

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Will Allen, Redevelopment Administrator/ 954-797-2093

PREPARED BY: Will Allen, Redevelopment Administrator

SUBJECT: Resolution

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING AN EASEMENT AGREEMENT BETWEEN THE EAST DAVIE COMPANY, THE TOWN OF DAVIE AND THE DAVIE COMMUNITY REDEVELOPMENT AGENCY AND APPROVING AN AGREEMENT AMONG THE SAME PARTIES SUPPLEMENTING THE TERMS OF THE EASEMENT AGREEMENT; AUTHORIZING EXECUTION OF SAME BY THE APPROPRIATE OFFICIALS OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: This resolution approves an easement agreement among the East Davie Company, the Town of Davie and the Davie CRA. This easement is needed across this property to provide pedestrian access to and from Davie Road for the public parking lot to be constructed on property owned by the CRA which fronts on SW 63rd Avenue. The purpose of the easement is to install, operate, and maintain a sidewalk, lighting, utilities and beautification amenities. The CRA will construct a five feet wide brick paver walkway and a five feet wide landscape area within the ten feet wide easement.

There is also a supplemental agreement which clarifies the future use of the walkway as well as how the walkway and landscaping easement area as well as the public parking lot can benefit the private property from which the easement is being granted. The CRA plans on building a public parking lot on four lots which front on SW 63rd Avenue. The lot is expected to have 49 spaces. The property owner has the option of using some of the spaces within the parking lot to obtain greater use of the property along Davie Road which is one of the purposes of building the public parking lot. The site plan for the public parking lot is such that the private property owner to the west will have easy vehicular access and can connect easily to the public parking lot if so desired. There is an incentive to the property owner to develop the property to the west by offering a lower price per parking space if a building is begun within four years. The walkway built along the private property will serve as the required side yard setback and the required landscape buffer for a future development on the private property.

CONCURRENCES: The Davie Community Redevelopment Agency approved the agreements at its September 22, 2003 meeting.

FISCAL IMPACT: N/A

RECOMMENDATION(S): Motion to approve the Resolution.

Attachment(s): Resolution
Easement Agreement
Agreement

RESOLUTION # _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING AN EASEMENT AGREEMENT BETWEEN THE EAST DAVIE COMPANY, THE TOWN OF DAVIE AND THE DAVIE COMMUNITY REDEVELOPMENT AGENCY AND APPROVING AN AGREEMENT AMONG THE SAME PARTIES SUPPLEMENTING THE TERMS OF THE EASEMENT AGREEMENT; AUTHORIZING EXECUTION OF SAME BY THE APPROPRIATE OFFICIALS OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie and Davie Community Redevelopment Agency are seeking a specific easement in the Downtown area of Davie; and

WHEREAS, the easement will allow access from Davie Road to a public parking lot east of Davie Road; and

WHEREAS, East Davie Company has agreed to provide the necessary easement to provide for such sidewalk as well as beautification, utilities and lighting within the easement.

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 Easement Agreement, attached hereto as Attachment "A", and accepts the grant of easement conveyed thereby, and authorizes execution of same by the appropriate officials of the Town.

SECTION 2. The Town Council of the Town of Davie hereby approves the Agreement supplementing the terms of the Easement Agreement attached hereto as Attachment "B" and authorizes the execution of same by the appropriate officials of the Town.

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

ATTACHMENT "A"

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("the Agreement") is made this ____ day of _____, 2003, by and between East Davie Company, a Florida corporation, whose address is c/o Tom Truex, 4740 SW 72 Avenue, Davie, FL 33314 ("Grantor"), the Davie Community Redevelopment Agency ("CRA"), a public body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes, whose address is 4700 Davie Road, Suite C, Davie, Florida 33314, and the Town of Davie, a municipal corporation of the State of Florida whose address is 6591 Orange Drive, Davie, Florida 33314 (collectively, "Grantees").

RECITALS

A. Grantor is the fee simple owner of that certain parcel of real property located in Broward County, Florida, and legally described in Exhibit "A" attached hereto and made a part hereof ("Grantor's Parcel"). References to the "Grantor" herein shall refer to all successors in interest.

