TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Marcie O. Nolan, AICP, Acting Development Services Director/(954) 797-1101

PREPARED BY: Lise Bazinet, Planner II

SUBJECT: Developer's Agreement, DA 11-1-06, Rancho Alegre/2800 SW 148th Avenue/Generally located on SW 148th Avenue, between SW 31st Court and SW 26th Street.

AFFECTED DISTRICT: District 4

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM:
A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN BROWARD COUNTY, THE TOWN OF DAVIE, AND THE DEVELOPER (JAC F. BERMAN) FOR THE CONSTRUCTION OF ROAD IMPROVEMENTS RELATED TO THE RANCHO ALEGRE PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:
The petitioner's request is for Town Council to authorize the Mayor and Town Administrator to enter into a Regional Road Concurrency Agreement between the Town of Davie, Broward County, and the Developer. This Tri-Party Agreement is for improvements including the construction of an eastbound left turn lane on Southwest 14th Street at the driveway to Western High School, as well as modifying an existing driveway on Southwest 14th Street to and from Western High School by providing one 12-foot egress lane and two 15-foot ingress lanes. These improvements are being completed within the Town of Davie and benefit the local and regional transportation network. Additionally, this request is associated with Plat Application (P 11-6-06, Rancho Alegre) and is required to ensure traffic concurrency is met. Staff has no objection to the request.

PREVIOUS ACTIONS: n/a

CONCURRENCES: n/a

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S):
Staff finds that the application is complete and suitable for transmittal to Town Council for consideration subject to the petitioner providing a Letter of Credit associated with this agreement prior to issuance of any building permits.

Attachment(s):
Resolution, Developer's Justification, Agreement, Future Land Use Map, Zoning and Aerial Map

RESOLUTION NO._____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN BROWARD COUNTY, THE TOWN OF DAVIE, AND THE DEVELOPER (JAC F. BERMAN) FOR THE CONSTRUCTION OF ROAD IMPROVEMENTS RELATED TO THE RANCHO ALEGRE PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Broward County requires improvements to be satisfy concurrency on the regional road network; and

WHEREAS, Broward County requires that the Town of Davie not issue a certificate of occupancy on said plat until the Town receives confirmation from the County that the payment required for the improvements to satisfy traffic concurrency on the regional road network has been received.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008.

_____
MAYOR/COUNCILMEMBER

Attest:

_____

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2008.

Exhibit ***(Developer's Justification)***

PILLAR CONSULTANTS INC.

December 19, 2007

LISE BAZINET, Planner II
Town of Davie
Development Services Department,
Planning and Zoning Division
6591 Orange Drive
Davie, Florida 33314

Office: 954-797-1103
Fax: 954-797-1204

RE: **RANCHO ALEGRE – SP 11-3-06** Traffic Concurrency Agreement
PILLAR Job No. 02021B

Dear Ms. Bazinet:

A review was initiated at Broward County for the Rancho Alegre Plat. Following the review, their findings stated that the application does not satisfy the concurrency requirements for the regional road network. The proposed development falls within the following impact area:

Southwest 14 Street from Southwest 154 Avenue to Southwest 136 Avenue: Segment No. 555 (4 trips/peak hour).

The four (4) additional trip impacts are planned to be mitigated via a proposed eastbound left turn lane on SW 14 Street along with a modification of the existing driveway to and from Western High School (please see attached letter from BC Development Management Division approving this mitigation plan). The County Highway Construction and Engineering Division has requested that the Traffic Concurrency Agreement be executed by the property owner and the Town of Davie.

We respectfully request that the Traffic Concurrency Agreement for the Rancho Alegre Plat be scheduled for approval at the next available Town Council Meeting.

