

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020469

1. REQUESTED MOTION:

ACTION REQUESTED: Consider an amendment to the existing Development Agreement with Long Bay Partners, LLC, governing the mitigation of the transportation impacts of the Brooks of Bonita Springs DRI. Direct to second public hearing on May 28, 2002.

WHY ACTION IS NECESSARY: Florida Statutes, Section 163.3225, requires at least two public hearings before a local government may amend a development agreement.

WHAT ACTION ACCOMPLISHES: The purpose of the amendment is to revise the development parameters to reflect a proposed 20,000 square-foot increase in the retail/service/office floor area in the town center and decrease the number of dwelling units. The proposed amendment will also adjust the right-of-way alignment of the Three Oaks Parkway Extension at the Southern property line.

2. DEPARTMENTAL CATEGORY: County Attorney
COMMISSION DISTRICT # 3 **5:00 #5**

3. MEETING DATE: 05-14-2002

4. AGENDA:
 CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
TIME REQUIRED:
 30 minutes

5. REQUIREMENT/PURPOSE:
 (Specify)
 STATUTE 163.3225
 ORDINANCE
 ADMIN. CODE
 OTHER

6. REQUESTOR OF INFORMATION:
A. COMMISSIONER
B. DEPARTMENT County Attorney
C. DIVISION Land Use
BY: *Donna Marie Collins*
 Donna Marie Collins
 Assistant County Attorney

7. BACKGROUND: Lee County and Long Bay Partners, LLC, entered into a development agreement under the Florida Local Government Development Agreement Act on September 8, 1998, to address the mitigation of the transportation impacts of the Brooks of Bonita Springs DRI. The substance of the proposed amendment is to 1) revise the development parameters to reflect a 20,000 square-foot increase in the retail/service/office floor area in the Town Center; 2) decrease the number of dwelling units from 5,200 to 3,600; and 3) adjust the right-of-way alignment of the Three Oaks Parkway Extension at the Southern property line to conform to the alignment agreed to by the County and the City of Bonita Springs. The first two changes are necessary to conform the Development Agreement to the recently amended DRI Development Order.

(Continued on Page 2)

8. MANAGEMENT RECOMMENDATIONS: Consider the proposed amendment to the Brooks Development Agreement and then direct the matter to a second public hearing to be held on May 28, 2002.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>Donna Marie Collins</i>	OA <i>4/30/02</i>	OM <i>4/30/02</i>	RISK <i>4/30</i>	GC <i>4/30/02</i>	<i>5-10</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
 COUNTY ADMIN. *PMC*
4/30 9:30
CORAN
 COUNTY ADMIN.
 FORWARDED TO:
5/2 8:30

Blue Sheet #: 20020469

Page No.: 2

Subject: Second Amendment to the Brooks of Bonita Springs Development Agreement

Florida Statutes requires that there be two public hearings before the Board of County Commissioners prior to an amendment to a development agreement.

Attachment: 1) Draft Resolution amending the Brooks of Bonita Springs Development Agreement
 2) Proposed Second Amendment to the Brooks of Bonita Springs Development Agreement

RESOLUTION NO. 02-____

A RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF LEE COUNTY, FLORIDA

WHEREAS, the Florida Legislature adopted the Local Government Development Agreement Act to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development; and

WHEREAS, Long Bay Partners, LLC, proposes to amend a development agreement governing the Brooks of Bonita Springs, first entered into with Lee County on September 8, 1998, and subsequently amended on November 28, 2000; and

WHEREAS, Long Bay Partners, LLC, proposes to further revise the terms of the development agreement to adjust the development parameters and the right-of-way alignment of the Three Oaks Parkway Extension at the Southern boundary; and

WHEREAS, Florida Statutes, Section 163.3225, requires at least two public hearings before a local government may amend a development agreement; and

WHEREAS, the first public hearing was held on May 14, 2002, and a second public hearing was held on May 28, 2002.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that:

1. The Brooks of Bonita Springs Development Agreement is further amended to revise the development parameters and adjust the right-of-way alignment of the Three Oaks Parkway Extension at the Southern property line.
2. The substance of this amendment is set forth in the attached exhibit to this resolution. The exhibit is the revised development agreement that incorporates all prior amendments to the agreement.
3. The substance of this amendment to the development agreement is to revise the development parameters to reflect a 20,000 square-foot increase in the retail/service/office floor area in the Town Center; decrease the number of dwelling units from 5,200 to 3,600; and adjust the right-of-way alignment of the Three Oaks Parkway Extension at the Southern property line to conform to the alignment agreed to by Lee County and the City of Bonita Springs.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon a motion of Commissioner _____, seconded by Commissioner _____, and, upon being put to a vote, the result was as follows:

Robert P. Janes
Douglas R. St. Cerny
Ray Judah
Andrew W. Coy
John E. Albion

DULY PASSED AND ADOPTED this 28th day of May 2002.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Robert P. Janes, Chairman

Approved as to form by:

Donna Marie Collins
County Attorney's Office

Attachment: Second Amendment to the Brooks of Bonita Springs DRI Development Agreement

**SECOND AMENDMENT TO
THE BROOKS OF BONITA SPRINGS**

**DEVELOPMENT AGREEMENT
(CODIFIED)**

This Agreement is entered into this 8th day of September, 1998, by Long Bay Partners LLC, a Florida Corporation, hereinafter the "Developer," and Lee County, hereinafter the "County."

ARTICLE 1. RECITATIONS

WHEREAS, the Developer is developing a project known as The Brooks (f/k/a The Brooks of Bonita Springs) Development of Regional Impact (DRI), located in Sections 2, 3, 9, 10 and 11, Township 47S, Range 25E, Lee County, Florida.

WHEREAS, The Brooks Application For Development Approval, Development of Regional Impact was approved by the Lee County Board of County Commissioners on August 25, 1997; and

WHEREAS, The Brooks DRI Development Order originally approved a total of 5,200 dwelling units, 120 hotel rooms, 72 holes of golf, and 305,000 square feet of non-residential use, by phase and with buildout in 2007; and

WHEREAS, The Brooks DRI Development Order was subsequently amended to approve a total of 3,600 dwelling units, 120 hotel rooms, 72 holes of golf and 325,000 square feet of non-residential use, by phase and with a buildout in 2007; and

WHEREAS, The Brooks rezoning was approved by the Lee County Board of County Commissioners on August 25, 1997; and

WHEREAS, The Brooks development has been found consistent with The Lee Plan and the Lee County Land Development Codes; and

WHEREAS, The developer of The Brooks must participate in the improvement to certain roads in order to meet the transportation conditions of the adopted DRI Development Order; and

WHEREAS, all of the required road link improvements are consistent with the 2020 Transportation Plan for the Fort Myers - Cape Coral Metropolitan Area and/or the Bonita Springs Traffic Circulation Study; and

WHEREAS, Condition E.2 of The Brooks DRI Development Order specifies as a traffic mitigation option, the provision of a Development Agreement specifying the schedule for certain right-of-way dedication and roadway construction in lieu of the payment of roads impact fees; and

WHEREAS, the Lee County Comprehensive Plan, "The Lee Plan," is in compliance with the State Comprehensive Plan; and

WHEREAS, Lee County conducted two public hearings prior to executing and amending this agreement in accordance with Florida Statutes Section 163.3225(1); and

WHEREAS, all public hearings were properly noticed by publication in the News Press and by mailed notice to affected property owners in accordance with Florida Statutes Section 163.3225(2).

NOW, THEREFORE, for and in consideration of the premises and in reliance on the mutual promises, covenants, undertakings, recitals and other matters contained herein, the parties hereby covenant and agree that this Agreement constitutes a Contract among the Parties, as provided herein.

ARTICLE 2. DEFINITIONS

A. IN GENERAL

The definitions set forth below apply. The definitions and references provided in Section 163.3221, Florida Statutes, and Chapter 2, Article III of the Lee County Land Development Code apply if the terms are not defined herein. The plain meaning controls for all other words and terms.

B. ADDITIONAL DEFINITIONS

The following definitions and references are given for the purpose of interpreting this Agreement.

Building Permit - means an official document or certification which is issued by the Building Official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

Certificate of Concurrency Compliance - means the certification issued by the County Administrator or his designee pursuant to Lee County Concurrency Management System. This certification means that the County Administrator or his designee has determined that there is or will be sufficient public facilities to service the development for which a development permit has been requested without violating the minimum concurrency standards set forth in the Lee Plan.

Community Development District - means a local unit of special-purpose government which is created pursuant to the "Uniform Community Development District Act of 1980" (as may be amended) and limited to the performance of those specialized functions authorized by the act; the boundaries of which are contained wholly within a single County; the governing head of which is a body created, organized, and constituted and authorized to function specifically as prescribed in the act for the delivery of urban community development services; and the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law.

Concurrency - has the meaning set forth in Section 163.3180, F.S.

Concurrency Management System - is that system adopted by Lee County pursuant to Section 163.3180, F.S., and set forth in Lee County Land Development Code Article II, Section 2-46 pursuant to Article III of the Constitution of the State and pertinent provisions of Florida Statutes.

Construction Cost - are those costs associated with road capital improvements as that term is defined in Chapter 10 of the Land Development Code.

County - Lee County, Florida, acting through its elected Board of County Commissioners.

Developer - Long Bay Partners L.L.C., a Florida Corporation, The Brooks of Bonita Springs Development District or their assigns.

Development Agreement - means the subject contractual agreement between Lee County and the Developer adopted pursuant to §§163.3220 et seq., Florida Statutes, and Chapter 2, Article III of the Lee County Land Development Code.

Development Order - an official action of Lee County approving a Development of Regional Impact, as provided in §380.06(15) Florida Statutes; or a decision of Lee County to approve a development permit, as defined in §163.3164(6) Florida Statutes.

Development of Regional Impact (DRI) - a development defined in §380.06, Florida Statutes.

Land Development Code - means the Land Development Code, Lee County, Florida, as designated as Ordinance 94-12 dated 1994, and as amended.

The Lee Plan - the Lee County comprehensive plan which was adopted pursuant to F.S. Ch. 163 on January 31, 1989, and effective March 1, 1989, and all subsequent amendments thereto.

Road Impact Fee - means impact fees collected by Lee County pursuant to Chapter 2 of the Lee County Land Development Code, and dedicated to the construction of Roads.

