

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Chistopher J. Kovanes, MPA, Town Administrator, (954) 797-1030

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

SUBJECT: Resolution

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, SUBORDINATING THE LIEN OF THE TOWN OF DAVIE ON PROPERTY OWNED BY DAVIE TRAVEL CENTER, INC. WITH RESPECT TO CERTAIN MORTGAGE INDEBTEDNESS AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: This resolution subordinates the Town's lien interest in the Davie Travel Center, Inc. (DTC) property formerly referred to as the Jolmy Enterprises, Inc. truck stop property, relative to the Oaks Road reconstruction project. The subordination agreement maintains the Town's 80% valuation margin provided for in R-97-108.

Resolution R-97-108 provides a mechanism for the Town to subordinate its lien interests to future mortgage indebtedness subject to the total encumbrances on the property not exceeding 80% of the appraised land value. All previous liens on the property were satisfied when the property was conveyed to DTC in January of 2005. The total encumbrances, including the encumbrance of \$8 million which represents Jolmy's mortgage on the property and the Town's lien of \$2 million, amount to \$10 million which represents 56.93% of the sale amount of \$17,567,000.

PREVIOUS ACTIONS: The Town has previously granted lien subordinations consistent with the provisions of R-97-108. Subordinating resolutions may be considered up to a maximum 80% of the current appraised valuation.

CONCURRENCES: Not Applicable

FISCAL IMPACT: Not Applicable

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s): Resolution
Exhibit A - 1997 Lien Agreement
Exhibit B - Subordination Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, SUBORDINATING THE LIEN OF THE TOWN OF DAVIE ON PROPERTY OWNED BY DAVIE TRAVEL CENTER, INC. WITH RESPECT TO CERTAIN MORTGAGE INDEBTEDNESS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie entered into an agreement between the Town and Jolmy Enterprises, Inc. approved by Resolution R-97-108, adopted by the Town Council on March 19, 1997; and

WHEREAS, said agreement provided for a lien in favor of the Town of Davie imposed upon the property owned by Jolmy Enterprises, Inc. as described in Exhibit "A" attached hereto; and

WHEREAS, the property formerly owned by Jolmy Enterprises, Inc was sold to Davie Travel Center, Inc in January 2005 for the amount of \$17,567,000; and

WHEREAS, the Town Council has determined that based upon a written request submitted to the Town requesting subordination of the lien to proposed mortgages, there is sufficient evidence to the satisfaction of the Town that the total encumbrances against the subject property including the proposed indebtedness as represented by the mortgage in favor of Jolmy Enterprises, Inc. in the amount of \$8,000,000, when added to the Town's lien, does not exceed 80% of the value of the property; and

WHEREAS, those conditions being met, the Town wishes to subordinate its lien created by the aforementioned agreement between the Town of Davie and Jolmy Enterprises, Inc. to the note and mortgage.

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

SECTION 1. The Mayor is hereby authorized to execute the Subordination Agreement attached hereto as Exhibit B on behalf of the Town of Davie.

SECTION 2. The fully executed Subordination Agreement shall be recorded in the Public Records of Broward County.

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

97-108

Prepared by: Barry Webber, Town Attorney
Return to: Town of Davie
Town Clerk's Office
6591 Orange Drive
Davie, FL 33314-3399

EXHIBIT A

AGREEMENT

Between

TOWN OF DAVIE, FLORIDA

and

JOLMY ENTERPRISES, INC.

Relating to

Lien Security for Obligations Established

Pursuant to Agreement Between the State of Florida,

Office of Tourism, Trade and Economic Development

and the Town of Davie

97-197268 T#007
04-18-97 10:17AM

WHEREAS, the Town of Davie, Florida (hereinafter "Town") and JOLMY ENTERPRISES, INC., a Florida corporation (hereinafter "Jolmy") caused an application to be filed by the Town of Davie to the Florida Department of Commerce, Division of Economic Development for a grant to provide partial funding for upgrading of roads from U.S. 441 to property owned by Jolmy (hereinafter "Jolmy Property"), where Jolmy will be constructing its corporate headquarters and where it will be involved in a myriad of activities as set forth in the Town's application process; and

WHEREAS, in order to facilitate the development of the aforementioned facility to be constructed upon the Jolmy Property, it is necessary that the aforescribed road improvements (hereinafter "road improvement project") be constructed so as to provide safe and adequate access to the Jolmy Property; and

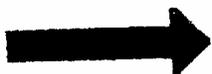
WHEREAS, it is necessary to obtain the grant funds in order to fund the road improvement project; and

WHEREAS, the application for the grant was approved and resulted in an Agreement (hereinafter "Agreement") being entered into between the State of Florida, Office of Tourism, Trade and Economic Development (hereinafter "OTTED") and the Town on behalf of Jolmy, said Agreement being dated January 8, 1997 and being approved by the Town Council by Resolution R-97-7, adopted by the Town Council on January 8, 1997, a copy of which is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the Agreement requires certain actions to be taken by the Town and by Jolmy; and

WHEREAS, the Town will expend substantial amounts of money relying upon Jolmy's performance of all obligations placed upon Jolmy as contemplated in the Agreement; and

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FEE ITEM
RETURN TO
FRONT RECORDING

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WHEREAS, in addition to Jolmy's obligations with regard to the Agreement (Exhibit "A" hereto), Jolmy has the obligation to run water and sewer lines from its property to existing Town facilities as further described in Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Town is agreeable to initiate and complete construction of those required water and sewer utility lines upon the condition that Jolmy be required to reimburse the Town for all costs and expenses associated with their design and construction plus accrued interest at the rate of seven percent (7%) per annum within three (3) years of completion of same. Jolmy shall have the right to prior approval of the expenses to be incurred for water and sewer utility lines, which approval shall not be unreasonably withheld. Jolmy must respond in writing to the Town's request for approval within ten (10) business days. If Jolmy does not approve of the expense, Jolmy must provide specific reasons in writing as to why the expense is not approved. If Jolmy fails to respond in writing as required herein within the ten (10) day period, approval shall be deemed granted. In the event the Town deems the failure to approve by Jolmy as causing a delay to the project, the Town can complete the project with Jolmy's right to contest the disputed expenditure at the completion of the project; and

WHEREAS, the Town requires Jolmy to provide security to the Town for losses which may be suffered by the Town in the event of Jolmy's failure to fully comply with all requirements of the grant and utility obligations as set forth above.

NOW, THEREFORE, in consideration of the mutual undertakings agreed to herein and previously agreed to by the parties, as well as Ten Dollars (\$10.00) and other good and valuable considerations, the parties do hereby agree as follows:

1. The above recitals are true and correct and are incorporated by reference herein.
2. That in order to secure the Town from losses it may suffer in the event of Jolmy's failure to perform under the January 8, 1997 Agreement between the Town and OTTED, which includes but is not limited to Jolmy's obligation to secure the necessary permits including a building permit and initiate construction of the Jolmy corporate headquarter facility within one hundred eighty (180) days from the date of execution of the Agreement between the Town and OTTED and to further secure the utility related obligations as set forth above, Jolmy does hereby create and grant a lien in favor of the Town of Davie, Florida, against the Jolmy Property being that real property described in Exhibit "C" attached hereto and made a part hereof, for

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the purpose of securing to the Town the performance required of Jolmy in order for the Town to be able to fully comply with its obligations under the Agreement between the Town and OTTED and its utility related obligations as set forth above. The lien of the Town can be subordinated to future mortgage indebtedness under the following conditions:

(a) A written request to subordinate the lien is submitted to the Town by Jolmy or its successors.

(b) Sufficient evidence is submitted to the Town evidencing to the satisfaction of the Town that the total encumbrances against the subject property (Exhibit "C" including the proposed indebtedness and the Town's lien do not exceed eighty percent (80%) of the value of the property.

(c) In the event Jolmy and the Town do not agree as to the value of the property, they shall jointly select an appraiser who shall perform an appraisal on the property. The resulting appraised value shall be deemed to be the value of the property pursuant to this provision. The cost of the appraisal shall be borne by both parties equally.

(d) Jolmy shall be put on a scheduled meeting on an expedited basis for any financial subordination request by filing the request fourteen (14) days prior to a scheduled meeting.

3. Should Jolmy fail to take all actions required of it in order for the Town to comply with said Agreement (Exhibit "A"), or if Jolmy shall default on its utility obligations, then Jolmy may be deemed in default under this agreement and this lien may be foreclosed or otherwise enforced by the Town in the same manner as a foreclosure of a mortgage on real property provided, however, that in the event of any such default by Jolmy of the Agreement, the Town shall give written notice to Jolmy and Jolmy shall have sixty (60) days from receipt of such written notice in which to cure the default to the satisfaction of OTTED. If it is determined that Jolmy's default is caused by the actions of a governmental agency (other than OTTED or its successor), then the Town shall grant a reasonable extension of time to cure so as to allow the governmental agency the opportunity to act. Should OTTED for any reason not accept Jolmy's attempts to cure and accordingly refuse to fully fund under the grant, then the Town may proceed with the foreclosure of the lien.

4. This agreement shall be recorded among the Public Records of Broward County,

Florida, immediately upon its execution by the parties.

5. Upon completion of the obligations of the Town contemplated in the Agreement between the Town and OTTED, receipt of full funding to the Town by OTTED and after OTTED fully accepts the project and accountings provided by the Town in accordance with said Agreement and upon full reimbursement to the Town for utility improvements, then the Town shall promptly cause evidence of discharge of the lien to be entered in the Official Records of Broward County.

6. This lien shall be in the amount of loss or potential loss to the Town resulting from Jolmy's non-performance under the grant or this agreement, however, in no event shall the lien exceed the sum of Two Million Dollars (\$2,000,000).

7. The lien created herein shall be released in whole or in part upon the substitution of equal value collateral in the form of a Letter of Credit from a state or national bank ("bank") in a form and content acceptable to the Town or by cash. The Town will use its best efforts to work with the bank so as to provide the Town with security of at least equal value as that contemplated to be provided for in this agreement.

8. In the event the Town defaults in its obligations under this agreement, including Exhibit "A" hereto, by failing to construct the improvements contemplated herein and Jolmy has fully performed its obligations required of it as of the date of the Town's default, then Jolmy shall have no obligation to pay the Town for any portion of the improvements which were not constructed and upon payment to the Town for all utility improvements completed to date, the Town shall release the lien created by this agreement. Should OTTED for any reason not accept the Town's attempts to cure non-Jolmy related defaults not caused in any way by Jolmy and, accordingly, refuses to fully fund under the grant, then the Town shall not seek foreclosure of its lien against the Jolmy property for road improvements but shall be entitled to proceed to foreclose the lien on the utility improvements.

9. Each party to this agreement shall be given sixty (60) days from the date of written notice by the other to cure a default under this agreement.

10. Each demand for payment to Jolmy from the Town shall be accompanied with an accounting to reflect the basis of the demand.

11. Jolmy represents and warrants that all actions have been taken by the

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corporation for the authorization of the execution of this agreement by Jolmy.

12. In the event of any litigation arising under this agreement, the prevailing party shall be entitled to recovery of reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the 19 day of MARCH, 1997.

