

RESOLUTION NO. 97-73

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA SETTING FORTH THE COUNTY'S UNDERSTANDING OF THE ATTACHED CORRESPONDENCE BETWEEN JULINGTON PARTNERS AND THE COUNTY ADMINISTRATOR; AND BASED ON THAT UNDERSTANDING ACCEPTING THE CHECK IN THE AMOUNT OF \$1.8 MILLION TENDERED BY JULINGTON PARTNERS IN ACCORDANCE WITH CONDITION 6(D)(e) OF ST. JOHNS COUNTY RESOLUTION 97-25.

WHEREAS, St. Johns County has received the check from Julington Partners, the developer, under St. Johns County (DRI) Resolution 93-159, as amended, depicted on Exhibit A attached hereto; and

WHEREAS, the Board of County Commissioners of St. Johns County has studied the correspondence attached hereto as Exhibit B (the "Correspondence") consisting of:

- a. The letter from Julington Partners Limited Partnership (M. Timothy Clark, President) dated May 1, 1997 addressed to Nicholas M. Meiszer, County Administrator; and
- b. The letter from Nicholas M. Meiszer as County Administrator dated May 2, 1997 addressed to Julington Partners Limited Partnership; and
- c. The letter from Julington Partners Limited Partnership (M. Timothy Clark, President) dated May 5, 1997 addressed to Nicholas M. Meiszer, County Administrator; and
- d. The letter from Nicholas M. Meiszer as County Administrator dated May 5, 1997 addressed to Julington Partners Limited Partnership.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA (the "Board") as follows:

Section 1. Based upon the Correspondence, the Board concludes that the \$1.8 million check has been tendered to the County by Julington Partners for the sole purpose of complying with condition 6(D)(e) of St. Johns County (Modification of DRI) Resolution 97-25 and is not conditioned upon the County's eventual interpretation of St. Johns County Resolution 93-159, as amended, as such resolution may apply to impact fees and/or impact fee credits, or the lack thereof, in connection with future roadway improvements that may or may not be made by the Julington Creek Community Development District.

Section 2. In reliance upon the conclusion set forth in Section 1 above, the Board hereby accepts the \$1.8 million check and instructs the County Administrator to deposit the check into the County's account to be held and used in the manner set forth in condition 6(D)(e) of St. Johns County Resolution 97-25.

Section 3. In reliance upon the Board's conclusion set forth in Section 1 above and upon the Board's being able to use the proceeds of the check - tendered by Julington Partners, the DRI developer, - in the manner set forth in Section 2 above, the Board hereby expresses its intent to comply with paragraph 2d of the Impact Fee Credit Agreement (Road Impact Fees) between Atlantic Gulf Communities Corporation and the Board of County Commissioners of St. Johns County, Florida, dated April 1, 1994.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 6th Day of May, 1997.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 
Chairman

ATTEST: CHERYL STRICKLAND, CLERK

By: 
Deputy Clerk

Partners

Partners LP

719

0719

NAME

PAYMENT NUMBER

CHECK DATE

Board of County Commissioners 00791

5/1/97

VOUCHER NUMBER	YOUR VOUCHER NUMBER	DATE	AMOUNT	AMOUNT PAID	DISCOUNT	WRITE-OFF	NET
01249		5/1/97	\$1,800,000.00	\$1,800,000.00	\$0.00	\$0.00	\$1,800,000.00
			\$1,800,000.00	\$1,800,000.00	\$0.00	\$0.00	\$1,800,000.00

COMMENT Fulfilment of Developmt Order

JULINGTON PARTNERS
 1800 WEST LOOP SOUTH, SUITE 850
 HOUSTON, TEXAS 77027
 (713) 622-7270

COMPASS BANK
 HOUSTON, TEXAS
 35-1054/1130 - 700

0719

DATE

AMOUNT

5/1/97

\$1,800,000.00

PAY One Million Eight Hundred Thousand Dollars And 00 Cents

TO THE
ORDER
OF

Board of County Commissioners
 St. Johns County, Florida



AUTHORIZED SIGNATURE

⑈000719⑈ ⑆113010547⑆ 71182444⑈

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

EXHIBIT A

JULINGTON PARTNERS LIMITED PARTNERSHIP

1800 W. Loop South, Suite 850
Houston, Texas 77027
(713) 622-7270 622-7279 fax

May 1, 1997

Nicholas M. Meiszer
County Administrator
St. Johns County
4020 Lewis Speedway
Post Office Drawer 349
St. Augustine, Florida 32085

