TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Marcie Nolan, Acting Development Services Director / (954) 797-1101

PREPARED BY: David Abramson, Deputy Planning and Zoning Manager

SUBJECT: Resolution: Agreement - Davie Travel Center Inc./1-15 Hartsdale Avenue Corp.

AFFECTED DISTRICT: District 1

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA ACCEPTING THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND DAVIE TRAVEL CENTER INC./1-15 HARTSDALE AVENUE CORPORATION AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN AFFECTIVE DATE.

REPORT IN BRIEF: On August 4, 2004, Town Council adopted a resolution (R-2004-190) that authorized the Mayor to execute an agreement with Jolmy Enterprises, Inc. which provides that neither party will assert a statute of limitations defense from July 1, 2004 to September 1, 2005. Town Council adopted further resolutions extending this agreement annually. The last adopted resolution (R-2007-269) extended this agreement from September 1, 2007 to September 1, 2008. Davie Travel Center/1-15 Hartsdale Avenue Corporation is currently requesting that this agreement be extended to September 1, 2011. Refer to the applicant's justification letter for further information concerning this requested tolling agreement.

PREVIOUS ACTIONS: n/a

CONCURRENCES: n/a

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S):

Attachment(s): Resolution, Justification Letter, Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA ACCEPTING THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND DAVIE TRAVEL CENTER INC./1-15 HARTSDALE AVENUE CORPORATION AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN AFFECTIVE DATE.

WHEREAS, on August 4, 2004, the Town Council adopted Resolution R-2004-190 which authorized the Mayor to execute an Agreement with Jolmy Enterprises, Inc. which provides that neither party will assert a statute of limitations defense for any claim which may expire between July 1, 2004 and September 1, 2005; and

WHEREAS, Jolmy Enterprises, Inc. subsequently assigned any interest it has in the agreement to the Davie Travel Center, Inc.; and

WHEREAS, on August 17, 2005, the Town Council adopted Resolution R-2005-232 which authorized the Mayor to execute an Agreement with the Davie Travel Center, Inc. which provides that the Waiver Agreement extend to September 1, 2006; and

WHEREAS, on August 16, 2006, the Town Council adopted Resolution R-2006-226 which authorized the Mayor to execute an Agreement with the Davie Travel Center, Inc. which provides that the Waiver Agreement extend to September 1, 2007; and

WHEREAS, on August 15, 2007, the Town Council adopted Resolution R-2007-231 which authorized the Mayor to execute an Agreement with the Davie Travel Center, Inc. which provides that the Waiver Agreement extend to October 3, 2007; and

WHEREAS, Davie Travel Center, Inc. subsequently assigned any interest it has in the agreement to the Davie Travel Center, Inc./1-15 Hartsdale Avenue Corporation; and

WHEREAS, on September 19, 2007, the Town Council adopted Resolution R-2007-269 which authorized the Mayor to execute an Agreement with the Davie Travel

Center, Inc./1-15 Hartsdale Avenue Corporation which provides that the Waiver Agreement extend to September 1, 2008; and

WHEREAS, Davie Travel Center, Inc./1-15 Hartsdale Avenue Corporation is requesting approval of a Waiver Agreement attached hereto as "Exhibit A" be extended until September 1, 2011.

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

SECTION 1: That the Town of Davie does hereby authorize the Mayor to execute the agreement attached hereto as "Exhibit (Agreement)";

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008.

_____
MAYOR/COUNCILMEMBER

ATTEST:

_____
TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2008.

Exhibit *(Justification Letter)*

SIEGEL, LIPMAN, DUNAY, SHEPARD & MISKEL, LLP

GARY S. DUNAY
KENNETH W. LIPMAN
BONNIE MISKEL
JONATHAN L. SHEPARD
CARL E. SIEGEL

SCOTT BACKMAN
LINDA B. LYMAN

THE PLAZA • SUITE 801
5355 TOWN CENTER ROAD
BOCA RATON, FLORIDA 33486

(561) 368-7700
FAX: (561) 368-9274

WWW.SLDSMLAW.COM

August 7, 2008

Mr. Gary Shimun
Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

Re: Davie Travel Center – Extension of Tolling Agreement

Dear Mr. Shimun:

Further to our recent conversation, Davie Travel Center, Inc. ("Davie Travel") proposes to extend the tolling agreement originally entered into between the Town and Jolmy Enterprises, Inc. ("Jolmy") in 2004. As you may recall, the tolling agreement was originally suggested in an effort to toll any statute of limitation defenses that might arise related to claims resulting from the Pre-Annexation Agreement, OTTED Agreement and Spur Road issues surrounding the development of the Davie Travel Property. A copy of Resolution No. R-2004-190 and the accompanying tolling agreement are attached for your convenience.

Since approving the original tolling agreement, the Town and Jolmy / Davie Travel have subsequently extended the tolling agreement on an annual basis. Copies of the 2005, 2006 and 2007 resolutions and extension agreements are also enclosed. At this point I believe it is in the best interests of both the Town and Davie Travel to extend the tolling agreement for a period of time in excess of one (1) year. Enclosed please find a draft of the proposed tolling agreement between the Town and Davie Travel proposing to extend the tolling agreement for an additional three (3) years.

Please do not hesitate to contact me with any questions or comments following your review of the enclosed documents. I look forward to hearing back from you with a date for an upcoming Town Council meeting regarding this matter.

Sincerely Yours,

Scott Backman, Esq.

Enclosures

cc: Mr. Russell Muniz (Town Clerk)

Exhibit *(Agreement)*

AGREEMENT BETWEEN DAVIE TRAVEL CENTER, INC. /
1-15 HARTSDALE AVENUE CORPORATION
AND
THE TOWN OF DAVIE

This Agreement is entered into between Davie Travel Center, Inc. / 1-15 Hartsdale Avenue Corporation ("Owner") and the Town of Davie ("Town").

W I T N E S S E T H:

WHEREAS, Owner and Town believe its in the best interest of each party to extend the waiver of the statute of limitations defense set forth in the original tolling agreement between the Town and Jolmy Enterprises, Inc. on August 4, 2004 ("Agreement"), a copy of which is attached hereto as Exhibit "A";

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

1. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. The waiver period set forth in Paragraph 2 of the Agreement is hereby extended from September 1, 2008 to September 1, 2011.

3. Owner agrees that the Agreement along with this extension shall not be transferable or assignable to any other person or entity.

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

DAVIE TRAVEL CENTER, INC. /
1-15 HARTSDALE AVENUE CORPORATION

Dated: _____ By:_____

TOWN OF DAVIE

Dated:_____ By:_____
TOM TRUEX, Mayor

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, as _____ of DAVIE TRAVEL CENTER, INC. / 1-15 HARTSDALE AVENUE CORPORATION. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2008.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

My Commission Expires:

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by TOM TRUEX, as MAYOR of the TOWN OF DAVIE. He is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2008.

_____
Notary Public

_____
Typed, printed or stamped name of Notary Public

My Commission Expires: