



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

REGULAR MEETING

JULY 24, 2014

6:30 P.M.

CALL TO ORDER

Determination of a Quorum

Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES

Regular Meeting of July 10, 2014

2. FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCE

A. **Ordinance 14-12:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING THE CITY OF WINTER GARDEN FISCAL YEAR 2013-2014 BUDGET; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for August 14, 2014** – City Manager Bollhoefer

3. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES

A. **Ordinance 14-11:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 0.92± ACRES OF LAND LOCATED AT 426 WEST PLANT STREET, FROM R-NC (RESIDENTIAL-NEIGHBORHOOD COMMERCIAL DISTRICT) TO C-1 (CENTRAL COMMERCIAL DISTRICT); PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE – Community Development Director Williams

B. **Ordinance 14-29:** 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 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 - Community Development Director Williams

4. **REGULAR BUSINESS**

- A. Recommendation to approve setting the proposed millage rate at 4.2500 mills for Fiscal Year 2014/2015 and the two public hearing dates for September 11th and 25th, 2014 at 6:30 p.m. – City Manager Bollhoefer
- B. Recommendation to approve Land Swap Agreement (270 W. Plant Street for 252 W. Plant Street) and Notice of Restriction between the City of Winter Garden and 252 West Plant Street Partnership - City Attorney Ardaman

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

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

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

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to a Regular Meeting on August 14, 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. |
|---|--|---|--|



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

July 10, 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 Kent Makin, Robert Olszewski and Colin Sharman

Absent: Commissioner Bob Buchanan

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 Olszewski to approve regular meeting minutes of June 26, 2014, as submitted. Seconded by Commissioner Sharman and carried unanimously 4-0.

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

A. **Ordinance 14-11:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 0.92± ACRES OF LAND LOCATED AT 426 WEST PLANT STREET, FROM R-NC (RESIDENTIAL-NEIGHBORHOOD COMMERCIAL DISTRICT) TO C-1 (CENTRAL COMMERCIAL DISTRICT); PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 14-11 by title only. Community Development Director Williams stated that this property is adjacent to City Hall, formerly the old yellow apartment buildings. The City is the applicant in this request and there has been a great deal of interest in seeing it rezoned. It has been reviewed by the Planning and Zoning Board and staff and both recommend approval.

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

Motion by Commissioner Makin to approve Ordinance 14-11 with the second reading and public hearing being scheduled for July 24, 2014. Seconded by Commissioner Olszewski and carried unanimously 4-0.

- B. **Ordinance 14-22:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 38.655 ± ACRES LOCATED AT 17806 MARSH ROAD ON THE SOUTH SIDE OF MARSH ROAD AT THE WESTERN BOUNDARY OF ORANGE COUNTY INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- C. **Ordinance 14-23:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 38.655 ± ACRES LOCATED AT 17806 MARSH ROAD ON THE SOUTH SIDE OF MARSH ROAD AT THE WESTERN BOUNDARY OF ORANGE COUNTY FROM ORANGE COUNTY VILLAGE TO CITY URBAN VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 14-22 and 14-23 by title only. Community Development Director Williams stated that this is an area covered by the Joint Planning Area Agreement with Orange County in the Marsh Road area. This is an applicant request for annexation and comprehensive plan designation for the property. The owners, Fischer and Spears are the requestors. This item has been reviewed by the Planning and Zoning Board and staff and both recommend approval.

Mayor Rees asked if there were property owners in the county that have not wanted to annex into the City. Mr. Williams answered that there are a few that have not yet annexed. Generally, they are willing to annex; but because of their current circumstances, they are not able to or in a position to at this time. Staff, especially Stephen Pash, has been successful in encouraging a lot of smaller lot owners to annex. This is one of the last larger lots out there. Eventually, the City will get all of those parcels. He shared that some are in foreclosure and some have other delays, but the City will get that entire area at some point because of the services available.

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

Motion by Commissioner Olszewski to approve Ordinances 14-22 and 14-23 with the second reading and public hearing being scheduled after review by the State. Seconded by Commissioner Sharman and carried unanimously 4-0.

- D. **Ordinance 14-24:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 9.527 ± ACRES

LOCATED ON THE SOUTH SIDE OF SEIDNER ROAD AT THE WESTERN BOUNDARY OF ORANGE COUNTY INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

- E. **Ordinance 14-25:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 9.527 ± ACRES LOCATED ON THE SOUTH SIDE OF SEIDNER ROAD AT THE WESTERN BOUNDARY OF ORANGE COUNTY FROM ORANGE COUNTY VILLAGE TO CITY URBAN VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 14-24 and 14-25 by title only. Community Development Director Williams stated that this is a voluntary annexation and request for initial comprehensive plan designation. This item has been submitted by Maury Boyd with McKinnon Groves. The Planning and Zoning Board and staff have reviewed this item and both recommend approval.

Mayor Rees asked, as was in the previous item, the density is really no different than it is in R-1. Mr. Williams responded that this is correct.

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

Motion by Commissioner Sharman to approve Ordinances 14-24 and 14-25 with the second reading and public hearing being scheduled after the property to the north has been reviewed by the State. Seconded by Commissioner Makin and carried unanimously 4-0.

- F. **Ordinance 14-26:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 33.79 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 562 BEARD ROAD LOCATED SOUTH OF THE FLORIDA TURNPIKE AND EAST OF DANIELS ROAD AT THE SOUTHWEST CORNER OF BEARD ROAD AND 9TH STREET FROM R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO PUD (PLANNED UNIT DEVELOPMENT DISTRICT); PROVIDING FOR CERTAIN PUD REQUIREMENTS; PROVIDING FOR NON-SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 14-26 by title only. Community Development Director Williams stated that the Planning and Zoning Board has not completed its review of this project and all the issues involved. Without their recommendation staff is asking that this item be postponed until the August 14, 2014.

Commissioner Olszewski asked if Beard Road was in the County. Several responded simultaneously that parts of it are in the County. Mr. Olszewski noted that with this being in the heart of District 3, he wanted to be sure that if there are plans for a housing development, that there is a review of the configuration of the road. The windy, long nature of the road is difficult now, making it especially difficult if there is to be additional traffic. He said he looks forward to the Planning and Zoning Board's review when it becomes available.

Mr. Williams noted that was one of their major concerns and part of the design of the project was to provide the main access through the adjoining development with their cooperation. There are several issues, but staff is working through them and working with the adjoining developments.

Motion by Commissioner Sharman to postpone Ordinance 14-26 until August 14, 2014, at 6:30 p.m. Seconded by Commissioner Olszewski and carried unanimously 4-0.

- G. **Ordinance 14-29:** 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 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

City Attorney Ardaman read Ordinance 14-29 by title only. Community Development Director Williams stated this is a change to the Code of Ordinances that tightens up the requirements and restrictions dealing with how a developer turns over the home owner association (HOA) upon completion. The City is making it stricter, more of an ability to hit certain targets, require certain things, and prohibit other activities that are detrimental

to future home owners. The Planning and Zoning Board and staff have reviewed this item and both recommend approval.

City Manager Bollhoefer added that some of the City's past issues have been with the infrastructure in subdivisions after the bond has expired. Or, when the City no longer has leverage in making the builders or developers fix the issues. Staff has seen this time and time again and these changes will help to eliminate this problem.

Commissioner Olszewski asked if this ordinance passes, does it go into effect immediately and affect currently in progress developments. Mr. Williams explained the concept called pending ordinance doctrine. Staff has been enforcing these new regulations, although not formally adopted, through negotiation with developers on their current projects. Commissioner Olszewski asked if anyone will be surprised by this ordinance. Mr. Williams noted they may not like it but they will not be surprised.

City Manager Bollhoefer noted that most of the developers agreed without much problem. One developer, who was not happy, agreed and understood. Commissioner Sharman noted that people who are doing the right thing will not have much issue with this anyways. He mentioned the drainage issues the City has seen in some subdivisions in the past. Mr. Bollhoefer noted that roads were a big issue. He expressed that it is only an issue if the developer does not do a good job when building. Mr. Williams asked them to recall the amendments to this ordinance two years ago after the infamous inadequate infrastructure protection act was passed. This ordinance tightens that up even more than the act.

Mr. Bollhoefer noted that this item changes the timeframe it runs to when the last house is built. He recalled a subdivision that is still not finished. Under the City's old rules there was no leverage to get developers to fix what should have been fixed.

Commissioner Olszewski asked for a clarification to the law, regarding the presumption that before an ordinance was passed that the City would be operating under it. Mr. Williams indicated that there was a lawsuit on one of the City's subdivisions where the infrastructure is literally falling apart. The legislature passed an act that basically states the developers were not liable to fix it. It seriously harmed the homeowners in that development. City Attorney Ardaman explained that the HOA filed a lawsuit. During the pendency of that lawsuit, the legislature made a change that effectively eviscerated the homeowners associations and homeowner's rights under that law. Mr. Bollhoefer stated that this HOA has since gone to the Supreme Court in Florida and won.

Mayor Rees opened the public hearing.

David Kassander, 15155 Ovation Drive, Winter Garden, Florida, asked if this item has any effect on HOA's after the turnover by developers or is this strictly before the actual turnover of the development. City Manager Bollhoefer responded that there is some

effect as there may be a time when it is turned over to the HOA and there will still be that period of time where the builder is responsible to fix items, so the HOAs will need to know that. Mr. Kassander asked what timeframe. Mr. Bollhoefer responded that he believes it is after the last home is built, there is a two year warranty period.

City Attorney Ardaman informed that it really goes a long way in protecting the HOA when that HOA becomes controlled by the homeowners themselves. Mr. Kassander asked if the perimeter walls count as a part of the infrastructure. Mr. Ardaman responded yes, as they are part of the common property.

Mayor Rees closed the public hearing.

Motion by Commissioner Sharman to approve Ordinance 14-29 with the second reading and public hearing being scheduled for July 24, 2014 at 6:30 p.m. Seconded by Commissioner Makin and carried unanimously 4-0.

- H. **Ordinance 14-30:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING SECTION 102-1 OF CHAPTER 102 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO CLARIFY CERTAIN DEFINITIONS AND TO ADD A DEFINITION FOR DIGITAL BILLBOARDS; AMENDING SECTION 102-92 OF CHAPTER 102 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO PROHIBIT DIGITAL BILLBOARDS EXCEPT UNDER LIMITED CONDITIONS AS A SPECIAL EXCEPTION AND PURSUANT TO A REPLACEMENT AND RELOCATION PLAN; CREATING SECTION 102-94 OF CHAPTER 102 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN PROVIDING FOR REPLACEMENT AND RELOCATION AGREEMENTS FOR BILLBOARDS AND DIGITAL BILLBOARDS, FOR SPECIAL EXCEPTION RESTRICTIONS AND REGULATIONS GOVERNING DIGITAL BILLBOARDS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

Community Development Director Williams stated staff requests postponement to a date uncertain. In the draft ordinance, the City received comments from various billboard companies trying to clarify certain issues in the program. The City has not come to agreement on all of the issues, so staff is requesting this item be postponed until we have an ordinance with which everyone is comfortable.

Motion by Commissioner Makin to postpone Ordinance 14-30 to a date and time uncertain. Seconded by Commissioner Sharman and carried unanimously 4-0.

3. **REGULAR BUSINESS**

A. **Community Development Block Grant (CDBG) Matters**

I. **Public workshop on Fair Housing**

Consultant, David Fox with Red Fox Enterprises stated that as part of the CDBG, a quarterly fair housing activities report is required. He gave a PowerPoint presentation on general information regarding fair housing (*See attached Exhibit A*).

II. Results of possible conflicts of interest as determined by the Florida Department of Community Affairs Small Cities CDBG Program

Mr. Fox noted that there were several possible conflicts of interest noted by staff and board members (*See attached Exhibit B*). The list includes Mark Jones, City Building Official, Mr. Snell Assistance Advisory Taskforce Member and John Kirby, also an Assistance Advisory Task Force Member.

In all of the potential case information submitted to Roger Daughtery, Planning Manager of the Department of Economic Opportunity (DEO), it was determined that there is no conflict of interest in relationship to the list of applicants.

III. Applicant ranking for approval

Mr. David Fox noted that the third item is the ranking of applicants in accordance with the City's housing assistance plan. In the agenda packet is a ranking of all qualified applicant submittals for the program based on their initial application. There were 35 applicants whom were ranked in order based on the following identifications in the housing assistance plan:

The first highest ranked applicants were very low income, 30 percent of area median. The second highest ranked applicants were low to moderate income, 50 percent of area median. The third would be over 50 percent but up to 80 percent, which is the maximum allowed for the program. The third criterion is disabled or handicapped. The fourth is head of household over 62 years of age. The fifth criterion is households with large families. The sixth criterion is households with small families.

Mr. Fox stated that the Assistance Advisory Task Force has reviewed the proposed ranking and recommends it be approved by the City Commission.

Commissioner Olszewski asked for the total number of houses. Mr. Fox replied that the number of houses to be addressed in the application is 12. There are 35 applicants and if someone is disqualified after verification of income and title, then we will go to the next applicant on the list of 35 based on their ranking.

Mayor Rees clarified that there are 12 out of the 35 with a possibility that this may change as they go through this process. Mr. Fox responded yes and we will keep going if there are funds left.

Commissioner Olszewski asked about the expected completion. Mr. Fox replied that the proposed date for going out to bid is late September; it takes about 30 days for title search and environmental review. After that, there is an environmental review for

each individual unit, and it takes about 30 days after the bids have been received. Mr. Bollhoefer asked if sometime in October to start. Mr. Fox affirmed, stating that he believes that they would break ground sometime in October.

Motion by Commissioner Olszewski to approve the ranking list as submitted (See Exhibit C). Seconded by Commissioner Makin and carried unanimously 4-0.

B. Recommendation to approve Florida Hospital (Adventist Health System/Sunbelt, Inc.) Phase A Site Plan, subject to conditions recommended by staff

Community Development Director Williams stated that before the City Commission is a staff report that includes proposed conditions of approval (*See attached Exhibit C*) for the hospital site plan; building plans are not included. This is the site work. The plans contain very detailed schedules of when off-site and on-site improvements have to be started and completed. He noted there has been some off-site preparation started, but the real work on the site cannot be done until this plan is approved.

Mr. Williams noted not included on the plan is the lay down yard to the south of the pond on the west side of the property. This is where the construction trailers and storage of equipment will be located during construction. He described the round-a-bout for access, parking areas, walls, acoustic walls, and fencing; displaying drawings for the City Commission. He displayed some of the buffer areas and described the landscaping that will remain and be installed. He described the area that the acoustical wall would be on top the berm, on the east end where Dona [Gussow's] house is, that will then turn and go all the way to the corner. The homes closest to the roundabout and the headlight buffer wall will be buffered with an acoustic wall. When it turns to the west, staff proposes putting in a regular wall as opposed to an acoustic wall. He noted there is a distance of 240 to 300 feet from the road to the landscape that does not support the need for an acoustical. Where the black fence is, there will be additional plantings.

With this distance separation, additional landscaping, the berm, supplemented with a six foot wall, all will make it almost impossible to see or hear the activity. The west end of the road will have the round-a-bout, and the prior entrances were designed to discourage traffic from heading in this direction. Therefore, the traffic count should be very low in this area. Between all of these factors, staff feels this should be a very effective buffer. The most difficult part is near Donna [Gussow's] house, where the houses are close to the road and require that extra level of protection.

Mr. Williams stated that off-site road construction will begin in February of next year and will be completed in four to six months. The initial issue will be the turn lanes that will get people in and out and off of Daniels Road and onto the Hospital as quick as possible. There are approximately 30 conditions of approval for the City Commission's consideration. Staff recommends approval subject to the conditions provided.

City Manager Bollhoefer stated that he believes one of the conditions is the bike path. Staff would like to change the focus from the bike path to fixing the intersection under the State Road 429, which is a greater impact to the community. The bike path would become a part of Phase 2. These projects are approximately the same cost for both (\$800,000.00).

City Attorney Ardaman sought clarification that the City Commission is being asked to approve with the expectation that these two items be swapped at a later date and is acceptable to the applicant. **Mr. Bollhoefer** replied yes.

