



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

**REGULAR MEETING**

**MAY 8, 2014**

**6:30 P.M.**

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**CALL TO ORDER**

Determination of a Quorum  
Invocation and Pledge of Allegiance

1. **APPROVAL OF MINUTES**

Regular Meeting of April 24, 2014

2. **PRESENTATION**

Annual Drop Savers Poster Contest Winners – Assistant to the City Manager for Public Services Director Cochran

3. **REGULAR BUSINESS**

- A. Recommendation to approve Hickory Hammock Phase 1B Final Plat – Community Development Director Williams
- B. Recommendation to approve Hickory Hammock Phase 2A Final Plat - Community Development Director Williams
- C. Recommendation to approve Developer’s Agreement with Royal Oak Homes, LLC for Black Lake Preserve – Community Development Director Williams
- D. Recommendation to approve bids and award contract for Vineland Road Improvements Project for \$842,334.13 that includes a ten percent contingency - Assistant City Manager-Public Services Cochran
- E. Recommendation to approve bids and award contract for North Dillard Street Phase 4 Improvements to DeWitt Excavating, Inc. for \$426,305.00 that includes a ten percent contingency – Assistant City Manager-Public Services Cochran
- F. Recommendation to approve utilizing up to \$6,500.00 in confiscation funds to acquire and transport an armored vehicle through Florida’s Federal Property Assistance Program – Lieutenant Allen

Continued on next page.

4. **FIRST AND FINAL PUBLIC HEARING MATTER**

- A. **Resolution 14-04:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, RELATING TO THE FUNDING OF IMPROVEMENT TO THE STORMWATER AND DRAINAGE MANAGEMENT INFRASTRUCTURE AND SYSTEMS LOCATED ON, ABOUT, OR WITHIN PHASE I OF THE LAKE COVE POINTE SUBDIVISION; ESTABLISHING ANNUAL ASSESSMENTS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014; APPROVING AN ASSESSMENT ROLL FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014; ESTABLISHING THE LIEN ASSOCIATED THEREWITH; DIRECTING THAT THE ASSESSMENT ROLL BE CERTIFIED TO THE ORANGE COUNTY TAX COLLECTOR; PROVIDING FOR COLLECTION OF THE ASSESSMENTS PURSUANT TO FLORIDA’S UNIFORM ASSESSMENT COLLECTION ACT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE  
– Finance Director Zielonka

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

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

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

- A. Draft ordinance amending the subdivision code

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

**ADJOURN** to a Regular Meeting on May 22, 2014 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 Department (407) 656-4111 x5455.
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# CITY OF WINTER GARDEN

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## CITY COMMISSION REGULAR MEETING MINUTES

April 24, 2014

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. The invocation and Pledge of Allegiance were given.

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

**Absent:** Commissioner Robert Olszewski

**Also Present:** City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Assistant City Manager - Public Services Don Cochran, Assistant City Manager - Administrative Services Frank Gilbert, Community Development Director Ed Williams, Finance Director Laura Zielonka, Fire Chief Matt McGrew, Police Chief George Brennan, Economic Development Director Tanja Gerhartz, Recreation Director Jay Conn, and West Orange Times Reporter Peter M. Gordon

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

**Motion by Commissioner Makin to approve regular meeting minutes of April 10, 2014, as submitted. Seconded by Commissioner Buchanan and carried unanimously 4-0.**

### 2. **OATHS OF OFFICE AND INTRODUCTION OF NEW OFFICERS**

Police Chief Brennan introduced and administered the oath of office to officers Andrew Raphael, Rajiv Lal, Leigh Mathisen, Justin Smyth, Keith McClellan, and Jason McSpadden

### 3. **REGULAR BUSINESS**

#### A. **Recommendation to approve bids and award contract for 9<sup>th</sup> Street Gravity Sewer Improvements Project to Morris & Associates to include a ten percent contingency, which brings the total contract amount to \$658,885.15**

Assistant City Manager – Public Services Cochran gave a brief background on this project. He stated that this project will take the existing sewer line from the [9<sup>th</sup> Street] lift station to the south of the Story Road intersection. The sewer pipe is in the north bound lane, and therefore, during construction there will be times when there will be one lane with flaggers. In some places, there will be a temporary lane on the west side of the street.

Bids were received with Morris & Associates being the lowest bidder at \$598,986.50. Their thirty references were checked and all came back with positive comments. Staff recommends including a ten percent contingency. Mayor Rees asked how long the

project would take. Mr. Cochran responded about 120 days. Commissioner Sharman expressed that he like the bid sheet format.

**Motion by Commissioner Buchanan to approve bid and award contract for 9<sup>th</sup> Street Gravity Sewer Improvements Project to Morris & Associates to include a ten percent contingency, which brings the total contract amount to \$658,885.15. Seconded by Commissioner Sharman and carried unanimously 4-0.**

**B. Recommendation to approve bids and award contract for Fullers Cross Road 16-inch Potable Water Main Extension project to include a ten percent contingency, which brings the total contract amount to \$474,928.30**

Assistant City Manager – Public Services Cochran stated this project will mostly be a directional drill with digging where the bore pits are. This will help because of the narrow road at this location. Bore Hwag, Inc. was the low bidder at \$431,753.00. Positive recommendations were received about the work the contractor has performed. Mayor Rees asked what would be the cost difference between directional boring and digging. Mr. Cochran responded it may save a little money. Commissioner Makin asked why we are going at this in different directions. Mr. Cochran responded it is because of avoiding the utility lines. He noted there are two more phases in future years to get this 16 inch line tied to the Fuller's Cross water treatment plant. Commissioner Buchanan asked how often the ten percent contingency is used. Mr. Cochran explained it is very rare that it is not used but we don't always use all ten percent. City Manager Bollhoefer assured the City Commission that every change order is scrutinized.

**Motion by Commissioner Makin to approve bids and award contract for Fullers Cross Road 16-inch Potable Water Main Extension project to include a ten percent contingency, which brings the total contract amount to \$474,928.30. Seconded by Commissioner Sharman and carried unanimously 4-0.**

**C. Recommendation to approve Change Order for Ortega Industrial Contractors in the amount of \$19,870.00 for extending and connecting the Trunk Line C reuse line to the Wastewater Treatment Plant**

Assistant City Manager – Public Services Cochran stated the reason for the change order is because about 400 feet of pipe, in the original phase, was not connected to the wastewater plant. The current contractor, Ortega Industrial Contractors, has agreed to correct the situation at a cost of about \$55 a foot for a total of \$19,870.00. Twelve inch pipe usually costs us about \$65 a foot so we are getting a very good price.

**Motion by Commissioner Sharman to approve Change Order for Ortega Industrial Contractors in the amount of \$19,870.00 for extending and connecting the Trunk Line C reuse line to the Wastewater Treatment Plant. Seconded by Commissioner Buchanan and carried unanimously 4-0.**

*Note: Items 3.D and Item 3.E were addressed in reverse order and acted upon at the same time.*

**D. Recommendation to approve the new Facility Sublicense Agreement between the City of Winter Garden and the District Board of Trustees of Valencia College to allow Winter Garden to use the facility at the Mid Florida Tech campus**

**E. Recommendation to approve an Interlocal Agreement between the City of Winter Garden and the Central Florida Fire Consortium**

Fire Chief McGrew stated it is essential for Winter Garden Fire Rescue Department to be associated with a certified fire training academy and an educational provider. The documents provided represent the transition from our previous technical education provider to the new provider which is Valencia College.

The first document is the Interlocal Agreement that revises a prior agreement in 2005. The name is being changed at the request of Valencia College since they will be taking on the role of the fire academy. It also updates the list of participating agencies and the responsibilities. The second document is the sublicense agreement with Valencia College that gives all the participating agencies permission to enter and use the training facility at Mid Florida Tech. This document is necessary because it will take Valencia College several years to fund and build an academy. This allows Winter Garden to continue to use the existing training location for up to ten years. Approval was recommended.

**Motion by Commissioner Buchanan to approve an Interlocal Agreement between the City of Winter Garden and the Central Florida Fire Consortium and approve the new Facility Sublicense Agreement between the City of Winter Garden and the District Board of Trustees of Valencia College to allow Winter Garden to use the facility at the Mid Florida Tech campus. Seconded by Commissioner Sharman and carried unanimously 4-0.**

4. **MATTERS FROM PUBLIC** – There was none.

5. **MATTERS FROM CITY ATTORNEY** – There was none.

6. **MATTERS FROM CITY MANAGER**

- Shared that staff has painted the curb in front of the Subway on State Road 50. In addition, reflectors have been ordered and will be installed by staff. There has been no response yet from the State [Florida Department of Transportation].
- Advised that the homeowner's association, at the southeast corner of Boyd and Division Streets, have given their okay for us to remove the hedges blocking motorist's view of oncoming traffic.

7. **MATTERS FROM MAYOR AND COMMISSIONERS** – There was none.

The meeting adjourned at 7:03 p.m.

APPROVED:

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Mayor John Rees

ATTEST:

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City Clerk Kathy Golden, CMC

DRAFT

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

**From:** Don Cochran, Assistant City Manager – Public Services

**Via:** Mike Bollhoefer, City Manager

**Date:** April 21, 2014                      **Meeting Date:** May 8, 2014

**Subject:** Presentation of Drop Saver Poster Contest Winners

**Issue:** The City of Winter Garden supports the nationally proclaimed Drinking Water Week celebration, which occurs annually during the first week of May. In an effort to promote public education of this important issue, the Water Conservation program participated in the Florida Section of the American Water Works Association (FSAWWA) Annual Drop Savers poster contest. The contest encourages students to use their own water conservation ideas and design to create a water conservation poster. Students from Dillard, Tildenville, and Whispering Oak participated in this year's contest. Each school was allowed to select one (1) school winner from each grade division (2 and 3) and submit entries to the City. City staff then voted for the best of each of the two divisions and submitted the designs for the state-level contest. All four (4) of the school winners will receive a t-shirt with their design, certificates, and other prizes from the City. Two (2) of the students' posters were selected as City winners and submitted to the state competition.

**Recommended Action:**

Staff recognizing the following winners:

Dillard Street Elementary School  
Caitlin Foster (Division 2) – School Winner

Whispering Oak Elementary School  
Morgan Jacob (Division 3) – School Winner & City Winner

Tildenville Elementary School  
Seth Guzman (Division 3) – School Winner  
Ariana Gonzalez (Division 2) – School Winner & City Winner

**Attachments/References:**

N/A

# 2014 Annual Drop Savers Poster Contest





Ariana Gonzalez Ramos  
*School Winner & City  
Winner*

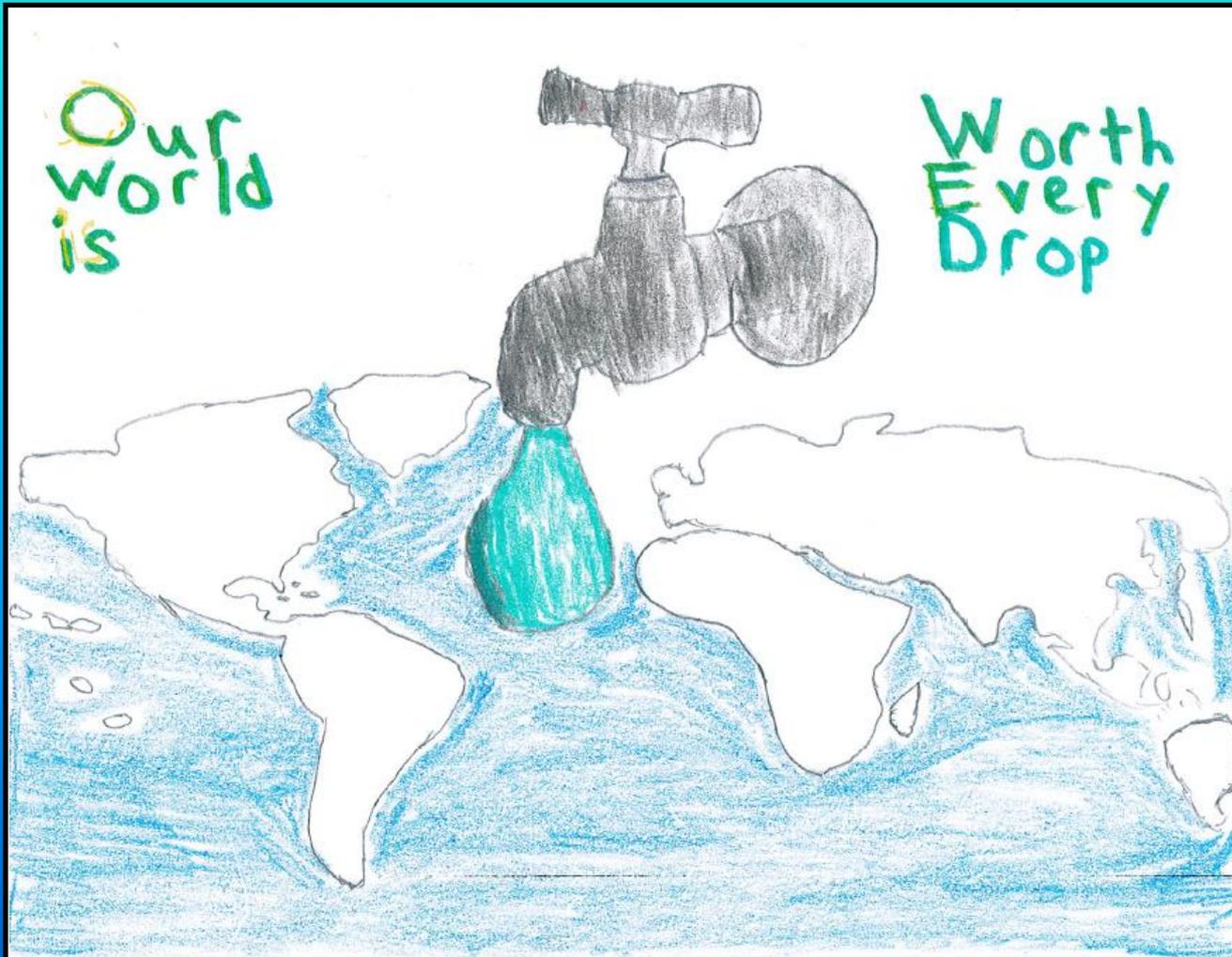
Division 2

Tildenville Elementary

Grade 3

Mrs. Espinoza's Class

Seth Guzman  
*School Winner*



Division 4

Tildenville  
Elementary

Grade 5  
Ms. Ortiz's  
Class

Morgan Jacob  
*School Winner & City Winner*



Division 4

Whispering  
Oaks  
Elementary

Grade 4  
Ms. Kirwan's  
Class



Caitlin Foster  
*School Winner*

Division 2

Dillard Street  
Elementary

Grade 3  
Mrs. Price-Sill's  
Class

Thank you to all of our  
participating schools!

Tildenville Elementary  
Dillard Street Elementary  
Whispering Oaks Elementary

American Water Works Association  
**AWWA** **FLORIDA**  
Florida's Water Professionals



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

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

**Via:** City Manager Mike Bollhoefer

**Date:** **April 16, 2014**

**Meeting Date: May 8, 2014**

**Subject:** Final Plat  
**Hickory Hammock Phase 1B (19.786 +/- Acres)**

**Issue:** Consideration of Final Plat of 67 lots in the 19.786+/- acre Hickory Hammock subdivision to be platted as Phase 1B. The Preliminary Plat of the Hickory Hammock subdivision for a total of 500 homes (391 single-family and 109 townhomes) was approved by the Planning and Zoning Board on June 5, 2006.

**Discussion:**

The applicant is requesting approval of the Final Plat of 67 lots in 19.786+/- acres of the Hickory Hammock subdivision to be platted as Phase 1B. The subject property is located within the City of Winter Garden municipal limits, and carries a zoning designation of PUD (Planned Unit Development).

**Recommended Action:**

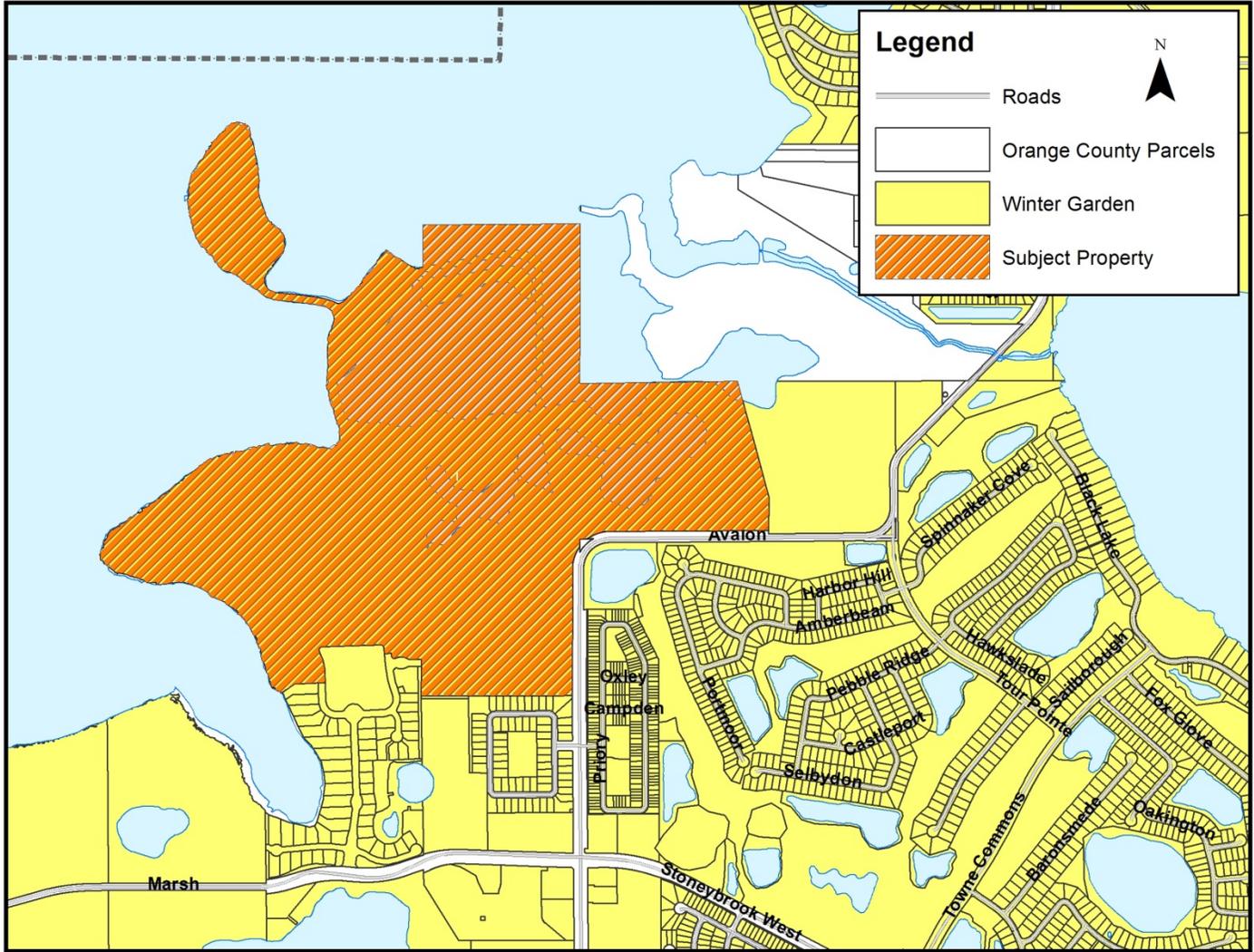
Staff recommends approval of the Hickory Hammock Phase 1B Final Plat.  
(See attached Staff Report)

**Attachments/References:**

Location Map  
Staff Report  
Final Plat

# LOCATION MAP

## Hickory Hammock



# CITY OF WINTER GARDEN

## PLANNING & ZONING DIVISION

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

# STAFF REPORT

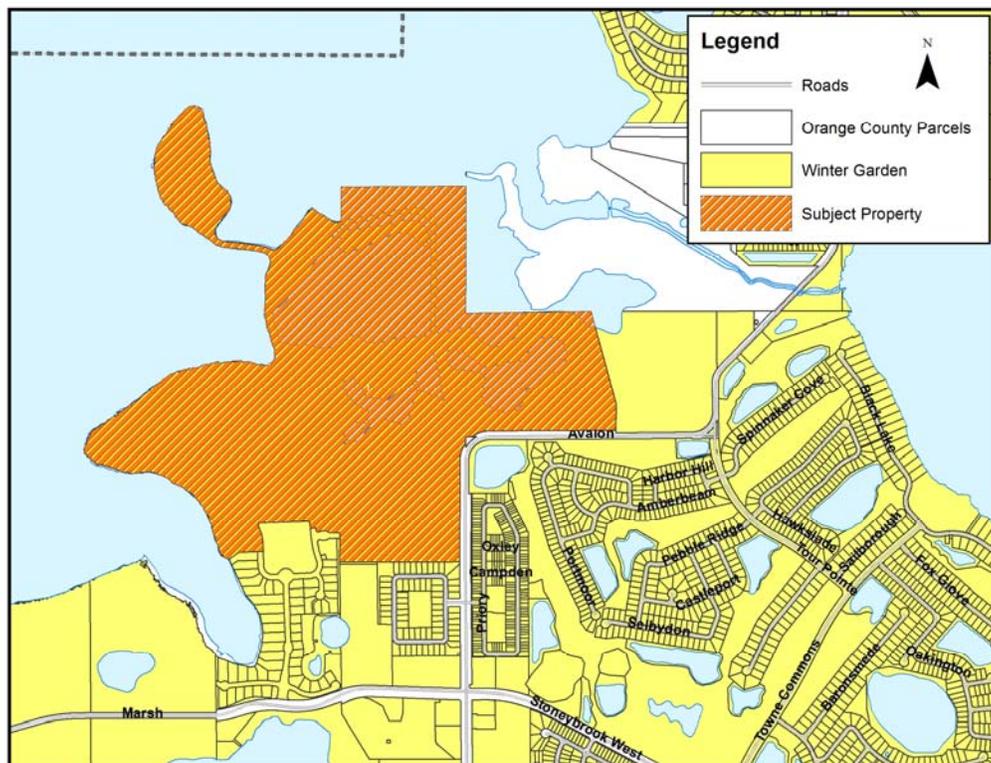
**TO:** PLANNING AND ZONING COMMITTEE  
**PREPARED BY:** KELLY CARSON, PLANNER II  
**DATE:** APRIL 16, 2014  
**SUBJECT:** FINAL PLAT  
**Hickory Hammock Phase 1B (19.786 ± ACRES)**  
**PARCEL ID # 33-22-27-0000-00-003**

**APPLICANT:** The Ryland Group, Inc. and M/I Homes of Orlando, LLC

### INTRODUCTION

The purpose of this report is to evaluate the proposed Final Plat of Hickory Hammock Phase 1B for compliance with the Preliminary Plat for the Hickory Hammock Property, the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property, located on the northwest corner of the intersection of Avalon Road and Marsh Road, is a 19.786 ± acre portion of the 849 ± acre Hickory Hammock PUD property. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The applicants are requesting approval of the Final Plat of the 19.786 ± acre property to be platted as Hickory Hammock Phase 1B for 67 single family residential lots. The subject property is located within the City of Winter Garden municipal limits, and carries the zoning designation PUD (Planned Unit Development). The subject property is designated Suburban Residential on the Future Land Use Map of the Comprehensive Plan. The applicant proposes to plat the project in multiple phases. The 19.786 ± acre site proposed for Final Plat is only a portion of the subdivision: a total of 500 homes are approved with the PUD (391 single-family and 109 townhomes). The first phase, Hickory Hammock Phase 1A, was platted for 54 single family residential lots in November of 2013. Hickory Hammock Phase 2A is being platted concurrently with Phase 1B for 61 single family residential lots. The remaining Hickory Hammock lots will be platted in future phases.

### **EXISTING USE**

The Preliminary Plat for the 849 ± acre Hickory Hammock PUD was approved by the Planning and Zoning Board on June 5, 2006; Construction Plans for the subdivision were approved by the City Commission in 2007. Site work for the subdivision is currently underway.

### **ADJACENT LAND USE AND ZONING**

The properties located to the north of the subject property are Hickory Hammock Phase 2A (Final Plat approval still pending) and Lake Burnett. The properties located to the east are Hickory Hammock Phase 2A (Final Plat approval still pending) and the Stoneybrook West subdivision, which is located within the City of Winter Garden and zoned PUD. The properties to the west are Hickory Hammock Phase 1A, future phases of the subdivision, and a portion of Lake Burnett. The properties to the south are Hickory Hammock Phase 1A, future phases of the subdivision, and the Avalon Reserve subdivision, which is located within the City of Winter Garden and zoned PUD.

### **PROPOSED USE**

The applicant proposes to plat the 19.786 ± acre site to construct 67 single family residential homes as Hickory Hammock Phase 1B.

### **PUBLIC FACILITY ANALYSIS**

The Hickory Hammock PUD subdivision was approved for 500 homes- 391 single family lots and 91 townhomes- to be developed in multiple phases. Infrastructure in the form of roads, water, sewer, and reclaimed water systems are being installed to support the approved subdivision.

### **SUMMARY**

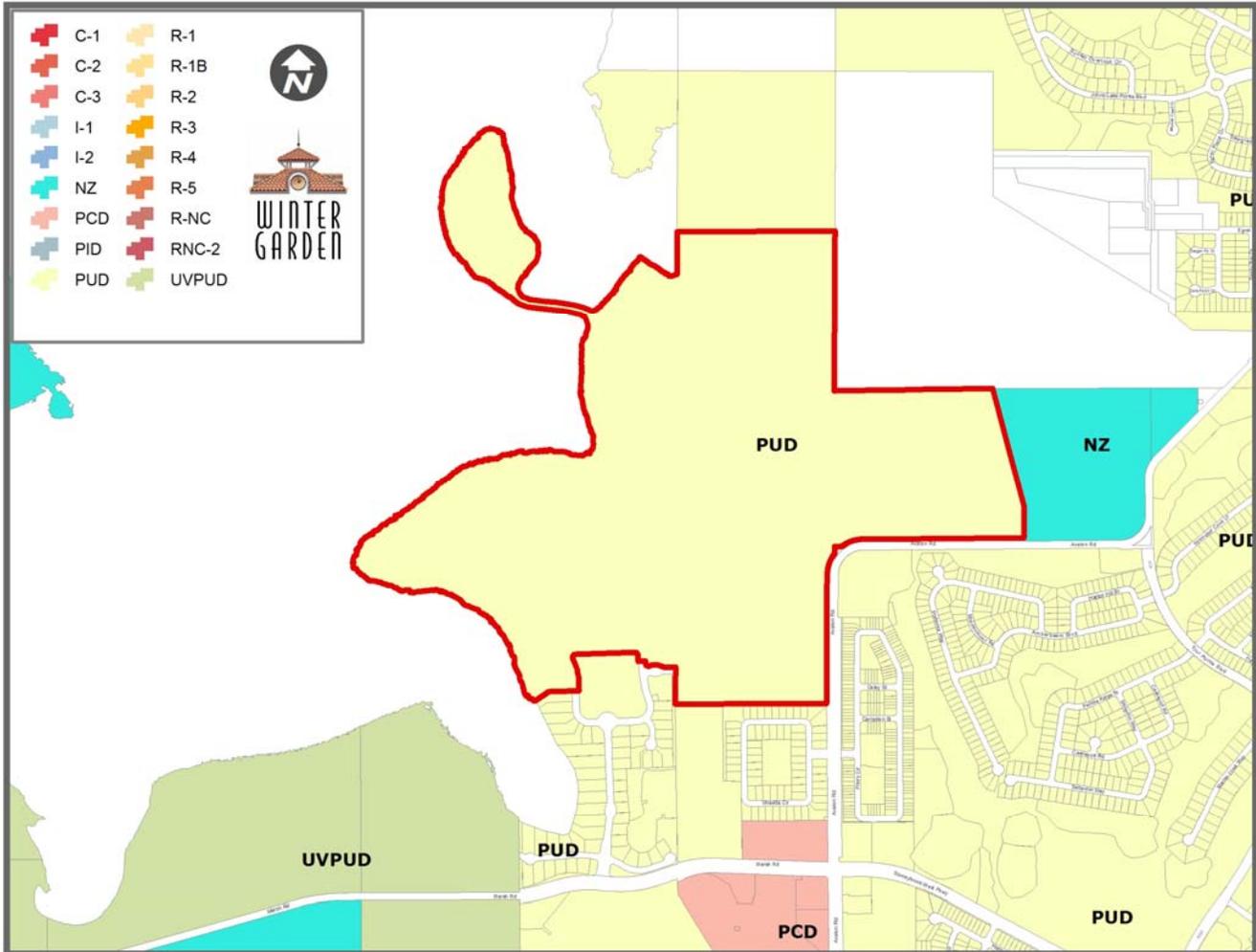
City Staff recommends approval of the proposed Final Plat for Hickory Hammock Phase 1B.

Staff has coordinated with the applicants to ensure that the Final Plat is consistent with the Code of Ordinances regarding Final Plat approval, the property specific PUD Zoning Ordinance and the approved Preliminary Plat.

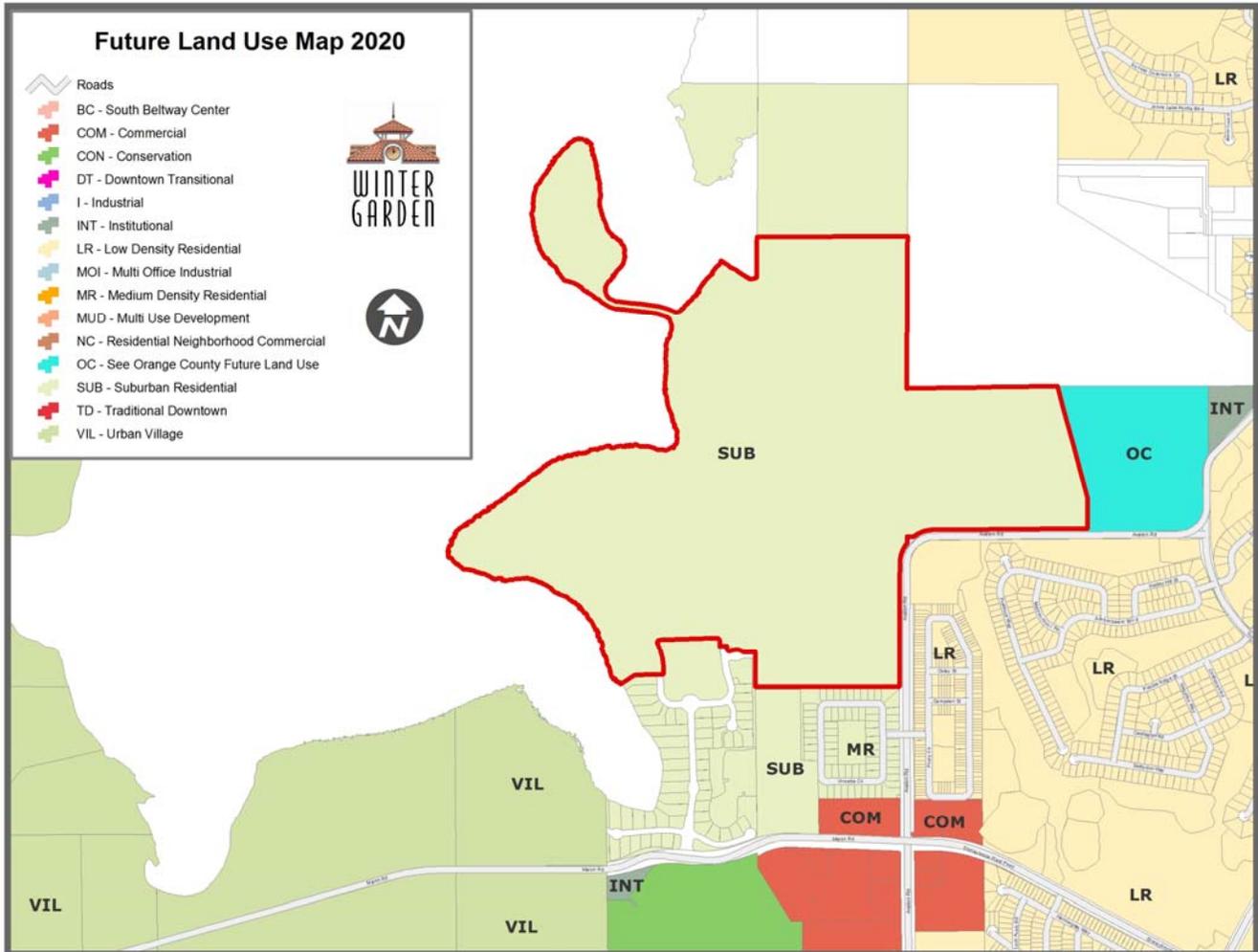
**AERIAL PHOTO**  
**HICKORY HAMMOCK**



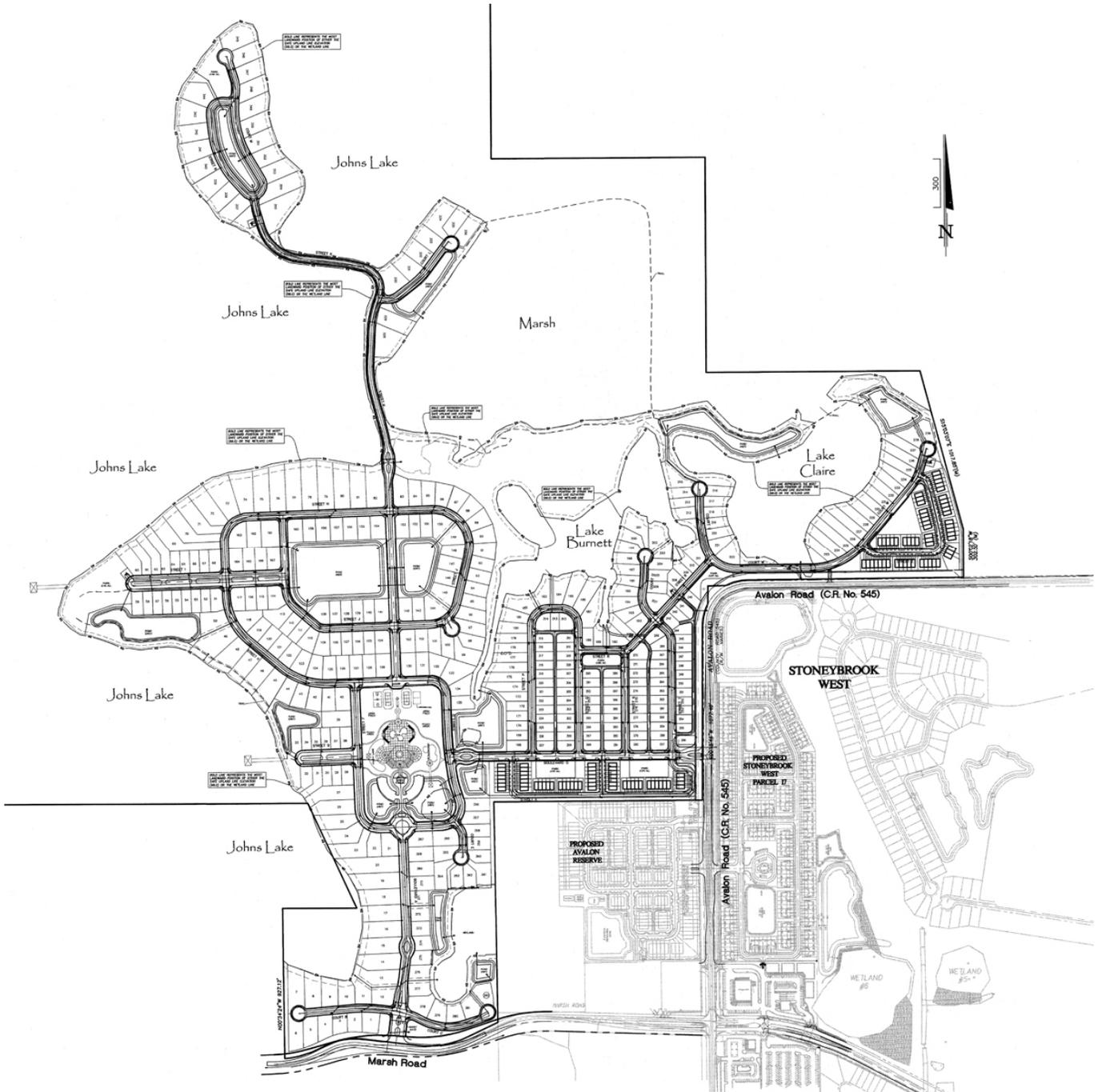
**ZONING MAP**  
**HICKORY HAMMOCK**



### FUTURE LAND USE MAP HICKORY HAMMOCK



**PRELIMINARY PLAT  
HICKORY HAMMOCK**



**END OF STAFF REPORT**

# HICKORY HAMMOCK PHASE 1B

SHEET 1 OF 3

Lying in Sections 32 and 33, Township 22 South, Range 27 East  
City of Winter Garden, Orange County, Florida.

PLAT  
BOOK

PAGE

## HICKORY HAMMOCK PHASE 1B DEDICATION

KNOW ALL BY THESE PRESENTS, that The Ryland Group, Inc., a Maryland corporation and M/J Homes of Orlando, LLC, a Florida limited liability company, being the owners in fee simple of the lands described in the foregoing caption to this plat, hereby dedicates said lands and plat for the easements, rights, uses and purposes therein expressed including as set forth in the plat notes.

IN WITNESS WHEREOF, the Owner has caused these presents to be signed and attested to by its Authorized Agents named below on.....

Signed, sealed and delivered in the presence of: **Debra Rosselle**  
Signature: *[Signature]*  
Print Name: **Debra Rosselle**  
By: **Dianna D. Moysall**  
Signature: *[Signature]*  
Print Name: **Dianna D. Moysall**

STATE OF FLORIDA  
COUNTY OF ORANGE  
The foregoing instrument was acknowledged before me this 1st day of April, 2014, by **Debra Rosselle**, its **Debra Rosselle**, on behalf of the Corporation.

He  is personally known to me or...  
 has produced \_\_\_\_\_ as identification, and DID or DID NOT take an oath.  
Notary Public: **Dianna D. Moysall**  
My Commission Expires: **8-14-15**  
IN WITNESS WHEREOF, I have hereto set my hand and seal on the above date.  
Signature: *[Signature]*  
Print Name: **Dianna D. Moysall**  
Notary Public  
Serial No. (if any) **EE298393**  
My Commission Expires: **8-14-15**

Signed, sealed and delivered in the presence of: **J. Allen**  
Signature: *[Signature]*  
Print Name: **Justin Allen**  
By: *[Signature]*

STATE OF FLORIDA  
COUNTY OF SEMINOLE  
The foregoing instrument was acknowledged before me this 1st day of April, 2014, by **Justin Allen**, its **Justin Allen**, on behalf of the Limited Liability Company.  
He  is personally known to me or...  
 has produced \_\_\_\_\_ as identification, and DID or DID NOT take an oath.  
Notary Public: **Patricia A. Smith**  
My Commission Expires: **9-12-16**  
IN WITNESS WHEREOF, I have hereto set my hand and seal on the above date.  
Signature: *[Signature]*  
Print Name: **PATRICIA A. SMITH**  
Notary Public  
Serial No. (if any) **EE219042**  
My Commission Expires: **9-12-16**

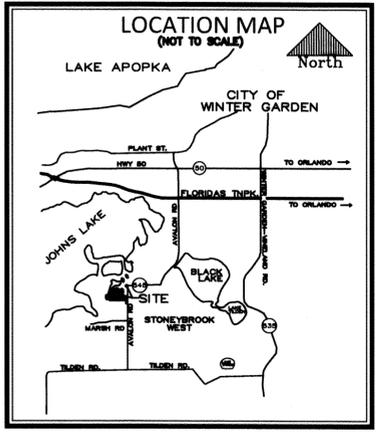
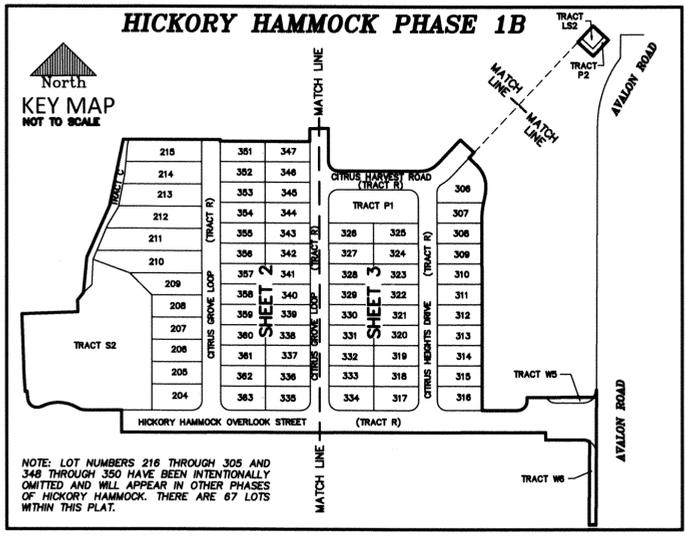
Notary Stamp:  
**PATRICIA A. SMITH**  
MY COMMISSION EXPIRES 09/12/2016  
Notary Public  
Signature: *[Signature]*  
Print Name: **PATRICIA A. SMITH**  
Notary Public  
Serial No. (if any) **EE219042**  
My Commission Expires: **9-12-16**

**CERTIFICATE OF APPROVAL BY MUNICIPALITY**  
THIS IS TO CERTIFY, that on ..... the foregoing plat was approved by the City Commission of Winter Garden, Florida  
Mayor  
Attest: .....  
City Clerk

**QUALIFICATION STATEMENT OF SURVEYOR AND MAPPER**  
KNOW ALL MEN BY THESE PRESENTS, This plat was prepared under the direction and supervision of the undersigned, a professional surveyor and mapper, and complies with all of the survey requirements of Chapter 177, Florida Statutes. The lands depicted herein are located in the City of Winter Garden, Orange County, Florida.  
DONALD W. McINTOSH ASSOCIATES, INC.  
Certificate of Authorization Number LB68  
2200 Park Avenue North, Winter Park, FL 32789  
Date: **3/29/2014** BY: **Keith Ruddick**  
Keith Ruddick  
Florida Registered Surveyor and Mapper  
Certificate No. 2617

**CERTIFICATE OF COUNTY COMPTROLLER**  
I HEREBY CERTIFY that the foregoing plat was recorded in the Orange County Official Records on \_\_\_\_\_ as File No. \_\_\_\_\_  
County Comptroller In and for Orange County, Florida  
BY: \_\_\_\_\_

**CERTIFICATE OF REVIEW BY CITY SURVEYOR**  
This plat has been reviewed for conformity with Chapter 177, Florida Statutes.  
City Surveyor PSM# \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_



**LEGEND (FOR ALL SHEETS)**

C53	CURVE NUMBER (SEE TABLE)
L10	LINE NUMBER (SEE TABLE)
∠	CENTRAL ANGLE
R=	RADIUS
L=	ARC LENGTH
CB=	CHORD BEARING
CL	CENTERLINE
ID	IDENTIFICATION
N&D	NAIL AND DISK
NT	NON-TANGENT
(NR)	NON-RADIAL
PI	POINT OF INTERSECTION
PT	POINT OF TANGENCY
PC	POINT OF CURVATURE
PCC	POINT OF COMPOUND CURVATURE
POL	POINT ON LINE
PRC	POINT OF REVERSE CURVATURE
ORB	OFFICIAL RECORD BOOK
PS	PLAT BOOK
PG	PAGE
R/W	RIGHT-OF-WAY
RP	RADIUS POINT
(TYP.)	TYPICAL
(R)	RADIAL
FND	FOUND
DUE	DRAINAGE AND UTILITY EASEMENT.
DE	DRAINAGE EASEMENT
DUASE	DRAINAGE, UTILITY AND SIDEWALK EASEMENT
UB	UPLAND BUFFER
UE	UTILITY EASEMENT
W&L	WALL AND LANDSCAPE EASEMENT
W&L&S	WALL, LANDSCAPE AND SIGNAGE EASEMENT
W&L&S&UE	WALL, LANDSCAPE AND UTILITY EASEMENT
SMA	STORMWATER MANAGEMENT AREA
CM	CONCRETE MONUMENT
LB	LICENSED BUSINESS
LS	LICENSED SURVEYOR
IRC	IRON ROD AND CAP
OCR	CERTIFIED CORNER RECORD
NOV029	NATIONAL GEODETIC VERTICAL DATUM OF 1929
SEC. 22-34-30	SECTION, TOWNSHIP, RANGE
	DENOTES PERMANENT REFERENCE MONUMENT SET 4"x4" CONCRETE MONUMENT #888 PER CHAPTER 177, FLORIDA STATUTES. (UNLESS OTHERWISE NOTED)
	DENOTES PERMANENT CONTROL POINT SET NAIL AND DISK #888 PER CHAPTER 177, FLORIDA STATUTES.

NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county.

PREPARED BY:  
**DONALD W. McINTOSH ASSOCIATES, INC.**  
ENGINEERS PLANNERS SURVEYORS  
2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4088  
CERTIFICATE OF AUTHORIZATION NUMBER LB68

Description:  
That part of Sections 32 and 33, Township 22 South, Range 27 East, Orange County, Florida, described as follows:  
Commence at the Southwest corner of Section 33, Township 22 South, Range 27 East and run N00°02'06"E along the West line of the Southwest 1/4 of said Section 33 a distance of 250.00 feet to the POINT OF BEGINNING; thence continue N00°02'06"E along said West line, 60.00 feet; thence departing said West line run S89°53'55"W, 98.77 feet to the point of curvature of a curve concave Northerly having a radius of 32.00 feet and a chord bearing of N74°07'05"W, thence Westerly along the arc of said curve through a central angle of 31°58'01" for a distance of 17.85 feet to a point of reverse curvature of a curve concave Southerly having a radius of 100.00 feet and a chord bearing of N87°35'59"W, thence Westerly along the arc of said curve through a central angle of 58°55'50" for a distance of 102.85 feet to a point of reverse curvature of a curve concave Northeasterly having a radius of 25.00 feet and a chord bearing of N61°20'35"W, thence Northwesterly along the arc of said curve through a central angle of 111°26'39" for a distance of 48.63 feet to a point of compound curvature of a curve concave Easterly having a radius of 1478.03 feet and a chord bearing of N05°12'27"W, thence Northerly along the arc of said curve through a central angle of 00°49'36" for a distance of 21.33 feet to a point on a non-tangent line; thence S85°12'21"W, 5.00 feet to a point on a non-tangent curve concave Easterly having a radius of 1483.03 feet and a chord bearing of N03°24'29"W, thence Northerly along the arc of said curve through a central angle of 02°46'20" for a distance of 71.76 feet to the point of tangency; thence N02°01'19"W, 138.31 feet; thence N87°58'41"E, 150.00 feet; thence N02°01'19"W, 31.58 feet; thence N38°48'59"E, 25.28 feet; thence N05°19'25"E, 96.65 feet; thence N23°42'11"E, 150.62 feet; thence N11°34'32"E, 183.80 feet; thence N89°53'55"E, 258.48 feet; thence S00°06'05"E, 5.00 feet; thence N89°53'55"E, 240.00 feet; thence N00°06'05"W, 35.00 feet; thence N89°53'55"E, 50.00 feet; thence S00°06'05"E, 90.00 feet to the point of curvature of a curve concave Northeasterly having a radius of 25.00 feet and a chord bearing of S45°06'05"E; thence Southeasterly along the arc of said curve through a central angle of 90°00'00" for a distance of 39.27 feet to the point of tangency; thence N89°53'55"E, 221.87 feet to the point of curvature of a curve concave Northwesterly having a radius of 52.00 feet and a chord bearing of N66°26'18"E, thence Northeasterly along the arc of said curve through a central angle of 46°55'14" for a distance of 50.77 feet to the point of tangency; thence N42°58'41"E, 89.45 feet; thence S47°01'19"E, 50.00 feet to a point hereinafter referred to as Reference Point A; thence S42°58'41"W, 20.00 feet; thence S45°52'46"E, 29.98 feet to the point of curvature of a curve concave Westerly having a radius of 80.00 feet and a chord bearing of S17°19'13"E; thence Southerly along the arc of said curve through a central angle of 57°07'07" for a distance of 79.75 feet to the point of tangency; thence S11°14'20"W, 32.20 feet to the point of curvature of a curve concave Easterly having a radius of 190.00 feet and a chord bearing of S03°34'08"W; thence Southerly along the arc of said curve through a central angle of 11°20'29" for a distance of 37.61 feet to the point of tangency; thence S00°06'05"E, 518.32 feet; thence N89°53'55"E, 95.00 feet to the point of curvature of a curve concave Northwesterly having a radius of 25.00 feet and a chord bearing of N44°53'55"E; thence Northeasterly along the arc of said curve through a central angle of 90°00'00" for a distance of 39.27 feet to the point of tangency; thence N00°06'05"W, 10.00 feet; thence N89°53'55"E, 179.44 feet to a point on a non-tangent curve concave Westerly having a radius of 35.00 feet and a chord bearing of N17°30'20"E; thence Northerly along the arc of said curve through a central angle of 34°29'09" for a distance of 21.07 feet to a point of cusp on the West right-of-way line of Avalon Road (County Road No. 545) as recorded in Official Records Book 9932, Page 7973 of the Public Records of Orange County, Florida; thence S00°15'46"W along said right-of-way line, 364.78 feet; thence departing said right-of-way line run S89°53'55"W along the South line of the Southwest 1/4 of said Section 33, township 22 South, Range 27 East, 18.00 feet; thence departing said South line run N00°15'46"E, 225.49 feet to a point on a non-tangent curve concave Southerly having a radius of 35.00 feet and a chord bearing of N75°23'23"W, thence Westerly along the arc of said curve through a central angle of 29°25'25" for a distance of 17.97 feet to the point of tangency; thence S89°53'55"W, 99.64 feet; thence N00°06'05"W, 20.00 feet; thence S89°53'55"W, 1134.61 feet to the POINT OF BEGINNING;  
AND  
Commence at the aforesaid Reference Point A and run N42°58'41"E, 407.86 feet to the POINT OF BEGINNING; thence continue N42°58'41"E, 60.00 feet; thence S47°01'19"E, 56.00 feet; thence S42°58'41"W, 60.00 feet; thence N47°01'19"W, 56.00 feet to the POINT OF BEGINNING.  
Together containing 19.786 acres more or less.

- NOTES:
- Bearings based on the West line of the Southwest 1/4 of Section 33, Township 22 South, Range 27 East, Orange County, Florida, as being N00°02'06"E, an assumed meridian.
  - All lines intersecting curves are non-radial unless noted as (R) = Radial.
  - Tract R is a Private Roadway to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
  - There is hereby granted and dedicated for the benefit of the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over and through Tract R (Private Roadway) and any other privately owned internal roads, alleys, paved areas and sidewalks for vehicular and pedestrian ingress and egress access for the purpose of providing public service and emergency services to the Subdivision, including but not limited to, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services. The City of Winter Garden is hereby granted and dedicated a non-exclusive drainage and utilities easement over, under, across and through Tract R. The City of Winter Garden shall only be responsible for the maintenance of utility improvements it accepts and/or installs within the aforesaid Easement Area and Hickory Hammock at Johns Lake Community Association, Inc. shall be responsible for the maintenance of all drainage improvements within Tract R.
  - Tract C is a Conservation Tract to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
  - Tract LS2 is a Lift Station Tract to be conveyed to the City of Winter Garden in fee simple via warranty deed.
  - Tracts P1 and P2 are Park Tracts to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
  - Tract S2 is a Stormwater Management Area to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
  - Tracts W5 and W6 are Wall, Landscape, Signage and Drainage Tracts to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
  - Each of the owners of lots as shown on this plat is a member of Hickory Hammock at Johns Lake Community Association, Inc. (the "Association"). The Association is required to maintain Tracts C, P1, P2, R, S2, W5 and W6. The members of the Association are ultimately responsible for payment of the cost to maintain Tracts C, P1, P2, R, S2, W5 and W6 and all lots are subject to assessments, liens and foreclosures for non-payment.
  - The lots within this subdivision are governed by Hickory Hammock at Johns Lake Community Association, Inc. (the "Association") requiring the payment of fees and with the power to assess the lots. The Association is the owner of and/or responsible for the maintenance, repair, and replacement of all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts C, P1, P2, R, S2, W5 and W6 and the improvements thereon, in the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fall to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts C, P1, P2, R, S2, W5 and W6 and the improvements thereon.
  - The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts C, P1, P2, R, S2, W5 and W6 and the improvements thereon, in the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fall to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts C, P1, P2, R, S2, W5 and W6 and the improvements thereon.

- The Association, as owner of the subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, common properties, and amenities, and the individual lot owners to extent of their interest in the foregoing, shall release, defend, indemnify and hold the City of Winter Garden, other governmental entities and public utilities harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), or otherwise including attorney's fees and costs of suit, in connection with the reasonable use of said subdivision infrastructure, common areas, or amenities, or said parties' maintenance thereof, or said parties' exercise of rights permitted in the declaration of the homeowners association, this plat, or as otherwise permitted by law.
- Vehicular access rights from Tract W6 to Avalon Road are dedicated to the City of Winter Garden through the City of Winter Garden permitting process.
- Easements within all lots are hereby dedicated and established as follows unless otherwise shown:
  - 5.00 foot wide drainage easement (in favor of the Association) and utility easement (in favor of the City of Winter Garden) along all side lot lines.
  - 5.00 foot wide drainage easement (in favor of the Association) and utility easement (in favor of the City of Winter Garden) along all rear lot lines.
  - 10.00 foot wide drainage easement (in favor of the Association), utility easement (in favor of the City of Winter Garden) and sidewalk easement (in favor of the Association) along all lot lines abutting right-of-way lines.The City of Winter Garden shall only be responsible for the maintenance of utility improvements it accepts and/or installs within the aforesaid Easement Areas. Except for authorized sidewalks, no utility structures or other improvements shall be permitted to conflict or interfere with the City of Winter Garden's utility improvements within said Easement Areas; the City's easement rights shall be superior to all others.
- Drainage Easements are reserved for the Association, its successors and assigns. Any and all drainage facilities within the area of the Drainage Easement shall be maintained in accordance with the Community Declaration for Hickory Hammock at Johns Lake recorded in Official Records Book 10592, Page 8632, Public Records of Orange County, Florida; as amended by that certain First Amendment to Community Declaration for Hickory Hammock at Johns Lake recorded in Official Records Book 10684, Page 1395, Public Records of Orange County, Florida. There shall be no modifications to a waive within said Drainage Easements without the prior consent of City of Winter Garden and the Association.
- Per Chapter 177.091 (28) Florida Statutes: All platted utility easements shall provide that such easements shall also be easements for the construction, installation, maintenance, and operation of cable television services; provided however, no such construction, installation, maintenance, and operation of cable television services shall interfere with the facilities and services of an electric, telephone, gas, or other public utility. In the event a cable television company damages the facilities of a public utility, it shall be solely responsible for the damages. Such construction, installation, maintenance, and operation shall comply with the National Electrical Safety Code as adopted by the Florida Public Service Commission.
- The Community Declaration for Hickory Hammock at Johns Lake encumbering the lands shown on this plat as recorded in Official Records Book 10592, Page 8632; as amended by that certain First Amendment to Community Declaration for Hickory Hammock at Johns Lake recorded in Official Records Book 10684, Page 1395, Public Records of Orange County, Florida; and all subsequent amendments and supplements thereto independently establishes easements over portions of the lands being platted hereunder.
- All development shall be in accordance with and subject to the City of Winter Garden Land Development Code, as amended from time to time, and all federal, state, county and city rules, regulations, ordinances, provisions and approvals. Nothing therein shall be construed to waive any provision of the Winter Garden Land Development Code.
- Due to ground water elevations, priorities established by governmental authorities, and other causes outside of the control of SRWMD, property owner and the Association, water levels may fluctuate at certain times during the year and such fluctuations may be material. None of the entities mentioned in the preceding sentence shall have any liability for aesthetic conditions, objectionable odors, damage to planting or direct or consequential damages of any nature caused by the fluctuation of water levels or water quality.
- No portion of this Dedication shall endorse, allow or sanction the violation of any code or ordinance of the City of Winter Garden or any statute or law.
- Note: Lot numbers 216 through 305 and 348 through 350 have been intentionally omitted and will appear in other phases of Hickory Hammock. There are 67 lots within this plat.
- Lots 210 through 215 shall be subject to a 25.00 foot wide Upland Buffer, Conservation Easement and Setback in favor of the Association.

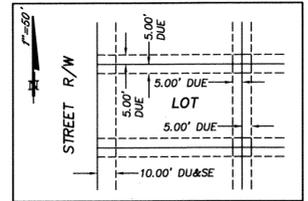
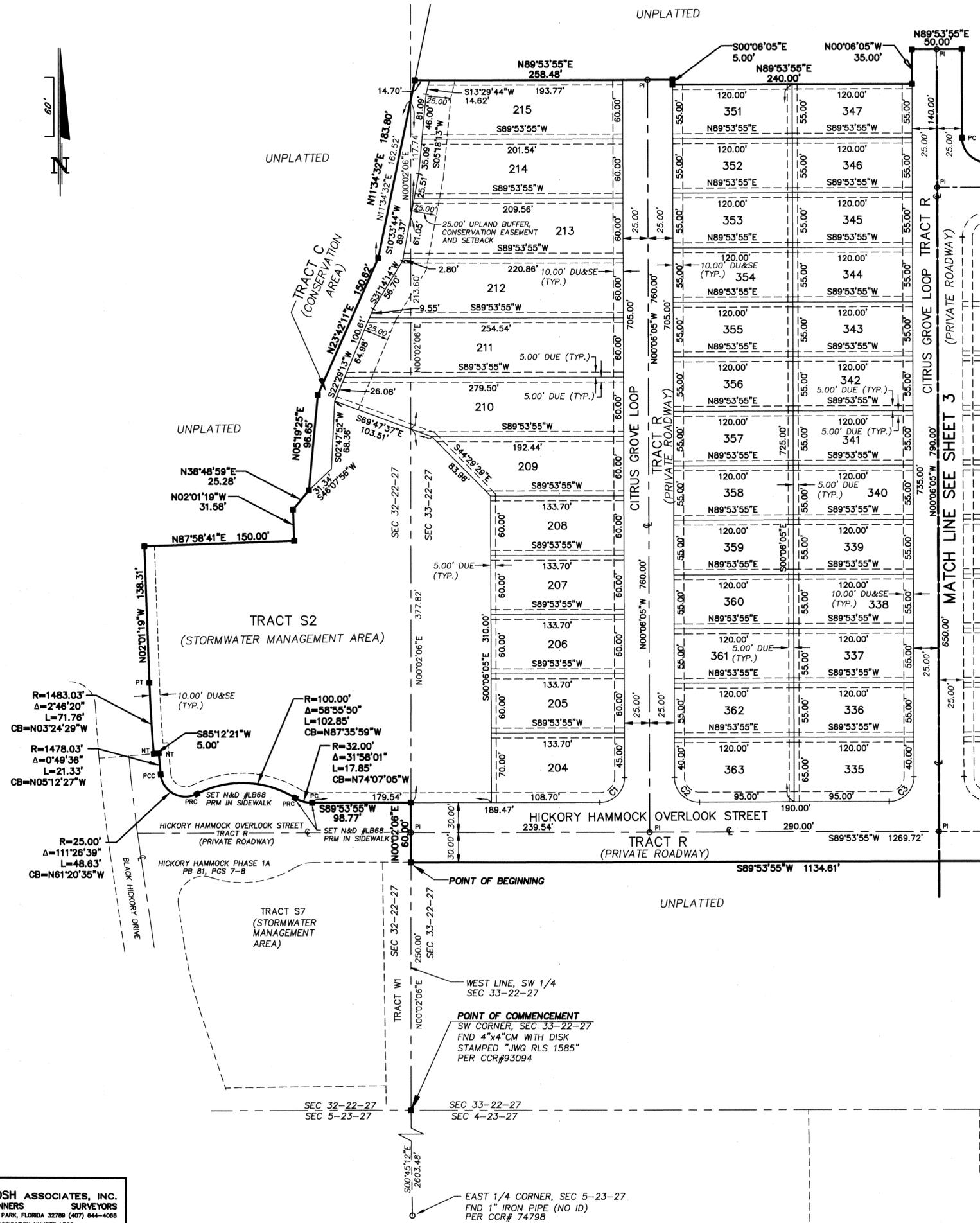
# HICKORY HAMMOCK PHASE 1B

Lying in Sections 32 and 33, Township 22 South, Range 27 East  
City of Winter Garden, Orange County, Florida.

PLAT  
BOOK

PAGE

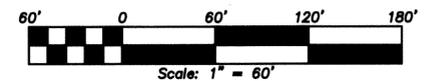
SHEET 2 OF 3  
(SEE SHEET 1 FOR LEGEND & NOTES)



LOT EASEMENTS DETAIL  
(TYPICAL UNLESS OTHERWISE SHOWN)

CURVE TABLE					
NUMBER	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C1	25.00'	90°00'00"	39.27'	35.36'	N44°53'55"E
C2	25.00'	90°00'00"	39.27'	35.36'	S45°06'05"E
C3	25.00'	90°00'00"	39.27'	35.36'	N44°53'55"E

NOTE: LOT NUMBERS 216 THROUGH 305 AND 348 THROUGH 350 HAVE BEEN INTENTIONALLY OMITTED AND WILL APPEAR IN OTHER PHASES OF HICKORY HAMMOCK. THERE ARE 67 LOTS WITHIN THIS PLAT.



NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county.

PREPARED BY:  
**DONALD W. McINTOSH ASSOCIATES, INC.**  
ENGINEERS PLANNERS SURVEYORS  
2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 844-4088  
CERTIFICATE OF AUTHORIZATION NUMBER LB88



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

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

**Via:** City Manager Mike Bollhoefer

**Date:** **April 16, 2014**

**Meeting Date: May 8, 2014**

**Subject:** Final Plat  
**Hickory Hammock Phase 2A (23.136 +/- Acres)**

**Issue:** Consideration of Final Plat of 61 lots in the 23.136+/- acre Hickory Hammock subdivision to be platted as Phase 2A. The Preliminary Plat of the Hickory Hammock subdivision for a total of 500 homes (391 single-family and 109 townhomes) was approved by the Planning and Zoning Board on June 5, 2006.

**Discussion:**

The applicant is requesting approval of the Final Plat of 61 lots in 23.136+/- acres of the Hickory Hammock subdivision to be platted as Phase 2A. The subject property is located within the City of Winter Garden municipal limits, and carries a zoning designation of PUD (Planned Unit Development).

**Recommended Action:**

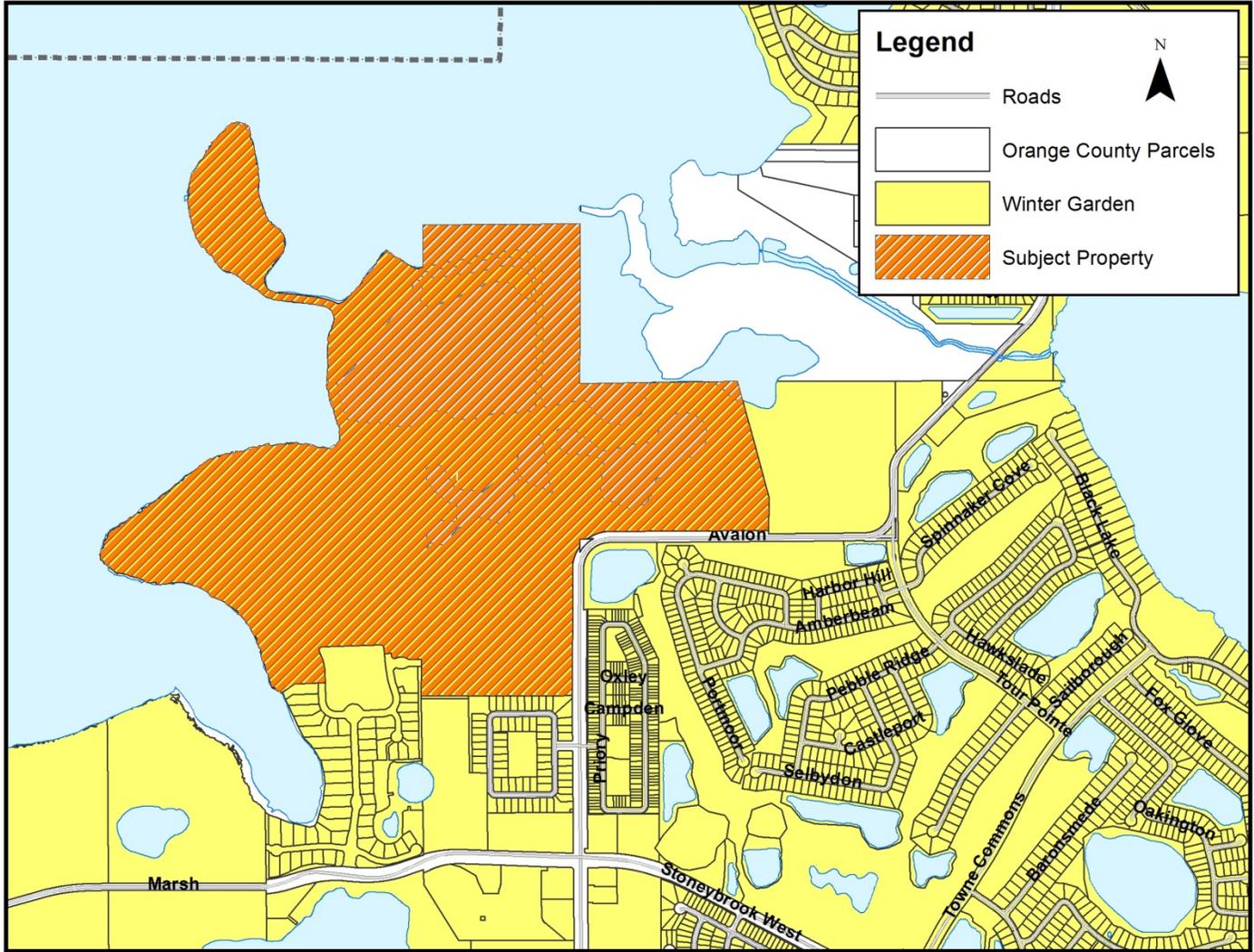
Staff recommends approval of the Hickory Hammock Phase 2A Final Plat.  
(See attached Staff Report)

**Attachments/References:**

Location Map  
Staff Report  
Final Plat

# LOCATION MAP

## Hickory Hammock



# CITY OF WINTER GARDEN

## PLANNING & ZONING DIVISION

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

# STAFF REPORT

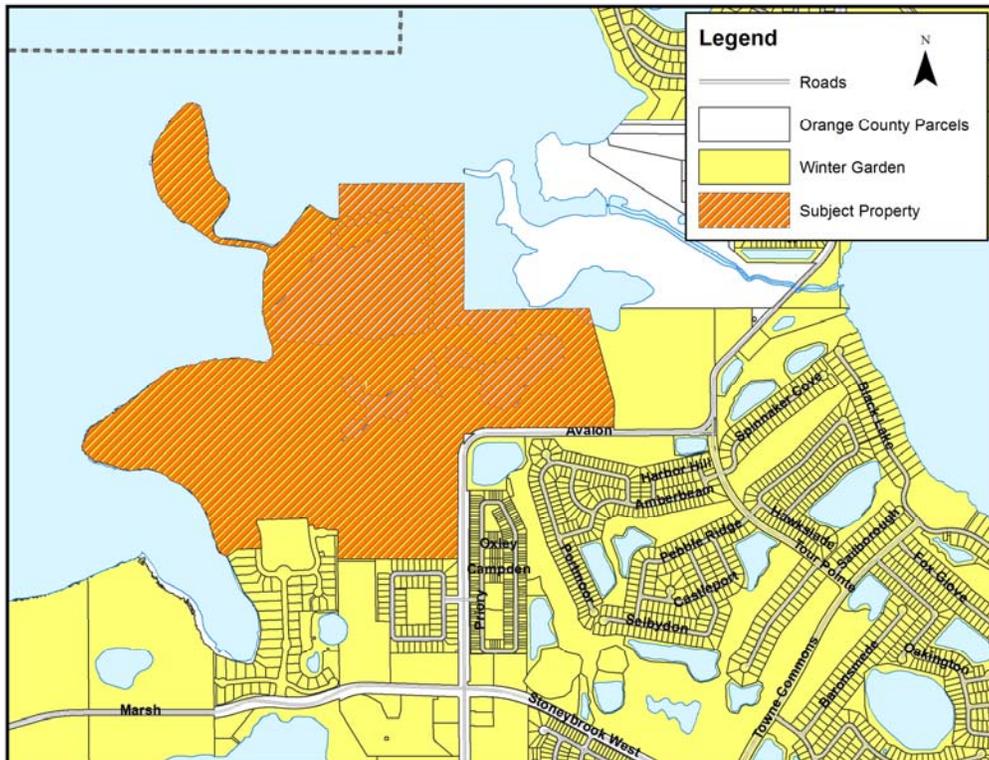
**TO:** PLANNING AND ZONING COMMITTEE  
**PREPARED BY:** KELLY CARSON, PLANNER II  
**DATE:** APRIL 16, 2014  
**SUBJECT:** FINAL PLAT  
**Hickory Hammock Phase 2A (23.136 ± ACRES)**  
**PARCEL ID # 33-22-27-0000-00-003**

**APPLICANT:** The Ryland Group, Inc. and M/I Homes of Orlando, LLC

### INTRODUCTION

The purpose of this report is to evaluate the proposed Final Plat of Hickory Hammock Phase 2A for compliance with the Preliminary Plat for the Hickory Hammock Property, the City of Winter Garden Code of Ordinances and Comprehensive Plan.

The subject property, located on the northwest corner of the intersection of Avalon Road and Marsh Road, is a 23.136 ± acre portion of the 849 ± acre Hickory Hammock PUD property. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The applicants are requesting approval of the Final Plat of the 23.136 ± acre property to be platted as Hickory Hammock Phase 2A for 61 single family residential lots. The subject property is located within the City of Winter Garden municipal limits, and carries the zoning designation PUD (Planned Unit Development). The subject property is designated Suburban Residential on the Future Land Use Map of the Comprehensive Plan. The applicant proposes to plat the project in multiple phases. The 23.136 ± acre site proposed for Final Plat is only a portion of the subdivision: a total of 500 homes are approved with the PUD (391 single-family and 109 townhomes). The first phase, Hickory Hammock Phase 1A, was platted for 54 single family residential lots in November of 2013. Hickory Hammock Phase 1B is being platted concurrently with Phase 2A for 67 single family residential lots. The remaining Hickory Hammock lots will be platted in future phases.

### **EXISTING USE**

The Preliminary Plat for the 849 ± acre Hickory Hammock PUD was approved by the Planning and Zoning Board on June 5, 2006; Construction Plans for the subdivision were approved by the City Commission in 2007. Site work for the subdivision is currently underway.

### **ADJACENT LAND USE AND ZONING**

The properties located to the north of the subject property are future phases of the subdivision, Lake Burnett and Johns Lake. The properties located to the east are future phases of the subdivision and the Stoneybrook West subdivision, which is located within the City of Winter Garden and zoned PUD. The properties to the west are Hickory Hammock Phase 1B (Final Plat approval still pending), future phases of the subdivision, and a portion of Lake Burnett. The properties to the south are Hickory Hammock Phase 1B (Final Plat approval still pending) and future phases of the subdivision.

### **PROPOSED USE**

The applicant proposes to plat the 23.136 ± acre site to construct 61 single family residential homes as Hickory Hammock Phase 2A.

### **PUBLIC FACILITY ANALYSIS**

The Hickory Hammock PUD subdivision was approved for 500 homes- 391 single family lots and 91 townhomes- to be developed in multiple phases. Infrastructure in the form of roads, water, sewer, and reclaimed water systems are being installed to support the approved subdivision.

### **SUMMARY**

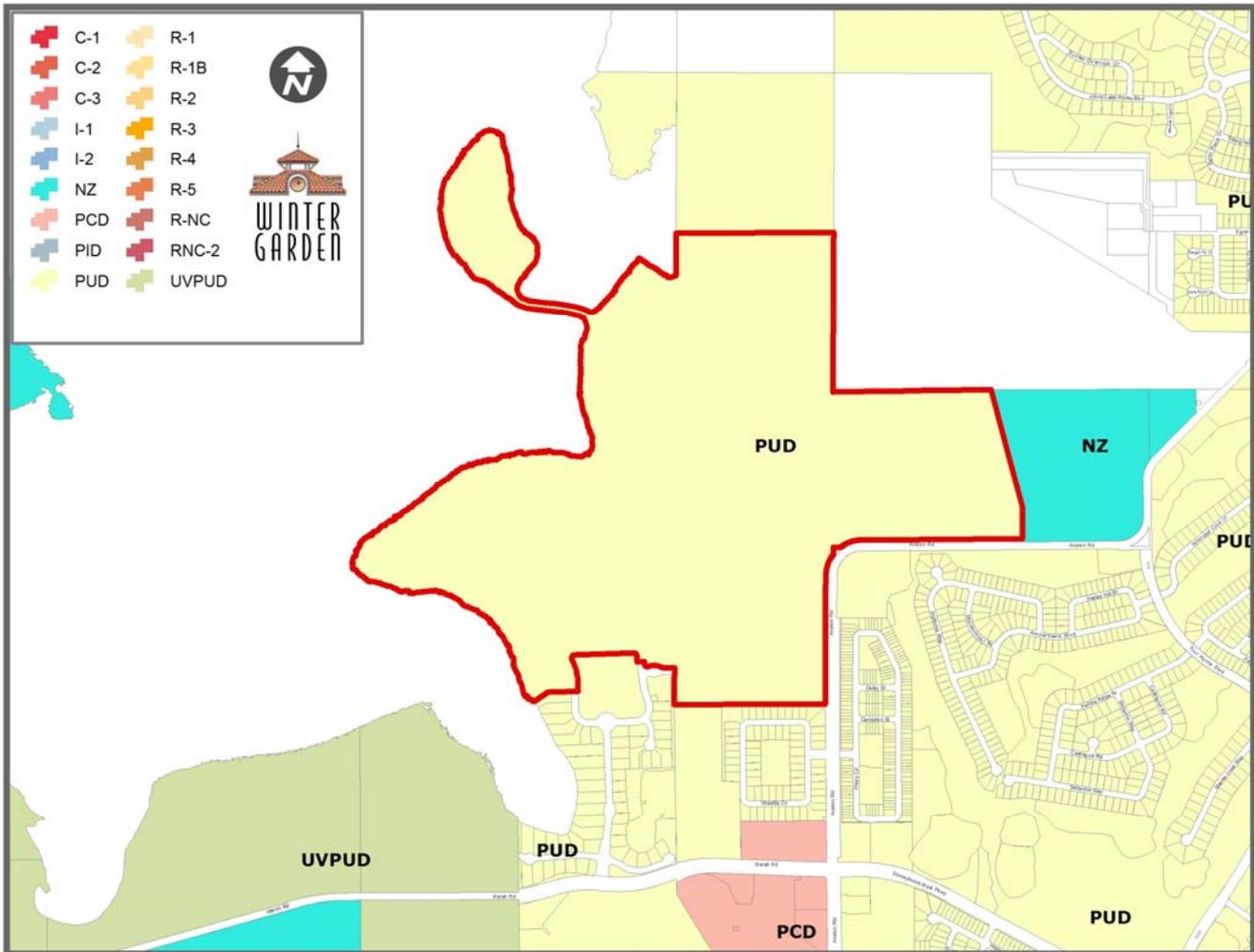
City Staff recommends approval of the proposed Final Plat for Hickory Hammock Phase 2A.

Staff has coordinated with the applicants to ensure that the Final Plat is consistent with the Code of Ordinances regarding Final Plat approval, the property specific PUD Zoning Ordinance and the approved Preliminary Plat.

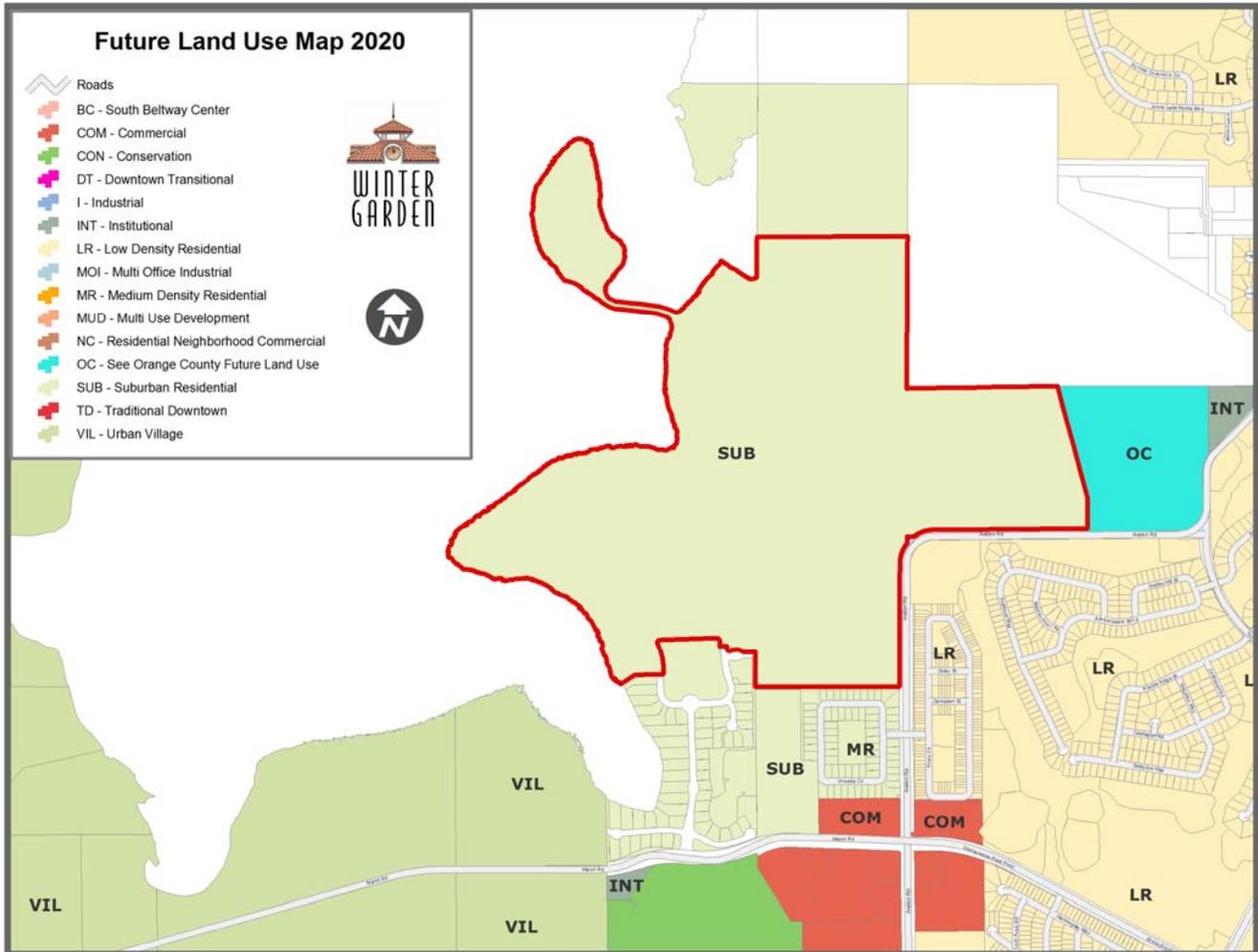
**AERIAL PHOTO**  
**HICKORY HAMMOCK**



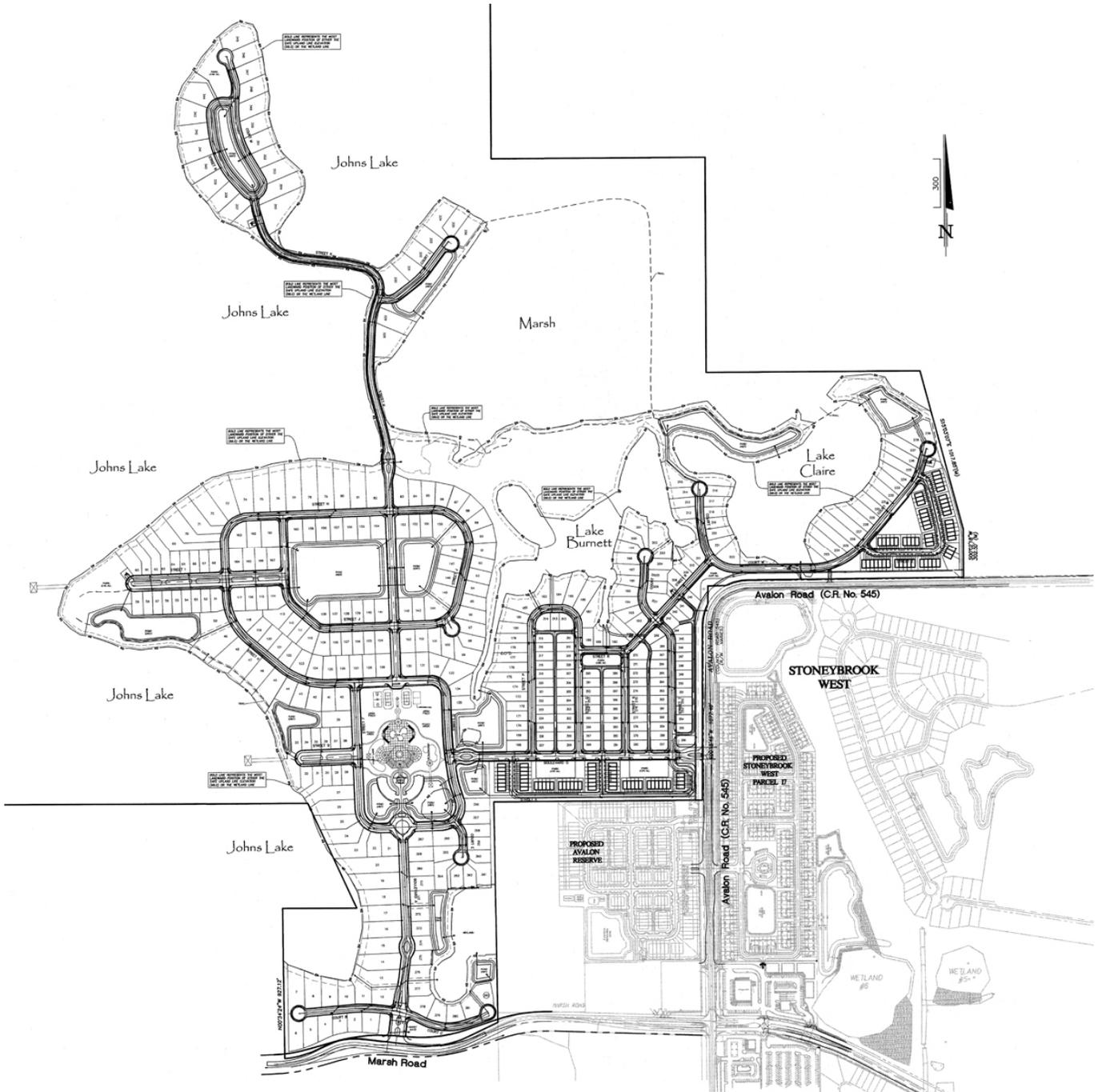
**ZONING MAP**  
**HICKORY HAMMOCK**



## FUTURE LAND USE MAP HICKORY HAMMOCK



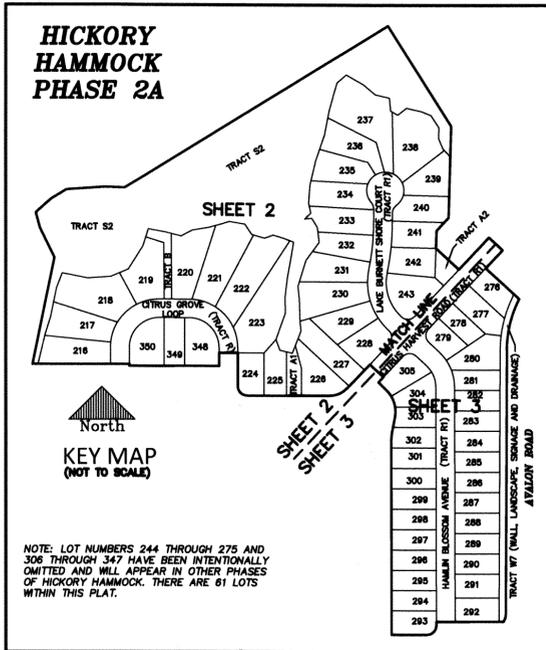
**PRELIMINARY PLAT  
HICKORY HAMMOCK**



**END OF STAFF REPORT**

# HICKORY HAMMOCK PHASE 2A SHEET 1 OF 3

Lying in Section 33, Township 22 South, Range 27 East  
City of Winter Garden, Orange County, Florida.



**Description:**

That part of Section 33, Township 22 South, Range 27 East, Orange County, Florida, described as follows:

Commence at the Southwest corner of Section 33, Township 22 South, Range 27 East and run N00°02'06"E along the West line of the Southwest 1/4 of said Section 33 a distance of 1019.16 feet; thence departing said West line run N11°34'32"E, 21.28 feet to the POINT OF BEGINNING; thence N89°53'55"E, 258.48 feet; thence S00°06'05"E, 5.00 feet; thence N89°53'55"E, 240.00 feet; thence N00°06'05"W, 35.00 feet; thence N89°53'55"E, 50.00 feet; thence S00°06'05"E, 90.00 feet to the point of curvature of a curve concave Northeastly having a radius of 25.00 feet and a chord bearing of S45°06'05"E; thence Southeastly along the arc of said curve through a central angle of 90°00'00" for a distance of 39.27 feet to the point of tangency; thence N89°53'55"E, 221.67 feet to the point of curvature of a curve concave Northwestly having a radius of 62.00 feet and a chord bearing of N66°26'18"E; thence Northeastly along the arc of said curve through a central angle of 46°55'14" for a distance of 50.77 feet to the point of tangency; thence N42°58'41"E, 89.45 feet; thence S47°01'19"E, 50.00 feet; thence S42°58'41"W, 20.00 feet; thence S45°52'46"E, 29.98 feet to the point of curvature of a curve concave Westery having a radius of 80.00 feet and a chord bearing of S17°19'13"E; thence Southerly along the arc of said curve through a central angle of 57°10'27" for a distance of 79.75 feet to the point of tangency; thence S11°42'20"W, 32.20 feet to the point of curvature of a curve concave Easterly having a radius of 190.00 feet and a chord bearing of S05°34'08"W; thence Southerly along the arc of said curve through a central angle of 11°20'25" for a distance of 37.61 feet to the point of tangency; thence S00°06'05"E, 518.32 feet; thence N89°53'55"E, 95.00 feet to the point of curvature of a curve concave Northwestly having a radius of 25.00 feet and a chord bearing of N44°53'55"E; thence Northeastly along the arc of said curve through a central angle of 90°00'00" for a distance of 39.27 feet to the point of tangency; thence N00°06'05"W, 10.00 feet; thence N89°53'55"E, 179.44 feet to a point on a non-tangent curve concave Westery having a radius of 35.00 feet and a chord bearing of N17°30'20"E; thence Northerly along the arc of said curve through a central angle of 34°29'09" for a distance of 21.07 feet to the point of tangency on the West right-of-way line of Avalon Road (County Road No. 545) as recorded in Official Records Book 9932, Page 7973, of the Public Records of Orange County, Florida; thence N00°15'46"E, along said right-of-way line 712.82 feet to a point on a non-tangent curve concave Easterly having a radius of 308.56 feet and a chord bearing of N13°26'42"E; thence Northerly along the arc of said curve and said right-of-way line through a central angle of 26°33'28" for a distance of 143.02 feet to a point on a non-tangent line; thence departing said right-of-way line run N47°01'19"W, 122.66 feet; thence N42°58'41"E, 66.27 feet; thence N47°01'19"W, 50.00 feet; thence S42°58'41"W, 117.83 feet; thence N47°01'19"W, 83.90 feet; thence N02°02'19"E, 47.46 feet; thence N42°45'55"E, 47.59 feet; thence N01°34'38"E, 247.72 feet; thence N31°57'00"W, 319.40 feet; thence S58°03'00"W, 830.82 feet; thence N87°43'50"W, 52.75 feet; thence S86°11'33"W, 101.82 feet; thence S58°31'34"W, 47.59 feet; thence S48°14'49"W, 55.92 feet; thence S14°49'49"E, 43.36 feet; thence S26°02'39"E, 88.56 feet; thence S11°34'32"W, 293.96 feet to the POINT OF BEGINNING.

