

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director / (954) 797-1101
Prepared by Deborah Ross, AICP, Planner III

SUBJECT: Resolution
Agreement with Broward Anchor International Incorporated, Space Development Limited, Rolling Hills International Corporation, and the Department of Community of Community Affairs

AFFECTED DISTRICT: Townwide

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA; AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT, BETWEEN BROWARD ANCHOR INTERNATIONAL INCORPORATED, SPACE DEVELOPMENT LIMITED, ROLLING HILLS INTERNATIONAL CORPORATION, AND THE DEPARTMENT OF COMMUNITY OF AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

At the December 18, 2002, Town Council meeting a Section 380.032(3) Agreement regarding the above referenced item was scheduled for the Council's consideration. In response to Council's concerns and questions, a brief history of the subject Rolling Hills DRI is attached. Relative to the requested 219 townhouse units that are the subject of this Agreement, staff advises the following -

Maximum levels of development of the approved DRI were not built;
Development Order expired March 15, 2001;
Mitigation, except for the noted traffic signal, required by the DO for regional impacts has been completed; and
Existing development within the DRI, together with the proposed 219 townhomes, comprises less than 100% of the multi-use DRI threshold and pursuant to Section 380.06(2)(d)2.a., F.S, the development does not constitute a DRI.

In conclusion, the Rolling Hills DRI is an essentially "builtout" DRI and as such may request a Section 380.032(3) Agreement to permit the development of the proposed 219 townhomes without the necessity of additional DRI review.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION: Staff finds the subject agreement complete and suitable for transmittal to Town Council for further consideration.

Attachments: Resolution, Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA: AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN BROWARD ANCHOR INTERNATIONAL INCORPORATED, SPACE DEVELOPMENT LIMITED, ROLLING HILLS INTERNATIONAL CORPORATION, AND THE DEPARTMENT OF COMMUNITY OF AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Town of Davie Commission Ordinance No. 87-72, as amended by Ordinance No. 87-8, as amended by Ordinance No. 89-13, as amended by Ordinance No. 91-27, as amended by Ordinance 91-27, as amended by Ordinance No. 92-22, as amended by Ordinance No. 94-12, as amended by Ordinance No. 95-2, the Town of Davie approved a development order for the Rolling Hills DRI providing for a certain development and conditions; and

WHEREAS, the developers proposes to build up to 219 townhouses; and

WHEREAS, the developers have no plans to construct the previously approved and now expired 215 hotel units; and

WHEREAS, the developers may undertake the development of up to 219 multi-family dwelling units on the townhome sites after the date of execution of this Agreement without the necessity of additional DRI review.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter an Agreement, attached hereto as Exhibit "A", between Broward Anchor International Incorporated, Space Development Limited, Rolling Hills International Corporation, and the Department of Community of Community Affairs.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.



DEVELOPMENT SERVICES DEPARTMENT 797-1111
Administration 954-797-1101
Planning & Zoning 954-797-1103
Building & Occupational Licensing 954-797-1111
Code Enforcement 954-797-1121
Engineering 954-797-1113

TOWN OF DAVIE 6591 ORANGE DRIVE, DAVIE, FLORIDA 33314-3399 (954) 797-1030

MEMEMORANDUM

PZ12-19-02

TO: Thomas J. Willi, Town Administrator

THRU: Mark A. Kutney, AICP, Development Services Director

THRU: Fernando Leiva, AICP, Planning and Zoning Manager

FROM: Deborah Ross, AICP, Planner III

DATE: December 23, 2002

RE: Rolling Hills Development of Regional Impact (DRI)

At the December 18, 2002, Town Council meeting an agreement regarding the above referenced item was scheduled for the Council's consideration. In response to Council's concerns and questions, below please find a brief history of the subject Rolling Hills DRI.

BACKGROUND

On June 3, 1987, the Town of Davie, Florida adopted Ordinance No. 87-72 approving a Development Order for the Rolling Hills DRI. The Development Order (DO) was valid for five (5) years. The 353 acre DRI is generally located between University Drive and Pine Island Road, south of SW 30 Street. Development at time of approval included the following, 160 townhouse units, 560 multi-family units, 280,000 square feet of office uses, 800,000 square feet of retail uses, 505 hotel rooms and a 36 hole golf course.

