

**DeSANTIS PROPORTIONATE SHARE TRAFFIC MITIGATION AGREEMENT AND  
FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into by and between James R. Clanton, Jr., Successor Trustee of the Peter A. DeSantis Jr. Trust ("Owner") and Leon County, Florida ("County"), a political subdivision of the State of Florida, subject to all other governmental approvals and solely at the risk of the Owner.

**RECITALS**

WHEREAS, the Owner owns approximately 27.4 acres of land (the "Property") located between Bannerman Road and Kinhega Drive, approximately 500 feet northwest of Thomasville Road (see map included as Exhibit #A); and the Owner is seeking Site and Development Plan approval for the Property identified as Tax Parcel Identification Numbers 14-22-20-018-0000, 1422-20-005-0000, 14-15-20-628-0000, and 14-15-20-601-0000, located in Leon County, Florida, more particularly described in Exhibit "B" to this Agreement which is attached hereto and made a part hereof; and

WHEREAS, a Settlement Agreement (the "Settlement Agreement") was approved by the Leon County Board of County Commissioners on February 12, 2002, between the County and H.G. Laird and Margaret L. Hirt, James K. Godfrey and Kristen H. Godfrey, Karen S. Hanson as trustee of the Arlene L. Carter Revocable Trust, and the Bradfordville Hunt Club ("Prior Owners") pertaining to the development of the Property; and

WHEREAS, the Owner has acquired the Property from the Prior Owners, and thereby, as a successor in title, acquired those rights established in the Settlement Agreement; and

WHEREAS, Owner and County wish to amend certain terms of the Settlement Agreement as contained herein; and

20080049854  
THIS DOCUMENT HAS BEEN  
RECORDED IN THE PUBLIC RECORDS  
OF  
LEON COUNTY FL  
BK: 3881 PG:1760, Page 1 of 15  
07/15/2008 at 03:29 PM,  
BOB INZER, CLERK OF COURTS 31

WHEREAS, the Settlement Agreement states that the County will be responsible for the construction of the extension of Beech Ridge Trail; however, in order to mitigate the development impacts including concurrency, Owner has agreed to construct this extension; and

WHEREAS, it is the intent of the County and the Owner that any terms contained in this Agreement, during the duration of this Agreement, that may be contrary to the terms of the Settlement Agreement shall supersede those contrary terms in the Settlement Agreement; and

WHEREAS, as a consideration for the development intensity conferred in the Settlement Agreement, the Prior Owners agreed to dedicate right-of-way and drainage easements to the County, between the southern right of way of Kinhega Drive and the northern right of way of Bannerman Road (the "Dedicated ROW") with the intention that a roadway be constructed within the Dedicated ROW which will be an extension of Beech Ridge Trail, a public road, extending from the southern right of way of Kinhega Drive to the northern edge of the pavement of Bannerman Road (the "New Roadway"); and

WHEREAS, the Settlement Agreement does not address transportation concurrency and the Owner seeks to pursue development of the Property and will need to address the issue of transportation concurrency capacity to do so successfully. In response, the Owner has proposed to offer infrastructure improvements as outlined in this Agreement, fashioned pursuant to the Leon County Concurrency Management Policies and Procedures Manual, revised November, 2006 to address all transportation concurrency issues; and

WHEREAS, the County has agreed that when this Agreement has been complied with, the County will grant the Property traffic concurrency; and

WHEREAS, the County has the power and duty to exercise general supervision of the administration and enforcement of the Leon County Code of Laws pertaining to the Tallahassee-Leon County 2010 Comprehensive Plan, Land Development Regulations, Concurrency Management Ordinance, and the Leon County Concurrency Policies and Procedures Manual; and,

WHEREAS, the County is authorized to enter into this Agreement pursuant to the Leon County Concurrency Policies and Procedures Manual and all applicable laws.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and premises set forth herein, the parties agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein by reference as though they were specifically set out. Herein.
2. The commercial portion of the development to be constructed on the Property will *not exceed 75,000 square feet of commercial retail use and any non-commercial retail development to be constructed shall be equivalent to the traffic concurrency impact of 32 residential units, in accord with the existing zoning and Comprehensive Plan requirements, and in accordance with the Settlement Agreement (the "Project").*
3. Based on utilization of the ITE Trip Generation (7th Edition) software, and the ITE Trip Generation Handbook (2nd Edition), both compiled by the Institute of Traffic Engineers, and are professionally accepted standard referenced utilized for estimating projected traffic generation based on proposed land use, it has been determined that the net number of new vehicular trips that would be created by a mixed use development consisting of 75,000 square feet of commercial retail land use and 32 residential dwelling units on the Property would be appropriately 232 trips during the PM peak hour of generation, as shown in Exhibit "C".

