REGULAR MEETING January 10, 2019 6:30 p.m.

CALL TO ORDER
Determination of a Quorum
Opening Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES
   Regular Meeting Minutes – December 13, 2018

2. PRESENTATION
   Lake Apopka Natural Gas

3. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES
   A. Ordinance 18-41: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.33 ± ACRES LOCATED AT 22 EAST MILLER STREET ON THE SOUTHWEST CORNER OF EAST MILLER STREET AND SOUTH WOODLAND STREET FROM CITY R-2 RESIDENTIAL DISTRICT TO CITY R-NC RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Pash

   B. Ordinance 19-01: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING SECTIONS 78-30 AND 78-38 OF CHAPTER 78, ARTICLE II OF THE WINTER GARDEN CODE OF ORDINANCES CONCERNING CONNECTION TO WATER AND WASTEWATER SYSTEMS AND REQUIREMENTS FOR UTILITY SERVICES TO PROPERTIES LOCATED OUTSIDE OF THE CITY LIMITS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE – Community Development Director Pash

4. REGULAR BUSINESS
   A. Recommendation to approve Right-of-Way Maintenance Agreement for McAllister’s Landing Phase 2 located at 315 E Fullers Cross Road – Community Development Director Pash

5. MATTERS FROM PUBLIC – (Limited to 3 minutes per speaker)

6. MATTERS FROM CITY ATTORNEY - Kurt Ardaman
7. MATTERS FROM CITY MANAGER – Mike Bollhoefer

8. MATTERS FROM MAYOR AND COMMISSIONERS

ADJOURN to Regular Meeting on Thursday, January 24, 2019 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

NOTICES:
In accordance with Florida Statutes 286.0105, if any person decides to appeal any decision made by said body with respect to any matter considered at such meeting, he/she will need a record of the proceedings and, for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City of Winter Garden does not prepare or provide such record.

Any opening invocation that is offered before the official start of the Commission meeting shall be the voluntary offering of a private person, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Commission or the city staff, and the City is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance at the City Commission meeting are invited to stand during the opening invocation and to stand and recite the Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered or to participate in the Pledge of Allegiance. You may remain seated within the City Commission Chambers or exit the City Commission Chambers and return upon completion of the opening invocation and/or Pledge of Allegiance if you do not wish to participate in or witness the opening invocation and/or the recitation of the Pledge of Allegiance. (Reference Resolutions 15-04 and 16-02)

Those needing assistance to participate in any of these proceedings should contact the City Clerk’s Office at least 48 hours in advance of the meeting (407) 656-4111 x2297.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Department (407) 656-4111 x5455.
A **REGULAR MEETING** of the City of Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. An Opening Invocation and Pledge of Allegiance were given.

**Present:** Mayor John Rees and Commissioners

- Lisa Bennett – District 1
- Bob Buchanan – District 2
- Mark A. Maciel – District 3
- Colin Sharman – District 4

**Also Present:** City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, City Clerk Angee Grimmage, Assistant City Manager of Administrative Services Frank Gilbert, Assistant City Manager of Public Services Jon Williams, Community Development Director Stephen Pash, Economic Development Director Tanja Gerhartz, Finance Director Laura Zielonka, Information Technology Director Chad Morrill, Police Chief Stephen Graham, Fire Chief Matt McGrew, and Planning Consultant Ed Williams

1. **APPROVAL OF MINUTES**

Motion by Commissioner Buchanan to approve regular meeting minutes of November 8, 2018. Seconded by Commissioner Sharman and carried unanimously 5-0.

- **PRESENTATION**

Award to Winter Garden Farmers Market for winning first place in American Farmland Trust’s National Farmers Market Celebration was read and presented by the Mayor and City Commissioners. Mayor Rees expressed that it is outstanding to be considered the best in the country.

2. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

   A. **Ordinance 19-01:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING SECTIONS 78-30 AND 78-38 OF CHAPTER 78, ARTICLE II OF THE WINTER GARDEN CODE OF ORDINANCES CONCERNING CONNECTION TO WATER AND WASTEWATER SYSTEMS AND REQUIREMENTS FOR UTILITY SERVICES TO PROPERTIES LOCATED OUTSIDE OF THE CITY LIMITS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 19-01 by title only. Community Development Director Pash stated that this ordinance clarifies the code, providing the City access to properties for meter reading. In the case of unincorporated properties, the owners must annex or enter into an agreement with the City to receive City services. Staff recommends approval of Ordinance 19-01.
Mayor Rees noted that the City encourages those annexing to hook up to the City’s water in an effort to get off of septic tank usage. Mr. Pash noted that in the voluntary annexations the property owners are generally seeking City services.

There was discussion on other subdivisions with older infrastructure.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Maciel to approve Ordinance 19-01 with the second reading and public hearing on January 10, 2019. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

B. **Ordinance 19-08:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-193, DISABILITY; AMENDING SECTION 54-202, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-213, REEMPLOYMENT AFTER RETIREMENT; AMENDING SECTION 54-214, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 19-08 by title only. City Manager Bollhoefer stated that this item would be postponed until the next meeting.

**Motion by Commissioner Sharman to POSTPONE Ordinance 19-08 until January 10, 2019 at 6:30 p.m. Seconded by Commissioner Bennett and carried unanimously 5-0.**

C. **Ordinance 19-09:** AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-33, DISABILITY; AMENDING SECTION 54-41, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-49, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 54-52, RE-EMPLOYMENT AFTER RETIREMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 19-09 by title only. City Manager Bollhoefer stated that this item would be postponed until the next meeting.

**Motion by Commissioner Sharman to POSTPONE Ordinance 19-09 until January 10, 2019 at 6:30 p.m. Seconded by Commissioner Buchanan and carried unanimously 5-0.**
3. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

A. **Ordinance 18-38**: An ordinance of the City of Winter Garden, Florida providing for the annexation of certain additional lands generally described as approximately 0.23 ± acres located at 630 South Park Avenue, East of Burch Avenue, West of South Park Avenue, and South of West Story Road into the City of Winter Garden, Florida; redefining the city boundaries to give the city jurisdiction over said property; providing for severability; providing for an effective date.

B. **Ordinance 18-39**: An ordinance of the City of Winter Garden, Florida amending the future land use map of the Winter Garden Comprehensive Plan by changing the land use designation of real property generally described as approximately 0.23 ± acres located at 630 South Park Avenue, East of Burch Avenue, West of South Park Avenue, and South of West Story Road from Orange County Low Density Residential to City Low Density Residential; providing for severability; providing for an effective date.

C. **Ordinance 18-40**: An ordinance of the City of Winter Garden, Florida rezoning approximately 0.23 ± acres located at 630 South Park Avenue, East of Burch Avenue, West of South Park Avenue, and South of West Story Road from Orange County R-2 Residential District to City R-2 Residential District; providing for severability; providing for an effective date.