Subsequent amendments to Ordinance 87-72 occurred amending the DO's buildout date but please note according to Chapter 380.06(19)(e)2,F.S., a change to a DO which only involves an extension of the date of buildout is not considered a substantial deviation. As you may be aware, a substantial deviation is any proposed change to a previously approved development which creates a reasonable likelihood of additional impact, or any type of regional impact created by the change not previously reviewed by the regional planning council.

The Ordinances amending said Ordinance include, Ordinance No. 87-8 which amended the DO from five (5) years to two (2) years (June 3, 1989); Ordinance No. 89-13 extended the DO from two (2) years to four (4) years (June 3, 1991); Ordinance 91-27 extended the DO from four (4) years to five (5) years (June 3, 1992); Ordinance 92-22 extended the duration of the DO to on or before May 15, 1994; and Ordinance No. 94-12 extended the duration of the DO to on or

before May 15, 1995.

In 1995, Town Council approved Ordinance 95-2 which extended the duration of the DO until March 15, 2001 and modified the type of development to include 260 single family dwelling units. Again it is noted at the time of Council's approval it was found that the proposed changes did not create a reasonable likelihood of additional regional impact. Nor were these changes considered a substantial deviation because they did not constitute a change for 15% or more of the acreage of the development to a land use not previously approved in the Development Order.

DEVELOPMENT IMPACT

Staff notes development within the DRI was not built according to the maximum levels approved in the original Development Order and as amended by Ordinance No. 95-2. Exhibit A of the proposed Section 380.032 (3) Agreement indicates 67,000 square feet of the approved 125,000 square feet was constructed while 64,432 square feet of the approved 175,000 commercial square footage was constructed. Of the approved 505 hotel rooms, 290 rooms were built and of the 889 residential units, 505 units have been built.

Regarding impacts associated with the development, it is noted all impacts e.g., schools, roadways have been mitigated. The remaining roadway improvement associated with the approval of Ordinance No. 95-12 concerns the installation of a traffic signal at the intersection of University Drive and Rolling Hills Boulevard. It is noted that Broward Anchor, a party to the agreement under review, has entered into an agreement with Nova Southeastern University and others to contribute towards the cost of said signal and median break. This improvement is currently under construction.

In regard to public hearings and public participation for the above referenced amendments, staff notes the adopting ordinance references that Town Council determined at the time that all legal requirements relative to publications for public hearing were satisfied. It is also noted that the South Florida Regional Planning Council (SFRPC) was a regional agency involved in the review of changes to the DRI's Development Orders. Please note according to state statute the SFRPC is not a required party to the agreement under review this evening.

Please be advised based on conversations with David Jordan, Deputy General Counsel for the Department of Community Affairs (DCA), staff notes that is not necessary for the Town to be a party to the proposed Section 380.032(3) Agreement if the applicant makes such a request. Mr. Jordan noted coordination between the applicant, local government and the DCA is encouraged but it is not unusual for the local government not to be a party to such an agreement.

Relative to the requested 219 townhouse units that are the subject of this agreement, staff advises the following -

- Maximum levels of development of the approved DRI were not built;
- Development Order expired March 15, 2001;
- Mitigation, except for the noted traffic signal, required by the DO for regional impacts has been completed; and

Existing development within the DRI, together with the proposed 219 townhomes, comprises less than 100% of the multi-use DRI threshold and pursuant to Section 380.06(2)(d)2.a., F.S, the development does not constitute a DRI.

In conclusion, the Rolling Hills DRI is an essentially “builtout” DRI and as such may request a Section 380.032(3) Agreement to permit the development of the proposed 219 townhomes without the necessity of additional DRI review.

RECOMMENDATION

Staff recommends that Town Council approve the Section 380.032(3) Agreement regarding the Rolling Hills DRI allowing the development of the proposed 219 townhomes.

BROWARD ANCHOR INTERNATIONAL INCORPORATED
§ 380.032(3) AGREEMENT

THIS AGREEMENT is entered into between **BROWARD ANCHOR INTERNATIONAL INCORPORATED**, a Florida corporation, **SPACE DEVELOPMENT LIMITED**, a Florida limited partnership, **ROLLING HILLS INTERNATIONAL COUNTRY CLUB INC.**, a Florida corporation, and **MIAMI ANCHOR INTERNATIONAL CORPORATION**, a Florida corporation (hereinafter collectively referred to as "Developers"), the **TOWN OF DAVIE**, a municipal corporation (the "Town"), and **THE DEPARTMENT OF COMMUNITY AFFAIRS**, an agency of the State of Florida (the "Department"), subject to all other governmental approvals and solely at the Developer's own risk.

WHEREAS, the Department is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, which includes provisions relating to developments of regional impact ("DRI"); and

WHEREAS, the Department is authorized pursuant to Section 380.032(3), Florida Statutes, to enter into agreements necessary to effectuate the provisions and purposes of Chapter 380, Florida Statutes, and this Agreement meets the statutory standard; and

WHEREAS, pursuant to Town of Davie Commission Ordinance No. 87-72, as amended by Ordinance No. 87-8, as amended by Ordinance No. 89-13, as amended by Ordinance No. 91-27, as amended by Ordinance No. 92-22, as amended by Ordinance No. 94-12, as amended by Ordinance No. 95-2, the Town of Davie approved a development order for the Rolling Hills DRI providing for certain development and conditions (collectively referred to as the "DO"), and

WHEREAS, Ordinance No. 95-2 amended the DO to amend the Development Phasing Table and Development Program, to add certain developer requirements and to provide that the DO would be null and void if the project was not completed by March 15, 2001; and

WHEREAS, no further ordinances amended the DO and, therefore, the DO expired on March 15, 2001; and

WHEREAS, at the time of expiration of the DO the level of development within the Rolling Hills DRI was as reflected on Exhibit "A" attached hereto; and

WHEREAS, the Annual Monitoring Report filed with the Department in March of 2001 (the "Annual Report") indicated that all of the conditions of approval for the DRI required to have been completed given the level of development as of March 15, 2001, had been completed or complied with; and

WHEREAS, regarding the outstanding requirement for the installation of a traffic signal at the intersection of University Drive and Rolling Hills Boulevard, Broward Anchor has entered into an agreement with Nova Southeastern University and others to contribute towards the costs of the traffic signal and median break, which improvement is currently under construction; and

WHEREAS, the mitigation required by the DO for regional impacts resulting from the approved level of development has been completed, even though development never reached the approved level of development; and

WHEREAS, the Developers are the fee simple owners of certain property within the DRI including the property approved for the development of 219 townhomes pursuant to Ordinance No. 95-2; and

WHEREAS, Developers propose to build up to 219 townhomes upon the property previously approved for such multifamily use as identified on Exhibit "B" attached hereto (hereinafter the "Townhome Sites); and

WHEREAS, Developers have no current plans to construct the previously approved (and now expired) 215 hotel units and understand that, if, in the future, development of additional hotel rooms was proposed, such development may be subject to additional DRI review.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein the parties hereto agree as follows:

1. The representations set forth above are incorporated herein and are essential elements hereof.
2. The existing development within the former DRI, as reflected on Exhibit "A", together with the proposed 219 townhomes, comprises less than 100% of the multi-use DRI threshold and, therefore, pursuant to Section 380.06(2)(d)2.a., Florida Statutes (2002), this development does not constitute a DRI. And further, in as much as the mitigation required pursuant to the DO has been met, notwithstanding that the previously approved maximum level of development was not constructed, the Developers may undertake the development of up to 219 multi-family dwelling units on the Townhome Sites after the date of execution of this Agreement without the necessity of additional DRI review.
3. The Developers shall not claim vested rights, or assert equitable estoppel, arising from this Agreement. If additional DRI review is required in the future, this Agreement shall not entitle the Developer to a final development order approving such proposed development nor to particular conditions in a final development order.

4. In the event of a breach of this Agreement or failure to comply with any condition of this Agreement, or if this Agreement is based upon materially inaccurate information, the Department may terminate this Agreement or file suit to enforce the Agreement as provided in Section 380.06, Fla. Stat. (2002), or as likewise allowed by law.

5. This Agreement affects the rights and obligations of the parties under Chapter 380, Fla. Stat. (2002). It is not intended to determine or influence the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals which might be required by state law or local ordinance for any development authorized by this Agreement.

6. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. To ensure and provide that any successor in interest in and to any lands or parcels affected by this Agreement is bound by the terms of this Agreement, the Developers shall record this Agreement in the Official Records of Broward County, Florida, and shall provide the Department and the Town with a copy of the recorded Agreement including Book and Page number within two (2) weeks of the date of the last execution of this Agreement. This recording information should be directed to Ken Metcalf, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100.