Sincerely,

Pillar Consultants, Inc

Jason Wilson
Project Engineer

BROWARD COUNTY
FLORIDA

Department of Urban Planning and Redevelopment
DEVELOPMENT MANAGEMENT DIVISION
115 S. Andrews Avenue, Room A-240 • Fort Lauderdale, Florida 33301 • 954-357-6666 • FAX 954-357-6521

December 9, 2005

Mr. Herbert E. Stanley
Pillar Consultants, Inc.
5230 South University Drive, Suite 104
Davie, Florida 33328

DEC 14 2005

RE: Rancho Allegre Plat (005-MP-03)
Traffic Concurrency Mitigation

Dear Mr. Stanley:

This is to advise that the Highway Construction and Engineering Division has approved the 125% cost estimate which you submitted for the eastbound left turn lane on SW 14 Street along with the modification of the existing driveway to and from Western High School. Attached please find a proposed Traffic Concurrency Agreement for the Rancho Allegre Plat which requires the developer to provide security for and construct these improvements.

Please have the agreement executed by the property owner(s) and the Town of Davie, and return it to me, along with an original letter of credit in the amount of $103,858, a current title opinion and a check in the amount of $290 (agreement review fee). As soon as the agreement and letter of credit are approved by the County Attorney's Office, the plat and agreement will be scheduled for County Commission approval.

If you have any questions in this regard, please advise.

Sincerely,

Martin Berger
Planning Section Manager

Attachment

Broward County Board of County Commissioners
Josephus Eggelletion, Jr. • Ben Graber • Sue Gunzburger • Kristin D. Jacobs • Ilene Lieberman • John E. Rodstrom, Jr. • Jim Scott • Diana Wasserman-Rubin • Lois Wexler
www.broward.org

Exhibit ***(Developer's Agreement)***

Return recorded document to:

Development Management Division
115 S. Andrews Avenue, A240
Fort Lauderdale, FL 33301

Document prepared by:

DEC 14 2005

NOTICE: PURCHASERS, GRANTEES, HEIRS, SUCCESSORS AND ASSIGNS OF ANY INTEREST IN THE PROPERTY SET FORTH ON EXHIBIT "A" ARE HEREBY PUT ON NOTICE OF THE OBLIGATIONS SET FORTH WITHIN THIS AGREEMENT WHICH SHALL RUN WITH THE PROPERTY UNTIL FULLY PAID AND/OR PERFORMED.

REGIONAL ROAD CONCURRENCY AGREEMENT
CONSTRUCTION OF IMPROVEMENTS
RELATED TO THE RANCHO ALLEGRE PLAT (005-MP-03)

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

_____, its successors and assigns, hereinafter referred to as "DEVELOPER",

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The Town of _DAVIE_, a municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as "TOWN"

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas; and

WHEREAS, DEVELOPER has applied for approval of or an amendment to the **Rancho Allegre Plat (005-MP-03)**, hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on January 12, 2005, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for approval of or amendment to the PLAT does not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code ("CODE"); and

WHEREAS, DEVELOPER has conducted a study and has determined that certain remedial measures will mitigate the traffic impacts so that the PLAT or amendment to the PLAT will satisfy Broward County concurrency standards; and

WHEREAS, the Broward County Development Management Division has approved these remedial measures and finds that its concurrency requirements for the PLAT or the amendment to the PLAT will be met with the execution of, and compliance with, the terms of this Agreement by DEVELOPER; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.

2. Construction of Improvements.

PLEASE CHECK THE APPROPRIATE SECTION

[X] IMPROVEMENTS CONSTRUCTED BY DEVELOPER

(a) DEVELOPER agrees to construct the improvements described in Exhibit "B" attached hereto, hereinafter referred to as the "Improvements." DEVELOPER agrees to complete the Improvements prior to receipt of the first certificate of occupancy for property within the PLAT.

(b) If the improvements described in Exhibit "B" are on a state road, as that term is defined in Chapter 334, Florida Statutes, DEVELOPER agrees that, prior to PLAT recordation, DEVELOPER shall provide COUNTY with proof of having received a permit or letter of intent to permit from the State of Florida Department of Transportation for the Improvements.

(c) DEVELOPER shall provide to COUNTY, contemporaneously with this Agreement, an irrevocable Letter of Credit, attached hereto as Exhibit "C," in

the amount of **$103,858.00** in a form acceptable to the COUNTY, which represents 125% of the costs of the Improvements.