City Attorney Ardaman read Ordinance 18-38, 18-39, and 18-40 by title only. Community Development Director Pash stated that this is a voluntary annexation. The owner is requesting annexation, low density designation, and R-2 zoning. These are all consistent with the surrounding areas. Staff recommends approval of Ordinances 18-38, 18-39 and 18-40.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Sharman to adopt Ordinances 18-38, 18-39, and 18-40. Seconded by Commissioner Maciel and carried unanimously 5-0.**

D. **Ordinance 18-41**: An ordinance of the City of Winter Garden, Florida rezoning approximately 0.33 ± acres located at 22 East Miller Street on the southwest corner of East Miller Street and South Woodland Street from City R-2 Residential District to City R-NC Residential Neighborhood Commercial District; providing for severability; providing for an effective date.

City Attorney Ardaman read Ordinance 18-41 by title only. Community Development Director Pash stated that staff recommends postponement of this items until the
January 10, 2019 meeting. City Manager Bollhoefer noted that the site plan for this item is being reviewed to ensure parking.

**Motion by Commissioner Buchanan to POSTPONE Ordinance 18-41 until January 10, 2019 at 6:30 p.m. Seconded by Commissioner Sharman and carried unanimously 5-0.**

**E. Ordinance 18-42:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 62, ARTICLE VI, SECTION 62-167 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN REGARDING UNPAVED RIGHT-OF-WAY AND SIDEWALK MAINTENANCE; PROVIDING FOR ADDITIONAL MAINTENANCE OBLIGATIONS OF ADJOINING PROPERTY OWNERS FOR SIDEWALKS; PROVIDING FOR CONTROL OF MOLD, MILDEW, AND OTHER DANGEROUS ACCUMULATIONS BUILDUP UPON SIDEWALKS IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY, AND WELFARE; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 18-42 by title only. Community Development Director Pash stated that this is a code amendment to Chapter 62 to clarify the existing maintenance requirements of sidewalks and right-of-way. He noted that the amendment outlines that it is the property owner’s responsibility to maintain the sidewalk, unpaved right-of-way and any landscaping that is install there. Staff recommends approval of Ordinance 18-42.

Commissioner Maciel sought clarification that around subdivisions the responsibility falls on that of the homeowner’s association (HOA). Mr. Pash responded that this would be for the exterior. There was discussion on the responsible party for sidewalk maintenance being first the Homeowner’s Association (HOA) and if not stipulated, it would then be the homeowner’s responsibility, but not the responsibility of the City. Landscaping was also part of these discussions.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Buchanan to adopt Ordinance 18-42. Seconded by Commissioner Sharman and carried unanimously 5-0.**

**F. Ordinance 18-43:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 118, ARTICLE XIII OF ORDINANCES OF THE CITY OF WINTER GARDEN TO CREATE A BACKYARD CHICKEN PROGRAM RELATING TO THE KEEPING OF CHICKENS ON PROPERTIES DEVELOPED WITH DETACHED SINGLE-FAMILY RESIDENTIAL STRUCTURES WITHIN CERTAIN ZONING DISTRICTS; PROVIDING FOR TERMS, CONDITIONS, AND PENALTIES CONCERNING THE KEEPING OF CHICKENS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE
City Attorney Ardaman read Ordinance 18-43 by title only. Community Development Director Pash stated that this ordinance codifies the backyard chicken program that was run by the City for the last couple years as a pilot, without any incident. Staff recommends approval of Ordinance 18-43.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Sharman to adopt Ordinance 18-43. Seconded by Commissioner Bennett and carried unanimously 5-0.**

4. **PUBLIC HEARING MATTERS**
   A. **Recommendation to approve Condemnation of building located at 509 South Lakeview Avenue**

   Code Enforcement Manager Pash stated that the home on this property was damaged by a tree falling onto it during Hurricane Irma. He shared that the owner has since passed away and the City continued its conversations with relatives and the foreclosing bank. He noted extensive time spent by staff that yielded no responses. He stated that staff recommends condemnation of the home at 509 South Lakeview Avenue, demolition costs would be approximately $5,000, and the City would lien the property.

   There was discussion on the current hazardous state of the property, and ownership rights after condemnation; the property would still belong to the owner, which will be the foreclosing bank. Mayor Rees commented that no one likes to do this kind of thing but noted the unfairness of these conditions to the surrounding neighbors.

   **Motion by Commissioner Buchanan to approve the condemnation of the building located at 509 South Lakeview Avenue. Seconded by Commissioner Maciel and carried unanimously 5-0.**

5. **REGULAR BUSINESS**
   A. **Resolution 18-08:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, ADOPTING A DOWNTOWN GOLF CART DISTRICT PURSUANT TO § 74-4 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES; IDENTIFYING STREETS UPON WHICH GOLF CARTS MAY BE OPERATED; PROVIDING FOR SIGNAGE; AND PROVIDING FOR AN EFFECTIVE DATE

   City Attorney Ardaman read Resolution 18-08 by title only. Community Development Director Pash stated that this resolution adds portions at Tildenville School Road and Lakeview Road to the golf cart route. By adding these roads, Oakland Park, Lakeview Reserve and Golden Pond will have access to the remainder of the golf cart street routes and access to the downtown. Staff recommends approval of Resolution 18-08.
City Manager Bollhoefer shared history of these areas and its impact on traffic. He stated that this route is almost the same distance, but safer. He also shared updates on City intentions toward handling future golf cart routes, suggesting that it will be approached in small parts at a time; easier routes being completed first, and more challenging ones at the end.

**Motion by Commissioner Bennett to approve Resolution 18-08. Seconded by Commissioner Sharman and carried unanimously 5-0.**

B. **Recommendation to approve Site Plan for SouthWest Aquatics located at 205 Windermere Road, subject to conditions**
Community Development Director Pash stated that this is the site plan for SouthWest Aquatics to build a new 3,500 square foot indoor swimming pool and a 4,000 square foot office building. He noted that there will also be several accessory buildings, parking, and stormwater facilities. This has been reviewed by the Development Review Committee (DRC) and is consistent with the PUD ordinance. Staff recommends approval, subject to the conditions of the DRC report.

**Motion by Commissioner Maciel to approve site plan for SouthWest Aquatics located at 205 Windermere Road, subject to conditions. Seconded by Commissioner Sharman and carried unanimously 5-0.**

C. **Recommendation to approve Site Plan for Avamar Retail located at 1620 Avalon Road, subject to conditions**
Community Development Director Pash stated that this is the site plan for Avamar Crossings located at the southwest corner of Avalon and Marsh Road. This plan includes an 8,600 square foot multi-tenant building and site improvements. Staff recommends approval of the site plan, subject to conditions of the DRC report.

Mayor Rees sought clarification that there are no issues on that corner, already having five retail buildings and the addition of this building possibly contributing to any congestion issues. Mr. Pash responded that this is fine and shared that there was once a business planning to use this location, but due to major improvements required they have declined.

**Motion by Commissioner Sharman to approve the site plan for the Avamar Retail located at 1620 Avalon Road, subject to conditions. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

D. **Recommendation to approve Site Plan for Goddard Daycare located at 2001 Avalon Road, subject to conditions**
Community Development Director Pash stated that this site plan is for a 15,000 square foot daycare facility at 2001 Avalon Road. He described the proposed improvements
and noted that there will be 220 students; the building holds 284 but 220 will be the maximum. It has been reviewed and approved by the Development Review Committee (DRC) and it is consistent with the PCD ordinance. Staff recommends approval, subject to conditions.

