

Prepared by:

**Mark A. Watts, Esquire
351 East New York Avenue
Suite 200
Deland, Florida
386-736-7700**

**TRANSPORTATION IMPACT FEE ALLOCATION AND CONSTRUCTION
AGREEMENT BETWEEN THE CITY OF PALM COAST, FLORIDA AND
COBBLESTONE VILLAGE AT PALM COAST, LLC FOR IMPROVEMENTS TO
CYPRESS EDGE DRIVE INCLUSIVE OF SUPPORTIVE TRANSPORTATION
EQUIPMENT**

THIS AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this _____ day of _____, 2011 by and between **THE CITY OF PALM COAST, FLORIDA**, a Florida municipal corporation (hereinafter referred to as the "City"), whose address for purpose of this Agreement is 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida 32164, Memorial Hospital Flagler, Inc., (hereafter "MHF"), whose address for purpose of this Agreement is 6 Memorial Medical Parkway, Suite 2806, Palm Coast, Florida 32164, and **COBBLESTONE VILLAGE AT PALM COAST, LLC**, a Florida limited liability company (hereinafter referred to as the "Developer") whose address for purpose of this Agreement is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, TN 37421.

RECITALS

WHEREAS, the Developer has received approval from the City to develop Phase II of the Cobblestone Village at Palm Coast development the legal description being attached as **Exhibit A** ("Cobblestone Village, Phase II); and

WHEREAS, the Developer sold a lot in Cobblestone Village, Phase II to Memorial Hospital Flagler, Inc. for the construction of a medical office building consisting of approximately 34,000 square feet of medical office space; and

WHEREAS, the development of the medical office building will result in transportation impact fees becoming due and payable to the City from Memorial Hospital Flagler, Inc.; and

WHEREAS, the City and Developer have identified the need for certain improvements to Cypress Edge Drive (the "Cypress Edge Drive Improvements") which the City and Developer would like to fund with the transportation impact fee revenue generated by Memorial Hospital Flagler, Inc. development of the medical office building and future Cobblestone Village, Phase II development; and

WHEREAS, the City and Developer have agreed that the Developer may construct the Cypress Edge Drive Improvements including all associated costs in an amount not to exceed the actual amount of transportation impact fees paid by Memorial Hospital Flagler, Inc. in connection with its development (the "MHF Impact Fees"); and

WHEREAS, the City and Developer have further agreed that any of the Cypress Edge Drive Improvements which exceed the revenue generated by the MHF Impact Fees will be funded and completed by the City, but the City shall not be obligated to fund more than the amount of transportation

impact fee revenue that will be generated by the future development of Cobblestone Village, Phase II development; and

WHEREAS, this Agreement is authorized by and consistent with City Code Section 29-35.

NOW THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and the City do hereby covenant, stipulate and agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.
2. Calculation and Payment of City Transportation Impact Fee.
 - (a) *Calculation of Impact Fee.* The City will calculate the total transportation impact fee liability for the Memorial Hospital Flagler, Inc. medical office building based on current impact fee rates of \$5,781.62 per 1,000 square feet. The final MHF Transportation Impact Fees will be determined by the final approved square feet of medical building office space.
 - (b) *Payment of Impact Fee.* All transportation impact fees due for the Memorial Hospital Flagler, Inc. development shall be paid according to the City's normal schedule for payment of impact fees. MHF may qualify for a three percent (3%) reduction in the amount of transportation impact fees due in accordance with the City's prepayment policy.
3. Cypress Edge Drive Improvements.
 - (a) *Identification of Improvements.* The development of the Cobblestone Village, Phase II development does not cause any concurrency failures on the City's existing road network, although it contributes to impacts on the surrounding road network. The City and Developer have identified certain improvements that are desired to ensure continuing efficient operation of the surrounding road network, and which are eligible for transportation impact fee reimbursement under Code Section 29-35. City staff may adjust the scope and priority of the Cypress Edge Drive Improvements based on the availability of MHF and future Cobblestone Village, Phase II Transportation Impact Fees to fund design, permitting, and construction. The improvements are set forth below, in order of priority, and identified with more specificity on attached **Exhibit B**:
 - i. Construction of an additional right turn lane on the south side of Cypress Edge Drive from Cypress Point Parkway to the westerly driveway for the Cobblestone Village Phase II development.
 - ii. Designate and stripe the existing middle lane on Cypress Edge Drive as a bi-directional left turn lane that terminates at the easterly driveway of Sonny's Barbeque (Southwest QUADRANT, Phase II, LOT 8, Map Book 30 pgs 36-41-).

iii. (a) Install a fiber optic interconnect cable from the City fiber optic cable on the north side of Palm Coast Parkway to the traffic controller at Palm Coast Parkway/Cypress Point Parkway and to the traffic controller at Cypress Point Parkway/Cypress Edge Drive.

(b) Install Naztec TS2 traffic signal controllers at the intersections of Cypress Point Parkway and Cypress Edge Drive, Palm Coast Parkway and Cypress Point Parkway and Palm Coast Parkway and the I-95 Southbound Ramps. This would include all necessary hardware and drivers to complete the interconnect system.

(c) Develop traffic signal timings for the intersection of Cypress Point Parkway/Cypress Edge Drive, Palm Coast Parkway and Cypress Drive, and Palm Coast Parkway and I-95 Southbound Ramps.

(b) *City Reimbursement of Costs Associated with Cypress Edge Drive Improvements.* The Developer has agreed to construct the Cypress Edge Drive Improvements, according to the rank of priority set forth above and subject to a maximum cost for design and construction not to exceed the MHF Impact Fees. A rough estimate of the cost of the Cypress Edge Drive Improvements is shown in attached **Exhibit C**. The Developer shall ensure performance and payment bonds are in place to guarantee the construction. The Developer may submit requests to the City for progress payments for the Cypress Edge Drive Improvements, but not until the Cypress Edge Drive Improvements are at least 50% complete, per Code Section 29-35. Payment requests may be made based on the percentage of completion of the Cypress Edge Drive Improvements, so long as accompanied by all proper documentation as may be required by the City. Full payment shall be due to the Developer upon completion of the Cypress Edge Drive Improvements and acceptance of the improvements by the City, or reasonably close to completion, per Section 29-35 of the City Code. As part of the cost of the Cypress Edge Drive Improvements, the City shall reimburse the Developer for the full, reasonable cost of designing, permitting and constructing the improvements from the MHF Impact Fees. In the event the full cost of designing and constructing the Cypress Edge Drive Improvements is less than the total MHF Impact Fees, the City shall retain the balance of the funds for use for other necessary transportation improvements. Developer will not be reimbursed for maintenance of improvements, or for operational or personnel expenses associated with the improvements, per Section 29-36B of the City Code.

(c) *Allocation of Future Impact Fees.* The actual total cost of the Cypress Edge Drive Improvements is not known at this time. Upon execution of this Agreement, the Developer will obtain bids for the completion of the Cypress Edge Drive Improvements and provide copies to the City. In the event the cost of the improvements exceeds the MHF Impact Fees, the projects will be funded in the order listed in paragraph (3) (a)(i-iii), above, and any project not funded may be delayed until such time as additional impact fee revenues are generated by the Cobblestone Village, Phase II project. Future Transportation Impact Fee revenues from the project will be used to complete the Cypress Edge Drive Improvements. The City is not required to pay for any improvements from any other source of funds.

- (d) *Timing of Cypress Edge Drive Improvements.* The Developer shall have eighteen (18) months from the date of this Agreement to complete construction of the Cypress Edge Drive Improvements funded by the MHF Transportation Impact Fees. The Cypress Edge Drive Improvements are off-site related improvements for the Cobblestone Village, Phase II development and will not delay permits or certificates of occupancy for any development activity associated with the Phase II development.
4. City Option to Design or Construct Cypress Edge Drive Improvements. The City and Developer further agree that the City reserves the right to construct or cause to be constructed any phase or all of the prescribed Cypress Edge Drive improvements.
- i. The City shall notify the developer of the City's decision to design or construct any part of the improvements outlined in Exhibit "C".
 - ii. Section 3 (b) shall govern the reimbursement of Developer's costs, except that Developer shall be paid in full for any costs incurred at the time City has determined to complete an improvement(s) as outlined in Exhibit "C".
5. Time of the Essence. Time is of the essence with respect to the rights and obligations of the parties as set forth in this Agreement. The duties and obligations of the parties shall be completed in accordance with all dates or deadlines set forth herein, subject to any acts of God or force majeure, but in no event more than five (5) years from the date of this Agreement. The improvements listed in paragraph 3(a)(i-ii) shall be completed within eighteen (18) months from the date of this Agreement.
6. Governing Law, Binding Effect, Construction and Venue.
- (a) This Agreement shall be interpreted and governed by Florida Law.
 - (b) Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Florida law.
 - (c) Each of the parties agrees that they have participated in the drafting of this Agreement. Therefore, the presumption that any ambiguity or vagueness in the construction of the Agreement shall be construed against the drafter shall not apply. The terms and provisions of this Agreement shall be applied equally to each party and the interpretation of the Agreement shall be guided by the express intent of the parties as determined by the overall effect of the Agreement provisions.
7. Remedies and Attorney Fees. The parties hereto shall have all rights and remedies provided hereunder and under Florida Law with respect to the enforcement of this Agreement and hereby acknowledge and agree that each party hereto shall have the right and remedy to bring an action or actions for specific performance and such other equitable or injunctive relief as appropriate or necessary to enforce this Agreement. The parties agree that the venue for any enforcement action shall be the Circuit Court in and

for Flagler County. In the event of litigation to enforce the terms of this Agreement, each party shall be responsible for its own attorney fees and costs of suit, including any and all attorney fees and costs incurred in pursuit of any appeal.

8. Notice of Default. The parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of said written notice.
9. Notices. All notices, demands, or other writings required or permitted to be given or made or sent under this Agreement, by any party to another, shall be in writing and shall be deemed to have been fully delivered upon (i) receipt of such notice when hand delivered (by personal courier or overnight delivery service) to the party to whom such notice is addressed as set forth below, (ii) receipt of such notice as indicated by the signature and date on the return receipt of a certified mailing, or (iii) on the same day if sent by facsimile and a printed confirmation of transmission is obtained by the sender, and addressed and transmitted to the party to whom such notice is to be delivered as set forth below.

CITY: THE CITY OF PALM COAST
Attn: City Manager
160 Cypress Point Parkway, Suite B-106
Palm Coast, Florida 32164

DEVELOPER: Cobblestone Village at Palm Coast, LLC
Attn: Victoria S. Berghel, Vice President and General Counsel
2030 Hamilton Place Boulevard, Suite 500
Chattanooga, TN 37421
Telephone No.: (423) 490-8345
Fax No.: (423) 490-8626

With a copy to: Mark A. Watts, Esquire
Cobb Cole, P. A.
351 East New York Avenue; Suite 200
DeLand, FL 32724
Telephone No.: (386) 736-7700
Fax No.: (386) 785-1549

MHF: Memorial Hospital Flagler, Inc.
61 Memorial Medical Pkwy, Suite 2806
Palm Coast, FL 32164
Attention: Mr. Wally DeAcquino

Any party by written notice in accordance with the requirements of this section may modify its address for receipt of all future notices.

