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A Resolution of the Board of County Commissioners of Indian River County, Florida, making findings of fact and conclusions of law pertaining to Indian River Mall, a Development of Regional Impact, and constituting this Resolution as a Development Order by Indian River County in compliance with law; providing an effective date; and providing a termination date.

WHEREAS, Edward J. DeBartolo Corporation has filed a Development of Regional Impact Application for Development Approval with Indian River County, Florida, in accordance with Section 380.06, Florida Statutes; and

WHEREAS, the Developer of the Development is DeBartolo Properties Management, Inc., agent for DeBartolo Realty Partnership, L.P., and the owner of the Development is DeBartolo Realty Partnership, L.P.; and

WHEREAS, the authorized agents of the Developer are Mr. David H. Curl, DeBartolo Properties Management, Inc., P.O. Box 3287, Youngstown, Ohio 44512-6085 and Mr. Thomas Marsicano, Vice President, Greiner, Inc. P.O. Box 31646, Tampa, FL 33630-3416; and

WHEREAS, said Applicant proposes to construct 1,517,174 square feet, gross floor area, of retail development (945,364 square feet of regional mall, 404,979 of community shopping center, and 166,831 square feet of outparcel or peripheral retail) constituting a Development of Regional Impact on the real property legally described in Exhibit "A" attached hereto and located in Indian River County, Florida; and

WHEREAS, the Board of County Commissioners as the governing body of Indian River County having jurisdiction, pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider Applications for Development Approval for Developments of Regional Impact; and

WHEREAS, the Board of County Commissioners on the 19th day of July, 1994, held a duly noticed public hearing on the Development of Regional Impact Application for Development Approval and has heard and considered the testimony taken thereat; and

WHEREAS, the Board of County Commissioners has received and considered the assessment report and recommendations of the Treasure Coast Regional Planning Council; and

WHEREAS, the Board of County Commissioners has made the following FINDINGS OF FACT and CONCLUSIONS OF LAW with regard to the Application for Development Approval:

FINDINGS OF FACT

1. The proposed Development is not in an area of critical state concern designated pursuant to the provisions of Section 380.06, Florida Statutes;
2. The proposed development is consistent with the State Land Development Plan and the State Comprehensive Plan;
3. The proposed development is consistent with the report and recommendations of the Treasure Coast Regional Planning Council submitted pursuant to Section 380.06(12)(a), Florida Statutes; and
4. The proposed Development is consistent with the local comprehensive plan, zoning, and land development laws and regulations of the County.

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5. The conditional concurrency requirements for drainage, solid waste, water, wastewater, recreation, and transportation have been met under the Indian River County Concurrency Management System. Incorporating the road improvement conditions contained in this Development Order into an approved developer's agreement between the developer and Indian River County will satisfy the initial concurrency transportation requirements of the Indian River County Concurrency Management System.

CONCLUSIONS OF LAW

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, in a public meeting, duly constituted and assembled this 19th day of July, 1994, that the Indian River Mall Development of Regional Impact Application for Development Approval submitted by the Edward J. DeBartolo Corporation is hereby APPROVED, subject to the following conditions, restrictions, and limitations:

Application for Development Approval

1. The Indian River Mall Application for Development Approval is incorporated herein by reference. It is relied upon, but not to the exclusion of other available information, by the parties in discharging their statutory duties under Chapter 380, Florida Statutes. Substantial compliance with the representations contained in the Application for Development Approval, as modified by Development Order conditions, is a condition for approval.

For the purpose of this condition, the Application for Development Approval shall include the following items:

- a. Application for Development Approval dated December 20, 1993;
- b. Supplemental informed dated January 18, 1994; and March 28, 1994; and
- c. Revised Map H, the project master development plan, attached hereto.

Commencement and Progress of Development

- 2.(a). In the event the developer fails to commence significant physical development within three years from the effective date of the Development Order, development approval shall terminate and the development shall be subject to further development-of-regional-impact review by the Treasure Coast Regional Planning Council, Department of Community Affairs, and Indian River County pursuant to Section 380.06, Florida Statutes. For the purposes of this paragraph, construction shall be deemed to have been initiated after placement of permanent evidence of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation or land clearing.
- 2.(b). On or before January 19, 1997, the developer shall submit to the county planning division a complete site plan application for the construction of at least three hundred twenty thousand (320,000) square feet of regional commercial facility (single, enclosed mall building). In the event the developer fails to meet this deadline, development approval shall terminate and the development shall be subject to further development-of-regional-impact review by the Treasure Coast Regional Planning

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Council, Department of Community Affairs, and Indian River County pursuant to Section 380.06, Florida Statutes.

- 2.(c). No site plan(s) shall be released and no building permit shall be issued for the development of the commercial outparcels or community shopping center (as referenced in the ADA) until the developer completes (as determined by the county building department) of at least fifty percent (50%) of the structural foundation elements (at, above, and below grade) necessary for the construction at least three hundred twenty thousand (320,000) square feet of regional mall, gross floor area.
- 2.(d). In the event the developer fails to commence significant physical development of at least three hundred twenty thousand (320,000) square feet of regional mall gross floor area, on or before December 31, 1997, development approval shall terminate and the development shall be subject to further development-of-regional-impact review by the Treasure Coast Regional Planning Council and Indian River County pursuant to Section 380.06, Florida Statutes. The developer shall notify in writing the Treasure Coast Regional Planning Council and Indian River County of the date significant physical development has commenced, and shall specifically identify by reference to an approved site plan the building(s) and area(s) within the initial mall construction phase. For the purpose of this paragraph, significant physical development shall be deemed to have commenced after placement of permanent evidence of a structure (other than a mobile home) on the subject site(s), such as the pouring of slabs or footings or any permanent work beyond the sage of excavation, land clearing, or earthwork.
- 2.(e). The developer hereby covenants with the county that, in the event that the Mall Development Order is terminated, no plans to develop commercial uses on the Mall site shall be submitted or approved for a period of at least nine (9) months after Development Order termination. The purpose of this covenant is to give the county the ability to reconsider the land use designation and zoning of the site in the event that Mall Development Order is terminated.
- 2.(f). The developer shall complete (as determined by the county building department) all structural foundation elements (at, above, or below grade) for at least three hundred twenty thousand (320,000) square feet of regional commercial facility (mall) gross building area, within two hundred ten (210) days of the commencement date as noticed by the developer to the Treasure Coast Regional Planning Council and Indian River County (reference 2.(d)., above) for the building(s) and area(s) specifically identified by the developer as the initial mall construction phase. In the event the developer fails to complete construction within the prescribed deadlines, then, after at least 10 calendar days notice to the developer, the County may, upon hearing, revoke the mall site plan approval.
- 2.(g). The developer shall complete "shell" construction of the initial mall construction phase within twenty-four (24) months from the commencement date as noticed by the developer to the Treasure Coast Regional Planning Council and Indian River County (reference 2.(d)., above) for the area(s) specifically identified by the developer as the

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initial mall construction phase. In the event the developer fails to complete construction within the prescribed deadlines, then, after at least 10 calendar days notice to the developer, the County may, upon hearing, revoke the mall site plan approval. For purposes of this paragraph, "complete shell construction" is defined as completion of the building foundation, roofing, and exterior walls as depicted within the approved building permit plans, as verified by the county building department upon inspection of the building site.

