



**CITY COMMISSION AGENDA**  
**REVISED 5/23/12\***  
**CITY HALL COMMISSION CHAMBERS**  
**300 W. Plant Street**

**REGULAR MEETING**

**MAY 24, 2012**

**6:30 P.M.**

**CALL TO ORDER**

Determination of a Quorum

Invocation and Pledge of Allegiance

**1. APPROVAL OF MINUTES**

Regular Meeting of May 10, 2012

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

A. **Ordinance 12-23:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA CREATING A NEW CHAPTER 27 OF THE CODE OF ORDINANCES REGARDING PARKS, RECREATION AND COMMUNITY FACILITIES; PROVIDING FOR RULES AND REGULATIONS CONCERNING CITY PARKS, RECREATIONAL FACILITIES AND COMMUNITY FACILITIES; PROVIDING FOR USE PERMITS AND SPECIAL EVENTS PERMITS AND ASSOCIATED STANDARDS, CONDITIONS AND FEES; AMENDING SECTION 50-151 OF THE CODE OF ORDINANCES TO DELETE APPLICABILITY OF PROHIBITED ACTIVITIES IN PARKS AND RECREATIONAL FACILITIES TO AVOID CONFLICTS WITH NEW CHAPTER 27 OF THE CODE OF ORDINANCES; AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES TO DELETE ARTICLE III. MUSICAL OR ENTERTAINMENT FESTIVALS, SECTIONS 10-241, 10-242, 10-243, 10-244 AND 10-245 TO AVOID CONFLICTS WITH NEW CHAPTER 27 OF THE CODE OF ORDINANCES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

B. **Ordinance 12-24:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REPEALING ORDINANCE 12-02 AND REPLACING IT WITH THE AMENDMENTS TO ARTICLE V OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES CONTAINED WITHIN THIS ORDINANCE; PROVIDING FOR THE AMENDMENT OF ARTICLE V OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES ENTITLED "PLANNED UNIT DEVELOPMENTS" CREATING URBAN VILLAGE PLANNED UNIT DEVELOPMENTS; PROVIDING REQUIREMENTS FOR MIXTURE OF USES AND URBAN DEVELOPMENT CRITERIA FOR ALL PROPOSED PLANNED DEVELOPMENT PROJECTS IN THE URBAN VILLAGE PLANNED UNIT DEVELOPMENT ZONING DISTRICT; CLARIFYING, UPDATING, AND REMOVING REDUNDANT LANGUAGE FOR RESIDENTIAL PLANNED UNIT DEVELOPMENTS; PROVIDING FOR REVISIONS TO PLANNED UNIT DEVELOPMENT REVIEW PROCESS AND APPROVAL CRITERIA; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

3. **REGULAR BUSINESS**

- A. Recommendation to approve the Carriage Pointe Reserve developer agreement - Community Development Director Williams
- B. Recommendation to approve the rankings and negotiation of a contract with Tetra Tech Engineering for Hydrogeological and Water Resource Planning Services – Community Services Director Cochran
- C. Request by East Winter Garden Community Development Corporation, Inc. (non-profit) to waive rental fees for the use of Tanner Hall for their annual fundraiser on October 6, 2012 – City Manager Bollhoefer
- D. **\*Resolution 12-09:** A RESOLUTION OF THE CITY OF WINTER GARDEN IN SUPPORT OF A COMMUNITYWIDE INITIATIVE TO REDUCE PEDESTRIAN INJURIES AND FATALITIES IN CENTRAL FLORIDA THROUGH EDUCATION, ENGINEERING, AND ENFORCEMENT – City Manager Bollhoefer

4. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker*)

5. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

6. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

- A. Discussion on proposed revisions to the noise ordinance
- B. **\*Discussion** on proposed resolution opposing the expansion of the West Orange Airport

7. **MATTERS FROM MAYOR AND COMMISSIONERS**

**ADJOURN** to a Regular Meeting on June 14, 2012 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

**NOTICE:** 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.

	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 x2254.		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.
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# CITY OF WINTER GARDEN

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## CITY COMMISSION REGULAR MEETING MINUTES

May 10, 2012

A **REGULAR MEETING** of the 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. The invocation and Pledge of Allegiance were given.

**Present:** Mayor John Rees, Commissioners Bob Buchanan, Kent Makin, Robert Olszewski and Colin Sharman

**Also Present:** City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Assistant to the City Manager - Administrative Services Frank Gilbert, Assistant to the City Manager - Public Services Don Cochran, Community Development Director Ed Williams, Building Official Skip Lukert, Economic Development Director Tanja Gerhartz, Recreation Director Jay Conn, Information Technology Director Bob Reilly, Deputy Police Chief Bill Sullivan, Orlando Sentinel Reporter Stephen Hudak and West Orange Times Reporter Michael Laval

### 1. **APPROVAL OF MINUTES**

**Motion by Commissioner Olszewski to approve the regular meeting minutes of April 26, 2012, as submitted. Seconded by Commissioner Makin and carried unanimously 5-0.**

### 2. **PRESENTATIONS**

#### A. **Drop Savers Awards**

The 2012 Annual Drop Savers Awards were presented by Mayor Rees and City Commissioners to the following winners:

Tessa Wolfe	Dillard Elementary Division 2 School Winner
Eumica Eugene	Whispering Oak Division 3 School Winner ( <i>unable to attend</i> )
Christine Nguyen	Whispering Oak Division 2 School and City winner
Fermin Medina	Tildenville Elementary Division 3 School, City, and State Winner

#### B. **Opposition to expanding the West Orange Airport**

Ramona Phipps, representing the Friends of Lake Apopka (FOLA) and as a Commissioner of the Town of Oakland, gave a PowerPoint presentation as to why FOLA are in opposition to expanding the airport off the Lake Apopka shore. She emphasized how the restoration efforts of the past 10 years that have cost taxpayers over \$150 million are working and how positively the area impacts our regional economics. She requested

that the City of Winter Garden join Oakland and Montverde in adopting a resolution, to be given to the Saint Johns River Water Management District (SJRWMD) governing board, that they should deny any expansion of the existing runway. Expanding the runway will cause the marshes to be drawn down so the birds will have no water, which will be a negative impact to our environment. She finds it critical that solidarity is shown on this issue and urged the City Commission to join them in their opposition.

Bob Stamps, board member of the Orange Audubon Society, shared stories of people enjoying the wildlife on the north shore of Lake Apopka. He distributed a handout indicating that we are on the Atlantic flyway, which is an extremely important migratory route for all kinds of birds. The highest Christmas bird count in all of North America is the north shore of Lake Apopka. He noted that the expansion of the airport will negatively impact our water quality, wildlife, fishing, boating, and duck hunting. He urged the City Commission to sign the resolution and forward it to the St. Johns Water Management District.

Rich Stunkel, a board member and representative for the Florida Greenways and Trails Foundation, invited the City Commission to a presentation to be held on May 31, 2012 at 4:30 p.m. at the Lakeside Inn in Mount Dora. He stated that they have pieced together the heart of the Florida Trail, which closes the loop and connects us to form a 250 mile trail that people will be able to use and experience Florida. He stated that they would be able to see how the preservation of the north shore restoration area plays into our ecotourism.

City Manager Bollhoefer asked for clarification on the 10,000 foot hazardous wildlife indicated and is it because they want to expand or add jets. Ms. Phipps responded that the information provided came directly off of the FAA website. It is because they want to have jets. She explained that the marsh water would have to be drawn down that will eliminate attracting birds. Mr. Stunkel added that the reference made to wildlife is not just limited to birds but includes others such as a deer on a runway.

Mayor Rees suggested that the City Commissioner review the resolutions presented and speak with the City Manager with any thoughts and suggestions they may have. This matter will be brought back to the next meeting.

### 3. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

- A. **Ordinance 12-24:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REPEALING ORDINANCE 12-02 AND REPLACING IT WITH THE AMENDMENTS TO ARTICLE V OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES CONTAINED WITHIN THIS ORDINANCE; PROVIDING FOR THE AMENDMENT OF ARTICLE V OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES ENTITLED "PLANNED UNIT DEVELOPMENTS" CREATING URBAN VILLAGE PLANNED UNIT DEVELOPMENTS; PROVIDING REQUIREMENTS FOR MIXTURE OF USES AND URBAN DEVELOPMENT CRITERIA FOR ALL PROPOSED PLANNED

DEVELOPMENT PROJECTS IN THE URBAN VILLAGE PLANNED UNIT DEVELOPMENT ZONING DISTRICT; CLARIFYING, UPDATING, AND REMOVING REDUNDANT LANGUAGE FOR RESIDENTIAL PLANNED UNIT DEVELOPMENTS; PROVIDING FOR REVISIONS TO PLANNED UNIT DEVELOPMENT REVIEW PROCESS AND APPROVAL CRITERIA; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

City Attorney Ardaman read Ordinance 12-24 by title only. Community Development Director Williams stated that in a lawsuit brought against the City on the zoning and subdivision plan for the project on Marsh Road, the adjoining property owner seeks to overturn that decision. One of the issues raised is that the original ordinance (12-02) was not properly advertised. He noted that our lawsuit hearing is scheduled for July 2<sup>nd</sup> and this ordinance is before the Commission to properly readopt this ordinance to meet the proper timeframe. He noted some minor changes have been distributed to the City Commission for consideration as were issues brought to staff's attention, so some clarifications have been made. Staff recommends approval.

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

**Motion to Commissioner Buchanan to approve Ordinance 12-24 with revisions provided by staff and with the second reading and public hearing being scheduled for May 24, 2012. Seconded by Commissioner Olszewski and carried unanimously 5-0.**

- B. **Ordinance 12-28:** AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING ARTICLE II OF CHAPTER 30, ARTICLE II OF CHAPTER 26, AND ARTICLE IV OF CHAPTER 38 OF THE WINTER GARDEN CODE OF ORDINANCES TO REMOVE REFERENCES AND APPLICABILITY OF SUCH PROVISIONS TO THE REGULATION OF FIREARMS AND AMMUNITION IN ACCORDANCE WITH SECTION 790.33, FLORIDA STATUTES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-28 by title only. City Manager Bollhoefer stated in October of 2011 the State changed the statutes to give full authority to regulate firearms to the State, thus preempting any local laws. The City was required to effectively stop enforcing its laws as of October 1, 2011. This was done and staff thought it necessary to change our Code of Ordinances to match this change.

Commissioner Olszewski clarified that this is not limiting a citizens second amendment rights. This ordinance takes it out of the City's hands and puts it into the hands of the State. Mr. Bollhoefer replied yes.

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

**Motion by Commissioner Sharman to approve Ordinance 12-28 with the second reading and public hearing being scheduled for June 14, 2012. Seconded by Commissioner Makin and carried unanimously 5-0.**

4. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

- A. **Ordinance 12-17:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.14 ± ACRES LOCATED AT 176 WATER STREET; ON THE SOUTH SIDE OF WATER STREET EAST OF WALKER STREET 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

City Attorney Ardaman read Ordinance 12-17 by title only. Community Development Director Williams stated that there are two parcels seeking annexation, rezoning, and a land use designation change. A revised condition has been distributed and is based on the last hearing when the City Commission directed that the language be changed from only access would be from State Road 50 with no access to Walker and Water Streets to allowing access to the site from Walker Street being limited to a right-in and left-out driveway, and no access from Water Street. He stated that staff asks that this condition be included in the rezoning and comprehensive plan designation actions. Staff recommends approval.

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

**Motion by Commissioner Buchanan to adopt Ordinance 12-17. Seconded by Commissioner Sharman and carried unanimously 5-0.**

- B. **Ordinance 12-18:** 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 0.14 ± ACRES OF LAND LOCATED AT 176 WATER STREET; ON THE SOUTH SIDE OF WATER STREET EAST OF WALKER STREET FROM ORANGE COUNTY LOW MEDIUM DENSITY RESIDENTIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-18 by title only. Community Development Director Williams stated that staff recommends approval of the future land use designation of commercial, subject to the revised conditions provided.

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

**Motion by Commissioner Sharman to adopt Ordinance 12-18 with the revised conditions submitted by staff (See Exhibit A). Seconded by Commissioner Buchanan and carried unanimously 5-0.**

- C. **Ordinance 12-19:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.14 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 176 WATER STREET; ON THE SOUTH SIDE OF WATER STREET EAST OF WALKER STREET FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-19 by title only. Community Development Director Williams stated staff recommends approval of the C-2 zoning subject to the revised conditions.

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

**Motion by Commissioner Olszewski to adopt Ordinance 12-19 with the revised conditions submitted by staff (See Exhibit A). Seconded by Commissioner Makin and carried unanimously 5-0.**

- D. **Ordinance 12-20:** 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 THE SOUTHEAST CORNER OF WALKER STREET AND WATER STREET 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

City Attorney Ardaman read Ordinance 12-20 by title only. Community Development Director Williams stated staff recommends approval of the annexation.

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

**Motion by Commissioner Makin to adopt Ordinance 12-20. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

- E. **Ordinance 12-21:** 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 0.23 ± ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF WALKER STREET AND WATER STREET FROM ORANGE COUNTY LOW MEDIUM DENSITY RESIDENTIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-21 by title only. Community Development Director Williams stated staff recommends approval of the future land use subject to the revised conditions.

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

**Motion by Commissioner Buchanan to adopt Ordinance 12-21 with the revised conditions submitted by staff (See Exhibit B). Seconded by Commissioner Olszewski and carried unanimously 5-0.**

- F. **Ordinance 12-22:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.23 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER OF WALKER STREET AND WATER STREET FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-22 by title only. Community Development Director Williams stated that staff recommends approval of the commercial zonings subject to revised conditions.

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

Commissioner Buchanan asked for clarification that once these parcels are brought together will they become one property. Mr. Williams responded yes, the owners anticipate it being one property.

**Motion by Commissioner Olszewski to adopt Ordinance 12-22 with the revised conditions submitted by staff (See Exhibit B). Seconded by Commissioner Makin and carried unanimously 5-0.**

5. **REGULAR BUSINESS** – There were no items.

6. **MATTERS FROM CITIZENS** – There were no items.

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

8. **MATTERS FROM CITY MANAGER**

*(Note: Order of items discussed was changed by the City Manager.)*

A. **Sale of City-owned Mobile Home**

City Manager Bollhoefer stated that the City owns a home at 18 Holly Drive for which he is asking the City Commission for permission to sell the mobile home for a fair asking price of \$5,000.00.

**Motion by Commissioner Sharman to approve the sale of the mobile home located at 18 Holly Drive (Trailer City) for \$5,000.00. Seconded by Commissioner Makin and carried unanimously 5-0.**

B. **Discussion on revisions to noise ordinance**

City Manager Bollhoefer stated that he had intended on handing this out tonight but staff has gone back to the drawing board and is being reviewed by the Police Chief for enforceability. It will be very challenging and it will be brought to the City Commission for review and direction.

There was discussion on the use of a decibel meter and any way this might be enforced.

C. **Discussion on expanding senior citizen utility discount to low income residents with disabilities**

City Manager Bollhoefer explained that it was brought to the attention of one of the City Commissioners that the City has a senior citizen discount on the utilities. In some instances some people do not meet the age requirement but have disabilities and have inquired as to whether this program can be expanded to include them. He noted that in reviewing this issue there were challenges as to defining disability and how income is measured. Staff will be going back to the drawing board on this item. He shared that approximately ten years ago this program was budgeted at \$30,000 per year and is now approaching \$65,000, doubling over time; adding more residents will only cause it to go higher. Allowing more to pay less must be made up elsewhere. He noted that staff will work on this item and bring it back more information to the City Commission.

There was discussion that qualifying be a combination of income versus net worth. Commissioner Sharman emphasized that the program should be made available to the ones who really need it. Mr. Bollhoefer stated qualifying factors is a part of what will be reviewed.

• **Recent Downtown Events**

City Manager Bollhoefer displayed pictures of the Harvest Fest and Farmers Market noting that hosting these types of events is one of the best things you can do for economic development. He noted that not having a place to park is a good issue for our City to have.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Makin stated that he spoke to some visitors from Kansas City who came down to attend a wedding. They noted that they wished they could take the model of our City to other cities. He stated that it is a joy to walk downtown and see all the families enjoying the downtown. He commended staff and its residents for getting on board with this vision and seeing the outcome.

Commissioner Buchanan stated that he is receiving non-stop comments on how wonderful the City of Winter Garden is. He noted that he also attended a fundraiser which also generated nonstop comments on how wonderful they thought the City's changes are. The City festivals are starting to move down Tremaine Street, which shows that we are expanding.

Commissioner Buchanan also thanked Lake Apopka Natural Gas and noted that is nice to see the City improve, grow, and expand.

Commissioner Olszewski:

- Echoed the comments made by the City Manager regarding the Harvest Fest and commended the staff members.
- Thanked City Manager Bollhoefer for mentioning the lift station on Ninth Street the night he took office and wants the residents to know that the City is currently working on the issue.
- Stated that he and Police Chief Brennan represented the City of Winter Garden at the Orange County Law Enforcement Memorial in which they honored two of our fallen officers William Benton and Dalton Fleming, which was very moving.
- Stated that the Safe Streets of West Orange had an event this week bringing up the impact of Windermere and Roberson Road. He expressed that the City is definitely listening to our residents. The feeling is that a round-about is definitely needed.
- Spoke on the issue of redistricting of the State House and Senate maps and stated that the City of Winter Garden is in a very different environment and ask that consideration be given to an advocate for Winter Garden in Tallahassee given the impending changes for the next 10 years.

**City Manager Bollhoefer** asked for permission to take \$5,000.00 out of the City's contingency fund to independently hire someone to take a look at whether a round-about would work at the Windermere and Roberson intersection. He noted that the County has done a study and staff would like an independent study done to see if it comes up with a different conclusion than the County's. He believes the County determined that a roundabout would work until the year 2020.

**Motion by Commissioner Olszewski to approve taking \$5,000.00 from the City's contingency fund to conduct a feasibility study for a round-about for Roberson Road and Windermere Road. Seconded by Commissioner Sharman and carried unanimously 5-0.**

The meeting adjourned at 7:26 p.m.

APPROVED:

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Mayor John Rees

ATTEST:

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City Clerk Kathy Golden, CMC

DRAFT

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** *Jay Conn, Parks and Recreation Director*

**Via:** City Manager Mike Bollhoefer

**Date:** **May 2, 2012**

**Meeting Date:** **May 24, 2012**

**Subject:**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA CREATING A NEW CHAPTER 27 OF THE CODE OF ORDINANCES REGARDING PARKS, RECREATION AND COMMUNITY FACILITIES; PROVIDING FOR RULES AND REGULATIONS CONCERNING CITY PARKS, RECREATIONAL FACILITIES AND COMMUNITY FACILITIES; PROVIDING FOR USE PERMITS AND SPECIAL EVENTS PERMITS AND ASSOCIATED STANDARDS, CONDITIONS AND FEES; AMENDING SECTION 50-151 OF THE CODE OF ORDINANCES TO DELETE APPLICABILITY OF PROHIBITED ACTIVITIES IN PARKS AND RECREATIONAL FACILITIES TO AVOID CONFLICTS WITH NEW CHAPTER 27 OF THE CODE OF ORDINANCES; AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES TO DELETE ARTICLE III. MUSICAL OR ENTERTAINMENT FESTIVALS, SECTIONS 10-241, 10-242, 10-243, 10-244 AND 10-245 TO AVOID CONFLICTS WITH NEW CHAPTER 27 OF THE CODE OF ORDINANCES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE**

**Issue:**

The current code of the City of Winter Garden is being amended to include a new Park and Recreation Ordinance that will include a comprehensive list of regulations applicable to many of the situations that are encountered by parks staff or police officers on a daily basis. This will allow for more uniform enforcement and assure that the public will ultimately have a safe and enjoyable experience when utilizing any of our public spaces.

Some of the changes to the current parks ordinance included in these newly proposed regulations include:

- Special Events – Any festival, athletic competition, gathering, or demonstration with more than 100 people in attendance will now be considered a “special event” and will be required to fill out a permit, provide evidence of insurance, and provide the city with adequate proof that there are plans in place for parking, sanitation, and a plan to manage emergency situations that may arise. The

language in the current code of ordinances only requires “Music or Entertainment Festivals” to obtain permits. Changing this term to “Special Events” will alleviate the ambiguity of an event may or may not easily be classified in the “Musical or Entertainment” category.

- Park Operating Hours – Establishes normal park operating hours as 7:00am to 10:00pm unless activities have been approved by city staff to take place outside of these hours.
- Playground Use - Prohibits anyone over the age of 14 from utilizing playground equipment unless it is in the supervision of younger children in his or her care.
- Signage – Prohibits anyone from affixing any type of sign to any part of a public facility without proper permission.
- Sound Amplification – Use of any type of sound amplification equipment will need to have pre-approval of city staff through a special event permit.
- Pet Regulations – Dogs and cats must be leashed by pet owners unless it is in an area that has been designated to allow for free roaming pets.
- Picnic Shelter Use – Allows individuals or groups to reserve picnic facilities for a fee. To assure that no one person or group is monopolizing the opportunity to utilize these facilities the use frequency is limited to no more than once every month by the same individual.
- Prohibited Activities in Parks – Some of the prohibited activities include alcohol consumption, gambling, soliciting/advertising, camping (unless in an area designated for such use), and igniting fires (unless in an installed grill).
- Rental Functions – Limits all alcohol possession that it will be permitted in indoor and verandah areas only (not parking lots or other park areas).

**Recommended action:**

**Move to adopt ordinance 12-23.**

**Attachments/References:**

**Ordinance 12-23**

**ORDINANCE 12-23**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA CREATING A NEW CHAPTER 27 OF THE CODE OF ORDINANCES REGARDING PARKS, RECREATION AND COMMUNITY FACILITIES; PROVIDING FOR RULES AND REGULATIONS CONCERNING CITY PARKS, RECREATIONAL FACILITIES AND COMMUNITY FACILITIES; PROVIDING FOR USE PERMITS AND SPECIAL EVENTS PERMITS AND ASSOCIATED STANDARDS, CONDITIONS AND FEES; AMENDING SECTION 50-151 OF THE CODE OF ORDINANCES TO DELETE APPLICABILITY OF PROHIBITED ACTIVITIES IN PARKS AND RECREATIONAL FACILITIES TO AVOID CONFLICTS WITH NEW CHAPTER 27 OF THE CODE OF ORDINANCES; AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES TO DELETE ARTICLE III. MUSICAL OR ENTERTAINMENT FESTIVALS, SECTIONS 10-241, 10-242, 10-243, 10-244 AND 10-245 TO AVOID CONFLICTS WITH NEW CHAPTER 27 OF THE CODE OF ORDINANCES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Garden owns and holds available to the public, parks and recreational facilities and other community facilities; and

**WHEREAS**, it is the City's goal to provide citizens with a safe environment in which recreational opportunity can be maximized; and

**WHEREAS**, in order to promote public health, safety and welfare of the citizens of the City of Winter Garden, it is necessary to adopt this Ordinance for the general purpose of assuring the proper balance between the use of parks, recreational facilities and other community facilities with the preservation of such parks and facilities and law and order; and

**WHEREAS**, it is the intent of this Ordinance not to exclude communication of a particular content; and

**WHEREAS**, to allow unregulated access to all comers to parks and recreational facilities could easily reduce rather than enlarge parks' and recreational facilities' utility as a forum for speech; and

**WHEREAS**, it is further the intent of this Ordinance to coordinate multiple uses or limited space, reduce and prevent property damage, minimize the hazards of personal injury and loss of life, and maintain the quality of outdoor and indoor cultural, recreational and other community facilities by establishing rules and regulations governing the use of such parks and facilities.

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

**SECTION 1: Adoption.** A new Chapter 27, Divisions 1, 2, 3 and 4 of the City of Winter Garden Code is hereby created and adopted to read as follows:

**CHAPTER 27 PARKS, RECREATION AND COMMUNITY FACILITIES**

**DIVISION 1. SCOPE AND PURPOSE.**

**Sec. 27-1. Purpose and objectives.**

In order to promote public health, safety and welfare of the citizens of the city, a parks and recreation ordinance is hereby enacted for the general purpose of assuring the proper balance between (1) the use of park, cultural and recreational facilities and (2) the preservation of such facilities and law and order.

**Sec. 27-2. Applicability.**

(a) Unless stated otherwise herein, this article shall apply in all city parks and recreation areas and in all cultural, recreational and other community facilities which now are or which may hereafter be under the jurisdiction and control of the City of Winter Garden, and shall include all grounds, roadways, parks, athletic fields, buildings, school facilities when they are in use by the city as recreational facilities, and other areas used by the city for cultural, recreational or other community purposes.

