



city commission agenda

Regular Meeting

June 8, 2015
3:30 p.m.
Commission Chambers

commissioners				mayor	commissioners			
seat 1	Gregory Seidel	seat 2	Sarah Sprinkel	Steve Leary	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 website at 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.

Citizen comments at 5 p.m. and each section of the agenda where public comment is allowed are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left. 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.

agenda

1 Meeting Called to Order

2 Invocation Minister John McDonald, Flowers Temple Church of God In Christ Pledge of Allegiance

3 Approval of Agenda

4 Mayor's Report

***Projected Time**
***Subject to change**

- Presentation - FMEA 2014 Community Service Award
- Presentation - Happy 10th Anniversary Electric Utility
- Proclamation – **Code Enforcement Officer's Appreciation Week**
- Board appointments:
 - Visioning Steering Committee: Debra Ousley representing Orwin Manor area
 - Fire Pension Board – Stuart (Trey) Merrick (elected by FD Board (2015-2017))

15 minutes

5	City Manager's Report	*Projected Time *Subject to change
6	City Attorney's Report	*Projected Time *Subject to change
7	Non-Action Items	*Projected Time *Subject to change
	a. Review of concepts for parking garage design guidelines	20 minutes
8	Citizen Comments 5 p.m. or soon thereafter (if the meeting ends earlier than 5 p.m., the citizen comments will be at the end of the meeting) (Three (3) minutes are allowed for each speaker; not to exceed a total of 30 minutes for this portion of the meeting) "Cake at the Break" – Celebration of 10th anniversary of electric utility - 5:00 p.m.	
9	Consent Agenda	*Projected Time *Subject to change
	a. Approve the minutes of May 11, 2015. b. Approve the following contracts: 1. Piggyback Contract No. 12-0806H with Fisher Scientific Company, LLC for fire equipment and supplies; and authorize the Mayor to execute contract. 2. Amendment No. 2, IFB-7-2014 to Bailey Scapes, LLC for grounds maintenance for cemeteries; and authorize the Mayor to execute Amendment. 3. Amendment No. 3, RFQ-2-2012 (Continuing contracts for Professional, Architectural & Engineering Services, Discipline: Structural Engineering) to Florida Bridge & Transportation Inc.; and authorize the Mayor to execute Amendment. 4. Amendment No. 3, RFQ-2-2012 (Continuing Contracts for Professional, Architectural & Engineering Services, Discipline: Structural Engineering) to BASE Consultants, P.A.; and authorize the Mayor to execute Amendment. 5. Amendment No. 3, RFQ-2-2012 (Continuing Contracts for Professional, Architectural & Engineering Services, Discipline: Environmental Services) to Universal Engineering Sciences; and authorize the Mayor to execute Amendment. 6. Amendment No. 3, ITN-6-2013 (Utility Vegetation Management) to The Davey Tree Expert Company; and authorize the Mayor to execute Amendment. c. Approve the FDOT Quiet Zone Project Grant Agreement subject to City Attorney review and approval of forthcoming final draft. d. Approve the budget amendment for Stormwater (fee in lieu of for drainage improvements-\$56,978) and Public Works (TECO for salaries part time-\$7,000).	5 minutes

10 Action Items Requiring Discussion	*Projected Time *Subject to change
11 Public Hearings	*Projected Time *Subject to change
<p>a. <u>Request of Philip Kean:</u></p> <ul style="list-style-type: none"> - Subdivision or lot split approval to divide the property at 456 West Lyman Avenue into two buildable lots. Subdivision variances are requested for the 50' lot width and 3,750 square feet of lot area in lieu of the 75' of lot width and 8,500 square feet of lot area required in the R-1A zoning. <p>b. <u>Request of Adam Bert and Todd Albert:</u></p> <ul style="list-style-type: none"> - Subdivision or lot split approval to divide the property at 500 Fairfax Avenue into two buildable lots. Subdivision variances are requested for the 50' lot width in lieu of the 100' lot width required in the R-1AA zoning. <p>c. <u>Request of the Winter Park Racquet Club, Inc. for the property at 2011 Via Tuscany:</u></p> <ul style="list-style-type: none"> - Ordinance – To amend the “comprehensive plan” Future Land Use map to change from Single Family Residential to an Open Space and Recreation Future Land Use designation (1) - Ordinance – To amend the official zoning map to change from Single Family (R-1AAA) District zoning to Parks and Recreation (PR) (1) <p>d. <u>Request of Icon Residential:</u></p> <ul style="list-style-type: none"> - Conditional use approval to redevelop the 3.45 acres collectively referred to as 1800 Lee Road, including the tax parcels of 1746/1800/1802/1806/1810/1814/1818/1824/1828/1832 Lee Road for a 30 unit townhouse development (cluster housing). <p>e. Real Estate Purchase and Sale between Orange County School Board, City of Winter Park and UP Fieldgate US Investments</p> <p>f. Indemnity Agreement between the City and UP Fieldgate US Investments – Winter Park LLC</p> <p>g. Resolution – Extending the term of existence for the Visioning Steering Committee</p> <p>h. Resolution - Approving the Joint Participation Agreement (JPA) with Florida Department of Transportation (FDOT) to have decorative lighting installed on the south side of Fairbanks Avenue between Orlando Avenue and Interstate 4</p>	<p>20 minutes</p> <p>20 minutes</p> <p>20 minutes</p> <p>20 minutes</p> <p>15 minutes</p> <p>15 minutes</p> <p>5 minutes</p> <p>10 minutes</p>

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|---|------------|
| i. Resolution - Approving the Joint Participation Agreement (JPA) with Florida Department of Transportation (FDOT) to have decorative lighting installed on Aloma Avenue between Pennsylvania Avenue and Lakemont Avenue | 10 minutes |
| j. <u>Fairbanks Avenue Undergrounding:</u>
<ul style="list-style-type: none"> - Agreement regarding construction of underground electric distribution lines with Duke Energy Florida - Resolution – Approving Joint Participation Agreement (JPA) with Florida Department of Transportation (FDOT) to reimburse the City for undergrounding Duke Energy’s distribution facilities along Fairbanks Avenue between Orlando Avenue and I-4 - Three party agreement with Duke Energy, Florida Department of Transportation and the City relating to the undergrounding of Duke’s transmission line | 20 minutes |

12	City Commission Reports	*Projected Time *Subject to change
	<ul style="list-style-type: none"> a. Commissioner Seidel b. Commissioner Sprinkel c. Commissioner Cooper d. Commissioner McMacken e. Mayor Leary 	10 minutes each

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."



city commission **city manager's report**

item type

City Manager's Report

meeting date

June 8, 2015

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
Quiet Zones	Grant funds agreement received, are being reviewed and negotiated.	Agreement to be executed by June 2015.
Fairbanks electric transmission and distribution undergrounding	Engineering cost estimates indicate that the project can be completed within FDOT's available funding. Contracts among Duke, the City, and FDOT in final draft form.	Completed. On June 8 agenda.
New Hope Baptist Church Project	Pastor John Phillips continues pursuing licensing for the day care and school through DCF and obtaining required certifications for staff. Exterior construction and landscaping complete.	Approved Conditional Use will expire in September 2015.
Railroad crossing update	Grade crossing repairs included in a CIP managed by FDOT.	Contracts to be awarded by August 2015.
Future tree plantings	FY 2015 to date – 220 trees planted.	Street tree inventory has started.
MLK (Rollins) Restroom	Plans complete. Rollins will be contracting.	Project in for permitting. Contractor anticipated to break ground by end of June. Construction will take approximately (four) 4 months.
Historic Preservation Ordinance	Draft approved by the Historic Preservation Board. Work session scheduled for June 17 at 9:00 a.m. to review with citizens group.	To be determined based on work session outcome.
Underground electric	Refinement/update of policies re: undergrounding of overhead electric service wires	TBD – June 2015
Lake Lillian Restoration	This project is underway at Mead Botanical Garden.	Pond excavation is complete and boardwalk replacement and planting will be complete by end of June.
Visioning Steering Committee	Meeting scheduled for June 9 at 3:00 p.m. in Community Center.	On-going activities.

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.



city commission agenda item

Item type	Non-Action Item	meeting date	June 8, 2015		
prepared by	Jeff Briggs	approved by	<input checked="" type="checkbox"/>	City Manager	
department	Planning		<input type="checkbox"/>	City Attorney	
division			<input type="checkbox"/>	N/A	
board approval	N/A	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A	final vote
strategic objective	<input type="checkbox"/> Exceptional Quality of Life				
	<input type="checkbox"/> Fiscal Stewardship				
	<input type="checkbox"/> Intelligent Growth & Development				
	<input type="checkbox"/> Public Health & Safety				
	<input type="checkbox"/> Investment in Public Assets & Infrastructure				

Subject: Review of Concepts for Parking Garage Design Guidelines.

The planning staff will present a short (15 minute) power point presentation on the design concepts proposed to be included within Parking Garage Design Guidelines.

Motion | Recommendation by P&Z:

No action is requested. This same presentation was made to the Planning and Zoning Board at their work session on April 28th. The P&Z Board agreed with the general direction. To be formally adopted, a specific Ordinance and public hearings must be held in the future.

Background:

The City Commission has always asked for SunTrust quality in parking garage design but that label has never been specifically defined. Some time ago the City Commission directed staff to develop Parking Garage Design Guidelines to guide developers and the P&Z/City Commission on the attributes of good parking garage design both on the exterior and interior, in order to give some definition to what we mean by SunTrust quality.

Alternatives | Other Considerations:

In the absence of design guidelines, the City will continue to make decisions on the "right" look of parking garages on an individual case by case basis.

Fiscal impact:

None for the City.

REGULAR MEETING OF THE CITY COMMISSION
May 11, 2015

The meeting of the Winter Park City Commission was called to order by Mayor Steve Leary, at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Reverend Dr. Harold Custer, St. Andrews United Methodist Church, followed by the Pledge of Allegiance.

Members present:

Mayor Steve Leary
Commissioner Greg Seidel
Commissioner Sarah Sprinkel
Commissioner Tom McMacken
Commissioner Carolyn Cooper

Also present:

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

Approval of the agenda

Motion made by Commissioner Sprinkel to approve the agenda; seconded by Commissioner Seidel and approved by acclamation with a 5-0 vote.

Mayor's Report

a. Recognition – Winter Park High School State and National Championships

Tim Smith, Winter Park High School Principal and Michael Brown, Director of Athletics spoke about the support the City provides to the High School and the accomplishments of their athletes. The teams congratulated and recognized were: **the Girls' Cross Country Team, the Competition Cheerleading Team, the Special Olympics Unified Basketball Team, the Girls' Crew Team, the Boys' Crew Team, Girls' 4x800 Meter Relay Team, Doubles Tennis State Champions Ninan Kumar and Will Smyrk, and Rafaella Gibbons the Cross Country 4A Individual State Champion and 3200 Meter Run State Champion.**

b. Honoring the life of Ella Mae Talbert in "The Sage Project"

Vice Mayor Sprinkel and Peter Schreyer, Executive Director of Crealde School of Art both honored the life of Ella Mae Talbert. Vice Mayor Sprinkel spoke about her relationship with Dr. Talbert from Lakemont Elementary School who introduced his family members that were present. Mr. Schreyer spoke about the Hannibal Square Heritage Center in Winter Park. He presented a picture of Ella Mae Talbert that included the history of her life that will be part of the Heritage Center collection.

c. Proclamation – Women's Lung Health Week

Janelle Middentz, Area Director for the American Lung Association, spoke about lung cancer in woman. Mayor Leary proclaimed May 10-16, 2015 as **"Women's Lung Health Week"**.

d. Proclamation – Building Safety Week

Mayor Leary proclaimed May 2015 as Building Safety Month. Building Director George Wiggins provided a PowerPoint presentation about his department personnel, the many inspections they do, the safety issues they deal with, and other Building Department services they provide as well as enhancements they made to their department.

e. Proclamation – Emergency Medical Services Week

Mayor Leary proclaimed May 17-23, 2015 as Emergency Medical Services Week. Fire Chief Jim White spoke about the many services they provide such as CPR classes, the elaborate 911 system, the PD vehicles containing AED's in their vehicles, and the success rate of survivability that comes from their trained EMT's.

f. 2015 Advisory Board appointments

Nominations for the 2015 Advisory Board appointments were brought forward as follows:

Board of Adjustments: Brian Mills (reappointed-from alternate to replace Phil Kean on regular position 2015-2018); Laura Turner (alternate)

Code Enforcement Board: Keith Manzi and Daniel McIntosh (reappointed 2015-2018); Kyle Sanders (2015-2018 to replace John Hunt); Clay Roesch (alternate)

CRA Advisory Board: Lance Decuir (reappointed 2015-2018); Jeffrey Stephens (reappointed-from alternate to replace Alan Thompson on regular position 2015-2018); Alex Tragger (alternate)

Economic Development Advisory Board: Patrick Chapin, Stephen Flanagan, Kelly Olinger (all reappointed 2015-2018) and Maura Weiner (reappointed alternate)

Historic Preservation Board (see discussion below): Laura Armstrong (was nominated as alternate but moved into Barbara DeVane position 2015-2018)

Housing Authority Board: Dorothy Felton, Kenneth Goodwin, Judith Kovisars, Shanna Windle (all reappointed 2015-2018)

Keep Winter Park Beautiful and Sustainable Board: All new appointments: Erin Fleck (2015-2017 (2 years) replaces Steve DiClemente); Sally Miller (2015-2018 replaces Carol Kostick); Ben Ellis (2015-2018 replaces John Tapp); Lambrine Macejewski (2015-2018 replaces Joseph Robillard); Baxter Murrell (2015-2017 (2 years) replaces Patricia Schoknecht); Bill Heagy (alternate)

Lakes and Waterways Board: Amy Byrd (reappointed – alternate to regular position to replace Marty Sullivan 2015-2018); Steve DiClemente (from KWPB&S – Alternate)

Parks and Recreation Board: Gary Diehl (reappointed – from alternate to regular position to replace Blair Culpepper 2015-2018); Mark Calvert (alternate)

Pedestrian and Bicycle Board: Terry Bangs (reappointed – from alternate to regular position to replace Jean Siegfried 2015-2018); Karen McGuire (2015-2018 to replace Susan Pins); Duane Skage (alternate)

Public Art Advisory Board: Katy Bakker, Susan Battaglia, Sarah Davey (reappointed 2015-2018); Jessica de Arcos (2015-2018 to replace Betty Hartnett); Caryn Israel (2015-2018 to replace Dana Thomas); Lauren Branzei (alternate)

Tree Preservation Board: I. Paul Mandelkern (reappointed-from alternate to regular position to replace Myriam Garzon-Greenberg 2015-2018); Catherine Knudsen (alternate)

Utilities Advisory Board: Barbara DeVane (2015-2018 to replace Linda Lindsey); Lawrie Platt Hall (2015-2018 to replace John Reker); Rick Baldocchi (2015-2018 to replace David Smith); Tara Tedrow (alternate)

Fire Pension Board: Mike Hlavic (2015-2017 to replace Tony Grey)

Police Pension Board: Kevin Roesner (WPPD appointment) and Sandy Modell (Pension Board appointment); Bill Manuel (reappointed 2015-2017)

Motion made by Mayor Leary to nominate all the board appointments as presented; seconded by Commissioner Sprinkel.

Motion amended by Commissioner McMacken to exclude the nominees presented for the Historic Preservation Board; seconded by Commissioner Cooper.

Discussion ensued regarding the number of members on each board and whether the number of members should be lowered. Mayor Leary addressed the Pedestrian and Bicycle Board vacancies and corrected that there was only one regular position and one alternate to be filled so he removed Jim McFarland from the list presented.

Jack Lane, 1200 Lakeview Drive, addressed the appointment process.

Upon a roll call on the amendment to remove the Historic Preservation Board from the main motion, Commissioners Seidel, Cooper and McMacken

voted yes. Mayor Leary and Commissioner Sprinkel voted no. The motion carried with a 3-2 vote.

Upon a roll call vote on the main motion (excluding the Historic Preservation Board nominees), Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

Commissioner McMacken spoke about the Historic Preservation Board working on an ordinance to present to the Commission at a future date. He expressed his preference to extend the current board members for a defined period to allow the board to complete their work on the ordinance or have the five current remaining members complete the task. Discussion ensued regarding the need to amend the **board ordinance if this moves forward, the Mayor's Charter provision regarding** board appointments that supersedes the current ordinances, the nominees for this board by the Mayor this evening, the current board still having five members whose terms are not expiring to complete the ordinance, if having new voices could bring new ideas pertaining to the ordinance, and the need for the Board to expedite and complete the ordinance.

Motion made by Mayor Leary to appoint Bill Segal; seconded by Commissioner Sprinkel.

Motion made by Mayor Leary to appoint Phil Kean; seconded by Commissioner Sprinkel.

Motion made by Mayor Leary to appoint Laura Armstrong as the alternate; seconded by Commissioner Sprinkel.

The following public comments were made:

Patrick Chapin, Chamber of Commerce, asked what happens if the Mayor makes nominations and he does not get the support from the majority of the Commission.

Pete Weldon, 700 Via Lombardy, stated he would like more input concerning the **historic ordinance and asked for support of the Mayor's nominations for this board.**

Jack Lane, 1200 Lakeview Drive, asked to postpone the appointments.

Betsy Owens, Casa Feliz, asked to not prolong the process with adding new members.

Sally Flynn, 1400 Highland Road, asked to not add new members at this time.

Karen James, 1551 Dale Avenue, asked to not appoint new members and to wait for the ordinance.

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

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

Upon a roll call to appoint Laura Armstrong, Commissioners Cooper and McMacken voted no. Mayor Leary and Commissioners Seidel and Sprinkel and voted yes. The motion carried with a 3-2 vote. It was clarified that Laura Armstrong who was nominated as the alternate will move into the regular position of Barbara DeVane since they did not fill the other two positions.

Public Comments (Items not on the agenda):

1. Jeffrey Jontz, provided an update regarding the Library Task Force.
2. Bee Epley, 151 N. Orlando Avenue, #156, spoke against the \$100,000 contribution to the Dr. Phillips Performing Arts Center.
3. Bud Oliver, YMCA, stated he was leaving and thanked the Commission for their support throughout the years.
4. Gene Randall, 1285 Richmond Road, spoke against the number of Chamber of Commerce members serving on the Visioning Committee.
5. Gary Sacheck, 1034 Aloma Avenue, spoke about possible future locations for the library.
6. Leonard Feinberg, 250 Cortland Avenue, presented an idea concerning moving the location of the library and city hall.
7. Patrick Chapin, Chamber of Commerce, stated he has an open door policy and would appreciate anyone that is anti-Chamber to come to him with any concerns to avoid providing inaccurate information. He corrected information provided earlier by a citizen. He took offense to comments made regarding Chamber of Commerce members who he said are wonderful people.

Recess

A recess was taken from 5:43 – 6:03 p.m.

City Manager's Report

City Manager Knight reminded the Commission that the May 25, 2015 meeting has been cancelled due to the holiday.

Commissioner McMacken requested that a list be provided with the species of trees that were planted. City Manager Knight acknowledged the request.

Commissioner Cooper requested that a place be created on the website for a library list of documents such as design standards, the CRA plan and amendments, and other reports for easy access.

City Attorney's Report

Attorney Brown addressed the motion filed by their office in Federal Court involving the current version of the law on red light camera enforcement. He stated they filed a motion to dismiss and the other party voluntarily dismissed. they will monitor to see if they re-file anything and as of this time Winter Park is dismissed out of the case.

Non-Action Item

a. Financial Report – March 2015

Finance Director Wes Hamil provided the March 2015 financial report. Questions were answered by Mr. Hamil and City Manager Knight.

Motion made by Mayor Leary to accept the financial report; seconded by Commissioner Leary and carried unanimously with a 5-0 vote.

Consent Agenda

- a. Approve the minutes of April 27, 2015.
- b. Approve the following purchases and contracts:
 - 1. PR 157606 to CDW-G for the purchase of Electronic Citation Reporting; \$161,450.08.
 - 2. Change Order Request (modify existing Blanket Purchase Order) to Heart Utilities of Jacksonville to include purchase of wire material for Electric Undergrounding Project; \$200,000.
 - 3. Contract renewal with Bellomo-Herbert & Company, Amendment 3 for RFQ-2-2012 Continuing Contracts for Professional, Architectural, & Engineering Services (Parks & Recreation) and authorize the Mayor to execute Amendment 3.
 - 4. Contract renewal with Le-Huu Partners, Amendment 3 for RFQ-2-2012 Continuing Contracts for Professional, Architectural, & Engineering Services (Parks & Recreation) and authorize the Mayor to execute Amendment 3.

5. Contract renewal with Environmental Research & Design, Inc., Amendment 3 for RFQ-2-2012 Continuing Contracts for Professional, Architectural, & Engineering Services (Lake Management) and authorize the Mayor to execute Amendment 3.

Motion made by Commissioner McMacken to approve the Consent Agenda, seconded by Mayor Leary. No public comments were made. **The motion carried unanimously with a 5-0 vote.**

Action Items Requiring Discussion

- a. Request for an extension of the Vehicle Sales Agreements at 1891, 2250 and 2286 W. Fairbanks Avenue

Planning Manager Jeff Briggs explained the requests made by the property owners of 1891 W. Fairbanks (Frank Ray) and 2250/2286 W. Fairbanks (Jim Veigle) to extend the period of vehicle sales permitted on these properties. Questions of the Commission were answered by Mr. Briggs.

Motion made by Commissioner Sprinkel to approve the extension of the Vehicle Sales Agreements to expire September 28, 2017 (during the term of the electric undergrounding project in recognition of impact of that construction on the West Fairbanks Avenue corridor); seconded by Commissioner Seidel and carried unanimously with a 5-0 vote.

Public Hearings:

- a. Request of Fifth Third Bank:

ORDINANCE NO. 2997-15: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE I "COMPREHENSIVE PLAN" FUTURE LAND USE MAP SO AS TO CHANGE THE FUTURE LAND USE DESIGNATION OF SINGLE FAMILY RESIDENTIAL TO PARKING LOT DESIGNATION ON THE PROPERTY AT 453 NORTH LAKEMONT AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE. Second Reading

ORDINANCE NO. 2998-15: AN ORDINANCE AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING" AND THE OFFICIAL ZONING MAP SO AS TO CHANGE SINGLE FAMILY RESIDENTIAL (R-1A) DISTRICT ZONING TO PARKING LOT (PL) DISTRICT ZONING ON THE PROPERTY AT 453 NORTH LAKEMONT AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE. Second Reading

Conditional use approval to develop the properties at 1851/1861/1871 Aloma Avenue and 443/453 North Lakemont Avenue for a one story 3,500

square foot branch bank with drive-thru tellers and 5,715 square feet of professional office

Attorney Brown read both ordinances by title. There was a simultaneous public hearing. Since the conditional use was a quasi-judicial hearing, Commissioners and Mayor Leary disclosed their ex-parte communications with staff, residents, property owners, and/or the applicant/attorney since the last meeting.

Planning Manager Jeff Briggs summarized the changes made since the last meeting. This included the updated plans to conform to all the conditions that were recommended originally by the P&Z Board and the ones brought forward by the neighbors that were also incorporated into the P&Z recommendations. This **included the 8' brick wall on the north property line buffering the neighbors, the oak trees instead of cedars, the parking lot lighting and the revisions to the elevation on the western side of the building that has been changed.** Mr. Briggs addressed the ATM lighting that under the tellers and that applicant understands they have to comply with state law.

Mr. Briggs stated that the easement to interconnect this property with the office property to the west has not been agreed to. He stated that is the discretion of the Commission if they determine there is a public interest in requiring it and decide to require that as a condition of approval and if so it would be a dedication to the City; not to any adjacent property owners for governance over that easement. He stated the applicant is not agreeing to the easement which is the only remaining issue that needs to be discussed.

There was discussion pertaining to the easement and the traffic flow and impact through the neighborhoods. Mayor Leary asked if any study/information was provided to support that the easement will alleviate traffic through the neighborhood on Edwin which should be considered if it will ease the traffic through the neighborhood. Mr. Briggs stated at the traffic study from the applicant only addresses their off-site impacts.

Attorney Arthur Baker on behalf of Fifth Third Bank spoke about the site plan revisions, the incorporation of additional live oaks, elevations, and façade enhancements. He commented about the easement request and has determined that the easement does not alleviate the issues of the intersection of N. Lakemont and Aloma and will not address traffic concerns on Edwin Boulevard. He spoke about the uncertainty of what happens to their west as there is no site plan and there is an uncertain use of the property at this time. He stated they are not saying they will never agree to a cross access easement, but they are saying not now until a future use is known.

Mr. Baker volunteered **an additional condition of approval as follows:** "Upon Matsby Properties LLC (its successors and assigns) submitting a final site plan to the City of Winter Park for the property with tax identification number 05-22-30-

1140-00-160 (the "Matsby Property") and subject to commercially reasonable discretion of Fifth Third Bank, Fifth Third Bank (its successors and assigns) shall enter into an agreement with Matsby Properties LLC providing for cross access between the Matsby Property and the property owned by Fifth Third Bank that is the subject of this approval. This condition shall automatically terminate two years from the date of approval." Attorney Brown stated this is a very reasonable proposal but asked the Commission to consider if two years is sufficient time for it to terminate. He also wanted to insure that this condition included a process to reach an agreement rather than just be able to say no based on their commercial discretion.

Motion made by Commissioner McMacken to approve the application for conditional use as was presented this evening with the modifications included in the plan, and also with the additional condition of approval that was submitted by the applicant, and for the City Attorney to insure a means for resolution of the easement negotiations if the parties cannot agree as to what is reasonable under the circumstances; seconded by Commissioner Sprinkel.

Motion made by Commissioner McMacken to adopt the comprehensive plan ordinance; seconded by Commissioner Sprinkel.

Motion made by Commissioner McMacken to adopt the zoning ordinance; seconded by Commissioner Sprinkel.

Commissioner Cooper expressed concerns with the proposed additional condition of approval stating a particular property owner but that it should reflect the address of the property. Commissioner Sprinkel stated she is not interested in having an easement but that it should be worked out by the residents there. Commissioner Seidel stated the condition addresses his concerns.

Kathy Helsby, 2100 Aloma Avenue (Matsby Properties LLC), disagreed that the applicant has done everything they can to work this out with them. She asked them to consider putting the easement in the front, set it as temporary parking spaces now, then when their site plan comes up for approval the easement could be rescinded at that time if it is deemed to not be good for the bank. She submitted a copy of emails between her and the bank as well as pictures.

Fifth Third Bank's traffic engineer addressed questions posed by Mayor Leary related to what turns can be made into or out of the property legally because of the median.

Upon questioning by Commissioner Seidel, Attorney Brown explained the proposed condition submitted by the applicant. Mayor Leary commented that he does not want to mediate this between two property owners; we have heard it provides no benefit to the City regarding traffic flow in the neighboring streets or on the main

street.

Commissioner Cooper commented she believed there is a public benefit to the City because she believes in alleys and cross connections of any type of commercial or retail property that keeps people from having to move into the Aloma traffic by turning right from Lakemont. She spoke about being uncomfortable with being put in the position of trying to play traffic engineers.

Motion made by Commissioner Cooper to table this application until our traffic expert and our attorney bring us back language that would be appropriate to do what is in the best interest of traffic on Aloma and a public purpose here. Motion failed for lack of a second.

Attorney Baker concluded by saying he has had extensive discussions with the broker for the Helsby's property and they are more than willing to continue this conversation. Mrs. Helsby commented about the lack of time they had to address this with the applicant.

Upon a roll call vote on the conditional use motion above, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper, McMacken voted yes. The motion carried unanimously with a 5-0 vote.

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

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

- b. RESOLUTION NO. 2153-15: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, EXTENDING CERTAIN DEADLINES IN ORDINANCE NO. 2965-14; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE

Attorney Brown read the resolution by title. Public Works Director Troy Attaway explained that a request was received to extend the reversionary deadline for the Loren Avenue right-of-way vacation (originally adopted June 23, 2014) due to extenuating circumstances related to private legal actions between the adjoining properties. The development has been on hold while waiting for a resolution of the legal matters. As originally adopted, the Loren Avenue right-of-way would revert back to the City of as of June 1, 2015 with the necessary permits and approvals being submitted and granted. The developer Mr. Bellows cannot move forward until these legal matters are resolved.

Motion made by Commissioner Sprinkel to adopt the resolution; seconded by Commissioner McMacken. Dan Bellows, W. New England Avenue and

representing Benjamin Partners, explained what has been already completed and the legal issues he is having with the 50' x 73' piece of property. He stated this project has been approved by the City and cannot move forward because of this. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.**

- c. RESOLUTION NO. 2154-15: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, EXTENDING THE TERM OF EXISTENCE FOR THE GOLF COURSE STRATEGIC PLAN TASK FORCE; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

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

City Commission Reports:

- a. Commissioner Seidel

Commissioner Seidel reported that he attended the emergency training with the Fire Department; and provided an update on the America In Bloom judging dinner he attended.

- b. Commissioner Sprinkel

Commissioner Sprinkel reminded the Commission about the City hosting the next Tri-County luncheon; she reported about individuals who are over 100 years old in our community; reported that Sir Paul McCartney was in town; and that Ann Saurman's house has been placed on the National Historic Registry which is next door to her.

- c. Commissioner Cooper

Commissioner Cooper announced the good discussions they have had on historic preservation and that both forums were well attended; announced that on May 13 at 9:00 all the comments will be provided to the Historic Preservation Board; the Casa Feliz colloquium is May 16; Dr. Leslie Poole is talking about women in the environment on May 20 as part of the historic museum speaker series; requested that she be provided an update regarding West Fairbanks as to what has been recommended as far as design standards, etc. and which items are useful; and that Representative Mike Miller provide an update when he returns.

- d. Commissioner McMacken

Commissioner McMacken attended the honor that the Library bestows upon the valedictorians from Winter Park High School that are an incredible group of kids; attended Library Task Force and Historic Preservation meetings which were great opportunities for community input. He commented that he was very impressed and gave him great encouragement for the visioning process because it was demonstrated that we can have a diverse group of individuals in the community to get together in a public forum and talk about issues in a reasonable manner.

e. Mayor Leary

Mayor Leary reported that he attended the MetroPlan Municipal Advisory Committee meeting and the Orange County Fallen Officer's Memorial service.

The meeting adjourned at 7:35 p.m.

ATTEST:

Mayor Steve Leary

City Clerk Cynthia S. Bonham, MMC



city commission agenda item

item type	Consent Agenda	meeting date	June 8, 2015
prepared by department division	Purchasing Division	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A final vote		

Piggyback contracts

	vendor	item background	fiscal impact	motion recommendation
1.	Fisher Scientific Company, LLC	Piggyback Contract No. 12-0806H – Fire Equipment and Supplies	Total Expenditure included in approved FY15 budget.	Commission approve Piggyback Contract with Fisher Scientific Company, LLC and authorize the Mayor to execute contract.
Lake County issued a formal solicitation to award this contract.				

Contracts

	vendor	item background	fiscal impact	motion recommendation
2.	Bailey Scapes, LLC	Amendment No. 2 – IFB-7-2014 – Grounds Maintenance for Cemeteries	Total Expenditure included in approved FY15 budget. Amount: \$79,980.	Commission approve Amendment No. 2 to Bailey Scapes, LLC and authorize the Mayor to execute Amendment.
This contract was awarded to Bailey Scapes, LLC on April 4, 2014. Requesting to add additional services to include grounds maintenance at Public Works Compound, Water Treatment Plants, Lift Stations & Retention Ponds.				
3.	Florida Bridge & Transportation Inc.	Amendment No. 3 – RFQ-2-2012 – Continuing Contracts for Professional, Architectural & Engineering Services Discipline: Structural Engineering	Total Expenditure included in approved FY15 budget.	Commission approve Amendment No. 3 to Florida Bridge & Transportation Inc. and authorize the Mayor to execute Amendment.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to Florida Bridge & Transportation Inc. on June 25, 2012. The contract term was for a period of one (1) year with a total of four (4) one year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2015.				

	vendor	item background	fiscal impact	motion recommendation
4.	BASE Consultants, P.A.	Amendment No. 3 – RFQ-2-2012 – Continuing Contracts for Professional, Architectural & Engineering Services Discipline: Structural Engineering	Total Expenditure included in approved FY15 budget.	Commission approve Amendment No. 3 to BASE Consultants, P.A. and authorize the Mayor to execute Amendment.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to BASE Consultants, P.A. on June 25, 2012. The contract term was for a period of one (1) year with a total of four (4) one year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2015.				
5.	Universal Engineering Sciences	Amendment No. 3 – RFQ-2-2012 – Continuing Contracts for Professional, Architectural & Engineering Services Discipline: Environmental Services	Total Expenditure included in approved FY15 budget.	Commission approve Amendment No. 3 to Universal Engineering Sciences and authorize the Mayor to execute Amendment.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to Universal Engineering Sciences on June 25, 2012. The contract term was for a period of one (1) year with a total of four (4) one year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2015.				
6.	The Davey Tree Expert Company	Amendment No. 3 - ITN-6-2013 – Utility Vegetation Management	Total Expenditure included in approved FY15 budget.	Commission approve Amendment No. 3 to The Davey Tree Expert Company and authorize the Mayor to execute Amendment.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to The Davey Tree Expert Company on May 13, 2013. The contract term was for a period of one (1) year with a total of four (4) one year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2015.				



city commission agenda item

Item type	Consent Agenda	meeting date	June 8, 2015		
prepared by	Lena Petersen/Donald Marcotte	approved by	<input checked="" type="checkbox"/> City Manager		
department	Public Works		<input checked="" type="checkbox"/> City Attorney		
division	Administration		<input type="checkbox"/> N/A		
board approval		<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> N/A	final vote
strategic objective	<input checked="" type="checkbox"/> Exceptional Quality of Life <input type="checkbox"/> Fiscal Stewardship				
	<input type="checkbox"/> Intelligent Growth & Development <input type="checkbox"/> Public Health & Safety				
	<input checked="" type="checkbox"/> Investment in Public Assets & Infrastructure				

Subject

Execution of State of Florida, Department of Transportation Quiet Zone Improvement Agreement for Project Funding

motion | recommendation

Staff recommends approval to execute the FDOT Quiet Zone Project Grant Agreement subject to City Attorney review and approval of forthcoming final draft.

Background

January 27, 2014, the subject of quieting train horns was presented to the City Commission by Staff.

August 12, 2014, Staff submitted a Quiet Zone (QZ) Corridor Funding Grant Request to the Florida Department of Transportation seeking state fund match for capital improvements to provide Supplemental Safety Measures (SSMs) at railroad crossings through Winter Park. On January 29, 2015, Winter Park received notice of funding award.

February 9, 2015, City Commission meeting, the City Manager's Report announced Winter Park's award of funding.

February 23, 2015, City Commission meeting, City Manager's Report discussion ensued regarding Agreement development and the June 30, 2015 deadline to execute.

March 25, 2015, the Quiet Zone Improvement Agreement was received from FDOT. Both Staff and City Attorney have reviewed the draft, returning revisions to FDOT on April 30, 2015. Currently, FDOT is in the process of evaluating comments received from all of the awarded local agencies. What has not been announced by FDOT is

how long this evaluation process will take or whether the June 30, 2015, deadline for execution of Agreement will be extended. As a preemptive measure, Staff requests approval to execute the Quiet Zone Improvement Agreement contingent upon City Attorney review and consent of the final draft should we indeed need to meet the June 30 deadline.

alternatives | other considerations

Table approval to execute agreement until the final draft of the agreement is received from FDOT for review and execution.

fiscal impact

Total Project Cost \$2,352,000

FDOT contribution \$1,137,500

City contribution \$1,214,500 (\$534,500 from the Hurricane Recovery Fund, \$680,000 from Winter Park's SunRail Commuter Station Project surplus fund held by FDOT).

Financial Project No.: 436014-1-54-08	Fund: DPTO	FLAIR Approp: 088808
Contract No.: _____	Function: _____	FLAIR Obj.: 55100500
	Contract Amount: \$ _____	Org. Code: 55 31 00 00 933
	DUNS No: _____	Vendor No.: _____

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

QUIET ZONE IMPROVEMENT AGREEMENT

This Quiet Zone Improvement Agreement (“Agreement”), is entered into this _____ day of _____, 2015, between the State of Florida, Department of Transportation (“Department”) and the City of Winter Park (“Agency”). The Department and the Agency are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Department has determined that the project described in Exhibit “A” attached to and incorporated in this Agreement is for the public purpose of quiet zone capital improvements in response to the use of locomotive horns at highway-rail grade crossings, and the Department is authorized pursuant to Chapter 2014-51, Laws of Florida, to approve an expenditure to the Agency for up to fifty percent of the nonfederal and nonprivate share of project costs, with the remaining share being provided by the Agency.

B. The Department is prepared, in accordance with its Adopted Five Year Work Program, to undertake the project described as the Quiet Zone Improvements, in Fiscal Year 2014/2015, which project is known as FM #436014-1-54-08 (the “Project”).

C. The Department estimates the total cost of the Project to be Two Million, Three Hundred Fifty-Two Thousand and 00/100 Dollars (\$2,352,000.00).

D. The Agency is prepared to contribute 51.64% to the total cost of the Project, up to One Million, Two Hundred Fourteen Thousand and Five Hundred 00/100 Dollars (\$1,214,500).

E. The Department is prepared to contribute 48.36% to the total cost of the Project up to One Million, One Hundred Thirty-Seven Thousand, and Five Hundred and 00/100 Dollars (\$1,137,500.00).

F. The Department and the Agency shall each contribute 50% of any cost to the Project that exceeds the original estimated cost noted in Section C above. The Agency’s liability for costs under this Section may not exceed One Hundred Seventy Six Thousand, Four Hundred

00/100 Dollars (\$176,400) and is conditioned upon the Department providing the Agency with proper written notice as required under Sections 4(a) and (b).

G. The Department and the Agency have determined that it is in the best interest of the State of Florida for the Department to complete the work as described in this Agreement, as the Department is the fee simple title owner of the property where the Project is located.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. The Recitals above are true and correct and are made as part of this Agreement.
2. The term of this Agreement shall begin upon the date of signature of the last party to sign this Agreement ("Effective Date") and continue for three (3) years after the Effective Date.

3. The total estimated cost of the Project is Two Million, Three Hundred Fifty-Two Thousand and 00/100 Dollars (\$2,352,000.00). This amount is based on the Schedule of Funding, Exhibit "B" attached to and incorporated in this Agreement. The Agency agrees to contribute 51.64% of the actual costs incurred, excluding Department overhead, in an amount not to exceed One Million, Two Hundred Fourteen Thousand and Five Hundred 00/100 Dollars (\$1,214,500). The Department agrees to contribute 48.36% of the actual costs incurred, excluding Department overhead, in an amount not to exceed One Million, One Hundred Thirty-Seven Thousand, and Five Hundred and 00/100 Dollars (\$1,137,500.00). Project costs eligible for contribution will be allowed only from the Effective Date of this Agreement. The funding for this Project is contingent upon annual appropriation by the Florida Legislature, the availability of funds pursuant to this Paragraph 3, written Department approval of costs in excess of the approved funding and all other terms of this Agreement, and Department approval of the Project scope and budget at the time appropriation authority is available. The foregoing principal is also applicable to the Agency at the City level, therefore, the Agency and Department agree to contribute fifty (50%) percent of all costs that exceed the estimated costs noted in Exhibit "B." The Agency's liability for costs under this Section may not exceed One Hundred Seventy Six Thousand, Four Hundred 00/100 Dollars (\$176,400) and is conditioned upon the Department providing the Agency with proper written notice as required under Sections 4(a) and (b).

3. Travel costs by either the Agency or Department will not be reimbursed.

4. The Agency agrees that it will, at least fourteen (14) calendar days prior to the Department's advertising the SunRail Project for bid, furnish the Department an advance deposit in the amount of \$1,214,500 for full payment of the Agency's portion of the estimated cost of the Project. The funds used by the Agency for the deposit will consist of \$534,500 in the form of a check, with the remaining balance to come from the Winter Park, Florida, SunRail Commuter Station surplus fund held by the Department. The Department shall release such surplus funds previously paid by the Agency in the amount of \$680,000 and credit such amount to the Agency's deposit. The Department may utilize this deposit for payment of the costs of the Project. Should on-site construction not begin within six (6) months of remittance of said deposit, the Agency, at its option, may request refund of its deposit from the Department, to be paid within forty (40) calendar days from the date of request and, afterward, subject to an interest charge at a rate established pursuant to Section 55.03, Florida Statutes.

- (a) The Department will notify the Agency as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the total project costs. No bid amount plus allowances in excess of the total project costs as set forth in Paragraph 3 may be accepted by the Department without prior-written notification to the Agency and the Agency's written approval. Should the Agency provide such approval in writing, the Agency will provide an additional deposit within fourteen (14) calendar days of notification from the Department or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the Agency's share of the total project costs. If the Agency cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the Department's project manager indicating when the deposit will be made. The Agency understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to a delay of the Project.
- (b) The Department will notify the Agency as soon as it becomes apparent that Project modifications or changes to bid items occur, which will increase the Agency's share of total project costs. The Department shall not proceed with the Project until the Department obtains the written approval of the Agency. If the Agency agrees to the increased costs, the Agency will provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the Department is sufficient to fully fund its share of the Project. Funds due from the Agency during the Project not paid within forty (40) calendar days from the date of

the invoice are subject to an interest charge at a rate established pursuant to Section 55.03, Florida Statutes.

- (c) The Department intends to have its final and complete accounting of all costs incurred in connection with the work performed under this Agreement within three hundred and sixty (360) days of final payment to its contractor. The Department considers the Project complete when the final payment has been made to the contractor, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the Agency for a period of three (3) years after final close out of the Project. The Agency will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the Department to the Agency. If the final accounting is not performed within three hundred and sixty (360) days, the Agency is not relieved from its obligation to pay.
- (d) In the event the final accounting of total project costs is greater than the total deposits to date, the Agency will pay 50% of the additional amount within forty (40) calendar days from the date of the invoice from the Department, provided that the Department complies with Sections 4(a) and (b) by obtaining written approval by the Agency prior to incurring the excess costs. Agency's liability shall not exceed One Hundred Seventy Six Thousand, Four Hundred 00/100 Dollars (\$176,400). The Agency agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within forty (40) calendar days until the invoice is paid.
- (e) The payment of funds by the Agency pursuant to this Agreement will be made directly to the Department for deposit and as provided in the form of Memorandum of Agreement between the Agency, the Department, and the State of Florida, Department of Financial Services, Division of Treasury, attached to this Agreement as Exhibit "C."
- (f) The Department and the Agency agree that the payment shall be an asset of the Department for the cost of the work.
- (g) The Agency reserves the right to participate in bid negotiations to obtain value engineering with the design consultant and bidder and to negotiate with materials vendors to obtain a lower price should the bid amount, plus allowances, is in excess

of the total project costs, or modifications or changes to bid items occur, which will increase the Agency's share of total project costs. If this negotiation process fails and the cost of the Project exceeds the dollar amount noted in Section C of the Recitals, the Agency may terminate the Agreement without further financial exposure. In which case, the Department shall refund to Agency any portion of its deposit which has not been expended. The Department agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any amounts not paid within forty (40) calendar days until the amount is paid in full.

5. Should the Department choose not to complete the Quiet Zone Project for any reason, any payments made by the Agency to the Department for costs that have not been incurred by the Department shall be refunded to the Agency within 40 calendar days of notice of non-completion by the Department. The Department agrees to pay an interest charge at a rate established under Section 55.03, Florida Statutes, for any amounts not paid within 40 calendar days. The Agency shall be discharged and released of any obligations to make any future contribution payments toward the Quiet Zone Project.

6. The Department's consultant/contractor shall furnish the services to design and construct the Project and provide all necessary engineering supervision, obtain all permits/clearances, as well as all other necessary work, as related to the Project. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by the Department's consultant/contractor, at such times, in such manner, under such conditions, and pursuant to such requirements, specifications and standards as are made part of the Department's agreement with its consultant/contractor. The Agency shall not have any jurisdiction or control over the Department's activities. The Agency shall be entitled to be advised of the progress of the Project at reasonable intervals upon request. Should the Agency disagree with the requirements, specifications and standards as are made part of the Department's agreements with its consultants/contractor, Agency shall notify the Department in writing. The Department shall take such steps as is necessary to resolve the disagreement. Failure to do so by the Department may result in the Agency exercising its rights to terminate this Agreement, at its sole discretion. In which case, Agency will be discharged and released from any obligations to make any future contribution payments towards the Quiet Zone Project and the Department shall reimburse the Agency any portions of its deposit not expended within 40 calendar days of receiving notice of termination by the Agency. The Department agrees to pay an interest charge at a rate established under Section 55.03, Florida Statutes, for any amounts not paid within 40 calendar days.

7. Upon completion of the Project and subject to the Agency's inspection and final acceptance, the Agency or the Department, as set forth in a separate agreement, shall have ownership and be immediately responsible for the perpetual maintenance of the Project. The terms of this provision shall survive the termination of this Agreement.

8. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the Department and shall at all times be and remain the property of the Department without restriction or limitation on their use. The Agency may, however, inspect those materials upon providing reasonable advance notice to the Department.

9. In the event this Agreement is in excess of \$25,000.00 (Twenty Five Thousand Dollars and 00/100) and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are incorporated as follows:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year."

10. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature. The Parties agree that in the event funds are not appropriated to the Department for the Project, this Agreement may be terminated, which shall be effective upon the Department giving notice to the Agency to that effect. In such case, the Department shall refund to the Agency its deposit within 40 calendar days of notice of non-completion by the Department. The Department agrees to pay an interest charge at a rate established under Section 55.03, Florida Statutes, for any amounts not paid within 40 calendar days.

11. The Agency and the Department shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Agency and the Department in conjunction with this Agreement. Failure by the Agency or the Department to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the party not in breach of this Section.

12. Funds may not be used for the purpose of lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

13. This Agreement may be canceled by the Department/Agency in whole or in part at any time the interest of the Department/Agency requires such termination. The Department/Agency also reserves the right to seek termination or cancellation of this Agreement in the event the Department/Agency shall be placed in either voluntary or involuntary bankruptcy. The Department/Agency further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors.

14. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Venue for any action arising under this Agreement shall be in Leon County, Florida. Any provision in this Agreement determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

15. This Agreement is binding on the Parties' successors and/or assigns.

16. This Agreement may only be modified in writing and executed by the Parties or their respective successors or assigns.

17. All notices pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses and the contact persons set forth below for the respective Parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

DEPARTMENT:

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
STATE RAIL OPERATIONS AND PROGRAMS ADMINISTRATOR
605 SUWANNEE STREET, MS 25
TALLAHASSEE, FL 32399-0450
PHONE: 850-414-4620, FAX: 850-414-4508**

AGENCY:
CITY OF WINTER PARK, FL
CITY MANAGER
401 S. PARK AVENUE
PHONE: 407-599-3235, FAX: 407-599-3436

18. This Agreement embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Agency and the authorized officer of the Department or his/her delegate.

19. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) below.

FDOT

State of Florida, Department of Transportation

By: _____

Print Name: _____

Title: _____

Date: _____

Legal Review:

See attached Encumbrance Form for date of
funding approval by Comptroller

AGENCY

By: _____

Print Name: _____

Title: _____

As approved by the Board on:

Attest: _____

Legal Review:

City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Financial Project Number: 436014-1-54-08

This exhibit forms an integral part of that certain Quiet Zone Improvement Agreement entered into this _____ day of _____, 2015, between the State of Florida, Department of Transportation ("Department") and City of Winter Park ("Agency").

PROJECT LOCATION:

Project Description:

The Agency requests rail development grant funds to perform Quiet Zone Improvements associated with at-grade railroad crossings.

SPECIAL CONSIDERATION:

Unless terminated earlier, design work on the Project may commence upon the full execution of this Agreement, and construction work may commence upon the Agency's issuance of a notice to proceed. All work on the Project shall be completed on or before three (3) years after the Effective Date of this Agreement. If the Department does not complete the Project within the time period allotted, this Agreement will expire on the last day of the term of this Agreement unless an extension of the time period is requested by the Department and granted in writing by the Agency prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project.

Prior to commencing the construction work described in this Agreement, the Department shall request a notice to proceed from the Agency's Contract Manager or from an appointed designee and provide one (1) copy of the final design plans and specifications and final bid documents to the Agency's Contract Manager prior to commencing construction of the project. Any construction work performed prior to the issuance of the Notice to Proceed for construction is not subject to reimbursement.

Execution of this Agreement by both Parties shall be deemed a notice to proceed to the Department for the design phase of the project. Any work performed prior to the execution of this Agreement is not subject to reimbursement.

Exhibit "B"

ESTIMATED SCHEDULE OF FUNDING
Financial Project Number 436014-1-54-08

Description of Work	Estimated Completion	Total	State Funds
		\$ _____	\$ _____
		\$ _____	\$ _____
	TOTAL	\$ _____	\$ _____

Project Cost: \$ _____

**State (DPTO) – 48.36% of total costs
up to** \$ _____

**City of Winter Park – 52.64% of total
costs up to** \$ _____

All work is scheduled to be completed by _____.

EXHIBIT "C"

FORM OF MEMORANDUM OF AGREEMENT

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), the City of Winter Park ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: Quiet Zone Improvement Agreement
Project #: 436014-1-54-08
County: Orange

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028

Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

G:\docs\Cities\Winter Park\Agreements & Contracts\Winter Park Electric Utility Lighting Services Contract\Quiet Zone Grant City of Winter Park final 032515R.doc



city commission agenda item

Item type	Consent Agenda	meeting date	June 8, 2015		
prepared by	Peter Moore	approved by	<input checked="" type="checkbox"/>	City Manager	
department	Administrative Services		<input type="checkbox"/>	City Attorney	
division	Budget, Purchasing, Performance Measurement		<input type="checkbox"/>	N/A	
board approval		<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> N/A	final vote
strategic objective	<input type="checkbox"/> Exceptional Quality of Life	<input checked="" type="checkbox"/> Fiscal Stewardship			
	<input type="checkbox"/> Intelligent Growth & Development	<input type="checkbox"/> Public Health & Safety			
	<input type="checkbox"/> Investment in Public Assets & Infrastructure				

subject

FY 2015 Budget Amendment for Stormwater and Public Works.

motion | recommendation

Approve the budget amendment as presented.

Background

The City Commission is required by Statute to approve any budget amendments that alter the total amount budgeted in any fund or when funds are transferred between different fund types. The Stormwater Fund receives fees-in-lieu of site treatment where the constraints of the site are such that the stormwater improvements cannot be made. This one-time receipt of fees was not part of the original budget and this amendment would raise the budgeted revenues for the utility by \$57k and raise the budgeted project spending on drainage improvement projects by the same amount. Public Works is requesting an amendment to properly record funds received from TECO to pay for right-of-way permitting inspections related gas main improvements. The \$7k in cost will be more than offset by payments from TECO.

This amendment if approved by the Commission will become part of the formal FY15 year-end close out process that will adopt all FY15 amendments by formal ordinance. The adjustments requested are attached to this item.

alternatives | other considerations

N/A

fiscal impact

The increase in appropriated budget levels is equally offset by an increase in revenues for both requests.

Budget Adjustments Requiring Commission Approval

Item	Amount	Source Account	Source Acct. Name	Exp. Account	Exp. Acct. Name	Note	Approval Date
Stormwater (Fee in Lieu)	\$ 56,978	303-0000-343.70-11	Fee in Lieu Receipts	303-3406-602.01-05	Drainage Improvement	One-time revenues to be allocated to general stormwater improvements.	pending
Public Works (TECO)	\$ 7,000	001-0000-341.90-30	Right of Way Fees	001-3112-539.13-10	Salaries Part Time	TECO ROW fees to cover cost for inspector to oversee gas main improvements.	pending



city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	7-0 final vote

Subject: Subdivision/Lot Split Request at 456 W. Lyman Avenue.

Mr. Philip Kean is requesting subdivision or lot split approval to divide the property at 456 West Lyman Avenue into two single family lots. The zoning is R-1A. The property now holds one single family home, which is to be demolished. The Planning Board recommended approval limited to one-story homes as the future development.

Summary:

The City's review of small subdivisions or lot split requests is based on two criteria. One is the 'Zoning Test' as to conformance with the zoning criteria. The other is the 'Comprehensive Plan Test' which is conformance to the neighborhood character.

ZONING TEST: Each proposed building lot is proposed to be 50 feet wide and 3,750 square feet in size. Variances are requested for each lot to be 50 feet in width in lieu of the minimum 75 feet of lot width required for R-1A and lot areas of 3,750 square feet in lieu of the required 8,500 square feet.

COMPREHENSIVE PLAN TEST: There are many neighborhoods in the City that are zoned R-1AA or R-1A but the existing character or typical dimensions are significantly different than the zoning code minimums. In some cases the typical lots are smaller and in some cases the typical lots are larger. The Comprehensive Plan Test or comparison is a door that swings both ways. In some cases, it can substantiate a relaxation of the minimum lot dimensions and in other cases it can require larger lot sizes than the minimums.

The practice outlined in the Comprehensive Plan and the Subdivision Code (attached) is to look at the surrounding neighborhood to see what standard is for typical lot sizes. The Code dictates that the review area is within a 500 foot radius of the subject property and limited to those in the same zoning. Thus we only use properties zoned single family for our comparisons and do not include churches or properties used as parking lots in the comparisons.

There are 44 homes within this neighborhood on Lyman, Comstock, Virginia and Pennsylvania Avenues. The average lot width is 55 feet. Using the "average" method is in some sense unfair to the applicant because when the smallest lot size is 50 feet, one can never have a comparison that supports 50 feet unless 100% of the lots are at that dimension. As soon as one starts adding in any larger lots, the average number then becomes larger. Another way then that the City has done these comparisons is by looking at the "median" lot size.

In that case, the median lot width is 50 feet. From this 44 home survey, this neighborhood has 79.5% of the homes that are on 50 foot wide lots. Thus, 20.5% are on larger lots.

These subject lots are very shallow with only 75 feet of lot depth and thus 3,750 square feet of lot area. Most of the lots in this neighborhood have a more typical 125-140 feet of lot depth. Thus, these lots do not compare favorably to the average lot size (6,875 sf) or the median lot size (6,550 sf).

Development Plans: The applicant has provided two versions of generalized elevations and floor plans for the types of homes anticipated to be built on these lots, if approved. The first version depicts a two-story house that complies with the maximum FAR and impervious lot coverage and also meets all the setbacks. That submittal is intended to show how a new home **could be built that meets the City's zoning rules without any variance. It would permit on these 3,750 square foot lots, a new two-story home of 1,550 square feet.** The second version depicts a one-story house of 1,422 square feet that requests a variance for a 10 foot rear setback. The City can establish a 10 foot rear setback as part of this subdivision approval process.

There are a six other blocks of the original Town of Winter Park plat within the Hannibal Square neighborhood that were originally platted at 68-69 feet deep. A number of years ago, the City recognized the hardship of the front/rear setbacks and the desirability for one-story homes. There is a special Zoning Code setback, excerpted below, that provides for a 10 foot rear setback for a one-story home. This approval would be granting the same setback based on the same shallow 75 foot deep lot dimension.

Sec. 58-71. General Provisions for Residential Zoning Districts.

(w) *Lots with shallow depth.* The platted lots within Blocks 46 through 53 of the Town of Winter Park subdivision or any other lot with an average a lot depth of 70 feet or less shall be enabled to utilize a ten (10) foot rear setback in lieu of the twenty-five (25) foot rear setback given the unusual shallow depth of these platted lots, provided the overall building height does not exceed one story within the typical twenty-five (25) foot rear setback area.

From the **Planning Board's** perspective, the lot width and size variances are reasonable given that 80% of the homes in this immediate neighborhood area are on 50 foot wide lots. At one-story as required for one-story homes on comparably sized lots, the new homes would be compatible with the street character.

Planning and Zoning Board Recommendation:

Motion made by Mr. Sacha, seconded by Mr. Gottfried to grant subdivision or lot split approval to divide the property at 456 West Lyman Avenue into two buildable lots, each with variances for 50 feet of lot width and 3,750 square feet of lot area, subject to the condition that development be limited to the one-story proposal per the setbacks indicated, as recommended by staff.

The motion carried unanimously 7-0.

RELEVANT COMPREHENSIVE PLAN POLICY:

Policy 1-3.6.8: Subdivision of Land and Lot Splits for Non-Lakefront Single Family and Low Density Multi-Family Property. The City shall consider approving subdivision and lot split applications, which are not lakefront properties and which are not estate lots in areas designated single family, low density or multi-family residential, when the proposed new lots are designed at size and density consistent with the existing conditions in the surrounding neighborhood within a radius of five hundred (500) feet.

ARTICLE VI. - SUBDIVISION AND LOT CONSOLIDATION REGULATIONS

Sec. 58-377. - Conformance to the comprehensive plan.

(a) In the City of Winter Park, as a substantially developed community, the review of lot splits, lot consolidations, plats, replats or subdivisions within developed areas of the city shall insure conformance with the adopted policies of the comprehensive plan as a precedent to the conformance with other technical standards or code requirements.

(b) In existing developed areas and neighborhoods, all proposed lots shall conform to the existing area of neighborhood density and layout. The proposed lot sizes, widths, depths, shape, access arrangement, buildable areas and orientation shall conform to the neighborhood standards and existing conditions. This provision is specifically intended to allow the denial or revision by the city of proposed lot splits, lot consolidations, plats, replats or subdivisions when those are not in conformance with the existing neighborhood density or standards, even if the proposed lots meet the minimum technical requirements of the zoning regulations.

(c) In determining the existing area or neighborhood density and standards, for the consideration of lot splits, plats, replats or subdivision of other than estate lots or lakefront lots, the planning and zoning commission and city commission shall consider the frontage and square foot area of home sites and vacant properties with comparable zoning within an area of 500-foot radius from the proposed subdivision.

(d) In order to implement the policies of the comprehensive plan, the city commission may also impose restrictions on the size, scale, and style of proposed building, structures, or other improvements. This provision shall enable the city commission to impose restrictions on the size, height, setback, lot coverage, impervious area or right-of-way access such that proposed building and other improvements match the dimension and character of the surrounding area or neighborhood.

P&Z Minutes: May 5, 2015:

REQUEST OF PHILIP KEAN FOR: SUBDIVISION OR LOT SPLIT APPROVAL TO DIVIDE THE PROPERTY AT 456 WEST LYMAN AVENUE INTO TWO BUILDABLE LOTS, EACH WITH 50 FEET OF LOT WIDTH AND 3,750 SQUARE FEET OF LOT AREA. SUBDIVISION VARIANCES ARE REQUESTED FOR THE 50 FOOT LOT WIDTH AND 3,750 SQUARE FEET OF LOT AREA IN LIEU OF THE 75 FEET OF LOT WIDTH AND 8,500 SQUARE FEET OF LOT AREA REQUIRED IN THE R-1A ZONING.

Planning Manager Jeffrey Briggs gave the staff report and explained that Phil Kean, is requesting subdivision or lot split approval to divide the property at 456 West Lyman Avenue into two single family lots. The zoning is R-1A. The property now holds one single family home, which is to be demolished. He reviewed the provisions of the Zoning and Comprehensive Plan Tests as relates to lot split review and approval. He reviewed the subject lots and compatibility with the surrounding neighborhood, the applicant's plan to redevelop, the requested variances, setbacks and impervious coverage. He also discussed the special Zoning Code for setbacks established for one-story homes. He said that this was put in place several years ago for hardships with shallow lots just such as these.

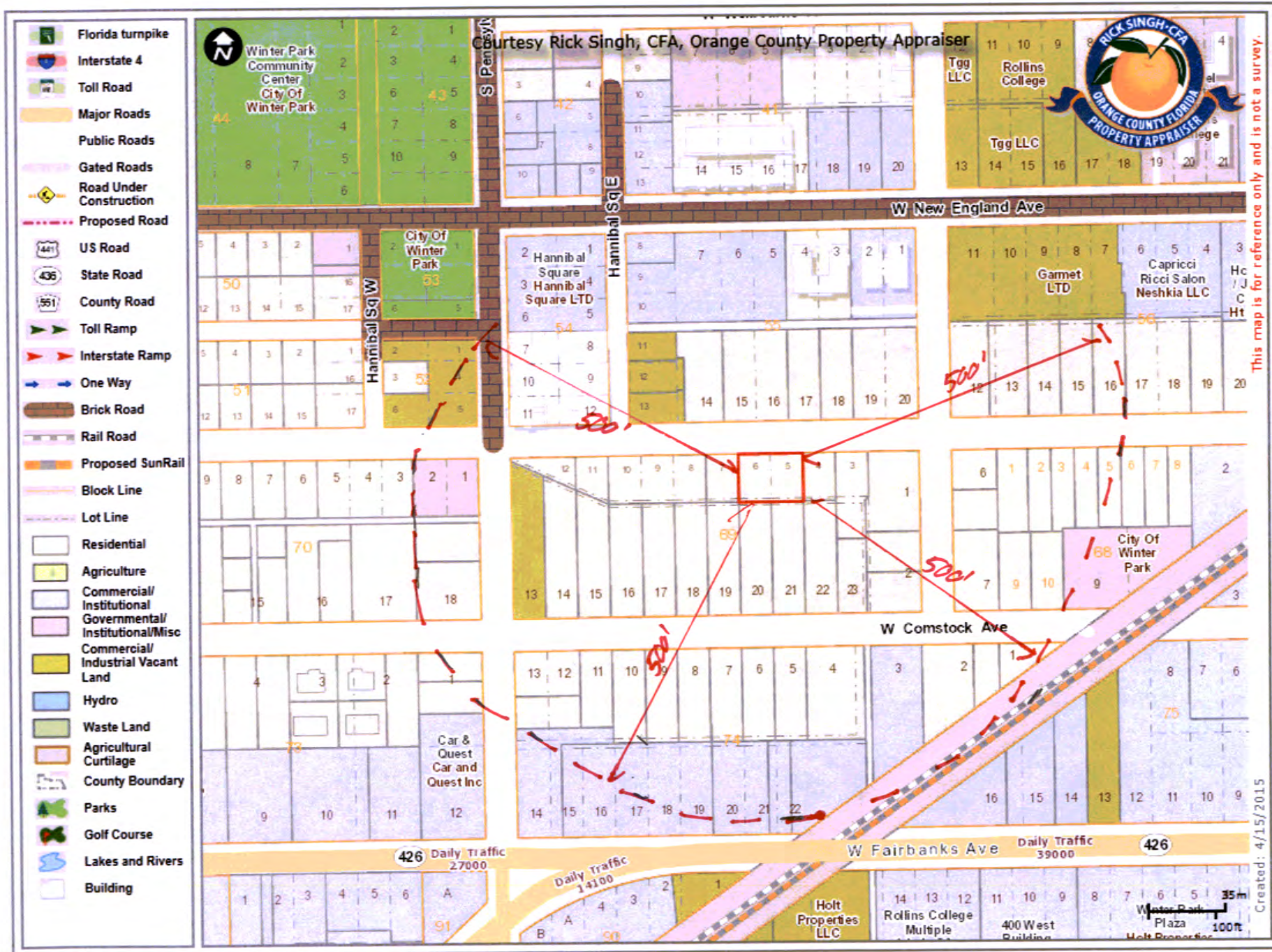
Mr. Briggs summarized by stating that from the staff's perspective, the lot width and size variances are reasonable given that 80% of the homes in this immediate neighborhood area are on 50 foot wide lots. The City has seen very nice new homes constructed on such small lots as these requested within those blocks in the area between Denning; New England; Capen and Lyman. At one-story as required by this Code provision the new homes would be compatible with the street character. Staff recommended approval of the request subject to the one-story plan proposal. Mr. Briggs responded to Board member questions and concerns.

Phil Kean, 229 Alexander Place, provided an overview of his request with a 3-D fly-a-round. He agreed with the staff recommendation. Mr. Kean responded to Board member questions and concerns. No one wished to speak in favor of or in opposition to the request. Public Hearing closed.

The Board members discussed the request and agreed that the dominant characteristic of this immediate neighborhood was of small homes on 50 foot wide lots. The Board asked Mr. Kean whether he preferred the one-story or two-story plan. Mr. Kean stated that he likes both but understood that the one-story version would be more compatible with the neighborhood and it also benefits him by making the living area more usable versus the loss to stairways. Mr. Johnston noted that in this case the staff is relying upon the "median" approach to compatibility of lot sizes which will also be important in the next public hearing.

Motion made by Mr. Sacha, seconded by Mr. Gottfried to grant subdivision or lot split approval to divide the property at 456 West Lyman Avenue into two buildable lots, each with variances for 50 feet of lot width and 3,750 square feet of lot area, subject to the condition that development be limited to the one-story proposal per the setbacks indicated, as recommended by staff.

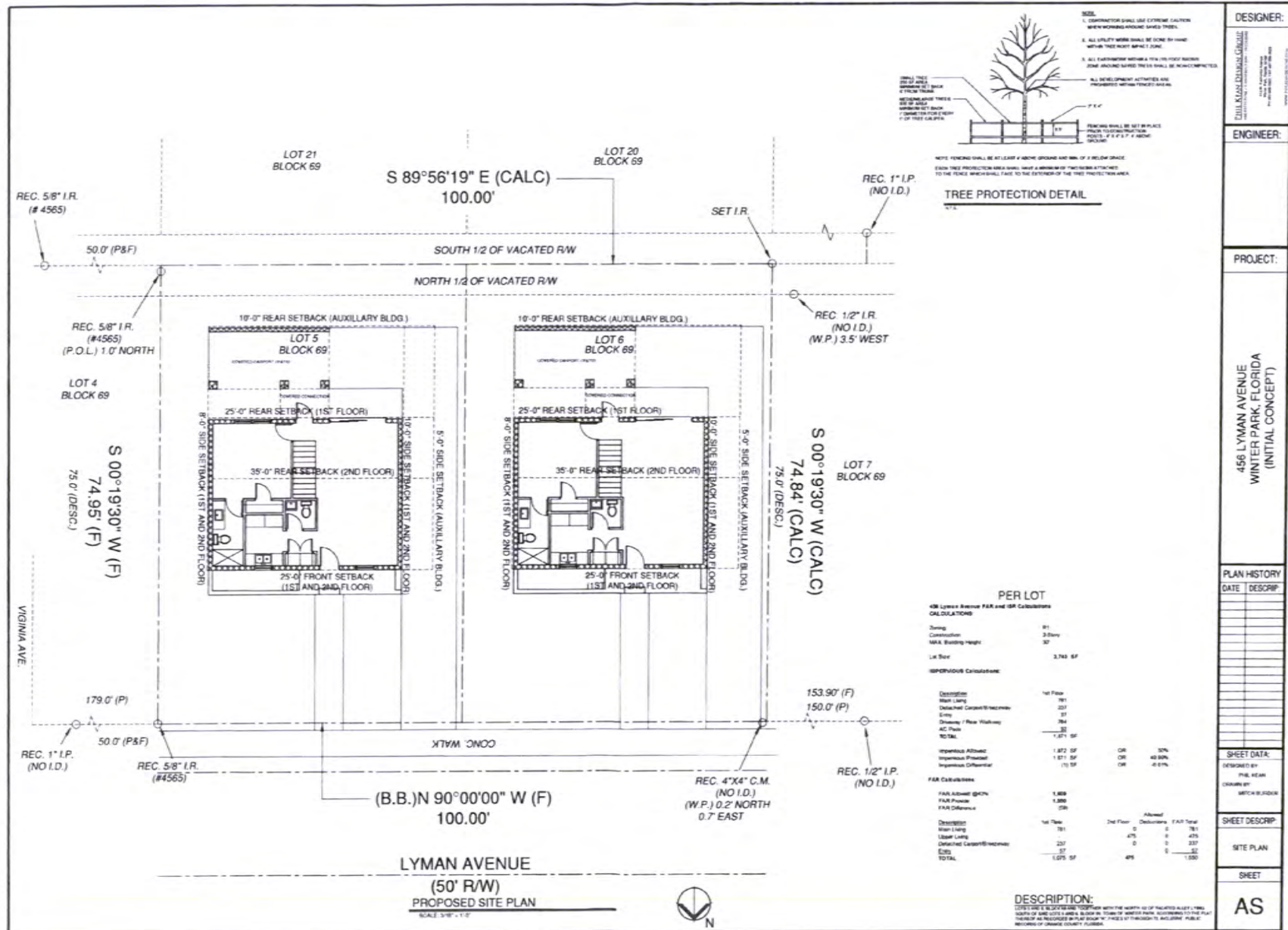
Motion carried unanimously, by a 7-0 vote.



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lc
J
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lt

FEI | 415/5015

Version #1 Two Story Home - Meets Setbacks



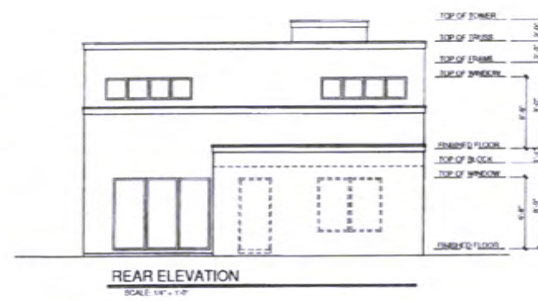
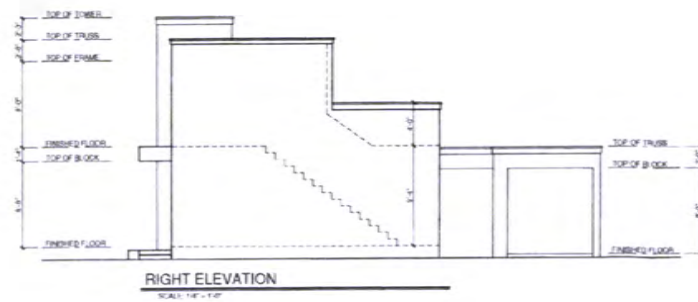
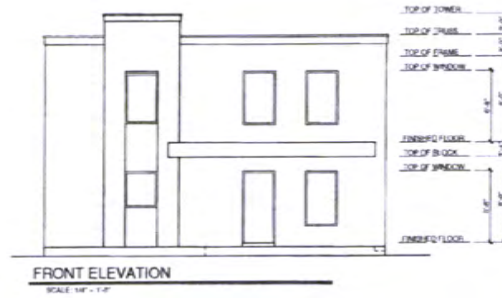
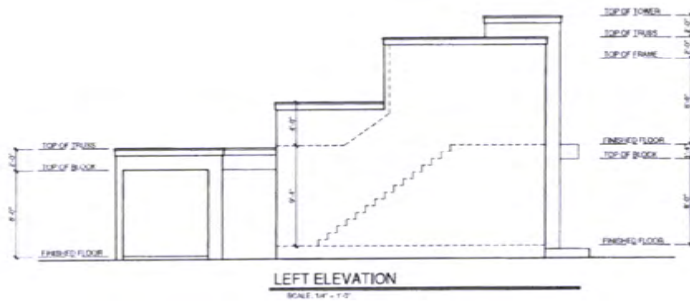
Two Story



A/C	1256
ENTRY	57
CARPORT	237
TOTAL UNDER GARAGE	1550

2.0

Version #1 Two Story



ELEVATION NOTES:	
#	DESCRIPTION
1.	STONE FINISH.
2.	STUCCO FINISH.
3.	#1 STUCCO BAND.
4.	TILE ROOF, OVER APPROVED WATER BARRIER, OVER ROOF SHEATHING.
5.	DECORATIVE SHUTTERS

DESIGNER:

PHIL KIAM DESIGN GROUP
ARCHITECTS / INTERIORS / LANDSCAPE ARCHITECTS

810 W. Hollywood Avenue
Miami, FL 33136
Tel: 305.358.8888 Fax: 305.358.8883

WWW.PKDG.COM • 1.800.451.4544

ENGINEER:

PROJECT:

456 LYMAN AVENUE
WINTER PARK, FLORIDA
(INITIAL CONCEPT)

[illegible]

SHEET DATA:
DESIGNED BY: PHIL KEANE
DRAWN BY: MELTON BURGIN

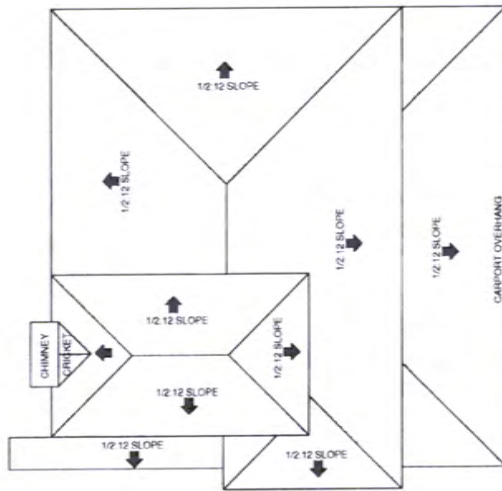
SHEET DESCIP.
FRONT AND REAR ELEVATIONS

SHEET

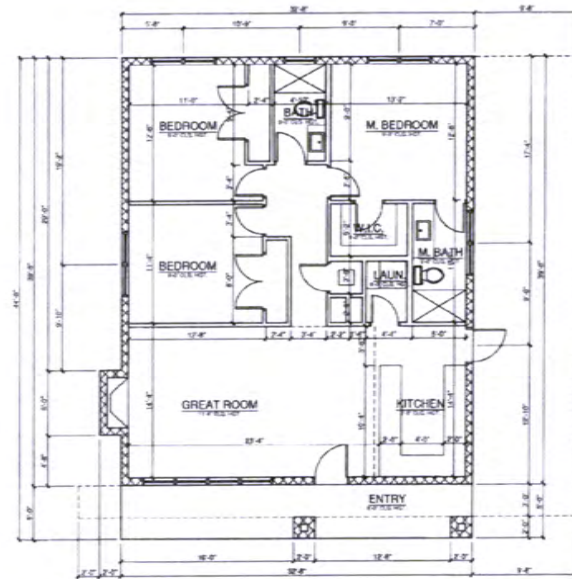
4.0

[illegible]

Version #2 One Story



ROOF PLAN
SCALE: 1/4" = 1'-0"

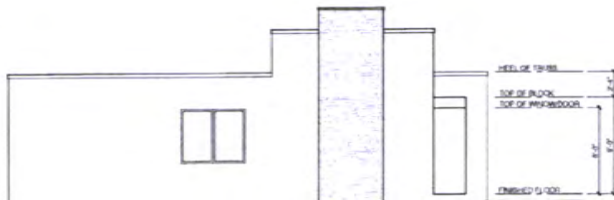


MAIN LEVEL FLOOR PLAN

MAIN LEVEL	
A/C	1296
ENERGY	543
<hr/>	
TOTAL UNDER ROOF	1459

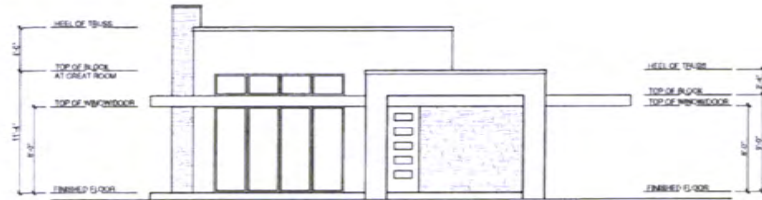
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Version #2 One Story



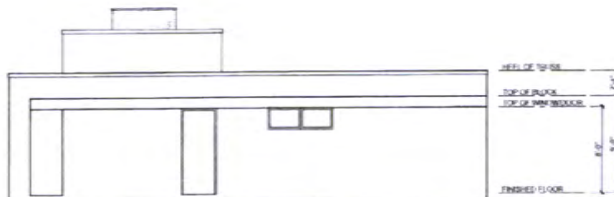
LEFT ELEVATION

SCALE: 14C = 1.07



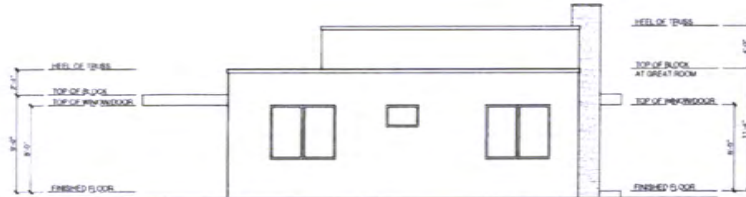
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 140° = 140°



REAR ELEVATION

SCALE: 1" = 1'-0"

ELEVATION NOTES:	
#	DESCRIPTION
1.	STONE FINISH
2.	STUCCO FINISH
3.	6" STUCCO BAND
4.	TILE ROOF, OVER APPROVED WATER BARRIER & SHEATHING
5.	DECORATIVE SHUTTERS

DESIGNER:	
ZILL MCDONALD GROUP INCORPORATED • 10867 WILSON ROAD SUITE 100 • FORT MYERS, FL 33907-4000 TEL: 888-999-9999 FAX: 888-999-9999	
ENGINEER:	
PROJECT: 456 LYMAN AVENUE WINTER PARK, FLORIDA (CONCEPT WITH 10'-0" REAR SETBACK VARIANCE)	
PLAN HISTORY	
DATE	DESCRIP.
SHEET DATA:	
DESIGNED BY THE ARNOLD	
DRAWING NUMBER MATCH-BUILDING	
SHEET DESCRIP:	
FRONT AND REAR ELEVATIONS	
SHEET	
4.0	

Jeffrey Briggs

From: Jeffrey Briggs
Sent: Monday, May 04, 2015 3:46 PM
To: Jeffrey Briggs
Subject: FW: Zoning Please forward to the P & Z board or who ever it may concern

-----Original Message-----

From: CEGirand [<mailto:cegirand@aol.com>]
Sent: Monday, May 04, 2015 2:18 PM
To: Lisa Smith
Subject: Zoning Please forward to the P & Z board or who ever it may concern

Lisa Clark and P & Z board members

My name is Christine Girand and I live at 282 W Lyman Ave, Winter Park Fl. We are a family of six and are new to Lyman Ave but have lived in the local area for the past 14 years. My husband and I have had 20 plus yrs in working in our careers and have worked many volunteer hours in our local community while raising our four children.

I am writing to support of the zoning request from R1 to R2 and splitting the lot on Lyman Ave with builder Phil Kean Designs. Phil Kean is a local builder with a good reputation of building quality homes and think the new homes will add well constructed homes while adding great design to the charm of our street.

Plus I think the floor plans that Phil Kean Designs chose to build on the Lyman Ave lot fit with the size and style of the current neighborhood homes that include older homes and new construction on Lyman. I view this project as a "win win" for the city of Winter Park, Hannibal Square, and Lyman Ave families.

Thank You for your service to our wonderful city of Winter Park Christine & Keith Girand

Jeffrey Briggs

From: Jeffrey Briggs
Sent: Monday, May 04, 2015 3:46 PM
To: Jeffrey Briggs
Subject: FW: Re-Zoning - Lyman Ave - Phil Kean Designs

From: Murphy, Terri C (PS PG RNA BA LTP 1) [<mailto:terri.c.murphy@siemens.com>]
Sent: Monday, May 04, 2015 3:40 PM
To: Lisa Smith
Subject: Re-Zoning - Lyman Ave - Phil Kean Designs

Dear Ms. Clark,

I am a resident of Winter Park, recently purchasing one of the David Weekly villas that were built on West Lyman, near the Chapel. Please accept this email as documentation of my support to rezone the property located on Lyman Ave to be developed by Phil Kean Designs. The request is to rezone from R1 to R2, which I support, and will enable the developer to build two new construction single family homes on the property.

Kind regards,

Terri Murphy
290 W. Lyman Ave.
Winter Park, FL 32789

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Jeffrey Briggs

From: Jeffrey Briggs
Sent: Tuesday, May 05, 2015 9:30 AM
To: Jeffrey Briggs
Subject: FW: Phil Kean homes

-----Original Message-----

From: Teresa Gomez [<mailto:malacha26@icloud.com>]
Sent: Tuesday, May 05, 2015 6:44 AM
To: Lisa Smith
Subject: Phil Kean homes

Hello Lisa,

I support Phil Kean plan to build 2 homes on Lyman and re-zone to R2.

My name is:

Teresa Goodkind

My address is:

266 West Lyman Ave. Winter Park, FL 32789

407-529029

Please call me if you have any questions or if I need to take any further actions to show my support.

Teresa Goodkind

Sent from my iPhone

Jeffrey Briggs

From: Jeffrey Briggs
Sent: Wednesday, May 06, 2015 8:30 AM
To: Jeffrey Briggs
Subject: FW: Phil Kean Lyman Ave

-----Original Message-----

From: Scott Email [<mailto:srgoodkind@gmail.com>]
Sent: Tuesday, May 05, 2015 5:24 PM
To: Lisa Smith
Subject: Phil Kean Lyman Ave

My name is Scott Goodkind I live at 266 West Lyman Ave. I do not oppose and in fact I support the approval of the requested zoning change for the proposed construction on Lyman Avenue between Virginia and Pennsylvania

Sent from my iPhone



city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	6-1 final vote

Subject: Subdivision or Lot Split Approval at 500 Fairfax Avenue.

Mr. Adam Bert & Todd Albert are requesting subdivision or lot split approval to divide the property at 500 Fairfax Avenue into two single family lots. The zoning is R-1AA. The property now holds one single family home. Variances are requested for each lot to be 50 feet in width in lieu of the minimum 100 feet of lot width requirement.

Summary:

When the City reviews small subdivisions or lot split requests there are two criteria. One is the 'Zoning Test' as to conformance with the zoning criteria. The other is the 'Comprehensive Plan Test' which is conformance to the neighborhood character.

ZONING TEST: This block on the south side of Fairfax Avenue from Pennsylvania Avenue to Richmond Road, was zoned R-2 until 1976. In 1976, this block was administratively rezoned from R-2 to single family, R-1AA, because it had developed primarily as single family homes. The R-1AA zoning then matches the single family zoning on the adjoining streets to the east.

Each proposed building lot in this request is approximately 50 feet wide and have lot areas of 12,500 square feet. The R-1AA minimum lot sizes (for new lots) are 100 feet of lot width and 10,000 square feet of lot area. Thus, variances are needed for the two lots at 50 feet in width.

COMPREHENSIVE PLAN TEST: There are many neighborhoods in the City that are zoned R-1AA or R-1A but the existing character or typical dimensions may be significantly different than the zoning code minimums. In some cases the typical lots are smaller and in some cases the typical lots are larger. The Comprehensive Test or comparison is a door that swings both ways. In some cases, it can substantiate a relaxation of the minimum lot dimensions and in other cases it can require larger lot sizes than the minimums.

As a result, the practice outlined in the Comprehensive Plan and the Subdivision Code (attached) is to look at the surrounding neighborhood to see what standard is for typical lot sizes. The Code dictates that the review area is within a 500 foot radius of the subject property and limited to those in the same zoning. Thus we only use properties zoned single family for our comparisons in this case.

There are 30 homes within this neighborhood on the south side of Fairfax Avenue and on Richmond Road. There are another 11 homes on Bonnie Burn Circle in the neighborhood south of Howell Creek. One can make a case that those homes are in a different "neighborhood" but the staff included them in the comparison. There are another 9 homes within the 500 foot radius that are on the west side of Pennsylvania Avenue within the Sevilla subdivision. The staff did not feel those are relevant to the neighborhood comparison.

The average lot width of the 30 homes on Fairfax and Richmond Road is 60.7 feet. When one adds in the 11 homes on Bonnie Burn Circle, the average rises to 71.5 feet. So from this comparison, the proposed lot sizes of 50 feet do not match the neighborhood characteristics.

Using the "average" method is in some sense unfair to the applicant because when the smallest lot size is 50 feet, one can never have a comparison that supports 50 feet unless 100% of the lots are at that dimension. As soon as one starts adding in any larger lots, the average number then becomes larger. Another way to do a comparison is by looking at the "median" lot size.

Using the "median" method, there are 22 properties on Fairfax and Richmond Road (71%) that are 50-53 feet wide and the median lot width is 50 feet. Adding in the 11 larger homes in the Bonnie Burn Circle neighborhood raises the median lot width to 62.4 feet. All 8 other homes on the south side of Fairfax Avenue are on 50 foot lots.

Development Plans: The applicant has provided generalized elevations site plans for the types of homes anticipated to be built on these lots, if approved. You will note that these lots are parallelograms. So the 50 feet is measured at an angle. The straight across dimension for each of these proposed lots is 48 feet each. Given the "streamfront" nature of these lots, the P&Z Board would review and approve any eventual plans due to the waterfront location.

P&Z Summary: Based on the strict application of the Code and the traditional method of using the average lot size for Comp. Plan comparison purposes, this subdivision request does not conform to the Zoning Test (it needs variances) or the Comprehensive Plan Test of the neighborhood comparison (based on average lot sizes). However, the P&Z Board recognized and acknowledged that these two proposed lots are the same size (50 feet wide) as the 8 adjoining neighbors on the south side of Fairfax Avenue and that a "comparison" per the Comp. Plan within the immediate neighborhood showed that the median lot size was 50-53 feet wide for 71% of the properties. The P&Z Board did not feel the comparison or inclusion of homes on Bonnie Burn Circle was appropriate, as this was outside the "neighborhood". Thus, P&Z felt the proposed lots were comparable in size to what exists in the immediate neighborhood and was in agreement with the proposal with one vote in dissent.

Planning and Zoning Board Recommendation:

Motion made by Mr. J. Johnston, seconded by Mr. Sacha to approve the request to grant subdivision or lot split approval to divide the property at 500 Fairfax Avenue into two buildable lots with variances for the 50 foot lot width in lieu of the 100 feet of lot width required in the R-1AA zoning.

The motion was approved by a 6-1 vote with Mr. Weldon voting against the motion to approve.

RELEVANT COMPREHENSIVE PLAN POLICY:

Policy 1-3.6.8: Subdivision of Land and Lot Splits for Non-Lakefront Single Family and Low Density Multi-Family Property. The City shall consider approving subdivision and lot split applications, which are not lakefront properties and which are not estate lots in areas designated single family, low density or multi-family residential, when the proposed new lots are designed at size and density consistent with the existing conditions in the surrounding neighborhood within a radius of five hundred (500) feet.

ARTICLE VI. - SUBDIVISION AND LOT CONSOLIDATION REGULATIONS

Sec. 58-377. - Conformance to the comprehensive plan.

(a) In the City of Winter Park, as a substantially developed community, the review of lot splits, lot consolidations, plats, replats or subdivisions within developed areas of the city shall insure conformance with the adopted policies of the comprehensive plan as a precedent to the conformance with other technical standards or code requirements.

(b) In existing developed areas and neighborhoods, all proposed lots shall conform to the existing area of neighborhood density and layout. The proposed lot sizes, widths, depths, shape, access arrangement, buildable areas and orientation shall conform to the neighborhood standards and existing conditions. This provision is specifically intended to allow the denial or revision by the city of proposed lot splits, lot consolidations, plats, replats or subdivisions when those are not in conformance with the existing neighborhood density or standards, even if the proposed lots meet the minimum technical requirements of the zoning regulations.

(c) In determining the existing area or neighborhood density and standards, for the consideration of lot splits, plats, replats or subdivision of other than estate lots or lakefront lots, the planning and zoning commission and city commission shall consider the frontage and square foot area of home sites and vacant properties with comparable zoning within an area of 500-foot radius from the proposed subdivision.

(d) In order to implement the policies of the comprehensive plan, the city commission may also impose restrictions on the size, scale, and style of proposed building, structures, or other improvements. This provision shall enable the city commission to impose restrictions on the size, height, setback, lot coverage, impervious area or right-of-way access such that proposed building and other improvements match the dimension and character of the surrounding area or neighborhood.

REQUEST OF ADAM BERT & TODD ALBERT FOR: SUBDIVISION OR LOT SPLIT APPROVAL TO DIVIDE THE PROPERTY AT 500 FAIRFAX AVENUE INTO TWO BUILDABLE LOTS, EACH WITH 50 FEET OF LOT WIDTH AND 12,500 SQUARE FEET OF LOT AREA. SUBDIVISION VARIANCES ARE REQUESTED FOR THE 50 FOOT LOT WIDTH IN LIEU OF THE 100 FEET OF LOT WIDTH REQUIRED IN THE R-1AA ZONING.

Planning Manager Jeffrey Briggs presented the staff report and explained that the applicants, Adam Bert & Todd Albert are requesting subdivision or lot split approval to divide the property at 500 Fairfax Avenue into two single family lots. The zoning is R-1AA. The property now holds one single family home. Variances are requested for each lot to be 50 feet in width in lieu of the minimum 100 feet of lot width requirement. He reviewed the provisions of the Zoning and Comprehensive Plan Tests as relates to lot split review and approval. He reviewed the subject lots and compatibility with the surrounding neighborhood, the applicant's plan to redevelop, the requested variances, setbacks and impervious coverage. He added that each proposed building lot in this request is approximately 50 feet wide and have lot areas of 12,500 square feet. The R-1AA minimum lot sizes (for new lots) are 100 feet of lot width and 10,000 square feet of lot area. Thus, variances are needed for the two lots at 50 feet in width.

Mr. Briggs summarized by stating that based on the strict application of the Code and the traditional method of using the 500 foot radius for Comprehensive Plan comparison purposes, this subdivision request does not conform to the Zoning Test (it needs variances) or the Comprehensive Plan Test of the neighborhood comparison (based on average and median lot sizes). Using the "median" method, there are 22 properties on Fairfax and Richmond Road (71%) that are 50-53 feet wide and the median lot width is 50 feet. However, adding in the 11 larger homes in the Bonnie Burn Circle neighborhood raises the median lot width to 62.4 feet. All 8 other homes on the south side of Fairfax Avenue are on 50 foot lots. However, while the P&Z Board has the factual justification for denial based on those requirements, the P&Z Board can also recognize and acknowledge that these two proposed lots are the same size (50 feet wide) as the 8 adjoining neighbors and that a "comparison" per the Comp. Plan could be based on the 71% of the lots within the immediate area are 50-53 feet wide (discounting the Bonnie Burn lots). While the P&Z Board has some latitude in the perspective on this request, the planning staff felt compelled to recognize the zoning variances and that the traditional method of doing neighborhood comparison by full 500 foot radius method does not support the request. Staff recommended denial. Mr. Briggs responded to Board member questions and concerns.

Adam Bert, 500 Fairfax Avenue, presented his case to subdivide the subject property. He stated that his original plan was to renovate the existing home, but has since discovered that is not feasible. He explained his requested variance and stated that his request meets all setback requirements for the two new homes. He stated that he understood that given the stream-front location, the actual plans must come back to P&Z for approval. He presented a petition with neighbor signatures in support of his request.

Kathryn Campbell, 1351 Richmond Road, spoke in opposition to the request. She stated that she is concerned with the diminished lake access at College Point. She said that she feels that if the lot split is approved, that dilutes the surrounding neighbor's ownership of the lake lot. She expressed frustration with the larger homes on smaller lots changing the character of the neighborhood.

Mike Langley, 1169 Lakeshore Drive, Clermont, represented his mother Marilyn Langley who lives next door (to the east) at 534/536 Fairfax Avenue. His mother is very concerned with the loss of privacy, the reduced setbacks, parking and loss of aesthetics that would result from an approval. He indicated that if

the property is maintained at 100 feet wide, the side setback is 13-15 feet and if approved to be 50 feet then the side setback reduces to 7.5 feet. He expressed having a new large house 6-8 feet closer that is permitted now and to have that happen by variance is not fair to his mother and diminishes her property value.

Al Cooper, architect for the applicant, spoke concerning the concept plans that had been prepared for P&Z.

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

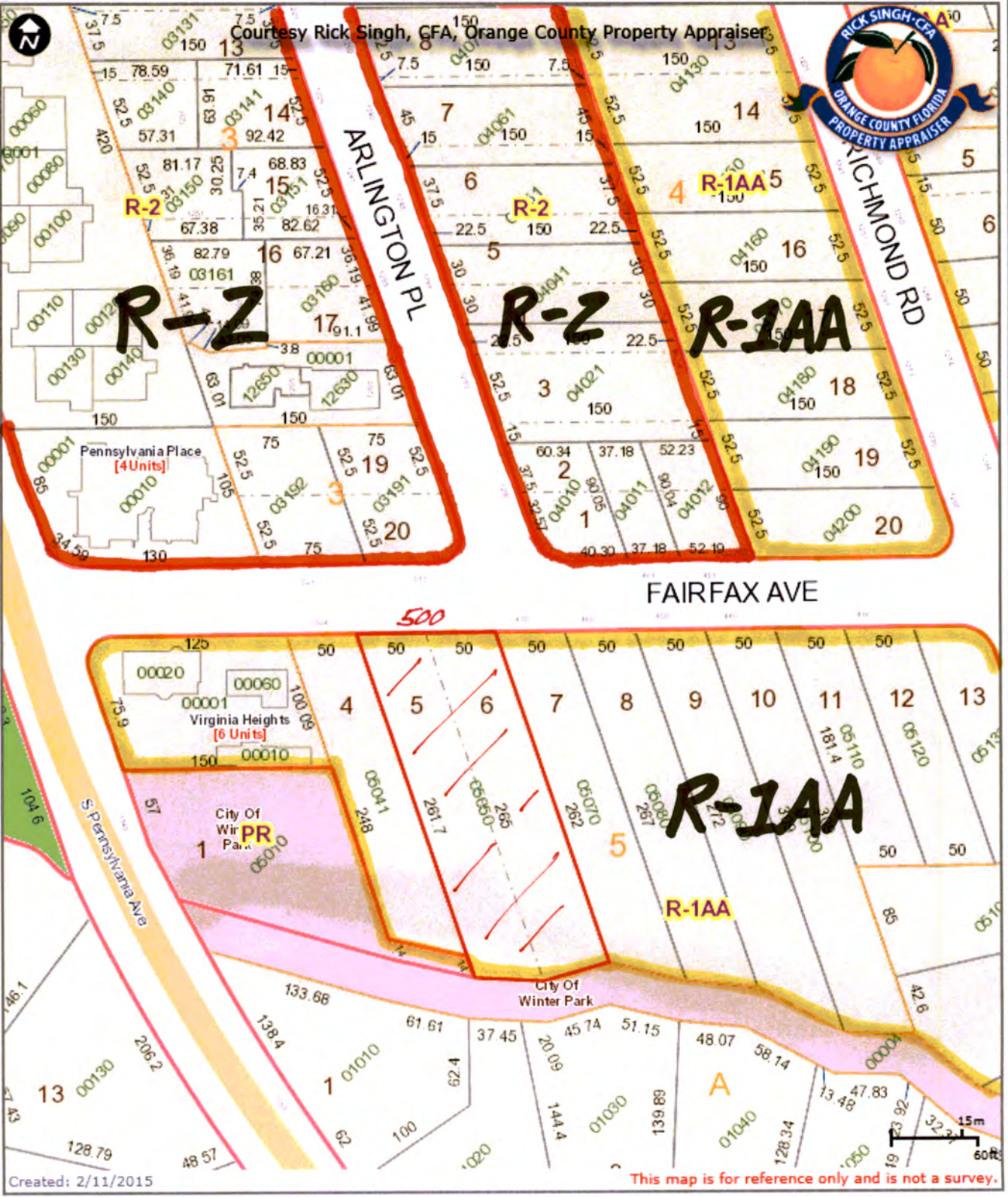
The Board members discussed the request. Mr. J. Johnston stated that he does not have a problem with the request and feels that smaller homes are a better fit with the surrounding neighborhood and fit into the existing character of the immediate area. He pointed out that the previous request which was approved by the Board needed variances for both the width and total area of the lot and this applicant is requesting a variance for only the width. Mr. Hahn stated that he agrees the comments made by Mr. J. Johnston and the applicant's architect to keep the focus on the lots on Fairfax Avenue. Mr. Weldon stated that he did not support the request. He expressed concern with the impact on the neighbor that narrower setbacks would have on adjacent neighbor's property. He generally agreed with the statements of Messrs. Johnston and Hahn, but wanted to see a different plan for this property split, as a flag lot which would maintain the existing setbacks for a 100 foot wide property. Mr. Gottfried stated the he supported the request and felt that the immediate neighborhood and not the homes across the creek on Bonnie Burn Circle should be the guide. He did not feel that it was a flag lot situation. Mrs. De Ciccio, R. Johnston and Sacha spoke that they also supported the request.

Motion made by Mr. J. Johnston, seconded by Mr. Sacha to approve the request to grant subdivision or lot split approval to divide the property at 500 Fairfax Avenue into two buildable lots with variances for the 50 foot lot width in lieu of the 100 feet of lot width required in the R-1AA zoning.

The motion was approved by a 6-1 vote with Mr. Weldon voting against the motion to approve.

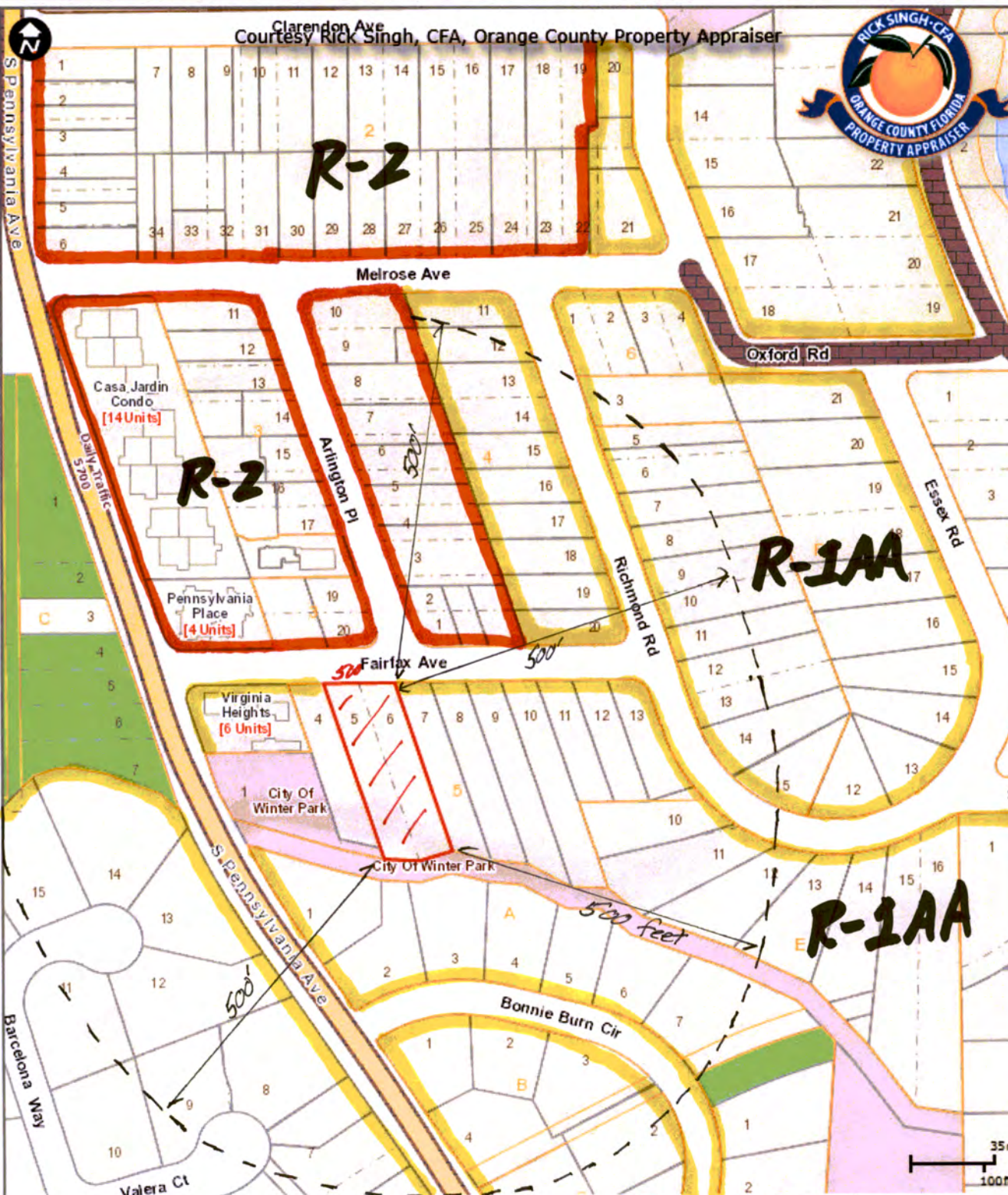
OCPA Web Map

OCPA Web Map	 Major Roads	 Proposed Road	 Residential	 Commercial/Industrial/Vacant Land	 Parks	6	Lot Number
 Florida Turnpike	 Public Roads	 Brick Road	 Agriculture	 Agricultural Curtilage	 Building	06060	Parcel Number
 Interstate 4	 Gated Roads	 Block Line	 Commercial/Institutional	 Hydro	 Zoning	3106	Parcel Address
 Toll Road	 Road Under Construction	 Lot Line	 Governmental/Institutional/Misc	 Waste Land	 E Block Number	111.9	Parcel Dimension



OCA Web Map

	Major Roads		Block Line		Hydro	
	Public Roads		Lot Line		Waste Land	
	Gated Roads		Residential		County Boundary	
	Road Under Construction		Agriculture		Parks	



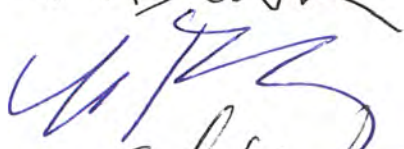


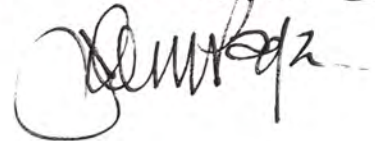
Created: 4/13/2015

This map is for reference only and is not a survey.

FINAL SITE PLAN/PLOT PLAN DRAWINGS SHALL BE PREPARED AND CERTIFIED BY A REGISTERED FLORIDA ENGINEER.
THIS SITE PLAN BASED ON SURVEY DRAWING BY: ACCURIGHT SURVEYS OF ORLANDO INC. - ORLANDO FLORIDA 32803

4/30/15

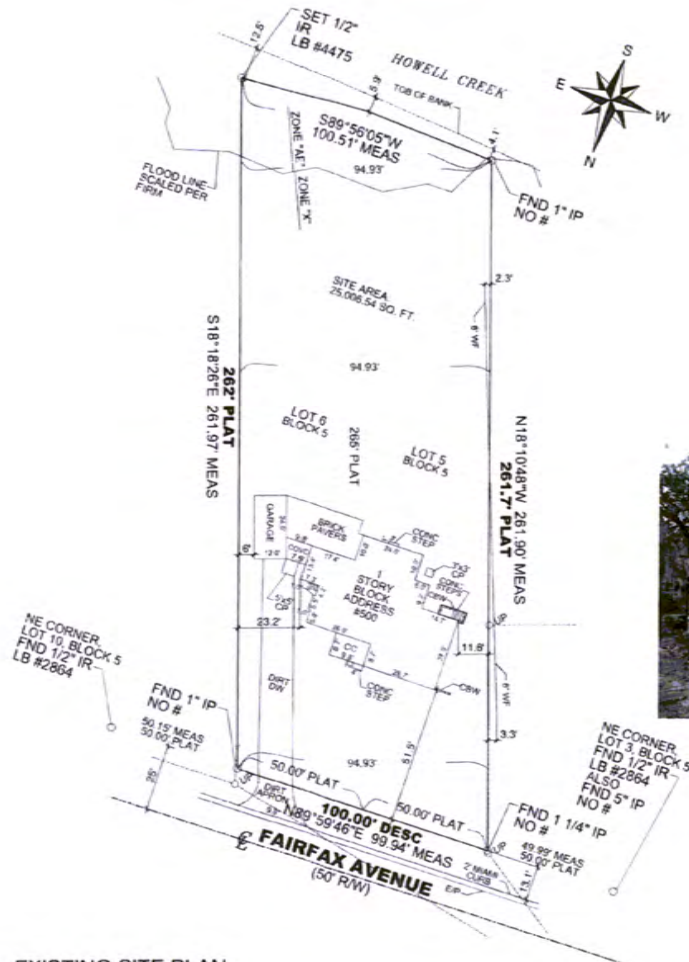
I do not oppose the lot at 500 Fairfax wP
32789 being divided from one 100 foot
lot to two 50 foot lots; 2 SINGLE FAMILY
HOUSES.

<u>NAME</u>	<u>ADDRESS</u>	<u>SIGNATURE</u>
WM DANK EB BLANK	450 FAIRFAX AV 1295 RICHMOND RD	Wm Dank 
Ed Walker ED WALKER Amy Angert	1430 Bonnie Buri 1294 Richmond Rd	Ed Walker Amy Angert
is objection Bernard Weather	1230 Richmond Rd	
Waelik Macksood	440 Fairfax	
W. L. Z. W. L.	470 Fairfax	William Lee Wallace
John W. Page	416 Fairfax	

SITE PLAN - EXISTING CONDITIONS

500 FAIRFAX AVENUE

WINTER PARK, FLORIDA



EXISTING BUILDING - FRONT ELEVATION
EXISTING SITE - 500 FAIRFAX AVENUE
SQUARE FOOTAGE: 25,008.54 SQ. FT.

EXISTING SITE PLAN

FOR GRAPHIC PURPOSES ONLY.
THIS SITE PLAN BASED ON SURVEY DRAWING BY: ACCURIGHT SURVEYS OF ORLANDO INC., - ORLANDO FLORIDA 32803

SCALE 1" = 20'-0"

LEGAL DESCRIPTION

LOTS 5 & 6, BLOCK 5, REPLAT OF A PORTION OF VIRGINIA HEIGHTS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK J, PAGE 28, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

ALBERT
COOPER
ARCHITECT
LESS OF 80-C
ARCHITECTURE
AND PLANNING
500 FAIRFAX AVENUE
LOT SPLIT
WINTER PARK, FLORIDA 32789
CITY OF WINTER PARK
FLORIDA COUNTY, FLORIDA

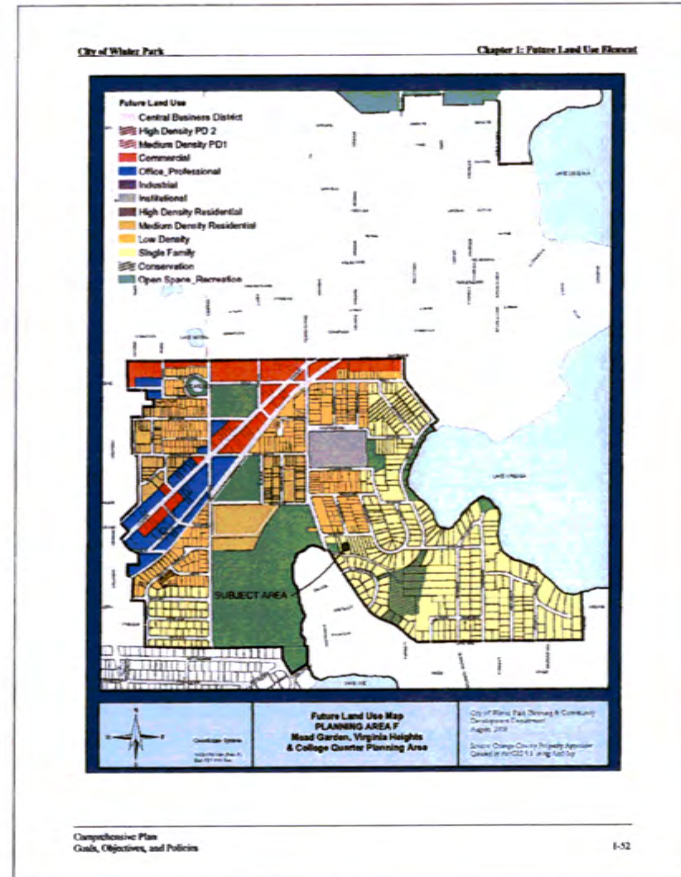
EXISTING
CONDITIONS
SITE PLAN

SUBMITTAL TO CLIENT
FORMING LOT SPLIT
DATE: 10/1/2014
SUBMITTAL TO HAYDEN PARK
FORMING LOT SPLIT
DATE: 10/1/2014

Drawn By: A.C.
Check By: H.C.
Date: 10/1/2014
By: H.C.

S-1

OCPA MAP & FUTURE LAND USE ELEMENT
 VIRGINIA HEIGHTS - FAIRFAX AVENUE
 WINTER PARK, FLORIDA

[illegible]

CCPA MAP & FUTURE LAND USE ELEMENT

SUBMITTING TO Qeios ID: 8W4WZL · 01/10/2021
 APPLICATION: [INTRODUCE](#)
 SUBMITTING TO PUBLISHED JOURNAL: [INTRODUCE](#)

Sheet No.	1.2
JOB No.	19.2
Date	05/10/2016
File	077-076

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2099	1.5	1.5
2100	1.5	1.5

S-1.1

Jeffrey Briggs

From: Sophia Langley <sophia@langleylaw.com>
Sent: Tuesday, May 05, 2015 12:59 AM
To: Jeffrey Briggs
Cc: Marilyn Langley (marilynjlangle@gmail.com)
Subject: Variance Request - 500 Fairfax Avenue
Attachments: Marilyn side garden photo.jpg; Marilyn back deck photo.jpg; Marliyn creek photo back yard.png; 536 fairfax current 2nd floor view.jpg

Dear Mr. Briggs:

I understand a variance request for the lot and single family home currently situated at 500 Fairfax Avenue is being considered at tomorrow evening's Planning and Zoning Board meeting. In general, the request is to split the current lot into two separate lots, with the result of each being half the width of the current minimum in this zoning classification.

On behalf of Marilyn Langley, the adjacent property owner located at 536 Fairfax Avenue, please note this adjacent property owner's objection to this request, based in part on the following:

- 1) The R-1AA minimum lot width applicable to new lots is 100 feet, and the applicant for the variance is requesting that two separate lots of only 50 feet in width, to include two buildings and two swimming pools be built directly adjacent to Marilyn's home and gardens. Notably, as pointed out in general in staff's report, the actual straight across dimension results in each lot being less than 50 feet in width (appears to be about 47.5 feet each)
- 2) As a long term resident and property owner for over 30 years in her home, Marilyn's property enjoys a unique type of privacy, cultivated by the natural vegetation and trees along the side and back of her home that sits on the canal. To assist in gaining a visual of the character in this area, a photo of yard angled towards the back and adjacent to the applicant's proposed two buildings and pools is attached, along with another photo of the back and of the creek area (the heron is real!). The proposed reduction in the adjacent lot size at 500 Fairfax significantly reduces the side set back that Marilyn currently enjoys in the use of her home.
- 3) In general, Section 58-66 of the Winter Park Ordinances provides concerning R1-AA zoning districts provides:

The side setback for one-story homes or the first floor of two-story homes is equal to 25 percent of the lot width in feet equally divided on each side of the home, except the side setback is 7.5 feet for lots which are 60 feet wide or less.

The side setback for two-story homes measured to the second story wall shall be 35 percent of the lot width in feet equally divided on each side of the home, except the second floor side setback is ten feet for lots which are 60 feet wide or less.

- 4) Permitting this variance, not only doubles the density of the adjacent lot, but significantly reduces Marilyn's quiet enjoyment of her property by reducing the vegetated buffer between her home and the neighboring structure and pool area by almost one half of what would be present under the current zoning rules. The **current** required **100 foot** minimum lot width would afford a **13 foot side yard set back** from her property line on her first floor, and **18 feet on her 2nd floor** (where the view currently is of only greenery and trees) using the 25%-35% ratio chart, or 15 feet and 20 feet respectively (using the 30-40% ratios if applicable). The applicant's proposed lot split takes this set back down to **7.5 feet** on the first floor, and **10 feet** (according to the submittal) on the 2nd floor. This

not only strips Marilyn of her privacy, but modifies the entire character of this area, and is detrimental to the value of her property which is adjacent to the proposed buildings in the variance (see Sec. 58-71 – suitability of buildings). The last photo shows the current view from her second floor landing.

- 5) Additionally, it is unclear as to whether the proposal by the applicant serves to address Sec. 58-87, dealing with canalfront lots. The purpose and intent of this section states:

(a) Purpose and intent. It is the intent of this section to insure that buildings and structures on canalfront lots, lakefront lots and streamfront lots are not constructed or placed such that boating hazards will be created, that construction shall be compatible with the natural grade of the property, that water pollution from stormwater runoff and other sources will be minimized, that views of water from adjoining properties will not be unduly impaired, that existing trees shall be preserved to the degree reasonably possible and the appearance of the property and the shore when viewed from the water will be kept as natural as reasonably possible. The city's lakes, canals and streams are among the city's greatest assets, and it is in the public interest to require that their aesthetic appeal and water quality be maintained and enhanced when possible.

- 6) It appears that there are special requirements that are to be considered by planning and zoning with regard to the structures on Winter Park canals, (in this instance, Howell Creek), as well as other lakeshore protections within Sec. 114-6, however, these did not appear, to the best of our knowledge, be part of the current analysis.

- 7) Marilyn has also expressed concerns over whether there is sufficient parking in the allowed areas of the proposed lot split, with doubts as to whether the plans can accommodate all the vehicles being used on a regular basis for 2 separate residences without causing further overflow into on-street parking.

Thank you for the opportunity to address these concerns.

Best,

Sophia Langley
Langley Law Offices
5415 Lake Howell Road, No. 242
Winter Park, Florida 32792
Phone: (407) 628-2232
Fax: (407) 678-7335
Cell: (321) 689-4787



city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	7-0 final vote

Subject: Rezoning for the Winter Park Racquet Club.

The Winter Park Racquet Club at 2111 Via Tuscany has a contract to purchase the adjacent single family home at 2011 Via Tuscany. The 2011 Via Tuscany property is designated Single Family in the Comprehensive Plan and zoned R-1AA. The Racquet Club is asking for a Comprehensive Plan change from Single Family to Open Space and Recreation and for a Zoning change from Single Family (R-1A) to Parks and Recreation (PR) for that property so they may incorporate the property into the Racquet Club as part of the Club's activities and for Conditional Use approval for modifications to the facilities. The action on the Conditional Use has to wait for the 2nd reading of the Ordinances by the City Commission.

Summary:

This acquisition is beneficial to the Racquet Club for a number of reasons:

1. Acquiring the 2011 Via Tuscany property 'squares off' the Racquet Club property. Actually the north 30 feet of that property is an easement for the driveway of the Racquet Club.
2. Acquiring the 2011 Via Tuscany property allows the Club to widen the south entrance road/driveway for two-way traffic flow. That then permits eliminating the "north" driveway. The attached plan shows how that area will be improved with more green space, outdoor patio and pedestrian/bike path. It also removes the traffic impacts (noise/head lights) onto those adjacent residential neighbors to the north.
3. Acquiring the 2011 Via Tuscany property allows the existing house to be converted for Club purposes such as administrative office space, an expanded tennis pro shop and for storage.

The Conditional Use component of this request is depicted on the attached site plan. It shows the elimination of the driveway on the north side of the tennis courts. It shows a new patio area and pedestrian/bike path in that area. It allows a full sized regulation tennis court to be built in the front where the City had previously approved an undersized new tennis court.

The ideas of how the Racquet Club would use the 2011 Via Tuscany property are conceptual at this point. This approval would allow the City to permit interior renovations to the home for use by the Racquet Club and for the connection of the two properties for circulation. However, if there are major changes to the building (additions over 500 sf) or major changes to the site layout (such as parking in the front yard) then those would require a future conditional use review/approval at subsequent public hearings.

As a point of information, the Winter Park Racquet Club is not a tax exempt entity. The Racquet Club pays property taxes on their current properties and would continue to pay property taxes on this newly acquired property.

The Winter Park Racquet Club has voluntarily made several significant safety, aesthetic and environmental improvements to their properties in recent years. The parking and driveways have been redone to add extra parking spaces and improve vehicle safety. New sidewalk/bike paths have been added to increase pedestrian safety. New storm water retention areas have been added and underground clay separators have been installed to improve the quantity and quality of the drainage systems. This acquisition of the property at 2011 Via Tuscany continues that program by improving traffic safety (two way drive) and squaring off the Club's boundaries. It does not represent an increase in the number of activities or traffic to/from the Racquet Club.

Planning and Zoning Board Recommendation:

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the request to amend the "Comprehensive Plan" Future Land Use Map to change from single family residential to open space and recreation designation on the property at 2011 Via Tuscany.

Motion carried unanimously by a 7-0 vote.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the request to amend the official zoning map to change from single family (R-1AA) district zoning to parks and recreation (PR) district zoning on the property at 2011 Via Tuscany.

Motion carried unanimously by a 7-0 vote.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the request for a Conditional Use to amend the site plan layout for the Racquet Club to add the property at 2111 Via Tuscany, eliminate the north driveway and make other site modifications.

Motion carried unanimously by a 7-0 vote.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE"
ARTICLE I, "COMPREHENSIVE PLAN" SO AS TO CHANGE THE FUTURE
LAND USE DESIGNATION OF SINGLE FAMILY RESIDENTIAL FUTURE
LAND USE TO OPEN SPACE AND RECREATION ON THE PROPERTY AT
2011 VIA TUSCANY, MORE PARTICULARLY DESCRIBED HEREIN,
PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.**

WHEREAS, the Winter Park City Commission adopted its Comprehensive Plan on February 23, 2009 via Ordinance 2762-09, and

WHEREAS, Section 163.3184, Florida Statutes, establishes a process for adoption of comprehensive plans or plan amendments amending the future land use designation of property; and

WHEREAS, the Winter Park Racquet Club, as petitioner for a future land use amendment, is desirous of amending the future land use designation from Single Family Residential to Open Space and Recreation; and

WHEREAS, this Comprehensive Plan amendment meets the criteria established by Chapter 163 and 166, Florida Statutes; and pursuant to and in compliance with law, notice has been given to Orange County and to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held; and

WHEREAS, the Winter Park Planning and Zoning Board, acting as the designated Local Planning Agency, has reviewed and recommended adoption of the proposed Comprehensive Plan amendment, having held an advertised public hearing on May 5, 2015, provided for participation by the public in the process and rendered its recommendations to the City Commission; and

WHEREAS, the Winter Park City Commission has reviewed the proposed Comprehensive Plan amendment and held advertised public hearings on June 8, 2015 and June 22, 2015 and provided for public participation in the process in accordance with the requirements of state law and the procedures adopted for public participation in the planning process.

NOW THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. Future Land Use Map Amendment. That Chapter 58 "Land Development Code", Article I, "Comprehensive Plan" future land use plan map is hereby amended so as to change the future land use map designation from Single Family Residential to Open Space and Recreation on the property at 2011 Via Tuscany, more particularly

described as follows:

Lots 1 & 2 and the south 30 feet of the street to the north, Block C, Sicilian Shores subdivision, as recorded in Plat Book "O", Page 34 of the Public Records of Orange County, Florida. Parcel ID# 32-21-30-8020-03-010

SECTION 2. 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 3. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. Effective Date. An amendment adopted under this paragraph does not become effective until 31 days after adoption. If timely challenged, an amendment may not become effective until the state land planning agency or the Administration Commission enters a final order determining that the adopted small scale development amendment is in compliance. Furthermore this amendment shall only become effective upon the purchase of this property by the Winter Park Racquet Club.

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 _____, 2015.

Mayor Steve Leary

Attest:

City Clerk

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE"
ARTICLE III, "ZONING" AND THE OFFICIAL ZONING MAP SO AS TO
CHANGE SINGLE FAMILY RESIDENTIAL (R-1AA) DISTRICT ZONING TO
PARKS AND RECREATION (PR) DISTRICT ZONING ON THE PROPERTY AT
2011 VIA TUSCANY, MORE PARTICULARLY DESCRIBED HEREIN,
PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the Winter Park Racquet Club has requested a Zoning map amendment consistent with the amended Comprehensive Plan and the requested zoning change will achieve conformance with the Comprehensive Plan for the property, and such municipal zoning meets the criteria established by Chapter 166, Florida Statutes, and pursuant to and in compliance with law, notice has been given to Orange County and to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held; and

WHEREAS, the Planning and Zoning Board of the City of Winter Park has recommended approval of this Ordinance at their May 5, 2015 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 findings and 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 Comprehensive Plan and that sufficient, competent, and substantial evidence supports the zoning change set forth hereunder; and

WHEREAS, the City Commission hereby finds 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 COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. Official Zoning Map Amendment. That Chapter 58 "Land Development Code", Article III, "Zoning" and the Official Zoning Map is hereby amended so as to change the zoning designation from Single Family (R-1AA) District to Parks and Recreation (PR) District on the property at 2011 Via Tuscany, more particularly described as follows:

Lots 1 & 2 and the south 30 feet of the street to the north, Block C, Sicilian Shores subdivision, as recorded in Plat Book "O", Page 34 of the Public Records of Orange County, Florida. Parcel ID# 32-21-30-8020-03-010

SECTION 2. 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 3. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. Effective Date. This Ordinance shall become effective upon the effective date of Ordinance _____. If Ordinance _____ does not become effective, then this Ordinance shall be null and void. Furthermore this amendment shall only become effective upon the purchase of this property by the Winter Park Racquet Club.

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 _____, 2015.

Mayor Steve Leary

Attest:

City Clerk

P&Z Minutes: May 5, 2015:

REQUEST OF THE WINTER PARK RACQUET CLUB INC. TO: AMEND THE "COMPREHENSIVE PLAN" FUTURE LAND USE MAP TO CHANGE FROM SINGLE FAMILY RESIDENTIAL TO OPEN SPACE AND RECREATION DESIGNATION ON THE PROPERTY AT 2011 VIA TUSCANY.

REQUEST OF WINTER PARK RACQUET CLUB INC. TO: AMEND THE OFFICIAL ZONING MAP TO CHANGE FROM SINGLE FAMILY (R-1AA) DISTRICT ZONING TO PARKS AND RECREATION (PR) DISTRICT ZONING ON THE PROPERTY AT 2011 VIA TUSCANY.

REQUEST OF WINTER PARK RACQUET CLUB INC. FOR: CONDITIONAL USE APPROVAL TO AMEND THE SITE PLAN LAYOUT FOR THE RACQUET CLUB TO ADD THE PROPERTY AT 2111 VIA TUSCANY, ELIMINATE THE NORTH DRIVEWAY AND MAKE OTHER SITE MODIFICATIONS.

Planning Manager Jeffrey Briggs presented the staff report and explained that the Winter Park Racquet Club at 2111 Via Tuscany has a contract to purchase the adjacent single family home at 2011 Via Tuscany. The 2011 Via Tuscany property is designated Single Family in the Comprehensive Plan and zoned R-1AA. The Racquet Club is asking for the Comprehensive Plan change from Single Family to Open Space and Recreation and for the Zoning change from Single Family (R-1A) to Parks and Recreation (PR) for the property so that they may use the property as part of the Club's activities.

This acquisition is beneficial to the Racquet Club for as number of reasons:

1. Acquiring the 2011 Via Tuscany property 'squares off' the Racquet Club property. Actually the north 30 feet of that property is an easement for the driveway of the Racquet Club.
2. Acquiring the 2011 Via Tuscany property allow the Club to widen the south entrance road/driveway for two-way traffic flow. That then permits eliminating the "north" driveway. The attached plan shows how that area can be improved with more green space, outdoor patio and pedestrian/bike path. It also removes the traffic impacts (noise/head lights) onto those adjacent residential neighbors to the north.
3. Acquiring the 2011 Via Tuscany property allow the existing house to be converted for Club purposes such as administrative office space, an expanded tennis pro shop and for storage.

Mr. Briggs reviewed the Conditional Use component of this request. It contemplates the elimination of the driveway on the north side of the tennis courts, a new patio area, and pedestrian/bike path in that area. It also contemplates a full sized regulation tennis court to be built up in the front where the City had previously approved an undersized new tennis court.

Mr. Briggs explained that any proposed uses of the 2011 Via Tuscany property are conceptual at this point. This approval would allow the City to permit interior renovations to the home for use by the Racquet Club and for the connection of the two properties for circulation. However, if there are major changes to the building (additions over 500 square feet) or major changes to the site layout (such as parking in the front yard) then those would require a future conditional use review/approval at subsequent public hearings. Given that there are adequate protections for the neighbors from the City approval processes, this property acquisition will not provide for something unforeseen that could be a nuisance for the neighbors. He noted that as a point of information, the Winter Park Racquet Club is not a tax exempt entity. They pay property taxes on their current properties and thus would continue to pay property taxes on this newly acquired property.

Mr. Briggs summarized by stating that the Winter Park Racquet Club has voluntarily made several very significant safety, aesthetic and environmental improvement to their properties in recent years. The

parking and driveways have been redone to add extra parking spaces and improved vehicle safety. New sidewalk/bike paths have been added to increase pedestrian safety. New storm water retention areas have been added and underground clay separators have been installed to improve the quantity and quality of the drainage systems. This acquisition of the property at 2011 Via Tuscany continues that program by improving traffic safety (two-way drive) and squaring off the Club's boundaries. It does not represent an increase in the number of activities or traffic to/from the Racquet Club. Staff recommended approval of the request. Mr. Briggs responded to Board member questions and concerns.

Mr. Gottfried disclosed that he is a member of the Racquet Club. He explained that he has spoken to the City Attorney and there is no conflict that prohibits him from voting on or participating in the discussion of this item.

John Gigliotti, 2233 Azalea Place, represented the Racquet Club. He explained that he is a neighbor, member and also serves on Club's the long range planning committee. He stated that there have been improvements to storm water, parking lot and landscaping. He noted that they have been working with the Sutton's in an effort to traffic calm their ingress/egress to their driveway. He said that redevelopment will be conforming to the existing single family neighborhood. Mr. Gigliotti responded to Board member questions and concerns.

Charlie Madden, Madden Engineering, spoke regarding Board member concerns with regard to the location and configuration of the boat ramp. He also explained the improvements that have been made at the racquet Club for storm water drainage including the clay separators and increased retention areas.


































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

The P&Z Board agreed that the addition of this property can be done without impact upon the neighbors and that the City conditional use requirements would apply if anything major is done to the acquired property.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the request to amend the "Comprehensive Plan" Future Land Use Map to change from single family residential to open space and recreation designation on the property at 2011 Via Tuscany.
Motion carried unanimously by a 7-0 vote.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the request to amend the official zoning map to change from single family (R-1AA) district zoning to parks and recreation (PR) district zoning on the property at 2011 Via Tuscany.
Motion carried unanimously by a 7-0 vote.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the request for a Conditional Use to amend the site plan layout for the Racquet Club to add the property at 2111 Via Tuscany, eliminate the north driveway and make other site modifications.
Motion carried unanimously by a 7-0 vote.

-  Florida turnpike
-  Interstate 4
-  Toll Road
-  Major Roads
-  Public Roads
-  Gated Roads
-  Road Under Construction
-  Proposed Road
-  US Road
-  State Road
-  County Road
-  One Way
-  Brick Road
-  Proposed SunRail
-  Block Line
-  Lot Line
-  Residential
-  Agriculture
-  Commercial/Institutional
-  Governmental/Institutional/Misc
-  Commercial/Industrial Vacant Land
-  Hydro
-  Waste Land
-  Agricultural Curtilage
-  County Boundary
-  Parks
-  Golf Course
-  Lakes and Rivers
-  Block Number
-  Lot Number
-  Parcel Number
-  Parcel Address
-  Parcel Dimension

Courtesy Rick Singh, CFA, Orange County Property Appraiser



This map is for reference only and is not a survey.

Created: 4/21/2015



Winter Park Racquet Club

April 21st, 2015

Mr. Jeffrey Briggs
City of Winter Park
401 South Park Avenue
Winter Park, FL 32789

Dr. Mr. Briggs;

The Winter Park Racquet Club (WPRC) is a neighborhood club, governed by neighborhood volunteers, with over 350 multi-generational members residing within 1 mile of the club.

The club has entered into discussions with the owners of 2011 Via Tuscany, Winter Park, for the purchase of their property. The home is located south of the Clubhouse, directly across from our tennis courts and fitness center. As we move forward with the purchase, we respectfully request a change to the zoning of 2011 Via Tuscany to Parks and Recreation, which is consistent with the current WPRC property.

The zoning change will allow us to:

- Increase parks and recreation space
- Reduce single lane vehicle traffic and optimize pedestrian and vehicle safety
- Increase pedestrian paths and landscaping
- Retain the residential character of all buildings
- Cultivate green space to the north of the property.

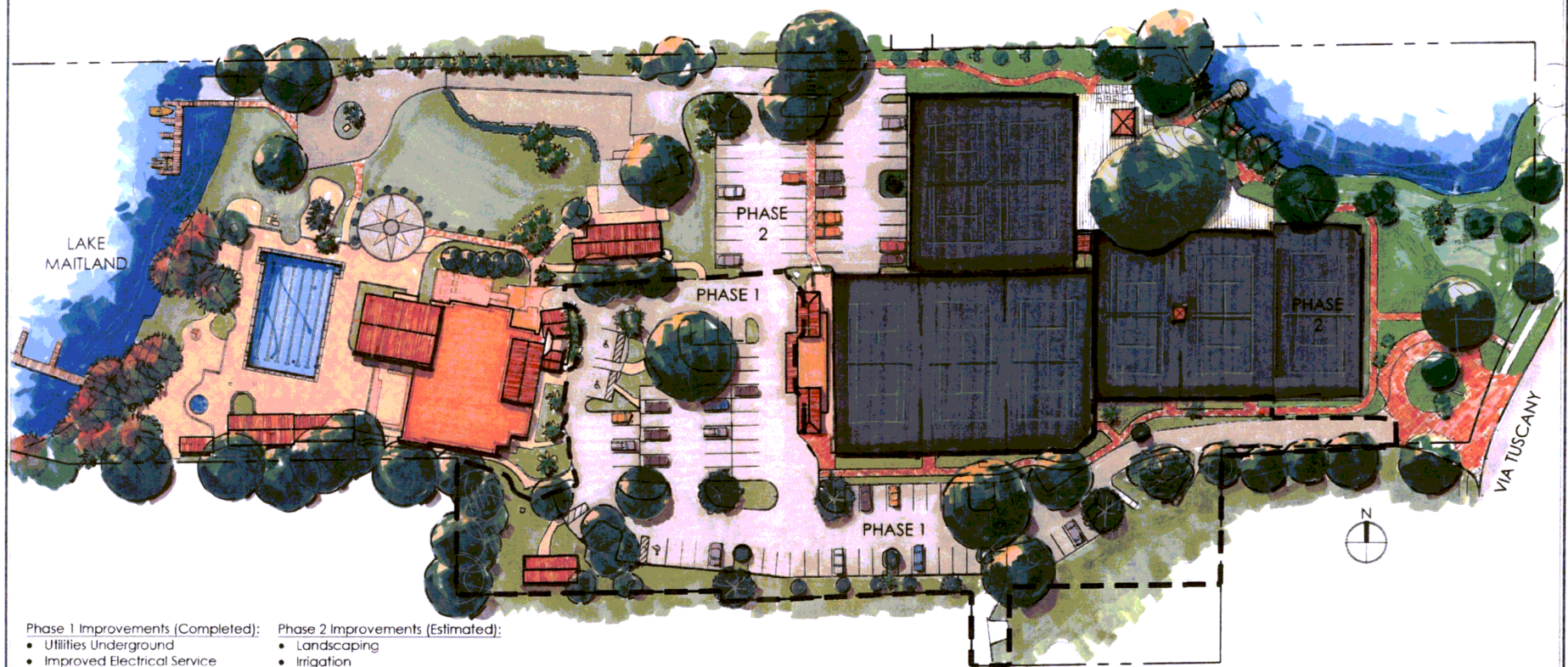
All of these ideas will function into the framework of the Club's vision to remain a neighborhood club.

It is always the Club's goal to ensure a mutually beneficial relationship with our neighbors and the surrounding Winter Park community.

Thank you for your attention to our request.