- 2.(h). With respect to paragraphs 2.(f). and 2.(g). above, the following shall apply. In the event that the developer shall be delayed or hindered in or prevented from the performance of any act or requirement under conditions 2.(f). and 2.(g). of this Development Order by reasons of strikes, lockouts or labor troubles; inability to procure construction materials due to general shortage, government rationing or regulation of labor, materials, equipment, facilities or sources of energy (including, without limitation, electricity, oil or gas); failure of power or transportation; riots, mob violence, sabotage, malicious mischief, insurrection or war; Acts of God, fire, earthquake, flood, hurricane, explosion or other casualty or other reasons of a similar nature beyond the reasonable control of the developer in performing work or doing acts specified under the terms of conditions 2.(f). and 2.(g). of this Development Order, then, and in each such event performance of such work or act shall be excused for the period of the delay (including the duration of both the actual delay and any consequential delays resulting therefrom) and any period set forth in conditions 2.(f). and 2.(g). of this Development Order in performance of any such work or act shall be extended for a period equivalent to the period of such delay (including the duration of both the actual delay and any consequential delays resulting therefrom).

Phasing

3. The phasing of the development is approved as follows:

One continuous phase of development, with build-out by December 31, 1999, unless otherwise amended pursuant to 380.06 (19) Florida Statutes.

Termination Date

4. This Development Order shall terminate on July 19, 2014.

Transfer of Approval

5. Notice of transfer of all or a portion of the subject property shall be filed with the Indian River County Board of County Commissioners. Prior to transfer, the transferee shall assume in writing on a form acceptable to the County Attorney, any and all applicable commitments, responsibilities, and obligations pursuant to the Development Order. The intent of this provision is to ensure that subsequent property transfers do not jeopardize the unified control, responsibilities, and obligations required of the project as a whole.

Air Quality and Alternative Transportation Modes

6. All primary access points and internal circulation roadways shall be designed and constructed to provide sufficient geometry to accommodate transit vehicles. The applicable

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standards and recommendations of the American Association of State Highway and Transportation Officials (AASHTO) should be utilized in determining design requirements for accommodating transit vehicles to the mall site.

7. At a minimum, boarding and unloading space at one entrance to the mall structure shall be designated. Upon implementation of regularly scheduled transit service, the following facilities, at a minimum, will be provided: 1) covered bus shelters with seating, lighting, trash receptacles, etc.; 2) bus stop signs; 3) bus schedules conspicuously available within the mall or bus shelter; and 4) mall tenants will be encouraged to participate in programs that offer shopper bonuses to those patrons who use transit to get to the mall. At the end of the first full year of regularly scheduled transit service to the mall, the developer shall provide a written summary in the annual report required by Section 380.06, Florida Statutes, regarding the extent to which the boarding and unloading space has been designated and facilitated consistent with the above condition.
8. The developer shall establish and actively support, through the provision of information and incentives to employees, a ridesharing program. At the end of the first full year following the mall's opening, the developer shall provide a written summary in the annual report required by Section 380.06, Florida Statutes, regarding the structure of the program and an evaluation of the program's effectiveness.
9. The developer shall cooperate with the Indian River County Council on Aging or other government transportation/transit planning agency or transit provider designated in the future to serve Indian River County, and provide information on the general location of employee and shopper residences, regarding the establishment or expansion of transit routes to serve the Indian River Mall.
10. With the exception of clearing for access roads, survey lines, construction trailers, equipment staging areas, and fencing work, construction shall commence within 30 days after completion of clearing and grading.
11. During land clearing and site preparation, wetting operations or other soils treatment techniques appropriate for controlling unconfined particulate emissions, including grass seeding and mulching of disturbed areas, shall be undertaken and implemented by the developer to comply with applicable Indian River County and Florida Department of Environmental Protection standards.

HISTORIC AND ARCHEOLOGICAL SITES

12. In the event of discovery of any archaeological artifacts during project construction, the developer shall stop construction in that area and immediately notify Indian River County and the Division of Historical Resources in the Florida Department of State. Proper protection, to the satisfaction of the Division, shall be provided by the developer.

WETLANDS

13. At a minimum, the developer shall preserve 8.7 acres of mixed hardwood wetland identified on Exhibit W-1 of Treasure Coast Regional Planning Council's Assessment Report for the Indian River Mall (see copy, attached). The developer shall enhance the quality of this wetland by: 1) enhancing the hydroperiod as described in the Indian River Mall Application for

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Development Approval, 2) removing all invasive exotic species and maintaining the wetland free of these species, and 3) plugging and abandoning the Floridan aquifer well located in this wetland. The continued viability and maintenance of this wetland shall be assured by conservation easement pursuant to section 704.06 Florida Statutes acceptable to Indian River County that will guarantee preservation of the wetland in perpetuity, and shall be granted prior to any on-site development. The County acknowledges that a conservation easement may be entitled to a special property tax valuation in accordance with applicable sections of FS Chapter 193.501.

14. The developer shall provide mitigation for the elimination of 3.0 acres of wetland. Mitigation shall include the establishment of an upland buffer, littoral shelf area, and wetland enhancement as described in the Indian River Mall Application for Development Approval. Prior to the initiation of clearing such wetland area, the developer shall submit and have approved by Indian River County and St. John's River Water Management District, in consultation with the Treasure Coast Regional Planning Council, a wetland mitigation plan, which describes the methodology and timetable for implementation of the mitigation. The approved plan shall be implemented and enforced as a condition of the development order.
15. The developer shall establish and maintain a buffer zone of native upland edge vegetation around all preserved and created wetland and deepwater habitats on-site in accordance with the following provisions. The buffer zone shall include canopy, understory and ground cover of native species only. The edge habitat shall begin at the upland limit of the wetland or deepwater habitat and shall include a total area of at least 10 square feet per linear foot of wetland or deepwater habitat perimeter. This upland edge habitat shall be located such that no less than 50 percent of the total shoreline is buffered by a minimum width of 10 feet of upland habitat.
16. In order to allow good access to the mall from surrounding residential land and avoid unnecessary impacts on the regional roadway network, road right-of-way shall be reserved to provide access across the wetland preserve area as identified on Exhibit B, attached. Such right-of-way shall be:
 - A) reserved via the project site plan to accommodate a two-lane residential street section consistent with Indian River County's local road design standards;
 - B) located within the alignment of the existing dirt road which crosses the wetland;
 - C) perpetually available for connection to the future residential area located between the project wetlands area and 26th Street; and
 - D) subject to approval of applicable regulatory and permitting agencies.

Any street ultimately constructed within this right-of-way shall be designed to allow adequate water flow through the wetland.