Signed, sealed and delivered in the presence of:

[Signature]
Print Name ROBERT RAWLS
[Signature]
Print Name MARIA BLACKISTON

JOLMY ENTERPRISES, INC.,
a Florida corporation

By [Signature]
William E. Myers, President

[Signature]
Print Name STARR CROWLEY
[Signature]
Print Name JANET GALE

TOWN OF DAVIE
By [Signature]
Harry Venis, Mayor

APPROVED AS TO FORM:
BY [Signature]
Town Attorney

Attest: [Signature] 3/19/97
Gail Reinfeld, Town Clerk

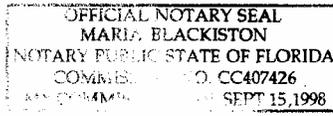
State of Florida :
 :SS.
County of Broward :

The foregoing Agreement was executed in my presence by William E. Myers, President of Jolmy Enterprises, Inc., who is personally known to me or who has produced as identification _____, who acknowledged to and before me that he executed same for the purposes herein expressed on behalf of said corporation, this 19 day of MARCH, 1997.

[Signature]
Notary Public
MARIA Blackiston CC 407426
(Print Name & Commission Number)

My Commission Expires:

State of Florida :



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:SS.
County of Broward :

The foregoing Agreement was executed in my presence by Harry Venis, Mayor of the Town of Davie, a municipal corporation, (who is personally known to me or who has produced as identification _____, who acknowledged to and before me that he executed same for the purposes herein expressed on behalf of the Town, this 19th day of March, 1997.

Elena M. Blackiston
Notary Public

(Print Name & Commission Number)

My Commission Expires:

OFFICIAL NOTARY SEAL
ELENA M BLACKISTON
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC596837
MY COMMISSION EXP. OCT. 28, 2000

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EXHIBIT B

SUBORDINATION AGREEMENT

This Agreement entered into this _____ day of _____, 2005, by and between **Davie Travel Center, Inc.** (the "Mortgagor"), of 820 Andrews Avenue, Pompano Beach, Florida and **Jolmy Enterprises, Inc.** (the "Mortgagee"), of 2147 Montpelier, Weston, Florida, and **Town of Davie** (the "Subordinating Lienholder"), of 6591 Orange Drive, Davie, Florida.

WITNESSETH:

Whereas, Subordinating Lienholder is the holder of a certain Agreement between Town of Davie, Florida and Jolmy Enterprises, Inc. relating to Lien Security recorded April 18, 1997, in Official Records Book 26301, Page 0861, of the Public Records of Broward County, Florida (the "Lien"); and

Whereas, Mortgagee has made an Eight Million Dollar (\$8,000,000.00) Purchase Money Mortgage loan to the Mortgagor ("Purchase Money Mortgage"); and

Whereas, the Mortgagor has requested that the Subordinating Lienholder comply with the subordination requirements of the Lien and the Subordinating Lienholder is agreeable to subordinating the Lien to the Purchase Money Mortgage placed on the property described in Exhibit "A" (the "Property"), in favor of the Mortgagee.

Now Therefore, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by each party hereto, the parties covenant and agree as follows:

1. The Subordinating Lienholder hereby subordinates the Lien and the lien priority thereof to the Purchase Money Mortgage executed and delivered by the Mortgagor to the Mortgagee.

2. Mortgagor hereby agrees and consents to the Subordinating Lienholder subordination of the Lien to the Purchase Money Mortgage in favor of the Mortgagee.

3. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

In Witness Whereof, the parties have hereunto executed their hands and seals the day and year first above written.

Signed in the Presence of:

Mortgagor:

Print Name: _____

Print Name: _____

Print Name: _____

Mortgagee:

Print Name: _____

By: _____

Print Name: _____

Subordinating Lienholder:

Print Name: _____

By: _____

STATE OF FLORIDA)
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
by _____, who are personally known to me or have produced
_____ as identification.

My Commission Expires: _____
My Commission Number is: _____
Notary Public, State of Florida

STATE OF FLORIDA)
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
by _____, who are personally known to me or have produced
_____ as identification.

My Commission Expires: _____
My Commission Number is: _____
Notary Public, State of Florida

STATE OF FLORIDA)
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
by _____, who are personally known to me or have produced
_____ as identification.

My Commission Expires: _____
My Commission Number is: _____
Notary Public, State of Florida