

RESOLUTION NO. 2006 - 090

A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT BETWEEN BROWARD COUNTY, BELLA ACRES ESTATES, LLC, AND THE TOWN OF SOUTHWEST RANCHES, PROVIDING FOR THE ABILITY TO WITHHOLD TOWN DEVELOPMENT PERMITS UPON FAILURE OF BELLA ACRES ESTATES, LLC, TO CONSTRUCT ROAD CONCURRENCY IMPROVEMENTS REQUIRED AS A CONDITION OF APPROVAL OF THE BELLA ACRES ESTATES PLAT; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council approved the Bella Acres Estates Plat on December 8, 2005; and

WHEREAS, the subject standard form concurrency agreement ("Agreement") ensures construction of improvements necessary to satisfy the regional road concurrency requirement; and

WHEREAS, execution and recordation of the Agreement is necessary to enable Broward County to make a positive roadway concurrency determination; and

WHEREAS, the Town agrees to be party to said Agreement to the extent that the Town will withhold development permits, upon request by Broward County, should the developer be in default of the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2: The Town Council of the Town of Southwest Ranches hereby approves the Agreement between Broward County, Bella Acre Estates, and the Town of Southwest Ranches, which is attached hereto as Exhibit "A," and incorporated herein.

Section 3: The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into the Agreement, in substantially the same form as that

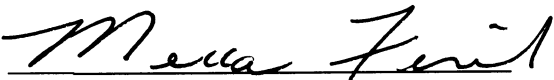
attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

Section 4: The Town of Southwest Ranches hereby agrees to be bound by the requirements of the aforementioned Agreement and to comply with all applicable provisions therein.

Section 5: This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 7th day of September, 2006, on a motion by Council Member Aster Knight and seconded by Vice Mayor Don Maines.

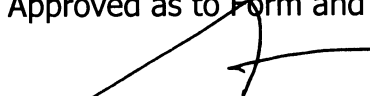
Fink	<u>Y</u>	Ayes	<u>5</u>
Maines	<u>Y</u>	Nays	<u>0</u>
Blanton	<u>Y</u>	Absent	<u>0</u>
Knight	<u>Y</u>	Abstaining	<u>0</u>
Nelson	<u>Y</u>		


Mecca Fink, Mayor

ATTEST:


Susan A. Owens, Town Clerk

Approved as to Form and Correctness:


Gary A. Poliakoff, J.D., Town Attorney

FTL_DB: 1003343_1

Return recorded document to:

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

Document prepared by:

Jason Espinosa
Pulice Land Surveyors, Inc.
5381 Nob Hill Road
Sunrise, FL 33351

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**

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

Bella Acre Estates, LLC A florida Limited Liability Company
_____, its successors and assigns, hereinafter referred to as "DEVELOPER",

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The Town of SOUTHWEST RANCHES, 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

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WHEREAS, DEVELOPER has applied for approval of or an amendment to the **Bella Acre Estates Plat (117-MP-05)**, hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on January 17, 2006, 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 **\$18,671.00** 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 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."
- (g) 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.

- (h) 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.
- (i) 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.
- (j) 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.
- (k) DEVELOPER agrees that any contract(s) for the Improvements shall:
 - 1. Indemnify and hold harmless COUNTY and TOWN, 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 and TOWN, 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 or TOWN by reason of any such claim or demand, DEVELOPER shall, upon written notice from COUNTY and/or TOWN, resist and defend such action or proceeding by counsel satisfactory to COUNTY and TOWN. 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, the Broward County Board of County Commissioners, TOWN and Town Council of the Town of Southwest Ranches by naming COUNTY, the Broward County Board of County Commissioners, TOWN and Town Council of the Town of Southwest Ranches 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 be 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

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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 TOWN or FDOT, DEVELOPER shall provide to the municipality 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

FOR the TOWN:

Town of Southwest Ranches
6589 SW 160 Avenue
Southwest Ranches, FL 33331

- 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 sits, 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]

DEVELOPER-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

Beatriz Lizaso
(Signature)
Print name: Beatriz Lizaso
Jane Storms
(Signature)
Print name: Jane Storms

Bella Acre Estates, LLC
by its managing member Bella Real Estate, Inc.
Carvajal Properties, LLC
Name of Developer (corporation/partnership)

By Fernando Carvajal
(Signature)
Print name: Beatriz Lizaso
Title: Managing Member
Address: 6511 Rodeo Drive
Southwest Ranches, FL 33330

____ day of _____, 20____

ATTEST (if corporation):

(CORPORATE SEAL)

(Secretary Signature)
Print Name of Secretary: _____

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

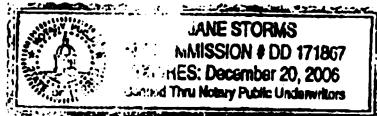
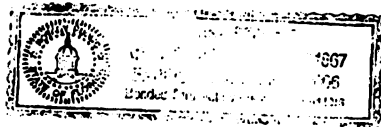
STATE OF Florida,
COUNTY OF Broward) SS.