HABITAT PRESERVATION

17. The developer shall preserve, by dedicating a conservation easement, pursuant to section 704.06 Florida Statutes, to the county prior to project site plan release, the 4.7 acres of

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cabbage palm hammock, including canopy, understory, and ground cover, shown on Exhibit C, attached. The intent of this development condition is to: 1) provide for wildlife and upland habitat protection on site; 2) provide proper protection to the endangered species of hand fern and other listed plant species occurring in this hammock; and 3) assist in the County's effort to maintain SR 60's quality entrance and gateway character. The continued viability and maintenance of the preserve shall be assured by a conservation easement to the county. The County acknowledges that a conservation easement may be entitled to a special property tax valuation in accordance with applicable sections of FS Chapter 193.501. Said easement shall be granted prior to release of any project site plan.

18. Temporary fencing of the 4.7 acre preserve and all other wetland and upland areas to be preserved including the stand of Simpson's Stopper as shown on Exhibit C, attached, shall be installed by the developer and inspected and approved by Indian River County prior to commencement of site clearing. Such fencing shall be of a type that will clearly identify and designate the boundaries of the preserve areas and the stand of Simpson's Stopper, and minimize the potential disturbance of these features during land clearing and construction. The temporary fencing shall be established at least 30 feet outside the actual boundary of said preserve areas. Temporary fencing shall stay in place until it is necessary to remove it for finish grading, planting required buffers, and constructing any required permanent fencing.
19. The developer shall prepare a habitat management plan for the 4.7 acre preserve. The plan shall identify methods to maintain suitable habitat conditions for the hand fern and other listed species which exist in the preserve. The plan should include methods to: 1) reduce the risk of fire to the hammock; 2) remove exotic vegetation, including Brazilian pepper and strawberry guava; 3) enhance the existing hydrology of the preserve; 4) permanently fence the preserve and allow only limited access for nature appreciation, education, or scientific study. The management plan shall be approved by Indian River County and the Department of Community Affairs in consultation with Treasure Coast Regional Planning Council prior to the initiation of site clearing activities. The approved plan shall be implemented and enforced as a condition of the development order.
20. Development of parcels adjacent to the 4.7 acre cabbage palm hammock preserve area shall include a densely landscaped buffer within or directly adjacent to the preserve as indicated on Exhibit D, attached. The buffers shall be planted with 100 percent native vegetation. The relocation of cabbage palms from areas to be cleared on site is highly recommended for use in the buffers. The purpose of the buffer is to reduce the amount of pollution entering the hammock, and to minimize undesirable effects of development on the preserve area.

SPECIES OF SPECIAL REGIONAL CONCERN

21. In the event that it is determined that any additional representative of a plant or animal species of special regional concern (as defined in the Treasure Coast Regional Planning Council Assessment Report for the Indian River Mall) is resident on, or otherwise is significantly dependent upon the Indian River Mall property, the developer shall cease all activities which might negatively affect that individual population and immediately notify Treasure Coast Regional

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Planning Council and Indian River County. Proper protection, to the satisfaction of the Treasure Coast Regional Planning Council and Indian River County, in consultation with the U.S. Fish and Wildlife Service and the Florida Game and Fresh Water Fish Commission, shall be provided by the developer.

EXOTIC SPECIES

22. Prior to obtaining a certificate of occupancy for any structure located on any parcel or area of development, the developer shall remove all Melaleuca, Brazilian pepper, and Australian pine which occur on that parcel or area of development. Removal shall be in such a manner that avoids seed dispersal by any of these species. There shall be no planting of these species on site.

DRAINAGE

23. As part of the project's site plan design(s), the surface water management system shall be designed to maximize shallow aquifer recharge potential for the site such that the project will not result in a water table less than 17 feet NGVD across the site. To help achieve this end, the developer shall consider use of uncurbed grassed swale conveyances and depressed grassed water collection areas within the parking area to the maximum extent possible. Grassed swales and depressions shall be adequately maintained so they can function as infiltration areas. In addition, the developer shall consider other appropriate methods to maximize aquifer recharge, including: exfiltration, drainage perimeter swales, increased open space, reduction in parking area, and use of pervious parking area materials.
24. To improve the quality of water discharge from the site, the following shall apply:
- a. All curbed areas within the boundaries of the development shall be swept daily. All other parking and road surfaces shall be swept as necessary, but in no case less frequently than once per week. Sweeping shall be accomplished by vacuum type or vacuum regenerative type sweepers. Sweepers shall be equipped with speed governors which will limit operating speed to no more than five miles per hour.
 - b. Parking stops or bumps which may collect and concentrate contaminants, or which would interfere with efficient sweeping of the parking area, shall not be used on the project. The developer shall either use curbing or its equivalent or obtain tire stop waivers pursuant to county land development regulations.
 - c. A vegetated littoral zone shall be established for the lakes constructed on site. Prior to construction of the surface water management system for the development, the developer shall prepare a design and management plan for the wetland/littoral zone that will be developed as part of that system. The plan shall be subject to approval by the St. John's River Water Management District and Indian River County in consultation with the Treasure Coast Regional Planning Council prior to beginning any excavation activity. Littoral zones shall be constructed concurrent with lake excavation and final grading. Operational permits for that portion of the surface water management system shall not be utilized until such time as littoral zones have been found to be constructed in conformance with approved plans.

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- d. To the maximum extent practical, the 8.7 acre mixed-hardwood wetland area shall be incorporated into the water management system to take advantage of water quality treatment provided by the existing vegetation.
 - e. At a minimum, water quality treatment equivalent to retention of the first inch of runoff from the three-year, one-hour storm event shall be provided prior to discharge from the site.
25. The developer shall consider in its site plan design(s) use of Indian River County's allowance of up to 25% of the required mall parking spaces to consist of unpaved, sodded or otherwise stabilized areas. In addition, the developer shall consider in its site plan design(s) other methods of minimizing the amount of impervious surface constructed for the purposes of automobile parking on the Indian River Mall site.

HAZARDOUS MATERIALS AND WASTE

26. Prior to issuance of any building permits for Indian River Mall, the developer shall prepare or cause to have prepared a hazardous materials management plan which shall be reviewed and approved by Indian River County, St. John's River Water Management District, and Florida Department of Environmental Protection. For the purposes of this plan, hazardous materials are those constituents found in reportable quantities on site pursuant to 42 USC, Section 6921 (RCRA); 42 USC, Section 9602 (CERCLA); 42 USC, Section 11011 et seq. (SARA, Title III); and Part IV, Chapter 403, Florida Statutes. At a minimum, the plan shall;
- a. require disclosure by all owners or tenants of nonresidential property of all hazardous materials proposed to be stored, used, or generated on the premises;
 - b. require the inspection of premises storing, using, or generating hazardous materials or wastes prior to commencement of operation, and periodically thereafter, to assure that approved facilities and procedures are in place to properly manage hazardous materials projected to occur;
 - c. provide minimum standards and procedures for storage, prevention of spills, containment of spills, and transfer and disposal of such materials or wastes;
 - d. provide for proper maintenance, operation, and monitoring of hazardous materials and waste management systems including spill and hazardous materials and waste containment systems;
 - e. detail actions and procedures for financial and physical spill clean-up actions; and
 - f. describe who will be responsible for financial and physical spill clean-up actions; and

The approved plan shall be incorporated into the development by including it as part of any lease or sale agreement provided to tenants and owners that will use, handle, store, display, or generate hazardous materials or wastes.