4. The Project will significantly impact the westbound segment of Bannerman Road between Thomasville Road and Tekesta Drive, Segment 13561 as identified in the County's Concurrency Management System (CMS), and Segments 43550 and 43580 of the County's CMS, more specifically, the westbound segment of Kinhega Drive between Thomasville Road and Deer Lake Road. (These three segments will hereinafter be referred to as the "Impacted Road Segments")

5. The Impacted Road Segments are located inside of the Project's Comprehensive Traffic Analysis Network and are operating below the adopted Level of Service in the Leon County Concurrency Management System, and are capacity-constrained roadways, as defined by the Leon County Concurrency Management Policies and Procedures Manual, adopted on November 14, 2006, as shown in Exhibit "D."

6. In response to the projected adverse impacts upon the Impacted Road Segments, and as required in the Settlement Agreement, Owner agrees to dedicate to the County the Dedicated ROW and also such portion of the Property required for the construction, operation and maintenance of facilities for stormwater treatment, including drainage easements, for the runoff generated by the New Roadway. The Dedicated ROW shall be no less than sixty (60) feet in width, which may also require that a governmental subdivision be approved. The length of the Dedicated ROW shall be determined by provision of the connections to Bannerman Road at the existing median cut at the eastern side of the Property and the northern property line of the Property aligned with the intersection of Beech Ridge Trail and Kinhega Drive.

7. The Owner shall be under no obligation to fund and construct the New Roadway until such time as it seeks permits or county approvals for development of the property; however, nothing herein shall modify or eliminate the obligations of the Owner under the Settlement Agreement should the Owner not fund or construct said New Roadway. The amount of costs associated with the construction of the New Roadway is in lieu of funding the pro-rata share of

construction of the above described improvements identified in the concurrency review process in order to construct the Project. Funding and construction shall include all design, permitting, testing, construction management or other costs associated with the construction of the New Roadway and the associated stormwater facility. The design process shall include submittal of design documents to Leon County Public Works for review, comment (which comments shall be implemented by the Owner) and approval, as appropriate, at the customary points of design completion: 30%, 60%, 90% and 100% of design completion. Leon County shall be afforded adequate time for this review, including not less than 30 days for review of final plans for final approval at 100% completion. The County must approve or reject the final plans with 60 days or it shall be deemed that the County has approved the final plans as submitted.

8. The Owner agrees to waive those provisions under Section 2, Grant of Right of Way, enumerated on pages 5 and 6 of the Settlement Agreement that would otherwise require the County to bear the cost of designing, permitting, conducting evaluations and investigations in support of, the acquisition of right of way and the construction of the New Roadway. The Owner agrees to bear the cost of surveying, engineering, designing, permitting and construction of the Dedicated ROW and the New Roadway. Owner further agrees to contribute to the County one-half (½) of the cost, on a reimbursement basis, not to exceed a total contribution by the Owner of \$100,000.00, for surveying, engineering, designing, and permitting a roundabout at Kinhega Drive and of the acquisition of needed right-of-way to access the roundabout from the subject property and construction of said roundabout. The County shall be responsible for the costs of permitting, design, construction, and additional right of way acquisition for the roundabout at Kinhega Drive and Beech Ridge Trail that exceed the contribution by the Owner.

9. The Owner agrees to waive those provisions under Section 5, Cost of Surveying, Design, Permitting and Construction, enumerated on page 7 of the Settlement Agreement that

would otherwise require the County to bear the proportionate costs of surveying, engineering, designing, permitting, acquisition of right of way and constructing the stormwater management facility, to be constructed on the Property, based on the proportionate share of stormwater volume coming from the New Roadway.