Road Impact Fee Benefit Districts - the geographical areas within Lee County established in the Land Development Code.

Site-Related Improvement - has the meaning set forth in Lee County Comprehensive Plan as of December 1997. The term is defined as:

Capital improvements and right of way dedications for direct access improvements to the development. Direct access improvements include, but are not limited to the following: (1) site driveways and roads; (2) median cuts made necessary by those driveways or roads; (3) right turn, left turn, and deceleration or acceleration lanes leading to or from those driveways or roads; (4) traffic control measures for those driveways or roads; and (5) roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

Street, arterial - means streets primarily intended to carry large volumes of through traffic connecting major activity centers to other major traffic generators. Access to abutting properties is a secondary function.

Street, local - means streets with the primary function being to serve adjacent properties. As such, a local street provides the linkage from adjacent land uses to the collector street system. Through volume service is not a function of local streets.

Street, major collector - means streets having the primary purpose of collecting traffic from intersecting local and minor collector streets and distributing this volume to the nearest arterial. A secondary purpose is to carry moderate volumes of through traffic. Access to abutting land uses is a secondary function.

Street, minor collector - means streets having the primary purpose of collecting traffic from intersecting local streets and distributing this volume to the nearest major collector or arterial. As such, a minor collector street provides the linkage from neighborhoods (i.e., local streets) to the arterial system, and provides intra-neighborhood access. Access to abutting land uses is a secondary function.

ARTICLE 3. DESCRIPTION OF THE PROJECT

A. PROPERTY SUBJECT TO THIS AGREEMENT.

The Property subject to this Agreement is commonly known as The Brooks of Bonita Springs and is legally described in Appendix A, which is attached hereto.

B. OWNERSHIP

Long Bay Partners, L.L.C., a Florida Limited Liability Corporation is the owner or authorized agent for the property. Long Bay Partners, either owns the property in fee or easement, or has a power of attorney for all of the property that is subject to the DRI DO for The Brooks. Long Bay Partners has an easement for the portion of property that is the right-of-way for Coconut Road from U.S. 41 to the railroad tracks. Long Bay Partners is authorized to do business pursuant to Chapter 608, F.S. Edward J. McArdle is required, by an agreement between Long Bay Partners, L.L.C., and Edward J. McArdle, to convey the right-of-way in fee for Coconut Road from U.S. 41 to the railroad tracks.

All references herein to the applicant or developer shall be understood to mean Long Bay Partners, L.L.C., the Community Development District, or their successors or assigns.

C. FUTURE LAND USE DESIGNATION

The Future Land Use Designations for the Property are Rural, Wetlands, and Suburban. The development within the Rural future land use category has been approved for development under the Planned Development District Option (PDDO).

D. ZONING DISTRICT DESIGNATION

The Zoning Designation of the Property is Mixed Use Planned Development (MPD). The property was rezoned on August 25, 1997, by the Board of County Commissioners, Case 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01.

E. DRI DEVELOPMENT ORDER

The Property is subject to a Development of Regional Impact Development Order approved by the County Commission at public hearings held on August 25, 1997, pursuant to Case 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01 and DRI Development Order 07-9697-133. The Notice of Adoption of the DRI DO is located at OR Book 2866, Pages 0010-0013. The DRI development order is a public record on file with Lee County, Southwest Florida Regional Planning Council, and the Department of Community Affairs.

F. CONCEPTUAL MASTER PLAN

1. CONSISTENCY WITH COMPREHENSIVE PLAN

The Parties find and agree that the conceptual master plan of the Property attached as Exhibit 1 is consistent with The Lee Plan.

2. CONSISTENCY WITH LAND DEVELOPMENT REGULATIONS

The Parties find and agree that the conceptual master plan of the Property is consistent with local land development regulations.

G. USES, DENSITIES, INTENSITIES AND HEIGHT

The Brooks DRI Development Order approves a total of ~~5,200~~ 3,600 dwelling units, 120 hotel rooms, 72 golf holes, and ~~305,000~~ 325,000 square feet of non-residential use, by phase, with build out in year 2007. The uses, densities and height of the Project are summarized in Exhibit 2. (Maximum Height 75 feet.)

H. RESERVATION, DEDICATION, OR CONVEYANCE OF LAND

All proposed reservations, dedications or conveyances of land within the Project for traffic purposes are identified in this Agreement under Developer Responsibilities. If other right-of-way dedications are subsequently required by Lee County the parties must amend this development agreement to reference those dedications.

I. COUNTY DEVELOPMENT PERMITS AND ORDERS

1. LIST OF REQUIRED PERMITS AND DEVELOPMENT ORDERS

The following is a list of development approvals that have been granted, or may be required to accommodate this Project:

- (a) DRI Development Order, 07-9697-133;
- (b) Zoning Case 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01 to rezone the property to Mixed Use Planned Development (MPD);
- (c) Certificate of Concurrency;
- (d) Subdivision Approvals, Local Development Orders;
- (e) Certificate to Dig - Excavate Permits; and
- (f) Right-of-Way Permits.

J. PROJECT PHASING

The Project will be constructed in two phases, identified on Exhibit 2.

ARTICLE 4. TERMS OF THE AGREEMENT

A. DEVELOPER RESPONSIBILITIES

1. GENERAL

- A) The Developer will be responsible for providing right-of-way, easements, design plans, road improvements, and possibly a cash payment to the County. The Developer's proportionate share obligation is based on the project's transportation impacts estimated on the development parameters set forth in Exhibit 2. This obligation is \$9,198,000 and represents the estimated costs of needed improvements in 1997 dollars. The Developer's obligations are summarized in Exhibit 3 and presented in the conditions set forth herein. The actual cost of improvements will be adjusted to 1997 dollars at the time construction contracts are let for Three Oaks Parkway and Williams Road by using the most current State Highway Bid Price Index for Florida published by the Engineer News Record (McGraw-Hill Publications). Except for the adjustment for prematurity, the actual cost of improvements for Coconut Road, including the embankment and drainage, will not be subject to further adjustment.
- B) The Developer shall dedicate, or cause to be dedicated, certain on-site and off-site right-of-way. The dedication of right-of-way will be in accordance with this agreement. The alignments for the on-site rights-of-way and easements are set forth in the adopted Conceptual Master Plan, which is attached hereto as Exhibit 1 and Exhibit 4B. The alignments have been reviewed and approved by Lee County DOT. The northern and southern control points for Three Oaks Parkway are set forth in Exhibits 1, 4A and 4B. The developer has proceeded with site planning in reliance on the northern and southern control points established on the Conceptual Master Plan. During final site planning the alignments portrayed in Exhibits 1 and 4B may vary slightly. The control points of Exhibit 4A are fixed.
- C) Certain rights-of-way required by this Agreement may be dedicated or granted by owners other than the Developer. These dedications or grants will be considered to meet the intent of this Agreement. Any credits available for the dedication or grant will pass directly to those persons or entities dedicating or granting the right-of-way. The availability of credits to third party donors of rights-of-way will be in accordance with this Agreement and the Land Development Code. Road impact fee credits issued to third party donors may not be used to offset the proportionate share obligation of the Developer.
- D) If the Developer modifies the parameters of development so as to reduce the density or intensity of development approved to date and also seeks a

reduction in the transportation mitigation, the Developer will file a Notice of Proposed Change to The Brooks DRI development order in accordance with Florida Statutes. If the proposed changes to the development are not disputed by County staff, the request to amend the DRI Development Order may proceed directly to the Board of County Commissioners. If the proposed changes are disputed by County Staff, the Notice of Proposed Change will be reviewed by the Hearing Examiner before going to the Board of County Commissioners. In the event the Developer reduces the density or intensity of development approved to date, but does not seek a modification to the transportation mitigation outlined in the DRI Development Order, no Notice of Proposed Change will be necessary.

2. PHASE I REQUIREMENTS

A) COCONUT ROAD RIGHT-OF-WAY

- 1) Dedicate or cause to be dedicated 150 feet of right-of-way for the extension of Coconut Road from US 41 to the eastern property line of The Brooks. The alignment for this arterial road is set forth in Exhibit 1 and Exhibit 4B.
- 2) Dedicate, or cause to be dedicated or reserved, the expanded right-of-way (3.5 acres) for a potential overpass at I-75 at the eastern property line of The Brooks. This right-of-way forms an area north and south of the centerline of Coconut Road at I-75, approximately 155' north and south of the centerline of Coconut Road at I-75 and approximately 1900' +/- on Coconut Road west of the centerline of I-75.

Long Bay Partners has the ability to acquire the 8.84 acres under the McArdle agreement. McArdle may refuse to convey the property. McArdle does not have the right to develop the property for any use other than a fly-over (or interchange) pursuant to the DRI Development Order. If McArdle refuses to convey the property, thereby precluding Long Bay Partners from conveying the 8.84 acres, then the Developer may select one of the following options to meet the total Phase I mitigation requirements:

- (a) Provide Lee County with a cash payment equal to the appraised value of the 8.84 acres as of August 25, 1997, without the added value attributable to the DRI or DCI approvals; or
- (b) Make other road improvements, provide other land, perform other design work of equivalent value on significantly and

adversely impacted roadways that is mutually agreeable to the County and the Developer.

- 3) The right-of-way from US 41 to Seminole Gulf Railroad and from the Seminole Gulf Railroad to future Three Oaks Parkway must be dedicated no later than ninety (90) business days after Lee County's execution of this Development Agreement. The County will negotiate a right-of-crossing agreement with the Railroad when the County accepts Coconut Road between US 41 and the railroad for maintenance.
- 4) The right-of-way from Three Oaks Parkway to the Southeast Parcel entrance, must be dedicated coincident with the 1,300th residential building permit. The Developer, in its discretion, may dedicate the right-of-way prior to the issuance of the building permit for the 1,300th residential unit, and the County agrees to accept the right-of-way when dedicated.
- 5) The right-of-way from the Southeast Parcel entrance to I-75, and the two quadrants at I-75 (8.84 acres) must be dedicated coincident with the 1,300th residential building permit. If McArdle fails to convey this property to the Developer, then the Developer will proceed in accordance with Article 4, Paragraph A.2.A)2).
- 6) The Developer will receive offsets against the proportionate share obligations for a portion of the right-of-way dedication. The value of the offset will be based on the following:
 - a) The 2,100 +/- foot segment from US 41 to the Seminole Gulf Railroad is partially creditable: 80 feet is not creditable and 70 feet is creditable. This segment of right-of-way is owned by Edward J. McArdle, and Edward J. McArdle is contractually obligated to dedicate the right-of-way in fee simple to the County for road impact fee credits. If Edward J. McArdle fails to dedicate the right-of-way in fee simple, then the Developer will dedicate a fee simple interest in the right-of-way for an offset against its proportionate share obligation.
 - b) The 6,900 +/- foot segment from the Seminole Gulf Railroad to Three Oaks Parkway is partially creditable: 80 feet is not creditable and 70 feet is creditable.
 - c) The 2,000 +/- foot segment from Three Oaks Parkway to the Southeastern Parcel Entrance is partially creditable: 80 feet is not creditable and 70 feet is creditable.

