

Regular Meeting

3:30 p.m. November 14, 2011 Commission Chambers

	com	missi	oners	mayor	commiss			ioners
seat 1	Steven Leary	seat 2	Sarah Sprinkel	Kenneth W. Bradley	seat 3	Carolyn Cooper	seat 4	Tom McMacken

welcome

Welcome to the City of Winter Park City Commission meeting. The agenda for regularly scheduled Commission meetings is posted in City Hall the Tuesday before the meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's Web site at www.cityofwinterpark.org.

meeting procedures

Persons desiring to address the Commission MUST fill out and provide to the City Clerk a yellow "Request to Speak" form located by the door. After being recognized by the Mayor, persons are asked to come forward and speak from the podium, state their name and address, and direct all remarks to the Commission as a body and not to individual members of the Commission, staff or audience.

Comments at the end of the meeting under New Business are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left to sum up. Large groups are asked to name a spokesperson. This period of time is for comments and not for questions directed to the Commission or staff for immediate answer. Questions directed to the City Commission will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you for participating in your city government.

- 1 Meeting Called to Order
- 2 Invocation Building Director George Wiggins Pledge of Allegiance
- 3 Approval of Agenda

4 Mayor's Report	Projected Time
 a. Keep Winter Park Beautiful Award for the Post Office landscape improvements and Azalea Lane Volunteer Project Award b. Proclamation - "National Hospice and Palliative Care Month" c. Recognition of the Winter Park High School's 500th Football Victory d. Presentation of Winter 2011 Webisode produced in partnership with Full Sail's SPARK program e. Appointment of Martin Luther King, Jr. Task Force members f. Board appointment: Board of Adjustments 	30 minutes
5 City Manager's Report	Projected Time
6 City Attorney's Report	Projected Time
7 Non-Action Items	Projected Time
a. Financial Report - September 2011	
speaker; not to exceed a total of 30 minutes for this portion of the meeting)	D 1 1 1 T
9 Consent Agenda a. Approve the minutes of 10/24/11.	Projected Time
 b. Approve the following contracts and purchase order: Piggybacking City of Sanford contract #RFP 09/10-23 with Florida Bearings, Inc. for repair of electric motors and pumps and authorize the Mayor to execute the Piggyback Contract; \$30,000 Piggybacking Pasco County contract #05-114 with Owens, Renz & Lee, Inc. for janitorial services and authorize the Mayor to execute the Piggyback Contract; \$157,062.00 Approve the Civility Code as recommended by the Ethics Board. Cancel the December 26, 2011 Commission meeting due to the holidays. Approve the On-Site Energy Audit Services Program Master Agreement with Progress Energy Florida (PEF) and authorize the Mayor to execute the agreement. 	5 minutes
Tim, or to the agreement.	
10 Action Items Requiring Discussion	Projected Time

There are no action items.

11 Public Hearings	Projected Time
 a. Requests of the City of Winter Park: To revise the public notice requirements for City-wide notices to streamline the zoning approval process: Ordinance – Revising the application and approval procedures for zoning amendments and conditional uses, revising the submitted requirements for conditional uses and the extension or resestablishment of conditional uses (2) Ordinance - Adopting new public notice and adoption procedure for amendments to the comprehensive plan, goals, objectives an policies document and substituting for the current amendment procedures (2) 	10 minutes
b. Request of Bank First Realty, Inc. on behalf of McDonald' Corporation for: Conditional use approval to construct a McDonald' Restaurant with a drive-thru service at 1282/1288/1302 Wes Fairbanks Avenue and 1281/1289/1301 Gene Street, zoned C-3 QUASI JUDICIAL PROCEEDING	t 20 minutes
 c. Equalization Board Hearings – Dixie Parkway and Williams Drive: TOBE HELD AFTER 5:00 P.M. Resolution – Declaring that the City is to fund capital improvements to underground electric/CATV (BHN) facilities along Dixie Parkway and Williams Drive and declaring that the cost be paid by special assessments levied against real propert specifically benefitted by said improvements. Resolution – Confirming the Special Assessments for the undergrounding of electric/CATV (BHN) facilities on properties adjacent to Dixie Parkway and Williams Drive. 	15 minutes
 d. State Office Building property: Exchange agreement between the City of Winter Park and Progress Point LLC Ordinance – Authorizing the conveyance of the City owned property located at 941 W. Morse Boulevard (State Office Building) (1) 	90 minutes
12 City Commission Reports	Projected Time
a. Commissioner Leary b. Commissioner Sprinkel c. Commissioner Cooper	10 minutes each

d. Commissioner McMacken

e. Mayor Bradley

Residential irrigation/lighting codes

Regular Meeting November 14, 2011 Commission Chambers Page 4

appeals & assistance

"If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such 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." (F. S. 286.0105).

"Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-599-3277) at least 48 hours in advance of the meeting."



Citizen Board Application Form Note: This application is valid for one year from the date of completion.

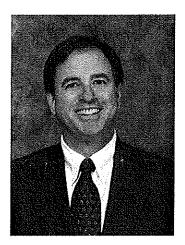
If you are interes	sted in serving on a C	ity Board, please	e complete this applica	tion and
return it to: City Manager	's Office, 401 Park A	venue South, Wi	nter Park, FL 32789.	Fax 407-599-3436.
Name: Jeffry R. Jontz			Home phone: 407	-647-0408
Home address: 1138 Park Nort	h Place, Winte	er Park, FL	Business phone: 40	7-647-2777
Business: Lawyer			E-Mail address: joi	ntz68@gmail.com
Business: <u>Lawyer</u> Business address: <u>1031 W. Morse</u>	e Blvd., Winte	r Park, FL	32789	
Are you a registered voter?		□ No		
Are you a resident of the city?	Yes	· 🗖 No		
Do you own property in the city?	🖾 Yes	☐ No		
Do you hold a public office?	☐ Yes	🛮 No		
Are you employed by the city?	Yes	🛛 No		
Until you are selected for the board o	fyour choice may w	e submit vour an	polication when vacano	cies occur, rather than
phoning you?	S). No	o suonne your up	, p. 100 100 100 100 100 100 100 100 100 10	
h				
Please list in order of your preference skill(s) that would be beneficial in selisted on pages 3 and 4 of this application.	rving on said board. A ation form.	Note: The function	ons and requirements of	of each board are
1. Planning and Zoning	y/			
2. <u>Board of Adjustment</u>				
3	/			
		0		
Do you have any potential conflicts of (A conflict of interest would be anythfamily's benefit. For Example: You or Attorney that may occasionally report interest does not necessarily exclusion.	ning that inures to you are applying for a Pla present a client with a	ir benefit, your e nning and Zonin project before the	mployer's benefit or a ng Board Appointment he board. Note: Havin	and are an Architect
If yes, please explain:				
I am an attorney and it	is possible t	hat client	s may appear b	efore
a board upon which I wo	ould sit; howev	ver, I have	served on a n	umber of
boards in the city of M	aitland and ir	the City	of Winter Park	in the
nast and this has rare	lv ever been a	n issue	•	

Are you currently serving on a City Board(s)? Yes No If yes, which board(s)
Have you previously served on a City Board(s)? Yes No If yes, which board(s) Board of Adjustment
Please list any other community involvement:
See attached resume.
Please list any work/career experience: I have been a lawyer in Central Florida since 1972. Please see attached
resume.
Please list your educational experience: B.A., Drake University, Des Moines, Iowa 1966
Law Degree, University of Iowa, Iowa City, Iowa 1969
Signature 1//3/1/ Date

Attorneys at Law

JEFFRY R. JONTZ

Jeffry Jontz has been in private practice in Orlando since 1974. His legal practice centers around commercial litigation, banking, bankruptcy, and creditors' rights issues. Jeff has significant experience in litigation involving financial institutions, contracts, real estate, and construction disputes, as well as litigation involving petroleum marketing, trademark, franchise, employment and non-competition agreements and issues. He has extensive experience in insolvency matters and



financial reorganizations, including workouts and bankruptcy. He represented parties in cases before the Florida Supreme Court which established the unconstitutionality of a portion of the Florida distress for rent statute, and the constitutionality of the Florida replevin statute. He was trial counsel in the first jury trial ever conducted in the bankruptcy courts of the United States. He has been named as a "Best Attorney" for bankruptcy law in Florida.

Jeff has served on numerous committees related to commercial litigation and bankruptcy matters of the American Bar Association, the Florida Bar, and the Orange County Bar Association. He has lectured and written in the areas of bankruptcy and commercial litigation for the Florida Bar and the Orange County Bar Association. He was selected as a "best attorney" in bankruptcy law in Florida by The Best Attorneys Network. He is admitted to practice law in the states of Iowa, Ohio and Florida.

Jeff earned his Bachelor of Arts in Political Science in 1966, from Drake University, and he obtained his law degree, with distinction, in 1969, from the University of Iowa College of Law, where he was on the Board of Editors for the *Iowa Law Review*, and was elected to the Order of the Coif. After graduation, he was a judicial law clerk to United States District Court Judge Charles R. Scott and United States Circuit Judge Bryan Simpson in Jacksonville. From 1972 through 1974, he was an Assistant United States Attorney in the Middle District of Florida in Orlando.

Among his civic activities, Jeffry served on the Board of Directors of the Florida Symphony Orchestra and Junior Achievement of Central Florida, as well as the Board of

Jeffry R. Jontz (continued)

Governors of the Winter Park Racquet Club. He was President of the Winter Park Racquet Club in 1993. He has served on several Greater Orlando Chamber of Commerce Committees, and is a Leadership Orlando graduate. He has served as an officer of the Drake University National Alumni Association and the University of Iowa National Alumni Association, and is a former member of the Tau Kappa Epsilon National Social Fraternity Judicial Committee. He was Chairman of the Code Enforcement Board of the City of Maitland, Florida, and Chairman of the Board of Adjustment of the City of Winter Park, Florida. He was nominated in 1991 for an Outstanding Individual Community Leadership Award by the Volunteer Center of Central Florida. He served for a decade as a member of the Board of Directors of Junior Achievement of Central Florida.

item type Non-Action Item meeting date November 14, 2011

Below are issues of interest to the Commission and community that are currently being worked on by staff, but do not currently require action on the Commission agenda. These items are being tracked to provide the Commission and community the most up to date information regarding the status of the various issues. The City Manager will be happy to answer questions or provide additional updates at the meeting.

issue	update	date
City Hall	Beginning after Thanksgiving, City Hall will be under construction until mid February. The renovations include new HVAC, lighting, as well as replacement of carpet and paint. We are also modifying the lobby and Commission Chambers to be more customers friendly.	February 2012
Renovation	Many departments will be temporarily relocated to other buildings or moved within City Hall during this period. Additionally, Commission Meetings will be held at the Community Center during the renovation period. More detailed information will be provided as the move gets closer and construction plans are finalized.	J
Pensions	The City's consulting team is expected to provide a draft report for discussion in an executive session with the Commission by Friday, November 11 th . At the November 14 th Commission Meeting, a date and time to hold the executive session will be determined.	December 2012
Lee Road Median Update	FDOT comments restrict planting of canopy trees over the vast majority of the islands due to sight distance & bill board restrictions. Only possibility is low shrubs and single trunk crepe myrtles. Currently scheduling a meeting with FDOT District V secretary to discuss this ultra restrictive determination.	
Pro Shop Renovation	Interior improvements continue.	Anticipate completion November 30 th .

Fairbanks Improvement Project	A revised lift station location is being evaluated that will allow standard construction techniques and provide a larger easement. There will be a slight delay in the bidding to accommodate the lift station redesign.	Project should be out to bid by the middle of November and construction should begin in January.
Hazardous Waste	Another round of comments has been forwarded to the County for review. We have requested and received permission to temporarily allow Winter Park residents to use the Orange County HHW disposal facility while the details of the Interlocal Agreement are being finalized.	Currently waiting on Orange County.

Once projects have been resolved, they will remain on the list for one additional meeting to share the resolution with the public and then be removed.

Financial Report

For the Month of September (100% of fiscal year lapsed) Fiscal Year 2011

General Fund

Financial results for FY 2011 in the General Fund are favorable with the following items noted:

- Overall General Fund revenues are on track to meet budget expectations.
 Discussion of major revenue sources is below.
- As of September, we have collected 99% of budgeted property tax revenues. A small amount will be received in October and November which will improve this percentage. Budget shortfall will be about \$150,000.
- Franchise fee revenues include only ten months of solid waste and eleven months of electric franchise fees. Electric franchise fees will likely be about \$40,000 short of the annual budget. Gas franchise fees will be about \$25,000 short of the budget projection. Solid waste franchise fees will likely be about \$35,000 greater than the annual budget estimate. Franchise fees from the scenic boat tour will be at least \$8,000 greater than estimated. In total, franchise fees will be about \$22,000 less than budgeted.
- Utility tax revenue includes only ten months of Communications Service Tax revenue. Communications Services Tax will likely be about \$20,000 short of the budget estimate. Electric utility taxes will be about \$57,000 short of the annual budget and water utility taxes will be \$32,000 greater than the budget estimate. Gas utility taxes will be \$34,000 short of the budget. In total, utility taxes will be about \$79,000 short of the annual budget.
- Business taxes are \$30,660 greater than budgeted.
- Building permit revenues exceed the annual budget by \$286,460.
- Intergovernmental revenues are low in comparison to budget because only ten months of half cent sales and local option gas tax revenues had been received through September. Sales tax revenue will exceed the annual budget estimate by about \$45,000. Local option gas tax is on track with the annual budget. State revenue sharing may be about \$30,000 short of the annual budget.
- Charges for services have a \$17,261 positive variance from the adjusted budget for the year.
- Fines and forfeiture revenues are a bit behind as not as many red light traffic cameras have been installed as anticipated. We will be about \$125,000 short on this estimate.
- Miscellaneous revenue is already \$187,199 ahead of the annual budget as a result of the p-card rebate and better than anticipated investment earnings.

Expectations had been set low for investment earnings given the low rate environment.

- Electric franchise fees are \$94,552 below budget.
- Legal services are over budget due to litigation matters.
- Other expenditures are generally in line with or below budget.

Community Redevelopment Agency Fund

Tax increment revenues decreased by \$862,426 as a result of a 16% decrease in valuation of properties within the CRA. Revenues are even with budget as expected and all tax increment revenues are credited to the CRA in December.

Charges for services revenue is from daily passes and sponsorships for the ice skating rink in the West Meadow earlier this year.

Capital project spending is largely for construction of the recently completed Community Center.

Debt service is higher than the prior year because this is the first year of debt service for the Community Center loan. All CRA debt service due in FY 2011 has been paid and amounts are on track with the annual budget.

Water and Sewer Fund

Revenue is up \$1,281,849 in comparison to the prior year and is 98% of the annual budget. Sales in terms of gallons are trending upward as evidenced in the table below:

	Sales in Thousands of Gallons for the Fiscal Year ended September 30,	Sales in Thousands of Gallons for the Fiscal Year ended September 30,	Difference	
	2010	2011	Difference	Percentage
Water	3,246,398	3,489,744	243,346	7.5%
Sewer	1,761,551	1,830,551	(69,000)	(3.9%)

Expenditures are well within budgetary constraints.

Bottom line shows YTD net income of \$2,779,516. After subtracting capital contributions (impact fees), net income is still \$1,661,382 for the fiscal year ended September 30, 2011.

Revenues will be short of projections because we anticipated a rate increase being implemented in FY 2011. Our current timeline for the water and sewer rate study indicates rates will be adjusted in the first quarter of fiscal year 2012.

Although revenues will be approximately \$500K short of budget, there is contingency built into the budget as well as anticipated savings in wastewater treatment and debt service that offset this shortfall.

Electric Services Fund

Revenues are down \$5,600,852 comparison to the prior year. Sales of kWh are running about 2.6% behind the prior year.

Bulk power costs are \$6,904,414 below last year. Part of this is due to less consumption and part is attributable to the new bulk power contract with Seminole Electric and Progress Energy.

Bottom line is net income of \$6,858,360 through September 30. Overall, FY 2011 is looking like another strong year for the electric fund and we will stay on track with our goals of repaying monies borrowed from other funds by the end of FY 2013.

The City of Winter Park, Florida Monthly Financial Report - Budget vs. Actual General Fund

Fiscal YTD September 30, 2011 and 2010 100% of the Fiscal Year Lapsed - PRELIMINARY

			FISCAL Y I D	September 3	0, 2011			FISCAL Y ID SE	eptember 30, 20	10
	Actu	al		E	Budget		Actual		Budget	
	YTD	YTD %	Original Annual	Adjusted Annual *	Prorated Adj. Annual	Variance from Prorated Adj. Annual	YTD	Adjusted Annual	Prorated Adj. Annual	Variance from Prorated Adj. Annual
Revenues:										
11 2 2	\$ 14,358,510	99%	\$ 14,538,871	\$ 14,538,871	\$ 14,538,871	\$ (180,361)		\$ 15,895,265		
Franchise Fees	1,008,037	89%	1,130,000	1,130,000	1,130,000	(121,963)	963,869	1,088,094	1,088,094	(124,225
Utility Taxes	6,409,393	93%	6,921,536 450,000	6,921,536 450,000	6,921,536	(512,143) 30,660	6,481,036	6,712,270	6,712,270 468,000	(231,234
Business taxes Building Permits	480,660 1,320,260	107% 128%	1,033,800	1,033,800	450,000 1,033,800	286,460	454,610 1,002,949	468,000 939,497	939,497	(13,390 63,452
Other Licenses & Permits		128%	20,000	20,000		3,285			16,100	
	23,285	88%	5,995,605		20,000		21,230	16,100	,	5,130
Intergovernmental	5,284,313	100%	3,708,300	5,995,605	5,995,605	(711,292) 17,261	5,087,050	5,660,612	5,660,612	(573,562
Charges for Services	4,175,561			4,158,300	4,158,300		3,359,920	3,516,538	3,516,538	(156,618
Fines and Forfeitures	355,636	74%	797,500	480,500	480,500	(124,864)		684,570	684,570	(319,430
Miscellaneous	721,009	135%	504,610	533,810	533,810	187,199	579,357	499,414	499,414	79,943
Fund Balance				566,257	566,257	(566,257)		802,709	802,709	(802,709
Total Revenues	34,136,664	95%	35,100,222	35,828,679	35,828,679	(1,692,015)	33,987,561	36,283,069	36,283,069	(2,295,508
Expenditures:										
City Commission	28,329	60%	47,057	47,057	47,057	18,728	27,223	19,477	19,477	(7,746
Legal Services - City Attorney	291,092	144%	202,800	202,800	202,800	(88,292)	296,562	266,596	266,596	(29,966
Legal Services - Other	169,699	170%	100,000	100,000	100,000	(69,699)	122,164	70,000	70,000	(52,164
Lobbvists	100,546	193%	52,000	52,000	52,000	(48,546)	121,450	112,000	112,000	(9,450
City Management	478,627	100%	476,603	476,603	476,603	(2,024)	493,115	478,863	478,863	(14,252
City Clerk	226,112	98%	229,966	229,966	229,966	3,854	235,786	235,547	235,547	(239
Communications Dept.	425,653	96%	440,584	441,384	441,384	15,731	450,020	481,212	481,212	31,192
Information Technology Services	1,205,841	86%	1,252,217	1,399,459	1,399,459	193,618	1,161,573	1,362,712	1,362,712	201,139
Finance	832,228	105%	789,862	789,962	789,962	(42,266)	831,743	807,357	807,357	(24,386
Human Resources	290,847	97%	300,859	300,859	300,859	10,012	272,694	353,479	353,479	80,785
Purchasing	225,742	97%	202,494	232,988	232,988	7,246	191,404	210,825	210,825	19,421
Planning & Community Development	571,577	84%	639,187	683,761	683,761	112,184	605,198	692,089	692,089	86,891
Building & Code Enforcement	1,252,012	97%	1,289,136	1,293,628	1,293,628	41,616	1,240,334	1,295,919	1,295,919	55,585
Public Works	6,759,730	98%	6,779,814	6,932,734	6,932,734	173,004	7,149,976	7,192,799	7,192,799	42,823
		96%				419,738				
Police Fire	11,227,259 9,291,609	102%	11,044,550 8,643,108	11,646,997 9,095,375	11,646,997 9,095,375		11,035,127 9,182,304	11,672,252 9,162,232	11,672,252 9,162,232	637,125
-		97%	5,924,844	5,944,994		(196,234)				(20,072)
Parks & Recreation Organizational Support	5,751,657 1,411,212	100%		1,411,212	5,944,994 1,411,212	193,337	5,760,553 1,386,212	6,134,081 1,386,212	6,134,081 1,386,212	373,528
Non-Departmental	1,411,212	100%	1,411,212 239,000	1,411,212	1,411,212	1,429,375	1,300,212	911,735	911,735	911,735
Total Expenditures	40,539,772	95%	40,065,293	42,711,154	42,711,154	2,171,382	40,563,438	42,845,387	42,845,387	2,281,949
Revenues Over/(Under)	+0,008,172	3070	40,000,293	74,111,104	42,711,154	2,171,302	40,000,430	72,040,007	72,040,307	2,201,949
Expenditures	(6,403,108	93%	(4,965,071)	(6,882,475)	(6,882,475)	479,367	(6,575,877)	(6,562,318)	(6,562,318)	(13,559
Operating transfers in	8,687,460	99%	8,782,012	8,782,012	8,782,012	(94,552)	9,151,035	9,139,505	9,139,505	11,530
Operating transfers out	(1,884,537)	99%	(1,884,537)	(1,899,537)	(1,899,537)	15,000	(2,575,262)	(2,577,187)	(2,577,187)	1,925
Other Financing Sources/(Uses)	6,802,923	99%	6,897,475	6,882,475	6,882,475	(79,552)		6,562,318	6,562,318	13,455

^{*} As adjusted through September 30, 2011

The City of Winter Park, Florida Monthly Financial Report - Budget vs. Actual Community Redevelopment Fund Fiscal YTD September 30, 2011 and 2010 100% of the Fiscal Year Lapsed

	Fiscal YTD September 30, 2011					Fiscal YTD September 30, 2010				
	Actua	al	Budget				Actual	Actual Budget		
	YTD	YTD %	Original Annual	Adjusted Annual *	Prorated Adj. Annual	Variance from Prorated Adj. Annual	YTD	Adjusted Annual	Prorated Adj. Annual	Variance from Prorated Adj. Annual
Revenues:								-		
Property Tax Intergovernmental	\$ 2,309,577	100% 0%	. , ,	\$ 2,305,963	\$ 2,305,963	\$ 3,614	\$ 3,172,003 116,463	3,222,158	\$ 3,222,158	\$ (50,155) 116,463
Charges for services	175,941	0%	200,000	200,000	200,000	(24,059)	122,800	-	-	122,800
Miscellaneous	50,251	43%	,	117,200	117,200	(66,949)	164,056	234,400	234,400	(70,344)
Fund Balance	-	0%	338,821	10,268,931	10,268,931	(10,268,931)	-	3,459,789	3,459,789	(3,459,789)
Total Revenues	2,535,769	20%	2,961,984	12,892,094	12,892,094	(10,356,325)	3,575,322	6,916,347	6,916,347	(3,341,025)
Expenditures:										
Planning and Development	595,946	92%		644,908	644,908	48,962	· · · · · · · · · · · · · · · · · · ·	776,233	776,233	174,403
Capital Projects	8,006,715	79%		10,169,910	10,169,910	2,163,195	' '	12,971,674	12,971,674	10,057,273
Debt service	1,509,997	100%	1,506,081	1,506,081	1,506,081	(3,916)	974,686	1,150,578	1,150,578	175,892
Total Expenditures	10,112,658	82%	2,150,789	12,320,899	12,320,899	2,208,241	4,490,917	14,898,485	14,898,485	10,407,568
Revenues Over/(Under) Expenditures	(7,576,889)	-1326%	811,195	571,195	571,195	(8,148,084)	(915,595)	(7,982,138)	(7,982,138)	7,066,543
Debt proceeds Operating transfers out	- (107,108)	- 100%	- (107,108)	- (107,108)	(107,108)		8,100,000 (117,862)	8,100,000 (117,862)	8,100,000 (117,862)	
Other Financing Sources/(Uses)	(107,108)	100%	(107,108)	(107,108)	(107,108)		7,982,138	7,982,138	7,982,138	-
Total Revenues Over/(Under) Expenditures	\$ (7,683,997)		\$ 704,087	\$ 464,087	\$ 464,087	\$ (8,148,084)	\$ 7,066,543	-	\$ -	\$ 7,066,543

^{*} As adjusted through September 30, 2011

The City of Winter Park, Florida Monthly Financial Report - Budget vs. Actual Water & Sewer Funds Fiscal YTD September 30, 2011 and 2010 100% of the Fiscal Year Lapsed

	Fiscal YTD September 30, 2011			Fiscal YTD September 30, 2010			
	YTD	Original	Adjusted	Adjusted	YTD	Adjusted	Adjusted
	Actual	Budget	Budget *	%	Actual	Budget	%
Operating Revenues							
Intergovernmental	\$ 48,918		\$ -	0%		\$ -	0%
Charges for services	26,698,289	27,129,592	27,129,592	98%	25,465,358	26,084,284	98%
Total Operating Revenues	26,747,207	27,129,592	27,129,592	99%	25,465,358	26,084,284	98%
Operating Expenses:							
General and Administration	1,460,136	1,434,592	1,474,745	99%	1,445,067	1,516,471	95%
Operations	11,252,176	14,450,260	15,296,069	74%	11,648,370	16,538,442	70%
Facility Agreements	3,150,564	3,530,000	3,530,000	89%		3,717,000	81%
Depreciation & Amortization	4,226,342			0%	4,869,950		0%
Total Operating Expenses	20,089,218	19,414,852	20,300,814	99%	20,958,995	21,771,913	96%
Operating Income (Loss)	6,657,989	7,714,740	6,828,778	97%	4,506,363	4,312,371	104%
Nonoperating Revenues (Expenses):							
Investment earnings	400,061	238,920	238,920	167%	402,597	745,900	54%
Debt Service - Principal	-	(2,410,000)	(2,410,000)	0%		(1,150,000)	0%
Debt Service - Interest	(3,442,064)	(3,589,908)	(3,589,908)	96%	(3,047,642)	(2,956,638)	103%
Miscellaneous revenue	1,448	2,300	2,300	0%	250	-	0%
Fund Balance			885,962	0%		1,459,718	0%
Total Nonoperating	(0.040.555)	(5.750.000)	(4.070.700)	000/	(0.044.705)	(4.004.000)	4000/
Revenues (Expenses)	(3,040,555)	(5,758,688)	(4,872,726)	62%	(2,644,795)	(1,901,020)	139%
Income (Loss) Before							
Operating Transfers	3,617,434	1,956,052	1,956,052	185%	1,861,568	2,411,351	77%
Capital Contributions	1,118,134	_	_	0%	282,049	_	100%
Operating transfers in	-	-	-	0%	202,010	_	0%
Operating transfers out	(1,956,052)	(1,956,052)	(1,956,052)	100%	(2,181,400)	(2,181,400)	100%
Total Contributions and Transfers	(837,918)	(1,956,052)	(1,956,052)	43%	(1,899,351)	(2,181,400)	87%
Net Income	\$ 2,779,516	\$ <u>-</u>	\$ -		\$ (37,783)	\$ 229,951	

^{*} As adjusted through September 30, 2011

The City of Winter Park, Florida Monthly Financial Report - Budget vs. Actual Electric Services Funds

Fiscal YTD September 30, 2011 and 2010 100% of the Fiscal Year Lapsed - PRELIMINARY

	Fiscal YTD September 30, 2011			Fiscal YTD September 30, 2010			
	YTD	Original	Adjusted	Adjusted	YTD	Adjusted	Adjusted
0 " "	Actual	Budget	Budget *	%	Actual	Budget	%
Operating Revenues	¢	¢	\$ -	00/	\$ 836,175	r.	00/
Intergovernmental Charges for services	52,901,540	\$ - 53,805,025	53,805,025	0% 98%	\$ 836,175 57,666,217	57,337,970	0% 101%
Charges for services	52,901,540	53,805,025	53,805,025	96%	57,000,217	57,337,970	101%
Total Operating Revenues	52,901,540	53,805,025	53,805,025	98%	58,502,392	57,337,970	102%
Operating Expenses:							
General and Administration	1,159,107	1,117,722	1,117,758	104%	1,042,433	1,142,806	91%
Operations	5,054,609	8,931,951	10,242,216	49%	4,829,784	7,038,744	69%
Purchased Power Cost	30,214,537	33,914,312	33,914,312	89%	37,118,951	37,592,170	99%
Deferred Purchased Power Fuel Cost	-	-	-	0%	297,025	-	0%
Transmission Power Cost	2,130,671	1,772,000	1,772,000	120%	2,155,495	1,771,875	122%
Depreciation & Amortization	3,232,157			0%	3,080,218		0%
Total Operating Expenses	41,791,081	45,735,985	47,046,286	89%	48,523,906	47,545,595	102%
Operating Income (Loss)	11,110,459	8,069,040	6,758,739	164%	9,978,486	9,792,375	102%
Operating mediae (2003)	11,110,700	0,000,040	0,7 00,7 00	10470	3,370,400	3,132,010	102/0
Nonoperating Revenues (Expenses):							
Investment earnings	33,344	(115,000)	(115,000)	-29%	(42,994)	(100,000)	43%
Debt Service - Principal	-	(1,425,000)	(1,425,000)	0%	-	(650,000)	0%
Debt Service - Interest	(2,731,260)	(3,564,711)	(3,564,711)	77%	(2,765,162)	(3,382,260)	82%
Miscellaneous revenue	1,315,594	-	-	0%	92,299	-	0%
Fund Balance			3,978,358	0%		-	0%
Total Nonoperating							
Revenues (Expenses)	(1,382,322)	(5,104,711)	(1,126,353)	123%	(2,715,857)	(4,132,260)	66%
Income (Loss) Before							
Operating Transfers	9,728,137	2,964,329	5,632,386	173%	7,262,629	5,660,115	128%
Operating transfers in	_			0%		_	0%
Operating transfers out	(2,869,777)	(2,964,329)	(2,964,329)	97%	(3,220,605)	(3,209,075)	100%
epotating transfero out	(2,000,177)	(2,001,020)	(2,001,020)		(5,225,555)	(5,200,070)	
Total Operating Transfers	(2,869,777)	(2,964,329)	(2,964,329)	97%	(3,220,605)	(3,209,075)	100%
Net Income (Loss)	\$ 6,858,360	\$ -	\$ 2,668,057		\$ 4,042,024	\$ 2,451,040	

^{*} As adjusted through September 30, 2011

REGULAR MEETING OF THE CITY COMMISSION October 24, 2011

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida.

The invocation was provided by Mayor Bradley, followed by the Pledge of Allegiance.

Members present:

Mayor Kenneth Bradley Commissioner Steven Leary Commissioner Sarah Sprinkel Commissioner Carolyn Cooper Commissioner Tom McMacken Also present:

City Manager Randy Knight City Attorney Larry Brown City Clerk Cynthia Bonham

Approval of the agenda

Motion made by Commissioner McMacken to approve the agenda; seconded by Commissioner Sprinkel and approved by acclamation of the City Commission.

Mayor's Report

a. <u>Presentation of City Hall Commission Chamber flags – Lakemont Elementary Student</u> Council

Courtney Poppell, representing the Lakemont Elementary Student Council, presented the students who shared information on each flag displayed in the Commission Chamber.

b. "Week of the Family" proclamation

Mayor Bradley proclaimed October 29 through November 5 as "Week of the Family" in Winter Park. The following were present to accept the proclamation: Kevin Bush, Orlando Stake President for the Church of Jesus Christ of Latter-day Saints and Donna Parker, Orange County's Week of the Family Committee.

c. Check presentation – Friends of Fleet Peeples Park

Parks and Recreation Director John Holland accepted a check of \$40,000 from John Fishback, Chairman of Friends of Fleet Peeples Park. This was from fundraising efforts made of the group and will go toward a new ADA accessible restroom and a dog wash facility at the park. He mentioned that they are prepared to raise additional funds to help pay for this.

City Manager's Report

a. Pension study update

City Manager Knight updated the Commission on the pension study and provided a summary report (attached). He also provided the Commission with copies of the "City of Sarasota 2011 PBA Impasse Summary dated October 19, 2011" (attached) and a copy of the "Bill Summary HB 365, Representative Fred Costello, City Police/Fire Pensions, Fire/Police Correctional

Disability Presumptions dated October 18, 2011 (attached). Discussion ensued as to each Commissioner's preference. Questions of the Commission were answered by Mr. Knight.

Upon further discussion, motion made by Commissioner McMacken for City Manager Knight to continue to have them study the four items, if there is any information to be gleamed from the City of Sarasota report that is in addition to the four items, he would like to have them take a look at that and would like by the next meeting to have a time certain before the holidays or he is going to make a motion that they talk to someone else; seconded by Commissioner Cooper and approved by acclamation of the City Commission.

City Manager Knight reported on the Mead Gardens lease agreement discussions and suggested having a work session to discuss the item in more detail. There was consensus to schedule a work session for Tuesday, November 8 from 5:00 p.m. to 6:00 p.m.

City Manager Knight reported that we received State approval for the red light cameras to be installed on State roads.

City Attorney's Report

Commissioner Cooper asked if Attorney Brown has reviewed the information that she sent out and if there were any violations of the Sunshine Law. Attorney Brown said he does not believe that a Sunshine Law violation occurred and noted that he prepared a letter with his findings.

Non-Action Items

No items.

Consent Agenda

- a. Approve the minutes of 10/10/11. PULLED FROM CONSENT AGENDA FOR DISCUSSION SEE BELOW
- b. Approve the following purchases and contracts:
 - 1. PR 147840 to Winter Park Historical Association for FY12 organizational support; \$70,000
 - Blanket Purchase Order to Lina (Cigna) for Lift, Accidental Death and Dismemberment and Long Term Disability Insurance (RFP-19-2008); \$113,134.28
 - 3. Blanket Purchase Order to Aetna for Administrative Contract Service Fee for Medical Insurance (RFP-6-2007); \$262,810.99
 - 4. Blanket Purchase Order to Aetna for Administrative Stop Loss for Medical Insurance (RFP-6-2007); \$415,516.37
 - Blanket Purchase Order to Metlife for Dental Insurance (RFP-18-2008); \$354,109.15
 - Blanket Purchase Order to GATSO USA for Red Light Safety Enforcement (RFP-13-2009); \$552,000
 - 7. PR 147880 to Brown & Brown of Florida, Inc. for Risk Management Services; \$115.000
 - 8. PR 147862 to Mobile Tec International, Inc. for Annual Support of Public Safety Computer Aided Dispatch and Records Management System; \$65,030
 - 9. PR 147862 to Sungard Public Sector for Annual Support of ERP Software; \$86,629.80

- 10. After the fact Purchase Order 145616 to Winter Park Public Library for October 2011 Organizational Support; \$113,767.63
- 11. PR 147888 to Software House International for Annual Microsoft Enterprise Software Support; \$60,299
- 12. Blanket Purchase Order to William J. Peebles for State Lobbyist Services; \$52,000
- 13. Blanket Purchase Order to Brown, Garganese, Weiss & DeGresta for Attorney Services (RFP-21-2009); \$300,000
- 14. Blanket Purchase Order to Alcalde & Fay for Federal Lobbyist Services; \$62,000 PULLED FROM CONSENT AGENDA FOR DISCUSSION SEE BELOW
- 15. Blanket Purchase Order to Shutts & Bowen for Labor Attorney Services; \$100,000
- 16. Authorize the Mayor to execute the Maintenance Agreement for Public Safety Computer Aided Dispatch and Records Management System
- 17. Piggybacking GSA Schedule GS-07F-0350X with Interworld Highway, LLC and authorize the Mayor to execute the Piggyback Contract for Scientific Equipment and Services; \$3,000
- c. Authorize the City Manager, in consultation with the City Attorney, as needed, to sign purchase orders for payment of HIDTA personnel and operations, subject to the condition that the HIDTA grant funds will be the sole source of money to pay these obligations.
- d. Approve the use up to \$25K of FY 2012 budgeted Parks Department improvement fund to improve the golf bag storage area of the Starter's House to provide insulated/air conditioned space.

Motion made by Commissioner McMacken to approve Consent Agenda Items 'b-1-13', 'b-15-17', 'c' and 'd'; seconded by Commissioner Sprinkel and approved by acclamation of the City Commission.

Consent Agenda Item 'a' - Approve the minutes of 10/10/11.

The minutes were approved as corrected.

Motion made by Commissioner Cooper that on page 7, to add "performance", on page 12 that it states "speak about the Veterans Program", on page 12 that is states "Legends" instead of 'Regents'; seconded by Commissioner McMacken and approved with by acclamation of the City Commission.

Motion made by Commissioner Cooper to change the word "numerous" relative to the number of petitions and signatures that were submitted by the citizens and have the Clerk enter the number of signatures that were on the petitions; seconded by Commissioner McMacken. Motion failed with a 3-2 vote with Mayor Bradley, Commissioner Leary and Sprinkel voting no and Commissioners Cooper and McMacken voting yes.