27. All site plans and layouts for Indian River Mall must be in accordance with the requirements of applicable State and local wellfield protection ordinances. All plan approvals shall

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note what development will take place in areas near canals and waterways or within zones of influence of any private or municipal wellfield in the area.

WATER SUPPLY

28. No building permits shall be issued for any portion of the project until the developer provides evidence from the Indian River County Department of Utility Services to the Indian River County Planning Department that adequate potable water capacity and service/distribution infrastructure will be available to serve the portion of the project for which permits are required.
29. The preferred source of irrigation water shall be treated wastewater effluent at such time as this source is made available to the site. Should treated wastewater be unavailable or a supplemental source for irrigation be needed, existing or created surface waters (i.e., lakes or canals) shall be used to the maximum extent available. On-site wells or municipal potable water may be used for irrigation only after the developer has demonstrated to the satisfaction of the Treasure Coast Regional Planning Council, St. John's River Water Management District, and Indian River County that preferred sources of water are unavailable and that the proposed source will not adversely affect ground water quality and quantity. The irrigation system shall be installed so that it can be connected to wastewater effluent reuse lines as soon as they become available to the property.
30. In order to reduce irrigation water demand, xeriscape landscaping shall be implemented throughout the project. As a minimum, 30 percent of all areas requiring landscape material shall be landscaped with native or drought-tolerant species adapted to soil and climatic conditions existing on site, and 50 percent of all trees shall be native or drought-tolerant species.
31. All development in the Indian River Mall shall use water-saving plumbing fixtures and other water conserving devices as specified in the Water Conservation Act, Section 553.14, Florida Statutes, to reduce water use.

WASTEWATER

32. No building permits shall be issued for any portion of the project until the developer provides evidence from the Indian River County Department of Utility Services to the Indian River County Planning Division that adequate wastewater capacity, service infrastructure, and adequate provisions for the effluent disposal, will be available to collect, treat and dispose of the wastewater generated by the portion of the development for which permits are required.

SOLID WASTE

33. The developer shall participate in any solid waste stream reduction/recycling plan program implemented by Indian River County Department of Utility Services. Each annual report shall address whether or not the developer is participating in such programs and the extent of participation.

POLICE AND FIRE PROTECTION

34. a. Prior to issuance of any building permits for the Indian River Mall, the developer shall provide the Indian River County Planning Division an update of ADA Exhibit 25.1

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from the Sheriff's Department regarding the provision of law enforcement to serve the project.

- b. Prior to the release of a site plan(s) for construction on site, the developer shall certify to the Indian River County Planning Division that a construction security system, acceptable to the Sheriff's Department, will be in place prior to commencement of construction. The security system shall include continuous patrolling and other measures such as fencing and lighting.
35. Prior to the issuance of a certificate of occupancy for any portion of the Indian River Mall, the developer shall certify to the Indian River County Planning Division that all security measures and commitments referenced in Section 25 of the Indian River Mall Application for Development Approval are in place and will be operational concurrent with the operation of the portion of the project for which a certificate of occupancy is sought.
36. Prior to issuance of building permits for any portion of Indian River Mall, the developer shall provide the Indian River County Planning Division with written confirmation that the Indian River County Department of Emergency Services has sufficient manpower and equipment to serve the fire protection/emergency medical service needs of the portion of the project for which a permit is sought at adequate service levels.

ENERGY

37. In the final site and building design plans, the developer shall: a) comply with the Florida Thermal Efficiency Code Part VII, Chapter 553, Florida Statutes; b) to the maximum extent feasible, incorporate measures identified in the Treasure Coast Regional Planning Council's Regional Energy Plan dated May 1979, and the Treasure Coast Regional Planning Council's Regional Comprehensive Policy Plan; and c) incorporate those energy conservation measures identified on pages 29-5 through 29-9 of the Indian River Mall Application for Development Approval.
38. The developer shall incorporate each of the 17 energy saving methods outlined in the ENERGY section discussion of the Treasure Coast Regional Planning Council's Assessment Report for the Indian River Mall unless it can be demonstrated to the satisfaction of Indian River County that individually each method is not cost effective.

TRANSPORTATION

39. No building permits for the Indian River Mall Development of Regional Impact shall be issued until the developer provides the Indian River County Planning Division a letter from the Florida Department of Transportation stating that sufficient road right-of-way exists along the project's SR 60 frontage for all required SR 60 improvements.
40. Prior to site plan release, the developer shall dedicate to the county and the Indian River Farms Water Control District a 30' wide access easement for canal maintenance purposes. Said easement shall run the length of the Lateral "A" Canal from SR 60 to 26th Street. The easement will allow possible future maintenance of the canal from the canal's east side, rather than from the canal's 66th Avenue side. Such a shift in maintenance sides is intended to maximize the ability of the county to use canal right-of-way along 66th Avenue for

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road purposes which could help minimize the amount of 66th Avenue future expansion westbound, toward the Vista Plantation golf course.

41. No building permits for the Indian River Mall Development of Regional Impact shall be issued until either: 1) contracts have been let for the following roadway expansions; 2) the following expansions have been included within the first three years of Indian River County's adopted Capital Improvements Program; or 3) a local government development agreement consistent with sections 163.3220 through 163.3243, F.S. has been executed and attached as an exhibit to the Development Order via an amendment to the Development Order, for the following improvements. Any such agreement shall include provisions for surety to guarantee construction of required improvements.
- a. Six-lane SR 60 from 66th Avenue to 58th Avenue;
 - b. Four-lane 58th Avenue from 26th Street to SR 60; and
 - c. Four-lane 58th Avenue from SR 60 to 16th Street.

No certificates of occupancy shall be issued for the Indian River Mall Development of Regional Impact until the roadway expansion under "a." above is in place and operational, and "b." through "c." above are in place and operational or actual construction is underway.

42. No building permits for the Indian River Mall Development of Regional Impact shall be issued until either: 1) contracts have been let for the following roadway expansions; 2) the following expansions have been included within the first three years of Indian River County's adopted Capital Improvement Program; or 3) a local government development agreement consistent with sections 163.3220 through 163.3243, F.S. has been executed and attached as an exhibit to the Development Order via an amendment to the Development Order, for the following improvements. Any such agreement shall include provisions for surety to guarantee construction of required improvements.
- a. Paving of 26th Street between 66th Avenue and 58th Avenue as a two-lane facility. Design and construction of this facility shall be consistent with the Florida Department of Transportation and Indian River County standards; and
 - b. Intersection expansion (including signalization if and when warranted) at 26th Street and the northern project entrance (Access A) necessary to provide Level of Service D at buildout of the Mall.

No certificates of occupancy shall be issued for the Indian River Mall Development of Regional Impact until the roadway expansions under "a." and "b." above are in place and operational.

