

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/(954) 797-1101
Prepared by Michael Orfanedes, Urban Forester

SUBJECT: Resolution - Beautification Agreement for north side of Nova Drive adjacent to Westport Plaza, University Commons and University Parc Residences

AFFECTED DISTRICT: District 2

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND BROWARD COUNTY FOR NOVA DRIVE BEAUTIFICATION; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

In its on-going effort to beautify Davie, the Town wishes to enter into an agreement with Broward County to approve the installation of trees in the county-owned right-of-way along the north side of Nova Drive adjacent to Westport Plaza, University Commons and University Parc Residences. Site plans for each of these developments were approved by Town Council with the understanding and agreement by each of the applicants that trees would be installed in the Nova Drive right-of-way at a future point in time at the their expense. The landscaping in front of University Parc Residences has already been installed and this agreement will formalize the installment.

These trees will be installed in the right-of-way area extending from the centerline of SW 71st Avenue to the westbound line of SW 70 Way, and the centerline of College Avenue to the centerline of Davie Rd. While the County owns the right-of-way and the Town owns said improvements, their maintenance and related expenses will be the responsibility of the adjacent above-mentioned property owners along with their landscape buffer consisting of trees, sod, irrigation and sidewalks.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION: Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachments: Resolution, Agreement, and Site Plans

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND BROWARD COUNTY FOR NOVA DRIVE BEAUTIFICATION; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie wishes to beautify Nova Drive by installing trees in the county-owned right-of-way along the north side of Nova Drive extending from the centerline of SW 71st Avenue to the westbound line of SW 70 Way, and the centerline of College Avenue to the centerline of Davie Rd. as a part of site plans approved for three developments known as Westport Plaza, University Commons and University Parc Residences; and

WHEREAS, these improvements consisting of a landscape buffer featuring trees, sod, irrigation and sidewalks will be owned by the Town and serve to beautify the area;

WHEREAS, the Town of Davie has obtained a Beautification Agreement from the Broward County Engineering Division describing the participants to the Agreement, the work to be allowed, the area of right-of-way the Agreement will be applied to, and responsibilities of the Town and Broward County;

WHEREAS, the owners of Westport Plaza, University Commons and University Parc Residences have agreed to maintain said Town-owned improvements at their expense as part of their site plan approval by Town Council;

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 does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between the Town of Davie and Broward County;

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005.

AGREEMENT

Between

BROWARD COUNTY

and

for

RIGHT OF WAY BEAUTIFICATION FOR

THIS IS AN AGREEMENT made and entered into by and between BROWARD COUNTY, a political subdivision of the state of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

_____, a municipal corporation located in Broward County, Florida, organized and existing under the laws of the state of Florida, its successors and assigns, hereinafter referred to as MUNICIPALITY.

WHEREAS, COUNTY is the owner of real property which lies within the right of way of _____, a County Road, and is located in _____; and

WHEREAS, it is of mutual benefit to the residents of COUNTY and MUNICIPALITY to beautify the Right of Way by the installation of landscaping as defined in Article 1, Section 1.6, herein; and

WHEREAS, MUNICIPALITY has expressed its desire to have the Right of Way beautified and to undertake the maintenance of the landscaping following installation in the Right of Way; and

WHEREAS, COUNTY has agreed to permit the use of a portion of the Right of Way as described in Exhibit "A" attached hereto and incorporated herein (the "Property"), subject to the terms and conditions of this Agreement; and

WHEREAS, MUNICIPALITY, by resolution of its governing body adopted on the ____ day of _____, _____, has approved the terms of this Agreement, and has authorized the appropriate officers of MUNICIPALITY to execute this Agreement; and

WHEREAS, COUNTY, by action of its Board of County Commissioners on the ____ day of _____, _____, has approved this Agreement for beautification of the Right of Way and has authorized the appropriate COUNTY officers to execute this Agreement; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises and covenants hereinafter set forth, COUNTY and MUNICIPALITY agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

