

Attachment C

Development Agreement Provisions		
Proposed	PROVISION	STAFF REMARKS/RECOMMENDATIONS
preamble	Identification of the parties	No objection. Note – incomplete paragraph.
Whereas provisions	A – Identification of subject property and ownership thereof (“Property”)	No objection.
Whereas provisions	B – Identification of rezoning application request (“Application”)	No objection.
Whereas provisions	C – Assertion that the rezoning application request was previously considered by the Planning and Zoning Commission and has yet to be considered by the Board of County Commissioners	No objection.
Whereas provisions	D – Intent of Developer to develop the property as a gas station and convenience store (“Project”)	No objection.
Whereas provisions	E – Assertion that the Developer’s Agreement is meant as supporting analysis for the requested rezoning	No objection.
Whereas provisions	F – Proposition that if the rezoning request is approved, then the property will be developed in accordance with the Land Dev. Code (LDC), the Comprehensive Plan, and this Agreement.	Objection: except for the inconsistency with the future land use.
Whereas provisions	G – Assertion that the Rural Land future land use designation is applicable to the property and allows agricultural-related commercial uses, and this agreement is intended to ensure development of the property is limited accordingly.	Objection 1: Although gas station with convenience store is a permitted use of Rural Commercial (RC-1) zoning classification, as it reads today, staff disagrees that it is an agricultural-related, and thus conflicts with the intent of that zoning classification. Note: there is currently a pending application to review the language of this zoning classification. Objection 2: Commercial use is generally incompatible with Rural Land future land use designation

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Whereas provisions	H – Identification of the Engineer who prepared the Traffic Study – MacKenzie Engineering & Planning, Inc. (“Traffic Study”)	No objection.
Whereas provisions	I – Assertion that the agreement complies with the requirements of ss. 163.3220 through 163.3243, F.S.	County Attorney’s Office has deemed the agreement legally sufficient as to form; however, staff would like to note specifically that s. 163.3227(1)(g) requires a finding that the development permitted or proposed is consistent with the local government’s Comp Plan and Land Development Regulations. Staff disagrees with this finding.
Whereas provisions	J – Authorization for parties to enter into this agreement	No objection.
Whereas provisions	K – County has complied with Notice requirements.	No objection. Note – incomplete provision.
Whereas provisions	L – Dates of public hearings	No objection. Note – incomplete provision.
Whereas provisions	M – Terms of agreement are necessary and appropriate to protect public health, safety, and welfare.	No objection.
Whereas provisions	N – Parties are entering into this agreement pursuant to the foregoing.	With objections stated above, staff has no objection to this provision.
1	Recitals	No objection.
2	Acknowledgements	See below.
2.1	County has no obligations hereunder. This agreement is subject to all provisions of applicable law.	No objection.
2.2	Developer enters this agreement freely and voluntarily.	No objection.
2.3	Footnote to be included in the County’s Zoning Map.	No objection. Note – incomplete provision.
2.4	Conditions herein are reasonable and nondiscriminatory, and do not unduly benefit or burden a particular person.	No objection.

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2.5	There may be third-party beneficiaries of this Agreement such as surrounding property owners, who benefit from the conditions set forth herein.	No objection.
3	Representations and Warranties	See below.
3.1	Developer's	See below.
3.1.1	Developer is the owner of the property	No objection.
3.1.2	Developer has the authority to enter into this agreement.	No objection.
3.1.3	Developer has taken all actions prerequisite, and upon execution and delivery, the obligations of the Developer shall be valid and binding on the Developer	No objection.
3.1.4	The individual executing this Agreement on behalf of developer is authorized to do so.	No objection.
3.1.5	Upon execution and delivery, the obligations of the developer shall be valid and binding obligations.	No objection.
3.1.6	Execution and delivery of this agreement is not in contravention with or prohibited by the terms or provisions of any agreement, covenant, court order, judgment, or the governing documents of the Developer.	No objection.
3.2	County's	See below.
3.2.1	The actions by County are consistent with the Comp Plan and County Code and County Land Development Code.	No objection.
3.2.2	County has taken all necessary actions prerequisite to this Agreement.	No objection.
3.2.3	Upon the execution and delivery by County, the obligations of County shall be valid and binding	No objection.