- d) The 1,600+/- foot segment from the Southeast Parcel Entrance to I-75 is creditable in its entirety: 150 feet is creditable.
 - e) The 3.5 acre parcel that accommodates the I-75 overpass is creditable. If McArdle dedicates the 3.5 acres, McArdle will receive road impact fee credits. If the Developer dedicates the 3.5 acres, the Developer will receive an offset against its proportionate share obligation.
- 7) The Developer will provide the water storage, water quality, attenuation and pre-treatment of the drainage associated with the four laning of Coconut Road from US 41 to Three Oaks Parkway as permitted by South Florida Water Management District Permit # 36-00288-S, "Sweetwater MPD and The Brooks of Bonita Springs DRI". Before the County accepts Coconut Road for maintenance, the Developer must provide the County a legal right of access to the development drainage system to address any emergency needs related to Coconut Road.

B) THREE OAKS PARKWAY RIGHT-OF-WAY

- 1) Dedicate 150 feet of right-of-way (width) for the Three Oaks Parkway Extension within The Brooks from the south property line to the north property line. The alignment for this road is set forth in Exhibits 1 and 4B.
- 2) The northern and southern control points for Three Oaks Parkway are established and are set forth in Exhibits 4A and 4B.
- 3) The Three Oaks Parkway right-of-way from the south property line to the north property line must be dedicated coincident with the issuance of the 650th residential building permit. The Developer may dedicate the right-of-way prior to the issuance of the building permit for the 650th unit. The County agrees to accept the right-of-way when dedicated, and agrees to provide an offset against the proportionate share obligation. In any case, the right-of-way will be dedicated to the County no later than December 31, 2001.
- 4) The entire 150-foot right-of-way (width) for Three Oaks Parkway is eligible for an offset against the proportionate share obligation.
- 5) The Developer will voluntarily reserve its off-site property in the general vicinity of the Three Oaks Parkway Extension from Corkscrew Road to Williams Road temporarily until the County

completes the alignment study. Lee County will conduct the alignment study by 2001. The alignment study will identify the location of the Three Oaks Parkway Extension. The County will provide written notice to the Developer of what off-site lands under the Developer's control are within the Three Oaks Parkway Extension alignment or necessary for the roadway.

- 6) Upon receipt of the written notice from Lee County identifying the precise alignment for the Three Oaks Parkway Extension, the Developer will have 180 business days to dedicate to Lee County the properties under the Developer's ownership or control that lie within the alignment. All off-site land dedicated to Lee County for the Three Oaks Parkway Extension, owned by the Developer at the time of DRI approval, is eligible for offset against the proportionate share obligation based on the appraised value on August 25, 1997, without enhanced value attributable to the DRI or DCI approvals. If the Developer utilizes off-site land located outside of the alignment of the extension to acquire property within the alignment, the Developer will receive full credit for the appraised value of these additional lands upon dedication. Lands that are acquired by the developer after the date of DRI Development Order approval will be valued as of the date of dedication. The Developer is not obligated by this agreement to negotiate to obtain additional off-site land within the alignment, and the Developer is not precluded by this agreement from obtaining off-site land within the alignment.
- 7) The Developer will provide the water storage, water quality, attenuation and pre-treatment of drainage associated with the six laning of Three Oaks Parkway Extension from the Developer's south property line to its north property line as permitted by South Florida Water Management District Permit # 36-00288-S, "Sweetwater MPD and The Brooks of Bonita Springs DRI". Before the County accepts Three Oaks Parkway for maintenance, the Developer must provide the County a legal right of access to the development drainage system to address any emergency needs related to Three Oaks Parkway.

C) WILLIAMS ROAD RIGHT-OF-WAY

- 1) Dedicate 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway. The alignment for the road is set forth in Exhibits 1 and 4B.

- 2) The value of the entire 100 feet of right-of-way for Williams Road is eligible as an offset to the proportionate share obligation. The date of valuation is August 25, 1997, without enhanced value attributed to the DRI or DCI approvals.
- 3) The right-of-way from River Ranch Road to Three Oaks Parkway must be dedicated coincident with the issuance of the 1,300th residential building permit. The Developer may dedicate the right-of-way prior to the issuance of the building permit for the 1,300th unit. The County agrees to accept the right-of-way and provide an offset against the proportionate share obligation. The date of valuation of the right-of-way is August 25, 1997, without enhanced value attributed to the DRI and DCI approvals.

D) RIGHT-OF-WAY DEDICATIONS

- 1) Prior to the dedication of right-of-way, the Developer must provide the County with an appraisal, current title opinion, and draft deed. The title opinion and the form of the deed must be approved by the County Attorney's office.
- 2) The appraisal for on-site right-of-way must be valued at, or prior to, August 25, 1997, without the enhanced value created by the DRI and zoning approval.
- 3) The value of the right-of-way owned by the Developer along the road alignment of Three Oaks Parkway between Corkscrew Road and Williams Road will be based on the value on August 25, 1997, without the enhanced value attributed to the DRI and DCI approvals, assuming the land was owned by the Developer at the time of DRI approval. If the Developer acquires additional right-of-way after the time of DRI approval, the value of that right-of-way will be based on the value at the time of dedication to Lee County.
- 4) Lee County will accept the dedication of right-of-way consistent with this agreement.

E) ESTIMATED VALUE OF RIGHT-OF-WAY

- 1) The total estimated value of the rights-of-way for the three roads factoring out the non-creditable portion of Coconut Road, has been estimated to be \$2,652,400. This figure is based on the current appraiser's estimate for all right-of-way except Coconut Road from US 41 to Three Oaks Parkway, which is based on an actual appraisal.

However, this figure was calculated without the benefit of a title search. This figure also assumes that The Developer will be the entity to dedicate the Coconut Road right-of-way to the County. If McArdle is the entity who dedicates the right-of-way, this figure will be less since the County will be issuing road impact fee credits. The Developer will not receive an offset against the proportionate share assessment in this instance. These values are summarized as follows.

<u>Right-of-Way</u>	<u>Total Estimated Value**</u>	<u>Estimated Value** Eligible for Offset</u>
Coconut Road		
US 41 to Railroad Track*	\$ 1,055,000*	\$ 492,700*
Railroad Tracks to Three Oaks Parkway		
Three Oaks Parkway to SE Parcel	\$ 587,900	\$ 274,500
SE Parcel to I-75 and I-75 Quadrant (8.84)*	\$ 172,300	\$ 80,500
	\$ 221,000*	\$ 221,000*
Three Oaks Parkway from North Property Line to South Property Line	\$ 1,108,000	\$1,108,000
Three Oaks Parkway from North Property Line to Corkscrew Road	\$ 370,700	\$ 370,700
Williams Road from River Ranch Road to Three Oaks Parkway	\$ 105,000	\$ 105,000
TOTAL	\$ 3,619,900	\$2,652,400

* The values for the highlighted segments of Coconut Road may not be used as an offset to the proportionate share obligation if Edward J. McArdle is the entity to convey the right-of-way. If McArdle is the entity to convey those segments, the estimated value eligible for offset against the proportionate share would be \$1,938,700.

** All estimates have been made without the benefit of a title search. Actual values may vary from the estimates set forth above.

- 2) Unless provided otherwise elsewhere in this agreement, all right-of-way dedications will be valued as of August 25, 1997, the date of approval of the Brooks DRI Development Order, without the enhanced value created by the DRI approval.

F) DESIGN PLANS

- 1) At the earlier of December 31, 2000, or the issuance of any residential or commercial building permits for Phase II, the Developer will submit design plans for the following improvements:
 - a) Three Oaks Parkway from the Developer's south property line to its north property line. The design must be for a four-lane urban arterial which can be expanded to six lanes.
 - b) Williams Road from River Ranch Road to Three Oaks Parkway. The design must be for a two lane rural collector road.

The design plans must be consistent with County standards and are subject to review and approval by the Lee County Division of Transportation. The County will provide comments within 30 days of each submittal. Design will be reviewed in accordance with the LDC, AASHTO, and best engineering practices.

- 2) The Developer will also prepare, submit and process necessary permits for the road improvements identified in Paragraph A.2.F)1) clearly distinguished from the rest of the development. The County will be identified as the applicant for all permits. All permit fees, application fees, and other expenses will be paid for by the Developer. All fees and expenses will be documented to the County and will be eligible for offset against the proportionate share obligation upon review and approval by the County.
- 3) If wetlands are impacted by the roadway design for Williams Road and Three Oaks Parkway, their impacts will be mitigated. Those mitigation costs attributable to the roadway will be documented and will be eligible for offset against the proportionate share obligation in conjunction with the construction costs. The documentation of costs is subject to review and approval by the County.
- 4) Prior to the initiation of the design work, the contract with the design engineer must be submitted to Lee County for review and approval. Approval will not be unreasonably withheld. Once the contract is approved, the County must approve all cost overruns exceeding \$10,000. The County should be apprized of any additional costs for changes requested by the County. The design and permitting work will be eligible for offset against the proportionate share obligation of the developer.