Mr. Bollhoefer clarified the use of the term wall. The intention is that the acoustical wall along the "L" along the eastern section is actually made out of PVC, and is actually an acoustical fence, but staff uses the term wall. The wall where the rest of the trees are is a PVC fence and not an actual wall. There will be a change in the costs for adding the additional section where Donna [Gussow's] house is across the entire length of her yard and all the way down to the corner. This additional expense is approximately \$64,000.00. Of this expense, Florida Hospital has agreed to pay a portion of it at \$23,000.00 and the City's portion is approximately \$40,000.00, which we can justify using impact fees for that portion of the wall. The cost of the other fence is \$30,000.00 to \$40,000.00 to go all the way to Winter Garden Vineland Road.

Commissioner Sharman clarified that this is a change tonight because the site plan submitted only shows it partially up the length of Donna [Gussow's] house. **Mr. Williams** responded yes, that is why he spent so much time on this issue because it has changed from the conditions proposed by staff.

Mayor Rees asked about ongoing maintenance. **Mr. Williams** replied the Hospital has responsibility for maintaining all of the landscaping and berm in that area, so we are assuming the wall is part of that.

Attorney Borrón Owen of Gray Robinson on behalf of Florida Hospital, stated that their agreement with the property owners association, who actually owns this land, is to allow Florida Hospital to put in the fence and landscaping. Florida Hospital would maintain everything that they actually put on their property. This includes the head light wall, the fencing, and the landscaping.

Commissioner Olszewski asked Community Development Director Williams and City Manager Bollhoefer are the changes to the site plan making things better and we are not going back on what was promised. **Mr. Williams** assured that staff trusts everyone but verifies everything; noting that this is why it has taken the applicant six to eight months to get to this point.

Mayor Rees explained that what he thinks Commissioner Olszewski is indicating is that we all agree there are going to be issues but the end product will be equal to or better than

what was presented to the residents and to the City Commission. Mayor Rees expressed that he is confident that it will be.

Mr. Williams mentioned that there is a new condition in the staff report that addresses traffic concerns for staff access along the rear of the facility on Sembler Way when the second phase of construction starts, should there be traffic problems, Florida Hospital will hire off-duty police to direct traffic and come in with a plan to correct that problem. He reported that this condition has not been in the plan all along, but the applicant has agreed that if problems should come up they are willing to solve them.

Commissioner Sharman asked for confirmation on what the City Manager described as additions to referenced changes to site plan C5.8 (*See attached Exhibit D*) regarding the acoustical fence section that shows Dona's wall would go halfway to 58 feet. Not included is the City paying for additional 220 feet to the north of acoustic wall. **Mr. Bollhoefer** repeated that Florida Hospital will pay for the wall that was initially half way through the yard and will pay to the full length of Donna's yard on the west side. The City will cover costs for the next two houses all the way down to the corner. **Commissioner Sharman** further clarified that the City is paying for the full length of the fencing. **Mr. Bollhoefer** replied yes. **Commissioner Sharman** stated that he wanted to be sure this was stated in the motion and on the record.

Mayor Rees opened public comments.

Roy Thompson, representative for the Glynwood Homeowner's Association, expressed their appreciation for everything that has been done in effort to protect the community from noise resulting from building a hospital at this location. He stated that the new plans are not making everyone happy, which is to be expected from a community of individuals. He referred back to the February 27th meeting, section 3, paragraph 3 through 5, where the City Commission agreed to make sure that our community is protected from the noise. He indicated that he is not an acoustical expert and does not know if a PVC fence will stop the noise. He challenged the City Commission to make corrections, if necessary and stand by their word given on February 27th. He thanked whoever asked that it be put in writing regarding who will maintain the berm, the trees, and the fence; which he indicated is important to them as well.

Commissioner Olszewski asked Mr. Thompson for additional information about the reasons some are not happy as he mentioned earlier. **Mr. Thompson** responded that it is the fence that goes from the corner west out to Daniels Road. The homeowner's backed up to that fence feel that they should have the same type of acoustical fence as the other residents. He expressed that the only thing they can ask is that the City stand by what was said in the February 27th meeting. That the City will make sure that they are not inundated with noise beyond what is reasonable.

Mayor Rees asked that staff make sure the PVC fence provides the same protection as the physical fence and provide the City Commission with information on the difference in cost. **City Manager Bollhoefer** replied that an acoustical fence more than 200 feet away really does not provide protection from sound, which is why there is no difference there. Acoustical fences are only effective generally between 100 and 200 feet because of the refraction of noise. The idea of an acoustical fence is that you want it to be as close to the road as possible in order to be effective. The difference in cost would be the addition of approximately \$225,000.00 to construct the additional acoustical fence.

Commissioner Sharman asked if it would be possible to get an independent engineering report on the sound difference. **Mr. Bollhoefer** responded he was sure we could. **Mayor Rees** agreed that staff should look into this. **Mr. Bollhoefer** indicated that the City could use impact fees for the L-shaped wall, but may not be able to use the impact fees for the other portion because it does not provide sound barrier past 200 feet. It may be difficult to justify this to the auditor on the impact fees resulting in a general fund expense on the other portion. **Commissioner Sharman** stated that our independent sound engineering study would be able to prove or validate our claims.

Mr. Williams suggested monitoring the noise after the walls go up and construction is underway, which would be cheaper and more realistic. **Mr. Manager Bollhoefer** noted you cannot accurately monitor because there will not be the two walls up for comparison. He noted you have to have someone do an analysis. An expert will be hired to do a study to be completed in 30 days.

David Kassander, 15155 Ovation Drive, Winter Garden, Florida, voiced his concerns with traffic and sound reduction. The City Manager clarified some items.

William Palmer, 13736 Windshell Drive, Winter Garden, Florida, addressed the effectiveness of the different types and sizes of walls and fences.

Commissioner Sharman emphasized an independent person can provide the effectiveness of the different sound proofing options. **Mr. Bollhoefer** stated that can be provided within 30 days. **City Attorney Ardaman** asked if this issue needs to come back to the City Commission. **Mr. Bollhoefer** responded yes to confirm one way or the other. **Mr. Ardaman** stated this agenda item is to approve the site plan with conditions. **Mr. Bollhoefer** responded that the acoustical could be constructed but the other wall could not be started until the study is done. He will try to get it done by the next meeting.

Motion by Commissioner Sharman to approve the site plan with the changes discussed with the acoustical wall going to the corner of the Glynwood Subdivision, which is currently not reflected on the site plan, the City will cover the cost of this additional acoustical wall. The City will hire an engineering consultant to report back to the City Commission prior to building anything between the corner and the

west end of the property. Seconded by Commissioner Olszewski and carried unanimously 4-0.

4. **MATTERS FROM PUBLIC**

Roy Thompson, representative for the Glynwood Homeowner's Association, suggested that the sign directing trucks by Stone Crest Blvd. be moved back to Roper Road. It places everything right down through the middle of their neighborhood. **City Manager Bollhoefer** indicated that he would have to have the Police Chief look at the transportation side of this and shared that this road was actually designed to handle trucks.

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

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

7. **MATTERS FROM MAYOR AND COMMISSIONERS**

Mayor Rees wished Commissioner Buchanan gets well soon and a speedy return.

Mayor Rees thanked everyone for their efforts in the 4th of July event.

The meeting adjourned at 7:34 p.m. to the next regular City Commission meeting.

APPROVED:

Mayor John Rees

ATTEST:

City Clerk Kathy Golden, CMC

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Michael Bollhoefer, City Manager

Date: July 18, 2014

Meeting Date: July 24, 2014

Subject: Interim Budget Ordinance 14-12

Issue: Amending the budget for mid-year adjustments. The interim budget is used as part of the budget process to account for changes that have occurred since the original budget was passed and to adjust for corrections in estimates used in the original budget.

Recommended action:

Motion to approve Ordinance 14-12, amending the fiscal year 2013-2014 budget for mid-year with second hearing on August 14, 2014

ORDINANCE 14-12

**AN ORDINANCE OF THE CITY OF WINTER GARDEN,
FLORIDA, AMENDING THE CITY OF WINTER GARDEN FISCAL
YEAR 2013-2014 BUDGET; PROVIDING FOR SEVERABILITY
AND AN EFFECTIVE DATE.**

WHEREAS, on September 26, 2013, the City Commission of the City of Winter Garden, Florida, adopted Ordinance 13-64 appropriating and allocating all revenue and funds of the City of Winter Garden, Florida for the tax year beginning October 1, 2013 and ending September 30, 2014;

WHEREAS, the City Commission has decided to amend the City of Winter Garden, Florida Budget for the tax year beginning October 1, 2013 and ending September 30, 2014 to provide for interim adjustments;

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

SECTION 1: That the sum of \$3,605,601 to be appropriated as follows:

REVENUES

| | |
|--|--------------------|
| General Fund | \$370,488 |
| Community Redevelopment Agency | 125,000 |
| Law Enforcement Trust Fund | 11,017 |
| Local Option Gas Tax Fund | 363,180 |
| General Impact Fee Fund | 25,184 |
| Transportation Impact Fee-General Fund | 1,213,596 |
| Utility Operating Fund | 111,883 |
| Utility Impact Fee Fund | 1,156,053 |
| Utility Renewal and Replacement Fund | 29,073 |
| Stormwater Fund | <u>200,127</u> |
| | \$3,605,601 |

EXPENDITURES

| | |
|--|--------------------|
| General Fund | \$370,488 |
| Community Redevelopment Agency | 125,000 |
| Law Enforcement Trust Fund | 11,017 |
| Local Option Gas Tax Fund | 363,180 |
| General Impact Fee Fund | 25,184 |
| Transportation Impact Fee-General Fund | 1,213,596 |
| Utility Operating Fund | 111,883 |
| Utility Impact Fee Fund | 1,156,053 |
| Utility Renewal and Replacement Fund | 29,073 |
| Stormwater Fund | <u>200,127</u> |
| | \$3,605,301 |

SECTION 2: Detail for the aforementioned totals is attached as Exhibit 1, which shall be incorporated in the Ordinance. Should any portion of this Ordinance be held invalid, then such portions as are not declared to be invalid shall remain in full force and effect.

SECTION 3: This Ordinance shall become effective upon its adoption at the second reading and public hearing.

READ FIRST TIME: _____

READ SECOND TIME AND PUBLIC HEARING HELD: _____

APPROVED:

Mayor/Commissioner John Rees

ATTEST:

Kathy Golden, City Clerk

EXHIBIT #1
ORDINANCE 14-12

**City of Winter Garden
Interim Budget
FYE 2014**

**City of Winter Garden
Interim Budget
FYE 2014**

Table of Contents

| <u>Section</u> | <u>Item</u> | <u>Page</u> |
|-----------------------|--|--------------------|
| General Fund | | 3 |
| Special Revenue Funds | Community Redevelopment Agency | 5 |
| | Law Enforcement Trust Fund | 6 |
| | Local Option Gas Tax Fund | 7 |
| | General Impact Fee | 8 |
| | Transportation Impact Fee-General Fund | 9 |
| Enterprise Funds | Utility Operating Fund | 10 |
| | Utility Impact Fee Fund | 11 |
| | Utility Renewal and Replacement Fund | 12 |
| | Stormwater Fund | 13 |

**City of Winter Garden
Interim Budget
General Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|--|-----------------------------|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| Executive | | | | | |
| 001-0213-314.10-00 | Utility Tax - Electric | \$2,550,293 | \$2,343,740 | \$ 174,285 | \$2,518,025 |
| <i>Revenues were trending down during budget, actual revenues are increasing</i> | | | | | |
| Engineering | | | | | |
| 001-1016-329.04-00 | Engineering Inspection Fees | 328,890 | 140,308 | 71,203 | 211,511 |
| <i>Actual engineering inspections are higher than budgeted</i> | | | | | |
| Economic Development | | | | | |
| 001-0215-381.00-00 | Interfund Transfer | - | - | <u>125,000</u> | 125,000 |
| <i>Transfer from CRA for CDBG grant match (Commission approved September 13, 2012)</i> | | | | | |
| Total Revenues | | | | <u>\$ 370,488</u> | |
| Expenditures | | | | | |
| Executive | | | | | |
| 001-0213-512.31-01 | Misc Professional Service | \$ 38,875 | \$ 18,800 | \$ 39,500 | \$ 58,300 |
| <i>EMS Transport Feasibility Study (Commission approved 2013)</i> | | | | | |
| 001-0213-512.61-00 | Land | 219,078 | 79,216 | 118,000 | 197,216 |
| <i>Add'l costs re: 252 W Plant St land swap for 270 W Plant (Commission approved March 27, 2014)</i> | | | | | |
| Economic Development | | | | | |
| 001-0215-552.34-01 | Contractual Services | (34,775) | 60,000 | 84,775 | 144,775 |
| <i>Rollover from unused TriCity partnership money in prior FY 34,775 Market feasibility study 25,000 (Commission approved March 27, 2014) Consultant services for code revisions to re-write planning codes 25,000</i> | | | | | |
| 001-0215-554.34-01 | Contractual Services | - | - | 125,000 | 125,000 |
| <i>CDBG Grant match 125,000 (Commission approved September 13, 2012)</i> | | | | | |
| Building | | | | | |
| 001-0324-524.12-00 | Salaries | 341,138 | 511,399 | 19,309 | 530,708 |
| 001-0324-524.21-00 | FICA | 24,622 | 39,198 | 1,477 | 40,675 |
| 001-0324-524.22-00 | Retirement | 44,148 | 69,020 | 2,601 | 71,621 |
| 001-0324-524.23-00 | Life and Health | 51,545 | 67,153 | 120 | 67,273 |
| 001-0324-524.41-02 | Communication | 8,451 | 8,832 | 270 | 9,102 |
| 001-0324-524.41-04 | Verizon 2GB Plan | 1,545 | 1,545 | 215 | 1,760 |
| 001-0324-524.52-04 | Clothing Allowance | 977 | 1,720 | 280 | 2,000 |
| 001-0324-599.99-99 | Transfer to Fund Balance | 87,232 | 152,034 | (24,272) | 127,762 |
| <i>Fund Building Inspector IV NOTE: expenses are covered by dedicated Building revenues</i> | | | | | |
| Code Enforcement | | | | | |
| 001-0528-521.12-00 | Salaries | 69,065 | 101,593 | 11,787 | 113,380 |
| 001-0528-521.21-00 | FICA | 5,018 | 7,772 | 902 | 8,674 |
| 001-0528-521.22-00 | Retirement | 8,987 | 13,685 | 1,588 | 15,273 |
| 001-0528-521.23-00 | Life and Health | 14,959 | 36,869 | 719 | 37,588 |
| 001-0528-521.41-02 | Communication | 1,636 | 1,966 | 270 | 2,236 |
| 001-0528-521.41-04 | Verizon 2GB Plan | 624 | 1,272 | 215 | 1,487 |
| 001-0528-521.52-04 | Clothing Allowance | 113 | 840 | 280 | 1,120 |
| <i>Fund Code Enforcement Officer</i> | | | | | |

