

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Thomas J. Willi, Town Administrator

**PREPARED BY:** Russell C. Muniz, CMC, Town Clerk

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** Townwide

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A STIPULATED SETTLEMENT AGREEMENT WITH FORMAN INDUSTRIAL LAND, LLC PERTAINING TO CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT CASE NUMBER 03-020380(02); AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** In 2003, the Town issued a Notice of Violation (NOV) to Forman Industrial Land, LLC (FORMAN) concerning storage of vehicles on property adjacent to I-595/SR 84 between Davie Road and the Florida Turnpike. After the matter was referred to the Special Master, FORMAN filed suit against the Town seeking to enjoin the Town from proceeding with the NOV and other substantive relief. In the interest of resolving the NOV proceeding and the civil action filed by FORMAN both parties have agreed to the terms set forth in this Stipulation.

**PREVIOUS ACTIONS:** R-90-252, R-93-203, R-96-379.

**CONCURRENCES:**

**FISCAL IMPACT:**

Has request been budgeted? N/A

Additional Comments:

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

**Attachment(s):** Resolution, Stipulation of Settlement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A STIPULATED SETTLEMENT AGREEMENT WITH FORMAN INDUSTRIAL LAND, LLC PERTAINING TO CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT CASE NUMBER 03-020380(02); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie issued a Notice of Violation (NOV) to Forman Industrial Land, LLC (FORMAN) in 2003 concerning FORMAN's storage of vehicles on property adjacent to I-595/SR 84 between Davie Road and the Florida Turnpike; and

WHEREAS, FORMAN filed suit against the Town of Davie in 2003 seeking to enjoin the Town from proceeding with the NOV and the NOV proceeding and seeking other substantive relief; and

WHEREAS, the Town wishes to enter into the attached Stipulation of Settlement agreement, which will result in an amicable resolution of the parties' differences and will avoid the expense, delay, and uncertainty of further litigation.

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

SECTION 1. The Mayor is hereby authorized to execute the Stipulation of Settlement attached as exhibit "A" hereto, on behalf of the Town Council of the Town of Davie, Florida.

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

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

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

ATTEST:

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

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

**IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT, IN AND  
FOR BROWARD COUNTY, FLORIDA**

FORMAN INDUSTRIAL LAND,  
LLC, a Florida limited liability  
Company,

Plaintiff,

v.

Case No. 03-020380 (02)

THE TOWN OF DAVIE, FLORIDA,  
a municipal corporation,

Defendant.

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**STIPULATION OF SETTLEMENT**

**THIS STIPULATION OF SETTLEMENT** (the “Stipulation”) is entered on the dates stated below, by and between Plaintiff, FORMAN INDUSTRIAL LAND, LLC, a Florida limited liability Company, (“FORMAN”), and THE TOWN OF DAVIE, FLORIDA, a municipal corporation (“TOWN”). The parties recite as follows:

**WHEREAS**, in 2003, the TOWN issued a notice of violation (“NOV”) to FORMAN concerning FORMAN’s storage of vehicles upon the real property located along the southern edge of Interstate 595/State Road 84 and between Davie Road and Florida’s Turnpike, and encompassed within the Annexed Property as described in FORMAN’s Complaint filed herein (the “Property”);

**WHEREAS**, in furtherance of the NOV, the TOWN later in 2003 initiated a Code Enforcement proceeding pursuant to the Town of Davie Code before a Special Master, Case No. 03-2200 (“the NOV Proceeding”);

**WHEREAS**, FORMAN objected to the NOV and the NOV Proceeding, *inter alia*, on the grounds that (1) the TOWN was without legal authority to issue the NOV against FORMAN due to FORMAN’s existing rights under Orders and Judgments entered by the Broward County Circuit Court in the civil case styled THE HAMILTON M. AND BLANCHE C. FORMAN CHRISTIAN FOUNDATION, etc., et al., Plaintiffs vs. THE TOWN OF DAVIE, FLORIDA, a municipal corporation, Defendant, Case No. 85-003046 CT (consolidated with Case No. 93-0798603) (collectively, the “1985 Circuit Court Action”), (2) the NOV Proceeding was invalid and improper as a result; (3) the NOV lacked substantive merit, and (4) any disputes regarding FORMAN’s use of the Property were to be addressed and resolved by the Court in the 1985 Circuit Court Action rather through any other processes or procedures;

**WHEREAS**, FORMAN filed a motion in the 1985 Circuit Court Action seeking to enjoin the TOWN from proceeding with the NOV and the NOV Proceeding, and seeking other substantive relief. FORMAN filed the instant civil action (the “2003 Action”) seeking similar relief;

**WHEREAS**, the TOWN was duly served with process in this 2003 Action;

**WHEREAS**, in the interest of avoiding costly and time-consuming litigation, in the spirit of good faith, in order to resolve the NOV Proceeding and this 2003 Action while the parties continue to address other pending issues concerning the Property through the 1985 Circuit Court Action, and expressly without prejudice to FORMAN’s assertions that the NOV and the NOV

Proceeding were not proper for both procedural and substantive reasons, FORMAN and the TOWN have agreed to the terms set forth in this Stipulation;

**NOW, THEREFORE**, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The parties agree that the above recitations are true and correct.

