



**CITY COMMISSION AGENDA
CITY HALL COMMISSION CHAMBERS
300 W. Plant Street**

BUDGET WORKSHOP AND REGULAR MEETING

REGULAR MEETING

AUGUST 23, 2012

6:30 P.M.

CALL TO ORDER

Determination of a Quorum

Invocation and Pledge of Allegiance

1. **WORKSHOP ON PROPOSED BUDGET FOR FISCAL YEAR 2012/2013**

2. **APPROVAL OF MINUTES**

Regular Meeting of August 9, 2012

3. **FIRST PUBLIC HEARING ON A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION**

A. CDBG Funding Overview and Process

B. Public comments received

4. **FIRST READING OF PROPOSED ORDINANCE**

A. **Ordinance 12-38:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, CREATING A NEW CHAPTER 19 OF THE CITY CODE TO BE ENTITLED FAIR HOUSING CODE; PROVIDING FOR A DECLARATION OF POLICY TO PROHIBIT DISCRIMINATION IN HOUSING ON THE BASIS OF RACE, COLOR, ANCESTRY, NATIONAL ORIGIN, RELIGION, SEX, MARITAL STATUS, FAMILIAL STATUS, HANDICAP OR AGE; PROVIDING DEFINITIONS; DESIGNATING AS UNLAWFUL CERTAIN DISCRIMINATORY PRACTICES IN THE SALE OR RENTAL OF HOUSING, AS WELL AS IN ADVERTISING IN CONNECTION THEREWITH, IN THE FINANCING OF HOUSING, AND IN BROKERAGE SERVICES RELATED TO EXCEPTIONS; PROVIDING FOR AN ADMINISTRATOR TO BE DESIGNATED BY THE CITY OF WINTER GARDEN AND PRESCRIBING THE GENERAL POWERS AND DUTIES OF SUCH ADMINISTRATOR, PRESCRIBING ACTION UPON A DETERMINATION OF PROBABLE CAUSE, AND AUTHORIZING THE PROMULGATION OF FORMS AND REGULATIONS; MAKING PROVISIONS FOR THE FILING OF COMPLAINTS AND RESPONSES THERETO, AND THE PROCESSING THEREOF BY THE ADMINISTRATOR; PROVIDING FOR ADDITIONAL REMEDIES; PROVIDING FOR PROHIBITING UNTRUTHFUL COMPLAINTS OR FALSE TESTIMONY; PROVIDING FOR PENALTIES FOR VIOLATION OF SUCH CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for September 13, 2012** – Economic Development Director Gerhartz

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

A. **Ordinance 12-34:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.897 ± ACRES LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

B. **Ordinance 12-35:** 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 0.897 ± ACRES OF LAND LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

- C. **Ordinance 12-36:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.897 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY R-1B SINGLE FAMILY RESIDENTIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams
- D. **Ordinance 12-40:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.405 ± ACRES LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE 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 – Community Development Director Williams
- E. **Ordinance 12-41:** 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 0.405 ± ACRES OF LAND LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams
- F. **Ordinance 12-42:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.405 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE FROM ORANGE COUNTY C-3 COMMERCIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams
- G. **Ordinance 12-37:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE - City Manager Bollhoefer
6. **COMMUNITY DEVELOPMENT BLOCK GRANT MATTERS**
- A. **Resolution 12-13:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA ADOPTING A POLICY RELATING TO THE EMPLOYMENT OF SMALL, WOMEN OWNED AND MINORITY BUSINESSES FOR USE IN ADMINISTERING COMMUNITY DEVELOPMENT BLOCK GRANTS; ADOPTING A POLICY RELATING TO THE EMPLOYMENT OF MINORITIES BY THE CITY OF WINTER GARDEN; PROVIDING DEFINITIONS; DEFINING AN ACTION PLAN; AND PROVIDING AN EFFECTIVE DATE - Economic Development Director Gerhartz

- B. **Resolution 12-14:** Anti-Displacement and Relocation Policy of the City of Winter Garden - Economic Development Director Gerhartz
- C. **Resolution 12-15:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA ADOPTING A POLICY RELATING TO COMPLAINT AND GRIEVANCE PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM - Economic Development Director Gerhartz
- D. Consider adoption of a Citizens Participation Plan, Procurement Policy, and Housing Assistance Plan - Economic Development Director Gerhartz

7. **REGULAR BUSINESS**

- A. **Resolution 12-12:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, REQUESTING FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA A NON-EXCLUSIVE EASEMENT UNDER, OVER, AND UPON A PORTION OF THE WEST ORANGE TRAIL FOR THE PURPOSES OF ACCESS, DRAINAGE, UTILITIES, ROADWAY, AND OTHER PUBLIC USES, PROVIDING FOR AN EFFECTIVE DATE (Oakland Park Trail Easement Acceptance) – Community Development Director Williams
- B. Recommendation to approve amendment to Oakland Park Development Agreement – Community Development Director Williams
- C. Recommendation to approve Hickory Hammock Developer’s Agreement - Community Development Director Williams
- D. Recommendation to approve Waterside on John’s Lake Developer’s Agreement - Community Development Director Williams
- E. Recommendation to approve extending the Rural Metro ambulance service contract for one year – City Manager Bollhoefer
- F. Recommendation to approve the consultant agreement to review the financial feasibility of the City providing ambulance service - City Manager Bollhoefer
- G. Recommendation to approve request to block Plant Street downtown, waive event fees, and approve event date of April 13 and 14, 2013 for Spring Fever in the Garden festival - Parks & Recreation Director Conn

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

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

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

- A. City Manager Employment Agreement

11. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to a Budget Hearings and Regular Meeting on, September 13, 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

CITY COMMISSION BUDGET WORKSHOP AND REGULAR MEETING MINUTES

August 9, 2012

A **BUDGET WORKSHOP** and **REGULAR MEETING** of the Winter Garden City Commission were 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 (*arrived at 6:33 p.m.*)

Also Present: City Manager Mike Bollhoefer, Assistant City Attorney Dan Langley, Assistant to the City Manager - Administrative Services Frank Gilbert, Assistant to the City Manager - Public Services Don Cochran, Community Development Director Ed Williams, Finance Director Michael Givens, Recreation Director Jay Conn, Deputy Police Chief Bill Sullivan and West Orange Times Reporter Michael Laval, Orlando Sentinel Reporter Stephen Hudak and Recording Clerk Corrina Williams

1. **PRESENTATIONS**

A. **Proclamation 12-15** recognizing the accomplishment of the Winter Garden Little League Association as one of the top under 10 baseball teams in the entire State of Florida was presented by Mayor Rees and the City Commission.

B. **St. Johns River Water Management District on dredging of Lake Apopka**

Dave Walker, Basin Program Manager for the Upper Ocklawaha and Lake Apopka basin for the St. Johns Water management district (SJWMD) gave a PowerPoint presentation. Mr. Walker's presentation entitled "2012-13 Legislative Appropriations for Lake Apopka Restoration \$4.8 million," highlighted goals of achieving 10 percent coverage of native aquatic vegetation within 10 years, enhancing the current fishery, test innovative technologies for water quality and habitat improvement. He shared the proposal for dredging Lake Apopka, and requested the City help in the final design. He also requested that the City have a representative attend the task force meeting of August 24, 2012.

Mayor Rees stated that the City Manager would have a representative attend the task force meeting.

2. **WORKSHOP ON PROPOSED BUDGET FOR FISCAL YEAR 2012/2013**

Mayor Rees called the budget workshop to order for Fiscal Year 2012/2013 at 6:56 p.m.

City Manager Bollhoefer noted that the newly hired Finance Director has resigned and as City Manager he would be presenting a broad overview of the budget. He stated that another workshop is scheduled later in August and welcomed any questions now. Mr. Bollhoefer

gave a PowerPoint presentation on the year of 2013 Budget introduction (*See attached Exhibit A*).

Mr. Bollhoefer highlighted historical information on ad valorem revenues, which he noted have been shrinking over time. There has been a leveling off which he hopes will continue to go up. He stated that shared revenues have gone up and are calculated by the State based on the City's increase in population. The one-half cent sales tax and revenue sharing from the State has helped the City as a source of funding as property taxes have declined.

Mr. Bollhoefer stated that as a general rule the fund balance target is 30 percent. The City's projected fund balance at the end of 2013 is 18 percent, which is below what the City would like to have as a fund balance.

Areas highlighted in the presentation were ad valorem revenues, one-half cent sales tax, revenue sharing, fund balance, FTE's per one thousand residents, capital expenditures, general fund revenues, intergovernmental revenues, operating expenses by function, capital expenses by function, general fund operating expenses, capital items, items removed from the budget, future capital, City-owned properties, ideas going forward, special revenue funds, CRA, local option gas tax, projects, enterprise funds, utility revenues, utility expenses, stormwater expenses, solid waste expenses, and trailer city.

Commissioner Makin expressed his concerns regarding Newton Park, stating that neglect over the years has hampered the ability for activities such as boating because people cannot get on the water; he hopes to concentrate on that area. Mr. Bollhoefer noted that this is one of the goals to have the City Commission's wishes prioritized to concentrate on which projects would be most important to the City.

Mr. Bollhoefer stated that one thing that would not be reflected in this budget is the properties the City owns. At some point in time the properties could be sold and those funds could replenish the fund balance.

Commissioner Makin asked about possibly having a partnership with someone on the Tucker Ranch project as Orange County had planned to be. Mr. Bollhoefer replied that there has been conversation with Orange County but the funding has not been made available.

Commissioner Olszewski expressed his concern about the budget having well over one-half million dollars in surplus revenue. He asked where those funds are to be distributed and why not use them to ease the burdens put on taxpayers. Mr. Bollhoefer responded by explaining the City's fund balance and its current level of 18 percent. He noted that once you go below the 18 percent and the City no longer has any fund balance, the City could end up in jeopardy as many other cities have had to file bankruptcy. He used a comparison example of a typical family's savings account that is in place for emergencies. In answer to Commissioner Olszewski's question about where the funds are located, Mayor Rees clarified that the funds are in the general fund's opening balance for this year.

Mayor Rees asked that the City Commission review the budget, prepare any questions they may have in advance, and give them to the City Manager so that they can be addressed at the next budget meeting.

The budget workshop concluded at 7:32 p.m. and the regular meeting was immediately opened.

3. **APPROVAL OF MINUTE APPROVAL OF MINUTES**

Motion by Commissioner Buchanan to approve regular meeting minutes of July 26, 2012. Seconded by Commissioner Olszewski and carried unanimously 5-0.

4. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 12-37:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-37 by title only. City Manager Bollhoefer stated that the State requires the City make these changes to the pension plan. The City is complying with State law. This also redefines the definition of salary for the Firefighters and Police pension plan.

Commissioner Olszewski noted that he was a member of the Firefighter and Police Pension Board prior to his election to the City Commission. He knows these issues came up while he was on the board and wanted to be sure that as a Commissioner he is still required to vote on them. City Attorney Ardaman confirmed that he is required to vote.

Motion by Commissioner Olszewski to approve Ordinance 12-37 with the second reading and public hearing being scheduled for August 23, 2012. Seconded by Commissioner Buchanan and carried unanimously 5-0.

PUBLIC HEARINGS

B. **Ordinance 12-34:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.897 ± ACRES LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD INTO THE CITY OF WINTER

GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

- C. **Ordinance 12-35:** 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 0.897 ± ACRES OF LAND LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- D. **Ordinance 12-36:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.897 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY R-1B SINGLE FAMILY RESIDENTIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 12-34, 12-35, and 12-36 by title only. Community Development Director Williams stated that the property owner has requested annexation of this 0.897 acre parcel which is technically divided by the railroad. They are two parcels under one owner. Staff recommends approval of the annexation, low density future land use designation, and R-1B zoning. This has been reviewed by the Planning and Zoning Board and they also recommend approval with the second reading on August 23rd.

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

Motion by Commissioner Makin to approve Ordinances 12-34, 12-35, and 12-36 with the second reading and public hearing being scheduled for August 23, 2012. Seconded by Commissioner Sharman and carried unanimously 5-0.

- E. **Ordinance 12-40:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.405 ± ACRES LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE

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- F. **Ordinance 12-41:** 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 0.405 ± ACRES OF LAND LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- G. **Ordinance 12-42:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.405 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE FROM ORANGE COUNTY C-3 COMMERCIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 12-40, 12-41, and 12-42 by title only. Community Development Director Williams stated that this is a 0.4 acre property for which the property owner is requesting annexation. There is a house used for business located on the property next to the carwash on the south side of State Road 50. The property owner is requesting annexation so that they can obtain City services. Staff supports the annexation, recommends a commercial land use designation, and noted that it is in the State Road 50 overlay zone, and recommends C-2 zoning. The planning and Zoning Board also reviewed and recommended approval with the second reading on August 23rd.

Commissioner Olszewski noted that the carwash had some concerns with the signage. He asked if this helps them now that the property adjacent would now be in the City. Mr. Williams replied that he does not think this would affect any of the signage.

Mr. Williams noted that the City has worked with the carwash property owner to get an extra entrance sign so that people can see the entrance before they pass it.

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

Motion by Commissioner Sharman to approve Ordinances 12-40, 12-41, and 12-42 with the second reading and public hearing being scheduled for August 23, 2012. Seconded by Commissioner Makin and carried unanimously 5-0 the Second reading and public hearing being scheduled for August 23, 2012.

Mr. Williams noted that today the City received notification from the State that the City's population is now just over 36,000. He expressed that the City should be prepared for this amount to very rapidly increase with the housing building permits that have been approved.

There was discussion on the City of Winter Garden's total population versus that of the City of Ocoee and the chance of possibly being the third largest city in Orange County.

5. **REGULAR BUSINESS**

A. **Appointment of between five and seven members to the Citizen Advisory Task Force to support the City's Community Development Block Grant Program**

City Manager Bollhoefer stated that Economic Development Director Gerhartz has been working on putting this board together. They will work on the Community Development Block Grant (CDBG). She found five City residents willing to serve on the board. Mr. Bollhoefer listed the volunteers as: Pat Primrose, Xeres Snell, Charlie Mae Wilder, John Kirby, and Mike Kelley.

Motion by Commissioner Makin to appoint Pat Primrose, Xeres Snell, Charlie Mae Wilder, John Kirby, and Mike Kelley to the CDBG Citizen Advisory Task Force. Seconded by Commissioner Sharman and carried unanimously 5-0.

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

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

8. **MATTERS FROM CITY MANAGER** – There were no items.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Makin stated that he participated in a back-pack drive in Tildenville last Saturday in conjunction with the Tildenville Missionary Baptist Church along with Orange County Commissioner Scott Boyd and City of Winter Garden Commissioner Olszewski. He noted that it was great to see the community come together and give out the back-packs, school supplies, and great food.

Commissioner Olszewski announced that this weekend in East Winter Garden the Unity in the Community event will be held from 1:00 p.m. to 8:00 p.m. and encouraged attendance. He also noted that at 5:00 p.m. on Saturday at 4 E. Plant Street the local churches will get together to pray for the City, and he encouraged attendance.

Commissioner Sharman shared that there was a balloon test that he attended and he noted that it was centrally located on the property. He expressed that he can't wait to get feedback from the residents. **Commissioner Olszewski** reiterated that the balloon was centrally

located on the property and not near the [hospital] towers, which is something to think about when moving forward with community meetings.

Mayor Rees apologized to Commissioner Makin for not attending the Saturday event.

The meeting adjourned at 7:49 p.m.

APPROVED:

Mayor John Rees

ATTEST:

Assistant City Clerk Angela Grimmage, CMC

THE CITY OF WINTER GARDEN

AGENDA ITEM

From: Tanja Gerhartz, Economic Development Director

Via: Mike Bollhoefer, City Manager

Date: August 15, 2012 **Meeting Date:** August 23, 2012

Subject: Community Development Block Grant (CDBG) Small Cities Program – Funding Priorities, Process and Timeline

Discussion:

The City opted out of the County CDBG program last year and has qualified for the CDBG Small Cities Program through the State of Florida and is on the eligibility list for funding next year. This is a competitive grant process with the application due on October 1, 2012.

Over the next 45 days, the City will be working with the community to identify priorities in order to complete the grant application. The City will be required to adopt a Fair Housing Ordinance along with several other resolutions and policies that meet federal policies and guidelines. A great deal of ground work must be accomplished in order to submit the application.

The most important item is the creation of a Fair Housing Ordinance which includes holding Fair Housing Workshops and approving a Housing Assistance Plan. Last meeting, the City Commission created a Citizen Advisory Task Force to ensure there is community input in the process.

The following items are on the **August 23rd Agenda** that are CDBG requirements to receive funding. In addition to these items, the City Commission will need to identify the type of grant the City will apply for on October 1st:

- 1st Public Hearing
- 1st Reading Fair Housing Ordinance 12-38
- Resolution 12-13 - Affirmative Action Plan
- Resolution 12-14 - Anti-Displacement and Relocation Policy
- Resolution 12 -15 - Complaint and Grievance Procedures
- Citizens Participation Plan
- Procurement Policy
- Housing Assistance Plan

The following items will be on the **September 13th Agenda** and are also CDBG requirements to receive funding:

2nd Public Hearing

2nd Reading Fair Housing Ordinance 12-38

Resolution to submit the application

Resolution to adopt a Community Development Plan

Resolution for the Local Match

In order to begin work on the application, the City Commission needs to provide direction on priorities. Below are the grant categories:

- Housing
- Neighborhood Revitalization
- Commercial Revitalization
- Economic Development
- Section 108 Loan Guarantee Program

A timeline is attached that explains the process steps.

Recommended Action:

Move to select grant category for the grant application. City staff is recommending that the City apply for a housing grant to meet the needs of low to moderate income households.

Attachments/References:

CDBG Small Cities Program

CDBG Timeline

Florida Small Cities Community Development Block Grant Program

The Community Development Block Grant Program is a federal program that provides funding for housing and community development. In 1974, Congress created the program by passing the Housing and Community Development Act, Title I. The national objectives of the program are to:

1. Benefit low- and moderate-income persons
2. Prevent or eliminate slum or blight
3. Address urgent community development needs

The program, administered and funded by the United States Department of Housing and Urban Development, consists of two components:

1. Entitlement - provides funds directly to urban areas
2. Small Cities - provides funds to the states for distribution to rural areas

The Department of Economic Opportunity administers Florida's Small Cities Community Development Block Grant Program. This is a competitive grant program that awards funds to rural areas. Each year since 1983, Florida has received between 18 and 35 million dollars. One of the factors in the competitive process is the Community Wide Needs Score. This is a numerical representation of the needs of a community based on the following census data:

- Low and Moderate Income Population
- Number of Persons Below the Poverty Level
- Number of Housing Units with More than One Person Per Room

The program is an excellent opportunity for communities to obtain funds for projects that the community cannot otherwise afford. Further, it provides a means to implement projects that local governments may not have staff to complete. Popular examples of community projects include:

- Rehabilitation and Preservation of Housing
- Water and Sewer Improvements
- Street Improvements
- Economic Development Activities
- Creating Jobs for Low and Moderate Income People
- Downtown Revitalization
- Parks and Recreation Projects
- Drainage Improvements

Project Requirements

To be eligible for funding, an activity must meet at least one of the following national objectives:

- Low-Moderate National Objective - at least 51 percent of the beneficiaries must be low and moderate income persons (total family income is at or below 80 % of the area's median income)
- Slum and Blight National Objective - the area must be a slum or blighted area as defined by state or local law
- Urgent Needs National Objective - the activity must alleviate existing conditions which pose a serious and immediate threat to those living in the area and are 18 months or less in origin. The local government must demonstrate that it is unable to finance the activity on its own and that other funding is not available.

Funding Categories

The program gives the community the ability to determine which projects - with a focus on the following five categories - are most needed within the overall eligibility and scoring priorities.

1. Housing
2. Neighborhood Revitalization
3. Commercial Revitalization
4. Economic Development
5. Section 108 Loan Guarantee Program

Eligible Applicants

The following communities are eligible to apply for funds:

- Non-entitlement cities with fewer than 50,000 residents
- Counties with fewer than 200,000 residents
- Cities that opt out of the urban entitlement program

Funding Requirements

Upon receiving a grant, communities must comply with specific requirements.

- Record Keeping
- Procurement
- Public Participation
- Minority Business Participation
- Protection of the Environment
- Acquisition
- Relocation
- Civil Rights and Non-Discrimination
- Wages
- Construction Standards

**City of Winter Garden
CDBG Timeline**

August 9 CC -	CC appoint Citizen Advisory Task Force
August 13	Notice for 1 st Reading/Hearing –Aug. 16 WO Times
August 23	Citizen Advisory Task Force Meets at 4:00 pm (Follow the City’s Notice Requirements)
August 23	Fred Fox Enterprises attends meeting 1 st Public Hearing (Must be advertised) 1 st Reading Fair Housing Ordinance Adopt the following: Affirmative Action Plan, Anti-Displacement and Relocation Policy, Citizens Participation Plan Procurement Policy, Complaint and Grievance Procedures Adoption of Housing Assistance Plan
September 3	Notice for 2 nd Reading/Hearing/Workshop – Sept. 6 WO Times
September 13	2 nd Public Hearing (Must be advertised) 2 nd Reading Fair Housing Ordinance (Must be advertised) Resolution to submit the application Resolution to adopt a Community Development Plan Resolution for the \$125,000 Match
September 13	1 st Fair Housing Workshop (Requires Notice)
September 20	2 nd Fair Housing Workshop (Banks, Realtors)
September 28	Submit Grant Application

ORDINANCE12-38

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, CREATING A NEW CHAPTER 19 OF THE CITY CODE TO BE ENTITLED FAIR HOUSING CODE; PROVIDING FOR A DECLARATION OF POLICY TO PROHIBIT DISCRIMINATION IN HOUSING ON THE BASIS OF RACE, COLOR, ANCESTRY, NATIONAL ORIGIN, RELIGION, SEX, MARITAL STATUS, FAMILIAL STATUS, HANDICAP OR AGE; PROVIDING DEFINITIONS; DESIGNATING AS UNLAWFUL CERTAIN DISCRIMINATORY PRACTICES IN THE SALE OR RENTAL OF HOUSING, AS WELL AS IN ADVERTISING IN CONNECTION THEREWITH, IN THE FINANCING OF HOUSING, AND IN BROKERAGE SERVICES RELATED TO EXCEPTIONS; PROVIDING FOR AN ADMINISTRATOR TO BE DESIGNATED BY THE CITY OF WINTER GARDEN AND PRESCRIBING THE GENERAL POWERS AND DUTIES OF SUCH ADMINISTRATOR, PRESCRIBING ACTION UPON A DETERMINATION OF PROBABLE CAUSE, AND AUTHORIZING THE PROMULGATION OF FORMS AND REGULATIONS; MAKING PROVISIONS FOR THE FILING OF COMPLAINTS AND RESPONSES THERETO, AND THE PROCESSING THEREOF BY THE ADMINISTRATOR; PROVIDING FOR ADDITIONAL REMEDIES; PROVIDING FOR PROHIBITING UNTRUTHFUL COMPLAINTS OR FALSE TESTIMONY; PROVIDING FOR PENALTIES FOR VIOLATION OF SUCH CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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 Chapter 166, Florida Statutes;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA: THAT THE CODE OF ORDINANCES, CITY OF WINTER GARDEN, FLORIDA, IS HEREBY AMENDED BY ADDING A CHAPTER TO BE NUMBERED 19, WHICH SAID SECTION READS AS FOLLOWS:

SECTION 1. TITLE.

Chapter 19 of the Code of Winter Garden, Florida, is hereby created which shall be known as and may be cited as the "Fair Housing Code" of the City of Winter Garden, Florida.

SECTION 2. DECLARATION OF POLICY.

It is the policy of the City of Winter Garden in keeping with the laws of the United States of America and the spirit of the Constitution of the State of Florida, to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain housing of such person's choice in this jurisdiction without regard to race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age, and, to that end, to prohibit discrimination in housing by any person.

SECTION 3. DEFINITIONS.

The terms as used herein shall be defined as follows:

- (a) Administrator: That person appointed by the City Commission pursuant to Section 6 hereof.
- (b) Age: Unless the context clearly indicates otherwise, the work age as used herein shall refer exclusively to persons who are 18 years of age or older.
- (c) Discriminatory Housing Practice: An act that is unlawful under Section 4 hereof.
- (d) Family: One or more persons living together as a single housekeeping unit in a dwelling.
- (e) Housing or Housing Accommodation: Any building, structure, or portion thereof, mobile home or trailer, or other facility which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home or trailer or other facility.
- (f) Lending Institution: Any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information, including, but not limited to credit bureaus.
- (g) Owner: Any person, including, but not limited to a lessee, sublease, assignee, manager, or agent, and also including the City of Winter Garden and its departments or other subunits, having the right of ownership or possession or the authority to sell or lease any housing accommodation.
- (h) Person: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mortgage companies, joint stock companies, trusts, receivers, fiduciaries, unincorporated organizations, or public corporations, including, but not limited to the City or any department or subunit thereof.
- (i) Real Estate Agent: Any real estate broker, any real estate salesperson, or any other person, employee, agent, or otherwise, engaged in the management or operation of any real property.
- (j) Real Estate Broker or Salesperson: A person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself or herself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these.
- (k) Real Estate Transaction: Includes the sale, purchase, exchange, rental or leases of real property, and any contract pertaining thereto.

- (l) Rent: Includes a lease, sublease, assignment and/or rental, including any contract to do any of the foregoing, or otherwise granting for a consideration the right to occupy premises that are not owned by the occupant.
- (m) Respondent: Any person against whom a complaint is filed pursuant to this ordinance.
- (n) Sale: Includes any contract to sell, exchange, or to convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

SECTION 4. UNLAWFUL HOUSING PRACTICES.

- (1) Unlawful housing practices: Sale or rental and advertising in connection therewith.

Except as provided in Section 5 hereof, it shall be unlawful and a discriminatory housing practice for an owner, or any other person engaging in a real estate transaction, or for a real estate broker, as defined in this ordinance, because of race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age:

- (a) To refuse to engage in a real estate transaction with a person or to otherwise make unavailable or deny housing to any person.
- (b) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person.
- (d) To refuse to negotiate for a real estate transaction with a person.
- (e) To represent to a person that housing is not available for inspection, sale, rental or lease when, in fact, it is so available, or to fail to bring a property listing to such person's attention, or to refuse to permit him or her to inspect the housing.
- (f) To steer any person away from or to any housing.
- (g) To make, print, publish, circulate, post or mail, electronic or otherwise, or cause to be made, printed, published or circulated, any notice, statement, advertisement or sign, or to use a form of application or photograph for a real estate transaction or, except in connection with a written affirmative action plan, to make a record or oral or written inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly an intent to make a limitation, specification, or discrimination with respect thereto.
- (h) To offer, solicit, accept, use or retain a listing of housing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (i) To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of housing owned, used or occupied by any person protected by the terms of this ordinance.

- (j) To make any misrepresentations concerning the listing for sale or rental, or the anticipated listing for sale or rental, or the sale or rental of any housing in any area in the City of Winter Garden for the purpose of inducing or attempting to induce any such listing or any of the above transactions.
- (k) To retaliate or discriminate in any manner against any person because of his or her opposing a practice declared unlawful by this ordinance, or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or conference under this ordinance.
- (l) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by the provisions of this ordinance, or to obstruct or prevent any person from complying with the provisions of this ordinance, or any conciliation agreement entered into there under.
- (m) By canvassing to compel any unlawful practices prohibited by the provisions of this ordinance.
- (n) Otherwise to deny to, or withhold, any housing accommodations from a person.
- (o) To promote, induce, influence or attempt to promote, induce or influence by the use of postal cards, letters, circulars, telephone, emails, facsimiles, visitation or any other means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any housing by referring as a part of a process or pattern of indicating neighborhood unrest, community tension, or fear of racial, color, religious, nationality or ethnic change in any street, block, neighborhood or any other area, to the race, color, religion, neighbors, tenants or other prospective buyers of any housing.
- (p) To place a sign or display any other devise either purporting to offer for sale, lease, assignment, transfer or other disposition or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer or other disposition.

(2) Unlawful housing practices: Financing

It shall be unlawful and a discriminatory housing practice for any lending institution to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining housing, or to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age of such person or of any person associated with such person in connection with such loan or other financial assistance, or of the present or prospective owners, lessees, tenants or occupants of the housing in relation to which such loan or other financial assistance is to be made or given; provided that nothing contained in this subsection shall impair the scope or effectiveness of the exceptions contained in Section 5 of this ordinance.

(3) Unlawful housing practices: Brokerage Services

It shall be unlawful and a discriminatory housing practice to deny any person access to, or membership, or participation in any multiple listing service, real estate brokers organization or other service, organization, or facility related to the business of selling, or renting housing, or to discriminate against such person in the terms or conditions of such access, membership or participation because of race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age.

SECTION 5. EXEMPTIONS AND EXCEPTIONS.

(1) Nothing contained in Section 4 hereof shall prohibit a religious organization, association, or society, or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting or from advertising the sale, rental or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this ordinance prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(2) Nothing in Section 4 hereof, other than subsection (g) of subsection (1) thereof, shall apply to:

(a) Any single-family house sold or rented by an owner: provided, that such private individual owner does not own more than three such single-family houses at any one time; provided, further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period; provided, further, that it does not own any interest in, nor is there owned or reserved on such owner's behalf, under any express or voluntary agreement, title to or any rights to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; provided, further, that the owner sells or rents such housing (1) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent, salesperson, or person and (2) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection (g) of subsection (1) of Section 4 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(b) Rooms or units in housing containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the

owner actually maintains and occupies one of such living quarters as such owner's residence, provided that the owner sells or rents such rooms or units (1) without the use in any manner of the sales or rental services of any real estate broker, agent or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent salesperson, or person and (2) without the publication, posting or mailing, after notice in violation of subsection (g) of subsection (1) of Section 4 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(3) For the purpose of this subsection a person shall be deemed to be in the business of selling or renting housing if:

- (a) He or she has, within the preceding twelve months, participated as principal, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in three or more transactions involving the sale or rental of any housing or any interest therein; or
- (b) He or she has, within the preceding twelve months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any housing or any interest therein; or
- (c) He or she is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(4) Nothing in Section 4 hereof shall be construed to:

- (a) Bar any person from restricting sales, rentals, leases or occupancy, or from giving preference, to persons of a given age for bona fide housing intended solely for the elderly or bona fide housing intended solely for minors.
- (b) Make it an unlawful act to require that a person have legal capacity to enter into a contract or lease.
- (c) Bar any person from advertising or from refusing to sell or rent any housing which is planned exclusively for, and occupied exclusively by, individuals of one sex, to any individual of the opposite sex.
- (d) Bar any person from selling, renting or advertising any housing which is planned exclusively for, and occupied exclusively by, unmarried individuals to unmarried individuals only.
- (e) Bar any person from advertising or from refusing to sell or rent any housing which is planned exclusively for married couples without children or from segregating families with children to special units of housing.
- (f) Bar any person from refusing a loan or other financial assistance to any person whose life expectancy, according to generally accepted mortality tables, is less than the term for which the loan is requested.

SECTION 6. ADMINISTRATOR AUTHORITY AND RESPONSIBILITIES.

- (1) Commission to Appoint. The authority and responsibility for administering this ordinance shall be vested in the Commission who shall appoint an administrator.
- (2) General Powers and Duties. The administrator shall:
 - (a) Receive written complaints as hereinafter provided in Section 7 relative to alleged unlawful acts under this ordinance when a complaint seeks the administrator's good offices to conciliate.
 - (b) Upon receiving written complaint, make such investigations as the administrator deems appropriate to ascertain facts and issues.
 - (c) Utilize methods of persuasion, conciliation, and mediation or information adjustment of grievances.
 - (d) Establish, administer or review programs at the request of the Commission and make reports on such programs to the Commission.
 - (e) Bring to the attention of the Commission items that may require Commission notice or action to resolve.
 - (f) Render to the Commission annual written reports of his or her activities under the provisions of this ordinance along with such comments and recommendations as he or she may choose to make.
 - (g) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this ordinance.
- (3) Determination of Probable Cause. If after fully processing the complaint in the manner hereafter provided, the administrator determines that there is probable cause to believe that there has been a violation of the provisions of this Chapter, and conciliation and/or resolution under this chapter is not achieved, the administrator shall refer the matter, along with the facts he or she has gathered in the investigations, to the proper county, state or federal authorities for appropriate legal action, with notification thereof to the City Manager and City Attorney.
- (4) Promulgation of Forms and Regulations. The administrator shall promulgate, publish and distribute the necessary forms, rules and regulations to implement the provisions of this ordinance.

SECTION 7. COMPLAINTS.

- (1) A person who claims that another person has committed a discriminatory housing practice against him or her may report that offense to the administrator by filing an informal complaint within forty-five (45) days after the date of the alleged discriminatory housing practice and not later.

- (2) The administrator shall treat a complaint referred by the Secretary of Housing and Urban Development or the Attorney General of the United States under the Fair Housing Act of 1968, Public Law 90-284, as an informal complaint filed under subsection (1).
- (3) An informal complaint must be in writing, verified or affirmed, on a form to be supplied by the administrator and shall contain the following:
 - (a) Identity and address of the respondent.
 - (b) Date of offense and date of filing the informal complaint.
 - (c) General statement of facts of the offense including the basis of the discrimination (race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age).
 - (d) Name and signature of the complainant.
- (4) Each complaint shall be held in confidence by the administrator unless and until the complainant and the respondent(s) consent in writing that it shall be made public.
- (5) Within fifteen (15) days after the filing of the informal complaint, the administrator shall transmit a copy of the same to each respondent named therein by certified mail, return receipt requested. Thereupon, the respondent(s) may file a written, verified informal answer to the informal complaint within twenty (20) days of the date of the receipt of the informal complaint.
- (6) An informal complaint or answer may be amended at any time, and the administrator shall furnish a copy of each amended informal complaint or answer to the respondent(s) complaint, respectively, as promptly as practicable.
- (7) The administrator shall assist complainants or respondents when necessary in the preparation and filing of informal complaints or answers or any amendments thereto.
- (8) The administrator shall advise complainants of their rights and options provided in Section 760.34, Florida Statutes.

SECTION 8. PROCESSING COMPLAINTS.

- (1) Within fifteen (15) days after the filing of an informal complaint, the administrator shall make such investigation as is deemed appropriate to ascertain facts and issues. If the administrator shall deem that there are reasonable grounds to believe that a violation has occurred and can be resolved by conciliation, the administrator shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done in the course of the informal conference with the individuals to resolve the dispute may be public or used as evidence in a subsequent proceeding by either party without the written consent of both the complainant and the respondent(s). The administrator or employee of the administrator who shall make public any information in violation of this provision shall be deemed guilty of a violation of a city ordinance, and shall be subject to penalty as set forth in Section 12.
- (2) If the parties desire to conciliate, the terms of the conciliation shall be reduced to writing in the form approved by the administrator and must be signed and verified by the

complainant and respondent(s) and approved by the administrator. The conciliation agreement shall be for conciliation purposes only and shall not constitute an admission by any party that the law has been violated.

- (3) If the administrator deems that there is not probable cause to believe that the alleged discriminatory housing practice has been committed, the administrator shall take no further action with respect to the alleged offense.
- (4) For any matter involving a complaint under this chapter which is not resolved after the parties, in good faith, have attempted conciliation; or if the administrator determines that a violation alleged in the complaint cannot be resolved by conciliation, the administrator shall notify both the complainant and the respondent(s) within thirty (30) days of the failure or the determination, and then shall proceed as provided in Paragraph (3) of Section 6 herein above.

SECTION 9. ADDITIONAL REMEDIES.

The procedure prescribed by this chapter does not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this chapter shall be deemed to modify, impair or otherwise affect any right or remedy conferred by the Constitution or laws of the United States or the State of Florida, and the provisions of this chapter shall be in addition to those provided by such other laws.

SECTION 10. EDUCATION AND PUBLIC INFORMATION.

The administrator may conduct educational and public informational activities, including workshops, that are designed to promote the policy of this chapter.

SECTION 11. UNTRUTHFUL COMPLAINTS OR TESTIMONY.

It shall be a violation of this chapter for any person knowingly and willfully to make false or untrue statements, accusations or allegations in a complaint filed hereunder, or to give false testimony concerning violations of this chapter.

SECTION 12. PENALTY.

Any person who is determined under this chapter to have committed a discriminatory housing practice shall be subject, upon conviction, to a fine up to but not exceeding the sum of Five Hundred and no/100 Dollars (\$500.00), or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

SECTION 13. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City of Winter Garden hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional, and all ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 14. CODIFICATION.

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 "Chapter," "Section", "Article", or other appropriate word.

SECTION 15. EFFECTIVE DATE.

This Ordinance shall become effective upon approval of the City Commission at its second reading.

FIRST READING: _____ , 2012.

SECOND READING AND PUBLIC HEARING HELD: _____ , 2012.

ADOPTED this _____ Day of, _____ , 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: August 16, 2012

Meeting Date: August 23, 2012

Subject: **399 Railroad Avenue & 404 N. West Crown Point Road**
(Lyles & Rodgers - Annexation-Zoning-FLU Amendment)
Ordinance 12-34
Ordinance 12-35
Ordinance 12-36
PARCEL ID # 13-22-27-5624-00-010
PARCEL ID # 13-22-27-5624-00-290

Issue: The applicant is requesting voluntary Annexation into the City of Winter Garden, Zoning, and a Future Land Use Amendment.

Discussion: The City encourages infill of its jurisdictional limits through voluntary annexation of enclaves. The subject property makes up a 0.897 ± acre enclave located at the northwest corner of Railroad Avenue and N West Crown Point Road. The applicant has requested Annexation into the City, Amendment to the Future Land Use Map of the City's Comprehensive Plan to designate the property as Low Density Residential, and Rezoning of the property to City R-1B Residential District. (See attached Staff Report)

Recommended Action:
Staff recommends approval and adoption of Ordinance 12-34, Ordinance 12-35 and Ordinance 12-36.

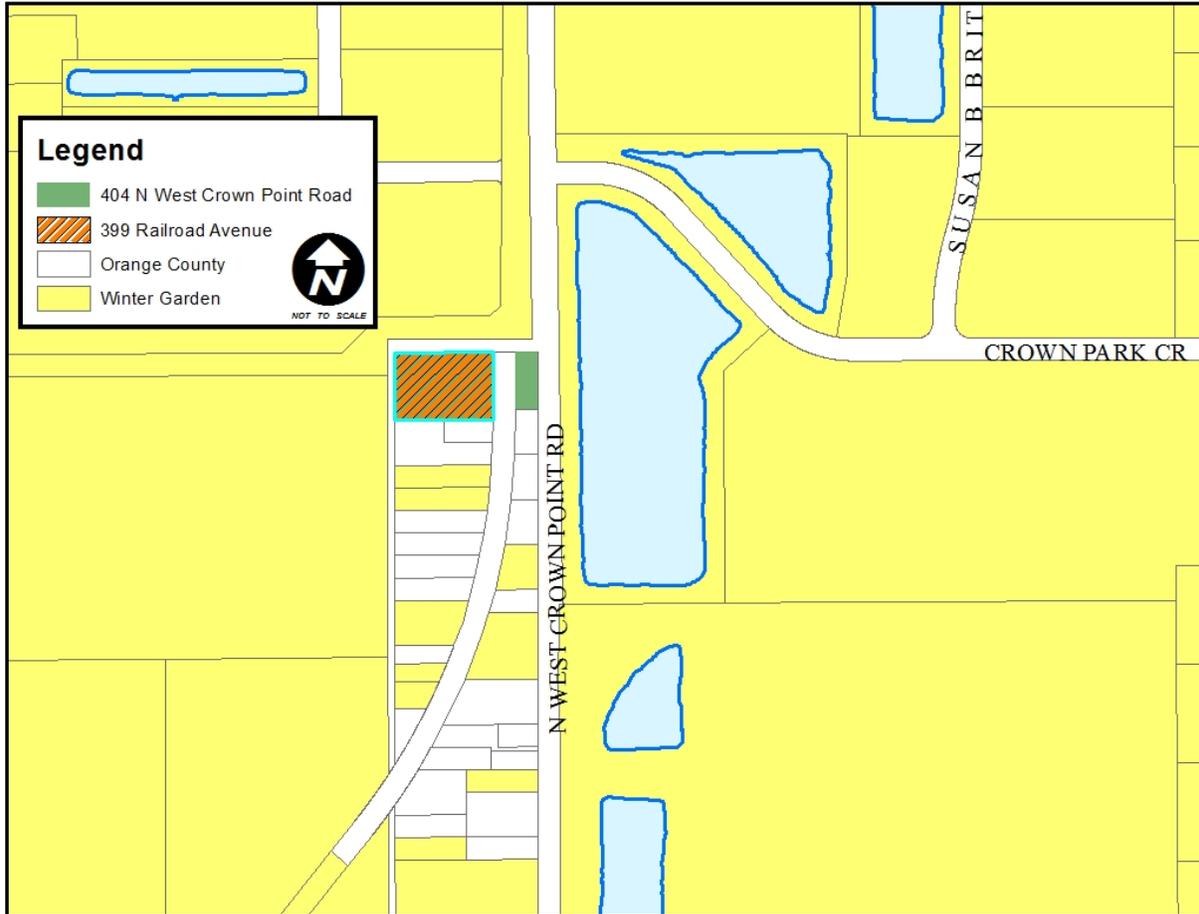
Attachments/References:

Location Map
Ordinance 12-34
Ordinance 12-35
Ordinance 12-36
Staff Report

LOCATION MAP

Ordinance #12-34; 12-35; and 12-36

399 Railroad Avenue & 404 N West Crown Point Road



ORDINANCE 12-34

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.897 ± ACRES LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of the land, generally described as approximately 0.897 ± acres located at 399 Railroad Avenue and at 404 N. West Crown Point Road; at the southeast corner of Railroad Avenue and Railroad Avenue and at the southwest corner of Railroad Avenue and N. West Crown Point Road and legally described in Section 2 of this Ordinance, which land is reasonably compact and contiguous to the corporate limits of the City of Winter Garden, Florida (“City”), has, pursuant to the prerequisites and standards set forth in § 171.044, Fla. Stat., petitioned the City Commission for voluntary annexation;

WHEREAS, the petition for voluntary annexation referenced herein bears the signatures of all owners of the property or properties described in Section 2 of this Ordinance (*i.e.*, the property or properties to be annexed); and

WHEREAS, the City has determined that the property described in Section 2 of this Ordinance is located in an unincorporated area of the County and that annexation of such property will not result in the creation of an enclave.

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

SECTION 1: *Annexation.* That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, Fla. Stat. and has held a public hearing and said petition and made certain findings.

SECTION 2: *Description of Area Annexed.* That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT “A” and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida.

SECTION 3: *Effect of Annexation.* That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and the inhabitants thereof, and property therein, as it does and have over its present corporate limits and laws, ordinances, and resolutions of said City shall apply and shall have equal force and effect as if all territory had been part of said City at the time of the passage of such laws, ordinances, and resolutions.

SECTION 4: *Apportionment of Debts and Taxes.* Pursuant to § 171.061, Fla. Stat., the area annexed to the City shall be subject to all taxes and debts of the City upon the effective date of annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the City levies such tax.

SECTION 5: *Instructions to Clerk.* Within seven (7) days following the adoption of this Ordinance, the City Clerk or his/her designee is directed to file a copy of this ordinance, including ATTACHMENT "A" hereto, with the clerk of the circuit court and the chief administrative officer of Orange County as required by § 171.044(3), Fla. Stat.

SECTION 6: *Severability.* Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

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

FIRST READING AND PUBLIC HEARING: _____, 2012.

SECOND READING AND PUBLIC HEARING: _____, 2012.

ADOPTED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"
LEGAL DESCRIPTION

PARCEL ID#: 13-22-27-5264-00-010 & 13-22-27-5264-00-290

DESCRIPTION:

LOTS 1, 2, 3 AND 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

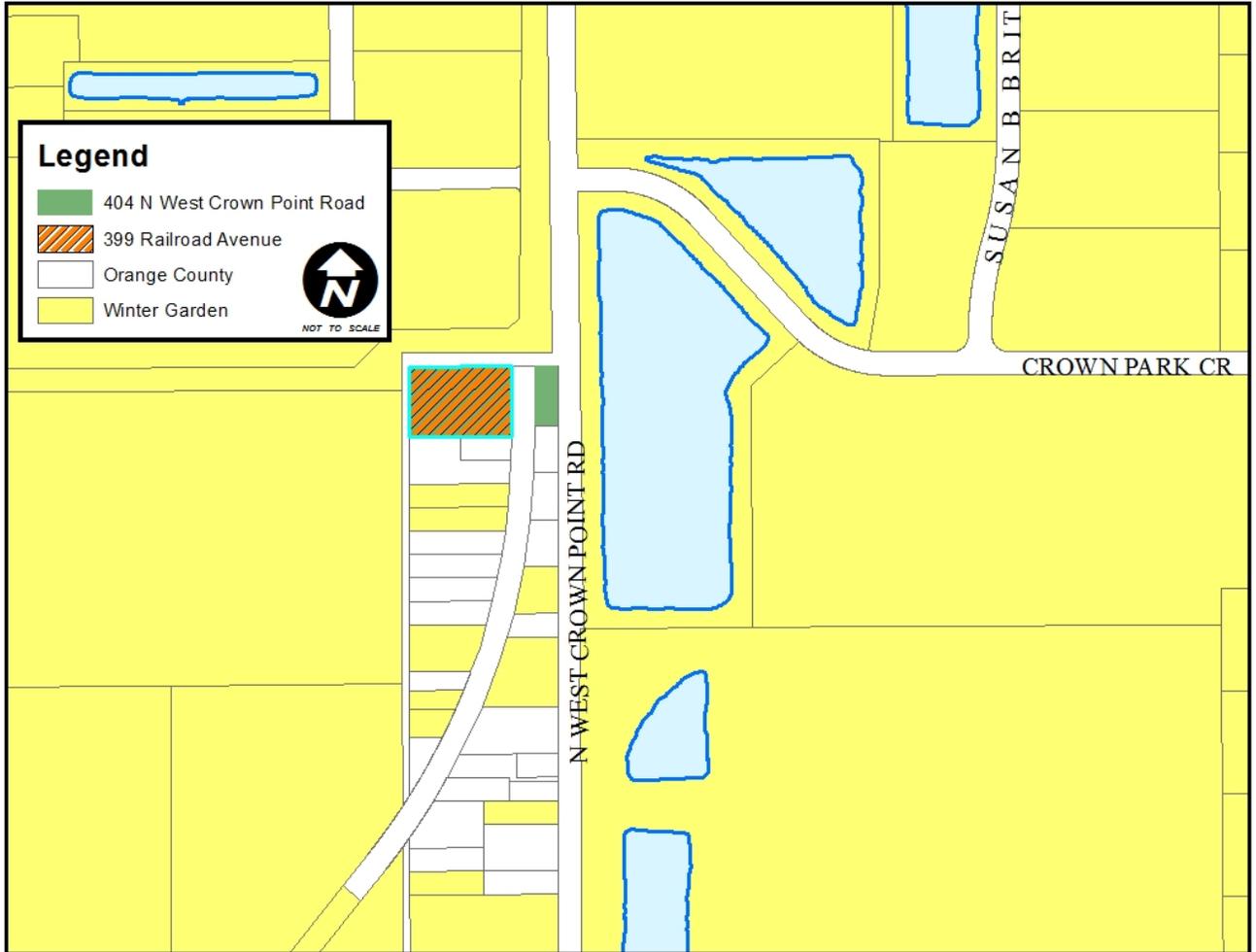
BEGIN AT THE NORTHEAST CORNER OF LOT 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S00°10'33"E ALONG THE EAST LINE OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, A DISTANCE OF 128.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 29; THENCE RUN S89°47'53"W, A DISTANCE OF 50.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 29; THENCE RUN N00°43'12"E A DISTANCE OF 128.02 FEET TO THE NORTHWEST CORNER OF SAID LOT 29; THENCE RUN N89°47'53"E A DISTANCE OF 48.00 FEET TO THE POINT OF BEGINNING.

AND

COMMENCE AT THE NORTHEAST CORNER OF LOT 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S89°47'53"W ALONG THE NORTH LINE OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, A DISTANCE OF 98.00 FEET TO THE NORTHEAST CORNER OF LOT 1 OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, THENCE RUN S00°43'14"W A DISTANCE OF 150.02 FEET TO THE SOUTHEAST CORNER OF LOT 3 OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, THENCE RUN S89°47'53"W A DISTANCE OF 218.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE RUN N00°08'51"E A DISTANCE OF 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE RUN N89°47'53"E A DISTANCE OF 219.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.897 ACRES, MORE OR LESS.

POINT OF COMMENCEMENT
POINT OF BEGINNING



ORDINANCE 12-35

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 0.897 ± ACRES OF LAND LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 13th of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden, and on the 24th of June, 2010, the City Commission of the City of Winter Garden adopted Ordinance 10-19 readopting and amending the Comprehensive Plan for the City of Winter Garden;

WHEREAS, the owner of that certain real property generally described as 0.897 ± acres of land located at 399 Railroad Avenue and at 404 N. West Crown Point Road; at the southeast corner of Railroad Avenue and Railroad Avenue and at the southwest corner of Railroad Avenue and N. West Crown Point Road, and legally described in ATTACHMENT "A" (the "Property") has petitioned the City to amend the Winter Garden Comprehensive Plan to change the Future Land Use classification from Orange County Low Density Residential to City Low Density Residential; and

WHEREAS, the City of Winter Garden's Local Planning Agency and City Commission have conducted the prerequisite advertised public hearings pursuant to Chapter 163, Florida Statutes, regarding the adoption of this ordinance; now, therefore,

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

SECTION I. *FLUM Amendment.* The City of Winter Garden hereby amends the Future Land Use Map of the City of Winter Garden Comprehensive Plan by designating the aforesaid Property to City Low Density Residential as set forth in ATTACHMENT "B".

SECTION II. *Effective Date.* Provided that the Property described herein is annexed into the City of Winter Garden pursuant to Ordinance 12-34, this Ordinance shall become

effective 31 days after adoption, unless the Ordinance is timely challenged pursuant to § 163.3187(5), Fla. Stat., in which case, the Ordinance shall not be effective until the state land planning agency or the Administrative Commission, respectively, issues a final order determining that the adopted Ordinance is in compliance.

SECTION III. Severability. Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

FIRST READING AND PUBLIC HEARING: _____, 2012.

SECOND READING AND PUBLIC HEARING: _____, 2012.

ADOPTED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"
LEGAL DESCRIPTION

PARCEL ID#: 13-22-27-5264-00-010 & 13-22-27-5264-00-290

DESCRIPTION:

LOTS 1, 2, 3 AND 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF LOT 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S00°10'33"E ALONG THE EAST LINE OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, A DISTANCE OF 128.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 29; THENCE RUN S89°47'53"W, A DISTANCE OF 50.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 29; THENCE RUN N00°43'12"E A DISTANCE OF 128.02 FEET TO THE NORTHWEST CORNER OF SAID LOT 29; THENCE RUN N89°47'53"E A DISTANCE OF 48.00 FEET TO THE POINT OF BEGINNING.

AND

COMMENCE AT THE NORTHEAST CORNER OF LOT 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S89°47'53"W ALONG THE NORTH LINE OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, A DISTANCE OF 98.00 FEET TO THE NORTHEAST CORNER OF LOT 1 OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, THENCE RUN S00°43'14"W A DISTANCE OF 150.02 FEET TO THE SOUTHEAST CORNER OF LOT 3 OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, THENCE RUN S89°47'53"W A DISTANCE OF 218.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE RUN N00°08'51"E A DISTANCE OF 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE RUN N89°47'53"E A DISTANCE OF 219.50 FEET TO THE POINT OF BEGINNING.

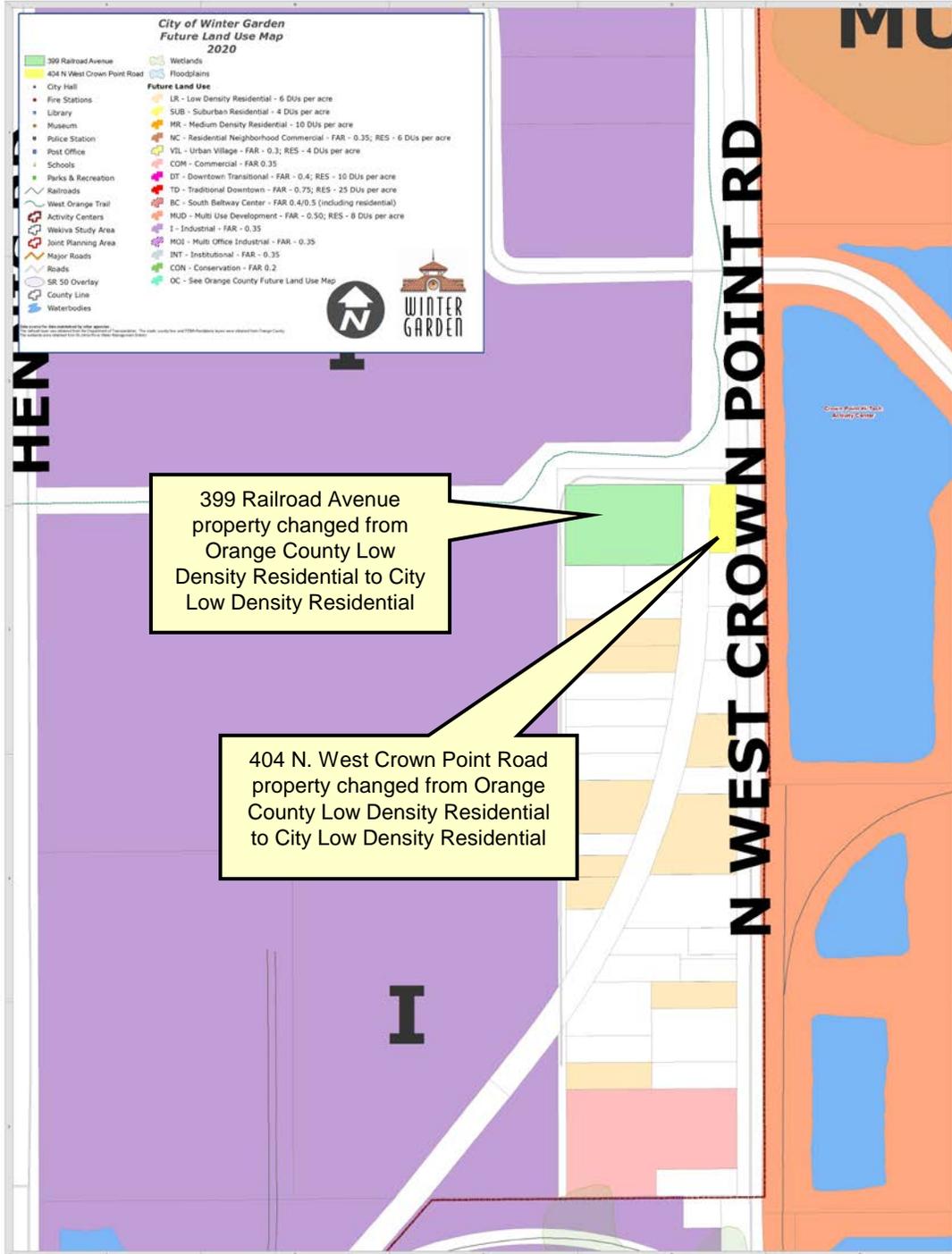
CONTAINING 0.897 ACRES, MORE OR LESS.

POINT OF COMMENCEMENT
POINT OF BEGINNING

ATTACHMENT "B"

FUTURE LAND USE MAP

399 Railroad Avenue & 404 N. West Crown Point Road



ORDINANCE 12-36

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.897 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 399 RAILROAD AVENUE AND AT 404 N. WEST CROWN POINT ROAD; AT THE SOUTHEAST CORNER OF RAILROAD AVENUE AND RAILROAD AVENUE AND AT THE SOUTHWEST CORNER OF RAILROAD AVENUE AND N. WEST CROWN POINT ROAD FROM ORANGE COUNTY R-2 RESIDENTIAL DISTRICT TO CITY R-1B SINGLE FAMILY RESIDENTIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of that certain real property generally described as 0.897 ± acres of land located at 399 Railroad Avenue and at 404 N. West Crown Point Road; at the southeast corner of Railroad Avenue and Railroad Avenue and at the southwest corner of Railroad Avenue and N. West Crown Point Road, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from Orange County R-2 Residential District to the City’s R-1B Single Family Residential District zoning classification, therefore;

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

SECTION 1: *Rezoning.* After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT “A,” is hereby rezoned from Orange County R-2 Residential District to City R-1B Single Family Residential District in the City of Winter Garden, Florida.

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

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

SECTION 4: *Effective Date.* This Ordinance shall become effective simultaneously upon the effective date of Ordinance 12-35 which is an amendment to the Future Land Use Map of the City of Winter Garden Comprehensive Plan that allows the property described herein to be zoned as provided in this Ordinance.

FIRST READING AND PUBLIC HEARING: _____, 2012.

SECOND READING AND PUBLIC HEARING: _____, 2012.

ADOPTED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 13-22-27-5264-00-010 & 13-22-27-5264-00-290

DESCRIPTION:

LOTS 1, 2, 3 AND 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF LOT 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S00°10'33"E ALONG THE EAST LINE OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, A DISTANCE OF 128.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 29; THENCE RUN S89°47'53"W, A DISTANCE OF 50.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 29; THENCE RUN N00°43'12"E A DISTANCE OF 128.02 FEET TO THE NORTHWEST CORNER OF SAID LOT 29; THENCE RUN N89°47'53"E A DISTANCE OF 48.00 FEET TO THE POINT OF BEGINNING.

AND

COMMENCE AT THE NORTHEAST CORNER OF LOT 29, J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 8, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S89°47'53"W ALONG THE NORTH LINE OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, A DISTANCE OF 98.00 FEET TO THE NORTHEAST CORNER OF LOT 1 OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, THENCE RUN S00°43'14"W A DISTANCE OF 150.02 FEET TO THE SOUTHEAST CORNER OF LOT 3 OF SAID J.S. LOVELESS AND J.R. SEWELL SUBDIVISION, THENCE RUN S89°47'53"W A DISTANCE OF 218.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE RUN N00°08'51"E A DISTANCE OF 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE RUN N89°47'53"E A DISTANCE OF 219.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.897 ACRES, MORE OR LESS.

POINT OF COMMENCEMENT
POINT OF BEGINNING

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

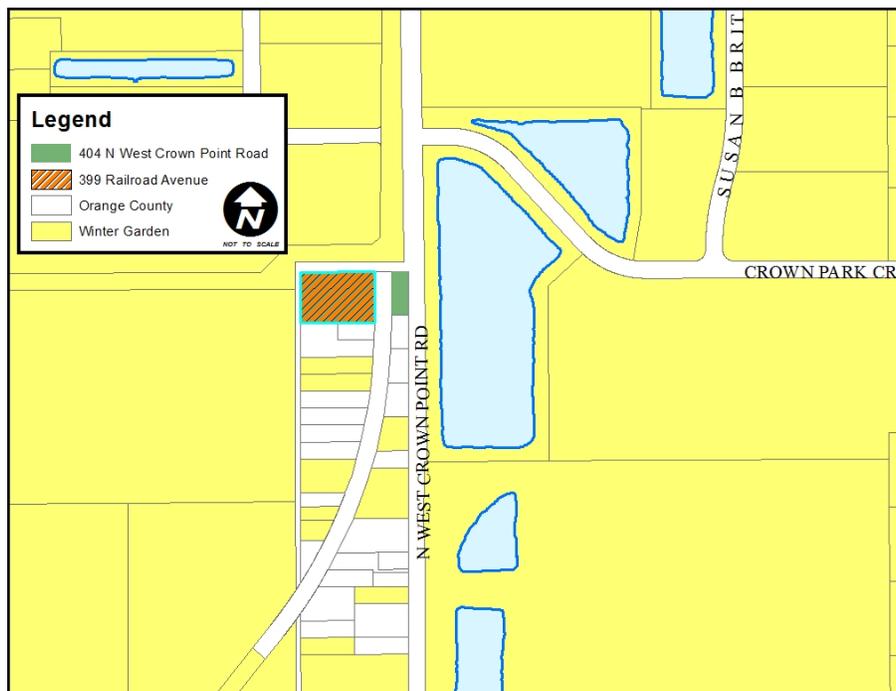
STAFF REPORT

TO: PLANNING AND ZONING BOARD
PREPARED BY: STEVE PASH, SENIOR PLANNER
DATE: JULY 1, 2012
SUBJECT: ANNEXATION - REZONING - FLU AMENDMENT
**399 RAILROAD AVENUE & 404 N. WEST CROWN POINT ROAD
(0.897 +/- ACRES)**
PARCEL ID #: 13-22-27-5264-00-010 & 13-22-27-5264-00-290
APPLICANT: SHARON LYLES, & DIANA RODGERS

INTRODUCTION

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

The subject property is located at 399 Railroad Avenue and 404 West Crown Point Road and is approximately 0.897 ± acres. The map below depicts the proximity of the subject property to the City's jurisdictional limits:



The applicant has requested annexation into the City, amendment to the Future Land Use Map

(FLUM) of the City's Comprehensive Plan to designate the property as Low Density Residential, and rezoning the property to R-1B Residential District.

In accordance with the City's Comprehensive Plan, permitted uses within the Low Density Residential land use include single family homes and churches and schools. The zoning classifications that are consistent with the Low Density Residential land use designation include PUD, R-1A, R-1, R-2, R-1B, and INT.

The City endorses infill of its jurisdictional limits through voluntary annexation of enclaves. The elimination of enclaves through voluntary annexation furthers the goals, objectives, and policies of the City's Comprehensive Plan.

EXISTING USE

The subject property located at 399 Railroad Avenue is currently developed with a 1,438 square foot single family house. The subject property located at 404 North West Crown Point Road is vacant. The properties are owned by the same owner and split by the CSX railroad.

ADJACENT LAND USE AND ZONING

The property located to the north is a trucking company, zoned I-2 and located in the City. The property located to the east is a pond, zoned I-2 and located in the City. The property to the south is a single-family house, zoned R-2 and located in Orange County. The property to the west is undeveloped industrial land, zoned I-2, located in the City.

PROPOSED USE

The owner is proposing to annex the property and leave the existing house.

PUBLIC FACILITY ANALYSIS

The City will provide water, sewer, garbage collection, police protection, and all other services regularly provided to City of Winter Garden residents including building permits. The property will be served by both Orange County Fire and Rescue and the City of Winter Garden Fire Department under the First Response System.

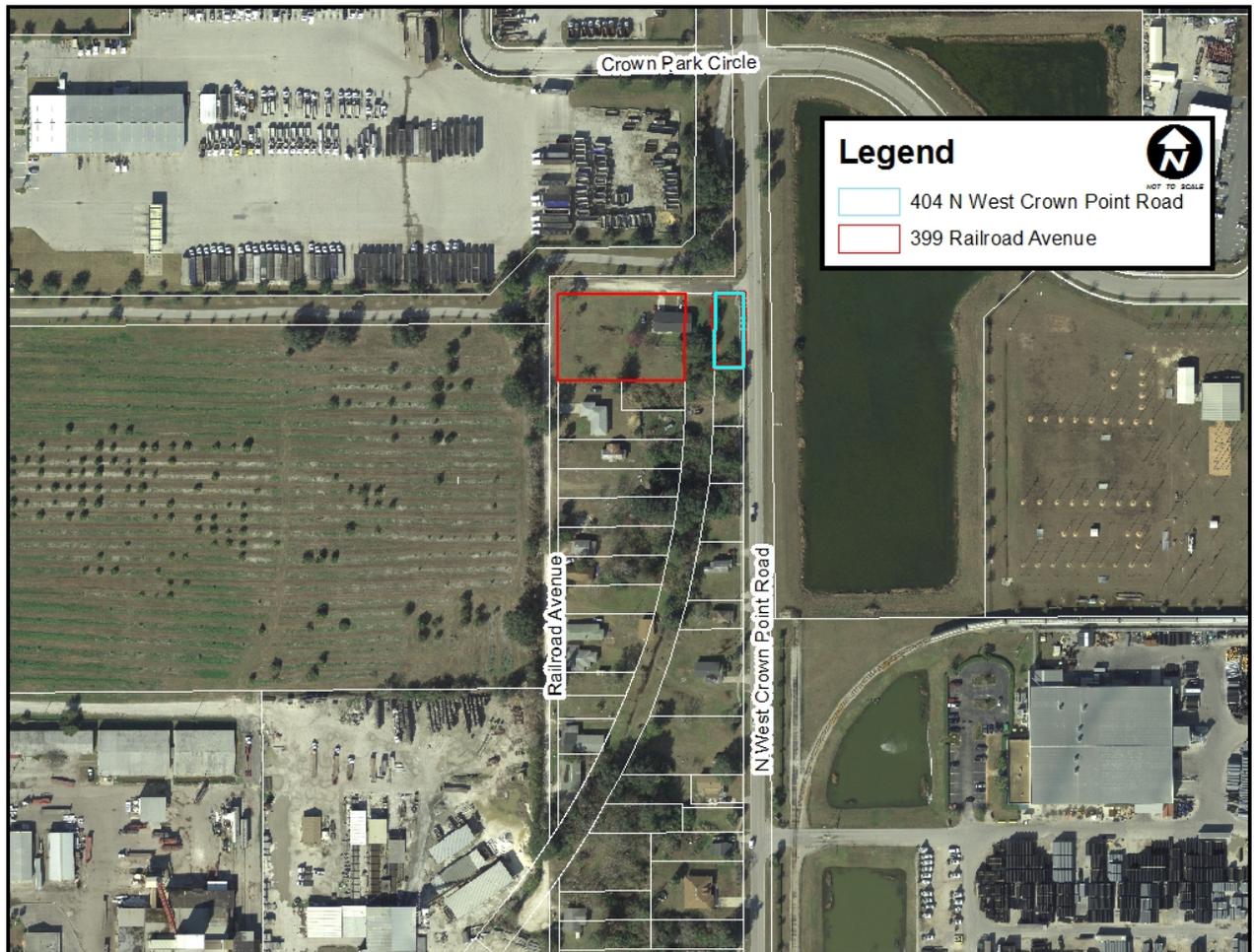
SUMMARY

City Staff recommends approval of the proposed Ordinances.

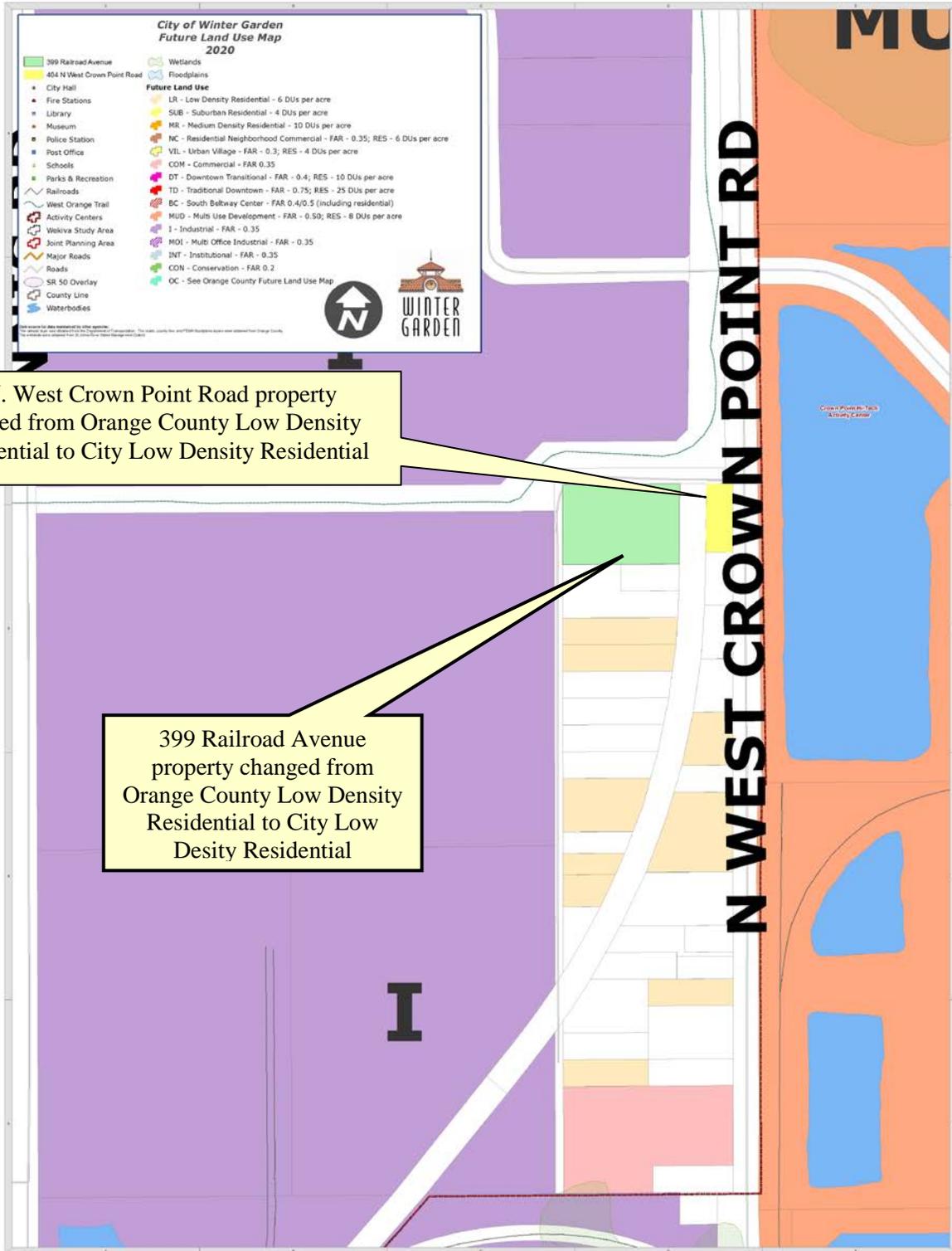
MAPS

AERIAL PHOTO

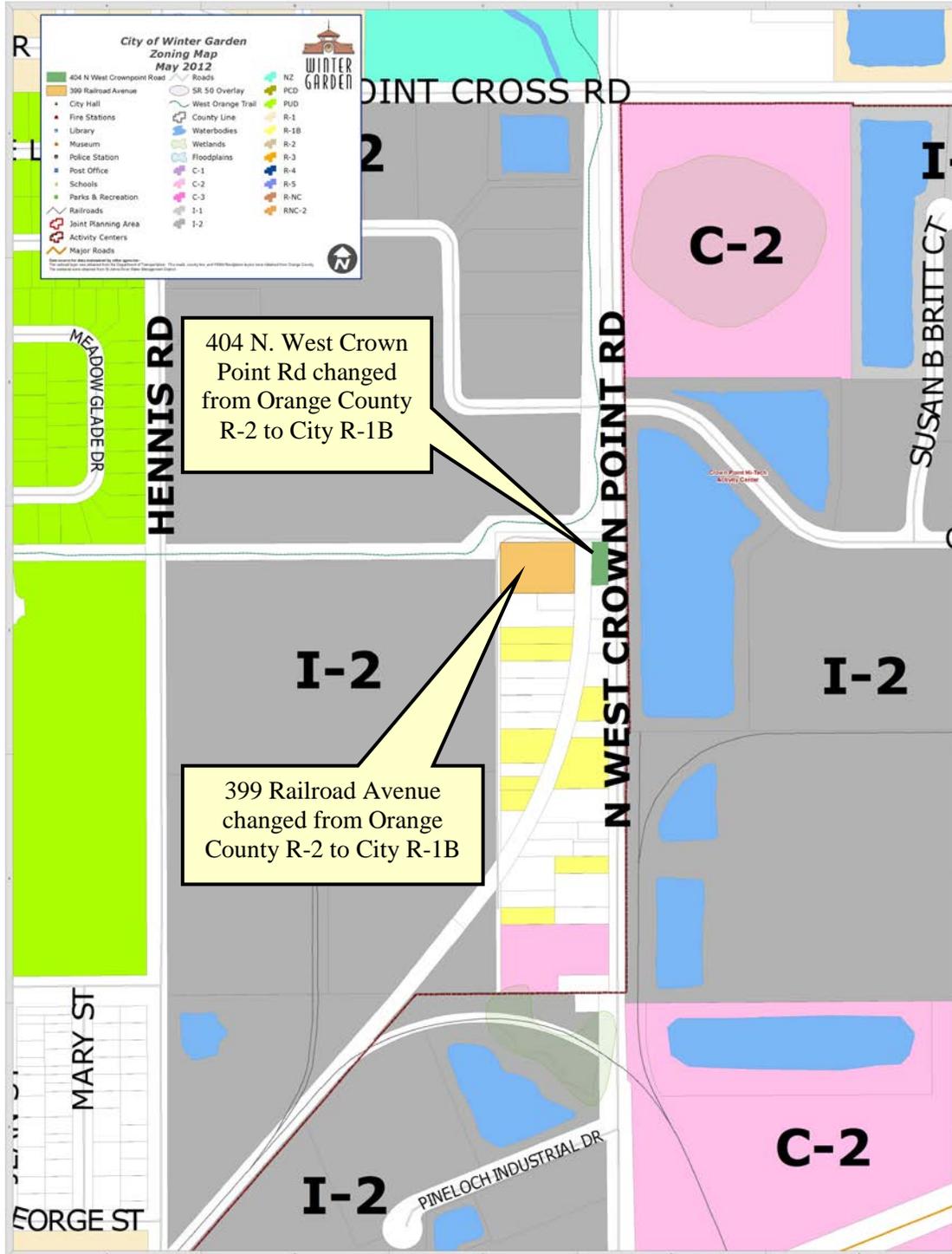
399 Railroad Ave & 404 N. West Crown Point Rd



FUTURE LAND USE MAP 399 Railroad Ave & 404 N. West Crown Point Rd



ZONING MAP
399 Railroad Avenue & 404 N. West Crown point Road



THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: August 16, 2012

Meeting Date: August 23, 2012

Subject: **12750 West Colonial Drive**
(Lyles & Rodgers - Annexation-Zoning-FLU Amendment)
Ordinance 12-40
Ordinance 12-41
Ordinance 12-42
PARCEL ID # 12-22-27-6496-23-004

Issue: The applicant is requesting voluntary Annexation into the City of Winter Garden, Zoning, and a Future Land Use Amendment.

Discussion: The City encourages infill of its jurisdictional limits through voluntary annexation of enclaves. The subject property makes up a 0.405 ± acre enclave located on the south side of West State Road 50 east of Gillard Avenue and west of Partlow Drive. The applicant has requested Annexation into the City, Amendment to the Future Land Use Map of the City's Comprehensive Plan to designate the property as Commercial, and Rezoning of the property to City C -2 Arterial Commercial District. (See attached Staff Report)

Recommended Action:
Staff recommends approval and adoption of Ordinance 12-40, Ordinance 12-41 and Ordinance 12-42.

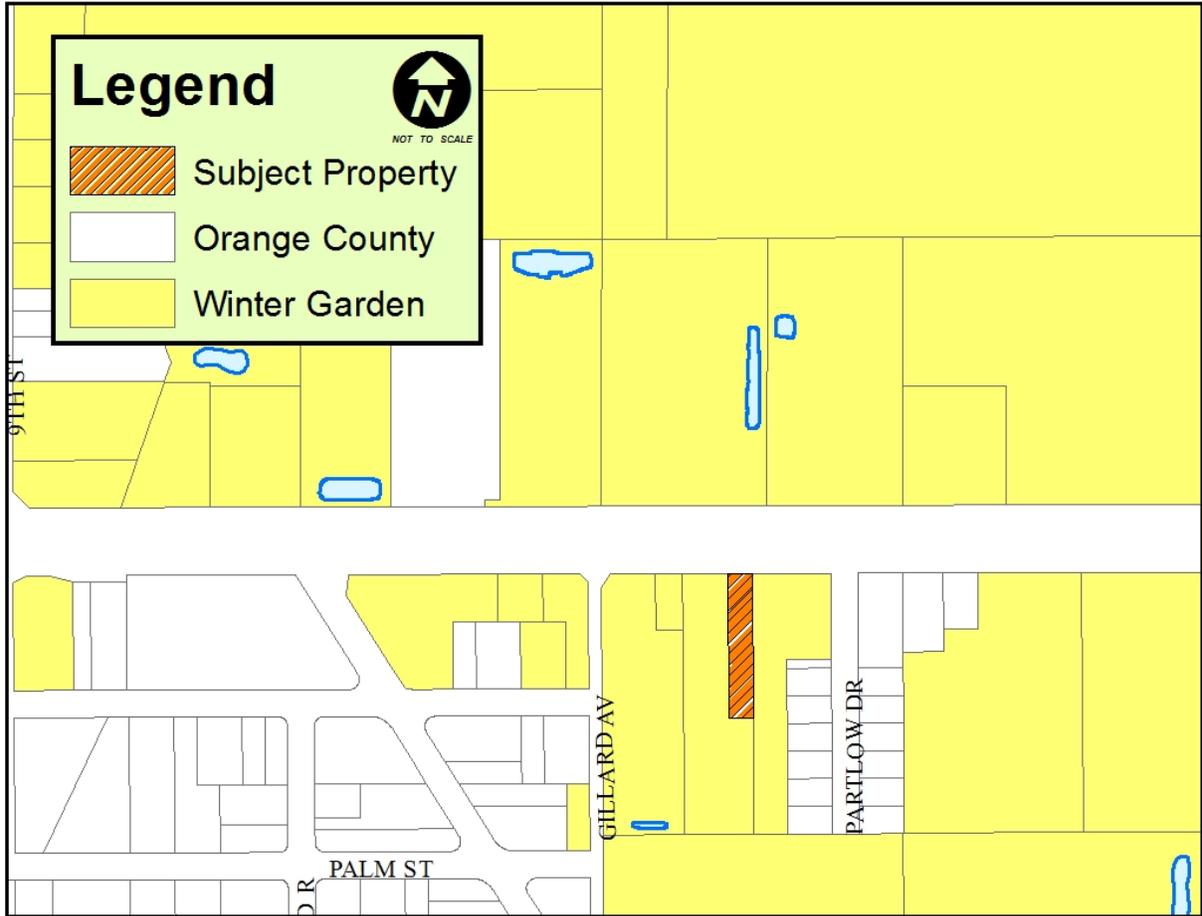
Attachments/References:

Location Map
Ordinance 12-40
Ordinance 12-41
Ordinance 12-42
Staff Report

LOCATION MAP

Ordinance #12-40; 12-41; and 12-42

12750 West Colonial Drive



ORDINANCE 12-40

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 0.405 ± ACRES LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE 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.

WHEREAS, the owner of the land, generally described as approximately 0.405 ± acres located at 12750 West Colonial Drive; on the south side of West Colonial Drive east of Gillard Avenue and west of Partlow Drive and legally described in Section 2 of this Ordinance, which land is reasonably compact and contiguous to the corporate limits of the City of Winter Garden, Florida (“City”), has, pursuant to the prerequisites and standards set forth in § 171.044, Fla. Stat., petitioned the City Commission for voluntary annexation;

WHEREAS, the petition for voluntary annexation referenced herein bears the signatures of all owners of the property or properties described in Section 2 of this Ordinance (*i.e.*, the property or properties to be annexed); and

WHEREAS, the City has determined that the property described in Section 2 of this Ordinance is located in an unincorporated area of the County and that annexation of such property will not result in the creation of an enclave.

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

SECTION 1: *Annexation.* That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, Fla. Stat. and has held a public hearing and said petition and made certain findings.

SECTION 2: *Description of Area Annexed.* That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT “A” and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida.

SECTION 3: *Effect of Annexation.* That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and the inhabitants thereof, and property therein, as it does and have

over its present corporate limits and laws, ordinances, and resolutions of said City shall apply and shall have equal force and effect as if all territory had been part of said City at the time of the passage of such laws, ordinances, and resolutions.

SECTION 4: *Apportionment of Debts and Taxes.* Pursuant to § 171.061, Fla. Stat., the area annexed to the City shall be subject to all taxes and debts of the City upon the effective date of annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the City levies such tax.

SECTION 5: *Instructions to Clerk.* Within seven (7) days following the adoption of this Ordinance, the City Clerk or his/her designee is directed to file a copy of this ordinance, including ATTACHMENT "A" hereto, with the clerk of the circuit court and the chief administrative officer of Orange County as required by § 171.044(3), Fla. Stat.

SECTION 6: *Severability.* Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

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

FIRST READING AND PUBLIC HEARING: _____, 2012.

SECOND READING AND PUBLIC HEARING: _____, 2012.

ADOPTED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

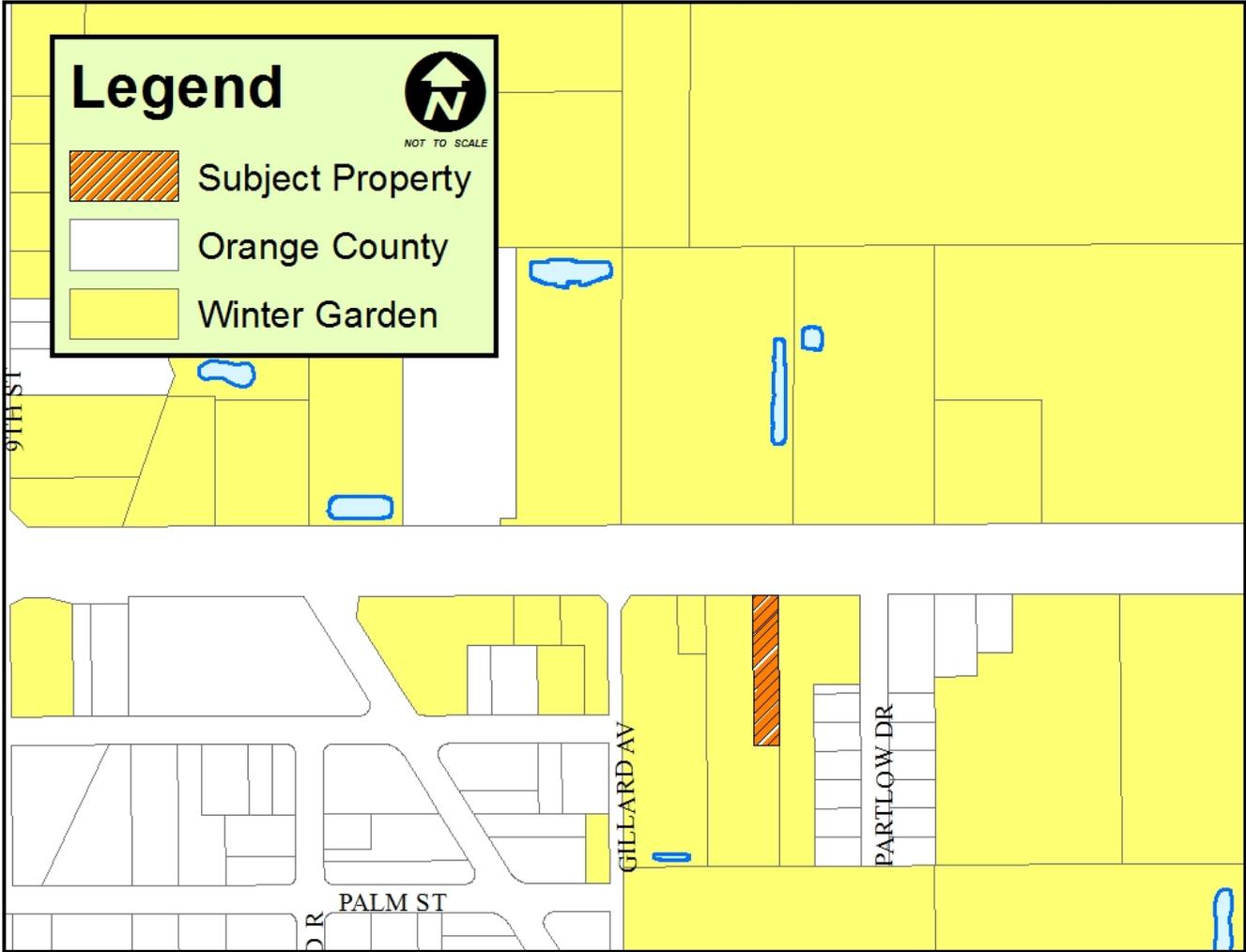
ATTACHMENT "A"
LEGAL DESCRIPTION

PARCEL ID#: 12-22-27-6496-23-004

DESCRIPTION:

COMMENCE AT THE NORTHEAST CORNER OF THE WEST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF BLOCK "W", OVERSTREET CRATE COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 9, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S00°49'24"E ALONG THE EAST LINE OF SAID WEST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF BLOCK "W", A DISTANCE OF 75.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD NO. 50, AND THE POINT OF BEGINNING; THENCE CONTINUE S00°49'24"E A DISTANCE OF 321.00 FEET; THENCE RUN S89°00'06"W A DISTANCE OF 55.00 FEET; THENCE RUN N00°49'24"W A DISTANCE OF 321.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE; THENCE RUN N89°00'06"E A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.405 ACRES, MORE OR LESS.



ORDINANCE 12-41

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 0.405 ± ACRES OF LAND LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 13th of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden, and on the 24th of June, 2010, the City Commission of the City of Winter Garden adopted Ordinance 10-19 readopting and amending the Comprehensive Plan for the City of Winter Garden;

WHEREAS, the owner of that certain real property generally described as 0.405 ± acres of land located at 12750 West Colonial Drive; on the south side of West Colonial Drive east of Gillard Avenue and west of Partlow Drive, and legally described in ATTACHMENT "A" (the "Property") has petitioned the City to amend the Winter Garden Comprehensive Plan to change the Future Land Use classification from Orange County Commercial to City Commercial; and

WHEREAS, the City of Winter Garden's Local Planning Agency and City Commission have conducted the prerequisite advertised public hearings pursuant to Chapter 163, Florida Statutes, regarding the adoption of this ordinance; now, therefore,

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

SECTION I. *FLUM Amendment.* The City of Winter Garden hereby amends the Future Land Use Map of the City of Winter Garden Comprehensive Plan by designating the aforesaid Property to City Commercial within the West State Road 50 Commercial Activity Center as set forth in ATTACHMENT "B".

SECTION II. *Effective Date.* Provided that the Property described herein is annexed into the City of Winter Garden pursuant to Ordinance 12-40, this Ordinance shall become effective 31 days after adoption, unless the Ordinance is timely challenged pursuant to § 163.3187(5), Fla. Stat., in which case, the Ordinance shall not be effective until the state land planning agency or the Administrative Commission, respectively, issues a final order

determining that the adopted Ordinance is in compliance.

SECTION III. Severability. Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

FIRST READING AND PUBLIC HEARING: _____, 2012.

SECOND READING AND PUBLIC HEARING: _____, 2012.

