

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Will Allen, Redevelopment Administrator/ 797-2093

**PREPARED BY:** Will Allen

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, RATIFYING THE DAVIE COMMUNITY REDEVELOPMENT AGENCY'S PURCHASE OF PROPERTY FROM HULLY GILL; AND PROVIDING FOR AN EFFECTIVE DATE

**REPORT IN BRIEF:** The CRA Board approved a purchase contract to purchase an approximately one-half acre (.46 acres) site on the north side of Orange Drive to the west of Davie Road known as 6501-6509 Orange Drive at the September 5, 2006 CRA meeting. This site is located immediately west of the former Davie Apostolic Church property and the Wayne Jackson property which were previously purchased by the CRA. The addition of this site will result in a consolidated parcel of approximately 2.5 acres owned by the CRA. The subject site has two buildings and three current tenants including an office, a furniture sales establishment and a hair and nail salon. The contract indicates the purchase price is \$850,000. This purchase price must be substantiated by two independent appraisals. The contract also includes an inspection and due diligence period of sixty days which will begin after the Town Council ratifies the purchase contract. This period is used to investigate and inspect the site including preparing title work, surveys and environmental assessments.

The acquisition of property is consistent with the Redevelopment Plan and with the Downtown Master Plan adopted at the July 5, 2006 Town Council meeting. Acquisition of property is also consistent with State Statutes and is specifically listed as a power of the CRA in Section 12-408 (C) (3) (b) of the Town of Davie Land Development Code. The property in question is a prime redevelopment site particularly when combined with adjoining property.

**PREVIOUS ACTIONS:** The CRA Board approved the contract for purchase with the property owner at the September 5, 2006 CRA meeting.

**FISCAL IMPACT:** Has request been budgeted?       yes  
If yes, expected cost: \$850,000  
Account Name:       Special Projects (010-0404-515-0502)

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

**Attachment(s):** Resolution  
Contract For Purchase

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, RATIFYING THE DAVIE COMMUNITY AGENCY'S PURCHASE OF PROPERTY FROM HULLY GILL; AND PROVIDEING FOR AN EFFECTIVE DATE

WHEREAS, the Town Council of the Town of Davie created the Davie Community Redevelopment Agency (CRA) pursuant to Ordinance 88-23 adopted on May 5, 1988; and WHEREAS, pursuant to Ordinance 92-24, the Town Council delegated to the CRA the power to make and execute contracts and other instruments necessary or convenient to the carrying out of Community Redevelopment projects and related activities within its area of operation; and WHEREAS, the CRA has identified property located at the northwest corner of Davie Road and Orange Drive for acquisition; and WHEREAS, the property is owned by Hully Gill; and WHEREAS, the CRA and Hully Gill have approved a Contract for Purchase and Sale to purchase this approximately one-half acre site for the amount of \$850,000; and WHEREAS, the Contract for Purchase and Sale requires the purchase price to be substantiated by two appraisals and grants the CRA a 60 day Inspection Period to obtain the appraisals, survey and other investigations.

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 ratifies the CRA's purchase of property from Hully Gill, described as: The East 90 feet of the West 225 feet of South 266.80 feet of Tract 47 of Everglades Land Sales Co. Subdivision of Section 27, Township 50 South, Range 41 East, a Subdivision, according to the plat thereof, recorded in Plat Book 2 at Page 34, of the public records of Broward County, Florida. (as described in Deed recorded in OR Book25631, Page 962)

a/k/a

The East 75.00 feet of the West 210.00 feet of the South 180.00 feet of Tract 47 of Everglades Land Sales Co. Subdivision of Section 27, Township 50, Range 41 East, a Subdivision, according to the plat thereof, recorded in Plat Book 2 at Page 34, of the public records of Broward County, Florida.

And

The East 150.00 feet of the West 225.00 feet of the South 180.00 feet and the East 90.00 feet of the West 225 feet of the North 86.80 feet of the South 26.80 feet of Tract 47 Everglades Land Sales Co. Subdivision of Section 27, Township 50 South, Range 41 East, a Subdivision, according to the plat thereof, recorded in Plat Book 2 at Page 34, of the public records of Broward County, Florida. (as described on survey prepared by Associated Engineers & Surveyors, Inc.)

SECTION 2. 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

## CONTRACT FOR PURCHASE AND SALE

This CONTRACT FOR PURCHASE AND SALE (the "Contract") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between **HULLY GILL** (the "Seller") and the **TOWN OF DAVIE COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic created pursuant to Chapter 163, Part III, Florida Statutes (the "Buyer").

For and in consideration of the mutual covenants and obligations created hereby as well as other good and valuable considerations, Buyer agrees to buy and Seller agrees to sell the following described property subject to and upon the terms and conditions set forth below. The effective date of this Contract (the "Effective Date") shall be the date upon which the last of Seller and Buyer shall have signed this Contract or initialed any changes thereto and the Town Council of the Town of Davie has ratified the Contract.