**Motion by Commissioner Maciel to approve site plan for Goddard Daycare located at 2001 Avalon Road, subject to conditions. Seconded by Commissioner Sharman and carried unanimously 5-0.**

**E. Recommendation to approve 11th Annual Martin Luther King, Jr. Celebration and Parade on Monday, January 21, 2019**
Community Development Director Pash stated that this special event application is for the 11th Annual Martin Luther King, Jr. Parade and Celebration. This year the request is to hold it downtown. He noted that permission is requested to have the event on Monday, January 21, 2019. He described street closings, proposed times, routes and additional event plans. Staff recommends approval.

Commissioner Maciel thanked the East Winter Garden Alliance for their perseverance and initiative in this effort. He also thanked the City for allowing this to be done downtown, noting that it is a good time to bring this from East Winter Garden to a City-wide function.

**Motion by Commissioner Maciel to approve 11th Annual Martin Luther King, Jr. Celebration and Parade on Monday, January 21, 2019. Seconded by Commissioner Bennett and carried unanimously 5-0.**

**F. Recommendation to approve Final Plat for McAllister Landing Phase II located at 315 E Fullers Cross Road, subject to conditions**
Community Development Director Pash stated that this is the final plat for Phase II of the McAllister Landing subdivision. This plat creates 54 single family lots ranging from 75 and 100 feet wide and is consistent with the approved PUD. The plat has been reviewed and approved by the Development and Review Committee and staff recommends approval. Mayor Rees commented on this project possibly bringing some traffic challenges.

**Motion by Commissioner Sharman to approve the final plat for McAllister Landing Phase II located at 315 E Fullers Cross Road, subject to conditions. Seconded by Commissioner Maciel and carried unanimously 5-0.**

**G. Recommendation to approve Purchase of a 0.30-acre parcel located at 275 Center Street**
Planning Consultant Williams stated a vacant lot recently went on the market on Center Street that has several uses that could be beneficial for the implementation of the East
Winter Garden Plan. Staff recommends giving the City Manager authorization to process paperwork necessary to purchase this property at a cost of $25,000 plus appropriate closing fees.

Commissioner Bennett informed that she must abstain from voting on this item as an agent in her office has this property listed for sale.

Commissioner Sharman inquired as to whether there were any other properties in and around this parcel. City Manager Bollhoefer responded yes, there are quite a few around the neighborhood.

Commissioner Maciel stated that this will be a key piece and is glad the City is showing initiative in buying this piece to improve the area. He noted that it is strategic and echoed Mr. Williams statement that something good will go on that property.

**Motion by Commissioner Maciel to approve the Purchase of a 0.30-acre parcel located at 275 Center Street. Seconded by Commissioner Buchanan and carried 4-0-1; Commissioner Bennett abstained.**

H. **Appointment Confirmation to General Employees’ Pension Board for fifth trustee Mark Griffith for an additional 2-year term through December 31, 2020**

City Clerk Grimmage stated that the next two items are a ministerial duty of the City Commission as stated in the City Code confirming the fifth trustee as chosen by the board’s other four trustees.

**Motion by Commissioner Sharman to confirm appointment of Mark Griffith to the General Employees’ Pension Board for a 2-year term through December 31, 2020. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

I. **Appointment Confirmation to Police and Firefighters’ Pension Board for fifth trustee Phil Cross for an additional 2-year term through December 31, 2020**

**Motion by Commissioner Sharman to confirm appointment of Phil Cross to the Police and Firefighters’ Pension Board for a 2-year term through December 31, 2020. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

6. **MATTERS FROM PUBLIC**

Mark Anthony, 1507 N. Fullers Cross Road, Winter Garden, Florida addressed the City Commission regarding concerns about drainage and stormwater issues in his community. He shared history relating to drainage and flooding in the area. He pleaded for assistance from the City to look into solutions for them. He described the problem area and noted that his yard could be used for installation of culverts if necessary as an option. He hopes to get help before the storms come again. City Manager Bollhoefer responded that the City will
look into this for them. Mr. Bollhoefer noted that he was very familiar with this issue and explained that there are undersized pipes that do not carry the water especially when they get blocked. He also commented that the swale will probably be the most logical solution to catch the water.

7. **MATTERS FROM CITY ATTORNEY** – There were no items.

8. **MATTERS FROM CITY MANAGER**

   **Fireworks**
   City Manager Bollhoefer addressed prior discussions relating to fireworks and noted that the City will place advertisements in the newspaper. He explained that we will try and get information out to all residents to let them know that 99 percent of all fireworks sold at fireworks stands are illegal as most are only allowed for agricultural use. He noted that the public will be informed that this law will be enforced, with exception to July 4th and December 31st. He expressed that the launching of those fireworks is a criminal offense.

   City Attorney Ardaman noted that the City will have strict enforcement throughout the year, except for those two periods. The City is not saying that they will not enforce the law on those two days, but note that it is very difficult due to the volume of use on those days.

   City Manager Bollhoefer noted that this will be started for the new year.

   **Elimination of Stop Sign on Smith Street**
   City Manager Bollhoefer noted that there are a couple of stop signs on Smith Street that the City would like to eliminate. He stated that they really serve no purpose and there is probably one car there per hour, making everyone stop for no reason. This the same for a stop sign at Smith Street and Highland Avenue. He shared that there will be signs for a period of time to let the public know about the change. This will help with traffic on Smith Street which is an alternative route to Plant Street.

   There was discussion on traffic flow in this area and possibly easing traffic issues during events.

   **Sadler Oaks**
   City Manager Bollhoefer addressed solutions for protecting the Sadler Oaks tree roots, with one solution being fencing. He spoke of the potential damage driving and walking on the roots could cause. There was discussion on possible fencing and solutions, as well as cost sharing with Oakland.

   **Employees Event**
   City Manager Bollhoefer thanked everyone and the City Commission for the event held yesterday for the City Employees. He noted that 330 people attended.
9. **MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Sharman** thanked staff and noted that he enjoyed the Employee’s Luncheon and wished everyone a Merry Christmas and hope they enjoy their time off.

**Commissioner Maciel** thanked City staff for the world class holiday events held in this City. He commented that his relatives and friends came in and were in awe of what this City does. He shared that he saw staff at night time events and then the same staffers either cleaning up or setting up again the next morning. He expressed how it really is incredible and is great to be a part of it.

**Commissioner Buchanan** stated that he absolutely loved Light Up Winter Garden. He mentioned addressing issues with the sound system and there was discussion that it is already being reviewed. Commissioner Buchanan also stated that the Christmas Parade was wonderful and had a great turnout. Also noted was the Employee’s Luncheon and its great reviews; employees voiced their appreciation and he feels that this means a lot to him and that that they really deserve it. He expressed that downtown Winter Garden is absolutely fabulous and wished everyone a Merry Christmas.

