

**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: Marcie Oppenheimer Nolan, Deputy Planning and Zoning Manager

**SUBJECT:** Resolution – Park Utilization Agreement for Parkside Estates of Davie

**AFFECTED DISTRICT:** District 3

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A PARK UTILIZATION AGREEMENT BETWEEN THE TOWN OF DAVIE AND PARKSIDE ESTATES ASSOCIATES, LTD. FOR ACCESS INTO PINE ISLAND PARK THROUGH TWO LIMITED ACCESS GATES; PROVIDING FOR CONTRIBUTION TO THE TOWN; PROVIDING FOR INDEMNIFICATION; AND TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The master site plan for Parkside Estates (MSP 8-1-02) was approved by Town Council on February 5, 2003. This project is located on Orange Drive, just to the west of Pine Island Road adjacent to Pine Island Park to the north. The project consists of 29 one acre single family homes.

At the Town Council meeting, the developer requested access into Pine Island Park to the north through two (2) restricted access gates. Town Council approved this request requiring an agreement between the Town and the developer prior to providing access. This agreement allows two access gates at the terminus of the two cul-de-sac streets. These gates will have coded locks for access by the residents of Parkside Estates into the park. At closing of the park, a park ranger will lock the gates with a Town of Davie lock, restricting any night access. An indemnification agreement is attached as Exhibit "C" reducing any liability to the Town. A thirty day notice, by either party, is required to terminate the agreement.

The agreement provided for a yearly fee, paid by the Parkside Estates Homeowners Association of \$400.00 to the Town to off-set the cost of the park ranger's time and energy. In addition, the developer will donate \$5,000.00 toward tree planting along the south side of Berman Park to buffer the new homes from the existing ball-field lights.

This agreement was drafted by the Town Attorney under the Cost Recovery Program adopted by Town Council.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:** Funds will be paid to the Town initially and then on a yearly basis

**RECOMMENDATION(S):** Motion to approve.

**Attachment(s):** Resolution, Park Utilization Agreement, Exhibit A: Legal Description of Parkside Estates of Davie Agreement, Exhibit B: Legal Description of Pine Island Park, Exhibit C: Indemnification Agreement.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A PARK UTILIZATION AGREEMENT BETWEEN THE TOWN OF DAVIE AND PARKSIDE ESTATES ASSOCIATES, LTD. FOR ACCESS INTO PINE ISLAND PARK THROUGH TWO LIMITED ACCESS GATES; PROVIDING FOR CONTRIBUTION TO THE TOWN; PROVIDING FOR INDEMNIFICATION; AND TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of Davie approved the master site plan (MSP 8-1-02) known as Parkside Estates at Davie on February 5, 2003, and

WHEREAS, as part of the approval process the developer requested two limited access gates into Pine Island Park, and

WHEREAS, at the time of master plan approval by Town Council, restrictions and terms to provide such access must be adhered to by the developer and ultimately the Pine Island Homeowners Association, and

WHEREAS, to buffer the adjacent ballpark lights from the single-family homes, the developer also has provided the Town five thousand (\$5,000.00) toward landscape material to be planted along the southern property line of Pine Island Park; and

WHEREAS, the Town agrees to allow the developer to construct two limited access gates into Pine Island Park with restricted to access by the residents of Parkside Estates at Davie , and

WHEREAS, Parkside Estates at Davie, LTD. agrees to an annual fee of four hundred (\$400.00) dollars for the use of the premises, as defined in the Park Utilization 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 and Town Administrator to enter into a Park Utilization Agreement, attached hereto as Exhibit "A", between Parkside Estates at Davie, LTD. and the Town of Davie for the private use of two limited access gates into Pine Island Park, subject to the terms and conditions of said Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

## PARK UTILIZATION AGREEMENT

**THIS PARK UTILIZATION AGREEMENT** (“Agreement”) is made and entered into as of this \_\_\_\_ day of June, 2005, between the **TOWN OF DAVIE**, a municipal corporation of the State of Florida (hereinafter referred to as “Town”) and **PARKSIDE ESTATES ASSOCIATES LTD.**, a corporation of the State of Florida residing at 18851 NE 29<sup>th</sup> Avenue, Suite 700, Aventura, Florida 33180 (hereinafter referred to as “Parkside Estates Associates”).

