

#110



CITY OF TAMPA

Bob Buckhorn, Mayor

Growth Management & Development Services

Land Development Coordination

October 11, 2011

Ms. Elizabeth Abernathy
Stantec Consulting
2205 North 20th Street
Tampa, Florida 33605

Re: **Rocky Point DRI (Parcel J)** – Extension of the DRI Pursuant to HB 7207
Folio 094500.0077

Dear Liz:

We are in receipt of your request to extend the build out and expiration date of the Rocky Point (Parcel J only) Development of Regional Impact. The Florida Legislature recently enacted House Bill 7207 in recognition of 2011 real estate conditions which extended certain permits issued by Florida Department of Environmental Protection and Water Management Districts. **This extension includes any local government issued development order or building permit that has an expiration date of January 1, 2012 through January 1, 2014**

Based upon the information provided, we have determined that the approved development has met the provisions of HB 7207 for an extension of time and is, therefore, extended for four years from the date of its build out and expiration. The new build out date is December 31, 2017. Please be advised that the four year extension does not impair the authority of the City of Tampa to require the property subject to the extension to be secured and maintained in a safe and sanitary condition in compliance with applicable codes and regulations. In addition, the extension request is issued by the City of Tampa for permits and development orders solely under its jurisdiction. Outside agencies which may have extra jurisdictional authority should be contacted for permit extensions separately.

Regards,

Susan L. Johnson
Subdivision Coordination
City of Tampa, Florida



Notification of a Time Extension for an Approved Project or Development

Deadline to file this notification is prior to the current expiration date of approval or by December 31, 2011, 5:00 pm whichever date occurs first. Identify below by placing a checkmark in the specific box as to which this notification of a time extension is being requested and provide the issued permit number or file number originally associated with the approval.

Please submit this Notification of Time Extension to the Growth Management and Development Services Department

The project name is: Rocky Point Harbor DRI #110 (Parcel J)

- 1 Building Permit, Project #: _____
- 2 Zoning: Planned Development Ordinance # or Petition #: _____
- 3 Variance Authorization, Variance Petition #: _____
- 4 Construction Site Plan Approval Project # _____
(If no subdivision approval is required).
- 5 Subdivision, Preliminary Plat Approval, Project #: _____
- 6 Subdivision, Construction Plans Approval, Project #: _____
- 7 Subdivision, Final Plat Approval, Project #: _____
- 8 Special Use Permit, Petition #: _____
- 9 Architectural Review Commission/Barrio Latino Commission
Certificate of Appropriateness Petition # _____
- 10 _____ Date the permit/application/agreement was approved.
- 11 _____ Date the valid permit/application/agreement is set to expire (must be in the term from January 1, 2012 through January 1, 2014).
- 12 _____ Requested new expiration date for the permit/approval/agreement. Maximum time extension is 2 years from the date the permit would have expired.
- 13 Development of Regional Impact Development Order
Date the Development Order was approved 02/26/87.
 - (a) Current Commencement date _____.
 - (b) Current phase date(s) _____.
 - (c) Current build-out date 12/31/2013; Parcel J only
 - (d) Current expiration date 12/31/2013; Parcel J only

New date will be four years from the dates listed in (a) through (d). Associated mitigation requirements are extended for four years unless, before December 1, 2011, the City notifies the developer that has commenced any construction within the phase for which the mitigation is required, that the City has entered into a contract for construction of a facility with funds to be provided from the development's mitigation funds for that phase as specified in the development order or written agreement with the developer.

Please identify below the entity processing the original permit/application/agreement:

- 14 Land Development Coordination Division
- 15 Construction Services Division
- 16 Historic Preservation and Urban Design

Disclaimer/Hold Harmless:

This extension would be granted only pursuant to Chapter 2011-139, Laws of Florida ("HB7207"), and the City of Tampa's good faith interpretation of House Bill 7207. By accepting this extension, the applicant agrees to hold the City of Tampa harmless in the event a court of competent jurisdiction determines that the extension granted by the City of Tampa were not legally granted, or in the event that the extension is subsequently revoked based upon a legal challenge to House Bill 7207.

Acknowledgment:

I understand that any Development Order, permit or authorization determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action shall not be eligible for an extension. Any Development Order, permit or authorization that would delay or prevent compliance with a court order shall not be eligible for an extension. Approval of the time extension shall in no way impair the authority of the City of Tampa to require the owner of the property to maintain and secure the property in a safe and sanitary condition, in compliance with applicable laws and ordinances.

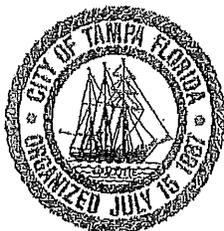
I hereby certify that the subject permit/agreement is valid, current, and unexpired.

- I am the owner
- I am the legal representative of the owner and have provided a notarized Owner/Agent affidavit which is attached hereto.
- I am the holder of the permit.
- Pursuant to Resolution 09-800, I wish to receive written confirmation of the time extension approval. The required \$51.80 fee is attached.

Signature: _____
 Print Name: Samuel A. Herdage
 Address: 12691 High Bluff Drive, Suite 300
 City, State, Zip: San Diego, CA 92130
 Daytime Phone: (858) 799-0700
 Email: Sam@theherdagegroup.com

Date: 7/30/11

Official Use Only	
<input type="checkbox"/> Date Received: _____	_____
<input type="checkbox"/> Received by: _____	_____



CITY OF TAMPA

Pam Iorio, Mayor

Growth Management & Development Services

Land Development Coordination

November 3, 2009

Ms. Elizabeth Abernathy
Wilson Miller
2205 North 20th Street
Tampa, Florida 33605

Re: Rocky Point Harbor (Parcel J only) - Extension of Build Out of Development of Regional Impact
Dear Elizabeth:

We are in receipt of your request to extend the build out and expiration date of the Rocky Point Harbor DRI (Parcel J). The Florida Legislature recently enacted Senate Bill 360 in recognition of 2009 real estate conditions, which extended certain permits issued by Florida Department of Environmental Protection and Water Management Districts. **This extension includes any local government issued development order or building permit that has an expiration date of September 1, 2008 through January 1, 2012**

Based upon the information you provided, we have determined that the development order has met the provisions of SB 360 and is extended for two years from the date of its expiration. The new build out expiration date is **December 31, 2013**. Please be advised that the two year extension does not impair the authority of the City of Tampa to require the property subject to the extension to be secured and maintained in a safe and sanitary condition in compliance with applicable codes and regulations. In addition, the extension request is issued by the City of Tampa for permits and development orders under its jurisdiction. Outside agencies which may have extra jurisdictional authority should be contacted for permit extensions separately.

Regards,

Susan Johnson
City of Tampa
DRI/Subdivision Coordination



CITY OF TAMPA

Pam Iorio, Mayor

Growth Management & Development Services

Land Development Coordination

November 3, 2009

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Based upon the information you provided, we have determined that the development order has met the provisions of SB 360 and is extended for two years from the date of its expiration. The new build out expiration date is **December 31, 2013**. Please be advised that the two year extension does not impair the authority of the City of Tampa to require the property subject to the extension to be secured and maintained in a safe and sanitary condition in compliance with applicable codes and regulations. In addition, the extension request is issued by the City of Tampa for permits and development orders under its jurisdiction. Outside agencies which may have extra jurisdictional authority should be contacted for permit extensions separately.

Regards,

Susan Johnson
City of Tampa
DRI/Subdivision Coordination



Notification of a Time Extension for an Approved Project or Development

RECEIVED

SEP 28 2009

Deadline to file this notification is prior to the current expiration date of approval or by December 31, 2009, 5:00 pm whichever date occurs first. Identify below by placing a checkmark in the specific box as to which this notification of a time extension is being requested and provide the issued permit number or file number originally associated with the approval.

Please submit this Notification of Time Extension to the Growth Management and Development Services Department

The project name is: Rocky Point Harbor DRI #110 - Parcel J

- 1 Building Permit, Project #: _____
- 2 Zoning: Planned Development Ordinance # or Petition #: _____
- 3 Variance Authorization, Variance Petition #: _____
- 4 Construction Site Plan Approval Project # _____
(If no subdivision approval is required).
- 5 Subdivision, Preliminary Plat Approval, Project #: _____
- 6 Subdivision, Construction Plans Approval, Project #: _____
- 7 Subdivision, Final Plat Approval, Project #: _____
- 8 Special Use Permit, Petition #: _____
- 9 Development of Regional Impact Development Order
- 10 Architectural Review Commission/Barrio Latino Commission
Certificate of Appropriateness Petition # _____
- 11 2/26/1987 Date the permit/application/agreement was approved.
- 12 12/31/2011 Date the valid permit/application/agreement is set to expire (must be in the term September 1, 2008 and not later than January 1, 2012).
- 13 12/31/2013 Requested new expiration date for the permit/approval/agreement. Maximum time extension is 2 years from the date the permit would have expired.

Please identify below the entity processing the original permit/application/agreement:

- 14 Land Development Coordination Division
- 15 Construction Services Division
- 16 Historic Preservation and Urban Design

Disclaimer/Hold Harmless:

This extension would be granted only pursuant to Chapter 2009-96, Laws of Florida ("SB360"), and the City of Tampa's good faith interpretation of Senate Bill 360. By accepting the approved extension, the applicant (properly owner/permit holder) acknowledges that the legality of Senate Bill 360 has been challenged. Accordingly, by accepting this extension, the applicant agrees to hold the City of Tampa harmless in the event a court of competent jurisdiction determines that the extension granted by the City of Tampa were not legally granted, or in the event that the extension is subsequently revoked based upon the legal challenge to Senate Bill 360.

Acknowledgment:

I understand that any Development Order, permit or authorization determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action shall not be eligible for an extension. Any Development Order, permit or authorization that would delay or prevent compliance with a court order shall not be eligible for an extension. Approval of the time extension shall in no way impair the authority of the City of Tampa to require the owner of the property to maintain and secure the property in a safe and sanitary condition, in compliance with applicable laws and ordinances.

I hereby certify that the subject permit/agreement is valid, current, and unexpired.

- I am the owner
- I am the legal representative of the owner and have provided a notarized Owner/Agent affidavit which is attached hereto.
- I am the holder of the permit.
- Pursuant to Resolution 09-800, I wish to receive written confirmation of the time extension approval. The required \$50 fee is attached.

Signature

Print Name: Mr. Jack Illes, The Hardage Group
 Address: 12671 High Bluff Drive, Suite 300
 City, State, Zip: San Diego, CA 92130
 Daytime Phone: 858-789-0712
 Email: jack@thehardagegroup.com

Date

Official Use Only	
<input type="checkbox"/> Date Received:	<u>10/15/09</u>
<input type="checkbox"/> Received by:	<u>S. O. [Signature]</u>

CITY OF TAMPA

#110



Pam Iorio, Mayor

Office of the City Clerk

Shirley Foxx-Knowles
City Clerk

Via Certified Mail/Return Receipt Requested

October 2, 2006

Tampa Bay Regional Planning Council
Attention: John Meyer
4000 Gateway Centre, Suite 100
Pinellas Park, Florida 33782

Re: File No. DZ84-130
Rocky Point Harbor

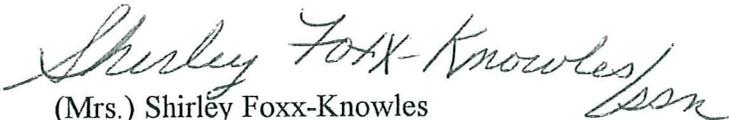
Dear Sir or Madam:

The City Council of the City of Tampa, Florida met in a regular session on September 28, 2006 at 9:00 a.m. in the City Council Chambers.

During this session, the enclosed ordinance was adopted regarding the above listed petition. This ordinance is being transmitted for your information and record keeping process.

If you have any questions, please contact my office at (813) 274-8397 or Land Development Coordination at (813) 274-8405.

Sincerely,


(Mrs.) Shirley Foxx-Knowles
City Clerk

SFK/ssm

Enclosure: Certified Copy of Ordinance No. 2006-232

ORDINANCE NO. 2006-232

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, APPROVING A SIXTH AMENDMENT TO A DEVELOPMENT ORDER RENDERED PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FILED BY WCI COMMUNITIES, INC. FOR ROCKY POINT HARBOR (F/K/A ROCKY POINT OFFICE AND COMMERCIAL PARK), A PREVIOUSLY APPROVED DEVELOPMENT OF REGIONAL IMPACT; PROVIDING AN EFFECTIVE DATE HEREOF.

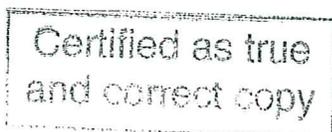
WHEREAS, Ordinance No. 9544-A, passed and ordained by the City Council of the City of Tampa, Florida (the "City Council"), on February 26, 1987, approved a development order for Rocky Point Harbor (f/k/a Rocky Point Office and Commercial Park) (the "Development"), a Development of Regional Impact ("DRI") (hereinafter said Ordinance shall be referred to as the "Original Development Order"); and

WHEREAS, Ordinance No. 92-162, passed and ordained by the City Council on October 8, 1992, approved a first amendment to the Development order (hereinafter said Ordinance shall be referred to as the "First Amendment"); and

WHEREAS, on November 20, 1992, the Tampa Bay Regional Planning Council ("TBRPC") filed a Petition with the State of Florida Land and Water Adjudicatory Commission ("FLWAC") appealing Ordinance No. 92-162 (the "Appeal"); and

WHEREAS, the Shriners Hospitals for Crippled Children (the "Shriners") and New York Yankees Limited Partnership d/b/a Radisson Bay Harbor Inn (the "Yankees") were granted the right to intervene in the Appeal proceedings in support of TBRPC pursuant to the FLWAC's Order of February 12, 1993; and

WHEREAS, on July 30, 1993, a Settlement Agreement among Scarborough Constructors, Inc. ("Scarborough"); Centennial Homes, Inc.; Shriners; and Yankees was entered into to resolve the



D284-130

issues in dispute among them with respect to the Appeal (the “Intervenor’s Settlement Agreement”);
and

WHEREAS, on August 5, 1993, a Settlement Agreement among Scarborough, the City of Tampa (the “City”), TBRPC, Shriners, and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the “Agency Settlement Agreement”); and

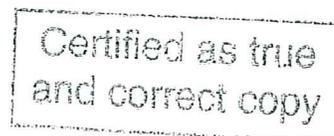
WHEREAS, on August 24, 1993, FLWAC entered a Final Order adopting and incorporating the Agency Settlement Agreement and amending the First Amendment (hereinafter the “Final Order”); and

WHEREAS, Ordinance No. 95-4, passed and ordained by the City Council on January 5, 1995, approved a second amendment to the Development Order (hereinafter said Ordinance shall be referred to as the “Second Amendment”); and

WHEREAS, Ordinance No. 96-88, passed and ordained by the City Council on April 25, 1996, approved a third amendment to the Development Order (hereinafter said Ordinance shall be referred to as the “Third Amendment”); and

WHEREAS, Ordinance No. 97-265, passed and ordained by the City Council on December 18, 1997, approved a fourth amendment to the Development Order (hereinafter said Ordinance shall be referred to as the “Fourth Amendment”); and

WHEREAS, Ordinance 2000-157, passed and ordained by the City Council on June 22, 2000, approved a fifth amendment to the Development Order (hereinafter, the Development Order, as amended by the First Amendment and the Final Order, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment shall collectively be referred to as the “Development Order” unless the context expressly provides otherwise);



WHEREAS, on April 17, 2006, WCI Communities, Inc. (the "Developer") filed a Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes, for the Rocky Point Harbor DRI, attached hereto as Composite Exhibit "A" and incorporated herein (the "Notice of Proposed Change"); and

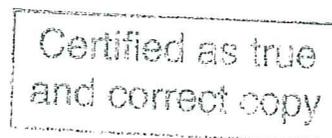
WHEREAS, the Notice of Proposed Change proposed an extension of the date of buildout of Phase II specifically for Parcel J, established a termination date, allowed for a land use exchange within Parcel J to allow for residential uses within Parcel J, allowed for wet slips adjacent to Parcel J, and modified Map H, as defined in the Notice of Change; (hereinafter the proposed modification as set forth in the Notice of Change shall be referred to as the "Proposed Change") and

WHEREAS, Appendix B of the Notice of Proposed Change provided responses to agency comments to the Notice of Proposed Change, attached hereto as Composite Exhibit "A" and incorporated herein by reference (the "First Sufficiency Response"); and

WHEREAS, on June 21, 2006, the Developer provided responses to agency comments to the Notice of Proposed Change, attached hereto as Composite Exhibit "A" and incorporated herein by reference (the "First Sufficiency Response"); and

WHEREAS, the Proposed Change to the Development Order shall constitute the Sixth Amendment to the Development Order; and

WHEREAS, the City Council has reviewed and considered the Notice of Proposed Change as well as all related testimony and evidence submitted by the Developer concerning the Proposed Change; and



WHEREAS, the City Council as the governing body of the local government having jurisdiction pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider the Proposed Change and to amend the Development Order; and

WHEREAS, the public notice requirements have been fulfilled; and

WHEREAS, all interested parties and members of the public have been afforded an opportunity to be heard at the public hearing on the Proposed Change before the City Council; and

WHEREAS, the City Council has reviewed and considered the above-referenced documents as well as all testimony and evidence submitted by certain parties and members of the general public; and

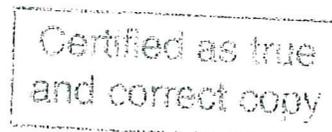
WHEREAS, Section 380.06, Florida Statutes, requires that a development order be amended to reflect the City Council's approval of changes to an adopted development order.

NOW, THEREFORE

**BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:**

Section 1. Findings of Fact. That City Council, having received the above referenced documents, and having received all related comments, testimony and evidence submitted by all persons and members of the general public, finds that there is substantial, competent evidence to support the following findings of fact:

- A. That the Developer submitted to the City the Notice of Proposed Change and the First Sufficiency Response, attached hereto as Composite Exhibit "A" and incorporated herein by reference, which proposes specifically and exclusively for Parcel J, an extension of the

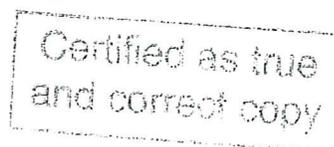


buildout date of Phase II to December 31, 2011, establishes a termination date of December 31, 2012, allows for an exchange of hotel rooms for residential units within Parcel J, allows for wet slips adjacent to Parcel J, updates the Phasing schedule land uses to reflect existing/proposed uses within each Parcel, and modifies Map H, to allow residential uses within Parcel J and reflect the existing land uses built-out within each Parcel, as more particularly set forth in the Notice of Proposed Change (hereinafter said change shall be referred to as the "Proposed Change"), and as reflected in the Revised Phasing Scheduled attached hereto as Exhibit "B".

- B. The Developer shall mitigate increased impact to shelter space through application of the following formula, imposed by the Emergency Management Office of Hillsborough County:
- a. Number of dwelling units (x) 2.5 (*occupancy factor*) = the number of potential evacuees;
 - b. Number of potential evacuees (x) .25 (*historical public shelter demand*) = shelter space demand;
 - c. Number of shelter space demand (x) \$129.00 = offset cost/mitigation for shelter impact.

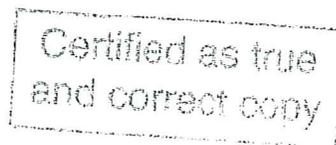
This fee shall be payable to Hillsborough County prior the issuance of a certificate of occupancy, at which time the Developer shall provide the City with a receipt evidencing payment of the mitigation assessment. In the event that Hillsborough County establishes a County-wide shelter space fee in excess of the fee set forth above, such increased fee shall be payable by the Developer for any residential units for which building permits are obtained after two years from the effective date of this Amended Development Order.

- C. The Developer shall mitigate park and recreation impacts through the payment, due at the time of issuance of a certificate of occupancy for each residential unit, of a site specific



park assessment fee of \$216 per multi-family unit. Any residential development within Parcel J shall not be eligible for impact fee (assessment fee) credit for any previous park land contributions to the City of Tampa.

- D. To offset the potential demand for schools generated by the residential uses, the Developer shall pay the prevailing Hillsborough County school impact fee upon issuance of a certificate of occupancy for each residential unit.
- E. The Developer shall be required to comply with the City of Tampa Transportation Impact Fee Ordinance in effect at the time of permitting.
- F. The Developer shall comply with the requirements of the City of Tampa Code regarding stormwater management regulations in effect at the time of permitting.
- G. That the Proposed Change is consistent with the State Comprehensive Plan.
- H. That the Proposed Change is consistent with all local land development regulations and the local comprehensive plan.
- I. That the Proposed Change does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- J. That the Proposed Change is consistent with the Report and Recommendations of the Tampa Bay Regional Planning Council.
- K. That the Proposed Change is presumed to create a substantial deviation under Subsection 380.06, Florida Statutes.
- L. That a comprehensive review of the impacts generated by the Proposed Change has been conducted by the City and the Tampa Bay Regional Planning Council.

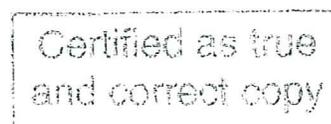


M. That the Proposed Change does not create additional regional impacts or impacts that were not previously reviewed nor does it meet or exceed any of the criteria set forth in Subsection 380.06(19)(b), Florida Statutes.

Section 2. Conclusions of Law. That the City Council, having made the above findings of fact, renders the following conclusions of law:

- A. That these proceedings have been duly conducted pursuant to applicable law and regulations and, based upon the record of these proceedings, the Developer is authorized to conduct the Development as described herein, subject only to the amendments, conditions, restrictions and limitations set forth herein.
- B. That the review by the City, the Tampa Bay Regional Planning Council and other participating agencies and interested citizens concludes that the impacts of the Proposed Change are adequately addressed pursuant to the requirements of Chapter 380, Florida Statutes, within the terms and conditions of this Ordinance.
- C. That, based upon the analyses which are part of Composite Exhibit "A" and the record of these proceedings, and the conditions contained herein, the Developer has submitted clear and convincing evidence to rebut the presumption created under Subsection 380.06(19), Florida Statutes.
- D. That, based on the foregoing and pursuant to Subsection 380.06(19), Florida Statutes, the Proposed Change is found not to be a substantial deviation to the previously approved Development Order.

Section 3. Order. That, having made the above findings of fact and conclusions of law, it is ordered:

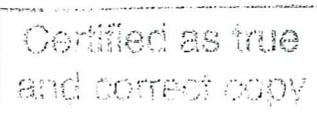


- A. That the Proposed Change set forth in Composite Exhibit "A", is hereby approved and the Development Order is hereby amended to incorporate the Notice of Proposed Change and the First Sufficiency Response.
- B. That the Development Order is hereby amended to incorporate the Revised Phasing Schedule attached hereto as Exhibit "B."
- C. The findings of fact and conclusions of law made in the Development Order are hereby reaffirmed and are incorporated herein by reference, provided, however, that to the extent that a finding of fact or conclusion of law in the original Development Order, or any amendment thereto, conflicts with another finding or conclusion in a different amendment, the more recent in time shall control.

Section 4. Development Order, as Amended. This Ordinance shall constitute the Sixth Amendment to Ordinance No. 9544-A, as previously amended by Ordinance No. 92-162, the Final Order, Ordinance 95-4, Ordinance No. 96-88, Ordinance No. 97-265, and Ordinance 2000-157; which shall constitute, collectively, the Development Order for the Development as passed and ordained by the City Council. All provisions of the Development Order except those provisions specifically modified herein, shall remain in full force and effect and shall be considered conditions of the Development unless inconsistent with terms and conditions of this Ordinance, in which case the terms and conditions of this ordinance shall govern.

Section 5. Definitions. That the definitions contained in Chapter 380, Florida Statutes, shall control the interpretation and construction of any terms of this Ordinance.

Section 6. Binding Effect. That this Ordinance shall be binding upon the Developer, its assigns, and its successors in interest.



Section 7. Governmental Agencies. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Ordinance.

Section 8. Severance. That in the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

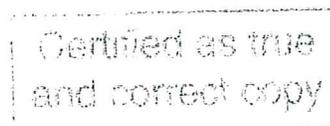
Section 9. Transmittals. That the City Clerk is directed to send copies of this Ordinance, within five (5) days of its being passed and ordained by the City Council, to the Developer, the Florida Department of Community Affairs (Bureau of State Planning), and the Tampa Bay Regional Planning Council.

Section 10. Rendition. That this Ordinance shall be deemed rendered upon transmittal of copies of this Ordinance to the recipients specified in Chapter 380, Florida Statutes.

Section 11. Recording. That the Developer shall record a notice of adoption of this Ordinance pursuant to Chapter 380, Florida Statutes.

Section 12. Effective Date. That this Ordinance shall become a law as provided in the City of Tampa Home Rule Charter and shall take effect upon transmittal to the parties specified in Section 9, hereof.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA,
FLORIDA, ON _____ SEP 28 2006 _____.



Brendolyn M. Miller
CHAIRMAN, CITY COUNCIL

Approved by me September 29, 2006

ATTEST:

Shirley Fox-Krowles
CITY CLERK

Re Aris
MAYOR

APPROVED as to form by:

ASSISTANT CITY ATTORNEY

State of Florida
County of Hillsborough

This is to certify that the foregoing is a true and correct copy of Ordinance No 2006-232
on file on my office

Witness my hand and official seal this 2nd day
of Oct, 2006

Sandra Marshall
CITY CLERK / DEPUTY CITY CLERK

EXHIBIT LIST

Composite Exhibit "A"	Notice of Proposed Change Appendix B: First Sufficiency Response to the Notice of Proposed Change
Exhibit "B"	Revised Phasing Schedule
Exhibit "C"	Revised Map H
Exhibit "D"	Developer's Certification

Certified as true
and correct copy

EXHIBIT "B"
REVISED PHASING SCHEDULE

Phase	Buildout *	Office	Restaurant	Apartments	Condominiums	Hotel Rooms	Wet Slips
I	1989	253,393	5,000	0	0	0	0
II	Dec. 31, 2011**	275,632	11,000	464	161	203	35
Total		529,025	16,000	464	161	203	35

* The subject Land Use Schedule is derived based on the information provided in the latest Rocky Point Harbor Annual Report

Buildout Date

December 31, 2011**

Termination Date

December 31, 2012**

** Buildout date of 2011 and Termination date of 2012 applies to Parcel J only. The Buildout date for the balance of the project is 2004 and Termination date is 2005.

Certified as true
and correct copy

EXHIBIT "D"
DEVELOPER'S CERTIFICATION

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I hereby certify that on this day before me, the undersigned notary public authorized in this State and County named above to administer oaths and take acknowledgements, personally appeared Mark Bentley, attorney for WCI Communities, Inc., the applicant of the Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes (the "Notice of Proposed Change"), for the Rocky Point Harbor DRI (f/k/a Rocky Point Office and Commercial Park), to me well known, who being by me first duly sworn, says upon oath as stated below:

1. WCI Communities, Inc. filed the Notice of Proposed Change on April 17, 2006.
2. WCI Communities, Inc. filed the First Sufficiency Response to the Notice of Proposed Change on June 21, 2006.
3. The Notice of Proposed Change and First Sufficiency Response were filed with the City of Tampa, the State of Florida Department of Community Affairs ("DCA") and the Tampa Bay Regional Planning Council ("TBRPC") as required by law.

Mark Bentley
Attorney for WCI Communities, Inc.

The foregoing was acknowledged before me this ____ day of _____, 2006, by Mark Bentley, who is personally known to me.

(SEAL)

Notary Public-State of Florida
Commission Number:
My commission expires: _____

Certified as true
and correct copy

Notice of Proposed Change Application
submitted as part of
Ordinance No. 2006-232
a Development Order Amendment for
DRI #110, Rocky Point Harbor
is located in the DRI Project File

APPENDIX

UNIVERSITY OF CALIFORNIA
LIBRARY
DIVERSITY

Appendix A
EXHIBIT B
EQUIVALENCY MATRIX^{1,3}
Rocky Point Harbor

Change To:	Change From Office:
Residential	
- Single Family	1.2549 dus./ksf. ²
- Apartments	2.5865 dus./ksf.
- Retirement Apartments	4.3906 dus./ksf.
- Congregate Care Fac.	7.2315 dus./ksf.
Child Care	257.01 sf./ksf.
Branch Bank	
- Walk-In	140.03 sf./ksf.
- Drive-In	52.91 sf./ksf.
Movie Theater	.1729 screens/ksf. (1 screen = 5,784 sf.)
Medical Center	357.28 sf./ksf.
Health Club	624.48 sf./ksf.
Restaurant	440.44 sf./ksf.
Museum	2,831.30 sf./ksf.
Specialty Retail	641.8014 sf./ksf.
Comm. Ctr./Social Club	1,081.0467 sf./ksf.
Convenience Market	106.2242 sf./ksf.
Parcel J Only	
Change To:	Change From Hotel
Residential - Condominium	1.3537 dus./room

1 Residential land use exchanges are based on two way p.m. peak hour external traffic. All other land use exchanges are based on net external p.m. peak hour peak direction project traffic. Use of this matrix shall be limited to the minimums and maximums below to ensure that project impacts for transportation, water, wastewater, solid waste, and affordable housing are not exceeded.

Equivalency Factor Formula = $\frac{\text{Approved yet unbuilt Office External Trip Rate (Table 2)}}{\text{Proposed Land Use External Trip Rate (Table 2)}}$

Equivalency Factor Formula = $\frac{\text{Hotel External Trip Rate}}{\text{Proposed Residential Land Use External Trip Rate}}$
for Residential within Parcel J only

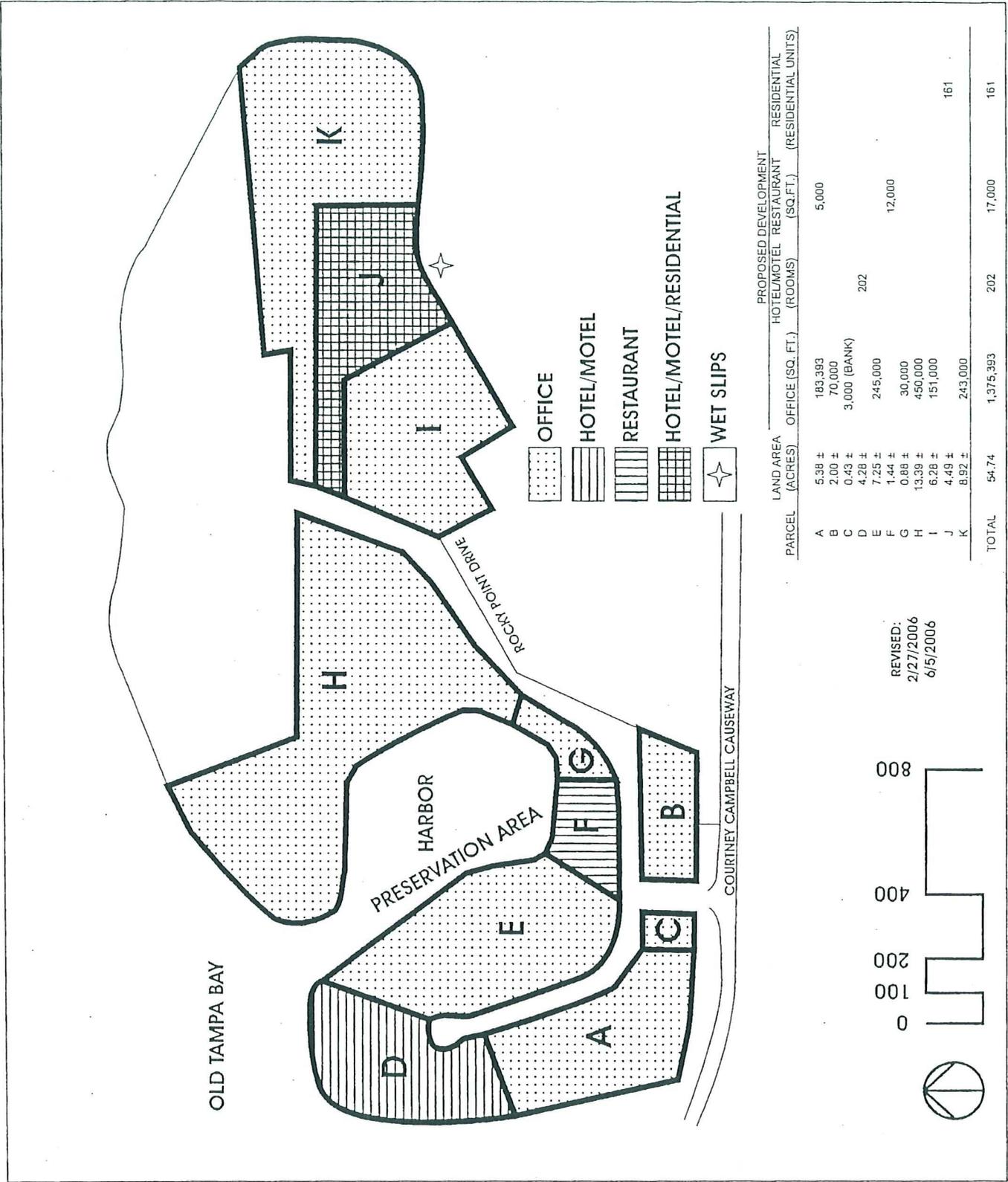
Office to Single Family $\frac{1.2294/\text{ksf}}{0.9797/\text{du}} = 1.2549 \text{ dus/ksf}$
Equivalency Factor

Hotel to Residential Condo $\frac{0.597/\text{rm}}{0.441/\text{unit}} = 1.3537 \text{ dus/rm}$
Equivalency Factor

Land Use	Minimum/Maximum ^{c,d}
Office ^a	418,000 sf/738,000 sf
Hotel ^b	379 203 Rooms/379 Rooms
Single Family	0/129 dus.
Apartments	0/615 dus
Condominiums	0/161 dus
Congregate Care	0/615 dus
Child Care	0/4,000 sf
Walk-In Bank	0/2,500 sf
Convenience Mkt. ^f	0/5,000 sf

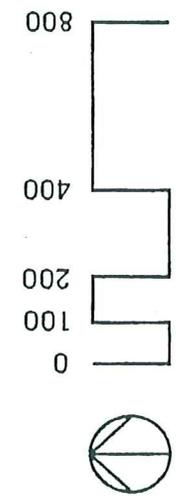
Land Use	Minimum/Maximum
Drive-In Bank	0/2,500 sf
Movie Theater	0/8 Screens (46,272 sf)
Medical Center	0/20,000 sf
Health Club	0/20,000 sf
Restaurant ^e	0/15,000 sf
Museum	0/60,000 sf
Specialty Retail ^f	0/15,000 sf
Comm.Ctr/Soc.Clb	0/20,000 sf

- a Office minimum equals existing office (258,00 sf) plus 160,000 sf of approved yet unbuilt office. Office maximum equals existing office plus 480,000 sf of approved yet unbuilt office. Existing Office square footage includes Phase I Restaurant square footage of 5,000 sf.
 - b ~~Hotel minimum and maximum reflect existing hotel.~~ No additional Hotel rooms are permitted under this matrix.
 - c Equivalency Matrix maximums referenced in Footnote #1 are less than the maximums actually achievable utilizing this matrix. However exchanges using this matrix shall be limited to the maximums identified in Footnote #1.
 - d ~~An absolute maximum of 615 residential dwelling units may be exchanged (i.e.,~~ The sum of single family, apartment, retirement apartment, condominium, and congregate care facility dwelling units can not exceed ~~615~~ 776 dwelling units).
 - e. No single restaurant building shall exceed 11,000 sf (floor area) or 425 seats.
 - f. The cumulative square footage of Convenience Market and Specialty Retail shall not exceed 15,000 sf.
- 2 Example Exchange - Add 60 Single Family dus by reducing office. $60 \text{ dus} \times 1.2549 = 47.8126$; Reduce Office by 47,813 sf.
 3. Notwithstanding any exchange contemplated by this Matrix, no exchange shall result in p.m. peak hour external vehicle trips in excess of 1.) A two way volume of 1,361 vph, and 2.) A peak direction volume of 1,048 vph. The calculation of vehicle trips shall be based on the methodology used in this Notice of Proposed Change.



PARCEL	LAND AREA (ACRES)	PROPOSED DEVELOPMENT		
		OFFICE (SQ. FT.)	HOTEL/MOTEL (ROOMS)	RESTAURANT (RESIDENTIAL UNITS)
A	5.38 ±	183,393		
B	2.00 ±	70,000		5,000
C	0.43 ±	3,000 (BANK)	202	
D	4.28 ±	245,000		
E	7.25 ±			12,000
F	1.44 ±	30,000		
G	0.88 ±	450,000		
H	13.39 ±	151,000		
I	6.28 ±			
J	4.49 ±			161
K	8.92 ±	243,000		
TOTAL	54.74	1,375,393	202	17,000

REVISED:
2/27/2006
6/5/2006



**ROCKY POINT
OFFICE AND COMMERCIAL PARK**
DEVELOPMENT OF REGIONAL IMPACT

**MAP H
MASTER DEVELOPMENT PLAN**

**Coen
Company**
Planning & Transportation Services
P.O. Box 1025A Tampa Florida 33679-025A
Phone: 813.877.7299 Fax: 813.877.7609

EXHIBIT "B"
REVISED PHASING SCHEDULE

Phase	Buildout *	Office	Restaurant	Apartments	Condominiums	Hotel Rooms	Wet Slips
I	1989	253,393	5,000	0	0	0	
II	Dec. 31, 2011**	275,632	11,000	464	161	203	35
Total		529,025	16,000	464	161	203	35

* The subject Land Use Schedule is derived based on the information provided in the latest Rocky Point Harbor Annual Report

Buildout Date

December 31, 2011**

Termination Date

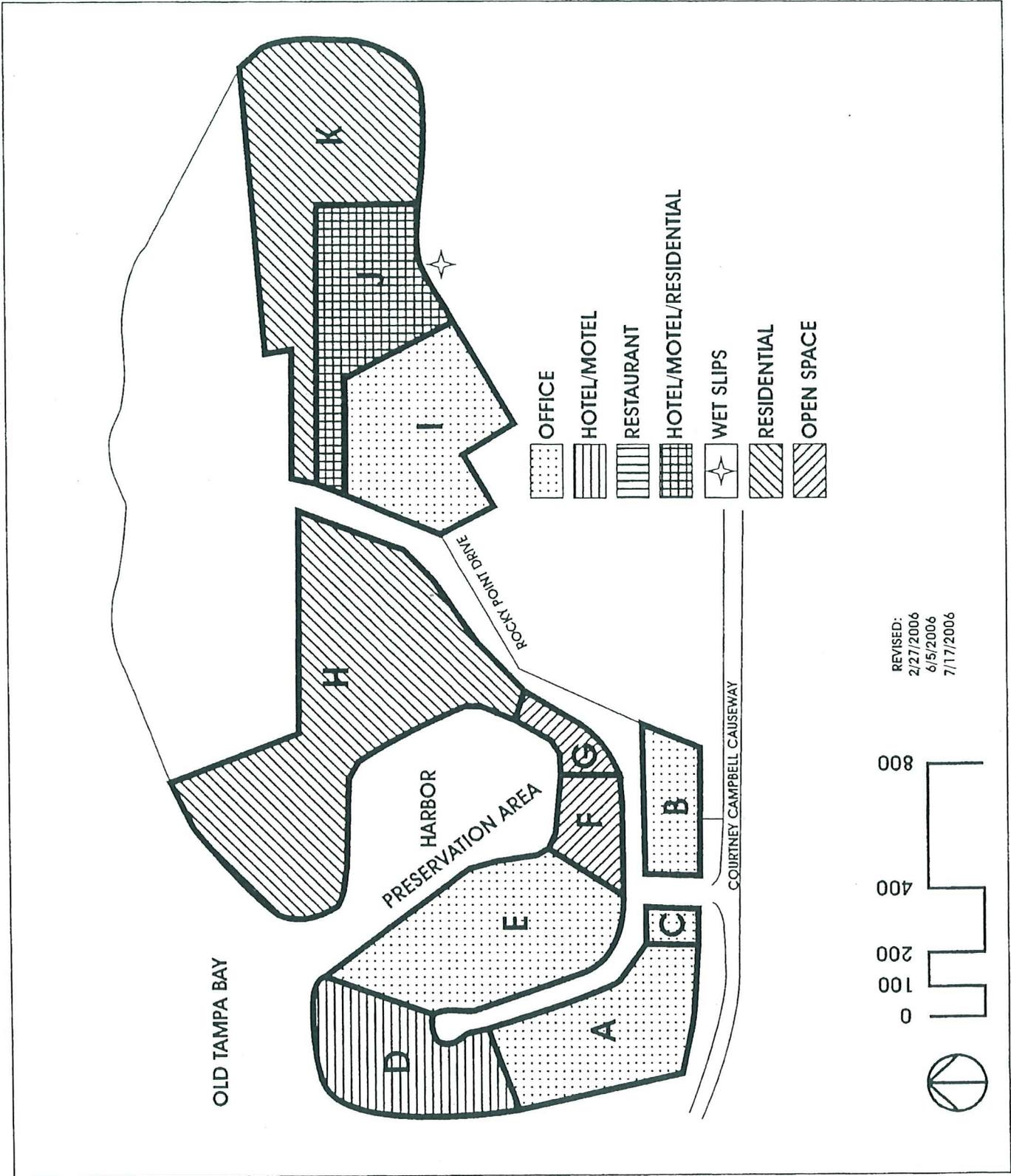
December 31, 2012**

** Buildout date of 2011 and Termination date of 2012 applies to Parcel J only. The Buildout date for the balance of the project is 2004 and Termination date is 2005.

2011-12-31
1401 Jones Ave

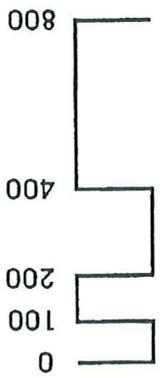
Exhibit C

Carroll County
and Carroll County
1997



- OFFICE
- HOTEL/MOTEL
- RESTAURANT
- HOTEL/MOTEL/RESIDENTIAL
- WET SLIPS
- RESIDENTIAL
- OPEN SPACE

REVISED:
 2/27/2006
 6/5/2006
 7/17/2006



**ROCKY POINT
 OFFICE AND COMMERCIAL PARK**
 DEVELOPMENT OF REGIONAL IMPACT

**MAP H
 MASTER DEVELOPMENT PLAN**

**Coen
 & Company**
 Planning & Transportation Services
 P.O. Box 10958 Tampa, Florida 33629-0658
 Phone: 813.877.2649 Fax: 813.877.2649

Reviewed by [unclear]
 and [unclear]

EXHIBIT "D"
DEVELOPER'S CERTIFICATION

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I hereby certify that on this day before me, the undersigned notary public authorized in this State and County named above to administer oaths and take acknowledgements, personally appeared Mark Bentley, attorney for WCI Communities, Inc., the applicant of the Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes (the "Notice of Proposed Change"), for the Rocky Point Harbor DRI (f/k/a Rocky Point Office and Commercial Park), to me well known, who being by me first duly sworn, says upon oath as stated below:

1. WCI Communities, Inc. filed the Notice of Proposed Change on April 17, 2006.
2. WCI Communities, Inc. filed the First Sufficiency Response to the Notice of Proposed Change on June 21, 2006.
3. The Notice of Proposed Change and First Sufficiency Response were filed with the City of Tampa, the State of Florida Department of Community Affairs ("DCA") and the Tampa Bay Regional Planning Council ("TBRPC") as required by law.

Mark Bentley
Attorney for WCI Communities, Inc.

The foregoing was acknowledged before me this ____ day of _____, 2006, by Mark Bentley, who is personally known to me.

(SEAL)

Notary Public-State of Florida
Commission Number:
My commission expires:_____

[Seal of Notary Public]
[and other text]



CITY OF TAMPA

Janett S. Martin, CMC, City Clerk

Office of City Clerk

June 30, 2000

Mr. John Meyer
Tampa Bay Regional Planning Council
9455 Koger Blvd.
St. Petersburg, Florida 33702

File No. DZ84-130

Dear Mr. Meyer:

The City Council of the City of Tampa met in a regular session on June 22, 2000 at 9:00 a.m. During this session, the enclosed ordinance was adopted, granting the fifth amendment to a development order per request filed by Highwoods/Florida Holdings, LP, for Rocky Point Harbor (FKA Rocky Point Office and Commercial Park). A certified copy of said ordinance is hereby transmitted.

Sincerely,


Janett S. Martin, CMC
City Clerk

JSM/ssm

Enclosures: Ordinance No. 2000-157

#110
TBRPC

ORDINANCE NO. 2000-157

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, APPROVING A FIFTH AMENDMENT TO A DEVELOPMENT ORDER RENDERED PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FILED BY HIGHWOODS/FLORIDA HOLDINGS LP FOR ROCKY POINT HARBOR (F/K/A ROCKY POINT OFFICE AND COMMERCIAL PARK), A PREVIOUSLY APPROVED DEVELOPMENT OF REGIONAL IMPACT; PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Ordinance No. 9544-A, passed and ordained by the City Council of the City of Tampa, Florida (the "City Council"), on February 26, 1987, approved a development order for Rocky Point Harbor (f/k/a Rocky Point Office and Commercial Park) (the "Development"), a Development of Regional Impact ("DRI") (hereinafter said Ordinance shall be referred to as the "Original Development Order"); and

WHEREAS, Ordinance No. 92-162, passed and ordained by the City Council on October 8, 1992, approved a first amendment to the Development order (hereinafter said Ordinance shall be referred to as the "First Amendment"); and

WHEREAS, on November 20, 1992, the Tampa Bay Regional Planning Council ("TBRPC") filed a Petition with the State of Florida Land and Water Adjudicatory Commission ("FLWAC") appealing Ordinance No. 92-162 (the "Appeal"); and

WHEREAS, the Shriners Hospitals for Crippled Children (the "Shriners") and New York Yankees Limited Partnership d/b/a Radisson Bay Harbor Inn (the "Yankees") were granted the right to intervene in the Appeal proceedings in support of TBRPC pursuant to the FLWAC's Order of February 12, 1993; and

**Certified as true
and correct copy.**

WHEREAS, on July 30, 1993, a Settlement Agreement among Scarborough Constructors, Inc. ("Scarborough"); Centennial Homes, Inc.; Shriners; and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Intervenors' Settlement Agreement"); and

WHEREAS, on August 5, 1993, a Settlement Agreement among Scarborough, the City of Tampa (the "City"), TBRPC, Shriners, and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Agency Settlement Agreement"); and

WHEREAS, on August 24, 1993, FLWAC entered a Final Order adopting and incorporating the Agency Settlement Agreement and amending the First Amendment (hereinafter the "Final Order"); and

WHEREAS, Ordinance No. 95-4, passed and ordained by the City Council on January 5, 1995, approved a second amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "Second Amendment"); and

WHEREAS, Ordinance No. 96-88, passed and ordained by the City Council on April 25, 1996, approved a third amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "Third Amendment"); and

WHEREAS, Ordinance No. 97-265, passed and ordained by the City Council on December 18, 1997, approved a fourth amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "Third Amendment")(hereinafter, the Development Order, as amended by the First Amendment and the Final Order, Second Amendment, Third Amendment, and Fourth Amendment shall collectively be referred to as the "Development Order" unless the context expressly provides otherwise); and

WHEREAS, on December 8, 1999, Highwoods/Florida Holdings LP (the "Developer") filed a Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes, for the Rocky Point Harbor DRI, attached hereto as Composite Exhibit "A" and incorporated herein (the "Notice of Proposed Change"); and

WHEREAS, the Notice of Proposed Change proposed an extension of the date of buildout of Phase II, as defined in the Notice of Change; (hereinafter the proposed modification as set forth in the Notice of Change shall be referred to as the "Proposed Change") and

WHEREAS, on March 28, 2000, the Developer filed an Amended Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes, for the Rocky Point Harbor DRI, attached hereto as Composite Exhibit "A" and incorporated herein (the "Amended Notice of Proposed Change"); and

WHEREAS, the Amended Notice of Proposed Change proposed an additional extension of the date of buildout of Phase II, as defined in the Amended Notice of Proposed Change; (hereinafter the proposed modification as set forth in the Amended Notice of Proposed Change shall be referred to as the "Amended Proposed Change"); and

WHEREAS, Appendix B of the Amended Notice of Proposed Change provided responses to agency comments to the Notice of Proposed Change, attached hereto as Composite Exhibit "A" and incorporated herein by reference (the "First Sufficiency Response"); and

WHEREAS, on May 31, 2000, the Developer provided responses to agency comments to the Amended Notice of Proposed Change, attached hereto as Composite Exhibit "A" and incorporated herein by reference (the "Second Sufficiency Response"); and

WHEREAS, the Amended Proposed Change to the Development Order shall constitute the Fifth Amendment to the Development Order; and

WHEREAS, the City Council has reviewed and considered the Notice of Proposed Change and the Amended Notice of Proposed Change as well as all related testimony and evidence submitted by the Developer concerning the Amended Proposed Change; and

WHEREAS, the City Council as the governing body of the local government having jurisdiction pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider the Amended Proposed Change and to amend the Development Order; and

WHEREAS, the public notice requirements have been fulfilled; and

WHEREAS, all interested parties and members of the public have been afforded an opportunity to be heard at the public hearing on the Amended Proposed Change before the City Council; and

WHEREAS, the City Council has reviewed and considered the above-referenced documents as well as all testimony and evidence submitted by certain parties and members of the general public; and

WHEREAS, Section 380.06, Florida Statutes, requires that a development order be amended to reflect the City Council's approval of changes to an adopted development order.

NOW, THEREFORE

**BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:**

Section 1. Findings of Fact. That City Council, having received the above referenced documents, and having received all related comments, testimony and evidence submitted

**Certified as true
and correct copy.**

by all persons and members of the general public, finds that there is substantial, competent evidence to support the following findings of fact:

- A. That the Developer submitted to the City the Notice of Proposed Change, the Amended Notice of Proposed Change, the First Sufficiency Response and the Second Sufficiency Response, attached hereto as Composite Exhibit "A" and incorporated herein by reference, which propose an extension of the buildout date of Phase II to December 31, 2004, as more particularly set forth in the Amended Notice of Proposed Change (hereinafter said change shall be referred to as the "Amended Proposed Change"), and as reflected in the Revised Phasing Schedule attached hereto as Exhibit "B."
- B. That the Amended Proposed Change is consistent with the State Comprehensive Plan.
- C. That the Amended Proposed Change is consistent with all local land development regulations and the local comprehensive plan.
- D. That the Amended Proposed Change does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- E. That the Amended Proposed Change is consistent with the Report and Recommendations of the Tampa Bay Regional Planning Council.
- F. That the Amended Proposed Change is presumed to create a substantial deviation under Subsection 380.06, Florida Statutes.

- G. That a comprehensive review of the impacts generated by the Amended Proposed Change has been conducted by the City and the Tampa Bay Regional Planning Council.
- H. That the Amended Proposed Change does not create additional regional impacts or impacts that were not previously reviewed nor does it meet or exceed any of the criteria set forth in Subsection 380.06(19)(b), Florida Statutes.

Section 2. Conclusions of Law. That the City Council, having made the above findings of fact, renders the following conclusions of law:

- A. That these proceedings have been duly conducted pursuant to applicable law and regulations and, based upon the record of these proceedings, the Developer is authorized to conduct the Development as described herein, subject only to the amendments, conditions, restrictions and limitations set forth herein.
- B. That the review by the City, the Tampa Bay Regional Planning Council and other participating agencies and interested citizens concludes that the impacts of the Amended Proposed Change are adequately addressed pursuant to the requirements of Chapter 380, Florida Statutes, within the terms and conditions of this Ordinance.
- C. That, based upon the analyses which are part of Composite Exhibit "A" and the record of these proceedings, and the conditions contained herein, the Developer has submitted clear and convincing evidence to rebut the presumption created under Subsection 380.06(19), Florida Statutes.

- D. That, based on the foregoing and pursuant to Subsection 380.06(19), Florida Statutes, the Amended Proposed Change is found not to be a substantial deviation to the previously approved Development Order.

Section 3. Order. That, having made the above findings of fact and conclusions of law, it is ordered:

- A. That the Amended Proposed Change set forth in Composite Exhibit "A," is hereby approved and the Development Order is hereby amended to incorporate the Notice of Proposed Change, the Amended Notice of Proposed Change, the First Sufficiency Response and the Second Sufficiency Response.
- B. That the Development Order is hereby amended to incorporate the Revised Phasing Schedule attached hereto as Exhibit "B."
- C. That if the Development is not completed by December 31, 2004, and the fifth southbound lane at the intersection of Rocky Point Drive and Courtney Campbell Causeway is not constructed, then the Development shall undergo additional transportation review through a substantial deviation determination pursuant to Subsection 380.06(19), Florida Statutes.
- D. The findings of fact and conclusions of law made in the Development Order are hereby reaffirmed and are incorporated herein by reference, provided, however, that to the extent that a finding of fact or conclusion of law in the original Development Order, or any amendment thereto, conflicts with another finding or conclusion in a different amendment, the more recent in time shall control.

Section 4. Development Order, as Amended. This Ordinance shall constitute the Fifth Amendment to Ordinance No. 9544-A, as previously amended by Ordinance No. 92-162, the Final Order, Ordinance 95-4, Ordinance No. 96-88, and Ordinance No. 97-265, which shall constitute, collectively, the Development Order for the Development as passed and ordained by the City Council. All provisions of the Development Order except those provisions specifically modified herein, shall remain in full force and effect and shall be considered conditions of the Development unless inconsistent with terms and conditions of this Ordinance, in which case the terms and conditions of this ordinance shall govern.

Section 5. Definitions. That the definitions contained in Chapter 380, Florida Statutes, shall control the interpretation and construction of any terms of this Ordinance.

Section 6. Binding Effect. That this Ordinance shall be binding upon the Developer, its assigns, and its successors in interest.

Section 7. Governmental Agencies. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Ordinance.

Section 8. Severance. That in the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 9. Transmittals. That the City Clerk is directed to send copies of this Ordinance, within five (5) days of its being passed and ordained by the City Council, to the Developer, the

Florida Department of Community Affairs (Bureau of State Planning), and the Tampa Bay Regional Planning Council.

Section 10. Rendition. That this Ordinance shall be deemed rendered upon transmittal of copies of this Ordinance to the recipients specified in Chapter 380, Florida Statutes.

Section 11. Recording. That the Developer shall record a notice of adoption of this Ordinance pursuant to Chapter 380, Florida Statutes.

Section 12. Effective Date. That this Ordinance shall become a law as provided in the City of Tampa Home Rule Charter and shall take effect upon transmittal to the parties specified in Section 9, hereof.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON JUN 22 2000.

CHAIRMAN, CITY COUNCIL
Approved by me JUN 29 2000

ATTEST:

Janett S. Martin
CITY CLERK

[Signature]
MAYOR

APPROVED as to form by:

[Signature]
ASSISTANT CITY ATTORNEY

State of Florida
County of Hillsborough

This is to certify that the foregoing is a true and correct copy of Ordinance 2000-157 on file in my office
Witness my hand and official seal this 30th day of June, 2000

Janett S. Martin, CITY CLERK
BY: Gail A. Anderson
CITY CLERK
GAIL A. ANDERSON, DEPUTY CITY CLERK

EXHIBIT LIST

Composite Exhibit "A"

Notice of Proposed Change

Amended Notice of Proposed Change

Appendix B: First Sufficiency Response to the Notice
of Proposed Change

Second Sufficiency Response to the Amended Notice of
Proposed Change

Exhibit "B"

Revised Phasing Schedule

Exhibit "C"

Developer's Certification

**Certified as true
and correct copy.**

EXHIBIT "B"
REVISED PHASING SCHEDULE

PHASE II

Land Use

480,000 sq. ft. gross floor area office

Buildout Date

December 31, 2004

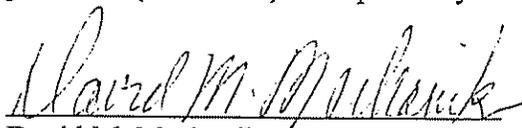
**Certified as true
and correct copy.**

EXHIBIT "C"
DEVELOPER'S CERTIFICATION

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I hereby certify that on this day before me, the undersigned notary public authorized in this State and County named above to administer oaths and take acknowledgements, personally appeared David M. Mechanik, attorney for Highwoods/Florida Holdings LP, the applicant of the Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes (the "Notice of Proposed Change"), and the Amended Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes, (the "Amended Notice of Proposed Change"), both for the Rocky Point Harbor DRI (f/k/a Rocky Point Office and Commercial Park), to me well known, who being by me first duly sworn, says upon oath as stated below:

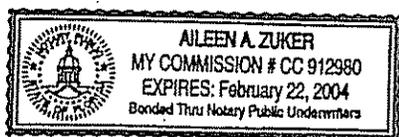
1. Highwoods/Florida Holdings LP filed the Notice of Proposed Change on December 8, 2000.
2. Highwoods/Florida Holdings LP filed the Amended Notice of Proposed Change on March 28, 2000, together with the First Sufficiency Response to the Notice of Proposed Change, attached as Appendix B thereto.
3. Highwoods/Florida Holdings LP filed the Second Sufficiency Response to the Amended Notice of Proposed Change on May 31, 2000.
4. The Notice of Proposed Change, Amended Notice of Proposed Change, First Sufficiency Response and Second Sufficiency Response were filed with the City of Tampa, the State of Florida Department of Community Affairs ("DCA") and the Tampa Bay Regional Planning Council ("TBRPC") as required by law.

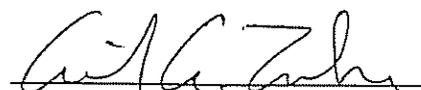


David M. Mechanik
Attorney for Highwoods/Florida Holdings LP

The foregoing was acknowledged before me this 7th day of JUNE, 2000, by David M. Mechanik, who is personally known to me.

(SEAL)




Notary Public-State of Florida
Commission Number:
My commission expires:

**Certified as true
and correct copy.**

Three
"Composite Exhibit A's"
are in
the NOPC File.

(Too cumbersome and
spiral bound to make
part of D.O. file).

110



CITY OF TAMPA

Janett S. Martin, City Clerk

Office of City Clerk

December 22, 1997

Tampa Bay Regional Planning Council
9455 Koger Boulevard
St. Petersburg FL 33702

RE: Petition No. DZ84-130
Ordinance No. 97-265

Dear Sir:

The enclosed document is being transmitted for your information and record keeping process. If further information is needed, please contact the office of Land Development Coordination, at (813) 274-8405.