ADOPTED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"
LEGAL DESCRIPTION

PARCEL ID#: 12-22-27-6496-23-004

DESCRIPTION:

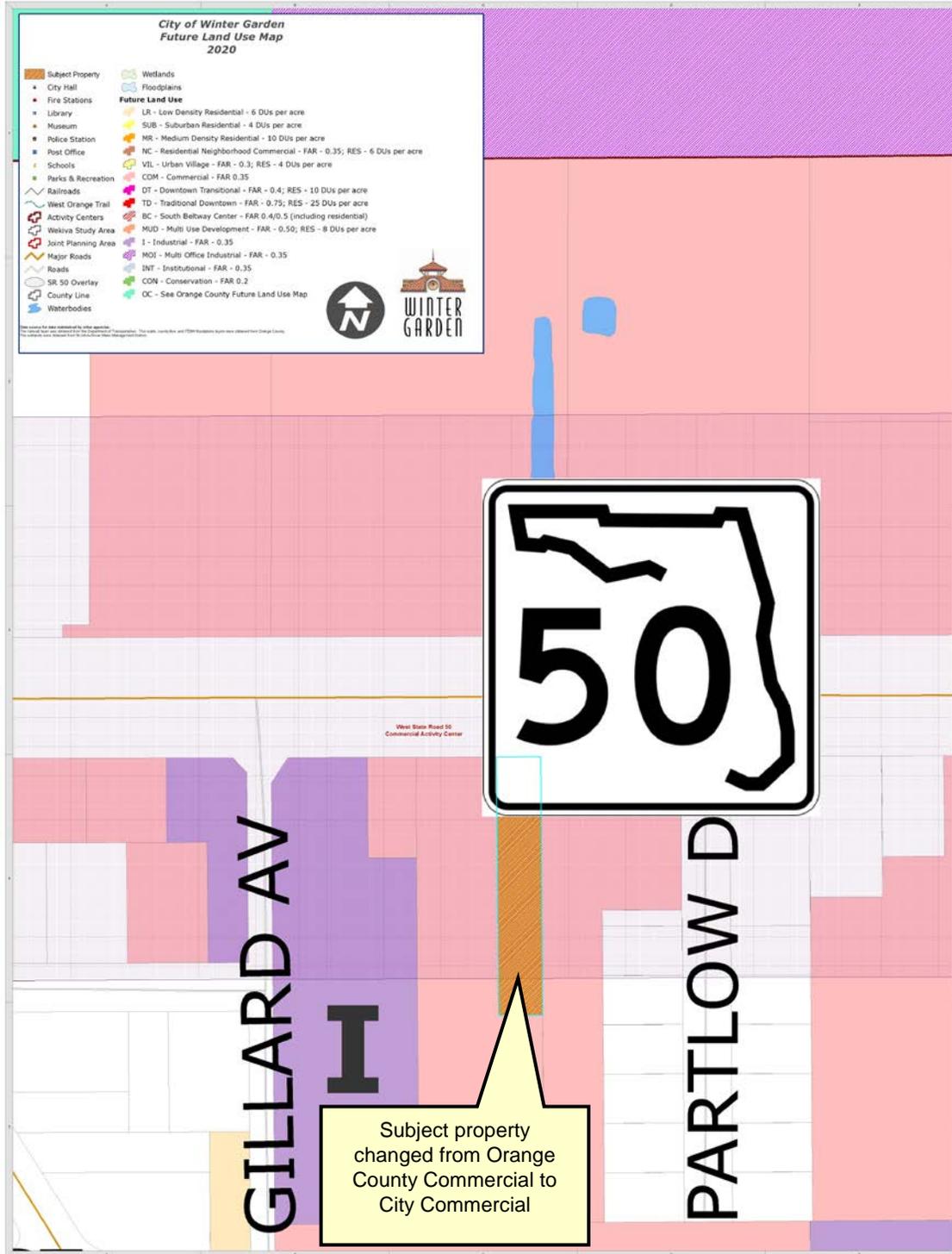
COMMENCE AT THE NORTHEAST CORNER OF THE WEST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF BLOCK "W", OVERSTREET CRATE COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 9, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S00°49'24"E ALONG THE EAST LINE OF SAID WEST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF BLOCK "W", A DISTANCE OF 75.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD NO. 50, AND THE POINT OF BEGINNING; THENCE CONTINUE S00°49'24"E A DISTANCE OF 321.00 FEET; THENCE RUN S89°00'06"W A DISTANCE OF 55.00 FEET; THENCE RUN N00°49'24"W A DISTANCE OF 321.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE; THENCE RUN N89°00'06"E A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.405 ACRES, MORE OR LESS.

ATTACHMENT "B"

FUTURE LAND USE MAP

12750 West Colonial Drive



ORDINANCE 12-42

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 0.405 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 12750 WEST COLONIAL DRIVE; ON THE SOUTH SIDE OF WEST COLONIAL DRIVE EAST OF GILLARD AVENUE AND WEST OF PARTLOW DRIVE FROM ORANGE COUNTY C-3 COMMERCIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of that certain real property generally described as 0.405 ± acres of land located at 12750 West Colonial Drive; on the south side of West Colonial Drive east of Gillard Avenue and west of Partlow Drive, and legally described in Section 1 of this ordinance has petitioned the City to rezone said property from Orange County C-3 Commercial District to the City’s C-2 Arterial Commercial District zoning classification, therefore;

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

SECTION 1: Rezoning. After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT “A,” is hereby rezoned from Orange County C-3 Commercial District to City C-2 Arterial Commercial District in the City of Winter Garden, Florida.

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

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

SECTION 4: Effective Date. This Ordinance shall become effective simultaneously upon the effective date of Ordinance 12-41 which is an amendment to the Future Land Use Map of the City of Winter Garden Comprehensive Plan that allows the property described herein to be zoned as provided in this Ordinance.

FIRST READING AND PUBLIC HEARING: _____, 2012.

SECOND READING AND PUBLIC HEARING: _____, 2012.

ADOPTED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL ID#: 12-22-27-6496-23-004

DESCRIPTION:

COMMENCE AT THE NORTHEAST CORNER OF THE WEST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF BLOCK "W", OVERSTREET CRATE COMPANY SUBDMISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK F, PAGE 9, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S00°49'24"E ALONG THE EAST LINE OF SAID WEST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF BLOCK "W", A DISTANCE OF 75.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD NO. 50, AND THE POINT OF BEGINNING; THENCE CONTINUE S00°49'24"E A DISTANCE OF 321.00 FEET; THENCE RUN S89°00'06"W A DISTANCE OF 55.00 FEET; THENCE RUN N00°49'24"W A DISTANCE OF 321.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE; THENCE RUN N89°00'06"E A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.405 ACRES, MORE OR LESS.

CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

300 West Plant Street - Winter Garden, Florida 34787-3011 • (407) 656-4111

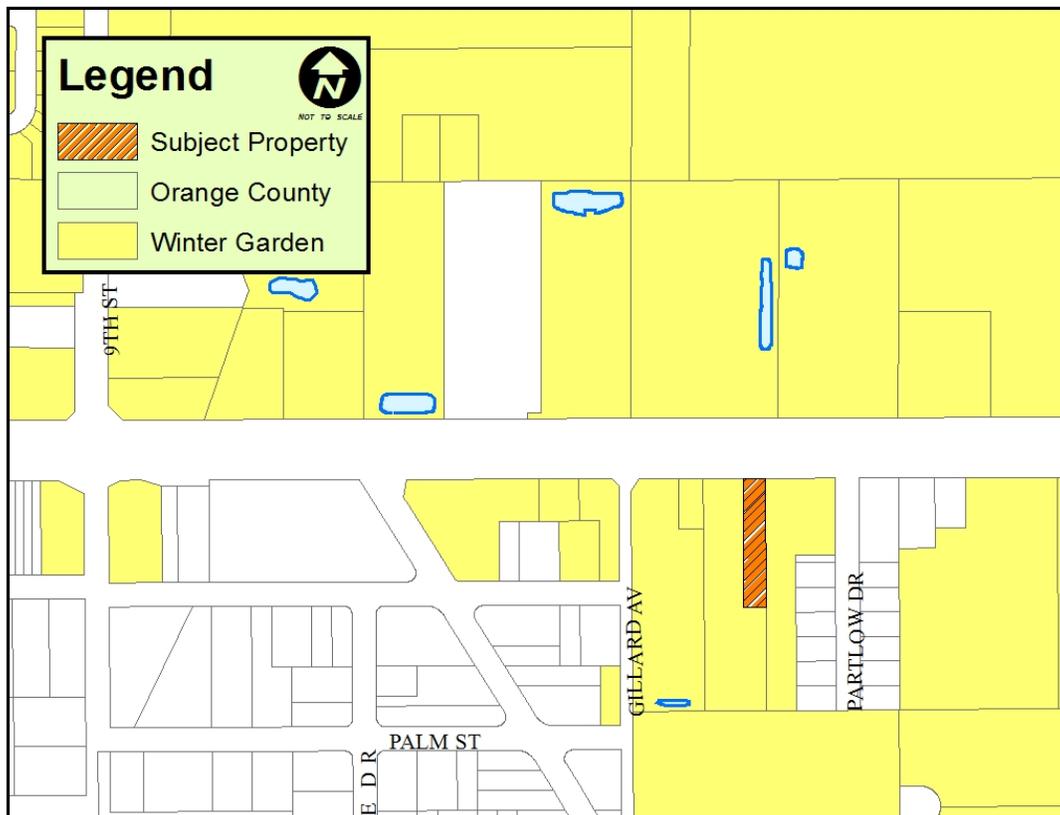
STAFF REPORT

TO: PLANNING AND ZONING BOARD
PREPARED BY: STEVE PASH, SENIOR PLANNER
DATE: AUGUST 6, 2012
SUBJECT: ANNEXATION - REZONING - FLU AMENDMENT
12750 WEST COLONIAL DRIVE (0.405 +/- ACRES)
PARCEL ID #: 12-22-27-6496-23-004
APPLICANT: JOYCE E. THOMAS TRUST

INTRODUCTION

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

The subject property is located at 12750 West Colonial Drive and is approximately 0.405 ± acres. The map below depicts the proximity of the subject property to the City's jurisdictional limits:



The applicant has requested annexation into the City, amendment to the Future Land Use Map (FLUM) of the City's Comprehensive Plan to designate the property as Commercial, and rezoning the property to C-2 Commercial Arterial District. This property is also within the West State Road 50 Overlay, which has additional development standards.

The subject property is located within the West State Road 50 Commercial Activity Center which allows for the following land use categories: Commercial, Medium Density Residential, Industrial, and Multi Use Development. The majority of the properties located within the West State Road 50 Commercial Activity Center are designated Commercial on the Future Land Use Map, with the only exceptions being several apartment complexes and a senior living facility on the south side of the road at the western edge of the city limits, which are designated Medium Density Residential on the Future Land Use Map and total about 35 acres of land.

In accordance with the City's Comprehensive Plan, permitted uses within the Commercial land use include retail, service, and professional activities. The zoning classifications that are consistent with the Commercial land use designation include C-1, C-2, C-3, C-4, PCD, and INT.

The City endorses infill of its jurisdictional limits through voluntary annexation of enclaves. The elimination of enclaves through voluntary annexation furthers the goals, objectives, and policies of the City's Comprehensive Plan.

EXISTING USE

The subject property is currently developed with an 1,376 square foot commercial building with a residential unit.

ADJACENT LAND USE AND ZONING

The properties located to the north are developed commercial properties with an assisted living facility, an RV sales center, a gas station, zoned C-2 and located in the City. The property located to the east is a car wash facility, zoned C-2 and located in the City. The properties to the south are vacant commercial buildings and property, zoned C-2 and located in the City. The property to the west is a vacant commercial building, zoned C-2, and located in the City.

PROPOSED USE

The owner is proposing to annex the property because they need to connect to the City potable water. The existing commercial building will remain.

PUBLIC FACILITY ANALYSIS

The City will provide water, sewer, garbage collection, police protection, and all other services regularly provided to City of Winter Garden residents including building permits. The property will be served by both Orange County Fire and Rescue and the City of Winter Garden Fire

Department under the First Response System.

SUMMARY

City Staff recommends approval of the proposed Ordinances.

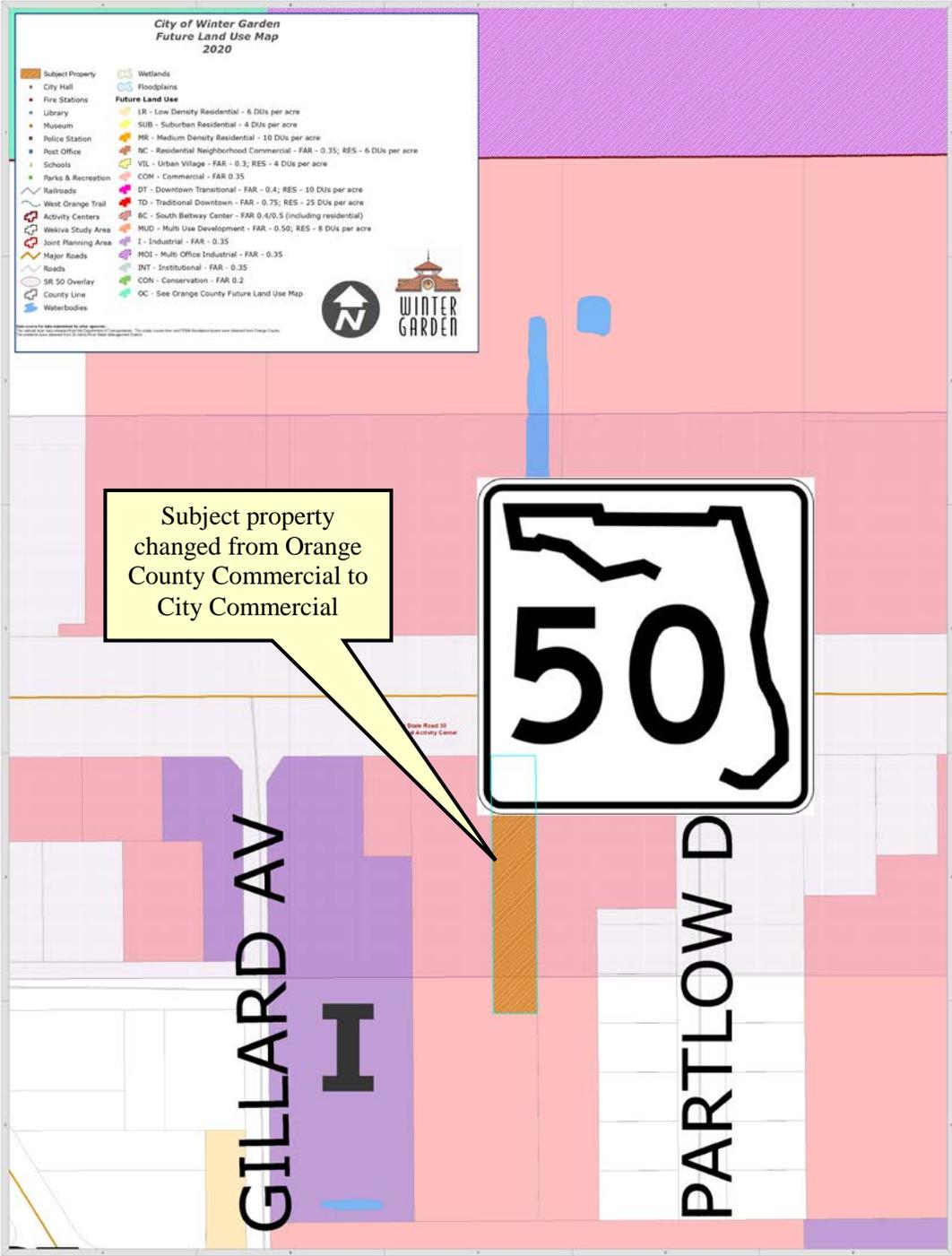
MAPS

AERIAL PHOTO

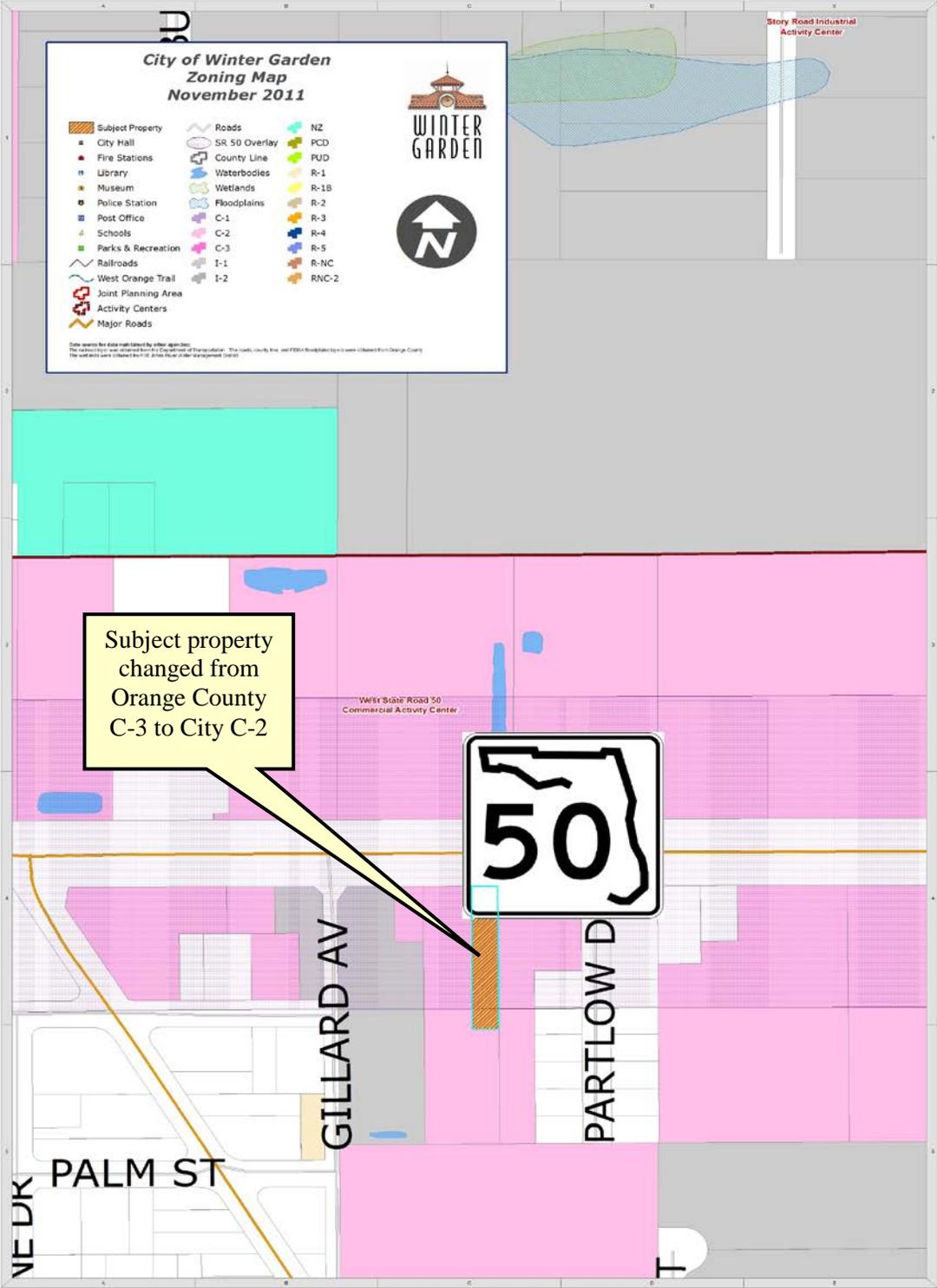
12750 W Colonial Drive



**FUTURE LAND USE MAP
12750 W Colonial Drive**



ZONING MAP
12750 W Colonial Drive



END OF STAFF REPORT

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: City Manager, Mike Bollhoefer

Date: 08/17/12

Meeting Date: 08/23/12

Subject: Amending Definition of Salary in Chapter 54, Article III, Pension Plan for Firefighters and Police Officers

Issue: The current definition of salary is not in compliance with state law. This ordinance will bring the pension plan into compliance with state law.

Recommended action: Approve Ordinance 12-37, amending the definition of salary in Chapter 54, Article III, Pension Plan for Firefighters and Police Officers.

ORDINANCE NO. 12-37

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1: That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the Code of Ordinances of the City of Winter Garden, Section 54-186, Definitions, to amend the definition of *Salary*, to read as follows:

* * * * *

Salary means the total cash remuneration including “overtime,” paid by the ~~primary~~ employer City to a firefighter or police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. For service earned after July 1, 2011, Salary shall not include more than three hundred (300) hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of three hundred (300) hours per year or accrued unused sick or annual leave accrued as of July 1, 2011 and attributable to service earned prior to July 1, 2011, may still be included in Salary for pension purposes even if the payment is not actually made until on or after July 1, 2011. Additional hours worked pursuant to the Fair Labor Standards Act (FLSA) shall not be deemed to be overtime. In any event, with respect to unused sick leave and unused annual leave accrued prior to July 1, 2011, Salary will include the lesser of the amount of sick or annual leave time accrued on July 1, 2011 or the actual amount of sick or annual leave time for which the retiree receives payment at the time of

retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on July 1, 2011.

Compensation in excess of the limitations set forth in section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

* * * * *

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Garden, Florida.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this _____ day of _____, 2012.

PASSED AND ADOPTED ON SECOND READING, this _____ day of _____, 2012.

APPROVED:

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

KATHY GOLDEN, CITY CLERK

RESOLUTION 12-13

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA ADOPTING A POLICY RELATING TO THE EMPLOYMENT OF SMALL, WOMEN OWNED AND MINORITY BUSINESSES FOR USE IN ADMINISTERING COMMUNITY DEVELOPMENT BLOCK GRANTS; ADOPTING A POLICY RELATING TO THE EMPLOYMENT OF MINORITIES BY THE CITY OF WINTER GARDEN; PROVIDING DEFINITIONS; DEFINING AN ACTION PLAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Garden desires to establish a policy supporting small, women owned and minority businesses, and,

WHEREAS, the City Commission of the City of Winter Garden recognizes an opportunity to affirmatively support small, women owned and minority business in those programs directly funded by the U.S. Department of Housing and Urban Development; and,

WHEREAS, the City Commission of the City of Winter Garden desires to bring the percentage of minorities employed by the City more closely in line with its percentage of minorities who live in the City; and,

WHEREAS, the City Commission of the City of Winter Garden recognizes the need to adopt an action plan to implement such goals;

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

1. Policy Relating to the Employment of Small, Women Owned and Minority Businesses.

It shall be the policy of the City of Winter Garden when soliciting for projects that involve Community Development Block Grant federal funding to require each department, agency, entity, or agent of the City to promote and assist small, women owned and minority businesses in gaining entry to do business with the City of Winter Garden. By assisting small, women owned and minority businesses, the City will help to expand and develop the small, women owned and minority section in and around the City of Winter Garden.

For projects assisted by programs providing direct financial assistance from the U.S. Department of Housing and Urban Development (hereinafter "HUD"), the City will include the Section III clause of the Housing and Urban Development Act of 1968 in all contracts for work connected with the projects. The City will also comply with the

Section III clause in the administration of Community Development Block Grant programs, which requires:

1. To the greatest extent feasible, opportunities for training and employment are given to low income project area residents;
2. To the greatest extent feasible, contract for work in connection with the project will be awarded to businesses located in, or owned in substantial part by persons residing in the project area;
3. Certifying that parties to the contracts are under no obligation, which would prevent them from complying;
4. Insuring that the contractor will send labor organizations with which he or she has had a collective bargaining agreement a notice stating his or her commitments under this section and post this notice in places available to employees;
5. Insuring that the contractor will include a "Section III Clause" in every subcontract;
6. Insuring that the contractor will not subcontract with anyone that has previously violated "Section III" requirements;
7. Obligate the contractor to provide a preliminary statement of work force needs prior to signing the contract;
8. Include "Section III" requirements in Community Development Block Grant bid invitations and contract specifications;
9. Cooperate with the Secretary of Housing And Urban Development in obtaining compliance from the recipient of the grant's contractors;
10. Submit to compliance reviews by the HUD when necessary; and,
11. Permit HUD access to all required records, accounts, reports, books, etc.

It is understood however, that while every opportunity will be afforded to small and minority businesses to enable them to bid on the City of Winter Garden's Community Development Block Grant federally funded projects, contracts will continue to be awarded to the lowest or best responsible bidder.

2. Policy Relating to the Employment of Minorities by the City of Winter Garden.

It shall be the goal of the City Commission of the City of Winter Garden to attempt to increase the percentage of minority City employees at the rate of .1 percent of the City's total employee base, per year until the percentage of minority City employees is equal to that of the minority City population.

The City will attempt to attain the goal by doing the following:

1. The City will advertise every open position in a newspaper of general circulation within the City prior to filling the open position when the position has not already been filled through existing procedures or policies providing for promotion from within and from Job Service applicants.
2. Stating in every advertisement that the City is an equal opportunity employer and does not discriminate in its hiring practice.

While City of Winter Garden will attempt to attain the minority employment goal stated herein the following is understood:

1. The City of Winter Garden will attempt to hire the best qualified person for each available position, regardless of race.

2. While the City of Winter Garden will attempt to attain the employment goal set forth herein; the goal is only that and the City accepts no liability if the goal stated herein is not reached.

3. Definitions.

1. **SMALL BUSINESS**-An independently owned and operated business concern which employs twenty-five (25) or fewer permanent full-time employees, and which has a net worth of not more than one million dollars as applicable to sole proprietorships; the one million dollar net worth requirement shall include both personal and business investments.

2. **WOMEN BUSINESS ENTERPRISES**-Any small business concern which is organized to engage in commercial transaction, which is at least fifty-one (51) percent owned by women and whose management and daily operations are controlled by such person. A minority business enterprise may primarily involve the practice of a profession.

3. **MINORITY BUSINESS ENTERPRISES**-Any small business concern which is organized to engage in commercial transaction, which is at least fifty-one (51) percent owned by minority persons and whose management and daily operations are controlled by such person. A minority business enterprise may primarily involve the practice of a profession.

4. **CERTIFIED MINORITY BUSINESS ENTERPRISES**-A business enterprise which has been certified by the State of Florida Department of General Services to be a minority business enterprise in accordance with the provision of the Small and Minority Business Assistance Act of 1985.

5. **MINORITY PERSON**-A person whose race is Black, American Indian, Alaskan Native, Asian or Pacific Islander.

4. Action Plan.

In that the City of Winter Garden will continuously seek to administer programs funded in part or in total by allocations directly or indirectly from the U.S. Department of Housing and Urban Development, the City desires to enhance the opportunities for small and minority businesses and local businesses to participate in Community Development Block Grants with the City.

To accomplish this objective, the City Commission of the City of Winter Garden, Florida, establishes and implements the following steps to facilitate the deployment of affirmative action in expenditures for contractual services, commodities and construction contracts on Community Development Block Grant federally funded projects:

1. To utilize the news media, State Department of General Services list of small, women owned or minority business concerns, local advertising services, citizens advisory boards, regional planning Commissions, listings by federal agencies, and other appropriate sources to identify small, women owned and minority business concerns for possible involvement with the City Community Development Block Grant federally funded contracts.
2. To maintain and update the listing of small, women owned and minority business concerns and notify them of Community Development Block Grant federally funded contracting opportunities with the City.
3. To maintain records (copies of memoranda, general correspondence, etc.) to document that all steps in the action plan have been followed.
4. To establish or utilize an existing position to function as the equal opportunity officer to coordinate the implementation of the Affirmative Action Plan with operators of Community Development Block Grant federally funded City administered projects and programs.

5. Effective Date.

This resolution shall take effect immediately upon its adoption.

DULY ADOPTED by the City Commission of the City of Winter Garden, Florida this _____ day of _____, 2012.

**CITY COMMISSION
WINTER GARDEN, FLORIDA**

BY: _____

ATTEST:

RESOLUTION 12-14
ANTI-DISPLACEMENT
AND RELOCATION
POLICY
CITY OF WINTER GARDEN

REFERENCE: TENANT ASSISTANCE, RELOCATION AND
REAL PROPERTY ACQUISITION PLANS

TABLE OF CONTENTS

- I. Displacement Avoidance Policy
- II. Definitions
 - a) Standard Condition
 - b) Substandard Condition
Suitable for Rehabilitation

Displacement Policy and Procedures

- III. Permanent, Involuntary Displacement
 - a) Provisions for One-to One Replacement
 - b) Provisions for Relocation Assistant
for Residential Displacement
 - c) Provisions for Non-Residential
Relocation.
- IV. Temporary, Voluntary Displacement
and Relocation.
- V. Permanent, Voluntary Displacement
and Relocation.
- VI. Tenant Assistance Policy
Federal Rental Rehabilitation Program.
- VII. Displacement of Homeowners.
- VIII. Appeals/Counseling

**CITY OF WINTER GARDEN
TENANT ASSISTANCE, RELOCATION & REAL PROPERTY ACQUISITION
PLAN**

I. Displacement Avoidance Policy:

The City of Winter Garden is committed to a policy to make all reasonable efforts to ensure that activities undertaken through the use of Community Development Block Grant (CDBG) and/or other federal funding will not cause unnecessary displacement or relocation. Such federally funded programs will be administered in such a manner that careful consideration is given during the planning phase with regard to avoiding displacement. The City will also provide information to keep citizens involved in the process regarding pending land use changes, zoning and rezoning actions that threaten the preservation of residential areas. Involuntary displacement shall be reserved as a last resort action necessitated only when no other alternative is available and when the activity is determined necessary in order to carry out a specific goal or objective that is of benefit to the public. In this case, community development and housing programs will be planned in a manner which avoids displacement of households or business.

However, “voluntary” displacement (temporary or permanent) may be necessary in order to achieve a benefit to a household or business (such as rehabilitation or replacement of the building). Such benefits shall be identified and requested by the displacee. Voluntary displacement may also occur when a property owner voluntarily offers his home or business property for sale to the City. In these cases, the seller may be required to waive rights as a condition of the sale of the property, and the Uniform Relocation Act provisions will govern actions of the City and/or its representative. 24 CFR Part 570 is a governing document on displacement and is incorporated by reference. 49 CFR Part 24 provides Uniform Relocation Act information and is incorporated by reference. As pertains to the City’s tenant Assistance, Relocation and Real Property Acquisition Plan, the U.S. Department of Housing and Urban Development Handbook #1378, September 1990, shall be adopted in its entirety.

II. Definitions of “Standard” and “Non-Standard Suitable for Rehabilitation” Dwelling Unit Condition.

In the absence of federal and state provided definitions, the following is provided to establish a frame of reference and context when dealing with matters of displacement and/or relocation as defined in 24 CFR Part 570 and 49 CFR Part 24.

A. Standard Condition

A dwelling unit is considered standard if it has no major defects or only slight defects which are correctible through the course of regular maintenance. It must be in total compliance with applicable City housing and occupancy codes; be structurally sound, watertight and in good repair; be adequate in size with respect to number of rooms and area of living space and contain the following:

1. A safe electrical wiring system adequate for lighting and other normal electrical devices.
2. A separate, well-lighted and ventilated bathroom that provides user privacy and contains a sink, commode, and bathtub or shower stall.
3. An appropriate, sanitary and approved source of hot and cold potable water.
4. An appropriate, sanitary and approved sewage drainage system.
5. A fully useable sink in the kitchen.
6. Adequate space and service connections for a refrigerator.
7. An unobstructed egress to a safe, open area at ground level; and
8. Be free of any barriers which would preclude ingress or egress if the occupant is handicapped.

Failure to meet any of these criteria automatically causes a dwelling to be considered “standard”.

B. Substandard Condition Suitable for Rehabilitation

A dwelling unit is considered substandard if it does not fully comply with the standard criteria, or has minor defects which require a certain amount of correction but can still provide safe and adequate shelter or has major defects requiring a great deal of correction and will be safe and adequate once repairs are made.

To be suitable for rehabilitation, a trained housing specialist must carefully inspect the dwelling and prepare a work write-up of repairs necessary to bring it up to standard condition. A cost estimate of repairs will be prepared based on the needs identified in the work write-up.

If these costs are equal to or less than 65% of the value of a comparable replacement unit as obtained from more than one licensed contractor, the dwelling will be considered suitable for rehabilitation. If the predicted cost exceeds 65%, the unit will be deemed unsuitable.

This criteria is arbitrary, however, and the City Commission/Planning and Zoning Board may authorize deviations based on the unique aspects of each dwelling, owner, tenant, etc. on a case by case basis. Each deviation so approved must be thoroughly documented.

Displacement Policy and Procedures

III. Permanent, Involuntary Displacement

The City will provide reasonable relocation assistance to persons (families, individuals, businesses, nonprofit organizations, displaced (moved permanently and involuntarily) as a result of the use of CDBG/federal assistance to acquire or substantially rehabilitate property). Assistance to displaced persons may include:

- a) Payment for actual moving and relocation expenses documented by receipts and/or vouchers from service providers and utility companies. The documents shall be submitted prior to the disbursement of payment.
- b) Advisory services necessary to help in relocating.
- c) Financial assistance sufficient to enable the displaced person to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household gross income of a family earning 80 percent of the median income for the jurisdiction.

A. Provisions for One-on-One Replacement

The City will replace all occupied and vacant occupiable low/moderate income dwelling units demolished or converted to use other than a low/moderate income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended, and as described in 24 CFR Part 570. Replacement low/moderate income units may include public housing or existing housing receiving Section 8 project based assistance.

All replacement housing will be provided within three years of the commencement of the demolition rehabilitation relating to conversion and will meet the following requirements:

1. The units will be located within the City.
2. The units will meet all applicable City housing, building, and zoning ordinances and will be in standard, or better, condition.
3. The units will be designed to remain low/moderate income dwelling units for at least 10 years from the date of initial occupancy (applies to initial tenant only).

4. The unit will be sufficient in size and number (functionally equivalent) to house at least the number of occupants who could have been housed in the units that are demolished or converted.

Before obligating or expanding CDBG/federal funds that will directly result in such demolition or conversion, the local government will make public and submit to the Florida Department of Economic Opportunities and/or the U.S. Department of Housing and Urban Development the following information in writing.

1. A description of the proposed assisted activity.
2. The general location on an area map including approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than low/moderate income dwelling units.
3. A time schedule for commencement and completion of the demolition or conversion.
4. The general location on a service area map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement units.
5. Identification of the source of funding at the time of submittal and the time frame, location and source for the replacement units.
6. The basis for concluding that each replacement dwelling unit will be designed to remain a low/moderate income dwelling unit for at least 10 years from the date of initial occupancy.
7. Information demonstrating that any proposed replacement of a unit with a smaller unit is consistent with the housing needs of LMI persons in the jurisdiction.

B. Provisions for Relocation Assistance for Residential Displacement

The City will provide relocation assistance, as described in 24 CFR Part 570, to each low/moderate income household involuntarily displaced by the demolition of housing or by the conversion of a low/moderate income dwelling to another use as a direct result of CDBG/federally assisted activities. Persons that are relocated are entitled to:

1. A choice between actual reasonable moving expenses or a fixed expense and dislocation allowance.
2. Advisory services.

3. Reimbursement for reasonable and necessary security deposits and credit checks.
4. Interim living costs, and
5. Replacement housing assistance which may include a Section 8 housing voucher/certificate and referral to assisted units; cash rental assistance to reduce the rent and utility cost or lump sum payment equal to the present value or rental assistance installments to be used toward purchasing an interest in a housing cooperative or mutual housing association for a period up to 60 months (5 years).

C. Provisions for Non-Residential Relocation

Businesses, non-profit organizations, etc., shall not be relocated unless the move is voluntary, essential to the project from the public view, and the owner waives his/her rights under the Uniform Act except for the following relocation assistance:

1. Actual moving and reasonable re-establishment expenses not less than \$1,000 nor more than \$20,000 equal to prorated share for a period of interruption of operations of the average annual net earnings. Average annual net earnings before taxes during the two taxable years immediately prior to the taxable year it was displaced.
2. No other benefits will be provided and a signed waiver acknowledging that fact will be required.

IV. Temporary, Voluntary Displacement and Relocation

- A. Persons occupying housing which is to be rehabilitated using CDBG/federal funds must voluntarily agree to inclusion in the program and shall vacate the housing at the direction of the City (or its designated agency), in order to facilitate the safe, timely and economical rehabilitation process.
- B. A moving allowance of \$300 will be provided each family unit so displaced. This allowance will be provided in two payments of \$150 each on move out and move back in.
- C. The City may provide a safe, decent and sanitary housing unit for use as temporary relocation housing. The unit shall be available free of charge to temporarily displaced households for the time period authorized by the City's designated agency, generally for the period of rehabilitation construction. Households who occupy the unit shall have a \$75 refundable deposit withheld from their initial moving allowance payment. This deposit shall be refunded in full immediately after the relocation unit is vacated in a clean and undamaged condition. The deposited refunded shall be denied in full or in part for payment of

damages to the owner/lessee due to the occupants, (a) failure to properly clean or maintain the unit, (b) physical damage to the unit, (c) loss of keys to the unit, (d) need for any special condition such as fumigation. A \$25 per day penalty may also be assessed for the household's failure to do so by the City's designated agency.

- D. A storage allowance of up to \$150 will be provided each family unit displaced if Storage is necessary and essential to the move.
- E. Insurance cost of up to \$100 for the replacement value of the household property in connection with the move will be provided each family unit displaced if storage is necessary and essential to the move.
- V. Permanent, Voluntary Displacement and Relocation

If it is determined by the City that occupants of a dwelling should be permanently relocated, and the occupants voluntary consent, the government will assist in the relocation to a decent, safe and sanitary dwelling unit. Benefits, if provided, will be limited to increases in monthly housing costs incurred by the occupant in an amount equal to the lesser of 60 times the increase or 30 percent of the person's annual income. 24 CFR Part 570 must be consulted to determine specific limitations.

VI. Tenant Assistance Policy/federal Rental Rehabilitation Program.

- A. It is not the local government's policy to displace families in rental units. Participating landlords will be required to warrant that the proposed rehabilitation will not cause any tenant to be permanently displaced unless the owner will be able to relocate the tenant displaced in accordance with HUD relocation criteria. Rental Rehabilitation funds will not be used to rehabilitate the structures if the rehabilitation will cause the permanent displacement of LMI families.
- B. If it becomes necessary for an owner to temporarily move a tenant from a unit as a direct result of rehabilitation assisted through rental rehabilitation funds, the owners will assure that the tenant is offered a decent, safe and sanitary dwelling unit at an affordable rate as described on the applicable regulations. No tenant will be considered displaced if the owner has offered the tenant a decent, safe, sanitary and affordable unit and the tenant has declined the offer.
- C. Should temporary displacement becomes necessary for a LMI family as a result of the rental rehabilitation assistance, the owner will assure that tenants are provided necessary financial assistance, information, counseling, referrals and housing location options regarding Federal Housing Ordinance and other relocation services as needed without regard to race, color, religion, sex, familial status, age, handicap or national origin, so as to enable the family to obtain decent, safe, and sanitary housing at an affordable rate.

D. The Housing Authority at the City of Winter Garden shall provide federal preferences to any qualified LMI family subject to relocation. Where Section 8 Housing vouchers are available, such preferences will apply.

E. Where required compensation to obtain replacement housing shall not exceed \$3,000 threshold. Should such projected compensation to the tenant exceed this threshold, consideration shall be given to not performing the demolition rehabilitation which would cause displacement.

VII. Displacement of Homeowners

When rehabilitation of the dwelling is not feasible or cost effective, demolition of house with CDBG/federal funds may be considered, only as a voluntary action by the homeowner.

Although homeowners have a right to assistance as previously discussed, CDBG/federal funds available for relocation assistance are limited. Therefore, financial assistance shall not exceed that described in accordance with 49 CFR 24.401, and the regulations under U.S. HUD Handbook 1378.

VIII. Appeals/Counseling

A. If a claim for assistance is denied by the City, the claimant may appeal where applicable to either the State of Florida or U.S. Department of Housing and Urban Development, and their decision shall be final unless a court determines the decision was arbitrary and capricious.

B. Counseling will be provided to displacees in the area of households finance, fair housing rights, real estate transactions, and locating and evaluating replacement housing options. Counseling shall be provided by the City or its designated agency.

To permanently displaced households to ensure that:

1. No person is discriminated against based upon age, race, color, religion, sex, handicap, familial status, national origin, or presence of children in the households

2. Displacees receive information concerning the full range of housing opportunities within the local housing market.

DULY ADOPTED by the City Commission of the City of Winter Garden, Florida
this _____ day of _____, 2012.

WINTER GARDEN, FLORIDA

BY: _____

ATTEST:

CITY OF WINTER GARDEN, FLORIDA
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CITIZENS PARTICIPATION PLAN

In keeping with the provisions of the Housing and Community Development Act of 1974 as amended, 24 CFR 570.431 and DEO Rule 73C-23, the City of Winter Garden, Florida hereby establishes a Citizen Participation Plan.

I. OVERALL GOAL

The purpose of this plan is to provide the citizens of the City of Winter Garden with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, development, implementation, and assessment of the City of Winter Garden's Community Development Block Grant Program.

II. OBJECTIVES

- A. To increase interchange of information between CDBG Staff and the local citizens concerning community development and related concerns.
- B. To heighten public awareness as to the purpose and function of the CDBG Program and the types of assistance available, especially among low/moderate income residents of CDBG target areas.
- C. To increase community participation in program planning and implementation and thereby create local support for CDBG goals.
- D. To allow affected or potentially affected citizens to directly assist in shaping and guiding the program's impact upon their neighborhood as well as the community at large.

III. CONSISTENCY

This Citizen Participation Plan is consistent with the requirements Section 508 of the Housing and Community Development Act of 1987 which amends Section 104(a) of the Housing and Community Development Act of 1974, 24 CFR 570.4312 and DEO Rule 73C-23. This Plan supersedes all other Citizen Participation Plans utilized by the City of Winter Garden, Florida. This Plan sets forth the procedures for Citizen Participation that shall be utilized during each stage of the Community Development Block Grant process and upon its adoption by the City Commission of the City of Winter Garden shall remain in effect until otherwise amended.

IV. OVERVIEW

- A. Citizen participation is a vital element in the preparation of a method by which community involvement will be solicited and maintained throughout the entire Community Development Block Grant process. The City of Winter

Garden, Florida shall strive to ensure such participation by utilizing the public hearing process and by appointing a Citizens Advisory Committee.

- B. It shall be the policy of the City of Winter Garden that the effectiveness of citizen participation in the planning, development, implementation, and assessment of the Community Development Block Grant process be analyzed during the public hearings and other called meetings and amendments to the Plan made when necessary.

V. CITIZEN PARTICIPATION TECHNICAL REQUIREMENTS

Since the purpose of this plan is to provide the citizens of the City of Winter Garden, Florida with an adequate opportunity for meaningful involvement in the planning, implementation, and evaluation of the City's Community Development Block Grant process, it shall be the City's policy to solicit, and respond in a timely manner to, the views and proposals of all citizens, particularly low and moderate income persons, members of minority groups, and residents of blighted areas where the potential exists for the undertaking of CDBG eligible activities. Upon adoption of this Plan, the following technical requirements shall govern this process:

A. Public Hearings

1. To ensure adequate notice of public hearings, all notices shall be printed in the (local newspaper) no less than five (5) days and no more than twenty (20) days prior to each public hearing held at any stage of the Community Development Block Grant process.
2. When deemed appropriate, the City may also post notice of such hearings in a public place. The posting of notices may only supplement publication of public hearing notices. A news article located in a conspicuous place in the newspaper may be considered as sufficient printed notice to fulfill this requirement. The City may also utilize additional means (personal contact, radio, website, etc.) to the maximum extent possible to reach target groups identified above when this is necessary. A minimum of two public hearings will be held before the City Commission to provide the greatest access for citizen participation in developing CDBG applications.
3. Because of the size of the City, and the centrality of the City Commission Chambers, this requirement will generally be satisfied by holding the hearings at the Winter Garden Commission Meeting Chambers.
4. The City of Winter Garden has a known concentration of non-English speaking residents; therefore the services of a translator will be obtained in the event a significant number of residents of a target area do not speak

English and request such services. Notices shall include information concerning the handicapped.

B. Citizens Advisory Task Force (CATF)

1. The City shall establish a Citizens Advisory Task Force for all CDBG projects other than economic development projects, which shall consist of no less than three (3), not more than seven (7) members appointed by the City Commission in a manner, which will ensure substantial representation of low and moderate income persons and minorities. Committee members shall serve until they resign from the board or their position is reappointed by the Commission. CATF members shall be City residents and shall not be elected officials of the City. A maximum of one City employee shall serve on the CATF board at any point in time.
2. The Citizens Advisory Task Force shall serve as a focal point or liaison between the City and its constituents in regard to CDBG project development and implementation. The Committee shall have the following duties and responsibilities:
 - a. Disseminate information concerning eligible activities, proposed projects, and the status of current projects.
 - b. Coordinate various groups which choose to participate in the implementation of community development activities.
 - c. Review written comments assessing the implementation of the CDBG program.
 - d. Monitor the overall implementation of the CDBG program and review program status with administrative personnel.
 - e. Monitor the citizen participation process and propose such amendments as may be necessary to this Participation Plan.
3. The Citizen Advisory Task Force shall be a tool through which program progress can be analyzed and proposed amendments discussed, if applicable.

C. Access To Records

1. The City of Winter Garden shall maintain a complete project file on its Community Development Block Grant program(s) which shall be available for public inspection during regular office hours in the City

Clerk's office. This file shall include but not be limited to the following:

- a. Citizens Participation Plan
- b. Community Development Plan
- c. Community Development Block Grant Application
- d. Program Amendments
- e. Environmental Review Record
- f. Financial Status
- g. Fair Housing Ordinance
- h. Equal Opportunity Requirements
- i. Policies and Procedures Governing Beneficiary Eligibility
- j. Performance Assessment Report
- k. Written Comments and City's Response

2. Generally, the project file is available for review by any citizen or group; however, in no case will disclosure be made of any program participant's financial status.

D. Technical Assistance

The program staff shall provide technical assistance to citizens committees and groups and interested persons in the citizen participation process. This technical assistance shall focus on increasing public access to participating in the Community Development Block Grant decision making process through the Citizens Advisory Committee, and ensuring that this participation is meaningful. Technical assistance will also be utilized to foster an understanding of program requirements; i.e., equal opportunity, relocation, environmental policies, beneficiary eligibility, etc.

E. Grievances

1. All grievances regarding individual decisions made as a part of the implementation of the Community Development Block Grant program shall be submitted, in writing to the Program Administrator. If a person feels that his/her complaint has not been sufficiently addressed by the Program Administrator's response, an appeal may be made to the Citizens Advisory Task Force.
2. If a response satisfactory to the aggrieved is not issued by the Committee, an appeal may be made to the City Commission. At any point, the aggrieved may register a written complaint with the Florida Department of Economic Opportunities (DOE), 107 East Madison Street, MSC-400, Tallahassee, Florida 32399. All written complaints registered at the local level shall have a written response from the City Manager within fifteen (15) working days of the lodging of said complaint. A file of all grievances and responses shall be maintained and available for

public inspection. In the event the aggrieved has exhausted all appeals without a decision satisfactory to himself/herself, he/she may pursue other legal channels in an attempt to achieve satisfaction.

F. Amendment

The amendment of this Plan shall follow all citizen participation requirements delineated in this plan and all applicable technical provisions. Such amendments shall require adoption by the City Commission prior to becoming effective.

G. Authority

No part of this participation Plan shall be construed to restrict the responsibility and authority of the elected officials of the City of Winter Garden, Florida, in the development and implementation of any Community Development Block Grant program. Rather it is a vehicle through which the elected officials of the City of Winter Garden can assure citizen input prior to their decision making process.

CITIZEN PARTICIPATION IN EACH STAGE OF THE CDBG PROGRAM

I. Application Stage

The objective of citizen participation at this stage is to provide meaningful community-wide citizen input into the decision making process during the consideration of priorities and of options associated with the development and submission of the application. The following requirements will be met during the application stage and certified to in the body of the application:

A. Review of the Citizen Participation Plan

B. Presentation of the City's Community Development Plan.

Title I of the Housing and Community Development Act of 1974, as revised, has as its primary objective, the development of viable urban communities by providing decent housing, suitable living environment, and expanding economic opportunities, principally for persons of low and moderate incomes. Consistent with these objectives, the City of Winter Garden will develop a Community Development Plan that identifies the community development and housing needs and specifies both short and long term community development objectives to meet the established needs.

C. Public Hearings

A minimum of two (2) public hearings will be held before the City Commission during this stage. The purpose of the first public hearing is to access community needs and problems in an effort to determine the most pressing needs of the community and to solicit citizen input as to the ranking of said needs. The purpose of the second hearing is to present for public comment and review the program of activities that the City has selected for the application as best suited to meet these needs. The City may determine that more than two (2) public hearings during the application stage are desirable and thus hold extra hearings. All such hearings shall be governed by the requirements as set forth herein. The following information will be presented to the public at the public hearing stages of the application:

1. The range of activities that may be undertaken with CDBG funds
2. An overview of the CDBG program to include analysis of DEO rating process and discussion of applicable grant ceilings.
3. Discussion of the competitive nature of the CDBG process and the likelihood that more applications will be submitted to DEO than can be funded.
4. The process to be followed in soliciting and responding to the views and proposals of citizens in a timely manner.
5. Discussion of the role of the Citizen Advisory Task Force.

II. POST APPROVAL STAGE

- A. The City shall assure continuing citizen participation throughout the life of the Community Development Block Grant program, particularly when considering amendments to the program. The City shall conduct a public hearing as required by the Department of Economic Opportunities for amendments reducing project beneficiaries.

IV. ASSESSMENT OF PERFORMANCE

Citizens of the City of Winter Garden will be provided opportunities to comment on the implementation of the City's CDBG program and to assess the performance of the City in meeting its community development goals and objectives. Continual community assessment of the effectiveness of the program

is considered essential to the success of a CDBG program. In order to ensure this involvement, the City will utilize the following approaches:

1. The Citizen Advisory Task Force, established in accordance with this Plan, will function as the focal point of the evaluation and assessment process. This group will continually provide the City and its staff with feedback on the effectiveness of the program and suggest changes, if applicable.
2. The public hearing process will be used to ensure community-wide participation in the evaluation of the program.
3. Written comments on the program will be received at any time during the life of the program.

VI. CITIZEN COMMENT TO Florida Department of Economic Opportunity (DEO)

Persons may comment to DEO at any time concerning the City of Winter Garden failure to comply with the citizen participation requirements as set forth in this Plan.

CITY OF WINTER GARDEN, FLORIDA

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

CITIZENS PARTICIPATION PLAN

THIS PLAN passed this _____ day of _____, 2012.

John Rees, Mayor

ATTEST:

CITY OF WINTER GARDEN
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PURCHASING POLICY
INCLUDING THE
MINORITY BUSINESS ENTERPRISE POLICY

Section 1 PURPOSE

This policy is adopted to assure that commodities and services for the Community Development Block Grant Programs are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All City staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to: OMB Circular A-102, attachment O; 24 CFR Part 85 Section 85.36; s. 287.055, Florida Statutes.

Section 2 APPLICATION OF POLICY

This policy shall apply to contracts or agreements for the procurement of all materials, supplies, services, construction and equipment for any Community Development Block Grant Program solicited or entered into after the effective date of this policy.

Section 3 PURCHASING OFFICER

The Procurement Officer shall serve as the central purchasing officer for the City of Winter Garden for all contracts or agreements described in Section 2 and in the City's Purchasing Manual.

Section 4 PURCHASING AND CONTRACT AWARD PROCEDURES

Section 4.01 PURCHASING CATEGORIES; THRESHOLD AMOUNTS

Except as to Sole Source Purchases (Section 4.06) and Cooperative Purchasing (Section 4.07), all purchases and contract awards are to be made subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. Small Purchases (Section 4.02) \$1.00 to \$750.00
- B. Purchasing Quotes (Section 4.03)\$750.01 to \$5,000.00
- C. Competitive Sealed Bids/Proposals
(Section 4.04 & 4.05)\$5,000.01 and above

Section 4.02 SMALL PURCHASES

The purchase of commodities, equipment and services which cost less than the threshold authorized in Section 4 does not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Officer or his/her designees.

Section 4.03 PURCHASING QUOTES

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4 shall require competitive quotations from three or more vendors. The quotations shall be obtained by the respective Department(s) and shall be reviewed and awarded by the Purchasing Officer.

1. Conditions For Use. All contracts for purchases of a single item, services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding.

2. Invitation to Bid. An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. No later than five working days prior to the date for receipts of bids, a vendor shall make a written request to the City for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda. The City will not be responsible for oral clarifications. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any City employee prior to the opening of proposals. Only those communications which are in writing from the City may be considered as a duly authorized expression on the behalf of the Commission. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Commission as duly authorized expressions on behalf of proposers.
 - (1) Alternate(s). Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.
 - (2) Approved Equivalents. The City reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bid.

3. Public Notice. Public Notice shall be by publication in a newspaper of general circulation at least twelve (12) working days prior to bid opening. Notice of the Invitation to Bid shall give date, time, and place set forth for the submittal of proposals and opening bids.

4. Bid Opening. Bids shall be opened publicly. The Purchasing Officer or his/her designee shall open bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and other such relevant information as may be deemed appropriate by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.

5. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as; inspection, testing, quality, recycled or degradable material content, workmanship, delivery, and suitability for a particular purpose. Those criteria that will effect the bid price shall be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total or

life cycle costs. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid, in regulations, or in this policy.

6. Bid Agenda Item. After evaluation, the Purchasing office will prepare a recommendation and shall place the item on the agenda of the City Commission.

7. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bids mistakes, shall be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation to Bid prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake, of non-judgemental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in the bid price or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his bid if:
 - (1) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (2) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Officer.

8. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

9. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid.

The City reserves the right to waive any informality in bids and to make an award in whole or in part when both conditions are in the best interest of the City of Winter Garden. Any requirement which is waived must be documented and kept in the file.

 - (1) Notice of Intended Award. The contract shall be awarded by written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of intended award, including rejection of some or all of bids

received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United States mail, return receipt requested, whichever is specified in bid solicitation. A vendor may request, in their bid submittal, a copy of the tabulation sheet to be mailed in a vendor provided, self-addressed envelope for their records.

- (2) Notice of Right to Protest. All notices of decision or intended decisions shall contain the statement: “Failure to file a protest within the time prescribed in Section 4.08 of the CDBG Purchasing Policy of the City of Winter Garden shall constitute a waiver of Proceedings under that section of this policy”.
10. Cancellation of Invitations for Bids. An Invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the City, as determined by the Commission. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items.
 11. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Finance Director or City Clerk for the following reasons:
 - (1) Failure to respond to bid invitation three consecutive times within the last eighteen (18) month period.
 - (2) Failure to update the information on file including address, project or service, or business description.
 - (3) Failure to perform according to contract provisions.
 - (4) Conviction in a court of law of any criminal offense in connection with the conduct of business.
 - (5) Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 - (6) Clear and convincing evidence that the vendor has attempted to give a City employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City’s purchasing activity.
 - (7) Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133 (3) (a).
 - (8) Other reasons deemed appropriate by the City.

Section 4.05

COMPETITIVE SEALED PROPOSALS

All contracts for purchases of a single item or services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where qualifications, not price, is the basis for contract award, shall be awarded by competitive sealed proposals. All contracts for the procurement of professional architectural, engineering, landscape architectural, and land surveying services will be awarded according to the provisions of Section 4.051. All other

contracts required to be awarded by competitive sealed proposals will be awarded according to the provisions of Section 4.052.

Section 4.051 PROFESSIONAL ARCHITECTURAL, ENGINEERING,
LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

1. Public Announcement. It is the policy of the City to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the City may require firms to submit a statement of qualifications, performance data and other related information for the performance of professional services.

(1) Scope of Project Requirements. Prior to submission of the request for proposals for professional as an agenda item for approval by the Commission, the Purchasing Officer shall submit to the City written project requirements indicating the nature and scope of the professional services needed, including but not limited to the following:

- (a) the general purpose of the services or study;
- (b) the objectives of the study or services;
- (c) estimated period of time needed for the services or the study;
- (d) the estimated cost of the service or study;
- (e) whether the proposed study or service would or would not duplicate any prior or existing study or services;
- (f) list of current contracts or prior services or studies which are related to the proposed study or service;
- (g) the described qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

(2) Distribution of Project Requirements. The Purchasing Officer shall distribute the written project requirements as approved by the City Commission to all persons on the mailing list who have indicated an interest in being considered for the performance of such professional services and to any additional persons as the Purchasing Officer or using agency deems desirable. The written project requirements shall include a statement of the relative importance of each of the requirements. The project requirements shall be accompanied by an Invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. This date shall not be less than fourteen calendar days from the date of public notice when the Purchasing Officer shall publish in at least one newspaper of wide general circulation in the region.

(3) Modification Prohibition. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection

Committee (defined in Section 4.051B) prior to making its selection of those best qualified to be formally interviewed.

(4) Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the City is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

2. Selection Committee Membership and Evaluation. Depending on the expected complexity and expense of the professional services to be contracted, the City may determine whether a three member or five member selection committee will best serve the needs of the Commission.

(1) Three Member Committee Composition. Membership of a three-member selection committee shall be appointed by the City Commission.

(2) Five Member Committee Composition. Membership of a five-member selection committee shall be appointed by the City Commission.

(3) Selection Committee Evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for Formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:

(a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and

(b) designate no less than three persons on the alphabetical list considered by the Selection Committee to be best qualified to perform the work required.

(4) Shortlisting. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determination may be based upon, but not limited to, the following considerations:

(a) competence, including technical educational and training, experience in the kind

of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and where applicable, the relationship of construction costs estimates by the person to actual cost on previous projects;

- (b) current work load;
- (c) financial responsibilities;
- (d) ability to observe and advise whether plans and specifications are being compiled with, where applicable;
- (e) record of professional accomplishments;
- (f) proximity to the project involved, if applicable;
- (g) record of performance; and
- (h) ability to design an approach and work plan to meet the project requirements, where applicable.

(5) Interview and Commission Approval. After conducting the formal interviews, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Commission for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

3. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing office unless the Commission President directs that negotiations be conducted by a Negotiation Committee.

Negotiation. The Purchasing office or the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the Negotiation Committee determines to be fair and reasonable to the City. In making this decision, the Purchasing Officer or the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As a part of the negotiation, the Purchasing Officer or the Negotiation Committee shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the Negotiations Committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The Purchasing Officer or the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the Negotiation Committee shall formally terminate negotiations, and then shall undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select

additional firms in order of their competence and qualifications, and the Purchasing Officer or Negotiation Committee shall continue negotiations in accordance with this section until an agreement is reached or until a determination has been made not to contract for services.

Section 4.052 OTHER COMPETITIVE SEALED PROPOSALS (non-287.055 services)

1. Conditions for Use. All contracts required by Section 5.05 to be awarded by competitive sealed proposals that are not for the procurement of professional architectural, engineering, landscape architectural, and land surveying services, will be awarded according to the provisions of this section.
2. Consultant's Competitive Negotiation Act. Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 4.051.
3. Commission Approval. Proposals anticipated to exceed the threshold established in Section 4 for Competitive sealed Proposals shall be approved by the City of Winter Garden prior to solicitation.
4. Public Notice. Adequate public notice of the Request for Proposal shall be given in the same manner as provided in subsection 4.04C of this policy for competitive sealed bidding.
5. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation.
6. Proposal Cancellation or Postponement. The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
7. Revisions and Discussions with Responsible Offerors. As provided in the Request for Proposals, and under regulations promulgated by the City Commission of the City of Winter Garden, discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The Purchasing Officer shall prepare a written summary of the proposals and make written recommendation of award to the City Commission. As a part of the recommendation, the Purchasing Officer shall conduct a

cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price.

8. Award. Award shall be made by the City Commission to the lowest responsible offer
9. or whose proposal is determined in writing to be the most advantageous to the City of Winter Garden, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal.

Section 4.06 SOLE SOURCE PURCHASES

1. Sole Source Certification. A contract may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Officer with the concurrence of the City Clerk, certifies in writing after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service equipment, or construction item(s). Such awards will be made within the authorized procurement limits. When a purchase exceeds five thousand dollars (\$5,000.00), the item will be placed on the agenda for the Commission to approval and clarification that the vendor has been determined to be sole source. When a purchase exceeds twenty five thousand dollars (\$25,000.00) it will require prior State Department of Economic Opportunity approval.
2. Additional Purchases from Certified Sole Source . The Purchasing Officer may be authorized, after initial sole source certification, to make additional purchases from a sole source vendor for not less than one year or until such time a contrary evidence is presented regarding sole source eligibility, whichever period is less.

Section 4.07 COOPERATIVE PURCHASING

1. State Contracts. The Purchasing Officer is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of Management Services, subject otherwise to the requirements of this policy.
2. Other Governmental Units. The Purchasing Officer shall have the authority to join other units of government in cooperative purchasing ventures when the best interest of the City would be served thereby, and the same is in accordance with this policy and with the City and State Law.

Section 4.08 BID PROTEST

1. Right to Protest. Any actual prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the City Commission. Protestors shall seek resolution of their complaints initially with the Purchasing Officer.

2. Filing a Protest. Any persons who is effected adversely by the decision or intended decision of the City shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of bid tabulation or after receipt of the notice of intended decision and file a formal written protest within 10 calendar days after he/she filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the City when it is delivered to and received in the office of the Purchasing Officer.
 1. The notice of protest shall contain at a minimum: the name of the bidder; the bidders address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
 2. The formal written protest shall; identify the protestant and the solicitation involved; include a plain, clear, statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds.
 3. The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.
3. Settlement and Resolution. The Purchasing Officer shall; within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.
4. Protest Proceedings. If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures:
 - (1) Protest Proceeding Procedures.
 - (a) The presiding officer shall give reasonable notice to all substantially affected persons or businesses. Otherwise petitions to intervene will be considered on their merits as received.
 - (b) At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, or affidavits, and arguments which he/she deems relevant to the issues raised.
 - (c) In the proceeding, the protestant, or his/her representative or counsel, may also make an oral presentation of his evidence and arguments. However,

neither direct nor cross examination of witnesses shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.

- (d) The judicial rules of evidence shall not apply and the presiding officer shall base his/her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
 - (e) Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation to the City Commission.
 - (f) Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.
- (2) **Intervenor.** The participation of intervenors shall be governed by the terms of the order issued in response to a petition to intervene.
- (3) **Time Limits.** The time limits in which protests must be filed as provided herein may be altered by specific provisions in invitation for bids or request for proposal
- (4) **Entitlement to Costs.** In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
5. **Stay of Procurement During Protests.** In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the City Commission makes a determination that the award of a contract without delay is necessary to protect the substantial interest of the City.

Section 4.09 CONTRACT CLAIMS

1. **Authority of the Purchasing Officer to Settle Bid Protests and Contract Claims.** The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the City Commission or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration of \$1,000.00 or greater in value without prior approval of the City Commission.
2. **Decision of the Purchasing Officer.** All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

3. Notice to the Contractor of the Purchasing Officer's Decision. The decision of the Purchasing Officer shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his appeal rights under Subsection D of this section.
4. Finality of the Purchasing Officer Decision; Contractor's Right to Appeal. The Purchasing Officer's decision shall be final and conclusive unless, within 10 calendar days from the date of receipt of the decision, the contractor files a notice of appeal with the City Commission.
5. Failure to Render Timely Decision. If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been issued.

Section 4.10 REMEDIES FOR SOLICITATION OR AWARDS IN VIOLATION OF LAW

1. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Officer after consultation with the City Attorney, determines that solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
2. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award contract, the Purchasing Officer after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
3. After Award. If, after award, the Purchasing Officer after consultation with the City Attorney, determine that a solicitation or award of a contract was in violation of applicable law or ordinance, then;
 - (1) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the City; or
 - (b) the contract may be terminated and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to termination; or

- (2) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interest of the City.

Section 5

CONTRACT ADMINISTRATION

Section 5.1 CONTRACT PROVISION

1. Standard Contract Clauses and Their Modification. The City after consultation with the City Attorney, may establish standard contract clauses for use in City contracts. However, the Purchasing Officer may, upon consultation with the City Attorney, vary any such standard contract clauses for any particular contract.
2. Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the City Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) the unilateral right of the City to order, in writing, changes in the work within the scope of the contract;
 - (2) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (3) variations occurring between estimated quantities or work in contract and actual quantities;
 - (4) defective pricing;
 - (5) time of performance and liquidated damages;
 - (6) specified excuses for delay or nonperformance;
 - (7) termination of the contract for default;
 - (8) termination of the contract in whole or in part for the convenience of the City;
 - (9) suspension of work on a construction project ordered by the City;
 - (10) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract
 - (a) when the contract is negotiated;
 - (b) when the contractor provides the site or design; or
 - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;
 - (11) value engineering proposals;
 - (12) remedies;
 - (13) access to records/retention records;
 - (14) environmental compliance; and
 - (15) prohibition against contingency fees;

- (16) insurance to be provided by contractor covering employee property damage, liability and other claims, with requirements of certificates of insurance and cancellation clauses;
- (17) bonding requirements as set by the City Commission;
- (18) causes of and authorization for suspension of contract for improper contractor activity.

Section 5.2 PRICE ADJUSTMENTS

1. Method of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the City:
 - (1) by agreement on a fixed price adjustment before adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) by unit prices specified in the contract or subsequently agreed upon;
 - (3) by costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the City;
 - (4) in such other manner as the contracting parties may mutually agree; or
 - (5) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, subject to the provisions of this Section.

2. Costs or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

Section 5.3 CHANGE ORDERS/CONTRACT AMENDMENTS

Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by an appropriate person based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Section 4.01 shall govern the appropriate level of approval.

Section 5.4 ASSIGNMENTS OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the City nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the City.

Section 5.5 RIGHT TO INSPECT PLANT

The City may, as its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performances of any contract awarded, or to be awarded, by the City. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the City.

Section 6 RIGHTS OF CITY COMMISSION

Nothing in this policy shall be deemed to abrogate, annul, or limit the right of the City Commission, in the best interest of the City to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for public good.

Section 7 CITY PROCUREMENT RECORDS

1. Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file.

2. Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules established by the State of Florida.

Section 8 SPECIFICATIONS

Section 8.1 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the City needs and shall not be unduly restrictive. The policy applies to all specifications including, but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

Section 8.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

1. Use. Brand name or equivalent specifications may be used when the City determines that:
 - (1) no other design, performance, or qualified product list is available;
 - (2) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) the nature of the product or the nature of the City requirements makes use of a brand name equivalent specifications suitable for the procurement; or
 - (4) use of brand name or equivalent specification is in the City's best interest.

2. Designation of Several Brand Names. Brand names or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state the substantially equivalent products to those designated may be considered for award.

3. Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.

4. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or

equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

5. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Officer. If sufficient information is provided by the prospective bidder, the Purchasing Officer may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
6. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

Section 8.3 BRAND NAME SPECIFICATIONS

1. Use of Brand Name Specifications. Since the use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item will satisfy the City needs.
2. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 4.10, Sole Source Purchases.

Section 9 ETHICS IN PUBLIC CONTRACTING

Section 9.1 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

Section 9.2 EMPLOYEE CONFLICT OF INTEREST

1. Participation. It shall be unethical for any City employee, officer, or agent to participate directly or indirectly in a procurement or administration of a contract. A conflict of interest would arise when:
 - (1) the City employee, officer or agent;
 - (2) any member of his immediate family;
 - (3) his or her partner; or

2. Non-employee Sanctions. The Commission may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:

- (1) written warnings;
- (2) termination of contracts; or
- (3) debarment or suspension as provided in Section 15.

Section 9.7 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

1. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a City employee or non-employee may be recovered from both the City employee and non-employee.
2. Recovery of Kickbacks by the City of Winter Garden. Upon a showing that a subcontractor made a kickback to prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such a kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 10 FEDERAL POLICY NOTICE

Section 10.1 PATENTS

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions:

1. Notice To Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or inventions arising out of the contract.
2. Notice By Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

Section 10.2 NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

1. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract may be subject to one or more federal public policy

requirements such as:

- (1) equal employment opportunity;
 - (2) affirmative action;
 - (3) fair labor standards;
 - (4) energy conservation;
 - (5) environmental protection; or
 - (6) other similar socio-economic programs.
2. Notice. The Purchasing Officer shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Officer shall include in the contract provisions the requirement that the contractor give similar notice to all of its subcontractors.

Section 11 PAYMENT TO VENDORS

All payment to vendors shall also in accordance with the amended "Prompt Payment Act", Chapter 89-297, Florida Statutes.

Section 12 MINORITY BUSINESS ENTERPRISE PARTICIPATION PROGRAM

1. Purpose and Scope. The purpose of the Minority Business Enterprise Program is to enhance the participation of qualified minority and women-owned businesses in providing goods and services and construction contracts required by the City Commission. This program describes procedures to accomplish this purpose and to monitor and evaluate progress. All Departments and Divisions under the jurisdiction of the City Commission are responsible for implementing this program.
2. Policy Statement.
 - (1) It is the policy goal of the City that two percent (2%) of the Commission approved procurement as contained with both operating and capital improvement budgets (exclusive of in-house services and construction) shall be identified and let through the competitive bid process to minority and women businesses and persons. The program is based on an in-depth evaluation of all actual as well as projected procurement (CIPs, equipment, commodities and services) and on the market place. Procurement identified to establish a base for this program is not limited to those items only. This evaluation is the main factor in building a realistic program with attainable targets.
 - (2) All department and divisions under the jurisdiction of the City Commission are responsible for implementing this program and for making every reasonable effort to utilize MBEs and WBE's when opportunities are available. The Purchasing Officer will take the lead role in this process by taking active steps to encourage minority or women owned businesses.

(3) Regarding the implementation of this policy, it is the City's intent to foster economic development in the City's area by establishing its MBE goals based on availability of minority and women-owned businesses located within the City. This is no way intended to limit or restrict competition. Rather, availability of area companies will be used to guide MBE goals. Such geographical preferences may be adjusted, amended or repealed by the City Commission, with or without a public hearing, as deemed necessary.

3. Definition. Minority Business Enterprise (MBE) as used herein, means a business that is owned and controlled at least 51% by one or more minority persons (MBE) or by one or more women (WBE) and whose management and daily operations are controlled by one or more such persons.

4. Administrative Responsibilities. The Purchasing Officer is responsible for the coordination of the Minority Business Enterprise Program and registration.

(1) Capital Improvement Projects

(a) REVIEW

The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs and report their finds to the City Commission. This review is based on known availability of capable MBE/WBEs in the area in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.

(b) PRE-BID ACTIVITY

(1) Language regarding the Minority Business Enterprise Program will be inserted into bid specifications to assure that prospective bidders are aware of a requirement to make good faith efforts to utilize MBE/WBEs.

(2) Registered MBE/WBEs, the Minority Contractors Association and other organizations for minority and women owned businesses will be notified in writing regarding pre-bid conferences where information on project scope and specifications will be presented, along with other types of technical assistance.

(3) Available plans and specification will be to MBE/WBE associations along with any special instructions on how to pursue bids.

(4) Majority (prime) contractors on a bid list will be sent a letter outlining the Minority Business Enterprise Program procedures, the supportive documentation required for submittal with their bid, and a list of MBE/WBE contractors on the bid list.

(5) No contractor will be awarded a bid until the contractor has provided specific detailed documentation on how MBE/WBEs will be utilized, and such a plan is approved by the City Commission.

(6) The MBE/WBE participation plan for a specific project and the contractor commitment to carry out the program will become a part of the contract awarded by the City. Failure to keep these commitments will be deemed noncompliance with the contract

and may result in a breach of contract.

(2) Contractor Responsibilities

(a) Contractors must indicate all MBE/WBEs, contracted for quotes regarding a particular scope of work and submit a completed “Intent to Perform” sheet containing information and documentation obtained from each MBE/WBEs.

(b) A contractor who determines that a MBE/WBEs, names in the bid submittal, is unavailable or cannot perform, will request approval from the Purchasing Officer to name an acceptable alternate. Such requests will be approved when adequate documentation of cause for the change is presented by the contractor.

(c) A contractor’s MBE/WBE plan will utilize MBE/WBEs to perform commercially useful functions in the work bid. A MBE/WBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work.

(d) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will submit a non-availability or refusal to participate and will request waiver of MBE/WBE participation.

(e) The contractor who is the successful bidder will attend pre-construction conferences with appropriate City representatives to review the project scope and the MBE/WBE utilization plan.

(f) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan. Change orders require Commission approval and are contingent on contractor documentation of MBE/WBE involvement in the change requested and documentation of cause for these changes.

(3) MBE/WBE Contractor’s Responsibilities

(a) MBEs/WBEs must register with the Purchasing Officer in order to participate in the Minority Business Enterprise Program.

(b) MBEs/WBEs should attend pre-construction conferences to obtain information and technical assistance on projects and bid procedures in which they (MBEs/WBEs) have submitted bids.

5. Joint Venture Responsibilities

(a) All joint ventures between minority and non-minority contractors must meet the “joint venture” definition included in the policy.

(b) The use by MBE/WBEs or prime contractors of “minority fronts” or other fraudulent practices which subvert the true meaning and spirit of the Minority Business Enterprise Program, will not be tolerated and may result in termination of participation.

(c) A joint venture consisting of minority and non-minority business enterprise will be credited with MBE/WBE participation on the basis of the percentages of the dollar amount of the work to be performed by the MBE/WBEs.

(d) Contracts subject to this policy shall contain provisions stating that liquidated damages may be assessed against the general contractor and/or the MBE/WBE specifications in the contract(s). Such liquidated damage provisions shall be in a form approved by the Commission.

6. Fulfilling MBE/WBE Participation Requirements

For the purpose of this policy, a general contractor may utilize the services of a MBE/WBE subcontractor, manufacturer, and/or supplier in estimating and satisfying the scope of work, provided that written contract/agreement is executed between the general contractor and the subcontractor, manufacturer, and/or the supplier.

7. Payment

(1) Payment will be expedited by the City Commission within thirty (30) days upon completion and acceptance of the project. Special consideration may be given to hardship cases upon notification by MBEs/WBEs.

(2) The City will provide work progress payments to all businesses at the completion and subsequent acceptance by Commission representatives within various stages of a particular project.

8. Waiver of Bid Bond Requirements.

The Commission may, at its discretion, waive any of the requirements of this Section when it is determined to be in the best interest of the City.

9. Bid List.

A bid list for the purpose of bid solicitations shall be maintained by the City. The list shall consist of firms that apply.

(1) The City may remove firms from the bid list for any of the following reasons:

(a) failure to consistently respond to bid invitations (three (3) consecutive instances) within the last eighteen month period; or

CITY OF WINTER GARDEN
HOUSING ASSISTANCE PLAN
REHABILITATION/REPLACEMENT/RELOCATION GUIDELINES
AND
GENERAL INFORMATION FOR PARTICIPANTS
FFY 2012 CDBG PROGRAM

I. GENERAL

This repository of information is to advise potential participants of the guidelines by which the City will operate its Community Development Block Grant (CDBG) program. These guidelines have been established to give a program overview and procedures to ensure compliance with the requirements established by the Florida Department of Economic Opportunity (DEO) and Federal Department of Housing and Urban Development (HUD). The information contained herein is subject to change upon action of DEO, HUD, or the City Commission.

It is illegal to discriminate on the basis of an individual's **RACE, CREED, COLOR, SEX, RELIGION, ETHNICITY, HANDICAP, AGE, NATIONAL ORIGIN, OR FAMILY STATUS**. Individuals in the City are also protected by the State's Fair Housing Act, Sections 760.20, 760.22, 760.23, and any amendments thereto.

The City Commission has established a Citizen's Advisory Task Force (CATF) to serve as an oversight committee for the City's CDBG program. This committee will meet as needed to ensure that the program is operating in accordance with all Local, State, and Federal requirements.

In order to qualify for the CDBG Housing program, the applicant must currently be the owner of the housing unit and occupy the housing unit proposed for rehabilitation or replacement as their primary residence.

The owner of the housing unit will be asked to give personal and financial information about themselves and their household to a representative of the City or the Housing Specialist in order to begin the application process. This information will be recorded and become a part of the applicant's file. The information provided must be accurate and true. The Housing Specialist, upon advice from the Citizen's Advisory Task Force, will use the information to ascertain if the applicant is eligible to participate in the CDBG Housing program.

The home of each applicant who qualifies for the CDBG housing program will be inspected by the Housing Specialist to determine the extent of rehabilitation that will be required to bring the residence within program guidelines. The applicant or their representative must be present while their home is being inspected and will be requested to provide input concerning their housing needs. The Housing Specialist will meet with a representative of the local Building Department to insure the local building code and housing code requirements related to addressing each structure will be met. The Housing Specialist will develop an inspection report based on the housing needs and estimate the costs necessary to bring each of the housing units up to the required minimum property standards. Additional bedroom space can only be provided as needed to ensure those household members in permanent residence do not share a bedroom with a member of the opposite sex, except husband and wife in addition no more than two individuals of the same sex

can occupy the same bedroom. The construction work on a dwelling will be completed by a state registered or certified contractor, under no circumstances may the contractor or his/her subcontractors be the owner of the residence, a relative of the owner of the residence or an occupant of the residence that is to be rehabilitated. Neither shall any of the aforementioned be paid for their own labor with CDBG funds for the rehabilitation of said residence.

The owner(s) of the residence will be required to sign certain documents before the construction process begins. These documents will outline the work to be performed on their property and give an estimate of the cost to address the improvements needed on the property. Construction will cause a certain amount of debris; however, every effort will be made by the contractor to leave the work site in a clean and orderly fashion. Work on the foundation and exterior of the dwelling may cause damage to shrubs and lawn ornaments around the dwelling. If possible, the owner of the property shall have all of these items moved prior to the time work is to begin. Although the contractor will be as careful as possible to protect the trees, shrubs and bushes located on the property, neither the City, Housing Specialist, nor the contractor will be responsible for any damage done to the trees, shrubs and bushes located on the property during the course of the construction, demolition or renovation.

II. OBJECTS OF PROGRAM

- A. To provide a Deferred Payment Loan (DPL) to very low income (up to 30% of Area Median Income) and low/moderate income (Up to 80% of Area Median Income) participants whose homes are in need of repair or replacement. Each housing unit considered for inclusion in the CDBG Housing program must contain a minimum of two violations pertaining to building code or HUD Section 8 Housing standards. (DPL is explained further in the financing section). The purpose is to bring the residence up to Section 8 Minimum Property Standards and/or the standards set forth in the Florida Housing Code currently adopted by the City.
- B. To improve the conditions of housing while maintaining housing costs at a level affordable to lower-income households; to provide a safe and sanitary dwelling.
- C. To reverse the physical deterioration of the community by providing a mechanism to allow for the rehabilitation of existing housing stock in a community. In no case shall the amount spent on the rehabilitation of a residence exceed 50% of the assessed value of that residence when the work has been completed.
- D. To eliminate slums and blight and provide a safer, more sanitary environment in which to live.

III. FINANCING

- A. The type of assistance which will be available to eligible applicants is known as a Deferred Payment Loan (DPL). A brief description of this program is presented below. Grants will not be utilized as a part of the CDBG Housing program.

Deferred Payment Loans: This type of loan will be available to eligible, approved homeowners. The DPL can be used in the owner-occupied rehabilitation program. The DPL will be secured by a lien on the property. The DPL payments will be deferred for a period of 10 years. The DPL will depreciate at the rate of 10% per full year. The DPL will be forgiven at the end of the 10 year period. If the owner sells or rents the property

or otherwise violates the terms of the mortgage at any time within the 10 year period, the remaining mortgage balance will be due and payable. This is done to assure that the applicant will occupy the residence and not sell or rent the property for 10 years after the rehabilitation of the dwelling has been completed.

IV. ELIGIBILITY

- A. Only those properties containing owner occupied conventionally built structures and mobile homes located within the City of Winter Garden will be considered for participation in the CDBG Housing program. No rental properties will be addressed under this project. Mobile homes built before December 31, 1996 will only be considered for replacement, not rehabilitation.
- B. Household income must be within the Section 8 income limit guidelines as published by the State of Florida and/or HUD for the region.
- C. No member of the City Commission, member of the CATF, employee of the City, or relatives of any of these as defined by HUD and Florida Statutes, shall be eligible for program participation unless they are granted a waiver by the Department of Economic Opportunity. The prohibition shall continue for one year after an individual's relationship with the City is terminated.

All applicants will receive a conflict of interest affidavit that will include a list of the names of all local City Commission members, CATF members and local government employees associated with decision making related to this program. The conflict of interest affidavit in addition will request if the applicant is related to any local government employees in general.

The local Commission, CATF members and local government employees associated with decision making related to this program will receive a conflict of interest affidavit with the list of names of all eligible applicants to determine if a possible conflict of interest exists.

The name of all eligible homeowners will be read aloud at a CATF meeting and City Commission meeting and all Board members shall publically acknowledge any relationship that could be a possible conflict of interest. Acknowledgment shall include the applicants name and how they are related.

If a potential conflict of interest is noted, it will be presented to the Department of Economic Opportunity and a determination or waiver will be obtained prior to the applicant receiving final approval.

A final list of all eligible applicants and their ranking will be presented to the CATF and the City Commission for final consideration and will be noted in the meeting minutes for public review.

- D. For a person with a potential conflict of interest to be eligible to participate in the program, the following steps must be taken:

1. The person(s) must declare on the application form/conflict of interest affidavit that a conflict of interest may exist.
 2. The potential conflict will be presented publically to the CATF and the task force must decide whether to recommend to the City Commission whether or not to proceed with requesting a waiver on the applicant despite the conflict of interest.
 3. The potential conflict will be presented publically to the City Commission and the City Commission must decide whether to proceed with requesting a waiver on the applicant despite the conflict of interest.
 4. If the person with whom the conflict of interest exists is a voting member of the City Commission or CATF, that person must declare a conflict of interest and not vote on the applicant.
 5. The City Attorney shall prepare a written document stating in his opinion proceeding with the rehabilitation or replacement of the applicant's residence would not violate any state or local law.
 6. A written request for waiver is sent by the City Commission to DEO for review and approval.
 7. If a waiver is obtained, the applicant would be placed on the potential client list with the other applicants for ranking as outlined herein.
- E. Priority will be given to applicants in the following order:
1. Very low income (30% of Median income) households will be given priority over low and moderate income (50% and 80% of Median Income) households.
 2. Low income (50% of Median income) households will be given priority over low and moderate income (80% of Median Income) households.
 3. Disabled and/or handicapped head of household.
 4. Head of Household is over 62 years of age.
 5. Households with large families (five or more).
 6. Households with small families (four or less).
- F. The geographic distribution of funds shall not be considered.
- G. To select participants in the Rehabilitation - Permanent Relocation Activity, the following steps will be taken:
1. A display ad will be placed in one or more local newspapers of general circulation advising local residents of the availability of grant funds and establishing a convenient time and place for interested residents to obtain information and pick up application forms to allow them to be considered for inclusion in the program. Applications will be accepted by the City for a minimum of twelve (12) calendar days after the display ad is placed in the newspaper.
 2. Local organizations who would normally work with clientele that could potentially qualify for the program shall be contacted and a list of possible

applicants obtained from each organization. This list will then be reviewed and contacts made to help potential applicants who qualify sign up for the program.

3. If a list is available, applicants who submitted an initial intake application as part of a previous CDBG Housing project carried out by the City and did not received assistance will be contacted and asked to submit an application for the current program.
4. Once a list of applicants is obtained, the Housing Specialist shall perform initial inspections on the housing units to determine which of the following categories each housing unit fall into:

For conventionally built structures and modular homes:

- a. Minor rehabilitation – the cost to correct all existing code violations is estimated at twenty thousand dollars (\$20,000.00) or less.
- b. Moderate rehabilitation – the cost to correct all existing code violations is estimated between twenty thousand and one dollars (\$20,001.00) and thirty-five thousand dollars (\$35,000.00).
- c. Major rehabilitation – the cost to correct all existing code violations is estimated between thirty-five thousand and one dollars (\$35,001.00) and fifty thousand dollars (\$50,000.00).
- d. Replacement housing – the cost to correct all existing code violations is estimated to exceed fifty thousand dollars (\$50,000.00) or, the cost to correct all existing code violations exceeds fifty percent (50%) of the appraised value of the property and based upon the local Building Departments direction the dwelling must be brought up to the current building code, or the housing unit is deemed structurally unsound and not feasible for rehabilitation.

For single-wide mobile homes built after 1996:

- a. Minor rehabilitation – the cost of correcting all existing code violations is estimated not to exceed five thousand five hundred dollars (\$5,000.00)
- b. Moderate rehabilitation – the cost to correct all existing code violations is estimated between five thousand and one dollars (\$5,001.00) and ten thousand dollars (\$10,000.00).
- c. Major rehabilitation – the cost to correct all existing code violations is estimated between ten thousand and one dollars (\$10,001.00) and fifteen thousand dollars (15,000.00)
- d. Replacement housing – the cost to correct all existing code violations exceeds fifteen thousand dollars (\$15,000.00) or, the single-wide mobile home is deemed structurally unsound and not feasible for rehabilitation.

For double-wide mobile homes built after 1996:

- a. Minor rehabilitation – the cost to correct all existing code violations is estimated not to exceed ten thousand dollars (\$10,000.00).
 - b. Moderate rehabilitation – the cost to correct all existing code violations is estimated between ten thousand and one dollars (\$10,001.00) and twenty thousand dollars (\$20,000.00).
 - c. Major rehabilitation – the cost to correct all existing code violations is estimated between twenty thousand and one dollars (\$20,001.00) and thirty thousand dollars (\$30,000.00).
 - d. Replacement housing – the cost to correct all existing code violations exceeds thirty thousand dollars (\$30,000.00), or the double-wide mobile home is deemed structurally unsound and not feasible for rehabilitation.
5. Applications containing income and owner CDBG information shall then be processed by the Housing Specialist on all potential participants. If the list of applicants exceeds the number of available units to be addressed in the Community Development Block Grant program, the applicant ranking order shall be recommended by the Housing Specialist and selected by the City Commission utilizing the criteria in Section IV (E) & (G) of these Guidelines.

H. In the event that changes in circumstances occur which are beyond the control of the City Commission to cause beneficiaries or structures to no longer be eligible, the Housing Specialist may pick alternates and recommend them to the governing body to replace those selected under Section IV (E) & (G). In all cases, it is understood the financial limitations associated with a Community Development Block Grant Housing program specifically addressing the number of units required to be completed under the activity and program contract shall be an overriding factor in determining which units shall ultimately be addressed.

V. ADMINISTRATIVE PROCEDURES FOR REHABILITATION/REPLACEMENT

- A. The Housing Specialist will make initial contact with the resident, explain the program, and provide a copy of the program guidelines.
- B. The Housing Specialist will take the information necessary to begin the application process including: household size, name of the property owner, ages of residents, and income, along with other additional information as may be required. The representative will verify all information including, but not limited to, the following:
 - 1. assets/liabilities
 - 2. mortgage
 - 3. taxes
 - 4. title search (O & E Report) – obtained from a licensed abstract company
 - 5. household income
 - 6. lot size
 - 7. zoning

C. The Housing Specialist will provide their recommendation to the designated City Staff for their review. The Housing Specialist will include the following items and any other information that may be necessary along with their recommendation:

1. Assigned case number
2. Name and address of applicant
3. Estimated cost of rehabilitation
4. Description of rehabilitation work
5. Source of household income
6. Size and description of household
7. Property title information
8. Legal description of property
9. Lot size

D. The Housing Specialist will review the aforementioned with City Staff and submit their recommendation to the City Commission. If an applicant feels that his/her case has been rejected by the City CDBG Coordinator for unjust reasons, the applicant may request that his/her case be submitted to the City Commission for review.

The Housing Specialist will provide the City Commission with the client's application data.

E. Approval: In receiving the recommendation for approval from the Housing Specialist, the City Commission will receive the following information:

1. Assigned case number
2. Name and address of applicant
3. Cost of rehabilitation
4. Size and description of household
5. Amount of the Deferred Payment Loan (DPL)
6. Legal description of property
7. Lot size
8. Date the City's Housing Specialist recommended the application
9. Additional information requested by the Commission

F. The Commission will, after review of the information, approve or deny the application and sign the appropriate documents.

VI. REHABILITATION GUIDELINES EXTENT OF REHABILITATION

A. In order for the program to commit funds to the rehabilitation of a unit, the following must be met:

1. The units eligible for rehabilitation must have all local housing code and/or Section 8 Housing Quality Standards (HQS) violations corrected.
2. The following "green" elements will be implemented with CDBG funds for all Housing units addressed under the program:
 - a. If available from a manufacturer, Energy Star rated appliances shall be used, when existing appliances are replaced or new appliances are installed.

- b. All replacement and newly installed doors and windows shall be energy star rated.
 - c. All replacement and newly installed lighting fixtures will be energy star rated.
3. All homes being rehabilitated with CDBG funds will receive at minimum the following Supplemental “Green Standards – Weatherization” items:
- a. The installation of attic insulation with a factor of R-30 or greater.
 - b. Housing units containing first floor wood or metal floor framing will receive floor joist insulation if sufficient access is available within the crawl space for installation of the materials.
 - c. The installation of new weather stripping around all attic access panels and existing doors leading to unconditioned areas.
 - d. The installation of new thresholds and door sweeps on all doors leading to unconditioned areas.
 - e. All exterior walls shall be properly sealed including cracks around windows, exterior faucets, plumbing, electrical boxes, settlement cracks and open joints.
 - f. All HVAC replacement units and new installations shall have a minimum SEER rating of 14.
4. The following components may be rehabilitated, replaced, or added as a part of the CDBG Housing program:
- a. Structural system
 - b. Electrical system
 - c. Plumbing system
 - d. Heating system
 - e. Windows
 - f. Insulation
 - g. Kitchen cabinets
 - h. Stove and refrigerator
 - i. Roofing system
 - j. Extra bedrooms (if required due to family size)
 - k. Handicap accessibility/ADA requirements
 - l. Weatherization elements
 - m. Green elements

VII. SIZE OF UNITS

- A. For owner-occupied structures: the final size of the housing unit will depend upon the size and condition of the existing structure and the size and makeup of the household. Those household members who are not the head of household or spouse and are over 18 years of age but under the age of 62 must provide documentation that they have occupied the residence for a minimum of 6 months prior to submitting an

application for CDBG housing rehabilitation assistance to be counted as eligible for a bedroom unless they have been certified as mentally or physically handicapped. Proof of disability will be required from an appropriate physician.

VIII. CONDITION OF REHABILITATION ASSISTANCE

- A. Maximum amount: The maximum amount of funds available for the rehabilitation of an individual housing unit will be the amount required to eliminate all code violations giving consideration to the average amount per structure in the application. This amount must conform with the extent of rehabilitation section and shall be brought to the City Commission for final approval. However, no rehabilitation shall exceed the amount of \$60,000 of CDBG funds unless specifically approved by the Housing Specialist and City Commission as exceeding the limits set out herein.
- B. Community Development funds are to be provided to or for the benefit of the owner(s) of the residential housing units to rehabilitate their home. Prior to beginning work on the property, the owner(s) will be required to sign a mortgage and promissory note in an amount equal to the cost of the work. This is called a Deferred Payment Loan (DPL) and shall be forgiven in 10 years. If the property is sold within that 10 year period, the owners will be required to repay any unforgiven portion of that note. However, if the owner dies within the 10 year period, the Commission will forgive the remaining portion of the note. The City Commission shall also retain the option to forgive the note in case of hardship.
- C. The purchase of Comprehensive Home Owners Insurance on the property will be required prior to the participant moving back into the residence. Comprehensive homeowners insurance must include fire, casualty and liability coverage. If the property is located in a designated flood zone, flood insurance for the property must also be obtained. All property insurance must be maintained until the Deferred Payment loan is satisfied.

IX. ELIGIBILITY CRITERIA FOR REPLACEMENT/RELOCATION

- A. For a unit to be eligible, the following criteria must be met:

The estimated cost of rehabilitating the housing unit must exceed fifty percent (50%) of the assessed value of the property. The cost of Lead Based paint inspection and abatement shall be included in calculating the rehabilitation cost.

X. REPLACEMENT HOME CRITERIA

- A. Once a participant has been deemed eligible for the Permanent Relocation program, he/she may have a conventionally built home placed on the property where the house is currently located.
 - 1. The construction of the new dwelling unit must meet all local building and zoning code requirements.

2. Home Construction award process will begin as follows:
 - a. The Housing Specialist will place a legal notice in a local newspaper to solicit interested contractors to participate in the program. (Contractors must be Licensed by the State of Florida, Department of Business and Professional Regulations and meet all local building department requirements and be to be eligible to obtain a building permit for the construction of the dwelling as a contractor).
 - b. The homeowner will choose a home layout as provided by the Housing Specialist that meets the program requirements.
 - c. The Housing Specialist will develop bid specifications that meet program requirements for the floor plan that was selected by the client.
 - d. The pool of pre-approved contractors will attend a mandatory pre-bid meeting and receive a bid package.
 - e. Sealed bids will be accepted from contractors until the bid deadline date and time.
 - f. A public bid opening will be held and the amount of the bids received will be read aloud.
 - g. Bids will be reviewed for completeness by the Housing Specialist and a recommendation of award will be presented to the City Commission. Recommended low bidder must have submitted a bid within fifteen percent (15%) of the Housing Specialists cost estimate.
 - h. The Winter Garden City Commission makes award for construction to the selected contractor.

XI. SIZE OF UNITS

- A. The size of each housing unit shall be determined based upon information provided by the permanent residents living in the existing housing unit based upon the following criteria:
 - ___ No more than two (2) persons of the same sex may occupy the same bedroom.
 - ___ Two (2) persons of the opposite sex may not occupy the same bedroom (excluding husband and wife or couples).
 - ___ Only the husband, wife, dependent children (including those who are mentally and/or physically handicapped of any age), adults over the age of 18 with documentation that they have resided in the residence for a minimum of 6 months prior to the owner submitting an application for assistance and family members 62 years of age or older and currently residing in the household will be counted in calculating family size and the minimum number of bedrooms and square footage allowance.

XII. SQUARE FOOTAGE ALLOWANCE

A. A displaced family will be eligible for the following replacement housing payment allowance:

Number of Bedrooms	Payment	Est. Square Footage
1 bedroom	\$60,000	800
2 bedrooms	\$67,000	900
3 bedrooms	\$75,000	1,000
4 or more bedrooms	\$86,000	1,150

XIII. CONSTRUCTION IN A FLOOD PLAIN

The finished floor elevation of any housing unit located within a flood zone addressed with CDBG funds as part of the City of Winter Garden’s CDBG Housing program must be at a minimum one foot (1’) above the established flood elevation for the property.

XIV. MOVING EXPENSES

This procedure will take place, if required, as follows:

The City, at the direction of the Housing Specialist, will provide to the head of household moving expenses totaling four hundred dollars (\$400.00). Two hundred dollars (\$200.00) will be provided to the head of household when the household moves their belongings from the existing dwellings to the central storage location, and two hundred dollars (\$200.00) will be provided to the head of household when the household moves their belongings from the central storage location back to the housing unit that has been rehabilitated or replaced.

The head of household will certify they accept full responsibility for moving all of their belongings.

The City at the direction of the Housing Specialist will provide the head of household with off-site storage for the belongings and furnishings in the dwelling. The head of household will be responsible for moving the furniture out of the existing dwelling into the storage unit; and moving their belongings from the storage unit back to the housing unit after the housing unit has been rehabilitated or replaced. In addition the head of household will supply their own lock for the storage unit and shall remove all items from the storage unit and sweep out the storage unit prior to submitting for the moving expense for relocating into the rehabilitated or new housing unit. All of the items must be removed from the storage unit and the storage unit cleaned prior to the moving expense allowance for the second move being approved by the Housing Specialist.

XV. TEMPORARY RELOCATION ALLOWANCES

Temporary Relocation assistance will only be provided to families who vacate the rehabilitated residence to facilitate the rehabilitation.

It is the homeowner’s responsibility to find alternate housing for all occupants of the residence during the construction phase of the project. The City will offer monthly utility allowances of one hundred dollars (\$100.00) for families of one or two persons and monthly utility allowances of

one hundred fifty dollars (\$150.00) for families with three or more members. These CDBG funds will be provided by the City to the participant to offset the increase in utilities of the friends, private homes, other family members, etc. that are supplying temporary housing. The participating family will be responsible for packing and unpacking all of their belongings.

Neither the City nor the Housing Specialist will be responsible for any items lost, stolen, or damaged during the temporary relocation process. The applicants shall be encouraged to make satisfactory arrangements to secure family valuables.

XVI. CONDITION OF REHABILITATION/REPLACEMENT ASSISTANCE

- A. Maximum amount: The maximum amount of funds available for the replacement of a specific property will be the amount specified in Section XII of the Housing Assistance Plan, giving consideration to the average amount per structure in the application. This amount must be in compliance with the extent of rehabilitation section of the Housing Assistance Plan and shall be brought to the City Commission for final approval. However, the cost of a replacement structure shall not exceed the amount specified in Section XII of the Housing Assistance Plan unless specifically recommended by the City Housing Specialist and approved by the City Commission.
- B. Community Development funds are to be provided to or for the benefit of the owner(s) of the residence to rehabilitate/replace their home. Prior to beginning work on the property, the owner(s) will be required to sign a mortgage and promissory note in an amount equal to the cost of the work. This is called a Deferred Payment Loan (DPL) and shall be forgiven in 10 years. If the property is sold within that 10 year period, the owners will be required to repay any unforgiven portion of that note. However, if the owner dies within the 10 year period, the City will forgive the remaining portion of the note. The City Commission shall also retain the option to forgive the note in case of hardship.
- C. The purchase of Comprehensive Home Owners Insurance and Flood Insurance, if the property is located in a designated flood zone, will be required prior to the participant moving back into the residence. Comprehensive Home Owner's Insurance and Flood Insurance, if required, shall be maintained on the property, by the property owner, until the Deferred Payment Loan is satisfied.

XVII. LEVERAGING CDBG FUNDS WITH OTHER FUNDS

Where feasible the program will combine the following funds sources:

- A. Weatherization funds
- B. SHIP funds

XVIII. OPERATIONAL PROCEDURES FOR THE REHABILITATION AND/OR REPLACEMENT PROGRAM

- A. The Housing Specialist will place a legal notice in a local newspaper to solicit interested contractors to participate in the program. (Contractors must be licensed by the State of Florida, Department of Business and Professional Regulations and must either be State Certified or state Registered and meet all local building department requirements. The contractor must be properly licensed to obtain a permit from the local building department to either construct a new residence or rehabilitate an existing residence.
- B. After verification of the participant's eligibility, the property will be inspected by both the Housing Specialist and the home owner. Upon completion of the inspection, a rehabilitation work write-up or demolition/replacement bid specifications will be completed.
- C. Before the work is advertised for bid, the Housing Specialist and the participants will meet to review all the information associated with the rehabilitation or replacement of their dwelling unit, to insure the participant has a full understanding of the program and wants to participate.
- D. The documents are then dated and signed by the participants.
- E. The work is then advertised for bid. Bidding is limited to pre-qualified contractors licensed by the State of Florida, Department of Business and Professional Regulation and who have pre-qualified in an opened, advertised prequalification process.

Documents shall be included in the bid package wherein the contractor shall agree in writing that any change orders for rehabilitation or reconstruction of a housing unit that are being paid with CDBG funds and cumulatively exceed one thousand dollars (\$1,000.00) above the original contract amount, shall only be paid with CDBG funds if those change orders are to correct documented code violations, health and safety items or items required to bring the residence up to Section 8 Housing Standards.

Additionally, the contractor shall agree in his bid and contract, if awarded, that all change orders for housing rehabilitation or reconstruction shall be approved by the owner of the housing unit or his or her representative, the contractor, Housing Specialist, and a representative of the local government prior to any initiation of additional work based on said change order.

All pre-qualified bidders will be notified of bid solicitations. The bids will then be received and tabulated. The low bid, if within 15% above or below the Housing Specialists estimate, will then be presented to City staff for review and the Housing specialists recommendations will then be submitted to the City Commission for approval. The City Commission can approve the bid from a qualified low bidder if the bid is below 15% of the cost estimate, if the City Commission feel the bid price is justified.

- F. Should the bid be higher than the acceptable range, the residence will be re-bid.
- G. The contract will be awarded to the lowest acceptable bidder.

- H. The successful contractor will have 72 hours from the date of notification to produce all necessary licenses and insurances. Should the contractor fail to perform in accordance with the bid or be unable to produce the necessary licenses and insurances, the City Commission will, at its discretion, award the contract to the next lowest bidder or have the work re-bid.
- I. When the contract has been successfully awarded, the participant may be required to temporarily relocate out of their residence.
- J. The participant will move and store their belongings. (See Temporary Relocation Guidelines for details.)
- K. After the participant has vacated the dwelling unit, the contractor receives a Notice to Proceed (further information is contained in the construction contract and construction specifications) and the Notice of Commencement is recorded.
- L. The house is then rehabilitated in accordance with the rehabilitation standard specifications, the Florida Building Code, and the work write-up. At each draw request, a partial waiver, final waiver, or release of liens is required prior to payment.
- M. The Housing Specialist in cooperation with the local building official will inspect the residence at various times during the project, particularly at the time of each draw request.
- N. The Housing Specialist does not have the authority to supersede the building inspector, but may require stricter compliance in some areas. As a rule, the most stringent requirement will prevail.
- O. Upon completion of the project, the local building inspector will issue a Certificate of Occupancy or similar document verifying that the housing unit meets applicable local codes. The contractor is required to submit to the Housing Specialist a request for final payment including the following information:
 - (1) a waiver or release of liens from the prime contractor
 - (2) a waiver or release of liens from all material suppliers, subcontractors, persons, or organizations that may have supplied material or labor to carry out the job or have an investment in the job as a result of the work performed
 - (3) a statement from the contractor that all items in the initial work write-up as modified through the approved change order(s) has been completed.
- P. The applicant inspects the work and is requested to sign a work acceptance statement. The work acceptance statement shall include language that the work write-up has been completed based upon the work write-up and approved change orders. Should all requirements be fulfilled and the homeowner or their representative refuse to acknowledge completion of the work, the housing unit case file shall contain a statement detailing the stated reason for said refusal.

Copies of the applicant's work acceptance or detailed explanation for refusal of the acceptance shall be included in the administrative closeout package submitted to the state at the conclusion of the project.

Note: In the event of any disputes between the participants and the contractor concerning the completion of the rehabilitation work, the Housing Specialist shall work with both parties in an attempt to negotiate a satisfactory solution. If a solution cannot be arrived at, Article II of the construction contract shall be invoked.

Q. The Housing Specialist shall indicate in writing that the completed housing unit meets the applicable local code and Section 8 Housing Quality Standards.

R. The participant is given notice to move back to their residence.

S. The Housing Specialist will conduct a sixty (60) day inspection of the residence to ensure that all improvements are still in good working order.

Note: Periodic inspections will be made by the Housing Specialist to ensure that the terms of the contract between the City and the participants are being maintained.

XIX. PARTICIPANT NOTIFICATION PROCEDURES

When a previously approved housing unit is deleted by the Housing Specialist or City Commission from the list of proposed homes for rehabilitation or replacement, the City shall notify the owner of said housing unit by certified mail that their unit is being deleted and the specific reason for this deletion.

XX. COMPLAINT PROCEDURES

A. Complaints concerning the Community Development Block Grant Program shall be submitted in writing and addressed to the Program Administrator. The City will have fifteen (15) days to respond. Additional information is available in the Grievance Procedure for the City's CDBG grant program.

XXI. PERMANENT RELOCATION

With the exception of the demolition/relocation program, where the owner of a dilapidated structure received a payment for a replacement structure and the existing structure is removed, no existing housing units that have the potential to be occupied by low and moderate income households will be demolished or converted to non-low moderate income housing as a part of this project.

XXI. LOCAL TRASH NUISANCE, ENVIRONMENTAL OR HEALTH CODE ORDINANCES

Prior to approval of any residential dwelling unit for final inclusion in the program all local trash, nuisance, environmental, or health code violations that will not be addressed as part of the Community Development Block Grant or CDBG programs must be eliminated.

XXIII. LEAD BASED PAINT POISONING

IN NO INSTANCE SHALL LEAD BASED PAINT BE UTILIZED IN THE REHABILITATION OF A STRUCTURE. If a dwelling was constructed before 1978, there is a possibility it may contain lead-based paint. All properties built before 1978, not being replaced, will be tested for lead-based paint by a certified lead testing organization prior to bidding the rehabilitation of the dwelling. Where lead-based paint is found, removal and/or abatement procedures by a licensed lead abatement contractor will be included in the rehabilitation bid specifications for the housing unit based upon the lead based paint inspection report and required abatement procedures. If the rehabilitation of the dwelling is found to be feasible after bidding out the work to be addressed, a clearance test will be performed by the licensed lead based paint inspector prior to final acceptance of the rehabilitation. No owner will be approved for occupancy of any lead abated home rehabilitated with CDBG funds until a clearance has been obtained from the pre-approved lead inspector. The housing unit owner will be provided literature pertaining to lead-based paint poisoning and the dangers of lead by the Housing Specialist.

XIV. HISTORICAL STRUCTURES

The Housing Specialist will utilize the Counties Property Appraisers Records to determine the age of the home. Information on all structures being considered for inclusion in the CDBG Rehabilitation or Permanent Relocation Activities that are more than 50 yrs of age will be supplied to the Department of State, Division of Historical Resources for review and comment prior to approval by the City.

XV. SITE SPECIFIC ENVIRONMENTAL REVIEWS

A Site Specific Environmental Review will be developed by the Housing Specialist for each property being considered for inclusion in the CDBG Housing Program. The Site Specific Environmental Review shall be submitted to DEO for review and approved by DEO prior to the execution of the contract for the rehabilitation or replacement of the residence.

XVI. REHABILITATION RECORDS

Note: Housing rehabilitation documentation will be completed prior to grant ending date and submittal of closeout. The following data will be provided by housing unit and summarized by activity as part of the administrative closeout for each activity providing direct benefit:

- a. Address of each housing unit rehabilitated with CDBG funds, the date the construction was completed on the housing unit, and the amount of CDBG funds spent on that housing unit.
- b. If the housing unit has a female head of household, the number of handicap people occupying the household, the number of elderly people occupying the household and the household income status -VLI or LMI
- c. The number of occupants in the household, categorized by sex
- d. The racial demographics of the household by number (White, Black, Hispanic, Asian/Pacific Islander, or American Indian/Alaskan Native).

ADOPTED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA
THIS _____ DAY OF _____. 2012.

County of Orange

BY: _____
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: August 15, 2012

Meeting Date: August 23, 2012

Subject: **Oakland Park Trail Crossing Easement**
Resolution 12-12

Issue: Request approval of Resolution 12-12, which authorizes the City Staff to apply for an easement on the West Orange Trail from the State.

Discussion:

The proposed trail crossing easement on the West Orange Trail will provide a public road connection to access public spaces and residences north and south of the trail at the Oakland Park subdivision, as well as for accessibility of fire and emergency vehicles. There will be no restriction on use as it will be a public right-of-way. The proposed easement of 100' width is requested for a term equivalent to the lifetime of the community. Utilities underlying the easement may include water, reuse, force main, and other necessary utilities to serve the neighborhood. Oakland Park has an existing crossing constructed and two other approved but not yet constructed, all three adopted by City Commission on November 10, 2005 with Resolution 05-22.

Recommended Action:

Staff recommends adoption of Resolution 12-12.

Attachment(s)/References:

Resolution 12-12

RESOLUTION 12-12

A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, REQUESTING FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA A NON-EXCLUSIVE EASEMENT UNDER, OVER, AND UPON A PORTION OF THE WEST ORANGE TRAIL FOR THE PURPOSES OF ACCESS, DRAINAGE, UTILITIES, ROADWAY, AND OTHER PUBLIC USES, PROVIDING FOR AN EFFECTIVE DATE. (Oakland Park Trail Easement Acceptance)

WHEREAS, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the “State”) is the owner of that certain real property described on Exhibit “A”, attached hereto and incorporated herein by this reference (the “Easement Property”); and

WHEREAS, the City of Winter Garden, Florida (the “City”), desires an easement over, under and upon the Easement Property for the following purposes: providing access, drainage, utilities, construction of a roadway, and other public uses; and

WHEREAS, the State has agreed to grant an easement over, under and upon the Easement Property in favor of the City for said purposes, provided the City enters into an easement agreement with the State, providing for, inter alia, maintenance of the Easement Property; now, therefore,

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

SECTION 1. The foregoing recitals are true and correct and are incorporated herein.

SECTION 2. The City requests the grant of an easement over, under and upon the Easement Property from the State for the purposes set forth in the recitals above and further the City agrees to negotiate in good faith and enter into an easement agreement with the State, providing for, inter alia, maintenance of the Easement Property, with such terms and conditions as are acceptable to both the State and the City.

SECTION 3. This resolution shall take effect immediately upon its final adoption by Winter Garden City Commission.

PASSED AND RESOLVED this _____ day of _____, 2012, by the City Commission of the City of Winter Garden, Florida.

CITY OF WINTER GARDEN

ATTEST:

John Rees, Mayor/Commissioner

Kathy Golden, City Clerk

EXHIBIT "A"

SKETCH OF DESCRIPTION

DESCRIPTION:

THAT PART OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF TRACT F5, OAKLAND PARK UNIT 1B-1A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 76, PAGES 8 THROUGH 10, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING A POINT ON THE SOUTH LINE OF THE WEST ORANGE TRAIL AS DESCRIBED IN PARCEL 109C OF OFFICIAL RECORDS BOOK 5577, PAGE 1483, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S68°15'00"W ALONG SAID SOUTH LINE, 142.40 FEET TO THE POINT OF BEGINNING; THENCE RUN N21°45'00"W, 40.00 FEET TO THE NORTH LINE OF THE WEST ORANGE TRAIL; THENCE RUN S68°15'00"W ALONG SAID NORTH LINE, 100.00 FEET; THENCE RUN S21°45'00"E, 40.00 FEET TO THE SOUTH LINE OF THE WEST ORANGE TRAIL; THENCE RUN N68°15'00"E ALONG SAID SOUTH LINE, 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,000 SQUARE FEET OR 0.092 ACRES MORE OR LESS.

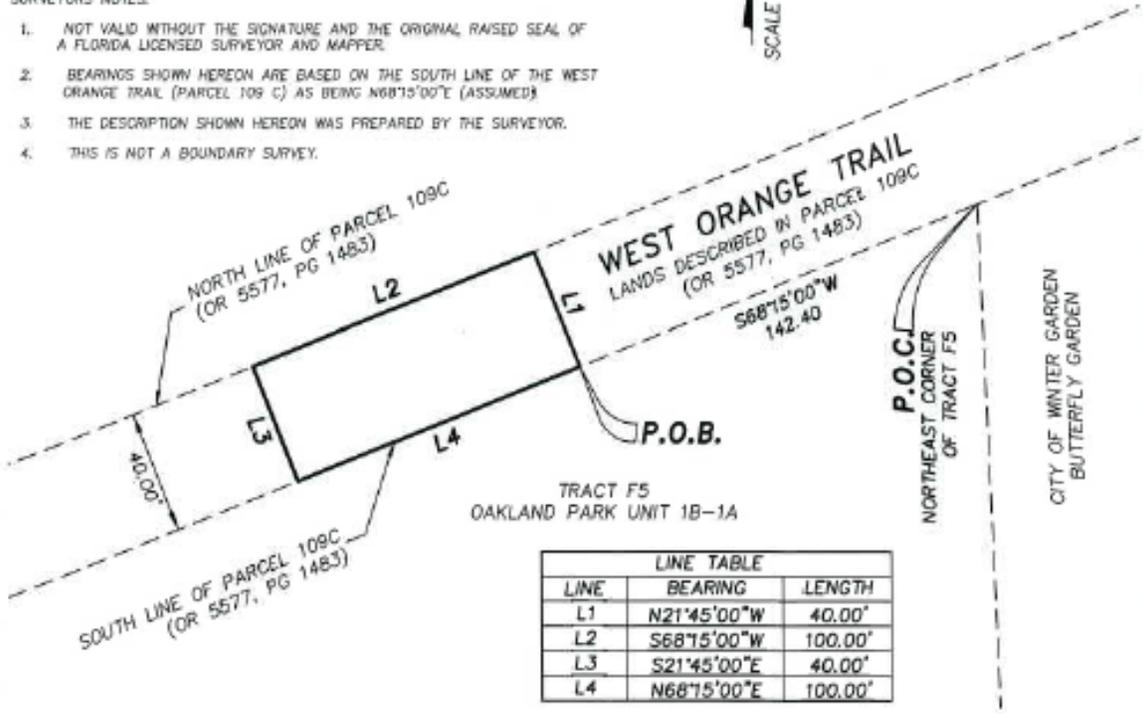
SURVEYORS NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF THE WEST ORANGE TRAIL (PARCEL 109 C) AS BEING N68°15'00"E (ASSUMED)
3. THE DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
4. THIS IS NOT A BOUNDARY SURVEY.

LEGEND:

L.B.	LICENSED BUSINESS
P.S.M.	PROFESSIONAL SURVEYOR & MAPPER
OR	OFFICIAL RECORDS BOOK
PG	PAGE
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT

SCALE 1"=50'



LINE TABLE		
LINE	BEARING	LENGTH
L1	N21°45'00"W	40.00'
L2	S68°15'00"W	100.00'
L3	S21°45'00"E	40.00'
L4	N68°15'00"E	100.00'

JOB NUMBER: 08025.015

SURVEY DATE: 05/21/12
 FIELD BY: N/A
 FIELD BOOK: N/A
 PAGES: N/A
 FIELD FILE: N/A

DRAWING FILE: 08025-15.DWG

ARON D. BISHMAN, P.S.M. FLORIDA REGISTRATION NO. 3668

20 S. MAIN ST, STE 210
 WINTER GARDEN, FL 34787
 Phone No. 407.905.8577
 www.bishmansurveying.com

BISHMAN
SURVEYING
 AND
MAPPING, INC.

CERTIFICATE OF AUTHORIZATION LB 7274

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: **August 15, 2012**

Meeting Date: August 23, 2012

Subject: Oakland Park
Amendment to Developer's Agreement

Issue: The Oakland Park Planned Unit Development Ordinance 05-26 was amended by Ordinance 12-08, which was adopted January 26, 2012. Ordinance 12-08 stipulated that the Oakland Park Developer's Agreement be amended and that Ordinance 12-08 would become effective upon recording of such amendment to the Oakland Park Developer's Agreement.

The Amendment to the Developer's Agreement addresses owner/developer proportionate fair share of costs of improvements to Plant Street/Oakland Avenue/Tildenville School Road intersection improvements and recreation impact fees.

Recommended Action:

Approval of the Amendment to the Oakland Park Developer's Agreement

Attachments/References:

Amendment to the Oakland Park Developer's Agreement

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

DANIEL W. LANGLEY, ESQ.
FISHBACK DOMINICK
1947 LEE ROAD
WINTER PARK, FLORIDA 32789

AMENDMENT TO DEVELOPER'S AGREEMENT
(Oakland Park PUD)

THIS AMENDMENT TO DEVELOPER'S AGREEMENT ("Amendment") is entered into this ___ day of _____, 2012 by and between CITY OF WINTER GARDEN, a Florida municipal corporation ("City") and Castle & Cooke Florida, LTD., a Florida limited partnership (the "Developer").

RECITALS:

WHEREAS, City and Developer entered into that certain Developer's Agreement dated January 26, 2006 and recorded February 22, 2006 at Official Records Book 8492, Page 3431, of the Public Records of Orange County, Florida ("Agreement"); and

WHEREAS, Developer desires to and has sought amendment of the PUD Plan for the Subject Property described in the Agreement and City of Winter Garden Ordinance 05-26 allowing for: (a) the mixture of lot sizes, (b) revisions to the phasing and amenity schedule, and (c) construction of an additional 35 dwelling units within the Oakland Park Project all of which is more particularly described in and approved by City of Winter Garden Ordinance 12-08 adopted on January 26, 2012;

WHEREAS, this Amendment is a requirement of Ordinance 12-08 and the executing and recording of this Amendment will make Ordinance 12-08 effective in accordance with Section 4 of Ordinance 12-08;

WHEREAS, Ordinance 05-26, as modified by Ordinance 12-08 remains effective;

WHEREAS, City and Developer desire to enter into this Amendment to amend certain terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The above referenced recitals are true and correct and hereby incorporated into this Amendment.
2. **Ordinance 12-08.**

References in Paragraph 2 and 6 of the Agreement to “Ordinance 05-26” shall be revised to read “Ordinance 05-26 as amended by Ordinance 12-08.”

3. **Notices.**

The address and contact information for the City in Section 19 of the Agreement is hereby replaced with the following:

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

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

The address and contact information for the Developer in Section 19 of the Agreement is hereby replaced with the following:

Developer: John F. Rinehart
Castle & Cooke Florida, Ltd.
15241 East Oakland Avenue
Winter Garden, FL 34787
Telecopy: (407) 656-9120

With a copy to:
Asma & Asma, PA
C. Nick Asma Esquire
884 S Dillard Street
Winter Garden Florida 34787
Telecopy (407) 656-0486

With a copy to:
Mark Jones, Esq.
Jones & Beardsley, P.C.
10,000 Stockdale Highway, Suite 350
Bakersfield, CA 93311
Telecopy: 661-664-2904

4. **Roadway Improvements.**

Subsection (b) of Paragraph 44 of the Agreement regarding "Connection of Motamassek Street" is hereby deleted from the Agreement and replaced with the following:

"(b) Plant Street/Oakland Avenue/Tildenville School Road Intersection. In order to support the development of the Subject Property and other future development in the area, it is necessary to improve the Plant Street/Oakland Avenue/Tildenville School Road Intersection in the future with the following improvements (the "Intersection Improvements"):

- i. Eastbound (two lane approach)
 - A. Combination Left/Thru Lane
 - B. Separate Right Turn Lane
- ii. Southbound (single lane away)
 - A. One-way northbound away movement
- iii. Westbound (two lane approach)
 - A. Separate Left Turn Lane
 - B. Combination Right/Thru Lane
- iv. Northbound (two lane approach)
 - A. Combination Left/Through Lane
 - B. Separate Right Turn Lane

A portion of the costs of the design, engineering, permitting, installation, construction, provision, testing, inspection and completion of the Intersection Improvements shall be borne by the Developer. The total cost of the Intersection Improvements is estimated to be \$258,854.00 in March 2011 dollars. City and Developer agree that Developer's fair share allocation for the Intersection Improvements is and shall be 16.02% of the total cost of the design, engineering, permitting, installation, construction, provision, testing, completion and inspection of the Intersection Improvements ("Intersection Fair Share Payment"), which fair share allocation is estimated to be \$41,459.07 in March 2011 dollars. The Developer acknowledges and agrees that the Intersection Fair Share Payment is proportionate to the impacts of the development of the Subject Property on the Plant Street/Oakland Avenue/Tildenville School Road Intersection and that the Intersection Improvements provide a direct benefit to the Project and the Subject Property. The Developer shall pay the Intersection Fair Share Payment to the City upon the earlier of (i) prior to the issuance of the 175th residential building permit for the Project and Subject Property, and (ii) thirty (30) days after the City gives Developer written notice of the commencement of the construction of the Intersection Improvements. The City shall have the right to withhold the issuance of permits and approvals, along with other remedies the City may have, in order to enforce Developer's timely compliance with the Intersection Fair Share Payment requirement."

5. **Recreational Impact Fee Credits.**

Subsection (c) of Paragraph 28 of the Agreement is amended to add the following sentences to the end of said subsection that reads as follows:

“Due the substantial amenities being provided by the Project, beginning August 24, 2012, Developer shall receive a fifty percent (50%) impact fee credit on recreational impact fees due on each residential dwelling unit and such credit shall be applied on a unit by unit basis when the recreational impact fee is due under the City Code. Developer shall not receive recreational impact fee credits for any residential dwelling units issued building permits or certificate of occupancies prior to August 24, 2012.”

6. **Ratification.** Except as expressly modified and amended hereby, the Agreement remains in full force and effect and is ratified and confirmed by City and Developer.

7. **Recording.** This City shall record this Amendment in the Public Records of Orange County, Florida, and the cost thereof shall be borne by the Developer.

“CITY”

ATTEST:

CITY OF WINTER GARDEN, FLORIDA

By: _____
KATHY GOLDEN, CITY CLERK

By: _____
JOHN REES, MAYOR

Signed, sealed and delivered in the presence of:

“DEVELOPER”

**CASTLE & COOK FLORIDA, LTD., A
FLORIDA LIMITED PARTNERSHIP**

Print Name: _____
Witness

By: Castle & Cooke California, Inc., a
California corporation, its General Partner

Print Name: _____
Witness

JOHN F. RINEHART
Title: VICE PRESIDENT

STATE OF FLORIDA
COUNTY OF _____:

The foregoing instrument was executed and acknowledged before me this ___ day of _____, 2012 by JOHN F. RINEHART as VICE PRESIDENT of Castle & Cooke California, Inc., a California corporation, the General Partner of CASTLE & COOKE FLORIDA, LTD., a Florida limited partnership, on its behalf. 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: _____

S:\AKA\CLIENTS\WINTER GARDEN\CLOSED WG\OAKLAND PARK PUD W500-20636\FIRST AMENDMENT TO DEVELOPER AGREEMENT 08-15-2012.DOC

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: **August 16, 2012**

Meeting Date: August 23, 2012

Subject: Hickory Hammock
Amendment to Developer's Agreement

Issue: The Hickory Hammock Developer's Agreement was approved by City Commission on June 26, 2007 and amended by the 1st Amendment to the Hickory Hammock Developer's Agreement on April 9, 2009. This proposed amendment to the Hickory Hammock Developer's Agreement amends and restates the Developer's Agreement.

Recommended Action:

Approval of the Amendment to the Hickory Hammock Developer's Agreement

Attachments/References:

Amended and Restated Hickory Hammock 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

Parcel Identification # 33-22-27-0000-00-003

HICKORY HAMMOCK
AMENDED AND RESTATED DEVELOPER'S AGREEMENT

THIS AMENDED AND RESTATED DEVELOPER'S AGREEMENT (this "Agreement" or "Restated Agreement") is made this ____ day of _____, 2012, by and between the CITY OF WINTER GARDEN, FLORIDA, a Florida municipality (the "City") and IOTA HICKORY HAMMOCK, LLC, a Delaware limited liability company (the "Developer").

RECITALS:

- A.** The Developer is the current owner in fee simple of that certain real property generally located on the Northwest corner of Avalon Road and Hartwood Marsh Road in Winter Garden, Orange County, Florida, being more particularly described on **Attachment "A"** (the "**Subject Property**"); and
- B.** The Subject Property is zoned PUD, Planned Unit Development, and subject to Winter Garden Ordinance No. 06-05 (the "PUD Ordinance"); and
- C.** The Developer desires to develop the Subject Property as a residential subdivision to be known as Hickory Hammock consisting of a total of not more than 500 residential units (109 townhomes / single family attached units and 391 single family detached units) and related amenities and infrastructure (the "**Project**"); and
- D.** City and Developer's predecessor in interest entered into that certain Hickory Hammock Developer's Agreement dated June 26, 2007 and recorded June 27, 2007 at Official Records Book 9324, Page 4396, et. seq. of the Public Records of Orange County, Florida ("Developer's Agreement"); and
- E.** On April 9, 2009, City and Developer's predecessor in interest entered into that certain First Amendment to Hickory Hammock Developer's Agreement recorded April 27, 2009, at Official Records Book 9863, Page 5755, et. seq., of the Public Records of Orange County, Florida ("First Amendment") (hereinafter, the Developer's Agreement and First Amendment shall be collectively referred to as the "Developer's Agreement"); and

- F.** In order to facilitate development of the Project, the Developer has established the Hickory Hammock Community Development District (the “CDD”); and
- G.** The Developer’s predecessor in interest committed multiple defaults under Developer’s Agreement; and
- H.** City and Developer enter into this Restated Agreement in order to address and correct the defaults under the Developer’s Agreement, to address changes in circumstances, and to confirm to Developer that all prior defaults under the Developer’s Agreement are cured by this Restated Agreement and Developer’s continued compliance therewith; and
- I.** 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
- J.** 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 infrastructures, stormwater drainage, sanitary sewer, potable water, police, and fire will be substantial given the infrastructure needs generated by the Project; and
- K.** Development of the Subject Property at the intensity and configuration of the Project 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
- L.** 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
- M.** 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
- N.** In light of the foregoing, the Developer is willing to pay a proportionate fair-share of the cost of planning, designing, permitting and constructing the improvements required by this Agreement which serves or will serve not only the Subject Property but other area properties as well and such improvements as required by the approvals of the Project; and

- O. 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 installation of potable water mains, sanitary sewer mains, reclaimed water mains and other improvements more particularly described herein; and
- P. The 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 current design requirements established by the City; and,
- Q. The City and the Developer desire to enter into this Agreement to memorialize certain promises, agreements, covenants and expectations pertaining to the public infrastructure improvements, the development of the Project and Subject Property, and other matters as provided for herein;
- R. This Restated Agreement amends and restates all provisions of the Developer's Agreement and supersedes any provisions therein.

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, 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. The Developer shall revise and resubmit for City review and approval subdivision construction plans compliant with current City of Winter Garden Code of Ordinance standards and requirements, so that the Project will be constructed in accordance with current standards and requirements.

The Project shall provide, at the Developer's expense, a cross access connection roadway ("Cross Access") with the property having Orange County Tax Identification # 05-23-27-0000-00-005 and # 05-23-27-0000-00-008 located west of and adjacent to the Subject Property (the "Cra-Mar Property") owned by Cra-Mar Groves, Inc. ("Cra-Mar"), which meets code standards and requirements, and Developer shall convey or grant such property interests or easements as are needed to authorize legal cross access between the Cra-Mar Property and the Subject Property through the Project's roadways to and from public rights-of-way. The proposed Cross Access and related instruments to provide for legal cross access as described above shall be submitted to the City for review and approval. The Cross Access connection may be gated by Developer and shall only be required to be open to the residents of the Cra-Mar Property if a mutual agreement can be reached between Developer and Cra-Mar or their respective successor and assigns. Successors and assigns of Developer as used in this section relating to Cross Access

shall only refer to any party taking title to the Subject Property who develops the Subject Property or is considered the “declarant” or “developer” in recorded covenants, conditions, and restrictions for the Subject Property or the homeowners association for the Subject Property after the homeowner’s association is turned over to the residents. The Cross Access connection shall provide access for police, fire, ambulance, and other emergency vehicles and services.

3. Project Amenities/Order of Development. The Developer shall construct, at its sole cost and expense, all of the amenities for the Project, including, but not limited to, the clubhouse, parks, boardwalks, gazebos, pools, spa, playground, picnic areas, open fields, two tennis courts, basketball court, volleyball court, landscaping, and related facilities shown on the approved preliminary plat and subdivision construction plans (collectively the “Amenities”) as part of the development of the Project, which Amenities are more particularly described in the PUD Ordinance, and the overall master plan attached hereto as **Attachment B** and the Amenity Description and Schedule attached hereto as Attachment C and incorporated herein by this reference. The Project’s two (2) proposed community docks shall be included within the Amenities at such time as the necessary City and SJRWMD permits and approvals have been obtained. Maintenance responsibility for the Amenities shall be provided by the homeowners’ association (“HOA”). The detail design plans for the Amenities shall be subject to approval by the City and shall be submitted to the City prior to issuance of the first building permit for the Project. The Amenities shall be substantially consistent in all material respects with the elevations and designs as may be approved by the City, a copy of which shall be retained by the City’s Community Development Director in the offices of the City Community Development Director and which plans shall be incorporated herein by this reference.

Developer shall have completed the Amenities on or before the issuance of certificates of occupancies in accordance with Attachment “C”. It shall be a condition of final plat approval that Developer shall provide or shall cause its contractor to provide a performance bond in favor of, and acceptable to, the City and Developer in the amount of 120% of the contract cost of the Amenities. The Amenities and land upon which said Amenities are constructed shall be conveyed to and maintained by the HOA prior to issuance of certificates of occupancy in accordance with Attachment “C”. Access to and use of the Amenities shall be afforded to all unit owners within the Subject Property, subject to applicable covenants, conditions, and restrictions imposed on the Subject Property. Unless otherwise provided for herein or during the final plat approval process for the last construction phase, all open space shall be conveyed to said HOA, which shall be responsible for the management and maintenance of said open space. Adjustments in the order of development or as to the Amenities to be constructed or developed or the maximum number of residential units may occur upon approval by the City Commission.

4. Master Surface Water Management System. The Project shall include a “Master Surface Water Management System” that is designed, constructed and implemented upon the Property to control discharges caused by rainfall events and to collect, convey, drain, store, absorb, inhibit, treat, use or reuse water in order to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, and to control the quality and quantity of discharges from the system, all as permitted by the St. Johns River Water Management District (the “District”) pursuant to Chapter 40C-4, 40C-40, 40C-42, Florida Administrative Code, and District Permit Number 4-095-80357-2. The Master Surface Water

Management System includes all land, easements and other facilities and appurtenances that together constitute and comprise the Master Surface Water Management System as reflected on the plan attached hereto as **Attachment “D.”** The HOA shall own and be responsible for maintenance of the Master Surface Water Management System.

5. Avalon Road Sewer Force Main & Potable Water Main. The City is currently in the process of causing the procurement, installation and construction of: (i) an eighteen inch (18”) sanitary sewer force main from the point of connection on Avalon Road (a.k.a. County Road 545) and continuing along the entire frontage of the Subject Property along Avalon Road and connecting to the terminus of the sewer force main near the Johns Lake Pointe development, with stubouts for intervening parcels (the **“Avalon Sewer Force Main”**); and (ii) a twelve inch (12”) diameter potable water main that will connect with the existing ten inch (10”) water main that runs along Avalon Road and extends the water main along the entire Avalon Road frontage of the Subject Property to the existing water main located north of the intersection of Avalon Road and Marsh Road (the **“Avalon Water Main”**). The Avalon Sewer Force Main and Avalon Water Main are to be installed and constructed in accordance with the City’s Code, regulations, applicable plans and permits, policies and requirements. Said route is depicted on the approved construction plans and **Attachment “E”**, attached hereto and made a part hereof.

The parties acknowledge and agree that the design, permitting, procurement, installation and construction of the Avalon Sewer Force Main and Avalon Water Main benefits the Subject Property and the Project and that the Developer is required to pay its fair share for the cost of the design, permitting, procurement, installation and construction of such improvements. The parties acknowledge and agree that the full length and size of the Avalon Water Main is necessary to serve the requirements of the Project, and as such, Developer is responsible for the full cost to design, permit, procure, install and construct the Avalon Water Main. Further, the parties acknowledge and agree that the following sewer force main requirements along Avalon Road are necessary to serve the needs of the Project: (i) two thousand six hundred fifty feet (2,650’) of eight inch (8”) diameter force main, and (ii) three thousand two hundred ten feet (3,550’) of ten inch (10”) diameter force main; however the City is oversizing the Avalon Sewer Main for its entire length from the forgoing diameters to a diameter of eighteen inches (18”) to serve both the needs of the Project and the needs of other properties in the area. The Developer shall be responsible for the cost of the design, permitting, procurement, installation and construction less the additional direct material costs associated with the Oversizing of such force main to eighteen inches (18”). Developer’s share of the cost of the design, permitting, procurement, engineering, installation and construction of the Avalon Sewer Force Main and Avalon Water Main is hereinafter sometimes referred to as the “Avalon Utility Mains Fair Share.”

Upon the City executing a contract with a contractor for the installation and construction of the Avalon Sewer Force Main and Avalon Water Main, the City shall have the right to invoice Developer for and the Developer shall pay within thirty (30) days of delivery of the invoice, an amount equal to the Avalon Utility Mains Fair Share based on the construction contract price plus the design, permitting and procurement costs of the Avalon Sewer Force Main and Avalon Water Main incurred or estimated to be incurred by the City. Further, during the course of the construction of the Avalon Sewer Force Main and Avalon Water Main, if change orders related

to construction of such improvements are approved by the City, the City shall have the right to invoice Developer for and the Developer shall pay within thirty (30) days of delivery of the invoice, an amount equal to one-hundred percent (100%) of the change order(s) approved by the City related to the installation and construction of the Avalon Sewer Force Main and Avalon Water Main; provided, however, the City shall provide Developer with a minimum 10 days' advance notice prior to approving such change orders. Within thirty (30) days after final completion of such improvements, the City will refund to the Developer any amounts paid by Developer in excess of amounts required to be paid under this Section 5. Further, in the event the total installation and construction costs exceed the amount previously paid by the Developer to the City, upon final completion of the Avalon Sewer Force Main and Avalon Water Main, the City shall have the right to invoice and Developer shall pay within thirty (30) days of delivery of such invoice, an amount equal to the deficiency between the amounts required to be paid by the Developer under this Section 5 and the amounts previously collected from the Developer.

No certificate of occupancies shall be issued for or concerning the Project unless and until the Avalon Utility Mains Fair Share is paid in full by the Developer to the City and the Project is connected to potable water, sewer and reclaim water utility services.

6. Marsh Water Main.

A. Marsh Water Main Described. As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to the Developer's receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer shall diligently pursue the design, permitting, installation, engineering, procurement, construction and completion of a sixteen inch (16") diameter potable water main along the entire Marsh Road frontage of the Subject Property and extending to and connecting with the existing potable water main on Marsh Road close to the property boundary of the Subject Property and the Zion Evangelical Lutheran Church, Inc. property (the "**Marsh Water Main**"). Said Marsh Water Main shall be designed, permitted, installed and constructed in accordance with the City's Code, regulations, policies and requirements and in accordance with construction plans to be approved by the City. Said route is depicted on **Attachment "F,"** attached hereto and made a part hereof. Developer shall be responsible for the full cost of the Marsh Water Main. The parties acknowledge that the design, permitting, installation and construction of the Marsh Water Main are an obligation of the Developer and that the Developer desires to assume such obligation for its own purposes and benefit and provide for its design, permitting, engineering, installation and construction as part of this Agreement.

B. Construction by Waterside. However, either Developer or the City may elect to cause the completion of the Marsh Water Main to occur earlier than required under this Section 6 through an agreement with the developer/owner of the Waterside on Johns Lake UVPUD property described in Ordinance 12-29 ("Waterside"), and thereafter Waterside shall become an intended third party beneficiary of this Section 6 for the purposes of enforcing its right to obtain reimbursement from Developer as set forth herein. In the event such option is selected and Waterside constructs the Marsh Water Main, Developer shall be responsible for reimbursing Waterside directly for the full cost of the design, permitting, procurement, engineering, installation and construction cost of the Marsh Water Main. If Developer or City elects to have

Waterside cause the construction of the Marsh Water Main, upon Waterside's written notice to Developer that Waterside has commenced construction of the Marsh Water Main, Developer shall deposit into an escrow account held by an escrow agent, the full estimated cost of the Marsh Water Main, but said deposit is not to exceed \$118,000. Upon final completion of the Marsh Water Main, the escrowed deposit shall be released from escrow and applied towards the actual costs of the Marsh Water Main and, additionally, Developer is required to make a true-up payment to Waterside within thirty (30) days of invoicing to cover any deficiency between the actual cost incurred for the Marsh Water Main and the estimated cost escrowed by Developer. Similarly, if Developer's escrowed deposit amount exceeds the Marsh Water Main actual cost, the excess shall be refunded to Developer contemporaneously with Waterside receiving its reimbursement. Even though both the Developer and City have the option of allowing Waterside to install and construct the Marsh Water Main, the Developer remains fully responsible to cause the completion of Marsh Water Main to occur since such improvement is necessary for the development of the Subject Property.