### **WITNESETH:**

**WHEREAS**, Parkside Estates Associates is the owner of certain real property located at 8901 S.W 45<sup>th</sup> Street, Davie, Florida and more specifically described within **Exhibit “A”** attached hereto and incorporated herein by reference; and

**WHEREAS**, the Town of Davie is the owner of that certain real property known as Pine Island Park, which is located adjacent to the property owned by Parkside Estates Associates indicated within Exhibit “A”, said property being more specifically described within **Exhibit “B”** attached hereto and incorporated herein by reference; and

**WHEREAS**, Parkside Estates Associates Ltd. has requested the Town of Davie to allow it and those individuals residing within the development know as “Parkside Estates of Davie”, access to Pine Island Park for the purposes of utilizing the park property under certain specified conditions agreed upon by the parties; and

**WHEREAS**, this Park Utilization Agreement shall establish the specific rules and manner by which the park property may be utilized as well as the conditions under which the Town of Davie will allow Parkside Estates Associates and the residents of Parkside Estates of Davie access to Pine Island Park.

**NOW, THEREFORE**, the Town of Davie hereby grants to Parkside Estates Associates and the residents of Parkside Estates of Davie the right to access Pine Island Park and utilize the park properties under the terms and conditions specified herein. This Agreement and the terms herein shall be binding upon the parties, their heirs, successors or assigns, and shall remain in full force and effect in perpetuity.

The scope, nature, and character of this Park Utilization Agreement shall be as follows:

1. It is the purpose of the Park Utilization Agreement to allow Parkside Estates Associates and residents of Parkside Estates of Davie access to Pine Island Park to utilize the park property. Park property shall be utilized by the residents of Parkside Estates of Davie and by Parkside Estates Associates solely for recreational purposes and in

accordance with the specific rules promulgated by the Town of Davie's Parks and Recreations Division.

2. Any acts or uses inconsistent with the utilization of the park property for recreational purposes in accordance with the specific rules promulgated by the Town of Davie Parks and Recreations Division shall be strictly prohibited. Parkside Estates Associates shall ensure that such acts are not committed by representatives of Parkside Estates Associates and/or residents of Parkside Estates of Davie.

3. Any acts or uses detrimental to the preservation of the Park property and/or any acts or uses in violation of the Town of Davie Code of Ordinances shall be prohibited. Parkside Estates Associates shall ensure that such acts are not committed by representatives of Parkside Estates Associates and/or residents of Parkside Estates of Davie.

4. It is specifically understood by the parties that the rules and regulations promulgated by the Town of Davie Parks and Recreations Division may be amended by the Town of Davie from time to time and Parkside Estates Associates and the residents of Parkside Estates of Davie shall be bound by all such rules in place at all times when utilizing the park property.

5. The Town of Davie shall have the right to utilize its police powers and any other regulatory powers lawfully possessed by the Town to enjoin any activity or use by either Parkside Estates Associates or the residents of Parkside Estates of Davie that is inconsistent with the rules and regulations promulgated by the Town of Davie Parks and Recreations Division and/or is in violation of the Town of Davie Code of Ordinances. The Town shall further have the right to enforce the restoration of such areas of the park property that may be damaged by any inconsistent activity on and/or use of the property. The Town shall be entitled to recover from Parkside Estates Associates, the cost of restoring the park property for any damages to park property caused by either Parkside Estates Associates or residents of Parkside Estates of Davie.

6. As consideration for the Town's conveyance of the right to utilize Pine Island Park, Parkside Estates Associates shall be required to install and maintain two access gates at 8901 S.W. 45 Street, Davie, Florida which will connect directly to Pine Island Park property. Parkside Estates Associates shall be required to indemnify the Town, its officers, directors, employees and agents for any loss, damage, expense (including legal fees) or liability resulting from any incident, claim, action or demand arising out of or related to the installation and on-going use of said gates. Parkside Estates Associates' responsibility to indemnify the Town is more specifically stated within the Indemnification Agreement, attached hereto as **Exhibit "C"**.

7. As further consideration for the Town's conveyance of the right to utilize Pine Island Park, Parkside Estates Associates shall also be required to provide to the Town the sum of Five Thousand Dollars (\$5,000.00) for the purpose of constructing a landscaping berm barrier adjacent to the access gates indicated above abutting Pine Island Park.

8. Parkside Estates shall also be required to provide to the Town the sum of Four Hundred Dollars (\$400.00) per year to reimburse the Town for use of Town staff to open and lock the access gates to Pine Island Park each day. This sum shall be subject to a 5% increase every five (5) years. It is specifically acknowledged and agreed to by the parties that the access gates shall be opened and locked by Town employees at a time consistent with the established park hours of operation as may be amended from time to time.

9. This Agreement shall terminate in the event that Parkside Estates Association does not construct and maintain a landscaping berm and/or access gates as indicated above, or fails to comply with any provision established within this Agreement. The Town shall provide Parkside Estates Association with written notification that the Town believes a breach has occurred. Upon receipt of the written notification from the Town, Parkside Estates Associates shall have thirty (30) days to cure the defects specified within the notification.

10. The terms and conditions of this Park Utilization Agreement shall be construed and governed in accordance with the laws of the State of Florida. In the event that any dispute hereunder or any action to interpret or enforce this Agreement, the venue of such actions shall be exclusively in the Seventeenth Judicial Circuit, in and for Broward County Florida. Any costs, including but not limited to reasonable attorney's fees and administrative, trial and appellate court costs which are incurred in enforcing the terms and restrictions of this Agreement, shall be borne by and recoverable against the non-prevailing party in such proceedings.

11. This Agreement shall be recorded in the public records of Broward County, Florida. Parkside Estates Associates' obligations shall be binding upon its heirs, successors or assigns in perpetuity.

12. If any provision of this agreement or the application thereof to any person is found to be invalid, the remainder of the provisions of this Agreement shall not be affected thereby.

13. Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities of sovereign immunity as provided by law as set forth in Section 768.28, Florida Statutes.

14. This Agreement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns and successors-in-interest, which shall be filed in the public records of Broward County.

IN WITNESS WHEREOF, the parties have made and executed this Park Utilization Agreement on the respective dates under each signature: TOWN OF DAVIE through its TOWN COUNCILMEMBERS, signing by and through its MAYOR, authorized to execute same by COUNCIL ACTION ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2006, and by Parkside Estates Associates on the \_\_\_\_ day of \_\_\_\_\_, 2006.

**TOWN**

TOWN OF DAVIE

By: \_

Attest:

\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_

Town Clerk

By: \_

Town Administrator

\_\_\_ day of \_\_\_\_\_, 2006

APPROVED AS TO FORM:

Town Attorney

**Witness** my hand and seal this \_\_\_ day of \_\_\_\_\_, A.D., 2006.

Signed, sealed and delivered  
in the presence of:

PARKSIDE ESTATES ASSOCIATES:

\_\_\_\_\_

Witness

\_\_\_\_\_

Print/Type Name

\_\_\_\_\_

Witness

\_\_\_\_\_

Print/Type Name

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2006, by \_  
who is personally known to me or who has produced \_\_\_\_\_ as identification and  
who did/did not take an oath.

\_\_\_\_\_

Notary Public, State of Florida at Large

\_\_\_\_\_

Print, Type or Stamp Name

My Commission Expires:

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A PORTION OF TRACTS 17 AND 18 OF SECTION 29, TOWNSHIP 50 SOUTH, RANGE 41 EAST, AND A PORTION OF THE ADJACENT 30.00 FOOT RIGHT-OF-WAY, ALL OF "NEWMAN'S SURVEY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2 AT PAGE 26 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 29; THENCE SOUTH 02°05'55" EAST, ALONG THE EAST LINE OF SAID SECTION 29, ALSO BEING THE EAST LINE OF SAID TRACT 17, A DISTANCE OF 218.18 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 02°05'55" EAST, ALONG SAID EAST LINE, A DISTANCE OF 1171.50 FEET; THENCE SOUTH 88°32'16" WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT C-11-3 CANAL, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR STATE ROAD 818 (SECTION 86015-2510), A DISTANCE OF 1320.16 FEET; THENCE NORTH 02°04'19" WEST, ALONG THE WEST LINE OF SAID TRACT 18, A DISTANCE OF 1171.17 FEET; THENCE NORTH 88°31'25" EAST, ALONG A LINE 218.17 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACTS 18 AND 17, A DISTANCE OF 1319.61 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA, AND CONTAIN 35.490 ACRES, MORE OR LESS.

## Legal Description

Parcel "A", PINE ISLAND PARK, according to the plat thereof as recorded in Plat Book 139, Page 28, Broward County Record and a portion of Tract 1, 2, 15, 16, 17 and 18, JOHN W. NEWMAN'S SURVEY, Plat Book 2, Page 26, Dade County Record, Section 28-50-41.

