



**Date:** February 7, 2012

**To:** Thomas J. Bonfield, City Manager

**Through:** Theodore L. Voorhees, Deputy City Manager

**From:** Joel V. Reitzer, Director, General Services Department  
David M. Fleischer, Acting Real Estate Manager

**Subject:** Proposed Easements Deed and Agreement with Diamond View III, LLC

### **Executive Summary**

Diamond View III, LLC (“DVIII”) is the owner of a parcel of land (Parcel ID # 207540) adjacent to the Durham Bulls Athletic Park (“DBAP”). DVIII intends to construct a multi-story office building on their parcel; construction of which will require DVIII to acquire 952.73 square feet of property from the City-owned parcel housing the DBAP (Parcel ID # 103356).

Consistent with the property value determined by an appraisal ordered at the request of the City’s Real Estate Division, DVIII has agreed to pay \$13,000.00 for the fee simple acquisition of 952.73 square feet of property (“the transferred property”). Currently a concrete walkway, ramp, and gate exists on the transferred property.

DVII is also seeking a temporary construction easement for the purpose of relocating the existing concrete ramp, walkway, and gate on the transferred property. DVIII will provide an easement back to the City through the transferred property so that DBAP operations on the property will not be affected.

### **Recommendation**

1. The General Services Department recommends that the City Council a) declare 952.73 square feet of property to be conveyed, being a portion of Parcel 103356, as surplus property in order to foster economic development; and b) sell the property to be conveyed in exchange for \$13,000.00 to be paid to the City by Diamond View III, LLC under the authority of Section 86 of the City Charter; and c) authorize the City Manager or Mayor to execute a Deed conveying 952.73 square feet of property, being a portion of Parcel 103356 to Diamond View III, LLC;
2. The General Services Department recommends that the City Council authorize the City Manager or Mayor to execute an Easements Deed and Agreement, which includes the following transactions a) acceptance of an access easement across the property conveyed; and b) granting of a temporary construction easement allowing Diamond View III, LLC to construct the relocated concrete walkway, ramp, and gate on a portion of City-Owned Parcel 103356.

### **Background**

DVIII is proposing to develop a multi-story office building adjacent to the North side of the DBAP. The building will be located between the existing Diamond View II Building and the Durham Performing Arts Center along Blackwell Street. The building’s design requires that

DVIII acquire 952.73 square feet of City-owned property that currently contains a concrete ramp, walkway, and gate used by DBAP staff for trash removal and other maintenance uses.

In consideration of an amount to be paid by DVIII to the City (\$13,000.00), the City will execute an Easements Deed and Agreement granting a temporary construction easement to DVII allowing them to build a relocated concrete walkway, ramp, and gate for the City's use on City property, conveying 952.73 square feet of City-owned property to DVIII, and accepting an easement from DVII across the 952.73 square feet of property the City has conveyed to DVIII so that DBAP operations may continue on that property.

### **Issues/Analysis**

- Impact of Easements: The easement granted by the City to DVIII will allow the City to be made whole from the perspective of our DBAP operation after conveyance of a small amount of property to DVIII.
- DBAP Operations: Will not be permanently impacted by this transaction.
- Conveyance of Property: The City will gain \$13,000.00 of revenue from the sale of the property involved.
- Dependence on DVIII: Under the terms of the Agreement, the City will deed property to DVIII. The City will then rely on DVIII's performance of the duties detailed in the Easements Deed and Agreement.
- Default of Duties: DVIII rejected the request of the City Attorney's Office to connect majority-owned affiliates of DVIII to the duties required of DVIII by the Easements Deed and Agreement in the event of DVIII's default of any of those duties.

### **Alternatives**

The City Council could decide not to approve sale of 952.73 square feet of property to DVIII and the easements recommended. This alternative is not recommended as it would interfere with development of a property adjacent to the DBAP and would impede construction of the Diamond View III Building.

### **Financial Impact**

Revenue to City: \$13,000.00 – will generate revenue into the Durham Bulls Athletic Park Operations Fund account.

### **SDBE Summary**

This item does not require review by the Equal Opportunity/Equity Assurance Department.

Attachments: Easements Deed and Agreement