

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Council Members

FROM/PHONE: Bruce Bernard, Director, Public Works/Capital Projects (954) 797-1240

SUBJECT: Resolution

AFFECTED DISTRICT: All

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO ENTER INTO AN AGREEMENT WITH GL HOMES FOR THE BERM AND LANDSCAPING CONSTRUCTION, PLANTING AND MAINTENANCE ON SW 36 STREET BETWEEN HIATUS ROAD AND SW 106 AVENUE.

REPORT IN BRIEF: This resolution is an agreement between the Town and GL Homes to maintain berms and landscaping within Town of Davie right-of-way.

PREVIOUS ACTIONS: None

CONCURRENCES: N/A

FISCAL IMPACT:

Has request been budgeted? N/A

If yes, expected cost: N/A

Account Name: N/A

If no, amount needed: N/A

What account will funds be appropriated from: N/A

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Exhibit "A"

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO ENTER INTO AN AGREEMENT WITH GL HOMES FOR THE BERM AND LANDSCAPING CONSTRUCTION, PLANTING AND MAINTENANCE ON SW 36 STREET BETWEEN HIATUS ROAD AND SW 106 AVENUE.

WHEREAS, the Town of Davie has received an agreement from GL Homes for the berm and landscaping construction, planting and maintenance on SW 36 Street between Hiatus Road and SW 106 Avenue; and

WHEREAS, the construction portion of this agreement will be at the expense of GL Homes; and

WHEREAS, the Town desires to authorize the execution of said agreement, attached hereto as Exhibit "A".

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

SECTION 1. The Town Council of the Town of Davie authorizes the appropriate Town officials to execute the agreement with GL Homes, a copy of which is attached hereto as Exhibit "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED ____ DAY OF _____, 2003

MAYOR/COUNCIL MEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2003

This instrument prepared by and after
Recording should be returned to:

G.L. Homes of Davie Associates II, Ltd.
1401 University Drive, Suite 200
Coral Springs, Florida 33071
Attn: Michael S. Shetelman, Esq.

(Space Reserved for Clerk of Court)

**BERM AND LANDSCAPING
CONSTRUCTION, PLANTING AND MAINTENANCE AGREEMENT**

THIS BERM AND LANDSCAPING CONSTRUCTION, PLANTING AND MAINTENANCE AGREEMENT ("Agreement") is entered into and executed this ____ day of _____, 2003 by and between G.L. Homes of Davie Associates II, Ltd., a Florida limited partnership ("Owner") and the Town of Davie, Florida ("Town").

RECITALS:

WHEREAS, Owner is the owner of that certain real property located in Broward County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof ("Owner Property"); and

WHEREAS, the Town is the owner of that certain real property located in Broward County, Florida, more particularly described on Exhibit "B" attached hereto and made a part hereof ("Town Property"); and

WHEREAS, the southern boundary of the Owner Property abuts and is adjacent to the northern boundary of the Town Property; and

WHEREAS, Owner and the Town mutually desire Owner to, in accordance with and subject to the terms and conditions of this Agreement: (i) construct and maintain a berm on and within the Town Property ("Berm"), (ii) plant and maintain certain landscaping on and within the Town Property ("Landscaping"), (iii) install and maintain an irrigation system ("Irrigation System") to service the Berm and Landscaping, and (iv) re-configure and construct a portion of the existing equestrian trail located on the Town Property ("Equestrian Trail").

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Owner hereby agrees, at its sole cost and expense, to: (i) construct the Berm, plant the Landscaping and install the Irrigation System on and within the Town Property, and (ii) re-configure and construct a portion of the existing Equestrian Trail on and within the Town Property. Owner shall construct the Berm ("Berm Work"), plant the Landscaping ("Landscaping Work") and re-configure and construct the Equestrian Trail ("Equestrian Trail Work") substantially in accordance with the plans and specifications attached hereto and made a part hereof as Exhibit "C" ("Berm, Landscaping and Equestrian Trail Plans"), and Owner shall install the Irrigation System ("Irrigation Work") substantially in accordance with the plans and specifications attached hereto and made a part hereof as Exhibit "D" ("Irrigation Plans"). The Berm Work, Landscaping Work, Equestrian Trail Work and the Irrigation Work are referred to herein collectively as the "Work," and the Berm, Landscaping and Equestrian Trail Plans and the Irrigation Plans are referred to herein collectively as the "Plans."

2. The Town hereby acknowledges and agrees that: (i) Owner has submitted the Plans to the Town, and (ii) the Town has received, reviewed and approved the Plans in their form as attached hereto as Exhibits "C" and "D", respectfully.

3. Owner shall use its good faith efforts to complete the Work on or before October 31, 2003 ("Completion Date"). In this respect, Owner shall apply for all permits necessary for the Work (collectively, "Permits") a sufficient time prior to the Completion Date, and the Town shall timely issue such Permits after Owner makes application for the same, all so that Owner can, using good faith efforts, complete the Work on or before the Completion Date.

4. The Town hereby consents to Owner performing and completing the Work on and within the Town Property in accordance with the terms and conditions of this Agreement. In this respect, the Town hereby grants to Owner a temporary construction easement ("Temporary Construction Easement") in, on, under, over, through and above the Town Property for Owner, Owner's agents, employees, contractors, licensees and invitees (collectively, "Owner's Agents") and their respective equipment, machines, tools, vehicles, materials and supplies for the purpose of performing and completing the Work. The Temporary Construction Easement shall automatically terminate and become null, void and of no further force or effect upon the completion of the Work.

5. After the Work has been completed, Owner, at its sole cost and expense, shall have the perpetual responsibility and obligation to maintain the Berm, Landscaping and Irrigation System in good condition, repair and working order (collectively, "Maintenance Obligation"). In this respect, the Town hereby grants to Owner a perpetual irrevocable maintenance easement in, on, under, over, through and above the Town Property for Owner, Owner's Agents and their respective equipment, machines, tools, vehicles, materials and supplies for the purpose of Owner performing and fulfilling the Maintenance Obligation, in perpetuity.

6. Notwithstanding anything contained in this Agreement to the contrary, it is hereby acknowledged and agreed by and between Owner and the Town, that, except only for the Work and Maintenance Obligation to be performed by Owner under the terms of this Agreement, Owner shall have no duty, responsibility, obligation or liability, whatsoever, to construct, install, maintain, repair or replace: (i) any pedestrian trail or equestrian trail (including, without limitation, (a) that portion of the Equestrian Trail re-configured and constructed by Owner, or (b) the pedestrian trail existing along the southern limits of the Town Property), whether now or hereafter existing, in whole or in part, (ii) any portion of the Town Property (including, without limitation, any existing or hereafter existing sodded or landscaped areas), in whole or in part, or (iii) any other improvement on or to the Town Property, whether now or hereafter existing; it being the intention of the parties to this Agreement that the sole duties, responsibilities and obligations of Owner are the Work and Maintenance Obligation as expressly set forth in this Agreement.

7. Owner hereby agrees to indemnify, defend and save the Town harmless from and against any all claims, causes of action, demands, suits, proceedings, judgments, liabilities, losses and expenses of any kind or nature, including litigation costs and reasonable attorneys' fee, whether for injury to person or damage to property (including wrongful death or impairment of any property interest), arising out of the gross negligence of Owner or Owner's Agents while performing any of their duties, responsibilities or obligations under this Agreement.

8. The Town, subject to sovereign immunity, hereby agrees to indemnify, defend and save Owner harmless from and against any all claims, causes of action, demands, suits, proceedings, judgments, liabilities, losses and expenses of any kind or nature, including litigation costs and reasonable attorneys' fee, whether for injury to person or damage to property (including wrongful death or impairment of any property interest), in connection with or relating to the Berm, Landscaping and/or Irrigation System caused by the gross negligence of the Town or the Town's agents, employees, contractors, licensees and invitees.

9. Owner shall, at all times during the term of this Agreement, maintain in full force a policy of commercial general liability insurance ("Insurance Policy"), including coverage for personal injury and property damage, in an amount not less than One Million (\$1,000,000.00) Dollars, to support the indemnification clause contained herein. Owner agrees to add and maintain the Town as an additional named insured on the Insurance Policy, and the Insurance Policy shall provide the Town with at least thirty (30) days prior notice in the event of cancellation, non-renewal, or a material change in coverage.

10. Owner shall have the absolute and unconditional right to assign, transfer and convey its Maintenance Obligation under and in connection with this Agreement to the Long Lake Ranches Homeowners Association, Inc., a Florida corporation not-for-profit or any other homeowners association responsible for the maintenance of common areas within the Owner Property (collectively, "Association"), without the consent of, or prior notice to, the Town. Upon the assignment of the Agreement to, and the assumption of the Agreement by, the Association, Owner shall be relieved of any and all obligations to perform the Maintenance Obligation (or any portion thereof) imposed by and under this Agreement. In the event Owner (prior to the assignment and assumption of this Agreement to and by the Association) or Association (after the assignment and assumption of this Agreement to and by the Association) fail to perform and fulfill the Maintenance Obligation ("Breach"), then the Town shall notify Owner or Association, as applicable, in writing of such Breach ("Notice"), and Owner or Association, as applicable, shall have the right to cure the Breach within sixty (60) days after receipt of the Notice to cure said Breach.

11. This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be recorded amongst the public records of Broward County, Florida. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity with the prevailing party in any such action being entitled to reimbursement from the non-

prevailing party of all reasonable attorneys' fees and costs (at trial and all appellate levels and proceedings). All of the parties to this Agreement have participated fully in its negotiation, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. This Agreement shall be binding upon Owner and the Town, and shall inure to and be binding upon their respective successors and/or assigns. This Agreement may not be amended, modified or terminated except by a written agreement executed by all of the parties hereto.

12. The "Effective Date" of this Agreement shall be the date on which the Agreement has been signed by the last of Owner or the Town thereby making this Agreement fully executed.

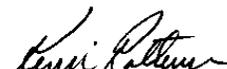
IN WITNESS WHEREOF, Owner and the Town have executed this Agreement as of the date set forth above.

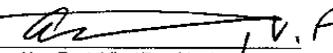
WITNESSES

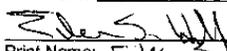
OWNER:

G.L. HOMES OF DAVIE ASSOCIATES II, LTD, a Florida limited partnership

By: G.L. HOMES OF DAVIE II CORPORATION, a Florida corporation, its general partner


Print Name: KEVIN RATTERREE

By: 
Name: Alan Fant, Vice-President


Print Name: Eileen S. Abornoka

Address: 1401 University Drive
Suite 200
Coral Springs, Florida 33071

TOWN:

TOWN OF DAVIE

Print Name: _____

By: _____
Name: _____
Title: _____

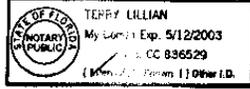
Print Name: _____

Address: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22 day of January, 2003,
by Alan Fant, Vice President of G.L. Homes of Davie II Corporation, a Florida corporation, the
general partner of G.L. Homes of Davie Associates II, Ltd., a Florida limited partnership, on behalf
of said corporation and partnership, who is personally known to me.

NOTARY SEAL



Terry Lillian
Notary Public
TERRY LILLIAN
Print Notary Name
My Commission Expires: 5/12/2003

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE me the undersigned authority on this ____ day of _____, 2003,
personally appeared _____ as
_____ of TOWN OF DAVIE, FLORIDA, who is personally known to me or who has
produced a driver's license as identification and who did (did not) take an oath.

NOTARY SEAL

Notary Public

Print Notary Name
My Commission Expires: _____