

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	=====	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Net Impact					
Is Item Included In Current Budget?	Yes	_____	No	_____	
Budget Account No.:	Fund	_____	Agency---	Org	_____
	Reporting Category	_____	Various		

B. Recommended Sources of Funds/Summary of Fiscal Impact:
There will be no impact on ad valorem funds.

C. Department Fiscal Review:

William M. Groff
Impact Fee Manager *RM*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

Jan D. 1-28-09
OFMB *MD*
1/27 *SW* *1/27/09* *ON* *1/21/09*

John J. Judd *1/30/09*
Contract Administration
Expenses 1/30/09

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

Steven B.
Assistant County Attorney

C. Other Department Review:

Department Director

Prepared by and return to:
Willie M. Swoope
Impact Fee Manager
2300 BUILDING
2300 N. Jog Road
West Palm Beach, Fl 33411-2741

SPECIAL ALLOCATION AGREEMENT

This Agreement is made and entered into on _____, 2008, by and among 1950 CONGRESS AVENUE, LLC, a Florida limited liability company, whose address is 5858 Central Avenue, St. Petersburg, Florida 33707 (hereinafter referred to as "1950"), WR 1 LLC, a Florida limited liability company, whose address is 980 North Federal Highway, Suite 200, Boca Raton, Florida 33432 (hereinafter referred to as "WR 1"), WR 2 LLC, a Florida limited liability company, whose address is 980 North Federal Highway, Suite 200, Boca Raton, Florida 33432 (hereinafter referred to as "WR 2"), SOUTH FLORIDA DEVCO, INC., a Florida corporation, whose address is 1275 Gateway Boulevard, Boynton Beach, Florida 33426 (hereinafter referred to as "Devco") and PALM BEACH COUNTY, Florida, a political subdivision of the State of Florida, having its offices at 301 North Olive Avenue, West Palm Beach, Florida 33401 (hereinafter referred to as "County").

RECITALS

WHEREAS, 1950 is the master developer of the Boynton Town Center and Boynton Village projects, which were aggregated under the County's Traffic Performance Standards requirements (the two projects are hereinafter referred to as the "Project"); and

WHEREAS, 1950 (hereinafter referred to as the "Master Developer") applied for and received government approvals to develop the Project; and

WHEREAS, the Project approvals contained requirements for the dedication of right-of-way and construction of off-site road improvements (hereinafter referred to as the "Off-site Improvements") for which an impact fee credit was established by the County in the amount of \$10,667,782.00; and

WHEREAS, the property comprising the Project was platted as the Boynton Town Center, A P.C.D., which was recorded in Plat Book 106, Pages 144-151; and

WHEREAS, WR 1, WR 2, and Devco (hereinafter collectively referred to as the "Parcel Developers") acquired undeveloped parcels within the Project from the Master Developer; and

WHEREAS, WR 1 acquired and owns the property platted as SMU Parcel 4 within the Project, with a legal description of this parcel attached as Exhibit 1; and

WHEREAS, WR 2 acquired and owns the property platted as SMU Parcel 3 within the Project, with a legal description of this parcel attached as Exhibit 2; and

WHEREAS, Devco acquired and owns the property platted as SMU Parcel 1 and SMU Parcel 2 within the Project, with a legal description of these parcels attached as Exhibit 3; and

WHEREAS, 1950 owns the remaining development parcels within the Project, with a legal description of these parcels attached as Exhibit 4; and

WHEREAS, some of the 1950 parcels have been developed, or partially developed, utilizing a portion of the road impact fee credit and these parcels are eligible to utilize a portion of the remaining road impact fee credit; and

WHEREAS, there are mortgages on specific parcels of the property and such mortgagees have joined in this Agreement, with their joinder and consent included herewith; and

WHEREAS, the Master Developer and the Parcel Developers entered into a Development Agreement which provided that the Parcel Developers would contribute toward a portion of the Off-site Improvements and would be entitled to a share of the impact fee credits established for those Off-site Improvements; and

WHEREAS, the Master Developer is in the process of constructing the Off-site Improvements and the Parcel Developers have made some, but not all, of their required contributions for the Off-site Improvements; and

WHEREAS, the amount of impact fee credit to be assigned to the Parcel Developers and to be utilized on the remainder of the undeveloped parcels can not be finally determined until the Parcel Developers have made all of their required contributions for the Off-site Improvements; and

