



WINTER GARDEN
CITY OF WINTER GARDEN
DEVELOPMENT REVIEW COMMITTEE
MINUTES
November 12, 2014

The Development Review Committee (DRC) of the City of Winter Garden, Florida, met in session on Wednesday, November 12, 2014 in the City Hall Commission Chambers.

Agenda Item #1: CALL TO ORDER

Chairman/Community Development Director Ed Williams called the meeting to order at 10:05 a.m. The roll was called and a quorum was declared present.

PRESENT

Voting Members: Community Development Director Ed Williams, City Engineer Art Miller, Building Official Mark Jones, and Assistant Director of Operations Mike Kelly on behalf of Assistant City Manager for Public Services Don Cochran

Others: City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, Assistant City Attorney Dan Langley, Manager of Community Development Steve Pash, Planner Kelly Carson, Planner Nadine Avola and Customer Service Representative Colene Rivera

ABSENT

Voting Members: Economic Development Director Tanja Gerhartz and Assistant City Manager for Public Services Don Cochran

APPROVAL OF MINUTES

Agenda Item #2:

Approval of minutes from regular meeting held on October 29, 2014.

Motion by City Engineer Miller to approve the above minutes. Seconded by Building Official Jones, the motion carried unanimously 4-0.

10:06 am Break in Meeting
10:08 am Meeting Resumed

DRC BUSINESS

Agenda Item #3: Four Corners - PUD

Marsh Road – 17500

Standard Pacific of Florida

Maury Boyd of McKinnon Corp, Scott Stearns of Dewberry, Tom Sullivan of Lowndes, Drosdick, Doster Kantor & Reed, PA, Dana Boyte of Dewberry Inc., John Florio of Donald W McIntosh Associates, Inc., Travis Rentz of Clark, Albush, Rentz, LLD, Ashley Boyd of McKinnon Corp, Stephen Polachek of Standard Pacific and CeCe Dela Cerna of Stanpac, applicants for the project were in attendance for discussion. The following items were reviewed and discussed:

Exhibit A is a draft copy of Ordinance 15-04.

This was distributed at the meeting for review and discussion that contained a proposed set of conditions of approval. This was reviewed page by page – 10 pages total. 1st page is a boiler plate, 2nd page is identification of zones and uses. Zones were further explained. Clarified the zones and mixed uses for this PUD only. 3rd page is design criteria and architectural standards. The drive-through use being prohibited was discussed. Applicants can come back with proposed plan and see about possibility of including drive-thrus as a special exception provision. 4th page is Mixed Use zone and the applicants inquired about residential density of the PUD. Applicants inquired about attached single family dwellings in the PUD. City staff advised as long as it is within the 3 dwelling units per acre criteria it would be acceptable. 5th page has setbacks and lot standards. City staff explained that there is concern about two-story commercial near residential zoning area. City Staff explained that the setbacks have been adjusted since last discussion with this group. Cross access requirement were clarified. 6th – 9th pages are standard conditions and 10th page is signature page. Applicants inquired about drainage and landscaping. City staff advised that drainage requirements be designed and incorporated into landscaping features is encouraged as part of the PUD but will still have to meet the water management requirements. Applicants inquired about size of utility lines for project. This is left to be determined in the future as specific plans and designs are developed. Discussion took place about residential component for capacity enhancement delay with the school board.

Exhibit B is a draft copy of Four Corners Developer's Agreement.

It was distributed at the meeting for review and discussion. City Staff explained that this is very similar to other agreements along Marsh Road but tailored specific to the Four Corner's PUD. Brief overview of what the development agreement includes and specifics to the project and timelines. Applicants will review the Developer's Agreement and come back to staff with comments. Applicant inquired about incremental payment of prop shares in the agreement. City Staff explained that this is not in the agreement but applicants can propose that. The second inquiry was about concurrency vesting for Four Corners and this language is in the agreement.

Discussion took place about potential for future developments on additional property beyond this current PUD project. These will need to be considered as separate projects and will address in the future specific to that project. Discussion took place about when next meeting can be scheduled. Planner Carson will spear head the coordination of this meeting – tentatively set for 10:00 am, Monday, November 17th.

Motion by Community Development Director Williams to continue to work on this project, review and submit comments for Ordinance 15-04 and Developer's Agreement

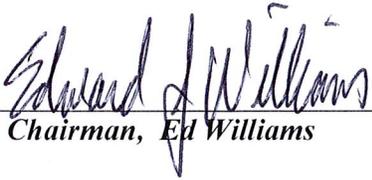
and plan to return for another full DRC review cycle. City Engineer Miller, seconded; the motion carried unanimously 4-0.

ADJOURNMENT

There being no more business to discuss, the meeting was adjourned at 10:39 a.m. by Chairman/Community Development Director Ed Williams

APPROVED:

ATTEST:



Chairman, Ed Williams



DRC Recording Secretary, Colene Rivera

ORDINANCE 15-04

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 23.64 ± ACRES OF CERTAIN REAL PROPERTY GENERALLY LOCATED ON THE NORTH, SOUTH, EAST, AND WEST CORNERS OF THE INTERSECTION OF MARSH ROAD AND WILLIAMS ROAD AT 17416, 17451, 17500, AND 17501 MARSH ROAD AND 2002 WILLIAMS ROAD, FROM CITY NZ TO CITY UVPUD; PROVIDING FOR CERTAIN UVPUD REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE. (Four Corners UVPUD)

WHEREAS, the Owner(s) of real property generally described as approximately 23.64 ± acres of certain real property generally located on the north, south, east, and west corners of the intersection of Marsh Road and Williams Road at 17416, 17451, 17500, and 17501 Marsh Road and 2002 Williams Road in Winter Garden, Florida, being more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), desire to rezone their property from City NZ to City UVPUD, and

WHEREAS, after public notice and due consideration of public comment, the City Commission of the City of Winter Garden hereby finds and declares the adoption of this Ordinance and the proposed development of the Property is consistent with the City of Winter Garden Comprehensive Plan, the Sixth Amendment to the Restated Interlocal Agreement for Joint Planning Area between Orange County and the City of Winter Garden, and the City of Winter Garden Code of Ordinances, and

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

SECTION 1: Rezoning. After due notice and public hearing, the zoning classification of the Property, as described in Exhibit "A" attached hereto, is hereby rezoned from City NZ to City UVPUD in the City of Winter Garden, Florida subject to the following conditions, provisions and restrictions:

- a. **Conceptual Plan-** All development on the Property must substantially conform to the requirements identified in the Four Corners Urban Village Planned Unit Development Preliminary Plan attached hereto as Exhibit "B." Should any conflict be found between this Ordinance and the Four Corners Urban Village Planned Unit Development Preliminary Plan attached hereto as Exhibit "B", then the standards and conditions established by this Ordinance shall control.

- b. **Zoning-** Unless specifically noted elsewhere in Exhibit "B" attached hereto, all development on the Property must comply with the general zoning requirements of the Urban Village Planned Unit Development Zoning District.
- c. **JPA-** Unless specifically noted elsewhere in Exhibit "B" attached hereto, all development of the Property must conform to the requirements of the Sixth Amendment to the Restated Interlocal Agreement for Joint Planning Area between Orange County and the City of Winter Garden dated January 24, 2007.

d. **Permitted, Special Exception, and Prohibited Uses**

1. **Low Density Residential Zone**

- a. **Permitted Uses** – The Permitted Uses allowed in this zone within the subject property are as follows:

- Single Family Residential Dwelling Units
- Public Parks and Recreation Facilities
- Retention Areas

- b. **Prohibited Uses and Structures**– The Prohibited Uses and Structures in this zone within the subject property are as follows:

- Commercial Uses
- Communication Towers
- House trailers in vacant lots or residential yards
- Any structure or use of a nature not specifically or provisionally permitted in this division.

2. **Mixed Use Zone**

- a. **Permitted Uses** - The Permitted Uses allowed in this zone within the subject property are as follows:

- All uses permitted in the Low Density Residential Zone.
- Retail Stores and shops of a neighborhood convenience.
- Dry Cleaning and Laundry Facilities
- Bakeries and neighborhood food service establishments
- Drug Stores and Sundries
- Professional Offices and Studios
- Personal Services
- Laboratories and Clinics

- Multi-Family Residential Dwelling Units
- Live / Work Units
- Upper-Story Residential Dwelling Units
- Nursing Homes
- Civic Facilities

b. Special Exception Uses and Structures – The Special Exception Uses and Structures in this zone within the subject property are as follows:

- Outdoor Sales Displays
- All types of businesses in buildings not of standard construction or without restroom facilities

c. Prohibited Uses and Structures – The Prohibited Uses and Structures in this zone within the subject property are as follows:

- Manufacturing and industrial activities, transportation terminals, storage warehousing and other activities of a similar nature.
- Fuel sales
- * • Buildings with drive-thru lanes
- All uses not specifically or provisionally permitted in this division; any use not in keeping with a low-density commercial character.
- Communication Towers
- Schools / Daycares

e. Design Criteria/Architectural Standards-

1. Low Density Residential Zone:

a. Architectural Review - Elevations of the front and rear building exposures and any side building exposures visible from a public right-of-way must be provided and approved as part of the site plan approval process.

b. Lot Size- Minimum lot width shall be 75 feet.

c. Density- Maximum residential density permitted in this zone shall be 3 dwelling units per acre.

d. Building Height- Maximum building height shall be 35 feet.

e. Minimum Living Area- Minimum living area for each residential unit shall be 1,500 square feet.

f. Signage- All signage shall be reviewed and permitted by the City of Winter Garden.

g. Setbacks and Required Yards-

i. All residential development shall be set back no less than 100 feet from the limits of Unincorporated Orange County parcels located outside the JPA 6 Expansion Area.

ii. Side yard setbacks shall be no less than 7.5 feet and shall be unobstructed by any mechanical equipment including, but not limited to, AC units, pool equipment, water filtration systems, gas tanks, propane tanks, and any other utility or service equipment; rear yard setback shall be no less than 25 feet; and front yard setback shall be no less than 25 feet with the exception of homes with 5 foot recessed garage or side loaded garage which shall maintain a 20 foot front yard setback. Any landscaping or fencing installed within the setback areas shall be designed and constructed so as not to interfere with any easement function.

2. Mixed Use Zone:

a. Architectural Standards- All commercial buildings and sites shall adhere to the Four Corners Urban Village Planned Unit Development Commercial Design Guidelines, attached hereto as Exhibit "C".

b. Architectural Review- Elevations of all four building exposures must be provided and approved as part of the site plan approval process. The elevations must be compliant with the general architectural design criteria identified in Exhibit "C".

c. Landscape Design - Unless specifically identified or allowed in Exhibit "C", all commercial sites shall be required to adhere to the landscape design standards for specified commercial corridors in accordance with Chapter 118, Article X, Division 3 of the City of Winter Garden Code of Ordinances.

d. Density- Maximum residential density permitted in this zone shall be 12 dwelling units per acre.

e. **Commercial Floor Area Ratio (FAR) & Maximum Area-** Non-residential uses may not exceed a FAR of 0.30. The maximum area of commercial space permitted within this UVPUD shall be 90,000 square feet for retail uses and 80,000 for professional office uses not to exceed a combined total of 115,000 square feet.

f. **Building Height-** Maximum building height shall be 40 feet, not to exceed two stories.

g. **Signage-** All signage shall be reviewed and permitted by the City of Winter Garden. Unless specifically identified or allowed in Exhibit "C", all signs for commercial uses shall comply with the City of Winter Garden's commercial sign standards in accordance with Chapter 102, Article III, Division 3 of the City of Winter Garden Code of Ordinances.

h. **Cross Access Corridors-** Use of cross-access corridors and driveways are required for commercial properties located adjacent to Marsh Road and Williams Road.

i. **Setbacks and Lot Standards-**

i. All commercial development shall be set back no less than 500 feet from the limits of Unincorporated Orange County parcels located outside the JPA 6 Expansion Area.

ii. All commercial and mixed-use development shall be set back no less than 50 feet adjacent to Marsh Road and 25 feet adjacent to Williams Road. All residential development shall be set back no less than 50 feet adjacent to Marsh Road and 25 feet adjacent to Williams Road.

iii. One story commercial buildings shall be set back no less than 50 feet when located adjacent to a residential parcel. Two story commercial buildings shall be set back no less than 100 feet when located adjacent to a residential parcel.

iv. Distances between structures in this zone shall comply with the Urban Village Planned Unit Development requirements in accordance with Chapter 118, Article V, Division 2, Subdivision II.

- v. **Setbacks:**
 - a. Commercial structures, Mixed-Use structures, and Multi-Family Residential units: Internal side yard setbacks shall be no less than 10 feet; Corner side yard setbacks shall be no less than 20 feet; rear yard setbacks shall be no less than 15 feet; and front yard setback shall be no less than 20 feet.
 - b. Single Family Residential Uses: All single-family residential uses shall comply with the setback requirements of the Low Density Residential Zone.

f. Common Recreation and Open Space-

The Property is located within the Resource Protection Overlay, and in compliance with the City of Winter Garden Comprehensive Plan Future Land Use Element Policies 1-3.1.7 and 1-3.1.8 will provide no less than 25% Wekiva Study Area Open Space.

