

Return recorded document to:

Urban Planning Division  
1 North University Drive, Box 102  
Plantation, Florida 33324

Document prepared by:

Christina Bilenki, Esq.  
Dunay, Miskel & Backman, LLP  
14 SE 4<sup>th</sup> Street, Suite 36  
Boca Raton, FL 33432

**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 THAT 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 among: Broward County, a political subdivision of the state of Florida, hereinafter referred to as "County,"

and

Toll Southeast Florida LLC ("Toll"), and Southern Homes of Davie V LLC ("Southern"), their successors and assigns, hereinafter referred to as "Developer" (collectively referred to as the "Parties").

A. Chapter 5, Article IX, Broward County Code of Ordinances, the "Land Development Code," requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments.

B. The Land Development Code more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas.

C. Toll has applied for the release of the Regional Road Concurrency Agreement Relating to the Millcreek Ranches (050-MP-02), Diamond Creek (052-MP-02) and BlackStone Creek (053-MP-02) Plats, as recorded in Official Records Book 37895, Page 922 of the Public Records of Broward County, Florida ("Existing Regional Road Concurrency Agreement"), as the Millcreek Ranches and Diamond Creek plats now satisfy concurrency requirements.

D. On January 26, 2022, the Broward County Urban Planning 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 portion of the Blackstone Creek (053-MP-02) Plat owned by Southern, hereinafter referred to as "Plat", more particularly described in Exhibit "A", attached hereto and made a part hereof, does not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code.

E. Southern is the fee simple owner of that property within the Plat.

F. Toll 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 County concurrency standards.

G. The Broward County Urban Planning 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 foregoing recitals are true and correct and form a material part of this Agreement upon which the Parties have relied.
2. Construction of Improvements.

**PLEASE CHECK THE APPROPRIATE SECTION**

☒ **IMPROVEMENTS CONSTRUCTED BY DEVELOPER**

- (a) Toll agrees to construct the improvements described in Exhibit "B," attached hereto, hereinafter referred to as the "Improvements." Toll agrees to complete the Improvements prior to the earlier of the receipt of the final certificate of occupancy for the property within the Millcreek Ranches (050-MP-02) plat, or 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 release of the Existing Regional Road Concurrency Agreement, Toll 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) Toll shall provide to County, contemporaneously with this Agreement, an irrevocable Letter of Credit, in the amount of Eighty Three Thousand Four Hundred Sixty-Five and 87/100 (\$83,465.87), the form of which is attached hereto as Exhibit "C," which represents One Hundred Twenty-Five percent (125%) of the costs of the Improvements.
- (d) The Improvements described in Exhibit "B" will be installed in accordance with applicable County and state of Florida Department of Transportation standards and specifications and in accordance with the Development Review Report for the release of the Existing Regional Road Concurrency Agreement. 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 will be subject to inspection and approval by County. Pavement marking and signing will be provided for all of the Improvements and will be subject to review, field inspections, and final approval by the Broward County Traffic Engineering Division. All Improvements must be consistent with the previously approved plans.
- (e) Southern agrees that this Agreement will be recorded in the Public 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 the property within the Plat on notice of the obligations set forth herein, which will run with the property until fully performed. However, the amount(s) set forth above that are secured by a letter of credit will 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 the Plat is located within a municipality, Southern, its successors and assigns, agree that no building permits or certificates of occupancy will be obtained from the municipality for construction of a principal building within the Plat, and Toll, its successors and assigns, agree that no final certificate of occupancy for the property within the Millcreek Ranches (050-MP-02) plat will be obtained from the municipality until such time as Toll provides the municipality with written confirmation from County that engineering plans for the required Improvement(s) have been approved by the Broward County Highway Construction and Engineering Division and that Toll has complied with paragraph 2(c) of this Agreement. Failure to comply with the above will constitute a default of this Agreement. If the property is located within the unincorporated area, County shall not issue building permits for construction of a principal building within the Plat until such time as Toll has complied with paragraph 2(c) of this Agreement.
- (g) If property is located within a municipality, Southern, its successors and assigns agree that no certificates of occupancy within the Plat, and and Toll, its successors and assigns, agree that no final certificate of occupancy for

the property within the Millcreek Ranches (050-MP-02) 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 will 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."

- (h) In the event Toll fails to complete the Improvements, Southern may step in to complete construction of the Improvements described in Exhibit "B". In the event Toll defaults under the terms of this Agreement or County receives notice that the security will be canceled by the issuing institution, County will be entitled to draw against the security for the amount set forth in paragraph 2(c), 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 percent (12%) per annum. Alternatively, and at the option of County, County may record a document entitled "Notice of Lien" that will constitute a lien on the property described in Exhibit "A" in the amount due County pursuant to the terms of this section. 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, will be recorded against and apply only to such parcel or portion of the Plat. The above provisions will control such lien, except that the provision regarding subordination of mortgages will 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.
- (i) Toll shall ensure that the security remains valid and in full force and effect until Toll's obligations are fully satisfied. Expiration of the security prior to satisfaction of such obligations, or notice to Broward County that the security will expire or be canceled prior to Toll's satisfaction of all obligations hereunder, will constitute a default of this Agreement.
- (j) In the event County determines that the security has been canceled or disaffirmed by the issuing institution, County may record a document entitled "Notice of Lien," which will 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, will be recorded against and apply only to such parcel or portion of the Plat. The above provisions will control such lien, except that the provision regarding subordination of mortgages will not apply. If the Developer provides substitute security in a form acceptable to County, County shall release the lien.

- (k) In the event County draws on the security in accordance with the provisions of this Agreement, Toll shall be responsible for County's reasonable costs incurred in drawing against the security.
- (l) Toll agrees that any contract(s) for the Improvements will:
- 1) Indemnify County, its officers, and employees from liabilities, damages, losses, and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Toll or persons employed or utilized by or under contract with Toll in the performance of this Agreement. In the event that any action or proceeding is brought against County by reason of any such claim or demand, Toll shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County. The provisions of this section will survive the expiration or earlier termination of this Agreement.
  - 2) In order to insure the indemnification obligation contained above, Toll and/or its contractor shall, at 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 will be without any deductible amount and will be issued by 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 must specifically protect County and the Broward County Board of County Commissioners by naming County and the Broward County Board of County Commissioners as additional insureds for General Liability and Excess Liability coverage.
  - 4) Comprehensive General Liability Insurance. A Comprehensive General Liability Insurance Policy with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and One Million Dollars (\$1,000,000.00) per aggregate. 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 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 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) Toll shall furnish to the Broward County Highway Construction and Engineering Division Certificates of Insurance or endorsements evidencing the insurance coverages specified by this section prior to beginning performance of work under this Agreement. The required Certificates of Insurance must 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 remedial improvement 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 for the improvements set forth in Exhibit "B," attached hereto ("Improvements"), which amount represents Developer's proportionate share of the cost of the improvements. Developer shall provide to the municipality or FDOT, prior to County's execution of this agreement, security acceptable to the municipality or FDOT. Developer agrees that payment for the Improvements 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 will constitute a default of this Agreement.
  - (b) If the Improvements are to be constructed solely by County, Developer agrees that payment of the amount in Exhibit "B" shall be made to County prior to Plat recordation or recordation of an Agreement for Amendment of Notation on the Plat. County agrees that no security will be required by County since payment will be made prior to Plat recordation or recordation of the Agreement for Amendment of Notation on the Plat.
- 3. County finds that the execution of and adherence to this Agreement on the part of Developer satisfies the requirement of the Land Development Code that plats of land 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 will 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 the Land Development Code.
- 4. Developer its successors and assigns, agree that in the event of a default of this Agreement, no building permits, certificates of occupancy, or any other development permits will be obtained within the boundaries of the Plat until such time as the County notifies the applicable municipality that the default has been resolved. If the property is located within the unincorporated area and Developer is determined to be in default of this Agreement by County, 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.
- 5. Notice. In order for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first class mail with a contemporaneous copy via e-mail to the address listed below and will be effective upon mailing. The addresses for notice will remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

For County:

Broward County Urban Planning Division  
1 North University Drive, Suite 102A  
Plantation, Florida 33324  
Email address: kdaluz@broward.org

For Toll:

Christina Bilenki, Esq.  
Dunay, Miskel & Backman, LLP  
14 SE 4<sup>th</sup> Street, Suite 36  
Boca Raton, FL 33432  
Email address: cbilenki@dmbblaw.com

Four Southern:

Jerry Aguirre  
9900 SW 107 Ave, Suite 103  
Miami, FL 33176  
Email address: jaguirre@shcommunities.com

6. Recordation. This Agreement will be recorded in the Public Records of Broward County, Florida, at the Toll's expense. The benefits and obligations contained in this Agreement will inure to grantees, successors, heirs, and assigns who have an interest in the Plat.
7. Venue; Choice of Law. This Agreement will be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, will be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement will be exclusively in such state courts, forsaking any other jurisdiction that either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL WILL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS WILL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**



8. 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.
9. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
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 will be effective unless it is in writing, signed by the Party against whom it is asserted, and any such written waiver will only be applicable to the specific instance to which it relates and will not be deemed to be a continuing or future waiver.
12. Exhibits; Priority of Provisions. 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 will control all printed provisions in conflict therewith. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement will prevail and be given effect.
13. Further Assurances. The Parties hereby agree to execute, acknowledge, deliver and cause to be done, executed, acknowledged, and delivered all further assurances and to perform such acts as reasonably requested of them in order to carry out this Agreement.
14. Assignment and Assumption. Southern 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." Southern agrees that any assignment will contain a provision that clearly states that such assignment is subject to the obligations of this Agreement.

15. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein will be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Broward County through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Toll, signing by and through its \_\_\_\_\_, duly authorized to execute same, and Southern, signing by and through its \_\_\_\_\_, duly authorized to execute same.

**County**

ATTEST:

Broward County, through its  
Board of County Commissioners

\_\_\_\_\_  
County Administrator, as  
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  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By MAITE AZCOITIA Digitally signed by MAITE AZCOITIA  
Date: 2024.02.22 12:30:29 -05'00'  
Assistant County Attorney

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**Developer – Corporation/Partnership**

Witnesses:

Denise Bourne  
(Signature)

Print name: Denise Bourne

Umm Umm  
(Signature)

Print name: Catherine Goliat

Toll Southeast Florida LLC

\_\_\_\_\_  
Name of Developer (Individual)

Alexander Martin  
(Signature)

Print name: Alexander Martin

Title: Division President  
Address: \_\_\_\_\_

8th day of August, 2023

ATTEST (if corporation):

\_\_\_\_\_  
(CORPORATE SEAL)

\_\_\_\_\_  
(Secretary Signature)

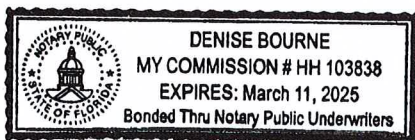
Print Name of Secretary: \_\_\_\_\_

**Acknowledgment - Individual**

STATE OF Florida )  
COUNTY OF Palm Beach ) SS.

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 8th day of August, 2023 by Alexander Martin, the Division President, of Toll Southeast, Inc., on behalf of the company. (He/She is ☒ personally known to me, or ☐ produced identification. Type of identification produced \_\_\_\_\_.

(Seal)



Denise Bourne  
(Signature)

Printed Name: Denise Bourne

Notary Title/Rank: \_\_\_\_\_

Notary Serial Number, if any: \_\_\_\_\_

My commission expires: 3/11/25

**Developer – Corporation/Partnership**

Witnesses (if partnership):

David Andrade  
(Signature)  
Print name: DAVID ANDRADE

Liliana Jaramillo  
(Signature)  
Print name: LILIANA JARAMILLO

Southern Homes of Davie V, LLC  
Name of Developer (corporation/partnership)

By Gerardo Aguirre  
(Signature)  
Print name: GERARDO AGUIRRE  
Title: MANAGER OF SOUTHERN HOMES MANAGEMENT, LLC  
ITS MANAGER  
Address: 9900 SW 107 AVE STE 103  
MIAMI, FL 33176

8 day of AUGUST, 2023

ATTEST (if corporation):

\_\_\_\_\_  
(Secretary Signature)

Print Name of Secretary: \_\_\_\_\_

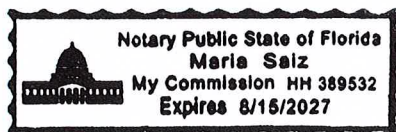
(CORPORATE SEAL)

**Acknowledgment – Corporation/Partnership**

STATE OF Florida )  
 ) SS  
COUNTY OF Miami-Dade )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 8 day of August, 2023, by Gerardo Aguirre, the manager, of Southern Homes Management, LLC, on behalf of the Developer. He/She is ☒ personally known to me, or ☐ produced identification. Type of identification produced \_\_\_\_\_.

(Seal)



Maria Saiz  
(Signature)

Printed Name: Maria Saiz  
Notary Title/Rank: \_\_\_\_\_  
Notary Serial Number, if any: HH 389532

My commission expires:

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Tract "A", Blackstone Creek Plat, according to the plat thereof, as recorded in Plat Book 175, Page 82 of the Public Records of Broward County, Florida.

Less and except that portion thereof as conveyed to the Town of Davie by Special Warranty Deed recorded in Official Records Book 41139, Page 704, of the Public Records of Broward County, Florida.

Also less and except that portion thereof as conveyed to the Town of Davie by Special Warranty Deed recorded in Official Records Book 46669, Page 1626, of the Public Records of Broward County, Florida.

**EXHIBIT "B"**

**IMPROVEMENTS & COST OF IMPROVEMENTS**

Conversion of striped-out area on the westbound approach at the intersection of SW 160<sup>th</sup> Avenue and Griffin Road to a second westbound-to-southbound left turn lane and signal modification for additional left-turn signal.