

RETURN TO:  
DWAYGHT GANDY  
MARION COUNTY PLANNING  
2631 SE 3RD ST.  
OCALA, FL 34471

RECORD \$ \_\_\_\_\_

PREPARED BY AND RETURN TO:

Steven H. Gray, Esq.  
GRAY, ACKERMAN & HAINES, P.A.  
125 NE 1<sup>st</sup> Avenue, Suite 1  
Ocala, FL 34470

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 12/01/2006 09:18:20 AM

FILE #: 2006189170 OR BK 04641 PGS 0281-0303

RECORDING FEES 197.00

SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA

### DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT is made and entered into this 20<sup>th</sup> day of December, 2005, by and between:

- MARION COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**, whose address is 601 SE 25<sup>th</sup> Avenue, Ocala, FL 34471 (hereinafter "*Marion County*"); and
- LARRY R. BROWN**, whose address is 13992 US Hwy. 301, Oxford, FL 34484 (hereinafter "*Owner*").

#### RECITALS:

- A. Owner has previously filed with Marion County an Application for an amendment to the Future Land Use Map of the Marion County Comprehensive Plan with respect to a parcel of real property owned by Owner and described on Exhibit "A" (the "*Property*"). County has assigned Owner's Application its Application No. 05-L2 with respect to the County's 2005 Large Scale Comprehensive Plan Amendment cycle.
- B. Owner's Application for amendment to the Future Land Use Map of the Marion County Comprehensive Plan requests the amendment of the land use classification of the Property from its current land use classification of Rural Land to a classification of Medium Density Residential.
- C. If Owner's currently pending Application No. 05-L2 for amendment of the land use classification of the Property to a classification of Medium Density Residential is approved by County and the State of Florida Department of Community Affairs, Owner agrees that the terms and provisions of this Agreement shall govern any subsequent development of the Property or any portion thereof.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

1. **INCORPORATION OF RECITALS.** The parties confirm and agree that the above recitals are true and correct and incorporate their terms and provisions herein for all purposes.
2. **DEFINITIONS.** In addition to any other terms which may be specifically defined elsewhere in this Agreement, for the purposes of this Agreement the following terms shall have the following meanings:
  - 2.1 **"Agreement" or "Developer's Agreement"** -- shall refer to this Developer's Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions.
  - 2.2 **"Buffer Zone", or "Zone"** -- shall refer, as applicable, to one or more of the zones of the Property within which Owner will construct or cause to be constructed or installed outer boundary landscaping, trees, fencing, vertical buffering improvements, or other buffering improvements in accordance with buffer plans and specifications described below in this Agreement. Zones of the Property are delineated on the Buffering Master Plan shown on attached Exhibit "B", and specific design criteria for the buffering plan in each zone are shown in the Buffer Design Criteria attached as Composite Exhibit "C" to this Agreement.
  - 2.3 **"Comprehensive Plan"** -- shall refer to the Marion County Comprehensive Plan as originally adopted by the County and subsequently amended, all in accordance with the provisions of Chapter 163, Florida Statutes.
  - 2.4 **"Corridor Study"** -- shall refer to the U.S. 441 Marion County Corridor Study/Area Master Plan dated May 2003 prepared for County by the Renaissance Planning Group.
  - 2.5 **"Marion County Utilities"** -- shall refer to the public utilities services which are provided by County, and owned by County, which provides central potable water and sanitary sewer (wastewater) services to certain geographic areas of the County.
  - 2.6 **"Property"** -- shall refer to the parcel of real property located in Marion County, Florida, described on Exhibit "A".
  - 2.7 **"Stonecrest Facility"** -- shall refer, in aggregate, to the wastewater treatment plant which is owned and operated by Marion County Utilities and located within and adjacent to the boundaries of the Stonecrest Development of Regional Impact.
3. **ENCUMBRANCE ON PROPERTY.** If Owner's Application for amendment of the land use classification of the Property to a classification of Medium Density Residential is approved, the terms and provisions of this Agreement shall become development restrictions regarding any subsequent development of the Property or any portion thereof, in which event the terms and provisions of this Agreement shall encumber the Property, shall run with title to the Property, and shall be binding upon any successor-in-title to the Property or any portion thereof.

4. **DENSITY LIMITATION.** Notwithstanding any of the provisions of the Comprehensive Plan the maximum development intensity of development of the Property shall not exceed a total density of greater than nine hundred fifty (950) residential units. This density limitation is an aggregate density limitation including Marion County Tax Parcel Nos. 48366-000-00 and 48367-000-00 which are the subject of a related Application No. 05-L29, as set forth in Section 19. If the Property is developed in sub-parcels, the approved density, subject to this limitation, may be allocated between sub-parcels of the Property provided that the total gross density of the Property (and the Property which is the subject of Application No. 05-L29 if Section 19 is applicable) shall not exceed the total limitation of 950 residential units.
5. **USAGE RESTRICTION.** The Property is currently zoned A-1 (General Agriculture) under the County's Land Development Code. Subject to Owner obtaining the necessary rezoning of the Property for residential use, the Property shall be limited to usage for single family residential purposes only or agricultural uses currently allowable under the current zoning and land use classifications of the Property.
6. **AGE-RESTRICTED COMMUNITY.**
  - 6.1 The Property (including the property which is the subject of Application No. 05-L29 is Section 19 of this Agreement is applicable) shall be developed as an age-restricted community. If Owner subsequently elects not to develop the Property or some portion thereof as an age-restricted community amendment of this Agreement shall be required, and the County may, at its discretion, not approve amendment of this usage restriction. In the event amendment of this usage restriction is approved Owner acknowledges that development of the Property or any portion thereof would require compliance with the school concurrency provisions of Section 163.3180(13) of the Florida Statutes.
  - 6.2 Prior to the sale of any portion of the Property (including residential units) to third parties a Declaration of Covenants and Restrictions ("*Declaration*") must be recorded in the Marion County Public Records, and a copy thereof provided to the County Attorney, which encumbers the Property, runs with title to the Property or any portion thereof, cannot be revoked or amended for a period of at least thirty (30) years from the date of recording, and prohibits any person under the age of eighteen (18) years of age from residing in any dwelling unit on the Property as a permanent resident. In the event the Declaration is breached or otherwise modified following the recording and persons under the age of eighteen (18) years of age are allowed to reside as permanent residents in any residential dwelling unit on the Property the educational system impact fee in effect at the time of the change in circumstances shall thereafter be applicable for all residential units located on the Property. However, the application of the educational system impact fee for residential units on the Property in such circumstances shall not be applicable if the Owner, Property Owner Association or other parties having standing to enforce the Declaration have initiated an action in a court of competent jurisdiction for the enforcement of the Declaration to terminate the breach of the age-restriction provisions of the Declaration, and such litigation is pending and being prosecuted with due diligence. A determination by the County that under the provisions of this Section the educational system impact fee in effect shall become applicable