(b) The provisions of this article shall not apply to any public officer, employee or peace officer who is acting in the course of and within the scope of the public business, nor to any other person conducting public business or related activities for, on behalf of, and pursuant to lawful authority of an appropriate public entity.

**Sec. 27-3. Definitions.**

For the purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The pronouns "he" and "his" include the pronouns "she" and "her, and the use of his/her means "his or her."

Alcoholic beverage means distilled spirits and all beverages containing one-half of one (0.5) per cent or more alcohol by volume, including beer and wine. Medicines or drugs dispensed pursuant to a physician's prescription are excluded.

Amplified sound equipment and/or sound-emanating equipment means music, sound wave, vibration or speech projected or transmitted by electronic equipment, including, but not limited to, public address systems, amplifiers, horns and megaphones.

Animal means any cat, dog, horse, fowl and living creature other than a human.

Applicant means any person seeking a permit to use or conduct an activity in a park or recreation area or facility.

City means the City of Winter Garden.

City Commission means the governing body of the City of Winter Garden.

City Manager means the chief administrative officer of the City of Winter Garden or his/her designee.

Civic, educational or community service group means any not-for-profit group primarily devoted to the advancement of civic, educational or community service purposes.

Community facility means a building owned, leased or otherwise controlled by the city which is made available for reserved use by members of the public.

Domestic animal. Any animal not deemed to be a wild or exotic animal pursuant to Florida Game and Freshwater Fish Commission regulations.

Facility means any building, structure, or location owned, equipped and maintained by the city for public use.

Lewd or lascivious act means any one or more of those acts defined in Section 800.04(4)(5)(6) & (7) or Section 825.1025, Florida Statutes, as may be amended from time to time, regardless of the age of the victim(s) or observer(s) of such acts.

Limited membership group means denominational groups, partisan political groups, labor organizations and other such groups where membership is limited or not open to the general public.

Loiter or prowl shall have the same meaning as used in Section 856.021, Florida Statutes, as may be amended from time to time.

Nonrecurring use means infrequent use of a specific facility or the use of a facility on a special event basis (i.e., annual picnics, private parties or company-sponsored events).

Organized play means six persons or more engaging in a team sport athletic contest, such as, but not limited to, soccer, baseball, softball, football, basketball, or volleyball; this shall not apply for infrequent use.

Park means all real properties owned or controlled by the city and designated on a map maintained in the office of the city clerk, regardless of the extent of development or official designation, which serve as picnic grounds, recreation areas, nature areas and public fishing waters. Use of the term “park” in this article generally refers to those parks which are not used for organized scheduled activities. Park facilities include, but are not limited to, open space play areas, picnic shelters or pavilions, park benches, bike trails, fishing piers, boat ramps, restrooms, etc. The term “park” also refers to urban open spaces that are maintained for public use.

Permit means any written license issued by or under the authority of the city manager or the city commission permitting a use, event or activity in a park or recreation area or facility.

Person means any individual, child, firm, association, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, and all other groups or combinations thereof.

Political activities means activities engaged in by candidates for public office, political groups, political parties or political committees.

Professional association means a group formed by practitioners of a specific profession or occupation.

Recreation facility means a building, structure, field, court, or park owned, leased or otherwise controlled by the city for public use which hosts organized recreational activities for teams and individuals or which provides active facility sites for non-organized leisure play. Recreation facilities include, but are not limited to, ballfields, tennis courts, shuffleboard courts, and playgrounds.

Recurring use means repeated use of a specific facility on a regularly scheduled basis (i.e., leagues, organized play, monthly meetings, etc.).

Reserved use means exclusive, permitted use for one or more occasions.

Resident means a person or the minor children of the person who owns or leases real property within the city limits or who maintains either voter registration or a bona fide domicile within the city limits. For the purpose of assessing fees for use of city facilities, the term “resident” also includes persons who reside outside the city limits but are customers of the city’s water utility.

Service animal means any animal such as a seeing-eye dog or hearing-ear dog used to assist a person with a disability or an animal trained for law enforcement purposes and under the control of a law enforcement officer.

Sexual activity means the same as defined in Section 800.04(1)(a), Florida Statutes, as may be amended from time to time.

Special event means an event that takes place on any publicly owned property, sidewalk, alley, park, lake or other publicly owned outdoor location, which, because of its scope and impact on surrounding areas and the potential need for provision of extra services by the city, requires a permit issued by the city manager in accordance with Division 4 of this Article. Special events include, but are not limited to circuses, carnivals, concerts, festivals, parades, special photography or any other event involving the anticipated assembly of one hundred (100) or more participants, spectators or other persons. Special events that require the closure of a public street(s) must be approved by the city commission. The location of a special event shall require the approval of the city manager. Special events do not include activities sponsored by the City or activities conducted by athletic organizations that utilize public facilities and have a current existing contract agreement with the City to do so.

Vehicle means every device in, upon or by which any person or property may be transported or drawn upon a highway, excepting devices used exclusively upon station rails or tracks.

**Sec. 27-4. Parental responsibility.**

No parent, guardian or custodian of a minor shall permit or allow such minor to do any act or thing in any city park or facility prohibited by the provisions of this article. Parents, guardians and custodians of minors shall also be held responsible for the acts of said minors.

**Sec. 27-5. Enforcement.**

- (a) It shall be unlawful for any person to do any act prohibited or fail to perform any act required by this article. Any person who fails to comply with any lawful and reasonable order given by law enforcement officers or authorized city official shall be in violation of § 843.02, Fla. Stat.
- (b) The city manager, city law enforcement officers, or any employee so designated by the city manager shall have the authority to eject from a city park or facility any person in violation of this article, the Winter Garden Code of Ordinances, or Florida Statutes.

**Sec. 27-6. Penalties.**

Any person violating any of the provisions of this Chapter shall also be subject to the violation and penalty provisions of § 1-15 of this Code.

**DIVISION 2. RULES FOR USE OF CITY PARKS AND FACILITIES.**

**Sec. 27-7. Hours of use — parks and outdoor recreation facilities.**

- (a) It shall be unlawful to congregate in or use any lighted city park or outdoor recreation facility after 10:00 p.m. and before 7:00 a.m., except for the following:

- (1) Those organized recreational or cultural activities where the organizer has obtained a permit for use of the city park beyond 10:00 p.m. A permit for the use of a city park beyond 10:00 p.m. may be issued to the organizer of a cultural or recreational activity by the city manager or his/her designee.
  - (2) Any park or outdoor recreation facility where a sign is posted that specifies closing hours other than those specified in paragraph (a).
  - (3) Any city sponsored activity that has been authorized to take place in such facilities by the city manager or his/her designee.
- (b) It shall be unlawful to congregate in or use any unlighted city park or outdoor recreation facility after dusk and before dawn.
- (c) It shall be unlawful to congregate on or use any unlighted trail after 11:00 p.m. and before 5:00 a.m. Lighted trails shall be open at all times.

**Sec. 27-8. Prohibited acts in city parks and facilities.**

It shall be unlawful for any person using city parks and facilities to either perform or allow the performance of any of the following acts, unless such activity is authorized, permitted or supervised by the city:

- (a) *Damaging property.* No person shall willfully mark, deface, damage, displace, remove or tamper with any park or facility buildings, tables, benches, fireplaces, railing, paving or paving materials, water lines or other utilities, permanent or temporary signs, placards or notices, monuments, stakes, posts, boundary markers or other structures, equipment or parks or recreation property.
- (b) *Improperly using park structures, equipment and furniture.*
  - (1) No person over the age of fourteen (14) years shall trespass upon or play upon or use the playground equipment at any city park other than those swings and equipment designated for adult use; however, parents, guardians, and other bona fide caretakers over the age of fourteen (14) shall have limited access to playground equipment for the purposes of supervising the use of such equipment by children under their care.
  - (2) No person shall lie or otherwise be in a horizontal position on a table or bench intended for use by the general public.
  - (3) No person may erect signs or affix signs to any tree, post, or park facility or grounds, except for city representatives or other individuals authorized by the city to do so.

- (4) No person may drive, putt, or otherwise hit a golf ball or throw javelins or other missile type objects except in areas specifically designated for such purposes by the city manager.
- (5) No person shall sleep, loiter or prowl in bushes, shrubs, or other foliage located within the parks.
- (6) The city manager may develop and post additional safety rules and regulations particular to each facility.
- (c) *Polluting waters.* No person shall throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond or lake or any storm sewer or drain flowing into such waters any substance, matter or things, liquid or solid, which will or may result in the pollution of such waters.
- (d) *Damaging plants.* No person shall damage, cut, carve, transplant or remove any tree or plant, or grass area, or injure the bark or pick the flowers or seeds of any tree or plant, nor shall any person attach any rope, wire, sign or other contrivance to any tree or plant.
- (e) *Harming or molesting animal life.* No person shall molest, harm, frighten, kill, trap, hunt, chase, capture, shoot or throw missiles at any mammal, bird, reptile or amphibian; nor shall any person remove or in any way harm the eggs, nest or young of any mammal, bird, reptile or amphibian. Fishing shall be permitted in accordance with § 27-10 of this article.
- (f) *Littering.* No person shall bring in or dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, refuse or other litter, or place refuse or litter in any waters in or contiguous to any park or facility, or anywhere on the grounds thereof, except for within those receptacles provided by the city and designated for such purposes.
- (g) *Igniting fires.* No person shall ignite or attempt to ignite any fire against or on any vegetation or park or facility structure, except in city provided fireplaces or grills when used for cooking. Persons are permitted to use a personal grill of type approved by the parks and recreation department in a designated picnic area; provided that such persons accept responsibility for proper off-site disposal of all charcoal, wood chips or other cooking materials after such use.
- (h) *Unauthorized operation of vehicles.* No person shall drive or otherwise operate a vehicle in a park or recreation area upon surfaces other than those maintained and open to the public for purposes of vehicular travel, except upon temporary parking areas as may be designated from time to time by the city commission or city manager, and further excepting vehicles in the service of the city, animal control vehicles, law enforcement vehicles, and motorized wheelchairs.

- (i) Possessing or consuming alcoholic beverages. No person shall sell, possess or consume alcoholic beverages, including beer or wine; provided, however, that alcoholic beverages may be permitted by the city manager for special events or within certain designated facilities.
- (j) Fireworks. No person shall possess, carry or ignite fireworks or sparklers in any city park or facility, unless authorized as part of a city sponsored or authorized event such as a Fourth of July celebration or similar community celebration. The terms "fireworks" and "sparklers" shall have the same meaning as such terms are defined by Chapter 791.01, Florida Statutes.
- (k) Gambling. No person shall conduct in any city park or facility any card game for money or any other game for money or participate in any form of betting or gambling as defined in Florida Statutes. A drawing for chance conducted by a charitable or non-profit organization may be conducted only in accordance with § 849.0935, Fla. Stat.
- (l) Vending, soliciting, advertising, etc. No person shall practice, carry on, conduct or solicit for any occupation, business, or profession in any city park or facility; or sell or offer for sale any food, beverage, merchandise, article, or anything whatsoever in any park or facility. No person shall beg or solicit contributions. This paragraph shall not apply to any person, association, organization, entity or group acting pursuant to a contract with the city or under a special event permit granted by the city.
- (m) Operating amplified sound equipment. No person shall install, use, and operate within a park amplified sound equipment for the purposes of giving instructions, directions, talks, addresses, or lectures, or for transmitting music to any persons or groups of persons in any park, or in the vicinity thereof, except when installed, used, or operated in compliance with a special event permit issued by the city and when operated in accordance with terms of the permit. This paragraph shall not apply to the use of a loudspeaker or other amplified sound equipment that might be used on an athletic field during an athletic competition or other event sponsored by a school or community organization or when amplified sound equipment is authorized by a negotiated agreement with the city.
- (n) Launching or operating aircraft, radio-controlled model airplanes, etc. No person shall launch or operate any aircraft, including but not limited to, hot air balloons, airplanes, ultralights, helicopters and gliders except in areas or at times specifically designated for this purpose by special permit issued by the city manager.
- (o) Camping. No person shall camp in a city park or recreation area except at such times and places as may be designated by the city manager and except pursuant to a special permit issued by the city.
- (p) Erecting structures. No person shall construct or erect any tent, building, shed, shelter or structure of whatever kind, whether permanent or temporary in character, or run or string

any public service utility into, upon, or across a city park or recreation area except as authorized by the city manager or his/her designee.

- (q) *Endangering the public.* No person shall endanger the safety of any person or group by any conduct or act or by any failure to observe the rules established by this article.
- (r) *Interfering with use of the park by others.* No person or group shall prevent any other person or group from using any park or any of its facilities, or interfere with such use in compliance with this article and with the rules applicable to such use. Conducting activities authorized by a reserved use or special event permit issued pursuant to this article shall not constitute a violation of this section.
- (s) *Lewd or lascivious acts and sexual activity.* No person shall engage in a lewd or lascivious act or sexual activity in a city park or facility.
- (t) *Sanitation.* No person shall discharge or otherwise deposit human wastes in a city park or facility, except in appropriate toilet facilities provided by the city for such purposes. Furthermore, no person shall shave or shower in any city park or facility except in appropriate bathing facilities provided by the city for such purposes.

**Sec. 27-9. Domestic animals in parks and recreation facilities.**

- (a) No animals, other than dogs or cats, are permitted on park property unless a permit is applied for and obtained from the city manager to expressly authorize such animal(s). Dogs must be kept at all times on leashes no longer than eight (8) feet. Cats must be kept at all times on leashes or restrained within a pet carrier or cage. All animal excrement must be properly cleaned up and properly disposed of by the owner or keeper of the animal.
- (b) No person shall bring into any park any animal that constitutes a safety hazard or detriment to the enjoyment of the area by the public.
- (c) No person having in charge or custody any dog or cat shall permit, allow or suffer such dog or cat to enter upon or remain within any playground or park area reserved for children or to enter any sandbox or play apparatus area.

**Sec. 27-10. Fishing.**

Fishing shall be permitted in accordance with state law in those areas of ponds, lakes, and streams designated by the city for such activity, a record of which shall be maintained by the City's parks and recreation department and made available to the public.

**Sec. 27-11. Alcoholic beverages.**

No person shall sell, offer for consumption, or consume any alcoholic beverage, including beer and wine, within any city park or facility except as follows:

- (a) The city commission may approve the sale or consumption of alcoholic beverages in a city park or facility in conjunction with the issuance of a special event permit when possession and consumption is specifically authorized by permit or license of the state division of alcoholic beverages and tobacco.
- (b) The city manager may approve the consumption of alcoholic beverages at private social functions in city facilities designated for such functions.

### **DIVISION 3. USE PERMITS**

#### **Sec. 27-12. General Provisions**

- (a) Application for permits
  - (1) Applicants may be required to provide liability insurance in accordance with § 27-12 (e) if, in the sole discretion of the city manager, the requested use of the facility represents a significant risk of loss to the city.
  - (2) Parks and facility use permits will not be issued to persons under 18 years of age; youth groups must have an adult sponsor.
  - (3) The permittee listed on the park or facility use permit shall be considered the person or entity responsible for the conduct of the activities occurring during the event and shall be responsible for the condition of the park or facility after its use. All other conditions listed on the park or facility use permit shall apply.
- (b) Permit fees for reserved use.
  - (1) The city is authorized to establish fees for reserved use of park, recreation and community facilities and to offset the cost to the public for additional services provided by the city in connection with such use.
  - (2) A fee will not be charged for use of a facility for city sponsored or co-sponsored programs or events.
- (c) Standards for review of permit applications.
  - (1) The city manager shall approve an application for permit unless the city manager finds that any one or more of the following basis for denying a permit application exists: (i) if the applicant or the person on whose behalf the application for permit was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior permits issued to or on behalf of the applicant; (ii) the application for permit (including any required attachments and submissions) is not fully completed and executed; (iii) the applicant has not tendered the required application fee with the application or has not tendered the required user fee, indemnification agreement, insurance certificate, or security deposit within the

times prescribed by the city; (iv) the application for permit contains a material falsehood or misrepresentation; (v) the applicant is legally incompetent to contract or to sue and be sued; (vi) the applicant or the person on whose behalf the application for permit was made has on prior occasions damaged city property and has not paid in full for such damage, or has other outstanding and unpaid debts to the city; (vii) a fully executed application for permit with priority for the same time and place has been received, and a permit has been or will be granted to another applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular park or part hereof; (viii) the use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the city and previously scheduled for the same time and place; (ix) the application is in conflict with the facility reservation frequency restrictions under this chapter; (x) the applicant has exhibited an inability or unwillingness to satisfy conditions of a permit; (xi) the proposed use or activity is prohibited by or inconsistent with the classifications and uses of the park or part thereof designated pursuant to this chapter; (xii) the use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, or other users of the park, of city employees or of the public; (xiii) the use or activity intended by the applicant would reasonably be calculated to incite violence, crime or disorderly conduct on the part of the participants; (xiv) the use or activity intended by the applicant would reasonably be calculated to entail unusual, extraordinary or burdensome expense for supervision, maintenance, cleanup or police protection by the city; or (xv) the use or activity intended by the applicant is prohibited by law, by this chapter or the Code of Ordinances.

- (2) Under no circumstances shall the sex, age, race, religion, political views, or national origin of applicants, event coordinators or participants be used as a basis for denying a permit.
- (3) Upon receipt of a fully executed and complete permit application, the city manager shall have twenty-one (21) days to approve, approve with conditions or deny the permit application. If the 21-day application review period expires on a Saturday, Sunday or city observed holiday, the city manager shall be given until the following business day to take action on the applicable permit application. If a permit application is denied, the city manager shall explain to the applicant the city manager's reasons for denial.
- (4) Applications for permits shall be processed in order of receipt; provided however, in the event more than one application is received for reservation of the same park or park facility during the review of a pending application(s), the city may give priority preference, first to an applicant that is a city resident or entity maintaining an office within the city's municipal boundaries, and second to an applicant with the fewest reservations of park facilities within the previous twelve-month period. The use of a particular park facility or part thereof shall be allocated based on the receipt of fully executed and complete application. Any amendment or revision of an application or permit shall for purposes of determining the priority of the application for permit, relate back to the original filing thereof; but the time in

which the city manager shall approve, approve with conditions or deny the application for permit and serve notice of such denial shall be computed from the date of the amendment or revision.

(d) *Conditions of permits.*

(1) Permits will be issued under this article subject to such special regulations and instructions as may be prescribed by the city manager including, but not limited to:

- a. Restrictions on the number and other designations of persons who may participate in such permitted activities.
- b. Restrictions on the days of the week and the time of day that the particular facility may be used by the permittee.
- c. Provisions for maintenance by the permittee of the sanitation, cleanliness, and appearance of the facility. At times, portable restrooms may be required for special events.
- d. Provisions for security and the maintenance of law and order, including compliance with noise, parking, safety and other appropriate regulations. It is at the city's discretion to require security on the premises to enforce the policies of facility use. If security is deemed necessary, it is the responsibility of the user group or individual to reimburse the city for costs incurred in providing such security.
- e. Restrictions on the installation of apparatus or modification in any manner, either temporary or permanent, by the permittee to a sports field or adjacent structures.
- f. Requirements that all applicable fees shall be paid prior to use, unless other payment arrangements have been authorized.
- g. Requirements that a certificate of insurance in accordance with § 27-12 (e), naming the city as the additional insured, must be on file at the city prior to any permit being approved.

(2) By applying for and obtaining a permit, permittees agree to indemnify and hold the city and the city's officials, employees, and agents harmless from any and all claims for loss, injury or damage to any persons (including death or illness) and property whatsoever caused, in whole or part by the negligence of permittees and permittees' officers, directors, employees, members, participants, invitees, spectators and agents (or any combination thereof) in the exercise or use of such permit. Without limitation to the protections afforded to the city by foregoing sentence, the city may require a permittee to execute an indemnity and hold

harmless agreement in a form acceptable to the city as a condition to a permit. Nothing in or required by this chapter is intended as or shall be construed as a waiver of the city's sovereign immunity protections.

(e) *Liability insurance required for certain uses of city parks and facilities.*

(1) The city shall require each large organized activity taking place at any city facility to have insurance for said activity. Permittee shall procure and maintain for the term of the permit insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities described hereunder performed by the permittee, his agents, representatives, or employees. Except where otherwise specified in this article, insurance shall be provided in an amount to be determined by the city manager, provided that such amount reflects a reasonable expectation of potential liability. Insurance is to be placed with insurers authorized to do business in the state and acceptable to the city. This may not apply for infrequent use; however, a one-time special event shall be subject to this requirement. For the purpose of this subsection (e)(1), the term "large organized activity" shall apply to sporting events and competitions, special events, exhibitions, shows, speaking engagements, celebrations, concerts, performances, camps, fairs, programs and other such activities involving the assembly of one hundred (100) or more participants, spectators or other persons at any city park or facility for a common purpose under the direction and control of a person or group of persons. The city manager is authorized to waive the requirement for liability insurance when the applicant for a use permit is a regular user of the facility or an established not-for-profit group and such user or group has no history of misusing the city's parks or facilities. The city manager is also authorized to require liability insurance for an activity when not specifically required above if, in his/her opinion, the proposed activity represents a significant risk to bystanders, equipment or facilities, wildlife, or wildlife habitat. Nothing in or required by this chapter is intended as or shall be construed as a waiver of the city's sovereign immunity protections.

(2) The certificate of insurance, naming the city as the additional insured along with an endorsement, is to be submitted prior to permit authorization or execution of a negotiated use agreement. A 30-day written notice of cancellation clause is required.

(f) *Challenge of Permit Decisions.*

(1) *City Manager decisions.* Any applicant or other aggrieved party in connection with a permit decision by the city manager or his/her designee made pursuant to this chapter may challenge such decision to the city commission. A challenge to the city commission of a city manager's or his/her designee's decision shall be valid only if such is submitted in writing to the city manager no later than 5:00 p.m. on the seventh (7<sup>th</sup>) day after the decision being challenged was rendered. Failure to timely submit a written challenge shall constitute a waiver of the right to challenge the decision.

Upon receipt of a timely challenge, a hearing before the city commission shall be scheduled to be conducted within thirty (30) days. The time, date and location of the city commission hearing on the challenge shall be noticed in the same manner as the city notices regular city commission meetings. The city commission shall conduct a hearing de novo and hear the testimony of witnesses and other evidence offered by the appealing party, city staff and other aggrieved persons and interested parties to the appeal. The city commission may, in conformity with the city code of ordinances, reverse, or affirm, wholly or partly, or modify the decision of the city manager or his/her designee. The city commission's determination on the challenge shall constitute the city's final determination of the matter.

- (2) *City Commission decisions.* Any party aggrieved or adversely affected by the city commission's decision on a challenge conducted pursuant to subsection (f)(1), may challenge such decision by filing a petition for writ of certiorari as provided by the Florida Rules of Appellate Procedure in the circuit court of Orange County. The petition for writ of certiorari shall be filed within thirty (30) days of the rendition of the city commission's decision, or the right to challenge the decision is waived. The court shall not conduct a trial de novo, but shall be limited to reviewing whether the decision was supported by competent substantial evidence in the record, the essential elements of the law were followed and due process was afforded. The proceedings before the city commission, including applicable city ordinances, rules and regulations, testimony of witnesses, and any exhibits and documents filed before it, shall be the subject of review by the circuit court. The person filing the petition for certiorari shall be responsible for filing with the circuit court a true and correct transcript and the complete testimony of the witnesses from the city commission hearing or meeting in which the decision was rendered. Any aggrieved person may intervene as a respondent in the certiorari proceeding authorized by this section.

### **Sec. 27-13. Use Permits - Parks**

(a) *Picnic shelters.*

Reservations for picnic shelters or park pavilions and the appurtenances thereto must be obtained in advance by filing a permit application and obtaining a use permit. A group consisting of more than twenty (20) persons assembled for a common purpose shall make a reservation and obtain a use permit prior to the use of picnic shelters and park pavilions. Reservations must be for a specific time and duration for each such facility and shall be subject to the conditions and provisions contained in the use permit. Applications for reserved use of picnic shelters or park pavilions shall be made on forms provided by the city and in accordance with procedures promulgated by the recreation department. Reservations shall be made no less than forty-eight (48) hours in advance and no longer than six (6) months in advance. In order to allow opportunities for varied users, picnic shelters and park pavilions may not be reserved on a recurring basis by any group or individual more frequently than once each month. Use permits shall be issued only after payment of a damage deposit and fees as required by city staff. The city manager or his/her designee may establish a policy on which picnic shelters and park pavilions are available for reservation.

(b) *Public demonstrations, meetings and other public assemblies.*

- (1) No person, entity, or association shall initiate, sponsor, organize, promote, conduct or advertise a public assembly of one hundred (100) or more persons to be gathered in a park or recreational area unless a permit has been obtained from the city manager. A separate permit shall be required for each such assembly and the period of time for which such is authorized shall be clearly stated. Such permits shall clearly define the nature of the activity and the limit of its scope and time, and shall set forth such other restrictions and requirements, such as restrictions concerning the use of electronic microphones and other amplified sound equipment as the city manager or his/her designee may deem necessary to ensure that such use does not unreasonably impact the general public's use of the location or facility. Applications for permits shall be submitted no less than two (2) weeks in advance of the date of the activity and no longer than six (6) months in advance.
- (2) No entertainment, concert, exhibition or performance by any musical, theatrical or circus group shall be given in any park or recreation area and no electronic microphones or amplifying devices shall be used in connection therewith, except in accordance with a special event permit approved by the city manager pursuant to division 4 of this article. Applications for special event permits shall be submitted no less than forty-five (45) days in advance of the date of the activity and no longer than twelve (12) months in advance.

**Sec. 27-14. Use Permits – Recreation Facilities**

(a) *Negotiated agreements for recurring use* - Regardless of any restrictions to the contrary, nothing in this article shall prohibit the city from entering into a negotiated agreement with any person or organization for recurring use of a city recreation facility in return for renovation or maintenance of the facility, provision of a particular recreation program, or similar consideration. Such agreements shall require the approval of the city manager or his/her designee.

(b) *Permit required for reserved use* - Except as provided in § 27-14 (a), reserved use of recreation facilities shall require obtaining a use permit in accordance with division 3 of this article. Applications for recreation facility use permits shall be submitted no less than one (1) week in advance of the date of the activity and no more than two (2) months in advance.

(c) *Prohibited activities.*

- (1) No act prohibited by § 27-8 of this article shall be permitted in city recreation facilities, including the sale or consumption of alcoholic beverages.
- (2) No person shall conduct or participate in any sport or in any organized athletic activities within any recreation area other than in such areas as may be designated

for such sports, games or athletic activities, or in any areas where the city has posted signs prohibiting such activities.

(d) Sales and commercial uses - Authorized user groups which desire to use concession stands or other facilities for fund raising purposes shall be allowed to do so subject to policies and fee requirements contained herein. Proposed uses which are determined by the city to be solely a commercial undertaking and without educational, recreational or cultural benefit to the community shall not be allowed on the premises of recreational facilities.

(e) Denial of facility use - The city shall have the authority, based on cause, to deny use of all or any portion of a recreational facility to any group or individual who has abused the privilege of facility use, including failure to comply with the general policies and rules governing the use of city parks and recreation facilities.

### **Sec. 27-15. Use Permits – Community Facilities**

(a) Negotiated agreements for recurring use - Regardless of any restrictions to the contrary, nothing in this article shall prohibit the city from entering into a negotiated agreement with any person or organization for recurring use of a community building facility in return for renovation or maintenance of the facility, provision of a particular program, or similar consideration. Such agreements shall require the approval of the city manager or his/her designee.

(b) Permit and rental fees required for reserved use - Reserved use of community facilities shall require obtaining a use permit in accordance with division 3 of this article.

(c) City sponsored uses - Any use of city facilities scheduled for city sponsored or co-sponsored uses shall be deemed a use for municipal purposes, and shall be exempt from fees, deposits and permit requirements listed herein. A determination of whether an event is city sponsored or co-sponsored by the City is to be made by the city manager.

(d) Use of community facilities for commercial purposes prohibited - No person shall practice, carry on, conduct or solicit for any occupation, business, or profession in any community building. All programs must be open to the public at no charge. Requests by non-profit educational groups or institutions desiring to use community facilities for short-term classes, institutes, discussion groups and forums which involve small fees will be examined on an individual basis. Nothing may be sold to the public in a community building.

(e) General Rules and Regulations Regarding Use of Community Facilities

(1) Consumption of alcoholic beverages shall not be permitted outside of an enclosed structure or outside of a partially enclosed patio, balcony or veranda affixed to an enclosed structure.

(2) If a permit is issued for a non-alcoholic event and alcohol is found on the premises, the police will shut down the event and no deposit will be refunded.

“On the premises” shall be interpreted to include the community facility as well as the parking lots and all surrounding exterior public property.

(3) If an event is shut down by the police for any reason, the clean-up/damage deposit shall be forfeited.

(4) *Smoking.* Smoking is prohibited inside any community facility or outdoors within 10 yards of an entrance or exit to any community facility.

(5) *Supervision of minors.* Adults must supervise groups composed of minors in a ratio of one (1) adult to every five (5) minors. Adult supervisors shall be named on the permit application.

(6) All equipment and materials not belonging to the city must be removed at the end of each scheduled use.

(7) Liability for damage to facility/Requirement for insurance.

a. The permittee shall be responsible for any and all damage to the facility premises and property therein and shall be responsible for all actions, behavior and damages caused by its/their officers, directors, employees, members, participants, invitees, spectators, agents, guests and attendees (or any combination thereof).

b. The city is not responsible for accidents, injury, illness or loss of group or individual property.

c. Prior to issuance of a permit, all approved applicants shall execute a hold harmless and indemnification agreement in a form acceptable to the city, indemnifying and releasing the city and its officials, employees and agents from and against any and all claims, demands, damages and liability arising from or related to activities conducted in community facilities.

d. If, in the sole discretion of the city manager, the use of a community facility involves significant risk of loss or casualty to the city, the permittee shall be required to provide satisfactory evidence of liability insurance naming the city as an additional insured in accordance with § 27-12 (e) of this article.

(f) *Endorsement not implied* - The fact that a group, association, or entity is permitted to meet in a community facility does not constitute an endorsement of the group’s, association’s, or entity’s policies or beliefs by the city.

#### **DIVISION 4. SPECIAL EVENTS**

##### **Sec. 27-16. Permit required.**

No person or entity shall stage, promote or conduct any special event on any publicly owned property within the city limits unless he, she or it first secures a permit for such event.

**Sec. 27-17. Conditions for obtaining permit.**

To obtain a permit as required by § 27-16, the sponsor of a special event must comply with and demonstrate adherence to the following requirements:

- (a) Fill out a special event request application form and any requested supporting documentation at least six weeks but no more than 12 months prior to the intended date of the event. Such application shall include the following:
  - (1) A plan for sanitation facilities and sewage disposal commiserate with the anticipated impacts of the event.
  - (2) A plan for adequate parking facilities to accommodate anticipated participants and attendees, including any such parking facilities that will not be located within the area of the special event, as well as a plan for transporting individuals parked off-site to and from such event.
  - (3) A plan for medical facilities and first aid stations adequate to serve the number of anticipated participants and attendees.
  - (4) A plan for adequate security and traffic control in and around the event.
- (b) Withhold from charging an admission fee for entrance into the area associated with the event unless such charge or charges are otherwise approved by the city commission;
- (c) Obtain liability insurance coverage for said event in limits deemed appropriate by the city manager or his/her designee;
- (d) Limit activities associated with the event to areas within the park or public area that have been pre-approved by the city manager;
- (e) Request permission from the city commission if any streets are to be blocked for said event and/or more than 500 people are reasonably anticipated to be in attendance;
- (f) Pay permit fees according to the following schedule:
  - (1) Events with less than 25 people in attendance: \$25
  - (2) Events with between 25 and 100 in attendance: \$100
  - (3) Events with more than 100 but less than 250 in attendance: \$250
  - (4) Events with more than 250 in attendance: \$1000
- (g) Pay additional fees for city staff or services as deemed appropriate by the city manager or his/her designee.

(h) Any other restrictions or limitations reasonably imposed by the city manager as being necessary for the health, safety and welfare of participants and attendees.

**SECTION 2: Adoption:** Section 50-151 of Chapter 50, Article VI, Winter Garden Code of Ordinances is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 50-151. Prohibited activities in ~~parks, recreational facilities, or any other facility~~ or public rights-of-way owned, controlled and/or operated by the city.

Except for activities of a governmental agency within the scope of its governmental authority, or unless specifically permitted to do so by a permit issued pursuant to this Code, it shall be unlawful for any person to do any one or more of the following in or on a ~~park, recreational facility, or any other facility~~ or public right-of-way owned or controlled by the city:

~~(1) Occupy or otherwise be present in or on a park, recreational facility, or any other facility or public right of way owned or controlled by the city at any time other than the hours posted on a sign at, in, or near the park, recreational facility, or any other facility or public right of way owned or controlled by the city;~~

~~(2)~~ Lie or otherwise be in a horizontal position on a bench placed at its location for use by the general public;

~~(3)~~ Construct any hut, shanty, or other shelter;

~~(4)~~ Cook foodstuffs, ~~except where facilities for such preparation are provided by the city;~~

~~(5)~~ Set or stoke a fire, ~~except where appropriate facilities are provided by the city;~~

~~(6)~~ Discharge or deposit human wastes, except in toilet facilities provided by the city;

~~(7)~~ Dig holes or otherwise disturb the natural surface of the ground;

~~(8)~~ Pick flowers or damage or remove plants, trees, shrubs, or any part of the ~~park~~ grounds;

~~(9)~~ Erect signs or affix signs to any tree, post, or ~~park~~ facility or grounds, except signs posted by the city or a representative or agent thereof;

~~(10) Drive, putt, or otherwise hit a golf ball or shoot an arrow, except in areas specifically designated for those purposes by the city or a representative or agent thereof;~~

~~(11)~~ Kill, injure, harm, capture, chase, poison, or remove any wildlife, animal, bird, or touch, break, remove, or relocate any bird egg locate above, upon, or under a ~~park, recreational facility, or any other facility~~ or public right-of-way owned or controlled by the city;

~~(12)~~ Write on, draw on, or otherwise deface, damage, remove or destroy any ~~park, recreational facility, or any other facility~~ or improvement on a public right-of-way owned or controlled by the city ~~or any part of the park, recreational facility, or any other facility or public right of way owned or controlled by the city;~~

~~(13)~~ Sleep or otherwise remain in the bushes, shrubs, or other foliage;

~~(14)~~ Use public restrooms to shave, shower, or bathe, except where facilities are provided specifically for use by the public for those purposes;

~~(15)~~ Sit in or on any trash receptacles provided for public use; or

~~(16)~~ Bathe or otherwise cleanse one's self in a water fountain and/or reservoir.

**SECTION 3: Adoption:** Chapter 10, Winter Garden Code of Ordinances is hereby amended to delete Article III, Sections 10-241 through 10-245 (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

~~ARTICLE III. MUSICAL OR ENTERTAINMENT FESTIVALS-(Reserved)~~

~~Sec. 10-241. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: *Musical or entertainment festival* means any gathering of groups or individuals for the purpose of listening to or participation in entertainment, which consists primarily of musical renditions conducted in open spaces and not within an enclosed structure.~~

~~(Code 1988, § 13-61)~~

~~**Cross references:** Definitions generally, § 1-2.~~

~~Sec. 10-242. Permit required.~~

~~No person shall stage, promote or conduct any musical or entertainment festival within the city limits unless he shall first secure a special entertainment permit for the festival.~~

~~(Code 1988, § 13-62)~~

~~Sec. 10-243. Conditions for obtaining permit.~~

~~A permit required by section 10-242 shall not be issued unless the following conditions are met and the following plans are submitted to the city commission:~~

~~(1) A plan for adequate sanitation facilities and sewage disposal, approved by the city manager.~~

~~(2) A plan for parking facilities which are not within the area of the festival, and a plan for transportation of the patrons from parking facilities to the festival area.~~

~~(3) A plan for adequate medical facilities.~~

~~(4) A plan for the provision of adequate security and traffic control in and around the festival area.~~

~~(5) Full disclosure made by the promoters to the city commission of the financial backing of the festival and the names of all persons or groups who will perform in the festival.~~

~~(6) Any other reasonable conditions set by the city commission in its discretion.~~

~~(Code 1988, § 13-63)~~

~~Sec. 10-244. Limitation on hours; rest period required.~~

~~Under no circumstances shall any person operate any musical or entertainment festival, which will continue for more than an eight-hour period, without a 24-hour rest period before any continuation of the festival.~~

~~(Code 1988, § 13-64)~~

~~Sec. 10-245. Permit fee.~~

~~The fee imposed upon each permit issued for a musical or entertainment festival shall be \$1,000.00.~~

~~(Code 1988, § 13-65)~~

**SECTION 4: Codification:** Sections 1, 2 and 3 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

**SECTION 5: Control:** In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance shall control to the extent such conflict exists.

**SECTION 6: Severability:** It is the intent of the City Commission of the City of Winter Garden 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 be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

**SECTION 7: Effective Date:** This Ordinance shall become effective upon adoption at its second reading.

**FIRST READING:** April 26\_\_\_\_\_, 2012.

**SECOND READING AND PUBLIC HEARING:** May 24\_\_\_\_\_, 2012.

**ADOPTED** this 24th day of May\_\_\_\_\_, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

\_\_\_\_\_  
John Rees, Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Ed Williams, Community Development Director

**Via:** City Manager Mike Bollhoefer

**Date:** **May 15, 2012**

**Meeting Date: May 24, 2012**

**Subject:** Ordinance 12-24

**Issue:** Repealing Ordinance 12-02 and replacing it with the amendments to Article V of Chapter 118 of the City of Winter Garden Code of Ordinances.

**Discussion:** On January 26, 2012, the City Commission adopted Ordinance 12-02 amending Article V of Chapter 118, City of Winter Garden Code of Ordinances. There has been a claim asserted that the adoption of Ordinance 12-02 was not properly advertised. Repealing Ordinance 12-02 and replacing it with the amendments to Article V of Chapter 118, City of Winter Garden Code of Ordinances contained in this Ordinance is in an effort to avoid litigation relating to such allegation and the costs associated with such litigation and to make further amendments deemed to be in the best interests of the City and consistent with the Comprehensive Plan

**Recommended Action:**

Adoption of Ordinance 12-24 for repealing Ordinance 12-02 and creating the Urban Village Planned Unit Development Zoning Designation.

**Attachments/References:**

Ordinance 12-24

ORDINANCE 12-24

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REPEALING ORDINANCE 12-02 AND REPLACING IT WITH THE AMENDMENTS TO ARTICLE V OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES CONTAINED WITHIN THIS ORDINANCE; PROVIDING FOR THE AMENDMENT OF ARTICLE V OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES ENTITLED "PLANNED UNIT DEVELOPMENTS" CREATING URBAN VILLAGE PLANNED UNIT DEVELOPMENTS; PROVIDING REQUIREMENTS FOR MIXTURE OF USES AND URBAN DEVELOPMENT CRITERIA FOR ALL PROPOSED PLANNED DEVELOPMENT PROJECTS IN THE URBAN VILLAGE PLANNED UNIT DEVELOPMENT ZONING DISTRICT; CLARIFYING, UPDATING, AND REMOVING REDUNDANT LANGUAGE FOR RESIDENTIAL PLANNED UNIT DEVELOPMENTS; PROVIDING FOR REVISIONS TO PLANNED UNIT DEVELOPMENT REVIEW PROCESS AND APPROVAL CRITERIA; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on January 26, 2012, the City Commission of the City of Winter Garden adopted Ordinance 12-02 amending Article V of Chapter 118, City of Winter Garden Code of Ordinances;

**WHEREAS**, since the adoption of Ordinance 12-02, there has been a claim asserted that the adoption of Ordinance 12-02 was not properly advertised and such claim is denied by the City;

**WHEREAS**, the City Commission desires to repeal Ordinance 12-02 and replace it with the amendments to the Article V of Chapter 118, City of Winter Garden Code of Ordinances adopted by this Ordinance in an effort to avoid litigation relating to such allegation and the costs associated with such litigation and to make further amendments deemed to be in the best interests of the City and consistent with the Comprehensive Plan; and

**WHEREAS**, the adoption of this Ordinance shall not be construed as an admission that the aforesaid claim has merit or is correct; and

**WHEREAS**, the City Commission of the City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapters 163 and 166, Florida Statutes;

**WHEREAS**, the Zoning Ordinance as set forth in the Land Development Regulations of the City of Winter Garden Code of Ordinances must be consistent with the provisions of the City of Winter Garden Comprehensive Plan by furthering and moving the City in the direction of accomplishing the objectives, goals and policies of the Comprehensive Plan; and

**WHEREAS**, the provisions of this Ordinance implement the provisions of Policy 1-1.2.18 of the City of Winter Garden Comprehensive Plan, as well as other objectives, goals and policies of the City's Comprehensive Plan, and provide for the application of sound and generally accepted land use principles in order to promote and protect the quality of life of the citizens of the City while imposing reasonable regulations upon the development of private property; and

**WHEREAS**, after public notice and due consideration of public comment given at advertised public hearings, the City Commission has determined the hereafter described amendments to Chapter 118, Article V of the City of Winter Garden Code of Ordinances are warranted to ensure consistency with the City of Winter Garden Comprehensive Plan.

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

**SECTION 1:** That Division 1 (titled: Generally) of Chapter 118, Article V, Planned Unit Developments of the City of Winter Garden Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; sections and provisions not included are not being amended):

## **ARTICLE V. PLANNED UNIT DEVELOPMENTS**

### **DIVISION 1. GENERALLY**

#### **Sec. 118-826. - Review by planning and zoning board.**

~~All proposed planned development projects shall be referred to the planning and zoning board for its review and recommendation in conformance with subdivision II of division 3 of this article. The planning and zoning board shall proceed as set forth in subdivision II of division 3 of this article.~~

The planning and zoning board shall review a planned unit development (PUD) application and its associated preliminary development plan to determine its conformity with the comprehensive plan and the requirements of this article. The planning and zoning board shall recommend to the city commission the approval, approval subject to conditions and modifications, or disapproval of the a planned unit development zoning application and its associated preliminary development plan. In making its recommendation to the city commission, the planning and zoning board shall consider the criteria specified in section 118-828. It is not necessary for planning and zoning board to make findings of fact in support of its recommendation to the city commission concerning planned unit development applications and associated preliminary development

plans.

**Sec. 118-827. - Ordinance requirements.**

The plan unit development classification is a zoning district that is allowed in all future land use categories. Property rezoned to the PUD classification must meet the requirements of the rezoning procedure to include proper notification and the adoption of an ordinance approving the PUD (hereinafter know as the "Parcel Specific PUD Ordinance"). No part of the following PUD requirements of this article may be eliminated except with the specific approval of the city commission through the adoption of an ordinance approving the PUD, the Parcel Specific PUD Ordinance.

**Sec. 118-828. Approval Criteria.**

The city commission may approve a proposed planned unit development (PUD) and its associated preliminary development plan only after competent, substantial evidence has been presented that allows the city commission to make the following findings determination:

- (1) The ~~request~~ proposed PUD is consistent with the land development regulations, comprehensive plan and the future land use map;
- (2) The proposed ~~rezoning~~ PUD will not substantially devalue or prevent reasonable use and enjoyment of the adjacent properties;
- (3) Adequate public infrastructure facilities and water and sewer service to support the development of the proposed PUD are available or an development agreement or binding conditions ~~has have~~ been established that will provide these facilities, improvements and services in a reasonable time frame;
- (4) The proposed ~~rezoning~~ PUD will not allow a type or intensity of development that is premature or presently out of character in relationship to the surrounding area;
- (5) The rezoning will not interfere with an adjacent property owner's reasonable expectation of use or enjoyment; and
- (6) ~~The rezoning will not significantly increase the vehicular traffic in adjacent residential neighborhoods.~~ There is availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed PUD and the surrounding area, or an agreement or binding conditions have been established that will provide such transportation facilities to support said traffic in a reasonable time frame.

**Sec. 118-831. Summary of steps for receiving final approval of a residential or urban village planned unit development.**

Four steps are generally required to obtain final approval for a residential or urban village planned unit development:

- (1) Preliminary conference;
- (2) Preliminary development plan submission and application for planned unit development zoning;
- (3) Preliminary plat submission; and
- (4) Final development plan submission

**Sec. 118-832. Preliminary conference.**

The preliminary conference for a residential or urban village planned unit development shall generally include the following: the city planner, city engineer, building official, fire marshal, city public services director, and the developer.

**Sec. 118-833. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Common open space:* a parcel of land or a combination of land and water within the site designated as a planned unit development, and designed and intended for the use or enjoyment of residents of the planned unit development. All common open space shall be improved to the extent necessary to complement the residential uses and may contain compatible and complementary structures for the benefit and enjoyment of the residents of the planned unit development.

*Developer:* a person, firm, association, syndicate, partnership or corporation who owns land which is developed or proposed to be developed into a planned unit development and who is actually involved in the construction and creation of a planned unit development.

*Development plan:* the total site plan of a planned unit development drawn in conformity with the requirements of this division. The development plan shall specify and clearly illustrate the location, relationship, design, nature and character of all primary and secondary uses, public and private easements, structures, parking areas, public and private roads, and common open space.

*Development schedule:* a comprehensive statement showing the type and extent of development to be completed within the various practicable time limits and the order in which development is to be undertaken. A development schedule shall contain an exact description of the specific buildings, facilities, common open space, and other improvements to be developed at the end of each time period.

*Final development plan:* the development plan approved by the city commission and recorded with the clerk of the circuit court of the county according to this division.

*Final development plan application:* the application for approval of the final development plan and for approval of the required exhibits as specified in this division.

*Planned unit development or PUD:* an area of land developed as a single entity, or in approved

stages or phases by a developer or group of developers acting jointly, which is planned and approved in accordance with this article. A planned unit development approved under any division of this article is sometimes generally referred to as a PUD.

Preliminary development plan: means the development plan approved by the city commission and filed with approval of the city for a planned unit development zone.

Preliminary development plan application: the application for approval of the use of a site as a planned unit development and for approval of the required exhibits as specified in this division.

Residential clustering: the grouping of residential structures on a portion of the available land, reserving a significant amount of the site as protected open space.

Site: means the actual physical area to be developed as a planned unit development, including the natural and created characteristics of the area.

Stage or phase: means a specified portion of the planned unit development that may be developed as an independent entity. It must be delineated in the preliminary development plan, defined in the final development plan, and specified within the development schedule.

Village center: that portion of the properties within the urban village future land use classification which allow retail and commercial uses. Residential uses may also be located in the village center.

Zero lot line: means a residential development of single-family detached dwelling units in which each dwelling unit abuts one side lot line with no two dwelling units abutting a common side lot line, and the maximum height of units in the development is 30 feet.

#### **Sec. 118-834. Preliminary development plan application.**

- (a) For residential and urban village planned unit development rezonings, a preliminary development plan along with a zoning application shall be submitted to the city by the developer requesting approval of the site as a PUD. The preliminary plan and application shall contain the name of the developer and the architect, surveyor and engineer who prepared the development plan.
- (b) The following generally shall be included on the preliminary development plan with the zoning application:
  - (1) Proposed name or title of the project; the name of the surveyor, engineer, architect, and developer.
  - (2) North arrow, scale of one inch equals 200 feet or larger, date and legal description of the site.
  - (3) Boundaries of the site shown with bearings, distances, closures and bulkhead lines. All existing easements, section lines and property lines, all existing streets, rights of ways, natural waterbodies, karst features, wetlands and physical features in and adjoining the project, and the existing zoning.
  - (4) Names and locations of adjoining developments and subdivisions.
  - (5) Any proposed parks, school sites, and other public and private open space.

- (6) Vehicular and pedestrian circulation systems.
  - (7) Site data including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the types of uses, the proposed total number of dwelling units, the proposed lot size(s) and minimum house size(s), the proposed square footage of nonresidential uses, and the proposed building setbacks and building elevation renderings.
  - (8) Proposed setbacks and buffering between uses within the PUD; and proposed setbacks and buffering at the perimeter of the PUD.
  - (9) Proposed common open space, including proposed improvements and proposed common open space structures and the tabulation of the percent of the total area of the project to be devoted to common open space. Areas proposed to qualify for common open space shall be specifically designated on the preliminary development plan.
  - (10) Delineation of specific areas designated as a proposed stage or phase.
  - (11) General statement indicating proposed means of drainage for the site to ensure conformity with natural drainage within the area or with the drainage plan established or to be established within the vicinity.
  - (12) General location within the site of each residential and/or nonresidential use.
  - (13) The proposed method of dedication and administration of proposed common open space.
  - (14) Vicinity map.
- (c) Submittal requirements and procedures are as follows:
- (1) Prints required. The application shall include the required number of prints of the preliminary development plan and an electronic copy.
  - (2) Certified survey. Two copies of a certified survey must also accompany the application.
  - (3) Application review. The preliminary development plan shall be reviewed by the Development Review Committee in accordance with Chapter 98, Article VI of the City of Winter Garden Code of Ordinances, and any other city division or department as deemed necessary by the city to determine the feasibility and suitability of the plan prior to the submission of the planned unit development zoning application to the planning and zoning board. The planning and zoning board shall then review the PUD and its associated preliminary development plan and recommend to the city commission the approval, approval subject to conditions and modifications, or disapproval of such application. Upon receiving the recommendation of the planning and zoning board, the city commission shall review the recommendation and the PUD and associated preliminary development plan application and either approve, approve subject to conditions and modifications, or disapprove the proposed PUD and associated preliminary development plan.
  - (4) Approval Criteria. In addition to the approval criteria set forth in Section 118-828, the proposed PUD should address, to the extent deemed applicable by the city, the following:
    - a. The degree of departure or conformity of the proposed PUD with surrounding areas in terms of character and density.