1. Property. The property which is the subject of this Contract consists of the following: the fee simple good, marketable and insurable title to the real property described located at 6507 and 6501 SW 45 St., Davie, Florida, more particularly described in Exhibit "A" attached hereto (the "Property"); together with all riparian rights, easements, privileges, servitudes, appurtenances and other rights pertaining to the Property. The legal description of the Property will be more particularly determined upon receipt of the survey by Buyer as described in Section 5 hereof.

2. Deposit. Upon receipt of a copy of this Contract executed by Seller and Buyer, Buyer shall immediately deposit in escrow with Billing, Cochran, Heath, Lyles, Mauro & Anderson, P.A. (the "Escrow Agent") One Thousand and 00/100 Dollars (\$1,000.00) (the "Deposit"), which shall be placed in a separate interest-bearing escrow account under the Buyer's Federal Employer Tax Identification Number. The Deposit shall be held by Escrow Agent and utilized in accordance with the provisions of this Contract. The Deposit, if this transaction closes, shall become a credit in favor of the Buyer against the Purchase Price at Closing. If this transaction shall fail to close, the disposition of the Deposit shall be as provided herein, and the interest on the Deposit shall follow the Deposit and inure to the benefit of the party entitled thereto. Reference to the Deposit throughout this Contract shall include any and all accrued interest thereon.

3. Purchase Price. The Purchase Price of the Property (the "Purchase Price") shall be Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000.00), to be substantiated by the average of two (2) appraisals obtained by Buyer prior to the expiration of the Inspection Period (as defined below). In the event the average of the two (2) appraisals is less than the Purchase Price, the Buyer may terminate this Contract and obtain a return of the Deposit and each party shall bear its or his expenses incurred to the date of termination. Notice of termination of this Contract pursuant to this Section 3 shall

be given as provided in Section 27 hereof prior to the expiration of the Inspection Period as that term is hereinafter defined. The Purchase Price is subject to prorations and adjustments as herein provided.

4. Evidence of Title.

A. Within fifteen (15) days following the Effective Date, the Buyer shall obtain, at Buyer's expense, an ALTA title insurance commitment, including hard copies of all title exceptions, issued by a Title Insurance Company authorized to conduct business in the State of Florida (the "Title Insurance Company"), proposing to insure Buyer's title to the Property (the "Title Evidence"). Buyer shall have up to and including fifteen (15) days following Buyer's receipt of the Title Evidence (the "Title Review") to review the Title Evidence. If the Title Evidence reveals that title to the Property is not good, marketable and insurable in accordance with the standards adopted by The Florida Bar, then Buyer shall, within the Title Review period, notify Seller in writing specifying the title defect(s) (the "Title Defects") and the curative action required to render such matters acceptable to Buyer. If said Title Defect(s) render title to the Property unmarketable and/or uninsurable, Seller shall have sixty (60) days from receipt of such notice within which to remove said Title Defects or Buyer may accept title to the Property "as is" without reduction in the Purchase Price and proceed to close. If Buyer does not elect to accept title to the Property "as is", or if Seller is unsuccessful in removing the Title Defects within said sixty (60) day period, despite Seller's due diligence and best efforts to remove the Title Defects, then the Buyer shall elect within ten (10) days after the end of the sixty (60) day period to either: (i) accept the title to the Property as it then is without reduction in the Purchase Price; or (ii) demand a refund of the Deposit, which shall forthwith be returned to Buyer by the Escrow Agent, and thereafter Buyer and Seller shall be released from all further obligations under this Contract. Notwithstanding anything to the contrary set forth in this Paragraph 4, if title to the Property is unmarketable because of liens in a liquidated amount that can be released if satisfied by the payment of money alone, then Buyer shall accept title to the Property as it then is and, at the time of the Closing hereunder, such liens shall be paid from the cash to close, and the amount due Seller shall be reduced by such amount, or the Seller shall remove same by statutory permitted bond. Seller agrees that Seller shall, if title to the Property is found to be unmarketable, use its best efforts to cure the Title Defects within the time limit set forth herein.

B. If at any time subsequent to the delivery of the Title Evidence and prior to the Closing of this transaction, title to the Property is found to be subject to additional exceptions not revealed by the Title Evidence ("Additional Defects"), Buyer shall give written notice of such Additional Defects to Seller prior to the Closing Date. Any Additional Defects, other than those created by, through or under Buyer, shall be removed of record by Seller and, if necessary, Closing shall be delayed by a period not to exceed sixty (60) days to allow such removal. If such Additional Defects are not corrected within said sixty (60) day period, despite Seller's due diligence and best efforts to remove the

Additional Defects, then Buyer shall have the same options as Buyer has been granted herein as if Seller did not cure the Title Defects.

5. Survey. Within thirty (30) days following the Effective Date, Buyer may obtain, at Buyer's expense, a currently dated survey (the "Survey") of the Property prepared by a Florida licensed surveyor which shall include a delineation of existing easements on the Property certified to the Buyer, Buyer's attorney, and the Title Insurance Company. Buyer shall deliver a sealed copy of the Survey to Seller within said thirty-day period. If the Survey shows any easements, encroachments or other matters which would impair the Buyer's proposed development of the Property, the same shall be treated as a Title Defect and such Title Defect shall be governed by the provisions contained within Paragraph 4 of this Contract.

