

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Seminole County/ Colonial Realty Limited Partnership Agreement

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** April Boswell *AB* **EXT.** 7339

Agenda Date <u>10/10/06</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/> Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>
--

MOTION/RECOMMENDATION:

Approve the Seminole County/ Colonial Realty Limited Partnership Agreement and authorize the Chairman to execute the Agreement.

Districts: County wide

April Boswell, Planning Manager

BACKGROUND:

The Board of County Commissioners met with the City Commission on February 28, 2006 in a joint work session to discuss certain properties the City was considering annexing within the HIBC DRI, owned by Colonial Realty Limited Partnership (Colonial), and converting the entitlements to residential from office. That meeting resulted in the County, City and Colonial agreeing in concept to try to work through the issues in the form of a tripartite agreement.

County staff and Colonial negotiated effectively to finalize the enclosed Agreement per the Board's direction, and Colonial has executed the Agreement. The City of Lake Mary decided not to execute the Agreement. The Agreement with Colonial's signature is attached for the Board's official action.

Colonial Properties has agreed to the following:

- Will add 950,000 square feet of Class A office to the Colonial Town Park DRI, with restrictive covenants, to off-set the loss of 192,962 square feet that results from the HIBC conversion;
- Will not to seek annexation of the Colonial Town Park (Colonial Center Heathrow) DRI or BOMAR tract for a 10-year period;

Reviewed by: <i>KPT</i> Co Atty: _____ DFS: _____ Other: _____ DCM: <i>AB</i> CM: _____ File No. <u>CPDP0</u>
--

- Will dedicate property for the SR 417 improvements, if the actual road provides access to International Parkway and within certain time constraints;
- Agree to develop the remaining tracts within Colonial Center Heathrow as office, retail, and commercial with the right to pursue additional residential as secondary, understanding that it may not be approved;
- Agree to restrict the 9.1-acre urban park tract (Tract H) to remain as it is now; and not seek conversion until all parties agree on future use other than the Park.

The County acknowledges that the additional Class A office square footage offsets the loss to accommodate the residential conversion; agrees not to object to the residential conversion on those subject HIBC properties annexed into the City of Lake Mary; and acknowledges that the City of Lake Mary has agreed to accept International Parkway from Colonial.

The Agreement is structured so that even though Lake Mary will not execute, responsibilities of Colonial and the County are still enforceable and applicable.

STAFF RECOMMENDATION:

Staff recommends the Board approve the Seminole County/ Colonial Realty Limited Partnership Agreement and authorize the Chairman to execute the Agreement.

Attachments: Seminole County/ Colonial Realty Limited Partnership Agreement

AGREEMENT
BETWEEN SEMINOLE COUNTY,
COLONIAL REALTY LIMITED PARTNERSHIP
AND THE CITY OF LAKE MARY
RELATED TO COLONIAL CENTER HEATHROW

THIS AGREEMENT is made and entered into this 27th day of June, 2006, by and between, COLONIAL REALTY LIMITED PARTNERSHIP, a Delaware Limited Partnership duly authorized to conduct business in the State of Florida, hereinafter referred to as "COLONIAL", whose address is 2101 Sixth Avenue North, Suite 750, Birmingham, Alabama, 35203, the CITY OF LAKE MARY, a Florida municipal corporation, whose address is 100 N. Country Club Road, Lake Mary, Florida 32795, hereinafter referred to as the "CITY", and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

W I T N E S S E T H:

WHEREAS, the CITY and the COUNTY held a joint meeting on February 28, 2006 to discuss the annexation and land use into the CITY of certain properties known as Colonial Center Heathrow, formerly known as Heathrow International Business Center, wherein a consensus was built to develop an Agreement to resolve concerns; and

WHEREAS, COLONIAL owns or controls certain real property located in Seminole County, Florida, consisting of approximately 436 acres, formerly known as the Heathrow International Business Center Development and which is currently known as Colonial Center Heathrow (the "property"); and

WHEREAS, the property has been designated a Development of Regional Impact ("DRI") within the boundaries of Seminole County and the