10. Amendments. No amendment, modification or other changes in this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

11. Successors and Assigns Bound. The rights and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
12. Effective Date. This Agreement shall become effective upon the date it is executed by the last party to it.
13. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be any original, but all counterparts shall together constitute duplicates of one and the same instrument.
14. Headings. The headings above the various provisions herein are for ease of reference and are not to be used in constructing this Agreement or ascertaining the intent of the parties.
15. Recording. This Agreement shall be recorded by the County in the Public Records of Flagler County, Florida within five (5) working days of its complete execution by the Developer, the City and MHF. The cost of recording shall be paid by the City.
16. Duration of Agreement. The duration of this Agreement shall be for a term of five (5) years from the effective date of this Agreement.
17. Further Assurances. Each party hereto agrees to sign any other and further instruments and documents, consistent herewith, as may be necessary and proper in order to give complete effect to the benefits deriving from the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

(This space left intentionally blank-Signature page to follow)

WITNESSES:

Sign Name

Print Name

Sign Name

Print Name

STATE OF _____

COUNTY OF _____

**COBBLESTONE VILLAGE
AT PALM COAST, LLC**

By: CBL & Associates Limited
Partnership, its chief manager
By: CBL Holdings I, Inc., its sole general
Partner

By: _____
Victoria S. Berghel
Senior Vice President and General Counsel

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by Victoria S. Berghel, as Senior Vice President and General Counsel CBL Holdings, I, Inc., the sole general partner of CBL & Associates Limited Partnership, the chief manager of COBBLESTONE VILLAGE AT PALM COAST, LLC who is personally known to me.

NOTARY PUBLIC, STATE OF _____

Type or Print Name: _____

Commission No.: _____

My Commission Expires: _____

ATTEST:

CITY:

CITY OF PALM COAST, FLORIDA

Virginia A. Smith, C.P.
City Clerk/Paralegal

BY: _____
Jim Landon, City Manager

DATE: _____

Approved as to form
and correctness:

William E. Reischmann, Jr.
City Attorney

MHF

MEMORIAL HOSPITAL FLAGLER, INC., a
Florida not-for-profit corporation

By: _____

Name: _____

Title: _____

Date: _____

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this day of _____ 2011 by
_____, as _____ of Memorial Hospital Flagler, Inc.. He or she is
personally known to me or produced _____ as identification.

