

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/ (954) 797-1101
Prepared by Todd Vargo, Planner I

SUBJECT: Resolution - Developers Agreement
DA 3-4-03 Pointe West Center North Plat, 3450-3550 Weston Road/Generally located on the northeast corner of Weston Road and SW 36 Court.

AFFECTED DISTRICT: District 4

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 THE TOWN OF DAVIE, BROWARD COUNTY, AND R & R DAVIE, L.L.C. FOR THE TRAFFIC SIGNALIZATION AGREEMENT RELATING TO THE POINTE WEST CENTER NORTH PLAT; PROVIDING FOR THE INSTALLATION OF A TRAFFIC SIGNAL; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

On January 5, 2000 Town Council passed Resolution No. R-2000-005, approving a boundary plat known as the Pointe West Center North Plat. In order to satisfy a traffic signal obligation for this plat, the developer is entering into a Traffic Signalization Agreement. The developer has agreed to be responsible for payment to the county the amount of money outlined in the agreement for the installation costs of a traffic signal at a location to be determined.

The Town of Davie is party to this Developers Agreement for the purpose of issuing or withholding the issuance of permits for construction of buildings within the property subject to the 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 the agreement.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION: Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachments: Resolution, Traffic Signalization 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 THE TOWN OF DAVIE, BROWARD COUNTY, AND R & R DAVIE L.L.C., FOR THE TRAFFIC SIGNALIZATION AGREEMENT RELATING TO THE POINTE WEST CENTER NORTH PLAT; PROVIDING FOR INSTALLATION OF A TRAFFIC SIGNAL; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, R & R Davie, L.L.C. proposes to develop properties known as the Pointe West Center North Plat; and

WHEREAS, Broward County requires installation of a traffic signal, at a point to be determined, to satisfy conditions related to the Pointe West Center North Plat.

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 "A", between Broward County, R & R Davie, L.L.C., and the Town of Davie, whereby the Town of Davie agrees not to issue building permits for construction of a principal building within the project until such time as the Developer provides the Town with written confirmation from the County that the Developer has complied with paragraph 3(a)(2) of the agreement.

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 _____, 2003.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

Return recorded copy to:

Broward County Engineering Division
1 North University Drive, Suite 300B
Plantation, FL 33324-2038

Document prepared by:

C. William Laystrom, Jr., Esquire
Doumar, Allsworth, et al.
1177 S.E. 3rd Avenue
Fort Lauderdale, FL 33316

TRAFFIC SIGNALIZATION AGREEMENT

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

R&R DAVIE, LLC, its successors and assigns, hereinafter referred to as DEVELOPER,

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The ^{Town}~~City~~ of Davie, a municipal corporation, created and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

WHEREAS, Chapter 5, Article IX, Section 5-182(c), Broward County Code of Ordinances, require that access to trafficways be designed to facilitate the safe and efficient movement of vehicles; and

WHEREAS, DEVELOPER'S Project, known as Pointe West Center North Plat Development Management Division File No. 100 MP 99, hereinafter referred to as the "Project," a legal description of which is attached hereto as Exhibit "A" and made a part hereof;" and

WHEREAS, the Project was approved by the COUNTY on December 4, 2001, subject to certain conditions which require the installation of traffic signalization, NOW, THEREFORE,

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



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

2. TRAFFIC SIGNAL OBLIGATION.

The DEVELOPER shall be responsible for payment to COUNTY of \$ 50,000.00 for the installation costs of a traffic signal(s) at TO BE DETERMINED, in accordance with the conditions and time frames set forth in this Agreement.

3. FORM OF SECURITY

PLEASE CHECK THE APPROPRIATE SECTION BELOW

(a) Lien.

- (1) A lien is hereby imposed by the COUNTY against the real property identified in Exhibit "A" in the amount of Fifty Thousand and no/100 Dollars (\$ 50,000.00). Such lien shall secure the installation costs of the traffic signal(s) described in paragraph 2 above. Such lien shall exist until fully paid, discharged, released, or barred by law. The lien created by this Agreement shall be superior to and shall have priority over any mortgage on the real property described in Exhibit "A." The DEVELOPER shall cause this Agreement to be executed by the holder of any such mortgage, which execution shall constitute the mortgagee's consent to such subordination.
- (2) Prior to the DEVELOPER obtaining a building permit for construction of any portion of the Project, DEVELOPER shall provide a form of security acceptable to the COUNTY in the form of a letter of credit, surety bond, or other acceptable security in the amount of Fifty Thousand and no/100 Dollars (\$ 50,000.00), in substitution of the lien imposed hereby, and the COUNTY shall cause to be executed and recorded in the Official Records of Broward County a release or satisfaction of the lien upon the property described in Exhibit "A."
- (3) In the event DEVELOPER fails to pay to the COUNTY the sums set forth in paragraph 2 above, COUNTY may recover such outstanding sums from DEVELOPER as are necessary to cause the installation of the traffic signal(s) as set forth in paragraph 2 above. Such sums,



plus costs and attorneys fees, may be recovered by COUNTY against the DEVELOPER through a civil action, or may be recovered by action as provided by the applicable security. In the event that DEVELOPER fails to pay for or install the traffic signal(s) as required in paragraph 2 above, 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.