2. In full satisfaction of the matters asserted by the TOWN in the NOV and the NOV Proceeding, FORMAN agrees to perform the following acts:

A. FORMAN shall submit to the TOWN a landscaping plan outlining palm trees which will be planted along the Property's border with State Road 84, in order to curtail or limit sight lines from State Road 84 onto the Property. The TOWN may provide comment on the proposed landscaping plan, and the parties shall use their best efforts to reach an accord as to appropriate landscaping. FORMAN's submission of the landscaping plan to the TOWN shall not constitute an admission or acknowledgement of the TOWN's legal authority to require landscaping on the Property at this juncture, and FORMAN's compliance with any comments or requests of the TOWN concerning landscaping shall be purely voluntary. The TOWN acknowledges that FORMAN as of this date has complied with this requirement of the Stipulation;

B. FORMAN shall engage Ferncrest Utilities to provide a sewer hookup to the office trailer located on the Property, which shall not require the issuance of TOWN permits.

FORMAN's provision of this sewer hookup shall not constitute an admission or acknowledgement of the TOWN's legal authority to require the sewer hookup. The TOWN acknowledges that FORMAN as of this date has complied with this requirement of the Stipulation; and

C. FORMAN shall obtain an appropriate permit from the South Florida Water Management District concerning FORMAN's current use of the Property. A copy of the permit shall be furnished to the TOWN, but shall not constitute an admission or acknowledgement of the TOWN's legal authority to oversee permitting on the Property at this juncture. The TOWN acknowledges that FORMAN as of this date has complied with this requirement of the Stipulation.

3. The parties hereto believe that the Stipulation is in the best interests of the TOWN and FORMAN.

4. The parties hereto shall cooperate in the consummation of the settlement and in the preparation and execution of any and all documents necessary to carry out the intent and purpose of this Stipulation.

**5. This Stipulation is contingent upon approval by the Town Council of the Town of Davie upon proper notice. Once the Town Council has approved this Stipulation, the parties shall then file this Stipulation with the Circuit Court for approval in the 2003 Action. Upon final approval by the Circuit Court, the Stipulation shall become effective. Once this Stipulation becomes effective, FORMAN shall dismiss this 2003 Action without**

**prejudice, and the TOWN shall deem the NOV fully resolved and shall dismiss the NOV Proceeding, all within five (5) calendar days from the date of the Circuit Court's Order approving this Stipulation.**

6. Notwithstanding this Stipulation and any approvals thereof by the Town Council and the Circuit Court in this 2003 Action, however, the 1985 Circuit Court Action (including FORMAN's pending motion to enforce judgment) shall remain pending by agreement with regard to other matters being discussed between FORMAN and the TOWN relating to the Property (including, without limitation, the extent to which the TOWN may legally seek to control FORMAN's activities on the Property within the confines of the 1985 Circuit Court Action and judgments entered therein). The parties agree that the remaining disputes between them relating to the Property shall be resolved by Orders and Judgments entered by the Circuit Court in the 1985 Circuit Court Action following settlement or final adjudication.

7. The TOWN acknowledges that FORMAN is executing this Stipulation on a purely voluntary basis, without prejudice to FORMAN's existing rights under the Orders and Judgments entered in the 1985 Circuit Court Action, and that FORMAN retains the right to seek protection in the 1985 Circuit Court Action from any efforts by the TOWN to control FORMAN's activities on the Property. Nothing in or about this Stipulation shall be construed as a replacement or substitute for (or modification of) the Orders and Judgments entered in the 1985 Circuit Court Action, and the Circuit Court's agreed and exclusive role to hear and resolve all disputes between the TOWN and FORMAN concerning the Property shall not be affected by this Stipulation. The parties agree that no evidence of this Stipulation shall be used in any way to

affect, modify or alter the continuing force and effect of the Orders and Judgments entered in the 1985 Circuit Court Action.

8. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their successors, successors-in-interest, and assigns,.

9. This Stipulation shall not be construed against either party as an admission of liability or concession of any matters, except as to those specific agreements contained herein.

10. This Stipulation shall be construed and governed by the laws of the State of Florida.

11. This Stipulation constitutes the entire agreement by and between FORMAN and the TOWN as to the matters specifically relevant to the NOV and the NOV Proceeding. However, the parties agree and acknowledge that they are continuing discussions concerning other pending issues affecting the Property (including, without limitation, the extent to which the TOWN may legally seek to control FORMAN's activities on the Property within the confines of the 1985 Circuit Court Action and judgments entered therein). In the event agreements are reached on those other pending issues, the parties anticipate their execution of further stipulations subject to approval by the Town Council and the Circuit Court in the 1985 Circuit Court Action. However, the parties agree and confirm that, in connection with their execution of this Stipulation, neither has relied upon any promises or proposals for action in the future concerning any other pending issues.

12. The TOWN and FORMAN shall request that the Circuit Court retain jurisdiction over this cause and these parties to enforce and construe the provisions of this Stipulation.

13. FORMAN, and the TOWN through its authorized representatives, hereby acknowledge that there are no agreements or understandings contrary to or different from the terms of this Stipulation.

14. The Stipulation may be executed in one or more counterparts each counterpart to be considered an original portion of this Stipulation and all of which shall constitute a singular instrument. Any signatures of one party to this Stipulation transmitted to the other party via facsimile shall have the same binding force and effect as if the Stipulation bearing such signatures had been delivered to the other party by hand delivery and/or as if signed in the presence of the other party.

15. Each signatory to this Stipulation represents and warrants that he/she is duly authorized to execute this Stipulation; that he/she has been fully and duly empowered and authorized to execute same on the respective parties' behalf, and that each party has had the benefit of advice of counsel of its own choosing concerning the form and effect of this Stipulation.

**[THIS PORTION INTENTIONALLY LEFT BLANK]**

DATED: June \_\_, 2004.

DATED: June \_\_, 2004.

FORMAN INDUSTRIAL LAND,  
LLC, a Florida limited liability  
Company,

THE TOWN OF DAVIE, FLORIDA,  
a municipal corporation,

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_