(d) The Improvements described in Exhibit "B" shall be installed in accordance with applicable COUNTY, State of Florida Department of Transportation standards and specifications and in accordance with the Development Review Report for the PLAT. The construction plans for the Improvements, including pavement marking and signing plans, shall be submitted to COUNTY for review and approval prior to commencement of construction. Construction shall be subject to inspection and approval by the COUNTY. Pavement marking and signing shall be provided for all of the Improvements and shall be subject to review, field inspections and final approval by the Broward County Traffic Engineering Division, which Improvements shall be consistent with the previously approved plans.

(e) Developer agrees that this agreement shall be recorded in the Official Records of Broward County, Florida, against the property described in Exhibit "A" to put subsequent purchasers, grantees, heirs, successors and assigns of any interest in such property on notice of the obligations set forth herein, which shall run with the property until fully performed. However, the amount(s) set forth above which are secured by a letter of credit shall not constitute a lien on the property unless and until the provisions below are activated by the recording of a "Notice of Lien."

(f) If property is located within a municipality, DEVELOPER, its successors and assigns agree that no building permits or certificates of occupancy shall be obtained from the municipality for construction of a principal building within the Plat until such time as DEVELOPER provides the municipality with written confirmation from COUNTY that engineering plans for the required improvement have been approved by the Broward County Engineering Division and that DEVELOPER has complied with paragraph 2(c).of this Agreement. Failure to comply with the above shall constitute a default of this Agreement. If the property is located within the unincorporated area, the COUNTY shall not issue building permits for construction of a principal building within the Project until such time as the DEVELOPER has complied with paragraph 2(c). of this Agreement.

(g) If property is located within a municipality, DEVELOPER, its successors and assigns agree that no certificates of occupancy within the Plat shall be obtained prior to completion of the Improvements according to the schedule set forth in Exhibit "B." Failure to comply with the above shall constitute a default of this Agreement. If the property is located within the unincorporated area, the COUNTY shall not issue any certificates of occupancy within the Plat prior to completion of the Improvements according to the schedule set forth in Exhibit "B."

(h) In the event DEVELOPER defaults under the terms of this Agreement or the COUNTY receives notice that the security will be canceled by the issuing institution, COUNTY shall be entitled to draw against the security for the amount set forth above, plus costs and interest as set out herein. If COUNTY draws against the security and the amount recovered is less than the amount due, COUNTY may maintain an action against DEVELOPER in a court of competent jurisdiction for the difference between any sums obtained and the amount due, plus costs and interest accrued from the due date at the rate of twelve (12) per cent per annum or, at the option of the COUNTY, the COUNTY may record a document entitled "Notice of Lien" which shall constitute a lien on the property described in Exhibit "A" in the amount stated above. To the extent that the failed security is attributable to an identified parcel or portion of the PLAT, the Notice of Lien, as set forth above, shall be recorded against and apply only to such parcel or portion of the PLAT. The above provisions shall control such lien, except that the provision regarding subordination of mortgages shall not apply. Such lien may be foreclosed or otherwise enforced by the COUNTY by action or suit in equity as for the foreclosure of a mortgage on real property.

(i) DEVELOPER shall ensure that the security remains valid and in full force and effect until DEVELOPER'S obligations are fully satisfied. Expiration of the security prior to DEVELOPER'S satisfaction of such obligations, or notice to Broward County that the security will expire or be canceled prior to DEVELOPER'S satisfaction of all obligations hereunder, shall constitute a default of this Agreement.

(j) In the event the COUNTY determines that the security has been canceled or disaffirmed by the issuing institution, COUNTY may record a document entitled "Notice of Lien" which shall constitute a lien on the property described in Exhibit "A" for the Outstanding Balance or stated portion thereof. To the extent that the disaffirmed security is attributable to an identified parcel or portion of the PLAT, the Notice of Lien, as set forth above, shall be recorded against and apply only to such parcel or portion of the PLAT. The above provisions shall control such lien, except that the provision regarding subordination of mortgages shall not apply. If the DEVELOPER provides substitute security in a form acceptable to COUNTY, COUNTY shall release the lien.