**City of Winter Garden
Interim Budget
General Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---------------------------------|--|------------------------|------------------------------------|-------------------------------|---|
| Police / Communications | | | | | |
| 001-0530-521.52-01 | Miscellaneous Operating Supplies | 253 | 4,331 | 4,500 | 8,831 |
| | <i>UPS backup equipment for new consoles</i> | <i>3,000</i> | | | |
| | <i>Add two LCD monitors for dispatch mapping</i> | <i>1,500</i> | | | |
| 001-0530-521.62-00 | Buildings | - | - | 20,895 | 20,895 |
| | <i>Remodel Comm Center for 2 additional dispatcher positions</i> | <i>20,895</i> | | | |
| 001-0530-21.64-00 | Machinery and Equipment | - | 500,000 | (284,914) | 215,086 |
| | <i>Add 2 dispatch work stations for additional dispatchers</i> | <i>96,558</i> | | | |
| | <i>Upgrade radio system to be compatible w/County</i> | <i>118,528</i> | | | |
| | <i>County installed new consoles</i> | <i>(500,000)</i> | | | |
| Employee Health Benefits | | | | | |
| 001-XXXX-XXX.23-00 | Health Insurance | 1,667,846 | 1,901,268 | 64,342 | 1,965,610 |
| | <i>Commission approved to pay 2/3 of the increase for Health Insurance Premiums (\$80,000)</i> | | | | |
| | <i>(Commission approved Dec 12, 2013)</i> | | | | |
| Facilities | | | | | |
| 001-0746-539.12-00 | Salaries | 187,505 | 208,750 | 8,640 | 217,390 |
| 001-0746-539.21-00 | FICA | 14,333 | 16,352 | 661 | 17,013 |
| 001-0746-539.22-00 | Retirement | 24,311 | 28,792 | 1,202 | 29,994 |
| 001-0746-539.41-02 | Communication | 3,971 | 4,245 | 336 | 4,581 |
| 001-0746-539.41-04 | Verizon 2GB Plan | 1,026 | 2,680 | 180 | 2,860 |
| 001-0746-539.52-04 | Uniforms & Safety shoes | 3,243 | 3,452 | 1,145 | 4,597 |
| | <i>Fund Building Maintenance Worker II</i> | | | | |
| 001-0746-539.46-10 | Building Repair/Maint. | 76,422 | 43,693 | 23,903 | 67,596 |
| | <i>127 S. Boyd St Renovations (Old Fire House)</i> | | | | |
| | <i>(Commission approved August 22, 2013)</i> | | | | |
| Parks | | | | | |
| 001-0775-572.12-00 | Salaries | 289,193 | 305,005 | 87,984 | 392,989 |
| 001-0775-572.21-00 | FICA | 23,999 | 25,972 | 6,731 | 32,703 |
| 001-0775-572.22-00 | Retirement | 38,911 | 45,731 | 11,851 | 57,582 |
| 001-0775-572.23-00 | Life and Health | 57,870 | 71,954 | 9,300 | 81,254 |
| | <i>Fund Parks Director position; partial cost neutral with swap from recreation</i> | | | | |
| | <i>NOTE: moved funding from Recreation Manager position</i> | | | | |
| 001-0775-572.34-02 | Lawn Maintenance | 181,660 | 163,500 | (25,000) | 138,500 |
| | <i>Fix drainage issue in Stoneybrook West</i> | | | | |
| | <i>(Commission approved February 27, 2014)</i> | | | | |
| 001-0775-581.91-00 | Interfund Transfer | 400,000 | - | 50,000 | 50,000 |
| | <i>Fix drainage issue in Stoneybrook West</i> | | | | |
| | <i>(Commission approved February 27, 2014)</i> | | | | |
| Recreation | | | | | |
| 001-0872-572.12-00 | Salaries | 239,802 | 308,438 | (50,918) | 257,520 |
| 001-0872-572.21-00 | FICA | 30,602 | 35,790 | (3,895) | 31,895 |
| 001-0872-572.22-00 | Retirement | 30,435 | 41,547 | (6,859) | 34,688 |
| 001-0872-572.23-00 | Life and Health | 35,462 | 65,260 | (9,300) | 55,960 |
| | <i>Move Recreation Manager position to Parks Director position</i> | | | | |
| Engineering | | | | | |
| 001-1016-541.14-00 | Overtime | 3,540 | 2,000 | 4,500 | 6,500 |
| | <i>Paid for with corresponding increase in engineering inspection revenues</i> | | | | |
| 001-1016-541.31-04 | Engineering Services | 98,964 | 50,000 | 66,703 | 116,703 |
| | <i>Paid for with corresponding increase in engineering inspection revenues</i> | | | | |
| 001-1016-541.54-03 | Educational Reimbursement | - | - | 5,465 | 5,465 |
| | <i>Item underbudgeted</i> | | | | |
| Total Expenditures | | | | \$ 370,488 | |

City of Winter Garden
Interim Budget
Community Redevelopment Area

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---------------------------|---|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 120-0213-3999.99-99 | Use of Fund Balance <i>CDBG grant match</i> <i>(Commission approved September 13, 2012)</i> | \$ - | \$ - | \$ 125,000 | \$ 125,000 |
| Total Revenues | | | | <u>125,000</u> | |
| Expenditures | | | | | |
| 120-0213-581.91-00 | Interfund Transfer <i>CDBG grant match</i> <i>(Commission approved September 13, 2012)</i> | 450,019 | 570,409 | <u>125,000</u> | 695,409 |
| Total Expenditures | | | | <u>\$ 125,000</u> | |

City of Winter Garden
Interim Budget
Law Enforcement Trust Fund

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---|---------------------|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 121-1121-399.99-99 | Use of Fund Balance | \$ - | \$ 10,853 | \$ 10,217 | \$ 21,070 |
| <i>To balance increase in budgeted revenues/expenditures</i> | | | | | |
| 121-1321-399.99-99 | Use of Fund Balance | - | - | <u>800</u> | 800 |
| <i>To balance increase in budgeted revenues/expenditures</i> | | | | | |
| Total Revenues | | | | <u>\$ 11,017</u> | |
| Expenditures | | | | | |
| 121-1221-521.52-01 | | \$ 31,662 | \$ 9,559 | \$ 789 | \$ 10,348 |
| <i>K-9 detection odor kits</i> | | | | | |
| 121-1221-521.64-00 | | 27,364 | - | 9,428 | 9,428 |
| <i>Rescue mannequin - to use for physical abilities testing of applicants</i> | | | | | |
| | | 1,184 | | | |
| <i>Purchase projection system for training room</i> | | | | | |
| | | 8,244 | | | |
| 121-1421-521.52-01 | | - | 1,350 | <u>800</u> | 2,150 |
| <i>Prescription drop box</i> | | | | | |
| Total Expenditures | | | | <u>\$ 11,017</u> | |

**City of Winter Garden
Interim Budget
Local Option Gas Tax Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|--|----------------------------------|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 160-0741-312.41-00 | Local Option Gas Tax | \$1,130,741 | \$1,129,858 | \$ 91,910 | \$1,221,768 |
| <i>Item underbudgeted</i> | | | | | |
| 160-0741-399.99-99 | Use of Fund Balance | - | 938,710 | <u>271,270</u> | 1,209,980 |
| <i>To balance increase in budgeted expenditures</i> | | | | | |
| Total Revenues | | | | <u>363,180</u> | |
| Expenditures | | | | | |
| 160-0741-541.63-00 | Improvements Other than Building | 1,513,275 | 1,721,495 | <u>363,180</u> | 2,084,675 |
| <i>Re-pave Santee Terra Lane in Westfield Subdivision</i> | | <i>12,500</i> | | | |
| <i>NOTE: re-pave as part of the project for the installation of underdrain</i> | | | | | |
| <i>Vineland (SR 50 to Palmetto) roadway reconstruction</i> | | <i>182,680</i> | | | |
| <i>NOTE: road reconstruction includes curbs and sidewalks</i> | | | | | |
| <i>Bid came in over estimated budget</i> | | | | | |
| <i>(Commission approved May 8, 2014)</i> | | | | | |
| <i>S. Woodland (Smith to Tremaine) roadway reconstruction to be brick</i> | | <i>168,000</i> | | | |
| <i>NOTE: road reconstruction includes curbs and sidewalks</i> | | | | | |
| <i>Bid came in over estimated budget</i> | | | | | |
| <i>(Commission approved March 27, 2014)</i> | | | | | |
| Total Expenditures | | | | <u>\$ 363,180</u> | |

City of Winter Garden
Interim Budget
General Impact Fee Fund

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---------------------------|--|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 170-0521-399.00-00 | Use of Fund Balance | \$ - | \$ - | \$ 25,184 | \$ 25,184 |
| <i>Item underbudgeted</i> | | | | | |
| Total Revenues | | | | <u>25,184</u> | |
| Expenditures | | | | | |
| 170-0521-521.64-00 | Machinery and Equipment | | - | - | 25,184 |
| | <i>4 In-car video systems for the new officer positions</i> | <i>24,000</i> | | | |
| | <i>at \$6,000 each; the systems were not included in the original budget request</i> | | | | |
| | <i>2 Commercial grade storage sheds for evidence / material</i> | <i>12,000</i> | | | |
| | <i>Actual costs for projects came in less than budget</i> | <i>(10,816)</i> | | | |
| Total Expenditures | | | | <u>\$ 25,184</u> | |

City of Winter Garden
Interim Budget
Transportation Impact Fees-General

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|--|--|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 174-0741-399.99-99 | Use of Fund Balance | \$2,393,649 | \$6,207,186 | <u>\$ 1,213,596</u> | \$7,420,782 |
| <i>To balance increase in budgeted revenues/expenditures</i> | | | | | |
| Total Revenues | | | | <u>\$ 1,213,596</u> | |
| Expenditures | | | | | |
| 174-0741-541.61-00 | Land <i>Purchase of Right of Way and access and drainage easements from Foundation Academy (Commission approved Dec 12, 2013)</i> | | | \$ 172,873 | \$ 172,873 |
| 174-0741-541.63-00 | Improvements Other Than Bldg <i>E Plant St from 3rd St. to 6th St - final phase of widening E Plant St (Commission approved Apr 10, 2014)</i> | 2,400,422 600,723 | 7,264,780 | <u>1,040,723</u> | 8,305,503 |
| | <i>Avalon Rd and SR 50, add northbound right turn lane to improve traffic flow Design and Construction for northbound right turn lane on Avalon & SR50 (Commission approved June 26, 2014)</i> | 220,000 | | | |
| | <i>Fullers Cross-E. Crown Intersection Design and Construction for traffic signal and turn lane</i> | 220,000 | | | |
| Total Expenditures | | | | <u>\$ 1,213,596</u> | |

**City of Winter Garden
Interim Budget
Utility Operating Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---|---------------------------------|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 410-2116-399.99-99 | Use of Fund Balance | \$ - | \$ - | \$ <u>111,883</u> | \$ 223,766 |
| <i>To balance increase in budgeted expenditures</i> | | | | | |
| Total Revenues | | | | \$ <u>111,883</u> | |
| Expenditures | | | | | |
| Administration | | | | | |
| 410-2113-536.31-01 | Professional Services | \$ 8,150 | \$ 5,800 | \$ 42,810 | \$ 48,610 |
| <i>Alternative water supply study required by SJRWMD for CUP</i> | | | | | |
| 410-2113-581.91-00 | Interfund Transfers | 2,600,000 | 2,982,900 | 29,073 | 3,011,973 |
| <i>Transfer to Replacement and Renewal Fund</i> | | | | | |
| 410-2116-533.34-01 | Other contractual services | 37,637 | 64,200 | 15,000 | 79,200 |
| 410-2117-535.34-01 | Other contractual services | 493,731 | 423,400 | 15,000 | 438,400 |
| <i>Upgrade the SCADA system to monitor water plants from the wastewater plant</i> | | | | | |
| 410-2117-533.46-02 | Repair & Maint Svcs - Equipment | 74,068 | 65,200 | <u>10,000</u> | 75,200 |
| <i>Five year blower service at the WWTP</i> | | | | | |
| Total Expenditures | | | | \$ <u>111,883</u> | |

**City of Winter Garden
Interim Budget
Utility Impact Fee Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---|----------------------------|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| Water | | | | | |
| 411-2116-399.99-99 | Use of Fund Balance | \$ - | \$ - | \$ 243,817 | \$ 243,817 |
| <i>Item underbudgeted</i> | | | | | |
| Wastewater | | | | | |
| 411-2117-399.99-99 | Use of Fund Balance | - | - | <u>912,236</u> | 912,236 |
| <i>Item underbudgeted</i> | | | | | |
| Total Revenues | | | | <u>\$ 1,156,053</u> | |
| Expenditures | | | | | |
| Wastewater | | | | | |
| 411-2117-535.63-00 | Improv Other Than Building | \$ - | \$ 1,869,996 | \$ 1,019,236 | \$ 2,889,232 |
| <i>WWTP Equalization Tank</i> | | | | | |
| <i>NOTE: additional cost due to the under estimation of the design engineer</i> | | | | | |
| <i>(Commission approved July 13, 2013)</i> | | | | | |
| Distribution | | | | | |
| 411-2126-533.63-00 | Improv Other Than Building | | - | 7,903,756 | 243,817 |
| <i>Booster Pump for Reuse Water to Oakland Park</i> | | | | | |
| | | <i>150,500</i> | | | <i>8,147,573</i> |
| <i>Culvert crossing on Lulu Creek at Crest Ave</i> | | | | | |
| | | <i>7,341</i> | | | |
| <i>Vineland (SR 50 to Palmetto) roadway reconstruction</i> | | | | | |
| <i>NOTE: Water & Sewer Utilities upgrade as part of reconstruction</i> | | | | | |
| <i>Bid came in over estimated budget</i> | | | | | |
| <i>(Commission approved May 8, 2014)</i> | | | | | |
| <i>S. Woodland (Smith to Tremaine)</i> | | | | | |
| | | <i>7,000</i> | | | |
| <i>NOTE: Water & Sewer Utilities upgrade as part of reconstruction</i> | | | | | |
| <i>Bid came in over estimated budget</i> | | | | | |
| <i>(Commission approved March 27, 2014)</i> | | | | | |
| 411-2127-535.63-00 | Improv Other Than Building | | - | 876,647 | (107,000) |
| <i>Vineland (SR 50 to Palmetto) roadway reconstruction</i> | | | | | |
| | | <i>(89,000)</i> | | | <i>769,647</i> |
| <i>S. Woodland (Smith to Tremaine) roadway reconstruction</i> | | | | | |
| | | <i>(18,000)</i> | | | |
| Total Expenditures | | | | <u>\$ 1,156,053</u> | |

**City of Winter Garden
Interim Budget
Utility Renewal and Replacement Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---------------------------|--|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| 412-2116-381.41-00 | Interfund Transfer <i>Transfer from Operating Fund</i> | \$2,600,000 | \$2,982,900 | \$ 29,073 | \$3,011,973 |
| Total Revenues | | | | <u>\$ 29,073</u> | |
| Expenditures | | | | | |
| Collection | | | | | |
| 412-2127-535.63-00 | Improv Other Than Building <i>Culvert crossing on Lulu Creek at Crest Ave</i> | - | 1,942,900 | <u>29,073</u> | 1,971,973 |
| Total Expenditures | | | | <u>\$ 29,073</u> | |

**City of Winter Garden
Interim Budget
Stormwater Fund**

| <u>Account Number</u> | <u>Description</u> | <u>2013 Actual</u> | <u>2014 Current Budget</u> | <u>Budget Adjustments</u> | <u>2014 Proposed Amended Budget</u> |
|---------------------------|---|------------------------|------------------------------------|-------------------------------|---|
| Revenues | | | | | |
| Storm Water | | | | | |
| 420-2618-381.00-00 | Interfund Transfer In <i>Transfer funds from GF to fix Stoneybrook West drainage issue in lieu of mowing SBW (Commission approved February 27, 2014)</i> | \$ - | \$ - | \$ 25,000 | \$ 25,000 |
| 420-2618-399.99-99 | Use of Fund Balance <i>To balance increase in budgeted revenues/expenditures</i> | - | - | <u>175,127</u> | 175,127 |
| Total Revenues | | | | <u>\$ 200,127</u> | |
| Expenditures | | | | | |
| 420-2618-538.31-04 | Engineering <i>Design of new outfall and stabilization on stormwater pipes into Bradford Park</i> | \$ 16,521 | \$ 2,000 | \$ 44,329 | \$ 46,329 |
| 420-2618-538.63-00 | Capital Improvements <i>Culvert crossing on Lulu Creek at Crest Ave</i> | 84,487 | - | \$ 317,713 | 1,087,603 |
| | <i>Santee Terra Lane in Westfield Subdivision Install 400 linear ft underdrain</i> | 27,951 | | | |
| | <i>Vineland (SR 50 to Palmetto) roadway reconstruction NOTE: stormwater upgrade is included as part of reconstruction Bid came in over estimated budget (Commission approved May 8, 2014)</i> | 142,075 | | | |
| | <i>Fix drainage issue in Stoneybrook West (Commission approved February 27, 2014)</i> | 50,000 | | | |
| | <i>S. Woodland (Smith to Tremaine) NOTE: stormwater upgrade is included as part of reconstruction Bid came in over estimated budget (Commission approved March 27, 2014)</i> | 13,200 | | | |
| 420-2618-599.99-99 | Transfer to Fund Balance <i>To balance decrease in budgeted revenues</i> | 647,638 | 161,915 | <u>(161,915)</u> | - |
| Total Expenditures | | | | <u>\$ 200,127</u> | |

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: July 18, 2014

Meeting Date: July 24, 2014

Subject: 426 W. Plant Street - REZONING
PLANT STREET MARKET
PARCEL IDs #23-22-27-2888-05-021

Issue: Proposal to rezone the property located at 426 West Plant Street from R-NC to C-1.