- b. Compatibility of uses and improvements within the PUD and the relationship with surrounding existing or proposed developments.
- c. Prevention of erosion and degrading or enhancement of the surrounding areas.
- d. Provision for recreation facilities, surface drainage, flood control and soil conservation as shown in the preliminary development plan.
- e. The nature, intent and compatibility of any common open space, including the proposed method for the maintenance and conservation of the common open space.
- f. The feasibility and compatibility of the specified stage(s) or phase(s) contained in the preliminary development plan to exist as an independent development.
- g. The availability of existing or planned reclaimed water service to support the proposed PUD.
- h. The benefits within the proposed PUD development and to the general public to justify the requested departure from standard land use requirements inherent in a PUD classification.
- i. The conformity and compatibility of the proposed common open space, residential and/or nonresidential uses within the proposed PUD.
- j. Architectural characteristics of proposed residential and/or nonresidential development.
- k. A listing of the specific types of nonresidential uses to be allowed.

(5) Recordation of PUD. If the proposed PUD and its associated preliminary development plan application is approved by the city commission, a copy of the approved PUD and preliminary development plan shall be signed by the mayor and attested by the city clerk, and a certified copy or original of such shall be filed with the city clerk as a permanent record.

**Sec. 118-835. Preliminary plat.**

- (a) Procedures for preliminary plat submission will comply with chapter 110 pertaining to subdivisions.
- (b) Additional information on the preliminary plat should include the following for the residential or urban village planned unit development or the portion thereof which is the subject of the preliminary plat:
  - (1) Any proposed residential use other than single-family.
  - (2) The proposed location of the residential use and/or nonresidential use.
  - (3) Acreage in each of the residential and/or nonresidential use areas.
  - (4) Proposed setbacks and buffering between uses within the PUD; and proposed setbacks and buffering at the perimeter of the PUD.
  - (5) Phasing or development schedule.
  - (6) Number of units, both total and by type, and total square footage of any nonresidential

uses and by type.

(7) The proposed method of maintenance of the storm drainage system.

(c) A topographical map shall be submitted with the preliminary development plan. The topographical map shall be drawn at a scale of not less than 100 feet to one inch by a registered professional engineer or registered land surveyor showing the following:

(1) The location of existing property lines, streets, buildings, watercourses, transmission lines, sewers, bridges, culverts and drain pipes, water mains, city limit lines and all public utility easements and rights of ways.

(2) Wooded areas, marshes, wetlands, karst features and any other physical conditions affecting the site.

(d) Engineering drawings and specifications of the following proposed utility system improvements must be presented to the city engineer no less than 30 days prior to the intended commencement of construction of such improvements. Construction of such improvements shall not commence until the city engineer approves the drawings and specifications submitted. Engineering drawings must include the following:

(1) Potable water.

(2) Sanitary sewer.

(3) Storm sewer.

(4) Reclaimed water

(5) Sidewalks and bicycle paths.

(6) Streets.

(7) Lot grading plan.

(8) Drainage.

(9) Lighting.

**Sec. 118-836. Final development plan.**

(a) Time limits for submission. Unless otherwise specified by the planned unit development zoning ordinance or extended under section 118-829, the developer shall have three (3) years from the adoption date of the PUD zoning ordinance in which to:

(1) File and obtain approval of a final plat of a residential or urban village planned unit development, or any portion thereof; or

(2) File and obtain approval of a final development plan of a residential or urban village planned unit development, or a portion thereof and commence construction contemplated by such plan. Site clearing and tree removal activities do not constitute commencement of construction for the purposes of this subsection.

Residential planned unit developments adopted prior to September 30, 2009 are hereby granted an extension to allow three years from September 30, 2009 in order to satisfy the conditions under section (1) or (2) above.

- (b) Site plan. A site plan must be presented in accordance with division 2 of article II of this chapter.
- (c) Plat. A plat must be presented which complies with chapter 110.
- (d) Additional exhibits. Additional exhibits required for the final development plan may include the following:
- (1) Development schedule. The development schedule shall contain the following information for the urban village planned unit development or the portion thereof which is the subject of the final development plan:
    - a. The order of construction of the proposed stages or phases delineated in the development plan.
    - b. The proposed date for the beginning of construction on the stages or phases.
    - c. The proposed date for the completion of the stages or phases.
    - d. The proposed schedule for the construction and improvement of common open space within the stages or phases, including any complementary buildings.
  - (2) Deed restriction. Deed restriction proposals to preserve the character and purpose of the common open space. The deed restrictions shall include, among other provisions a prohibition against partition by any residential property owner.
  - (3) Association or nonprofit corporation. If the developer elects this method of administering common open space, the proposed bylaws of the association, articles of incorporation and other controlling documents shall be submitted for approval by the city attorney.
  - (4) Instruments. Instruments dedicating all rights-of-way, easements and other public lands shown on the final development plan from all persons and entities having any interest in the land and instruments indicating that all necessary off-site easements or dedications have been acquired. In lieu of originals, certified copies of the relevant documents will be accepted if the recording information from the public records of the county is included thereon.
  - (5) Bill of sale. A bill of sale, conveying to the city water and sewer utility lines, mains, lift stations, and other improvements required to be installed by this Code.
  - (6) Title opinion. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, taxes, encumbrances, easements, agreements, and other documents affecting title.
  - (7) Tax receipts. Paid receipts from the city and county indicating taxes and required fees have been paid in full up to and including the current period.
- (e) Procedure.
- (1) A fee established by the city commission shall accompany the final development plan application for the purpose of administration.
  - (2) The city engineer and the city planner shall recommend the approval, approval subject to conditions and modifications, or disapproval of the final development plan application

based upon the conformity of the final development plan with the preliminary development plan, sufficiency and accurateness of the required exhibits, and the requirements and purposes of this division and ordinances and regulations of the city.

- (3) The planning and zoning board and the city commission shall review these recommendations at regular public meetings and shall approve, approve subject to conditions and modifications, or deny the final development plan application.

(f) Recording of final development plan.

- (1) After approval of the city commission of the final development plan application, it shall be recorded in the public records of the county. No final development plan of a planned unit development, or any portion thereof, within the city shall be recorded unless it shall have the approval of the city commission inscribed thereon.
- (2) The transfer of, sale of, agreement to sell, or negotiation to sell land by reference to or exhibition of or other use of a final development plan of a planned unit development or portion thereof that has not been given final approval by the city commission and recorded in the official records of the county is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such documents.

**Sec. 118-837. Physical review.**

The city shall have the right to evaluate the physical layout, architectural characteristics, and amenities of the planned unit development and to require changes or modifications designed to create compatibility and conformity in the variety of uses within the development to ensure, protect and promote the health, safety and general welfare of the property owners of the planned unit development and the residents of the city.

**Sec. 118-838. Building permit.**

No building permit shall be issued by the city until the final development plan has been approved and duly recorded as provided in this division.

**Sec. 118-839. Enforcement.**

In addition to any other method of enforcement, the city shall have the power to enforce this division by a suit in equity.

Secs. 118-840—118-855. Reserved

**SECTION 2:** That Division 2 (titled: Residential Planned Unit Developments) of Chapter 118, Article V, Planned Unit Developments of the City of Winter Garden Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; sections and provisions not included are not being amended):

## DIVISION 2. RESIDENTIAL PLANNED UNIT DEVELOPMENTS

### Subdivision I. In General

Sec. 118-857. – Reserved. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Common open space* means a parcel of land or a combination of land and water within the site designated as a planned unit development, and designed and intended for the use or enjoyment of residents of the planned unit development. All common open space shall be improved to the extent necessary to complement the residential uses and may contain compatible and complementary structures for the benefit and enjoyment of the residents of the planned unit development.

*Developer* means a person, firm, association, syndicate, partnership or corporation who owns land which is developed or proposed to be developed into a planned unit development and who is actually involved in the construction and creation of a planned unit development.

*Development plan* means the total site plan of a planned unit development drawn in conformity with the requirements of this division. The development plan shall specify and clearly illustrate the location, relationship, design, nature and character of all primary and secondary uses, public and private easements, structures, parking areas, public and private roads, and common open space.

*Development schedule* means a comprehensive statement showing the type and extent of development to be completed within the various practicable time limits and the order in which development is to be undertaken. A development schedule shall contain an exact description of the specific buildings, facilities, common open space, and other improvements to be developed at the end of each time period.

*Final development plan* means the development plan approved by the city commission and recorded with the clerk of the circuit court of the county according to this division.

*Final development plan application* means the application for approval of the final development plan and for approval of the required exhibits as specified in this division.

*Planned unit development or PUD* means an area of land developed as a single entity, or in approved stages in conformity with a final development plan by a developer or group of developers acting jointly, which is totally planned to provide for a variety of residential and compatible uses and common open space.

*Preliminary development plan* means the development plan approved by the city commission and filed with approval of the city for a planned unit development zone.

~~*Preliminary development plan application* means the application for approval of the use of a site as a planned unit development and for approval of the required exhibits as specified in this division.~~

~~*Site* means the actual physical area to be developed as a planned unit development, including the natural and created characteristics of the area.~~

~~*Stage or phase* means a specified portion of the planned unit development that may be developed as an independent entity. It must be delineated in the preliminary development plan, defined in the final development plan, and specified within the development schedule.~~

~~*Zero lot line* means a residential development of single family detached dwelling units in which each dwelling unit abuts one side lot line with no two dwelling units abutting a common side lot line, and the maximum height of units in the development is 30 feet.~~

~~**Subdivision II. Administration\***~~

~~**\*Cross references:** Administration, ch. 2.~~

~~**Sec. 118-886. Summary of steps for receiving final approval.**~~

~~Four steps are generally required to obtain final approval for a residential planned unit development:~~

- ~~(1) Preliminary conference;~~
- ~~(2) Preliminary development plan submission and application for zoning request;~~
- ~~(3) Preliminary plat submission, which may be omitted if the phase is not platted; and~~
- ~~(4) Final development plan submission (if platted, the final plat; if not platted, a site plan with engineering drawings listed in subsection 118-889(e)).~~

~~(Code 1988, § 24-45(g))~~

~~**Sec. 118-887. Preliminary conference.**~~

~~The preliminary conference for a residential planned unit development includes the following:~~

- ~~(1) City planner, city engineer.~~
- ~~(2) Building official and fire marshal.~~
- ~~(3) Public works director and utilities director.~~
- ~~(4) Developer.~~

~~(Code 1988, § 24-45(g)(1))~~

**Sec. 118-888. Preliminary development plan application.**

(a) For a residential planned unit development, a preliminary plan along with a zoning application shall be submitted to the city clerk by the developer requesting approval of the site as a PUD. The preliminary plan and application shall contain the name of the developer and the architect, surveyor or engineer who prepared the development plan.

(b) The following shall be included with the preliminary application:

(1) Proposed name or title of the project; the name of the surveyor, engineer, architect, and developer.

(2) North arrow, scale of one inch equals 200 feet or larger, date and legal description of the proposed site.

(3) Boundaries of the tract shown with bearings, distances, closures and bulkhead lines. All existing easements, section lines and property lines, all existing streets and physical features in and adjoining the project, and the existing zoning.

(4) Names and locations of adjoining developments and subdivisions.

(5) Proposed parks, school sites, and other public and private open space.

(6) Vehicular and pedestrian circulation systems.

(7) Site data including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary residential and secondary nonresidential uses, and the total number of dwelling units.

(8) Proposed common open space, including the proposed improvements and any complementary structures and the tabulation of the percent of the total area devoted to common open space. Areas qualifying for common open space shall be specifically designated on the site plan.

(9) Delineation of specific areas designated as a proposed stage.

(10) General statement indicating proposed means of drainage for the site to ensure conformity with natural drainage within the area or with the drainage plan established within the vicinity.

(11) General location within the site of each primary residential use, secondary nonresidential use, and the proposed amount of land to be devoted to individual ownership.

(12) The proposed method of dedication and administration of proposed common open space.

(13) Vicinity map.

(c) Submittal requirements and procedures are as follows:

(1) *Time limits.* The PUD zoning application and preliminary development plan shall be submitted to the city clerk at least 30 days prior to any scheduled

~~meetings of the planning and zoning board.~~

~~(2) *Prints required.* The application shall include the required number of black or blue line prints of the development plan and a reproducible copy.~~

~~(3) *Certified survey.* Two copies of a certified survey must also accompany the application.~~

~~(4) *Application review.* The preliminary development plan shall be reviewed formally by the city engineer and the city planner and any other city division or department as necessary to determine the feasibility and suitability of the plan prior to the submission of the PUD zoning application to the planning and zoning board. The planning and zoning board shall then review the preliminary development plan to determine its conformity with the official plans and policies of the city and the requirements of this division. Upon completion of its review, the planning and zoning board shall recommend to the city commission the approval, approval subject to conditions, or disapproval of the preliminary development plan application and the PUD zoning.~~

~~(5) *Review criteria.* The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:~~

~~a. The degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.~~

~~b. Compatibility within the planned unit development and the relationship with surrounding neighborhoods.~~

~~c. Prevention of erosion and degrading of the surrounding area.~~

~~d. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.~~

~~e. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.~~

~~f. The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.~~

~~g. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development and the surrounding area.~~

~~h. The availability and adequacy of water and sewer service to support the proposed planned unit development.~~

~~i. The benefits within the proposed development and to the general public to justify the requested departure from standard land use requirements~~

~~inherent in a planned unit development classification.~~

~~j. The conformity and compatibility of the planned unit development with the comprehensive plan of the city.~~

~~k. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses within the proposed planned unit development.~~

~~l. Architectural characteristics of proposed nonresidential development when available.~~

~~m. A listing of the specific types of secondary nonresidential or commercial uses to be allowed.~~

~~(6) *Review by city commission.* Upon receiving the recommendation of the planning and zoning board, the city commission shall, at a regularly scheduled public meeting, review the recommendation and preliminary development plan and either approve, approve subject to conditions, or disapprove the preliminary development plan application. Approval of the preliminary development plan includes the approval of the PUD zoning. The decision of the city commission shall be based upon a consideration of the facts specified as review criteria for the planning and zoning board.~~

~~(7) *Recordation of preliminary application.* If the preliminary development plan application is approved by the city commission, a copy of the application and required exhibits shall be certified by the city clerk and signed by the mayor, and the certified copy shall be filed with the city clerk as a permanent record.~~

~~(Code 1988, § 24-45(g)(2))~~

**~~Sec. 118-889. Preliminary plat.~~**

~~(a) For a residential planned unit development, or any portion thereof, the preliminary plat may be omitted if the parcel, or applicable portion thereof, is not to be platted.~~

~~(b) The developer may request plat approval of the entire PUD or any portion thereof (a minimum of 20 acres).~~

~~(c) Procedures for preliminary plat submission will comply with chapter 110 pertaining to subdivisions.~~

~~(d) Additional information on the preliminary plat should include the following for the residential planned unit development or the portion thereof which is the subject of the preliminary plat:~~

~~(1) The proposed residential use other than single family.~~

~~(2) The proposed location of the primary residential use and secondary nonresidential use.~~

~~(3) Acreage in each of the primary residential and secondary nonresidential uses.~~

~~(4) Phasing or development schedule.~~

~~(5) Number of units, both total and by type.~~

~~(6) The proposed method of maintenance of the storm drainage system.~~

~~(e) A topographic data map may be submitted with the preliminary development plan if the property is not to be platted. The topographic data map shall be drawn at a scale of not less than 100 feet to one inch by a registered professional engineer or registered land surveyor showing the following:~~

~~(1) The location of existing property lines, streets, buildings, watercourses, transmission lines, sewers, bridges, culverts and drain pipes, water mains, city limit lines and any public utility easements.~~

~~(2) Wooded areas, marshes and any other physical conditions affecting the site.~~

~~(f) Engineering drawings of the following proposed utility system improvements must be presented to the city engineer no less than 30 days prior to commencement of construction of such improvements. Further, the improvements must be constructed and approved by the city engineer prior to presenting the final development plan to the planning and zoning board, unless an acceptable developer's agreement and bond are provided to the city by the developer in accordance with the requirements of this Code. Engineering drawings must include the following:~~

~~(1) Water.~~

~~(2) Sanitary sewer.~~

~~(3) Storm sewer.~~

~~(4) Sidewalks and bicycle paths.~~

~~(5) Streets.~~

~~(6) Lot grading plan.~~

~~(7) Drainage.~~

~~(Code 1988, § 24-45(g)(3); Ord. No. 09-19, § 7, 10-8-09)~~

#### **~~Sec. 118-890. Final development plan.~~**

~~(a) *Time limits for submission.* Unless otherwise specified by the PUD zoning ordinance, the developer shall have three years from the adoption date of the PUD zoning ordinance in which to:~~

~~i. File and obtain approval of a final plat of a residential planned unit development, or any portion thereof; or~~

~~ii. File and obtain approval of a final development plan of a residential planned unit development, or a portion thereof and commence construction contemplated by such plan. Site clearing and tree removal activities do not constitute commencement of construction for the purposes of this subsection.~~

~~Residential planned unit developments adopted prior to September 30, 2009 are hereby granted an extension to allow three years from September 30, 2009 in order to satisfy the conditions~~

~~under subsection i. or ii. above.~~

~~(b) *Site plan.* If not platted, a site plan must be presented in accordance with division 2 of article II of this chapter.~~

~~(c) *Plat.* If platted a plat must be presented which complies with chapter 110.~~

~~(d) *Additional exhibits.* Additional exhibits required for the final development plan may include the following:~~

~~(1) *Development schedule.* The development schedule shall contain the following information for the residential planned unit development or the portion thereof which is the subject of the final development plan:~~

~~a. The order of construction of the proposed stages delineated in the development plan.~~

~~b. The proposed date for the beginning of construction on the stages.~~

~~c. The proposed date for the completion of the stages.~~

~~d. The proposed schedule for the construction and improvement of common open space within the stages, including any complementary buildings.~~

~~(2) *Deed restriction.* Deed restriction proposals to preserve the character of the common open space. The deed restrictions shall include a prohibition against partition by any residential property owner.~~

~~(3) *Association or nonprofit corporation.* If the developer elects this method of administering common open space, the proposed bylaws of the association or the certificate of incorporation and the corporate bylaws of the nonprofit corporation shall be submitted for approval by the city attorney.~~

~~(4) *Instruments.* Instruments dedicating all rights of way, easements and other public lands shown on the final development plan from all persons having any interest in the land and instruments indicating that all necessary off-site easements or dedications have been acquired. In lieu of originals, certified true copies will be accepted if the recording information from the public records of the county is included thereon.~~

~~(5) *Bill of sale.* A bill of sale, conveying to the city water and sewer utility lines, mains, lift stations, and other personal property required to be installed by this Code.~~

~~(6) *Title opinion.* A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances and defects, if any.~~

~~(7) *Tax receipts.* Paid receipts from the city and county indicating taxes have been paid in full up to and including the current period.~~

~~(e) *Procedure.*~~

~~(1) A fee established by the city commission shall accompany the final development plan application for the purpose of administration.~~

~~(2) The city engineer and the city planner shall recommend the approval, approval subject to conditions, or disapproval of the final development plan application based upon the conformity of the final development plan with the preliminary development plan, sufficiency and accurateness of the required exhibits, and the requirements and purposes of this division and ordinances and regulations of the city.~~

~~(3) The planning and zoning board and the city commission shall review these recommendations at regular public meetings and shall approve, approve subject to conditions, or deny the final development plan application.~~

~~(f) *Recording of final development plan.*~~

~~(1) After approval of the city commission of the final development plan application, it shall be recorded in the public records of the county. No final development plan of a planned unit development, or any portion thereof, within the city shall be recorded unless it shall have the approval of the city commission inscribed thereon.~~

~~(2) The transfer of, sale of, agreement to sell, or negotiation to sell land by reference to or exhibition of or other use of a final development plan of a planned unit development or portion thereof that has not been given final approval by the city commission and recorded in the official records of the county is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such documents.~~

~~(Code 1988, § 24-45(g)(4); Ord. No. 09-19, § 2, 10-8-09)~~

~~**Sec. 118-891. Physical review.**~~

~~The city shall have the right to evaluate the physical layout, architectural characteristics, and amenities of the residential planned unit development and to require changes or modifications designed to create compatibility and conformity in the variety of uses within the development to ensure, protect and promote the health, safety and general welfare of the property owners of the planned unit development and the residents of the city.~~

~~(Code 1988, § 24-45(h))~~

~~**Sec. 118-892. Building permit.**~~

~~No building permit shall be issued by the city until the final development plan has been approved and duly recorded as provided in this division.~~

~~(Code 1988, § 24-45(i))~~

~~**Sec. 118-893. Reserved.**~~

~~Editor's note: Ord. No. 09-19, § 3, adopted October 8, 2009, repealed § 118-893, which pertained to termination of PUD zone and derived from § 24-45(j) of the 1988 Code.~~

~~Sec. 118-894. Enforcement.~~

~~In addition to any other method of enforcement, the city shall have the power to enforce this division by an appropriate suit in equity.~~

~~(Code 1988, § 24-45(k))~~

~~Secs. 118-895—118-920. Reserved~~

~~Secs. 118-886--118-920. Reserved.~~

**Subdivision III. Land Use Regulations**

**Subdivision II. Land Use Regulations**

**SECTION 3:** That Chapter 118, Article V, Planned Unit Developments of the City of Winter Garden Code of Ordinances is hereby amended to create a new Division 4, titled: Urban Village Planned Unit Development (UVPUD) as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

**DIVISION 4. URBAN VILLAGE PLANNED UNIT DEVELOPMENT (UVPUD)**

**Subdivision I. In General**

**Sec. 118-1063. Intent/description/design features.**

- (a) This division is intended to implement the policies of the comprehensive plan concerning the urban village future land use classification.
- (b) Development within the urban village future land use classification shall be designed based on an urban development pattern which encourages the formation of a suburban village. Through the urban village planned unit development process, which may involve the approval of multiple UVPUDs, all development within the urban village future land use classification shall follow the general design principles of:
  - (1) creating a series of walkable residential neighborhoods;
  - (2) developing an integrated park and trail system to facilitate pedestrian travel and recreation;

- (3) developing a comprehensive network of roads and traffic calming solutions to complement and support the existing Marsh Road infrastructure;
  - (4) establishing connectivity to natural systems while preserving wetlands and other natural resources and protecting water quality and quantity;
  - (5) creating a mixed-use character through the integration of a diversity of uses; and
  - (6) creating a focus center within the urban village.
- (c) The urban village planned unit development shall provide a compact integrated development pattern with a park or central feature located within a ¼ mile walking distance of the majority of residences in each neighborhood.
  - (d) To ensure adequate housing diversity, urban village planned unit development should generally contain a variety of housing types which may include both attached and detached housing product with ownership and rental opportunities, as well as live/work housing.
  - (e) The street network shall be designed to create a hierarchy of interconnected streets and traffic calming solutions to allow travel through and between neighborhoods and beyond the urban village planned unit development. Roadway cross sections shall be designed to accommodate multiple modes of transportation.
  - (f) Emphasis shall be placed on pedestrian and bike paths and shall be incorporated in street cross sections and open spaces.
  - (g) The standards and procedures of the urban village planned unit development are intended to promote flexibility of design and to permit planned diversification and integration of uses and structures, while retaining in the city commission the absolute authority to establish such limitations and regulations as it deems necessary to protect and promote the public health, safety and general welfare.
  - (h) Consistent with the goal of ensuring the entirety of lands designated with the urban village future land use designation developing in such a way as to meet the goals and policies of the comprehensive plan, the city commission shall have the flexibility in deciding whether to require a mixture of residential and non-residential uses and a variety of housing types and lot sizes within individual urban village planned unit developments based on anticipated development patterns.

**Sec.118.1064. General requirements.**

- (a) The urban village planned unit development shall be located in the urban village future land use designation as defined in the city's comprehensive plan, or in such other areas as determined by city commission.
- (b) All development proposals within an urban village planned unit development shall, as determined by the city commission, be consistent with the requirements and/or guidelines of the Sixth Amendment to the Restated Interlocal Agreement for Joint Planning Area between Orange County and the City of Winter Garden (Dated January 24, 2007) as approved by the city commission, as such may be amended from time to time.