**Commissioner Bennett** thanked the employees and staff for all their hard work and expressed how she loves our town, especially this time of the year. She noted that the Christmas Parade was awesome and knows that everyone worked a lot of extra hours putting it together. She also noted that the Employee’s Luncheon was a great time and a great sense of comradery. She thanked everyone for all that they do.

**Mayor Rees** expressed that as we close our 2018 year, it has been an honor and a pleasure serving with this City Commission. He thanked the City Manager for a fantastic job, the department heads, and the City staff. He noted that this is a great City to be in, which was witnessed during Light Up Winter Garden, the Christmas Parade, and during the Employee’s Luncheon. He stated that we are blessed and hopes everyone has a Very Merry Christmas and a Happy New Year.

The meeting adjourned at 7:16 p.m.

ATTEST:  
Approved:

____________________________  ______________________________
City Clerk Angee Grimmage, CMC  Mayor John Rees
THE CITY OF WINTER GARDEN

CITY COMMISSION AGENDA ITEM

From: Steve Pash, Community Development Director
Via: City Manager Mike Bollhoefer
Date: January 4, 2019  Meeting Date: January 10, 2019
Subject: 22 E Miller Street
Ordinance 18-41
PARCEL ID # 23-22-27-8900-01-150

Issue: The applicant is requesting to rezone the .33 +/- acre property from R-2 (Residential District) to R-NC (Residential-Neighborhood Commercial).

Discussion: The applicant has requested to rezone the subject property from R-2 Residential District to R-NC Residential Neighborhood Commercial District in order to use the property as a proposed vet care. The proposed R-NC zoning is consistent with the property’s (NC) Residential Neighborhood Commercial Future Land Use designation.

Recommended Action: Staff recommends approval of Ordinance 18-41.

Attachment(s)/References:
Location Map
Ordinance 18-41
Staff Report
AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA
REZONING APPROXIMATELY 0.33 ± ACRES LOCATED AT 22 EAST MILLER STREET ON THE SOUTHWEST CORNER OF EAST MILLER STREET AND SOUTH WOODLAND STREET FROM CITY R-2 RESIDENTIAL DISTRICT TO CITY R-NC RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the owner of that certain real property generally described as 0.33 ± acres of land located at 22 East Miller Street on the southwest corner of East Miller Street and South Woodland Street, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from City R-2 Residential District to the City’s R-NC Residential Neighborhood Commercial District zoning classification, therefore; and

WHEREAS, after public notice and due consideration of public comment, the City Commission of the City of Winter Garden hereby finds and declares the rezoning approved by this Ordinance is consistent with the City of Winter Garden Comprehensive Plan; and

WHEREAS, further, the City Commission finds that based on competent, substantial evidence in the record, the rezoning approved by this Ordinance meets all applicable criteria for rezoning the Property to R-NC Residential Neighborhood Commercial District contained within the City of Winter Garden Comprehensive Plan and the Code of Ordinances.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: Rezoning. The above “Whereas” clauses constitute findings by the City Commission. After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT “A,” is hereby rezoned from City R-2 Residential District to City R-NC Residential Neighborhood Commercial District in the City of Winter Garden, Florida.

SECTION 2: Zoning Map. The City Planner is hereby authorized and directed to amend the Official Winter Garden Zoning Map in accordance with the provisions of this ordinance.

SECTION 3: Non-Severability. Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 4: Effective Date. This Ordinance shall become effective upon its adoption.


ADOPTED this _____ day of ____________, 2019, by the City Commission of the City of Winter Garden, Florida.
ATTACHMENT "A"

LEGAL DESCRIPTION

Parcel ID: 23-22-27-8900-01-150

Description:

LOT 115, LESS THE WEST 2 FEET, FRIES SURVEY OF WINTER GARDEN VINING ADDITION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK E, PAGE16, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Containing 0.33 acres, more or less.
INTRODUCTION

The purpose of this report is to evaluate the proposed project for compliance with the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property, located on 22 E Miller Street, is an approximately 0.33 ± acre lot. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:
The applicant is requesting to rezone the 0.33 ± acre property, which is located within the City of Winter Garden and carries the zoning designation R-2 (Residential District) and is designated NC (Residential Neighborhood Commercial) on the Future Land Use Map of the City’s Comprehensive Plan, to R-NC (Residential-Neighborhood Commercial) zoning district.

EXISTING USE
The property currently has an unoccupied single story single-family home.

ADJACENT LAND USE AND ZONING
The two properties north of the subject property are developed with single-family residences, are zoned R-2. The property to the south is also single-family residence with R-2 zoning. The property to the west are developed single-family duplexes with R-2 zoning. The property to the east is a single story two-family dwelling and is zoned C-3. All neighboring properties are in the City of Winter Garden’s Municipal limits.

PROPOSED USE
The potential buyer of this property will request to have a veterinary clinic. The property will have to go through the Special Exception permitting process for this use. The Special Exception permit requires site plan approval to convert from residential to commercial.

SUMMARY
The applicant’s proposal to rezone the subject property from R-2 to R-NC is consistent with the property’s Future Land Use designation of NC Residential Neighborhood Commercial as well as the policies contained within the City’s Comprehensive Plan. City Staff recommends approval of Rezoning Ordinance 18-41.
Zoning Map
22 E Miller St

END OF STAFF REPORT
THE CITY OF WINTER GARDEN

CITY COMMISSION AGENDA ITEM

From: Steve Pash, Community Development Director

Via: City Manager Mike Bollhoefer

Date: January 2, 2019  Meeting Date: January 10, 2019

Subject: Code Amendment
Ordinance 19-01

Issue: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING SECTIONS 78-30 AND 78-38 OF CHAPTER 78, ARTICLE II OF THE WINTER GARDEN CODE OF ORDINANCES CONCERNING CONNECTION TO WATER AND WASTEWATER SYSTEMS AND REQUIREMENTS FOR UTILITY SERVICES TO PROPERTIES LOCATED OUTSIDE OF THE CITY LIMITS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Discussion: The City is proposing to amend certain Sections of Chapter 78 concerning connecting to water and wastewater systems.

Recommended Action: Staff recommends approval of Ordinance 19-01.

Attachment(s)/References:
Ordinance 19-01
ORDINANCE 19-01

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING SECTIONS 78-30 AND 78-38 OF CHAPTER 78, ARTICLE II OF THE WINTER GARDEN CODE OF ORDINANCES CONCERNING CONNECTION TO WATER AND WASTEWATER SYSTEMS AND REQUIREMENTS FOR UTILITY SERVICES TO PROPERTIES LOCATED OUTSIDE OF THE CITY LIMITS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the City has home rule authority pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, to enact this Ordinance; and

WHEREAS, the City desires to amend Chapter 78 of the Code of Ordinances to require the annexation of properties or an agreement requiring future annexation of properties for properties located outside of the city limits requesting to receive utility services from the City; and

WHEREAS, the City desires to amend Chapter 78 of the Code of Ordinance to clarify customer agreements upon connection to water and/or wastewater utilities.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section I The above recitals represent the legislative findings of the City Commission of the City of Winter Garden and are incorporated herein by this reference.

