

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Gary Shimun, Town Administrator / 954-797-1030

PREPARED BY: Phillip R. Holste, Program Manager / 954-797-1041

SUBJECT: Resolution

AFFECTED DISTRICT: 4

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO AN EXISTING MITIGATION AGREEMENT BETWEEN THE TOWN OF DAVIE AND HOME DYNAMICS CORPORATION CONCERNING WETLAND MITIGATION AT THE VAN KIRK SITE; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: At the petitioner's request, staff is bringing this resolution forward. This resolution would approve a first amendment to the mitigation agreement between Home Dynamics and the Town of Davie for the Van Kirk site. Staff recommends denial of this amendment as detailed below.

The proposed amendment includes two modifications to the existing mitigation agreement. First, the amendment addresses the fill rights for the property. Under the existing agreement, any fill material excavated from the site is the exclusive property of the Town. (Section 11, Page 5.) The mitigation project will create approximately 586,551 cubic yards of fill. According to 4a and 4b of the amendment, Home Dynamics would transfer approximately 66,853 cubic yards of fill from the project site to other Town properties. According to verbal quote from vendors, the cost to purchase fill for a Town site is estimated at \$8.00 per cubic yard. The Town also requested a vendor quote on the revenue the Town would receive on the sale of the fill. The vendor would use his own labor and equipment to load and transport the fill. The quote ranges from \$1.75-\$3.75 per cubic yard depending upon the quality of the fill. Using the average value of \$2.75 per cubic yard, the estimated value of the 586,551 cubic yards of fill is \$1,613,015.

According to 4c of the amendment, the Town of Davie would transfer the rights to the remaining fill (approximately 519,698 cubic yards) to Home Dynamics. The estimated value of this fill is \$1,429,170 based upon the above noted value of \$2.75 per cubic yard.

Per the Town's Florida Communities Trust (FCT) grant contract, FCT must review and approve this amendment. It has reviewed and rejected this amendment stating "that the Town must use excavated fill on Town properties only. If the Town wants to sell any remaining fill, we will ask that the Town contact FCT prior to sale of any fill material to another entity." Town staff provided these comments to Home Dynamics beginning in October 2006.

The second modification proposed would transfer the mitigation agreement obligations from Home Dynamics Corporation to Sierra Ranches LLC. The proposed amendment further states that upon completion of the project's construction phase, Sierra Ranches LLC could transfer its obligations to its successor homeowner's association. These obligations include the lump sum payment of \$943,000 to the Town upon completion of the construction phase and prior to commencement of the five (5) year maintenance and monitoring period. Thereafter, the homeowner's association would be responsible for the five (5) year maintenance and monitoring period on the project site. The association would also be responsible for any corrective actions if the mitigation area was deemed noncompliant during the maintenance and monitoring period. Town staff has concerns with this modification because of the Berman mitigation site. At the Berman mitigation site, noncompliance issues have occurred and must be rectified by the developer, Standard Pacific Homes, previously Westbrooke. If noncompliance issues occur at Van Kirk and the Town executes Home Dynamics proposed amendment to the agreement, the homeowner's association, consisting of Town residents, would be responsible for bringing the site into compliance. If the mitigation area was not brought into compliance, the Town would need to take legal action against the party to force compliance.

PREVIOUS ACTIONS: Van Kirk Mitigation Agreement (R2004-281)

CONCURRENCES: None

FISCAL IMPACT: Yes

Has request been budgeted? n/a

If yes, expected cost: \$

Account Name:

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments: Potential loss of approximately \$1.6 million.

RECOMMENDATION(S): Motion to deny.

Attachment(s): Resolution, First Amendment, Original Mitigation Agreement, FCT grant contract, FCT Comments on the First Amendment

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO AN EXISTING MITIGATION AGREEMENT BETWEEN THE TOWN OF DAVIE AND HOME DYNAMICS CORPORATION CONCERNING WETLAND MITIGATION AT THE VAN KIRK SITE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie and Home Dynamics Corporation agreed to a wetland mitigation agreement through R2004-281; and

WHEREAS, Home Dynamics has requested a first amendment to the agreement; and

WHEREAS, this amendment transfers the rights to the project's fill from the Town of Davie to Home Dynamics; and

WHEREAS, this amendment assigns Home Dynamics obligations' to Sierra Ranches LLC; and

WHEREAS, this amendment provides the ability for Sierra Ranches LLC to transfer its obligations to its successor homeowner's association upon project construction completion.

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 hereby approves the aforementioned amendment and authorizes the Mayor to execute the proposed first amendment, a copy of which is attached as Exhibit "A", on behalf of the Town.

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007.

MAYOR/COUNCILMEMB

ER
ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2007.

Exhibit A: First Amendment

FIRST AMENDMENT TO AGREEMENT FOR MITIGATION

THIS FIRST AMENDMENT TO AGREEMENT FOR MITIGATION ("First Amendment") dated _____, 2007 ("Effective Date"), by and between the TOWN OF DAVIE, a political subdivision of the State of Florida ("Town") and HOME DYNAMICS CORPORATION, a Florida corporation ("Home Dynamics").

WITNESSETH:

WHEREAS, Town and Home Dynamics entered into that certain Agreement for Mitigation as approved by the Town through its Town Council on April 7, 2005 (the "Agreement"); and

WHEREAS, Town and Home Dynamics desire to amend certain provisions of the Agreement pursuant to the terms and provisions of this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, TEN DOLLARS (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, each intending to be legally bound, do hereby agree as follows:

1. The foregoing recitals are true and are incorporated in this First Amendment by this reference.
2. Capitalized terms used herein and not expressly defined herein shall have the same meaning as set forth in the Agreement unless the context indicates a different meaning.
3. In case of any conflict or ambiguity between the terms and provisions of this First Amendment and the terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control to the extent of such conflict or ambiguity.
4. The fifth (5th) sentence of Paragraph 12 of the Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

"Any fill material excavated in conjunction with the described mitigation work estimated to be approximately 586,551 cubic yards of fill shall be stockpiled and transferred by Home Dynamics, at its sole cost and expense, and utilized in accordance with the Permit, the License, all other applicable permits and as follows:

- (a) Home Dynamics shall stockpile approximately 54,853 cubic yards of excavated fill material on the Town's Property following the issuance of and in accordance with the Permit, License and other applicable permits within locations to be designated by the Town within thirty (30) days following the Effective Date;
- (b) Home Dynamics shall transfer and stockpile approximately 12,000 cubic yards of fill material to other properties owned by Town following the issuance of and in accordance with

the Permit, License and other applicable permits within locations to be designated by the Town within thirty (30) days following the Effective Date; and

(c) During the construction phase of the Project, Home Dynamics shall have the right to transfer and utilize the balance of the excavated fill to other properties within the Town of Davie owned by Home Dynamics, its successors and/or assigns, as and when required by Home Dynamics in connection with the development of the other properties."

