

RESOLUTION NO. 2009 – 046

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A WAIVER OF SIDEWALK REQUIREMENTS AGREEMENT BETWEEN BROWARD COUNTY AND THE TOWN OF SOUTHWEST RANCHES RELATING TO THE SOUTHWEST MEADOWS SANCTUARY PLAT; AUTHORIZING THE TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Southwest Ranches ("Town") has undertaken platting of approximately 25 acres of the parcel of land owned by the Town located at the southwest corner of Griffin Road and Dykes Road (the "Property"), which site shall be known as the Southwest Meadows Sanctuary Plat and shall include a park, public safety facility and town hall site (the "Plat"); and

WHEREAS, Chapter 5, Article IX, of the Broward County Code of Ordinances requires that, in conjunction with development of the Property, sidewalks be constructed adjacent to the Property; and

WHEREAS, sidewalks have not been built along nearby parcels, which would leave an isolated segment of sidewalk along the Property; and

WHEREAS, the Town wishes to use the Property without constructing sidewalks until such time as sidewalks are constructed by any owner, developer, or governmental entity along any adjacent properties or streets; and

WHEREAS, as a condition of approval of the Plat and for County approval of development of the Property without construction of sidewalks, it is necessary for the Town and Broward County to enter into a Waiver Of Sidewalk Requirements Agreement relating to the Southwest Meadows Sanctuary Plat, a copy of which is attached hereto, made a part hereof and marked Exhibit "A", (the "Agreement"); and

WHEREAS, the Town Council deems it to be in the best interest of the citizens and residents of the Town of Southwest Ranches to approve the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1. The foregoing "Whereas" clauses are confirmed and ratified as being true and correct, and are incorporated herein by this reference.

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

Section 3. The appropriate Town officials are hereby authorized to execute the Agreement, and the Town Administrator and Town Attorney are authorized to make any non-material revisions to the Agreement as may be acceptable to the Town Administrator and approved as to form and legality by the Town Attorney, consistent with the intent of this Resolution.

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

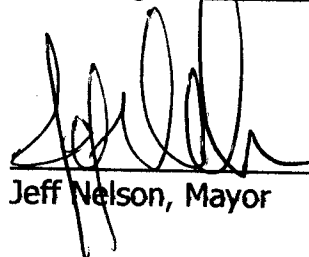
Section 5. The Agreement shall be recorded by the Town in the Public Records of Broward County, Florida.

Section 6. 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 19th day of March, 2009, on a motion by Council Member Aster Knight and seconded by Vice Mayor Steve Breitkreuz.

Nelson	<u>Y</u>
Breitkreuz	<u>Y</u>
Knight	<u>Y</u>
McKay	<u>Y</u>
Fisikelli	<u>N</u>

Ayes	<u>4</u>
Nays	<u>1</u>
Absent	<u>0</u>
Abstaining	<u>0</u>



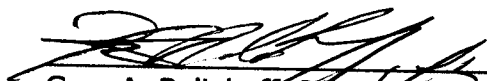
Jeff Nelson, Mayor

Attest:



Susan A. Owens, CMC, Town Clerk

Approved as to Form and Correctness:



Gary A. Poliakov, J.D., Town Attorney
FTL_DB: 1173483_1

Return recorded copy to:

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

Document prepared by:

Becker & Poliakoff, P.A.
Carol Capri Kalliche, Attorney at law
3111 Stirling Road
Fort Lauderdale, FL 33312

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 PERFORMED.

WAIVER OF SIDEWALK REQUIREMENTS 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

Town of Southwest Ranches, hereinafter referred to as "DEVELOPER," its successors and assigns.

