Finance
RE: Cheryl
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RESOLUTION 2002-107

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY AMENDING RESOLUTION 2001-135; REPEALING AND RESTATING THE THIRD AMENDMENT TO THE HAMMOCK DUNES DEVELOPMENT OF REGIONAL IMPACT (DRI); PROVIDING FOR PAYMENTS IN LIEU OF CONSTRUCTION FOR THE PUBLIC SAFETY COMPLEX; PROVIDING FOR AN EXPANDED AREA AND TIME FRAME FOR FLAGLER COUNTY TO EXPEND DEVELOPER PARK CONTRIBUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 30, 1984, the Board of County Commissioners of Flagler County, Florida ("Flagler County"), pursuant to Section 380.06, Florida Statues, adopted Resolution 84-7 approving a Development Order for the Development of Regional Impact known as Hammock Dunes ("Development Order"); and

WHEREAS, on July 17, 1995 and January 30, 1998, Flagler County adopted Resolution Nos. 95-50 and 98-10 constituting the first and second amendments, respectfully, to the Development Order; and

WHEREAS, Flagler County submitted a Notification of a Proposed Change (NOPC) to a Previously Approved DRI (the "Notification") that was approved by the Department of Community Affairs (DCA) on February 20, 2002; and

WHEREAS, subsequent to approval, the County found some minor errors that needed to be amended and clarified in the Notice of Proposed Change; and

WHEREAS, on July 24, 2002 an amended NOPC was duly filed with Flagler County, DCA, and the Northeast Florida Regional Planning Council; and

WHEREAS, the Northeast Florida Regional Planning Council and the Florida Department of Community Affairs, has reviewed the proposed changes and does not object to the proposed changes; and

WHEREAS, public notice of this Resolution has been provided in accordance with Chapter 380.06, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY FLAGLER COUNTY AS FOLLOWS:

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Section 1. FINDINGS

The Notice of Proposed Change filed by Lowe/Ocean Hammock, Admiral Corporation, Ginn-LA Marina Ltd., and HD Associates on July 24, 2002 does not constitute a substantial deviation pursuant to Chap. 380.06(19), F.S. and does not require further development or regional impact review.

Section 2. REPEAL OF RESOLUTION 2001-135

Resolution 2001-135, an amendment to the Hammock Dunes D.R.I. Development Order adopted on December 17, 2001 is hereby repealed in its entirety.

Section 3. THIRD AMENDMENT TO DEVELOPMENT ORDER

This Resolution shall be read in pari materia with Resolution Numbers 84-7, 95-50, 98-10 and together constitute the Third Amendment to the Hammock Dunes Development of Regional Impact Development Order. All portions of said Resolutions not amended herein shall remain in full force and effect. The specific portions of the existing Resolutions to be amended are as follows:

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A. Section 3.0 ECONOMY AND INFRASTRUCTURE of Resolution 84-7 is hereby amended as follows:

3.1 The approval by the County of this development order is based on the fact that the project will be served by certain capital facilities. These capital facilities are:

- Surface water management system
- Internal potable water distribution and fire hydrant system
- Wastewater collection, treatment and disposal systems
- Major north/south arterial roads (main road network)
- ~~An on-site public safety complex including a fire and police station~~
- ~~On-site fire, police, emergency medical and secondary security equipment including vehicles and apparatus~~
- Intracoastal Waterway Bridge

B. Section 12.3 PUBLIC SAFETY of Resolution 95-50 is hereby amended as follows:

12.3 The ~~Applicant~~ County shall construct, or cause to be constructed, a public safety complex on County owned property. ~~consisting of a two-~~

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~~bay facility of approximately 5,000 square feet within the convenience/commercial site located at the easterly end of the Intracoastal Waterway bridge~~. ~~The facility shall be constructed before 750 dwelling units are built on site.~~ The Developer agrees to make a contribution in the amount of $750,000 to Flagler County to construct the public safety facilities or operations which could include, but are not limited to, building construction, enhancements, purchase of equipment or other items as determined by the Board of County Commissioners. The Applicant and the County shall develop a construction draw schedule to finance the construction/outfitting of the public safety complex.

C. Section 12.4 PUBLIC SAFETY of Resolution 95-50 is hereby amended as follows:

12.4 On or before the completion of the public safety complex described in 12.3 above, the applicant shall contribute the following new public safety equipment to the County or other appropriate entity:

- ~~One emergency service line unit (advance life support);~~
- ~~One 1,250 gallon capacity fire pumper/tanker;~~
- Two patrol units for use by the Sheriff's Office.

The Applicant may contribute the equivalent value of the patrol units to the Sheriff's Office for its use for public safety purposes in lieu of donating the two patrol units. In lieu of a contribution of new public safety equipment to the County, the Applicant will contribute a total of $325,000 to the County to pay for an aerial apparatus truck, five months after issuance of purchase order to manufacturer.

D. Section 14.1 EXCHANGE of Resolution 98-10 is hereby amended as follows:

a. Exchange of Parks. The Applicant shall convey, or cause to be conveyed to the County, within thirty (30) days of the effective date of these amendments to the Hammock Dunes DRI as provided in Section 8 of this Resolution, those two properties known as the Malacompra Beach Front Park, a 47.01 acre parcel of property legally described in Resolution 98-10 as Exhibit "B" hereto (the "Beachfront Park") and a 306.98 acre parcel of property located along SR A 1 A known as the Malacompra Greenway, legally described in Resolution 98-10 as Exhibit "C" hereto (the "Malacompra Greenway [sic]) (tThe Beachfront Park, along with the 5 acre Oceanfront National Experience Site and the appropriate adjacent publicly owned lands north of Malacompra Road in the Johnson Beach Subdivision and the Malacompra Greenway Park shall be herein

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after collectively referred to as the "Parks"). Simultaneous with the Applicant's conveyance of the Parks to the County, the County shall convey to the Applicant 33 acres of property, the majority of which was previously donated by the Applicant to the County, which property is legally described in Resolution 98-10 as Exhibit "D" hereto (the "16" Road Park"). Simultaneously with the County's conveyance of the 16th Road Park to the Applicant, the Applicant shall grant an easement to the County for the benefit of the general public over the property described on Exhibit E hereto (the "Access and Parking Easement"), which shall grant the right of ingress and egress, parking and beach access for pedestrians and motor vehicles and public restroom facilities. The terms and conditions of the Access and Parking Easement shall contain, among other matters, the following: (i) The easement shall run in perpetuity and shall not be canceled or terminated without the express written approval of the Flagler County Board of Commissioners; (ii) The Applicant shall at all times maintain and provide public access to the beach and comparable restroom and parking facilities, either over the easement area; (iii) The Applicant shall have the sole right and obligation to construct the necessary roadway, parking lot improvements, and public restroom facilities which shall be constructed in a manner consistent with the development of Applicant's surrounding property and concurrently with the development of the clubhouse intended to be located adjacent to the easement area; (iv) The Applicant shall be responsible for the installation of the landscaping within and adjacent to the easement area; (v) The Applicant shall be responsible for the on-going maintenance of the improvements, including the landscaping, at the Applicant's sole cost and expense; and (vi) At such time as the Applicant has completed construction of the roadway improvements, parking area and public restroom facilities, the Applicant shall convey said improvements and the land on which they are located to the County subject, however, to a reservation by the Applicant of the right and obligation to continue maintaining the improvements and the right to use the land and improvements in any manner which is consistent with the public's use of the improvements for beach access and parking. The deed shall contain additional terms and conditions to provide that the County may not change the public use of the improvements without the express written consent of the Applicant or its successors and assigns. The County shall, concurrently with its acceptance of the conveyance, execute a Release and Termination of the Access and Parking Easement. The legal description of the improvements and land to be conveyed shall be based on an as built survey to be obtained by

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Applicant once the improvements have been completed. Attached hereto as Exhibit F is a legal description of the 16th Road right-of-way as it traverses the Applicant's property and the 16th Road Park. Applicant has advised the County that a portion of said 16th road right-of-way will need to be vacated in order to enable Applicant to develop its property in a manner consistent with the Development Order. Accordingly, the County agrees to cooperate with Applicant in completing the vacation of this 16th Road right-of-way provided that Applicant has, prior to the commencement of the vacation process, granted the Access and Parking Easement. The conveyances to the County contemplated herein shall be by a deed of conveyance in accordance with Chapter 125, F.S. The County shall be responsible for procuring all evidence of title and title information necessary to examine title to the properties described herein being conveyed to the County. The County shall further be responsible for procuring the owner's commitment for title insurance and the final owner's title insurance policy for the properties being conveyed to the County. The County shall choose its title agent in its sole discretion. Title to the property must be marketable as defined by Standard A of the Florida Association of Realtors/Florida Bar Real Estate Contract. The Applicant shall be responsible for paying for the cost of the title evidence and cost of the commitment and policy obtained by the County. The charge for said commitment and policy shall be at the promulgated rate. At least 15 days prior to any conveyance as contemplated herein the Applicant, shall provide the County with a Phase I Environmental Assessment covering all the property being conveyed to the County.

b. Improvement of Parks. The County shall design and construct certain improvements to the Parks for the use and enjoyment of the public (the "Park Improvements"). Simultaneously with conveyance of the Parks contemplated above, the Applicant shall contribute one million seventy five thousand dollars ($1,075,000) to the County to cover the cost of the Park Improvements. The Applicant hereby agrees to indemnify and hold the County harmless in the event the applicable governmental agency requests repayment of the following sums: (i) $150,000 received by Flagler County pursuant to that certain agreement by and between the State of Florida Department of Natural Resources and the Board of County Commissioners, Flagler County, Florida dated June 10, 1988 recorded at Official Records Book 0351 Page 0849; and (ii) $35,000 received from the Florida Department of Community

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Affairs pursuant to grant number 98-CZ-26-04-28-01-001 and to reimburse the County for its expenditures made to match the grant for the project plans which are no longer applicable due to transfer of the present 16th Road Park to the Applicant. This indemnification and hold harmless shall become null and void upon the presentation by Applicant to the County of written confirmation from the Department of Natural Resources (or its successor agency) with respect to the $150,000 funding that no repayment is necessary and from the Department of Community Affairs with respect to the $35,000 grant that there are no ineligible grant expenditures incurred by Flagler County. The Park Improvements within the Malacompra Greenway, Malacompra Beachfront Park, and the Oceanfront Natural Experience Park may consist of restrooms, pavilions, beaches, walkways (at grade and/or elevated), pedestrian and bike paths and picnic areas. The design of such public improvements shall be consistent with ecosystem planning principles and recognize the integrity of the beach dune system, the coastal scrub system and the hardwood hammock system existing in the Malacompra Greenway. The Park Improvements shall also include reconnection of the wetlands bifurcated by Malacompra Road. All site development work (including, without limitation, grading and filling), landscaping, the extension of water and sewer service within the Parks, and all costs and fees associated with the planning, design, permitting and construction of the Park Improvements shall be considered Park Improvements. The Applicant shall provide water and sewer utility service to the perimeters of: (i) the four (4) Beachfront Parks, (ii) the ICWW Park; (iii) ~~the emergency service building~~; (iii) ~~(iv)~~ the Malacompra Greenway where it reaches the intersection of the Northwest corner of Spine Road and 16th Road; and, (~~v~~) (iv) two (2) other locations along the Greenway in order to allow convenient use of the greenway by the public. This utility service shall be installed by the Applicant in conjunction with its construction of subdivision improvements serving that portion of the project immediately adjacent to such public facilities. ~~Within 180 days of the date of conveyance of the Parks to the County t~~ The County shall submit a Conceptual Plan ~~and proposed project budget~~ for the Park Improvements to the Applicant for the Applicant's review and comment. The Applicant shall have thirty (30) days from the date of submission to review and comment regarding the Conceptual Plan. Following the Applicant's review and comment period, the Applicant and County shall jointly review all comments and agree on the finalization of the Conceptual Plan and the proposed project budget. Following finalization of the Conceptual Plan and

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project Budget, the County shall cause the completion of the construction plans and shall submit construction documents to the Applicant to review and comment. The Applicant shall have thirty (30) days in which to review the plans and documents and return any comments to the County. Following that period, the County through its standard purchasing procedures, shall advertise and receive bids for the construction. The County may, however; elect to construct the facility with its own forces or with a combination of its own and contracted forces. If the work is to be done by Contract, ~~A machine copy~~ copies of the bids received shall be furnished to the Applicant. The Applicant shall have 15 days to review and comment on the bids. ~~for review and a fifteen (15) day period allowed for the Applicant to review and comment on the bids~~. ~~following which~~ Tthe County will either award the contract to the lowest responsive bidder, award the contract to another bidder or re-bid the contract whichever, in its sole discretion appears to best serve the interests of the public.

The County shall complete construction of the Park Improvements ~~within three years of the date of conveyance of the Parks to the County.~~ on or before April 30, 2006.

Section 4. TRANSMITTAL

Within ten (10) days of the date of adoption of this Resolution, Flagler County will send certified copies of this Resolution and all related exhibits by certified mail, return receipt requested, to:

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF COMMUNITY PLANNING
Bureau of State Planning
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100

NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL
9143 Phillips Highway, Suite 350
Jacksonville, Florida 32356

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Section 5. RECORDATION

This Resolution shall be recorded in accordance with Section 380.06(15)(f), Florida Statutes and file a Certification of Compliance with the Clerk of the Board of County Commissioners.

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Section 6. EFFECTIVE DATE

This Resolution shall become effective upon adoption.

ADOPTED THIS 7th DAY OF OCTOBER, 2002.

BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA

ATTEST:

Gail Wadsworth, Clerk and
Ex Officio Clerk to the Board

10.8.02

James A. Darby,
Chairman

APPROVED AS TO FORM:

Carl E. Kern III, County Attorney

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