

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM:** Monroe D. Kiar, Town Attorney (954) 584-9770

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO ENTER INTO AN AGREEMENT WITH WESTBROOKE COMPANIES INC., AMENDING THE AGREEMENT TO DEDICATE LAND BETWEEN THE TOWN OF DAVIE AND WESTBROOKE COMPANIES, INC. AND PROVIDING AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The Town Administrator has requested the Town Attorney's office to prepare a Resolution authorizing the Town Council to amend the Agreement between the Town and Westbrooke Companies, Inc. relative to the Berman Mitigation Parcel. The Amended Agreement amends two provisions of the present Agreement. First, the Amended Agreement states that Westbrooke will pay to the Town the sum of \$275,000.00 at this time to be placed into the Town's Long Term Annuity Account in lieu of keeping open a letter of credit in the amount of \$300,000.00 until the end of Westbrooke's five-year maintenance and monitoring period. Additionally, the Amended Agreement states that Westbrooke shall continue to be the Permittee on the regulatory permits until the end of its five-year maintenance responsibilities.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:** N/A

**RECOMMENDATION(S):** This resolution is suitable for transmittal to the Town Council for its review.

**ATTACHMENTS:** Resolution and Amended Agreement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO ENTER INTO AN AGREEMENT WITH WESTBROOKE COMPANIES INC., AMENDING THE AGREEMENT TO DEDICATE LAND BETWEEN THE TOWN OF DAVIE AND WESTBROOKE COMPANIES, INC. AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie entered into an Agreement with Westbrooke Companies, Inc. whereby Westbrooke dedicated a thirty nine acre property to the Town as a Preserve Parcel; and

WHEREAS, the Agreement specifies that Westbrooke shall leave open a letter of credit in the amount of \$300,000.00 for Long Term Maintenance of the Preserve Parcel; and

WHEREAS, Westbrooke has satisfied its obligation to provide to the Town a letter of credit in the amount of \$300,000.00 and the Town has requested that Westbrooke pay to the Town the sum of \$275,000.00 at this time to be placed in the Town's long term annuity account in lieu of keeping open the letter of credit; and

WHEREAS, the Town and Westbrooke have agreed that it would be in the best interest of both the Town and Westbrooke for Westbrooke to pay the Town \$275, 000.00 at this time in lieu of paying \$300,000.00 at the conclusion of the five-year monitoring and maintenance period; and

WHEREAS, the Town and Westbrooke desire to amend paragraph 5(d) of the Agreement to state that Westbrooke shall remain the Permittee on permits required by the permitting agencies until the conclusion of Westbrooke's five-year monitoring and maintenance responsibilities; and

WHEREAS, the Town and Westbrooke desire into an Agreement amending the Agreement to dedicate land as specified above and more specifically set forth in Exhibit "A".

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

SECTION 1. The Town Council hereby authorizes the Mayor to execute the Amended Agreement to dedicate land between the Town of Davie and Westbrooke Companies, Inc.

SECTION 2. 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.

**AMENDMENT TO AGREEMENT TO DEDICATE LAND**  
**BETWEEN**  
**THE TOWN OF DAVIE AND WESTBROOKE COMPANIES, INC.**

THIS AMENDMENT TO AGREEMENT TO DEDICATE LAND ("Amendment") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between THE TOWN OF DAVIE, a municipal corporation of the State of Florida (the "Town"), and WESTBROOKE COMPANIES, INC., a Delaware corporation, as successor by merger with Westbrooke Companies, Inc., a Florida corporation ("Westbrooke").

**WITNESSETH:**

WHEREAS, Westbrooke and the Town executed an Agreement dated February 17, 1999 ("Dedication Agreement") whereby Westbrooke dedicated to the Town an approximately 39 acre parcel of property described in Exhibit B to the Dedication Agreement and referenced in that Agreement as the Preserve Parcel ("Preserve Parcel"); and

WHEREAS, by the terms of the Dedication Agreement, Westbrooke agreed to complete certain mitigation improvements to the Preserve Parcel required by environmental permits ("Mitigation Improvements") before conveying the Preserve Parcel to the Town; and

WHEREAS, the South Florida Water Management District and Broward County Environmental Protection Department have determined that the Mitigation Improvements have been completed as required by the permits and have authorized the monitoring and maintenance period for those improvements to commence; and

WHEREAS, Westbrooke conveyed to the Town and the Town has accepted title to the Preserve Parcel in accordance with the terms of the Dedication Agreement; and

WHEREAS, Westbrooke and the Town have completed all of their respective obligations pursuant to the Dedication Agreement with the exception of Westbrooke's obligations set forth in Paragraphs 3.II(e) and (f) and the Town's obligations set forth in Paragraphs 4 and 5(d), which obligations have not yet been fully performed; and

WHEREAS, Westbrooke pursuant to Paragraph 3.II(f) of the Dedication Agreement had agreed to provide the Town with a long term maintenance fund in the amount of \$300,000.00 to be used by Town for maintenance of the Preserve Parcel following Westbrooke's completion of the five-year monitoring and maintenance period requirements for the Mitigation Improvements as specified in the Permits; and

WHEREAS, at closing on the dedication of the Preserve Parcel, Westbrooke provided the Town with a letter of credit to secure payment of the \$300,000.00 for long term monitoring and maintenance; and

WHEREAS, Westbrooke and the Town have now agreed that it would be in the best interest of the Town and Westbrooke for Westbrooke to pay the Town \$275,000.00 at this time in lieu of paying \$300,000.00 at the conclusion of the five-year monitoring and maintenance period; and

WHEREAS, Paragraph 5(d) of the Dedication Agreement required that the Permits, as that term is defined in the Agreement, be transferred into the name of the Town in accordance with the rules of the Permitting Agencies following transfer of the Preserve Parcel; and

WHEREAS, the Town has requested that Westbrooke remain the permittee of the Permits until the conclusion of the 5-year monitoring and maintenance period, and Westbrooke has agreed to do so, subject to acceptance of same by the Permitting Agencies;

NOW, THEREFORE, in consideration of the mutual promises and other considerations herein contained, the parties hereto agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by reference.

2. Amendment: The following paragraphs of the Dedication Agreement are hereby amended as follows:

A. Paragraph 3. II(f) the Dedication Agreement is hereby amended to read as follows:

(f) Westbrooke shall within 15 days of the execution of this Amendment by all parties, pay the Town \$275,000.00 to fund a Trust Fund for the long-term maintenance of the Preserve Parcel (“Trust Fund”) required by the permits for the Preserve Parcel. In exchange for this payment, the Town shall release the letter of credit in the amount of \$300,000.00 that was provided to the Town by Westbrooke. Following this payment Westbrooke shall have satisfied all obligations of the Dedication Agreement except for Westbrooke’s obligation to continue to perform the five-year monitoring and maintenance requirements described in Paragraph 3.II(e) of the Dedication Agreement and Westbrooke’s obligation for Indemnification as described in Paragraph 9 of the Agreement, which obligations shall continue until the monitoring and maintenance period is completed.

B. Paragraph 5(d) of the Dedication Agreement is hereby amended to read as follows:

(d) Following transfer of title to the Preserve Parcel to the Town, the Permits shall remain in Westbrooke’s name, provided such is acceptable to the Permitting Agencies. The parties acknowledge that at the time of this Amendment the Permitting Agencies have consented to the Permits continuing in Westbrooke’s name. Upon completion of the 5-year maintenance period, the Permits shall be transferred to the Town, and Westbrooke shall thereafter have no duties or responsibilities regarding the Preserve Parcel. If at any time prior to conclusion of the 5-year maintenance period a Permitting Agency requests transfer of the Permits into the name of the Town, Town shall promptly comply with such request, although such transfer shall not alter Westbrooke’s duties regarding maintenance.

3. Effective Provisions of Dedication Agreement. Paragraphs 3.II(e), 3.II(f) and 5(d), as amended by this Amendment, and Paragraphs 4, 9, 10, 11, 12, 13, 15, 16, 17 and 18 shall continue to be in full force and effect. All other terms and conditions of the Dedication Agreement have been performed or their performance has been waived.

4. Terms Defined in the Dedication Agreement: All capitalized terms used in this Amendment but not defined herein shall have the meanings given or established in the Dedication Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; Westbrooke signing by and through its duly authorized representative, and the Town through its Town Council, signing by and through its Mayor, authorized to execute same by Town Council action on \_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

**TOWN OF DAVIE, FLORIDA**

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

By: \_\_\_\_\_, Mayor

Approved as to form:

\_\_\_ day of \_\_\_\_\_, 2005

By: \_\_\_\_\_, Town Attorney

WITNESSES:

**WESTBROOKE COMPANIES, INC.**  
a Delaware corporation

\_\_\_\_\_

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

Name: \_\_\_\_\_

Name:

Title:

\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_

Name: \_\_\_\_\_