due for residential units located on the Property shall require (i) notice by certified mail from the County to the Declarant under the Declaration that the County has determined that under provisions of this Section of this Developer's Agreement the educational system impact fees shall thereafter be due and payable for residential units located on the Property; and (ii) notice from the County to the Declarant, which notice must be provided not less than twenty (20) days from the date of the scheduled hearing, of a hearing by the County Commission to confirm a recommendation of the County staff that sale or usage of the Property or residential units on the Property has proceeded in violation of the age restriction provisions of this Section and the educational system impact fees in effect shall thereafter be effective with respect to residential units on the Property. At the hearing the Declarant under the Declaration and the owners of any portion of the Property shall have standing to present testimony or evidence regarding the issue of whether the age restriction provisions of this Section and of the Declaration have been breached, and the County is entitled to impose the educational system impact fees in accordance with the terms of this Agreement.

7. **WATER & SANITARY SEWER (WASTEWATER) SERVICES.** All development of the Property must be served by central water and central sanitary sewer (wastewater) services. Owner shall provide potable water and wastewater services for services for the Property by Marion County Utilities in accordance with the following provisions:

- 7.1 Pursuant to a separate Utilities Agreement with Marion County Owner has agreed to extend the County's wastewater system to the Property to provide service for all development on the Property. The Utilities Agreement provides that Owner will, at Owner's expense (subject to partial reimbursement by County to Owner for the construction of utilities infrastructure with additional capacity to service third parties) construct on the Property a regional wastewater lift station and construct a force main from the lift station to County's Stonecrest Facility. The lift station and force main will be designed, permitted and constructed in accordance with the terms of the Utilities Agreement, which shall provide for an oversizing of the constructed facilities so as to facilitate the use of the facilities to provide centralized wastewater services for properties outside the boundaries of the Property owned by Owner, including specifically service to the Orange Blossom Hills subdivision.
- 7.2 The Utilities Agreement provides that Owner will construct on the Property and convey to Marion County Utilities a water plant, designed, permitted and constructed in accordance with design specifications and plans approved by County, which will provide central water services for the Property and will be oversized so as to provide to Marion County Utilities capacity to provide central water services to other properties outside the boundary of the Property.
- 7.3 The construction of the wastewater lift station, force main, water plant, water distribution system and wastewater collection systems to service the Property shall be in accordance with the terms of the Utilities Agreement and this Agreement, and shall be completed so as to provide, at the time of the issuance of the first Certificate of Occupancy for residential units on the Property, central water and wastewater services provided by Marion County Utilities.

8. **BUFFERING.** To facilitate the compatibility of the single family residential project to be constructed on the Property Owner agrees that there shall be constructed on the outer boundaries of the Property buffering improvements and landscape buffers to minimize the visual impact of the development of the Property from adjacent rights-of-way and from adjacent properties, and to improve the streetscapes of adjacent rights-of-way, including specifically SE 73<sup>rd</sup> Street, in accordance with the following provisions:

8.1 Owner will install landscape and buffering improvements on the outer boundaries of the designated Zones of the Property which are delineated on the Buffering Master Plan shown on Exhibit "B".

8.2 Within each Zone, prior to the sale of residential units to a third party within that Zone Owner shall, at Owner's expense, install, in accordance with any other applicable regulations of County, the specific buffering plan for that Zone which is identified in the Buffer Design Criteria attached to this Agreement as Composite Exhibit "C".

8.3 At the time of the rezoning of the Property to a zoning classification of Residential Planned Unit Development (PUD) the obligations of Owner to install the buffering and landscaping improvements with the delineated Zones which are set forth in this Agreement shall be included as specific PUD requirements in any final PUD zoning ordinance issued by County. Amendment of the buffering plan as to any Buffer Zone shall require amendment of this Agreement and (if applicable) amendment of any approved PUD Zoning Ordinance which has incorporated any Buffer Design Criteria Zone.

8.4 Notwithstanding any other provisions of this Agreement or any PUD zoning ordinance approval obtained with respect to the Property or any portion thereof, all landscaping materials and trees installed in any exterior buffering shall be maintained in good condition, damaged or dead landscaping materials shall be timely replaced with replacement material of the same or similar quality, with all maintenance to be undertaken by the Owner or, after the initiation of development, by any homeowners' association or associates organized and formed for the purpose of owning, maintaining or operating common elements related to the development of the Property as a residential project.

8.5 The buffer areas designated to be in any perimeter landscape buffer in accordance with the terms of this Agreement, or portions thereof, may (with County's approval) be included within the boundaries of platted residential lots on the Property.

9. **SCHOOL CONCURRENCY.**

9.1 Owner acknowledges that pursuant to the provisions of Florida Senate Bill 360 (2005) and its amendments to Chapter 163 of the Florida Statutes, school concurrency shall be established on a district-wide basis and shall be applicable with respect to the development of the Property by Owner. Owner agrees that Owner shall satisfy the School Concurrency requirements of Chapter 163 in accordance with the following provisions: If, prior to development of Owner's Property, including subdividing the Property or any portion thereof,

the Marion County Board of County Commissioners ("*Marion County*") and the School Board of Marion County ("*School Board*") have, pursuant to the provisions of Section 163.3180(13), Florida Statutes, entered into an Interlocal Agreement determining or establishing a proportionate fair share contribution for the purpose of providing funds to the School Board for the construction of required school district infrastructure expansion or improvements, Owner shall, with respect to the development of Owner's subject Property, comply with the fair share contribution in accordance with the provisions of the Interlocal Agreement.

- 9.2 If at the time of the development, including subdividing the Property or any portion thereof, Marion County and the School Board have not entered into the Interlocal Agreement described above, Owner shall provide to Marion County as a deposit, or assurance of a deposit, towards the development's potential fair share to meet School Concurrency, the amount of \$3,000.00 per development unit. The deposit payment for each unit shall be made at the time a building permit for the residential unit is issued. Assurance may be provided by either an acceptable irrevocable letter of credit, bond or cash. For the purposes of this Agreement, a development unit shall be defined as each individual residential lot or tract, or in the case of multi-family development, each individual residential unit of a duplex, triplex, quadruplex or apartment or other multi-family structure, being platted or otherwise established by the Owner. Upon establishment of the Interlocal Agreement described above, Owner shall provide any and all additional funds necessary to provide for the development's required proportionate share. In the event any funds initially provided by the Owner to Marion County exceed the required proportionate share, Marion County shall refund to the Owner, the amount of funds paid which exceed the proportionate.
- 9.3 Marion County shall by March 1, 2006, establish a definition for an age restricted community. If at the time of the development, including subdividing the Property or any portion thereof, Marion County and the School Board have not entered into the Interlocal Agreement described above, and the development of the Property meets the Marion County definition of an age restricted community, no funds shall be required to be deposited with Marion County prior to Marion County and the School Board entering into the Interlocal Agreement.

