Contract No. CM2848

FINAL

After recording return to:

Nassau County School District
Office of the Superintendent
1201 Atlantic Avenue
Fernandina Beach, FL 32034

**Inst: 202045014856 Date: 05/19/2020 Time: 8:32AM
Page 1 of 14 B: 2362 P: 201, Doc Type: AGR
John A. Crawford, Clerk of Court, Nassau County,
By: CS, Deputy Clerk**

----------[SPACE ABOVE THIS LINE FOR RECORDING DATA]----------

Application Number: PL18-025/ 2019SCR0003
Project Name: Miner Pines

PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT

THIS PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT ("Agreement"), is entered into by and between THE SCHOOL DISTRICT OF NASSAU COUNTY, a body corporate and political subdivision of the State of Florida, hereinafter referred to as "School District;" NASSAU COUNTY, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and WR Howell Company, a corporation of the State of Florida, whose address is 12443 San Jose Boulevard, Suite 504, Jacksonville, FL 32223, hereinafter referred to as "Applicant", together referred to as the "Parties."

RECITALS:

WHEREAS, in order to implement a system of school concurrency as provided in the Public School Facilities Element of the Nassau County 2030 Comprehensive Plan (the "Public School Facilities Element"), the School District, Nassau County, and the municipalities within Nassau County have entered into that certain "Amended Interlocal Agreement For Public School Facility Planning," dated as of August 2008 (the "Interlocal Agreement"); and

WHEREAS, the County and the School District have adopted and implemented a public school concurrency management system to assure the future availability of public school facilities to serve new development consistent with level of service standards ("Level of Service" and "Level of Service Standards") required in the current Interlocal Agreement and the Public School Facilities Element; and

WHEREAS, pursuant to Section 10 of the Interlocal Agreement, Section 08.05 of the Public School Facilities Element, and Section 163.3180, Florida Statutes, an Applicant submitting a development permit application for residential development requiring a subdivision plat approval, site plan approval, or the functional equivalent that will generate additional students in a concurrency service area, as established in the Public School Facilities Element, in which there is insufficient capacity to accommodate the anticipated additional students must enter into a proportionate share mitigation agreement and provide proportionate share mitigation to ensure that

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the minimum level of service standards are maintained as specified in the Interlocal Agreement, the Public School Facilities Element, and Florida Statutes; and

WHEREAS, applicants must submit a development permit application to the County along with a School Impact Analysis that identifies the proposed location of the residential development, the number of dwelling units that will be created, a phasing schedule (if applicable), and age restrictions for occupancy (if any) as well as all other information required pursuant to the Interlocal Agreement and Public School Facilities Element; and

WHEREAS, Applicant is the fee simple owner, or authorized agent of the owner, of that certain tract of land (Parcel Number(s) 38-2N-27-0000-0014-0050), consisting of 15 ± acres and located in the Yulee South Concurrency Service Area specified in the Public School Facilities Element, which property is more particularly described on Exhibit "A," attached hereto and incorporated herein by reference (the "Property"), which such Property location is further illustrated by a map attached hereto as Exhibit "B," and incorporated herein by reference; and

WHEREAS, the Applicant has submitted a development permit application and School Impact Analysis to County in connection with a proposal to obtain a subdivision plat approval in order to develop 12 new single-family, detached residential dwelling units on the Property (the "Development Permit Application"), which such Development Permit Application and School Impact Analysis have been forwarded to the School District; and

WHEREAS, the School District has reviewed and evaluated the Applicant's Development Permit Application and School Impact Analysis as required by the Interlocal Agreement; and

WHEREAS, the School District has determined that at the time of this Agreement, based on the current adopted Level of Service Standards, adequate middle and high school capacity is available within the applicable Concurrency Service Area and any contiguous Concurrency Service Areas to accommodate the middle and high school students the Development Permit Application is anticipated to generate for the proposed dwelling units; and