43. Commencing in 1997, the developer shall undertake a traffic monitoring program which shall be updated on an annual basis and included in the Annual Report as specified in the Development Order. The developer shall submit a Traffic Monitoring Report to Indian River County, Florida Department of Transportation (FDOT) and Treasure Coast Regional Planning Council (TCRPC) for 58th Avenue from 41st Street to 26th Street and 58th Avenue from 16th Street to 12th Street. The methodology to be used for traffic monitoring and reporting shall be discussed and agreed to at a meeting to be convened

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by Indian River County with FDOT, TCRPC, the City of Vero Beach, and the developer prior to 1997.

As a minimum, the report shall:

- a. present existing traffic volumes;
- b. present existing level of service with all analysis used to determine the level of service;
- c. determine traffic projections for each roadway link and intersection for one year into the future including background, discounting all new traffic from other projects in Indian River County, plus project traffic;
- d. specify roadway expansions necessary to provide Level of Service D for peak-hour/peak-season conditions on the monitored roadway links and intersections; and
- e. identify methods for funding the necessary roadway expansions.

Commencing in the year 1997, no further building permits for the Indian River Mall Development of Regional Impact shall be issued after three months from the due date of the Annual Report as established in the Development Order, until the Traffic Monitoring Report referenced above has been submitted to and approved by Indian River County, FDOT, TCRPC, in consultation with the City of Vero Beach.

No further certificates of occupancy shall be issued for the Indian River Mall Development of Regional Impact within a year of the date of the Traffic Monitoring Report until roadway expansions, if any, specified in the approved Traffic Monitoring Report are under construction. Monitoring of the roadway links may be discontinued once expansion of the roadway links to a four-lane cross-section are under construction or by buildout of the Indian River Mall.

44. No building permits for the Indian River Mall Development of Regional Impact shall be issued until either: 1) contracts have been let for the following intersection expansions; 2) the following expansions have been included within the first three years of Indian River County's adopted Capital Improvement Program; or 3) a local government development agreement consistent with sections 163.3220 through 163.3243, F.S. has been executed and attached as an exhibit to the Development Order via an amendment to the Development Order, for the following improvements. Any such agreement shall include provisions for surety to guarantee construction of required improvements.

- a. SR 60 and 58th Avenue

Northbound (58th Avenue)	Southbound (58th Avenue)
2 left-turn lanes	1 left turn lane
1 through lane	1 through lane
1 through/right-turn lane	1 through/right-turn lane
Eastbound (SR 60)	Westbound (SR 60)
1 left-turn lane	1 left-turn lane
2 through lanes	2 through lanes
1 through/right-turn lane	1 through/right-turn lane

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- b. SR 60 and Access F
Southbound (Access F)

2 left-turn lanes
1 right-turn lane

Eastbound (SR 60)

1 left-turn lane
3 through lanes

Westbound (SR 60)

3 through lanes
1 right-turn lane

All above configurations shall be permitted and constructed in accordance with County and State criteria.

No certificates of occupancy shall be issued for the Indian River Mall Development of Regional Impact until the intersection expansion under "b." above is in place and operational, and "a." above is in place and operational or actual construction is underway.

45. A signal warrant study shall be conducted at the following intersections at a time and by a method acceptable to Indian River County and the Florida Department of Transportation:
- a. SR 60 and Access F;
 - b. SR 60 and 66th Avenue;
 - c. 26th Street and 58th Avenue; and
 - d. 26th Street and Access A.

Required signalization shall be permitted and constructed in accordance with applicable Indian River County criteria on county roads and Florida Department of Transportation criteria on State roads. Indian River County and Florida Department of Transportation shall establish a date for the installation of any signalization required at the above referenced intersections. The issuance of building permits for the project shall cease if signalization is not installed within one year of the established date.

46. No more than one signalized intersection and one full median opening designed in accordance with applicable Florida Department of Transportation (FDOT) standards shall be allowed along SR 60 between 66th Avenue and 58th Avenue unless otherwise approved by FDOT and Indian River County.
47. As a minimum, the developer shall pay a fair share contribution consistent with the road impact fee ordinance of Indian River County in effect at the time of issuance of building permits. Any DRI Development Order exaction or fee shall be credited toward an impact fee or exaction imposed by local ordinances for the same need.
48. Commencing in 1997, the developer shall undertake a traffic monitoring program which shall be updated on an annual basis and included in the Annual Report as identified in the Development Order. The developer shall submit a Traffic Monitoring Report to Indian River County for 16th/17th Street from 43rd Avenue to 27th Avenue. The methodology to be used when preparing the Report shall be discussed and agreed to at a meeting between Indian River County, the City of Vero Beach, and the developer held prior to 1997.

As a minimum, the report shall:

- a. present existing traffic volume;

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- b. present existing level of service with all analysis used to determine the level of service;
- c. determine traffic projections for each roadway link and intersection for one year into the future including background, discounting all new traffic from other projects in Indian River County, plus project traffic;
- d. specify improvements necessary to provide Level of Service D for peak-hour/peak-season conditions on the monitored roadway links and intersections; and
- e. identify methods for funding the necessary roadway expansions.

Commencing in the year 1997, no further building permits for the Indian River Mall Development of Regional Impact shall be issued after three months from the due date of the Annual Report as established in the Development Order, until the Traffic Monitoring Report referenced above has been submitted to and approved by Indian River County and the City of Vero Beach.

No further certificates of occupancy shall be issued for the Indian River Mall Development of Regional Impact within a year of the date of the Traffic Monitoring Report until roadway expansions, if any, specified in the approved Traffic Monitoring Report are under construction. Monitoring of the roadway links may be discontinued once expansion of the roadway link to a four-lane cross-section is under construction or by buildout of the Indian River Mall.

49. Commencing in 1995 and continuing every year thereafter, the developer shall submit an Annual Status Report indicating the status (schedule) of guaranteed roadway expansions. This Annual Status Report shall be submitted to Indian River County, Florida Department of Transportation, Treasure Coast Regional Planning Council and the Department of Community Affairs as part of the Development of Regional Impact Annual Report.

The Annual Status Report shall list all roadway expansions needed to be constructed by phase, the guaranteed date of completion for the construction of each needed expansion, the party responsible for the guaranteed construction of each expansion, and the form of the binding commitment that guarantees construction of each expansion.

No further building permits for the Indian River Mall Development of Regional Impact shall be issued at the time the Annual Status Report reveals that any needed transportation network expansion included in the Development Order is no longer scheduled or guaranteed, or has been delayed in schedule such that it is not guaranteed to be in place and operational, or under actual construction for the entire expansion by December 31, 1999.

50. A traffic methodology meeting shall be conducted for any proposed change to the Development Order that may affect traffic, such as an increase in project size and extension of the project buildout dates. The Florida Department of Transportation, the Department of Community Affairs, Treasure Coast Regional Planning Council, Indian River County, and the City of Vero Beach shall be present at the meeting. Issues to be discussed at the meeting include, but are not limited to: trip generation rates, trip distribution and assignment, passer-by rates, growth factors, application of the growth

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factors, approved developments in the area, and proposed roadway expansions. A traffic study shall be submitted to the Florida Department of Transportation, Department of Community Affairs, Treasure Coast Regional Planning Council, Indian River County, and the City of Vero Beach which will determine traffic impacts of the proposed change. This study will incorporate the methodology discussed at the traffic methodology meeting. The traffic study shall identify any additional roadway expansions necessary to maintain the subject transportation network at objective levels of service.