6. Right to Enter/Inspection Period.

A. Seller hereby grants to Buyer the right to enter upon the Property during the Inspection Period as set forth below to inspect, investigate and conduct tests and environmental audits on the Property and take whatever action Buyer deems necessary or desirable to determine the Property's suitability for Buyer's intended use. Buyer shall restore the Property to the condition existing prior to Buyer conducting any tests on the Property pursuant to this Paragraph 6. To the extent allowed by law, the Buyer shall hold Seller harmless for any damage resulting from the failure of Buyer or the agents, contractors, employees and representatives of Buyer to exercise reasonable care in the conduct of such tests, inspections or examinations.

B. Buyer shall have up to and including Sixty (60) days following the Effective Date to conduct an examination of the Property to determine the Property's suitability for Buyer's intended use ("Inspection Period"). During the Inspection Period, Seller agrees to provide Buyer with access to any documents or information which Seller has in its possession relating to the Property, including, without limitation, surveys and title evidence.

C. To the extent permitted by law, Buyer shall timely pay for and hold Seller harmless from liability for all tests, services, inspections, audits and examinations performed on Buyer's behalf under this Paragraph 6 so that the Property does not become subject to any liens. Buyer has no authority or right to create liens upon the Property. If such a lien occurs, Buyer shall remove same by a statutory permitted bond or otherwise within five (5) days of notice from Seller.

D. At any time prior to expiration of the Inspection Period, Buyer shall have the sole alternative, at its absolute discretion, of either (i) rejecting the Property, in which event Buyer shall notify Seller and Escrow Agent in writing prior to the expiration of the Inspection Period of Buyer's intention to terminate this Contract, whereupon

Escrow Agent shall promptly return the Deposit to Buyer and both parties shall be released from any further rights and obligations hereunder; or (ii) accepting the Property and proceeding with performance of Buyer's obligations hereunder and to close this transaction. In the event Buyer fails to notify Seller of Buyer's rejection of the Property as provided herein, such failure shall be deemed an acceptance of the Property by the Buyer.

7. Closing Documents. At the Closing, Seller shall deliver to Buyer the following:

A. Warranty Deed in Statutory Form ("Deed"), in recordable form, conveying fee simple title to the Property, subject to those exceptions accepted by Buyer pursuant to Paragraph 4 above;

B. An affidavit from Seller testifying that (i) it will take no action prior to recording the Deed to Buyer affecting the title to the Property, (ii) Seller has collected and remitted all taxes and filed all applicable tax returns in connection with the use and operation of the Property and is current in the payment of all such taxes, except for the current year's real estate taxes, (iii) there are no actions or proceedings now pending in any state or Federal court or other governmental body of which Seller is a party, including, but not limited to, proceedings in bankruptcy, receivership or insolvency, which would adversely affect the title to the Property or Seller's ability to close on the sale of the Property to Buyer, and (iv) there are no parties in possession of or with any rights to possession of any portion of the Property other than Buyer and tenants in possession listed on Exhibit "B" attached hereto (subject to the provisions of Paragraph 18 hereof).

C. No-lien Affidavit;

D. A Certificate of Non-Foreign Status or statement complying with Section 1445(b)(2) or (3) of the Internal Revenue Code of 1986, as amended;

E. A Closing Statement;

F. Sworn Statement under Section 287.133(3)(a), Florida Statutes, if applicable;

F. Form 1099; and

G. Such other instruments as the Title Insurance Company shall reasonably require, including a good standing certificate and appropriate corporate resolution authorizing the sale.

8. Place of Closing. The Closing shall be held at the offices of Billing, Cochran, Heath, Lyles, Mauro & Anderson, P.A., 888 S.E. 3<sup>rd</sup> Avenue, Suite 301, Fort Lauderdale, Florida 33316, or at such other place as is agreed to by the parties.

9. Closing Date. The Closing of this transaction ("Closing") shall occur on or before thirty (30) days following expiration of the Inspection Period ("Closing Date").

10. Closing Costs. Buyer shall pay the costs of Buyer's inspection of the Property, Buyer's attorney's fees, the costs of the Title Evidence, the cost of the Survey, and any title insurance premium. Seller shall pay the costs of the Florida documentary stamp tax on the Deed, the costs of recording the Deed, Seller's legal fees, and the cost of curing Title Defects or Additional Title Defects, if any, in accordance with Paragraph 4 above.

11. Real Estate Taxes; Assessments.

A. Real estate taxes on the Property shall be prorated as of the Closing Date based on the current year's taxes, if known. If a Closing occurs at a date when the current year's taxes are not fixed and the current year's assessment is available, taxes shall be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes will be prorated on the prior year's tax. However, any tax proration based on the prior year's tax may, at the request of either party to the transaction be subsequently readjusted upon receipt of the current year's tax bill. All such prorations will have been based on actual tax or estimated tax and make appropriate allowance for the maximum allowable discount or other exemptions. In the event either party fails or refuses to reprorate the real estate taxes within ten (10) days following receipt of a request by the other party for such reproration, then the amount due shall bear interest from the expiration of said ten (10) day period at the rate of eighteen (18%) percent per annum. In the event a party is obligated to institute legal proceedings to recover the reproration of real estate taxes and the interest due as herein set forth, the prevailing party shall be entitled, in addition, to recover reasonable attorneys' fees and costs from the non-prevailing party. Seller shall remit prorated real estate taxes to the Broward County Revenue Collector in accordance with applicable provisions of Florida law.