Re: Transmittal of \$1.8 Million Contribution for Road Improvements pursuant to Julington Creek Plantation DRI Development Order

Dear Mr. Meiszer:

Pursuant to and in fulfillment of the conditions of Paragraph 6.D.(e) of Development of Regional Impact (DRI) development order (St. Johns County Resolution No. 93-159, as amended through Resolution No. 97-25) for the Julington Creek Plantation DRI, we are enclosing a check from Julington Partners Limited Partnership, the DRI Developer, in the amount of \$1.8 million toward the future improvement of Russell Sampson Road or Racetrack Road, as described in that subparagraph of the DRI development order.

Pursuant to the terms of the DRI development order, this \$1.8 million contribution must be placed in escrow in an appropriate County construction fund for the purposes described in Paragraph 6.D.(e) of the DRI development order.

For your information, the DRI Developer has requested that the Julington Creek Plantation Community Development District (CDD) reimburse the Developer for this expenditure after it has been made to the County. The governing board of the CDD on April 28, 1997 approved this reimbursement after payment of the funds to the County by the Developer.

Please note that Paragraph 2.d. of the Impact Fee Agreement for Road Impact Fees between the Board of County Commissioners of St. Johns County and Atlantic Gulf Communities Corporation, Julington Partners Limited Partnership's predecessor-in-interest, dated April 1, 1994, provides that road impact fee credits in the amount of the \$1.8 million payment have now been accumulated. In accordance with Paragraph 3 of that Agreement, Fee payers within Julington Creek Plantation will be issued vouchers evidencing payment of road impact fees and presenting those

Exhibit B-1

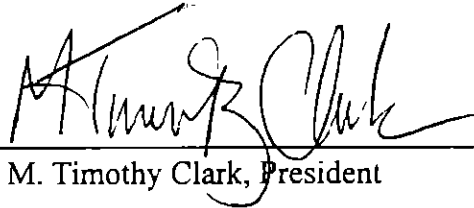
vouchers to the County for issuance of a road impact fee receipt, based on the accumulation of road impact fee credits from the enclosed monetary contribution from the Developer. Section 380.06(16)(a), Florida Statutes, and Paragraphs 6.G. and 33 of the DRI development order also provide for impact fee credits.

We request that the County immediately issue a receipt for the enclosed payment evidencing (1) that the funds have been placed in an escrow account consistent with the requirements of Paragraph 6.D.(e) of the DRI development order; and (2) that in accordance with the provision of the Impact Fee Agreement of April 1, 1994; Paragraphs 6.G. and 33 of the DRI development order; and Section 380.06(16)(a), Florida Statutes, the County will grant the Developer a credit against road impact fees in the amount of \$1.8 million, which may be utilized pursuant to the terms of the Impact Fee Agreement. In light of the amount of money involved, we request that you fax this receipt directly to me at (713) 622-7279 no later than the close of business on May 2, 1997.

JULINGTON PARTNERS LIMITED PARTNERSHIP

By: JULINGTON CYPRESS LIMITED PARTNERSHIP
a Delaware limited partnership, as its General Partner

By: JULINGTON CYPRESS, INC.
a Delaware corporation, as its General Partner



By: M. Timothy Clark, President

Enclosure

cc with copy of enclosure:

David J. Bruner, Chairman, St. Johns County Board of County Commissioners

Cheryl Strickland, Clerk of the Circuit Court

~~James Sisco/Dan Bosanko, St. Johns County Attorney's Office~~

Stephen M. Pierce, Julington Partners Limited Partnership

Michael Boyd, Andrews & Kurth

J. Thomas Gillette, III, Julington Creek Plantation

Elizabeth C. Bowman, Hopping Green Sams & Smith, P.A.

John A. DeVault, Bedell Dittmar DeVault Tillons & Cox

John W. Gary, III, Esq., Gary, Dytrych & Ryan

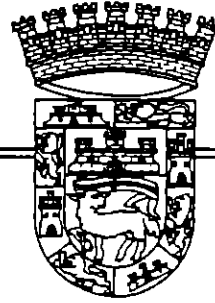
Linda C. Kane, Holland & Knight

Exhibit B.2

St. Johns County Board of County Commissioners

NICHOLAS M. MEISZER
County Administrator

P.O. DRAWER 349
SAINT AUGUSTINE, FLORIDA
32085-0349



PHONE: (904) 823-2501
FAX: (904) 823-2507
SUNCOM: 865-2501

May 2, 1997

Julington Partners Limited Partnership
Attn: M. Timothy Clark, President
1800 W. Loop South, Suite 850
Houston, TX 77027

Also Via Fax: (713) 622-7279

Re: Your letter dated May 1, 1997 addressed to Nicholas M. Meiszer enclosing check for \$1.8 million.

