

RESOLUTION NO. 2017-002

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A SETTLEMENT AGREEMENT WITH NEW TESTAMENT BAPTIST CHURCH, INCORPORATED OF MIAMI, FLORIDA ("NTBC") RELATING TO THE PROPERTY GENERALLY LOCATED AT 13900 GRIFFIN ROAD; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO THE SETTLEMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, New Testament Baptist Church, Incorporated of Miami, Florida ("NTBC") is the current owner of property and improvements situate on a total of approximately 83.5 to 85.5 acres of land generally located at 13900 Griffin Road Southwest Ranches, Florida (property folio numbers of 5040 27 03 0010 & 5040 70 03 0012) (the "NTBC land"); and

WHEREAS, the NTBC land has a Community Facilities land use plan designation and it maintains a Community Facility zoning ("CF zoning"); and

WHEREAS, on or about February 28, 2013, the Town passed and adopted Ordinance No. 2013-006 (the "Ordinance"), which amended the Town's Comprehensive Plan policies pertaining to development intensities within the Community Facilities land use plan designation; and

WHEREAS, NTBC believes, notwithstanding the Town's argument to the contrary, that prior to the adoption of the Ordinance, the CF zoning would permit NTBC to build up to 931,095 square feet of buildings on the NTBC land, and that after the Ordinance NTBC would only be permitted to build approximately 317,448 sq ft; and

WHEREAS, as a result of the reduction caused by adoption of the Ordinance, NTBC filed suit against the Town in the Circuit Court of Broward County pursuant to Case No. 13-11134 CACE (09), to wit: *New Testament Baptist Church Incorporated of Miami, Florida vs. Town of Southwest Ranches* (the "Lawsuit"); and

WHEREAS, both parties desire to reach an amicable compromise and settlement of all of the disputed claims in the Lawsuit; and

WHEREAS, the parties, acting in good faith and in their own best interests, have engaged in extensive negotiations, have reconciled their differences, and have arrived at an amicable settlement of the Lawsuit; and

WHEREAS, the parties agree that the settlement of the Lawsuit without further litigation is in the public's best interest and that the entry of this Settlement Agreement

is the most appropriate means of resolving this matter; and

WHEREAS, the Town Council believes that the settlement of the Lawsuit is in the best interest of the health, safety, and welfare of its residents.

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

Section 1. The above-referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby approves the Settlement Agreement with New Testament Baptist Church, Incorporated of Miami, Florida, as specifically delineated in Exhibit "A", attached hereto and incorporated herein by reference.

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into the Settlement Agreement in substantially the same form as that attached hereto as Exhibit "A," and to make any and all changes necessary and proper to effectuate the intent of this Resolution.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest

Ranches, Florida, this 13th day of October, 2016, on a motion by

Vice Mayor McKay and seconded by Council Member Fisikelli.

Nelson
McKay
Breitkreuz
Fisikelli
Jablonski

Yes
Yes
Yes
Yes
Yes

Ayes
Nays
Absent

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0
0

Jeff Nelson, Mayor

ATTEST:
Russell Muñiz
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:
Keith Poliakoff, J.D.
Town Attorney

113552350.1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement"), dated this ~~13th~~^{13th} day of ~~September~~^{October}, 2016 is made between New Testament Baptist Church, Incorporated of Miami, Florida ("NTBC") and Town of Southwest Ranches, a municipal corporation of the State of Florida (the "Town"); also collectively referred to as (the "Parties").

General Recitals

1. NTBC is the current owner of property and improvements situate on a total of approximately 83.5 to 85.5 acres of land generally located at 13900 Griffin Road Southwest Ranches, Florida (property folio numbers of 5040 27 03 0010 & 5040 70 03 0012) (the "NTBC land"). Such total is an estimate, and is without the benefit of a survey.

2. The NTBC land has a Community Facilities land use plan designation and it maintains a Community Facility zoning ("CF zoning").

3. On or about February 28, 2013, the Town passed and adopted Ordinance No. 2013-006 (the "Ordinance"), which amended the Town's Comprehensive Plan policies pertaining to development intensities within the Community Facilities land use plan designation.

4. NTBC believes that prior to the adoption of the Ordinance, the CF zoning would potentially permit NTBC to build up to 931,095 square feet of buildings on the NTBC land, notwithstanding the Town's argument that its Comprehensive Plan, NTBC's plat note, and other Code regulations would have further limited such construction. The prior F.A.R. formula pursuant to CF zoning was as follows: Total square feet of NTBC land x .25.