Commission No: _____

My Commission Expires: _____

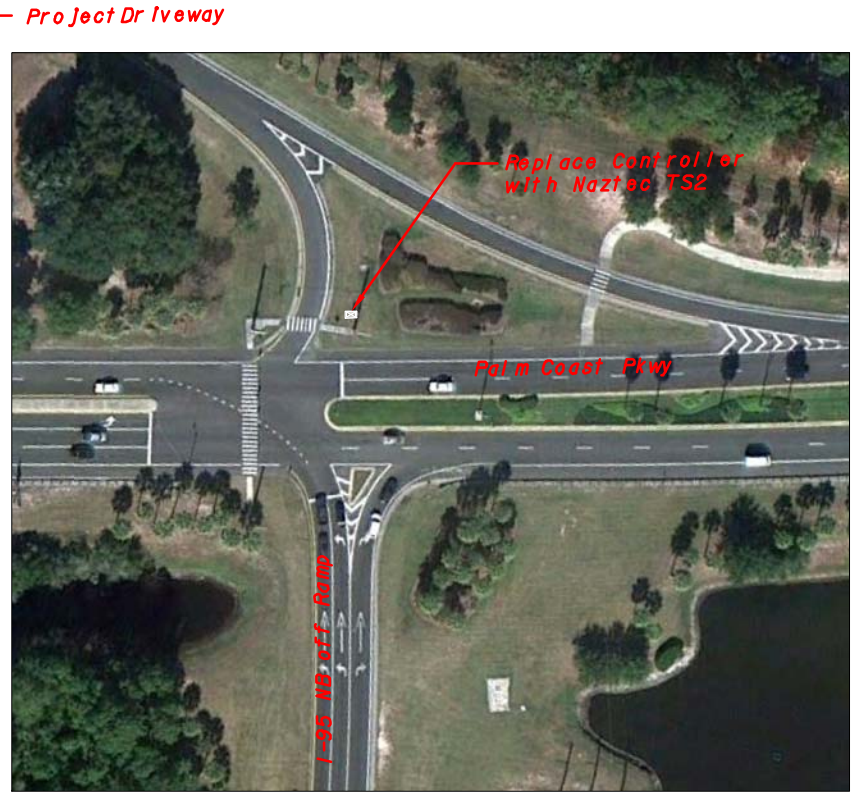