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3.2.4	Execution and delivery of this agreement is not in contravention with, or prohibited by, the terms and provisions of the County LDR of any agreement, covenant, court order or judgment to which County is a party.	No objection.
4	Permitted Uses (excludes truck parking, showers or bathing facilities, sleeping quarters, or automobile/truck service uses (“Proposed Development”))	Objection – what does “substantially complies with” actually mean?
5	Developer Commitments to Ensure Compatibility	See below.
5.1	Limitation on area of the convenience store – shall not exceed 6,008 SF or a FAR of 0.012.	No objection.
5.2	Limitation on height of the convenience store – shall not exceed one story	No objection. Note – fueling area canopy is not addressed.
5.3	Parking and driveway aisles shall conform to concept plan and LDC, and shall exclude commercial vehicles exceeding 16,000 pounds	No objection.
5.4	Fueling stations – no more than 8 automobile fueling stations (or 16 pumps), and no more than 5 truck fueling stations.	Objection – Staff needs this clarified. Does the drafter mean to allow 10 truck pumps? Note – the rezoning request and concept plan is limited to 5 truck fueling lanes, and 16 automobile fueling stations
5.5	Open space on western portion of the property on Concept Plan shall not include vertical improvements.	No objection.
5.5.1	3-board fence to be used as barrier between parking areas and drive aisles west of convenience store and the open space to provide a barrier preventing any use of the open space for parking of automobiles or trucks.	No objection. Note – staff is concerned that this will not be maintained long term, and that a 3-board fence will be ineffective in preventing truck parking. Staff also has a concern about truck staging along W Hwy 329 and also along N US Hwy 441. Neither the Agreement nor the Traffic Study address this concern.
5.6	Buffers	No objection.

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5.7	Architectural design and 3-board fence at perimeter of property	No objection
5.8	Lighting	No objection
6	Traffic Transportation Improvements Study;	<p>Objection #1. Traffic study only analyzes 6,008 SF which is described herein as the limitation on the convenience store only; it fails to account for the other 137,740 GSF of potential commercial development which is the remainder of the property subject to the rezoning request (± 11.06 acres in total)</p> <p>Objection #2. Traffic study fails to address the potential for truck queuing along W Hwy 329 and N US Hwy 441, which poses a significant safety concern.</p> <p>Traffic Study (AR#30932), pending; Traffic Methodology (AR#29859), approved.</p>
6.1	Developer Improvements	See below.
6.1.1	Ingress 235-foot left turn lane constructed within WB W Hwy 329 at Driveway 1	No objection.
6.1.2	Ingress 405-foot right-turn lane constructed within SB N Us Hwy 441 serving both Project driveways, described as Driveway 3 and Driveway 4	No objection.
6.1.3	Existing SB right turn lane on N US Hwy 441 at its intersection with W Hwy 329 to be extended by 80 feet	No objection.
6.1.4	Existing NB left turn lane on N US Hwy 441 at its intersection with W Hwy 329 to be extended by 200 feet	No objection.
6.2	Additional ROW – Above transportation improvements requiring widening, developer shall convey additional ROW to County as is required.	No objection.
6.3	Design and Permitting	See below.
6.3.1	Design and permitting the Developer Improvements shall be at sole cost and expense of Developer	No objection.

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6.3.2	Developer shall prepare and submit plans to County prior to commencing construction of the Developer Improvements	No objection.
6.3.3	Developer shall obtain all permits necessary for the construction of the developer improvements. County consents to such permits being in the name of the County and/or Developer, and County shall cooperate with Developer in conjunction with the permitting process	No objection.
7	Required Stormwater Facilities. Developer shall provide on-site stormwater facilities designed and constructed in compliance with the County drainage LOS standards, including water quantity and water quality treatment standards.	<p>Objection 1 – what does “substantial compliance with” actually mean?</p> <p>Objection 2 – DRC Comments Letter notes that the Developer’s Agreement fails to identify the party responsible for analyzing the stormwater impacts to the offsite ROW from the proposed turning lanes. Additionally, if improvements are needed to the offsite stormwater conveyance systems or DRAs, the cost of those improvements should be the Developer’s</p>
8	Development Permits Required	See below.
8.1	Local Development Permits	No objection.
8.2	Additional Permits	No objection.
8.3	Additional Conditions	No objection.
9	Consistency with the Comprehensive Plan and County LDC	Objection – RC-1 is not consistent with Rural Land future land use designation (Comp Plan)
10	Omissions	No objection.
11	Recording, Effective Date and Duration	No objection
11.1	Agreement shall be recorded within 14 days of date of execution	No objection
11.2	Effective Date shall be the date of recording of this agreement, or in the event the rezoning is appealed, the Effective Date of this agreement shall be the effective date of the rezoning.	No objection.
11.3	Duration 30 years.	No objection.