Containing 23.136 acres more or less.

**NOTES:**

- Bearings based on the East line of the Southeast 1/4 of Section 32, Township 22 South, Range 27 East, Orange County, Florida, as being N00°02'06"E, an assumed meridian.
- All lines intersecting curves are non-radial unless noted as (R) = Radial.
- Tracts R and R1 are Private Roadways to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
- There is hereby granted and dedicated for the benefit of the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over and through Tracts R and R1 (Private Roadways) and any other privately owned internal roads, alleys, paved areas and sidewalks for vehicular and pedestrian ingress and egress access for the purpose of providing public services and emergency services to the Subdivision, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services. The City of Winter Garden is hereby granted and dedicated a non-exclusive drainage and utilities easement over, under, across and through Tracts R and R1. The City of Winter Garden shall only be responsible for the maintenance of utility improvements it accepts and/or installs within the aforesaid Easement Area and Hickory Hammock at Johns Lake Community Association, Inc. shall be responsible for the maintenance of all drainage improvements within Tract R and R1.
- Tracts A1 and A2 are Open Space Tracts to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
- Tract B is an Access Tract to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
- Tract S2 is a Conservation Area to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
- Tract W7 is a Wall, Landscape, Signage and Drainage Tract to be owned and maintained by Hickory Hammock at Johns Lake Community Association, Inc.
- Each of the owners of lots as shown on this plat is a member of Hickory Hammock at Johns Lake Community Association, Inc. (the "Association"). The Association is required to maintain Tracts A1, A2, B, R, R1, S2 and W7. The members of the Association are ultimately responsible for payment of the cost to maintain Tracts A1, A2, B, R, R1, S2 and W7 and all lots are subject to assessments, liens and foreclosures for non-payment.
- The lots within this subdivision are governed by Hickory Hammock at Johns Lake Community Association, Inc. (the "Association") requiring the payment of fees and with the power to assess the lots. The Association is the owner of and/or responsible for the maintenance, repair, and replacement of all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts A1, A2, B, R, R1, S2 and W7, and the improvements thereon. Every lot owner within this subdivision is required to be a member of the Association, and is subject to its rules and regulations, including, but not limited to, the conditions, covenants, and restrictions provided for in its Declaration, and the dedications, restrictions, and reservations, as set forth on this Plat. Failure to pay such fees or assessments shall result in the attachment of a lien on the property of the owner which fails to pay such fees or assessments by the Association, which may result in the foreclosure of said property.
- The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts A1, A2, B, R, R1, S2 and W7 and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or constitute a nuisance or in the event the City of Winter Garden exercises its aforesaid right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts A1, A2, B, R, R1, S2 and W7 and the improvements thereon.

- The Association, as owner of the subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, common properties, and amenities, and the individual lot owners to extent of their interest in the foregoing, shall release, defend, indemnify and hold the City of Winter Garden, other governmental entities and public utilities harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), or otherwise including attorney's fees and costs of suit, in connection with the reasonable use of said subdivision infrastructure, common areas, or amenities, or sold parties' maintenance thereof, or said parties' exercise of rights permitted in the declaration of the homeowners association, this plat, or as otherwise permitted by law.
- Vehicular access rights from Tract W7 to Avalon Road are dedicated to the City of Winter Garden through the City of Winter Garden permitting process.
- Easements within all lots are hereby dedicated and established as follows unless otherwise shown:
  - 5.00 foot wide drainage easement (in favor of the Association) and utility easement (in favor of the City of Winter Garden) along all side lot lines.
  - 5.00 foot wide drainage easement (in favor of the Association) and utility easement (in favor of the City of Winter Garden) along all rear lot lines.
  - 10.00 foot wide drainage easement (in favor of the Association), utility easement (in favor of the City of Winter Garden) and sidewalk easement (in favor of the Association) along all lot lines abutting right-of-way lines.
 The City of Winter Garden shall only be responsible for the maintenance of utility improvements it accepts and/or installs within the aforesaid Easement Areas. Except for authorized sidewalks, no utility structures or other improvements shall be permitted to conflict or interfere with the City of Winter Garden's utility improvements within said Easement Areas; the City's easement rights shall be superior to all others.
- Drainage Easements are reserved for the Association, its successors and assigns. Any and all drainage facilities within the area of the Drainage Easement shall be maintained in accordance with the Community Declaration for Hickory Hammock at Johns Lake recorded in Official Records Book 10592, Page 8632, Public Records of Orange County, Florida; as amended by that certain First Amendment to Community Declaration for Hickory Hammock at Johns Lake recorded in Official Records Book 10684, Page 1395, Public Records of Orange County, Florida. There shall be no modifications to swales within said Drainage Easements without the prior consent of City of Winter Garden and the Association.
- Per Chapter 177.091 (28) Florida Statutes: All planned utility easements shall provide that such easements shall also be easements for the construction, installation, maintenance, and operation of cable television services; provided however, no such construction, installation, maintenance, and operation of cable television services shall interfere with the facilities and services of an electric, telephone, gas, or other public utility. In the event a cable television company damages the facilities of a public utility, it shall be solely responsible for the damages. Such construction, installation, maintenance, and operation shall comply with the National Electrical Safety Code as adopted by the Florida Public Service Commission.
- The Community Declaration for Hickory Hammock at Johns Lake encumbering the lands shown on this plat as recorded in Official Records Book 10592, Page 8632; as amended by that certain First Amendment to Community Declaration for Hickory Hammock at Johns Lake recorded in Official Records Book 10684, Page 1395, Public Records of Orange County, Florida; and all subsequent amendments and supplements thereto independently establishes easements over portions of the lands being platted hereunder.
- All development shall be in accordance with and subject to the City of Winter Garden Land Development Code, as amended from time to time, and all federal, state, county and city rules, regulations, ordinances, provisions and approvals. Nothing therein shall be construed to waive any provision of the Winter Garden Land Development Code.
- Due to ground water elevations, priorities established by governmental authorities, and other causes outside of the control of SURFWD, property owner and the Association, water levels may fluctuate at certain times during the year and such fluctuations may be material. None of the entities mentioned in the preceding sentence shall have any liability for aesthetic conditions, objectionable odors, damage to plantings or direct or consequential damages of any nature caused by the fluctuation of water levels or water quality.
- No portion of this Dedication shall endorse, allow or sanction the violation of any code or ordinance of the City of Winter Garden or any statute or law.
- Note: Lot numbers 244 through 275 and 306 through 347 have been intentionally omitted and will appear in other phases of Hickory Hammock. There are 61 lots within this plat.
- Lots 216 through 219 shall be subject to a 25.00 foot wide Upland Buffer, Conservation Easement and Setback in favor of the Association.

**HICKORY HAMMOCK PHASE 2A DEDICATION**

KNOW ALL BY THESE PRESENTS, that The Ryland Group, Inc., a Maryland corporation and M/I Homes of Orlando, LLC, a Florida limited liability company, being the owners in fee simple of the lands described in the foregoing caption to this plat, hereby dedicate said lands and plat for the easements, rights, uses and purposes therein expressed including as set forth in the plat notes.

IN WITNESS WHEREOF, the Owner has caused these presents to be signed and attested to by its Authorized Agents named below on.....

Signed, sealed and delivered in the presence of: *[Signature]* By: *[Signature]*  
 Signature: *[Signature]* Print Name: *[Signature]*  
 Signature: *[Signature]* Print Name: *[Signature]*

STATE OF FLORIDA COUNTY OF ORANGE  
 The foregoing instrument was acknowledged before me this 1st day of APRIL, 2014, by *[Signature]* its *[Signature]* on behalf of the Corporation.

He  is personally known to me or...  
 has produced... as identification, and DID or DID NOT take an oath.  
 IN WITNESS WHEREOF, I have hereto set my hand and seal on the above date.  
*[Signature]*  
 Signature of Person Taking Acknowledgment  
 Print Name: *[Signature]*  
 Notary Public  
 Serial No. *[Signature]*  
 My Commission Expires: 8-14-15

Signed, sealed and delivered in the presence of: *[Signature]* By: *[Signature]*  
 Signature: *[Signature]* Print Name: *[Signature]*  
 Signature: *[Signature]* Print Name: *[Signature]*

STATE OF FLORIDA COUNTY OF SEMINOLE  
 The foregoing instrument was acknowledged before me this 1st day of APRIL, 2014, by *[Signature]* its *[Signature]* on behalf of the Limited Liability Company.

He  is personally known to me or...  
 has produced... as identification, and DID or DID NOT take an oath.  
 IN WITNESS WHEREOF, I have hereto set my hand and seal on the above date.  
*[Signature]*  
 Signature of Person Taking Acknowledgment  
 Print Name: *[Signature]*  
 Notary Public  
 Serial No. *[Signature]*  
 My Commission Expires: 9/16/16

**CERTIFICATE OF APPROVAL BY MUNICIPALITY**  
 THIS IS TO CERTIFY, that on ..... the foregoing plat was approved by the City Commission of Winter Garden, Florida  
 Mayor  
 Attest: ..... City Clerk

**QUALIFICATION STATEMENT OF SURVEYOR AND MAPPER**  
 KNOW ALL MEN BY THESE PRESENTS, This plat was prepared under the direction and supervision of the undersigned, a professional surveyor and mapper, and complies with all of the survey requirements of Chapter 177, Florida Statutes. The lands depicted herein are located in the City of Winter Garden, Orange County, Florida.  
 DONALD W. McINTOSH ASSOCIATES, INC.  
 Certificate of Authorization Number LB88  
 2200 Park Avenue North, Winter Park, FL 32789  
 Date: 3/28/2014 BY: *[Signature]*  
 Keith Ruddick  
 Florida Registered Surveyor and Mapper  
 Certificate No. 2617

**CERTIFICATE OF REVIEW BY CITY SURVEYOR**  
 This plat has been reviewed for conformity with Chapter 177, Florida Statutes.  
 City Surveyor PSM#..... Date:.....  
 Printed Name:.....

**CERTIFICATE OF COUNTY COMPTROLLER**  
 I HEREBY CERTIFY that the foregoing plat was recorded in the Orange County Official Records on ..... as File No. ....  
 County Comptroller In and for Orange County, Florida  
 BY: .....

PREPARED BY: **DONALD W. McINTOSH ASSOCIATES, INC.**  
 ENGINEERS PLANNERS SURVEYORS  
 2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4088  
 CERTIFICATE OF AUTHORIZATION NUMBER LB88

# HICKORY HAMMOCK PHASE 2A

Lying in Section 33, Township 22 South, Range 27 East  
City of Winter Garden, Orange County, Florida.

PLAT BOOK

PAGE

SHEET 2 OF 3

(SEE SHEET 1 FOR LEGEND & NOTES)

**CURVE TABLE**

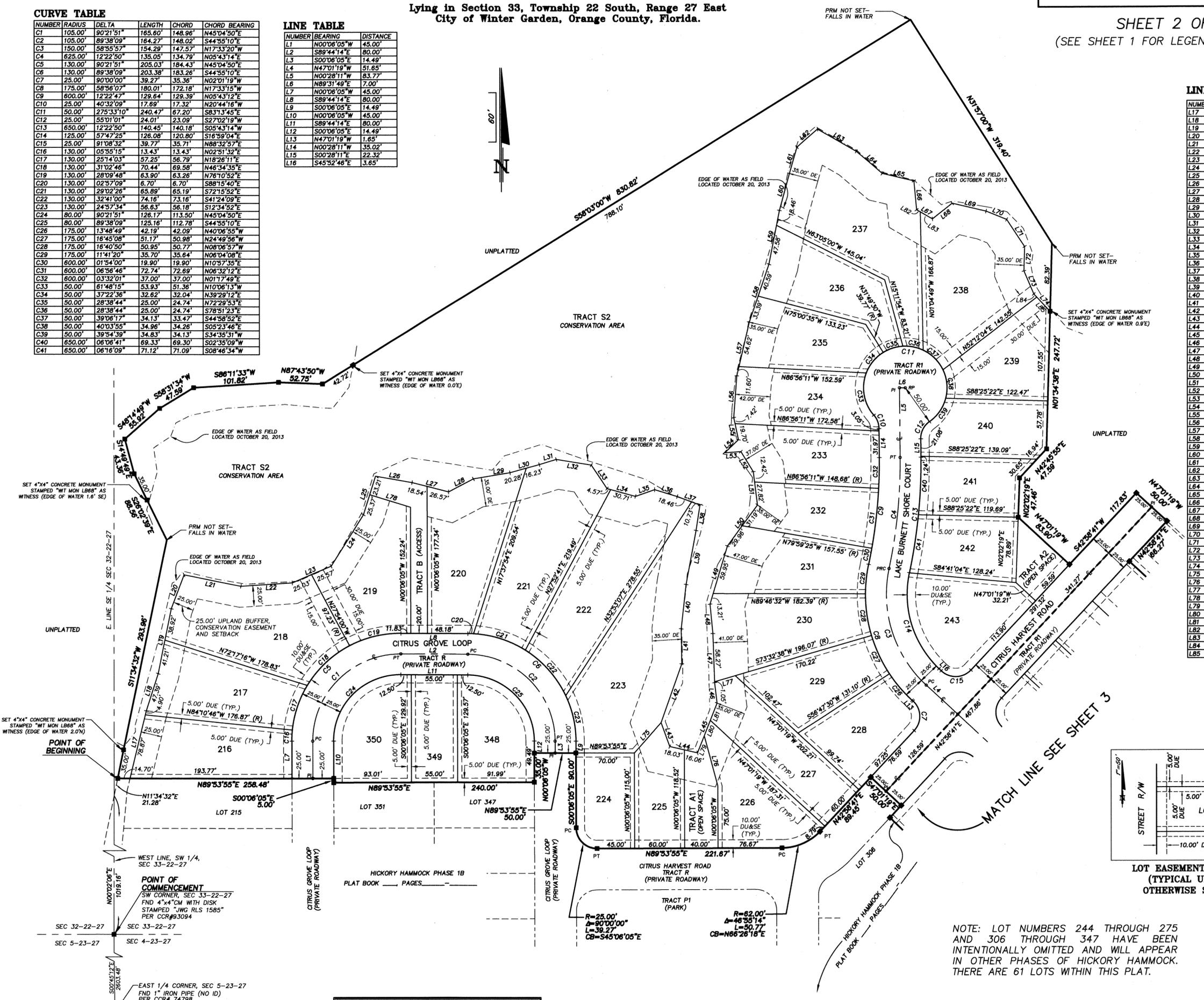
NUMBER	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C1	105.00'	90°21'51"	165.60'	148.96'	N45°04'50"E
C2	105.00'	89°38'09"	164.27'	148.02'	S44°55'10"E
C3	150.00'	58°55'57"	154.29'	147.57'	N17°33'20"W
C4	625.00'	12°22'50"	138.05'	134.79'	N05°43'14"E
C5	130.00'	90°21'51"	205.03'	184.43'	N45°04'50"E
C6	130.00'	89°38'09"	203.38'	183.26'	S44°55'10"E
C7	25.00'	90°00'00"	39.27'	35.36'	N02°01'19"W
C8	175.00'	58°56'07"	180.01'	172.18'	N17°33'15"W
C9	600.00'	12°22'47"	129.64'	129.39'	N05°43'12"E
C10	25.00'	40°32'09"	17.69'	17.32'	N20°44'16"W
C11	50.00'	275°33'10"	240.47'	67.20'	S83°13'45"E
C12	25.00'	55°01'01"	24.01'	23.09'	S27°02'19"W
C13	650.00'	12°22'50"	140.45'	140.18'	S05°43'14"W
C14	125.00'	57°47'25"	126.08'	120.80'	S16°59'04"E
C15	25.00'	91°08'32"	39.77'	35.71'	N88°32'57"E
C16	130.00'	05°55'15"	13.43'	13.43'	N02°51'32"E
C17	130.00'	25°14'03"	57.25'	56.79'	N18°26'11"E
C18	130.00'	31°02'46"	70.44'	69.58'	N46°34'35"E
C19	130.00'	28°09'48"	63.90'	63.28'	N76°10'52"E
C20	130.00'	02°57'09"	6.70'	6.70'	S88°15'40"E
C21	130.00'	29°02'28"	65.89'	65.19'	S17°15'52"E
C22	130.00'	32°41'00"	74.16'	73.16'	S41°24'09"E
C23	130.00'	24°57'34"	56.63'	56.18'	S12°34'52"E
C24	80.00'	90°21'51"	126.17'	113.50'	N45°04'50"E
C25	80.00'	89°38'09"	125.16'	112.78'	S44°55'10"E
C26	175.00'	13°48'49"	42.19'	42.09'	N40°06'55"W
C27	175.00'	16°45'08"	51.17'	50.98'	N24°49'56"W
C28	175.00'	16°40'50"	50.95'	50.77'	N08°06'57"W
C29	175.00'	11°41'20"	35.70'	35.64'	N06°04'08"E
C30	600.00'	01°54'00"	19.90'	19.90'	N10°57'35"E
C31	600.00'	06°56'46"	72.74'	72.69'	N06°32'12"E
C32	600.00'	03°32'01"	37.00'	37.00'	N01°17'49"E
C33	50.00'	61°48'15"	53.93'	51.36'	N10°06'13"W
C34	50.00'	37°23'36"	32.82'	32.01'	S39°29'18"E
C35	50.00'	28°38'44"	25.00'	24.74'	N72°28'53"E
C36	50.00'	28°38'44"	25.00'	24.74'	S78°51'23"E
C37	50.00'	39°06'17"	34.13'	33.47'	S44°58'52"E
C38	50.00'	40°03'55"	34.96'	34.26'	S05°23'46"E
C39	50.00'	39°54'39"	34.83'	34.13'	S34°35'31"W
C40	650.00'	06°06'41"	69.33'	69.30'	S02°35'09"W
C41	650.00'	06°16'09"	71.12'	71.09'	S08°46'34"W

**LINE TABLE**

NUMBER	BEARING	DISTANCE
L1	N00°06'05"W	45.00'
L2	S89°44'14"E	80.00'
L3	S00°06'05"E	14.49'
L4	N47°01'19"W	51.65'
L5	N00°28'11"W	83.77'
L6	N89°31'49"E	7.00'
L7	N00°06'05"W	45.00'
L8	S89°44'14"E	80.00'
L9	S00°06'05"E	14.49'
L10	N00°06'05"W	45.00'
L11	S89°44'14"E	80.00'
L12	S00°06'05"E	14.49'
L13	N47°01'19"W	1.65'
L14	N00°28'11"W	35.02'
L15	S00°28'11"E	22.32'
L16	S45°52'46"E	3.65'

**LINE TABLE (CONTINUES)**

NUMBER	BEARING	DISTANCE
L17	N13°29'44"E	83.77'
L18	N17°35'53"E	47.39'
L19	N11°19'17"E	80.13'
L20	N20°32'41"E	43.43'
L21	S78°47'07"E	69.30'
L22	N86°08'16"E	61.66'
L23	N66°51'06"E	50.60'
L24	N31°53'42"E	73.33'
L25	N17°17'09"E	48.58'
L26	S80°32'33"E	44.47'
L27	S73°32'43"E	45.11'
L28	N61°59'51"E	33.43'
L29	N80°25'10"E	44.48'
L30	N74°23'19"E	36.51'
L31	N72°49'44"E	21.21'
L32	S80°52'51"E	42.68'
L33	S33°41'54"E	33.89'
L34	S74°45'47"E	35.28'
L35	N70°52'40"E	24.44'
L36	S72°55'55"E	28.28'
L37	S69°02'16"E	29.19'
L38	S08°39'16"W	31.12'
L39	S102°17'14"W	86.21'
L40	S08°19'11"W	45.17'
L41	S00°47'17"E	42.59'
L42	S19°19'56"W	75.30'
L43	S19°48'57"E	30.64'
L44	S76°55'22"E	34.09'
L45	N21°30'48"E	64.49'
L46	N06°47'24"W	25.04'
L47	N01°50'45"W	59.32'
L48	N05°28'34"W	35.78'
L49	N16°34'55"E	73.16'
L50	N36°09'36"E	61.15'
L51	N07°06'33"W	40.24'
L52	N31°20'47"W	28.48'
L53	S85°51'16"W	19.29'
L54	N46°12'53"E	22.71'
L55	N11°58'40"W	27.12'
L56	N04°13'34"E	50.31'
L57	N13°06'11"E	66.22'
L58	N18°41'41"E	73.98'
L59	N11°01'51"E	66.04'
L60	N15°06'20"E	46.18'
L61	N15°51'54"E	33.12'
L62	N48°15'26"E	32.70'
L63	S80°01'03"E	53.75'
L64	S49°16'27"E	41.13'
L65	S76°39'13"E	38.94'
L66	S05°11'56"E	35.10'
L67	S89°43'14"E	21.83'
L68	N11°28'03"E	30.26'
L69	S78°40'25"E	41.82'
L70	S67°46'47"E	26.58'
L71	S33°15'10"E	39.25'
L72	S01°45'33"W	29.26'
L73	S22°53'24"E	30.25'
L74	S42°38'51"E	28.86'
L75	N41°15'37"E	48.59'
L76	N15°02'20"W	62.68'
L77	N73°32'38"E	25.85'
L78	N72°42'51"W	51.00'
L79	N21°30'48"E	22.28'
L80	N21°30'48"E	19.84'
L81	N21°30'48"E	22.37'
L82	S59°43'14"E	5.15'
L83	S59°43'14"E	16.78'
L84	S42°38'51"E	5.30'
L85	S42°38'51"E	23.56'



# HICKORY HAMMOCK PHASE 2A

Lying in Section 33, Township 22 South, Range 27 East  
City of Winter Garden, Orange County, Florida.

PLAT BOOK

PAGE

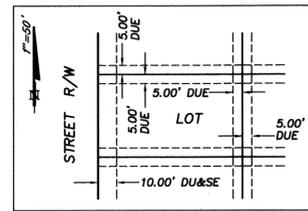
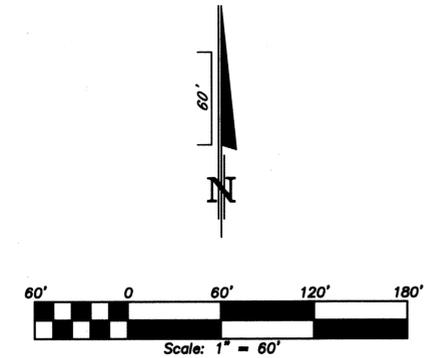
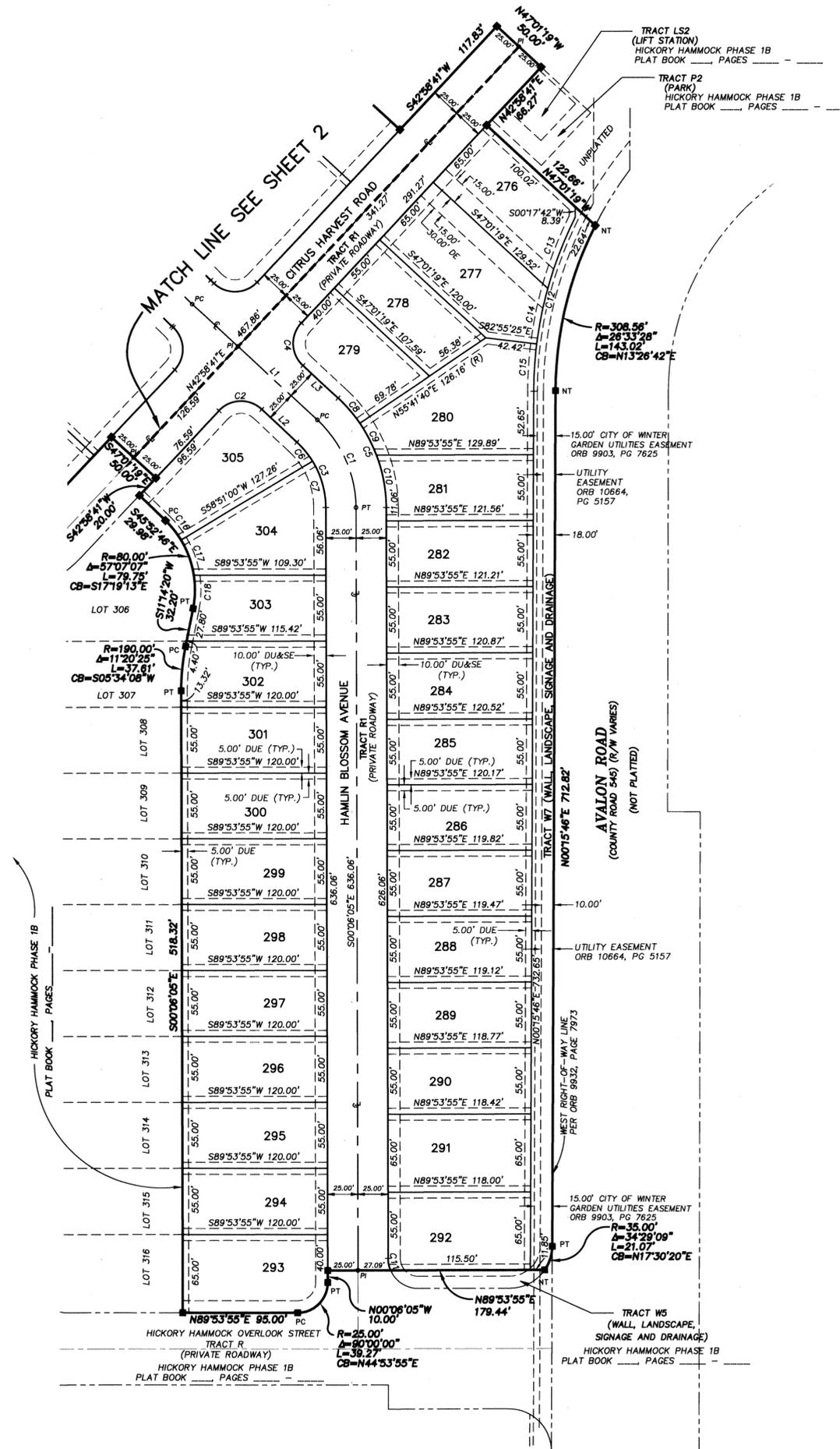
SHEET 3 OF 3  
(SEE SHEET 1 FOR LEGEND & NOTES)

LINE TABLE

NUMBER	BEARING	DISTANCE
L1	S47°01'19"E	89.72'
L2	S47°01'19"E	39.72'
L3	S47°01'19"E	39.72'

CURVE TABLE

NUMBER	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C1	100.00'	46°55'14"	81.89'	79.62'	S23°33'42"E
C2	25.00'	90°00'00"	39.27'	35.36'	N87°58'41"E
C3	75.00'	48°55'14"	61.42'	59.72'	S23°33'42"E
C4	25.00'	90°00'00"	39.27'	35.36'	S02°01'19"E
C5	125.00'	46°55'14"	102.36'	99.53'	S23°33'42"E
C6	75.00'	15°44'34"	20.81'	20.54'	S39°09'02"E
C7	75.00'	31°10'39"	40.81'	40.31'	S15°41'25"E
C8	125.00'	12°42'59"	27.74'	27.69'	S40°39'49"E
C9	125.00'	13°37'20"	29.72'	29.65'	S27°29'40"E
C10	125.00'	20°34'55"	44.90'	44.66'	S10°23'32"E
C11	25.00'	23°34'41"	10.29'	10.22'	S11°53'26"E
C12	326.56'	26°21'22"	150.22'	148.90'	S13°20'23"W
C13	326.56'	11°09'15"	63.57'	63.47'	S20°56'27"W
C14	326.56'	08°17'15"	47.23'	47.19'	S11°13'12"W
C15	326.56'	06°54'53"	39.41'	39.39'	S03°37'08"W
C16	80.00'	14°43'47"	20.57'	20.51'	S38°30'53"E
C17	80.00'	22°24'47"	31.29'	31.10'	S19°56'36"E
C18	80.00'	19°58'33"	27.89'	27.75'	S01°15'04"W



LOT EASEMENTS DETAIL  
(TYPICAL UNLESS OTHERWISE SHOWN)

NOTE: LOT NUMBERS 244 THROUGH 275 AND 306 THROUGH 347 HAVE BEEN INTENTIONALLY OMITTED AND WILL APPEAR IN OTHER PHASES OF HICKORY HAMMOCK. THERE ARE 61 LOTS WITHIN THIS PLAT.

NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county.

PREPARED BY:  
**DONALD W. McINTOSH ASSOCIATES, INC.**  
ENGINEERS PLANNERS SURVEYORS  
2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 844-4088  
CERTIFICATE OF AUTHORIZATION NUMBER LB88

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

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

**Via:** City Manager Mike Bollhoefer

**Date:** May 2, 2014

**Meeting Date:** May 8, 2014

**Subject:** **14350 Siplin Road**  
**Black Lake Preserve PUD**  
**Developer's Agreement**

**Issue:** Developer's Agreement for the Black Lake Preserve Subdivision.

**Recommended Action:**

Staff recommends approval of the Black Lake Preserve Developer's Agreement.

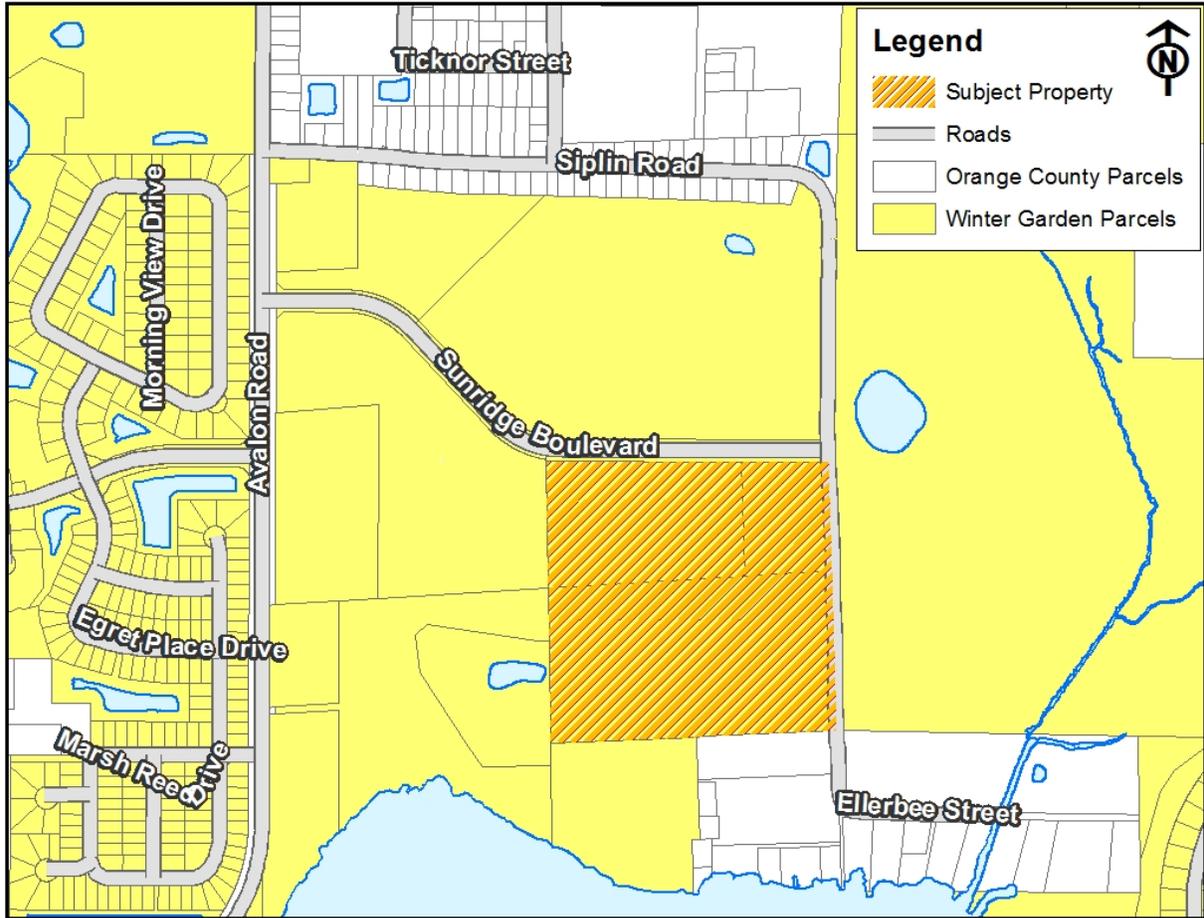
**Attachment(s)/References:**

Location Map  
Black Lake Preserve Developer's Agreement

# LOCATION MAP

Black Lake Preserve

Developer's Agreement



MAY 01 2014

Received By: PHB-067

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: 34-22-27-0000-00-007  
34-22-27-0000-00-008  
34-22-27-0000-00-029

Siplin Road - 14362  
BLACK LAKE PRESERVE  
PRE-PLAT Dev Agreement

Hanover Black Lake, LLC

34-22-27-0000-00-007, -008, -029

05/01/2014

**BLACK LAKE PRESERVE  
DEVELOPER'S AGREEMENT**

**THIS DEVELOPER'S AGREEMENT** (the "**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF WINTER GARDEN, FLORIDA, a Florida municipal corporation (the "**City**"), and ROYAL OAK HOMES, LLC, a Florida limited liability company formerly known as AVH ACQUISITION, LLC, a Florida limited liability company (the "**Developer**").

RECITALS:

- A. Developer is the fee simple owner of that approximately +/- 35.2 acre parcel of real property generally located on Sunridge Boulevard southwest of the intersection of Sunridge Boulevard and Siplin Road in Winter Garden, Orange County, Florida, being more particularly described on **Exhibit "A"** (the "**Subject Property**"); and
- B. The Subject Property is zoned PUD, and subject to and governed by City of Winter Garden Ordinance No. 13-68 (the "**PUD Ordinance**"); and
- C. The Developer shall comply with all provisions of the PUD Ordinance in the development of the Subject Property; and
- D. The PUD Ordinance requires the Developer to enter into this Agreement; and
- E. The Developer desires to develop the Subject Property as a residential subdivision to be known as "Black Lake Preserve" consisting of a total of not more than 91 residential single-family units and related amenities and infrastructure (the "**Project**"); and
- F. This Agreement is not a statutory development agreement pursuant to Chapter 163, Florida Statutes (Florida Local Government Development Agreement Act), and is being entered into by the City pursuant to the City's home rule authority and as a condition of the PUD Ordinance; and
- G. 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

- H. 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
- I. The City has identified the need for certain improvements in order to accommodate Developer's development of the Subject Property; and
- J. Pursuant to the Code of Ordinances and the PUD Ordinance, Developer is required to cause or provide for the installation, construction and extension of all public utility mainlines, lift station, access roads, 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
- K. The City and the Developer desire to enter into this Agreement to memorialize certain promises, agreements, covenants and expectations pertaining to the construction of the infrastructure and road improvements, the development of the Project and Subject Property, and other matters as provided for herein.

**NOW, THEREFORE**, for and in consideration of the above premises, the promises and provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City agree as follows:

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

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

**3. Offsite Utility Improvements.** The development of the Project requires and the Developer shall cause the installation and construction of certain offsite utility improvements to be ultimately accepted and maintained by the City after their completion, including an 8" sewer force main line, 8" potable water main line, 8" reclaimed water main line, and a joint use lift station the location of which are shown on **Exhibit "B"** attached hereto (the "**Offsite Utility Improvements**"). The Offsite Utility Improvements will require the Developer's cooperation with the owner of the parcel of real property being developed with a residential project known as Mathews Grove (zoned PUD pursuant to Ordinance No. 14-06) and located immediately adjacent to and east of the Subject Property, which is sometimes referred to in this Agreement as the "Mathews Grove Property." Accordingly, the Developer and the owner of the Mathews Grove Property entered into that certain Development Agreement and Grant of Easements dated January 21, 2014 and recorded at Book 10700, Page 1815, Public Records of Orange County, Florida (the "**DAGE**") to memorialize the easements and other rights and obligations necessary for the two projects to share the responsibilities for the Offsite Utility Improvements and Access Road Improvements as more particularly described herein and to allow one project to advance development of such infrastructure ahead of the other, in the event the two projects do not develop at the same time. In the event of a default by either party under the DAGE,

Developer shall give the City written notice of such default within ten (10) days of becoming aware of any default. Moreover, Developer acknowledges and agrees that the provision of this Agreement pertaining to the Developer's conveyance of the Right-of-Way Property allows the City the right, but not the obligation, to obtain such lands in advance of the development of the Project proceeding so that such lands may be used to facilitate the earlier development of the Mathews Grove Property and for other public purposes that public rights-of-way may be used. References in this Agreement to the "Mathews Grove Property" shall mean and refer to the same real property described in the DAGE as the "ALI Property."

Upon completion of the Offsite Utility 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 Offsite Utility Improvements, (ii) a 2-year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Offsite Utility 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 Offsite Utility Improvements 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 Offsite Utility Improvements, and (v) a special warranty deed, or plat dedication, conveying the Lift Station tract to the City, free and clear of all encumbrances not acceptable to the City (in its reasonable discretion) and which conveyance shall be accompanied by the right for the City to access such tract from the public right-of-way. The Offsite Utility Improvements shall be deemed completed upon Developer (or the developer of Mathews Grove Property) satisfying all of the conditions of this paragraph 3 ("**Offsite Utility Improvements Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Offsite Utility Improvements Completion. Following the Offsite Utility Improvements Completion, the Developer shall have no maintenance responsibility for the Offsite Utility Improvements.

#### **4. Access Road Improvements.**

**(a) Developer's Responsibility for Construction.** As part of the Developer's construction of the site infrastructure for the first phase of the Project (subsequent to receipt of preliminary subdivision plan (a/k/a preliminary plat) approval), the Developer shall cause the design, permitting and construction of a two-lane extension of Sunridge Boulevard through the Subject Property and the Mathews Grove Property, beginning at the terminus of the existing Sunridge Boulevard (located to the north of the Subject Property and south of the School Board property) and ending at the southeast corner of the Subject Property (where the Sunridge Boulevard extension will connect to Siplin Road) and connecting to the internal roads of the Project, all in substantial conformance with the schematic attached hereto as **Exhibit "C"** (the "**Access Road Improvements**"). The Access Road Improvements shall also include, along the frontage of such extension, streetlights that meet the dark skies requirements of the City Code and a sidewalk. The Access Road Improvements will require the Developer's cooperation with the owner of the Mathews Grove Property as contemplated by the DAGE.

Upon completion of the Access Road Improvements, the Developer shall have the City Engineer inspect such improvements, obtain a certificate of completion from the City Engineer, and, as a condition precedent to receiving a certificate of completion, the Developer shall cause the execution and delivery to the City of: (i) invoices for construction costs of the Access Road Improvements, (ii) a 2-year maintenance bond or irrevocable letter of credit in an amount equal to twenty percent (20%) of the Access 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 Access Road Improvements have been completed in accordance with approved designed plans, (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Access Road Improvements, and (v) the conveyance of the Right-of-way Property as set forth in subparagraph 4 (b) shall have occurred. The Access Road Improvements shall be deemed completed upon Developer (or the developer of Mathews Grove Property) satisfying all of the conditions of this paragraph 4 ("**Access Road Improvements Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of the Access Road Improvements Completion. Following the Access Road Improvements Completion, the Developer shall have no maintenance responsibility for the Access Road Improvements.

**(b) Right-of-Way Conveyance.** The Developer shall convey or cause to be conveyed to the City in fee simple ownership the lands more specifically described as the "Hanover Dedication Parcels" in the attached Exhibit "C", which are necessary to accommodate the Access Road Improvements as defined in paragraph 4 (a) (collectively the "**Right-of-Way Property**"). The Right-of-Way Property shall be conveyed to the City by special warranty deed free and clear of all liens and encumbrances except for those matters acceptable to the City. On or before sixty (60) days following receipt of a written request by the City, but no later than upon final plat approval and simultaneously with the recording of the final plat for the first phase of the Project, Developer shall convey or cause the conveyance of the Right-of-Way Property to the City in the manner consistent with this subparagraph (b). The conveyance of the Right-of-Way Property to the City shall not relieve the Developer from its responsibilities to design, permit and construct the Access Road Improvements or any other improvements specified in this Agreement or as a condition of Project approvals.

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 certificate of title, evidencing that fee simple title to the Right-of-Way Property is free and clear of all liens and encumbrances except for those matters acceptable to the City. The cost and expenses related to the conveyance of the Right-of-Way Property including the cost of title work and survey shall be borne solely by the Developer. Real property taxes on the Right-of-Way Property shall be prorated as of the day before the City's acceptance of the conveyance of the same, and the prorated amount of such real property taxes attributable to the Developer shall be paid and escrowed by the Developer in accordance with the provisions of Section 196.295, Florida Statutes; provided, however, that if the conveyance occurs between November 1 and December 31, then Developer shall be responsible for real property taxes for the entire year. Developer shall comply with the disclosure requirements of Section 286.23, Florida Statutes, with respect to the conveyance of the Right-of-Way Property to the City, if applicable.

**(c) Siplin Road.** Except as may be otherwise provided for in an access management plan submitted by Developer and approved by the City, upon the occurrence of the Access Road Improvements Completion and Orange County transferring jurisdiction and/or ownership of the necessary right-of-way to the City, the City agrees to process, in accordance with the standard process for right-of-way vacations and abandonments (including any public notice and hearing requirements), for City Commission consideration a request by Developer to vacate and abandon public access to the segment of the existing Siplin Road right-of-way running from the northeast corner of the Subject Property to the southeast corner of the Subject

Property, but excluding any portion of the right-of-way that the City deems necessary to retain as public right-of-way (the "**Existing Siplin Road**"). Following the City's vacation and abandonment of the Existing Siplin Road, if approved by the City Commission, and pursuant to certain rights provided for in the DAGE, it is anticipated that a portion of the vacated right-of-way area will become part of the Subject Property and be incorporated into the landscape buffer for the Project.

The parties acknowledge that, as of the Effective Date of this Agreement, the City is entitled to jurisdiction and/or ownership of the Existing Siplin Road but has not yet received a deed for same from Orange County. Accordingly, to facilitate the intent of this paragraph with respect to the closure of the Existing Siplin Road and incorporation of same into the Project landscape buffer, the City agrees to take reasonable steps to secure a deed from Orange County for the Existing Siplin Road. Notwithstanding anything provided in this Agreement to the contrary, should the transfer of such deed from Orange County to the City be delayed for any reason, such delay shall not impair or otherwise interfere with Developer's ability to proceed with development of the Project, including Developer's ability to obtain approvals, permits and certificates of occupancy for the Project; provided, however, such delay does not relieve Developer from its obligation to complete the landscape buffer improvements to such vacated right-of-way as soon as possible after Developer acquires title to the vacated right-of-way and all road improvements existing on the former right-of-way are removed in accordance with the DAGE, but no sooner than commencement of development of the Project.

**5. Internal Utility Lines.** Prior to and as a condition precedent to receipt of a certificate of completion from the City Engineer for sewer, water and reclaimed water utility lines internal to the Project (the "**Internal Utility Lines**") and before issuance of any certificates of occupancy for any dwelling units for the Project, Developer shall execute and deliver to the City: (i) invoices for construction costs of such Internal Utility Lines, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Internal Utility Lines construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record provides a certification to the City that the Internal Utility Lines have been completed in accordance with approved design plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Internal Utility Lines. The Internal Utility Lines shall be deemed completed upon Developer satisfying all of the conditions of this paragraph 5 ("**Internal Utilities Lines Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of Internal Utilities Lines Completion. Upon the occurrence of Internal Utilities Lines Completion, the City will take over maintenance responsibility of the Internal Utility Lines.

**6. Plan Approval.** The City shall have final approval of all plans, calculations, designs, locations and specifications for the Access Road Improvements, Offsite Utility Improvements and Internal Utility Lines (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 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 such permits 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.

**7. 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 by special warranty deed (if conveyed by means other than by plat) unencumbered by any lien, mortgage, easement or any other encumbrance or restriction not acceptable to the City in its reasonable discretion. Developer hereby indemnifies and holds the City harmless from any and all claims, damages, penalties, fines, attorneys' fees (including at appellate and trial levels), costs, including but not limited to clean-up costs and other matters arising out of or any way related to environmental pollution and contamination on any and all real property interest granted, dedicated, gifted, and otherwise conveyed by the Developer to the City pursuant to this Agreement, but excluding any environmental pollution or contamination that occurs after the date of such conveyance unless such environmental pollution or contamination is caused by the Developer.

#### **8. Utility Improvements.**

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

(b) The Developer shall obtain water and sewer capacity through the City's established reservation procedures. The City confirms that as of the Effective Date of this Agreement, sufficient plant capacity exists to service the Project with water and sewer service, however, this Agreement does not reserve capacity for such services to the Subject Property and Project.

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

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

**9. 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.

**10. Performance Bond.** Prior to final plat approval for the Project, if Offsite Improvements are not then completed, Developer shall, as a condition precedent to obtaining final plat approval, 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 remaining or outstanding 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.

**11. Community Subdivision Infrastructure Improvements.** Prior to the turnover of control of the homeowner's association as defined by Chapter 110, City of Winter Garden Code of Ordinances and prior to the issuance of certificates of occupancy for ninety percent (90%) of the dwelling units for the Project, Developer shall execute and deliver to the City a 2 year maintenance bond or irrevocable letter of credit covering the community subdivision infrastructure improvements in an amount equal to 20 percent of such community subdivision infrastructure improvements' construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, and naming the City as beneficiary. Community subdivision infrastructure improvements include stormwater systems, non-public roadways, gates, walls, streetlights (if not otherwise to be maintained by the power company), sidewalks and other subdivision infrastructure improvements (including those improvements on common area or common property) to be ultimately owned or maintained by the homeowner's association for the Property/Project, but specifically exclude the Public Infrastructure Improvements. The Developer shall have maintenance responsibility for the community subdivision infrastructure improvements until homeowner's association turnover occurs.

**12. 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.

**13. Sunridge Boulevard Fair Share Payment.** Developer shall timely pay to the City the Sunridge Fair Share Payment as and when specified by that certain Sunridge Boulevard Fair Share Agreement recorded on July 2, 2013 at Official Records Book 10594, Page 1119, Public Records of Orange County, Florida (the "**Fair Share Agreement**").

To the extent the City constructs improvements to Sunridge Boulevard in accordance with the Fair Share Agreement, the parties agree to work together in good faith to coordinate the final design and construction of such work to avoid conflicts with the Access Road Improvements to be constructed by Developer.

Notwithstanding any provision in the Fair Share Agreement to the contrary, in the event the City does not declare or make Sunridge Boulevard a public road before Developer makes the Sunridge Fair Share Payment, then upon Developer's payment of the Sunridge Fair Share Payment to the City, the City will grant the Developer and the Subject Property a non-exclusive temporary easement (in lieu of a license) for access over and upon Sunridge Boulevard for pedestrian and vehicular ingress and egress to and from the Subject Property and the Avalon Road right-of-way (a/k/a County Road 545), and in such event the easement will automatically terminate upon the City declaring Sunridge Boulevard a public road. Such temporary access easement shall be in a commercially reasonable form deemed acceptable to the City Attorney and to the Developer, be subject to City's operation, traffic enforcement, maintenance of traffic, control, rules and regulations, provide for Developer's repair of any damage to any property, facilities or improvements of City's or utility service providers located within the easement area or adjacent thereto, damaged by Developer and/or Developer's employees, contractors, builders, agents and invitees during the exercise of Developer's rights and privileges under such easement, and such easement shall also allow for development and construction access to and from the Subject Property (including the Project) and the Avalon Road right-of-way (a/k/a

County Road 545). At the request of either party, the other party agrees to execute an amendment to the Fair Share Agreement to reflect the foregoing.

**14. Concurrency.** The City acknowledges and agrees that Developer's construction of the Public Infrastructure Improvements and payment of Developer's Sunridge Fair Share Payment pursuant to the Fair Share Agreement are consistent with and satisfy all concurrency and off-site mitigation requirements of the City's Comprehensive Plan and Land Development Code, excluding school concurrency and the requirement to pay impact fees as set forth in paragraph 25 below. With respect to school concurrency, the City acknowledges and agrees that Developer's compliance with that certain (i) *Capacity Enhancement Agreement* (KB Home Orlando LLC – Blacklake property – RAN Loan) (CEA # 05-019) as recorded in Official Records Book 10148, Page 6410, as amended by that certain First Amendment to Capacity Enhancement Agreement recorded in Official Records Book 10148, Page 6428, as amended by that certain Second Amendment to Capacity Enhancement Agreement recorded in Official Records Book 10553, Page 4522, as affected by that certain Partial Assignment to Hanover Land Company, LLC, recorded in Official Records Book 10564, Page 4306, and as affected by that certain Partial Assignment to Royal Oak Homes, LLC (f/k/a AVH Acquisition, LLC), recorded in Official Records Book 10738, Page 3136, all of the Public Records of Orange County, Florida (collectively, the "**Blacklake CEA**"), and (ii) *Capacity Enhancement Agreement* (KB Home Orlando LLC – McCallister property – RAN Loan) (CEA # 05-021) having an effective date of August 29, 2005, entered into by and between the School Board and KB and recorded in Official Records Book 10148, Page 6386, of the Public Records, as amended by that certain First Amendment to Capacity Enhancement Agreement recorded in Official Records Book 10148, Page 6404, as amended by that certain Second Amendment to Capacity Enhancement Agreement recorded in Official Records Book 10553, Page 4456, as affected by that certain Partial Assignment to Hanover Land Company, LLC, recorded in Official Records Book 10564, Page 4288, and as affected by that certain Partial Assignment to Royal Oak Homes, LLC (f/k/a AVH Acquisition, LLC), recorded in Official Records Book 10738, Page 3136, all of the Public Records of Orange County, Florida (collectively, the "**McCallister CEA**"), is consistent with and satisfies the school concurrency requirements set forth in the City's Comprehensive Plan and Land Development Code because the School Board, pursuant to a resolution adopted on September 9, 2008, has opined that the Property should be exempt from school concurrency based on the Blacklake CEA and the McCallister CEA, and the City concurs with such finding.

**15. 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.

**16. 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 one or more years 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.

**17. 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.

**18. 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: Royal Oak Homes, LLC  
Attn: Ben Snyder  
2420 S. Lakemont Ave., Suite 450  
Orlando, FL 32814

With a copy to:  
James H. McNeil, Esq.  
Akerman LLP  
420 S. Orange Avenue, Suite 1200  
Orlando, Florida 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.

**19. 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.

**20. 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.

**21. 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.

**22. Binding Effect and Successors.** This Agreement shall run with the Subject Property and the rights and the obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement. In the event of the assignment of this Agreement, or the conveyance or transfer of the Subject Property, or any part thereof, the Developer shall be and remain liable for performance of the obligations under this Agreement until such time as a written release is obtained from the City, in the City's sole discretion except in the event all obligations under this Agreement have been completed, in which case no such release shall be required. Excluding the City and any homeowner who is conveyed a lot within the Project after a certificate of occupancy is issued for a dwelling unit on such lot, Developer and all transferees, transferor, grantees, grantors, assignees and assignors relating to the Subject Property are jointly and severally liable for the Developer's obligations under this Agreement. The rights granted to Developer under this Agreement relate specifically to the Subject Property and are not permitted to be transferred to any other property.

**23. 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.

**24. 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.

**25. Impact Fees.**

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

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

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

(d) The impact fee determination of subparagraphs (a) through (c) above shall be determined pursuant to City Code as such may be amended from time to time. Except as otherwise provided herein, the Developer shall not receive any compensation or impact fee credits for improvements described herein and/or the dedication or conveyance of any land to the City.

**26. 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.

**27. Authority.** Each party represents and warrants to the other parties that it has all necessary power and authority to enter into and consummate the terms and conditions of this Agreement, that all acts, approvals, procedures, and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be, and that, upon the execution of this Agreement by all parties, this Agreement shall be valid and binding upon the parties hereto and their successors in interest and assigns. Furthermore, Developer represents and warrants to City that Developer is the fee simple owner of the Subject Property and that the Subject Property is free and clear of all mortgages and liens. In the event any mortgage or other lien encumbrance in fact exists on the Subject Property as of the recording of this Agreement in the Orange County public records such shall constitute a default of this Agreement by Developer and must be cured by Developer, at Developer's sole cost by obtaining the joinders, consents and subordinations to this Agreement (and documents called for herein) or releases from the appropriate parties with mortgage and lien interest in the Subject Property. Developer shall provide to City, certified surveys, title reports or other documents evidencing said ownership interest.

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

**29. Breach.** In the event of a breach, default, or violation of one or more of the provisions herein by the Developer or the City, the violating party shall be given thirty (30) days to cure such violation upon receipt of written notice of the violation from a non-violating party. In the event such violation is not cured within said period, the City, or the Developer, as the case

may be, shall have the right to pursue any and all legal and equitable remedies available provided by law. In addition to any of the above stated remedies, the City shall be permitted to withhold the processing and issuance of certificates of occupancy, building permits and development orders associated with the Project in the event Developer is in default of this Agreement. In addition to any of the above stated remedies, in the event the Developer fails to timely complete the Public Infrastructure Improvements or any portion thereof, or any other improvement required herein to be constructed by the Developer and intended to be ultimately owned or maintained by the City, the City may record a Notice of Lien against the Subject Property, excluding any lot that has been conveyed to third party homebuyer subsequent to a certificate of occupancy issued for a dwelling unit on such lot, in an amount equal to the design, permitting, installation and construction costs of such improvements. In addition, if Developer fails to timely pay the City any monies due pursuant to this Agreement, the City may record a Notice of Lien against the Subject Property, excluding any lot that has been conveyed to third party homebuyer subsequent to a certificate of occupancy issued for a dwelling unit on such lot, in the amount owed to the City. A copy of such Notice of Lien shall also be delivered to Developer in the same manner as required under this Agreement for delivery of written notices. The recorded Notice of Lien shall constitute a lien upon the Subject Property, 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, 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. Such recorded Notice of Lien shall be superior to all other liens and encumbrances subordinated to this Agreement and superior to all other liens and encumbrances that become a matter of record after the recording date of this Agreement regardless of when the Notice of Lien is recorded. The City may foreclose the lien in accordance with the procedures established in Chapter 702, Florida Statutes, or successor statute or other statute providing for lien foreclosure procedures. Amounts past due shall accrue interest in favor of the City at the rate of twelve percent per annum. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

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

**35. 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.

**36. 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.

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

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

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

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

Exhibit A	Legal Description of Subject Property
Exhibit B	Offsite Utility Improvements
Exhibit C	Access Road Improvements & Right-of-Way Property

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

**"CITY"**

**CITY OF WINTER GARDEN, FLORIDA**

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

**ATTEST:**

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

**Date:** \_\_\_\_\_

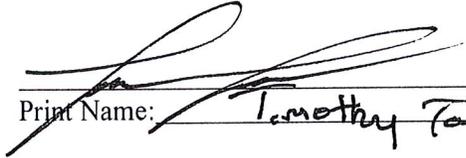
"DEVELOPER"

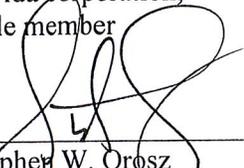
Signed, sealed and delivered in the presence of:

**ROYAL OAK HOMES,**  
a Florida limited liability company

  
Print Name: Brandi Smith

By: **AVATAR PROPERTIES INC.**  
a Florida corporation,  
its sole member

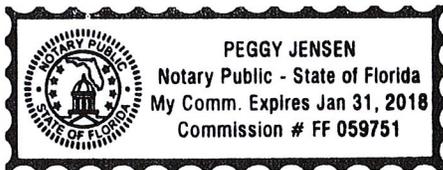
  
Print Name: Timothy Tarame

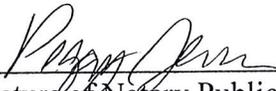
By:   
Name: Stephen W. Orosz  
Title: Co-Division Present – ROH,  
Authorized Agent

STATE OF FLORIDA

COUNTY OF ORANGE

This instrument was acknowledged before me this 29<sup>th</sup> day of April, 2014, by Stephen W. Orosz, Co-Division Present - ROH, an Authorized Agent of **AVATAR PROPERTIES INC.**, a Florida corporation, the sole member of **ROYAL OAK HOMES**, a Florida limited liability company, on behalf of the company, who  is personally known to me OR  has produced \_\_\_\_\_ as identification.



  
Signature of Notary Public – State of Florida

Print Name \_\_\_\_\_  
Commission Number \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**Exhibit "A"**

(Legal Description of Subject Property)

PARCEL 1:

BEGIN SOUTH 2° EAST 231.9 FEET FROM THE NORTH 1/4 CORNER OF SECTION 34, TOWNSHIP 22 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, RUN NORTH 88°14'42" WEST 395.89 FEET, THENCE RUN SOUTH 504.26 FEET TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4, THENCE RUN NORTH 87°54'02" EAST 395.96 FEET, THENCE NORTH 477.64 FEET TO THE POINT OF BEGINNING, LESS THE EAST 8 FEET.

PARCEL 2:

THAT PART OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 22 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, WHICH IS DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 34, RUN SOUTH 231.90 FEET ALONG THE EAST BOUNDARY OF SAID NORTHWEST 1/4; THENCE NORTH 88°14'42" WEST 395.89 FEET FOR THE POINT OF BEGINNING; THENCE RUN SOUTH 504.26 FEET TO A POINT ON THE SOUTH BOUNDARY OF SAID NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE SOUTH 87°54'02" WEST ALONG SAID SOUTH BOUNDARY OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 00°39'56" EAST 562.54 FEET ALONG THE WEST BOUNDARY OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 TO A POINT 123.77 FEET SOUTHERLY FROM THE NORTHWEST CORNER OF SAID NORTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE SOUTH 88°14'42" EAST 862.37 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH: THAT CERTAIN EASEMENT FOR RIGHT-OF-WAY PURPOSES 30 FEET IN WIDTH AND RUNNING EAST AND WEST OVER THE NORTH SIDE OF THE FOLLOWING: THAT PART OF THE NORTH ½ OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 22 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, WHICH IS DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 34, RUN SOUTH 231.90 FEET ALONG THE EAST BOUNDARY OF SAID NORTHWEST 1/4 FOR THE POINT OF BEGINNING; THENCE RUN NORTH 88°14'42" WEST 395.89 FEET ALONG A LINE WHICH IF EXTENDED WESTERLY WOULD INTERSECT THE WEST BOUNDARY OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 AT A POINT 123.77 FEET SOUTH OF THE NORTH BOUNDARY OF SAID NORTHWEST 1/4; THENCE RUN SOUTH 504.26 FEET TO A POINT ON THE SOUTH BOUNDARY OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE NORTH 87°54'02" EAST 395.96 FEET ALONG SAID SOUTH BOUNDARY TO THE EAST BOUNDARY OF THE NORTHWEST 1/4; THENCE NORTH 477.64 FEET TO THE POINT OF BEGINNING, LESS THE EAST 8 FEET.