All more fully described as follows:

Commencing at the Northeast corner of said Section 29; Thence South 02°05'56" East on the East line of said Section 29, a distance of 20.00 feet to a point on a line 20.00 feet South of and parallel with the North line of the Northeast One-Quarter (NE1/4) of said Section 29, said point being the Northeast corner of Tract 1, of said Newmans Survey; thence South 88°32'28" West on said parallel line, and on the North line of said Tract 1, a distance of 130.00 feet to the Point of Beginning; thence South 02°05'56" East on a line 130.00 feet West of and parallel with the East lines of Tracts 1 and 16, of said Newmans survey, a distance of 1346.21 feet, to a point of curvature; thence North Easterly on a curve to the left with a radius of 1140.01', a central angle of 21°35'27", an arc distance of 429.59 feet to a point on a line 50.00 feet West of and parallel with the East lines of Tracts 16 and 17, of said Newmans Survey; thence South 02°05'56" East on said Parallel line, a distance of 1072.76 feet, thence South 83°31'25" West on a line 218.17 feet South of and parallel with the South lines of Tracts 17 and 18 of said Newmans Survey, a distance of 1269.59 feet; thence South 02°04'19" East on the East line of said Tract 19, and on the South line of Parcel "A", said Pine Island Park, a distance of 40.82 feet; thence West, North, and East on the boundary of said Parcel "A", the following five courses and distances; South 88°31'25" West, a distance of 281.13 feet; thence North 02°04'19" West, a distance of 38.88 feet; thence South 88°31'25" West, a distance of 348.67 feet; thence North 02°03'30" West, a distance of 2,073.07 feet; thence North 88°32'28" East, a distance of 756.60 feet to the Northeast corner of said Parcel "A", and to the point of termination of the said five courses and distances; thence North 02°05'07" West, on the East line of Parcel "A", SCHOOL SITE 3080, according to the plat thereof as recorded in Plat Book 142, Page 28, of the public records of Broward County, Florida, a distance of 767.00 feet; thence North 88°32'28" East on the North lines of said Tracts 1, and 2, a distance of 1051.17 feet to the Point of Beginning. Said lands situate, lying and being in the Town of Davie, Broward County Florida.



Administration	797-1030	Parks & Recreation	797-1145
Budget & Finance	797-1050	Police Department	693-8200
Development Services	797-1111	Public Works	797-1240
Engineering	797-1113	Town Clerk's Office	797-1023
Fire Department	797-1211	Utilities	433-4000
Human Resources	797-1100	Risk Management	797-1097

---

**TOWN OF DAVIE** 6591 Orange Drive, Davie, Florida 33314-3399 (954) 797-1100

---

## INDEMNIFICATION AGREEMENT

This agreement made and entered into this \_\_\_\_ day of October, 2004 by and between Parkside Estates Associates, Ltd. of 18851 NE 29<sup>th</sup> Avenue, Suite 700, Aventura, Florida 33180 (hereafter referred to as "DEVELOPER") and The Town of Davie (hereafter referred to as "TOWN") pertains to two (2) access gates which are to be installed at 8901 S.W. 45 Street, Davie, Florida and which will connect directly to adjacent Town property.

Whereas, Developer owns the property located at 8901 S.W. 45 Street, Davie, Florida;

Whereas, Town swears that it has ownership of the adjacent property known as \_\_\_\_\_ (the "Park") and the authority to enter into this agreement and desires to assist Developer by permitting the installation of said gates and it's connection to Town property; and

Whereas, Developer desires the use of the gates and agrees to the proper installation of and on-going maintenance of the gates.

Now, therefore, in consideration of the mutual agreement contained herein, the parties do hereby agree as follows:

Town shall permit the installation of and connection to Town property of two (2) gates and shall permit such continued use by Developer and thereafter the Parkside Estates of Davie Homeowner's Association, Inc. and its members and the general public as is appropriate and in return Developer agrees to defend, indemnify and hold harmless TOWN, its officers, directors, employees and agents for any loss, damage, expense (including legal fees) or liability resulting from any incident, claim, action or demand arising out of or related to the installation and on-going use of the two (2) gates.

Nothing in this Agreement shall be construed to affect in any way the TOWN's rights, privileges, and immunities, including sovereign immunity as provided by law as set forth in Florida Statue 768.28.

IN WITNESS WHEREOF, the parties hereto have duly exercised this agreement on the day and year shown by their signatures.

PARKSIDE ESTATES ASSOCIATES, LTD.  
 By: Parkside Estates Associates, Inc., its  
 General Partner

TOWN OF DAVIE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Gary D. Posner, President  
 18851 N.E. 29 Avenue, Suite 700  
 Aventura, FL 33180  
 786-787-7705

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature  
 Title: \_\_\_\_\_  
 Printed Name : \_\_\_\_\_

\* \* \* \* \*

THIS PAGE  
INTENTIONALLY  
LEFT BLANK

\* \* \* \* \*