- 5) The design and permitting of Coconut Road, Three Oaks Parkway and Williams Road improvements will be in accordance with County standards in effect at the time of initial design and permitting. The cost of any change in design or permitting due to changing design or permitting standards, after the County has approved the original design, will be eligible for an offset against the Developer's proportionate share obligations to the same extent as the original design and permitting.
- 6) The value of the design of Williams Road and Three Oaks Parkway will include permitting. The value of the design and permitting must be verified and approved by Lee County, through the certification by a professional engineer. No offsets to the proportionate share obligation will be given for the design of site-related improvements. The value is currently estimated at a total of \$614,000 (\$526,000 for Three Oaks Parkway, and \$88,000 for Williams Road). The design cost estimate for Coconut Road is included in the estimated differential cost of building four lanes instead of two. Upon completion of the design studies and verification of the actual costs, the Williams Road and Three Oaks Parkway design costs will be adjusted back to 1997 values for purposes of crediting against the proportionate share obligation and final accounting.

G) COCONUT ROAD CONSTRUCTION

- 1) The construction of the first two lanes of a four lane Coconut Road from US 41 to Three Oaks Parkway is not eligible for offset against the proportionate share obligation. This construction has been determined by Lee County to be site-related.
- 2) The Developer must construct this roadway consistent with the approved design plans for an arterial roadway.
- 3) The cost of constructing two lanes of Coconut Road from US 41 to Three Oaks Parkway is estimated to be \$2,428,224, including design, mitigation, drainage improvements and the railroad crossing. The cost of constructing four lanes of Coconut Road from US 41 to Three Oaks Parkway is estimated to be \$4,098,479, including design, mitigation, drainage improvements and the railroad crossing. The estimated differential cost of building four lanes instead of two (excluding right-of-way) from US 41 to Three Oaks Parkway is \$1,670,255. This represents the amount eligible for offset against the proportionate share obligation.

- 4) The Developer is entitled to an offset against the proportionate share obligation for the construction of the third and fourth lanes on the following basis.
 - a) Prior to 2010: If credit for the construction of the third and fourth lanes is requested prior to 2010, then the amount of construction costs that are creditable against the proportionate share shall be reduced by 2.5% compounded per year for every year before 2010 that the request is made.
 - b) 2010 or After: If credit for the construction of the third and fourth lanes is requested in 2010, or thereafter, then the total amount of the construction costs are eligible for offset against the proportionate share.

The Developer expects to request an offset against the proportionate share obligation for construction as of the end of Phase I (2002). The differential cost to be offset against the proportionate share obligation is \$1,370,856.

- 5) The Developer will be fully responsible for turn lanes and signalization required at the project entrances onto Coconut Road. A portion of the improvements to the intersection of Coconut Road and US 41 is creditable subject to the same adjustment noted in C)4) above. The initial two-lane Coconut Road construction, with turn lanes, is not creditable. Non-creditable improvements include: northbound right turn lane, southbound left turn lane, westbound left turn lane, westbound thru lane, westbound right turn lane, and signalization. Improvements beyond these "base" improvements are creditable. Creditable improvements include: additional eastbound/westbound thru lanes, east/west thru lane transitions, dual left turn lanes, and signal modifications.
- 6) There will be no offset against the proportionate share obligation for roadway construction or drainage costs for the portion of Coconut Road east of Three Oaks Parkway. That roadway may be designed as a two-lane local roadway at the developer's option. When the County desires to widen or extend that roadway to the east of Three Oaks Parkway, it will be fully obligated for all costs of construction, including drainage.

H) CASH PAYMENT

- 1) a) The costs eligible for offset against the Phase I proportionate share obligation have been estimated utilizing the values set forth below:
 - 1) Right-of-Way dedications: \$2,652,400. (Assuming The Developer is the entity to convey the Coconut Road right-of-way.)
 - 2) Estimated design costs for Three Oaks Parkway and Williams Road: \$614,000.
 - 3) Estimated value of creditable portion of Coconut Road construction including design, mitigation, drainage, railroad crossing costs and a reduction for premature construction: \$1,370,856.
 - 4) Road Impact Fees already paid at \$16,312.

The above estimated values total \$4,653,568 in 1997 dollars. This figure is \$876,298 more than the Phase I proportionate share obligation of \$3,777,270. Any overage will be applied to the Phase II mitigation requirements. However, this estimated overage assumes that The Developer will be the entity to convey all of the Coconut Road right-of-way rather than Edward J. McArdle. It also assumes that the County will need the property owned by The Developer north of Williams Road for the Three Oaks Extension. If Mr. McArdle is the entity to convey a portion of the Coconut Road right-of-way or the County concludes it does not need the property owned by The Developer north of Williams Road, then there may not be an overage. In that event, the Developer would be subject to the provisions of subparagraph 2.H)1)b) below.

- b) If the cost estimates, value of credits, or creditable items are in fact determined to be less than the Phase I proportionate share, then the Developer, at its option, must do one of the following:
 - 1) provide a portion of the Phase II mitigation; or
 - 2) transfer to the County non-Brooks related road impact fee credits owned or controlled by the Developer; or
 - 3) provide a combination of the above or provide alternative mitigation, provided it is acceptable to Lee County; or

- 4) make a cash payment to the County.

If the Developer must make a cash payment, the payment (less any deductions identified herein) must be made to Lee County no later than thirty (30) business days after the Developer determines, or is notified in writing, of the adjustment to the estimates or values. The Developer may appeal the adjustment pursuant to the process set forth herein.

- 2) If upon completion of the right-of-way dedications, roadway design and permitting, and establishment of actual value in 1997 dollars, it is determined that the value of the Phase I mitigation activities made by the Developer was insufficient to equal the total mitigation value of \$3,777,270, then the Developer must, at the Developer's option:
 - a) make an additional cash payment to reach \$3,777,270; or
 - b) construct, as specified under Phase II, one or more of the Phase II roadway improvements (i.e., Williams Road or Three Oaks Parkway); or
 - c) transfer to the County non-Brooks related road impact fee credits owned or controlled by the Developer; or
 - d) notify the County that no further building permits will be applied for beyond the level of development already paid for and mitigated; or
 - e) adjust the development proposal for The Brooks in a manner which reduces the build-out transportation impacts, including a reduction in the Phase I transportation impacts (this adjustment would be subject to a NOPC to the Brooks DRI and a recalculation of the proportionate share obligation); or

The Developer can choose one or a combination of the afore stated mitigation options, so long as the cumulative value of cash, impact fees, right-of-way, credits, design, permitting, drainage, and any other transportation mitigation identified herein, meets the total mitigation value of \$3,777,270.00 in 1997 dollars. If the mitigation for Phase I exceeds the \$3,777,270.00, the overage shall be applied to the Phase II mitigation requirements.

3. PHASE II REQUIREMENTS

A) THREE OAKS PARKWAY CONSTRUCTION

- 1) On or before December 31, 2003, or within twelve months after design approval and the issuance of all necessary permits, the Developer must begin construction of Three Oaks Parkway, as a four-lane divided arterial, from the project's southern property line to the northern property line. Once construction is initiated, it should proceed in a reasonable fashion. The construction may occur prior to December 31, 2003, at the developer's discretion. In any event, the developer will substantially complete the construction of Three Oaks Parkway within 18 months assuming no unusual delays due to weather, material shortages, labor union strikes, civil unrest, acts of God, or other actions beyond the control of the developer.
- 2) The Developer must construct this roadway consistent with the approved design plans.
- 3) With the exception of site-related improvements, all construction costs for Three Oaks Parkway are eligible for offset against the proportionate share amount. The estimated value of the construction, including wetland mitigation is \$4,233,000 in 1997 dollars. This figure excludes design, right-of-way, permitting and drainage. Actual costs are subject to verification by Lee County DOT and must be adjusted back to 1997 dollars for purposes of crediting against the proportionate share obligation.
- 4) The value of drainage improvements as constructed in 1998 is established at \$214,833 and is eligible for offset against the proportionate share obligation.
- 5) Subject to Lee County DOT review and approval of its design, the Developer may opt to elevate Three Oaks Parkway over one of the internal roadways. The approximate location of the Three Oaks Parkway Overpass is identified in Exhibit 5. There will be no offset against the proportionate share obligation for the cost differential associated with elevating Three Oaks Parkway, and the developer must ensure that the elevated structure will accommodate the eventual six-lane roadway. The developer will be responsible for the maintenance of the side slopes of the elevated structure.
- 6) Lee County may elect to construct Three Oaks Parkway earlier than the Developer's time frames of Article 4.A.3.A)1). If Lee County so elects, it will make this election prior to June 30, 2003, and will inform the Developer at least one hundred eighty (180) days prior to initiating construction. The Developer will have the option of accelerating its construction schedule to be consistent with the County's and the Developer may undertake the construction in accordance with the County's schedule. If the Developer

declines to pursue the construction, the Developer must notify the County within twenty (20) business days of the County's notification. Failure to respond in writing within the identified time frame will be interpreted to mean that the Developer does not wish to perform the construction in an accelerated manner.

If the County constructs Three Oaks Parkway within the project boundaries, construction must be substantially complete within eighteen (18) months, assuming no unusual delays due to weather, material shortages, labor union strikes, civil unrest, acts of God, or other actions beyond the control of the County. The County must perform the construction in a manner that does not unduly impede the Developer's construction activity. If the County constructs Three Oaks Parkway, it will construct the road south to at least Strike Lane. The segment south of the project boundary will be completed no later than six months after the completion of the segment within the project boundaries. If the County builds Three Oaks Parkway as described in this paragraph, the County will assume maintenance responsibility for the roadway once completed.

- 7) The Developer will be fully responsible for turn lanes and signalization required at the project entrances onto Three Oaks Parkway. Improvements needed at the Three Oaks Parkway/Williams Road intersection at the time either roadway is constructed will be fully eligible for credits against the DRI proportionate share obligation. A portion of the improvements to the intersection at Three Oaks Parkway and Coconut Road are creditable. All of the turn lane improvements to Three Oaks Parkway (except eastbound turn lanes) are fully creditable, along with the turn lane improvements on the Coconut Road west approach to the intersection (eastbound single and dual left turn lane and right turn lane), the transition from four lanes to two lanes east of the intersection, and signalization. The turn lane improvements on the Coconut Road east approach are not creditable (left turn lane and thru/right turn lane). The costs of such improvements are subject to verification by Lee County DOT and must be adjusted back to 1997 dollars for purposes of crediting against the proportionate share obligation.
- 8) The methods of construction within The Brooks will make the accounting of the actual construction costs related to excavation and embankment materials for the roadway improvements difficult to isolate. Therefore, as a measure of the actual cost of those operations, the unit price for borrow excavation for the roadway improvements within The Brooks will be set at \$5.50 a cubic yard. This number is not subject to adjustment based on actual future costs.

B) WILLIAMS ROAD CONSTRUCTION

- 1) On or before December 31, 2004, or within twenty-four months after the design approval and the issuance of all necessary permits, whichever is sooner, the Developer must begin construction of Williams Road, as two lanes, from River Ranch Road to Three Oaks Parkway. Once construction is initiated, it should proceed in reasonable fashion. The construction may occur prior to December 31, 2004, at the Developer's discretion.
- 2) The Developer must construct this roadway consistent with the approved design plans.
- 3) With the exception of site-related improvements, all construction costs for the Williams Road Extension are eligible for offset against the proportionate share obligation. All costs will be subject to verification by Lee County DOT. The estimated value of the construction is \$278,000.00. This figure excludes the cost of design, permitting, and right-of-way, all of which are eligible for offset against the proportionate share obligation. The final verified construction costs will be adjusted back to 1997 dollars for purposes of crediting against the proportionate share obligation.
- 4) The Developer will be fully responsible for turn lanes and signalization required at the project entrances onto Williams Road.

C) CASH PAYMENTS

- 1) The Developer must make a cash payment if the construction costs, design and permitting costs, and the Phase I and Phase II contributions do not meet or exceed the nine million one hundred ninety eight thousand dollar (\$9,198,000.000) proportionate share obligation. The actual cost of design, permitting and construction cannot be determined until all of the construction is complete and the County has issued a certificate of completion, and the invoices have been submitted to the County. Payment, if any, shall be made by the Developer within 90 business days after agreement on the amount owed.
- 2) In lieu of a cash payment, if any, the Developer may transfer road impact fee credits owned or controlled by the Developer to the County.

4. CREDITS

- A) Offsets against the proportionate share obligation will only be provided for right-of-way that is identified as eligible for offset in this agreement. If the agreement is silent, and the Developer dedicates right-of-way, then the issue of credit must be addressed in accordance with the LDC or by an amendment to this agreement.

- B) Offsets against the proportionate share obligation will be provided for design and permitting in accordance with this agreement. If the agreement is silent, and the Developer wants to undertake design and permitting of future public roadways for credit, the issue of credits must be addressed by an amendment to this agreement.
- C) Offsets to the proportionate share obligation of the developer will only be provided for the construction of roadways in accordance with this agreement. If the agreement is silent, and the Developer wants to construct future public roadways for credit, the issue of credits must be addressed in accordance with the Land Development Code, or by an amendment to this agreement.
- D) The actual cost of design, permitting, and construction of roadways shall be based on costs certified by a professional engineer. The costs will be adjusted back to 1997 dollars for purposes of crediting against the proportionate share obligation. The Developer will provide to the County interim cost certifications if the costs are in excess of \$10,000 more than the initial estimate. These interim certifications will be provided quarterly or earlier if change orders are made or requested to the design, permits, and/or construction.
- E) If the value of the right-of-way, design, permitting, construction, and cash contributions made by the Developer exceeds the proportionate share obligation, then the Developer shall receive the difference in road impact fee credits or by check at the option of the County. The right to receive the credit does not run with the land or to other third parties, it is a credit that goes only to the Developer, Long Bay Partners L.L.C., a Florida Corporation. The Developer, Long Bay Partners L.L.C., a Florida Corporation, may assign the impact fee credits to a third party and may transfer credits for use in Road Impact Fee Benefit Districts 8, 3 and 4.

5. CONSTRUCTION REQUIREMENTS

- A) All roadways constructed pursuant to this Developer's Agreement for dedication to Lee County must be constructed consistent with the approved and permitted design plans.
- B) The Developer may provide landscaping, irrigation, telecommunication lines, utilities, decorative benches, signage, and the like within the roadway right-of-way subject to the approval of Lee County Department of Transportation. The Developer or its successors will execute a landscape maintenance and hold harmless agreement in the event the identified improvements are made within the right-of-way. The cost of the above improvements will not be eligible as an offset to the proportionate share obligation. Utilities located within the right of way may be subject to relocation at the utility company's expense.

- C) The Developer, Developer's designee, or the UCDD will be responsible for the maintenance of all landscaping, irrigation for landscaping, benches, signage and the like installed by the Developer, the Developer's designee or the UCDD.

6. ACCESS

- A) The access management plan for US 41, Coconut Road, Williams Road and Three Oaks Parkway within or adjacent to The Brooks is set forth in Exhibit 5. Florida DOT has jurisdiction over access to US 41.
- B) The number, general location and type of access, (i.e., full or directional median cuts), is identified in the access management plan, (Exhibit 5), and the access identified is available to The Developer, with the following qualifications:
- 1) The median opening 660 feet north of Coconut Road on Three Oaks Parkway is restricted to the following movements: northbound right turn, westbound right turn, southbound right turn, eastbound left turn and eastbound right turn. If operational problems emerge at the Coconut Road/Three Oaks Parkway intersection that, in the opinion of the Director of Lee County DOT, would be relieved by expanding the allowed movements at the opening to the north, the expansion will be considered for approval by the County. The cost of modifying the access point will be the obligation of the Developer to the extent that it is site-related.
 - 2) The median opening 660 feet west of Three Oaks Parkway on Coconut Road is a directional opening allowing an eastbound to northbound left turn movement. If operational or safety problems emerge at that intersection as determined by the Director of Lee County DOT, the County may limit access to right-in/right-out movements.
 - 3) The first two median openings east of U.S. 41 on Coconut Road are full movement openings. However, if operational or safety problems emerge as determined by the Director of Lee County DOT, the County may limit the movements allowed at those locations.
 - 4) The median opening 1,300 feet south of Coconut Road on Three Oaks Parkway is restricted to the following movements: north bound right turn, south bound left turn, west bound right turn, and a west bound left turn. If operational problems emerge at the intersection as determined by the Director of Lee County Department of Transportation, the County may limit access at that intersection. (The text of this subsection was added pursuant to the First Development Agreement Amended on November 28, 2000. Exhibit 5 was also amended at that time to replace the median opening located 1,200 feet south of the northern most access point on the three Oaks Parkway Extension with an overpass.

7. IMPACT FEE PAYMENTS

- A) No builder or contractor within The Brooks is obligated to pay road impact fees. The payment of the proportionate share in accordance with this agreement addresses the project's impacts on the transportation network, and is in lieu of the payment of road impact fees on a building permit by building permit basis. The County will advise its staff regarding the development agreement, and the fact that the Developer is addressing its transportation impacts in accordance with this agreement instead of the LDC.

- B) When builders or the Developer apply for building permits within The Brooks, the building permits will not be issued until Lee County has been provided notarized documentation from The Developer of The Brooks, Long Bay Partners L.L.C., which states that credits have been granted by The Developer of The Brooks to the applicant. Lee County will issue building permits only if that documentation is provided, and only for the type and amount of development authorized in the documentation from The Developer. The Developer may assign the benefit of this agreement to a third party. Assignments must be in writing, with two witnesses, and notarized. The Developer must provide written evidence of assignment to Lee County.

Specifically, it is understood that only the Developer, or its designee, is permitted to proceed through the building permit process without paying impact fees. The designee or assignee must provide a notarized statement from the Developer identifying the assignee or designee as an authorized representative of the Developer. Building permits will be issued to only those applicants who have a notarized statement from the Developer consistent with the sample statement attached as Exhibit 6.

8. FAILURE TO COMPLY WITH THE REQUIREMENTS

- A) If the Developer fails to comply with the terms of this agreement, then no building permits will be issued for the units or square footage for which no mitigation has been provided.

- B) If the County staff fails to comply with the terms of this agreement, the Developer shall have the right to take a direct appeal of the matter to the BOCC. The Developer may also appeal any dispute regarding the interpretation, application or implementation of the Development Agreement to the BOCC. The matter shall be scheduled before the Board of County Commissioners within 15 business days after the submission of a written request to the County Administrator. The written request shall identify the nature of the non-compliance, interpretation, application, and/or implementation, the basis of the request, and the relief requested.

- C) The parties shall have all rights available by law to enforce this agreement.

9. TIMING

- A) The Developer may, at his own discretion, dedicate right-of-way, provide design plans, and construct identified improvements sooner than the timing set forth herein.
- B) The decision to provide right-of-way, design, or improvements prior to the date required by this agreement is a decision that rests solely with the Developer.
- C) Dates, months and calendar days as may be identified and specified in the above agreement reflect reasonable and expeditious agency review and permitting periods. Any delays due to public agency reviews and permitting shall be reflected in the actual dates and calendar days of the development agreement obligations.

10. ROADWAY DRAINAGE

The Developer will provide the water storage, water quality, attenuation and pre-treatment of the drainage for Coconut Road from US 41 to Three Oaks Parkway and Three Oaks Parkway from The Brooks north property line to the south property line via the development's water management system. The County is responsible for contamination or pollution of the water management system that emanates from the roadway right-of-way. The Developer is responsible for contamination or pollution of the water management system which may emanate from the Developer's property.

B. COUNTY RESPONSIBILITIES

1. RIGHT-OF-WAY

- A) Upon completion and approval by Lee County of the Three Oaks Extension South Alignment and Preliminary Engineering Study, Lee County will inform the Developer of the specific right-of-way under the Developer's ownership from Williams Road to Corkscrew Road along the Three Oaks Parkway alignment needed by the County and to be dedicated to the County. After dedication to the County, if the right-of-way is not used for the specified improvement by the ultimate buildout date of the Brooks DRI Development Order, the right-of-way will revert back to the Developer.
- B) Lee County has accepted the alignments for Williams Road, Three Oaks Parkway, and Coconut Road as depicted in the Master Plan (Exhibit 1), and as specified in Exhibits 4A and 4B.
- C) The Developer may install landscaping, transmission lines, electric, cable, and irrigation lines in the right-of-way. All landscaping in the right-of-way must be reviewed and approved by Lee County to insure that the landscaping does not create a traffic hazard. The Developer may install irrigation lines to maintain the landscaping and vegetation. The Developer will consider the inclusion of xeriscape in the landscaping palate. The Developer will execute a landscape maintenance and hold harmless agreement and provide proof of insurance naming the County as "also insured". If the Developer or UCDD fails to maintain the landscaping in accordance with the landscape maintenance and hold harmless agreement, the County may remove the landscaping upon 30 days written notice. Written notice must be sent by certified mail. The cost of installation and maintenance of landscape material is not eligible for offset against the proportionate share obligation.
- D) The Developer may install telecommunications lines in the right-of-way. The lines will be installed in a manner which permits the eventual construction of the ultimate design and cross section of the roadway in question. The responsibility for the maintenance of the lines shall be that of the installer of lines, in no instance shall it be the responsibility of the County. If the Developer or telecommunications company damages County property during the course of maintenance or repair of the telecommunications lines, then it is the responsibility of the entity that caused the damage to restore the road and related facilities to the condition that existed prior to the damage. The relocation of telecommunication lines, if necessary, will be at the utility company's expense.

