

RESOLUTION NO. 94-118

A RESOLUTION AUTHORIZING EXECUTION OF NINE MILE
ROAD INTERCHANGE IMPROVEMENT AGREEMENT AND
AMENDMENT TO OPTION AGREEMENT

WHEREAS, SJH PARTNERSHIP, LTD, a Florida limited partnership ("Petitioner") is the owner and developer of certain lands constituting part of Saint Johns, a development of regional impact as approved under St. Johns County Development of Regional Impact Development Order (Resolution No. 91-130), as the same may be amended from time to time (the "DRI"); and

WHEREAS, the DRI provides that, as a condition to Petitioner's development of portions of lands within the DRI, Petitioner must obtain necessary funding, right-of-ways and governmental approvals for construction of a highway interchange and associated improvements (the "Interchange") at the intersection of Interstate Highway 95 and Nine Mile Road; and

WHEREAS, St. Johns County, Florida ("County") desires for the Interchange to be constructed and recognizes that the Interchange is a needed improvement to the County transportation system and will provide public benefit to the County. The DRI and the Interchange are included in County's

proposed 2005 Comprehensive Plan, as submitted to the Florida Department of Community Affairs, as a project consistent with the goals and guidelines for future growth and development of St. Johns County; and

WHEREAS, Petitioner and County have entered into an Agreement dated effective April 9, 1991, governing the respective rights and obligations of County and Petitioner with respect to the transfer of certain lands to FDOT through the process of vacation; and

WHEREAS, pursuant to such Agreement, Petitioner has agreed to provide financial assurances reasonably satisfactory to County in the form of a surety bond or letter of credit, to provide for such construction, relocation and traffic continuation and County has agreed to accept that certain Nine Mile Road Interchange Improvement Agreement attached hereto as Exhibit A ("Improvement Agreement") in satisfaction of such requirement.

WHEREAS, it appears that the averments of said Petition are true,

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

RESOLVED, that the Board of County Commissioners of St. Johns County, Florida, hereby authorizes execution and delivery of the Improvement Agreement on behalf of the County and in conjunction therewith authorizes execution and delivery of that certain Amendment to Option Agreement attached hereto as Exhibit B on behalf of the County.

ADOPTED this 28 day of June, 1994.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Delan Roberts
Chairman

ATTEST: Carl "Bud" Markel, Clerk

By: Irma Ricketts
Deputy Clerk

**NINE MILE ROAD
INTERCHANGE IMPROVEMENT AGREEMENT
(ST. JOHNS COUNTY)**

THIS AGREEMENT is made this _____ day of _____, 1994, by and between **BARNETT BANK OF JACKSONVILLE, N.A.**, a National Banking Association ("Lender"), **SJH PARTNERSHIP, LTD**, a Florida Limited Partnership ("Partnership") and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County").

RECITALS

A. Partnership and County entered into that certain Option Agreement dated April 9, 1991, as amended through the date hereof, which provides for requirements to be fulfilled by Partnership and County prior to undertaking construction of an Interchange on Interstate 95 and Nine Mile Road in St. Johns County, Florida ("Interchange"), which includes, among other things, construction of improvements to relocate a portion of Francis Road, a County right-of-way, which relocation is hereinafter referred to as the "Project."

B. As provided for in the Option Agreement, Partnership and County intend that upon completion of the Project, the Project shall be thereafter maintained by County.

C. Partnership has exercised the Option Agreement by virtue of delivery of certain documentation in accordance with Corrective Escrow Agreement dated February 22, 1994, and recorded in Official Records Book 1051, Page 1359, public records of St. Johns County, Florida.

D. Pursuant to the provisions of Warranty Deed dated _____, 199____, Partnership has conveyed to County its right, title and interest to the lands upon which the Project will be constructed.

E. Lender has issued its Mortgage Loan Commitment to Partnership dated April 26, 1994 (the "Commitment"), which provides, among other things, for a loan not to exceed Seven Million Four Hundred Fifty Thousand Dollars (\$7,450,000.00), One Hundred Twenty Five Thousand Dollars (\$125,000.00), of which is to be applied to costs incurred by Partnership in the construction of the Project ("Project Funds"). Loans made under the Commitment are to be evidenced by the Note of Partnership and to be disbursed in accordance with the Construction Loan Agreement dated _____, 199____, between Partnership and Lender ("Construction Loan Agreement").

F. This Agreement is entered into to satisfy the provisions of Section 2.0 of the Option Agreement for this three-party agreement to provide financial assurances to County in conjunction with the surety bond provided to Partnership under the terms of the applicable construction contract for the Project and to set out the obligation of the parties hereto related to the construction of the Project and the payment of the costs incurred.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Partnership shall commence construction of the Project and shall endeavor to complete construction of the Project in accordance with all requirements of the Option Agreement.

2. Partnership shall, from time to time, direct disbursements of the Project Funds to contractors or subcontractors as payment for the amount of work completed in construction of the Project by the respective contractor or subcontractor. Disbursements shall be made no more frequently than once each calendar month. Each direction to disburse shall be in the form approved by Lender and as a condition to such disbursement, Bessent, Hammack & Ruckman, (the "Inspecting Engineer"), shall certify to Lender and County confirming percentage of progress of the Project in accordance with the Plans and Specifications as approved by the Florida Department of Transportation ("FDOT"), and that the value thereof is consistent with Contractor's requisition (the "Inspecting Engineer's Certification"). Partnership shall cause a copy of each Inspecting Engineer's Certification to be delivered to County coincident with delivery to Lender.