WHEREAS, the School District has determined that based on the current adopted Level of Service Standards, there is insufficient elementary school capacity within the applicable Concurrency Service Area and any contiguous Concurrency Service Areas, including any anticipated new school capacity that will be available in the first three (3) years of the current School District Educational Facilities Plan, to accommodate the anticipated number of public school students that the Development Permit Application will generate and that available school capacity will not be in place or under actual construction within three (3) years after the approval of the Development Permit Application; and

WHEREAS, approving the Development Permit Application without requiring Proportionate Share Mitigation for the impacts of the proposed new dwelling units will result in a failure of the adopted Level of Service Standards; and

WHEREAS, the Applicant has agreed to enter into this Agreement with the School District and County to provide Proportionate Share Mitigation proportionate to the demand for Public

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School Facilities to be created by the Development Permit Application, as more particularly set forth herein; and

WHEREAS, the Parties agree that public school concurrency shall be satisfied by the Applicant's execution and full performance of this legally binding Agreement to provide mitigation proportionate to the demand for public school facilities to be created by the residential dwelling units proposed in the Development Permit Application ("Proportionate Share Mitigation").

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

SECTION 1. INCORPORATION OF RECITALS. The foregoing recitals are true and correct and are hereby incorporated into this Agreement by this reference as if fully set forth herein.

SECTION 2. DEFINITION OF MATERIAL TERMS. Any capitalized terms used herein but not defined shall have the meaning attributed to such term in the Interlocal Agreement, as the context may require.

SECTION 3. LEGALLY BINDING COMMITMENT.

(A) This Agreement constitutes a legally binding commitment by the Applicant to mitigate for the impacts of the new residential dwelling units for which the Applicant is seeking approval pursuant to the Development Permit Application and satisfies the requirements of the Interlocal Agreement and Public School Facilities Element.

(B) The Parties agree that this Agreement satisfies the requirements of Section 163.3180(6)(h), Florida Statutes, as a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the residential development proposed in the Development Permit Application.

SECTION 4. PROPORTIONATE SHARE MITIGATION. The Applicant shall provide Proportionate Share Mitigation in order to meet the demand for school capacity created by the proposed residential development, and to provide for capacity for 1.812 elementary students, as follows, in accordance with Section 10.6 of the Interlocal Agreement and Section 09.03 of Public School Facilities Element:

The payment of a total amount of $59,513 for the Development Permit Application, which equates to $4,959.42 per dwelling unit, as an appropriate proportionate share payment to enable the School District to maintain the Level of Service Standard for school capacity in the affected Concurrency Service Area or Concurrency Service Areas. This proportionate share payment shall occur at the time of and be a condition precedent for the issuance by County of a Certificate of Concurrency as provided in Section 6. This payment shall be made directly to the School District.

SECTION 5. USE OF PROPORTIONATE SHARE MITIGATION. The School District shall direct any and all Proportionate Share Mitigation, provided in Section 4 above, to a school capacity project identified in the financially feasible five (5) year district work plan of the

School District Educational Facilities Plan which mitigates the impacts from the proposed residential development in the Development Permit Application. If such a school capacity project does not exist in the School District Educational Facilities Plan, the School District may, in its sole discretion, add a school capacity project to mitigate the impacts from the proposed residential development, as provided in Section 10.6 of the Interlocal Agreement.

SECTION 6. CONCURRENCY RESERVATION.

(A) Upon final execution of this Agreement by all Parties hereto, the School District shall issue a School Concurrency Reservation Letter documenting that capacity will be available for the proposed residential development in the Development Permit Application. The County shall be entitled to rely on the School Concurrency Reservation Letter in its review and issuance of a Certificate of Concurrency for the proposed development; provided that nothing herein shall require the County to issue a Certificate of Concurrency for the Development Permit Application if the Applicant has otherwise failed to satisfy the requirements of the County's land development regulations.