- (c) All development within the urban village planned unit development shall comply with the Wekiva Parkway and Protection Act, and shall meet or exceed the standards of the Resource Protection Overlay as established by the City's Comprehensive Plan. In the event of a conflict or conflicts between the Urban Village Planned Unit Development zoning district and the Resource Protection Overlay, the Resource Protection Overlay shall control to the extent such conflict exists.
- (d) Maximum density in the urban village planned unit development for any neighborhood shall be four dwelling units per gross acre except in the village center where the density may be up to 12 dwelling units per gross acre. However, certain neighborhoods may use residential clustering while maintaining the overall maximum density for the neighborhood. Maximum intensity for non residential development is 0.3 floor area ratio.
- (e) Stormwater facilities within the urban village residential planned unit development shall generally be designed as amenities and low impact design (LID) techniques will be used where practical.
- (f) New development shall connect to City utilities, potable water, sanitary sewer, and reclaimed water when available.
- (g) Residential and nonresidential uses are allowed in the village center and may occupy the same building where nonresidential occupies the first floor with residential on the upper floors.
- (h) Accessory dwelling units, not to exceed 850 square feet, above garages shall be allowed for a maximum of 50% of the residential units in the urban village planned unit development. These additional accessory units shall not be counted towards the density.

**Sec. 118-1065. Permitted uses.**

Uses permitted in the urban village residential planned unit development may include and shall be limited to the following:

- (1) Primary residential uses. Primary residential uses permitted are single-family detached and multifamily residential dwelling units, including apartments, in semidetached, attached, and multistoried structures.
- (2) Nonresidential uses. Nonresidential uses include religious, public or semipublic uses, cultural, recreational, retail, schools, personal service, offices and professional centers providing services to residents of the urban village planned unit development and to residents of surrounding properties. The nonresidential uses shall be compatible with the primary residential use. No building devoted primarily to a commercial use shall be built or established prior to the primary residential buildings or uses it is designed or intended to serve. These uses shall be located in the village center and shall be accessible from all primary residential use areas.

**Sec. 118-1066. Unified ownership or control.**

For an urban village planned unit development, unified ownership or control is not required. An urban village planned unit development can be made up of numerous property owners. However,

parcels that do not contain non-residential uses must have direct pedestrian and vehicular access to the village center and other commercial and institutional areas.

**Sec. 118-1067. Common open space.**

- (a) All common open spaces in urban village planned unit developments shall be preserved for their intended purpose as expressed in the final development plan. The developer shall choose one of the following methods of administering common open space:
  - (1) Public dedication to the city of the common open space. This method is subject to formal acceptance by the city and in its sole discretion.
  - (2) Establishment of an association or nonprofit corporation or entity which must include all individuals, corporations and entities owning property within the urban village planned unit development to ensure the maintenance of all common open space.
- (b) All privately owned common open space shall continue to conform to its intended purpose and remain as expressed in the final development plan through its inclusion in all deeds with appropriate restrictions to ensure that the common open space is permanently preserved. The deed restrictions shall run with the land and shall be for the benefit of present as well as future property owners and shall contain a prohibition against partition.
- (c) All common open space and recreational facilities shall be specifically included in the development schedule and shall be constructed and fully improved by the developer at an equivalent or greater rate than the construction of residential structures.
- (d) If the developer elects to administer common open space through an association or nonprofit corporation or other entity, the organization shall conform to the following requirements:
  - (1) The developer must establish the association or nonprofit corporation prior to the sale or transfer of any lots.
  - (2) Membership in the association or nonprofit corporation or other entity shall be mandatory for all property owners within the urban village planned unit development.
  - (3) The association or nonprofit corporation or other entity shall manage all common open space and recreational and cultural facilities that are not dedicated to the City or public; shall provide for the maintenance, administration and operation of the land and improvements and any other land and improvements within the urban village planned unit development not publicly or privately owned; and shall secure adequate liability insurance on the land and improvements, and provide adequate reserves for operation, maintenance and replacement of improvements.
  - (4) If the developer elects an association or nonprofit corporation or other entity as a method of administering common open space, the title to all property owners in the planned unit development shall include undivided rights and obligations in all common open space.
  - (5) Association documents shall be reviewed and approved by the city.

Secs. 118-1068—118-1079. Reserved

**Subdivision II. Land Use Regulations**

**Sec. 118-1080. Minimum size; dwelling units.**

There are no minimum acreage requirements for the urban village planned unit development zoning.

**Sec. 118-1081. Maximum development.**

The average density permitted in each planned unit development shall be established by the city commission upon recommendation of the planning and zoning board. Maximum density in the urban village planned unit development shall be four dwelling units per gross acre except in the village center where the density may be up to 12 dwelling units per acre. Maximum intensity for non residential development is 0.3 floor area ratio.

**Sec. 118-1082. Minimum common recreation and open space.**

(a) For the urban village planned unit development, all new development and redevelopment shall be subject to the Resource Protection Overlay and Wekiva Study Area Open Space standards and requirements as follows:

(1) Minimum open space shall be 25% for both residential and non residential development, all open space shall consist of Wekiva Study Area Open Space. Wekiva Study Area Open space shall be preserved through the use of conservation easements, deed restriction, plats and/or dedication to the appropriate governmental agency, environmental association or homeowners association as required by the City. Open space shall be connected to the greatest extent possible on-site and to natural areas and open space within adjacent property or corridors.

(2) Wekiva Study Area Open space shall be defined as land area within the Resource Protection Overlay that remains undisturbed or minimally disturbed such as trails and boardwalks, as part of a natural resource preserve or passive recreation area and shall include land preserved for Conservation purposes. Wekiva Study Area Open Space may include dry retention, passive recreation, school playgrounds and buffers. Up to fifty percent (50%) of the Wekiva Study Area Open Space requirement may be met with dry stormwater retention areas. None of the 25% WSA Open Space may be chemically treated with pesticides or fertilizers; provided, however, a development that creates sensitive natural habitat may be allowed limited use of pesticides and fertilizers to establish sensitive natural habitat. Wekiva Study Area Open Space shall not include setback areas, private yards, street right of way, parking lots, impervious surfaces or active recreation areas.

(b) Common recreation space shall be provided to the extent necessary to complement the residential uses and may contain compatible and complementary structures for the benefit and enjoyment of the residents of the PUD. Drainage ditches, if allowed by the city commission, parking areas, road rights-of-way and minimum yards and spacing between dwelling units may not be included in determining usable recreation space. Water areas including wet bottom retention, dry retention, and wetland areas which are aesthetically and functionally designed for active or passive recreational use may be considered to partially

fulfill recreation requirements. In no case, however, shall there be less than five percent of the total developable land area set aside for active, dry-land recreational use.

**Sec. 118-1083. Minimum lot area, frontage and setbacks.**

- (a) A minimum lot size of 90 feet wide by 120 feet deep shall be required for lakefront lots within the urban village planned unit development district. No minimum lot size shall be required for non-lakefront lots; however residential areas within an urban village planned unit development must provide a mixture of lot sizes.
- (b) Each dwelling unit or other permitted use shall have access to a public street either directly or indirectly via a private road or other area dedicated to public or private use guaranteeing access. Permitted uses are not required to front on a publicly dedicated road. The city shall be allowed access on privately owned roads, easements and common open space.
- (c) The minimum distance between structures and side yards shall be as follows:
  - (1) For single-family platted lots, minimum side yard requirements shall be as follows:
    - a. For lot width less than 70 feet: five feet.
    - b. For lot width 70 feet to 84 feet: 7 1/2 feet.
    - c. For lot width greater than 84 feet: ten feet.
    - d. For zero lot line single-family detached development: ten feet.
    - e. Along the side yard of each single-family platted lot containing a drainage easement, there shall be maintained a five foot wide area unobstructed by equipment.
  - (2) For townhouses, unplatted residential development, commercial development, and all development other than single-family platted lots, the distance between structures shall be as follows:
    - a. Between structures of 20 feet in height or less: 15 feet.
    - b. Between structures of 20 and 30 feet in height: 20 feet.
    - c. Between structures of 30 feet and 40 feet in height: 25 feet.
    - d. Between structures over 40 feet in height: 40 feet, plus five feet for each additional ten feet of height or fraction thereof over 40 feet.
    - e. Between structures of varying heights, the larger distance separation shall be required.
- (d) A minimum 25-foot yard shall be required from the nearest part of any building wall to the edge of any public right-of-way or private street, and all structures shall have a minimum 20-foot rear yard. A minimum 25-foot yard shall be maintained between the walls of all structures and the perimeter of the UVPUD. Additional perimeter yard requirements for multistory buildings shall be figured at five additional feet for each ten feet of height over the first story.
- (e) Maximum height shall be 50 feet, not to exceed 3 stories, unless approved by special exception by the city commission in addition to a finding by the city commission that height

in excess of 50 feet will be compatible with adjacent uses and will substantially further the health, safety or general welfare of the citizens of the city.

(f) Accessory buildings or structures may only be placed in the rear yard according to the requirements of this chapter.

(g) Building setbacks from water areas and lakes shall be 30 feet from the normal high water line.

**Sec. 118-1084. Maximum length of structure.**

The maximum length of a structure in the urban village planned unit development is 200 feet. Units constructed under the zero lot line concept with common walls shall be considered as one structure and shall not exceed 200 feet.

**Sec. 118-1085. Minimum floor area per unit.**

In an urban village planned unit development, the minimum floor area per unit shall be as follows:

(1) Single family dwellings, 1,000 square feet.

(2) Multifamily dwellings including townhouses:

a. Efficiency, 450 square feet.

b. One bedroom, 550 square feet.

c. Two bedrooms, 650 square feet.

d. Three bedrooms, 800 square feet.

**Sec. 118-1086. Off-street parking.**

All uses in the urban village planned unit development shall meet the city's parking and landscaping requirements.

**Sec. 118-1087. Underground utilities.**

Within the urban village planned unit development, all utilities including telephone, television cable and electrical systems shall be installed underground unless physical and technical conditions require aboveground installation. Primary facilities providing service to the site of the PUD may be exempted from this section. Large transformers shall be placed on the ground, and such transformers and all utilities not installed underground shall be contained within landscaped enclosures or vaults. Any required substations shall be screened by walls resembling a structure which is compatible with the design of the PUD.

**Sec. 118-1088. Development standards.**

For the urban village planned unit development, the minimum construction requirements for streets or roads, sidewalks, sewer and water facilities, drainage and all utilities shall be in

compliance with the requirements of chapter 78, chapter 110 and the manual in appendix A to this Code.

Secs. 118- 1089--118-1100. Reserved.

**SECTION 4. REPEAL.** The repeal of Ordinance 12-02 is not intended to and shall not affect the legal status of any planned unit development ordinance adopted in accordance with the provisions of Ordinance 12-02.

**SECTION 5. CONTROL.** In the event of a conflict or conflicts between this Ordinance and other Ordinances, this Ordinance shall control to the extent such conflict exists.

**SECTION 6. SEVERABILITY.** If any portion of this Ordinance is determined to be void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

**SECTION 7. CODIFICATION.** Sections 1, 2 and 3 of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; and the word "*Ordinance*" may be changed to "*Section*", "*Article*", or other appropriate word.

**SECTION 8. EFFECTIVE DATE.** This Ordinance shall become effective upon approval of the City Commission at its second reading.

READ FIRST TIME AND PUBLIC HEARING HELD: \_\_\_\_\_, 2012.

READ SECOND TIME AND PUBLIC HEARING HELD: \_\_\_\_\_, 2012.

APPROVED:

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Ed Williams, Community Development Director

**Via:** City Manager Mike Bollhoefer

**Date:** **May 15, 2012**

**Meeting Date: May 24, 2012**

**Subject:** Carriage Pointe Reserve  
**Developer's Agreement**

**Recommended Action:**

Approval of the Carriage Pointe Reserve Developer's Agreement

**Attachments/References:**

Carriage Pointe Reserve Developer's Agreement

**This Instrument Prepared by and Return to:**

Daniel W. Langley  
Fishback, Dominick, Bennett, Ardaman,  
Ahlers, Langley & Geller LLP  
1947 Lee Road  
Winter Park, Florida 32789-1834

Tax Parcel Number: 06-23-27-4284-04-010

**CARRIAGE POINTE RESERVE**  
**DEVELOPER'S AGREEMENT**

**THIS DEVELOPER'S AGREEMENT** (the "**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WINTER GARDEN, FLORIDA, a Florida municipal corporation (the "**City**"), and Taylor Morrison of Florida, Inc., a Florida profit corporation (the "**Developer**").

**RECITALS:**

- A.** Developer is the fee simple owner of that approximately +/- 38.08 acre real property generally located on Avalon Road (a/k/a C.R. 545) west of the intersection of Avalon Road and Tilden Road in Winter Garden, Orange County, Florida, being more particularly described on **Exhibit "A"** (the "**Subject Property**"); and
- B.** The Subject Property is zoned PUD, Planned Unit Development, and subject to and governed by City of Winter Garden Ordinance No. 12-07 (the "**PUD Ordinance**"); and
- C.** The Developer shall comply with all provisions of the PUD Ordinance in the development of the Subject Property; and
- D.** The PUD Ordinance requires the Developer to enter into this Agreement; and
- E.** The Developer desires to develop the Subject Property as a residential subdivision to be known as Carriage Pointe Reserve consisting of a total of not more than 90 residential single-family units and related amenities and infrastructure (the "**Project**"); and
- F.** Development of the Project remains subject to certain approvals by the City, including, but not limited to, final plat approval, and issuance of building permits, certificates of occupancy and certificates of completion; and
- G.** The impact of such a development on public infrastructure and services, including, but not limited to, roads, the connection of improvements to be constructed on the Subject Property to the City's public infrastructure, stormwater drainage, sanitary sewer, potable water, police, and fire will be significant given the infrastructure needs generated by the Project; and
- H.** Development of the Subject Property at the intensity and configuration proposed requires the Developer to perform certain obligations and provide for certain mitigation of impacts of such development in order to comply with the City's Code of

Ordinances, Comprehensive Plan and state law and otherwise address the impacts generated by the Project; and

- I. Developer acknowledges that there are inadequate public facilities, infrastructure and services existing at this time to adequately serve the Project and, therefore, the Developer will need to provide certain public facilities, infrastructure and services for the Subject Property, perform certain obligations and provide for certain mitigation of impacts of such development in order to comply with the City's Code of Ordinances, Comprehensive Plan, regulations, policies and state law; and
- J. The Developer acknowledges that construction of the improvements and obligations required herein, which are necessary to serve the Project and the Subject Property, will be of direct benefit to the Developer and the Subject Property; and
- K. The City has identified the need for certain improvements in order to accommodate Developer's development of the Subject Property including, but not limited to, the construction of right-of-way improvements and installation of potable water mains, sanitary sewer mains, reclaimed water mains and other improvements more particularly described herein; and
- L. Pursuant to the Code of Ordinances and the PUD Ordinance, Developer is required to cause the installation, construction and extension of all public utility mainlines and other infrastructure to adequately serve the Project and the development of the Subject Property based on minimum design requirements established by the City; and,
- M. In conjunction with the Developer's development of the Subject Property and as a condition of approval of the Project, the City requires the "oversizing" of certain public infrastructure (i.e., the public utility mainlines) which are to be constructed, installed and extended for and to the Subject Property for the Project (i.e., that portion of the public utility mainlines exceeding the minimum standards for the Project as established by the City and as provided in this Agreement, with said oversizing and extension at times collectively referred to herein as "**Oversizing**"); and
- N. Said Oversizing is required for the purpose of ensuring that the City maintains the minimum standards for health, safety and welfare in the most cost-effective manner and to promote the convenience, comfort, public interest, and general welfare of the citizens of the City and to meet present and future local needs; and
- O. Because certain required public infrastructure for the Project entails Oversizing to meet present and future local needs, City and Developer have agreed, as more particularly set forth herein, that the City shall pay for the additional costs associated with the Oversizing of public utility mainlines beyond that which is necessitated by development of the Project, as provided for in this Agreement; and
- P. The payment by the City for the required Oversizing of public infrastructure improvements as provided for in this Agreement will allow the construction of said improvements to occur in a more cost-effective and timely manner; and
- Q. The Developer and City agree, as more particularly set forth herein, that the Developer, or its independent contractors, shall install, construct and extend certain

oversized public utility mainlines and other public infrastructure, in consideration of City's financial contribution to the costs associated with the Oversizing of public infrastructure beyond that which is necessitated by the development of the Project; and

- R. The City and the Developer desire to enter into this Agreement to memorialize certain promises, agreements, covenants and expectations pertaining to the Oversizing of the infrastructure and road improvements, the development of the Project and Subject Property, and other matters as provided for herein.

**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 acknowledged, the Developer and the City agree as follows:

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

**2. Plat and Subdivision Construction Plans.** In addition to the requirements and obligations of the Developer herein, the development of the Subject Property and the Project, which may be developed and maintained as a gated community, shall be subject to the PUD Ordinance, City Code requirements, the preliminary plat, final plat subdivision construction plans and other development orders and permits for the Project and Subject Property.

**3. Sewer Force Main Line.** As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer shall diligently pursue the design, permitting, installation and construction of a six inch (6") sanitary sewer force main from the existing point of connection on Avalon Road east of the Subject Property and continuing west approximately two thousand two hundred eleven feet (2,211') to the proposed main entrance of the Subject Property/Project and along the frontage of the Subject Property along Avalon Road (the "**Sewer Force Main**"). The route of the Sewer Force Main is depicted on **Exhibit "B,"** attached hereto and made a part hereof. Said Sewer Force Main shall be designed, permitted, installed and constructed in accordance with the City's Code, regulations, policies and requirements. Developer shall control all aspects of the construction and installation of the Sewer Force Main and shall select and hire any independent contractors to complete the work as it shall determine. Developer is responsible for the full cost of the Sewer Force Main.

Upon completion of the Sewer Force Main, the Developer shall have the City Engineer inspect such improvements, obtain a certificate of completion from the City Engineer for such improvements and as a condition precedent to receiving a certificate of completion Developer shall execute and deliver to the City: (i) invoices for construction costs of the Sewer Force Main, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Sewer Force Main construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record certification to the City that the Sewer Force Main has been completed in accordance with approved design plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Sewer Force Main. The Sewer Force Main shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 3 ("**Sewer Force Main Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Sewer Force Main Completion. The City agrees that it has maintenance jurisdiction over the sewer system

that serves the Project and will be responsible for maintenance of the Sewer Force Main upon the occurrence of the Sewer Force Main Completion.

**4. Potable Water Lines.** As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer shall diligently pursue the design, permitting, installation and construction of a twelve inch (12") diameter potable water main from the existing point of connection on Avalon Road east of the Subject Property and north of Tilden Road and continuing west approximately two thousand two hundred twenty-one feet (2,221') to the proposed main entrance of the Subject Property/Project on Avalon Road, then extending another one hundred feet (100') to the north to connect to the potable water line existing on the north side of Avalon Road (the "**Water Line**"). The route of the Water Line is depicted on **Exhibit "B,"** attached hereto and made a part hereof. Said Water Line shall be designed, permitted, installed and constructed in accordance with the City's Code, regulations, policies and requirements. Developer shall control all aspects of the construction and installation of the Water Line and shall select and hire any independent contractors to complete the work as it shall determine.

The parties acknowledge and agree that the City is requiring the Water Line to be oversized from an eight inch (8") diameter water main to a twelve inch (12") diameter water main. Subject to compliance with this paragraph and City's review and approval of all contractors' bids and pricing and of all contracts and change orders, which review and approval shall not be unreasonably withheld, conditioned or delayed, the City shall reimburse Developer for the actual direct costs associated with such Oversizing.

Upon completion of the Water Line, the Developer shall have the City Engineer inspect such improvements, obtain a certificate of completion from the City Engineer for such improvements and as a condition precedent to receiving a certificate of completion Developer shall execute and deliver to the City: (i) invoices for construction costs of the Water Line, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Water Line construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record certification to the City that the Water Line has been completed in accordance with approved design plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Water Line. The Water Line shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 4 ("**Water Line Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Water Line Completion. The City agrees that it has maintenance jurisdiction over the potable water system that serves the Project and will be responsible for maintenance of the Water Line upon the occurrence of the Water Line Completion.

Within 30 days of Developer accomplishing Water Line Completion, the City shall reimburse the Developer for the actual direct costs associated with the Water Line Oversizing.

**5. Reclaimed Water Line.** As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer shall diligently pursue the design, permitting, installation and construction of an eight inch (8") diameter reclaimed water line from the existing point of connection located on the north side of Avalon Road (which existing line is currently under the jurisdiction of Water Conserv II but is expected to become the jurisdiction of the City's) to the Subject Property a distance of approximately one hundred sixteen feet (116')

(the "**Reclaimed Water Line**"). The route of the Reclaimed Water Line is depicted on **Exhibit "B,"** attached hereto and made a part hereof. Said Reclaimed Water Line shall be designed, permitted, installed and constructed in accordance with the City's Code, regulations, policies and requirements. Developer shall control all aspects of the construction and installation of the Reclaimed Water Line and shall select and hire any independent contractors to complete the work as it shall determine.

Developer is responsible for the full cost of the eight inch (8") diameter reclaimed water line commencing from the existing point of connection on Avalon Road and extending to the Subject Property. Upon completion of the Reclaimed Water Line, the Developer shall have the City Engineer and, if applicable, the Water Conserv II Engineer (based on maintenance jurisdiction), inspect such improvements and obtain a certificate of completion from the City Engineer and/or Water Conserv II Engineer, if applicable, for such improvements. As a condition precedent to receiving a certificate of completion from the City Engineer, the Developer shall execute and deliver to the City: (i) invoices for construction costs of the Reclaimed Water Line, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to twenty percent (20%) of the Reclaimed Water Line construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record certification to the City that the Reclaimed Water Line has been completed in accordance with approved design plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Reclaimed Water Line. The Reclaimed Water Line shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 5 ("**Reclaimed Water Line Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Reclaimed Water Line Completion. Upon the occurrence of Reclaimed Water Line Completion, the City will take over maintenance of the Reclaimed Water Line.

**6. Avalon Road Improvements.** As part of the Developer's construction of the site infrastructure for the first phase of the Project, the Developer subsequent to receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, at Developer's sole expense, shall design, permit and construct a west-bound left-in turn lane on Avalon Road at the main entrance to the Project, stormwater retention areas and other right-of-way improvements necessary to accommodate access to the Project in accordance with the schematic attached hereto as **Exhibit "C"** along with streetlights meeting the dark skies City Code requirements and a sidewalk along the Subject Property's entire Avalon Road frontage (the "**Road Improvements**"). Developer shall control all aspects of the construction and installation of the Road Improvements subject to right-of-way permit/use regulations and Developer shall select and hire any independent contractors to complete the work as it shall determine.

Upon completion of the Road Improvements, the Developer shall have the City Engineer and, if applicable, the County Engineer (based on maintenance jurisdiction), inspect such improvements and obtain a certificate of completion from the City and/or County Engineer, as applicable, for such improvements. As a condition precedent to receiving a certificate of completion from the City Engineer, the Developer shall execute and deliver to the City: (i) invoices for construction costs of the Road Improvements, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to twenty percent (20%) of the Road Improvements construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record certification to the City that the Road Improvements have been completed in accordance with approved designed plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Road

Improvements. The Road Improvements shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 6 ("**Road Improvements Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Road Improvements Completion. Developer shall not have any maintenance responsibility for the Road Improvements upon the occurrence of Road Improvements Completion.

**7. Conveyance of Right-of-Way.** The Developer shall convey or cause to be conveyed: (i) an approximately thirty-five foot (35') wide area from the Subject Property in order to ensure a total 120 ft. Avalon Road right-of-way width and to accommodate the Road Improvements and utilities serving the Project and being installed pursuant to this Agreement; and (ii) a portion of the southeast corner of Subject Property adjacent to Davenport Road; as more specifically described in the attached **Exhibit "D"** (the "**Right-of-Way Property**"). The Right-of-Way Property shall be conveyed by the Developer to the City by general warranty deed free and clear of all liens and encumbrances except for those matters acceptable to the City. The Right-of-Way Property shall be conveyed to the City no later than upon final plat approval and simultaneously with the recording of the final plat for the first phase of the Project. Provided however, the City may require the Developer to convey the Right-of-Way Property prior to final plat approval upon sixty (60) days written notice to Developer requesting the conveyance to occur due to the need to proceed with construction of Avalon Road (CR 545) right-of-way improvements. The form of the general warranty deed shall be subject to the approval of the City. The Developer shall, at least ten (10) days prior to the conveyance of the Right-of-Way Property to the City, provide to the City a boundary survey of the Right-of-Way Property certified to the City and a current attorney's opinion of title or a current title commitment to be followed by a policy of title insurance, evidencing that fee simple title to the Right-of-Way Property is free and clear of all liens and encumbrances except for those matters acceptable to the City. The cost and expenses related to the conveyance of the Right-of-Way Property including the cost of title work and survey shall be borne solely by the Developer. Real property taxes on the Right-of-Way Property shall be prorated as of the day before the City's acceptance of the conveyance of the same, and the prorated amount of such real property taxes attributable to the Developer shall be paid and escrowed by the Developer in accordance with the provisions of Section 196.295, Florida Statutes; provided, however, that if the conveyance occurs between November 1 and December 31, then Developer shall be responsible for real property taxes for the entire year. Developer shall comply with the disclosure requirements of Section 286.23, Florida Statutes, with respect to the conveyance of the Right-of-Way Property to the City. The Developer nor Developer's successors and assigns nor any other person or entity shall be entitled to any road impact fee credits or other compensation of any kind for, on account of, or with respect to the required conveyance of the Right-of-Way Property to the City.

**8. Lift Station.** Prior to the issuance of any certificate of occupancy related to any building associated with the Project, the Developer shall design, permit, locate and install, and construct, in accordance with City regulations, a lift station or lift stations of a size and capacity and in a location required by conditions of development approvals to accommodate the anticipated sanitary sewer flow requirements of the Project (the "**Lift Station**"). Upon completion of the Lift Station, the Developer shall have the City Engineer inspect such improvements, obtain a certificate of completion from the City Engineer for such improvements and as a condition precedent to receiving a certificate of completion Developer shall execute and deliver to the City: (i) invoices for construction costs of the Lift Station, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Lift Station construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record provides a certification to the City that the Lift Station has been completed in accordance with approved design plans, (iv)

a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Lift Station, after the City Engineer certifies that the Lift Station is properly constructed, (v) a warranty deed conveying the Lift Station tract to the City, free and clear of all encumbrances not acceptable to the City, and (vi) an access easement in favor of the City in a reasonable width requested by the City for ingress and egress to and from the Lift Station tract over a reasonable portion of the Subject Property. The Lift Station shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 8 ("**Lift Station Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of Lift Station Completion. Upon the occurrence of Lift Station Completion, the City will take over maintenance responsibility of the Lift Station.

**9. Plan Approval.** The City shall have final approval of all plans, calculations, designs, locations and specifications for the foregoing Road Improvements, Water Line, Reclaimed Water Line, Sewer Force Main and Lift Station (hereinafter collectively referred to as the "**Public Infrastructure Improvements**"). The Developer acknowledges and agrees that its design, permitting, installation and construction of the Public Infrastructure Improvements (less the utility Oversizing costs to be reimbursed by the City) are proportionate to the impacts of the development of the Subject Property and that such improvements provide a direct benefit to the Subject Property. Except as otherwise extended by the City, once the Developer commences construction of the Public Infrastructure Improvements, such improvements shall be completed no more than 365 days from the commencement of construction, unless a shorter period of time is required by applicable permits as may be extended, then such shorter period shall apply. The Developer shall construct and install the Public Infrastructure Improvements in accordance with approved design plans.

**10. Dedications/Conveyances.** It is an express condition of this Agreement and a condition of approval of final plat for the Project that, Developer shall convey or caused to be conveyed to the City fee simple title or dedicate to the City certain real property to be identified on the final plat. Any dedications and/or conveyances to the City required under this Agreement or as part of final plat approval shall be dedicated and/or conveyed, as applicable (by general warranty deed), unencumbered by any lien, mortgage, easement or any other encumbrance or restriction not acceptable to the City. Developer hereby indemnifies and holds the City harmless from any and all claims, damages, penalties, fines, attorneys' fees (including at appellate and trial levels), costs, including but not limited to clean-up costs and other matters arising out of or any way related to environmental pollution and contamination on any and all real property interest granted, dedicated, gifted, and otherwise conveyed by the Developer to the City pursuant to this Agreement, but excluding any environmental pollution or contamination that occurs after the date of such conveyance unless such environmental pollution or contamination is caused by the Developer.

**11. Utility Improvements.**

(a) The development of the Subject Property must connect to the City's potable water and wastewater facilities, and to the City's or Water Conserv II's reclaimed water facilities, at the Developer's expense. Except where the requirements and specifications of Water Conserv II apply, all of the City's Code requirements and specifications concerning utility connections and all of the City's Code requirements and specifications concerning solid waste collection apply to the Subject Property and development thereof.

(b) The Developer shall obtain water and sewer capacity through the City's established reservation procedures. The City confirms that as of the Effective Date of this Agreement, sufficient plant capacity exists to service the Project with water and sewer service, however, this Agreement does not reserve capacity for such services to the Subject Property and Project. The Project, if developed in accordance with the applicable provisions of the City Comprehensive Plan and Land Development Code and this Development Agreement, satisfies the concurrency requirements for sewer, potable water, reclaimed water and transportation as described in the City Land Development Code and the Comprehensive Plan.

(c) The Developer shall provide the design, permitting and construction of reclaimed (reuse) water systems throughout the development for service and meter connection in accordance with the applicable City Codes and the regulations of Water Conserv II, as applicable.

(d) Nothing in this Agreement is intended to relieve or release third parties from their obligations under the City Code of Ordinances and applicable development orders and developer's agreements with the City concerning fair share contributions, utility extension and oversizing, road improvements and other infrastructure improvements.

(e) It is an express condition of this Agreement that the City's maximum monetary liability and obligation under this Agreement shall be the actual oversize costs associated with the Water Line, and that the City shall have no liability therefor if the bids, pricing, contracts and change orders are not reviewed and approved by the City prior to construction of such items, which approval shall not be unreasonably withheld, conditioned or delayed.

**12. Internal Sidewalks.** Prior to the issuance of a certificate of occupancy related to any residential unit associated with the Project, the Developer shall cause its builders to construct sidewalks in accordance with the approved construction plans along the internal street in front of the particular residential dwelling for which a certificate of occupancy is sought.

**13. Performance Bond.** Prior to final plat approval for the first phase of the Project, if Public Infrastructure Improvements are not then completed, Developer shall, as a condition precedent to obtaining final plat approval, provide or shall cause its contractor to provide to the City a performance bond or irrevocable letter of credit, acceptable to and in favor of the City in an amount which is one hundred twenty percent (120%) of the total design, permitting and construction costs of the Public Infrastructure Improvements and which bond or irrevocable letter of credit shall be subject to approval by the City Attorney and City Engineer.

**14. Internal Utility Lines.** Prior to and as a condition precedent to receipt of a certificate of completion from the City Engineer for sewer, water and reclaimed water utility lines internal to the Project (the "**Internal Utility Lines**") and before issuance of any certificates of occupancy for any dwelling units for the Project, Developer shall execute and deliver to the City: (i) invoices for construction costs of such Internal Utility Lines, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Internal Utility Lines construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record provides a certification to the City that the Internal Utility Lines have been completed in accordance with approved design plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Internal Utility Lines. The Internal Utility Lines shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 14 ("**Internal Utilities Lines Completion**"). No certificates of occupancy

shall be issued for any part of the Project until the occurrence of Internal Utilities Lines Completion. Upon the occurrence of Internal Utilities Lines Completion, the City will take over maintenance responsibility of the Internal Utility Lines.

**15. Community Subdivision Infrastructure Improvements.** Prior to the turnover of control of the homeowner's association as defined by Chapter 110, City of Winter Garden Code of Ordinances and prior to the issuance of certificates of occupancy for ninety percent (90%) of the dwelling units for the Project, Developer shall execute and deliver to the City a 2 year maintenance bond or irrevocable letter of credit covering the community subdivision infrastructure improvements (excluding Public Infrastructure Improvements and Internal Utility Lines), in an amount equal to 20 percent of such community subdivision infrastructure improvements' construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, and naming the City as beneficiary. Community subdivision infrastructure improvements include stormwater systems, roadways, gates, walls, streetlights, sidewalks and other subdivision infrastructure improvements to be ultimately owned or maintained by the homeowner's association for the Property/Project. The Developer shall have maintenance responsibility for the community subdivision infrastructure improvements until homeowner's association turnover occurs.

**16. Model Homes.** Prior to final plat approval for the first phase of the Project, the Developer may receive building permits for the construction of up to four (4) model homes subject to compliance with Section 110-60 of the City Code.

**17. Compliance with Law.** Nothing in this Agreement shall allow, or be construed to allow the Developer or Developer's successors and assigns to avoid or delay compliance with any or all provisions of the City's Comprehensive Plan, the City Code, City resolutions and other requirements pertaining to the use and development of the Subject Property.

**18. Indemnity.** The Developer hereby indemnifies and holds City and its elected and appointed officials, employees and agents harmless from and against any and all claims, disputes, lawsuits, injuries, damages, attorneys' fees (including the City's trial and appellate attorneys' fees), costs and experts' fees, interest and all adverse matters in any way arising out of or relating to the Developer's and its officers', employees' and agents' negligent acts, negligent omissions, and negligent misrepresentations under or arising from this Agreement, or any combination thereof, arising from or related to the Developer's exercise of (or failure to exercise) the rights or obligations of the Developer under this Agreement. The foregoing indemnity shall: (i) in no way cover any negligent acts, negligent omissions or negligent misrepresentations of the City, its officers, employees or agents; (ii) not be applicable to claims and disputes arising from events occurring after one year after certificates of completion have been issued for all of the Public Infrastructure Improvements; and (iii) not apply or be enforceable against any homeowner who is conveyed a lot within the Project after a certificate of occupancy is issued for a dwelling unit on such lot, nor shall it apply or be enforceable against any lender holding a mortgage or other security interest in any portion of the Property.

**19. Validity.** 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.

**20. Notices.** Any notices required or permitted under this Agreement, and copies thereof, shall be addressed to the City and the Developer at the following addresses, or at such other addresses designated in writing by the party to receive notice.

City: City Manager  
City of Winter Garden  
300 West Plant Street  
Winter Garden, Florida 34787

With a copy to:  
City Attorney  
City of Winter Garden  
300 West Plant Street  
Winter Garden, Florida 34787

Developer: Taylor Morrison of Florida, Inc.  
Attn: Anas Iqbal  
151 Southhall Lane, Suite 200  
Maitland, Florida 32751

With a copy to:  
James H. McNeil, Jr., Esq.  
Akerman Senterfitt  
420 S. Orange Avenue, Suite 1200  
Orlando, FL 32801

Notices shall be either: (i) personally delivered (including delivery by Federal Express or other overnight courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; or (ii) 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.

**21. Attorney's Fees.** In any lawsuit between the parties to this Agreement arising from this Agreement, each party shall bear their own respective attorneys' fees and costs.

**22. Entire Agreement.** This Agreement embodies the entire understanding of the parties with respect to the matters specifically enumerated herein, and all negotiations, representations, warranties and agreements made between the parties are merged herein. The making, execution and delivery of this Agreement by all parties have been induced by no representations, statements, warranties or agreements that are not expressed herein. There are no further or other agreements or understandings; written or oral, in effect between or among the parties related to the subject matter hereof.

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

**24. Binding Effect and Successors.** This Agreement shall run with the Subject Property and the rights and the obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement. In the event of the assignment of this Agreement, or the conveyance or transfer of the Subject Property, or any part thereof, the Developer shall be and remain liable for performance of the obligations under

this Agreement until such time as a written release is obtained from the City, in the City's sole discretion except in the event all obligations under this Agreement have been completed, in which case no such release shall be required. Excluding the City and any homeowner who is conveyed a lot within the Project after a certificate of occupancy is issued for a dwelling unit on such lot, Developer and all transferees, transferor, grantees, grantors, assignees and assignors relating to the Subject Property are jointly and severally liable for the Developer's obligations under this Agreement. The rights granted to Developer under this Agreement relate specifically to the Subject Property and are not permitted to be transferred to any other property.

**25. Local Development Approvals and Permits.** Notwithstanding anything herein to the contrary, all development of the Project shall be in compliance with all applicable federal, state, county and municipal laws and ordinances, rules and regulations (including, but not limited to, the City's land development regulations, zoning requirements and comprehensive plan). Unless expressly authorized or granted herein, nothing in this Agreement shall constitute or be deemed to constitute or require the City to issue any approval by the City of any rezoning, Comprehensive Plan amendment, variance, special exception, final site plan, preliminary subdivision plan, final subdivision plan, building permit, grading, stormwater drainage, engineering, or any other land use or development approval. Nor shall this Agreement be deemed to reduce, eliminate, derogate from or otherwise adversely affect any such approvals, permissions or rights. These and any other required City development approvals and permits shall be processed and issued by the City in accordance with procedures with respect to same as otherwise set forth in the City's Code of Ordinances and subject to any conditions of approval thereof. Nothing in this Agreement shall constitute or be deemed to constitute a limitation, restriction or any other type of waiver of Developer's right or ability to seek a rezoning, comprehensive plan amendment, variance, special exception, site plan, preliminary subdivision plan, final subdivision plan, or any other land use or development approval.

**26. Rights-of-Way.** The City shall be under no obligation to condemn any rights-of-way, easement or other property rights for the construction of the Project or for any of Developer's obligations provided for herein.

**27. Impact Fees.**

(a) Transportation Impact Fees. Transportation impact fees shall be paid at rates applicable within the City at the time of building permit issuance. The Developer and the Project shall not receive any compensation or impact fee credits for the transportation-related obligations of the Developer provided in this Agreement including without limitation, for Right-of-Way Property conveyances required herein or as a condition to development approval.

(b) Water and Sewer Impact Fees. Water and sewer impact fees shall be paid in accordance with Chapter 78, Article II of the City of Winter Garden Code of Ordinances.

(c) Police, Fire and Parks/Recreation Services Impact Fees. Applicants for building permits within the Subject Property shall comply with the City Code, as it may from time to time be amended, imposing impact fees for police, fire, and parks/recreation facilities and/or services. In addition, impact fees, which may be adopted in the future or which currently exist, applicable to the development of the Subject Property, will be paid consistent with the applicable adopted ordinance or inter-local agreement at time of building permit issuance.

(d) The impact fee determination of subparagraphs (a) through (c) above shall be determined pursuant to City Code as such may be amended from time to time. Except

as otherwise provided herein, the Developer shall not receive any compensation or impact fee credits for improvements described herein and/or the dedication or conveyance of any land to the City.

**28. Permit Approvals.** Developer shall be responsible for providing to City and obtaining any and all approval and permits for, by way of example not limitation, all drainage improvements, drainage connections, driveway connections, and utility connections from all applicable governmental agencies or jurisdictions, including but not limited to, the St. John's River Water Management District ("SJRWMD"), Orange County and the Florida Department of Environmental Protection ("FDEP"). If permit requirements and conditions imposed by Orange County, the St. John's River Water Management District, the Florida Department of Environmental Protection, the Florida Department of Transportation, or any other applicable jurisdiction significantly change the design of the Project or create conflict or inconsistencies with the conditions of this Agreement, the Agreement must be amended and approved by the City prior to the continuation of any development activities within the Subject Property.

**29. Authority.** Each party represents and warrants to the other parties 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. Furthermore, Developer represents and warrants to City that Developer is the fee simple owner of the Subject Property and that the Subject Property is free and clear of all mortgages and liens. In the event any mortgage or other lien encumbrance in fact exists on the Subject Property as of the recording of this Agreement in the Orange County public records such shall constitute a default of this Agreement by Developer and must be cured by Developer, at Developer's sole cost by obtaining the joinders, consents and subordinations to this Agreement (and documents called for herein) or releases from the appropriate parties with mortgage and lien interest in the Subject Property. Developer shall provide to City, certified surveys, title reports or other documents evidencing said ownership interest.

**30. Effective Date.** This Agreement shall become effective upon execution by all parties (the "**Effective Date**").

**31. Breach.** In the event of a breach, default, or violation of one or more of the provisions herein by the Developer or the City, 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. In the event such violation is not cured within said period, the City, or the Developer, as the case may be, shall have the right to pursue any and all legal and equitable remedies available provided by law. In addition to any of the above stated remedies, the City shall be permitted to withhold the processing and issuance of certificates of occupancy, building permits and development orders associated with the Project in the event Developer is in default of this Agreement. In addition to any of the above stated remedies, in the event the Developer fails to timely complete the Public Infrastructure Improvements or any portion thereof, the City may record a Notice of Lien against the Subject Property in an amount equal to the design, permitting, installation and construction costs of such improvements (less City's share of such improvements provided herein). In addition, if Developer fails to timely pay the City any monies due pursuant to this Agreement, the City may record a Notice of Lien against the Subject Property, excluding any lot that has been conveyed to third party homebuyer subsequent to a certificate of occupancy issued for a dwelling unit on such lot, in the amount owed to the City. A

copy of such Notice of Lien shall also be delivered to Developer in the same manner as required under this Agreement for delivery of written notices. The recorded Notice of Lien shall constitute a lien upon the Subject Property and the lien may be foreclosed upon for the benefit of the City any time after ten (10) days after the Notice of Lien has been recorded in the public records. The City may foreclose the lien in accordance with the procedures established in Section 702.10, Florida Statutes, or successor statute or other statute providing for lien foreclosure procedures. The Developer may obtain a release from the lien by paying the amount stated in the lien, plus accrued interest of twelve percent per annum, plus attorney's fees and costs incurred by the City in filing and collecting upon the lien. Without regard to anything herein to the contrary, the Developer shall have the right to transfer any liens off the Subject Property to other security as provided by law.

**32. Amendment.** This Agreement may be amended, modified or cancelled by mutual consent of the parties hereto as represented by a written document executed by the City and the Developer.

**33. 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.

**34. Recording.** Within fourteen (14) days after the execution of this Agreement by the parties, the City shall record this Agreement with the cost thereof to be borne by the Developer.

**35. Non-Waiver of Sovereign Immunity.** Nothing contained in this Agreement nor in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the City of its sovereign immunity under the Constitution and laws of the State of Florida.

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

**37. Reimbursement.** On or before ten (10) days after the date of invoicing, Developer shall reimburse the City for all the City's direct costs, expenses and fees incurred relating to the review, processing, inspection, and regulation (or any combination thereof) of applications related to the Project, including without limitation, the City's consultants', engineers' and attorneys' fees, concerning the preparation of this Agreement and for other development review expenses in accordance with Chapter 88, City of Winter Garden Code of Ordinances.

**38. 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.

**39. 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.

**40. Independent Parties.** City and Developer are not partners and this Agreement is not a joint venture and nothing in this Agreement shall be construed to authorize the

Developer to represent or bind the City to matters not expressly authorized or provided in this Agreement.

**41. Full Compensation and Release.** Developer agrees that the consideration provided to Developer by and incorporated by reference in this Agreement is intended as and does hereby constitute full, just and complete compensation for the conveyance of the Right-of-Way Property, Lift Station tract and any other dedication and conveyance as provided for herein, including, without limitation, any and all damage, if any, to the Subject Property (or any portion thereof), Developer's remaining property and business which may result from Developer's conveyance to the City of the Right-of-Way Property, Lift Station tract and any other dedication and conveyance as provided for herein. As such, Developer, on behalf of itself and its agents, successors, legal representatives and assigns, fully and forever release the City of and from, and waives, any and all condemnation or inverse condemnation claims and business damage claims relating to any or all portions of the Subject Property and the remaining property, which Developer may now have, may have had or which may hereafter accrue or otherwise be acquired arising out of and caused by the conveyance of the Right-of-Way Property, Lift Station tract and any other conveyance as provided for herein to City. The foregoing release and waiver includes, but is not limited to, compensation, damages, expenses, attorney's or expert's fees and costs, whether known or unknown.

**42. Attachments.** The following attachments are incorporated herein by reference:

Exhibit A	Legal Description of Subject Property
Exhibit B	Utility Lines Route
Exhibit C	Avalon Road Improvements
Exhibit D	Right-of-Way Property

AGREED by the City and Developer as of the day first written above.

[Signature Pages on Following Pages]

**"CITY"**

**CITY OF WINTER GARDEN, FLORIDA**

Signed, sealed and delivered in  
the presence of:

**By:** \_\_\_\_\_  
JOHN REES, MAYOR

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Witness

**ATTEST:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Witness

**By:** \_\_\_\_\_  
KATHY GOLDEN, CITY CLERK

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was executed, sworn to and acknowledged before me this \_\_\_\_\_, 2012 by JOHN REES as Mayor of the City of Winter Garden. He (check one)  
 is personally known to me, or  has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public, State and County Aforesaid  
Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission Number is: \_\_\_\_\_

**“DEVELOPER”**

TAYLOR MORRISON OF FLORIDA, INC.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Witness

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was executed, sworn to and acknowledged before me this \_\_\_\_\_, 2012 by \_\_\_\_\_ as \_\_\_\_\_ of TAYLOR MORRISON OF FLORIDA, INC. She/He (check one)  is personally known to me, or  has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public, State and County Aforesaid  
Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission Number is: \_\_\_\_\_

**EXHIBIT "A"**

TRACTS ONE-D AND TWO-D, LAKE AVALON GROVES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK H, PAGE 24, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

AND

TRACTS FIFTEEN-D AND SIXTEEN-D, LAKE AVALON GROVES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK H, PAGE 24, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE EAST ¼ CORNER OF SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE N00°11'44"E, ALONG THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION 8, A DISTANCE OF 1352.21 FEET TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF DAVENPORT ROAD (A 50.00 FOOT RIGHT-OF-WAY); THENCE S89°52'42"W, ALONG SAID LINE, A DISTANCE OF 25.00 FEET TO THE SOUTHEAST CORNER OF TRACT 16D, LAKE AVALON GROVES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK H, PAGE 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND THE POINT OF BEGINNING; THENCE CONTINUE S89°52'42"W, ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE SOUTH LINE OF SAID TRACT 16D AND THE SOUTH LINE OF TRACT 15D, SAID LAKE AVALON GROVES, A DISTANCE OF 1297.35 FEET, TO THE SOUTHWEST CORNER OF SAID TRACT 15D; THENCE N00°13'39"E, ALONG THE WEST LINE OF SAID TRACT 15D AND THE WEST LINE OF TRACT 2D, SAID LAKE AVALON GROVES, A DISTANCE OF 1280.76 FEET TO THE NORTHWEST CORNER OF SAID TRACT 2D; THENCE S89°58'04"E, ALONG THE NORTH LINE OF SAID TRACT 2D AND THE NORTH LINE OF TRACT 1D, SAID LAKE AVALON GROVES, A DISTANCE OF 1296.62 FEET TO THE NORTHEAST CORNER OF SAID TRACT 1D; THENCE S00°11'44"W, ALONG THE EAST LINE OF SAID TRACT 1D, A DISTANCE OF 1277.27 FEET TO THE POINT OF BEGINNING.