THE FOREGOING PARCELS 1 AND 2 BEING ALSO DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 22 SOUTH, RANGE 27 EAST BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTH QUARTER CORNER OF SAID SECTION 34 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 01°18'35" EAST, ALONG THE EAST LINE OF THE NORTHWEST CORNER OF SAID SECTION 34, A DISTANCE OF 231.90 FEET; THENCE DEPARTING SAID EAST LINE RUN NORTH 89°42'54" WEST, 8.00 FEET TO THE WEST LINE OF THAT CERTAIN RIGHT-OF-WAY AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 1753, PAGE 564 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND THE POINT OF BEGINNING; THENCE RUN SOUTH 01°18'35" EAST, ALONG SAID WEST LINE, 478.23 FEET TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER, OF THE NORTHWEST QUARTER OF SAID SECTION 34; THENCE RUN SOUTH 86°25'20" WEST, ALONG SAID SOUTH LINE, 1256.43 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTH WEST QUARTER OF SAID SECTION 34; THENCE RUN NORTH 00°43'13" WEST, ALONG SAID WEST LINE, 562.75 FEET TO A POINT ON SAID WEST LINE, BEING 123.77 FEET FROM THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 34; THENCE DEPARTING SAID WEST LINE, RUN SOUTH 89°42'58" EAST, 1250.14 FEET TO THE POINT OF BEGINNING.

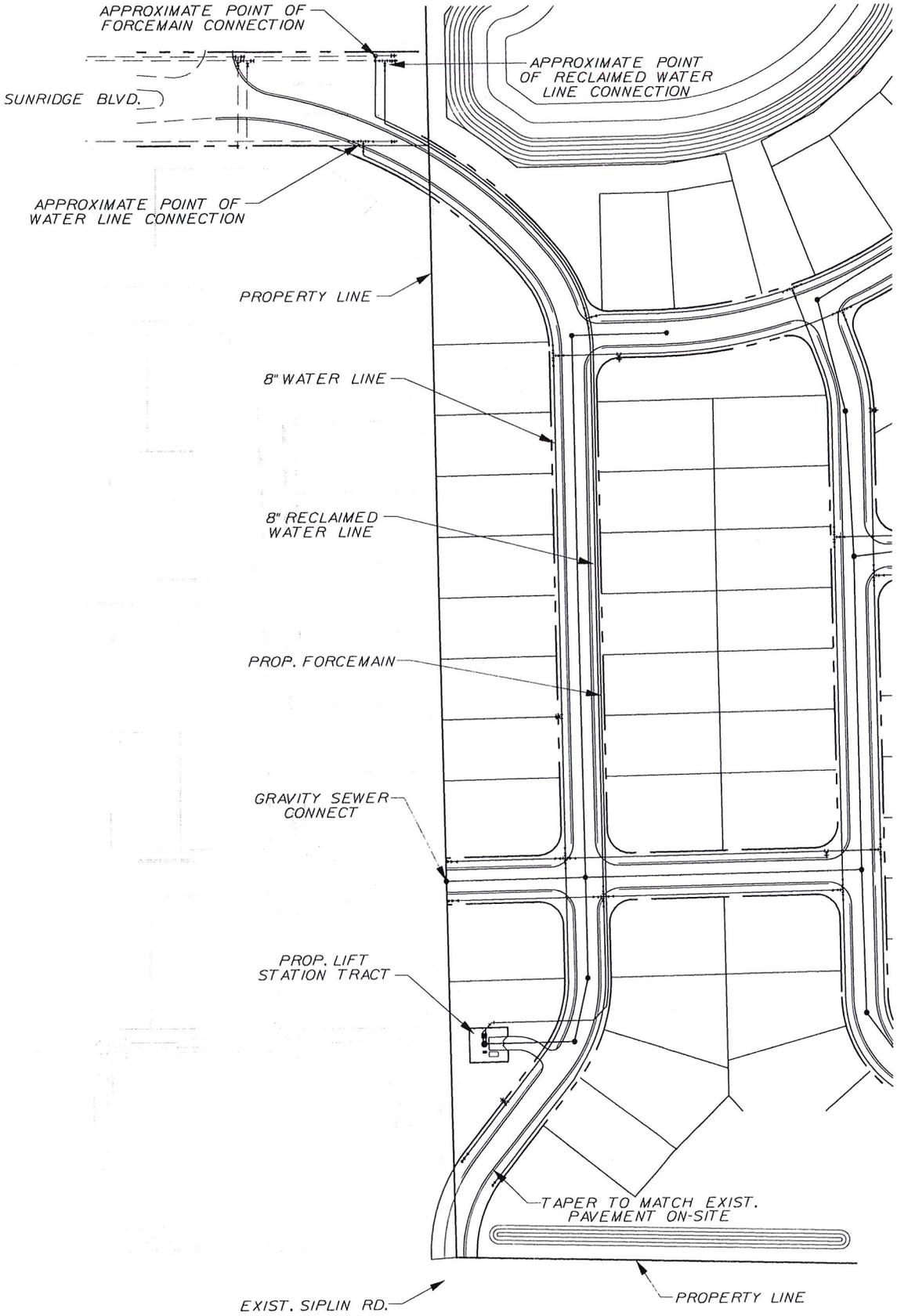
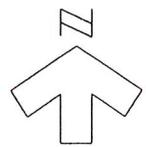
PARCEL 3:

The South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 34, Township 22 South, Range 27 East, Orange County, Florida.

Parcel Identification Numbers

Said above-described real property presently bearing the following Orange County Property Appraiser Parcel Identification numbers:

34-22-27-0000-00-029  
34-22-27-0000-00-008  
34-22-27-0000-00-007



halfsize.tbl

1/28/2014

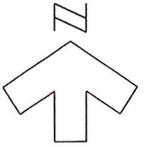
Exhibit B.dgn

2.28.26 PM

**BOWYER SINGLETON**  
 LAND DEVELOPMENT & TRANSPORTATION ENGINEERING  
 PLANNING, SURVEYING & MAPPING  
 BSA-CIVIL.COM

TYPE:
DATE: JANUARY 2014
PROJECT NO.: MTGR1
DRAWN BY: TFS
CHECKED BY: MSS
SCALE: 1" = 150'
SHEET: 1 OF 1

*EXHIBIT B  
UTILITIES*



halfsize.tbl  
4/21/2014  
...\\Exhibit C-1.dgn  
9:37:50 AM

-  HANOVER DEDICATION PARCELS
-  ACCESS ROAD IMPROVEMENTS

HANOVER DEDICATION PARCEL  
 EXIST. SIPLIN RD.  
 PROPERTY LINE



TYPE:
DATE: JANUARY 2014
PROJECT NO.: MTGR1
DRAWN BY: TFS
CHECKED BY: MSS
SCALE: 1" = 150'
SHEET: 1 OF 1

## EXHIBIT C ACCESS ROAD IMPROVEMENTS

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

**From:** Don Cochran, Assistant City Manager – Public Services  
**Via:** Mike Bollhoefer, City Manager  
**Date:** April 30, 2014                      **Meeting Date:** May 8, 2014  
**Subject:** Approve bids and award a contract for the Vineland Road Improvements Project  
**Issue:** On April 8, 2014, the City received bids for the Vineland Road Improvements Project. The project consists of the reconstruction of Vineland Road from SR 50 to Palmetto Street, including the installation of sanitary sewer, water, and stormwater lines.

The following two bids were received for this project:

DeWitt Excavating, Inc.	\$765,758.30
T. D. Thomson Construction Co., Inc.	\$797,437.50

Staff recommends awarding the contract to DeWitt, as the lowest responsive and qualified bidder. Their documentation was found to be in order and their qualifications indicate that they are capable of undertaking the project and completing it successfully. Staff further recommends adding a 10% contingency, bringing the total project amount to \$842,334.13.

**Recommended Action:**

Recommend approving the bids and awarding a contract for the Vineland Road Improvements Project to DeWitt Excavating, Inc., including a 10% contingency, for a total project amount of \$842,334.13.

**Attachments/References:**

- Engineer's letter of recommendation and bid tabulation

# CITY OF WINTER GARDEN

## Engineering Department

300 West Plant Street - Winter Garden, Florida 34787-3011

(407) 656-4111 - FAX (407) 877-2363

### MEMORANDUM

**TO:** CITY COMMISSION VIA MICHAEL BOLLHOEFER, CITY MANAGER  
**FROM:** DON COCHRAN, ASSISTANT CITY MANAGER FOR PUBLIC SERVICES  
 ARTHUR R. MILLER, III, PE, PLS – CITY ENGINEER  
**DATE:** APRIL 8, 2014  
**SUBJECT:** REVIEW OF BIDS – RECOMMENDATION OF AWARD  
 VINELAND ROAD (SR 50 TO PALMETTO) PROJECT - CITY PN 10-009



As you know, the City received bids for this project today, with two of the seven contractors that had purchased bid packages and attended the mandatory pre-bid meeting submitting. Based on our recommendation, we are asking the Commission to award the bid at this time so construction can commence as soon as possible. The tabulated amounts for the two bids are summarized below:

<u>Company</u>	<u>Unit Price Base Bid</u> (Tabulated)
<b>DeWitt Excavating, Inc.</b>	<b>\$765,758.30</b>
T.D. Thomson Construction Co., Inc.	\$797,437.50

Even though there were only two bidders, we feel that the bids were very competitive. We have attached the bid tabulation for the two bidders for your review. After reviewing the proposal submitted by DeWitt Excavating, Inc., we have found all documentation to be in order (appropriate licenses, resumes of personnel to be assigned to this project, bid form signed, bid guarantee, etc.) and that their qualifications indicate that they can perform the project within the time frames specified. (Note: DeWitt’s bid had minor math or roundoff errors that amounted to \$2.43 and were determined to be of no consequence.)

We also recommend that a contingency amount of 10% be approved in addition to the Contractor’s Unit Price bid. This will allow construction to continue without delays if Staff approves additional work within the contingency amount that exceeds the original scope. This is a Unit Price contract. Payment will be based on the actual quantity of materials installed according to the unit price bid.

In summary, we recommend that the project be awarded to DeWitt Excavating, Inc., at a price not to exceed \$842,334.13 (Base bid + 10% contingency), and ask the Commission's approval for the City to enter into a contract with them. Execution of the contract will be contingent upon all requirements being met (i.e. insurance, bond, etc.).

Please review this information and contact our office if you have any questions. Thank you.

**END OF MEMORANDUM**

**BID TABULATION**  
**CITY OF WINTER GARDEN**  
**VINELAND ROAD (SR 50 TO PALMETTO) PROJECT - APRIL 8, 2014**  
**PN 10-009**

ITEM NO.	ITEM	QUANT.	UNIT	UNIT PRICE	T.D. Thomson	UNIT PRICE	DeWitt Exc.
					AMOUNT		AMOUNT
1	MOBILIZATION	1	LS	\$58,000.00	\$58,000.00	\$40,570.00	\$40,570.00
2	MAINTENANCE OF TRAFFIC	1	LS	\$12,000.00	\$12,000.00	\$30,000.00	\$30,000.00
3	TEMP EROSION & SEDIMENT CONTROL (INCLUDING SWPPP & NPDES PERMIT)	1	LS	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00
4	TEMPORARY DEWATERING (INCLUDING FDEP PERMIT)	1	LS	\$1,500.00	\$1,500.00	\$11,500.00	\$11,500.00
5	REMOVE, SALVAGE AND TRANSPORT BRICKS TO CITY PUBLIC WORKS YARD & STACK	500	SY	\$12.00	\$6,000.00	\$10.00	\$5,000.00
6	CLEARING & GRUBBING (INCLUDING ALL DEMOLITION AND PAVEMENT REMOVAL)	7,492	SY	\$10.00	\$74,920.00	\$5.00	\$37,460.00
7	EXCAVATE/REMOVE/DISPOSE SOIL	4,000	CY	\$8.00	\$32,000.00	\$6.00	\$24,000.00
8	SELECT IMPORT BACKFILL MATERIAL (INCLUDING 18" LAYER UNDER SUBBASE)	4,000	CY	\$9.00	\$36,000.00	\$5.25	\$21,000.00
9	GRADING	7,492	SY	\$3.00	\$22,476.00	\$3.00	\$22,476.00
10	6" COMPACTED SUBGRADE (UNDER SIDEWALKS)	818	SY	\$2.50	\$2,045.00	\$4.00	\$3,272.00
11	10" BASE (SOIL CEMENT OR CONC. FINES)	4,362	SY	\$18.00	\$78,516.00	\$10.48	\$45,713.76
12	12" COMPACTED SUBGRADE	4,362	SY	\$2.50	\$10,905.00	\$3.50	\$15,267.00
13	2" S-3 ASPHALTIC CONCRETE PAVEMENT	3,837	SY	\$9.50	\$36,451.50	\$14.50	\$55,636.50
14	4" THICK CONCRETE SIDEWALK	818	SY	\$30.00	\$24,540.00	\$23.66	\$19,353.88
15	6" THICK CONCRETE DRIVEWAY	456	SY	\$36.00	\$16,416.00	\$29.50	\$13,452.00
16	HANDICAP RAMP (COMPLETE)	9	EA	\$700.00	\$6,300.00	\$1,765.00	\$15,885.00
17	PAVEMENT MARKINGS & SIGNAGE	1	LS	\$3,500.00	\$3,500.00	\$10,765.00	\$10,765.00
18	DROP CURB (MIAMI CURB)	2,178	LF	\$23.00	\$50,094.00	\$10.50	\$22,869.00
19	FDOT TYPE 'F' CURB	369	LF	\$23.00	\$8,487.00	\$11.00	\$4,059.00
20	SOD RESTORATION	1,856	SY	\$3.50	\$6,496.00	\$4.75	\$8,816.00
	<b><u>SANITARY</u></b>						
21	DEMO EXISTING SANITARY SEWER MAIN	200	LF	\$10.00	\$2,000.00	\$5.00	\$1,000.00
22	4" PVC SANITARY FORCE MAIN(DR 18, C-900) INCLUDING MH CONNECTION	19	LF	\$60.00	\$1,140.00	\$55.15	\$1,047.85
23	8" PVC GRAVITY SANITARY (SDR 26)	1,051	LF	\$29.00	\$30,479.00	\$26.06	\$27,389.06
24	6" PVC SERVICE LATERAL (SDR 26)(INCLUDING CLEANOUTS)	361	LF	\$35.00	\$12,635.00	\$29.58	\$10,678.38
25	SANITARY MANHOLE (4' DIA.)	3	EA	\$3,400.00	\$10,200.00	\$3,132.80	\$9,398.40
26	CONNECT TO EXIST. MANHOLE	1	EA	\$2,500.00	\$2,500.00	\$3,150.00	\$3,150.00
	<b><u>WATER MAIN</u></b>						
27	DEMO EXISTING WATER MAIN	1,367	LF	\$9.00	\$12,303.00	\$6.00	\$8,202.00
28	DEMO EXISTING WATER SERVICES	431	LF	\$9.00	\$3,879.00	\$5.00	\$2,155.00

29	DEMO EXISTING FIRE HYDRANT	2	EA	\$500.00	\$1,000.00	\$1,050.00	\$2,100.00
30	8" PVC WATER MAIN (C-900, DR 18) (INCLUDING ALL FITTINGS)	1,299	LF	\$31.00	\$40,269.00	\$35.00	\$45,465.00
31	6" PVC WATER MAIN (C-900, DR 18)(INCLUDING ALL FITTINGS)	84	LF	\$28.00	\$2,352.00	\$56.66	\$4,759.44
32	2" HDPE WATER SERVICE	327	LF	\$20.00	\$6,540.00	\$61.99	\$20,270.73
33	8" GATE VALVE	7	EA	\$2,000.00	\$14,000.00	\$1,637.14	\$11,459.98
34	6" GATE VALVE	3	EA	\$2,000.00	\$6,000.00	\$1,530.00	\$4,590.00
35	AIR RELIEF VALVE	1	EA	\$3,500.00	\$3,500.00	\$8,380.00	\$8,380.00
36	CONNECT TO EXIST. 8" WATER MAIN (WET TAP)	1	EA	\$4,800.00	\$4,800.00	\$5,450.00	\$5,450.00
37	CONNECT TO EXIST. 8" WATER MAIN @ GATE VAL	1	EA	\$2,500.00	\$2,500.00	\$4,000.00	\$4,000.00
38	CONNECT TO EXIST. 6" WATER MAIN (WET TAP)	1	EA	\$3,500.00	\$3,500.00	\$4,300.00	\$4,300.00
39	CONNECT TO EXIST. 2" WATER MAIN	1	EA	\$1,500.00	\$1,500.00	\$900.00	\$900.00
40	FIRE HYDRANT ASSEMBLY	2	EA	\$3,400.00	\$6,800.00	\$3,830.00	\$7,660.00
	<b>STORMWATER</b>						
41	6" PVC (SDR 26)	94	LF	\$30.00	\$2,820.00	\$23.50	\$2,209.00
42	15" RCP	10	LF	\$34.00	\$340.00	\$30.19	\$301.90
43	18" RCP	606	LF	\$34.00	\$20,604.00	\$34.79	\$21,082.74
44	24" RCP	275	LF	\$39.00	\$10,725.00	\$42.95	\$11,811.25
45	30" RCP	209	LF	\$45.00	\$9,405.00	\$63.07	\$13,181.63
46	TYPE P-7 MANHOLE	2	EA	\$3,500.00	\$7,000.00	\$4,283.60	\$8,567.20
47	SPECIAL ENDWALL	2	EA	\$1,500.00	\$3,000.00	\$2,561.60	\$5,123.20
48	FDOT TYPE 'V' INLET W/P BOTTOM (INCLUDING STEEL PLATES)	11	EA	\$3,100.00	\$34,100.00	\$5,512.80	\$60,640.80
49	FDOT TYPE 'C' INLET	4	EA	\$2,200.00	\$8,800.00	\$2,052.40	\$8,209.60
50	15" RCP CONNECT TO EXIST. 15" RCP	1	EA	\$2,500.00	\$2,500.00	\$2,700.00	\$2,700.00
51	18" RCP CONNECT TO EXIST. 18" RCP	1	EA	\$2,500.00	\$2,500.00	\$2,700.00	\$2,700.00
52	30" RCP CONNECT TO EXIST. 30" RCP @ MANHOLE	1	EA	\$2,500.00	\$2,500.00	\$3,700.00	\$3,700.00
53	6" UNDERDRAIN, INCLUDING 10 CLEANOUTS & 10 CONNECTIONS TO STORM INLETS	1,600	LF	\$21.00	\$33,600.00	\$20.05	\$32,080.00
	<b>TABULATED BID AMOUNT</b>				<b>\$797,437.50</b>		<b>\$765,758.30</b>
	<b>TOTAL UNIT PRICE BID SUBMITTED</b>				<b>\$797,437.50</b>		<b>\$765,760.73</b>

**NOTE: HIGHLIGHTED CELLS INDICATE ERRORS IN BID VERSUS TABULATED AMOUNTS.**

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

**From:** Don Cochran, Assistant City Manager – Public Services

**Via:** Mike Bollhoefer, City Manager

**Date:** April 30, 2014                      **Meeting Date:** May 8, 2014

**Subject:** Approve bids and award a contract for the North Dillard Street Phase 4 Improvement Project

**Issue:** On April 29, 2014, the City received bids for the North Dillard Street Phase 4 Improvement Project. The project consists of the reconstruction of N. Dillard St. between Verna St. and Division St. and the installation of sanitary sewer, water, and stormwater lines.

The following two bids were received for this project:

DeWitt Excavating, Inc.	\$387,550.00
T. D. Thomson Construction Co., Inc.	\$468,482.00

Staff recommends awarding the contract to DeWitt, as the lowest responsive and qualified bidder. Their documentation was found to be in order and their qualifications indicate that they are capable of undertaking the project and completing it successfully. Staff further recommends adding a 10% contingency, bringing the total project amount to \$426,305.00.

**Recommended Action:**

Recommend approving the bids and awarding a contract for the North Dillard Street Phase 4 Improvement Project to DeWitt Excavating, Inc., including a 10% contingency, for a total project amount of \$426,305.00.

**Attachments/References:**

- Engineer's letter of recommendation, including bid tabulation

# CITY OF WINTER GARDEN

## Engineering Department

300 West Plant Street - Winter Garden, Florida 34787-3011

(407) 656-4111 - FAX (407) 877-2363

### MEMORANDUM

**TO:** CITY COMMISSION VIA MICHAEL BOLLHOEFER, CITY MANAGER  
**FROM:** DON COCHRAN, ASSISTANT CITY MANAGER FOR PUBLIC SERVICES  
 ARTHUR R. MILLER, III, PE, PLS – CITY ENGINEER  
**DATE:** APRIL 29, 2014  
**SUBJECT:** REVIEW OF BIDS – RECOMMENDATION OF AWARD  
 NORTH DILLARD PHASE 4 – VERNA TO DIVISION PROJECT - CITY PN 10-008



As you know, the City received bids for this project today, with two of the four contractors that had purchased bid packages and attended the mandatory pre-bid meeting submitting. Based on our recommendation, we are asking the Commission to award the bid at this time so construction can commence as soon as possible. The tabulated amounts for the two bids are summarized below:

<u>Company</u>	<u>Unit Price Base Bid</u> (Tabulated)
<b>DeWitt Excavating, Inc.</b>	<b>\$387,550.00</b>
Engineer's Estimate	\$400,000.00
T.D. Thomson Construction Co., Inc.	\$468,482.00

Even though there were only two bidders, we feel that the bids were competitive and were below both the Engineer's estimate and the budgeted project amount. We have attached the bid tabulation for the two bidders for your review. After reviewing the proposal submitted by DeWitt Excavating, Inc., we have found all documentation to be in order (appropriate licenses, resumes of personnel to be assigned to this project, bid form signed, bid guarantee, etc.) and that their qualifications indicate that they can perform the project within the time frames specified.

We also recommend that a contingency amount of 10% be approved in addition to the Contractor's Unit Price bid. This will allow construction to continue without delays if Staff approves additional work within the contingency amount that exceeds the original scope. This is a Unit Price contract. Payment will be based on the actual quantity of materials installed according to the unit price bid.

In summary, we recommend that the project be awarded to DeWitt Excavating, Inc., at a price not to exceed \$426,305.00 (Base bid + 10% contingency), and ask the Commission's approval for the City to enter into a contract with them. Execution of the contract will be contingent upon all requirements being met (i.e. insurance, bond, etc.).

Please review this information and contact our office if you have any questions. Thank you.

**END OF MEMORANDUM**

**BID TABULATION  
CITY OF WINTER GARDEN  
NORTH DILLARD PHASE 4 - BID TABULATION - 4/29/14  
PN 10-008**

ITEM NO.	ITEM	QUANT.	UNIT	UNIT PRICE	T.D. Thomson	UNIT PRICE	DeWitt Exc.
					AMOUNT		AMOUNT
1	MOBILIZATION	1	LS	\$45,000.00	\$45,000.00	\$17,620.07	\$17,620.07
2	MAINTENANCE OF TRAFFIC	1	LS	\$9,000.00	\$9,000.00	\$10,000.00	\$10,000.00
3	TEMP EROSION & SEDIMENT CONTROL (INCLUDING SWPPP & NPDES PERMIT)	1	LS	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00
4	TEMPORARY DEWATERING (INCLUDING FDEP PERMIT)	1	LS	\$2,500.00	\$2,500.00	\$1,500.00	\$1,500.00
5	REMOVE, SALVAGE AND TRANSPORT BRICKS TO CITY PUBLIC WORKS YARD & STACK	1,315	SY	\$12.00	\$15,780.00	\$10.00	\$13,150.00
6	CLEARING & GRUBBING (INCLUDING ALL DEMOLITION AND PAVEMENT REMOVAL)	3,775	SY	\$14.00	\$52,850.00	\$4.00	\$15,100.00
7	EXCAVATE/REMOVE/DISPOSE SOIL	750	CY	\$9.00	\$6,750.00	\$6.00	\$4,500.00
8	SELECT IMPORT BACKFILL MATERIAL (INCLUDING 18" LAYER UNDER SUBBASE)	750	CY	\$11.00	\$8,250.00	\$8.25	\$6,187.50
9	GRADING	3,775	SY	\$3.00	\$11,325.00	\$3.00	\$11,325.00
10	6" COMPACTED SUBGRADE (UNDER SIDEWALKS)	536	SY	\$2.50	\$1,340.00	\$4.00	\$2,144.00
11	10" BASE (SOIL CEMENT OR CONC. FINES)	1,663	SY	\$19.00	\$31,597.00	\$11.63	\$19,340.69
12	12" COMPACTED SUBGRADE	1,663	SY	\$3.00	\$4,989.00	\$3.50	\$5,820.50
13	2" S-3 ASPHALTIC CONCRETE PAVEMENT	1,399	SY	\$10.00	\$13,990.00	\$14.50	\$20,285.50
14	4" THICK CONCRETE SIDEWALK	536	SY	\$32.00	\$17,152.00	\$23.66	\$12,681.76
15	6" THICK CONCRETE DRIVEWAY	278	SY	\$38.00	\$10,564.00	\$29.50	\$8,201.00
16	HANDICAP RAMP (COMPLETE)	4	EA	\$700.00	\$2,800.00	\$1,765.00	\$7,060.00
17	PAVEMENT MARKINGS & SIGNAGE	1	LS	\$3,800.00	\$3,800.00	\$1,875.00	\$1,875.00
18	3' WIDE CONCRETE VALLEY GUTTER	165	LF	\$18.00	\$2,970.00	\$14.50	\$2,392.50
19	DROP CURB (MIAMI CURB)	160	LF	\$18.00	\$2,880.00	\$14.50	\$2,320.00
20	FDOT TYPE 'F' CURB	756	LF	\$18.00	\$13,608.00	\$15.00	\$11,340.00
21	SOD RESTORATION	1,320	SY	\$3.50	\$4,620.00	\$4.75	\$6,270.00
	<b><u>SANITARY</u></b>						
22	DEMO EXISTING SANITARY SEWER MAIN	611	LF	\$10.00	\$6,110.00	\$6.00	\$3,666.00
23	DEMO EXISTING SANITARY SEWER MANHOLE	2	EA	\$500.00	\$1,000.00	\$410.00	\$820.00
24	8" PVC GRAVITY SANITARY (SDR 26)	568	LF	\$31.00	\$17,608.00	\$25.75	\$14,626.00
25	6" PVC SERVICE LATERAL (SDR 26)(INCLUDING CLEANOUTS)	500	LF	\$25.00	\$12,500.00	\$25.20	\$12,600.00
26	SANITARY MANHOLE (4' DIA.)	2	EA	\$3,500.00	\$7,000.00	\$3,592.80	\$7,185.60
27	8" PVC CONNECT TO EXIST. MANHOLE/PIPE	2	EA	\$2,500.00	\$5,000.00	\$3,150.00	\$6,300.00
28	RE-WORK BENCH IN EXIST. SAN. MANHOLE	1	EA	\$300.00	\$300.00	\$2,300.00	\$2,300.00
	<b><u>WATER MAIN</u></b>						
29	DEMO EXISTING WATER MAIN	615	LF	\$11.00	\$6,765.00	\$6.00	\$3,690.00

30	8" PVC WATER MAIN (C-900, DR 18) (INCLUDING ALL FITTINGS)	608	LF	\$32.00	\$19,456.00	\$32.19	\$19,571.52
31	6" PVC WATER MAIN (C-900, DR 18)(INCLUDING ALL FITTINGS)	12	LF	\$38.00	\$456.00	\$77.23	\$926.76
32	1" HDPE WATER SERVICE	437	LF	\$18.00	\$7,866.00	\$24.70	\$10,793.90
33	2" OFFSET AIR RELEASE VALVE	1	EA	\$1,900.00	\$1,900.00	\$4,190.00	\$4,190.00
34	8" GATE VALVE	3	EA	\$2,500.00	\$7,500.00	\$1,637.14	\$4,911.42
35	6" GATE VALVE	2	EA	\$2,000.00	\$4,000.00	\$1,530.00	\$3,060.00
36	CONNECT TO EXIST. 8" WATER MAIN (WET TAP)	1	EA	\$4,500.00	\$4,500.00	\$5,015.00	\$5,015.00
37	CONNECT TO EXIST. 8" WATER MAIN	1	EA	\$2,800.00	\$2,800.00	\$3,500.00	\$3,500.00
38	CONNECT TO EXIST. 6" WATER MAIN (WET TAP)	1	EA	\$3,500.00	\$3,500.00	\$4,140.00	\$4,140.00
39	CONNECT TO EXIST. 6" WATER SERVICE	1	EA	\$2,800.00	\$2,800.00	\$3,200.00	\$3,200.00
	<b>STORMWATER</b>						
40	DEMO EXISTING 18" VCP	586	LF	\$11.00	\$6,446.00	\$10.00	\$5,860.00
41	DEMO EXISTING STORM STRUCTURE	6	LF	\$400.00	\$2,400.00	\$250.00	\$1,500.00
42	DEMO EXISTING 8" PVC	18	LF	\$10.00	\$180.00	\$11.00	\$198.00
43	18" RCP	392	LF	\$34.00	\$13,328.00	\$34.79	\$13,637.68
44	24" RCP	248	LF	\$39.00	\$9,672.00	\$47.95	\$11,891.60
45	8" PVC (SDR 26)	18	LF	\$35.00	\$630.00	\$30.50	\$549.00
46	FDOT TYPE '5' INLET W/P BOTTOM	3	EA	\$3,800.00	\$11,400.00	\$3,852.00	\$11,556.00
47	FDOT TYPE '6' INLET W/P BOTTOM	1	EA	\$3,800.00	\$3,800.00	\$4,230.00	\$4,230.00
48	FDOT TYPE 'V' INLET W/P BOTTOM (INCLUDING STEEL PLATES)	2	EA	\$3,100.00	\$6,200.00	\$4,222.00	\$8,444.00
49	STORM MANHOLE (6' DIAMETER)	1	EA	\$3,200.00	\$3,200.00	\$2,914.00	\$2,914.00
50	CONNECT TO EXIST. STORM MANHOLE	1	EA	\$2,000.00	\$2,000.00	\$2,700.00	\$2,700.00
51	CONNECT EXIST. 18" RCP TO NEW MANHOLE	1	EA	\$1,800.00	\$1,800.00	\$2,700.00	\$2,700.00
52	CONNECT EXIST. 24" RCP TO NEW MANHOLE	1	EA	\$2,000.00	\$2,000.00	\$3,700.00	\$3,700.00
53	6" PVC UNDERDRAIN	1,200	LF	\$23.00	\$27,600.00	\$20.05	\$24,060.00
	<b>TABULATED BID AMOUNT</b>				<b>\$468,482.00</b>		<b>\$387,550.00</b>
	<b>TOTAL UNIT PRICE BID SUBMITTED</b>				<b>\$468,482.00</b>		<b>\$387,550.00</b>

**NOTE: HIGHLIGHTED CELLS INDICATE ERRORS IN BID VERSUS TABULATED AMOUNTS.**

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

**From:** George Brennan, Police Chief

**Via:** City Manager Mike Bollhoefer

**Date:** April 22, 2014

**Meeting Date:** May 8, 2014

**Subject:** The police department requests to use confiscation funds to acquire an armored vehicle through Florida's Federal Property Assistance Program.

