

11/13/08
Doc #14

BY: *[Signature]*
BARBARA T. SCOTT
CLERK OF THE CIRCUIT COURT
CHARLOTTE COUNTY, FLORIDA
CERTIFIED TRUE COPY
OF THE ORIGINAL

AGR 2008 - 054
(X-ref AGR 2006-013)

**IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT
FOR BABCOCK RANCH COMMUNITY**

1800

THIS AGREEMENT is made and entered as of this 12TH day of NOVEMBER, 2008, by and between the **BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA** ("Board" or "County"), **BABCOCK PROPERTY HOLDINGS, LLC**, a Delaware limited liability company ("Developer"), and **BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT**, a special district of the State of Florida ("District").

Recitals

WHEREAS, the Board, the Developer and the District recognize the following:

A. This Agreement is entered into pursuant to the Home Rule Charter powers of the County as provided under the Constitution of the State of Florida to charter counties.

B. The Developer is the owner of some 17,890 acres located in Charlotte and Lee Counties generally known as the "Babcock Ranch Community" or "Area 6." Approximately 13,630 of those acres are located in Charlotte County ("Charlotte Area 6"), as more specifically set forth in Exhibit "A" attached hereto and incorporated herein.

C. County approved a development agreement with MSKP III, Inc. on April 4, 2006 ("Charlotte Development Agreement") which was subsequently assigned to Developer on November 15, 2006 and which addresses the mitigation of the various impacts of the proposed development in the Charlotte Area 6 on public infrastructure.

D. Provision 2.e. of the Charlotte Development Agreement requires County and Developer to enter into an impact fee agreement, and this Agreement is in fulfillment of that requirement.

E. The Charlotte County Comprehensive Plan, Future Land Use Element, Policy 2.24.3, provides Developer shall be entitled to impact fee credits for public infrastructure extensions funded by Developer.

F. County approved the Babcock Ranch Community Master Development of Regional Impact Master DRI Development Order on December 13, 2007, as subsequently amended on June 17, 2008, and as may be amended in the future, ("MDO") addressing the development of Charlotte Area 6.

G. Pursuant to Condition 21 of the MDO, the County and Developer shall enter into an Impact Fee Credit and Reimbursement Agreement pursuant to the terms of the Charlotte Development Agreement prior to, or contemporaneously with, the issuance of the development order for the first Increment, and this Agreement is in fulfillment of that requirement.

H. The District was established by the Florida legislature pursuant to Chapter 2007-306 (Laws of Florida) with boundaries encompassing all of the Charlotte Area 6 for the purpose



of designing, financing, constructing, maintaining and operating infrastructure to support the development on Charlotte Area 6.

I. This Agreement addresses those impact fees set forth in Section 3-3.5 of the Charlotte County Code (“Code”). This Agreement does not address any Utility Impact Fees, as same are not imposed pursuant to Section 3-3.5 of the Code.

J. Developer shall fully fund those improvements discussed herein and will seek reimbursements through impact fees only from impact fees collected.

K. Through the Incremental Development Order approval process, and in accordance with Florida law, Developer will be responsible for mitigating all roadway impacts of the Charlotte Development Program, so that there will be no roadway impacts generated that are not fully mitigated.

NOW, THEREFORE, in consideration of the mutual covenants entered between the parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

1. Recitals.

The above recitals are true and correct and are incorporated herein and made a part hereof.

2. General Provisions.

a. Development Program

The development program contemplated for the Charlotte Area 6 is 17,870 dwelling units and 6 million square feet of non-residential uses as set forth in the MDO (“Charlotte Development Program”).

b. Impact Fee Account

County shall establish within ninety (90) days of this Agreement a specific account to track by type and source all impact fees collected from development within Charlotte Area 6 and all reimbursements of such fees paid to Developer or District (“Babcock Impact Fee Account”). There shall be no commingling of funds from one category of impact fees to another.

c. Public Purpose Sites and Construction

Developer is required by Provision 2.e. of the Charlotte Development Agreement, and various provisions of the MDO, to provide sites for certain public purposes and to construct certain buildings on those sites. Developer shall not be reimbursed for said sites, but shall be reimbursed for the expenditures for the required construction, but only up to the amount of the impact fees collected from the development in Charlotte

Area 6 (not including any interest earned by County) for the particular impact fee category associated with the particular construction. Expenditures subject to reimbursement include the costs of design, permitting, and construction and the costs of associated on-site infrastructure to meet minimum criteria as governed by applicable County codes, unless otherwise agreed to by the parties, such as water, sewer, paving, drainage, landscaping, lighting, signage and other expenditures as agreed to between the parties.

d. Off-Site Road Improvements.

Developer and/or District is required by provision 2.f. of the Charlotte Development Agreement, and Condition 5 of the MDO, and may be required in the Incremental Development Orders ("IDO"), to pay for certain off-site road improvements, or the proportionate share thereof, and to provide certain associated rights-of-way as specified in the provisions thereof. In light of the required IDO off-site road improvements, there will not be any road impacts from the Charlotte Development Program that the Developer shall not mitigate for. Based on the foregoing, no Roads Impact Fee, as said fee is defined within Section 3-3.5 of the Code, as may be amended, will be levied or collected by the County within Charlotte Area 6.

e. Impact Fee Reimbursements.

All parks, law enforcement, fire, EMS, admin, library and any other impact fees that may be adopted or imposed by County and collected from Charlotte Development Program (not including any interest earned by County) shall be remitted to Developer and/or District on a monthly basis. Developer or District shall be reimbursed for all costs incurred and provided to County. Costs shall be based on actual dollars expended, appraisals or as mutually agreed between the parties. If County objects to any cost submitted for reimbursement it must do so in writing within 30 days of submittal. County shall reimburse costs in whole when funds are available, and will make partial payments, using all available funds from the appropriate impact fee account when the reimbursable amount exceeds the available funds in the impact fee account.

f. Excess Road Capacity

(1) Developer may create and reserve excess road capacity to satisfy mitigation requirements for future Increment(s). Developer or District, as appropriate, shall be reimbursed by County for the reasonable expenditure for any unreserved capacity and the associated right-of-way created by Developer or District in a particular offsite road improvement beyond the capacity required by the Development Program in that improvement within Charlotte County, if and only if the provision of such unreserved

excess capacity and the reimbursement is agreed to by mutual agreement between the parties. "Expenditure" includes, but is not limited to, acquisition, design, permitting, and construction costs and the costs of all associated infrastructure; including drainage, landscaping, lighting, signage, signalization, striping, utility relocations, and other expenditures as agreed to between the parties.

(2) The County shall insure that the Babcock Ranch Community's vested trips are protected. The County acknowledges these vested trips may be sold and assigned to third parties. The County's assurance of protecting vested trips may be achieved through several mechanisms, including, but not limited to, the following:

- (a) Insuring that the County's concurrency management system accurately reflects the vested trips attributable to the Babcock Ranch Community.
- (b) Actively encouraging the Southwest Florida Regional Planning Council and adjacent counties to require that all DRI developments and non-DRI developments that potentially have multicounty traffic impacts use a regional travel model, comparable to that used by the Babcock Ranch Community DRI, to assess their traffic impacts within the County and in the adjacent Counties.
- (c) Actively encouraging the Southwest Florida Regional Planning Council and adjacent Counties to insure that all future DRI developments and non-DRI developments undergoing comprehensive plan amendments, rezoning, or local developer order approvals accurately reflect the vested trips attributable to the Babcock Ranch Community in their traffic impact assessments.

g. Term.

The initial term of this Agreement shall be twenty-five (25) years from the Effective Date. Inasmuch as buildout of the Charlotte Development Program may exceed the Term of this Agreement, the parties contemplate that the Term of this Agreement will be extended in five (5) year intervals until buildout is achieved.

h. Effective Date

This Agreement shall be effective on the date upon which the last party to sign the agreement executes same.

i. Effect of Contrary State or Federal Laws.

In the event that any state or federal law is enacted after the execution of this Agreement that is applicable to and precludes the parties from complying with the terms of this Agreement, then this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal law.

j. Enforcement.

Either party may file an action for injunctive relief in the Circuit Court in and for Charlotte County to enforce the terms of this Agreement.

k. Notices.

- (1) The parties designate the following persons as representatives to be contacted and to receive all notices regarding this Agreement:

For the County: County Administrator
Charlotte County
18500 Murdock Circle
Port Charlotte, FL 33948-1094

with a copy to: County Attorney
Charlotte County
18500 Murdock Circle
Port Charlotte, FL 33948-1094

For the Developer: Tom Danahy, President
Babcock Property Holdings, LLC
17837 Murdock Circle
Port Charlotte, FL 33948

with a copy to: Robert H. Berntsson, Esq.
McKinley, Ittersagen, Gunderson,
Berntsson, Waksler & Wideikis,
L.L.P.
18401 Murdock Circle, Suite C
Port Charlotte, FL 33948

For the District:

Babcock Ranch Community
Independent Special District
17837 Murdock Circle
Port Charlotte, FL 33948

with a copy to:

Jonathan T. Johnson, Esq.
Hopping, Green & Sams, P.A.
123 South Calhoun Street
Tallahassee, FL 32314

- (2) Any change in the person designated by a party to receive notices hereunder shall be communicated in writing to the representative of the other parties designated hereunder.

l. Successors, Assigns, and Assignments.

This Agreement shall be binding upon the parties and their successors and assigns. This Agreement, or portions hereof, will not be assigned by Developer or District, without the express written approval of County, and such approval shall not be unreasonably withheld. In the event of a proposed assignment, the Developer shall provide notice as set forth above.

Notwithstanding the foregoing, County recognizes that Developer may establish other entities to exercise its various rights and responsibilities under this Agreement, and County does not object to such exercise by such other entities, as long as Developer, or one of its officers, retains control of the other entity. In addition, the District may exercise certain rights and responsibilities under this Agreement, when such rights or responsibilities are assigned to it by Developer.

m. Modification of Agreement, Entire Agreement.

This Agreement constitutes the entire agreement among the parties pertaining to Impact Fee Credits and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written. This Agreement may be amended or modified by the agreement of the parties hereto by written instrument duly executed with the formality of a deed, acknowledged and recorded in the Public Records of Charlotte County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Agreement by their duly authorized officials as of the day and year first above written.

Signed, sealed and delivered in the presence of:

BABCOCK PROPERTY HOLDINGS, LLC, a Delaware limited liability company

Theres-a Jurca
Print Name: Theres-A Jurca

By: [Signature]
Its: President

Witness Elizabeth A. Andres
Print Name: ELIZABETH A. ANDRES
Witness

ATTEST:
Aune L. Pfaller
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
CHARLOTTE COUNTY, FLORIDA

By: [Signature]
Thomas C. Sprinkle, Chairman.

APPROVED AS TO FORM AND CORRECTNESS

By: Janette S. Knowlton
Janette S. Knowlton, County Attorney LR 08-658 RB

Signed, sealed and delivered in the presence of:

BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT

Theres-a Jurca
Print Name: Theres-A Jurca

By: Neal Blackett
Its: Chairman, Board of Supervisors

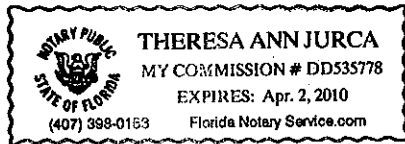
Witness Elizabeth A. Andres
Print Name: ELIZABETH A. ANDRES
Witness

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 30th day of October, 2008, by Tom Danahy, the President of BABCOCK PROPERTY HOLDINGS, LLC, a Delaware limited liability company, who is X personally known to me, or _____ who has produced _____ as identification.

Notary Seal



Theresa Ann Jurca
Notary Public, State of Florida

Print Name: Theresa Ann Jurca
My Commission Expires: 4-2-10

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 30 day of OCTOBER, 2008, by Neal Blacketter, Chairman, Board of Supervisors, of THE BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT, who is ✓ personally known to me, or _____ who has produced _____ as identification.

Notary Seal



ELIZABETH A. ANDRES
MY COMMISSION # DD 663677
EXPIRES: April 16, 2011
Bonded Thru Budget Notary Services

Elizabeth A. Andres
Notary Public, State of Florida

Print Name: ELIZABETH A. ANDRES
My Commission Expires: APRIL 16, 2011

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 12th day of November, 2008, by Thomas C. D'Aprile, the Chairman of The Board of County Commissioners of Charlotte County, Florida, who is personally known to me, or _____ who has produced _____ as identification.

Notary Seal

Bonnie S. Stoner
Notary Public, State of Florida

NOTARY PUBLIC-STATE OF FLORIDA
Bonnie S. Stoner
Commission # DD447969
Expires: JULY 06, 2009
Bonded Thru Atlantic Bonding Co., Inc.

Print Name:

Bonnie S. Stoner

My Commission Expires:

July 6, 2009

EXHIBIT "A"

Legal Description of Property



Since 1946



BABCOCK RANCH COMMUNITY

CHARLOTTE COUNTY PARCEL:

A parcel of land lying within Sections 29, 31 through 33, Township 41 South, Range 26 East, AND, Sections 4 through 10, Sections 15 through 17 and Sections 19 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, being more particularly described as follows: Commence at the Southwest corner of Section 31, Township 42 South, Range 26 East and run S89°41'45"E, along the South line of said Section 31, a distance of 50.00 feet to a point on the East right-of-way line of State Road No. 31, said point also being the Point of Beginning of the parcel of land herein described; Thence continue S89°41'45"E a distance of 5,189.75 feet to the Southwest corner of Section 32, Township 42 South, Range 26 East; Thence S89°41'45"E a distance of 5,306.08 feet to the Southeast corner of Section 32, Township 42 South, Range 26 East; Thence S89°37'16"E a distance of 5,289.11 feet to the Southwest corner of Section 34, Township 42 South, Range 26 East; Thence S89°35'44"E a distance of 5,294.60 feet to the Southeast corner of Section 34, Township 42 South, Range 26 East; Thence S89°35'44"E a distance of 5,294.60 feet to the Southwest corner of Section 36, Township 42 South, Range 26 East; Thence S89°35'44"E, along the South line of Section 36, Township 42 South, Range 26 East, a distance of 3,430.66 feet; Thence N00°00'40"W a distance of 10,185.53 feet; Thence N05°46'23"E a distance of 1,058.56 feet; Thence N66°40'38"W a distance of 200.62 feet; Thence S83°12'47"W a distance of 1,373.33 feet; Thence N30°17'33"W a distance of 1,686.63 feet; Thence N70°02'41"W a distance of 1,332.41 feet; Thence S72°42'44"W a distance of 1,430.81 feet; Thence N49°18'31"W a distance of 2,362.25 feet; Thence S69°00'57"W a distance of 1,518.19 feet; Thence S21°08'17"W a distance of 865.44 feet; Thence S20°29'11"E a distance of 1,376.91 feet; Thence N74°38'25"E a distance of 1,635.69 feet; Thence S00°18'50"E a distance of 1,309.92 feet; Thence S89°45'02"W a distance of 4,154.48 feet; Thence N51°39'36"W a distance of 782.53 feet; Thence N04°14'12"E a distance of 1,329.59 feet; Thence N39°20'59"W a distance of 1,779.16 feet; Thence N42°01'35"W a distance of 1,162.94 feet; Thence S52°01'16"W a distance of 818.34 feet; Thence S62°56'46"W a distance of 516.42 feet; Thence S89°59'33"W a distance of 307.20 feet; Thence N80°06'18"W a distance of 334.84 feet; Thence N20°54'51"W a distance of 336.86 feet; Thence N05°03'05"E a distance of 533.35 feet; Thence N22°47'49"E a distance of 5,490.82 feet; Thence N55°42'26"E a distance of 195.73 feet; Thence N21°59'06"W a distance of 1,739.17 feet; Thence N52°37'55"E a distance of 867.75 feet; Thence N13°36'57"W a distance of 2,507.33 feet; Thence S78°50'16"W a distance of 687.95 feet; Thence N19°48'25"W a distance of 366.25 feet; Thence N08°01'21"W a distance of 493.32 feet; Thence N03°43'40"E a distance of 687.22 feet; Thence N00°28'20"E a distance of 674.51 feet; Thence N25°12'33"W a distance of 261.13 feet; Thence N42°54'55"W a distance of 643.19 feet; Thence N07°19'37"W a distance of 171.40 feet; Thence N13°05'30"E a distance of 201.96 feet; Thence N32°40'01"W a distance of 186.12 feet; Thence N05°04'15"W a distance of 1,832.77 feet; Thence N19°47'08"W a distance of 527.20 feet; Thence N26°13'22"W a distance of 802.13 feet; Thence S79°06'55"W a distance of 475.20 feet; Thence N74°19'19"W a

251 West Hickpochee Avenue (S.R. 80); LaBelle, Florida 33935-4757
(863) 612-0594; Fax (863) 612-0341

EXHIBIT "A"

Legal Description of Property, cont.

distance of 1,689.05 feet; Thence N01°26'06"W a distance of 897.42 feet; Thence N89°51'42"W a distance of 67.91 feet; Thence N00°00'03"W a distance of 1,218.37 feet; Thence N39°50'11"W a distance of 190.86 feet; Thence N00°00'29"W a distance of 324.62 feet; Thence N89°59'52"W a distance of 688.20 feet; Thence N00°00'00"E a distance of 1,967.22 feet; Thence N41°13'25"W a distance of 2,825.17 feet; Thence S89°59'57"W a distance of 3,566.80 feet; Thence S00°00'03"E a distance of 2,799.34 feet; Thence S89°11'17"W a distance of 5,960.98 feet to a point on the East right-of-way line for State Road No. 31; Thence along the East right-of-way line for State Road No. 31, the following courses and distances: S00°48'43"E a distance of 2,976.13 feet and S00°34'01"W a distance of 786.25 feet; Thence S89°25'59"E a distance of 4,104.32 feet; Thence S00°01'22"E a distance of 2,084.04 feet; Thence S16°46'15"E a distance of 1,740.24 feet; Thence S09°11'59"W a distance of 1,325.85 feet; Thence S73°15'18"E a distance of 661.15 feet; Thence N59°20'29"E a distance of 577.75 feet; Thence S38°10'48"E a distance of 551.46 feet; Thence S86°25'58"E a distance of 385.80 feet; Thence S24°01'11"E a distance of 975.12 feet; Thence S57°46'34"E a distance of 530.20 feet; Thence S70°04'12"E a distance of 1,843.47 feet; Thence N63°01'21"E a distance of 1,214.99 feet; Thence S50°03'22"E a distance of 2,565.56 feet; Thence S13°56'09"W a distance of 1,953.90 feet; Thence S12°51'59"E a distance of 1,862.33 feet; Thence S71°59'01"W a distance of 448.53 feet; Thence N45°00'57"W a distance of 266.60 feet; Thence S69°50'23"W a distance of 1,104.27 feet; Thence S28°10'55"E a distance of 1,272.60 feet; Thence S62°45'03"W a distance of 4,638.30 feet; Thence S82°12'01"W a distance of 711.48 feet; Thence S81°38'00"W a distance of 5,167.82 feet; Thence N77°54'41"W a distance of 707.32 feet; Thence N89°28'15"W a distance of 299.98 feet to a point on the East right-of-way line for State Road No. 31; Thence along the East right-of-way line for State Road No. 31, the following courses and distances: S00°31'45"W a distance of 4,197.71 feet, S00°26'10"W a distance of 5,282.33 feet and S00°36'46"W a distance of 5,337.00 feet to the Point of Beginning.

Containing 13,630.60 acres, more or less.

Dimensions and acreage shown are grid values.

Bearings hereinabove mentioned are based on the South line of Section 31, Township 42 South, Range 26 East to bear S89°41'45"E.

Mark G. Wentzel

Mark G. Wentzel (For The Firm CB 642)

Professional Surveyor and Mapper

Florida Certificate No. 5247

Date signed: 8/27/08