5. Paragraphs 13 and 14 are hereby amended by inserting the name of Gary Shimun as Town Administrator.

6. Paragraph 37 of the Agreement entitled "Assignment" is hereby amended by adding the following at the end thereof:

"Accordingly, pursuant to this First Amendment, Home Dynamics hereby assigns its obligations under this Agreement to Sierra Ranch, LLC, a Florida limited liability company, the developer of the Sierra Ranches project ("Sierra") with the consent of Town and, Sierra hereby agrees to assume Home Dynamic's obligations under this Agreement. Upon the Town's approval of successful completion of the construction phase of the Project, Sierra may assign its obligations to maintain the mitigation area as set forth in this Agreement and in accordance with the Permit, License and all other applicable permits under this Agreement to the Sierra Ranch Homeowner's Association."

7. In all other respects, the Agreement is hereby ratified and confirmed by the parties to be in full force and effect, as amended hereby, and has not otherwise been modified or amended except as set forth herein.

8. This First Amendment may be executed in any number of counterparts, all of which, when taken together, shall constitute one (1) original.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this First Amendment on the respective dates under each signature: TOWN OF DAVIE through its TOWN COUNCIL, by and through its Mayor or Vice Mayor, authorized to execute same by the Board action on the _____ day of _____, 2007, and HOME DYNAMICS CORPORATION, signing by and through its President, duly authorized to execute same.

TOWN:

ATTEST:

TOWN OF DAVIE, through its
TOWN COUNCIL

Town Administrator and
Town Clerk
Town of Davie, Florida

By _____
Mayor

____ day of _____, 2007

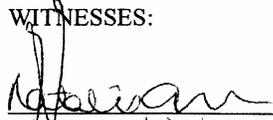
Approved as to form by
Office of Town Attorney
Town of Davie, Florida
James Cherof, Town Attorney
6591 Orange Drive
Telephone: (954) 584-9770
Telecopier: (954) 797-1023

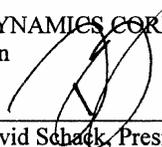
By _____
Town Attorney

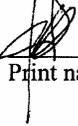
HOME DYNAMICS:

WITNESSES:

HOME DYNAMICS CORPORATION, a Florida corporation


Print name: Natalie Giampole

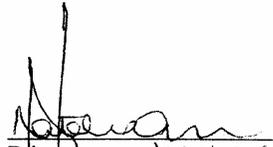
By: 
David Schack, President

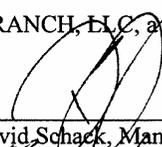

Print name: Alexander DeLeon

20th day of JUNE, 2007

SIERRA:

SIERRA RANCH, L.L.C., a Florida limited liability company


Print name: Natalie Giampole

By: 
David Schack, Manager


Print name: Alexander DeLeon

20th day of JUNE, 2007

EXHIBIT B: ORIGINAL MITIGATION AGREEMENT

AGREEMENT FOR MITIGATION

between

TOWN OF DAVIE

and

HOME DYNAMICS, INC.

AGREEMENT FOR MITIGATION

between

TOWN OF DAVIE

and

HOME DYNAMICS, INC.

This is an Agreement, made and entered into by and between the TOWN OF DAVIE, a political subdivision of the State of Florida, hereinafter referred to as ("TOWN") and HOME DYNAMICS, INC., a Florida corporation, authorized to do business in the State of Florida, hereinafter referred to as ("HOME DYNAMICS").

WHEREAS, HOME DYNAMICS is planning on building sixty-two (62) single-family homes at 1900 Hiatus Road, which is generally located on the east side of Hiatus Road, immediately south of the Village of Harmony Lakes Development in the Town. The project, known as Sierra Ranches, consists of approximately eighty-nine (89) acres, with approximately seventeen (17) acres to be mitigated on site; and

WHEREAS, TOWN owns certain land known as the Van Kirk Property consisting of approximately one hundred fifteen (115) acres; hereinafter referred to as ("TOWN'S PROPERTY"); and

WHEREAS, HOME DYNAMICS will utilize eighty-two (82) acres of land from the Town located on the TOWN'S PROPERTY to create a mitigation area, hereinafter referred to as (the "PROPERTY"); and

WHEREAS, HOME DYNAMICS must comply with Environmental Resource Permit Number _____, hereinafter referred to as the ("PERMIT"), issued by the South Florida Water Management District, hereinafter referred to as ("SFWMD"), as well as with Wetland License Number _____, hereinafter referred to as the ("LICENSE"), issued by the Department of Planning and Environmental Protection, hereinafter referred to as the ("DPEP"); said PERMIT and LICENSE are incorporated herein by reference; and

WHEREAS, in accordance with the PERMIT and the LICENSE, HOME DYNAMICS must undertake certain mitigation work for the construction work referenced herein and is proposing to perform such mitigation on TOWN'S PROPERTY; hereinafter referred to as the ("PROJECT"); and

WHEREAS, approximately eighty-two (82) acres of total mitigation work required of HOME DYNAMICS pursuant to the PERMIT and the LICENSE will be done on TOWN'S

PROPERTY; and

WHEREAS, TOWN shall approve the overall site design for the mitigation work; and

WHEREAS, HOME DYNAMICS must have written approval to enter upon TOWN'S PROPERTY to perform the mitigation work required by the PERMIT and the LICENSE; and

WHEREAS, HOME DYNAMICS shall submit to TOWN all transmittal documentation required by other governmental agencies regarding the mitigation work including, but not limited to, environmental studies, audits, surveys, correspondence to other governmental agencies and reports; and

WHEREAS, TOWN agrees that the mitigation work required of HOME DYNAMICS on TOWN'S PROPERTY will significantly benefit the public, and as such, is in TOWN'S best interest.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, and covenants as herein set forth, HOME DYNAMICS and TOWN agree as follows:

1. That the above recitals are true and correct and made a part hereof as if set forth in full hereunder.
2. TOWN agrees to issue any necessary permits and licenses required to allow HOME DYNAMICS to access TOWN'S PROPERTY in order to undertake the required mitigation work for the PROJECT described in this Agreement.
3. TOWN hereby authorizes and approves the mitigation work for the PROJECT to be undertaken by HOME DYNAMICS on TOWN'S PROPERTY as set forth above and in SFWMD Permit Number _____, as well as in DPEP License Number DF-_____. HOME DYNAMICS shall complete the mitigation work for the PROJECT, as described in the Agreement and the LICENSE referenced herein, within two (2) years from the date the last permit for the mitigation work is issued by DPEP and/or the SFWMD and/or the Army Corp. of Engineers, if applicable. Upon HOME DYNAMICS demonstrating good cause and under reasonable circumstances, the TOWN may extend the above-noted completion date.

