

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Chris Kovanes, Town Administrator  
Prepared By: Colleen Ryan, Grants Specialist/ 797-1024

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR THE ACQUISITION, IMPROVEMENT, OPERATION AND MANAGEMENT OF OPEN SPACE SITE OS-05, ALSO KNOWN AS SUNDANCE; AND AUTHORIZING THE EXECUTION AND FILING OF A DECLARATION OF RESTRICTIVE COVENANTS FOR THE SITE.

**REPORT IN BRIEF:** The Sundance site, also known as SW 71 Terrace Park, was acquired by the Town of Davie on December 23, 2002. The site has been approved for partial reimbursement funding under the Broward County Safe Parks and Land Preservation Bond Program as Open Space Site OS-05. The Town should receive \$775,491. For this program, the Town must enter into an interlocal agreement with Broward County agreeing to specified terms and conditions for the site's development and management. This resolution authorizes the Mayor and Town Administrator to execute the Interlocal Agreement attached as Exhibit A.

The Bond Program also requires that a "Declaration of Restrictive Covenants" for the parcel be recorded in the Public Records of Broward County to preserve the site as open space for recreational use in perpetuity. This resolution authorizes the execution and filing of the Declaration of Restrictive Covenants attached as Exhibit B.

**PREVIOUS ACTIONS:** R-2002-290 Purchase of Sundance at Davie, Inc. site; R-2003-103 authorizing submission of the site for reimbursement funding under the bond program.

**CONCURRENCES:** None

**FISCAL IMPACT:** Reimbursement to the Town of \$ 775,491 for some acquisition costs.

**RECOMMENDATION(S):**

**Attachment(s):** Resolution, Exhibit A - Interlocal Agreement, Exhibit B - Declaration of Restrictive Covenants.

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR THE ACQUISITION, IMPROVEMENT, OPERATION AND MANAGEMENT OF OPEN SPACE SITE OS-05, ALSO KNOWN AS SUNDANCE, AND AUTHORIZING THE EXECUTION AND FILING OF A DECLARATION OF RESTRICTIVE COVENANTS FOR THE SITE.

WHEREAS, the Town of Davie purchased the Sundance at Davie property, located at 2300 SW 71 Terrace, on December 23, 2002 as a future park site; and

WHEREAS, the Town of Davie submitted the site for funding consideration under the Broward County Land Preservation Bond Program, and the site was approved and added to the Broward County Open Space Inventory as Site #OS-05; and

WHEREAS, in agreement with the terms of the Land Preservation Bond Program, the Town of Davie desires to enter into the Interlocal Agreement with Broward County attached as "Exhibit A" which sets terms and conditions for the acquisition, improvement, and management of Site OS-05, and which will be recorded in the public records of Broward County; and

WHEREAS, the Town of Davie desires to restrict use of Site OS-05 for recreational use in accordance with the terms of the bond program as stated in the Declaration of Restricted Covenants attached as "Exhibit B," and which will be recorded in the public records of Broward County.

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

Section 1. The Town of Davie authorizes the Mayor and Town Administrator to execute the Interlocal agreement with Broward County for Site OS-82, which is attached as "Exhibit A."

Section 2. The Town of Davie authorizes the Mayor and Town Administrator to execute the Declaration of Restrictive Covenants, which is attached as "Exhibit B."

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

EXHIBIT A

Return recorded document to:  
Environmental Protection Department  
Land Preservation Section  
115 South Andrews Avenue, Room A-240  
Ft. Lauderdale, FL 33301

Document prepared by:  
Sharon L. Cruz, Deputy County Attorney  
Suite 423, Governmental Center  
115 South Andrews Avenue  
Fort Lauderdale, FL 33301

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INTERLOCAL AGREEMENT FOR THE  
ACQUISITION, IMPROVEMENT, ENHANCEMENT,  
OPERATION AND MANAGEMENT OF  
OPEN SPACE SITE OS-05, SUNDANCE

This is an Interlocal Agreement, made and entered into by and between:  
BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred  
to as "COUNTY,"

AND

TOWN OF DAVIE, a Florida municipal corporation, created and existing under  
the laws of the State of Florida, hereinafter referred to as "TOWN."

WHEREAS, TOWN is: (i) acquiring conservation, green space or open space  
land with proceeds of the Bonds (hereinafter defined within Section 1.7 of this  
Agreement), or (ii) receiving reimbursement from proceeds of the Bonds for the prior  
acquisition of such lands, or (iii) receiving title from COUNTY to such lands previously  
acquired by COUNTY involving the proceeds of the Bonds; and

WHEREAS, this Agreement is entered into in order to impose terms, conditions,  
and restrictions on TOWN's use of Bond proceeds on lands acquired by TOWN with  
Bond proceeds or on lands for which TOWN received reimbursement from Bond  
proceeds for prior acquisition or on lands acquired by COUNTY which are transferred to  
TOWN; and

WHEREAS, this Agreement is entered into pursuant to § 163.01, Florida  
Statutes, also known as the "Florida Interlocal Cooperation Act of 1969"; and

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; and

WHEREAS, it is the purpose and intent of the parties to this Interlocal Agreement, to permit COUNTY and TOWN to make the most efficient use of their respective powers, resources and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby accomplish the objectives provided for herein in the manner that will best accord with the existing resources available to each of them and with the needs and developments within their respective jurisdictions; and

WHEREAS, TOWN and COUNTY desire to enter into a cooperative agreement regarding the acquisition, preservation, improvement/enhancement, operation and management of a parcel of property described in Exhibit "A," attached hereto and made a part hereof and hereinafter referred to as the "Site"; NOW, THEREFORE,

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

ARTICLE 1  
BACKGROUND, PURPOSE, INTENT AND DEFINITIONS

- 1.1 The above recitals are true and correct and incorporated herein as if set forth in full hereunder.
- 1.2 It is the purpose and intent of this Interlocal Agreement for COUNTY and TOWN, pursuant to Section 163.01, Florida Statutes, to cooperate and provide for a means by which each governmental entity may exercise its respective powers, privileges and authorities which they share in common and which each might exercise separately in order to further a common goal.
- 1.3 In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax-exempt status of the Bonds is not jeopardized, TOWN and COUNTY agree to amend the Agreement accordingly.
- 1.4 In order to further the efforts to be undertaken by COUNTY in connection with the acquisition, preservation, improvement/enhancement, operation and management of the Site, the parties hereto acknowledge and agree to cooperate with each other to the fullest extent reasonably necessary to accomplish the mutual desire of the parties that the project be successfully completed.

- 1.5 This Agreement and the covenants and restrictions contained herein shall run with the Site and shall bind, and the benefits shall inure to, respectively COUNTY and TOWN and their respective successors and assigns.
- 1.6 This Agreement will be effective upon execution by both parties.
- 1.7 Definitions - For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

"Bonds" shall mean the Broward County, Florida General Obligation Bonds issued in one or more series pursuant to Resolution 2000-1062 and Resolution 2000-1063 adopted by the Board of County Commissioners of Broward County relative to parks and/or conservation lands, green space and open space lands.

"Bond Restrictions" shall mean the terms, conditions, and limitations imposed by any resolution adopted by the Board of County Commissioners of Broward County authorizing the issuance of Bonds and the official statement and the terms, conditions, and limitations contained in any contracts, covenants or instruments executed in connection with the Bonds.

"Disallowable Activities" shall mean those activities and uses not consistent with the Bond Restrictions or those activities or uses prohibited by those restrictive covenants or conservation easements required by this Agreement or those activities or uses set forth within Article 5 of this Agreement.

## ARTICLE 2 MANAGEMENT PLAN

If the Site is Conservation Lands or Green Space, a Conceptual Resource Management Plan which broadly describes the proposed use of the Site and the manner in which the TOWN proposes to preserve and enhance the Site shall be attached as Exhibit "B." If the Site is Open Space land, a Conceptual Open Space Park Management Plan which broadly describes the proposed use of the Site as open space shall be attached as Exhibit "B."

## ARTICLE 3 ACQUISITION BY TOWN OR TRANSFER OF TITLE

- 3.1 TOWN shall purchase or has purchased the Site without COUNTY participation in the acquisition. COUNTY shall reimburse the TOWN up to the grant amount

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of \$752,700 (plus appropriate closing costs to include appraisals, survey, environmental site assessment, title search and recording fees) approved by the Land Preservation and Acquisition Advisory Board (LPAAB) and the Broward County Commission upon receipt of the following:

3.1.1 A copy of the recorded deed for the Site; **AND**

3.1.2 FOR OPEN SPACE SITES - An executed Declaration of Restrictive Covenants acceptable to the COUNTY, which shall include such covenants and restrictions sufficient to ensure that the use of the Site at all times complies with the Bond Restrictions. COUNTY shall record the Declaration of Restrictive Covenants.

FOR CONSERVATION OR GREEN SPACE SITES – An executed Conservation Easement acceptable to the COUNTY, which shall include such covenants and restrictions sufficient to ensure that the use of the Site at all times complies with the Bond Restrictions. COUNTY shall record the Conservation Easement.

**AND**

3.1.3 A performance bond, letter of credit or a resolution of the TOWN acceptable to the COUNTY indicating that the obligations set forth in the Conceptual Resource or Open Space Park Management Plan will be included within the TOWN's 5 Year Capital Improvements Program as set forth within the timeline contained in the Conceptual Resource or Open Space Park Management Plan. The performance bond, letter of credit or resolution shall guarantee the TOWN's performance of the obligations set forth in the Conceptual Resource or Open Space Park Management Plan which will include, at a minimum, securing the site, removing trash and debris, removing invasive exotic species, replanting native vegetation, providing for public access and establishing a timeline for the completion of these activities.

3.2 In addition to the above requirements, each parcel to which TOWN acquires title to the Site shall be subject to such covenants and restrictions as are, at a minimum sufficient to ensure that the use of the Site at all times complies with the applicable trust indenture(s) under which the Bonds are issued and any provision of the Internal Revenue Code or the regulations promulgated thereunder that pertain to tax-exempt bonds.