Discussion ensued about removing references in the minutes presented before them. Attorney Brown explained what is required in the minutes and that there is no mechanism for removing statements from the minutes if they are correct statements of what was discussed. He further commented that because someone does not like what was discussed is not a cause for removing a reference to what was discussed because the minutes are to reflect what actually happened.

After discussion, City Manager Knight advised that staff would prefer to do action minutes and not attempt to include extra dialogue because there is always a question of what to include and it is objective on the Clerk's part to try and figure out what is important. He asked the Commission for direction.

Motion made by Commissioner Cooper that the entire discussion under Mayor Bradley's section and under Commissioner Cooper's section be listed verbatim in the minutes; seconded by Commissioner McMacken. The motion failed with a 3-2 vote with Mayor Bradley and Commissioners Leary and Sprinkel voting no and Commissioners Cooper and McMacken voting yes.

Motion made by Mayor Bradley that the minutes reflect a striking of the sentence or move an amendment that she (Commissioner Cooper) sent out to see if there was a Sunshine Law violation be stricken from the record; seconded by Commissioner Cooper and approved with a 5-0 vote.

Upon discussion, motion made by Commissioner Sprinkel to request action minutes for this meeting; seconded by Commissioner Leary. Discussion ensued as to the process. Approved by a 4-1 vote with Commissioner Cooper voting no.

Consent Agenda Item 'b-14' - Blanket Purchase Order to Alcalde & Fay for Federal Lobbyist Services; \$62,000

Motion made by Mayor Bradley that we do a formal Request for Proposal (RFP) for the Federal Lobbyist services and to not terminate the current contract at this time; seconded by Commissioner McMacken.

City Manager Knight advised that he will notify Alcalde & Fay that we are putting this out for bid and in the meantime we will be working under their contract on a month-to-month basis until the RFP is completed.

Upon a roll call vote, Mayor Bradley and Commissioner Leary voted yes. Commissioners Sprinkel, Cooper and McMacken voted no. The motion failed with a 3-2 vote.

Motion made by Commissioner Sprinkel that the City Manager bring back to the Commission recommendations for the Federal and State Lobbyist renewal or RFP process; seconded by Mayor Bradley. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Public Comments

Marti Miller, 1399 Aloma Avenue, felt that the Commission should make a public apology to Commissioner Cooper for publicly attacking her on the dais during the last meeting.

Sally Flynn, 1400 Highland Road, asked why there is opposition to amend the minutes to reflect the exact number of signatures on the petition that she submitted at the last meeting. She noted that the petition was in opposition to the CNL proposal and contained 234 signatures from Winter Park residents.

Bill Shallcross, 1450 Bonnie Burn Circle, encouraged the Commission to have verbatim minutes since the audio files are destroyed every two years. He mentioned the construction project on Lakemont and Aloma and urged the Commission to find a way to expedite public road projects.

Jackie Ellis, Base Camp American Childhood Cancer Organization, asked the community for support by donating funds, food baskets, volunteering efforts or becoming a board member.

Donna Colado, 327 Beloit Avenue, disagreed with comments made at the last meeting and asked that the upcoming agenda list the correct language pertaining to the State Office Building negotiations.

A recess was taken from 5:22 p.m. to 5:38 p.m.

Action Items Requiring Discussion:

a. Review and approval of the exchange agreement between the City of Winter Park and Progress Point LLC for the State Office Building property

This item was postponed until November 14, 2011.

b. Adoption of the official City of Winter Park Flag

Communications Director Clarissa Howard presented the choices for the City's flag and recommended option #1. Motion made by Commissioner Cooper to adopt staff's recommendation; seconded by Commissioner McMacken. Commissioner Leary preferred option #3. Upon a roll call vote, Mayor Bradley and Commissioners Sprinkel, Cooper and McMacken voted yes. Commissioner Leary voted no. The motion carried with a 4-1 vote.

c. State legislative priorities

City Manager Knight provided the State legislative priorities (attached) and answered questions of the Commission. **Motion made by Commissioner Leary to approve the priorities; seconded by Commissioner McMacken.** Commissioner Sprinkel asked that a more detailed or specific list on the bigger topics be provided. City Manager Knight acknowledged.

Bill Shallcross, 1450 Bonnie Burn Circle, asked that the list be abbreviated and to include the costs. He also spoke about deleting the quiet zones from the list.

Commissioner Cooper asked City Manager Knight if he would send them the list of Federal legislative priorities. The request was acknowledged. City Manager Knight clarified that the lobbyist is actively working on the top three items on the State legislative priority list and if the Commission would like to reprioritize the list to let him know. Commissioner Cooper asked if they could also see the financial data on these items. The request was acknowledged.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Public Hearings

- a. Requests of the City of Winter Park: To revise the public notice requirements for Citywide notices to streamline the zoning approval process:
- AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58
 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO REVISE THE PUBLIC
 NOTICE REQUIREMENTS FOR ZONING AMENDMENTS AND CONDITIONAL USES AND
 THE EXTENSION OR RE-ESTABLISHMENT OF CONDITIONAL USES, PROVIDING FOR
 SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE
- AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO ADOPT NEW PUBLIC NOTICE AND ADOPTION PROCEDURES FOR AMENDMENTS TO THE CITY OF WINTER PARK COMPREHENSIVE PLAN SUBSTITUTING FOR THE CURRENT AMENDMENT PROCEDURES, PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE

Attorney Brown read both ordinances by title. Planning Director Jeff Briggs explained the proposed changes. He answered questions regarding the public notice process and the length of time associated with the notifications.

Motion made by Commissioner Sprinkel to accept the first ordinance on first reading; seconded by Commissioner Leary.

Motion made by Commissioner Sprinkel to accept the second ordinance on first reading; seconded by Commissioner Leary.

Motion amended to the first ordinance by Commissioner Cooper - Section 58-89 (2) (c) to not delete the requirement (leave the statement in) that owners of record receive notice within 1,500 feet (to be applied to both ordinances); seconded by Commissioner McMacken.

Motion amended to the first ordinance by Commissioner Cooper - Section 58-90 (d) (2) to delete the last sentence of the first paragraph (For projects requiring city-wide notice, the alternative use of a quarter page display advertisement in a newspaper of general circulations shall substitute); seconded by Commissioner McMacken.

Upon a roll call vote on the first amendment, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Upon a roll call vote on the second amendment, Mayor Bradley and Commissioners Leary and Sprinkel voted no. Commissioners Cooper and McMacken voted yes. The motion failed with a 3-2 vote.

Motion amended to the second ordinance by Commissioner Cooper – Section 58-6 (a) (3)b to delete "affecting more than 80,000 square feet of land." Motion failed for lack of a second.

Upon a roll call vote on the first ordinance as amended, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Upon a roll call vote on the second ordinance, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

b. Request for 10 year Conditional Use approve extension for Mr. Felix Furst for the project at 170 S. Knowles Avenue.

Planning Director Jeff Briggs explained the request for the four unit townhouse project located at 170 S. Knowles Avenue and that this was back on the agenda because of a requirement of advertising. This would add another five years and would be effective until October 24, 2021.

Motion made by Commissioner Sprinkel to approve the extension of the conditional use request, seconded by Commissioner Leary. Upon a roll call vote, Mayor Bradley and Commissioners Leary and Sprinkel voted yes. Commissioners Cooper and McMacken voted no. The motion carried with a 3-2 vote.

c. Request of Winter Park Investors LLC on behalf of WAWA, Inc.: Conditional use approval to construct a convenience store and drive-in gas/fuel sales at 901 and 911 North Orlando Avenue

Each Commissioner disclosed their ex-parte conversations with the applicant. Planning Director Jeff Briggs summarized the site and the conditional use request. He noted that he is comfortable with the architecture of the proposed canopy and the landscaping and indicated that it is an upgrade from the minimum requirement listed in the code.

Applicant Brian Pomykacz, Real Estate Manager for WAWA, provided a presentation and video regarding the history of their company and how the company will integrate into the surrounding community.

Ryan Stahl, Equinox Development Group provided the site plan, showed renderings of the proposed building and explained how the building will look both inside and outside.

Motion made by Commissioner McMacken to approve the conditional use request, seconded by Commissioner Sprinkel.

Bill Shallcross, 1450 Bonnie Burn Circle, indicated that this is not a project that he would prefer to see in the City and encouraged the Commission to carefully consider approving the project.

Bee Epley, 151 N. Orlando Avenue, spoke in favor of the project.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

CITY COMMISSION MEETING MINUTES OCTOBER 24, 2011 PAGE 8 OF 8

d. ORDINANCE NO. 2859-11: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING THE EASEMENT LOCATED AT 1500 SUMMERLAND AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING AN EFFECTIVE DATE. Second Reading

Attorney Brown read the ordinance by title. Motion made by Commissioner McMacken to adopt the ordinance; seconded by Commissioner Sprinkel. No public comments were made. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

City Commission Reports:

- a. <u>Commissioner Leary</u> no report
- b. <u>Commissioner Sprinkel</u> no report
- c. Commissioner Cooper

Commissioner Cooper asked for support to look at the existing ordinance regarding when our elections are held as related to the Presidential Preference Primary election as they move forward. There was not a consensus to discuss this on a future agenda.

Commissioner Cooper followed up on her Coffee talk from last week and asked for clarification on three questions that she could not answer.

- d. Commissioner McMacken no report
- e. Mayor Bradley

The median adjoining ad at 7,00 p.m.

Mayor Bradley spoke about operation gratitude that was held last year with the Fire Department and Andrew Weinstock and urged the City to continue to support this effort.

City Manager Knight advised that there was an unfortunate accident that happened today with one of the City's fire engines and a bicyclist and our condolences go out to the bicyclist as he did not survive. A moment of silence was given for this individual.

The meeting adjourned at 7.26 p.m.	
ATTEST:	Mayor Kenneth W. Bradley
City Clerk Cynthia S. Bonham	

item type	Consent Agenda	meeting date	November 14, 2011
prepared by department division	Purchasing Division	approved by	☐ City Manager☐ City Attorney☐ N A
board approval		yes no	N A final vote

Piggyback contracts

	vendor	item background	fiscal impact	motion recommendation
1.	Florida Bearings, Inc.	Piggyback for Repair of Electric Motors & Pumps	Total projected expenditure included in approved FY12 budget. Amount: \$30,000	Commission approve piggybacking the City of Sanford contract #RFP 09/10-23 with Florida Bearings, Inc. and authorize the Mayor to execute the Piggyback Contract
	The City of Sanford utilized a competitive bidding process to award this contract. The contract was awarded on August 25, 2010 and is valid through August 9, 2013.			
2.	Owens, Renz & Lee, Inc.	Piggyback for Janitorial Services	Total expenditure included in approved FY12 budget. Amount: \$157,062.00	Commission approve piggybacking the Pasco County contract #05-114 with Owens, Renz & Lee, Inc. and authorize the Mayor to execute the Piggyback Contract
	Pasco County utilized a competitive bidding process to award this contract. The contract was awarded			

Pasco County utilized a competitive bidding process to award this contract. The contract was awarded on October 24, 2006. The current contract term is valid through October 31, 2016. Proposed price increases to the contract are based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U).

item type	Consent Agenda	meeting date November 14, 2011
prepared by department division	City Management	approved by ■ City Manager □ City Attorney □ N A
board approval	Ethics Board	■yes □ no □ N A 6-0 final vote

subject

Civility Code

motion | recommendation

Approve the Civility Code as recommended by the Ethics Board.

Background

On April 27th the City Commission requested that the Ethics Board develop a Civility Code. On June 13th the Ethics Board ranked and presented three choices to be considered as a Civility Code for the City. The Commission discussed the three choices and ultimately asked the Ethics Board to continue to consider alternatives. Due to vacation schedules, the Ethics Board did not meet over the summer. They met on Wednesday, October 12th to further consider the development of a Civility Code and crafted the attached recommendation.

alternatives | other considerations

Many alternatives were considered including samples from other municipalities, school boards, state organizations, political organizations, etc.

fiscal impact

N/A

long-term impact

strategic objective

City of Winter Park Code of Civility

The City of Winter Park Civility Code is intended to clearly emphasize our commitment to maintain civility in the conduct of the public's business.

We will demonstrate dignity, respect, and courtesy towards those with whom we contact in our capacity as City Commissioner, Board Member or Employee.

- We will respect the right of all citizens in our community to hold differing opinions;
- We will avoid rhetoric intended to humiliate, illegitimize or question the wisdom of those whose opinions differ from ours;
- We will strive to understand differing perspectives;
- We will choose our words carefully;
- We will speak truthfully without accusation and we will avoid distortion; and
- We will speak out against violence, prejudice and incivility in all of their forms, whenever and wherever they occur.

By practicing the code, the City Commission, Board Members and Employees shall set the example and in turn, invite all citizens of Winter Park along with those involved in the business of the City, to join them in honoring the Civility Code.

item type	Consent Agenda	meeting date	November 14, 2011
prepared by department division	Cindy Bonham City Clerk	approved by	■ City Manager□ City Attorney□ N A
board approval		☐ yes ☐ no ■	N A final vote

subject

Cancellation of December 26, 2011 City Commission meeting

motion | recommendation

Cancel the December 26, 2011 Commission meeting that falls the Monday after the holiday weekend.

background

Traditionally, the City Commission has cancelled this meeting.

alternatives | other considerations

Hold the meeting another day as City Hall is closed.

fiscal impact

N/A

strategic objective

N/A

item type	Consent Agenda	meeting date November 14, 2011
prepared by department division	Electric Department	approved by ■ City Manager ■ City Attorney □ N A
board approval		■ yes □no □N A 9-0 final vote

subject

On-Site Energy Audit Services Program Master Agreement

motion | recommendation

Authorize Mayor to execute the attached On-Site Energy Audit Services Program Master Agreement with Progress Energy Florida (PEF)

background

Energy conservation is a difficult topic for a distribution utility. The less kWh we sell, the fewer we have to spread our costs over. Good customer service, however, demands that we provide energy conservation. Most utilities in Florida offer in-person energy audits and rebates for implementing energy conservation measures. Winter Park Electric does not currently offer energy conservation services. As you know, the City Commission approved the fiscal year 2012 budget with funding of \$350,000 for the implementation of a Winter Park Electric energy conservation program.

For a couple of years, Winter Park Electric Staff has been having discussions with OUC and Progress Energy about the potential of helping us with energy conservation services. The genesis for the idea comes from our existing home wire and surge protection program that PEF administers to our customers on our behalf. The development and implementation of a Winter Park Electric energy conservation would be expensive and time consuming. Staff does not believe that the expenditure of the funds necessary to essentially invent a Winter Park conservation program, nor would the delay to implementation be in the best interest of our customers. As a result, staff concluded that contracting with another utility to provide energy audit services and patterning our energy conservation program after theirs would be the best approach. Electric Department staff is currently working with the Utilities Advisory Board to identify the various rebates and incentives that will be recommended to the City Commission for approval and inclusion in a Winter Park energy conservation program. Staff expects to bring that recommendation to the City Commission for consideration in December. By patterning our conservation program after the utility's that is providing energy audits, the energy auditors providing the audit services would not have to learn new programs, but would be simply implementing programs that they are already familiar with.

Also, since both OUC and PEF actively advertise their energy conservation programs here in Central Florida, it would allow us to essentially ride their coattails without having to fund our own advertising program. That approach maximizes the funds available for energy audits, rebates and other conservation incentives.

The electric department does not have sufficient staff resources to manage a program so hiring city employees or doing an RFP for private contractors that we would have to manage is beyond our ability at this point. Also, using utility auditors that are independent of electrical appliance sales and the installation of conservation measures gives customers confidence in the recommendations and avoids having to separate out sales pitches provided by contractors with a vested interest in selling services and/or equipment to the customers.

Using a local utility that is already advertising conservation services provides significant cost advantages to the City. Customer inquiries about the availability of City provided conservation services always increases after local OUC and PEF advertising campaigns. There are three central Florida utilities that would appear to be logical options to provide such services: Kissimmee Utility Authority KUA, Orlando Utilities Commission (OUC), and Progress Energy Florida (PEF). The table below summarizes staff's evaluation of those three utilities.

Criteria	KUA	OUC	PEF
Provides Energy Conservation	Yes	Yes	Yes
Services			
WP customer count as a % of host	24%	6%	.9%
utility			
		6 miles (OUC has	14 miles (PEF has
Distance from serving office	23 miles	existing customers	existing customers in
		in Winter Park)	Winter Park)
Active advertising energy			
conservation services in local	No	Yes	Yes
market			
Willing to provide Services to	Too Small	No	Yes
Winter Park	to consider	140	168

The evaluation shows that OUC and PEF are the only real choices since they are the only ones that could economically take on services to Winter Park's customers. KUA is just too small in comparison to Winter Park and practically speaking too far away. Once we selected PEF/Seminole for power supply OUC staff communicated to us that they would no longer be interested in providing us conservation services. We therefore discontinued further discussions with them.

PEF has agreed to provide the same energy audit services that it provides to its own customers with its personnel/contractors in accordance with the attached agreement.

Fiscal impact

Residential Energy Audits will be provided at \$225 each; Commercial Energy Audits will be provided at \$230-\$715 depending on the size of the customer's electric load. Other elements of a Winter Park Electric conservation program will be presented to the City Commission for consideration at a future City Commission meeting. Total conservation program costs will be limited to the FY 2012 budgeted amount of \$350,000.

Attachment:

City of Winter Park

On-Site Energy Audit Services Program Master Agreement

This On-Site Energy Audit Services Program Master Agreement (this "Master Agreement") is made and entered into as of this 14th day of November, 2011 (the "Effective Date") between Florida Power Corporation, d/b/a Progress Energy Florida, Inc. ("Service Provider"), with its principal place of business located at 299 First Avenue North, St. Petersburg, Florida, 33701-3324, and the City of Winter Park, with its principal place of business located at 401 Park Ave South, Winter Park, Florida. 32789-4386. each of the City of Winter Park and Service Provider, individually a "Party" and collectively referred to herein as the "Parties," agree as follows:

WHEREAS, the City of Winter park provides electric utility services to the residents of the City of Winter Park;

WHEREAS, Service Provider is a regulated public utility with extensive experience in providing its utility customers with regulated, electrical home services such as On-Site Energy Audits;

WHEREAS, the City of Winter Park desires to engage Service Provider to develop, administer and service the Program as further defined in Section I below for the benefit of the City of Winter park utility customers;

WHEREAS, Service Provider desires to provide the City of Winter Park with the development, administration and servicing of the Program for the benefit of the City of Winter Park utility customers;

NOW, THEREFORE, for and in consideration of the premises and covenants contained herein and in reliance upon the representations and warranties contained herein, the Parties agree as follows:

I. DEFINITIONS

- A. "Accounts" shall mean the block or group of City of Winter Park utility customers to which Service Provider has, pursuant to its enrollment of said customers in an On-Site Energy Audit Service, agreed to provide its On-Site Energy Audit Services to the City of Winter Park under the terms and conditions of this Master Agreement.
- B. "Bill Inserts" shall refer to those promotional inserts prepared and inserted by the City of Winter Park into the City of Winter Park utility customers' bills that promote the On-Site Energy Audit Services that the City of Winter Park will provide to its utility customers through Service Provider.

- C. "Affiliate" means, with respect to any Person, at the time in question, any other Person Controlling, Controlled by or under common Control with such Person.
- D. "Confidential Information" means all documents, materials, data and information, in whatever form received, created or gathered, including, but not limited to, oral, written, magnetic, electronically recorded, tangible or intangible, which have or will come into the possession of a Party hereto relating to and furnished by the other Party or its representatives in connection with this Master Agreement or the transactions contemplated hereby, which are confidential and proprietary in nature, including, but not limited to, the following: City of Winter Park Customer lists; names of contract owners; types of products and services purchased or provided; financial information; business plans; technology; marketing philosophies and objectives; distribution networks; the identity, production and compensation of individual agents, sales representatives and sales managers; except that Confidential Information shall not include the following:
 - (1) information that, at the time it is disclosed, is already in the rightful possession of the receiving Party or available to the receiving Party, or its officers, directors or employees, from any other source having no obligation not to disclose it;
 - (2) information that is, or any time thereafter, becomes available to the general public;
 - (3) information that, after it is disclosed, is at any time obtained by the receiving Party from any other Person having no obligation not to disclose it; or
 - (4) information that is developed by a Party hereto independently, without reference to any confidential information relating to or furnished by the other Party.

"Notwithstanding anything to the contrary in the foregoing, the parties agree and acknowledge that the City is subject to Florida's Public Records Act, which is codified in Chapter 119, Florida Statutes, (said Act hereinafter referred to as "Chapter 119"). Therefore, it is agreed that the parties shall comply with the requirements of chapter 119, and neither party will be liable for breach of this Contract as a result of a good faith response to a demand for public records. Any records that the Service Provider contends are a "trade secret" and therefore exempt from Chapter 119 should be clearly marked as a "trade secret" before delivery into the possession of the City or any agent or employee thereof, and thereafter the City shall treat such item(s) as confidential as allowed by section 815.045,

Florida Statutes, as the same may be amended. If marking an item as a "trade secret" is not commercially reasonable because of the nature of the item, then the Service Provider, when delivering the item must designate it as a "trade secret" in writing to the City official charged with administering this Contract. However, documents delivered to the City by the Service Provider must be expressly marked as "trade secrets" in order to receive the exemption from Chapter 119 that is allowed by section 815.045, Florida Statutes, if Service Provider contends such documents are in fact "trade secrets" as defined under Florida law."

- E. "Control" means the possession, direct or indirect of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of issued and outstanding voting securities, the holding of proxies by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the Person. Except as otherwise provided in this Master Agreement, control is presumed to exist if any person, directly or indirectly, owns, controls, holds, with the power to vote or holds shareholders' proxies representing ten percent (10%) of the issued and outstanding voting securities of any other Person or holds or controls sufficient proxies, or is entitled by contract or otherwise, to nominate, appoint or to elect the majority of the board of directors or comparable governing body of any other Person.
- F. "On-Site Energy Audit Service(s)" shall refer, either individually to each separate On-Site Energy Audit Service, or collectively to all On-Site Energy Audit Services, promoted by the City of Winter Park and administered and serviced by Service Provider on behalf of the City of Winter Park for the benefit of the City of Winter Park utility customers. The On-Site Energy Audit Services covered under this Master Agreement presently include On-Site Energy Audit Services for Residential, Commercial and Industrial Customers. Additional DSM and Energy Efficient Services may be added to this Master Agreement at the mutual written consent of the Parties hereto.
- G. "City of Winter Park Customer" means the utility customer of the City of Winter Park who has been enrolled by Service Provider on the City of Winter Park's behalf or by the City of Winter Park in one or more On-Site Energy Audit Services.
- H. "Person" means any individual, corporation, partnership, firm, joint venture, association, joint stock Company, Limited Liability Company, trust, unincorporated organization, governmental, judicial or regulatory body, business unit, division or other entity.
- I. "Program" means On-Site Energy Audit Services to the City of Winter Park under the terms and conditions of this Master Agreement.

- J. "Target Customer" shall refer to the City of Winter Park utility customer who has been identified by City of Winter Park as meeting the City of Winter Park's eligibility criteria, but has not yet been enrolled in the City's On-Site Energy Audit Service Program of this Master Agreement.
- K. "Term" shall refer to the time period in which this Master Agreement remains in effect between the Parties hereto pursuant to the terms and conditions specified in Section IV below.

II. COVENANTS AND AGREEMENTS OF THE CITY OF WINTER PARK

- A. The City of Winter Park hereby retains Service Provider, or an Affiliate, contractor or subcontractor appointed by Service Provider, to provide the City of Winter Park utility customers with On-Site Energy Audit Services of this Master Agreement, as the same may be amended from time to time. Upon such enrollment, the City of Winter Park shall also exclusively retain Service Provider, or an Affiliate, contractor or subcontractor appointed by Service Provider, to administer and provide the On-Site Energy Audit Services to each City of Winter Park utility customer so enrolled. "Service Provider will screen or cause to be screened for criminal history all personnel who may come into contact with City residents or may be exposed to personal information regarding any City resident during the course of performing work under this Contract. The level of the screening shall be equal to Level 2 Screening Standards set out in section 435.04, Florida Statutes. Persons not meeting Level 2 Screening Standards will not be used for any work under this Contract that may cause them to deal directly with City residents or which may reasonably allow them access to City residents' personal information. And, all persons employed, contracted or subcontracted by Service Provider or its contractor shall be subject to a legally compliant policy that prohibits personnel from using or being under the influence of illegal drugs and alcohol in the workplace and in the field while on work assignment. Moreover, the Service Provider and its contractors and subcontractors will immediately remove any individual from providing services hereunder upon the request of the City, the City Manager, or the person or persons authorized to administer this Contract on behalf of the City."
- B. The City of Winter Park acknowledges that the City of Winter Park shall be the obligating party to each City of Winter Park Customer and that Service Provider's enrollment, administration and servicing activities under this Master Agreement are done solely for the benefit of the City of Winter Park and not for the benefit of any of the City of Winter Park utility customers, the City of Winter Park Target Customers or City of Winter Park Customers.

- C. The City of Winter Park shall provide the necessary programming to enable insertion of the promotional Bill Inserts to the Target Customers.
- D. The City of Winter Park shall insert the promotional Bill Inserts provided by the City into Target Customer utility bills.
- E. The City of Winter Park will try to print an on-bill promotional message during those months where Bill Inserts are not included with the bills sent to the City of Winter Park Target Customers (optional).
- F. The City of Winter Park will promote those On-Site Energy Audit Services that are agreed upon by the Parties hereto on the City of Winter Park website and this website promotion will include the toll-free number that Target Customers may call for enrollment purposes.
- G. The City of Winter Park shall promptly send Service Provider the enrollment information of any Target Customer requesting directly by the City of Winter Park in On-Site Energy Audit Services. The City of Winter Park shall ensure that new City of Winter Park Customer enrollment information is received by Service Provider in sufficient enough time to allow Service Provider to fulfill Service Provider's covenants under Section III (G) below.
- H. The City of Winter Park shall pay all mailing and handling costs incurred to market the On-Site Energy Audit Services to Target Customers in any of the promotional methods specified in Section in this Master Agreement.
- I. The City of Winter Park shall be solely responsible for collecting from each of its City of Winter Park Customers the monies owed by each City of Winter Park Customer for each City of Winter Park Customer's receipt of On-Site Energy Audit Services from Service Provider. (Currently, the city does not intend to charge its customers for Energy Audit Services.)
- J. In consideration for Service Provider's costs, administration and provision of the On-Site Energy Audit Services to City of Winter Park Customers, the City of Winter Park will make payment to Service Provider in accordance with the terms and conditions specified more fully in Section IV below.
- K. The City of Winter Park shall notify Service Provider within seventy-two (72) hours after receiving notice of any actual (i) litigation, or (ii) complaint or inquiry made by or through any governmental or regulatory body, if such litigation, complaint or inquiry relates to the On-Site Energy Audit Services, or this Master Agreement. Such notice shall include a copy of any written material received in connection with the litigation, complaint or inquiry. The City of Winter Park agrees to cooperate with Service Provider and assist in the resolution of all such matters. The City of Winter Park shall not have the authority, implied or otherwise to

institute against any third party any legal proceeding directly involving Service Provider, unless such proceeding shall have been approved in writing by an officer of Service Provider.

III. COVENANTS AND AGREEMENTS OF SERVICE PROVIDER

- A. A. Service Provider shall provide the City of Winter Park with its Target Customer criteria for marketing and promotional purposes.
- B. Service Provider shall provide the City of Winter Park with its form(s) of Target Customer Bill Inserts prior to the commencement of any promotional or marketing activities by either Party hereto.
- C. During the Term, Service Provider, either directly or through its Affiliates or Service Provider Contractors, shall answer all telephone calls relating to claims reported by consumers who hold On-Site Energy Audit Service Customer Agreements, and shall facilitate repair and replacement services as described in the On-Site Energy Audit Service Customer Agreements.
- D. Service Provider shall administer the On-Site Energy Audit Service Customer Agreements on the City of Winter Park's behalf in accordance with their respective terms and conditions.
- E. Throughout the Term of this Master Agreement, Service Provider shall provide to the City of Winter Park a City of Winter Park Customer report each month, which shall contain City of Winter Park Customer's On-Site Energy Audit Service Customer Agreement administration information applicable to a given monthly period.
- F. Service Provider will recruit, train, and manage a network of electrical Service Provider Contractors who will assist Service Provider with the provision of On-Site Energy Audit Services identified in Appendix A to this Master Agreement, as the same may be amended from time to time.
- G. Service Provider shall comply with all legal requirements necessary for Service Provider to administer the On-Site Energy Audit Service Customer Agreements (and all amendments and changes thereto) according to the terms and conditions of this Master Agreement.
- H. Service Provider shall notify the City of Winter Park within seventy-two (72) hours after receiving notice of any actual or threatened (i) litigation, or (ii) complaint or inquiry made by or through any governmental or regulatory body, if such litigation, complaint or inquiry relates to the Home Services, Home Service Customer Agreements or this Master Agreement. Such notice shall include a copy of any written material received in connection with the litigation, complaint or inquiry. Service Provider agrees to cooperate with the City of Winter Park and assist in the resolution of all such matters. Service Provider shall not have the

authority, implied or otherwise to institute against any third party any legal proceeding directly involving the City of Winter Park, unless such proceeding shall have been approved in writing by an officer of the City of Winter Park.

J. On-Site Energy Audit Service Provider Cost

The costs specified below shall apply for the initial Term of this Master Agreement and may be amended at any time by the Parties hereto in a mutually signed amendment to this Master Agreement. See Exhibit A-1

IV. TERM AND TERMINATION

A. Term.

Subject to early termination of this Master Agreement pursuant to the other provisions of this Section IV, the term of this Master Agreement (the "Term") shall commence on the date hereof, shall continue in full force and effect for two (2) years (the "Initial Term") and shall be automatically renewed for successive one-year periods unless written termination is provided by the canceling Party to the other non-canceling Party ninety (90) days prior to the end of the Initial Term or any renewal term.

B. Early Termination.

This Master Agreement may be terminated during its Term for the following reasons only:

- 1. By mutual written consent of the Parties at any time with written notice to each other;
- 2. By either Party at any time and for any reason upon at least ninety (90) days written notice to the other Party, which notice shall specify the effective date of termination;
- 3. By any Party, for a material breach of this Master Agreement by the other Party upon thirty (30) days written notice to the breaching Party, if such breaching Party does not cure the breach prior to the expiration of the thirty (30) day notice period (or in the case of a breach that cannot be reasonably cured within such thirty (30) day notice period, if the breaching Party has not undertaken substantial measures to cure the breach). Both Service Provider and the City of Winter Park agree that a material breach shall include, but not be limited to, any of the following situations:

- a. Either Party fails to remit funds in accordance with the terms of this Master Agreement; or
- b. Either Party fails to submit any report or accounting in accordance with the terms of this Master Agreement;
- c. By either Party if required by state laws or regulations;
- d. By either Party, upon thirty (30) days written notice of the bankruptcy, insolvency or placing in conservation, administrative supervision, rehabilitation or liquidation of another Party or upon another Party making an assignment for the benefit of its creditors;
- e. By either Party upon ninety (90) days written notice of any direct competitor of the Party, its parent or affiliate companies obtaining control of the other Party, who did not have such control as of the Effective Date. Control in this instance means the possession, direct or indirect, of the power to direct or cause the direction of the management of the policies of a Party whether through the ownership of issued and outstanding voting securities, the holding of proxies by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the Person. Control is presumed to exist if any Person, directly or indirectly owns controls, holds with the power to vote, or holds shareholders' proxies representing twenty-five percent (25%) or more of the issued and outstanding voting securities of any other Person or holds or controls sufficient proxies, or is entitled by contract or otherwise to nominate, appoint or to elect the majority of the board of directors or comparable governing body of any other Person:
- f. By either Party, immediately upon written notice if another Party, with respect to the On-Site Energy Audit Services knowingly commits a fraudulent or illegal act or engages in willful or malicious misconduct.

C. Duties Following Termination.

In the event of termination of this Master Agreement, this Master Agreement shall remain in full force and effect with respect to all Home Service Agreements issued, renewed or applied for during the Term of this Master Agreement, until all liabilities contained thereunder have been fully discharged.

Notwithstanding any provision in this Master Agreement to the contrary, in the event this Master Agreement is terminated because of a material breach by Service Provider as defined in Section IV(B)(3)(a) through –(f) above, the City of Winter Park shall have the right to immediately assume the Services or to transfer such responsibility to a new administrator. Service Provider agrees to cooperate fully in effectuating such shift of

responsibility. Upon such transfer, Service Provider shall have no further rights to compensation or reimbursement hereunder, except Service Provider shall be compensated and reimbursed in accordance with the terms of this Master Agreement with respect to Services provided before the date of such transfer.

Notwithstanding any provision in this Master Agreement to the contrary, in the event this Master Agreement is terminated because of a material breach by the City of Winter Park as defined in Section IV (B) (3) (a) through – (f) above, Service Provider shall have the right, but not the obligation, to assume the On-Site Energy Audit Service Customer Agreements with each City of Winter Park Customer active at the time of the City of Winter Park material breach.

V. DEFENSE AND INDEMNIFICATION

A. Defense by Service Provider.

In the event that a claim is made against the City of Winter Park by a third party including a City of Winter Park Customer or Target Customer, Service Provider shall, at its own expense, defend the City of Winter Park, its directors, officers, shareholders, attorneys, employees, agents and other representatives (each a "City of Winter Park Indemnitee"), from and against all allegations (even though such allegations may be false, fraudulent or groundless) asserted in any claim, demand, suit or cause of action but only to the extent caused by the negligent or willful acts or omissions by Service Provider, Service Provider affiliates or subcontractors, or caused by any misrepresentations by Service Provider in violation of its obligations under this Master Agreement, or under any applicable local, state or federal laws or regulations (collectively, the "Claims Against the City of Winter Park"), whether actual or alleged.

B. Indemnification by Service Provider.

Service Provider shall, at its own expense, indemnify and hold harmless any of the City of Winter Park Indemnities against any and all Claims Against the City of Winter Park including, but not limited to, any reasonable attorneys' fees and court costs, but excluding any loss of profits or any other indirect or consequential damages, that arise directly out of the Claims Against the City of Winter Park.

C. Defense by the City of Winter Park.

In the event that a claim is made against Service Provider by a third party including a City of Winter Park Customer or Target Customer, the City of Winter Park shall, at its own expense, defend Service Provider, its directors, officers, shareholders, attorneys, employees, agents and other representatives (each a "Service Provider Indemnitee"), from and against all allegations (even though such allegations may be false, fraudulent or groundless) asserted in any claim, demand, suit or cause of action but only to the extent caused by the negligent or willful acts or omissions by the City of Winter park, City of Winter Park Affiliates or subcontractors, or caused by misrepresentations by the City of Winter Park in violation of its obligations under this Master Agreement or under any applicable local, state or federal laws or regulations (collectively, the "Claims Against Service Provider"), whether actual or alleged. "Notwithstanding any other provision herein to the contrary, the City is only allowed to indemnify a private party to the extent allowed by law. Additionally, in no event does the City waive its right to defend any action or claim based on its defense of sovereign immunity. And, the City specifically does not waive its sovereign immunity notwithstanding these clauses providing for "defense" and "indemnification." Moreover, in no event will the City's liability under the defense and indemnity clauses in subsections V. C. and D. of this Contract ever exceed the limits of liability provided or applicable to the City under section 768.28, Florida Statutes, as it may be amended."

D. Indemnification by the City of Winter Park.

The City of Winter Park shall, at its own expense, indemnify and hold harmless any of the Service Provider Indemnitees against any and all Claims against Service Provider as defined in Section V.C. above, including, but not limited to, any reasonable attorneys' fees and court costs, but excluding any loss of profits or any other indirect or consequential damages incurred by Service provider, that the City of Winter Park does not hereby waive any of the defenses or protections against such Claims Against Service Provider or claims which arise directly or indirectly out of Claims Against Service Provider; including, without limitation, protections provided by sovereign immunity. The City of Winter Park shall carry liability and contractual insurance in an amount no less than \$1,000,000.00. "Notwithstanding any other provision herein to the contrary, the City is only allowed to indemnify a private party to the extent allowed by law. Additionally, in no event does the City waive its right to defend any action or claim based on its defense of sovereign immunity. And, the City specifically does not waive its sovereign immunity notwithstanding these clauses providing for "defense" and "indemnification." Moreover, in no event will the City's liability under the defense and indemnity clauses in subsections V. C. and D. of this Contract ever exceed the limits of liability provided or applicable to the City under section 768.28, Florida Statutes, as it may be amended."