B. All certified assessment liens as of the Effective Date shall be paid by Seller, and all other assessment liens shall be assumed by Buyer.

12. Condemnation. In the event that any portion of the Property shall be threatened by or taken in condemnation or under the right of eminent domain after the Effective Date hereof and prior to the Closing Date, Seller shall within ten (10) days of receiving notice from the governmental authorities, provide written notice to Buyer of the government's intent. This Contract, at the option of Buyer, may within fifteen (15) days written notice to Seller: (a) be declared null and void with respect to the Property; or (b) continue in effect and the proceeds received from such condemnation or eminent domain

proceeding shall be retained by Seller and applied to reduce the Purchase Price, or (c) if condemnation or eminent domain proceedings are not completed, assigned at Closing to Buyer. If Buyer elects to complete the sale of the Property pursuant hereto, Seller shall not negotiate a settlement of any pending condemnation or eminent domain proceedings without the prior written consent of Buyer.

13. Proceeds of Sale and Closing Procedure. At the Closing, Buyer shall pay to Seller the Purchase Price, plus or minus any prorations or adjustments permitted by this Contract. The Deposit, together with interest earned thereon, shall be applied to the Purchase Price. Payment of the Purchase Price shall be made in the form of a cashier's check or immediately available federal wire funds payable or wired to the Seller's account or other account designated by Seller in writing.

14. Escrow.

A. During the Inspection Period, Escrow Agent agrees, by acceptance of the Deposit, to comply with the instructions of Buyer as to whether Escrow Agent shall return the Deposit to Buyer if it is not satisfied with the matters discovered during the Inspection Period or continue to hold the Deposit pursuant to the terms of this Contract.

B. In the event of any dispute between Seller and Buyer as to the disposition of the Deposit, Escrow Agent shall have the right to interplead all parties hereto and thereupon be freed from further liability to either or both parties. The non-prevailing party in such litigation shall pay reasonable expenses incurred by Escrow Agent in connection with such interpleading, and the non-prevailing party shall pay the other party's reasonable legal and other expenses incurred in connection therewith. Except for its grossly negligent or willful acts, Escrow Agent shall be excused from all responsibility, including insolvency of any depository, and shall be indemnified and held harmless by Seller and Buyer to the extent permitted by law, from all claims, demands, liability, costs and expenses associated with its duties as Escrow Agent hereunder. Buyer acknowledges that it has been advised that Escrow Agent has acted and is also acting herein as counsel to Seller in this transaction and Buyer has no objection thereto.

C. Escrow Agent shall not charge Seller or Buyer for its services as Escrow Agent.

15. Conditions Precedent and Termination. Not to the exclusion of any other conditions and remedies contained herein, the obligations of Buyer hereunder shall be subject to satisfaction of the following conditions precedent ("Conditions Precedent") on or before the Closing Date:

A. The representations and warranties made by Seller herein shall be true and correct statements of fact as said facts exist as of the Closing Date, with the same

force and effect as though such representations and warranties had been made as of the Closing Date; and

B. All terms, covenants and provisions of this Contract to be complied with and performed by the Seller on or before the Closing Date shall have been duly complied with and performed.

If the Conditions Precedent set forth above are not satisfied on or before the Closing Date, then, at Buyer's option, Buyer may: (i) waive any or all such unsatisfied Conditions Precedent and proceed to Closing as provided herein; (ii) extend the Closing Date an additional thirty (30) days by giving Seller written notice of such extension prior to the original Closing Date; or (iii) terminate this Contract by giving Seller written notice thereof at any time prior to the Closing Date (or extended Closing Date), in which event this Contract shall be cancelled and the Deposit shall be returned to the Buyer.

16. Agreements of Seller. Seller agrees that, from the Effective Date and until the earlier to occur of termination of this Contract, expiration of this Contract, or Closing:

A. Seller shall maintain the Property in the same condition as it is as of the date of Buyer's execution of this Contract and in accordance with all requirements of any governmental authority, reasonable wear and tear excepted;

B. Seller shall not encumber the Property or permit the Property to be additionally encumbered, without the consent of the Buyer, with any easements, agreements, concessions, licenses, judgments, leases or other third party rights except for the tenants listed on Exhibit "B" attached hereto (subject to the provisions of Paragraph 18 hereof) or with any mortgage or other monetary lien or encumbrance and at or prior to Closing, any judgments, leases and third-party rights except for the tenants listed on Exhibit "B" (subject to the provisions of Paragraph 18 hereof) shall be terminated and/or released to Buyer's satisfaction in its sole and absolute judgment and discretion;