Section II Sections 78-30 and 78-38 of Chapter 78, Article II of the Winter Garden Code of Ordinances are hereby amended to read as follows (underlined text indicates additions; struckout text indicates deletions):

Sec. 78-30. - Connection with water and sewer systems required.

(a) Except as provided in subsection (e), the owner of each and every lot, parcel, or plot of land developed within the corporate limits of the city for residential, commercial or industrial uses shall be required to connect to the city's water and sanitary sewer systems at the landowner's expense, regardless of the distance of the lot, parcel or plot of land to the service. The city commission may waive the requirements of this subsection if the city commission specifically finds that requiring such connection would create an extreme hardship on the owner of the property.
(b) Except as provided in subsection (e), any existing building used for residential, commercial or industrial uses shall be required to connect to the systems within 60 days after service is certified available by the city.

(c) Any new building erected and used for residential, commercial or industrial uses shall, within 30 days, be connected to the systems after service is certified available by the city. If there are no city-owned systems existing at the time construction is completed, the time limits will apply as in subsection (b) of this section.

(d) If such connection shall not be made within the prescribed period, the public services department shall, at the expiration of such period, proceed forthwith to require the owner of such lot, parcel or plot to connect to the systems in such lawful manner as may be required.

(e) After December 31, 2001, the owners of a developed lot, parcel or plot of land utilized for single-family residential purposes and lawfully served, pursuant to the Orange County Code of Ordinances, by private well or septic system prior to annexation into the corporate limits of the city may continue to be served by said private well or septic system and shall be exempt from the requirements of section 78-30 of the Code as it is then in effect at the time of said annexation, provided such use remains lawful.

(f) The city shall have the right to adopt and enforce rules and regulations governing utility services and customer accounts. By accepting utility services from the city, customers and property owners agree to comply with and that they are subject to the provisions of this chapter and the city’s rules and regulations governing utility services regardless of whether the property connected to utility services is located within or outside the jurisdictional limits of the city.

(g) The making of an application under this chapter for utility service shall act to grant the properly authorized agent of the city free access to the premises at all reasonable hours for the purpose of reading, repairing, removing or examining the water meter or water or wastewater service connection, or making such other inspection of the premises as the city may determine necessary to properly maintain and service the public utilities system as it relates to the health and general welfare of the citizens of the city. The customer consents to the installation, use, reading (including via electronic, wireless or manual means) and maintenance of metering equipment installed upon the property by the city as a condition of service.

***

Sec. 78-38. - Service outside corporate limits.

(a) The city may furnish sewer and water service outside the corporate limits of the city, within the discretion of the city commission.

(b) Annexation agreement. If application is made for water or wastewater utilities service (or a combination thereof) to property located outside the city boundaries that is contiguous to the existing city boundaries or is within an enclave surrounded by the city’s boundaries, the property owner shall simultaneously annex the property into the city as a prerequisite to the provision of water or wastewater utilities service to the property. If application is made for water or
wastewater utilities service (or a combination thereof) to property located outside the city boundaries that is not contiguous to the existing city boundaries, the property owner shall simultaneously execute an annexation agreement, in a form acceptable to the city and binding upon the property, giving the city the right to annex the property into the city limits when the prerequisites of annexation under general law are met. Failure of the property owner to annex the property pursuant to the annexation agreement shall constitute grounds to terminate water and/or wastewater service to the property. "Application" for public utilities service shall include any and all applications for water and/or wastewater service, to reactivate prior water and/or wastewater service, or to add additional water and/or wastewater service, including the addition of additional water meters, new fixtures or water and/or wastewater service capacity. There is an exception to this subsection for the properties being provided wastewater services pursuant to an interlocal agreement.

Section III  Section II of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

Section IV  In the event of a conflict or conflicts between this ordinance and other ordinances, this Ordinance shall control to the extent of the conflict.

Section V  It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed to render invalid or unconstitutional the remaining provisions of this Ordinance.

Section VI  This Ordinance shall become effective upon adoption by the City Commission.

FIRST READING: ___________________________.
SECOND READING AND PUBLIC HEARING: ___________________________.

ADOPTED this _____ day of _____________, 2019, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

_____________________________
John Rees, Mayor/Commissioner

ATTEST:

_____________________________
Angela Grimmage, City Clerk
THE CITY OF WINTER GARDEN

CITY COMMISSION AGENDA ITEM

From: Steve Pash, Community Development Director
Via: City Manager Mike Bollhoefer
Date: January 3, 2019   Meeting Date: January 10, 2019

Subject: Right-of-Way Maintenance Agreement – McAllister’s Landing Phase 2
315 E Fullers Cross Road
McAllister Landing Phase 2 (19.28 +/- Acres)

Issue: Consideration of the Final Plat to create 54 single family lots on a 19.28-acre property located at 315 E Fullers Cross Road.

Discussion:

The applicant is requesting approval of the Right-of-Way Maintenance Agreement for the McAllister’s Landing Phase 2 subdivision. The McAllister’s Landing Phase 2 Final Plat was approved by City Commission on December 13, 2018.

Recommended Action:

Staff recommends approval of the Right-of-Way Maintenance Agreement for McAllister’s Landing Phase 2.

Attachments/References:

Location Map
McAllister’s Landing Phase 2 - Right-of-Way Maintenance Agreement
LOCATION MAP

McAllister Landing
RIGHT-OF-WAY MAINTENANCE AGREEMENT

THIS RIGHT-OF-WAY MAINTENANCE AGREEMENT (the "Agreement") is made and entered into this 12th day of November, 2018, by and between the CITY OF WINTER GARDEN, a Florida municipal corporation, ("City"), MERITAGE HOMES OF FLORIDA, INC. ("Developer"), and MCALLISTER LANDING HOMEOWNERS ASSOCIATION, INC., a Florida non-profit corporation ("HOA").

WITNESSETH:

WHEREAS, Developer is the fee simple owner of that approximately 19.28 acre real property generally located on EAST FULLERS CROSS ROAD in Winter Garden, Orange County, Florida, being more particularly described on Exhibit "A" attached hereto and by this reference hereby incorporated herein ("Subject Property"); and

WHEREAS, Developer is in the process of developing the Subject Property as a residential project known as MCALLISTER LANDING Phase 2 ("Project"); and

WHEREAS, Developer and the HOA desire to obtain a non-exclusive right to provide, install and maintain certain landscaping, irrigation, pavement, signage and other improvements (hereinafter collectively referred to as the "Landscaping and Improvements") along and within certain rights-of-way which are adjacent to the Project and are more particularly identified on Exhibit "B" attached hereto and by this reference hereby incorporated (hereafter collectively referred to as the "Roads"); and

WHEREAS, said Landscaping and Improvements require substantially more extensive maintenance than is typical for the City to perform within and along public rights-of-way; and

WHEREAS, the City has raised certain concerns regarding the responsibility for and future maintenance of the Landscaping and Improvements; and

WHEREAS, Developer and HOA, in order to satisfy the concerns of the City, so as to receive permission to provide, install and maintain the Landscaping and Improvements in the public right-of-way, have agreed to the terms, conditions and requirements set forth in this Agreement; and
WHEREAS, the Landscaping and Improvements to be provided, installed and maintained by the Developer and the HOA shall be as set forth in this Agreement and that certain Landscaping Plan prepared by MAGLEY DESIGN, LLC, dated 10/12/17 (the “Landscape Plan”), a copy of which is retained by the City in the offices of the Public Works Director and incorporated herein by this reference; and

WHEREAS, Developer and HOA acknowledge that the primary beneficiary of said Landscaping and Improvements will be the Developer in marketing the Project and the HOA and the residents of the Project in beautifying the Roads; and

WHEREAS, in light of the foregoing, the Developer and HOA are willing to provide, install and maintain the Landscaping and Improvements pursuant to this Agreement; and

WHEREAS, the City requires that the Developer and HOA undertake certain commitments and covenants to assure the continuous maintenance of the Landscaping and Improvements within or along the Roads during the term of this Agreement;

NOW, THEREFORE, for and in consideration of the above premises, the promises and provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the parties, the Developer, the HOA, and the City agree as set forth herein.