2. PHASE I AND PHASE II CASH PAYMENTS

- A) Cash payments provided to Lee County by the Developer in Phase I or Phase II will be applied by Lee County toward the following improvements and in the following priority.
 - 1) Alignment studies and design plans for the Three Oaks Parkway Extension from Corkscrew Road to Williams Road.
 - 2) Right-of-way acquisition necessary for the Three Oaks Parkway Extension from Corkscrew Road to Williams Road.
 - 3) Construction of the Three Oaks Parkway Extension from Corkscrew Road to Williams Road.
 - 4) Alignment studies, design plans, right-of-way acquisition, or construction of the Three Oaks Parkway Extension from The Brooks' south property line to the south.
 - 5) The list of significantly and adversely impacted roads from The Brooks DRI Development Order.
 - 6) Other roadway improvements benefitting The Brooks.

3. CONCURRENCY

- A) If the transportation mitigation is provided in accordance with the terms of this agreement, The Brooks is deemed concurrent through 2002 for the Phase I level of development set forth in Exhibit 2 and concurrent through 2007 for the Phase II level of development set forth in Exhibit 2
- B) Concurrency for the Phase I level of development will be made available to The Brooks immediately upon acceptance of this Development Agreement by the County.
- C) Concurrency for the Phase II level of development will be made available to The Brooks immediately upon the initiation of the Phase II requirements.

4. IMPACT FEE PAYMENTS

- A) This agreement exempts The Brooks from the Roads Impact Fee Provisions of the Land Development Code in accordance with Section 2-272(a)(6). No builder, contractor, or developer within The Brooks is obligated to pay road impact fees. The payment of the proportionate share in accordance with this agreement addresses the project's impacts on the transportation network, and substitutes for the payment of road impact fees at the time of permitting.

- B) As the Developer or builders within The Brooks apply for building permits, the Developer of The Brooks will provide Lee County documentation (consistent with Exhibit 6) stating that the builder, or assignee, is permitted to build a specified number and type of units, or a specified amount and type of square footage within The Brooks and that Lee County may issue one or more building permits. Lee County will issue building permits only if that documentation is provided.

5. MAINTENANCE

- A) Lee County will not accept any roads constructed by the Developer for maintenance until 80% of the development within The Brooks that would require the roadway for construction access is complete. Roads must pass County inspection prior to acceptance. The parties anticipate that each of the qualifying road segments will be accepted for County maintenance in phases.
- B) When 80% of the development is complete that would use any given segment of road for construction traffic or when the Developer provides a separate construction entrance, the County will accept that segment of the road for maintenance. When the roads are turned over to the County for maintenance, the County will review the road for compliance with the standards in effect at the time the roadway was designed. If the Developer is requested to build to standards other than those in effect at the time of design approval, the Developer will receive an offset against the proportionate share obligation for the costs associated with the changed standards.
- C) When 80% of the total build out level of development is complete, Lee County must accept all of the roads for maintenance.
- D) Lee County is responsible for the ongoing maintenance and monitoring costs for wetland mitigation costs attributable to the construction of Three Oaks Parkway, Williams Road, and Coconut Road.

6. REPEAL OF ROAD IMPACT FEES

If the Land Development Code chapter governing roads impact fees is repealed, reduced or made unenforceable by a court decision, The Brooks DRI will continue to pay to the County its proportionate share obligation pursuant to the conditions of this Development Agreement. The Brooks' mitigation and credits will be applied in full to any alternative transportation mitigation program or assessment program formulated and adopted by Lee County in the absence of road impact fees.

ARTICLE 5. OTHER PROVISIONS

A. EFFECT OF AGREEMENT

The failure of the Development Agreement to address a particular permit, condition, term or restriction, does not relieve the Developer of the necessity of complying with the law governing those permitting requirements, conditions, terms or restrictions.

The terms of this Development Agreement may not supersede the procedural requirements of State law under Chapter 380.06 and 163.3220 *et seq.*

If State or Federal laws are enacted after the execution of this Development Agreement which are applicable to and preclude the parties's compliance with the terms of this agreement, the agreement will be modified or revoked as necessary to comply with relevant State or Federal laws.

B. DURATION OF AGREEMENT

1) GENERAL

This Agreement shall be effective upon execution of all parties and shall continue in force until December 31, 2007. It may only be terminated, amended, or extended as provided herein.

2) FUTURE EXTENSIONS OF AGREEMENT CONTEMPLATED

This Agreement is executed in order to satisfy the concurrency requirements of the Project through its build out. §163.3229 Florida Statutes currently limits a development agreement to a maximum term of ten (10) years. However, provided that there are no prior acts of default or termination, the Parties contemplate that this Agreement will be renewed at regular intervals until the Project is built out. The Development Agreement may be extended by mutual consent of the governing body and the developer, subject to a public hearing in accordance with Section 163.3225, F.S.

If the Developer has fully complied with the terms of this agreement upon the termination date, and Lee County has not yet performed its obligations on the termination date, Lee County is obligated to perform in accordance with the terms of the agreement as though it had not expired.

C. AMENDMENT OF AGREEMENT

This agreement may be amended or canceled by mutual consent of the parties or by their successors in interest. If State or Federal laws are enacted after the execution of this agreement which are applicable to, and preclude the parties's compliance with the terms of

the Development Agreement, the agreement will be modified or revoked as necessary to comply with the relevant State or Federal laws after a public hearing.

D. TIME EXTENSIONS

Except as otherwise provided herein, extensions of the time of performance of any time-certain commitment in this Agreement may be granted provided that such time extensions comply with the terms of Section 380.06 Florida Statutes.

E. ANNUAL REVIEW

This Agreement shall be reviewed annually by Lee County and the Developer, commencing one (1) year after its effective date, as follows:

1) INITIATION OF REVIEW

The annual review shall be initiated by the Developer submitting the Annual Monitoring Report to the Lee County Director of Community Development. The Annual Monitoring Report shall be submitted one year after the acceptance of this Development Agreement by Lee County.

2) REVIEW PROCESS

The Director of Community Development must commence the review upon receipt of the Annual Report and shall complete it within thirty (30) calendar days.

3) COMPLIANCE DETERMINATION

If the Director of Community Development finds and determines that the Developer has complied in good faith with the terms and conditions of the Agreement during the period under review, the review is and shall be concluded. Developer shall be given written notice of this conclusive determination.

4) BREACH OF AGREEMENT; PUBLIC HEARINGS REQUIRED TO REVOKE OR MODIFY

If the Director of Community Development makes a preliminary finding that there has been a failure to comply with the terms of this Agreement the Director shall provide written notification of such failure to The Developer, and The Developer shall have a reasonable time within which to resolve the alleged non-compliance. If The Developer refuses to address the non-compliance, or if The Developer disagrees with the findings of the Director of Community Development, then such finding, and any written response of The Developer shall be referred to the Lee County Board of County Commission. The County Commission shall conduct two (2) public hearings, at which the Developer may demonstrate good faith compliance with the

terms of the Agreement. The County shall provide The Developer with reasonable notice of the date and time of the public hearings. If the County Commission finds and determines during the public hearings, on the basis of substantial competent evidence, that the Developer has not complied in good faith with the terms and conditions of the Agreement during the period under review, the County Commission may modify or revoke the Agreement.

F. REVOCATION OR TERMINATION OF AGREEMENT

This Agreement shall only terminate upon the first to occur of the following events:

- a) Revocation of the Agreement by the County Commission as provided in E.4) above; or
- b) Revocation, abandonment or termination of the Development Order approving the Project; or
- c) Final buildout or declared buildout of the Project, provided all monies or credits have been paid;
- d) Mutual consent of the Parties.

G. SEVERABILITY

In the event that any part, term, or provision of this Agreement is found by a court of competent jurisdiction to be illegal, the validity of the remaining portions and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

H. BINDING EFFECT

All terms, conditions, responsibilities, duties, promises and obligations of the parties shall be binding upon the parties, their successors and assigns.

I. RECORDATION IN PUBLIC RECORDS AND EFFECTIVE DATE

In accordance with Florida Statutes Section 163.3239, the County will record this Development Agreement with the Clerk of the Circuit Court promptly after the Chairman's signature, but in no event later than 14 days of its execution. The County will submit a copy of the recorded agreement to the Department of Community Affairs. This Development Agreement is not effective until it is properly recorded in the public records of Lee County and until 30 days after receipt by the Department of Community Affairs.

J. ENFORCEMENT

Any party, any aggrieved party, or adversely affected person as defined in Section 163.3215(2) or the Department of Community Affairs may file an action for injunctive relief in the Twentieth Judicial Circuit Court to enforce the terms of this Development Agreement or to challenge compliance of the agreement with the provisions of the Florida Local Government Development Agreement Act.

ARTICLE 6. EXECUTION

Long Bay Partners, L.L.C. is a corporation duly organized and validly existing and in good standing under the laws of the State of Florida. The officers executing this Agreement have been duly authorized to consummate this Agreement on behalf of the Corporation.

IN WITNESS WHEREOF, the undersigned have hereto set their hand and seals the day and year first written above.