Discussion: Proposal to rezone the property located at 426 West Plant Street from R-NC to C-1.

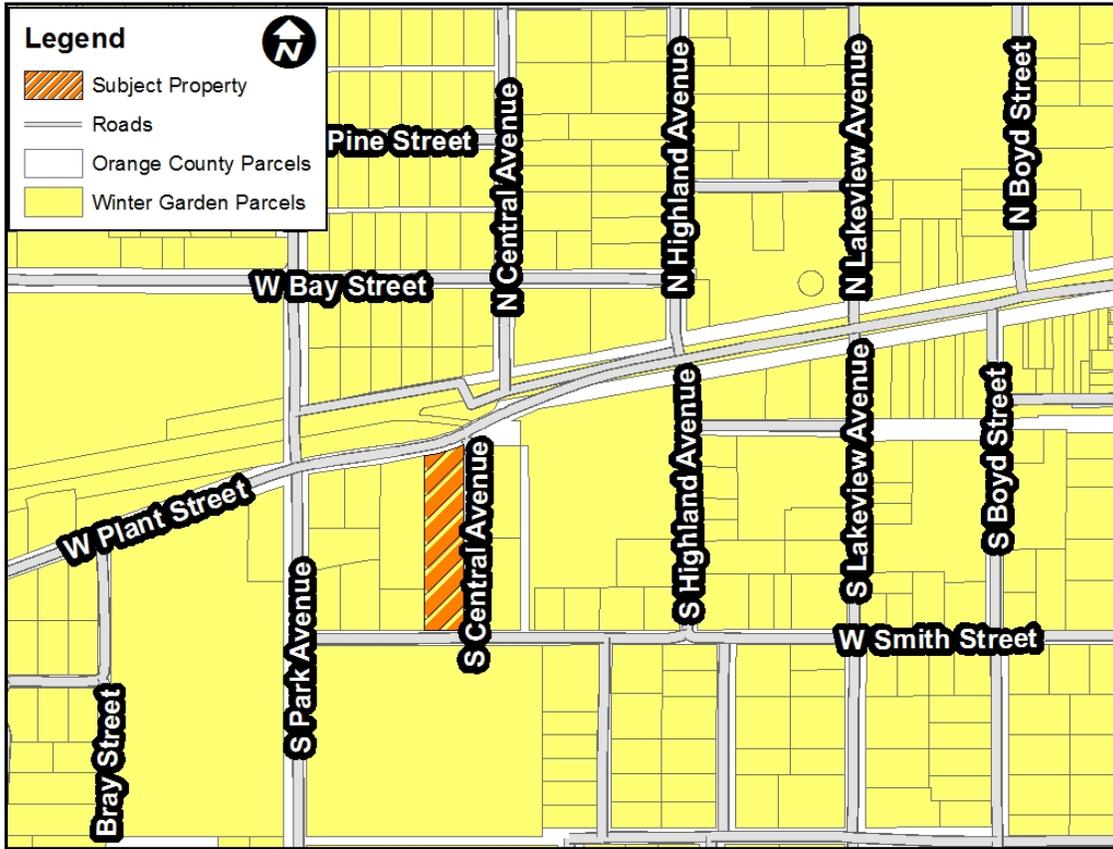
Recommended Action: City Staff recommend approval of Ordinance 14-11 rezoning 426 W. Plant Street from R-NC to C-1.

Attachment(s)/References:

Location Map
Staff Report
Ordinance 14-11

LOCATION MAP

426 W Plant Street



CITY OF WINTER GARDEN

PLANNING & ZONING DIVISION

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

STAFF REPORT

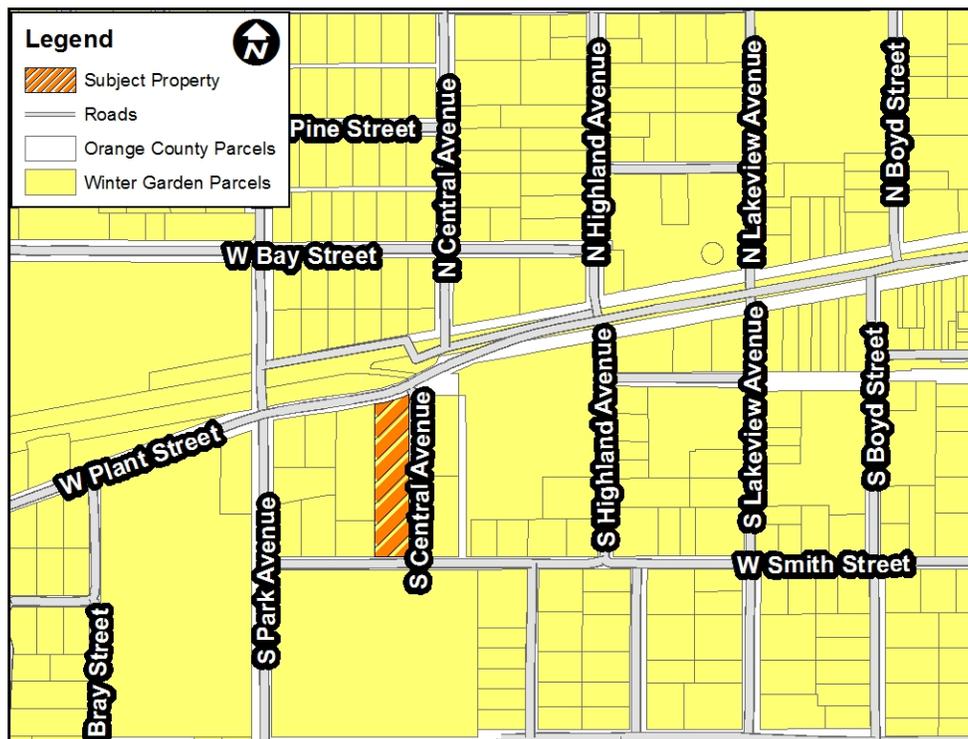
TO: PLANNING AND ZONING BOARD
PREPARED BY: LAURA SMITH, SENIOR PLANNER
DATE: JUNE 30, 2014
SUBJECT: REZONING
426 W. Plant Street (PLANT STREET MARKET)
PARCEL ID # 23-22-27-2888-05-021

APPLICANT: City of Winter Garden

INTRODUCTION

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

The subject property, generally located at the southwest corner of the intersection of South Central Avenue and W. Plant Street at 426 W. Plant Street, is approximately .92± acres. The map below depicts the location of the subject property within the City of Winter Garden municipal limits:



The City, acting as applicant, is requesting to rezone .92± acre property which is located within the City of Winter Garden and carries a Future Land Use Designation of TD (Traditional Downtown) on the Future Land Use Map of the City's Comprehensive Plan from R-NC (Residential Neighborhood Commercial District) to C-1 (Central Commercial District).

EXISTING USE

The subject property contains 3 structures built in 1973 which have previously been used for apartments, but have been vacant for approximately six months. The buildings are all two stories and have a combine total square footage of 18,530 square feet.

ADJACENT LAND USE AND ZONING

The properties located to the north of the subject property are single family residences zoned R-2 in the City of Winter Garden. The properties located to the east and west of the subject property include a commercial office zoned R-NC and a single-family residence zoned R-NC. The property located to the south of the subject property is a city park zoned R-NC.

PROPOSED USE

The City has coordinated with the property owner to obtain approval from the Architectural Review and Historic Preservation Board to demolish the buildings and build a new 11,500 SF building with high ceilings to incorporate an artisan market facing Plant Street, a microbrewery located in the back of the building along Smith Street, and a tap room located in the middle of the building. There will be several outdoor patio areas. One of which will be situated directly on Plant Street to encourage pedestrian and bicycle activity. There will also be outdoor patio areas along the east side of the building taking advantage of the large oak trees that are located along Central Avenue.

SUMMARY

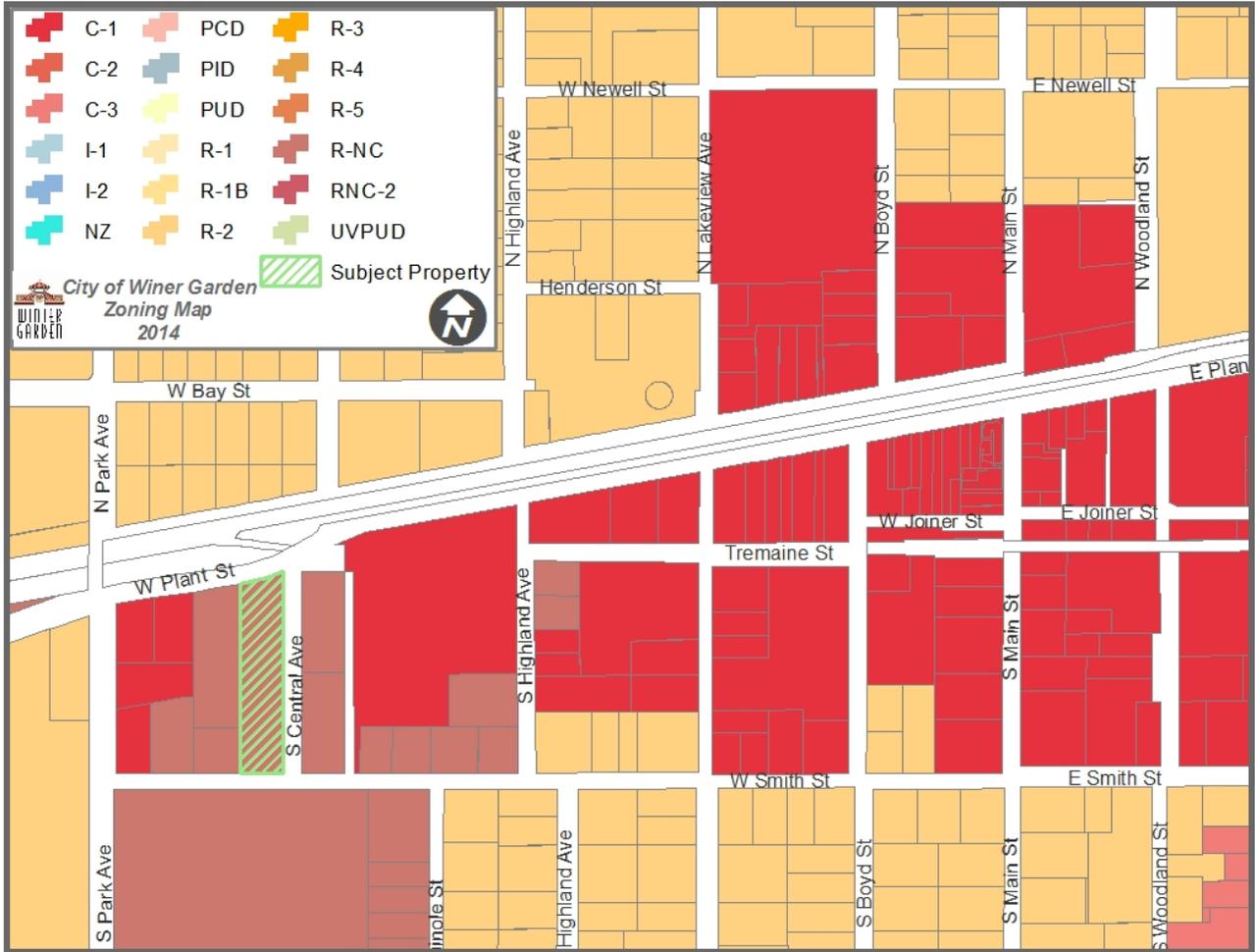
Staff recommends approval of the proposed Ordinance. Rezoning the subject property from R-NC to C-1 is consistent with the City's Comprehensive Plan and surrounding property uses.