B. Grantor desires to grant to Grantees an easement over, across and through the Grantor's Parcel for the purpose of sidewalk; beautification, utilities and lighting. Grantees are agreeable to accepting such easement.

C. The CRA is the owner of that certain parcel of real property located in Broward County, Florida, and legally described in Exhibit "B" attached hereto and made a part hereof ("CRA Parcel"). The CRA Parcel is adjacent to the Grantor's Parcel and is the benefitted property.

D. The Grantor and the Grantees have entered into an Agreement of even date herewith establishing certain agreements among them relating to the utilization, improvement and maintenance of the Grantor's Parcel and adjacent property owned by Grantor, the CRA Parcel and the Easement created hereby.

AGREEMENT

NOW, THEREFORE, in consideration of the grants and the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantees, the Grantor and Grantees agree as follows:

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

2. Grant of Easement to Grantee. Grantor hereby grants and conveys to Grantees an exclusive easement ("Easement") over, across and through the Grantor's Parcel for the purpose of installing, operating and maintaining a sidewalk, lighting, utilities and installing and maintaining beautification amenities,

including but not limited to, landscape features and irrigation, together with the right of ingress and egress over such property.

3. Term. Grantor and Grantees, for themselves and for the respective successors and assigns, acknowledge that the Easement created hereby shall continue in perpetuity and run with the land.

4. Grantor's Reservation of Rights. Grantor hereby reserves access rights over, across and through the Grantor's Parcel for the purpose of pedestrian access.

5. Notices. Any and all notices or other communications required or permitted to be given hereunder shall be in writing and shall be hand-delivered or sent by certified or registered mail (return receipt requested, postage prepaid) or by overnight courier service which delivers only upon signed receipt of the addressee or by telecopier with confirmed answer back and addressed as follows:

To Grantor:
East Davie Company
c/o Tom Truex
4740 SW 72nd Avenue
Davie, FL 33314

To Grantee:
Town of Davie
6591 Orange Drive
Davie, FL 33314

To Grantee:
Davie Community Redevelopment Agency
4700 Davie Road
Suite C
Davie, FL 33314

Any party may from time to time change the address to which such notices or communications may be delivered or sent by giving the other party written notice of such change. Except as otherwise provided, notices and other communications shall be deemed received on the date of delivery, unless delivery is refused or cannot be made in which event the date of attempted delivery shall be the date of notice.

6. Time is of the Essence. Time is of the essence of this Agreement.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida. No presumption or construction of this agreement shall arise by reason of its authorship.

8. Venue. In any dispute arising out of the terms or conditions of this Agreement, venue shall be deemed to be proper in Broward County, Florida.

9. Attorneys' Fees. If it shall be necessary for either party to this Agreement to bring suit, to construe, interpret or enforce any provisions of this Agreement or for damages on account of any breach of this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to any damages or other relief granted as a result of such litigation, all reasonable attorneys' fees and reasonable court costs at all levels of litigation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

GRANTOR

East Davie Company

WITNESSES:

Janel Lebron
Printed Name: Janel Lebron

Michelle Garrison
Printed Name: MICHELLE GARRISON

By: [Signature]
Printed Name: Thomas A. Truex
Title: President
Registered Agent/President

Attest:

GRANTOR
(CORPORATE SEAL)

STATE OF FLORIDA)
:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 27 day of October, 2003, by Thomas A. Truex as President of East Davie company on behalf of the company. He/she is personally known to me or produced (personally known) as identification and did/did not take an oath.



NOTARY PUBLIC
Michelle Garrison
Print: Michelle Garrison
State of Florida (Seal)
My Commission Expires: 10/6/07

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

GRANTEE

WITNESSES:

DAVIE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes

Cheryl L. Ellett
Printed Name: Cheryl L. Ellett

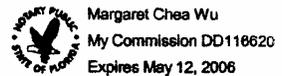
By: Joan Kovac
Printed Name: JOAN KOVAC
Title: Chairman

Will Allen
Printed Name: Will Allen

STATE OF FLORIDA)
:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 31st day of October, 2003, by Joan Kovac as Chairman of the Davie Community Redevelopment Agency, a public body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes. He/she is personally known to me or produced personally known to me as identification and did/did not take an oath.