- 1.1 Agreement: Agreement shall mean this document, Articles 1 through 8, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Board: Board shall mean the Broward County Board of County Commissioners.
- 1.3 Contract Administrator: Contract Administrator shall mean the Director of Highway Construction and Engineering Services Division or the designee of such Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with MUNICIPALITY and to manage and supervise execution and completion of 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 Contract Administrator, provided, however, that such instructions and determinations do not change the Scope of Participation.
- 1.4 COUNTY: COUNTY shall mean Broward County, through the Board, a political subdivision of the State of Florida.
- 1.5 County Attorney: County Attorney shall mean the chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 4.03 of the Broward County Charter.
- 1.6 Division. Division shall mean the Broward County Highway Construction and Engineering Services Division .
- 1.7 Landscape: Landscape or Landscaping shall mean living plant materials such as grasses, and trees or palms and nonliving durable materials commonly used in environmental design such as, but not limited to curbing, rocks, pebbles, sand, paving, decorative pavers, pump systems, grading and irrigation systems as authorized by this Agreement and pursuant to Exhibit B.
- 1.8 MUNICIPALITY: MUNICIPALITY shall mean _____, a municipal corporation of the State of Florida.
- 1.9 Plans: Plans shall mean the construction documents and specifications depicting and defining the Project including but not limited to the materials to be installed within the Property all as described in Exhibit B.
- 1.10 Project: Project shall mean the participation described in Article 2.
- 1.11 Property: Property shall mean the beautified Right of Way described in Exhibit A.

ARTICLE 2 - SCOPE OF PARTICIPATION

COUNTY and MUNICIPALITY shall participate in the beautification of the Right of Way in the manner set forth in this Agreement.

2.1 MUNICIPALITY shall:

2.1.1 MUNICIPALITY shall make application to the Division for a permit or cause application to be made for a permit, for the installation of the landscaping set forth in the Plans which have previously been approved by COUNTY. Installation of the Landscaping authorized by this

Agreement shall not proceed until the Division permit(s) has/have been issued and permit conditions for commencement of construction have been satisfied.

2.1.2 Once conditions for commencement of construction have been satisfied and construction has commenced, MUNICIPALITY shall complete to the satisfaction of the Contract Administrator, all construction in accordance with this Agreement, applicable provisions of the Broward County Minimum Standards and the Division permit.

2.1.3 At MUNICIPALITY's sole cost and expense, install and maintain, or cause to have installed and maintained, consistent with prudent and well reasoned installation and maintenance procedures and techniques, all Landscaping within the Right of Way in a manner that will not pose a hazard to persons or vehicles on adjacent property or the Right of Way, in accordance with the Plans, and install an automatic irrigation system.

2.1.4 Provide signed and sealed certified as-built drawings detailing the pertinent information regarding the installation, per the Plans, prior to requesting a final inspection from the Contract Administrator.

2.1.5 Properly maintain and fertilize all vegetation; keep all vegetation as free from disease and harmful insects as practicable; properly mulch the vegetation beds, keeping them free from weeds; periodically mow the grass in order to maintain a neat and proper appearance; prune all plants so as to remove all dead or diseased parts of plants and all parts of plants which present a visual hazard or physical obstacle to the use of the Right of Way; remove and replace all vegetation which is dead or diseased or which otherwise falls below the initial level of beautification of the Right of Way and keep litter removed from the Right of Way. Any replacement of vegetation as required herein, shall be accomplished by the use of plants of the same grade as specified in the original Plans and shall be of the same size as those existing at the time of replacement or with a mutually agreed upon substitution.

2.1.6 Not by its use or occupancy cause damage to the Property.

2.1.7 Give the COUNTY, or its agent, prompt written notice as set forth in Article 5 of any occurrence, incident or accident occurring on the Property.

2.2 COUNTY shall:

2.2.1 Upon receipt of a completed application for permit and the approved Plans, by the Contract Administrator, review the application for completeness and either reject the application or process the application for issuance of the permit.

2.2.2 Reserve the right to inspect and reject work which does not meet the requirements of the Plans.

2.2.3 After receiving the signed and sealed certified as-built drawings detailing the pertinent information regarding the installation per the Plans and request for a final inspection the Contract Administrator and other interested parties, perform a final inspection.

2.2.4 Upon receipt of all paperwork and completion of all inspection, through the Contract Administrator notify MUNICIPALITY as to the status of the Project.

2.2.5 Have no further obligation except as otherwise specifically set forth herein.

2.3 COUNTY and MUNICIPALITY agree that all improvements placed upon the Property shall remain the property of MUNICIPALITY, and shall be placed upon the Property at the risk of MUNICIPALITY.

2.4 COUNTY and MUNICIPALITY agree and understand that this Agreement does not change the County road functional classification.

ARTICLE 3 - TERM AND TERMINATION

3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall terminate as provided for by Sections 3.2 through 3.7 herein below.