In the event any regulatory agencies with jurisdiction over the PROJECT determine that HOME DYNAMICS is not complying with the terms and conditions for the mitigation work set forth in the applicable LICENSE and this Agreement for completion of the PROJECT, TOWN may require that HOME DYNAMICS undertake a corrective action plan established by the TOWN. Failure of HOME DYNAMICS to satisfactorily comply with the corrective plan, as determined by the TOWN, will be deemed an event of default enabling the TOWN to seek recovery under the

Performance Bond for this PROJECT, in addition to other remedies available to TOWN by law.

4. TOWN shall approve the overall site design for the mitigation work prior to issuing any necessary permits or licenses to HOME DYNAMICS.
5. HOME DYNAMICS shall obtain and pay for all necessary permits and licenses from TOWN and any other regulatory agencies, if any, for the mitigation work, and TOWN agrees to cooperate concerning the same.
6. It is expressly understood and agreed to by the parties that the rights herein conveyed by this Agreement are permissive rights only and shall not operate to create or vest any property rights in HOME DYNAMICS.
7. TOWN and HOME DYNAMICS understand and agree that HOME DYNAMICS may utilize the Property for purposes of off-site water detention, water retention, drainage and mitigation for HOME DYNAMICS and other properties located within the TOWN.
8. HOME DYNAMICS covenants and agrees to do all things necessary and required by this Agreement and the mitigation work contemplated in the PERMIT and in the LICENSE.
9. HOME DYNAMICS shall be responsible for ensuring that all work performed on TOWN'S PROPERTY shall substantially conform to the requirements of the PERMIT and the LICENSE and the mitigation plan submitted by HOME DYNAMICS and approved by TOWN; upon approval by TOWN, said mitigation plan shall be incorporated herein. HOME DYNAMICS, through its consultant(s) and/or contractor(s), shall assign a Project Manager to oversee the mitigation project and to be available on site during all regular working hours. HOME DYNAMICS agrees to perform the services within the time frames established in the Project Schedule to be approved by TOWN with the mitigation plan. Upon approval by TOWN, the parties shall have the right to mutually agree to changes to the Project Schedule.
10. HOME DYNAMICS, through its consultant(s) or contractor(s), shall cause the mitigation work described in the PERMIT and the LICENSE to have the least impact on the functions of TOWN'S PROPERTY, and shall schedule the mitigation activities in a manner so as not to unreasonably interfere with the use of TOWN'S PROPERTY. All equipment staging areas, stockpile areas, and haul routes are to be determined and approved by TOWN prior to the commencement of any site work.
11. HOME DYNAMICS shall, at its expense, provide to TOWN'S individual designated

in Section 15 of this Agreement, before and after color aerial photographs of those portions of TOWN'S PROPERTY to be mitigated. The before photograph must be submitted prior to the initiation of the permitted work and the after photograph must be submitted within thirty (30) calendar days after the completion of the PROJECT. The photographs must be 8" x 10," taken at an altitude of not more than 500', and must encompass the entire PROJECT area. Photo's must be printed, labeled and dated by the flying company on glossy photo paper.

- 10A. HOME DYNAMICS shall hire a firm, approved by TOWN, to complete a non-nuisance and native vegetation inventory on the mitigation site prior to starting the PROJECT.
- 10B. HOME DYNAMICS, by and through its Contractor(s) hired to perform the mitigation for the PROJECT, agrees not to injure or kill non-nuisance or native vegetation on TOWN's PROPERTY. HOME DYNAMICS will assure replacement of non-target trees and other plants that are injured or lost due to its Contractor's negligence or carelessness. Replacement vegetation shall be based on the most current and accepted industry standards available with regard to plants injured or killed and consistent with TOWN's environmental policies.
11. HOME DYNAMICS shall have the right to enter into and upon TOWN PROPERTY to the extent necessary to fulfill its functions and obligations under this Agreement, the PERMIT, and the LICENSE. However, prior to commencing the mitigation work, HOME DYNAMICS shall consult with TOWN regarding proper ingress and egress routes through TOWN'S PROPERTY. HOME DYNAMICS will be fined each time a vehicle fails to enter or leave the site via the agreed upon ingress and egress routes at \$500 per vehicle per occurrence. Any fill material excavated in conjunction with the described mitigation work is the exclusive property of TOWN (disposition of fill material including any stockpiling area to be determined prior to beginning excavation.) The SFWMD staff and DPEP shall also have the right to enter onto TOWN'S PROPERTY to inspect for compliance with the PERMIT. HOME DYNAMICS will coordinate with the parties to ensure that the materials are disposed of in compliance with the guidelines of all relevant regulatory agencies, and will communicate to TOWN in writing any problem/situation that may or has arisen with other governmental agencies and all remedies taken or that may need to be taken necessary to meet all compliance.
12. Any notice or other communication required or permitted to be given hereunder shall be in writing and sent certified mail and shall be deemed to have been duly given if deposited in the United States mail. Notice shall be given to all the individuals listed below at the address indicated:

FOR TOWN:

FTL:1048839:4

Chris Kovanes
Acting Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

Dennis Andresky
Parks & Recreation Director
Town of Davie
6591 Orange Drive
Davie, FL 33314

Bruce Bernard
Public Works Director
Town of Davie
6591 Orange Drive
Davie, FL 33314

With a copy to:

Monroe Kiar,
Town Attorney
6191 S.W. 45th Street
Suite 6151A
Davie, FL 33314

FOR HOME DYNAMICS:

Alejandro Delfino
Land Development Director
Home Dynamics, Inc.
4788 West Commercial Boulevard
Tamarac, FL 33319

Dennis Mele, Esq.
Ruden, McClosky, Smith,
Schuster, & Russell, P.A
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, FL 33301

13. HOME DYNAMICS and TOWN are hereby required to each designate an individual

FTL:1048839:4

with whom HOME DYNAMICS and its consultant(s)/contractor(s) can coordinate all activities and approvals required by this Agreement. Unless otherwise notified in writing, the individuals shall be as follows: For HOME DYNAMICS, the designated individual is Alejandro Delfino and for TOWN, the designated individual is Chris Kovanes, Acting Town Administrator.

