

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101
Prepared by: Deborah Ross, AICP, Planning Supervisor

SUBJECT: Spielman-Margolis Replat (168-46)/Located at the northwest corner of University Drive and Orange Drive

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING APPLICATION DG 8-1-03, CONSENTING TO AN AMENDMENT TO THE REQUIRED IMPROVEMENTS AGREEMENT FOR THE SPIELMAN-MARGOLIS REPLAT (168-46); AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

The applicant is requesting a revision to the Required Improvements Agreement, "Phasing Agreement", so that the only certain roadway improvements will be required by Broward County prior to the issuance of a certificate of occupancy for the subject property. These roadway improvements include the University Drive driveway, the turn lanes for that driveway, and the median improvements to University Drive. Staff notes the original "Phasing Agreement" was approved in 1998 by Broward County and the Town was a party to said agreement. A 2,849 square foot office/commercial use is proposed to be located on area described as Phase I-A of the revised Phasing Agreement. The proposed improvements are consistent with the site plan which is also scheduled on this Town Council's agenda.

The proposed amendment to the "Phasing Agreement" will not require the turn lanes on Orange Drive to be constructed unless driveway connections are actually made to Orange Drive. The 1998 Agreement required the Orange Drive driveway openings and turn lanes to be constructed prior to any certificates of occupancy for the south half of the subject property, and the University Drive driveway and associated improvements to be completed before a certificate of occupancy for development on the northern half of the subject property.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION(S): Staff finds that the application is complete and suitable for transmittal to Town Council for consideration.

Attachment(s): Resolution

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING APPLICATION DG 8-1-03, CONSENTING TO AN AMENDMENT TO THE REQUIRED IMPROVEMENTS AGREEMENT FOR THE SPIELMAN-MARGOLIS REPLAT (168-46); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Big Orange Development Ltd. proposes an amendment to the Required Improvements Agreement for the Spielman-Margolis Replat (168-46); and

WHEREAS, the Required Improvements Agreement contains a listing of roadway improvements and completion dates is hereby attached as Exhibit A; and

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 does hereby consent to an amendment to the Phasing Agreement for the Spielman-Margolis Replat (168-46).

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation

APPLICANT INFORMATION

<u>Owner:</u>		<u>Agent:</u>	
Name:	The Big Orange Development Ltd. General Partner University Management Corp.	Name:	Barbara Hall Greenberg Traurig, P.A.
Address:	141 N.W. 20 th Street, Suite G-122	Address:	515 East Las Olas Boulevard
City:	Boca Raton, FL 33431	City:	Ft. Lauderdale, FL 33302
Phone:	(561) 338-3426	Phone:	(954) 765-0500

BACKGROUND INFORMATION

Application History: No deferrals have been requested.

Application Request: Petitioner is requesting a revision of the Phasing Agreement regarding roadway improvements associated with the "Spielman-Margolis Replat."

Address/Location: 7921 SW 45 Street (Orange Drive)/ Located at the Northwest corner of University Drive and Orange Drive.

Future Land Use Plan Designation: Commercial

Zoning: B-1, Neighborhood Business and B-2, Community Business District

Existing Use: Agricultural

Existing Plat Note: 366,900 square feet of commercial use.

Parcel Size: ±36.07 acres

Surrounding Uses:
North: Rolling Hills
South: Town Plaza at Davie
East: Retail and Restaurants
West: Alpine Woods

Land Use Plan Designation:
Residential (3.5 DU/AC)
Commercial
Commercial
Residential (5 DU/AC)

Surrounding Zoning:

North: R-5 District, Low Medium Density Dwelling

South: B-2 District, Community Business, CF, Community Facilities

East: B-1 & B-2 Districts, Neighborhood Business and Community Business

West: R-5 & PRD-5 Districts, Low Medium Density Dwelling and Planned Residential

ZONING HISTORY

Related Zoning History: A ‘Settlement Agreement’ was approved in October 1989. The Margolis settlement agreement vested the developer to the Land Development Code in effect in 1989 with additional modifications as specified in said agreement.

Previous Request on same property: The Spielman-Margolis Plat was approved on July 20, 1994, by Resolution R 94-227 for installation of required improvements.

Town Council approved the Spielman-Margolis Replat (Plat Book 168, Page 46) on October 18, 1995, by Resolution 95-287.