MAPS

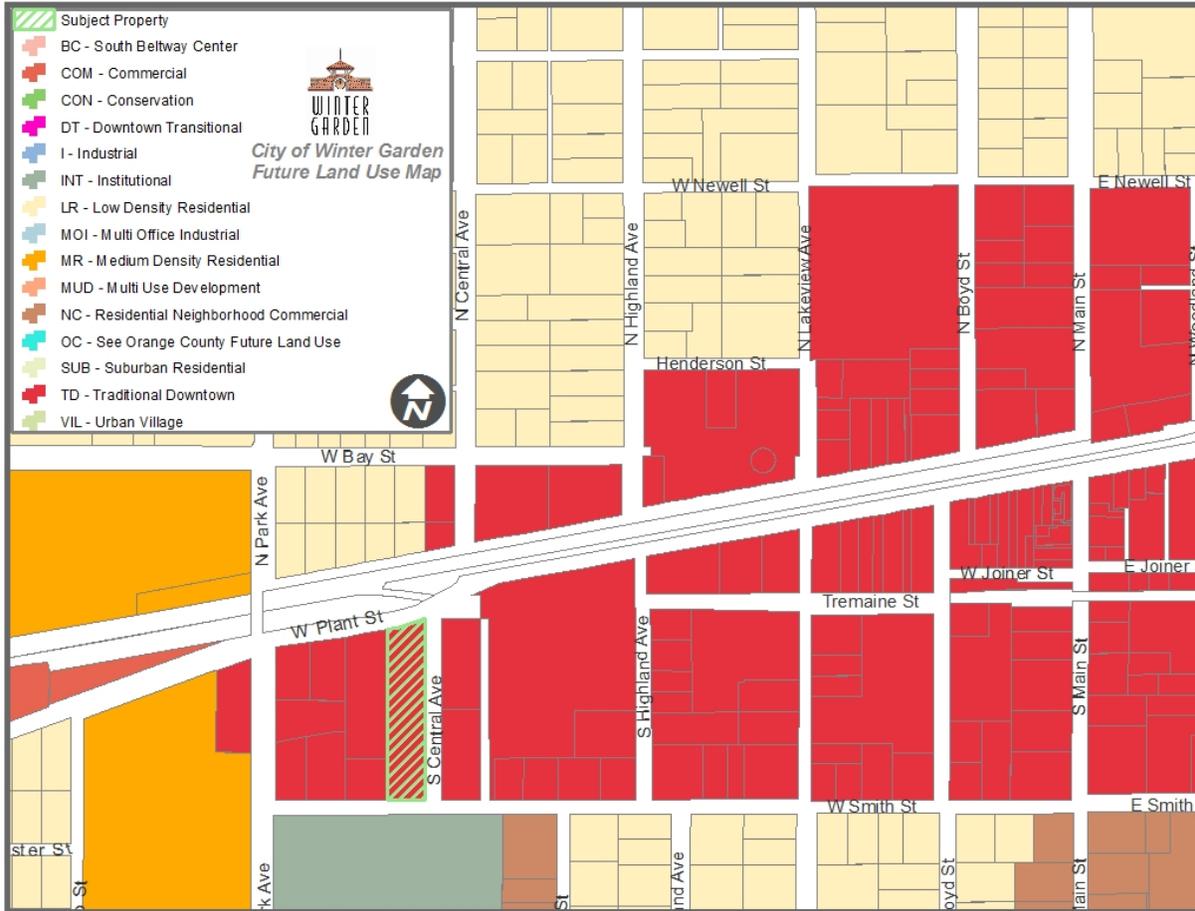
AERIAL PHOTO
426 W. Plant Street



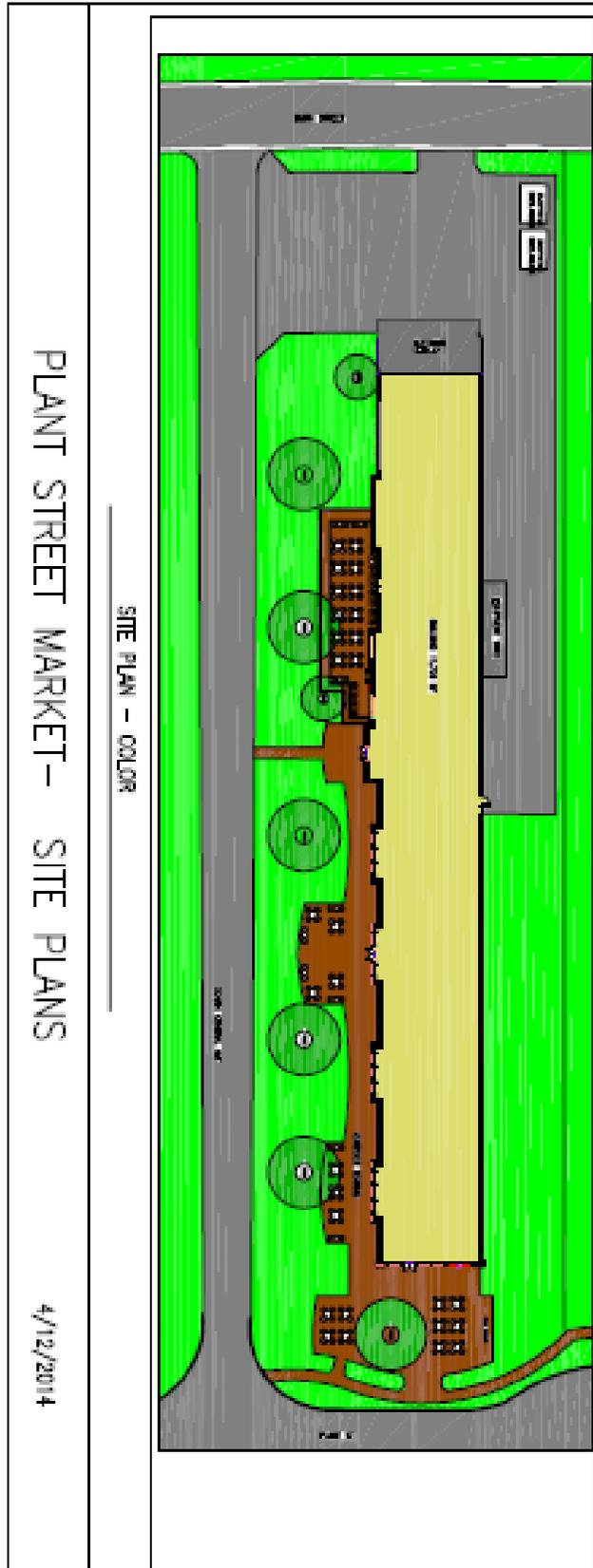
ZONING MAP
426 W. Plant Street



FUTURE LAND USE MAP 426 W. Plant Street



ARHP BOARD APPROVED SITE LAYOUT
426 W. Plant Street



ARHP BOARD APPROVED EXTERIOR ALTERATION
426 W. Plant Street

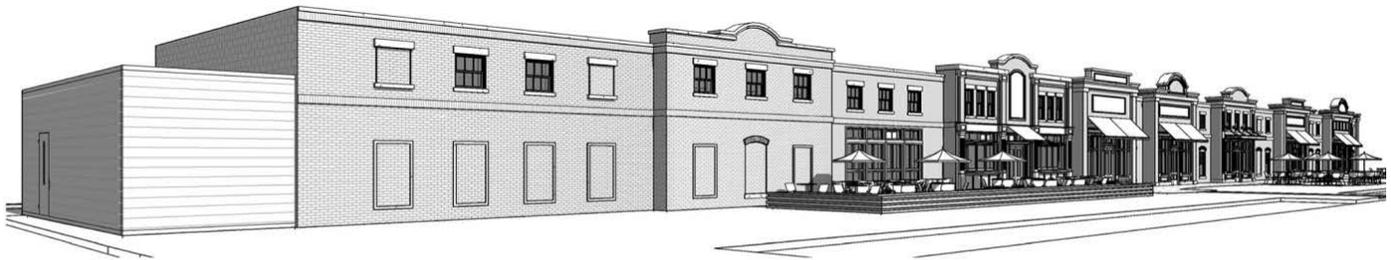


PLANT STREET PERSPECTIVE





CROOKED CAN BREWERY PERSPECTIVE



SOUTH CENTRAL PERSPECTIVE

END OF STAFF REPORT

ORDINANCE 14-11

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 0.92± ACRES OF LAND LOCATED AT 426 WEST PLANT STREET, FROM R-NC (RESIDENTIAL-NEIGHBORHOOD COMMERCIAL DISTRICT) TO C-1 (CENTRAL COMMERCIAL DISTRICT); PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission has the authority to regulate uses and zoning within its jurisdictional boundaries pursuant to Article VIII, § 2(b) of the Florida Constitution and Chapter 163 and 166, Florida Statutes;

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

WHEREAS, further, the City Commission finds that based on competent, substantial evidence in the record, the rezoning approved by this Ordinance meets all applicable criteria for rezoning the Property to C-1 Central Commercial District contained within the City of Winter Garden Comprehensive Plan and the Code of Ordinances; therefore

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

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

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

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

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

FIRST READING AND PUBLIC HEARING: _____, 2014.

SECOND READING AND PUBLIC HEARING: _____, 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

Exhibit "A"

LEGAL DESCRIPTION

PARCEL ID#: 23-22-27-2888-05-021

FRIES PLAT OF WINTER GARDEN E/16 LOT 2 (LESS W 105 FT) BLK E; being the same property as described by that certain warranty deed recorded at Official Records Book 10516, Page 5861, Public Records of Orange County, Florida.

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: July 18, 2014 **Meeting Date:** July 24, 2014

Subject: Chapter 110 Amendment (Code Amendment)
Ordinance 14-29

Issue:
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.

Discussion:
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.

Recommended Action:
Staff recommends approval of ordinance 14-29 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.

Attachment(s)/References:

Ordinance 14-29

ORDINANCE 14-29

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 1, 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. An original performance guarantee as described in subsection (7) ~~bond, irrevocable letter of credit, cash deposits, or certificate check has been delivered to the city, 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; or a performance guarantee agreement secured by an 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 twenty (120) 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; or a maintenance guarantee agreement secured by an 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 if the plat is approved based on the delivery of the performance guarantee under subsection (7). but before issuance of the 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. The developer's delivery to the city of the maintenance guarantee shall occur prior to the city engineer's issuance of a certificate of completion for such improvements, unless otherwise agreed to by the city engineer, but in no event shall any certificate of occupancy be issued until such maintenance guarantee is provided. Further, ~~P~~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. The city engineer may allow segments of internal sidewalks adjacent to each lot to be constructed as a precondition to the issuance of a certificate of occupancy for each individual dwelling unit, provided that prior to and as a pre-condition of turnover of the Association, the developer shall fully complete all sidewalks within the subdivision.

(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, any condition of a development order issued by the city, 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, referencing the city, or required as a condition of any development order issued by the city shall not be removed or amended without the prior 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 or required as a condition of any development order issued by the city shall be considered a restrictive covenant in favor of and enforceable by the city.

(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.

(21) Provide for other such terms as may be required as a condition of any development order issued by the city, including by way of example but not limitation, provisions relating to HOA maintenance of retaining walls, drainage swales and improvements or other improvements on a lot(s) benefiting more than that lot(s).

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.;

~~e. 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

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Michael Bollhoefer, City Manager

Date: July 18, 2014

Meeting Date: July 24, 2014

Subject: Establish proposed millage rate for fiscal year 2014/2015

Issue: The Truth in Millage (TRIM) legislation timetable requires us to advise the Property Appraiser of the proposed millage rate by August 4, 2014. The following is submitted to assist you in making a decision:

1. The Current Gross Taxable Value for the coming year is projected at \$2,199,295,739. This represents a 10.72% increase in taxable value over the final fiscal year 2013/2014 value, an increase of \$212,923,038.
2. The Current Adjusted Taxable Value used to calculate the rolled-back rate is projected at \$2,136,009,717 representing a 7.53% increase in taxable value over the final fiscal year 2013/2014 value.
3. One (1) mill will generate approximately \$2,111,324 in revenue (budgeting at 96% of the estimated amount levied).
4. The 2013/2014 fiscal year's budgeted Ad Valorem Tax Revenue (AVTR) is \$8,150,503. We should achieve the budgeted amount. We budgeted \$7,755,117 in fiscal year 2012/2013 and recorded \$7,780,204.
5. If the current millage rate of 4.2500 is adopted, the projected AVTR is calculated at \$8,973,127 (budgeting at 96% of the estimated amount levied).
6. The rolled-back rate of 3.9458 per \$1,000 would produce \$8,330,862, or \$642,265 less revenue than the 4.2500 rate.
7. Proposing a millage rate up to 5.5620 would require a majority vote of the Commission. Proposing a rate between 5.5621 and 6.1182 would require a two-thirds vote of the Commission. Any rate proposed in excess of 6.1182 would require a unanimous vote of the Commission or referendum of the voters.

8. The TRIM Act states that the millage rate established by the commission through a vote and provided to the Property Appraiser cannot be increased after August 4, 2014, unless each property owner is notified by mail; however, it may be lowered at either the first or second public budget hearing without any required notification. The millage rate propose by the commission will be sent to all property owners within Winter Garden directly after August 4, 2014.

Recommended Action: Motion to set the proposed millage rate for fiscal year 2014/2015 at the current rate of 4.2500 mills, set the first public hearing for September 11, 2014 at 6:30 p.m., and set the second public hearing for September 25, 2014 at 6:30 p.m.

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: A. Kurt Ardaman, City Attorney

Via: Michael Bollhoefer, City Manager

Date: July 18, 2014

Meeting Date: July 24, 2014

Subject: 252 West Plant Street – Land Swap

Issue: The City Commission previously approved a draft of the Land Swap Agreement and requested that the final agreement and Notice of Restriction come back to the Commission for approval.

Discussion:

The attached Land Swap Agreement is for an exchange of property between the City and the owners of 252 West Plant Street. The land the City will acquire in this transaction will be subject to the attached 30-year restriction and the City is granting to the owners a 15-foot wide seating easement next to and on the east side the land the owners will own and 8-foot wide aerial easements to the owners for balconies on the north, south and east sides of the building the owners expect to build on the land they will own. Please see the attached survey reflecting the boundaries of the properties after the swap.

Recommended Action:

Approval of the Land Swap Agreement and Notice of Restriction.

Attachment(s)/References:

Land Swap Agreement and Notice of Restriction.

LAND SWAP AGREEMENT

THIS LAND SWAP AGREEMENT (herein called this “Agreement”), is made this ____ day of _____, 2014, (“Effective Date”) by and between 252 W. PLANT STREET, LLC, a Florida limited liability company and WEST PLANT STREET PARTNERS, LLC, a Florida limited liability company, whose mailing address is 308 S. Dillard Street, Winter Garden, Florida 34787 (herein collectively referred to as “SELLER”), and the CITY OF WINTER GARDEN, a Florida municipal corporation, whose address is 300 West Plant Street, Winter Garden, Florida 34787 (“CITY”). The SELLER and CITY are sometimes herein jointly referred to as the “Parties.”

WHEREAS, SELLER is the fee simple owner of that certain parcel of land situated in Orange County, Florida, adjacent to Plant Street with Orange County Tax Parcel Identification #23-22-27-2888-04-075 and legally described in that certain special warranty deed recorded on October 22, 2004 in Official Records Book 7671, Page 0778, Public Records of Orange County, Florida which legal description is attached hereto as **Exhibit “A”** (herein “252 West Plant Property”); and

WHEREAS, the CITY owns the water fountain and park property with Orange County Tax Parcel Identification #23-22-27-2888-04-074, which is more particularly identified and legally described on the attached **Exhibit “B”** (herein “Fountain Property”); and

WHEREAS, the 252 West Plant Property is west of and adjacent to the Fountain Property; and

WHEREAS, the CITY is the fee simple owner of that certain approximately 19,039 square foot parcel of land situated in Orange County, Florida with Orange County Tax Parcel Identification #23-22-27-2888-04-073 that is adjacent to Plant Street and adjacent to and west of the 252 West Plant Property, which is more particularly identified and legally described on the attached **Exhibit “C”** (herein “Old Planning Department Property”); and

WHEREAS, for recreational and other governmental uses the CITY desires to acquire fee simple ownership of the eastern 78.70 feet (consisting of approximately 10,612 square feet) of the 252 West Plant Property, which is more particularly identified and legally described on the attached **Exhibit “D”** (herein “Extended Park Property”); and

WHEREAS, the SELLER desires to convey to the CITY fee simple ownership of the Extended Park Property in exchange for the CITY’s conveyance of fee simple ownership of the eastern 92.76 feet (consisting of 10,604 square feet) of the Old Planning Department Property, which is more particularly identified and legally described on the attached **Exhibit “E”** (herein “Swap Property”).

WHEREAS, as additional material consideration for the consummation of this Agreement, the SELLER and CITY shall also enter into and timely record at Closing that certain NON-EXCLUSIVE SUBORDINATE SEATING EASEMENT AGREEMENT, CONDITIONAL SUBORDINATE AERIAL EASEMENT AGREEMENT and NOTICE OF RESTRICTION, all as provided for in this Agreement.

For and in consideration of the above recitals and provisions set forth in this Agreement, the receipt and sufficiency of which is acknowledged and agreed to by the parties, the Parties agree as follows:

I. AGREEMENT TO SELL AND PURCHASE; CONSIDERATION; CLOSING DATE:

A. Recitals. The foregoing Recitals are true and correct and are incorporated herein as material provisions of this Agreement by this reference.

B. Agreement to Sell and Convey. SELLER hereby agrees to convey to CITY in fee simple and CITY hereby agrees to accept conveyance from SELLER, subject to the terms, conditions and provisions hereinafter set forth, the Extended Park Property.

C. Consideration to SELLER for Conveyance. In consideration for SELLER's conveyance of the Extended Park Property to the CITY, the CITY will:

1. Simultaneously with the conveyance of the Extended Park Property to the City, the CITY will convey the Swap Property to the SELLER subject to the terms, conditions and restrictions hereinafter set forth, so that upon the execution and recording of the deeds contemplated by this Agreement, the CITY will be the fee simple owner of the two (2) parcels of land identified and legally described in **Exhibit "F"** attached hereto (herein "City Parcel 1 and City Parcel 2"), and SELLER will be the fee simple owner of the parcel of land identified and legally described in **Exhibit "G"** (herein "Seller Parcel") attached hereto. It is the express intent of the SELLER and CITY that the Extended Park Property shall be immediately adjacent to the Fountain Property without gaps and gores, and SELLER shall take all actions and execute all documents at or before Closing to ensure such at Closing.

2. At Closing, the CITY will pay to SELLER **\$117,000.00**, subject to City approval, as provided below, for reimbursement of SELLER's previously incurred architectural, legal, engineering and planning expenses ("Seller's Soft Costs") for proposed development of the 252 West Plant Property, in addition to providing written confirmation from CITY to SELLER that SELLER is entitled to \$18,000.00 in parking fee credits in connection with SELLER's proposed development of SELLER's parcel. On or before ten (10) days after the Effective Date, Seller shall submit to City, receipts, invoices and other records of Seller's Soft Costs. If the CITY determines in CITY's discretion such costs are unreasonable, CITY may notify Seller, in writing, of the amount of Seller's Soft Costs that CITY is willing to pay. Seller shall have until and

including the fifth (5th) day after CITY's notice to SELLER of the amount of Seller's Soft Costs that CITY is willing to pay to notify CITY, in writing, that such amount that CITY is willing to pay is acceptable or to terminate this Agreement.

3. CITY, at its expense, will seek a lot split/combination approval in order to establish the City Parcel 1 and City Parcel 2 and Seller Parcel, each as separate legal lots for development purposes, the approval of which will occur on or before forty-five (45) days after Closing.

4. At Closing, the CITY will grant to SELLER an eight (8) foot wide aerial easement for SELLER's construction and placement of 2nd and 3rd floor balconies attached to the north, south and east walls of Seller's future building to be constructed on the Seller Parcel. The balconies shall be no lower than the floor of the second floor elevation and all supports and design features related to the balconies shall be subject to prior written approval of the CITY. The locations and legal description of the 8 foot wide easement areas are attached to the aerial easement attached hereto as **Exhibit "H."** The attached Exhibit "H" is the Aerial Easement Agreement titled CONDITIONAL SUBORDINATE AERIAL EASEMENT AGREEMENT to be executed and delivered to Seller at Closing.

5. At Closing, the CITY will grant to SELLER a fifteen (15) foot wide non-exclusive easement for outdoor seating over a portion of the Extended Park Property. The location and legal description of the 15' wide easement area is attached to the Non-exclusive Subordinate Seating Easement Agreement attached hereto as **Exhibit "I."** The attached Exhibit "I" is the "Non-exclusive Subordinate Seating Easement Agreement to be executed and delivered to Seller at Closing.