C. Construction by City. In the event the Cra-Mar Property or any other property is in need of the Marsh Water Main for development purposes before Developer can commence and complete the construction of the Marsh Water Main, the City may elect to self perform or otherwise cause to be performed the design, permitting, installation, engineering, procurement, construction and completion of Marsh Water Main by giving written notice of such to Developer. If the City elects to construct or cause the construction of the Marsh Water Main, upon City's written notice to Developer that a notice to proceed for construction of the Marsh Water Main has been issued, Developer shall deposit with the City the full estimated cost of the Marsh Water Main, but said deposit is not to exceed \$118,000. Upon final completion of the Marsh Water Main, the deposit shall be applied towards the actual costs of the Marsh Water Main and, additionally, Developer is required to make a true-up payment to the City within thirty (30) days of invoicing to cover any deficiency between the actual cost incurred for the Marsh Water Main and the estimated cost deposited by Developer. Similarly, if Developer's deposit amount exceeds the Marsh Water Main actual cost, the excess shall be promptly refunded to Developer. Even though the City has the option of constructing the Marsh Water Main as described in this section, the Developer remains fully responsible to cause the completion of Marsh Water Main to occur since such improvement is necessary for the development of the Subject Property.

D. Completion. Upon completion of the Marsh Water Main, the Developer (or Waterside, if Waterside causes the construction to occur) 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 (or Waterside, if Waterside causes the construction to occur) shall execute and deliver to the City: (i) invoices for construction costs of the Marsh Water Main, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Marsh Water 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 Marsh Water 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 Marsh Water Main. The Marsh Water Main

shall be deemed completed upon the satisfaction all of the conditions of this Section 6 (“**Marsh Water Main Completion**”).

E. Certificates of Occupancy. No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Marsh Water Main Completion, whether performed by Developer, Waterside, or City. Upon the occurrence of Marsh Water Line Completion, the City will take over operation and maintenance of the Marsh Water Line.

7. Reclaimed Water Line.

A. Reclaimed Water Line Described. As part of the Developer’s construction of the site infrastructure for the first phase of the Project subsequent to the Developer’s receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer shall diligently pursue the design, permitting, installation, engineering, procurement, construction and completion of a twelve inch (12”) diameter reclaimed water line along the entire Marsh Road frontage of the Subject Property and connecting with and extending east past the dry reclaimed water line segment fronting the Zion Church property along Marsh Road and continuing to and connecting with the existing reclaimed water main along Avalon Road (CR 545) near the intersection of Marsh Road and Avalon Road (the “**Reclaimed Water Line**”). Said Reclaimed Water Line shall be designed, permitted, installed and constructed in accordance with the City’s Code, regulations, policies and requirements and in accordance construction plans to be approved by the City. Said route is depicted on **Attachment “F,”** attached hereto and made a part hereof. Developer shall be responsible for the full cost of the design, permitting, installation and construction of the Reclaimed Water Line. The parties acknowledge that the design, permitting, installation and construction of the Reclaimed Water Line are an obligation of the Developer and that the Developer desires to assume such obligation for its own purposes and benefit and provide for its design, permitting, engineering, installation and construction as part of this Agreement.

B. Construction by Waterside. However, Developer or the City may elect to cause the completion of the Reclaimed Water Line to occur earlier than required under this Section 7 through an agreement with Waterside, and thereafter Waterside shall become an intended third party beneficiary of this Section 7 for the purposes of enforcing its right to obtain reimbursement from Developer as set forth herein. In the event such option is selected and Waterside constructs the Reclaimed Water Line, Developer shall be responsible for reimbursing Waterside directly for the full cost of the design, permitting, procurement, engineering, installation and construction cost of the Reclaimed Water Line. If Developer or City elects to have Waterside cause the construction of the Reclaimed Water Line, upon Waterside’s written notice to Developer that Waterside has commenced construction of the Reclaimed Water Line, Developer shall deposit into an escrow account held by an escrow agent, the full estimated cost of the Reclaimed Water Line, but said deposit is not to exceed \$132,000. Upon final completion of the Reclaimed Water Line, the escrowed deposit shall be released from escrow and applied towards the actual costs of the Reclaimed Water Line and, additionally, Developer is required to make a true-up payment to Waterside within thirty (30) days of invoicing to cover any deficiency between the actual cost incurred for the Reclaimed Water Line and the estimated cost escrowed by Developer. Similarly, if Developer’s escrowed deposit amount exceeds the Reclaimed Water Line actual

cost, the excess shall be refunded to Developer contemporaneously with Waterside receiving its reimbursement. Even though both the Developer and City have the option of allowing Waterside to install and construct the Reclaimed Water Line, the Developer remains fully responsible to cause the completion of Reclaimed Water Line to occur since such improvement is necessary for the development of the Subject Property.

C. Construction by City. In the event the Cra-Mar Property or any other property is in need of the Reclaimed Water Line for development purposes before Developer can commence and complete the construction of the Reclaimed Water Line, the City may elect to self perform or otherwise cause to be performed the design, permitting, installation, engineering, procurement, construction and completion of Reclaimed Water Line by giving written notice of such to Developer. If the City elects to construct or cause the construction of the Reclaimed Water Line, upon City's written notice to Developer that a notice to proceed for construction of the Reclaimed Water Line has been issued, Developer shall deposit with the City the full estimated cost of the Reclaimed Water Line, but said deposit is not to exceed \$132,000. Upon final completion of the Reclaimed Water Line, the deposit shall be applied towards the actual costs of the Reclaimed Water Line and, additionally, Developer is required to make a true-up payment to the City within thirty (30) days of invoicing to cover any deficiency between the actual cost incurred for the Reclaimed Water Line and the estimated cost deposited by Developer. Similarly, if Developer's deposit amount exceeds the Reclaimed Water Line actual cost, the excess shall be promptly refunded to Developer. Even though the City has the option of constructing the Reclaimed Water Line as described in this section, the Developer remains fully responsible to cause the completion of Reclaimed Water Line to occur since such improvement is necessary for the development of the Subject Property.

D. Completion. Upon completion of the Reclaimed Water Line, the Developer (or Waterside, if Waterside causes the construction to occur) shall have the City Engineer inspect such improvements and obtain a certificate of completion from the City Engineer for such improvements. As a condition precedent to receiving a certificate of completion from the City Engineer, the Developer (or Waterside, if Waterside causes the construction to occur) 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 the satisfaction all of the conditions of this Section 7 ("**Reclaimed Water Line Completion**").

E. Certificates of Occupancy. No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Reclaimed Water Line Completion, whether performed by Developer, Waterside, or the City. Upon the occurrence of Reclaimed Water Line Completion, the City will take over operation and maintenance of the Reclaimed Water Line.

8. Marsh Road and Avalon Road Right-of-Way & Utilities Easement. As a condition of approval of the PUD Ordinance, there was a requirement to convey a portion of the Subject Property to the City for additional Marsh Road and Avalon Road right-of-way and a grant a 15-foot wide utility easement over and upon the Subject Property adjacent to Avalon Road (the “Right-of-Way Property”). The Developer and City acknowledge that the Developer’s predecessor in interest satisfied such conditions by execution and delivery of that certain Warranty Deed recorded on September 11, 2009 at Official Records Book 9932, Page 7973 et. seq., Public Records of Orange County, Florida, and the Utilities Easement recorded July 17, 2009 at Official Records Book 9903, Page 7625, et. seq, Public Records of Orange County, Florida. The Developer nor Developer’s predecessors, 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 such Right-of-Way Property to the City.

9. Marsh Road Improvements/Fair Share Payment.

A. Marsh Road Improvements. In order to support the development of the Subject Property and other new developments in the area, it is necessary to improve and widen Marsh Road to four lanes from the Marsh Road/Avalon Road (C.R. 545) intersection to the Subject Property and along the Subject Property’s entire Marsh Road frontage, including a ten foot bike trail on the north side of Marsh Road, streetlights, turn lanes, drainage improvements, and a divided median/urban sections across the Project frontage as depicted on the attached **Attachment “G”** and improve the Marsh Road/Avalon Road intersection and its signalization, (hereinafter collectively referred to as the “**Marsh Road Improvements**”). The parties acknowledge and agree that the Marsh Road Fair Share Payment set forth in this Restated Agreement shall be paid pursuant to the terms of this Section 9. The City shall have complete and exclusive authority over the design, engineering, permitting, procurement and construction of the Marsh Road Improvements, including the right to construct such improvements in phases and the City makes no warranties or representations concerning the commencement and completion time for such improvements. The Developer, at its sole expense, may conduct a traffic study to analyze whether the full extent of the Marsh Road Improvements are needed to support the traffic generated by the Project and surrounding developments and submit such report to the City for review and consideration for potential amendment to the Marsh Road Improvements under this Agreement.

B. Fair Share Allocation. A study by the City was conducted to identify the developments having traffic impacts to Marsh Road (the “Marsh Road Study”) and such study has determined that the Project and the adjacent developments have significant traffic impacts on Marsh Road. A portion of the costs of the design, engineering, permitting, installation, construction, provision and completion of the Marsh Road Improvements shall be borne by the Developer and Subject Property.

The Developer’s share of the Marsh Road Improvement cost is calculated based upon Developer’s/Subject Property’s portion of the total frontage along the Marsh Road Improvements, measured in linear feet. Due to the non-profit status of Zion Evangelical Lutheran Church, Inc. (“Zion Church”) and the timing and nature of the Zion Church project on Marsh Road, the

Developer and other adjacent developments and City are contributing monies towards mitigating the impacts of the Zion Church project. According to the Marsh Road Study the development of the Subject Property causes a certain percentage of the impacts on Marsh Road. City and Developer agree that Developer's fair share allocation is 25.6929% of the total actual cost of the design, engineering, permitting, installation, construction, provision, testing, completion and inspection of the Marsh Road Improvements, plus \$85,279.00 for Developer's share of the road frontage for Zion Evangelical Lutheran Church, Inc.'s property on Marsh Road (collectively the "**Marsh Road Fair Share Payment**"). The estimated cost for the design, engineering, permitting, installation, construction, provision, testing, completion and inspection of the Marsh Road Improvements is \$4,800,000 ("Cost Estimate") Therefore, based on the Cost Estimate, the Marsh Road Fair Share Payment is estimated to be ONE MILLION THREE HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED THIRTY-EIGHT DOLLARS (**\$1,318,538.00**).

The Developer acknowledges and agrees that the Marsh Road Fair Share Payment is proportionate to the impacts of the development of the Subject Property on Marsh Road and the Marsh Road/C.R. 545 intersection and that the Marsh Road Improvements provide a direct benefit to the Project and the Subject Property.

C. Fair Share Payment. The Developer shall pay the Marsh Road Fair Share Payment to the City on or before the earlier of (i) prior to the issuance of any certificates of occupancy for Phase II of the Project and Subject Property (or 261st dwelling unit), and (ii) thirty (30) days after the City provides Developer written notice of the City's intent to commence construction of the Marsh Road Improvements, or any portion thereof. If the actual cost of the Marsh Road Improvements is not known at the time the Marsh Road Fair Share Payment is due, the Developer shall pay the City the estimated amount of \$1,318,538.00 set forth in subsection 9. B. Thereafter, when the actual cost of the Marsh Road Improvements becomes known after the completion of the Marsh Road Improvements, if the actual costs of such improvements exceeds the Cost Estimate the Developer shall be responsible for reimbursing the City for the difference between what the Marsh Road Fair Share Payment should be based on actual Marsh Road Improvement costs incurred versus the estimated amount Developer paid to the City (the "Differential Amount"). Upon completion of the Marsh Road Improvements, the City shall have the right to invoice Developer for the Differential Amount, and such shall be paid in full by Developer to the City on or before sixty (60) days after the date of said invoice.

Similarly, if the actual cost of the Marsh Road Improvements is less than the Cost Estimate and the Developer paid the City the \$1,318,538.00 set forth in subsection 9. B, the City shall reimburse the Developer the difference between the estimated Marsh Road Fair Share Payment amount Developer paid to the City and what the Marsh Road Fair Share Payment should be based on actual Marsh Road Improvement costs within sixty (60) days after final completion of Marsh Road Improvements.

In the event Developer fails to timely make the Marsh Road Fair Share Payment (including without limitation, the Differential Amount), Developer shall have no right to proceed with any portion of the Project and the City may withhold any and all approvals, permits and certificate of occupancies relating to the Project and/or place a stop work order on any construction activities related to the Project.

D. Potential Transportation Impact Fee Credits. The City is considering the elimination or substantial reduction of the CR 545 Special Benefit Overlay District Impact Fee adopted by City Ordinance 06-40 (the “CR 545 Impact Fee”). If at the time Developer pays the Marsh Road Fair Share Payment, the CR 545 Impact Fee has not been eliminated or reduced by fifty percent (50%) or more from the amount of such fee in effect on the Effective Date of this Restated Agreement, Developer shall be entitled to a general transportation impact fee credit in an amount equal to seventy-five percent (75%) of the Marsh Road Fair Share Payment (“Transportation Impact Fee Credits”). The Transportation Impact Fee Credits shall be credited towards general transportation impact fees required for the Project.

10. Lift Stations. Prior to the issuance of a certificate of occupancy related to any building associated with any particular phase within the Project, the Developer, at Developer’s sole cost, shall design, permit, locate, install and construct, in accordance with City regulations, the City’s required number of lift stations of sufficient size and capacity to accommodate the anticipated sanitary sewer flow requirements of the specific phase at issue (the “Lift Stations”). Prior to final completion of the Lift Stations, the Developer shall provide, at Developer’s cost, the City Public Services Department with one (1) permanent and two (2) portable generators of a size and voltage to be determined by the City at final plan review.

Upon completion of the Lift Stations, 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 Stations, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Lift Stations 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 Stations have 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 Stations, after the City Engineer certifies that the Lift Stations are properly constructed, (v) a warranty deed conveying the Lift Stations tracts 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 Stations tracts over a reasonable portion of the Subject Property. The Lift Stations shall be deemed completed upon Developer satisfying all of the conditions of this Section 10 (“**Lift Stations Completion**”). No certificates of occupancy shall be issued for the applicable Project phase until the occurrence of Lift Station Completion. Upon the occurrence of Lift Stations Completion, the City will take over operation and maintenance responsibility of the Lift Stations.

11. Plan Approval. Plan Approval. The City shall have final approval of all plans, calculations, designs, locations and specifications for the foregoing Marsh Water Main, Reclaimed Water Line and Lift Stations (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 incurred 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.

12. Utility Improvements.

(a) The development of the Subject Property must connect to the City's potable water, reclaimed water, and wastewater facilities at the Developer's expense. 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 has obtained partial water and sewer capacity for the Project [see Section 30(b)] and Developer shall obtain water and sewer capacity through the City's established reservation procedures for remaining units. The Project, if developed in accordance with the applicable provisions of the PUD Ordinance and this Restated 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.

13. Sidewalks. Prior to the issuance of a certificate of occupancy related to any residential unit associated with the Project, the Developer shall construct or 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. As a condition of receiving a certificate of completion for Project site infrastructure improvements within a phase, the Developer shall construct sidewalks along all common areas within such phase, as is generally depicted on **Attachment "H."** Initially, as a condition of receiving a certificate of completion for Project site infrastructure improvements and prior to issuance of a certificate of occupancy to any residential unit associated with the Project, based on construction plans to be approved by the City, the Developer shall either: (i) at its expense, construct sidewalks along the Project's entire frontage of Avalon Road (five-foot width) and Marsh Road (ten-foot width), or (ii) Developer shall contribute to the City's sidewalk fund in an amount equal to the estimated construction cost of the aforementioned required sidewalks along the Avalon Road and Marsh Road roadways. If the Developer elects to make a contribution to the City's sidewalk fund in lieu of construction, the Developer's contribution to the sidewalk fund is be reviewed by and approval for such amount obtained from the City Engineer.

14. 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.

15. Phasing. The Project will be developed in two (2) phases, as shown on **Attachment “I.”** However, the City may authorize development of the Project in additional phases through the final plat approval process.

16. 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 Section 16 (**“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 operation and maintenance responsibility of the Internal Utility Lines.

17. Community Subdivision Infrastructure Improvements. Developer shall provide all bonds covering the community subdivision infrastructure improvements required by the City’s Code of Ordinances, as such may be amended from time to time. 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 Subject Property/Project. The Developer shall have maintenance responsibility for the community subdivision infrastructure improvements until homeowner’s association turnover occurs. Until turnover of the HOA occurs, Developer shall ensure that HOA accounts concerning the operation, replacement, repair and maintenance of community subdivision infrastructure improvements shall be established and adequately funded in accordance with the requirements of Chapter 110, City of Winter Garden Code of Ordinances, as such may be amended from time to time.

18. PUD Ordinance. In accordance with the PUD Ordinance and § 118-830, City of Winter Garden Code of Ordinances, the PUD Ordinance and its associated preliminary development plan expires on September 30, 2012 (**“PUD Expiration Date”**), unless the Developer satisfies the following prior to the PUD Expiration Date, either: 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). Developer intends to seek an extension of the PUD Expiration Date from the City in accordance with § 118-829, City of Winter Garden Code of Ordinances, after the Effective Date of this Restated Agreement.

19. Sessions Road Construction Cost Reimbursement. Developer, as the successor in interest to Hickory Hammock, FL, LLC, remains subject to and bound by the requirements of the Sessions Property Tri-Party Road Construction Agreement recorded on August 16, 2010 at Official Records Book 10090, Page 4202, et. seq., Public Records of Orange County, Florida (the “Sessions Road Agreement”) including for the reimbursement of the remaining unbilled portion of the Road Construction Costs as defined in the Sessions Road Agreement. The City acknowledges receipt of \$2,460,276.67 from the Developer towards the Road Construction Costs, thus, Developer’s remaining maximum reimbursement obligation for Road Construction Cost is \$81,180.40.

20. 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.

21. 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.

22. 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.

23. 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: IOTA HICKORY HAMMOCK, LLC
c/o Sabal Financial Group, L.P.
Attn: Pat Jackson
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
Fax: (888) 611-9030

Sabal Financial Group, L.P.
Attn: Maureen Connaughton, General Counsel
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
Fax: (888) 611-9030

Gibraltar Asset Management Services, LLC
Attn: Michael Greiner
250 Gibraltar Road
Horsham, Pennsylvania 19044
Telephone: (215) 938-8393
Fax: (215) 938-5240
E-mail: mgreiner@gibraltarcapital.net

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.

24. 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, except as otherwise provided herein.

25. Entire Agreement. This Restated Agreement supersedes and replaces the Developer's Agreement and First Amendment. This Restated 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 Restated 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.

26. 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.

27. Binding Effect and Successors. This Restated Agreement shall run with the Subject Property and the rights and the obligations under this Restated Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Restated Agreement. In the event of the assignment of this Restated 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 Restated 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 Restated Agreement have been completed, in which case no such release shall be required. Excluding the City, homeowners' association, 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 Restated Agreement. The rights granted to Developer under this Restated Agreement relate specifically to the Subject Property and are not permitted to be transferred to any other property.

28. 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 Restated 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 Restated 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 Restated 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.

29. 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.

30. Impact Fees.

(a) **Transportation Impact Fees.** Transportation impact fees shall be paid in accordance with the City of Winter Garden Code of Ordinances at rates applicable within the City at the time of building permit issuance. Except for the potential Transportation Impact Fee Credits described in Section 9. D., the Developer and the Project shall not receive any compensation or transportation impact fee credits for the obligations of the Developer provided in this Restated Agreement.

(b) **Water and Sewer Impact Fees.** City acknowledges and agrees that as of the date of this Restated Agreement, Developer has paid fifty percent (50%) of the applicable water and sewer impact fees for 261 single family units and 54 single family attached units in Phase I of the Project in the total amount of Five Hundred Twenty Six Thousand Eight Hundred Thirty Seven Dollars and 50/100 (\$526,837.50); the remaining 50 percent of the water and wastewater impact fees for 261 single family units and 54 single family attached units in Phase I of the Project shall be paid at the time of application for each building permit requested commencing with the first building permit issued and continuing until 100 percent of the water and wastewater impact fees have been paid for the requested water meters which are reserved. The water and sewer impact fees for Phase II units shall be paid by Developer as provided in the City's Code of Ordinances then in effect at the time capacity is being reserved and/or building permits are sought, or at other such times impact fees are required to be paid under the City's Code of Ordinances.

(c) **Police, Fire, School 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. With regard to school impact fees, the City acknowledges that Developer has obtained that certain Orange County Capacity Enhancement Agreement dated November 9, 2004 which addresses the Developer's payment of school impact fees for the Project (the "CEA"). Developer shall pay \$200,000.00 to the City for parks and recreation ("Park Payment") in addition to the parks and recreation impact fees due to the additional impact generated by the Project. The Park Payment shall be made prior to obtaining final plat approval for Phase II of the Project (See Attachment I), or any portion thereof.

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

(e) All impact fee calculations shall be based upon the City's single family rate, provided however that Orange County school impact fees shall be calculated in accordance with the terms of the CEA referenced above and paid to the City in money or by reduction in approved credits documented to the City by Orange County Public Schools.

(f) No building permits shall be issued by the City unless and until all impact fee obligations have been satisfied for the permits requested to be issued.

31. 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 Restated Agreement, the Restated Agreement must be amended and approved by the City prior to the continuation of any development activities within the Subject Property.

32. 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 Restated Agreement, that all acts, approvals, procedures, and similar matters required in order to authorize this Restated Agreement have been taken, obtained, or followed, as the case may be, and that, upon the execution of this Restated Agreement by all parties, this Restated 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 Restated Agreement in the Orange County public records such shall constitute a default of this Restated Agreement by Developer and must be cured by Developer, at Developer's sole cost by obtaining the joinders, consents and subordinations to this Restated 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.

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

34. 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 for any uncured default of this Restated Agreement by Developer. 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 Restated Agreement (including, without limitation, the Marsh Road Fair Share Payment), 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 or any land which is owned by the CDD or HOA, 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 Restated 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.

35. Amendment. This Restated 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. In no event shall any lot owned by a third party homeowner, the HOA, or the CDD be required to join in and consent to any future amendment to this Restated Agreement.

36. Governing Law. This Restated 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 Restated Agreement shall be in the circuit court of and for Orange County, Florida.

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

38. Non-Waiver of Sovereign Immunity. Nothing contained in this Restated Agreement nor in any instruments executed pursuant to the terms of this Restated 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.

39. Informed Execution. This Restated 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 Restated Agreement.

40. 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 Restated Agreement and for other development review expenses in accordance with Chapter 88, City of Winter Garden Code of Ordinances. Such reimbursement obligation shall include previously unpaid amounts incurred and owed by Developer's predecessor in interest.

41. 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 Restated Agreement.

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

43. Independent Parties. City and Developer are not partners and this Restated Agreement is not a joint venture and nothing in this Restated Agreement shall be construed to authorize the Developer to represent or bind the City to matters not expressly authorized or provided in this Restated Agreement.

44. Full Compensation and Release. Developer agrees that the consideration provided to Developer by and incorporated by reference in this Restated 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.

45. Attachments. The following attachments are incorporated herein by reference:

- Attachment A Legal Description of Subject Property
- Attachment B Master Plan
- Attachment C Amenity Description and Schedule
- Attachment D Master Surface Water Management System
- Attachment E Avalon Road Utility Line Routes
- Attachment F Marsh Road Utility Line Routes
- Attachment G Marsh Road Improvements
- Attachment H Sidewalks
- Attachment I Phasing Plan

AGREED by the City Commission of the City of Winter Garden, Florida, a Florida municipality and IOTA Hickory Hammock, LLC, , as of the day approved by the City Commission written below.

Signed, sealed and delivered in the presence of:

“CITY”

CITY OF WINTER GARDEN, FLORIDA

ATTEST:

By: _____
JOHN REES, MAYOR

By: _____
KATHY GOLDEN, CITY CLERK

Approved by the City Commission on _____

“DEVELOPER”

IOTA HICKORY HAMMOCK, LLC, a Delaware limited liability company

Print Name: _____
Witness

By: _____
Its: _____

Print Name: _____
Witness

STATE OF _____
COUNTY OF _____

The foregoing instrument was executed, sworn to and acknowledged before me this _____, 2012 by _____, as _____ of IOTA HICKORY HAMMOCK, LLC, a Delaware limited liability company, on its behalf. He/she (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: _____

s:\aka\clients\winter garden\hickory hammock w500-20489\amended & restated developer's agreement\hickory hammock amended and restated developer's agreement 08-17-2012 final.doc

**JOINDER, CONSENT AND SUBORDINATION OF MORTGAGEE TO
HICKORY HAMMOCK–AMENDED AND RESTATED DEVELOPER’S AGREEMENT**

AMT CADC VENTURE, LLC, a Delaware limited liability company, whose address is 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071, successor in interest to Amtrust Bank, a federal savings bank (‘Mortgagee’), being the owner and holder of that certain mortgage of HICKORY HAMMOCK FL, LLC, a Virginia limited liability company (‘Mortgagor’) recorded in Book 9786, Page 9196 of the Public Records of Orange County, Florida which encumbers the real property located in Orange County, Florida, more fully described in **Exhibit “A”** (herein referred to as the ‘Mortgagee Lien Documents’) hereby joins in and consents to the Hickory Hammock – Amended and Restated Developer’s Agreement being entered into between the Mortgagor and the City of Winter Garden and to be recorded in the Public Records of Orange County, Florida (herein ‘Restated Agreement’) and Mortgagee hereby expressly subordinates its above referenced Mortgage Lien Documents to the Restated Agreement and any liens arising out of or concerning the Restated Agreement regardless of the recording date of such liens. This Joinder, Consent and Subordination does not release any property from the lien and effect of the Mortgagee Lien Documents or any other lien instrument, and does not otherwise amend or alter any Mortgage Lien Documents.

IN WITNESS WHEREOF, THE Mortgagee hereto has executed and delivered this Joinder, Consent and Subordination of Mortgagee as of this ____ day of _____, 2012.

Witnesses:	MORTGAGEE

Name Printed: _____	AMT CADC VENTURE, LLC , a Delaware limited liability company

Name Printed: _____	By: _____
_____	Printed Name: _____
_____	Its: _____

Name Printed: _____	
_____	By: _____
_____	Printed Name: _____
Name Printed: _____	Its: _____

**JOINDER, CONSENT AND SUBORDINATION OF MORTGAGEE TO
HICKORY HAMMOCK–AMENDED AND RESTATED DEVELOPER’S AGREEMENT**

AMT CADC VENTURE, LLC, a Delaware limited liability company, whose address is 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071, successor in interest to Ohio Savings Bank, a federal savings bank (‘Mortgagee’), being the owner and holder of that certain mortgage of HICKORY HAMMOCK FL, LLC, a Virginia limited liability company (‘Mortgagor’) recorded in Book 07887, Page 3431 of the Public Records of Orange County, Florida, and as modified by that certain Mortgage Modification Agreement recorded in Book 9786, Page 9176 of the Public Records of Orange County, Florida which encumbers the real property located in Orange County, Florida, more fully described in **Exhibit “A”** (herein referred to as the ‘Mortgagee Lien Documents’) hereby joins in and consents to the Hickory Hammock – Amended and Restated Developer’s Agreement being entered into between the Mortgagor and the City of Winter Garden and to be recorded in the Public Records of Orange County, Florida (herein ‘Restated Agreement’) and Mortgagee hereby expressly subordinates its above referenced Mortgage Lien Documents to the Restated Agreement and any liens arising out of or concerning the Restated Agreement regardless of the recording date of such liens. This Joinder, Consent and Subordination does not release any property from the lien and effect of the Mortgagee Lien Documents or any other lien instrument, and does not otherwise amend or alter any Mortgage Lien Documents.

IN WITNESS WHEREOF, the Mortgagee hereto has executed and delivered this Joinder, Consent and Subordination of Mortgagee as of this ____ day of _____, 2012.

Witnesses:	MORTGAGEE

Name Printed: _____	AMT CADC VENTURE, LLC , a Delaware limited liability company

Name Printed: _____	By: _____
_____	Printed Name: _____
_____	Its: _____
Name Printed: _____	
_____	By: _____
Name Printed: _____	Printed Name: _____
_____	Its: _____

Government Lot 1 (Turkey Island) in Section 32, Township 22 South, Range 27 East.

AND

All of fractional Section 32, Township 22 South, Range 27 East; excluding, however, any real property in private ownership located in the West one-half (W1/2) of the Southwest quarter (SW1/4) of the Northwest quarter (NW1/4) or the West one-half (W1/2) of the Northwest quarter (NW1/4) of the Southwest quarter (SW1/4) of Section 32, Township 22 South, Range 27 East.

AND

The Southwest quarter (SW1/4) of the Northwest quarter (NW1/4) of Section 33, Township 22 South, Range 27 East.

AND

The North one-half (N1/2) of the Southwest quarter (SW1/4) of Section 33, Township 22 South, Range 27 East; Subject to the road right of way of County Road 545 on the South side thereof.

AND

The Southwest quarter (SW1/4) of the Southwest quarter (SW1/4) of Section 33, Township 22 South, Range 27 East; Subject to the road right of way of County Road 545 on the East side thereof.

AND

Beginning at the Southwest corner of the Northwest quarter (NW1/4) of the Southeast quarter (SE1/4) of Section 33, Township 22 South, Range 27 East, run East 264.99 feet, thence run North 341.22 feet, thence run Northwesterly to the Northwest corner of the Northwest quarter (NW1/4) of the Southeast quarter (SE1/4) of said Section, thence run South to the Point of Beginning; Less road right of way of County Road 545 on the South side thereof.

AND

Beginning at the corner post of the Northeast corner of the Northeast quarter (NE1/4) of the Northeast quarter (NE 1/4) of Section 5, Township 23 South, Range 27 East, run South on the Section line 39.5 rods, thence run West 52 rods, thence run in a Northerly direction to the Northwest corner of said lands on the Section line, thence run East 70 rods to the Point of Beginning.

AND

The South one-half (S1/2) of the Northeast quarter (NE1/4) of the Northeast quarter (NE1/4) of Section 5, Township 23 South, Range 27 East.

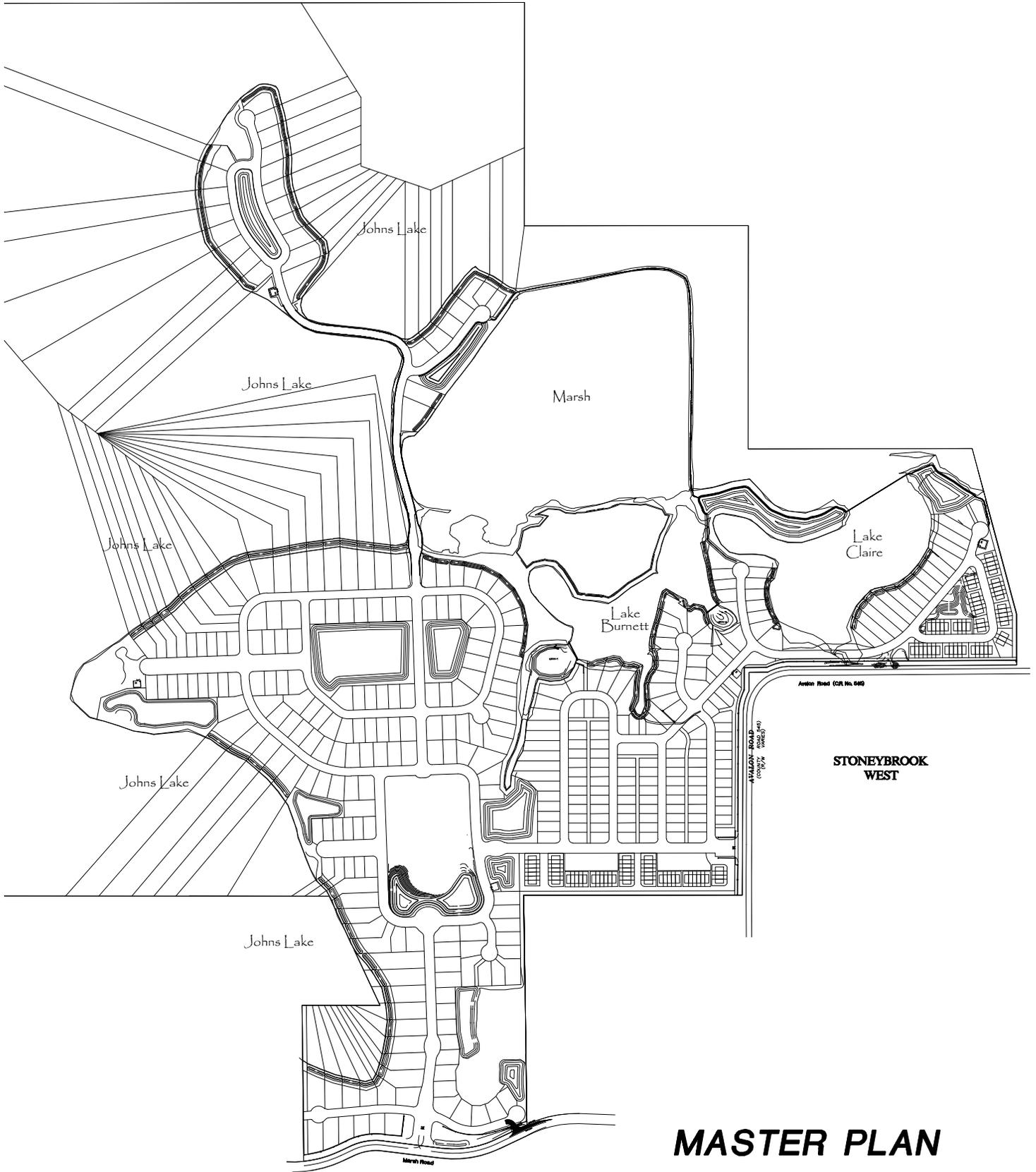
AND

That part of the Southeast quarter (SE1/4) of the Northeast quarter (NE1/4) of Section 5, Township 23 South, Range 27 East, lying North of the county graded road known as Marsh Road running East and West through the Southeast quarter (SE1/4) of the Northeast quarter (NE1/4) of said Section.

Subject to a conservation easement granted to St. Johns River Water Management District on and over a portion of Section 32, Township 22 South, Range 27 East, and a portion of Section 33, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southwest corner of Section 33, Township 22 South, Range 27 East; said point lying South 89°53'58" West, 2657.13 feet from the South one-quarter (S1/4) corner of said Section 33; thence North 21°31'39" East, 2609.56 feet to the Point of Beginning; thence South 81°47'55" West, 413.26 feet; thence South 77°42'48" West, 209.93 feet; thence North 59°07'01" West, 158.92 feet; thence South 86°48'21" West, 139.02 feet; thence South 41°21'57" West, 127.32 feet; thence North 85°15'44" West, 612.77 feet; thence North 18°10'31" West, 263.62 feet; thence North 35°54'18" East, 1173.94 feet; thence North 78°29'05" East, 758.18 feet; thence South 73°33'07" East, 180.13 feet; thence South 46°02'33" East, 88.18 feet; thence South 00°03'35" West, 1165.74 feet to the Point of Beginning.

**LEGAL DESCRIPTION
ATTACHMENT A**



**MASTER PLAN
ATTACHMENT B**

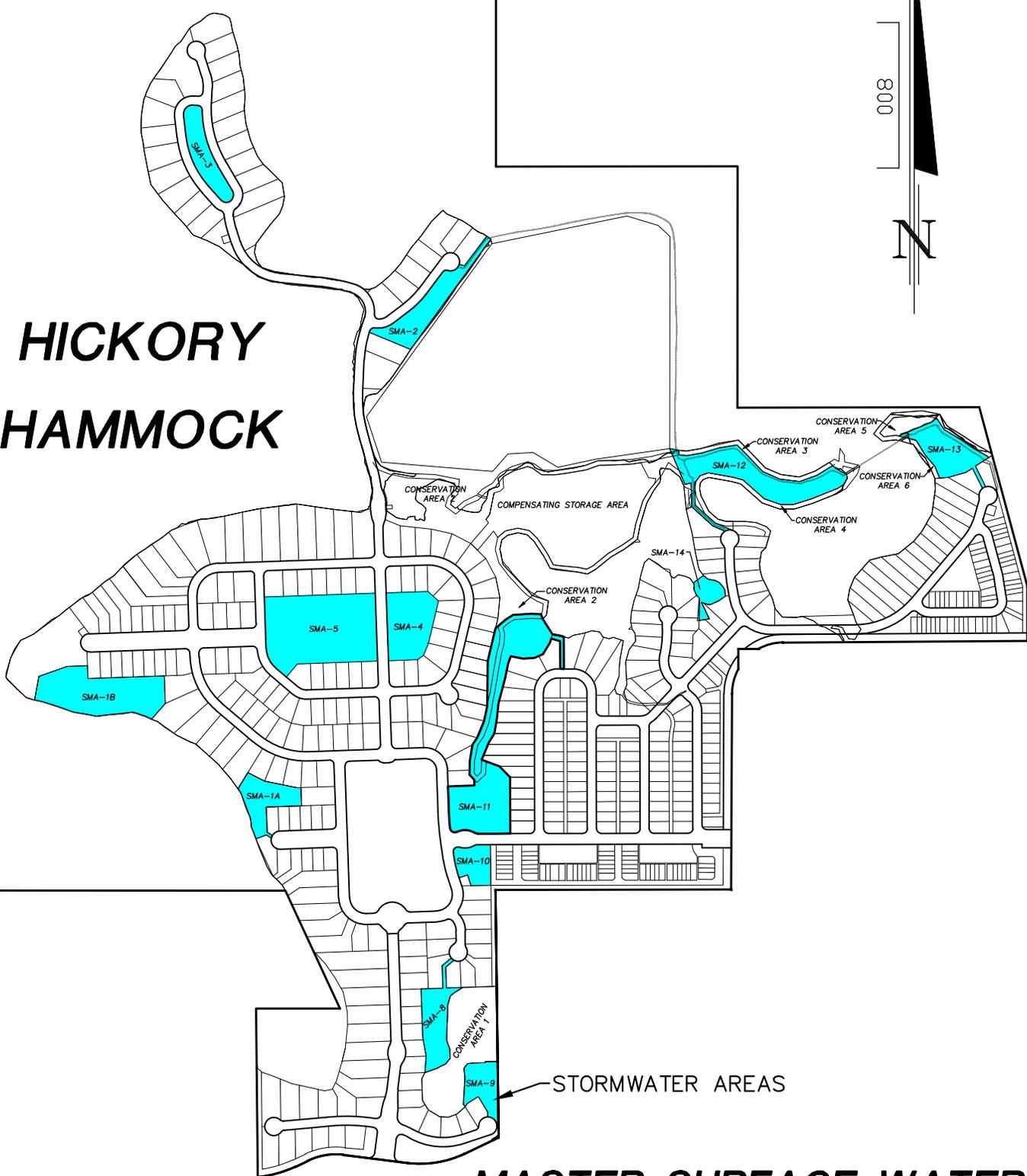
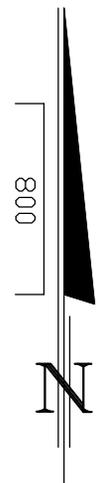
Hickory Hammock
Amenity Description and Schedule

17-Aug-12

Amenity Description	Components	Completion Date
Amenity Park	Clubhouse (min 2,800 sq ft), Pool, Pavillion, Playground (tot lot), Two Tennis Courts, Volleyball Court, Landscape	On or Before the 220th Certificate of Occupancy
Phase I Bike Trail and 8' Bike Path	Nature Trail and 8' Bike Path within limits of PH 1	Built and Completed with Ph 1 Construction
Hickory Cove Park	Park Benches, Trellis, Walks, Open Play Area	Completed with Ph 1 Construction and with Community Dock within one year as per SJRWMD Permit
Lake Point Park	Park Benches, Trellis, Walks, Open Play Area	Completed with Ph 1 Construction and with Community Dock within one year as per SJRWMD Permit
Community Docks	Two Community Docks; one in Hickory Cove Park and one in Lake Point Park	Within one year of approval of the SJRWMD Permit, if approved.
Hickory Green Park	Park Benches, Play Structure, and Picnic Table	On or Before the 60th Certificate of Occupancy
Twin Commons	Picnic Tables, Grills, Park Benches, Open Play Area	On or Before the 1st Townhome Certificate of Occupancy
Clare View Commons	Park Benches and Walks	On or Before the 360th Certificate of Occupancy
Emerald Pointe Park	Park Benches, Walks, and Open Areas	On or Before the 360th Certificate of Occupancy
Phase II Trail and 8' Bike Path	Nature Trail and 8' Bike Path within limits of PH 2	Built and Completed with Ph 2 Construction

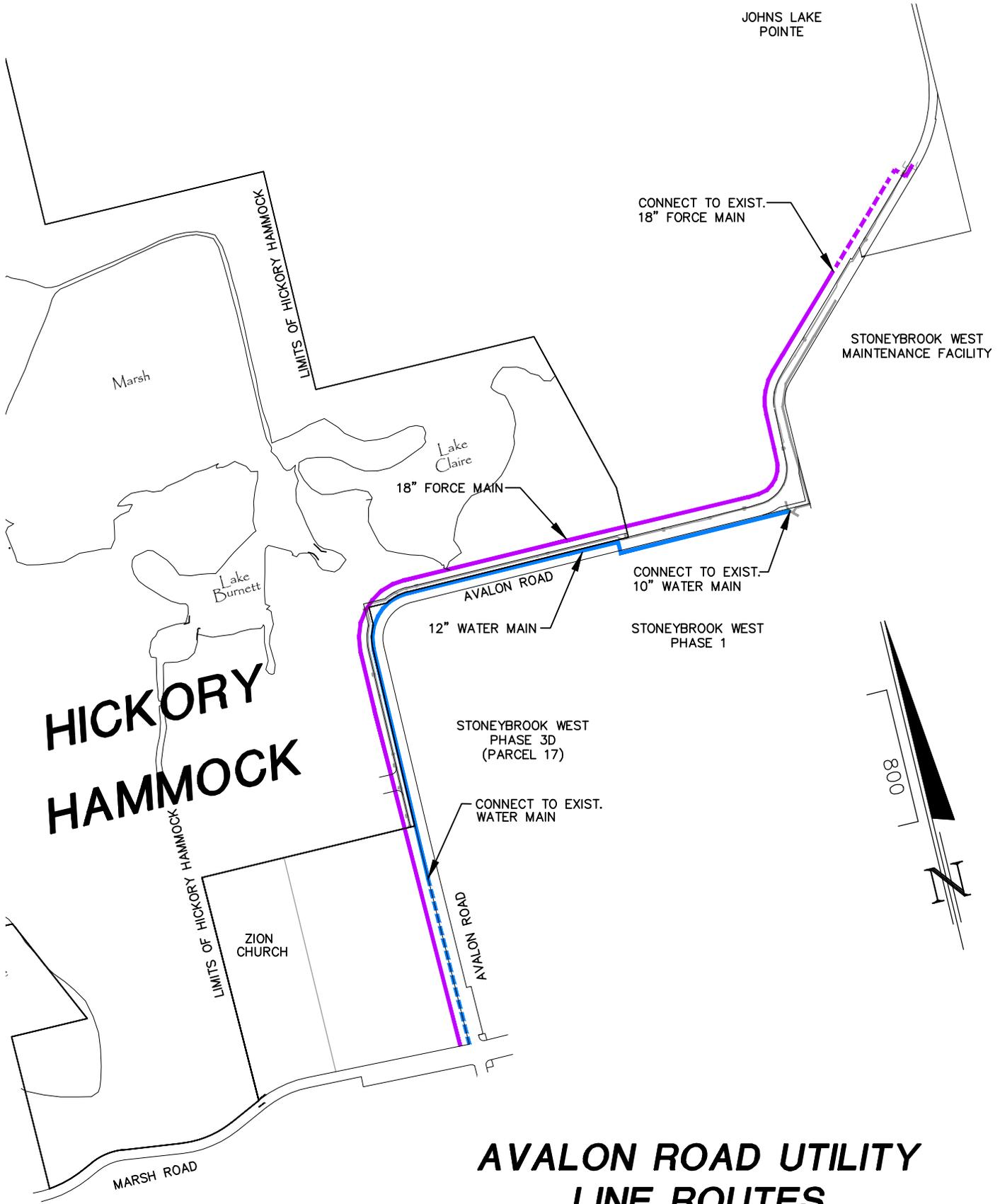
**AMENITY DESCRIPTION
AND SCHEDULE
ATTACHMENT C**