3.2 This Agreement may be terminated for cause by COUNTY, through action of the Board if the MUNICIPALITY has not corrected the breach within thirty (30) day of written notice given by the COUNTY to the MUNICIPALITY setting forth the breach. If MUNICIPALITY corrects the breach within thirty (30) days after written notice of same, to the sole satisfaction of the COUNTY, the Agreement shall remain in full force and effect. If such breach is not corrected and improved within thirty (30) days of receipt of notice of breach, the COUNTY may terminate the Agreement. Specifically in the case of MUNICIPALITY's requirement to maintain the beautified Right of Way, COUNTY, at the option of the Contract Administrator, may cause such breach to be corrected and improved and bill MUNICIPALITY for the costs of such correction and improvement or terminate this Agreement. If COUNTY opts to correct and improve the breach and bill MUNICIPALITY for same, MUNICIPALITY shall then remit to COUNTY the amount so billed within thirty (30) days of MUNICIPALITY's receipt thereof.

3.3 Termination of this Agreement for cause shall include, but not be limited to failure of the MUNICIPALITY to suitably perform the services required by Article 2 herein, failure of the MUNICIPALITY to maintain the beautified Right of Way pursuant to the terms of this Agreement, and failure of the MUNICIPALITY to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.

3.4 This Agreement may be terminated for convenience by COUNTY upon thirty (30) day written notice given by COUNTY to MUNICIPALITY. This Agreement may also be terminated by County's Contract Administrator upon such notice as Contract Administrator deems appropriate in the event that the Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

3.5 In the event this Agreement is terminated for convenience, upon being notified of election to terminate, the parties shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. MUNICIPALITY acknowledges and agrees that ten dollars (\$10.00), the adequacy of which is hereby acknowledged by MUNICIPALITY, is given as specific consideration to MUNICIPALITY for County's right to terminate this Agreement for convenience.

3.6 Notice of termination shall be provided in accordance with the Article 5, NOTICES, except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with Article 5, NOTICES.

3.7 In the event this Agreement is terminated, or upon being notified of COUNTY's election to terminate, MUNICIPALITY shall obtain a Division permit and remove from the Property, at MUNICIPALITY'S sole expense, anything placed upon it unless COUNTY, in writing, authorizes MUNICIPALITY to leave any landscaping or improvements on the Property

3.7.1 MUNICIPALITY shall peaceably surrender and deliver the Property to the COUNTY, or its agents immediately upon termination of this Agreement.

3.7.2 COUNTY shall have no obligation to remove, relocate, reinstall, replace, or in any way compensate MUNICIPALITY for any loss resulting from or arising out of the termination of this Agreement, the requirement to remove improvements or landscaping, or the removal of the same by the COUNTY upon failure of the MUNICIPALITY to restore the Property.

3.7.3 MUNICIPALITY agrees to return the Property to safe condition following removal of any improvements or landscaping.

3.7.4 MUNICIPALITY shall be obligated to repair or pay for any damage to COUNTY property resulting from the removal of landscaping or improvements.

3.7.5 If mitigation is required as a result of termination, MUNICIPALITY shall obtain a Broward County Department of Planning and Environmental Protection license pertaining to Chapter 27, Article XIV, Sections 401 through 430 of the Broward County Tree Preservation and Abuse Ordinance, as last amended, to provide for relocation, removal and replacement per the tree removal license requirements at MUNICIPALITY's sole cost and expense.

ARTICLE 4 - CHANGES IN SCOPE OF PARTICIPATION

Any change to the Scope of Participation must be accomplished by a written amendment, executed by the parties in accordance with Section 8.11 below.

ARTICLE 5 - NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

FOR MUNICIPALITY:

Director, Highway Construction and
Engineering Division
One North University Drive
Suite 300B
Plantation, Florida 33324-2038

ARTICLE 6 - INDEMNIFICATION

6.1 MUNICIPALITY is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its agents or employees to the

extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

6.2 In the event that MUNICIPALITY contracts with a third party to provide the services set forth herein, addressed herein above, any contract with such third party shall include the following provisions:

6.2.1 Indemnification: MUNICIPALITY's contractor shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, 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 MUNICIPALITY's contractor, 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. To the extent considered necessary by Contract Administrator and County Attorney, any sums due MUNICIPALITY's contractor under this Agreement may be retained by MUNICIPALITY and/or COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by MUNICIPALITY and/ or COUNTY.

6.2.2 In order to insure the indemnification obligation MUNICIPALITY's contractor shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Article 7, Section 7.2, in accordance with the terms and conditions required by this Article.