6. On or before Closing, the CITY and SELLER shall agree on the terms, conditions and provisions of a Notice of Restriction regarding the construction of certain improvements on the Extended Park Property. In the event the parties do not agree on the terms, conditions and provisions of the Notice of Restriction, either party may terminate this Agreement and this Agreement shall be of no further force or effect except for any provisions that expressly survive. If the Notice of Restriction is approved by the parties, the CITY and SELLER shall execute and record the Notice of Restriction in the Official Records of Orange County, Florida at Closing.

D. If there are no legal descriptions attached to the Aerial Easement Agreement and/or Non-Exclusive Subordinate Seating Easement Agreement attached to this Agreement, respectively, as Exhibits "H" and "I" and the parties on or before thirty (30) days after the Effective Date do not mutually agree on acceptable legal descriptions for both easements, either party may terminate this Agreement by providing written notice of such termination to the other on or before the forty fifth (45th) day after the Effective Date. If there are no legal descriptions attached to the Aerial Easement Agreement and/or the Non-Exclusive Subordinate Seating Easement Agreement and the legal descriptions are not agreed to by both parties and neither

party terminates this Agreement on or before the forty fifth (45th) day after the Effective Date for failure to agree on either or both such legal descriptions, then the easement(s) without agreed legal description(s) shall not be required, executed or delivered.

E. Closing. On or before the sixtieth (60th) day after the Effective Date, the Closing of the transactions contemplated by this Agreement shall occur at the office of Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller LLP (“Fishback Law Firm”), at 1947 Lee Road, Winter Park, Florida 32789, or Winter Garden City Hall at 300 West Plant Street, Winter Garden, Florida, whichever the CITY may choose.

F. Mortgage. SELLER represents that there is an existing mortgage lien against the 252 West Plant Property by way of that certain mortgage executed by SELLER to United Heritage Bank recorded 10/25/2005 in Official Records Book 8266, Page 4454, last assigned of record to M&I Marshall & Ilsley Bank, a Wisconsin banking corporation, by Assignment of Mortgage recorded on 06/12/2007 in Official Records Book 9300, Page 1412, Notice of Renewal of Promissory Note recorded in Official Records Book 9337, Page 1073, of the Public Records of Orange County, Florida and related financing statements (the “Mortgage”). SELLER represents and warrants that the outstanding Mortgage balance which constitutes a lien on the 252 West Plant Property is less than the funds being paid by CITY for Seller’s Soft Costs under Paragraph I. C. 2. It is a Closing requirement that the Mortgage shall be fully satisfied by SELLER at Closing by using the Seller’s Soft Costs proceeds (or a portion thereof) to pay off the Mortgage and to obtain and record a satisfaction of the Mortgage, or SELLER may elect to pay off the Mortgage and obtain a satisfaction of Mortgage prior to Closing using its independent funds. Within ten (10) days from the Effective Date, SELLER shall seek and obtain an estoppel certificate from the Mortgage holder addressed to SELLER, CITY and Fishback Law Firm evidencing the payoff amount for the Mortgage with a payoff good through date effective at least to the anticipated Closing date and 30 days thereafter, and provide such to the CITY and Fishback Law Firm.

II. TITLE COMMITMENT, CONVEYANCE & INSURANCE:

A. Extended Park Property Title Commitment. CITY, at CITY’s expense, shall obtain, by or through the Fishback Law Firm as Title Agent within fifteen (15) days from the Effective Date of this Agreement, an A.L.T.A. Form B (Florida) title commitment for the Extended Park Property for title insurance (the “Commitment A”) in the amount of \$132,000.00. The Extended Park Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in CITY’s reasonable judgment, interfere with the CITY’s intended use of the City Parcel (the “Permitted Exceptions”). In the event the Commitment A shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the CITY, the CITY shall notify SELLER of any objections in writing within ten (10) days of CITY’s City Manager’s receipt of Commitment A specifying the defects

which exist with respect to the title to the Extended Park Property, and SELLER shall have a period of three (3) days after receipt of such written notice within which: (i) elect to cure any defects in title to the satisfaction of CITY; or (ii) notify CITY that it elects not to cure any defects. If SELLER elects by written notice to cure the defects in title, SELLER shall have thirty (30) days to cure such defects, at its expense. Upon SELLER's election not to cure or failure to cure defects in title within the time limit aforesaid, the CITY may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive its objections in this subsection II. A. and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such defect or defects had been found, provided however, that exceptions may be made to the title insurance policy for such uncured defects. The Closing date shall be extended as necessary to effectuate the intent of this Section II and any of its subsections.

B. Swap Property Title Commitment. CITY, at CITY's expense, shall obtain, by or through the Fishback Law Firm as Title Agent within fifteen (15) days from the date of this Agreement, an A.L.T.A. Form B (Florida) title commitment concerning the Swap Property for title insurance (the "Commitment B") in the amount of \$132,000.00. The Swap Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in SELLER's reasonable judgment, interfere with the development of the Swap Property (the "Permitted Exceptions"). In the event the Commitment B shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the SELLER, the SELLER shall notify CITY of any objections in writing within ten (10) days of SELLER's receipt of Commitment B specifying the defects which exist with respect to the title to the Swap Property, and CITY shall have a period of three (3) days after receipt of such written notice within which: (i) elect to cure any defects in title to the satisfaction of SELLER; or (ii) notify SELLER that CITY elects not to cure any defects. If CITY elects by written notice to cure the defects in title, CITY shall have thirty (30) days to cure such defects, at its expense. Upon CITY's election not to cure or failure to cure defects in title within the time limit aforesaid, the SELLER may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive all conditions in this subsection II B and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such defect or defects had been found, provided however, that exceptions may be made to the title insurance policy for such uncured defects. The Closing date shall be extended as necessary to effectuate the intent of this Section II and any of its subsections.

C. Extended Park Property Title. The Extended Park Property shall be conveyed to CITY by SELLER by Special Warranty Deed and shall be free and clear of all liens, easements, restrictions and encumbrances except taxes and special assessments, if any, for the year of Closing and subsequent years, and the Permitted Exceptions as described subsection II. A. Possession will be given as of the date of Closing. A proration will be made as of the date of

Closing for real estate taxes and special assessments and the prorated amount of such real property taxes and special assessments attributable to the SELLER shall be withheld from the Closing proceeds and escrowed 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 SELLER shall be responsible for real property taxes for the entire year. The CITY is exempt from real estate taxes and under no circumstances shall the CITY have any obligation for real estate taxes.

D. Swap Property Title. The Swap Property shall be conveyed to SELLER by CITY by Special Warranty Deed and shall be free and clear of all liens, easements, restrictions and encumbrances except taxes and special assessments, if any, for the year of Closing and subsequent years, and the Permitted Exceptions as described in subsection II. B. Possession will be given as of the date of Closing. The CITY is exempt from real estate taxes and under no circumstances shall the CITY have any obligation for real estate taxes.

E. Quit Claim Deeds. To ensure that there are no gaps and gores in the legal descriptions and to otherwise effectuate the intent of the Parties concerning the transaction contemplated by this Agreement, in addition to the Special Warranty Deeds required in Section II of this Agreement, the Closing Agent or the CITY may require as a condition of the Closing for: (i) the SELLER to execute a quit claim deed concerning the City Parcel conveying any and all interest SELLER may have in the City Parcel to the CITY; (ii) the CITY to execute a quit claim deed concerning Seller Parcel conveying any and all interest CITY may have in the Seller Parcel to SELLER; (iii) a certification by a Florida licensed surveyor, at the CITY's expense, that there are no gaps and gores in the legal descriptions between the City Parcel and Seller Parcel, and between the Extended Park Property and the Fountain Property, and other such surveyor certifications as may be required for title insurance purposes; and (iv) the legal descriptions attached to this Agreement be corrected and reflected in the Closing documents if an error in the legal descriptions is discovered or such are not otherwise consistent with the intended purpose of the transaction contemplated by this Agreement. The Closing may be extended for a reasonable period of time as needed to obtain the surveyor certifications required herein.

F. Title Insurance. An Owner's Policy of Title Insurance to be issued pursuant to the Commitment A is to be purchased and issued to CITY at CITY's expense after Closing. An Owner's Policy of Title Insurance to be issued pursuant to the Commitment B is to be purchased by the CITY and issued to SELLER at the CITY's expense after Closing. This subsection II. F. shall survive Closing.

G. Further Assurances. At or subsequent to Closing, SELLER and CITY will, without additional consideration, sign, acknowledge, and deliver a further assurances agreement and any other documents and take any other action necessary or appropriate, as reasonably requested by the SELLER, CITY or the Closing Agent, to carry out the intent and purpose of this Agreement, including for the issuance of title insurance.

III. CLOSING COSTS: SELLER shall pay for the cost of recording any corrective instruments concerning the Extended Park Property, SELLER's attorney's fees, costs for clearing encumbrances and curing title defects and costs for satisfying mortgages and liens on the Extended Park Property conveyed. The CITY shall pay documentary stamp tax on the deeds and costs for the title commitments and the title insurance policies, recording costs associated with the special warranty deeds and quit claim deeds described in subsection II, if any, and Closing document preparation concerning the conveyance of both the Extended Park Property and the Swap Property.

IV. AS-IS SALE.

Except for warranties of title and other warranties specified in Sections V and VI of this Agreement, the Extended Park Property and Swap Property are being conveyed "as-is" without representations and warranties (express or implied), including without limitation, concerning the condition of such properties and suitability for the respective intended uses. Given the nature of this transaction, in the event certain statutory disclosures or any other disclosures required by law were not made to the SELLER and/or the CITY herein, the SELLER and CITY each for themselves and for their successors and assigns, hereby waive any and all statutorily required disclosures, and release each other from any and all claims or right to terminate this Agreement on the basis that such disclosures have not or were not made.

V. SELLER'S WARRANTIES: The representations and warranties set forth below are limited to SELLER's actual knowledge:

A. SELLER warrants that SELLER is in sole constructive or actual possession of the Extended Park Property and SELLER has no actual knowledge of another person having any right to possession of the Extended Park Property, or asserts any claim of title or other interests in it. SELLER warrants that the Extended Park Property is not the homestead of SELLER.

B. SELLER has no actual knowledge of any outstanding contracts for the sale of the Extended Park Property to any person or persons whomsoever except for the CITY, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Extended Park Property.

C. SELLER has no actual knowledge of any assessments that are now liens on the Extended Park Property are shown in the Official Records. SELLER has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against SELLER that could attach to the Extended Park Property or affect title to the Extended Park Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the SELLER unable to consummate this transaction.

D. SELLER warrants that there have been no improvements made upon the Extended Park Property within the past ninety (90) days for which there remain any outstanding

and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

E. SELLER warrants that the undersigned person(s) signing for SELLER has full authority to bind SELLER to this Agreement and to convey the Extended Park Property to the CITY and to accept conveyance of the Swap Property from the CITY.

F. It is a Closing condition that representations and warranties of the SELLER contained in this Agreement will be true on and as of the Closing date with the same effect as though those representations and warranties have been made on and as of that date. Further, in consideration of this Agreement, the SELLER and each of the entities that constitute the SELLER jointly and severally, shall, and does hereby agree to defend, indemnify, save and hold harmless the CITY from and against any all claims, suits, actions, damages, judgments, liabilities and expenses in connection with or arising out of any or all of the aforesaid warranties and representations. SELLER and each of the entities that constitute the SELLER jointly and severally, shall execute an affidavit at Closing agreeing that the warranties herein are true on and as of the Closing date and that such warranties survive Closing.

VI. CITY's WARRANTIES:

A. Except for a parking lease that CITY intends to terminate prior to Closing, CITY warrants that CITY is in sole constructive or actual possession of the Swap Property and CITY has no actual knowledge of another person having any right to possession of the Swap Property, or asserts any claim of title or other interests in it. CITY warrants that the Swap Property is not the homestead of CITY.

B. CITY has no actual knowledge of any outstanding contracts for the sale of the Swap Property to any person or persons whomsoever except for the SELLER, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Swap Property.

C. CITY has no actual knowledge of any assessments that are now liens on the Swap Property are shown in the Official Records. CITY has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against CITY that could attach to the Swap Property or affect title to the Swap Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the CITY unable to consummate this transaction.

D. CITY warrants that there have been no improvements made upon the Swap Property within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

E. CITY warrants that the undersigned person(s) signing for CITY has full authority to bind CITY to this Agreement and to convey the Swap Property to the SELLER and to accept conveyance of the Park Property from the SELLER.

F. It is a Closing condition that representations and warranties of the CITY contained in this Agreement will be true on and as of the Closing date with the same effect as though those representations and warranties have been made on and as of that date. Further, in consideration of this Agreement, the CITY shall, and does hereby agree to defend, indemnify, save and hold harmless the SELLER from and against any all claims, suits, actions, damages, judgments, liabilities and expenses in connection with or arising out of any or all of the aforesaid warranties and representations. CITY shall execute an affidavit at Closing agreeing that the warranties herein are true on and as of the Closing date and that such warranties survive Closing.

VII. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon any of the Parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the Parties unless in writing, executed by the Parties to be bound thereby. Typewritten or handwritten provisions inserted herein or attached hereto as Addenda, and initialed by all Parties, shall control all printed provisions in conflict therewith.

VIII. DISCLOSURES: The Extended Park Property is held by an entity or entities or form of ownership as set forth in Section 286.23, Florida Statutes that requires certain disclosures to be made and SELLER agrees to fully comply with said statutory disclosure requirements and such disclosures shall be made under oath by affidavit executed before or at Closing, subject to the penalties prescribed for perjury.

IX. RADON GAS / MOLD: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Pursuant to § 404.056(8), Florida Statutes.

Mold is naturally occurring and may cause health risks or damage of property. If either party is concerned or desires additional information regarding mold, such party should contact an appropriate professional.

X. NOTICE: Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered through hand delivery , or (ii) delivered through Federal Express, UPS, or other expedited mail or package service, addressed to the Parties at the address shown below. Any notice or demand that may be given hereunder shall be deemed complete (i) upon confirmed delivery if hand delivery, or (ii) upon confirmation of delivery if deposited with Federal Express, UPS, or other expedited mail with package delivery to the appropriate address as herein provided. Any party hereto may change said address by notice in writing to the other

Parties in the manner herein provided. All notices shall be sent to SELLER and the CITY as the following addresses:

CITY: Mike Bollhoefer, City Manager
City of Winter Garden
300 West Plant Street
Winter Garden, Florida 34787
Telecopy: (407) 656-4952
Telephone: (407) 656-4111

With a copy to: A. Kurt Ardaman, City Attorney
Fishback Dominick
1947 Lee Road
Winter Park, Florida 32789
Telecopy: (407) 425-2863
Telephone: (407) 262-8400

SELLER: 252 W. Plant Street, LLC and
West Plant Street Partners, LLC
308 South Dillard Street
Winter Garden, Florida 34787

With a Copy to South Milhausen, P.A.
c/o Jeffrey P. Milhausen, Esq.
Gateway Center
1000 Legion Place Suite 1200
Orlando, Florida 32801
Telephone (407) 539-1638
Facsimile (407) 539-2679
jeffm@southmilhausen.com

XI. ESCROW / CLOSING AGENT: SELLER and CITY agree that Fishback Law Firm shall serve as counsel to CITY, the Escrow Agent, Title Agent and Closing Agent, and in the event of any dispute, conflict or lawsuit, either between SELLER, CITY or Escrow Agent or any combination thereof, SELLER agrees that the Fishback Law Firm may serve as Escrow Agent, Title Agent, Closing Agent and attorneys for CITY in this transaction and in any dispute concerning or arising from this Agreement. Further, in the event of any dispute, conflict or lawsuit, involving any deposit, or this Agreement or the transaction or obligations or rights under this Agreement, the Escrow Agent may interplead the disputed funds or documents with the Clerk of the Circuit Court. SELLER and CITY shall each pay Escrow Agent attorneys' fees and costs related to any dispute, conflict and litigation relating to this Agreement, or the transaction, or obligations or rights provided in this Agreement. Further, CITY and SELLER each indemnify and hold harmless the Escrow Agent from all losses, damages, claims, disputes, lawsuits,

interests, and other adverse matters caused by Escrow Agent excluding gross negligence and intentional misappropriation by Escrow Agent. Monies held by Escrow Agent under this Agreement, if any, shall be placed in a non-interest bearing account. This Section XI survives termination of this Agreement and Closing.