14. HOME DYNAMICS shall at all times hereafter indemnify, hold harmless and, at the option of the Town Attorney, defend or pay for an attorney selected by the Town Attorney to defend TOWN, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of HOME DYNAMICS, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

15. TOWN shall have the right at any time to inspect the lands and the eradication of exotic plant species referenced in the PERMIT and in the LICENSE, to examine work records and to test chemicals being used. In the event that HOME DYNAMICS fails to perform the work under this Agreement within the time frames established in the Project Schedule set forth in Exhibit "B" herein, Town shall provide written notice requiring the satisfactory correction of that failure, as determined by TOWN may, at its discretion, grant one (1) extension to the initial time frame established for corrective action. Thereafter, any additional extensions may only be granted by TOWN in its discretion, upon a showing by HOME DYNAMICS of a substantial hardship in not being able to complete the particular task within the established time frame. Notwithstanding the above TOWN and HOME DYNAMICS agree that any failure by HOME DYNAMICS to adhere to the Project Schedule due to delays in governmental permitting which are not the fault of HOME DYNAMICS and force majeure matters, including inclement weather, will be resolved by the Contract Administrators by amending the Project Schedule to grant HOME DYNAMICS a reasonable additional amount of time to perform the work. In the event a failure occurs, as identified in the previous sentence, HOME DYNAMICS will not be subject to the payment of liquidated damages. If the Contract Administrators cannot agree on a reasonable amount of time under the circumstances presented, TOWN's decision will be final. HOME DYNAMICS acknowledges and agrees to pay TOWN the sum of dollars identified below for each calendar day after the applicable time for performance established in the Project Schedule, plus any time extensions granted by TOWN, until completion of the work at Five Hundred Dollars (\$500) per day.

These amounts are not penalties but are liquidated damages to TOWN for its

inability to proceed with, and have the Project completed in a timely manner pursuant to the agreed upon Project Schedule. Liquidated damages are hereby fixed and agreed upon by the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by TOWN as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of HOME DYNAMICS to complete the work within the applicable time for performance set forth in the Project Schedule. This provision shall not affect the rights and obligations of either party as set forth in Section 15, Indemnification of TOWN.

Notwithstanding TOWN's right to liquidated damages, if HOME DYNAMICS fails to remedy the failure, to the satisfaction of TOWN, within the time frame established by TOWN for said failure, and any extensions granted at TOWN'S sole option, this will be deemed an event of default enabling TOWN to (i) seek recovery under the Performance Bond for this PROJECT, in addition to other remedies available to TOWN by law or (ii) elect, in its discretion, to have such failure remedied by TOWN and any monies expended by TOWN shall be the sole obligation of HOME DYNAMICS who shall promptly reimburse TOWN for all costs and expenses incurred to remedy the failure of HOME DYNAMICS.

16. HOME DYNAMICS agrees that, upon completion of the work under this Agreement, HOME DYNAMICS shall cause all equipment, chemical containers and appurtenances associated with the mitigation work for the PROJECT to be removed from TOWN'S PROPERTY within two weeks.
17. HOME DYNAMICS agrees to monitor and maintain the mitigation work for the PROJECT according to the PERMIT and the LICENSE and assign personnel to supervise the application of herbicide, if necessary, for a period of five (5) years from completion of PROJECT. Copies of all correspondence and monitoring reports, as well as all transmittal documentation required by other governmental agencies regarding the mitigation work including, but not limited to, environmental studies, audits, surveys, correspondence to other governmental agencies and reports, must be submitted to TOWN, the South Florida Water Management District and the Department of Planning and Environmental Protection. HOME DYNAMICS or its contractor's supervisory personnel and applicators must possess a current Commercial Restricted Use Pesticide Applicator License ("Applicator License") with proof of aquatic herbicide application training and be in good standing with the Florida Department of Agriculture and Consumer Services (FDACS) and all other regulatory agencies having jurisdiction over such entity holding the Applicator License. No herbicide shall be applied by unlicensed personnel. A copy of this Application License must be provided to TOWN prior to commencement of the mitigation work for the PROJECT.

18. HOME DYNAMICS agrees to use reasonable care and due diligence in assisting TOWN in maintaining the area(s) affected by the required mitigation work for the PROJECT, and in protecting the public and natural resources in the area(s) affected by the performance of the PROJECT on TOWN'S PROPERTY during the course of the mitigation work performed by HOME DYNAMICS.
19. This Agreement shall remain in effect until such time as necessary to satisfy the requirements of this Agreement, the PERMIT and the LICENSE, but in no event shall it extend beyond completion of the construction phase, which includes passing regulatory final inspection plus five (5) years monitoring and maintaining mitigation site plus any error time, unless otherwise agreed upon by the Parties.
20. HOME DYNAMICS agrees to include the following indemnification provisions in its contract with the successful contractor(s) engaged to complete the mitigation work for the PROJECT:
 - a. In consideration of Twenty-five Dollars (\$25.00) and other valuable consideration, the Contractor shall indemnify and save harmless Town of Davie, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the work to be performed on the PROJECT including a warranty period; or as a consequence of any negligence (excluding sole negligence of TOWN in connection with the same); or by use of any improper material or on account of any act or omission of the Contractor or his or her subcontractors, agents, servants or employees. Contractor agrees to indemnify and save harmless TOWN, including the warranty period, against any claims or liability arising from or based upon the violation of any federal, state, Town or city laws, by-laws, ordinances or regulations by the Contractor, his or her subcontractors, agents, servants or employees. Contractor agrees to indemnify and save harmless TOWN from all such claims and fees and from any and all suits and actions of every name and description that may be brought against TOWN. These indemnification provisions survive the term of the Contract. In the event that any action or proceedings is brought against TOWN, by reason of any such claim or demand, the Contractor, upon written notice from TOWN shall defend such action or proceeding by counsel satisfactory to TOWN.
 - b. The indemnification provided above shall obligate the Contractor to defend at its own expense or to provide for such defense, at TOWN'S option, any and all claims of liability and all suits and actions of every name and description that may be brought against TOWN, excluding only those which allege that

the injuries arose out of the sole negligence of TOWN which may result from the operations and activities under this Contract whether the application of herbicide be performed by the Contractor, its subcontractor, or by anyone directly or indirectly employed by either.

21. HOME DYNAMICS agrees to include in its contract with the successful Contractor(s) the requirements contained in this Agreement and further agrees to provide TOWN, prior to application of herbicide, Certificates of Insurance evidencing HOME DYNAMICS' compliance with the requirements of this section.