3.3 Any payments will be made payable to TOWN and forwarded to TOWN at:

Town of Davie  
6591 Orange Drive  
Davie, FL 33314

ARTICLE 4  
GENERAL CONDITIONS

4.1 The amount of the performance bond, letter of credit or capital improvement funding shall be determined based upon the site modification requirements set forth within the Conceptual and Final Resource or Open Space Park Management Plan or Conservation Land Ecological Restoration Plan. In the event that TOWN fails to perform the obligations set forth within the Conceptual and Final Resource or Open Space Park Management Plan, COUNTY shall be entitled to proceed under Article 8, Default and Remedy provisions of this Agreement. TOWN shall ensure that the performance bond or letter of credit remains valid and in full force and effect until TOWN's obligation pursuant to the Conceptual and Final Resource or Open Space Park Management Plan or Conservation Land Ecological Restoration Plan is performed. Termination or expiration of the bond or letter of credit prior to TOWN's performance of such obligation, or notice to COUNTY that the bond or letter of credit will expire or has been canceled or disaffirmed prior to TOWN's satisfaction of its obligations hereunder, shall constitute a default of this Agreement. If a resolution is provided by the TOWN, the removal of the obligations set forth in the Conceptual and Final Resource or Open Space Park Management Plan or Conservation Land Ecological Restoration Plan from the TOWN's 5 Year Capital Improvements Program before the obligations have been completed shall constitute a default of this Agreement. In the event of such a default COUNTY shall be entitled to proceed under the Article 8, Default and Remedies provisions of this Agreement.

4.2 Conservation Land and Green Space Sites:

4.2.1 TOWN shall prepare a Final Resource Management Plan and submit it to the LPAAB for approval within one (1) year from the date of the title transfer. Upon approval by the LPAAB, the Plan shall be filed with the COUNTY. The Resource Management Plan shall describe management goals and measurable objectives to preserve and enhance the environmental features of the Site and mitigate any potential environmental damage. The Resource Management Plan shall include an implementation schedule detailing TOWN's timetable for the enhancement, improvement and preservation activities. The Resource Management Plan shall be consistent with COUNTY standards for Conservation Land/Green Space Sites. Under no circumstances shall organized sports be a permissible activity on the Site. Any proposed use

for the Site shall be consistent with the terms and conditions contained in the COUNTY's Land Preservation Bond Program, as set forth in Broward County Resolution No. 2000-1230.

- 4.2.2 A Conservation Land Ecological Restoration Plan will be prepared by the TOWN and submitted for approval to the LPAAB for the ecological restoration of designated Conservation Lands, if present, before any ecological restoration operation or site development is initiated. The Conservation Land Ecological Restoration Plan shall contain an ecological restoration cost projection. After the completion of the ecological restoration operations in accordance with the Conservation Land Ecological Restoration Plan, COUNTY shall reimburse TOWN for the costs sustained by TOWN to a maximum amount not to exceed \$ N/A within ninety (90) days from the reimbursement request. COUNTY shall not make any payments to TOWN in advance of the completion of the ecological restoration.
- 4.3 Open Space Sites: TOWN shall prepare a Final Open Space Park Management Plan and submit it to the LPAAB for approval within one (1) year from the date of reimbursement by COUNTY or within one (1) year of the closing if the COUNTY contributed the grant amount at the time of acquisition. Upon approval by the LPAAB, the Plan shall be filed with the COUNTY. The Final Open Space Park Management Plan shall at a minimum set forth how the Site will be used by the TOWN, how much land is necessary to be paved for infrastructure and active recreation, a requirement that native trees be used in landscaping, clearing of exotic invasive species and the accessibility of the site to the general public. Additionally, the TOWN shall describe how *NatureScape Broward* principles will be utilized on the site after development occurs. These principles which include actions such as reducing the amount of irrigation, fertilizer and pesticide use will be described in the Final Open Space Park Management Plan. The TOWN shall apply for certification under the *Florida Yards & Neighborhoods* or *Backyard Wildlife Habitat* programs once site development has occurred. The Final Open Space Park Management Plan shall describe management goals and measurable objectives. The Final Open Space Park Management Plan shall include an implementation schedule detailing TOWN's timetable for the enhancement and improvement activities. The Final Open Space Park Management Plan shall be consistent with COUNTY standards for Open Space Sites. Any proposed use for the Site shall be consistent with the terms and conditions contained in the COUNTY's Land Preservation Bond Program, as set forth in Broward County Resolution No. 2000-1230.
- 4.4 Any amendment to the Final Resource Management Plan or Conservation Land Ecological Restoration Plan or Final Open Space Park Management Plan shall

not be effective until such time as it is mutually agreed upon by the TOWN and the Land Preservation and Acquisition Advisory Board and filed with the COUNTY.

- 4.5 Conservation Land and Green Space Sites: TOWN shall manage or cause the Site to be managed in accordance with the approved Final Resource Management Plan and Conservation Land Ecological Restoration Plan for the conservation, protection and enhancement of natural resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Site, along with other related uses necessary for the accomplishment of this purpose. TOWN covenants that TOWN will not commit waste to or on the Site, and TOWN shall use due care and diligence to prevent others from doing same. TOWN covenants to keep and maintain the Site in good order and condition and, furthermore, covenants that TOWN shall not commit a nuisance on the Site or knowingly permit others to do so; nor shall TOWN itself use the Site for any unlawful purpose, or allow any other person to do so.
- 4.6 Open Space Sites: TOWN shall manage or cause the Site to be managed in accordance with Resolution 2000-1230 adopted by the Board of County Commissioners and the approved Final Open Space Park Management Plan. TOWN covenants that TOWN will not commit waste to or on the Site, and TOWN shall use due care and diligence to prevent others from doing same. TOWN covenants to keep and maintain the Site in good order and condition and, furthermore, covenants that TOWN shall not commit a nuisance as set forth in Chapter 823, F.S., on the Site or knowingly permit others to do so; nor shall TOWN itself use the Site for any unlawful purpose, or allow any other person to do so.
- 4.7 TOWN shall not make enhancements at the Site in conflict with the Final Resource or Open Space Park Management Plan as described above. TOWN shall notify COUNTY's Contract Administrator of intended enhancements at the Site, reasonably before implementation of same. TOWN shall have all access required for its enhancement responsibilities. COUNTY acknowledges that COUNTY's Contract Administrator may need to assist in resolving any conflicts which may exist between COUNTY departments in order for TOWN to properly proceed with enhancements.
- 4.8 COUNTY agrees that it will join, cooperate and shall execute such reasonable documents as may be required by law in connection with grants of easements or restrictive covenants. The approval of any development or environmental permits by the COUNTY shall be in accordance with applicable laws and ordinances.