1. **Recitals.** The above premises are true and correct and are incorporated herein as material provisions of this Agreement.

2. **License.** Subject to the terms and conditions provided in this Agreement, the City hereby grants Developer and the HOA the non-exclusive right, privilege and license to use the Roads for the purposes described hereinafter. The license granted herein by the City is terminable by the City as provided for in this Agreement. Termination of the Agreement shall constitute termination of the license.

3. **Construction and Maintenance of Landscaping and Improvements.**

   A. **Installation of Landscaping.** The Developer, at the Developer’s sole cost and expense, shall design, permit, construct, provide and install the Landscaping and Improvements within, along and for the Roads adjacent to the Subject Property in accordance with the Landscape Plan and this Agreement.

   B. **Maintenance.** Any and all Landscaping and Improvements installed, constructed or maintained within the Roads shall be operated and maintained by Developer and the HOA in good, clean, attractive, sanitary, safe and serviceable condition, order and repair in accordance with the Landscape Plan and this
Agreement. No portion of the Landscaping and Improvements shall be
maintained in such a manner as may interfere with the use of the Roads by the
public or create a safety hazard, as determined by the City in the City’s sole
discretion.

C. **Compliance with the Law.** Unless otherwise provided for herein, in designing,
constructing, installing and maintaining the Landscaping and Improvements, the
Developer and the HOA shall comply with any and all laws, ordinances, and
regulations of the City, county, state and federal governments, related to its
activities, including but not limited to laws and regulations concerning
landscaping, trees, planting, maintenance, and signage within and along public
and private rights-of-way. Said laws and ordinances include, but are not limited
to, Chapter 62 and Chapter 114 of the City Code, as such may be amended from
time to time.

D. **Additional Requirements.** In addition to the requirements of Subsection C.
above, all plantings must comply with the following conditions:

1. All trees must be planted at least seven (7) feet from any utility box and at
   least seven (7) feet from the side lot lines of the adjacent lots.

2. No tree or vegetation may be planted or allowed to grow in such manner
   as to interfere with the "triangle of visibility" as defined in FDOT Road
   Design Index #546.

3. A permit must be issued by the City’s Public Services Director before any
   tree is planted within the right-of-way.

4. All trees must be planted a minimum of four (4) feet behind the back of
   the curb.

5. All trees and other vegetation as planted or maintained must not pose a
   safety hazard.

To the extent of any conflict between the additional requirements set forth above
and any current or future City, county, state or federal law or regulation, the more
stringent requirement shall control unless preempted by law.

E. **Road Work.** Developer, the HOA, or their agents, shall not, while installing or
maintaining the Landscaping and Improvements, damage or disturb any portion of
the Roads without the prior written approval of the City and the City’s prior
written approval of a plan to restore the Roads. The Developer, the HOA, or their
agents, shall take all safety measures required by law for construction and
maintenance work in and along public rights-of-way, including the placing and display of caution signs and signals, when working in the Roads, and shall prevent any obstructions to the Roads which are or may become dangerous to the traveling public. In the event that any work to be conducted by the Developer or the HOA requires streets or traffic lanes to be closed or obstructed, the Developer or the HOA shall, pursuant to the City ordinances, obtain all permits from and pay all applicable fees to the City, and shall obtain approval of its maintenance of traffic plan from the City’s Police and Public Services Departments prior to commencing such work. In the event that the Developer, or the HOA, or their agents, damages any portion of the Roads while maintaining or installing the Landscaping and Improvements, the Developer or the HOA, as the case may be, at its sole expense, shall restore such portion of the Roads to their prior condition.

F. Changes to the Landscape Plan. Variations from the Landscape Plan must be reviewed and approved by the City in writing prior to any work commencing.

G. Irrigation. All irrigation arising from matters contained in the Landscaping Plan for the Project shall be compatible with future connection to the City’s reclaimed water system.

H. Water Conservation. Developer and the HOA shall encourage water conservation in the design and development of the Landscaping and Improvements, including but not limited to, water conserving techniques, water efficient landscaping, proper soil preparation, irrigation systems and equipment and the use of reclaimed water, upon its availability.

I. Impact Fees. Neither the Developer nor the HOA shall receive any compensation, impact fee or tax credits for any landscaping or improvements described herein.

J. Non-Interference with Other Interests. Developer and the HOA, in the performance and exercise of their rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any public rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, rights of adjoining property owners, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable laws. Developer and the HOA, jointly and severally, shall be liable to the City or to the third party owner, as the case may be, for the cost of any repairs made necessary by any displacement, damage, or destruction of City or third party property and shall pay such costs upon written demand within thirty (30) days of receipt of such demand. In addition, Developer and the HOA, jointly and
severally, shall be responsible for any and all damage to street pavements, curbs, gutters, sidewalks and other improvements on, above, below or adjacent to the Roads arising from the installation, maintenance, repair or removal of the Landscaping and Improvements, and shall repair, replace and restore in kind, the said damaged property at its expense.

4. **Removal/Relocation.** If, in the sole discretion of the City, all or any portion of the Landscaping and Improvements, or maintenance thereof: (a) interferes with any construction, widening, reconstruction, alteration or improvement which the City desires to perform on, around, over, through or under the Roads or Subject Property; or (b) said Landscaping and Improvements, or maintenance thereof, unreasonably interferes in any way with the convenient, safe, or continuous use of the Roads; or (c) the non-emergency removal of any or all Landscaping and Improvements is necessary to serve the health, safety or general welfare of the citizens of Winter Garden, the Developer or the HOA, upon receipt of written notice from the City to either of them, shall remove or relocate within the right-of-way that portion of the Landscaping and Improvements as requested by the City within thirty (30) days of receipt of said notice. Any such relocation or removal of any or all Landscaping and Improvements shall be at the sole expense of the Developer or the HOA and the Developer or the HOA shall restore the Roads to their prior condition save for the removal of the Landscaping and Improvements. Notwithstanding anything to the contrary, no Landscaping and Improvements may be removed without the prior written consent of the City, except that fallen vegetation and signage may be removed without prior written consent when reasonably necessary to remedy a threat to public safety.