(k) In the event COUNTY draws on the security in accordance with the provisions of this Agreement, DEVELOPER shall be responsible for COUNTY'S reasonable costs incurred in drawing against the security.

(l) DEVELOPER agrees that any contract(s) for the Improvements shall:

1. Indemnify and hold harmless COUNTY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence,

recklessness or intentional wrongful misconduct of DEVELOPER and persons employed or utilized by or under contract with the DEVELOPER in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require DEVELOPER to indemnify COUNTY, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. In the event that any action or proceeding is brought against COUNTY by reason of any such claim or demand, DEVELOPER shall, upon written notice from COUNTY, resist and defend such action or proceeding by counsel satisfactory to COUNTY. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

2. In order to insure the indemnification obligation contained above, the DEVELOPER and/or its contractor shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth below, in accordance with the terms and conditions required by this section.

3. Such policy or policies shall be without any deductible amount and shall be issued by United States Treasury approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Such policies shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds.

4. Comprehensive General Liability Insurance. A Comprehensive General Liability Insurance Policy with minimum limits of Five Hundred Thousand Dollars ($500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

   Premises and/or operations.
   Independent contractors.
   Products and/or completed operations for contracts.
   Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.
   Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Underground coverages.

5. Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars ($300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

   Owned vehicles.
   Hired and non-owned vehicles.
   Employers' non-ownership.

6. Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

   Employers' Liability with a limit of One Hundred Thousand Dollars ($100,000.00) each accident.

7. DEVELOPER shall furnish to the Broward County Engineering Division Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

8. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of DEVELOPER is completed. All policies must b endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days' prior to the date of their expiration.

~~[ ] IMPROVEMENTS CONSTRUCTED BY COUNTY, CITY OR FDOT~~

(a) If the Improvements are to be constructed by the State of Florida, Department of Transportation (FDOT) or a municipality or a combination thereof, DEVELOPER agrees to pay the amount in Exhibit "B," attached hereto, which represents DEVELOPER's proportionate share of the cost of the Improvements described in Exhibit "B," hereinafter referred to as the Improvements. DEVELOPER agrees that payment must be made to the

municipality or to FDOT (or any combination thereof) either prior to receipt of the first certificate of occupancy for property within Exhibit "A" or within thirty (30) days of receiving notice from COUNTY that payment is due, whichever date occurs first. Failure to comply with the above shall constitute a default of this Agreement.

(b) If the Improvements are to be constructed solely by the COUNTY, DEVELOPER agrees that payment of the amount in Exhibit "B" shall be made to COUNTY prior to PLAT recordation or recordation of the Agreement amending the Notation on the Face of the PLAT. COUNTY agrees that no security shall be required by the COUNTY since payment shall be made prior to PLAT recordation or recordation of the Agreement amending the Notation on the Face of the PLAT.

(c) If the Improvements are to be constructed by the CITY or FDOT, DEVELOPER shall provide to the muncipality or FDOT, contemporaneously with this agreement, security acceptable to the municipality or FDOT.

3. CONCURRENCY COMPLIANCE. COUNTY finds that the execution of and adherence to this Agreement on the part of DEVELOPER satisfies the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, that plats of land shall be designed to provide for the adequacy of the regional road network, at the adopted levels of service, concurrent with the impact of the development. Nothing in this Agreement shall be construed as constituting a waiver or an exemption from road impact fees authorized to be assessed by COUNTY to DEVELOPER under the provisions of Chapter 5, Article IX, Broward County Code of Ordinances.

4. PROPERTY WITHIN A MUNICIPALITY.

(a) If the property is located within a municipality, TOWN agrees that, upon notification from the COUNTY that DEVELOPER is in default of this Agreement, TOWN shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time that the COUNTY notifies the TOWN that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time as the default has been resolved.

(b) If the property is located within a municipality, the parties hereto agree that, except as may otherwise be provided herein, the TOWN is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to this Agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for the construction of buildings within the property subject to this Agreement. The parties specifically agree and recognize that

nothing in this Agreement is a waiver, specific or otherwise, of the obligation of the DEVELOPER to strictly comply with all the requirements of the TOWN'S land development codes.