- 4.9 COUNTY staff or its duly authorized representatives shall have the right at any time to inspect the Site and the operations of TOWN at the Site.
- 4.10 If TOWN obtains a grant from an agency of the State of Florida for any portion of the moneys required for the acquisition of the Site or reimbursement of moneys used to acquire the Site, TOWN will use its best efforts to ensure that any reverter language required by the State includes a commitment by the State (in the event fee simple title to the Site reverts to the State) that the use of the Site will at all times comply with the applicable trust indenture(s) under which the Bonds are issued and any provision of the Internal Revenue Code or the regulations promulgated thereunder that pertain to tax-exempt bonds.
- 4.11 Any transfer of title of the Site, excluding transfer of title to the State as set forth above, shall be subject to the approval of COUNTY and COUNTY shall enter into a new agreement with the transferee, containing such covenants or clauses, or other restrictions as are sufficient to protect the interests of the Bond holders.
- 4.12 If the Land Preservation and Acquisition Advisory Board is no longer in existence, the Final Resource Management Plan and/or the Conservation Land Ecological Restoration Plan or Final Open Space Park Management Plan and any amendments to the Plan shall be submitted to the Board of County Commissioners for approval.
- 4.13 TOWN agrees to initiate a land use plan map amendment to the Broward County Land Use Plan and the local Land Use Plan amending the land use designation of the Site to Recreation and Open Space use or comparable local land use designation for Open Space Sites or to Conservation for Conservation or Green Space Sites.
- 4.14 TOWN shall ensure that all activities on the Site comply with applicable local, state, regional and federal laws and regulations, including zoning ordinances and the TOWN and COUNTY comprehensive plans.

ARTICLE 5  
OBLIGATIONS INCURRED BY TOWN  
AS A RESULT OF BOND PROCEEDS BEING UTILIZED  
TO PURCHASE SITE

- 5.1 If the Site is to remain subject after its acquisition to any of the below listed activities or interests, TOWN shall provide at least sixty (60) days written notice of any such activity or interest to COUNTY prior to the activity taking place, and shall provide to COUNTY such information with respect thereto as COUNTY

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reasonably requests in order to evaluate the legal and tax consequences of such activity or interest:

- 5.1.1 Any lease of any interest in the Site to a non-governmental person or organization.
  - 5.1.2 The operation of any concession on the Site to a non-governmental person or organization.
  - 5.1.3 Any sales contract or option to buy things attached to the Site to be severed from the Site with a non-governmental person or organization.
  - 5.1.4 Any use of the Site by non-governmental persons other than in such person's capacity as a member of the general public.
  - 5.1.5 A management contract of the Site with a non-governmental person or organization.
  - 5.1.6 Such other activity or interest as may be specified from time to time in writing by COUNTY to TOWN.
- 5.2 TOWN agrees and acknowledges that the following transactions, events, and circumstances may not be permitted on the Site as they may have negative legal and tax consequences under Florida Law and federal income tax law. TOWN shall provide at least sixty (60) days written notice of any such activity or interest to COUNTY prior to the activity taking place, and shall provide to COUNTY such information with respect thereto as COUNTY reasonably requests in order to evaluate the legal and tax consequences of such activity or interest.
- 5.2.1 A sale of the Site or lease of the Site to a non-governmental person or organization.
  - 5.2.2 The operation of a concession on the Site by a non-governmental person or organization.
  - 5.2.3 A sale of things attached to the Site to be severed from the Site to a non-governmental person or organization.
  - 5.2.4 Any change in the character or use of the Site from that use expected at the date of the issuance of any series of Bonds from the disbursement is to be made.

- 5.2.5 Any use of the Site by non-governmental persons other than in such person's capacity as a member of the general public.
- 5.2.6 A management contract of the Site with a non-governmental person or organization.
- 5.2.7 Such other activity or interest as may be specified from time to time in writing by COUNTY to TOWN.
- 5.3 Delegations and contractual arrangements between TOWN and other governmental bodies, not-for-profit entities, or non-governmental persons for use or management of the Site will in no way relieve TOWN of the responsibility to ensure that the conditions imposed herein on the Site as a result of utilizing Bond proceeds to acquire the Site are fully complied with by the contracting party.