XII. BROKERS: This Agreement was not brought about, directly or indirectly, by any real estate agency or broker and no commission or fee will be payable on the sale hereunder. SELLER shall and hereby indemnifies CITY against and holds CITY harmless from all liabilities, costs, damages and expenses (including reasonable attorneys fees), arising from any claims for commissions or other similar fees in connection with the transactions covered by this Agreement, based upon alleged arrangements or agreements made by SELLER. CITY shall and hereby indemnifies SELLER against and holds SELLER harmless from all liabilities, costs, damages and expenses (including reasonable attorneys fees), arising from any claims for commissions or other similar fees in connection with the transactions covered by this Agreement, based upon alleged arrangements or agreements made by CITY. This Section XII survives termination of this Agreement and Closing.

XIII. DEFAULT. If the CITY fails to perform any of the covenants of this Agreement, SELLER shall as its sole remedy: (i) have the right to terminate this Agreement; or (ii) seek specific performance of this Agreement. SELLER waives monetary damages in the event of breach or default of CITY. If SELLER fails to perform any of the covenants of this Agreement, CITY shall: (i) have the right to terminate this Agreement; or (ii) seek specific performance of this Agreement.

XIV. DISPUTES.

1. Mediation. Any disputes, claims or counterclaims between CITY and SELLER arising out of or in connection with this Agreement which cannot be amicably resolved by the Parties through good faith negotiations shall first be submitted to nonbinding mediation for resolution. As a condition precedent to the filing of any suit or other legal proceeding, the Parties shall endeavor to resolve claims, disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The Parties shall, by mutual agreement, select a mediator within twenty (20) days of the date of the request for mediation. If the Parties cannot agree on the selection of a mediator, then the CITY shall select the mediator who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. No suit or other legal proceeding shall be filed until (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation; provided however, a lawsuit may be filed prior to the satisfaction of the mediation requirement in order to preserve a claim that will elapse due to an immediate forthcoming expiration of an applicable statute of limitation. In the event a lawsuit is

filed prior to the completion of the mediation requirement, the lawsuit shall be abated upon motion of either party until such time as the mediation requirement has been satisfied. The Parties shall share the mediator's fee equally. The mediation shall be held in Orange County, Florida, unless another location is mutually agreed upon by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

2. Laws/Venue. All of the terms and conditions stated herein shall be construed under the laws of the State of Florida. Exclusive venue for any lawsuits filed relating to or arising from this Agreement shall be in a court of proper jurisdiction in Orange County, Florida.

3. Attorneys' Fees. The prevailing party in any lawsuit filed concerning the breach of this Agreement shall be entitled to reimbursement of reasonable attorney's fees, experts' fees and other litigation costs incurred in such lawsuit against the non-prevailing party.

XV. MISCELLANEOUS: Time is of the essence in this Agreement. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, trustees, successors and assigns of the respective parties. In the event any date or time period in this Agreement falls on a Saturday, Sunday or legal holiday recognized by the State of Florida, the date or time period shall be extended to the next business day. Nothing herein shall constitute a waiver of or be deemed a waiver of the CITY's sovereign immunity protections. Nothing herein shall constitute or be deemed a waiver or limitation of CITY's home rule and police power authority. The effectiveness of this Agreement is subject to City of Winter Garden City Commission approval. If the date on the first page of this Agreement designated Effective Date is blank, the Effective Date of this Agreement shall be upon the date of the last of the Parties to execute this Agreement and after City Commission approval. Electronic and/or facsimile signatures to this Agreement shall be deemed original signatures. This Agreement may be executed in any number of counterparts, the aggregate of which shall constitute a single document. The conveyances from City to Seller and Seller to City contemplated by this Agreement are not severable.

IN WITNESS WHEREOF, the SELLER and the CITY have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in the presence of:

“CITY”

CITY OF WINTER GARDEN

Michael Bollhoefer, City Manager

“SELLER”

252 West Plant Street, LLC, a Florida limited liability company

By: _____
Print Name: _____
Its: _____

West Plant Street Partners, LLC, a Florida limited liability company

By: _____
Print Name: _____
Its: _____

This Instrument was prepared by and return to:

Daniel W. Langley
Fishback Dominick
1947 Lee Road
Winter Park, Florida 32789

Part of Tax Parcel Identification # 12-22-27-6496-07-001

CONDITIONAL SUBORDINATE AERIAL EASEMENT AGREEMENT

THIS CONDITIONAL SUBORDINATE AERIAL EASEMENT AGREEMENT, hereinafter the “Agreement,” is entered into his ____ day of _____, 2014, (the “Effective Date”) by and between the **CITY OF WINTER GARDEN, FLORIDA**, a Florida municipal corporation, with its permanent address at 300 West Plant Street, Winter Garden, Florida 34787, hereinafter the “CITY” and 252 W. Plant Street, LLC, a Florida limited liability company and West Plant Street Partner, LLC, a Florida limited liability company, with their collective mailing address at 308 S. Dillard Street, Winter Garden, Florida 34787, hereinafter collectively referred to as GRANTEE.

GRANTEE is the fee simple owner of property situate in Orange County, Florida and described as set forth as the attached **Exhibit “1”** attached hereto and made as part hereof (the Benefited Property”); and CITY is the local government entity with ownership, operation and control of that area adjacent to the east side of the Benefited Property and which is described on the attached **Exhibit “2”** (the “City Property”) within which is located the East Aerial Easement Area described on the attached **Exhibit “3,”** and CITY is the local governmental entity with ownership, operation and control over Plant Street and West Tremaine Street right-of-way adjacent, respectively, to the north and south sides of the Benefited Property within which rights-of-way, respectively, are located the North Aerial Easement Area described on the attached **Exhibit “4”** and the South Aerial Easement Area described on the attached **Exhibit “5.”**

WHEREAS, CITY and GRANTEE have entered into that certain recorded NOTICE OF RESTRICTION (“Notice of Restriction”) recorded in the public records of Orange County, Florida on the same day this Agreement is recorded in such records, which Notice of Restriction affects City Parcel 1 as described in said Notice of Restriction within which area is located the East Aerial Easement Area referenced in this Agreement and which Notice of Restriction is effective for a period of thirty years (30) from the Effective Date of the Notice of Restriction.

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged and agreed by the parties, GRANTEE and CITY agree as follows:

1. **AERIAL EASEMENT.** Subject to the terms, conditions and provisions of this Agreement, the CITY does hereby establish and grant to GRANTEE a non-exclusive, conditional, subordinate and appurtenant aerial easement, on, over, across and through the areas at or above the floor of the second (2nd) floor elevation of the building to be constructed on the Benefited Property, described in more particularity below, to allow GRANTEE to construct, place and use a balcony attached to, serving and supported by a building to be constructed by GRANTEE on the

Benefited Property with the balconies and their supports and design features related to the balconies subject to the prior written approval of the CITY (hereinafter collectively referred to as the "Aerial Easement"):

- A. East Aerial Easement Area described on the attached Exhibit "3."
- B. North Aerial Easement Area described on the attached Exhibit "4."
- C. South Aerial Easement Area described on the attached Exhibit "5."

The Aerial Easement granted herein is a non-exclusive, easement appurtenant to the Benefited Property and subordinate to the CITY's rights to control, use, operate and develop the East Aerial Easement Area, the North Aerial Easement Area and the South Aerial Easement Area as established hereinbelow.

2. GRANTEE'S OBLIGATIONS. GRANTEE shall have full and complete responsibility to maintain, care for, insure, repair, replace and take all actions necessary to provide for the integrity and safety of the balconies constructed or placed within the Aerial Easement.

3. INDEMNIFICATION. GRANTEE agrees to indemnify and hold harmless CITY and its Commissioners, officers, agents, and employees from any and all suits, actions, causes of action, liabilities, claims, damages and judgments related to GRANTEE's exercise of its Aerial Easement rights under this Agreement and for any breach by GRANTEE of this Agreement.

4. INSURANCE. GRANTEE shall, at GRANTEE's own cost and expense, maintain and provide general public liability insurance for GRANTEE's use of the Aerial Easement for the benefit and protection of the CITY and GRANTEE in an amount not less than \$1,000,000.00 each person/1,000,000.00 each accident, or \$1,000,000.00 each occurrence/\$2,000,000.00 aggregate. Those amounts shall be increased at the request of the City to amounts deemed appropriate by the GRANTEE. Said policy of insurance shall cover the GRANTEE and the CITY shall be named as an additional insured under said policy as to general public liability and as a loss payee as to property damage. A certificate of said insurance shall be delivered to the City at, or prior to any use of the Aerial Easement and once per year together with proof of payment of the premium thereon, and shall contain thereon an undertaking by the insurer to give the City not less than thirty (30) days written notice of any cancellation, or change in the scope of coverage, of such policy. Proof of payment of renewal premiums of said policy shall be furnished to the City not less than thirty (30) days prior to the expiration date of any such policy. If GRANTEE fails to comply with the requirements hereof, as to insurance, the City may obtain such insurance and keep the same in effect, and GRANTEE shall pay the City therefore upon demand; and if not paid as required, the City shall have the right to recover the amount thereof, together with interest at the maximum lawful rate and the non-payment thereof when due shall constitute a material default of this Agreement and be a basis for termination of this Agreement.

5. BINDING ON SUCCESSORS & ASSIGNS. The Aerial Easement granted herein and all rights, privileges, benefits and burdens created in this Agreement are covenants running with the land, perpetually binding on and inuring to the benefit of the parties and their

respective successors and/or assigns. All rights, privileges and benefits granted herein to the parties shall benefit their successors and assigns in title during their respective periods of title-ownership.

6. CITY CODE. Nothing in this Agreement grants or allows the GRANTEE or its successors, assigns, tenants or others, the right to make any improvements, take any actions, or carry out any, activities on or related to the Aerial Easement that violate the City's Code of Ordinances and CITY's rules and regulations. All actions, activities, events, improvements and other matters allowed pursuant to this Agreement must comply with the City's Code, rules and regulations.

7. CITY'S RIGHTS.

A. East Aerial Easement Area. Subject to the Notice of Restriction limitations on the CITY over the East Aerial Easement Area during the effectiveness of the Notice of Restriction, neither this Agreement, the East Aerial Easement granted herein, nor anything within this Agreement prohibits or limits the CITY's rights to develop, redevelop, improve, use, modify, remove or otherwise take any actions modifying the physical conditions of the East Aerial Easement Area and the property owned by the CITY abutting the East Aerial Easement Area. If the CITY exercises its rights after thirty (30) years after the Effective Date such that the balcony or balconies constructed in the East Aerial Easement Area is or are removed or modified in order to allow the CITY to use or occupy the space occupied by any or all of such balconies, the CITY shall be responsible for all reasonable costs for the removal or modification, architectural design and review and sealing and covering the balcony opening into the building, all with the understanding that such work will be completed in a manner that will maintain the architectural integrity of the building to the reasonable satisfaction of the GRANTEE.

B. North and South Aerial Easement Areas. Neither this Agreement, the North Aerial Easement, the South Aerial Easement, nor anything within this Agreement, prohibits or limits the CITY's rights to develop, improve, use, modify, remove or otherwise take any actions modifying the physical conditions of the North and/or South Aerial Easement Areas and the rights of ways abutting such Aerial Easement areas.; However, in the event the CITY exercises its rights expressed herein after thirty (30) years after the Effective Date, or within thirty (30) years after the Effective Date, such that any balconies constructed within the North or South Aerial Easement Areas are removed or modified in order to allow the CITY to use or occupy the space created by such removal or modification ("CITY's Exercise"), the CITY shall be responsible for the reasonable costs for the removal or modification, architectural design and review, and the sealing and covering of the balcony opening into the building, all with the understanding that such work will be completed in a manner that will maintain the architectural integrity of the building to the reasonable satisfaction of the GRANTEE.

8. GRANTEE. Each of the entities constituting the GRANTEE are jointly and severally bound to GRANTEE's obligations under this Agreement.

9. TAXES. In the event any ad valorem real property taxes, sales taxes, or other taxes, fees or assessments are imposed or levied on or become due or any for the Aerial Easement, GRANTEE shall be responsible for and pay such.

10. RECORDING, TERMINATION AND AMENDMENT. This Agreement shall be recorded in the Public Records of Orange County, Florida. This Agreement may only be terminated or amended by an instrument in writing and executed by the parties benefitting under this Agreement as identified at the time of such termination; provided, however, in the event the Benefited Property has been condominiumized or divided such that it is owned or controlled by an association or organization, such association or organization may execute the termination or amendment and such shall bind all of the owners of the Benefited Property, or if the Benefited Property has been condominiumized or divided and there is no single association or organization that owns or controls the Benefited Property, only those owners of the Benefited Property that have rights to use the Aerial Easement shall be required to execute the writing and such shall bind all of the owners of the Benefited Property.

11. GOVERNING LAW and VENUE. The laws of the State of Florida shall govern this instrument. Any legal action instituted hereunder, arising from or concerning this Agreement shall be brought in a court of proper jurisdiction in Orange County, Florida. Nothing contained in this Agreement shall create any rights in the general public.

Signed, sealed and delivered
in the presence of:

GRANTEE:

252 WEST PLANT STREET, LLC

(Witness Signature)

(Witness Print Name)

(Witness Signature)

(Witness Print Name)

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA:
COUNTY OF ORANGE:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as Member of _____, a Florida limited liability company.

(Notary Public Signature)

(Notary Public Print Name)
My Commission Expires:

Personally Known _____ OR Produced Identification _____
Type of Identification: _____

**WEST PLANT STREET PARTNERS,
LLC**

(Witness Signature)

(Witness Print Name)

By: _____

Print Name: _____

Title: _____

(Witness Signature)

(Witness Print Name)

STATE OF FLORIDA:
COUNTY OF ORANGE:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as Member of _____ a Florida limited liability company.

(Notary Public Signature)

(Notary Public Print Name)
My Commission Expires:

Personally Known _____ OR Produced Identification _____
Type of Identification: _____

**This Instrument was prepared by:
and Should be returned to:**

Daniel W. Langley
Fishback, Dominick, et. al.
1947 Lee Road
Winter Park, Florida 32789

Part of Tax Parcel Identification # _____

NON-EXCLUSIVE SUBORDINATE SEATING EASEMENT AGREEMENT

THIS NON-EXCLUSIVE SUBORDINATE SEATING EASEMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2014, by and between the CITY OF WINTER GARDEN, a Florida municipal corporation, with its mailing address at 300 West Plant Street, Winter Garden, Florida 34787, hereinafter referred to as the CITY and 252 W. Plant Street, LLC, a Florida limited company, and West Plant Street Partners, LLC, a Florida limited company, with their collective mailing address at 308 S. Dillard Street, Winter Garden, Florida 34787, hereinafter collectively referred to as GRANTEE.

GRANTEE is the fee simple owner of property situate in Orange County, Florida, and described as set forth on **Exhibit "1"** attached hereto and made a part hereof (the “Benefited Property”); and

CITY is the local government entity with ownership, operation and control of that area described on the attached **Exhibit “2”** adjacent to the Benefited Property and which area described on the attached **Exhibit “2”** is referred to as the “Seating Easement Area.”

WHEREAS, CITY and GRANTEE have entered into that certain recorded NOTICE OF RESTRICTION (“Notice of Restriction”) recorded in the public records of Orange County, Florida, on the same date this Agreement is recorded in such records, which Notice of Restriction affects City Parcel 1 as described in said Notice of Restriction within which area is located the Seating Easement Area referenced in this Agreement and which Notice of Restriction is effective for a period of thirty years (30) from the Effective Date of the Notice of Restriction.

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged and agreed by the parties, GRANTEE and CITY hereby agree as follows:

1. **NON-EXCLUSIVE SEATING EASEMENT.** CITY does hereby establish and grant to GRANTEE a non-exclusive, conditional, subordinate and appurtenant easement, on, over, across and through the areas described as the Seating Easement Area to place and use non-permanent seating and tables within the Seating Easement Area for use by customers, patrons, invitees and employees of the business or businesses located and operating upon or within the Benefited Property, subject to the terms, conditions and provisions of this Agreement (hereinafter collectively referred to as the “Seating Easement.”