Resolution R 99-92 was approved on March 16, 1999, to revise access openings for the Margolis Plat through the Delegation Request process.

APPLICATION DETAILS

The applicant is requesting a revision to the Required Improvements Agreements, “Phasing Agreement”, to allow certain roadway improvements be required by Broward County prior to the issuance of a certificate of occupancy for the subject property. These roadway improvements include the University Drive driveway, the turn lanes for that driveway, and the median improvements to University Drive.

The original “Phasing Agreement” was approved in 1998 by Broward County and the Town was a party to said agreement. The subject property as shown by Exhibit “A” of the Agreement was divided into two phases, Phase I and II. The List of Improvements as indicated by Exhibit “B” shows trafficway and sidewalk improvements to be completed in Phase I. Improvements to be completed in Phase II included trafficway, turn lane, traffic conduit relocation, street conduit relocation, pavement markings and signs and sidewalk improvements. These improvements in either phase were tied to the issuance of a certificate of occupancy or upon construction of a driveway onto University Drive or Orange Drive.

The “Phasing Agreement” as proposed consists of three phases, Phase I-A, Phase I-B, and Phase II and the following list of improvements - trafficway, sidewalk requirements, traffic signal conduit relocation and street lighting conduit relocation.

Applicable Codes and Ordinances

The effective code of ordinances governing this project is the Town of Davie Land Development Code. The Broward County Land Development Code requires Delegation Requests for plat note revisions and for agreements associated with plats.

Significant Development Review Agency Comments

Broward County Development Management Division is the County lead agency in assessing the impact of development through the plat and/or delegation request process. Broward County requires that the petitioner request to amend or revise the level of approved development on the plat. Such requests must be approved by the local municipality and County Commission, and then subsequently recorded against the plat. As part of the delegation request process, the property would be reviewed for traffic concurrency and assessed any additional traffic impact fees, or mitigation measures, as applicable.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 5. Planning Area 5 is bound by Nova Drive on the north, University Drive on the east, and Nob Hill Road on the west. The southern limits are SW 36 Street, on the western portion. This planning area is comprised of residential uses developed at a density of three to 22 dwelling units per acre and commercial development, existing and proposed, along the University Drive and Orange Drive corridors. The Pine Island Ridge, classified as environmentally sensitive, has been preserved within this planning area.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 99.

Broward County Land Development Code: The Broward County Land Development Code requires that any changes or waivers to requirements of development permit applications be reviewed and approved or disapproved by the municipality with final approval by Broward County Commission.

Applicable Goals, Objectives & Policies: The proposed plat is generally consistent with the goals, objectives and policies of the Comprehensive Plan.

Staff Analysis/Findings of Fact

The applicant is requesting a revision to the "Phasing Agreement" associated with the subject plat to allow certain roadway improvements to be completed prior to the issuance of a certificate of occupancy for the subject property. These roadway improvements include the University Drive driveway, the turn lanes for that driveway, and the median improvements to University Drive. A 2,849 square foot office/commercial use is proposed to be located on area described as Phase I-A of the revised "Phasing Agreement." The proposed improvements are consistent with the site plan which is also scheduled on this Town Council's agenda.

The proposed amendment to the "Phasing Agreement" will not require the turn lanes on Orange Drive to be constructed unless driveway connections are actually made to Orange Drive. The 1998 Agreement required the Orange Drive driveway openings and turn lanes to be constructed prior to any certificates of occupancy for the south half of the subject property, and the University Drive driveway and associated improvements to be completed before a certificate of occupancy for development on the northern half of the subject property.

Please note the proposed "Phasing Agreement" has been conceptually reviewed by David Huizenga, Engineer III of Broward County Engineering and Irene Cooper, Engineer III of Broward County Traffic Engineering.