#### 10. TRAFFIC CONCURRENCY.

- 10.1 **Traffic Impact Study.** If the complete development of the property has the potential of generating 100 or more p.m. peak hour trips, prior to commencing any development on the property, Owner shall have prepared and presented to Marion County, a traffic study identifying the potential impact of the complete development of the property. Complete development of the property being defined as the issuance of certificate of occupancies for all residential units within the project. Owner shall, prior to initiating the study, obtain agreement from the County Engineer and County Planning Director, or their designees, as to the methodology for the study, including an agreement on the process for establishing the time period to be utilized in the traffic study for complete development of the Property. The study shall identify all roadways, roadway segments and intersections which would potentially be impacted by the development. The study shall include consideration of committed development projects and vested projects, including, but not limited to, those existing

subdivisions of record recognized by Marion County for the issuance of building permits. The study shall identify roadways, roadway segments and intersections which fail or exceed the adopted Level of Service at any point in time prior to complete development of the Property. The traffic study shall be subject to acceptance by the County Engineer and County Planning Director, or their designees. Upon acceptance of the study, the County shall determine the required transportation improvements and shall provide the time frame when those improvements must be completed. Marion County shall be under no obligation to participate in any costs associated with providing these improvements.

**10.2 Updated Traffic Study.** In addition to providing the initial traffic study described above, for those developments consisting of 300 or more potential residential units the following shall also apply:

**10.2.1** If in the event complete development of the Property exceeds the time period agreed upon in the accepted traffic study, Marion County may require, and the Owner shall provide, an updated traffic study acceptable to Marion County. Upon acceptance of the updated study, the County shall determine if any additional transportation improvements are required and the time frame when those improvements must be completed. Marion County may withhold and further development approval, including but not limited to the issuance of building permits, until the updated study is completed and accepted, and any additional transportation improvements are assured for completion. Marion County shall be under no obligation to participate in any costs associated with providing these improvements.

**10.2.2** Marion County may require those developments with the potential of 500 or more residential units to be phased. Phasing of the development may, at the option of Marion County, require interim traffic studies. In addition to the initial traffic study, Marion County may require an updated study be prepared and submitted between issuance of the 300<sup>th</sup> and 400<sup>th</sup> certificate of occupancy issued in each phase. Upon acceptance of the updated study, the County shall determine if any additional transportation improvements are required and the time frame when those improvements must be completed. Marion County may withhold any further development approval, including but not limited to the issuance of building permits, until the updated study is completed and accepted, and any additional transportation improvements are assured for completion. Marion County shall be under no obligation to participate in any costs associated with providing these improvements.

**10.3 Supplemental Terms.** The foregoing provisions shall supplement the County's Concurrency Management System (currently codified in Article 11 of the County's Land Development Regulations). In the event that the Concurrency Management System imposes more stringent requirements than those set forth herein, such requirement shall apply.

- 10.4** **SE 73<sup>rd</sup> Avenue.** Owner's plan for development of the Property includes a main entrance servicing the Property from County Road 42 (to be located on an adjacent contiguous parcel of property, containing Marion County Tax Parcel No. 48366-000-00 and Parcel No. 48367-000-00, (see Section 19 below regarding the separate Application) which is the subject of a separate amendment Application pending before Marion County (Application No. 05-L29) and a primary secondary access to the Property from the easterly right-of-way of SE 73<sup>rd</sup> Avenue. With respect to SE 73<sup>rd</sup> Avenue Owner agrees as follows:
- 10.5** All final Roadway profile, design specifications and design criteria for any Roadway reconstruction under this Section shall be subject to final review and approval by County.
- 10.6** The construction of Road Phase I must be completed, and completion accepted by County, prior to the sale of greater than one hundred (100) residential units on the Property to third parties.
- 10.7** Owner shall comply with County's normal requirements for private construction within County or public right-of-way regarding provision of liability insurance, lien waivers, provision of as-built plans, etc.
- 10.7.1** Owner acknowledges that the segment of SE 73<sup>rd</sup> Avenue from County Road 42 north to Sunset Harbor Road is not constructed to County's current roadway construction specifications.
- 10.7.2** Owner shall convey to the County, as additional right-of-way for SE 73<sup>rd</sup> Avenue, that portion of the Property lying within fifty (50) feet of the westerly boundary of Section 20, Township 17 S., Range 23 E.
- 10.7.3** In addition to any other traffic mitigation activities required in accordance with the provisions of the other provisions of this Agreement, Owner will, at Owner's expense, reconstruct SE 73<sup>rd</sup> Avenue from CR 42 to the northern boundary line of the Property ("*Road Phase I*").
- 10.7.4** Owner also agrees, subject to the conditions and contingencies precedent described below, to reconstruction SE 73<sup>rd</sup> Avenue from the north boundary line of the Property to a point of intersection with Sunset Harbor Road ("*Road Phase II*") subject to and in accordance with the following provisions:
- 10.7.4.1** County will make the final determination of the alignment of the intersection of SE 73<sup>rd</sup> Avenue with Sunset Harbor Road. The intersection may be realigned to create a perpendicular intersection between the Roadways. If additional right-of-way for the Road Phase II segment is required in order to facilitate the construction of the Roadway and provision of any required stormwater management facilities. Owner's obligation to complete the construction of Road Phase II shall be contingent upon County

procuring any required additional right-of-way, by acquisition or condemnation.

**10.7.4.2** If the County desires construction of Road Phase II by Owner and County is required to require additional right-of-way, County must complete the acquisition of required additional right-of-way within four (4) years of the date of this Agreement. If the additional right-of-way is not acquired within this time period Owner's obligation to construct Road Phase II shall be automatically terminated.

**10.7.4.3** If the additional right-of-way is obtained, (by acquisition or condemnation) by County within the specified time period, Owner shall immediately thereafter initiate the design, permitting and construction of Road Phase II, and pursue completion of construction with due diligence thereafter.

