

RESOLUTION NO. 2004-346

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY FLORIDA, APPROVING THE TERMS OF AN AMENDED AGREEMENT BETWEEN WORLD COMMERCE CENTER AND ST. JOHNS COUNTY FOR THE ENGINEERING DESIGN, PERMITTING AND CONSTRUCTION OF SOUTH FRANCIS ROAD AND APPROVED CERTAIN SHARED RESPONSIBILITIES FOR THIS TRANSPORTATION PROJECT.

WHEREAS, WCC is the owner of certain properties located in St. Johns County, Florida, under development as a mixed use development, including the Ring Power headquarters, as more specifically described on Exhibit "A" attached (the "Property");

WHEREAS, both Parties want to widen and improve that section of South Francis Road, a County Right-of-Way, as delineated in the attached Exhibit "B" (the "Project");

WHEREAS, the County has planned the South Francis Road improvements; and

WHEREAS, on July 28, 2004, the County and WCC entered into an Agreement to coordinate the construction and improve the efficiency of the South Francis Road improvements; and

WHEREAS, the parties want to clarify the Agreement to state that interest on the escrowed funds for the reimbursement of costs of the improvements are distributed to the County in accordance with statutory requirements.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AS FOLLOWS:

Section 1: The above recitals as hereby incorporated into the body of this Resolution and adopted as findings of fact.

Section 2: The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of an Amended Infrastructure Co-Construction Agreement between the World Commerce Center, and St. Johns County, Florida, and authorizing the County Administrator to execute the Agreement on behalf of the County.

Section 3: The Clerk of Circuit Court is instructed to file the Amended Agreement in the public records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 1st day of December, 2004.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: Juanne King
Deputy Clerk

By: Bruce A. Maguire
Chairman

Effective Date: 12-01-04

RENDITION DATE 12/02/04



FIRST AMENDED

INFRASTRUCTURE CO-CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2004, by and between World Commerce Center, L.L.P., By: Steinemann Development Company-Florida, Inc., its manager, whose mailing address is 13901 Sutton Park Drive South, 2nd Floor, Jacksonville, Florida 32224, (hereinafter "WCC"), and St. Johns County, whose mailing address is 4020 Lewis Speedway, St. Augustine, Florida 32084 (hereinafter "County").

WITNESSETH:

WHEREAS, WCC is the owner of certain properties located in St. Johns County, Florida, under development as a mixed use development, including the Ring Power headquarters, as more specifically described on Exhibit "A" attached (the "Property");

WHEREAS, both Parties want to widen and improve that section of South Francis Road, a County Right-of-Way, as delineated in the attached Exhibit "B" (the "Project");

WHEREAS, the County has planned the South Francis Road improvements; and

WHEREAS, the County and WCC are entering into this Agreement to coordinate the construction of the South Francis Road improvements so as to improve the overall efficiency of the construction.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and WCC hereby agree as follows:

1. **COUNTY CONSTRUCTION.** WCC shall construct the Project as a public right-of-way in accordance with the construction plans as approved through the County Development Review Department, such as construction to include, without limitation, the installation of stormwater drainage facilities, the installation of road subgrade, base and asphalt,

and the installation of related improvements (but which construction shall not include the installation of curb and gutter and related improvements, collectively, which is the sole responsibility of WCC pursuant to paragraph 2 hereinbelow). All design and construction plans (the Plans) to be in compliance with the County Land Development Code, including any variances granted. WCC shall commence construction within 90 days of receipt of all applicable permits and complete construction within 12 months of commencement.

2. WCC CONSTRUCTION. WCC will install curb and gutter on the section as referenced in the Plans (hereinafter referred to as the “WCC Additional Work”). The WCC Additional Work shall be performed in accordance with all applicable ordinances, rules and regulations of the County.