5. Pursuant to the Ordinance, the F.A.R. formula was changed and reduced the building area permitted under the prior F.A.R. Pursuant to the Ordinance, the permitted square footage of buildings on the NTBC land was subsequently reduced from approximately 931,095

(2)

sq ft to approximately 317,448 sq ft.

6. As a result of the reduction caused by adoption of the Ordinance, NTBC filed suit against the Town in the Circuit Court of Broward County pursuant to Case No. 13-11134 CACE (09), to wit: *New Testament Baptist Church Incorporated of Miami, Florida vs. Town of Southwest Ranches* (the "Lawsuit").

7. In the Lawsuit, NTBC is seeking relief and monetary damages pursuant to the Bert J. Harris Private Property Right Protection Act (F.S. 70.001), due to the actual loss of market value to the NTBC land as a result of adoption of the Ordinance. NTBC further alleges in the Lawsuit that the reduction of potential building area constitutes an excessive loss of vested property rights. The Parties have agreed upon a resolution of the Lawsuit, as specifically contained herein, which is contingent upon the sale of a portion of the NTBC land, as specifically delineated herein.

8. On or about April 10, 2016, NTBC executed a purchase and sale agreement with EAAI Member, LLC, its successors and/or assigns, which has been assigned to SWR Acquisitions, LLC, a Delaware limited liability (the "Buyer") for the sale of the western approximately 40 acres of the NTBC land ("West 40 acres"). This Agreement is strictly contingent upon the closing of the sale of the West 40 acres from NTBC to Buyer, which shall be a condition precedent to all other terms and conditions contained within this Agreement. Following the closing of the West 40 acres, Buyer shall timely submit applications to the Town for a land use amendment, rezoning, and a replat inclusive of all documents and fees required to accompany the applications, to: (1) rezone the West 40 acres from the current CF zoning to the Town's Rural Estate (RE) zoning category; (2) change the West 40 acres future land use map ("FLUM") designation from Community Facilities to Rural Estates; and (3) create a new plat

(collectively the "Applications"). If Buyer submits the Applications within one hundred and twenty (120) days of this Agreement, the Lawsuit shall be dismissed with prejudice within five (5) days from the Town's approval of the Applications. In the event Buyer timely submits the applications in good faith, but the Town subsequently believes the application to be deficient in some ministerial manner, then the application shall still be deemed timely and the Buyer shall work diligently and in good faith to address any such deficiency in as timely manner as is reasonable under the circumstances. If any such deficiency requires additional documentation, consent and/or approval from any federal or state or county agency, then the Buyer's application shall not be deemed untimely if Buyer is diligently working to obtain such documentation, consent and/or approval from any such applicable agency. Should the Buyer fail to submit the completed Applications to the Town within one hundred and twenty (120) days of this Agreement, then a final dismissal of the Lawsuit with prejudice shall be filed without further delay, and without waiver of any of Buyer's rights pursuant to paragraph 15(a) of this Agreement. It is the Town's position that the FLUM change and the new plat will also require the approval of the Broward County Board of County Commissioners, or its designated Board. In addition, it is the Town's position that the FLUM change will also be subject to review and approval by the State's land planning agency and other reviewing agencies pursuant to FLS §163.3184(1)(c).

9. The RE zoning category allows for the construction of one (1) single family home for every one (1) net acre of property net of streets, common areas, and shared water bodies as required in the Town's Code. Based upon the believed size of the West 40 acres, and the Buyer's own conceptual site plan which has not yet been reviewed by the Town, it is NTBC's belief that the West 40 acres could be developed to include approximately twenty nine (29) or more single

family homes. The foregoing is intended solely as an estimate and is not intended to either limit or restrict the final number of homes which shall be determined by the final approved site plan, which shall be in strict accordance with the Town's Code and Comprehensive Plan. ("Buyer's intended use").

10. The current CF zoning and Community Facilities land use plan designation do not permit the Buyer's intended use on the West 40 acres.

11. In order to allow the Buyer's intended use, the CF zoning and FLUM designation for the West 40 acres must be changed by the Town to the Rural Estate (RE) residential zoning designation and the Rural Estates land use designation, which expressly permit the Buyer's intended use. Once again, it is the Town's position that such a change shall also necessitate the approval of Broward County and the review agencies specified in Section 163.3184, Florida Statutes as delineated above. However, to the extent that these approvals are not required and/or are subsequently waived by Broward County and/or the State, the Town shall not require anything in addition to the requirements of the Town's Code with respect thereto.

12. Upon closing of the sale of the West 40 acres to the Buyer, NTBC will retain ownership of the eastern approximately 45.5 acres (the "East 45.5 acres").