WHEREAS, DEVELOPER has applied for a permit to develop the Property known as Southwest Meadows Sanctuary Plat, Development Management Division File No. 028-MP-08, hereinafter referred to as the "Property," a legal description of which is attached hereto as Exhibit "A" and made a part hereof;" and

WHEREAS, Chapter 5, Article IX, of the Broward County Code of Ordinances, requires that, in conjunction with such development, sidewalks be constructed adjacent to the Property; and

WHEREAS, sidewalks have not been built along nearby parcels, which would leave an isolated segment of sidewalk along the Property; and

WHEREAS, DEVELOPER wishes to use the Property without constructing sidewalks until such time as sidewalks are constructed by any owner, developer, or governmental entity along any adjacent properties or streets; and

CAF#455
03/30/06 Revised

1



Exhibit "A"

WHEREAS, DEVELOPER agrees that the construction of the sidewalks would materially benefit the Property; and

WHEREAS, on _____, 20___, it was determined that DEVELOPER could be released from the requirement to construct sidewalks if the DEVELOPER entered into this Agreement to construct or pay for the construction of the sidewalks at any time that notice is given under the terms set forth below, or to pay any assessment levied if a special assessment district were formed to construct the sidewalks; NOW, THEREFORE,

IN CONSIDERATION of the mutual promises and representations contained herein, COUNTY and DEVELOPER agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. DEVELOPER agrees to construct or pay for the construction of sidewalks within ninety (90) days of notice from COUNTY that sidewalks are required under the terms of this Agreement. Such notice shall not be given unless and until sidewalks are to be constructed along parcels adjacent to the Property, or along streets adjacent to such parcels.
3. DEVELOPER agrees that, in the alternative to the provisions of Paragraph 2, if a special assessment district is ever formed for the purpose of constructing sidewalks, including sidewalks adjacent to the Property, such improvements would constitute a benefit to the property and DEVELOPER will pay his or her share of any assessment levied for such purpose.
4. DEVELOPER agrees that the construction contract for the sidewalk shall indemnify and hold harmless COUNTY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of DEVELOPER and persons employed or utilized by or under contract with the DEVELOPER in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require DEVELOPER or its contractor to indemnify COUNTY, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. In the event that any action or proceeding is brought against COUNTY by reason of any such claim or demand, DEVELOPER shall, upon written notice from COUNTY, resist and defend such action or proceeding by counsel satisfactory to COUNTY. The provisions of this section shall survive the expiration or earlier termination of this Agreement.
5. COUNTY agrees that, in consideration of the terms and conditions contained herein, the requirement of the Broward County Code of Ordinances that DEVELOPER construct or pay for the future construction of the sidewalk improvements prior to issuance of a development order is hereby satisfied.



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 Highway Construction and Engineering Division
1 North University Drive, Suite 300B
Plantation, FL 33324-2038

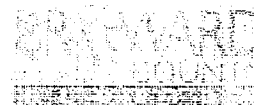
For the DEVELOPER:

Town Administrator

6589 S.W. 160 Avenue

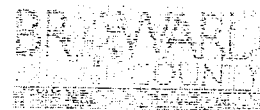
Southwest Ranches, FL 33331

7. RELEASE. When all of the obligations under this Agreement are fully performed, at the request of the Developer or its successor and upon payment of any applicable fees, COUNTY shall cause a Release to be recorded in the Official Records of Broward County, Florida evidencing such performance.
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 performed.
9. 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.
10. 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.



11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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 COUNTY and DEVELOPER.

[THE REMAINDER OF THIS PAGE IS 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, acting by and through its Mayor or Vice Mayor, authorized to execute same; and DEVELOPER, acting 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
Government Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Assistant County Attorney

_____ day of _____, 20__



DEVELOPER-TOWN

TOWN OF SOUTHWEST RANCHES, a political
subdivision of the State of Florida

ATTEST:

By: _____
Susan A. Owens, CMC, Town Clerk

By: _____
Jeff Nelson, Mayor

Dated this ____ day of _____, 2009

By: _____
Bert Wrains, Interim Town Administrator

Dated this ____ day of _____, 2009

Approved as to Form:

By: _____
Gary A. Poliakoff, J.D., Town Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