5. **Homeowners Association.**

A. **Amendment to Declaration.** Prior to the issuance of the fiftieth (50th) Certificate of Occupancy for a residential dwelling within the Project by the City, the HOA shall cause to be recorded in the Public records of Orange County, Florida, an amendment to its declaration of covenants, rules and restrictions or other recorded governing document (the "Amendment to the Declaration") which shall apply to all properties within the Subject Property. Said Amendment to the Declaration shall not be subject to the prior approval by the City but shall provide, *inter alia*, for the assumption and acceptance by HOA of all of the Developer’s responsibilities, obligations, commitments, covenants, burdens, and duties as provided in this Agreement and any amendment thereto. Notwithstanding the foregoing, this Agreement is binding upon the HOA upon its execution by the parties and the Amendment to Declaration is intended solely to place notice on the public record for all future owners within the Project of the HOA’s obligations hereunder. The adoption or failure to adopt such Amendment to Declaration shall not affect the validity of this Agreement or in any way impair or otherwise reduce HOA’s obligations hereunder.
B. **Release of Developer.** At such time as HOA has properly enacted and recorded the Amendment to the Declaration and written approval is obtained from the City, Developer shall be fully released from its obligations and responsibilities as provided for in this Agreement. From and after the release of Developer, any amendments or modifications to this Agreement may be made by written agreement between the City and HOA without the consent of the Developer, provided, however, that no retroactive amendment or modification affecting the rights or obligations of Developer may be made without the prior written consent of the Developer.

6. **Inspection; Violations; Remedies.**

A. **Inspection.** At all times, the City shall have the right to inspect the installation, construction, and maintenance of the Landscaping and Improvements to ensure compliance with the terms of this Agreement.

B. **Breach.** In the event any of the parties violate any material provision of this Agreement, the violating party shall be given thirty (30) days to cure such violation upon receipt of written notice of the violation from a non-violating party. Notwithstanding the preceding, no cure period need be given for a violation by the Developer or HOA which results in a threat or danger to the public health or safety. In the event a violation is not cured within the applicable cure period or the City is required to act without a cure period to remedy a threat to the public health or safety, the City shall have the right to pursue any and all legal and equitable remedies available to it, including the right to seek specific performance of this Agreement.

C. **City’s Right to Take Remedial Action.** In addition to the provisions and remedies set forth above, in the event that Developer or the HOA fail to take any action as required by the City to cure a violation within any applicable cure period, in addition to any and all other rights available to the City, the City shall have the right, but not the obligation to take the required action on behalf of Developer or the HOA. Notwithstanding the preceding, in the event that the City determines in its sole discretion that for reasons of public health or safety, immediate action is required to remedy a violation of this Agreement by Developer or the HOA, the City shall have the right, but not the obligation, to repair, replace, maintain or otherwise take such action as may be necessary to remedy the threat to public health or safety without prior written notice to the Developer or the HOA. In the event that for any reason the City repairs, replaces, maintains or otherwise services the Landscaping and Improvements or takes any other action as may be necessary to remedy a violation of this Agreement, the HOA shall be responsible for the payment of all of the costs incurred by the City and its agents in taking such action. Said payment by the HOA shall be made
within thirty (30) days of written demand by the City. The City’s exercise of its right to remedy a violation of this Agreement shall not limit the City from exercising any other rights or remedies available to it arising from such violation or impose any future or ongoing obligation on the City to continue to maintain, repair, replace or otherwise care for the Landscaping and Improvements thereafter.

7. Indemnification.

A. **HOA.** HOA shall save, defend, indemnify, release, and hold harmless City and City’s employees, agents, contractors, and commission members against and from all disputes, lawsuits, injuries, losses, liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable consultants’ and attorneys’ fees which may be imposed upon, incurred by or asserted or claimed against them, resulting or arising from any or all of the following (i) the performance by HOA or its agents of any action under this Agreement or otherwise related to the Landscaping and Improvements or the Roads, (ii) HOA’s failure to perform, or cause to be performed, any required action or obligation of HOA pursuant to this Agreement; (iii) the exercise or attempted exercise by HOA of any rights, privileges, or obligations under this Agreement, (iv) the City’s or an agent of the City’s performance of any obligation of Developer or HOA pursuant to paragraph 6.C. of this Agreement, or (v) any damage to the Landscaping and Improvements which may result from the use of the Roads by the City or other governmental authority or their agents due to maintenance, construction, widening, installation or other proper use within the Roads.

B. **Developer.** Developer shall save, defend, indemnify, release, and hold harmless City and City’s employees, agents, contractors, and commission members against and from all disputes, lawsuits, injuries, losses, liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable consultants’ and attorneys’ fees which may be imposed upon, incurred by or asserted or claimed against them, resulting or arising from any or all of the following (i) the performance by Developer or its agents of any action under this Agreement or otherwise related to the Landscaping and Improvements or the Roads, (ii) Developer’s failure to perform, or caused to be performed, any required action or obligation of Developer pursuant to this Agreement; (iii) the exercise or attempted exercise by Developer of any rights, privileges, or obligations under this Agreement, (iv) the City’s or an agent of the City’s performance of any obligation of Developer or HOA pursuant to paragraph 6.C. of this Agreement, or (v) any damage to the Landscaping and Improvements which may result from the use of the Roads by the City or other governmental authority or their agents due to maintenance, construction, widening, installation or other proper use within the Roads. The provisions of this paragraph shall survive any assumption of obligations by the HOA pursuant to the Amendment to Declaration.
C. **Joint and Several Liability.** Subject to the terms of Paragraph 5.B. above regarding the release of Developer upon the occurrence of certain events, HOA and Developer shall be jointly and severally liable for any and all obligations, responsibilities, and liabilities imposed upon either the HOA or Developer under this Agreement.

8. **Non-Approval.** Unless expressly authorized or granted herein, nothing in this Agreement shall constitute or be deemed to constitute any approval by the City of any rezoning, Comprehensive Plan amendment, variance, special exception, site plan, preliminary subdivision plan, final subdivision plan, or any other land use or development approval. Further, nothing in this Agreement shall be deemed to reduce, eliminate, derogate from or otherwise adversely affect or modify the approved Landscape Plans. Developer and the HOA shall be solely responsible for obtaining all governmental and private approvals which may be necessary or desirable for the performance of Developer’s or the HOA’s obligations under this Agreement and it is expressly understood and agreed upon that the City does not assume any responsibility for the securing of any such approvals, permits, licenses, easements or other interests, including but not limited to any necessary agreement with utility providers.

9. **Termination.** This Agreement may be terminated by the Developer, HOA, or the City at any time with or without cause upon thirty (30) days written notice to the other parties. Unless otherwise agreed to in writing by the City, in the event of termination of this Agreement, whether at the election of the Developer, HOA or the City, Developer (or HOA if Developer has been released in accordance with Paragraph 5.B. above) at its sole cost and expense shall remove any and all landscaping and improvements from the Roads, other than trees, and replace such landscaping and improvements with sod of a type approved by the City within thirty (30) days.