ARTICLE 6  
IMPROVEMENT, OPERATION  
AND MANAGEMENT RESPONSIBILITIES

- 6.1 COUNTY and TOWN agree that TOWN shall be solely responsible for the improvement, operation and management of the Site in accordance with the terms of this Interlocal Agreement and the Final Resource or Open Space Park Management Plan.
- 6.2 TOWN agrees that the Site and all its facilities and amenities will be available to all residents of Broward County for activities set forth within this Agreement and that any entrance, user or other fees or conditions assessed by TOWN will be identical for all residents of Broward County.
- 6.3 COUNTY agrees to provide TOWN with technical assistance in the implementation of the Final Resource or Open Space Park Management Plan for the utilization of the Site, if requested by TOWN at no cost to TOWN.
- 6.4 TOWN agrees to provide access to COUNTY personnel to provide, if COUNTY so desires, the public with nature interpretation programs.
- 6.5 TOWN shall be solely responsible to obtain and shall promptly pay all charges for telephone, gas, water, electricity, sewage, garbage removal and any other utility used or consumed at the Site.
- 6.6 COUNTY shall monitor the Site for compliance with the provisions of the Final Resource or Open Space Park Management Plan for a period of five (5) years

from the date of the mutual acceptance and approval of the Final Resource or Open Space Park Management Plan.

- 6.7 TOWN shall submit an annual report to the COUNTY indicating all operations, enhancements, and site development which occurred during the previous year for a period of five (5) years.
- 6.8 TOWN shall, through its agents and employees, prevent the unauthorized use of the Site or any use thereof not in conformity with the Conceptual and Final Resource or Open Space Park Management Plan.
- 6.9 If the TOWN is the recipient of a grant jointly with Broward County for this project, the TOWN, as manager of the site, shall be responsible for compliance with all requirements of the grant agreement including, but not limited to, management plan implementation, appropriate site management, site monitoring and preparation of all reports required by the granting agency in compliance with the agency's time frames as established in the management plan. The TOWN shall submit a copy of the annual Agency report to the COUNTY. If this report adequately provides the requested information of Section 6.7 above, then the annual report submitted to the Agency may replace the annual report required by the County.

ARTICLE 7  
CONSTRUCTION OF ENHANCEMENTS

- 7.1 TOWN agrees to include the following language in any contract it enters into with selected contractor(s) [said contractor(s) referred to as "CONTRACTOR"] engaged to complete any improvements contemplated by this Interlocal Agreement:

GENERAL INDEMNIFICATION: CONTRACTOR shall indemnify and hold harmless COUNTY and TOWN, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require CONTRACTOR to indemnify COUNTY or TOWN, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against COUNTY or TOWN by reason of any such claim

or demand, CONTRACTOR shall, upon written notice from COUNTY, resist and defend such action or proceeding by counsel satisfactory to COUNTY.

The indemnification provided above shall obligate CONTRACTOR to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at COUNTY's and TOWN's option, any and all claims of liability and all suits and actions of every name and description covered by the above provisions which may be brought against COUNTY or TOWN whether performed by CONTRACTOR, or persons employed or utilized by CONTRACTOR.

Nothing contained herein is intended nor shall it be construed to waive TOWN's and COUNTY's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time.

- 7.2 TOWN agrees to include in its agreement with any successful contractor(s) the requirement that the contractor(s) maintain at least the following insurance requirements throughout the term of the Agreement and further agrees to provide to COUNTY, prior to commencement of any improvements at the Site, Certificates of Insurance evidencing the CONTRACTOR's compliance with the requirements of this section:

INSURANCE REQUIREMENTS:

- A. Without limiting any of the other obligations or liabilities of CONTRACTOR, CONTRACTOR shall provide, pay for and maintain in force until all of its work to be performed under this Interlocal Agreement has been completed and accepted by TOWN (for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein:
1. Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
    - a. Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

- b. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and Jones Act.
2. Comprehensive General or Commercial Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) 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 or Commercial Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
- a. Premises and/or Operations.
  - b. Independent Contractors.
  - c. Products and/or Completed Operations.
  - d. Explosion, Collapse and Underground Coverages.
  - e. Broad Form Property Damage.
  - f. Broad Form Contractual Coverage applicable to this specific Interlocal Agreement, including any hold harmless and/or indemnification agreement.
  - g. Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
  - h. COUNTY is to be expressly included as an "Additional Insured" in the name of the "Board of County Commissioners of Broward County, Florida" with respect to liability arising out of operations performed for TOWN by or on behalf of CONTRACTOR or acts or omissions of COUNTY or TOWN.
3. Business Automobile Liability with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) 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 Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- a. Owned Vehicles.
  - b. Hired and Non-Owned Vehicles.
- B. If the initial insurance expires prior to the completion of the work, renewal copies of policies shall be furnished thirty (30) days prior to the date of their expiration.
- C. Notice of Cancellation and/or Restriction - The Certification of Insurance will reflect thirty (30) days prior notice of cancellation and/or restriction to the COUNTY and TOWN.
- D. The CONTRACTOR shall furnish to the TOWN's Risk Management Department Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) calendar days after notification of award. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Interlocal Agreement and state that such insurance is as required by this Interlocal Agreement.
- E. CONTRACTOR shall not commence work under the Interlocal Agreement until after it has obtained all the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by TOWN. CONTRACTOR shall not permit any subcontractor to begin work until after similar minimum insurance to cover the subcontractor has been obtained and approved.
- 7.3 TOWN agrees that prior to commencement of any construction at the Site, TOWN through its contractor(s), shall deliver or cause to be delivered to COUNTY one or more Payment and Performance Bond(s) ("Bond") for the Project naming COUNTY and TOWN as dual obligees in said Bond; which Bond shall be in an amount at least equal to one hundred percent (100%) of the contract price.
- 7.4 TOWN shall ensure that all warranties and guarantees for any construction, workmanship and/or materials and equipment constructed, installed and/or affixed on the Site, shall run to both TOWN and COUNTY.