THOSE PORTIONS OF TRACTS 52, 53, 54 AND 55 OF THE S.E. 1/4 OF SECTION 29, TOWNSHIP 50 SOUTH, RANGE 40 EAST, OF FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2 AT PAGE 17 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE S.E. 1/4 OF SAID SECTION 29, THENCE RUN NORTH 01°38'10" WEST (BASIS OF BEARINGS) 331.17 FEET ALONG THE EAST LINE OF SAID SOUTHEAST 1/4 OF SECTION 29, TO AN INTERSECTION WITH THE SOUTH LINE OF TRACT 55 ACCORDING TO SAID PLAT; THENCE RUN SOUTH 89°41'59" WEST 53.01 FEET ALONG SAID SOUTH LINE TO AN INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF S.W. 160TH AVENUE (DYKES ROAD) AS DESCRIBED ON THE INSTRUMENTS FILED IN OFFICIAL RECORDS BOOK 3339 AT PAGE 587 AND OFFICIAL RECORDS BOOK 26079 AT PAGE 143 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°41'59" WEST ALONG SAID SOUTH LINE OF TRACT 55 1239.34 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF S.W. 163RD AVENUE, AS DESCRIBED ON THE INSTRUMENT FILED IN OFFICIAL RECORDS BOOK 5226 AT PAGES 628 THROUGH 636 INCLUSIVE OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN NORTH 01°36'38" WEST 496.26 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO AN INTERSECTION WITH THE NORTH LINE OF THE SOUTH 1/2 OF TRACT 54 ACCORDING TO SAID PLAT; THENCE RUN NORTH 89°40'39" EAST 631.06 FEET ALONG SAID NORTH LINE TO THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE WEST 1/2 OF SAID TRACT 54; THENCE RUN NORTH 01°37'24" WEST 165.50 FEET ALONG THE EAST LINE OF THE NORTH 1/2 OF THE WEST 1/2 OF SAID TRACT 54 TO AN INTERSECTION WITH THE NORTHEAST CORNER OF THE NORTH 1/2 OF THE WEST 1/2 OF SAID TRACT 54; THENCE RUN SOUTH 89°40'13" WEST 631.02 FEET ALONG THE NORTH LINE OF SAID TRACT 54 TO AN INTERSECTION WITH SAID EAST RIGHT-OF-WAY LINE OF S.W. 163RD AVENUE; THENCE RUN NORTH 01°36'38" WEST 297.51 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO AN INTERSECTION WITH THE SOUTH LINE OF THAT CERTAIN PERPETUAL ROADWAY EASEMENT AS DESCRIBED ON THE INSTRUMENT FILED IN OFFICIAL RECORDS BOOK 20827 AT PAGE 36 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN NORTH 43°19'03" EAST 35.31 FEET ALONG SAID SOUTH LINE; THENCE RUN NORTH 88°14'44" EAST 1166.63 FEET ALONG SAID SOUTH LINE AND THE SOUTH LINE OF THAT CERTAIN RIGHT-OF-WAY EASEMENT AS DESCRIBED ON THE INSTRUMENT FILED IN OFFICIAL RECORDS BOOK 20827 AT PAGE 33 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA TO AN INTERSECTION WITH A LINE 100 FEET WEST OF, AS MEASURED AT RIGHT ANGLES AND PARALLEL WITH SAID EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 29; THENCE RUN SOUTH 01°38'10" EAST 20.94 FEET ALONG SAID PARALLEL LINE TO AN INTERSECTION WITH THE NORTH LINE OF TRACT 53 ACCORDING TO SAID PLAT; THENCE RUN NORTH 89°39'19" EAST 17.01 FEET ALONG SAID NORTH LINE TO AN INTERSECTION WITH SAID WEST RIGHT-OF-WAY LINE OF S.W. 160TH AVENUE (DYKES ROAD) AS DESCRIBED ON SAID INSTRUMENTS FILED IN OFFICIAL RECORDS BOOK 3339 AT PAGE 587 AND OFFICIAL RECORDS BOOK 26079 AT PAGE 143 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN SOUTH 03°38'11" EAST 859.38 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO A POINT OF INTERSECTION; THENCE RUN SOUTH 01°38'10" EAST 135.30 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE TOWN OF SOUTHWEST RANCHES, BROWARD COUNTY, FLORIDA AND CONTAINING 25.712 ACRES MORE OR LESS.