Sincerely,

Janett S. Martin
City Clerk

JM/gg

Enclosure: Certified Copy of Ordinance No. 97-265

Certified Mail

TBRPC

ORDINANCE NO. 97-265

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, APPROVING A FOURTH AMENDMENT TO A DEVELOPMENT ORDER RENDERED PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FILED BY SCARBOROUGH CONSTRUCTORS, INC. FOR ROCKY POINT HARBOR (F/K/A ROCKY POINT OFFICE AND COMMERCIAL PARK), A PREVIOUSLY APPROVED DEVELOPMENT OF REGIONAL IMPACT; PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Ordinance No. 9544-A, passed and ordained by the City Council of the City of Tampa, Florida (the "City Council"), on February 26, 1987, approved a development order for Rocky Point Harbor (f/k/a Rocky Point Office and Commercial Park) (the "Development"), a Development of Regional Impact ("DRI") (hereinafter said Ordinance shall be referred to as the "Original Development Order"); and

WHEREAS, Ordinance No. 92-162, passed and ordained by the City Council on October 8, 1992, approved a first amendment to the Development order (hereinafter said Ordinance shall be referred to as the "First Amendment"); and

WHEREAS, on November 20, 1992, the Tampa Bay Regional Planning Council ("TBRPC") filed a Petition with the State of Florida Land and Water Adjudicatory Commission ("FLWAC") appealing Ordinance No. 92-162 (the "Appeal"); and

WHEREAS, the Shriners Hospitals for Crippled Children (the "Shriners") and New York Yankees Limited Partnership d/b/a Radisson Bay Harbor Inn (the "Yankees") were granted the right to intervene in the Appeal proceedings in support of TBRPC pursuant to the FLWAC's Order of February 12, 1993; and

**Certified as true
and correct copy.**

WHEREAS, on July 30, 1993, a Settlement Agreement among Scarborough Constructors, Inc. ("Scarborough"); Centennial Homes, Inc.; Shriners; and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Intervenors' Settlement Agreement"); and

WHEREAS, on August 5, 1993, a Settlement Agreement among Scarborough, the City of Tampa (the "City"), TBRPC, Shriners, and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Agency Settlement Agreement"); and

WHEREAS, on August 24, 1993, FLWAC entered a Final Order adopting and incorporating the Agency Settlement Agreement and amending the First Amendment (hereinafter the "Final Order"); and

WHEREAS, Ordinance No. 95-4, passed and ordained by the City Council on January 5, 1995, approved a second amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "Second Amendment"); and

WHEREAS, Ordinance No. 96-88, passed and ordained by the City Council on April 25, 1996, approved a third amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "Third Amendment")(hereinafter, the Development Order, as amended by the First Amendment and the Final Order, Second Amendment, and Third Amendment shall collectively be referred to as the "Development Order" unless the context expressly provides otherwise); and

WHEREAS, on October 3, 1997, Scarborough Constructors, Inc. (the "Developer") filed a Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes, for the Rocky Point Harbor DRI, attached hereto as Composite Exhibit "A" and incorporated herein (the "Notification of Proposed Change"); and

WHEREAS, on October 30, 1997, the Developer filed the first supplemental response to comments provided by an adjacent property owner and reviewing agencies, attached hereto as Composite Exhibit "A" and incorporated herein (the First Sufficiency Response"); and

WHEREAS, on November 4, 1997, the Developer filed the second supplemental response to comments provided by a reviewing agency, attached hereto as Composite Exhibit "A" and incorporated herein (the "Second Sufficiency Response") (hereinafter the Notification of Proposed Change, the First Sufficiency Response and the Second Sufficiency Response shall collectively be referred to as the "Notice of Change"); and

WHEREAS, the Notice of Change proposed the modification of the approved Equivalency Matrix to allow for an increase in the size of the individual restaurant building permitted within the development; the addition of a convenience market land use, while reducing the size of approved office space, and allowing for stormwater facilities to be constructed in the park area, with a corresponding decrease in park

assessment credits, all as more particularly set forth in the Notice of Change (hereinafter said changes shall collectively be referred to as the "Proposed Changes"); and

WHEREAS, the Proposed Changes to the Development Order shall constitute the Fourth Amendment to the Development Order; and

WHEREAS, the City Council has reviewed and considered the Notice of Change as well as all related testimony and evidence submitted by the Developer concerning the Proposed Changes; and

WHEREAS, the City Council as the governing body of the local government having jurisdiction pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider the Proposed Changes and to amend the Development Order; and

WHEREAS, the public notice requirements have been fulfilled; and

WHEREAS, all interested parties and members of the public have been afforded an opportunity to be heard at the public hearing on the Proposed Changes before the City Council; and

WHEREAS, the City Council has reviewed and considered the above-referenced documents as well as all testimony and evidence submitted by certain parties and members of the general public; and

WHEREAS, Section 380.06, Florida Statutes, requires that a development order be amended to reflect the City Council's approval of changes to an adopted development order.

NOW, THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:

Section 1. Findings of Fact. That City Council, having received the above referenced documents, and having received all related comments, testimony and evidence submitted by all persons and members of the general public, finds that there is substantial, competent evidence to support the following findings of fact:

- A. That the Developer submitted to the City the Notice of Change, attached hereto as Composite Exhibit "A" and incorporated herein by reference, which proposed a modification to the approved Equivalency Matrix to allow for an increase in the size of the individual restaurant building permitted within the development; and the addition of a convenience market land use, while reducing the size of approved office space, and allowing for stormwater facilities to be constructed in the park area, with a corresponding decrease in park assessment credits, all as more particularly set forth in the Notification of Proposed of Change (hereinafter said changes shall collectively be referred to as the "Proposed Changes").

- B. That the Proposed Changes are consistent with the State Comprehensive Plan.
- C. That the Proposed Changes are consistent with all local land development regulations and the local comprehensive plan.
- D. That the Proposed Changes do not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- E. That the Proposed Changes are consistent with the Report and Recommendations of the Tampa Bay Regional Planning Council.
- F. That the Proposed Changes are presumed to create a substantial deviation under Subsection 380.06, Florida Statutes.
- G. That a comprehensive review of the impacts generated by the Proposed Changes has been conducted by the City and the Tampa Bay Regional Planning Council.
- H. That the Proposed Changes do not create additional regional impacts or impacts that were not previously reviewed nor do they meet or exceed any of the criteria set forth in Subsection 380.06(19)(b), Florida Statutes.

Section 2. Conclusions of Law. That the City Council, having made the above findings of fact, renders the following conclusions of law:

- A. That these proceedings have been duly conducted pursuant to applicable law and regulations and, based upon the record of these proceedings, the Developer is authorized to conduct the Development as described herein, subject only to the amendments, conditions, restrictions and limitations set forth herein.
- B. That the review by the City, the Tampa Bay Regional Planning Council and other participating agencies and interested citizens concludes that the impacts of the Proposed Changes are adequately addressed pursuant to the requirements of Chapter 380, Florida Statutes, within the terms and conditions of this Ordinance.
- C. That, based upon the analyses which are part of Composite Exhibit "A" and the record of these proceedings, and the conditions contained herein, the Developer has submitted clear and convincing evidence to rebut the presumption created under Subsection 380.06(19), Florida Statutes.
- D. That, based on the foregoing and pursuant to Subsection 380.06(19), Florida Statutes, the Proposed Changes are found not to be a substantial deviation to the previously approved Development Order.

Section 3. Order. That, having made the above findings of fact and conclusions of law, it is ordered:

A. That the Proposed Changes set forth in Composite Exhibit "A," are hereby approved and the Development Order is hereby amended to incorporate the Notice of Change.

B. That the Development Order is hereby amended as follows :

1) The modified Equivalency Matrix, attached hereto as Exhibit "B" and incorporated herein, which allows for an increase in the size of the individual restaurant building permitted within the development and the addition of a convenience market land use, while reducing the size of approved office space, is hereby incorporated.

2) Subsection B. 1. of Section 3. Order. of the Development Order (Ordinance No. 96-88) is hereby amended and restated to read as follows:

1. To off-set the potential demand for park areas generated by the residential uses, the Developer will pay an assessment of \$216 per multi-family dwelling unit and \$263 per single family dwelling unit which shall be payable upon the issuance of the certificate of occupancy for each residential unit. Prior to the issuance of the first certificate of occupancy for a residential unit, the Developer shall provide on site, a 2.963 acre upland park area as shown on the drawing which is a part of Composite Exhibit A , for the recreational use of the residents of the Development, which shall be a credit against the foregoing assessment. The credit for the above park area shall be \$78,845, which amount was calculated using the City's standard park acreage cost of \$26,610 per acre. Notwithstanding the foregoing, if in the future the Developer seeks any permit or approval from the City or any other government entity which would authorize the

construction or use of any portion of the park area for stormwater management purposes which decreases the upland park area, the Developer shall, as a condition of such permit or approval, pay the City an amount equal to the portion of the park area devoted to such stormwater purposes based on a cost per acre of \$26,610. In no event, however, shall the total remaining park area, after the reduction authorized in this section, be less than 1.5 acres in size.

- C. The findings of fact and conclusions of law made in the Development Order are hereby reaffirmed and are incorporated herein by reference, provided, however, that to the extent that a finding of fact or conclusion of law in the original Development Order, or any amendment thereto, conflicts with another finding or conclusion in a different amendment, the more recent in time shall control.

Section 4. Development Order, as Amended. This Ordinance shall constitute the Fourth Amendment to Ordinance No. 9544-A, as previously amended by Ordinance No. 92-162, the Final Order, Ordinance 95-4 and Ordinance No. 96-88, which shall constitute, collectively, the Development Order for the Development as passed and ordained by the City Council. All provisions of the Development Order except those provisions specifically modified herein, shall remain in full force and effect and shall be considered conditions of the Development unless inconsistent with terms and conditions of this Ordinance, in which case the terms and conditions of this ordinance shall govern.

Section 5. Definitions. That the definitions contained in Chapter 380, Florida Statutes, shall control the interpretation and construction of any terms of this Ordinance.

Section 6. Binding Effect. That this Ordinance shall be binding upon the Developer, its assigns, and its successors in interest.

Section 7. Governmental Agencies. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Ordinance.

Section 8. Severance. That in the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 9. Transmittals. That the City Clerk is directed to send copies of this Ordinance, within five (5) days of its being passed and ordained by the City Council, to the Developer, the Florida Department of Community Affairs (Bureau of State Planning), and the Tampa Bay Regional Planning Council.

Section 10. Rendition. That this Ordinance shall be deemed rendered upon transmittal of copies of this Ordinance to the recipients specified in Chapter 380, Florida Statutes.

Section 11. Recording. That the Developer shall record a notice of adoption of this Ordinance pursuant to Chapter 380, Florida Statutes.

Section 12. Effective Date. That this Ordinance shall become a law as provided in the City of Tampa Home Rule Charter and shall take effect upon transmittal to the parties specified in Section 9, hereof.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON DEC 18 1997.

Ronnie Mason

CHAIRMAN, CITY COUNCIL

Approved by me DEC 19 1997

ATTEST:

Janett S. Martini

CITY CLERK

Rich A. Greco

MAYOR

APPROVED as to form by:

Andreas...

ASSISTANT CITY ATTORNEY

State of Florida
County of Hillsborough

This is to certify that the foregoing is a true and correct copy of Ordinance 97-268 or file in my office. Witness my hand and official seal this 19th day of Dec 19 97

JANETT S. MARTINI, CITY CLERK

BY: *Sandra S. Marshall*
SANDRA S. MARSHALL, DEPUTY CITY CLERK

Exhibit A in
NOPC file

110-12197

**EXHIBIT B
EQUIVALENCY MATRIX^{1,3}
Rocky Point Harbor**

Change To:		Change From Office:
Residential		
-	Single Family	1.2549 dus./ksf. ²
-	Apartments	2.5865 dus./ksf.
-	Retire Apartments	4.3906 dus./ksf.
-	Congregate Care Fac.	7.2315 dus./ksf.
Child Care		257.01 sf./ksf.
Branch Bank		
-	Walk-In	140.03 sf./ksf.
-	Drive-In	52.91 sf./ksf.
Movie Theater		.1729 screens/ksf. (1 screen = 5,784 sf.)
Medical Center		357.28 sf./ksf.
Health Club		624.48 sf./ksf.
Restaurant		440.44 sf./ksf.
Museum		2,831.30 sf./ksf.
Speciality Retail		641.8014 sf./ksf.
Comm. Ctr./Social Club		1,081.0467 sf./ksf.
Convenience Market		106.2242 sf./ksf.

1. Residential land use exchanges are based on two way p.m. peak hour external traffic. All other land use exchanges are based on net external p.m. peak hour peak direction project traffic. Use of this matrix shall be limited to the minimums and maximums below to ensure that project impacts for transportation, water, wastewater, solid waste, and affordable housing are not exceeded.

Equivalency Factor Formula = $\frac{\text{Approved yet unbuild Office External Trip Rate (Table 2)}}{\text{Proposed Land Use External Trip Rate (Table 2)}}$

Office to Single Family = $\frac{1.2294/\text{ksf}}{0.9797/\text{du}} = 1.2549 \text{ dus/ksf}$
 Equivalency Factor =

**Certified as true
and correct copy.**

Land Use	Minimum/Maximum ^{c,d}	Land Use	Minimum/Maximum
Office ^a	418,000 sf/738,000 sf	Drive-In Bank	0/2,500 sf
Hotel ^b	379 Rooms/379 Rooms	Movie Theater	0/8 Screens (46,272 sf)
Single Family	0/129 dus.	Medical Center	0/20,000 sf
Apartments	0/615 dus	Health Club	0/20,000 sf
Congregate Care	0/615 dus	Restaurant ^e	0/15,000 sf
Child Care	0/4,000 sf	Museum	0/60,000 sf
Walk-In Bank	0/2,500 sf	Speciality Retail ^f	0/15,000 sf
Convenience Mkt ^f	0/5,000 sf	Comm.Ctr/Soc.Clb	0/20,000 sf

- a. Office minimum equals existing office (258,000 sf) plus 160,000 sf of approved yet unbuild office. Office maximum equals existing office plus 480,000 sf of approved yet unbuild office. Existing Office square footage includes Phase I Restaurant square footage of 5,000 sf.
- b. Hotel minimum and maximum reflect existing hotel. No additional Hotel rooms are permitted under this matrix.
- c. Equivalency Matrix maximums referenced in Footnote #1 are less than the maximums actually achievable utilizing this matrix. However, exchanges using this matrix shall be limited to the maximums identified in Footnote #1.
- d. An absolute maximum of 615 residential dwelling units may be exchanged (i.e., the sum of single family, apartment, retirement apartment and congregate care facility dwelling units can not exceed 615 dwelling units).
- e. No single restaurant building shall exceed 11,000 sf (floor area) or 425 seats.
- f. The cumulative square footage of Convenience Market and Specialty Retail shall not exceed 15,000 sf.
2. Example Exchange - Add 60 Single Family dus by reducing office. $60 \text{ dus} \div 1.2549 = 47.8126$; Reduce Office by 47,813 sf.
3. Notwithstanding any exchange contemplated by this Matrix, no exchange shall result in p.m. peak hour external vehicle trips in excess of 1.) A two way volume of 1,361 vph, and 2.) A peak direction volume of 1,048 vph. The calculation of vehicle trips shall be based on the methodology used in this Notice of Proposed Change.



CITY OF TAMPA

Janett S. Martin, City Clerk

Office of City Clerk

April 29, 1996

Tampa Bay Regional Planning Council
9455 Koger Boulevard
St. Petersburg FL 33702

RE: Petition No. DZ84-130
Ordinance No. 96-88

Dear Sir:

The enclosed document is being transmitted for your information and record keeping process. If further information is needed, please contact the office of Land Development Coordination, at (813) 274-8405.

Sincerely,

Janett S. Martin
City Clerk

JM/gg

Enclosure: Certified Copy of Ordinance No. 96-88

cc: Land Development Coordination

CC & C.M. / T.E.A.

ORDINANCE NO. 96-88

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, APPROVING A THIRD AMENDMENT TO A DEVELOPMENT ORDER RENDERED PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FILED BY SCARBOROUGH CONSTRUCTORS, INC. FOR ROCKY POINT HARBOR (F/K/A ROCKY POINT OFFICE AND COMMERCIAL PARK), A PREVIOUSLY APPROVED DEVELOPMENT OF REGIONAL IMPACT; PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Ordinance No. 9544-A, passed and ordained by the City Council of the City of Tampa, Florida (the "City Council"), on February 26, 1987, approved a development order for Rocky Point Harbor (f/k/a Rocky Point Office and Commercial Park) (the "Development"), a Development of Regional Impact ("DRI") (hereinafter said Ordinance shall be referred to as the "Development Order"); and

WHEREAS, Ordinance No. 92-162, passed and ordained by the City Council on October 8, 1992, approved a first amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "First Amendment"); and

WHEREAS, on November 20, 1992, the Tampa Bay Regional Planning Council ("TBRPC") filed a Petition with the State of Florida Land and Water Adjudicatory Commission ("FLWAC") appealing Ordinance No. 92-162 (the "Appeal"); and

WHEREAS, the Shriners Hospitals for Crippled Children (the "Shriners") and New York Yankees Limited Partnership d/b/a Radisson Bay Harbor Inn (the "Yankees") were granted the right to intervene in the Appeal proceedings in support of TBRPC pursuant to FLWAC's Order of February 12, 1993; and

WHEREAS, on July 30, 1993, a Settlement Agreement among Scarborough Constructors, Inc. ("Scarborough"); Centennial Homes Inc.; Shriners; and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Intervenors' Settlement Agreement"); and

WHEREAS, on August 5, 1993, a Settlement Agreement among Scarborough; the City of Tampa (the "City"); TBRPC; Shriners; and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Agency Settlement Agreement"); and

WHEREAS, on August 24, 1993, FLWAC entered a Final Order adopting and incorporating the Agency Settlement Agreement and amending the First Amendment (hereinafter the "Final Order"); and

WHEREAS, Ordinance No. 95-4, passed and ordained by the City Council on January 5, 1995, approved a second amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "Second Amendment") (hereinafter, the Development Order, as amended by the First Amendment and the Final Order, and Second Amendment, shall collectively be referred to as the "Development Order" unless the context expressly provides otherwise); and

WHEREAS, on December 4, 1995, Scarborough Constructors, Inc. (the "Developer") filed a Notification of Proposed Change to a Previously Approved Development of Regional Impact (DRI) Subsection 380.06(19), Florida Statutes, for the Rocky Point Harbor DRI (the "Notice of Change"); and

WHEREAS, the Notice of Change proposed to amend the Development Order to include an Equivalency Matrix to allow for the simultaneous exchange of previously approved land uses; and to revise the master plan as depicted on Revised Map H to reflect the inclusion of the Equivalency Matrix, all as more particularly set forth in the Notice of Change (hereinafter said changes shall collectively be referred to as the "Proposed Changes"); and

WHEREAS, the Proposed Changes to the Development Order shall constitute the Third Amendment to the Development Order; and

WHEREAS, the City Council has reviewed and considered the Notice of Change as well as all related testimony and evidence submitted by the Developer concerning the Proposed Changes; and

WHEREAS, the City Council as the governing body of the local government having jurisdiction pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider the Proposed Changes and to amend the Development Order; and

WHEREAS, the public notice requirements have been fulfilled; and

WHEREAS, all interested parties and members of the public have been afforded an opportunity to be heard at the public hearing on the Proposed Changes before the City Council; and

WHEREAS, the City Council has reviewed and considered the above-referenced documents as well as all testimony and evidence submitted by certain parties and members of the general public; and

WHEREAS, Section 380.06, Florida Statutes, requires that a development order be amended to reflect the City Council's approval of changes to an adopted development order.

NOW, THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:

Section 1. Findings of Fact. That City Council, having received the above referenced documents, and having received all related comments, testimony and evidence submitted by all persons and members of the general public, finds that there is substantial, competent evidence to support the following findings of fact:

A. That the Developer submitted to the City the Notice of Change, attached hereto as Composite Exhibit "A" and incorporated herein by reference, which proposed a change to include an Equivalency Matrix to allow for the simultaneous exchange of previously approved land uses; and to revise the master plan as depicted on Revised Map H to reflect the inclusion of the Equivalency

Matrix, all as more particularly set forth in the Notice of Change (hereinafter, the proposed changes shall collectively be referred to as the "Proposed Changes").

B. The Developer submitted responses to agency comments on March 11, 1996, and March 14, 1996, and submitted correspondence from Larry Gispert (Director of Hillsborough County Emergency Planning Operations), and Jim Martin (Director of American Red Cross Disaster Emergency Services) dated April 1, 1996 and April 2, 1996, respectively, and a drawing showing a proposed on-site 2.963 acre park area, all of which are attached hereto and made part of Composite Exhibit A and are hereafter referred to as part of the Proposed Changes; unless the context clearly indicates otherwise,

C. That the Proposed Changes are consistent with the State Comprehensive Plan.

D. That the Proposed Changes are consistent with all local land development regulations and the local comprehensive plan.

E. That the Proposed Changes do not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

F. That the Proposed Changes are consistent with the Report and Recommendations of the Tampa Bay Regional Planning Council.

G. That the Proposed Changes are presumed to create a substantial deviation under Subsection 380.06, Florida Statutes.

H. That a comprehensive review of the impacts generated by the Proposed Changes has been conducted by the City and the Tampa Bay Regional Planning Council.

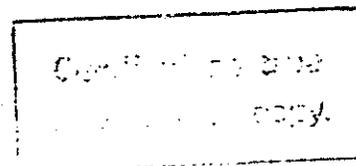
I. That the Proposed Changes do not create additional regional impacts or impacts that were not previously reviewed nor do they meet or exceed any or the criteria set forth in Subsection 380.06(19)(b), Florida Statutes.

Section 2. Conclusions of Law. That the City Council having made the above findings of fact, renders the following conclusions of law:

A. That these proceedings have been duly conducted pursuant to applicable law and regulations and based upon the record of these proceedings, the Developer is authorized to conduct the Development as described herein, subject only to the amendments, conditions, restrictions and limitations set forth herein.

B. That the review by the City, the Tampa Bay Regional Planning Council and other participating agencies and interested citizens concludes that the impacts of the Proposed Changes are adequately addressed pursuant to the requirements of Chapter 380, Florida Statutes, within the terms and conditions of this Ordinance.

C. That based upon the analyses which are part of Composite Exhibit "A" and the record of the proceedings, and the conditions contained herein, the Developer has submitted clear and



convincing evidence to rebut the presumption created under Subsection 380.06(19), Florida Statutes.

D. That based on the foregoing and pursuant to Subsection 380.06(19), Florida Statutes, the Proposed Changes are found not to be a substantial deviation to the previously approved Development Order.

Section 3. Order. That having made the above findings of fact, and conclusions of law, it is ordered:

A. That the Proposed Changes set forth on Composite Exhibit A, are hereby approved and the Development Order is hereby amended to incorporate the Notice of Change.

B. The Development Order is hereby amended to include the Equivalency Matrix, attached hereto as Exhibit "B" and incorporated herein, which allows for the simultaneous exchange from previously approved land uses under the Development Order, subject to the following terms and conditions:

1. To off-set the potential demand for park areas generated by the residential uses, the Developer will pay an assessment of \$216 per multi-family dwelling unit and \$263 per single family dwelling unit which shall be payable upon the issuance of the certificate of occupancy for each residential unit. Prior to the issuance of the first certificate of occupancy for a residential unit, the Developer shall provide on site, a 2.963 acre upland park area as shown on the drawing which is part of Composite Exhibit A, for the recreational use of the residents of the Development, which shall be a credit against the foregoing assessment. The credit for the above park area shall be \$78,845, which amount was calculated using the City's standard park acreage cost of \$26,610 per acre.
2. In accordance with Rule 95-2.0256(5)(a)4., F.A.C., upon the issuance of the first construction permit for a residential unit in the Development, the Developer shall pay to the local chapter of the American Red Cross the sum of \$ 12,600 for the purpose of training public hurricane shelter managers as set forth in the correspondence from Larry Gispert (Director of Hillsborough County Emergency Planning Operations), and Jim Martin (Director of American Red Cross Disaster Emergency Services), attached as part of Composite Exhibit A.
3. The Equivalency Matrix may not be used unless the zoning district applicable to the portion of the Development upon which the proposed use is to be located permits such proposed use to be placed thereon.
4. At the time of selection of a land use exchange under the Equivalency Matrix, the Developer shall notify the Department of Community Affairs (DCA) the Tampa Bay Regional Planning Council (TBRPC), the New York Yankees, and the Shriners Hospital for Crippled Children, of said selection and shall also provide the above listed agencies and persons and the City with cumulative land use totals and remaining allowable quantities. Notice to the New York Yankees shall be at Bay Harbour Inn, 7000 Courtney Campbell Causeway, Tampa, Florida, 33607, and notice to the Shriners Hospital for Crippled Children shall be at 2900 Rocky Point Drive, Tampa, Florida, 33607,



or such other address as they may designate pursuant to Section 15 of the Development Order. This condition shall not be construed as a requirement for an approval of a particular land use exchange so long as the desired exchange is consistent with the formula set forth in the Equivalency Matrix.

C. The Development Order is hereby amended to refer to Revised Map H, attached hereto as Exhibit "C" and incorporated herein, in lieu of the previously approved Master Plan (Map H);

D. Prior to issuance of certificates of occupancy for any congregate care unit, the Developer shall enter into a mutual aid agreement with a congregate care facility which is located outside a hurricane vulnerability zone or a high hazard hurricane evacuation area ("Inland Congregate Facility") to provide for the evacuation of residents from any congregate care unit within the Development to the Inland Congregate Facility.

E. The findings of fact and conclusion of law made in the Development Order are hereby reaffirmed and are incorporated herein by reference, provided, however, that to the extent that a finding of fact or conclusion of law in the original Development Order, or any amendment thereto, conflicts with another finding or conclusion in a different amendment, the more recent in time shall control.

Section 4. Development Order, as Amended. This Ordinance shall constitute the Third Amendment to Ordinance No. 9544-A, as previously amended by Ordinance No. 92-162 and the Final Order, and Ordinance 95-4, which shall constitute, collectively, the Development Order for the Development as passed and ordained by the City Council. All provisions of the Development Order except those provisions specifically modified herein, shall remain in full force and effect and shall be considered conditions of the Development unless inconsistent with terms and conditions of this Ordinance, in which case the terms and conditions of this ordinance shall govern.

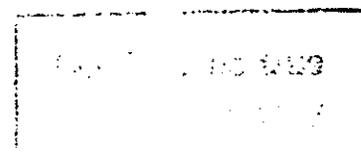
Section 5. Definitions. That the definitions contained in Chapter 380, Florida Statutes, shall control the interpretation and construction of any terms of this Ordinance.

Section 6. Binding Effect. That this Ordinance shall be binding upon the Developer, its assigns, and its successors in interest.

Section 7. Governmental Agencies. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Ordinance.

Section 8. Severance. That in the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 9. Transmittals. That the City Clerk is directed to send copies of this Ordinance, within five (5) days of its being passed and ordained by the City Council, to the Developer, the



Florida Department of Community Affairs (Bureau of State Planning, and the Tampa Bay Regional Planning Council.

Section 10. Rendition. That this Ordinance shall be deemed rendered upon transmittal of copies of this Ordinance to the recipients specified in Chapter 380, Florida Statutes.

Section 11. Recording. That the Developer shall record a notice of adoption of this Ordinance pursuant to Chapter 380, Florida Statutes.

Section 12. Effective Date. That this Ordinance shall become a law as provided in the City of Tampa Home Rule Charter and shall take effect upon transmittal to the parties specified in Section 9 hereof.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON APR 25 1996

Paul A. Jensen
CHAIRMAN, CITY COUNCIL PRO-TEM
Approved by me APR 26 1996
Nick A. Greco
MAYOR

ATTEST:
Janett S. Martini
CITY CLERK

APPROVED as to form by:

Dina K. Guinness
ASSISTANT CITY ATTORNEY

State of Florida
County of Hillborough

This is to certify that the foregoing is a true and correct copy of Ordinance 96-88 or file in my office
Witness my hand and official seal this 29th day of April 19 96
Janett S. Martini
CITY CLERK

B
EXHIBIT

EQUIVALENCY MATRIX^{1,3}
Rocky Point Harbor

Change To:	Change From Office:
Residential	
- Single Family	1.2549 dus./ksf. ²
- Apartments	2.5865 dus./ksf.
- Retire Apartments	4.3906 dus./ksf.
- Congregate Care Fac.	7.2315 dus./ksf.
Child Care	257.01 sf./ksf.
Branch Bank	
- Walk-In	140.03 sf./ksf.
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Movie Theater	.1729 screens/ksf. (1 screen = 5,784 sf.)
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Museum	2,831.30 sf./ksf.
Speciality Retail	641,8014 sf/ksf.
Comm. Ctr./Social Club	1,081.0467 sf/ksf.

1 Residential land use exchanges are based on two way p.m. peak hour external traffic. All other land use exchanges are based on net external p.m. peak hour peak direction project traffic. Use of this matrix shall be limited to the minimums and maximums below to ensure that project impacts for transportation, water, wastewater, solid waste, and affordable housing are not exceeded.

Equivalency Factor Formula = $\frac{\text{Approved yet unbuilt Office External Trip Rate (Table 2)}}{\text{Proposed Land Use External Trip Rate (Table 2)}}$

Office to Single Family = $\frac{1.2294/\text{ksf}}{0.9797/\text{du}} = 1.2549 \text{ dus/ksf}$
Equivalency Factor =

Land Use	Minimum	Maximum ^{c,d}	Land Use	Minimum/Maximum
Office ^a	418,000 sf	738,000 sf	Drive-In Bank	0/2,500 sf
Hotel ^b	379 Rooms	379 Rooms	Movie Theater	0/8 Screens (46,272 sf)
Single Family	0/129 dus.		Skilled Nursing	0/130,000 sf
Apartments	0/615 dus		Medical Center	0/20,000 sf
Congregate Care	0/615 dus		Health Club	0/20,000 sf
Child Care	0/4,000 sf		Restaurant ^e	0/15,000 sf
Walk-In Bank	0/2,500 sf		Museum	0/60,000 sf
			Speciality Retail	0/15,000 sf
			Comm.Ctr/Soc.Clb	0/20,000 sf

a Office minimum equals existing office (258,00 sf) plus 160,000 sf of approved yet unbuilt office. Office maximum equals existing office plus 480,000 sf of approved yet unbuilt office.

b Hotel minimum and maximum reflect existing hotel. No additional Hotel rooms are permitted under this matrix.

c Equivalency Matrix maximums referenced in Footnote # 1 are less than the maximums actually achievable utilizing this matrix. However exchanges using this matrix shall be limited to the maximums identified in Footnote # 1.