13. The Town finds that this Settlement Agreement is in the best interest of the health, safety, and welfare of its residents. The Town also finds that the rezoning and FLUM change of the West 40 acres meets the criteria contained within the Town's Code, is a legitimate and valid public purpose, is a valid exercise of the Town's legislative judgment, and that the rezoning and FLUM change will not cause an extraordinary burden on the Town, the West 40 acres, or the surrounding properties.

14. The parties agree that the foregoing recitals are true and correct and every

provision contained in this Agreement is a material provision without inclusion of which the Parties would not settle the Lawsuit.

Settlement

15. Terms. The Parties are desirous of an amicable resolution of the Lawsuit and hereby agree to the following terms;

a. On or before ninety (90) days from receipt of the Buyer's completed zoning, plat, and land use change application, inclusive of all documents and fees required to accompany the applications, the Town Council shall, so long as the requirements of the Town's Code and Comprehensive Plan with respect to Rural Estate (RE) zoning category and Rural Estates land use category have been met, approve a rezoning, plat, and land use change to the West 40 acres (currently CF zoning) to the Rural Estate (RE) zoning category and Rural Estates land use category, which shall permit the development of one (1) home for every one (1) net acre of property net of streets, common areas owned and maintained by a property owner's association or equivalent association, and shared water bodies as required in the Town's Code. Additionally, the Parties and the Buyer are aware that in addition to the applicable approvals from the Town, approval from Broward County as well as other private, state and/or federal agencies may be required. So long as the Buyer is in compliance with all other applicable requirements of the Town Code related the Buyer's intended use, the Town shall cooperate in a good faith, diligent, and timely manner to provide the Buyer with any and all additional documentation the Buyer may reasonably require to obtain the additional approvals from any private, state, federal and/or county agencies. In the event NTBC is desirous in the future of selling to the Buyer any additional portion of the East 45.5 acres, the Parties agree that the foregoing requirements shall apply and inure to any such additional lands which Buyer may purchase in the future from

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NTBC, its successors and/or assigns, so long as the land being acquired is immediately adjacent to, contiguous with the West 40 acres and is part of the East 45.5 acres. In the event of future sale of any additional land which was formerly part of the East 45.5 acres by NTBC, the maximum square feet of building set forth in subparagraph (b) below shall be reduced by 4,396 square feet for every acre, or portion thereof sold by NTBC. The future site plan for the West 40 acres, and homes, shall be designed and constructed in strict accordance with the Town's Code and Comprehensive Plan. In addition, a berm, equivalent to the berm constructed on the Archdiocese of Miami/St. Mark Church property (generally located at 5551 SW 127th Avenue, Southwest Ranches, FL 33330) (property folio #5040 35 01 0026), will need to be constructed on the East 45.5 acres, at Buyers sole cost and expense, to fully buffer the residential properties from the East 45.5 acres. Such berm shall be maintained in the future by NTBC at NTBC's expense. In the event Buyer purchases any additional portion of the East 45.5 acres, the berm shall be extended so as to fully buffer the additional portion sold. In addition, in the event NTBC adds substantial improvements to the East 45.5 acres, then a similar berm shall also be constructed on the East 45.5 acres south and east property lines, at NTBC's sole cost and expense, and it shall be maintained by NTBC. No variances, which will cause an increase in density or plot coverage, shall be considered on the West 40 acres, and no access shall be provided onto Hancock Road, unless such access is restricted for emergency purposes only and is specifically required by Broward County or any other state or federal agency. Every effort shall be made to design a site plan that will not require the use of Hancock Road for emergency access. So long as NTBC is in full compliance with all other applicable Town Code and Comprehensive Plan requirements applicable to CF zoning and Community Facilities land use on the East 45.5 acres in effect at that time, NTBC shall be permitted to build a maximum of

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200,000 square feet of building on the East 45.50 acres, in strict compliance with the Town's Code and Comprehensive Plan, including but not limited to the Town's Code and Land Use Plan's limitation on use. Such maximum square footage shall be reduced by 4,396 square feet for every acre, or portion thereof, of property that is less than the 45.50 acres stated above, inclusive of any reduction resulting from survey calculations that ascertain the exact acreage. With the exception of any future sale of additional portions of the East 45.50 acres to the Buyer, the East 45.50 acres and/or any portion remaining thereafter shall be utilized by NTBC strictly for a house of worship and NTBC's directly owned and operated primary and secondary school, including the ancillary uses, as defined by the Town's Code and Comprehensive Plan, as may be amended from time to time; and