Dear Mr. Clark:

This letter is to acknowledge receipt of your letter dated May 1, 1997 addressed to Nicholas M. Meiszer enclosing a check from Julington Partners in the amount of \$1,800,000 and to advise you that County staff, on the advice of its attorneys, will hold the check uncashed until receiving instructions from the Board of County Commissioners as to whether to accept the check under the unilateral conditions imposed by your May 1, 1997 cover letter or return the uncashed check to you.

You are aware of the contents of Ken Van Assenderp's letter to the County dated March 28, 1997 pertaining to impact fee credits, the Julington Creek Community Development District and Julington Partners Limited Partnership. We have been advised through your counsel that Julington Partners intends to sue the County unless the County, in effect, over rules or otherwise steps around the conclusions set forth in Mr. Van Assenderp's letter. The issues involved in his letter and Julington Partners' stated intent to sue the County involve Section 380.06(16)(a), Florida Statutes, and Paragraphs 6.G. and 33 of St. Johns County Resolution (development of regional impact order) 93-159 as amended. On Monday, April 28, 1997 your counsel made a presentation to our County Attorneys and to the Clerk of Court's attorney outlining Julington Partners' position on the issues raised by Mr. Van Assenderp's letter and requesting that they consider such position prior to the County accepting the conclusions set forth in Mr. Van Assenderp's letter. Our counsel has advised your counsel that they are in the process of reviewing the entire matter but, due to other pressing matters, will be unable to provide a reasoned recommendation for the Board until the end of next week at the earliest.

We therefore object to the following sentence near the top of page 2 of your letter:

Exhibit B-3

M. Timothy Clark, President
Julington Partners Limited Partnership
May 2, 1997
Page 2

"Section 380.06(16)(a), Florida Statutes, and Paragraphs 6.G. and 33 of the DRI development order also provide for impact fee credits."

We request that you delete that sentence.

We also object to the following language in phrase (2) of the last paragraph of your letter:

" ; Paragraphs 6.G. and 33 of the DRI development order, and Section 380.06(16)(a), Florida Statutes"

We request that phrase (2) be rewritten as follows:

"(2) that in accordance with the provision of paragraph 2d of the Impact Fee Agreement of April 1, 1994, the County will grant the Developer a credit against road (etc) . . ."

At this time we believe that Julington Partnership (a) has breached the above referenced development of regional impact order in that the \$1.8 million payment has been tendered to the County after the date it was due and (b) has breached the order by unilaterally attaching conditions to the payment.

We ask that you notify us in writing no later than noon on Monday, May 5, 1997 that your conditions attached to the \$1.8 million payment (a) are removed, or (b) are modified as requested in this letter, or (c) remain as written in your letter of May 1, 1997.

The Board of County Commissioners has called a special - emergency - meeting for Tuesday, May 6, 1997 at 9:00 a.m. to determine the course of action they will take in reference to your letter of May 1, 1997 and the enclosed check. We will keep you advised.

I note that you did not ask for the return of the check if your request for a receipt was not complied with by the close of business today. If you would like us to return the check to you because you have not received the receipt today, please advise.

Sincerely,

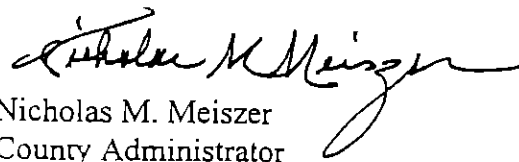

Nicholas M. Meiszer
County Administrator

Exhibit B-4

Copies by fax to:

John DeVault, Esquire (904) 353-9307

Elizabeth C. Bowman, Esquire (904) 224-8551

Linda Conner Kane, Esquire (904) 358-1872

Exhibit B-5

JULINGTON PARTNERS LIMITED PARTNERSHIP

1800 W. Loop South, Suite 850
Houston, Texas 77027
(713) 622-7270 622-7279 fax

VIA FACSIMILE

May 5, 1997

Nicholas M. Meiszer
County Administrator
St. Johns County
4020 Lewis Speedway
Post Office Drawer 349
St. Augustine, Florida 32085