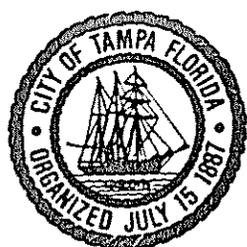
d. An absolute maximum of 615 residential dwelling units may be exchanged (i.e., the sum of single family, apartment, retirement apartment and congregate care facility dwelling units can not exceed 615 dwelling units).

e. No single restaurant shall exceed 10,000 sf or 300 seats.

2 Example Exchange - Add 60 Single Family dus by reducing office. 60 dus - 1.2549 = 47.8126; Reduce Office by 47.813 sf.

3. Notwithstanding any exchange contemplated by this Matrix, no exchange shall result in p.m. peak hour external vehicle trips in excess of 1.) A two way volume of 1,361 vph, and 2.) A peak direction volume of 1,048 vph. The calculation of vehicle trips shall be based on the methodology used in this Notice of Proposed Change.

Exhibit B



CITY OF TAMPA

Janett S. Martin, City Clerk

Office of City Clerk

January 11, 1995

Tampa Bay Regional Planning Council
9455 Koger Boulevard
St. Petersburg FL 33702

RE: Petition No. DZ84-130
Ordinance No. 95-4

Dear Sir:

The enclosed document is being transmitted for your information and record keeping process.

If further information is needed, please contact the office of Land Development Coordination,

(813) 223-8405.

Sincerely,

Janett S. Martin
City Clerk

JM/gg

Enclosure: Certified Copy of Ordinance No. 95-4

CERTIFIED MAIL

cc: Land Development Coordination



ORDINANCE NO. 95-4

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, APPROVING A SECOND AMENDMENT TO A DEVELOPMENT ORDER RENDERED PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FILED BY SCARBOROUGH CONSTRUCTORS, INC. FOR ROCKY POINT HARBOR (FORMERLY KNOWN AS ROCKY POINT OFFICE AND COMMERCIAL PARK), A PREVIOUSLY APPROVED DEVELOPMENT OF REGIONAL IMPACT; PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Ordinance No. 9544-A, passed and ordained by the City Council of the City of Tampa, Florida (the "City Council"), on February 26, 1987, approved a Development Order for Rocky Point Harbor (f/k/a Rocky Point Office and Commercial Park) (the "Development"), a Development of Regional Impact ("DRI"), (hereinafter said Ordinance shall be referred to as the "Development Order"); and

WHEREAS, Ordinance No. 92-162, passed and ordained by the City Council on October 8, 1992, approved a first amendment to the Development Order (hereinafter said Ordinance shall be referred to as the "First Amendment"); and

WHEREAS, on November 20, 1992, the Tampa Bay Regional Planning Council (the "TBRPC") filed a Petition with the State of Florida Land and Water Adjudicatory Commission ("FLWAC") appealing Ordinance No. 92-162 (the "Appeal"); and

WHEREAS, the Shriners Hospitals for Crippled Children (the "Shriners") and New York Yankees Limited Partnership d/b/a Radisson Bay Harbor Inn (the "Yankees") were granted the right to intervene in the Appeal proceedings in support of the TBRPC pursuant to FLWAC's Order of February 12, 1993; and

WHEREAS, on July 30, 1993, a Settlement Agreement among Scarborough Constructions, Inc. ("Scarborough"); Centennial Homes, Inc.; Shriners; and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Intervenors' Settlement Agreement"); and

WHEREAS, on August 5, 1993, a Settlement Agreement among Scarborough; the City of Tampa (the "City"); the TBRPC; Shriners; and Yankees was entered into to resolve the issues in dispute among them with respect to the Appeal (the "Agency Settlement Agreement"); and

WHEREAS, on August 24, 1993, FLWAC entered a Final Order adopting and incorporating the Agency Settlement Agreement and amending the First Amendment (hereinafter the Development Order as amended by the First Amendment and the Final Order shall be collectively referred to as the "Development Order" unless otherwise expressly provided); and

WHEREAS, on July 21, 1994, Scarborough Constructors, Inc. (the "Developer") filed a Notification of Proposed Change to a Previously Approved Development of Regional Impact Subsection 380.06(19), Florida Statutes, for the Rocky Point Harbor (f/k/a Rocky Point Office and Commercial Park) DRI (the "Notification"); and

WHEREAS, on November 17, 1994, the Developer filed a letter containing a supplemental response (hereinafter the Notification together with this supplemental response shall be collectively referred to as the "NOPC"); and

WHEREAS, the NOPC proposed to amend the Development Order, as previously amended by the First Amendment and Final Order, to change the buildout date for Phase II to December 31, 1999; extend the expiration date of the Development Order to December 31, 2005; eliminate the proportionate share payments and associated transportation improvement; and to provide that transportation mitigation shall be in accordance with the City of Tampa Transportation Impact Fee Ordinance (hereinafter said changes shall be referred to as the "Proposed Changes"); and

WHEREAS, the Proposed Changes to the Development Order, as previously amended by the First Amendment and Final Order, shall constitute the Second Amendment to the Development Order; and

WHEREAS, the City Council has reviewed and considered the NOPC as well as all related testimony and evidence submitted by the Developer concerning the Proposed Changes; and

Certified as true
and correct copy

WHEREAS, the City Council, as the governing body of the local government having jurisdiction pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider the Proposed Changes and to amend the Development Order, as previously amended by the First Amendment and Final Order; and

WHEREAS, the public notice requirements have been fulfilled; and

WHEREAS, all interested parties and members of the public have been afforded an opportunity to be heard at the public hearing on the Proposed Changes before the City Council; and

WHEREAS, the City Council has reviewed and considered the above-referenced documents as well as all testimony and evidence submitted by certain parties and members of the general public; and

WHEREAS, Section 380.06, Florida Statutes, requires that a development order be amended to reflect the City Council's approval of changes to an adopted development order.

NOW, THEREFORE
BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:

Section 1. Findings of Fact. That City Council, having received the above referenced documents, and having received all related comments, testimony and evidence submitted by all persons and members of the general public, finds that there is substantial, competent evidence to support the following findings of fact:

A. That the Developer submitted to the City the NOPC attached hereto and incorporated herein by reference as Composite Exhibit "A".

B. That the Proposed Changes are consistent with all local land development regulations and the local comprehensive plan.

C. That the Proposed Changes do not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

D. That the Proposed Changes are consistent with the recommendations of the Tampa Bay Regional Planning Council.

E. That a comprehensive review of the impacts generated by the Proposed Changes has been conducted by the City and the Tampa Bay Regional Planning Council.

F. That the Proposed Changes do not create additional regional impacts or impacts that were not previously reviewed nor meet or exceed any of the criteria set forth in Subsection 380.06(19)(b), Florida Statutes.

Section 2. Conclusions of Law. That the City Council having made the above findings of fact, renders the following conclusions of law:

A. That these proceedings have been duly conducted pursuant to applicable law and regulations, and based upon the record of these proceedings, the Developer is authorized to conduct the Development as described herein, subject only to the amendments, conditions, restrictions and limitations set forth herein.

B. That the review by the City, the Tampa Bay Regional Planning Council and other participating agencies and interested citizens concludes that the impacts of the Proposed Changes are adequately addressed pursuant to the requirements of Chapter 380, Florida Statutes, within the terms and conditions of this Ordinance.

C. That based on the foregoing and pursuant to Chapter 380.06(19), Florida Statutes, the Proposed Changes are found not to be a substantial deviation to the previously approved Development Order, as amended by the First Amendment and Final Order.

Section 3. Order. That having made the above findings of fact, and conclusions of law, it is ordered:

A. That the Proposed Changes are hereby approved and the Development Order, as amended by the First Amendment and Final Order, is hereby amended to incorporate the NOPC.

Certified as true
and correct

B. That the Development Order, as amended by the First Amendment and Final Order, is hereby amended as follows:

- 1) to change the buildout date for Phase II to December 31, 1999;
- 2) extend the expiration date of the Development Order to December 31, 2005;
- 3) to eliminate the proportionate share payments and associated transportation improvement;
- 4) to provide that transportation mitigation shall be in accordance with the City of Tampa Transportation Impact Fee Ordinance.

Section 4. Development Order, as Amended. This Ordinance shall constitute the Second Amendment to Ordinance No. 9544-A, as previously amended by Ordinance No. 92-162 and the Final Order, which shall constitute, collectively, the Development Order for the Development as passed and ordained by the City Council. All provisions of the Development Order except those provisions specifically modified herein, shall remain in full force and effect and shall be considered conditions of the Development unless inconsistent with the terms and conditions of this Ordinance, in which case the terms and conditions of this Ordinance shall govern.

Section 5. Definitions. That the definitions contained in Chapter 380, Florida Statutes, shall control the interpretation and construction of any terms of this Ordinance.

Section 6. Binding Effect. That this Ordinance shall be binding upon the Developer, its assigns, and its successors in interest.

Section 7. Governmental Agencies. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Ordinance.

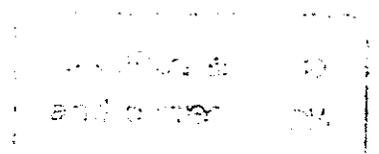
Section 8. Severance. That in the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 9. Transmittals. That the City Clerk is directed to send copies of this Ordinance, within five (5) days of its becoming a law to the Developer, Scarborough Constructors, Inc., Attn: David Felice, Project Manager, P. O. Box 7078, Wesley Chapel, Florida 33543, the Florida Department of Community Affairs (Bureau of State Planning), and the Tampa Bay Regional Planning Council.

Section 10. Rendition. That this Ordinance shall be deemed rendered upon transmittal of copies of this Ordinance to the recipients specified in Chapter 380, Florida Statutes.

Section 11. Recording. That the Developer shall record a notice of adoption of this Ordinance pursuant to Chapter 380, Florida Statutes.

Section 12. Effective Date. That this Ordinance shall become a law as provided in the City of Tampa Home Rule Charter and shall take effect upon transmittal to the parties specified in Section 9, hereof.



COMPOSITE EXHIBIT "A"
TO AMENDED DEVELOPMENT ORDER

NOPC

Cardinal ...
and ...

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA,
FLORIDA, ON JAN 05 1995.

Ronnie Mason

CHAIRMAN, CITY COUNCIL

APPROVED by me JAN 06 1995

ATTEST:

Janett S. Martin

CITY CLERK

Andre W. Anderson

MAYOR

APPROVED as to form by:

Gina K. Gaines

ASSISTANT CITY ATTORNEY

babcock\ado\adoc1n.2
12/6/94

State of Florida
County of Hillsborough

This is to certify that the foregoing is a
true and correct copy of Ordinance 95-4
as file in my office.

Witness my hand and official seal this 6th day

of Jan, 19 95.

JANETT S. MARTIN, CITY CLERK

CITY CLERK
BY: *Gail A. Anderson*
GAIL A. ANDERSON, DEPUTY CITY CLERK

110b

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA BAY REGIONAL PLANNING COUNCIL

Petitioner,

and

CASE NO.: 93-0870 DRI

SHRINERS HOSPITALS FOR
CRIPPLED CHILDREN and NEW
YORK YANKEES LIMITED
PARTNERSHIP d/b/a RADISSON
BAY HARBOR INN,

Intervenors,

v.

CITY OF TAMPA and
SCARBOROUGH CONSTRUCTORS,
INC.,

Respondents.

_____ /

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this 5th day of August, 1993, by and among SCARBOROUGH CONSTRUCTORS, INC., a Florida corporation ("Scarborough"); the CITY OF TAMPA (the "CITY"); the TAMPA BAY REGIONAL PLANNING COUNCIL (the "TBRPC"); SHRINERS HOSPITALS FOR CRIPPLED CHILDREN, a Colorado corporation (the "SHRINERS"); and the NEW YORK YANKEES LIMITED PARTNERSHIP, d/b/a RADISSON BAY HARBOR INN, an Ohio limited partnership (the "Yankees").

WITNESSETH:

WHEREAS, on February 28, 1987, the City Council of the City of Tampa adopted Ordinance No. 9544-A, constituting a development of regional impact development order for the Rocky Point Office and Commercial Park (the "Original Development Order"); and

WHEREAS, on October 8, 1992, the City adopted Ordinance No. 92-162, constituting a development of regional impact development order amendment for the Rocky Point Office and Commercial Park (the "Amended Development Order"); and

WHEREAS, on November 20, 1992, the TBRPC filed a Petition with the State of Florida Land and Water Adjudicatory Commission (the "FLWAC") appealing the Amended Development Order (the "Appeal"); and

WHEREAS, the Shriners and the Yankees were granted the right to intervene in the Appeal proceedings in support of the TBRPC pursuant to the FLWAC's Order dated February 12, 1993; and

WHEREAS, Scarborough and the City, and the Shriners, the Yankees and the TBRPC (collectively the "Parties") desire to resolve the issues in dispute between them with respect to the Appeal.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. The development authorized in the Amended Development Order constitutes a substantial deviation, pursuant to Section 380.06(19), Florida Statutes. However, the staffs of the Florida Department of Community Affairs (the "DCA"), the Florida Department of Transportation (the "FDOT"), the TBRPC and the City have conducted comprehensive

studies of the development authorized by the Amended Development Order (the "Development"), and, therefore, further substantial deviation review by the DCA, the FDOT, the TBRPC or the City is unnecessary and shall not be undertaken. In addition, the Amended Development Order sets forth appropriate mitigation for the additional regional impacts of the Development in accordance with the requirements of Chapter 380, Florida Statutes, and, accordingly, no additional mitigation of any kind shall be required as a condition to the development, construction or occupancy of the Development.

2. The Parties shall request the FLWAC to enter a Final Order affirming and adopting the Amended Development Order, without further review, and without further modifications or conditions except for the following:

(a) The Development shall be reduced from 500,000 square feet of gross floor area to 480,000 square feet of gross floor area; and

(b) Any development in the Rocky Point Office and Commercial Park in excess of 480,000 square feet of gross floor area plus the gross floor area of existing development in the Rocky Point Office and Commercial Park shall constitute an automatic substantial deviation and, pursuant to Section 380.06, Florida Statutes, require further development of regional impact review, and such development shall be limited to the following uses:

- (1) "Multi-Family Residential Retirement", which shall mean a Multi-family Residential Community which provides "housing for older persons" as defined in the Fair Housing Amendments Act of 1988.

- (2) "Conference Facility", which shall mean a building or group of buildings intended primarily for assemblies or meetings and which is rented or leased by the hour, day or week for such purposes, independent of and separate from any motel/hotel or Restaurant.
- (3) "Park", which shall mean land which has been designated for active or passive recreational activities, open space or wilderness areas.
- (4) "Marina", which shall mean a facility for storing, servicing, fueling, berthing, securing and launching of boats and vessels which may include the sale of fuel and incidental supplies, retail activities and one Restaurant.
- (5) If the developer is unable to locate and develop a Marina in the Rocky Point Office and Commercial Park after a good faith effort to do so, a "Restaurant", which shall mean an establishment whose principal business is the sale of food, frozen desserts or beverages to the customer in a ready-to-consume state. The definition of Restaurant shall exclude "sports theme" restaurants, "sports theme" lounges or "sports theme" bars, and "fast food" type restaurants.
- (6) "Child Care Center/Nursery School", which shall mean any establishment that provides, on a regular basis, supervision and

care for children for a period of less than twenty-four (24) hours a day. The Child Care Center/Nursery School may include classrooms, offices for the staff of the Child Care Center/Nursery School, eating areas and playgrounds.

- (7) "Branch Bank", which shall mean a financial institution engaged in banking and closely related functions, including the extension of credit by means of loans and investments and fiduciary activities.
- (8) "Movie Theater", which shall mean a building for the presentation of motion pictures containing no more than four motion picture screens, and ancillary services for patrons.
- (9) "Convalescent Care/Nursing Home/Skilled Care Facility", which shall mean any facility which provides for a period exceeding twenty-four (24) hours, nursing care, personal care, or custodial care excluding care and treatment for people with drug or alcohol problems.
- (10) "Single-Family Detached Residential Housing", at a density no greater than six (6) dwelling units per gross acre. For purposes of this Agreement, "Single-Family Detached Residential Housing" shall mean a structure containing a single Dwelling Unit with open space on all sides, and "Dwelling Unit" shall mean a room or group of rooms forming a single independent

habitable unit used for, or intended to be used for living, sleeping, sanitation, cooking, and eating purposes by one family only, for owner occupancy or for rental, lease, or other occupancy on a monthly or longer basis, and containing independent kitchen, sanitary and sleeping facilities.

- (11) "Medical Specialty Center", which shall mean a facility limited to medical specialties (such as a sports medicine facility and/or an orthopedic center) and is also limited to diagnostic and outpatient care and excludes drug or alcohol rehabilitation.
- (12) "Museum", which shall mean a facility for the procurement, care, study, display, and presentation of objects or information of artistic, historical, educational or cultural value and interest, but excludes amusement arcade-type uses.
- (13) "Health Club", which shall mean a facility which is engaged in the sale of services, training, or assistance in a program of physical exercise or which provides the right or privilege to use equipment or facilities in furtherance of a program of physical exercise.
- (14) An office building not to exceed 40,000 square feet of gross floor area and not exceeding a total gross floor area of 480,000 square feet when added to the square footage of the office buildings described in paragraph 2 (a), above. For purposes of

this Agreement an "Office Building" shall mean a building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers.

The uses listed above are not conceptually approved. All terms and provisions of the Amended Development Order shall remain in full force and effect except as herein modified.

4. This Agreement shall be presented for approval to the FLWAC as a full and complete settlement of all outstanding issues, whatsoever, between the Parties in this Appeal. The Parties agree to use their best efforts to obtain approval of this Agreement by the FLWAC and to have the FLWAC enter a Final Order modifying the Amended Development Order in accordance with Paragraph 2, above, which Final Order of the FLWAC shall constitute the "Final Development Order" for Phase II of the Rocky Point Office and Commercial Park. It is the intention of the Parties that this Agreement shall merge and be absorbed into the Final Development Order. Accordingly, if this Agreement is approved by the FLWAC and the FLWAC enters the Final Development Order, this Agreement shall automatically extinguish and be of no further force or effect. Thereafter, enforcement or modification of the Original Development Order, as amended by the Amended Development Order, as amended by the Final Development Order, shall be in accordance with Chapter 380, Florida Statutes. In the event that the FLWAC does not approve this Agreement and enter the Final Development Order, this Agreement shall become null and void and be of no further force or effect.

5. Within seven (7) days after the full execution of this Agreement, Scarborough shall deposit with Linda M. Hallas, Esquire, (the "Escrow Agent"), the amount of \$10,118.30 (the "Deposit"), which shall be held in the Hallas & Tucker, P.A. Trust Account and disbursed in strict conformance with this paragraph. If this Agreement is approved by the FLWAC and the FLWAC enters the Final Development Order, the Deposit shall be immediately transmitted to the TBRPC in full satisfaction of any and all review fees due to the TBRPC for its review of the development authorized by the Amended Development Order, as amended by the Final Development Order (the amount of \$10,118.31 having already been paid to the TBRPC). If this Agreement is not approved by the FLWAC or if the FLWAC does not enter the Final Development Order, the Deposit shall be immediately transmitted to Scarborough. Escrow Agent, by execution of this Agreement, agrees that she will receive and hold the Deposit paid to her and disburse it only in accordance with this Agreement. This paragraph, but only this paragraph, shall survive the entering of the Final Development Order.

6. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed and sealed this Agreement on the dates shown below.

Signed, sealed and delivered
in the presence of:

SCARBOROUGH CONSTRUCTORS, INC.

Name: _____

By: Frederick H. Burcaw
Its: PRESIDENT
Name: FREDERICK H. BURCAW

Name: _____

Date: 8/4/93

CITY OF TAMPA

ATTEST:

Frances [Signature]
City Clerk

By: Sandra W. Freedman
MAYOR
SANDRA W. FREEDMAN

TAMPA BAY REGIONAL
PLANNING COUNCIL

Linda M. Hallas
Name: Linda M. Hallas

By: Julia E. Greene
Its: Executive Director
Name: Julia Greene

Betty Jane Shifflett
Name: Betty Jane Shifflett

Date: 8-4-93

SHRINERS HOSPITALS FOR
CRIPPLED CHILDREN

Vanessa L. Heitzman
Name: Vanessa L. Heitzman

By: Burton E. Ravellette, Jr.
Its: First Vice President
Name: Burton E. Ravellette, Jr.
cKRA

Jeanne E. Hathaway
Name: Jeanne Hathaway

Date: August 5, 1993

NEW YORK YANKEES LIMITED
PARTNERSHIP d/b/a RADISSON
BAY HARBOR INN

Name: _____

By: _____
Its: _____
Name: _____

Name: _____

Date: _____

LINDA M. HALLAS, ESQUIRE,
ESCROW AGENT

Name: _____

By: _____

Name: _____

Date: _____

SHRINERS HOSPITALS FOR
CRIPPLED CHILDREN

Name: _____

By: _____

Its: _____

Name: _____

Name: _____

Date: _____

NEW YORK YANKEES LIMITED
PARTNERSHIP d/b/a RADISSON
BAY HARBOR INN

F B Matthews
Name: F B MATTHEWS

By: Harold Z. Stein

Its: Secretary

Name: Harold Z. Steinbrenner

Dinie Taylor
Name: DINIE TAYLOR

Date: 8/5/93

LINDA M. HALLAS, ESQUIRE,
ESCROW AGENT

Name: _____

By: _____

Name: _____

Date: _____

SHRINERS HOSPITALS FOR
CRIPPLED CHILDREN

Name: _____

By: _____

Its: _____

Name: _____

Name: _____

Date: _____

NEW YORK YANKEES LIMITED
PARTNERSHIP d/b/a RADISSON
BAY HARBOR INN

Name: _____

By: _____

Its: _____

Name: _____

Name: _____

Date: _____

LINDA M. HALLAS, ESQUIRE,
ESCROW AGENT

Beth Jane Shefflett
Name: Beth Jane Shefflett

By: Linda M. Hallas

Kim Blackford
Name: Kim Blackford

Date: 8-4-93

COMPOSITE EXHIBIT "A"

Part 1 - NOPC Application
Part 2 - Response to Comments

Is located in the NOPC
REVIEW FILE.

#110 NOPC 2/95

Urin Rusty
2/16/95

STATE OF FLORIDA
LAND AND WATER ADJUDICATORY COMMISSION

TAMPA BAY REGIONAL PLANNING)	
COUNCIL,)	
)	
Petitioner,)	CASE NO. APP-92-060
)	DOAH CASE NO. 93-0870DRI
and)	
)	
SHRINERS HOSPITAL FOR CRIPPLED)	
CHILDREN and NEW YORK YANKEES)	
LIMITED PARTNERSHIP, d/b/a/)	
RADISSON BAY HARBOR INN,)	
)	
Intervenors,)	
)	
vs.)	
)	
CITY OF TAMPA and SCARBOROUGH)	
CONSTRUCTORS, INC.,)	
)	
Respondents.)	
)	

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission on August 24, 1993 and pursuant to Chapter 380, Florida Statutes. Having reviewed the record in this matter, and based on the parties' settlement, this matter is hereby dismissed in accordance with the Division of Administrative Hearings' ("DOAH") Order issued on August 10, 1993.

The Settlement Agreement amends Ordinance 92-162 adopted by the City of Tampa on October 8, 1992 for the Rocky Point Office and Commercial Park Development of Regional Impact. DOAH's Order is based on a Settlement Agreement entered into by the parties

August 25, 1993

1/10
6/26

which states that all factual and legal disputes have been amicably resolved. A copy of said Order and Settlement Agreement is attached hereto as Exhibit A.

IT IS HEREBY ORDERED, that the Settlement Agreement entered into by the Tampa Bay Regional Planning Council, Scarborough Constructors, Inc., City of Tampa, Shriners Hospitals for Crippled Children, and the New York Yankees Limited Partnership d/b/a Radisson Bay Harbor Inn, is hereby adopted and incorporated into this Final Order, and the Amended Development Order, Ordinance 92-162, is hereby amended pursuant to the terms of the Settlement Agreement and this matter is dismissed.

Any party to this order has the right to seek judicial review of the order pursuant to section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Planning and Budgeting, Executive Office of the Governor, Room 311 Carlton Building, 501 South Gadsden Street, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied with the applicable filing fees, with the appropriate District Court of Appeal. Notice of Appeal must be filed within 30 days of the day this order is filed with the Clerk of the Commission.

DONE AND ENTERED this 24th day of August 1993.

Jeresa B. Zinker
for DAVID K. COBURN, Secretary
Florida Land and Water
Adjudicatory Commission

FILED with the Clerk of the Florida Land and Water
Adjudicatory Commission this 24th day of August 1993.

Patricia P. McCray
Clerk, Florida Land and Water
Adjudicatory Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by U.S. Mail this 24th day of August 1993.

Jeresa B. Sinker
for David K. Coburn, Secretary
Florida Land and Water
Adjudicatory Commission

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, Florida 32399

Honorable Jim Smith
Secretary of State
The Capitol
Tallahassee, Florida 32399

Honorable Gerald Lewis
Comptroller
The Capitol
Tallahassee, Florida 32399

Honorable Tom Gallagher
Treasurer
The Capitol
Tallahassee, Florida 32399

Honorable Bob Butterworth
Attorney General
The Capitol
Tallahassee, Florida 32399

Honorable Betty Castor
Commissioner of Education
The Capitol
Tallahassee, Florida 32399

Honorable Bob Crawford
Commissioner of Agriculture
The Capitol
Tallahassee, Florida 32399

Robin Hassler, Esquire
Governor's Legal Office
The Capitol, Room 210
Tallahassee, Florida 32399

Kathy Castor, Esquire
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100

Linda M. Hallas, Esquire
9455 Koger Boulevard
Suite 205
St. Petersburg, Florida 33702

Robert Apgar, Esquire
820 East Park Avenue
Building F, Suite 100
Tallahassee, Florida 32301

Florida Administrative
Law Report
Post Office Box 385
Gainesville, Florida 32602

P. Michael Ruff, Hearing Officer
Division of Administrative Hearings
DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

John Campbell, Esquire
Brian Forbes, Esquire
111 East Madison Street
Tampa, Florida 33602

Jerry Gewirtz, Esquire
Pamela Akin, Esquire
City Attorney, City of Tampa
315 East Kennedy Boulevard
Tampa, Florida 33602

L. David Shear, Esquire
Shear, Newman, et. al.
201 East Kennedy Boulevard
Suite 1000
Tampa, Florida 33602

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA BAY REGIONAL PLANNING)
COUNCIL,)
)
Petitioner,)
)
and)
)
SHRINERS HOSPITALS FOR CRIPPLED)
CHILDREN and NEW YORK YANKEES)
LIMITED PARTNERSHIP, d/b/a)
RADISSON BAY HARBOR INN,)
)
Intervenors,)
)
vs.)
)
CITY OF TAMPA and SCARBOROUGH)
CONSTRUCTORS, INC.,)
)
Respondents.)
_____)

CASE NO. 93-870DRI

APY 93-060
RECEIVED
AUG 11 1993

FLORIDA LAND AND WATER
ADJUDICATORY COMMISSION

ORDER

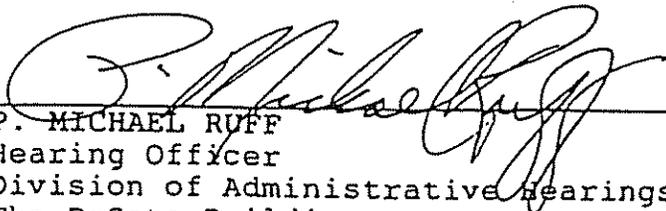
THIS CAUSE comes before the undersigned Hearing Officer upon a "Joint Motion to File Settlement Agreement". The Hearing Officer is thus advised that all factual and legal disputes have been amicably resolved between the parties and all parties have joined in the Motion. Accordingly, it is

ORDERED that:

1. The Motion is hereby GRANTED.
2. The hearing presently scheduled for August 16-20, 1993 is hereby CANCELLED.
3. Jurisdiction is hereby relinquished to the Florida Land and Water Adjudicatory Commission for entry of a Final Order incorporating the terms of the Settlement Agreement between the parties.

EXHIBIT A

DONE AND ORDERED this ^{10th} day of August, 1993, at Tallahassee, Leon County, Florida.


P. MICHAEL RUFF
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the Division
of Administrative Hearings this 10th
day of August, 1993.