**10.7.4.4** If Road Phase II is designed, permitted and constructed by Owner in accordance with the provisions of this Section, Owner shall be entitled to make application to the County for appropriate impact fee credits under the provisions of the Marion County Transportation Impact Fee Ordinance, as then in effect, for an equitable portion of the costs incurred by Owner in the design, permitting and construction of Road Phase II, such determination to be made by the County (through the impact fee credit application and approval process). County agrees that it will, if Road Phase II is constructed, include such construction on its approved Transportation Improvement Plan so that Owner will qualify (subject to final determination of approval by the County) to make application for transportation impact fee credits under the provisions of this sub-Section.

**10.7.5** The reconstruction of the road Phase I segment of SE 73<sup>rd</sup> Avenue to the northern boundary of the Property must be completed, and completion accepted by County, prior to the sale of greater than one hundred (100) residential units to third parties for use as a residence by the third parties. Reconstruction of the segment of SE 73<sup>rd</sup> Avenue from the northern boundary of the Property to Sunset Harbor Road must be completed within the same time period if all required right-of-way is available for use at the time of the initiation of construction of the project by Owner.

**10.7.6** Owner shall comply with County's normal requirements for private construction within County or public right-of-way regarding provision of liability insurance, lien waivers, etc.

**11. STORMWATER MANAGEMENT – NORTH OUTPARCEL.** Approximately seven hundred (700) feet south of the northeasterly corner of the Property encloses an Outparcel approximately one acre which

fronts on SE 73<sup>rd</sup> Avenue and upon which there is constructed a residence owned by a third party (the "OutParcel"). With respect to this Outparcel Owner agrees that the buffering, sidewalk and stormwater management plans for development of the Property shall include design provisions to insure that no stormwater runoff from the Property to the Outparcel will occur, and shall also insure that the stormwater management plan for the Property will not result in the impoundment of water adjacent to the boundaries of the Outparcel.

12. **RELOCATION OF WATER TREATMENT PLANT AND AMMENITIES.** A Conceptual Plan previously submitted by representatives of Owner to County depicted certain common elements (Racket Club and Water Treatment Plant) adjacent to the easterly one thousand (1,000) feet of the northern boundary of the Property. Owner agrees that the final development plan of the Property shall relocate such common elements a sufficient distance from the described segment of the northern boundary of the Property so as to provide reasonable buffering for adjacent property owners, subject to final review and approval by County. The final development Master Plan for the Property, including this adjustment to the Conceptual Plan, shall be subject to the normal planned unit development (PUD) review and approval process of County.
13. **ENVIRONMENTAL IMPACT ASSESSMENT.** In order to develop the Property Owner shall provide to County an environmental impact assessment in accordance with then applicable environmental impact regulations contained in County's Land Development Code. In the event the impact assessment indicates any adverse environmental impact by development of the Property mitigation of the environmental impact shall be undertaken by Owner in accordance with the mitigation plan approved by County.
14. **STORMWATER MANAGEMENT SYSTEM DESIGN AND MAINTENANCE.** Owner shall design and construct the stormwater management system (including all stormwater retention areas, stormwater ponds, or other drainage structures or facilities) in accordance with all applicable state and local regulations including, without limitation, the regulations of County and the St. Johns River Water Management District. Owner shall thereafter maintain all stormwater management system improvements in accordance with any applicable state or local regulations, laws, or rules. Owner's maintenance obligations with respect to the stormwater management system improvements may be assigned by Owner to a homeowners' association formed for the purpose of owning common elements or maintaining common elements related to the development of the Property for residential purposes.
15. **WATER CONSERVATION.** Owner shall promote water conservation throughout the Property through the following actions:
  - 15.1 Owner, or any subsequent developer of the Property, shall encourage the usage of high-efficiency, low-flow plumbing fixtures and appliances throughout the Property.
  - 15.2 Owner may use groundwater to irrigate within the boundaries of the Property until such time as treated wastewater or effluent is available from County, at which time Owner or any subsequent developer may, at their election, alternatively use the treated wastewater or effluent for irrigation purposes.

16. **MINIMUM REQUIREMENTS.** In the event any of the provisions of this Agreement restricting, limiting, or controlling development criteria for the Property are less than the minimum requirements of the County's Land Development Code at the time of the development of the Property (or any portion thereof) the then applicable requirements of County's Land Development Code shall be controlling and must be satisfied.
17. **VIOLATIONS.** Any violation of this Agreement by Owner or any successor or assign to Owner of the Property, or any portion of the Property, or any successor or assign of Owner as to any of Owner's obligations under this Agreement, shall be considered a violation of the terms of this Agreement and may result in the suspension, cancellation or termination of development orders and permits previously issued by County. Any suspension, cancellation or termination of any development order or permit shall occur in accordance with the following provisions:
- 17.1 Prior to the exercise of its rights under this Section regarding development orders or permits County shall provide written notice of the violation to Owner or Owner's successors and assigns (as applicable) and Owner shall have ninety (90) days after the effective date of the violation notice within which to cure the specified violation.
- 17.2 If within the ninety (90) day cure period specified immediately above Owner has in good faith initiated reasonable actions to cure the violation, and the reasonable actions required to cure the violation required a time period extending beyond the ninety (90) day cure period, the cure period shall be automatically extended through the reasonable time period required to complete a cure or remediation of the notified violation.
- 17.3 County's final exercise of its rights under this Section regarding suspension, cancellation or termination of issued development orders or permits shall require final approval of such action by the Board of County Commissioners of County, with notice of County's hearing of the same to be provided to Owner (or successors and assigns, if applicable) not less than ten (10) calendar days prior to the date of the County Commission's consideration of the action. At the Commission's consideration of the action the Owner shall have reasonable opportunity to respond to County's notice of violation and to present information, testimony or other evidence in support of any request that County not exercise its rights under this Section.
18. **NOTICE OF AGREEMENT.** Upon the execution of this Agreement by Owner and County, Owner shall provide funds to County for the recording of this Agreement in the Public Records of Marion County, Florida. The Agreement shall be recorded upon final approval of Owner's Application for Amendment to the land use classification of the Property (as described above) and completion of the associated land use amendment process. Any conveyance of any interest in the Property, or any portion thereof, after execution of this Agreement and prior to the recording of the Agreement in the Public Records of Marion County, Florida, shall be subject to the terms and conditions of this Agreement. Owner agrees to disclose the existence of this Agreement to any purchaser of the Property or any portion of the Property, prior to the sale to the purchaser.