10. The New Roadway shall be designed and constructed as a connector street, consistent with the parameters established by and in coordination with Leon County Department of Public Works, and shall include the following design elements: two eleven-foot wide travel lanes; curb and gutter along each side of the street; four-foot wide bicycle travel lanes along each side of the street; a sidewalk of no less than five feet of width to be provided along the side of the street; conveyances for stormwater; a stormwater detention or retention facility, with adequate access thereto; a traffic signal at the intersection of Beech Ridge Trail and Bannerman Road, including associated support structures, signal box, pedestrian crossing signals, and wiring.

11. Upon final completion of the New Roadway and stormwater facilities construction, and acceptance of that construction by Leon County Public Works, Owner shall dedicate or convey the ownership of the Dedicated ROW to Leon County and shall grant an easement for the stormwater facilities and access to said stormwater facilities and any necessary drainage easements, subject to the Board of County Commissioners' acceptance. The dedication of the Dedicated ROW to Leon County and construction of the New Roadway qualify as "Significant Benefits" under the provisions of Section 6.2.5.3.b. of the Leon County Concurrency Management Policies and Procedures Manual, adopted on November 14, 2006.

12. The parties agree and understand that the commitments for the dedication of the Dedicated ROW by the Owner and for the construction of the New Roadway and final inspection and acceptance of the New Roadway, in its entirety, shall be pre-requisites for the issuance of any certificate of occupancy for any building constructed on the Property. Except, however, should the

County fail to construct its portion of the road and roundabout which lie to the north of the Property, that is the portion lying north of the southern right of way of Kinhega Drive, such failure shall not affect the Owner's right and ability to obtain building permits for the development of the Project.

13. As a condition of any development order or environmental permit, pursuant to the Settlement Agreement, or as amended by this Agreement, the Owner shall provide a surety device for the construction of the New Roadway and associated improvements as specified in this Agreement which have not been constructed. The surety device shall:

(a) Be acceptable to and approved by the County Engineer and the County Attorney; and, Cover 110 percent of the cost of any uncompleted road, storm water management conveyance improvements, or other required infrastructure as estimated by the engineer of record and approved by the County Engineer; and,

(b) Be conditioned upon completion of construction and dedication of roads and storm water management conveyances as shown on the approved construction plans within 18 months, or as extended by the county engineer; and,

(c) Be payable solely to and for the indemnification of Leon County.

14. As condition of any development order pursuant to the Settlement Agreement, as amended by this Agreement, the Owner shall provide a surety device, payable solely to and for the indemnification of Leon County, in the amount of ten percent of the total cost of all required improvements as approved in the site and development plan to cover defects in materials and/or workmanship for two years.

15. Owner also agrees to coordinate with Star Metro to locate a transit stop and shelter on the Property or within the adjacent right-of-way. The costs of construction, installation and maintenance of said transit stop and shelter to be borne by Star Metro.

16. This Agreement shall remain in full force and effect for a term of five (5) years from the effective date hereof; or until buildout is complete, whichever occurs first.

17. The rights and obligations of this Agreement shall remain in full force and effect in the event that the Property, or any portion thereof, is annexed into the City of Tallahassee. The burdens and benefits of this Agreement shall be binding upon and shall inure to all successors in interest to the County and Owner.

18. If reasonable adjustments in the Agreement are required to complete the Project in a satisfactory manner, this Agreement may be amended if agreed to in advance by the Owner or its successor and Leon County.

19. This Agreement shall be effective upon the date all parties hereto have executed the same. Within fourteen (14) days of approval of this Agreement, the Owner shall record it in the Public Records of Leon County.

20. The rights and obligations of this Agreement shall be binding upon and shall inure to the benefit of the parties to the agreement and their lawful heirs, successors, and assigns, and any future owners of the Property.

21. 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.

22. 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.



LEON COUNTY, FLORIDA

ATTESTED BY:  
CLERK OF THE COURT FOR  
LEON COUNTY, FLORIDA

By: Jane G. Sauls  
Jane G. Sauls, Chairman  
Board of County Commissioners

By: John Stott, Deputy Clerk  
Bob Inzer, Clerk of the Court

Date: 6-17-08

APPROVED AS TO FORM:  
COUNTY ATTORNEY'S OFFICE  
FOR LEON COUNTY, FLORIDA

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

NAME OF OWNER

By: James R. Clanton, Jr.  
Designated Agent for:  
Property Owner(s)

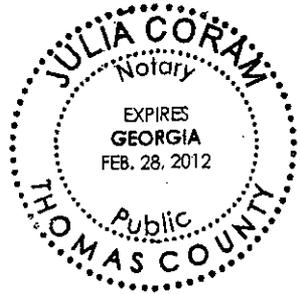
Dated: July 10, 2008

ATTESTED BY:  
(CORPORATE SEAL)

STATE OF FLORIDA ~~Georgia~~  
COUNTY OF LEON ~~Thomas~~

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2008, by James R. Clanton, Jr., who is personally known to me and who did not take an oath.