INSURANCE REQUIREMENTS:

- a. Without limiting any of the other obligations or liabilities of the Contractor, Contractor shall provide, pay for and maintain in force until all of its work to be performed under this Agreement has been completed and accepted by TOWN five (5) years from completion and acceptance of construction date (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein:
 1. Worker's Compensation insurance to apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.
 2. Comprehensive General Liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form not more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:
 - (a) Premises and/or Operations; and
 - (b) Independent Contractors; and
 - (c) Products and/or Completed Operations.
- b. If the initial insurance expires prior to the completion of the mitigation work, renewal copies of policies shall be furnished to TOWN thirty (30) days prior to the date of their expiration.
- c. Notice of Cancellation and/or Restriction - The policy(ies) must be endorsed to provide TOWN with thirty (30) days notice of cancellation and/or restriction.

- d. Prior to Town's approval, the Contractor shall furnish to Town's Contract Administrator Certificates of Insurance or endorsements evidencing the insurance coverage specified above. The required Certificates of Insurance shall name the types of policies provided, the insured and additional insured, as well as inception and expiration dates.
23. HOME DYNAMICS shall be required to post security in the form of a Letter of Credit to the Broward County Department of Planning and Environmental Protection and the South Florida Water Management District for the cost of the mitigation work for the PROJECT prior to the issuance of any permits or licenses for the PROJECT. In addition, HOME DYNAMICS agrees that, prior to commencement of any eradication of exotic species through its Contractor(s), it will deliver, or cause to be delivered to TOWN one (1) or more Payment and Performance Bonds ("Bond") for the PROJECT in a form acceptable to Town's Risk Manager or shall prepay in full to the Contractor(s) the completion of its work by placing said funds in escrow for the benefit of the Contractor(s) upon completion of said work.
24. Upon successful completion of the monitoring plan as described in Exhibit "A" and final inspection and acceptance by TOWN, TOWN shall be responsible for the PROJECT maintenance in perpetuity. Exotics and nuisance species shall be maintained by TOWN at less than Five Percent (5%) of the total species within the mitigation site.
25. Ownership of Documents. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the respective party providing or creating same. All documents requested and delivered to TOWN become property of TOWN.
26. Audit Right and Retention of Records. Each party shall have the right to audit the books, records, and accounts of the other parties with respect to this Agreement. The parties shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

The parties shall preserve and make available, at reasonable times for examination and audit by the other parties, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is

determined by a party to be applicable to a party's records, that party shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by that party.

27. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act. HOME DYNAMICS shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. In addition, each party shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
28. Merger. This Agreement incorporates and includes all prior negotiations, correspondence, conversions, agreements or understandings applicable to the matter contained herein. It is further agreed that no change, alteration or modification in the terms and conditions contained herein shall be effective unless contained in written document executed with the same formality and of equal dignity herewith in accordance with Section 41 below and with SFWMD's prior notification and written consent.
29. TOWN and HOME DYNAMICS agree that time is of the essence with respect to the terms and conditions of this Agreement.
30. HOME DYNAMICS, by and through its Contractor(s) hired to perform the mitigation work for the PROJECT, agrees that herbicides selected shall be approved by TOWN in order to ensure that exotic/nuisance species are eradicated and desirable native or planted species are not affected, and that the herbicide will be effective on targeted species and comply with all applicable regulations and in accordance with the current manufacturer's label. TOWN may hire outside experts to review herbicides at HOME DYNAMICS expense.
31. HOME DYNAMICS, by and through its Contractor(s) hired to perform the mitigation work for the PROJECT, agrees that transporting, storing, applying, and the herbicides shall be in accordance with Federal, State, and local regulations, and the current manufacturer's label. No full, empty or partially empty containers shall be left on the site after application hours. All empty containers shall be triple rinsed and made unusable. The Contractor(s) shall be required to supply rinse water and containers to store the rinsate. The rinsate and empty herbicide containers shall be disposed of off-site by the Contractor(s) in accordance to all Federal, State, and local regulations. All herbicides purchased, shipped and stored for use under this Agreement shall display the original manufacturer's label at all times. The

Contractor(s) shall take all necessary precautions to prevent any contamination of the surface and ground waters as required by the regulatory agencies. All oil, chemicals, fuel and the like shall be disposed of off-site in an approved manner per Federal, State, and local regulations. Contractor must supply proof of proper disposal.

32. HOME DYNAMICS agrees that its Contractor(s) shall demonstrate satisfactory relevant experience and capability in wetland mitigation as defined in this Agreement. Relevant experience shall consist of five (5) years experience by the person in charge and directly responsible for the work. The installation of plant material shall be supervised by an individual possessing the education and relevant mitigation experience to satisfy TOWN that the quality of plant materials and installation shall equal or exceed PERMIT and LICENSE requirements and TOWN specifications. The Contractor(s) shall submit a minimum of three (3) work references in which the Contractor(s) has performed wetland mitigation construction within the past five (5) years. TOWN shall have the right to exercise approval of Contractor(s); such approval shall not be unreasonably withheld.

The supervisory personnel and all applicators shall be experienced with the identification of the desirable native plant species and the exotic/nuisance plant species within and adjacent to the PROJECT area.

33. No license, permit, or other document issued by BCDPEP, SFWMD or other agencies shall be released upon completion of the work until written authorization is obtained from TOWN. HOME DYNAMICS shall contact TOWN for an inspection upon completion of the work.
34. HOME DYNAMICS shall remit to TOWN a lump sum payment of \$ 943,000.00 within thirty (30) calendar days of approval by the TOWN of the successful completion of the construction phase of the PROJECT and prior to the commencement of HOME DYNAMICS' five (5) year maintenance and monitoring period. Said remittance shall be placed in a special account for the purpose of providing future maintenance, via interest accrued on the principle, after HOME DYNAMICS five (5) year maintenance requirement for the PROJECT has expired and/or payoff of bonds used by the TOWN for the purchase of the mitigation site. The account principle shall remain in the designated account unless otherwise allocated to another account for the same purpose at the discretion of TOWN. Payment is to be made 50% when contract signed and 50% on completion of construction. Copies of the five (5) year quarterly monitoring reports as noted in Exhibit "A" shall be provided to the TOWN concurrent with distribution to the permitting agencies.

35. Third Party Beneficiaries. Except as provided for in this section, no party to this

Agreement intends to directly or substantially benefit a third party by virtue of entering into this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Notwithstanding the above, HOME DYNAMICS agrees to include the following provision in its agreement with the Contractor(s) performing the mitigation activities on TOWN'S PROPERTY: "Town of Davie shall be a third party beneficiary to this Agreement."