WHEREAS, the purpose of this Agreement is to establish a special allocation of impact fees for the benefit of the Master Developer and Parcel Developers and to

establish a special assignment letter process for submission with building permit applications to address the assignment of road impact fee credits to individual development parcels within the Project; and

WHEREAS, the Master Developer has notified by certified mail all owners of record of any undeveloped land within the Project of this Special Allocation Agreement, and has received no bona fide claim to the credits as a result; and

WHEREAS, the Master Developer has met the requirements of Article 13.A.11.A of the Unified Land Development Code, which allows developers to assign or allocate their credit to specific parcels of land within the affected development.

NOW THEREFORE, in consideration of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby resolve and agree as follows:

1. RECITALS

The recitals set forth above are true and correct and form a part of this Agreement.

2. SPECIAL ALLOCATION

The County hereby authorizes a special allocation of road impact fee credit within the Project and authorizes the Master Developer to establish the amount of road impact fee credit to be allocated to each development parcel through the issuance of Special Assignment Letters. Specifically, all road impact fee credits within the Project shall be assigned and utilized only through the issuance of Special Assignment Letters by the Master Developer. Prior to the application for any additional building permits within the Project that will be utilizing any of the road impact fee credits, the Master Developer shall issue a Special Assignment Letter indicating the amount of road impact fee credit assigned to that particular parcel. The Special Assignment Letter shall be submitted with each application for building permit(s), with the assigned credit amount being depleted in accordance with the then current rates for road impact fees. The form of the Special Assignment Letter is contained as Exhibit 5. All Special Assignment Letters consistent with the form provided for in Exhibit 5 shall be honored by the County. Any credits not specifically assigned in accordance with the above process shall remain vested with the Master Developer. Notwithstanding the provisions of this paragraph, however, the Master Developer and the Parcel Developers acknowledge and agree that the County shall not be responsible for verifying the authenticity of any Special Assignment Letter submitted.

3. INDEMNIFICATION OF COUNTY

Master Developer and the Parcel Developers, their heirs, assigns and successors in interest, unconditionally and irrevocably and for good and valuable consideration, agrees to indemnify, hold harmless, and defend County from and against any and all claims, liabilities, damages, suits and judgments relating to and arising out of claims by other owners or developers that they are entitled to all or some portion of the impact fee credit which is the subject of this Agreement.

4. NOTICE

All notices or other communications required or permitted under this Agreement shall be in writing and shall be addressed as follows:

As to 1950: 1950 Congress Avenue LLC
 c/o Sembler Family Partnership #35, Ltd.
 5858 Central Avenue
 St. Petersburg, Fl. 33707
 Attn: Craig Sher

w/copy to: The Sembler Company
 1540 South Johnson Ferry Road
 Suite 100
 Atlanta, Georgia 30319
 Attn: Jeffery Fuqua

w/copy to: The Sembler Company
 1540 South Johnson Ferry Road
 Suite 100
 Atlanta, Georgia 30319
 Attn: Mike Hagan

w/copy to: Corbett and White, P.A.
 1111 Hypoluxo Road
 Suite 207
 Lantana, Fl. 33462
 Attn: John Corbett, Esquire

If to WR 1: WR 1 LLC
 980 North Federal Highway
 Suite 200

Boca Raton, Florida 33432
Attn: Anthony Comparato

w/copy to: Broad and Cassel
7777 Glades Road
Suite 300
Boca Raton, Florida 33434
Attn: Richard McFarland, Esquire

If to WR 2: WR 2 LLC
980 North Federal Highway
Suite 200
Boca Raton, Florida 33432
Attn: Anthony Comparato

w/copy to: Broad and Cassel
7777 Glades Road
Suite 300
Boca Raton, Florida 33434
Attn: Richard McFarland, Esquire

If to Devco: South Florida Devco, Inc.
1275 Gateway Boulevard
Boynton Beach, Florida 33426
Attn: Steve Liller

w/copy to: Platt and Surber, P.A.
205 N.E. 5th Terrace
Delray Beach, Florida 33444
Attn: Ronald L. Platt, Esquire

If to County: Palm Beach County Impact Fee Manager
Palm Beach County Planning, Zoning and Building
2300 Building
2300 N. Jog Road
West Palm Beach, Florida 33411
Attn: Willie Swoope

5. APPLICABLE LAW

Any litigation arising or relating to this Agreement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.