The foregoing instrument was acknowledged before me this 8th day of August, 2006, by Fernando Carvajal, as Managing Member of Bella Acre Estates, a Florida corporation/partnership, on behalf of the corporation/ partnership. He or she is:
☒ personally known to me, or
☐ produced identification. Type of identification produced _____.

(Seal)

My commission expires:

NOTARY PUBLIC:
Jane Storms
Print name: J. Jane Storms



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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]
(Signature)
Print name: Nina Lynn Dawick
[Signature]
(Signature)
Print name: JOHN MICHAEL

Fidelity Federal Bank & Trust
Name of Mortgagee (corporation/partnership)

By [Signature]
(Signature)
Print name: Michael Lepera
Title: Vice President
Address: 200 East Broward Blvd
Ft Lauderdale, FL 33301

14 day of August, 2006

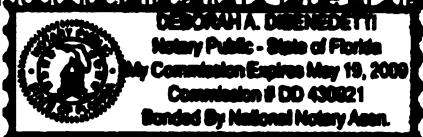
ATTEST (if corporation):

[Signature] (CORPORATE SEAL)
(Secretary Signature)
Print Name of Secretary: Nazaraat Rivera

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14th day of AUGUST, 2006, by MICHAEL LEPERA, as VICE PRESIDENT of FIDELITY FEDERAL BANK & TRUST, 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) 
My commission expires: MAY 19, 2009

NOTARY PUBLIC:
[Signature]
Print name: DEBORAH DIBENEDETTO

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01/01/02

TOWN OF SOUTHWEST RANCHES

By: _____
Mecca Fink, Mayor
____ day of _____, 2006

ATTEST:

Susan A. Owens, Town Clerk

By: _____
John Canada, Town Administrator
____ day of _____, 2006

APPROVED AS TO FORM:

Gary A. Poliakoff, J.D. Town Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

**TRACT 14 LESS THE WEST 45.00 FEET THEREOF AND ALL OF TRACT
15 OF "CHAMBERS LAND COMPANY SUBDIVISION" OF THE
NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 32,
TOWNSHIP 50 SOUTH, RANGE 40 EAST ACCORDING TO THE PLAT
THEREOF AS RECORDED PLAT BOOK 1, AT PAGE 5A OF THE PUBLIC
RECORDS OF BROWARD COUNTY, FLORIDA**

**SAID LANDS SITUATE, LYING AND BEING IN THE TOWN OF
SOUTHWEST RANCHES, BROWARD COUNTY, FLORIDA.**

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EXHIBIT "B"

IMPROVEMENTS & COST OF IMPROVEMENTS

Prior to the issuance of a certificate of occupancy within the plat, construct a far side (open design) bus pullout bay on Sheridan Street west of Dykes Road, with 100 feet of storage and 36 feet of exit taper, including an 8-foot wide by 40-foot long landing pad adjacent to the storage portion of the bus bay, in accordance with ADA standards.

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P. 16

954 475 9550

MMAPLANNING

Aug 30 06 12:42p

Return recorded document to:

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

Document prepared by:

Jason Espinosa
Pulice Land Surveyors, Inc.
5381 Nob Hill Road
Sunrise, FL 33351

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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

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WHEREAS, DEVELOPER has applied for approval of or an amendment to the **Bella Acre Estates Plat (117-MP-05)**, hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on January 17, 2006, 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:

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- (f) 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."
- (g) 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.

- (h) 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.
- (i) 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.
- (j) 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.
- (k) DEVELOPER agrees that any contract(s) for the Improvements shall:
 - 1. Indemnify and hold harmless COUNTY and TOWN, 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 and TOWN, 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 or TOWN by reason of any such claim or demand, DEVELOPER shall, upon written notice from COUNTY and/or TOWN, resist and defend such action or proceeding by counsel satisfactory to COUNTY and TOWN. 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, the Broward County Board of County Commissioners, TOWN and Town Council of the Town of Southwest Ranches by naming COUNTY, the Broward County Board of County Commissioners, TOWN and Town Council of the Town of Southwest Ranches 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 be 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

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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 TOWN or FDOT, DEVELOPER shall provide to the municipality 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:

Bella Acre Estates, LLC

6511 Rodeo Drive

Southwest Ranches, FL 33330

FOR the TOWN:

Town of Southwest Ranches

6589 SW 160 Avenue

Southwest Ranches, FL 33331

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 sits, 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.

