

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101

PREPARED BY: David M. Abramson, Planner II

SUBJECT: Developer's Agreement / DA 5-2-05 / Flamingo Road Estates Plat / Generally located on the S.W. corner of S.W. 14th Street between Flamingo Road and S.W. 127th Avenue

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM: DA 5-2-05 / Flamingo Road Estates Plat

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A TRAFFIC SIGNALIZATION AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND LOWELL AT PROVENCE INC., FOR THE COST OF TRAFFIC SIGNALIZATION INSTALLATION RELATING TO FLAMINGO ROAD ESTATES 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 Traffic Signalization Agreement between the Town of Davie, Broward County, and Lowell at Provence Inc. This tri-party agreement is for the installation cost of \$50,000 associated with the construction of a traffic signal at the intersection of Flamingo Road and Southwest 14th Street abutting the Flamingo Road Estates Plat. This improvement is being completed within the Town of Davie and shall benefit future developments along Flamingo Road and Southwest 14th Street.

This request is in connection with Town Council approval of Flamingo Road Estates Plat on January 5, 2005. In addition, the Broward County Commission also approved the Plat on March 1, 2005 for 26 single-family detached units.

The Town is a party to the agreement because Broward County requires that the Town of Davie not issue a certificate of occupancy for any development within the plat until the Town receives confirmation from the County that the payment required for the improvements to satisfy concurrency on the regional road network has been received. Staff has no objection to the request.

PREVIOUS ACTIONS: None

CONCURRENCES: N/A

FISCAL IMPACT: N/A

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

Attachment(s): Resolution, Justification, Agreement, Future Land Use Plan 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 A TRAFFIC SIGNALIZATION AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND LOWELL AT PROVENCE INC., FOR THE COST OF TRAFFIC SIGNALIZATION INSTALLATION RELATING TO FLAMINGO ROAD ESTATES PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the proposed plat to be known as Flamingo Road Estates Plat was approved by the Town Council of the Town of Davie on January 5, 2005;

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

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 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 "A."

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 _____, 2005.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2005.

Attachment (Justification Letter)

Page 1

JUSTIFICATION

The Flamingo Road Estates Plat 041-MP-03 ("Plat") was approved on March 1, 2005, by Broward County ("County") Commission for 26 single-family detached units. Our client, Lowell at Provence, Inc., is in the process of recording the Plat. As a requirement of recordation, Broward County is requesting a Traffic Signalization Agreement ("Agreement"). The Agreement is a tri-party agreement between the Town of Davie ("Town"), County and Lowell at Provence Inc. ("Developer"). The Agreement requires the Developer to be responsible for payment to Broward County of \$50,000 for the installation cost of a traffic signal located at Flamingo Road and Southwest 14 Street. The Ohio Savings Bank has issued an irrevocable letter of credit in the amount of \$50,000 to submit to Broward County for this improvement.

Attachment (Agreement)

Return recorded copy to:

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

Document prepared by:

Ruden, McClosky, Smith,
Schuster & Russell, P.A.
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, Florida 33301

NOTICE: PURCHASERS, GRANTEEES, 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 PERFORMED.

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

LOWELL AT PROVENCE, INC., a Florida corporation, its successors and assigns, hereinafter referred to as DEVELOPER,

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 FLAMINGO ROAD ESTATES, Development Management Division File No.041-MP-03, hereinafter referred to as the "Project," a legal description of which is attached hereto as Exhibit "A" and made a part hereof was approved by the COUNTY on March 1, 2005, 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.

Southwest 14 Street, 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 _____ Dollars (\$_____). 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 _____ Dollars (\$_____), 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 COUNTY determines that the security has been cancelled or disaffirmed by the issuing institution, COUNTY may record a document entitled "Notice of Lien for Installation of Traffic Signals" 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. 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.

(b) Letter of Credit.

- (1) DEVELOPER shall provide the COUNTY with an irrevocable letter of credit, which is acceptable to the COUNTY and which guarantees the DEVELOPER'S the costs of the installation of the traffic signal(s) described in paragraph 2 above in the total amount of \$50,000.00.
- (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 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, at the option of the COUNTY, constitute a default of this Agreement.

- (4) 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 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. 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.
4. If the 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 Project until such time as DEVELOPER provides the municipality with written confirmation from COUNTY that DEVELOPER has complied with paragraph 3 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, 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 of this Agreement.
5. 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 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:

LOWELL AT PROVENCE, INC.
80 S.W. 8 Street, Suite 1870
Miami, Florida 33130

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 sitis, 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 and recorded in the public records of Broward County, Florida.
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 Mayor or Vice Mayor, authorized to execute same by Board action on the ____ day of _____, 2005, 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 _____
_____, 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__

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):

Tina V
(Signature)
Print name: TINA VACCINO
James Sadock Jr.
(Signature)
Print name: JAMES SADOCK, JR.