C. Seller shall promptly notify Buyer of any change in any condition with respect to the Property or of any event or circumstance which makes, or will make, any representation or warranty of Seller to Buyer under this Contract untrue or misleading or any covenant of Seller to Buyer under this Contract incapable or less likely of being performed and shall deliver to Buyer any and all notices with respect to or affecting the Property promptly upon receipt of same (including, without limitation, all notices with respect to real estate taxes or special assessments affecting the Property or any portion thereof);

D. Seller shall, upon written request from Buyer, obtain such estoppel letters and consents to this Contract and such alternative information and certifications as Buyer may require, in form and substance acceptable to Buyer, from the holders of any

mortgage, lien, security interest, judgment or other encumbrance on all or any portion of the Property or against Seller; and

17. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows, which representations and warranties shall be deemed made by Seller to Buyer as of the Effective Date, and shall survive Closing or any termination of this Contract for a period of one (1) year, and Seller acknowledges that, but for such representations and warranties, Buyer would not execute this Contract:

A. This Contract, and the consummation of the transactions described herein, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Seller have been or shall be, duly authorized, executed and delivered by, and, upon delivery thereof, shall be binding upon and enforceable against Seller in accordance with their respective terms.

B. Seller has the legal right, power and authority to enter into this Contract and to perform all of its obligations hereunder, and the execution and delivery of this Contract and the performance by Seller of its obligations hereunder shall not conflict with or result in a breach of any law or regulation, or order, judgment, writ, injunction or decree of any court or governmental instrumentality or any agreement or instrument to which Seller is a party or by which Seller is bound or to which Seller or any portion of the Property is subject.

C. Seller has not granted any option or other right to purchase or otherwise acquire any portion of the Property, or any interest therein, to any party except Buyer pursuant to this Contract, except the leasehold interest set forth in Exhibit "B" hereto (subject to the provisions of Paragraph 18 hereof) which does not contain any option or other right to purchase the subject property.

D. Seller holds record fee simple absolute title to the Property.

E. Seller is not a foreign person and is not in any manner controlled by a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

F. To the best knowledge of Seller, Seller has not received any notice of violation of any applicable law pertaining to the Property or any portion thereof, the provisions of which have not been complied with, nor does Seller have knowledge of any such violation.

G. To the best knowledge of Seller, there are no pending actions, suits, claims or legal proceedings affecting the Property or any portion thereof, at law or in equity, before any court or governmental agency.

H. Seller has not, nor, to the best knowledge of Seller, has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property.

I. As of the Effective Date, to Seller's actual knowledge no Hazardous Substances (as hereinafter defined) have been released or discharged into the groundwater under the Property or the Property itself, and no Hazardous Substances are present on the Property in violation of any state, local or federal rule or statute.

18. Existing Leases. Buyer and Seller acknowledge and agree that Exhibit "B" attached hereto is a complete list of all leases subject to which the Buyer agrees to purchase the Property. The Seller and Lessee, Myrla Fernandez, d/b/a Milly's Hair and Nail Salon, for property located at 6505 Orange Drive, Davie, Florida, have entered into an Amendment to the Lease ("Amendment"), attached hereto as Exhibit "C", which provides that the option to extend the Lease through March 4, 2011 is deleted in exchange for no payment of rent by the Lessee for the last year of the original lease term, i.e. March 5, 2007 through March 4, 2008. This transaction shall close only upon the effectiveness of the Amendment.

19. Representations and Warranties of Buyer. Buyer represents and warrants that it has the lawful authority to purchase the Property and to otherwise carry out the terms of this Contract, and the execution and delivery of this Contract and the performance thereof is not prohibited by or inconsistent with any agreement to which Buyer is a party or pursuant to which Buyer exists as a legal entity.

20. Hazardous Substances. If, at any time during the term of this Contract, Buyer shall discover any Hazardous Substances on, under or about the Property, Buyer may (i) proceed to close the transaction, or (ii) terminate this Contract by providing Seller with written notice thereof within thirty (30) days following such discovery by Buyer, in which event this Contract shall be cancelled and the Deposit returned to the Buyer. As used herein, the term "Hazardous Substances" means petroleum, petroleum products, asbestos, asbestos containing materials, lead, lead containing materials, any other hazardous, toxic or dangerous substance, material, or waste as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.* ("CERCLA"); Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.* ("HMTA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* ("RCRA"), and all amendments to the foregoing, or any other federal, state or local law, ordinance, rule or regulation applicable to the Property, and establishing liability, standards or required action as to discharge, spillage, storage, uncontrolled loss, seepage, filtration, disposal, removal, use or existence of a hazardous, toxic or dangerous substance, material or waste.

