

DEVELOPMENT SERVICES DEPARTMENT

Planning & Zoning Division

MEMORANDUM

PZ 04-36-99

TO: Mayor Harry Venis
Councilmember Kathy Cox
Councilmember Jim Bush
Councilmember Richard Weiner
Councilmember Judy Paul

FROM: Gayle Easterling, AICP, Planning and Zoning Manager

THRU: Mark A. Kutney, AICP, Development Services Director

DATE: April 22, 1999

RE: DG 3-3-99 Pelican Coast Plat

This delegation request authorizes the Mayor and Town Administrator to enter into an agreement, between Broward County, Pelican Coast Holdings, Inc., and the Town of Davie, to provide for the construction, funding, and security for required improvements for the above referenced plat.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND PELICAN COAST HOLDINGS, INC. RELATING TO THE INSTALLATION OF REQUIRED IMPROVEMENTS WITHIN THE PELICAN COAST PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURE TO SAID AGREEMENT.

WHEREAS, Pelican Coast Holdings, Inc. is proposing to develop property known as the Pelican Coast Plat; and

WHEREAS, Broward County will allow provisions for the construction, funding, and security for required improvements should an agreement be entered into with the Town as party.

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 "AA", between Broward County, Pelican Coast Holdings, Inc., and the Town of Davie, providing for the construction, funding, and security for required improvements as indicated on Exhibit "B".

SECTION 2. The Town of Davie Development Services Department shall not issue building permits until such time as the developer provides the Town with written confirmation that an acceptable form of security has been placed with the County in the amount of \$53,193.00.

SECTION 3. The Town of Davie Development Services Department shall not issue a certificate of occupancy prior to completion of the required improvements.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 1999.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 1999.

Lien -
incorp.

Return recorded copy to:

Document prepared by:

AGREEMENT

Among

BROWARD COUNTY

And

Town of Davie

And

Pelican Coast Holdings, Inc.

for

INSTALLATION OF REQUIRED IMPROVEMENTS
RELATING TO

Pelican Coast Plat

This is an Agreement among BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

Town Of Davie, a municipal corporation, organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY";

AND

Pelican Coast Holdings, Inc., hereinafter referred to as "DEVELOPER," its successors and assigns.

CAF#249
06/29/98

WHEREAS, DEVELOPER'S plat, known as Pelican Coast
(63-MP-97), hereinafter referred to as the "PLAT," was approved by the Board of
County Commissioners of Broward County on February 3, 1998, and is
described in Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, the PLAT was approved subject to certain conditions to ensure the
protection of the public health and safety, and one of the conditions imposed at the time
of PLAT approval was the construction of certain improvements;

WHEREAS, the PLAT is located within the boundaries of the CITY; and

WHEREAS, the parties desire to enter into this agreement to provide for the
construction, funding and security for the required improvements as described in Exhibit
"B" attached hereto and incorporated herein; NOW THEREFORE,

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

1. INSTALLATION OF REQUIRED IMPROVEMENTS.

- (a) DEVELOPER agrees to and DEVELOPER shall construct the improvements
described in Exhibit "B" attached hereto, hereinafter referred to as "the
Improvements." Said Improvements shall be constructed according to the
schedule set forth in Exhibit "B."
- (b) 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.
- (c) Notwithstanding subparagraphs 1.(a) and (b) above, COUNTY agrees that
the turn lane improvements(s) described in Exhibit "B" shall not be required
if the associated opening(s) in the nonvehicular access line depicted on the
PLAT are eliminated through the recordation of an agreement to amend the
nonvehicular access line pursuant to approval by COUNTY. In that event,
COUNTY agrees to authorize reduction of the security provided by
DEVELOPER according to provisions of paragraph 5. below.

2. DEVELOPER understands and agrees that it is DEVELOPER'S responsibility to complete the Improvements described in Exhibit "B" and that all costs relating to the installation of the Improvements will be borne by the DEVELOPER.
3. CITY agrees not to issue building permits for construction of a principal building within the PLAT until such time as DEVELOPER provides CITY with written confirmation from COUNTY that DEVELOPER has complied with paragraph 5.(c) of this Agreement.
4. CITY agrees not to issue any certificates of occupancy for the plat prior to completion of improvements according to the schedule set forth in Exhibit "B."
5. SECURITY AND DEFAULT:
 - (a) A lien is hereby imposed by the COUNTY against the real property identified in Exhibit "A" in the amount of Fifty Three Thousand One Hundred Ninety Three Dollars (\$ 53,193.00). Such lien shall secure the construction of the Improvements identified in Exhibit "B" attached hereto. 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.
 - (b) 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.
 - (c) Prior to the DEVELOPER obtaining a building permit for construction of any portion of the PLAT which, according to the schedule set forth in Exhibit "B," requires the installation of the Improvements, or a portion thereof, 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 Three Thousand One Hundred Ninety Three Dollars (\$ 53,193.00), 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."
 - (d) Pursuant to subsection 5(c) above, DEVELOPER may elect to provide security for any individual phase as listed in Exhibit "B," in order to release a portion of the lien imposed on the PLAT for the individual phase. In that event, DEVELOPER shall submit a cost estimate prepared by a Registered Engineer for the Improvements required in such phase. Upon acceptance

by the COUNTY of the cost estimate, and payment by DEVELOPER of any applicable fee, that portion of the PLAT shall be released from the lien imposed and the total amount of the lien shall be reduced by the approved amount.