Staff Recommendation

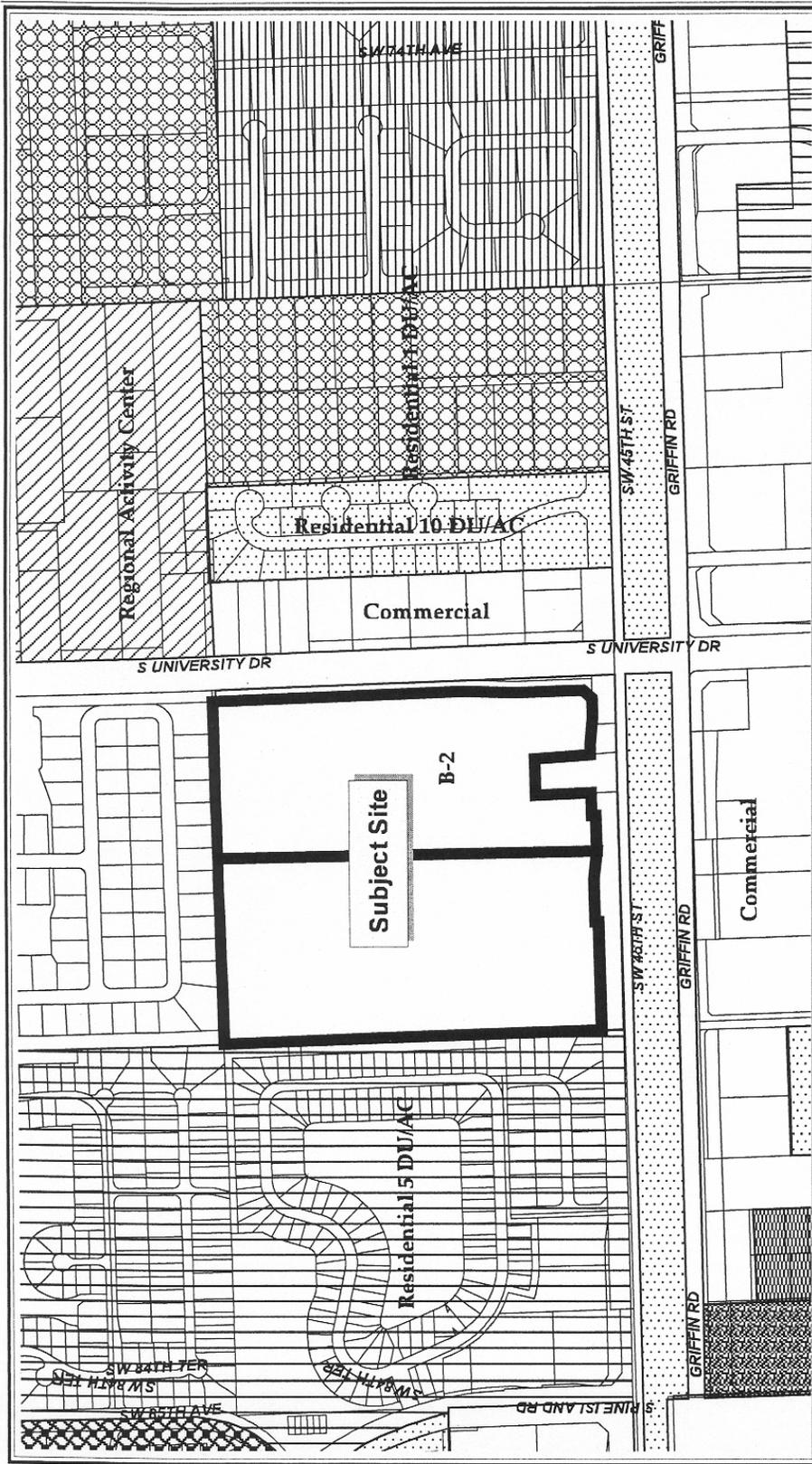
Recommendation: Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Exhibits

1. Justification letter
2. Future Land Use Map
4. Subject Site, Zoning and Aerial Map
5. Amendment to Required Improvements Agreement

