

Meeting Date
July 22, 2014



AGENDA	
Section	Public Hearing
Item No.	III.B.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	DEVELOPMENT AGREEMENT RE: DATA CENTER - 14SP-00174 9 (SECOND READING) DEVELOPER: JENSEN NORTH LLC & JENSEN SOUTH LLC DISTRICT 4 FISCAL IMPACT: NONE
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT/LAND DEVELOPMENT

Requested Action:

In accordance with Section 163.3227, F.S., it is requested that the Board of County Commissioners take action to approve the amended development agreement for the deferral of infrastructure improvements for the above referenced project.

Summary Explanation & Background:

It is requested that the Board of County Commissioners take action to approve the development agreement. On July 8, 2014 the Board authorized staff to schedule a second public hearing for the amended development agreement for the deferral of infrastructure improvements for the above referenced project. The Data Center is a proposed two phase office space development at the southeast corner of Viera Boulevard and Holiday Springs Road on approximately 12.70 acres. Phase I consists of a one-story building containing 5,500 square feet for office space, and 19,200 square feet for the data center; while, the completion of Phase II will consist of a 58,610 sq ft two-story building instead of the previously planned one-story building containing 25,000 square feet of office space.

The development agreement contains the following stipulations:

1. Limits the use of Phase I to 5,500 square feet for office space; 19,200 square feet for the data center; 44 parking spaces and generator area.
2. Defines data center as a facility that stores electronic information/files for its clients and which contains multiple computer servers and associated computer hardware.
3. Defers the construction of fifty-five (55) parking spaces for the Phase I Data Center until such time as the developer or owner changes the use of the building to another permitted use allowed within RP zoning classification.
4. Requires the construction of the following roadway improvements prior to issuing the first Certificate of Occupancy for Phase II of the project:
 - a. West bound to south bound left turn lane on Viera Boulevard at the intersection of Viera Boulevard and Holiday Springs Road.
 - b. East bound right turn lane on Viera Boulevard at the project right-in/right-out ingress/egress access to Viera Boulevard. This ingress/egress access drive will remain as a right-in/right-out access point upon the widening of Viera Boulevard to four lanes by others.
 - c. Left turn lane on Holiday Springs Road at the project's Northern ingress/egress to Holiday Springs Road.

Clerk to the Board instruction: **Please return original agreement to Planning and Development.**

Exhibits Attached: Location maps, underline and strikethrough copy of agreement, and executed agreement.

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager	Department Director / Extension					
Stockton Whitten		Mel Scott, AICP		Robin M. Sobrino, AICP, Planning & Development Department				



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

July 23, 2014

MEMORANDUM

TO: Robin Sobrino, Planning and Development Director

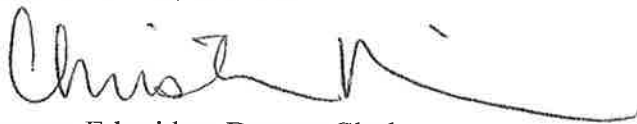
RE: Item III.B, First Amended Development Agreement with Jensen North LLC and Jensen South LLC for Data Center – 14SP-001749

The Board of County Commissioners, in regular session on July 22, 2014, executed the amended Development Agreement with Jensen North LLC and Jensen South LLC, for the deferral of infrastructure improvements for the Date Center – 14SP-001749. Enclosed is the original Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for 
Tammy Etheridge, Deputy Clerk

/clm

Encl. (1)

cc: Contract Administration
Finance
Budget

This Instrument was prepared
by and return to:
Kimberly Bonder Rezanka, Esquire
DEAN MEAD
8240 Devereux Drive, Suite 100
Viera, FL 32940

_____ [Space above this line for recording] _____

**FIRST AMENDED
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, entered into this 22 day of July, 2014, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and JENSEN NORTH, LLC and JENSEN SOUTH, LLC both with a mailing address of 1901 Highway A1A, Indian Harbour Beach, FL 32937, (hereinafter referred to as "Developer/Owner"), amends the Development Agreement dated February 2, 2012, and recorded in the in the Official Records of Brevard County, Book 6536, Page 2303.