(B) The duration and effect of any Certificate of Concurrency relating to the development provided in the Development Permit Application shall be in accordance with the Interlocal Agreement and Public School Facilities Element; however, in no event shall this School Concurrency Reservation Letter, a Certificate of Concurrency, or any capacity reservation based on the same, continue to be effective if the Applicant fails to perform its obligations under this Agreement.

SECTION 7. IMPACT FEE CREDIT.

(A) Any Proportionate Share Mitigation paid pursuant to this Agreement shall be credited on a dollar-for-dollar basis at fair market value toward any Educational System Impact Fees due for the same residential development included in the Development Permit Application, as provided in Section 10.7 of the Interlocal Agreement.

(B) The School District shall notify the County of the amount of the above described Proportionate Share Mitigation, which fair market value is $59,513, and shall request an Educational System Impact Fees credit in such amount on behalf of the Applicant upon receipt of the Proportionate Share Mitigation.

(C) An entity that later applies for a building permit for any of the dwelling units included in the Development Permit Application shall obtain an assignment of all or a portion of the above mentioned Educational System Impact Fee credits from the Applicant and submit such assignment to the School District and County at the time the Educational Impact Fee is due in order to drawdown from the Educational System Impact Fee credits provided herein, for so long as the Applicant has any remaining Educational System Impact Fee credits. The Parties agree that all the requirements, including those in the Nassau County Comprehensive Impact Fee Ordinance, for the Applicant to receive the Educational System Impact Fee credits set forth herein for the Development Permit Application have been satisfied.

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(D) If the Educational System Impact Fee is less than the Proportionate Share Mitigation for the residential development included in the Development Permit Application, the Applicant shall not be entitled to the use of any excess Educational System Impact Fee credits.

(E) Nothing in this Agreement shall be deemed to require the County to continue to levy or collect Educational System Impact Fees or, if levied, to maintain them at any certain level.

SECTION 8. NO GUARANTEE OF LAND USE. Nothing in this Agreement shall require County to approve the Development Permit Application.

SECTION 9. TERMINATION. This Agreement shall terminate and Applicant shall forfeit any administrative application fees paid under the following circumstances, unless the County and the School District agree to an extension of the Certificate of Concurrency provided to the Applicant:

(A) The County does not approve the Development Permit Application within one hundred eighty (180) days of the Effective Date of this Agreement. In such event, all Proportionate Share Mitigation paid by the Applicant shall be refunded to the Applicant.

(B) The Certificate of Concurrency expires in accordance with Section 9.9 of the Interlocal Agreement. In such case, this Agreement shall be terminated and any encumbered capacity shall become unencumbered. The Applicant will not be entitled to a refund of Proportionate Share Mitigation paid under this Agreement, but the value of the Proportionate Share Mitigation received shall be held as a credit toward any future Proportionate Share Mitigation that may be required for future residential development on the same property.

SECTION 10. COVENANTS RUNNING WITH THE LAND. This Agreement shall be binding, and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

SECTION 11. NOTICES. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

School Board: Nassau County School District
Office of the Superintendent
1201 Atlantic Avenue
Fernandina Beach, FL 32034

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Owner/Applicant; W.R. Howell Company
12443 San Jose Boulevard, Suite 504
Jacksonville, FL 32223

County or City: Nassau County Administrator
96135 Nassau Place, Suite 6
Yulee, FL 32097

SECTION 12. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

SECTION 13. DEFAULT. If any party to this Agreement materially defaults under the terms hereof, then a non-defaulting party shall give the defaulting party thirty (30) days' notice and a right to cure such breach. Should the Applicant of the property described herein fail to timely cure a default in meeting their obligations set forth herein, the School Concurrency Reservation Letter and Certificate of Concurrency, issued based upon payment and/or performance hereunder, shall be voided and the Applicant and the property described herein shall lose their right to concurrency under this Agreement and their right to Educational System Impact Fee credits under this Agreement. Further, in the case of such default, any development upon that property dependent upon such certificate will be stopped, until and unless the Agreement is reinstated or the default is cured or capacity becomes available and is granted through an appropriate application. Should County or School District fail to timely cure a default in meeting their obligations set forth herein, Applicant may seek any and all remedies available to it in law or equity.

