

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Thomas J. Willi, Town Administrator

DOCUMENT PREPARED BY: Dennis Andresky, Parks and Recreation Director 954-797-1150

SUBJECT: Resolution

AFFECTED DISTRICT: Townwide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE SILVER LAKES PARK ENCROACHMENT AGREEMENTS BETWEEN THE TOWN OF DAVIE AND INDIVIDUAL HOMEOWNERS AND AUTHORIZING ENCROACHMENT REMOVAL WHEN NECESSARY

REPORT IN BRIEF: The Town has a 50-year lease with the Florida Department of Transportation for development of a passive park at the Silver Lakes Park site. Construction is scheduled to begin January 2004 and includes an access roadway, bike trail, equestrian and nature trail, restroom building, picnic shelters, a fishing seawall and parking area. Certain encroachments such as fishing piers, boat docks, sheds, etc. have been created by a number of adjacent property owners onto the leased property thus creating a liability risk. The attached agreement titled "AGREEMENT BETWEEN THE TOWN AND INDIVIDUAL HOMEOWNERS", Exhibit "A", has been prepared and approved by the Town Attorney for use in addressing the encroachment caused risk exposure.

Staff has taken the following action to notify the homeowners of the encroachment liability and requirement that they sign an encroachment agreement and provide insurance as stipulated in the agreement should they wish to keep and continue use of their encroachments:

- Public Meetings: 11/21/2000 and 7/2/2001
- One First Class Mailing: 5/3/2001
- Door To Door Canvassing: December, 2002
- Two Certified Mailings: 4/2/2003 and 5/5/2003

Currently there are (18) sites with encroachments the status of which is as follows:

- (4) homeowners have both signed an agreement and provided updated insurance
- (3) homeowners have signed an agreement and need to provide updated insurance
- (1) homeowner has not signed the agreement but provided insurance which needs updating
- (6) homeowners have neither signed agreements nor provided proof of insurance.

Staff will follow up with the four homeowners needing to return a signed agreement and/or updated insurance and **will provide the six homeowners who have not submitted the required agreement/insurance a final notice that their encroachments will be removed by**

the Town in the event they fail to provide a signed agreement and proof of insurance within thirty days of notification. The final notice will require a statement reimbursing the Public Works Department and indicating that the homeowners will be receiving a bill for removal.

Staff recommends approval of this resolution authorizing: the Mayor to sign the encroachment agreements on behalf of the Town and for staff to proceed with encroachment removal at this park site when necessary.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT:

Has request been budgeted? N/A

If yes, expected cost:

Account Name:

RECOMMENDATION(S): Motion to approve Resolution

Attachment(s): Resolution and Exhibit "A"

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE SILVER LAKES PARK ENCROACHMENT AGREEMENTS BETWEEN THE TOWN OF DAVIE AND INDIVIDUAL HOMEOWNERS AND AUTHORIZING ENCROACHMENT REMOVAL WHEN NECESSARY

WHEREAS, the Town of Davie has a 50 year lease agreement for use and development of Silver Lakes Park; and

WHEREAS, there exists certain homeowner created encroachments onto the park site which create a liability for the Town; and

WHEREAS, a formal agreement titled "Agreement Between the Town of Davie and Individual Homeowners" (Exhibit A) has been created to address said liability concerns; and

WHEREAS, the Mayor's signature is required in order to execute and record the agreements in the Broward County Records Division; and

WHEREAS, encroachment removal may be necessary with regards to those homeowners who chose not to sign and prescribe to the requirements of the above referenced encroachment agreement.

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 authorize the Mayor to sign the Agreements between the Town of Davie and the Individual Homeowners on behalf of the Town.

SECTION 2. The Town Council of the Town of Davie does hereby authorize the removal of encroachments when necessary should an adjacent homeowner not sign and prescribe to the requirements of the encroachment agreement following thirty days notice by certified mail and staff delivery of said notice to the respective residence.

SECTION 3. 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.

**AGREEMENT BETWEEN TOWN OF DAVIE
AND INDIVIDUAL HOMEOWNERS**

THIS AGREEMENT made this _____ day of _____, 200__, by and between the Town of Davie, a Political Subdivision, State of Florida, 6591 Orange Drive, Davie, Broward County, Florida 33314-3399 (hereinafter referred to as "the Town"), and _____ (hereinafter referred to as "the Homeowner").

WHEREAS, the Town of Davie has leased from the State of Florida, Department of Transportation, that certain property commonly referred to as Silver Lake, for a period of fifty (50) years beginning October 1, 2000 and ending September 30, 2050; and

WHEREAS, the undersigned Homeowner owns real property which borders on Silver Lake; and

WHEREAS, the Homeowner has a structure or structures which encroach upon and into the property leased by the Town of Davie from the State of Florida, Department of Transportation, which encroachments exist without said Homeowner having first obtained prior permission from either the State of Florida or the Town of Davie to build and maintain such a structure and encroachment; and

WHEREAS, the Homeowners desires to avoid having to remove the encroaching structure;

NOW, THEREFORE, for the good and valuable considerations set forth below, the parties agree as follows:

1. The Homeowner acknowledges that the Town of Davie has leased from the State of Florida, Department of Transportation, the property commonly known as Silver Lake and that certain Lease between the Town and the State of Florida contains specific obligations which make the Town responsible and liable to the State of Florida.

2. The Homeowner further acknowledges that the structure projecting out from his/her property and into the leased property constitutes an encroachment upon the leased property for which the Homeowner has no ownership or lease right.

3. The Town of Davie will allow the Homeowner to maintain the encroaching structure for the term of its lease, and will not require the removal of same provided that the Homeowner and the Homeowner's successors, heirs or assigns, complies with all of the terms and obligations set forth in this Agreement with respect to the encroachment into Silver Lake.

4. In exchange for the Town of Davie's agreeing to allow the encroachment to remain during the term of its lease, the Homeowner agrees to the following terms and conditions:

- A. The Homeowner agrees to be responsible to keep the encroaching structure in good maintenance and repair and to maintain same at his/her own expense, subject to the minimum standards for such structures as set forth in the applicable Code of Ordinances of the Town of Davie and any applicable provisions of the South Florida Building Code.
- B. The Homeowner agrees that no additional encroachments or other structures or substantial improvements to those already in existence are to be made and that any and all repairs and work made to the existing structure shall be for the purpose of maintenance only and not for expansion or enlargement of the existing encroachment.
- C. The Homeowner agrees to indemnify the Town of Davie for and against any and all incidents, occurrences or liabilities arising out of the encroaching structure and the use thereof by any and all persons. As a part of this Indemnification Agreement, the Homeowner shall maintain liability insurance in the minimum amount of \$1,000,000.00 and the Town shall be named as an additional insured under said policy. The Homeowner shall provide proof of the existence of the liability insurance in the aforementioned sum annually to the Town of Davie. The Homeowner agrees to protect, pay defense costs, indemnify and hold harmless the Town of Davie and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges or other expenses, or liabilities of every and any kind, including attorney's fees, in connection with or arising directly or indirectly from all incidents, occurrences or liabilities arising out of the encroaching structure and the use thereof by any and all persons. Without limiting the foregoing, any and all such claims, suits or other actions, relating to personal injury, death, damage to property, defects and materials or workmanship, actual or alleged violation of any applicable statute,

ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder, excluding any gross negligence or intentional act of the Town of Davie. Notwithstanding the provisions hereof, the Town of Davie does not waive any rights to sovereign immunity provided by law.

- D. The Homeowner agrees that there shall be no hazardous materials maintained on the encroaching structure, nor shall it be used at anytime for any illegal or commercial uses. Furthermore, the Lease of the property and the Addendum to the Lease Agreement between the Town of Davie and State of Florida, Department of Transportation is incorporated into this Agreement and made a part hereof by specific reference, and any and all uses of the encroaching structure and property shall be subject to and shall comply with the terms of said Lease.
- E. The Homeowner agrees that all of the terms of this Agreement shall be covenants which run with the land and that this document shall be recorded in the Broward County Records. No sale of the property shall be made without the new owner specifically becoming a party to this Indemnification Agreement.

Further, the Homeowner waives and disavows any claim that he/she may have to adverse possession of the encroachment and the property into which it encroaches as one of the specific considerations and inducement for the Town of Davie entering into this Agreement.

- F. The Homeowner acknowledges that this Agreement does not convey any ownership or lease rights to the Homeowner to the property into which the structure encroaches and further acknowledges that it is merely an accommodation made by the Town of Davie to the Homeowner in exchange for promises and considerations set forth in the Agreement.

5. In the event that the Homeowner breaches the terms of the Agreement and does not cure said breach within a reasonable time after notice of the breach, the Town of Davie shall have the immediate right to seek injunctive relief and any and all other relief which it may obtain in a court of competent jurisdiction. In such case, the Town of Davie may also seek the right to disassemble and remove the encroaching structure at the expense of the breaching Homeowner.

The Homeowner agrees that he/she shall be responsible to reimburse the Town of Davie for any attorneys fees and costs incurred by it in compelling compliance with the terms

of the Agreement, whether or not legal action is initiated in a court of competent jurisdiction to compel compliance.

In any legal action filed in a court of competent jurisdiction to compel compliance with the terms of the Agreement, the prevailing party shall be entitled to recover all of its costs and attorney's fees incurred in prosecution of the action. The parties further acknowledge that the property which is the subject of this Agreement is situate in the County of Broward and venue for any legal action concerning the enforcement of this Agreement shall lie in Broward County, Florida.

6. All notices which are required to be given to the Homeowner concerning this Agreement or any breach thereof, shall be sent to the Homeowner at the address of the property from which the encroachment extends into Silver Lake.

IN WITNESS WHEREOF, the parties hereto have caused these presence to be executed the day and year first above written.

Witness

Name

Witness

Address

TOWN OF DAVIE

BY: _____

TITLE: _____

ATTEST:

_____ (Seal)

TITLE _____

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