**Issue:** The police department has the need for an armored vehicle but the cost of purchasing such a vehicle is not fiscally feasible. The military, through the state's Federal Property Assistance Program, is offering their surplus armored vehicles to law enforcement agencies. The agency must pay an acquisition fee and agree to maintain the vehicle. The acquiring agency must pick up the vehicle in Texas and is responsible for all transportation expenses. When the vehicle is no longer needed it has to be returned to the Federal Surplus Property Program.

**Recommended action:** Authorize the police department to utilize up to \$6,500 in confiscation funds to acquire and transport an armored vehicle through Florida's Federal Property Assistance Program.

**Supplemental information:** The armored vehicles being offered are still at the manufacturer and have not been delivered to the military because with the de-escalation of the wars the military no longer has a need for these vehicles. These vehicles cost approximately \$780,000 to produce. While there are cheaper armored vehicles on the market (such as the Bearcat), the cost is about \$225,000 and they do not have the same ballistic protection or the higher ground clearance of the military vehicles. We don't have the funds to purchase one, nor would I recommend purchasing one since when can obtain the use of a military vehicle for a fraction of the cost.

I estimate the acquisition and transportation costs will not exceed \$6,500, which should also include spare tires at no additional cost. I will have to make some modifications to the vehicle to take out some of the military features, repaint it, and to add the features that we need. I plan to use confiscation funds for this

also and will budget for that at a later time if this acquisition is approved and awarded.

Since these vehicles are considered “new”, the upkeep and repair costs should be minimal. They won’t get driven a lot so the frequency of the oil changes may be once per year and some fuel costs will be needed. They have diesel engines. The fuel and oil change expenses are estimated to be around \$500 per year. If, at any time, the vehicle becomes too costly to maintain, we can give it back to the surplus program.

All vehicles will be awarded by the end of May 2014 and will no longer be available to police departments. Upon notification of our award, we will have 14 days to pick it up. If we fail to pick it up within 14 days, our award is cancelled. We also have the right to decline the award.

Here is the text of the email information from the program administrator:

Attached is more information on the MRAP. The address for pick up will be BAE Systems 5000 I-10 West Sealy, Texas, 77474 US.

#### **MRAP NEWS:**

**New or used**; turns out both - the personnel compartment on the back and the cab were removed from used older model Caimans – this was done in order to upgrade the driveline and suspension components – so everything that makes the MRAP go is brand new – suspension – frame – engine – transmission – breaks – wheels – tires – etc., etc.

**Turrets**; *the turrets have been removed* - there is still a functional hatch that law enforcement personnel can use but the actual turrets themselves have been removed and are not available for reutilization.

**Spare tires**; there are literally thousands of spare tire and wheel assemblies – originally the plan was to pre-load six of them into each MRAP but when they started the pre-load process they quickly realized from a safety perspective they represented a **crushing hazard** so the wheel and tire assemblies are still available but **must** be picked up in a separate vehicle. The wheel and tire assembly consists of the brand new tire, new wheel, and new run-flat device all fully assembled and complete. (Did I mention they are free?)

Thank you,

Rhonda Stifel  
Florida Department of Management Services  
Bureau of Federal Property Assistance  
14281 U.S. Highway 301 South  
Starke, Florida 32091  
Phone: 904-964-5603  
Fax: 904-964-4815

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

**From:** Michael Bollhoefer, City Manager

**Date:** May 2, 2014

**Meeting Date:** May 8, 2014

**Subject:** Resolution 14-04 Establishing Non-Ad Valorem Special Assessment

**Issue:** The City intends to improve the groundwater and drainage management infrastructure located within Phase I of the Lake Cove Pointe subdivision. The City will impose a non-ad valorem assessment on the lots within Phase I of the Lake Cove Pointe subdivision to cover the resident's one-third share of the total costs of the project. The developer of phase II is also paying one-third and the City is paying the final third out of the stormwater fund. The City Commission agreed to this arrangement at a previous Commission meeting.

**Recommended action:**

Staff recommends approval of Resolution 14-04.

**RESOLUTION 14-04**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, RELATING TO THE FUNDING OF IMPROVEMENT TO THE STORMWATER AND DRAINAGE MANAGEMENT INFRASTRUCTURE AND SYSTEMS LOCATED ON, ABOUT, OR WITHIN PHASE I OF THE LAKE COVE POINTE SUBDIVISION; ESTABLISHING ANNUAL ASSESSMENTS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014; APPROVING AN ASSESSMENT ROLL FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014; ESTABLISHING THE LIEN ASSOCIATED THEREWITH; DIRECTING THAT THE ASSESSMENT ROLL BE CERTIFIED TO THE ORANGE COUNTY TAX COLLECTOR; PROVIDING FOR COLLECTION OF THE ASSESSMENTS PURSUANT TO FLORIDA'S UNIFORM ASSESSMENT COLLECTION ACT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Garden, Florida ("City") is authorized pursuant to Article VIII, § 2(b) of the Florida Constitution, §§ 166.021 and 197.3632, Florida Statutes, and Resolution 13-03 to provide for the initial design, permitting and construction of the stormwater and drainage management infrastructure improvements, and specially assess properties for the costs of the improvements that will be of a special and peculiar benefit to such parcels;

**WHEREAS**, the City has duly adopted a resolution of its intent to use the uniform method of assessment for the levy, collection and enforcement of such charges for the stormwater and drainage management infrastructure improvements located on, about or within Phase I of the Lake Cove Pointe subdivision ("Subdivision"), and complied with the notice provisions of § 197.3632(4)(b), Fla. Stat.;

**WHEREAS**, the City has determined that the stormwater and drainage management infrastructure improvements ("Improvements") as generally reflected on the attached **Exhibit "A"** within the Subdivision specially benefit the 59 lots within the Subdivision which Subdivision is within the City, and shall also serve a valid municipal purpose insofar as governmental emergency and non-emergency services, private service providers, the general citizenry, and utility providers will enjoy safe and sound access to and from dwellings, utilities, and easements located within the Subdivision.

**Now, be it resolved by the City of Winter Garden, Florida:**

**SECTION I.** The City of Winter Garden, Florida hereby adopts the following non-ad valorem special assessment:

**1. Title**

This Resolution shall be known and may be cited as the Lake Cove Pointe Phase I Stormwater and Drainage Management Infrastructure Improvement Assessment (“Lake Cove Pointe Phase I Assessment”).

**2. Establishment of Lake Cove Pointe Phase I Stormwater and Drainage Management Infrastructure Assessment Benefit Area.**

There is hereby created and established a Lake Cove Pointe Phase I Stormwater and Drainage Management Infrastructure Benefit Area, which area shall encompass all lots benefited by the Improvements and necessary for the efficient improvement of said lots within the Subdivision. Such benefit area encompass the residential parcels located within the Subdivision and is more specifically defined and depicted in **Exhibit “B,”** which is attached hereto and incorporated herein.

**3. Levy of Special Non-Ad Valorem Assessment for Stormwater and Drainage Management Infrastructure Improvements.**

There is hereby levied an annual non-ad valorem special assessment against all 59 lots located within the Subdivision, as depicted and described on the attached Exhibit “B.” The Assessment shall be collected for each fiscal year beginning October 1, 2014, for the approximately one third (1/3) of the costs for the initial design, permitting and construction of the Improvements and shall be collected every year thereafter for a total assessment of \$86,112.66 over a period of thirty (30) years.

**4. Adoption of Non-Ad Valorem Assessment Roll**

The Assessment Roll, which is currently on file with the City Manager is attached hereto and incorporated herein as **Exhibit “C”** and is hereby approved and adopted by the City Commission.

**5. Collection and Enforcement.**

Annual non-ad valorem assessments are subject to all collection provisions provided for in Chapter 197, Florida Statutes, including those provisions related to discounts for early payment, prepayment by installment method, deferred payments, penalties for delinquent payments, and the issuance of and sale of tax certificates and tax deeds for nonpayment.

**6. Special Benefit.**

The City Commission finds that (a) a reasonable methodology has been applied in determining which parcels of property in the jurisdictional limits of the city are specially

benefited by the Improvements referenced herein; (b) there is a logical relationship between the Improvements and the benefit received by the parcels of property located within the Subdivision; (c) each parcel specially benefited by the Improvements is included in the benefited area; and (d) the unit of measurement referenced herein fairly and reasonably apportions the cost of the Improvements among all parcels in the benefit area proportionate to the special benefit received by each such parcel from the Improvements. The City Commission has hereby found and determined that the Improvements provide the benefited properties certain special benefits, including:

- i. Enhanced drainage of stormwater in Phase I of the Subdivision;
- ii. Aesthetic enhancements to the sidewalks and street and related neighborhood area;
- iii. Enhanced attractiveness and potential improved marketability of benefited properties;
- iv. Potential increases in property values for the benefited parcels;
- v. Enhanced access within Phase I of the Subdivision; and
- vi. Enhanced safety of sidewalks and streets of the Subdivision.

#### **7. Units of Measurement.**

The Unit of Measurement to be levied and applied to each parcel shall be one unit per parcel, with the total amount assessed divided equally among each benefited parcel. Each parcel shall be assessed as containing one unit and one unit only.

#### **8. Levy Against Each Parcel.**

The number of units, the estimated maximum annual apportionment of the assessment applied to each of the benefited properties, and the maximum obligation for which each of the benefited properties is subject to lien shall be as set forth in **Exhibit "D"** attached hereto and incorporated herein. The amount of the Assessment levied against each of the benefited properties shall be **\$48.65** per parcel (*i.e.*, per unit) annually for a period of thirty (30) years, for a total of \$1,459.50 per parcel, unless otherwise adjusted by the City Commission.

#### **9. Certification of Non-Ad Valorem Assessment Roll.**

The City Commission hereby authorizes and directs the City Manager, or his/her designee to certify by September 15, 2014, the Non-Ad Valorem Assessment Roll for the Assessment and benefit area created herein in accordance with § 197.3632, Fla. Stat., and Resolution 13-03 for fiscal year 2013/2014 and each fiscal year thereafter as required by law. Such Non-Ad Valorem Assessment Roll shall consist of all adjustments, if any, as authorized herein and shall be provided on compatible electronic medium to the Tax Collector of Orange County, Florida, in accordance with § 197.3632(5), Fla. Stat., and any other requirements as may be imposed by applicable law or rule.

**10. Payment of Assessment.**

The Fiscal year 2013/2014 assessment and each assessment authorized herein for each subsequent fiscal year shall be placed on the Orange County Real Estate Ad-Valorem Tax Bill and shall be due and payable annually with any discounts or penalties associated therewith.

**11. Release of Lien.**

If any benefited property's apportionment of the Assessment becomes delinquent or a tax certificate has been issued and remains outstanding against such benefited property, such property's full apportionment of the Assessment shall become mandatorily and immediately due and payable to the City. The mandatory payment in full of a benefited property's apportionment of the Assessment shall release the lien created hereby against such property.

**12. Reallocation Upon Future Subdivision.**

If any specially-benefited tax parcel included in the benefit area is subdivided into separate tax parcels, the assessment imposed against such parent parcel shall be equitably reallocated among the new tax parcels upon assignment of a district tax identification number to each new separate tax parcel or any combination of tax parcels by the Orange County Property Appraiser.

**13. Other Authorizations.**

The proper officials and employees of the City are authorized to (a) do all things necessary to carry out the terms and conditions of this Resolution consistent with the intent of the City Commission, including contracting with the Orange County Property Appraiser and the Orange County Tax Collector to administer the levy and collection of the Assessment, provided that any such proposed agreements or contracts shall be presented to the City Commission for its consideration; and (b) record a copy of this Resolution or any other necessary papers in the Public Records of Orange County, Florida to provide additional constructive notice and preserve the status of the lien created hereby on all properties in Phase I of the Lake Cove Pointe Subdivision against all the world, including any subsequent purchasers of the affected properties.

**SECTION II. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this resolution is, for any reason, determined invalid, void, voidable, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion hereto.

**SECTION III. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**ADOPTED** at a Regular Meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY COMMISSION OF THE CITY OF  
WINTER GARDEN, FLORIDA**

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John Rees, Mayor/Commissioner

ATTEST:

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Kathy Golden, City Clerk



PRELIMINARY COST ESTIMATE  
 CITY OF WINTER GARDEN  
 LAKE COVE POINTE PHASE I UNDERDRAIN  
 22-Aug-12

EXHIBIT 1  
 PAGE 2 OF 2

ITEM NO.	ITEM	BID QUANT	UNIT	UNIT \$	AMOUNT
1	MOBILIZATION	1	LS	\$8,822.00	\$8,822.00
2	MAINTENANCE OF TRAFFIC & EROSION/SEDIMENT CONTROL	1	LS	\$4,411.00	\$4,411.00
3	6" UNDERDRAIN	3195	LF	\$30.00	\$95,850.00
4	6" THICK CONCRETE DRIVEWAY APRON (INCLUDING REMOVAL - 27 EA.)	1800	SY	\$40.00	\$72,000.00
5	BRICK DRIVEWAY REPAIR/REPLACEMENT	100	SY	\$55.00	\$5,500.00
6	4" THICK CONCRETE SIDEWALK (INCLUDING REMOVAL)	150	SY	\$27.00	\$4,050.00
7	CONNECT TO EXISTING INLET	9	EA	\$750.00	\$6,750.00
8	OPEN CUT & RESTORE ROADWAY	45	SY	\$50.00	\$2,250.00
9	12" SOLID PVC (SDR 21)	225	L.F.	\$30.00	\$6,750.00
10	8" SOLID PVC (SDR 18)	70	L.F.	\$30.00	\$2,100.00
11	18" YARD DRAIN	2	EA	\$500.00	\$1,000.00
12	ST. AUGUSTINE SOD	3200	SY	\$2.75	\$8,800.00
13	UNDERDRAIN CLEANOUTS	36	EA	\$250.00	\$9,000.00
14	ROOT BARRIER	150	LF	\$10.00	\$1,500.00
15	TREE REMOVAL	5	EA	\$1,000.00	\$5,000.00
16	MISC. IRRIGATION REPAIRS	1	LS	\$2,500.00	\$2,500.00
17	MISC./CONTINGENCY (10%)	1	LS	\$22,055.00	\$22,055.00
<b>TOTAL</b>					<b>\$258,338.00</b>

This estimate of probable site work cost does not include costs of items for other disciplines such as electrical, landscaping or irrigation, etc. except as noted above.

Since the Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's method of determining prices, the opinions of probable construction cost provided herein are made on the basis of our experience and qualifications. These opinions represent the Engineer's best judgement. The Engineer cannot guarantee that proposals, bids or the final construction costs will not vary from these opinions of probable cost.

CITY OF WINTER GARDEN

# Lake Cove Pointe

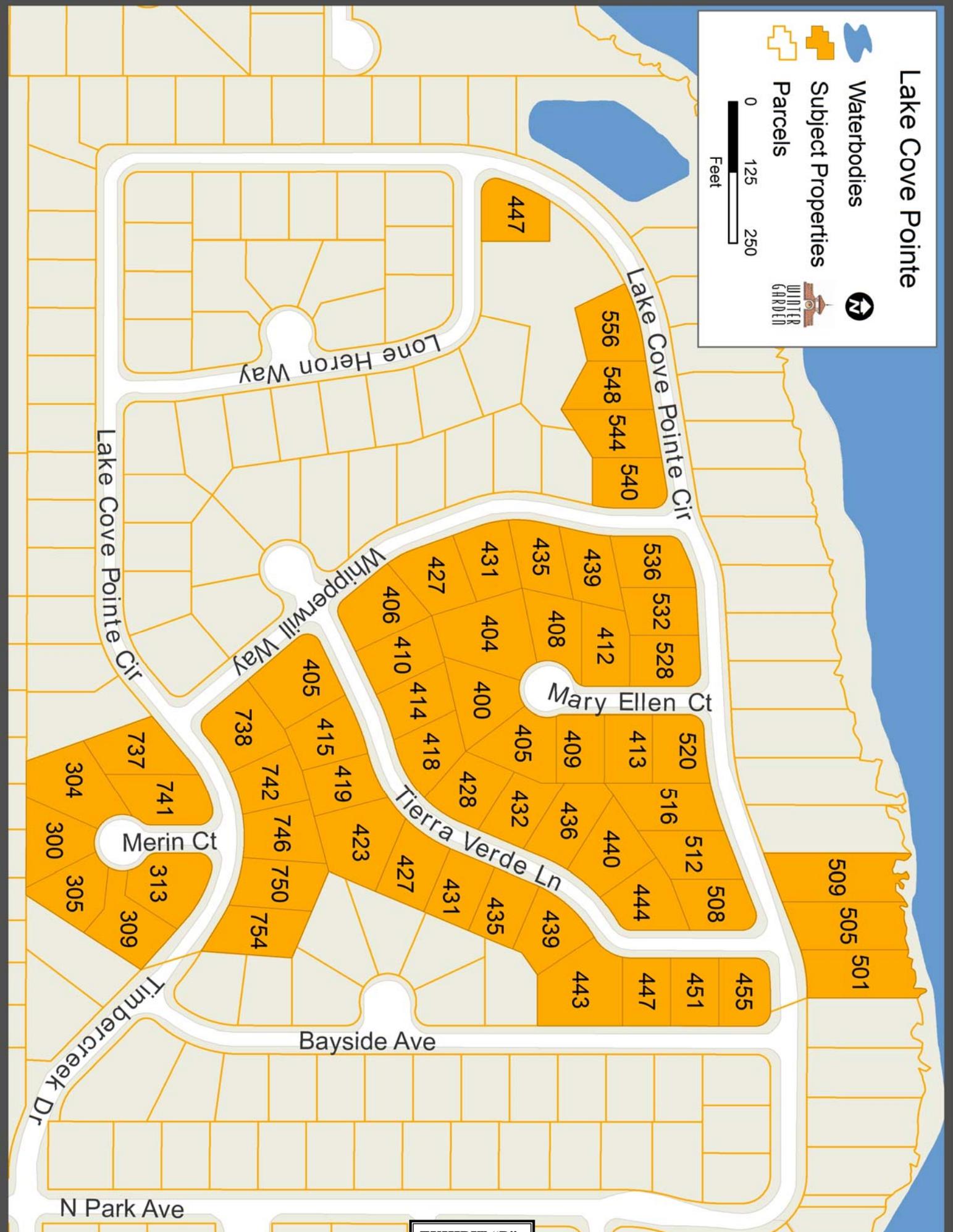
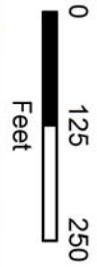


EXHIBIT "B"

**RESOLUTION 14-04  
EXHIBIT "C"**

**LAKE COVE POINT PHASE I  
ASSESSMENT TO BE DETERMINED BY PARCEL**

<b>Parcel Number</b>	<b>Mailing Address</b>	<b>City, State, Zip</b>	<b>Assessed Amount per Parcel</b>
152227442900010	313 MERIN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900020	309 MERIN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900030	305 MERIN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900040	300 MERIN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900050	304 MERIN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900060	737 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900070	741 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900080	754 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900090	750 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900100	746 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900110	742 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900120	738 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900130	405 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900140	415 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900150	419 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900160	423 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900170	427 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900180	431 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900190	435 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900200	439 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900210	443 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900220	447 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900230	451 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900240	455 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900250	444 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900260	440 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65

**EXHIBIT "C"**

152227442900270	436 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900280	432 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900290	428 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900300	418 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900310	414 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900320	410 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900330	406 TIERRA VERDE LN	WINTER GARDEN, FL, 34787	\$48.65
152227442900340	427 WHIPPERWILL WAY	WINTER GARDEN, FL, 34787	\$48.65
152227442900350	431 WHIPPERWILL WAY	WINTER GARDEN, FL, 34787	\$48.65
152227442900360	435 WHIPPERWILL WAY	WINTER GARDEN, FL, 34787	\$48.65
152227442900370	439 WHIPPERWILL WAY	WINTER GARDEN, FL, 34787	\$48.65
152227442900380	536 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900390	532 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900400	528 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900410	412 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900420	408 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900430	404 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900440	400 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900450	405 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900460	409 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900470	413 MARY ELLEN CT	WINTER GARDEN, FL, 34787	\$48.65
152227442900480	520 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900490	516 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900500	512 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900510	508 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900520	501 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900530	505 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900540	509 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900550	540 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900560	544 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900570	548 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900580	556 LAKE COVE POINTE CIR	WINTER GARDEN, FL, 34787	\$48.65
152227442900590	447 LONE HERON WAY	WINTER GARDEN, FL, 34787	\$48.65

**City of Winter Garden  
 Lake Cove Pointe Phase I Special Assessment  
 Pro-forma Amortization Schedule-Individual Parcel  
 Fiscal Year 2015 Debt Issue  
 RESOLUTION 14-04  
 EXHIBIT "D"**

<u>Pmt</u>	<u>Scheduled Total Balance</u>	<u>Scheduled Pmt</u>	<u>Due Date</u>
0	1,459.54		
1	1,410.89	(\$48.65)	October 1, 2015
2	1,362.24	(\$48.65)	October 1, 2016
3	1,313.59	(\$48.65)	October 1, 2017
4	1,264.94	(\$48.65)	October 1, 2018
5	1,216.29	(\$48.65)	October 1, 2019
6	1,167.64	(\$48.65)	October 1, 2020
7	1,118.99	(\$48.65)	October 1, 2021
8	1,070.34	(\$48.65)	October 1, 2022
9	1,021.69	(\$48.65)	October 1, 2023
10	973.04	(\$48.65)	October 1, 2024
11	924.39	(\$48.65)	October 1, 2025
12	875.74	(\$48.65)	October 1, 2026
13	827.09	(\$48.65)	October 1, 2027
14	778.44	(\$48.65)	October 1, 2028
15	729.79	(\$48.65)	October 1, 2029
16	681.14	(\$48.65)	October 1, 2030
17	632.49	(\$48.65)	October 1, 2031
18	583.84	(\$48.65)	October 1, 2032
19	535.19	(\$48.65)	October 1, 2033
20	486.54	(\$48.65)	October 1, 2034
21	437.89	(\$48.65)	October 1, 2035
22	389.24	(\$48.65)	October 1, 2036
23	340.59	(\$48.65)	October 1, 2037
24	291.94	(\$48.65)	October 1, 2038
25	243.29	(\$48.65)	October 1, 2039
26	194.64	(\$48.65)	October 1, 2040
27	145.99	(\$48.65)	October 1, 2041
28	97.34	(\$48.65)	October 1, 2042
29	48.69	(\$48.65)	October 1, 2043
30	(0.00)	(\$48.69)	October 1, 2044
Total		(1,459.54)	

59 Platted Parcels

**EXHIBIT "D"**

ORDINANCE \_\_

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 110-56, 110-152, 110-153, 110-154, 110-157 AND 110-162 OF ARTICLE III, DIVISION 1, 4 AND 5 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING PLATTING REQUIREMENTS; PROVIDING FOR UTILITY EASEMENT DEDICATIONS; AMENDING DEFINITIONS; CLARIFYING THE DEFINITION OF COMMUNITY SUBDIVISION INFRASTRUCTURE AND MAKING OTHER RELATED REVISIONS; PROVIDING FOR ADDITIONAL REQUIRED AND PROHIBITED LANGUAGE FOR DECLARATIONS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Commission desires to amend the final plat approval requirements of Article III, Division 4 and 5 of Chapter 110, City of Winter Garden Code of Ordinances to provide for utility easement dedications, amend definitions pertaining to platting requirements, clarify the definition of community subdivision infrastructure and make other related revisions, and to include additional prohibited and required provisions for declarations; and

**WHEREAS**, the City Commission finds it to be in the best interest of the public health, safety and welfare to make the revisions to Chapter 110, City of Winter Garden Code of Ordinances in the manner specified in this Ordinance.

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

**Section 1:** **Authority.** 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.

**Section 2:** **Adoption.** Section 110-56 of Article III, Division 1 of Chapter 110 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Sec. 110-56. Definitions.

*Community subdivision infrastructure* or "*community subdivision infrastructure improvements*" means all structures and real property improvements to be ultimately owned or maintained by the

subdivision HOA, including without limitation, all stormwater management systems, sod and landscaping within stormwater retention and detention areas, roadways, gates, walls, streetlights, street and traffic signs, sidewalks, docks, pools, clubhouses and other structures or real property improvements on common areas (or common property), but excluding playground equipment and sod and landscaping not within stormwater detention or retention areas. ~~subdivision infrastructure not dedicated to the use of the public or the city and which may include, but is not limited to, roadways, street lights, drainage systems (which includes, without limitation, stormwater detention/retention areas and underdrains), sidewalks, and other improvements and facilities.~~

*Homeowners' association or HOA* means a mandatory community association as contemplated by Chapter 720, Fla. Stat. in which the owners of all lots, blocks, and tracts within the residential subdivision are required by the terms of the declaration to be members, ~~as contemplated by F.S. (2003) § 720.301(7),~~ with the ability and duty to impose and collect on assessments. This definition includes homeowners' associations or property owners' associations formed pursuant to Chapter 720, Fla. Stat. governing residential, commercial or mixed-use subdivisions.

~~*Private amenities* means those lands and improvements, not considered subdivision infrastructure, which are retained for private use by the HOA or owners of lots within the subdivision, including, but not limited to, entrance and exit gates, walls, swimming pools, clubhouses, parks, landscaping, irrigation, signs, conservation areas, and other recreation areas.~~

**Section 3: Adoption.** Section 110-152 of Article III, Division 4 of Chapter 110 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

Sec. 110-152. Final plats; application, supplementary materials, documentation, contents and data required for final approval.