ARTICLE 8  
DEFAULT AND REMEDIES

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- 8.1 COUNTY shall have the right at any time to inspect the Site described herein in order to determine compliance with this Interlocal Agreement. In the event that TOWN is engaging in or allowing others to engage in Disallowable Activities on the Site, TOWN agrees to immediately cease or cause the cessation of the Disallowable Activity upon receipt of written notice from the COUNTY. In the event that either party fails to keep and perform any essential term or condition of this Interlocal Agreement, the other party shall provide written notice requiring the satisfactory and immediate correction of that failure within ninety (90) days. If the failure is not remedied within said ninety (90) days to the satisfaction of the other party, this occurrence shall be deemed to be an event of default.
- 8.2 Both parties acknowledge and agree that, in the event that the TOWN fails to materially comply with the covenants and restrictions as are sufficient to ensure that the use of the Site at all times complies with the Bond Restrictions set forth within the Declaration of Restrictive Covenants and/or Conservation Easement, such failure shall be deemed a default and if TOWN fails to remedy the default within the time frame set forth above, TOWN shall transfer fee simple title of the Site to the COUNTY within sixty (60) days of the date of the COUNTY requests transfer of the Site. If TOWN obtained a grant from an agency of the State of Florida for any portion of the moneys required for the acquisition of the Site or reimbursement of moneys used to acquire the Site and the State of Florida has also declared TOWN to be in default, the provisions of the agreement entered into between TOWN and the State of Florida shall prevail. If the CITY fails to remedy the default within the time frame set forth within the agreement with the State of Florida and the State of Florida requires the transfer of fee simple title to the State of Florida, CITY shall refund COUNTY's monetary contribution plus six percent (6%) interest per annum to the COUNTY within sixty days of the date the Site is transferred to the State of Florida.
- 8.3 If TOWN provided a bond or letter of credit, both parties acknowledge and agree that, in the event that the TOWN fails to materially comply with the obligations set forth within the Conceptual or Final Resource or Open Space Park Management Plan or the Conservation Land Ecological Restoration Plan, such failure shall be deemed a default and if TOWN fails to remedy the default within the time frame set forth above, COUNTY shall draw on the bond or the letter of credit. If the COUNTY draws against the bond or letter of credit, TOWN agrees that COUNTY shall have the authority to perform such obligations utilizing the funds obtained from the bond or letter of credit.
- 8.4 If TOWN provided a resolution indicating that the obligations set forth in the Conceptual Resource or Open Space Park Management Plan will be included

within the TOWN's 5 Year Capital Improvements Program, both parties acknowledge and agree that, in the event that the TOWN fails to materially comply with the obligations set forth within the Conceptual or Final Resource or Open Space Park Management Plan or the Conservation Land Ecological Restoration Plan, such failure shall be deemed a default and if TOWN fails to remedy the default within the time frame set forth above, TOWN shall transfer fee simple title of the Site to the COUNTY within sixty (60) days of the date of the COUNTY requests transfer of the Site.

- 8.5 In the event of any default or breach of any of the terms of this Interlocal Agreement, it is specifically acknowledged and agreed that either party shall, in addition to all other remedies which may be available in law or equity, have the right to enforce this Interlocal Agreement by specific performance, injunctive relief, prohibition or mandamus to compel the other party to abide by the terms of this Interlocal Agreement.

#### ARTICLE 9 INDEMNIFICATION

TOWN is a state agency as defined in Chapter 768.28, Florida Statutes, and COUNTY is a political subdivision of the State of Florida. Each agrees to be fully responsible for acts and omissions of their elected officials, 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.

#### ARTICLE 10 MISCELLANEOUS

- 10.1 Joint Preparation: The preparation of this Interlocal Agreement has been a joint effort of the parties hereto 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.
- 10.2 Entire Agreement and Modification: This Interlocal Agreement incorporates, supersedes and includes all prior negotiations, correspondence, conversations, agreements or understanding 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 a written document executed with the same formality and of equal dignity herewith.

- 10.3 Records: In accordance with the Public Records Law, TOWN agrees to permit COUNTY to examine all records and grants COUNTY the right to audit any books, documents and papers that were generated during the course of administration of the Site. TOWN shall maintain the records, books, documents and papers associated with this Interlocal Agreement for at least three (3) years following execution of this Interlocal Agreement.
- 10.4 Contract Administrator: The Contract Administrators for this Interlocal Agreement are the Biological Resources Division Director or designee for COUNTY, and TOWN Manager or designee for TOWN. In the administration of this Interlocal Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the respective Contract Administrators.
- 10.5 Recordation/Filing: This Agreement shall be recorded in the public records of Broward County, in accordance with the Florida Interlocal Cooperation Act of 1969.
- 10.6 Notices: Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR COUNTY:

Director  
Broward County Biological Resources Division  
218 SW 1st Avenue  
Fort Lauderdale, Florida 33301

FOR TOWN:

Town Manager  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

- 10.7 Choice of Law; Waiver of Jury Trial: Any controversies or legal problems arising out of this transaction 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.