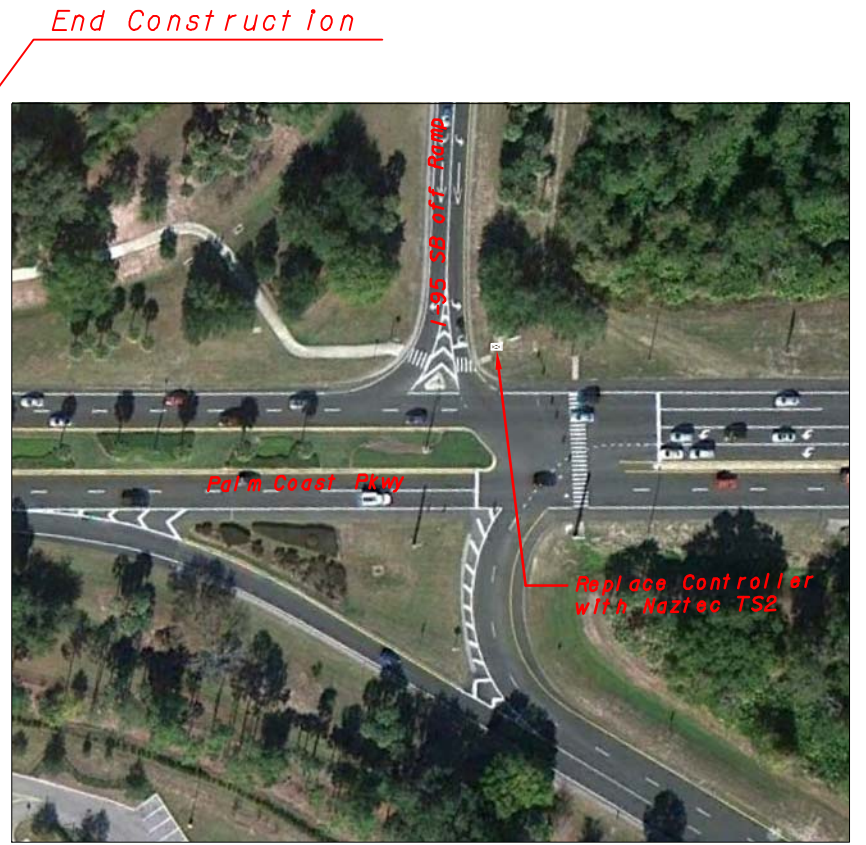
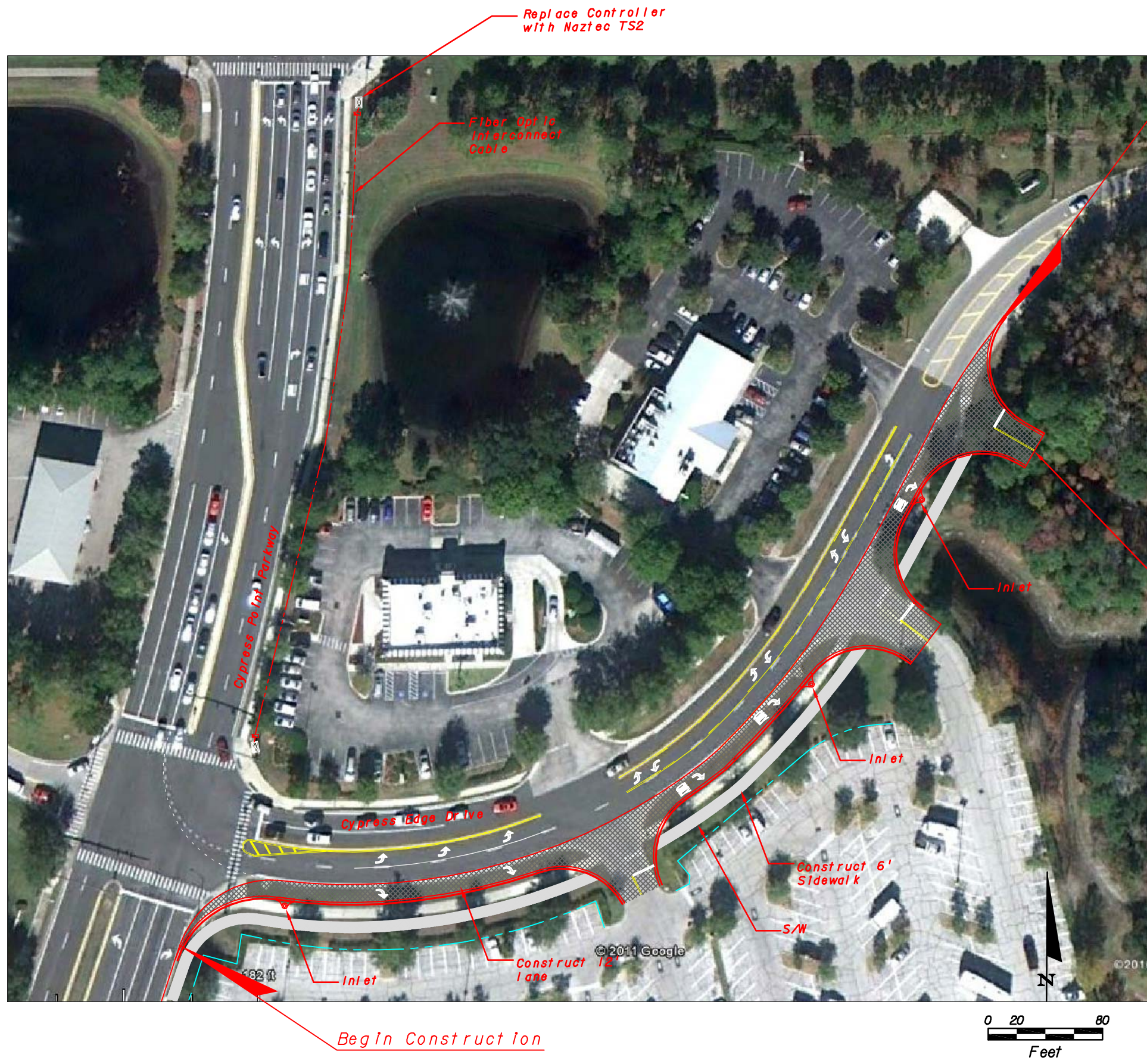
Exhibit A