Warm regards,


Leslie Karen
General Manager
Winter Park Racquet Club



Phase 1 Improvements (Completed):

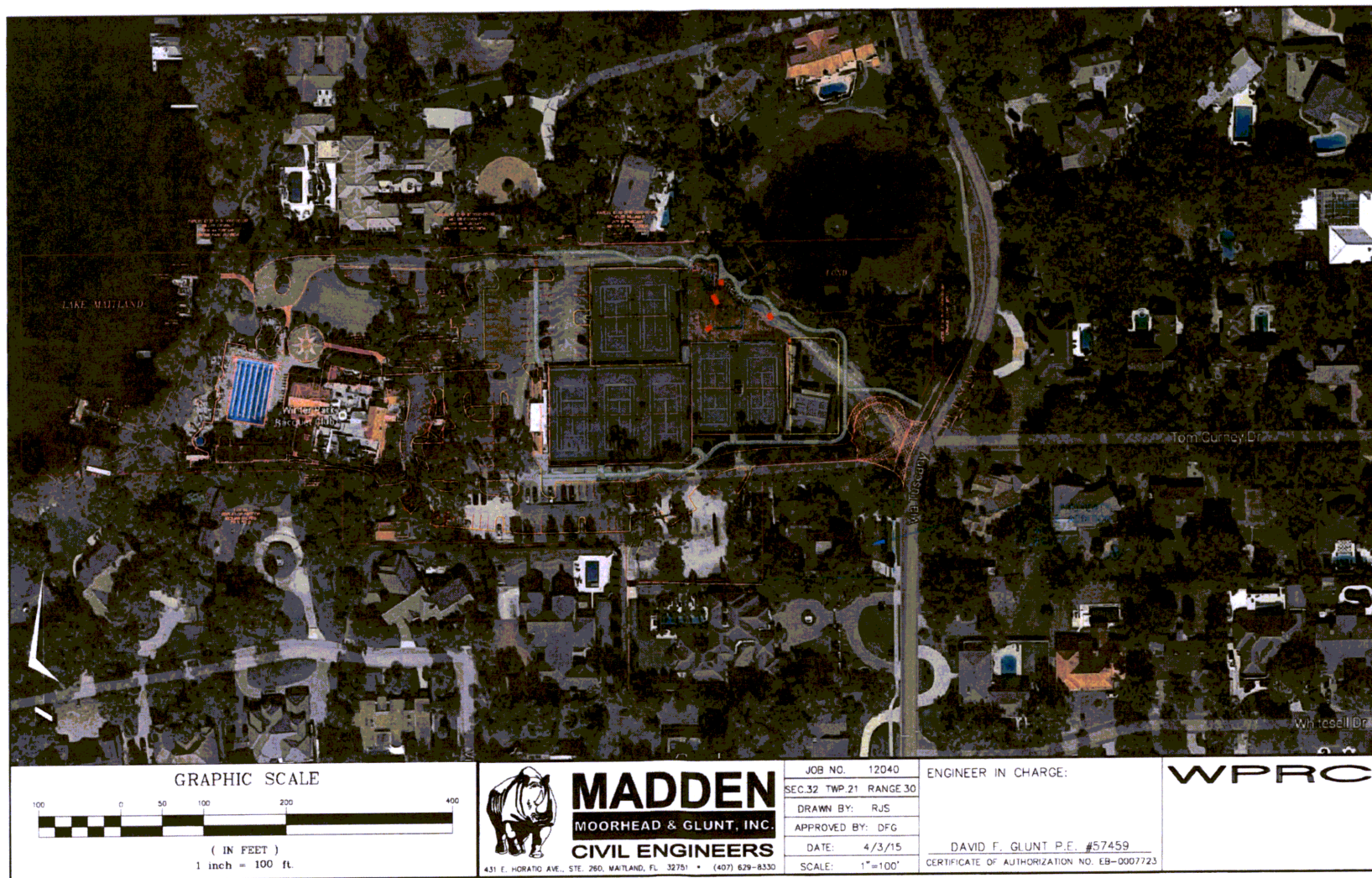
- Utilities Underground
- Improved Electrical Service
- Improved Parking Lot Lighting
- Landscaping
- Irrigation
- Paving
- Traffic Flow
- Additional Parking
- Improved Water Retention

Phase 2 Improvements (Estimated):

- Landscaping
- Irrigation
- Eighth Tennis Court
- Removal of North Exit
- Traffic Flow; Easier Guest Drop-Off
- Paving
- Improved Drainage and Water Retention
- Additional Parking
- Improved Signage and Flagpole
- Wider Entrance / Exit
- Deck Area
- Summer Kitchen / Bathrooms
- Repair / Improve courts 6 & 7



**WINTER PARK RACQUET CLUB
MASTER PLAN**





city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	7-0 final vote

Subject: Conditional Use for 1800 Lee Road.

This public hearing involves the request of Icon Residential for the redevelopment of the properties collectively referred to as the 1800 Lee Road property that have separate property addresses of 1746/1800/1802/1806/1810/1814/1818/1824/1828/1832 Lee Road. All of the properties have a Low Density Residential future land use designation in the Comprehensive Plan and are zoned Low Density Residential (R-2). The request is for Conditional Use approval under the R-2 provision for Cluster Housing to redevelop the properties with 30, two-story townhouses.

Summary:

Development Request: The proposed development consists of approximately 82,000 square feet of total residential buildings which yield townhouse units of an average size of 2,733 square feet inclusive of a two car garage for each unit. For purposes of comparison, the following table outlines the R-2 zoning requirements and the proposed dimensions of this project.

	R-2 Require-ments	Project Proposal
Property Size		3.45 acres
Floor Area Ratio	Max. 55%	53.3%
Lot Coverage	Max. 35%	27.2%
Max. Impervious Coverage	Min. 65%	62.5%
Lee Road setback	30 feet	35 feet
Lakeside setback	50 feet	50 feet minimum
Western Side setback	10 feet	20 feet
Northern Side setback	30 feet	38-84 feet
Parking Required	75 spaces	72 spaces
Bldg. Height	35 feet	30-32 feet

There are currently eight one-story duplexes on this property (16 units) which will be demolished to make way for this redevelopment. The 30 new townhouse units are to be spread amongst nine separate buildings holding 2-4 units each. Four units in a building is the maximum permitted under the R-2 cluster housing regulations. Parking spaces shown for this project are 72 spaces. Each townhouse has a two-car garage and there are 15 visitor parking spaces.

Storm water retention will be accomplished through a combination of underground exfiltration and some retention swales within the lakefront portions of the site. Due to the shallow location of groundwater, given the lakeside location, the site has to be built up with fill so that there can be clearance between the underground exfiltration and the groundwater so that the system can function as designed.

The addition of this fill then necessitates the clear cut removal of all of the existing trees on the property except those bordering the lake edge. The landscape plan indicates the removal and compensation to be provided. **Per the applicant's tree survey**, there will be 33 existing oak trees to be removed of a total size of 850 caliper inches. The replacement is 46 trees, each of 3 inches in diameter for a replacement 138 caliper inches.

Since the initial P&Z meeting there has been a site plan modification primarily to protect the tree canopy along the western property line that moved the building about 30 feet from that property line (in lieu of the 15 feet originally shown). This has not only been beneficial to that tree canopy but has also allowed the applicant to preserve some of the existing sand oaks within a tree well in the open space where the visitor parking is located. That revised plan has been shown to P&Z at their June 2nd meeting.

These units will be sold fee simple with a Homeowners Association for maintenance of the common elements. There will be a **re-plat of this property for the "lots" and common area** tracts to be maintained by the HOA as well as indicating the easement areas needed for utilities.

The common area amenities will include some boat slip and gazebo/dock area for the use and enjoyment of the residents. The primary concern of the Lake Killarney Advisory Board is that the City control the number of structures and the number of boat/jet skis that add to the impact on lake usage. The applicant is asking for the ability for their residents to have 10 boat or jet ski slips and one common dock/gazebo for the residents. That number seems reasonable to staff but the actual design and location of these facilities is one item that needs further refinement. As such there will be a condition of approval requiring a subsequent review and approval by P&Z, as to the actual design and location.

The project also proposes to redevelop the privacy wall that exists along the Lee Road frontage. The existing wall is not in good condition structurally in some sections due to tree root/growth impacts since 1964. The applicant is proposing to move the wall closer to Lee Road, at a 10 foot setback and is requesting a variance for 7 feet of wall height in lieu of the typical code maximum of 6 feet. The subdivision code requirement would also apply such that the walls may not be completely linear but must contain jogs which will vary the distance from the sidewalk between 2-3 feet. Staff understands the need for a little more height and sound buffering given the location adjacent to Lee Road. As there is not a firm design at this time, there will be a condition of approval requiring a subsequent review and approval by P&Z, as to the actual design and configuration of the wall.

Preliminary and Final CU: This application package is intended to provide the detail needed both for the “preliminary” and “final” conditional use approvals and as such includes the final site plan, civil engineering plans, architectural perspective images of the building facades, landscape plan, complete storm water retention design and a traffic impact information. Aside from the two items previously mentioned, which can be conditions of approval, everything else appears to have been provided.

History of the Property: The current duplexes on these properties were built in 1964. In 2007 the P&Z Board and City Commission approved a redevelopment plan via this same Conditional Use process for a project of 27 two-story townhouses and based on that approval the property was sold to the current ownership group. However, shortly thereafter, the economy experienced the downturn and that project was not pursued. The current applicant has a contract to purchase these properties from that ownership group, contingent upon received these development approvals.

Context with Adjacent Properties: This property location sits in between two office properties with the Lee World Center, a three story building of 62,000 square feet on the west and the one-story Bank of 6,500 square feet on the east. As such there are no neighborhood impacts from this project.

Traffic/Mobility Impacts: The 30 townhouses will have a daily traffic generation of 285 trips per day. The existing 16 units generate 152 trips per day so the net increase is 133 trips per day. On Lee Road with an existing 35,500 cars a day, this increase is de minimus.

Staff Analysis of the Applicant’s Requests:

Various city departments have reviewed this application including representatives from Planning & Community Development, Public Works, Electric Utility, Water and Wastewater Utilities, Fire, Urban Forestry, Parks & Recreation and City Administration. Their comments were as follows:

Fire Dept.: Applicant is aware of the fire hydrant and fire flow needs for the project.

Traffic Engineering/Police Dept.: The median on Lee Road allows left turns from the site. The added traffic impact is minimal.

Water/Sewer/Storm Water Utility: The applicant is aware of the requirements for the private lift station for sanitary sewer and the fire flow need for additional hydrants. The HOA will maintain the lift station and underground exfiltration system per Agreement with the City.

P&Z Summary and Conclusion:

The Planning and Zoning Board recognized that in 2007 the City approved a redevelopment plan for this property with a similar concept (two-story townhouses) and density (27 units). This location is on a four lane arterial State Highway (Lee Road) with 35,500 cars/day and sits in between two office buildings. The one negative impact is that the storm water exfiltration design is causing the loss of many significant oak trees but overall, the applicant has provided a plan that meets the requirements of the Comprehensive Plan and Land Development Code. The only items to define further are the boat docks/gazebo and exterior wall design. Thus the P&Z Board recommended approval subject to the special conditions suggested by staff.

Please note that the revised site plan showing the approximately 30 foot setback to the western property line and the preservation of existing oaks adjacent to the visitor parking is to be the "approved" site plan. The applicant has committed to preserve the oak tree limb canopy that hangs over the property along the western property line and to construct a tree well to save some of the interior oak trees.

Planning and Zoning Board Recommendation:

Motion made by Mr. Weldon, seconded by Mr. Gottfried to grant conditional use approval to redevelop the 3.45 acres of properties collectively referred to as 1800 Lee Road, including the tax parcels of 1746/1800/1802/1806/1810/1814/1818/1824/1828/1832 Lee Road for a 30 unit townhouse development (cluster housing), on these properties zoned R-2 subject to the following conditions requested by staff:

- 1. The Icon Residential project entitlements comprise 30 residential two-story townhouses of approximately 82,000 total square feet which may be sold as fee simple units subject to the City's review and approval of the re-plat, covenants/restrictions and HOA documents by staff and city attorney.**
- 2. The final number, location and design of the docks and gazebos shall be reviewed and approved by the Planning & Zoning Board but may not exceed accommodations for more than 10 boats/jet skis and the re-plat covenants/restrictions and HOA documents shall reflect this restriction.**
- 3. The final design of the privacy wall along Lee Road shall be reviewed and approved by the Planning & Zoning Board.**

The motion carried unanimously by a 7-0 vote.

P&Z Minutes: May 5, 2015:

REQUEST OF ICON RESIDENTIAL FOR: CONDITIONAL USE APPROVAL TO REDEVELOP THE 3.45 ACRES OF PROPERTIES COLLECTIVELY REFERRED TO AS 1800 LEE ROAD, INCLUDING THE TAX PARCELS OF 1746/1800/1802/1806/1810/1814/1818/1824/1828/1832 LEE ROAD FOR A 30 UNIT TOWNHOUSE DEVELOPMENT (CLUSTER HOUSING), ON THESE PROPERTIES ZONED R-2.

Planning Manager Jeffrey Briggs presented the staff report and explained that this public hearing involves the request of Icon Residential for the redevelopment of the properties collectively referred to as the 1800 Lee Road property that are all in the same ownership but which have separate property addresses of 1746/1800/1802/1806/1810/1814/1818/1824/1828/1832 Lee Road. All of the properties have a Low Density Residential future land use designation in the Comprehensive Plan and are zoned Low Density Residential (R-2). The request is to for Conditional Use approval under the R-2 provision for Cluster Housing to redevelop the properties with 30, two-story townhouses. There are currently eight one-story duplexes on this property (16 units) which will be demolished to make way for this redevelopment. Project Site is 3.45 acres. Mr. Briggs discussed the R-2 zoning requirements and the proposed dimensions of this project, preliminary and final Conditional Use approvals, history of the Property, compatibility with adjacent properties, traffic/mobility impacts and detailed the current redevelopment proposed by the applicant. The proposed redevelopment consists of approximately 82,000 square feet of total residential buildings which yield townhouse units of an average size of 2,733 square feet inclusive of a two car garage for each unit. Mr. Briggs briefly touched on the concerns and comments received from other departments.

Mr. Briggs concluded by stating that the staff recognizes that in 2007 the City approved a redevelopment plan for this property with a similar concept (two-story townhouses) and density (27 units). This location is on a four lane arterial State Highway (Lee Road) with 35,500 cars/day and sits in between two office buildings. The one negative impact is that the storm water exfiltration design is causing the loss of many significant oak trees. Overall, the applicant has provided a plan that meets the requirements of the Comprehensive Plan and Land Development Code. The only items to define further are the boat docks/gazebo and exterior wall design. After significant review, staff has analyzed the Conditional Use and is recommending approval subject to the following special conditions:

1. The Icon Residential project entitlements comprise 30 residential two-story townhouses of approximately 82,000 total square feet which may be sold as fee simple units subject to the City's review and approval of the re-plat, covenants/restrictions and HOA documents by staff and city attorney.
2. The final number, location and design of the docks and gazebos shall be reviewed and approved by the Planning & Zoning Board but may not exceed accommodations for more than 10 boats/jet skis and the re-plat covenants/restrictions and HOA documents shall reflect this restriction.
3. The final design of the privacy wall along Lee Road shall be reviewed and approved by the Planning & Zoning Board.

Mr. Briggs responded to Board member questions and concerns.

Brian Kiraly, 2190 South Belcher Road, Largo, represented Icon Residential. He stated that the applicant agrees with the staff report and the conditions as presented by Mr. Briggs. He further

discussed parking, architectural details, ingress/egress. He confirmed that the applicant will build a private lift station for this project. Mr. Kiraly and Mr. Ryan Studzinski of Icon Residential responded to Board member questions and concerns.

The following people addressed the Board concerning the request: Bob Maska, 1820 Lee Road; Paul Gaulding, 1121 Park Green Place; Bee Epley, 151 North Orlando Avenue; Linda Young, 1808 Lee Road; Karen Gray, 1832 Lee Road; Resident of 1814 Lee Road; Perry Pryor, 1830 Lee Road. The existing residents within the properties that spoke expressed concern about the impact on the existing cove, additional boat docks, the proposed height of the townhomes, traffic on Lee Road, the loss of trees, and the impact that the redevelopment would have on the existing wildlife. The residents that reside at the property currently expressed frustration over the upkeep of the property, their displacement and expressed frustration that no one from the ownership, management or prospective buyers would talk to them or provide them any information for them to plan for the future.

No one else wished to speak. Public Hearing closed.

The Planning Board members expressed sympathy to the residents that no one on the ownership or development side had made any effort to provide information regarding their future. However, the Chairman noted that a lease agreement provides rights and privileges to the tenants but also provides the opportunity for the owners to redevelop their property at the end of the lease periods. The role of the P&Z Board then is limited to review of those prospective plans if the ownership decides to redevelop.

The Board members noted that the redevelopment plans were in conformance with the R-2 code regulations and no variances were requested. Mr. Gottfried added that the St. Johns WMD reviews the storm water system and impacts upon wetlands and thereby impacts on wildlife. The Board agreed that the items to return for further review were important for the ecology of the lake and for the aesthetics of project.

Motion made by Mr. Weldon, seconded by Mr. Gottfried to grant conditional use approval to redevelop the 3.45 acres of properties collectively referred to as 1800 Lee Road, including the tax parcels of 1746/1800/1802/1806/1810/1814/1818/1824/1828/1832 Lee Road for a 30 unit townhouse development (cluster housing), on these properties zoned R-2 subject to the following conditions requested by staff:

- 4. The Icon Residential project entitlements comprise 30 residential two-story townhouses of approximately 82,000 total square feet which may be sold as fee simple units subject to the City's review and approval of the re-plat, covenants/restrictions and HOA documents by staff and city attorney.**
- 5. The final number, location and design of the docks and gazebos shall be reviewed and approved by the Planning & Zoning Board but may not exceed accommodations for more than 10 boats/jet skis and the re-plat covenants/restrictions and HOA documents shall reflect this restriction.**
- 6. The final design of the privacy wall along Lee Road shall be reviewed and approved by the Planning & Zoning Board.**

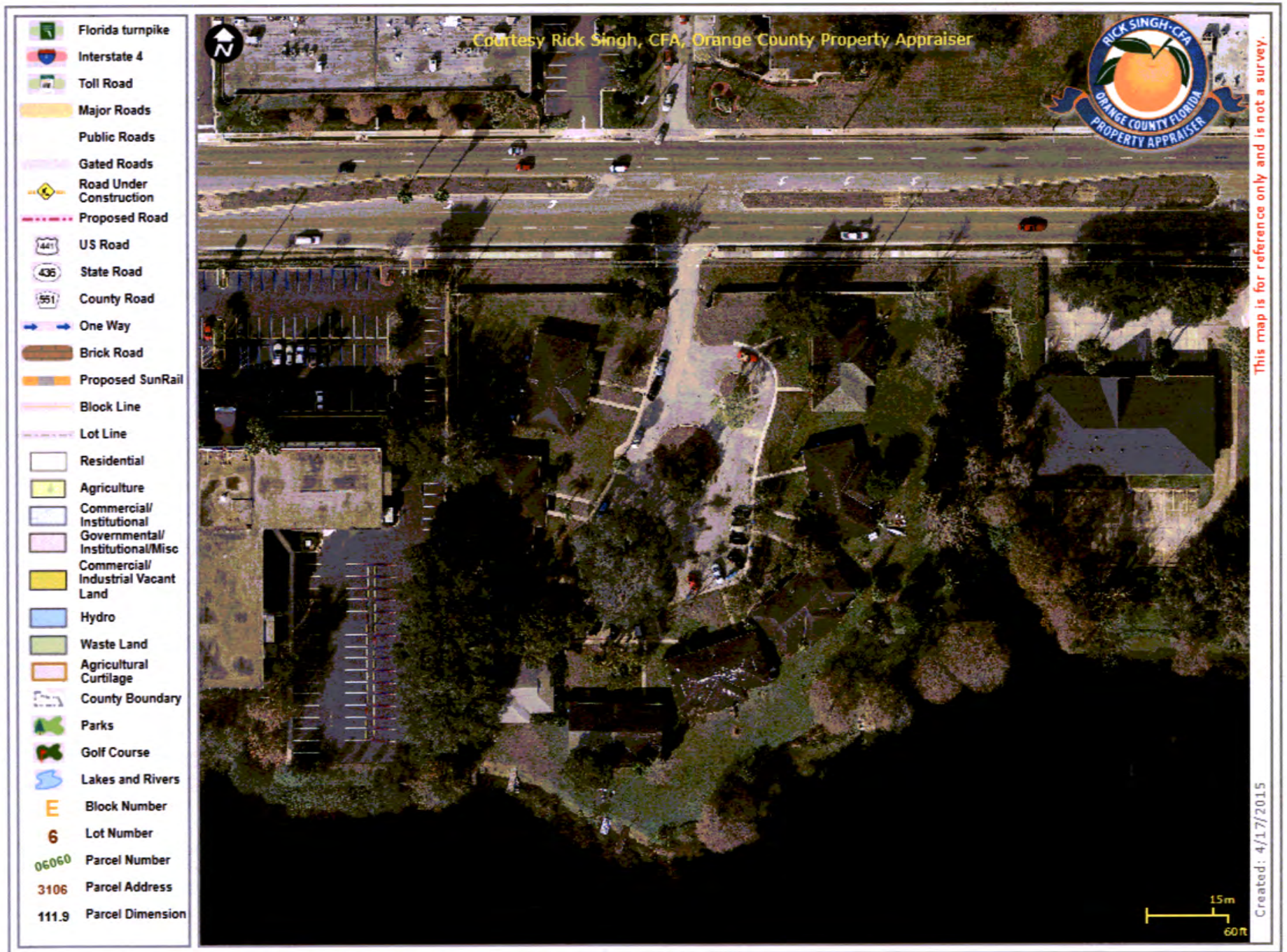
Motion carried unanimously by a 7-0 vote.



1 in. = 387.2 feet





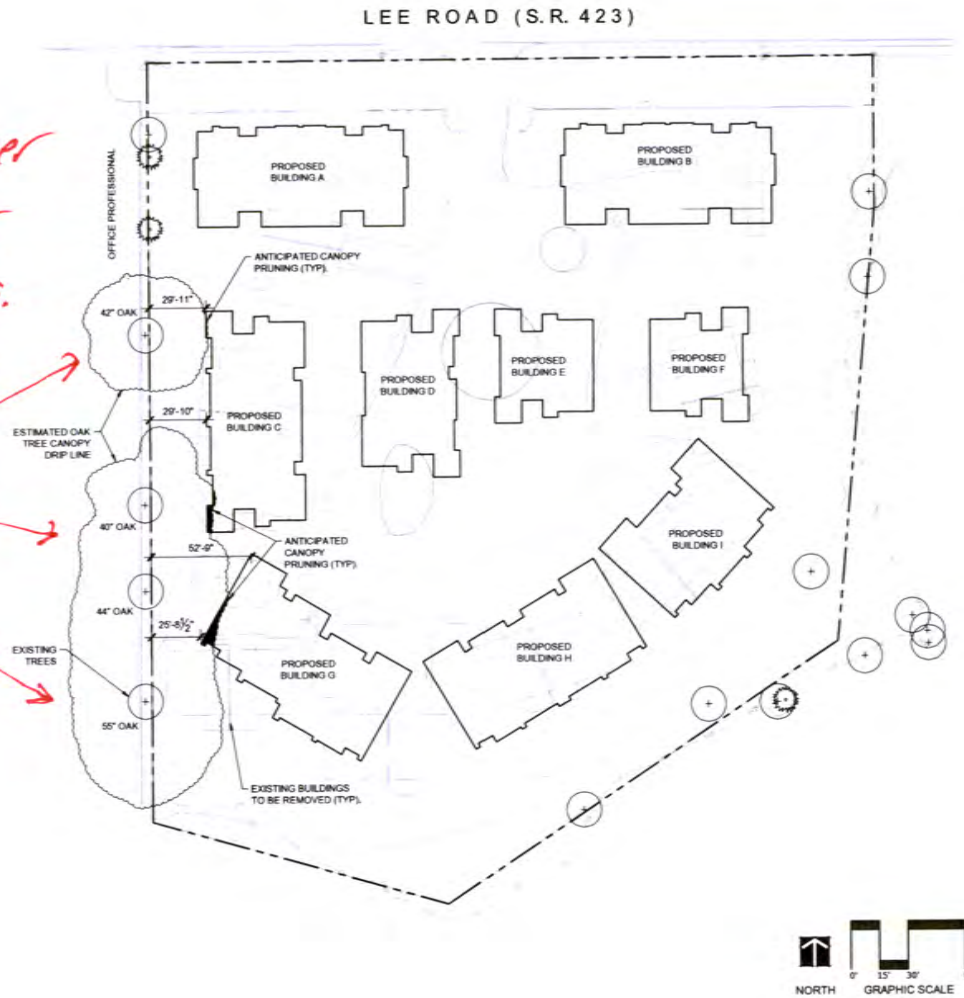




1800 Lee Road - Frontage

Revised Site Plan - June 1, 2015

Per request of owner
of Lee World Center,
site plan moves bldgs.
to 30 ft. setback to
save existing tree
limb canopy along the
common property line



Prepared By:

PlaceMaker
Design Studio, LLC

PlaceMaker Design Studio, LLC
1800 S. Beech Road, Suite 101 - Clearwater, Florida 34616
Phone: 727-298-6134
LIC#00000005

Contact: Chris Anderson
Web Site: www.placemakerdesignstudio.com

Prepared For:

ICON Residential
2100 S. Beech Road, Unit 8
Largo, Florida 34771
Contact: Ryan Bultman
Phone: 813-582-8883

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**LEE ROAD
TOWNHOMES**

1800 LEE ROAD
WINTER PARK, FLORIDA

DRAFT
PROGRESS DRAWING

CONCEPTUAL LANDSCAPE PLAN
PRELIMINARY
CONDITIONAL USE SUBMITTAL

NOT FOR CONSTRUCTION
THESE PLANS HAVE NOT BEEN APPROVED
BY THE GOVERNING AGENCY
AND ARE SUBJECT TO CHANGE.

REV DATE DESCRIPTION

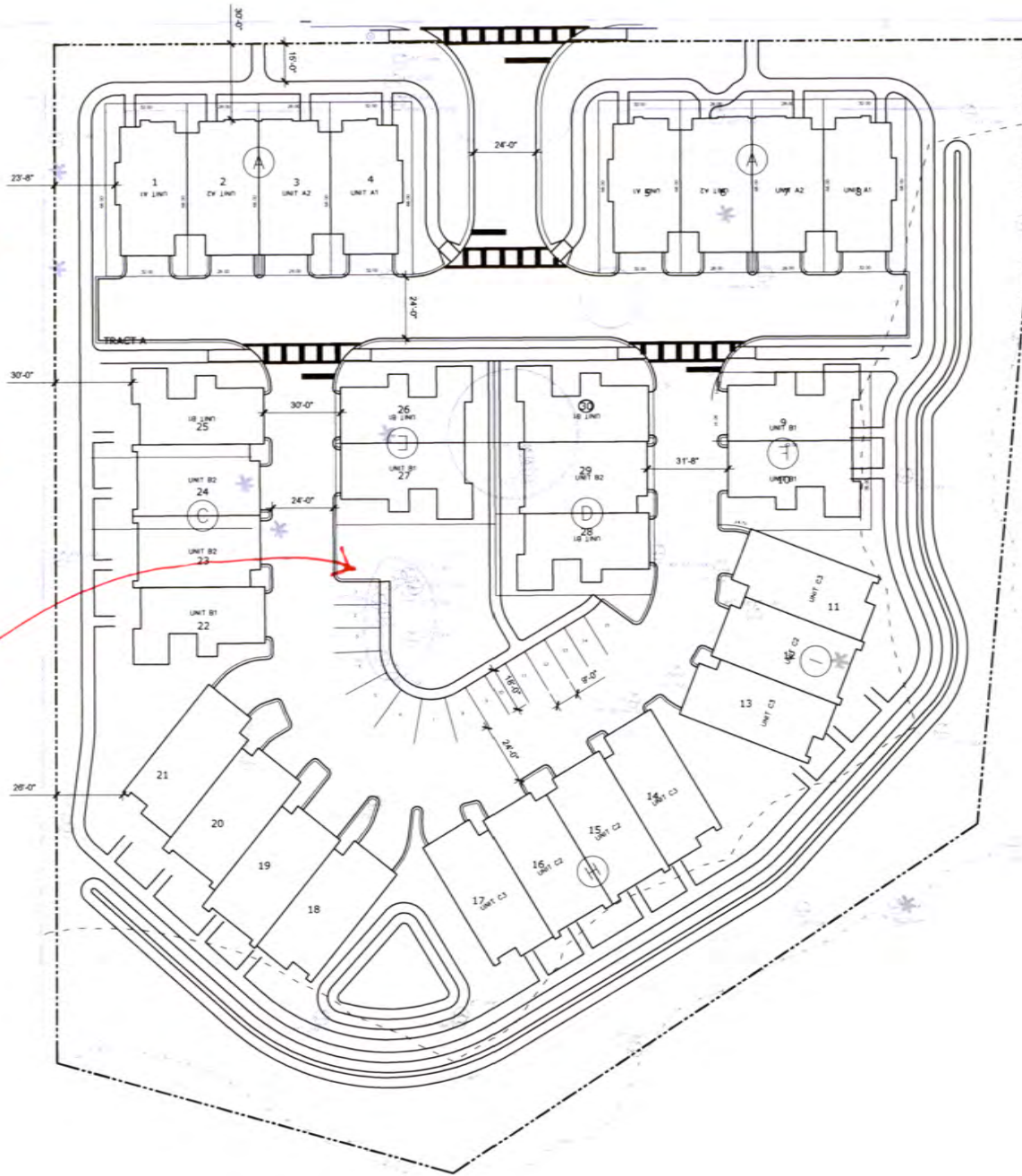
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Job No.: 2404
Drawn By: CJA
Checked By: CJA

Sheet Title
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PRUNING
EXHIBIT**

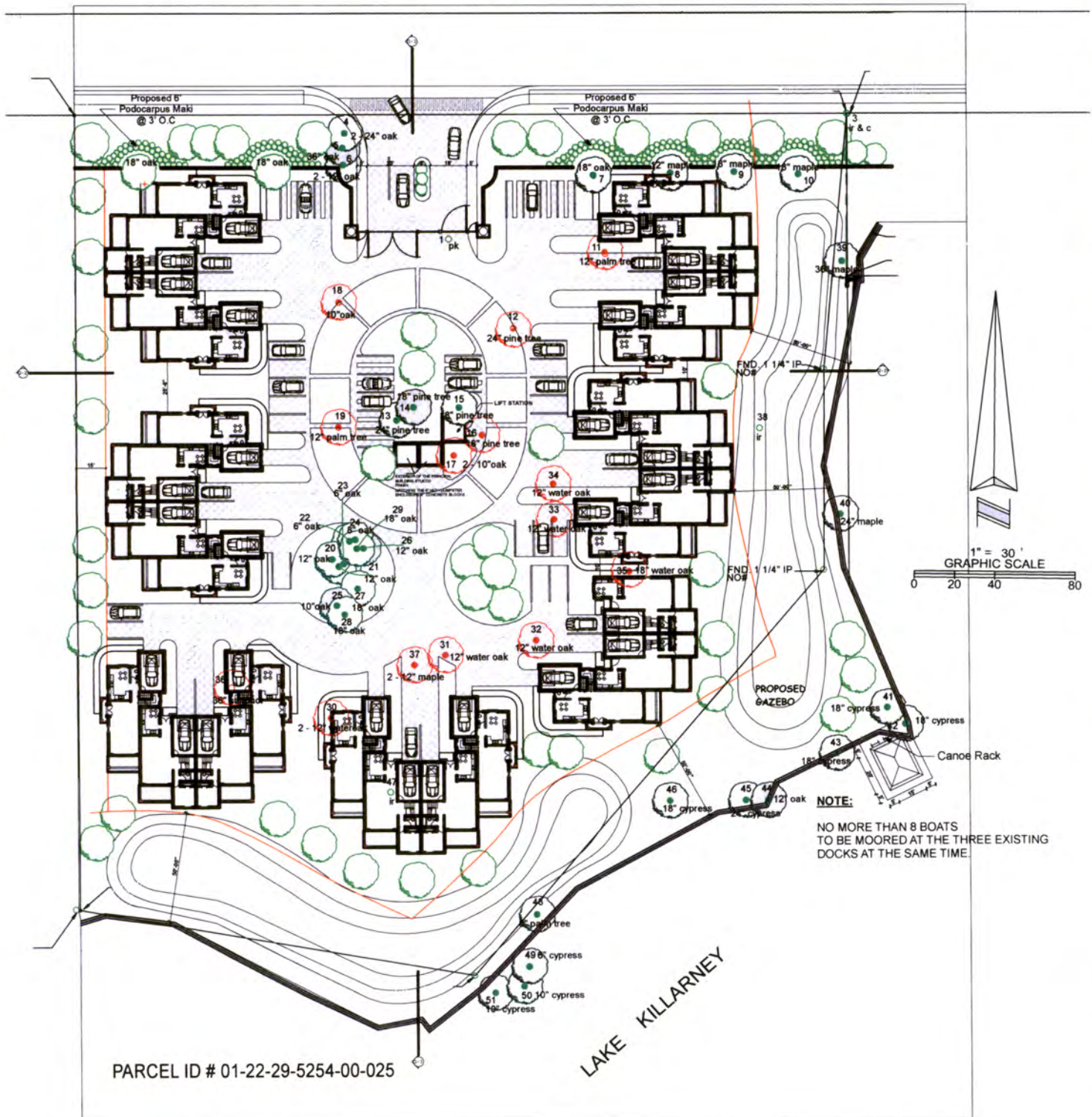
Sheet No.
EXH-1

Revised Site Plan - June 1, 2015

Shift in the location of the bldgs. also allows preservation of existing oaks within interior open space



WINTER PARK FLORIDA



*City Commission Approval
from June 25, 2007*

The following spoke in favor of the conditional use approval:

Michael Harbison, 2150 Forrest Road

Joe Terranova, 700 Melrose Avenue – expressed concerns with the wetlands mitigation and asked that they be permanently protected and that the mitigation be done at the Clayton property.

Muriel Dubuc, Mayflower resident

Jack Williamson, Mayflower resident

The following submitted a letter of opposition to the conditional use approval which Attorney Cheek read into the record: S. Charles Modell, 1230 Sunset Drive (representing the Gallery Condominiums).

Barbara Smith, 2427 Gallery View Drive, did not speak for or against the project but expressed concerns with the construction phase, the dirt and noise and the two lane road that will be used during the construction. She asked what can be done to keep these concerns at a minimum.

Motion made by Commissioner Metcalf to approve the conditional use request, and seconded by Commissioner Bridges for discussion. Commissioner Bridges stated she supports the project but asked if there is a way to help mitigate the traffic issues during the construction phase. Mr. Kolb responded there are ways to help this and they will be developing those plans. He stated they will consider an alternate access road that may be a solution to both the construction and emergency access. Mr. McGuffin spoke about their sensitivity with the Gallery Condominium resident's concerns regarding traffic. Mayor Strong asked if there was any way we could regulate the construction traffic during the construction period that would alleviate some of the concerns. Attorney Cheek responded as well as Mr. Kolb who spoke about a satellite parking area for construction traffic which will alleviate some of the traffic back and forth. Further discussion ensued regarding the size of the building. **The motion carried unanimously.**

A recess was taken from 5:16 – 5:20 p.m.

- b) Conditional Use Approval-Request to construct 27 two-story townhouse units on the 3.4 acre property at 1800 Lee Road.

Planning Director Jeff Briggs explained the location of the request and the other issues related to the project that have been resolved regarding the gated entrance into the property, the access and tree preservation. He stated they have adequate parking, the stormwater retention meets the code and that the site plan has been perfected. He added that there is more architectural detail and the architecture of the individual buildings has been improved. He addressed the Planning and Zoning approval with conditions. Commissioner Metcalf inquired into the rules currently in place regarding gates. Mr. Briggs responded there is a prohibition in the code about private streets and further spoke regarding this issue. There was discussion as to why the applicant asked for a gate, that the code does not prohibit it and that all public safety concerns have been eliminated.

Representing the applicant, Attorney Allison Yurko and Ed Avellaneda provided a power point presentation outlining the details of the project. Ms. Yurko asked that the record reflect the following: "That they have talked a lot with the adjacent neighbor to the west and that they will cooperate in good faith with the neighbor at 1850 Lee Road on sewer related issues and that they will use best efforts to preserve the density and health of the seven trees near the western

boundary of their property". She stated they are actually located on the neighbor's property but that they wanted assurances that they would try and preserve the trees. She stated this is also important to them because that is their buffer between the commercial property to the west and their parcel. She stated that staff is going to add a phrase to recommendation #2.

Michael (unknown), Lakefront Boulevard, asked that the cypress trees be preserved along the perimeter. He spoke about the stormwater runoff swales between the trees and the water and asked how that will be created and that this be considered. He stated he is not against gating their community. It was assured by the applicant that the existing trees will remain and that the trees behind the swales are new trees that will be added.

→ **Motion made by Commissioner Metcalf to approve the conditional use request, subject to the following conditions as approved by the P&Z:**

1. **Applicant is to bring back for final development plan approval, the final site plan, civil plans (retention), final architectural elevations, tree preservation protection plan and landscape/hardscape plans to P&Z for review and approval; and**
2. **Applicant is to modify the stormwater retention area to increase separation from the cypress trees (indicated by numbers 41, 43 and 46 on the tree survey) to 35 feet for better protection of the tree root systems and preservation of those trees.**

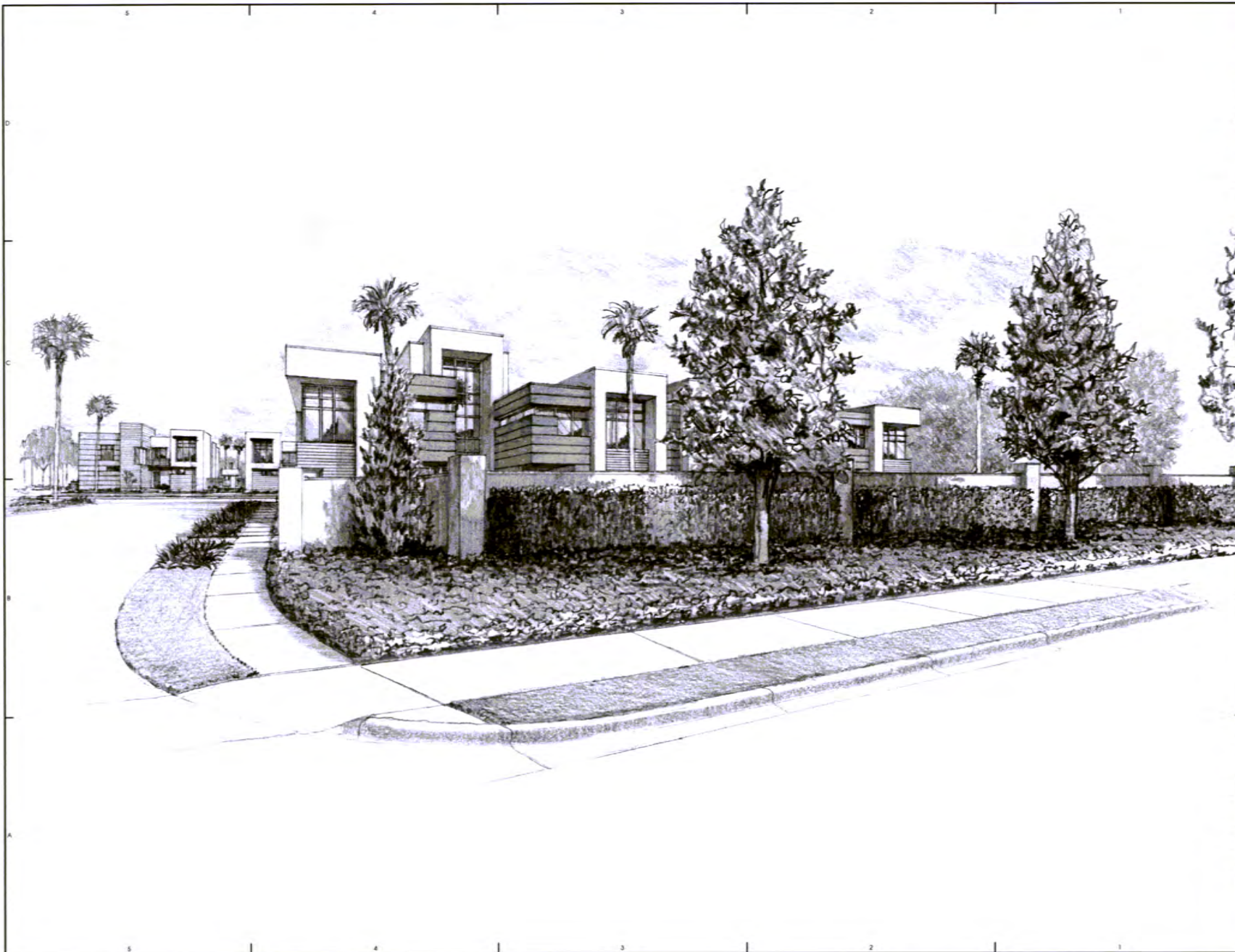
→ **Motion was seconded by Commissioner Bridges.** Commissioner Bridges commented about the gated community and if this is precedent setting. There was further discussion regarding the allowance of gates within the City. Commissioner Metcalf commented against gates. He spoke about the future gateways of the City and the future of Lee Road to look like other areas of the City but without gates. Attorney Yurko spoke about the importance of the gate for the project. Mayor Strong and Commissioner Eckbert addressed their preference of a gate at this location. Mayor Strong commented about Lee Road having its own set of circumstances and issues that would warrant a gate that may not be warranted at most other City locations. He stated that the project is an upgrade for the community and that the gate does not detract from that upgrade significantly. Commissioner Bridges asked that the issue of gates within the City be discussed at a future work session as part of the visioning process. **The motion carried unanimously.**

- c) Conditional Use Approval-Request to allow the three properties at 634/640/642 West Comstock Avenue to be used for the construction of four individual one-story single family homes.

Planning Director Jeff Briggs explained that this is a combined request from the City and the Hannibal Square Community Land Trust. He showed the location of the three 50' lots on the south side of Comstock Avenue. He commented that instead of building three large homes, they worked to promote the goals of the affordable work force housing. He addressed the layout showing four smaller homes; 1,100-1,300 square feet in size; one single center drive, and parking behind the two front residences. He stated this is before the Commission because of the conditional use request to build four affordable houses versus the three that are permitted. He stated there are no variances, besides the conditional use, as it meets the parking requirements, external setbacks, and Floor Area Ratio (FAR).

Mary Daniels, 650 Canton Avenue, asked for approval of the request as presented.

Joe Terranova, 700 Melrose Avenue, spoke in favor of the request because it increases affordable housing.



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Urban Planning

STATE OF FLORIDA
REGISTERED ARCHITECT

ROBERT A. GLEASON
NUMBER 122



1800 LEE ROAD TOWNHOMES

WINTER PARK, FL



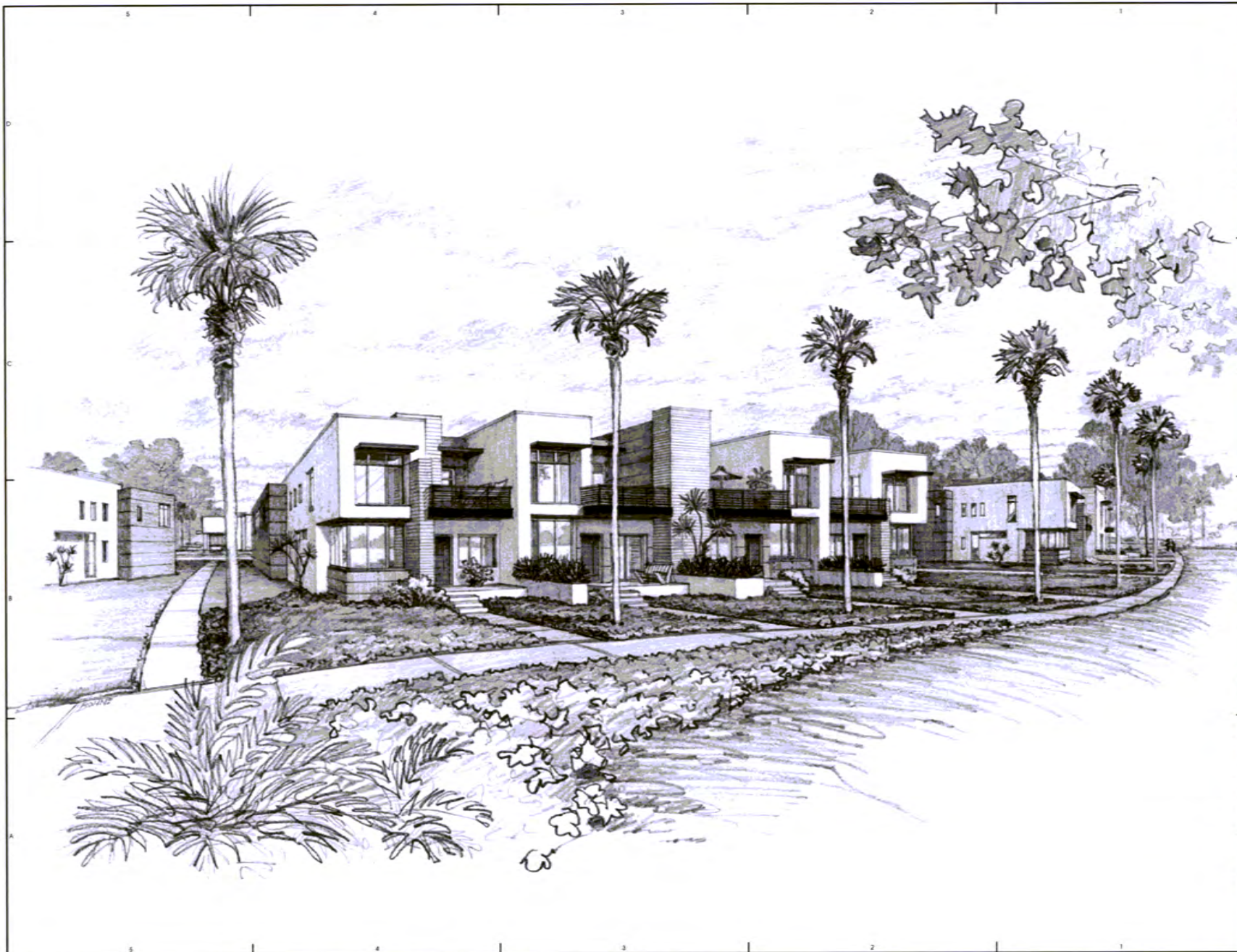
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Revised/Drawn	Revised/Drawn	
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CAC file Name		
Drawn By	JB	
Reviewed By	RG/CAC	
Plot Date	10/20/2010	
Plot Date	10/20/2010	
Plot Date	10/20/2010	

STREET VIEW
W/ PROPERTY WALL

SCALE: N.T.S.

Drawing No.

A-1



100 ARCHITECTURE
COLUMBIA, SOUTH CAROLINA

STATE OF FLORIDA
REGISTERED ARCHITECT

ROBERT A. CLIBSON
46019-02

1800 LEE ROAD
TOWNHOMES
WINTER PARK, FL

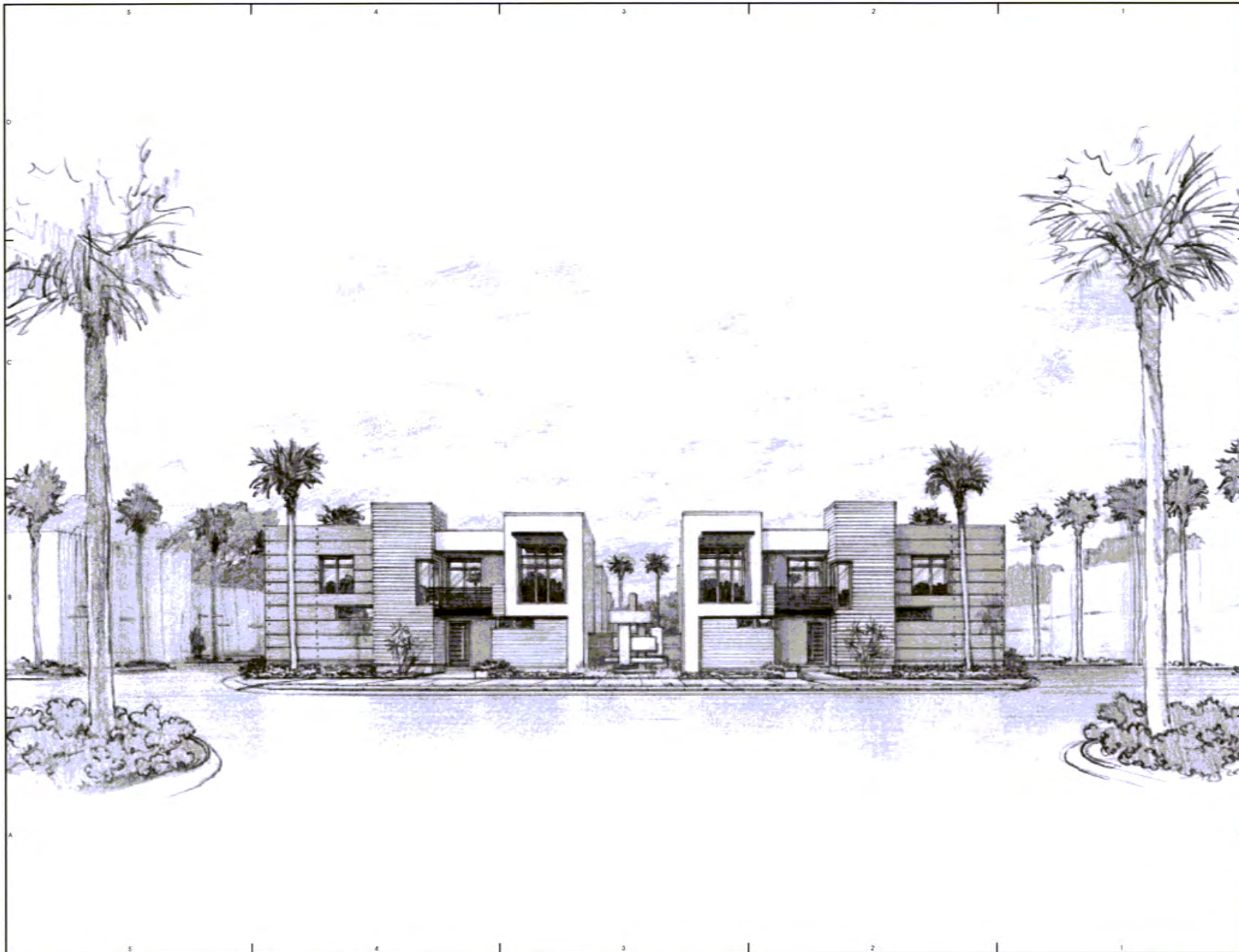
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As Issued/Revised	Revised	
Project ID	1800R	
CAD File Name		
Client No.	JK	
Residential No.	1800R	
Plot Code	1800R/01	
Revision No.	1800R/01	
Sheet Title		

VIEW FROM LAKE
TYP. BUILDING "C", "H" & "I"

SCALE: N.T.S.

Drawing No.

A-3



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STATE OF FLORIDA

REGISTERED ARCHITECT

ROBERT A. GILSON

ARCHITECT



**1800 LEE ROAD
TOWNHOMES**
WINTER PARK, FL



Mark	Date	Description
Revised/Drawn	08/08/16	08/08/16
Project ID	1800	
CAD File Name		
Drawn By	JE	
Reviewed By	RGUC	
Rev Date	08/08/16	
Rev Description	08/08/16	

VIEW FROM MAIN DRIVE
TYP. BUILDING "C", "D", "E" & "F"
BUILDINGS "D" & "E" SHOWN

SCALE N.T.S.

Drawing No.

A-4



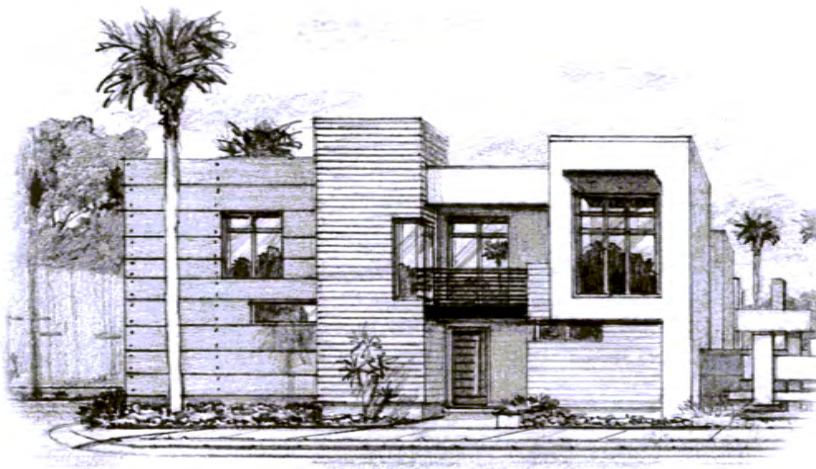
UNIT TYPE A1



UNIT TYPE A2



UNIT TYPE C1



UNIT TYPE B1



UNIT TYPE C2

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STATE OF FLORIDA
REGISTERED ARCHITECT

ROBERT A. GIBSON
NO. 15151



**1800 LEE ROAD
TOWNHOMES**
WINTER PARK, FL

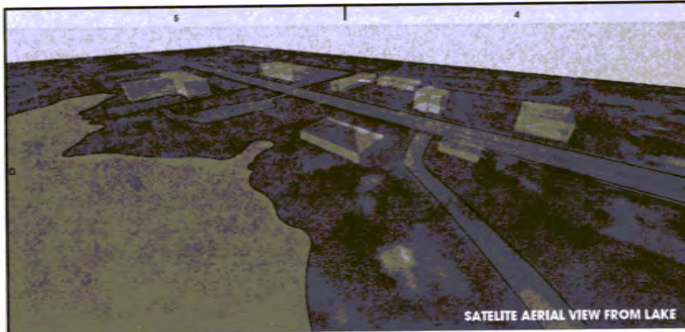
ICON
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Mark	Date	Description
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CAC/Name		
Owner/No		
Community		
Rev. 1/1/2018	1/1/2018	
Rev. 1/1/2018	1/1/2018	
Rev. 1/1/2018	1/1/2018	

TYPICAL UNIT TYPES

SCALE: N.T.S.

A-5



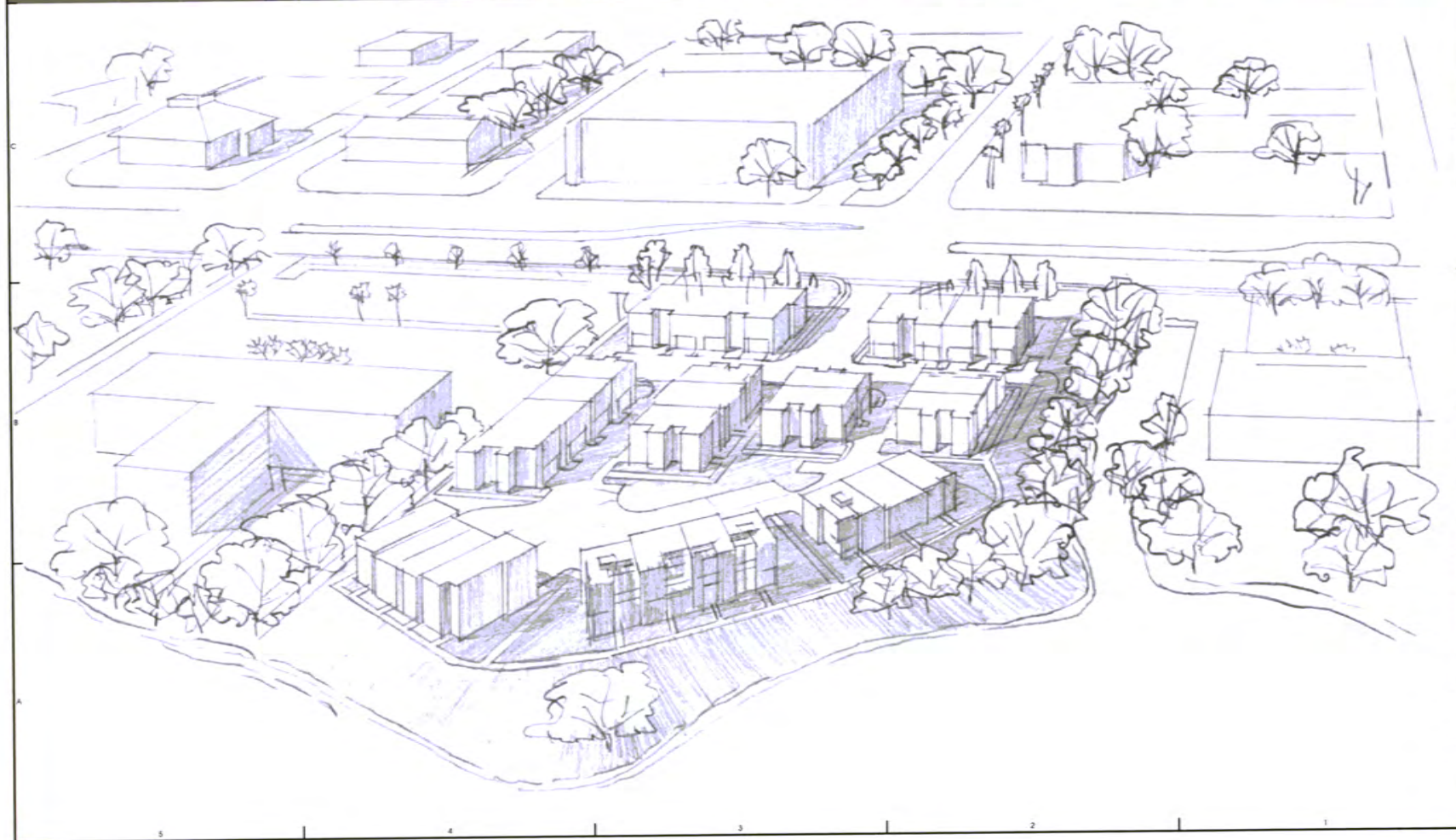
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1000 Architecture
1000 Architecture

STATE OF FLORIDA
REGISTERED ARCHITECT

ROBERT A. GIBSON
ARCHT 121

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**1800 LEE ROAD
TOWNHOMES**

WINTER PARK, FL

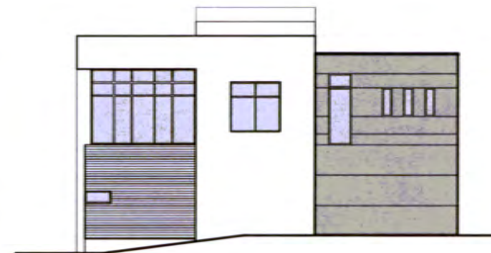


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A-6



3D BUILDING I - SIDE ELEVATION
Scale: 1/8" = 1'-0"



3C BUILDING I - SIDE ELEVATION.
Scale: 1/8" = 1'-0"



3B BUILDING I - GARAGE ELEVATION
Scale: 1/8" = 1'-0"



3A BUILDING I - FRONT ENTRY
Scale: 1/8" = 1'-0"

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STATE OF FLORIDA
REGISTERED ARCHITECT

ROBERT A. GILSON
NOV 15/12

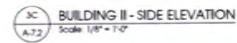
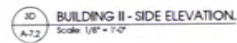


1800 LEE ROAD
TOWNHOMES
WINTER PARK, FL

ICON
RESIDENTIAL

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Arch/Designer	Architect	
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CAD File Name		
Order By	JE	
Reviewed By	ICAD	
Rev Date	08/07/20	
Revised Date	08/08/20	
Sheet No.		
BUILDING I ELEVATIONS		
SCALE: N.T.S.		
Drawing No.		

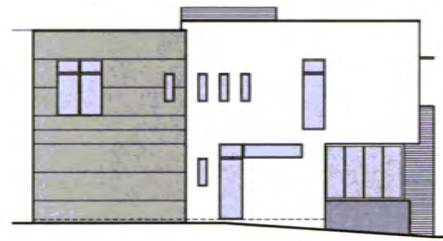
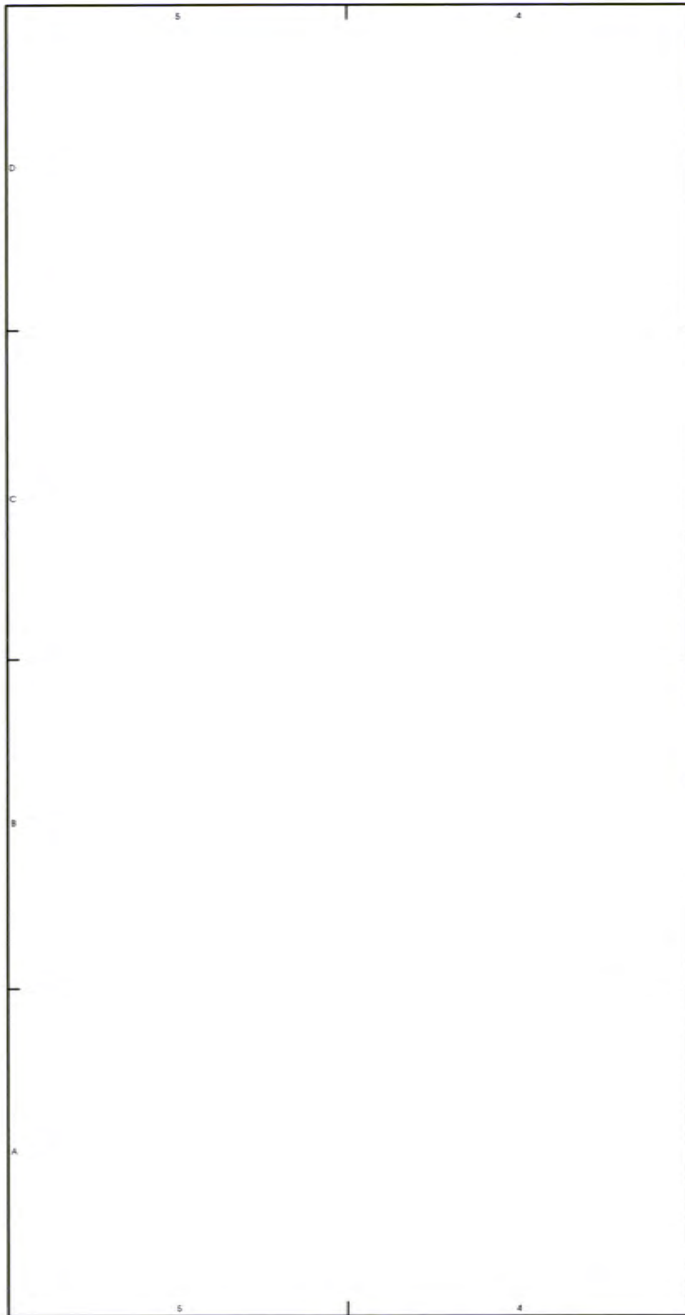
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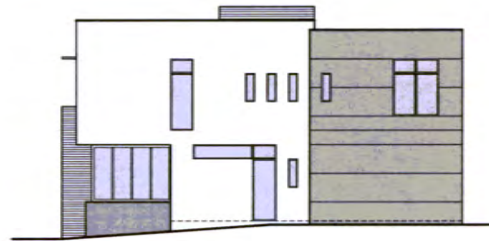
100% Accuracy in 1 Week!
 100% Satisfaction Guarantee!
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 100% No Risk!

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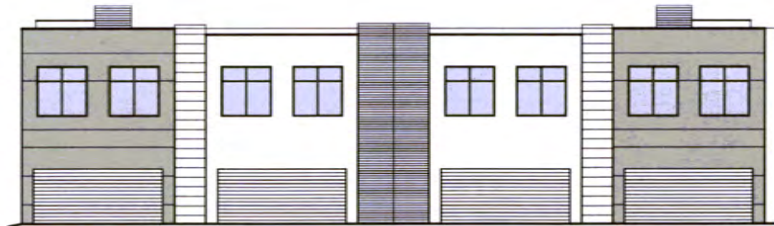
A-7.2



3D
A-7.3
BUILDING III - SIDE ELEVATION
Scale: 1/8" = 1'-0"



3C
A-7.3
BUILDING III - SIDE ELEVATION.
Scale: 1/8" = 1'-0"



3B
A-7.3
BUILDING III - GARAGE ELEVATION
Scale: 1/8" = 1'-0"



3A
A-7.3
BUILDING III - FRONT ELEVATION
Scale: 1/8" = 1'-0"

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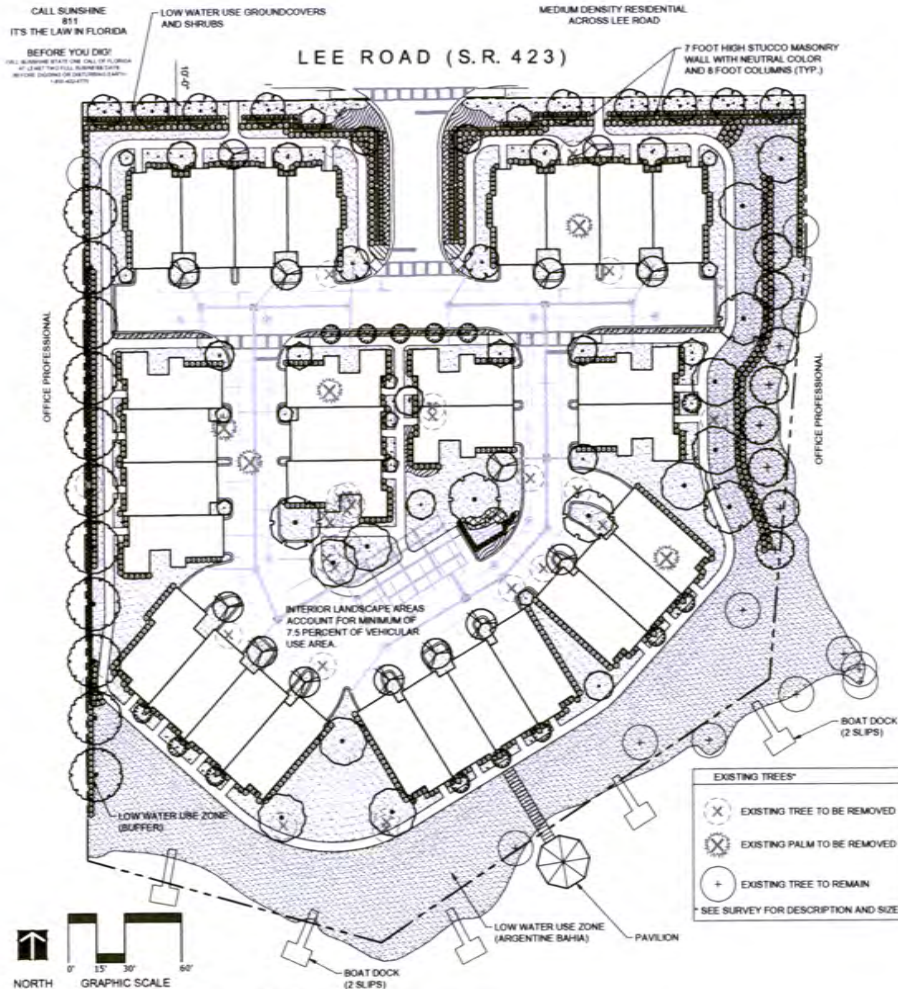
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Revised/Revised	Revised	Revised
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CAC File Name		
Created by	AS	
Drawn by	AS	
Plot Date	08/15/10	
Plot Date	08/15/10	
Plot Date	08/15/10	

BUILDING III
ELEVATIONS

SCALE: 1/8" = 1'-0"

Drawing No.

A-7.3



**CITY OF WINTER PARK LAND DEVELOPMENT CODE REQUIREMENTS
SEC. 58-287. TREE REPLACEMENT REQUIREMENTS.**

PROTECTED TREES TO BE REMOVED UNDER 19 INCHES:

9" OAK
11" OAK
12" WATER OAK
12" WATER OAK
12" OAK
12" OAK
14" OAK
15" OAK
17" OAK
17" OAK
17" OAK
18" OAK
18" OAK
18" OAK

PROTECTED TREES TO BE REMOVED EQUAL TO AND OVER 19 INCHES:

22" OAK
23" WATER OAK
25" OAK
26" OAK
26" OAK
27" OAK
27" WATER OAK
32" OAK
32" OAK
40" OAK
40" WATER OAK
41" OAK
44" OAK
48" OAK
48" OAK
54" OAK
60" OAK




























TOTAL REQUIRED REPLACEMENT TREES FOR PROTECTED TREES TO BE REMOVED UNDER 19 INCHES: 14 TREES AT 3 INCH CALIPER
TOTAL REQUIRED REPLACEMENT TREES FOR PROTECTED TREES TO BE REMOVED OVER 19 INCHES: 36 TREES AT 3 INCH CALIPER
TOTAL REQUIRED REPLACEMENT TREES: 50 TREES AT 3 INCH CALIPER
TOTAL REPLACEMENT TREES PROVIDED: 48 CANOPY TREES AT 3 INCH CALIPER + PROPOSED UNDERSTORY TREES
TOTAL PALMS TO BE REMOVED AND REPLACED: 5 PALMS

NOTES:
1) ALL LANDSCAPING SHALL MEET OR EXCEED THE MINIMUM REQUIREMENTS OF LDC SEC. 58. V, DIVISION 8 AND 9 OF THE WINTER PARK CITY CODE. LANDSCAPE PLAN SHOWS CODE REQUIRED PLANTINGS. ADDITIONAL ENHANCEMENT PLANTINGS MAY BE PROVIDED.
2) ALL LANDSCAPE AREA SHALL BE IRRIGATED WITH AN AUTOMATIC UNDERGROUND SYSTEM WITH 100% COVERAGE, BACKFLOW PREVENTER, AND A RAIN SENSOR DEVICE.
3) SOO ALL DISTURBED AREAS.
4) SEE SHEET L3 FOR PLANTING DETAILS. SEE SHEET L3 FOR LANDSCAPE NOTES.

PLANT SCHEDULE NOTES:

- SOD QUANTITIES ARE SQUARE FOOT ESTIMATE. ANY DISTURBED AREAS ON SITE OR WITHIN THE R.O.W. THAT ARE NOT COVERED WITH LANDSCAPE MATERIAL OR SOD SHALL BE SODOED. SOD QUANTITIES SHOWN IN SCHEDULE ARE ESTIMATES AND FOR REFERENCE ONLY. ADDITIONAL SOD WILL BE REQUIRED. CONTRACTOR SHALL BE RESPONSIBLE FOR CALCULATING AND VERIFYING REQUIRED SOD QUANTITIES PRIOR TO BID.
- ALL TREES, PALMS, SHRUBS, GROUND COVERS AND OTHER PLANTS SHALL CONFORM TO THE STANDARD OF FLORIDA NO. 1 OR BETTER AS GIVEN IN THE LATEST EDITION OF GRADERS AND STANDARDS FOR NURSERY PLANTS BY FLORIDA DEPARTMENT OF AGRICULTURE, PART I (AND II). PLANT MATERIAL SHALL ALSO CONFORM TO THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (ANSI) BULLETIN Z 90.1 - 1990 AND AS REVISED. ALL PLANTS MUST BE HEALTHY, VIGOROUS MATERIAL, FREE OF PESTS AND DISEASE.
- THE CALIPER OF INSTALLED TREES LISTED AS BEING UP TO 4 INCHES SHALL BE MEASURED 6 INCHES ABOVE THE GROUND, AND THE CALIPER OF INSTALLED TREES LISTED AS MORE THAN 4 INCHES SHALL BE MEASURED 12 INCHES ABOVE THE GROUND.

PLANT SCHEDULE

TREES	QTY	BOTANICAL NAME / COMMON NAME	HT.	SPR.	CALIPER	
	8	Acer rubrum 'Florida Flame' / Florida Flame Red Maple	-		3" MIN.	
	11	Magnolia grandiflora 'D.D. Blanchard' TM / Southern Magnolia	-		3" MIN.	
	10	Quercus shumardii / Shumard Red Oak	-		3" MIN.	
	11	Quercus virginiana / Southern Live Oak	-		3" MIN.	
	5	Ulmus alata / Winged Elm	-		3" MIN.	
PALM TREES	QTY	BOTANICAL NAME / COMMON NAME	HT.	SPR.	CALIPER	
	14	Sabal palmetto / Cabbage Palmetto B&B	8' Clear Trunk			
UNDERSTORY TREES	QTY	BOTANICAL NAME / COMMON NAME	HT.	SPR.	CALIPER	
	12	Cercis canadensis / Eastern Redbud	-		2" MIN.	
	5	Elaeocarpus decipiens TM / Japanese Blueberry Tree	-		2" MIN.	
	11	Ilex x attenuata 'Eaglestar' / Eaglestar Holly Standard	-		2" MIN.	
	14	Lagerstroemia x 'Natchez' / White Crape Myrtle Standard	-		2" MIN.	
SHRUBS	QTY	BOTANICAL NAME / COMMON NAME	CONT.	HT.	SPR.	
	41	Alpinia zerumbet 'Variegata' / Variegated Shell Ginger	3 gal	18"	18"	
	244	Ilex vomitoria 'Schillings Dwarf' / Dwarf Schillings Holly	3 gal	12"	12"	
	166	Podocarpus macrophyllus / Yew Pine	3 gal	24"		
	112	Podocarpus macrophyllus makii / Shrubby Yew	3 gal	24"		
	73	Schefflera arboricola 'Tristata' / Schefflera	3 gal	18"	18"	
	263	Triplaris dactyloides / Fakahatchee Grass	3 gal	24"	18"	
	71	Viburnum coccineum / Walter's Viburnum	3 gal	18"	18"	
	254	Viburnum suspensum / Sanderling Viburnum	3 gal	24"	24"	
SHRUB AREAS	QTY	BOTANICAL NAME / COMMON NAME	CONT.	HT.	SPR.	SPACING
	25	Zamia floridana / Coontie Palm	3 gal	12"	12"	30" o.c.
GROUND COVERS	QTY	BOTANICAL NAME / COMMON NAME	CONT.	HT.	SPR.	SPACING
	114	Dianella tasmanica 'Blueberry' / Blueberry Flax Lily	1 gal	12"	12"	24" o.c.
	49	Lantana x 'New Gold' / New Gold Lantana	1 gal	12"	12"	20" o.c.
	270	Liriope muscari 'Super Blue' / Super Blue Lily Turf	1 gal	18"	18"	20" o.c.
	1,750	Trachelospermum asiaticum / Star Jasmine	1 gal	12"	12"	22" o.c.
	174	Triplaris floridana / Florida Gamagrass	1 gal	12"	12"	24" o.c.
SOD/SEED	QTY	BOTANICAL NAME / COMMON NAME	CONT.	HT.	SPR.	SPACING
	30,874 sf	Paspalum notatum 'Argentine' / Bahia Grass	SOD			
	20,425 sf	Stenotaphrum secundatum 'Floratam' / Floratam St. Augustine Sod	SOD			
MULCH	QTY	BOTANICAL NAME / COMMON NAME	CONT.	HT.	SPR.	SPACING
		ORGANIC MULCH - SHREDDED MULCH TO BE APPLIED TO ALL PLANTING BEDS, 3 INCH THICK DEPTH.				

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**LEE ROAD
TOWNHOMES**
1800 LEE ROAD
WINTER PARK, FLORIDA

Christopher J. Anusiewicz
Registered Landscape Architect
LA6667069

**CONCEPTUAL LANDSCAPE PLAN
PRELIMINARY
CONDITIONAL USE SUBMITTAL**

NOT FOR CONSTRUCTION
THESE PLANS HAVE NOT BEEN APPROVED
BY THE GOVERNING AGENCY
AND ARE SUBJECT TO CHANGE.

REV. DATE DESCRIPTION

Date: FEBRUARY 23, 2015
Job No.: 2404
Drawn By: CJA
Checked By: CJA

Sheet Title
**LANDSCAPE
PLAN**

Sheet No.
L1

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LEE ROAD TOWNHOMES

1800 LEE ROAD
WINTER PARK, FLORIDA

Christopher J. Anusiewicz
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LA5657959

CONCEPTUAL LANDSCAPE PLAN
PRELIMINARY
CONDITIONAL USE SUBMITTAL

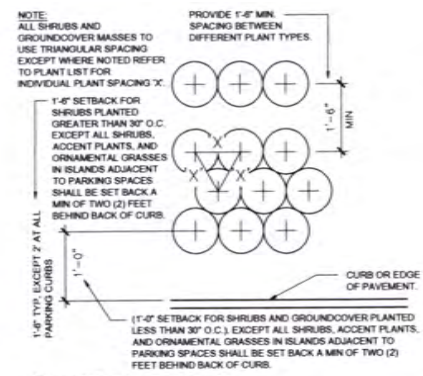
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REV	DATE	DESCRIPTION
1		

Date: FEBRUARY 23, 2015
Job No.: 2404
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Checked By: CJA

Sheet Title
PLANTING DETAILS

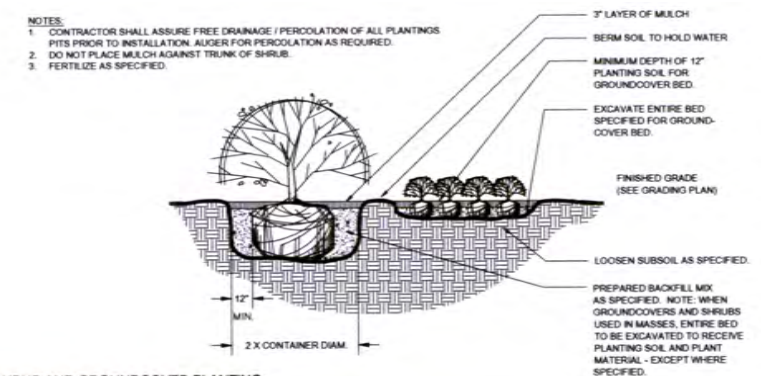
Sheet No.
L2



1 TYPICAL PLANT SPACING

1" = 1'-0"

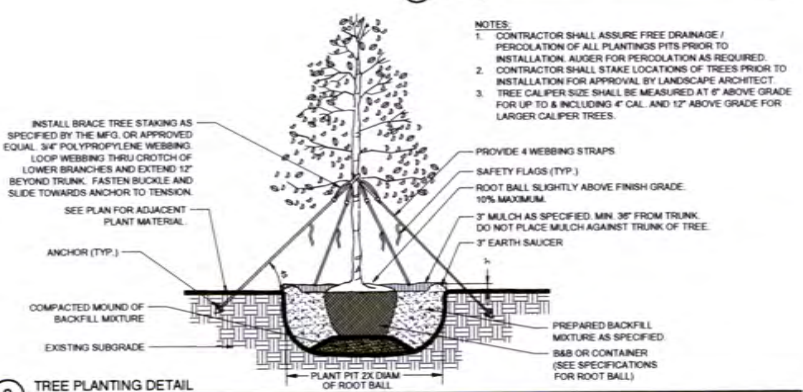
P-5A-81



2 SHRUB AND GROUNDCOVER PLANTING

1" = 1'-0"

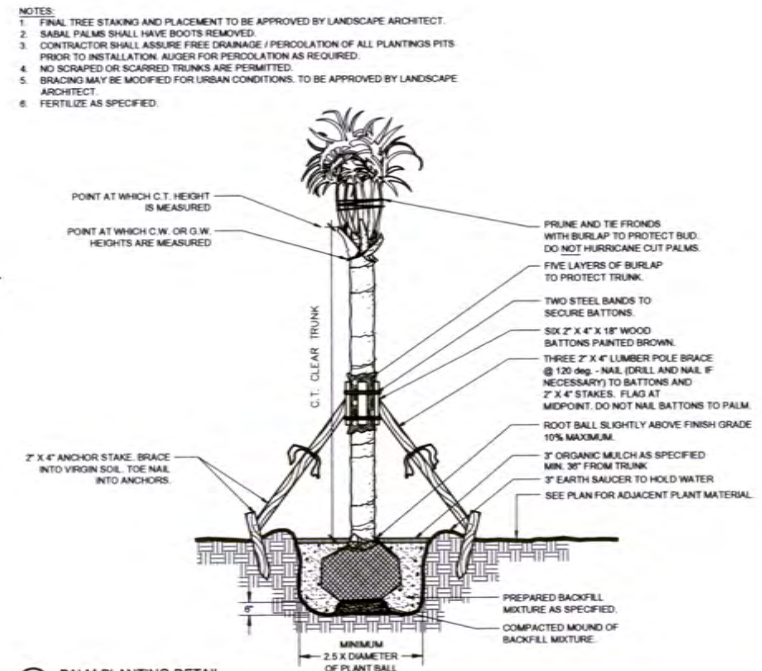
P-5A-18



3 TREE PLANTING DETAIL

1" = 1'-0"

P-5A-85



4 PALM PLANTING DETAIL

N.T.S.

P-5A-88

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LANDSCAPE NOTES

1. LANDSCAPE CONTRACTOR SHALL FIELD VERIFY ALL INFORMATION, INCLUDING UNDERGROUND UTILITIES, PRIOR TO INITIATING PLANTING INSTALLATION. REPORT ANY DISCREPANCIES BETWEEN THE CONSTRUCTION DRAWINGS AND FIELD CONDITIONS TO THE OWNER'S REPRESENTATIVE AND LANDSCAPE ARCHITECT IMMEDIATELY. FIELD ADJUST LOCATION OF PLANT MATERIAL AS NECESSARY TO AVOID DAMAGE TO ALL EXISTING UNDERGROUND UTILITIES AND/OR EXISTING ABOVE GROUND ELEMENTS. ALL CHANGES SHALL BE COMPLETED AT THE CONTRACTOR'S EXPENSE AND SHALL BE COORDINATED WITH THE OWNER'S REPRESENTATIVE AND THE LANDSCAPE ARCHITECT.
2. ALL CONSTRUCTION SHALL CONFORM TO MEET FEDERAL, STATE, AND LOCAL CODES, REGULATIONS AND ORDINANCES.
- IT SHALL BE THE LANDSCAPE CONTRACTOR'S SOLE RESPONSIBILITY TO NOTIFY "SUNSHINE" AND ANY OTHER INTERESTED AGENCIES OR PARTIES OF HIS INTENT TO EXCAVATE AND TO OBTAIN FROM ALL AGENCIES OR OTHER INTERESTED PARTIES LOCATIONS OF ALL EXISTING UTILITIES OF EVERY KIND IN THE AREAS WHERE HE INTENDS OR PLANS TO EXCAVATE. SUCH LOCATIONS SHALL BE OBTAINED PRIOR TO STARTING CONSTRUCTION AND SHALL BE MAINTAINED DURING CONSTRUCTION.
4. CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS PRIOR TO CONSTRUCTION AND THE COST FOR SUCH ARE TO BE INCLUDED AS PART OF THE BID.
5. CONTRACTOR SHALL BE RESPONSIBLE TO REMOVE ALL EXISTING GRASSES, GROUNDCOVERS, AND SHRUBS WHERE NEW PLANTINGS ARE PROPOSED. CONTRACTOR SHALL VERIFY ALL PLANT MATERIAL TO BE REMOVED AND/OR PROTECTED ITEMS WITH OWNER'S REPRESENTATIVE PRIOR TO BID. THIS MAY INCLUDE BUT NOT BE LIMITED TO: SOO, SOIL, PLANT MATERIAL, STUMPS, ETC. CONTRACTOR SHALL BE RESPONSIBLE TO REPLACE ANY TREES DAMAGED WITH SAME SPECIES AND SIZE TO THE SATISFACTION OF THE OWNER'S REPRESENTATIVE.
6. LANDSCAPE CONTRACTOR SHALL COORDINATE ALL WORK WITH RELATED CONTRACTORS AND WITH THE GENERAL CONSTRUCTION OF THE PROJECT IN ORDER NOT TO IMPED THE PROGRESS OF THE WORK OF OTHERS OR THE CONTRACTOR'S OWN WORK.
7. THE OWNER OR LANDSCAPE ARCHITECT SHALL HAVE THE RIGHT TO REJECT ANY AND ALL WORK AND MATERIALS WHICH, IN HIS OPINION, DO NOT MEET THE REQUIREMENTS OF THE PLANTING PLAN, DETAILS, AND THESE SPECIFICATIONS.
8. THE LANDSCAPE CONTRACTOR SHALL FIELD VERIFY THE LOCATION OF ALL WORK AS SHOWN ON THE PLAN AND CONTACT THE LANDSCAPE ARCHITECT IMMEDIATELY FOR ANY CONFLICTS AND ADJUST AS PER THE LANDSCAPE ARCHITECTS OR OWNER'S DIRECTION.
9. THE LANDSCAPE CONTRACTOR SHALL CONTROL RUNOFF AND EROSION DURING CONSTRUCTION THROUGH THE USE OF SEDIMENT BASINS, STRAW OR HAY BALES AS APPROPRIATE. THE LANDSCAPE CONTRACTOR SHALL SPRINKLE OR OTHERWISE MANUALLY APPLY WATER TO AFFECTED CONSTRUCTION AREA TO CONTROL BOTH SIGNIFICANT WIND EROSION AND FUGITIVE DUST.
10. THE LANDSCAPE CONTRACTOR SHALL ASSURE DRAINAGE AND PERCOLATION OF ALL PLANTING PITS PRIOR TO INSTALLATION OF PLANT MATERIAL. CONTRACTOR SHALL FILL ALL THREE PITS WITH WATER BEFORE PLANTING TO ASSURE THAT PROPER DRAINAGE AND PERCOLATION IS AVAILABLE. CORRECT IF REQUIRED TO ASSURE PERCOLATION. CONTRACTOR IS RESPONSIBLE FOR REPLACEMENT OF ALL PLANTS DUE TO INADEQUATE DRAINAGE CONDITIONS.
11. EXCEPT FOR PLANTINGS IN SURFACE WATER MANAGEMENT AREAS, THE SPECIFIED DEPTH OF ORGANIC MULCH, MEASURED AFTER WATERING-IN, SHALL BE PLACED AND MAINTAINED AROUND ALL NEWLY INSTALLED CANOPY TREES, ACCENT TREES, PALM TREES, AND SHRUBS. EACH TREE SHALL HAVE ORGANIC MULCH NO LESS THAN 36 INCHES BEYOND ITS TRUNK IN ALL DIRECTIONS; HOWEVER, THE MULCH SHALL BE KEPT AWAY FROM THE TRUNKS AND STEMS OF PLANTS SO AS TO AVOID CONDITIONS THAT MAY BE CONDUITS TO COLLAR ROT, BASAL CANKER OR OTHER FUNGI.
12. THE LANDSCAPE CONTRACTOR SHALL EXAMINE THE SITES OF ALL PLANTING AREAS PRIOR TO SUBMITTING BIDS FOR THE SUITABILITY TO SUSTAIN HEALTHY PLANT GROWTH AS CALLED FOR ON THE PLANTING PLAN, DETAILS, AND THESE SPECIFICATIONS. ANY REQUIRED AMENDMENTS AND ADDITIVES SHALL BE INCLUDED AS PART OF THE BID.
13. NO SUBSTITUTIONS SHALL BE MADE TO THE PLANTING PLAN, DETAILS OR THESE SPECIFICATIONS WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE LANDSCAPE ARCHITECT.
14. GUYING / STAKING PRACTICES SHALL NOT PERMIT NAILS, SCREWS, WIRES, ETC., TO PENETRATE OUTSIDE SURFACE OF TREE OR PALM. TREES OR PALMS REJECTED DUE TO THIS PRACTICE SHALL BE REPLACED WITH INSPECTOR ON SITE.
15. TREE INSTALLATION: ALL REQUIRED TREES SHALL BE INSTALLED 1"-2" ABOVE FINISHED GRADE. TREES INSTALLED OR BURIED TOO DEEPLY SHALL BE RESET TO THIS STANDARD. REMOVE THE TOP 1/3 OF THE WIRE BASKET ON ALL B&B TREE STOCK.
16. PLANT MATERIAL
- 16.1. ALL TREES, PALMS, SHRUBS, GROUND COVERS AND OTHER PLANTS SHALL CONFORM TO THE STANDARD OF FLORIDA NO. 1 OR BETTER AS GIVEN IN THE LATEST EDITION OF GRADES AND STANDARDS FOR NURSERY PLANTS BY FLORIDA DEPARTMENT OF AGRICULTURE, PART I AND II. PLANT MATERIAL SHALL ALSO CONFORM TO THE AMERICAN ASSOCIATION OF NURSEMEYEN, INC. (ANSI) BULLETIN 2 60 1 - 1990 AND AS REVISED. ALL PLANTS MUST BE HEALTHY, VIGOROUS MATERIAL, FREE OF PESTS AND DISEASE.
- 16.2. ALL CONTAINER AND CALIPER SIZES NOTED ON PLANT LIST ARE MINIMUM. CONTRACTOR SHALL PROVIDE LARGER CONTAINER MATERIAL IF NECESSARY TO CONFORM TO PLANT SIZE AND SPECIFICATIONS. BOTH MINIMUM DIMENSIONAL SPECIFICATION AND MINIMUM CONTAINER SPECIFICATION SHALL BE MET.
- 16.3. ALL PLANTS SHALL BE CONTAINER GROWN EXCEPT AS NOTED ON PLAN. BARE ROOT TREES ARE NOT ACCEPTABLE. ALL PLANTS SHALL BE HARDY UNDER CLIMATIC CONDITIONS SIMILAR TO THOSE IN THE LOCALITY OF THE PROJECT. TREES GROWN IN GROW BAGS OR GROW BAG TYPE MATERIAL MUST HAVE THE GROW BAG REMOVED ENTIRELY PRIOR TO PLANTING. BALLED AND BURLAPPED MATERIAL SHALL HAVE THE BURLAP REMOVED. WIRE CAGES, STRAPS, ETC. MUST BE CUT AND REMOVED PRIOR TO INSTALLATION.
- 16.4. SOO SHALL MEET AMERICAN SOO PRODUCERS ASSOCIATION STANDARDS FOR NURSERY GROWN SOO FOR THICKNESS OF CUT, PAD SIZE, STRENGTH OF SECTIONS, MOISTURE CONTENT AND THATCH. SOO SHALL BE GUARANTEED TO BE UNIFORM IN COLOR, LEAF TEXTURE, AND SHOOT DENSITY AND FREE OF WEEDS, DISEASE, FUNGUS, INSECTS OR OTHER IMPERFECTIONS AND SUFFICIENTLY KNITTED TO SUSTAIN GROWTH. SOO SHALL BE MOVED FOR FINAL ACCEPTANCE.
- 16.5. TYPICALLY, SHRUB AND GROUND COVER PLANTINGS ARE SHOWN AS MASS PLANTING BEDS. PLANTS SHALL BE PLACED ON A TRIANGULAR SPACING CONFIGURATION (STAGGERED SPACING).
17. QUANTITIES, LOCATION AND SUBSTITUTIONS: THE LANDSCAPE CONTRACTOR SHALL FURNISH AND INSTALL ALL PLANTS AS SHOWN ON THE DRAWINGS, AS SPECIFIED, AND IN THE QUANTITIES LISTED ON THE PLANT SCHEDULE. IN THE EVENT OF A VARIATION BETWEEN THE PLANT SCHEDULE AND THE ACTUAL NUMBER OF PLANTS SHOWN ON THE PLANTING PLAN, THE HIGHER QUANTITY SHALL PREVAIL. THE LANDSCAPE ARCHITECT RESERVES THE RIGHT TO ADJUST THE NUMBER AND LOCATIONS OF THE DESIGNATED TYPES AND SPECIES OF PLANTS TO BE USED AT ANY OF THE LOCATIONS SHOWN. THE OWNER SHALL RECEIVE A CREDIT OR DEBIT FOR THE UNIT PRICE OF THE PLANT MATERIAL. NO SUBSTITUTION OF PLANT MATERIAL, TYPES, SPECIFICATIONS OR SIZES WILL BE PERMITTED WITHOUT WRITTEN AUTHORIZATION FROM THE LANDSCAPE ARCHITECT. THE OWNER AND/OR LANDSCAPE ARCHITECT RESERVES THE RIGHT TO NOT ACCEPT PLANT MATERIAL THAT DOES NOT, IN THE OPINION OF THE OWNER AND/OR LANDSCAPE ARCHITECT, MEET THE SPECIFICATIONS HEREIN.
18. IRRIGATION: ALL PROPOSED LANDSCAPE AREAS SHALL BE IRRIGATED WITH AN AUTOMATIC, UNDERGROUND IRRIGATION SYSTEM. THE CONTRACTOR SHALL BE RESPONSIBLE FOR INSTALLING, AND PERMITTING THE IRRIGATION SYSTEM IN ACCORDANCE WITH APPLICABLE LOCAL AND STATE BUILDING CODES. THE COST OF INSTALLATION, PERMITTING, AND CREATING AS-BUILT DRAWINGS SHALL BE INCLUDED IN THE BID PRICE FOR IRRIGATION.
- 18.5. LANDSCAPE CONTRACTOR SHALL COORDINATE ALL PLANTING WORK WITH IRRIGATION WORK. LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL HAND WATERING ALL EXISTING AND PROPOSED PLANT MATERIAL, AS REQUIRED BY OWNER'S REPRESENTATIVE TO SUPPLEMENT IRRIGATION WATERING AND RAINFALL. LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR HAND WATERING IN ALL PLANTING AREAS, REGARDLESS OF THE STATUS OF EXISTING OR PROPOSED IRRIGATION. CONTRACTOR SHALL TEMPORARILY WATER ANY NON IRRIGATED LAWN AREAS AS REQUIRED FOR ESTABLISHMENT.
- 18.6. IRRIGATION LINES SHALL BE HAND DUG AROUND EXISTING TREES AND TUNNELED BENEATH TREE ROOTS OF EXISTING TREES, RATHER THAN TRENCHED.
19. FERTILIZATION: PROVIDE FERTILIZER UNIFORM IN COMPOSITION, DRY, AND IN A FREE FLOWING CONDITION FOR APPLICATION BY SUITABLE EQUIPMENT, AND DELIVER IN UNOPENED BAGS OR CONTAINERS, EACH FULLY LABELED.
- 19.1. FERTILIZE TREES, SHRUBS, AND GROUND COVERS WITH "MILORGANITE" OR AN APPROVED COMPLETE FERTILIZER. APPLY "MILORGANITE" FERTILIZER AT THE FOLLOWING RATE:
- 19.1.1. 5.00 LBS. OR 14.50 CUPS / PALM
- 19.1.2. 3.00 LBS. OR 8.70 CUPS / 12-16" MATERIAL
- 19.1.3. 2.00 LBS. OR 5.80 CUPS / 8-12" MATERIAL
- 19.1.4. 0.80 LBS. OR 2.00 CUPS / 6-8" MATERIAL
- 19.1.5. 0.19 LBS. OR 1/2 CUP / 3 GAL. MATERIAL
- 19.1.6. 0.10 LBS. OR 1/4 CUP / 1 GAL. MATERIAL
- 19.1.7. FERTILIZE TURF COMPLYING WITH THE STATE FERTILIZER LAWS. THE FERTILIZER SHALL BE CHEMICALLY DESIGNATED WITH 12-8-4. PROVIDE AT LEAST 50% OF THE PHOSPHORIC ACID FROM NORMAL SUPERPHOSPHATE OR AN EQUIVALENT SOURCE PROVIDING A MINIMUM OF TWO UNITS OF AVAILABLE PHOSPHORUS. THE AMOUNTS OF SULFUR AND ALL OTHER CHEMICALS SHALL BE INDICATED ON THE QUANTITATIVE ANALYSIS CARD ATTACHED TO THE UNOPENED BAG.
- 19.1.8. THE USE OF FERTILIZER IS PROHIBITED WITHIN 20 FEET OF THE ORDINARY HIGH-WATER LEVEL OR A SEAWALL.
20. SOIL PREPARATION AND SOIL MIX
- 20.1. CONTRACTOR TO ENSURE TOTAL WEED ERADICATION. ANY HERBICIDE APPLIED SHALL BE BY A LICENSED PEST AND CONTROL OPERATOR OF LAWN AND ORNAMENTAL. APPROVED HERBICIDE SHALL BE APPLIED ACCORDING TO MANUFACTURER'S RATE AND SPECIFICATION WITHIN LIMITS OF ALL AREAS TO BE PLANTED. PROTECT EXISTING PLANTS TO REMAIN FROM OVERSPRAY OR SPRAY WITHIN ROOT ZONE.
- 20.2. BEFORE PLANTING TOPSOIL, PANE SUBSOIL SURFACE CLEAR OF STONES, 1/2 INCH DIAMETER AND LARGER, DEBRIS, RUBBISH, REMAINS OF REMOVED PLANT MATERIAL, AND ALL REMAINING CONSTRUCTION DEBRIS TO A DEPTH OF 4". CONTAMINATED SOILS SHALL BE REMOVED AND REPLACED TO THEIR FULL DEPTHS AND EXTENTS.
- 20.3. SCARIFY SUBSOIL TO A DEPTH OF 3 INCHES.

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- 20.4. A LICENSED PEST AND CONTROL OPERATOR OF LAWN AND ORNAMENTAL SHALL APPLY APPROVED PRE-EMERGENT HERBICIDE IN ACCORDANCE WITH THE MANUFACTURER'S RATE AND SPECIFICATIONS.
- 20.5. PLANTING LANDSCAPE BEDS (SHRUBS AND GROUNDCOVERS): ALL LANDSCAPE BEDS TO BE MULCHED SHALL BE ROUGH GRADED TO AN ELEVATION OF 18 TO 17 INCHES BELOW THE TOP OF ADJACENT HARDSCAPE OR FINAL FINISHED GRADE TO PROVIDE ROUGH 12 INCHES OF BACKFILL MIXTURE, 3 INCHES OF MULCH WITH A 2 INCH REVEAL ON THE CURB, ADJOINING SIDEWALK, OR OTHER HARDSCAPE FEATURE. SEE LANDSCAPE PLANS FOR LOCATION OF LANDSCAPE BEDS AND SOO AREAS. IF NECESSARY, THE GENERAL CONTRACTOR AND LANDSCAPE CONTRACTOR SHALL COORDINATE THE INSTALLATION AND GRADING OF TOPSOIL. SEE SPECIFICATIONS FOR BACKFILL MIXTURE.
- 20.6. PLANTING LAWNS: SOODED AREAS SHALL BE ROUGH GRADED TO AN ELEVATION 5 TO 6 INCHES BELOW THE TOP OF THE ADJACENT HARDSCAPE OR FINAL FINISHED GRADE. TO ALLOW FOR 4 INCHES OF COMPACTED BACKFILL MIXTURE AND 1 INCH TO 1.5 INCHES OF SOO. SEE LANDSCAPE PLANS FOR LOCATION OF LANDSCAPE BEDS AND SOO AREAS. IF NECESSARY, THE GENERAL CONTRACTOR AND LANDSCAPE CONTRACTOR SHALL COORDINATE THE INSTALLATION AND GRADING OF TOPSOIL. SEE SPECIFICATIONS FOR BACKFILL MIXTURE.
- 20.7. FINISH GRADE ALL PREPARED TOPSOIL AREAS TO A SMOOTH, EVEN SURFACE ASSURING POSITIVE DRAINAGE AWAY FROM THE STRUCTURES AND ELIMINATE ANY LOW AREAS WHICH MAY COLLECT WATER. SEE CIVIL GRADING PLANS.
- 20.8. BACKFILL MIXTURE:
- 20.8.1. TREES, ROYAL PALMS, SHRUBS, GROUNDCOVERS, LAWNS: 1/3 SAND, 1/3 TOPSOIL, 1/3 PEAT HUMUS.
- 20.8.2. ALL OTHER PALMS: 3/4 SAND, 1/4 TOPSOIL.
- 20.8.3. SAND SHALL BE CLEAN, SILICA, SALT-FREE AND CONTAINING NO EXTRANEIOUS MATTER.
- 20.8.4. TOPSOIL SHALL BE FREE OF DELETERIOUS MATERIALS THAT WOULD BE HARMFUL TO PLANT GROWTH, SHALL BE FREE OF NEMATODES, SHALL BE OF UNIFORM QUALITY, AND SHALL BE FRABLE FERTILE SOIL WITH REPRESENTATIVE CHARACTERISTICS OF AREA SOILS. IT SHOULD BE FREE OF HEAVY CLAY, SILT, STONE, EXCESS LIME, SHELL ROCK, PLANT ROOTS, WEEDS, DEBRIS OR OTHER FOREIGN MATTER. IT SHALL NOT CONTAIN NOXIOUS PLANT GROWTH (SUCH AS BERMUDA, TORPEDO OR NUT GRASS). IT SHALL TEST BETWEEN THE PH RANGE OF 5.0 TO 6.5 UNLESS OTHERWISE SPECIFIED AND CONTAIN NO TOXIC RESIDUE OR SUBSTANCES THAT WOULD ENDANGER PLANT GROWTH. OBTAIN TOPSOIL ONLY FROM NATURALLY, WELL-DRAINED SITES WHERE TOPSOIL OCCURS IN A DEPTH NOT LESS THAN 4".
- 20.8.5. PEAT HUMUS SHALL BE DECOMPOSED PEAT WITH NO IDENTIFIABLE FIBERS OR IF AVAILABLE, MUCH MAY BE SUBSTITUTED AND SHALL BE FREE FROM STONES, EXCESSIVE PLANT ROOTS, DEBRIS OR OTHER FOREIGN MATTER. MUCH SHALL NOT BE OVERLY SATURATED WITH WATER. HUMUS SHALL BE OF GOOD QUALITY, MATURE, DARK COLOR, OF HUMUS-LIKE QUALITY, AND HAVE PLEASANT SOIL SMELL.
- 20.8.6. BACKFILL MIX SAMPLES AND LABORATORY SOIL TESTS SHALL BE SUBMITTED TO THE LANDSCAPE ARCHITECT OF RECORD FOR APPROVAL. CONTRACTOR SHALL TAKE RESPONSIBILITY FOR PERFORMING PERCOLATION TESTS PRIOR TO BACKFILLING WITH APPROVED PLANTING SOIL.
21. MULCH: ALL MULCH BED QUANTITIES TO BE DETERMINED BY CONTRACTOR. CONTRACTOR SHALL MULCH ALL PLANT MATERIAL THROUGHOUT AND COMPLETELY TO A THREE (3) INCH DEPTH WITH CLEAN, WEED FREE MELALEUCA WOOD CHIPS. PLANT BEDS WITHIN STORMWATER BASINS SHALL BE MULCHED WITH FINE STRAW MULCH.
22. TREE PROTECTION: PROTECT ALL TREES AND PALMS TO REMAIN WITH TREE BARRICADES. IMMEDIATELY FOLLOWING VEGETATION REMOVAL, EXISTING SLOPES GREATER THAN 3:1 SHALL BE PROTECTED FROM EROSION AS REQUIRED BY LOCAL CODE. THE FOLLOWING ACTIVITIES ARE PROHIBITED WITHIN THE BARRICADED AREA: VEHICULAR AND PEDESTRIAN TRAFFIC; STORAGE OF CONSTRUCTION MATERIALS; PLACEMENT OF EXCAVATED MATERIALS OR TRASH; AND ANY ACTIVITIES THAT MAY DISTURB THE ROOT SYSTEM WITHIN THE BARRICADED AREA.
- 22.1. ALL REQUIRED TREE REMOVAL OR RELOCATION PERMITS SHALL BE PROCURED BY CONTRACTOR, PRIOR TO COMMENCEMENT OF WORK.
- 22.2. ALL PROTECTED TREES SHALL BE TRIMMED IN A MANNER CONSISTENT WITH THE "AMERICAN NATIONAL STANDARD FOR TREE CARE OPERATIONS, ANSI, Z309, CURRENT EDITION".
23. MAINTENANCE: THE CONTRACTOR IS RESPONSIBLE FOR COMPLETE MAINTENANCE OF ALL PROPOSED PLANTING AREAS (INCLUDING WATERING, SPRAYING, MULCHING, MOWING, FERTILIZING, ETC.) THROUGHOUT THE ENTIRE COURSE OF THE PROJECT. LANDSCAPE CONTRACTOR SHALL CLEAN THE WORK AREAS AT THE END OF EACH WORKING DAY. RUBBISH AND DEBRIS SHALL BE COLLECTED AND DEPOSITED OFF-SITE DAILY. ALL MATERIALS, PRODUCTS, AND EQUIPMENT SHALL BE STORED IN AN ORGANIZED FASHION AS DIRECTED BY OWNER'S REPRESENTATIVE.
24. FINAL ACCEPTANCE: CONTRACTOR TO REQUEST INSPECTION OF PROJECT IN WRITING. IF ALL WORK IS SATISFACTORY AND COMPLETE IN ACCORDANCE WITH CONDITIONS OF CONTRACT DOCUMENTS, THEN THE OWNER AND LANDSCAPE ARCHITECT SHALL DECLARE SUBSTANTIALLY COMPLETE. SUBSTANTIAL COMPLETION CONSTITUTES THE BEGINNING OF THE GUARANTEE PERIOD.
25. WARRANTY / GUARANTEE PERIOD: CONTRACTOR TO WARRANT AND GUARANTEE PLANT MATERIAL FOR A ONE (1) YEAR PERIOD FOLLOWING DATE OF SUBSTANTIAL COMPLETION. PRIOR TO ISSUING SUBSTANTIAL COMPLETION NOTICE, THE CONTRACTOR SHALL SUBMIT TO THE OWNER COPIES OF AS BUILT PLANS, DOCUMENTS AND COPIES OF AN ANNUALIZED MAINTENANCE AND OPERATION MANUAL, DETAILING ALL SCHEDULES, NURSERY PRACTICES, WATERING REQUIREMENTS, FERTILIZATION, TRIMMING, ETC. FOR ALL PLANT MATERIALS AND PLANT AREAS OF THE PROJECT. CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVING ALL TREE STAKES AND GUY WIRES FROM TREES WHICH ARE ESTABLISHED AT THE END OF ONE (1) YEAR GUARANTEE PERIOD. TREES WHICH HAVE BEEN REPLACED SHALL REMAIN STAKED FOR ONE (1) FULL GROWING SEASON, AND THE OWNER SHALL BE RESPONSIBLE FOR REMOVING TREE STAKES AND GUY WIRES.

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LEE ROAD
TOWNHOMES
1800 LEE ROAD
WINTER PARK, FLORIDA

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Registered Landscape Architect
LA0457668

CONCEPTUAL LANDSCAPE PLAN
PRELIMINARY
CONDITIONAL USE SUBMITTAL

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DATE: FEBRUARY 23, 2015
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CHECKED BY: CJA

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Sheet Title
**LANDSCAPE
NOTES**

Sheet No.
L3

1800 Lee Rd. Townhomes

City of Winter Park, Florida Parcel I.D. #

01-22-29-5224-00-006,007,010,045,086,087,089,091,109

for



by



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Vicinity Map



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1	Coversheet	02-22-15
2	Symbols & Abbreviations	02-22-15
3	Boundary & Topo Survey	02-22-15
4	General Notes	02-22-15
5	Overall Site Plan	02-22-15
6	Existing Conditions Plan	02-22-15
7-8	Detailed Site Plans	02-22-15
9-10	Utility Plans	02-22-15
11-12	Paving & Drainage Plans	02-22-15
13	General Details	02-22-15



G L SUMMITT
ENGINEERING INC

Office: Lake Mary
3667 Simonson Place
Lake Mary, Florida 32746
phone: 407-323-0705
fax: 407-992-8650
www.glsum.com



ICON Residential, Inc.
2190 Belcher Rd. S
Suite B
Largo, FL 33771
(813) 541-1821

1800 Lee Road
Townhomes
City of Winter Park, Florida

Preliminary
Development Plan

Coversheet

These are valid unless signed,
dated and sealed below.
GLOVER L. SUMMITT, P.E.
Date: February 22, 2015
FL Registration # 68775
Certificate of Authorization #22660

Revisions		
No.	Date	Description
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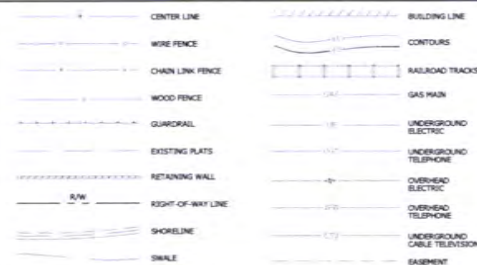
SHEET NUMBER
1 OF 13

ABBREVIATIONS

[illegible]

EXISTING SYMBOLS

LINES



SANITARY



WATER & REUSE WATER



STORM DRAIN

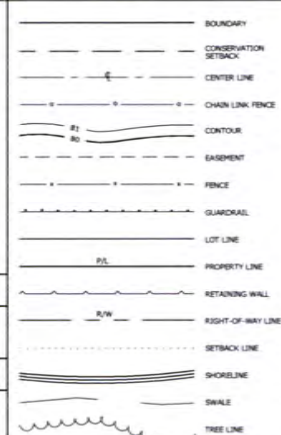


HIGHWAY & UTILITIES

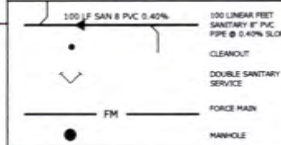


PROPOSED SYMBOLS

LINES



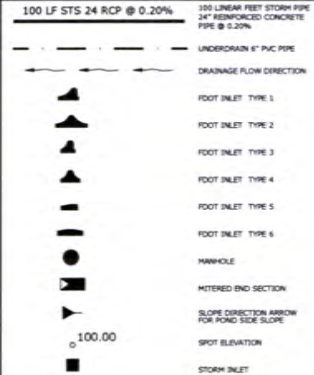
SANITARY



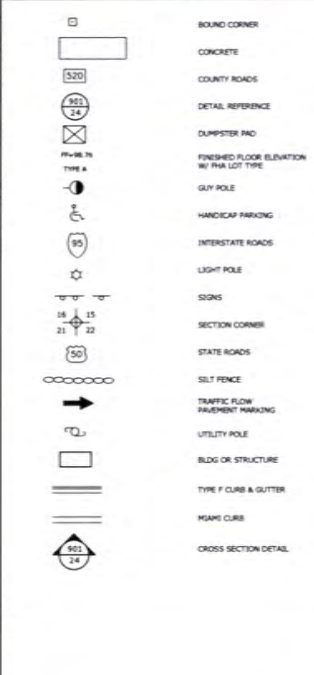
WATER & REUSE WATER



STORM DRAIN



HIGHWAY & UTILITIES



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**1800 Lee Road
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City of Winter Park, Florida

Preliminary Development Plan

Symbols & Abbreviation

Plans not valid unless Signed,
Dated and Sealed below.

Revisions		
NO.	DATE	DESCRIPTION
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SHEET NUMBER
2 OF 13

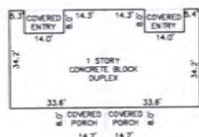
LEE ROAD (STATE ROAD 423)
100' RIGHT OF WAY



LEGEND:

- TELEPHONE MANHOLE
- STORM MANHOLE
- SEWER MANHOLE
- ELECTRIC MANHOLE
- TELEPHONE HANDHOLE
- TELEPHONE JUNCTION BOX
- CABLE TELEVISION PEDESTAL
- FIBER OPTIC CABLE MARKER
- TELEPHONE JUNCTION BOX
- LIGHT POLE
- FIRE HYDRANT
- WATER VALVE
- UTILITY POLE
- METAL SIGN
- PALM TREE
- OAK TREE (SIZE AS NOTED)

BUILDING DETAIL
(TYPICAL OF ALL BUILDINGS)
1" = 20'



LEGAL DESCRIPTION:

Begin at the Point of Intersection of the South line of Lee Road (State Road 423) and the West line of Lot 1, LORD'S SUBDIVISION, as recorded in Plat Book P, Page 88, Public Records of Orange County, Florida; thence run South 00°59'07" East along said West line of Lot 1, a distance of 299 feet, more or less, to the eastern edge of Lake Kilgus; thence run Easterly and Northerly along said water's edge and the westerly edge of a canal distance of 693 feet, more or less, to the Southwest corner of Orange County Parcel recorded in Official Records Book 2732, Page 432, Public Records of Orange County, Florida; thence run North 01°11'30" West along the West line of said Parcel a distance of 80.00 feet to a point on the Southern Right of Way line of aforesaid Lee Road (State Road 423); thence South 88°49'25" West, along said Right of Way line a distance of 380.86 feet to the Point of Beginning.

NOTES:

1. BEARINGS SHOWN HEREON ARE RELATIVE TO AN ASSUMED BEARING OF S89°45'25" W ALONG THE SOUTH RIGHT OF WAY LINE OF LEE ROAD, ACCORDING TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY SECTION MAP 75190-2502.
2. ELEVATIONS DEPICTED HEREON ARE BASED ON ORANGE COUNTY DATUM, REFERENCED TO NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988).
3. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, ADJOINERS OR OTHER INSTRUMENTS OF RECORD.
4. UNDERGROUND FOUNDATIONS AND UTILITIES WERE NOT LOCATED.
5. WETLAND AREAS WERE NOT ADDRESSED AS PART OF THIS SURVEY.
6. THE SURVEY MEANDER LINE DEPICTED HEREON IS FOR MATHEMATICAL CLOSURE ONLY, AND NOT INTENDED TO BE USED AS A BOUNDARY LINE.

SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY THIS SURVEY MEETS THE APPLICABLE "MINIMUM TECHNICAL STANDARDS" AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 507.050-.052, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

RALPH THOMAS SNOW
FLORIDA LICENSED SURVEYOR & MAPPER NO. 5561
DATE
THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

FILED	DATE	DRAWN	REVISION	CHK

RALPH THOMAS SNOW, PSM

3524 NORTH HICKORY DRIVE, LONGWOOD, FL 32750
407-321-6301 rsn@tsc.com
CERTIFICATE OF AUTHORIZATION NUMBER 13 1998

SECTION 1, TOWNSHIP 22
SOUTH, RANGE 29 EAST,
ORANGE COUNTY, FLORIDA

BOUNDARY & TOPOGRAPHIC SURVEY
FOR
SUMMIT ENGINEERING

FILED	FILED DATE	PROJECT NO.
SKETCH	02/02/2015	15-001
DRAWING DATE	BY	APPROVED
2/3/2015	GLG	RTS
		SCALE: 1"=30'

1 OF 1

SITE DATA:

1. Site is located in Section 1, Township 22 South, Range 29 East, Orange County Florida
2. Current Site Zoning: O-2 Proposed Zoning: A-2
3. Current Future Land Use: Low Density Residential
4. Site Contain: 6.41 acres more or less (± 279,340 square feet)
5. a. Net Developable Area: 6.41 ac ± 3.26 ac (Water) = 3.15 ac
6. Existing Use: Residential Single-Family Attached
7. Total Number of Proposed Single-Family Units: 30
8. Residential Density: 30 Single-Family Units / 3.15 ac ± 9.54 units/acre
9. Projected School Age Population: 30 Single-Family Units x 0.431 = 13 students
10. Proposed Minimum Lot Dimensions: Single-Family Attached Townhomes
 - Lot Area (sq. ft.): 1,400
 - Living Area (sq. ft.): 1,000
 - Min Lot Width @ 30' Setback (ft.): 71
 - Min Lot Depth (ft.): 88
 - Max Building Height (ft.): 35' / 3 story
 - Lot Setback Area: 90%
 - P.A.R.: 90% (max.)
11. Building Setbacks: Single-Family Attached Townhomes
 - Front yard setback: 0'
 - Side yard setback: 0' (or more), 0' (and more)
 - Side Street setback: 0'
 - Side Street setback: N/A
12. Property Line Setbacks: Single-Family Attached Townhomes
 - Lee Road (State Road 423) Line setback: 25' Building, 15' Postament
 - Weather Property Line setback: 15' Building, 10' Postament
 - Lee Killarney setback: 10' (from 15' to 20' N/A)
 - East Property Line setback: 15' Building, 10' Postament

12. Minor alteration of the floodplain is anticipated with the proposed construction.
13. Fire flow shall be provided according to the following:
 - a. Single-Family Townhomes: 1,500 gpm @ 20 psi (Per FPFC 210 Chapter 18 & Annex I)
14. Water, Sanitary Sewer and solid waste disposal services will be provided by City of Winter Park.
15. Site will connect to water and gravity sewer located on Lee Road and Executive Drive.
16. Blue reflective markers to be installed in arrears adjacent to all fire hydrant as per City of Orlando Land Development Regulations.
17. All traffic markings shall be in accordance with City of Winter Park and FDOT roadway specifications.
18. Project to be constructed in single phase. This will include infrastructure and first building. Additional buildings will be constructed as market conditions dictate.
19. Sidewalks will be provided internally and adjacent to all roadways.
20. On-site drainage system will be privately owned and maintained by the HOA.
21. Open Space Breakdown:

Category	Tract Area	Open Space	Open Space Percentage
Water	1.96 ac	1.96 ac	30.20%
Water Area	3.36 ac	1.68 ac	50.00%
Total	0.20 ac	2.86 ac (44.62% of developable area)	

22. Trip Generation:

Category	Number of Units	Required Parking Spaces	Provided Parking Spaces
Single-Family Residential	30 units @ 9.5 trips per day = 285 ADT	60 (2 spaces per unit)	60 (on-street spaces) = 12 (on-street spaces)
23. Required Off-Street Parking:

Category	Number of Units	Required Parking Spaces	Provided Parking Spaces
Single-Family	30	60 (2 spaces per unit)	60 (on-street spaces) = 12 (on-street spaces)
24. Living Area is defined as that area enclosed by a 1/4" AC system.
25. All external HVAC equipment shall be placed on one side of building only.
26. Proposed finished floor grades are expected to be 12" minimum above property line grade.
27. No trees are located within. See Landscape Plan for proposed trees & plantings.
28. Water distribution system design and fire hydrant layout shall meet the requirements in Annex H & Annex I of NFPA 1, 2003 edition.
29. On-site billboards are prohibited.
30. Street Lighting shall be in accordance with City of Winter Park subdivision regulations. All lighting will be owned and maintained by HOA and/or City of Winter Park.

Category	Tract Area	Open Space	Open Space Percentage
Water	1.96 ac	1.96 ac	30.20%
Water Area	3.36 ac	1.68 ac	50.00%
Total	0.20 ac	2.86 ac (44.62% of developable area)	

FUTURE LAND USE: ROADWAY
ZONING: N/A
EXISTING USE: ROADWAY

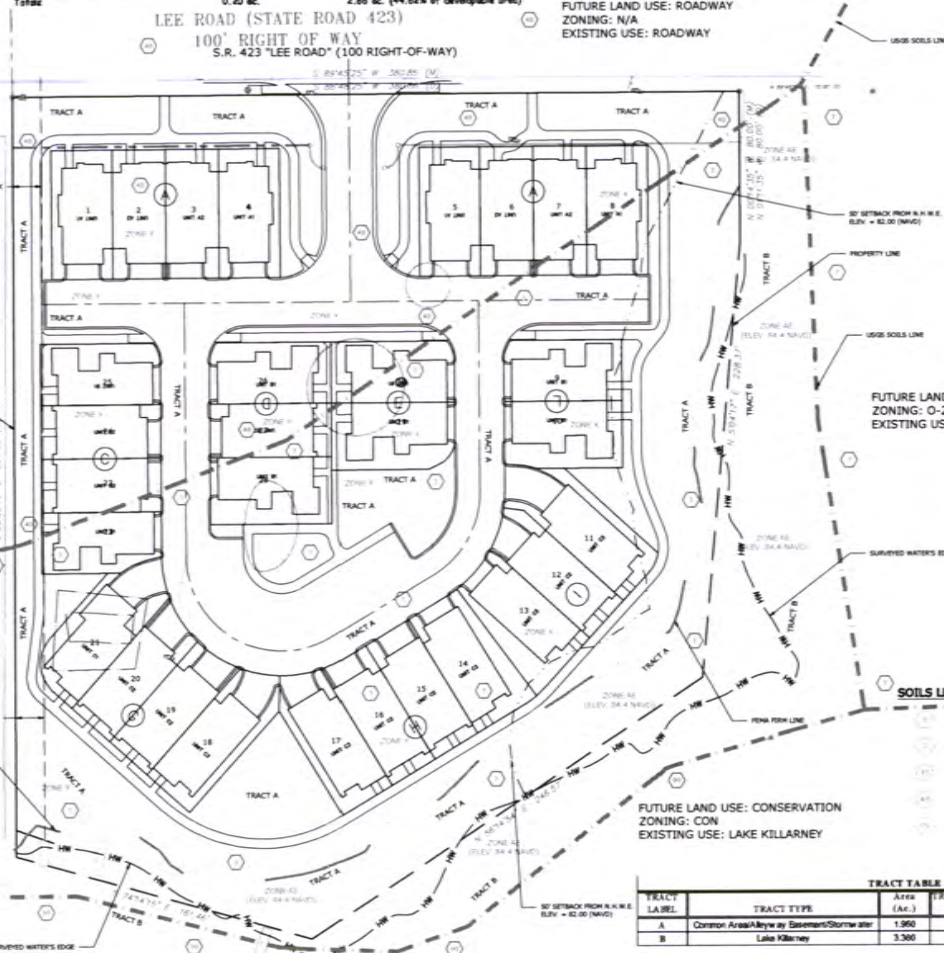
FUTURE LAND USE: OFFICE/PROFESSIONAL
ZONING: O-1
EXISTING USE: LEE WORLD CENTER

FUTURE LAND USE: OFFICE PROFESSIONAL
ZONING: O-2
EXISTING USE: ANDERSEN BANK

FUTURE LAND USE: CONSERVATION
ZONING: CON
EXISTING USE: LAKE KILLARNEY

FUTURE LAND USE: CONSERVATION
ZONING: CON
EXISTING USE: LAKE KILLARNEY

FUTURE LAND USE: CONSERVATION
ZONING: CON
EXISTING USE: LAKE KILLARNEY

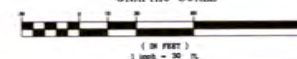


SOILS LEGEND:

- BASINGER FINE SANDS
- CANDLER-URBAN LAND COMPLEX
- SMYRNA-URBAN LAND COMPLEX
- TAVARES-URBAN LAND COMPLEX
- WATER

TRACT LABEL	TRACT TYPE	Area (Ac.)	TRACT DESIGNATION	ESTABLISHED DEDICATED TO
A	Common Area/Alleyway	1.960	HOA	City of Winter Park
B	Lake Killarney	3.360	HOA	City of Winter Park

GRAPHIC SCALE



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2190 Belcher Rd. S
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Largo, FL 33771
(813) 541-1821

1800 Lee Road Townhomes
City of Winter Park, Florida

Preliminary Development Plan

Overall Site Plan

Please seal and submit original, dated and sealed before.
JOHANNY L. SUMMITT, P.E.
Date: February 23, 2018
FL Registration #29777
Certificate of Authorization #29669

Revisions

No.	Date	Description
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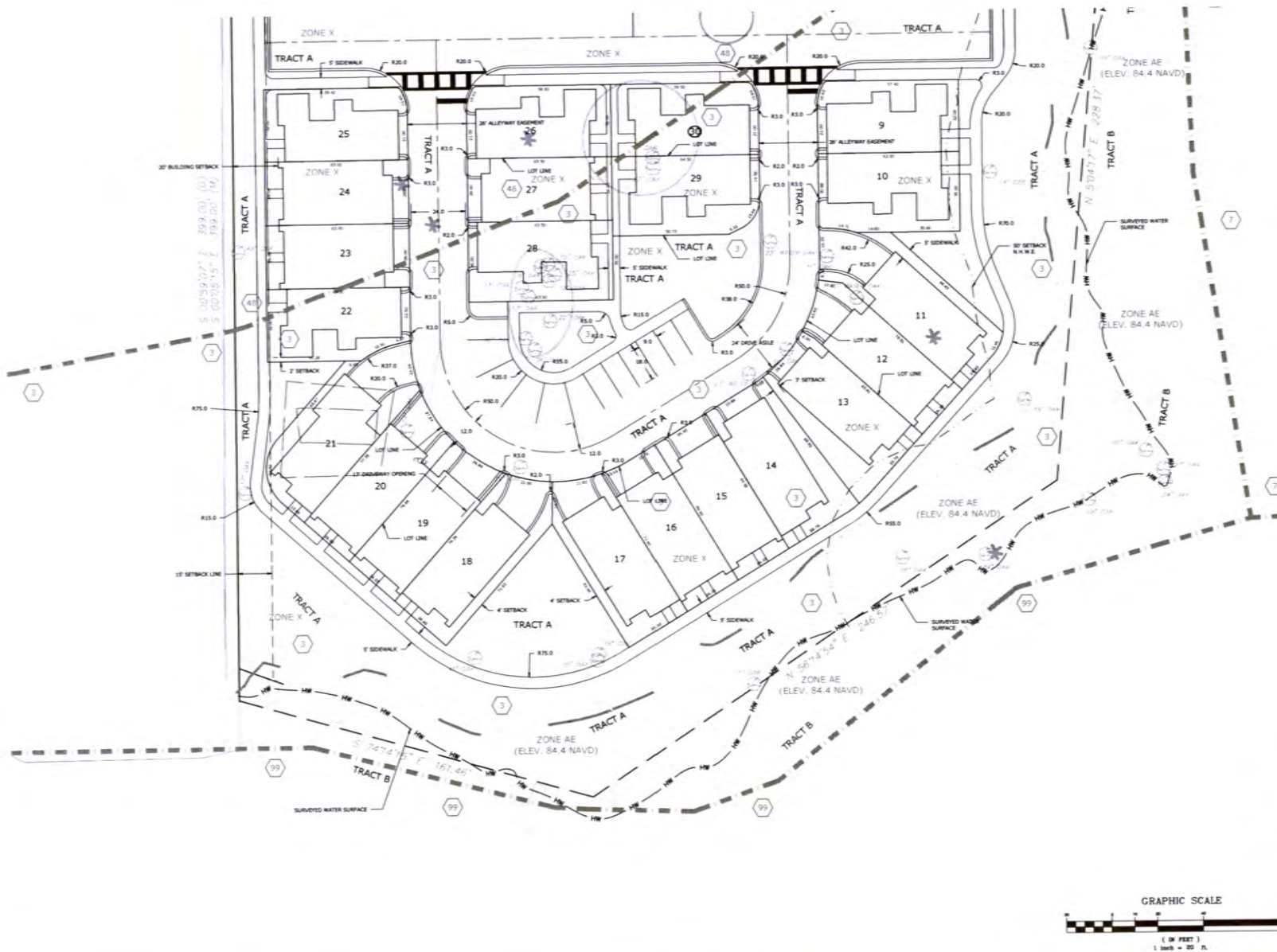
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1. THIS PLAN IS MET ONLY AS A GUIDELINE TO FACILITATE THE CONTRACTOR IN IDENTIFYING THE SCOPE OF THE CONTRACT. A LICENSED DEMOLITION CONTRACTOR SHALL PREPARE AND SUBMIT A PERMIT APPLICATION TO THE CITY PRIOR TO START OF ANY DEMOLITION WORK.
2. INFORMATION SHOWN ABOVE REFLECTS ONLY THAT INFORMATION REFLECTED ON THE SURVEY PROVIDED BY THE CLIENT. THE ENGINEER DOES NOT CERTIFY TO THE COMPLETENESS OF THE INFORMATION SHOWN.
3. DEMOLITION OF ALL EXISTING INTERNAL UTILITIES IS REQUIRED AS PART OF THE DEMOLITION WORK. CONTRACTOR SHOULD CONTACT THE ASSOCIATED UTILITY COMPANIES TO COORDINATE SERVICE CUT-OFF AND CLEARANCE TO REMOVE THE EXISTING UTILITY LINES.

(IN FEET)
1 inch = 30 ft.



SEE SHEET 7 OF 13



G L SUMMITT
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Largo, FL 33771
(813) 541-1821

1800 Lee Road
Townhomes
City of Winter Park, Florida

Preliminary
Development Plan

Detailed
Site Plan
2

Please see valid volume Stamps,
Dates and Seals below.

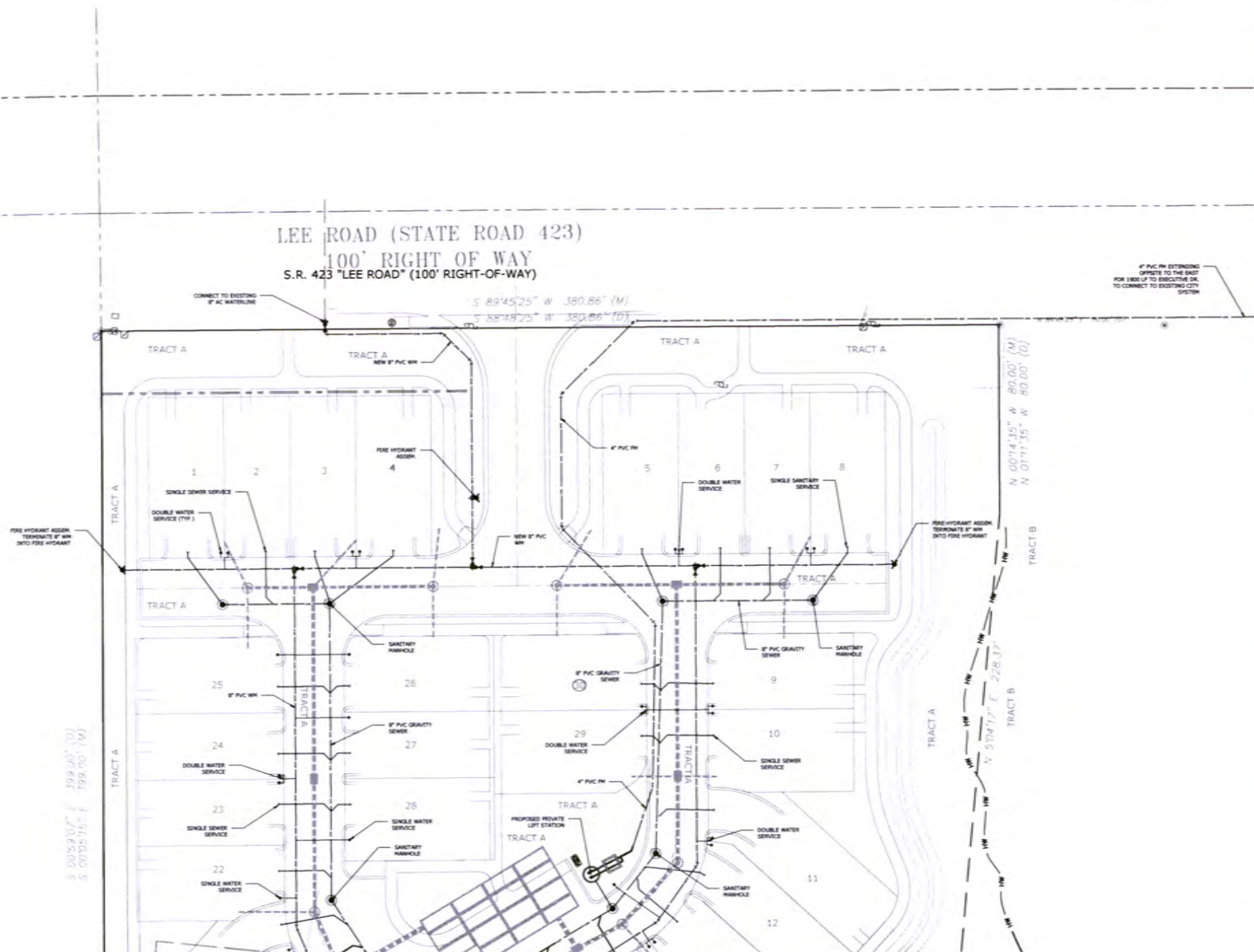
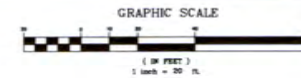
PROFESSIONAL ENGINEER
GEORGE L. SUMMITT, P.E.
Date: February 22, 2013
Certificate of Authorization #24668

Revisions

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SHEET NUMBER

8 OF 13



SEE SHEET 10 OF 13



G L SUMMITT
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2190 Belcher Rd. S
Suite B
Largo, FL 33771
(813) 541-1821

**1800 Lee Road
Townhomes**
City of Winter Park, Florida

**Preliminary
Development Plan**

**Utility
Plan 1**

Please note: unless noted, all dimensions are in feet.
Checked and sealed below.