Julia Coram  
Signature of Notary  
Print, Type or Stamp Name of Notary Title or Rank



## Exhibits

Exhibit A: Map of PROPERTY

Exhibit B: Legal Description of PROPERTY

Exhibit C: ITE Traffic Generation Analysis

Exhibit D: List of Street Segments Located Within the Comprehensive Traffic Analysis Network

# DeSantis Parcels

Requested By: AAB  
Project Desc: DeSantis Parcels

DATE: 4/6/2007

NAME: christopherw

Legend	
De Santis Parcels	
Buildings	
MAP_DATE	
1/1996	
2/2001	
2/2005	
2/2006	
---	Road Edge
—	Major Roads
□	Leon County Boundary
□	Parcels

SCALE  
1 inch equals 315 feet

Leon County Growth and Environmental Management  
Building Inspection Tax Assessors/Scientists  
2000 UNIVERSITY BLVD, SUITE 200, TALLAHASSEE, FL 32303-3000  
TEL: 904.224.2200 FAX: 904.224.2202

Tallahassee-Lemon County  
www.tlcc.com

**LEON**

**TAL**

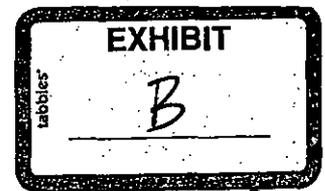
This product has been certified from the most accurate available information. It is not a warranty, representation, or guarantee of any kind. It is for reference purposes only and it is to be understood as a disclaimer of liability. Any reliance on the information herein is at the user's sole risk. The Assessor's Office assumes no responsibility for any use of the information contained herein or any loss resulting therefrom.

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EXHIBIT  
A



Ana Project No. 4504-001  
October 17, 2003



Attachment # 2  
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27.74 ACRE PARCEL  
BADFORDVILLE, FLORIDA

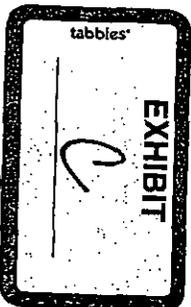
Commence at a concrete monument marking the Northeast corner of Section 22, Township 2 North, Range 1 East, Leon County, Florida, and run thence West along the section line a distance of 628.98 feet; thence North 14 degrees 30 minutes West 391.00 feet; thence South 37 degrees 07 minutes West 260.00 feet; thence North 52 degrees 53 minutes West 1381.40 feet to the East boundary of the West Half of the Southwest Quarter of the Southeast Quarter of Section 15, Township 2 North, Range 1 East, Leon County, Florida; thence North 00 degrees 28 minutes East along said East boundary a distance of 324.20 feet to the Northeast corner of the West Half of the Southwest Quarter of the Southeast Quarter of said Section 15, thence North 89 degrees 32 minutes West along the North boundary of the Southwest Quarter of the Southeast Quarter of said Section 15 a distance of 660.00 feet; thence South 00 degrees 28 minutes West along the West boundary of the Southeast Quarter of said Section 15 a distance of 660.00 feet to a 1" iron pipe on the boundary of Killearn Lakes, Unit No. 1, a subdivision as per map or plat thereof, recorded in Plat Book 6, Page 26 of the Public Records of Leon County, Florida for the POINT OF BEGINNING. From said POINT OF BEGINNING run South 28 degrees 14 minutes 45 seconds East along the boundary of said Killearn Lakes, Unit No. 1 and the bearing base for this survey a distance of 954.40 feet to a found 1" iron pipe; thence continue South 28 degrees 14 minutes 45 seconds East a distance of 58.48 feet; thence South 59 degrees 08 minutes 38 seconds East a distance of 466.17 feet to a 4"x 4" found concrete monument (#1254); thence South 40 degrees 38 minutes 07 seconds West a distance of 1094.92 feet to a 5/8" found iron rod on the Northeasterly right of way of Bannerman Road; thence North 37 degrees 24 minutes 45 seconds West along said right of way a distance of 1102.10 feet to a 5/8" set iron rod and cap (#3293); thence leaving said Bannerman Road right of way run North 29 degrees 08 minutes 30 seconds East a distance of 544.05 feet to a found 4"x 4" concrete monument (#1254); thence North 06 degrees 37 minutes 38 seconds East a distance of 279.84 feet to a found 4"x 4" concrete monument (#1254); thence South 88 degrees 54 minutes 49 seconds East a distance of 199.72 feet to a found 4"x 4" concrete monument (#1254); thence North 01 degrees 03 minutes 00 seconds East a distance of 337.58 feet to the POINT OF BEGINNING, containing 27.47 acres more or less.