36. Independent Contractor. HOME DYNAMICS is an independent contractor under this Agreement. Services provided by each party pursuant to this Agreement shall be subject to the supervision of the respective party. In providing such services, each party represents that it and its agents shall not act as officers, employees, or agents of the other parties. This Agreement shall not constitute or make the parties a partnership or joint venture.
37. Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by HOME DYNAMICS except as provided for herein.
38. Conflicts. Neither HOME DYNAMICS nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with its loyal and conscientious exercise of judgment related to its performance under this Agreement.

HOME DYNAMICS agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against any of the parties in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, HOME DYNAMICS agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude HOME DYNAMICS or any other persons from representing themselves in any action or in any administrative or legal proceeding.

39. Contingency Fee. HOME DYNAMICS warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for that party, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for a party, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability at its discretion and be reimbursed for any expenses incurred by cash payout or staff time spent on PROJECT.
40. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Sections 1 through 50 of this Agreement shall prevail and be given effect.
41. Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems 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 Florida for Town of Davie.
42. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Town Council of Davie and HOME DYNAMICS.
43. Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or HOME DYNAMICS elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final. If HOME DYNAMICS chooses to term agreement, they will reimburse TOWN for all expenses, including staff time.
44. Waiver. The failure of any party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
45. Joint Preparation. The parties acknowledge that they have sought and received

whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

46. Public Entity Crimes. HOME DYNAMICS acknowledges the existence of Section 287.133(2)(a), F. S., ("Public Entity Crimes Act") which provides, in part, that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to TOWN, may not submit a bid on a contract with TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to TOWN, may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with TOWN, and may not transact business with TOWN in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by HOME DYNAMICS shall result in termination of the Agreement by TOWN without penalty.
47. Incorporation by Reference. The truth and accuracy of the "WHEREAS" clauses set forth above are acknowledged by the parties.
48. Contract Administrators. The Contract Administrators are those individuals designated in Section 13 above. The primary responsibilities of the Contract Administrators are to coordinate and communicate with each other and to manage and supervise execution and completion of the scope of work and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the respective Contract Administrators for their particular entity.
49. Multiple Originals. This Agreement may be fully executed in four (4) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: TOWN OF DAVIE through its TOWN COUNCIL, by and through its Mayor or Vice Mayor, authorized to execute same by the Board action on the _____ day of _____, 2004, and HOME DYNAMICS, INC., signing by and through its President, duly authorized to execute same.

TOWN

ATTEST:

TOWN OF DAVIE, through its
TOWN COUNCIL

Town Administrator and
Town Clerk
Town of Davie, Florida

By _____
Mayor

_____ day of _____, 2004

Insurance requirements
approved by the Town's
Risk Manager

Approved as to form by
Office of Town Attorney
Town of Davie, Florida
Monroe Kiar, Town Attorney
6591 Orange Drive
Davie, Florida 33314
Telephone: (954) 584-9770
Telecopier: (954) 797-1023

By _____

By _____
Town Attorney

HOME DYNAMICS

WITNESSES:

HOME DYNAMICS, INC.

By _____
President

_____ day of _____, 2004

Exhibit C: FCT Grant Award Contract for Van Kirk

Return to:
Town of Davie
Town Clerk's Ofc
6591 SW 45 Street
DAVIE FL 33314

INSTR # 104456090
OR BK 38463 Pages 1861 - 1871
RECORDED 11/02/04 10:05:23
BROWARD COUNTY COMMISSION
DEPUTY CLERK 1032
#1, 11 Pages

This document prepared by:
Kelly A. Martinson, Esq.
Florida Communities Trust
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399

FLORIDA COMMUNITIES TRUST
FF2 AWARD #02-088-FF2
FCT Contract #02-CT-2C-02-F2-A1-088
DAVIE'S WETLANDS RESTORATION

GRANT AWARD AGREEMENT

THIS AGREEMENT is entered into this 12th day of May, 2004, by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and TOWN OF DAVIE, a political subdivision of the State of Florida ("Recipient"), in order to impose terms, conditions, and restrictions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds and as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), as shall be necessary to ensure compliance with applicable Florida Law and federal income tax law and to otherwise implement provisions of Chapters 259.105, 259.1051, and 380, Florida Statutes.

WHEREAS, Part III Chapter 380, Florida Statutes, the Florida Communities Trust Act, creates a nonregulatory agency within the Department of Community Affairs, which will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments and nonprofit environmental organizations to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 259.105(3)(c), F.S., of the Florida Forever Act provides for the distribution of twenty- two percent (22%) less certain reductions of the net Florida Forever Revenue Bond proceeds to the Department to provide land acquisition grants to local governments and nonprofit environmental organizations through the FCT for acquisition of community-based projects, urban open spaces, natural resource conservation areas, parks, greenways and outdoor recreation areas to implement local comprehensive plans;

GAA\02-088-FF2
April 27, 2004

WHEREAS, the Bonds were issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of Bondholders for federal income tax purposes;

WHEREAS, Rule Chapter 9K-7, Florida Administrative Code (F.A.C.), authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding in accordance with Rule Chapter 9K-7, F.A.C.;

WHEREAS, the FCT has approved the terms under which the Project Site is acquired and the deed whereby the Recipient acquires title to the Project Site shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund upon the failure of the Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, such covenants and restrictions shall be imposed by an agreement which shall describe with particularity the real property which is subject to the agreement and shall be recorded in the county in which the real property is located; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to its acquisition using funds from the Florida Forever Trust Fund award.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and Recipient do hereby contract and agree as follows:

I. GENERAL CONDITIONS.

1. Upon execution and delivery by the parties hereto, the Recipient shall cause this Agreement to be recorded and filed in the official public records of **Broward County, Florida**, and in such manner and in such other places as FCT may reasonably request, and shall pay all fees and charges incurred in connection therewith.
2. The Recipient and FCT agree that the State of Florida Department of Environmental Protection will forward this Agreement to Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax-exempt status of the Florida Forever Bonds is not jeopardized, FCT and Recipient shall amend the Agreement accordingly.
3. This Agreement may be amended at any time. Any amendment must be set forth in a

written instrument and agreed to by both the Recipient and FCT.