6. SUBSEQUENT MODIFICATION

This Agreement may not be modified or terminated except by written agreement signed by all the parties.

7. BINDING AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, assigns and successors in interest.

8. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding and agreement among the parties hereto.

9. SEVERABILITY

Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement.

10. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original, but together such counterparts shall constitute only one instrument.

11. EFFECTIVE DATE

This Agreement shall become effective upon signature of the last party to execute, excluding Mortgagees.



IN WITNESS WHEREOF, the parties hereto have executed this Special Allocation Agreement on the date set forth above.

Signed, sealed and delivered
in our presence:

J Ledbetter
Jennifer Ledbetter
Print Name

1950 CONGRESS AVENUE, LLC,
a Florida limited liability company

By: Sembler Family Partnership #35,
Ltd., a Florida limited partnership
Its: Manager

By: Sembler Retail, Inc.,
a Florida corporation
Its: General Partner

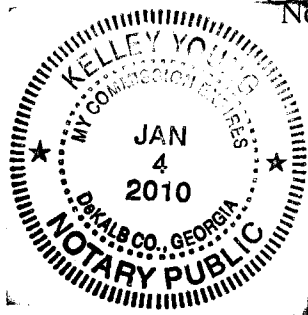
Brenda Cavanagh
Brenda Cavanagh
Print Name

JEFFREY S. FUQUA
Its: PRESIDENT Vice President
Dated: 12-12-08

STATE OF GEORGIA)
COUNTY OF DEKALB)

Sworn to and subscribed before me this 12th day of December, 2008 by
JEFFREY S. FUQUA, President of SEMBLER RETAIL, INC., a Florida corporation,
the General Partner of SEMBLER FAMILY PARTNERSHIP #35, LTD., the Manager of
1950 CONGRESS AVENUE, LLC, a Florida limited liability company, the on behalf of
the limited liability company. He is personally known to me.

My Commission Expires:
My Commission Number:
My Notary Seal:



[Signature]
Notary Public, State of Georgia

[Handwritten mark]

MORTGAGEE JOINDER AND CONSENT AS TO EXHIBIT 4 ONLY

The undersigned, being the owner and holder of a mortgage encumbering the portion of the property described in "Exhibit 4" of the foregoing Special Allocation Agreement owned by 1950 (the "Agreement") by virtue of the following:

Mortgage, Security Agreement and Fixture Filing given by 1950 to Wells Fargo Bank, National Association, dated November 18, 2005 recorded November 18, 2005, in Official Records Book 19557, Page 247, and Collateral Assignment of Leases, Rents and Contract Rights, dated November 18, 2005, and recorded November 18, 2005, in Official Records Book 19557, Page 271, as modified by that certain Mortgage Modification and Future Advance Agreement recorded in Official Records Book 21620, Page 1290, and that certain Mortgage Spreader Agreement recorded in Official Records Book 22445, Page 87, all of the Public Records of Palm Beach County, Florida,

the same having been recorded prior to the recordation of the Agreement, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, consents to and joins in the execution of the Agreement.

Dated this 5 day of December, 2008.

WITNESSES:

Sandra Ortiz

Sandra Ortiz
Print Name

Robert A. Groves

Robert A. Groves
Print Name

WELLS FARGO BANK, NATIONAL ASSOCIATION

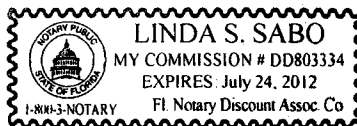
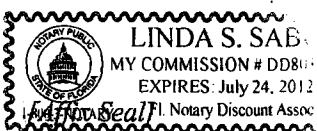
By: Carl M. Roeder

Carl M. Roeder, Senior Vice President

STATE OF FLORIDA)
) ss:
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me this 5 day of December, 2008, by CARL M. ROEDER, a Senior Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, on behalf of the association. He/She is personally known to me or has produced a _____ driver's license as identification.