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property" or "land") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has developed Phase I, to include Building I of 24,700 square feet, utilized for a data center of 19,200 square feet, limited office space of 5,500 square feet with an existing utility farm area and desires to develop the remainder of the Property as office space and for other permitted uses in the Residential- Professional zoning classification ("RP") in Phase II, with the potential of a Phase III for parking in the event that the Phase I data center converts to a new use, pursuant to the Brevard County Code; and

WHEREAS, Developer/Owner constructed a data center and, due to the low volume of traffic from the data center, requested deferral of design and construction of infrastructure improvements until a later date when Phase II is constructed or the data center is converted to another use, hence the potential Phase III parking improvements; and

WHEREAS, a Traffic Impact Analysis prepared by Lassiter Transportation Group, Inc. dated March 27, 2014 has been presented to Brevard County demonstrating the traffic impacts for the proposed development as phased on Overall Site and Phasing Plan prepared by Construction Engineering Group, Project 140102 dated May 10, 2014, also known as 14SP-00174 and attached hereto as Exhibit "B"; and

WHEREAS, Brevard County, Florida acknowledges the traffic impact analysis dated March 27, 2014; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on affected facilities or services and limit development until additional improvements are constructed as provided herein; and

WHEREAS, the development proposed is consistent with the County's Comprehensive Plan and land development regulations; and

WHEREAS, the County is authorized to regulate development of the Property and enter into development agreements pursuant to Sec. 163.3220, et. seq., Fla. Stat. (2011); and

WHEREAS, the parties wish to record this agreement to assure its provisions run with the land and bind the future owners, assignees and successors in interest to the real property;

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements as reflected in or

associated with the Overall Site and Phasing Plan prepared by Construction Engineering Group, Project 140102 ("Site Plan") dated May 10, 2014 , and attached hereto as Exhibit "B"; nor, shall the County be obligated in any way for the necessary traffic improvements described herein and on Brevard County Site Plan Application #14SP-00174 and the traffic impact analysis for the site. It is the intent of the parties that the Developer/Owner, its grantees, assignees, and successors in interest shall be responsible for the construction and maintenance of any improvements.

2. The Developer/Owner shall limit the use of the existing one-story Phase I, Building 1 to 5,500 square feet for office space, and 19,200 square feet for the data center as reflected in Exhibit "B". The data center is a facility that stores electronic information/files for its clients and which contains multiple computer servers and associated computer hardware. The data center eliminates the need for businesses located elsewhere to have onsite server facilities. No onsite meetings with clients are required for the operation of the center and the office area is limited as shown on the Site Plan.

The Developer/Owner shall limit the use of the two-story Phase II, Building 2 to 58,610 square feet of office space as reflected in Exhibit "B". The gym depicted within Building 2 shall not be opened to the general public. The gym is an ancillary improvement for use of the onsite employees of Building 1 & Building 2 only. The gym shall not exceed 3,500 square feet.

Development may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

3. Based upon Developer/Owner's agreement Phase I, Building 1, has limited the use to only Phase 1, Building 1, 19,200 square feet of data center and 5,500 square feet of office space; forty-four (44) parking spaces; two ingress/egress driveway to Holiday Springs Road; storm water area sufficient for on-site water retention as required by Brevard County; and generators (the

existing utility farm area), as reflected in Site Plan , Exhibit “B”.

If the Developer/Owner constructs Phase II(A) without changing the use of Phase 1, Building 1 as stated above, the Developer/Owner shall construct the Phase II(A) improvements which include Building 2 (39,645 square feet of office space), one hundred sixty-seven (167) additional parking for a total of two-hundred and eleven (211) parking spaces (including 26 spaces in the parking garage), on-site storm water area, and the ingress/egress to Viera Boulevard, as depicted on Site Plan , Exhibit “B”, prior to the County issuing the Certificate of Occupancy for Building 2. Additionally, the turn lane improvements, as outlined in paragraph 5, shall be constructed.

If the Developer/Owner subsequently constructs Phase II(B) without changing the use of Phase I, Building 1, the Developer/Owner shall construct the Phase II(B) improvements which include converting the parking garage into an additional 18,965 square feet of office space for Building 2 and forty-six (46) additional parking, for a total of at least two-hundred and fifty-seven (257) parking spaces.