The final plat, application, and other materials required by subparagraphs (b) and (c) of section 110-151 shall, where applicable, at a minimum, comply with and include the following:

(1) Unless otherwise provided for in this article, the final subdivision plat shall comply with the requirements of F.S. Ch. 177, as may be amended from time to time. The final subdivision plat shall be drawn in ink on tracing cloth on sheets as required for filing for record in the county and shall be at a scale of 100 feet to one inch or larger. Where more than one sheet must be used to accurately portray the lands subdivided, an index or key map must be included and each sheet must show the particular number of that sheet and the total number of sheets included, as well as clearly labeled matchlines to show where other sheets match or adjoin. For large subdivisions the final plat may be submitted for approval progressively in contiguous sections satisfactory to the planning and zoning board. In addition to the requirements of F.S. Ch. 177, referenced above, the final plat shall show, depict, or otherwise provide for the following:

a. Primary control points, approved by the city engineer, or descriptions and ties to such control points, to which all dimensions, angles, bearings, and similar data on the plat shall be referred.

b. Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites, with accurate dimensions, bearing or deflection angles; and radii, arcs and central angles of all curves.

c. As applicable, the exact location, dimensions, name, identification, purpose, and description of public streets, private roadways, public and private alleys, rights-of-way, waterways, tracts, common areas, parks, public and private areas, playgrounds or other similar uses, reservations, easements or rights-of-way, blocks, lots and significant sites within the subdivision, with accurate dimensions, bearing or deflecting angles and radii, area and central angles, chord bearing and distance, tangent distance and length of all curves where appropriate. All interior excepted parcels as described in the description of the lands being subdivided shall be clearly indicated and labeled "Not a part of this plat."

d. Location, dimensions and purpose of any proposed easements and existing easements identified in the title opinion or certification required by this article below shall be shown on the plat or in the notes or legend, and their intended use shall be clearly stated. Where easements are not coincident with property lines, they must be labeled with bearings and distances tied to the principal lot, tract, or right-of-way.

e. Number to identify each lot or site. All lots shall be numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.

f. Purpose for which sites, other than residential lots, are dedicated or reserved.

g. ~~Reserved.~~ The plat shall dedicate, in a form approved by the city attorney and in locations, size and dimensions acceptable to the public services department and city engineer, utility easements necessary to provide utility services to the lots and tracts within the subdivision. Such utility easements should be granted, at the city's option, either to the city or to the city and the public. The city's rights in such easement areas shall be superior to all others and no utilities or other improvements shall be permitted to conflict or interfere with the city's utility improvements within such utility easement areas. The city shall only be responsible for the maintenance of utilities it accepts and/or installs within utility easements. The plat shall not contain reservations of utility easements in favor of the developer or the HOA which could be used for the purpose of mandating, restricting or controlling the selection of utility service providers providing utility services to lots within the subdivision. The city shall have the authority to permit and regulate the use of utility easements dedicated on any plat to the city, the public or to the city and the public by utility service providers for utility purposes, including for the placement, operation, maintenance, replacement and repair of utilities. For the purposes of this article, the term "utility service providers" includes without limitation, entities providing water, sewer, reclaimed water, cable, internet, electric, gas, or telephone utilities or services.

h. Location and description of monuments.

i. Reserved.

j. All contiguous properties shall be identified by subdivision title, plat book, and page, and date of recording, or, if unplatted, land shall be so designated. If the subdivision platted is a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to controlling lines appearing on the earlier plat to permit an overlay to be made; the fact of its being a replat shall be stated as a subtitle under the name of the plat on each sheet included. The subtitle must state the name of the subdivision being replatted and the appropriate recording reference.

k. Every plat offered for recording must be prepared by a Florida registered professional surveyor and mapper. The plat must be signed and sealed by that professional surveyor and mapper, who must state on the plat that the plat was prepared under his or her direction and supervision and that the plat complies with all of the survey requirements of F.S. Pt. I of Ch. 177, and chapter 110 of the Winter Garden Code of Ordinances. Every plat must also contain the printed name and registration number of the professional surveyor and mapper directly below the statement required by this paragraph, along with the printed name, address, and certificate of authorization number of the legal entity, if any. A professional surveyor and mapper practicing independently of a legal entity must include his or her address.

l. Dedication of the plat to the public and the city for the uses and purposes stated thereon including in the plat notes by the owner or owners of record of lands to be subdivided. The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey the record fee simple title to the lands being dedicated in the same manner in which deeds are required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in, consenting to, and ratifying the plat and all dedications and reservations thereon.

m. Each plat shall show a description of the lands subdivided, and the description shall be the same in the title certification. The description must be so complete that from it, without reference to the plat, the starting point and boundary can be determined.

n. In all cases, the letter size and scale used shall be of sufficient size to show all detail. The scale shall be both stated and graphically illustrated by a graphic scale drawn on every sheet showing any portion of the lands subdivided. The name of the plat shall be shown in bold legible letters, as stated in F.S. § 177.051. The name of the subdivision shall be shown on each sheet included. The name of the professional surveyor and mapper or legal entity, along with the street and mailing address and phone number, must be shown on each sheet included. A prominent "north arrow" shall be drawn on every sheet included showing any portion of the lands subdivided. The bearings or azimuth reference shall be clearly stated on the face of the plat in the notes or legend, and, in all cases, the bearings used shall be referenced to some well-established and monumented line. The date of preparation shall be provided on the face of the plat.

o. When a subdivision provides screening walls, landscaping, sidewalks, or other amenities within the public right-of-way and such is acceptable to the city in the city's sole discretion, a license agreement shall be required between the city, the developer and/or the homeowners association and such license agreement shall be referenced on the plat. Such license agreement shall be reviewed by the city as part of the preliminary plat process. Unless otherwise provided

for in the license agreement, the developer and the HOA, jointly and severally, shall be responsible for the maintenance and repair of any such amenities constructed in the public right-of-way, and in no event shall the city be prohibited from removing such amenities within the public right-of-way in its sole and absolute discretion (such removal being at the cost of the developer and HOA, jointly and severally).

p. A statement of approval of the plat by the city.

q. The section, township, and range shall appear immediately under the name of the plat on each sheet included, along with the name of the city, county, and state.

r. As applicable, the following statements shall appear on the face of the plat in the "notes" section:

1. "The homeowners association, as owner of the subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, common properties, and amenities, and the individual lot owners to extent of their interest in the foregoing, shall release, defend, indemnify and hold the City of Winter Garden, other governmental entities and public utilities harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), or otherwise including attorney's fees and costs of suit, in connection with the reasonable use of said subdivision infrastructure, common areas, or amenities, or said parties' maintenance thereof, or said parties' exercise of rights permitted in the declaration of the homeowners association, this plat, or as otherwise permitted by law."

2. "The lots within this subdivision are governed by a mandatory homeowners association requiring the payment of fees and with the power to assess the lots. The homeowners association is the owner of and/or responsible for the maintenance, repair, and replacement of all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts \_\_\_\_\_ and \_\_\_\_\_ and the improvements thereon. Every lot owner within this subdivision must be a member of the homeowners association. Failure to pay such fees or assessments shall result in the attachment of a lien on the property of the owner which fails to pay such fees or assessments by the homeowners association, which may result in the foreclosure of said property."

3. "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts \_\_\_\_\_ and \_\_\_\_\_ and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately

responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts \_\_\_\_\_ and \_\_\_\_\_ and the improvements thereon."

4. "All platted utility easements shall also be easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services shall interfere with the facilities and services of an electric, telephone, gas, or other public utility. In the event a cable television company damages the facilities of a public utility, it shall be solely responsible for the damages. This paragraph shall not apply to those private easements granted to or obtained by a particular electric, telephone, gas, or other public utility. Further, such construction, installation, maintenance, and operation shall comply with the National Electrical Safety Code as adopted by the Florida Public Service Commission."

5. "NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county."

6. If applicable: "The homeowners association shall enter into a license agreement with the city, where additional right-of-way has been dedicated or right-of-way will be utilized for the purpose of providing landscaping, additional areas for sidewalks, walls, or other amenities, and shall be responsible for the installation and maintenance of all landscape areas that are located in the public right-of-way."

7. For subdivisions with private roads or alleys, then the following, or substantially similar statement: "There is hereby granted and dedicated to the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over and through Tract \_\_\_\_ (Private Right-of-Way) and any other privately owned internal roads, alleys, paved areas and sidewalks for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the subdivision, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(2) A certificate shall be issued by the city engineer certifying that the subdivider has complied with one of the following alternatives:

a. All improvements have been installed in accord with the requirements of this section and with the action of the planning and zoning board giving conditional approval of the preliminary plat; or

b. A bond, irrevocable letter of credit, cash deposits, or certificate check has been posted, which is available to the city, and in sufficient amount to ensure such completion of all required improvements, said amount being at least equal to 120 percent of the estimated cost of completion.

(3) When the subdivider proposes to regulate land use within the subdivision or when required pursuant to this chapter, an executed original declaration, or amendment thereto, in recordable form, providing for the requirements of this chapter shall be required and subject to review by the city attorney for compliance with the provisions of this article.

(4) An original "Affidavit Certifying an Absence of Reserve Strips," in recordable form, executed by the developer and preparing surveyor.

(5) Unless provided for on the plat, an original joinder and consent to dedication, in recordable form, executed by all mortgage holders and such other parties, having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the plat and all dedications, reservations, restrictions and covenants thereon.

(6) An original joinder and consent to the declaration, in recordable form, executed by all mortgage holders and such other parties having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the declaration and all dedications, reservations, restrictions and covenants therein.

(7) If applicable, an original performance guarantee in the form of a bond, irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Said guarantee shall, at a minimum, be in the amount of one hundred 20 percent of the construction cost of the required subdivision improvements to be completed and guarantee the proper and timely completion of all unfinished public and private infrastructure improvements, including, but not limited to, its materials, workmanship, structural integrity, and functionality to the satisfaction and approval of the city.

(8) An original maintenance guarantee in the form of a bond, irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Subject to approval by the city engineer, said maintenance guarantee may be provided after final plat approval, but before issuance of a certificate of occupancy. Said maintenance guarantee shall, at a minimum, be in the amount of 20 percent of the construction cost of (i) the required subdivision improvements to be dedicated or conveyed to the city, (ii) the offsite public infrastructure improvements constructed or installed by the developer, and (iii) the private community subdivision infrastructure improvements. The maintenance guarantee shall provide for the developer's guarantee of all such improvements, including its materials, workmanship, structural integrity, and functionality and require developer's repair, replacement and correction of damage and defects to such

improvements for at least a period of two years from the date of final acceptance by the city. Prior to the city engineer issuing a certificate of completion for such improvements, the developer shall cause the design engineer of record to provide a signed and sealed certification to the city that all subdivision improvements to be dedicated or conveyed to the city, offsite public infrastructure improvements, and private community subdivision infrastructure improvements constructed or installed by the developer have been completed in accordance with approved design and construction plans.

(9) An original "Statement of Lien Settlement - Requirement For Current Year Of Payable Taxes, Tax Sale, and Capital Improvements" from the Orange County Property Appraiser's Office showing that all due taxes have been paid in full and all tax certificates, if any, against the land have been redeemed.

(10) As may be applicable, executed original instruments of conveyance in recordable form as to such property and improvements which are required to be conveyed to the HOA and the city from the developer, along with executed partial release of mortgages. Fee simple ownership of all rights-of-way, lift station tracts and other lands to be used for public purposes, but excluding dedicated easements, should be conveyed to the city by warranty deed, unless otherwise specified by the city. Fee simple ownership of all common area tracts should be conveyed to the applicable homeowners association by quit claim deed, unless otherwise specified by the city. Mortgagees shall execute partial release of mortgages concerning all tracts and lands conveyed in fee simple either to the homeowners' association or the city and such partial releases shall be recorded in the public records concurrently with the recording of the corresponding deeds.

(11) A title opinion of an attorney at law licensed in Florida or a certification by an abstractor or a title company, along with referenced documents, showing that record title to the land as described and shown on the plat is in the name of the persons, persons, corporation, or entity executing the dedication. The title opinion or certification shall also show all mortgages, easements, or encumbrances not satisfied or released of record nor otherwise terminated by law. An update of said title opinion or certification, certified to the city and the offices of the city attorney and the city surveyor, must be provided within 30 days of final plat recording. All documents referenced in said title opinion or certification, and update thereof, shall also be provided for review by the city.

(12) A construction cost estimate shall be submitted, which provides the estimated cost of installing all improvements. Such estimates shall be based upon recent bid information. As an alternative, bids of two reputable contractors, or a copy of an executed contract, for the installation of the improvements may be submitted.

(13) Payment of required recording costs, fees, deposits and costs as may be applicable or required pursuant to the code, and other applicable laws, ordinances, and regulations.

(14) A phase I environmental site assessment (ESA) must be conducted in accordance with the latest edition of the American Society for Testing and Materials (ASTM) standard E-1527 (Phase I ESA Process). The city will require a specified minimum off-site search distance of one-quarter mile. The minimum search distance may include areas outside the adjoining properties and shall

be measured from the nearest property boundary. The ESA must be performed and signed by a Florida registered professional engineer or geologist who is able to demonstrate competence (i.e., education and previous experience) in producing ESA reports.

A previous phase I ESA may be used if it meets or exceeds the requirement of ASTM E-1527 (except as modified herein) and if the conditions of the property and area surrounding the property are not likely to have changed materially since the previous phase I ESA. Should more than one year have passed since the completion of the last phase I ESA, a current site reconnaissance and records review will be required at a minimum. All supplemental phase I ESA documents must also be signed by a Florida licensed engineer or geologist.

The results shall be provided to the city prior to acceptance of any lands to be dedicated to the city. Should environmental conditions requiring any remedial activity, monitoring or regulatory action be identified as a result of the ESA(s), the city will not accept any dedications of such land until the conditions on the land are fully addressed to the satisfaction of the city and all applicable regulatory agencies.

(15) Such other agreements, certificates, endorsements, affidavits, documentation, engineering drawings, and data as may be deemed necessary to ensure conformity with the requirements of this chapter, the code, and other applicable laws, ordinances, and regulations.

**Section 4: Adoption.** Sections 110-153, 110-154, 110-157 and 110-162 of Article III, Division 5 of Chapter 110 of the City of Winter Garden Code are amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being revised):

**Sec. 110-153. Homeowners association.**

(1) Prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates, a residential subdivision or commercial subdivision which is subject to the provisions of this division shall establish a mandatory homeowners' (or property owners') association in accordance with the requirements of this division, and a declaration (or in the event of an existing recorded declaration, an amendment thereto) must be approved by the city. A certificate of good standing or such other evidence to determine the status of the HOA shall be submitted to the city as part of the final plat approval process.

(2) Unless otherwise approved by the city, simultaneous with the recording of the plat the developer shall cause to be conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure.

(3) A residential subdivision or commercial subdivision (or any combination thereof) shall be subject to the provisions of this division when:

~~(1)a.~~ The responsibility to maintain certain areas, ~~private amenities,~~ or community subdivision infrastructure or improvements within the subdivision is to be shared by the lot owners, or where common areas will exist; or

~~(2)b.~~ Any of the community subdivision infrastructure, ~~including, but not limited to, roadways, street lights, drainage systems (which includes, without limitation, stormwater detention/retention areas and underdrains), sidewalks, or certain other subdivision infrastructure and improvements~~ are is to be owned or maintained privately; or

~~(3)c.~~ A gated community is sought to be established.

As long as one or more of the matters set forth in subsections (a), (b) or (c) exists, this division applies to the subdivision regardless of whether such subdivision has public or private roads, or is gated or un-gated.

### **Sec. 110-154. Declaration**

A declaration, or an amendment thereto, which, at a minimum, sets forth the responsibilities and obligations for the maintenance, repair and replacement of the community subdivision infrastructure, common areas and private amenities and such other matters as provided in this division shall be required and submitted to the city prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates. The declaration, or amendment thereto, shall be recorded simultaneously with the subdivision plat. The terms of the declaration, or amendment thereto, shall be to the city's satisfaction, legally sufficient and enforceable to, at a minimum, accomplish, provide or otherwise ensure or disclose the provisions of this division. An existing executed and recorded declaration for a subdivision shall be amended, in a form acceptable to the city attorney, to come into compliance with the current version of this division as condition to a final plat approval covering any phase of a subdivision to be platted after the execution and recording of the original declaration, so that an amended declaration incorporating the current requirements of this division governs previously platted phases, current and future phases. Notwithstanding the foregoing, the exclusion of said provisions within the declaration, or amendment thereto, shall not operate as a condition precedent to city's ability to enforce the requirements of this chapter. Further, nothing in this section shall preclude the declaration, or amendment thereto, from addressing other matters so long as the substance of each part of the declaration, or amendment thereto, is not inconsistent with the requirements of this chapter or any other applicable code reference or state law. The declaration, or amendment thereto, shall, as applicable:

(1) Establish the point at which the developer must turn over control of the HOA consistent with definition of same provided in section 110-56

(2) Provide for the preparation of an initial community subdivision infrastructure report and compliance with the provisions of section 110-155, including developer's requirements prior to turnover.

(3) Provide for the preparation of a subsequent community subdivision infrastructure report and compliance with the provisions of section 110-156

(4) Include the following or similar statement: "Property owners within the subdivision shall receive no discount in property taxes or any other tax or fee because of the retention or private ownership of the community subdivision infrastructure."

(5) Include the following or similar statement: "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts \_\_\_\_; and \_\_\_\_; and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts \_\_\_\_; and \_\_\_\_; and the improvements thereon."

(6) Provide for the consequences resulting from a default with the provisions of the declaration, or amendment thereto, or the provisions of this chapter by the HOA or developer as set forth in section 110-159

(7) Provide that any transfer of any portion or component of the community subdivision infrastructure (including the property on which the said community subdivision infrastructure is located) to the city or other governmental entity is prohibited without the concurrence of the city or governmental entity and the owners of two-thirds (or such higher percentage as the declaration may provide) of the platted lots.

(8) Require the establishment, funding and maintenance of an HOA account for annual routine maintenance and repair of the community subdivision infrastructure (referred to in this division as the "routine-community subdivision infrastructure-maintenance account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA routine-community subdivision infrastructure-maintenance account required by section 110-157 until turnover of the HOA.

Provide that developer/declarant shall continue to have responsibility to ensure proper maintenance of the community subdivision infrastructure until turnover occurs.

(9) Require the establishment, funding and maintenance of an HOA account for major capital repair and replacement of the subdivision's roads, curbing, sidewalks, stormwater drainage systems, and walls, etc. (referred to in this division as the "capital-community subdivision infrastructure reserve account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA capital-community subdivision infrastructure reserve account required by section 110-157 until turnover of the HOA.

(10) Include the following or similar statement: "The association and the lot and unit owners are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The City of Winter Garden shall not be liable or responsible for the maintenance, repair and replacement of private subdivision property and infrastructure improvements."

(11) Include the following or similar statement: "It is prohibited to alter the grade of or original drainage plan for any parcel, lot or tract, or change in the direction of, obstruct, or retard the flow of surface water drainage, or alter or remove of any berm, pipe, ditch, weir, manhole, swale, and stormwater collection, storage and conveyance system unless expressly authorized by the City of Winter Garden. This provision shall be considered a restrictive covenant in favor of and enforceable by the City of Winter Garden and in the event of a violation of this provision, the City of Winter Garden shall have the right to obtain injunctive relief, seek damages, and assess fines and liens in the amount of the cost to remedy the prohibited action (including administrative costs and attorneys' fees and costs) against the violating person or entity and any property owned by such violating person or entity; provided however, such right shall not limit the City of Winter Garden's other available enforcement actions permitted by law or equity."

(12) For subdivisions with private roads or alleys, include the following or similar statement: "There is hereby created, granted and reserved for the benefit of the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over, under and through the private subdivision roads and alleys for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the common property and lots, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(13) Provide that the HOA may not be dissolved and that no portion of the declaration, or amendment thereto, pertaining to the requirements of this chapter may be amended without the written consent of the city.

(14) Shall not contain any provisions that would circumvent the purpose and intent of any requirement of this chapter or any other applicable ordinance as determined by the city manager or his/her designee, including without limitation, any statement of protest of provisions required by this division or any provision impeding or restricting the HOA or the city's access to courts or rights and remedies against the developer in the event of developer's (or declarant's) default of

its obligations and responsibilities under this chapter or to the HOA or city (or any combination thereof). This subsection does not prohibit the incorporation by reference of applicable statutes of limitation set forth in Florida Statutes, if any, or voting requirements as may be expressly required of the HOA by Florida Statutes, if any.

(15) Shall not contain any provision providing for a mandatory pre-litigation claims process, arbitration proceeding, or pre-suit mediation procedure in order for the city, the HOA, or any lot owner to make or bring claims, lawsuits or administrative proceedings against the developer (or declarant) or any home builder, except for the incorporation of any provision that is specifically set forth in and required by Florida Statutes.

(16) Shall not contain, unless expressly required by Florida Statutes, any provision providing for: (i) HOA to make payments or reimbursements to the developer (or declarant); (ii) the assessment of lot owners for the benefit or reimbursement of the developer (or declarant); or (iii) lot owners to make payments to pay for, in whole or part, the original construction cost of community subdivision infrastructure improvements required to be constructed by the developer (or declarant) or its successors and assigns as set forth in any development order or permit. This subsection does not prohibit provisions concerning the assessment of lot owners by the HOA concerning the cost to operate, maintain, reconstruct, repair, replace or remodel community subdivision infrastructure improvements.

(17) Shall not contain any provision prohibited by Florida Statutes.

(18) Shall not contain any provision reserving upon the developer (or declarant) or the HOA the authority to restrict individual lot owners' choice of utility service provider(s), including by way of example, but not limitation, through the reservation of the right to sell, lease, or grant licenses, permits or franchises over, under and through the subdivision property to utility service providers for service to the lots. This subsection does not prohibit provisions allowing for the HOA to select utility service providers to service common areas and common properties owned by the HOA.

(19) Provide that the declaration provisions required by this division shall not be removed or amended without the written consent of the city manager or his/her designee. Provide that the declaration shall not be amended to add any provisions prohibited by this division without the written consent of the city manager or his/her designee. Provide that declaration provisions required (or prohibited) by this division shall be considered a restrictive covenant in favor of and enforceable by the city. Provide that until the occurrence of turnover, the declaration shall not be amended without the written consent of the city manager or his/her designee in order to ensure that amendments are not made that are contrary to or prohibited by this division.

(20) Provide that tracts owned by the city within the subdivision are exempt from the provisions of the declaration, and that the city shall not be subject to enforcement, regulation or assessment under the declaration or by the HOA, declarant, or any owner by virtue of the city's ownership of tracts or easements conveyed or dedicated to the city, or for any other basis. Provide that no provision of the declaration shall restrict or prohibit the city or any other applicable government

authority from enforcement of their respective laws, ordinances, rules and regulations (as they may be amended from time to time) against the declarant, HOA, any lot owner or others.

**Sec. 110-157. Homeowners association required accounts for maintenance, repair and reserves.**

At a minimum, the requirements, restrictions, terms, conditions, and limitations provided for in this section with respect to the accounts required for the maintenance and repair of the community subdivision infrastructure and the monies on deposit in those accounts shall be established and maintained by each HOA.

(1) *Required HOA asset accounts.* The HOA must create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to in this article collectively as the "required HOA accounts":

a. A routine-community subdivision infrastructure-maintenance account; and

b. A capital-community subdivision infrastructure reserve account;

~~c. This division does not require the establishment of accounts for either routine maintenance or the capital repair and replacement of private amenities not related to the community subdivision infrastructure, but such accounts may be required by the declaration or as may be established at the discretion of the HOA. However, except as otherwise provided for in this section, monies within the required HOA accounts may not be utilized for the maintenance, repair or replacement of the private amenities.~~

Each of the foregoing accounts must be asset accounts kept separate and apart from all other funds and accounts of the HOA, and for accounting purposes the HOA may not commingle these accounts, either with each other or with other funds and accounts of the HOA. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other HOA accounts for banking and investment purposes, and may be pooled with other HOA monies in a common investment program, so long as the financial books and records of the HOA account for these monies separately and apart from all other HOA monies and keep such monies earmarked for the purposes set forth below. All earnings from the investment of monies in the required HOA accounts shall remain in their respective accounts and shall follow their respective principal.

(2) *Use of accounts.*

a. Routine-community subdivision infrastructure-maintenance account. Monies on deposit in the routine-community subdivision infrastructure-maintenance account, including any investment earnings, shall be used by the HOA, or by the developer with the written consent of the board of directors of the HOA, only for scheduled maintenance and for unscheduled repair of the roads, drainage system, including, but not limited to, the stormwater detention/retention areas and underdrains, sidewalks, street lights, curbing, bike paths, traffic-control signage and other HOA infrastructure appurtenant to the private roads and drainage systems. If allowed by the

declaration, the monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the declaration shall require that the roadways and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

b. Capital-community subdivision infrastructure reserve account. Monies on deposit in the capital-community subdivision infrastructure reserve account, including any investment earnings, shall be used by the HOA for: (i) resurfacing and related reconstruction of the roadways, including alleys, in the subdivision; (ii) major repair, replacement and reconstruction of drainage systems, including, but not limited to, the stormwater detention/retention areas, control structures, underdrains and conveyance systems; and (iii) major repair, replacement and reconstruction of sidewalks, bike paths, curbing, walls, subdivision signage, gates, community clubhouses and pools, and other capital community subdivision infrastructure improvements of the subdivision. Under no circumstances may the monies in the account be expended before the developer conveys the community subdivision infrastructure to the HOA.

*(3) Required funding; required assessments.*

a. *Routine-community subdivision infrastructure-maintenance account.* The HOA must deposit each year into the routine-community subdivision infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the roads, drainage system, and other community subdivision infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts estimated under subsection (5) until the reports required under sections 110-155 and 110-156 are prepared, and thereafter the amount deposited must be no less than the amount recommended by the applicable engineer's report required pursuant to sections 110-155 and 110-156. If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine-community subdivision infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs.

b. *Capital-community subdivision infrastructure reserve account.* The HOA must deposit each year into the capital-community subdivision infrastructure reserve account an amount sufficient for: (i) the private roads and alleys to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every 12 years; (ii) the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas control structures, underdrains and conveyance systems, no less frequently than once every ten years; and (iii) the restoration and repair or replacement of all other community subdivision infrastructure, no less frequently than once every 50 years. The amount to be deposited each year into the account must be estimated by the developer and approved by the city prior to issuance of a certificate of completion for the subdivision infrastructure. Deposits to the account must begin in the year in which the city issues its certificate of completion. At the end of each five-year community subdivision infrastructure reporting period pursuant to section 110-156, the HOA shall revise and update the estimated cost to restorate, repair and replace community infrastructure improvements taking into consideration actual costs incurred and expected increases in costs, and shall adjust the amount of its annual deposits to the account accordingly.

c. *Required assessments.* The obligation to collect and pay assessments shall commence as of the date on which the city issues its certificate of completion for the infrastructure improvements for the subdivision. However, if no plat has been recorded as of that date, the obligation to collect and pay assessments shall commence as of the date the plat is recorded in the public records of Orange County, Florida. In the case of the conversion of an existing subdivision to a gated community, the city shall determine the appropriate commencement dates on a case by case basis. The HOA shall impose and collect assessments against each platted lot in the subdivision, including lots owned or controlled by the developer and by any builder, without exception. The assessments must be uniform and equitable and must be imposed and collected in amounts sufficient, when added to investment earnings and other available revenues of the HOA, if any, to make all required deposits to each of the required HOA accounts.

Notwithstanding the foregoing, if in the opinion of the city engineer the community subdivision infrastructure has substantially deteriorated at the time a plat is approved, the city may require an additional payment of assessments by the developer to address the loss of useful life of the deteriorated community subdivision infrastructure.

(4) *Financial reports and other requirements.* Each year the HOA shall cause a financial report of the required HOA accounts to be performed and prepared, and a copy of the report shall be submitted to each owner of property in the subdivision and the city within the time frame required under the "financial reporting" requirements of F.S. ch. 720. At a minimum, the report shall confirm the existence of each of the required HOA accounts and report the amounts of deposits into and expenditures from the account during the period year, along with an itemization of the expenditures from the required HOA accounts. Finally, the financial report shall disclose whether any of the required HOA accounts has on deposit less than the amount required under the declaration.

(5) *Initial account funding and developer's obligations.* From the recording of the plat and up to the point in time when turnover of control of the HOA occurs, the developer and its successors in interest, shall remain personally obligated to ensure that adequate funding of the HOA accounts required by this section is provided, that the financial reporting requirements of this section are met and that the community subdivision infrastructure is being properly maintained. Prior to the issuance of a certificate of completion for the community subdivision infrastructure, the developer shall be required to fund the capital-community subdivision infrastructure reserve account in an amount sufficient cover two-year's estimated deposits for such account and fund the routine-community subdivision infrastructure-maintenance account in an amount sufficient to cover one-year's estimated deposits for such account. For purposes of establishing deposits by the developer required under this subsection, deposit amounts shall be supported by a licensed engineer's evaluation of the community subdivision infrastructure's economic life and cost estimate for maintenance and replacement of such infrastructure provided to the city at the developer's expense and such is subject to the review and approval by the city engineer.

(6) *Original construction costs.* Developer and home builders and their respective successors and assigns in interest are prohibited from using HOA funds or the assessment of lot owners in order to finance, fund, or make reimbursements concerning the original construction cost of community subdivision infrastructure required to be constructed as set forth in any development

order(s) or permit(s). This subsection does not prohibit the assessment of lot owners by the HOA concerning the cost to operate, maintain, reconstruct, repair, replace or remodel community subdivision infrastructure improvements after their original construction and completion as determined by the city pursuant to applicable certificate(s) of completion, certificate(s) of occupancy or other form of inspection approval(s).

**Sec. 110-162. Developer liability.**

Until such time as turnover of control of the HOA has occurred and the developer has conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure, the developer shall remain jointly and severally liable, to the city, along with the HOA, for the maintenance and repair of the community subdivision infrastructure, ~~common areas and private amenities within the subdivision~~, for the adequate funding of the HOA accounts required by section 110-157 and for otherwise ensuring compliance with the provisions of this division. ~~By way of example and not limitation, all maintenance and repair of roads, sidewalks, street lighting and the drainage system, including the stormwater detention/retention areas and underdrains, are the responsibility of the developer, except as provided in this section.~~ If turnover occurs and the obligations of the developer under this division have not been met, the rights of the city, HOA, any of the HOA's members, and any and all owners of land within the subdivision to enforce the requirements of this division against the developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs against the non-prevailing party. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County, Florida.

**SECTION 5: Codification:** Sections 2, 3 and 4 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

**SECTION 6: Control:** In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls to the extent of the conflict.

**SECTION 7: Severability:** It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

**SECTION 8: Effective Date:** This Ordinance shall become effective upon adoption at its second reading.

**FIRST READING:** \_\_\_\_\_, 2014.

**SECOND READING:** \_\_\_\_\_, 2014.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

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

ATTEST:

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