Copies furnished to:

Robert C. Apgar, Esq.
David A. Theriaque, Esq.
APGAR & THERIAQUE
820 East Park Avenue
Building F, Suite 100
Tallahassee, FL 32301

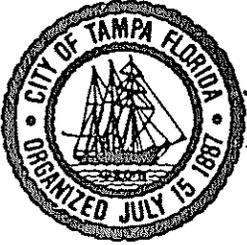
Linda M. Hallas, Esq.
TUCKER & HALLAS, P.A.
9455 Koger Boulevard, Suite 209
St. Petersburg, FL 33702

John Campbell, Esq.
Brian D. Forbes, Esq.
David M. Mechanik, Esq.
MACFARLANE FERGUSON
111 East Madison Street
Tampa, FL 33602

Jerry M. Gewirtz, Esq.
Pamela K. Akin, Esq.
City Attorney, City of Tampa
315 East Kennedy Boulevard
Tampa, FL 33602

L. David Shear, Esq.
SHEAR, NEWMAN, ET AL.
201 East Kennedy Boulevard
Suite 1000
Tampa, FL 33602

Kathy Castor, Esq.
Department of Community Affairs
2740 Centerview Drive
Tallahassee, FL 32399-2100



CITY OF TAMPA

Frances Henriquez, City Clerk

OFFICE OF CITY CLERK

October 13, 1992

Tampa Bay Regional Planning Council
9455 Koger Boulevard
St. Petersburg FL 33702

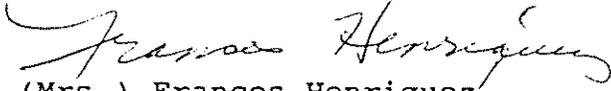
RE: Petition No. DZ84-130
Ordinance No. 92-162

Dear Sir:

The enclosed document is being transmitted for your information and record keeping process.

If further information is needed, please contact Susan Swift, Manager, Land Development Coordination, 223-8405.

Sincerely,


(Mrs.) Frances Henriquez
City Clerk

FH/gg

Enclosure: Ordinance

CERTIFIED MAIL

cc: Susan Swift, Land Development Coordination

received 10/14/92

Exhibits in NOPC file

110

227-10-11
1991

ORDINANCE NO. 92- 162

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, APPROVING AN AMENDMENT TO A DEVELOPMENT ORDER RENDERED PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FILED BY THE BABCOCK COMPANY FOR ROCKY POINT OFFICE AND COMMERCIAL PARK, A PREVIOUSLY APPROVED DEVELOPMENT OF REGIONAL IMPACT, AND SUBSEQUENT AMENDMENT THERETO; PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Ordinance No. 9544-A, passed and ordained by the City Council of the City of Tampa, Florida, on February 26, 1987, approved a Development Order for Rocky Point Office and Commercial Park (the "Development"), a Development of Regional Impact (the "Development Order"); and

WHEREAS, the Development Order approved Phase I of the Development and denied Phase II of the Development, subject to various terms and conditions, all of which are more fully set forth in the Development Order; and

WHEREAS, the Babcock Company (the "Developer") has filed a Notification of Proposed Change to a Previously Approved Development of Regional Impact dated July 1, 1991, a Response to Agency Comments dated February 21, 1992, a Second Response to Agency Comments dated April 10, 1992, a letter from Greiner, Inc., to the Florida Department of Transportation ("FDOT") dated May 6, 1992, the Updated Transportation Analysis dated August 1992 and the Response to Comments dated September 1992 (the Notification of Proposed Change, the two Responses to Agency Comments, the letter to the FDOT, the Updated Transportation Analysis and the Response to Comments being collectively referred to as the "Notification"), attached hereto as Composite Exhibit "A"; and

WHEREAS, the Notification proposes to amend the Development Order to authorize the development of Phase II of the Development, as described in the Notification, (hereinafter all proposed modifications as set forth in the Notification shall be referred to as the "Proposed Changes"); and

WHEREAS, the Proposed Changes shall constitute the First Amendment to the Development Order; and

WHEREAS, the City Council has reviewed and considered the Notification, as well as all related testimony and evidence submitted by the Developer concerning the Proposed Changes; and

WHEREAS, the City Council as the governing body of the local government having jurisdiction pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider the Proposed Changes and to amend the Development Order; and

WHEREAS, the public notice requirements of Chapter 380, Florida Statutes, and Section 27-418, City of Tampa Code, have been fulfilled; and

WHEREAS, all interested parties and members of the public have been afforded an opportunity to be heard at the public hearing on the proposed First Amendment to the Development Order before the City Council; and

WHEREAS, the City Council has held a duly noticed public hearing on the proposed First Amendment to the Development Order and has reviewed and considered the Notification, as well as all testimony and evidence submitted by certain parties and members of the general public; and

WHEREAS, Section 380.06, Florida Statutes, requires that a development order be amended to reflect the City Council's approval of changes to the approved development order;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:

Section 1. Findings of Fact. That the City Council, having received the Notification, and having received all related comments, testimony and evidence submitted by all persons and members of the general public, finds that there is substantial competent evidence to support the following findings of fact:

A. That the Developer submitted to the City the Notification attached hereto as Composite Exhibit "A".

B. That the Developer proposes to amend the Development Order to authorize the development of Phase II of the Development, as described in the Notification.

C. That the Proposed Changes are consistent with all local land use development regulations and the local comprehensive plan.

D. That the Proposed Changes do not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area and are consistent with the State Comprehensive Plan.

E. That a comprehensive review of the impacts generated by the Proposed Changes has been conducted by the City and other participating agencies.

F. That the Proposed Changes do not create additional regional impacts or impacts that were not previously reviewed nor meet or exceed any of the criteria set forth in Subsection 380.06(19)(b), Florida Statutes (1991).

Section 2. Conclusions of Law. That the City Council having made the above findings of fact, renders the following conclusions of law:

A. That these proceedings have been duly conducted pursuant to applicable law and regulations and, based upon the record of these proceedings, the Developer is authorized to conduct the Development as described herein, subject only to the amendments, conditions, restrictions and limitations set forth herein.

B. The review by the City and other participating agencies and interested citizens concludes that the impacts of the Proposed Changes are adequately addressed pursuant to the requirements of Chapter 380, Florida Statutes, within the terms and conditions of this Ordinance.

C. That, based on the foregoing and pursuant to Subsection 380.06(19), Florida Statutes (1991), the Proposed Changes are found not to be substantial deviations to the previously approved Development Order.

Section 3. Order. That, having made the above findings of fact and conclusions of law, it is ordered:

A. That the Proposed Changes are hereby approved subject to the following conditions, limitations and restrictions:

1. The Developer shall pay a fair share contribution for Phase II based on Rule 9J-2.0255 (1987) (3) and (4), Florida Administrative Code or the City of Tampa Transportation Impact Fee Ordinance whichever is greater. The proportionate share contribution (\$843,103.00) was calculated on the improvements listed in the Notification and has been determined to be less than the impact fee assessed under the City of Tampa Impact Fee Ordinance (\$1,926,700.00) and therefore the amount assessed under the City of Tampa Impact Fee

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Ordinance shall be the amount due to mitigate for the Phase II Transportation Impacts.

2. The Developer shall pay the entire contribution due for Phase II as calculated above prior to the issuance of the first building permit for Phase II so that the City or FDOT may immediately initiate right-of-way acquisition and proceed with the construction of a major transportation improvement which shall substantially benefit the affected regional roadway network. The Developer shall pay the proportionate share amount (\$843,103.00) prior to issuance of the first building permit or by December 31, 1992, whichever is earlier. The payment is to be applied by the City or made available to FDOT for use on the following required improvement:

Route	From	To	Dir	Ex. Lanes	Req. Lanes	Cost per Mile	Distance (miles)	Improvement Cost	Existing Volume	Existing ST & D	Existing Capacity	Reserve Ser. Vol.	New Ser. Vol.	New Capacity	DRI Trips	Excl. 1994	Incl. Dev. Vol.	Excl. V/C	Incl. V/C	DRI % Trips	Proposed V/C	Fair Share Ratio
HILLSBORO AVE.	EISENHOWER	BENJAMIN	EA	6L	6L	\$1,512,000	0.25	\$378,000	2,395	2,440	2,600	45	3,200	3,440	151	2,391	2,542	0.92	0.98	6.7%	0.73	0.1218
			EA	6L	6L	\$1,512,000	0.25	\$378,000	2,421	2,150	2,120	79	4,210	4,440	32	2,460	2,492	0.71	0.75	1.0%	0.56	0.0500

- Cost estimates were obtained from FDOT's "1988 Transportation Costs", Florida DOT Economic Analysis Section, Office of Policy Planning, August 11, 1989. These costs were expanded by a 4%/yr factor to reflect 1991 prices and include a 50% increase for R/W, CEI and PE.
- Proportionate share assessment is based on 100% of project trips (existing plus new trips) for those roadway links outside the existing development's study area. For those links within the existing development study area, only new DRI traffic is assessed.

or such alternative improvements as the City, Tampa Bay Regional Planning Council and Florida Department of Community Affairs determine to provide equal or greater mitigation of the transportation impacts on the regional transportation system. If an alternative improvement is selected and agreed to as provided herein, the City shall direct the Developer to file a Notice of Proposed Change to provide for the implementation of construction of the selected alternative improvement. Costs for design, right-of-way acquisition and construction borne by Developer for either the required or alternate improvement, shall be credited against Transportation Impact Fees, to the extent permitted under the City of Tampa Impact Fee Ordinance and Section 380.06, Florida Statutes.

The right-of-way acquisition and construction of the required improvement must comply with the following schedule:

- Right-of-way acquisition must be completed by August 31, 1993;
- Construction of the required improvement to Hillsborough Avenue from Eisenhower to Benjamin must start prior to the build-out date of Phase II of December 31, 1994 or prior to permits in excess of 250,000 gross square feet, whichever is earlier; however, this date shall be tolled during any period of time that the build-out date is tolled pursuant to Florida Statutes Section 380.06(19)(c). Any requested extension of the construction commencement date for the required improvement shall be presumed to create a substantial deviation. In the event FDOT cannot commence construction of the required improvement in accordance with the schedule set forth in this Development Order, the Developer, at its option, may elect to construct the required improvement, subject to adherence to this schedule.

The remaining \$1,083,597 shall be paid prior to the issuance of the first building permit.

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In the event that the performance by the City, or FDOT, of the commitments set forth above shall be interrupted or delayed by war, riot, civil commotion, natural disaster or other occurrence not within its control, then the Developer shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof; provided however, that for purposes of this paragraph, a lack of funding shall not be deemed an occurrence beyond the City's control; provided further, an extension of greater than six months of any of the time periods set forth above shall require an amendment to this development order pursuant to Florida Statutes Section 380.06(19), Notice of Proposed Change process.

3. Construction of the following improvement is necessary for Developer to maintain LOS D peak-hour on Courtney Campbell Causeway corridor through the Phase II project build-out as required in §4.C.1.f. of the original Development Order (Ordinance No. 9544-A). The Developer shall design and complete construction of the intersection improvement at Courtney Campbell Causeway and Rocky Point Drive described in the Notification. Prior to issuance of any building permit for Phase II the FDOT shall have issued a construction permit for the intersection improvements at Courtney Campbell Causeway and Rocky Point Drive. The City shall acquire, at Developer's expense, any necessary right-of-way for the above described intersection improvement. Costs for design, right-of-way acquisition and construction of improvements borne by the Developer, shall be credited against Transportation Impact fees, to the extent permitted under the City of Tampa Impact Fee Ordinance and Section 380.06, Florida Statutes. It is acknowledged that all or a significant portion of the above intersection improvement may not be creditable under the current City of Tampa Transportation Impact Fee Ordinance. The Developer shall not occupy the Phase II buildings and the City shall not issue certificates of occupancy for any portion of Phase II until construction of the intersection improvements at Courtney Campbell Causeway and Rocky Point Drive is completed.

B. That the Development Order is hereby amended as follows:

1. Section 1 of the Development Order is hereby amended to incorporate the Notification, set forth on Composite Exhibit "A".

2. Section 2 of the Development Order is hereby amended to incorporate the Notification and to modify the land use totals of the Development stated in Section 2.0. of the Development Order as follows:

PHASE II

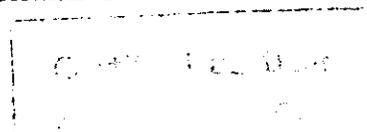
Land Use

Buildout Date

500,000 square feet
gross floor area office

December 31, 1994

Further, in addition to any other requirements that may be imposed pursuant to Florida Statutes Chapter 380 or City of Tampa Code as part of the review, in accordance with §4.C.1.f. of the original Development Order (Ordinance No. 9544-A), any future requests for extension of the Phase II project build-out date herein of December 31, 1994 shall not be approved by the City until the Developer demonstrates the feasibility of and funding commitments for the improvements necessary to maintain LOS D peak-hour on Courtney Campbell Causeway corridor through the requested extended Phase II project build-out. In the event that the Developer should ever seek approval to increase the amount of development approved hereunder, such request shall be deemed to be a



substantial deviation for review pursuant to Paragraph 380.06(19)g., Florida Statutes. The Application for Development Approval shall include a new transportation study which shall assess the cumulative impacts of the entire project. This provision shall not be construed to relieve the Developer from complying with the provisions of Subsection 380.06, Florida Statutes, with respect to other impacts which might be generated by the proposed increase in the development totals.

3. Subparagraph 4.C.1.c. of the Development Order is hereby restated as follows: Prior to issuance of a certificate of occupancy for any additional office development on site, or within a year of the effective date of this Amended Development Order, the Developer shall become a participating member of the Westshore Transportation Management Association ("TMA") and shall use reasonable efforts to implement recommendations from the TMA to the extent economically feasible.

4. Subparagraph 4.C.1.d., including subparagraphs (1) and (2), of the Development Order is hereby deleted as the new conditions of approval fully address the transportation impacts of the Development.

5. Subparagraph 4.C.1.e.(2) of the Development Order is hereby deleted as this condition is satisfied.

6. Subparagraph 4.C.1.f., including subparagraphs (1) through (6), of the Development Order is hereby deleted as the new conditions fully address transportation impacts of the Development and a new subparagraph 4.C.1.f. is incorporated to read as follows:

Phase II is hereby approved subject to the terms and conditions set forth in this First Amendment to Ordinance No. 9544-A.

7. Subparagraphs 4.C.1.g.(1), including subparagraphs (a) through (e), of the Development Order is hereby deleted as all conditions contained therein have been satisfied.

8. Section 8 of the Development Order is hereby restated in its entirety as follows:

That prior to the expiration of the effective period of this Order, the City may not down-zone or reduce the intensity or unit density of Phase I or Phase II, unless the City can demonstrate that:

- A. substantial changes in the conditions underlying the approval of the Order have occurred; or
- B. the Order was based on substantially inaccurate information provided by the Developer; or
- C. the change is clearly established by the City to be essential to the public health, safety, or welfare.

Any down-zoning or reduction of intensity shall be effected only through the usual and customary procedures required by statute and/or ordinance for changes in local land development regulations.

For the purpose of this Order, the term "down-zone" shall refer only to changes in zoning regulations which decrease the development rights approved by this Order, and nothing in this paragraph shall be construed to prohibit legally enacted changes in zoning regulations

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which do not decrease the development rights granted to the Developer by this Order.

9. Section 15 of the Development Order is hereby amended by adding the following paragraph:

At any time when a legal notice in connection with this Order or any other approval process related to the project is required, in addition to the publication requirement, the Developer shall send notice by regular U.S. mail, certified receipt, to the following entities (the "Entities"):

1. Rocky Point Owners Association
Attn: Mr. Lonnie D. Homenuk, President
2701 N. Rocky Point Drive
Tampa, Florida 33607
2. Radisson Bay Harbour Inn
Attn: Mr. Fred Matthews
7700 Courtney Campbell Causeway
Tampa, Florida 33607
3. Shriners Hospital for Crippled Children
Attn: Mr. Lewis Molnar
2900 Rocky Point Drive
Tampa, Florida 33607
4. L. David Shear, Esquire
Shear, Newman, Hahn & Rosenkranz, P.A.
201 East Kennedy Boulevard, Suite 1000
Tampa, Florida 33602

The Developer shall additionally deliver to the Entities copies of all submissions relating to the traffic issues concerning the project which are submitted to the City. Moreover, the Entities shall have the right to review any submissions made by the Developer which relate to a change in this Order, the compliance with a Development Order provision, or the demonstration of feasibility of improvements and the adequate provision of level of service referenced above and to submit comments to the Developer, the City, the Department of Community Affairs, the Tampa Bay Regional Planning Council and the Florida Department of Transportation. Any one of the Entities shall have the right at any time, and from time to time, to (i) notify the Developer of a change in its address for notice purposes pursuant to this paragraph, or (ii) notify the Developer that it no longer desires to receive such notices. Such notifications shall be sent to the Developer, with a copy to the Assistant City Attorney of the City of Tampa, by regular U.S. mail, certified receipt.

Section 4. Development Order, As Amended. This Ordinance shall constitute the First Amendment to Ordinance No. 9544-A. All provisions of the Development Order, except those provisions specifically modified herein, shall remain in full force and effect and shall be considered conditions of the Development Order, in which case the terms and conditions of this Ordinance shall govern.

Section 5. Definitions. The definitions contained in Chapter 380, Florida Statutes, shall control the interpretation and construction of any terms of this Ordinance.

Section 6. Binding Effect. That this Ordinance shall be binding upon the Developer, its assigns, and its successors in interest.

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and correct copy.

Section 7. Governmental Agencies. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Ordinance.

Section 8. Severance. That in the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court or agency of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 9. Transmittals. That the City Clerk is directed to send copies of this Ordinance, within five (5) days of its becoming law to the Owner (Centennial Homes, Inc., c/o Scarborough Constructors, Inc., Attn: Frederick H. Burcaw, P.O. Box 7078, Wesley Chapel, Florida 33543), the Florida Department of Community Affairs (Bureau of Land and Water Management), and the Tampa Bay Regional Planning Council.

Section 10. Rendition. That this Ordinance shall be deemed rendered upon transmittal of the copies of this Ordinance to the recipients specified in Chapter 380, Florida Statutes.

Section 11. Recordation. That the Developer shall record a notice of adoption of this Ordinance pursuant to Chapter 380, Florida Statutes.

Section 12. Effective Date. That this Ordinance shall become law as provided in the City of Tampa Home Rule Charter and shall take effect upon transmittal to parties specified in Section 9, hereof.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON OCT 08 1992

ATTEST:

Francis Henriquez
CITY CLERK

Joe Greco
CHAIRMAN, CITY COUNCIL

APPROVED as to form by:

Gina K. Grimes
GINA K. GRIMES
ASSISTANT CITY ATTORNEY

APPROVED by me on OCT 08 1992

Sandra W. Spalding
MAYOR

State of Florida
County of Hillsborough

This is to certify that the foregoing is a true and correct copy of Ordinance no 92-162 on file in my office.

Witness my hand and official seal this 12th day of Oct., 19 92.

Francis Henriquez
CITY CLERK

Composite Exhibit A:

- Part 1 of 6 Notification of Proposed Change dated 7/1/91
- Part 2 of 6 Response to Agency Comments dated 2/21/92
- Part 3 of 6 Second Response to Agency Comments dated 4/10/92
- Part 4 of 6 Greiner, Inc. Letter to FDOT dated 5/6/92
- Part 5 of 6 Updated Transportation Analysis dated August 1992
- Part 6 of 6 Response to Comments dated September 1992

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and correct copy.

or that funds have been committed by any public agency for further improvements on the Causeway.

What Babcock appears to be offering as mitigation for the adverse traffic and environmental impacts of its development is some combination of pipelining and/or the payment of the City's impact fees. It seems to be saying, "Here is the solution and Babcock will pay the City's impact fee to support its implementation." This combined offering is inconsistent with the policies of the State, the TBRRPC and the City with respect to DRIS.

One of the goals of the pipelining policy is to encourage early construction of immediate major improvements to a regional roadway. In exchange, impacts at other locations are forgiven and left for other solutions. The developer's fair share or proportionate share contribution of the cost of all improvements, as identified in the review process, is calculated, and that contribution is directed to one or more of the necessary improvements. That concept, along with the concept of concurrency, is particularly applicable in this instance due to the critical location of Babcock's DRI and its single access point. Because Courtney Campbell Causeway is the single access to Rocky Point Island, the failure to mitigate traffic impacts as soon as they occur would cause that regionally significant roadway to fail. Since Babcock has made no offer to fund or construct the interchange, the policy and goals underlying the pipelining approach cannot be realized.

maintaining LOS "D" peak hour traffic conditions, and that it can be constructed and funded.

The evidence demonstrates that it is probably feasible from an engineering sense to develop some sort of overpass at the intersection leading into the proposed development. However, Babcock did not present sufficient competent evidence to demonstrate that its proposed interchange would maintain LOS "D" peak hour at full buildout of the project. The transportation analysis presented by Babcock contains numerous inaccurate assumptions and cannot form the basis for a conclusion that the interchange would achieve the regulatory criterion upon full buildout. Likewise, Babcock failed to adequately demonstrate that the existence of an interchange would cure air quality violations at the site were full buildout to occur.

Even assuming that with full development, Babcock's proposed interchange would be effective to maintain LOS "D" peak hour and would meet air quality standards for carbon monoxide, Babcock failed to demonstrate how such a curative measure would be effectuated and implemented with the immediacy required at this location.

Babcock has never offered to fund or construct the proposed grade separation. No evidence was presented to demonstrate that Babcock's proportionate share contribution would wholly fund the proposed grade separation. No evidence was presented that the grade separation is scheduled for construction

Among the regional issues to be addressed in a DRI review is whether, and the extent to which, the proposed development will efficiently use or unduly burden public transportation facilities. Section 380.06(12)(a)4, Florida Statutes. Another issue is whether, and the extent to which, the development will have a favorable or unfavorable impact on the environment. Section 380.06(12)(a)1, Florida Statutes. Here, it was clearly demonstrated that Babcock's proposed development would unduly burden existing public transportation facilities on the Courtney Campbell Causeway and would adversely affect the air quality in the area. The burden thus shifted to Babcock to demonstrate that there are viable curative measures adequate to mitigate those adverse impacts. Babcock attempted to satisfy that burden by proposing a grade-separated interchange as a curative measure.

There is no doubt that a grade-separated interchange would improve existing and future traffic conditions and air quality at the intersection of Rocky Point Drive and the Courtney Campbell Causeway. However, that does not end the inquiry and satisfy Babcock's burden. The adequacy of such an improvement with respect to the proposed future development, the costs involved and a commitment to construct or fund such an improvement must also be shown. In order to determine whether the curative measure offered by Babcock will be adequate mitigation, it must be shown that the interchange is a feasible building alternative to accomplish the regulatory criterion of

evidence indicating that traffic exiting a multi-family development on North Rocky Point Island in the morning hours could aggravate the a.m. peak hour conditions due to conflicts with eastbound through traffic. (Hall, Tr. 877-82) In any event, Babcock did not request development approval for a residential development and sufficient analyses and studies were not presented to enable a conclusion that residential development on Babcock's property would comport with all applicable review standards and criteria.

CONCLUSIONS OF LAW

When a DRI appeal is initiated in accordance with Section 380.07, Florida Statutes, the applicant for development approval, just as in any permitting or licensing proceeding, has the initial burden of going forward and the ultimate burden of establishing that the proposed development meets the statutory and regulatory criteria for approval. The issues and standards for DRI review and approval are stated in rather broad terms. With regard to regional impacts, the law does not require that the proposed project be impact-free. The DRI process is one of balancing favorable and unfavorable regional impacts based upon all the evidence. Graham v. Estuary Properties, Inc., 399 So.2d 1374 (Fla. 1981). The burdens of proof in a DRI proceeding may shift back and forth, with the applicant having the ultimate responsibility to demonstrate that any adverse regional impacts can be adequately cured.

developments are not comparable. (Babcock's Exhibits 85 and 95) Point Properties, Ltd. is a non-DRI development which is located on North Rocky Point Island on an out-parcel which has direct access to Courtney Campbell Causeway and Rocky Point Drive. (Hall, Tr. 2669) The City's action upon Point Properties' application for a zoning change (while perhaps relevant to the City's action in rezoning Babcock's undeveloped property) cannot be compared with the City's action concerning Babcock's DRI application. The City of Tampa denied the Lifsey DRI for North and South Rocky Point Islands with essentially the same conditions and language as contained in the Babcock Development Order. (Stipulation, Tr. 1523-24)

(45) While not included in the City's Development Order as a change which would make Babcock's proposal eligible to receive approval, evidence was presented at the hearing that City staff would recommend approval of a multi-family residential proposal for the Babcock property on Rocky Point Island. (Mihalik, Tr. 1994) Other developments in Tampa have mixed office uses with residential and retail uses. (Mihalik, Tr. 1992-93) The opinion was offered by City staff that multi-family use would reduce overall trip generation and change the direction and timing of peak hour trips. (Hall, Tr. 878, 896, 905-910; Mihalik, Tr. 1992-94) While it would seem logical that the p.m. peak hour traffic would be less with residential as opposed to office development, the opinion as to a.m. peak hour traffic was not substantiated by sufficient evidence. Indeed, there was

substantial hardship upon any further development of the Shriners' 6-acre parcel. Even if Bay Harbour Inn were permitted a driveway onto Courtney Campbell Causeway after construction of the overpass, it would not be a commercially viable access. (Tipton, Tr. 2468-70; Chapman, Tr. 2110-13; Matthews, Tr. 1540-42; Molnar, Tr. 2427)

(43) Not only would the proposed interchange require use of the Shriners' property in order to provide access to the Bay Harbour Inn, the interchange would diminish the ability of the Shriners to continue performing its charitable activities at its international headquarters. Reduced visibility would adversely affect the Shriners' ability to raise funds to operate its children's hospitals. The overpass would require the construction of a retaining wall which, at its highest point, is about 25 feet high. (Chinery, Tr. 1033) This would virtually obliterate the visibility of the Shriners' property from Courtney Campbell Causeway. (Chinery, Tr. 1041; Molnar, Tr. 2424-27)

(44) As noted above, DRI review is site-specific and location is a critical factor in reviewing a DRI's potential impacts, both positive and negative. (Beck, Tr. 1414) For this reason, other Development Orders entered by the City of Tampa which may contain different conditions for approval do not establish that the City or the TBRPC has acted arbitrarily with regard to the Babcock DRI. For example, the Areawide Westshore DRI does not include Rocky Point Island. As an areawide DRI, it is regulated by Section 380.06(25), Florida Statutes, and the two

Thus, while there is little doubt that a grade-separated interchange which permits the free flow of traffic would improve air quality at the subject intersection, it cannot be concluded that full buildout of the proposed DRI would comply with Florida's ambient air quality standards.

(41) Traffic congestion causes user delay costs to the motoring public. If Babcock were to buildout at-grade, the increased delay costs to motorists would be \$1,525 per hour or \$1,549,400 per year. (City's Exhibit 12; Garity, Tr. 2056-57; Chapman, Tr. 2083) If an interchange were substituted for the existing at-grade condition, and assuming the interchange functioned properly, there would be a savings to the motoring public of approximately one million dollars per year. (Wright, Tr. 2574)

(42) The grade-separated interchange proposed by Babcock will affect the property rights of nearby landowners. The interchange would allow entrance to the Bay Harbour Inn from the Causeway only from the west, and would allow no means for exiting the facility at all. A similar situation would exist for the Rocky Point Beach Resort Hotel. Since the Bay Harbour Inn has no access to Rocky Point Drive, the only means of providing that access would be through property owned by the Shriners. This would require condemnation of the Shriners' property and the construction of a driveway from Rocky Point Drive to the Bay Harbour Inn either over a large retention pond or through the existing Shriner's parking lot. This, of course, would create a

(38) Babcock's analysis which concluded that with current Department of Transportation improvements, the at-grade intersection could accommodate an additional 300,000 square feet of office use (Wright, Tr. 1808) utilized many of the same faulty assumptions as discussed above. Accordingly, it too, is not supported by competent substantial evidence.

(39) If Babcock were to buildout with the at-grade intersection, the automobile carbon monoxide emissions would exceed the Department of Environmental Regulation's (DER) guidelines and standards for air quality. (Hale, Tr. 1625)

(40) Babcock presented evidence that if the proposed grade separation (the interchange) were in place, carbon monoxide concentrations would not exceed ambient air quality standards for this pollutant. This conclusion is suspect for several reasons. The air quality analysis conducted on Babcock's behalf deviated from the DER's guidelines in several respects. (Kenney, Tr. 1082-83; Hale, 1556) Although parking garages are located in the vicinity, they were not considered in the analysis. (Kenney, Tr. 1136; Hale, Tr. 1593-94, 1630) Use of the intersection by heavy duty vehicles, which emit far more particulate matter than most motor vehicles, was not considered. (Kenney, Tr. 1062-63, 1140) The assumption of traffic traveling unimpeded through the intersection at 35 miles per hour was not substantiated. (Kenney, Tr. 1118-27) Some receptors were not located in accordance with the DER guidelines. (Kenney, Tr. 1195-96; Hale, Tr. 1582, 1627-29) All these factors affect Babcock's air quality analysis.

The 4th Edition projects less traffic per square foot of commercial office development than had been projected under the 3rd Edition that was in use until December of 1987. As indicated above, in Florida, and specifically in Tampa, actual trip generation figures from established developments demonstrate that even the 3rd Edition ITE Manual under-projects traffic impacts. (Tindale, Tr. 646; Adair, Tr. 2275-77; Chapman, Tr. 2120) Babcock's use of a zero percent background growth rate is incorrect based upon the historic growth rate for Courtney Campbell Causeway (Wright, Tr. 461), other studies of the Causeway and Rocky Point Island, and the likelihood that, with further development on the Island, cars will travel back and forth between North and South Rocky Point Islands (Patterson, Tr. 270; Chapman, Tr. 2116; Wright, Tr. 1707) A fifteen and twenty percent flex time reduction of trips for all office uses is erroneous because the ITE trip generation rates already account for any flex time which may be occurring (Tipton, Tr. 2465-66) and the ITE Manual does not authorize reduction of trips for flex time. (Wright, Tr. 1743) The internal capture rates and directional traffic split utilized by Babcock were not supported by competent substantial evidence. Babcock's failure to take into account heavy vehicles on Rocky Point Drive is inappropriate since the Island is served by public transportation, and City bus stops are located on the Island. (City's Exhibit 2A; Hale, Tr. 1597)

Tr. 1859) Babcock's Exhibit 128, prepared in May of 1986, indicates that the recommended standard value for interchanges is \$7 million. The Uimerton-U.S. 19 urban interchange located in Pinellas County, which is similar to the proposed interchange, cost \$19 million-plus in construction costs, which figure did not include right-of-way costs. (Tocknell, Tr. 1912-13)

(36) Babcock has not offered to fund or construct the proposed interchange at Rocky Point Drive. There was no evidence offered to determine whether a proportionate share contribution by Babcock would fund the proposed grade separated interchange. There was no competent evidence presented that a grade separation is currently scheduled for construction.