- (e) In the event DEVELOPER fails to construct the Improvements according to the terms and conditions of this Agreement, COUNTY may recover such sums from DEVELOPER as are necessary in order to cause the construction of the Improvements that are outstanding. Such sums, plus costs and attorney's 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 construct an improvement secured by lien created hereunder, 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.
 - (f) DEVELOPER shall ensure that the security remains valid and in full force and effect until DEVELOPER'S improvement obligations 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.
 - (g) In the event the letter of credit, surety bond or other form of security provided to COUNTY, as described in paragraph 5(c) above, expires, is canceled, or is disaffirmed, COUNTY shall send notice to DEVELOPER, according to the notice provisions of this Agreement, and DEVELOPER shall have four (4) months 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 Required 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 PLAT, the Notice of Lien for Required Improvements may be recorded against and apply only to such parcel or portion of the PLAT.
6. Upon the completion of one or more of the Improvements specified in Exhibit "B," the DEVELOPER may request a partial release of security from the COUNTY. The DEVELOPER shall submit a sealed certification by a Registered Engineer of the work completed, and a cost estimate of the remaining Improvements to be completed based upon the current approved County unit prices. Upon acceptance by the COUNTY of said certification and cost estimate, and payment by the DEVELOPER of any applicable fee, the COUNTY shall release that portion of the security, if any, which is in excess of the cost of the remaining Improvements. Final release of the full security is subject to the standard COUNTY maintenance period of one (1) year from the date of completion of all of the Improvements specified on

Exhibit "B." If a full or partial release is warranted for Improvements secured by lien under this Agreement, the COUNTY shall execute any and all documents satisfying and discharging said lien which shall be recorded in the Official Records of Broward County.

7. DEVELOPER agrees that the construction contract(s) for the Improvements shall include the following:

- (a) Indemnify and save harmless the COUNTY, the Board of County Commissioners of Broward County, and the State of Florida, its agents and employees, from or on account of any injuries or damages received or sustained by any person or persons during or on account of any operations connected with the construction of the Improvements; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of an act or omission of the said contractor, subcontractor, agents, servants or employees.
- (b) 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.
- (c) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) per accident.
- (d) Comprehensive General Liability Insurance 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.

Underground Coverages.

COUNTY and the Broward County Board of County Commissioners are to be named as additional insureds with respect to liability arising out of operations performed for COUNTY by or on behalf of CONTRACTOR or negligent acts or omissions of COUNTY in connection with general supervision of such operation.

- (e) 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 and hired and non-owned vehicles.

Notice of Cancellation and/or Restriction: The policy(ies) must be endorsed to provide COUNTY with thirty (30) days notice of cancellation and/or restriction.

8. COUNTY agrees that this Agreement satisfies the requirements of Chapter 5, Article IX, Broward County Code of Ordinances, that developers install all required improvements prior to issuance of a development order or enter into an agreement to provide for installation of the required improvements within a reasonable period of time or before issuance of building permits or certificates of occupancy, as required by the County Commission. Upon official acceptance of the Improvements by the applicable permitting agency, the local government may issue certificates of occupancy for parcels or portions of the PLAT.
9. Nothing herein shall prevent the COUNTY or CITY from enforcing the requirements of this Agreement against the owners, successors or assigns in any part of the PLAT.
10. The DEVELOPER agrees to execute any and all other instruments or documents as may be required to effectuate the requirements of Chapter 5, Article IX, Broward County Code of Ordinances, and this Agreement.
11. 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 Engineering Division
115 South Andrews Avenue, Room 321
Fort Lauderdale, FL 33301

For the CITY:

Town of Davie

6591 SW 45th Street

Davie, FL 33314

For the DEVELOPER:

Pelican Coast Holding

7500 NW 5th Street

Plantation, FL 33317

12. **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 PLAT, COUNTY may grant a partial release of this agreement for a specific parcel or portion of the PLAT for which this road impact obligation has been satisfied.
13. **APPLICABLE LAW AND VENUE.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County.

AGREEMENT FOR INSTALLATION OF REQUIRED IMPROVEMENTS RELATING TO
THE Pelican Coast PLAT

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 Chair or Vice Chair, authorized to execute same by Board action on the _____ day of _____, 19____, City of _____, signing by and through its _____, authorized to execute same by Commission/Council action on the _____ day of _____, 19____, and _____, through its duly authorized representative 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 _____, 19____.

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

AGREEMENT FOR INSTALLATION OF REQUIRED IMPROVEMENTS RELATING TO
THE Pelican Coast PLAT

CORPORATE/PARTNERSHIP

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 9 day of
April, 1999, by J.A. William Cuthbertson as President of
Pelican Coast Holdings, Incc., a Florida corporation/partnership, on behalf
of the corporation/ partnership. He or she is personally known to me or has produced
_____ as identification.

NOTARY PUBLIC:

(Seal)

My commission expires:

Aida M. Millan
Print name:
Commission No.:



Aida M. Millan
MY COMMISSION # CC79077 EXPIRES
December 23, 2007
BONDED THROUGH FAIR INSURANCE, INC.

MORTGAGEE

Witnesses:

Print name:

Print name:

(Corporate seal)

By _____
Print name:
Title:
Address:

____ day of _____, 19____

EXHIBIT A

(Legal Description for PLAT)

Portions of Tracts 1 and 2, FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1, SECTION 9, TOWNSHIP 50 SOUTH, RANGE 40 EAST, as recorded in Plat Book 2, Page 17, of the public records of Dade County, Florida, more fully described as follows:

Beginning at the Southeast Corner of said Tract 2; thence South 89°51'44" West, along the South line of said Tract 2, a distance of 463.25 feet; thence North 41°34'53" East, along the Easterly right-of-way of Interstate 75, a distance of 637.79 feet; thence South 0°21'21" East, along a line 37.00 feet East of and parallel with the East lines of Tracts 1 and 2, a distance of 206.08 feet; thence North 89°38'39" East, a distance of 37.00 feet; thence South 0°21'21" East, along the East line of said Tract 2, a distance of 270.12 feet to the Point of Beginning.

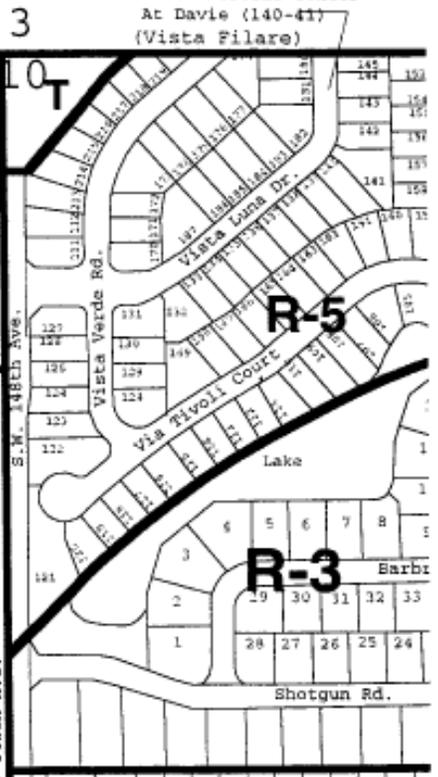
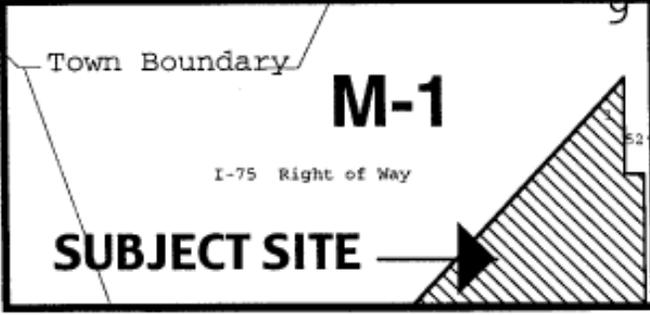
Said lands situate, lying and being in the Town of Davie, Broward County, Florida, and containing 111,450 square feet or 2.5585 acres more or less.

EXHIBIT B

(List of Improvements and Phasing Schedule)

<u>Road Improvement</u>	<u>Completion Date</u>
Staff recommendation #8: A southbound right turn lane on SW 148th Avenue at the 60' opening, with 150' of storage and 100' of transition including pavement markings and signage.	Prior to the issuance of a certificate of occupancy.
Staff recommendation #9: A northbound left turn lane on SW 148th Avenue at the 60' opening, with 200' of storage and 100' of transition including pavement marking and signage.	Prior to the issuance of a certificate of occupancy.
Staff recommendation #10: A Concrete sidewalk along SW 148th Avenue adjacent to the plat.	Prior to the issuance of a certificate of occupancy.

The Grove Commercial Center
At Davie (140-417)
(Vista Filare)



Town Boundary

PETITION NUMBER		N 4
DG 3-3-99		
PREPARED 4/21/99	Scale: 1" = 300'	
BY THE PLANNING & ZONING DIVISION		