4. This Agreement and the covenants and restrictions contained herein shall run with the Property herein described and shall bind, and the benefits shall inure to, respectively, the FCT and the Recipient and their respective successors and assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

6. Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

FCT: Florida Communities Trust
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
ATTN: Program Manager

Recipient: Town of Davie
6591 Orange Drive
Davie, FL 33314

ATTN: Chris Kovnes

7. If any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

II. PROJECT SITE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375, AND CHAPTER 380, PART III, FLORIDA STATUTES.

1. If any essential term or condition of this grant agreement is violated by the Recipient or by some third party with the knowledge of the Recipient and the Recipient does not correct the violation within 30 days of notice of the violation, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund. The FCT shall treat such property in accordance with Section 380.508(4)(e), Florida Statutes.

2. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other

restrictions as are sufficient to protect the interest of the people of Florida.

3. The interest, if any, acquired by the Recipient in the Project Site will not serve as security for any debt of the Recipient unless FCT approves the transaction.

4. If the existence of the Recipient terminates for any reason, title to all interest in real property it has acquired with the FCT award shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

5. In the event that the Project Site is damaged or destroyed or title to the Project Site, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Recipient shall deposit with the FCT any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. The FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Recipient fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project Site after notice from the FCT, the FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT will have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

III. PROJECT SITE OBLIGATIONS IMPOSED BY FCT ON THE RECIPIENT.

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Project Site, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site are specifically designated in the Project Plan as approved by FCT.

2. The Recipient shall prepare and submit to FCT an annual stewardship report as required by Rule 9K-7.013, F.A.C.

3. The Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the Recipient's comprehensive plan is required to comply with this paragraph, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the Recipient.

4. Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

5. The Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the FCT approved project plan.

6. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the Recipient at the Project Site.

7. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and/or major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably with-held by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the Recipient's management plan addressing the items mentioned herein shall be considered written approval from FCT.

8. If archaeological and historic sites are located on the Project Site, the Recipient shall comply with Chapter 267, Florida Statutes. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site will be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

9. The Recipient shall ensure that the Project Site is identified as being publicly owned and operated as a passive, natural resource-based public outdoor recreational site in all signs, literature and advertising regarding the Project Site. The Recipient shall erect a sign(s) identifying the Project Site as being open to the public and as having been purchased with funds from FCT and Recipient.

IV. OBLIGATIONS INCURRED BY RECIPIENT AS A RESULT OF BOND PROCEEDS BEING UTILIZED TO PURCHASE THE PROJECT SITE.

1. If the Project Site is to remain subject, after its acquisition by the State and the Recipient, to any of the below listed activities or interests, the Recipient shall provide at least 60 days written notice of any such activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest:

- a. any lease of any interest in the Project Site to a non-governmental person or organization;
- b. the operation of any concession on the Project Site to a non-governmental person or organization;
- c. any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with a non-governmental person or organization;
- d. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;
- e. a management contract of the Project Site with a non-governmental person or organization; and
- f. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

2. Recipient agrees and acknowledges that the following transaction, events, and circumstances may not be permitted on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law:

- a. a sale of the Project Site or a lease of the Project Site to a non-governmental person or organization;
- b. the operation of a concession on the Project Site by a non-governmental person or organization;
- c. a sale of things attached to the Project Site to be severed from the Project Site to a non-governmental person or organization;
- d. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of bonds from which the disbursement is to be made;
- e. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;
- f. a management contract of the Project Site with a non-governmental person or organization; and
- g. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE Recipient AND OTHER GOVERNMENTAL BODIES, NOT FOR PROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE Recipient OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

V. CONDITIONS THAT ARE PARTICULAR TO THE PROJECT SITE AS A RESULT OF THE FCT APPROVED MANAGEMENT PLAN.

1. Two or more resource-based outdoor recreational facilities including a canoe launch, nature trail, and observation platform and two or more user-oriented outdoor recreation facilities including a playgrounds and fitness trail shall be provided at the Project Site. The facilities shall be designed and located with minimal impact to natural resources on the Project Site.
2. A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the Project Site is open to the public and was purchased with funds from the Florida Communities Trust Program, Town of Davie, and Broward County
3. Interpretive signage shall be provided to educate visitors about the natural resources on the Project Site.
4. At least 24 environmental education classes or programs shall be conducted annually at the Project Site by trained educators or resource professionals.
5. A staffed nature center that provides year-round education programming shall be established on the Project Site.
6. A biological inventory of the natural communities found on the Project Site, including the dominant and listed plant and animal species, shall be conducted prior to any site development. The inventory shall be used to ensure the protection of biological resources and be updated periodically.
7. The Project Site shall be managed in a manner that protects and enhances habitat for native wildlife species that utilize or could potentially utilize the site, including listed wading birds. The development of the management plan shall be coordinated with the Fish and Wildlife Conservation Commission's Office of Environmental Services to ensure the preservation and viability of native wildlife species and their habitat in a manner that furthers the Strategic Habitat Conservation Area designation. Periodic surveys shall be conducted to ensure that site

management is compatible with the listed species using the Project Site.

8. A program to enhance the water quality and ecological function of the wetland areas shall be implemented on the Project Site. The water quality will be improved through the creation and enhancement of marsh areas and slough habitat on approximately 69 acres of the project site. The development of the wetland restoration plan, implementation and management shall be coordinated with the South Florida Water Management District.

9. Approximately 44 acres, shall be landscaped with native plant species to provide wildlife habitat and enhance the function and appearance of the Project Site.

10. An ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species shall be implemented at the Project Site. The objective of the control program shall be the elimination of invasive exotic plant species and the maintenance of a diverse association of native vegetation. The Management Plan shall reference the Exotic Pest Plant Council's List of Florida's Most Invasive Species to assist in identifying invasive exotics on the Project Site.

11. A feral animal removal program shall be developed and implemented, as necessary, for dogs, cats, ducks, and other non-native wildlife that may be found on the Project Site.

12. Prior to the commencement of any proposed development activities, measures shall be taken to determine the presence of any archaeological sites. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent the disturbance of significant sites.

13. The location and design of the parking and other site improvements shall have minimal impact on natural resources. The parking area shall incorporate pervious material wherever feasible.

14. Stormwater management facilities on the Project Site shall be designed to provide recreational open space or wildlife habitat.

15. Pedestrian and bicycle access to the Project Site shall be promoted through the provision of pedestrian oriented walkways and bicycle facilities that link the Project Site with adjacent residential neighborhoods. Bike parking stands shall be installed at the Project Site to provide an alternative to automobile transportation to the Project Site.

16. The Project Site shall be developed and managed as a trailhead facility for the community-wide recreational trail system that connects the Project Site with other parts of the community and promotes alternative modes of transportation.