City of Lake Mary; and

WHEREAS, the "THIRD AMENDED AND RESTATED DEVELOPMENT ORDER HEATHROW INTERNATIONAL BUSINESS CENTER (SEMINOLE COUNTY)", hereinafter "DRI Development Order", was executed on May 25, 2001 constituting approval of the DRI and incorporated by reference herein; and

WHEREAS, the DRI Development Order makes certain provisions regarding development of the property and imposes certain conditions and restrictions that run with the land pursuant to Section VI 2, recorded in Official Records Book 4091, Page 0109; and

WHEREAS, the COUNTY has a substantial interest in protecting the public interest within the COUNTY boundaries by regulating planning and growth management pursuant to Chapter 163 of the Florida Statutes and the Florida Administrative Code Chapter 9J-2, the Seminole County Land Development Code, the Seminole County Comprehensive Plan and all other applicable law and ordinances; and

WHEREAS, the "THIRD AMENDED AND RESTATED DEVELOPMENT ORDER HEATHROW INTERNATIONAL BUSINESS CENTER (LAKE MARY)", hereinafter ("DRI Development Order (LM)"), was executed on April 5, 2001 constituting approval of the DRI and incorporated by reference herein; and

WHEREAS, COLONIAL owns property north of 46A and east of International Parkway, and south of the BOMAR Tract, also known as the Colonial Town Park DRI; and

WHEREAS, COLONIAL and the COUNTY have expressed a common interest and goal to maximize the commercial/Class A office square footage in Colonial Town Park DRI to offset the loss of commercial/Class A office square footage in Colonial Center Heathrow; and

WHEREAS, COLONIAL has provided a Master Plan that depicts existing and future development for Colonial Center Heathrow; and

WHEREAS, certain portions of the Colonial Center Heathrow have recently been annexed into the City of Lake Mary pursuant to Chapter 171, Florida Statutes and by Ordinance Number 1192 on March 16, 2006 ("recently annexed property"); and

WHEREAS, other portions of the Colonial Center Heathrow have been annexed into the City of Lake Mary some years ago, which is now currently referred to as Heathrow International Business Center DRI; and

WHEREAS, COLONIAL now anticipates application to the CITY for a land use amendment to the recently annexed property; and

WHEREAS, the parties desire to keep the property consistent with DRI Development Orders executed between COLONIAL and the COUNTY and between COLONIAL and the CITY; and

WHEREAS, COLONIAL desires to develop a fee simple multi-family development consisting of 340 units on the annexed property; and

WHEREAS, pursuit of further development will constitute a substantial change and will require the DRI be amended through the Notice of Proposed Change process, in which all three parties have a stake;

NOW, THEREFORE, in consideration of the mutual covenants and promises by and between the parties hereto, and for other good and valuable consideration, each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. COLONIAL'S RESPONSIBILITIES.

(a) With regard to the development of the BOMAR Tract, more particularly described as Tax Parcel ID: 31-19-30-300-0010-0000, COLONIAL will seek to add the BOMAR Tract to the Colonial Town Park DRI and pursue development of the property as a commercial/office site and build approximately 450,000 square feet of Class A office space on the same, which may include a commercial/hotel component. COLONIAL reserves the right to apply for an amendment to add residential as a secondary use in the future with the understanding that it may or may not be approved.

(b) COLONIAL will process any and all applications necessary to increase the existing Class A office building stock and use of Colonial Town Park DRI by an additional 500,000 square feet of office space. The additional 500,000 square feet of office space does not include the addition of the BOMAR Tract, which will result in an additional 450,000 square feet of office space. The maximization of the existing Class A office building stock, adding the BOMAR Tract into the Colonial Town Park DRI, and the additional development of the BOMAR Tract development of approximately 450,000 square feet of Class A office space, will result in a total of approximately 950,000 square feet of additional office space in Colonial Town Park DRI. The net gain of office space would be approximately 757,038 square feet.¹

¹ (i.e. 950,000 square feet gain minus 192,962 square foot loss). The loss of 192,962 square feet of office in Colonial Center Heathrow was derived using the approved conversion matrix in the DRI Development Order, which provides that 1,000 square feet of office equals 1.762 multifamily units. Using the conversion ratio set forth in the DRI Development Order, an additional 340 multi-family units equates to a simultaneous decrease of approximately 192,962 square feet of office space ($340/1.762 = 192.96$ units x 1,000 square feet = 192,962 square feet of office space).