Dear Mr. Meiszer:

In response to your letter of May 2, 1997, please be advised that, contrary to the statements in your letter, Julington Partners has not breached the Development of Regional Impact (DRI) development order, as amended:

(a) St. Johns County Resolution No. 97-25, amends Paragraph 6.D.(e) of the DRI and provides that the \$1.8 million payment tendered to you on May 2, 1997 will be placed in escrow "within 60 days of the rendition of the 1996 amendments to this section of this Development Order" "Rendition" is the date the development order (or here the amendment) is sent to the State Department of Community Affairs, Regional Planning Council and the Developer by the County. See Rule 9J-2.025(5). The attached letter from the County was sent to the Department of Community Affairs and the Developer on March 3, 1997. Accordingly, as your counsel were informed at the meeting on April 28, 1997 (at which time they offered no objection), payment on May 2, 1997 was timely made in accordance with the provisions of the DRI as amended and does not constitute a breach; and

(b) my letter to you did not "unilaterally attach[] conditions to the payment." In light of recent pronouncements indicating that the St. Johns County Commission may, on the advice of counsel, take the position that it is no longer bound by the DRI development order, the Impact Fee Agreement for Road Impact Fees; and Section 380.06(16)(a), we simply asked that St. Johns County, upon the receipt and deposit of these substantial funds, acknowledge that it will grant the Developer a credit against road impact fees which may be utilized pursuant to the terms of the

Exhibit B-6

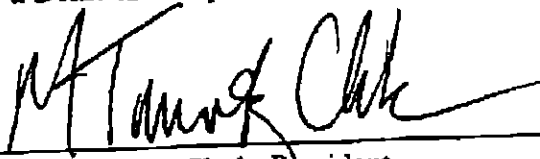
applicable law, resolutions and agreements. This is not an attempt to unilaterally place any conditions on the payment, but simply to request the County to acknowledge the purpose for which the funds have been tendered and received and the effect of that payment.

You have requested that we "delete" certain language in my letter of May 1, 1997 to which you "object." We recognize your right to take issue with our position with respect to the credits due the Developer under our agreements, your resolutions and state law. We decline to "delete" or modify our position in accord with your request. However, we do not object to the County's receipt and deposit of the funds into escrow so long as credits against road impact fees in the amount of \$1.8 million will be granted to the Developer as you have acknowledged in your letter.

Finally, you state in your letter that in light of the advice received from special outside counsel the County Attorney's Office is "reviewing the entire matter" and may have a recommendation for the Board by the end of this week. Because the Developer entered into the agreement to purchase the Julington Creek Properties (expending some \$24 million), and has committed to make road improvements for the immediate benefit of the citizens of St. Johns County (of approximately \$15 million), all in reliance on the previous written commitments of the Board of County Commissioners, this matter is of extreme importance to us. We hereby request that within seven (7) days from today, or on or before May 12, 1997, you inform us as to the position of the County with respect to future credits against road impact fees, so that we may instruct our counsel that in the event the County decides it is no longer bound by its prior agreements, to undertake such legal action against the County and its officials to recover the amounts expended, and agreed to be expended, in reliance on the promises of the County and those officials. We look forward to hearing from you and stand by to provide you with any additional information which may assist in your review of this matter.

Very truly yours,

JULINGTON PARTNERS LIMITED PARTNERSHIP
By: JULINGTON CYPRESS LIMITED PARTNERSHIP
a Delaware limited partnership, as its General Partner
By: JULINGTON CYPRESS, INC.
a Delaware corporation, as its General Partner



By: M. Timothy Clark, President

Exhibit B-7

cc with Enclosure:

David J. Bruner, Chairman, St. Johns County Board of County Commissioners
Cheryl Strickland, Clerk of the Circuit Court
James Sisco/Dan Bosanko, St. Johns County Attorney's Office
Stephen M. Pierce, Julington Partners Limited Partnership
Michael Boyd, Andrews & Kurth
J. Thomas Gillette, III, Julington Creek Plantation
Elizabeth C. Bowman, Hopping Green Sams & Smith, P.A.
John A. DeVault, Bedell Dittmar DeVault Tillons & Coxe
John W. Gary, III, Esq., Gary, Dytrych & Ryan
Linda C. Kane, Holland & Knight