4. When the use of the existing Phase I, Building 1 changes from the uses stipulated in Paragraph 2 of this Agreement to another permitted use in the RP zoning classification or an expansion of the office area the Developer/Owner shall:

A. Submit Change of Occupancy Permit to Brevard County Building Code Section; and

B. Construct the additional fifty-nine (59) parking spaces shown as future parking within Phase III of approved Site Plan #14SP-00174 prior to the County issuing the Certificate of Occupancy for the change in use; and

5. The Developer/Owner shall design, permit, and construct the following traffic improvements prior to the County issuing the first Certificate of Occupancy (CO) for Building 2.

A. West bound to south bound left turn lane on Viera Boulevard at the intersection of Viera Boulevard and Holiday Springs Road.

B. East bound right turn lane on Viera Boulevard at the project right-in/right-out ingress/egress access to Viera Boulevard. This ingress/egress access drive will remain as a right-in/right-out access point upon the widening of Viera Boulevard to four lanes by others. This access point will NOT be allowed to have a median opening at anytime in the future.

C. Left turn lane on Holiday Springs Road at the project's Northern ingress/egress to Holiday Springs Road.

6. The public facilities that will service the development are as follows:

A. Roads: the project is provided access off Holiday Springs Boulevard and Viera Boulevard, both which are existing public roadways.

B. Water: the project is served by an existing 12-inch water main (located within the western right-of-way of Holiday Springs Boulevard) under the City of Cocoa's jurisdiction. The proposed water mains, hydrants and appurtenances within the project will be dedicated to the City of Cocoa.

C. Sewer: the project is served by an existing gravity sewer main (located within the east right-of-way of Holiday Springs Blvd) under Brevard County's jurisdiction. There are no sewer dedications to Brevard County for this project as the proposed buildings will be served by sewer service extensions only.

D. Reuse: the project is served by an existing 12-inch reuse main (located within the east right-of-way of Holiday Springs Blvd) under Brevard County's jurisdiction. The proposed reuse mains and appurtenances within the project will be dedicated to Brevard County.

E. Parks: the project, while commercial in nature, may be served by a variety of Brevard County Parks in the South Area and Central Mainland, including but not limited to: Pineda Landing, Rotary Park at Suntree, Viera Regional Park, Riverwalk Family Park, Silver Pines Park, Community Park of Rockledge, McLarty Park and Rockledge Park.

F. Schools: the project as currently designed will have no impacts on schools, and a School Concurrency Exemption for Viera Data Center dated January 17, 2012, has issued from the School Board of Brevard County. Should the use of the project change to residential, it would currently be served by Quest Elementary School, Kennedy Middle School and Viera High School. Additionally, if the use changed to residential, Developer/Owner would be required to complete a School Facility Planning and Concurrency Application (School Impact Analysis), unless otherwise exempted or provided by Brevard County Ordinances.

7. The additional development of the Property, Phase II and Phase III, will require the following permits to be reviewed, approved, revised and/or obtained for the additional development of the land: from Brevard County, Site plan approval, Right-of-Way Use, Building permit; from St. Johns River Water Management District, an Environmental Resource Permit (ERP); from the City of Cocoa, the water plan approval; from Florida Department Environmental Protection, a potable water permit and a Notice of Intent (NOI) for stormwater discharge; from Army Corp of Engineers (ACOE), a wetlands permit; from Florida Wildlife Service (FWS), a biological opinion (BO) (note that the BO is actually issued through the ACOE - FWS acts as a consultant to ACOE for permitting of species); and from Florida Fish and Wildlife Conservation Commission (FF&WCC), a tortoise relocation.

8. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer/Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restriction. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property.

9. The duration of this Agreement shall be 30 years, or until Phase III is constructed, or if the data center is converted to another use, unless this Agreement is extended by mutual consent of the COUNTY and the Developer/Owner, subject to a public hearing in accordance with Sec. 163.3225, Fla. Stat. (2011).

10. Developer/Owner, upon execution of this Agreement, shall pay to County the cost of recording this Agreement in Brevard County, Florida.

11. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the Property and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____, 2014.

12. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Injunction or Code Enforcement Action as to Sections 1.7, 62-5, and 62-3206, Code of Ordinances of Brevard County, Florida, as it may be amended.