(c) Within thirty (30) days of the execution of this Agreement by COLONIAL and the COUNTY, COLONIAL will record restrictive covenants for BOMAR and Colonial Town Park DRI tracts restricting development consistent with subsections 1(a) and 1(b) above. The form of said restrictive covenants will be subject to the approval of the COUNTY, such approval to not be unreasonably withheld. The restrictions shall include but are not necessarily limited to any change in the development plan from office space use will require advance written approval by the COUNTY, and that such restrictions run with the land in favor of the COUNTY. In conjunction with applications made pursuant to subparagraph 1(b), COLONIAL agrees to proceed with a DRI amendment to add the BOMAR tract into the Colonial Town Park DRI and designate the tracts as specified in 1(a) and 1(b) above. Any restrictive covenants approved under this section shall automatically terminate, without further action of either party, upon the execution and adoption of a zoning development order issued by the County consistent with this Agreement and otherwise consistent with the Land Development Code and all applicable statutes, laws and public policy. In the event that the County denies an application for a zoning development order in which the consistency with the restrictive covenants is disputed, the COUNTY shall provide notice to COLONIAL within 30 days of the Board meeting in which the denial was rendered as to the nature of the deficiency. All costs of recording said restrictive covenants will be borne solely by COLONIAL.

(d) Within sixty (60) days, adoption of a Resolution of Necessity and Notice to COLONIAL, as provided in Chapter 73, Florida Statutes, identifying property owned by COLONIAL as necessary for the

417/International Parkway ramp as depicted in Exhibit "A", COLONIAL shall transfer fee simple title of such parcels by warranty deed, free of all encumbrances to the COUNTY for the 417/International Parkway Ramp up to and as necessary for construction and no more than 1.695 acres. Such obligation is conditioned upon the size of the parcel not to exceed 1.695 acres and the ramp alignment and intersection to be constructed will be in substantial conformity with the preferred Preliminary 417 Interchange Site Plan Alternative 4, attached as Exhibit "A", providing for ingress and egress access between the 417 to International Parkway, possible locations illustrated in Exhibit "B", International Parkway/ SR 417 Interchange PD&E Study Alternative 4. The deed of conveyance shall contain a reversion provision providing that the 417/International Parkway Ramp project shall be put out for bid within twenty four (24) months from the date title is vested in the COUNTY or the adoption of the Resolution of Necessity and Notice pursuant to Chapter 73, Florida Statutes, whichever occurs later. In addition, the contract to begin construction must be awarded within twelve (12) months of the date the project was put out for bid. In any event, construction shall not be required to begin prior to State Fiscal Year 2011. Should the foregoing conditions not be met, such conveyance shall be subject to reversion at the sole determination of COLONIAL. COLONIAL shall give 90 days notice in writing to the COUNTY of its intent to exercise its right of reversion and the grounds therefore. If the defect is cured within that time, the reversion shall not occur.

(e) COLONIAL will not seek the annexation of all or any portion of Colonial Town Park DRI, including the BOMAR Tract, for a period of

ten (10) years from the effective date of this Agreement.

(f) COLONIAL agrees to develop the remaining tracts within Colonial Center Heathrow owned by COLONIAL and designated for office, retail and commercial, primarily for such purposes, consistent with the Land Development Code and all applicable codes and rules. COLONIAL reserves the right to pursue additional residential development within Colonial Center Heathrow as a secondary and ancillary use to the office, commercial and retail component, with the understanding that it may or may not be approved.

(g) The 9.1-acre Urban Park (Tract H) will remain an urban park until and/or unless the CITY, COUNTY and COLONIAL have further discussion and reach an amicable agreement with respect to the future use of this tract. No DRI amendments, no land use amendments, and no rezoning will be processed on this property inconsistent with its use as an urban park until such agreement is reached by all three parties.

SECTION 2. COUNTY'S RESPONSIBILITIES.