Exhibit B-8

ST. JOHNS COUNTY, FLORIDA

Board of County Commissioners



PLANNING AND ZONING
DEPARTMENT

P.O. DRAWER 348
SAINT AUGUSTINE, FLORIDA 32085-0348

PHONE: (904) 823-3470
FAX: (904) 823-3488

March 3, 1997

Mr. James Stansbury
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100

Re: Julington Creek Planation DRI Modification/Non-substantial Deviation

Dear Mr. Stansbury:

Enclosed is an original certified copy of St. Johns County Resolution 97-25, modifying the Julington Creek Planation DRI.

If you have any questions or require additional information, feel free to contact me.

Sincerely,

Janet D. Trantham
Planning Technician II

cc: (w/encl.) Ed Lehman, Northeast Florida Regional Planning Council
Thomas Gillette, Julington Partners Limited Partnership
Elizabeth C. Bowman, Esq.

RECEIVED
MAR 7 1997
Hopping, Grant,
Sells & Smith, P.A.

Exhibit B-9

St. Johns County Board of County Commissioners

NICHOLAS M. MEISZER
County Administrator

P.O. DRAWER 349
SAINT AUGUSTINE, FLORIDA
32085-0349



PHONE: (904) 823-2501
FAX: (904) 823-2507
SUNCOM: 865-2501

May 5, 1997

Julington Partners Limited Partnership
Attn: M. Timothy Clark, President
1800 W. Loop South, Suite 850
Houston, TX 77027

Also Via Fax: (713) 622-7279

Re: Your letters dated May 1, 1997 and May 5, 1997 addressed to
Nicholas M. Meiszer and the subject check for \$1.8 million.

Dear Mr. Clark:

This letter is to acknowledge receipt of your letter to me dated May 5, 1997. Based upon your representation that Julington Partners is not attempting to unilaterally place conditions on the \$1.8 million payment, but is simply requesting the County to acknowledge the purpose for which the funds have been tendered and received and the effect of that payment, and, based further on your representation that Julington Partners does not object to the County's receipt and deposit of the funds into escrow so long as credits against road impact fees in the amount of \$1.8 million will be granted to the Developer as acknowledged in my letter to you dated May 2, 1997, it appears reasonable to conclude that the tender by Julington Partners of the \$1.8 million check is for the sole purpose of complying with condition 6(D)(e) of St. Johns County (Modification of DRI) Resolution 97-25 and is not conditioned upon the County's eventual interpretation of St. Johns County Resolution 93-159, as amended, as such resolution may apply to impact fees and/or impact fee credits, or the lack thereof, in connection with future roadway improvements that may or may not be made by the Julington Creek Community Development District. Accordingly, I am prepared to recommend to the Board of County Commissioners at its special - emergency - meeting at 9:00 a.m. tomorrow that the Board accept the check and deposit and use the proceeds thereof in the manner set forth in condition 6(D)(e) of St. Johns County Resolution 97-25. I further intend to suggest to the Board that it consider adopting the enclosed resolution to set forth the Board's understanding of the significance of the \$1.8 million check, your letters of May 2, 1997 and May 5, 1997, my letter of May 2, 1997 and this letter.

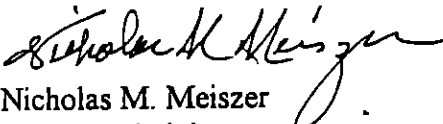
Finally, I note your request that I inform you by May 12, 1997 of the County's position regarding the relationship, if any, of future roadway improvements that may or may not be performed by the Julington Creek Community Development District and the County's duty, if any, of issuing impact fee credits in return for those improvements. As you are aware, the County's staff and

Exhibit B-10

M. Timothy Clark, President
Julington Partners Limited Partnership
May 5, 1997
Page 2

counsel have commenced studying that issue and intend to provide a recommendation to the Board as soon as they reach a reasoned opinion on the matter. They can not however, drop their other County responsibilities in order to meet such litigation time schedules as you may deem convenient.

Sincerely,


Nicholas M. Meiszer
County Administrator

Copies by fax to:

John DeVault, Esquire (904) 353-9307
Elizabeth C. Bowman, Esquire (904) 224-8551
Linda Conner Kane, Esquire (904) 358-1872

Exhibit B-11