5. DEVELOPER, its successors and assigns agree that in the event of a default of this Agreement, DEVELOPER, its successors and assigns agree that no building permits, certificates of occupancy, or any other development permits shall be obtained within the boundaries of the PLAT, until such time that the COUNTY notifies the local government that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time as the default has been resolved.

6. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director of the Broward County Development Management Division
115 South Andrews Avenue, Room A240
Fort Lauderdale, FL 33301

Director of the Broward County Engineering Division
115 South Andrews Avenue, Room 321
Fort Lauderdale, FL 33301

For the DEVELOPER:
JAC F. BERMAN

900 N. FEDERAL HIGHWAY, SUITE 200

HALLANDALE BEACH, FL 33004

For the TOWN:

_____

_____

_____

7. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.

8. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sitis, and shall be governed by the laws of the State of Florida.

9. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.

10. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.

11. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

12. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.

13. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

14. ASSIGNMENT AND ASSUMPTION. DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement and recorded in the public records of Broward County, Florida.

15. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the _____ day of _____, 20___, and DEVELOPER, signing by and through its _____ duly authorized to execute same and TOWN OF DAVIE, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

_____
County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

By_____
Mayor

____ day of _____, 20___

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By_____
Assistant County Attorney

____ day of _____, 20___

DEVELOPER-INDIVIDUAL

Witnesses:

_____
(Signature)
Print name:_____

_____
(Signature)
Print name:_____

_____
Name of Developer (Individual)

JAC F. Berman
(Signature)
Print name: JAC F. Berman
Print address: 900 N. Federal Highway #200
Hallandale Beach, FL 33009

8th day of February, 2006

ACKNOWLEDGMENT - INDIVIDUAL

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this 8th day of February, 2006, by Jack F. Berman who is
[ ]personally known to me, or
[✓]produced identification. Type of identification produced Drivers License.

NOTARY PUBLIC:

(Seal)

Carlos A. Hoyos
Commission #DD314461
Expires: Apr 28, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

Print name:

My commission expires:

CAF#361
01/01/04 Revised

DEVELOPER-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

_____
Name of Developer (corporation/partnership)

_____
(Signature)
Print name:_____

_____
(Signature)
Print name:_____

By_____
(Signature)
Print name:_____
Title:_____
Address:_____
_____

____ day of _____, 20___

ATTEST (if corporation):

_____
(Secretary Signature)
Print Name of Secretary:_____

(CORPORATE SEAL)

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, as _____ of _____, a _____ corporation/partnership, on behalf of the corporation/ partnership. He or she is:
[ ]personally known to me, or
[ ]produced identification. Type of identification produced _____.

(Seal)

NOTARY PUBLIC:

My commission expires:

_____
Print name:

MORTGAGEE-INDIVIDUAL

Mortgagee, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Agreement.

Witnesses:

_____
(Signature)
Print name:_____

_____
(Signature)
Print name:_____

_____
Name of Mortgagee (Individual)

_____
(Signature)
Print name:_____
Print address:_____
_____

____ day of _____, 20___

ACKNOWLEDGMENT - INDIVIDUAL

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____ who is
[ ]personally known to me, or
[ ]produced identification. Type of identification produced_____.

NOTARY PUBLIC:

(Seal)

_____
Print name:

My commission expires:

MORTGAGEE-CORPORATION/PARTNERSHIP

Mortgagee, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Agreement.

Witnesses (if partnership):

(Signature)
Print name: Christine A. Skowron
Vice President

(Signature)
Print name: Patricia Pikul

Bank of America, N.A.
Name of Mortgagee (corporation/partnership)

By Catherine M. Gorlewski
(Signature) CATHERINE M. GORLEWSKI
Print name:
Title: VICE PRESIDENT
Address: 475 Cross Point Pkwy
Getzville NY 14068

29 day of September, 2006

ATTEST (if corporation):

(Secretary Signature)
Print Name of Secretary: Michele Holle

(CORPORATE SEAL)

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF New York)
) SS.
COUNTY OF Erie)

The foregoing instrument was acknowledged before me this 29 day of September, 2006 by Catherine M. Gorlewski, V.P. of Bank of America, NA National ~~corporation/partnership~~, on behalf of the corporation/ partnership. He or she is: Assoc.
[✓] personally known to me, or
[ ] produced identification. Type of identification produced _____.