(a) The COUNTY acknowledges that the maximization of and additions to the Colonial Town Park DRI office square footage outlined in section 1(b) above is being offered to offset the loss of approximately 192,962 square feet of office space in Colonial Center Heathrow to accommodate the development of two (2) fee simple multi-family projects consisting of 340 total units.

(b) The COUNTY will not object to the conversion of those properties annexed into the CITY located within Colonial Center Heathrow (approximately 26 acres described in Exhibit "C") to a residential use, accommodating the development of two (2) multi-family fee simple

communities consisting of a maximum of 340 units for sale.

(c) The COUNTY acknowledges that the CITY has agreed to accept the segment of International Parkway extending from County Road 46-A to AAA Boulevard (the "Phase I Roadway") within ten days of the one year anniversary of the Annexation Effective Date (March 21, 2006) and the remainder of International Parkway less the Phase I Roadway (the Phase II Roadway") within ten days of the three year anniversary of the Annexation Effective Date (March 21, 2006), as provided in the City of Lake Mary's Ordinance No. 1192. Further, the COUNTY agrees that nothing herein shall obligate COLONIAL to make any improvements to International Parkway, beyond usual and customary maintenance, until said dedication to the CITY. The COUNTY will not provide any funding for any improvements to the road prior to or following the assignment of the International Parkway Agreement to the CITY.

(d) The COUNTY hereby assigns the existing Development Agreement Regarding International Parkway and Recreational Trail (hereinafter referred to as "International Parkway Agreement") dated September 19, 1996, to the CITY.

SECTION 3. LAKE MARY'S RESPONSIBILITIES.

(a) The CITY agrees to accept assignment of the International Parkway and Recreational Trail Agreement, dated September 19, 1996 (hereinafter "International Parkway Agreement"). The COUNTY will not agree to any future interlocal transfer of the roadway to the COUNTY unless it meets COUNTY standards. The CITY acknowledges that the COUNTY will not provide any funding for any improvements to the road prior to or following the assignment of the International Parkway Agreement to

the CITY.

(b) The CITY agrees to process any amendments to any development orders and developer commitment agreements and/or other documents deemed necessary to effectuate assignment of the International Parkway Agreement.

(c) The 9.1-acre Urban Park (Tract H) will remain an urban park until and/or unless the CITY, COUNTY and COLONIAL have further discussion and reach an amicable agreement with respect to the future use of this tract. No DRI amendments, no land use amendments, and no rezoning will be processed on this property inconsistent with its use as an urban park until such agreement is reached by all three parties.

(d) The CITY, in a good faith measure, agrees to adopt a resolution stating its intent not to annex any additional property west of Interstate 4 between Lake Mary Boulevard and State Road 46, for a period of ten (10) years. The CITY agrees further to enter into a Joint Planning Agreement with COUNTY for the express purpose of collaborative planning in this area of concern to both jurisdictions.

SECTION 4. EFFECTIVE DATE. This Agreement shall take effect immediately upon the execution of any two parties as it relates to those obligations of the parties to each other. Failure of a third party to execute this Agreement in a timely manner shall not render any portion of this Agreement void or inoperable as to the other two parties. This Agreement shall take effect as to the third party upon execution by the third party.

SECTION 5. ENTIRE AGREEMENT.

This document incorporates and includes all prior negotiations,

correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 6. NOTICES. Whenever any party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For COUNTY:

Planning and Development Department
1101 E. First St.
Sanford, FL 32773

For CITY:

City of Lake Mary
100 N. Country Club Road
Lake Mary, FL 32795

For COLONIAL:

Colonial Realty Limited Partnership
2101 Sixth Avenue North, Suite 750
Birmingham, AL 35203

SECTION 7. MODIFICATIONS, AMENDMENTS OR ALTERATIONS. No modification, amendment or alteration in the terms or conditions

contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 8. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and assigns of the parties.

SECTION 9. ASSIGNMENT. This Agreement shall not be assigned by any of the parties without the prior written approval of the others.