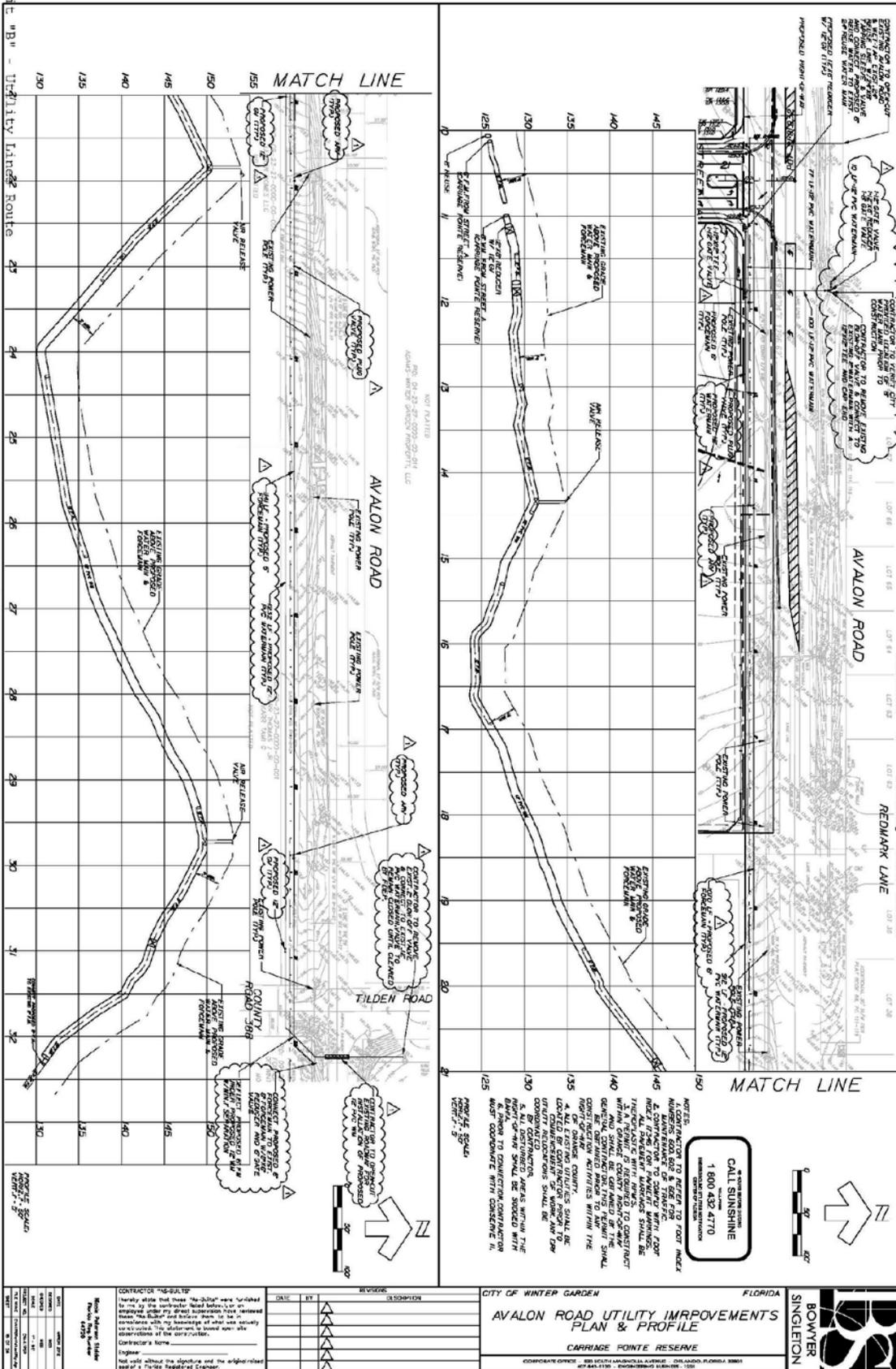




EXHIBIT "D" - Right-of-Way  
Property

**LEGAL DESCRIPTION:**

THE NORTH 35.00 FEET OF TRACTS 1D AND 2D (LOTS 1D AND 2D), LAKE AVALON GROVES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK H, PAGE 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE EAST 1/4 CORNER OF SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE N00°11'44"E, ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 8, A DISTANCE OF 2629.41 FEET, TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH LINE OF AFORESAID TRACT 1D; THENCE N89°58'04"W, ALONG SAID EASTERLY EXTENSION, A DISTANCE OF 25.00 FEET, TO THE NORTHEAST CORNER OF SAID TRACT 1D AND THE POINT OF BEGINNING; THENCE S00°11'44"W, ALONG THE EAST LINE OF LOT 1D, A DISTANCE OF 35.00 FEET, TO A POINT ON A LINE LYING 35.00 FEET SOUTHERLY OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACT 1D AND THE NORTH LINE OF AFORESAID TRACT 2D; THENCE N89°58'04"W, ALONG SAID PARALLEL LINE, A DISTANCE OF 1296.64 FEET, TO A POINT ON THE WEST LINE OF SAID TRACT 2D; THENCE N00°13'39"E, ALONG SAID WEST LINE, A DISTANCE OF 35.00 FEET, TO THE NORTHWEST CORNER OF SAID TRACT 2D; THENCE S89°58'04"E, ALONG SAID NORTH LINE OF TRACT 2D AND THE NORTH LINE OF TRACT 1D, A DISTANCE OF 1296.62 FEET, TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 1.04 ACRES (45,382 SQUARE FEET), MORE OR LESS.

**GENERAL NOTES:**

1. BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE EAST LINE OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, AS BEING N00°11'44"E.
2. THIS IS NOT A BOUNDARY SURVEY.

*Jeff W Barnes* 04/20/2012  
JEFF W. BARNES DATE

PROFESSIONAL SURVEYOR &  
MAPPER LICENSE NUMBER 5576  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

**SHEET 1 OF 3**

(SEE SHEETS 2 & 3 FOR SKETCH OF DESCRIPTION)

**SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.**

**SKETCH OF DESCRIPTION**  
-OF-  
**R/W DEDICATION**

SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST

ORANGE COUNTY FLORIDA



DEVELOPMENT & TRANSPORTATION ENGINEERING  
PLANNING I SURVEYING & MAPPING

520 SOUTH MAGNOLIA AVENUE  
ORLANDO, FLORIDA 32801

PHONE: 407.843.5120 FAX: 407.648.9104  
BSA-CIVIL.COM  
CERTIFICATE OF AUTHORIZATION No. LB 1221

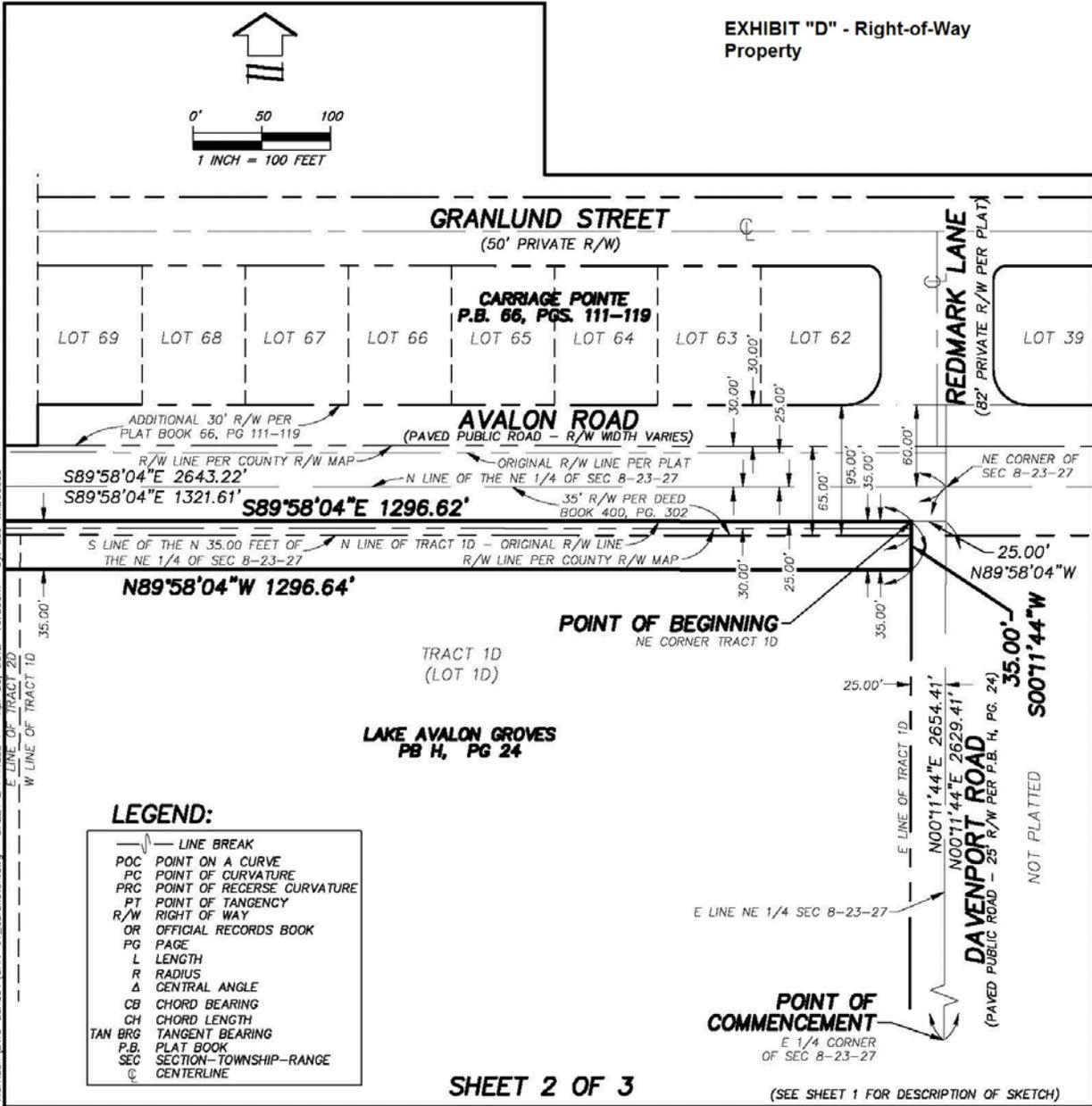
PREPARED FOR:  
**TAYLOR MORRISON**

DATE: 04/19/12  
REV DATE:  
SCALE 1" = N/A

DRAWN BY: LAT  
CHECKED BY: JB

Drawing name: E:\Orlando\Survey\Jobs\CAN\uk Taylor Morrison\DMC-LandDT\CAN-uk\_sursketch.dwg SHEET 1 PARCEL 1 Apr 20, 2012 9:59am by Lee Thibodeau

**EXHIBIT "D" - Right-of-Way Property**



**SKETCH OF DESCRIPTION**  
 -OF-  
**R/W DEDICATION**

SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST  
 ORANGE COUNTY FLORIDA

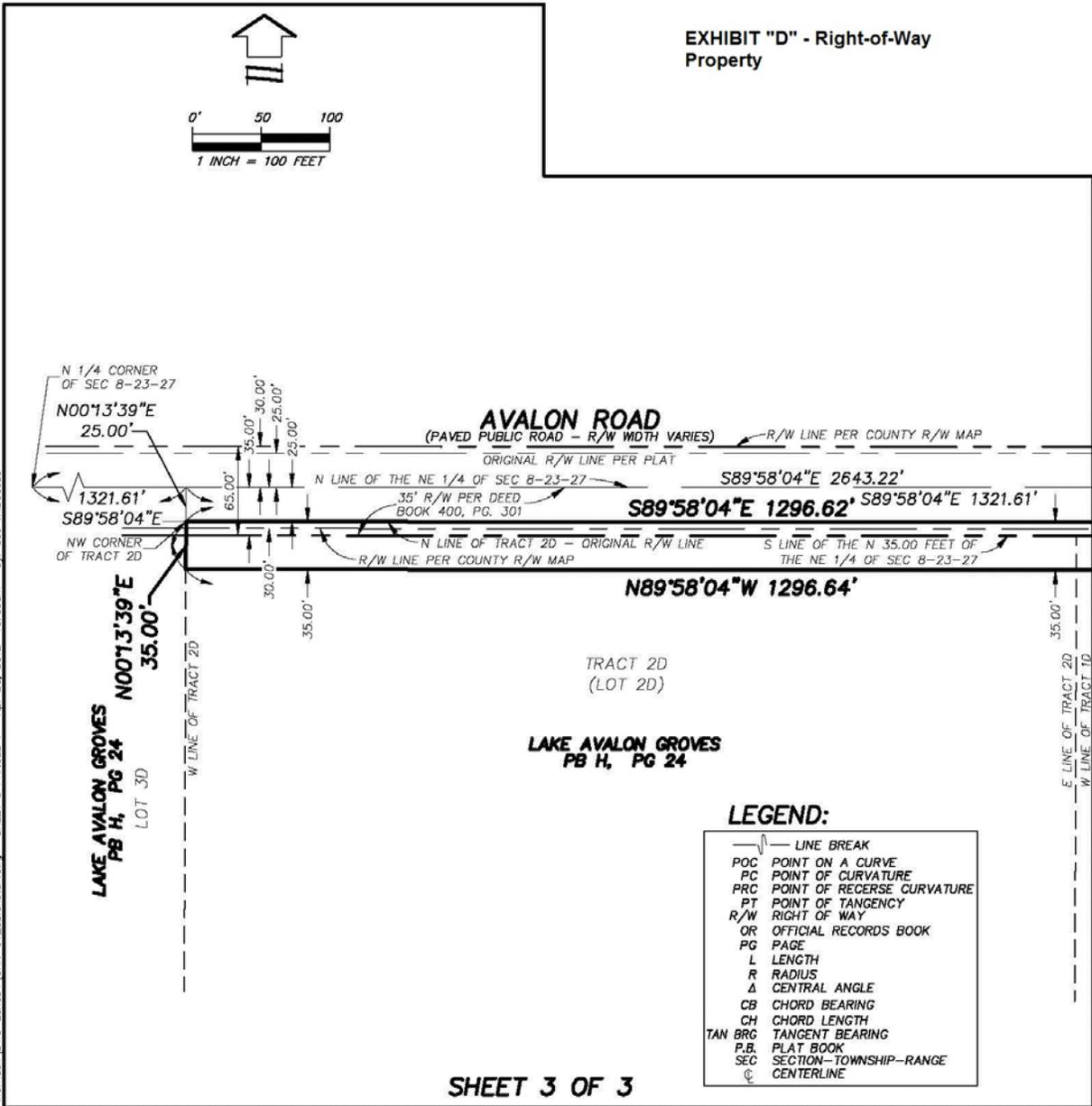
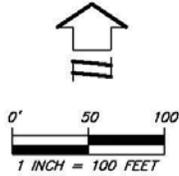
**BOWYER SINGLETON**  
 DEVELOPMENT & TRANSPORTATION ENGINEERING  
 PLANNING I SURVEYING & MAPPING  
 520 SOUTH MAGNOLIA AVENUE  
 ORLANDO, FLORIDA 32801  
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 BSA-CIVIL.COM  
 CERTIFICATE OF AUTHORIZATION No. LB 1221

PREPARED FOR:  
**TAYLOR MORRISON**

DATE: 04/19/12  
 REV DATE:  
 SCALE 1" = N/A

DRAWN BY: LAT  
 CHECKED BY: JB

**EXHIBIT "D" - Right-of-Way Property**



**LEGEND:**

—	LINE BREAK
PC	POINT ON A CURVE
PC	POINT OF CURVATURE
PRC	POINT OF REVERSE CURVATURE
PT	POINT OF TANGENCY
R/W	RIGHT OF WAY
OR	OFFICIAL RECORDS BOOK
PG	PAGE
L	LENGTH
R	RADIUS
Δ	CENTRAL ANGLE
CB	CHORD BEARING
CH	CHORD LENGTH
TAN BRG	TANGENT BEARING
P.B.	PLAT BOOK
SEC	SECTION-TOWNSHIP-RANGE
⊕	CENTERLINE

**SHEET 3 OF 3**

**SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.**

**SKETCH OF DESCRIPTION**  
 -OF-  
**R/W DEDICATION**

SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST

ORANGE COUNTY FLORIDA

**BOWYER SINGLETON**  
 DEVELOPMENT & TRANSPORTATION ENGINEERING  
 PLANNING | SURVEYING & MAPPING

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 ORLANDO, FLORIDA 32801  
 PHONE: 407.843.5120 FAX: 407.648.9104  
 BSA-CIVIL.COM  
 CERTIFICATE OF AUTHORIZATION No. LB 1221

PREPARED FOR:  
**TAYLOR MORRISON**

DATE: 04/19/12  
 REV DATE:  
 SCALE 1" = N/A

DRAWN BY: LAT  
 CHECKED BY: JB

WGV3\_OVERALL GS.dwg

Drawing name: E:\Orlando\Survey\Jobs\CAV\14 Taylor Morrison\DWG-Land\14\_sursketch.dwg SHEET 3 PARCEL 1 Apr 20, 2012 10:00am by: Lee Theodanis

EXHIBIT "D" - Right-of-Way  
Property

**LEGAL DESCRIPTION:**

A PORTION OF TRACT 16D (LOT 16D), LAKE AVALON GROVES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK H, PAGE 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE EAST 1/4 CORNER OF SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE N00°11'44"E, ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 8, A DISTANCE OF 1352.21 FEET, TO A POINT ON THE EASTERLY EXTENSION OF THE SOUTH LINE OF AFORESAID TRACT 16D; THENCE S89°52'42"W, ALONG SAID EASTERLY EXTENSION, A DISTANCE OF 25.00 FEET, TO THE SOUTHEAST CORNER OF SAID LOT 16D AND THE POINT OF BEGINNING; THENCE CONTINUE S89°52'42"W, ALONG THE SOUTH LINE OF SAID LOT 16D, A DISTANCE OF 52.65 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN N56°19'33"E, A DISTANCE OF 15.04 FEET, TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 87.00 FEET, A CENTRAL ANGLE OF 53°57'56", A CHORD BEARING OF N29°20'35"E AND A CHORD DISTANCE OF 78.95 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 81.94 FEET, TO THE POINT OF TANGENCY; THENCE N02°21'37"E, A DISTANCE OF 45.36 FEET, TO A POINT ON THE EAST LINE OF SAID TRACT 16D; THENCE S00°11'44"W, ALONG SAID EAST LINE, A DISTANCE OF 122.37 FEET, TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 0.03 ACRES (1,360 SQUARE FEET), MORE OR LESS.

**GENERAL NOTES:**

1. BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE EAST LINE OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, AS BEING N00°11'44"E.
2. THIS IS NOT A BOUNDARY SURVEY.

*Jeff W Barnes* 04/20/2012  
 JEFF W. BARNES DATE  
 PROFESSIONAL SURVEYOR &  
 MAPPER LICENSE NUMBER 5576  
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
 RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

**SHEET 1 OF 2**

(SEE SHEETS 2 & 3 FOR SKETCH OF DESCRIPTION)

**SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.**

**SKETCH OF DESCRIPTION**

-OF-

**R/W DEDICATION**

SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST

ORANGE COUNTY

FLORIDA



**BOWYER SINGLETON**  
 DEVELOPMENT & TRANSPORTATION ENGINEERING  
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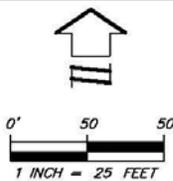
PREPARED FOR:  
**TAYLOR MORRISON**

DATE: 04/19/12  
REV DATE:  
SCALE 1" = N/A

DRAWN BY: LAT  
CHECKED BY: JB

Drawing name: E:\Orlando\Survey\_Jobs\CAN\44 Taylor Morrison\DWG-LandDT\CAN-44\_sursketch.dwg SHEET 1 PARCEL 2 Apr. 20, 2012 10:00am by: Lee Theobald

**EXHIBIT "D" - Right-of-Way Property**



**LEGEND:**

— —	LINE BREAK
POC	POINT ON A CURVE
PC	POINT OF CURVATURE
PRC	POINT OF REVERSE CURVATURE
PT	POINT OF TANGENCY
R/W	RIGHT OF WAY
OR	OFFICIAL RECORDS BOOK
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Δ	CENTRAL ANGLE
CB	CHORD BEARING
CH	CHORD LENGTH
TAN BRG	TANGENT BEARING
P.B.	PLAT BOOK
SEC	SECTION-TOWNSHIP-RANGE
C	CENTERLINE

**LAKE AVALON GROVES  
PB H, PG 24**

TRACT 16D  
(LOT 16D)

$\Delta=53^{\circ}57'56''$   
 $L=81.94'$   $R=87.00'$   
 $CB=N29^{\circ}20'35''E$   
 $CH=78.95'$

$N56^{\circ}19'33''E$   
 $15.04'$

**DAVENPORT ROAD**  
 (PAVED PUBLIC ROAD - 50' R/W PER P.B. H, PG. 24)

S LINE NE 1/4 OF NE 1/4 SEC 8-23-27

**POINT OF BEGINNING**  
 SE CORNER TRACT 16D

**POINT OF COMMENCEMENT**  
 E 1/4 CORNER

NE CORNER OF  
 SEC 8-23-27

**DAVENPORT ROAD**  
 (PAVED PUBLIC ROAD - 25'  
 R/W PER P.B. H, PG. 24)

EASTERLY EXTENSION OF  
 THE S LINE OF TRACT 16D  
 $S89^{\circ}52'42''W$

NOT PLATTED

**SHEET 2 OF 2**

(SEE SHEET 1 FOR DESCRIPTION OF SKETCH)

**SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.**

**SKETCH OF DESCRIPTION**  
 -OF-  
**R/W DEDICATION**

SECTION 8, TOWNSHIP 23 SOUTH, RANGE 27 EAST

ORANGE COUNTY FLORIDA



**BOWYER  
 SINGLETON**

DEVELOPMENT & TRANSPORTATION ENGINEERING  
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 CERTIFICATE OF AUTHORIZATION NO. LB 1221

PREPARED FOR:

**TAYLOR MORRISON**

DATE: 04/19/12  
 REV DATE:  
 SCALE 1" = N/A

DRAWN BY: LAT  
 CHECKED BY: JB

Drawing name: E:\Orlando\Survey\Jobs\CAM\CAM\44 Taylor Morrison\DWG-CAMD\T\CAM-44\_suraketic.dwg SHEET 2 PARCEL 2 Apr 20, 2012 10:00am by Lee Thibodeau

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Don Cochran, Public Services  
**Via:** City Manager Mike Bollhoefer  
**Date:** May 8, 2012      **Meeting Date:** May 24, 2012  
**Subject:** Annual Services Contract for Hydrogeological and Water Resource Planning Services  
**Issue:** The City has received submittals for RFQ #12-01 for Hydrogeological and Water Resource Planning Services, with a total of seven consultants submitting.

The scope of work includes the following services on an as-needed basis:

- CUP applications and guidance
- Groundwater monitoring and modeling
- Wetland monitoring
- Public presentations
- Meetings with SJRWMD
- Quantifying the effectiveness of the Water Conservation Program
- Water audits

Through the RFQ process, Tetra Tech Engineering was ranked the highest qualified consultant.

The contract shall run for a period of one (1) year with an option to renew the contract annually, not to exceed five (5) years.

**Recommended action:**

Recommend approval of the rankings and the negotiation of a contract with Tetra Tech Engineering for Hydrogeological and Water Resource Planning Services.

**Attachments/References:**

- Ranking sheet



## **Unofficial Rankings**

*Professional Hydrogeological and  
Water Resource Planning Services  
(RFQ 12-01)*

Tetra Tech	355
CDM Smith	350
CPH	346
SMW Geosciences, Inc.	319
Cardno Entrix	292
WRA (Water Resource Associates)	274

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Mike Bollhoefer, City Manager

**Date:** May 22, 2012

**Meeting Date:** May 24, 2012

**Subject:** The City of Winter Garden's support of a communitywide initiative to reduce pedestrian injuries and fatalities in Central Florida through education, engineering and enforcement.

**Issue:** Local studies have shown a deadly trend of pedestrian/bicyclist injuries and fatalities in the Central Florida area. This trend can be decreased through a systematic regimen of public education, low-cost engineering and high-visibility enforcement. Supporting this effort could increase the safety of Winter Garden streets, which could in turn enhance the health and well-being of Winter Garden residents and visitors, as well as contribute to our goal as a of creating a more walkable and livable community.

**Recommended action:**

Recommend approving Resolution 12-09, supporting a communitywide initiative to reduce pedestrian injuries and fatalities through education, engineering and enforcement.

**Attachments/References:**

Resolution 12-09

**RESOLUTION 12-09**

**A RESOLUTION OF THE CITY OF WINTER GARDEN IN SUPPORT OF A COMMUNITYWIDE INITIATIVE TO REDUCE PEDESTRIAN INJURIES AND FATALITIES IN CENTRAL FLORIDA THROUGH EDUCATION, ENGINEERING, AND ENFORCEMENT.**

**WHEREAS**, the mobility and accessibility afforded the individual is basic to the success of the Winter Garden land use and transportation system, where streets are designed and operated to assure safety, comfort (i.e. perceived safety), and accessibility for all users; and

**WHEREAS**, studies have shown that over the past decade, on average, two pedestrians are injured every day and one pedestrian is killed each week in the Orlando-Kissimmee MSA; and

**WHEREAS**, Florida Statute Title XXIII, Chapter 316.130 states that vehicle drivers must yield right-of-way to a pedestrian crossing within a crosswalk; and a pedestrian crossing a roadway at any point other than a crosswalk must yield the right-of-way to a vehicle; and

**WHEREAS**, the loss of even one life is tragic and the persistence of such adverse conditions presents a danger to pedestrians and bicyclists; and

**WHEREAS**, a systematic regimen of public education, low-cost engineering and high-visibility enforcement has been demonstrated to reduce pedestrian injuries and fatalities in other markets;

**NOW, THEREFORE, BE IT RESOLVED THAT** the City of Winter Garden joins with other cities, towns, counties, law enforcement, and regional planning authorities in a regional effort to reverse this deadly trend.

**RESOLVED**, that the Greater Central Florida region benefits by a reduction in pedestrian injuries and fatalities.

**RESOLVED**, that the City of Winter Garden will participate in this effort by educating both drivers and pedestrians through established means of constituent communications and the production and dissemination of Winter Garden-specific public awareness in conjunction with supporting the efforts of groups such as Bike/Walk Central Florida and the participation in pedestrian specific enforcement actions, and

**RESOLVED**, that these actions will enhance the health and well-being of the people of Winter Garden and visitors, and contribute to our goal of creating a more walkable, and livable, community.