19. **RELATED APPLICATION AND JOINDER BY ADDITIONAL OWNER.** The Application for the amendment of the land use classification of this Property has been submitted in conjunction with a separate Application (No. 05-L29) submitted by CR 42 Land, LLC (the "Additional Owner") for Marion County Tax Parcel Nos. 48366-000-00 and 48367-000-00 (collectively the "Additional Parcel"). It is the intention of Owner that the development of the Property will be in conjunction with the development of the Additional Parcel. The Owner and the Additional Owner (by its execution of the Joinder and Consent to this Agreement) agree that the density limitation set forth in Section 4 above, for 950 residential units, shall apply as an aggregate density limitation for both the Property and the Additional Parcel if the Property and the Additional Parcel are subsequently developed as a single residential real estate project. The Owner and Additional Owner further agree that if the Property and the Additional Parcel are not developed as a single project the nine hundred fifty (950) unit density cap set forth above shall remain in effect as an aggregate density cap allocated between the parcels on a per-acre basis. By its execution of the Joinder to Agreement attached the Additional Owner agrees as follows with respect to the Additional Parcel:
- 19.1 All of the terms, conditions and covenants of this Developer's Agreement shall automatically extend to the Additional Parcel, as though this Developer's Agreement initially covered and encumbered both the Property and the Additional Parcel.
- 19.2 If the Additional Parcel is developed as part of a single project with the Property the aggregate density cap of 950 units described above, shall apply to the combined parcels. If the Additional Parcel is not developed as part of the same real estate project with the Property, the density allocation between the parcels shall be made on a per-acre basis as set forth above.
- 19.3 If the Additional Parcel is not developed as part of a single real estate project with the Property the provisions of Sections 6 (Age-Restricted Community), Section 7 (Water & Sanitary Sewer Services, subject to the later provisions of this Section), Section 8, and Section 10.3 shall not be applicable to the Additional Parcel. Regarding the water and sanitary sewer (wastewater services), all development of the Additional Parcel must be served by central water and central sanitary sewer services, and Owner shall procure water and wastewater services for the Additional Parcel from Marion County Utilities by separate Agreement.
20. **CONTINGENT OBLIGATIONS.** All of the obligations of Owner and County under this Agreement are expressly contingent upon the final approval of Owner's Application for amendment to the land use classification of the Property (as defined above) and completion of the associated land use amendment process. If Owner's Application is not approved or the land use amendment process is not completed, the parties shall execute a Termination Notice to this Agreement confirming that, as a result of non-completion of the land use amendment process, the terms and provisions of this Agreement have become null and void. This Agreement shall, however, become null and void whether or not a Termination Notice is executed by the parties.

**21. General Provisions:****21.1 Notices.**

**21.1.1 Effective Date of Notices.** Any notice required or permitted hereunder, and all demands and requests given or required to be given by and party hereto to another Party, shall be in writing unless otherwise provided herein and shall be deemed given (a) when received if personally delivered or sent by telex, telegram, or facsimile, or (b) if sent by Federal Express (which terms shall be deemed to include within it any other nationally recognized reputable firm of overnight couriers) one (1) day after depositing with Federal Express, charges prepaid, before its deadline for next day delivery, or (c) if mailed, five (5) days after mailing if such notice has been delivered to the United States Postal Service with postage prepaid and properly marked for certified or registered mail with a request for return receipt, addressed as set forth in this Section.

**21.1.2 County's Address.** If given to Marion County any notice hereunder shall be addressed and given as follows:

Marion County, Florida  
Attn: County Administrator  
601 SE 25th Avenue  
Ocala, Florida 34471

With Copy to: Marion County Attorney  
601 SE 25th Avenue  
Ocala, FL 34471

With Additional Copy to: Marion County Planning Department  
2631 SE 3rd Street  
Ocala, FL 34471-9101

**21.1.3 Owner's Address.** If given to Owner, any notice hereunder shall be addressed and given as follows:

Larry R. Brown  
13992 US Hwy. 301  
Oxford, FL 34484

**With Copy To:**

Gray, Ackerman & Haines, P.A.  
Attn: Steven H. Gray, Esquire  
125 NE 1st Avenue  
Ocala, FL 34470  
Tel: (352) 732-8121  
Fax: (352) 368-2183  
E-mail: [sgray@gahlaw.com](mailto:sgray@gahlaw.com)

**21.1.4 Additional Owner's Address.** If given to Additional Owner, any notice hereunder shall be addressed and given as follows:

CR 42 Land, LLC

Attn: \_\_\_\_\_

383 Carriage Lane

Lady Lake, FL 32159

**21.1.5 Modification of Address.** Any Party hereto may change the address or addresses to which notice is to be sent, or the facsimile number, by giving written notice of such change to the other Parties to this Agreement in the manner provided herein.

**21.2 Litigation.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.

**21.3 Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.

**21.4 Amendment.** This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement.

**21.5 Severability.** In the event any provision or section of this Agreement is determined to be invalid or unenforceable, such determination shall not effect the enforceability or the validity of the remaining provisions of this Agreement.

**21.6 Successors and Assigns** All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.

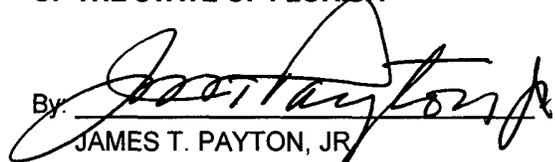
**21.7 Applicable Law** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.

**21.8 Entire Agreement.** This Agreement shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force or effect. This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

IN WITNESS WHEREOF, the parties have set their hand and seal as of the day and year first above written.

AS TO COUNTY:

MARION COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

By:   
JAMES T. PAYTON, JR.  
Chairman, Board of County Commissioners

APPROVED AS TO FORM AND LEGALITY:

  
for GORDON B. JOHNSTON  
County Attorney

ATTEST:

  
DAVID R. ELLSPERMANN, Clerk

SIGNATURE PAGE FOR LARRY R. BROWN  
[DEVELOPER'S AGREEMENT BETWEEN MARION COUNTY, FLORIDA AND LARRY R. BROWN]

AS TO OWNER:

Signed and sealed in our presence as witnesses:

*Susan C. Bringle*

Print Name: SUSAN C. BRINGLE LARRY R. BROWN

*Larry R. Brown*

*Beverly J. Hernandez*

Print Name: Beverly J. Hernandez

STATE OF FLORIDA  
COUNTY OF MARION

The foregoing DEVELOPER'S AGREEMENT was acknowledged before me by LARRY R. BROWN,  
who is:

- Personally known by me, OR
- Produced a driver's license as identification.

Dated: this 12<sup>th</sup> day of December, 2005.