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12	Applicability of County Laws	Objection – Governing laws for this agreement per s. 163.3233, F.S. should be the laws in place at time agreement is executed. Notwithstanding, no objection.
12.1	Determinations to be made of the County at a public hearing in order to apply subsequently adopted laws and policies	No objection.
12.2	Continuation of determinations to be made in order to apply subsequently adopted laws and policies to this agreement	No objection.
12.3	Continuation of determinations	No objection.
12.4	Continuation of determinations	No objection. Note – drafter fails to include s. 163.3233(2)(e) here as it is included in the Florida Statutes.
13	Public Facilities	See below.
13.1	Transportation	Scrivener’s error in the Agreement. Otherwise, no objection.
13.2	Potable Water	Objection – required connection distance has not been established. Developer could be required to connect per Marion County Utilities on the DRC Comments Letter. 22,000 feet for a water main extension, and 27,000 feet for a sewer main extension
13.3	Wastewater	Objection – required connection distance has not been established. Staff objects to the provisions that allow the Developer to not have to connect until the mains are closer. Utilities have not been determined “unavailable” at this time. This Development should be subject to the development standards of the LDC as stated elsewhere in this agreement.
13.4	Solid Waste Collection	No objection.
14	Additional Provisions	See below.
14.1	Adopted Pursuant to Florida Local Govt Dev Agreement Act	No objection.
14.2	Performance on behalf of the Developer – County agrees that any obligation of Developer to construct and Developer Improvements hereunder may be performed by third parties.	No objection.

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15	General provisions	See below.
15.1	Notices	No objection (to this or any subpart of this section)
15.2	Negation of Partnership	No objection (to this or any subpart of this section)
15.3	Not a Public Dedication	No objection.
15.4	Default Provisions	See below.
15.4.1	Terms of this agreement shall not entitle any party to cancel, rescind, or otherwise terminate this agreement...	No objection.
15.4.2	All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief in addition to other remedies available	No objection.
15.4.3	Written Default Notice required before seeking remedies to allow opportunity to cure	No objection.
15.4.4	Material Default by Developer	No objection.
15.4.4.1	If Developer has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel"), the default of the Developer is not with respect to, or does not impact developer's obligations regarding, a Third-Party Parcel...	Defer to County Attorney. All parcels subject to this Agreement are not subsequently excluded by sale, conveyance, or other method of transfer of a parcel or portion thereof. Staff notes that this is addressed in para. 15.11.2. No objection.
15.4.4.2	Failure of Developer to timely pay and Proportionate Share Mitigation owed	Defer to County Attorney. Otherwise, no objection.
15.5	Estoppel Statements	No objection (to this or any subpart of this section)
15.6	Litigation/Attorneys' Fees	No objection.
15.7	Binding Effect	No objection.
15.8	Headings	No objection.
15.9	Severability	No objection.
15.10	Survival of Representations and Warranties	No objection.
15.11	Successors and Assigns	No objection (to this or any subpart of this section)
15.12	Applicable Law	No objection.
15.13	Counterparts	No objection.

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15.14	Term	No objection. Note – County permitted periodic reviews per s. 163.3235, F.S.
15.15	Rules of Construction	No objection (to this or any subpart of this section). Note – scrivener’s error in para. 15.5.5.
15.16	Time	No objection (to this or any subpart of this section)
15.17	Exhibits	No objection.
15.18	Entire Understanding	No objection.