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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]

DEVELOPER-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

Beatriz Lizaso
(Signature)
Print name: Beatriz Lizaso
Jane Storms
(Signature)
Print name: Jane Storms

Bella Acre Estates, LLC
by its managing member Bella Real Estate, Inc.
CARNAVAL PROPERTIES, LLC
Name of Developer (corporation/partnership)

By [Signature]
(Signature) Fernando Carvajal
Print name: Beatriz Lizaso
Title: Managing member
Address: 6511 Rodeo Drive
Southwest Ranches, FL 33330

____ day of _____, 20____

ATTEST (if corporation):

(Secretary Signature)
Print Name of Secretary: _____

(CORPORATE SEAL)

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF Florida,
COUNTY OF Broward) SS.

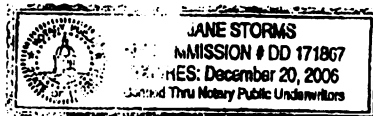
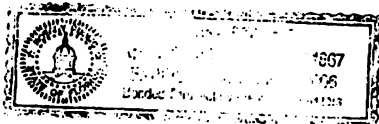
The foregoing instrument was acknowledged before me this 8th day of August, 2006, by Fernando Carvajal, as Managing member of Bella Acre Estates, a Florida corporation/partnership, on behalf of the corporation/ partnership. He or she is:
☒ personally known to me, or
☐ produced identification. Type of identification produced _____.

(Seal)

My commission expires:

NOTARY PUBLIC:

[Signature]
Print name: J. Jane Storms



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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]
(Signature)
Print name: Nina Lynn David
[Signature]
(Signature)
Print name: JOHN MICHAEL

Fidelity Federal Bank & Trust
Name of Mortgagee (corporation/partnership)

By [Signature]
(Signature)
Print name: Michael Lepera
Title: Vice President
Address: 200 East Broward Blvd
Ft Lauderdale, FL 33301

14 day of August, 2006

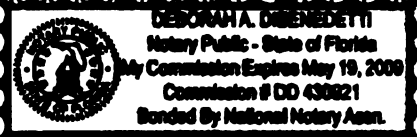
ATTEST (if corporation):

[Signature] (CORPORATE SEAL)
(Secretary Signature)
Print Name of Secretary: Nazaraat Rivera

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF FLORIDA)
) SS.
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14th day of August, 2006, by MICHAEL LEPERA, as VICE PRESIDENT of FIDELITY FEDERAL BANK & TRUST, 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) 
My commission expires: MAY 19, 2009

NOTARY PUBLIC:
[Signature]
Print name: DEBORAH DIBENEDETTI

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TOWN OF SOUTHWEST RANCHES

By: Mecca Fink
Mecca Fink, Mayor
20th day of September, 2006

ATTEST:

Susan A. Owens
Susan A. Owens, Town Clerk

By: John Canada
John Canada, Town Administrator
18 day of September, 2006

APPROVED AS TO FORM:

Gary A. Poliakoff
Gary A. Poliakoff, J.D. Town Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

**TRACT 14 LESS THE WEST 45.00 FEET THEREOF AND ALL OF TRACT
15 OF "CHAMBERS LAND COMPANY SUBDIVISION" OF THE
NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 32,
TOWNSHIP 50 SOUTH, RANGE 40 EAST ACCORDING TO THE PLAT
THEREOF AS RECORDED PLAT BOOK 1, AT PAGE 5A OF THE PUBLIC
RECORDS OF BROWARD COUNTY, FLORIDA**

**SAID LANDS SITUATE, LYING AND BEING IN THE TOWN OF
SOUTHWEST RANCHES, BROWARD COUNTY, FLORIDA.**

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EXHIBIT "B"

IMPROVEMENTS & COST OF IMPROVEMENTS

Prior to the issuance of a certificate of occupancy within the plat, construct a far side (open design) bus pullout bay on Sheridan Street west of Dykes Road, with 100 feet of storage and 36 feet of exit taper, including an 8-foot wide by 40-foot long landing pad adjacent to the storage portion of the bus bay, in accordance with ADA standards.

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