3. FINANCIAL RESPONSIBILITY FOR THE PROJECT.

a. The County shall reimburse WCC for the cost of WCC’s construction of the Project (including without limitation the expense of geotechnical and engineering work performed in connection therewith) up to One Million, Five Hundred Thousand Dollars (\$1,500,000.00). WCC shall submit application for payment to the County in order to be reimbursed for costs of constructing the Project pursuant to the terms and conditions of an escrow agreement in form and content as set forth in Exhibit “C,” attached hereto and made a part hereof (the “Escrow Agreement”).

b. The reimbursements shall be sought on a draw schedule, as set forth in the Escrow Agreement. That reimbursement for all reasonable requests related to the design engineer shall be paid in full immediately after the County’s Development Review Committee (DRC) shall have approved the Project’s design. The design engineer for the Project is Transystems, Inc., under an existing contract with the County.

c. The total reimbursement for the construction of the Project (including without limitation the expense of geo-technical and engineering work performed in connection therewith)

shall not exceed an absolute, unconditional cap of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) (hereinafter referred to as the "Construction Reimbursement Amount" or "CRA"). In addition, the Construction Reimbursement Amount shall be subject to increase or decrease based upon any change orders issued in connection with the Project to be completed by WCC pursuant to this Agreement. Change orders shall be issued on account of changes in the work resulting from:

- (i) modifications to the plans and specifications agreed upon by both the County and WCC, and
- (ii) changes in the Project resulting from unforeseen conditions or necessary corrections to the plans.

All change orders shall be subject to the written approval of both the County and WCC, such approval not to be unreasonably withheld. No action taken pursuant to this paragraph shall be considered a waiver of any party's rights and nothing herein shall prohibit the filing of a lawsuit regarding the disputes.

d. Notwithstanding anything herein to the contrary, the County is and shall be entitled to all interest earned on the Construction Reimbursement Amount. The escrow agent under the Escrow Agreement is instructed to release all such interest to the County, consistent with the terms of the Escrow Agreement.

4. PUBLIC CONTRACT REQUIREMENTS. Notwithstanding anything herein to the contrary, all work, and all awards of work, under the Project, shall comply with all applicable public contract requirements established by County Ordinance, policy, rule, regulation, or by State and/or Federal law, rule or regulation, which requirements are incorporated herein.

5. REVIEW MEETINGS. WCC shall have the right to have a representative present at any construction site meetings or so-called percentage of completion review meetings, which shall be at such time and places as the County deems appropriate. WCC hereby appoints

Buddy Young to act as such representative and attend such meetings on behalf of WCC. The County shall provide WCC's representative with one (1) day advance notice of the date, time and location of any such meeting unless an emergency meeting is required, in which case reasonable efforts shall be made to contact WCC's representative on the Project prior to the emergency meeting.

6. INSURANCE. The Parties acknowledge and agree that the Contractor performing the Work shall maintain insurance in the amounts listed below. Prior to the initiation of construction, WCC or such Contractor shall provide, or cause to be provided, to the County a certificate or certificates of insurance demonstrating the following coverages of not less than the amounts indicated:

- a. Worker's Compensation - Statutory
- b. Comprehensive General Liability:
 - i) General Aggregate - \$1,000,000.00 per project;
 - ii) Products - Comp/Ops Aggregate - \$1,000,000.00;
 - iii) Personal Injury - \$1,000,000.00; and
 - iv) Each Occurrence - \$1,000,000.00.
- c. Automotive Liability:
- d. Combined Single Limit - \$1,000,000.00.
- e. Certificate of Insurance. WCC shall furnish, or cause to be furnished, to

the County Public Works Director, prior to the start of the construction of the Work and during the term of this Agreement, satisfactory proof of insurance coverage. To be acceptable to the County, each insurance certificate must contain a clause substantially as follows: "Should any of the described policies be canceled before the expiration date thereof, the issuing insurer will provide thirty (30) days prior written notice to the Certificate Holder. The interests of the

County shall be included under the comprehensive general liability policy as an additional insured.”

7. INDEMNIFICATION. WCC agrees that it will indemnify and hold harmless the County, to the extent permitted by law, from any and all liability, claims, damages, expenses, proceedings, and causes of action of any kind and/or nature arising out of or connection with WCC’s wrongful acts or omissions arising out of WCC’s performance of this Agreement, but shall not be required to indemnify County for its own wrongful acts or omissions. WCC agrees that it will, at its own expense, defend any and all actions, writs or proceedings which are brought against the County and which arise out of circumstances as set out previously in this paragraph, and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such actions or proceedings, subject to the limitations of Florida Statute 768.28 (2003).