13. This agreement shall be recorded in the Public Records of Brevard County, Florida.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA

ATTEST:

Scott Ellis

Mary Bolin Lewis

Scott Ellis, Clerk
(SEAL)

Mary Bolin Lewis, Chairman JUL 22 2014
As approved by the Board on _____

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 22 day of July, 2014, by Mary Bolin Lewis, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

[Signature]


My commission expires

Notary Public



DEVELOPER/OWNER:

JENSEN NORTH, LLC,
1901 Highway A1A
Indian Harbour Beach, FL 32937



James W. Jensen, Manager

WITNESSES:





(Print Name of Witness)

Adam Berman

Ryan Gibbons

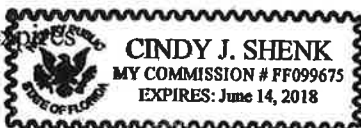
(Print Name of Witness)

STATE OF FLORIDA §
COUNTY OF BREVARD§

The foregoing instrument was acknowledged before me this 16 day of June, 2014, by JAMES W. JENSEN, Manager, JENSEN NORTH, LLC, who is personally known to me or who has produced as identification.

My commission expires

SEAL



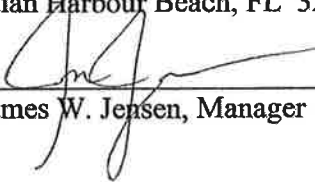


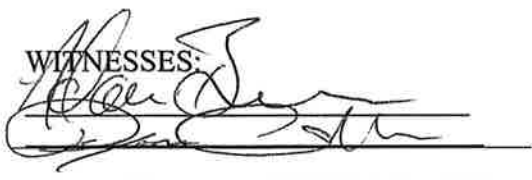
Notary Public

CINDY J. SHENK

(Name typed, printed or stamped)

JENSEN SOUTH, LLC,
1901 Highway A1A
Indian Harbour Beach, FL 32937


James W. Jensen, Manager

WITNESSES:


(Print Name of Witness)
Adam Berman
Ryan Gibbons

(Print Name of Witness)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 16 day of June, 2014, by JAMES W. JENSEN, Manager, JENSEN SOUTH, LLC, who is personally known to me or who has produced as identification.

My commission expires




Notary Public

SEAL

CINDY J SHENK (Name typed, printed or stamped)

Exhibit "A"

Legal Description:

Tract "E-E" of the Springs of Suntree as recorded in Plat Book 44, Page 26 & 27 of the public records of Brevard County, Florida lying within Section 35, Township 25 South, Range 36 East, Brevard County, Florida.

PHASING LEGEND:

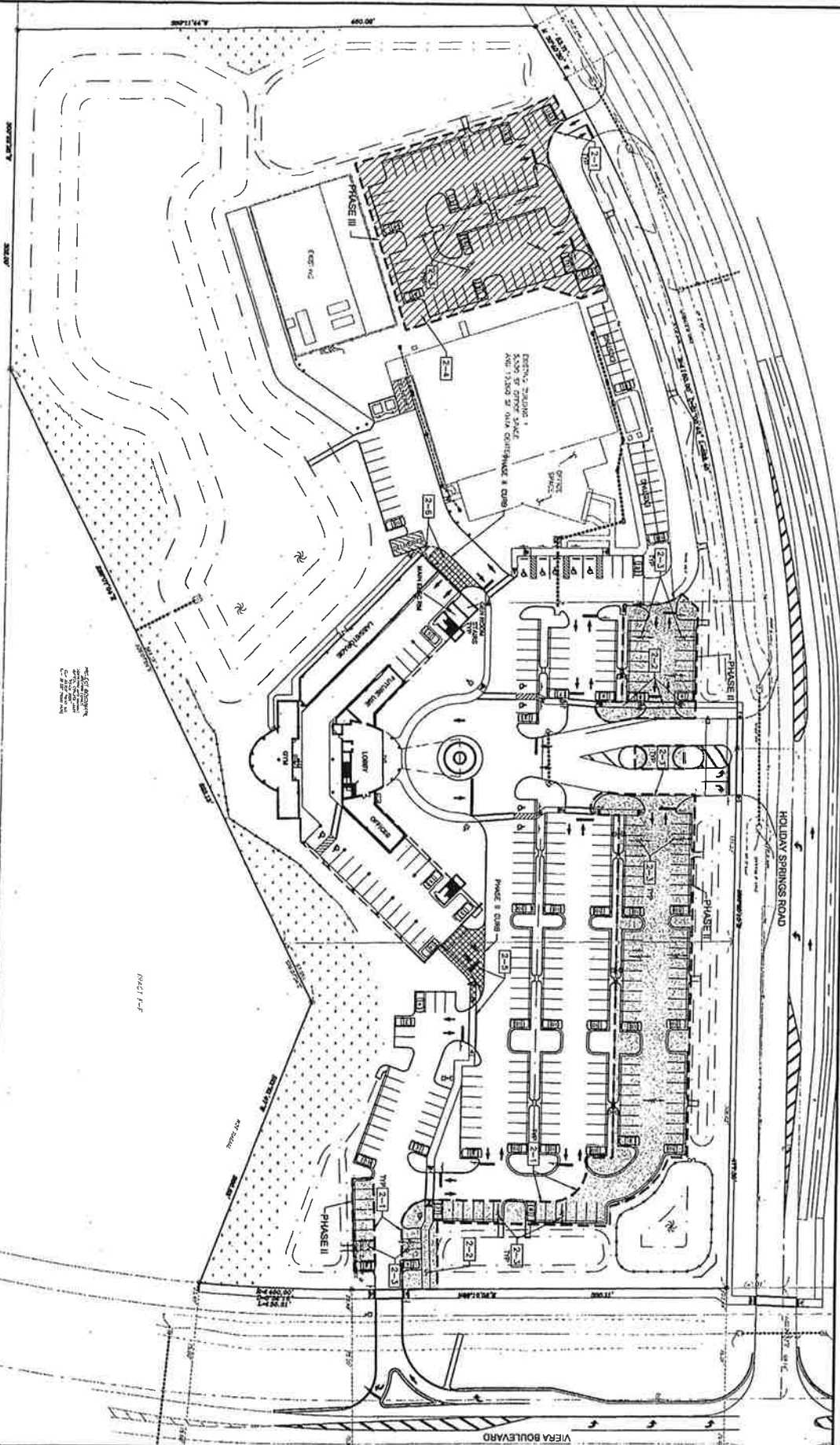
PHASE II
PHASE III

PHASING PLAN



PHASING NOTES:

- 2-1. AT THE END OF ALL PHASING PHASES, PARKING/DRIVEWAYS AND PHASE I
- 2-2. CONSTRUCTION SCHEDULE IN PHASE I TO THE NORTH-WEST CORNER
- 2-3. ADVANTAGE HALL OR COLLECTION SHALL BE OPEN FOR TRAFFIC AND SHALL BE
- 2-4. CONTINUED WORK AND FINISHES INCLUDING ALL WELLS AND PIPING IN
- 2-5. PHASE I. PHASE I FINISHES INCLUDING ALL WELLS AND PIPING IN
- 2-6. PHASE I FINISHES INCLUDING ALL WELLS AND PIPING IN
- 2-7. PHASE I FINISHES INCLUDING ALL WELLS AND PIPING IN
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DATE	10/21/14
SCALE	1"=40'
PROJECT NO.	140102
DESIGNED BY	JRT
DRAWN BY	NCW
CHECKED BY	
APPROVED BY	

SATCOM
 JENSEN NORTH, LLC.
 HOLIDAY SPRINGS RD., MELBOURNE 32840
 DRAWING TITLE
PHASING PLAN

CONSTRUCTION ENGINEERING GROUP
 consulting engineers

3111 West 10th Street
 Melbourne, FL 32909
 Tel: 321-253-1111
 Fax: 321-253-1112
 www.cegroup.com
 Date: 10/21/14

REV#	DATE	REVISION

AERIAL MAP

JENSEN NORTH LLC

jakewise2500



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2014

 Subject Property

 Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 6/23/2014

STRIKETHROUGH/UNDERLINE

COPY

This Instrument was prepared
by and return to:
Kimberly Bonder Rezanka, Esquire
DEAN MEAD
8240 Devereux Drive, Suite 100
Viera, FL 32940

_____ [Space above this line for recording] _____

FIRST AMENDED
DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2014~~2~~, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and JENSEN NORTH, LLC and JENSEN SOUTH, LLC ~~JAMES W. JENSEN, as Trustee of the James W. Jensen Living Trust u/t/a July 1, 2002,~~ both with a mailing address of 1901 Highway A1A, Indian Harbour Beach, FL 32937, ~~as amended~~ (hereinafter referred to as "Developer/Owner"), amends the Development Agreement dated February 2, 2012, and recorded in the in the Official Records of Brevard County, Book 6536, Page 2303.