- 10.8 Conflict: In the event that this Interlocal Agreement conflicts with any other agreement or document pertaining to permissible uses of the Site, TOWN and COUNTY agree that the terms and conditions contained in this Interlocal Agreement shall prevail.
- 10.9 Counterpart Originals: The parties agree that this Agreement may be executed in counterparts, and that collectively the counterparts shall be considered an original agreement and shall be deemed legally sufficient and binding upon the parties.

IN WITNESS WHEREOF, the parties have made and executed this Interlocal 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 on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and \_\_\_\_\_, 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 \_\_\_\_\_, 20\_\_\_\_.

Approved as to Insurance  
Requirements

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

By \_\_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_  
Assistant County Attorney

INTERLOCAL AGREEMENT FOR ACQUISITION, IMPROVEMENT/ENHANCEMENT,  
OPERATION AND MANAGEMENT BY TOWN OF CONSERVATION LAND, GREEN  
SPACE AND OPEN SPACE SITES.

TOWN

WITNESSES:

TOWN OF DAVIE

\_\_\_\_\_

By \_\_\_\_\_  
Mayor-Commissioner

\_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

By \_\_\_\_\_  
Town Administrator

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM:

By \_\_\_\_\_  
Town Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SITE**

All of Parcel "B" of UNIVERSITY PARC, according to the Plat therefore, as recorded in Plat Book 170, at Pages 95 and 96 of the Public Records of Broward County, Florida

**EXHIBIT B**  
**CONCEPTUAL OPEN SPACE PARK MANAGEMENT PLAN**

EXHIBIT AB

CONCEPTUAL OPEN SPACE PARK MANAGEMENT PLAN

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

IMPROVEMENT / ENHANCEMENT / OPERATION / MANAGEMENT BY THE  
TOWN OF DAVIE FOR  
OPEN SPACE SITE REFERRED TO AS

Sundance -- OS-05

As Designated in the Broward County

Open Space Inventory

April 21, 2005

## **I INTRODUCTION**

The Sundance property, Site OS-05, is 3.89 acres of vacant land with a wet and dry retention area and a parking lot. The project is located adjacent to residential and industrial land uses just north of Nova Drive and east of SW 71<sup>st</sup> Terrace. The site lacks native vegetation. Improvements proposed for the site include picnic facilities, a recreational trail and fitness par course, a playground, restrooms and parking area. The Town estimates that less than 10% of the site will be covered with impervious surfaces and 20% of the site will be landscaped with native vegetation.

This management plan shall ensure that the goals and objectives of Broward County Resolution 2000-1230 are satisfied and provide a timeline for completion of required improvements.

## **II PURPOSE OF THE PROJECT**

The primary goal of the Land Preservation Program is to ensure the preservation and/or creation of ecologically valuable lands while expanding the passive recreation opportunities for the residents of Broward County. This project shall incorporate these values in the planning, implementation, maintenance and operation of the site.

Two or more resource-based outdoor recreational opportunities shall be developed including but not limited to: picnic facilities, a recreational trail and fitness par course, a playground, restrooms and parking area. The facilities shall be designed and located so as to minimize impact to the natural resources on the project site such as natural groundwater permeability and survivability of native vegetation. These recreational opportunities shall be provided consistent with the integration of the project into the Town's five-year Capital Improvement Plan and the Final Park Management Plan.

## **III KEY MANAGEMENT ACTIVITIES**

### Exotic Vegetation

The Town, as manager of the site, shall be responsible for the removal of all invasive exotic vegetation and the prevention of future growth and spread of such vegetation. Once the site has been developed, the Town shall ensure that exotic vegetation does not reestablish within natural areas of the park. An ongoing monitoring and control program for invasive vegetation including exotic and nuisance 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 final Park 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.

### Native Vegetation

Existing native vegetation shall be preserved and incorporated into the park landscape design. The Town shall landscape at least 20% of the site with native species and maintain such species in a manner which ensures their viability. Xeriscape design shall be used where appropriate. The location of this landscaping shall be determined by the Town and depicted in the Final Park Management Plan which shall contain a list of the native species anticipated to be used in landscaping and a map of the landscaped portions of the site.

### NatureScape Broward Principles

The *NatureScape Broward* program focuses on nine (9) principles for "Florida Friendly" landscapes. Town shall incorporate all applicable principles into park development and note such actions in the Final Park Management Plan.

Town shall apply for either a *Backyard Wildlife Habitat* certification through the National Wildlife Federation or the *Florida Yards & Neighborhoods* certification through the University of Florida IFAS Extension within three (3) months of opening the site to the public.

For more information regarding the implementation of NatureScape practices to your project please contact 954-519-0317.

### Illegal Dumping

Prior to site development, the Town shall ensure that illegal dumping of waste does not occur on the site and if such activity does occur it is the Town's responsibility to remove and properly dispose of such items. If hazardous materials are discovered on the site, the Town shall immediately notify the Broward County Department of Planning and Environmental Protection.

### Public Access

Once the site has been fully developed, the Town shall allow public access to the site during hours of operation determined by the Town.