17. Proposed site improvements shall be designed and located to minimize or eliminate the long term risk of storm damage or flooding in conjunction with appropriate hazard mitigation agencies or experts.

18. The requirements imposed by other grant program funds that may be sought for activities associated with the Project Site shall not conflict with the terms and conditions of this Agreement.

This Agreement including Exhibit "A" embodies the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Witness:

Martin Kiar
Print Name: Martin Kiar

Andre Parker
Print Name: Andre Parker

TOWN OF DAVIE

By: Chris Kovanes
Print Name: Chris Kovanes
Title: Program Administrator

Date: 4/29/04

Approved as to Form and Legality:

By: MONROE D. KIAR
Print Name: MONROE D. KIAR

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 6th day of May, 2004, by CARIS KOVANES as REPRESENTATIVE of DAVIE on behalf of the Local Government, and who is personally known to me.



Constance K. Lathrop
Notary Public
My Commission DD239230
Expires August 06, 2007

Constance K. Lathrop
Notary Public
Print Name: CONSTANCE K. LATHROP
Commission No. DD239230
My Commission Expires: AUGUST 6, 2007

Witness:

Gayle Brett
Print Name: Gayle Brett

Deborah A. Harvey
Print Name: Deborah A. Harvey

FLORIDA COMMUNITIES TRUST

By: *Kathy Baughman McLeod*
Kathy Baughman McLeod,
Community Program Manager

Date: 5/12/04

Approved as to Form and Legality:

By: *Kelly A. Martinson*
Kelly A. Martinson, Trust Counsel

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 12th day of May, 2004, by Kathy Baughman-McLeod, Community Program Manager of FCT. She is personally known to me.

Gayle H. Brett

Notary Public
Print Name: _____
Commission No. _____
My Commission Expires: _____



EXHIBIT "A"

All of Block One (1), less the North 1,196 feet thereof of Van Kirk Grove, according to the map or plat thereof, as recorded in Plat Book 15, Page 45 of the Public Records of Broward County, Florida.

Exhibit D: FCT Comments on First Amendment

RCVD MAR 14 '07



Florida Communities Trust

March 1, 2007

Colleen Ryan, Grants Specialist
Administration Department
Town of Davie
6591 Orange Drive
Davie, Florida 33314-3399

Subject: Easement Review and Revised Management Plan
Davie's Wetlands Restoration
FCT Project No. 02-088-FF2

Dear Ms. Ryan:

Thank you for your letter of September 7, 2006, requesting document review of a Joint Deed of Conservation Easement & Agreement, Easement to Florida Power & Light, Right-of-Way Agreement, Amendment to Agreement for Mitigation and approval to revisions to the management plan for the Davie's Wetlands Restoration project.

Florida Communities Trust staff reviewed the documents and the proposed modifications to the management plan for consistency with the original application, the Grant Award Agreement, and the approved management plan. Please refer to the attached comments for each of the documents submitted for review.

We find the proposed changes to the management plan are consistent with the approved project. Please incorporate the additions and deletions in your copy of the Management Plan and we will do the same.

If you have any questions, please feel free to contact Deborah Burr at (850) 410-0976.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Gelhardt", written in a cursive style.

Grant Gelhardt
Environmental Administrator

GG/db

Enclosures

Davie's Wetland Restoration
FCT 02-088-FF2
March 1, 2007

EASEMENT REVIEW AND REVISED MANAGEMENT PLAN COMMENTS

1. Joint Deed of Conservation Easement & Agreement

Please have the South Florida Water Management District and Broward County incorporate the FCT Standard Language for Easements (attached) into the document. When the Town of Davie receives the Conservation Easement with the included FCT language, please forward the document to our office for review and approval prior to execution.

2. Easement to Florida Power & Light (FPL)

Please provide FCT with the revised easement including a new legal description and boundary survey. Provide FCT with an updated Master Site Plan showing the boundary of the revised easement.

3. Right-of-Way Consent Agreement with FPL

We have no objection to the proposed consent agreement that allows for a 20-foot wide slough and the installation of culverts through the FPL easement.

4. Amendment to Agreement for Mitigation

The Town must use the excavated fill on Town property.

WHEREAS, Grantor has acquired the property with partial funding from the Florida Communities Trust (FCT), and the Property is subject to certain limitations provided in the FCT Grant Award Agreement (as recorded in OR Book ____, Page ____ in _____ County)(the "Agreement,") and

WHEREAS, as part and condition of the FCT funding, the City provided and FCT approved a Management Plan for the project site, and together with the Agreement, the terms of which are hereby incorporated herein by reference; and

WHEREAS, Grantor intends that the conservation and recreation values of the Property be preserved and enhanced in accordance with the Management Plan, as it may be amended from time to time only after review and approval by FCT; and

WHEREAS, All activities by the Grantor and Grantee shall be consistent with the Agreement and Management Plan.

Also, signature block that states something like the following - to clarify that FCT had reviewed the contract - in compliance with the GAA requirement

Reviewed and Approved by:

Ken Reecy, Community Program Manager
Florida Community Trust



Deborah.Burr@dca.state.fl.us

10/11/2006 12:14 PM

To colleen_ryan@davie-fl.gov

cc

bcc

Subject Document review - questions

History:

This message has been replied to and forwarded.

Hi Colleen,

Grant and I have both reviewed the documents you set us for review for the Davie's Wetland Restoration (FCT # 02-088-FF2). The following questions are a result of these reviews and would appreciate it you could provide answer as they are applicable.

Please let me know if you have any questions. Thanks!!

1. Conservation Easement

Document needs to include FCT standard easement language (*see attached*)

The Master Site Plan (locating all facilities) and Management Plan (affected pages) need to be revised and submitted prior to execution of the easement document.

2. FPL Easement

Why does FPL need the additional 27' of easement? (can FPL provide justification?)

For what do they need to access that they do not currently have access to?

Does the easement transect the site completely? (Exhibit A and B show different scenarios)

The easement must meet FCT's policy on linear facilities. (*attached*)

Please send us a copy of the current lease for our files.

3. Right-of-way Consent agreement

Will the standard agreement be edited for relativity prior to execution?

4. Mitigation Agreement - Amendment

The Town must use excavated fill on Town properties only. If the Town wants to sell any remaining fill, we will ask that the Town contact FCT prior to sale of any fill material to another entity. This will also be stated in a letter that is forthcoming.

Deborah Burr, Planner IV
Florida Communities Trust
2555 Shumard Oak Blvd.
Tallahassee, FL 32399
850.410.0976 phone
850.921.1747 fax