SECTION 14. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

SECTION 15. EXHIBITS. All Exhibits attached hereto are a part of this Agreement and are fully incorporated herein by this reference.

SECTION 16. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be binding upon the parties hereto unless in writing and executed by all the Parties to this Agreement.

SECTION 17. ASSIGNMENT, TRANSFER OF RIGHTS. The Applicant may assign its rights, obligations and responsibilities under this Agreement to a third-party purchaser of all or any part of fee simple title to the Property; provided, however, that any such assignment shall be in writing and shall require the prior written consent of all of the Parties hereto. Such consent may be conditioned upon the receipt by the other parties hereto of the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Applicant's obligations with regard to Proportionate Share Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same. Absent

an assignment of the rights, obligations, and responsibilities under this Agreement, the transfer of all or a portion of the Property to a third-party purchaser (including assignment of all or a portion of the above mentioned Educational System Impact Fee credits from the Applicant as provided in Section 7) shall not require the consent of the School District or the County.

SECTION 18. COUNTERPARTS. This Agreement may be signed in counterparts, each of which may be deemed an original, and all of which together constitute one and the same agreement.

SECTION 19. RECORDING OF THIS AGREEMENT. The School District agrees to record this Agreement, at Applicant's expense, within fourteen (14) days after the Effective Date, in the Public Records of Nassau County, Florida.

SECTION 20. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement among the Parties with respect to the subject matter addressed herein, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

SECTION 21. SEVERABILITY. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

SECTION 22. APPLICABLE LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Nassau County Code and venue for any action to enforce the provisions of this Agreement shall be in the Fourth Judicial Circuit Court in and for Nassau County, Florida.

SECTION 23. ATTORNEY'S FEES. In the event any party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against any other party hereto arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney fees.

SECTION 24. EFFECTIVE DATE. The effective date of this Agreement shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures (the "Effective Date").

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives on the dates set forth below each signature:

[REST OF PAGE INTENTIONALLY LEFT BLANK]

FINAL

SCHOOL DISTRICT

(seal)

THE SCHOOL DISTRICT OF NASSAU COUNTY, FLORIDA

WITNESSES:

By: Donna Martin

Donna Martin, Chair

26 day of March, 2020.

ATTEST:

Approved as to Form:

, Superintendent of Schools

Brett L Steger

, School District Attorney

26th day of March, 2020.

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APPLICANT

Signed, witnessed, executed and acknowledged on this 19th day of March 2020.

WITNESSES:

Sara Hall

Sharon A Hudson

WR HOWELL COMPANY

By: William R Howell, II

Title: PRES, DEVT

STATE OF FLORIDA)
) SS:
COUNTY OF NASSAU)

Before me on March 19, 2020, personally appeared William R Howell II, who ✓ is personally known to me or _____ has produced _____ as identification, and who acknowledged that he/she signed the above instrument as his/her free and voluntary act.

Sharon A Hudson
Notary Public

SHARON A. HUDSON
MY COMMISSION # GG935943
EXPIRES: December 11, 2023

SHARON A HUDSON
Name Printed, Typed or Stamped

Certificate No. GG935943

FINAL

COUNTY

NASSAU COUNTY, FLORIDA

WITNESSES

By: _____

Daniel B. Leeper, Chair

11th day of May, 2020.

ATTEST:

_____,
Clerk

MES
05.12.20

Approved as to Form:

_____

Michael S. Mullin
County Attorney

11th day of May, 2020.

FINAL

Exhibit A – Legal Description

DESCRIPTION AS PER OFFICIAL RECORDS BOOK 0869, PAGE 0796, OF THE CURRENT PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA:

A PORTION OF THE JOHN VAUGHAN GRANT, SECTION 38, TOWNSHIP 2 NORTH, RANGE 27 EAST, NASSAU COUNTY, FLORIDA. SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT A POINT WHERE THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 200 (A-1-A, A 75 FOOT RIGHT-OF-WAY) INTERSECTS WITH THE WESTERLY LINE OF SAID SECTION 38, AND RUN SOUTH 23° 07' 40" EAST ALONG SAID WESTERLY LINE A DISTANCE OF 2,958.80 FEET TO AN IRON PIPE FOR THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING, THUS DESCRIBED, CONTINUE SOUTH 23°07'40" EAST ALONG SAID WESTERLY LINE A DISTANCE OF 460.50 FEET TO AN IRON PIPE; RUN THENCE NORTH 66°56'50" EAST A DISTANCE OF 1,418.90 FEET TO AN IRON PIPE; RUN THENCE NORTH 23° 07'40" WEST A DISTANCE OF 462.35 FEET TO AN IRON PIPE; RUN THENCE SOUTH 66°52'20" WEST A DISTANCE OF 1,418.90 FEET TO THE POINT OF BEGINNING. THE PORTION OF LAND THUS DESCRIBED CONTAINS 15.0 ACRES, MORE OR LESS, ACCORDING TO SURVEY BY VERNON N. DRAKE, REG. LAND SURVEYOR NO. 1558, DATED MARCH 29, 1972. EXCEPTING FROM THE ABOVE DESCRIBED LAND ANY PORTION THEREOF USED FOR ROAD PURPOSES.

ABOVE HEREIN DESCRIBED LANDS SAME AS LANDS DESCRIBED IN WARRANTY DEED RECORDED JULY 14, 1972 IN OFFICIAL RECORDS BOOK 128 PAGE 24 THRU 27.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE JOHN VAUGHAN GRANT, SECTION 38, TOWNSHIP 2 NORTH, RANGE 27 EAST, NASSAU COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 200 (A-1-A, A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED) WITH THE WESTERLY LINE OF SAID SECTION 38, SAID WESTERLY LINE ALSO BEING THE EASTERLY RIGHT OF WAY LINE OF MINER ROAD (A VARIABLE WIDTH RIGHT OF WAY, AS NOW ESTABLISHED); THENCE SOUTH 22°54'51" EAST ALONG SAID WESTERLY LINE 2958.80 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 22°54'51" EAST, ALONG LAST SAID LINE 460.06 FEET TO THE NORTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1320, PAGE 1192 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE, NORTH 67°08'04" EAST, ALONG LAST SAID LINE, AND ALSO ALONG THE NORTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 2037, PAGE 804, OFFICIAL RECORDS BOOK 2060, PAGE 826, OFFICIAL RECORDS BOOK 2113, PAGE 794, OFFICIAL RECORDS BOOK 985, PAGE 120 AND OFFICIAL RECORDS BOOK 1383, PAGE 1568, SAID PUBLIC

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RECORDS, 1418.90 FEET, TO THE WESTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1028, PAGE 835; THENCE NORTH 22°54'50"WEST ALONG LAST SAID LINE, 461.97 FEET, TO THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 942, PAGE 1907, SAID PUBLIC RECORDS; THENCE SOUTH 67°03'26" WEST ALONG SAID LAST LINE, AND ALSO ALONG THE SOUTHERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1326, PAGE 610, OFFICIAL RECORDS BOOK 1326, PAGE 608, OFFICIAL RECORDS BOOK 1983, PAGE 901, OFFICIAL RECORDS BOOK 722, PAGE 1674, OFFICIAL RECORDS BOOK 2016, PAGE 7, OFFICIAL RECORDS BOOK 2122, PAGE 953 AND OFFICIAL RECORDS BOOK 718, PAGE 269, SAID PUBLIC RECORDS, 1418.90 FEET, TO THE POINT OF BEGINNING.

CONTAINING 15.02 ACRES, MORE OR LESS.