Legal Description:

TRACT B, LOT 1 AND A PORTION OF LOT 2, COBBLESTONE VILLAGE, AS RECORDED IN MAP BOOK 36, PAGES 5 THROUGH 9, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, IN SECTION 13 AND SECTION 18, TOWNSHIP 11 SOUTH, RANGE 31 EAST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE S50°28'03"W ALONG THE SOUTH LINE OF SAID LOT 1 AND THE WESTERLY EXTENSION THEREOF, 249.00 FEET; THENCE S39°31'57"E, 167.40 FEET TO THE NORTHERLY EXTENSION OF THE EASTERLY LINE SAID TRACT B; THENCE S09°32'20"W ALONG THE EASTERLY LINE OF SAID TRACT B AND ITS NORTHERLY EXTENSION, 40.76 FEET; THENCE S78°53'24"W ALONG THE SOUTHERLY LINE OF SAID TRACT B, 42.06 FEET; THENCE S89°39'19"W ALONG SAID SOUTHERLY LINE, 425.59 FEET TO THE WESTERLY BOUNDARY LINE OF SAID TRACT B; THENCE ALONG THE WESTERLY BOUNDARY OF SAID TRACT B THE FOLLOWING 14 COURSES: N15°54'03"W, 39.17 FEET; THENCE N56°33'42"W, 94.60 FEET; THENCE N40°30'00"E, 29.00 FEET; THENCE N37°34'16"W, 44.33 FEET; THENCE N11°19'48"W, 60.40 FEET; THENCE N13°36'22"E, 41.88 FEET; THENCE N71°00'00"E, 44.00 FEET; THENCE N18°34'13"E, 37.93 FEET; THENCE N13°27'52"W, 31.90 FEET; THENCE S87°01'47"W, 73.47 FEET; THENCE N30°00'00"W, 35.00 FEET; THENCE N52°43'04"W, 44.13 FEET; THENCE N05°50'05"W, 43.16 FEET; THENCE N60°40'07"W, 24.47 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF CYPRESS EDGE DRIVE, A VARIABLE WIDTH RIGHT OF WAY PER THE PLAT OF SAID COBBLESTONE VILLAGE; THENCE N29°19'54"E ALONG SAID RIGHT OF WAY LINE, 31.55 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEAST HAVING A RADIUS OF 280.00 FEET AND A CENTRAL ANGLE OF 60°40'06"; THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, 296.48 FEET; THENCE N90°00'00"E ALONG SAID RIGHT OF WAY LINE, 159.78 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWEST HAVING A RADIUS OF 262.50 FEET AND A CENTRAL ANGLE OF 50°28'00"; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE AND THE ARC OF SAID CURVE, 231.21 FEET; THENCE S39°32'00"E ALONG SAID RIGHT OF WAY LINE, 224.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 332,113 SQUARE FEET OR 7.624 ACRES, MORE OR LESS.



Cobblestone Village Phase II
Palm Coast, Florida

Lassiter Transportation Group, Inc.
Engineering and Planning

123 Live Oak Avenue – Daytona Beach, Florida 32114
Telephone: 386.257.2571 Fax: 386.257.6996 EB# 0009227

Cypress Edge Drive
Cypress Point Parkway
Proposed Improvement

Project No. 3216.17

Exhibit B

Exhibit C
Cobblestone Village Impact Fee Credit Agreement
Engineer's Cost Estimate

Improvement Priority Number	Description	Construction Cost	Engineering Cost (15%)	Total Cost
i	Construction of an additional 12-foot right turn lane on the south side of Cypress Edge Drive from Cypress Point Parkway to the easterly driveway for the Wal-Mart.	\$ 126,036	\$ 18,905	\$ 144,942
ii	Construction of an additional 12-foot right turn lane on the south side of Cypress Edge Drive from the easterly Wal-Mart driveway to the westerly driveway for the Cobblestone Village Phase II development.	\$ 45,497	\$ 6,825	\$ 52,322
iii	Designate and stripe the existing middle lane on Cypress Edge Drive as a bi-directional left turn lane that terminates at the eastern Sonny's Barbeque driveway.	\$ 6,600	\$ 990	\$ 7,590
iv (a)	Install a fiber optic interconnect cable from the traffic controller at Palm Coast Parkway/Cypress Point Parkway to the traffic controller at Cypress Point Parkway/Cypress Edge Drive.	\$ 15,000	\$ 2,250	\$ 17,250
iv (b)	Install Naztec TS2 traffic signal controllers at the intersections of Cypress Point Parkway and Cypress Edge Drive, Palm Coast Parkway and Cypress Point Parkway and Palm Coast Parkway and the I-95 Southbound Ramps, and Palm Coast Parkway and the I-95 Northbound Ramps. This would include all necessary hardware and drivers to complete the interconnect system.	\$ 60,000	\$ 9,000	\$ 69,000
iv (c)	Develop traffic signal timings for the intersection of Cypress Point Parkway/Cypress Edge Drive, Palm Coast Parkway and Cypress Drive, and Palm Coast parkway and I-95 Southbound Ramps.	\$ -	\$ 12,000	\$ 12,000
Totals:		\$ 253,133	\$ 49,970	\$ 303,103