(Seal)

NOTARY PUBLIC:
Kristen Niethe
Print name:

My commission expires:
KRISTEN NIETHE
Notary Public, State of New York
Qualified in Niagara County
Reg. No. 01NI5080387
My Commission Expires 6-16-07

CAF#361
01/01/04 Revised

EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

THE SOUTH ONE-HALF (S 1/2) OF TRACT 3, ALL OF TRACT 4 AND THE NORTH 5.00 FEET OF TRACT 5, IN SECTION 21, TOWNSHIP 50 SOUTH, RANGE 40 EAST, ACCORDING TO THE "FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION No. 1", AS RECORDED IN PLAT BOOK 2, PAGE 17, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.

LESS AND EXCEPT:

A PORTION OF TRACT 3 AND 4, IN SECTION 21, TOWNSHIP 50 SOUTH, RANGE 40 EAST, ACCORDING TO THE "FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1", AS RECORDED IN PLAT BOOK 2, PAGE 17, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, LYING AND BEING IN BROWARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT ON THE EAST LINE OF SAID TRACT 4, 20.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 4; THENCE, SOUTH 89°59'45" WEST FOR A DISTANCE OF 275.00 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST; THENCE, WESTERLY AND NORTHERLY ALONG A 180.00 FOOT RADIUS CURVE, HAVING A CENTRAL ANGLE OF 67°27'35" FOR AN ARC DISTANCE OF 211.93 FEET TO A POINT OF REVERSE CURVATURE OF A 180.00 FEET RADIUS CURVE, HAVING A CENTRAL ANGLE OF 03°42'06" FOR AN ARC DISTANCE OF 11.63 FEET; THENCE, NORTH 63°45'14" EAST FOR A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED LANDS; THENCE, CONTINUE NORTH 63°45'14" EAST FOR A DISTANCE OF 45.10 FEET; THENCE, NORTH 00°04'09" WEST FOR A DISTANCE OF 322.91 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH-HALF (S 1/2) OF SAID TRACT 3; THENCE, SOUTH 89°59'41" EAST ALONG THE NORTH LINE OF THE SOUTH-HALF (S 1/2) FOR A DISTANCE OF 122.00 FEET; THENCE, SOUTH 04°19'03" WEST FOR A DISTANCE OF 450.23 FEET TO A POINT OF NON-TANGENCY ON A 155.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, WHOSE CENTER BEARS NORTH 07°41'30" EAST; THENCE, WESTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°45'50" FOR AN ARC DISTANCE OF 161.68 FEET TO A POINT OF REVERSE CURVATURE OF A 205.00 FOOT RADIUS CURVE; THENCE, WESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 03°42'06" FOR AN ARC DISTANCE OF 13.24 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA, CONTAINING 607,466 SQUARE FEET OR 13.95 ACRES, MORE OR LESS.

EXHIBIT "B"

IMPROVEMENTS & COST OF IMPROVEMENTS

1. Construct an eastbound left turn lane on Southwest 14 Street at the driveway to Western High School with 500 feet of storage# and 100 feet of transition.

   Estimated Cost: $64,300.00

   # Median opening design to include acceptable vehicular turning radii. The length of the storage lane is measured from the end of the taper to the point of curvature of the median opening.

2. Modify the existing driveway on Southwest 14 Street to and from Western High School by providing one 12-foot egress lane and two 15-foot ingress lanes. The ingress shall be physically channelized to accommodate simultaneous movements. The signage for the egress shall read "Right Turns Only during School Hours."