NOTARY PUBLIC
Margaret Chea Wu
Print: MARGARET CHEA WU
State of Florida (Seal)
My Commission Expires:



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

GRANTEE

TOWN OF DAVIE, a municipal corporation of the State of Florida

ATTEST:

By: _____
Printed Name: _____
Title: _____

Russell Muniz, Town Clerk

STATE OF FLORIDA)
 :
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____ as _____ of the Town of Davie, a municipal corporation of the State of Florida. He/she is personally known to me or produced _____ as identification and did/did not take an oath.

NOTARY PUBLIC

Print: _____
State of Florida (Seal)
My Commission Expires:

EXHIBIT "A"

THE SOUTH 10.00 FEET OF LOT 16, BLOCK 3 OF "FIRST ADDITION TO DAVIE" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA

SAID LANDS LYING IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA.

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EXHIBIT "B"

ALL OF LOTS 7, 8, 9, AND 10 IN BLOCK 3 OF "FIRST ADDITION TO DAVIE"
ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 39
OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA

SAID LANDS LYING IN THE TOWN OF DAVIE, BROWARD COUNTY,
FLORIDA.

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ATTACHMENT "B"

AGREEMENT

THIS AGREEMENT ("the Agreement") is made this _____ day of _____, 2003, by and between East Davie Company, a Florida corporation, whose address is 4740 SW 72 Avenue, Davie, FL 33314; the Town of Davie, a municipal corporation of the State of Florida whose address is 6591 Orange Drive, Davie, Florida 33314; and the Davie Community Redevelopment Agency ("CRA"), a public body corporate and politic as created pursuant to Part III, Chapter 163, Florida Statutes, whose address is 4700 Davie Road, Suite C, Davie, FL 33314.

RECITALS

A. The East Davie Company is the fee simple owner of that certain parcel of real property located in Broward County, Florida, and legally described in Exhibit "A" attached hereto and made a part hereof (the "East Davie Company's Parcel" or "Parcel"). References to the "East Davie Company" herein shall refer to all successors in interest.

B. The CRA is the owner of that certain parcel of real property, known as the S.W. 63rd Avenue Parking Lot, located in Broward County, Florida, and legally described in Exhibit "B" attached hereto and made a part hereof (the "Town of Davie Parcel"). The Town of Davie Parcel is adjacent to the East Davie Company's Parcel and is intended to provide certain parking spaces to benefit the future development of the East Davie Company's Parcel.

C. This Agreement is intended to supplement the terms of the Easement Agreement (the "Easement Agreement") executed among the East Davie Company, the Town of Davie, and the CRA at the same time as this Agreement, by which Easement Agreement the East Davie Company grants to the Town of Davie and the CRA an easement over, across and through the East Davie Company's Parcel for the purpose of sidewalk, beautification, utilities and lighting (the "Easement").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the East Davie Company, Town of Davie, and CRA agree as follows:

1. Walkway. The CRA shall install a 5 foot wide brick paver walkway ("Walkway") within the Easement, as well as a 5 foot wide landscape area. The CRA shall also provide facilities for irrigation for the plant materials and wiring for lighting which will be installed within and along the Walkway. The Easement, and facilities and improvements therein, shall be maintained by the CRA so long as the Walkway is used for public access. Should the East Davie Company's Parcel be developed in the future with a building(s) then the Easement will be included for

purposes of calculation of the side yard setback and provide the required landscape strip for the future development of the Parcel. The plantings in this landscape area shall be installed and maintained by the CRA including trees, shrubs and ground cover or grass.

2. Maintenance and Insurance. The CRA shall be responsible, at its expense, for maintaining the Walkway, lighting, and installing and maintaining beautification amenities including but not limited to landscape features and irrigation in the Easement during the term of this Agreement, such facilities, improvements and the maintenance thereof, to be determined in the sole discretion of the CRA. The Town of Davie shall maintain in force a policy of insurance in the amount of no less than One Million Dollars (\$1,000,000.00), that will cover losses incurred as a result of negligent acts or omissions of the Town or CRA or their employees. The Town reserves the right to self-insure for any such losses should it determine to implement a general policy of self insurance for the Town. Nothing contained herein shall be construed to waive the limits of sovereign immunity of the Town or the CRA set forth in Section 768.28, Florida Statutes.