HICKORY HAMMOCK



STORMWATER AREAS

MASTER SURFACE WATER MANAGEMENT SYSTEM ATTACHMENT D



JOHNS LAKE
POINTE

CONNECT TO EXIST.
18" FORCE MAIN

STONEYBROOK WEST
MAINTENANCE FACILITY

Marsh

LIMITS OF HICKORY HAMMOCK

Lake
Claire

18" FORCE MAIN

Lake
Burnett

AVALON ROAD

CONNECT TO EXIST.
10" WATER MAIN

STONEYBROOK WEST
PHASE 1

12" WATER MAIN

**HICKORY
HAMMOCK**

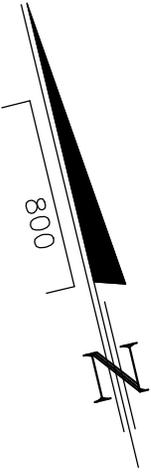
LIMITS OF HICKORY HAMMOCK

STONEYBROOK WEST
PHASE 3D
(PARCEL 17)

CONNECT TO EXIST.
WATER MAIN

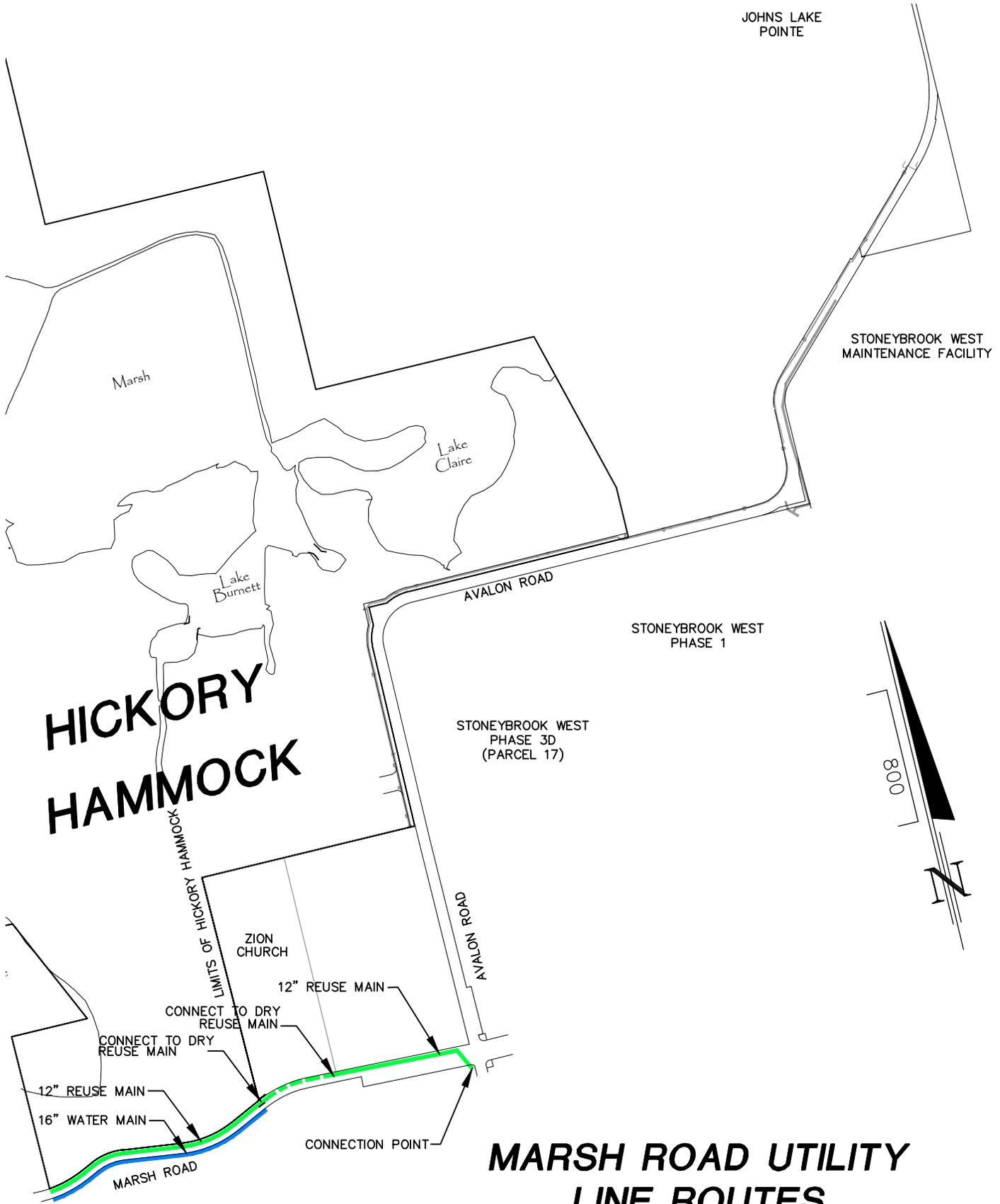
AVALON ROAD

ZION
CHURCH



MARSH ROAD

**AVALON ROAD UTILITY
LINE ROUTES
ATTACHMENT E**

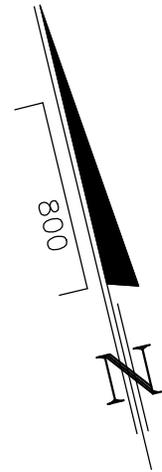


JOHNS LAKE
POINTE

STONEBROOK WEST
MAINTENANCE FACILITY

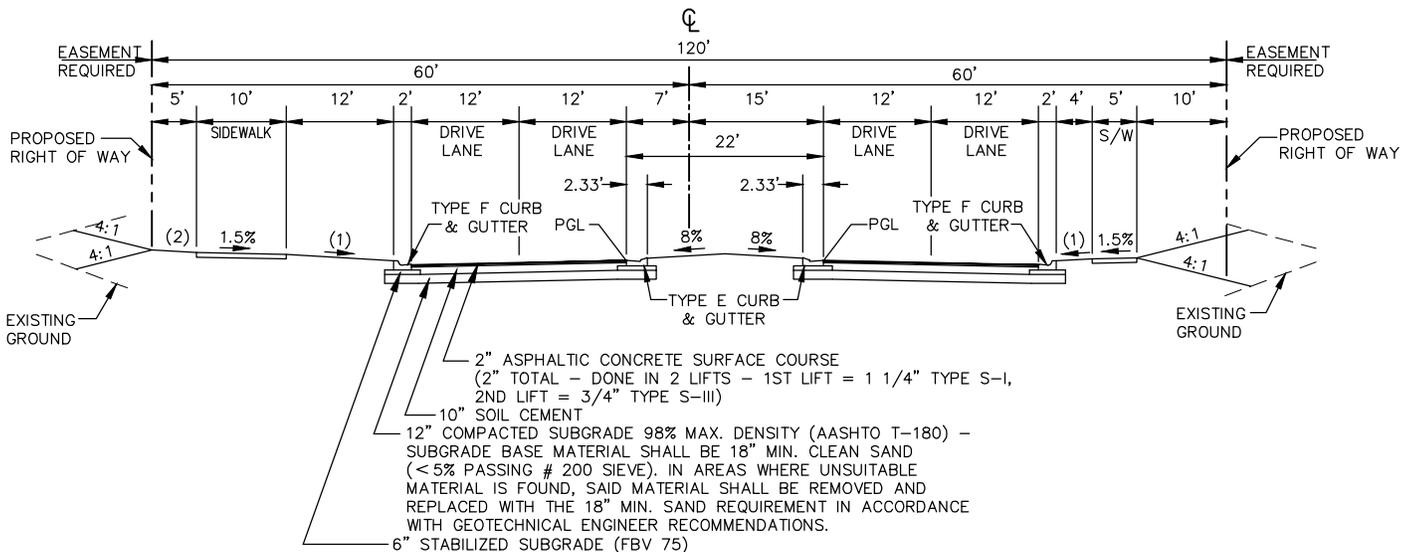
STONEBROOK WEST
PHASE 1

STONEBROOK WEST
PHASE 3D
(PARCEL 17)



HICKORY HAMMOCK

MARSH ROAD UTILITY LINE ROUTES ATTACHMENT F



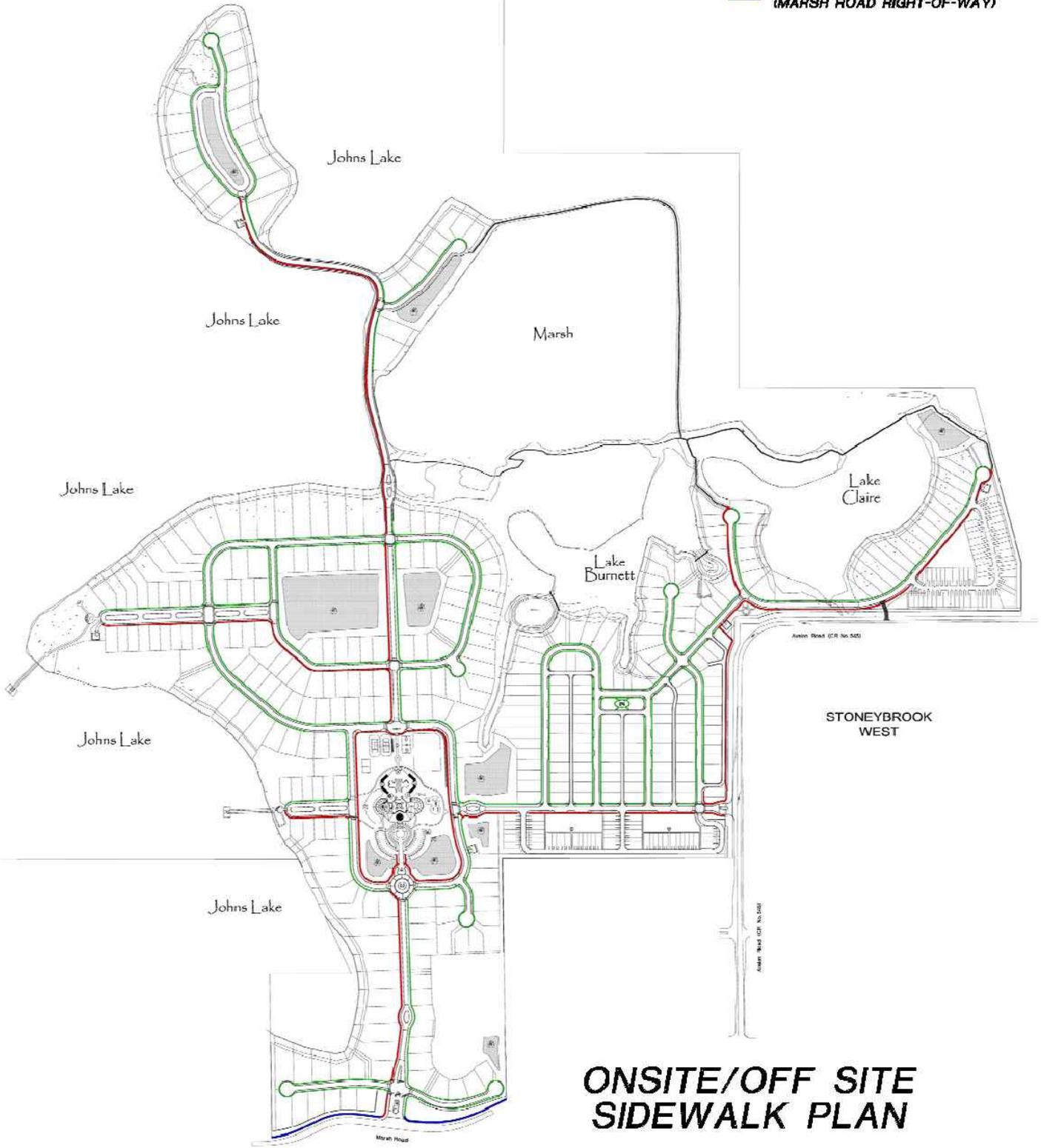
(1) 2% MIN. - 8% MAX.
 (2) GRADE AS SHOWN IN PLANS

TYPICAL SECTION
 MARSH ROAD IMPROVEMENTS
 N.T.S.

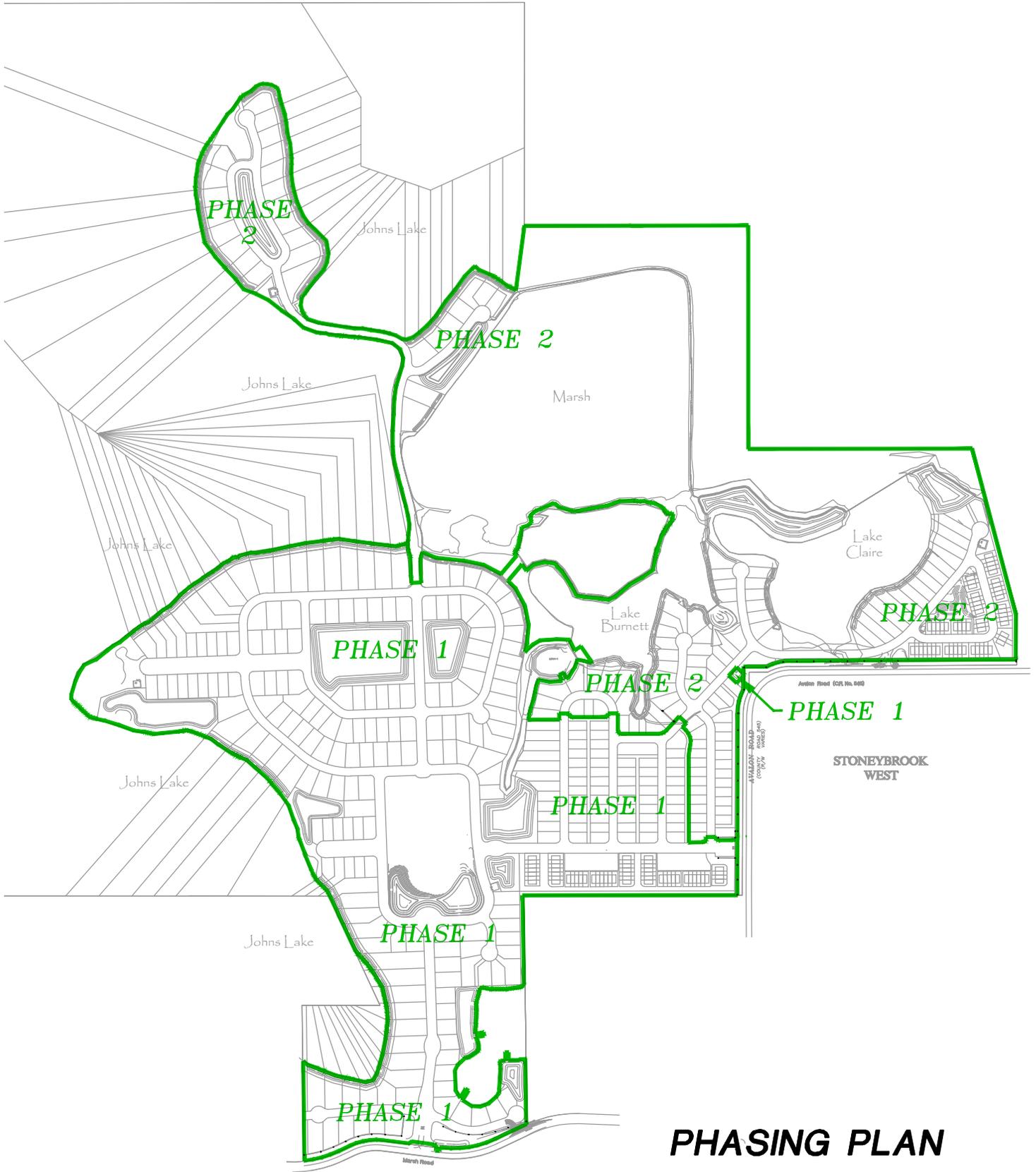
NOTE: SECTION TO BE DETERMINED
 PENDING TRAFFIC ANALYSIS

**TYPICAL SECTION
 MARSH ROAD IMPROVEMENTS
 ATTACHMENT G**

- 8' CONCRETE WALK
- 5' CONCRETE WALK
- 10' CONCRETE WALK (MARSH ROAD RIGHT-OF-WAY)



**ONSITE/OFF SITE
SIDEWALK PLAN
ATTACHMENT H**



**PHASING PLAN
ATTACHMENT I**

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: **August 16, 2012**

Meeting Date: **August 23, 2012**

Subject: Waterside on John's Lake
Developer's Agreement

Recommended Action:

Approval of the Waterside on John's Lake Developer's Agreement

Attachments/References:

Waterside on John's Lake 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 Numbers: 05-23-27-0000-00-001
06-23-27-0000-00-002
06-23-27-0000-00-003

WATERSIDE ON JOHN'S LAKE
DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT (the "**Agreement**") is made this ____ day of _____, 2012, by and among the CITY OF WINTER GARDEN, FLORIDA, a Florida municipal corporation (the "**City**"), CENTERLINE HOMES ENTERPRISES FIVE, LLC (the "**Developer**") and WARREN HARDIN EDWARDS, III (the "**Owner**").

RECITALS:

- A.** Owner is the fee simple owner of that certain real property generally located on west of C.R. 545 on Marsh Road in Winter Garden, Orange County, Florida, being more particularly described on **Exhibit "A"** (the "**Subject Property**"); and
- B.** The Subject Property is located on the north side of Marsh Road and represents a portion of the Urban Village area depicted on Figure 1.2 in the Future Land Use Element of the City's Comprehensive Plan (the "**Urban Village Area**"); and
- C.** Policy 1-1.2.12 of the Future Land Use Element of the City's Comprehensive Plan addresses development within the Urban Village Area and references an anticipated total development program to include approximately 2,140 residential dwelling units and approximately 115,000 square feet of commercial uses; and
- D.** Owner has given Developer a limited power of attorney to seek and obtain development orders and approvals for the Subject Property;
- E.** Owner hereby joins into and consents to this Agreement and agrees that this Agreement is binding upon the Subject Property; and
- F.** The Subject Property is zoned PUD, Planned Unit Development, and subject to and governed by City of Winter Garden Ordinance No. 12-29 (the "**PUD Ordinance**"); and
- G.** The Owner and Developer shall comply with all provisions of the PUD Ordinance in the development of the Subject Property in addition to other approvals by the City; and
- H.** The Developer desires to purchase the Subject Property and to develop the Subject Property as a residential subdivision to be known as Waterside on Johns Lake consisting of a total of not more than 164 residential single-family units and related amenities and infrastructure (the "**Project**"); and

- I. 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
- J. 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
- K. 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
- L. 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
- M. 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
- N. 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
- O. 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,
- P. 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
- Q. 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

- R. 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
- S. 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
- T. 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
- U. 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, Owner 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. City Approvals. 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.

A. Sewer Force Main Line Described. As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to the Developer's 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") sanitary sewer force main from the existing point of connection on Marsh Road east of the Subject Property and continuing west approximately six thousand two hundred five feet (6,205') to the Subject Property and along the entire frontage of the Subject Property along Marsh 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. The parties acknowledge that the design, permitting, installation and construction of the Sewer Force Main is an obligation of the Developer and that the Developer desires to assume such obligation for its own purposes and benefit and to provide for its design, permitting, installation and construction as part of this Agreement.

B. Oversizing Reimbursement. The parties also further acknowledge and agree that the City is requiring the Sewer Force Main to be oversized from an eight inch (8") diameter force main to twelve inch (12") diameter force main for its entire length and that the City, subject to Developer constructing the Sewer Force Main in compliance with this Section and City's review and approval of all contractors' bids and pricing and of all contracts and change orders, City shall reimburse Developer for the actual direct material costs associated with such oversizing ("Sewer Oversizing"). Within 30 days of Developer accomplishing Sewer Force Main Completion (as defined herein) the City shall reimburse the Developer for the Sewer Oversizing costs.

C. Reimbursement by Cra-Mar. The real property located adjacent to and east of the Subject Property and having Orange County Tax Identification # 05-23-27-0000-00-005 and # 05-23-27-0000-00-008 (the "Cra-Mar Property") owned by Cra-Mar Groves, Inc. ("Cra-Mar") is in need of sewer line extensions in order to support future development of the Cra-Mar Property. A portion of the Sewer Force Main would be necessary for Cra-Mar to construct in accordance with Section 78-2, City of Winter Garden Code of Ordinances, if and when such property was to develop. In the event Developer completes the Sewer Force Main, the City, Developer and Cra-Mar agree that Cra-Mar shall be responsible for directly reimbursing Developer for the costs of installing a 2,043.50' portion of the 6,205' Sewer Force Main less the City's share of such segment for Sewer Oversizing, as Cra-Mar's proportionate fair share of the Sewer Force Main costs ("Cra-Mar Sewer Cost Share"). The Cra-Mar Sewer Cost Share is based on the length of the Cra-Mar Property frontage on Marsh Road (1,311') plus one-half of the distance from the eastern boundary of the Cra-Mar Property to the existing sewer force main point of connection on Marsh Road ($1,465'/2 = 732.50'$). After completion of the Sewer Force Main, the Developer, City and Cra-Mar agree that the Cra-Mar Sewer Cost Share shall be reimbursed by Cra-Mar directly to Developer and prior to Cra-Mar obtaining certificates of occupancy for any buildings/units on the Cra-Mar Property.

In the event the Cra-Mar Property or any other property is in need of the Sewer Force Main or any portion thereof for development purposes before Developer can commence and complete the construction of the Sewer Force Main, and the Sewer Force Main or a portion thereof is constructed by the City, Cra-Mar or anyone else, Developer agrees that it shall be responsible for reimbursing the City or at the City's direction, the party that caused the construction of the Sewer Force Main, or a portion thereof, to occur for Developer's share of the completion cost.

Developer shall be responsible for obtaining Cra-Mar's fully executed joinder and consent to this Section 3 of this Agreement in recordable format. In the event such joinder and consent is not obtained, Developer runs the risk of not being reimbursed for the Cra-Mar Sewer Cost Share. In no event shall the City be responsible for reimbursing Developer for the Cra-Mar Sewer Cost Share.

D. Completion. Upon completion of the Sewer Force Main, the Developer shall request the City Engineer inspect such improvements and seek to 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 two (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 designed plan, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor's 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 Section 3 ("Sewer Force Main Completion").

E. Certificates of Occupancy. No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Sewer Force Main Completion. Upon the occurrence of Sewer Force Main Completion, the City will take over ownership, operation and maintenance of the Sewer Force Main.

4. **Potable Water Lines.**

A. Potable Water Lines Described. As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to the Developer's receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer shall diligently pursue the design, permitting, installation and construction of a sixteen inch (16") diameter potable water main from the existing point of connection on Marsh Road east of the Subject Property and continuing west approximately six thousand one hundred thirty-one feet (6,131') to the Subject Property and along the entire frontage of the Subject Property along Marsh 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 that the design, permitting, installation and construction of the Water Line is an obligation of the Developer and that the Developer desires to assume such obligation for its own purposes and benefit and provide for its design, permitting, installation and construction as part of this Agreement.

B. Hickory Hammock. In accordance with the Restated and Amended Developer's Agreement ("HH Agreement") between the City and IOTA HICKORY HAMMOCK, LLC ("Hickory Hammock"), the owner of that certain real property having Orange County Tax Identification # 33-22-27-0000-00-003 ("Hickory Hammock Property"), Hickory Hammock is obligated to construct at its full expense, an approximately 1,465' portion of the sixteen inch (16") diameter Water Line along the entire frontage of the Hickory Hammock Property ("HH Water Line Segment"). Under the HH Agreement, Developer is given certain third party beneficiary rights to seek and obtain reimbursement directly from Hickory Hammock in the event Developer constructs the HH Water Line Segment; therefore, Developer may seek such reimbursement from Hickory Hammock as specified in the HH Agreement. In no event shall the City be responsible for reimbursing Developer for any portion of the HH Water Line Segment.

C. Oversizing Reimbursement. The parties further acknowledge and agree that the City is requiring the Water Line to be oversized from: (i) an eight inch (8") diameter water main to sixteen inch (16") diameter water main for an approximately 2,913 foot portion of the Water

Line, and (ii) a twelve inch (12") diameter water main to sixteen inch (16") diameter water main for an approximately 3,194 foot portion of the Water Line, subject to Developer constructing the Water Line in compliance with this Section and City's review and approval of all contractors' bids and pricing and of all contracts and change orders, City shall reimburse Developer for the actual direct material costs associated with such oversizing but not including oversizing reimbursement for the HH Water Line Segment ("Water Line Oversizing"). Within 30 days of Developer accomplishing Water Line Completion (as defined herein) the City shall reimburse the Developer for the Water Line Oversizing costs.

D. Reimbursement by Cra-Mar. Cra-Mar is in need of potable water line extensions in order to support future development of the Cra-Mar Property. A portion of the Water Line would be necessary for Cra-Mar to construct in accordance with Section 78-2, City of Winter Garden Code of Ordinances, if and when such property was to develop. In the event Developer completes the Water Line, the City, Developer and Cra-Mar agree that Cra-Mar shall be responsible for directly reimbursing Developer for the costs of installing a 1,325' portion of the 6,131' Water Line less the City's share of such segment for Water Line Oversizing, as Cra-Mar's proportionate fair share of the Water Line costs ("Cra-Mar Water Line Cost Share"). The Cra-Mar Water Line Cost Share is based on the length of the Cra-Mar Property frontage on Marsh Road. After completion of the Water Line Main, the Developer, City and Cra-Mar agree that the Cra-Mar Water Line Cost Share shall be reimbursed by Cra-Mar directly to Developer prior to Cra-Mar obtaining certificates of occupancy for any buildings/units on the Cra-Mar Property.

In the event the Cra-Mar Property or any other property is in need of the Water Line or any portion thereof for development purposes before Developer can commence and complete the construction of the Water Line, and the Water Line or a portion thereof is constructed by the City, Cra-Mar or anyone else, Developer agrees that it shall be responsible for reimbursing the City or at the City's direction, the party that caused the construction of the Water Line, or a portion thereof, to occur for Developer's share of the completion cost.

Developer shall be responsible for obtaining Cra-Mar's fully executed joinder and consent to this Section 4 of this Agreement in recordable format. In the event such joinder and consent is not obtained, Developer runs the risk of not being reimbursed for the Cra-Mar Water Line Cost Share. In no event shall the City be responsible for reimbursing Developer for the Cra-Mar Water Line Cost Share.

E. Completion. 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 two (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 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's warranties, if any, for the for the Water Line. The Water Line shall be deemed completed upon Developer satisfying all of the conditions of this Section 4 ("Water Line Completion").

F. Certificates of Occupancy. No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Water Line Completion. Upon the occurrence of

Water Line Completion, the City will take over ownership, operation and maintenance of the Water Line.

5. Reclaimed Water Line.

A. Reclaimed Water Line Described. As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to the Developer's 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 reclaimed water line from existing point of connection on Marsh Road east of the Subject Property and continuing west approximately six thousand one hundred eighty three feet (6,183') to the Subject Property and along the entire frontage of the Subject Property along Marsh Road (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. Once sufficient reclaimed water becomes available to the Project as determined by the City, the Developer agrees to accept all flows to the Project in an amount as determined by the City which amount will vary, all subject to City Code and City Engineer review and approval. The City is not responsible for any portion of the Reclaimed Water Line cost.

B. Hickory Hammock. In accordance with the HH Agreement, Hickory Hammock is obligated to construct at its full expense, an approximately 2,381' portion of the twelve inch (12") diameter Water Line along the entire frontage of the Hickory Hammock Property and connecting with and extending east past the dry reclaimed water line segment fronting the Zion Church property along Marsh Road and continuing to and connecting with the existing reclaimed water main along Avalon Road (CR 545) near the intersection of Marsh Road and Avalon Road ("HH Reclaimed Water Line Segment"). Under the HH Agreement, Developer is given certain third party beneficiary rights to seek and obtain reimbursement directly from Hickory Hammock in the event Developer constructs the HH Reclaimed Water Line Segment; therefore, Developer may seek such reimbursement from Hickory Hammock as specified in the HH Agreement. In no event shall the City be responsible for reimbursing Developer for any portion of the HH Reclaimed Water Line Segment.

C. Oversizing Reimbursement. The parties further acknowledge and agree that the City is requiring the Reclaimed Water Line to be oversized from an eight inch (8") diameter line to a twelve inch (12") diameter line from the southeastern most boundary to the southwestern most boundary of the Subject Property along Marsh Road (or the Subject Property's Marsh Road frontage) for a total distance of 3,436 feet (the "**Reclaimed Water Line Oversizing**"), subject to Developer constructing the Reclaimed Water Line in compliance with this Section and City's review and approval of all contractors' bids and pricing and of all contracts and change orders, City shall reimburse Developer for the actual direct material costs associated with such oversizing but not including oversizing reimbursement for the HH Reclaimed Water Line Segment. Within 30 days of Developer accomplishing Reclaimed Water Line Completion (as defined herein) the City shall reimburse the Developer for the Reclaimed Water Line Oversizing costs.

D. Reimbursement by Cra-Mar. Cra-Mar is in need of reclaimed water line extensions in order to support future development of the Cra-Mar Property. A portion of the Reclaimed Water Line would be necessary for Cra-Mar to construct in accordance with Section

78-2, City of Winter Garden Code of Ordinances, if and when such property was to develop. In the event Developer completes the Reclaimed Water Line, the City, Developer and Cra-Mar agree that Cra-Mar shall be responsible for directly reimbursing Developer for the costs of installing a 1,311' portion of the 6,183' twelve inch (12") diameter Reclaimed Water Line as Cra-Mar's proportionate fair share of the Reclaimed Water Line costs ("Cra-Mar Reclaimed Water Line Cost Share"). The Cra-Mar Reclaimed Water Line Cost Share is based on the length of the Cra-Mar Property frontage on Marsh Road. After completion of the Reclaimed Water Line, the Developer, City and Cra-Mar agree that the Cra-Mar Reclaimed Water Line Cost Share shall be reimbursed by Cra-Mar directly to Developer prior to Cra-Mar obtaining certificates of occupancy for any buildings/units on the Cra-Mar Property.

In the event the Cra-Mar Property or any other property is in need of the Reclaimed Water Line or any portion thereof for development purposes before Developer can commence and complete the construction of the Reclaimed Water Line, and the Reclaimed Water Line or a portion thereof is constructed by the City, Cra-Mar or anyone else, Developer agrees that it shall be responsible for reimbursing the City or at the City's direction, the party that caused the construction of the Reclaimed Water Line, or a portion thereof, to occur for Developer's share of the completion cost.

Developer shall be responsible for obtaining Cra-Mar's fully executed joinder and consent to this Section 5 of this Agreement in recordable format. In the event such joinder and consent is not obtained, Developer runs the risk of not being reimbursed for the Cra-Mar Reclaimed Water Line Cost Share. In no event shall the City be responsible for reimbursing Developer for the Cra-Mar Reclaimed Water Line Cost Share.

D. Completion. Upon completion of the Reclaimed 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 Reclaimed Water Line, (ii) a two (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's warranties, if any, for the for the Reclaimed Water Line. The Reclaimed Water Line shall be deemed completed upon Developer satisfying all of the conditions of this Section 5 ("Reclaimed Water Line Completion").

E. Certificates of Occupancy. 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 ownership, operation and maintenance of the Reclaimed Water Line.

6. Marsh Road Improvements. As part of the Developer's construction of the site infrastructure for the first phase of the Project subsequent to the Developer's receipt of preliminary subdivision plan (a/k/a preliminary plat) approval, the Developer, at Developer's sole expense, shall design, permit and construct a round-a-bout with right turn lane by-pass on Marsh Road at the main entrance to the Project 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 ten-foot

wide bike path/sidewalk along the Subject Property's entire Marsh 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 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 Road Improvements, (ii) a two (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's warranties, if any for the Road Improvements. No certificates of occupancy shall be issued for any part of the Project until completion of the Road Improvements, including the issuance of a the certificate of completion by the City Engineer, execution and delivery of the bill of sale, and delivery of an acceptable maintenance bond or irrevocable letter of credit for the Road Improvements. The Road Improvements shall be deemed completed upon Developer satisfying all of the conditions of this Section 6 ("Road Improvements Completion"). Upon the occurrence of Road Improvements Completion, the City will take over ownership, operation and maintenance of the portion of Road Improvements located within the public right-of-way.

7. Conveyance of Right-of-Way. The Developer shall convey or cause to be conveyed lands from the Subject Property as more specifically described in the attached **Exhibit "D"** (the "**Right-of-Way Property**") which are necessary to accommodate the Road Improvements and utilities serving the Project and being installed pursuant to this Agreement. The Right-of-Way Property shall be conveyed by the Developer to the City by special 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. The form of the special 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. Owner and 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. Neither the Owner or Developer nor Owner's and 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 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 City Engineer shall inspect such improvements, and Developer shall seek to obtain a certificate of completion from the City Engineer for such improvements. As a condition precedent to receiving such 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 designed plan, (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and contractor warranties, if any, for the Lift Station after the City Engineer certifies that the Lift Station is properly constructed, (v) a special warranty deed conveying the area on which the Lift Station is located as depicted and described on **Exhibit "E"** attached hereto and incorporated herein by reference (the "Lift Station Tract"), free and clear of all encumbrances not reasonably unacceptable to the City, to the City after the City Engineer certifies that the Lift Station is properly constructed, and (vi) access easement in favor of the City for ingress and egress to and from the Lift Station Tract in the area also depicted and described on **Exhibit "E"** attached hereto and incorporated herein by reference. The Lift Station shall be deemed completed upon Developer satisfying all of the conditions of this Section 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 the Lift Station Completion, the City will take over ownership, operation and maintenance responsibility for 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 Sewer Oversizing costs to be reimbursed by the City and other reimbursements obtained from Hickory Hammock and Cra-Mar) 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, then such shorter period shall apply.

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 (special warranty deed), unencumbered by any lien, mortgage, easement or any other encumbrance or restriction not reasonably unacceptable to the City. Developer hereby indemnifies and holds the City harmless from any and all claims, damages, penalties, fines, attorneys' fees (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 Owner or Developer to the City, but excluding any environmental pollution or contamination that occurs after the date of such conveyance unless such environmental pollution or contamination is caused by Developer.

11. Utility Improvements.

(a) The development of the Subject Property must connect to the City's potable water, reclaimed water, and wastewater facilities at the Developer's expense, except for reimbursements provided to Developer herein. 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 to the Subject Property and the Project. The Project, if developed in accordance with the applicable provisions of the City Comprehensive Plan and Land Development Code and this 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 future service and meter connection in accordance with the applicable City Codes. This reclaimed system may initially be supplied by the City's potable water, and will be supplied in the future with reclaimed water.

(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 Water Line Oversizing, Reclaimed Line Oversizing and Sewer Oversizing costs, 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.

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 two (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 Section 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 ownership, operation and maintenance responsibility of the Internal Utility Lines.

15. Community Subdivision Infrastructure Improvements. Developer shall provide all bonds covering the community subdivision infrastructure improvements required by the City’s Code of Ordinances, as such may be amended from time to time. 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 Subject Property/Project. The Developer shall have maintenance responsibility for the community subdivision infrastructure improvements until homeowner’s association turnover occurs. Until turnover of the HOA occurs, Developer shall ensure that HOA accounts concerning the operation, replacement, repair and maintenance of community subdivision infrastructure improvements shall be established and adequately funded in accordance with the requirements of Chapter 110, City of Winter Garden Code of Ordinances, as such may be amended from time to time.

16. 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.

17. 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 trial and appellate 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, negligence, negligent misrepresentation and default under 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 and for the risk assumed by Developer under this Agreement.

18. 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.

19. 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: Centerline Homes Enterprises Five, LLC
Attn: Robert Hutson
1511 East State Road 434, Suite 1009
Winter Springs, FL 32708

Owner: Warren Hardin Edwards, III
16851 Marsh Road
Winter Garden, FL 34787

With copies to:
Jeff Kronengold
Centerline Homes Enterprises Five, LLC
825 Coral Ridge Drive
Coral Springs, FL 33071

and Thomas R. Sullivan
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
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.

20. 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.

21. 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.

22. 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.

23. 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. The Developer shall remain responsible for the performance of its obligations under this Agreement in the event of assignment of this Agreement and/or the conveyance or transfer of the Subject Property unless Developer obtains a release from the City; such requested release will not be unreasonably withheld if Developer is not in default of this Agreement and the City has reasonable assurance that the Developer's obligations hereunder will be satisfied by the proposed assignee of this Agreement and proposed owner of the Subject Property. In the event all obligations under this Agreement have been completed, no such approval from the City shall be required. Excluding the City, homeowner's association 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.

24. 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.

25. 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.

26. 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. Consistent with Section

42-62 of the City Code, as may be amended from time to time, the Developer shall be entitled to receive a three percent (3%) cost reduction in said impact fees for paying the fee 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 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 subsections (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.

27. 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. Subject to compliance with Section 110-60 of the City Code, the Developer may occupy the model homes prior to completion of the infrastructure improvements required pursuant to this Agreement.

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. In the event Developer fails to pay the monies, dedicate the lands so required by this Agreement, or otherwise fails to meet Developer's obligations under this Agreement, no further development (including without limitation the issuance of permits, review of applications, or construction) of the Subject Property shall continue until such obligations are met.

Furthermore, Owner represents and warrants to City that it is the fee simple owner of the Subject Property, free and clear of any encumbrances including but not limited to mortgages, liens or easements, or, in the event an encumbrance exists, Owner at Owner's and Developer's sole cost, shall obtain the necessary joinders and consents and subordinations to this Agreement (and documents called for herein) or releases from the appropriate parties with an 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 Owner, Developer or the City, the violating party shall be given ten (10) 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, Owner 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. Notwithstanding the foregoing, the City shall be permitted to without notice immediately withhold the issuance of, and revoke, certificates of occupancy or building permits associated with the Project in the event Developer is in violation of any provision 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 in the amount owed to the City. A copy of such Notice of Lien shall also be delivered to Developer (and to Owner, if Owner owns the Subject Property at that time) 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 or other statute providing for lien foreclosure procedures. The Owner and Developer may obtain a release from the lien by paying the amount stated in the lien, plus accrued interest of twelve percent (12%) 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 and Owner without duress and after full review, evaluation and consideration by the Developer. Developer and Owner are 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 section 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, Owner and Developer are not partners and this Agreement is not a joint venture and nothing in this Agreement shall be construed to authorize the Owner or 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 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, Owner and Developer, on behalf of Owner and Developer and their 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 Owner and 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 Road Improvements
Exhibit D Right-of-Way Property
Exhibit E Lift Station

AGREED by the City Commission of the City of Winter Garden, Florida, a Florida municipality, CENTERLINE HOMES ENTERPRISES FIVE, LLC and WARREN HARDIN EDWARDS, III 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

"DEVELOPER"

CENTERLINE HOMES ENTERPRISES FIVE, LLC

Print Name: _____
Witness

By: _____
Its: _____

Print Name: _____
Witness

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was executed, sworn to and acknowledged before me this _____, 2012 by _____ as _____ of CENTERLINE HOMES ENTERPRISES FIVE, LLC. 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: _____

“OWNER”

WARREN HARDIN EDWARDS, III

Print Name: _____
Witness

Print Name: _____
Witness

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was executed, sworn to and acknowledged before me this _____, 2012 by WARREN HARDIN EDWARDS, III. 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: _____

**JOINDER, CONSENT AND SUBORDINATION OF MORTGAGEE TO
Waterside on Johns Lake - DEVELOPER'S AGREEMENT**

_____, whose address is _____, ("Mortgagee"), being the owner and holder of that certain mortgage of WARREN HARDIN EDWARDS, III ("Mortgagor"), recorded at Official Records Book ____, Page _____, Public Records of Orange County, Florida which encumbers the real property located in Orange County, Florida, more fully described in **Exhibit "A"** (herein referred to as the "Mortgagee Lien Documents"), hereby joins in and consents to the Waterside on Johns Lake – Developer's Agreement being entered into between the Mortgagor and the City of Winter Garden and to be recorded in the Public Records of Orange County, Florida (herein "Developer's Agreement"), and Mortgagee hereby expressly subordinates its above referenced Mortgage Lien Documents to the Developer's Agreement and any liens arising out of or concerning the Developer's Agreement regardless of the recording date of such liens. This Joinder, Consent and Subordination does not release any property from the lien and effect of the Mortgage Lien Documents or any other lien instrument, and does not otherwise amend or alter any Mortgage Lien Documents.

IN WITNESS WHEREOF, the Mortgagee hereto has executed and delivered this Joinder, Consent and Subordination of Mortgagee as of this ____ day of _____, 2012.

Witnesses:

MORTGAGEE

Name Printed: _____

By:

Name Printed: _____

Printed Name:

Its: _____

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____ as _____ of _____ on behalf of said company. She/He is personally known to me or has produced _____ as identification.

(SEAL)

Signature of Notary Public
Printed Name: _____
My Commission Expires: _____

Exhibit "A"
Legal Description of Subject Property

(PER TITLE COMMITMENT FILE NO. L103647)

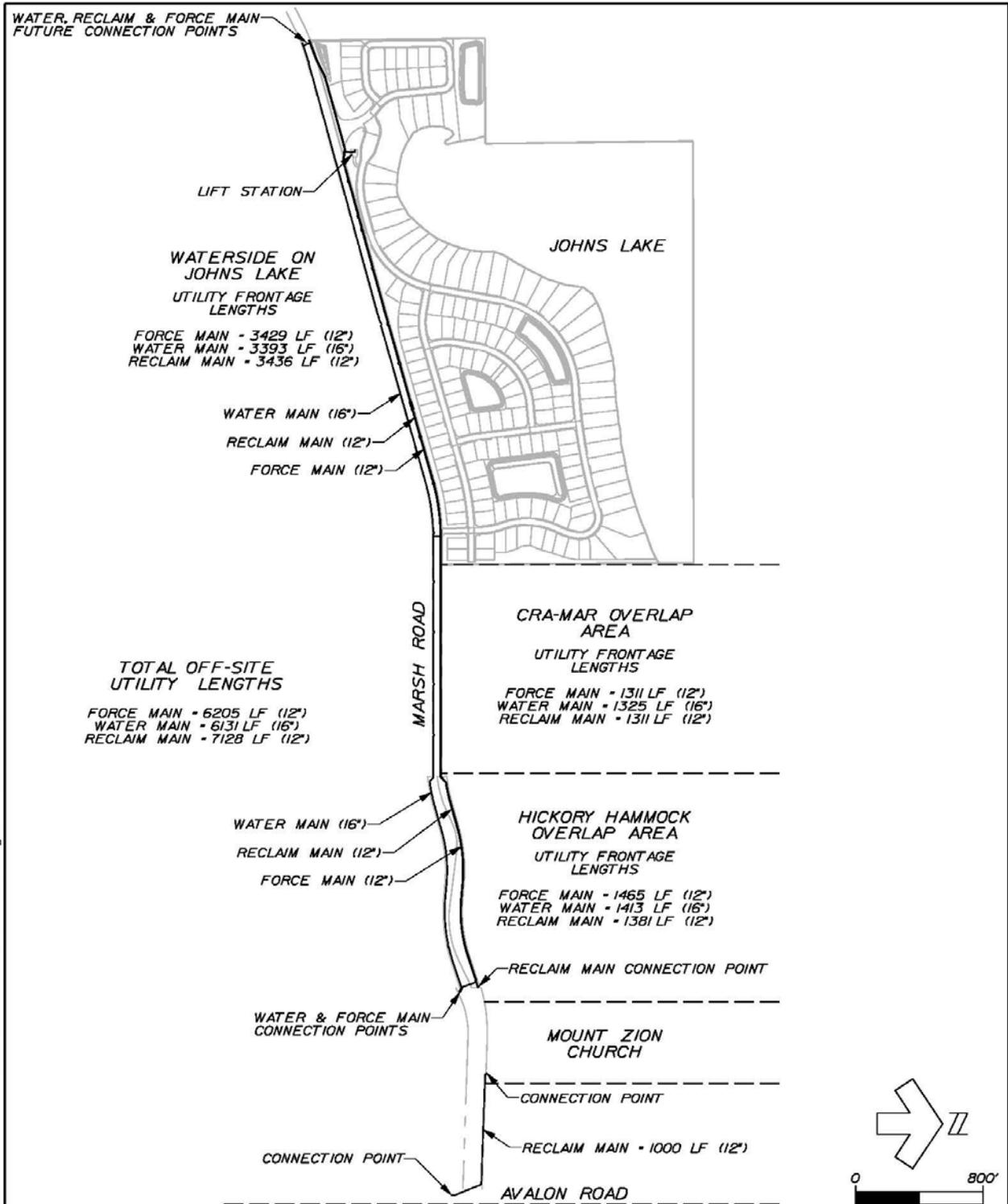
PARCEL I:

THAT PORTION OF THE FRACTIONAL NORTHWEST 1/4 LYING NORTH OF MARSH ROAD, OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 27 EAST, OF ORANGE COUNTY, FLORIDA.

PARCEL II:

THE SOUTH 1/2 OF THE FRACTIONAL EAST 1/2 OF THE NORTHEAST 1/4 (LESS WEST 1/2 OF SAME LYING NORTH OF ROAD AND ALSO, LESS THAT PORTION OF THE FRACTIONAL EAST 1/2 OF THE NORTHEAST 1/4 LYING SOUTH OF MARSH ROAD), OF SECTION 6, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

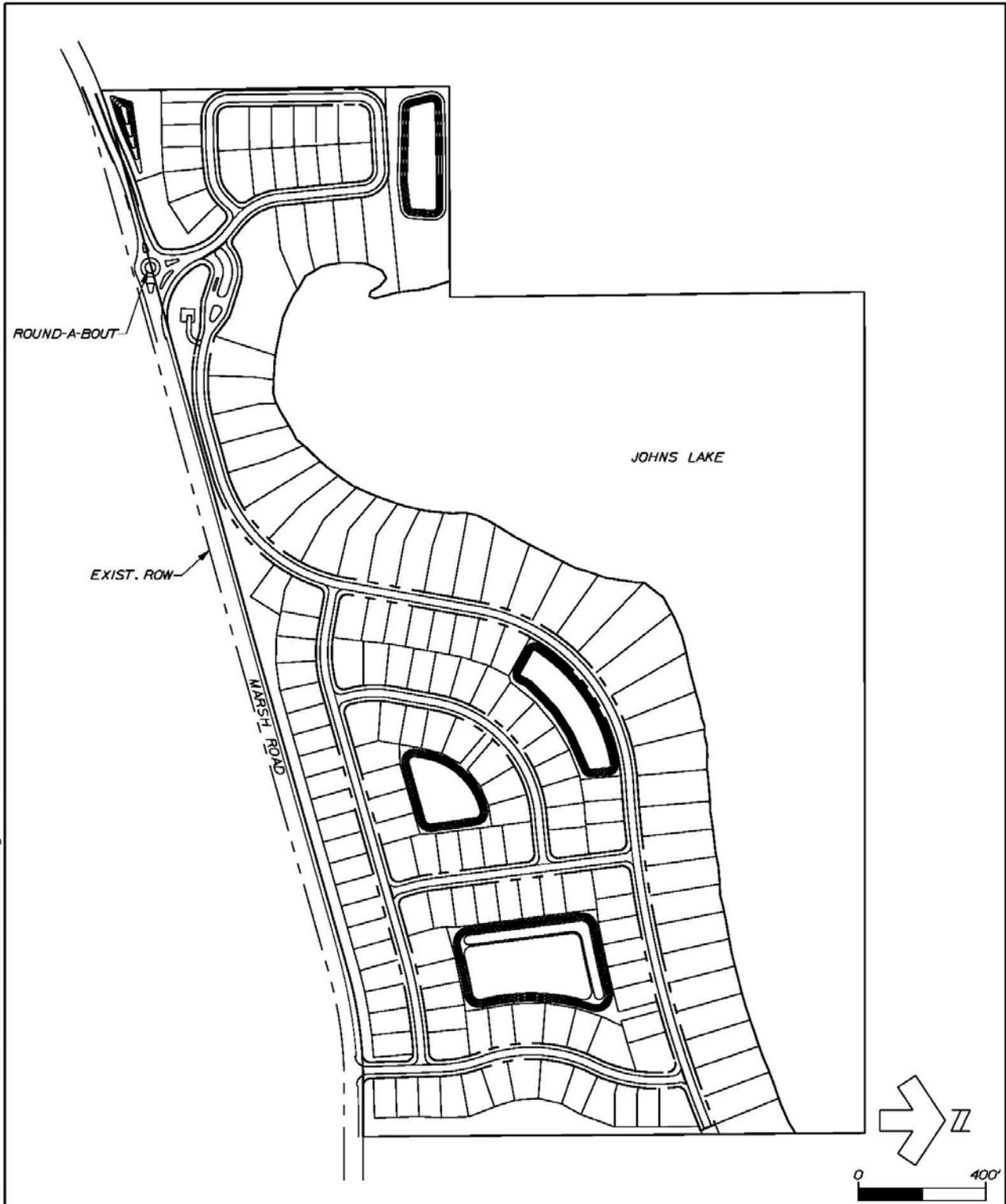
Exhibit "B"
Utility Lines Route



OFF-SITE UTILITIES
& OVERLAP PLAN

EXHIBIT "B"

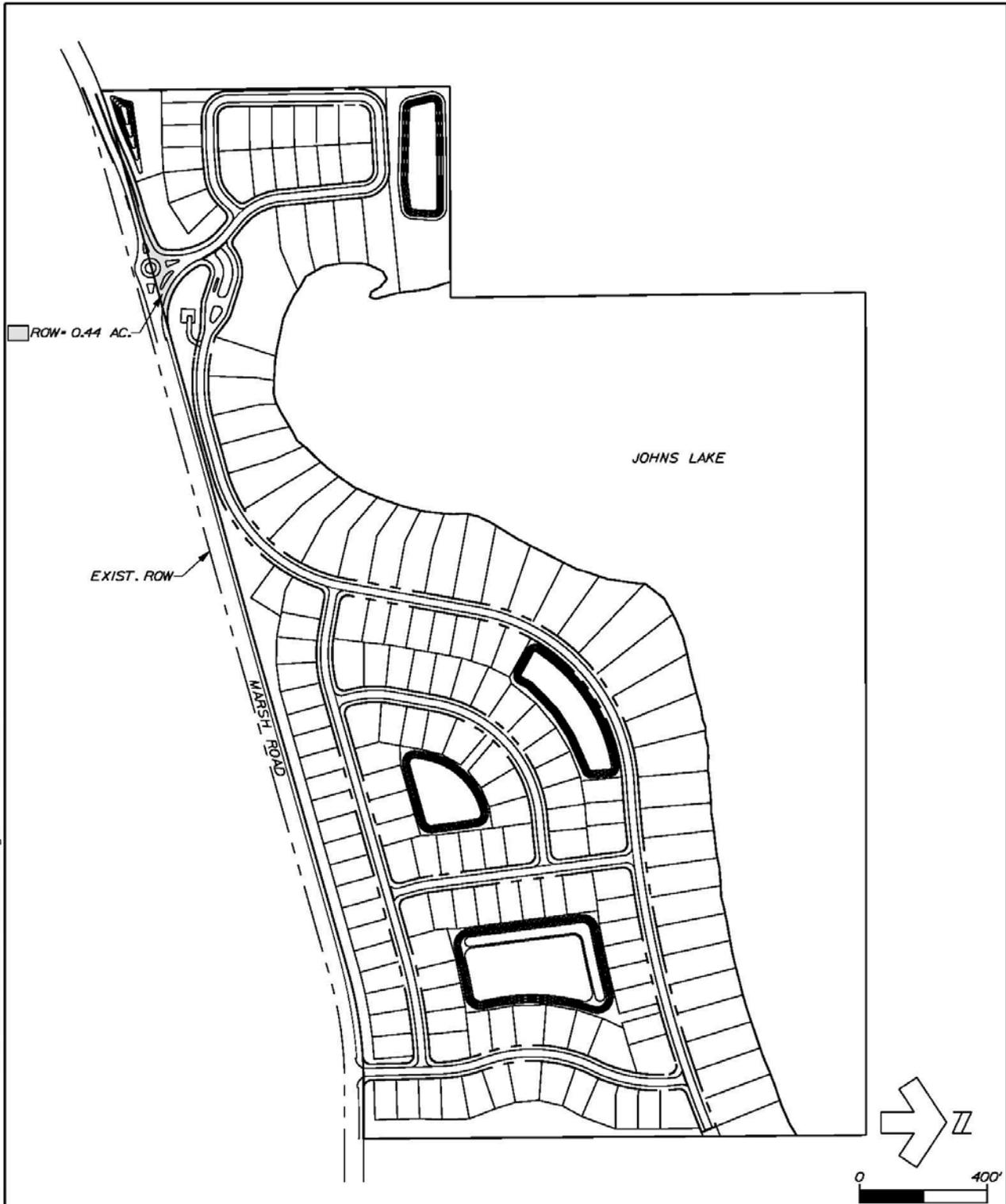
Exhibit "C"
Marsh Road Improvements



MARSH ROAD IMPROVEMENT PLAN

EXHIBIT "C"

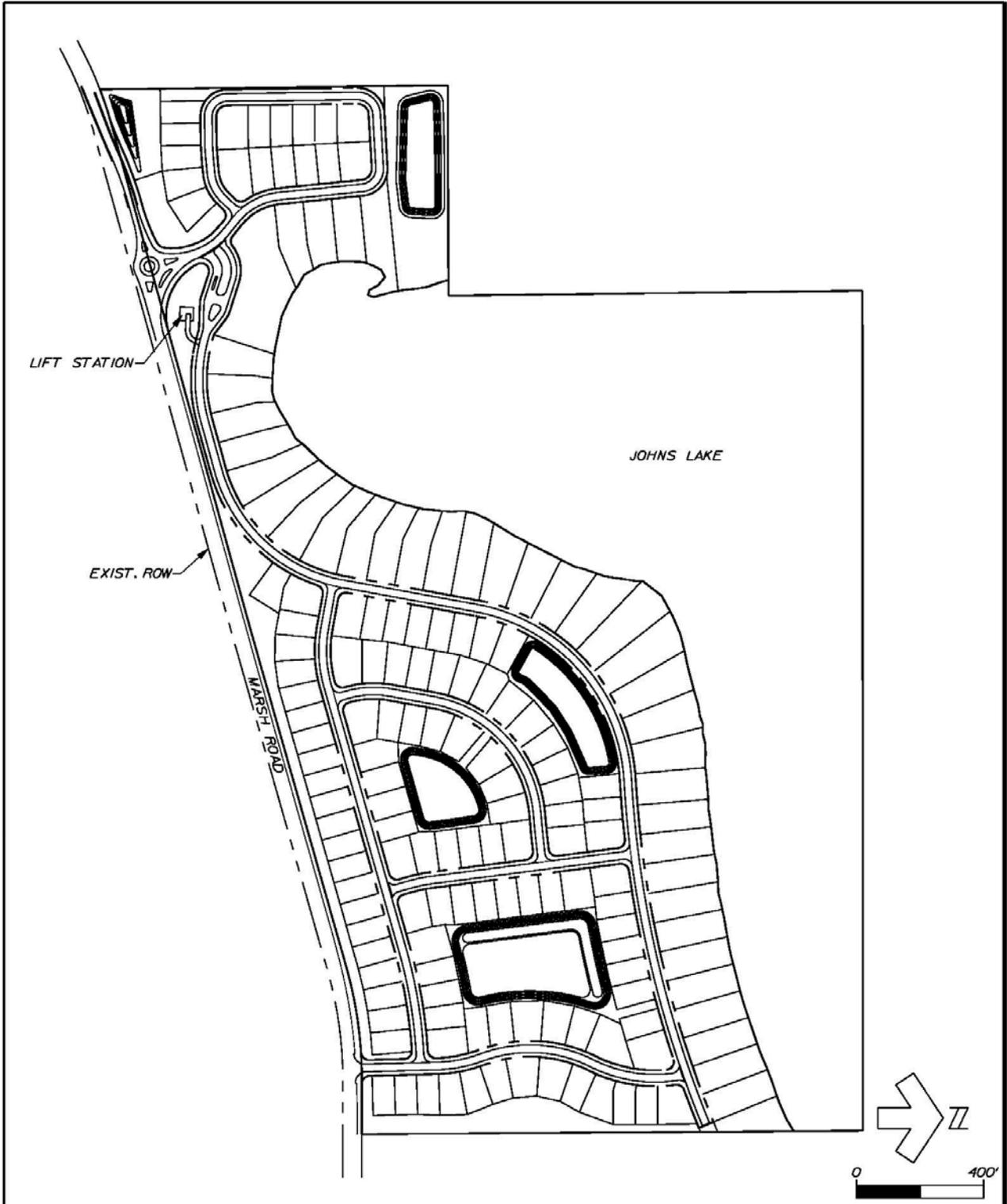
Exhibit "D"
Right-of-Way Property



RIGHT OF WAY PROPERTY

EXHIBIT "D"

Exhibit "E"
Lift Station



LIFT STATION

EXHIBIT "E"

This document was prepared by and after recording should be returned to:

Thomas R. Sullivan, Esquire
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 North Eola Drive
Orlando, Florida 32801
(407) 843-4600

Joinder and Consent to Waterside On John’s Lake Developer’s Agreement by and among City of Winter Garden, Florida (“City”), Centerline Homes Enterprises Five, LLC (“Developer”) and Warren Hardin Edwards, III (“Owner”) (“Developer”) (the “Agreement”)

Cra-Mar Groves, Inc., a Florida corporation, whose address is 5932 Caymus Loop, Windermere, Florida 34786 hereby joins in a consents solely to Sections 3, 4 and 5 of the Agreement.

Signed, sealed and delivered in the Presence of:

Cra-Mar Groves, Inc., a Florida corporation

Print Name: _____

By: _____
Name: Mark W. Griffith
Its: President

Print Name: _____

Date: _____, 2012

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Mark W. Griffith, as President of Cra-Mar Groves, Inc. a Florida corporation. Said person (check one) is personally known to me or produced _____ as identification.

(Notary Seal)

Printed Name: _____
Notary Public, State of _____
Commission No. _____
My commission expires: _____

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

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

Via: City Manager Mike Bollhoefer

Date: August 16, 2012

Meeting Date: August 23, 2012

Subject: Recommendation to approve waiving fees and closing Plant St. to accommodate the Spring Fever in the Garden Festival on April 13 & 14, 2013.

Issue:

The Bloom and Grow Garden society has again requested to hold their 13th annual Spring Fever in the Garden Festival on April 13 and 14 in 2013. The festival is themed as a garden, art and wildlife event and attracts garden enthusiasts from around central Florida, the state and beyond. Event committee members select vendors with this theme in mind and program gardening demonstrations, a sidewalk chalk art contest, have entertainment and are proposing to add a new organic gardening and food area to this year's festival on S. Main St.

The festival has grown to be one of the signature events for Winter Garden and the greater West Orange County area. The garden society allows City representation on their planning committee to help assure that precautions are taken to provide a seamless experience for event patrons. Previous events have been well attended, organized, and taken place with very few incidents or disruptions to citizens or local businesses. The group has obtained permission to hold the festival and block Plant St. on these dates from the Downtown Winter Garden Merchants Guild.

The event has grown since its inception to require the following City Services:

- Police to monitor the event
- Fire personnel to man a first-aid station on-site
- Parks staff to drive carts throughout the festival to transport plants for a plant pick-up service
- Public Services staff to take care of emptying trash during the festival
- Facilities staff to be on-site to assist with electrical or other facilities issues

The group is a 501c-3 organization and is involved with several local charity projects to include landscaping homes for habitat for humanity, maintaining the "Path of Life" at Chapin Station Park in Winter Garden, and giving books to local schools among others.

The organization is asking that fees are waived for the event permit, that streets be blocked during this time and that staff fees be waived.

Recommended action:

Recommendation to approve the request to block Plant St. and waive event and staff fees to accommodate the 2013 Spring Fever in the Garden festival.

Attachments/References:

Event Application



CITY OF WINTER GARDEN
 PARKS & RECREATION DEPARTMENT
 310 NORTH DILLARD STREET
 WINTER GARDEN, FL 34787

PHONE: (407) 656-4155
 WWW.WINTERGARDEN-FL.GOV

WINTER GARDEN • A charming little city with a juicy past.

Official Use Only
 Date Received: _____
 Permit Fee Pd. on: _____ Init. _____

**CITY OF WINTER GARDEN
 SPECIAL EVENT APPLICATION**

SPECIAL EVENTS ON CITY PROPERTY WHERE 500 OR MORE PEOPLE ARE REASONABLY ANTICIPATED TO BE IN ATTENDANCE OR WHERE THERE ARE REQUESTS FOR STREET CLOSURE WILL REQUIRE PRIOR APPROVAL BY THE CITY COMMISSION, AT LEAST FOUR WEEKS PRIOR TO THE SCHEDULED EVENT. THE APPLICANT MUST COMPLETE ALL OF THE FOLLOWING INFORMATION.

ORGANIZATION/GROUP: Bloom + Grow Garden Soc NON PROFIT CORP. _____ INDIV. _____
 NAME OF EVENT: "SPRING FEVER IN ^{THE} GARDEN"
 CONTACT/REPRESENTATIVE: SUE CRABTREE PHONE # 407-656-6974
 ALT. PHONE: 407-656-2089 EMAIL: skcrabtree@yahoo.com
 EVENT LOCATION: HISTORIC DOWNTOWN WINTER GARDEN PROPOSED DATES: April 13 + 14, 2013
 HOURS: SAT 9 to 5 Sun 11 to 4 ESTIMATED DAILY ATTENDANCE: 15,000 PER DAY

PLEASE CHECK ALL OF THE FOLLOWING THAT APPLY:

TYPE OF EVENT	EVENT DETAILS	EQUIPMENT AT EVENT
<input checked="" type="checkbox"/> FESTIVAL	<input type="checkbox"/> ADMISSION CHARGE/TICKET SALES	<input checked="" type="checkbox"/> AMPLIFIED SPEAKING/MUSIC
<input type="checkbox"/> EXHIBIT(S)	<input type="checkbox"/> ALCOHOL SERVED	HOURS OF: <u>BOTH DAYS</u>
<input type="checkbox"/> CARNIVAL/CIRCUS/FAIR	<input type="checkbox"/> ALCOHOL SALES	<input checked="" type="checkbox"/> PORTABLE RESTROOMS
<input type="checkbox"/> GENERAL MEETING	<input type="checkbox"/> FIREWORKS/PYROTECHNICS	<input type="checkbox"/> SPORTS EQUIPMENT
<input type="checkbox"/> PARADE	<input checked="" type="checkbox"/> FOOD VENDORS: # OF <u>20</u>	<input type="checkbox"/> STAGE/PROPS/PRODUCTION ?
<input type="checkbox"/> BLOCK PARTY OR PICNIC	<input checked="" type="checkbox"/> MERCHANDISE VENDORS: # OF <u>135</u>	<input checked="" type="checkbox"/> TENTS: # OF & SIZE _____
<input type="checkbox"/> SPORTING EVENT/COMPETITION	<input checked="" type="checkbox"/> OPEN TO PUBLIC	<input checked="" type="checkbox"/> TEMPORARY EVENT SIGNAGE
<input type="checkbox"/> WEDDING/RECEPTION	<input checked="" type="checkbox"/> STREET/SIDEWALK CLOSURE-	<input checked="" type="checkbox"/> DUMPSTERS/RECEPTACLES
<input type="checkbox"/> REVIVAL	HOURS OF: <u>BOTH DAY</u>	<input checked="" type="checkbox"/> INFLATABLE DEVICES
<input type="checkbox"/> OTHER: (EXPLAIN) _____	<input checked="" type="checkbox"/> CITY WATER USED	<input type="checkbox"/> COOKING EQUIP. USED.
_____	<input checked="" type="checkbox"/> EVENT HELD PREVIOUSLY	GAS _____ OPEN FLAME _____
_____	<input checked="" type="checkbox"/> CITY ELECTRIC USED	OTHER: _____



CITY OF WINTER GARDEN
PARKS & RECREATION DEPARTMENT
310 NORTH DILLARD STREET
WINTER GARDEN, FL 34787

PHONE: (407) 656-4155
WWW.WINTERGARDEN-FL.GOV

PLEASE PROVIDE A GENERAL DESCRIPTION OF THE EVENT THAT INCLUDES ALL FEATURES BEING PROPOSED TO TAKE PLACE. ELABORATE ON ANY OF THE ABOVE CHECKED ITEMS IF NECESSARY: (USE BACK IF NECESSARY)

GARDEN, NATURE & WILDLIFE THEMED VENDORS - ALL APPROVED BY SELECTION COMMITTEE FOR STREET SETUP, LIVE ENTERTAINMENT, RAFFLES, GARDEN ART SILENT AUCTION, KIDZONE, WATCH ART HAPPEN ARTISTS & CHALKIN IT UP SIDEWALK ~~ART~~ CHALK ARTISTS, EVERYTHING PLANNED & APPROVED BY SPRING FEVER COMMITTEE. ALSO SHUTTLE TO & FROM EVENT FROM VETERAN'S PARK.

THE FOLLOWING SHOULD ACCOMPANY YOUR APPLICATION: (APPROVAL PROCESS WILL NOT BEGIN UNTIL THESE ARE SUBMITTED)

- COPY OF 501C-3 FORM SIGNIFYING NON-PROFIT STATUS (IF APPLICABLE)
- SITE PLAN INDICATING ALL AFFECTED AREAS, STREETS PROPOSING TO BE CLOSED, TEMPORARY POWER SOURCES TO BE INSTALLED, PORTABLE RESTROOM LOCATIONS, VENDOR PLACEMENT, PARADE ROUTE OR ANY OTHER SIGNIFICANT FEATURES
- COPY OF APPLICANT'S INSURANCE CERTIFICATE NAMING THE CITY OF WINTER GARDEN AS ADDITIONALLY INSURED. (SEE NEXT PAGE FOR INDIVIDUALS AND GROUPS WITHOUT INSURANCE)
- IF ATTENDANCE IS REASONABLY ANTICIPATED TO BE GREATER THAN 100 PEOPLE YOU SHOULD ALSO INCLUDE A PLAN FOR:
- SANITATION - RESTROOMS, PORT-O-LET PLACEMENT, POTABLE WATER, TRASH RECEPTACLES & COLLECTION PLAN, ETC.
- PARKING AND TRAFFIC - REROUTING TRAFFIC AROUND BLOCKED STREETS, PARKING FOR EVENT PATRONS, ETC.
- MEDICAL CARE - FIRST AID STATIONS, EMS SERVICES, AMBULANCE ON SITE, ETC. FIRE DEPT
- SECURITY - OFF-DUTY OFFICERS SCHEDULED, SECURITY SERVICE UTILIZED, # OF EVENT STAFF IN ATTENDANCE, ETC. police DEPT

FOR OFFICE USE ONLY

REC.: _____ SCHEDULED FOR MEETING OF: _____
PD: _____
FIRE: _____
PW: _____ OTHER: _____

spring fever
in the
Garden

August 23, 2012

Dear Mayor Rees, City Commissioners and Mike Bollhoefer:

On behalf of the Spring Fever in the Garden Committee, we would like to thank you for your support for the past twelve years.

Our event has grown from a small four blocks of vendors, in 2001, to the current ten blocks of vendors, selected for their quality products.

We have worked with the City in making this an event that not only makes Bloom and Grow proud to host, but also one that the City of Winter Garden can be proud to co-sponsor.

We appreciate the positive working relationship our committee has with the Parks and Recreation Department. Each and every staff member gives their attention to make the event fun for the attendees and profitable for the vendors. Their assistance is truly appreciated by the Bloom & Grow Garden Society members. The leadership and support of Jay Conn, Mary Mazza, Elizabeth Robertson & Rick Reynolds are commendable. We also appreciate the assistance of all Department Heads and staff with our event.

We are looking forward to partnering with the City of Winter Garden, on Spring Fever in the Garden, for years to come. Thank you.

Sincerely,



Sue

Sue Crabtree
Festival Chairperson

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Mike Bollhoefer, City Manager

Date: August 17, 2012

Meeting Date: August 23, 2012

Subject: City Manager Contract

Issue: My current contract expired August 13, 2012. The contract I have submitted is based on the standard International City/County Management Association (ICMA) contract. It is identical to my previous contract except for the following changes. Section 3.B.regarding severance pay was changed from 6 months severance to 20 weeks severance and 6 weeks accrued sick leave.

Attachments/references: Contract, previous contract

THIS AGREEMENT, made and entered into this 23rd day of July, 2012, by and between the City of Winter Garden, a municipal corporation, hereinafter called "Employer or Governing Body" as party of the first part, and Michael Bollhoefer, hereinafter called "Employee or City Manager", as party of the second part, both of whom understand as follows:

WHEREAS, Employer desires to employ the services of said Michael Bollhoefer as City Manager of the City of Winter Garden, as provided for in the City Charter of the City of Winter Garden; and

WHEREAS, it is the desire of the Governing Board, hereinafter called "Governing Body" or "City" to provide certain benefits, to establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Governing Body to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment, (2) to make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee's services at such time that Employer may desire to terminate his employ; and

WHEREAS, Employee desires to accept employment as City Manager of Winter Garden;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section I. Powers and Duties of the City Manager

- A. The Governing Body hereby agrees to employ said Michael Bollhoefer as City Manager of the City of Winter Garden to perform the functions and duties specified in the City Charter, and to perform other legally permissible and proper duties and functions as the Governing Body shall from time to time assign, subject to this Agreement. Employment shall commence on the 23rd day of August, 2012.
- B. As stated in Section 14 (1) of the City Charter, Neither the City Commission nor any of its members shall control, demand, direct or request the appointment or removal of any city administrative officer or employee whom the city manager or any of the city manager's subordinates is empowered to appoint or hire. Except for the purpose of an inquiry under section 24 of the Charter, the City Commission and its members shall deal with the administrative officers and employees solely through the city manager, and neither the City Commission nor any members thereof shall give orders to any subordinates of the city manager, either publicly or privately.
- C. As stated in Section 30 of the City Charter, the City Manager shall be the chief executive officer and head of the administrative branch of the city government except as herein provided. He shall be responsible to the City Commission for the proper administration of all affairs of the city and to that end, subject to Florida Statutes as from time to time amended, he shall have power and shall be required to:

Appoint, suspend and remove all city employees and appointive administrative officers, except as otherwise provided by law, this charter, or city ordinances. The city manager may authorize any administrative officer to exercise these powers with respect to city employees and officers that are within, or subordinates of that administrative officer's department, office, or agency, subject to the city manager's direction and supervision;

Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or law;

The city manager shall have the right to take part in discussion at City Commission meetings but shall not vote;

See that all laws, provisions of this charter and acts of the city commission, subject to enforcement by the city manager or by officers subject to the city manager's direction and supervision, are faithfully executed;

Prepare and submit the annual budget and capital program to the city commission, and implement the formal budget as approved by the city commission to achieve the goals of the city;

Submit to the city commission and make available to the public, as of the end of the fiscal year, a complete report on the finances and administrative activities of the city for the preceding year;

Make such other reports as the city commission may require concerning operations;

Keep the city commission fully advised as to the financial condition and future needs of the city;

Make recommendations to the city commission, concerning the affairs of the city and facilitate the work of the city commission in developing policy;

Provide staff support services for the mayor-commissioner and commission members;

Assist the city commission to develop long term goals for the city and strategies to implement these goals;

Encourage and provide staff support for regional and intergovernmental cooperation;

Promote partnerships among commission, staff, and citizens in developing public policy and building a sense of community; and

Perform such other duties as are specified in this charter or may be required by the city commission not inconsistent therewith.

- D. The City Manager agrees to remain in the exclusive employ of the City of Winter Garden while employed by the City of Winter Garden. The term "employ," however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on his time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Winter Garden. In the event overnight travel is required for such non-Employer related business, the Governing Body shall be notified in advance. De minimis use of City equipment for such purposes is hereby authorized.
- E. Sections 1(B) and 1(C) shall be amended to reflect any changes made to the City Charter.

Section 2. Term

- A. The term of this Employment Agreement shall be for an initial period of three years beginning August 23, 2012, and concluding August 23, 2015. In the event Employee voluntarily resigns as City Manager before expiration of the term of this Agreement, then Employee shall give the Governing Body 30 days advance notice unless the parties agree otherwise.

Section 3. Termination and Severance Pay

- A. In the event the City Manager is involuntarily terminated by the Governing Body, Employer agrees to pay Michael Bollhoefer a lump sum cash payment equal to ~~six months~~ 20 weeks aggregate compensation as severance pay. The City will also pay 6 weeks accrued sick leave and all accrued vacation.
- B. In the event the City Manager is terminated by the Governing Body, then in that event all life, health, dental, and disability insurance and all other City provided benefits shall continue in full force and coverage, at City expense, for a period of six months or until similar coverage is provided to Michael Bollhoefer by a subsequent employer (and is in full force and effect), whichever comes first. Said continuation of group health insurance coverage shall be in addition to any protection afforded Employee by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on the date all coverage extended under the severance provisions herein expires.
- C. In the event the Governing Body at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across-the-board reduction for all employees of the City, or in the event the Governing Body refuses to comply with any other provision benefiting the City Manager herein, or the City Manager resigns following a suggestion, either formal or informal, by the Governing Body that he resign, then in that event Michael Bollhoefer may at his option be deemed to be terminated, as provided herein.
- D. In the event the City Manager is terminated for "just cause" then Employer's only obligation to Michael Bollhoefer is to pay all compensation and benefits accrued but unpaid at the date of termination. "Just cause" is defined and hereby limited for the purposes of this Agreement to the following reasons: (1) willful neglect of duty; (2) felony or misdemeanor conviction of any crime involving moral turpitude; (3) violation of duties to the City of honesty and sobriety; (4) any other act of a similar nature or the same or greater seriousness.
- E. Should the City Manager be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued leave, the Governing Body shall have the right to terminate this agreement subject to the severance provisions of Section 3A and B above.
- F. For purposes of complying with Section 3 of this Agreement, appropriations held as unencumbered fund balances in any fund or account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Employment Agreement.
- G. The terms of this Agreement shall remain in full force and effect and hold over until employment be terminated under the terms herein, or a new Agreement has been negotiated and entered into by the City Manager and Governing Body.
- H. Contemporaneously with the delivery of the severance pay herein above set out, Michael Bollhoefer agrees to execute and deliver to Employer a release, releasing Employer of all claims that Michael Bollhoefer may have against Employer.

Section 4. Salary

- A. Employer agrees to pay Michael Bollhoefer for his services rendered pursuant hereto as City Manager an annual base salary of \$143,270.40, payable in installments at the same time as other employees of the City of Winter Garden are paid. Employee's salary shall automatically increase based on cost of living increases (COLA's), if any, uniformly provided by the City to Department Directors of the City on the same basis and under the same conditions provided to said Department Directors.
- B. Employee's job performance will be reviewed and evaluated annually by the City Commission

prior to Employee's anniversary date of employment under this agreement and shall be discussed with Employee by the City Commission or its designee. The Mayor shall provide the City Manager with a summary written statement of the findings of the Governing Body and provide an adequate opportunity for the City Manager to discuss the evaluation with the Governing Body.

- C. Increases in Employee's base salary shall be negotiated by the City Commission, or its designee, and the Employee. Any salary increase for Employee must be approved by the City Commission, but does not require a formal amendment to this Agreement; provided, however, that the COLA increases referenced in subparagraph A above shall not require any specific approval by the City Commission.

Section 5. Retirement Benefits

The City Manager shall be covered and governed by the same retirement system as all other non-public safety employees.

Section 6. Insurance Coverage and Annual Physical

The City Manager shall be covered by the same health and dental plans as all other Department Heads.

Section 7. Automobile

Employee's duties require that he shall have the exclusive and unrestricted use at all times during his employment with Employer of an automobile provided to him by the Employer. Employer shall be responsible for paying liability, property damage, and comprehensive insurance and for the purchase (lease), operation, maintenance, repair, and regular replacement of said automobile.

Section 8. Other Benefits

All provisions of the City Charter, rules and regulations of Employer relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to the City Manager as they would to all other employees of Employer.

Section 9. Professional Development

Employer agrees to budget for and to pay the professional dues, subscriptions, travel and subsistence expenses of the City Manager for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation on City time to include, but not to be limited to the National League of Cities, International City/County Management Association, Florida League of Cities, and such other national, regional, state and local governmental groups and committees thereof which Michael Bollhoefer serves as a member, or which said participation is beneficial to Employer, as well as associated short courses, institutes, and seminars.

Additionally, Employer encourages the City Manager to attain positions of leadership in national, state, regional and local associations and organizations relevant to his profession. Employer agrees to budget and pay for travel and subsistence expenses necessary for his professional development and for the good of the employer.

Section 10. General Expenses

Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the City Manager, including participation in civic and other local organizations, and hereby agrees to reimburse or pay said general expenses.

Employer shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

The Finance Director (or other designated employee) is hereby authorized to disburse funds as needed to fulfill all provisions of this Agreement, upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

Section II. Suspension

Employer may suspend the City Manager with full pay and benefits at any time during the term of this Agreement, but only if a majority of the Governing Body and the City Manager agree; or after a public hearing, a majority of the Governing Body votes to suspend the City Manager for "just cause", provided, however, that Employee shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing, by the Governing Body members bringing such charges.

"Just cause" is defined and hereby limited for the purposes of this Agreement to the following: (1) willful neglect of duty, (2) felony or misdemeanor conviction of any crime involving moral turpitude, (3) violation of duties to the City of honesty and sobriety, or (4) any other act of similar nature, or of the same or greater seriousness.

Section 13. Indemnification

Employer has made Employee aware of the provisions of §768.28, Florida Statutes. Pursuant to §768.28(9) (a), Florida Statutes, Employee, as an officer of the City of Winter Garden, shall not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless Employee acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Further Employer has made Employee aware of the provisions of §111.07, Florida Statutes, authorizing municipalities to provide an attorney to defend certain civil actions arising from a complaint for damages or injury suffered as a result of any act or omission of action of any municipal officer for an act or omission arising out of and in the scope of such officer's employment and function.

Section 14. Conflict of Interest Prohibition

It is further understood and agreed that because of the duties of the City Manager within and on behalf of the City of Winter Garden and its citizenry, the City Manager shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Winter Garden, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the Governing Body. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Winter Garden, without the prior consent of the Governing Body.

Section 15. General Provisions

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.
- C. This Agreement shall become effective upon adoption and approval by the Governing Body of the City of Winter Garden.
- D. If any provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS THEREOF, the City of Winter Garden has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Secretary, and the City Manager has signed and executed this Agreement, both in duplicate, the day and year first written above.

Mayor

City Manager

ATTEST:

THIS AGREEMENT, made and entered into this 24th day of July, 2009, by and between the City of Winter Garden, a municipal corporation, hereinafter called "Employer or Governing Body" as party of the first part, and Michael Bollhoefer, hereinafter called "Employee or City Manager", as party of the second part, both of whom understand as follows:

WHEREAS, Employer desires to employ the services of said Michael Bollhoefer as City Manager of the City of Winter Garden, as provided for in the City Charter of the City of Winter Garden; and

WHEREAS, it is the desire of the Governing Board, hereinafter called "Governing Body" or "City" to provide certain benefits, to establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Governing Body to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment, (2) to make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee's services at such time that Employer may desire to terminate his employ; and

WHEREAS, Employee desires to accept employment as City Manager of Winter Garden;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Powers and Duties of the City Manager

- A. The Governing Body hereby agrees to employ said Michael Bollhoefer as City Manager of the City of Winter Garden to perform the functions and duties specified in the City Charter, and to perform other legally permissible and proper duties and functions as the Governing Body shall from time to time assign, subject to this Agreement. Employment shall commence on the 14th day of August, 2009.
- B. As stated in Section 14 (1) of the City Charter, Neither the City Commission nor any of its members shall control, demand, direct or request the appointment or removal of any city administrative officer or employee whom the city manager or any of the city manager's subordinates is empowered to appoint or hire. Except for the purpose of an inquiry under section 24 of the Charter, the City Commission and its members shall deal with the administrative officers and employees solely through the city manager, and neither the City Commission nor any members thereof shall give orders to any subordinates of the city manager, either publicly or privately.
- C. As stated in Section 30 of the City Charter, the City Manager shall be the chief executive officer and head of the administrative branch of the city government except as herein provided. He shall be responsible to the City Commission for the proper administration of all affairs of the city and to that end, subject to Florida Statutes as from time to time amended, he shall have power and shall be required to:

Appoint, suspend and remove all city employees and appointive administrative officers, except as otherwise provided by law, this charter, or city ordinances. The city manager may authorize any administrative officer to exercise these powers with respect to city employees and officers that are within, or subordinates of that administrative officer's department, office, or agency, subject to the city manager's direction and supervision;

Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or law;

The city manager shall have the right to take part in discussion at City Commission meetings but shall not vote;

See that all laws, provisions of this charter and acts of the city commission, subject to enforcement by the city manager or by officers subject to the city manager's direction and supervision, are faithfully executed;

Prepare and submit the annual budget and capital program to the city commission, and implement the final budget as approved by the city commission to achieve the goals of the city;

Submit to the city commission and make available to the public, as of the end of the fiscal year, a complete report on the finances and administrative activities of the city for the preceding year;

Make such other reports as the city commission may require concerning operations;

Keep the city commission fully advised as to the financial condition and future needs of the city;

Make recommendations to the city commission, concerning the affairs of the city and facilitate the work of the city commission in developing policy;

Provide staff support services for the mayor-commissioner and commission members;

Assist the city commission to develop long term goals for the city and strategies to implement these goals;

Encourage and provide staff support for regional and intergovernmental cooperation;

Promote partnerships among commission, staff, and citizens in developing public policy and building a sense of community; and

Perform such other duties as are specified in this charter or may be required by the city commission not inconsistent therewith.

D. The City Manager agrees to remain in the exclusive employ of the City of Winter Garden while employed by the City of Winter Garden. The term "employ," however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on his time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Winter Garden. In the event overnight travel is required for such non-Employer related business, the Governing Body shall be notified in advance. De minimis use of City equipment for such purposes is hereby authorized.

E. Sections 1(B) and 1(C) shall be amended to reflect any changes made to the City Charter.

Section 2. Term

A. The term of this Employment Agreement shall be for an initial period of three years beginning August 14, 2009, and concluding August 13, 2012. In the event Employee voluntarily resigns as City Manager before expiration of the term of this Agreement, then Employee shall give the Governing Body 30 days advance notice unless the parties agree otherwise.

Section 3. Termination and Severance Pay

- A. In the event the City Manager is involuntarily terminated by the Governing Body, Employer agrees to pay Michael Bollhoefer a lump sum cash payment equal to six months aggregate compensation as severance pay.
- B. In the event the City Manager is terminated by the Governing Body, then in that event all life, health, dental, and disability insurance and all other City provided benefits shall continue in full force and coverage, at City expense, for a period of six months or until similar coverage is provided to Michael Bollhoefer by a subsequent employer (and is in full force and effect), whichever comes first. Said continuation of group health insurance coverage shall be in addition to any protection afforded Employee by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on the date all coverage extended under the severance provisions herein expires.
- C. In the event the Governing Body at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across-the-board reduction for all employees of the City, or in the event the Governing Body refuses to comply with any other provision benefiting the City Manager herein, or the City Manager resigns following a suggestion, either formal or informal, by the Governing Body that he resign, then in that event Michael Bollhoefer may at his option be deemed to be terminated, as provided herein.
- D. In the event the City Manager is terminated for "just cause" then Employer's only obligation to Michael Bollhoefer is to pay all compensation and benefits accrued but unpaid at the date of termination. "Just cause" is defined and hereby limited for the purposes of this Agreement to the following reasons: (1) willful neglect of duty; (2) felony or misdemeanor conviction of any crime involving moral turpitude; (3) violation of duties to the City of honesty and sobriety; (4) any other act of a similar nature or the same or greater seriousness.
- E. Should the City Manager be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued leave, the Governing Body shall have the right to terminate this agreement subject to the severance provisions of Section 3A and B above.
- F. For purposes of complying with Section 3 of this Agreement, appropriations held as unencumbered fund balances in any fund or account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Employment Agreement.
- G. The terms of this Agreement shall remain in full force and effect and hold over until employment be terminated under the terms herein, or a new Agreement has been negotiated and entered into by the City Manager and Governing Body.
- H. Contemporaneously with the delivery of the severance pay herein above set out, Michael Bollhoefer agrees to execute and deliver to Employer a release, releasing Employer of all claims that Michael Bollhoefer may have against Employer.

Section 4. Salary

- A. Employer agrees to pay Michael Bollhoefer for his services rendered pursuant hereto as City Manager an annual base salary of \$137,030.40, payable in installments at the same time as other employees of the City of Winter Garden are paid. Employee's salary shall automatically increase based on cost of living increases (COLA's), if any, uniformly provided by the City to Department Directors of the City on the same basis and under the same conditions provided to said Department Directors.
- B. Employee's job performance will be reviewed and evaluated annually by the City Commission prior to Employee's anniversary date of employment under this agreement and shall be discussed

with Employee by the City Commission or its designee. The Mayor shall provide the City Manager with a summary written statement of the findings of the Governing Body and provide an adequate opportunity for the City Manager to discuss the evaluation with the Governing Body.

- C. Increases in Employee's base salary shall be negotiated by the City Commission, or its designee, and the Employee. Any salary increase for Employee must be approved by the City Commission, but does not require a formal amendment to this Agreement; provided, however, that the COLA increases referenced in subparagraph A above shall not require any specific approval by the City Commission.

Section 5. Retirement Benefits

The City Manager shall be covered and governed by the same retirement system as all other non-public safety employees.

Section 6. Insurance Coverage and Annual Physical

The City Manager shall be covered by the same health and dental plans as all other Department Heads.

Section 7. Automobile

Employee's duties require that he shall have the exclusive and unrestricted use at all times during his employment with Employer of an automobile provided to him by the Employer. Employer shall be responsible for paying liability, property damage, and comprehensive insurance and for the purchase (lease), operation, maintenance, repair, and regular replacement of said automobile.

Section 8. Other Benefits

All provisions of the City Charter, rules and regulations of Employer relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to the City Manager as they would to all other employees of Employer.

Section 9. Professional Development

Employer agrees to budget for and to pay the professional dues, subscriptions, travel and subsistence expenses of the City Manager for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation on City time to include, but not to be limited to the National League of Cities, International City/County Management Association, Florida League of Cities, and such other national, regional, state and local governmental groups and committees thereof which Michael Bollhoefer serves as a member, or which said participation is beneficial to Employer, as well as associated short courses, institutes, and seminars.

Additionally, Employer encourages the City Manager to attain positions of leadership in national, state, regional and local associations and organizations relevant to his profession. Employer agrees to budget and pay for travel and subsistence expenses necessary for his professional development and for the good of the employer.

Section 10. General Expenses

Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the City Manager, including participation in civic and other local organizations, and hereby agrees to reimburse or pay said general expenses.

Employer shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

The Finance Director (or other designated employee) is hereby authorized to disburse funds as needed to fulfill all provisions of this Agreement, upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

Section 11. Suspension

Employer may suspend the City Manager with full pay and benefits at any time during the term of this Agreement, but only if a majority of the Governing Body and the City Manager agree; or after a public hearing, a majority of the Governing Body votes to suspend the City Manager for "just cause", provided, however, that Employee shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing, by the Governing Body members bringing such charges.

"Just cause" is defined and hereby limited for the purposes of this Agreement to the following: (1) willful neglect of duty, (2) felony or misdemeanor conviction of any crime involving moral turpitude, (3) violation of duties to the City of honesty and sobriety, or (4) any other act of similar nature, or of the same or greater seriousness.

Section 13. Indemnification

Employer has made Employee aware of the provisions of §768.28, Florida Statutes. Pursuant to §768.28(9)(a), Florida Statutes, Employee, as an officer of the City of Winter Garden, shall not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless Employee acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Further Employer has made Employee aware of the provisions of §111.07, Florida Statutes, authorizing municipalities to provide an attorney to defend certain civil actions arising from a complaint for damages or injury suffered as a result of any act or omission of action of any municipal officer for an act or omission arising out of and in the scope of such officer's employment and function.

Section 14. Conflict of Interest Prohibition

It is further understood and agreed that because of the duties of the City Manager within and on behalf of the City of Winter Garden and its citizenry, the City Manager shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Winter Garden, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the Governing Body. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Winter Garden, without the prior consent of the Governing Body.

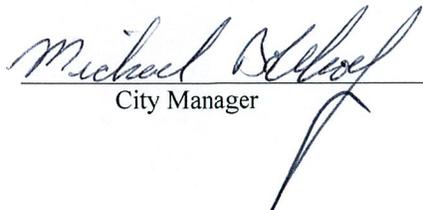
Section 15. General Provisions

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.
- C. This Agreement shall become effective upon adoption and approval by the Governing Body of the City of Winter Garden.
- D. If any provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS THEREOF, the City of Winter Garden has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Secretary, and the City Manager has signed and executed this Agreement, both in duplicate, the day and year first written above.



Mayor



City Manager

ATTEST: