



EXHIBITS

from HEX hearing

CASE #: DC12005 - 00027

CASE NAME: Buckingham Villages

Attach a copy of this form to the top of packet of the exhibits & place exhibits in case file.

ARE THERE ANY BOARD EXHIBITS? ☒ YES ☐ NO

LOCATION OF BOARDS:

Diana's Closet

If there are any board exhibits, attach another copy of this form to boards for identification purposes.

EXHIBITS

Buchingham

APPLICANT

STAFF

#1 Aerial (larger area)

✓ #1 2005 Aerial (yellow & green)

^{new} #2 MCP -

✓ #2 Aerial w/ Gray McPoncelay

#3 Aerial (~~larger area~~)

✓ #3 Lehigh Acres Board Model Forecasting

#4

✓ #4 Lehigh Acres Board Forecasting Zoning

#5

Post HRG. Submitted (composite)

#6

#6

#7

#7

#8

#8

#9

#9

#10

#10

OTHER EXHIBITS

NAME

NAME

#1

#1

#2

#2

#3

#3

#4

#4

#5

#5

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
ZONING DIVISION

LEE COUNTY
HEARING EXAMINER
06 FEB 27 AM 8:24

DATE: February 24, 2006

To: Diana Parker
Chief Hearing Examiner

FROM: Josh Philpott & Matt Noble
Lee County Planners

RE: Buckingham Villages
DCI2005-00027 & Rez2005-0004

Unfortunately, Staff and the applicant have been unable to come to agreement on the terms of the proposed bonus density contract as well as the airport noise notification language.

Staff and the applicant do not agree to the proposed airport noise and overflight language. Staff has included language that identifies specific impacts that can be expected due to the close proximity of the development to the Buckingham Airfield. Staff recommends the following language to be included as a condition of approval:

"Prior to issuance of first Development Order the applicant must record the following statement in the public records of Lee County Florida:

"Notification Of Proximity To Air Strip"

The property described in exhibit "A" attached hereto is located proximate to an active aircraft landing strip. Future owners residing on the property may experience aircraft over-flight activity and noise associated with the landing strip of Buckingham Airfield.

This statement must also be included in the covenants and deed restriction documents for the proposed development."

The proposed language includes a direct indication that aviation noise can be expected to impact the area surrounding the Buckingham Airport. Staff recommends including the language as proposed to allow future residents advance notice of the conditions that can be expected in the vicinity of Buckingham Airfield.

Staff recommends the following bonus density provisions be included in the Hearing Examiner recommendation. Staff has attached a copy of the Bonus Density

contract as proposed by staff as Attachment A. The main disagreements reside with the issue of specifying the total cash payment due, if the project is approved as proposed by the applicant. Staff recommends that the contract include a total contribution amount reflective of the total bonus units approved. The applicant has provided a contract proposal based on the number of units approved without including a total contribution amount. Although this might seem trivial, staff notes that all previously approved contracts have provided a specific total amount to be paid to the County. This is important because of the legally binding nature of this contract and the fact that there has been consideration given to the proposed project based on the proposed level of development.

Specifically, for section 4.4 of the Contract staff recommends that the following language be included:

“\$2,891,537= \$11,429.00 X 253 Units”

For Section 4.5 d. of the Contract staff recommends including the following language:

“The developer must pay a total of \$2,891,537.00 into the County’s Affordable Housing Trust Fund as payment for 253 bonus units (\$11,429.00 per bonus unit). The contribution must be paid in full prior to issuance of the first Development Order approval for this project. Contributions will not be refunded once made, even if the project in question fails to occur.”

If the Hearing Examiner makes a recommendation that is less than the proposed 253 bonus units, staff would recommend the contribution figure be altered to the appropriate cash contribution amount relating to the bonus units recommended by the Hearing Examiner.

ATTACHMENTS:

- A. Proposed Bonus Density Contract

ATTACHMENT A

DEVELOPMENT CONTRACT

between

THE BOARD OF COUNTY COMMISSIONERS
Lee County, Florida

and

LEHIGH ACRES ACQUISITION, LLC

The Cash Contribution Option

of the

Housing Bonus Density Program

AGREEMENT

This agreement is made and entered into this__ day of _____ 2006, between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Lehigh Acres Acquisition, LLC, a Florida Limited Liability Corporation with a principal address of 921 Ash Street, Winnetka, IL 60093, hereinafter referred to as the "Developer."

In consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, County and the Developer hereby agree as follows:

ARTICLE I

Definitions

1.1 For the purpose of this Agreement and the various covenants, conditions, terms and provisions which follow, the Definitions set forth in this Agreement will be consistent with those set forth in the Lee County Land Development Code (LDC), as amended.

ARTICLE II

Intentions

2.1 In order to establish the background, context and frame of reference for this agreement, and to manifest the objectives and the intentions of the respective parties herein, the following statements, representations, and explanations are set forth. Such statements, representations, and explanations will be accepted as predicates for the undertakings and commitments included within the provisions that follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which the Agreement is based.

2.2 The County adopted a Comprehensive Plan pursuant to Chapters 125 and 163, Florida Statutes by Lee County Ordinance 89-02.

2.3 The Housing Element of the Comprehensive Plan includes a Goal that requires the County to, in part, develop mechanisms to encourage the provision of very low and low income housing.

2.4 The County created a Housing Bonus Density Program to stimulate the construction of very low and low income housing in Lee County. One option under the Program is for Developers to obtain bonus density through contributions to the Affordable Housing Trust Fund.

2.5 The Developer desires to contribute funds to the Housing Bonus Density Program's Affordable Housing Trust Fund to support very low and low income housing in order to

obtain permission to construct 253 bonus density units on a 59.39±-acre parcel of land (plus 3.76 acres of right-of-way) described in attached Exhibit A.

2.6 The County authorizes the development of 253 bonus density units upon execution of this agreement and receipt of the contribution to the Affordable Housing Trust Fund described herein.

ARTICLE III **Implementation**

3.1 No development activity may begin until the Development Order is approved and permits are issued.

3.2 The Developer must complete the project in accordance with the time frames for construction set forth in the in the Development Order issued by the County.

ARTICLE IV **Assurances**

4.1 The Developer enters into this contract as a condition for issuance of a Development Order that will authorize the construction of 253 bonus density units on the property described in Exhibit A. The Developer must comply with the terms and conditions of the Development Order approval.

4.2 The Developer agrees to fulfill all pre-contract conditions as a pre-requisite for participating in the Housing Density Bonus Program.

4.3 The Developer agrees to comply with all other legal requirements imposed by current or future federal, state, or local laws and regulations.

4.4 The Developer agrees to pay:

$$\$2,891,537 = \$11,429.00 \times 253 \text{ units}$$

4.5 The Developer and his successors are bound by the following conditions:

- a. Development must be consistent with Exhibit B, which is the ____-page Buckingham Villages Master Concept Plan (dated _____) stamped received _____, except as modified by the conditions set forth herein.
- b. Development must comply with all requirements of the LDC at time of local Development Order Approval. If changes to the plan of development are desired, appropriate approvals will be necessary.

- c. This agreement is not a building permit or Development Order. It does not vest development rights other than an increase in density by 253 units. Development must comply with all applicable federal, state or Lee County permitting requirements. No variances or deviations from the LDC open space, parking, or buffering have been granted by virtue of this Agreement. Furthermore, the Developer may not seek variances or deviations from those specific provisions of the LDC in the future.
- d. The Developer must pay a total of \$2,891,537 into the County's Affordable Housing Trust Fund as payment for 253 bonus dwelling units (\$11,429 per bonus unit). The contribution must be paid in full prior to the issuance of the first Development Order for this project. Contributions will not be refunded once made, even if the development in question fails to occur.
- e. The developer must, at a minimum, install a Type D buffer along Homestead Road. This buffer must be depicted on the master concept plan and be included within the first development order approval for the project. The required right of way buffer trees must be native canopy trees (no palm trees).
- f. The developer must install a five-foot wide pedestrian sidewalk along the project's Homestead Road frontage. The location of this sidewalk will be determined through the final permitting process for the project and be included within the first development order approval for the project.
- g. All buildings on the perimeter of the project are limited to two habitable stories as depicted on the master concept plan. No building or accessory structures will exceed the Land Development Code approach surface heights as noted on the master concept plan. The master concept plan must continue to depict the LDC's approach surface height restrictions.
- h. Development orders will be granted only upon a clear showing that the development will not cause the mandatory levels of service set forth in Lee Plan Policy 95.1.3 to be exceeded. The granting of a development order will not release the property owner from any obligations under the Privately Funded Infrastructure Overlay.
- i. The project must connect to a public water system and must connect to a sanitary sewer system. No development order will be approved unless these services are provided to the site.
- j. Prior to local development order approval, provisions and locations for solid waste collection/disposal must be provided on the development order plans in compliance with the LDC. Proposed locations and method of disposal is subject to review and approval by Lee County Solid Waste Division.

4.7 The County authorizes the development of 253 bonus density units provided the conditions set forth in this agreement are fully satisfied by the Developer.

ARTICLE V
Assignability

5.1 Density bonuses for which contributions are made will run with the specific Master Concept Plan submitted and approved by the County concurrent with the request for bonus density units. The development of units pursuant to this Agreement binds all successors in interest and future owners to the terms and conditions stated herein, and the conveyance of any unit must be made subject to the terms and conditions of this contract.

ARTICLE VI
Breach

6.1 Enforcement of this Agreement will be governed by Lee County Ordinances. Waiver by the County of a breach of any provision of this Agreement will not be construed to be a modification of the terms of this Agreement.

ARTICLE VII
Miscellaneous Provisions

7.1 This document incorporates and includes all prior negotiation, correspondence, conversation, or understanding applicable to the authorization to construct 253 bonus density units on the subject property. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated upon any prior representations or agreements whether oral or written.

7.2 It is understood by the Developer that the County will not be held responsible for refunding any portion of the contribution for the County's termination of the Agreement due to the Developer's failure to abide by the provisions of the Agreement or any conditions imposed by the LDC.

7.3 The Developer agrees to indemnify and hold the County harmless from or on account of any injuries, damages, omissions, commissions, actions or causes of action accruing as a result of services performed, or not performed, pursuant to this Agreement. Developer will be liable for all claims, suits, judgments or damages arising from the services or lack of services provided pursuant to this Agreement.

ARTICLE VIII
Amendments

8.1 The covenants, terms and provisions contained in this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. The Chairman of the Lee County Board of County Commissioners, or his designated representative, will act on behalf of the County in executing Amendments to the Agreement. The Developer, as an individual, or, a corporation, by its corporate president or vice president, may act in executing Amendments to the Agreement. In the event of conflicts between the requirements, provision or terms of the Agreement and written Amendments, the requirements, provisions or terms of the latest executed Amendment will take precedence.

8.2 Changes in the terms of this Agreement are subject to the approval of the County Attorney.

IN WITNESS OF THE ABOVE, the parties, by their duly authorized representatives, execute this Agreement effective the day and year first written above.

ATTEST:

LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

CLERK OF CIRCUIT COURT
Charlie Green, Clerk

By: _____
Deputy Clerk

By: _____
Tammara Hall, Chairwoman

LEHIGH ACRES ACQUISITION, LLC,
a Florida Limited Liability Corporation

(Witness)

By: Lehigh Acres Management, LLC,
a Florida Limited Liability Corporation
Its Managing Member

(Witness)

By: _____
Antonio Bismonte
Managing Member

State of _____
County of _____

The foregoing contract was acknowledged before me this _____ day of _____
2006, by Antonio Bismonte, in his capacity as the Managing Member of Lehigh Acres
Management, LLC, a Florida Limited Liability Corporation, the Managing Member of Lehigh
Acres Acquisition, LLC, a Florida Limited Liability Corporation. He is personally known
to me or has produced _____ as identification.

(Signature of person taking acknowledgment)

(Name typed, printed, or stamped)
(Title or Rank)
(Serial Number, if any)

APPROVED AS TO FORM

Donna Marie Collins
Office of the County Attorney

Exhibit A: Legal Description

Exhibit B: Buckingham Villages Master Concept Plan

• OPTIONAL 3 STORIES

PROJECT SUMMARY:

- 1.) REQUEST: A REZONING FROM AG-2 TO RESIDENTIAL PLANNED DEVELOPMENT (RPD)**

22-44-28-00-000001

TOTALS

40% OPEN SPACE REQUIRED (PER L.C.L.D.C.) FOR MULTI FAMILY TRACTS ONLY.

Item 1	= 21.13 AC. x 40%	= 8.45 AC.
Item 2	= 59.39 AC. x 40%	= 23.76 AC.

20% INDIGENOUS SPACE IS MOST OF THE INDIGENOUS

INDIGENOUS SHALL BE REQUIRED FOR MULTIFAMILY TRACTS ONLY AS FOLLOWS:

Account	11.88 AC.	11.95 AC. PRVD
11.88 AC.		
11.95 AC. PRVD		

6.) TYPE 'D' BUFFER REQUIREMENTS: (HOMESTEAD ROAD)
(PER L.D.C. SEC. 10-416(D)) 4'

MAINTAINED @ 36" HT. 12 MOS. AFTER TIME OF PLANTING.

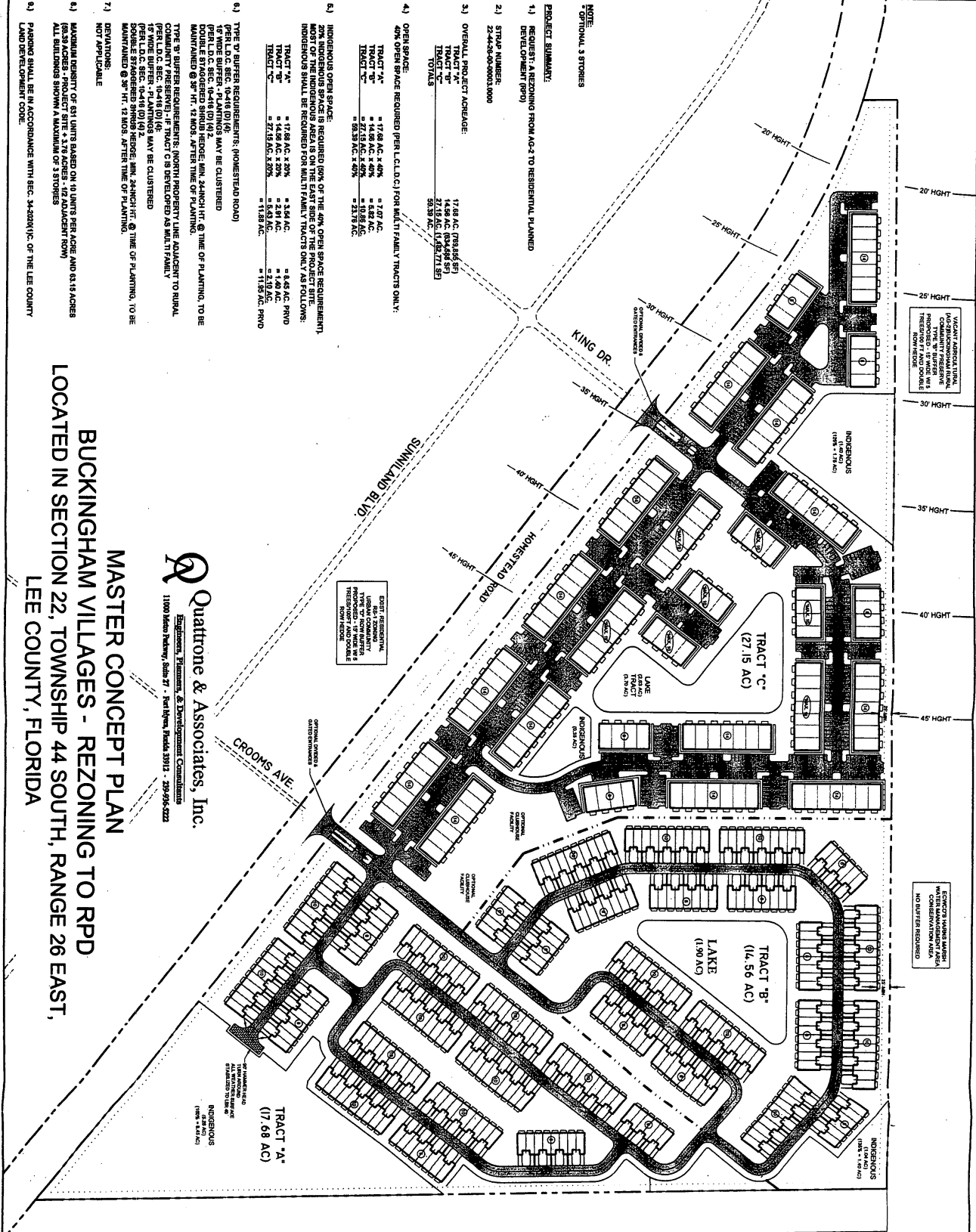
15' WIDE BUFFER - PLANTINGS MAY BE CLUSTERED

**DEVIATIONS:
NOT APPLICABLE**

6.) MAXIMUM DENSITY OF 631 UNITS BASED ON 10 UNITS PER ACRE AND 63.15 ACRES
(59) 10 ACRES - BRO ECT SITE A 1 76 ACRES - 475 AD JACENT BOW

ALL BUILDINGS SHOWN A MAXIMUM OF 3 STORIES

LAND DEVELOPMENT CODE.



ECWCD8 HARRIS MARSH
WATER MANAGEMENT AREA
CONSERVATION AREA
NO BUFFER REQUIRED

EXIST. RESIDENTIAL
RS-1 ZONING
LEE COUNTY SCHOOL
URBAN COMPLEXITY
NO BUFFER REQUIRED

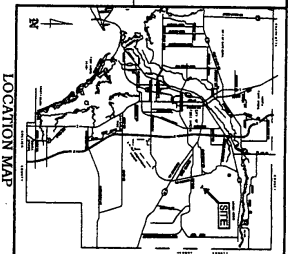
**FUTURE LEE COUNTY
SCHOOL UNDER
CONSTRUCTION**

RECEIVED
OCT 26 2005

PEBBLE GUNNER
NORTH

EXHIBIT 6-J
1" = 100'

OCT. 25, 2005



LEE COUNTY
HEARING EXAMINER

06 MAR -3 PM 2:49

001 5002-0005 100

STRAYHORN & STRAYHORN, P.L.
A Professional Limited Liability Company
2125 First Street, Suite 200 • Fort Myers, Florida 33901

GUY M. STRAYHORN (1889-1981)
NORWOOD R. STRAYHORN (1911-1982)
GUY R. STRAYHORN
E. BRUCE STRAYHORN, P.L.
RICHARD W. PRINGLE, P.A.

Reply to:
Richard W. Pringle
P. O. Box 1545
Fort Myers, FL 33902-1545

Telephone: 239/332-4717
Facsimile: 239/332-4718

E-Mail: Richard@strayhornlaw.com

February 24, 2006

VIA HAND DELIVERY

Diana Parker
P. O. Box 398
Ft. Myers, FL 33902-0398

RE: Buckingham Villages-Case No. DCI2005-00027

Dear Ms. Parker:

The County Staff and I have spent a considerable amount of time working on the language of a Bonus Density Agreement. The final draft I submitted to the County Staff was rejected because I did not state a total dollar amount due from the developer based on the usage of 253 bonus units as proposed. My position is that I cannot agree to insert language in a contract which I know may or may not be factually correct; therefore, I cannot agree to insert a total dollar amount due based on 253 bonus units when you have not issued your recommendation and when the Board of County Commissioners has not made a final ruling as to how many bonus density units are going to be approved. I have indicated in my proposed Bonus Density Agreement at Section 4.4 and at Section 4.5d that the developer must pay \$11,429.00 for each bonus density unit approved for up to 253 bonus density units. I am enclosing herein a proposed Bonus Density Agreement which contains the revisions I have agreed to. I believe the revisions I have made to the document at Section 4.4 and Section 4.5 make the contents of the document more accurate and clearer so as not to leave room for interpretation as to the rights and obligations of the parties. As a result, I respectfully request that you adopt the enclosed Bonus Density Agreement as the appropriate agreement for the parties to use in this case since no one knows exactly how many bonus density units are going to be approved on the property until the final rezoning approval by the Board of County Commissioners.

The second item for which the record was kept open relates to the drafting of a note to be place in the recorded subdivision plat document. I initially drafted a note which read as follows:

NOTE: This subdivision lies within the overflight path for the adjacent
Buckingham Air Field.

Diana Parker
Page 2
February 24, 2006

After additional conversations with County Staff, I revised the Note to read as follows:

NOTE: This subdivision lies adjacent to Buckingham Air Field which is an active operational on aircraft landing facility. Residents may experience an operational environment related to an airfield and aircraft overflight activity.

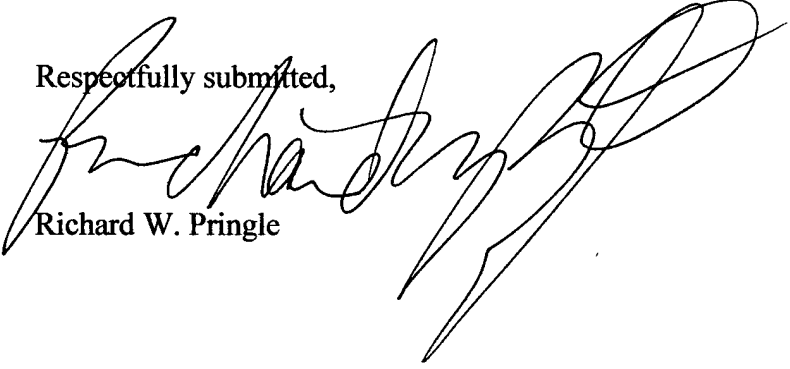
County Staff is demanding the insertion of the word noise at some time in the Note; however, I argued to County Staff that if we insert reference to overflight noise without inserting reference to all other possible ramifications, we might be subject to claims that we assumed the responsibility to warn about the impacts of aircraft overflights and that we did not adequately warn about all possible impacts from aircraft overflights. For the reason stated above, I do not believe it is appropriate to arbitrarily refer to one type of potential impact of aircraft overflights.

I respectfully request that you adopt my proposed language (Note) for the overflight activity, especially since there was not any evidence presented that there is any impact which could result from the proximity of the Buckingham Air Field to the subject property into the record.

There is a third matter I am presenting to you here with which relates to the absence of a cul-de-sac at the end of an interior street at the southeast corner of the subject property. In the abundance of caution, I have acquired correspondence from Tice Fire District which acknowledges that the proposed T intersection turn around at the end of the above referenced street is sufficient for purposes of access by fire safety vehicles. A copy of the correspondence from Tice Fire District is enclosed.

I am not aware of any other information that needs to be included in the record at this time. For the reason stated herein and during the hearing, I respectfully request that your adopt the applicants' position with regard to both the language of the Bonus Density Agreement and the language related to the subdivision note on overflight activity.

Respectfully submitted,


Richard W. Pringle

Enclosures
RWP/jlb
Cc: Donna Marie Collins
Josh Philpott
Matt Noble
Ken Markgraf
2005021

TICE FIRE & RESCUE DISTRICT

FIRE PREVENTION & INSPECTIONS

Ted Ross Jr.
Fire Marshal
(239) 694-2380

9351 Workmen Way
Ft. Myers, FL 33905
Fax (239) 694-7399

January 26, 2006

Quattrone & Associates
11000 Metro Parkway, Suite 27
Ft. Myers, FL 33912

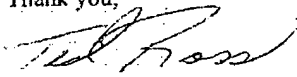
Attn: Al Quattrone

RE: Buckingham Villages

Dear Sir,

After reviewing the above referenced concept plan, dated January 11, 2006, the Tice Fire & Rescue District does not object to the proposal of a "Hammer Head" turn around. The district does reserve the right for future reference regarding the surface material used for the turn around as well as water supply and fire department access for this proposal. Anyone with any questions should feel free to contact me at 239 694-2380.

Thank you,



Ted Ross
Fire Marshal
Tice Fire / Rescue District

Smoke Detectors Save Lives

EXHIBIT D

DEVELOPMENT CONTRACT

between

THE BOARD OF COUNTY COMMISSIONERS
Lee County, Florida

and

LEHIGH ACRES ACQUISITION, LLC

The Cash Contribution Option

of the

Housing Bonus Density Program

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OPTION CONTRACT.WPD

C:\CLIENT.RWP\BISMONTE\BISMONTE-58 ACRE SITE-BUCKINGHAM-REZONING-DEVELOPMENT\CASH OPTION
CONTRACT (REDLINE) 2-2-06.DOC
01-06-05

AGREEMENT

This agreement is made and entered into this ___ day of _____ 2006, between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Lehigh Acres Acquisition, LLC, a Florida Limited Liability Corporation with a principal address of 921 Ash Street, Winnetka, IL 60093, hereinafter referred to as the "Developer."

In consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, County and the Developer hereby agree as follows:

ARTICLE I **Definitions**

1.1 For the purpose of this Agreement and the various covenants, conditions, terms and provisions which follow, the Definitions set forth in this Agreement will be consistent with those set forth in the Lee County Land Development Code (LDC), as amended.

ARTICLE II **Intentions**

2.1 In order to establish the background, context and frame of reference for this agreement, and to manifest the objectives and the intentions of the respective parties herein, the following statements, representations, and explanations are set forth. Such statements, representations, and explanations will be accepted as predicates for the undertakings and commitments included within the provisions that follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which the Agreement is based.

2.2 The County adopted a Comprehensive Plan pursuant to Chapters 125 and 163, Florida Statutes by Lee County Ordinance 89-02.

2.3 The Housing Element of the Comprehensive Plan includes a Goal that requires the County to, in part, develop mechanisms to encourage the provision of very low and low income housing.

2.4 The County created a Housing Bonus Density Program to stimulate the construction of very low and low income housing in Lee County. One option under the Program is for Developers to obtain bonus density through contributions to the Affordable Housing Trust Fund.

2.5 The Developer desires to contribute funds to the Housing Bonus Density Program's Affordable Housing Trust Fund to support very low and low income housing in order to

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OPTION CONTRACT.WPD

obtain permission to construct up to 253 bonus density units on a 59.39±-acre parcel of land (plus 3.76 acres of right-of-way) described in attached Exhibit A.

2.6 The County authorizes the development of up to 253 bonus density units upon execution of this agreement and receipt of the contribution to the Affordable Housing Trust Fund described herein.

ARTICLE III **Implementation**

3.1 No development activity may begin until the Development Order is approved and permits are issued.

3.2 The Developer must complete the project in accordance with the time frames for construction set forth in the in the Development Order issued by the County.

ARTICLE IV **Assurances**

4.1 The Developer enters into this contract as a condition for issuance of a Development Order that will authorize the construction of up to 253 bonus density units on the property described in Exhibit A. The Developer must comply with the terms and conditions of the Development Order approval.

4.2 The Developer agrees to fulfill all pre-contract conditions as a pre-requisite for participating in the Housing Density Bonus Program.

4.3 The Developer agrees to comply with all other legal requirements imposed by current or future federal, state, or local laws and regulations.

4.4 The Developer agrees to pay:

\$11,429.00 for each bonus density unit approved by Lee County as a part of the rezoning approval for the subject property.

4.5 The Developer and his successors are bound by the following conditions:

- a. Development must be consistent with Exhibit B, which is the ____-page Buckingham Villages Master Concept Plan (dated _____) stamped received _____, except as modified by the conditions set forth herein.
- b. Development must comply with all requirements of the LDC at time of local Development Order Approval. If changes to the plan of development are desired, appropriate approvals will be necessary.

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- c. This agreement is not a building permit or Development Order. It does not vest development rights other than an increase in density by up to 253 units. Development must comply with all applicable federal, state or Lee County permitting requirements. No variances or deviations from the LDC open space, parking, or buffering have been granted by virtue of this Agreement. Furthermore, the Developer may not seek variances or deviations from those specific provisions of the LDC in the future.
- d. The Developer must pay \$11,429.00 for each bonus density unit approved for the development project as a part of the rezoning approval into the County's Affordable Housing Trust Fund, as payment for up to 253 bonus density units. The contribution must be paid in full prior to the issuance of the first Development Order for this project. Contributions will not be refunded once made, even if the development in question fails to occur.
- e. The developer must, at a minimum, install a Type D buffer along Homestead Road. This buffer must be depicted on the master concept plan and be included within the first development order approval for the project. The required right of way buffer trees must be native canopy trees (no palm trees).
- f. The developer must install a five-foot wide pedestrian sidewalk along the project's Homestead Road frontage. The location of this sidewalk will be determined through the final permitting process for the project and be included within the first development order approval for the project.
- g. All buildings on the perimeter of the project are limited to two habitable stories as depicted on the master concept plan. No building or accessory structures will exceed the Land Development Code approach surface heights as noted on the master concept plan. The master concept plan must continue to depict the LDC's approach surface height restrictions.
- h. Development orders will be granted only upon a clear showing that the development will not cause the mandatory levels of service set forth in Lee Plan Policy 95.1.3 to be exceeded. The granting of a development order will not release the property owner from any obligations under the Privately Funded Infrastructure Overlay.
- i. The project must connect to a public water system and must connect to a sanitary sewer system. No development order will be approved unless these services are provided to the site.
- j. Prior to local development order approval, provisions and locations for solid waste collection/disposal must be provided on the development order plans in

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Deleted: prior to the issuance of the first Development Order for this project.

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compliance with the LDC. Proposed locations and method of disposal is subject to review and approval by Lee County Solid Waste Division.

4.7 The County authorizes the development of up to 253 bonus density units provided the conditions set forth in this agreement are fully satisfied by the Developer.

ARTICLE V **Assignability**

5.1 Density bonuses for which contributions are made will run with the specific Master Concept Plan submitted and approved by the County concurrent with the request for bonus density units. The development of units pursuant to this Agreement binds all successors in interest and future owners to the terms and conditions stated herein, and the conveyance of any unit must be made subject to the terms and conditions of this contract.

ARTICLE VI **Breach**

6.1 Enforcement of this Agreement will be governed by Lee County Ordinances. Waiver by the County of a breach of any provision of this Agreement will not be construed to be a modification of the terms of this Agreement.

ARTICLE VII **Miscellaneous Provisions**

7.1 This document incorporates and includes all prior negotiation, correspondence, conversation, or understanding applicable to the authorization to construct up to 253 bonus density units on the subject property. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated upon any prior representations or agreements whether oral or written.

7.2 It is understood by the Developer that the County will not be held responsible for refunding any portion of the contribution for the County's termination of the Agreement due to the Developer's failure to abide by the provisions of the Agreement or any conditions imposed by the LDC.

7.3 The Developer agrees to indemnify and hold the County harmless from or on account of any injuries, damages, omissions, commissions, actions or causes of action accruing as a result of services performed, or not performed, pursuant to this Agreement. Developer will be liable for all claims, suits, judgments or damages arising from the services or lack of services provided pursuant to this Agreement.

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SETTINGS\TEMPORARY
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ARTICLE VIII
Amendments

8.1 The covenants, terms and provisions contained in this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. The Chairman of the Lee County Board of County Commissioners, or his designated representative, will act on behalf of the County in executing Amendments to the Agreement. The Developer, as an individual, or, a corporation, by its corporate president or vice president, may act in executing Amendments to the Agreement. In the event of conflicts between the requirements, provision or terms of the Agreement and written Amendments, the requirements, provisions or terms of the latest executed Amendment will take precedence.

8.2 Changes in the terms of this Agreement are subject to the approval of the County Attorney.

IN WITNESS OF THE ABOVE, the parties, by their duly authorized representatives, execute this Agreement effective the day and year first written above.

ATTEST:

LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

CLERK OF CIRCUIT COURT
Charlie Green, Clerk

By: _____
Deputy Clerk

By: _____
Tammara Hall, Chairwoman

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LEHIGH ACRES ACQUISITION, LLC,
a Florida Limited Liability Corporation

(Witness)

By: Lehigh Acres Management, LLC,
a Florida Limited Liability Corporation,
Its Managing Member

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Member

(Witness)

By: Antonio Bismonte
Managing Member of Lehigh Acres
Management, LLC, a Florida
Limited Liability Corporation

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State of _____
County of _____

The foregoing contract was acknowledged before me this _____ day of
_____ 2006, by Antonio Bismonte, in his capacity as the Managing Member of
Lehigh Acres Management, LLC, a Florida Limited Liability Corporation, the Managing
Member of Lehigh Acres Acquisition, LLC, a Florida Limited Liability Corporation. He
is personally known to me or has produced _____ as
identification.

(Signature of person taking acknowledgment)

(Name typed, printed, or stamped)
(Title or Rank)
(Serial Number, if any)

APPROVED AS TO FORM

Donna Marie Collins
Office of the County Attorney

Exhibit A: Legal Description

Exhibit B: Buckingham Villages Master Concept Plan

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CASH CONTRIBUTION OPTION
DEVELOPMENT CONTRACT (01/06/05)

PAGE 7 OF 7

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EXHIBIT D

DEVELOPMENT CONTRACT

between

**THE BOARD OF COUNTY COMMISSIONERS
Lee County, Florida**

and

LEHIGH ACRES ACQUISITION, LLC

The Cash Contribution Option

of the

Housing Bonus Density Program

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CONTRACT (REDLINE) 2-2-06.DOC**
01-06-05

AGREEMENT

This agreement is made and entered into this ___ day of _____ 2006, between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Lehigh Acres Acquisition, LLC, a Florida Limited Liability Corporation with a principal address of 921 Ash Street, Winnetka, IL 60093, hereinafter referred to as the "Developer."

In consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, County and the Developer hereby agree as follows:

ARTICLE I **Definitions**

1.1 For the purpose of this Agreement and the various covenants, conditions, terms and provisions which follow, the Definitions set forth in this Agreement will be consistent with those set forth in the Lee County Land Development Code (LDC), as amended.

ARTICLE II **Intentions**

2.1 In order to establish the background, context and frame of reference for this agreement, and to manifest the objectives and the intentions of the respective parties herein, the following statements, representations, and explanations are set forth. Such statements, representations, and explanations will be accepted as predicates for the undertakings and commitments included within the provisions that follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which the Agreement is based.

2.2 The County adopted a Comprehensive Plan pursuant to Chapters 125 and 163, Florida Statutes by Lee County Ordinance 89-02.

2.3 The Housing Element of the Comprehensive Plan includes a Goal that requires the County to, in part, develop mechanisms to encourage the provision of very low and low income housing.

2.4 The County created a Housing Bonus Density Program to stimulate the construction of very low and low income housing in Lee County. One option under the Program is for Developers to obtain bonus density through contributions to the Affordable Housing Trust Fund.

2.5 The Developer desires to contribute funds to the Housing Bonus Density Program's Affordable Housing Trust Fund to support very low and low income housing in order to

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obtain permission to construct up to 253 bonus density units on a 59.39±-acre parcel of land (plus 3.76 acres of right-of-way) described in attached Exhibit A.

2.6 The County authorizes the development of up to 253 bonus density units upon execution of this agreement and receipt of the contribution to the Affordable Housing Trust Fund described herein.

ARTICLE III **Implementation**

3.1 No development activity may begin until the Development Order is approved and permits are issued.

3.2 The Developer must complete the project in accordance with the time frames for construction set forth in the Development Order issued by the County.

ARTICLE IV **Assurances**

4.1 The Developer enters into this contract as a condition for issuance of a Development Order that will authorize the construction of up to 253 bonus density units on the property described in Exhibit A. The Developer must comply with the terms and conditions of the Development Order approval.

4.2 The Developer agrees to fulfill all pre-contract conditions as a pre-requisite for participating in the Housing Density Bonus Program.

4.3 The Developer agrees to comply with all other legal requirements imposed by current or future federal, state, or local laws and regulations.