6.2.3 The policies referred to in Section 6.2.2 herein above shall be without any deductible amount and shall be issued by United States Treasury approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

ARTICLE 7 - INSURANCE

7.1 SECOND PARTY is an entity subject to Section 768.28, Florida Statutes, and SECOND PARTY shall furnish Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of said agreement.

7.2 In the event that MUNICIPALITY contracts with a third party to provide the services set forth herein, any contract with such third party shall include the following provisions:

7.2.1 Insurance: MUNICIPALITY's contractor shall at all times during the term of this Agreement keep and maintain in full force and effect, at contractor's sole cost and expense, Comprehensive General Liability with minimum limits of \$500,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Workers' Compensation insurance with minimum limits of \$100,000 .00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability and Workers Compensation policy, without restrictive endorsements, as filed by the Insurance Services Office and shall name COUNTY and Broward County Board of County Commissioners

as an additional insured. and shall name COUNTY and Broward County Board of County Commissioners as an additional insured.

7.2.2 MUNICIPALITY's contractor shall furnish to the Contract Administrator Certificates of Insurance or Endorsements evidencing the insurance coverages specified by this Article prior to the beginning performance of work under this Agreement.

7.2.3 Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of MUNICIPALITY's contractor is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

ARTICLE 8 - MISCELLANEOUS

8.1 AUDIT RIGHT AND RETENTION OF RECORDS. COUNTY shall have the right to audit the books, records, and accounts of MUNICIPALITY that are related to this Project. MUNICIPALITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. MUNICIPALITY shall preserve and make available, at reasonable times for examination and audit by COUNTY, 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 COUNTY to be applicable to MUNICIPALITY's records, MUNICIPALITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by MUNICIPALITY. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

8.2 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT. MUNICIPALITY 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. MUNICIPALITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, MUNICIPALITY 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.

8.2.1 MUNICIPALITY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 162), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

8.2.2 MUNICIPALITY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 162) in performing any services pursuant to this Agreement.

8.3 THIRD PARTY BENEFICIARIES. Neither MUNICIPALITY nor COUNTY intend to directly or substantially benefit a third party by 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.

8.4 ASSIGNMENT AND PERFORMANCE. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. MUNICIPALITY represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scoop of Participation and to provide and perform such services to COUNTY's satisfaction. MUNICIPALITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of MUNICIPALITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

8.5 MATERIALITY AND WAIVER OF BREACH. COUNTY and MUNICIPALITY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. COUNTY's failure 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.

8.6 COMPLIANCE WITH LAWS. MUNICIPALITY shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.7 SEVERANCE. In the event 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 COUNTY or MUNICIPALITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.8 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.

8.9 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 Articles 1 through 8 of this Agreement shall prevail and be given effect.

8.10 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 the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

8.11 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 Board and MUNICIPALITY.

8.12 PRIOR AGREEMENTS. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 8.11 above.

8.13 INCORPORATION BY REFERENCE. The truth and accuracy of each Whereas clause set forth above is acknowledged by the parties. The attached exhibits are incorporated into and made a part of this Agreement.

8.14 MULTIPLE ORIGINALS. This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action and MUNICIPALITY of _____, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By _____,
Mayor

____ day of _____, 200__.

Approved as to form by
Office of County Attorney
Broward County, Florida
EDWARD A. DION, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Pamela M. Kane
Assistant County Attorney

____ day of _____, 200__

AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR RIGHT OF
WAY BEAUTIFICATION FOR _____

MUNICIPALITY

WITNESSES:

ATTEST:

_____, Clerk

(CORPORATE SEAL)

By _____
Mayor-Commissioner

____ day of _____, 200__.

_____, Manager

____ day of _____, 200__.

APPROVED AS TO FORM:

By _____
, Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF RIGHT-OF-WAY TO BE IMPROVED

The rights-of-way to be improved includes the swale area along the Nova Drive frontage of each of the following properties: University Parc, University Commons and Westport Plaza. The legal description of these rights-of-way will be provided by Broward since Nova Drive is a county road and the rights-of-way belong to the county. As such, Broward County will handle recording the legal description, not the Town.

EXHIBIT "B"

Please see attached landscape plans featuring Nova Drive frontages for University Parc, University Commons and Westport Plaza properties. Additional copies of the landscape plans may be obtained from the Town of Davie Development Services Division, 7591 Orange Drive, Davie, FL 33314. Plans for landscaping, etc. improvements proposed to be installed within the property, described in Exhibit B and which are on file with the Broward County Engineering Division under Project Reference No.

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