b. If Buyer submits the Applications within one hundred and twenty (120) days of this Agreement, NTBC shall file a dismissal of the Lawsuit with prejudice within five (5) days from the Town's approval of the Applications, and shall file a copy of this Settlement Agreement with the Court. Should Buyer fail to submit the completed Applications to the Town within one hundred and twenty (120) days of this Agreement, then NTBC shall file a final dismissal of the Lawsuit with prejudice without further delay, and without waiver of any of Buyer's rights pursuant to paragraph 15(a) of this Agreement, and it shall file a copy of this Settlement Agreement with the Court; and

c. In addition to the aforementioned, NTBC agrees that it shall be barred from any and all future actions, or causes of actions, relating in any way to the development or use of the East 45.50 acres. Such bar shall not be applicable if such proposed development or use is consistent with the terms of this Agreement and the Town's Code and/or Comprehensive Plan, unless as specifically stated otherwise herein. The future site plan for the East 45.50 acres, and proposed

buildings, shall be designed and constructed in strict accordance with the Town's Code and Comprehensive Plan. No variances will be permitted.

16. Payment of Attorneys' Fees. The Parties agree that each shall bear its own attorneys' fees and costs.

17. Matters Settled. This Agreement settles all of the claims and causes of action of any nature whatsoever between the Parties they had, have or will have in the future between them relating to the issues raised in the Lawsuit, including but not limited to the NTBC land, the West 40 acres, and the East 45.50 acres including the buildable square footage allowed for the East 45.50 acres and the permitted uses thereon. This Agreement contains a mutual release by the Parties NTBC, which shall become valid and binding upon closing of the land sale between NTBC and the Buyer and the full and final satisfactory performance of each Parties respective rights and obligations under this Agreement.

18. Mutual Release by Parties. The Parties hereby release, acquit, and forever discharge, jointly and severally, each other and their respective officers, employees and agents from the matters referenced in this Agreement, as well as from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express, implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which either Party can, shall, or may have in the future or did have against the other whether raised or could have been raised in, and/or arising from, directly or indirectly, the Lawsuit. This release shall be full and binding upon the full and final satisfactory performance of each Parties respective rights and obligations under this Agreement.

19. Agreement to Run with the Land. All of the provisions of this Agreement shall be construed as covenants running with the land. The Parties, including any successors and assigns, shall be bound by all of the provisions of this Agreement and any amendments thereof. Upon the closing of the land sale between NTBC and the Buyer, this Agreement and any amendments thereof shall be recorded in the Public Records of Broward County, Florida, at NTBC's expense.

20. No Admission of Liability or Wrongdoing. This Agreement is a compromise and settlement of disputed claims, and does not constitute a determination of liability with respect to the allegations made in the Lawsuits. The Parties agree that this Agreement does not constitute adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of law. Nothing herein shall be interpreted or construed as any weakness of proof on the part of either Party; nor shall anything herein be interpreted or construed as an acknowledgment, admission, or evidence of liability on the part of either Party. This Agreement shall not be used as evidence of liability or fault in any other proceeding, claim, case, or lawsuit. This Agreement has been entered into for the purpose of avoiding the risks, burdens, and expense of litigation. The parties find that entry of this Agreement is in the public interest, as expediting resolution of the disputed claims avoids unnecessary legal expenses for the Parties.

21. Governing Law. This Agreement shall be enforced and construed according to the laws of the State of Florida.

22. Final Order of Dismissal with Prejudice; Binding Effect. Subject to the Parties full performance of all the terms and obligations of this Agreement, this shall constitute a final resolution of all claims which were or could have been asserted by either Party in the above-styled civil action, and shall be binding on the Parties, their employees, representatives,

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successors, heirs and assigns. Subject to the Parties full performance of all the terms and obligations contained in this Agreement, this action is hereby dismissed with prejudice, with the Court only retaining jurisdiction to enforce the terms and conditions of and compliance with this Agreement.

23. 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, presented to the Court and executed by the Parties supported by appropriate authorizing approvals.

24. Entire Agreement. The Parties acknowledge that this Agreement constitutes the full agreement or understanding between the Parties. Each party acknowledges that no other party, or agent or attorney of any other party, or any person, firm, corporation or any other entity has made any promise, representation, or warranty, whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Agreement. Each party also hereby acknowledges that this Agreement was not executed in reliance on any promise, representation, or warranty not contained herein or made by any other party or its legal counsel. The execution of this Agreement is made solely upon the judgment of each party, after a full and complete review of all facts and legal advice.