Additional building permits shall not be issued for the portions of the Indian River Mall Development of Regional Impact that are the subject of the proposed change until: 1) a new project phasing program and roadway expansion program necessary to maintain acceptable levels of service for the remainder of the development has been approved by Indian River County, Florida Department of Transportation, Department of Community Affairs, and Treasure Coast Regional Planning Council in consultation with the City of Vero Beach; and b) the Development Order has been amended to reflect the new phasing program and set of additional roadway expansions.

51. No additional building permit shall be issued after December 31, 1999, unless a traffic study has been conducted by the developer, and submitted to and approved by Indian River County, Florida Department of Transportation, Department of Community Affairs, and Treasure Coast Regional Planning Council, in consultation with the City of Vero Beach, which demonstrate that the regional roadway network can accommodate the remaining (yet to be generated) Indian River Mall generated traffic and growth in background traffic beyond 1999 and still be maintained at Level of Service D during peak-hour/peak-season conditions. The traffic study shall:
 - a. be conducted in 1999, and
 - b. identify the roadway expansions and timing of those expansions necessary to provide Level of Service D during peak-hour/peak-season conditions for the subject transportation network during the projected condition of the project including project impacts and growth in background traffic.

Additional building permits shall not be issued until: a) a new project phasing program and roadway expansion program necessary to maintain acceptable levels of service for the remainder of the development has been approved by Indian River County, Florida Department of Transportation, Department of Community Affairs, and Treasure Coast Regional Planning Council in consultation with the City of Vero Beach; and b) the Development Order has been amended to reflect the new phasing program and set of additional roadway expansions.

52. The project site plan(s) shall incorporate vehicular and pedestrian interconnections between commercial sites within the project area and adjacent to the project area, in accordance with the county's land development regulations.
53. The County recognizes that in order for the developer to meet the requirements of the transportation section of this Development Order it may be necessary for the developer to acquire road right-of-way which is currently under private ownership. Upon written request by the developer, the County agrees to file a petition in eminent domain as is necessary to exercise its power of eminent domain to acquire such right-of-way, subject to a court finding of proper public purpose and

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public necessity. Should a court enter an order finding no public purpose or public necessity, and the transportation conditions contained herein cannot be satisfied, the developer must file for and obtain modification(s) to the development order to ensure satisfaction of applicable transportation level of service standards. No further building permits or Certificates of Occupancy shall be issued until such Development Order modification(s) are approved. No settlement prior to jury award shall occur without the prior approval of the developer. All attorney's fees, expert fees, and costs associated with the County's exercise of its power of eminent domain, including compensation to land owners, shall be borne by the developer.

54. BUFFERING AND OPEN SPACE

- a. The following required buffering provisions shall be incorporated into the site plans of Indian River Mall and related DRI project and outparcel developments and shall be provided and maintained as follows:

*SR 60 frontage: A Type "C" buffer with 3' opaque feature or its equivalent, as established in the county land development regulations.

*66th Avenue, 26th Street: A Type "D" buffer with 3' opaque feature or its equivalent, as established in the county land development regulations.

Buffers shall be provided with planted and/or existing vegetation and shall be maintained between the referenced road rights-of-way and development within the subject site.

- (1) The entire referenced buffer shall be provided on or before December 31, 1999. No certificate of occupancy (C.O.) shall be issued for the project or any portion of the project after December 31, 1999 unless the required buffer has been provided.
- (2) No certificate of occupancy (C.O.) shall be issued for the project or any portion of the project unless the required buffer is provided and maintained between any of the referenced road rights-of-way and any development within 300' of any of the referenced road rights-of-way.

- b. Buffering between project uses and adjacent uses shall be provided and maintained as required in the county's land development regulations in effect at the time a site plan application is considered for approval or approval extension.
- c. The county's SR 60 special 75' building setback, as established in the county land development regulations, shall apply to all buildings on site.
- d. Height, size, and type of all signs used within the project shall be addressed in a developers agreement between the developer and the county, approved by the county prior to site plan release.

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BE IT FURTHER RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

1. Any modification or deviations from the approved plans or requirements of this Development Order shall be submitted to the Community Development Director for a determination by the Board of County Commissioners of Indian River County and Department of Community Affairs as to whether the change constitutes a substantial deviation as provided in section 380.06(19), Florida Statutes. The Board of County Commissioners of Indian River County shall make its determination of substantial deviation at a public hearing after notice to the developer.
2. Indian River County shall monitor the development of the project to ensure compliance with this Development Order. The Indian River County Community Development Director shall be the local official assigned the responsibility for monitoring the development and enforcing the terms of the Development Order. The Community Development Director may require periodic reports of the developer with regard to any item set forth in this Development Order.
3. The developer shall make an annual report as required by Section 380.06(18), Florida Statutes. The annual report shall be submitted each year on the anniversary date of the adoption of the Development Order and shall include the following:
 - a. Any changes in the plan of development, or in the representations contained in the Application for Development Approval, or in the phasing for the reporting year and for the next year;
 - b. A summary comparison of development activity proposed and actually conducted for the year;
 - c. Undeveloped tracts of land that have been sold, transferred, or leased to a successor developer;
 - d. Identification and intended use of lands purchased, leased, or optioned by the developer adjacent to the original site since the Development Order was issued;
 - e. An assessment, listing the developer's and local government's compliance with each of the conditions of approval contained in this Development Order and the commitments specified in the Application for Development Approval and summarized in the Regional Planning Council Assessment for the development undertaken; This assessment shall include a list of each Development Order condition number and a corresponding statement regarding the status of compliance with that condition.
 - f. Any request for a substantial deviation determination that was filed in the reporting year or is anticipated to be filed during the next year;
 - g. An indication of a change, if any, in local government jurisdiction for any portion of the development since the Development Order was issued;
 - h. A list of significant local, state, and federal permits which have been obtained or which are pending by agency, type of permit, permit number, and purpose of each;
 - i. The annual report shall be transmitted to Indian River County, the Treasure Coast Regional Planning Council, the

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Florida Department of Community Affairs, the Florida Department of Environmental Protection, the South Florida Water Management District, and such additional parties as may be appropriate or required by law;

- j. A copy of any recorded notice of the adoption of a Development Order or the subsequent modification of an adopted Development Order that was recorded by the developer pursuant to Subsection 380.06(15), Florida Statutes; and,
 - k. Any other information requested by the Board of County Commissioners of Indian River County or the Indian River Community Development Director to be included in the annual report.
- 4. The definitions found in Chapter 380, Florida Statutes, shall apply to this Development Order.
 - 5. Indian River County hereby agrees that prior to July 19, 2014 the Indian River Mall Development of Regional Impact shall not be subject to down zoning, unit density reduction, or intensity reduction, except as outlined in Condition 2.(a). through 2.(h). of this Development Order, unless the County demonstrates that substantial changes in the conditions underlying the approval of the Development Order have occurred, or that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by Indian River County to be essential to the public health, safety, or welfare.
 - 6. This Development Order shall be binding upon the developer and its assignees or successors in interest. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designated as successor in interest to, or which otherwise possesses any of the powers and duties of any referenced government agency in existence on the effective date of this Development Order.
 - 7. The approval granted by this Development Order is conditional and shall not be construed to obviate the duty of the developer to comply with all other applicable local, state, and federal permitting requirements.
 - 8. In the event that any portion or section of this Development Order is deemed to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, then this development shall be required to obtain a substantial deviation determination.
 - 9. This Development Order shall become effective upon final approval of the comprehensive plan amendment associated with the project.
 - 10. Certified copies of this Development Order shall be transmitted immediately by certified mail to the Department of Community Affairs, the Treasure Coast Regional Planning Council, and Edward J. DeBartolo Corporation.