The County agrees that it will indemnify and hold harmless WCC, to the extent permitted by law, from any and all liability, claims, damages, expenses, proceedings, and causes of action of any kind an/or nature arising out of or connected with the County’s wrongful acts or omissions arising out of the County’s performance of this Agreement, but shall not be required to indemnify WCC for its own wrongful acts or omissions. The County agrees that it will, at its own expenses, defend any and all actions, writs or proceedings which are brought against WCC and which arise out of circumstances as set out previously in this paragraph, and that it will satisfy, pay and discharge any and all judgments that may be entered against WCC in any such actions or proceedings, subject to the limitations of Florida Statute 768.28 (2003).

a. Final Completion and County Acceptance. Construction Completion documents shall be submitted to the Development Review Department in accordance with the Land Development Code for inspection and County Acceptance of the improvements.

b. Contractor’s Release of Lien. Concurrently with the delivery of the Project referenced hereinabove, WCC shall submit to the County written verification of payment

in full of all costs of the Project, testing, surveying, and engineering inspection supervision, consisting of the Contractor's and other service providers as stated above final affidavit of full payment and release of lien, final releases of lien from suppliers of materials and services, a copy of all applicable change orders, and statements pertaining to testing services rendered to or on behalf of WCC by WCC's professional engineer or other parties in connection with the engineering, design, permitting, inspection and testing of the Work.

8. TERMINATION. This Agreement shall terminate and all parties released from obligations when all obligations have been performed by both parties. If the terms and requirements of this Agreement are not fully performed within two (2) years from the date of the last parties signing of this Agreement, either party may terminate this Agreement by giving the other party fifteen (15) days written notice, and the Escrow Fund shall be reconciled in accordance with the terms of the Escrow Agreement.

9. NOTICE. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or hand delivered, to the individuals identified below at the addresses set forth in the preamble of this Agreement.

a. For the County:
County Administrator
4020 Lewis Speedway
St. Augustine, Florida 32084

with copy to:
County Attorney
St. Johns County Attorney's Office
4020 Lewis Speedway
St. Augustine, FL 32084

b. For WCC:
Mr. Frank C. Steinemann, Jr.
Steinemann & Company
13901 Sutton Park Drive, South, Suite 100
Jacksonville, FL 32224

with copy to:
Sidney F. Ansbacher, Esquire
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, FL 32085-3007

10. AMENDMENT. Amendments to, and waivers of, the provisions contained in this Agreement may be made only by an instrument in writing, executed by each of the parties hereto.

11. WAIVER. The waiver by either party of a default or a breach of any provisions of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be constructed to operate as a waiver of any subsequent default or breach.

12. ATTORNEYS' FEES. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorneys' fees and costs, including for all appeals.

13. SEVERABILITY. If any part of the Agreement is found invalid or unenforceable by any court, such invalidity or unenforcement shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

14. ENTIRETY. This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both parties.

15. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date on which the last signature, required to execute this Agreement, is attached.

16. TIME OF ESSENCE. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals the date first above written.

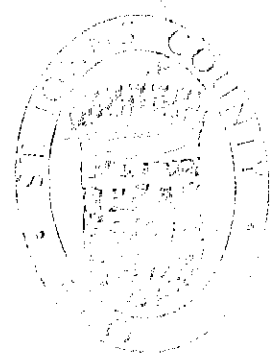
WORLD COMMERCE CENTER, L.L.P., BY:
STEINEMANN DEVELOPMENT COMPANY-
FLORIDA, INC., ITS MANAGER

By: _____
Print Name
Its: _____

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: **~~Cheryl Strickland~~** (Clerk)
By *Patricia DeGrande* Deputy Clerk
final.3

By: *[Signature]* (Chair)



Stamm
Company

Real Estate

Mr. Ben Adams
County Administrator
St. Johns County Florida
P.O. Box 349
St. Augustine, FL 32085-0349

March 11, 2003

Re: South Francis Road Improvements

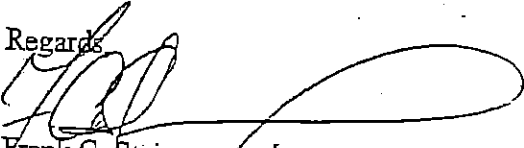
Dear Ben:

Thank you for all your help throughout this DRI process. There are many moving parts to this and we greatly appreciate the help we have received from both you and your staff. I would like to take this time to provide you with our proposal for improvements to South Francis Road from International Golf Parkway to SR 16. This will be a financial undertaking by both the County and the World Commerce Center Development.

The northern portion from International Golf Parkway to the Ring Power Site will be replaced by the World Commerce Center Loop Road. The southern portion (A on the attached drawing) will be improved to include two twelve (12) foot travel lanes, four (4) foot paved shoulders, two (2) foot sodded shoulders, and re-graded swales for positive drainage. A sidewalk will be constructed on the east side of the road within ten (10) foot easements provided by the adjacent property owners. The adjacent property owners will be offered a one-time opportunity to provide the easement but are not required to provide the easement and in no case will the County or the Developer be required to purchase right-of-way for the purpose of sidewalk construction.

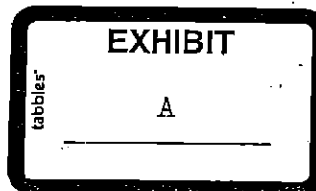
It is our understanding that the County will fund \$1,500,000 towards the construction cost and we will manage the construction process. Please provide confirmation to us that the proposed improvements will be sufficient to handle the traffic generated by our project and will be supported by County staff in front of the Board of County Commissioners.

Regards


Frank C. Steinemann, Jr.

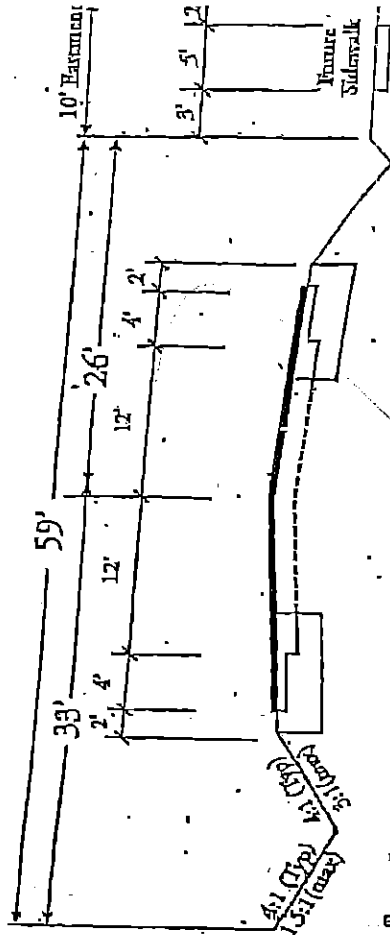
Cc: Joe Stephenson
Teresa Bishop
Scott Clem