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property" or "land") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has developed Phase I, to include Building I of 24,700 square feet, utilized for a data center of 19,200 square feet, and limited office space of 5,500 square feet, with an existing utility farm area and desires to develop the remainder of the Property as a data center and limited office space in Phase I and for other permitted uses in the Residential-Professional zoning classification ("RP") in Phase II, with the potential of a Phase III for parking in

the event that the Phase I data center converts to a new use, pursuant to the Brevard County Code;
and

WHEREAS, Developer/Owner ~~is constructing~~ a data center and, due to the low volume of traffic ~~anticipated~~ from the data center, ~~is requesting~~ deferral of design and construction of infrastructure improvements until a later date when Phase II is constructed or the data center is converted to another use, hence the potential Phase III parking improvements; and

WHEREAS, a Traffic Impact Analysis prepared by Lassiter Transportation
Group, Inc. dated ~~December 15, 2011~~ March 27, 2014 has been presented to Brevard County demonstrating the traffic impacts for the proposed development as phased on Overall Site and Phasing Plan #11SP-00326 (“Site Plan”) prepared by B.S.E. Consultants, Inc. Construction Engineering Group, Project 140102 dated May 10, 2014-11117, also known as 14SP-00174 and attached hereto as Exhibit “B”; and

WHEREAS, Brevard County, Florida ~~approves~~ acknowledges the traffic impact analysis ~~as of this date~~ dated March 27, 2014; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on affected facilities or services and limit development until additional improvements are constructed as provided herein; and

WHEREAS, the development proposed is consistent with the County’s Comprehensive Plan and land development regulations; and

WHEREAS, the County is authorized to regulate development of the Property and enter into development agreements pursuant to Sec. 163.3220, et. seq., Fla. Stat. (2011); and

WHEREAS, the parties wish to record this agreement to assure its provisions run with the

land and bind the future owners, assignees and successors in interest to the real property;

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements as reflected in or associated with the Overall Site and Phasing Plan prepared by Construction Engineering Group, Project 140102 ("Site Plan") dated May 10, 2014 Site Plan #11SP-00326 prepared by B.S.E. Consultants, Inc., Project 11117, and attached hereto as Exhibit "B"; nor, shall the County be obligated in any way for the necessary traffic improvements described herein and on Brevard County Site Plan Application #11SP-00326 #14SP-00174 and the traffic impact analysis for the site. It is the intent of the parties that the Developer/Owner, its grantees, assignees, and successors in interest shall be responsible for the construction and maintenance of any improvements.

2. The Developer/Owner shall limit the use of the existing one-story Phase I, Building 1 to 5,500 square feet for office space, and 19,200 square feet for the data center as reflected in Exhibit "B". The data center is a facility that stores electronic information/files for its clients and which contains multiple computer servers and associated computer hardware. The data center eliminates the need for businesses located elsewhere to have onsite server facilities. No onsite meetings with clients are required for the operation of the center and the office area is limited as shown on the Site Plan.

The Developer/Owner shall limit the use of the ~~one~~two-story Phase II, Building 2 to ~~25,000~~ 58,610 square feet of office space, as reflected in Exhibit "B". The gym depicted within Building 2 shall not be opened to the general public. The gym is an ancillary improvement for use of the onsite employees of Building 1 & Building 2 only. The gym shall not exceed 3,500 square feet.

Development may be further restricted by any changes to the Comprehensive Plan or the

Land Development Regulations.

3. Based upon Developer/Owner's agreement ~~to limit the use of the Phase I, Building 1 to the data center, if Developer/Owner decides to apply for a permit to develop~~ has limited the use to only Phase 1, Building 1, the 19,200 square feet of data center and 5,500 square feet of office space; Developer/Owner will only be required to construct the following Phase I improvements ~~which include, Building 1; forty-four (44) parking spaces; two (2) ingress/egress driveways to Holiday Springs Road; storm water areas 1, 2, and 3~~ sufficient for on-site water retention as required by Brevard County; and generators (the existing utility farm area), as reflected in Site Plan #11SP-00326, Exhibit "B".