3. Relocation of Easement. The CRA shall relocate, at its expense, the Walkway and improvements located in the Easement, to another area providing direct access from the Town of Davie Parcel to Davie Road, conditioned upon East Davie Company: (i) providing a ten (10) foot replacement easement, in a location acceptable to the Town and CRA, according to the same terms and conditions as the Easement Agreement (in which event the Easement created by the original Easement Agreement shall be released); and (ii) obtaining an approved site plan by the Town of Davie showing the relocation of the Easement.

4. Purchase of Parking Spaces. Subject to the provisions of this Paragraph, the East Davie Company shall have the right to purchase, and the CRA shall sell, sufficient parking spaces in the Town of Davie Parcel to permit the East Davie Company to meet up to one hundred percent of the required parking spaces under the Town Code, including handicap spaces, for the future development of a building(s) on the East Davie Company's Parcel. If additional parking spaces are requested by East Davie Company within the Town of Davie Parcel to meet requirements of the Town Code, then up to one half of the required spaces will be provided to the East Davie Company at no charge. The other half of the required spaces will be provided within the Town of Davie Parcel at a cost of two thousand dollars (\$2,000.00) per space. Such payment shall be made to the CRA no later than the time of application for the first building permit for a principal building in furtherance of the approved site plan; acceptance by the Town of said application shall be conditioned upon receipt by the CRA of the payment described in this Paragraph. The parking spaces in the Town of Davie Parcel shall be maintained by the CRA at no additional cost to the East Davie Company. If the site plan application is for a building of less than three stories, then no more than twenty-one spaces for the East Davie Company's use in the Town of Davie Parcel shall be

provided for required parking for development of the East Davie Company's Parcel. If the site plan application is for a building of three stories or more, then no more than twenty-four spaces for the East Davie Company's use in the Town of Davie Parcel shall be provided for required parking for development of the East Davie Company Parcel. All spaces provided to the East Davie Company for parking pursuant to this Agreement shall be for non-exclusive use. The terms and conditions applicable to the use by East Davie Company of the Town of Davie Parcel for required parking shall be subject to a cross parking agreement as provided in the Town Code. Any parking spaces provided on the East Davie Company Parcel shall be for its exclusive use.

5. Incentive for Early Development. As an incentive to encourage early development on the East Davie Company's Parcel, the purchase price for parking spaces referred to in Paragraph 4 shall be reduced from two thousand dollars (\$2,000.00) per space to one thousand dollars (\$1,000.00) per space, provided that East Davie Company has received final site plan approval by the Town for development of the Parcel as approved by the CRA and there has been a first inspection subsequent to the issuance of a building permit for a principal building under the Florida Building Code, or successor building code, within four (4) years after the date the Easement Agreement is approved by Town Council. The CRA shall remit any funds due to East Davie Company as a result of compliance with this Section 5 within sixty (60) days.

6. Vehicular Access Lane and Additional Parking Spaces. The East Davie Company has the right to provide a vehicular access lane(s) which connects into the Town of Davie Parcel so long as the access lane(s) is within a drive aisle of the public parking lot located on the Town of Davie Parcel. The East Davie Company also has a right to provide parking spaces and/or to provide an enclosed trash dumpster along the eastern edge of the East Davie Company Parcel. These parking spaces are in addition to the parking spaces referred to in Paragraph 4 of this Agreement. These parking spaces and/or trash dumpster shall utilize the traffic aisle which parallels the westerly property line of the Town of Davie Parcel. The development of the Town of Davie Parcel includes landscaping which parallels the easterly property line of the East Davie Company's Parcel. Should the construction of parking spaces and/or location of the trash dumpster within the East Davie Company's Parcel require the displacement of the landscape materials provided and maintained by the CRA, they may be relocated at the expense of the East Davie Company within the development area, and pursuant to an approved site plan.