OHIO SAVINGS BANK
Name of Mortgagee (corporation/partnership)
By E D Edlund
(Signature)
Print name: ERIC D. EDLUND
Title: VICE PRESIDENT
Address: 5550 GLADES ROAD
BOCA RATON, FL
19th day of MAY, 2005

ATTEST (if corporation):

(Secretary Signature)

(CORPORATE SEAL)

Print Name of Secretary: _____

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF FLORIDA)
) SS.
COUNTY OF PAKM Beach)

The foregoing instrument was acknowledged before me this 19th day of May, 2005, by ERIC D. Edlund, as VICE President of Ohio Savings Bank, a federal corporation/partnership, on behalf of the corporation/partnership. He or she is: savings bank,
 personally known to me, or bank.
 produced identification. Type of identification produced _____.

(Seal)

My commission expires _____



FTL:1429206:1
CAF#456

NOTARY PUBLIC:

James Sadock Jr.
Print name: JAMES SADOCK, JR.

TOWN
(If Property is located within a Town)

WITNESSES:

ATTEST:

Town Clerk

Town of _____

By _____
Mayor-Commissioner

_____ day of _____, 20__

By _____
Town Manager

_____ day of _____, 20__

APPROVED AS TO FORM:

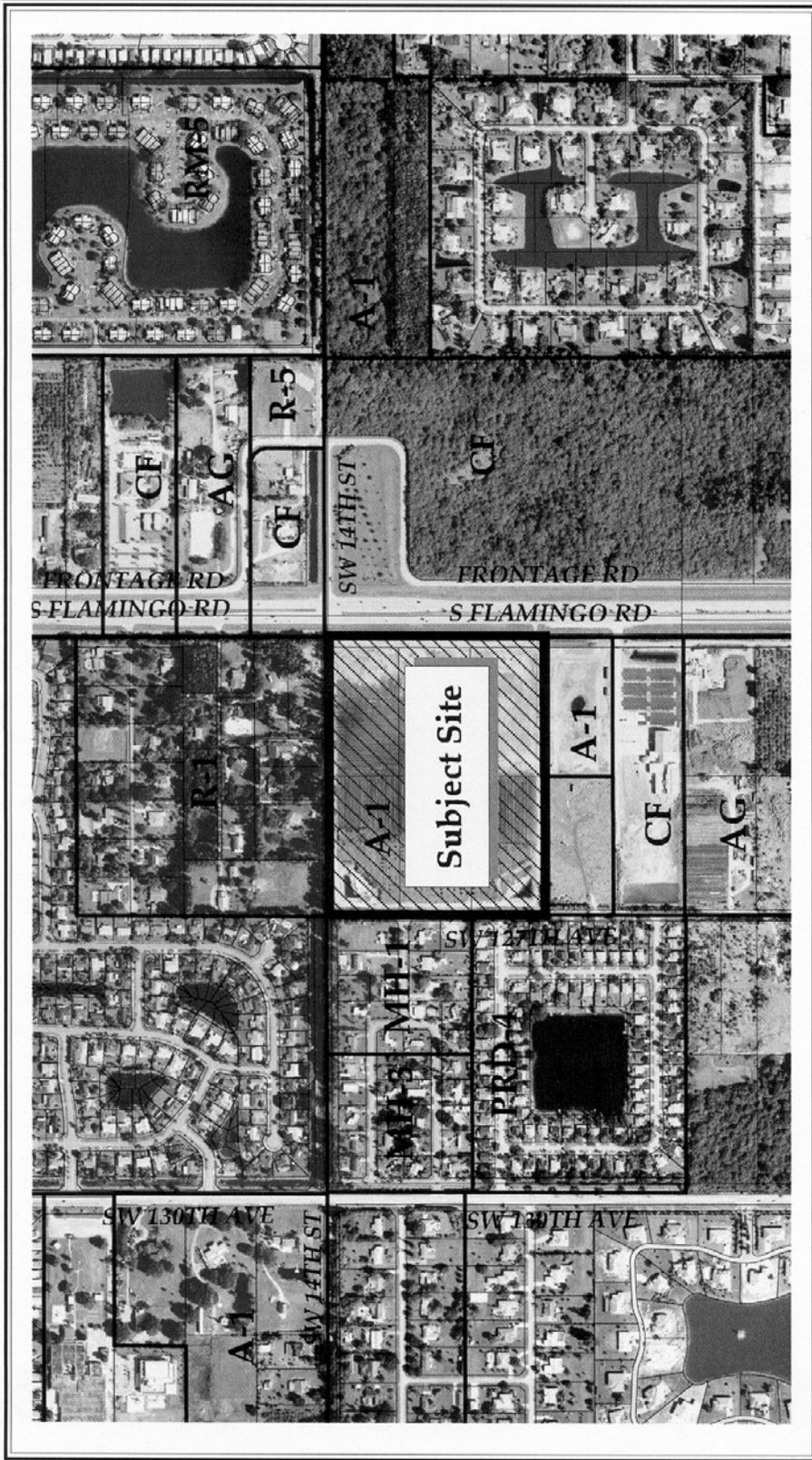
By _____
Town Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

Tracts 129, 130, 131, 142, 143 and 144, "FLAMINGO GROVES" Unit E, Section 14, Township 50 South, Range 40 East, according to the Plat thereof, as recorded in Plat Book 15, at Page 5, of the Public Records of Broward County, Florida.