**PASSED AND RESOLVED** this \_\_\_\_\_ day of May, 2012, by the City Commission of the City of Winter Garden, Florida.

\_\_\_\_\_  
John Rees, Mayor / Commissioner

ATTEST:

\_\_\_\_\_  
Kathy Golden, City Clerk

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE IV OF CHAPTER 38 OF THE WINTER GARDEN CITY CODE; PROVIDING FOR EXTENDED HOURS FOR CONSTRUCTION OPERATIONS; PROVIDING FOR ADDITIONAL ABATEMENT OF NOISE IN RESIDENTIAL AREAS; PROVIDING FOR ENFORCEMENT OF NOISE ORDINANCE VIA AN ALTERNATIVE OBJECTIVE STANDARD OF REASONABLENESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Garden (“City”) desires to amend Article IV of Chapter 38 of its Code of Ordinances relating to the abatement of noise levels within the City to add restrictions on noise affecting residential areas and an alternative enforcement mechanism whereby noise may be evaluated by a standard of objective reasonableness; and

**WHEREAS**, the City recognizes recent increases in complaints within residential areas of loud, raucous, or otherwise unduly jarring noise occurring at night during customary periods of slumber;

**WHEREAS**, the City acknowledges that modern methods of measuring and evaluating sound levels for the purpose of enforcing its noise ordinance require the use of expensive and delicate equipment, inefficient sharing of measurement devices with neighboring jurisdictions, dependency on the availability of such measurement devices, and cumbersome calibration procedures; and

**WHEREAS**, the City has determined that objectively unreasonable, harmful, or environmentally damaging noise often occurs intermittently and at such times that make it impractical to implement or conduct technical measurement or monitoring of such noise; and

**WHEREAS**, it has been held by courts within this state that both the U.S. and Florida Constitutions permit the enforcement of noise ordinances by and through the evaluation of noise in light of an objectively determined reasonable person standard,

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

**SECTION I:** SECTION 38-153(b). DEFINITIONS, Section 38-153(b) is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

Amplified sound equipment means electronic equipment that projects or transmits music, sound waves, vibration or speech, including but not limited to, a loudspeaker, megaphone, amplifier or public address system.

Noise means any sound produced in such quantity and for such duration that it annoys, disturbs, endangers or ~~may~~ injures the comfort, repose, health, peace, or safety of a reasonable prudent man or woman person of ~~normal~~ ordinary sensitivities ~~sensibilities~~, ~~including any~~ and also includes sounds ~~or sound~~ at or above decibel levels as specifically prohibited by this article.

All other definitions remain the same.

**SECTION II: SECTION 38-155. PROHIBITED ACTS,** Section 38-155 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

(a) It shall be unlawful for any person to produce, cause to be produced, allow to be produced or project, by any means, any sound or noise across a property line in such manner as to create a sound level which exceeds the limits set forth for the receiving land use listed in section 38-156 when measured at or within the property line of the receiving property. For any activity or use of land or buildings not expressly listed in the zoning districts in the city, the city commission, upon notice to the owner or occupant of the property producing sound, may determine the category of use under this article for which the activity or use is to be considered. Notwithstanding the foregoing, the existence of a noise which relates to the receiving land use listed in 38-156 may be determined by the police department, code enforcement officer, code inspector, and/or their agents pursuant to section 38-160(a)(1).

(b) ~~In addition to any sound or noise prohibited pursuant to~~ Notwithstanding any violation of subsection (a) above, the following specific uses, and activities and circumstances within the city are declared to be ~~loud, disturbing and excessive noise~~ in violation of this article:

- (1) *Radios, television sets, exterior loudspeakers, musical instruments, and similar devices.* Operating or permitting the use or operation of any radio receiving set, exterior loudspeaker, amplified sound equipment, musical instrument, phonograph, television set, or other machine or device for the production or reproduction of sound between the hours of 9:00 p.m. and 7:00 a.m. in such a manner as to create a noise across ~~a~~ the boundary of the property line from which the noise originates. Radios, cassette players, disk players and similar devices associated with motor vehicles or motorboats, shall not be operated or amplified in such a manner as to ~~be felt or heard~~ create noise heard at 50 feet or more from such device, when operated or parked on a public right-of-way or public space.

- (2) *Construction equipment and activity.* Operating or causing to be operated any equipment or performing any outside activity in furtherance of construction, repair, alteration or demolition work on buildings, structures, roads, or projects within the city except between the hours of 7:00 a.m. and 9:00 p.m. Monday through Friday and between the hours of 9:00 a.m. and 9:00 p.m. on Saturday, excluding all legal, state, and nationally recognized holidays. A variance may be obtained as set forth in this article from the city for such construction or repair work outside of such hours.
- (3) *Engine mufflers.* ~~Operating~~ Operation of any internal combustion engine, including but not limited to ~~such~~ an engine associated with a motor boat, or motor vehicle without a functioning as designed by the manufacturer muffler or other effective sound-dampening device at least as effective as that installed as original equipment by the manufacturer, which will effectively prevent ~~so that~~ loud or explosive noises is produced therefrom.
- (4) *Motor vehicle, motorcycle or motorboat repair in residential areas.* Repairing, rebuilding, modifying or testing any motor vehicle, off-road vehicle, or motorboat within or abutting any residential land use designation in such a manner as to create noise across ~~a property line~~ the boundary of the property from which the noise originated between the hours of 9:00 p.m. and 7:00 a.m.
- (5) *Activities in the vicinity of schools, courts, churches, and hospitals.* Creating ~~any excessive noise~~ sound on any street adjacent to any school, court, church, or hospital ~~which unreasonably interferes with the workings of such institution~~ so that such sound constitutes a noise as perceived from the enclosed interior of such institution, or which disturbs or unduly annoys patients in a hospital.
- (6) *Peddlers, hawkers, or vendors.* It shall be unlawful for peddlers, hawkers, or vendors to shout or cry along or on a roadway ~~to the disturbance of the peace or quiet of a neighborhood~~ in such a manner as to create noise on property outside the right of way. This provision shall not apply to ice cream trucks.
- (7) *Drums, cymbals, and amplified sound equipment* ~~loudspeakers~~. Creating, making, or maintaining any ~~noise sound~~ by the use of any drum, cymbals, amplified sound equipment ~~loudspeaker~~, or other similar instruments in the city for the purpose of attracting attention to any performance, show, sale, or display of merchandise, or place of business so that a noise is projected across the boundary of the property from which the noise originated. This provision shall not apply to ice cream trucks, ~~or approved public events.~~

- (8) *Bells or sirens on vehicles.* Using, in connection with an unauthorized vehicle, any bell or siren similar to that used on ambulances or vehicles of the police, fire departments, and other public safety agencies.
- (9) *Skateboard ramps.* Using any skateboard ramp or similar configuration for skateboarding or rollerblading between 9:00 p.m. and 7:00 a.m. in a residential land use designation in ~~such~~ a manner that ~~would~~ results in noise across the boundary of the property from which the noise originates ~~a property line~~.
- (10) *Air blow or vacuum cleaners.* Operating any air-blow or vacuum cleaning equipment or similar devices for the cleaning of parking lots, walkways, driveways, or similar areas between the hours of 9:00 p.m. and 7:00 a.m. that ~~would~~ results in noise across the boundary of the property from which the noise originates ~~a property line~~.
- (11) *Places of public entertainment.* It shall be unlawful for any public entertainment establishment or person associated with or working for said establishment to operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create a noise across the boundary of the property from which the noise originates ~~a property line~~.
- (12) *Landscape maintenance.* Undertaking landscape maintenance activities in such a manner as to create noise across the boundary of the property from which the noise originates ~~a property line~~ between the hours of 9:00 p.m. and 7:00 a.m. Golf courses engaged in the regular maintenance of greens, fairways, practice areas, etc. are exempt from this provision.
- (13) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles in such a manner as to create noise across the boundary of the property from which the noise originates ~~a property line~~ between the hours of 9:00 p.m. and 7:00 a.m.
- (14) *Animal noises.* It shall be unlawful for the owner or custodian of any animal to permit such animal to habitually bark, whine, howl, squawk, screech, bray, crow or cause any other noise which ~~is~~ objectionable constitutes a noise experienced across the boundary of the property from which the noise originates ~~due to pitch, frequency, timing, or any combination thereof~~.
- (15) *Loading docks.* It shall be unlawful for any commercial or industrial establishment to engage in any loading or unloading of equipment or merchandise from a vehicle between the hours of 10:00 p.m. and 7:00

a.m. ~~which~~ where such activity results in ~~any sound or~~ a noise being generated across ~~a residential~~ the boundary of the property from which the noise originates onto property occupied for residential purposes~~property line~~.

(16) Activities within the vicinity of sleeping quarters. It shall be unlawful for any person or entity to engage in any behavior between the hours of 9:00 p.m. and 7:00 a.m., resulting in transmission of a sound that constitutes a noise as perceived from within the enclosed interior of a building used for residential or lodging purposes.

**SECTION III. ENFORCEMENT,** Section 38-160 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

(a) Determination of Violations. The police department, the city manager, code enforcement officers, code inspectors, and their agents are empowered to investigate any situation where a person is alleged to be violating section 38-155, section 38-156 or the terms of any variance. Code enforcement officers and code inspectors are hereby expressly designated as agents of the city manager for purposes of investigating alleged violations and issuing ~~warning notices and~~ citations for all violations of this article. If the police department, city manager or any of their authorized agents encounters a circumstance which reasonably indicates that a person is violating a provision of section 38-155 or 38-156, the following standards shall apply depending upon the provision alleged to have been violated:

(1) Violations of Section 38-155(a) – If a violation of § 38-155(a) is alleged, ~~which requires~~ a sound level pressure test may be utilized to establish the violation. ~~, a sound level pressure test with a sound level meter may be performed. If the results of the test indicate that a violation of section 38-155(a) or 38-156~~ The city may, through agreement with other local governments or other entities, provide for the measurement of sound and noise and for the performance of sound level pressure tests and other matters as such may be used in the enforcement of this article and the enforcement of section 118-1339. Additionally, the police department, code enforcement officer, code inspector, and/or their agents, may assess whether a particular sound constitutes a noise as to the receiving land use listed in section 38-156. In assessing whether a noise has been or is continuing to be created, the investigating agent shall investigate the matter and be entitled to rely on his or her observations, witness statements, and any other evidence available. In determining whether a sound constitutes a noise, the investigating agent shall objectively evaluate the alleged noise by considering several environmental and contextual factors, including, but not limited to the following:

(i) The intensity of the alleged noise.

- (ii) The duration of the alleged noise.
- (iii) The relationship of the alleged noise to the intensity of background or ambient sounds, if any.
- (iv) The uses permitted within the zoning district in which the alleged noise emanates or emanated and the uses permitted within zoning districts that lie within 500 feet of the source of the alleged noise.
- (v) The time of the day or night at which the alleged noise occurs.
- (vi) The proximity of the alleged noise to facilities customarily utilized for sleeping purposes.
- (vii) Whether the alleged noise is continuous or impulsive.
- (viii) The existence of additional complaints concerning the alleged noise from additional persons who claim to be affected by the alleged noise.
- (ix) Whether the alleged noise is due to natural occurrences or human-made activities.

(2) Violations of section 38-155(b) – If a violation of section 38-155(b) is alleged, then the police department, code enforcement officer, code inspector, and/or their agents, in assessing whether a noise has been or is continuing to be created shall investigate the matter and be entitled to rely on their observations, witness statements, and any other evidence available. In determining whether a sound constitutes a noise, the investigating agent shall objectively evaluate the alleged noise by considering several environmental and contextual factors, including, but not limited to the following:

- (i) The intensity of the alleged noise.
- (ii) The duration of the alleged noise.
- (iii) The relationship of the alleged noise to the intensity of background or ambient sounds, if any.
- (iv) The uses permitted within the zoning district in which the alleged noise emanates or emanated and the uses permitted within zoning districts that lie within 500 feet of the source of the alleged noise.
- (v) The time of the day or night at which the alleged noise occurs.

(vi) The proximity of the alleged noise to facilities customarily utilized for sleeping purposes.

(vii) Whether the alleged noise is continuous or impulsive.

(viii) The existence of additional complaints concerning the alleged noise from additional persons who claim to be affected by the alleged noise.

(ix) Whether the alleged noise is due to natural occurrences or human-made activities.

(b) *Enforcement Generally.*

(1) *Violations of Section 38-155(a)* – If the results of the sound level pressure test indicate that a violation of section 38-155(a) is occurring or has occurred in the presence of the police department, the city manager, a code enforcement officer, a code inspector, or their designated agents, code enforcement proceedings may be initiated or a citation<sup>(1)</sup> issued against the person(s) or entities in violation of section 38-155(a) as set forth in chapter 2 of the Winter Garden Code of Ordinances. Code enforcement proceedings may be brought against or a civil citation may be issued to the Owner or tenant of the real property on which such violation occurred if the person producing the noise, causing the noise to be produced, or allowing the noise to be produced is identified as or determined to be a guest, tenant, or invitee of the property Owner or any tenant or subtenant leasing or subleasing such property. A reasonable effort shall be made to notify the violator and property Owner of the violation. Violations attributed to a trespasser or individual not otherwise identified as or determined to be the property Owner or a guest, tenant, or invitee of either the property Owner or any tenant leasing or subleasing such property shall not result in a code enforcement proceeding or civil citation against the property Owner or tenant. The police department or code enforcement officer is authorized to issue a notice to appear as to the person(s) producing the noise, causing the noise to be produced, and/or allowing the noise to be produced. Any violation of section 38-155(a) may be prosecuted as a violation of an itinerant or transient nature and one that is irreparable and irreversible.

(2) *Violations of Section 38-155(b)* – If evaluation of available evidence and relevant factors leads the investigating agent to believe that a violation of one of the enumerated provisions of section 38-155(b) has occurred or is occurring, code enforcement proceedings may be initiated or a civil citation issued against the person(s) or entities in violation of section 38-155(b) as set forth in chapter 2 of the Winter Garden Code of Ordinances. Code enforcement proceedings may be brought against or a civil citation may be issued to the Owner or tenant of the real property on which such violation occurred if the person producing the noise,

causing the noise to be produced, or allowing the noise to be produced is identified as or determined to be a guest, tenant, or invitee of the property Owner or any tenant or subtenant leasing or subleasing such property. A reasonable effort shall be made to notify the violator and property Owner of the violation. Violations attributed to a trespasser or individual not otherwise identified as or determined to be the property Owner or a guest, tenant, or invitee of either the property Owner or any tenant leasing or subleasing such property shall not result in a code enforcement proceeding or civil citation against the property Owner or tenant. The police department or code enforcement officer is authorized to issue a notice to appear as to the person(s) producing the noise, causing the noise to be produced, and/or allowing the noise to be produced. Any violation of section 38-155(b) may be prosecuted as a violation of an itinerant or transient nature and one that is irreparable and irreversible.

(c) *Power to Arrest* – In the event that a violation of section 38-155 occurs, the police officer present shall have the authority to arrest the violator, or the Owner or tenant of the real property on which such violation occurred if the person producing the noise, causing the noise to be produced, or allowing the noise to be produced is identified as or determined to be a guest, tenant, or invitee of the property Owner or any tenant or subtenant leasing or subleasing such property. A violation of section 38-155 shall constitute a criminal misdemeanor punishable by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the court.

(d) *Other Remedies* – In the event that a violation of section 38-155 occurs, the City may institute any appropriate action at law or in equity to bring about compliance or remedy, including but not limited to, instituting an action in court to enjoin violating actions, in which case the violating person(s) or entity shall be liable to the City for reimbursement of the City's attorneys' fees and costs concerning such action.

SECTION IV. Sec. 38-161. Penalty. Section 38-161 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

A violation of section 38-155 or 38-156, or the terms of any variance granted pursuant to section 38-165 shall be classified as class 2 violations under division III, article II, chapter 2, part II of this Code. Otherwise, penalties for a violation of section 38-155 or 38-156 are as set forth in section 38-160. A violation of the terms of any variance granted pursuant to section 38-165 shall be subject to the enforcement procedures provided set forth in chapter 2 of the Winter Garden Code of Ordinances pertaining to code violations. ~~and shall be subject to the enforcement procedures provided set forth in chapter 2 of the Winter Garden Code of Ordinances dealing with code violations, including by use of the city's code enforcement citation program or code enforcement board.~~

**SECTION V. Sec. 38-165. Variances.** Section 38-165 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

A. Planning and Zoning Board Variance:

- (a) The planning and zoning board may grant a variance from section 38-155 or 38-156.

B. Administrative Variance:

(a) Notwithstanding the provisions set forth in Section 38-155(b)(2) above, any person may apply to the City on form(s) approved by the City to allow for construction activities to occur outside of the days and times referenced in Section 38-155(b)(2) above provided that each of the following conditions have been met:

- (1) Applicant provides City with 72-hour written notice prior to commencement of construction activity;
- (2) City staff is available to inspect and review construction activity on the days and at the times requested for construction; and
- (3) Applicant pays all fees, costs and expenses incurred or to be incurred by City as well as any overtime incurred by City staff for such inspections and review of construction activity.

(b) If the conditions enumerated under Section 38-165(B)(a) have been met, the City may permit the applicant to perform the following construction activities on the specified days and at the specified times:

- (1) Horizontal Construction may be permitted to occur no later than 9:00 p.m. Horizontal Construction includes site work such as clearing, grading, paving, drainage, utilities, sidewalks, curbs, gutters, base work, street lighting, electrical, landscaping and other subdivision and non-residential site improvements or work.
- (2) Vertical Construction may be permitted to occur 24 hours a day any day of the week subject to prohibition by the City, in the City's sole discretion, if any part of the Vertical Construction causes, or is likely to cause noise. Vertical Construction includes footings, forms, steel, electrical, plumbing, roofing, HVAC, concrete, painting, sheetrock, and other activities that are not Horizontal Construction.

C. Exemptions for Pre-approved City Events or Activities:

(a) It shall not be a violation of section 38-155(a) or section 38-155(b) if the noise at issue relates to or is produced as a result of pre-approved City events or activities. Such exemptions include, but is not limited to, activities or events sponsored by, conducted by, or permitted by the City.

**SECTION VI. INCONSISTENCY.** If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION VII. SEVERABILITY.** If any portion of this Ordinance is determined to void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

**SECTION VIII. CODIFICATION.** That Sections I through VI of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; the word “*Ordinance*” may be changed to “*Section*”, “*Article*”, or other appropriate word.

**SECTION IX.** This Ordinance shall become effective upon approval by the City Commission at its second reading.

FIRST READING: \_\_\_\_\_, 2012.

SECOND READING: \_\_\_\_\_, 2012.

APPROVED:

\_\_\_\_\_  
John Rees, Mayor/Commissioner

ATTESTED:

\_\_\_\_\_  
Kathy Golden, City Clerk

**THE CITY OF WINTER GARDEN**  
**CITY COMMISSION AGENDA ITEM**

**From:** Michael Bollhoefer, City Manager

**Date:** May 22, 2012

**Meeting Date:** May 24, 2012

**Subject:** Resolution opposing the expansion of the runway located at the proposed Central Florida Business and Aviation Center.

**Issue:** The West Orange Airport Authority has requested that the St. Johns River Water Management District swap lands with the Authority so they can extend the runway to allow jets to use the runway. FOLA and other organizations have opposed this action because they believe it will have a negative effect on the proposed bike trail around Lake Apopka, birding activities along the lake and ecological tourism in general. This resolution memorializes the City of Winter Garden's opposition to this expansion.

**Recommended action:** Consider approving this resolution or some other method to express the City's concern to the St. Johns River Water Management District regarding the expansion of the runway.

**RESOLUTION 12-09**  
**A RESOLUTION OF THE CITY OF WINTER GARDEN,  
FLORIDA, OPPOSING ANY EXPANSION OF THE  
EXISTING RUNWAY LOCATED AT THE PROPOSED  
CENTRAL FLORIDA BUSINESS AND AVIATION  
CENTER; REQUESTING THE GOVERNING BOARD OF  
THE ST. JOHNS RIVER WATER MANAGMENT  
DISTRICT TO DENY APPROVALS THAT WILL ALLOW  
FOR EXPANSION OF THE EXISTING RUNWAY;  
PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Winter Garden, located on the southern shore of Lake Apopka, and has historic, economic and recreational ties to the lake; and

**WHEREAS**, the St. Johns River Water Management District and the State of Florida have invested an amount in excess of \$150 million of public funds and over a decade of effort in the restoration of Lake Apopka and the associated marshlands of the North Shore Restoration Area; and.

**WHEREAS**, the Lake Apopka Basin has been the subject of several planning efforts, including the Lake Apopka Basin Planning Initiative, the Lake Apopka Greenways and Trails Master Plan, and the Green Mountain Scenic Byway Corridor Master Plan, all of which recommend and encourage the development of the Lake Apopka Basin for nature based tourism and recreation; and

**WHEREAS**, due to the restoration efforts of the St. Johns River Water Management District, the marshlands of the North Shore Restoration Area have become a world renowned birding destination with a growing species list that is now number one in the State of Florida; and

**WHEREAS**, over \$1 million of public funds have been committed to the development of infrastructure to provide public access to the North Shore Restoration Area for nature based tourism and recreation; and

**WHEREAS**, aircraft collisions with birds are serious economic and public safety problem; and

**WHEREAS**, the West Orange Airport Authority is proposing the expansion of an existing 2,600 foot runway in an area adjacent to the North Shore Restoration Area to a length of 6,500 feet in order to service turbine-powered aircraft; and

**WHEREAS**, the development of an airport capable of serving turbine-powered aircraft adjacent to the marshlands of the North Shore Restoration Area and the application of Federal Aviation Authority regulations pertaining to the mitigation aircraft collisions with birds can only have a pernicious effect on the restoration of Lake Apopka and the development of nature based tourism and creation within the Lake Apopka Basin.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA:**

**SECTION 1.** The City Commission of the City of Winter Garden opposes any efforts to expand the existing runway located at the proposed Central Florida Business and Aviation Center.

**SECTION 2.** The City hereby requests the Governing Board of the St. Johns River Water Management District to DENY any and all approvals that will allow for expansion of the existing runway.

**SECTION 3.** This Resolution shall take effect immediately upon its passage and adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012:

**City of Winter Garden**

\_\_\_\_\_  
John Rees, Mayor

Attest:

\_\_\_\_\_  
Kathy Golden, City Clerk

## RESOLUTION 12-10

**A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, OPPOSING ANY EXPANSION OF THE EXISTING RUNWAY LOCATED AT THE PROPOSED CENTRAL FLORIDA BUSINESS AND AVIATION CENTER; REQUESTING THE GOVERNING BOARD OF THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT TO DENY APPROVALS THAT WILL ALLOW FOR EXPANSION OF THE EXISTING RUNWAY; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Winter Garden, located on the southern shore of Lake Apopka, and has historic, economic and recreational ties to the lake; and

**WHEREAS**, the St. Johns River Water Management District and the State of Florida have invested an amount in excess of \$150 million of public funds and over a decade of effort in the restoration of Lake Apopka and the associated marshlands of the North Shore Restoration Area; and.

**WHEREAS**, the Lake Apopka Basin has been the subject of several planning efforts, including the Lake Apopka Basin Planning Initiative, the Lake Apopka Greenways and Trails Master Plan, and the Green Mountain Scenic Byway Corridor Master Plan, all of which recommend and encourage the development of the Lake Apopka Basin for nature based tourism and recreation; and

**WHEREAS**, due to the restoration efforts of the St. Johns River Water Management District, the marshlands of the North Shore Restoration Area have become a world renowned birding destination with a growing species list that is now number one in the State of Florida; and

**WHEREAS**, over \$1 million of public funds have been committed to the development of infrastructure to provide public access to the North Shore Restoration Area for nature based tourism and recreation; and

**WHEREAS**, aircraft collisions with birds are serious economic and public safety problem; and

**WHEREAS**, the West Orange Airport Authority is proposing the expansion of an existing 2,600 foot runway in an area adjacent to the North Shore Restoration Area to a length of 6,500 feet in order to service turbine-powered aircraft; and

**WHEREAS**, the development of an airport capable of serving turbine-powered aircraft adjacent to the marshlands of the North Shore Restoration Area and the application of Federal Aviation Authority regulations pertaining to the mitigation aircraft collisions with birds can only have a pernicious effect on the restoration of Lake Apopka and the development of nature based tourism and recreation within the Lake Apopka Basin.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA:**

**SECTION 1.** The City Commission of the City of Winter Garden opposes any efforts to expand the existing runway located at the proposed Central Florida Business and Aviation Center.

**SECTION 2.** The City hereby requests the Governing Board of the St. Johns River Water Management District to DENY any and all approvals that will allow for expansion of the existing runway.

**SECTION 3.** This Resolution shall take effect immediately upon its passage and adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012:

**City of Winter Garden**

\_\_\_\_\_  
John Rees, Mayor

Attest:

\_\_\_\_\_  
Kathy Golden, City Clerk