

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY
AFFAIRS,

Petitioner,

v.

DOAH Case No. 06-2397GM

CITY OF TALLAHASSEE and
LEON COUNTY,

Respondents.

ROSS BURNAMAN,

Petitioner,

v.

DOAH Case No. 06-2780GM

DEPARTMENT OF COMMUNITY
AFFAIRS, CITY OF TALLAHASSEE,
and LEON COUNTY,

Respondents.

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs ("Department"), Leon County ("County"), and City of Tallahassee ("City"), and Ross Burnaman ("Burnaman") as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the Department is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, the County is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the City is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the City and County adopted Comprehensive Plan Amendment 2006-1-M-007 ("Plan Amendment") by Ordinance No. 06-11 on April 25, 2006 (DCA No. 06-1); and

WHEREAS, the Plan Amendment proposes to change the designation of 232 acres on the Future Land Use Map from Rural to Urban Fringe; and

WHEREAS, the Department signed its Statement of Intent regarding the Plan Amendment on June 30, 2006 and published its Notice of Intent on July 5, 2006; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Plan Amendment is not "in compliance" because it does not demonstrate that the level of service for facilities and services will be maintained, it exhibits indicators of urban sprawl, and it is internally inconsistent with portions of the comprehensive plan; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, the Department has initiated the above-styled formal administrative proceeding challenging the Plan Amendment; and

WHEREAS, the County and City dispute the allegations of the Statement of Intent regarding the Plan Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein below set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions: As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. DOAH: The Florida Division of Administrative Hearings.

d. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

e. Notice: The Notice of Intent issued by the Department to which was attached its Statement of Intent to find the Plan Amendment not in compliance.

f. Petition: The Petition of the Department of Community Affairs filed by the Department in this case.

g. Plan Amendment: Comprehensive Plan Amendment 2006-1-M-007, a part of DCA No. 06-1, adopted by the County and City on April 25, 2006 as Ordinance No. 06-11.

h. Remedial Action: A Remedial Plan Amendment, submission of Support Document or other action described in the Statement of Intent or this Agreement as an action which must be completed to bring the Plan Amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or Support Document, the need for which is identified in this Agreement, including its exhibits, and which the County and City must adopt to complete all remedial actions. Remedial Plan Amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The Statement of Intent to find the Plan Amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice of Intent and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice of Intent, and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the County and City complete the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. The County and City agree to consider for adoption by formal action of their governing bodies the Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7 Adoption or Approval of Remedial Plan Amendments. Within 60 days after the execution of this Agreement by the parties, the County and City shall consider for adoption the Remedial Actions or Remedial Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the County and City shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County and City also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the Remedial Action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendment and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted Plan Amendment and Remedial Plan Amendment in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Remedial Plan Amendment

not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the County's and City's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(15)(e), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the County's and City's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve any party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the last party to the Agreement.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. All parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the County in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

By: _____
Charles Gauthier, AICP
Director, Division of Community Planning

APPROVED AS TO FORM:

Date: _____

Kelly A. Martinson, Esq.
Assistant General Counsel

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this ____ day of
_____, 2007, by _____, who is personally
known to me or who has produced _____ as identification and
who did/did not take an oath.

Notary Public

LEON COUNTY, FLORIDA

ATTESTED BY :
Bob Inzer, Clerk of the Court

By: _____
C. E. DePuy, Jr., Chairman
Board of County Commissioners

By: _____
Bob Inzer, Clerk

Date: _____

APPROVED AS TO FORM:
County Attorney's Office

By: _____
Herbert W.A. Thiele, Esq.
County Attorney

CITY OF TALLAHASSEE

ATTESTED BY:
Gary Herndon, City Treasurer-Clerk

By: _____

APPROVED AS TO FORM:
City Attorney's Office

By: _____
James R. English, Esq.
City Attorney

By: _____
John R. Marks, III
Mayor, City of Tallahassee

Date: _____

ROSS BURNAMAN

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

Notary Public

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE CITY OF TALLAHASSEE/LEON COUNTY
AMENDMENT(S), NO(S) 2006-1-M-007, ADOPTED BY ORDINANCE NO. 06-11 ON
APRIL 25, 2006
NOT IN COMPLIANCE,
AND THE REMAINING AMENDMENT(S) ADOPTED PURSUANT TO
ORDINANCE 06-11 AND 06-O-21AA,
IN COMPLIANCE
DOCKET NO. 06-1-NOI-3701-(A)-(N)

The Department gives notice of its intent to find the City of Tallahassee/Leon County amendment(s), no.(s) 2006-1-M-007 adopted by Ordinance No. 06-11 on April 25, 2006 NOT IN COMPLIANCE, and the remaining amendment(s) adopted by Ordinance No. 06-11 and 06-O-21AA IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

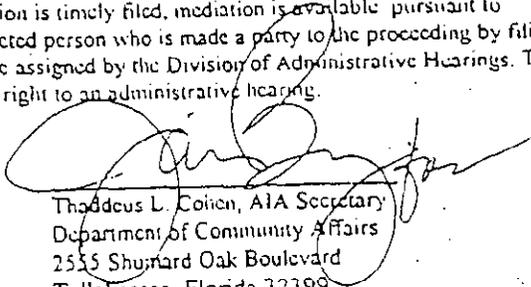
The adopted City of Tallahassee/Leon County Comprehensive Plan Amendment(s), the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment(s) Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at City Hall-Tallahassee Leon County Planning Department, 300 South Adams Street, Tallahassee, Florida 32301.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the City of Tallahassee/Leon County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendment(s) found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.


Thaddeus L. Coien, AIA Secretary
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

DRAFT EXHIBIT B – COUNTY’S REMEDIAL ACTIONS

The remedial actions agreed to by the County.

1. The Future Land Use Map of the Tallahassee-Leon County Comprehensive Plan will be amended as indicated in Exhibit B1 to show that development of the Property will be no greater than 81 residential units.
2. The Leon County Capital Improvement Element of the Tallahassee-Leon County Comprehensive Plan will be amended as indicated on Exhibit B2 to show the developer’s estimated contribution of \$1,200,000 for the provision of water and sewer services to the Property. The exact amount will be based on actual costs and credits and will be negotiated by the City and Developer in conjunction with an agreement for the provision of utility services by the City.
3. As a precursor to a finding that Comprehensive Plan Amendment 2006-1-M-007 is in compliance, the County will adopt an amended Black Creek Highlands Development Agreement. The amendment shall be in the form attached as Exhibit B3.

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EXHIBIT "B1"

**NOTES APPLICABLE TO THE URBAN FRINGE CATEGORY OF THE FUTURE LAND
USE MAP**

12-02-20-602-0000 and 12-11-20-202-0000 will be developed at a cumulative density no greater than 81 residential detached units.

DEVELOPER FUNDED PROJECTS

Project	Project #	Life to Date	FY07 Adjusted	FY08 Budget	FY09 Planned	FY010 Planned	FY011 Planned	FY07-011 Totals	Total Project Cost
Water Sewer US-90 East	n/a	-	-	-	-	-	1,200,000	1,200,000	1,200,000
<hr/>									
Total									1,200,000
Grand Total									1,200,000

12 83

EXHIBIT "B3"

BLACK CREEK HIGHLANDS

FIRST AMENDED DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between Dr. Miley Miers (Dr. Miers) and any subsequent developer of the property described herein (DEVELOPER), and LEON COUNTY, FLORIDA, a political subdivision of the State of Florida (COUNTY).

WITNESSETH

WHEREAS, Dr. Miers owns approximately 232 acres (Property) of land located along Highway 90, the legal description of which is attached as Exhibit A; and

WHEREAS, the Property is identified on Blueprint 2000 as a Tier 2 project. The parties have agreed to terms for development and for conservation of designated portions of the Property.

WHEREAS, it is deemed to be in the interest of the public health, safety, and welfare for LEON COUNTY to memorialize the development plan and the conservation of land for Blueprint 2000 and to assure that overall planning principles and concerns of the COUNTY are addressed in order to provide for orderly development for LEON COUNTY.

WHEREAS, the City and County adopted Comprehensive Plan Amendment 2006-1-M-007 ("Plan Amendment") by Ordinance No. 06-11 on April 25, 2006 (DCA No. 06-1); and

WHEREAS, the Plan Amendment proposes to change the designation of 232 acres on the Future Land Use Map from Rural to Urban Fringe; and

WHEREAS, the Department of Community Affairs ("Department") signed its Statement of Intent regarding the Plan Amendment on June 30, 2006 and published its Notice of Intent on July 5, 2006; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Plan Amendment is not "in compliance" because it does not demonstrate that the level of service for facilities and services will be maintained, it exhibits indicators of urban sprawl, and it is internally inconsistent with portions of the comprehensive plan; and

WHEREAS, Leon County has entered into a Stipulated Settlement Agreement to resolve the Department's compliance objections to the Plan Amendment wherein Leon County agreed to amend Section E.(2) of this Development Agreement to be consistent with F.S. 163.3177 (3) and F.S. 163.3227(1)(d) requiring that development agreements contain a description of public facilities that will service the development, including who shall provide such facilities; the date

EXHIBIT "B3"

any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development.

NOW, THEREFORE in consideration of the mutual terms, covenants, and conditions contained herein, and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

(A) PURPOSE.

The purpose of this Agreement is to:

1. Provide a mechanism to allow the Property to proceed through the rezoning process.
2. Set forth requirements and commitments for the development of the Property.
3. This Agreement, except as specifically provided herein, is intended to address the developer's commitment to conserve a portion of the Property and to clarify the development process that will be applicable to the Property. It is not intended to, nor does it, approve or authorize any amount of development or type of use on the Property, except as otherwise provided herein.

(B) AUTHORITY FOR AGREEMENT.

This Agreement is being entered into pursuant to authority provided in Sections 163.3220 - .3203, Florida Statutes (F.S), otherwise known as the Florida Local Government Development Agreement Act, and the Leon County Code of Laws.

(C) TERM.

This Agreement, shall be effective for a period of ten years from the date upon which zoning has been approved on the Property. This Agreement may be extended by mutual written consent of the parties, or their successors, subject to public hearings in accordance with Section 163.3225, F.S. In the event the developer does not comply with the terms of the Agreement within ten years and the Agreement is not extended, the local government shall initiate a Future Land Use Map amendment and/or rezoning at the earliest possible time in order to return the property to the status it held prior to this Agreement.

(D) APPROVED LAND USES AND CONSISTENCY WITH COMPREHENSIVE PLAN.

EXHIBIT "B3"

The plan of development proposed under this development agreement is consistent with the Tallahassee-Leon Comprehensive Plan Urban Fringe Future Land Use Category and the applicable rules and regulations found within the Leon County Land Development Code.

(E) PUBLIC FACILITIES.

1. Infrastructure Planning and Design. The design of the residential subdivision and necessary infrastructure shall be the responsibility of the developer. These improvements shall be designed in accordance with adopted standards for development as established in the Leon County Code.

2. Utilities. The developer shall be responsible for making the appropriate arrangements to provide central water and sewer to the Property. The City has agreed to supply water and sewer service consistent with attached correspondence (Exhibit B) and the terms of the Water and Sewer Agreement between the City and the County. The Developer shall be responsible for design and installation of a water distribution system and wastewater collection system to serve each home and for any infrastructure required consistent with City specifications. This system shall include the wastewater pumping station and force main. The developer will also be responsible for the design, permitting, and construction of any extension required to bring service from its off-site terminus at the time of hook-up to the Property. The developer and the City may negotiate a separate agreement to coordinate and facilitate the availability of the off-site water and wastewater infrastructure. Water and sewer services shall be in place prior to issuance of a final certificate of occupancy in accordance with applicable Land Development Code provisions and Section 163.3180(2)(a) Florida Statutes (2006). Developer agrees that the above infrastructure and systems shall be completed within ten (10) years from the date of this amended agreement.

As of the effective date of this agreement, the needed improvements are 8000 feet of 12 inch water pipe and 8000 feet of 6-inch sewer force main. The estimated cost to design, permit, and construct the project as of the effective date of this agreement is \$800,000 for the water pipe and \$400,000 for the force main. These costs and specifications are estimates and, regardless of these estimates, the Developer will be responsible for those specifications and related costs applicable at the time of construction of the water and sewer infrastructure.

EXHIBIT "B3"

3. Transportation. The Property was issued a two year reservation of concurrency for 74 dwelling units on March 11, 2005.
4. Stormwater Management. The Property shall manage stormwater in accordance with the Leon County Code of Laws.
5. Conservation Easement. The developer shall dedicate a conservation easement to Leon County over the portion of the property that is within the 100-year floodplain of Black Creek and for other preservation and conservation features identified in the Natural Features Inventory. The extent of this conservation easement shall be determined by a surveyor licensed in the State of Florida and shall be determined by elevation. In at least three locations within the Property, public pedestrian access shall be provided to the easement area. At one of these pedestrian access points, vehicular access and area sufficient for a public parking area (not to exceed 1 acre of upland area) shall be provided for the purpose of public access and Leon County maintenance and public safety. At the other two public access points, easements shall be provided for trail access to adjacent parcels to the east and west.

The terms of the conservation easement shall comply with Section 704.06 Florida Statutes (2006) regarding prohibited activities, shall be in perpetuity, and shall be prepared by the Developer in a form acceptable to the County. The easement shall be dedicated and accepted concurrent with the County's action approving the site and development plan for the Property. If the Property is developed in phases, dedication and acceptance shall occur concurrent with review of the first phase.

6. Annexation: All deeds transferring lots within the Property shall require the owner to agree to annexation into the City if the City boundary ever abuts any portion of the Property.

(F) DEVELOPMENT APPROVAL PROCESS

1. Open Space and Natural Areas Requirements. Satisfied in Residential Areas. The dedication of the conservation easement shall satisfy all Leon County code requirements for open space and natural areas.

(G) ADDITIONAL REQUIREMENTS.

1. Land Use. This agreement limits the residential density allowable on the Property to 74 single family detached residential lots and 7 additional inclusionary housing residential lots per Section (G)(3) of this Agreement

EXHIBIT "B3"

regardless of the maximum density allowed within the Urban Fringe land use category found within the Comprehensive Plan. No lot shall be re-subdivided. Incidental and customary accessory uses to single family residential subdivisions are also permitted.

2. Silviculture: The upland portions of the Property have been historically, and are currently, used in active silviculture activities. Dr. Miers agrees that silviculture activities on the Property shall not be expanded and specifically shall not be conducted nor permitted in the 100-year floodplain, unless otherwise authorized by the COUNTY. At the time the COUNTY develops trail systems in the conservation easement, the developer shall receive fair market value compensation for any timber that is removed by Leon County or its designees.
3. Inclusionary Housing: The developer shall be responsible for providing a minimum of 7 single family residential inclusionary units (prices no greater than the maximum affordable sales price or MASP), as defined within City of Tallahassee Ordinance No. 04-0-90AA. These seven units may be in addition to the 74 single family units permitted in subsection (G)1. above. The developer shall be responsible for gaining approval of an Inclusionary Housing Plan by the Leon County Growth Management Department at the time of site plan submittal. Such Plan shall include the mechanisms that will be used to assure that the units remain affordable, per City of Tallahassee Ordinance No. 04-0-90AA, such as resale and rental restrictions, and rights of first refusal and other documents. Approval of this section by the COUNTY shall not be construed as adoption of the provisions of the above City of Tallahassee ordinance. COUNTY shall not apply any provisions of the above ordinance which are determined by the County Attorney's Office to contradict lawfully adopted County ordinances or policies in place at the time of development approval is sought.

(H) PERMITS.

Failure of this Agreement to address a particular need for a permit, a permit condition, term, or restriction, shall not relieve the developer from the necessity of complying with law governing permitting requirements, terms, or restrictions. This Agreement shall not be used to influence any permitting decision except as specifically provided herein nor may it be used as the basis for a claim of vested rights to any amount of development on the Property.

(I) BINDING EFFECT.

EXHIBIT "B3"

The burden of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this document.

(J) EFFECTIVE DATE.

Within fourteen (14) days of execution of this Agreement, the COUNTY shall record the Agreement in the Public Records of Leon County. Within fourteen (14) days of recordation, the COUNTY shall submit a copy of the Florida Department of Community Affairs (DCA). This Agreement shall become effective thirty (30) days after submittal to DCA, but in no event shall the Agreement be effective or be implemented by a local government unless and until the local government's comprehensive plan and plan amendments implementing or related to the agreement are found in compliance by the state land planning agency, pursuant to Section 163.3229, F.S.

(K) FURTHER ASSURANCES.

Each of the parties to this agreement shall execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Agreement and give effect to it without in any manner limiting their specific rights and obligations as forth herein.

(L) NOTICES.

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

As to Leon County: Leon County Department of
Growth and Environmental
Management
ATTN: Gary Johnson
3401 Tharpe Street
Tallahassee, Florida 32312

With a copy to: Leon County Attorney's Office
Attention: Herbert Thiele
Leon County Courthouse
301 South Monroe Street
Tallahassee, Florida 32301

As to Owner: Dr. Miley Miers
Century 21 First Realty

EXHIBIT "B3"

With a copy to:

2365 Centerville Road
Tallahassee, Florida 32308
Cynthia A. Henderson, Esquire
Cynthia A. Henderson, P.A.
2846-A Remington Green Circle
Tallahassee, Florida 32308

(M) SEVERABILITY.

If any word, phrase, clause, section, or portion of this Agreement shall be held invalid by a court of competent jurisdiction, such portion or word shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

(N) LAWS.

This Agreement shall be governed by and construed in accordance with laws of the State of Florida.

(O) ENFORCEMENT.

In the event of a breach of this Agreement by a party, the other may sue to enforce this Agreement and the prevailing party shall be entitled to payment of attorney's fees and costs by the non-prevailing party.

(P) APPROVAL.

This Development Agreement was approved by LEON COUNTY after two (2) public hearings before the County Commission on March 28, 2006 and April 25, 2006.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement as of the dates set forth below.

SIGNED, SEALED AND DELIVERED

In the presence of:

DR. MILEY MIERS

By: _____

Printed Name: _____

Title: _____

Witness

Printed Name:

Witness

Printed Name:

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC

Printed Name

My commission expires:

LEON COUNTY, FLORIDA

ATTESTED BY:
Bob Inzer, Clerk of the Court

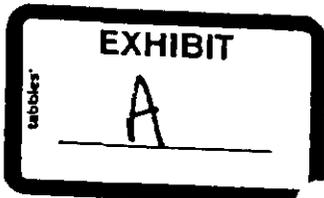
By: _____
Bill Proctor, Chairman
Board of County Commissioners

By: _____
Bob Inzer, Clerk

Date: _____

APPROVED AS TO FORM:
County Attorney's Office

By: _____
Herbert W. A. Thiele, Esq.
County Attorney



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RECORDED IN
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TALLAHASSEE, FLORIDA

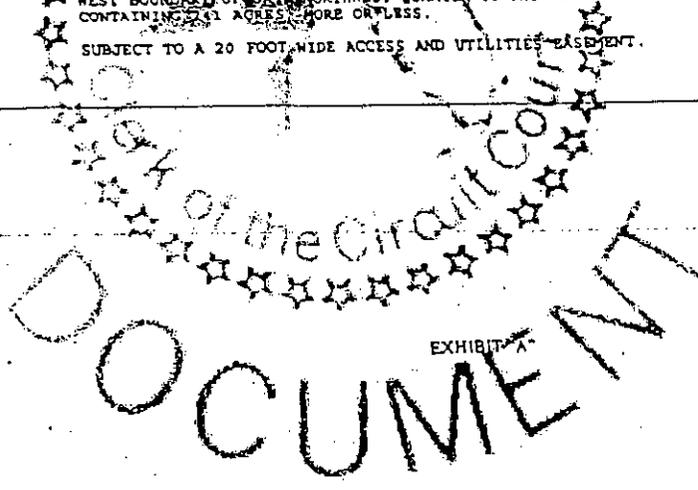


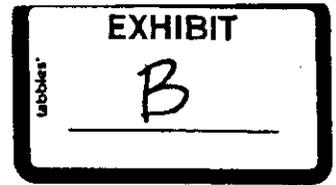
BK: R2085 PG: 01896

Attachment # 2
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BEGIN AT A CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 1 NORTH, RANGE 2 EAST, LEON COUNTY, FLORIDA AND RUN SOUTH 00 DEGREES 10 MINUTES 20 SECONDS WEST 361.00 FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER TO A CONCRETE MONUMENT, THEN NORTH 89 DEGREES 47 MINUTES 58 SECONDS EAST 361.00 FEET TO A CONCRETE MONUMENT, THEN NORTH 00 DEGREES 10 MINUTES 20 SECONDS EAST 361.00 FEET TO A CONCRETE MONUMENT, THEN NORTH 89 DEGREES 47 MINUTES 58 SECONDS EAST 2171.10 FEET ALONG THE NORTH BOUNDARY OF SAID QUARTER TO A CONCRETE MONUMENT ON THE NORTHWESTERLY BOUNDARY OF THE 66 FOOT WIDE RIGHT OF WAY FOR STATE ROAD NO. 10 (SECTION 5502, DATED AUGUST 1930, ALSO KNOWN AS U.S. HIGHWAY NO. 90, THEN LEAVING SAID NORTH BOUNDARY RUN ALONG SAID NORTHWESTERLY BOUNDARY NORTH 51 DEGREES 37 MINUTES 53 SECONDS EAST 211.07 FEET TO A CONCRETE MONUMENT, THEN LEAVING SAID NORTHWESTERLY BOUNDARY RUN NORTH 00 DEGREES 01 MINUTES 05 SECONDS EAST 85.23 FEET TO AN IRON BAR, THEN NORTH 89 DEGREES 54 MINUTES 55 SECONDS WEST 160.00 FEET TO AN IRON BAR, THEN NORTH 00 DEGREES 01 MINUTES 05 SECONDS EAST 272.25 FEET TO AN IRON BAR, THEN CONTINUE NORTH 00 DEGREES 01 MINUTES 05 SECONDS EAST 272.25 FEET TO AN IRON BAR, THEN SOUTH 89 DEGREES 54 MINUTES 55 SECONDS EAST 160.00 FEET TO AN IRON BAR, THEN NORTH 00 DEGREES 01 MINUTES 05 SECONDS WEST 1919.74 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, THEN SOUTH 89 DEGREES 54 MINUTES 55 SECONDS WEST 1353.80 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2 OF SAID TOWNSHIP AND RANGE, THEN NORTH 2629.6 FEET ALONG THE EAST BOUNDARY OF SAID WEST HALF TO THE NORTH BOUNDARY OF SAID WEST HALF, THEN WEST 1320 FEET ALONG SAID NORTH BOUNDARY TO THE WEST BOUNDARY OF SAID SECTION 2, THEN SOUTH 2640 FEET ALONG SAID WEST BOUNDARY TO A CONCRETE MONUMENT AT THE SOUTHWEST CORNER OF SAID SECTION 2 AND THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 11, THEN SOUTH 00 DEGREES 10 MINUTES 41 SECONDS WEST 268.91 FEET ALONG THE WEST BOUNDARY OF SAID NORTHWEST QUARTER TO THE POINT OF BEGINNING; CONTAINING 2.41 ACRES, MORE OR LESS.

SUBJECT TO A 20 FOOT WIDE ACCESS AND UTILITIES EASEMENT.





70 South Adams Street, Box B-26, Tallahassee, Florida 32301, (850) 891-4YOU (4968), talgov.com

Attachment # 2
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November 7, 2006

RECEIVED
06 NOV -9 AM 7:54
TALLAHASSEE/LEON COUNTY
PLANNING DEPARTMENT

Dr. Miley Miers
C/O Century 21 Realty
2365 Centerville Road
Tallahassee, FL 32308

Re: Availability of City Water and Sewer to the Black Creek Highlands Property
on U.S. Highway 90 West, Leon County, Florida

Dear Dr. Miers:

The City of Tallahassee commits to providing water and sewer services to the subject property in accordance with Section (E)2. of the Leon County Development Agreement for the property. The City has a six-inch sewer force main and a twelve-inch water main beyond the Urban Services Area boundary approximately 600 feet west of Crump/Chaires Road. The provisions for the necessary water and sewer main extensions are stipulated in the aforementioned Section (E)2.

Specifically, the City will be responsible for the cost of extending the twelve-inch water main from its present terminus to within 1200 feet of the nearest property boundary of the proposed development on U.S. Highway 90 East. As the developer, you will be entirely responsible for extending the remaining 1200 feet of twelve-inch water main and for constructing the onsite water distribution system. The City does have funding in the current FY07 Capital Improvement Plan to extend the twelve-inch water main to within 1200 feet of the property as referenced in the agreement.

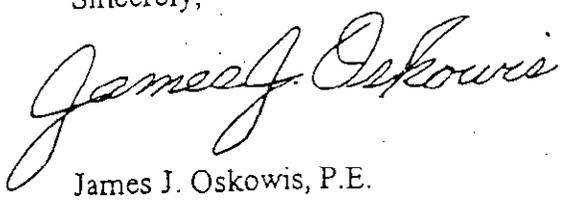
Similarly, you will be entirely responsible for extending the six-inch sewer force main from its present terminus to the nearest property boundary of the proposed development on U.S. Highway 90 East. You will also construct the onsite sewer collection system, including the necessary pumping station and force main to connect to the six-inch force main on U.S. Highway 90 East.

06 NOV 16 PM 4:28
TALLAHASSEE/LEON COUNTY
PLANNING DEPARTMENT

Dr. Miley Miers
C/O Century 21 Realty
Black Creek Highlands Property
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In addition to the County agreement, you will be required to enter into a Letter of Agreement with the City for the extension of City utility services. If you have any questions or comments, please contact me at 891-6129.

Sincerely,



James J. Oskowis, P.E.
General Manager

Xc: ~~Ricardo Fernandez, Assistant City Manager - City Utility Services~~
~~Wayne Tedder, Director - Tallahassee-Leon County Planning Department~~
~~Lynne Putnam, Engineering Manager - City Water Utility~~
~~Kristen Andersen, Planner II - Tallahassee-Leon County Planning Department~~