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PASSED AND ADOPTED in a public hearing held on this the 19
day of July, 1994.

The foregoing resolution was offered by Commissioner
Eggert and the motion was seconded by Commissioner
Bird, and, upon being put to a vote, the vote was as
follows:

Chairman John W. Tippin	<u>Aye</u>
Vice Chairman Kenneth R. Macht	<u>Aye</u>
Commissioner Fran Adams	<u>Aye</u>
Commissioner Richard N. Bird	<u>Aye</u>
Commissioner Carolyn K. Eggert	<u>Aye</u>

This Chairman thereupon declared the resolution duly passed and
adopted this 19 day of July, 1994.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

by John W. Tippin
Chairman John W. Tippin

ATTEST

Jeffrey K. Barton, County Clerk

By Rosemary Rivera, D.C.
ROSEMARY RIVERA D.C.

APPROVED AS TO PLANNING MATTERS:

Robert M. Keating
Robert M. Keating, AICP
Community Development Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

William G. Collins
William G. Collins, Deputy
County Attorney

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EXHIBIT A

#100
Ref. Dwg. 1011-P5A
6-14-89
REV. 10/27/89
REV. 11/3/89
REV. 11/17/93

BOUNDARY SURVEY DESCRIPTION
FOR INDIAN RIVER MALL D.R.I.
164.520 ACRES

Beginning at a point being 50.0 feet east and 30.0 feet south of the Northwest corner of the Northwest one-quarter of Section 5, Township 33 South, Range 39 East; run parallel to the North line of said Section 5, S 89° 52' 28" E a distance of 614.00 feet to the principal point and place of beginning of the following description:

Thence S 89° 52' 28" E, 72.00 feet to a point; thence S 00° 07' 32" W, 425.00 feet to a point; thence S 44° 52' 28" E, 35.36 feet to a point; thence S 89° 52' 28" E, 250.00 feet to a point; thence N 00° 07' 32" E, 230.00 feet to a point; thence S 89° 52' 28" E, 770.02 feet to a point; thence S 00° 07' 32" W, 143.38 feet to a point; thence N 87° 01' 21" E, 550.00 feet to a point; thence S 57° 58' 39" E, 556.50 feet to a point; thence S 32° 01' 21" W, 122.35 feet to a point; thence S 57° 58' 39" E, 330.00 feet to a point; thence S 47° 13' 39" E, 69.27 feet to a point; thence S 89° 51' 57" E, 917.49 feet to a point; thence S 00° 08' 03" W, 339.44 feet to a point; thence S 00° 07' 12" W, 1153.69 feet to a point on north right-of-way line of State Road 60 Highway; thence run N 89° 53' 54" W along said North right-of-way line a distance of 1326.17 feet; thence run S 89° 52' 37" W a distance of 709.12 feet to a point of intersection with the Southerly extension of the West boundary line of Wallace Acres Subdivision, as recorded in Plat Book 7, page 12 Public Records of Indian River County, Florida, and said North right-of-way; thence run N 00° 02' 44" E along said West boundary line a distance of 494.52 feet to the Northeast corner of said subdivision; thence run N 89° 50' 24" W along the North boundary line a distance of 619.04 feet to a point; thence run S 00° 02' 43" W a distance of 497.58 feet to the said North right-of-way line of State Road 60 Highway; thence run S 89° 52' 25" W a distance of 1277.97 feet to a point on the West line of Tract 5 of said Section 5; thence run N 00° 01' 21" E and parallel to the West line of said Section 5 a distance of 1630.00 feet to a point; thence N 45° 00' 00" E, 465.00 feet to a point; thence N 67° 00' 00" E, 123.49 feet to a point; thence S 89° 52' 28" E, 145.85 feet to a point; thence N 45° 07' 32" E, 35.36 feet to a point; thence N 00° 07' 32" E, 425.00 feet to the point of beginning and containing 164.520 acres of land more or less.