10. **Rights in Roads.** It is expressly stipulated that this Agreement shall not operate to create or vest any property rights to any portion of the Roads to Developer or HOA. Further, it is expressly understood by Developer and HOA that the City shall be under no obligation to acquire or condemn any rights-of-way, easement or other property right as part of this Agreement.

11. **Other Provisions.**

   A. **Warranty of Authority and Ownership.** Developer and the HOA represent and warrant that it has all necessary power and authority to enter into and consummate the terms and conditions of this Agreement, that all acts, approvals, procedures, and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be, and that, upon the execution of this Agreement by all parties, this Agreement shall be valid and binding upon the parties hereto and their successors in interest and assigns. In addition, Developer represents and warrants to City that Developer is the owner of the Subject Property in fee simple.
B. **Notice.** All notices required or permitted to be given under this Development Agreement must be in writing and must be delivered to the City, the HOA or the Developer at its address set forth below (or such other address as may hereafter be designated by such party in writing). The parties' addresses for the delivery of all such notices are as follows:

City: 
City Manager  
City of Winter Garden  
300 West Plant Street  
Winter Garden, FL 34787  
Facsimile: (407) 656-1073

With a copy to: 
City Attorney  
City of Winter Garden  
300 West Plant Street  
Winter Garden, FL 34787  
Facsimile: (407) 656-1073

Developer: MERITAGE HOMES OF FLORIDA, INC.  
5337 Millenia Lakes Boulevard  
Suite 410  
Orlando, FL 32839  
Facsimile: (407) 712-8688

HOA: McALLISTER LANDING HOMEOWNERS ASSOCIATION, INC.  
5337 Millenia Lakes Boulevard  
Suite 410  
Orlando, FL 32839  
Facsimile: (407) 712-8688

Notices shall be either: (1) personally delivered (including delivery by Federal Express or other courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; (2) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail; or (3) transmitted via telecopier using a telecopier number provided above, if any (or such other number as receiving party may have designated in writing), in which case the delivery shall be deemed to have occurred on the day of the transmission, provided that the day of transmission is a normal business day or, if not, the first normal business day after the transmission. Notices or communications to or from parties' attorneys will be deemed to be to or from that party.
C. **Amendment.** This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except by writing signed by the parties hereto or their authorized assignees.

D. **Severability.** If any portion of this Agreement is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the balance of the Agreement shall continue in full force and effect.

E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the circuit court of and for Orange County, Florida.

F. **Effective Date.** The effective date of this Agreement, for purposes of the performance of obligations by the parties under this Agreement, shall be the date the last of the parties hereto executes the Agreement.
G. **Binding Effect and Successors.** The obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement.

H. **Reimbursement.** On or before ten (10) days after the date of invoicing, Developer shall reimburse the City for the City’s engineer and attorney fees for negotiations, inspections, conferences relating to or drafting of this Agreement for the City.

I. **Time is of the Essence.** Time is hereby declared to be of the essence in the performance of the duties and obligations of the respective parties to this Agreement.

J. **Captions.** The captions or paragraph headings of this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, or meaning of this Agreement.

K. **Counterparts.** This Agreement may be executed in any number of counterparts; each of which when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same Agreement.

L. **Independent Parties.** The parties are not partners and this Agreement is not a joint venture and nothing in this Agreement shall be construed to authorize any of the parties hereto to represent or bind any other party to matters not expressly authorized or provided in this Agreement.

M. **Informed Execution.** This Agreement is entered into voluntarily by the Developer and HOA without duress and after full review, evaluation and consideration by the Developer and HOA. Developer and HOA are represented by counsel, or alternatively, have been afforded an opportunity to retain counsel for review of this Agreement.

N. **Recording.** At any time during the term of this Agreement, the City may record this Agreement with the cost thereof to be borne by the Developer.

O. **Interpretation.** None of the parties shall be considered the drafter of this Agreement for purposes of interpreting this Agreement, it being recognized that all parties have contributed substantially and materially to the preparation of this Agreement.

P. **Non-Waiver of Sovereign Immunity.** Nothing contained in this Agreement or in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Grantee of its sovereign immunity under the Constitution and laws of the State of Florida.
Q. **Police Power; City Ordinances.** Developer and HOA acknowledge that at all times during the term of this Agreement, their rights shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation of the Public Rights-of-Way as the City shall hereafter by resolution or ordinance provide in the interests of health, safety and welfare of the public. Any inconsistency or ambiguity between the provisions of this Agreement and the lawful exercise of the City’s police power shall be resolved in favor of the latter. Additionally, this Agreement and the privileges granted hereunder to Developer and HOA are subject to the general ordinance provisions now in effect and hereinafter made effective by the City.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE 13]
IN WITNESS WHEREOF, the Developer, the HOA and the City have executed this Agreement as of the day and year approved and accepted by the City.

Signed, sealed and delivered in the presence of:

<table>
<thead>
<tr>
<th>ATTEST:</th>
<th>“CITY”</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: ANGEE GRIMMAGE, City Clerk</td>
<td>By: JOHN REES, Mayor</td>
</tr>
</tbody>
</table>

| Print Name: NICHOLAS EVERLY | Print Name: Brian Kittle       |
| Witness                     | Its: Division President       |

| Print Name: ALEX MADISON | Print Name: LEON CALHOUN       |
| Witness                  | Witness                      |

| Print Name: JEFF STALDER | Print Name: MARSHAL SCHIFFE   |
| Witness                  | Its: HOA DIRECTOR            |

<table>
<thead>
<tr>
<th>Print Name: MCALLISTER LANDING HOMEOWNERS ASSOCIATION, INC.</th>
<th>By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print Name: MARSHAL SCHIFFE</td>
<td></td>
</tr>
<tr>
<td>Its: HOA DIRECTOR</td>
<td></td>
</tr>
</tbody>
</table>
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was executed, sworn to and acknowledged before me this 12 of Nov., 2018, by Brian Kittle, as Division President of Meritage Homes of Florida, Inc., on its behalf. He (check one) ☑️ is personally known to me, or ☐ has produced a valid driver’s license as identification.

[Notary Stamp]
Christine Aviles  
Notary Public, State and County Aforesaid  
Name: Christine Aviles  
My Commission Expires: January 11, 2022  
My Commission Number is: GG 174913

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was executed, sworn to and acknowledged before me this 12 of Nov., 2018, by Martha Schiffer, as HOA Director of McAllister Landing Homeowners Association, Inc., on its behalf. He (check one) ☑️ is personally known to me, or ☐ has produced a valid driver’s license as identification.

[Notary Stamp]
Christine Aviles  
Notary Public, State and County Aforesaid  
Name: Christine Aviles  
My Commission Expires: January 11, 2022  
My Commission Number is: GG 174913
EXHIBIT “A”

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

TRACT FD-1, MCALLISTER LANDING, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 96, PAGES 92 THROUGH 97, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA

CONTAINING 19.28 ACRES, MORE OR LESS.
EXHIBIT “B”

DESCRIPTION OF THE ROADS

Tract “J” of McAllister Landing Phase 2, according to the plat thereof, recorded at Plat Book ___, Page ____., Public Records of Orange County, Florida.