Linda S. Sabo
Notary Public, State of Florida
My Commission Expires: 7/24/2012
My Commission Number: DD 803334



Paul J. Anderson

Paul J. Anderson
Print Name:

Jean Yin
Print Name

SOUTH FLORIDA DEVCO, INC.,
a Florida corporation

By: Peter Brennan
Print Name

Its: Agent

Dated: 10/28/08

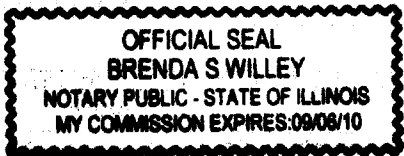
STATE OF FLORIDA ^{Illinois}
COUNTY OF DuPage

The foregoing instrument was acknowledged before me on the 28 day of October, 2008, by Peter Brennan, as Agent of South Florida Devco, Inc., a Florida corporation, on behalf of the Corporation. He is personally known to me or has provided _____ as identification..

Brenda S Willey
Notary Public-State of Florida

My Commission Expires:
My Commission Number:
My Notary Seal:

Dated: _____



SOUTH FLORIDA DEVCO, INC.
a Florida corporation
of South
on behalf of the Corporation. He is
as

Print Name:
Notary Public-State of Florida

Claudette Diamond

Claudette Diamond

Print Name:

Amy F

Amy Ferguson

Print Name

WR 1 LLC, a Florida limited liability company

By:

James Comparato
JAMES COMPARATO
Its MANAGER

Dated:

10/27/08

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on the 27th day of October 2008, by James Comparato JAMES COMPARATO, as Manager of WR1, LLC, a Florida limited liability company, on behalf of the Company. He is personally known to me or has provided as identification..

Claudette Diamond
Notary Public, State of Florida

My Commission Expires:
My Commission Number:
My Notary Seal:

NOTARY PUBLIC-STATE OF FLORIDA
Claudette Diamond
Commission #DD670093
Expires: JUNE 19, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

MORTGAGEE JOINDER AND CONSENT AS TO EXHIBIT 1 ONLY

The undersigned, being the owner and holder of a Mortgage encumbering the portion of the property described in "Exhibit 1" of the following Special Allocation Agreement owned by WRI LLC (the "Agreement") by virtue of the following:

Mortgage and Security Agreement in favor of Wachovia Bank, National Association, recorded June 12, 2007 in Official Records Book 21829, Page 263 of the Public Records of Palm Beach County, Florida.

Same having been recorded prior to the recordation of the foregoing Agreement hereby, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, consents to and joins in the execution of the foregoing Agreement.

Dated this 3rd day of Sept., 2008

WITNESSES:

Sabrina Geddes
Print Name: Sabrina Geddes

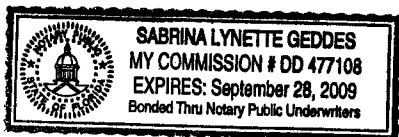
Thelma Morici
Print Name: THELMA MORICI

WACHOVIA BANK, NATIONAL ASSOCIATION

By: Bruce Perrine Jr.
Its: Managing Director

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 3rd day of September 2008, by Bruce Perrine, as Managing Director of Wachovia Bank, National Association, on behalf of the Association. He/She is personally known to me or has produced _____ as identification.



Sabrina Geddes
NOTARY PUBLIC
Print Name: SABRINA L GEDDES
State of Florida
My commission expires: DD 477108

gc

Claudette Diamond

Claudette Diamond
Print Name:

Susan Levin

Susan E. Levin
Print Name

WR 2 LLC, a Florida limited liability company

By: [Signature]
JAMES COMPARATO
Its MANAGER

Dated: 10/27/08

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on the 27th day of October, 2008, by James Comparato JAMES COMPARATO, as Manager of WR2, LLC, a Florida limited liability company, on behalf of the Company. He is personally known to me or ✓ has provided _____ as identification..

Claudette Diamond
Notary Public, State of Florida

My Commission Expires:
My Commission Number:
My Notary Seal:

NOTARY PUBLIC-STATE OF FLORIDA
Claudette Diamond
Commission # DD670093
Expires: JUNE 19, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

MORTGAGEE JOINDER AND CONSENT AS TO EXHIBIT 2 ONLY

The undersigned, being the owner and holder of a Mortgage encumbering the portion of the property described in "Exhibit 2" of the following Special Allocation Agreement owned by WR2 LLC (the "Agreement") by virtue of the following:

Mortgage and Security Agreement in the principal amount of \$7,395,000.00 from WR2 LLC to Wachovia Bank, National Association, dated February 15, 2006 and recorded February 24, 2006 in Official Records Book 19970, Page 1972, as modified by that Modification of Mortgage and Notice of Future Advance Agreement recorded in Official Records Book 21829, Page 298, of the Public Records of Palm Beach County, Florida.