GEOFFREY L. SUMMITT, P.E.
Date: February 22, 2015
FL Registration #8775
Certificate of Authorization #29668

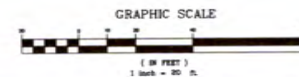
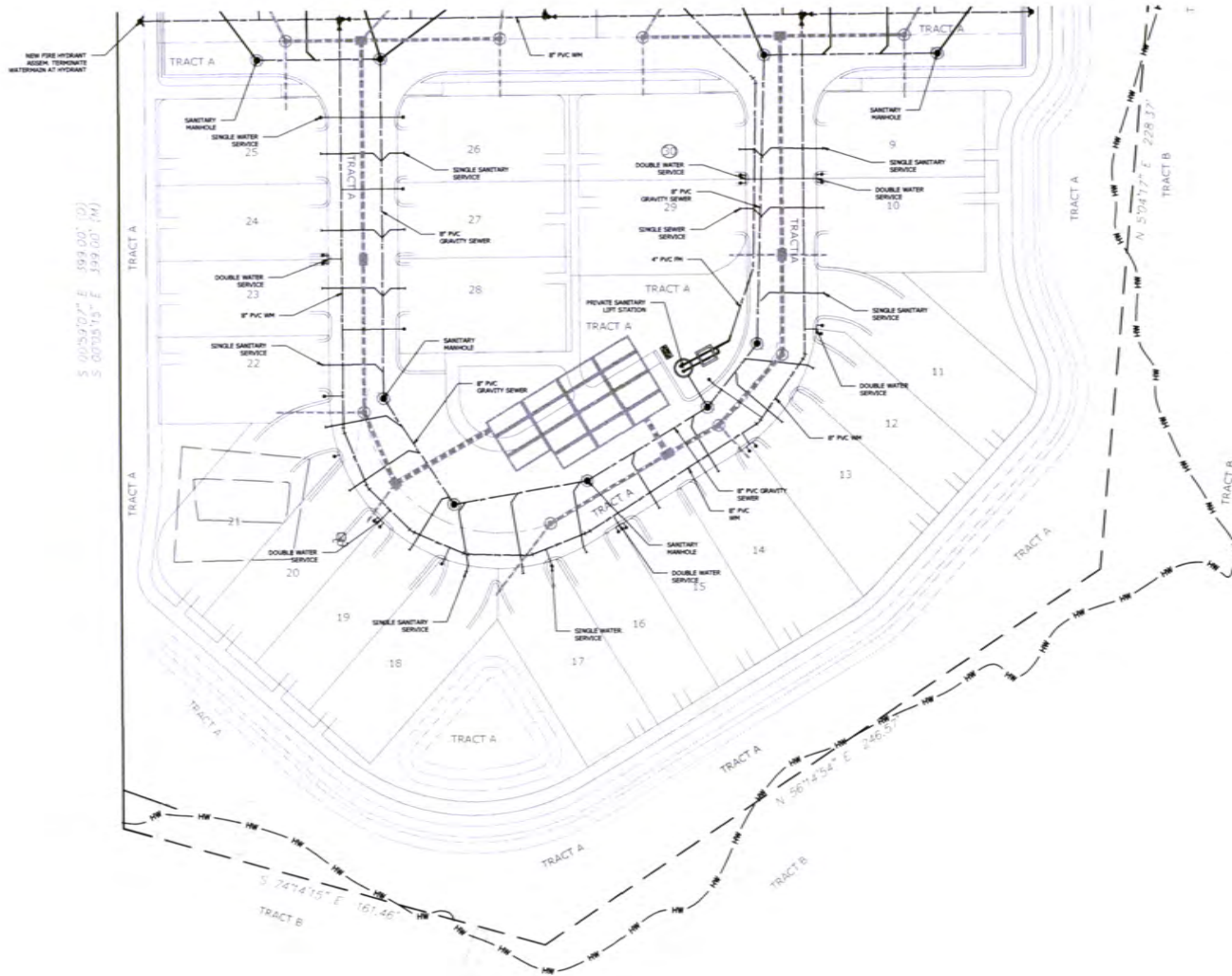
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9 OF 13

SEE SHEET 9 OF 13



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1800 Lee Road
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City of Winter Park, Florida

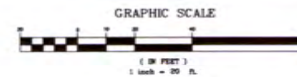
Preliminary
Development Plan

Utility
Plan 2

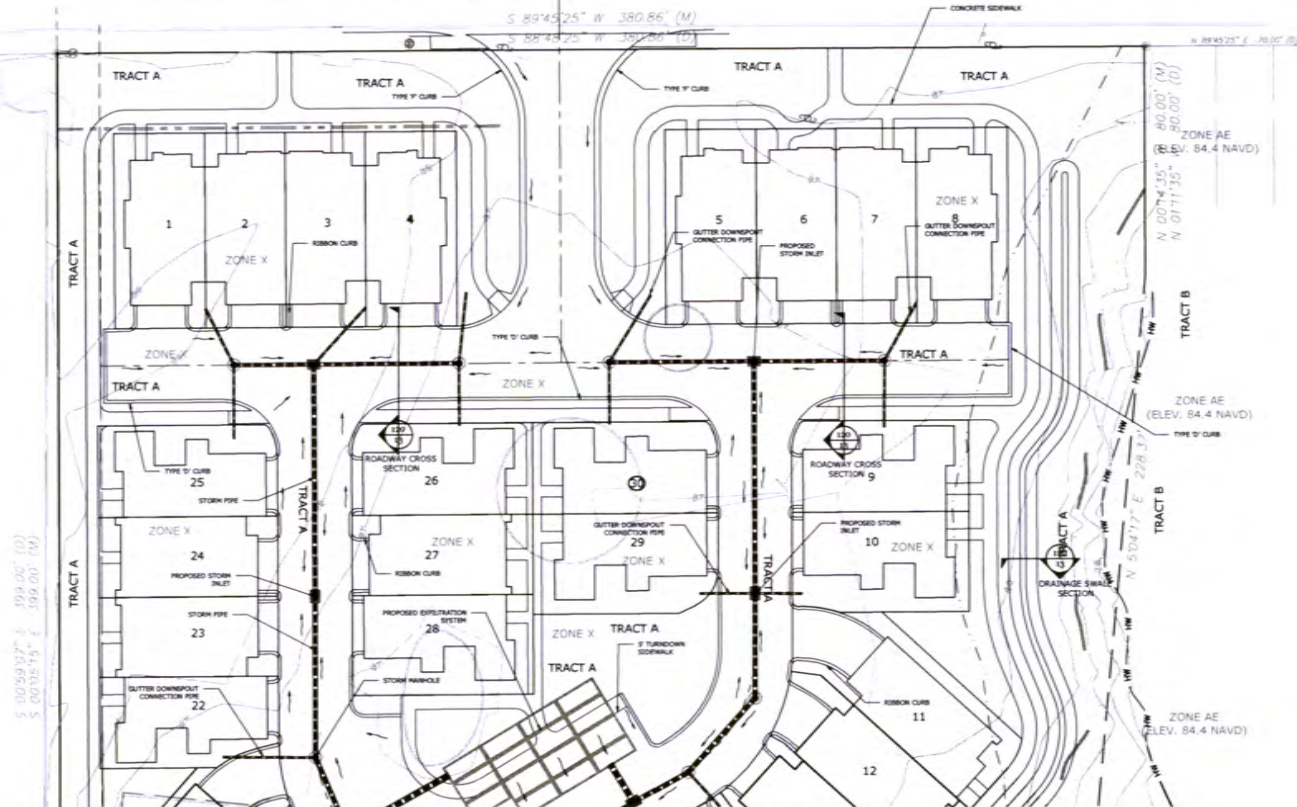
Please read and void unless signed,
dated and sealed below.
CHOPPA L. SUMMITT, P.E.
Date: February 23, 2015
FL Registration #00077
Certificate of Authorization #29665

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LEE ROAD (STATE ROAD 423)
100' RIGHT OF WAY
S.R. 423 "LEE ROAD" (100' RIGHT-OF-WAY)



SEE SHEET 12 OF 13



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City of Winter Park, Florida

**Preliminary
Development Plan**

**Paving &
Drainage
Plan 1**

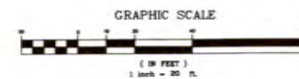
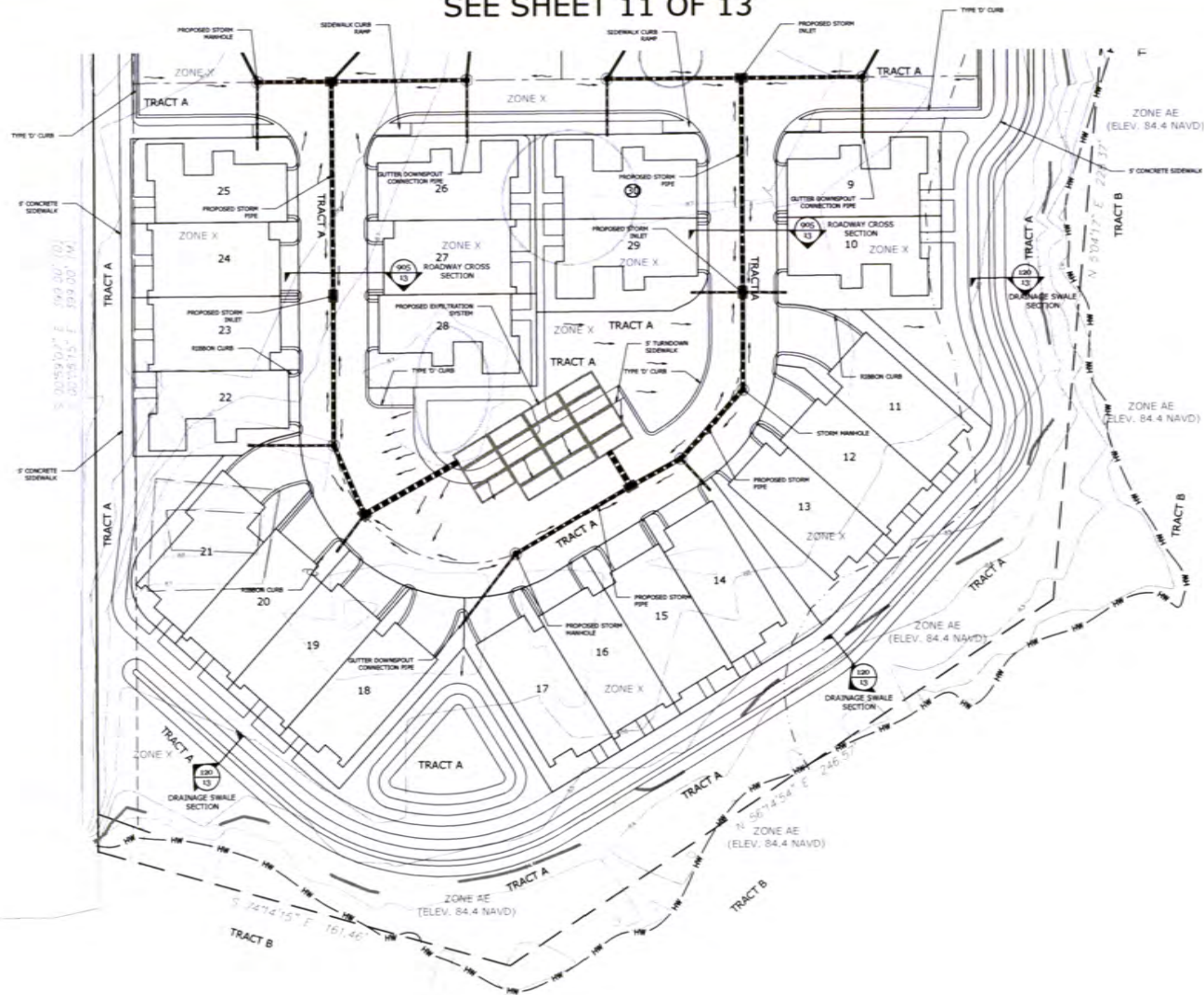
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dated and sealed below.

GEOFFREY L. SUMMITT, P.E.
Date: February 22, 2015
P.E. Registration #8755
Certificate of Authorization #25640

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SEE SHEET 11 OF 13



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(813) 541-1821

**1800 Lee Road
Townhomes**
City of Winter Park, Florida

**Preliminary
Development Plan**

**Paving &
Drainage
Plan 2**

Please not void unless signed,
dated and sealed below.

JOSEPH L. SUMMITT, P.E.
Date: February 23, 2015
FL Registration # 48773
Certificate of Authorization # 29645

Revisions

NO.	DATE	DESCRIPTION
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12 OF 13



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**1800 Lee Road
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**Preliminary
Development Plan**

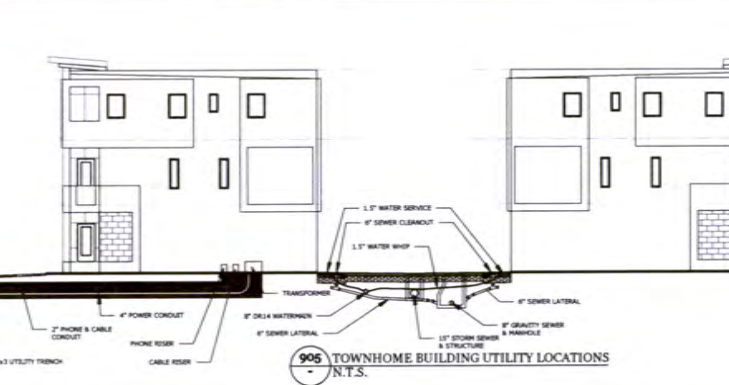
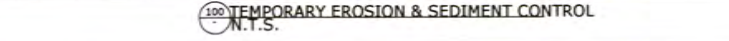
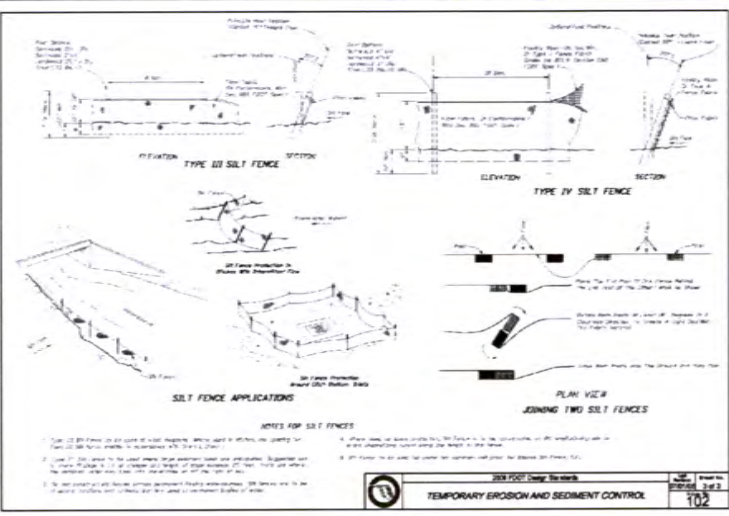
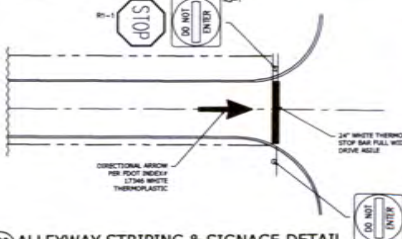
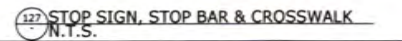
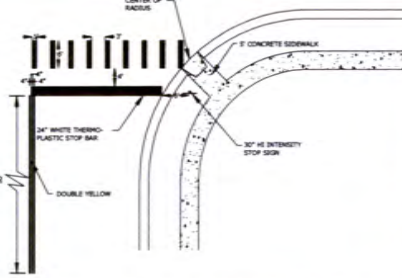
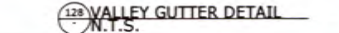
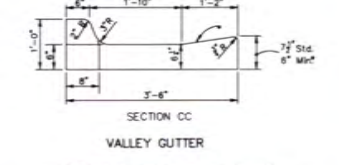
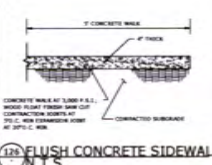
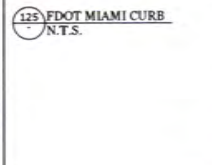
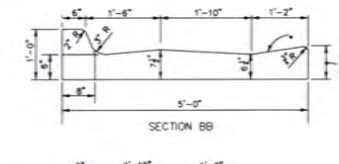
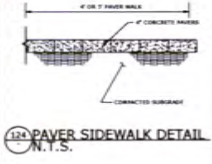
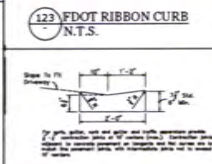
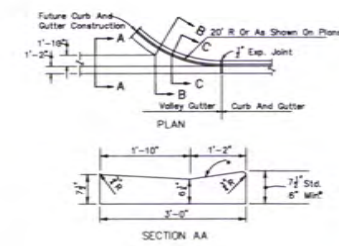
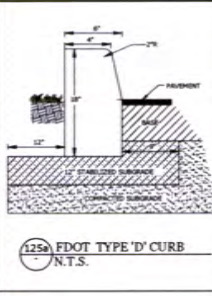
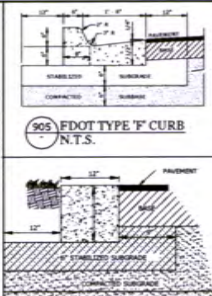
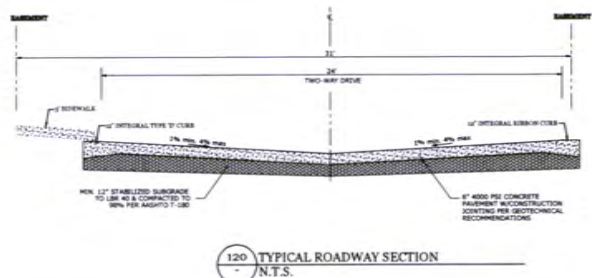
**General
Details 1**

Please see valid volume legend,
dated and located below.

GEOFFREY L. SUMMITT, P.E.
Date: February 23, 2015
FL Registration #88775
Certificate of Authorization #25660

Revisions		
NO.	DATE	DESCRIPTION
1		
2		
3		
4		
5		
6		
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10		

SHEET NUMBER
13 OF 13





city commission public hearing

Item type	Public Hearing	meeting date	June 8, 2015
prepared by	Dori Stone	approved by	<input checked="" type="checkbox"/> City Manager
department	Planning & Comm. Develop.		<input checked="" type="checkbox"/> City Attorney
division			<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A
strategic objective	<input type="checkbox"/> Exceptional Quality of Life	<input type="checkbox"/> Fiscal Stewardship	
	<input checked="" type="checkbox"/> Intelligent Growth & Development	<input type="checkbox"/> Public Health & Safety	
	<input type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Real Estate Purchase and Sale Agreement between the Orange County School Board, the City of Winter Park and UP Fieldgate US Investments – Winter Park LLC

motion | recommendation

Request approval of the Agreement based on the terms set out in the UP Fieldgate US Investments – Winter Park LLC Development Agreement dated 03/19/15

background

This agreement is a tri-party agreement between Orange County School Board, the City of Winter Park and UP Fieldgate for property currently owned by the School Board on the Winter Park Vo-Tech site to be used as rights-of-way for the proposed Lee Road Extension.

As part of the Development Agreement for the Whole Foods project and the additional Building A, UP Fieldgate agrees to construct the Lee Road Extension as a necessary access point to the development along US 17-92. The development agreement requires the developer to also convey the right of way for the Lee Road Extension to the City. To acquire the necessary rights of way, UP Fieldgate has negotiated a purchase of property from the Orange County School Board.

The terms of the Tri-Party Agreement provide that the School Board will convey the property to the city and the developer, on behalf of the city, will pay the school board the sum of \$2,580,000 for the property.

Since the Vo-Tech site will be losing parking spaces, the agreement also requires the city to “cause the undertaking and performance of the design, engineering,

permitting and construction of certain cure work.” The cure work includes the reconfiguration of the parking filed on the Vo-Tech site, the addition of a full access point from the remaining School property to the Lee Road Extension, drainage improvements, reconfiguration of the parking lot lighting and installation of new parking lot lighting and temporary offsite parking for the operation of the Vo-Tech center. The city is requiring UP Fieldgate to undertake and perform the cure work at no cost to either the School Board or the city. The School Board has the right to review and approve all cure work.

The Agreement also requires that temporary parking for the Vo-Tech site must be in place by September 1, 2015 and the cure work must be completed by December 31, 2015 or 120 days after the temporary completion date. The access point must be open by March 1, 2016 and the School Board is entitled to liquidated damages if the cure work is not completed in a timely manner. The conveyance of the property will be **“As-is” and the city and the developer will have a 15 day inspection period** commencing on the effective date of the agreement. The agreement requires that the property may only be used for public right of way and related purposes such as stormwater draining and retention.

The Orange County School Board approved this agreement at their Board meeting on May 26, 2015.

The Indemnity Agreement which is another public hearing item outlines the roles and responsibilities in greater detail between the city and UP Fieldgate.

alternatives | other considerations

N/A

fiscal impact

There is no fiscal impact to the city for the acquisition of the property from the School Board.

REAL ESTATE PURCHASE AGREEMENT

Between

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, as Seller

and

THE CITY OF WINTER PARK, FLORIDA, as Purchaser

and

UP FIELDGATE US INVESTMENTS – WINTER PARK, LLC, as Developer

(Winter Park Adult Vocational Center)

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EXHIBIT “A”	Legal Description of the School
EXHIBIT “B”	Depiction of the Lee Road Extension
EXHIBIT “C”	Legal Description of the Land
EXHIBIT “D”	School Improvements

REAL ESTATE PURCHASE AGREEMENT
(Winter Park Adult Vocational Center)

THIS REAL ESTATE PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of the Effective Date (as hereinafter defined), by and between **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a public corporate body organized and existing under the Constitution and laws of the State of Florida, (“**Seller**”), **THE CITY OF WINTER PARK, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, (“**Purchaser**”), and **UP FIELDGATE US INVESTMENTS – WINTER PARK, LLC**, a Florida limited liability company (“**Developer**”).

WITNESSETH:

WHEREAS, Seller is the fee simple owner of a parcel of real property, commonly known as the Winter Park Adult Vocational Center, located on the northwest corner of West Webster Avenue and North Denning Drive in the incorporated City of Winter Park, Orange County, Florida, containing approximately 13.04 acres and bearing Orange County Property Appraiser’s Parcel Identification Number 01-22-29-3664-02-010, (the “**School**”) which School is legally described in **Exhibit “A”** attached hereto and by this reference made a part hereof, and the sale of a portion of the School for public right-of-way and related purposes is the subject of this Agreement; and

WHEREAS, Developer is the fee simple owner of parcels of real property, located generally west and northwest of the School, that Developer is developing and redeveloping for a commercial project (the “**Project**”); and

WHEREAS, in connection with the development of the Project, as a condition of Developer’s “final” conditional use approval of the Project on October 27, 2014, and as more particularly set forth in that certain “Developer’s Agreement” between Developer and Purchaser recorded on March 19, 2015 in Book 10891, Page 2720, of the Public Records of Orange County, Florida, (collectively, the “**Project Approvals**”) Developer will be required to obtain right-of-way and construct an extension of Lee Road (the “**Lee Road Extension**”) extending east from the current terminus of Lee Road with North Orlando Avenue, before curving 90 degrees to the right and proceeding south to a new terminus with West Webster Avenue, said Lee Road Extension being more particularly depicted and described in **Exhibit “B”** attached hereto and by this reference made a part hereof; and

WHEREAS, the Lee Road Extension is to be a publicly-dedicated right-of-way owned and maintained by Purchaser; and

WHEREAS, the construction of the Lee Road Extension requires Purchaser to obtain fee simple ownership of approximately 2.0 acres of the School (the “**Land**”) which Land is legally described in **Exhibit “C”** attached hereto and by this reference made a part hereof; and

WHEREAS, on May __, 2015, pursuant to Resolution No. _____, Seller (i) declared the Land to be “unnecessary or unsuitable for school purposes” (i.e. surplus) in accordance with Policy DN of Seller, such policy having been adopted by Seller pursuant to the

Florida Administrative Procedures Act (Chapter 120, Florida Statutes) and in accordance with the "State Requirements for Educational Facilities" approved by the Florida State Board of Education, and (ii) approved the sale of the Property to Purchaser for public right-of-way and related purposes for the Lee Road Extension; and

WHEREAS, in order to facilitate the Lee Road Extension and ensure compliance with Seller's duly adopted procurement policies, Developer has requested that Seller sell and convey the Land directly to Purchaser inasmuch as Purchaser shall ultimately own and maintain the Lee Road Extension, and Seller has agreed to sell the Land to Purchaser and Purchaser has agreed to purchase the Land with Developer providing the funds Developer would have expended in any event in accordance with the Developer's Agreement, said sale of Land to be together with (i) all tenements, hereditaments and appurtenances relating thereto or associated therewith, (ii) all improvements, buildings and fixtures, if any, situated thereon, (iii) all right, title and interest of Seller in any street, road, alley or avenue adjoining such Land to the center line thereof, but (for avoidance of doubt) excluding any streets, roads, alleys or avenues, if any, within Seller's Retained Lands (hereinafter defined), and (iv) all of Seller's right, title and interest in any strip, hiatus, gore, gap or boundary adjustment area adjoining or affecting such Land (collectively, with the Land, the "**Property**"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Property upon the terms and conditions hereinbelow set forth, in order to effectuate the Lee Road Extension; and

WHEREAS, Seller's conveyance of the Property to Purchaser provides a material benefit to Developer inasmuch as Purchaser's acquisition of the Property allows Developer to construct the Lee Road Extension, perform the Cure Work and develop the Project; and

WHEREAS, this Agreement has a public purpose for the Purchaser because the Lee Road Extension is beneficial to the public as it provides improved traffic flow, and is required by FDOT for the benefit of the public; further, the Project will increase the Purchaser's tax base and improve this area of the City; and

WHEREAS, Purchaser and Developer have entered into a Developer's Agreement of even date with this Agreement providing that Developer is Purchaser's guarantor under this Agreement, and the real party in interest with respect to the conveyance of the Property; and

WHEREAS, the sale of the Land will result in certain work being necessary to replace Seller facilities that will be lost, which work is hereafter more clearly defined and referred to herein as the Cure Work; and

WHEREAS, Purchaser has agreed to cause the Cure Work to be completed and Developer has agreed to provide funds in escrow to guarantee the completion of the Cure Work with no out-of-pocket cost to Purchaser.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties hereto do hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Agreement to Buy and Sell.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property in the manner and upon the terms and conditions hereinbelow set forth in this Agreement.

3. **Purchase Price.** The purchase price to be paid by Developer to Seller, on behalf of Purchaser, for the Property (the "**Purchase Price**") shall be the sum of Two Million Five Hundred Eighty Thousand and No/100 U.S. Dollars (\$2,580,000.00), which Purchase Price shall be paid by Developer to Seller at the Closing, subject to appropriate credits, adjustments and prorations as hereinbelow provided. Purchaser is not responsible for paying any part of the Purchase Price. As additional consideration to Seller for the conveyance of the Property to Purchaser, and in addition to the Purchase Price, Purchaser has agreed to cause the undertaking and performance of the design, engineering, permitting, and construction of the Cure Work as described in Section 10 of this Agreement. Purchaser and Developer acknowledge that the Purchase Price has been arrived at after accounting for, and that Seller has only agreed to the Purchase Price because of, Purchaser's promise to cause the undertaking and performance of the design, engineering, permitting, and construction of the Cure Work.

4. **Purchaser's Access to Property.** Purchaser and Developer shall at all times before Closing have the right of going upon the Property with their respective agents and engineers as needed to inspect, examine, survey, and otherwise undertake those actions which Purchaser, in its sole discretion, deems necessary or desirable to determine the suitability of the Property for the Lee Road Extension; provided, however, all entries upon the Property shall be coordinated in advance of entry with the then current senior director of the public school on Seller's Retained Lands. Said privilege shall include, without limitation, the right to make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Property, all of the foregoing (hereinafter collectively referred to as the "**Inspections**") at no cost or expense to Seller. Purchaser and Developer each covenant, respectively, that their respective activities will not cause any harm to Seller or the Property and will not unreasonably interfere with the use and operation of the Seller's Retained Lands and the school located thereon and that the Property will be immediately restored to the same or better condition as existed prior to their respective inspection activities. Purchaser (to the extent allowed by law) and Developer, respectively, and their respective agents and engineers shall at all times indemnify, save harmless and defend Seller, and Seller's board, staff, counsel, trustees, employees, and/or other agents, from and against any and all claims, liabilities, losses, costs, lawsuits, disputes, damages and expenses (including reasonable attorneys' fees whether incurred at or before the trial level or in any appellate proceedings) which Seller may suffer, sustain or incur by reason of the exercise of Purchaser's and Developer's respective rights under this Section 4, including, without limitation, any damage to the Property or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claims against the Property or any part thereof. The restoration and indemnification provisions of this Section 4 shall survive Closing or earlier termination of this Agreement.

5. **Survey and Title Matters.**

a. **Survey.** Purchaser shall, through Developer, and at Developer's expense, within five (5) days after the Effective Date, at no cost or expense to Seller, obtain a new, current survey of the Property (the "**Survey**") prepared by a registered surveyor, licensed in the State of Florida (the "**Surveyor**") and deliver a copy of such Survey to Developer and Seller and, if requested by Purchaser, to Purchaser. The Survey shall locate all improvements, if any, situated upon the Property and shall locate and identify with the relevant recorded information all utility lines and access, easements, streets, rights-of-way and other man-made objects, and locate all other matters not of record which are ascertainable by a visual inspection of the Property. The Survey shall identify any portion of the Property which is within a flood plain or which is subject to the jurisdiction of the Department of Environmental Protection, the Army Corps of Engineers, the applicable Water Management District or any agency of Orange County. The Survey shall also determine and certify within one-one hundredth (1/100th) of an acre the total acreage contained within the boundaries of the Property. The survey shall be certified to Purchaser, Seller, Developer, Purchaser's attorney, Seller's attorney, Developer's attorney, Title Agent (as defined below), and the Title Company (as defined below), and shall certify that such Survey was prepared in accordance with the ALTA/ACSM land survey requirements and the minimum technical requirements and standards promulgated by the Florida Board of Professional Land Surveyors, Chapter 61G-17 of the Florida Administrative Code and Section 427.027 of the Florida Statutes. The Survey shall, at Purchaser's option, also contain such other matters as are required by the Title Company. The Surveyor's seal shall be affixed to the Survey.

b. **Title Insurance.** Purchaser and Developer acknowledge receipt of Title Commitment No. 5011612-2037-3320722 with an effective date of April 13, 2015 at 8:00 a.m. (the "**Title Commitment**") proposing to insure the Property issued by First American Title Insurance Company ("**Title Company**"), by and through its agent, Shutts & Bowen LLP ("**Title Agent**"), together with copies of all exception documents referred to therein. The Title Commitment shall irrevocably obligate the Title Company to issue an ALTA title insurance policy approved for issuance in the State of Florida in the amount of the Purchase Price (the "**Title Policy**"), which Title Policy shall insure the Purchaser's fee simple title to the Property.

c. **Title and Survey Objection.** Within five (5) days after the receipt of the Survey, Purchaser shall provide Seller with notice of any matters set forth in the Title Commitment or Survey which are unacceptable to Purchaser, which matters shall be referred to herein as "**Title Defects**". Any matters set forth in the Title Commitment or Survey to which Purchaser does not timely object shall be referred to collectively herein as the "**Permitted Exceptions**". Within five (5) days after receipt of the notice of Title Defects from Purchaser (the "**Seller's Response Period**"), Seller shall notify Purchaser whether Seller will attempt to cure any of the Title Defects; in the event Seller fails to notify Purchaser of its intent to cure any Title Defect(s) within the Seller's Response Period, Seller shall be deemed to have refused to cure such Title Defect(s). In the event Seller refuses to cure (or is deemed to refuse to cure) any Title Defect within the Seller's Response Period then Purchaser may, at its option, by delivering written notice thereof to Seller prior to the expiration of the Inspection Period: (i) terminate this Agreement, whereupon the Agreement shall be deemed null and void and of no force and effect, and no party hereto shall have any further rights, obligations or liability hereunder, except as otherwise provided herein; or (ii) accept title to the Property subject to such Title Defects,

whereupon such Title Defects that Seller has refused to cure shall for all purposes herein also be considered “**Permitted Exceptions**”. If Seller elects to attempt to cure any of the Title Defects, Seller shall have until Closing (the “**Seller’s Cure Period**”) within which to use its diligent good faith efforts to cure such Title Defects to the satisfaction of Purchaser and the Title Company. In the event Seller fails to cure any Title Defect within Seller’s Cure Period after agreeing to cure such Title Defect within the Seller’s Response Period, then Purchaser may at its option by delivering written notice thereof to Seller prior to Closing: (i) terminate this Agreement, whereupon the Agreement shall be deemed null and void and of no force and effect, and no party hereto shall have any further rights, obligations or liability hereunder, except as otherwise provided herein; or (ii) accept title to the Property subject to such Title Defects, whereupon such Title Defects that Seller has failed to cure shall for all purposes herein also be considered “**Permitted Exceptions**”.

6. **Inspection Period; As-Is Sale.** Purchaser and Developer shall have fifteen (15) days after the Effective Date (the “**Inspection Period**”), to determine, as to Purchaser, in Purchaser’s sole and absolute discretion, and as to Developer, in Developer’s sole and absolute discretion, that the Property is suitable and satisfactory for the Lee Road Extension.

In addition to those inspections of the Property permitted under Section 4 of this Agreement, during the Inspection Period, Purchaser may, in Purchaser’s sole discretion and at no cost or expense to Seller, through Developer, and at Developer’s expense, also: (i) have the Property tested, surveyed and inspected to determine if the Property contains any hazardous or toxic substances, wastes, materials, pollutants or contaminants; (ii) have the Property tested, surveyed and inspected to determine if the Property contains any endangered or threatened species of animal life or endangered, threatened or commercially exploited plants on or under it, including, without limitation, any jurisdictional wetlands, such that any state or federal agency, department or commission would disallow the use of the Property for the Lee Road Extension or require Purchaser to relocate any such species, plants or wetlands; and/or (iii) obtain an endangered species and habitat report. All entries upon the Property shall be coordinated in advance of entry with the then current senior director of the public school on Seller’s Retained Lands.

As used herein, “**Hazardous Substances**” shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, “CERCLA”, “RCRA”, or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as “Environmental Laws”). Purchaser may obtain a hazardous waste report prepared by a registered engineer.

In the event either Purchaser or Developer is not satisfied, in Purchaser’s or Developer’s sole discretion, with Purchaser’s or Developer’s respective inspections of the Property (if any), either Purchaser or Developer may elect to terminate this Agreement by written notice to Seller prior to the expiration of the Inspection Period, whereupon this Agreement shall terminate and be null and void and no party shall have any further liability or obligation hereunder except as otherwise provided herein.

Except to the extent specifically set forth herein, Seller makes and shall make no representation or warranty either express or implied regarding the condition, operability, safety, fitness for intended purpose or use of the Property. Purchaser and Developer specifically acknowledge and agree that except as otherwise specifically set forth herein to the contrary, Seller shall sell and Purchaser shall purchase the Property on an “AS IS, WHERE-IS, AND WITH ALL FAULTS” basis and that, except as otherwise specifically set forth herein to the contrary, neither Purchaser nor Developer is relying on any representations or warranties of any kind whatsoever, express or implied, from Seller and/or Seller’s board, staff, counsel, trustees, employees, and/or other agents, as to any matters concerning the Property except as specifically set forth in this Agreement, including, without limitation, any warranty or representation as to: (i) the quality, nature, adequacy, and physical condition of the Property; (ii) the quality, nature, adequacy, and physical condition of soils, geology, and any groundwater; (iii) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property; (iv) the development potential of the Property; (v) the Property’s value, use, habitability, or merchantability; (vi) the fitness, suitability, or adequacy of the Property for any particular use or purpose; (vii) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (viii) the compliance of the Property or its operation with all applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity including, without limitation, environmental person or entity, including, without limitation, environmental laws, and environmental matters of any kind or nature whatsoever relating to the Property; (ix) the presence of hazardous or toxic materials on, under, or about the Property or the adjoining or neighboring property; (x) the quality of any labor and materials used in any improvements included in the Property, (xi) any service contracts, guarantees or warranties, or other agreements affecting the Property; (xii) the economics of the purchase of the Property; (xiii) the freedom of the Property from latent or apparent vices or defects; (xiv) peaceable possession of the Property; and (xv) any other matter or matters of any nature or kind whatsoever relating to the Property. Neither Purchaser nor Developer shall have any rights or claims whatsoever against Seller or Seller’s board, staff, counsel, trustees, employees, or other agents, for damages, rescission of the sale, or reduction or return of the Purchase Price because of any matter not represented or warranted by Seller contained in this Agreement, and all such rights and claims are hereby expressly waived by Purchaser and Developer.

7. **School Improvements; Scope.** Purchaser and Developer acknowledge that the sale of the Property will result in the loss by Seller of approximately 2.0 acres of the School, including a minimum of one hundred six (106) parking spaces and associated improvements, and that as a result it will be necessary to reconfigure the development and improvements upon portions of the School other than the Property (the “**Seller’s Retained Lands**”) in order to maintain safe, efficient, and legal operations of the public school upon the Seller’s Retained Lands. Without limiting the generality of the foregoing, as a result the conveyance of the Property to Purchaser for public right-of-way purposes (and Seller’s loss of use thereof), and/or as a result Developer’s construction of the Project and the Lee Road Extension, it will be necessary to reconfigure the parking fields of the School, to add a full access point from Seller’s Retained Lands to the Lee Road Extension, to make drainage improvements both within and external to Seller’s Retained Lands to accommodate the stormwater retention/detention needs of Seller’s Retained Lands, to reconfigure the parking lot lighting of the parking fields of the school

and to install new parking lot lighting in connection therewith, to provide temporary offsite parking for the operation of the public school located on Seller's Retained Land during the performance of the Cure Work and to make certain other improvements both within and external to Seller's Retained Lands, which may include the removal, relocation, installation, and/or construction of utilities.

a. Definitions.

i. For the purposes of this Agreement, the term "**Parking Improvements**" shall mean those parking improvements depicted and described in **Exhibit "D"** attached hereto and by this reference made a part hereof (other than the Access Point (as defined below)) and, without limiting the foregoing, such Parking Improvements shall include (i) the removal of existing asphalt pavement, clearing, grading, base, sub-base, paving, curbing, sidewalks, drainage pipes, inlets, signage, striping, light poles, fencing, and landscaping within the Seller's Retained Lands and (ii) any such other improvements as are necessary to accommodate the parking needs of Seller's Retained Lands and to maintain safe, efficient, and legal operations of the public school upon Seller's Retained Lands, after the conveyance of the Property to Purchaser for public right-of-way purposes (and Seller's loss of use thereof) and/or resulting from Developer's construction of the Project, Developer's construction of the Lee Road Extension, and/or construction of the Cure Work (hereinafter defined).

ii. For the purposes of this Agreement, the term "**Temporary Parking Improvements**" shall mean those parking improvements on the Premises (as hereinafter defined) depicted and described in **Exhibit "D"** and, without limiting the foregoing, such Temporary Parking Improvements shall include (i) the removal of existing asphalt pavement, clearing, grading, base, sub-base, paving, curbing, sidewalks, signage, light poles, and fencing within and adjacent to the Premises and (ii) any such other improvements to the Premises and Seller's Retained Land as are necessary to accommodate the parking needs of Seller's Retained Lands during the time period commencing with the commencement of the Cure Work and ending with the Completion of the Cure Work and to maintain safe, efficient, and legal operations of the public school upon Seller's Retained Lands, after the conveyance of the Property to Purchaser for public right-of-way purposes (and Seller's loss of use thereof) and/or resulting from Developer's construction of the Project, Developer's construction of the Lee Road Extension, and/or construction of the Cure Work.

iii. For the purposes of this Agreement, the term "**Access Point**" shall mean and refer to the one (1) access point with full median cut providing for vehicular ingress and egress (right in and out and left in and out) to and from the Parking Improvements and the Lee Road Extension in the location generally depicted in **Exhibit "D"** attached hereto. The exact location and configuration of the Access Point shall be subject to Seller's approval, as contemplated in Section 10 below.

iv. For the purposes of this Agreement, the term "**Drainage Improvements**" shall mean a drainage system within Seller's Retained Lands, within the Property, and/or within other lands of Purchaser and/or Developer to accommodate the stormwater retention/detention needs of Seller's Retained Lands and to maintain safe, efficient, and legal operations of the public school upon Seller's Retained Lands, after the conveyance of

the Property to Purchaser for public right-of-way purposes (and Seller's loss of use thereof) and/or resulting from Developer's construction of the Project, Developer's construction of the Lee Road Extension, and/or construction of the Cure Work, including without limitation all aboveground and underground drainage, retention, detention, and conveyance facilities, lakes, ponds, ditches, trenches, swales, culverts, inlets, pipes, weirs, control structures, and other structures associated with such drainage system including a pond (the "**Pond**"), outside of Seller's Retained Lands, that may also accommodate certain stormwater retention/detention needs of the Lee Road Extension. For avoidance of doubt, the Drainage Improvements shall be generally consistent with those improvements depicted and described in **Exhibit "D"** attached hereto.

v. For the purposes of this Agreement, the term "**Utility Improvements**" shall mean and refer to the removal, relocation, installation, and/or construction of water, wastewater, reclaimed/reuse water, electrical, gas, telephone, internet, cable, and/or other utility pipes, lines, mains, lift stations, poles, wires, guy wires, transformers, and/or other facilities, and appurtenances associated therewith, within Seller's Retained Lands, within the Property, and/or within other lands of Purchaser and/or Developer necessary to accommodate the utility needs of Seller's Retained Lands and to maintain safe, efficient, and legal operations of the public school upon Seller's Retained Lands, after the conveyance of the Property to Purchaser for public right-of-way purposes (and Seller's loss of use thereof) and/or resulting from Developer's construction of the Project, Developer's construction of the Lee Road Extension, and/or construction of the Cure Work, including without limitation any required "upsizing" of existing utilities and/or "upsizing" of new utilities to be installed in connection with the Project, the Lee Road Extension, and/or the Cure Work.

vi. For the purposes of this Agreement, the term "**Other Improvements**" shall mean and refer such other work of every kind and nature and to the removal, relocation, installation, and/or construction of such other improvements and facilities of every kind and nature within Seller's Retained Lands, within the Property, and/or within other lands of Purchaser and/or Developer (other than the Parking Improvements, the Access Point, the Drainage Improvements, the Utility Improvements, and the Access Improvements (hereinafter defined)) necessary to maintain safe, efficient, and legal operations of the public school upon Seller's Retained Lands, after the conveyance of the Property to Purchaser for public right-of-way purposes (and Seller's loss of use thereof) and/or resulting from Developer's construction of the Project, Developer's construction of the Lee Road Extension, and/or construction of the Cure Work.

vii. For the purposes of this Agreement, the term "**School Improvements**" shall mean, collectively, the Parking Improvements, the Temporary Parking Improvements, the Access Point, the Drainage Improvements, the Utility Improvements, the Other Improvements, and the Access Improvements.

b. Purchaser, Seller and Developer acknowledge that while some of the School Improvements are depicted and described in **Exhibit "D"**, the exact nature of all School Improvements and the complete list of all matters that will constitute School Improvements (collectively, the "**Scope**") are unknown as of the Effective Date. Prior to the expiration of the Inspection Period, Purchaser, Seller and Developer shall agree upon the Scope and shall

document their agreement upon the Scope through an amendment of this Agreement which amendment shall, among other terms and provisions, add such Scope to this Agreement as an exhibit hereto. Purchaser and Developer hereby acknowledge that the Scope will materially impact Seller, and that Seller shall have the right to review and approve or disapprove all aspects of the Scope in its sole, exclusive and absolute discretion. To facilitate agreement by the parties on the Scope prior to the end of the Inspection Period, Developer shall provide Purchaser and Seller with Developer's proposed Scope within five (5) days after the Effective Date. If Purchaser, Seller and Developer do not agree upon the Scope (and document such agreement through an amendment of this Agreement) prior to expiration of the Inspection Period, then any of Purchaser, Seller or Developer may, by written notice to all other parties, terminate this Agreement at any time thereafter; upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

8. **Conditions Precedent to Seller's Obligation to Close.** Seller's obligation to sell the Property shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (collectively, the "**Conditions to Close**") on or before the date or dates hereinafter specifically provided and in no event later than the date of Closing:

- a. The representations, warranties and covenants of Purchaser and Developer contained in this Agreement shall be true and correct as of the Closing Date.
- b. Purchaser and Developer shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by Purchaser and/or Developer at or prior to Closing.
- c. Purchaser, Seller, and Developer shall have agreed upon the Scope.
- d. Seller shall have approved the Proposed Plans such that the Proposed Plans are deemed Submission Plans in accordance with Section 10 below.
- e. Purchaser, Seller, and Developer shall have agreed upon forms of the Escrow Agreement (hereinafter defined), Temporary Construction Easement (hereinafter defined), Drainage Easement (hereinafter defined) and Letter of Credit (as hereinafter defined).
- f. Purchaser, Seller and Developer shall have agreed upon the amount of the Escrowed Funds (as defined in Section 10.j. below)
- g. Purchaser shall have surrendered to Seller sole and exclusive possession of the Premises (as defined in Section 25) in accordance with Section 25 of this Agreement.
- h. Seller may at any time or times on or before Closing, at its election, subject to restrictions of law, waive any of the foregoing conditions to its obligations hereunder and the consummation of such sale, but any such waiver shall be effective only if contained in writing signed by Seller and delivered to Purchaser and Developer. Except as to the condition waived, no waiver shall reduce the rights or remedies of Seller by reason of any breach of any undertaking, agreement, warranty, representation or covenant of Purchaser and/or Developer.

i. In the event any of the foregoing conditions, or other conditions to this Agreement, are not fulfilled or waived prior to the date of Closing, Seller may terminate this Agreement, regardless of whether such right is otherwise expressly provided above, by written notice of Seller delivered to Purchaser and Developer prior to the Closing Date. Notwithstanding anything herein to the contrary, in the event of any such termination, this Agreement shall become null and void and of no further force or effect with neither party having any further rights or liabilities hereunder, except as otherwise provided herein.

9. **Closing Date and Closing Procedures and Requirements.**

a. Closing Date. The closing (the “**Closing**”) shall be fifteen (15) business days after satisfaction of the Conditions to Close; but in no event later than June 25, 2015 (“**Closing Date**”), at the offices of the Title Company (the “**Closing Agent**”). Closing Agent shall prepare all documents for Closing and act as escrow agent (the “**Escrow Agent**”).

b. Conveyance of Title. At the Closing, Seller shall execute and deliver to Purchaser a Special Warranty Deed conveying fee simple marketable record title to the Property to Purchaser, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances whatsoever, excepting only the Permitted Exceptions (“**Deed**”). Developer, Seller, and Purchaser agree that such documents, resolutions, certificates of good standing and certificates of authority as may be necessary to carry out the terms of this Agreement shall be executed and/or delivered by such parties at the time of Closing, including, without limitation, an owner’s affidavit in form sufficient to enable the Title Company to delete all standard title exceptions other than survey exceptions from the Title Policy and other affidavits reasonably required by a party to this Agreement, the Title Company, or Closing Agent, and a certificate duly executed by Seller certifying that Seller is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as may be amended from time to time.

c. Prorating of Taxes and Assessments; Special Assessments. All real property ad valorem taxes, general assessments and all Municipal Services Taxing Unit (“**MSTU**”) charges applicable to the Property shall be prorated as of the Closing Date between Seller and Purchaser, and at Closing Seller will pay to Purchaser (or the Closing Agent) Seller’s pro rata share of such taxes, assessments, and MSTU charges as determined by the Orange County Property Appraiser, the Orange County Tax Collector, and any other applicable governmental authority. Delivery of such tax payment to Orange County along with a copy of the Deed and a request to remove the Property from the tax roll at Closing shall be the responsibility of the Closing Agent and shall occur at Closing. If the real property ad valorem taxes, general assessments, and MSTU charges applicable to the Property are not available at Closing, then they shall be estimated based upon the most recent information available. If the Closing occurs in November or December Seller shall be responsible for the entire year’s tax liability. Seller shall pay in full, on or before the Closing Date, all special assessments which have been levied and certified, confirmed, and/or ratified prior to Closing.

d. Closing Costs. Developer shall pay all costs of the Closing including without limitation: (i) all real property transfer and transaction taxes and levies, if any, relating to the purchase or sale of the Property including, without limitation, the documentary stamps which

shall be affixed to the Deed; (ii) title search fees, title insurance premiums for the Title Commitment/Policy equal to the Purchase Price to be issued by Title Agent, and title insurance premiums for any endorsements to the Title Commitment/Policy; (iii) the cost of preparing the Closing documents; and (iv) the cost of recording the Deed, the Drainage Easement (hereinafter defined), and any other documents to be recorded at Closing. Notwithstanding the foregoing, each party shall pay its own attorneys' fees and costs. Notwithstanding the foregoing, all parties acknowledge and agree that the Deed will constitute a conveyance from a state agency or instrumentality to an agency of the state and is not subject to documentary stamp tax under Florida Department of Revenue Rule 12B-4.0114(10), F.A.C.

10. **Cure Work.** Upon the terms and provisions more particularly set forth herein, Purchaser, at no cost or expense to Seller, shall cause to be designed, engineered, permitted, and constructed: (i) the School Improvements; (ii) all other site work, work, and improvements that are described in the Submission Plans (hereinafter defined) or the revised Submission Plans (if applicable); and (iii) all other site work, work, and improvements required by the Permits (hereinafter defined) (collectively, the "**Cure Work**"). Purchaser intends to retain Developer to undertake and perform the Cure Work and Purchaser shall require Developer to provide a letter of credit to Purchaser to insure the timely performance and completion of the Cure Work in accordance with this Agreement. All terms and provisions of this Section 10 shall survive Closing hereunder.

a. **Definitions.**

i. For the purposes of this Agreement, the term "**Permits**" shall mean all permits, approvals, licenses, authorizations, and development entitlements of/from all Governmental Authority(ies), including Purchaser, Seller, the St. Johns River Water Management District and the Florida Department of Transportation, consents from all private parties with rights of consent or approval applicable to the School, and easements from persons from whom easements may be obtained, that are required or beneficial to own, improve, construct, develop, use, occupy, or operate the School Improvements in accordance with the Submission Plans (hereinafter defined) and/or revised Submission Plans, if applicable, including: (i) any required rezoning, land use designation changes, and/or comprehensive plan amendments; (ii) all subdivision, preliminary subdivision, and site plans; (iii) all applicable St. Johns River Water Management District and United States Army Corps of Engineers approvals, or determinations of no jurisdiction, as applicable; (iv) building permits; and (v) Approval by all Governmental Authority(ies) of final construction and engineering plans, including drainage and infrastructure plans, for the development and construction of the School Improvements, and completion thereafter of the pre-construction meetings required as part of the engineering and construction plan review process, allowing Purchaser to immediately cause the commencement of construction of the School Improvements after the Closing.

ii. For the purposes of this Agreement, the term "**Governmental Authorities**" shall mean Purchaser, Seller and any and all federal, state, county, municipal, or other governmental department or entity, or any authority, commission, board, bureau, court, community development district, or agency having jurisdiction over the School or any portion thereof, and whose approval is necessary or beneficial for the construction of the School Improvements, including without limitation, the United States Army Corps of Engineers, Orange

County, Florida, Seller, Purchaser, the Florida Department of Environmental Protection, the Florida Department of Transportation, and the St. Johns River Water Management District.

iii. For the purposes of this Agreement, the terms “**Approval**” or “**Approved**” shall mean final approval by the applicable Governmental Authority(ies) and the expiration of all appeal periods for the same without an appeal being filed, with such matter being approved containing no terms, conditions, or provisions that are unsatisfactory or objectionable to Seller in its sole, exclusive and absolute discretion.

b. Review and Approval of Proposed Plans. Purchaser shall, at no cost or expense to Seller, cause to be prepared and provided to Seller complete engineering plans, specifications, and drawings for permitting and construction of the School Improvements as agreed upon in the Scope (the “**Proposed Plans**”) no later than the expiration of the Inspection Period. As part of the design of the Access Point, Purchaser shall, at no cost or expense to Seller, cause to be taken any and all action reasonably necessary to amend, revise, or redesign the Lee Road Extension to provide the Access Point and to ensure the safe and efficient circulation of traffic for the operation of a public school upon the Seller’s Retained Lands and the surrounding areas, including, without limitation, the assessment and determination of need for additional turn lanes or other improvements (the “**Access Improvements**”) to accommodate the traffic needs of the educational facility and potential impact on the surrounding areas. Within fifteen (15) days following Seller’s receipt of the Proposed Plans, Seller shall notify Purchaser and Developer of its approval or disapproval thereof, and, if disapproved, the specific reasons for such disapproval and the modifications deemed necessary by Seller in order for the Proposed Plans to be acceptable (“**Disapproval Notice**”). Purchaser and Developer hereby acknowledge that the design of the School Improvements will materially impact Seller, and that Seller shall have the right to review and approve or disapprove all aspects of the Proposed Plans in its sole, exclusive and absolute discretion. In the event Seller does not deliver a Disapproval Notice to Purchaser and Developer within said fifteen (15) day period, the Proposed Plans as submitted by Purchaser or on behalf of Purchaser shall be deemed approved. In the event Seller timely delivers a Disapproval Notice to Purchaser, Purchaser shall cause the Proposed Plans to be revised to address Seller’s concerns or objections and have the same resubmitted to Seller within ten (10) days following Purchaser’s receipt of Seller’s Disapproval Notice, whereupon Seller shall have ten (10) days following the delivery of the revised Proposed Plans to review the same and notify Purchaser and Developer of its approval or to deliver to Purchaser and Developer another Disapproval Notice. In the event Seller does not deliver another Disapproval Notice to Purchaser and Developer within said ten (10) day period, the revised Proposed Plans shall be deemed approved. The parties shall continue the foregoing process until the Proposed Plans are approved by Seller (the Proposed Plans as approved by Seller are hereinafter be referred to as the “**Submission Plans**”). Purchaser and Developer acknowledge that any approval by Seller pursuant to this paragraph with respect to the Proposed Plans shall not mean that the School Improvements proposed thereby comply with any applicable laws, regulations, rules, ordinances or statutes; moreover, the approval of Submission Plans by Seller shall not impose any liability or warranty obligation on Seller.

c. Permits for Submission Plans. Immediately subsequent to obtaining Seller’s approval of the Submission Plans, Purchaser shall submit or cause to be submitted, the Submissions Plans to the Governmental Authorities having jurisdiction thereof in order to obtain

the Permits, and shall diligently and in good faith pursue, or cause to be diligently pursued, the Permits at no cost or expense to Seller. In the event any changes need to be made to the Submission Plans after submission of the same to Governmental Authorities, Purchaser shall cause the same to be revised and resubmitted to Seller for approval or disapproval and the parties shall undertake the same approval process as set forth in the immediately preceding paragraph until the revised Submission Plans are approved by Seller, which approval by Seller must be obtained prior to the submission of such revised Submission Plans for approval by any Governmental Authorities.

Without limiting the generality of the foregoing, the Permits to be obtained by or on behalf of Purchaser include without limitation applicable permits from Seller's Building Code Compliance Office (the "BCCO"), applicable permits from the Florida Department of Education, applicable permits from the St. Johns River Water Management District and applicable permits from the Florida Department of Transportation. For avoidance of doubt, review of the Submission Plans by the BCCO (and issuance of permits by the BCCO) is a process separate and in addition to the review and approval/disapproval of the Proposed Plans (and/or revised Submission Plans, if applicable) to be undertaken by Seller pursuant to Section 10(b) of this Agreement. If Purchaser performs, or causes to be performed, any Cure Work without obtaining, or contrary to, the Permits, Purchaser (through application of the Escrow Funds as hereafter defined) shall bear all costs arising therefrom. Purchaser shall pay, or cause to be paid, all applicable governmental charges and inspection fees necessary for the prosecution of the Cure Work.

d. Cooperation. Developer and Seller shall, upon the reasonable request of Purchaser, at no cost or expense to Seller, join in all application and submissions, forms, or documents that shall be reasonably required by any Governmental Authority, to facilitate the processing of the Submission Plans and approval of the School Improvements and the Permits.

e. Construction. Promptly after obtaining the Permits, but in no event prior to Closing, Purchaser shall commence and diligently pursue or cause the commencement and diligent pursuit of the construction of the Cure Work to Completion. All Cure Work shall be constructed: (i) in conformity with the Submission Plans (or the revised Submission Plans, if applicable); (ii) in conformity with the Permits; (iii) in conformity with applicable laws; (iv) in a good and workmanlike manner; and (v) free and clear of all liens, claims and encumbrances. Notwithstanding the foregoing, in order to accommodate the parking needs for Seller's Retained Land during the construction of the Cure Work, Completion of the Temporary Parking Improvements (as finally approved in the Submission Plans) shall occur prior to and as a condition precedent to the commencement of construction of any other aspect of the Cure Work.

f. Completion Dates. Purchaser, at no cost or expense to Seller or Purchaser, shall cause the Temporary Parking Improvements to be Completed by the latter of (a) September 1, 2015 or (b) that date which is forty-five (45) days after issuance of all approvals and permits from the BCCO (the "**Temporary Completion Date**"). Developer, at no cost or expense to Seller or Purchaser, shall cause the remainder of the Cure Work (other than the opening of the Access Point such that the Access Point may be lawfully used by the Seller and the public for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension) to be Completed (the "**Completion Date**") by the latter of (a) December 31,

2015 or (b) that certain date which is one hundred twenty (120) days after the Temporary Completion Date. Developer, at no cost or expense to Seller or Purchaser, shall cause the Access Point to be opened such that the Access Point may be lawfully used by the Seller and the public for vehicular and pedestrian access to and from the Parking Improvements and the Lee Road Extension (the “**Access Point Opening Date**”) on or before March 1, 2016.

g. Completion. For the purposes of this Agreement, the terms “**Complete**”, “**Completed**”, or “**Completion**”, or words of similar import, shall be deemed to have occurred with regard to each applicable portion of the Cure Work only when: (i) all elements of such Cure Work have been constructed and installed by Purchaser, including without limitation the completion and satisfaction of material and non-material “punchlist” items; (ii) the as-built elevation of the Seller’s Retained Lands as to such Cure Work meet the requirements of the Submission Plans (or the revised Submission Plans, if applicable) and the Permits in all material respects; (iii) final approval of such Cure Work, including approval that such Cure Work may be lawfully used for its intended purposes, has been obtained from Purchaser and all other applicable Governmental Authorities, and final certificates of completion (or equivalent certificates) have been issued by Seller, Purchaser, and all other applicable Governmental Authorities (collectively, the “**Certificates**”); (iv) the Utility Improvements included in such Cure Work have been approved by the applicable utility provider(s) and either: (x) the Utility Improvements (within the Property and/or within other lands of Developer) included in such Cure Work have been dedicated as utilities to the appropriate governmental entity(ies) and/or service provider(s), or (y) Purchaser and/or Developer have granted Seller and the appropriate governmental entity(ies) and/or service provider(s) appropriate easements over the Utility Improvements included in such Cure Work permitting use of all Utility Improvements (within the Property and/or within other lands of Purchaser and Developer) for the operation a public school upon Seller’s Retained Lands; (v) Purchaser has delivered to Seller one or more letters signed by Developer’s engineer of record for the Cure Work (or portion thereof) (the “**Completion Notice**”), enclosing the applicable Certificates, and wherein Purchaser’s engineer certifies to Seller that each of (i), (ii), (iii), and (iv) set forth above in this paragraph, as applicable, have occurred and that all elements of such Cure Work have been Completed in accordance with the requirements of applicable law, in accordance with the Permits, and in accordance with the Submission Plans (or the revised Submission Plans, if applicable); and (vi) all Deficiencies (hereinafter defined) have been cured to Seller’s satisfaction in Seller’s sole, exclusive and absolute discretion.

h. Verification of Completion. Seller shall have a period of thirty (30) days from the date of its receipt of a Completion Notice (the “**Verification Period**”) within which to determine, in Seller’s sole discretion, whether or not the applicable portion of the Cure Work which is the subject of the Completion Notice has been Completed and whether Seller’s Retained Lands, as improved by such Cure Work, are in a condition acceptable to Seller in its sole discretion. In the event Seller shall determine that such Cure Work has not been Completed and/or that Seller’s Retained Lands, as improved by the Cure Work, are not in a condition acceptable to Seller, Seller shall provide a written notice to Purchaser and Developer of the deficiencies in such Cure Work (the “**Deficiencies**”), in which case Purchaser shall have ten (10) days to cause said Deficiencies to be cured and provide written notice to Seller that such Deficiencies have been cured. Upon the receipt of any such notice from Purchaser, Seller shall have five (5) business days to provide a written notice to Purchaser and Developer that such

Deficiencies have not been cured, in which case Purchaser shall have ten (10) days to cause the outstanding Deficiencies to be cured and provide written notice to Seller that the outstanding Deficiencies have been cured. The foregoing process shall be repeated until all Deficiencies have been cured to Seller's satisfaction in Seller's sole, absolute and exclusive discretion. At such time as Seller either: (i) notifies Purchaser and Developer that there are no Deficiencies (or that all Deficiencies have been cured), or (ii) fails to provide a notice of Deficiencies to Purchaser and Developer within the time periods established by this paragraph; then "**Completion**" shall be deemed to have occurred.

i. Payment of Liquidated Damages for Failure to Timely Complete the Cure Work: It is mutually agreed by and between the parties hereto that time shall be an essential part of this Agreement and that if Purchaser fails to cause any or each of the Temporary Parking Improvements to be Completed by the Temporary Completion Date, the Cure Work (other than the opening of the Access Point such that the Access Point may be lawfully used by the Seller and the public for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension) to be Completed by the Completion Date, or the Access Point to be opened for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension by the Access Point Opening Date, Seller shall be damaged thereby; and because the amount of said damages to Seller in its efforts to operate a public school upon Seller's Retained Lands is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that for such period of time after (i) the Temporary Completion Date the Temporary Parking Improvements are not Completed, (ii) the Completion Date the Cure Work (other than the opening of the Access Point such that the Access Point may be lawfully used by the Seller and the public for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension) is not Completed, or (iii) the Access Point Opening Date the Access Point is not opened such that the Access Point may be lawfully used by the Seller and the public for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension, in each such instance the amount of such damages shall be ONE THOUSAND DOLLARS (\$1,000.00) per day for the first thirty (30) days, THREE THOUSAND DOLLARS (\$3,000.00) per day for the next thirty (30) days and thereafter FIVE THOUSAND DOLLARS (\$5,000.00) per day until such time as the Temporary Parking Improvements are Complete, the Cure Work (other than the opening of the Access Point for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension) is Complete, or the Access Point is opened for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension, as the case may be, and Purchaser and Developer hereby agree that said sum may be deducted from monies otherwise due and payable to Purchaser under the Escrow Agreement (hereinafter defined); provided, however, that Purchaser's liability under this paragraph shall in no event be construed as being limited to the amount of the Escrowed Funds (as defined below), as the case may be, and if the Escrowed Funds are not available to be drawn upon, said Damages shall be paid directly by Developer; and Purchaser and Developer further agree that said sum is not a penalty but reasonable compensation for the damages incurred by Seller.

j. Guaranty of Purchaser's Post-Closing Performance. Seller and Purchaser shall enter into an unrecorded agreement at Closing which shall (i) identify both the Cure Work to be Completed by Purchaser after the Closing and an estimate of the cost to Complete such

work, (ii) require Purchaser to place into an escrow account with Escrow Agent, in addition to the Purchase Price to be paid to Seller, a sum equal to one hundred twenty five percent (125%) of the estimated cost of the Cure Work (to be agreed upon by Purchaser and Seller prior to expiration of the Inspection Period) (the “**Escrowed Funds**”), and (iii) authorize and direct Escrow Agent to hold such funds until Completion of the Cure Work (“**Escrow Agreement**”). The Escrowed Funds will be paid into escrow by Developer, on behalf of the Purchaser. The amount of the Escrowed Funds and the Escrow Agreement shall be drafted and approved in writing by Seller, Purchaser and Developer during the Inspection Period. If Seller, Purchaser and Developer do not agree upon the amount of Escrowed Funds and the form of Escrow Agreement prior to expiration of the Inspection Period, then either Seller, Purchaser or Developer may, by written notice to all other parties, terminate this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein. Notwithstanding the foregoing, Developer may provide an irrevocable Letter of Credit, issued from a Florida bank acceptable to Seller in Seller’s sole, exclusive and absolute discretion and approved in form and content by Seller, in Seller’s sole, absolute and exclusive discretion, equal to the Escrowed Funds required (the “**Letter of Credit**”), in lieu of cash for the Escrowed Funds.

k. Self-Help. In the event Purchaser does not cause the Completion of Temporary Parking Improvements, Completion of the Cure Work (other than the opening of the Access Point for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension), or the opening of the Access Point for vehicular and pedestrian access to and from the Temporary Parking Improvements and the Lee Road Extension by the Access Point Opening Date by the applicable completion dates set forth in Section 10(f) above, then, in each such instance, Seller shall be entitled, in addition to all other remedies available at law or in equity or otherwise set forth in this Agreement (including without limitation the liquidated damages provisions of Section 10(i)), to Complete such work itself, and all costs and expenses incurred by Seller in completing such work (including, without limitation, attorneys’ fees, mobilization costs, and all other costs incurred as a result of the failure to timely Complete such work) plus ten percent (10%) for administrative costs, shall, at the election of Seller and upon written demand by Seller therefor, be paid to Seller by Escrow Agent from the Escrowed Funds. Purchaser covenants and agrees to cooperate with Seller, and to cause its contractors and engineers to cooperate with Seller, in connection with Seller’s exercise of the remedy set forth in this paragraph, and to: (i) assign to Seller, as necessary, Purchaser’s rights under those Permits that may necessary for Seller to Complete such Cure Work itself; and (ii) grant to Seller such easements over, under, on, upon, through, and across, and/or to grant to Seller such permits, licenses, and/or other authorizations of Purchaser (including without limitation right-of-way use permits, if applicable) to use, the Property (and such other lands of Developer , if necessary) as may necessary for Seller to Complete such Cure Work itself. Developer covenants and agrees to cooperate with Seller in connection with Seller’s exercise of the remedy set forth in this paragraph and to grant to Seller such easements over, under, on, upon, through, and across lands of Developer as may be necessary for Seller to Complete such Cure Work itself. To the extent the Escrowed Funds, as the case may be, are not sufficient to fund such Self-Help, Developer shall pay any shortfall to Purchaser who shall forward same promptly to Seller.

l. Access to Seller’s Retained Lands and the Premises.

i. Notice. Purchaser shall, prior to causing the commencement of any construction of the Cure Work within Seller's Retained Lands and the Premises, provide three (3) weeks advanced notice to: (1) Seller's Department of Facilities and Environmental Services and furnish such department with a description of the proposed work; and (2) the principal (or senior director, as applicable) of the public school on Seller's Retained Lands.

ii. Access Restrictions. All entries upon Seller's Retained Lands and the Premises by Purchaser, and its successors, employees, contractors, subcontractors, consultants, and agents shall be coordinated in advance of entry with the then current principal (or senior director, as applicable) of the school on Seller's Retained Lands or other appropriate School Board representative designated by Seller to ensure that said entries are in compliance with all applicable laws, including the Jessica Lunsford Act (and all rules or regulations implemented by Seller in order to comply with the Jessica Lunsford Act). Further, Purchaser shall be prohibited from performing any work within Seller's Retained Lands and the Premises during FCAT (or other standardized assessment testing, as adopted by Seller from time to time) testing dates as determined by Seller in its sole discretion.

iii. Construction. In accessing the Seller's Retained Lands and the Premises to construct the Cure Work, Purchaser shall direct its employees, contractors, subcontractors, consultants and agents to undertake all work within Seller's Retained Lands and the Premises in a safe and prudent manner, and in such manner that the normal, orderly construction and operation of the public school on Seller's Retained Lands is not unreasonably disturbed. Purchaser, its successors, employees, contractors, subcontractors, laborers, consultants, agents, licensees, guests and invitees shall not make any use of the Seller's Retained Lands or the Premises which is or would be a nuisance or unreasonably detrimental to the use or operation of the public school on Seller's Retained Lands, or that would weaken, diminish, or impair the lateral or subjacent support of any improvement located on the Seller's Retained Lands. Purchaser through Developer shall comply with Seller's policies and procedures that are applicable to Purchaser's activities as to the Cure Work.

iv. Insurance of and Indemnification by Purchaser. Purchaser and/or its agents, contractors, subcontractors and consultants shall access the Seller's Retained Lands and the Premises to construct the Cure Work at their own risk and expense. Until Completion of the Cure Work, Purchaser shall maintain or cause to be maintained insurance in compliance with the limits provided in Section 768.28 (\$200,000/\$300,000), Florida Statutes. Upon request by Seller, Purchaser shall furnish evidence of such insurance to Seller. To the extent allowed by law, for actions arising from or connected in any way with the Cure Work, including, but not limited to, any acts or omissions which result in a breach or constitute a default under the Temporary Construction Easement (hereinafter defined) Purchaser will indemnify, defend, save, and hold harmless Seller, its successors, and its and their board, staff, counsel, trustees, employees, and/or other agents from and against any and all liabilities, damages, claims, penalties, fines, costs or expenses whatsoever (including reasonable attorneys' fees and court costs at trial and all appellate levels including any administrative proceedings and any appeals therefrom) to the extent provided in Section 768.28 (\$200,000/\$300,000), Florida Statutes, as same may be amended from time to time. The terms of this indemnification shall survive any termination of or Closing under this Agreement. Nothing herein shall be construed as a waiver of Purchaser's sovereign immunity or the limits of liability referenced therein, beyond that provided

under Section 768.28, Florida Statutes, as same may be amended from time to time. Nothing herein shall inure to the benefit of any third party to allow a claim otherwise barred by sovereign immunity or other operation of law.

v. Insurance of Purchaser's Agents. Until Completion of the Cure Work, Purchaser shall cause any and all of Purchaser's contractors, subcontractors, consultants and agents entering upon the Seller's Retained Lands and the Premises or otherwise performing work or services on behalf of Purchaser in connection with the Cure Work to procure and maintain, such insurance and insurance policies and coverages to afford protection to Seller against any and all claims for personal injury, death or property damage occurring in, upon, adjacent to, or connected with the Seller's Retained Lands and the Premises in connection with the Cure Work hereunder. Each such general liability insurance policy shall be from a company satisfactory to Seller, with minimum limits of not less than \$2,000,000.00, with an umbrella policy of \$1,000,000.00 (per occurrence), or such greater amounts as reasonably required by Seller from time to time. Each such person shall also maintain comprehensive automobile liability insurance with limits of not less than \$1,000,000.00, with an umbrella policy of \$1,000,000.00 (per occurrence). Copies of each such insurance policy from Purchaser's contractors, subcontractors, consultants, and agents and certificates of insurance therefor, shall be provided to Seller prior to entry upon Seller's Retained Lands and the Premises by Purchaser's contractors, subcontractors, consultants, and agents in connection with the Cure Work. The name of the project for which the Cure Work is to be installed and the type and amount of coverage provided shall be clearly stated on the face of each certificate of insurance. The insurance coverage shall name Seller as additional insured and shall contain a provision which forbids any cancellation, changes or material alteration, or renewals of coverage without providing thirty (30) days prior written notice to Seller. Purchaser's contractors, subcontractors, consultants, and agents will name Purchaser as an additional insured in its insurance policies described in this paragraph. For actions arising from or connected in any way with the Cure Work, including, but not limited to, any acts or omissions which result in a breach or constitute a default under the Temporary Construction Easement, Purchaser's contractors, subcontractors, consultants and agents will indemnify, defend, save, and hold harmless Seller, its successors, and its and their board, staff, counsel, trustees, employees, and/or other agents from and against any and all liabilities, damages, claims, penalties, fines, costs or expenses whatsoever (including reasonable attorneys' fees and court costs at trial and all appellate levels including any administrative proceedings and any appeals therefrom). The terms of this indemnification shall survive any termination of or Closing under this Agreement.

m. Temporary Construction Easement. As part of Closing, Seller and Purchaser shall enter into a temporary construction easement in form and substance acceptable to each of Seller and Purchaser in their sole discretion (the "**Temporary Construction Easement**") over such portions of the Seller's Retained Lands and the Premises as is reasonably necessary for performance of the Cure Work; provided, however, the Temporary Construction Easement shall: (i) contain provisions identical or substantially similar to those set forth in Section 10(l); (ii) shall contain other usual and customary provisions for instruments of a similar nature; and (iii) in no event may the Temporary Construction Easement, or the exercise of rights granted to Purchaser, its contractors, subcontractors, consultants or agents therein, materially interfere with Seller's use or enjoyment of the Seller's Retained Lands and the Premises, including without limitation the

ability to maintain safe, efficient, and legal operations of the public school upon the Seller's Retained Lands during the time that the Temporary Construction Easement is in effect and the Cure Work is being constructed. The Temporary Construction Easement shall be drafted and approved in writing by Seller and Purchaser during the Inspection Period. If Seller and Purchaser do not agree upon a form of Temporary Construction Easement prior to expiration of the Inspection Period, then either Seller or Purchaser may, by written notice to all other parties, terminate this Agreement at any time thereafter until Seller and Purchaser have agreed upon a form of Temporary Construction Easement; upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

n. Drainage Easement. As part of Closing, Seller and Purchaser and (and Developer, if applicable) shall enter into a permanent drainage easement in form and substance acceptable to each of Seller and Purchaser (and Developer, if applicable) in their sole discretion (the "**Drainage Easement**") over the elements of the Drainage Improvements outside of the boundaries of Seller's Retained Lands (the "**Off-Site Drainage Improvements**"), including without limitation over the Pond and over such other portions of the Property, and such other lands of Purchaser and Developer, if applicable, as is reasonably required by Seller to own, improve, construct, use, occupy, operate, or develop the public school upon Seller's Retained Lands; provided, however, the Drainage Easement shall: (i) always provide for the outfall, retention, and detention of stormwater from the Seller's Retained Lands through and within the Off-Site Drainage Improvements in accordance with the Submission Plans and the Permits, including, without limitation, permits issued by the St. Johns River Water Management District; (ii) require Purchaser to own, operate and maintain the Off-Site Drainage Improvements in accordance with the Submission Plans and the Permits, including, without limitation, permits issued by the St. Johns River Water Management District; (iii) provide for Purchaser's maintenance of the Off-Site Drainage Improvements at Purchaser's sole expense; (iv) provide a self-help remedy to Seller in the event that Purchaser shall default in Purchaser's maintenance of the Off-Site Drainage Improvements; and (v) shall contain other usual and customary provisions for instruments of a similar nature. The Drainage Easement shall be drafted and approved in writing by Seller and Purchaser (and Developer, if applicable) during the Inspection Period. If Seller and Purchaser and Developer do not agree upon a form of Drainage Easement prior to expiration of the Inspection Period, then either Seller or Purchaser may, by written notice to all other parties, terminate this Agreement at any time thereafter until Seller and Purchaser (and Developer, if applicable) have agreed upon a form of Drainage Easement; upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein. The Drainage Easement shall be recorded in the Public Records of Orange County, Florida, as part of Closing, immediately following the recordation of the Deed.

o. As-Built Survey. Within forty-five (45) days after the Completion Date, Purchaser shall, through Developer, and at Developer's sole cost and expense, deliver to Seller an "as-built" survey of the School prepared by Lochrane Consulting, Engineers and Surveyors or another registered land surveyor satisfactory to Seller in Seller's sole, exclusive and absolute discretion showing the location of all improvements on the School with relation to the boundary lines thereof, all easements thereon, and all setback restrictions applicable thereto and stating that such location is in compliance with all setback and other applicable restrictions.