**BEVERLY J. HERNANDEZ**  
Notary Public, State of Florida  
My comm. expires May 16, 2008  
Comm. No. DD 294643

*Beverly J. Hernandez*

Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission number \_\_\_\_\_  
Commission expires \_\_\_\_\_

**JOINDER AND CONSENT TO DEVELOPER'S AGREEMENT BETWEEN  
MARION COUNTY, FLORIDA AND LARRY R. BROWN**

The undersigned CR 42 Land, LLC a Florida Limited Liability Company ("Limited"), by its execution of this Joinder to the Developer's Agreement through which it is appended, as the Owner of the Additional Parcel described in Section 19 hereof, execute this Joinder to acknowledge its consent and joinder to the terms and provisions of this Agreement as applicable to the Additional Parcel owned by the undersigned, as more specifically set forth in the provisions of Section 19 above.

In witness whereof, Limited has caused this Joinder to be executed on this the \_\_\_ day of \_\_\_\_\_, 2005.

Witnesses:

**CR 42 LAND, LLC, A Florida Limited Liability Company**

*Marissa Young*  
Print Name: MARISSA YOUNG  
*Malcolm S. Pattie*  
Print Name: MALCOLM S. PATTIE

By: *Paul B Rogers*  
Print Name: Paul B Rogers  
Title: Manager/Member  
Address: 383 Carriage Lane  
Lady Lake, FL 32159

STATE OF FLORIDA  
COUNTY OF Marion

*Partner* The foregoing was acknowledged before me by Paul B Rogers as Managing of CR 42 Land, LLC who is:

\_\_\_ personally known to me; OR  
 produced a driver's license as identification.

Dated the 9th day of December, 2005.

SUSAN C. BRINGLE  
Notary Public, State of Florida  
My comm. expires October 13, 2008  
Comm. No. DD 347939

*Susan C. Bringle*  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_  
Commission Seal

**SCHEDULE OF EXHIBITS**

<b>EXHIBITS</b>	<b>REFERENCE</b>	<b>DESCRIPTION</b>
A	Recital A	Legal - Property
B	§2.2	Buffering Plan Map
C	§2.2	Buffering Design Criteria

# SKETCH FOR DESCRIPTION (NOT A FIELD SURVEY)

SHEET 1 OF 3

LEGAL DESCRIPTION:

THE SOUTH 3/4 OF SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST, LESS THE WEST 1/4 THEREOF LYING SOUTH OF RAILROAD RIGHT OF WAY AND LESS THE NORTH 210 FEET OF THE SOUTH 420 FEET OF THE WEST 210 FEET OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 THEREOF, MARION COUNTY, FLORIDA.

AND

THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 23 EAST, AND THE NORTH 3/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 23 EAST LESS THE WEST 9 ACRES THEREOF, MARION COUNTY, FLORIDA.

AND ALSO:

THE WEST 440 FEET OF THE NORTH 3/4 OF THE NE 1/4 OF THE NW 1/4 OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 23 EAST, LESS THE NORTH 210 FEET OF THE WEST 210 FEET OF THE NE 1/4 OF THE NW 1/4 OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA.

LESS &amp; EXCEPT:

PARCEL 11:

THAT PART OF THE SOUTH 1/2 OF THE EAST 3/4 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE NW CORNER OF THE SOUTH 1/2 OF THE EAST 3/4 OF THE NE 1/4 OF SAID SECTION 20, RUN THENCE S.00°00'45"W. ALONG THE WEST LINE THEREOF 337.78 FEET TO THE NORTH LINE OF THE SOUTH 990.00 FEET OF THE SAID NE 1/4; THENCE S.89°55'01"E. PARALLEL WITH THE SOUTH LINE OF THE SAID NE 1/4 A DISTANCE OF 1989.63 FEET TO THE EAST LINE SAID NE 1/4; THENCE N.00°04'03"W ALONG THE EAST LINE OF THE SAID NE 1/4 A DISTANCE OF 40.00 FEET; THENCE N.89°55'01"W. ALONG THE NORTH LINE OF THE SOUTH 1030.00 FEET OF THE SAID NE 1/4 A DISTANCE OF 1127.00 FEET; THENCE N.00°04'03"W. 298.15 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SAID NE 1/4; THENCE N.89°56'31"W. ALONG THE NORTH LINE THEREOF 826.31 FEET TO THE POINT OF BEGINNING, LESS RIGHT OF WAY FOR SE 80TH AVENUE.

ALSO LESS &amp; EXCEPT:

PARCEL 7:

THE EAST 1127.00 FEET OF THE SOUTH 1/2 OF THE NE 1/4 OF SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA, LYING SOUTHERLY OF RAILROAD RIGHT OF WAY, LESS THE SOUTH 1030.00 FEET THEREOF; AND LESS RIGHT OF WAY FOR SE 80TH AVENUE.

(CONTINUED ON SHEET 2 OF 3)

GENERAL NOTES

1. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. THIS SKETCH PREPARED FOR DESCRIPTION PURPOSES ONLY AND DOES NOT REPRESENT A FIELD SURVEY.



**FARNER  
BARLEY**  
AND ASSOCIATES, INC.

▲ ENGINEERS  
▲ SURVEYORS  
▲ PLANNERS  
LB 4709

4450 NE 83RD ROAD ▲ WILDWOOD, FL 34875 ▲ (352) 753-3114

# SKETCH FOR DESCRIPTION

(NOT A FIELD SURVEY)

SHEET 2 OF 3

LEGAL DESCRIPTION:

(CONTINUED FROM SHEET 1 OF 3)

## ALSO LESS &amp; EXCEPT:

FROM THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 17, RANGE 23, RUN S 00°04'03"E FOR A DISTANCE OF 337.78 FEET TO THE POINT OF BEGINNING, THENCE RUN S 00°04'03"E FOR 584 FEET; THENCE WESTERLY IN A LINE PARALLEL WITH THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 FOR 749 FEET; THENCE NORTHERLY IN A LINE PARALLEL WITH THE WEST LINE OF THE NORTHEAST 1/4 FOR 584 FEET; THENCE EASTERLY TO THE POINT OF BEGINNING. LESS THE RIGHT OF WAY FOR 80TH AVENUE, MARION COUNTY, FLORIDA.