25. Construction. The Parties acknowledge that this is a negotiated Agreement and that, in no event, shall any of the terms or provisions hereof, or any of the terms contained within the attachments hereto, be construed against any party on the basis that such party or counsel for such party drafted this Agreement or the attachments hereto.

26. Paragraph Headings. The headings of the paragraphs of this Agreement are inserted only for the purpose of convenience of reference, and the Parties recognize and agree

that these headings may not adequately or accurately describe the contents of the paragraph which they head. Such headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement or any part or portion thereof, nor

27. Third Party Beneficiary. The Parties agree that the Buyer and/or its successors and/or assigns shall be deemed as a third party beneficiary of this Agreement and shall have the right to enforce this Agreement, solely as it relates to the enforcement of the terms of Paragraph 15(a) of this Agreement for the West 40 acres and/or any additional land Buyer may purchase from NTBC, its successors and/or assigns which is immediately adjacent to, contiguous with and formerly part of the East 45.5 acres.

28. Binding Effect. This Agreement shall be binding upon each of the Parties, their heirs, legal representatives, executors, administrators, successors and assigns.

29. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall be deemed one instrument. Facsimile signatures will have the same legal effect as original signatures and are binding on the Parties.

30. Independent Counsel. Each party acknowledges that it has engaged and consulted with legal counsel of their choosing with respect to the negotiation and execution of this Agreement and each party has executed this Agreement freely, knowingly, and voluntarily and with a complete understanding of the terms and conditions of this Agreement.

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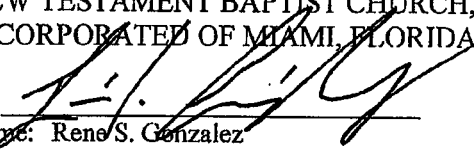
31. Severability. The Parties agree that if any provision of this Agreement or any part of any provision of this Agreement, other than provision is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of any other provision or part of this Agreement.

32. Jurisdiction over Disputes. The Circuit Court of Broward County shall retain jurisdiction over this Agreement. In the event of a dispute arises between the Parties as to the interpretation and/or enforcement of this Agreement, the Parties agree that in any such dispute, the prevailing party shall be entitled to recovery of its attorneys' fees and costs reasonably incurred in such proceedings.

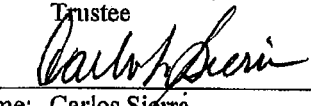
33. Recordation. This Agreement shall be recorded in the public records of Broward County Florida, and shall be specifically linked to the parcels identified herein.

IN WITNESS WHEREOF, the Parties have personally executed this Agreement as of the date set forth below.

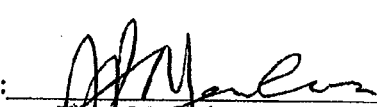
NEW TESTAMENT BAPTIST CHURCH,
INCORPORATED OF MIAMI, FLORIDA

By: 
Name: Rene S. Gonzalez
As: Trustee

By: 
Name: Harold T. Kushi
As: Trustee

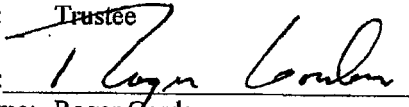
By: 
Name: Carlos Sierra
As: Trustee

By: 
Name: Leonardo King
As: Trustee

By: 
Name: Pierre Membrives
As: Trustee


By: 
Name: Fidel A. Morales
As: Trustee

By: 
Name: Ariel Pared
As: Trustee

By: 
Name: Roger Gordon
As: Trustee

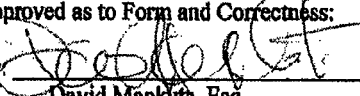
Approved as to Form and Correctness:

By:


Michael Cosculluela, Esq.
General Counsel for New Testament
Baptist Church

Approved as to Form and Correctness:

By:

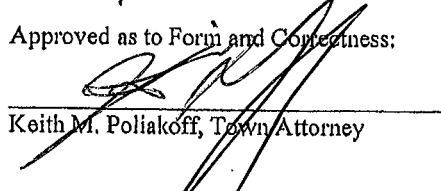

David Mankuta, Esq.
Litigation Counsel for New Testament
Baptist Church

TOWN OF SOUTHWEST RANCHES

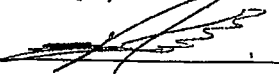

By: Jeff Nelson, Mayor

Attest: 
Russell Mufiz, MMC, Town Clerk

Approved as to Form and Correctness:


Keith M. Poliakoff, Town Attorney

SWR ACQUISITIONS, LLC, solely as it relates to Paragraph 15(a)

By:  9-28-16.
Rolfo Alvarez Manager
Print name and title above

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