SECTION 10. PUBLIC RECORDS LAW. COLONIAL acknowledges CITY's and COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. COLONIAL acknowledges that CITY and COUNTY are required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

SECTION 11. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder or as a result of this Agreement or any right to enforce any provisions of this Agreement.

SECTION 12. TIME IS OF THE ESSENCE. Time is of the essence relative to all aspects of performance under the terms of this Agreement.

SECTION 13. DEFAULT/ATTORNEY'S FEES/WAIVER. If any party fails to perform any of the terms and conditions of this Agreement for a

period of thirty (30) days after receipt of written notice of such default from the other party, the party giving notice of default is entitled to seek specific performance of this Agreement. The parties each acknowledge that money damages may be an inadequate remedy for the failure of performance and that the party giving notice is entitled to seek an order requiring specific performance by the defaulting party. In the event that such an order is sought, each party shall be responsible for its own costs and expenses so incurred, including all attorneys fees, if applicable. Failure of any party to exercise its rights in the event of any breach by another party shall not constitute a waiver of such rights. No party shall be deemed to have waived any breach by another party unless such waiver is reduced to writing and executed by the waiving party. Such written waiver shall be limited to terms specifically contained therein. This paragraph shall not prejudice the right of any party to seek such additional remedy at law or equity for any breach hereunder.

SECTION 14. SEVERABILITY. If any one (1) or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall in no way affect the validity of the remaining covenants or provisions of this Agreement.

SECTION 15. FURTHER ASSURANCES. In addition to the acts recited

in or set forth in this Agreement, the parties agree to perform or cause to be performed, in a timely manner, any and all further acts as may be reasonably necessary to implement the provisions of this Agreement, including but not limited to, the execution and/or recordation of further instruments.

SECTION 16. AUTHORITY TO ENTER INTO AGREEMENT. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has legal authority to enter into this Agreement and to undertake all obligations imposed on it.

SECTION 17. CONSTRUCTION OR INTERPRETATION OF AGREEMENT. This Agreement is the result of negotiations between the CITY, COLONIAL and the COUNTY and all parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against one party than against another.

SECTION 18. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

SECTION 19. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the parties consent to venue in the Circuit Court in and for Seminole County, Florida, as to State actions and the United States District Court for the Middle District of Florida as to Federal actions.

SECTION 20. CONFLICT OF INTEREST.

(a) All parties hereto agree that they will not engage in any action that would create a conflict of interest in the performance of

its obligations pursuant to this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) All parties hereto hereby certify that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of COLONIAL to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

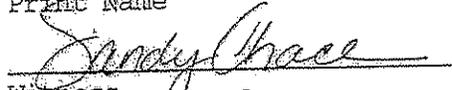
SECTION 21. INCORPORATION CLAUSE. The recitals contained within the "WHEREAS" clauses are hereby incorporated into the Agreement and are material terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

COLONIAL REALTY LIMITED
PARTNERSHIP, a Delaware Limited
Partnership, by COLONIAL PROPERTIES
TRUST, an Alabama Declaration of
Trust, its general partner.



Witness
FRANISKA RIFKIN
Print Name



Witness
Sandy Chace
Print Name

By: 

THOMAS GREEN
Print Name

Title: SR. VICE PRESIDENT

Date: 6/27/06

ATTEST:

CAROL FOSTER, City Clerk

CITY OF LAKE MARY

By: _____
THOMAS C. GREENE, Mayor

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution by
the Board of County Commissioners
at their _____, 20____,
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney
KFT/ljp/lpk
6/26/06
P:\Users\kfurey-tran\Planning Agreements\Colonial finalcorrected.doc

Attachments:

- Exhibit "A" - Preliminary 417 Interchange Site Plan Alternative 4
- Exhibit "B" - International Parkway/SR 417 Interchange PD&E Study
Alternative 4
- Exhibit "C" - Property Description of Colonial Center Heathrow
annexed properties

EXHIBIT "B"

ALTERNATIVE 4



LEGEND

- PARCEL LINES
- EXISTING LA HWY
- EXISTING LA HWY
- ~ WETLANDS
- ... 100 YEAR FLOODPLAIN
- PROPOSED LA HWY
- PLANNED ACCESS ROADWAY
- PROPOSED NOISE WALL
- BRIDGE ADJUSTMENT
- ROAD LOCATIONS