EXHIBIT C

EXHIBIT HP-1: HABITAT PRESERVATION MAP

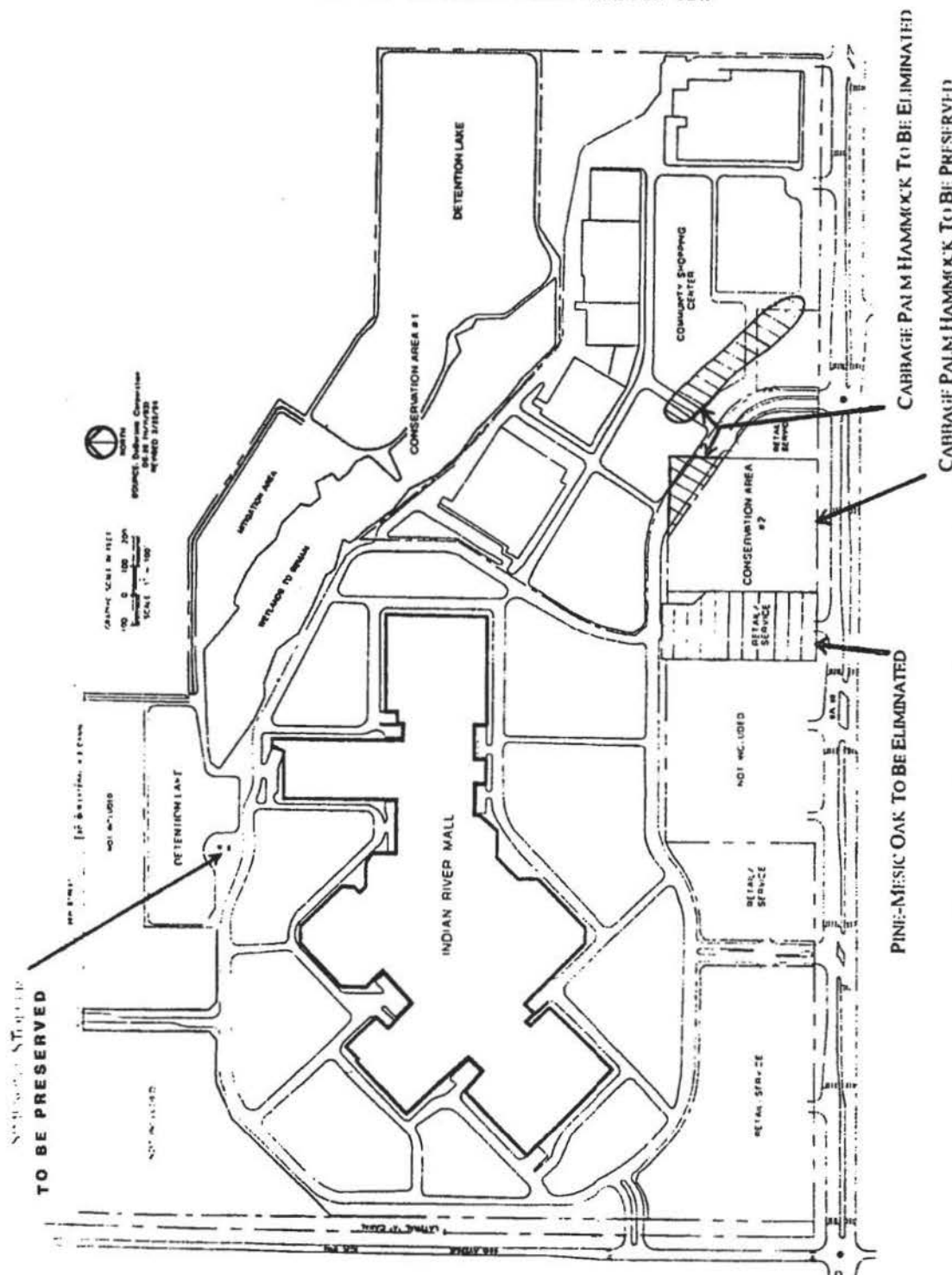
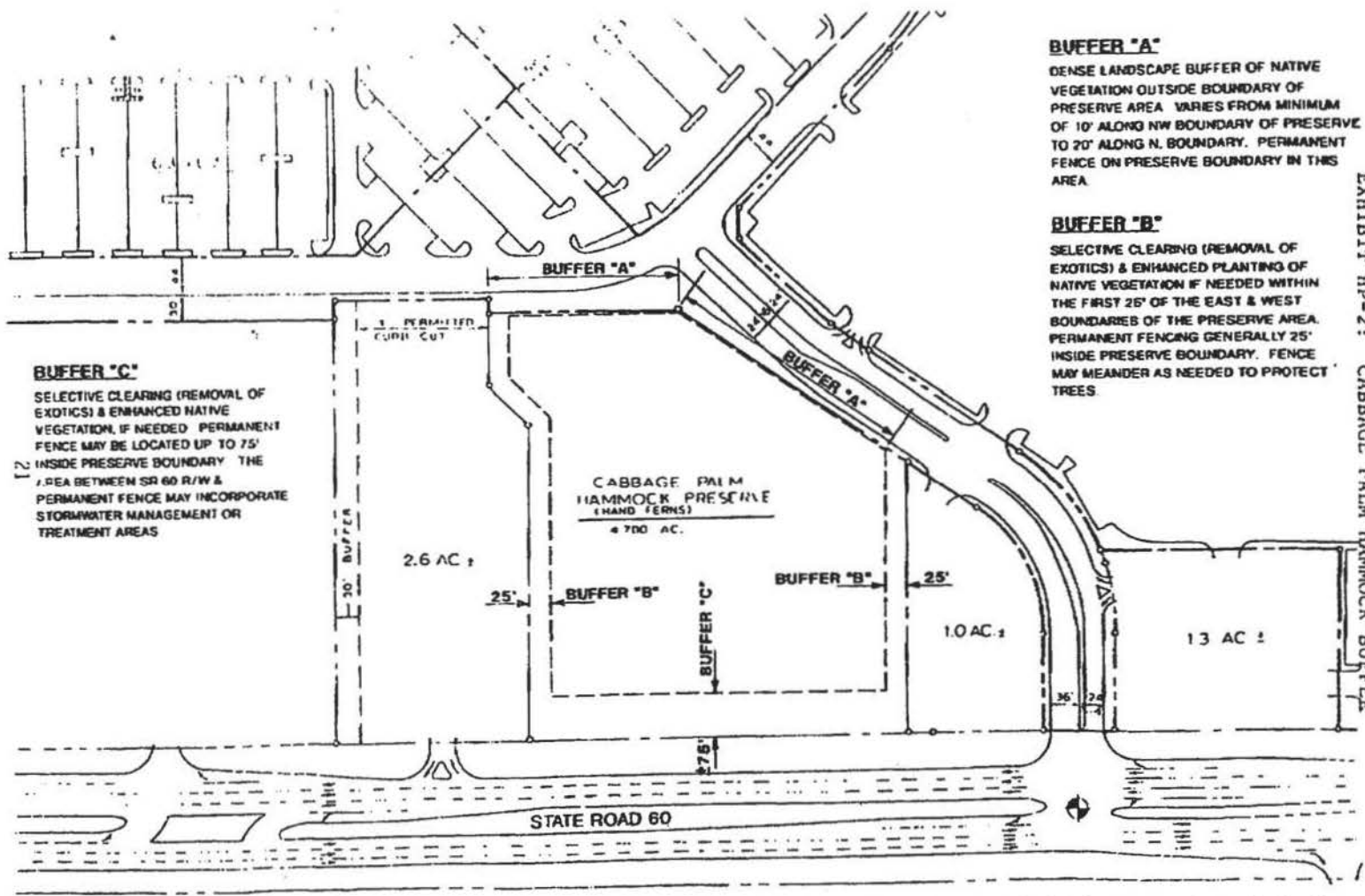


EXHIBIT D

EXHIBIT HP-2: CABBAGE PALM HAMMOCK BUFFER

**BUFFER "C"**

SELECTIVE CLEARING (REMOVAL OF EXOTICS) & ENHANCED NATIVE VEGETATION, IF NEEDED. PERMANENT FENCE MAY BE LOCATED UP TO 75' INSIDE PRESERVE BOUNDARY. THE AREA BETWEEN SR 60 R/W & PERMANENT FENCE MAY INCORPORATE STORMWATER MANAGEMENT OR TREATMENT AREAS.

BUFFER "A"

DENSE LANDSCAPE BUFFER OF NATIVE VEGETATION OUTSIDE BOUNDARY OF PRESERVE AREA. VARIES FROM MINIMUM OF 10' ALONG NW BOUNDARY OF PRESERVE TO 20' ALONG N. BOUNDARY. PERMANENT FENCE ON PRESERVE BOUNDARY IN THIS AREA.

BUFFER "B"

SELECTIVE CLEARING (REMOVAL OF EXOTICS) & ENHANCED PLANTING OF NATIVE VEGETATION IF NEEDED WITHIN THE FIRST 25' OF THE EAST & WEST BOUNDARIES OF THE PRESERVE AREA. PERMANENT FENCING GENERALLY 25' INSIDE PRESERVE BOUNDARY. FENCE MAY MEANDER AS NEEDED TO PROTECT TREES.