Same having been recorded prior to the recordation of the foregoing Agreement hereby, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, consents to and joins in the execution of the foregoing Agreement.

Dated this 3rd day of Sept., 2008

WITNESSES:

Sabrina Geddes
Sabrina Geddes

Print Name:

Therma Moric

Therma Moric

Print Name:

WACHOVIA BANK, NATIONAL ASSOCIATION

By:

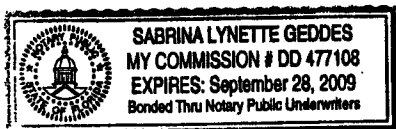
Bruse Perrine Jr

Its:

Managing Director

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 3rd day of September 2008, by Bruse Perrine Jr, as Managing Director of Wachovia Bank, National Association, on behalf of the Association He/She is () personally known to me or () has produced _____ as identification.



Sabrina Geddes
NOTARY PUBLIC

Print Name:

Sabrina Geddes

State of Florida

My commission expires: DD477108

JC

COUNTY

PALM BEACH COUNTY, FLORIDA

BY ITS BOARD OF COUNTY

COMMISSIONERS

By: _____

John F. Koons, Chairman

SHARON R. BOCK

CLERK AND COMPTROLLER

CIRCUIT COURT

BY: _____

Deputy Clerk

APPROVED AS TO FORM AND LEGAL

SUFFICIENCY

BY:  _____

Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

BY:  1.30.2009

Impact Fee Manager

Dated: _____

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 2/3/2009
(date)
by Willie M. Swope of Palm Beach County
(name of officer, title of officer) (name of corporation)

a Florida corporation, on behalf of the corporation. He/she is personally known to me or
has produced _____ as identification.
(type of identification)

By: Michele A. Bonanni
Name Michele A. Bonanni
Title or rank: _____
Serial Number _____



EXHIBIT 1

LEGAL DESCRIPTION OF WR 1 LLC PROPERTY

SMU Parcel 4, Boynton Town Center, A P.C.D., according to the Plat thereof, recorded in Plat Book 106, Page 144, of the Public Records of Palm Beach County, Florida.

EXHIBIT 2

LEGAL DESCRIPTION OF WR 2 LLC PROPERTY

SMU Parcel 3, Boynton Town Center, A P.C.D., according to the Plat thereof, recorded in Plat Book 106, Page 144, of the Public Records of Palm Beach County, Florida.

EXHIBIT 3

LEGAL DESCRIPTION OF SOUTH FLORIDA DEVCO, INC. PROPERTY

SMU Parcels 1 and 2, Boynton Town Center, A P.C.D., according to the Plat thereof, recorded in Plat Book 106, Page 144, of the Public Records of Palm Beach County, Florida.

EXHIBIT 4

**LEGAL DESCRIPTION OF 1950 CONGRESS AVENUE, LLC PROPERTY
REMAINING ELIGIBLE FOR ROAD IMPACT FEE CREDIT**

SMU Parcels 5, 6, 7 and 8 and C3 Parcels 1, 2, 3, 4, 5, and 6, Boynton Town Center, A P.C.D., according to the Plat thereof, recorded in Plat Book 106, Page 144, of the Public Records of Palm Beach County, Florida.

EXHIBIT 5

SPECIAL ASSIGNMENT LETTER

1950 Congress Avenue, LLC, a Florida limited liability company, hereby assigns road impact fee credit from the Boynton Village/Boynton Town Center Project in the amount of \$ _____ for use by _____ in receiving building permits for the following development:

on the following parcel of land within the Project:

The assigned amount of road impact fee credit shall be deducted from the available road impact fee credit for the Project.

1950 CONGRESS AVENUE, LLC, a
Florida limited liability company

By: Sembler Family Partnership #35, Ltd., a
Florida limited partnership, its Manager

By: Sembler Retail, Inc. a Florida corporation,
its General Partner

By: _____
Jeffrey S. Fuqua, President