Frank Upchurch



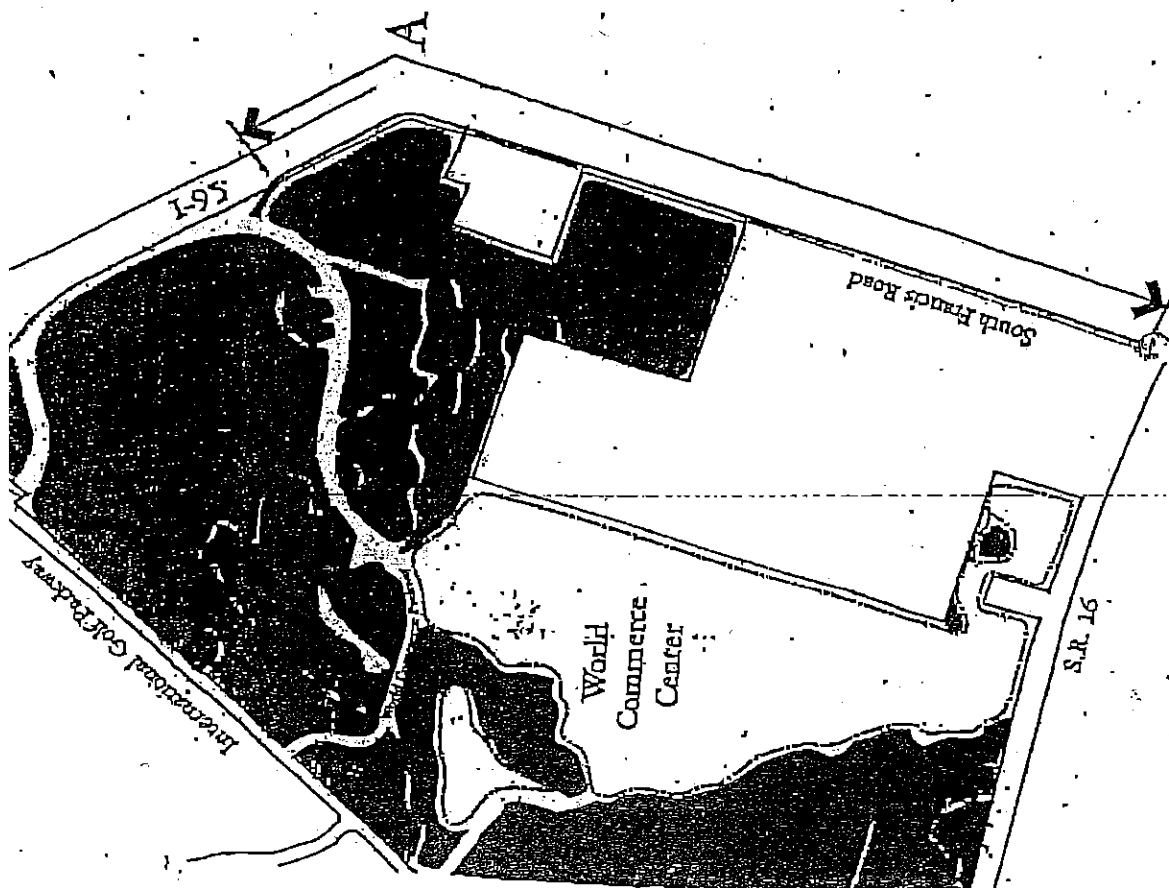
WORLD COMMERCE CENTER

Proposed South Francis Road Improvements



South Francis Road

- Travel Lane - Widen to 12'; Mill and Resurface
- Shoulder - 4' paved, 2' and
- Swales - Regrade for positive drainage
- Sidewalk - East side in 10' easement










Exhibit "C"

FIRST AMENDED
ESCROW AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2004, by and between St. Johns County (the County), Grantor, and World Commerce Center, L.L.P. (WCC), Grantee, and Upchurch, Bailey and Upchurch, P.A., c/o Sidney F. Ansbacher, Esquire, as Escrow Agent.

WHEREAS, the undersigned County and WCC have agreed to the terms of the Infrastructure Co-Construction Agreement (Agreement) to which this Escrow Agreement is attached as Exhibit "C," incorporated by reference and made a part hereof; and

WHEREAS, the Parties hereto agree to place Escrow funds with the Escrow Agent as set forth below;

NOW, THEREFORE, in consideration of the foregoing, the receipt and sufficiency of which are acknowledged, the Parties agree:

1. The Escrow Agent is Upchurch, Bailey and Upchurch, P.A., c/o Sidney F. Ansbacher, Esquire, whose address is Post Office Drawer 3007, St. Augustine, FL 32085-3007. The Escrow Agent agrees to serve as Escrow Agent at no additional charge to County or to WCC, but with the right to serve as underwriter for any title insurance policy.

2. The County will deposit with the Escrow Agent \$1,500,000.00 for WCC to make certain repairs as stipulated in the Agreement of the rights-of-way on South Francis Road, and the drainage facilities and other improvements located within the rights-of-way, as more fully described in the Agreement (jointly or severally, Improvements).

3. The balance shall be disbursed as construction of the Improvements progresses, but not more frequently than once a month, upon written requests from WCC given at least ten (10) days prior to the requested advance. At the time each advance is requested, WCC shall furnish to County WCC's certificate hereinafter described. Each request shall be made on a form acceptable to County, shall include a memorandum of advance and architectural or engineering documents as appropriate and, if requested by County, shall be accompanied by receipted invoices (or such other evidence of payment satisfactory to County) for the costs of Improvements which have been paid prior to the request for advance and by invoices not receipted covering the costs of Improvements which are due and payable, but which have not been paid. Each request shall be accompanied by a certificate of WCC and WCC's contractor (and engineer as appropriate) that the work has been accomplished which entitles the WCC to the requested disbursement and that all bills for labor, materials and services thence incurred and payable in connection with the Improvements have been paid or will be paid from the periodic advance being requested.

