

R 98 20440
PUBLIC FACILITIES AGREEMENT - LESTER PUD

DEC 3 1998

This Agreement is made and entered into this _____ day of December, 1998 by and between Levitt Homes, Incorporated, a Delaware Corporation (the "Developer"), and Palm Beach County, a subdivision of the State of Florida (the "County").

WITNESSETH:

WHEREAS, Developer is the developer of approximately **142** acres of land located in Palm Beach County, Florida, as more particularly described in Exhibit "A," attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer has applied to County for the rezoning of the property from AR-Agricultural Residential District to Residential Planned Unit Development District ("P.U.D.") pursuant to a zoning petition No. 98-55 for the Developer's property to permit the development of up to 700 single-family dwelling units (the "Project"); and

WHEREAS, County's 1989 Palm Beach County Comprehensive Plan requires certain public facilities to have adequate capacity available to accommodate the impacts of new development such as the Project; and

WHEREAS, County has adopted Article 11 of the County's Land Development Code ("ULDC") entitled "Adequate Public Facility Standards" which sets forth a procedure for determination of adequate public facilities to serve the Project and a procedure for issuance of a concurrency reservation ("Concurrency Reservation") confirming the existence of adequate public facilities to serve the Project as part of the Project's governmental approval review process; and

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WHEREAS, Section 11.2, ULDC, entitled “Level of Service (LOS) Standards”, Paragraph E entitled “LOS for Road Facilities” requires the Project to meet the level of service for road facilities as set forth in Section 15.1, ULDC, entitled “Traffic Performance Standards”; and

WHEREAS, with the improvement of certain roads, the Project meets the Traffic Performance Standards required to receive a Concurrency Reservation. Lake Ida Road from Military Trail to Congress Avenue must be assured as determined by Article 15 of the ULDC in order for the Project to meet traffic performance standards; and

WHEREAS, Developer shall assure the construction of Lake Ida Road from Military Trail to Congress Avenue by the timely posting of a letter of credit.

NOW, THEREFORE, in consideration of the premises and mutual undertakings and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Developer and County hereby covenant and agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein and made a part hereof by this reference.

2. Lake Ida Road. County agrees to use its best efforts to construct Lake Ida Road to a four (4) lane section from Military Trail to Congress Avenue, (“Lake Ida Road”) in accordance with the following schedule:

a. Administer (pursuant to County standards) a contract with a consultant approved by the County to prepare permissible construction plans and right-of-way documents by October 1, 1999;

b. Right-of-way acquisition beginning upon completion of right-of-way documents and construction plans; and

c. Construction contract award by October 30, 2000.

3. Developer's Responsibilities. Developer shall provide County with the following letters of credit or irrevocable surety approved by the County in a form acceptable to the County (the "LOC"):

a. Developer or such designee as reasonably approved by the County shall provide an irrevocable LOC no later than sixty (60) days (unless extended for an additional six months pursuant to the ULDC) from the date of approval of the Project in an amount calculated to be equal to the sum of the estimated costs of design (\$245,000.00) and road-way acquisition costs (\$100,000.00) for the four (4) lane widening of Lake Ida Road. Any funds not used for design and acquisition costs shall be used for the construction of the Lake Ida Road. A second irrevocable LOC shall be provided no later than six (6) months (unless extended for an additional six months pursuant to the ULDC) from the date of approval of the Project in the amount of Nine Hundred Thousand (\$900,000.00) Dollars. Such second LOC will not be drawn upon until September 30, 2000. Road impact fees paid prior to date of posting of either LOC shall be subtracted from the amount of the LOC to be posted. These are estimated costs. Notwithstanding the foregoing, in the event that Developer pays road impact fees for the project after Developer has provided the LOC, but before the LOC has been drawn, the amount of this LOC available to be drawn by the County shall be reduced by the amount of such road impact fees paid by Developer. Both LOCs may be drawn in increments upon the provision of thirty (30) days' written notice. The second LOC may be drawn in increments but no earlier than September 30, 2000 for and only to the extent necessary to pay for the improvements addressed in paragraph 2 when required by the County Engineer for these improvements in accordance with the schedule set forth in paragraph 2. In the event a portion of the improvements are funded by others prior to construction, the Developer shall be relieved of that portion of the obligation. In the event a LOC is drawn, Developer shall thereafter be entitled to receive a credit for the total amount drawn against the road impact fees in effect at the time of issuance of each building permit for the Project until the entire credit is exhausted.

- b. If at any point in the process of design, right-of-way acquisition or bidding of Lake Ida Road, the LOCs posted by the Developer are not sufficient to cover the costs thereof, the Developer shall post additional surety within 60 days of written notice from the County Engineer, provided, however, the maximum amount required of the Developer for Lake Ida Road (inclusive of the obligations recited in paragraph 3[a] above) shall be no more than one and one-half (1 ½) times the Developer's road impact fee for the Project. Any amounts of the LOCs not drawn by the County shall be released or refunded to the Developer at the completion of the Project.
 - c. Developer shall hire ^{OF HIS SRVP} a consultant acceptable to the county to prepare a permit ~~table~~ set-off construction plans and right-of-way documents by October 1, 1999 for Lake Ida Road as a four-lane section as approved by the County
4. Funds shall be expended for Lake Ida Road in the following order:
- a. The \$1,245,000.00 LOCs posted as required in 3a above.
 - b. The \$2,000,000.00 budgeted by the County in its Five Year Road Program.
 - c. Any additional funds if required from the Developer up to **15** times the Traffic Impact Fee.
 - d. Any additional funds in excess of Developer requirement as set forth in 4(c) above if required to complete the construction to be provided by County.
5. County's Responsibilities. County shall have the following responsibilities

under this Agreement.