Attachment (Aerial, Zoning, Subject Site Map)



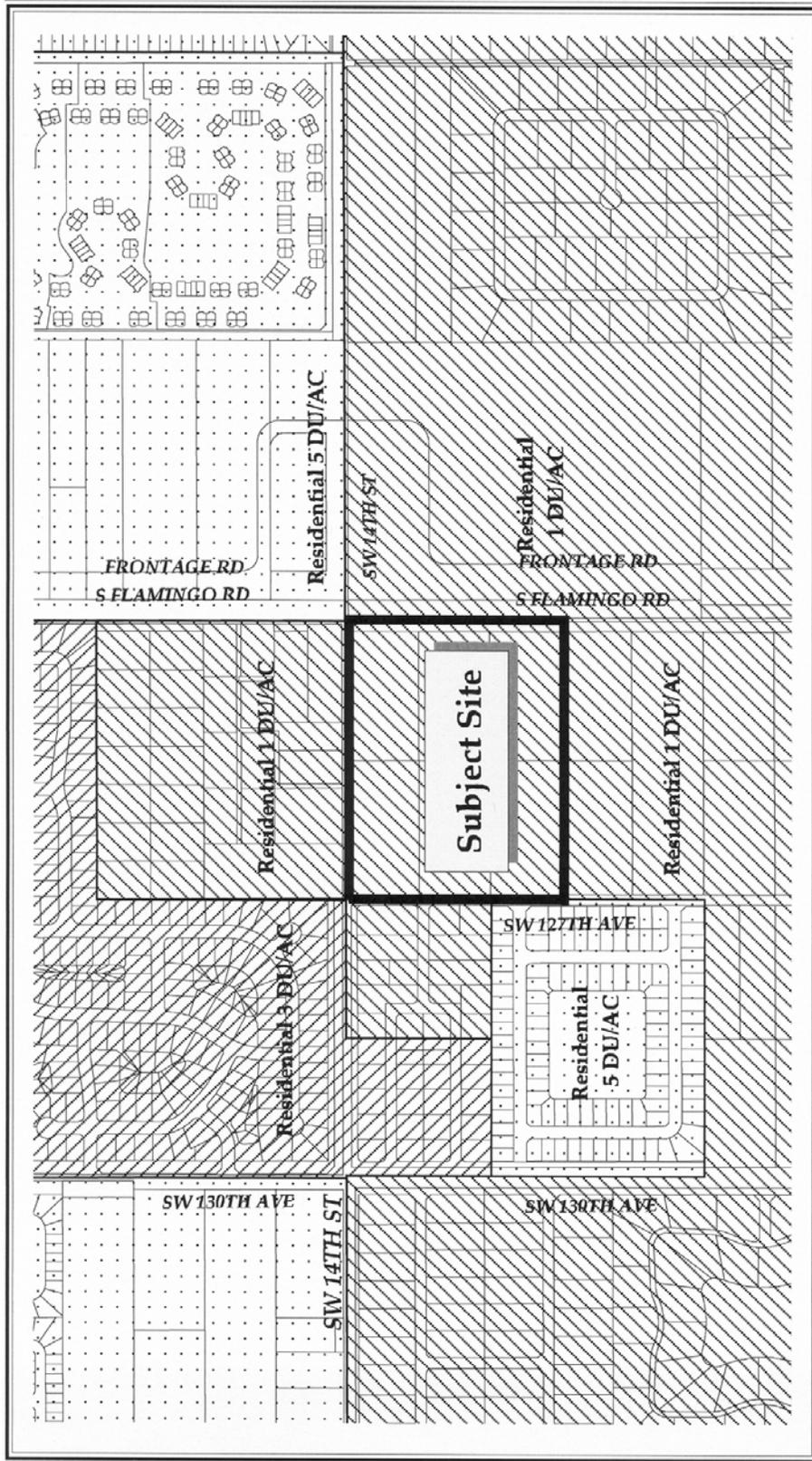
The Town of Davie
 Development Service Department
 Planning & Zoning Division



Developers Agreement
 DA 5-2-05, Flamingo Road Estates
 Subject Site, Zoning and Aerial Map

Prepared By: D.M.A.
 Date Prepared: 6/14/05

Attachment (Future Land Use Map)



Developers Agreement
 DA 5-2-05, Flamingo Road Estates
 Future Land Use Plan Map

Prepared By: D.M.A.
 Date Prepared: 6/14/05



The Town of Davie
 Development Service Department
 Planning & Zoning Division



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