7. The parties further agree that this Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing, signed by the parties and recorded in the public records as provided in paragraph 6 above.

8. The date of execution of this Agreement shall be the date that the last party signs and acknowledges this Agreement.

IN WITNESS THEREOF, the parties by and through their respective undersigned duly authorized representative have executed this Agreement on the dates and year below written.

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXECUTED this 14th day of November, 2002.

Signed, sealed and delivered in the presence of these witnesses:

BROWARD ANCHOR INTERNATIONAL LTD., a Florida limited partnership

By: Broward Anchor International, Inc.,
a Florida corporation, General Partner

Witness: [Signature]
Print Name: AC FERRIS MOYA

By: [Signature]
Nobuaki Kasai,
President

Witness: [Signature]
Print Name: K GEORGE RABINDRAN

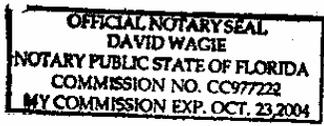
[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 14th day of NOV, 2002, by NOBUAKI KASAI as PRES of Broward Anchor International Incorporated, a Florida corporation, on behalf of said corporation. He personally appeared before me, is personally known to me or produced _____ as identification.

[NOTARIAL SEAL]

Notary: [Signature]
Print Name: DAVID WAGIE
Notary Public, State of FLORIDA
My commission expires: 10/23/04



EXECUTED this 14th day of November, 2002.

Signed, sealed and delivered in the presence of these witnesses:

SPACE DEVELOPMENT, LTD., a Florida limited partnership

By: SPACE DEVELOPMENT INC., a Florida corporation, General Partner

Witness: [Signature]
Print Name: ALFONSO MAYA

By: [Signature]
Nobuaki Kasai,
President

Witness: [Signature]
Print Name: K. GEORGE RABINIRAN

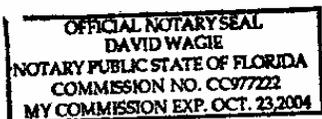
[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 14th day of NOV, 2002, by NOBUAKI KASAI as PRES of SPACE DEVELOPMENT, INC., a Florida corporation, which corporation is a general partner of Space Development, Ltd., a Florida limited partnership, on behalf of said corporation and partnership. He personally appeared before me, personally known to me or produced _____ as identification.

[NOTARIAL SEAL]

Notary: [Signature]
Print Name: DAVID WAGIE
Notary Public, State of FLORIDA
My commission expires: 10/23/04



WITNESSES:

ATTEST:

TOWN CLERK

TOWN OF DAVIE

By: _____
Mayor-councilmember

By: _____
Town Administrator

_____ day of _____, 20__

APPROVED AS TO FORM:

By: _____
Town Attorney

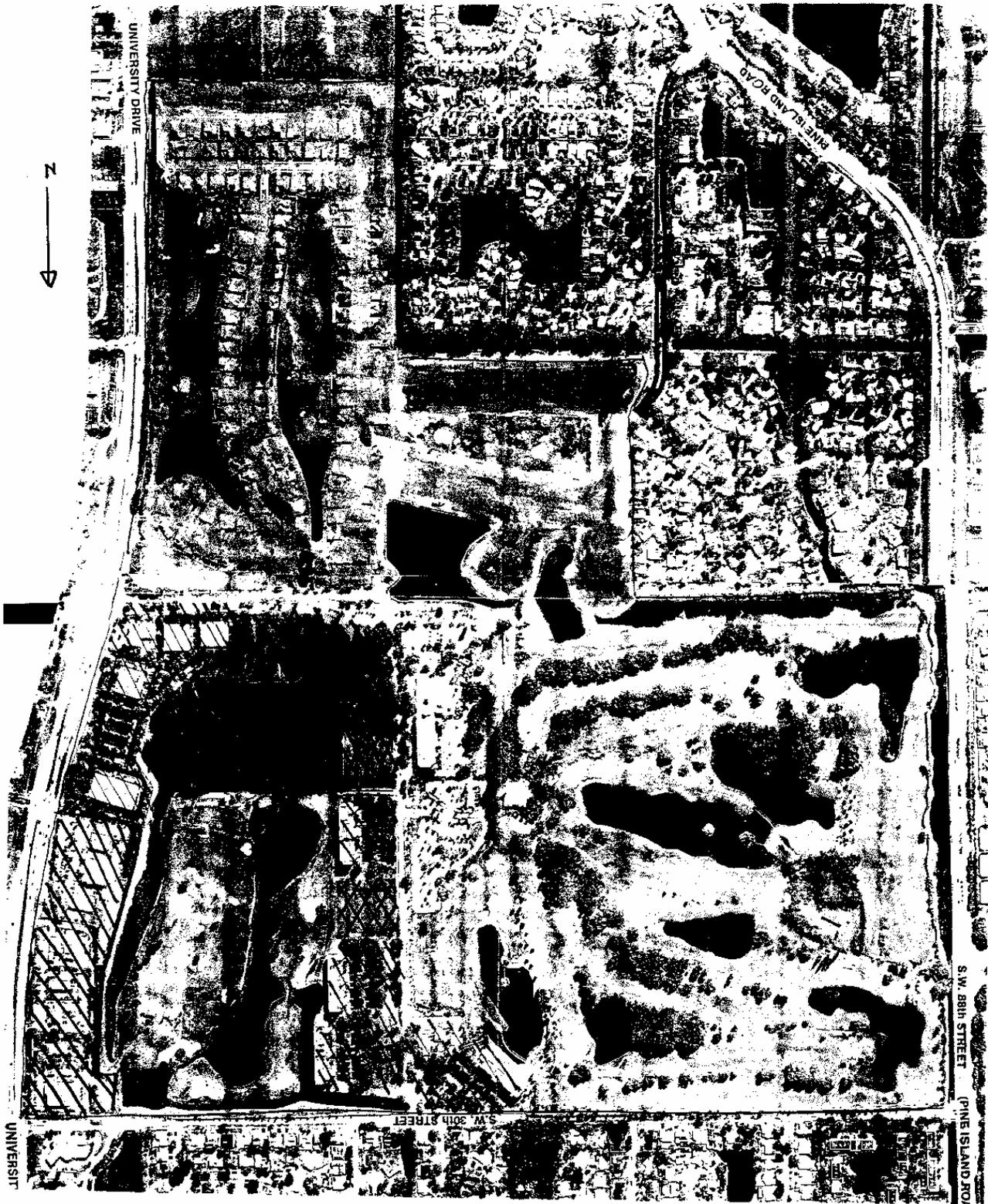
Exhibit "A"

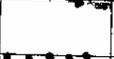
**Rolling Hills DRI
April 23, 2002**

Type of Use	Current Owner	Development Approved Pursuant to Ordinance 95-2	Status as of April 18, 2002	% of DRI Thresholds
Residential		280 mf (existing at time of approval of DRI)	280 mf	
	Boca Resorts	10 sf (SF-1)	0	
	Broward Anchor	250 sf (SF-1)	225	
	Boca Resorts	130 mf (MF-1)	0	
	Broward Anchor	219 mf (MF-2)	215 (proposed)	
Total		889 residential units	720 residential units	24%
Office	RHO Properties	67,000 (existing at time of Ord. 95-2) <u>58,000</u> 125,000	67,000 <u>0</u> 67,000	22.3%
Commercial	Walgreen's Wendy's SunTrust Quarterdeck Texaco Bennigan's Weston Road II Assoc. Ross Matz Associates	175,000	64,432	16.1%
Hotel	Affiliate of Broward Anchor	290 (existing at time of original DO) <u>215</u> 505	290 <u>0</u> 290	82.8%
Total of multi-use thresholds¹				145.2%

¹ 100% of the Multi-Use DRI threshold for three or more uses is 160%. Ch. 28-24.014, Florida Administrative Code.

Exhibit "B"



Color	Owner	Use
	Space Development, Ltd.*	Future townhouse site
	Rolling Hills International, Ltd.*	Future townhouse site
	Space Development, Ltd.*	Single family under construction
	Florida Golf Management, Inc. (Boca Resorts)	Golf course
	Homeowners	Existing single family
	Miami Anchor International Corporation*	Existing hotel
	Rolling Hills Golf & Tennis Club Condominiums	Existing multi-family
	Brinwo Development	Existing office
	Walgreen, Wendy's, SunTrust, Quarterdeck, Texaco, Bennigan's, Weston Road II Assoc., Ross Matz Assoc.	Existing retail

* All entities owned and controlled by our client