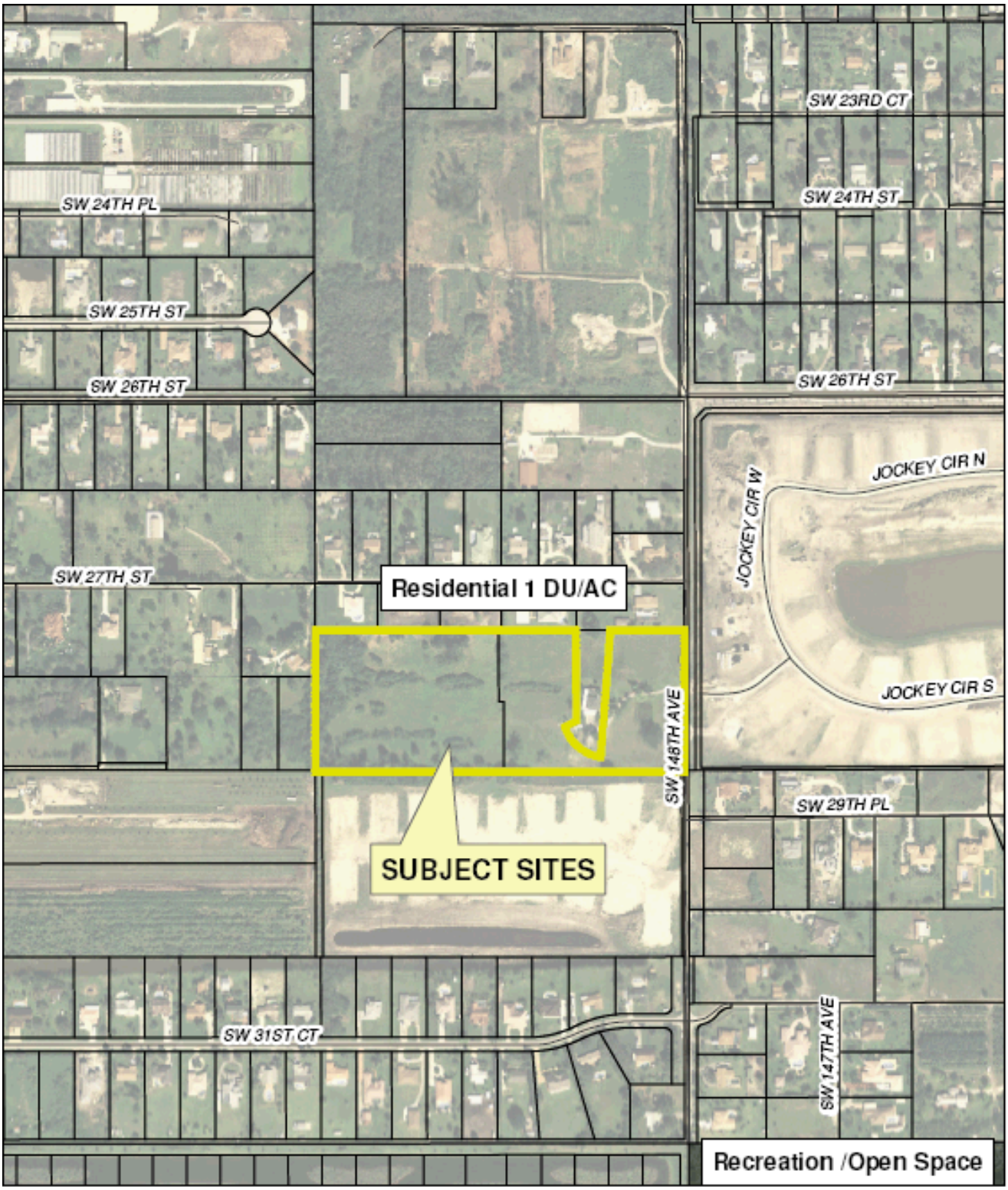
   Estimated Cost: $39,558.00

   Total Cost: $103,858.00

EXHIBIT "C"