4.4 The Developer agrees to pay:

\$11,429.00 for each bonus density unit it constructs not to exceed 253 bonus density units.

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253 units

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4.5 The Developer and his successors are bound by the following conditions:

- a. Development must be consistent with Exhibit B, which is the ____-page Buckingham Villages Master Concept Plan (dated _____) stamped received _____, except as modified by the conditions set forth herein.
- b. Development must comply with all requirements of the LDC at time of local Development Order Approval. If changes to the plan of development are desired, appropriate approvals will be necessary.

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- c. This agreement is not a building permit or Development Order. It does not vest development rights other than an increase in density by up to 253 units. Development must comply with all applicable federal, state or Lee County permitting requirements. No variances or deviations from the LDC open space, parking, or buffering have been granted by virtue of this Agreement. Furthermore, the Developer may not seek variances or deviations from those specific provisions of the LDC in the future.
- d. The Developer must pay \$11,429.00 for each bonus density unit constructed into the County's Affordable Housing Trust Fund for up to 253 bonus density units. The contribution must be paid in full, at the time the permitting is issued for the construction of the first building on the site. Contributions will not be refunded once made, even if the development in question fails to occur.
- e. The developer must, at a minimum, install a Type D buffer along Homestead Road. This buffer must be depicted on the master concept plan and be included within the first development order approval for the project. The required right of way buffer trees must be native canopy trees (no palm trees).
- f. The developer must install a five-foot wide pedestrian sidewalk along the project's Homestead Road frontage. The location of this sidewalk will be determined through the final permitting process for the project and be included within the first development order approval for the project.
- g. All buildings on the perimeter of the project are limited to two habitable stories as depicted on the master concept plan. No building or accessory structures will exceed the Land Development Code approach surface heights as noted on the master concept plan. The master concept plan must continue to depict the LDC's approach surface height restrictions.
- h. Development orders will be granted only upon a clear showing that the development will not cause the mandatory levels of service set forth in Lee Plan Policy 95.1.3 to be exceeded. The granting of a development order will not release the property owner from any obligations under the Privately Funded Infrastructure Overlay.
- i. The project must connect to a public water system and must connect to a sanitary sewer system. No development order will be approved unless these services are provided to the site.
- j. Prior to local development order approval, provisions and locations for solid waste collection/disposal must be provided on the development order plans in compliance with the LDC. Proposed locations and method of disposal is subject

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to review and approval by Lee County Solid Waste Division.

4.7 The County authorizes the development of up to 253 bonus density units provided the conditions set forth in this agreement are fully satisfied by the Developer.

ARTICLE V **Assignability**

5.1 Density bonuses for which contributions are made will run with the specific Master Concept Plan submitted and approved by the County concurrent with the request for bonus density units. The development of units pursuant to this Agreement binds all successors in interest and future owners to the terms and conditions stated herein, and the conveyance of any unit must be made subject to the terms and conditions of this contract.

ARTICLE VI **Breach**

6.1 Enforcement of this Agreement will be governed by Lee County Ordinances. Waiver by the County of a breach of any provision of this Agreement will not be construed to be a modification of the terms of this Agreement.

ARTICLE VII **Miscellaneous Provisions**

7.1 This document incorporates and includes all prior negotiation, correspondence, conversation, or understanding applicable to the authorization to construct up to 253 bonus density units on the subject property. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated upon any prior representations or agreements whether oral or written.

7.2 It is understood by the Developer that the County will not be held responsible for refunding any portion of the contribution for the County's termination of the Agreement due to the Developer's failure to abide by the provisions of the Agreement or any conditions imposed by the LDC.

7.3 The Developer agrees to indemnify and hold the County harmless from or on account of any injuries, damages, omissions, commissions, actions or causes of action accruing as a result of services performed, or not performed, pursuant to this Agreement. Developer will be liable for all claims, suits, judgments or damages arising from the services or lack of services provided pursuant to this Agreement.

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ARTICLE VIII
Amendments

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IN WITNESS OF THE ABOVE, the parties, by their duly authorized representatives, execute this Agreement effective the day and year first written above.

ATTEST:

LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

CLERK OF CIRCUIT COURT
Charlie Green, Clerk

By: _____
Deputy Clerk

By: Tammara Hall, Chairwoman

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LEHIGH ACRES ACQUISITION, LLC,
a Florida Limited Liability Corporation

(Witness)

By: Lehigh Acres Management, LLC,
a Florida Limited Liability Corporation

Member Its Managing

(Witness)

By: Antonio Bismonte
Managing Member

State of _____
County of _____

The foregoing contract was acknowledged before me this _____ day of _____ 2006, by Antonio Bismonte, in his capacity as the Managing Member of Lehigh Acres Management, LLC, a Florida Limited Liability Corporation, the Managing Member of Lehigh Acres Acquisition, LLC, a Florida Limited Liability Corporation. He is personally known to me or has produced _____ as identification.

(Signature of person taking acknowledgment)

(Name typed, printed, or stamped)
(Title or Rank)
(Serial Number, if any)

APPROVED AS TO FORM

Donna Marie Collins
Office of the County Attorney

Exhibit A: Legal Description
Exhibit B: Buckingham Villages Master Concept Plan

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CASH CONTRIBUTION OPTION
DEVELOPMENT CONTRACT (01/06/05)

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