7. Lighting. Lighting fixtures installed in conjunction with the Town of Davie Parcel along the Walkway within the Easement may be used to provide on-site lighting for the East Davie Company's Parcel should the photometric calculations indicate these lights help provide illumination to the Parcel. Any required relocation of a lighting fixture must conform to design lighting

photometrics and any relocation costs shall be borne by the East Davie Company as specified in an approved site plan.

8. Enforcement. If the CRA or Town of Davie shall default in any of the terms or provisions of the Agreement for which either party is responsible, and such default is not cured within twenty-five (25) business days after written notice thereof to the party in default as provided in the Agreement, then the East Davie Company may seek specific performance against the defaulting party to enforce the responsibilities of the defaulting party under this Agreement.

9. Notices. Any and all notices or other communications required or permitted to be given hereunder shall be in writing and shall be hand-delivered or sent by certified or registered mail (return receipt requested, postage prepaid) or by overnight courier service which delivers only upon signed receipt of the addressee or by telecopier with confirmed answer back and addressed as follows:

East Davie Company
c/o Tom Truex
4740 SW 72nd Avenue
Davie, FL 33314

Town of Davie
6591 Orange Drive
Davie, FL 33314

Davie CRA
4700 Davie Road, Suite C
Davie, FL 33314

Any party may from time to time change the address to which such notices or communications may be delivered or sent by giving the other party written notice of such change. Except as otherwise provided, notices and other communications shall be deemed received on the date of delivery, unless delivery is reused or cannot be made in which event the date of attempted delivery shall be the date of notice.

10. Time is of the Essence. Time is of the essence of this Agreement.

11. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida. No presumption or construction of this agreement shall arise by reason of its authorship.

12. Venue. In any dispute arising out of the terms or conditions of this Agreement, venue shall be deemed to be proper in Broward County, Florida

13. Attorneys' Fees. If it shall be necessary for any party to this Agreement to bring suit, to construe, interpret or enforce any provisions of this

Agreement or for damages on account of any breach of this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to any damages or other relief granted as a result of such litigation, all reasonable attorneys' fees and reasonable court costs at all levels of litigation.

14. Obligations to be Assumed by Town of Davie. The parties hereto acknowledge that in the event the CRA shall cease to exist by virtue of its expiration pursuant to law, then the duties and obligations of the CRA hereunder shall be assumed and performed by the Town of Davie.

15. No Vesting of Development Rights or Approvals. The parties agree that the terms and agreements contained in this Agreement shall not be construed to grant any development rights, including, but not limited to, zoning and site plan approval for the East Davie Company Parcel by the Town of Davie. The East Davie Company's Parcel shall be subject to all requirements of the Town of Davie for its development in effect at the time of the submission of an application for development approval, except to the extent otherwise provided by this Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

WITNESSES:

EAST DAVIE COMPANY

Janet Lebron
Printed Name: Janet Lebron

By: [Signature]
Printed Name: Thomas A. Trux
Title: President
Registered Agent/President

Michelle Garrison
Printed Name: MICHELLE GARRISON

Attest:

EAST DAVIE COMPANY
(CORPORATE SEAL)

Attest:

DAVIE COMMUNITY
REDEVELOPMENT AGENCY

By: Cheryl D. Ellett
Cheryl Ellett, Secretary

By: Joan Kovac, Chair
Printed Name: JOAN KOVAC

WITNESSES:

TOWN OF DAVIE, a municipal
corporation of the State of Florida

Printed Name: _____

By: _____

Printed Name: _____

Title: _____

Printed Name: _____

Attest:

Russell Muniz, Town Clerk

[Handwritten mark]

EXHIBIT "A"

LOTS 16 AND 17, BLOCK 3 OF "FIRST ADDITION TO DAVIE" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 39 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA

SAID LANDS LYING IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA.

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EXHIBIT "B"

ALL OF LOTS 7, 8, 9, AND 10 IN BLOCK 3 OF "FIRST ADDITION TO DAVIE"
ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 39
OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA

SAID LANDS LYING IN THE TOWN OF DAVIE, BROWARD COUNTY,
FLORIDA.

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