- a. County shall be responsible to administer a contract for the creation of the construction plans, right-of-way acquisition and construction of improvements addressed in paragraph 2.
- b. The County shall make its best effort to award the construction contract for Lake Ida Road on or before October 30, 2000.
- c. The County shall maintain funding of Two Million (\$2,000,000.00) Dollars for Lake Ida Road in the five year road program.

6. Assured Construction. In consideration of Developer's agreement to provide the LOC described in paragraph 3(a), and the payment described in 3(a) above, County agrees that upon execution of this Agreement, the improvements in paragraph 2 of this Agreement shall be considered "Assured Construction" for the purpose of this petition to proceed through the zoning process as provided under Section 15.1, ULDC. In the event that LOC in paragraph 3(a) and/or paragraph 3(b) are not timely made, this Agreement shall be null and void and Developer shall no longer meet Traffic Performance Standards.

7. Phasing Schedule. The Developer hereby agrees to the following phasing schedule:

- a. Building permits for no more than 255 adult single-family housing units (2043 daily project trips) shall be issued until contract is let for the construction of Lake Ida Road.
- b. No building permits for the Project may be issued after December 31, 2002. A time extension for this condition may be approved by the County Engineer only if based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the requests. This extension request shall be made pursuant to the requirements of Section 5.8 of the ULDC.

8. Governing Law. This Agreement under the rights and obligations created hereunder shall be interpreted, construed and enforced under the laws of the State of Florida. In the event of any conflict between the provisions of this Agreement and the provisions of the ULDC, the provisions of the ULDC shall control. This Agreement shall not be construed against the party who drafted it as both parties have consulted with attorneys and experts of their own choosing. If litigation should be brought in connection with this Agreement, then venue therefore shall be in Palm Beach County, Florida.

9. Enforcement. In the event it become necessary for either party to institute or defend legal proceedings as a result of the failure of the other party to comply with the terms, covenants, provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and extended in connection therewith, including, but not limited to attorneys' fees and court costs through all trial and appellate levels.

10. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be unenforceable or invalid to any extent, the remainder of this Agreement and the application of such Agreement provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

11. Entire Aareement. This Agreement contains the entire agreement between the parties with respect to subject matter hereof. No right, duties or obligations of the parties shall be created unless specifically set forth in this Agreement or shall be binding invalid unless made in writing and executed and approved by the parties or their successors or assigns.

12. Amendment. No modification or amendment of this Agreement shall be of any legal force or effect unless in writing executed by both County and Developer.

13. Binding Aareement. This Agreement shall adhere to the benefit of and bind the parties, their successors and assigns. This Agreement may be assigned without the consent of any party and all the terms and conditions set forth herein shall adhere to the benefit of and shall bind the parties. However, notice of any assignment by either party shall be given to the other party at least 30 days prior to such assignment.

14. Waiver. County's failure to enforce any provision of this Agreement shall not be considered a waiver of the right to later enforce that or any other provision in this Agreement.

15. Notices. Any notice, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand delivered, telecopied, sent by Federal Express or a comparable overnight service or by U.S. registered or certified mail, return receipt requested, postage prepaid to County and developer at their respective addresses set forth below:

As to County: Chairman, Board of County Commissioners of
Palm Beach County, Governmental Center
301 North Olive Avenue
West Palm Beach, FL 33401

As to County's
Legal Representative: Marlene Everitt, Esq.
c/o Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

As to the County's Road
Project Representative: Charles R. Walker, Jr., P.E., Director
Traffic Division
Palm Beach Engineering & Public Works Dept.
160 Australian Avenue, Suite 303
West Palm Beach, FL 33406

As to Developer: Harry T. Sleek, Senior V.P.
Levitt Homes Incorporated
7777 Glades Road, Suite 410
Boca Raton, FL 33434-4198

As to Developer's
Legal Representative: Henry B. Handler, **Esq.**
Weiss & Handler, P.A.
2255 Glades Road, Suite 218A
Boca Raton, FL 33431-7392

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

ATTEST:

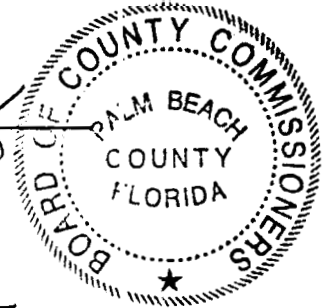
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision of the State
of Florida

DOROTHY H. WILKEN,
Clerk

BOARD OF COUNTY COMMISSIONERS

By: Joan Harvey
Deputy Clerk

Maudie Ford Lee
Chair



Deborah Altier
Legal Sufficiency

LEVITT HOMES INCORPORATED

By: Elliott Wiener
President

By: [Signature]
Elliott Wiener, President

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