21. Arbitration.

A. Without limiting any rights set forth in other provisions of this Contract, any and all disputes arising hereunder, shall be submitted to binding arbitration and not to a court for determination. Arbitration shall commence after written notice is given from either party to the other, such arbitration shall be accomplished expeditiously in the county and state where the Property is located, and shall be conducted in accordance with the rules of the American Arbitration Association ("AAA") currently in effect. The arbitration shall be conducted by an arbitrator jointly selected by Seller and Buyer. The arbitrator shall be selected from a list of arbitrators submitted by the AAA. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Arbitration shall not commence until the party requesting it has deposited One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) with the arbitrator as a retained for the arbitrator's fees and costs. The party requesting arbitration shall advance such sums as are required from time to time by the arbitrator to pay the arbitrator's fees and costs, until the prevailing party is determined or the parties have agreed in writing to an alternate allocation of fees and costs. Each party shall pay its own legal fees and costs and any other fees incurred in connection with an arbitration proceeding which arises out of or relates in any way to this Contract provided, however, that the arbitrator shall award arbitrator's fees and costs to the prevailing party in the arbitration judgment.

B. Notwithstanding the parties' intent to submit any controversy or claim arising out of or relating to this Contract or any other document signed or initialed in connection with this Contract to arbitration, in the event that a court of competent jurisdiction shall determine or relevant law shall provide that a particular dispute is not subject to the arbitration provisions of this Paragraph 20, then the parties agree to the following provisions:

(1) Each party acknowledges that this Contract is a sophisticated legal document. Accordingly, justice will best be served if issues regarding this Contract are heard by a judge in a court proceeding, and not a jury. Each party agrees that any claim, demand, action, or cause of action, with respect to any action, proceeding, claim, counterclaim, or cross-claim, whether in contract or in tort (regardless if the tort action is presently recognized or not), caused on, arising out of, in connection with or in any way related to this Contract, the documents (including, without limitation, any declaration), any course of conduct, course of dealing, verbal or written statement, validation, protection, enforcement action or omission of any party shall be heard by a judge in a court proceeding and not a jury.

(2) The party prevailing in such dispute shall be entitled to recover all costs incurred, including reasonable attorney's fees and costs, whether incurred before trial, at trial, in bankruptcy proceedings, or on appeal.

22. Default. In the event of a failure by Buyer or Seller to perform any obligation or covenant which either of them is obligated to perform under this Contract, except for the failure to close in accordance with the terms of this Contract, which failure shall constitute an immediate default hereunder, no default shall occur until notice thereof is given to the defaulting party by the other party hereto asserting an event of default has occurred, describing the nature of the default, and giving a period of five (5) days to cure the default, if readily curable by the payment of money, or a period of thirty (30) days to cure the default, if not readily curable by the payment of money. If after notice and the cure period provided in the preceding sentence, the Buyer is in default, then the balance of the Deposit shall be paid to and retained by and for the account of Seller as agreed and liquidated damages and in full settlement of any claims whatsoever, and this Contract shall terminate and be of no further force or effect. If Seller fails to perform any of its covenants set forth in this Contract or fails to properly convey the Property when obligated to do so in accordance with the terms hereof, Buyer shall be entitled to receive the return of the Deposit or seek specific performance against Seller.

23. Assignment. This Contract shall not be assigned by Buyer without Seller's prior written consent, which shall not be unreasonably withheld or delayed.

24. Persons Bound. The benefits and obligations of the covenants herein shall inure to and bind the respective successors and assigns of the parties hereto.

25. Survival of Covenants and Special Covenants. The terms, covenants, representations, and warranties of this Contract shall survive the Closing, and to the extent provided herein, except where expressly provided otherwise.

26. No Post-Closing Occupancy. The parties agree that the Seller shall vacate the Property at Closing. There shall be no post closing occupancy except for the tenants as listed on the attached Exhibit "B" (subject to the provisions of Paragraph 18 hereof).

27. Notices. All notices, request, consents, instructions, and communications required or permitted under this Contract shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by messenger or nationally recognized overnight courier service, or mailed (air mail if international) by registered or certified mail (postage prepaid), return receipt requested, and addressed to each party at their respective addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph 26.

IF TO SELLER: Hully Gill  
4900 SW 64<sup>th</sup> Avenue  
Davie, FL 33314-5203  
Telephone No. (954) 583-0832  
Fax No. (954) 583-7833

Copy to: Patrick G. Kelley, Esq.  
Kelley, Herman & Smith  
1401 E. Broward Blvd., Suite 206  
Fort Lauderdale, FL 33301  
Telephone No.: (954) 462-7806  
Fax No.: (954) 522-0396

IF TO BUYER: Town of Davie Community Redevelopment Agency  
Attn: Redevelopment Administrator  
4700 Davie Road, Suite C  
Davie, Florida 33314  
Telephone No. (954) 797-2093  
Fax No. (954) 797-1200

Copy to: Gerald L. Knight, Esq.  
Billing, Cochran, Heath, Lyles, Mauro & Anderson, P.A.  
888 SE 3<sup>rd</sup> Avenue, Suite 301  
Fort Lauderdale, Florida 33316  
Telephone No. (954) 764-7150  
Fax No. (954) 764-7279

ESCROW AGENT: Billing, Cochran, Heath, Lyles, Mauro & Anderson, P.A.  
888 SE 3<sup>rd</sup> Avenue, Suite 301  
Fort Lauderdale, Florida 33316  
Telephone No. (954) 764-7150  
Fax No. (954) 764-7279

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telex or telegraph or telecopier if transmitted before 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a nonbusiness day; or (c) on the date on which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, refusal to accept, or inability to deliver of which no notice was given shall be deemed to be a receipt of such notice, request, or other communication. The respective attorneys for Seller and Buyer are hereby authorized to give any notice pursuant to this Contract on behalf of their respective clients.