11. **Warranties and Representations.**

a. Of Seller. To induce Purchaser and Developer to enter into this Agreement, Seller, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is material and is being relied upon by Purchaser and Developer and shall survive Closing hereunder:

i. That Seller has the full right, power, and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and agreements of Seller hereunder.

ii. That, to the best of Seller's actual knowledge without investigation or inquiry, the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not and do not constitute a violation or breach by Seller of any provision of any agreement or other instrument to which Seller is a party or to which Seller may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Seller.

iii. That Seller owns fee simple marketable record title to the Property, which title is, to the best of Seller's actual knowledge without investigation or inquiry, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances other than those recorded in the public records of Orange County, Florida, or otherwise set forth in the Title Commitment, and there are no tenancy, rental or other occupancy agreements affecting the Property.

iv. That each and every one of the foregoing representations and warranties is true and correct as of the Effective Date, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

v. That in the event that changes occur as to any of the foregoing representations and warranties of Seller, or in any other part of this Agreement, of which Seller has knowledge, Seller will immediately disclose same to Purchaser and Developer when first available to Seller.

b. Of Purchaser. To induce Seller and Developer to enter into this Agreement, Purchaser, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is material and is being relied upon by Seller and Developer and shall survive Closing hereunder:

i. That Purchaser has the full right, power, and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and agreements of Purchaser hereunder.

ii. That, to the best of Purchaser's actual knowledge without investigation or inquiry, the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not and do not constitute a violation or breach by Purchaser of any provision of any agreement or other instrument to which Purchaser is a party or to which Purchaser may be subject although not a party, nor result in or constitute a violation or

breach of any judgment, order, writ, injunction or decree issued against Purchaser.

iii. That each and every one of the foregoing representations and warranties is true and correct as of the Effective Date, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

iv. That in the event that changes occur as to any of the foregoing representations and warranties of Purchaser, or in any other part of this Agreement, of which Purchaser has knowledge, Purchaser will immediately disclose same to Seller and Developer when first available to Purchaser.

c. Of Developer. To induce Purchaser and Seller to enter into this Agreement, Developer, in addition to the other representations and warranties set forth herein, makes the following representations and warranties, each of which is material and is being relied upon by Purchaser and Seller and shall survive Closing hereunder:

i. That Developer has the full right, power, and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and agreements of Developer hereunder.

ii. That the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not and do not constitute a violation or breach by Developer of any provision of any agreement or other instrument to which Developer is a party or to which Developer may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Developer.

iii. That Developer is duly organized, validly existing and in good standing under the laws of the State of Florida.

iv. That this Agreement constitutes a valid and binding obligation of Developer and is enforceable against Developer in accordance with its terms.

v. That the person signing below on behalf of Developer represents and warrants that he or she is duly authorized to execute this Agreement and to bind Developer to the terms hereof, and that the execution and delivery of all instruments and documents required hereunder to be obtained or authorized by Developer in order to consummate this transaction have been or will be obtained and authorized as so required.

vi. That each and every one of the foregoing representations and warranties is true and correct as of the Effective Date, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

vii. That in the event that changes occur as to any of the foregoing representations and warranties of Developer, or in any other part of this Agreement, of which Developer has knowledge, Developer will immediately disclose same to Purchaser and Seller when first available to Developer.

12. **Affirmative Covenants.** In addition to the other covenants and undertakings set forth herein, Purchaser and Developer each make the following affirmative covenants, each of which shall survive Closing hereunder:

a. Purchaser and Developer shall take such other actions and perform such other obligations as are required or contemplated hereunder including, without limitation, all obligations pertaining to satisfaction of any contingencies of this Agreement or conditions precedent to performance by Purchaser and/or Developer of their obligations hereunder and/or the Cure Work.

b. Neither Purchaser nor Developer shall permit on any property or lands owned by Purchaser or Developer, the location of overhead utility transmission lines, gas transmission lines, waste water or treatment plants/facilities, landfills, borrow pits or any other potentially hazardous or offensive use adjacent to the Seller's Retained Lands.

c. Construction of the Cure Work shall be Completed by Purchaser through Developer by the Completion Date. Developer shall cause Purchaser to Complete construction of the Cure Work by the Completion Date.

d. The Property shall only be used for public right-of-way and related purposes, such as stormwater drainage and retention. Purchaser and Developer acknowledge and agree that with respect to such related purposes, such purposes shall not conflict with or interfere with the use and operation of the Seller's Retained Lands and the school located thereon.

e. Construction of the Lee Road Extension shall be completed in accordance with the Project Approvals by Developer on or before March 1, 2016 (the "Road Completion Date"). Purchaser shall take all steps reasonably and lawfully available to it to ensure the Developer completes construction of the Lee Road Extension on or before the Road Completion Date. For purposes of this Agreement, construction of the Lee Road Extension shall be deemed to be "completed" only when: (i) the entirety of Lee Road Extension has received final approval from the City of Winter Park and all other applicable Governmental Authorities, and final certificates of completion (or equivalent certificates) have been issued by the City of Winter Park and all other applicable Governmental Authorities; (ii) the entirety of Lee Road Extension has been accepted for maintenance by the City of Winter Park (or the applicable Governmental Authority) to maintain the same; and (iii) the entirety of Lee Road Extension may be lawfully used for its intended purposes and has been opened to the public as a public right-of-way for ingress, egress, access, and passage by pedestrian and vehicular traffic.

13. **Defaults.**

a. **Pre-Closing Defaults of Seller.** In the event, prior to Closing, Seller breaches any warranty or representation contained in this Agreement, or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by Seller under the terms and provisions of this Agreement, each of Purchaser and Developer, in Purchaser's and/or Developer's sole discretion, shall be entitled to, as Purchaser's and/or Developer's sole and exclusive remedy, to elect either to: (i) enforce specific performance of this Agreement against Seller; or (ii) terminate this Agreement. Upon

any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

Developer and Purchaser acknowledge and agree that Seller was materially induced to enter into this Agreement in reliance upon Developer's and Purchaser's agreements to accept the limitation on remedies set forth herein and that Seller would not have entered into this Agreement but for the other parties' agreements to so limit remedies.

b. Pre-Closing Defaults of Purchaser. In the event, prior to Closing, Purchaser breaches any warranty or representation contained in this Agreement, or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by Purchaser under the terms and provisions of this Agreement:

i. Developer's sole and exclusive remedy for any such default shall be at Developer's election, and in Developer's sole discretion, to terminate this Agreement, whereupon Seller shall become entitled to the liquidated damages set forth in clause (ii) of this subsection, and thereafter this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

ii. Seller's sole and exclusive remedy for any such default shall be to receive the sum of Two Hundred Fifty-Eight Thousand and No/100 Dollars (\$258,000.00) as full liquidated damages from Developer, whereupon this Agreement and all rights and obligations created hereby shall automatically terminate and be null and void and of no further force or effect whatsoever, except as otherwise provided herein. Purchaser and Seller acknowledge that it would be difficult or impossible to ascertain the actual damages suffered by Seller as a result of any default by Purchaser and agree that such liquidated damages are a reasonable estimate of such damages. Notwithstanding anything in this Agreement to the contrary, the limitations on Seller's remedies set forth in this clause do not apply to any obligation of Purchaser, set forth elsewhere in this Agreement, to indemnify Seller; for avoidance of doubt, such obligations of Purchaser, set forth elsewhere in this Agreement, to indemnify Seller may be enforced by Seller by all remedies that may be available to Seller at law or in equity.

c. Pre-Closing Defaults of Developer. In the event, prior to Closing, Developer breaches any warranty or representation contained in this Agreement, or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by Developer under the terms and provisions of this Agreement:

i. Purchaser's sole and exclusive remedy for any such default shall be, at Purchaser's election, and in Purchaser's sole discretion, to terminate this Agreement, whereupon Seller shall become entitled to the liquidated damages set forth in clause (ii) of this subsection, and thereafter this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

ii. Seller's sole and exclusive remedy for any such default shall be to receive the sum of Two Hundred Fifty-Eight Thousand and No/100 Dollars (\$258,000.00) as full

liquidated damages from Developer, whereupon this Agreement and all rights and obligations created hereby shall automatically terminate and be null and void and of no further force or effect whatsoever, except as otherwise provided herein. Developer and Seller acknowledge that it would be difficult or impossible to ascertain the actual damages suffered by Seller as a result of any default by Developer and agree that such liquidated damages are a reasonable estimate of such damages. Notwithstanding anything in this Agreement to the contrary, the limitations on Seller's remedies set forth in this clause do not apply to any obligation of Developer, set forth elsewhere in this Agreement, to indemnify Seller; for avoidance of doubt, such obligations of Developer, set forth elsewhere in this Agreement, to indemnify Seller may be enforced by Seller by all remedies that may be available to Seller at law or in equity.

d. Post-Termination/Post-Closing Defaults. Notwithstanding anything in this Section 13 to the contrary, with respect to a default by any party of any of its obligations under this Agreement that survive Closing and/or termination of this Agreement, the non-defaulting party(ies) may pursue all remedies that may be available to the non-defaulting party(ies), at law or in equity; provided, however, in no event shall a party be liable for consequential, punitive, exemplary, indirect, or speculative damages.

e. Grace Period. In the event any party breaches any warranty or representation of such party contained in this Agreement, or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by such party under the terms and provisions of this Agreement, prior to the exercise of the rights hereinafter provided to the non-breaching party(ies), the breaching party(ies) shall be entitled to written notice of the specific default, breach, or other problem and to ten (10) days after the receipt of that written notice in which to cure said default, breach, or other problem, except that no notice shall be required as to a failure to timely close the transaction contemplated hereby. If such default, breach, or other problem is not corrected within the applicable period, then an event of default shall have occurred and the parties shall be entitled to the rights and remedies herein set forth.

14. Possession of Property. Seller shall deliver to Purchaser full and exclusive possession of the Property on the Closing Date.

15. Condemnation. In the event the Property or any portion or portions thereof shall be taken or condemned or be the subject of a bona fide threat of condemnation by any governmental authority or entity, other than Purchaser, prior to the Closing Date, Purchaser and Developer shall each have the option of terminating this Agreement by giving written notice thereof to all other parties, whereupon this Agreement and all rights and obligations created hereunder shall be null and void and of no further force or effect, except as otherwise provided herein. In the event that neither Purchaser nor Developer terminate the Agreement pursuant to the power granted in the preceding sentence, then Seller shall convey the remaining portion or portions of the Property to Purchaser pursuant to the terms and provisions hereof and to transfer and assign to Purchaser at the Closing all of the right, title and interest of Seller in and to any award made or to be made by reason of such condemnation. The parties hereby further agree that Purchaser and Developer shall have the right to participate in all negotiations with any such governmental authority relating to the Property or to the compensation to be paid for any portion or portions thereof condemned by such governmental authority or other entity.

16. **Broker.**

a. Seller hereby represents and warrants to Purchaser and Developer that Seller has not engaged or dealt with any agent, broker or finder in regard to this Agreement or to the sale and purchase of the Property contemplated hereby. To the extent allowed by law, Seller hereby indemnifies Purchaser and Developer and agrees to hold Purchaser and Developer free and harmless from and against any and all liability, loss, cost, damage and expense, including but not limited to attorneys' and paralegals' fees and costs, whether suit be brought or not, and whether at trial, both prior to and on appeal, or incurred in any mediation, arbitration, administrative or bankruptcy proceeding, which Purchaser and/or Developer shall ever suffer or incur because of any claim by any agent, broker or finder engaged by Seller, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the Property contemplated hereby.

b. Purchaser hereby represents and warrants to Seller and Developer that Purchaser has not engaged or dealt with any agent, broker or finder in regard to this Agreement or to the sale and purchase of the Property contemplated hereby. Developer hereby represents and warrants to Purchaser and Seller that Developer has not engaged or dealt with any agent, broker or finder in regard to this Agreement or to the sale and purchase of the Property contemplated hereby. To the extent allowed by law, Purchaser hereby indemnifies Seller and Developer and agrees to hold Seller and Developer free and harmless from and against any and all liability, loss, cost, damage and expense, including but not limited to attorneys' and paralegals' fees and costs, whether suit be brought or not, and whether at trial, both prior to and on appeal, or incurred in any mediation, arbitration, administrative or bankruptcy proceeding, which Seller and/or Developer shall ever suffer or incur because of any claim by any agent, broker or finder engaged by Purchaser, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the Property contemplated hereby

c. Developer hereby indemnifies Purchaser and Seller and agrees to hold Purchaser and Seller free and harmless from and against any and all liability, loss, cost, damage and expense, including but not limited to attorneys' and paralegals' fees and costs, whether suit be brought or not, and whether at trial, both prior to and on appeal, or incurred in any mediation, arbitration, administrative or bankruptcy proceeding, which Purchaser and/or Seller shall ever suffer or incur because of any claim by any agent, broker or finder engaged by Developer, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the Property contemplated hereby.

17. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., telecopier device), three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

Seller: The School Board of Orange County, Florida
Attn: Superintendent
445 West Amelia St.
Orlando, FL 32801
Telephone: (407) 317-3202
Telecopy: (407) 317-3401

Copy to: The School Board of Orange County, Florida
Attn: Harold Jenkins
6501 Magic Way
Building 100A
Orlando, FL 32809
Telephone: (407) 317-3700 (ext. 202)
Telecopy: (407) 317-3792

and

The School Board of Orange County, Florida
Attn: Eileen D. Fernandez, Esq.
445 West Amelia St.
Orlando, FL 32801
Telephone: (407) 317-3200 (ext. 2002945)
Telecopy: (407) 317-3341 (Direct)

and

Shutts & Bowen LLP
Attn: Juli S. James, Esq.
300 S. Orange Ave.
Suite 1000
Orlando, FL 32801
Telephone: (407) 835-6774
Telecopy: (407) 425-8316

Purchaser: The City of Winter Park Florida
Attn: Randy Knight, City Manager
401 Park Avenue South
Winter Park, FL 32789
Telephone: (407)599-3235
Telecopy: (407)599-3436

Copy to: Larry Brown, Esq.
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave., Ste. 2000
Orlando, FL 32801
Telephone: (407)425-9566 Telecopy: (407)425-9596

Developer: UP Fieldgate US Investments – Winter Park, LLC
Attn: Scott Fish
3201 East Colonial Drive
Orlando, Florida 32803
Telephone: (407)896-1956
Telecopy: (407) 894-8381

Copy to: Johnson Real Estate Law, PA
Attn: Paul Johnson, Jr., Esq.
3660 Maguire Blvd.
Suite 102
Orlando, FL 32803
Telephone: (407) 745-0019
Telecopy: (407) 278-4208

or to such other address as any party hereto shall from time to time designate to the other parties by notice in writing as herein provided. The attorneys for the parties set forth herein may deliver and receive notices on behalf of their clients.

18. **General Provisions.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by all of the parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, and successors. Neither this Agreement, nor any right or obligation of any party arising under this Agreement, may be assigned or delegated without the written consent of all parties. Time is of the essence of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or holiday, such time for performance shall be extended to the next business day. For purposes of this Agreement, "holiday" shall mean federal holidays as defined in 5 U.S.C. 6103. The last day of any period of time described herein shall be deemed to end at 6:00 p.m. local time in Orange County, Florida. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. The parties do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at the Closing. This Agreement shall be interpreted under the laws of the State of

Florida. Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any party regardless of which party is deemed to have drafted the Agreement. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest. Except as otherwise set forth herein, no person other than the parties shall have any rights or privileges under this Agreement, whether as a third-party beneficiary or otherwise. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HEREWITH.

19. **Survival of Provisions.** All covenants, representations and warranties set forth in this Agreement, and/or any other provisions of this Agreement, which are expressly stated herein to survive the Closing, and/or to survive the termination of this Agreement, shall survive the Closing, and/or shall survive the termination of this Agreement, indefinitely unless otherwise specified herein.

20. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

21. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party(ies) shall be entitled to recover its(their) reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration, bankruptcy or administrative proceeding, or at trial or on appeal.

22. **Effective Date.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the last date that any of Purchaser, Seller, or Developer execute this Agreement.

23. **Prior "Right of Entry" Agreements.** Notwithstanding any term or provision of this Agreement to the contrary, nothing herein shall alter, impact, amend, or waive any term or provision of either (i) that certain "Right of Entry Agreement" between Seller and Developer dated August 6, 2014, (ii) that certain "Right of Entry Agreement" between Seller and Developer dated August 29, 2014, or that certain "Right of Entry Agreement" between Seller and Developer dated March 4, 2015, including without limitation the provisions of such agreements providing that the provisions of Sections 3 and 5 of each such agreement survive any termination or

expiration of such agreements.

24. **No Sovereign Immunity Waiver.** Nothing herein shall be construed as a waiver of Purchaser's or Seller's sovereign immunity provided under Section 768.28, Florida Statutes, as same may be amended from time to time. The terms of this section shall survive Closing and/or any termination of this Agreement.

25. **Storage Area Lease.** As material inducement for Seller entering into this Agreement, Purchaser does hereby agree to surrender and deliver possession of that certain property located adjacent to Seller's Retained Lands and currently utilized by the Purchaser as a storage yard (the "**Premises**") pursuant to that certain Lease Agreement dated January 4, 2015 and entered into by and between the Seller, as landlord, and the Purchaser, as tenant (the "Storage Area Lease") within five (5) days after expiration of the Inspection Period and as condition precedent to Seller's obligation to convey the Property to Purchaser. Purchaser shall deliver possession of the Premises to Seller within five (5) days after expiration of the Inspection Period in as good condition and state of repair as existed on the "Commencement Date" as defined in the Storage Area Lease. Seller's acceptance of possession of the Premises shall be had without waiving any rights Seller may have under the Lease.

26. **No Recording.** Neither this Agreement nor any memorandum thereof shall be recorded and any attempted recordation hereof shall be void and constitute a default hereunder.

27. **Force Majeure.** Seller, Purchaser and/or Developer shall be excused for the period of any delay and no party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement to be performed by any party if any failure of performance shall be primarily due to any strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service for reasons other than the cost of such material or service, Act of God, or weather conditions abnormal for the period of time, which are beyond the reasonable control of such party (each, a "**Force Majeure Event**"). The time for performance by such party shall be extended by the period of delay resulting from or due to any of said Force Majeure Event; provided that: (a) the party which is unable to perform due to the Force Majeure Event promptly notifies the other parties of the Force Majeure Event and its anticipated effect on the time for completing the subject obligation, and (b) the party which is unable to perform due to the Force Majeure Event shall use commercially reasonable efforts to overcome or mitigate the effects of the Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event shall not include (i) Purchaser's or Developer's financial inability to perform any obligation under this Agreement, (ii) failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a required permit or approval that is necessary to meet the requirements of this Agreement, or (iii) the inability to obtain labor, supplies or equipment or pay monies due and owing. Further, for purposes of this Section, the term "Abnormal for the period of time" shall mean rain or bad weather in excess of the ten (10) year average for that specific period of time (from its commencement to its conclusion), as compared with the historical data for that same period) as published by the National Oceanic and Atmospheric Administration, Ashville, North Carolina, for Metropolitan Orlando, Florida, Reporting Station.

[signature pages and exhibits follow]

IN WITNESS WHEREOF, Seller, Purchaser, and Developer have caused this Agreement to be executed as of the dates set forth below.

“SELLER”

**THE SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA**, a public corporate
body organized and existing under the
Constitution and the laws of the State of Florida

WITNESSES:

_____	By: _____
Print Name: _____	Name: William E. Sublette
_____	Title: Chairman
Print Name: _____	Dated: _____

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by William E. Sublette, as Chairman of The School Board of Orange County, Florida, a public corporate body organized and existing under the Constitution and the laws of the State of Florida, on behalf of The School Board. He is personally known to me or has produced _____ (type of identification) as identification.

(NOTARY SEAL)

Notary Public

Print or Type Name
Serial Number:
My Commission Expires:

WITNESSES:

Print Name: _____

Print Name: _____

Attest: _____

Barbara M. Jenkins, as its
Secretary and Superintendent

Dated: _____

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Barbara M. Jenkins as Secretary and Superintendent of The School Board of Orange County, Florida, a public corporate body organized and existing under the Constitution and the laws of the State of Florida, on behalf of The School Board. She is personally known to me or has produced _____ (type of identification) as identification.

(NOTARY SEAL)

Notary Public

Print or Type Name
Serial Number:
My Commission Expires:

Reviewed and approved by Orange County
Public School's Chief Facilities Officer

John T. Morris
Chief Facilities Officer

Dated: _____, 2015

Approved as to form and legality by
legal counsel to The School Board of
Orange County, Florida, exclusively
for its use and reliance.

Shutts & Bowen LLP

Juli S. James, Esq.

Date: _____, 2015

“PURCHASER”

THE CITY OF WINTER PARK, FLORIDA,
a municipal corporation organized and existing
under the laws of the State of Florida

WITNESSES:

_____	By: _____
Print Name: _____	Name: _____
_____	Title: _____
Print Name: _____	Dated: _____

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, as _____ of The City of Winter Park, Florida, a municipal corporation organized and existing under the laws of the State of Florida, on behalf of the City. S/He is personally known to me or has produced _____ (type of identification) as identification.

(NOTARY SEAL)

Notary Public

Print or Type Name
Serial Number:
My Commission Expires:

“DEVELOPER”

**UP FIELDGATE US INVESTMENTS –
WINTER PARK, LLC,**
a Florida limited liability company

WITNESSES:

By: _____

Print Name: _____

Name: _____

Title: _____

Print Name: _____

Dated: _____

STATE OF _____)
) s.s.:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, as _____ of UP Fieldgate US Investments – Winter Park, LLC, a Florida limited liability company, on behalf of the company. S/He is personally known to me or has produced _____ (type of identification) as identification.

(NOTARY SEAL)

Notary Public

Print or Type Name
Serial Number:
My Commission Expires:

EXHIBIT "A"

Legal Description of the School

HOLDEN BROTHERS ADDITION A/61 ALL BLK B (LESS BEG SW COR RUN N TO NE COR BLK 3 HAVILAH PARK O/144 E 161 FT S TO S LINE SAID BLK B TH W TO POB) & PIECE 83 FT N & S LYING S OF LOTS 17 18 & 19 (LESS STS & LESS WEBSTER AV R/W) & LESS FROM SE COR OF NE1/4 RUN N 974.8 FT W 25 FT FOR A POB TH S 13.65 FT W 4 FT N 21 DEG W 33.24 FT S 43 DEG E 23.72 FT TO POB) & (LESS THAT PT LYING N OF BELOIT ST)

EXHIBIT "B"
1 OF 2

DESCRIPTION:

SKETCH AND DESCRIPTION

A PORTION OF BLOCKS 1, 4 AND A PORTION OF THE VACATED RIGHT OF WAY OF GALLOWAY DRIVE, (ELAH STREET BY PLAT), HAVILAH PARK, AS RECORDED IN PLAT BOOK O, PAGE 144 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, TOGETHER WITH A PORTION OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA. ALSO BEING A PORTION OF BLOCK "B" HOLDEN BROTHERS' ADDITION TO WINTER PARK AS RECORDED IN PLAT BOOK A, PAGE 61 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF BLOCK 4, HAVILAH PARK, AS RECORDED IN PLAT BOOK O, PAGE 144 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE S00°00'01"E, ALONG THE EAST LINE OF SAID HAVILAH PARK, 323.16 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE S00°00'01"E, ALONG SAID EAST LINE, 24.73 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF CHEROKEE AVENUE; THENCE S89°56'14"E, ALONG SAID SOUTH RIGHT OF WAY LINE, 220.50 FEET; THENCE S39°45'05"W, DEPARTING SAID SOUTH RIGHT OF WAY LINE, 73.65 FEET TO A POINT OF A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD BEARING OF S22°53'02"E, AND A RADIUS OF 260.00 FEET THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°31'50", A DISTANCE OF 197.54 FEET TO THE POINT OF TANGENCY; THENCE S01°07'07"E, 459.42 FEET; THENCE 57°02'44"E, 45.54 FEET TO THE NORTH RIGHT OF WAY LINE OF WEBSTER AVENUE; THENCE S89°45'17"W, ALONG SAID NORTH RIGHT OF WAY LINE, 124.74 FEET TO THE EAST LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9986, PAGE 2648 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N01°06'43"W, ALONG SAID EAST LINE, 507.15 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE S89°55'36"E, DEPARTING SAID EAST LINE, 18.17 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD BEARING OF N51°02'38"W AND A RADIUS OF 200.25 FEET; THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 76°42'23", A DISTANCE OF 268.09 FEET TO THE POINT OF TANGENCY; THENCE N89°23'50"W, 112.72 FEET; THENCE N88°26'44"W, 60.21 FEET; THENCE N89°23'50"W, 218.60 FEET; THENCE S64°45'39"W, 17.44 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 36.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 34°41'32", A DISTANCE OF 21.80 FEET TO THE POINT OF TANGENCY; THENCE S30°04'08"W, 21.73 FEET TO THE EASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 17-92 AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP OF STATE ROAD 15-600, SECTION 75030, F.P. NO.408429; THENCE N00°51'36"E, ALONG SAID EASTERLY RIGHT OF WAY LINE, 40.46 FEET; THENCE N89°08'24"W, ALONG SAID EASTERLY RIGHT OF WAY LINE, 10.00 FEET TO THE EASTERLY RIGHT OF WAY LINE AND THE WEST LINE OF AFOREMENTIONED HAVILAH PARK; THENCE N00°51'36"E, ALONG SAID EAST RIGHT OF WAY LINE AND SAID WEST LINE, 118.75 FEET; THENCE N88°50'50"E, DEPARTING SAID LINE, 5.15 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A CHORD BEARING OF S25°51'40"E AND A RADIUS OF 36.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 48°47'48" A DISTANCE OF 30.66 FEET TO THE POINT OF TANGENCY; THENCE S50°15'34"E, 18.74 FEET; THENCE S89°23'50"E, 423.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 107,576 SQUARE FEET OR 2.4696 ACRES MORE OR LESS.

LEGEND

C.B. CHORD BEARING
C.A. CENTRAL ANGLE
CH CHORD LENGTH
R RADIUS
L ARC LENGTH
P.B. PLAT BOOK

SURVEYOR'S NOTES:

1. THIS IS NOT A BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE EAST LINE OF HAVILAH PARK ASSUMED AS SHOWN.
3. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER.



MICHAEL D. CUMMINS, JR.
FLORIDA REGISTRATION NUMBER LS5592
FLORIDA LICENSED SURVEYOR AND MAPPER

PREPARED FOR:

UP DEVELOPMENT

**CUMMINS SURVEYING
AND MAPPING, INC.**

2758 Susanday Drive
Orlando, Florida 32812
(407) 894-4254

e-mail: mc5592@bellsouth.net
Certificate of Authorization LB 6983

TECHNICIAN: MDC

ISSUE DATE: 5-21-15

PROJECT NO. 14-36

OVERALL NO POND

SHEET No. 1 OF 2

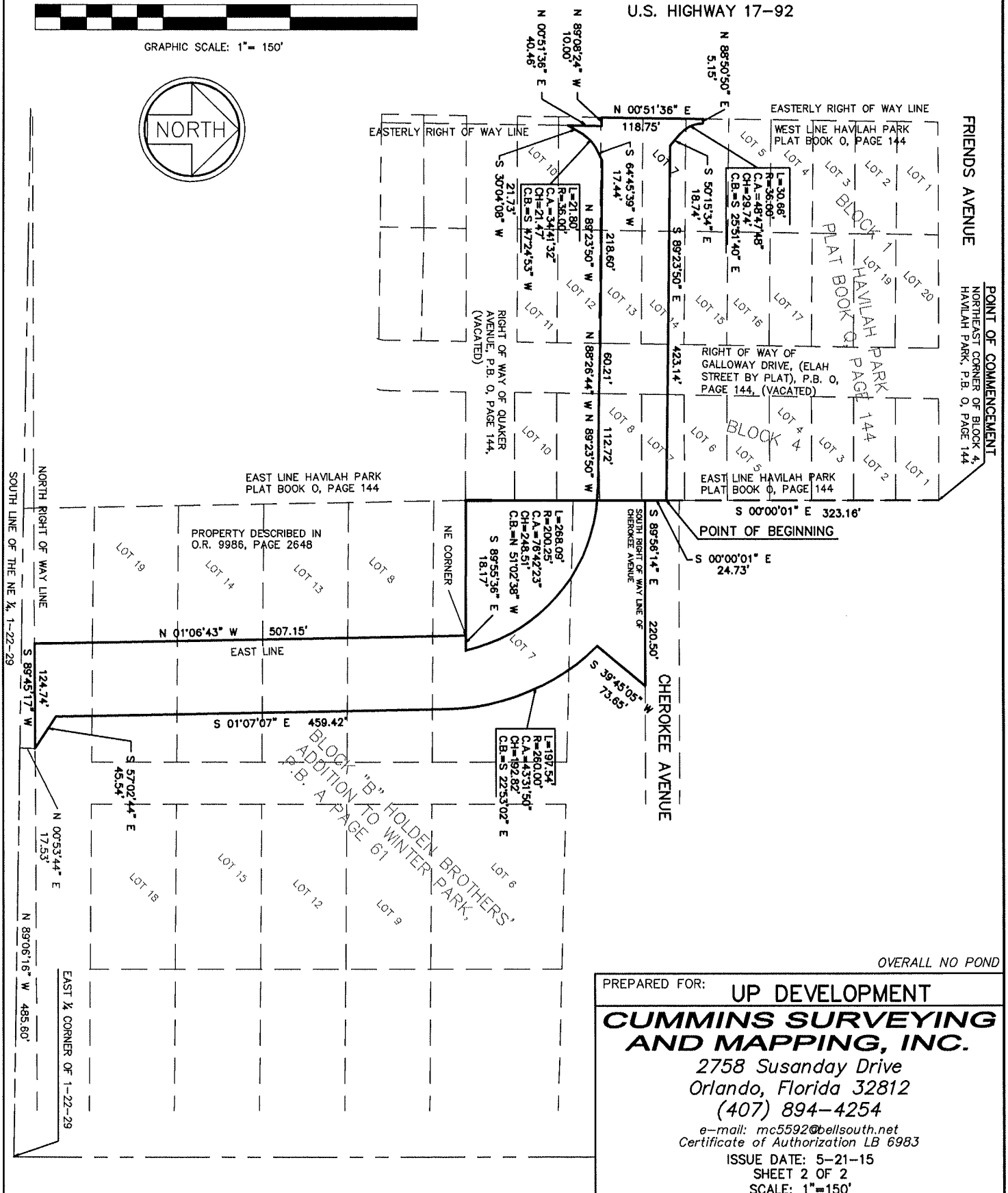
EXHIBIT "B"

2 OF 2

0' 150' 300' 450'



GRAPHIC SCALE: 1"= 150'



OVERALL NO POND

PREPARED FOR: **UP DEVELOPMENT**
CUMMINS SURVEYING AND MAPPING, INC.
 2758 Susanday Drive
 Orlando, Florida 32812
 (407) 894-4254
 e-mail: mc5592@bellsouth.net
 Certificate of Authorization LB 6983
 ISSUE DATE: 5-21-15
 SHEET 2 OF 2
 SCALE: 1"=150'

EXHIBIT "C"

1 OF 2

SKETCH AND DESCRIPTION

A PORTION OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA. ALSO BEING A PORTION OF BLOCK "B" HOLDEN BROTHERS' ADDITION TO WINTER PARK AS RECORDED IN PLAT BOOK A, PAGE 61 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE EAST $\frac{1}{4}$ CORNER OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST ORANGE COUNTY, FLORIDA; THENCE N89°06'16"W, ALONG THE SOUTH LINE OF SAID NORTHEAST $\frac{1}{4}$, A DISTANCE OF 485.60 FEET; THENCE N00°53'44"E, DEPARTING SAID SOUTH LINE, 17.53 FEET TO THE NORTH RIGHT OF WAY LINE OF WEBSTER AVENUE AND THE POINT OF BEGINNING; THENCE S89°45'17"W, ALONG SAID NORTH RIGHT OF WAY LINE, 124.74 FEET TO THE EAST LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9986, PAGE 2648 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N01°06'43"W, ALONG SAID EAST LINE, 507.15 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE N89°55'36"W, ALONG THE NORTH LINE OF SAID LANDS, 160.99 FEET TO THE NORTHWEST CORNER OF SAID LANDS AND THE EAST LINE OF HAVILAH PARK AS RECORDED IN PLAT BOOK O PAGE 144 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N00°00'01"W, ALONG SAID EAST LINE, 211.89 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF CHEROKEE AVENUE; THENCE S89°56'14"E, ALONG SAID SOUTH RIGHT OF WAY LINE, 220.50 FEET; THENCE S39°45'05"W, DEPARTING SAID SOUTH RIGHT OF WAY LINE, 73.65 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD BEARING OF S22°53'02"E, AND A RADIUS OF 260.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°31'50", A DISTANCE OF 197.54 FEET TO THE POINT OF TANGENCY; THENCE S01°07'07"E, 459.42 FEET; THENCE S57°02'44"E, 45.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 90,024 SQUARE FEET OR 2.0667 ACRES, MORE OR LESS.

LEGEND

O.R. OFFICIAL RECORDS BOOK
P.B. PLAT BOOK
C.A. CENTRAL ANGLE
C.B. CHORD BEARING
R RADIUS
L ARC LENGTH
CH. CHORD DISTANCE

SURVEYOR'S NOTES:

1. THIS IS NOT A BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE EAST LINE OF HAVILAH PLACE, ASSUMED AS SHOWN.
3. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



MICHAEL D. CUMMINS, JR.
FLORIDA LICENSE NUMBER LS5592
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER

PREPARED FOR:

UP FIELDGATE

**CUMMINS SURVEYING
AND MAPPING, INC.**

2758 Susanday Drive
Orlando, Florida 32812
(407) 894-4254

e-mail: mc5592@bellsouth.net
Certificate of Authorization LB 6983

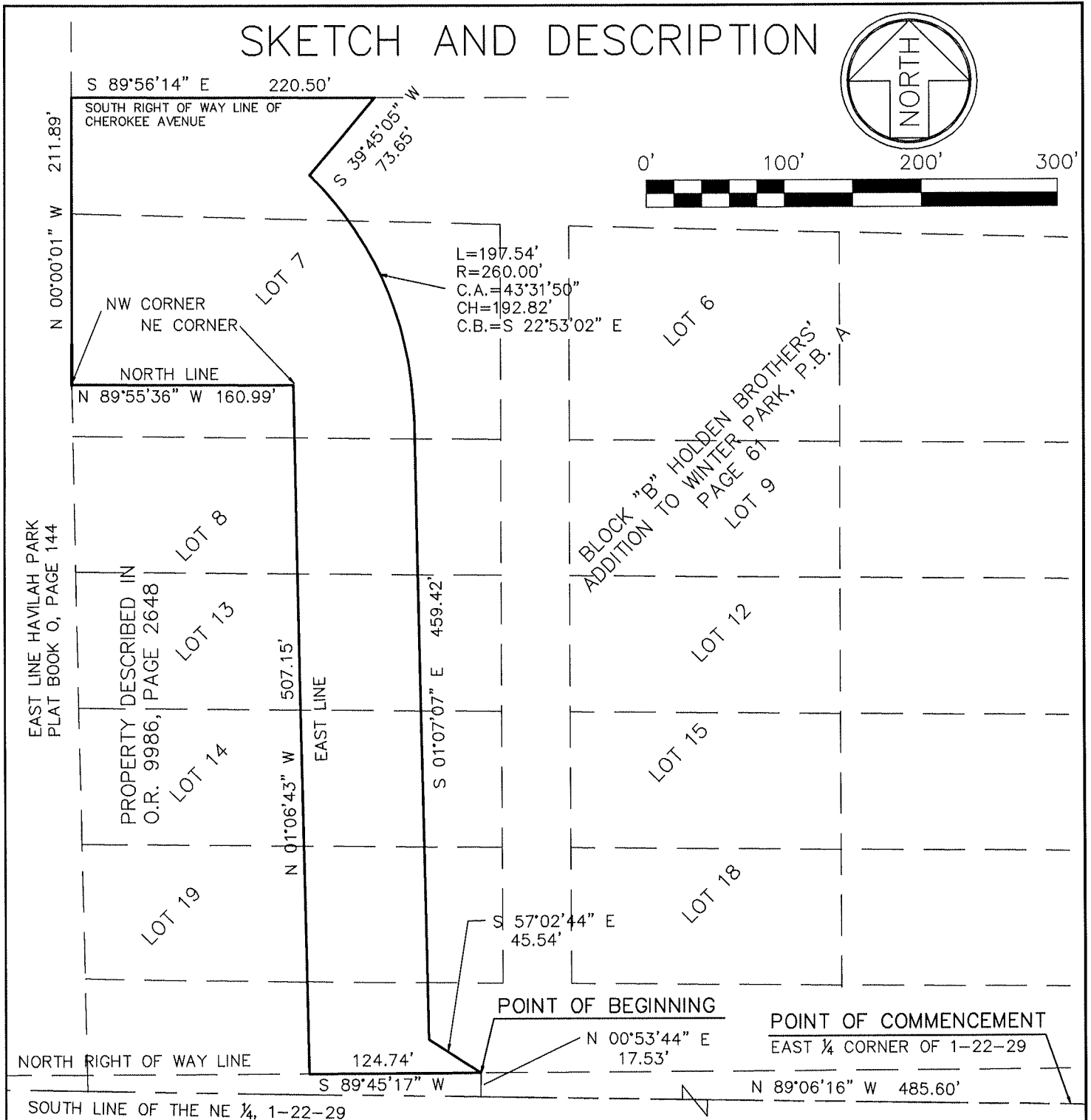
TECHNICIAN: MDC

ISSUE DATE: 5-21-15

PROJECT NO. 14-36

SCHOOL WITH POND

SHEET No. 1 OF 2



PREPARED FOR:

UP FIELDGATE

**CUMMINS SURVEYING
AND MAPPING, INC.**

2758 Susanday Drive
Orlando, Florida 32812
(407) 894-4254

e-mail: mc5592@bellsouth.net
Certificate of Authorization LB 6983

SCALE: 1"= 100'

TECHNICIAN: MDC

ISSUE DATE: 5-21-15

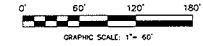
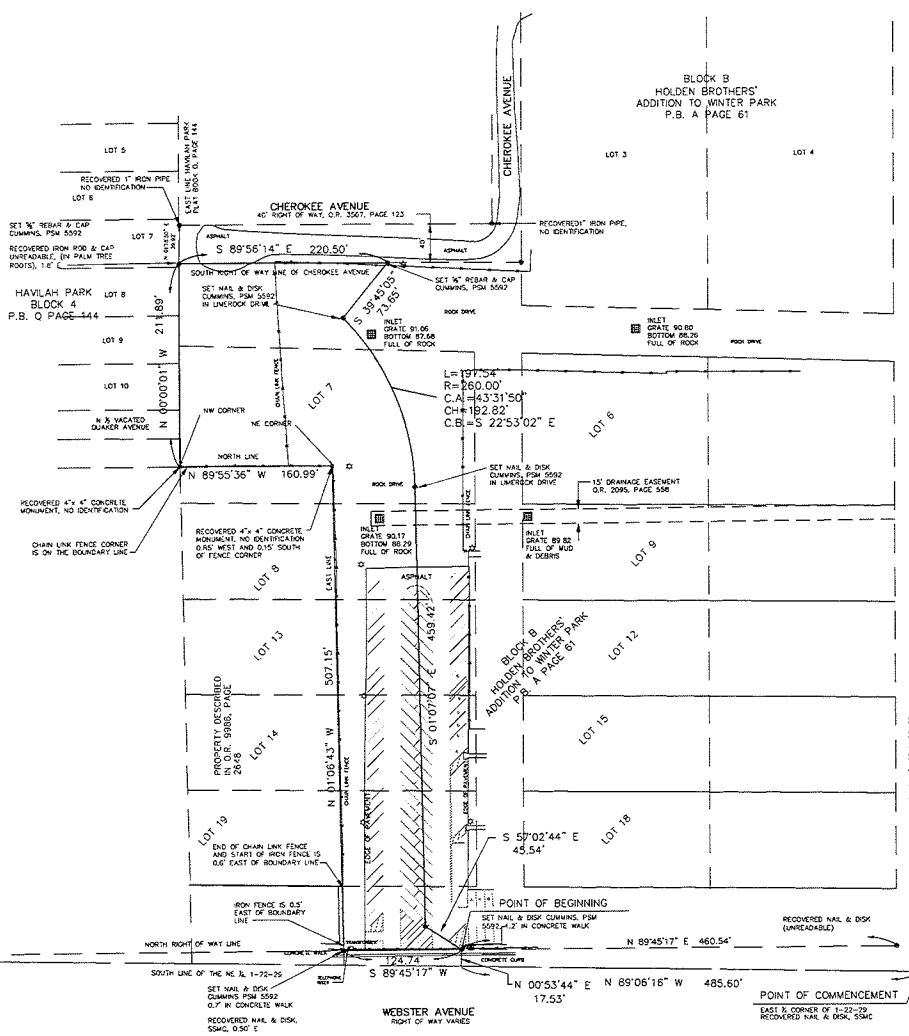
PROJECT NO. 14-36

SCHOOL WITH POND

SHEET No. 2 OF 2

LEGEND

- GAS VALVE
- SEWER VALVE
- IRRIGATION CONTROL VALVE
- RECLAIMED WATER VALVE
- SANITARY SEWER MANHOLE
- DRAINAGE MANHOLE
- TELEPHONE MANHOLE
- FIRE HYDRANT
- CLEANOUT
- LIGHT POLE
- SIGN
- WELL
- BOLLARD
- DRAIN INLET
- TRAFFIC SIGNAL BOX
- BURIED CABLE TELEVISION
- OVERHEAD UTILITY LINES
- BURIED TELEPHONE
- WATER LINE
- FORDWATER
- BURIED POWER
- GUY WIRE
- CONCRETE UTILITY POLE
- WOOD UTILITY POLE
- ELECTRIC JUNCTION BOX
- UTILITY RISER CABLE TELEVISION
- UTILITY RISER ELECTRIC
- UTILITY RISER TELEPHONE
- WATER METER
- WATER VALVE
- CALCULATED
- CENTRAL ANGLE
- CHORD BEARING
- CORRUGATED METAL PIPE
- DESCRIPTION
- DEED BOOK
- ELEVATION
- GOVERNMENT
- INVERT
- AREA LENGTH
- LICENSED
- MEASURED
- NAL & DISK
- CIVIL RECORDS
- PLAT BOOK
- PLAT
- PAGE
- PERMANENT CONTROL POINT
- PERMANENT CONTROL MONUMENT
- RADIUS
- TANGENT
- REINFORCED CONCRETE PIPE
- SECTION
- TEMPORARY BENCH MARK
- SURVEY
- POINT OF BEGINNING
- POINT OF TANGENCY
- POINT OF REVERSE CURVATURE



LEGAL DESCRIPTION:

A PORTION OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, ALSO BEING A PORTION OF BLOCK "B" HOLDEN BROTHERS' ADDITION TO WINTER PARK AS RECORDED IN PLAT BOOK A, PAGE 61 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE EAST 1/4 CORNER OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE N89°06'16\"/>

SURVEYOR'S NOTES:

1. BEARINGS ARE BASED ON THE NORTH RIGHT OF WAY LINE OF WEBSTER AVENUE, ASSUMED AS SHOWN.
2. THIS SURVEY WAS PREPARED FOR THE BENEFIT AND EXCLUSIVE USE OF THE PARTIES LISTED. USE BY OTHERS IS NOT PERMITTED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF THE SIGNING SURVEYOR.
3. THIS BOUNDARY SURVEY WAS PREPARED FOR USE IN A COMMERCIAL LAND TRANSACTION. NO OTHER USES ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF THE SIGNING SURVEYOR.
4. SYMBOLS SHOWN HEREON ARE NOT DRAWN TO SCALE FOR CLARITY.
5. ALL DIRECTIONS AND DISTANCES ARE MEASURED UNLESS OTHERWISE NOTED.
6. THIS SURVEY WAS PREPARED WITH THE BENEFIT OF FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT NUMBER 5011612-2037-3320722, DATED APRIL 13, 2015 AT 8:00 A.M.
7. NO UNDERGROUND LOCATIONS WERE PERFORMED FOR THE PURPOSE OF THIS SURVEY.

TITLE COMMITMENT NOTES:

EXCEPTIONS 1 THROUGH 8 ARE NOT MATTERS OF SURVEYING.

PREPARED FOR THE BENEFIT AND EXCLUSIVE USE OF:
CITY OF WINTER PARK
FIRST AMERICAN TITLE INSURANCE COMPANY
UP FIDELITY & SECURITY INVESTMENTS-WINTER PARK, LLC
SHUTTS & BOWEN
THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA
JOHNSON REAL ESTATE LAW
AND NONE OTHER

Michael D. Cummings, Jr.

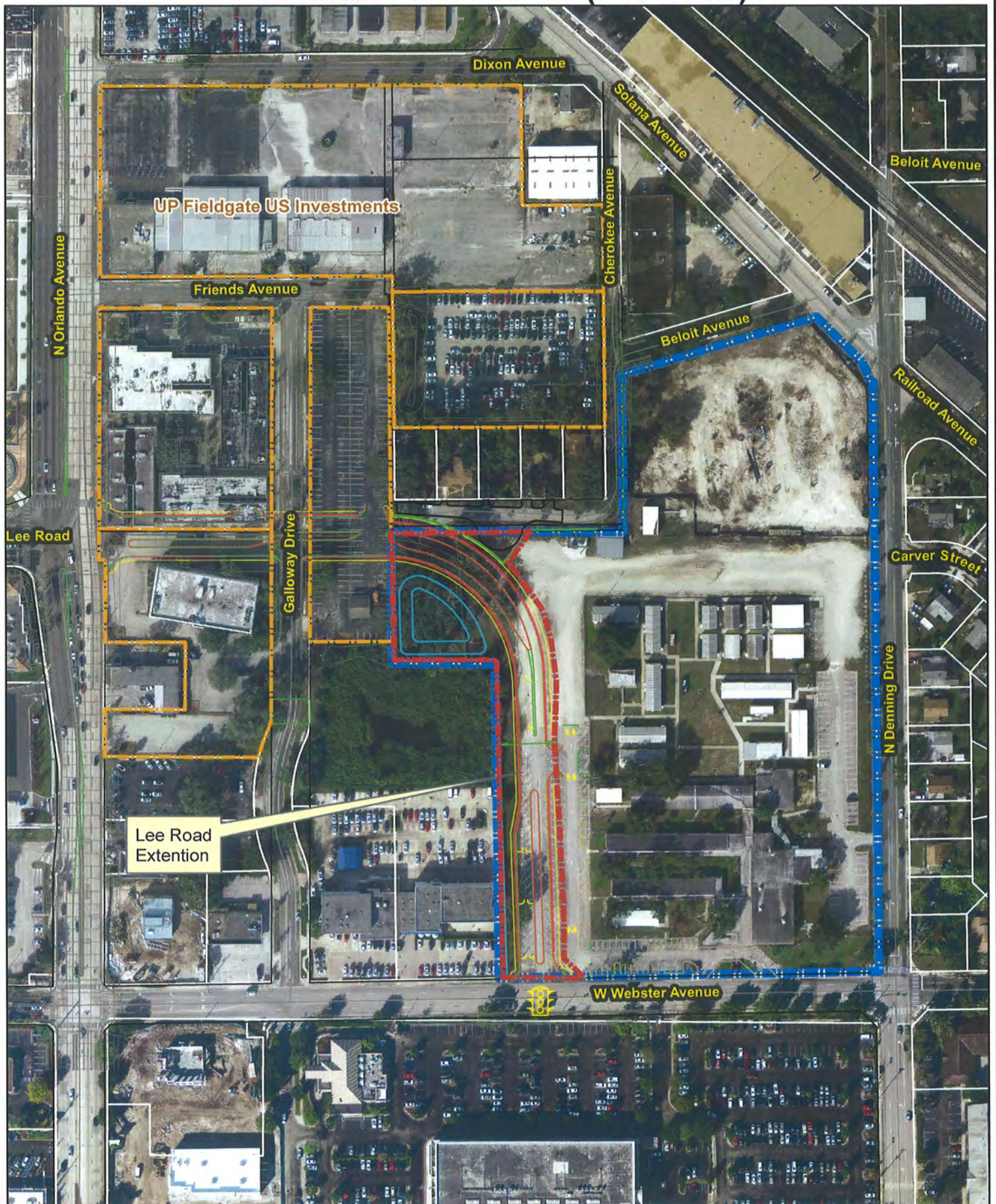
SURVEYOR & MAPPER IN RESPONSIBLE CHARGE #LS 5592
MICHAEL D. CUMMINGS, JR.
NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BOUNDARY SURVEY
PREPARED FOR:
CITY OF WINTER PARK

CUMMINS SURVEYING AND MAPPING, INC.
2750 Susanoo Drive
Orlando, Florida 32812
(407) 894-4254
E-mail: mcs592@earthlink.net
Certificate of Authorization LB 9383

SCALE: 1" = 60'	TECHNICIAN: MCC
ISSUE DATE: 5-21-15	PROJECT NO. 14-38 SC
SURVEY DATE: 2-20-15	FIELD BOOK NO. 30
	SHEET NO. 1 OF 1

Winter Park VoTech (~13.04 ac)



 Right-of-Way  WP TECH  US Fieldgate



Aerial 2014
MAY 2014

Prepared by
Paul "J.J." Johnson, Jr., Esq.
Johnson Real Estate Law, PA
3660 Maguire Blvd, Ste 102
Orlando, FL 32803

After Recording Return To:
City of Winter Park, City Clerk's Office
401 Park Avenue South
Winter Park, Florida 32789

DOCH 20150138629 B: 10891 P: 2720
03/19/2015 08:34:10 AM Page 1 of 9
Rec Fee: \$78.00
Martha O. Haynie, Comptroller
Orange County, FL
SA - Ret To: CITY OF WINTER PARK



DEVELOPER'S AGREEMENT FOR
1000/1050 N. Orlando Avenue, 1160 Galloway Drive and 967 Cherokee Avenue

THIS AGREEMENT ("Agreement") entered into and made as of the ^{25th} day of ~~FEBRUARY~~, 2015, by and between the **CITY OF WINTER PARK, FLORIDA**, 401 S. Park Avenue, Winter Park, Florida, 32789 (hereinafter referred to as the "City"), and **UP FIELDGATE US INVESTMENTS - WINTER PARK LLC**, a Florida limited liability company, 3201 East Colonial Drive, Orlando, Florida, 32083, (hereinafter referred to as "Owner/Developer").

W I T N E S S E T H

WHEREAS, **UP FIELDGATE US INVESTMENTS - WINTER PARK LLC** is the Owner/Developer of certain real property at 1000/1050 N. Orlando Avenue, 1160 Galloway Drive and 967 Cherokee Avenue, lying within the municipal boundaries of the City of Winter Park, as more particularly described on Exhibit "A" attached to and incorporated into this Agreement by reference (hereinafter referred to as "Property")

WHEREAS, the Owner/Developer desires to develop the Property for the operation of a Whole Foods grocery store (approximately 40,965 SF) with a secondary retail store (approximately 36,600 SF) and three out-parcels (approximately 4,000 SF each) as more particularly shown on Exhibit "B", the final site plan, attached to and incorporated into this Agreement by reference (hereinafter, the "Project"); and

WHEREAS, the Owner/Developer desires to facilitate the development of the Project, in compliance with the laws and regulations of the City, and of other governmental authorities as well as provide assurances that the Project will be compatible with surrounding properties; and

WHEREAS, the City of Winter Park has granted conditional use approval in order to facilitate this Project and has also agreed to consent to development of the Project provided that Owner/Developer acknowledge and abide by the restrictions mutually agreed upon for the operation and future use of the Property and such acknowledgement and restrictions are agreed upon to be in the form of a recordable Development Agreement to run with title to the land.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the City and the Owner/Developer agree as follows:

SECTION 1. RECITALS

The above recitals are true and correct and form a material part of the Agreement.

SECTION 2. REPLATTING OF PROPERTY

The Owner/Developer consents and agrees to join, plat, and subdivide the Property as necessary to achieve the Project objectives in accordance with the Comprehensive Plan future land use and zoning designations provided by City. The City agrees and consents to Owner/Developer joining, platting, and subdividing the Property to allow for and to encourage third-party occupancy and future conveyance of all or part of the Property.

SECTION 3. BUILDING ARCHITECTURE

The Owner/Developer consents and agrees to design the out-parcel buildings in architectural conformity with the main retail buildings and to use City's themed acorn lights along US 17/92. Architectural conformity will be decided by the City Planning Department, with the Owner/Developer having the right to appeal such determinations to the Planning and Zoning Board and then to the City Commission within thirty (30) days of the receipt of said determination.

SECTION 4. SIGNAGE

The Owner/Developer consents and agrees to the Project being limited to monument signage for all ground signs in lieu of pole signs and that the location and number of monuments signs shall be subject to the master sign plan, as part of the final conditional use approval by the City Commission. The master sign plan shall continue to govern the Project after the platting of the Property.

SECTION 5. STORM WATER RETENTION

The Owner/Developer consents and agrees to retrofit the Property to conform to the storm water retention requirements of the City and Saint Johns River Water Management District.

SECTION 6. LANDSCAPING

The Owner/Developer consents and agrees to provide enhanced landscaping as required by City staff to create an appealing front door appearance and review opportunities to preserve, using commercially reasonable diligence, the two major live oak trees on-site. Owner/Developer will provide additional buffer around live oak trees as required by City staff.

SECTION 7. TRAFFIC SIGNALS

The Owner/Developer agrees to pay Twenty Eight Thousand One Hundred Twenty Five Dollars (\$28,125.00) as its proportionate share of funding for traffic signal timing improvements.

SECTION 8. RIGHT-OF-WAY DEDICATION

The Owner/Developer agrees to convey, or cause the applicable party to convey, to the City, by warranty deed and bill of sale, the right-of-way and roadway improvements constructed by the Owner/Developer for the Lee Road extension, shown in Exhibit "B". Acceptance of the right-of-way and roadways improvements will be upon terms and conditions acceptable to the City as evidenced by a memorandum of understanding approved by the City Manager. Upon acceptance, all maintenance of the Lee Road extension shall be the responsibility of the City.

SECTION 9. SOUND CONTAINMENT

The building and mechanical equipment will be designed and operated at all times under a maximum of 55 decibels at the Property line. At certificate of occupancy, the engineer of record shall provide a certification of compliance with this requirement, and any subsequent violation of the specific 55 decibel level shall be grounds for code enforcement by the City and shall require compliance by the property owner and tenant. Upon written notice from City of a violation, Owner and tenant shall comply with the 55 decibel level within fifteen (15) days of such notice.

SECTION 10. EXPANSIONS, AMENDMENTS & MODIFICATIONS TO THIS AGREEMENT

Expansions, amendments, and modifications to this Agreement, if requested by the Owner/Developer, may be permitted if approved following review by the City in conformance with the City's Land Development Code.

SECTION 11. AGREEMENT TO BE BINDING

This Agreement, including any and all supplementary orders and resolutions, together with the approved development plan, the master sign plan, and all final site plans, shall be binding upon the Owner/Developer and their successors and assigns in title or interest. The provisions of this Agreement

and all approved plans shall run with the Property including after platting the Property, and shall be administered in a manner consistent with Florida Statutes and local law.

SECTION 12. ENFORCEMENT

This Agreement may be enforced by specific performance. In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer shall be responsible for all costs and expenses, including attorney's fees, whether or not litigation is necessary, and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement, which costs, expenses and fees shall also be a lien upon the Property superior to all others. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.

SECTION 13. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The Venue for purpose of litigation shall be in Orange County, Florida.

SECTION 14. RECORDING

This Agreement shall be recorded, at Owner/Developer's expense, among the Public Records of Orange County, Florida no later than fourteen (14) days after full execution. Notwithstanding the foregoing, the same shall not constitute any lien or encumbrance on title to the Property and shall instead constitute record notice of governmental regulations, which regulates the use and enjoyment of the Property.

SECTION 15. TIME IS OF THE ESSENCE

Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

SECTION 16. SEVERABILITY

If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Agreement is declared severable.

SECTION 17. DEVELOPMENT PERMITS

Nothing herein shall limit the City's authority to grant or deny any development permit applications or requests subsequent to the effective date of this Agreement. The failure of this Agreement to address any particular City, County, State and/or Federal permit, condition, term or restriction shall not relieve Developer or the City of the necessity of complying with the law governing said permitting requirement, condition, term or restriction.

SECTION 18. SUBORDINATION/JOINDER

Unless otherwise agreed to by the City, all liens, mortgages and other encumbrances not satisfied or released of record, must be subordinated to the terms of this Agreement or the lienholder join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain the said subordination or joinder, if necessary, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.

SECTION 19. EFFECTIVE DATE

This Agreement shall not be effective and binding until the latest date that this Agreement is approved by and signed by all parties hereto.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

Signed, Sealed and Delivered
In the Presence of:

Signature of Witness #1

Printed Name: Paul Johnson

Signature of Witness #2

Printed Name: Frank W. Herring

OWNER:

**UP FIELDGATE US INVESTMENTS – WINTER
PARK LLC**, a Florida limited liability company

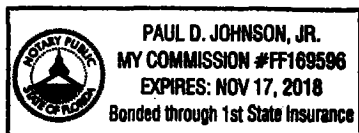
By: Scott Fish

Scott Fish, Manager

STATE OF FLORIDA)

COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 6 day of March, 2015, by Scott Fish, as Manager of **UP FIELDGATE US INVESTMENTS – WINTER PARK LLC (Owner/Developer)**, a Florida limited liability company, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.



Notary Public

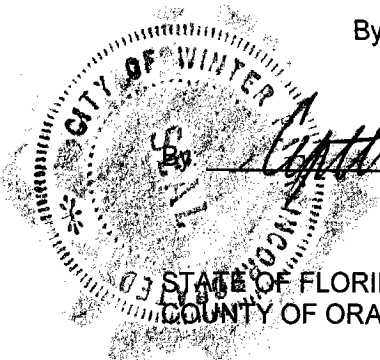
Printed Name: _____

My commission expires: _____

CITY OF WINTER PARK, FLORIDA

ATTEST:

By: Kenneth W. Bradley
Kenneth W. Bradley, Mayor



Michelle Bernstein

City Clerk

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 2nd day of March, 2015, by Kenneth W. Bradley, Mayor, of the City of Winter Park, Florida, who is personally known to me.

Michelle Bernstein
Notary Public
Printed Name: _____
My commission expires: _____



G:\docs\Cities\Winter Park\Planning & Zoning\Whole Foods Development Agreement\Whole Foods DA 10-6-14 CDR.docx

EXHIBIT "A"

Attach legal description of the Property

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL A:

PARCEL 1:

THE WEST 330 FEET OF THE EAST 773 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 443 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 212 FEET, WEST 330 FEET, NORTH 212 FEET, EAST 330 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE NORTH 72.00 FEET OF THE EAST 125.00 FEET OF THE WEST 330 FEET OF THE EAST 773.00 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22, SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA.

PARCEL 2:

BEGIN 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 330 FEET, NORTH 118 FEET, EAST 330 FEET.

LESS AND EXCEPT ROADWAY ON NORTH; AND

LESS AND EXCEPT: BEGIN 443 FEET WEST AND 118 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22, SOUTH, RANGE 29 EAST, RUN WEST 125 FEET, NORTH 118 FEET, EAST 125 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$, THENCE SOUTH TO THE POINT OF BEGINNING.

PARCEL 3:

LOTS 1 THRU 9, INCLUSIVE, AND LOTS 13 THRU 38, INCLUSIVE, ALANDALE PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK N, PAGE 7, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 4:

LOTS 10, 11 AND 12, ALANDALE PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK N, PAGE 7, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 5:

THAT PARCEL OF LAND LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE AND NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF FRIENDS AVENUE AND EAST OF ALANDALE PARK AS RECORDED IN PLAT BOOK N, PAGE 7, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 26 OF SAID ALANDALE PARK, THENCE RUN NORTH $00^{\circ}44'12''$ EAST ALONG THE EAST LINE OF SAID LOT 26 AND LOT 25 OF SAID ALANDALE PARK A DISTANCE OF 301.15 FEET TO THE NORTHEAST CORNER OF SAID LOT 25, SAID NORTHEAST CORNER BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE; THENCE RUN NORTH $89^{\circ}32'27''$ EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE 11.60 FEET TO THE NORTHWEST CORNER OF THE FOLLOWING DESCRIBED PARCEL (HEREINAFTER "PARCEL 2"):

PARCEL 2:

BEGIN 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 330 FEET, NORTH 118 FEET, EAST 330 FEET, LESS AND EXCEPT ROADWAY ON NORTH; AND LESS AND EXCEPT: BEGIN 443 FEET WEST AND 118 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN WEST 125 FEET, NORTH 118 FEET, EAST 125 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$, THENCE SOUTH TO THE POINT OF BEGINNING.

THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE RUN SOUTH $00^{\circ}01'54''$ WEST ALONG THE WEST BOUNDARY LINE OF PARCEL 2 AND THE WEST BOUNDARY LINE OF THE FOLLOWING DESCRIBED PARCEL:

PARCEL 1:

THE WEST 330 FEET OF THE EAST 773 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 443 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 212 FEET, WEST 330 FEET, NORTH 212 FEET, EAST 330 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE NORTH 72.00 FEET OF THE EAST 125.00 FEET OF THE WEST 330 FEET OF THE EAST 773.00 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22, SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA;

WHICH BOUNDARY LINE IS ALSO THE WEST LINE OF THE EAST 773.00 FEET OF THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, A DISTANCE OF 301.12 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SAID FRIENDS AVENUE; THENCE RUN SOUTH $89^{\circ}32'27''$ WEST ALONG SAID NORTHERLY RIGHT OF WAY LINE OF FRIENDS AVENUE A DISTANCE OF 15.30 FEET TO THE POINT OF BEGINNING.

COMMENCING AT THE EAST 1/4 CORNER OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA, RUN N00°29'19"W, ALONG THE EAST LINE OF THE SOUTHEAST 1/4, OF THE NORTHEAST 1/4, OF SAID SECTION 1, A DISTANCE OF 1444.59 FEET TO THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE RUN S89°15'26"W, ALONG THE NORTH LINE OF THE SAID SOUTHEAST 1/4, OF THE NORTHEAST 1/4, AS SAID LINE IS DEPICTED ON THE FDOT RIGHT-OF-WAY MAPS FOR STATE ROAD 15/600, SECTION NUMBER 75030, F.P. 408429-1, A DISTANCE OF 568.01 FEET, TO A POINT ON THE WEST LINE OF THE EAST 568.00 FEET OF THE AFORESAID SOUTHEAST 1/4, OF THE NORTHEAST 1/4, SAID POINT ALSO BEING THE POINT OF BEGINNING FOR THAT PARCEL BEING DESCRIBED HEREIN; THENCE S00°29'19"E, ALONG SAID WEST LINE OF THE EAST 568.00 FEET, A DISTANCE OF 190.00 FEET, TO A POINT ON THE SOUTH LINE, OF THE NORTH 190.00 FEET, OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE N89°15'26"E, ALONG SAID SOUTH LINE OF THE NORTH 190.00 FEET, RUN A DISTANCE OF 125.00 FEET, TO A POINT ON THE WEST LINE OF THE EAST 443.00 FEET, OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE S00°29'19"E, ALONG SAID WEST LINE OF THE EAST 443.00 FEET, RUN A DISTANCE OF 140.00 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH 330.00 FEET OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE S89°15'26"W, ALONG SAID SOUTH LINE OF THE NORTH 330.00 FEET, RUN A DISTANCE OF 330.00 FEET, TO A POINT ON THE WEST LINE OF THE EAST 773.00 FEET, OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE N00°29'19"W, ALONG SAID WEST LINE OF THE EAST 773 FEET, RUN A DISTANCE OF 28.54 FEET, TO A POINT OF INTERSECTION OF THE EASTERLY PROJECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF FRIENDS AVENUE AS SHOWN ON THE PLAT OF ALANDALE PARK, RECORDED IN PLAT BOOK "N", PAGE 7, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE S89°17'00"W, ALONG EASTERLY PROJECTION AND THE NORTHERLY RIGHT-OF-WAY LINE OF SAID FRIENDS AVENUE, A DISTANCE OF 480.35 FEET, TO THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY OF NORTH ORLANDO AVENUE (US 17-92), AS SAID RIGHT-OF-WAY IS SHOWN ON THE AFOREMENTIONED FDOT RIGHT-OF-WAY MAPS FOR STATE ROAD 15/600, SECTION NUMBER 75030, F.P. 408429-1; THENCE N00°15'52"E, ALONG SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 301.30 FEET, TO A POINT ON THE AFOREMENTIONED NORTH LINE OF THE SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE N89°15'26"E, ALONG SAID NORTH LINE OF THE SOUTHEAST 1/4, OF THE NORTHEAST 1/4, RUN A DISTANCE OF 661.39 FEET, TO THE POINT OF BEGINNING.

PARCEL B:

PARCEL 1:

BEGIN 5 CHAINS SOUTH AND 450 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA, THENCE RUN SOUTH 5 CHAINS, THENCE RUN WEST 5 CHAINS, THENCE RUN NORTH 5 CHAINS AND THENCE RUN EAST 5 CHAIN TO THE POINT OF BEGINNING, LESS AND EXCEPT THE SOUTH 114 FEET THEREOF.

PARCEL 2:

ALL OF THE LAND LYING IMMEDIATELY ADJACENT TO AND WEST OF WESTERN BOUNDARY OF THE FOLLOWING REAL PROPERTY:

BEGIN 5 CHAINS SOUTH AND 450 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, THENCE RUN SOUTH 5 CHAINS, THENCE RUN WEST 5 CHAINS, THENCE RUN NORTH 5 CHAINS AND THENCE RUN EAST 5 CHAINS TO THE POINT OF BEGINNING, LESS AND EXCEPT THE SOUTH 114 FEET THEREOF, ALL LOCATED IN ORANGE COUNTY, FLORIDA (PARCEL ID NO. 01-22-29-0000-00016; THE "RCJ2 PROPERTY");

AND LYING EAST OF THE EASTERN BOUNDARY OF THE FOLLOWING REAL PROPERTY:

ALL OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10, BLOCK 4, HAVILAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; TOGETHER WITH THAT PORTION OF THE NORTH 1/2 OF QUAKER AVENUE (NOW ABANDONED AS PER RESOLUTION SHOWN IN OFFICIAL RECORDS BOOK 1390, PAGE 601), WHICH LIES IMMEDIATELY ADJACENT TO THE SOUTH LINE OF BLOCK 4, HAVILAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA (PARCEL H) NO. 01-22-29-3452-04-0102; THE "UP PROPERTY");

AND HAVING AS ITS NORTHERN BOUNDARY THE WESTWARD EXTENSION OF THE NORTH BOUNDARY OF THE RCJ2 PROPERTY AND AS ITS SOUTHERN BOUNDARY THE WESTWARD EXTENSION OF THE SOUTH BOUNDARY OF THE RCJ2 PROPERTY;

AND INCLUDING ALL RIGHTS OF WAY, STREETS, ALLEYS, PASSAGEWAYS, STRIPS, CORES AND OTHER RIGHTS, TITLES AND INTERESTS PERTAINING TO EITHER THE RCJ2 PROPERTY OR THE UP PROPERTY.

PARCEL C:

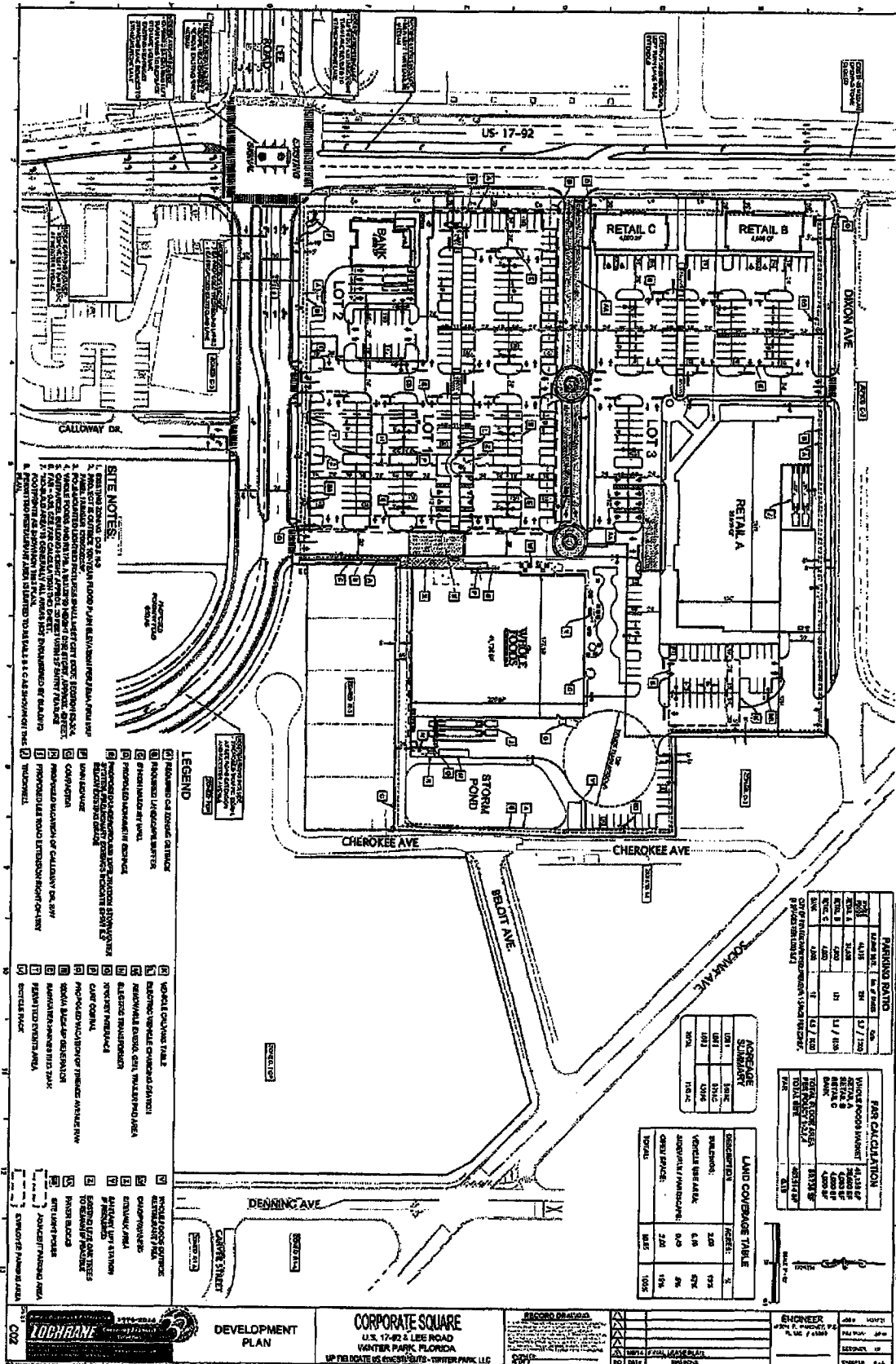
PARCEL 1:

LOTS 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 17, 18, 19 AND 20, BLOCK 1, HAVILAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10, BLOCK 4, HAVILAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; TOGETHER WITH THAT PORTION OF THE NORTH 1/2 OF QUAKER AVENUE VACATED PER RESOLUTION RECORDED IN OFFICIAL RECORDS BOOK 1390, PAGE 601, WHICH LIES IMMEDIATELY ADJACENT TO THE SOUTH LINE OF BLOCK 4, HAVILAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT THE PORTION OF PARCEL "C" SOUTH OF THE LEE ROAD EXTENSION.

EXHIBIT "B"





city commission public hearing

Item type	Public Hearing	meeting date	June 8, 2015		
prepared by	Dori Stone	approved by	<input checked="" type="checkbox"/>	City Manager	
department	Planning & Comm. Develop.		<input checked="" type="checkbox"/>	City Attorney	
division			<input type="checkbox"/>	N/A	
board approval		<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A	final vote
strategic objective	<input type="checkbox"/> Exceptional Quality of Life				
	<input checked="" type="checkbox"/> Intelligent Growth & Development				
	<input type="checkbox"/> Investment in Public Assets & Infrastructure				
	<input type="checkbox"/> Fiscal Stewardship				
	<input type="checkbox"/> Public Health & Safety				

subject

Indemnity Agreement between the City of Winter Park and UP Fieldgate US Investments – Winter Park LLC

motion | recommendation

Request approval of the Indemnity Agreement for Cure issues outlined in the School Board/City/UP Fieldgate Agreement

background

Under the School Board Agreement, the School Board agreed to sell property to the city with funding provided by UP Fieldgate to construct the Lee Road Extension. That **Agreement also required "cure work" for the impacts to the Winter Park Vo-Tech site.** The cure work outlined in the Agreement also has a number of timeframes and penalties associated with it.

It is the intent of the city that UP Fieldgate will not only construct the Lee Road **Extension to the city's standards but also perform the cure work required under the** School Board Agreement. The attached Indemnity Agreement further clarifies the role of the city and the developer. This Agreement, between the city and UP Fieldgate, outlines a number of terms that removes the city from any liability by the School Board for the cure work to the Winter Park Vo-Tech site. The developer agrees to perform the cure work, assumes any penalties and agrees to defend any claims against the city that may arise from the School Board Agreement. The developer also will post a \$300,000 irrevocable letter of credit as security for this cure work.

This agreement has been drafted by the City Attorney's office and attorneys for UP Fieldgate to ensure that the city has no risk with regard to the cure work required by the School Board Agreement.

alternatives | other considerations

N/A

fiscal impact

There is no fiscal impact to the city under this agreement.

Prepared by:
Catherine D. Reischmann, Esq.
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

**INDEMNITY AGREEMENT REGARDING
WHOLE FOODS DEVELOPMENT AND LEE ROAD EXTENSION**

THIS INDEMNITY AGREEMENT ("Agreement") entered into and made as of the ____ day of _____, 2015, by and between the **CITY OF WINTER PARK, FLORIDA**, 401 S. Park Avenue, Winter Park, Florida, 32789 (hereinafter referred to as the "City"), and **UP FIELDGATE US INVESTMENTS – WINTER PARK LLC**, a Florida limited liability company, 3201 East Colonial Drive, Orlando, Florida, 32083, and **UP DEVELOPMENT COMPANY, LLC**, a Florida limited liability company, 1045 Tulloss Road, Franklin, TN 37067 (collectively hereinafter referred to as "Developer").

W I T N E S S E T H

WHEREAS, DEVELOPER owns certain property located in the City of Winter Park, as more fully described in **Exhibit A** (the "Whole Foods Property"); and

WHEREAS, the CITY has determined that the construction of an extension of Lee Road (the "Lee Road Extension") from its present terminus at North Orlando Avenue extending east and south to a new terminus with Webster Avenue, all as shown on the Sketch and Description of the Lee Road Extension ("Lee Road Extension Sketch and Description") prepared by Cummins Surveying and Mapping, Inc., dated May 21, 2015 and bearing Project No. 14-36, attached hereto as Exhibit B, is consistent with and furthers the goals, objectives and policies of the Winter Park Comprehensive Plan; and

WHEREAS, CITY has entered into an agreement with the DEVELOPER and the Orange County School Board (the "School Board Agreement") for the sale to CITY of certain real property as necessary for the Lee Road Extension (the "School Board Property"), and the School Board Agreement is incorporated herein as if fully set forth herein; and

WHEREAS, the term "Property" shall have the same meaning as it does in the School Board Agreement; and

WHEREAS, as a condition to CITY entering into the School Board Agreement, DEVELOPER has agreed to pay the Purchase Price, perform the Cure Work defined in Section 10 of the School Board Agreement, and to assume all liabilities and obligations under the School Board Agreement, and to fully indemnify the CITY for any liability related to the School Board Agreement; and

WHEREAS, this Agreement has a public purpose for the CITY because the Lee Road Extension is beneficial to the public as it provides improved traffic flow, and is required by FDOT for the benefit of the public; further the DEVELOPER's proposed project will increase the City's tax base and improve this area of the CITY.

AGREEMENT

SECTION 1. Recitals; Capitalized Terms.

The above recitals are true and correct, form a material part of this Agreement and are incorporated in this Agreement by reference. All capitalized terms not otherwise defined in this Agreement will have the meanings ascribed to them in the School Board Agreement.

SECTION 2. Construction of the Lee Road Extension and the Cure Work.

(a) The DEVELOPER shall be responsible for the design, engineering, permitting and construction of the Cure Work and the performance of any other duties or obligations set forth in the School Board Agreement. The DEVELOPER shall exercise its good faith efforts to complete the construction of the improvements in accordance with the School Board Agreement.

(b) Should DEVELOPER fail to complete the Cure Work to the satisfaction of the School Board or the CITY, and the CITY is forced to expend any funds whatsoever to complete the Cure Work, the DEVELOPER and UP DEVELOPMENT COMPANY, LLC, agree that CITY can lien the property in Winter Park owned by DEVELOPER if DEVELOPER fails to immediately reimburse CITY.

(c) The DEVELOPER will provide the CITY with a \$300,000.00 irrevocable letter of credit with CNL to be drawn at a location in Orlando, Florida, as security for the Cure Work, effective until Final Completion of the Cure Work, as determined by the School Board. This Letter of Credit will provide that if the School Board or the School District Staff makes any demand of any kind on the CITY for any reason related to the Cure Work, the Lee Road Extension or the School Board Agreement, then the CITY will be authorized to draw down from the Letter of Credit the amount the CITY deems necessary, in the CITY's sole discretion, to address the School Board/District's demand, and for the CITY's attorneys' fees and expert fees. The Letter of Credit will provide that if the CITY initiates suit under the Letter of Credit, CNL agrees to be responsible for the CITY's courts costs and attorneys' fees, up to the full amount of the letter of credit.

SECTION 3. Indemnification Regarding School Board Agreement. To induce CITY to enter into the School Board Agreement, DEVELOPER, including its parent corporation, UP Development Company, LLC, ("collectively "Indemnitor"), agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless CITY and its employees, officers, and attorneys (collectively "Indemnatee") against all claims, losses, damages, personal injuries (including but not limited to death), or liability (including reasonable attorney's fees through all administrative, trial, post judgment and appellate proceedings), directly or indirectly arising from the acts, errors, omissions, intentional or otherwise, arising out of or resulting from the School Board Agreement, the CITY's acquiring ownership interest in the Property, as defined in the School Board Agreement, or the completion of the Cure Work. Indemnitor shall indemnify and defend Indemnatee against any environmental claim, threatened or commenced, which relates to the Property.

Upon demand by an Indemnatee, Indemnitor shall diligently defend any claim (threatened or commenced) which relates to or arises from the School Board Agreement, this Agreement or from CITY's acquisition of ownership interest in the Property or from the Cure Work, all at Indemnitor's own cost and expense, and the claim shall be pursued by counsel approved by Indemnatee in exercising its reasonable judgment. Indemnatee may elect for any reason to conduct its own defense through counsel selected by Indemnatee and at the sole cost and expense of Indemnitor. DEVELOPER will cooperate, and cause its Affiliates to cooperate, in the defense of any claim by the School Board, and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection with the claim. This Section will bind the Indemnitor and its successors, assigns and legal representatives and will inure to the benefit of Indemnatee and its successors, assigns and legal representatives.

For this Section, "Losses" means all liabilities, losses, damages, injuries, harm, diminution in value, expense, expenditure and disbursement of every nature (including, without limitation, costs of investigation, travel expenses, value of time expended by personnel), fines, fees and expenses of litigation (including without limitation reasonable attorneys' fees incident to any of the foregoing), costs, and court costs.

The Indemnitor shall reimburse Indemnatee for all Losses regardless of whether Indemnatee receives insurance proceeds as compensation for the Losses, receives tax benefits as result of the Losses, or receives any amounts from any other source as payment for the Losses.

Indemnitor releases and forever discharges, and covenants not to sue, Indemnatee from all claims, injuries, demands, costs, penalties, attorneys' fees, costs of litigation and causes of action of any kind, now or in existence, known or unknown, which Indemnitor may have against Indemnatee and which are related to events, omissions or circumstances arising from or related to the School Board Agreement, this Agreement or CITY's acquisition of ownership interest in the Property or the Cure Work or construction of the Lee Road Extension.

SECTION 4. Binding Effect; Termination. The obligations and covenants of this Agreement shall bind and benefit the successors, personal representatives, heirs and assigns of the parties to this Agreement. Except for those matters that survive closing under the School Board Agreement, this Agreement will automatically partially terminate on the date that is six (6) months following the later of: 1) the end of the School Board's "Verification Period", after School Board's receipt of Developer's "Completion Notice", as defined in the School Board Agreement; or 2) the CITY's acceptance of the Lee Road Extension; or 3) the "Completion" of the Lee Road Extension, as defined in the School Board Agreement; unless CITY has made a claim in writing to Developer for indemnification under the terms of this Agreement, in which case this Agreement will continue in full force and effect until the full and final resolution of such claim, including appeal periods. At the request of either party, CITY or Developer will execute a document acknowledging the partial termination of this Agreement.

SECTION 5. Conflicts. In case of a conflict between any provision of this Agreement and a provision in the Lee Road Extension Sketch and Description, attached as **Exhibit B**, the provisions of this Agreement shall control.

SECTION 6. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent, the same not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

SECTION 7. Notices: Proper Form.

(a) Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered (1) when hand delivered to the official hereinafter designated, or (2) upon receipt of such notice when deposited in United States mail, postage prepaid, certified mail, return receipt requested, or (3) upon receipt of such notice when deposited with Federal Express or similar overnight courier, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith.

(b) The initial persons to review note as set forth herein are:

(1) CITY:

THE CITY OF WINTER PARK, FLORIDA
Attn: Randy Knight, City Manager
City Management
CITY OF WINTER PARK

401 Park Avenue South
Winter Park, Florida 32789
Telephone: 407-599-3235
Telecopy: 407-599-3436

With a copy to: Usher L. Brown, Esq.
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave., Ste. 2000
Orlando, FL 32801
Telephone: 407-425-9566
Telecopy: 407-425-9596

(2) DEVELOPER: **UP FIELDGATE US INVESTMENTS-
WINTER PARK, LLC**
Attn: Scott Fish
1045 Tulloss Road
Franklin, TN 37067
Telephone: 407-896-1132
Telecopy: 407-278-4208

With a copy to: Johnson Real Estate Law, P.A.
Attn: Paul Johnson, Jr., Esquire
3660 Maguire Boulevard, Ste. 102
Orlando, Florida 32803
Telephone: 407-745-0019
Telecopier: 407-278-4208

(3) DEVELOPER **UP DEVELOPMENT COMPANY, LLC**
Attn: Scott Fish
1045 Tulloss Road
Franklin, TN 37067
Telephone: 407-896-1132
Telecopy: 407-278-4208

SECTION 8. Time of the Essence. Time is hereby declared of the essence in the performance of the duties and obligations of the respective parties to this Agreement.

SECTION 9. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, and venue for any action to enforce the provisions of this Agreement shall be in the Circuit Court in and for Orange County, Florida.

SECTION 10. Effective Date. This Agreement shall become effective upon the date of execution by the last of the parties hereto (the "Effective Date").

SECTION 11. Expenses of Enforcement.

(a) Should either party incur any expenses in enforcing any covenants, terms or conditions of this Agreement, the party in default, as determined by a court of competent jurisdiction, shall pay to the other all expenses so incurred, including reasonable attorneys' and paralegals' fees.

(b) On any third party challenge to this Agreement, the DEVELOPER shall bear all costs of defense.

SECTION 12. Amendments. No amendment, modification or other change in this Agreement shall be binding upon the parties unless in writing and executed by all of the parties hereto.

SECTION 13. Assignment. This Agreement shall not be assigned by either party without the prior written approval of the other, which approval shall not be unreasonable withheld.

SECTION 15. Exhibits. All exhibits to this Agreement shall be deemed to be incorporated into this Agreement as if fully set forth verbatim into the body of this Agreement.

SECTION 16. Public Records. The DEVELOPER shall allow public access to all documents, papers, letters or other materials subject to the provision of Chapter 119, Florida Statutes, and which have been made or received by the DEVELOPER in connection this Agreement.

SECTION 17. Records and Audits. The DEVELOPER shall maintain in its place of business all books, documents, papers and other evidence pertaining in any way to payments made pursuant to this Agreement. Such records shall be available at the DEVELOPER's place of business at all reasonable times during the term of this Agreement and for five (5) years from the date of final payment under this Agreement for audit or inspection by the CITY upon five (5) days prior written notice.

SECTION 18. Conflict of Interest. The DEVELOPER agrees that it will not commit any act in the performance of its obligations pursuant to this Agreement that would create a conflict of interest, as defined by Chapter 112, Florida Statutes.

SECTION 19. Compliance with Laws and Regulations. In performing pursuant to this Agreement, each party hereto shall abide by the respective statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such party, including, but not limited to, those now in effect and hereafter adopted.

SECTION 20. Entire Agreement.

(a) This Agreement embodies and constitutes the entire understandings of the parties with respect to the subject matter addressed herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

(b) This Agreement shall not be deemed to grant any development approval or be deemed to be a development permit or order except as may be specifically set forth herein.

IN WITNESS WHEREOF, the DEVELOPER and the CITY have executed this Agreement as of the day and year first above written.

[signature pages to follow]

Signed, Sealed and Delivered
In the Presence of:

DEVELOPER:

**UP FIELDGATE US INVESTMENTS – WINTER
PARK LLC**, a Florida limited liability company

Signature of Witness #1

Printed Name: _____

By: _____

Scott Fish, Manager

Signature of Witness #2

Printed Name: _____

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by
Scott Fish, as Manager of **UP FIELDGATE US INVESTMENTS – WINTER PARK LLC**
(Owner/Developer), a Florida limited liability company, who is personally known to me or who has
produced _____ as identification and who did (did not) take an oath.

Notary Public

Printed Name: _____

My commission expires: _____

Signed, Sealed and Delivered
In the Presence of:

Signature of Witness #1

Printed Name: _____

Signature of Witness #2

Printed Name: _____

DEVELOPER:

UP DEVELOPMENT COMPANY, LLC, a Florida
limited liability company

By: _____

Print name: _____

Title: _____

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by
_____ the _____ of **UP DEVELOPMENT COMPANY, LLC**, a Florida
limited liability company, who is personally known to me or who has produced
_____ as identification and who did (did not) take an oath.

Notary Public

Printed Name: _____

My commission expires: _____

CITY OF WINTER PARK, FLORIDA

ATTEST:

By: _____
Steven J. Leary, Mayor

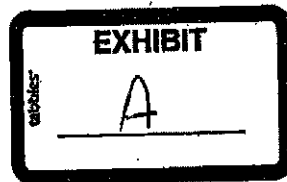
By: _____
City Clerk

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by
Steven J. Leary, Mayor, of the City of Winter Park, Florida, who is personally known to me.

Notary Public
Printed Name: _____
My commission expires: _____

G:\docs\Cities\Winter Park\Real Estate\Whole Foods & Org Co Schools Purchase\Indemnity Agreement\Whole Foods Indemnity Agreement CDR 5-5-15.docx



LEGAL DESCRIPTION

PARCEL A:

PARCEL 1:

THE WEST 330 FEET OF THE EAST 773 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 443 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 212 FEET, WEST 330 FEET, NORTH 212 FEET, EAST 330 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE NORTH 72.00 FEET OF THE EAST 125.00 FEET OF THE WEST 330 FEET OF THE EAST 773.00 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22, SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA.

PARCEL 2:

BEGIN 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 330 FEET, NORTH 118 FEET, EAST 330 FEET.

LESS AND EXCEPT ROADWAY ON NORTH; AND

LESS AND EXCEPT: BEGIN 443 FEET WEST AND 118 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22, SOUTH, RANGE 29 EAST, RUN WEST 125 FEET, NORTH 118 FEET, EAST 125 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼, THENCE SOUTH TO THE POINT OF BEGINNING.

PARCEL 3:

LOTS 1 THRU 9, INCLUSIVE, AND LOTS 13 THRU 38, INCLUSIVE, ALANDALE PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK N, PAGE 7, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 4:

LOTS 10, 11 AND 12, ALANDALE PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK N, PAGE 7, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 5:

THAT PARCEL OF LAND LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE AND NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF FRIENDS AVENUE AND EAST OF ALANDALE PARK AS RECORDED IN PLAT BOOK N, PAGE 7, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 28 OF SAID ALANDALE PARK, THENCE RUN NORTH 00°44'12" EAST ALONG THE EAST LINE OF SAID LOT 28 AND LOT 29 OF SAID ALANDALE PARK A DISTANCE OF 301.15 FEET TO THE NORTHEAST CORNER OF SAID LOT 25, SAID NORTHEAST CORNER BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE; THENCE RUN NORTH 89°52'27" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE 11.80 FEET TO THE NORTHWEST CORNER OF THE FOLLOWING DESCRIBED PARCEL (HEREINAFTER "PARCEL 2")

PARCEL 2:

BEGIN 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 330 FEET, NORTH 118 FEET, EAST 330 FEET, LESS AND EXCEPT ROADWAY ON NORTH; AND LESS AND EXCEPT: BEGIN 443 FEET WEST AND 118 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN WEST 125 FEET, NORTH 118 FEET, EAST 125 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ 443 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼, THENCE SOUTH TO THE POINT OF BEGINNING.

THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE OF DIXON AVENUE RUN SOUTH 00°01'34" WEST ALONG THE WEST BOUNDARY LINE OF PARCEL 2 AND THE WEST BOUNDARY LINE OF THE FOLLOWING DESCRIBED PARCEL:

PARCEL 1:

THE WEST 330 FEET OF THE EAST 773 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, RUN SOUTH 118 FEET, WEST 443 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 212 FEET, WEST 330 FEET, NORTH 212 FEET, EAST 330 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE NORTH 72.00 FEET OF THE EAST 125.00 FEET OF THE WEST 330 FEET OF THE EAST 773.00 FEET OF THE SOUTH 212 FEET OF THE NORTH 330 FEET OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22, SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA;

WHICH BOUNDARY LINE IS ALSO THE WEST LINE OF THE EAST 773.00 FEET OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, A DISTANCE OF 301.12 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SAID FRIENDS AVENUE; THENCE RUN SOUTH 89°52'27" WEST ALONG SAID NORTHERLY RIGHT OF WAY LINE OF FRIENDS AVENUE A DISTANCE OF 15.30 FEET TO THE POINT OF BEGINNING.

COMMENCING AT THE EAST 1/4 CORNER OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, RUN N00°28'18"W, ALONG THE EAST LINE OF THE SOUTHEAST 1/4, OF THE NORTHEAST 1/4, OF SAID SECTION 1, A DISTANCE OF 1444.36 FEET TO THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE RUN S89°15'28"W, ALONG THE NORTH LINE OF THE SAID SOUTHEAST 1/4, OF THE NORTHEAST 1/4, AS SAID LINE IS DEPICTED ON THE FOOT RIGHT-OF-WAY MAPS FOR STATE ROAD 15/600, SECTION NUMBER 75030, F.P. 408429-1, A DISTANCE OF 558.01 FEET, TO A POINT ON THE WEST LINE OF THE EAST 558.00 FEET OF THE AFORESAID SOUTHEAST 1/4, OF THE NORTHEAST 1/4, SAID POINT ALSO BEING THE POINT OF BEGINNING FOR THAT PARCEL BEING DESCRIBED HEREIN; THENCE S00°28'18"E, ALONG SAID WEST LINE OF THE EAST 558.00 FEET, A DISTANCE OF 190.00 FEET, TO A POINT ON THE SOUTH LINE, OF THE NORTH 190.00 FEET, OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE N89°15'28"E, ALONG SAID SOUTH LINE OF THE NORTH 190.00 FEET, RUN A DISTANCE OF 128.00 FEET, TO A POINT ON THE WEST LINE OF THE EAST 443.00 FEET, OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE S00°28'18"E, ALONG SAID WEST LINE OF THE EAST 443.00 FEET, RUN A DISTANCE OF 140.00 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH 330.00 FEET OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE S89°15'28"W, ALONG SAID SOUTH LINE, OF THE NORTH 330.00 FEET, RUN A DISTANCE OF 330.00 FEET, TO A POINT ON THE WEST LINE OF THE EAST 773.00 FEET, OF THE AFOREMENTIONED SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE N00°28'18"W, ALONG SAID WEST LINE OF THE EAST 773 FEET, RUN A DISTANCE OF 28.54 FEET, TO A POINT OF INTERSECTION OF THE EASTERLY PROJECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF FRIENDS AVENUE AS SHOWN ON THE PLAT OF ALANDALE PARK, RECORDED IN PLAT BOOK "N", PAGE 7, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE S89°17'00"W, ALONG EASTERLY PROJECTION AND THE NORTHERLY RIGHT-OF-WAY LINE OF SAID FRIENDS AVENUE, A DISTANCE OF 480.35 FEET, TO THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY OF NORTH ORLANDO AVENUE (US 17-82), AS SAID RIGHT-OF-WAY IS SHOWN ON THE AFOREMENTIONED FOOT RIGHT-OF-WAY MAPS FOR STATE ROAD 15/600, SECTION NUMBER 75030, F.P. 408429-1; THENCE N00°15'52"E, ALONG SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 301.30 FEET, TO A POINT ON THE AFOREMENTIONED NORTH LINE OF THE SOUTHEAST 1/4, OF THE NORTHEAST 1/4; THENCE N89°15'28"E, ALONG SAID NORTH LINE OF THE SOUTHEAST 1/4, OF THE NORTHEAST 1/4, RUN A DISTANCE OF 861.39 FEET, TO THE POINT OF BEGINNING.

PARCEL B:

PARCEL 1:

BEGIN 5 CHAINS SOUTH AND 450 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, THENCE RUN SOUTH 5 CHAINS, THENCE RUN WEST 5 CHAINS, THENCE RUN NORTH 5 CHAINS AND THENCE RUN EAST 5 CHAIN TO THE POINT OF BEGINNING, LESS AND EXCEPT THE SOUTH 114 FEET THEREOF.

PARCEL 2:

ALL OF THE LAND LYING IMMEDIATELY ADJACENT TO AND WEST OF WESTERN BOUNDARY OF THE FOLLOWING REAL PROPERTY:

BEGIN 5 CHAINS SOUTH AND 450 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 28 EAST, THENCE RUN SOUTH 5 CHAINS, THENCE RUN WEST 5 CHAINS, THENCE RUN NORTH 5 CHAINS AND THENCE RUN EAST 5 CHAINS TO THE POINT OF BEGINNING, LESS AND EXCEPT THE SOUTH 114 FEET THEREOF, ALL LOCATED IN ORANGE COUNTY, FLORIDA (PARCEL ID NO. 01-22-28-0000-00018; THE "RCJ2 PROPERTY");

AND LYING EAST OF THE EASTERN BOUNDARY OF THE FOLLOWING REAL PROPERTY:

ALL OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10, BLOCK 4, HAVLAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 0, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; TOGETHER WITH THAT PORTION OF THE NORTH 1/2 OF QUAKER AVENUE (NOW ABANDONED, AS PER RESOLUTION SHOWN IN OFFICIAL RECORDS BOOK 1380, PAGE 601), WHICH LIES IMMEDIATELY ADJACENT TO THE SOUTH LINE OF BLOCK 4, HAVLAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 0, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA (PARCEL ID NO. 01-22-29-3452-04—D102; THE "UP PROPERTY");

AND HAVING AS ITS NORTHERN BOUNDARY THE WESTWARD EXTENSION OF THE NORTH BOUNDARY OF THE RCJ2 PROPERTY AND AS ITS SOUTHERN BOUNDARY THE WESTWARD EXTENSION OF THE SOUTH BOUNDARY OF THE RCJ2 PROPERTY;

AND INCLUDING ALL RIGHTS OF WAY, STREETS, ALLEYS, PASSAGEWAYS, STRIPS, CORES AND OTHER RIGHTS, TITLES AND INTERESTS PERTAINING TO EITHER THE RCJ2 PROPERTY OR THE UP PROPERTY.

PARCEL C:

PARCEL 1:

LOTS 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 17, 18, 19 AND 20, BLOCK 1, HAVLAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 0, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10, BLOCK 4, HAVLAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 0, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; TOGETHER WITH THAT PORTION OF THE NORTH 1/2 OF QUAKER AVENUE VACATED PER RESOLUTION RECORDED IN OFFICIAL RECORDS BOOK 1380, PAGE 601, WHICH LIES IMMEDIATELY ADJACENT TO THE SOUTH LINE OF BLOCK 4, HAVLAH PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 0, PAGE 144, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT THE PORTION OF PARCEL "C" SOUTH OF THE LEB ROAD EXTENSION.

EXHIBIT

tabbies

B

DESCRIPTION:

SKETCH AND DESCRIPTION

A PORTION OF BLOCKS 1, 4 AND A PORTION OF THE VACATED RIGHT OF WAY OF GALLOWAY DRIVE, (ELAH STREET BY PLAT), HAVILAH PARK, AS RECORDED IN PLAT BOOK O, PAGE 144 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, TOGETHER WITH A PORTION OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA. ALSO BEING A PORTION OF BLOCK "B" HOLDEN BROTHERS' ADDITION TO WINTER PARK AS RECORDED IN PLAT BOOK A, PAGE 61 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF BLOCK 4, HAVILAH PARK, AS RECORDED IN PLAT BOOK O, PAGE 144 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE S00°00'01"E, ALONG THE EAST LINE OF SAID HAVILAH PARK, 323.16 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE S00°00'01"E, ALONG SAID EAST LINE, 24.73 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF CHEROKEE AVENUE; THENCE S89°56'14"E, ALONG SAID SOUTH RIGHT OF WAY LINE, 220.50 FEET; THENCE S39°45'05"W, DEPARTING SAID SOUTH RIGHT OF WAY LINE, 73.65 FEET TO A POINT OF A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD BEARING OF S22°53'02"E, AND A RADIUS OF 260.00 FEET THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°31'50", A DISTANCE OF 197.54 FEET TO THE POINT OF TANGENCY; THENCE S01°07'07E, 459.42 FEET; THENCE 57°0244"E, 45.54 FEET TO THE NORTH RIGHT OF WAY LINE OF WEBSTER AVENUE; THENCE S89°45'17"W, ALONG SAID NORTH RIGHT OF WAY LINE, 124.74 FEET TO THE EAST LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9986, PAGE 2648 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N01°06'43"W, ALONG SAID EAST LINE, 507.15 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE S89°55'36"E, DEPARTING SAID EAST LINE, 18.17 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD BEARING OF N51°02'38"W AND A RADIUS OF 200.25 FEET; THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 76°42'23", A DISTANCE OF 268.09 FEET TO THE POINT OF TANGENCY; THENCE N89°23'50"W, 112.72 FEET; THENCE N88°26'44"W, 60.21 FEET; THENCE N89°23'50"W, 218.60 FEET; THENCE S64°45'39"W, 17.44 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 36.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 34°41'32", A DISTANCE OF 21.80 FEET TO THE POINT OF TANGENCY; THENCE S30°04'08"W, 21.73 FEET TO THE EASTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 17-92 AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP OF STATE ROAD 15-600, SECTION 75030, F.P. NO.408429; THENCE N00°51'36"E, ALONG SAID EASTERLY RIGHT OF WAY LINE, 40.46 FEET; THENCE N89°08'24"W, ALONG SAID EASTERLY RIGHT OF WAY LINE, 10.00 FEET TO THE EASTERLY RIGHT OF WAY LINE AND THE WEST LINE OF AFOREMENTIONED HAVILAH PARK; THENCE N00°51'36"E, ALONG SAID EAST RIGHT OF WAY LINE AND SAID WEST LINE, 118.75 FEET; THENCE N88°50'50"E, DEPARTING SAID LINE, 5.15 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A CHORD BEARING OF S25°51'40"E AND A RADIUS OF 36.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 48°47'48" A DISTANCE OF 30.66 FEET TO THE POINT OF TANGENCY; THENCE S50°15'34"E, 18.74 FEET; THENCE S89°23'50"E, 423.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 107,576 SQUARE FEET OR 2.4696 ACRES MORE OR LESS.

LEGEND

C.B. CHORD BEARING
C.A. CENTRAL ANGLE
CH CHORD LENGTH
R RADIUS
L ARC LENGTH
P.B. PLAT BOOK

SURVEYOR'S NOTES:

1. THIS IS NOT A BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE EAST LINE OF HAVILAH PARK ASSUMED AS SHOWN.
3. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER.

Michael D. Cummins, Jr.

MICHAEL D. CUMMINS, JR.
FLORIDA REGISTRATION NUMBER LS5592
FLORIDA LICENSED SURVEYOR AND MAPPER

PREPARED FOR:

UP DEVELOPMENT

**CUMMINS SURVEYING
AND MAPPING, INC.**

2758 Susanday Drive
Orlando, Florida 32812
(407) 894-4254

e-mail: mc5592@bellsouth.net
Certificate of Authorization LB 6983

TECHNICIAN: MDC

ISSUE DATE: 5-21-15

PROJECT NO. 14-36

OVERALL NO POND

SHEET No. 1 OF 2

0' 150' 300' 450'



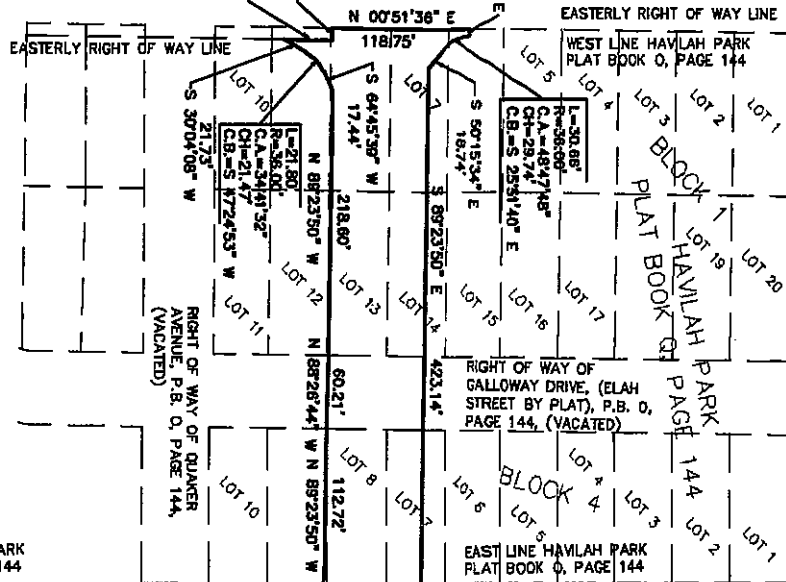
GRAPHIC SCALE: 1" = 150'



U.S. HIGHWAY 17-92

FRIENDS AVENUE

POINT OF COMMENCEMENT
NORTHEAST CORNER OF BLOCK 4
HAMILAH PARK, P.B. O, PAGE 144



EAST LINE HAMILAH PARK
PLAT BOOK O, PAGE 144

PROPERTY DESCRIBED IN
O.R. 9986, PAGE 2648

N 01°08'43" W 507.15'
EAST LINE

S 01°07'07" E 459.42'

BLOCK "B" HOLDEN BROTHERS'
ADDITION TO WINTER PARK,
P.B. A PAGE 61

L=197.54'
R=280.00'
C.A.=43°31'50"
CH=182.82'
CB=S 22°53'02" E

CHEROKEE AVENUE

PREPARED FOR:

UP DEVELOPMENT

**CUMMINS SURVEYING
AND MAPPING, INC.**

2758 Susanday Drive
Orlando, Florida 32812
(407) 894-4254

e-mail: mc5592@bellsouth.net
Certificate of Authorization LB 6983

ISSUE DATE: 5-21-15

SHEET 2 OF 2

SCALE: 1"=150'

OVERALL NO POND



city commission public hearing

Item type	Public Hearing	meeting date	June 8, 2015		
prepared by	Dori Stone	approved by	<input checked="" type="checkbox"/>	City Manager	
department			<input checked="" type="checkbox"/>	City Attorney	
division			<input type="checkbox"/>	N/A	
board approval		<input type="checkbox"/> yes <input type="checkbox"/> no	<input checked="" type="checkbox"/>	N/A	
				final vote	
strategic objective	<input type="checkbox"/>	Exceptional Quality of Life		<input type="checkbox"/>	Fiscal Stewardship
	<input checked="" type="checkbox"/>	Intelligent Growth & Development		<input type="checkbox"/>	Public Health & Safety
	<input type="checkbox"/>	Investment in Public Assets & Infrastructure			

subject

Resolution to extend the time for the Visioning Steering Committee

motion | recommendation

Approve resolution extending the Visioning Steering Committee through August 26, 2016.

background

The City Charter currently establishes a 180 day maximum time frame for **municipal task forces**. The city's visioning effort is anticipated to take approximately 12 months. The Visioning Steering Committee is critical to the success of the visioning process. The attached resolution provides an extended date for the Visioning Steering Committee to August 26, 2016 to provide the necessary length of time for the Committee to lead the visioning effort.

alternatives | other considerations

N/A

fiscal impact

None

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF WINTER PARK, FLORIDA, EXTENDING THE
TERM OF EXISTENCE FOR THE VISIONING STEERING
COMMITTEE; PROVIDING FOR CONFLICTS,
SEVERABILITY AND EFFECTIVE DATE.**

WHEREAS, the City of Winter Park established the Visioning Steering Committee on February 9, 2015; and

WHEREAS, Section 2-46 of the Municipal Code provides that all subsidiary boards of the City shall be established in Chapter 2, Article III, Division 1 of the Code of Ordinances of the City of Winter Park; and

WHEREAS, Section 2-47 of the Municipal Code enumerates all subsidiary boards of the City, and the Visioning Steering Committee is not there established; and

WHEREAS, Section 2-48 of the Municipal Code provides general rules for all subsidiary boards of the City, and in subsection 2-48(n) allows for establishment of municipal task forces, each of which shall have a term of one hundred eighty (180) days unless the term is extended by action of the Commission; and

WHEREAS, by this Resolution the Commission of the City of Winter Park has determined that it is in the public interest to extend the term of the Visioning Steering Committee; and

WHEREAS, the City Commission of the City of Winter Park has determined that the Visioning Steering Committee should have a term of one (1) year to allow it a reasonable opportunity to accomplish its important work.

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

SECTION 1. Extension of the Term of the Visioning Steering Committee.

The Visioning Steering Committee shall have a term of one (1) year ending August 26, 2016. The City Commission may, by future resolution further extend the term of existence of the Visioning Steering Committee as it may determine advisable in the future.

SECTION 2. Severability. If any Section or portion of a Section of this Resolution 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 Resolution.

SECTION 3. Conflicts. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 4. Effective Date. 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 in City Hall, Winter Park, on this _____ day of _____, 2015.

Steve Leary, Mayor

Attest:

Cynthia S. Bonham, City Clerk



city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by	Terry Hotard	approved by	<input checked="" type="checkbox"/> City Manager
department	Electric Utility		<input checked="" type="checkbox"/> City Attorney
division			<input type="checkbox"/> N/A
board approval		<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A	final vote
strategic objective	<input checked="" type="checkbox"/> Exceptional Quality of Life		<input checked="" type="checkbox"/> Fiscal Stewardship
	<input type="checkbox"/> Intelligent Growth & Development		<input checked="" type="checkbox"/> Public Health & Safety
	<input checked="" type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Installation of decorative lighting on Fairbanks Avenue (south side) between Orlando Avenue and Interstate 4

motion | recommendation

Approve the Resolution approving the Joint Participation Agreement (JPA) with Florida Department of Transportation (FDOT) to have decorative lighting installed on the south side of Fairbanks Avenue between Orlando Avenue and Interstate 4

Background

In 2010 The Florida Department of Transportation (FDOT) provided to the City of Winter Park a Fairbanks/Aloma Pedestrian Enhancement Grant. A portion of that grant was used to install decorative poles/light fixtures along the north side of Fairbanks Avenue between Orlando Ave. and I-4. Decorative poles and lights could not be installed on the south side of Fairbanks at that time due to the existence of **Duke Energy's** overhead distribution/transmission power lines.

During FDOT discussions with regards to undergrounding **Duke Energy's** distribution/transmission power lines, FDOT agreed to partially fund decorative poles/light fixtures on the south side of along Fairbanks Avenue between Orlando Ave. and I-4.

alternatives | other considerations

Do not install decorative lights along the south side of Fairbanks to match the light fixtures installed on the north side.

fiscal impact:

The total cost of installing decorative lights along the south side of Fairbanks is \$340,941. Under the JPA, FDOT has agreed to fund \$288,685; leaving the City of Winter Park with the required balance of \$52,256. **City of Winter Park's portion** (\$52,256) has been included in the overall project cost. Once the funds have been encumbered by the FDOT, the City of Winter Park will have up to 5 years to complete the **project**. **The City's share will be included as a budget request in the next few years.** It is expected that the installation of the decorative lighting will take place following the undergrounding of **Duke's transmission and distribution power lines**.

RESOLUTION NO. _____

A RESOLUTION OF THE COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, FOR THE APPROVAL OF THE JOINT PARTICIPATION AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF WINTER PARK – FM# 436862-1-58-01; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the City of Winter Park (“City”) and the Florida Department of Transportation (“FDOT”) is granted legislative authority to enter into this Joint Participation Agreement (“Agreement”) under Section 339.12, Florida Statutes; and

WHEREAS, FDOT is willing, under its Five Year Work Program, to provide funding for the project described as the “Installation of Forty Six (46) HPS Decorative Street Lights on the South Side of State Road 426 (Fairbanks Avenue) between State Road 400/Interstate 4 and State Road 15-600/US 17-92 (Orlando Avenue),” otherwise known as FM #436862-1-58-01 (“Project”); and

WHEREAS, this Project is on the State Highway System, is not intended for revenue producing purposes and follows FDOT’s Five Year Work Program; and

WHEREAS, implementing the Project is in the best interest of both FDOT and City; and

WHEREAS, it would be most practical, expeditious, and economical for City to perform the installation of the decorative lighting as the location of such installation is within City’s borders; and

WHEREAS, the Agreement establishes the terms and conditions required by FDOT to provide City with funding for the installation of such decorative lighting; and

WHEREAS, the City Commission has determined that it is in the public interest to approve and adopt this Agreement; and

WHEREAS, the City Commission has determined that the terms and conditions as stated in the Agreement is fair and reasonable to City.

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

SECTION 1. Approval of the Agreement. The Joint Participation Agreement between the State of Florida Department of Transportation and the City of Winter Park – FM# 436862-1-58-01, will be approved and adopted.

SECTION 2. Severability. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it will not invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION 3. Conflicts. All Resolutions or parts of Resolutions in conflict with any of this Resolution are repealed.

SECTION 4. Effective Date. This Resolution will be 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 8th day of June, 2015.

Steve Leary, Mayor

Attest:

Cynthia S. Bonham, City Clerk

Financial Management No.: 436862-1-58-01 Agency: City of Winter Park Contract No:	Fund: DS Function: 215 Contract Amount: \$288,685.00	FLAIR Approp: 088716 FLAIR Obj.: 320024 Org. Code: 55054010508 Vendor No.: F596000454017
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JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF WINTER PARK

This Agreement, made and entered into this _____ day of _____, 2015, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the DEPARTMENT) and the **CITY OF WINTER PARK**, a Florida Municipal Corporation (hereinafter referred to as the LOCAL GOVERNMENT),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program, to undertake the Project described as the “Installation of Forty Six (46) HPS Decorative Street Lights on the South Side of State Road 426 (Fairbanks Avenue) between State Road 400/Interstate 4 and State Road 15-600/US 17-92 (Orlando Avenue)”, in Fiscal Year 2014/2015, said Project being known as FM #436862-1-58-01, hereinafter referred to as the “Project”; and

WHEREAS, the Project is on the State Highway System, is not revenue producing and is contained in the adopted Five Year Work Program; and

WHEREAS, the implementation of the Project is in the interest of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to perform, or cause to be performed, the services to complete the Project.

WHEREAS, the intent of this Agreement is to establish the terms and conditions of the funding and the production of this Project; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. TERM

A. The term of this Agreement shall begin upon the date of signature of the last party to sign. The LOCAL GOVERNMENT agrees to complete the Project within twenty four (24) months from the date of the execution of this Agreement. If the LOCAL GOVERNMENT does not complete the Project within the time period allotted, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the LOCAL GOVERNMENT and granted in writing by the DEPARTMENT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project.

2. SERVICES AND PERFORMANCES

A. The Project consists of the: excavation of post location, form, place reinforcement, conduit installation, and construction of concrete mat foundation for each pole, set base, set street light and make electrical connection to distribution lines. The LOCAL GOVERNMENT shall perform or cause to be performed all necessary work to complete the Project, as specified in Exhibit "A", Scope of Services attached hereto and by this reference made a part hereof. Nothing herein shall be construed as requiring the LOCAL GOVERNMENT to perform any activity which is outside of the scope of services of the Project.

B. Construction of the Project shall be in accordance with the terms and conditions of a Utility permit that the LOCAL GOVERNMENT will secure from the DEPARTMENT to allow the LOCAL GOVERNMENT to enter onto the DEPARTMENT'S right of way to perform the work required by the Project.

C. The LOCAL GOVERNMENT shall utilize its own forces to perform the construction work for the Project.

D. The LOCAL GOVERNMENT shall be responsible for obtaining clearances/permits required for the construction of the Project from the appropriate permitting authorities.

E. The LOCAL GOVERNMENT shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the terms and conditions of the Utility permit issued by the DEPARTMENT.

F. Upon reasonable request, the LOCAL GOVERNMENT agrees to provide progress reports to the DEPARTMENT in the standard format used by the LOCAL GOVERNMENT and at reasonable intervals established by the DEPARTMENT. The

DEPARTMENT will be reasonably entitled to be advised, at its request, as to the status of work being done by the LOCAL GOVERNMENT and of details thereof. Either party to the Agreement may request and shall, within a reasonable time thereafter, be granted a conference with the other party. Coordination shall be maintained by the LOCAL GOVERNMENT with representatives of the DEPARTMENT.

G. Upon completion of the work authorized by this Agreement, the LOCAL GOVERNMENT shall notify the DEPARTMENT in writing of the completion, the form of which is attached hereto as Exhibit "C," and the LOCAL GOVERNMENT shall comply with all terms and conditions of the Utility permit associated with closing out the permit.

I. Upon completion of the Project, the LOCAL GOVERNMENT shall be responsible for the maintenance of the Highway Lighting constructed under this agreement in accordance with the terms of the "State Highway Lighting Maintenance and Compensation Agreement" previously signed by the parties hereto.

3. COMPENSATION AND REIMBURSEMENT

A. Project Cost: The total estimated cost of the Project is **\$288,685.00 (Two Hundred Eighty Eight Thousand Six Hundred Eighty Five Dollars and No/100).**

B. DEPARTMENT Participation: The DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount not to exceed **\$288,685.00 (Two Hundred Eighty Eight Thousand Six Hundred Eighty Five Dollars and No/100)** for actual costs incurred. The funding for this Project is contingent upon annual appropriation by the Florida Legislature. Travel costs will not be reimbursed.

i) Invoices shall be submitted by the LOCAL GOVERNMENT in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable, and verifiable deliverables as established in Exhibit "A", Scope of Services. Deliverables must be received and accepted in writing by the DEPARTMENT'S Project Manager or designee prior to payment.

ii) Supporting documentation must establish that the deliverables were received and accepted in writing by the LOCAL GOVERNMENT and must also establish that the required minimum level of service to be performed as specified in Paragraph 2. E. was met, and that the criteria for evaluating successful completion as specified in Paragraph 2. G. was met.

iii) The DEPARTMENT will reimburse the LOCAL GOVERNMENT for deliverables upon the completion of all Project services, receipt of final construction cost

documentation and proper submission of a detailed invoice, and proof that the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.

iv) All costs charged to the Project by the LOCAL GOVERNMENT shall be supported by detailed invoices, proof of payments, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

D. The DEPARTMENT shall have the right to retain all or a portion of any payment due the LOCAL GOVERNMENT under this Agreement an amount sufficient to satisfy any amount due and owing to the DEPARTMENT by the LOCAL GOVERNMENT on any other Agreement between the LOCAL GOVERNMENT and the DEPARTMENT.

E. The LOCAL GOVERNMENT which is providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice, the DEPARTMENT has twenty (20) working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the LOCAL GOVERNMENT requests payment. Invoices which have to be returned to the LOCAL GOVERNMENT because of LOCAL GOVERNMENT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at (877) 693-5236.

F. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL GOVERNMENT'S general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors

performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the LOCAL GOVERNMENT to the DEPARTMENT.

G. In the event this Agreement is in excess of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS AND NO/100) and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

H. The DEPARTMENT’S performance and obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving notice to the LOCAL GOVERNMENT to that effect.

4. COMPLIANCE WITH LAWS

A. The LOCAL GOVERNMENT shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The LOCAL GOVERNMENT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof. The LOCAL GOVERNMENT shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Contract.

5. TERMINATION AND DEFAULT

A. This Agreement may be cancelled by the DEPARTMENT in whole, or in part, at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the LOCAL GOVERNMENT shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors.

B. If the DEPARTMENT determines that the performance of the LOCAL GOVERNMENT is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, (b) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the LOCAL GOVERNMENT, the DEPARTMENT shall notify the LOCAL GOVERNMENT of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the LOCAL GOVERNMENT shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL GOVERNMENT.

6. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the LOCAL GOVERNMENT constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the LOCAL GOVERNMENT, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

C. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the Project is completed, any subsequent litigation is complete and terminated, final costs are known, and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

D. **PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

E. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- i) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and
- ii) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

F. All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

DEPARTMENT

Holly Lopenski Program Coordinator MS 4-520 719 South Woodland Boulevard DeLand, Florida 32720-6834 PH: (386) 943-5520 holly.lopenski@dot.state.fl.us	Megan Reinhart Design Project Manager MS 2-546 719 South Woodland Boulevard DeLand, Florida 32720-6834 PH: (386) 943-5252 megan.reinhart@dot.state.fl.us	Vincent Vacchiano Construction Project Manager MS 3-506 719 South Woodland Boulevard DeLand, Florida 32720-6834 (386) 943-5406 vincent.vacchiano@dot.state.fl.us
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LOCAL GOVERNMENT

City of Winter Park
Nikki Johnson
Project Coordinator, Electric Utility Services
401 South Park Avenue
Winter Park, Florida 32789
PH: (407) 643-1661
njohnson@cityofwinterpark.org

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement this _____ day of _____, 2015, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2015.

CITY OF WINTER PARK
By: BOARD OF CITY COMMISSIONERS

By: _____

Name: _____

Title: _____

As approved by the Board on:

Attest:

Legal Review:

City Attorney

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

Name: Frank J. O'Dea, P.E.

Title: Director of Transportation Development

Attest:

Executive Secretary

Legal Review:

Financial Provisions Approval by
the Office of the Comptroller on:

Authorization Received from the Office of
the Comptroller as to Availability of Funds:

EXHIBIT “A”

SCOPE OF SERVICES

Financial Management Number: 436862-1-58-01

Purpose:

The LOCAL GOVERNMENT’S electric utility division shall install Forty Six (46) HPS decorative street lights on the south side of State Road 426 (Fairbanks Avenue) from State Road 400/Interstate 4 to State Road 15-600/US 17-92 (Orlando Avenue). The newly installed street lights will improve the illumination levels of the area and by doing so, improve safety of drivers, bicycle riders, pedestrians and residents. The new street lights will also promote security in urban areas and the aesthetics in Winter Park. The locations of the light poles that need to be installed are as follows:

Street Light Locations:

Sta. 104+73 RT	Sta. 129+42 RT
Sta. 105+90 RT	Sta. 130+45 RT
Sta. 106+69 RT	Sta. 131+41 RT
Sta. 107+64 RT	Sta. 132+54 RT
Sta. 108+61 RT	Sta. 133+60 RT
Sta. 109+55 RT	Sta. 134+55 RT
Sta. 110+65 RT	Sta. 135+68 RT
Sta. 111+49 RT	Sta. 136+64 RT
Sta. 112+41 RT	Sta. 137+82 RT
Sta. 113+37 RT	Sta. 138+47 RT
Sta. 114+29 RT	Sta. 139+48 RT
Sta. 115+55 RT	Sta. 140+35 RT
Sta. 117+02 RT	Sta. 141+20 RT
Sta. 118+20 RT	Sta. 142+14 RT
Sta. 119+82 RT	Sta. 143+07 RT
Sta. 120+97 RT	Sta. 144+23 RT
Sta. 121+82 RT	Sta. 145+31 RT
Sta. 122+92 RT	Sta. 146+42 RT
Sta. 123+87 RT	Sta. 147+81 RT
Sta. 124+97 RT	Sta. 149+49 RT
Sta. 126+54 RT	Sta. 150+84 RT
Sta. 127+74 RT	Sta. 152+39 RT
Sta. 128+63 RT	Sta. 153+24 RT

Maintenance of Illumination Equipment and Facilities:

The following conditions shall apply to the equipment and facilities used to provide the illumination services after illumination services have been installed and begun:

1. The equipment and facilities shall at all times remain the property of and be properly protected and maintained by the LOCAL GOVERNMENT in accordance with the Utility Accommodation Manual and current utility permit for the equipment and facilities.
2. The equipment and facilities shall be maintained by the LOCAL GOVERNMENT. If the LOCAL GOVERNMENT fails to maintain the lighting, the LOCAL GOVERNMENT may terminate the illumination services, provided however, that the LOCAL GOVERNMENT shall first notify the DEPARTMENT in writing and provide the DEPARTMENT with a reasonable opportunity to cure the non-compliance prior to terminating the illumination services.
3. The LOCAL GOVERNMENT, shall not engage in any act or omission which in any way interferes with the provision of illumination services including, without limitation, granting rights to third parties with respect to the equipment and facilities which interferes with the continued provision of illumination services.

EXHIBIT “B”

ESTIMATED SCHEDULE OF FUNDING

Financial Management Number: 436862-1-58-02

For satisfactory completion of all services related to the Installation of Forty Six (46) HPS Decorative Street Lights on the South Side of State Road 426 (Fairbanks Avenue) between State Road 400/Interstate 4 and State Road 15-600/US 17-92 (Orlando Avenue)_detailed in Exhibit “A” (Scope of Work) of this Agreement, the DEPARTMENT will reimburse the LOCAL GOVERNMENT an amount not to exceed **\$288,685.00 (Two Hundred Eighty Eight Thousand Six Hundred Eighty Five Dollars and No/100)** for actual costs incurred.

The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing.

EXHIBIT "C"

NOTICE OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and the CITY OF WINTER PARK**

PROJECT DESCRIPTION: Installation of Forty Six (46) HPS Decorative Street Lights on the South Side of State Road 426 (Fairbanks Avenue) between State Road 400/Interstate 4 and State Road 15-600/US 17-92 (Orlando Avenue)

FINANCIAL MANAGEMENT ID# 436862-1-58-01

In accordance with the Terms and Conditions of the JOINT PARTICIPATION AGREEMENT, the undersigned hereby provides notification that the work authorized by this Agreement is complete as of _____, 20__ and all terms and conditions of Utility permit associated with closing out the permit have been met.

By: _____

Name: _____

Title: _____

EXHIBIT “D”

Resolution

Fairbanks Ave Street Lights (South side)

Project	# of lights	Cost per pole/fixture	Installation Cost	FDOT Allocation	Total per Installed pole/fixture	FDOT portion per pole/fixture	City's portion per pole/fixture
Fairbanks	46	\$5,344.00	\$2,067	\$288,685	\$7,411	\$6,275	\$1,136

City Cost Breakdown

Project	# of lights	Total cost per installed light	FDOT portion per fixture	City's portion per fixture	City's total cost for all 46 fixtures
Fairbanks	46	\$7,411.00	\$6,275.00	\$1,136.00	\$52,256.00



city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by	Terry Hotard	approved by	<input checked="" type="checkbox"/> City Manager
department	Electric Utility		<input type="checkbox"/> City Attorney
division			<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A final vote		
strategic objective	<input checked="" type="checkbox"/> Exceptional Quality of Life <input checked="" type="checkbox"/> Fiscal Stewardship		
	<input type="checkbox"/> Intelligent Growth & Development <input checked="" type="checkbox"/> Public Health & Safety		
	<input checked="" type="checkbox"/> Investment in Public Assets & Infrastructure		

Subject: Installation of additional road-way decorative lighting on Aloma Avenue between Pennsylvania Avenue and Lakemont Avenue

motion | recommendation

Approve the Resolution to approve the Joint Participation Agreement (JPA) with Florida Department of Transportation (FDOT) to have additional decorative lighting installed on Aloma Avenue between Pennsylvania Avenue and Lakemont Avenue

Background

In 2010 the Florida Department of Transportation (FDOT) provided to the City of Winter Park a Fairbanks-Aloma Pedestrian Enhancement Grant. The purpose of the grant was to provide improvements to the existing sidewalks and street lights. A portion of that grant was to be used to install decorative lighting along Aloma/Brewer/Osceola/Fairbanks from Lakemont Avenue to New York Avenue (1.75 miles). Due to lack of funds at that time, a decision was made not to install the decorative poles/fixtures between Cortland Avenue and Shepherd Avenue, leaving the existing wood poles and cobra light fixtures.

City of Winter Park Electric Utility Department and Florida Department of Transportation (FDOT) have negotiated an agreement for the FDOT to provide additional funding (\$111,315) to provide decorative poles/fixture funding for the area between Cortland Avenue and Shepherd Avenue which was not included within the 2010 agreement.

alternatives | other considerations

Do not install additional decorative lighting and live with the exiting wood pole cobra head lighting between Cortland Avenue and Shepherd Avenue.

fiscal impact

The total cost of additional Aloma decorative lighting between Cortland Avenue and Lakemont Avenue is \$118,739. \$111,315 will be reimbursed by FDOT under the JPA. **Winter Park Electric Utility's share will be \$7,424 which will be included in the 2015-2016 budget request.**

RESOLUTION NO. _____

A RESOLUTION OF THE COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, FOR THE APPROVAL OF THE JOINT PARTICIPATION AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF WINTER PARK – FM# 436862-1-58-02; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the City of Winter Park (“City”) and the Florida Department of Transportation (“FDOT”) is granted legislative authority to enter into this Joint Participation Agreement (“Agreement”) under Section 339.12, Florida Statutes; and

WHEREAS, FDOT is willing, under its Five Year Work Program, to provide funding for the project described as the “Installation of Sixteen (16) HPS Decorative Street Lights on the North Side and South Side of State Road 426 (Aloma Avenue) between Pennsylvania Avenue and Lakemont Avenue,” otherwise known as FM #436862-1-58-02 (“Project”); and

WHEREAS, this Project is on the State Highway System, is not intended for revenue producing purposes and follows FDOT’s Five Year Work Program; and

WHEREAS, implementing the Project is in the best interest of both FDOT and City; and

WHEREAS, it would be most practical, expeditious, and economical for City to perform the installation of the decorative lighting as the location of such installation is within City’s borders; and

WHEREAS, the Agreement establishes the terms and conditions required by FDOT to provide City with funding for the installation of such decorative lighting; and

WHEREAS, the City Commission has determined that it is in the public interest to approve and adopt this Agreement; and

WHEREAS, the City Commission has determined that the terms and conditions as stated in the Agreement is fair and reasonable to City.

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

SECTION 1. Approval of the Agreement. The Joint Participation Agreement between the State of Florida Department of Transportation and the City of Winter Park – FM# 436862-1-58-02, will be approved and adopted.

SECTION 2. Severability. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it will not invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION 3. Conflicts. All Resolutions or parts of Resolutions in conflict with any of this Resolution are repealed.

SECTION 4. Effective Date. This Resolution will be 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 _____, 2015.

Steve Leary, Mayor

Attest:

Cynthia S. Bonham, City Clerk

Financial Management No.: 436862-1-58-02 Agency: City of Winter Park Contract No:	Fund: DS Function: 215 Contract Amount: \$111,315.00	FLAIR Approp: 088716 FLAIR Obj.: 320024 Org. Code: 55054010508 Vendor No.: F596000454017
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JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF WINTER PARK

This Agreement, made and entered into this _____ day of _____, 2015, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the DEPARTMENT) and the **CITY OF WINTER PARK**, a Florida Municipal Corporation (hereinafter referred to as the LOCAL GOVERNMENT),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program, to undertake the Project described as the “Installation of Sixteen (16) HPS Decorative Street Lights on the North Side and South Side of State Road 426 (Aloma Avenue) between Pennsylvania Avenue and Lakemont Avenue”, in Fiscal Year 2014/2015, said Project being known as FM #436862-1-58-02, hereinafter referred to as the “Project”; and

WHEREAS, the Project is on the State Highway System, is not revenue producing and is contained in the adopted Five Year Work Program; and

WHEREAS, the implementation of the Project is in the interest of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to perform, or cause to be performed, the services to complete the Project.

WHEREAS, the intent of this Agreement is to establish the terms and conditions of the funding and the production of this Project; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. TERM

A. The term of this Agreement shall begin upon the date of signature of the last party to sign. The LOCAL GOVERNMENT agrees to complete the Project within twenty four (24) months from the date of the execution of this Agreement. If the LOCAL GOVERNMENT does not complete the Project within the time period allotted, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the LOCAL GOVERNMENT and granted in writing by the DEPARTMENT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project.

2. SERVICES AND PERFORMANCES

A. The Project consists of the: excavation of post location, form, place reinforcement, conduit installation, and construction of concrete mat foundation for each pole, set base, set street light and make electrical connection to distribution lines. The LOCAL GOVERNMENT shall perform or cause to be performed all necessary work to complete the Project, as specified in Exhibit "A", Scope of Services attached hereto and by this reference made a part hereof. Nothing herein shall be construed as requiring the LOCAL GOVERNMENT to perform any activity which is outside of the scope of services of the Project.

B. Construction of the Project shall be in accordance with the terms and conditions of a Utility permit that the LOCAL GOVERNMENT will secure from the DEPARTMENT to allow the LOCAL GOVERNMENT to enter onto the DEPARTMENT'S right of way to perform the work required by the Project.

C. The LOCAL GOVERNMENT shall utilize its own forces to perform the construction work for the Project.

D. The LOCAL GOVERNMENT shall be responsible for obtaining clearances/permits required for the construction of the Project from the appropriate permitting authorities.

E. The LOCAL GOVERNMENT shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the terms and conditions of the Utility permit issued by the DEPARTMENT.

F. Upon reasonable request, the LOCAL GOVERNMENT agrees to provide progress reports to the DEPARTMENT in the standard format used by the LOCAL GOVERNMENT and at reasonable intervals established by the DEPARTMENT. The

DEPARTMENT will be reasonably entitled to be advised, at its request, as to the status of work being done by the LOCAL GOVERNMENT and of details thereof. Either party to the Agreement may request and shall, within a reasonable time thereafter, be granted a conference with the other party. Coordination shall be maintained by the LOCAL GOVERNMENT with representatives of the DEPARTMENT.

G. Upon completion of the work authorized by this Agreement, the LOCAL GOVERNMENT shall notify the DEPARTMENT in writing of the completion, the form of which is attached hereto as Exhibit "C," and the LOCAL GOVERNMENT shall comply with all terms and conditions of the Utility permit associated with closing out the permit.

H. Upon completion of the Project, the LOCAL GOVERNMENT shall be responsible for the maintenance of the Highway Lighting constructed under this agreement in accordance with the terms of the "State Highway Lighting Maintenance and Compensation Agreement" previously signed by the parties hereto.

3. COMPENSATION AND REIMBURSEMENT

A. Project Cost: The total estimated cost of the Project is **\$111,315.00 (One Hundred Eleven Thousand Three Hundred Fifteen Dollars and No/100)**.

B. DEPARTMENT Participation: The DEPARTMENT agrees to reimburse the LOCAL GOVERNMENT in an amount not to exceed **\$111,315.00 (One Hundred Eleven Thousand Three Hundred Fifteen Dollars and No/100)** for actual costs incurred. The funding for this Project is contingent upon annual appropriation by the Florida Legislature. Travel costs will not be reimbursed.

i) Invoices shall be submitted by the LOCAL GOVERNMENT in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable, and verifiable deliverables as established in Exhibit "A", Scope of Services. Deliverables must be received and accepted in writing by the DEPARTMENT'S Project Manager or designee prior to payment.

ii) Supporting documentation must establish that the deliverables were received and accepted in writing by the LOCAL GOVERNMENT and must also establish that the required minimum level of service to be performed as specified in Paragraph 2. E. was met, and that the criteria for evaluating successful completion as specified in Paragraph 2. G. was met.

iii) The DEPARTMENT will reimburse the LOCAL GOVERNMENT for deliverables upon the completion of all Project services, receipt of final construction cost

documentation and proper submission of a detailed invoice and when the Project has been inspected, approved, and accepted to the satisfaction of the DEPARTMENT in writing.

iv) All costs charged to the Project by the LOCAL GOVERNMENT shall be supported by detailed invoices, proof of payments, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

D. The DEPARTMENT shall have the right to retain all or a portion of any payment due the LOCAL GOVERNMENT under this Agreement an amount sufficient to satisfy any amount due and owing to the DEPARTMENT by the LOCAL GOVERNMENT on any other Agreement between the LOCAL GOVERNMENT and the DEPARTMENT.

E. The LOCAL GOVERNMENT which is providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice, the DEPARTMENT has twenty (20) working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount. Interest penalties of less than one dollar (\$1.00) will not be enforced unless the LOCAL GOVERNMENT requests payment. Invoices which have to be returned to the LOCAL GOVERNMENT because of LOCAL GOVERNMENT preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at (877) 693-5236.

F. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL GOVERNMENT'S general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors

performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs. Any discrepancies revealed by any such audit shall be resolved by a corrected final billing from the LOCAL GOVERNMENT to the DEPARTMENT.

G. In the event this Agreement is in excess of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS AND NO/100) and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

H. The DEPARTMENT’S performance and obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving notice to the LOCAL GOVERNMENT to that effect.

4. COMPLIANCE WITH LAWS

A. The LOCAL GOVERNMENT shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The LOCAL GOVERNMENT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof. The LOCAL GOVERNMENT shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Contract.

5. TERMINATION AND DEFAULT

A. This Agreement may be cancelled by the DEPARTMENT in whole, or in part, at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the LOCAL GOVERNMENT shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors.

B. If the DEPARTMENT determines that the performance of the LOCAL GOVERNMENT is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, (b) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the LOCAL GOVERNMENT, the DEPARTMENT shall notify the LOCAL GOVERNMENT of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the LOCAL GOVERNMENT shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total

work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL GOVERNMENT.

6. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the LOCAL GOVERNMENT constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the LOCAL GOVERNMENT, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

C. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the Project is completed, any subsequent litigation is complete and terminated, final costs are known, and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

D. **PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or

perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

E. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- i) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and
- ii) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

F. All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

DEPARTMENT

Holly Lopenski Program Coordinator MS 4-520 719 South Woodland Boulevard DeLand, Florida 32720-6834 PH: (386) 943-5520 holly.lopenski@dot.state.fl.us	Megan Reinhart Design Project Manager MS 2-546 719 South Woodland Boulevard DeLand, Florida 32720-6834 PH: (386) 943-5252 megan.reinhart@dot.state.fl.us	Vincent Vacchiano Construction Project Manager MS 3-506 719 South Woodland Boulevard DeLand, Florida 32720-6834 (386) 943-5406 vincent.vacchiano@dot.state.fl.us
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LOCAL GOVERNMENT

City of Winter Park
Nikki Johnson
Project Coordinator, Electric Utility Services
401 South Park Avenue
Winter Park, Florida 32789
PH: (407) 643-1661
njohnson@cityofwinterpark.org

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement this _____ day of _____, 2015, and the DEPARTMENT has executed this Agreement this _____ day of _____, 2015.

CITY OF WINTER PARK
By: BOARD OF CITY COMMISSIONERS

By: _____

Name: _____

Title: _____

As approved by the Board on:

Attest:

Legal Review:

City Attorney

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

Name: Frank J. O'Dea, P.E.

Title: Director of Transportation Development

Attest:

Executive Secretary

Legal Review:

Financial Provisions Approval by
the Office of the Comptroller on:

Authorization Received from the Office of
the Comptroller as to Availability of Funds:

EXHIBIT “A”

SCOPE OF SERVICES

Financial Management Number: 436862-1-58-02

Purpose:

The LOCAL GOVERNMENT’S electric utility division shall install sixteen (16) HPS decorative street lights on the north side and south side of State Road 426 (Aloma Avenue) between Pennsylvania Avenue and Lakemont Avenue. The newly installed street lights will improve the illumination levels of the area and by doing so, improve safety of drivers, bicycle riders, pedestrians and residents. The new street lights will also promote security in urban areas and the aesthetics in Winter Park. The locations of the light poles that need to be installed are as follows:

Street Light Locations:

Sta. 87+03 RT
Sta. 88+03 LT
Sta. 88+93 RT
Sta. 89+93 LT
Sta. 90+88 RT
Sta. 91+84 LT
Sta. 92+74 RT
Sta. 93+84 LT
Sta. 94+84 RT
Sta. 95+79 LT
Sta. 96+84 RT
Sta. 97+84 LT
Sta. 98+64 RT
Sta. 99+74 LT
Sta. 100+81 RT
Sta. 101+84 LT

Maintenance of Illumination Equipment and Facilities:

The following conditions shall apply to the equipment and facilities used to provide the illumination services after illumination services have been installed and begun:

1. The equipment and facilities shall at all times remain the property of and be properly protected and maintained by the LOCAL GOVERNMENT in accordance with the Utility Accommodation Manual and current utility permit for the equipment and facilities.
2. The equipment and facilities shall be maintained by the LOCAL GOVERNMENT. If the LOCAL GOVERNMENT fails to maintain the lighting, the LOCAL GOVERNMENT may

terminate the illumination services, provided however, that the LOCAL GOVERNMENT shall first notify the DEPARTMENT in writing and provide the DEPARTMENT with a reasonable opportunity to cure the non-compliance prior to terminating the illumination services.

3. The LOCAL GOVERNMENT shall not engage in any act or omission which in any way interferes with the provision of illumination services including, without limitation, granting rights to third parties with respect to the equipment and facilities which interferes with the continued provision of illumination services.

EXHIBIT “B”

ESTIMATED SCHEDULE OF FUNDING

Financial Management Number: 436862-1-58-02

For satisfactory completion of all services related to the Installation of Sixteen (16) HPS Decorative Street Lights on the North Side and South Side of State Road 426 (Aloma Avenue) between Pennsylvania Avenue and Lakemont Avenue detailed in Exhibit “A” (Scope of Work) of this Agreement, the DEPARTMENT will reimburse the LOCAL GOVERNMENT an amount not to exceed **\$111,315.00 (One Hundred Eleven Thousand Three Hundred Fifteen Dollars and No/100)** for actual costs incurred.

The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing.

EXHIBIT “C”

NOTICE OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and the CITY OF WINTER PARK**

PROJECT DESCRIPTION: Installation of Sixteen (16) HPS Decorative Street Lights on the North Side and South Side of State Road 426 (Aloma Avenue) between Pennsylvania Avenue and Lakemont Avenue

FINANCIAL MANAGEMENT ID# 436862-1-58-02

In accordance with the Terms and Conditions of the JOINT PARTICIPATION AGREEMENT, the undersigned hereby provides notification that the work authorized by this Agreement is complete as of _____, 20__ and all terms and conditions of Utility permit associated with closing out the permit have been met.

By: _____

Name: _____

Title: _____

EXHIBIT “D”

Resolution

Financial Management Number: 436862-1-58-02

Aloma Ave Street Lights (the "GAP")

Project	# of lights	Cost per pole/fixture	Installation Cost	FDOT Allocation	Total per Installed pole/fixture	FDOT portion per pole/fixture	City's portion per pole/fixture
Aloma	16	\$5,354.00	\$2,067	\$111,315	\$7,421	\$6,957	\$464

City Cost Breakdown

Project	# of lights	Total cost per installed light	FDOT portion per fixture	City's portion per fixture	City's total cost for all 46 fixtures
Aloma	16	\$7,421.00	\$6,957.00	\$464.00	\$7,424.00



city commission public hearing

item type	Public Hearing	meeting date	June 8, 2015
prepared by	Jerry Warren	approved by	<input checked="" type="checkbox"/> City Manager
department	Electric Utility		<input checked="" type="checkbox"/> City Attorney
division			<input type="checkbox"/> N/A
board approval	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A 7-0 final vote		
strategic objective	<input checked="" type="checkbox"/> Exceptional Quality of Life <input checked="" type="checkbox"/> Fiscal Stewardship		
	<input checked="" type="checkbox"/> Intelligent Growth & Development <input type="checkbox"/> Public Health & Safety		
	<input type="checkbox"/> Investment in Public Assets & Infrastructure		

Subject: Fairbanks Undergrounding

motion | recommendation

- 1) Authorize the Mayor to execute the Agreement Regarding Construction of Underground Electric Distribution Lines with Duke Energy Florida
- 2) Approve the Resolution approving the Joint Participation Agreement (JPA) with Florida Department of Transportation (FDOT) to reimburse the City for **undergrounding Duke Energy's** distribution facilities along Fairbanks between Orlando Avenue and I-4 (Project ID: 433788-1-56-02)
- 3) Authorize the Mayor to execute the three party agreement with Duke Energy, the Florida Department of Transportation.

Background:

In 2012, through the efforts of Speaker of the House Dean Cannon and various local leaders, the FDOT agreed to provide funds to underground Duke Energy's transmission and distribution wires along west Fairbanks from Harper Street to I-4. The City of Winter Park believes that removal of the unsightly power lines along Fairbanks is an essential ingredient to improving the aesthetics and the long-term economic development of this important gateway road to the City. Since that time, Staff has had ongoing discussions/negotiations with Duke Energy and FDOT to bring that project to fruition.

As a first step, the FDOT agreed to fund the engineering associated with the undergrounding of the high voltage (69,000 volts) transmission line. In 2013 Duke retained an independent engineering firm (Power Engineers) to prepare the design and estimate the cost to underground the transmission line. While the engineering for the transmission element of the project was under way, City staff continued to discuss the distribution component with Duke. It was during these discussions that staff learned that Duke was unwilling to handle the customer service wires and

connections to the future underground distribution system. It became apparent that **Duke's position would become a significant** obstacle to moving the project forward. As a result, Winter Park staff negotiated an arrangement with Duke Energy whereby the City would design and construct the distribution portion of the project on behalf of Duke (attached Agreement Regarding Construction of Underground Electric Distribution Lines. Under that agreement, the City will essentially serve as a contractor to Duke and will design and construct the underground distribution facilities along Fairbanks in consistent **with Duke's** materials and construction standards and in accordance with a design approved by Duke. Under the agreement, Duke has no financial obligations as relates to the construction of the project.

Under the Joint Participation Agreement between the City and FDOT (Project ID: 433788-1-56-02), the FDOT agrees to reimburse the City up to \$3,076,602.29 for the costs that it incurs in carrying out its responsibilities under the Agreement with **Duke (i.e. undergrounding Duke's distribution facilities** along Fairbanks). Although staff can make no guarantees with regard to the actual cost to carry out its obligations under the Duke agreement, staff believes based on its own estimates that the cost will be less than or equal to the maximum reimbursement amount contained in the JPA with FDOT. It should be noted that if the actual cost of the distribution component exceeds the reimbursement amount, FDOT can transfer excess monies, if any from the transmission portion of the project to cover increased costs. **If excess monies from the transmission project are not available or are insufficient to cover actual costs above the reimbursable amount, then the City will be responsible for such costs.**

Under the three party agreement (City of Winter Park, Duke, and FDOT), FDOT agrees to reimburse Duke for its costs of placing the high voltage transmission lines underground up to a maximum amount of \$8,450,172.00. Duke presented **Power Engineers' estimate** for the transmission last summer at a meeting including representatives of Duke, the City of Winter Park, and FDOT. Although staff can make **no guarantees, it is staff's opinion that the project can be constructed at a cost that** is equal or less than the amount reimbursable by FDOT. It should be noted that if the actual cost of the transmission component exceeds the reimbursement amount, FDOT can transfer excess monies, if any from the distribution portion of the project to cover increased costs. **If excess monies from the distribution project are not available or are insufficient to cover actual costs above the reimbursable amount, then the City will be responsible for such costs.**

Although staff would prefer to offer agreements that have no risk to the city that is not possible in this situation. When considering the positions of the three parties: The FDOT has a maximum amount of approximately \$11.5 million available to fund this project; Duke has no reason to bury its transmission and distribution lines along Fairbanks and therefore is unwilling to undertake any financial responsibility. That leaves the risk of cost overruns on the back of the City. Staff believes this project is essential to the economic development of west Fairbanks and concluded that if estimates for the project had exceeded the FDOT reimbursable amount of approximately **\$11.5 million, it would still be in the city's best interest to take the** funding amounts offered by FDOT and to add its own money, as required to complete the project.

alternatives | other considerations

To not accept the FDOT funding for the project and the concomitant risks associated with the project's construction.

fiscal impact

To the degree that the project in total (transmission + distribution) is completed at an amount equal to or less than the maximum reimbursable amount, there will be no fiscal impact on the city. If there are cost overruns, and additional funding is required staff recommends that such overruns be funded by the electric department's undergrounding program and the undergrounding program be deferred as required sufficient to fund the deficiency.

**AGREEMENT REGARDING CONSTRUCTION OF UNDERGROUND
ELECTRIC DISTRIBUTION LINES**

The City of Winter Park, Florida (“City”) enters this Agreement with Duke Energy Florida, Inc. d/b/a Duke Energy (“Duke”), to provide for the undergrounding, including engineering and construction, of Duke’s overhead electric distribution lines along Fairbanks Avenue in the City of Winter Park from Interstate 4 (“I-4”) to U.S. 17-92 (North Orlando Avenue) (collectively referred to herein as the “Project”). Separate from and not covered by this Agreement, Duke, will underground its overhead 69 kV transmission line (“Transmission Project”), which is co-located on the same poles as the overhead electric distribution facilities, which distribution facilities are to be placed underground, in accordance with this Agreement.

For the consideration specified herein, the adequacy of which is deemed to be sufficient by the parties, including the mutual exchange of promises made herein, the parties do agree as follows:

1. Scope of the Agreement and Responsibilities of the City. The City shall provide the following services (collectively referred to herein as the “Services”):

- a. Develop the design, hereinafter “The Design” for the Project for Duke’s review and approval. Duke’s review and approval will be prompt, and approval shall not be unreasonably withheld by Duke. Upon approval by Duke of The Design, the City shall provide completed detailed engineering design plans adhering to Duke specifications with a complete list of compatible units for all materials required.
- b. Based upon The Design, the City shall, utilizing its own procurement processes, prepare the site for construction including any remediation if

necessary and construct the Project by installing the new underground distribution system along Fairbanks, from U.S. 17-92 to the east to I-4 to the west and legally remove and dispose of existing facilities as described in The Design. Construction will be in accordance with The Design subject to the procedures and requirements of this Agreement.

- c. Promptly after the execution of this Agreement, the City shall prepare and submit for Duke's review and comment, a schedule for the entire Project. The City shall periodically update the schedule, for Duke's review and comment, providing status of the Services and the Project.
- d. The parties shall cooperate, and representatives of Duke shall have the right at all times to observe and comment upon ongoing Services.
- e. The City shall be required to secure and pay for all necessary permits, licenses, easements, rights-of-way or other appropriate real property interests required to complete the Services and the Project, all of which will be secured in Duke's name and with the forms acceptable and provided by Duke.
- f. The City is responsible for making all necessary arrangements with all affected Duke customers to prepare their premises and service entrances in a timely manner for underground service, at no cost to Duke and to perform the Services so as to minimize interruptions to such customers' service.
- g. The City is responsible for making all arrangements necessary with all other utilities or joint users of Duke's above ground facilities (including

telephone and cable) to remove their equipment and facilities at no cost to Duke.

- h. The City is responsible for ensuring that Duke's distribution facilities are not damaged, destroyed, interfered with, interrupted or otherwise adversely impacted during the performance of the City's Services hereunder. This obligation extends not only to the City's employees, but also to any contractors, subcontractors, consultants or agents of the City. The City is responsible for the full cost of repairing, replacing and correcting any such damage, destruction or disturbance.
- i. The City acknowledges and agrees that it has been provided and is aware of Duke's construction specifications, including without limitation those related to safety criteria, and agrees that it will perform the construction portion of the Services hereunder in accordance with such criteria. When the City believes the Project is substantially complete, Duke and the City will conduct an inspection of the Services. If Duke and the City are in agreement that the Services are substantially completed, the City shall prepare for Duke's review and approval a list of items that must be completed and/or corrected prior to the Project being fully completed. Once that list is mutually agreed upon by the City and Duke, the City will promptly ensure that such items are completed and corrected in a timely manner.
- j. If the City wishes to perform any construction portion of the Services outside of normal business hours, the City must provide a written request

to Duke. The City will endeavor to provide said requests at least five (5) business days prior to the date the City wishes to do so. Duke may approve or disapprove such request for any reason, in its sole discretion. Further, City acknowledges and agrees that any construction portion of the Services, including the timing thereof, is subject to approval by Duke's Distribution Control Center.

- k. In cooperation with Duke, upon substantial completion of the Project in accordance with The Design, the parties shall energize the new underground distribution system.
- l. Subject to all conditions of this Agreement being satisfactorily performed by the parties, upon completion of the Project, title to the underground distribution system will be conveyed by the City to Duke as provided further in Section 8 below.

2. Other Obligations of the City.

- a. The City assumes all responsibility and obligations, as they relate to the Services, with respect to any changed or concealed conditions or any other differing site conditions, including without limitation the existence of and any necessary remediation of any hazardous materials, it being agreed that Duke shall not have any responsibility, financial or otherwise, or obligations with respect to the same whatsoever.
- b. Subject to the limitations set forth in section 768.28, Florida Statutes, the City shall indemnify, defend and hold harmless Duke (including its parent, subsidiary and affiliate companies) from and against all claims, damages,

losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts or omissions of the City, the City's employees, agents, contractor, or consultants, or anyone for whom any of them may be liable. Nothing in the Agreement shall be deemed to affect the rights, privileges and immunities of either party as set forth in Section 768.28, Florida Statutes. Only the parties to this Agreement shall have any rights arising out of or standing to enforce any provision hereof, and there are no third party beneficiaries intended or otherwise created or established by this Agreement."

- c. The City shall select qualified contractors and consultants to perform the Services on behalf of the City. The City shall ensure the following requirements are included in all agreements with any such contractor and consultant: (1) Duke will be an additional indemnified party to the same extent the City is indemnified thereunder; (2) Duke will be an additional insured on all insurance policies required to be provided by the contractor or consultant, except for any workers' compensation or professional liability insurance policies; and (3) Duke will be identified as an intended third-party beneficiary thereunder, including all warranties. Additionally, the City shall ensure that all such contractors and consultants maintain

insurance in accordance with the minimum requirements set forth in Exhibit A, attached hereto and made a part hereof by this reference.

- d. The City warrants to Duke that materials and equipment furnished hereunder will be of good quality and new unless otherwise required or permitted by The Design and that the Project will be free from defects and will conform to the requirements of The Design.
- e. The City represents and warrants to Duke that Duke will not be required to make payment of any costs or expenses of any nature with respect to the Services or the Project, it being agreed that all such costs and expenses will be paid by FDOT or the City. If any cost or expense is incurred by Duke, other than those relating to Duke's normal day-to-day activities, as a result of the Services or the Project, including without limitation any costs or expenses incurred by Duke as a result of Project site management, inspections of the Services, and review of the design, the City acknowledges and agrees that it will reimburse Duke for such costs and expenses promptly upon demand.
- f. The City shall be liable for any claims, damages, losses or expenses alleged against or incurred by Duke arising out of or resulting from performance of the Services and due to the acts or omissions of City, the City's employees, agents, contractors, or consultants, or anyone for whom any of them may be liable.
- g. The City represents and warrants to Duke that the City and any of its contractors have the requisite skill and expertise necessary to perform the

Services including those related to the design, construction and conversion of overhead distribution lines to underground distribution lines.

3. Conditions Precedent to Construction. None of the construction portion of the Services shall commence until the following conditions precedent have been satisfied, all of which conditions must be satisfied within 60 days after the Effective Date or this Agreement shall be deemed null and void unless the time period for satisfying all conditions is extended in writing by the mutual agreement of the parties:

- a. The City enters a Joint Participation Agreement with the Florida Department of Transportation (“FDOT”) satisfactory to the parties, which Joint Participation Agreement will provide for, permit and fund the Services and the Project. The Joint Participation Agreement will provide, to the satisfaction of the City, for a timely and prompt process by which the City will be reimbursed for all costs of undergrounding, designing and constructing the Project.
- b. All permits, licenses, easements, rights-of-way or other appropriate real property interests required by this Agreement have been obtained by or on behalf of the City in the name of Duke and Duke has received an easement from City allowing Duke to access the underground distribution lines in accordance with this Agreement prior to the installation of any electrical facilities.
- c. Duke agrees to engineering and construction standards that are fully compensated and reimbursed as a result of a grant from or through FDOT.

It is currently anticipated that there will be sufficient funding from FDOT to cover the entire cost of the conversion of both transmission lines and distribution lines (the “Estimated Funding”). If the actual amount of available and committed FDOT grant funding for completing the conversion of both the transmission lines and distribution lines is less than the Estimated Funding, then the parties will work cooperatively to consider alternatives whereby the City may elect to fund the shortfall and the parties may engage in a value engineering process if such can be reasonably and lawfully accomplished to complete the Project within the actual amount of FDOT grant funding plus funds from the City, if any. If conversion of both the transmission lines and distribution lines cannot be completed within actual amount of available FDOT grant funds along with funds from the City, if any, and taking into consideration any agreed-upon value engineering, then either party may terminate this Agreement by providing written notice thereof to the other party and in such event neither party shall have any further obligations hereunder.

- d. This Agreement is subject to the condition that the City Manager and City Attorney for the City certify in writing that the joint participation agreement and grant funding made available by or through FDOT is a legally binding obligation of the City, the State of Florida or FDOT. City warrants that it is aware of no illegality or bar to the complete enforcement of the joint participation agreement and/or FDOT Grant subject to applicable law and the provisions of such Agreement and Grant.

4. Obligations of Duke.

- a. Duke will cooperate with both FDOT and the City to assist the City to the extent reasonably possible, in achieving a design and cost of construction that is within the Estimated Budget. However, Duke makes no warranty, express or implied, to the City that the design and cost of construction of the Project can be accomplished within the Estimated Budget or the actual amount of available FDOT grant funding, if less than the Estimated Budget.
- b. The parties shall cooperate, and representatives of Duke shall have the right at all times to observe and comment upon ongoing Services.
- c. Duke shall endeavor to respond within fourteen (14) calendar days to each submittal or request for approval made by the City during the course of design and construction.
- d. The City acknowledges and agrees that, prior to performing any construction portion of the Services required hereunder, the City and its contractors will be required to attend a vendor orientation to be held at Duke's training facilities. From time to time, upon Duke's request, Duke will coordinate with the City and its contractor for purposes of inspecting the construction portion of the Services. Duke will provide a job site inspector to be onsite from time to time as required during the course of construction of the Project. The City will reimburse Duke for the expense associated with such inspector. Duke shall have the responsibility to report to the City and its contractor (by reporting in writing to the

designees of the City Manager and its contractor) all deficiencies or nonconformance in the construction portion of the Services actually observed. Duke, however, has no obligation to detect nonconformance or insufficiency in such Services and the City shall be responsible for the Services and will hold its design professionals and contractor fully responsible therefor. If at any time Duke reasonably believes the City or any of its contractors are performing any portion of the Services in a manner that is unsafe or otherwise not in accordance with the requirements of this Agreement, Duke may issue a written order to the City to stop performance of the Services, or any portion thereof, until the cause for such order has been eliminated; however, the right of Duke to stop performance of the Services shall not give rise to a duty on the part of Duke to exercise this right for the benefit of the City or any other person or entity.

5. Agreed Provisions of Law for the Work and Administration. The parties agree that Chapter 119 (Florida's Public Records Act) shall apply to documents made, received and maintained in connection with the City's design and construction of the Project, as well as other matters associated with the City's undergrounding of the electric distribution lines and subsequent conveyance to Duke. The City acknowledges and agrees that it may not utilize any portion of the design for this Project on any other project without the express prior written consent of Duke.

In addition to the applicability of Chapter 119, the parties also agree that the City shall, to the fullest extent allowed by law, have the authority in its construction contracting to utilize the

direct purchase program as a lawful means for avoiding the cost of sales tax with respect to materials purchased for the Project and agrees to reimburse Duke for any cost, damage, loss and expense, including but not limited to interest, penalties and attorneys' fees, which Duke may incur that arise out of or relate to such direct purchase program.

6. Venue. Venue and exclusive jurisdiction of any dispute arising out of the performance of this Agreement or the work performed as a result of this Agreement shall be exclusively and mandatorily in the state circuit court of appropriate jurisdiction in Orange County, Florida.

7. Sovereign Immunity. Except for liability otherwise expressly assumed in this Agreement, the City retains and reserves all of its rights and benefits of sovereign immunity under federal law, Florida common law, and under Section 768.28, Florida Statutes, as it may be amended from time to time.

8. Conveyance of Improvements. Upon City's determination that the Project is substantially completed, it will notify Duke and provide to Duke a punchlist of Services that are either incomplete or defective. Duke will endeavor to inspect the Project within fourteen (14) days of its receipt of such notice and punchlist, adding any additional items to the punchlist that must be completed by the City before it will accept the conveyance of the underground distribution system. The City shall thereafter have a reasonable amount of time, working with its contractor and any required replacement contractor to correct and complete the Services noted on the punchlist. This process will be repeated until all Services are fully completed in accordance with The Design and this Agreement and accepted by Duke.

After completion of the punchlist, the City shall convey the underground distribution system to Duke, at no cost to Duke and by bill of sale, the form of which is attached hereto and made a part of this Agreement as Exhibit B.

After conveyance, subject to the City's (and its contractors' and consultants') warranty of the Services, Duke and its successors shall have the responsibility to repair, maintain, upgrade and service the underground distribution lines. Duke shall have the right by easement secured by the City on behalf of Duke to access the property for purposes of making such improvements, maintenance and repair as needed.

9. Miscellaneous Legal Provisions.

- a. Each party shall bear its own legal fees with respect to any litigation that may arise out of this Agreement or litigation involving disputes concerning the construction or quality of construction of the Services, including the underground electric distribution lines installed by the City pursuant to this Agreement.
- b. The Agreement constitutes the entire understanding between Duke and the City relating to the subject matter hereof, superseding any prior or contemporaneous agreements or understanding between the parties. The parties shall not be bound by or be liable for any statement, prior negotiation, correspondence, representation, promise, draft agreements, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition, or instruction used in this Agreement.

- c. No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both parties and specifically states it is an amendment to this Agreement.
- d. There shall be no waiver by either party of any right, remedy, term, condition, or provision of this Agreement unless such waiver is expressed in writing and signed by the party against which such waiver is sought to be enforced. Nor shall any usage of trade, course of dealing, practice of performance, or failure to strictly enforce any term, right, obligation or provision of this Agreement by either party be construed as a waiver of any provision herein unless such waiver is expressed in writing and signed by the party against which such waiver is sought to be enforced.
- e. In the event any provision, or any part or portion of any provision of this Agreement shall be deemed or defined by any law or order of any court or any governmental agency, or regulatory body having jurisdiction over either party, or held or declared by a court of competent jurisdiction to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the parties shall be reduced or abated only to the extent required to remove or cure such illegal or unenforceable portion, so long as the Agreement is not affected in a manner or to the extent which would

render it economically, technically, materially, or commercially infeasible to either party.

- f. Neither termination nor cancellation of this Agreement shall be deemed to relieve the parties of any obligations hereunder that by their nature survive termination or cancellation including, but not limited to, all warranty and indemnification obligations.
- g. The headings used throughout this Agreement are inserted for reference purposes only and are in no way to be construed as a limitation of the scope of the particular sections to which they refer.

10. Effective Date. This Agreement is effective as of _____, 2014.

CITY OF WINTER PARK

ATTEST:

By: _____
Steve Leary, Mayor

Cynthia Bonham, City Clerk

DUKE ENERGY FLORIDA, INC.

ATTEST:

By: _____
Printed Name: _____
Title: _____

EXHIBIT A

INSURANCE REQUIREMENTS

Commencing with the performance of the Services hereunder, and continuing during any performance of Services under the Agreement including during the performance of any warranty services, City (and any of its contractors working on the project) shall maintain or cause to be maintained occurrence form insurance policies as follows:

(a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$1,000,000 each accident/employee/disease;

(b) Commercial General Liability Insurance having a limit of at least \$2,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability (which shall continue for at least three (3) years after completion), premises and operations liability coverage;

(c) Commercial/Business Automobile Liability Insurance (including owned, non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage, with any fellow employee exclusion removed, and contractual liability;

(d) Umbrella/Excess Liability insurance with limits of at least \$1,000,000 per occurrence and follow form of the underlying Commercial General Liability and Automobile Liability insurance, and provide at least the same scope of coverages thereunder;

(e) if engineering, consulting, design, or other professional services are to be performed under the Agreement, Professional Liability/Errors & Omissions (E&O) Insurance (claims-made form acceptable with reporting requirements of at least three (3) years after completion) with no resulting bodily injury or property damage exclusion in the amount of at least \$1,000,000 each claim;

(f) if Services under this Agreement include handling environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least three (3) years after completion) ; and

(g) if the City and or its Contractor have access to personally identifiable information, including but not limited to Duke's employees' or customers' social security numbers or personal financial information ("Personally Identifiable Information"), Cyber Risk/Privacy Data protection liability insurance covering claims arising from breaches of security; violation or infringement of any right privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; data

theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of Personally Identifiable Information, transmission of a computer virus or other type of malicious code information security or data breaches, or misappropriation of data; with a minimum limit of \$1,000,000 each occurrence and in the aggregate.

All insurance policies provided and maintained by City and each contractor shall:

- (i) be underwritten by insurers which are rated A.M. Best “A- VII” or higher;
- (ii) specifically include Duke and its directors, officers, employees, affiliates, subcontractors, and joint owners of any facilities as additional insureds utilizing ISO Additional Insured endorsement form CG 20 10 11 85 or if not available, endorsement forms 20 10 10 01 and 20 37 10 01 or if not available, their equivalent acceptable to Duke, including for completed operations, with respect to Contractor’s acts, omissions, services, products or operations, whether in whole or in part, excluding, however, for Worker’s Compensation/Employer’s Liability and E&O insurance;
- (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Duke and its directors, officers, employees, affiliates and subcontractors, and joint owners of any facilities;
- (iv) provide that such policies, and additional insured provisions, are primary with respect to the acts, omissions, services, products or operations of City or Duke, whether in whole or in part, and without right of contribution from any other insurance, self-insurance or coverage available to Duke and its affiliates;
- (v) contain standard separation of insured and severability of interest provisions except with respect to the limits of the insurer’s liability;
- (vi) not contain any provision that limits will not stack, pyramid or be in addition to any other limits provided by the insurer; and
- (vii) not have any cross liability exclusion, or any similar exclusion that excludes coverage for claims brought by additional insureds under the policy against another insured under the policy. Any deductibles or retentions shall be the sole responsibility of City and its contractors.

Evidence of such coverage shall be provided via City’s certificate of insurance (including all endorsements) furnished to Duke prior to the start of Services, upon any policy replacement or renewal and upon Duke’s request. All insurance policies shall provide that the insurer will provide at least thirty (30) days’ written notice to City, who in turn shall provide at least thirty (30) days’ written notice to Duke prior to cancellation of any policy (or ten (10) days’ notice in the case of non-payment of premium). City’s compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of City’s liability or otherwise affect City’s indemnification obligations pursuant to this Agreement. Any failure to comply with all of

these provisions shall permit Duke to suspend all Services and payment thereof until compliance is achieved. The failure by City to provide any or accurate certificates of insurance and endorsements, or Duke to insist upon any or accurate certificates of insurance or endorsements, shall not be deemed a waiver of any rights of Duke under this Agreement or with respect to any insurance coverage required hereunder. Duke at its sole discretion may request City or its contractors to provide a copy of any or all of its required insurance policies, including endorsements in which Duke is named as an additional insured.

EXHIBIT B
BILL OF SALE

This Bill of Sale, dated as of _____, 201____, is executed and delivered by The City of Winter Park (“City”) having its principal place of business at _____ to Duke Energy Florida, Inc. (“Duke”), a Florida Corporation.

WHEREAS, City performed certain underground construction work at its expense for the Project as that term is defined in the Agreement between City and Duke dated [_____]_(the “Agreement”) and as more particularly described in the exhibit attached hereto; and

WHEREAS, the City and Duke (the “Parties”) have agreed that City will transfer all rights, ownership and title in and to the Project to Duke; and

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, City and Duke hereby agree as follows:

- 1) City hereby sells, transfers, conveys, assigns and delivers to the Duke, its successors and assigns, to have and hold forever the asset described in the exhibit (the “Project”) attached hereto.
- 2) City represents and warrants to Duke that it has the right, power and authority to enter into and to execute this Bill of Sale and that, if necessary, it will take other actions reasonably requested by Duke to effectuate the transfer and sale of the Project.
- 3) City represents and warrants to Duke that there are no liens or encumbrances on the Project, and hereby represents and warrants to Duke that City has good title to the Project and is transferring all right, title and interest in the Project and that such title is unencumbered and that the Project has been constructed in accordance with applicable law and regulations and the Agreement requirements.

IN WITNESS WHEREOF, City has caused this instrument to be duly executed as of the date first written above.

CITY

By: _____

Title: _____

RESOLUTION NO. _____

A RESOLUTION OF THE COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, FOR THE APPROVAL OF THE JOINT PARTICIPATION AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF WINTER PARK – FM# 433788-1-56-02; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the City of Winter Park (“City”) and the Florida Department of Transportation (“FDOT”) is granted legislative authority to enter into this Joint Participation Agreement (“Agreement”) under Section 339.12, Florida Statutes; and

WHEREAS, the City desires to install certain utility facilities on behalf of Duke Energy, (owner of the facilities) which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the “Facilities” (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

WHEREAS, FDOT is currently engaging in a project which involves constructing, reconstructing or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as Fairbanks Ave. State Road No. 426, otherwise known as FM # 433788-1-56-02 (“Project”); and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment, or removal of the Facilities, or some combination thereof; and

WHEREAS, the City, in accordance with and subject to the limitations of the terms and condition of the Agreement, is entitled to be reimbursed for some portion or all for the Utility Work; and

WHEREAS, implementing the Project is in the best interest of both FDOT and City; and

WHEREAS, the Agreement establishes the terms and conditions required by FDOT to provide City with funding for the installation of such decorative lighting; and

WHEREAS, the City Commission has determined that it is in the public interest to approve and adopt this Agreement; and

WHEREAS, the City Commission has determined that the terms and conditions as stated in the Agreement is fair and reasonable to City.

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

SECTION 1. Approval of the Agreement. The Joint Participation Agreement between the State of Florida Department of Transportation and the City of Winter Park – FM# 433788-1-56-02, will be approved and adopted.

SECTION 2. Severability. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it will not invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION 3. Conflicts. All Resolutions or parts of Resolutions in conflict with any of this Resolution are repealed.

SECTION 4. Effective Date. This Resolution will be 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 8th day of June, 2015.

Steve Leary, Mayor

Attest:

Cynthia S. Bonham, City Clerk

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

Financial Project ID: 433788-1-56-02	Federal Project ID: N/A
County: Orange	State Road No.: 426
District Document No: 1	
Utility Agency/Owner (UAO): City of Winter Park Electric Doing Work In Behalf Of Duke Energy Trans.	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**FDOT**," and **City of Winter Park Electric Doing Work In Behalf Of Duke Energy Trans.**, hereinafter referred to as the "**UAO**";

WITNESSETH:

WHEREAS, the **UAO** owns or desires to install certain utility facilities which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the "Facilities," (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

WHEREAS, the **FDOT**, is currently engaging in a project which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as Fairbanks Ave., State Road No. 426, hereinafter referred to as the "Project"; and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment, or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the **UAO**, in accordance with and subject to the limitations of the terms and conditions of this Agreement, is entitled to be reimbursed for some portion or all of the Utility Work; and

WHEREAS, the **FDOT** and the **UAO** desire to enter into an agreement which establishes the terms and conditions applicable to the Utility Work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

1. Performance of Utility Work

- a. The **UAO** shall perform the Utility Work in accordance with the utility relocation schedule attached hereto as Exhibit A and by this reference made a part hereof (the "Schedule"), the plans and specifications for the Utility Work which have been previously approved by the **FDOT** (the "plans"), said Plans being incorporated herein and made a part hereof by this reference, and the detailed cost breakdown for the Utility Work (the "estimate") previously prepared. If the Schedule, the Plans, and the Estimate have not been prepared as of the date of the execution of this Agreement, then the Utility Work shall be performed in accordance with the Plans, the Schedule, and the Estimate that are hereafter prepared in compliance with the notice previously sent to the **UAO** which established the terms and conditions under which those documents are to be prepared. The **FDOT's** approval of the Plans shall not be deemed to be an adoption of the Plans by the **FDOT** nor a substitution for the proper exercise of engineering judgment and the **UAO** shall at all times remain responsible for any errors or omissions in the Plans. The Utility Work shall include all Facilities located on the Project and neither the failure of the **UAO** to include all of the Facilities in the Schedule nor the Plans nor the failure of the **FDOT** to identify this omission during its review of the Plans shall relieve the **UAO** of the obligation to make those Facilities part of the Utility Work. Time shall be of the essence in complying with the total time shown by the Schedule for the Utility Work as well as any and all interim time frames specified therein. The Utility Work shall be performed in a manner and using such methods so as to not cause a delay to the **FDOT** or its contractors in the prosecution of the Project.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(**FDOT PARTICIPATING IN EXPENSE**)

The **UAO** shall be responsible for all costs incurred as a result of any delay to the **FDOT** or its contractors caused by errors or omissions in the Plans, Schedule, or Estimate (including location of the Facilities and the proper inclusion of all Facilities as part of the Utility Work as stated above); failure to perform the Utility Work in accordance with the Plans and Schedule; or failure of the **UAO** to comply with any other obligation under this Agreement or under the law.

- b. All Utility Work shall be performed by the **UAO's** own forces or its contractor. The **UAO** shall be responsible for obtaining any and all permits that may be necessary to perform the Utility Work. The **FDOT's** Engineer (as that term is defined by the **FDOT's** Standard Specifications for Road and Bridge Construction) has full authority over the Project and the **UAO** shall be responsible for coordinating and cooperating with the **FDOT's** Engineer. In so doing, the **UAO** shall make such adjustments and changes in the Plans and Schedule as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project and shall stop work or modify work upon order of the **FDOT's** engineer as determined by the **FDOT's** engineer to be necessary for public health, safety or welfare. The **UAO** shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the **UAO** pursuant to Subparagraph 1 a.
- c. After the **FDOT** has received a proper Schedule, Estimate and Plans, the **FDOT** will issue a notice to the **UAO** which authorizes the Utility Work to proceed. The **UAO** shall notify the appropriate **FDOT** office in writing prior to beginning the Utility Work and when the **UAO** stops, resumes, or completes the Utility Work. The Utility Work shall be performed under the conditions of, and upon completion of the Utility Work, the Facilities shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to, the Utility Permit (TBD) (Note: Intent of this line is to allow either attachment of or separate reference to the permit).

2. Claims Against UAO

- a. In the event the **FDOT's** contractor provides a notice of intent to make a claim against the **FDOT** relating to the Utility Work, the **FDOT** will, in accordance with the **FDOT's** procedure, notify the **UAO** of the notice of intent and the **UAO** will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- b. In the event the **FDOT's** contractor makes any claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the claim and the **UAO** will cooperate with the **FDOT** in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the **UAO** and the **FDOT's** contractor shall be in writing, shall be subject to written **FDOT** concurrence and shall specify the extent to which it resolves the claim against the **FDOT**.
- c. The **FDOT** may withhold reimbursement to the **UAO** until final resolution (including any actual payment required) of all claims relating to the Utility Work. The right to withhold shall be limited to actual claim payments made by **FDOT** to **FDOT's** contractor.

3. Reimbursement for Utility Work

- a. The **FDOT** agrees to reimburse the **UAO** for a portion of the cost of the Utility Work, hereinafter referred to as the "**FDOT Participating Amount.**" The **FDOT Participating Amount** is established by the **FDOT's** Utility Estimate Summary form or similar form submitted to and accepted by the **FDOT** and the forms supporting documentation. The **FDOT Participating Amount** is estimated to be \$3,076,602.29. Any costs not included in the approved Plans and Estimate and any location work (vertically or horizontally) or other engineering work performed to determine the compensability of the Utility Work shall not be reimbursed by the **FDOT**. The **UAO** shall obtain written approval from the **FDOT** prior to performing Utility Work which exceeds the Estimate or which is not in the Plans.
- b. The method to be used in calculating the cost of the Utility Work shall be one of the following (check

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which option applies):

- ☒ Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
 - ☐ Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the **UAO** and approved by the **FDOT's**. (If this option is selected, the **UAO** shall provide written evidence of such approval).
 - ☐ An agreed lump sum as supported by a detailed analysis of estimated costs prepared prior to the execution of this Agreement.
- c. In determining the amount of the cost of the Utility Work to be reimbursed, a credit will be required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:
- (1) Increase in value credit.
 - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies, and will be determined as of the time of the issuance of the work order. This credit shall be deducted proportionally from each invoice for the Utility Work.
 - (b) Upgrading. A percentage of the total cost of the Utility Work, based on the extent of the betterment obtained from the new Facilities, to be determined as of the time of the issuance of the work order, will be applied equally to each billing for the Utility Work.
 - (2) Salvage Value. The **FDOT** shall receive salvage value credit for any salvage which shall accrue to the **UAO** as a result of the above Utility Work. It is the **UAO's** responsibility to ensure recovery of salvageable materials and to report the salvage value of same to the **FDOT**. This Salvage Value credit shall be applied as provided in Paragraph 4 c.

4. Invoice Procedures for FDOT Participating Amount

The following terms and conditions apply to all invoices submitted pursuant to this Agreement for reimbursement of the **FDOT** Participating Amount:

- a. The **UAO** may, unless reimbursement is on a lump sum basis pursuant to Subparagraph 3. b. hereof, at monthly intervals, submit progress invoices for all costs incurred for the period covered by the invoice. In addition to deductions for applicable credits, which deductions shall be shown on the invoice, the **FDOT** will retain ten (10%) percent of such progress invoices. Retainage will be paid with the final invoice. If reimbursement is on a lump sum basis pursuant to Subparagraph 3.b. hereof, the lump sum invoice shall be submitted as a final invoice pursuant to Subparagraph 4.b. below.
- b. The **UAO** shall submit a final invoice to the **FDOT** for payment of all Utility Work within one hundred and eighty (180) days after written notification from the **FDOT** of final acceptance of the Utility Work. The **UAO** waives all right of reimbursement for invoices submitted more than one hundred eighty (180) days after written notification of final acceptance of the Utility Work. The **FDOT** does not waive its right to reject future untimely invoices by acceptance and payment of any invoices not submitted within one hundred eighty (180) days after written notification of final acceptance of the Utility Work.

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- c. All invoices shall be arranged in the order of items contained in the Estimate referred to in Paragraph 1. The totals for labor, overhead, travel expenses, transportation, equipment, materials and supplies, handling costs and all other services shall be shown in such a manner as will allow ready comparison with the approved Plan and Estimate. Materials shall be itemized where they represent major components. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in relative position with the charge for the replacement or the original charge for temporary use.
- d. All invoices shall be submitted in triplicate and shall show the description and site of the project and the location where the records and accounts invoiced can be audited. Adequate reference shall be made in the invoicing to the **UAO's** records, accounts, and other relevant documents.
- e. All cost records and accounts shall be maintained in the auditable condition for a period of eight hundred twenty (820) days after final payment is received by the **UAO** and shall be subject to audit by a representative of the **FDOT** at any reasonable time during this eight hundred twenty (820) day period.
- f. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Such detail shall include, but not be limited to, a separation of costs for work performed by **UAO's** employees and work performed by **UAO's** contractor.
- g. Invoices for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. A state agency may establish rates lower than the maximum provided in Section 112.061, Florida Statutes.
- h. Upon receipt of an invoice, the **FDOT** has thirty (30) days to inspect and approve the goods and services. The **FDOT** has twenty (20) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved to deliver a request for payment (voucher) to the Department of Financial Services or to return the invoice to the **UAO**.
- i. If a warrant in payment of an invoice is not issued within forty (40) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to the **UAO**. Interest penalties of less than one (1) dollar will not be enforced unless the **UAO** requests payment. Invoices which have to be returned to the **UAO** because of **UAO's** preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **FDOT**. In the event of a bona fide dispute, the **FDOT's** voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.
- j. In accordance with Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the legislature.
- k. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.
- l. In accordance with the Florida Statutes, the **FDOT**, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **FDOT** shall require a statement from the comptroller of the **FDOT** that funds are

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available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this Paragraph shall be incorporated verbatim in all contracts of the **FDOT** which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.

- m. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- n. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

5. Out of Service Facilities

No Facilities shall be left in place on **FDOT's** Right of Way after the Facilities are no longer active (hereinafter "Placed out of service/Deactivated") unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities Placed out of service/Deactivated, but only to said Facilities Placed out of service/Deactivated:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for Facilities Placed out of service/Deactivated.
- b. The **FDOT** agrees to allow the **UAO** to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by **UAO**. In the event of a breach of this Agreement by **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph 5. e. below.
- c. The **UAO** shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the **UAO** to use due care in its dealings with others. The **UAO** shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The **UAO** shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests concerning the Facilities that are Placed out of service/Deactivated of the **FDOT** or other permittees using or seeking use of the right of way.
- e. The **UAO** shall remove the Facilities upon 30 days prior written request of the **FDOT** in the event that the **FDOT** determines that removal is necessary for **FDOT** use of the right of way or in the event that the **FDOT** determines that use of the right of way is needed for other active utilities that cannot be

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otherwise accommodated in the right of way. In the event that the Facilities that are Placed out of Service/Deactivated would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement only under Section 337.403 (1)(a), Florida Statutes, removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto because such a removal would be considered to be a separate future relocation not necessitated by the construction of the project pursuant to which they were Placed out of service/Deactivated, and would therefore not be eligible and approved for reimbursement by the Federal Government. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the **FDOT** as though the Facilities had not been Placed out of service/Deactivated. Removal shall be completed within the time specified in the **FDOT's** notice to remove. In the event that the **UAO** fails to perform the removal properly within the specified time, the **FDOT** may proceed to perform the removal at the **UAO's** expense pursuant to the provisions of Sections 337.403 and 337.404, Florida Statutes.

- f. Except as otherwise provided in Subparagraph e. above, the **UAO** agrees that the Facilities shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Facilities or from the presence of any hazardous substance or material in the Facilities or the discharge of hazardous substances or materials from the Facilities. Nothing in this Paragraph shall be interpreted to require the **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

6. Default

- a. In the event that the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by **FDOT** to third parties.
 - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **FDOT** or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
 - (5) Suspend the issuance of further permits to the **UAO** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within 60 days from written notice thereof from the **FDOT** until such time as the breach is cured.
 - (6) Pursue any other remedies legally available.
 - (7) Perform any work with its own forces or through contractors and seek repayment for the

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cost thereof under Section 337.403(3), Florida Statutes.

- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **UAO**.
 - (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
 - (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties and from any statutory obligations that either party may have with regard to the subject matter hereof.

7. Indemnification

FOR GOVERNMENT-OWNED UTILITIES:

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES:

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

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The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

8. Force Majeure

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

9. Miscellaneous

- a. If the Utility Work is reimbursable under this Agreement, the **UAO** shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto in connection with the Utility Work covered by this agreement, and such compliance will be governed by the method marked below:
- ☐ The **UAO** will perform all or part of such Utility Work by a contractor paid under a contract let by the **UAO**, and the Appendix "A" of Assurances transmitted with the issued work order will be included in said contract let by the **UAO**.
 - ☒ The **UAO** will perform all of its Utility Work entirely with **UAO's** forces, and Appendix "A" of Assurances is not required.
 - ☐ The Utility Work involved is agreed to by way of just compensation for the taking of the **UAO's** facilities on right-of-way in which the **UAO** holds a compensable interest, and Appendix "A" of Assurances is not required.
 - ☐ The **UAO** will perform all such Utility Work entirely by continuing contract, which contract to perform all future Utility Work was executed with the **UAO's** contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
- c. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.
- d. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written

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policies and procedures which shall be applicable at the time of the Project and the relocation of the Facilities and except that the **UAO** and the **FDOT** may have entered into joint agreements for Utility Work to be performed by **FDOT's** highway contractor. To the extent that such a joint agreement exists, this Agreement shall not apply to Facilities covered by the joint agreement. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.

- e. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.
- f. Time is of the essence in the performance of all obligations under this Agreement.
- g. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the **UAO**:

Director Electric Utility Department

If to the **FDOT**:

Ty Garner

10. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled "Changes To Form Document."

You MUST signify by selecting or checking which of the following applies:

- ☐ No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- ☒ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: City of Winter Park Electric Doing Work In Behalf Of Duke Energy
Trans.

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BY: (Signature)

DATE: _____

(Typed Name: Steve Leary)

(Typed Title: Mayor)

Recommend Approval by the District Utility Office

BY: (Signature)

DATE: _____

FDOT Legal review

BY: (Signature)

DATE: _____

District Counsel

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature)

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

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APPENDIX: "CHANGES TO FORM DOCUMENT"

The following changes are hereby made to the Utility Work Agreement (FDOT Participating in Expense) between the **State of Florida Department of Transportation (FDOT)** and City of Winter Park Doing Work In Behalf Of Duke Energy Transmission (the **UAO**) dated the ____ day of _____, 2014, for the project identified as Fairbanks Utility Undergrounding:

1. Section 3.c. is hereby deleted and the following will replace Section 3 a.:

The FDOT agrees to reimburse the City of Winter Park up to, but not to exceed, the estimated amount (\$3,076,602.29). In the event the City of Winter Park needs to exceed the estimated amount, the FDOT can adjust the reimbursement amount to include herein any surplus funds available from 433788-1-56-01(contract with Duke Energy Transmission). Any such additional reimbursement must be approved in writing prior to the work beginning that will be covered by the additional reimbursement. Should the City of Winter Park need to exceed the estimated amount and there are no surplus funds available from 433788-1-56-01, the City of Winter Park will be responsible for completing the work at its own expense. In addition, if Duke Energy Transmission needs to exceed their estimate for reimbursement for FM# 43788-1-56-01, the City of Winter Park hereby agrees to pay all costs for that work in excess of the estimate except that if there are surplus funds from 433788-1-56-02 (contract with City of Winter Park), those surplus funds may be applied to FM# 43788-1-56-01 to offset the obligation of the City of Winter Park to pay for costs in excess of the estimate.

2. Section 7 "Indemnification" is hereby deleted.

3. Only the parties to this Agreement have rights under it and stand to enforce it, there are no third party beneficiaries to this Agreement, intended, incidental, or otherwise.

UTILITY WORK AGREEMENT

This Utility Work Agreement ("Agreement") is entered into this 14th day of May, 2015, between State of Florida, Department of Transportation ("FDOT"), Duke Energy Florida, Inc. d/b/a Duke Energy ("Duke Energy"), and the City of Winter Park ("City").

FDOT AGREEMENT TO REIMBURSE DUKE ENERGY

1. Duke Energy will perform engineering and construction services in coordination with FDOT concerning FDOT's Road Project known as Fairbanks Avenue, State Road 426 in Orange County, Florida ("Project") and Duke Energy's transmission facilities affected or potentially affected by FDOT's Project as follows:

Duke will provide certain quantifiable, measurable and verifiable units of deliverables as follows:

a. Preparation of any and all specifications, plans, work schedule, estimate, and any associated incidental documents necessary to place existing Duke Energy facilities located between I-4 and just east of 17/92 on Fairbanks Avenue, State Road 426, underground. Duke shall submit all such documents to FDOT for review within a reasonable time after they are prepared. FDOT shall have a reasonable time within which to review the documents after they are received and submit comments back to Duke Energy. Duke Energy shall make such changes as FDOT reasonably requests and provide FDOT with copies of the final corrected documents within a reasonable time.

b. Perform such work with its own forces or contractors hired by Duke Energy in order to properly complete the undergrounding of the facilities in accordance with the specifications, plans, work schedule, estimate and any associated incidental documents prepared pursuant to paragraph a. above. Duke Energy shall be responsible for obtaining and complying with any and all permits as are required to perform the work.

Duke will provide written guidance to FDOT and City regarding expected timeframes and durations for outages that may be requested during construction, however, these outages cannot be guaranteed.

Duke will attend meetings as requested by FDOT or City and produce information as requested by FDOT or City.

Duke will perform the Utility Work in a manner and using such methods so as to not cause a delay to FDOT or City.

2. Subject to the terms and conditions of this Agreement, FDOT agrees to reimburse Duke Energy for the actual costs of the Utility Work not to exceed the amount of \$8,450,172.00. In the event Duke Energy Transmission needs to exceed the

estimated amount, the FDOT can adjust the reimbursement amount to include herein any surplus funds available from 433788-1-56-02(contract with City of Winter Park). Any such additional reimbursement must be approved in writing prior to the work beginning that will be covered by the additional reimbursement. Should Duke Energy Transmission need to exceed the estimated amount and there are no surplus funds available from 433788-1-56-02, the City of Winter Park will be responsible to pay all costs for that work in excess of the estimate except that if there are surplus funds from 433788-1-56-02(contract with the City of Winter Park), those surplus funds may be applied to FM# 43788-1-56-01 to offset the obligation of the City of Winter Park to pay for costs in excess of the estimate. Duke shall obtain written approval from FDOT prior to performing Utility Work which exceeds the agreement amount.

In determining the amount of the cost of the Utility Work to be reimbursed, a credit will be required for any increase in the value of the new facility and for any salvage derived from the old facility. These credits shall be determined as follows:

a. Increase in value credit

Expired Service Life. If an entirely new Facility is constructed and the old facility retired, credit for the normally-expected service life of the old facility applies, and will be determined as of the time of the issuance of the work order. This credit shall be deducted proportionally from each invoice for the utility work.

Upgrading. A percentage of the total cost of the utility work, based on the extent of the betterment obtained from the new facilities, to be determined as of the time of the issuance of the work order, will be equally applied to each billing for the utility work.

b. Salvage value. The FDOT shall receive salvage value credit for any salvage which shall accrue to Duke as a result of the above utility work. It is Duke's responsibility to ensure recovery of salvageable materials and to report the salvage value of same to the FDOT.

The method to be used in calculating the cost of the work which is reimbursable shall be one of the following (check which applies):

☐ Actual and related indirect costs accumulated in accordance with a work order accounting procedure established by the FDOT.

☒ Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by Duke Energy and approved by the FDOT. (If this option is selected, Duke Energy shall provide written evidence of such approval.)

☐ An agreed lump sum as supported by a detailed analysis of estimated costs prepared during the process established by paragraph 1a.

Invoice Procedures

3. The following terms and conditions apply to all invoices submitted pursuant to this Agreement for reimbursement by Duke Energy:

- a. Duke Energy may at monthly intervals submit progress invoices for all costs incurred for the period covered by the invoice.
- b. Duke Energy shall submit a final invoice to FDOT for payment of all Preliminary Engineering within one hundred and eighty (180) days after written notification from FDOT of final acceptance of the Preliminary Engineering.
- c. All invoices shall be submitted in triplicate. Invoices shall be submitted in detail sufficient for a proper preaudit and post audit thereof. All cost records and accounts shall be maintained in the auditable condition for a period of five (5) years after final payment is received by Duke Energy and shall be subject to audit by a representative of FDOT at any reasonable time during this five year period. Deliverables must be received and accepted in writing by the FDOT's Project Manager prior to payments. Supporting documentation must establish that the deliverables were received and accepted in writing and that the required minimum level of service to be performed based on the criteria for evaluating successful completion has been met.
- d. Upon receipt of an invoice, FDOT has twenty (20) days to inspect and approve the goods and services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services or to return the invoice to Duke Energy. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- e. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable in addition to the invoice amount, to Duke. Interest penalties of less than one (1) dollar will not be enforced unless Duke requests payment. Invoices that have to be returned because of preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the FDOT.
- f. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Participants who may be experiencing problems in obtaining

timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

- g. If a warrant in payment of an invoice is not issued within forty (40) days from the date the invoice is received, a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to Duke Energy. Interest penalties of less than one (1) dollar will not be enforced unless Duke Energy requests payment. Invoices which have to be returned to Duke Energy because of Duke Energy's preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to FDOT. In the event of a bona fide dispute, FDOT's voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.
- h. In accordance with Section 339.135(6)(a), Florida Statutes, FDOT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. FDOT shall require a statement from the comptroller of FDOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of FDOT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year. Additionally, the FDOT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.
- i. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.
- j. **Vendors/Contractors:**
 - 1. Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
 - 2. Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-

Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

Miscellaneous Provisions

4. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.

5. This Agreement shall be governed by the laws of the State of Florida. The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Orange County, Florida.

6. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof to the extent provided by Florida severability law.

7. Notices required to be given to another party under the provisions of this Agreement may be given to such party by any one or more of the following methods: prepaid U.S. certified mail, return receipt requested, overnight next day courier service, facsimile, email transmission or by delivery in person.

Florida Department of Transportation:

Name of contact: Ty
Garner
Telephone No.: 386-
943-5254
Fax No.:
Email address:
ty.garner@dot.state.fl.us

Duke Energy Florida, Inc. d/b/a Duke Energy:

Name of contact: Joel
Chatham
Telephone No.: 407-942-
9640
Fax No.:
Email address:
[joel.chatham@duke-
energy.com](mailto:joel.chatham@duke-energy.com)


Either party to this Agreement may, from time to time, change the contact information

set forth above by giving notice of such change by any one or more of the methods specified.

8. Either FDOT or Duke Energy may terminate this Agreement at any time without penalty by giving the other party written notice at least thirty (30) days prior to the effective date of said termination; provided, however, that the termination shall not relieve FDOT of the responsibility to reimburse Duke Energy for costs incurred or services satisfactorily performed before the effective date of the termination.

9. Pursuant to Section 287.058 of the Florida Statutes, the FDOT may unilaterally cancel this Agreement for refusal by Duke Energy to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Duke Energy in conjunction with this Agreement.

DUKE ENERGY FLORIDA, INC.
d/b/a DUKE ENERGY

By 

Name: Joel Chatham

Title: Project Manager, Transmission

FLORIDA DEPARTMENT OF TRANSPORTATION

By _____

Name: _____

Title: _____

Legal Review:

CITY OF WINTER PARK

By _____

Name: _____

Title: _____