- (4) DEVELOPER shall ensure that the substitute security remains valid and in full force and effect until DEVELOPER'S obligation to pay for or install the traffic signal(s) are fully performed. Expiration of the security prior to DEVELOPER'S performance of such obligation, or notice to COUNTY that the security will expire or has been canceled or disaffirmed prior to DEVELOPER'S satisfaction of all obligations hereunder, shall constitute a default of this Agreement.
- (5) In the event the letter of credit, surety bond or other form of security provided to COUNTY expires, is canceled, or is disaffirmed, COUNTY shall send notice to DEVELOPER, according to the notice provisions of this Agreement, and DEVELOPER shall have thirty (30) days from the date of such notice to provide substitute security in a form acceptable to COUNTY. If DEVELOPER fails to provide acceptable substitute security, COUNTY may record a document entitled "Notice of Lien for Installation of Traffic Signal(s) Improvements" which shall constitute a lien on the property described in Exhibit "A" for the amount due hereunder, until fully paid, discharged, released or barred by law. To the extent that the failed security is attributable to an identified parcel or portion of the Project, the Notice of Lien for Required Improvements may be recorded against and apply only to such parcel or portion of the Project.

[] (b) Other Form of Security.

- (1) Prior to the DEVELOPER obtaining a building permit for construction of any portion of the Project, DEVELOPER shall provide a form of security acceptable to the COUNTY in the form of a letter of credit, surety bond, or other acceptable security in the amount of _____ Dollars (\$ _____) secure the installation costs of the traffic signal(s) described in paragraph 2 above.
- (2) In the event DEVELOPER fails to pay to the COUNTY the sums set forth in paragraph 2 above, 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.

- (3) DEVELOPER shall ensure that the substitute security remains valid and in full force and effect until DEVELOPER'S obligation to pay for or install the traffic signal(s) are fully performed. Expiration of the security prior to DEVELOPER'S performance of such obligation, or notice to COUNTY that the security will expire or has been canceled or disaffirmed prior to DEVELOPER'S satisfaction of all obligations hereunder, shall constitute a default of this Agreement.
 - (4) In the event the letter of credit, surety bond or other form of security provided to COUNTY expires, is canceled, or is disaffirmed, COUNTY shall send notice to DEVELOPER, according to the notice provisions of this Agreement, and DEVELOPER shall have thirty (30) days from the date of such notice to provide substitute security in a form acceptable to COUNTY. If DEVELOPER fails to provide acceptable substitute security, COUNTY may record a document entitled "Notice of Lien for Installation of Traffic Signal(s) Improvements" which shall constitute a lien on the property described in Exhibit "A" for the amount due hereunder, until fully paid, discharged, released or barred by law. To the extent that the failed security is attributable to an identified parcel or portion of the Project, the Notice of Lien for Required Improvements may be recorded against and apply only to such parcel or portion of the Project.
4. If the property is secured by a lien and is located within a municipality, CITY agrees not to issue building permits for construction of a principal building within the Project until such time as DEVELOPER provides CITY with written confirmation from COUNTY that DEVELOPER has complied with paragraph 3(a)(2) of this Agreement. If the property is located within the unincorporated area, COUNTY shall not issue any building permits for construction of a principal building within the Project until such time as DEVELOPER has complied with paragraph 3(c) of this Agreement.
 5. If the property is located within a municipality, the parties hereto agree that, except as may otherwise be provided herein, the CITY 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 CITY's land development codes.

6. The DEVELOPER shall notify the COUNTY when the Projected property is built-out, as defined herein. Within two (2) years of DEVELOPER'S written notice of build-out of the Project to the Broward County Traffic Engineering Division, the COUNTY shall conduct studies at the pertinent intersection or location to determine if signalization is warranted under the standards of the United States Department of Transportation Manual on Uniform Traffic Control Devices for Streets and Highways. If the COUNTY determines that the signalization is warranted at the pertinent intersection or location and the signalization is subsequently installed, the DEVELOPER'S total obligation, exclusive of costs and interest as provided herein, shall not exceed the amount stated Paragraph 2 above. At its discretion, COUNTY may conduct the necessary traffic studies prior to DEVELOPER'S notice of build-out. COUNTY shall have three (3) years from DEVELOPER'S notice of build-out to install the traffic signal if warranted. Completion of build-out shall not be deemed to occur until certificates of occupancy have been issued for all buildings which may be constructed within the Project.
7. If the COUNTY determines that the signalization is not needed at the pertinent location or intersection within two (2) years after notice of build-out, or if the COUNTY fails to install the traffic signal within three (3) years after notice of build-out, the DEVELOPER shall be released from its obligations set forth in this Agreement, the COUNTY shall return the security to the DEVELOPER and record a release of this Agreement in the Public Records of Broward County, Florida.
8. RECORDATION. 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 paid and performed.
9. ENFORCEMENT. Nothing herein shall prevent the COUNTY or the CITY (if applicable) from enforcing the requirements of this Agreement against the owners, successors, or assigns in any part of the Project.
10. 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 Traffic Engineering Division
2300 W. Commercial Boulevard
Fort Lauderdale, FL 33309

For the DEVELOPER:

R&R DAVIE, LLC
c/o Rick Case
875 N. State Road 7

Fort Lauderdale, Florida 33317

For the CITY if the property is located within a municipality:

TOWN OF DAVIE
6591 Orange Drive

Davie, Florida 33314

Attention:

11. **RELEASE.** When all of the obligations set forth herein are fully paid and performed, COUNTY, at the request of DEVELOPER or its successor and upon payment of any applicable fees, shall cause a release to be recorded in the Official Records of Broward County, Florida, evidencing such performance. To the extent that the obligations set forth herein are divisible and attributable to a specific parcel or portion of the Project, COUNTY may grant a partial release of this agreement for a specific parcel or portion of the Project for which this traffic signalization obligation has been satisfied.
12. **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 sits, and shall be governed by the laws of the State of Florida.
13. **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.

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties 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 Chair or Vice Chair, authorized to execute same by Board action on the ____ day of _____, 20__, _____, signing by and through its _____, duly authorized to execute same and if applicable the CITY of _____, signing by and through its _____, duly authorized to execute same..

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

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

By _____
_____, Chair

____ 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-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

Nikhil Malhotra
(Signature)
Print name: Dole Malhotra

William L. Sander
(Signature)
Print name: William L. Sander

R&R DAVIE, LLC
Name of Developer (corporation/partnership)

[Signature]
(Signature)
Print name: Richard Case

Title: Manager
Address: 875 N. State Road 7
Fort Lauderdale, Florida 33317

28th day of March, 2003

ATTEST (if corporation):

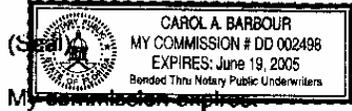
(CORPORATE SEAL)

(Secretary Signature)
Print Name of Secretary: _____

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF Florida)
) SS.
COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 28th day of March, 2003, by Richard Case, as Manager of R&R Davie, LLC, a LLC corporation/partnership, on behalf of the corporation/ partnership. He or she is:
 personally known to me, or
 produced identification. Type of identification produced N/A



NOTARY PUBLIC:
Carol A. Barbour
Print name: Carol A. Barbour



CITY
(If Property is located within a City)

WITNESSES:

TOWN
~~CITY~~ of DAVIE

By _____
Mayor-Commissioner

____ day of _____, 20__

ATTEST:

City Clerk

By _____
City Manager

____ day of _____, 20__

APPROVED AS TO FORM:

By _____
City Attorney



EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION

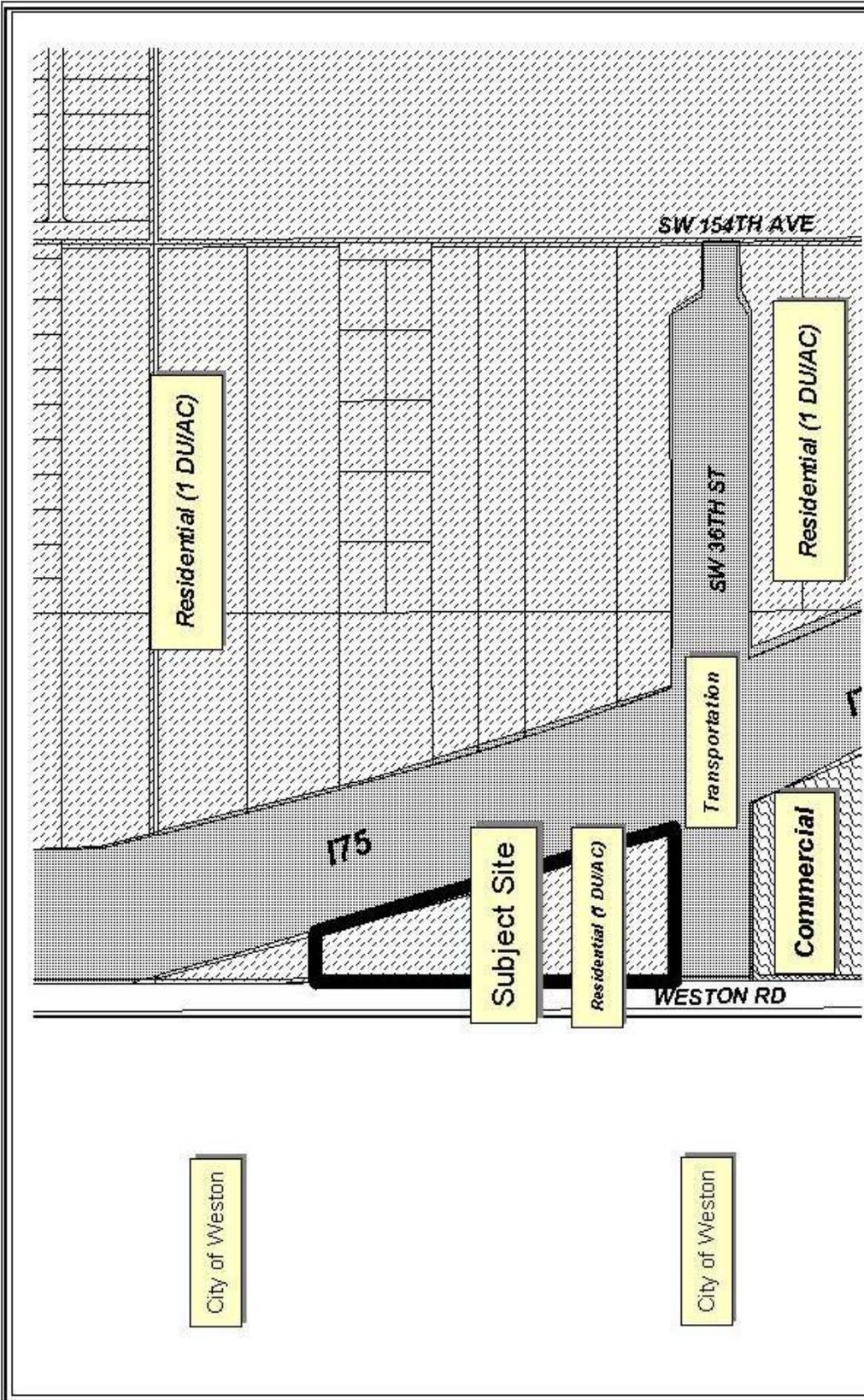
A PARCEL OF LAND IN THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 40 EAST, SAID PARCEL INCLUDING PORTIONS OF TRACTS 43 THROUGH 47 INCLUSIVE, ACCORDING TO THE FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO.1 AS RECORDED IN PLAT BOOK 2 AT PAGE 17 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 21 ;THENCE RUN SOUTH 00°15'58" EAST (ON A GRID BEARING) 563.18 FEET ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 OF SECTION 21 TO THE POINT OF BEGINNING; THENCE RUN NORTH 89°44'02" EAST 165.62 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 1-75 AS DESCRIBED IN THE INSTRUMENT FILED IN OFFICIAL RECORDS BOOK 7637 AT PAGE 156 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN SOUTH 15°24'36" EAST 127.29 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE TO A POINT OF INTERSECTION; THENCE RUN SOUTH 13°58'35" EAST 113.45 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE, TO A POINT OF CURVATURE OF A CURVE TO THE LEFT; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE, ON THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 11,706.16 FEET AND A CENTRAL ANGLE OF 05°21'39", RUN SOUTHEASTERLY 1095.26 FEET TO AN INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF SOUTHWEST 36TH STREET, AS DESCRIBED IN THE INSTRUMENT FILED IN OFFICIAL RECORDS BOOK 7637 AT PAGE 156 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN SOUTH 89°55'49" WEST 534.71 FEET ALONG SAID NORTH RIGHT OF WAY LINE, TO AN INTERSECTION WITH SAID WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 21; THENCE RUN NORTH 00°15'58" WEST 1281.62 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA AND CONTAINING 9.994 ACRES, MORE OR LESS.

CAF#456
01/01/02





**Developers Agreement
DA 3-4-03
Future Land Use Map**

Date Prepared: 3/31/03
Prepared By: TAV



500 0 500 1000 Feet

Planning & Zoning Division - GIS



City of Weston

Subject Site

City of Weston

Date Flown:
12/31/00



Planning & Zoning Division - GIS



DEVELOPERS AGREEMENT
DA 3-4-03
Subject Site, Zoning and Aerial Map
 Date Prepared: 3/31/03
 Prepared By: TAV