E. Notice and Settlement.

Except as otherwise provided in this Master Agreement, each Party hereto shall promptly notify the other Party of any claim, demand, suit, proceeding or threat of suit or proceedings of which the notifying Party becomes aware (except with respect to a threat or suit either Party might institute against the other Party) which may give rise to a right of indemnification pursuant to this Master Agreement (collectively, "Claims"); provided that any failure on the part of either Party hereto to give the other Party prompt notice of any Claim will not affect the rights to indemnity hereunder, unless such failure materially and adversely affects the ability of the Party who is obligated to indemnify the other Party to defend such Claim, or any other rights of the obligated Party with respect to such Claim. The Party obligated to indemnify under this Section V may take over and control the defense and settlement of any Claim as to which its indemnification obligation extends, without obtaining the prior consent of the other Party.

VI. REPRESENTATIONS AND WARRANTIES OF SERVICE PROVIDER

To induce the City of Winter Park to enter into this Master Agreement, Service Provider makes the representations and warranties set forth below, all of which will remain true in all material respects during any Term of this Master Agreement. Service Provider acknowledges the City of Winter Park justifiable right to rely upon the representations and warranties set forth below in this Section VI.

A. Non-Existence of Defaults.

The making of and performance of obligations under this Master Agreement will not immediately, or with the passage of time, or both: (a) violate the provisions of the bylaws or any other corporate document of Service Provider; (b) violate any laws to the best of Service Provider's knowledge; or (c) result in a material default under any contract, agreement, or instrument to which Service Provider is a party or by which Service Provider or its properties are bound.

B. Good Standing.

Service Provider is duly organized, validly existing, and in good standing under the laws of Florida. Service Provider has power and authority to transact the business in which it is engaged and to perform its obligations hereunder. Service Provider is duly qualified to do business and in good standing in all states where such qualification is necessary.

C. Power and Authority.

Service Provider has the power to execute, deliver and carry out the terms and provisions of the Master Agreement. Service Provider has taken or caused to be taken all necessary action to authorize the execution and delivery of this Master Agreement.

D. Enforceability of the Master Agreement.

This Master Agreement executed by Service Provider is a valid and binding obligation of Service Provider and is enforceable against Service Provider in accordance with its terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to the enforcement of creditors' rights.

E. Consents.

Service Provider has obtained all necessary consents, permits, licenses, approvals and authorizations of, or has affected the filing, registration or qualification with any governmental entity which are required to be obtained or affected by Service Provider in connection with the execution and delivery of and performance of its obligations under this Master Agreement.

F. Survival of Representations and Warranties.

All of the representations and warranties of Service Provider contained in this Master Agreement shall be true at the time of Service Provider's execution of this Master Agreement, and shall remain true in all material respects during the Term of this Master Agreement and for so long as this Master Agreement remains in effect.

VII. REPRESENTATIONS AND WARRANTIES OF THE CITY OF WINTER PARK

To induce Service Provider to enter into this Master Agreement, the City of Winter Park makes the representations and warranties set forth below, all of which will remain true in all material respects during the Term of this Master Agreement. The City of Winter Park acknowledges Service Provider' justifiable right to rely upon the representations and warranties set forth below in this Section VII.

A. Non-Existence of Defaults.

The making of and performance of obligations under this Master Agreement will not immediately, or with the passage of time, the giving of notice, or both: (a) violate the provisions of applicable Florida law or local ordinances authorizing the organization and existence of the City of Winter Park; (b) violate any laws to the best of the City of Winter Park's knowledge; or (c) result in a material default under any contract, agreement or instrument to which the City of Winter Park is a party or by which the City of Winter Park or its properties are bound.

B. Good Standing.

The City of Winter Park is duly organized, validly existing and in good standing under the laws of Florida. The City of Winter Park has power and authority to transact the business in which it is engaged and to perform its obligations hereunder. The City of Winter Park is duly qualified to do business and in good standing in all states where such qualification is necessary.

C. Power and Authority.

The City of Winter Park has the power to execute, deliver and carry out the terms and provisions of the Master Agreement. The City of Winter Park has taken or caused to be taken all necessary action to authorize the execution and delivery of this Master Agreement.

D. Enforceability of the Master Agreement.

The Master Agreement executed by the City of Winter Park is a valid and binding obligation and is enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to the enforcement of creditors' rights.

E. Consents.

The City of Winter Park has obtained all material consents, permits, licenses, approvals and authorizations of, or effected the filing, registration or qualification with, any governmental entity which is/are required to be obtained or effected by the City of including, without limitation, approvals by the governing body of the City of Winter Park, in connection with the execution and delivery of and the performance of its obligations under this Master Agreement.

F. Survival of Representations and Warranties.

All representations and warranties of the City of Winter Park contained in this Master Agreement shall be true at the time of the City of Winter Park execution of this Master Agreement, and shall remain true in all material respects during the Term of this Master Agreement and for so long as this Master Agreement remains in effect.

VIII. OTHER TERMS

A. Amendment, Changes and Modification.

This Master Agreement, including any Exhibit attached hereto, may be amended, changed or modified only as may be agreed upon in writing signed by both Service Provider and the City of Winter Park.

B. Binding Effect, Assignment.

This Master Agreement will be binding upon the Parties, their successors and permitted assigns. This Master Agreement may not otherwise be assigned by either Party without the express prior written consent of the other which consent shall not be unreasonably withheld, conditioned or delayed. Service Provider may assign this Master Agreement to any of its Affiliates or to a successor in interest either through a merger, purchase of a majority of the Service Provider's outstanding shares or a purchase of all, or substantially all, of the Service Provider's assets or to any purchaser of Service Provider's business products, customers or other tangible or intangible assets of Service Provider.

C. Entire Agreement.

This Master Agreement, including any and all Exhibits, embodies the entire agreement of the Parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations or warranties other than those contained in the Master Agreement. This Master Agreement

supersedes all prior communications, representations or agreements, oral or written, between the Parties relating to the subject matter hereof.

D. Headings.

The headings to the sections of this Master Agreement are included only for the convenience of the Parties and will not have the effect of defining, diminishing or enlarging the rights of the Parties or affecting the construction or interpretation of any portion of this Master Agreement.

E. Interpretation.

For the purpose of construing this Master Agreement, unless the context otherwise requires, words in the singular will be deemed to include words in the plural, and vice versa.

F. Notices.

Any notice under this Master Agreement must be made in writing. Any notice to be given or document to be delivered under the Master Agreement will be deemed to have been duly given upon delivery, if delivered in person or by any nationally recognized expedited delivery service which provides proof of delivery, upon receipt of telex or facsimile transmission, or on the fifth business day after depositing the notice in the U.S. Mail, if mailed by certified mail, return receipt requested, postage prepaid mail, addressed to the City of Winter Park or Service Provider at the appropriate address. The addresses for notices are those set forth below or such other addresses as may be hereafter specified by written notice by the Parties:

To Service Provider: Florida Power Corporation

d/b/a Progress Energy Florida, Inc.

299 First Avenue North

St. Petersburg, Florida 33701-3324

To City of Winter Park: City of Winter Park

401Park Avenue South

Winter Park, Florida 32789-4386

G. No Third Party Beneficiary Rights and Reliance.

No Person, not a party to this Master Agreement, will have any benefit under this Master Agreement nor have third-party beneficiary rights arising out of this Master Agreement. For purposes of this Master Agreement and any On-Site Energy Audit Service Customer Agreement executed between the City of Winter Park and a City of Winter Park Customer, the City of Winter Park is and shall remain the obligating party to City of Winter Park Customers. Furthermore, the existence and terms and conditions of this Master Agreement do not in any way constitute or create a legally binding relationship between Service Provider and any of the City of Winter Park utility customers who may or may not themselves become the City of Winter Park Customers as defined herein.

H. Severability.

If any provision of this Master Agreement (either generally, or as to a specific application to a set of facts) is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Master Agreement (either in its entirety, or as to or the application of such provision to any other set of facts), but this Master Agreement will be construed as if such invalid, illegal or unenforceable provision never had been included in this Master Agreement.

I. Waivers.

The failure of any of the Parties to insist on strict compliance with this Master Agreement, or to exercise any right or remedy hereunder shall not constitute a waiver of any rights contained herein nor stop the Parties from thereafter demanding full and complete compliance therewith nor prevent the Parties from exercising such remedy in the future.

Any inadvertent error, omission or delay in complying with the terms and conditions of this Master Agreement shall not be held to relieve either Party hereto from any liability which would attach to it hereunder if such delay, omission or error had not been made, provided such delay, omission or error is rectified as soon as practicable upon discovery

J. Cumulative Rights.

The rights of the Parties hereunder are cumulative and no exercise or enforcement by the other Party of any right or remedy hereunder shall preclude the exercise or enforcement by it of any other right or remedy hereunder or to which the Parties are entitled by law or in equity.

K. Drafting of Master Agreement.

Despite the possibility that one Party may have prepared this Master Agreement, the Parties agree that neither of them shall be deemed the drafter of this Master Agreement and that, in construing this Master Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by the other.

L. Captions.

The captions of this Master Agreement are not part of the Master Agreement, but are merely for reference and should have no force or effect. If any caption is inconsistent with any provision of the Master Agreement such provision shall govern.

M. Force Majeure.

Neither Party hereto shall be liable to the other for any failure, inability or delay in performing hereunder if caused by an Act of God, war, strike, fire, or any other cause beyond the reasonable control of the Party so failing; but due diligence shall be used in curing such cause and in resuming performance.

N. Counterparts.

This Master Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and either of the Parties hereto may execute this Master Agreement by signing any such counterpart.

O. Venue/Waiver of Jury Trail

The Parties agree that in the event of litigation pertaining to the negotiation or enforcement of the terms of this Master Agreement, the venue for any such litigation shall be Orange County, Florida. Any such lawsuit shall be filed in a state court of competent jurisdiction and shall be tried non-jury. The Parties acknowledge their right to trial by jury and specifically waive this right as partial consideration for entering into this Master Agreement.

IN WITNESS WHEREOF, this Master Agreement has been executed on behalf of the Parties hereto on the day of 2011.
Florida Power Corporation, d/b/a Progress Energy Florida, Inc.
By:
Name: Robert Caldwell
Title: VP – Efficiency and Innovative Technology
The City of Winter Park
By:
Name: Kenneth W. Bradley
Title: Mayor

List of Exhibits

Exhibit A

City of Winter Park Home Service Customer Agreements
A.1 Pricing and Responsibilities

Exhibit A-1

Residential Audits

Residential on-site energy audits would be performed by a certified PEF Energy Efficiency Advisor. The Energy Efficiency Advisor would conduct a physical inspection of the home (see energy audit procedures listed below) to provide recommendations for using energy more wisely through no-cost and low-cost changes and cost-effective measures. Recognizing that the City of Winter Park provides water and wastewater service, PEF would incorporate a standard set of water conservation measures into its audit recommendations to help educate customers on the importance of water conservation.

Residential Energy Auditing Procedures:

Validate size of conditioned area of home and review customer usage patterns if the City provided the customer's billing history

Inspect all windows and doors for potential air leakage/infiltration

Identify approximate area and properties for all types of windows in the conditioned area (single pane, double pane, clear, tinted, Low-E, orientations)

Inventory types of lighting fixtures and usage

Inspect refrigeration appliance door seals and coil condition

Inspect filters for all HVAC systems

Measure HVAC supply and return temperatures

Inspect HVAC evaporator and condenser coils (if accessible)

Determine insulation values for ceilings, walls and floors

Inspect central duct systems for signs of air leakage (attic and/or crawl spaces)

Check hot water temperature

Interview customer on behavioral habits impacting energy usage; i.e. temperature settings, appliance usage

Inspect for water leaks at all interior faucets and toilets

Summarize findings to customer including suggestive payback periods

Provide customer with energy and water conservation audit results and energy efficiency recommendations and discuss water usage patterns including appropriate irrigation times

The following tables provide pricing on a per audit basis. The trip charge credit can be applied if the audit scheduling can be coordinated for adjacent audits on the same day.

Residential On-site Energy Audits

Table 1. Price: Residential On-site Energy Audits ¹	
Item	Cost
Residential On-Site Energy Audit (trip cost \$15 included)	\$225 each
Trip Charge ² Credit (consecutive audits)	(\$ 0)
No-Shows	Same as regular Energy Audit - \$225
Printed Audit Materials ³	Direct Bill to WP
Audit Form Design Changes	\$500

Note: There would be a one-time charge of up to \$500 to add the City's logo, contact information and any minor changes to the existing Progress Energy audit form.

¹ Price includes scheduling, commute time, mileage, and audit time.

² Up to three consecutively scheduled energy audits can be performed in one day. A credit can be given for consecutively scheduled audits up to 2 credits per day.

³ Copy of energy audit report and recommendations provided to customer.

Commercial On-site Energy Audits

Small to medium size (0-500 kW demand per month) commercial energy audits would be performed by a certified Sr. Energy Efficiency Advisor from Progress Energy. The Sr. Energy Efficiency Advisor would conduct an inspection, survey and analysis of energy usage in commercial buildings, processes, and/or systems.

Commercial Energy Auditing Procedures:

Validate size of conditioned area of building and review customer usage patterns if the City provided the customer's billing history

Perform rate comparison (to be done by Winter Park)

Interview customer and collect information on facility and behavioral habits impacting energy usage and identify any specific concerns

Perform walk-thru of facility

Gather information about facility directly related to power consumption Identify areas of opportunity for the customer to increase energy efficiency Inventory all systems (HVAC, Lighting, Motors, Compressed Air, Building Envelope)

Record all specific recommendations found during audit

Inspect for water leaks at all interior faucets and toilets

Provide customer with energy and water conservation audit results and energy efficiency recommendations and discuss water usage patterns including appropriate irrigation times

As previously mentioned the training and skills required to perform audits of commercial accounts are substantially more complex. These customers tend to have specialized equipment or operational needs such as refrigeration equipment or specific lighting requirements for work areas. Generally, PEF has found that the larger the customer, the more complex and specialized are the audit recommendations.

Because of this, PEF has segmented its commercial audit services by size of customer. PEF will certainly work with the City to better define these categories based on the anticipated number of Winter Park customers in each category. The following tables provide pricing for a range of commercial accounts.

Table 2. Price: Commercial On-site Energy Audits ⁴				
Item	<50 kW Demand/Mth	50-350 kW Demand/Mth	350-500 kW Demand/Mth	
Commercial On-Site Energy Audit (trip cost included)	\$230	\$550	\$715	
Trip Charge ⁵ Credit (consecutive audits)	(\$20) each	N/A	N/A	
No-Shows	Same as regular Energy Audit - \$230	Same as < 50 kW Energy Audit - \$230	Same as < 50 kW Energy Audit - \$230	
Printed Materials ⁶	Direct Bill to Winter Park			
Audit Form Design (One time charge of up to \$500)	\$500			

^{*} Based on 8 hours – Actual cost will vary depending on actual hours required.

Commercial/industrial account audits (>500 kW demand per month) would be handled on a per case basis and performed by a Certified Energy Manager from Progress Energy. For informational purposes, below is an example of what a large grocery store might cost:

Table 3. Price: Commercial On-site Energy Audits> 500 kW Demand/Mth		
Item	Cost	
Commercial On-Site Energy Audit (trip included)	\$1218*	
No-Shows	\$ 230	
Printed Materials	Direct Bill to WP	

* Based on 8 hours of audit time. Any additional time will be billed accordingly.

⁴ Price will be based on monthly peak demand average over 12 months. Price includes scheduling, administration, commute time, mileage, and audit time. Not to exceed 8 hours of audit time.

⁵ Up to three consecutively scheduled energy audits for <50 kW demand/month commercial customers can be performed in one day.

⁶ Copy of energy audit report and recommendations.

Additional DSM and Energy Efficiency Services

Additional energy audit and customer support services requested by Winter Park's Electric Department not included in the above pricing will be billed monthly on a time and material basis per the following table:

Time and Material Pricing for Support after Audits

Support Type	Price
Residential Support	\$60/hour (1/4 hour minimum)
Commercial Support	\$80/hour (1/4 hour minimum)
Material	Actual Cost
Expedited Services	Actual Incremental Cost

Responsibility Assignments

Responsibility	Responsible Entity
Generating Customer Leads	Winter Park
Providing Leads with customer contact and usage data as required to PEF	Winter Park
Scheduling Initial Appointment with customer	PEF
Follow-up call to verify appointment one or two days before scheduled audit	PEF
Perform Energy Audits and Provide report to customer	PEF
Update energy audit list status report to Winter Park	PEF
Receive Winter Park customer calls and request support from PEF as needed	Winter Park
Generate monthly invoices and send to Winter Park for payment	PEF
Make Payment to PEF	Winter Park
* See additional responsibilities in attachments	

item type	Public Hearing	meeting date	November 14, 2011
prepared by department division	Jeff Briggs Planning Department	approved by	City ManagerCity AttorneyN A
board approval	Planning and Zoning Board	■ yes □ no □	N A 5-0 final vote

Subject: Ordinances to Streamline the Zoning Approval Process – Round 2 - Revising the Threshold for City-Wide Notices (Second Reading)

The two ordinances have been revised from the first reading, incorporating the one change approved by the City Commission at the first reading to reinstate the mailed notices to the "owners" of property within 1,500 feet, in addition to the city-wide notice mailed to all households. Otherwise the summary below is the same.

At the August 2nd Planning Board meeting, several initiatives were recommended to streamline the zoning approval process for new development. Those were adopted by the City Commission but the issue of increasing the threshold for city-wide notice was tabled at that time. Increasing the threshold for the city-wide notice requirements translates into a 30 day time savings for applicants that do not then need the city-wide notice.

Summary and Recommendation:

At the October 4th Planning Board meeting there was agreement (5-0 vote in favor) on the code changes outlined below to modify the threshold for the city-wide notice.

These two ordinances (Comp. Plan and Zoning changes) increase the threshold for a city-wide notice for conditional uses for building projects from 25,000 sq. ft. to 35,000 sq. ft. and for FLU/Rezonings from one acre to 80,000 square feet land. There are two ordinances since one changes the Zoning Code notice requirements and the second one amends the Comp. Plan.

The 80,000 sq. ft. was chosen because that is the threshold for a rezoning to the Planned Development zoning districts which would include parking garages. The typical maximum FAR of 45% on an 80,000 sq. ft. parcel would permit 35,000 sq. ft. of building, so that number then correlates to the land area threshold number.

Another minor change is also to eliminate the requirement for a city-wide notice to extend or reestablish an expired (already approved) conditional use and rely instead upon a quarter page advertisement notice rather than a city-wide notice. That was the situation we just encountered with the Furst Townhome project at 140 S. Knowles Avenue.



CITY OF WINTER PARK Planning & Zoning Board

Regular Meeting
Commission Chambers

October 4, 2011 7:00 p.m.

MINUTES

REQUEST OF THE CITY OF WINTER PARK TO: AMEND CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO REVISE THE PUBLIC NOTICE REQUIREMENTS FOR ZONING AMENDMENTS AND CONDITIONAL USES AND THE EXTENSION OR RE-ESTABLISHMENT OF CONDITIONAL USES.

REQUEST OF THE CITY OF WINTER PARK TO: AMEND CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO ADOPT NEW PUBLIC NOTICE AND ADOPTION PROCEDURES FOR AMENDMENTS TO THE CITY OF WINTER PARK, COMPREHENSIVE PLAN.

Planning Director Jeffrey Briggs presented the staff report and explained that at the August 2nd Planning Board meeting several initiatives were reviewed outlining ways to streamline the zoning approval process for new development. The goal is to look for ways to shorten the process for applicants needing a zoning approval, such as a conditional use from the planning board and/or city commission. As part of this effort, the Planning Board in August approved ordinances to increase the threshold for small additions needing P&Z reviews, revamped the lakefront review process to allow for staff approval of swimming pool additions and eliminated the wait for the twice a year cycle for comprehensive plan amendments. This ordinance revises the threshold for the city-wide notice requirements which translates into a 30 day time savings for applicants that do not need the city-wide notice.

These ordinances increase the threshold for a city-wide notice for conditional uses from 25,000 sq. ft. to 35,000 sq. ft. and for FLU/Rezonings from one acre to 80,000 square feet land. There are two ordinances to accomplish this since one changes the Zoning Code notice requirements and the second one amends the Comp. Plan notice requirements. The 80,000 sq. ft. was chosen because that is the threshold for a rezoning to the Planned Development zoning districts which would include parking garages. The typical maximum FAR of 45% on an 80,000 sq. ft. parcel would permit 35,000 sq. ft. of building so that number then correlates to the land area threshold number. Another minor change is also to eliminate the requirement for a city-wide notice to extend or re-establish an expired (already approved) conditional use and rely instead upon a quarter page advertisement notice.

The Planning Board members concurred that these changes had been discussed at their September 28th work session and there was agreement to proceed.

Motion made by Mr. Sacha, seconded by Mr. Livingston to approve the ordinance amending public notice requirements for zoning amendments and conditional uses. Motion carried unanimously with a 5-0 vote.

Motion made by Mr. Sacha, seconded by Mr. Livingston to approve the ordinance amending the adoption of new public notice and adoption procedures for comprehensive plan amendments. Motion carried unanimously with a 5-0 vote.

ORDIN	ANCE	NO.	
OLDIN	ANGL	NO.	

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" SO AS TO REVISE THE PUBLIC NOTICE REQUIREMENTS FOR ZONING AMENDMENTS AND CONDITIONAL USES AND THE EXTENSION OR RE-ESTABLISHMENT OF CONDITIONAL USES, PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Winter Park has recommended approval of this Ordinance at its October 4, 2011 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed zoning text change set forth hereunder and considered advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis and after complete deliberation, hereby finds the requested change consistent with the City of Winter Park's Comprehensive Plan; and

WHEREAS, the City Commission hereby find that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

NOW THEREFORE, BE IT ENACTED BY THE CITY OF WINTER PARK:

<u>SECTION 1</u>. That Chapter 58 "Land Development Code", Article III "Zoning" Section 58-89 "Zoning changes and amendments, public notice requirements and procedures for zoning amendments and conditional uses", within subsection within 58-89 (c) "Requirements for public notification and hearings", subsection (c) (2) "Public notice requirements" paragraphs (a) (b) and (c) are amended to read as follows:

Sec. 58-89. Zoning changes and amendments, public notice requirements and procedures for zoning amendments and conditional uses.

- (c) Requirements for public notification and hearings.
- (2) Public notice requirements.
 - a. In addition to notice required by state law, for any proposed conditional uses involving drive-in business components, two-story buildings in the O-2 district of less than 10,000 gross square feet above grade, residential projects of three units or less, conditional use for restaurant or liquor licenses, new or used car sales, vehicle repair or service, parking lots or recreational facilities, said notice of the hearing shall be published in a newspaper of general circulation within the city at least fifteen (15) days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken

shall be posted upon the property and mailed to all owners of record of property within 500 feet of the property requested for rezoning at least fifteen (15) days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.

- b. In addition to notice required by state law, for any amendment to the official zoning map for land of less than one acre and for conditional uses involving church expansions, residential projects of four to twenty-five units, buildings over 10,000 gross square feet and less than 35,000 25,000 gross square feet above grade, day care, nursing homes and assisted living complexes said notice of the hearing shall be published in a newspaper of general circulation within the city at least fifteen (15) days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of property of record within 1,500 feet of the property requested for rezoning at least fifteen (15) days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.
- c. In addition to notice required by state law, for any proposed amendment to the official zoning map for land of more than 80,000 square feet one acre and for conditional uses involving residential projects with over twenty-five units, buildings over 35,000 25,000 gross square feet above grade and third floor projects in the central business district, said notice of the hearing shall be published in a newspaper of general circulation within the city at least thirty (30) days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of record of property within 1,500 feet of the property, and mailed to all households as determined from the listing of utility billing addresses within the entire city limits at least thirty (30) days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant. Said postings of properties shall remain in place through the public hearing process. The city shall monitor this posting and provide replacements for any postings lost due to weather, vandalism, etc. However, the absence of a posting due to these conditions beyond the control of the city or the applicant shall not constitute a breach of this requirement provided a good faith effort is made to comply.

<u>SECTION 2</u>. That Chapter 58 "Land Development Code", Article III "Zoning" Section 58-90 "Conditional uses", within subsection 58-90 (d) "Expiration and re-establishment of conditional uses", subsection (d) (2) is amended to read as follows:

Sec. 58-90. Conditional uses.

- (d) Expiration and re-establishment of conditional uses.
- (2) The city commission may extend conditional uses or re-establish conditional use approvals that have expired at the discretion of the city commission. The advertisement and notification requirements shall not apply to the re-establishment of expired conditional uses except that for conditional uses approvals involving buildings over 10,000 square feet or involving three story buildings within the central business district geographic area as defined in this code, the advertisement and notification requirements shall apply the same as for the initial approval of

the conditional use in order for the city commission to extend or re-establish such conditional use approvals that have expired. For projects requiring city-wide notice, the city commission may, at their discretion, consent to the alternative use of a quarter page display advertisement in a newspaper of general circulation shall substitute.

SECTION 3. Severability. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 4. Codification. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

SECTION 5 Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 6. Effective Date. This ordinance shall become effective immediately upon its final passage and adoption.

Florida, held in City Hall, Winter Park, on this day of, 2011.	
Mayor	
ATTEST:	
City Clerk	

ORDI	VANCE	NO.	

AN ORDINANCE OF THE CITY OF WINTER PARK. FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO ADOPT NEW PUBLIC NOTICE AND ADOPTION PROCEDURES FOR AMENDMENTS TO THE CITY OF WINTER PARK, COMPREHENSIVE PLAN, SUBSTITUTING FOR THE CURRENT AMENDMENT PROCEDURES. **PROVIDING** FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the Winter Park City Commission desires to revise the public notice and amendment procedures in the City Code regarding comprehensive plan amendments to conform to the new Growth Management Act and to simplify the process; and

WHEREAS, the Planning and Zoning Board of the City of Winter Park has recommended approval of this Ordinance at its October 4, 2011 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed zoning change set forth hereunder and considered advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the requested change consistent with the City of Winter Park's Comprehensive Plan; and

WHEREAS, the City Commission hereby find that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

NOW THEREFORE, BE IT ENACTED BY THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 "Land Development Code", Article I "Comprehensive Plan" of the Code of Ordinances is hereby amended within Section 58-6 "Amendments to the comprehensive plan" subsections (a) (3) and (a) (5) to read as follows:

Sec. 58-6. Amendments to the comprehensive plan.

- (a) Amendments to the comprehensive plan shall at a minimum conform to the requirements as specified within Florida Statutes Chapter 163, Part II.
- (3) No recommendation for transmittal or adoption of any amendment to the comprehensive plan shall be made by the planning and zoning commission until and unless a public hearing has been held. In addition to the public notice requirements of Florida Statutes Chapter 163, Part II, the city shall also conform to the following notice requirements. Notice shall be provided based upon the type and size of the request as detailed below. In cases where requests are not specifically indicated in this section, the planning director shall determine the most appropriate level of public notice.

- a. For any proposed map amendment to the comprehensive plan involving land of less than 80,000 square feet one acre, notice of the public hearings for transmittal in the case of large scale amendments or for adoption in the case of small scale amendments shall be published in a newspaper of general circulation within the city at least 15 days in advance of the public hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of record of property within 1,500 feet of the property requested for map amendment at least 15 days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.
 - b. For any proposed map amendment to the comprehensive plan involving land of 80,000 square feet one acre or more or for any comprehensive plan text amendment to the goals, objectives and policies of the comprehensive plan affecting more than 80,000 square feet of land shall require notice of the public hearings for transmittal in the case of large scale amendments or for adoption in the case of small scale amendments, to be published in a newspaper of general circulation within the city at least 30 days in advance of the public hearings; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property affected by the map amendment and mailed to all owners of record of property within 1,500 feet of the property requested for map amendment as well as mailed to all households as determined from the listing of utility billing addresses within the entire city limits at least 30 days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant. Any public notice required after the initial public hearing for which a city-wide notice has already been mailed by the planning and zoning board or city commission due to tabling, continuance, postponement or any other action by the planning board commission shall revert to the 15 day notice so as to allow for requests to be heard at the next regular or special meeting of the planning and zoning board or city commission. This city-wide notice mailing requirement shall not apply to any comprehensive plan text amendment that changes the City's five year capital improvements plan or narrative thereto or other portions of the capital improvements element required to be adopted annually in order to coincide with the annual adoption of the city's budget and capital improvements program and shall also not apply to any comprehensive plan map amendment related to annexations that have been previously approved pursuant to Chapter 171, Florida Statutes, as may be necessary to update the city boundaries or to establish existing or future land use designations for annexed properties as long as there is no change to the existing and future land use designations in the Orange County Comprehensive Plan.
 - (5) Upon the filing of the recommendations report by the planning and zoning board commission, or upon failure to do so with respect to any proposed comprehensive plan text or map amendment, the city commission shall hold the first public hearing on the ordinance to transmit and adopt the comprehensive plan amendment, and following the receipt and response to the objections, recommendations and comments report (ORC) from the State of Florida, in a timely fashion in accordance with Florida law, the city commission will hold a second public hearing on the ordinance to adopt such comprehensive plan amendment, with such notice and hearings to be conducted in the manner prescribed by law. With respect to small-scale amendments that do not require transmittal to the State of Florida for issuance of an ORC, there shall be two public hearings on the ordinance for adoption of such small-scale amendments, giving at least 15 days' notice of time and place of such hearings, which notice shall first be published in a newspaper having a general circulation in the City of Winter Park, Florida.

<u>SECTION 2 - SEVERABILITY.</u> If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the

validity, force, or effect of any other Section or part of this Ordinance.

<u>SECTION 3. CODIFICATION</u>. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

<u>SECTION 4 - CONFLICTS.</u> All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

<u>SECTION 5.-EFFECTIVE DATE.</u> This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of held in City Hall, Winter Park, on this		
ATTEST:	-	Mayor
City Clerk		

item type	Public Hearing	meeting date	November 14, 2011
prepared by department division	Jeff Briggs Planning Department	approved by	City ManagerCity AttorneyN A
board approval	Planning and Zoning Board	■yes □ no □	N A 7-0 final vote

Subject: Conditional Use for a McDonald's restaurant with drive-thru

This item is a request for conditional use approval for a McDonald's restaurant with a drive-thru on the six vacant lots with addresses of 1282/1288/1302 West Fairbanks Avenue and 1281/1289/1301 Gene Street, which are all now, zoned C-3. The City Commission will remember this project from your July 25th agenda when the issue was the rezoning of two lots on Gene Street from office to commercial in order to permit this conditional use request.

Planning Board Recommendation:

The Planning and Zoning Board voted 7-0 for approval with the following conditions (which the applicant has agreed to):

- 1. That the landscape plan be augmented along the Fairbanks frontage with the addition of two ligustrum trees (30 gallon 8 ft. min.) at the corner islands and with four sable palm trees (10-12 ft. min.) across the center landscape island.
- 2. That conditioned upon acceptance by Fl. DOT, the concrete median divider be extended to the western boundary of this site.

Background:

Site and Context: The proposed site is 150 feet wide by 287 feet in length for 43,050 sq. ft. or just about one acre in size. The site has access both on Fairbanks Avenue and onto Gene Street in the rear.

Parking: The required parking for this 4,147 sq. ft. restaurant building based on one space for each three seats, for this 90 seat restaurant is 30 spaces. The site plan layout provides 36 parking spaces including the two handicap spaces required by code.

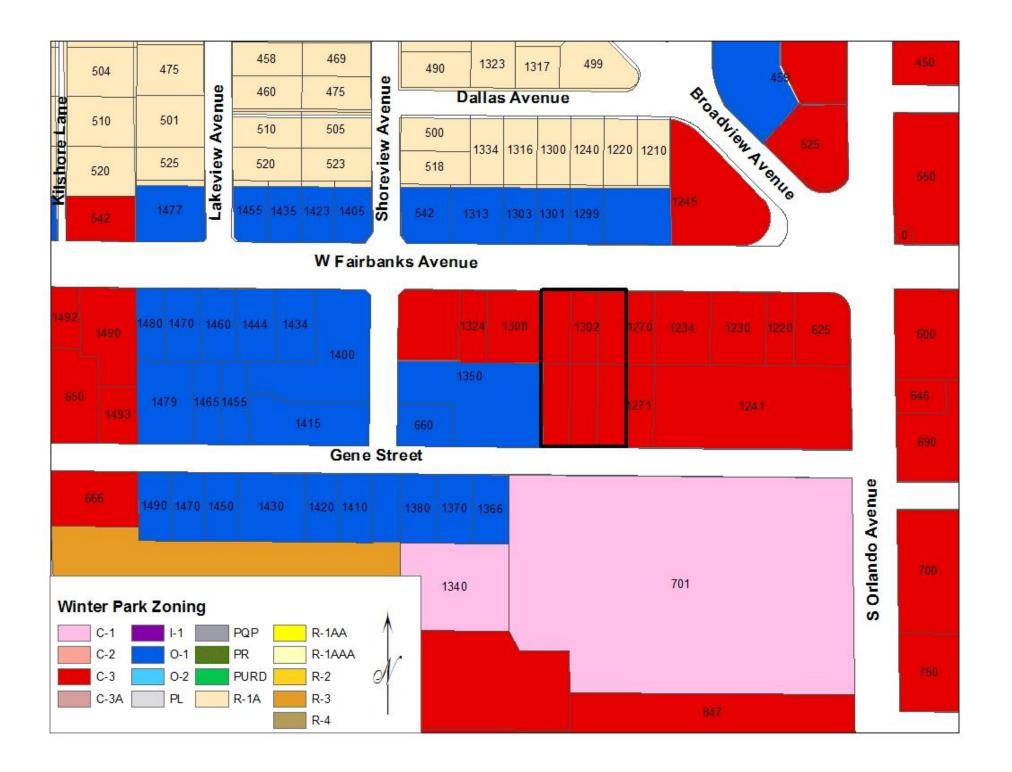
The two adjacent property owners have voiced a concern to staff about patrons parking in the adjacent parking lots (for the funeral home and/or the bank since those parking lots are largely unused). There is a four foot high aluminum picket fence (same as around the retention area) shown on the plans in response to this concern that will provide the separation and discouragement for off-site parking.

Traffic Circulation and Stacking: A McDonald's restaurant will attract a significant amount of traffic to this location where access and egress is challenging. This was the primary focus of the discussions during the initial public hearings in July that considered the zoning change. Now that the site has been zoned commercial, the focus shifts. The commercial zoning now permits a fast food restaurant at this location and the conditional use question is to assess whether the layout works and if there are any conditions of approval that will address traffic issues or other site concerns.

The access from Fairbanks Avenue is right turn in/right turn out only. Given the traffic congestion and back-ups that routinely occur from the traffic light at Orlando Avenue, most of the exiting traffic will utilize Gene Street. The city staff and our traffic consultant have reviewed the revised traffic study, primarily with respect to insuring there is adequate on-site room for stacking for any lines of cars waiting at a peak period for drive-thru service (without backing into Fairbanks). With the addition (at the city's request) of a by-pass lane in the front, there is stacking for 20 cars at any peak period which should be sufficient and also access throughout the site.

The other traffic concern was to prevent left turns into or out of the site on Fairbanks Avenue. There is no median to prevent those left turns. There are serious visibility and traffic safety issues with those left turn movements. This was not an issue with the previous office buildings on this site that generated 100-200 trips per day (one trip entering the site and one trip exiting the site.) But with a fast food restaurant, one would expect about 2,200 trips per day. As a result, the city staff and traffic consultant recommended a condition of approval that the center concrete raised median be extended back to the western end of this site to preclude the left turns and remedy those dangerous scenarios, which is acceptable to the applicant.

Architecture and Landscaping: The architectural elevations are provided along with materials and colors. Staff is very complimentary of the materials and design. The brick veneer and color pattern are understated and will be very attractive. It is a "step above" the typical McDonald's in terms of architectural character. The only other thing needed to enhance the 'front door' image is some signature landscaping along the Fairbanks frontage. At the existing McDonald's on Orlando Avenue there are palm trees that successfully buffer. Staff suggested a condition of approval to implement this landscaping upgrade, which the applicant has agreed to.



PLANNING INNOVATIONS, INC. 29 EAST PINE STREET ORLANDO, FLORIDA 32801

PHONE: 407.808.2005 ** FAX: 407.423.8022

MEMORANDUM

TO:

Jeff Briggs

FROM:

Mark S. Hardgrove

DATE:

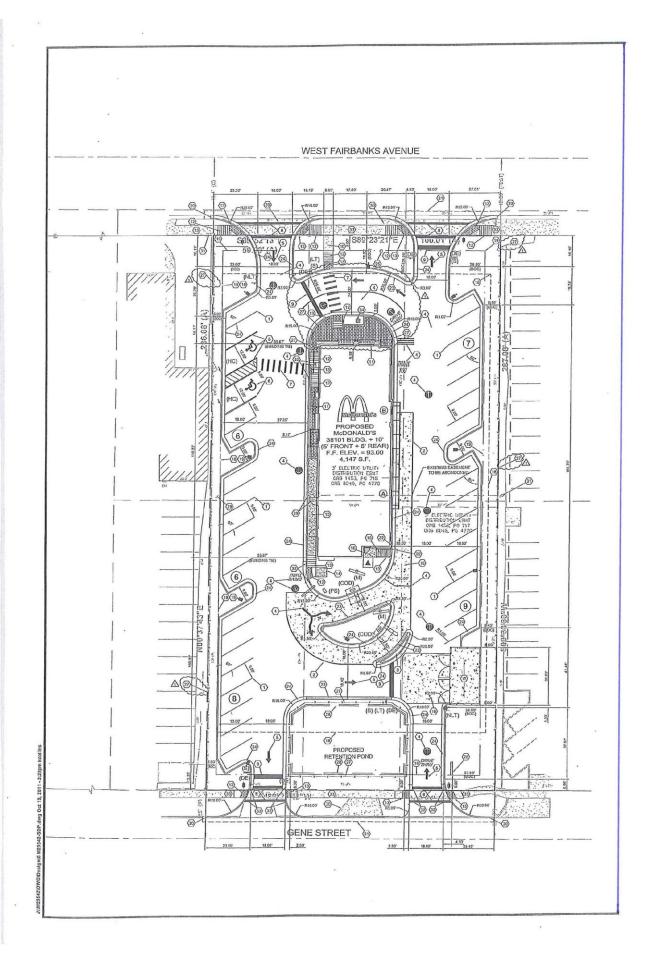
October 24, 2011

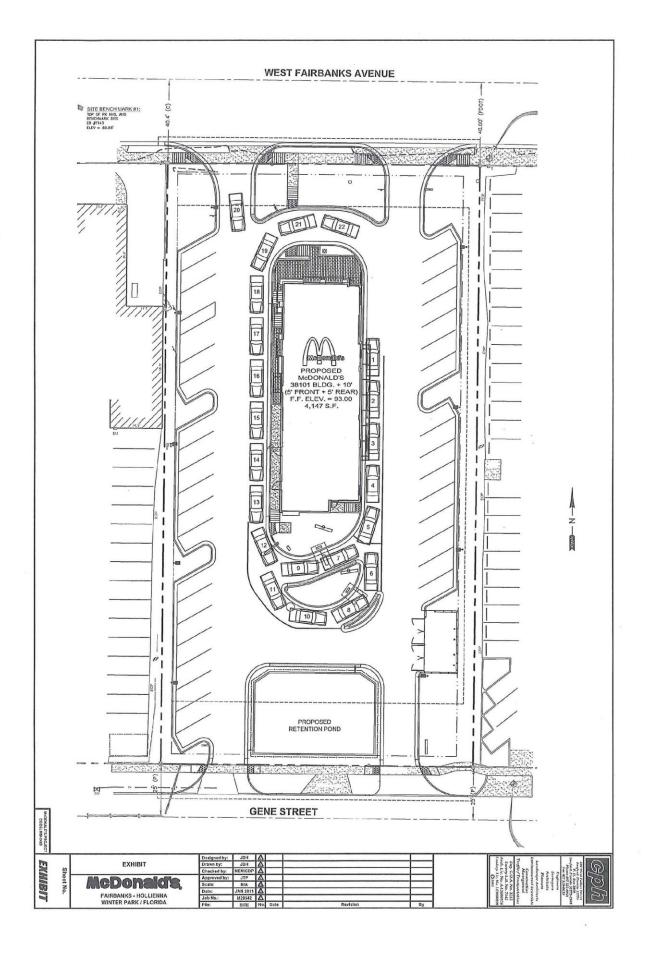
SUBJECT: Review of Final Traffic Impact Study for McDonald's Hollicanna Development near Fairbanks Avenue and US 17-92, Winter Park, Florida, dated August, 2011

∃The purpose of this memorandum is to provide a review of the revised Traffic Impact Study for the proposed McDonald's fast food restaurant with drive-through window in Winter Park, Florida, dated originally dated December, 2010 and revised August 2011. As you recall, the City reviewed the Applicant's October 8, 2010 Traffic Impact Study Methodology Letter on October 18, 2010.

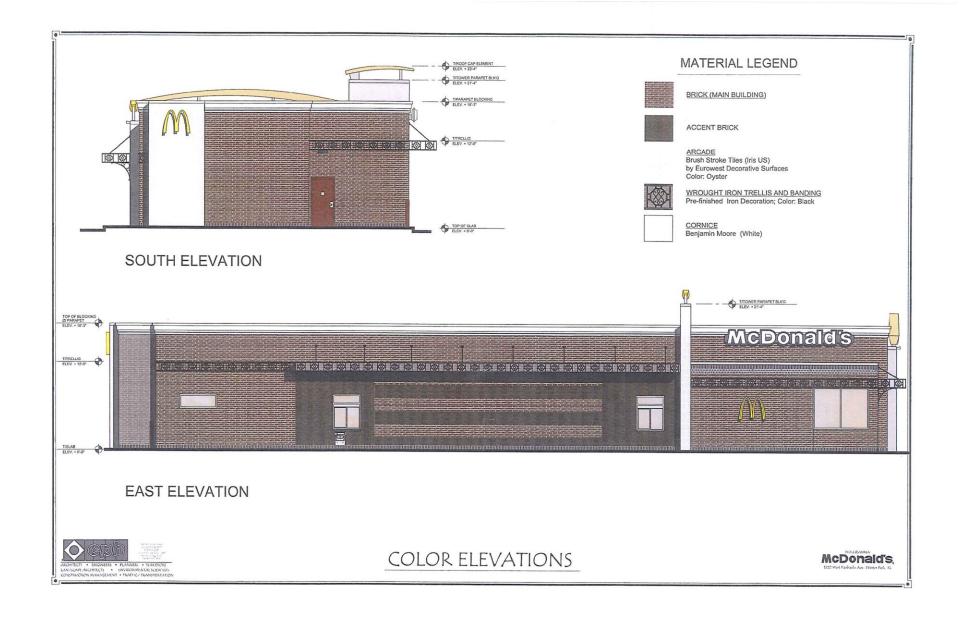
The biggest issue is exiting traffic trying to weave across two lanes of traffic to make a u-turn or left turn movement. The eastbound left turn queue is over 800 feet long. This will make it very difficult to make these movements. In order to alleviate some of these potential safety concerns along Fairbanks, it is recommended that the Applicant extend the existing concrete divider median on Fairbanks to the west, past the site boundary to a location acceptable to the City and FDOT.

In summary, based on the transportation analysis submitted, while not ideal, the site will have improved ingress and egress beyond that which was originally proposed with the median extension recommendation above. The information provided by the Applicant did not demonstrate adequate internal circulation and queuing distances. The Applicant was requested to address this potential problem in the redesign of the site, which included the addition of a bypass lane on the north end of the site. While not ideal, this will improve the internal circulation to a level higher than what was previously submitted.











CITY OF WINTER PARK Planning & Zoning Board

Regular Meeting Commission Chambers November 1, 2011 7:00 p.m.

MINUTES

Mr. Krecicki called the meeting to order at 7:00 p.m. in the Commission Chambers of City Hall.

Present: Chairman Drew Krecicki, Sarah Whiting, George Livingston, James Johnston, Randall Slocum, Tom Sacha, Peter Gottfried and Robert Hahn (alternate). Staff: Planning Director Jeffrey Briggs, Planning Technician Caleena Shirley and Recording Secretary Lisa Smith.

Approval of minutes - October 4, 2011

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the October 4, 2011, meeting minutes. Motion carried unanimously with a 7-0 vote.

PUBLIC HEARINGS:

REQUEST OF BANK FIRST REALTY, INC. ON BEHALF OF MCDONALD'S CORP. FOR: CONDITIONAL USE APPROVAL TO CONSTRUCT A MCDONALDS RESTAURANT WITH A DRIVE-THRU SERVICE ON THE PROPERTIES AT 1282/1288/1302 WEST FAIRBANKS AVENUE AND 1281/1289/1301 GENE STREET, ZONED C-3.

Planning Director Jeffrey Briggs presented the staff report. He explained that this item is a request for conditional use approval for a McDonald's restaurant with a drive-thru. It is proposed on the six vacant lots all of which are zoned C-3. Mr. Briggs reviewed the proposed project in terms of site and context, parking, traffic circulation and stacking, architecture and landscaping. Staff recommendation is for approval of the conditional use subject to the following conditions:

- 1. That the landscape plan be augmented along the Fairbanks frontage with the addition of two ligustrum trees (30 gallon 8 foot minimum) at the corner islands and with four sable palm trees (10-12 foot minimum) across the center landscape island.
- 2. That conditioned upon acceptance by Florida Department of Transportation, the concrete median divider be extended to the western boundary of this site.

Mr. Briggs responded to Board member questions and concerns.

Rebecca Wilson, of the Lowndes Law Firm, 218 North Eola Drive, represented the applicant. She explained that she is representing the applicant and that they are in agreement with staff recommendations and the recommended site plan changes. She also noted that the site plan that is before the Board takes into consideration all previous staff concerns (i.e.: enhanced architecture and landscaping, relocating the retention and the creation of a crosswalk). She also reviewed in detail traffic circulation and stacking. She introduced the members of the development team that were present, including the franchisee for this particular location. She responded to Board member questions and concerns.

David Sutphin, Killarney Estates, stated that he appreciates the planning that has gone into this particular project. He questioned if the traffic consultant has taken into consideration the impact on Killarney Estates. He stated that he would like to see a traffic plan in place for the neighborhood. Mrs. Wilson responded to his questions and concerns by stating that a traffic analysis was completed last year that has been made public that shows ingress/egress as well as traffic patterns.

Lisa Coney, represented the Carey Hand Funeral Home located at 1350 West Fairbanks Avenue. She stated that this new development was welcomed as a start to the redevelopment desired along West Fairbanks and expressed concern at the slow progress of the sanitary sewer project. She expressed concerns with extending the median beyond the McDonald's property. She discussed the decision of the City Commission not to have medians on that end of Fairbanks Avenue. She also requested that the new McDonald's have an aesthetically pleasing design with the proper landscaping for their establishment. The Board clarified with staff that the median would not be extended past the McDonald's property and in any way interfere with access from the funeral home.

No one else wished to speak concerning this request. Public Hearing closed.

Mrs. Whiting expressed her concerns for the traffic in the overall area given the difficulty that presently exists making left turns onto Fairbanks Avenue from Shoreview Avenue or Nicolet. She also expressed concern about the increase in traffic onto Gene Street and the added traffic trying to make left turns onto Orlando Avenue. Staff responded that her concerns were valid. Those were the traffic generation issues addressed during the rezoning meetings in July, 2011 but the decision was made to permit this restaurant at this location, so the task now was to make sure it functions safely.

Mrs. Whiting asked is the City will need to make other median improvements for traffic safety elsewhere along the West Fairbanks corridor as we are doing here. Staff stated that it might be a possibility but fast food restaurants are one of the largest traffic generators and the Comprehensive Plan policies do not permit fast food further west on the corridor making the repeat of this scenario unlikely unless those policies are changed.

Mr. Gottfried expressed concerns about the drainage and condition of the roadway of Gene Street and asked the City staff to look into those problems. Otherwise, he felt the project was adequately designed. Mr. Livingston voiced his agreement and support.

Mr. Johnston stated that the application appears to meet all the City criteria and the applicant has agreed to the remaining conditions of approval, as suggested by staff, so the project merits an approval. Mr. Krecicki indicated that traffic is a concern at this location but agreed that at this point in the process the focus is on the specific plans for the McDonald's and it appears aesthetically that this particular McDonald's is making concessions to improve the appearance which are well received by the City.

Motion made by Mr. Gottfried, seconded by Mr. Johnston to approve the request with the following conditions recommended by staff:

- 1. That the landscape plan be augmented along the Fairbanks frontage with the addition of two ligustrum trees (30 gallon 8 foot minimum) at the corner islands and with four sable palm trees (10-12 foot minimum) across the center landscape island.
- 2. That That conditioned upon acceptance by Florida Department of Transportation, the concrete median divider be extended to the western boundary of this site.

Motion carried unanimously with a 7-0 vote.

item type	Public Hearing	meeting date	November 14, 2011
prepared by department division	Terry Hotard Electric Utility	approved by	■ City Manager□ City Attorney□ N A
board approval		☐ yes ☐ no ■	N A final vote

subject

Undergrounding of Electric/CATV Facilities
Declaring and Confirming Resolutions Dixie Parkway and Williams Drive

motion | recommendation

Approve Declaring and Confirming Resolutions calling for the City of Winter Park City Commission to convene as an Equalization Board pertaining to the undergrounding of electric/CATV facilities in the area of Dixie Parkway and Williams Drive. Staff recommendation is to approve resolutions.

summary

Winter Park Electric's PLUG-IN program was approved by the city commission to provide neighborhoods with a method of accelerating the undergrounding of neighborhood overhead facilities. Through the PLUG-IN Program the city provides homeowners within the Neighborhood Electric Assessment District (NEAD) a 50% match of the electric undergrounding. Bright House Network has agreed to a 5% contribution. Homeowners have the option of a onetime lump sum or 10 year repayment schedule. Annual assessment will be placed on the property tax bill. 66% (66% required) of the 15 homeowners within the Williams/Ibis NEAD have voted in favor of this project.

board comments

N/A

RESOLUTION NO.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, PURSUANT TO CHAPTER 170, FLORIDA STATUTES, DECLARING THAT THE CITY IS TO FUND CAPITAL IMPROVEMENTS IN AND FOR THE CITY. TO-WIT: UNDERGROUND **ELECTRIC/CATV** (BHN) FACILITIES ALONG DIXIE PARKWAY AND WILLIAMS DRIVE DECLARING THAT THE COST OF **FURTHER** SAID **IMPROVEMENTS** SHALL \mathbf{BE} PAID BY SPECIAL AGAINST REAL ASSESSMENTS LEVIED **PROPERTY** SPECIALLY BENEFITTED \mathbf{BY} SAID **IMPROVEMENTS:** SPECIFYING THE MANNER OF AND TIME FOR PAYING THE SPECIAL ASSESSMENTS: AND INVITING THE PUBLIC TO REVIEW THE PROJECT PLANS AND SPECIFICATIONS AND THE ASSESSMENT PLAT, ALL OF WHICH ARE ON FILE AT THE OFFICE OF THE CITY CLERK OF THE CITY OF WINTER PARK; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park, Florida has established a policy for undergrounding electric/CATV (BHN) facilities within the City; and

WHEREAS, the owners of the requisite number of lots within the area along Dixie Parkway and Williams Drive have requested the undergrounding of electric/CATV (BHN) facilities, and

WHEREAS, Section 170.201, Florida Statutes, allows the City Commission of the City of Winter Park to levy and collect special assessments to fund capital improvements and municipal services; and

WHEREAS, the expenses of the electric/CATV (BHN) undergrounding project are to be defrayed by special assessments; and

WHEREAS, Sections 170.03 and 170.201, Florida Statutes, establish procedures to be followed by the City of Winter Park prior to commencement of the Project.

NOW, THEREFORE, be it resolved by the City Commission of the City of Winter Park, Florida as follows:

Section 1. The City of Winter Park shall provide public improvements consisting of the undergrounding of electric/CATV (BHN) facilities in the area

described as, Dixie Parkway and Williams Drive. The exact location and description of such improvements and municipal services appear upon the plans and specifications on file with the Electric Utility Department of the City of Winter Park.

Section 2. The estimated cost of this improvement to be paid by special assessments is \$56,052.00 (electric) and \$9,436.00 (BHN), representing an estimated unit cost of \$3,737.00 (electric) and \$629.00 (BHN) per adjacent parcel, which will be paid by special assessments established by the City Commission of the City of Winter Park in accordance with the provisions of Chapter 170, Florida Statutes. Such assessments, when established, the amount of the first year's assessment, and the method and schedule for payment, are as set forth on Schedule A attached hereto, and may be paid to the city as follows:

In cash without interest, at anytime within 30 days after the aforesaid improvement has been completed, or

In ten (10) equal annual installments of principal and interest accrued at the rate of 4.25% per annum for electric undergrounding and prime interest for CATV (BHN) undergrounding, such payments to commence upon the approval of the resolution and submittal to the appropriate agency(s) for inclusion in the tax roll(s) and annually there-after.

If such annual installments are not paid when due, there shall be added a penalty of one percent (1%) thereof per month until paid. Such assessments shall constitute liens, and shall be enforceable as provided in Chapter 170, Florida Statutes.

Section 3. The lands upon which the aforesaid special assessments shall be levied shall be all lots and lands adjoining and contiguous or bounding and abutting within the described Neighborhood Electric Assessment District (NEAD) improvements which are specially benefitted thereby and further designated by the assessment plat herein provided for.

Section 4. The public is invited to review the assessment plat, the plans and specifications, and the estimate of the cost of the Project, all of which are on file with the City Clerk of the City of Winter Park, Florida, all as required by Chapter 170, Florida Statutes.

Section 5. This Resolution shall be published once in a newspaper of general circulation published in the City of Winter Park, Florida.

Section 6. This Resolution shall become effective immediately upon its passage and adoption.

Winter Park,	Florida,	held at	City	Hall,	Winter	Park,	Florida,	on	the	$14^{\rm th}$	day	of
November, 20	011.											
									_	_		
					Keni	neth W	7. Bradle	y, M	layo	r		
Attest:												

Cynthia S. Bonham, City Clerk

ADOPTED at a regular meeting of the City Commission of the City of

RESOLUTION NO.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, PURSUANT TO CHAPTER 170.03, **FLORIDA** STATUTES, CONFIRMING THE SPECIAL ASSESSMENTS **FOR** THE UNDERGROUNDING OF **ELECTRIC/CATV** (BHN) **FACILITIES** WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF WINTER PARK, CONSISTING \mathbf{OF} PROPERTIES ADJACENT TO PARKWAY AND WILLIAMS DRIVE, GENERALLY DESCRIBED AS THOSE PROPERTIES ADJACENT TO DIXIE PARKWAY AND WILLIAMS DRIVE, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park, Florida has determined and does hereby determine, to make and fund certain public improvements and municipal services authorized by Section 170.01 and 170.201, Florida Statues, consisting of undergrounding electric/CATV (BHN) facilities, generally described as adjacent to those properties abutting Dixie Parkway and Williams Drive, more specifically indicated hereafter, such public improvements to be hereinafter referred to as the "Project"; and

WHEREAS, a portion of the expenses of the Project are to be defrayed by special assessments; and

WHEREAS, Section 170.07, Florida Statutes, requires that a public hearing be conducted with respect to the special assessment roll which has heretofore been filed with the City Clerk; and

WHEREAS, Section 170.08, Florida Statues, requires that at said public hearing the City Commission of the City of Winter Park meet as an equalizing board to hear and consider any and all complaints as to such special assessments; and to adjust and equalize the said assessments when necessary on a basis of justice and right; and

WHEREAS, the City Commission of the City of Winter Park has met as such equalizing board and has heard and considered all complaints as to such special assessments raised by the owners of property to be assessed and other interested persons.

NOW, THEREFORE, be it resolved by the City Commission of the City of Winter Park, Florida as follows:

Section 1. The City Commission of the City of Winter Park, after hearing and considering all complaints brought before it as to the special assessments to be

charged against property owners for the undergrounding of electric/CATV (BHN) facilities and funding of capital improvements consisting of undergrounding of electric/CATV (BHN) facilities along Dixie Parkway and Williams Drive, does hereby approve and confirm the special assessments as contained in the Special Assessment Rolls filed with the City Clerk of the City of Winter Park.

Section 2. By being so approved and confirmed, such assessments shall become legal, valid and binding first liens, upon the property against which such assessments are made, until paid.

Section 3. The City Clerk shall cause such approved and confirmed special assessments to be duly recorded in a special book to be known as the "improvement lien book". The record of the lien in said book shall constitute prima facie evidence of its validity.

Section 4. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the $\underline{14^{th}}$ day of November, 2011.

	Kenneth W. Bradley, Mayor
Attest:	
Cynthia S. Bonham, City Clerl	k

item type	Public Hearing	meeting date	November 14, 2011
prepared by department division	Dori DeBord Economic Development/CRA	approved by	■ City Manager■ City Attorney■ N A
board approval		_yes □ no □	N A final vote

subject

Exchange Agreement between the City of Winter Park and Progress Point LLC for properties located at 941 West Morse Boulevard and 1150 N. Orange Avenue, respectively.

motion | recommendation

Approve the Exchange Agreement subject to the due diligence findings

summary

In 2005, the CRA purchased the McCarty Building (State Office Building) site from the State of Florida for \$540,000. In January, 2011, the City rejected a deal for a long-term lease of the property for a net present value of \$3.0 million. In July 2011, the City issued a Notice of Disposal to consider new offers on the site. There were five proposals submitted under the Notice of Disposal process.

At the meeting on September 26, 2011, the City Commission directed staff to enter into negotiations with Progress Point LLC to allow the redevelopment of the City owned property located at 941 W. Morse to take place through a property swap with property located at 1150 N. Orange Avenue. This redevelopment opportunity would potentially place an office building of at least 80,000 square feet on the five acres of property with an anticipated opening within the next 24 months.

Progress Point LLC offered the proposal as part of the Notice of Disposal process, through which the City solicited development offers and proposals for the City-owned site. The terms of the Progress Point LLC proposal involve a direct swap of the two properties. Staff has been involved in negotiating an exchange agreement between the City and the representatives of Progress Point LLC over the past two weeks. The Exchange Agreement is enclosed for consideration.

At their meeting on October 10, 2011, the City Commission directed staff to continue negotiations with specific attention paid to three specific points:

- Value of the two properties
- Commitment and obligation that the development will occur
- Concerns regarding a potential near-term resale of 941 W. Morse Blvd.

Value of the Properties

Much discussion has been made of the exchange of the properties and the appraised value of each site. To address the value issue, the City and Progress Point LLC jointly hired an appraiser to provide an objective evaluation of all the appraisals and provide insight into the data and analysis

that was used to set the values of the three appraisals. To that end, staff and Progress Point LLC hired Meridian Appraisal Group, located in Winter Springs, Florida. Ms. Angela Brown reviewed all three appraisals and has offered an opinion of value for both sites based on the review of the documentation as well as her own review of sites. Her report is included. Staff has used this appraisal information as the basis for the analysis in the table below to outline deal terms.

Commitment and Obligation of Development

The Commission expressed concern about the commitment and security that Progress Point LLC would move forward with the office development in a timely manner. Progress Point representatives have modified the agreement to include a Letter Of Credit (LOC) for \$219,000 that will act as security to the City throughout the development process. The Letter of Credit will be refundable to Progress Point over time as various key development phases are met given the timeline outlined in the agreement. The timeline has been developed using the requirements of Planning and Building to ensure that the timeline is realistic.

Near term Sale of Asset

Progress Point LLC agrees that they shall not sell the State Office Building property for a period of two years after closing without the City's prior consent. Additionally, the City shall be entitled to $\frac{1}{2}$ of these proceeds after the costs associated with the development.

Terms of the Exchange

Staff has updated the breakdown for both properties given the current terms outlined in the Exchange Agreement and the most current appraised values.

	McCarty Building – 941 W. Morse Blvd.	1150 N. Orange Avenue
Meridian Appraisal 11-01-11	\$4,575,000	\$4,400,000
Appraisal Difference	\$175,000	
Credit:		
Demolition of Building	\$200,000	100,000
Net Demo	\$100,000*	
Conservation Easement	\$343,000	
CRA Contribution (NPV)	\$300,000	
Additional Value Offered to the City	\$743,000	

*Net demolition is the difference between the \$200,000 for the State Office Building and the \$100,000 for the Orange Avenue property.

The following assumptions apply to this analysis:

- The Owner has agreed to institute a conservation easement along frontage on Morse Boulevard that will contain .5 acre of land. The anticipated total value of this property is \$458,000. Staff gave 75% credit for the property valuing this easement at \$343,000. The parking, not the Floor Area Ratio (FAR) constrains building yield on the site. The maximum FAR allows 98,000 SF of building. Due to parking constraints the maximum building area is about 82,000 SF. The conservation easement reduces total parking by about 35 spaces or about 8,750 SF. Without the easement, the building could be 10% larger. Recognizing that the value of property is what can be built on it, the city has reduced the value of this property by \$343,000 to protect the tree canopy.
- Staff values the \$420,000 paid over 14 years in \$30,000 installments at approximately \$300,000 in present value terms based on a 5% discount rate.

Staff participated in the preparation of the Exchange Agreement between the City and Progress Point LLC. Staff provides the following highlights of the Exchange Agreement:

- There is a 45 day inspection period after the Effective Date of the Exchange Agreement with an additional extension of 15 days if needed by either party.
- Both parties must certify that the property being exchanged does not currently contain any hazardous substances.
 - Progress Point LLC acknowledges that there is arsenic located on approximately 600 square feet on the corner of South Denning and Palmetto Avenue.
 - The City acknowledges that there is asbestos within the McCarty Building.
- Closing shall be 30 days following the following the expiration of the inspection period.
- Progress Point LLC agrees to a reverter clause.
- Progress Point LLC may not sell or dispose of the property within two years without City approval.
- Progress Point LLC agrees to commit to a \$219,000 Letter Of Credit to secure
 their intent to move through the planning and permitting process. This LOC
 can be drawn down by Progress Point LLC as they work through the permitting
 process. The City agrees to limit their liability if the City cannot process the
 application in a timely manner.
- Progress Point LLC agrees to submit a preliminary conditional use application to the City on or before 90 days after closing.
- Progress Point LLC agrees to impose a 63' wide easement along Morse Boulevard as a conservation easement.
- Progress Point LLC will make a payment to the CRA of \$30,000 for 14 years upon completion of the project. The City is entitled to adopt and impose a special assessment agreement or assessment lien, obligating the fee be paid.
- Progress Point LLC will provide written confirmation to the City for each tenant executing a letter of intent.

Staff Recommendation:

Staff has recognized two issues related to the exchange of property. The first is risk and the second is timing. It is the nature of government to be risk-adverse. The City has the responsibility of public dollars generated by the taxpayers within the community to allocate in a way that benefits the greater public good. A private developer has more flexibility to take risk and hopefully make a profit. Through Commission guidance, the staff and the representatives from Progress Point LLC have worked to limit the risk as much as possible with regard to the exchange of property, the potential development of the State Office Building and the City's future control of the Orange Avenue parcel. This limitation of risk is focused on the LOC and the reverter clause as well as a documented timeframe for development to occur.

The second issue is the matter of timing. Based on information in the appraisal, the development of the State Office Building as a new office site is limited to the ability of the developer to construct the project at this point in time and having tenants available in the very near term to occupy the new building. This is the case with Progress Point LLC's proposal. It also involves re-engaging this property onto the Orange County tax rolls and receiving the remaining 14 years of CRA increment benefit. Additionally, the land use of the Orange Avenue parcel as a potential mixed use development allows for this parcel to develop in some form with more commercial potential than the defined office use permitted on the State Office Building site.

Given that the Agreement limits risk and provides the advantage of the benefits of a redeveloped State Office Building property as Class A office space, providing space for up to 450 new jobs, reoccurring net financial benefit through increased property taxes and fees, staff recommends approval of the Exchange Agreement subject to the findings of the due diligence process.

EDAB Recommendation:

The EDAB recommended approval of the essence of this proposal based upon the economic development opportunity offered. EDAB highlighted the economic benefits of a proposed new development at the State Office Building site, including the value of job creation and both the one-time, and continuing, revenue streams to the City. The EDAB also recognized the benefits that new office development will bring to the CRA from tax increment as well as providing available Class A space for future larger tenants.

alternatives | other considerations

The Commission could choose to decline the exchange and move forward with another course of action on the City-owned parcel.

fiscal impact

The City and the CRA accrue fiscal benefit from a variety of sources and the following estimates are based on the construction of an 82,000 SF building in the CRA. This analysis covers taxes and fees payable to the city directly but does not consider the economic impact accrued by the addition of new jobs in the area and increased spending in the local market. Please note that this analysis does not include any city expenses for providing services and assumes that the cost would be minimal.

One-time Fees:

Building & Permitting Fees: \$302,687 based on a construction valuation of \$154.97 per SF.

<u>Water/Sewer Impact Fees</u>: With no vested impacts, \$282,900 based on a cost of \$3.45 per SF. To estimate the vested impacts already paid on the site a credit based on \$3.45 a SF for the existing 60,000 SF building has been applied $(60,000 \times 3.45 = $207,000 \text{ credit})$. Total net new impact of \$75,900.

Total One-time Revenue Estimate: \$378,587

Annual Revenues:

<u>Property Taxes</u>: Valued at \$110 per SF an 82,000 SF building will generate approximately <u>\$73,000</u> annually in tax revenues for the CRA.

Note: The removal of the existing progress point property currently assessed at about \$3.0 million would cost the city's General Fund about \$12,000 annually in lost tax revenue. If and/or when the property is disposed of for taxable use, the property would again generate revenue on the tax rolls.

CRA Contribution Payment: Annual payment of \$30,000 agreed to for 14 years.

Stormwater Fees: \$11,108 annually based on a monthly fee of \$11.56 per 2,324 SF of impervious coverage and an assumed coverage of 85%.

Water Utility Tax: \$863 annually based on \$0.01 per SF.

Electric Utility Tax: \$18,853 annually based on \$0.23 per SF.

Electric Franchise Fee: \$11,562 annually based on \$0.141 per SF.

Solid Waste Franchise Fee: \$5,740 annually based on \$0.07 per SF.

Communication Svs Tax: \$4,920 annually based on \$0.06 per SF.

10% Gas Tax: \$196 annually based on \$0.0024 per SF.

Total Annual Revenue Estimate: \$144,242

The following revenues represent gross revenues payable to the city's utilities based upon comparable charges per SF for office properties nearby. This would not be considered net new profits as expenses have not been determined.

Electric Revenues: \$192,700 at \$2.35 per SF.

Water Revenues: \$19,680 at \$0.24 per SF (including irrigation charges).

Sewer Revenues: \$4,920 at \$0.06 per SF.

Total Annual Gross Utility Revenue Estimate: \$217,300

Estimate of Impact from Job Creation

Methods for valuing the economic impact of job creation vary widely and often involve multipliers however because this deal is being analyzed from the city's perspective, staff has used the city's adopted job creation program to estimate the value of the future jobs created. The City/CRA's adopted Targeted Industry Enhancement Program (TIE) currently values a high-wage job at \$1,000 to \$1,500 depending upon whether the average of jobs relocated is 115%, 150%, or 200% of the County Average. Based on the assumption that the new office project would hold approximately 300 jobs and depending upon the wage level attained, using the TIE program methodology the value to the city would be \$300,000 to \$450,000.

AGREEMENT FOR EXCHANGE OF REAL PROPERTY

This Agreement for Exchange of Real Property (the "Agreement") is made and entered into as of the _____ day of November, 2011, by and between PROGRESS POINT, LLC, a Florida limited liability company ("Owner"), whose address is c/o CNL Commercial Real Estate, 420 South Orange Avenue, Suite 950, Orlando, Florida 32801, and the CITY OF WINTER PARK, a Florida municipal corporation ("City"), whose address is 401 Park Avenue South, Winter Park, FL 32789.

Recitals:

WHEREAS, Owner is the owner of fee simple title to a parcel of real property and improvements thereon more particularly described on Exhibit "A", attached hereto, and by this reference made a part hereof, defined herein as "Owner Property"; and

WHEREAS, the City owns the fee simple title to a parcel of real property and improvements thereon more particularly described on Exhibit "B", attached hereto, and by this reference made a part hereof, defined herein as the "State Office Building Property" on which is located state office buildings; and

WHEREAS, on July 28, 2011, the City issued a notice requesting proposals for the redevelopment of the State Office Building Property; and

WHEREAS, Owner responded to the request, and the Owner and the City have agreed to an exchange of properties, pursuant to which Owner will convey the Owner Property to the City and the City will convey the State Office Building Property to the Owner, in accordance with the terms and conditions of this Agreement; and

WHEREAS, in addition to the exchange of properties, the Owner has agreed to certain financial obligations and commitments in favor of the City, as more particularly described in this Agreement; and

WHEREAS, the City Commission deems the exchange of properties and the redevelopment of the State Office Building Property to be a proper public purpose, and that said exchange and redevelopment will achieve important City objectives, such as stimulating economic development in the City and increasing property values, and declares that the State Office Building Property is surplus real property; and

WHEREAS, Owner desires to redevelop the State Office Building Property and the City wishes to encourage Owner to redevelop the State Office Building Property, as an office project including associated parking and landscaping (the "New Office Project"); and

WHEREAS, Owner has received expressions of interest from two potential tenants of the New Office Project representing sufficient space needs (approximately 50,000 s.f.) to develop the New Office Project, and Owner believes (and will continue to pursue) in good faith that it will reach agreement with both potential tenants to occupy space in the New Office Project; and

WHEREAS, Owner shall develop the New Office Project in accordance with its proposal to the City, and the development shall be "Class A" office space, comparable to other office space considered to be "Class A" office space in the commercial building submarket area of Winter Park located in the vicinity of the State Office Building Property; and

WHEREAS, the City has estimated that the net tax increment which will be derived by the City and its agencies after construction of the New Office Project will be at least +/- \$73,000 per year, which represents a significant economic benefit to the City; and

WHEREAS, the City finds that securing and facilitating the redevelopment of the State Office Building Property serves to enhance and expand economic activity by attracting and retaining business enterprise and other activities conducive to economic promotion, and contributes to a stronger, more balanced and stable economy in the City, enhances and preserves purchasing power and employment opportunities for the residents of the City, and improves the welfare and competitive position of the City, and the City declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises like the potential tenants of the New Office Project; and

WHEREAS, the City has determined that the expenditure of certain public funds to attract and retain businesses like Owner's potential tenants and the use of such public funds toward the achievement of the economic development goals described herein, constitutes a public purpose; and

WHEREAS, the City has an interest in acquiring the Owner Property in order to have options for the location or relocation of City departments, operations and/or personnel, such as potentially the library or City Hall; and

WHEREAS, Owner and the City now desire to set forth the terms and conditions of their agreement for the exchange of the properties and various related matters, all of which can be generally summarized as follows (all capitalized terms being defined below):

- A. Owner will convey to the City fee simple title to the Owner Property.
- B. The City will convey fee simple title to the State Office Building Property To Owner.
- C. Owner and the City will enter into a Development Agreement with respect to various master planning issues associated with development of the New Office Project; and

WHEREAS, the City Commission is authorized to enter into this Agreement pursuant to its home rule authority; and

WHEREAS, the City Commission finds that this Agreement is consistent with its Community Redevelopment Plan, its Comprehensive Plan, and is in the best interests of the citizens; and

WHEREAS, all of the foregoing will be accomplished without any pledge of credit or ad valorem tax revenues on the part of the City.

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

- 1. <u>Preambles</u>. The parties acknowledge that the above preambles are true and correct and incorporate them herein by this reference thereto.
- 2. <u>Agreement to Convey.</u> The Owner agrees to convey the Owner Property to City in exchange for City conveying the State Office Building Property to Owner, in accordance with the terms and conditions of this Agreement. For the purposes of this Agreement, the Owner Property and the State Office Building Property are sometimes each referred to as the "Property", and sometimes together referred to as the Properties, as applicable and as the context may require. Each conveyance shall be free from all encumbrances except Permitted Exceptions (defined below), with all appurtenances pertaining thereto.
- 3. <u>Title Insurance</u>. Within fifteen (15) days following the Effective Date hereof, City shall cause Old Republic National Title Insurance Company ("City's Title Company"), through its agent, Brown, Garganese, Weiss & D'Agresta, P.A. ("City's Title Agent"), to issue and deliver to Owner an ALTA title commitment ("Owner's Title Commitment") accompanied by one (1) copy of each document supporting any exception to the Title Commitment to the State Office Building Property.

Within fifteen (15) days following the Effective Date hereof, Owner shall cause Fidelity National Title Insurance Company ("Owner's Title Company"), through its agent, Lowndes, Drosdick, Doster, Kantor & Reed, P.A. ("City's Title Agent"), to issue and deliver to City an ALTA title commitment ("City's Title Commitment") accompanied by one (1) copy of each document supporting any exception to the City's Title Commitment to the Owner Property.

For the purposes of this Agreement, the term "Title Commitment" shall mean either the Owner's Title Commitment or the City's Title Commitment, as applicable and as the context may require.

If a Title Commitment reflects matters other than the standard exception for ad valorem real estate taxes for the current year and those matters which will be discharged by the respective owner at or prior to Closing, then the party to receive title to the property shall give the party conveying the property written notice thereof before the expiration of ten (10) business days after receipt of the Title Commitment. In such event, the objecting party shall state which exceptions to the Title Commitment are objectionable, and the conveying party shall undertake to eliminate such exceptions. In the event the conveying party is unable with the exercise of reasonable diligence to satisfy said objections prior to Closing, the objecting party may, in its sole discretion, (i) accept title subject to the objections raised by it, in which event said objections shall be deemed to be waived for all purposes, or (ii) rescind this Agreement and this Agreement shall be of no further force and effect (except for any indemnifications which survive hereunder). Neither party shall be obligated to spend more than \$5,000.00 to cure any title defects. For the

purposes of this Agreement, all matters and exceptions reflected in the Title Commitment that are either (a) contemplated or authorized by this Agreement or (b) accepted by the party receiving title to the property covered by such Title Commitment, shall be collectively referred to as "Permitted Exceptions".

- Survey. Either party may, at its expense and if it so desires, within thirty (30) days of the Effective Date hereof, obtain a current survey of the Property it is to receive in this exchange (each, a "Survey"). Any Survey shall be prepared by a duly licensed land surveyor in accordance with the minimum technical standards for surveyors in the State of Florida. If the Survey reveals any encroachment, hiatus, overlap, or other survey defect, then the same shall be treated as an objection to title, which objection must be made, if at all, by the respective party by written notice to the other party before the expiration of five (5) business days after receipt of the Survey. In such event, the objecting party shall state what matters depicted in the Survey are objectionable, and the other party shall undertake to eliminate such objections in accordance with the same standards and requirements set forth in Section 3 for title objections. In the event the other party is unable with the exercise of reasonable diligence to satisfy said objections prior to Closing, the objecting party may, in its sole discretion, (i) accept title subject to the Survey objections, in which event said objections shall be deemed Permitted Exceptions and shall be waived for all purposes, or (ii) rescind this Agreement and this Agreement shall be of no further force and effect (except for any indemnifications which survive hereunder). Any amount spent by a party to satisfy Survey objections shall be included in the \$5,000.00 maximum described in Section 3.
- 5. <u>Inspection Period</u>. Each party shall have until 5:00 p.m. on the date which is forty-five (45) days after the Effective Date ("Inspection Period") to perform any surveys, soil test borings environmental testing, environmental audit, or any other studies, tests or research on or about the Property they are to receive as a result of this exchange as they may desire or deem necessary. Either party may extend the Inspection Period by fifteen (15) days (to a total of 60 days), upon written notice to the other party delivered within forty (40) days after the Effective Date. To the extent that either party obtains an environmental testing, environmental audit or other analysis or report during the Inspection Period, such analysis or report shall be in favor of both parties such that both parties shall be entitled to rely on such analysis or report. During the Inspection Period, either party may, at each's sole discretion and for any reason, upon written notice to the other party, terminate this Agreement. If either party does not deliver written notice to the other of its election to terminate this Agreement before the expiration of the Inspection Period, each party shall be deemed to have waived its right to terminate this Agreement. Upon termination by either party pursuant to this Section 5, neither party shall have any further obligation to the other under the terms of this Agreement except for those terms and conditions that specifically survive the termination of this Agreement. To the extent allowed by law, both parties agree to indemnify, defend and hold each other harmless from and against all fines, expenses, penalties, costs, claims, liabilities and expenses, including reasonable attorneys' fees and other costs, incurred, sustained by, or asserted against the other party arising from the inspections and entries by or on behalf of a party on the State Office Building Property or the Owner Property, respectively. The foregoing indemnification shall survive the Closing or the earlier termination of this Agreement for whatever reason.

Environmental. Both parties warrant to the other, that to the best of the knowledge of the warranting party, without inquiry and except as disclosed in the Records (defined below), the property to be exchanged does not currently contain any Hazardous Substances in violation of any applicable environmental laws or regulations, including but not limited to Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. '9601 et seq., any "superlien" laws, any superfund laws, or similar federal or state laws, or any successor statutes thereto ("Environmental Laws"), nor to the warranting party's knowledge, has any clean-up of its property occurred pursuant to the Environmental Laws which could give rise to liability to reimburse any governmental authority for the costs of such clean-up nor a lien or encumbrance on the Property. For the purposes hereof, the term "Hazardous Substances" shall mean all toxic or hazardous materials, chemicals, wastes, pollutants or similar substances, including, without limitation, Petroleum (as hereinafter defined), asbestos insulation and/or urea formaldehyde insulation, which are regulated, governed, restricted or prohibited by any federal, state or local law, decision, statute, rule, regulation or ordinance currently in existence or hereafter enacted or rendered, including, but not limited to, those materials or substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "pollutants" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and any applicable statutes, ordinances or regulations under the laws of the State of Florida, and any rules and regulations promulgated thereunder, all as presently or hereafter amended. "Petroleum" for purposes of this Agreement shall include, without limitation, oil or petroleum of any kind and in any form including but not limited to oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline, diesel fuel and kerosene.

Notwithstanding the foregoing and as more particularly described in the Records to be provided by Owner, a portion of the Property located at the corner of South Denning Drive and Palmetto Avenue contains certain Hazardous Substances which have been reported to applicable governmental agencies and which currently are being addressed by the Owner. A portion of the property containing approximately 593.7 square feet and more particularly described and depicted on Exhibit "C" attached hereto and by this reference made a part hereof (the "Restricted Portion"), will be the subject of a "Site Rehabilitation Cleanup Order (SRCO), with Conditions" issued by the Florida Department of Environmental Protection, and the Restricted Portion also will be subject to a deed restriction associated with the SRCO. The Hazardous Substances within the Restricted Portion consist of slightly elevated levels of arsenic attributed to the proximity of the Restricted Portion to the railroad tracks. As part of the SRCO, Owner will be required to (and shall complete at its expense prior to Closing hereunder) permanently cover the Restricted Area with concrete.

Owner acknowledges that asbestos may be present on the State Office Building Property as a result of asbestos present in the building. Owner shall not engage in any activity on the State Office Building Property during the Inspection Period that has the effect of exacerbating any such the preexisting environmental conditions. Owner shall utilize its own consultants, engineers and all other related professionals to make its own investigation and determination as

the accuracy or acceptability of any and all matters regarding the State Office Building Property and any documents provided by the City.

Except in the case of a default under or violation of Section 8 hereof by the City. Owner hereby releases the City, its officers, agents and employees, from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damage, trespass, nuisance, negligence, response or investigation costs, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys' or consultants' fees and any other claim, demands, damages, losses or causes of action of whatever kind of nature, which Owner ever had, now has, or may have on account of or arising from the release or threatened release of Hazardous Substances at, on or from the State Office Building Property occurring from the date of the Closing, including, but not limited to environmental, property damage and personal injury, whether at law or in equity, whether under state or federal law or regulation, whether known or unknown, whether suspected or unsuspected, without any limitation or restriction whatsoever.

To the extent allowed by law and except in the case of a default under or violation of Section 8 hereof by the Owner, the City hereby releases Owner, its officers, agents and employees, from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damage, trespass, nuisance, negligence, response or investigation costs, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys' or consultants' fees and any other claim, demands, damages, losses or causes of action of whatever kind of nature, which City ever had, now has, or may have on account of or arising from the release or threatened release of Hazardous Substances at, on or from the Owner Property occurring from the date of the Closing of the Agreement, including, but not limited to environmental, property damage and personal injury, whether at law or in equity, whether under state or federal law or regulation, whether known or unknown, whether suspected or unsuspected, without any limitation or restriction whatsoever.

The terms and conditions of this Section 6 shall survive the Closing or the earlier termination of this Agreement for whatever reason.

Access to the Properties; Records and Other Information. Each party agrees that during the Inspection Period of each, the inspecting party or its agents shall have the right to enter upon the other party's Property to make such surveys, tests, inspections, analyses and similar examinations as the inspecting party may desire with respect to the Property. The inspecting party or its agents, shall have the right to enter upon the other's Property for such activities provided said activities shall not materially damage the Property or unreasonably disrupt the other party's ongoing activity at the Property. The inspecting party agrees to deliver copies of all such tests, reports, surveys, examinations, etc. to the other party in the event the inspecting party elects not to purchase the Property. The inspecting party agrees to restore the Property to substantially the same condition as existed prior to its access thereto. Within ten (10) days of the Effective Date, each party hereto shall deliver to the other party all books and records, including all environmental reports and related data pertaining to their respective Property including, the permits, plans, service contracts, building inspection reports, and records

and any other records or information or documents that the other party may reasonably request, with respect to the Property ("Records") that are in Seller's possession or control. In the event this Agreement is terminated as provided for herein and the transaction is not consummated, all information, documentation and the like shall be returned by to the other party.

- 8. Representations and Warranties. The following representations and warranties made by each party to the other party are true and correct as of the Effective Date and shall be true and correct as of the date of Closing and the truthfulness and correctness thereof shall constitute conditions precedent to either party's obligation to exchange the Property. Each of the following representations and warranties are, however, subject to and limited by the disclosures set forth elsewhere in this Agreement.
- A. <u>Authority</u>. Each party is duly organized, validly existing and in good standing under the laws of the State of Florida and of the United States. The individual executing this Agreement has full and lawful authority to bind and obligate their corporation or entity to perform its obligations as herein provided, and upon execution hereof, this Agreement shall be the binding and legal obligation of the parties hereto and is enforceable against each under the laws of the State of Florida.
- B. <u>Marketable Title</u>. Each party shall convey and deliver at Closing good and marketable title to their respective Property by Special Warranty Deed, in form and content reasonably acceptable to each, free and clear of all mortgages, liens, encumbrances, leases, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments and other matters affecting title, except for Permitted Exceptions.
- C. <u>No Condemnation Pending or Threatened</u>. Each party has no knowledge of any pending or threatened condemnation or similar proceeding affecting their Property or any portion thereof, nor does either party have knowledge that such action is contemplated.
- D. <u>Adverse Information</u>. Neither party has any knowledge of any changes contemplated in any applicable laws, ordinances or regulations, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial conditions upon their Property which would prevent, limit, impede or render more costly, the current use of the Property.
- E. <u>Compliance with Laws</u>. Neither party has any knowledge of any violation of any applicable laws, ordinances, regulations, rules or restrictions pertaining to or affecting their Property. Each party has no knowledge that performance of this Agreement would result in any breach of or constitute any default under or result in the imposition of any lien or encumbrance upon their Property under any agreement or other instrument to which either party is a party or to which either party or their Property might be bound. Neither party has received any notices from any association, city, county, state, or other governmental authority of building, land use, zoning or health code violations in respect to their Property that have not been corrected.
- F. <u>Pending Litigation</u>. There are no legal actions, suits, or other legal or administrative proceedings including condemnation cases pending. Neither party has any knowledge of any legal actions, suits, or other legal or administrative proceedings threatened

against their Property. Neither party is aware of any facts which might result in any such action, suit or other proceedings.

- G. <u>No Special Assessments or Obligations for Improvements</u>. Except for the Orange Avenue assessment applicable to the Owner Property, neither party has any knowledge that any portion of their Property is affected by any special assessments or obligations for roads or other improvements.
- H. <u>Access to Highways and Roads</u>. Neither party has any knowledge of any fact or condition which would result in the termination of ingress and egress to publicly maintained and dedicated streets and access ways.
- I. <u>Commitments to Governmental Authority</u>. To each party's knowledge, except for the Orange Avenue assessment applicable to the Owner Property, no commitments have been made to any governmental authority, Owner, utility company, school board, church or other religious body or any property owners' association or to any other organization, group or individual relating to their Property which would impose an obligation upon the other party or its successors and assigns to make any contribution or dedications of money or land or to construct, install, or maintain any improvements of a public or private nature on or off their Property. There is no requirement that any Owner or owner of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with any development of the Property or any part thereof. The provisions of this Section shall apply to any regular or non-discriminatory local real estate taxes assessed against the Property.
- J. <u>Subsurface Conditions</u>. Except as otherwise disclosed in this Agreement or in the Records, neither party has any knowledge of any environmental, soil, or subsurface conditions located on its Property which would impair the usability or developability of such Property for its present use.
- K. <u>Environmental</u>. To each party's knowledge, all of the statements regarding environmental matters contained in this Agreement are true and correct.
- L. <u>Contracts</u>. Each party represents that there are no leases, rights of first refusal, options or contracts, oral or written, in existence pertaining to their Property. Neither party, nor any person authorized to act on its behalf, is a party to any written, oral or implied contract, agreement, lease or other commitment affecting or relating to their Property, including, without limitation, agreements for the purchase of goods or the rendering of services.
- M. <u>Insolvency</u>. There has not been filed by or against either party a petition in bankruptcy or any other insolvency proceeding, or for the reorganization or appointment of a receiver or trustee, nor has either party made an assignment for the benefit of creditors, nor filed a petition for arrangement, nor entered into an arrangement with creditors, nor admitted in writing its inability to pay debts as they become due.
- N. <u>Physical Condition of Improvements</u>. Except as may be set forth in the representations and warranties contained herein, neither party makes any representation or warranty as to the condition of the buildings, structures and other improvements located on their

Property, or any systems or components thereof, said buildings, structures and other improvements to be acquired in their "AS IS" and "WHERE IS" condition.

- 9. <u>Covenants Pending Closing</u>. Following the execution of this Agreement and at all times prior to the Closing:
- A. <u>No Transfers</u>. Neither party shall transfer, sell, assign or otherwise dispose of or pledge, mortgage, hypothecate or otherwise encumber, or lease or sublease all or any portion of their Property or any interest therein during the pendency of this Agreement.
- B. <u>Leases</u>. Neither party shall, without the prior written consent of the other party hereto in each instance, (i) enter into any new leases or occupancy agreements for space at their Property, (ii) modify, amend, terminate, renew, extend or waive any rights under an existing leases, (iii) apply any rental security deposits against sums payable under any leases, (iv) grant any concessions, rebate, allowance or free rent to any tenant for any period, or (v) accept the surrender of or terminate any lease.
- C. <u>Service Contracts and Permits</u>. Neither party will terminate or enter into any renewal, extension, modification or replacement of any existing permits or enter into any new employment, maintenance, service, supply or other agreement relating to their Property without the prior written consent of the other party. Each party will use its best efforts to renew all of the permits as they expire from time to time and shall notify the other party at least thirty (30) days prior to the expiration date or threatened cancellation date of any permit.
- D. <u>Insurance</u>. Each party shall maintain hazard and liability insurance in commercially reasonable amounts, but in no event less than the amount currently carried, with respect to their Property, and all such policies shall be kept in full force and effect until the Closing.
- 10. <u>Compliance With Laws</u>. In the event that there shall be any notices of violations of law, ordinances, orders, protective covenants, development standards, requirements or regulations issued subsequent to the date hereof, but prior to the Closing, by any federal, state, county municipal or other governmental or quasi-governmental department, agency, or authority relating to their Property, each party will provide written notice thereof to the other party, and the owner of the property will cause the same to be complied with, at the owner's sole cost and expense, prior to the Closing, or the owner shall escrow sufficient funds at Closing or make such other arrangements to satisfy the other party.

11. Provisions with Respect to Closing.

- A. <u>Closing Date</u>. The consummation of the transaction contemplated by this Agreement ("Closing") shall occur on or before thirty (30) days following the expiration of the Inspection Period, at the offices of City's counsel, Brown, Garganese, Weiss & D'Agresta, P.A. ("Closing Agent").
- B. <u>Obligations at Closing</u>. On the Closing Date, Owner and City shall each deliver all of the following closing documents, duly executed in accordance with applicable law (together, the "Closing Documents"):

- (i) Special warranty deeds conveying the respective Properties subject only to the Permitted Exceptions. The legal description of the Property on the deeds shall be as contained in the Surveys and the Title Commitments;
- (ii) Standard form owner's affidavit attesting (among other things) to the lack of any parties in possession of their respective Property (or identifying any tenants and the leases under which they occupy the same), the lack of any unrecorded easements affecting their respective Property and certifying that no improvements have been undertaken thereon within the preceding ninety (90) days for which the cost thereof has not been paid;
- (iii) Such other affidavits as may reasonably be required by either party, the Owner's Title Company, the City's Title Company or Closing Agent;
- (iv) A closing statement, an Affidavit of Interest In Real Property (in the case of Owner), the form of which is attached hereto as Exhibit "D" (to be completed with this Agreement), and such other documents and instruments or assignments as may reasonably be requested by either party to consummate the exchange of the Properties;
- (v) Easement along Morse Boulevard as mentioned in Section 12 below and shown in attached Exhibit "E" attached:
- (vi) Notice of Reverter described in Section 12;
- (vii) Special Assessment Agreement or Lien on State Office Building Property, as described in Section 12;
- (viii) the Letter of Credit described in Section 13; and
- (ix) Such other documents and agreements as may be reasonably required by either party or as are contemplated by this Agreement to effectuate the Closing.
- C. <u>Closing Expenses</u>. Each party shall deliver to Closing Agent its share of the Closing expenses. Each party shall be responsible for the payment of the Florida documentary stamp tax payable on the special warranty deed(s) in which it is named as grantor (regardless of the provisions of Florida law exempting the City from the payment thereof), as well as for the premium for the title insurance policy to be delivered to it. Each party shall be responsible for the per-page cost of recording the deeds in which it is named as grantor and for one-half of the per-page cost of recording the other documents to be recorded in connection therewith. Promptly after Closing, Closing Agent shall issue to each party its owner's policy of title insurance with only the Permitted Exceptions as exceptions to the coverage afforded thereby. Each party shall pay their own attorney fees.

The parties may mutually agree to close the transaction in escrow, in order to execute the Closing Documents in advance and be prepared to consummate the transaction contemplated at a later date, all in accordance with an escrow agreement to be mutually agreed upon by the parties.

- D. Proration of Rents, Taxes, Utilities, and Miscellaneous Expenses. Taxes for all years prior to the year of the Closing, and taxes for the year of Closing if then due, shall be paid by the owner of the Property being conveyed prior to or at Closing. The conveyance shall be subject to taxes for subsequent years. Taxes for the tax year of Closing shall be prorated to the date of Closing, based upon the amount of taxes due for such year, if known, or the taxes for the preceding year, based upon the maximum discount allowable as of the date of Closing; provided, however, that upon the issuance of the actual tax statement or bill for the year of the Closing, if the actual tax varies from the amount prorated by more than five percent (5%), the parties shall promptly make such re-prorations as may be necessary to ensure that the actual amount of such taxes for the year of Closing shall be prorated between the parties, said agreement to survive Closing hereunder. All special assessments which have been levied or certified prior to Closing shall be paid in full by the owner of the Property being conveyed and any pending assessments shall be assumed by the party taking title to the Property at Closing.
- 12. Additional Owner Obligations. As additional consideration for the conveyance of the State Office Building Property to Owner, the Owner hereby further agrees to the following (all as more particularly described in this Section 12): (i) a reverter provision by which, after Closing, each party will convey its respective property back to the other party in the event certain conditions are not satisfied; and (ii) Owner will pay to the City's Community Redevelopment Agency (CRA), on an annual basis for a total of fourteen (14) years (i.e., 14 payments), the sum of Thirty Thousand Dollars (\$30,000) per year (the "Owners CRA Contribution").

The parties acknowledge and agree that the proposed redevelopment of the State Office Building Property by Owner is a material consideration for the City's willingness to enter into this Agreement. Owner acknowledges and agrees that it intends to pursue the approval, development and construction of the New Office Project diligently and in good faith. In that regard, after Closing and prior to the commencement of construction: the Owner will continue to pursue tenants for the New Office Project, and will provide written confirmation to the City for each tenant for which Owner reaches an executed letter of intent for space in the New Office Project (identifying the nature of the proposed tenant's business and the approximate square footage to be occupied by such tenant, but not identifying the tenant by name); Owner will proceed with planning for the New Office Project, anticipating and with the intent that the required application for preliminary conditional use approval for the New Office Project will be filed with the City within ninety (90) days after Closing; Owner will pursue necessary financing for the New Office Project diligently and in good faith, and will provide written confirmation to the City when it secures such financing; and upon approval of the conditional use for the New Office Project, the Owner anticipates obtaining a building permit within six (6) months of such approval and commencing construction of the New Office Project upon issuance of the building permit. Despite Owner's diligent and good faith efforts, in the event the Owner does not submit to the City within one (1) year after Closing (the "Application Period"), a complete conditional use application for the development of the New Office Project (the "CU Application"), then in addition to the City's rights under Section 13 below, the City at its option, exercised by written notice delivered to the Owner within thirty (30) days after the expiration of the Application Period, may require another exchange of properties pursuant to which Owner will convey the State Office Building Property back to the City and the City will convey the Owner Property back to the Owner (which transaction is referred to as the "Reverter Closing"). The Reverter Closing shall be conducted under terms and conditions comparable to those set forth in this

Agreement for the initial Closing. For purposes of this paragraph, the period of time from the Closing until the earlier of (x) Owner's satisfaction of the CU Application obligation, (y) City's election not to exercise (or City's failure to timely exercise) the Reverter Closing option, or (z) the Reverter Closing, if applicable, shall be referred to as the "Reverter Period". During the Reverter Period: (a) each party shall maintain its property in substantially the same condition as such property exists as of the date of Closing hereunder, reasonable wear and tear excepted.; and (b) Owner shall not convey, transfer or encumber any interest in the State Office Building Property without the prior written consent of the City. In the event the City conveys, transfers or encumbers any interest in the Owner Property during the Reverter Period, or fails to maintain the Owner Property as required above, its option for the Reverter Closing shall automatically terminate. Owner agrees to the recording of a Notice of Reverter at Closing to memorialize the terms and conditions of this paragraph. Upon Owner's satisfaction of the CU Application obligation described in this paragraph, or upon the City's election not to exercise (or failure to timely exercise) its option for the Reverter Closing, or if the Reverter Closing option terminates as a result of the City's conveyance, transfer or encumbrance of any interest in (or failure to maintain) the Owner Property, then in any such event the City shall execute and deliver to Owner a written acknowledgement, in recordable form, confirming the termination of the City's option for the Reverter Closing.

In connection with the CU Application, City and Owner further acknowledge and agree that part of the CU Application and any approval thereof will include the Development Agreement referenced in the preambles to this Agreement. Such Development Agreement will address certain development and master planning issues associated with the New Office Project, including without limitation: (1) Owner's agreement to impose on the State Office Building Property a 63' wide easement along Morse Boulevard (as depicted on Exhibit "E" attached hereto and by this reference made a part hereof) for the purpose of installing and/or maintaining a landscape and tree corridor along Morse Boulevard which easements will not adversely affect or impair allowable signage, required building setback lines, required open space, required F.A.R. and other site development criteria under applicable zoning.

The parties acknowledge and agree that the proposed redevelopment of the State Office Building Property will result in the CRA's receipt of tax increment funds, by which a portion of the ad valorem real property taxes due and payable for the State Office Building Property will be paid to the CRA. The parties further acknowledge and agree that the CRA is scheduled to terminate on January 1, 2027 (the "CRA Termination Date"). Beginning with the first calendar year for which the ad valorem real property taxes for the New Office Project reflect the construction and completion of, and the issuance of the certificate of occupancy for, the New Office Project, thereafter on an annual basis for a total of fourteen (14) years (i.e., 14 payments), the Owner shall pay the Owner's CRA Contribution to the CRA (in addition to, and not in lieu of, ad valorem real property taxes due and payable in connection with the State Office Building Property and the New Office Project). The Owner's CRA Contribution shall be due and payable to the CRA on or before March 31 of the year following the applicable ad valorem property tax year. In order to enforce and memorialize the Owner's commitment for the Owner's CRA Contribution, the City shall be entitled to adopt and impose a special assessment agreement or assessment lien, in form and substance reasonably acceptable to Owner, relating to the Owner's CRA Contribution obligation. In the event the CRA Termination Date occurs prior to the Owner paying fourteen (14) of the Owner's CRA Contributions, then for each year after the CRA

Termination Date until the Owner pays the fourteenth (14th) Owner's CRA Contribution, each remaining Owner's CRA Contribution shall be paid to the City (and the City shall be obligated to use such funds for purposes comparable to those identified in the expired CRA Plan). The Owner's obligation for the Owner's CRA Contribution shall not preclude, limit or impair the Owner's right and ability to contest any assessment of ad valorem real property taxes for the State Office Building Property and/or the New Office Project.

Each application by the Owner for development approvals pursuant to this Agreement, including the CU Application, shall be a complete application with all of the information required by the City's Land Development Code and Ordinances. If the City determines reasonably and in good faith that an application is not complete, it shall provide notice in writing to the Owner, and the Owner shall be in breach of this Agreement if Owner fails to submit a proper and complete application within ten (10) business days following such notice from the City.

The terms and conditions of this Section 12 shall specifically survive the Closing hereunder, and the parties shall cooperate in good faith to execute and record such further agreements as may be reasonable or necessary to memorialize the terms and conditions of this Section 12. The terms and conditions of this Section 12 shall terminate and be of no further force and effect in the event of and upon a Reverter Closing.

- 13. <u>Letter of Credit</u>. Owner shall deliver an irrevocable Letter of Credit issued by a bank licensed to conduct business as a national association bank or licensed to conduct business in Florida, with a branch or office located in Orange County, Florida (in this regard, the City agrees that CNLBank is acceptable) (the "Letter of Credit"). This Letter of Credit shall be delivered to the City at Closing and shall be in the amount of Two Hundred Nineteen Thousand Dollars (\$219,000.00), and will be payable to the City. The Letter of Credit shall be held by the City subject to the following schedule and conditions:
- A. Owner shall submit a preliminary CU Application to the City on or before 90 days after Closing. Upon timely filing of a complete preliminary CU Application as set forth above, the Letter of Credit shall be reduced by twenty-five percent (25%) to the principal amount of One Hundred Sixty-Four Thousand Two Hundred Fifty Dollars (\$164,250.00). The City shall process and review the preliminary CU Application in a diligent and timely manner, and shall hold the Planning and Zoning Commission meeting and the City Commission meeting (together, the "Commission Meetings") to review and consider the preliminary CU Application within 45 days of the submittal by Owner. No less than 30 days in advance of the submittal of the preliminary CU application, Owner will submit all necessary documents and fees to the City Planning Department to facilitate the required City-wide notice. In the event the City fails to schedule and hold the Commission Meetings (and to consider the preliminary CU Application at such meetings) as described in this subparagraph A, and if such failure is due to force majeure, the City shall have an additional 15 days to hold the Commission Meetings. In the event either: (i) the City fails to hold the Commission Meetings within 45 days of the submittal of the CU Application by Owner, or (ii) in the case of force majeure, the City fails to hold the Commission Meetings within 60 days after the submittal by Owner of the preliminary CU Application, then in either event the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit.

- Subject to the City's satisfaction of its obligations to hold the Commission Meetings as set forth in subparagraph A above, Owner shall submit a final CU Application to the City on or before 90 days after the City Commission meeting approving the preliminary CU Application. Upon the timely filing of a complete final CU Application as set forth above, the Letter of Credit shall be reduced by an additional Sixty-Four Thousand Two Hundred Fifty Dollars (\$64,250.00) to the principal amount of One Hundred Thousand Dollars (\$100,000.00). The City shall process and review the final CU Application in a diligent and timely manner, and shall hold the Commission Meetings to review the final CU Application within 45 days of submittal by Owner. In the event the City fails to schedule and hold the Commission Meetings (and to consider the final CU Application at such meetings) as described in this subparagraph B, and if such failure is due to force majeure, the City shall have an additional 15 days to hold the Commission Meetings. In the event either: (i) the City fails to hold the Commission Meetings within 45 days of the submittal of the final CU Application by Owner, or (ii) in the case of force majeure, if the City fails to hold the Commission Meetings within 60 days after submittal by Owner of the final CU Application, or (iii) the City approves the final CU Application but such approval is challenged or appealed by a third party, then in any such event the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit.
- C. The Owner shall submit the application for the Building Permit for the New Office Project within one (1) year of the City's final, non-appealable (and non-appealed) approval of the final CU Application. The City shall review and process the Building Permit application with reasonable diligence and in good faith. The Owner shall commence construction of the New Office Project within thirty (30) days after the issuance of the Building Permit. Upon the commencement of construction, the Letter of Credit shall be returned by the City to the Owner, and the City shall have no further rights in connection with the Letter of Credit.
- D. Upon default by Owner by failing to meet any of the above mentioned deadlines, the Letter of Credit shall be immediately payable to the City in its then-current amount and will fund without any defense or objection by the Owner. Notwithstanding anything in this Section 13 to the contrary, however, the Owner shall not be deemed in default hereunder (and the Letter of Credit shall not be payable to the City) if and to the extent the Owner is unable, in good faith, to meet any of the above-mentioned deadlines as a result of a force majeure event. For the purposes of this subparagraph D, "force majeure" shall mean that Owner is unable, in good faith, to meet any of the above-mentioned deadlines as a result of cause or causes beyond Owner's control, including, but not limited to, labor disputes, civil commotion, war, terrorism, fire or other casualty, shortage of supplies and materials, or through acts of God. In the event of any of the circumstances described in the foregoing clause-the Owner shall have up to three (3) years after the issuance of final, non-appealable CU Application approval by the City within which to obtain the Building Permit for the New Office Project.
- E. In the event the City, for any reason, denies either the preliminary CU Application or the final CU Application, the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit. For the purposes of this Section 13, the default curative periods described in Section 14 shall not apply to any of the required performance time frames described in this Section 13. The terms and conditions of this

Section 13 shall specifically survive the Closing hereunder, and the parties shall cooperate in good faith to execute and record such further agreements as may be reasonable or necessary to memorialize the terms and conditions of this Section 13.

- 14. <u>Default</u>. Except as expressly provided otherwise herein, if either party defaults or fails to perform any of its obligations hereunder within the time or times specified herein and such default or failure continues for ten (10) days after its receipt of written notice thereof from the other party (or, if such default or failure is not by its nature curable within ten (10) days but such party fails to commence such cure within ten (10) days and to thereafter diligently pursue such cure), then the non-defaulting party shall have the option to either (a) terminate this Agreement by written notice to the defaulting party, or (b) seek specific performance of the defaulting party's obligations hereunder.
- 15. Assignment or Sale. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, except the Owner may assign its rights and obligations under this Agreement prior to Closing, without the City's consent and in whole or in part, to another entity that will remain wholly owned or controlled by Owner or any of its respective principals, affiliates or subsidiaries. Owner shall notify the City of any such assignment within ten (10) days after the date thereof. In addition to the foregoing, upon and after the Closing hereunder, the Owner shall not sell the State Office Building Property to an unrelated third party (i.e., to an entity or party that is not wholly owned or controlled by the Owner or any of its respective principals, affiliates or subsidiaries) for a period of two (2) years after Closing without the City's prior consent; in the event of such consent and sale, to the extent the Owner receives net consideration for such conveyance in excess of the sum of (x) the agreedupon value of the Owner Property for purposes of the exchange of the Properties, plus (y) all of Owner's documented costs associated with the acquisition of the State Office Building Property and the development and construction of the New Office Project, the Owner shall pay to the City one-half (1/2) of such excess proceeds.
- 16. <u>Brokerage/Hold Harmless</u>. Owner and the City each hereby represent and warrant that no broker or finder has been employed by them in connection with this Agreement. Each party shall indemnify and hold harmless the other party from and against any commissions or fees or claims for commissions or fees arising under the indemnifying party, which indemnification shall expressly survive Closing.
- 17. <u>Tax Reporting Numbers</u>. The parties agree to provide their tax identification numbers to the Closing Agent prior to Closing.
- 18. <u>Notices</u>. Any notice or other communication permitted or required hereunder shall be in writing and shall be sent either by hand delivery, U.S. certified mail, return receipt requested, or by overnight delivery service (e.g. Federal Express), to the party entitled or required to receive the same, at the address set forth below or at such other address as may be specified by like notice, and shall be deemed delivered when delivery is made or attempted and refused, as indicated on the receipt:

TO OWNER: Progress Point, LLC

c/o CNL Commercial Real Estate

420 S. Orange Avenue, Suite 950

Orlando FL 32801

Attn: Thom Cunningham Telephone: 407-540-2736

Fax: _____

COPY TO: Lowndes, Drosdick, Doster, Kantor and Reed, P.A.

215 North Eola Drive

P.O. Box 2809 Orlando, FL 32802

Attn: M. Rebecca Wilson, Esquire

Telephone: 407-418-6250

Fax: 407-843-4444

TO CITY: City of Winter Park

401 Park Avenue South Winter Park, FL 32789

Attn: Randy Knight, City Manager

Telephone: 407-599-3399

Fax: 407-599-3436

COPY TO: Brown, Garganese, Weiss & D'Agresta, P.A.

111 N. Orange Ave., Ste. 2000

P.O. Box 2873

Orlando, FL 32802-2873 Attn: Usher L. Brown, Esq. Telephone: 407-425-9566

Fax: 407-425-9596

- 19. Entire Agreement: Modification. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into and superseded by this Agreement. No representations, agreements, understandings, warranties or indemnities shall be in force hereafter or deemed to exist between the parties unless expressly set forth herein. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.
- 20. Governing Law and Binding Effect. This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida, and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, as well as their respective successors and permitted assigns. Venue for enforcement shall be in Orange County, Florida. The parties shall comply with and will enter whatever agreements or documents are necessary with respect to the reversionary interest, as required by Sections 689.18(4) and 712.05, Florida Statutes. The parties agree that the reversionary interest provided for in this Agreement shall not be in violation of

these statutes and that the term of such reversionary interest does not exceed the permissible time period set out therein.

- 21. <u>No Pledge of Credit</u>. Nothing herein contained, and nothing contained in any of the Closing Documents, shall constitute or be deemed a pledge by the City of its credit or taxing power or of any ad valorem tax revenues.
- 22. <u>Headings</u>. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 23. <u>Counterparts</u>. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.
- 24. <u>Severability</u>. If any sentence, phrase, section, provision, or portion of this Agreement is for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining provisions hereon unless the deletion of such provision would have a material adverse affect on the benefits intended to be afforded hereby to either of the parties.
- 25. <u>Litigation and Attorneys' Fees</u>. In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party in any such litigation shall be entitled to recover from the other party, in addition to any other relief granted as a result of such litigation, all costs and expenses of such litigation, including, but not limited to, reasonable attorneys' fees and paralegal's fees incurred prior to trial, at trial, on appeal and in connection with any administrative or bankruptcy proceedings.
- 26. <u>Time</u>. Time is of the essence of this Agreement and in the performance of all conditions, covenants and obligations to be performed or satisfied by the parties hereto. Waiver of performance or of any condition, covenant, or obligation by a party shall not be implied or deemed given, and shall not be deemed to be a waiver of the performance of any other condition, covenant, or obligation, unless specifically stated in writing. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.
- 27. <u>Radon Gas.</u> Radon is a 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.
- 28. <u>Effective Date</u>. The Effective Date hereof shall be the date upon which the last of the parties hereto have executed this Agreement.
- 29. <u>City Commission Approval</u>. This Agreement is conditioned upon and subject to the conditional and final approval of the City Commission of the City of Winter Park, Florida

(which final approval shall be evidenced by the City's execution of this Agreement), the Charter of the City of Winter Park, Florida, and any other requirements of Florida laws.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date indicated below their signatures intending to be bound thereby.

[signatures to follow]

WITNESSES:	PROGRESS POINT, LLC, a Florida limited liability company
	By:
(print)	Time name.
	Title:
	Date:
(print)	
WITNESSES:	CITY OF WINTER PARK, a Florida municipal corporation
	By:
(print)	Print name:
(print)	Title:
	ATTEST:
(print)	By: Cynthia S. Bonham, City Clerk
	Date:

EXHIBIT "A" [OWNER PROPERTY]

Lots 118 through 138, AND Lots 164 through 173, inclusive The Palmetto Company's Addition to Winter Park, according to the map or plat thereof as recorded in Plat Book "E", Page 14, of the Public Records of Orange County, Florida

EXHIBIT "B" [STATE OFFICE BUILDING PROPERTY]

All of Block "D" of HILL'S ADDITION, according to the plat thereof as recorded in Plat Book "C" page 50, Public Records of Orange County, Florida; and that certain property formerly called Cherokee Avenue, from its intersection with West Morse Boulevard, North to a point opposite the south boundary of Lot 5, Block "A" and Lot 10, Block "B" of HILL'S ADDITION; and that land formerly being Symonds Avenue, from its intersection with Maitland Avenue, West to a point opposite the east boundary of Lot 10, Block "B" and Lot 1, Block "C" of said HILL'S ADDITION, both Cherokee and Symonds Avenue being now closed and vacated as public thoroughfares: being otherwise described as follows: Begin at the SE corner of Block "D", HILL'S ADDITION, according to the plat thereof recorded in Plat Book C, page 50, Public Records of Orange County, Florida, run thence West to the SE corner of Lot 10, Block "C" of said HILL'S ADDITION, run thence North to the SE corner of Lot 10, Block "B" of said HILL'S ADDITION, run thence East to the SE corner of Lot 2, Block "A" of said HILL'S ADDITION, run thence South to the point of beginning.

EXHIBIT "C" [SKETCH OF RESTRICTED PORTION]

Boundary Survey

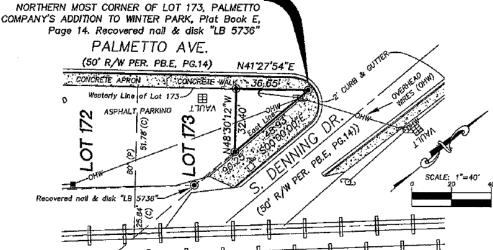
DESCRIPTION:

A PORTION OF LOT 173, THE PALMETTO COMPANY'S ADDITION TO WINTER PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "E", PAGE 14, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHERN MOST CORNER OF SAID LOT 173, AS THE POINT OF BEGINNING; THENCE RUN S 00'00'00" E, ALONG THE EAST LINE THEREOF, 48.93 FEET; THENCE RUN N 48'30'12" W, 32.40 FEET TO THE WESTERLY LINE OF SAID LOT 173; THENCE RUN N 41'27'54" E, ALONG SAID WESTERLY LINE, 36.65 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.014 ACRES MORE OR LESS.

POINT of BEGINNING



Surveyors Notes:

- Survey map and report or the copies thereof are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
- Lands shown hereon were not abstracted for rights of way, easements, ownership, or other instruments of record, by this firm.
- Bearings shown hereon are based on the East line of Lot 173, Pa; metto Company's Addition to Winter Park as being S 00'00'00"E (assumed).
- 4. Underground improvements and installations have not been located.
- 5. Precision of closure 1:10,000 Commercial Class Survey.
- 6. The property as described hereon contains 593.7 square feet or 0.014 acres, more or less.

SURVEYOR NOTED) BUSINESS <u>,</u> SET 5/8" IRON ROD & CAP "LB 5736" SET NAIL & DISC "LB PROFESSIONAL : UNLESS OTHERWSE LB. P.S.M. • PAVEMENT POWER METER OF AS 1647 EDGE CHAIN LINK FENCE UTILITY MEASURED WOODEN | 新口(g) g) D) 美田 **TECEND:**

I CERTIFY THAT THIS SURVEY MEETS OR EXCEEDS THE MINIMUM TECHNICAL, STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, IN CHAPTER 61617-6 FLORIDA ADMINISTRATIVE CODE PURSUANT TO PLORIDA STATUTE 472.027

BY: ROBERT D.M. SEARS F.S.M. FLORIDA REGISTRATION No. 4263

BOUNDARY SURVEY
JOB No. 05043.009
DRAWN BY: R. Sears
FILE NAME: 05043—9,dwg
FIELD BY: T. Sears
FIELD BOOK:
PAGE:
FIELD DATE: 05/16/11
DRAWING DATE: 05/16/11



SEARS SURVEYING COMPANY

128 Wigwam Place Maitland, Florida 32751 (407) 645.1332 Florida Licensed Business No. 5736

EXHIBIT "D"

<u>AFFIDAVIT OF INTEREST IN REAL PROPERTY – F.S. 286.23</u>

		T IN REAL PROPERTY is made and entered into this 1, for the sole purpose of compliance with Section
	of the Florida Statutes.	, and the property of the contract of the cont
٦	The undersigned hereby swears an	d affirms that the following is true:
	1. The undersigned is the Florida limited liability company, thed Exhibit "A."	of PROGRESS POINT, the legal title holder of the real property described on
		es) of every person having a beneficial interest in the hibit "A" however small or minimal is/are":
	Name	Address
	a)	
	b)	
	c)	

FURTHER AFFIANT SAYETH NAUGHT.

[SIGNATURES ON FOLLOWING PAGE]

WITNESSES:	PROGRESS POINT, LLC, a Florida limited liability company
	By:
(print)	Print name:
	Title:
-	Date:
(print)	
STATE OF	
COUNTY OF	
	fore me this day of, 2011, by, the of PROGRESS
	is personally known to me or • who provided
	
	Print Name:
	Notary Public:

EXHIBIT "E" [SKETCH OF MORSE BLVD. EASEMENT AREA]

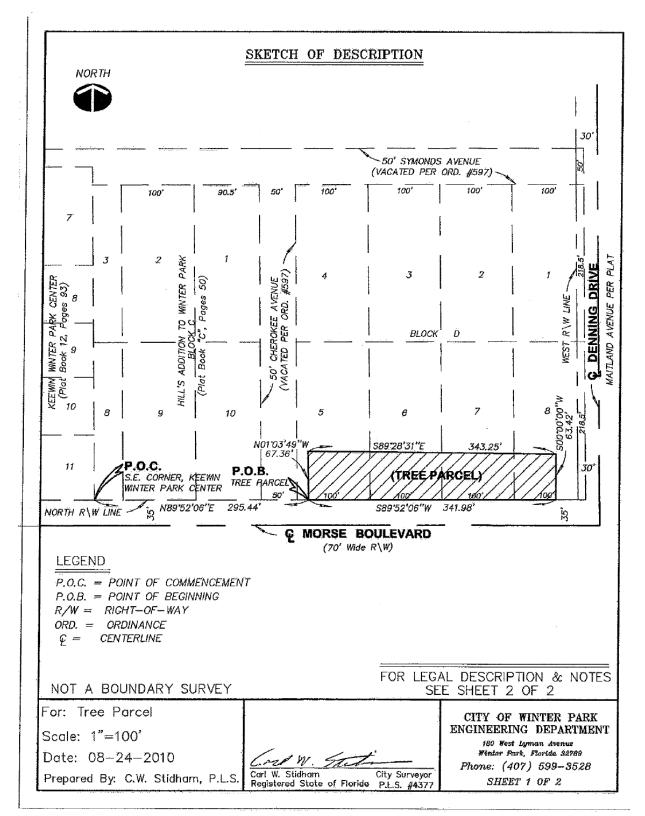


EXHIBIT "E" CONTINUED

Prepared by: Catherine D. Reischmann, Esq. Brown, Garganese, Weiss & D'Agresta, P.A. 111 N. Orange Ave. Ste. 2000 Orlando, FL 32801

Return to: City Clerk City of Winter Park 401 Park Avenue South Winter Park, FL 32789

1. CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this _____ day of _______, 2011, by CNL REALTY & DEVELOPMENT CORP., a Florida corporation, (hereinafter referred to as "Grantor"), 400 S. Orange Ave., Third Floor, Orlando, FL 32801, and the CITY OF WINTER PARK, a Florida municipal corporation, (hereinafter referred to as "Grantee") of 401 Park Avenue South, Winter Park, FL 32789.

WITNESSETH:

WHEREAS, Grantor solely owns in fee simple certain real property in Orange County, Florida, more particularly described in **Exhibit "A"** attached hereto and incorporated by this reference (the "Property");

WHEREAS, Grantor grants this conservation easement for a tree and canopy area; and WHEREAS, Grantor desires to preserve the Property in its current condition in perpetuity;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee a conservation

easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

- 1. <u>Purpose</u>. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property. The Grantor agrees to fully comply with the Mitigation Plan for the Property, attached hereto as **Exhibit "B."**
- 2. <u>Prohibited Uses</u>. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- (a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- (b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
 - (c) Removing or destroying trees, shrubs, or other vegetation.
- (d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- (e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
 - (g) Acts or uses detrimental to such retention of land or water areas.

- (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.
- 3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Grantor reserves the right to implement the Mitigation Plan attached as **Exhibit "B"**.
- 4. <u>Rights of Grantee</u>. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:
- (a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.
- (b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.
- 5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy

upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

- 6. <u>Grantee's Liability</u>. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantors, nor any person or entity claiming by or through Grantors, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property.
- 7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.
- 8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Orange County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.
- 9. <u>Successors</u>. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

WITNESSES:	CNL REALTY & DEVELOPMENT CORP., a Florida corporation
(signature)	By:
	Print name:
(print name)	Title:
(signature)	
(print name)	
STATE OF FLORIDA COUNTY OF ORANGE	
	as acknowledged before me this day of of CNL
REALTY & DEVELOPMENT CORP. produced	(check one) \square who is personally known to me or \square who
	Notary Public
	Print Name:
	My Commission expires:

 $G:\label{lem:conservation} G:\label{lem:conservation} G:\label{lem:conservation} Winter\ Park\ State\ of\ G:\ Denning\ Land\ Swap\ Conservation\ Easement. doc$



APPRAISAL REVIEW TRANSMITTAL

Date: October 31, 2011

From: Angela L. Brown, MAI

To: Mr. Randy Knight, City Manager, City of Winter Park, Florida and

Mr. Paul Ellis, President, CNL Commercial Real Estate

RE: Property (1): Appraisal review on the three appraisal reports prepared on the 4.99

acre tract of land located at the northwest corner of North Denning

Drive and Morse Boulevard, Winter Park, Florida and

Property (2): Appraisal review on the two appraisal reports prepared on the 3.733

acre tract of land located at the southwest corner of North Orange

Avenue and South Denning Drive, Winter Park, Florida

Meridian File #: 11-PFE

A comprehensive review of the above captioned appraisal reports was completed on the date set forth above. A tabulation of the value estimates derived in those reports and their timing are contained in the Comprehensive Review Report that follows. Where appropriate, a tabulation of any revisions that were made to those estimates and projections during the reviewer's analysis of data in the appraisal report and/or data subsequently provided by the appraiser is also contained in the report that follows.

Scope of Appraisal Review

The scope of the assignment included: a review of the appraisal reports, inspection of the subject properties, surrounding neighborhood and an inspection of the comparable sales. In addition, an interview with the principal/associate appraiser(s) preparing the appraisal report was conducted.

Purpose of the Assignment

The purpose of this appraisal review was performed to determine the compliance with USPAP and develop an opinion as to 1) the completeness of the material under review, given the scope of work applicable in the assignment; 2) the apparent adequacy and relevance of the data and the propriety of any adjustments to the data, given the scope of work applicable in the assignment; 3) the appropriateness of the appraisal methods and techniques used, given the scope of work applicable in the assignment, and develop the reasons for any disagreement and to whether the analyses, opinion and conclusions are appropriate and reasonable given the scope of work applicable in the assignment, and develop the reasons for any disagreement.

Intended Use and User of Appraisal Review

The intended use of this review is aid the respective parties in the decision making purposes regarding the potential "land trade" of the two sites referenced above. This appraisal review report is provided to aid my clients with an objective opinion of the value opinions reported in the appraisal reports and whether the analyses, opinions and conclusions are appropriate and reasonable. The intended users of this appraisal review are my clients, the Board of City Commissioners of Winter



Park, to the attention of Mr. Randy Knight, City Manager and CNL Commercial Real Estate, to the attention of Mr. Paul Ellis, President.

Review Request Date:	October 12, 2011	
Review Prepared By:	Angela L. Brown, MA State Certified Genera	I, Vice President 1 Real Estate Appraiser RZ805
Status of Appraisal Report: Property Number (1)	Acceptable - Acceptable - X Acceptable -	Reasonable Range of Value Low End of Reasonable Range of Value High End of Reasonable Range of Value Beyond Reasonable Range of Value
	Acceptable - Acceptable - Acceptable -	of Central Florida, Inc. – 4.99 Acre Site Reasonable Range of Value Low End of Reasonable Range of Value High End of Reasonable Range of Value Beyond Reasonable Range of Value
	Acceptable - X Acceptable -	Reasonable Range of Value Low End of Reasonable Range of Value High End of Reasonable Range of Value Beyond Reasonable Range of Value
Property Number (2)	X Acceptable - Acceptable - Acceptable -	of Central Florida, Inc. – 3.733 Acre Site Reasonable Range of Value Low End of Reasonable Range of Value High End of Reasonable Range of Value Beyond Reasonable Range of Value
	Acceptable - X Acceptable -	Reasonable Range of Value Low End of Reasonable Range of Value High End of Reasonable Range of Value Beyond Reasonable Range of Value
Date of Review:	October 14 – 31, 2011	
Review Requested By:	CNL Commercial Rea	l Estate and City of Winter Park
Identification of the Fee Appraisers:	Appraisal Firm: Appraiser No 1:	Bledsoe & Ebaugh, Inc. Craig A. Ebaugh, MAI, Principal Cert Gen RZ 234
	Appraisal Firm: Appraiser No. 1:	Appraisal Group of Central Florida, Inc. Richard K. MacMillan, MAI, President Cert Gen RZ 353
	Appraisal Firm: Appraiser No. 1:	Pinel & Carpenter, Inc. Walter Carpenter, Jr., MAI, CRE, President
Identification of Appraised Property:	Owner Name:	City of Winter Park – Property (1) Progress Point, LLC – Property (2)

Addresses

The subject properties consists of a 4.99 acre site located at the northwest corner of West Morse Boulevard and Denning Drive with a property address of 941 West Morse Boulevard, Winter Park, Florida with a tax identification parcel number of (01-22-29-3604-04-000) and a 3.733 acre site located at the southwest quadrant of North Orange Avenue and South Denning Drive with a property address of 450 South Orange Avenue, Winter Park, Florida 32789.



Property Type

The subject properties consist of a 4.999 acre site currently improved with an office building constructed in 1958. The second property consists of 3.733 acres of land improved with two office buildings constructed in 1950 and 1963. All of the appraisal reports reviewed did not consider the improvements in their analyses and valued the subject sites "As Vacant". This was also previously agreed upon with the client. The site are level, at or above road grade and both are zoned O-1, Office, by the city of Winter Park. Currently, the sites have all public utilities available.

Identification of Property Rights Appraised: Fee Simple Estate

DATA SUMMARY

VALUE ESTIMATI	ES & REVIEW APPRAI	SER'S CONCLUSIONS –	CITY OF WINTER PAR	K SITE
Property (1) 4.99 Acre Site	Appraiser	Effective Date	By Appraiser	By Reviewer
Date appraisal was prepared	Bledsoe & Ebaugh		July 14, 2010	October 31, 2011
2. Market Value "As Is" – Fee Simple Estate		July 13, 2010	\$5,880,000	Acceptable – High end of Value Range as of July 13, 2010
Date appraisal was prepared	The Appraisal Group of Central Florida		June 22, 2011	October 31, 2011
2. Market Value "As Is" – Fee Simple Estate		June 10, 2011	\$6,533,700	Unacceptable – Beyond Reasonable Value Range
Date appraisal was prepared	Pinel & Carpenter		July 22, 2011	October 21, 2011
2. Market Value "As Is" – Fee Simple Estate		July 14, 2011	\$5,010,000	Acceptable - High end of Value Range

VALUE ESTIMATES	& REVIEW APPRAIS	SER'S CONCLUSIONS	- PROGRESS POINT	, LLC SITE
Property (2) 3.733 Acre Site	Appraiser	Effective Date	By Appraiser	By Reviewer
Date appraisal was prepared	The Appraisal Group of Central Florida		June 22, 2011	October 31, 2011
2. Market Value "As Is" – Fee Simple Estate		June 10, 2011	\$4,703,800	Acceptable – Within a Reasonable Value Range
Date appraisal was prepared	Pinel & Carpenter		July 22, 2011	October 31, 2011
2. Market Value "As Is" – Fee Simple Estate		July 14, 2011	\$4,880,000	Acceptable – High end of Value Range

The following comments have been provided to support my opinion of the reasonableness of value on the two sites being reviewed

COMMENTS:

Property (1) 4.99 Acre Site – City of Winter Park Site

Bledsoe & Ebaugh Appraisal Report

Three appraisal reports were prepared on the site located at 941 West Morse Boulevard or the parcel of land located at the northwest corner of West Morse Boulevard and North Denning Drive. The date of valuation for the Bledsoe & Ebaugh appraisal report was July 13, 2010 and was a either a Self-contained or Summary appraisal in accordance with the Uniform Standards of Professional Appraisal Practice; however, it is not stated within the report which reporting standard the appraisal report was prepared. Overall, the appraisal was in compliance with USPAP and the value conclusion reported as of the date of value was within a reasonable value range, as of that date of value; albeit at the very high end of a reasonable value range. Because the two other appraisal reports were prepared one year later, more current data from the market was available to analyze. Within that year, market conditions have not improved and rental rates continue to decline and the office market has not improved. With that being said, it is my opinion that the \$5,880,000 final value reported by the appraiser is reasonable, but on the very high side of a value range as of that date of value (July 13, 2010). This conclusion was based on the fact that the appraiser did not make any adjustments for market conditions or a time adjustment to the sales that were used in the analysis. One of the land sales used was from 2006 which was the only sale of the four sales adjusted for time at -30%. The remaining sales that were used ranged in date of sale from January 2008 to January 2009 with the market experiencing a significant decline in the fourth quarter of 2008. Although the market continued to experience declines, the remaining three sales were not adjusted for time and therefore, I am of the opinion overstate the concluded value opinion.

In addition to the lack of a time adjustment to the sale, the appraiser made an upward adjustment to Land Sale No. 1 (Progress Point land sale) for inferior location to the Morse and Denning site. I would disagree with this adjustment and am of the opinion the Orange Avenue site is superior to the Morse and Denning site. A downward adjustment was made to this sale for the potential contributory value of some improvements on this site which I also disagree with. If an



adjustment for the contributory value of the improvements is made, it should be supported with more detail and verified with the buyer that they actually allocated contributory value to some of the improvements before making the adjustment. While both sites were zoned O-1, the Orange Avenue sale (Progress Point) has the potential to be developed with a mixed use of retail, office, etc. where the Morse and Denning site does not.

Overall, the report was adequately written and I found no USPAP violations and I found the "As Is" fee simple Market Value of the subject reasonable but on the very high end of a reasonable range of value as of the date of value, July 13, 2010, due primarily to the lack of a time adjustment to the sales analyzed. Because the report is over a year older than the other two and the sales used were much older, the value indication is high.

The Appraisal Group of Central Florida, Inc.

The date of valuation for the Appraisal Group of Central Florida, Inc. appraisal report was June 10, 2011, almost one year after the Bledsoe & Ebaugh, Inc. appraisal report and was presented in a Restricted format and in accordance with the Uniform Standards of Professional Appraisal Practice, Standard 2-2(c). Restricted appraisal reports are prepared typically for "one set of eyes only" and one intended user who is very knowledgeable about the property being appraised. Although the report was prepared in a Restricted format, it was prepared in such a manner as there was adequate data to review and to reach review conclusions. In addition, I interviewed the appraiser regarding several questions I had about the sales and the analysis. Overall, the appraisal was in compliance with USPAP; however, the value conclusion reported as of the date of value was considered to be beyond a reasonable range of value and I could not accept the value opinion reported. The following comments are provided to support my conclusion.

The appraiser provided a summary chart of three comparable land sales that were used to value the subject's 5.0 acre site at Morse Boulevard and Denning Drive. The land sales were all relatively current land sales with sale dates ranging from September 2009 to February 2011. The three land sales ranged in size from 0.898 acres for the Rollins College Land Sale No. 1 to 4.82 acres for the PP Uptown, LLC Land Sale No. 2. All of the land sales were reportedly purchased for cash and were arm's length. However, it was confirmed by the reviewer that Land Sale No. 1 was never on the open market officially and that the seller approached the buyer (Rollins College). The argument could be made that if properly marketed for sale, the price could be higher or lower depending on the interest in the property from the marketplace; however, it was never really tested and Rollins College purchased the site because they had existing housing in the area and this site was proximate to the housing. Typically, this would be viewed as a motivation of the buyer; however, it was also verified (Walter Carpenter's verification) that Rollins was of the opinion they got a really good price on the land and did not feel there was undue motivation to purchase the site. In my opinion, an adjustment one way or the other could be made for 1) lack of being on the market and tested and 2) for motivation by the buyer. Because there were conflicting verifications, the lack of an adjustment for market conditions is acceptable. The site is 0.898 acres in size and it does not appear that a size adjustment was made to this sale relative to the subject's 5.0 acre site. The appraiser concluded to a price per square foot for the 5.0 acre subject site of \$30/SF which is the same sale price per square foot of Land Sale No. 1; however, Land Sale No. 1 is 82% smaller than the subject. The appraiser has also indicated the highest and best use of Land Sale No. 1 is mixed-use; however, it is located in an area of Winter Park that is not known for a mixed use development and surrounding land uses reflect multifamily development, which the site was purchased for.

Land Sale No. 2 is the 4.82 acre site located at the northwest corner of State Road 50 and Orange Avenue in north downtown Orlando. This sale was purchased in January 2011 and is proposed for multifamily development of 327 units. The indicated price per square foot was \$18.00/SF and was most similar in terms of size and was a current land sale. I would agree that this was an appropriate sale to use for this analysis and the zoning allowed for a very diverse use of the site. This sale sets the lower limit of value for the subject site. However, no discussion was provided as to how this comparable would adjust out relative to the subject.

Land Sale No. 3 is located at the southeast corner of Denning Drive and Minnesota Avenue in Winter Park, Florida. This sale consists of a triangular parcel of land of 1.88 acres and was purchased by American Momentum Bank. The sale took place in September 2009 for \$4,200,000 or \$51 per square foot of land area. However, included in the purchase was a large building of 8,950 gross square feet. The appraiser adjusted this sale downward for the contributory value of the improvements by \$-2,261,700 which was based on a calculation of \$300 per square foot which was extrapolated from the analysis of two other sales where the land value was estimated at \$35/SF. I would disagree with using this sale at all since it is not a land sale and the appraiser tried to adjust the sale to a land sale by deducting for the contributory value of the improvements. If a property is purchased for the land and improvements, then it is an improved sale and it is not appropriate to use it as a land sale. I re-verified this sale and it was confirmed that it was purchased for a branch bank and that the building was going to be renovated. Renovation plans have been stalled due to the weak market. Therefore, I am of the opinion this sale was not a land sale and should not have been used. Regardless, the appraiser arrived at a price per square foot of land of \$24/SF, which is lower than the \$30/SF concluded value for the subject.

Conclusion

Based on the three sales provided and analyzed, the appraiser's adjusted prices per square foot of the comparable land sales ranged from \$18 to \$30 per square foot. The appraiser concluded to \$30 per square foot for the subject's 5.0 acre site.



Based upon the data and analysis within the appraisal report, the appraiser reconciled to a final value conclusion of the "As Is" Fee Simple Market Value, as of the valuation date of June 10, 2011 of \$6,533,700 for the subject or \$30.00 per square foot of land area and I am of the opinion the value estimate report is not acceptable and beyond a reasonable value range.

I cannot accept this conclusion of value for several reasons. First, the final value conclusion of \$30 per square foot site was equal to the price per square foot of a 0.898 acre site. Second, the appraiser provided sales and information on two other sales and arrived at indications of \$18 to \$24 per square foot of land area and appears to have placed no weight on either of these sales.

The appraiser also provided detail on four current listings in the Winter Park market. These listings range in size from 0.57 acres to 1.95 acres in size, still significantly smaller than the subject's 5.0 acres. The listings ranged in asking prices from \$32.00 to \$39.00 per square foot and two were located on U.S. Highway 17-92 with superior exposure and two were located on Swoope Avenue with inferior exposure. None of the listings were near the size of the subject and three of the four listings were under one acre in size. Typically, the price of a property on a per square foot basis is higher for smaller parcels versus larger parcels as there are more buyers for smaller parcels which tend to bid the price of the property up. There is an inverse relationship between size and price/unit and it would be expected that the subject's value per square foot would be less than the listings per square foot indication. In addition, properties generally do not sell at their listing prices and in a soft market, sale prices can be 15% to 30% less than the asking prices. I would expect the listings provided would be adjusted downward 15% to 20% at a minimum and in some cases, the asking prices of listings are so unrealistic that they will sit on the market for years unless they are priced at reasonable asking prices. Therefore, while the listings provide additional support for the appraiser's concluded \$30/SF indication, they are listings and are only indications and not closed sales, nor have they been adjusted for their size, location, shape, listing status etc. Consequently, I would place no weight on them in the analysis.

Overall, the report was adequately written and I found no USPAP violations; however, I found the "As Is" fee simple Market Value of the subject unacceptable and beyond a reasonable range of value.

Pinel & Carpenter, Inc.

The date of valuation for the Pinel & Carpenter, Inc. appraisal report was July 14, 2011, one year after the Bledsoe & Ebaugh, Inc. appraisal report and one month after the Appraisal Group of Central Florida appraisal report. The Pinel & Carpenter, Inc. appraisal report was presented in a Summary format and in accordance with the Uniform Standards of Professional Appraisal Practice, Standard 2-2(b). In addition, I interviewed the appraiser regarding several questions I had about the sales and the analysis. The essential difference between the Self-Contained appraisal report and the Summary appraisal report is the level of detail of presentation. A summary appraisal report summarizes the information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment. The report was prepared in compliance with USPAP; and I found the value conclusion reported of \$5,010,000 acceptable but on the very high side of a reasonable value range as of the date of valuation, July 14, 2011. The following comments are provided to support my conclusion.

The appraiser provided a summary appraisal report providing a description of the subject site, the subject property data, a neighborhood discussion, a highest and best use and marketability discussion and a Comparable Land Sales analysis. The appraiser used three comparable land sales (of which one was a current contract) that were used to value the subject's 5.0 acre site at Morse Boulevard and Denning Drive. Two of the land sales were relatively current land sales with sale dates ranging from a current contract to January 2011 with one land sale occurring in November 2008. The three land sales ranged in size from 0.572 acres for the current contract **Land Contract No. 1** to 4.360 acres for the PP Uptown, LLC **Land Sale No. 2**, (land size is different in the Pinel & Carpenter land sale write up 4.360 acres vs. the Appraisal Group of Central Florida sale discussion of 4.82 acres). All of the land sales were reportedly purchased for cash and were arm's length. **Land Contract No. 1** is the triangular site located at the northeast corner of South Orlando Avenue and Balch Avenue. The property is under contract for \$650,000 and was originally listed for \$799,000 or a -18.65% discount from its asking price. This contract price indicates a purchase price of \$26.09 per square foot. The appraiser indicated the location was similar, the size was superior (smaller) and shape was similar which I would disagree with. The subject's shape is rectangular and nearly square and this site is triangular. Physical characteristics and utilities were also considered similar.

Land Sale No. 2 is the 4.360 acre site located at the northwest corner of State Road 50 and Orange Avenue in north downtown Orlando. This sale was purchased in January 2011 and is proposed for multifamily development of 327 units. The indicated price per square foot was \$19.48/SF and was most similar in terms of size and was a current land sale. The appraiser was of the opinion that the location was inferior, the size and shape similar, the physical characteristics similar, utilities similar and zoning and future land use superior. Overall, the appraiser indicated this sale was slightly inferior, of which I would agree, even though it has a superior zoning and future land use relative to the subject.

Land Sale No. 3 is located on the south side of Aloma Avenue just west of Balfour Drive in east Winter Park, Florida. This 1.357 acre site was purchased in November 2008 for \$1,248,786 or \$21.13 per square foot of land area. The appraiser indicated the sale was purchased during superior market conditions which would imply a downward market conditions adjustment. The real estate market was stronger in 2008 and I would agree with this adjustment. The appraiser indicated



this sale was inferior in location due to it being on the edge of the Winter Park market, but somewhat similar to the subject's western Winter Park location. The appraiser indicated the size was superior (smaller) and the shape was similar as well as utilities. The zoning and future land use were considered superior. Overall, the appraiser indicated this sale was inferior to the subject. The sale is old relative to the date of valuation and there may have been a more current sale that could have been used in addition to this sale, such as the land that was purchased by Rollins College in February 2011 on Welbourne Ave. and New England Avenue.

Conclusion

Based on the three sales provided and analyzed, the appraiser's adjusted prices per square foot of the comparable land sales ranged from \$19.48 to \$26.10 per square foot. The appraiser concluded to \$23.00 per square foot for the subject's 5.0 acre site which is near the middle of the range indicated by the comparable land sales.

Based upon the data and analysis within the appraisal report, the appraiser reconciles to a final value conclusion of the "As Is" Fee Simple Market Value, as of the valuation date of July 14, 2011 of \$5,010,000 for the subject or \$23.00 per square foot of land area and I am of the opinion the value estimate report is acceptable but at the upper end of a reasonable value range.

COMMENTS:

Property (2) - 3.73 Acre Site - Progress Point, LLC

The Appraisal Group of Central Florida, Inc.

Two appraisal reports were prepared on the site located at the southwest quadrant of North Orange Avenue and South Denning Drive, also known as the Progress Point site.

The Appraisal Group of Central Florida

The date of valuation for the Appraisal Group of Central Florida, Inc. appraisal report was June 10, 2011, and was presented in a Restricted format and in accordance with the Uniform Standards of Professional Appraisal Practice, Standard 2-2(c). Restricted appraisal reports are prepared typically for "one set of eyes only" and one intended user who is very knowledgeable about the property being appraised. Although the report was prepared in a Restricted format, it was prepared in such a manner as there was adequate data to review and to reach review conclusions. In addition, I interviewed the appraiser regarding several questions I had about the sales and the analysis. Overall, the appraisal was in compliance with USPAP; and the value conclusion reported as of the date of value was considered within a reasonable value range. The following comments are provided to support my conclusion.

The appraiser provided a summary chart of three comparable land sales that were used to value the subject's 3.733 acre site at North Orange Avenue and South Denning Drive. The land sales were all relatively current land sales with sale dates ranging from September 2009 to February 2011. The three land sales ranged in size from 0.898 acres for the Rollins College Land Sale No. 1 to 4.82 acres for the PP Uptown, LLC Land Sale No. 2. All of the land sales were reportedly purchased for cash and were arm's length. However, it was confirmed by the reviewer that Land Sale No. 1 was never on the open market officially and that the seller approached the buyer (Rollins College). The argument could be made that if properly marketed for sale, the price could be higher or lower depending on the interest in the property from the marketplace; however, it was never really tested and Rollins College purchased the site because they had existing housing in the area and this site was proximate to the housing. Typically, this would be viewed as a motivation of the buyer; however, it was also verified (Walter Carpenter's verification) that Rollins was of the opinion they got a really good price on the land and did not feel there was undue motivation to purchase the site. In my opinion, an adjustment one way or the other could be made for 1) lack of being on the market and tested and 2) for motivation by the buyer. Because there were conflicting verifications, the lack of an adjustment for market conditions is acceptable. The site is 0.898 acres in size and it does not appear that a size adjustment was made to this sale relative to the subject's 3.733 acre site. The appraiser concluded to a value for the 3.733 acre subject site of \$4,703,800 or \$30 per square foot for the north 127,687 square feet and \$25.00 per square foot for the southernmost 34,922 square feet resulting in an average price per square foot of \$28.92 per square foot.

Land Sale No. 2 is the 4.82 acre site located at the northwest corner of State Road 50 and Orange Avenue in north downtown Orlando. This sale was purchased in January 2011 and is proposed for multifamily development of 327 units. The indicated price per square foot was \$18.00/SF and was most similar in terms of size and was a current land sale. I would agree that this was an appropriate sale to use for this analysis and the zoning allowed for a very diverse use of the site. This sale sets the lower limit of value for the subject site. However, no discussion was provided as to how this comparable would adjust out relative to the subject.

Land Sale No. 3 is located at the southeast corner of Denning Drive and Minnesota Avenue in Winter Park, Florida. This sale consists of a triangular parcel of land of 1.88 acres and was purchased by American Momentum Bank. The sale took place in September 2009 for \$4,200,000 or \$51 per square foot of land area. However, included in the purchase was a large building of 8,950 gross square feet. The appraiser adjusted this sale downward for the contributory value of the improvements by \$-2,261,700 which was based on a calculation of \$300 per square foot which was extrapolated from the analysis of two other sales where the land value was estimated at \$35/SF. I would disagree with using this sale at all since



it is not a land sale and the appraiser tried to adjust the sale to a land sale by deducting for the contributory value of the improvements. If a property is purchased for the land and improvements, then it is an improved sale and it is not appropriate to use it as a land sale. I re-verified this sale and it was confirmed that it was purchased for a branch bank and that the building was going to be renovated. Renovation plans have been stalled due to the weak market. Therefore, I am of the opinion this sale was not a land sale and should not have been used. Regardless, the appraiser arrived at a price per square foot of land of \$24/SF, which is lower than the \$28.92/SF average for the subject.

Conclusion

Based on the three sales provided and analyzed, the appraiser's adjusted prices per square foot of the comparable land sales ranged from \$18 to \$30 per square foot. The appraiser concluded to \$30 per square foot for the subject's northern square footage and \$27 per square foot for the subject's southern square footage.

Based upon the data and analysis within the appraisal report, the appraiser reconciles to a final value conclusion of the "As Is" Fee Simple Market Value, as of the valuation date of June 10, 2011 of \$4,703,800 for the subject or an average of \$28.92 per square foot of land area and I am of the opinion the value estimate report is acceptable and within a reasonable value range.

The appraiser also provided detail on four current listings in the Winter Park market. These listings range in size from 0.57 acres to 1.95 acres in size, still significantly smaller than the subject's 5.0 acres. The listings ranged in asking prices from \$32.00 to \$39.00 per square foot and two were located on U.S. Highway 17-92 with superior exposure and two were located on Swoope Avenue with inferior exposure. None of the listings were near the size of the subject and three of the four listings were under one acre in size. Typically, the price of a property on a per square foot basis is higher for smaller parcels versus larger parcels as there are more buyers for smaller parcels which tend to bid the price of the property up. There is an inverse relationship between size and price/unit and it would be expected that the subject's value per square foot would be less than the listings per square foot indication. In addition, properties generally do not sell at their listing prices and in a soft market, sale prices can be 15% to 30% less than the asking prices. I would expect the listings provided would be adjusted downward 15% to 20% at a minimum and in some cases, the asking prices of listings are so unrealistic that they will sit on the market for years unless they are priced at reasonable asking prices. Therefore, while the listings provide additional support for the appraiser's concluded \$30/SF and \$27/SF indication, they are listings and are only indications and not closed sales, nor have they been adjusted for their size, location, shape, listing status etc. Consequently, I would place no weight on them in the analysis.

Overall, the report was adequately written and I found no USPAP violations and I found the "As Is" fee simple Market Value of the subject acceptable and within a reasonable range of value.

Pinel & Carpenter, Inc.

The date of valuation for the Pinel & Carpenter, Inc. appraisal report was July 14, 2011, one month after the Appraisal Group of Central Florida appraisal report. The Pinel & Carpenter, Inc. appraisal report was presented in a Summary format and in accordance with the Uniform Standards of Professional Appraisal Practice, Standard 2-2(b). The essential difference between the Self-Contained appraisal report and the Summary appraisal report is the level of detail of presentation. A summary appraisal report summarizes the information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment. The report was prepared in compliance with USPAP; and I found the value conclusion reported of \$4,880,000 acceptable but on the high side of a reasonable value range as of the date of valuation, July 14, 2011. The following comments are provided to support my conclusion.

The appraiser provided a summary appraisal report providing a description of the subject site, the subject property data, a neighborhood discussion, a highest and best use and marketability discussion and a Comparable Land Sales analysis. The appraiser used four comparable land sales (of which one was a current contract) that were used to value the subject's 3.733 acre site at North Orange Avenue and South Denning Drive. Two of the land sales were relatively current land sales with sale dates ranging from a Current contract to January 2011 with one land sale occurring in November 2008 and one land sale occurring in April 2009. The four land sales ranged in size from 0.572 acres for the current contract Land Contract No. 1 to 3.354 acres for the Langford Development to Rollins College Land Sale No. 3. All of the land sales were reportedly purchased for cash and were arm's length. Land Contract No. 1 is the triangular site located at the northeast corner of South Orlando Avenue and Balch Avenue. The property is under contract for \$650,000 and was originally listed for \$799,000 or a -18.65% discount from its asking price. This contract price indicates a purchase price of \$26.09 per square foot. The appraiser indicated the location was similar, the size was superior (smaller) and shape was similar which I would disagree with. The subject's shape is irregular, but is also currently bisected by Palmetto Avenue. While there appears this road will be relocated to run parallel to the railroad and thus shift the land to the west and create a more functional site, in its "As Is" condition, some recognition should be given to the subject's irregular and less functional site even though the street can be moved in the future. Physical characteristics and utilities were also considered similar. Zoning and future land use were considered superior. Other than the smaller size of this sale, this is one of the best land sale comparables in the analysis.



Land Sale No. 2 is the 0.898 acre site located on the south side of Welbourne Avenue between South Virginia Avenue and South New York Avenue. This is the Land Sale No. 1 of the Appraisal Group of Central Florida appraisal. This sale was never on the open market officially and that the seller approached the buyer (Rollins College). The argument could be made that if properly marketed for sale, the price could be higher or lower depending on the interest in the property from the marketplace; however, it was never really tested and Rollins College purchased the site because they had existing housing in the area and this site was proximate to the housing. Typically, this would be viewed as a motivation of the buyer; however, it was also verified (Walter Carpenter's verification) that Rollins was of the opinion they got a really good price on the land and did not feel there was undue motivation to purchase the site. In my opinion, an adjustment one way or the other could be made for 1) lack of being on the market and tested and 2) for motivation by the buyer. Because there were conflicting verifications, the lack of an adjustment for market conditions is acceptable. This sale was purchased in January 2011 and is proposed for multifamily development of 327 units. The indicated price per square foot was \$19.48/SF and was most similar in terms of size and was a current land sale. The appraiser was of the opinion that the location was superior, the size superior (smaller) and shape inferior, the physical characteristics similar, utilities similar and zoning and future land use inferior. I would agree with all the comparisons with the exception of the shape being inferior. I am of the opinion the shape of the comparable sale is superior to the subject's southern half. This sale is also a good indication for the subject with the exception of its smaller size and zoning/highest and best use.

Land Sale No. 3 is located at the southeast corner of East New England Avenue and South Interlachen Avenue in Winter Park. This sale occurred in April 2009 and transacted for \$9,900,000 for 3.354 acres of land. This purchase was by Rollins College for the development of a hotel for the college. The appraiser indicated the sale was purchased during superior market conditions which would imply a downward market conditions adjustment. The real estate market was stronger in early 2009 and I would agree with this adjustment. The appraiser indicated this sale's location was superior and I would concur. The appraiser indicated the size was similar and the shape was similar as well as utilities and physical characteristics. I would disagree with the shape comparison. I am of the opinion this sale has a superior shape relative to the subject. The zoning and future land use was considered inferior however, even though it has a multi-family zoning, it has a very high density at over 60 DU/AC. Overall, the appraiser indicated this sale was superior to the subject which, I would concur with.

Land Sale No. 4 is located on the south side of Aloma Avenue just west of Balfour Drive in east Winter Park, Florida. This 1.357 acre site was purchased in November 2008 for \$1,248,786 or \$21.13 per square foot of land area. The appraiser indicated the sale was purchased during superior market conditions which would imply a downward market conditions adjustment. The real estate market was stronger in 2008 and I would agree with this adjustment. The appraiser indicated this sale's location was inferior in location due to it being on the edge of the Winter Park market, which I would concur with. The appraiser indicated the size was superior (smaller) and the shape was similar as well as utilities. I would disagree with the shape comparison. I am of the opinion this sale has a superior shape relative to the subject. The zoning and future land use were considered superior. Overall, the appraiser indicated this sale was inferior to the subject. I am somewhat familiar with this sale and it was my understanding that the property was improved at the time of sale and while the improvements were completely gutted and renovated, no discussion was provided about the cost of demolition and if it was accounted for in the purchase price or not. The sale is old relative to the date of valuation and there may have been a more current sale that could have been used in addition to this sale, such as the PP Uptown, LLC land sale.

Conclusion

Based on the four sales provided and analyzed, the appraiser's adjusted prices per square foot of the comparable land sales ranged from \$21.13 to \$67.76 per square foot. The appraiser concluded to \$30.00 per square foot for the subject's 3.733 acre site which is near the lower end of the range indicated by the comparable land sales; however, when removing the Rollins College hotel site from the analysis, the range of the sales is from \$21.13 to \$29.30 per square foot, with **Land Sales No. 1 and 2** most similar at \$26.09 and \$29.90 respectively.

Based upon the data and analysis within the appraisal report, the appraiser reconciles to a final value conclusion of the "As Is" Fee Simple Market Value, as of the valuation date of July 14, 2011 of \$4,880,000 for the subject or \$30.00 per square foot of land area and I am of the opinion the value estimate reported is acceptable but at the upper end of a reasonable value range.

In addition to providing an opinion of the appraisal reports and their conclusions of value regarding the two Winter Park sites, I have been requested to provide my own opinion of the value of the subject parcels. The scope of this assignment involves a Summary appraisal that is currently being prepared but is predicated upon my attached spreadsheet analysis. This analysis is based on the Extraordinary Assumption that my completed Summary Appraisal report will be prepared under the scope of the assignment outlined by my clients with a date of valuation of October 21, 2011, the most recent date of inspection of the subject sites and is subject to the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Code of Professional Ethics, FIRREA and the Standards of Professional Practice of the Appraisal Institute, and with the requirements of the State of Florida for State-Certified Appraisers. It is also subject to the Certification of Value. Following this section of the appraisal review are Summary Charts of my opinion of value for the two subject sites. These value conclusions will be detailed in the forthcoming Summary Appraisal report. The spreadsheets have been provided for this review assignment at the request of my clients with the knowledge the full summary report will be forthcoming.

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CERTIFICATION

The facts and data reported by the reviewer and used in the review process are true and correct.

- The analyses, opinions and conclusions in this report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in this review or from its use.
- The appraisal analyses and opinions were developed and this review report has been prepared in conformity with (and the use of this report is subject to) all regulations issued by the appropriate regulatory entities regarding the enactment of Title XI of the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA), the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation and the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- I have made a personal inspection of the subject property, subject neighborhood and some of the comparable sales used in the appraisal under review.
- No one provided significant real or personal property appraisal or appraisal review assistance to the person signing this certificate.
- The review appraiser performed within the context of the competency provisions of the Uniform Standards of Professional Appraisal Practice.
- I do not authorize the out-of-context quoting from or partial reprinting of this appraisal review report and neither all nor part of this appraisal review report shall be disseminated to the general public by the use of any public communications media without the prior written consent of the undersigned review appraiser.
- Use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- The Appraisal Institute conducts a mandatory program of continuing education for its designated members. MAIs and SRAs who meet the minimum standards of this program are awarded periodic educational certification. The undersigned MAI has completed the requirements of the continuing education program of the Appraisal Institute.

Date: October 31, 2011

Review Appraiser

angela 2. Brown

COMMERCIAL LAND SALES COMPARISON SUMMARY - 5.00 ACRES CITY OF WINTER PARK SITE

	Subject	Land Sale No. 1	Land Sale No. 2	LAND SALE NO. 3	Land Sale No. 4
LOCATION	NWC OF MORSE BLVD.	NEC of S. Orlando Ave	NWC of W. Colonial	S/S OF WELBOURNE AVE.	S/S of Aloma Ave.
	& N. Denning Drive	and Balch Avenue	& N. Orange Ave.	& N/S OF W. NEW ENGL.	W. of Balfour
	Winter Park	Winter park	Orlando	Winter Park	Winter Park
SALE PRICE		\$650,000	\$3,700,000	\$780,000	\$1,248,786
SALE DATE		21-OCT-11	31-Jan-11	16-FEB-11	13-Nov-08
Size - Gross Acres	5.00	0.57	4.36	0.60	1.36
Size - Net Acres	5.00	0.57	4.36	0.60	1.36
SIZE - NET SQUARE FEET	217,800	24,916	189,922	26,136	59,111
PROPOSED USE	Office	MEDICAL OFFICE	MULTIFAMILY	MULTIFAMILY	Commercial
UTILITIES	ALL	ALL	ALL	ALL	ALL
ZONING AT SALE	O-1	C-3	AC-3/T, CRO	R-3, MED DENSITY	C-3
FRONTAGE	Morse & Denning	South Orlando Ave.	N. Orange Avenue	Welbourne/W. New Eng.	Aloma Avenue
PRICE PER GROSS ACRE		\$1,136,364	\$848,624	\$1,300,000	\$920,255
PRICE PER NET ACRE		\$1,136,364	\$848,624	\$1,300,000	\$920,255
PRICE PER SF		\$26.09	\$19.48	\$29.84	\$21.13
COMPARISONS					
Terms/Condition		Cash	Cash	Cash	Cash
TERM ADJUSTMENT		0%	0%	0%	0%
MONTHS SINCE SALE		0	9	8	32
TIME ADJUSTMENT		0%	0%	0%	-20%
TIME ADJUST. PRICE/SF		\$26.09	\$19.48	\$29.84	\$16.90
LOCATION/ACCESS/FRONTAGE		Offset	Inferior	Superior	Inferior
LOCATION COMPARISON		0%	15%	-10%	30%
TOPOGRAPHY		Similar	Similar	Similar	Similar
Topo. Comparison		0%	0%	0%	0%
SIZE/SHAPE		Superior/Inferior	Similar/Similar	SUPERIOR/INFERIOR	Superior/Inferior
SIZE/SHAPE ADJUSTMENT		-10%	0%	-10%	0%
ZONING	O-1	Superior	Superior	Inferior	Superior
Zoning Comparison		-10%	-15%	10%	-10%
UTILITIES/RETENTION		Similar/Similar	Similar/Similar	Similar/similar	Similar/Similar
UTILITIES COMPARISON		0%	0%	0%	0%
OVERALL COMPARABILITY		Superior	Inferior	Superior	Inferior
OVERALL ADJUSTMENT		-20%	0%	-10%	20%
INDICATED PRICE/SF		\$20.87	\$19.48	\$26.86	\$20.28

ESTIMATED LAND VALUE VIA THE LAND SALES COMPARISON APPROACH
SUBJECT PROPERTY: 5.00 NET USABLE ACRES (217,800 SF) x \$21.00 per SF = \$4,573,800
ROUNDED TO \$4,575,000

COMMERCIAL LAND SALES COMPARISON SUMMARY - 3.733 ACRES - PROGRESS POINT SITE

	Subject	Land Sale No. 1	Land Sale No. 2	Land Sale No. 3	Land Sale No. 4
LOCATION	SWC of N. Orange Ave.	NEC of S. Orlando Ave	NWC of W. Colonial	S/S OF WELBOURNE AVE.	S/S OF ALOMA AVE.
	& S. Denning Drive	and Balch Avenue	& N. Orange Ave.	& N/S of W. New Engl.	W. of Balfour
	Winter Park	Winter park	Orlando	Winter Park	Winter Park
SALE PRICE		\$650,000	\$3,700,000	\$780,000	\$1,248,786
SALE DATE		21-Oct-11	31-Jan-11	16-FEB-11	13-Nov-08
SIZE - GROSS ACRES	3.73	0.57	4.36	0.60	1.36
SIZE - NET ACRES	3.73	0.57	4.36	0.60	1.36
SIZE - NET SQUARE FEET	162,609	24,916	189,922	26,136	59,111
PROPOSED USE	Mixed Use	Commercial	MULTIFAMILY	MULTIFAMILY	Commercial
UTILITIES	ALL	ALL	ALL	ALL	ALL
ZONING AT SALE	O-1	C-3	AC-3/T, CRO	R-3, MED DENSITY	C-3
FRONTAGE		South Orlando Ave.	N. Orange Avenue	Welbourne/W. New Eng.	Aloma Avenue
PRICE PER GROSS ACRE		\$1,136,364	\$848,624	\$1,300,000	\$920,255
PRICE PER NET ACRE		\$1,136,364	\$848,624	\$1,300,000	\$920,255
PRICE PER SF		\$26.09	\$19.48	\$29.84	\$21.13
COMPARISONS					
TERMS/CONDITION		Cash	Cash	Cash	Cash
TERM ADJUSTMENT		0%	0%	0%	0%
MONTHS SINCE SALE		0	9	8	32
TIME ADJUSTMENT		0%	0%	0%	-20%
TIME ADJUST. PRICE/SF		\$26.09	\$19.48	\$29.84	\$16.90
LOCATION/ACCESS/FRONTAGE		Inferior	Inferior	Similar	Inferior
LOCATION COMPARISON		15%	30%	0%	40%
TOPOGRAPHY		Similar	Similar	Similar	Similar
Topo. Comparison		0%	0%	0%	0%
SIZE/SHAPE		SUPERIOR/SUPERIOR	Similar/Superior	SUPERIOR/INFERIOR	Superior/Similar
SIZE/SHAPE ADJUSTMENT		-15%	-5%	-10%	-10%
ZONING	O-1	Superior	Superior	Inferior	Superior
ZONING COMPARISON		-10%	-15%	10%	-10%
UTILITIES/RETENTION	ALL	Similar/Similar	Similar/Similar	Similar/similar	Similar/Similar
UTILITIES COMPARISON		0%	0%	0%	0%
OVERALL COMPARABILITY		Superior	Inferior	Superior	Inferior
Overall Adjustment		-10%	10%	0%	20%
INDICATED PRICE/SF		\$23.48	\$21.43	\$29.84	\$20.28

ESTIMATED LAND VALUE VIA THE LAND SALES COMPARISON APPROACH
SUBJECT PROPERTY: 3.733 NET USABLE ACRES (162,609 SF) x \$27.00 per SF = \$4,390,000
ROUNDED TO \$4,400,000



QUALIFICATIONS OF ANGELA L. BROWN, MAI, VICE PRESIDENT

BUSINESS ADDRESS Meridian Appraisal Group, Inc.

1331 Sundial Point

Winter Springs, Florida 32708

Phone: 407.637.8704 Fax: 407.875.1061

E-mail: <u>abrown@meridianag.com</u>

FORMAL EDUCATION University of Florida, Gainesville, June 1983

Bachelor of Science in Business Administration, Real Estate Major

REAL ESTATE EDUCATION Completion of all MAI course work.

Course/Seminars/Continuing Education

- Valuation/Evaluation of Proposed Projects
- Fair Lending and the Fee Appraiser
- The Challenge of Technology
- Highest and Best Use Analysis
- Subdivision Analysis
- Appraising Troubled Properties
- Appraisal Review Seminar
- Understanding Limited Appraisals
- Hotel/Motel Valuation
- Appraisers Legal Liabilities
- Appraisal Regulations of the Federal Banking Agencies
- Real Estate Evaluations and the Real Estate Industry
- Understanding Wetlands/Mitigation Banking as a Highest and Best Use
- Commercial Appraisal Engagement and Review
- Introduction to Valuation for Financial Reporting

- Analyzing Operating Expenses
- Rates, Ratios & Reasonableness
- The Internet and Appraising
- Data Confirmation and verification
- HUD/FHA Lender Roster Training
- Accrued Depreciation
- Easement Valuation
- New Industrial Valuation
- USPAP Update/Core Law
- Florida Condemnation Valuation
- Partial Interest Valuation Divided
- Valuation of Detrimental Conditions
- Appraising from Blueprints & Specifications
- Business Practice and Ethics
- Oil Spill and Property Values

The Appraisal Institute conducts a mandatory program of continuing education for its designated members. MAI's and SRA's who meet the minimum standards of this program are awarded periodic educational certification. Ms. Brown is currently certified under this program through December 31, 2013.

EXPERIENCE

2007 – Present Meridian Appraisal Group, Inc.

Vice President and Principal

Responsible for the acquisition, coordination and review of appraisal assignments on real property. Also responsible for the preparation and review of appraisal assignments on various real property with emphasis on A & D projects throughout central Florida.

2004 – 2007 Realvest Appraisal Services, Inc.

Vice President and Principal

Responsible for the acquisition, coordination and review of appraisal assignments on real property. Also responsible for the preparation and review of appraisal assignments on various real property with emphasis on A & D projects throughout central Florida.

1992 – 2003 Realvest Appraisal Services, Inc.

President and Principal

Responsible for the internal operations including quality control, product development, technological advances, appraisal review and organizational management. Also responsible for the preparation and review of appraisal assignments on various real property.

QUALIFICATIONS OF ANGELA L. BROWN, MAI, VICE PRESIDENT (CONT'D)

1991 – 1992 First Union National Bank of Florida, N.A.

Vice President

Responsible for the review of all appraisals for the Central Florida region in excess of \$5,000,000 and Special Assets in excess of \$2,000,000.

1990 – 1991 Southeast Bank, N.A.

Assistant Vice President

Responsible for the review of all appraisals for the North and Central Florida region in excess of \$1,000,000.

excess of \$1,000,000.

1983 – 1990 Pardue, Heid, Church, Smith and Waller, Inc.

Senior Appraiser

Responsible for the preparation and review of appraisal assignments on various real property including vacant land, subdivisions, retail centers, office buildings, apartments, industrial properties, mobile and recreational vehicle parks and special use properties.

1989 Orange County Special Master

Served as Special Tax Master for the Orange County Property Appraisal Adjustment

Board

DESIGNATIONS Member Appraisal Institute (MAI), Certificate 8220

CERTIFICATIONS

& LICENSES State-Certified General Real Estate Appraiser RZ 805

Florida Real Estate Broker BK-0391466

PROFESSIONAL

AFFILIATIONS Bergstrom Center for Real Estate Studies – University of Florida – Executive Board

Member – 2007-2010

Bergstrom Center for Real Estate Studies - University of Florida - Advisory Board

Member since 2003

President, East Florida Chapter of the Appraisal Institute – 2002

Orlando Subchapter Chair, East Florida Chapter of the Appraisal Institute – 1995

Young Advisory Council, Appraisal Institute – 1995-1998 – Vice Chair (1996-1997),

Chair 1997-1998)

Orlando Leadership Alumni

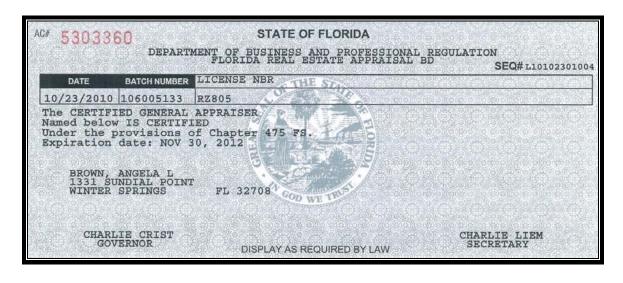
Central Florida Commercial Real Estate Society (CFCAR) - Investment Specialty Chair - 2000

Central Florida Commercial Association of Realtors (CFCAR)

Greater Orlando Association of Realtors

Qualified as Expert Witness (Real Estate Appraisal) in Federal Bankruptcy Court,

Middle District of Florida, Orange, Seminole and Sumter Counties





ATLANTIC COAST LINE RAILWAY

1 LAND DEVELOPMENT PLAN - OPTION I SCALE: 1'= 40-0'



LAND DEVELOPMENT PLAN - OPTION 1
PROGRESS ENERGY SITE
1150 ORANGE AVENUE

CAD CHECKED WPP DATE

AS NOTED

	1	OPTION 2						1
				T	T	1		
		Assisted Living	and Memor	v Care - 2	2.45 acres			
		Memory Care Ur	nits				30	
		Assisted Living	Units				65	
					T	otal	95	
		Offices/Retail - 2	0 acres	39 204 s	a ft allowed	(45% F.A.R	,	
		Bldg 1	46765	00,204 0	q.it allowed	1.7.1010-	18,000	
		Bldg 2					19,000	
					Т	otal	37,000	
		Assisted Living						
		Proposed Parking	ng: .75/Unit				49	
		Employees					15	
					S	Sub-Total	64	ORANGE AVENUE
		Office	410.00		1 07 0001			OF LANGE AVENUE
		Proposed	1/250 sq	į. ft	37,000	F-4-1	148	
					 	Total	212	
		Parking Shown:		<u> </u>			213	
								OFFICE / PET AN
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ATLANTIC COAST LINE RAILWAY

LAND DEVELOPMENT PLAN - OPTION 2

SCALE: 1'= 40-0'



SCALE AS NOTED JOB NO.



ATLANTIC COAST LINE RAILWAY

LAND DEVELOPMENT PLAN - OPTION 3

SCALE: 1'= 40-0'



LAND DEVELOPMENT PLAN - OPTION 3
PROGRESS ENERGY SITE
1150 ORANGE AVENUE

DRAWN
CAD
CHECKED
WPP
DATE

SCALE
AS NOTED
JOB NO.

item type	Public Hearing	meeting date	November 14, 2011
prepared by department division	Dori DeBord Economic Development/CRA	approved by	■ City Manager■ City Attorney□ N A
board approval		☐ yes ☐ no ☐	N A final vote

subject

An Ordinance approving the exchange of property between the City of Winter Park and Progress Point LLC (first reading)

motion | recommendation

Approval of the Ordinance allowing for the conveyance of land owned by the City of Winter Park in accordance with the terms and conditions outlined in the Exchange Agreement between the City of Winter Park and Progress Point LLC.

summary

Section 2.11(b) (7) of the City Charter requires an ordinance for the conveyance of land of the City of Winter Park.

Sec. 2.11. - Ordinances in general.

As used in this section, "ordinance" means an official legislative action of the commission, which action is a regulation of a general and permanent nature and enforceable as a local law.

- (a) Procedures for adoption. Ordinances shall be adopted in accordance with the procedures and notice requirements provided by general law, provided further that a proposed ordinance shall be adopted when it has been read, by title or in full, and has received the affirmative vote of a majority of the city commission physically present on at least two (2) separate days at either regular or special meetings of the commission. If there is a change in substance in the text, then the reading at the time of change will be deemed the first reading.
- (b) Action requiring an ordinance. In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city commission shall be by ordinance which:
 - (7) Convey or lease or authorize by administrative action the conveyance or lease of any lands of the city;

The purpose of this Ordinance is to convey City property, located at 941 W. Morse Boulevard to Progress Point LLC, under the terms and conditions of the approved Exchange Agreement.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE CONVEYANCE OF THE CITY OWNED PROPERTY LOCATED AT 941 W. MORSE BLVD., WINTER PARK, FL 32789, REFERRED TO AS THE STATE OFFICE BUILDING PROPERTY, SUBJECT TO MINIMUM REQURIEMENTS AS SET FORTH HEREIN; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, Section 2.11 of the Charter of the City of Winter Park, Florida authorizes the City Commission, by ordinance, to convey or authorize by administrative action the conveyance of any lands of the City; and

WHEREAS, the City Commission, in order to encourage redevelopment within the Community Redevelopment Area (CRA) deems it advisable to convey City property, pursuant to the terms of an agreement between the City and Progress Point, LLC, (hereinafter referred to as the "Exchange Agreement"), which Exchange Agreement must also be separately approved by the City Commission; and

WHEREAS, the Exchange Agreement, in order to be approved by the City Commission must provide that the real property and other consideration being received by the City in return for the City's agreement to convey the former State Office Building Property must be equitable, beneficial and in the interest of the citizens of Winter Park.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

- <u>Section 1.</u> Recitals. The recitals stated hereinabove are incorporated herein by reference and are made fully a part of this Ordinance.
- <u>Section 2</u>. The Exchange Agreement, when it is approved by the City Commission, shall be deemed incorporated into this Ordinance, and this Ordinance is subject to the requirement that the City shall separately approve the Exchange Agreement.
- <u>Section 3</u>. The property that is authorized to be conveyed is the City property identified in Exhibit "A" attached and made a part hereof by reference. The street address of the property owned by the City authorized to be conveyed to Progress Point, LLC, is 941 W. Morse Blvd., Winter Park, FL 32789.
- <u>Section 4</u>. The City Commission of the City of Winter Park hereby authorizes the transfer and conveyance of the former State Office Building property (identified and described hereinabove and in Exhibit "A" hereto) to Progress Point, LLC, on the terms and conditions and subject to all requirements as stated in the Exchange Agreement, as

the City Commission deems it to be in the public interest, provided that the requirements of the Exchange Agreement are satisfied by the transferee or its successors in interest.

<u>Section 5</u>. This Ordinance shall constitute the authorization by the City Commission pursuant to Section 2.11 of the Charter of the City of Winter Park, Florida, for the transfer and conveyance of any or all parts of the property set forth above (and described in Exhibit "A").

<u>Section 6</u>. Conflicts. All Ordinances or parts of Ordinances in conflict with any provisions of this Ordinance are hereby repealed.

<u>Section 7</u>. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this day of, 2011.
Kenneth W. Bradley, Mayor
Attest: Cynthia S. Bonham, City Clerk
Approved as to legal form and sufficiency for the City of Winter Park, Florida only:
Usher L. Brown, City Attorney
First Reading:

Second Reading:

AGREEMENT FOR EXCHANGE OF REAL PROPERTY

This Agreement for Exchange of Real Property (the "Agreement") is made and entered into as of the _____ day of November, 2011, by and between PROGRESS POINT, LLC, a Florida limited liability company ("Owner"), whose address is c/o CNL Commercial Real Estate, 420 South Orange Avenue, Suite 950, Orlando, Florida 32801, and the CITY OF WINTER PARK, a Florida municipal corporation ("City"), whose address is 401 Park Avenue South, Winter Park, FL 32789.

Recitals:

WHEREAS, Owner is the owner of fee simple title to a parcel of real property and improvements thereon more particularly described on Exhibit "A", attached hereto, and by this reference made a part hereof, defined herein as "Owner Property"; and

WHEREAS, the City owns the fee simple title to a parcel of real property and improvements thereon more particularly described on Exhibit "B", attached hereto, and by this reference made a part hereof, defined herein as the "State Office Building Property" on which is located state office buildings; and

WHEREAS, on July 28, 2011, the City issued a notice requesting proposals for the redevelopment of the State Office Building Property; and

WHEREAS, Owner responded to the request, and the Owner and the City have agreed to an exchange of properties, pursuant to which Owner will convey the Owner Property to the City and the City will convey the State Office Building Property to the Owner, in accordance with the terms and conditions of this Agreement; and

WHEREAS, in addition to the exchange of properties, the Owner has agreed to certain financial obligations and commitments in favor of the City, as more particularly described in this Agreement; and

WHEREAS, the City Commission deems the exchange of properties and the redevelopment of the State Office Building Property to be a proper public purpose, and that said exchange and redevelopment will achieve important City objectives, such as stimulating economic development in the City and increasing property values, and declares that the State Office Building Property is surplus real property; and

WHEREAS, Owner desires to redevelop the State Office Building Property and the City wishes to encourage Owner to redevelop the State Office Building Property, as an office project including associated parking and landscaping (the "New Office Project"); and

WHEREAS, Owner has received expressions of interest from two potential tenants of the New Office Project representing sufficient space needs (approximately 50,000 s.f.) to develop the New Office Project, and Owner believes (and will continue to pursue) in good faith that it will reach agreement with both potential tenants to occupy space in the New Office Project; and

WHEREAS, Owner shall develop the New Office Project in accordance with its proposal to the City, and the development shall be "Class A" office space, comparable to other office space considered to be "Class A" office space in the commercial building submarket area of Winter Park located in the vicinity of the State Office Building Property; and

WHEREAS, the City has estimated that the net tax increment which will be derived by the City and its agencies after construction of the New Office Project will be at least +/- \$73,000 per year, which represents a significant economic benefit to the City; and

WHEREAS, the City finds that securing and facilitating the redevelopment of the State Office Building Property serves to enhance and expand economic activity by attracting and retaining business enterprise and other activities conducive to economic promotion, and contributes to a stronger, more balanced and stable economy in the City, enhances and preserves purchasing power and employment opportunities for the residents of the City, and improves the welfare and competitive position of the City, and the City declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises like the potential tenants of the New Office Project; and

WHEREAS, the City has determined that the expenditure of certain public funds to attract and retain businesses like Owner's potential tenants and the use of such public funds toward the achievement of the economic development goals described herein, constitutes a public purpose; and

WHEREAS, the City has an interest in acquiring the Owner Property in order to have options for the location or relocation of City departments, operations and/or personnel, such as potentially the library or City Hall; and

WHEREAS, Owner and the City now desire to set forth the terms and conditions of their agreement for the exchange of the properties and various related matters, all of which can be generally summarized as follows (all capitalized terms being defined below):

- A. Owner will convey to the City fee simple title to the Owner Property.
- B. The City will convey fee simple title to the State Office Building Property To Owner.
- C. Owner and the City will enter into a Development Agreement with respect to various master planning issues associated with development of the New Office Project; and

WHEREAS, the City Commission is authorized to enter into this Agreement pursuant to its home rule authority; and

WHEREAS, the City Commission finds that this Agreement is consistent with its Community Redevelopment Plan, its Comprehensive Plan, and is in the best interests of the citizens; and

WHEREAS, all of the foregoing will be accomplished without any pledge of credit or ad valorem tax revenues on the part of the City.

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

- 1. <u>Preambles</u>. The parties acknowledge that the above preambles are true and correct and incorporate them herein by this reference thereto.
- 2. <u>Agreement to Convey.</u> The Owner agrees to convey the Owner Property to City in exchange for City conveying the State Office Building Property to Owner, in accordance with the terms and conditions of this Agreement. For the purposes of this Agreement, the Owner Property and the State Office Building Property are sometimes each referred to as the "Property", and sometimes together referred to as the Properties, as applicable and as the context may require. Each conveyance shall be free from all encumbrances except Permitted Exceptions (defined below), with all appurtenances pertaining thereto.
- 3. <u>Title Insurance</u>. Within fifteen (15) days following the Effective Date hereof, City shall cause Old Republic National Title Insurance Company ("City's Title Company"), through its agent, Brown, Garganese, Weiss & D'Agresta, P.A. ("City's Title Agent"), to issue and deliver to Owner an ALTA title commitment ("Owner's Title Commitment") accompanied by one (1) copy of each document supporting any exception to the Title Commitment to the State Office Building Property.

Within fifteen (15) days following the Effective Date hereof, Owner shall cause Fidelity National Title Insurance Company ("Owner's Title Company"), through its agent, Lowndes, Drosdick, Doster, Kantor & Reed, P.A. ("City's Title Agent"), to issue and deliver to City an ALTA title commitment ("City's Title Commitment") accompanied by one (1) copy of each document supporting any exception to the City's Title Commitment to the Owner Property.

For the purposes of this Agreement, the term "Title Commitment" shall mean either the Owner's Title Commitment or the City's Title Commitment, as applicable and as the context may require.

If a Title Commitment reflects matters other than the standard exception for ad valorem real estate taxes for the current year and those matters which will be discharged by the respective owner at or prior to Closing, then the party to receive title to the property shall give the party conveying the property written notice thereof before the expiration of ten (10) business days after receipt of the Title Commitment. In such event, the objecting party shall state which exceptions to the Title Commitment are objectionable, and the conveying party shall undertake to eliminate such exceptions. In the event the conveying party is unable with the exercise of reasonable diligence to satisfy said objections prior to Closing, the objecting party may, in its sole discretion, (i) accept title subject to the objections raised by it, in which event said objections shall be deemed to be waived for all purposes, or (ii) rescind this Agreement and this Agreement shall be of no further force and effect (except for any indemnifications which survive hereunder). Neither party shall be obligated to spend more than \$5,000.00 to cure any title defects. For the

purposes of this Agreement, all matters and exceptions reflected in the Title Commitment that are either (a) contemplated or authorized by this Agreement or (b) accepted by the party receiving title to the property covered by such Title Commitment, shall be collectively referred to as "Permitted Exceptions".

- Survey. Either party may, at its expense and if it so desires, within thirty (30) days of the Effective Date hereof, obtain a current survey of the Property it is to receive in this exchange (each, a "Survey"). Any Survey shall be prepared by a duly licensed land surveyor in accordance with the minimum technical standards for surveyors in the State of Florida. If the Survey reveals any encroachment, hiatus, overlap, or other survey defect, then the same shall be treated as an objection to title, which objection must be made, if at all, by the respective party by written notice to the other party before the expiration of five (5) business days after receipt of the Survey. In such event, the objecting party shall state what matters depicted in the Survey are objectionable, and the other party shall undertake to eliminate such objections in accordance with the same standards and requirements set forth in Section 3 for title objections. In the event the other party is unable with the exercise of reasonable diligence to satisfy said objections prior to Closing, the objecting party may, in its sole discretion, (i) accept title subject to the Survey objections, in which event said objections shall be deemed Permitted Exceptions and shall be waived for all purposes, or (ii) rescind this Agreement and this Agreement shall be of no further force and effect (except for any indemnifications which survive hereunder). Any amount spent by a party to satisfy Survey objections shall be included in the \$5,000.00 maximum described in Section 3.
- 5. <u>Inspection Period</u>. Each party shall have until 5:00 p.m. on the date which is forty-five (45) days after the Effective Date ("Inspection Period") to perform any surveys, soil test borings environmental testing, environmental audit, or any other studies, tests or research on or about the Property they are to receive as a result of this exchange as they may desire or deem necessary. Either party may extend the Inspection Period by fifteen (15) days (to a total of 60 days), upon written notice to the other party delivered within forty (40) days after the Effective Date. To the extent that either party obtains an environmental testing, environmental audit or other analysis or report during the Inspection Period, such analysis or report shall be in favor of both parties such that both parties shall be entitled to rely on such analysis or report. During the Inspection Period, either party may, at each's sole discretion and for any reason, upon written notice to the other party, terminate this Agreement. If either party does not deliver written notice to the other of its election to terminate this Agreement before the expiration of the Inspection Period, each party shall be deemed to have waived its right to terminate this Agreement. Upon termination by either party pursuant to this Section 5, neither party shall have any further obligation to the other under the terms of this Agreement except for those terms and conditions that specifically survive the termination of this Agreement. To the extent allowed by law, both parties agree to indemnify, defend and hold each other harmless from and against all fines, expenses, penalties, costs, claims, liabilities and expenses, including reasonable attorneys' fees and other costs, incurred, sustained by, or asserted against the other party arising from the inspections and entries by or on behalf of a party on the State Office Building Property or the Owner Property, respectively. The foregoing indemnification shall survive the Closing or the earlier termination of this Agreement for whatever reason.

Environmental. Both parties warrant to the other, that to the best of the knowledge of the warranting party, without inquiry and except as disclosed in the Records (defined below), the property to be exchanged does not currently contain any Hazardous Substances in violation of any applicable environmental laws or regulations, including but not limited to Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. '9601 et seq., any "superlien" laws, any superfund laws, or similar federal or state laws, or any successor statutes thereto ("Environmental Laws"), nor to the warranting party's knowledge, has any clean-up of its property occurred pursuant to the Environmental Laws which could give rise to liability to reimburse any governmental authority for the costs of such clean-up nor a lien or encumbrance on the Property. For the purposes hereof, the term "Hazardous Substances" shall mean all toxic or hazardous materials, chemicals, wastes, pollutants or similar substances, including, without limitation, Petroleum (as hereinafter defined), asbestos insulation and/or urea formaldehyde insulation, which are regulated, governed, restricted or prohibited by any federal, state or local law, decision, statute, rule, regulation or ordinance currently in existence or hereafter enacted or rendered, including, but not limited to, those materials or substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "pollutants" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and any applicable statutes, ordinances or regulations under the laws of the State of Florida, and any rules and regulations promulgated thereunder, all as presently or hereafter amended. "Petroleum" for purposes of this Agreement shall include, without limitation, oil or petroleum of any kind and in any form including but not limited to oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline, diesel fuel and kerosene.

Notwithstanding the foregoing and as more particularly described in the Records to be provided by Owner, a portion of the Property located at the corner of South Denning Drive and Palmetto Avenue contains certain Hazardous Substances which have been reported to applicable governmental agencies and which currently are being addressed by the Owner. A portion of the property containing approximately 593.7 square feet and more particularly described and depicted on Exhibit "C" attached hereto and by this reference made a part hereof (the "Restricted Portion"), will be the subject of a "Site Rehabilitation Cleanup Order (SRCO), with Conditions" issued by the Florida Department of Environmental Protection, and the Restricted Portion also will be subject to a deed restriction associated with the SRCO. The Hazardous Substances within the Restricted Portion consist of slightly elevated levels of arsenic attributed to the proximity of the Restricted Portion to the railroad tracks. As part of the SRCO, Owner will be required to (and shall complete at its expense prior to Closing hereunder) permanently cover the Restricted Area with concrete.

Owner acknowledges that asbestos may be present on the State Office Building Property as a result of asbestos present in the building. Owner shall not engage in any activity on the State Office Building Property during the Inspection Period that has the effect of exacerbating any such the preexisting environmental conditions. Owner shall utilize its own consultants, engineers and all other related professionals to make its own investigation and determination as

the accuracy or acceptability of any and all matters regarding the State Office Building Property and any documents provided by the City.

Except in the case of a default under or violation of Section 8 hereof by the City. Owner hereby releases the City, its officers, agents and employees, from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damage, trespass, nuisance, negligence, response or investigation costs, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys' or consultants' fees and any other claim, demands, damages, losses or causes of action of whatever kind of nature, which Owner ever had, now has, or may have on account of or arising from the release or threatened release of Hazardous Substances at, on or from the State Office Building Property occurring from the date of the Closing, including, but not limited to environmental, property damage and personal injury, whether at law or in equity, whether under state or federal law or regulation, whether known or unknown, whether suspected or unsuspected, without any limitation or restriction whatsoever.

To the extent allowed by law and except in the case of a default under or violation of Section 8 hereof by the Owner, the City hereby releases Owner, its officers, agents and employees, from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damage, trespass, nuisance, negligence, response or investigation costs, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys' or consultants' fees and any other claim, demands, damages, losses or causes of action of whatever kind of nature, which City ever had, now has, or may have on account of or arising from the release or threatened release of Hazardous Substances at, on or from the Owner Property occurring from the date of the Closing of the Agreement, including, but not limited to environmental, property damage and personal injury, whether at law or in equity, whether under state or federal law or regulation, whether known or unknown, whether suspected or unsuspected, without any limitation or restriction whatsoever.

The terms and conditions of this Section 6 shall survive the Closing or the earlier termination of this Agreement for whatever reason.

Access to the Properties; Records and Other Information. Each party agrees that during the Inspection Period of each, the inspecting party or its agents shall have the right to enter upon the other party's Property to make such surveys, tests, inspections, analyses and similar examinations as the inspecting party may desire with respect to the Property. The inspecting party or its agents, shall have the right to enter upon the other's Property for such activities provided said activities shall not materially damage the Property or unreasonably disrupt the other party's ongoing activity at the Property. The inspecting party agrees to deliver copies of all such tests, reports, surveys, examinations, etc. to the other party in the event the inspecting party elects not to purchase the Property. The inspecting party agrees to restore the Property to substantially the same condition as existed prior to its access thereto. Within ten (10) days of the Effective Date, each party hereto shall deliver to the other party all books and records, including all environmental reports and related data pertaining to their respective Property including, the permits, plans, service contracts, building inspection reports, and records

and any other records or information or documents that the other party may reasonably request, with respect to the Property ("Records") that are in Seller's possession or control. In the event this Agreement is terminated as provided for herein and the transaction is not consummated, all information, documentation and the like shall be returned by to the other party.

- 8. Representations and Warranties. The following representations and warranties made by each party to the other party are true and correct as of the Effective Date and shall be true and correct as of the date of Closing and the truthfulness and correctness thereof shall constitute conditions precedent to either party's obligation to exchange the Property. Each of the following representations and warranties are, however, subject to and limited by the disclosures set forth elsewhere in this Agreement.
- A. <u>Authority</u>. Each party is duly organized, validly existing and in good standing under the laws of the State of Florida and of the United States. The individual executing this Agreement has full and lawful authority to bind and obligate their corporation or entity to perform its obligations as herein provided, and upon execution hereof, this Agreement shall be the binding and legal obligation of the parties hereto and is enforceable against each under the laws of the State of Florida.
- B. <u>Marketable Title</u>. Each party shall convey and deliver at Closing good and marketable title to their respective Property by Special Warranty Deed, in form and content reasonably acceptable to each, free and clear of all mortgages, liens, encumbrances, leases, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments and other matters affecting title, except for Permitted Exceptions.
- C. <u>No Condemnation Pending or Threatened</u>. Each party has no knowledge of any pending or threatened condemnation or similar proceeding affecting their Property or any portion thereof, nor does either party have knowledge that such action is contemplated.
- D. <u>Adverse Information</u>. Neither party has any knowledge of any changes contemplated in any applicable laws, ordinances or regulations, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial conditions upon their Property which would prevent, limit, impede or render more costly, the current use of the Property.
- E. <u>Compliance with Laws</u>. Neither party has any knowledge of any violation of any applicable laws, ordinances, regulations, rules or restrictions pertaining to or affecting their Property. Each party has no knowledge that performance of this Agreement would result in any breach of or constitute any default under or result in the imposition of any lien or encumbrance upon their Property under any agreement or other instrument to which either party is a party or to which either party or their Property might be bound. Neither party has received any notices from any association, city, county, state, or other governmental authority of building, land use, zoning or health code violations in respect to their Property that have not been corrected.
- F. <u>Pending Litigation</u>. There are no legal actions, suits, or other legal or administrative proceedings including condemnation cases pending. Neither party has any knowledge of any legal actions, suits, or other legal or administrative proceedings threatened

against their Property. Neither party is aware of any facts which might result in any such action, suit or other proceedings.

- G. <u>No Special Assessments or Obligations for Improvements</u>. Except for the Orange Avenue assessment applicable to the Owner Property, neither party has any knowledge that any portion of their Property is affected by any special assessments or obligations for roads or other improvements.
- H. <u>Access to Highways and Roads</u>. Neither party has any knowledge of any fact or condition which would result in the termination of ingress and egress to publicly maintained and dedicated streets and access ways.
- I. <u>Commitments to Governmental Authority</u>. To each party's knowledge, except for the Orange Avenue assessment applicable to the Owner Property, no commitments have been made to any governmental authority, Owner, utility company, school board, church or other religious body or any property owners' association or to any other organization, group or individual relating to their Property which would impose an obligation upon the other party or its successors and assigns to make any contribution or dedications of money or land or to construct, install, or maintain any improvements of a public or private nature on or off their Property. There is no requirement that any Owner or owner of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with any development of the Property or any part thereof. The provisions of this Section shall apply to any regular or non-discriminatory local real estate taxes assessed against the Property.
- J. <u>Subsurface Conditions</u>. Except as otherwise disclosed in this Agreement or in the Records, neither party has any knowledge of any environmental, soil, or subsurface conditions located on its Property which would impair the usability or developability of such Property for its present use.
- K. <u>Environmental</u>. To each party's knowledge, all of the statements regarding environmental matters contained in this Agreement are true and correct.
- L. <u>Contracts</u>. Each party represents that there are no leases, rights of first refusal, options or contracts, oral or written, in existence pertaining to their Property. Neither party, nor any person authorized to act on its behalf, is a party to any written, oral or implied contract, agreement, lease or other commitment affecting or relating to their Property, including, without limitation, agreements for the purchase of goods or the rendering of services.
- M. <u>Insolvency</u>. There has not been filed by or against either party a petition in bankruptcy or any other insolvency proceeding, or for the reorganization or appointment of a receiver or trustee, nor has either party made an assignment for the benefit of creditors, nor filed a petition for arrangement, nor entered into an arrangement with creditors, nor admitted in writing its inability to pay debts as they become due.
- N. <u>Physical Condition of Improvements</u>. Except as may be set forth in the representations and warranties contained herein, neither party makes any representation or warranty as to the condition of the buildings, structures and other improvements located on their

Property, or any systems or components thereof, said buildings, structures and other improvements to be acquired in their "AS IS" and "WHERE IS" condition.

- 9. <u>Covenants Pending Closing</u>. Following the execution of this Agreement and at all times prior to the Closing:
- A. <u>No Transfers</u>. Neither party shall transfer, sell, assign or otherwise dispose of or pledge, mortgage, hypothecate or otherwise encumber, or lease or sublease all or any portion of their Property or any interest therein during the pendency of this Agreement.
- B. <u>Leases</u>. Neither party shall, without the prior written consent of the other party hereto in each instance, (i) enter into any new leases or occupancy agreements for space at their Property, (ii) modify, amend, terminate, renew, extend or waive any rights under an existing leases, (iii) apply any rental security deposits against sums payable under any leases, (iv) grant any concessions, rebate, allowance or free rent to any tenant for any period, or (v) accept the surrender of or terminate any lease.
- C. <u>Service Contracts and Permits</u>. Neither party will terminate or enter into any renewal, extension, modification or replacement of any existing permits or enter into any new employment, maintenance, service, supply or other agreement relating to their Property without the prior written consent of the other party. Each party will use its best efforts to renew all of the permits as they expire from time to time and shall notify the other party at least thirty (30) days prior to the expiration date or threatened cancellation date of any permit.
- D. <u>Insurance</u>. Each party shall maintain hazard and liability insurance in commercially reasonable amounts, but in no event less than the amount currently carried, with respect to their Property, and all such policies shall be kept in full force and effect until the Closing.
- 10. <u>Compliance With Laws</u>. In the event that there shall be any notices of violations of law, ordinances, orders, protective covenants, development standards, requirements or regulations issued subsequent to the date hereof, but prior to the Closing, by any federal, state, county municipal or other governmental or quasi-governmental department, agency, or authority relating to their Property, each party will provide written notice thereof to the other party, and the owner of the property will cause the same to be complied with, at the owner's sole cost and expense, prior to the Closing, or the owner shall escrow sufficient funds at Closing or make such other arrangements to satisfy the other party.

11. Provisions with Respect to Closing.

- A. <u>Closing Date</u>. The consummation of the transaction contemplated by this Agreement ("Closing") shall occur on or before thirty (30) days following the expiration of the Inspection Period, at the offices of City's counsel, Brown, Garganese, Weiss & D'Agresta, P.A. ("Closing Agent").
- B. <u>Obligations at Closing</u>. On the Closing Date, Owner and City shall each deliver all of the following closing documents, duly executed in accordance with applicable law (together, the "Closing Documents"):

- (i) Special warranty deeds conveying the respective Properties subject only to the Permitted Exceptions. The legal description of the Property on the deeds shall be as contained in the Surveys and the Title Commitments;
- (ii) Standard form owner's affidavit attesting (among other things) to the lack of any parties in possession of their respective Property (or identifying any tenants and the leases under which they occupy the same), the lack of any unrecorded easements affecting their respective Property and certifying that no improvements have been undertaken thereon within the preceding ninety (90) days for which the cost thereof has not been paid;
- (iii) Such other affidavits as may reasonably be required by either party, the Owner's Title Company, the City's Title Company or Closing Agent;
- (iv) A closing statement, an Affidavit of Interest In Real Property (in the case of Owner), the form of which is attached hereto as Exhibit "D" (to be completed with this Agreement), and such other documents and instruments or assignments as may reasonably be requested by either party to consummate the exchange of the Properties;
- (v) Easement along Morse Boulevard as mentioned in Section 12 below and shown in attached Exhibit "E" attached:
- (vi) Notice of Reverter described in Section 12;
- (vii) Special Assessment Agreement or Lien on State Office Building Property, as described in Section 12;
- (viii) the Letter of Credit described in Section 13; and
- (ix) Such other documents and agreements as may be reasonably required by either party or as are contemplated by this Agreement to effectuate the Closing.
- C. <u>Closing Expenses</u>. Each party shall deliver to Closing Agent its share of the Closing expenses. Each party shall be responsible for the payment of the Florida documentary stamp tax payable on the special warranty deed(s) in which it is named as grantor (regardless of the provisions of Florida law exempting the City from the payment thereof), as well as for the premium for the title insurance policy to be delivered to it. Each party shall be responsible for the per-page cost of recording the deeds in which it is named as grantor and for one-half of the per-page cost of recording the other documents to be recorded in connection therewith. Promptly after Closing, Closing Agent shall issue to each party its owner's policy of title insurance with only the Permitted Exceptions as exceptions to the coverage afforded thereby. Each party shall pay their own attorney fees.

The parties may mutually agree to close the transaction in escrow, in order to execute the Closing Documents in advance and be prepared to consummate the transaction contemplated at a later date, all in accordance with an escrow agreement to be mutually agreed upon by the parties.

- pears prior to the year of the Closing, and taxes for the year of Closing if then due, shall be paid by the owner of the Property being conveyed prior to or at Closing. The conveyance shall be subject to taxes for subsequent years. Taxes for the tax year of Closing shall be prorated to the date of Closing, based upon the amount of taxes due for such year, if known, or the taxes for the preceding year, based upon the maximum discount allowable as of the date of Closing; provided, however, that upon the issuance of the actual tax statement or bill for the year of the Closing, if the actual tax varies from the amount prorated by more than five percent (5%), the parties shall promptly make such re-prorations as may be necessary to ensure that the actual amount of such taxes for the year of Closing shall be prorated between the parties, said agreement to survive Closing hereunder. All special assessments which have been levied or certified prior to Closing shall be paid in full by the owner of the Property being conveyed and any pending assessments shall be assumed by the party taking title to the Property at Closing.
- 12. Additional Owner Obligations. As additional consideration for the conveyance of the State Office Building Property to Owner, the Owner hereby further agrees to the following (all as more particularly described in this Section 12): (i) a reverter provision by which, after Closing, each party will convey its respective property back to the other party in the event certain conditions are not satisfied; and (ii) Owner will pay to the City's Community Redevelopment Agency (CRA), on an annual basis for a total of fourteen (14) years (i.e., 14 payments), the sum of Thirty Thousand Dollars (\$30,000) per year (the "Owners CRA Contribution").

The parties acknowledge and agree that the proposed redevelopment of the State Office Building Property by Owner is a material consideration for the City's willingness to enter into this Agreement. Owner acknowledges and agrees that it intends to pursue the approval, development and construction of the New Office Project diligently and in good faith. In that regard, after Closing and prior to the commencement of construction: the Owner will continue to pursue tenants for the New Office Project, and will provide written confirmation to the City for each tenant for which Owner reaches an executed letter of intent for space in the New Office Project (identifying the nature of the proposed tenant's business and the approximate square footage to be occupied by such tenant, but not identifying the tenant by name); Owner will proceed with planning for the New Office Project, anticipating and with the intent that the required application for preliminary conditional use approval for the New Office Project will be filed with the City within ninety (90) days after Closing; Owner will pursue necessary financing for the New Office Project diligently and in good faith, and will provide written confirmation to the City when it secures such financing; and upon approval of the conditional use for the New Office Project, the Owner anticipates obtaining a building permit within six (6) months of such approval and commencing construction of the New Office Project upon issuance of the building permit. Despite Owner's diligent and good faith efforts, in the event the Owner does not submit to the City within one (1) year after Closing (the "Application Period"), a complete conditional use application for the development of the New Office Project (the "CU Application"), then in addition to the City's rights under Section 13 below, the City at its option, exercised by written notice delivered to the Owner within thirty (30) days after the expiration of the Application Period, may require another exchange of properties pursuant to which Owner will convey the State Office Building Property back to the City and the City will convey the Owner Property back to the Owner (which transaction is referred to as the "Reverter Closing"). The Reverter Closing shall be conducted under terms and conditions comparable to those set forth in this

Agreement for the initial Closing. For purposes of this paragraph, the period of time from the Closing until the earlier of (x) Owner's satisfaction of the CU Application obligation, (y) City's election not to exercise (or City's failure to timely exercise) the Reverter Closing option, or (z) the Reverter Closing, if applicable, shall be referred to as the "Reverter Period". During the Reverter Period: (a) each party shall maintain its property in substantially the same condition as such property exists as of the date of Closing hereunder, reasonable wear and tear excepted.; and (b) Owner shall not convey, transfer or encumber any interest in the State Office Building Property without the prior written consent of the City. In the event the City conveys, transfers or encumbers any interest in the Owner Property during the Reverter Period, or fails to maintain the Owner Property as required above, its option for the Reverter Closing shall automatically terminate. Owner agrees to the recording of a Notice of Reverter at Closing to memorialize the terms and conditions of this paragraph. Upon Owner's satisfaction of the CU Application obligation described in this paragraph, or upon the City's election not to exercise (or failure to timely exercise) its option for the Reverter Closing, or if the Reverter Closing option terminates as a result of the City's conveyance, transfer or encumbrance of any interest in (or failure to maintain) the Owner Property, then in any such event the City shall execute and deliver to Owner a written acknowledgement, in recordable form, confirming the termination of the City's option for the Reverter Closing.

In connection with the CU Application, City and Owner further acknowledge and agree that part of the CU Application and any approval thereof will include the Development Agreement referenced in the preambles to this Agreement. Such Development Agreement will address certain development and master planning issues associated with the New Office Project, including without limitation: (1) Owner's agreement to impose on the State Office Building Property a 63' wide easement along Morse Boulevard (as depicted on Exhibit "E" attached hereto and by this reference made a part hereof) for the purpose of installing and/or maintaining a landscape and tree corridor along Morse Boulevard which easements will not adversely affect or impair allowable signage, required building setback lines, required open space, required F.A.R. and other site development criteria under applicable zoning.

The parties acknowledge and agree that the proposed redevelopment of the State Office Building Property will result in the CRA's receipt of tax increment funds, by which a portion of the ad valorem real property taxes due and payable for the State Office Building Property will be paid to the CRA. The parties further acknowledge and agree that the CRA is scheduled to terminate on January 1, 2027 (the "CRA Termination Date"). Beginning with the first calendar year for which the ad valorem real property taxes for the New Office Project reflect the construction and completion of, and the issuance of the certificate of occupancy for, the New Office Project, thereafter on an annual basis for a total of fourteen (14) years (i.e., 14 payments), the Owner shall pay the Owner's CRA Contribution to the CRA (in addition to, and not in lieu of, ad valorem real property taxes due and payable in connection with the State Office Building Property and the New Office Project). The Owner's CRA Contribution shall be due and payable to the CRA on or before March 31 of the year following the applicable ad valorem property tax year. In order to enforce and memorialize the Owner's commitment for the Owner's CRA Contribution, the City shall be entitled to adopt and impose a special assessment agreement or assessment lien, in form and substance reasonably acceptable to Owner, relating to the Owner's CRA Contribution obligation. In the event the CRA Termination Date occurs prior to the Owner paying fourteen (14) of the Owner's CRA Contributions, then for each year after the CRA

Termination Date until the Owner pays the fourteenth (14th) Owner's CRA Contribution, each remaining Owner's CRA Contribution shall be paid to the City (and the City shall be obligated to use such funds for purposes comparable to those identified in the expired CRA Plan). The Owner's obligation for the Owner's CRA Contribution shall not preclude, limit or impair the Owner's right and ability to contest any assessment of ad valorem real property taxes for the State Office Building Property and/or the New Office Project.

Each application by the Owner for development approvals pursuant to this Agreement, including the CU Application, shall be a complete application with all of the information required by the City's Land Development Code and Ordinances. If the City determines reasonably and in good faith that an application is not complete, it shall provide notice in writing to the Owner, and the Owner shall be in breach of this Agreement if Owner fails to submit a proper and complete application within ten (10) business days following such notice from the City.

The terms and conditions of this Section 12 shall specifically survive the Closing hereunder, and the parties shall cooperate in good faith to execute and record such further agreements as may be reasonable or necessary to memorialize the terms and conditions of this Section 12. The terms and conditions of this Section 12 shall terminate and be of no further force and effect in the event of and upon a Reverter Closing.

- 13. <u>Letter of Credit</u>. Owner shall deliver an irrevocable Letter of Credit issued by a bank licensed to conduct business as a national association bank or licensed to conduct business in Florida, with a branch or office located in Orange County, Florida (in this regard, the City agrees that CNLBank is acceptable) (the "Letter of Credit"). This Letter of Credit shall be delivered to the City at Closing and shall be in the amount of Two Hundred Nineteen Thousand Dollars (\$219,000.00), and will be payable to the City. The Letter of Credit shall be held by the City subject to the following schedule and conditions:
- A. Owner shall submit a preliminary CU Application to the City on or before 90 days after Closing. Upon timely filing of a complete preliminary CU Application as set forth above, the Letter of Credit shall be reduced by twenty-five percent (25%) to the principal amount of One Hundred Sixty-Four Thousand Two Hundred Fifty Dollars (\$164,250.00). The City shall process and review the preliminary CU Application in a diligent and timely manner, and shall hold the Planning and Zoning Commission meeting and the City Commission meeting (together, the "Commission Meetings") to review and consider the preliminary CU Application within 45 days of the submittal by Owner. No less than 30 days in advance of the submittal of the preliminary CU application, Owner will submit all necessary documents and fees to the City Planning Department to facilitate the required City-wide notice. In the event the City fails to schedule and hold the Commission Meetings (and to consider the preliminary CU Application at such meetings) as described in this subparagraph A, and if such failure is due to force majeure, the City shall have an additional 15 days to hold the Commission Meetings. In the event either: (i) the City fails to hold the Commission Meetings within 45 days of the submittal of the CU Application by Owner, or (ii) in the case of force majeure, the City fails to hold the Commission Meetings within 60 days after the submittal by Owner of the preliminary CU Application, then in either event the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit.

- Subject to the City's satisfaction of its obligations to hold the Commission Meetings as set forth in subparagraph A above, Owner shall submit a final CU Application to the City on or before 90 days after the City Commission meeting approving the preliminary CU Application. Upon the timely filing of a complete final CU Application as set forth above, the Letter of Credit shall be reduced by an additional Sixty-Four Thousand Two Hundred Fifty Dollars (\$64,250.00) to the principal amount of One Hundred Thousand Dollars (\$100,000.00). The City shall process and review the final CU Application in a diligent and timely manner, and shall hold the Commission Meetings to review the final CU Application within 45 days of submittal by Owner. In the event the City fails to schedule and hold the Commission Meetings (and to consider the final CU Application at such meetings) as described in this subparagraph B, and if such failure is due to force majeure, the City shall have an additional 15 days to hold the Commission Meetings. In the event either: (i) the City fails to hold the Commission Meetings within 45 days of the submittal of the final CU Application by Owner, or (ii) in the case of force majeure, if the City fails to hold the Commission Meetings within 60 days after submittal by Owner of the final CU Application, or (iii) the City approves the final CU Application but such approval is challenged or appealed by a third party, then in any such event the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit.
- C. The Owner shall submit the application for the Building Permit for the New Office Project within one (1) year of the City's final, non-appealable (and non-appealed) approval of the final CU Application. The City shall review and process the Building Permit application with reasonable diligence and in good faith. The Owner shall commence construction of the New Office Project within thirty (30) days after the issuance of the Building Permit. Upon the commencement of construction, the Letter of Credit shall be returned by the City to the Owner, and the City shall have no further rights in connection with the Letter of Credit.
- D. Upon default by Owner by failing to meet any of the above mentioned deadlines, the Letter of Credit shall be immediately payable to the City in its then-current amount and will fund without any defense or objection by the Owner. Notwithstanding anything in this Section 13 to the contrary, however, the Owner shall not be deemed in default hereunder (and the Letter of Credit shall not be payable to the City) if and to the extent the Owner is unable, in good faith, to meet any of the above-mentioned deadlines as a result of a force majeure event. For the purposes of this subparagraph D, "force majeure" shall mean that Owner is unable, in good faith, to meet any of the above-mentioned deadlines as a result of cause or causes beyond Owner's control, including, but not limited to, labor disputes, civil commotion, war, terrorism, fire or other casualty, shortage of supplies and materials, or through acts of God. In the event of any of the circumstances described in the foregoing clause-the Owner shall have up to three (3) years after the issuance of final, non-appealable CU Application approval by the City within which to obtain the Building Permit for the New Office Project.
- E. In the event the City, for any reason, denies either the preliminary CU Application or the final CU Application, the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit. For the purposes of this Section 13, the default curative periods described in Section 14 shall not apply to any of the required performance time frames described in this Section 13. The terms and conditions of this

Section 13 shall specifically survive the Closing hereunder, and the parties shall cooperate in good faith to execute and record such further agreements as may be reasonable or necessary to memorialize the terms and conditions of this Section 13.

- 14. <u>Default</u>. Except as expressly provided otherwise herein, if either party defaults or fails to perform any of its obligations hereunder within the time or times specified herein and such default or failure continues for ten (10) days after its receipt of written notice thereof from the other party (or, if such default or failure is not by its nature curable within ten (10) days but such party fails to commence such cure within ten (10) days and to thereafter diligently pursue such cure), then the non-defaulting party shall have the option to either (a) terminate this Agreement by written notice to the defaulting party, or (b) seek specific performance of the defaulting party's obligations hereunder.
- 15. Assignment or Sale. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, except the Owner may assign its rights and obligations under this Agreement prior to Closing, without the City's consent and in whole or in part, to another entity that will remain wholly owned or controlled by Owner or any of its respective principals, affiliates or subsidiaries. Owner shall notify the City of any such assignment within ten (10) days after the date thereof. In addition to the foregoing, upon and after the Closing hereunder, the Owner shall not sell the State Office Building Property to an unrelated third party (i.e., to an entity or party that is not wholly owned or controlled by the Owner or any of its respective principals, affiliates or subsidiaries) for a period of two (2) years after Closing without the City's prior consent; in the event of such consent and sale, to the extent the Owner receives net consideration for such conveyance in excess of the sum of (x) the agreedupon value of the Owner Property for purposes of the exchange of the Properties, plus (y) all of Owner's documented costs associated with the acquisition of the State Office Building Property and the development and construction of the New Office Project, the Owner shall pay to the City one-half (1/2) of such excess proceeds.
- 16. <u>Brokerage/Hold Harmless</u>. Owner and the City each hereby represent and warrant that no broker or finder has been employed by them in connection with this Agreement. Each party shall indemnify and hold harmless the other party from and against any commissions or fees or claims for commissions or fees arising under the indemnifying party, which indemnification shall expressly survive Closing.
- 17. <u>Tax Reporting Numbers</u>. The parties agree to provide their tax identification numbers to the Closing Agent prior to Closing.
- 18. <u>Notices</u>. Any notice or other communication permitted or required hereunder shall be in writing and shall be sent either by hand delivery, U.S. certified mail, return receipt requested, or by overnight delivery service (e.g. Federal Express), to the party entitled or required to receive the same, at the address set forth below or at such other address as may be specified by like notice, and shall be deemed delivered when delivery is made or attempted and refused, as indicated on the receipt:

TO OWNER: Progress Point, LLC

c/o CNL Commercial Real Estate

420 S. Orange Avenue, Suite 950

Orlando FL 32801

Attn: Thom Cunningham Telephone: 407-540-2736

Fax: _____

COPY TO: Lowndes, Drosdick, Doster, Kantor and Reed, P.A.

215 North Eola Drive

P.O. Box 2809 Orlando, FL 32802

Attn: M. Rebecca Wilson, Esquire

Telephone: 407-418-6250

Fax: 407-843-4444

TO CITY: City of Winter Park

401 Park Avenue South Winter Park, FL 32789

Attn: Randy Knight, City Manager

Telephone: 407-599-3399

Fax: 407-599-3436

COPY TO: Brown, Garganese, Weiss & D'Agresta, P.A.

111 N. Orange Ave., Ste. 2000

P.O. Box 2873

Orlando, FL 32802-2873 Attn: Usher L. Brown, Esq. Telephone: 407-425-9566

Fax: 407-425-9596

- 19. Entire Agreement: Modification. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into and superseded by this Agreement. No representations, agreements, understandings, warranties or indemnities shall be in force hereafter or deemed to exist between the parties unless expressly set forth herein. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.
- 20. Governing Law and Binding Effect. This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida, and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, as well as their respective successors and permitted assigns. Venue for enforcement shall be in Orange County, Florida. The parties shall comply with and will enter whatever agreements or documents are necessary with respect to the reversionary interest, as required by Sections 689.18(4) and 712.05, Florida Statutes. The parties agree that the reversionary interest provided for in this Agreement shall not be in violation of

these statutes and that the term of such reversionary interest does not exceed the permissible time period set out therein.

- 21. <u>No Pledge of Credit</u>. Nothing herein contained, and nothing contained in any of the Closing Documents, shall constitute or be deemed a pledge by the City of its credit or taxing power or of any ad valorem tax revenues.
- 22. <u>Headings</u>. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 23. <u>Counterparts</u>. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.
- 24. <u>Severability</u>. If any sentence, phrase, section, provision, or portion of this Agreement is for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining provisions hereon unless the deletion of such provision would have a material adverse affect on the benefits intended to be afforded hereby to either of the parties.
- 25. <u>Litigation and Attorneys' Fees</u>. In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party in any such litigation shall be entitled to recover from the other party, in addition to any other relief granted as a result of such litigation, all costs and expenses of such litigation, including, but not limited to, reasonable attorneys' fees and paralegal's fees incurred prior to trial, at trial, on appeal and in connection with any administrative or bankruptcy proceedings.
- 26. <u>Time</u>. Time is of the essence of this Agreement and in the performance of all conditions, covenants and obligations to be performed or satisfied by the parties hereto. Waiver of performance or of any condition, covenant, or obligation by a party shall not be implied or deemed given, and shall not be deemed to be a waiver of the performance of any other condition, covenant, or obligation, unless specifically stated in writing. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.
- 27. <u>Radon Gas.</u> Radon is a 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.
- 28. <u>Effective Date</u>. The Effective Date hereof shall be the date upon which the last of the parties hereto have executed this Agreement.
- 29. <u>City Commission Approval</u>. This Agreement is conditioned upon and subject to the conditional and final approval of the City Commission of the City of Winter Park, Florida

(which final approval shall be evidenced by the City's execution of this Agreement), the Charter of the City of Winter Park, Florida, and any other requirements of Florida laws.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date indicated below their signatures intending to be bound thereby.

[signatures to follow]

WITNESSES:	PROGRESS POINT, LLC, a Florida limited liability company
	By:
(print)	Time name.
	Title:
	Date:
(print)	
WITNESSES:	CITY OF WINTER PARK, a Florida municipal corporation
	By:
(print)	Print name:
(print)	Title:
	ATTEST:
(print)	By: Cynthia S. Bonham, City Clerk
	Date:

EXHIBIT "A" [OWNER PROPERTY]

Lots 118 through 138, AND Lots 164 through 173, inclusive The Palmetto Company's Addition to Winter Park, according to the map or plat thereof as recorded in Plat Book "E", Page 14, of the Public Records of Orange County, Florida

EXHIBIT "B" [STATE OFFICE BUILDING PROPERTY]

All of Block "D" of HILL'S ADDITION, according to the plat thereof as recorded in Plat Book "C" page 50, Public Records of Orange County, Florida; and that certain property formerly called Cherokee Avenue, from its intersection with West Morse Boulevard, North to a point opposite the south boundary of Lot 5, Block "A" and Lot 10, Block "B" of HILL'S ADDITION; and that land formerly being Symonds Avenue, from its intersection with Maitland Avenue, West to a point opposite the east boundary of Lot 10, Block "B" and Lot 1, Block "C" of said HILL'S ADDITION, both Cherokee and Symonds Avenue being now closed and vacated as public thoroughfares: being otherwise described as follows: Begin at the SE corner of Block "D", HILL'S ADDITION, according to the plat thereof recorded in Plat Book C, page 50, Public Records of Orange County, Florida, run thence West to the SE corner of Lot 10, Block "C" of said HILL'S ADDITION, run thence North to the SE corner of Lot 10, Block "B" of said HILL'S ADDITION, run thence East to the SE corner of Lot 2, Block "A" of said HILL'S ADDITION, run thence South to the point of beginning.

EXHIBIT "C" [SKETCH OF RESTRICTED PORTION]

Boundary Survey

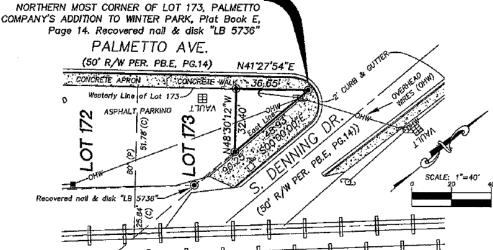
DESCRIPTION:

A PORTION OF LOT 173, THE PALMETTO COMPANY'S ADDITION TO WINTER PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "E", PAGE 14, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHERN MOST CORNER OF SAID LOT 173, AS THE POINT OF BEGINNING; THENCE RUN S 00'00'00" E, ALONG THE EAST LINE THEREOF, 48.93 FEET; THENCE RUN N 48'30'12" W, 32.40 FEET TO THE WESTERLY LINE OF SAID LOT 173; THENCE RUN N 41'27'54" E, ALONG SAID WESTERLY LINE, 36.65 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.014 ACRES MORE OR LESS.

POINT of BEGINNING



Surveyors Notes:

- Survey map and report or the copies thereof are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
- Lands shown hereon were not abstracted for rights of way, easements, ownership, or other instruments of record, by this firm.
- Bearings shown hereon are based on the East line of Lot 173, Pa; metto Company's Addition to Winter Park as being S 00'00'00"E (assumed).
- 4. Underground improvements and installations have not been located.
- 5. Precision of closure 1:10,000 Commercial Class Survey.
- 6. The property as described hereon contains 593.7 square feet or 0.014 acres, more or less.

SURVEYOR NOTED) BUSINESS <u>,</u> SET 5/8" IRON ROD & CAP "LB 5736" SET NAIL & DISC "LB PROFESSIONAL : UNLESS OTHERWSE LB. P.S.M. • PAVEMENT POWER METER OF AS 1647 EDGE CHAIN LINK FENCE UTILITY MEASURED WOODEN | 新口(g) g) D) 美田 **TECEND:**

I CERTIFY THAT THIS SURVEY MEETS OR EXCEEDS THE MINIMUM TECHNICAL, STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, IN CHAPTER 61617-6 FLORIDA ADMINISTRATIVE CODE PURSUANT TO PLORIDA STATUTE 472.027

BY: ROBERT D.M. SEARS F.S.M. FLORIDA REGISTRATION No. 4263

BOUNDARY SURVEY
JOB No. 05043.009
DRAWN BY: R. Sears
FILE NAME: 05043—9,dwg
FIELD BY: T. Sears
FIELD BOOK:
PAGE:
FIELD DATE: 05/16/11
DRAWING DATE: 05/16/11



SEARS SURVEYING COMPANY

128 Wigwam Place Maitland, Florida 32751 (407) 645.1332 Florida Licensed Business No. 5736

EXHIBIT "D"

<u>AFFIDAVIT OF INTEREST IN REAL PROPERTY – F.S. 286.23</u>

		Γ IN REAL PROPERTY is made and entered into this 1, for the sole purpose of compliance with Section
	of the Florida Statutes.	
٦	The undersigned hereby swears and	d affirms that the following is true:
	The undersigned is the Florida limited liability company, thed Exhibit "A."	of PROGRESS POINT, the legal title holder of the real property described on
		es) of every person having a beneficial interest in the hibit "A" however small or minimal is/are":
	Name	Address
	a)	
	b)	
	c)	

FURTHER AFFIANT SAYETH NAUGHT.

[SIGNATURES ON FOLLOWING PAGE]

WITNESSES:	PROGRESS POINT, LLC, a Florida limited liability company
	By:
(print)	Print name:
	Title:
-	Date:
(print)	
STATE OF	
COUNTY OF	
	fore me this day of, 2011, by, the of PROGRESS
	is personally known to me or • who provided
	
	Print Name:
	Notary Public:

EXHIBIT "E" [SKETCH OF MORSE BLVD. EASEMENT AREA]

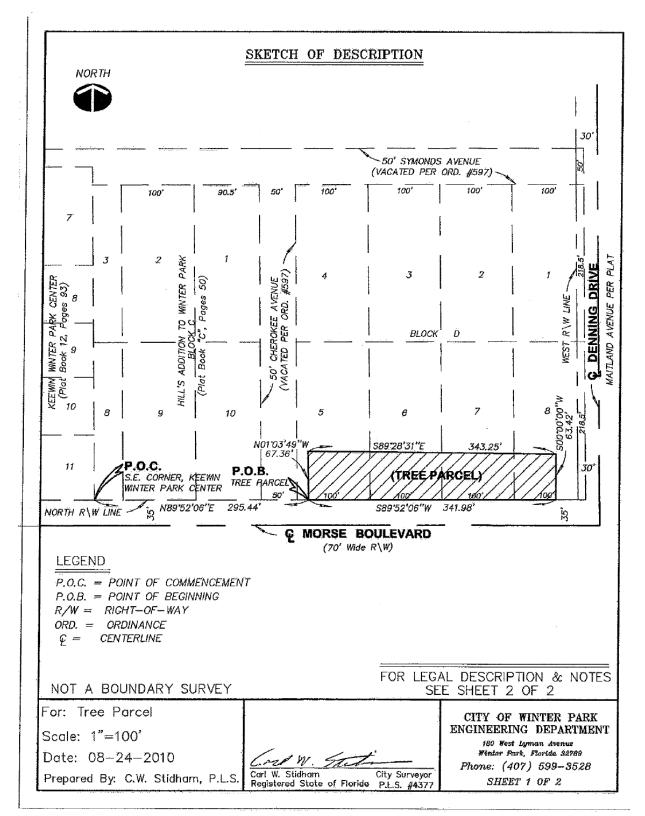


EXHIBIT "E" CONTINUED

Prepared by: Catherine D. Reischmann, Esq. Brown, Garganese, Weiss & D'Agresta, P.A. 111 N. Orange Ave. Ste. 2000 Orlando, FL 32801

Return to: City Clerk City of Winter Park 401 Park Avenue South Winter Park, FL 32789

1. CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this _____ day of _______, 2011, by CNL REALTY & DEVELOPMENT CORP., a Florida corporation, (hereinafter referred to as "Grantor"), 400 S. Orange Ave., Third Floor, Orlando, FL 32801, and the CITY OF WINTER PARK, a Florida municipal corporation, (hereinafter referred to as "Grantee") of 401 Park Avenue South, Winter Park, FL 32789.

WITNESSETH:

WHEREAS, Grantor solely owns in fee simple certain real property in Orange County, Florida, more particularly described in **Exhibit "A"** attached hereto and incorporated by this reference (the "Property");

WHEREAS, Grantor grants this conservation easement for a tree and canopy area; and WHEREAS, Grantor desires to preserve the Property in its current condition in perpetuity;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee a conservation

easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

- 1. <u>Purpose</u>. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property. The Grantor agrees to fully comply with the Mitigation Plan for the Property, attached hereto as **Exhibit "B."**
- 2. <u>Prohibited Uses</u>. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- (a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- (b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
 - (c) Removing or destroying trees, shrubs, or other vegetation.
- (d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- (e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
 - (g) Acts or uses detrimental to such retention of land or water areas.

- (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.
- 3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Grantor reserves the right to implement the Mitigation Plan attached as **Exhibit "B"**.
- 4. <u>Rights of Grantee</u>. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:
- (a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.
- (b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.
- 5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy

upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

- 6. <u>Grantee's Liability</u>. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantors, nor any person or entity claiming by or through Grantors, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property.
- 7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.
- 8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Orange County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.
- 9. <u>Successors</u>. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

WITNESSES:	CNL REALTY & DEVELOPMENT CORP., a Florida corporation
(signature)	By:
(print name)	Print name:
(signature)	
(print name)	
STATE OF FLORIDA COUNTY OF ORANGE	
	as acknowledged before me this day of the of CNL
REALTY & DEVELOPMENT CORP. produced	(check one) \square who is personally known to me or \square who
	Natara Baki'a
	Notary Public Print Name:
	My Commission expires:

 $G:\label{lem:conservation} G:\label{lem:conservation} G:\label{lem:conservation} Winter\ Park\ State\ of\ G:\ Denning\ Land\ Swap\ Conservation\ Easement. doc$