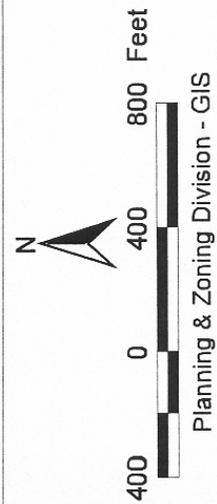
Prepared by: _____

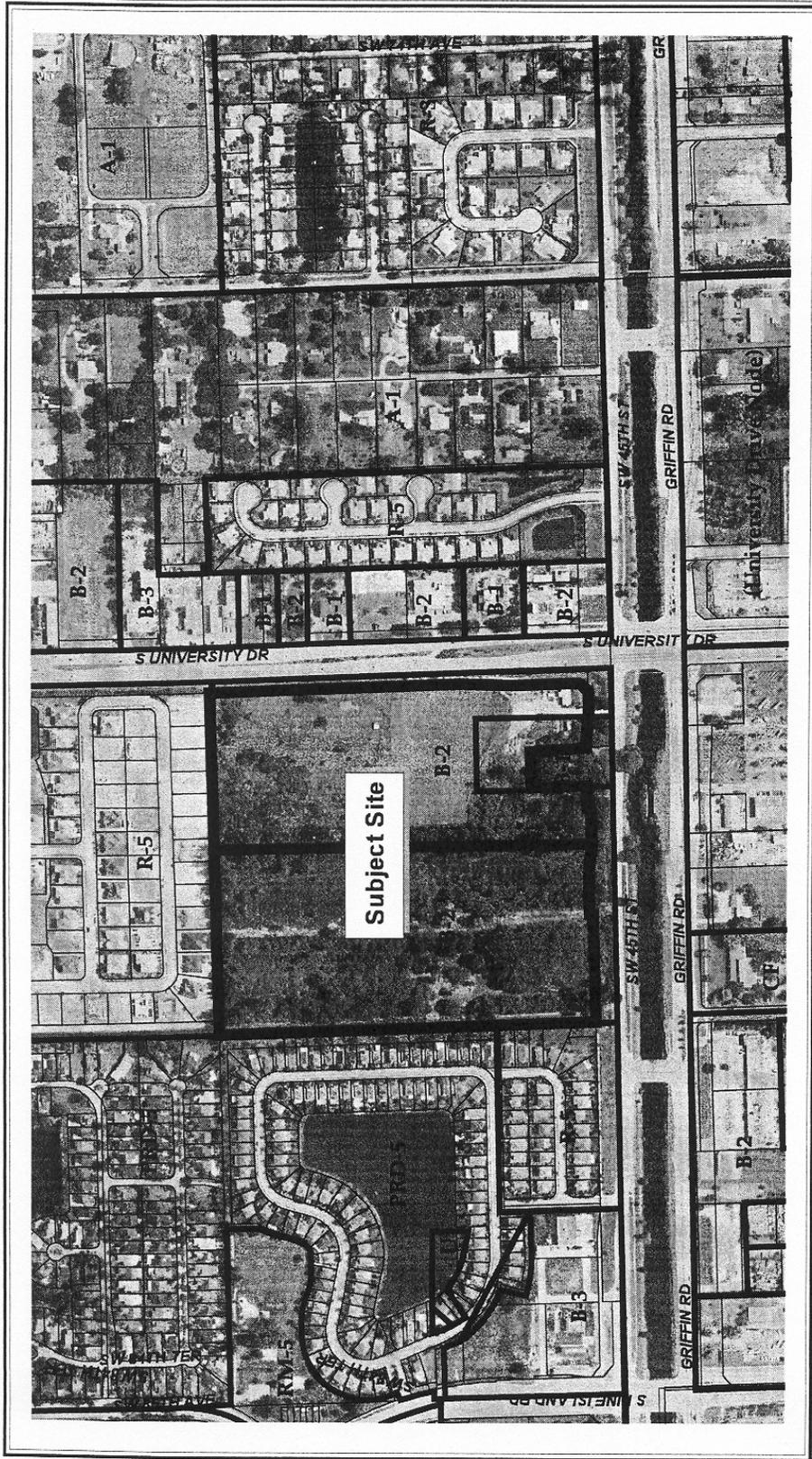
Reviewed by: _____



DELEGATION REQUEST DG 8-1-03 Future Land Use Map

Prepared By: D.M.A.
Date Prepared: 07-25-03





DELEGATION REQUEST DG 8-1-03 Zoning and Aerial Map

Prepared By: D.M.A.
Date Prepared: 07-25-03

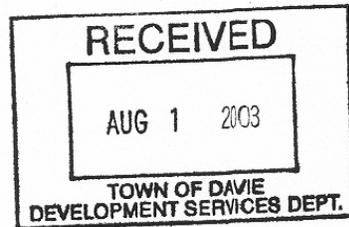


Date Flown:
12/31/00



Planning & Zoning Division - GIS

GREENBERG
ATTORNEYS AT LAW
TRAURIG



Barbara A. Hall
(954) 768-8236
hallb@gtlaw.com

August 1, 2003

VIA HAND DELIVERY

Mark Kutney
Planning and Zoning Director
Town of Davie
6591 Orange Drive
Davie, FL 33314

Re: Phasing Agreement/Speilman Margolis Rplat

Dear Mark,

In connection with the site plan approval for the principal building on the Spielman-Margolis Replat, we are revising the Phasing Agreement so that the only improvements that will be required, by the County, before a certificate of occupancy may be issued for the property are: the University Drive driveway, the turn lanes for that driveway, and the median improvements to University Drive. This is consistent with the pending site plan application.

Under the proposed Amendment to the Phasing Agreement, the turn lanes on Orange Drive to serve driveway connections to Orange Drive would not be required by the County unless driveway connections are actually made to Orange Drive. This is a change from the prior Phasing Agreement which required the Orange Drive driveway openings and turn lanes to be constructed before any certificates of occupancy are obtained for the south half of the property; and the University Drive driveway and associated improvements to be completed before a certificate of occupancy for development on the north half of the property.

The Schedule B to the Agreement for completing the improvements has been approved by David Huizenga of County Engineering and Irene Cooper of Traffic Engineering. The County requires the Town to be a party to a Phasing Agreement to enforce the requirement that certain improvements be completed before a certificate of occupancy is issued. We are therefore requesting that the attached agreement be placed on the Town's Agenda for August 20, 2003, which is the agenda on which the site plan is scheduled.

GREENBERG TRAUIG, P.A.

POST OFFICE BOX 14036 FORT LAUDERDALE, FLORIDA 33302

515 EAST LAS OLAS BOULEVARD SUITE 1500 FORT LAUDERDALE, FLORIDA 33301 954-765-0500 FAX 954-765-1477 www.gtlaw.com
MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER
FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

The original agreements executed by the client and by the client's mortgagee will be delivered you before the Town Council hearing. I am grateful to you for your assistance in having this scheduled.

Best Regards,


Barbara A. Hall

BAH/klw
Enclosure

cc: David Margolis w/o enclosure
Alan Margolis w/o enclosure
Neil Kalis, Esq. w/enclosure

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GREENBERG TRAURIG, P.A.

Return recorded copy to:

Broward County Engineering Division
1 North University Drive, Suite 300B
Plantation, FL 33324-2038

Document prepared by:

Barbara A. Hall, Esq.
Greenberg Traurig, P.A.
401 E. Las Olas Blvd, Suite 2000
Fort Lauderdale, FL 33301
(954) 768-8236

**AMENDMENT TO
REQUIRED IMPROVEMENTS AGREEMENT**

This is an Amendment to an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY, "

AND

DAVID MARGOLIS, individually and as Trustee; STANLEY SPIELMAN, Trustee; and THE BIG ORANGE DEVELOPMENT LTD., hereinafter referred to as "DEVELOPER," its successors and assigns.

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The TOWN OF DAVIE, a municipal corporation, created and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

WHEREAS, DEVELOPER's Project, hereinafter referred to as the "Project," was approved by the COUNTY on December 15, 1998, Development Management Division File No. 006-MP-96, and is described in EXHIBIT "A" attached hereto and incorporated herein; and

WHEREAS, the parties subsequently entered into a Required Improvements Agreement which is recorded in Official Records Book 30609, Page 0104, of the Public Records of Broward County, Florida, hereinafter referred to as "AGREEMENT"; and

WHEREAS, on _____, 20__, COUNTY approved a request by the DEVELOPER to amend the property areas within the map and/or the required

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improvements as described in EXHIBIT "A-1" and EXHIBIT "B-1"; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, and payments hereinafter set forth, the parties agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. **PLEASE CHECK THE APPROPRIATE SECTION(S) BELOW.**
 - Exhibit "A" of the existing AGREEMENT is hereby amended to include a revised map attached hereto as EXHIBIT "A-1."
 - Exhibit "B" of the existing AGREEMENT is hereby deleted in its entirety and replaced by an amended required improvements attached hereto as EXHIBIT "B-1."
 - The amount in Paragraph 4(b) of the existing AGREEMENT is hereby amended to read: \$ _____.
3. **NOTICE.** Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director of the Broward County Engineering Division
1 North University Drive, Suite 300B
Plantation, FL 33324-2038

For the DEVELOPER:

Attn: Mr. David Margolis
c/o Margolis Enterprises
141 N.W. 20th Street, Suite G-122
Boca Raton, FL 33431

4. **RECORDATION.** This Amendment to Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.

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5. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sitis, and shall be governed by the laws of the State of Florida.
6. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Amendment to Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
7. 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.
8. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
9. EXHIBITS. 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 shall control all printed provisions in conflict therewith.
10. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Amendment and the existing Agreement.
11. ASSIGNMENT AND ASSUMPTION. DEVELOPER 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." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement.
12. Except as amended herein, all other terms and conditions of the existing AGREEMENT shall remain in full force and effect.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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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 and Vice Mayor, authorized to execute same by Board action on the _____ day of _____, 20__, and DEVELOPER, through its duly authorized representative to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and
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: _____
Assistant County Attorney
____ day of _____, 20__

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TOWN OF DAVIE

ATTEST:

TOWN OF DAVIE, FLORIDA

By: _____
Russell Muniz
Town Clerk

By: _____
Tom Truex
Mayor

_____ day of _____, 2003

Approved as to form

By: _____

By: _____
Monroe Kiar, Esq.
Town Attorney

_____ Thomas J. Willi
Town Administrator

_____ day of _____,
2003

_____ day of _____,
2003

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Tom Truex as Mayor of the Town of Davie, on behalf of the Town, who is

personally known to me, or
 produced identification. Type of identification produced _____.

NOTARY PUBLIC:

(Seal)

Print name:

My commission expires:

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EXHIBIT "A"

Tract A of the Spielman-Margolis Replat recorded in Plat
Book 168, Page 46 of the Public Records of Broward
County, Florida.

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EXHIBIT "A-1"

REVISED PHASE MAP

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EXHIBIT "B-1"

REVISED PHASING SCHEDULE

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EXHIBIT "B"

List of Improvements

<i>IMPROVEMENT DESCRIPTION</i>	<i>COMPLETION DATE</i>
TRAFFICWAY IMPROVEMENTS DRR Staff Recommendation 8)- The removal of all existing driveways within Phase IA, that are in locations not consistent with approved openings in the non-vehicular access line and the construction of curb, gutter and sidewalk in these openings when necessary to complete the required improvement.	Prior to issuance of any Certificate of Occupancy within the Plat.
DRR Staff Recommendation 8)- The removal of all existing driveways within Phase IB or II, that are in locations not consistent with approved openings in the non-vehicular access line and the construction of curb, gutter and sidewalk in these openings when necessary to complete the required improvement.	Prior to issuance of any Certificate of Occupancy within Phases IB or II of the Plat.
Delegation Request Recommendation #iii Reconstruct the existing median opening on University Drive, that aligns with the 100 foot opening to prohibit outbound left turns.	Prior to issuance of any Certificate of Occupancy within the Plat or upon construction of a driveway onto University Drive within the 100 foot opening, whichever occurs first.

IMPROVEMENT DESCRIPTION	COMPLETION DATE
Delegation Request Recommendation #iv - A southbound right turn lane on University Drive at the 100 foot opening with 235+ feet of storage* and 50 feet of transition.	Prior to issuance of any Certificate of Occupancy within the Plat or upon construction of a driveway onto University Drive within the 100 foot opening, whichever occurs first.
Delegation Request Recommendation #v - A northbound left turn lane on University Drive at the 100 foot opening with 235+ feet of storage# and 50 feet of transition.	Prior to issuance of any Certificate of Occupancy within the Plat or upon construction of a driveway onto University Drive within the 100 foot opening, whichever occurs first.
DRR Staff Recommendation 9a) - A westbound right turn lane on Orange Drive at the eastern 80-foot opening with 150 feet of storage and 100 feet of transition.	Upon construction of a driveway onto Orange Drive within the eastern 80-foot opening.
DRR Staff Recommendation 9b) - A westbound right turn lane on Orange Drive at the western 80-foot opening with 150 feet of storage and 100 feet of transition.	Upon construction of a driveway onto Orange Drive within the western 80-foot opening.
DRR Staff Recommendation 10a) - An eastbound Left turn lane on Orange Drive at the eastern 80-foot opening with 200 feet of storage and 100 feet of transition.	Upon construction of a driveway onto Orange Drive within the eastern 80-foot opening.
DRR Staff Recommendation 10b) - An eastbound left turn lane on Orange Drive at the western 80-foot opening with 200 feet of storage and 100 feet of transition.	Upon construction of a driveway onto Orange Drive within the western 80-foot opening.

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