28. Miscellaneous.

A. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same agreement.

B. Governing Law; Venue. This Contract shall be governed by Florida law. No amendments to this Contract shall be effective unless signed by both parties and in writing. Venue for any legal proceedings shall be in Broward County, Florida.

C. Complete Agreement. This Contract evidences the complete understanding of the parties hereto as respects the matters addressed herein. No agreement or representation, unless set forth in this Contract, shall bind either of the parties hereto.

D. Partial Invalidity. In the event that any paragraph or portion of this Contract is determined to be unconstitutional, unenforceable or invalid, such paragraph or portion of this Contract shall be stricken from and construed for all purposes not to constitute a part of this Contract, and the remaining portion of this Contract shall remain in full force and effect and shall, for all purposes, constitute the entire agreement.

E. Construction of Contract. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Contract and that this Contract has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Contract shall not be construed or interpreted for or against any party hereto based upon authorship.

F. Waiver of Breach. The failure of any party hereto to enforce any provisions of this Contract shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Contract, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Contract shall be held to constitute a waiver of any other or subsequent breach.

G. Time. Time is of the essence of this Contract.

29. Brokerage. Seller and Buyer each warrant and represent to the other that they have not dealt or consulted with any real estate broker or agent in connection with the Property or this transaction. Seller shall indemnify and hold Buyer harmless from and against any and all claims of all brokers and finders claiming by, through or under Seller and in any way related to the sale and purchase of the Property or this Contract including, without limitation, attorneys' fees and expenses incurred by Buyer at the trial level and all levels of appeal in connection with such claim. To the extent permitted by law, Buyer shall indemnify and hold Seller harmless from and against any and all claims of all

brokers and finders claiming by, through or under Buyer and in any way related to the sale and purchase of the Property or this Contract, including, without limitation, attorneys' fees and expenses incurred by Seller at the trial level and at all levels of appeal in connection with such claim.

30. Recordation. Neither this Contract, nor any memorandum hereof, shall be recorded in the Public Records of Broward County, Florida, or any other county.

31. Execution of Contract. **IF THIS CONTRACT IS NOT EXECUTED BY THE SELLER WITHIN SEVEN (7) DAYS AFTER RECEIPT OF THE CONTRACT BY SELLER, THIS OFFER AND THIS CONTRACT SHALL BE NULL AND VOID.**

32. Effectiveness of Contract. This Contract shall not be effective until ratified by the Town Council of the Town of Davie as evidenced by the date inserted in the initial paragraph of this Contract.

33. Tax Free Exchange. The parties agree that the Seller shall have the right to designate this Contract and the transaction as a "tax-free exchange of like kind properties." If Seller shall advise Buyer, at least seven (7) days prior to closing, of its intention to so designate the transaction, Buyer agrees that it shall, so long as same does not result in any additional expenses or liabilities (including tax liabilities or time delays), cooperate with the Seller and aid the Seller in effectuating such a "tax-free exchange."

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

WITNESSES:

Sign Will Allen  
Print Will Allen

Sign Cheryl L. Elliott  
Print Cheryl L. Elliott

WITNESSES:

Sign \_\_\_\_\_  
Print \_\_\_\_\_

Sign \_\_\_\_\_  
Print \_\_\_\_\_

SELLER

Hully Gill  
Hully Gill

BUYER

TOWN OF DAVIE COMMUNITY  
REDEVELOPMENT AGENCY

\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit "A"**

(Property ID numbers 5041 27 01 0551 and 5041 27 01 0552)

The East 90 feet of the West 225 feet of South 266.80 feet of Tract 47 of EVERGLADES LAND SALES CO. SUBDIVISION OF Section 27, Township 50 South, Range 41 East, a Subdivision, according to the plat thereof, recorded in Plat Book 2 at Page 34, of the public records of Broward County, Florida. (as described in Deed recorded in OR Book 25631, page 962)

a/k/a

The East 75 feet of the West 210.00 feet of the South 180.00 feet of Tract 47 of EVERGLADES LAND SALES CO. SUBDIVISION OF Section 27, Township 50 South, Range 41 East, a Subdivision, according to the plat thereof, recorded in Plat Book 2 at Page 34, of the public records of Broward County, Florida.

and

The East 15.00 feet of the West 225.00 feet of the South 180.00 feet and the East 90.00 feet of the West 225 feet of the North 86.80 feet of the South 266.80 feet of Tract 47 EVERGLADES LAND SALES CO. SUBDIVISION OF Section 27, Township 50 South, Range 41 East, a Subdivision, according to the plat thereof, recorded in Plat Book 2 at Page 34, of the public records of Broward County, Florida. (as described on survey prepared by Associated Engineers & Surveyors, Inc.)