2. **SEATING EASEMENT LIMITATIONS AND GRANTEE’S OBLIGATIONS.** The Seating Easement granted herein is an easement appurtenant to the Benefited Property and

the GRANTEE's use of the Seating Easement Area and Seating Easement rights hereunder are only exercisable in conjunction with the principal use of the Benefited Property and GRANTEE's rights and use are subordinate to the CITY's rights to control, use, operate and develop, subject to the Notice of Restriction, the Seating Easement Area.

A. GRANTEE, at its expense shall keep and maintain the Seating Easement Area in a good, clean and safe condition.

B. GRANTEE shall not build, construct, alter, improve, or create, nor permit others to build, construct, alter, improve, or create any signs, railings, buildings or other structures that attach to the real property within the Seating Easement Area, nor shall GRANTEE make or allow any physical changes or alterations or improvements to the real property and improvements within the Seating Easement Area.

C. GRANTEE shall not dispose of any hazardous wastes, hazardous substances, petroleum products, trash or other adverse matters in, on, through or into the Seating Easement Area. GRANTEE shall be liable for any and all damages, penalties, claims, cleanups, remediations, assessments, lawsuits, disputes, attorneys' fees and other adverse matters which in any way relate to GRANTEE's breach or violation of GRANTEE's obligations under this Agreement.

3. INDEMNIFICATION. GRANTEE agrees to indemnify and hold harmless CITY and its Commissioners, officers, agents, and employees from any and all suits, actions, causes of action, liabilities, claims, damages and judgments related to GRANTEE's exercise of its rights under this Agreement and any breach by GRANTEE's of this Agreement.

4. INSURANCE. GRANTEE shall, at GRANTEE's own cost and expense, maintain and provide general public liability insurance for GRANTEE's use of the Seating Easement for the benefit and protection of the CITY and GRANTEE in an amount not less than \$1,000,000.00 each person/1,000,000.00 each accident, or \$1,000,000.00 each occurrence/\$2,000,000.00 aggregate. Those amounts shall be increased at the request of the City to amounts deemed appropriate by the GRANTEE. Said policy of insurance shall cover the GRANTEE and the CITY shall be named as an additional insured under said policy as to general public liability and as a loss payee as to property damage. A certificate of said insurance shall be delivered to the City at, or prior to any use of the Seating Easement Area and once per year together with proof of payment of the premium thereon, and shall contain thereon an undertaking by the insurer to give the City not less than thirty (30) days written notice of any cancellation, or change in the scope of coverage, of such policy. Proof of payment of renewal premiums of said policy shall be furnished to the City not less than thirty (30) days prior to the expiration date of any such policy. If GRANTEE fails to comply with the requirements hereof, as to insurance, the City may obtain such insurance and keep the same in effect, and GRANTEE shall pay the City therefore upon demand; and if not paid as required, the City shall have the right to recover the amount thereof, together with interest at the maximum lawful rate and the non-payment thereof when due shall constitute a material default of this Agreement and be a basis for termination of this Agreement.

5. BINDING ON SUCCESSORS & ASSIGNS. The Seating Easement granted herein and all rights, privileges, benefits and burdens created in this Agreement are covenants

running with the land, binding on and inuring to the benefit of the parties and their respective successors and or assigns. All rights, privileges and benefits granted herein to the parties shall benefit their successors and assigns in title during their respective periods of title-ownership.

6. CITY CODE. Nothing on this Agreement allows the GRANTEE or its successors, assigns, tenants or others, the right to take any actions, carry out activities, or make any improvements or other matters that violate the City's Code of Ordinance and CITY's rules and regulations. All actions, activities, events, improvements and other matters allowed pursuant to this Agreement must comply with the City's Code, rules and regulations.

7. CITY'S RIGHTS. Subject to the Notice of Restriction limitations on the CITY over the Seating Easement Area during the effectiveness of the Notice of Restriction, neither this Agreement, the Seating Easement granted herein, nor anything within this Agreement prohibits or limits the CITY's rights to develop, redevelop, improve, use, modify, remove or otherwise take any actions modifying the physical condition of and/or improvements located within the Seating Easement Area and the property owned by the CITY abutting the Seating Easement Area; provided however, as long as the CITY elects, in the CITY's sole and absolute discretion, to use or continue to use the Seating Easement Area to serve as an outside area for seating and tables, GRANTEE's non-exclusive subordinate Seating Easement shall continue. Subject to the Notice of Restriction limitations on the CITY over the Seating Easement Area during the effectiveness of the Notice of Restriction, if and when the CITY, in its sole and absolute discretion, chooses to develop, redevelop, improve, use, modify or otherwise take actions that do not allow for or are inconsistent with outside seating in the Seating Easement Area or would modify the physical condition of the Seating Easement Area which makes or will make use of Seating Easement Area by GRANTEE inconsistent with CITY's changes to the Seating Easement Area, as determined by CITY, the Seating Easement shall terminate and GRANTEE shall have no further rights under this Agreement.

8. GRANTEE. Each of the entities constituting the GRANTEE are jointly and severally bound to GRANTEE's obligations under this Agreement.

9. TAXES. In the event any ad valorem real property taxes, sales taxes, or other taxes, fees or assessments are imposed or levied on or become due or any for the Seating Easement, GRANTEE shall be responsible for and pay such.

10. RECORDING, TERMINATION AND AMENDMENT. This Agreement shall be recorded in the Public Records of Orange County, Florida. This Agreement may only be terminated or amended by an instrument in writing and executed by the parties benefitting under this Agreement as identified at the time of such termination; provided, however, in the event the Benefited Property has been condominiumized or divided such that it is owned or controlled by an association or organization, such association or organization may execute the termination or amendment and such shall bind all of the owners of the Benefited Property, or if the Benefited Property has been condominiumized or divided and there is no single association or organization that owns or controls the Benefited Property, only those owners of the Benefited Property that have rights to use the Seating Easement shall be required to execute the writing and such shall bind all of the owners of the Benefited Property.

11. GOVERNING LAW and VENUE. The laws of the State of Florida shall govern this instrument. Any legal action instituted hereunder, arising from or concerning this Agreement shall be brought in a court of proper jurisdiction in Orange County, Florida. Nothing contained in this Agreement shall create any rights in the general public.

IN WITNESS WHEREOF, GRANTEE and CITY have caused this Seating Easement Agreement to be executed as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

GRANTEE:

252 WEST PLANT STREET , LLC

Print Name:_____

By:_____

Print Name:_____

Title:_____

Print Name:_____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ 2013 by _____ as _____ of _____. He personally known to me or has produced _____ as identification.

Print Name:_____

Notary Public, State of _____

WEST PLANT STREET PARTNERS, LLC

Print Name:_____

By:_____

Print Name:_____

Title:_____

Print Name:_____

STATE OF FLORIDA:
COUNTY OF ORANGE:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as Member of _____, a Florida limited liability company.

(Notary Public Signature)

(Notary Public Print Name)

My Commission Expires:

Personally Known _____ OR Produced Identification _____
Type of Identification: _____

Signature

Print

Signature

Print

CITY OF WINTER GARDEN

Michael Bollhoefer, City Manager

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Michael Bollhoefer as City Manager of the CITY OF WINTER GARDEN, a Florida municipal corporation, who is personally known ____ or who produced identification of the following type:

NOTARY PUBLIC
STATE OF _____

Notary Stamp:

Signature

Print Name



16 EAST PLANT STREET
 WINTER GARDEN, FLORIDA • 34787
 (407) 654-5355 / (407) 654-5356 FAX

BOUNDARY AND TOPOGRAPHIC SURVEY
 OF
CITY OF WINTER GARDEN
 SECTION 23, TOWNSHIP 22 SOUTH, RANGE 27 EAST
 CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

FOR:
CITY OF WINTER GARDEN, FLORIDA

FOR THE LICENSED BUSINESS FIRM #5570 BY:

 GERALD M. JOHNSTON

| DATE | REVISIONS |
|---------|----------------------------|
| 4/10/14 | revised legal descriptions |
| 8/30/13 | revised tract boundaries |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

JOB # 20120238
 DATE: 06/09/13
 SCALE: 1 INCH = 10 FEET
 CALC BY: EJT
 FIELD BY: JM
 DRAWN BY: EJT
 CHECKED BY: ALB



LEGAL DESCRIPTION:
 TRACT 1
 The West 77.54 feet of the East 367.30 feet of Lot 7, Block D, FRIES PLAT OF WINTER GARDEN, as recorded in Plat Book E, page 16 of the Public Records of Orange County, Florida, 19mg East of Highland Avenue. Containing 7,658 square feet, or 0.18 acres, more or less.

LEGAL DESCRIPTION:
 TRACT 2
 The West 119.06 feet of the East 289.76 feet of Lot 7, Block D, FRIES PLAT OF WINTER GARDEN, as recorded in Plat Book E, page 16 of the Public Records of Orange County, Florida. Containing 13,900 square feet, or 0.32 acres, more or less.

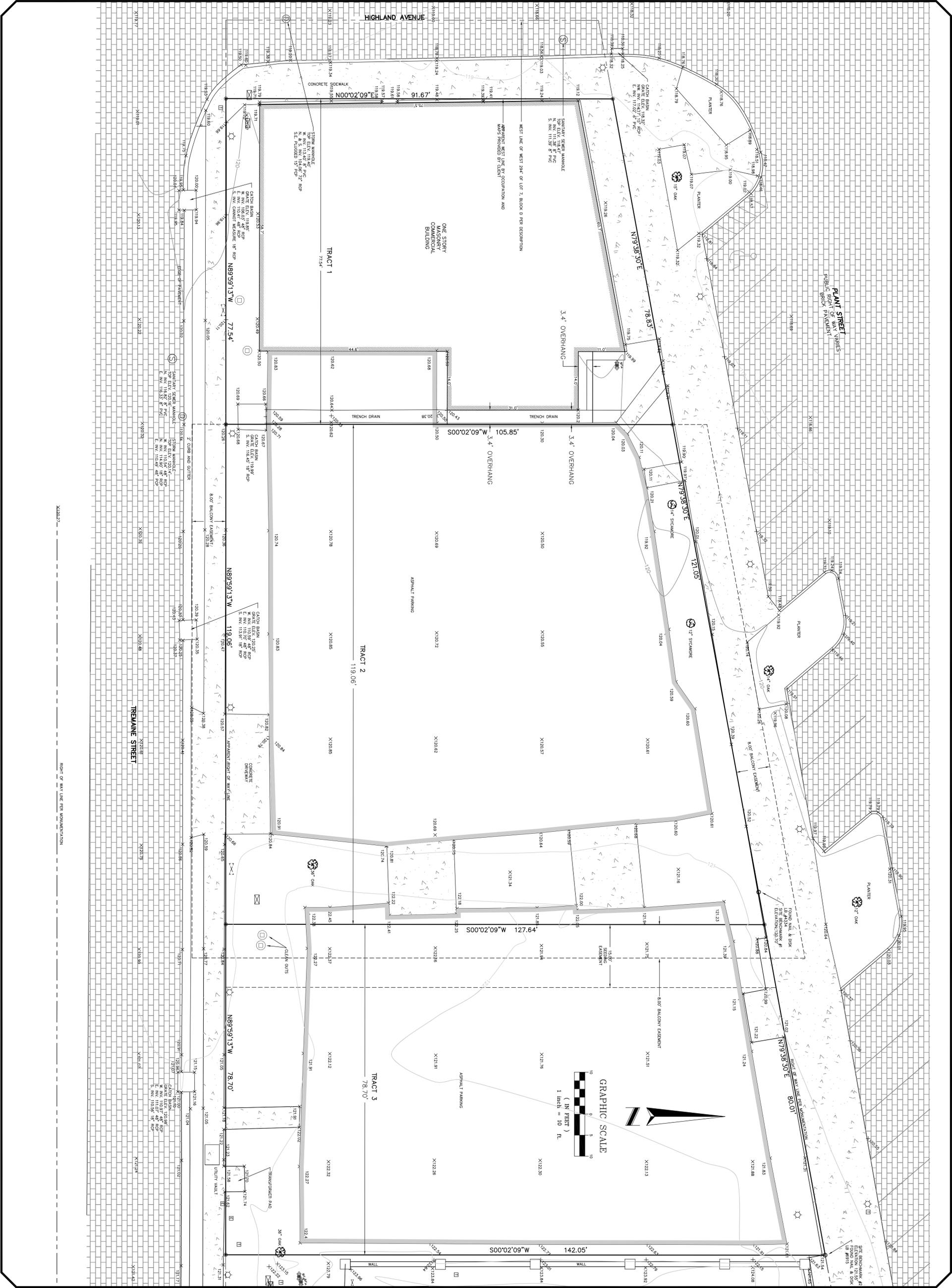
LEGAL DESCRIPTION:
 TRACT 3
 The West 78.70 feet of the East 170.70 feet of Lot 7, Block D, FRIES PLAT OF WINTER GARDEN, as recorded in Plat Book E, page 16 of the Public Records of Orange County, Florida. Containing 10,612 square feet, or 0.24 acres, more or less.

LEGEND:

| | | | |
|--|---|--|--------------------------------------|
| | Denotes chain link fence | | Denotes right-of-way |
| | Denotes wall | | Denotes sign |
| | Denotes fire hydrant | | Denotes traffic signal / control box |
| | Denotes water valve | | Denotes concrete power pole |
| | Denotes meter box | | Denotes wood power pole |
| | Denotes well | | Denotes guy pole |
| | Denotes dirt road | | Denotes overhead power |
| | Denotes concrete | | Denotes guy wire |
| | Denotes edge of pavement with concrete curb | | Denotes electric box and / riser |
| | Denotes edge of pavement | | Denotes light pole |
| | Denotes sanitary manhole | | Denotes gas marker |
| | Denotes storm manhole | | Denotes gas valve |
| | Denotes underground drainage pipes | | Denotes telephone riser |
| | Denotes catch basin | | Denotes mail box |
| | Denotes mitered end section | | Denotes gas meter |
| | Denotes centerline | | Denotes reinforced concrete pipe |
| | Denotes set 1/2" iron rod & cap LB #6723 | | Denotes corrugated metal pipe |
| | Denotes water valve | | Denotes water valve |

NOTES

Bearings shown hereon are assumed and based on the South right of way line of Plant Street as having a bearing of North 79°38'30" East.
 Legal descriptions shown hereon were provided by the client.
 There may be easements and restrictions of record and/or private agreements not furnished to this surveyor or shown on this boundary survey that may affect property rights and/or land use rights of the subject property.
 This Survey was performed without the benefit of a Title Commitment or abstract of title.
 There may be environmental issues and/or other matters regulated by various Departments of Federal, State or Local Governments affecting the subject property not shown on this survey.
 Subject property shown hereon is in Zone X according to Flood Insurance Rate Map number 12095D0205 F, map date Sept. 25, 2009.
 This Survey was performed for the sole and exclusive benefit of the entities listed hereon and shall not be relied upon by any other entity or individual whatsoever.
 This Survey is not valid without the signature and original raised seal of a Florida licensed surveyor and mapper.
 Underground utilities and improvements were not located, unless shown hereon.
 Elevations as shown hereon are based on National Geodetic Survey monument PID AK0054, having a published elevation of 118.83 feet, North American Vertical Datum of 1988.
 Last date of field survey: December 20, 2012.



RIGHT OF WAY LINE PER DOCUMENTATION

FOR:
CITY OF WINTER GARDEN, FLORIDA

BOUNDARY AND TOPOGRAPHIC SURVEY
OF
CITY OF WINTER GARDEN
SECTION 23, TOWNSHIP 22 SOUTH, RANGE 27 EAST
CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

ALLEN & COMPANY
Professional Surveyors & Mappers

16 EAST PLANT STREET
WINTER GARDEN, FLORIDA • 34787
(407) 654-5355 / (407) 654-5356 FAX

| DATE | REVISIONS |
|---------|----------------------------|
| 4/7/14 | revised legal descriptions |
| 8/30/13 | revised tract boundaries |
| | |
| | |
| | |

JOB # 20120238
DATE: 06/09/13
SCALE: 1 INCH = 10 FEET
CALC BY: JH
FIELD BY: JH
DRAWN BY: EST
CHECKED BY: ALB