If the Developer/Owner constructs Phase II(A) ~~2~~ without changing the use of Phase 1, Building 1 as stated above, the Developer/Owner shall construct the Phase II(A) improvements which includes Building 2 (~~39,645~~25,000 square feet of office space), one hundred sixty-seven (167) additional parking for a total of two-hundred and eleven (211)~~one hundred (100)~~ parking spaces (including 26 spaces in the parking garage), on-site storm water area, and the ingress/egress to Viera Boulevard, as depicted on Site Plan #11SP-00326, Exhibit "B", prior to the County issuing the Certificate of Occupancy for Building 2. Additionally, the turn lane improvements, as outlined in paragraph 5, shall be constructed.

If the Developer/Owner subsequently constructs Phase II(B) without changing the use of Phase I, Building 1, the Developer/Owner shall construct the Phase II(B) improvements which include converting the parking garage into an additional 18,965 square feet of office space for Building 2 and forty-six (46) additional parking, for a total of at least two-hundred and fifty-seven (257) parking spaces. The parking garage shall be eliminated.

4. When the use of the existing Phase I, Building 1 changes from the uses stipulated in

Paragraph 2 of this Agreement to another permitted use in the RP zoning classification or an expansion of the office area the Developer/Owner shall:

A. Submit Change of Occupancy Permit to Brevard County Building Code Section; and

B. Construct the additional ~~fifty-nine~~ five (595) parking spaces shown as future parking within Phase III of approved Site Plan ~~#14SP-00174#11SP-00326~~ prior to the County issuing the Certificate of Occupancy for the change in use; and

~~C. If Phase 2 exists at the time the Developer/Owner requests a Change of Occupancy Permit for Building 1, the turn lane improvements, as outlined in paragraph 5, shall be constructed.~~

5. The Developer/Owner shall design, permit, and construct the following traffic improvements prior to the County issuing the first Certificate of Occupancy (CO) for Building 2.

A. West bound to south bound left turn lane on Viera Boulevard at the intersection of Viera Boulevard and Holiday Springs Road.

B. East bound right turn lane on Viera Boulevard at the project right-in/right-out ingress/egress access to Viera Boulevard. This ingress/egress access drive will remain as a right-in/right-out access point upon the widening of Viera Boulevard to four lanes by others. This access point will NOT be allowed to have a median opening at anytime in the future.

C. Left turn lane on Holiday Springs Road at the project's Northern ingress/egress to Holiday Springs Road.

~~As described above, Developer/Owner shall be required to construct additional improvements by changing the use of the data center and office area described in Paragraph 4. The requirement for construction of additional improvements shall also be triggered or imposed if the Developer/Owner~~

~~changes the use of Building I and proceeds with the Phase II development. If the use of Building I changes and Phase II is constructed, the Developer/Owner shall design, (per Florida Department of Transportation Standards and all other applicable regulations) permit, and construct per the Traffic Impact Analysis dated December 15, 2011 and approved by Brevard County on _____, 20____, a one hundred and ninety-five foot (195') southbound left turn lane, with taper, on Holiday Springs Road. In addition to the construction of any required roadway improvements, the Developer/Owner shall construct the Phase II improvements which includes Building 2 (25,000 square feet of office space), one hundred (100) parking spaces, the ingress/egress to Viera Boulevard and any remaining improvements depicted on Site Plan #11SP-00326, Exhibit "B", prior to the County issuing the Certificate of Occupancy for Building 2.~~

6. The public facilities that will service the development are as follows:
 - A. Roads: the project is provided access off Holiday Springs Boulevard and Viera Boulevard, both which are existing public roadways.
 - B. Water: the project is served by an existing 12-inch water main (located within the western right-of-way of Holiday Springs Boulevard) under the City of Cocoa's jurisdiction. The proposed water mains, hydrants and appurtenances within the project will be dedicated to the City of Cocoa.
 - C. Sewer: the project is served by an existing gravity sewer main (located within the east right-of-way of Holiday Springs Blvd) under Brevard County's jurisdiction. There are no sewer dedications to Brevard County for this project as the proposed buildings will be served by sewer service extensions only.
 - D. Reuse: the project is served by an existing 12-inch reuse main (located within the east right-of-way of Holiday Springs Blvd) under Brevard County's

jurisdiction. The proposed reuse mains and appurtenances within the project will be dedicated to Brevard County.

E. Parks: the project, while commercial in nature, may be served by a variety of Brevard County Parks in the South Area and Central Mainland, including but not limited to: Pineda Landing, Rotary Park at Suntree, Viera Regional Park, Riverwalk Family Park, Silver Pines Park, Community Park of Rockledge, McLarty Park and Rockledge Park.

F. Schools: the project as currently designed will have no impacts on schools, and a School Concurrency Exemption for Viera Data Center dated January 17, 2012, has issued from the School Board of Brevard County. Should the use of the project change to residential, it would currently be served by Quest Elementary School, Kennedy Middle School and Viera High School. Additionally, if the use changed to residential, Developer/Owner would be required to complete a School Facility Planning and Concurrency Application (School Impact Analysis), unless otherwise exempted or provided by Brevard County Ordinances.

7. The additional development of the Property, Phase II and Phase III, will require the following permits to be reviewed, approved, revised and/or obtained for the additional development of the land: from Brevard County, Site plan approval, Right-of-Way Use, Building permit; from St. Johns River Water Management District, an Environmental Resource Permit (ERP); from the City of Cocoa, the water plan approval; from Florida Department Environmental Protection, a potable water permit and a Notice of Intent (NOI) for stormwater discharge; from Army Corp of Engineers (ACOE), a wetlands permit; from Florida Wildlife Service (FWS), a biological opinion (BO) (note that the BO is actually issued through the ACOE - FWS acts as a consultant to ACOE for permitting

of species); and from Florida Fish and Wildlife Conservation Commission (FF&WCC), a tortoise relocation.

8. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer/Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restriction. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property.

9. The duration of this Agreement shall be 30 years, or until Phase III is constructed, or if the data center is converted to another use, unless this Agreement is extended by mutual consent of the COUNTY and the Developer/Owner, subject to a public hearing in accordance with Sec. 163.3225, Fla. Stat. (2011).

10. Developer/Owner, upon execution of this Agreement, shall pay to County the cost of recording this Agreement in Brevard County, Florida.

11. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the Property and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____, 2014~~2~~.

12. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Injunction or Code Enforcement Action as to Sections 1.7, 62-5, and 62-3206, Code of Ordinances of Brevard County, Florida, as it may be

amended.

13. This agreement shall be recorded in the Public Records of Brevard County, Florida.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA

ATTEST:

Mitch Needleman
Scott Ellis, Clerk
(SEAL)

Chuck Nelson Mary Bowlin Lewis, Chairman
As approved by the Board on _____

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Chuck Nelson Mary Bowlin Lewis, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

My commission expires

Notary Public

DEVELOPER/OWNER:

JAMES W. JENSEN NORTH, LLC, as Trustee of
the
James W. Jensen Living Trust u/t/a July 1, 2002
1901 Highway A1A
Indian Harbour Beach, FL 32937

James W. Jensen, as Trustee Manager

WITNESSES:

(Print Name of Witness)

(Print Name of Witness)

STATE OF FLORIDA §
COUNTY OF BREVARD§

The foregoing instrument was acknowledged before me this ____ day of _____, 2014~~2~~, by JAMES W. JENSEN, Manager, JENSEN NORTH, LLC, as Trustee of the James W. Jensen Living Trust u/t/a July 1, 2002, who is personally known to me or who has produced as identification.

My commission expires

Notary Public

SEAL

(Name typed, printed or stamped)

JENSEN SOUTH, LLC,
1901 Highway A1A
Indian Harbour Beach, FL 32937

James W. Jensen, Manager

WITNESSES:

(Print Name of Witness)

(Print Name of Witness)

STATE OF FLORIDA §
COUNTY OF BREVARD§

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by JAMES W. JENSEN, Manager, JENSEN SOUTH, LLC, who is personally known to me or who has produced as identification.

My commission expires _____

Notary Public

SEAL

(Name typed, printed or stamped)

Exhibit "A"

Legal Description:

Tract "E-E" of the Springs of Suntree as recorded in Plat Book 44, Page 26 & 27 of the public records of Brevard County, Florida lying within Section 35, Township 25 South, Range 36 East, Brevard County, Florida.