### Signage

The Town shall install a temporary sign, at the Town's expense, the design and schematics of which shall be provided by the County, in a highly visible area of the project site recognizing the efforts of the Broward County Board of County Commissioners and funding through the Safe Parks and Land Preservation Bond.

Upon completion of the project, the Town shall construct and install a permanent sign, at the Town's expense, in accordance with the aforementioned standards.

#### **IV PRIORITY SCHEDULE**

Within three (3) months of the transfer of funds from the County to the Town the Town shall perform the necessary site maintenance (i.e. mowing) to prevent the growth and spread of exotic vegetation. This task shall be performed a minimum of four (4) times per year, or as deemed necessary by the County, until the project is fully developed.

Within six (6) months of the transfer of funds from the County to the Town, the Town shall install the temporary sign.

Within eighteen (18) months of the transfer of funds from the County to the Town, the Town shall remove any existing waste from the site. The Town shall ensure that future illegal dumping of waste does not occur on the site through a monitoring and security program. If such activity does occur, the Town shall be responsible for removing and properly disposing of such waste.

Within two (2) years of the transfer of funds from the County to the Town, the Town shall integrate the major elements of the project into the Town's five-year Capital Improvement Plan. The major elements of the project that are to be integrated include, but are not limited to, securing the site, removing invasive exotic plant species, installing native plant species, developing park infrastructures, removing existing waste and establishing a timeline to provide public access. These elements shall be completed on a schedule outlined in the Final Park Management Plan.

#### **V MONITORING**

The County shall monitor the site for compliance with the provisions of the final Park Management Plan for a period of five (5) years from the date of the mutual acceptance of and approval of the Final Park Management Plan. The Town shall allow County staff access onto the property during these visits.

Exhibit B

Document prepared by:

|

**DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by **TOWN OF DAVIE**, hereinafter referred to as "PROPERTY OWNER."

**WITNESSETH**

WHEREAS, PROPERTY OWNER is the fee title owner of that certain real property located in Broward County, Florida, as described in Exhibit "A," attached hereto and made a part hereof, (the PROPERTY); and

WHEREAS, the PROPERTY was acquired in whole or in part through Broward County's Safe Parks and Land Preservation Bond Program; and

WHEREAS, the use of the PROPERTY shall be in accordance with the provisions of the terms and conditions contained in Broward County's Safe Parks and Land Preservation Bond Program, as set forth in Broward County Resolution No. 2000-1230 and the Interlocal Agreement (the AGREEMENT) entered into with **Broward County** for Acquisition, Improvement/Enhancement, Operation and Management of Open Space Site OS-05, Sundance approved by the Broward County Board of County Commissioners on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_;

NOW, THEREFORE, PROPERTY OWNER hereby declares that the Property shall be developed, held, maintained, transferred, sold, conveyed and owned subject to the following designations and restrictive covenants:

1. RECITALS

The recitals set forth above are true and correct and are incorporated into these restrictive covenants.

2. RESTRICTIONS

(a) The PROPERTY shall be preserved as open space and for recreational use in perpetuity.

(b) Only buildings necessary for and ancillary to the open space and recreational use shall be allowed.

(c) Any proposed use for the Site shall be consistent with the terms and conditions contained in the Final Open Space Park Management Plan

(d) No use of the PROPERTY shall be allowed which is inconsistent with the intent and purpose of this Declaration of Restrictive Covenants, the AGREEMENT and the Final Open Space Park Management Plan.

3. MODIFICATION AND TERMINATION

No revisions to the Declarations of Restrictive Covenants shall be permitted unless specifically approved by the Board of County Commissioners of Broward County, Florida (the BOARD), in accordance with the procedures set forth below. If PROPERTY OWNER, its successors and assigns wishes to modify or terminate these restrictive covenants, it shall be required to do the following:

(a) PROPERTY OWNER must apply to the BOARD for an amendment to, or termination of, these restrictive covenants.

(b) It shall be at the sole discretion of the BOARD whether to modify or terminate these restrictive covenants.

4. COVENANT RUNNING WITH THE LAND

This Declaration of Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida, and shall run with the PROPERTY described in Exhibit "A," and shall be binding on all persons and entities acquiring title to or use of the PROPERTY.

5. ENFORCEMENT

Broward County, through its Board of County Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, Broward County may enforce these restrictive covenants by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of these Restrictions. Broward County shall provide PROPERTY OWNER with a written notice of violations for any provision of this Declaration and allow PROPERTY OWNER ninety (90) days to cure the violation. If PROPERTY OWNER fails to remedy the default within the time frame set forth above, PROPERTY OWNER shall transfer fee simple title of the PROPERTY to Broward County within sixty (60) days of the date of Broward County requests transfer of the PROPERTY.

6. WAIVER

Any failure by Broward County to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.

7. INVALIDATION

Invalidation of any one of these restrictive covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.

8. EFFECTIVE DATE

The Declaration of Restrictive Covenants shall become effective upon recordation in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF, \_\_\_\_\_ has hereunto set its  
authorized hand this \_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESSES:

TOWN OF DAVIE

\_\_\_\_\_

By \_\_\_\_\_  
Mayor-Commissioner

\_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

By \_\_\_\_\_  
Town Administrator

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

(CORPORATE SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_  
Town Attorney

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

All of Parcel "B" of UNIVERSITY PARC, according to the Plat therefore, as recorded in Plat Book 170, at Pages 95 and 96 of the Public Records of Broward County, Florida