ATTEST:

LEE COUNTY, a Political
Subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Chairman

Approved as to Form and Legal Sufficiency

By: _____
County Attorney

ATTEST:

Long Bay Partners, L.L.C.,
a Florida corporation

By: _____

By: _____

Attachments:

- Exhibit 1 Master Plan
- Exhibit 2 Development Parameters
- Exhibit 3 Summary of Developer Obligations
- Exhibit 4A Three Oaks Parkway Control Points
- Exhibit 4B Three Oaks Parkway, Williams Road, Coconut Road Right-of-way Alignments
- Exhibit 5 Access Management Plan
- Exhibit 6 Notarized Statement of Authorization to Pull Building Permits
- Appendix A Legal Description

EXHIBIT 1

THE BROOKS OF BONITA SPRINGS

MASTER PLAN

EXHIBIT 2

THE BROOKS OF BONITA SPRINGS

DEVELOPMENT PARAMETERS

EXHIBIT 2

THE BROOKS OF BONITA SPRINGS

DEVELOPMENT PARAMETERS

<u>Land Use</u>	<u>Development Parameters</u>	
	<u>Phase 1 (2002)</u>	<u>Buildout (2007)</u>
Residential		
--Single-Family	600 D.U.	1,140 <u>1600</u> D.U.
--Multifamily/Single-Family-Attached	<u>2,000 D.U.</u>	4,060 <u>2000</u> D.U.
	2,600 D.U.	5,200 <u>3600</u> D.U.
Non-Residential		
--Service/Retail/Office (Town Center)	10,000 sq. ft.	100,000 <u>120,000</u> sq. ft.
--Community Use (Town Center)	15,000 sq. ft.	50,000 sq. ft.
--General Retail (Community Center)	100,000 sq. ft.	150,000 sq. ft.
--Community Use (Community Center)	5,000 sq. ft.	5,000 sq. ft.
--Hotel	0 Rooms	120 Rooms
--Golf Course	36 Holes	72 Holes

EXHIBIT 3
THE BROOKS OF BONITA SPRINGS
SUMMARY OF DEVELOPER OBLIGATIONS

EXHIBIT 3
THE BROOKS OF BONITA SPRINGS
SUMMARY OF DEVELOPER OBLIGATIONS
(Summary only, see Article 4 for specifics)

<u>Obligation</u>	<u>Approximate Date</u>
• Submit Draft Development Agreement to Lee County.	February 1, 1998
• Dedicate or cause to be dedicated to Lee County, Coconut Road right-of-way from US 41 to Three Oaks Parkway.	Within 90 business days after the execution of this Agreement by the BOCC.
• If required, make cash payment for remainder of Phase I obligation necessary based on estimated values of contributions	Within 30 business days after agreed adjustments to estimated values showing balances due.
• Reserve property under The Brooks ownership along the Three Oaks Parkway Corridor from Williams Road to Corkscrew Road.	Coincident with the acceptance of the development agreement.
• Dedicate to Lee County 150-foot Three Oaks Parkway right-of-way from south property line to north property line.	Coincident with 650th residential building permit or no later than December 31, 2001.
• Dedicate right-of-way to Lee County under The Brooks ownership along Three Oaks Parkway Corridor from Williams Road to Corkscrew Road.	180 business days after written notification by Lee County.
• Dedicate to Lee County the balance of right-of-way to be dedicated.	Coincident with 1,300th residential building permit.
• Provide to Lee County design plans for Three Oaks Parkway from south property line to north property line.	December 31, 2000 or prior to start of Phase 2 residential or commercial construction, whichever is earlier.

- Provide to Lee County design plans for Williams Road from River Ranch Road to Three Oaks Parkway

December 31, 2000 or prior to start of Phase 2 residential or commercial construction, whichever is earlier.
- Provide Phase I cash payment to Lee County required to make up deficiency, if any.

After ROW dedication, alignment study and roadway design and permitting after Phase I and prior to Phase II.
- Initiate construction of Three Oaks Parkway from north property line to south property line.

No later than December 31, 2003 or within 12 months of design and permit approval.
- Initiate construction of Williams Road from River Ranch Road to Three Oaks Parkway.

No later than December 31, 2004 or within 24 months of design and permit approval.
- Calculate total cost of mitigation provided and subtract from total obligations. If balance due, pay balance in cash impact fee credits, provide construction of Coconut Road, or reduce development parameters.

Within 90 business days after the completion of Three Oaks Parkway and Williams Road construction and upon the agreed establishment of the amount owed.
- Transfer roadways to Lee County.

When Project 80% complete, if not earlier.

Footnote: Summary only. See Article 4 for specific requirements.

EXHIBIT 4A

THE BROOKS OF BONITA SPRINGS

THREE OAKS PARKWAY CONTROL POINTS

EXHIBIT 4A

THE BROOKS OF BONITA SPRINGS

THREE OAKS PARKWAY CONTROL POINTS

- Control Points: See Attached Exhibit 4B.
- Northern Control Point: The intersection of the western right-of-way line and the common section corner of Sections 3, 2, 34, and 35.
- Southern Control Point: The intersection of the centerline of the 150-foot right-of-way and the south line of Section 11/T47S/R25E, at a distance of 1,188.91 feet to 1,288 feet east of the southwest corner of said the Section, subject to final determination in the design of Three Oaks Parkway, said the distance being measured along the south line of Section 11/T47S/R25E.

EXHIBIT 4B

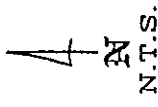
THE BROOKS OF BONITA SPRINGS

THREE OAKS PARKWAY, WILLIAMS ROAD, COCONUT ROAD
RIGHT-OF-WAY ALIGNMENTS

EXHIBIT 5

THE BROOKS OF BONITA SPRINGS

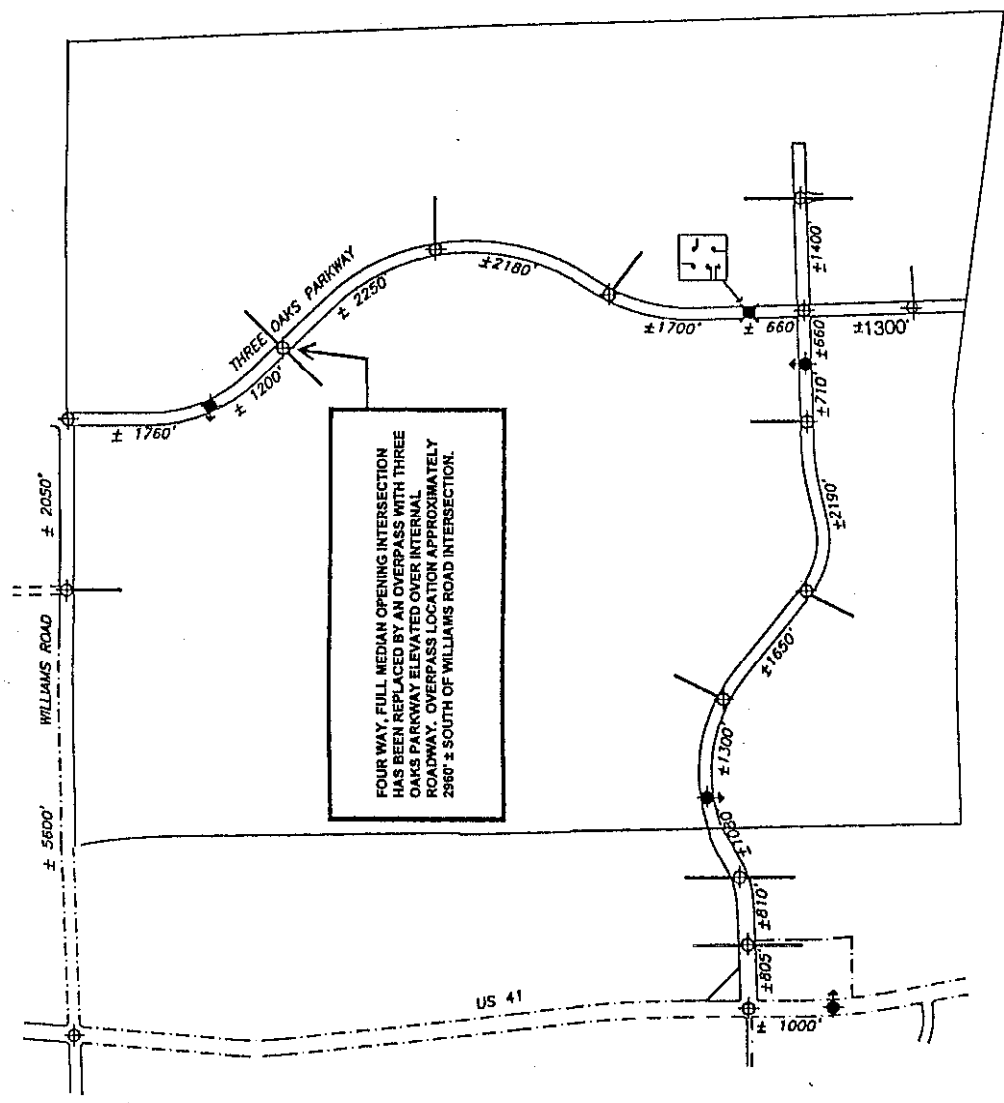
ACCESS MANAGEMENT PLAN
(Amended November 28, 2000)



All dimensions approximate. Dimensions may vary.
 Access points shown only on Williams Road, US 41, Coconut Road, and Three Oaks Parkway.
 Right-In/Right-out access points have not been displayed, but may be provided if consistent with LDC.
 Directional median opening includes inbound left, inbound right and outbound right.
 Restricted access at Town Centre on Three Oaks Parkway may be sufficient at times, but may include northbound left if that turn lane would interfere with operations at Three Oaks Parkway/Coconut Road Intersection.
 The full median opening approximately 1300' south of Coconut Road will serve only the area to the east. It will be an unsignalized intersection. Lee County reserves the right to modify movements at the full median opening if clearly necessitated by traffic operations problems at the intersection.

LEGEND

- FULL MEDIAN OPENING
- DIRECTIONAL MEDIAN OPENING
- RESTRICTED ACCESS



97572

5

ACCESS MANAGEMENT PLAN

(7/22/98, REVISED 10/25/00)

THE BROOKS OF BONITA SPRINGS



EXHIBIT 6

THE BROOKS OF BONITA SPRINGS

NOTARIZED STATEMENT OF AUTHORIZATION TO

PULL BUILDING PERMITS

THE BROOKS OF BONITA SPRINGS DRI
AUTHORIZATION TO OBTAIN RESIDENTIAL BUILDING PERMIT
WITHOUT THE PAYMENT OF ROAD IMPACT FEES
[SAMPLE]

The XYZ Corporation is hereby authorized by Long Bay Partners , LLC, to obtain (#) residential building permits on Tract ___ within The Brooks of Bonita Springs DRI. This property is legally described in Exhibit A, attached hereto. The applicant of these building permits are exempt from the payment of road impact fees. The unit types are identified below:

- ___ Single Family
- ___ Multi Family
- ___ Two Family Attached
- ___ Town House
- ___ Other:

Building permits in excess of the units identified above is expressly prohibited.

This authorization represents the ___ through ___ residential unit(s) for The Brooks of Bonita Springs Development of Regional Impact.

The payment of impact fees is not required for this building permit in accordance with the terms of the Development Agreement between Lee County and Long Bay Partners, LLC.

Developer's Representative

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ day of _____, 19__ by _____ who is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public

Print Name

Commission Expiration Date

THE BROOKS OF BONITA SPRINGS DRI
AUTHORIZATION TO OBTAIN NON RESIDENTIAL BUILDING PERMIT
WITHOUT THE PAYMENT OF ROAD IMPACT FEES
[SAMPLE]

The XYZ Corporation is hereby authorized by Long Bay Partners , LLC, to obtain a building permits in Tract ___ of the Brooks DRI. A legal description of this parcel is set forth in Exhibit A, attached hereto. The building permit is limited to _____ square footage. Building permits in excess of the square footage identified or for uses other than identified above is expressly prohibited.

The square footage is for:

- _____ Retail/Service
- _____ Community Facilities (Uses per LDC Section 2-266(e))
- _____ Professional Office
- _____ Medical Office
- _____ Other:

Developer's Representative

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ day of _____, 19__ by _____ who is personally known to me or has produced _____ as identification.

Notary Public

(SEAL)

Print Name

Commission Expiration Date

APPENDIX A

THE BROOKS OF BONITA SPRINGS

LEGAL DESCRIPTION¹

PARCEL 1

A PORTION OF THE SOUTH HALF OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN N.00°57'23"W., ALONG THE EAST LINE OF SAID SECTION 9, FOR A DISTANCE OF 2542.33 FEET; THENCE RUN S.88°02'34"W. FOR A DISTANCE OF 1221.61 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE N.00°15'56"W. FOR A DISTANCE OF 47.18 TO A POINT ON A NON-TANGENTIAL CURVE AND THE SOUTH RIGHT-OF-WAY LINE OF COCONUT ROAD; THENCE ALONG SAID RIGHT-OF-WAY AND CURVE, CONCAVE NORTHERLY; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 2024.96 FEET, THROUGH A CENTRAL ANGLE OF 08°29'00", SUBTENDED BY A CHORD OF 299.55 FEET AT A BEARING OF S.83°48'03"W., FOR A DISTANCE OF 299.82 FEET; THENCE RUN S88°02'34"W, ALONG THE SOUTH RIGHT-OF-WAY OF COCONUT ROAD FOR A DISTANCE OF 452.27' TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 (STATE ROAD NO. 45, A 200 FOOT RIGHT-OF-WAY); THENCE RUN S.00°15'56"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 577.74 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE EASTERLY; THENCE RUN SOUTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 5605.39 FEET, THROUGH A CENTRAL ANGLE OF 06°12'58", SUBTENDED BY A CHORD OF 607.83 FEET AT A BEARING OF S.03°22'24"E., FOR A DISTANCE OF 608.13 FEET; THENCE RUN N.88°07'51"E. FOR A DISTANCE OF 747.23 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENTIAL CIRCULAR CURVE, CONCAVE EASTERLY; WHOSE RADIUS POINT BEARS N.82°31'42"E. A DISTANCE OF 3909.60 FEET THEREFROM; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 3909.60 FEET, THROUGH A CENTRAL ANGLE OF 08°29'31", SUBTENDED BY A CHORD OF 578.92 FEET AT A BEARING OF N.03°13'32"W., FOR A DISTANCE OF 579.45 FEET TO THE END OF SAID CURVE; THENCE RUN N.00°15'56"W. FOR A DISTANCE OF 583.09 FEET TO THE POINT OF BEGINNING. CONTAINING 20.43 ACRES, MORE OF LESS.

SUBJECT TO EASEMENTS, RESERVATIONS, AND RESTRICTIONS OF RECORD.

BEARINGS BASED ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 9,

¹Amended pursuant to Second Amendment to Development Agreement _____, 2002

TOWNSHIP 47 SOUTH, RANGE 25 EAST, AS BEING N.00°57'23"W.

NOTE: Based on Property Description provided by Stephen P. Erek, Professional Surveyor & Mapper, Wilson Miller Inc. dated 8/18/2001.

PARCEL 2

A PORTION OF THE NORTH HALF OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE RUN N.00°57'23"W. ALONG THE EAST LINE OF SAID SECTION 9, FOR 2542.33 FEET; THENCE LEAVING SAID EAST LINE OF SECTION 9, S.88°02'34"W., FOR OF 1221.61 FEET; THENCE CONTINUE, S.88°02'34"W. FOR 750.33 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 41 (STATE ROAD NO. 45, A 200' RIGHT-OF-WAY); THENCE N.00°15'56"W. FOR 175.08 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, SAID POINT ALSO BEING ON THE NORTH RIGHT-OF-WAY LINE OF COCONUT ROAD (A 150 FOOT ROAD RIGHT-OF-WAY) AS DESCRIBED IN OFFICIAL RECORD BOOK 3090, PAGE 729, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE CONTINUE N.00°15'56"W. FOR 440.00 FEET; THENCE S.46°02'16"E. FOR 577.45 FEET; THENCE S.01°57'26"E. FOR 25.00 FEET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE S.88°02'34"W. FOR 414.72 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2.21 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHEAST ¼ (QUARTER) OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING N.00°57'23"W.

NOTE: Based on Property Description provided by Stephen P. Erek, Professional Surveyor & Mapper, Wilson Miller Inc. dated 8/16/2001.

PARCEL 3

SECTIONS 2, 3, 10 AND 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST AND SECTION 35, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA

A PARCEL OF LAND LOCATED IN SECTIONS 2, 3, 10 AND 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA AND LOCATED IN SECTION 35, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 47 SOUTH,

¹Amended pursuant to Second Amendment to Development Agreement _____, 2002

RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.00°46'22"E. ALONG THE WEST LINE OF THE NORTHWEST ¼ OF SAID SECTION 3, FOR A DISTANCE OF 100.02' TO A POINT 100.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 3; THENCE RUN N.89°51'03"E. PARALLEL WITH THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 3, FOR A DISTANCE OF 23.35 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF WILLIAMS ROAD, A 100.00 FOOT RIGHT-OF-WAY, THE SAME BEING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE N.89°51'03"E., ALONG SAID PARALLEL LINE AND ALONG SAID SOUTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2623.11 FEET; THENCE RUN N.89°51'33"E. PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3 AND ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 975.29 FEET; THENCE RUN N.00°08'27"W. ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 100.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3; THENCE RUN N.89°51'33"E. ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3, FOR A DISTANCE OF 1664.48 FEET TO THE NORTHEAST CORNER OF SAID SECTION 3, THE SAME BEING THE NORTHWEST CORNER OF SECTION 2, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE RUN N.00°35'46"W. FOR A DISTANCE OF 1320.30 FEET; THENCE RUN N.89°55'37"E. FOR A DISTANCE OF 1317.26 FEET; THENCE RUN S.00°44'07"E. FOR A DISTANCE OF 1318.66 FEET; THENCE RUN N.89°51'16"E. ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 2, FOR A DISTANCE OF 1321.48 FEET; THENCE RUN N.89°50'12"E. ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 2, FOR A DISTANCE OF 2026.48 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE 75, A 410 FOOT RIGHT-OF-WAY, THE SAME BEING A POINT ON A CIRCULAR CURVE CONCAVE WESTERLY, WHOSE RADIUS POINT BEARS S.79°55'57"W. A DISTANCE OF 5567.58 FEET THEREFROM; THENCE RUN SOUTHERLY, ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 5567.58 FEET, THROUGH A CENTRAL ANGLE OF 08°30'06", SUBTENDED BY A CHORD OF 825.37 FEET AT A BEARING OF S.05°49'00"E., FOR A DISTANCE OF 826.13 FEET TO THE END OF SAID CURVE; THENCE RUN S.01°33'57"E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 4512.58 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ¼ OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE CONTINUE S.01°33'57"E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 5977.28 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 11; THENCE RUN N.82°32'38"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 11, FOR A DISTANCE OF 2165.51 FEET; THENCE RUN N.82°29'27"W., ALONG THE SOUTH LINE OF THE SOUTHWEST ¼ OF SECTION 11, FOR A DISTANCE OF 2698.44 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 11, THE SAME BEING THE SOUTHEAST CORNER OF SECTION 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE RUN S.88°50'19"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 10, FOR A DISTANCE OF 2664.18 FEET; THENCE RUN S.88°50'37"W., ALONG THE SOUTH LINE OF THE SOUTHWEST ¼ OF SAID SECTION 10, FOR A DISTANCE OF 2540.14 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY, A 130.00 FOOT RIGHT-OF-WAY; THENCE RUN N.00°59'47"W., ALONG SAID EASTERLY RIGHT-OF-WAY

¹Amended pursuant to Second Amendment to Development Agreement _____, 2002

LINE, FOR A DISTANCE OF 5341.51 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 10; THENCE CONTINUE N.00°59'47"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2692.12 FEET; THENCE RUN N.00°56'59"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1590.73 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE WESTERLY; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING RADIUS OF 5771.38 FEET, THROUGH A CENTRAL ANGLE OF 09°31'27", SUBTENDED BY A CHORD OF 958.27 FEET AT A BEARING OF N.05°42'43"W., FOR A DISTANCE OF 959.37 FEET TO THE END OF SAID CURVE; THENCE RUN N.10°28'26"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 77.72 FEET TO THE POINT OF BEGINNING.

CONTAINING 2510.333 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

BEARINGS REFER TO THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 3, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING N.89°51'03"E.

NOTE: Based on Property Description provided by Stephen P. Erek, Professional Surveyor & Mapper, Wilson Miller Inc. dated 10/13/2001.