To the greatest extent possible, 5% of the developable area of the Property shall be set aside for active, dry-land recreational use. In the event that this requirement cannot be met wholly or in part, then a financial contribution in accordance with Chapter 110, Article V, Division 2 of the City Code of Ordinances shall be made to the City Recreation Fund to fulfill the requirement.

g. Setback and Buffer Areas

Permitted uses within all setback and buffer areas include retention, passive recreation, and landscape areas.

h. Lighting

- a. **Dark Skies Requirement**
- b. **Lighting along Marsh Road**
- c. **Lighting along Williams Road**
- d. **Internal Site Lighting**

i. Staff Conditions- All development on the Property must comply with the following conditions:

- 1. Extension of utility lines to proposed development will be at the developer's expense.

2. A master utilities analysis is required to be provided to the City for review prior to approval of preliminary plat and may include an upsizing agreement with the City.
3. Permits or exemptions are required from SJRWMD (stormwater) and FDEP (water, wastewater, NPDES) prior to construction.
4. Provide flow calculations for Utility Department verification of water and sewer impact fees. Final plans will not be approved for construction until utility impact fees have been paid and FDEP permits have been issued.
5. No fill or runoff will be allowed to discharge onto adjacent properties without the necessary easements; existing drainage patterns shall not be altered. Provide erosion control plan prior to issuance of building permit. Site construction shall adhere to the City of Winter Garden erosion and sediment control requirements as contained in Chapter 106 – Stormwater of the City of Winter Garden Code of Ordinances.
6. Once the plans are approved, a preconstruction meeting is required prior to any commencement of construction. The applicant shall pay all engineering review and inspection fees at the preconstruction meeting prior to construction. Provide certified engineer's cost estimate or executed construction contract as basis of inspection fees (2.25%).
7. The City of Winter Garden is not authorizing or approving drainage discharges onto private property or property owned or controlled by others. Obtaining permission, easements or other approvals that may be required to drain onto private property is the Owner/Developer's responsibility. Should the flow of stormwater runoff from, or onto adjacent properties be unreasonable or cause problems, the City will not be responsible and any corrective measures required will be the responsibility of the Owner. Maintenance of on-site or off-site drainage improvements will be the responsibility of the Owner, not the City.
8. Providing positive drainage within the site is the responsibility of the Design Engineer. The City will not maintain any portion of the on-site drainage systems or parking lot(s).
9. If approval is granted by the City of Winter Garden, it does not grant authority to enter, construct or otherwise alter the property of others, nor does it waive any permits that may be required by federal, state, regional, county, municipal or other agencies that

may have jurisdiction.

10. Required buffer areas and setbacks from Karst features are shown on Exhibit "B". These areas shall be maintained in compliance with the Wekiva Protection Act and the City of Winter Garden Comprehensive Plan. One access on Williams Road through the north part of the Karst buffer is permitted to be constructed for access to the northeastern parcel.

SECTION 2: *General Requirements.*

- a. **Development Agreement-** A Development Agreement must be approved and recorded prior to adoption of this rezoning ordinance. The Development Agreement shall include, but is not limited to, fair-share costs for intersection improvements, utilities, right-of-way dedication, water tank site dedication, transportation/roadway system, design standards, impact fees, stormwater, signage, and schools.
- b. **Stand Alone Clause-** If the development is phased, each phase of development of the Property must operate as an individual unit in that each particular phase will be able to stand-alone in the event that no other phase is developed.
- c. **Land Development Approvals and Permits-** This Ordinance does not require the City to issue any permit or approval for development, construction, preliminary plat, final plat, building permit, or other matter by the City relating to the Property or the project or any portion thereof. These and any other required City development approvals and permits shall be processed and issued by the City in accordance with procedures set forth in the City's Code of Ordinances and subject to this Ordinance.
- d. **Amendments-** Minor amendments to this Ordinance will be achieved by Resolution of the City Commission of the City of Winter Garden. Major amendments to this Ordinance will require approval of the City Commission of the City of Winter Garden by Ordinance.

SECTION 3: *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 4: *Non-Severability.* Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 5: *Effective Date.* This Ordinance shall become effective upon adoption at its second reading.

FIRST READING AND PUBLIC HEARING: _____, 2015.

SECOND READING AND PUBLIC HEARING: _____, 2015.

ADOPTED this _____ day of _____, 2015, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

Exhibit "A"

This Instrument Prepared by and Return to:

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

Tax Parcel Numbers: 06-23-27-4284-08-410
 06-23-27-4288-08-330
 06-23-27-4288-08-302
 06-23-27-4288-08-310

**FOUR CORNERS
DEVELOPER'S AGREEMENT**

THIS DEVELOPER'S AGREEMENT (the "**Agreement**") is made this ____ day of _____, 2014, by and among the CITY OF WINTER GARDEN, a Florida municipal corporation (the "**City**"), and Maurice M. Boyd and McKinnon Corp (collectively, the "**Developer**").

RECITALS:

- A. Developer is the fee simple owner of those certain four parcels of real property generally located at each corner of the intersection of Marsh Road and Williams Road in Winter Garden, Orange County, Florida, being more particularly described on **Exhibit "A"** attached hereto (the "**Subject Property**"); and
- B. The Subject Property represents a portion of the Urban Village area depicted on Figure 1.2 in the Future Land Use Element of the City's Comprehensive Plan (the "**Urban Village Area**"); and
- C. Policy 1-1.2.12 of the Future Land Use Element of the City's Comprehensive Plan addresses development within the Urban Village Area and references an anticipated total development program to include approximately 2,140 residential dwelling units ("**RDU(s)**") and approximately 115,000 square feet of commercial uses; and
- D. The Subject Property is zoned UVPUD, Urban Village Planned Unit Development, and subject to and governed by City of Winter Garden Ordinance No. 15-04 (the "**PUD Ordinance**"); and
- E. Pursuant to the PUD Ordinance, the Subject Property is to be developed with no more than 115,000 square feet of commercial uses and up to 3 residential dwelling units per acre within the 500' Rural Settlement Buffer (the "**Project**"); and

- F. The Developer shall comply with all provisions of the PUD Ordinance in the development of the Subject Property in addition to other approvals by the City; and
- G. Development of the Project remains subject to certain approvals by the City, including, but not limited to, final site plan, construction plan, final plat , and issuance of building permits, certificates of occupancy and certificates of completion; and
- H. The impact of such a development on public infrastructure and services, including, but not limited to, roads, the connection of improvements to be constructed on the Subject Property to the City's public infrastructure, stormwater drainage, sanitary sewer, potable water, police, and fire will be significant given the infrastructure needs generated by the Project; and
- I. Development of the Subject Property at the intensity and configuration proposed requires the Developer to perform certain obligations and provide for certain mitigation of impacts of such development in order to comply with the City's Code of Ordinances, Comprehensive Plan and state law and otherwise address the impacts generated by the Project; and
- J. Developer acknowledges that there are inadequate public facilities, infrastructure and services existing at this time to adequately serve the Project and, therefore, the Developer will need to provide certain public facilities, infrastructure and services for the Subject Property, perform certain obligations and provide for certain mitigation of impacts of such development in order to comply with the City's Code of Ordinances, Comprehensive Plan, regulations, policies and state law; and
- K. The Developer acknowledges that construction of the improvements and obligations required herein, which are necessary to serve the Project and the Subject Property, will be of direct benefit to the Developer and the Subject Property; and
- L. The City has identified the need for certain improvements in order to accommodate Developer's development of the Subject Property and future surrounding development including, but not limited to, the construction of right-of-way improvements and installation of potable water mains, sanitary sewer mains, reclaimed water mains and other improvements more particularly described herein; and
- M. Pursuant to the Code of Ordinances and the PUD Ordinance, Developer is required to cause the installation, construction and extension of all public utility mainlines and other infrastructure to adequately serve the Project and

the development of the Subject Property based on minimum design requirements established by the City; and

- N. In conjunction with the Developer's development of the Subject Property and as a condition of approval of the Project, the City requires the "oversizing" of certain public infrastructure (i.e., the public utility mainlines) which are to be constructed, installed and extended for and to the Subject Property for the Project (i.e., that portion of the public utility mainlines exceeding the minimum standards for the Project as established by the City and as provided in this Agreement, with said oversizing and extension at times collectively referred to herein as "**Oversizing**"); and
- O. Said Oversizing is required for the purpose of ensuring that the City maintains the minimum standards for health, safety and welfare in the most cost-effective manner and to promote the convenience, comfort, public interest, and general welfare of the citizens of the City and to meet present and future local needs; and
- P. The Developer and City agree, as more particularly set forth herein, that the Developer, or its independent contractors, shall install, construct and extend certain oversized public utility mainlines and other public infrastructure, in consideration of City's financial contribution to the costs associated with the Oversizing of public infrastructure in connection with Phase I beyond that which is necessitated by the development of the Project; and
- Q. This Agreement is not a statutory development agreement pursuant to Chapter 163, Florida Statutes (Florida Local Government Development Agreement Act), and is being entered into by the City pursuant to the City's home rule authority and as a condition of the PUD Ordinance; and
- R. The City and the Developer desire to enter into this Agreement to memorialize certain promises, agreements, covenants and expectations pertaining to the Oversizing of the infrastructure and road improvements, the development of the Project and Subject Property, and other matters as provided for herein.

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

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

2. City Approvals. In addition to the requirements and obligations of the Developer herein, the development of the Subject Property and the Project shall be subject to the PUD Ordinance, City Code requirements, the preliminary plat, final plat subdivision, construction plans, final site plan and other development orders and permits for the Project and Subject Property, including the conditions of such development orders, approvals and permits (collectively, the "City Approvals").

3. Utility Main Lines.

A. Utility Main Lines. As part of the Developer's construction of the site infrastructure for the Project, the Developer shall, at its expense, diligently pursue the design, permitting, installation and construction of a sanitary sewer force main, potable water main and reclaimed water main from the existing point of connection on Marsh Road and extend west to the Subject Property and extending along the entire Marsh Road and Williams Road frontage of the Subject Property (collectively herein the "**Utility Main Lines**"). The potable water main line extending north to the Tanks Site shall be at least sixteen inches (16") in diameter, and the sizing of the other utility main lines shall be subject to review and approval of the City during the final design phase of the Project. Said Utility Main Lines shall be designed, permitted, installed and constructed in accordance with the City's Code, regulations, policies and requirements. Developer shall control all aspects of the construction and installation of the Utility Main Lines and shall select and hire any independent contractors to complete the work as it shall determine. The parties acknowledge that the design, permitting, installation and construction of the Utility Main Lines is an obligation of the Developer and that the Developer desires to assume such obligation for its own purposes and benefit and to provide for its design, permitting, installation and construction as part of this Agreement.

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

C. Completion. Upon completion of the Utility Main Lines, the Developer shall request the City Engineer inspect such improvements and seek to obtain a certificate of completion from the City Engineer for such improvements and as a condition precedent to receiving a certificate of completion Developer shall execute and deliver to the City: (i) invoices for construction costs of the Utility Main Lines, (ii) a two (2) year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Utility Main Lines construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record certification to the City that the Utility Main Lines has been completed in accordance with approved designed plan, (iv) the granting of utilities easements to

the City under, across and through those portions of the Subject Property needed for the City's operation, maintenance and repair of the Utility Main Lines in a form acceptable to the City, and (v) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor's warranties, if any, for the Utility Main Lines. The Utility Main Lines shall be deemed completed upon Developer satisfying all of the conditions of this Section 3 ("**Utility Main Lines Completion**").

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

4. **Marsh Road/Williams Road Intersection.**

A. In order to support the development of the Project and other properties in the Urban Village Area it is necessary to widen and improve the intersection of Marsh Road and Williams Road in a manner as generally depicted in the schematic attached hereto as **Exhibit "B"** (the "Intersection Improvements").

B. Conveyance of Right-of-Way. Developer shall, at no cost to the City, convey the approximately 1.37 +/- acres of land from the Subject Property as more specifically described in the attached **Exhibit "B"** along with that certain land owned by Developer needed for the widening and extension of North Williams Road described in **Exhibit "C"** attached hereon (collectively the "**Right-of-Way Property**") which is necessary to accommodate the Intersection Improvements and utilities serving the Project and being installed pursuant to this Agreement. The Right-of-Way Property shall be conveyed by the Developer to the City by special warranty deed free and clear of all liens and encumbrances except for those matters acceptable to the City. The Right-of-Way Property shall be conveyed to the City no later than thirty (30) days from the Effective Date of the PUD Ordinance. The form of the special warranty deed shall be subject to the approval of the City. The Developer shall, at least ten (10) days prior to the conveyance of the Right-of-Way Property to the City, provide to the City a boundary survey of the Right-of-Way Property certified to the City and a current attorney's opinion of title or a current title commitment to be followed by a policy of title insurance, evidencing that fee simple title to the Right-of-Way Property is free and clear of all liens and encumbrances except for those matters acceptable to the City. The cost and expenses related to the conveyance of the Right-of-Way Property including the cost of title work and survey shall be borne solely by the Developer. Real property taxes on the Right-of-Way Property shall be prorated as of the day before the City's acceptance of the conveyance of the same, and the prorated amount of such real property taxes attributable to the Developer shall be paid and escrowed by the Developer in accordance with the provisions of Section 196.295, Florida Statutes; provided, however, that if the conveyance occurs between November 1 and December 31, then Developer shall be responsible for real property taxes for the entire year. Developer shall comply

with the disclosure requirements of Section 286.23, Florida Statutes, with respect to the conveyance of the Right-of-Way Property to the City. Neither the Developer nor Developer's successors and assigns nor any other person or entity shall be entitled to any road impact fee credits or other compensation of any kind for, on account of, or with respect to the required conveyance of the Right-of-Way Property to the City.

C. Proportionate Fair Share Contribution. A study by the City was conducted to identify the proposed developments' traffic impact on the Marsh Road and Williams Road intersection (the "**Road Study**") and such study has determined that the Subject Property and the adjacent developments will have a significant traffic impact said intersection. A portion of the costs of the design, engineering, permitting, installation, construction, provision and completion of the Intersection Improvements shall be borne by the Developer and Subject Property consistent with the terms of this Agreement.

The Developer's share of the Intersection Improvements cost is calculated based upon Developer's/Subject Property's proposed intensity and density of uses. According to the Road Study the development of the Subject Property causes a certain percentage of the impacts on the Marsh Road and Williams Road intersection. City and Developer agree that Developer's fair share allocation is **15%** of the total actual cost of the design, engineering, permitting, installation, construction, provision, testing, completion and inspection of the Intersection Improvements (collectively the "Proportionate Share Payment").

The estimated cost for the design, engineering, permitting, installation, construction, provision, testing, completion and inspection of the Intersection Improvements is \$1,600,000.00 ("**Cost Estimate**"). Therefore, based on the Cost Estimate, the Proportionate Share Payment for the Project and Subject Property is estimated to be Two-Hundred and Forty Thousand and 00/100 Dollars (\$240,000.00). The Developer acknowledges and agrees that the Proportionate Share Payment is proportionate to the impacts of the development of the Subject Property on Marsh Road and Williams Road intersection and that the Intersection Improvements provide a direct benefit to the Subject Property.

The Developer shall pay the Proportionate Share Payment to the City at the earlier of: (i) prior to issuance of any certificate of completion of infrastructure improvements for the Subject Property, or any portion thereof; (ii) prior to final plat or final site plan approval for the Subject Property, or any portion thereof; and (iii) within sixty (60) days written notice to Developer from the City that the Intersection Improvements have been completed. The Subject Property shall not obtain or be issued a certificate of completion or final plat or final site plan approval unless and until the Proportionate Share Payment is paid.

The City shall maintain reasonable books and records regarding the costs associated with the Proportionate Share Payment, and shall promptly furnish the Developer with copies of the same upon the request of Developer. If the actual cost of

the Intersection Improvements is not known at the time the Proportionate Share Payment is due, the Proportionate Share Payment shall be \$240,000.00. Thereafter, when the actual cost of the Intersection Improvements becomes known after the completion of the Intersection Improvements, if the actual costs of such improvements exceeds the Cost Estimate, the Developer shall be responsible for reimbursing the City for the difference between what the Proportionate Share Payment should be based on actual Intersection Improvement costs incurred versus the estimated amount Developer paid to the City (the "**Differential Amount**"); provided, however, the Developer's obligation to reimburse the City for such Differential Amount shall expire the later of five (5) years after the Effective Date of this Agreement or when the last certificate of occupancy for the Subject Property's dwelling units and commercial structures have been issued. Upon completion of the Intersection Improvements, the City shall have the right, which right shall expire on the date that is the later of five (5) years after the Effective Date of this Agreement or when the last certificate of occupancy for the dwelling units and commercial structures on the Subject Property have been issued, to invoice Developer for the Differential Amount, and, if such invoice is provided by the City in a timely manner, the same shall be paid in full by Developer to the City on or before sixty (60) days after the date of said invoice.

Similarly, if the actual cost of the Intersection Improvements is less than the Cost Estimate and the Developer paid the City the \$240,000.00 set forth in this Section 4, the City shall reimburse the Developer the difference between the estimated Proportionate Share Payment amount Developer paid to the City and what the Proportionate Share Payment should be based on actual Intersection Improvements costs within sixty (60) days after final completion of Intersection Improvements. The Developer's right to receive such reimbursement from the City shall expire the later of five (5) years after the Effective Date of this Agreement or when the last certificate of occupancy for the Subject Property's structures have been issued.

In the event Developer fails to timely make the Proportionate Share Payment and, if applicable, the Differential Amount in accordance with the schedule set forth above, Developer shall have no right to proceed with any portion of the development on the Subject Property and the City may withhold any and all approvals, permits and certificates of occupancy relating to the Project and/or place a stop work order on any construction activities related to the Project. The Project and Developer shall receive no impact fee credits for making the Proportionate Share Payment.

5. Lift Station. Prior to the issuance of any certificate of occupancy related to any building associated with each phase of the Project, if required by the City Approvals, the Developer shall design, permit, locate and install, and construct, in accordance with City regulations, a lift station of a size and capacity and in a location required by conditions of development approvals to accommodate the anticipated sanitary sewer flow requirements of each phase of the Project (the "**Lift Station**"). Upon completion of the Lift Station, the City Engineer shall inspect such improvements, and Developer shall seek to obtain a certificate of completion from the City Engineer for

such improvements. As a condition precedent to receiving such certificate of completion, Developer shall execute and deliver to the City: (i) invoices for construction costs of the Lift Station, (ii) a 2 year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Lift Station construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record provides a certification to the City that the Lift Station has been completed in accordance with approved designed plan, (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and contractor warranties, if any, for the Lift Station after the City Engineer certifies that the Lift Station is properly constructed, (v) a special warranty deed conveying the area on which the Lift Station is located (the "**Lift Station Tract**"), free and clear of all encumbrances not reasonably unacceptable to the City, to the City after the City Engineer certifies that the Lift Station is properly constructed, and (vi) access easement in favor of the City for ingress and egress to and from the Lift Station Tract. The Lift Station shall be deemed completed upon Developer satisfying all of the conditions of this Section 5 ("**Lift Station Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of Lift Station Completion. Upon the occurrence of the Lift Station Completion, the City will take over ownership, operation and maintenance responsibility for the Lift Station.

6. Water Tank Site. The City has received a report prepared by CPH dated March 21, 2013, that addresses the appropriate sizing and timetable for the design, permitting and construction of reuse and potable water pumping stations/storage tanks (the "Tanks") needed in order to support the proposed development of the Urban Village Area, including the Subject Property and the Project. The Developer acknowledges and agrees with the conclusions of the CPH Report and that the existing potable water and reclaimed water flow pressure of the City's utility system within the Urban Village Area is insufficient to support the development of the Property and the Subject Property and that the prompt design, permitting and construction of the Tanks is vital to support the development of the Urban Village Area, including the Subject Property and the Project.

The City and the Developer have identified that certain property depicted on **Exhibit "D"** of this Agreement (the "**Tanks Site**") as an appropriate location for the Tanks and its access point. Tanks Site includes the area described as the Tank Site and the 60' ROW (Tank Access) or Future ROW identified on Exhibit "C" attached hereto and incorporated herein. After conveyance of the Tanks Site to the City, the City agrees to design, permit, construct and operate the Tanks, at its sole cost and expense, through the use of impact fees or other sources as the City may designate.

Within 30 days from the Effective Date of the PUD Ordinance, the Developer shall, at no expense to the City, convey the Tanks Site to the City by special warranty deed free and clear of all liens and encumbrances except for those matters acceptable to the City. The form of the special warranty deed shall be subject to the approval of the City. The Developer shall, at least ten (10) days prior to the conveyance of the Tanks Site to the City, provide to the City a boundary survey of the Tanks Site certified to the

City and a current attorney's opinion of title or a current title commitment to be followed by a policy of title insurance, evidencing that fee simple title to the Tanks Site is free and clear of all liens and encumbrances except for those matters acceptable to the City. The cost and expenses related to the conveyance of the Tanks Site including the cost of title work and survey shall be borne solely by the Developer. Real property taxes on the Tanks Site shall be prorated as of the day before the City's acceptance of the conveyance of the same, and the prorated amount of such real property taxes attributable to the Developer shall be paid and escrowed by the Developer in accordance with the provisions of Section 196.295, Florida Statutes; provided, however, that if the conveyance occurs between November 1 and December 31, then Developer shall be responsible for real property taxes for the entire year. Developer shall comply with the disclosure requirements of Section 286.23, Florida Statutes, with respect to the conveyance of the Tanks Site to the City. Neither the Developer nor Developer's successors and assigns nor any other person or entity shall be entitled to any impact fee credits or other compensation of any kind for, on account of, or with respect to the required conveyance of the Tanks Site to the City.

The City and Developer understand that if the Tanks are not fully constructed and operational by the building permit being issued for the 914th residential dwelling unit (RDU) within the Urban Village Area ("Tanks Operational Deadline"), the potable water and reclaimed water flow pressure may be insufficient to support further development within the Urban Village Area, and the City may be forced to and the Developer agrees that the City shall have the right to withhold issuance of further building permits for the Project. In the event the Tanks Operational Deadline is not timely met, regardless of the phase or status of development and regardless of the reason for such deadline not being met, no further plat approvals, site plan approvals, or building permits shall be issued for the Project or any phase thereof and the City shall have the right to withhold and not process any further plat or building permit requests concerning the Project and Subject Property, and Developer hereby assumes such risk.

Get into agreement

It is acknowledged and agreed that in no event shall the City be liable for any damages, incur any penalties or waive any rights if the Tanks are not completed by the Tanks Operational Deadline or otherwise in time to serve the Project or any other development as may be anticipated by the parties, and that the Developer is assuming the risks associated with and the City (and the City's officials, officers, employees and agents) are held harmless from the unique circumstances concerning the need for the Tanks to be constructed to support development within the Urban Village Area (including the Subject Property and Project) and the potential that such Tanks may not be designed, permitted, constructed and operational to allow the Project to proceed in the manner as may be desired or intended by the Developer.

7. Internal Utility Lines. Prior to and as a condition precedent to receipt of a certificate of completion from the City Engineer for sewer, water and reclaimed water utility lines internal to the Project (the "**Internal Utility Lines**") and before issuance of any certificates of occupancy for any dwelling units for the Project, Developer shall

execute and deliver to the City: (i) invoices for construction costs of such Internal Utility Lines, (ii) a two (2) year maintenance bond or irrevocable letter of credit in an amount equal to 20 percent of the Internal Utility Lines construction costs (construction cost amount to be approved by City Engineer) and in a form approved by the City Attorney, (iii) the design engineer of record provides a certification to the City that the Internal Utility Lines have been completed in accordance with approved design plans, and (iv) a bill of sale, release of liens from contractors, subcontractors, materialmen and laborers, and assignment of contractor warranties, if any, for the Internal Utility Lines. The Internal Utility Lines shall be deemed completed upon Developer satisfying all of the conditions of this Section 7 ("**Internal Utilities Lines Completion**"). No certificates of occupancy shall be issued for any part of the Project until the occurrence of Internal Utilities Lines Completion. Upon the occurrence of Internal Utilities Lines Completion, the City will take over ownership, operation and maintenance responsibility of the Internal Utility Lines.

8. Plan Approval. The City shall have final approval of all plans, calculations, designs, locations and specifications for the foregoing Utility Main Lines, Internal Utility Lines and Lift Station (hereinafter collectively referred to as the "**Public Infrastructure Improvements**"). The Developer acknowledges and agrees that its design, permitting, installation and construction of the Public Infrastructure Improvements are proportionate to the impacts of the development of the Subject Property and that such improvements provide a direct benefit to the Subject Property. Except as otherwise extended by the City, once the Developer commences construction of the Public Infrastructure Improvements, such improvements shall be completed no more than 365 days from the commencement of construction, unless a shorter period of time is required by applicable permits, then such shorter period shall apply.

9. Dedications/Conveyances. Any dedications and/or conveyances to the City required under this Agreement or as part of final plat or final site plan approval shall be dedicated and/or conveyed, as applicable (special warranty deed), unencumbered by any lien, mortgage, easement or any other encumbrance or restriction not reasonably unacceptable to the City. Developer hereby indemnifies and holds the City harmless from any and all claims, damages, penalties, fines, attorneys' fees (at appellate and trial levels), costs, including but not limited to clean-up costs and other matters arising out of or any way related to environmental pollution and contamination on any and all real property interest granted, dedicated, gifted, and otherwise conveyed by the Owner or Developer to the City, but excluding any environmental pollution or contamination that occurs after the date of such conveyance unless such environmental pollution or contamination is caused by Developer.

10. Utility Improvements.

(a) The development of the Subject Property must connect to the City's potable water, reclaimed water, and wastewater facilities at the Developer's expense, except for reimbursements provided to Developer herein. All of the City's Code

requirements and specifications concerning utility connections and all of the City's Code requirements and specifications concerning solid waste collection apply to the Subject Property and development thereof.

(b) The Developer shall obtain water and sewer capacity through the City's established reservation procedures. The City confirms that as of the Effective Date of this Agreement, sufficient plant capacity exists to service the Project with water and sewer service, however, this Agreement does not reserve capacity to the Subject Property and the Project. The Project, if developed in accordance with the applicable provisions of the City Comprehensive Plan and Land Development Code and this Agreement, satisfies and is fully vested against the concurrency requirements for sewer, potable water, reclaimed water and transportation as described in the City Land Development Code and the Comprehensive Plan. The development of the Property will not be subject to further concurrency review for sewer, potable water, reclaimed water and transportation under the City's Comprehensive Plan and Land Development Code so long as the Developer commences construction of Public Improvements in accordance with this Agreement.

(c) The Developer shall provide the design, permitting and construction of reclaimed (reuse) water systems throughout the development for future service and meter connection in accordance with the applicable City Codes. This reclaimed system may initially be supplied by the City's potable water, and will be supplied in the future with reclaimed water.

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

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

12. Indemnity. The Developer hereby indemnifies and holds City and its elected and appointed officials, employees and agents harmless from and against any and all claims (at law and in equity), disputes, lawsuits, injuries, damages, attorneys' fees (including trial and appellate fees), costs and experts' fees, interest and all adverse matters in any way arising out of or relating to the risks assumed by Developer under this Agreement (including, without limitation, as set forth in Paragraph 6) and the Developer's and its officers', employees' and agents' negligent acts, negligent omissions, negligence, negligent misrepresentation and default under this Agreement, or any combination thereof, arising from or related to the Developer's exercise of (or

failure to exercise) the rights or obligations of the Developer under this Agreement and for the risk assumed by Developer under this Agreement.

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

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

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

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

Developer: Maurice Boyd

With copies to:

Notices shall be either: (i) personally delivered (including delivery by Federal Express or other overnight courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail.

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

16. Entire Agreement. This Agreement embodies the entire understanding of the parties with respect to the matters specifically enumerated herein, and all negotiations, representations, warranties and agreements made between the parties are merged herein. The making, execution and delivery of this Agreement by all parties

have been induced by no representations, statements, warranties or agreements that are not expressed herein. There are no further or other agreements or understandings; written or oral, in effect between or among the parties related to the subject matter hereof.

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

18. Binding Effect and Successors. This Agreement shall run with the Subject Property and the rights and the obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement. In the event of the assignment of this Agreement, or the conveyance or transfer of the Subject Property, or any part thereof, the Developer shall be automatically released from its obligations under this Agreement following the City's reasonable review and approval of such assignment, conveyance or transfer. In the event all obligations under this Agreement have been completed, no such approval from the City shall be required. Excluding the City, homeowner's association and any homeowner who is conveyed a lot within the Project after a certificate of occupancy is issued for a dwelling unit on such lot, Developer and all transferees, transferor, grantees, grantors, assignees and assignors relating to the Subject Property are jointly and severally liable for the Developer's obligations under this Agreement. The rights granted to Developer under this Agreement relate specifically to the Subject Property and are not permitted to be transferred to any other property.

Notwithstanding the above, the Developer and City acknowledge that neither this Agreement, nor any of the rights or obligations hereunder, is intended to create conditions or exceptions to title or covenants running with any "Public Lot" (as hereinafter defined). As a result, in order to alleviate any concern as to the effect of this Agreement on the status of title to any Public Lot, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any Public Lot. As used herein, the term "Public Lot" shall mean (a) any individual lot that satisfies all of the following requirements: (i) is the subject of a recorded subdivision plat, and (ii) has been improved with a residence or other structure for which the proper governing authority has issued a certificate of occupancy, and (iii) is leased (for more than a year) or sold to a third party, or (b) any parcel that has been dedicated to any Governmental Authority. Each Public Lot shall automatically be released from and no longer subject to or burdened by the provisions of this Agreement.

19. Local Development Approvals and Permits. Notwithstanding anything herein to the contrary, all development of the Project shall be in compliance with all applicable federal, state, county and municipal laws and ordinances, rules and regulations (including, but not limited to, the City's land development regulations, zoning requirements and comprehensive plan). Unless expressly authorized or granted herein,

nothing in this Agreement shall constitute or be deemed to constitute or require the City to issue any approval by the City of any rezoning, Comprehensive Plan amendment, variance, special exception, final site plan, preliminary subdivision plan, final subdivision plan, building permit, grading, stormwater drainage, engineering, or any other land use or development approval. Nor shall this Agreement be deemed to reduce, eliminate, derogate from or otherwise adversely affect any such approvals, permissions or rights. These and any other required City development approvals and permits shall be processed and issued by the City in accordance with procedures with respect to same as otherwise set forth in the City's Code of Ordinances and subject to any conditions of approval thereof. Nothing in this Agreement shall constitute or be deemed to constitute a limitation, restriction or any other type of waiver of Developer's right or ability to seek a rezoning, comprehensive plan amendment, variance, special exception, site plan, preliminary subdivision plan, final subdivision plan, or any other land use or development approval.

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

21. Impact Fees.

(a) Transportation Impact Fees. Transportation impact fees shall be paid at rates applicable within the City at the time of building permit issuance. Consistent with Section 42-62 of the City Code, the Developer shall be entitled to receive a three percent (3%) cost reduction in said impact fees for paying the fee at the time of building permit issuance. The Developer and the Project shall not receive any compensation or impact fee credits for the transportation-related obligations of the Developer provided in this Agreement including without limitation, for the Proportionate Share Payment, Marsh Road Improvements, North Williams Road Improvements, and Right-of-Way Property conveyances required herein or as a condition to development approval.

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

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

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

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

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

23. Authority. Each party represents and warrants to the other parties that it has all necessary power and authority to enter into and consummate the terms and conditions of this Agreement, that all acts, approvals, procedures, and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be, and that, upon the execution of this Agreement by all parties, this Agreement shall be valid and binding upon the parties hereto and their successors in interest and assigns. In the event Developer fails to pay the monies, dedicate the lands so required by this Agreement, or otherwise fails to meet Developer's obligations under this Agreement, no further development (including without limitation the issuance of permits, review of applications, or construction) of the Subject Property shall continue until such obligations are met.

Furthermore, Developer represents and warrants to City that it is the fee simple owner of the Subject Property, free and clear of any mortgages, liens or other encumbrances which will require the consent of that party to perform the obligations contained in this Agreement, or, in the event such an encumbrance exists, Developer at Developer's sole cost, shall obtain the necessary joinders and consents and subordinations to this Agreement (and documents called for herein) or releases from the appropriate parties with an interest in the Subject Property. Developer shall provide to City, certified surveys, title reports or other documents evidencing said ownership interest.

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

25. Breach. In the event of a breach, default, or violation of one or more of the provisions herein by the Developer or the City, the violating party shall be given ten (10) days to cure such violation upon receipt of written notice of the violation from a non-

violating party. In the event such violation is not cured within said period, the City, Owner or the Developer, as the case may be, shall have the right to pursue any and all legal and equitable remedies available provided by law. Notwithstanding the foregoing, the City shall be permitted to without notice immediately withhold the issuance of, and revoke, certificates of occupancy or building permits associated with the Project in the event Developer is in violation of any provision of this Agreement. In addition to any of the above stated remedies, in the event the Developer fails to timely complete the Public Infrastructure Improvements or any portion thereof, the City may record a Notice of Lien against the Subject Property in an amount equal to the design, permitting, installation and construction costs of such improvements (less City's share of such improvements provided herein). In addition, if Developer fails to timely pay the City any monies due pursuant to this Agreement, the City may record a Notice of Lien against the Subject Property in the amount owed to the City. A copy of such Notice of Lien shall also be delivered to Developer (and to Owner, if Owner owns the Subject Property at that time) in the same manner as required under this Agreement for delivery of written notices. The recorded Notice of Lien shall constitute a lien upon the Subject Property and the lien may be foreclosed upon for the benefit of the City any time after thirty (30) days after the Notice of Lien has been recorded in the public records. The City may foreclose the lien in accordance with the procedures established in Section 702.10, Florida Statutes, or successor or other statute providing for lien foreclosure procedures. The Owner and Developer may obtain a release from the lien by paying the amount stated in the lien, plus accrued interest of twelve percent (12%) per annum, plus attorney's fees and costs incurred by the City in filing and collecting upon the lien. Without regard to anything herein to the contrary, the Developer shall have the right to transfer any liens off the Subject Property to other security as provided by law.

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

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

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

29. Non-Waiver of Sovereign Immunity. Nothing contained in this Agreement or in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the City of its sovereign immunity under the Constitution and laws of the State of Florida. The City's financial obligations hereunder, if any, are subject to and contingent upon discretionary budgetary appropriations of the City Commission. The parties agree that this Agreement does not

constitute a general indebtedness of the City within the meaning of any constitutional, statutory, or charter provision of limitation and it is expressly agreed by the parties that the Developer (nor others) shall not have the right to require or compel the exercise of ad valorem taxing power of City, or taxation of any real or personal property therein for payment of any obligation of the City under the terms of this Agreement.

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

31. Reimbursement. On or before thirty (30) days after the date of invoicing, Developer shall reimburse the City for all the City's direct costs, expenses and fees incurred relating to the review, processing, inspection, and regulation (or any combination thereof) of applications related to the Project, including without limitation, the City's consultants', engineers' and attorneys' fees, concerning the preparation of this Agreement and for other development review expenses in accordance with Chapter 88, City of Winter Garden Code of Ordinances.

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

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

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

35. Full Compensation and Release. Developer agrees that the consideration provided to Developer in this Agreement is intended as and does hereby constitute full, just and complete compensation for the conveyance of the Right-of-Way Property, Lift Station tract and any other dedication and conveyance as provided for herein, including, without limitation, any and all damage, if any, to the Subject Property (or any portion thereof), Developer's remaining property and business which may result from Developer's conveyance to the City of the Right-of-Way Property, Lift Station tract and any other dedication and conveyance as provided for herein. As such, Owner and Developer, on behalf of Owner and Developer and their agents, successors, legal representatives and assigns, fully and forever release the City of and from, and waives, any and all condemnation or inverse condemnation claims and business damage claims relating to any or all portions of the Subject Property and the remaining property, which Owner and Developer may now have, may have had or which may hereafter accrue or

otherwise be acquired arising out of and caused by the conveyance of the Right-of-Way Property, Lift Station tract and any other conveyance as provided for herein to City. The foregoing release and waiver includes, but is not limited to, compensation, damages, expenses, attorney's or expert's fees and costs, whether known or unknown.

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

- Exhibit A Legal Description of Subject Property
- Exhibit B Intersection Improvements/Right-of-Way
- Exhibit C North Williams Road Right-of-Way
- Exhibit D Tanks Site

AGREED by the City Commission of the City of Winter Garden, Maurice M. Boyd and McKinnon Corporation as of the day first written above.

"CITY"

CITY OF WINTER GARDEN, FLORIDA

ATTEST:

By: _____
KATHY GOLDEN, CITY CLERK

By: _____
JOHN REES, MAYOR

"DEVELOPER"

Maurice M. Boyd

Print Name: _____
Witness

Maurice M. Boyd

Print Name: _____
Witness

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was executed, sworn to and acknowledged before me this _____, 2014 by Maurice M. Boyd. He (check one) is personally known to me, or has produced a valid driver's license as identification.

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

“DEVELOPER”

McKinnon Corporation, a Florida profit corporation

Print Name: _____
Witness

By: Maurice M. Boyd
Its: President

Print Name: _____
Witness

STATE OF _____
COUNTY OF _____

The foregoing instrument was executed, sworn to and acknowledged before me this _____, 2014 by Maurice M. Boyd as President of McKinnon Corporation. He (check one) is personally known to me, or has produced a valid driver's license as identification.

Notary Public, State and County
Aforesaid
Name: _____
My Commission Expires: _____

My Commission Number is: _____

Exhibit "A"

Legal Description of Subject Property

LEGAL DESCRIPTION

PARCEL A (ORB 4452, PG 4660)

THE N 395 FEET OF THE E 1/2 OF LOT 30H AND THE N 395 FEET OF THE W 1/2 OF LOT 30H, LAKE AVALON GROVES REPLAT, PLAT BOOK H, PAGE 81, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. ALL IN SECTION 6, TOWNSHIP 23 SOUTH, RANGE 27 EAST.

PARCEL B (PER PROPERTY APPRAISER WEBSITE)

LAKE AVALON GROVES REPLAT H/81 W1/2 OF LOT 30-H (LESS N 371 FT) & E1/2 OF LOT 30-H (LESS 371 FT).

PARCEL C

LOT 33H, LAKE AVALON GROVES, AS RECORDED IN PLAT BOOK H, PAGE 81 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA

PARCEL D (ORB 3308, PG 1285)

THE SOUTH ONE QUARTER OF TRACT 17-D, AND THE SOUTH ONE-HALF OF TRACT 18-D, AND ALL OF TRACT 41-H, OF LAKE AVALON GROVES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK H, PAGE 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL E (ORB 2937, PG 479)

THE WEST 4.37 ACRES OF LOT 31, BLOCK H, LAKE AVALON GROVES, AS RECORDED ON PLAT BOOK H, PAGE 81, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LESS: BEGIN AT THE NORTHWEST CORNER OF LOT 31-H, LAKE AVALON GROVES, AS RECORDED IN PLAT BOOK H, PAGE 81, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, THEN RUN SOUTH ALONG THE WESTERN BOUNDARY OF SAID LOT 31-H, A DISTANCE OF 148 FEET, THEN RUN EAST PARALLEL TO THE NORTHERN BOUNDARY OF SAID LOT 31-H, A DISTANCE OF 295 FEET, THEN RUN NORTH AND PARALLEL WITH THE WESTERN BOUNDARY OF SAID LOT A DISTANCE OF 148 FEET TO THE NORTH LINE OF SAID LOT THEN RUN WEST ALONG SAID NORTH LINE 295 FEET, MORE OR LESS TO THE POINT OF BEGINNING.