(37) It was generally agreed that the existence of a properly designed overpass or interchange at the Rocky Point Drive/Courtney Campbell Causeway intersection would accommodate additional development on Rocky Point Island. However, the extent or amount of such additional development was not established. Babcock's expert presented evidence that the overall operating condition of the intersection with its proposed interchange would be LOS "C" during the a.m. and p.m. peak hours in 1992 with full buildout of its proposed DRI, plus an additional 300,000 square feet of office development. (Wright, Tr. 528) LOS "C" is characterized as the absence of congestion. However, the analysis performed and assumptions made in reaching this conclusion were faulty in many respects. Babcock utilized the ITE Manual, 4th Edition, for its trip generation projections.

14) While Babcock's engineers utilized a "weave analysis" in designing the overpass, there was credible evidence presented that the proper analysis for this particular design is a "ramp analysis." If a ramp analysis is performed, the ramp would operate at a LOS "E," as would the Causeway itself. (Chapman, Tr. 2156, 2676-79) Although the Department of Transportation requires a 20-year design life for an interchange, Babcock's proposed interchange was not designed for any particular design life. (Chinery, Tr. 1042-43) Also, it was not established whether the proposed interchange would fit within the Department of Transportation's right-of-way on Rocky Point Drive (Chinery, Tr. 1010-11)

(35) Babcock estimated the cost of the proposed interchange to be \$9.5 million, plus or minus 25%. However, Babcock's cost witness did not prepare the estimate himself, did not verify the quantities of materials to be utilized in construction and did not include many costs that would be associated with the proposed interchange. For example, the estimated costs do not include right-of-way costs, design or engineering costs, costs associated with the environmental effects of additional dredging, filling and bulkheading activities, or possible business damages for any existing property owners in the Rocky Point area who might lose access to the Causeway. (Tocknell, Tr. 1832-67) It also appears that the cost estimate of \$9.5 million was based upon a conceptual drawing different than the drawing submitted at the hearing. (Tocknell,

westbound traffic from Tampa turning left to reach South Rocky Point Island, it is the conflicting through traffic movement which creates the total congested condition. In other words, there is no one critical movement. It takes two directional movements in conflict to create the negative impact.

(Padmanabahn, Tr. 849-50; Hall, Tr. 864, 909)

(33) With additional development on the Babcock parcel, the intersection at Rocky Point Drive and Courtney Campbell Causeway will degrade to a LOS below "D" in the a.m. peak hours sometime between the years 1990 and 1992. In order to accommodate the traffic impacts of its proposed additional development, Babcock proposes a grade separated interchange which would separate the conflicting turning movements from through traffic and improve the movement of traffic on the Causeway. Babcock's experts testified that with full buildout of the proposed development, the overall operating condition of such an interchange would be LOS "C" during the a.m. and p.m. peak hours in 1992. (Wright, Tr. 528)

(34) While it is technically feasible from an engineering standpoint to design an interchange for the Rocky Point Drive intersection, Babcock failed to demonstrate that the preliminary conceptual design it proposes is feasible. Babcock's witness on the subject was unfamiliar with certain aspects of the design and drawing of the proposed interchange. (Chinery, Tr. 934-40, 945-48) The vehicle mix was not considered in designing the overpass. It is important to know the mix of heavy vehicles because it affects the length of the ramps. (Chinery, Tr. 1011-

no further capacity for additional development on Rocky Point Island north or south of the Causeway. (Babcock's Exhibit 37) Without additional development above the Preliminary Development Approval (or Phase I), the 1985 Highway Capacity Manual projects that with the current Department of Transportation improvements, the at-grade intersection will operate at LOS "D" or better in both the a.m. and p.m. peak hours in 1992. With full buildout of the Babcock proposal and current Department of Transportation improvements, the 1992 LOS at the intersection would be at or below LOS "E" in both the a.m. and p.m. peak hours. (Wright, Tr. 1729-30) As noted above, the long-term study issued in February of 1986 concluded that over twice the amount of existing and approved development could be accommodated by an overpass at the intersection of Rocky Point Drive and the Causeway.

(32) The congested conditions which currently exist on the Courtney Campbell Causeway in the vicinity of the Rocky Point Drive intersection occur primarily one-way in the peak hours. In the morning peak hours, the Causeway is congested in the direction moving from the west to the east -- from Pinellas to Hillsborough County. Conversely, in the afternoon peak hours, the heaviest traffic flows from east to west. Thus, there is some excess capacity in the a.m. and p.m. peak hour direction opposite the prevailing flow of traffic and little or no excess capacity in the direction of the prevailing flow of traffic. (Wright, Tr. 522-23; Patterson, Tr. 1383) While the greatest negative impact on the intersection in the a.m. peak hours is

predicts the number of "trips" that a certain amount and type of development will generate. Through further calculations, these trips form the basis for conclusions as to the Level of Service (LOS) at which a roadway will operate. The LOS range from "A" (the best) through "F" (the worst). As noted above, the TBRPC considers LOS "D" peak hour the lowest acceptable level of service. (Chapman, Tr. 322-41; Wright, Tr. 457-74; Tipton, Tr. 2456-60)

(30) Several studies have shown that trip generation rates in the City of Tampa and throughout Florida are typically higher than the national average rates projected by the ITE Manuals. (Tindale, Tr. 646, 704, 820; Adair, Tr. 2275-76; Chapman, Tr. 2120). This may be due to factors such as climate, suburban characteristics and lack of mass transit. (Adair, Tr. 2275-79). Thus, trip rate projections for new developments within Tampa based upon the ITE Manuals would be on the conservative side.

(31) At the time Babcock filed its Application for Development Approval in 1984, the intersection of Rocky Point Drive and Courtney Campbell Causeway was operating at LOS "B" in both the a.m. and p.m. peak hours. (Babcock's Exhibit 3, page 31-16) The short-term study completed in April of 1985 concluded that, assuming maximum at-grade improvements, the intersection at Rocky Point Drive and the Causeway would operate at LOS "E" in the morning peak hours in the year 1990 with existing and approved development. Therefore, the study concluded there was

improvements necessary to accommodate new development paying the fee. (Tindale, Tr. 660-667) The impact fee ordinance was amended in 1988. The City was divided into transportation districts, and a different level of fees for each district was established. The transportation impact fees for the Westshore District, which encompasses Babcock's property, were increased. (Babcock's Exhibit 129)

(28) Transportation impact fees generally attempt to measure the value of the entire system consumed by a particular development. An impact fee calculation does not deal with existing conditions. In contrast, the requirement that a DRI developer make "adequate provision" has a different focus. This requirement focuses on the geographic location of the DRI, and measures the effect of the DRI on the public facilities at that location, both present and projected into the future. If certain regulatory levels are exceeded, the developer has several mitigation options to make "adequate provision" concurrently with the impact. Thus, while impact fees look at development in terms of the average value or capacity available to be consumed, the DRI regulatory process views impacts in terms of a performance standard not to be exceeded at a specific geographic location. (Tindale, Tr. 2233-43, 2253-62)

(29) According to transportation experts, the transportation impacts of a proposed new development can be estimated through the use of the Highway Capacity Manual and the Institute of Traffic Engineers (ITE) Manual, the latter of which

accommodated by the infrastructure in place, those improvements which are programmed to be put in place over time, or until the improvements are committed to by some other development. It is only when the DRI's impacts exceed existing capacity that the developer must identify and provide for the improvement. (Benz, Tr. 2355-57; Beck, Tr. 1492)

(26) One of the purposes of the Land Use Element of the Tampa Comprehensive Plan 2000 is to coordinate the orderly provision of public facilities (which include transportation facilities) with public and private development activities in a manner that is compatible with the City's fiscal resources. (City's Exhibit 17, page 3, paragraph 3.3) New development or increased intensity is to be permitted only in areas where adequate public facilities exist or can be adequately provided. (City's Exhibit 17, page 18, paragraph 1.2.3) Likewise, commercial and office development is to be permitted at an intensity and a location which complements existing and planned land use and existing and programmed public facilities. (City's Exhibit 17, page 24, paragraph 1.4.1.2; Mikalik, Tr. 1976, 1981, 1982)

(27) Prior to September 12, 1986, the City of Tampa had no transportation impact fee. The City's first impact fee was adopted on September 12, 1986, and it imposed upon all developers a non-site specific flat fee per square foot or per hotel/motel room. The fees imposed were conservative and were not sufficient to pay for the costs of transportation

pipelining option was not available at the time the TBRPC issued its report on the Babcock ADA, but was available at the time the City of Tampa issued its Development Order. (Benz, Tr. 2355-2375; TBRPC's Exhibits 23 and 24)

(23) The Florida Department of Transportation has jurisdiction over improvements to be constructed on the Courtney Campbell Causeway. The City of Tampa has an urban area Metropolitan Planning Organization (MPO) long-range transportation plan which analyzes the transportation demand estimates for the horizon year 2010. It is the policy of the TBRPC to encourage local governments to approve the pipelining option for roadway improvements which are consistent with the MPO and the Department of Transportation's long-range plans. TBRPC's Exhibit 24, Policy 19.8.14) A grade separated interchange at Rocky Point Drive and Courtney Campbell Causeway does not appear on the MPO long-range plan or the work plan of the Florida Department of Transportation. (Adair, Tr. 2274)

(24) The notion of concurrency is a common ingredient in each of the options for mitigation of transportation or traffic impacts. Concurrency means that the developer cannot build until the public improvements are either physically in place or there is a funding commitment from some source (not necessarily the developer) to put them in place. (Benz, Tr. 2388)

(25) A DRI developer does not have to pay money for its impacts. It may phase its development so that it is

(22) The TBRPC would offer three options, plus a creative option, to local government for mitigation of traffic impacts. The first option requires funding commitments from either the developer, the Department of Transportation, or any other source, for all roadway improvements identified. Such commitments must be in place prior to each phase of the development's approval. The second option is a phasing or staging approach whereby the developer proceeds on a piecemeal basis, obtaining funding commitments for smaller segments of the project. The funding commitments must be viable at the time of approval. The third option is known as the "pipelining" option which does not require that funding commitments for all roadway improvements be in place prior to development. Under this option, the developer is permitted to construct or fund the construction of one or more of the necessary improvements needed to maintain LOS "D." The developer's fair share contribution of the cost of all improvements is calculated, and that contribution is directed to one or more of the necessary improvements. The pipelining option is a tradeoff approach whereby the developer contributes his proportionate share and actually constructs or funds one or more regionally significant projects, and his impacts at other locations identified during the regional review are forgiven in exchange for construction of the pipeline improvement. The pipelining policy is to encourage early construction of immediate major improvement to a regional roadway in exchange for forgiveness of impacts at other locations. The

identifies the roadway improvements needed to return the roadway to LOS "D" peak hour. (Beck, Tr. 1495; Benz, Tr. 2356) Developers need not identify roadways which will operate at LOS "D" or better at the time of buildout, nor are they required to mitigate for the capacity which they are absorbing at locations which will be functioning at acceptable levels. (Benz, Tr. 2375) In other words, no commitment for roadway improvements is required so long as the LOS would not deteriorate below "D" during the peak hour.

(21) The DCA has three options for mitigation of traffic impacts which, if included in a Development Order, will preclude DCA appeal. The DCA's Transportation Rule, Rule 9J-2.0255, Florida Administrative Code, contains the three mitigation options. The first option is staging, the second is pipelining and the third is a creative option which provides for flexibility in situations such as an areawide DRI with mass transit. (Beck, Tr. 1498) These options are considered minimum criteria, and the local government and regional planning council may require more stringent measures than those found in the DCA's Rule in order to address traffic impacts. According to the DCA's interpretation of Chapter 380, Florida Statutes, payment of a local impact fee by a DRI developer would not necessarily make adequate provision for the transportation impacts of a DRI. (Beck, Tr. 1406-07) It is the position of the DCA that the Legislature intended to hold DRI developers to more stringent standards than non-DRI developers. (Beck, Tr. 1432)

(19) Courtney Campbell Causeway is a regionally significant roadway because it serves as one of only four links between Pinellas and Hillsborough Counties and is the only direct link between the Cities of Tampa and Clearwater. There is no reason to believe that the Causeway will not remain a significant regional roadway in the future. (Tipton, Tr. 2475) The traffic impacts of the proposed Babcock DRI take place in a unique setting. The entire development will be served by a single intersection located at Rocky Point Drive, which runs north and south, and Courtney Campbell Causeway, which runs east and west. There is no alternative route for people who would work on or visit the Island, other than the Causeway. Thus, Rocky Point Island is unique from a traffic planning perspective because of its location on a major regional link and its single point limited access onto said link. (Chapman, Tr. 2090 and 2185; Tipton, Tr. 2473)

(20) DRI review is site-specific and location is a critical factor. In reviewing the traffic impacts of a proposed DRI, the applicant identifies the regionally significant roadways which it projects will operate below Level of Service (LOS) "D" peak hour upon buildout of its project and upon which its project contributes a certain percentage or more of the LOS "D" peak hour capacity. The DCA requires an applicant to identify those regional roadways on which its traffic contributes ten percent (10%) or more of the LOS "D" peak hour capacity, while the TBRPC's requirement is five percent (5%). The applicant then

Causeway to operate below a level of service (LOS) "D" peak, and that the feasibility of traffic improvements and Babcock's fair share of the costs thereof to mitigate traffic impacts and maintain LOS "D" peak hour had not been fully determined. Before Phase II could be approved, the Development Order required Babcock to institute worker flex time conditions and to show the feasibility of, and funding commitments for, the roadway improvements necessary to maintain LOS "D" peak hour on the Causeway for project buildout. Further, Babcock would be required to pay, in advance of further building permits, a proportionate share contribution calculated under Rule 9J-2.0255, Florida Administrative Code, or City of Tampa Transportation Impact Fees, whichever was greater. Needed improvements caused by both the approved Phase I development and the denied Phase II development were listed. (Babcock's Exhibit 7)

(18) Babcock's proposed development is consistent with the zoning which existed on the property prior to Centennial's acquisition of the property and at the time the ADA was filed. It is also consistent with existing development on the Island. However, on December 17, 1987, during the pendency of these proceedings, the City Council rezoned the undeveloped portions of Babcock's property from C-1 and C-2 (general commercial) to RM-24 and RS-60 (residential, multi- and single-family). (TBRPC's Exhibit 51 and 51-A) The new zoning would not allow the development proposed by Babcock.

approving Babcock's ADA. (Babcock's Exhibit 6) The city Council also directed that a further traffic study be conducted regarding Rocky Point Island. On October 23, 1986, the City Council heard objections to the issuance of the Development Order from surrounding property owners, including the New York Yankees and the Shriners. The matter was then continued until December 18, 1986, over Babcock's objections to further continuances. On December 18, 1986, the City Council again continued the matter to April 9, 1987, despite Babcock's objection to further continuances. (Prehearing Statements of Fact)

(16) On December 31, 1986, Babcock filed a Complaint for Mandamus seeking to compel the City of Tampa to render a Development Order. The Circuit Court issued a Final Peremptory Writ of Mandamus on February 16, 1987, commanding the City Council to adopt an ordinance issuing a Development Order. (Prehearing Statements of Fact)

(17) On February 26, 1987, the City Council adopted emergency Ordinance No. 9544-A constituting a DRI Development Order which approved with conditions Phase I, and denied with conditions Phase II of the Rocky Point Office and Commercial Park DRI. The approval of Phase I (consisting of the development previously approved by the Preliminary Development Agreement) was conditioned upon payment to the City of \$582,566.09, based on the City's transportation impact fee then in effect. Denial of Phase II was based upon the City's finding that the development would cause the intersection of Rocky Point Drive and Courtney Campbell

(13) Except as to conditions relating to transportation, levels of development, and development phasing, Babcock and City Staff were in substantial agreement by May 23, 1985, on the terms and conditions of a recommended development order approving with conditions Babcock's ADA. At the public hearing on May 23, 1985, the City Council voted to defer consideration of the ADA in order to allow additional time to address and resolve various traffic related issues and to formulate conditions relating to mitigation of the project's transportation impacts. From that point forward, proceedings before the City were protracted, and public hearings were continued on numerous occasions. (Prehearing Statements of Fact)

(14) The long-term study was completed in December of 1985, and was formally released on February 20, 1986. The study concluded that a reduced amount of development on Rocky Point Island could be accommodated with a reasonable level of improvements, including an overpass at the intersection of Rocky Point Drive and Courtney Campbell Causeway. The study further concluded that an alternative development scenario would allow over twice the existing and approved development. (Prehearing Statements of Fact)

(15) Review and comment regarding the long-term study as well as negotiations regarding Development Order conditions resulted in further continuances of the public hearing on the Babcock ADA. On September 25, 1986, City Council approved on first reading a proposed ordinance issuing a Development Order

Campbell Causeway using the Rocky Point Drive intersection.
(Prehearing Statements of Fact; Babcock's Exhibit 37)

(11) On May 13, 1985, the TBRPC submitted its regional report and recommendation. The TBRPC recommended denial, but set forth conditions which, if satisfied, would result in a recommendation of approval. The Council's prime concern was the adverse impact of the proposed project upon the transportation network and regional facilities in the area, and mitigation of those impacts. The Council determined that "The addition of a project of this magnitude to an already overburdened infrastructure raises serious questions regarding land use and public facility decisions for this area of the region." The TBRPC concluded that the Babcock DRI would have a substantial negative impact upon several regionally significant highway facilities. While the council did identify some positive impacts from the proposed project (such as increased employment opportunities and increased ad valorem tax yields), the positive impacts were not site-specific to Rocky Point Island. (Babcock's Exhibit 13, TBRPC's Exhibit 52B, page 8)

(12) The TBRPC also proceeded with a longer term traffic study of the Courtney Campbell Causeway corridor area. The long-term study's stated purpose was to determine whether the traffic to be generated by the overall proposed development on Rocky Point Island, including Babcock's DRI, could be accommodated on the Causeway corridor given reasonable levels of road improvements. (Prehearing Statements of Fact)

(8) Babcock furnished additional information to the TBRPC in November and December of 1984. From December 1984 to March 1985, the TBRPC, in conjunction with the DCA and the City, proceeded with plans to conduct a short-term traffic study of the immediate Rocky Point Drive/Courtney Campbell Causeway Intersection. Also, the Preliminary Development Agreement with the DCA was amended to require payment of the \$50,000 to TBRPC instead of the DCA. These funds were subsequently paid to TBRPC by Babcock. (Prehearing Statement of Facts; Babcock's Exhibit 9)

(9) On or about March 12, 1985, the TBRPC determined the ADA was sufficient and so notified the City of Tampa. The City Council set a public hearing for May 23, 1985 to consider Babcock's ADA.

(10) In April, 1985, the short-term study was completed. The purpose of that study was to (1) determine the maximum at-grade roadway improvements which could be made to the Intersection and (2) determine the level of development which could be accommodated thereby. The conclusion of the short-term study was that, with the maximum amount of at-grade improvements (three through lanes in each direction), the intersection would operate at Level of Service (LOS) "E" in the morning peak hour in the year 1990 with existing and approved development. The afternoon peak hour would operate at LOS "D". Therefore, it was concluded that there was no capacity for any additional development on Rocky Point Island north or south of Courtney

380.06, Florida Statutes. In order to resolve this dispute, Babcock and the DCA entered into a Preliminary Development Agreement (PDA) pursuant to Section 380.032(3), Florida Statutes. Under that Agreement, the entire Rocky Point Office and Commercial Park was required to undergo DRI review. However, the four previously sold parcels were permitted to be developed and occupied prior to receipt of a final Development Order with, respectively, a 70,000 square foot office building, a 183,393 square foot office building with an associated 5,000 square foot restaurant, a 202 suite hotel and a 176 room hotel. The Agreement also required Babcock to pay to the DCA \$50,000 to fund a study of growth management issues on Rocky Point Island. (Prehearing Statements of Fact; Babcock's Exhibit 8)

(7) Pursuant to the Preliminary Development Agreement, a DRI preapplication conference was held on April 7, 1984, and Babcock's Application for Development Approval (ADA) was filed on October 19, 1984. In its ADA, Babcock proposed a total of 1,375,393 square feet of office uses, 378 rooms of hotel or motel use and 17,000 square feet of restaurant development in two phases. Phase I consisted of the 253,393 square feet of office uses, the 378-rooms of hotel use and 5,000 square feet of restaurant use permitted by the PDA to proceed prior to receipt of a final Development Order for the overall DRI. Phase II consisted of the balance of the proposed DRI: 1,122,000 square feet of office space and 12,000 square feet of restaurant uses. (Prehearing Statements of Fact; Babcock's Exhibits 1-3)

from the proposed Rocky Point Office and Commercial Park. Purchased in 1980, the six and a half acre site was selected by the Shriners for its high visibility and its convenient access. The Shriner's headquarters average approximately fifty (50) visitors per day. The Shriners operate 22 hospitals which treat crippled and burned children without charge to the patients. It depends upon its members and visitors to assist in funding efforts. If the visibility and/or accessibility of its headquarters were impaired, its ability to raise funds to operate its childrens' hospitals would be adversely affected. (Prehearing Statements of Fact; testimony of Louis Molnar, Tr. 2424-2429)

(5) In 1973-74, Centennial purchased approximately 62 acres of land located on the north side of Rocky Point Island. Between 1977 and 1980, Centennial constructed road, water, sewer and drainage improvements and platted a subdivision of the property known as the Rocky Point Office and Commercial Park. Between December 1981 and November 1983, Babcock sold, at a substantial profit, four parcels within the Rocky Point Office and Commercial Park to separate individual developers. (Prehearing Statements of Fact; testimony of William Lopez, Tr. 101-104)

(6) In the spring of 1984, a dispute arose between Babcock and the Department of Community Affairs as to whether the Rocky Point Office and Commercial Park was required to undergo Development of Regional Impact (DRI) review pursuant to Section

Point Island, an island situated along the eastern shore of Tampa Bay. The Island is bisected by the Courtney Campbell Causeway (State Road 60), a major regional roadway which runs across Tampa Bay and links Pinellas and Hillsborough Counties. (Prehearing Statements of Fact)

(2) The City of Tampa (City) is a municipal corporation and is the local government having jurisdiction to render development orders for DRIs located within its municipal boundaries. The TBRPC is the regional planning council within whose jurisdiction the Rocky Point Office and Commercial Park is located. The Department of Community Affairs (DCA) is the state land planning agency having jurisdiction over the proposed Babcock project. (Prehearing Statements of Fact)

(3) The New York Yankees is a New York limited partnership which owns and operates the Bay Harbour Inn, located on the south portion of Rocky Point Island directly across the Courtney Campbell Causeway from the proposed Rocky Point Office and Commercial Park. The Bay Harbour Inn is a 260-room motel, with a banquet room, meeting rooms, a restaurant and a cocktail lounge, and is situated on the only true beachfront property in Tampa. (Prehearing Statements of Fact; testimony of Frederick Matthews, Tr. 1524-1547)

(4) Shriners Hospitals is a Colorado charitable corporation authorized to do business in Florida. Its international headquarters is located on the south portion of Rocky Point Island directly across the Courtney Campbell Causeway

and transportation engineering; and Richard E. Adair. Received into evidence were the City's Exhibits 2(A-C), 6, 14A, 14B, 17, 21-23, 33, 34, 48, and 56-58.

The Tampa Bay Regional Planning Council (TBRPC) presented the testimony of Sheila Benz, and its Exhibits 23, 24, 51, 51A, 52B and 52C were received into evidence.

The New York Yankees Limited Partnership presented the testimony of Frederick B. Matthews and William E. Tipton, accepted as an expert in civil engineering, transportation engineering and traffic planning. No exhibits were offered.

The Shriners Hospitals for Crippled Children (Shriners) offered the testimony of Lewis K. Molnar. No exhibits were offered.

Subsequent to the hearing, each of the parties submitted proposed recommended orders. To the extent that the parties' proposed findings of fact are not included in this Recommended Order, they are rejected for the reasons set forth in the Appendix hereto.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, as well as the facts stipulated to in the Prehearing Stipulations, the following relevant facts are found:

(1) Babcock, a Weyerhaeuser Company, is the agent for Centennial Homes, Inc., another Weyerhaeuser Company, and is the current owner and/or seller of real property located on Rocky

with conditions Phase II of the proposed development.

In support of its position that it is entitled to approval of the entire proposed Rocky Point Commercial and Office Park, Babcock presented the testimony of William Lopez; Michael P. Patterson, accepted as an expert witness in the area of urban land planning; Roy Chapman; John Wright, accepted as an expert in the areas of traffic engineering and traffic planning; Steve Tindale; Bala Padmanabhan; Nannette E. Hall; Scott Smith Chinery; Michael Angus Kenney, accepted as an expert in air pollution monitoring, assessment and modeling; Jana Goble; and Wayne A. Tocknell. Babcock's Exhibits 1-3, 6-9, 11, 13, 28, 37, 38, 41-43, 55, 60, 85-87, 95, 122, 128, 129, 131, 134, 143, 151, 152, 154, 156, 164, 169, and 193-196C were received into evidence.

The Department of Community Affairs presented the testimony of John Thomas Beck, accepted as an expert witness concerning the application of Chapter 380, Florida Statutes, and the Development of Regional Impact (DRI) process. No exhibits were offered by the Department of Community Affairs.

The City of Tampa presented the testimony of Catheline S. Hale, accepted as an expert in the modeling of indirect sources of air pollution; Susan Swift Mihalik, accepted as an expert in land use planning; Clarence G. Stephens; Robert P. Wallis; Joseph Robert Garrity; Roy E. Chapman, accepted as an expert in traffic engineering, transportation planning and transportation methodology; Steve Tindale, accepted as an expert in impact fees, infrastructure financing, transportation planning

For Respondent,
City of Tampa:

Douglas M. Wyckoff, Esquire
de la Parte, Gilbert &
Gramovot, P.A.
705 East Kennedy Blvd.
Tampa, FL 33602

For Respondent,
Tampa Bay Regional
Planning Council:

Linda M. Hallas, Esquire
Law Offices of Roger S. Tucker
9455 Koger Blvd., Suite 209
St. Petersburg, FL 33702

For Intervenor,
Florida Department of
Community Affairs:

Jeffrey N. Steinsnyder, Esq.
Office of General Counsel
State of Florida, Department
of Community Affairs
2740 Centerview Drive
Tallahassee, FL 32399-2100

For Intervenor,
New York Yankees
Limited Partnership:

G. Steven Pfeiffer, Esquire
Fowler, White, Gillen, Boggs,
Villareal & Banker, P.A.
101 North Monroe Street
Suite 1040
Tallahassee, FL 32301

For Intervenor,
Shriners Hospitals for
Crippled Children:

Jann Johnson, Esquire
Ausley, McMullen, McGehee,
Carothers & Proctor
227 South Calhoun Street
Post Office Box 391
Tallahassee, FL 32302

INTRODUCTION

The petitioner, The Babcock Company (Babcock), timely filed a Notice of Appeal from the City of Tampa's Development Order dated February 26, 1987. The Development Order approved with conditions Phase I of the proposed development, and denied

Final

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE BABCOCK COMPANY,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 87-2519
)	
CITY OF TAMPA, et al.,)	
)	
Respondents.)	
)	
)	

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was held before Diane D. Tremor, Hearing Officer with the Division of Administrative Hearings, on March 21 and 22, 28 - 31 and June 13 - 16, 1988, in Tampa, Florida. The issue for determination in this proceeding is whether the petitioner, The Babcock Company, is entitled to approval of its application for a Development of Regional Impact for Rocky Point Office and Commercial Park, a mixed-use office, hotel-motel and restaurant development to be located on Rocky Point Island in Hillsborough County, Florida.

APPEARANCES

For Petitioner,	Eugene E. Sterns, Esquire
The Babcock Company:	David Smolker, Esquire
	Mark D. Solov, Esquire
	Sterns, Weaver, Miller,
	Weissler, Alhadef &
	Sitterson, P.A.
	One Tampa City Center
	Suite 3300
	Tampa, FL 33602

M. P. J.

Also, it must be remembered that the various options open to a DRI developer are options to be made by the local government, not the developer. A developer cannot force an option upon local government. To allow a developer to decide where, when and how roadway improvements are to be constructed would conflict with the very purpose of Chapter 380 to "facilitate planned development," as well as with other legislative programs and local comprehensive plans. The pipelined improvement is thus an option for local government which requires a commitment from the developer as to a viable method of funding or construction. Having failed to provide such a commitment, the City has no obligation to accept that approach as mitigation.

Babcock urges that DRI developers cannot be required to pay more than non-DRI developers impacting a transportation system. It is contended that Babcock should only be required to pay the City's transportation impact fee as opposed to the entirety of the cost of the grade-separated intersection. Babcock's argument seems to be that the term "adequate provision," as contained in Section 380.06(15)(e)2, Florida Statutes, means nothing more than a requirement that a DRI developer contribute his fair share, proportionate share or pro-rata share for improvements needed to accommodate the proposed development, and that this share can be determined through use of the City of Tampa's transportation impact fee. These arguments, if correct, would render meaningless Sections 380.06(15)(e)1,

380.06(15)(e)2, and 380.06(16)a, Florida Statutes, as well as Rule 9J-2.0255, Florida Administrative Code. The first section cited provides that a DRI developer can be required to contribute or pay for construction or expansion of public facilities only if the local government requires non-DRI developers to contribute their proportionate share of funds or facilities necessary to accommodate impacts having a rational nexus to the proposed development. Section 380.06(15)(e)2 prohibits the approval of DRIs where "adequate provision" is not made for the public facilities needed to accommodate the impacts of the development. Section 380.06(16)a specifically recognizes the distinctions between DRI requirements and local impact fee requirements by mandating that Development Order conditions with respect to funding or construction be credited against any local impact fees for which the developer may also be subject. And, Rule 9J-2.0255, Florida Administrative Code, defines the manner of calculating those contributions from or on behalf of DRI developers which make "adequate financial provision" for public transportation facilities needed to accommodate the impacts of the proposed development. If the legislative intent were that DRI developers simply pay a local government's transportation impact fee to mitigate the adverse impacts of their proposal, the above statutory and regulatory provisions would be unnecessary.

A DRI is defined in Section 380.06(1), Florida Statutes, as a development that, because of its character, magnitude or location, would have a substantial effect upon the

health, safety and welfare of citizens of more than one county. The location, size and character of Babcock's proposed project is such a development. The legislature has determined that such developments are subject to distinct review criteria and may be treated differently than non-DRI developments. The contentions of Babcock fail to recognize the distinctions drawn by the legislature when it chose to utilize, in the same sub-subsection of the statute, the term "adequate provision" for DRI developers and the term "proportionate share" for non-DRI developers. It must be concluded that, having chosen to use different language for DRI and non-DRI developments, the legislature did not intend the same meaning for those two terms. Department of Professional Regulation v. Durrani, 455 So.2d 515 (Fla. 1st DCA, 1984). Likewise, Babcock fails to acknowledge that the term "proportionate share contribution" when applied to DRI developers in Rule 9J-2.0255, Florida Administrative Code, is defined in terms of "adequate financial provision." More importantly, however, Babcock's argument fails to acknowledge the various mitigation options adopted by the state and regional land planning agencies charged with the responsibility of implementing Chapter 380, Florida Statutes. The available options embrace the concept of concurrency and do not include the payment of a local government's impact fees. Contrary to the state and regional mitigation options and policies applicable to DRI reviews, local impact fee requirements (often referred to as "pay and go") do not embrace the concept of concurrency. Concurrency is getting

roadways in place prior to development. The simple payment of a designated fee based upon non-site specific data would not ensure that roadway improvements be in place simultaneous with the scheduled development to accommodate the traffic that will be generated by the development. As noted above, this concurrency concept is particularly important given the location of Babcock's DRI.

Section 380.06(14)(6), Florida Statutes, requires a consideration of whether, and the extent to which, the proposed development is consistent with the local comprehensive plan and local land development regulations. As noted in Finding of Fact 26, the orderly provision of adequate existing and planned public facilities, including transportation facilities, is a theme which runs throughout the City of Tampa's comprehensive plan. New development, and particularly new commercial and office development, is to be permitted at intensities and locations which complement existing and programmed transportation facilities. Having failed to demonstrate that the necessary facilities to mitigate the traffic impacts of the project are existing, planned or to be funded, Babcock's proposal is inconsistent with these goals and policies of the local comprehensive plan.

As of the date of the final hearing, but subsequent to the issuance of the initial Development Order, the City of Tampa rezoned Babcock's property in a manner which would preclude construction of Phase II of the proposed DRI. Such action taken

during the pendency of this appeal would appear to be inconsistent with Sections 380.07(2), 380.06(15)(c)3 and the terms of the Development Order itself which prohibits downzoning within a specific time period. However, in light of the findings and conclusions reached with regard to the adverse impacts of the proposal upon transportation facilities and air quality, and Babcock's failure to present adequate mitigation therefore, a determination of the effect of the rezoning upon Babcock's entitlement to approval is unnecessary.

Babcock urges that the City failed to identify in the Development Order changes which would make its proposal eligible for approval, as mandated by Section 380.08(3), Florida Statutes. The argument seems to be that it was the responsibility of the City and intervenors in this cause to identify, with specificity, the amount of development which is presently available with existing at-grade conditions and the amount of development which would be permitted with a separated grade intersection. In fact, it was determined that no further development beyond Phase I was permissible with the existing roadway conditions. The argument of Babcock fails to acknowledge that it is the applicant's initial and ultimate burden to demonstrate that the development, as proposed, meets the criteria for approval. When adverse impacts are identified, an applicant cannot simply propose a solution without proving either its feasibility or potential for implementation, and then expect or rely upon the local government to propose an acceptable or alternative form of development. It

is not the local government's burden to rewrite applications for development approval. It is clear that Babcock has been informed at every stage of this proceeding that the prime problem with its proposed development is traffic impacts and that, in order to receive approval it must demonstrate the feasibility of and funding commitments for the improvements necessary to maintain LOS "D" peak hour on the Courtney Campbell Causeway for project buildout. This is sufficient to notify Babcock that if its proposal, at full buildout, is not capable of meeting the LOS criterion, it must make changes either in its proposed development or in its proposals for mitigation. Whether Babcock chooses to meet these conditions by scaling down the size of its mixed use proposal; by developing its property with residential, as opposed to commercial, use; by proposing roadway improvements which can be funded and which will mitigate the adverse impacts; by delaying further development until additional roadway improvements are made; or in some other fashion is Babcock's decision and responsibility.

The record of this proceeding does not support a finding of arbitrary or discriminatory treatment by the City or the TBRPC with respect to the Babcock application for development approval. As repeatedly noted above, the critical significance and relationship of location to impacts renders each development wholly different, and one DRI cannot easily be compared to another. No similarity was shown between the Babcock DRI and the Westshore Area-wide DRI, the latter of which is evaluated and

reviewed under different statutory considerations. See Section 380.06(25), Florida Statutes. The only other DRI proposal located on Rocky Point Island received identical treatment as the Babcock proposal.

The concerns of the Environmental Land and Water Management Acts are regional impacts affecting the public in general, and a balancing of the interests of developers and local, regional and state governmental planners. Accordingly, the concerns of the New York Yankees and the Shriners over potential adverse impacts to access, visibility, aesthetics and the viability of their business or charitable interests which may occur with the construction of a grade-separated interchange are not determinative of the ultimate issue of whether Babcock is entitled to approval of its DRI. Findings with regard to such private concerns are included herein to demonstrate both that the costs of Babcock's proposed mitigation may be affected thereby and that these intervenors have a substantial interest in the outcome of this proceeding so as to enable them to present evidence concerning those regional and local interests which Chapter 380 was designed to address.

In summary, DRI review is site specific. The location of Babcock's DRI is the critical factor preventing approval of the project proposed by Babcock. It was clearly established that the proposed development will unduly burden a major regional transportation facility, will create unacceptable levels of carbon monoxide emissions and will increase costs to the motoring

public. Absent a showing that improvements to the roadway can be funded and implemented in such a manner that adequate levels of service are maintained, Babcock has failed to make adequate provision for the public facilities needed to accommodate the impacts of its proposed additional development. Having failed to establish that the adverse regional impacts of its proposed development can be cured or adequately mitigated, Babcock is not entitled to approval.

RECOMMENDATION

Based upon the findings of fact and conclusions of law recited herein, it is RECOMMENDED that the Florida Land and Water Adjudicatory Commission DENY Phase II of Babcock's application for development approval, and otherwise approve the Development Order entered by the City of Tampa.

Respectfully submitted and entered this 2nd day of February, 1989, in Tallahassee, Florida.


DIANE D. TREMOR
Hearing Officer
Division of Administrative
Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative
Hearings this 2nd day of
February, 1989.

Copies furnished:

Eugene E. Sterns, Esquire
David Smolker, Esquire
Mark D. Solov, Esquire
Sterns, Weaver, Miller,
Weissler, Alhadeff &
Sitterson, P.A.
One Tampa City Center
Suite 3300
Tampa, FL 33602

Douglas M. Wyckoff, Esquire
de la Parte, Gilbert &
Gramovot, P.A.
705 East Kennedy Blvd.
Tampa, FL 33602

Linda M. Hallas, Esquire
Law Offices of Roger S. Tucker
9455 Koger Blvd., Suite 209
St. Petersburg, FL 33702

Jeffrey N. Steinsnyder, Esq.
Office of General Counsel
State of Florida, Department
of Community Affairs
2740 Centerview Drive
Tallahassee, FL 32399-2100

G. Steven Pfeiffer, Esquire
Fowler, White, Gillen, Boggs,
Villareal & Banker, P.A.
101 North Monroe Street
Suite 1040
Tallahassee, FL 32301

Jann Johnson, Esquire
Ausley, McMullen, McGehee,
Carothers & Proctor
227 South Calhoun Street
Post Office Box 391
Tallahassee, FL 32302

The Honorable Bob Martinez
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399

The Honorable Robert A. Butterworth
Attorney General
State of Florida
The Capitol
Tallahassee, Florida 32399-1050

The Honorable Doyle Conner
Commissioner of Agriculture
State of Florida
The Capitol
Tallahassee, Florida 32399-0810

The Honorable Betty Castor
Commissioner of Education
State of Florida
The Capitol
Tallahassee, Florida 32399-0250

The Honorable Jim Smith
Secretary of State
State of Florida
The Capitol
Tallahassee, Florida 32399-0250

The Honorable Tom Gallagher
Treasurer and Insurance Commissioner
State of Florida
The Capitol
Tallahassee, Florida 32399-0300

The Honorable Gerald A. Lewis
Comptroller
State of Florida
The Capitol
Tallahassee, Florida 32399-0250

Patty Woodworth, Director
Florida Land and Water
Adjudicatory Commission
Executive Office of the Governor
The Capitol - PL-05
Tallahassee, Florida 32399-0001

APPENDIX
(Case No. 87-2519)

The proposed findings of fact submitted by the parties have been accepted and/or incorporated in this Recommended Order except as noted below:

Babcock

- 50. Rejected - contrary to the evidence.
- 59. Accepted as supported by some evidence, but not included as irrelevant to the issues in dispute.
- 64. Rejected as to grade-separated interchanges - not supported by competent substantial evidence.
- 66. Not totally accepted - unsupported by competent substantial evidence.
- 67 - 68. Accepted only if identical locations are assumed.
- 71. Second and third sentences rejected. See Finding of Fact 32.
- 75 - 76. Accepted as factually correct, but the materiality of other developments is discussed in Conclusions of Law.
- 78 - 79. Partially rejected. It was determined that the issue of traffic impacts sufficiently embraces the issue of air pollution from carbon monoxide emissions.
- 82. Last sentence rejected - not supported by competent substantial evidence.
- 83. Rejected - irrelevant and immaterial to the issues in dispute.
- 85. First sentence rejected - not supported by competent substantial evidence and irrelevant.
- 89. Rejected - not supported by competent substantial evidence.

102. Rejected - not supported by competent substantial evidence.
- 104, 105 & 107. Rejected - not supported by competent substantial evidence.
108. Second and third sentences rejected - not supported by competent substantial evidence.
- 109 - 110. Rejected - contrary to the greater weight of the evidence and not supported by competent substantial evidence.
112. Rejected - improper factual finding, contrary to the burden of proof in this proceeding and not supported by competent substantial evidence.
- 113 & 115. Rejected - not supported by competent substantial evidence.
116. Third sentence rejected - not supported by competent substantial evidence.

City of Tampa

26. All but first sentence rejected - irrelevant and immaterial to the issues in dispute.
29. Rejected as irrelevant and immaterial.
42. First part of first sentence rejected as overbroad.
53. The words "no weight" rejected and replaced with "reduced weight."
68. Degree of weight to be accorded rejected.
80. The words "any evidence" should be replaced with "competent substantial" evidence.
100. Last sentence rejected - speculative and not supported by competent substantial evidence.

TBRPC

- 39. Rejected - irrelevant and immaterial.
- 80. Rejected - irrelevant and immaterial.
- 107 & 110. The words "intentionally" rejected as not supported by competent substantial evidence.

New York Yankees

- 18. Last sentence rejected as unsupported by competent substantial evidence.
- 20. Third from last and last sentence rejected - not supported by competent substantial evidence.
- 21. Last sentence rejected - legal conclusions as opposed to factual finding.
- 25. Second sentence rejected as an overstatement.

Shriners

- 19. Second sentence rejected as not supported by competent substantial evidence.

1100d

ORDINANCE NO. 9544 -A

AN EMERGENCY ORDINANCE OF THE CITY OF TAMPA, FLORIDA, RENDERING A DEVELOPMENT ORDER PURSUANT TO CHAPTER 380, FLORIDA STATUTES, ON AN APPLICATION FOR DEVELOPMENT APPROVAL FILED BY THE BABCOCK COMPANY, FOR ROCKY POINT OFFICE AND COMMERCIAL PARK, A DEVELOPMENT OF REGIONAL IMPACT; PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, on October 18, 1984, THE BABCOCK COMPANY ("the Developer") filed an Application for Development Approval (which, together with later filed sufficiency responses, is hereafter referred to as the "ADA") of a Development of Regional Impact ("DRI") with the City of Tampa ("the City"), Hillsborough County City-County Planning Commission, Hillsborough County Environmental Protection Commission, Florida Department of Community Affairs and the Tampa Bay Regional Planning Council ("TBRPC"), pursuant to the provisions of Section 380.06, Florida Statutes (1983), as amended ("Chapter 380"), and Section 43-96.2, City of Tampa Code; and

WHEREAS, the ADA proposes the development of ROCKY POINT OFFICE AND COMMERCIAL PARK, a mixed-use office, hotel-motel, and restaurant development located on a 54.8 acre site at Rocky Point Drive north of Courtney Campbell Causeway.

WHEREAS, the City Council as the governing body of the local government having jurisdiction pursuant to Chapter 380 is authorized and empowered to consider ADAs for DRIs; and

WHEREAS, the public notice requirements of Chapter 380, and Section 43-96.2, City of Tampa Code have been satisfied; and

WHEREAS, the City Council has on September 25, 1986, held a duly noticed public hearing on the ADA and has heard and considered testimony and documents received thereon; and

WHEREAS, the City Council has received and considered the report and recommendations of the TBRPC; and

WHEREAS, all interested parties and members of the public were afforded the opportunity to participate in the application hearing on the subject DRI, before the City Council; and

WHEREAS, Judge Hanlon in Centennial Homes, Inc. and the Babcock Company vs. the City of Tampa, et al, Case No. 86-22926, Division "A", rendered an order issuing a Final Pre-Emptory Writ of Mandamus ordering City Council to adopt an Ordinance issuing a Development Order either approving, approving with conditions or denying Plaintiffs ADA on or before March 1, 1987; and

WHEREAS, in order to comply with the Judge's Order to render a Development Order by March 1, 1987 it is necessary to adopt this Ordinance as an Emergency Ordinance; and

WHEREAS, the City Council has reviewed the above referenced documents, as well as all related testimony and evidence submitted by each party and members of the general public; and therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:

Section 1. That this Ordinance shall constitute the Development Order ("Order") of the City Council issued in response to the ADA filed by the Developer, for development of Rocky Point Office and Commercial Park, a DRI. The scope of development to be permitted pursuant to this Order includes the operations, conditions and limitations described in the ADA and

Certified as true and correct copy.

the supporting documents, which by reference are made a part hereof as composite Exhibit "A", as modified herein.

Section 2. That City Council, having received the above referenced documents, and having received all related comments, testimony and evidence submitted by each party and members of the general public, finds there is substantial competent evidence to support the following findings of fact:

- A. That the real property which is the subject of the ADA is legally described as set forth in Exhibit "B," attached hereto and by reference made a part hereof.
- B. That the Developer submitted to the City an ADA which is attached hereto as part of composite Exhibit "A," and by reference made a part hereof, to the extent that it is not inconsistent with the terms and conditions of this Order.
- C. That the Developer proposes the development of ROCKY POINT OFFICE AND COMMERCIAL PARK, a mixed-use office, hotel-motel, and restaurant development with a total site area of approximately 55 acres, located approximately at Rocky Point Drive north of Courtney Campbell Causeway.
- D. That the proposed development is not located in an area of critical state concern as designated pursuant to Section 380.05, Florida Statutes (1985), as amended. The proposed development is in an area which was the subject of regional studies related to transportation.
- E. That a comprehensive review of the impact generated by the development has been conducted by the City and the TBRPC.
- F. That TBRPC has reviewed the ADA for the proposed development and has recommended denial.
- G. That the project is consistent with all local land development regulations and the adopted local comprehensive plan.
- H. That this Order is consistent with the report and recommendations of the TBRPC and satisfies the provisions of §380.06(14) Florida Statutes, 1985.
- I. That the transportation impacts generated by the development without proper mitigation will unreasonably interfere with the achievement of objectives of the adopted State Land Development Plan applicable to the area.
- J. That Courtney Campbell Causeway is the only vehicular access to Rocky Point Island.
- K. That the feasibility of the traffic improvements on Courtney Campbell Causeway corridor at affected intersections to mitigate substantial adverse traffic impacts and maintain LOS D peak-hour has not been fully determined.
- L. That the dollar amount of the fair share improvements for Courtney Campbell Causeway corridor cannot be determined until the necessary improvements are identified and feasibility determined.
- M. Based on full occupancy of existing and approved development and projected 1990 background traffic on Courtney Campbell Causeway, the intersection at Rocky Point and Courtney Campbell Causeway will operate at a deficient level of service.

- N. The regional transportation facilities in the area are a primary evacuation route for the citizens of the region.
- O. That the project consists of two phases:
 - PHASE I - 253,393 square feet office
378 hotel rooms
5,000 square foot restaurant
 - PHASE II - 1,122,000 square feet office
12,000 square feet restaurant
- P. That Phase I has been previously approved by Agreement with the State of Florida Department of Community Affairs under a preliminary development agreement.

Section 3. That the City Council, having made the above findings of fact, reaches the following conclusions of law:

- A. That these proceedings have been duly conducted pursuant to applicable law and regulations, and based upon the record in this proceeding, the Developer and the various departments of the City are authorized to conduct development as described herein, subject to conditions, restrictions and limitations set forth herein.
- B. That the review by the City, the TBRPC, and other participating agencies and interested citizens reveals that impacts are adequately addressed pursuant to the requirements of Chapter 380, within the terms and conditions of this Order and the ADA.

Section 4. That, having made the above findings of fact and drawn the above conclusions of law, it is ordered that the ADA is conditionally approved for Phase I, as described herein. The conditional approval of Phase I is contingent upon satisfaction of development order conditions cited herein. It is further ordered that Phase II is hereby denied until such time as all Development Order conditions contained herein are satisfied.

- A. Substantial Deviations: Retriggering of DRI process.

Further review pursuant to Chapter 380, may be required if a substantial deviation, as defined in Chapter 380, occurs. The Developer shall be given due notice of, and an opportunity to be heard at any hearing to determine whether or not a proposed change to the development is a substantial deviation. Substantial deviation may occur by failure to comply with the conditions herein, failure to follow the plans and specifications submitted in the ADA and supplementary information and conditions specified herein, or by activities which are not commenced until after the expiration of the period of the effectiveness of this Order.

- B. Annual Reports:

The Developer shall submit annual reports on ~~the~~ DRI to the City, the TBRPC, the State Land Planning Agency, and other agencies as may be appropriate, on July 1, 1987, and on July 1st of each following year until such time as all terms and conditions of this Order are satisfied. The report shall be submitted on Form BLWM-07-85 as amended. Such report shall be submitted to the Director, Department of Housing, Inspections and Community Services (hereinafter "HICS") who shall, after appropriate review, submit it for review by the City Council. The City Council shall review the report for compliance with the terms and conditions of this Order and may issue further orders and conditions to

insure compliance with the terms and conditions of this Order. The Developer shall be notified of any City Council hearing wherein such report is to be reviewed, provided, however, that receipt and review by the City Council shall not be considered a substitute or a waiver of any terms or conditions of this Order. The annual report shall contain:

1. Changes in the plan of development, or representations contained in the ADA, or phasing for the reporting year and for the next year;
2. A summary comparison of development activity proposed and actually conducted for the reporting year;
3. Undeveloped tracts of land, other than individual single family lots, that have been sold to a separate entity or developer;
4. Identification of and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
5. An assessment of the development's and local government's compliance with conditions of approval contained in the DRI development order, and the commitments which are contained in the ADA;
6. Any known incremental DRI applications for development approval or request for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
7. A statement that all persons have been sent copies of the annual report in conformance with Subsections 380.06(14) and (16), Florida Statutes (1985); and
8. A copy of any notice of the adoption of a Development Order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Subsection 380.06(14)(d), Florida Statutes (1985).
9. An hourly traffic count for a 24-hour period taken at all established access points from public right of way to the development site. ✓
10. An indication of a change, if any, in local jurisdiction for any portion of the development since this Development Order was issued.
11. A list of significant local, state, and federal permits which have been obtained or which are pending, by Agency, type of permit, permit number, and purpose of each.

C. Development Conditions

1. The following conditions are established for the purpose of mitigating substantial adverse impacts of this development on regional transportation facilities. Issuance of the development permits by the City for the project shall require a determination by the City of compliance with the conditions set forth herein.
 - a. Funding Commitments. For the purpose of this Order, funding commitments may be at Developer's

option) either in the form of Developer contributions in aid of construction, or Developer commitments for actual construction, or the placement of the improvements in the Annual Element of the Transportation Improvements Work Programs of the City, Hillsborough ("County"), or the State of Florida ("State"), or a combination thereof or any other means which assures funding commitments to the City's satisfaction.

b. The Rocky Point Island Traffic Study (Long Term), dated February 20, 1986 on its Table of Contents, as amended, has been completed for an area which includes the Courtney Campbell Causeway Corridor. The study provided opportunity for participation of the Florida Department of Transportation, Tampa Bay Regional Planning Council, City of Clearwater, City of Tampa, Hillsborough County, Pinellas County, and developers in the study area. The study includes but is not limited to:

- (1) An inventory of regionally significant roadways in the study area which identifies the existing, programmed or proposed facilities for each roadway.
- (2) An inventory of existing, approved and projected development in the study area.
- (3) Estimates of base year and future traffic on the regionally significant roadways identified in the ADA, noting the extent to which said traffic is or will be generated by study area uses and by uses outside the study area.
- (4) An assessment of existing roadway operating conditions, and an estimate of future operating conditions on the regionally significant roadways.
- (5) Identification of goals, objectives and strategies for maintaining or achieving desirable operating conditions on the regionally significant roadways, including specific proposals for reducing traffic demands on the roadway system and/or for increasing system capacity through roadway improvement, new roadway construction or operational techniques, as appropriate.

The study was conducted consistent with accepted professional traffic planning and engineering practices, and methods. Standards and assumptions used in the study are described in the study document.

c. Within one year from the effective date of this Development Order, the Developer shall prepare and submit to the City of Tampa, TBRPC, TUANS, FDOT and the Hillsborough Area Rapid Transit Authority (HART), a plan of Transportation Systems Management (TSM) measures to be implemented for the project or portions thereof. The plan shall set forth objectives for reduction of total peak hour trips generated by project uses as estimated in the ADA, and shall set forth strategies for accomplishing those objectives, considering the following as a minimum:

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- (i) Ride-sharing.
- (ii) Provision of transit facilities and programs to encourage transit ridership.
- (iii) Other appropriate trip diversion measures.
- (iv) Van pooling.

The objectives for reduction of peak hour trips as set forth in the TSM plan may serve as a basis for the Developer or reviewing agencies to request amendments to this Development Order; provided, however, that such amendment shall stipulate that each annual report for this development after the issuance of certificates of occupancy for 200,000 square feet of office space or the equivalent thereof in other uses shall include yearly assessment of plan effectiveness as measured in terms of reduction of project-generated peak hour trips. This assessment shall also include sufficient and appropriate documentation to support determinations of reductions claimed as a result of each TSM strategy.

d. The Developer shall contribute, or cause to be contributed by others, certain funds, land, design and construction services, or a combination thereof, for the purpose of mitigating transportation impacts of the project. The contributions shall be subject to the conditions, limitations and restrictions set forth herein.

(1) Contributions shall be made to the City of Tampa, who shall apply such contributions, or may make such contributions available for the use of other responsible entities, to undertake studies and projects that may serve to mitigate the impacts of this project as set forth below. Eligible activities may include planning, design, rights-of-way acquisition, and construction of improvements set forth below as derived from the list of improvements recommended by TBRPC as indicated in Exhibit "C" or such alternative studies or improvements as the City and TBRPC determine to provide equal or greater mitigation of transportation impacts on the regional transportation system. Contributions assessed by this Development Order shall be credited against any local transportation impact fee ordinance assessments as appropriate.

(2) The design for improvements shall be reviewed and approved, as appropriate, by FDOT, Hillsborough County and the City with, in all cases, a final review and approval by the City prior to the construction of such improvements. The improvements and the phasing of the construction of those improvements may, after detailed review by the appropriate governmental agency and the City, be modified in a manner intended to accomplish acceptable operating conditions at the identified locations utilizing generally recognized professional traffic engineering standards and practices.

e. The following conditions shall apply for Phase I only:

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and correct copy.

- (1) Phase I shall consist of that development constructed or previously approved pursuant to the predevelopment agreement attached hereto as Exhibit E which approved development of:

office - 253,393 square feet
hotel - 378 rooms
restaurant - 5,000 square feet

- (2) No later than 45 days after adoption of this Development Order and expiration of the appeal period and the exhaustion of any appeal thereunder, the Developer shall pay to the City Five Hundred Eighty Two Thousand and Five Hundred Sixty Six and 09/100 Dollars (\$582,566.09) for Phase I, which amount is based on the City of Tampa Impact Fee.

f. Phase II is denied until such time as developer demonstrates that all the conditions below are met. The conditions of this subsection f. (1) through (6) below are cumulative not alternative. Developer shall then apply for an amendment to this Development Order pursuant to Chapter 380.06. Any approval shall include all conditions contained in this Development Order. Phase II consists of the remaining development requested in the ADA.

- (1) Developer must show feasibility of and funding commitments for the improvements necessary to maintain LOS D peak-hour on Courtney Campbell Causeway corridor for project build-out.
- (2) Compliance with all conditions set forth in this development order for Phase I.
- (3) The Developer shall insure that worker flex time be implemented as provided below:
 - (a) At least fifteen percent (15%) of the office employees' work hours must begin on or before 7:30 a.m. or on or after 9:00 a.m. and end on or before 4:30 p.m. or on or after 5:30 p.m..
 - (b) Developer shall place deed restrictions on the property or other mechanism approved by the City to insure compliance with the worker flex time provision. The deed restrictions or other mechanism proposed by the Developer shall be submitted to the City within forty-five (45) days after the adoption of this Development Order and expiration of the appeal period and the exhaustion of any appeal thereunder.
 - (c) The Annual Report for this development, beginning the year after the first certificate of occupancy for Phase II has been pulled, shall include an assessment of the effectiveness of the provision as measured in terms of reduction of project generated peak-hour trips. This assessment shall also include sufficient and appropriate documentation to support determination of the reductions shown.

- (4) If the conditions above have not been met within five (5) years of the effective date of this Development Order a new traffic analysis pursuant to Chapter 380.06 must be submitted with the request for amendment to Development Order. The new information shall be used to modify the transportation conditions herein.
- (5) The developer shall pay a fair share contribution for Phase II based on Rule 9J2.0255 (1987) (3) and (4), Florida Administrative Code or the City of Tampa Transportation Impact Fee Ordinance whichever is greater. The fee shall be calculated on the improvements listed in Exhibit D attached hereto.
- (6) Developer shall pay the entire contribution due for Phase II as calculated above prior to the issuance of the first building permit for Phase II so that the City may immediately initiate the design and proceed with the construction of a major transportation improvement which shall substantially benefit the affected regional roadway network. The payment shall be applied by the City or made available to other responsible entities for use on the improvements on Exhibit C or such alternative improvements as the City and TBRPC determine to provide equal or greater mitigation of the transportation impacts on the regional transportation systems.

g. Area Wide Transportation Study

- (1) A transportation study for the Courtney Campbell Causeway Area, shall be developed in cooperation with the Florida Department of Transportation, Tampa Bay Regional Planning Council, City of Tampa, Hillsborough County, Tampa Urban Area Transportation Study (TUATS), Metropolitan Planning Organization (MPO), and developers in the study area. The study shall be commenced within six months of the date of issuance of this Development Order and completed within one year. The study shall include, but is not limited to:
 - (a) An inventory of regionally significant roadways in the study area which identifies the existing, programmed or proposed facilities for each regionally significant roadway.
 - (b) An inventory of existing, approved and projected development in the study area.
 - (c) Estimates of base year and future traffic on the regionally significant roadways identified in the ADA, noting the extent to which said traffic is or will be generated by study area uses and by uses outside the study area.
 - (d) An assessment of existing roadway operating conditions, and an estimate of future operating conditions on the regionally significant roadways.
 - (e) Identification of goals, objectives and strategies for maintaining or achieving

desirable operating conditions on the regionally significant roadways, including specific proposals for reducing traffic demands on the roadway system and/or for increasing system capacity through roadway improvement, new roadway construction or operational techniques, as appropriate.

The study shall be conducted consistent with accepted professional traffic planning and engineering practices and methods. Standards and assumptions used in the study shall be described in the study document. The study findings and recommendations shall serve as a basis for the applicant or reviewing agencies to request amendments to this Development Order. The Westshore Master Plan may satisfy this condition.

2. The Developer's final development plan shall designate and map preservation and conservation areas, if any, in accordance with TBRPC's adopted growth policy Future of the Region, Sections 2.701, Preservation, and 2.702, Conservation.
3. The Developer, its successors or assigns, shall be the responsible entity for the maintenance of on-site stormwater management systems.
4. The Developer, its successors or assigns, shall implement the energy conservation measures as set forth in the ADA.
5. The total daily generation of solid waste from the commencement of construction through build-out and operation of the project as referenced in the ADA will be accepted by the City.
6. The Developer, its successors or assigns, shall provide separate hazardous waste storage containers/areas for each project component within the project. These containers/areas shall be accessible to project businesses and shall be clearly marked and/or colored so as to clearly distinguish the containers/areas intended for hazardous wastes and materials. (Hazardous wastes are those substances and materials defined in Section 403.703(21), Florida Statutes, and listed in Title 40 CFR Part 261.)

The Developer shall provide to all Rocky Point Office and Commercial Park businesses information that:

- a. Indicates types of waste and materials that are considered to be hazardous and are to be stored or disposed of only in specially-designated containers.
- b. Indicates the location of the specially-designated hazardous waste and materials containers; and
- c. Advises of applicable statutes and regulations regarding hazardous wastes and materials.

The Developer shall require that any hazardous waste will be transported and disposed of in a manner consistent with applicable regulations.

7. The average daily flows of waste water from commencement of construction through build-out and operation of the project as referenced in the ADA will be accepted by the City at the standard charge for

wastewater service. Connection fees, installation charges and, if applicable, grants-in-aid-of-construction for off-site improvements to the wastewater system necessitated by this development, shall be assumed by the Developer, its successors or assigns, when assessed by the City, as project plans become final, all in accordance with established City policies and regulations.

8. The total daily water requirements from commencement of construction through build-out and operation of the project as referenced in the ADA will be supplied by the City at the standard charge for water service. Connection fees, installation charges and, if applicable, grants-in-aid-of-construction for off-site improvements to the water system necessitated by this development, shall be assumed by the Developer, its successors or assigns, when assessed by the City, as project plans become final, all in accordance with established City policies and regulations.
9. The City shall ensure the adequacy and availability of the following public services for this development: energy, police, emergency medical, and fire. Further the Developer, its successors or assigns, shall be responsible for the cost of any water distribution capital improvements necessitated by this development to ensure adequate fire protection.
10. If any significant historical or archaeological sites or artifacts are discovered during site preparation and construction, ultimate disposition of such resources will be determined in cooperation with the Florida Division of Archives and the City of Tampa.
11. The Developer, its successors or assigns, shall be the responsible entities for the maintenance of all open space areas of the project site.
12. All development pursuant to this Order shall be in accordance with applicable local building codes, ordinances, and other laws, except as otherwise herein provided.
13. All elevations for habitable structures will be at or above the base flood elevation.
14. Drainage design guidelines for construction activities shall be prepared by the Developer in the restrictive covenants or other development controls for use by the Developer, its successors or assigns in an effort to control erosion during construction.
15. The harbor area identified on Map H of the ADA (more fully described on Exhibit "F" attached hereto and made a part hereof) shall be designated as a regional preservation area pursuant to Section 2.701 of the Council's adopted Future of the Region. Any subsequent proposal for development in the harbor shall require review pursuant to Chapter 380, Florida Statutes.
16. The Developer shall require that all title transfers and lease agreements for property sold or leased within the Rocky Point Office and Commercial Park development be accompanied by a hazard disclosure statement that, like other coastal lands, the property will be subject to a hurricane evacuation order and potential property damage in the event of a hurricane landfall.
17. An acceptable air quality analysis as required by the Department of Environmental Regulation shall be completed prior to Phase II. The City reserves the

right to require mitigative measures including, but not limited to, revisions of the Development Plan to alleviate impacts of the project or ambient air quality in accordance with City policy. The Developer shall employ fugitive dust emission abatement procedures such as, but not limited to, staged development, sodding and mulching, surface watering, and use of regenerative-type sweeping equipment.

18. The Developer shall develop a plan for each project component to encourage non-potable water use for landscape irrigation purposes, including stormwater or pumping from shallow wells.
19. The Developer shall be responsible for maintenance and operation of any on-site wells.
20. The Developer shall cooperate, by providing reasonably available information, in the Hurricane Evacuation study for the Rocky Point area, in cooperation with Tampa Bay Regional Planning Council, and the progress of this study shall be included in the first annual report after occupancy of any portion of the project.
21. In the event that any rare, endangered or threatened species are observed frequenting the site for feeding, nesting, or breeding, proper mitigation measures shall be implemented in cooperation with the Florida Game and Fresh Water Fish Commission.
22. Measures shall be instituted to design, construct, and maintain the drainage system to protect water quality in compliance with the requirements of the City and with the appropriate portions of TBRPC's Stormwater and Lake System Maintenance and Design Guidelines, as project plans become final, all in accordance with established City policies and regulations.

Section 5. That the definitions contained in Chapter 380 shall control the interpretation and construction of any terms of this Order.

Section 6. That the term "Developer" as used in this Order is deemed to mean The Babcock Company, its successors, or assigns.

Section 7. That this Order shall remain in effect for a period of ten (10) years from the date upon which this Order becomes final (not subject to appeal). Any development activity wherein plans have been submitted to the City for its review and approval prior to the expiration date of this Order, may be completed, if approved. This Order may be extended by City Council on the finding of excusable delay in any proposed development activity.

Section 8. That, prior to one (1) year from the date upon which this Order becomes final (not subject to appeal), the City may not down-zone or reduce the intensity or unit density of Phase I, unless the City can demonstrate that:

- A. substantial changes in the conditions underlying the "purpose" of the Order have occurred; or
- B. the Order was based on substantially inaccurate information provided by the Developer; or
- C. the change is clearly established by the City to be essential to the public health, safety, or welfare.

Any down-zoning or reduction of intensity shall be effected only through the usual and customary procedures required by statute and/or ordinance for changes in local land development regulations.

For the purpose of this Order, the term "down-zone" shall refer only to changes in zoning regulations which decrease the development rights approved by this Order, and nothing in this paragraph shall be construed to prohibit legally enacted changes in zoning regulations which do not decrease the development rights granted to the Developer by this Order. The City does intend to rezone the property to conform with the Tampa 2000 Land Use Plan and Chapter 43-A, City of Tampa Code, as required by State law.

Section 9. Notwithstanding this Order, the Developer, at its option, may resubmit this project for review and approval under any Area Wide Application for Development Approval, pursuant to Florida Statutes, Subsection 380.06(25), 1985, as amended, if such application encompasses the subject development site. Any impacts assessed and satisfied pursuant to this Order shall be considered and credited in any such Area Wide Development Order.

Section 10. That this Order shall be binding upon the Developer, assigns or successors-in-interests.

Section 11. The Director of HICS is responsible for insuring compliance with this Order and the receipt of the Developer's contributions. Monitoring shall be accomplished by review of the Annual Report, Building Permits, Certificates of Occupancy, Plats, if applicable, and by on-site observations.

Section 12. That it is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created or designated as successor-in-interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Order.

Section 13. That the City Clerk is hereby directed to send certified copies of this Order, within five (5) days of the effective date of this Ordinance, to the Developer, the Florida Department of Community Affairs, and the TBRPC.

Section 14. That this Order shall be deemed rendered upon transmittal of copies of this Order to the recipients specified in Chapter 380.

Section 15. That the Developer shall record a notice of adoption of this Order as required pursuant to Chapter 380, and shall furnish the City Clerk a copy of the recorded notice.

Section 16. That this Ordinance shall take effect immediately upon becoming a law, and a copy hereof shall be posted on the bulletin board in the hall of the first floor of the City Hall in the City of Tampa, Florida, for the convenience of the public.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON FEB 26 1987

ATTEST:

Tom Vanni
CHAIRMAN, CITY COUNCIL

Frances Henriques
CITY CLERK

APPROVED BY ME ON 2-27-87

Prepared and Approved by:

Sandra W. Friedman
MAYOR
(State of Florida,
County of Hillsborough)

PAMELA K. AKIN
CHIEF ASSISTANT CITY ATTORNEY

This is to certify that the foregoing is a true and correct copy of Ordinance 9544-A on file in my office.

Witness my hand and official seal this 27th day
of February, 1987. By: Frances Henriques
FRANCES HENRIQUES, CITY CLERK
Deputy City Clerk

EXHIBIT "C"

IMPROVEMENT LIST FOR ROCKY POINT OFFICE AND COMMERCIAL PARK

<u>LOCATION</u>	<u>IMPROVEMENT</u>
1. Rocky Point Drive/Courtney Campbell Causeway	Grade Separation
2. Eisenhower/Courtney Campbell Causeway	Grade Separation
3. SR 60: Rocky Point Drive to Memorial	6 lane partial access control
4. SR 60: Rocky Point Drive to Bayshore	4 lane partial access control
5. Memorial: Courtney Campbell Causeway to Spruce	Add two lanes to existing six lanes
6. Memorial/I-275: southbound to eastbound ramp	Add one lane to existing lane
7. Memorial: Spruce to I-275	Add two lanes to existing lanes
8. Eisenhower/Memorial	Grade separation
9. McMullen-Booth/SR 60	Add EB/WB thru lane, EB right turn lane, SB left turn lane
10. Eisenhower/Gunn Club	Grade separation
11. Memorial/Gunn Club	Grade separation
12. Lois Avenue/Boy Scout Boulevard	Add EB/WB thru lane
13. Westshore/Boy Scout Boulevard	Add EB/WB thru lane, NB thru land
14. US 19/SR 60	Add WB left turn lane
15. Memorial: Hillsborough to Gunn Club	Add EB/WB thru lane
16. Eisenhower: Gunn Club to Courtney Campbell Causeway	Add NB/SB thru lane
17. I-275: Memorial to Westshore	Add EB/WB thru lane
18. I-275: Westshore to Lois	Add EB/WB thru lane
19. I-275: Lois to Dale Mabry	Add EB/WB thru lane

Certified as true
and correct copy.

EXHIBIT "D"

IMPROVEMENT LIST FOR ROCKY POINT OFFICE AND COMMERCIAL PARK

<u>LOCATION</u>	<u>IMPROVEMENT</u>
1. Eisenhower/Courtney Campbell Causeway	Grade Separation
2. Memorial: Courtney Campbell Causeway to Spruce	Add two lanes to existing six lanes
3. Memorial/I-275: southbound to eastbound rampa	Add one lane to existing lane
4. Memorial: Spruce to I-275	Add two lanes to existing six lanes
5. Eisenhower/Memorial	Grade Separation
6. McMullen-Booth/SR 60	Add EB/WB thru lane, EB right turn lane, SB left turn lane
7. Eisenhower/Gunn Club	Grade Separation
8. Memorial/Gunn Club	Grade Separation
9. Lois Avenue/Boy Scout Boulevard	Add EB/WB thru lane
10. Westshore/Boy Scout Boulevard	Add EB/WB thru lane, NB thru lane
11. US 19/SR 60	Add WB left turn lane
12. Memorial: Hillsborough to Gunn Club	Add EB/WB thru lane
13. Eisenhower: Gunn Club to Courtney Campbell Causeway	Add NB/SB thru lane
14. I-275: Memorial to Westshore	Add EB/WB thru lane
15. I-275: Westshore to Lois	Add EB/WB thru lane
16. I-275: Lois to Dale Mabry	Add EB/WB thru lane

Certified as true
and correct copy.

A G R E E M E N T

THIS AGREEMENT is entered into between THE BABCOCK COMPANY, a Weyerhaeuser Company, and CENTENNIAL HOMES, INC., a Weyerhaeuser Company, (jointly the "Owner") and the State of Florida, Department of Community Affairs, (the "Department").

R E C I T A L S

WHEREAS, pursuant to Subsection 380.032(3), Florida Statutes and 9B-16.18, Florida Administrative Code, the state land planning agency is given the power and duty to enter into agreements with any landowner, developer, or governmental agency as may be necessary to effectuate the provisions of Chapter 380, Florida Statutes, or any rules promulgated thereunder; and

WHEREAS, prior to December 1981, Centennial Homes, Inc. owned approximately 55 acres generally known as Rocky Point Office and Commercial Park, as shown on Exhibit "1" attached hereto and made a part hereof (the "Property"), located on Rocky Point Island in the western portion of the City of Tampa and north of Courtney Campbell Causeway. The Owner has platted the Property, has sold several lots and intends to sell the remaining lots for development by third parties; and

WHEREAS, the Owner and the Department desire to enter into an agreement regarding the Property.

WHEREAS, (a) on December 14, 1977, the Department sent a letter of inquiry to the owner raising the possibility that development of the Property might constitute a Development of Regional Impact (DRI) pursuant to Chapter 380, Florida Statutes, and (b) on December 28, 1977, the Owner responded to the Department with a letter which explained that the Owner was at that time constructing only a roadway through the Property along with sewer, water and storm drainage systems. The letter also indicated that market studies were being conducted to determine what land uses would be proposed for the Property and that the Owner had no definite plans for the Property at that time; and

WHEREAS, in December, 1981, the owner sold lots 1-4, inclusive, of the Property (approximately 2 acres) to Elecon Industries, Inc.; and

WHEREAS, in December, 1982, Babcock sold lots 6-12, inclusive, of the Property (approximately 5.4 acres) to First Benjamin, Inc. ("TowerMarc"); and

WHEREAS, TowerMarc applied to the Department and on March 25, 1983, received a Binding Letter of Interpretation ("BLI") confirming that TowerMarc's proposed 183,393 gross square feet of office and 5,000 square feet of restaurant would not constitute a Development of Regional Impact.

WHEREAS, on August 16, 1983, the Department sent another letter of inquiry about the DRI status of the Rocky Point Office and Commercial Park. Owner claims that they have no record of receipt of this letter; and

WHEREAS, the owner signed the following three additional contracts to sell parcels within the property:

(1) July 12, 1983 - Contract to sell lots 13-16, inclusive, (4.3 acres) to Pickett Land Co., ("Pickett"); and

(2) November 3, 1983 - Contract to sell lot 38 and part of lot 39 (approximately 4.5 acres) to Hardage Enterprises; and

(3) December 20, 1983 - Contract to sell lots 35, 36, 37 and part of 38 (approximately 6.3 acres) to Gulfstream Land and Development Corporation.

WHEREAS, on December 23, 1983, and again on January 20, 1984, in response to Pickett's BLI application, the Department sent letters notifying Pickett and the Owner, that the Department had determined that the entire plan for the Rocky Point Office and Commercial Park should undergo DRI review pursuant to Section 380.06, Florida Statutes; and

WHEREAS, the Owner and the Department have heretofore disagreed and disputed whether Chapter 380, F.S., is applicable to the Property. The Owner wishes to sell the remaining 48 acres within the Property, and if the Property is sold and the present plans for the Property are carried out, the square footage of office development constructed on the Property will exceed the presumptive threshold of Rule 27F-2.07, Florida Administrative Code. To resolve the dispute and to avoid any potential enforcement action that might be initiated by the Department, the

Department believes that it will benefit the State of Florida to enter into this agreement whereby the applicability of Chapter 380, F.S., will finally be determined and immediate Development of Regional Impact review of the Rocky Point Office and Commercial Park will be obtained; and

WHEREAS, the Department, in its discretion, has determined that this Agreement (a) is in the best interest of the State, (b) is necessary and beneficial to the Department as the agency responsible for enforcement of Chapter 380, Florida Statutes, and (c) reasonably applies and effectuates the provisions and intent of said Chapter 380, F.S.

NOW THEREFORE, Department and Owner agree, pursuant to Subsection 380.032 (3), Florida Statutes and Rule 9B-16.18, Florida Administrative Code, as follows:

1. The Owner will file an application for development approval (ADA) relating to all the Property as shown on Exhibit "1", attached hereto and made a part thereof, within eight (8) months after the effective date of this Agreement. The effective date shall be the date that this agreement is executed by the last party to sign it. The ADA shall include all of the Property shown on Exhibit "1", including parcels previously sold, and shall include an assessment of the regional impacts generated by the development proposed to be located upon the Property, including the impacts of existing or proposed development located on portions of the Property previously sold which shall be considered in the assessment as new impacts generated by the development and not as part of the existing background conditions.

2. The Owner shall render to the Department a check for \$50,000.00 to fund a study of state and regional growth management issues relating to Rocky Point Island and the Courtney Campbell Causeway. The study will focus on state and regional problems that might result from future development of the Rocky Point area, such as traffic congestion on the Causeway, hurricane evacuation and bay management. The Department, in cooperation with the Tampa Bay Regional Planning Council (TBRPC), shall develop and approve a scope of work for this study to ensure that the study will be compatible with existing state and regional plans.

In addition, the Department shall enter into a contract with the TBRPC regarding the Council's participation in the study, within 30 days of the effective date of this agreement. Upon its execution by both parties, the Department shall send a copy of the executed contract, including the approved scope of work, to the Owner.

3. No further development, as defined in Section 380.04, Florida Statutes (1983), or construction of buildings shall be undertaken on any of the Property until a final DRI development order is issued pursuant to Section 380.06, Florida Statutes (1983), except construction of the buildings that are specifically authorized by this paragraph. The Owner or its successors or assigns may proceed to develop and occupy buildings to be constructed on the lots depicted on Exhibit "2" attached hereto and made a part hereof (the "Building Lots"), prior to the Owner's receipt of a DRI Development Order for the DRI Property, as follows:

(a) a 70,000 square foot office building on lots 1-4, inclusive, (approximately 2 acres) of Rocky Point Office and Commercial Park; and

(b) a 183,393 square foot office building and a 5,000 square foot restaurant on lots 6-12, inclusive, (approximately 5.4 acres) of Rocky Point Office and Commercial Park, which development is already underway based on the March 25, 1983, BLI issued therefore; and

(c) a 203-suite hotel as proposed by the Pickett Companies, on lots 13 through 16 inclusive, (approximately 4.28 acres) of the Rocky Point Office and Commercial Park.

(d) a 176-room hotel as proposed by Hardage Enterprises, on lot 38 and part of lot 39, (approximately 4.5 acres) of the Rocky Point Office and Commercial Park.

From and after the effective date of this Agreement, the Owner or its successors or assigns shall be entitled to obtain all necessary permits, to commence and complete construction, and to obtain all necessary certificates of completion and certificates of occupancy for the above described development on the Building Lots.

4. The Owner may continue to sell lots on the Property. If any part of the Property is sold by Owner to a third party, the Owner will include in the sale document a notice that the parcel sold is part of a development of regional impact and must comply with the provisions of the final development order issued for the Property pursuant to Section 380.06, Florida Statutes (1983). If the new owner of a parcel wishes to undertake development not authorized or approved in the development order, he shall submit his proposal to the local government and the regional planning council for review as a substantial deviation pursuant to Subsection 380.06(17), Florida Statutes (1983), or submit a new ADA for his proposed development pursuant to Section 380.06, F.S. If any sale of a parcel prior to issuance of a development order for the Property results in a change to the ADA, the Owner shall immediately amend its ADA and advise the regional planning council and local government of the proposed changes in the ADA, and address the impacts resulting from such changes.

5. No construction or development, as defined in Section 380.04, Florida Statutes (1983), shall be initiated or carried out by the Owner or any successor in interest on the Property prior to the submission of an ADA and issuance of a final DRI Development Order for the Property, except for construction of the buildings listed in Paragraph 2 and described on Exhibit 2.

6. Pursuant to Rule 9B-16.18(7)(e), F.A.C., the Owner shall pay the costs and reasonable attorney's fee resulting from any suit brought and successfully prosecuted by the Department to enforce the provisions of this agreement. Violation of this agreement will result in an enforcement action pursuant to Section 380.11, Florida Statutes.

7. The Department shall not initiate any judicial or administrative action to enforce the provisions of Chapter 380, F.S., so long as the terms and conditions of this agreement are met and carried out by the Owner.

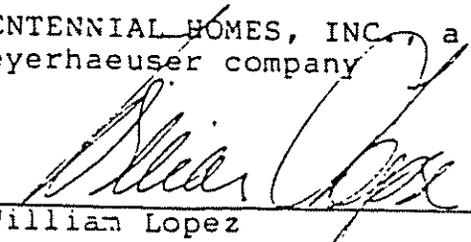
8. This agreement shall terminate upon either the issuance of a final DRI Development Order or within two years after the effective date, whichever occurs first.

9. The Babcock Company is a sister corporation of and is the authorized representative of Centennial Homes, Inc. ("Centennial") the record owner of the Property, which Property is known as Rocky Point Office and Commercial Park. Both Babcock and Centennial are subsidiaries of Weyerhaeuser Company, and the term "Owner" as used herein is deemed to mean either Centennial or Babcock or any other subsidiary of Weyerhaeuser Company which has managed or owned the Property, or any successor in interest to the property or a portion thereof whose interest arises after the effective date of this agreement.

10. The terms and conditions of this Agreement shall be binding upon the parties and enforceable by the parties in any court or administrative agency of competent jurisdiction. This Agreement constitutes the only writing or agreement entered into by the parties and may be modified only by written agreement signed by both parties. There are no additional terms, conditions or obligations of each party to the other except as specifically set forth in this Agreement.

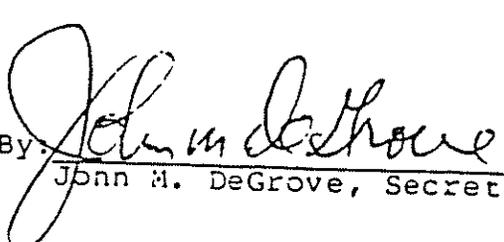
THE BABCOCK COMPANY, a
Weyerhaeuser Company, and

CENTENNIAL HOMES, INC. a
Weyerhaeuser company

By: 
William Lopez

Date: August 2, 1984

STATE OF FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS

By: 
John M. DeGrove, Secretary

Date: August 1, 1984



Certified as true
and correct copy.

AMENDMENT TO AGREEMENT

OF AUGUST 1, 1984

THIS AMENDMENT TO AGREEMENT IS ENTERED INTO between the Babcock Company, a Weyerhaeuser Company, and Centennial Homes, Inc., a Weyerhaeuser Company, (jointly the "Owner") and the State of Florida, Department of Community Affairs, (the "Department").

WHEREAS, the Owner and the Department entered into an Agreement on or about August 1, 1984, pursuant to Section 380.032(3), Florida Statutes, and 9B-16.18, Florida Administrative Code; and

WHEREAS, the Owner and the Department wish to amend the Agreement in order to clarify their understanding and to simplify portions of the Agreement;

NOW THEREFORE, the Department and Owner agree, pursuant to Subsection 380.032(3), Florida Statutes, and Rule 9B-16.18, Florida Administrative Code, to amend the Agreement of August 1, 1984 as follows:

1. The check for \$50,000 which is mentioned in paragraph two of the Agreement shall be rendered to the Tampa Bay Regional Planning Council (TBRPC), rather than to the Department. Said check shall be rendered to the TBRPC as soon as possible and within a maximum of three weeks from the date of execution of this Amendment of Agreement.

2. The 203-unit hotel on lots 13 through 16 inclusive, described in paragraph three "c" of the Agreement, may also include approximately 2,300 square feet of lot 17. However, the size of the hotel and the nature of the hotel shall remain unchanged.

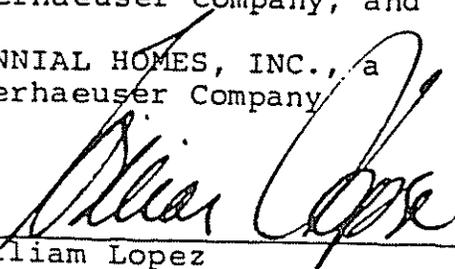
3. The development authorized by the Agreement in paragraph three shall include, in addition to the buildings described in paragraph three, all other aspects of a complete permitted development, such as parking lots, service areas, and landscaping.

Certified as true
and correct copy.

4. All terms and conditions of the Agreement of August 1, 1984, which are not modified by this Amendment, shall remain in full force and effect.

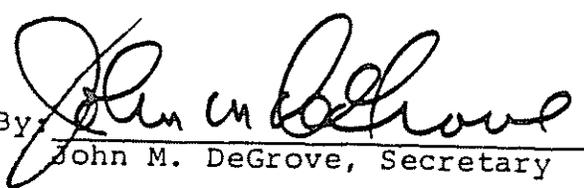
THE BABCOCK COMPANY, a
Weyerhaeuser Company, and
CENTENNIAL HOMES, INC., a
Weyerhaeuser Company

By:


William Lopez

STATE OF FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS

By:


John M. DeGrove, Secretary

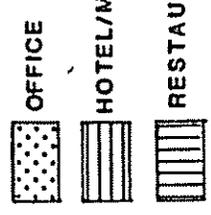
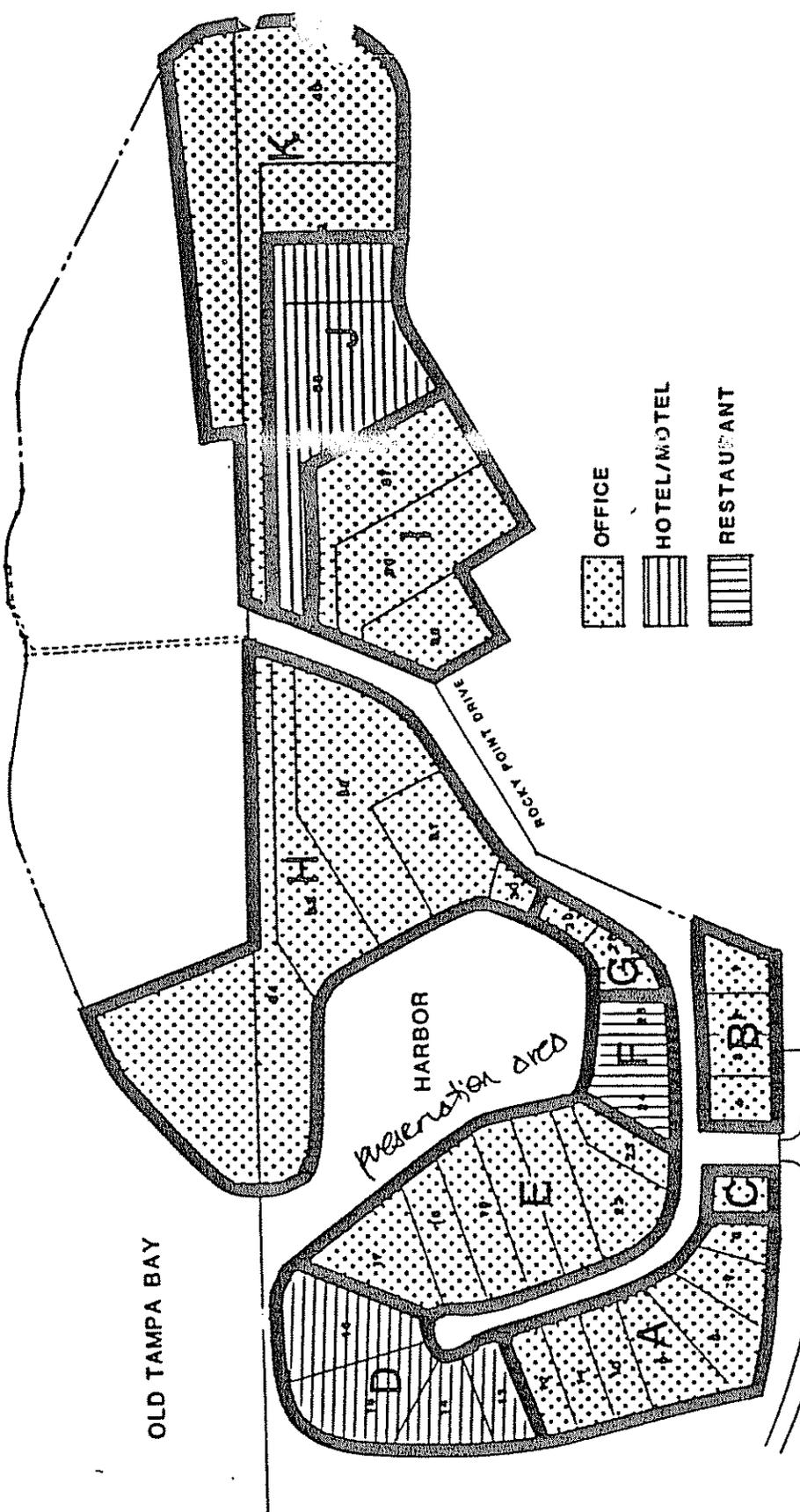
Date:

February 18, 1985

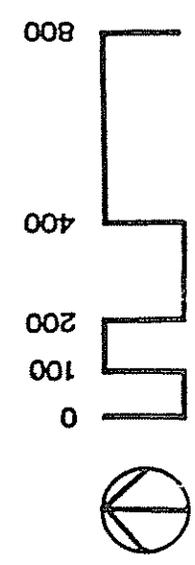
Date:

February 12, 1985

Exhibit F



PARCEL	LAND AREA (ACRES)	OFFICE (SQ. FT.)	HOTEL/MOTEL (ROOMS)	RESTAURANT (SQ. FT.)
A	5.38±	183,393		5,000
B	2.00±	70,000		
C	0.41±	3,000 (bank)		
D	4.28±		202	
E	7.25±	245,000		
F	1.44±			12,000
G	0.88±	30,000		
H	13.39±	450,000		
I	6.28±	151,000		
J	4.49±		176	
K	8.92±	243,000		
TOTAL	54.75±	1,375,393	378	17,000



ROCKY POINT OFFICE AND COMMERCIAL PARK
DEVELOPMENT OF REGIONAL IMPACT

MAP H DEVELOPMENT CONCEPT

Certified as true and correct copy.