

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Thomas J. Willi, Town Administrator (954) 797-1035

PREPARED BY: Barbara McDaniel, MMC, Assistant Town Clerk

SUBJECT: Resolution

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND JOLMY ENTERPRISES; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: This agreement provides that neither the Town of Davie nor Jolmy Enterprises will assert a statute of limitations defense for any claim which may expire between July 1, 2004 and September 1, 2005. Jolmy Enterprises is requesting this waiver agreement in order to refrain from filing a lawsuit at this time with respect to the pre-annexation agreement or the OTTED Agreement.

PREVIOUS ACTIONS: n/a

CONCURRENCES: n/a

FISCAL IMPACT: n/a

RECOMMENDATIONS: Motion to approve the resolution.

ATTACHMENTS: Resolution, Agreement and Correspondence from Special Council Michael Burke

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND JOLMY ENTERPRISES AND AUTHORIZES THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie wishes to enter into an agreement with Jolmy Enterprises which provides that neither party will assert a statute of limitations defense for any claim which may expire between July 1, 2004 and September 1, 2005; and

WHEREAS, Jolmy Enterprises is requesting this waiver agreement in order to refrain from filing a lawsuit at this time with respect to the pre-annexation agreement or the OTTED Agreement

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

SECTION 1. That the Town of Davie does hereby authorize the Mayor to execute the agreement, attached hereto as Exhibit A.

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004

**AGREEMENT BETWEEN JOLMY ENTERPRISES, INC.
AND TOWN OF DAVIE**

THIS AGREEMENT is entered into by and between JOLMY ENTERPRISES, INC. and the TOWN OF DAVIE.

WITNESSETH

WHEREAS, JOLMY ENTERPRISES, INC. and the TOWN OF DAVIE each believe, in good faith, that certain causes of action may exist in favor of one party against the other relating to the development of certain real property owned by JOLMY ENTERPRISES, INC. and located in the approximate vicinity of the SE corner of the Florida Turnpike and the I-595 expressway; and

WHEREAS, both parties believe that it is not in the best interest for either party to engage in litigation against the other at the present time; and

WHEREAS, it is possible that the Statute of Limitations, in regard to any such action, may run between July 1, 2004 and September 1, 2005; and

WHEREAS, each party believes it is in the best interest of each party to waive the defense of the Statute of Limitations as a bar to any action which may be brought prior to September 1, 2005 and for which the Statute of Limitations has not run prior to July 1, 2004, which will give the parties an additional period of time in order to resolve certain pending matters;

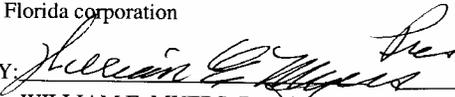
NOW, THEREFORE, upon the mutual covenants and conditions contained herein, including the forbearance by each party to file any litigation against the other party, the parties do hereby agree as follows:

1. RECITALS. The foregoing recitals are true and correct.
2. WAIVER. Each party agrees that in the event a lawsuit is filed by one against the other on or before September 1, 2005, neither party will raise an applicable Statute of Limitations as a defense against any claim which claim will expire as a result of the running of the Statute of Limitations between July 1, 2004, and September 1, 2005.
3. RESERVATION OF RIGHTS. The parties each reserve the right to assert a statute of limitations defense against any claim by one against the other which claim may have been barred by the applicable Statute of Limitations prior to July 1, 2004.

IN WITNESS WHEREOF, the parties have set their hands and seals the dates shown below:

DATED: 7-20-04

JOLMY ENTERPRISES, INC.
A Florida corporation

BY: 
WILLIAM E. MYERS, President

DATED: _____

TOWN OF DAVIE

BY: _____

TOM TRUEX, Mayor

STATE OF FLORIDA

COUNTY OF BROWARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared WILLIAM E. MYERS, as President of JOLMY ENTERPRISES, INC., a Florida corporation, to me known to be the person described in and who executed the foregoing instrument, and he swore to and acknowledged before me that he executed same. _____ (is personally known to me) or (produced _____ as identification) and did take an oath.

WITNESS my hand and official seal in the State and County last aforesaid this 20th day of July, 2004.

Cheryl A. Dejean

My Commission Expires:

NOTARY PUBLIC

STATE OF FLORIDA
COUNTY OF BROWARD



I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared TOM TRUEX, as Mayor of TOWN OF DAVIE, to me known to be the person described in and who executed the foregoing instrument, and he swore to and acknowledged before me that he executed same. _____ (is personally known to me) or (produced _____ as identification) and did take an oath.

WITNESS my hand and official seal in the State and County last aforesaid this _____ day of _____, 2004.

NOTARY PUBLIC

My Commission Expires:

LAW OFFICES

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A PROFESSIONAL ASSOCIATION

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* BOARD CERTIFIED CIVIL TRIAL LAWYERS
† BOARD CERTIFIED APPELLATE LAWYERS

July 22, 2004



Mr. Tom Willi
Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314-3399

Re: State Road 84 Spur Property
Parcel 93 S 101
Our File No. 21-251 MTB

Dear Mr. Willi:

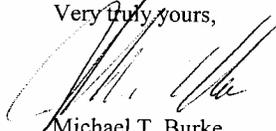
Enclosed please find an original and four signed copies of a proposed Agreement Between Jolmy Enterprises and the Town of Davie. As you can see, the proposed Agreement provides that neither party will assert a statute of limitations defense for any claim which may expire between July 1, 2004 and September 1, 2005. Jolmy is requesting this waiver agreement in order to refrain from filing a lawsuit at this time with respect to the Pre-Annexation Agreement or OTTED Agreement.

I have not attempted to analyze whether Jolmy has any viable claims against the Town under either Agreement. If the Town Council does not authorize the execution of the Agreement, I anticipate that Jolmy will file a lawsuit before the end of August and will probably try and keep from prosecuting the lawsuit until a final determination is reached concerning the Spur Road issue. If the Town Council authorizes the execution of the enclosed Agreement, I anticipate that Jolmy will refrain from filing any lawsuit until on or after September 1, 2005.

Mr. Tom Willi
July 22, 2004
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After you have had an opportunity to review the above, please give me a call so that we can discuss this enclosure and determine whether the proposed Agreement should be placed on the next Town Council meeting agenda.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael T. Burke", written over a horizontal line.

Michael T. Burke
For the Firm

MTB/lt

Enclosure