**Exhibit C**  
**ITE Trip Generation Analysis**

**DeSantis Property Proposal (75,000 sq. ft. retail and 32 dwelling units)**

Input	Unit Type	# of Units	Gen. Rate	% Enter	% Exit	Trips Total	Trips Enter	Trips Exit	IC Rate	External Total	External Enter	External Exit	Pass-By Rate	Pass-By Rate Tot.	New Trips	New Enter	New Exit	
Proposed																		
Shopping Center (820)	Sq. Ft.	75	T=4.75(75)	48%	52%	343	165	178	5%	326	157	169	34%	110	216	103	113	
Condominium/Townhouse (230)	DU	32	T=.52(32)	67%	33%	17	11	6	5%	16	10	5	0%	0	16	10	6	
<b>Total New</b>															<b>232</b>			

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**Exhibit D**  
**Trip Distribution/Assignment Roadway Segments within the Comprehensive Traffic Analysis Network (CTAN) of the DeSantis Property**

Roadway Segment Number	Road Name	From	To	# of Trips Shopping Cntr & 32 MFR	% Impact	Available Capacity (Trips) at the Adopted Level of Service (LOS)	Significantly Impacted
13541	Bannerman	Tekesta	Bull Headley	23	6.03%	195	No
13540	Bannerman	Bull Headley	Tekesta	11	4.60%	532	No
13560	Bannerman	Tekesta	Thomasville	80	34.48%	566	No
13561	Bannerman	Thomasville	Tekesta	62	26.72%	-142	Yes*
16830	Bradfordville	Thomasville	Velda Dairy	11	4.60%	371	No
16831	Bradfordville	Velda Dairy	Thomasville	25	10.92%	849	No
43580	Kinhega	Beech Ridge	Deer Lake	13	5.46%	-176	Yes*
43581	Kinhega	Deer Lake	Beech Ridge	11	4.60%	294	No
43550	Kinhega	Thomasville	Beech Ridge	22	9.48%	-199	Yes*
43551	Kinhega	Beech Ridge	Thomasville	10	4.31%	296	No
81200	Thomasville	Foxcroft	Kerry Forest	39	16.95%	639	No
81201	Thomasville	Kerry Forest	Foxcroft	53	22.70%	1401	No
81300	Thomasville	Kerry Forest	Bannerman/Bradfordville	59	25.29%	919	No
81301	Thomasville	Bannerman/Bradfordville	Kerry Forest	63	27.01%	941	No
81330	Thomasville	Bannerman/Bradfordville	Kinhega	15	6.32%	980	No
81331	Thomasville	Kinhega	Bannerman/Bradfordville	9	3.74%	1218	No
81360	Thomasville	Kinhega	Iamonia Lake	7	2.87%	936	No
81361	Thomasville	Iamonia Lake	Kinhega	7	2.87%	1391	No
82900	Velda Dairy	Kerry Forest	Bradfordville	4	1.72%	109	No
82901	Velda Dairy	Bradfordville	Kerry Forest	11	4.60%	1045	No
	Rhea Road	Thomasville	Lawton Chiles	8	3.45%	N/A	N/A**
	Lawton Chiles	Rhea	Kinhega	8	3.45%	N/A	N/A**

\* The segment is operating below the adopted LOS as established in the Comprehensive Plan for the roadway noted.

\*\* An LOS has not been established for the roadway segments based on its current classification.

Reference: Leon County Concurrency Management System. Analysis performed utilizing the QRS II Model and machine traffic counts adjusted for seasonal variations.

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