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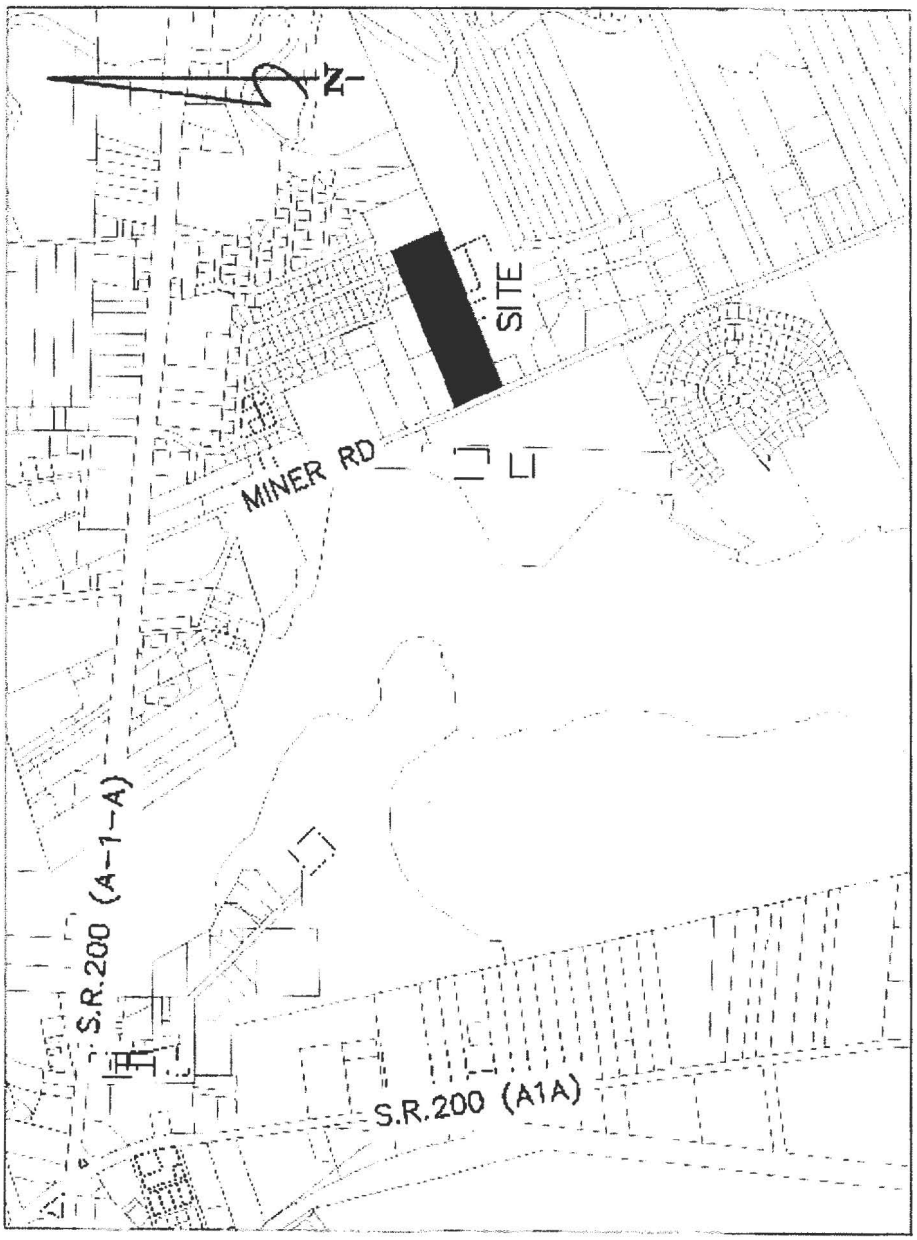
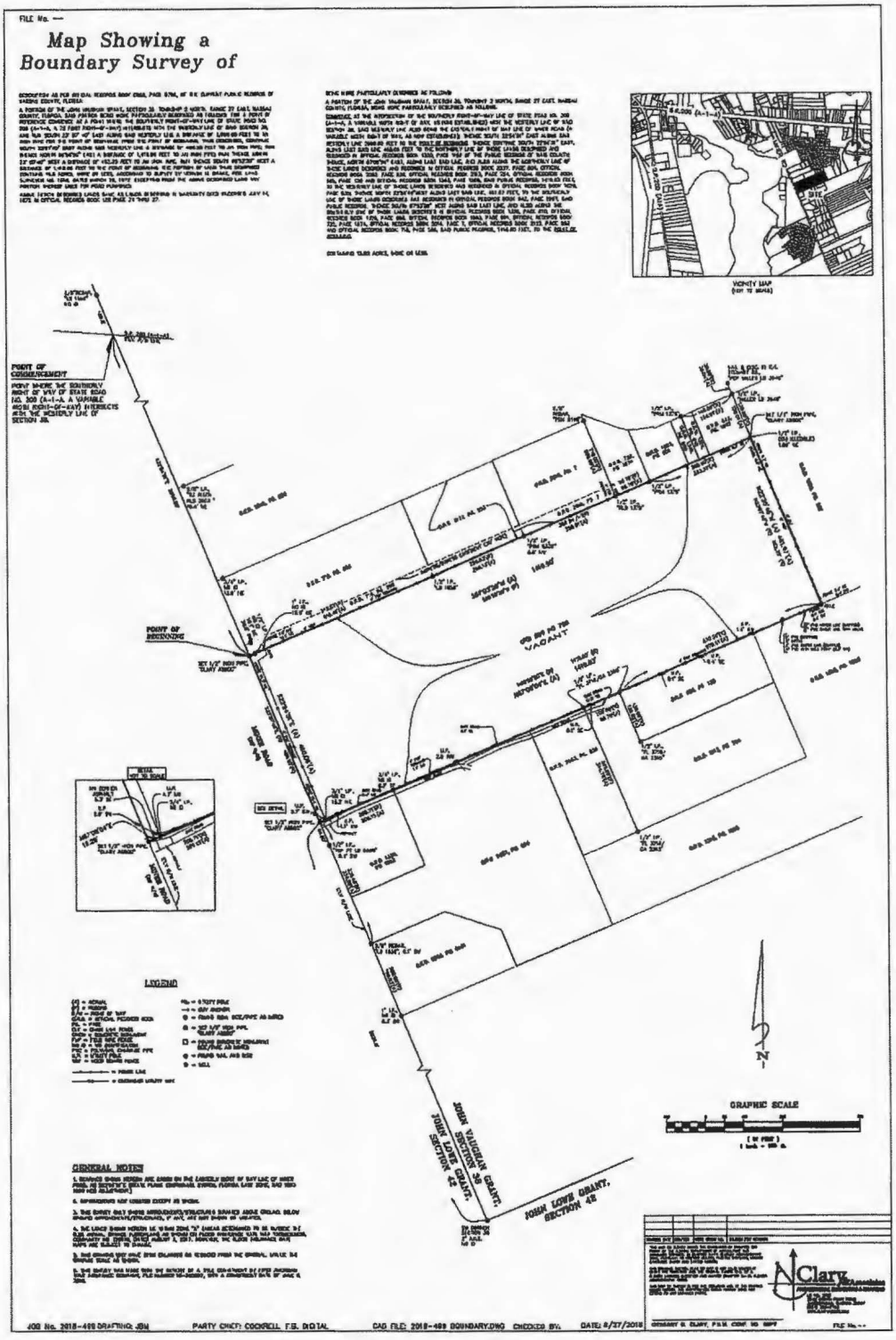
Exhibit B – Location Map



VICINITY MAP
(NOT TO SCALE)

FINAL


Map Showing a
Boundary Survey of
VICINITY MAP
POINT OF COMMENCEMENT
POINT OF BEGINNING
VACANT
LEGEND
GENERAL NOTES
GRAPHIC SCALE
JOHN LOWE GRANT, SECTION 42
JOHN VAUGHN GRANT, SECTION 39
JOHN LOWE GRANT, SECTION 42
Clary