County shall disburse to WCC a sum which, when added to all previous advances, will equal ninety percent (90%) of the balance to be disbursed under paragraph 2 above.

Notwithstanding anything to the contrary contained in this Exhibit "A" or in the Agreement, County shall not be required to disburse any amount which would reduce the undisbursed portion of the proceeds below the costs estimated by County as required to complete the Improvements in accordance with the requirements of the Agreement.

4. County shall disburse to the WCC all undisbursed proceeds of the escrow sum to which WCC is entitled (less only unused reserves for interest, fees and miscellaneous expenses set forth in the Agreement), upon performance of WCC's obligations under the Agreement, completion of the Improvements and receipt of the following:

- (a) Engineer's certificate as to completion in accordance with approved Plans and specifications.
- (b) Inspector's certification as to final completion.
- (c) Contractor's affidavit of completion.
- (d) Final Lien Waivers from the General Contractor and all subcontractors and material suppliers who have filed Notices to Owner.
- (e) Contractors' Final Affidavit and/or WCC's Final Affidavit.
- (f) Final "as-built" survey.
- (g) Final plat of the Property approved by the appropriate governmental entity, if applicable.
- (h) Certificate of insurance showing adequate insurance on the Property showing County as a loss payee as set forth in the Agreement.

5. Escrow Agent shall release to County on a monthly basis, a current escrow account statement, together with all then-accrued and undisbursed interest on the escrow sum, each month during the term of the Agreement until release of all proceeds of the escrow sum to which WCC is entitled. The Escrow Agent shall release each monthly escrow account statement and interest payment to the County by the twentieth day of the following month. The escrow account statement and interest payment shall be sent to:

Finance Department
Clerk of the Circuit Court
4010 Lewis Speedway
St. Augustine, FL 32084

The Escrow Agent shall also release a copy of each monthly escrow account statement to WCC at the address shown on the Agreement by the twentieth day of the following month.

6. The WCC's certificate to be furnished with each request for advance shall certify as to the progress of construction during the period from the date of the last certificate and shall show the accumulative total of the costs of labor and materials incorporated in the Improvements and all of the costs of Improvements and shall certify in addition to such other facts as County may reasonably require that all work and materials are in accordance with the Plans, all certifications and approvals which may be necessary or customary at such stage of construction have been received, all work has been done according to applicable law, regulations, building codes, covenants and restrictions and in good and workmanlike manner and that the unpaid portion of the costs of the Improvements will not exceed the undisbursed portion of the proceeds of the loan.

7. If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or any other monies or documents which it holds or as to whom such Deposit, monies or documents are to be delivered, Escrow Agent shall not be obligated to make any delivery, but, in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by all of the parties having an interest in such dispute directing the disposition of same, or in the absence of such authorization, Escrow Agent may hold such Deposit, monies or documents until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate interpleader action or proceeding for leave to deposit such Deposit, monies or documents in court, pending such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same constitutes gross negligence or willful misconduct and upon making delivery of the Deposit, monies or documents which Escrow Agent holds, in accordance with the terms of this Agreement, Escrow Agent shall have absolutely no further liability hereunder. In the event Escrow Agent places the Deposit, monies or documents that have actually been delivered to Escrow Agent in the registry of the Circuit Court in and for the County in which the Property is located and files an action of interpleader, naming the parties hereto, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith.

8. This Agreement shall automatically terminate upon acceptance of the Project (as defined by the Agreement), and disbursement of escrow money to WCC for repairs, and County for interest. This shall occur on or before January 1, 2007.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

Attest: _____
(Clerk)

By: _____
(Chair)

WORLD COMMERCE CENTER, L.L.P.

Print Name: _____

By: _____

Steinemann Development Company-
Florida, Inc., Its Manager

Print Name: _____

ESCROW AGENT

By: _____

Print Name: _____

Print Name: _____

Draft 4.