PRELIMINARY JANUARY 23, 2006



EXHIBIT "C"

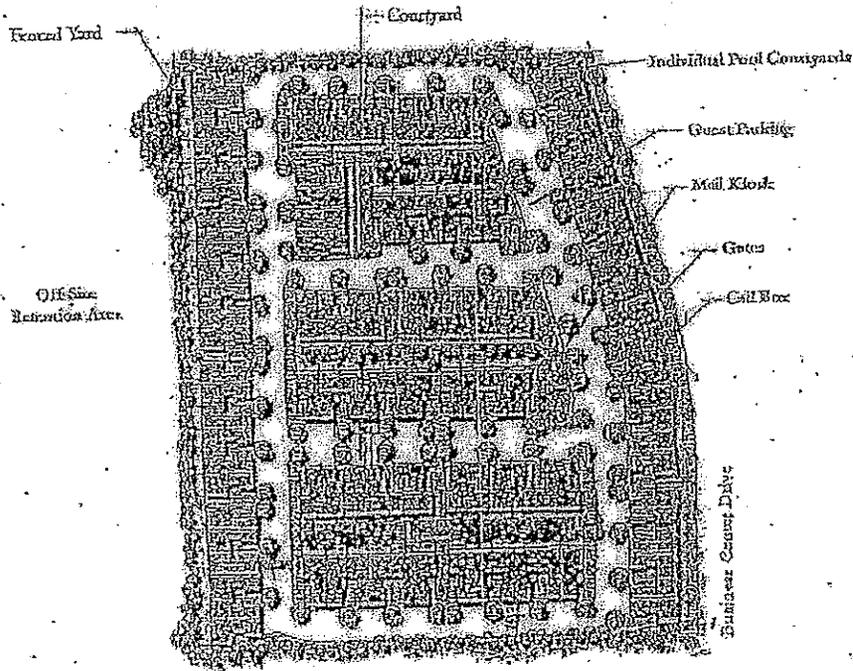
Colonial Center Heathrow

Conceptual Site Plan

Prepared For:

Colonial Properties Trust and Coscan Homes L.L.C.

Lake Mary, Florida
"East E"



Tabular Data:

Site Area	+/- 12 Ac.
Total number of Townhomes	108 Units
Density	9.0 Un./Ac.

ENVIROSCAPE

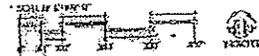
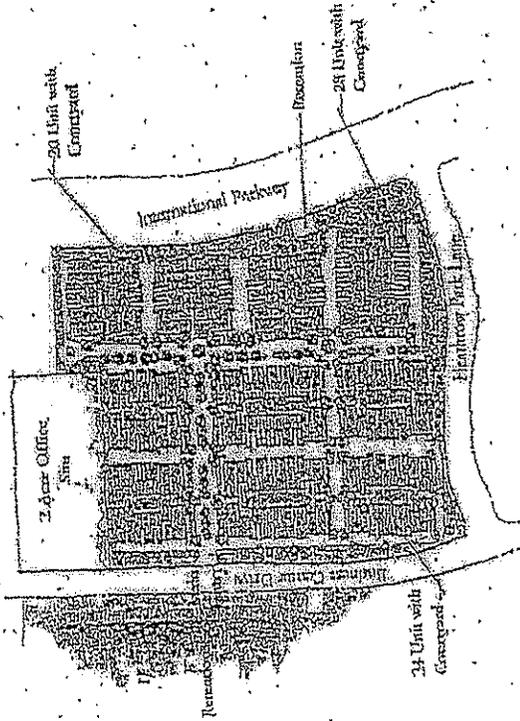


EXHIBIT "C" CONTINUED

Colonial Center Heathrow Conceptual Site Plan

Prepared For
Colonial Properties Trust and Coscan Homes L.L.C.
Lake Mary, Florida
"Lot B"



Tabular Data:

Site Area	14.3 Ac.
Total Number Of Units	232 Units
Density	16.2 Un./Ac.

ENVIROSCAPE