## ALSO &amp; LESS EXCEPT:

COMMENCE AT THE NORTHEAST CORNER OF THE S.E. 1/4 OF THE N.E. 1/4 OF SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA; THENCE RUN S 00°04'03" E., ALONG THE EAST LINE OF THE S.E. 1/4 OF THE N.E. 1/4 OF SAID SECTION 20, A DISTANCE OF 962.38 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S. 00°04'03" E., ALONG SAID EAST LINE, A DISTANCE OF 366.26 FEET TO THE NORTHEAST CORNER OF THE N.E. 1/4 OF THE S.E. 1/4 OF SAID SECTION 20, THENCE S. 00°08'29" E. ALONG THE EAST LINE OF THE N.E. 1/4 OF THE S.E. 1/4 OF SAID SECTION 20 A DISTANCE OF 275.75 FEET; THENCE N. 89°56'06" W. DEPARTING FROM SAID EAST LINE PARALLEL WITH THE NORTH LINE OF THE SOUTH 1/2 OF THE N.E. 1/4 OF SAID SECTION 20, A DISTANCE OF 749.00 FEET; THENCE N. 00°04'03" W. PARALLEL WITH THE WEST LINE OF THE N.E. 1/4 OF SAID SECTION 20, A DISTANCE OF 642.00 FEET; THENCE S. 89°56'06" E., A DISTANCE OF 748.64 FEET, TO THE POINT OF BEGINNING. LESS THE RIGHT OF WAY FOR S.E. 80TH AVENUE. SAID LANDS BEING IN MARION COUNTY, FLORIDA.

## ALSO LESS &amp; EXCEPT:

THE NE 1/4 OF THE SE 1/4 SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA. LESS THE FOLLOWING DESCRIBED LAND:

BEGINNING AT THE NORTHEAST CORNER OF THE SE 1/4 OF SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST; THENCE RUN S00 DEG 08 MIN 29 SEC EAST ALONG THE EAST LINE OF SAID SE 1/4 275.75 FEET; THENCE N89 DEG 56 MIN 06 SEC WEST, 749.00 FEET; THENCE N00 DEG 04 MIN 03 SEC WEST, 276.07 FEET TO THE NORTH LINE OF AFOREMENTIONED SE 1/4, THENCE ALONG SAID NORTH LINE S89 DEG 55 MIN 01 SEC EAST 748.28 FEET TO THE POINT OF BEGINNING.

## ALSO LESS &amp; EXCEPT:

THE EAST 3/4 OF THE SE 1/4 OF THE SE 1/4 OF SECTION 20; TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA. EXCEPT THE SOUTH 66 FEET THEREOF.

## ALSO LESS &amp; EXCEPT:

THE WEST 1/2 OF THE WEST 1/2 OF THE SE 1/4 OF THE SE 1/4 OF SECTION 20, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA. EXCEPT THE SOUTH 66 FEET THEREOF.

GENERAL NOTES

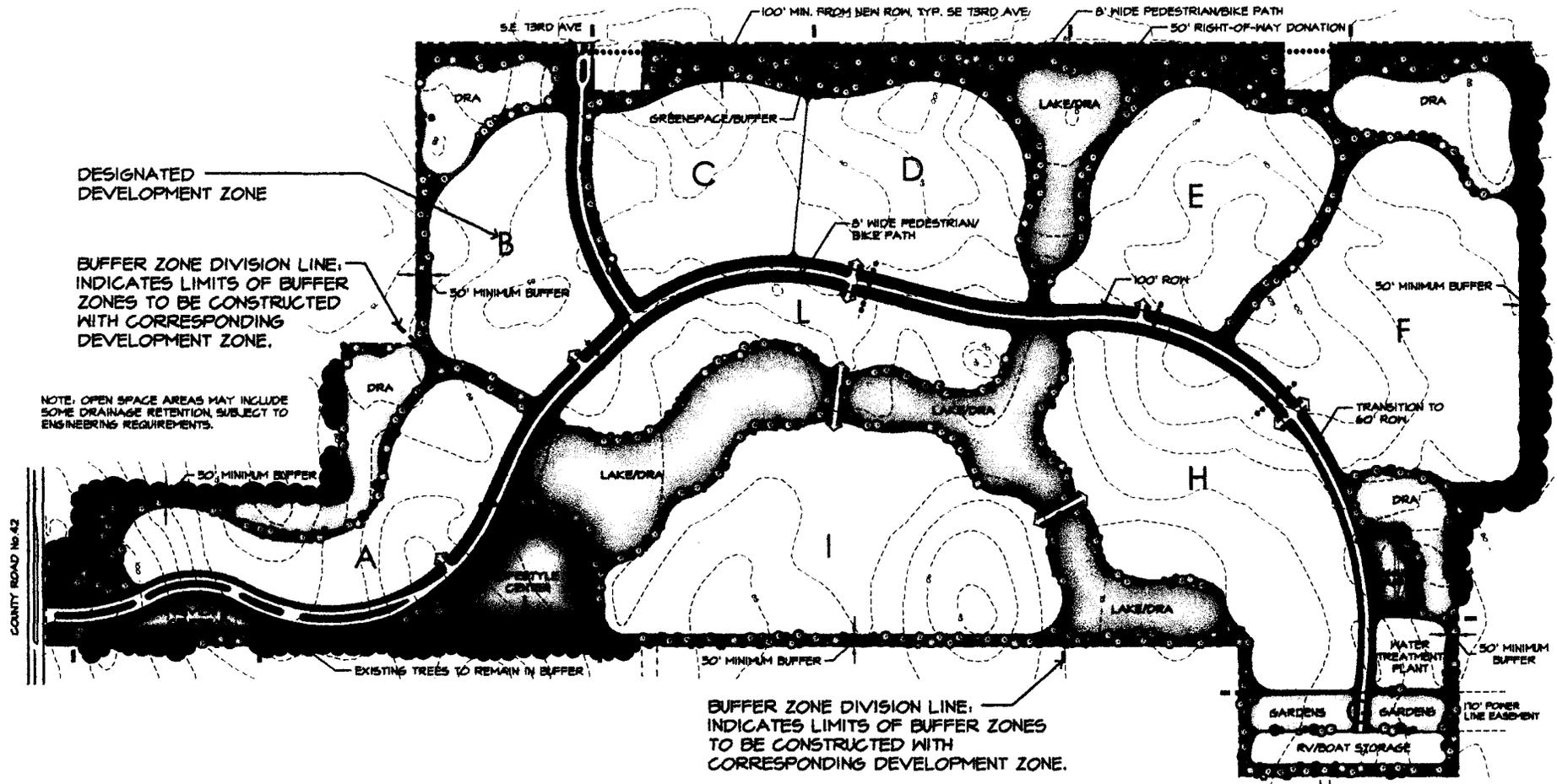
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DESIGNATED DEVELOPMENT ZONE

BUFFER ZONE DIVISION LINE, INDICATES LIMITS OF BUFFER ZONES TO BE CONSTRUCTED WITH CORRESPONDING DEVELOPMENT ZONE.