3. At the direction of Partnership, and upon receipt of the Inspecting Engineer's Certification, Lender shall disburse Project Funds in amounts specified by Partnership to the contractors or subcontractors, provided, however, that the Lender shall never be obligated to advance funds to pay the costs of the Project in excess of the Project Funds. In disbursing the Project Funds, Lender shall rely upon the Inspecting Engineer's Certification and the direction of Partnership. Lender shall have no responsibility to inspect any construction or installation said to have been completed, nor to determine or assure that the Project improvements have actually been made or that they comply with the Plans and Specifications or other requirements of the County.

4. If, at any time, the Partnership abandons, or before completion finally discontinues the Project or Partnership defaults under any provisions of the Commitment or Construction Loan Agreement ("Events of Default"), Lender shall make no further disbursements at the direction of Partnership with respect to the Project.

5. If Lender shall cease making disbursements as a result of an Event of Default, as provided for in paragraph 4 above, and if such Event of Default is not waived by the party entitled to declare such Event of Default, County may, at its option, be entitled to disbursement of any remaining available Project Funds upon Lender's receipt of such direction to disburse from County when accompanied by Inspecting Engineer's Certifications in accordance with the provisions of paragraph 2 of this Agreement. Disbursements of Project Funds to County shall be made on the same terms and conditions provided for in paragraphs 2 and 3 above, except that the Partnership shall not direct the payments. The rights of Lender and County pursuant to paragraphs 5 and 6 hereof, shall not bar other actions by Lender under the Commitment or Construction Loan Agreement.

6. Any Project Funds disbursed by Lender at the direction of Partnership, as certified by the Inspecting Engineer, or at the sole direction of the County under the provisions of paragraph 5 above, shall constitute advances under the Commitment and the Construction Loan Agreement between Lender and Partnership and shall be the debt of Partnership to Lender. Nothing contained in this Agreement shall modify or affect the terms and provisions of the Commitment or Construction Loan Agreement except as specifically provided herein.

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

8. This Agreement shall remain in full force and effect until the earlier of (i) substantial completion of the Project in accordance with the requirements of FDOT, or (ii) disbursement of all Project Funds in accordance with the terms of this Agreement.

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

BARNETT BANK OF JACKSONVILLE, N. A.

By: _____
Its: _____

SJH PARTNERSHIP, LTD.

By: ST. JOHNS HARBOUR, INC.,
its General Partner

By: _____
Louis Baioni
Its President

ST. JOHNS COUNTY, FLORIDA

By Its Board of Commissioners

By: _____

Chairman

ATTEST: Carl "Bud" Markel, Clerk

By: _____
Deputy Clerk

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DATE: 6/23 FILE # _____
ATTENTION: DAN ROSANICO TELECOPY # 823-2575
FROM: JAN PAPPAS
RE: _____

COMMENTS:

- () PLEASE REVIEW AND CONTACT ME
- () FOR YOUR INFORMATION
- () I WILL CONTACT YOU TO DISCUSS
- () OTHER: _____

We are telecopying (5) pages, including this cover page. If there are any problems during transmission, please call us immediately at (904) 353-1980. Thank you.

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*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO.	7895
CONNECTION TEL	19048232575
CONNECTION ID	
START TIME	06/23 16:49
USAGE TIME	02'08
PAGES	5
RESULT	OK

AMENDMENT TO OPTION AGREEMENT

THIS AMENDMENT TO OPTION AGREEMENT is made and entered into this 28 day of June, 1994, by and between SJH PARTNERSHIP, LTD., a Florida limited partnership ("SJH") and ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida ("County").

RECITALS:

A. SJH and County entered into an Option Agreement Re: Roadway Vacation and Conveyance/I95 Nine Mile Road Interchange dated April 9, 1991, as amended to the date hereof (the "Option Agreement").

B. SJH and the County desire to further amend a provision of the Option Agreement pertaining to financial assurances to be delivered by SJH to County pertaining to the construction of the interchange improvements at Nine Mile Road.

NOW THEREFORE in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The terms and provisions of subsection (B)(iii) of Section 2.0 of the Option Agreement are hereby amended in their entirety to read as follows:

"(iii) will provide financial assurances reasonably satisfactory to the County in the form of a surety bond, letter of credit, or three-party agreement to provide for such construction, relocation and traffic continuation."

2. Except as specifically modified herein, the Option Agreement shall remain in full force and effect as written.

Signed, sealed and delivered in the presence of:

SJH PARTNERSHIP, LTD., a Florida limited partnership

By: St. Johns Harbour, Inc., a Florida corporation, its sole general partner

By:

Louis Baioni
Its President

(Print Name _____)

(Print Name _____)

[CORPORATE SEAL]

ST. JOHNS COUNTY, FLORIDA

By Its Board of County Commissioners

By:

Allan Roberts, Its Chairman

(Print Name: _____)

(Print Name: _____)