SECURITY

Attachment ***(Future Land Use Plan Map)***



Date Flown:
12/2006

N

0 250 500 1,000 Feet

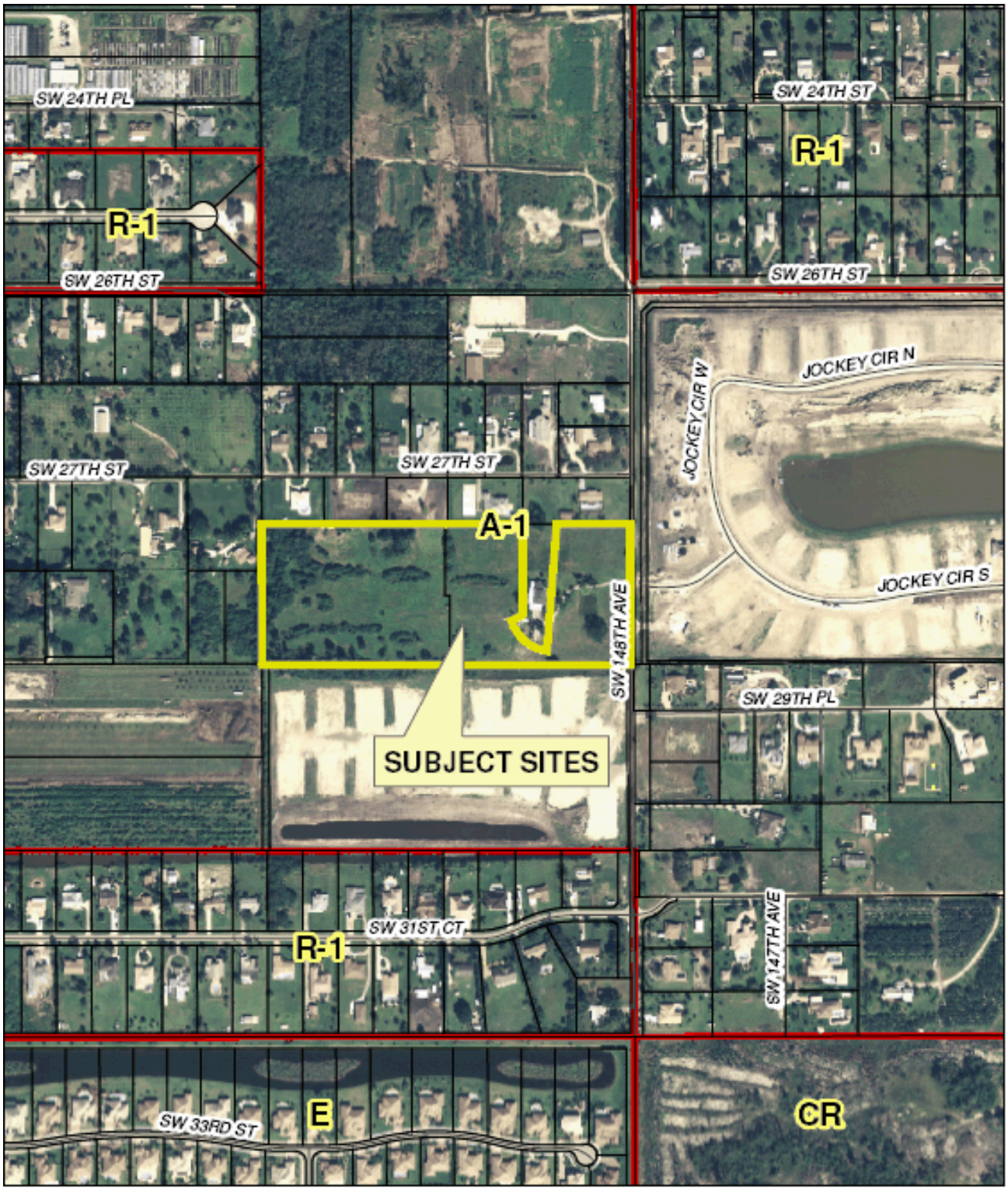
Prepared by the Town of Davie GIS Division

Plat
P 11-2-06

Future Land Use Map

Prepared by : ID
Date Prepared: 10/19/07

Attachment ***(Zoning and Aerial Map)***



Date Flown:
12/2006

N

0 250 500 1,000 Feet

Prepared by the Town of Davie GIS Division

Plat
P 11-2-06
Zoning and Aerial Map

Prepared by : ID
Date Prepared: 10/19/07