NOTE: OPEN SPACE AREAS MAY INCLUDE SOME DRAINAGE RETENTION, SUBJECT TO ENGINEERING REQUIREMENTS.

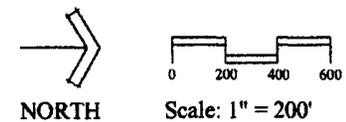
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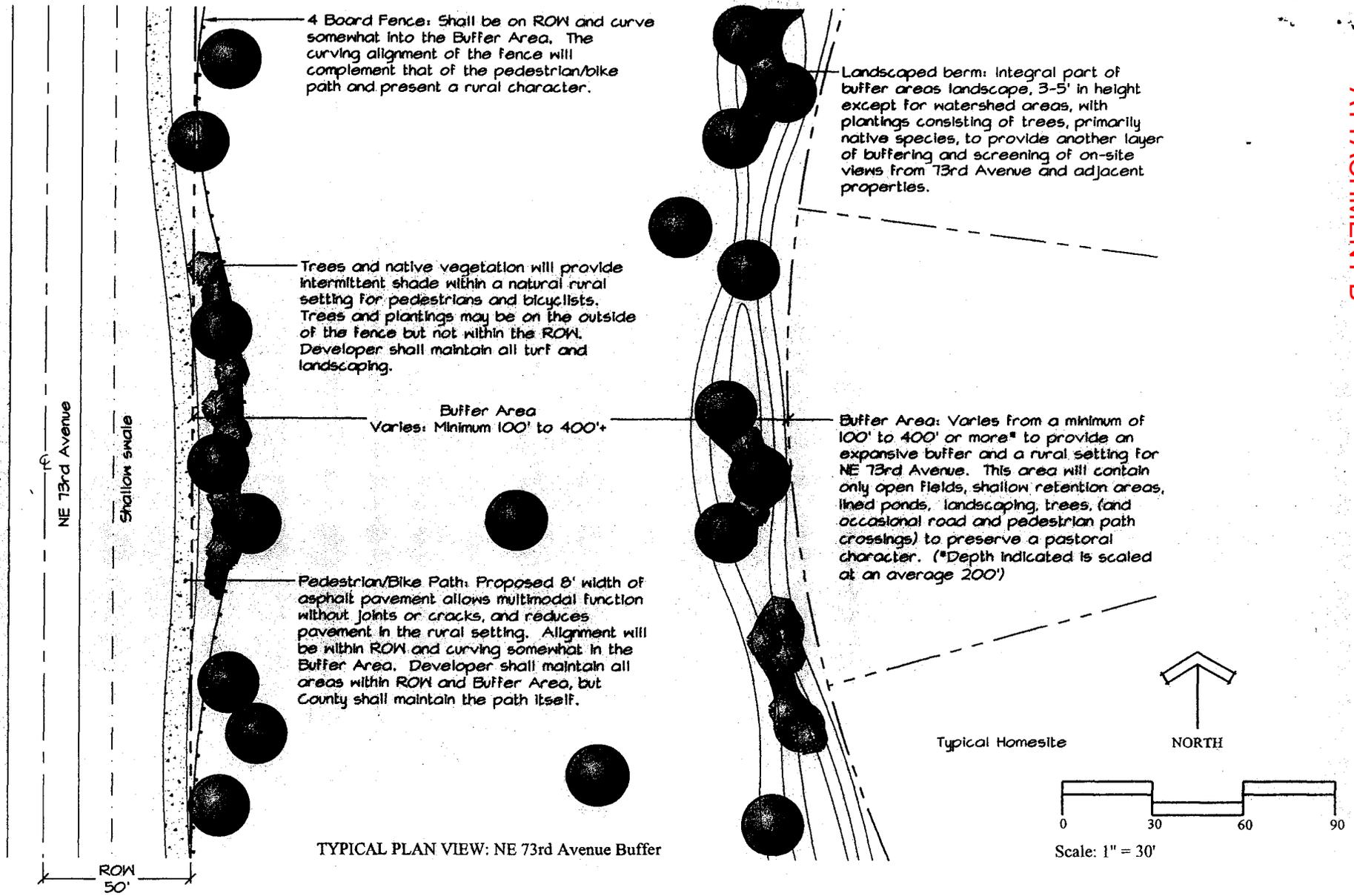
USE AREA CALCULATIONS

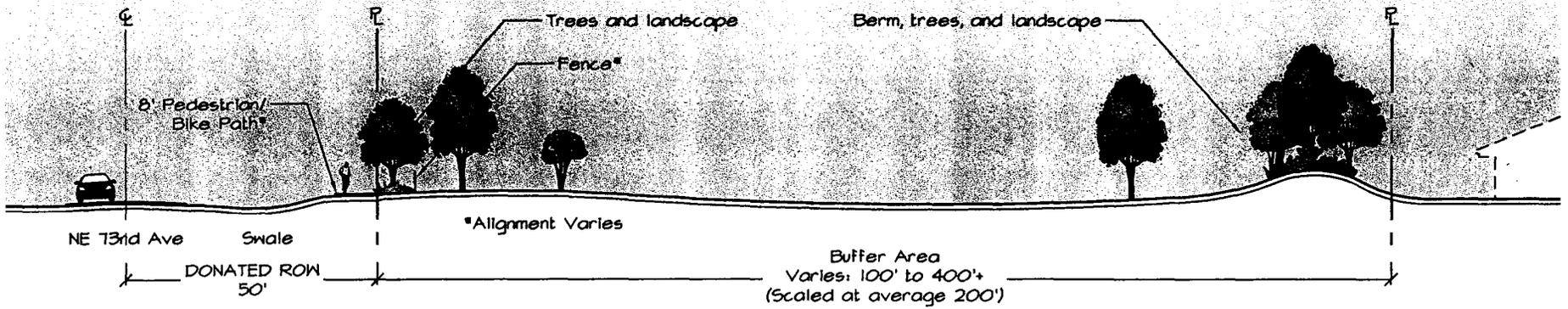
PLANNED USE	ACREAGE	% OF TOTAL
DONATED ROW	5.22	*
OPEN SPACE/BUFFER/REC AREAS	127.60	38.04
UTILITY/SERVICE	5.13	1.53
PRIMARY ROADS (PAVED AREA)	6.14	1.83
RESIDENTIAL AREA	198.85	58.80
TOTAL	340.63	100.00

(\*DONATED ROW NOT INCLUDED)

UTOPIA AT MARION COUNTY  
BUFFERING MASTER PLAN







TYPICAL SECTION VIEW: NE 73rd Avenue Buffer



Scale: 1" = 20'