Exhibit 'B'

Cousins Surveyors & Associates, Inc.  
Lessee: Richard & Rebecca Cousins  
6501 Orange Drive { 1,370 sq ft }

Month to Month Lease  
Security Deposit \$ 600.00

Base Rent	\$ 1,300.00
Sales Tax	78.00
Maintenance	+ 172.00
Total	\$ 1,550.00

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Milly's Hair & Nail Salon  
Lessee: Myrla Fernandez  
6505 Orange Drive { 704 sq ft }

Original Lease: from 03/05/05 through 03/04/08 Annual increases (March 5<sup>th</sup>) Base Rent & Maintenance.

Option: If exercised: from 03/05/08 through 03/05/11 Rent to be based on the average rent per square foot via 'Broward County Retail Market Report' + (5%) Base Rent annual increase after the first year and maintenance.

Security Deposit \$ 500.00

Base Rent	\$ 630.00
Sales Tax	37.80
Maintenance	+ 92.20
Total	\$ 760.00

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Our House to Yours  
Lessee: Tom & Susan Benech  
6507 & 6509 Orange Drive { 1,407 sq ft }

Original Lease: from 07/01/03 through 06/30/06 (ending this month)

Option: Has been exercised, from 07/01/06 through 06/30/09 Annual increases Base Rent (5%) and maintenance

Security Deposit \$ 500.00

Base Rent	\$ 2,100.00
Sales Tax	126.00
Maintenanc	+ 324.00
Total	\$ 2,550.00

6/8/2006

**EXHIBIT "C"**

**AMENDMENT TO ORANGE DRIVE PROPERTY LEASE**

THIS AMENDMENT TO LEASE ("Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between **HULLY GILL** ("Lessor"), and **MYRLA FERNANDEZ** doing business as "Milly's Hair & Nail Salon ("Lessee").

**WITNESSETH:**

WHEREAS, Lessor and Lessee entered into that certain Orange Drive Property Lease dated as of February 18, 2005 (the "Lease") for property located at 6505 Orange Drive, Davie, Florida (the "Leased Property"); and

WHEREAS, Lessor and Lessee desire to amend the Lease to provide: (a) that the provisions of the Lease granting to the Lessee the option to extend the original term of the Lease beyond the current expiration date of March 4, 2008 be deleted; and (b) that the Lessee shall pay no rent for the last year of the original term of the Lease, i.e. March 5, 2007 through March 4, 2008.

NOW, THEREFORE, in consideration of the mutual covenants and obligations created hereby, as well as other good and valuable consideration, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. The effective date of this Amendment shall be the date on which the last of Lessor or Lessee shall execute this Amendment. The date of this Amendment shall be inserted into the initial paragraph of this Amendment.
3. Any and all provisions contained in the Lease permitting the Lessee to extend the term of the Lease for an additional three (3) years commencing on the expiration of the original lease term of the Lease are hereby deleted in their entirety.
4. THE BASE RENT as recited in the Lease shall be amended as follows:

03/05/2005 through 03/04/2006 . . . . .	\$605.00 per month
03/05/2006 through 03/04/2007 . . . . .	\$630.00 per month
03/05/2007 through 03/04/2008 . . . . .	\$0.00 per month

It is the intent of the parties that the Lessee shall pay no rent for the last year of the lease term of March 5, 2007 through March 4, 2008 and that this Lease shall expire on March 4, 2008.

5. This Amendment is contingent, and shall only be effective, upon the date of closing on the sale of the property (the "Property") subject to the Lease to the Town of Davie Community Redevelopment Agency (the "CRA") pursuant to a Purchase and Sale Agreement executed between the Lessor and the CRA. If the closing does not occur, then this Amendment is of no force and effect.

6. All capitalized terms used in this Amendment without separate definition shall have the same meanings assigned to them in the Agreement.

7. This Amendment shall be construed and enforced in accordance with the laws of the State of Florida and shall be binding upon the heirs, successors and assigns of the parties hereto.

8. As amended hereby, the Lease shall remain in full force and effect. In the event of any conflict between the provisions of the Lease, and the provisions of this Amendment, the provisions of this Amendment shall prevail.

9. This Amendment may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same agreement. The parties agree and intend that a signature by facsimile machine shall bind the party so signing with the same effect as though the signature were an original.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date(s) set forth below.

WITNESSES

LESSOR

HULLY GILL.

Sign

Sarah L. Bush

Print

Sarah L. Bush

Sign

James N. Bush

Print

James N. Bush

Sign

Hully Gill

Date

08/22/06

**LESSEE**

**MYRLA FERNANDEZ d/b/a  
Milly's Hair & Nail Salon**

WITNESSES

Sign Barbara Gills

Print Barbara Gills

Sign E. L. Hennig

Print E. L. Hennig

Sign Myrla Fernandez

Date: 8-22-06

The Town of Davie Community Redevelopment Agency agrees to the terms and conditions of this Amendment.

WITNESSES:

Sign \_\_\_\_\_

Print \_\_\_\_\_

Sign \_\_\_\_\_

Print \_\_\_\_\_

TOWN OF DAVIE COMMUNITY  
REDEVELOPMENT AGENCY

\_\_\_\_\_

\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_

\_\_\_\_\_

\* \* \* \* \*

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