

ORDINANCE NO. 2862-11

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

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

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

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

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

Section 1. Recitals. The recitals stated hereinabove are incorporated herein by reference and are made fully a part of this Ordinance.

Section 2. The Exchange Agreement, when it is approved by the City Commission, shall be deemed incorporated into this Ordinance, and this Ordinance is subject to the requirement that the City shall separately approve the Exchange Agreement.

Section 3. The property that is authorized to be conveyed is the City property identified in Exhibit "A" attached and made a part hereof by reference. The street address of the property owned by the City authorized to be conveyed to Progress Point, LLC, is 941 W. Morse Blvd., Winter Park, FL 32789.

Section 4. The City Commission of the City of Winter Park hereby authorizes the transfer and conveyance of the former State Office Building property (identified and described hereinabove and in Exhibit "A" hereto) to Progress Point, LLC, on the terms and conditions and subject to all requirements as stated in the Exchange Agreement, as

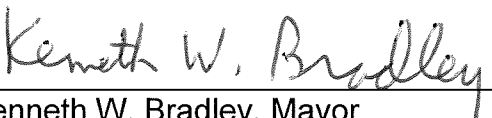
the City Commission deems it to be in the public interest, provided that the requirements of the Exchange Agreement are satisfied by the transferee or its successors in interest.

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

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

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

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 28th day of November, 2011.


Kenneth W. Bradley, Mayor

Attest: 
Cynthia S. Bonham, City Clerk

AGREEMENT FOR EXCHANGE OF REAL PROPERTY

This Agreement for Exchange of Real Property (the "Agreement") is made and entered into as of the 17th day of November, 2011, by and between PROGRESS POINT, LLC, a Florida limited liability company ("Owner"), whose address is c/o CNL Commercial Real Estate, 420 South Orange Avenue, Suite 950, Orlando, Florida 32801, and the CITY OF WINTER PARK, a Florida municipal corporation ("City"), whose address is 401 Park Avenue South, Winter Park, FL 32789.

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Preambles. The parties acknowledge that the above preambles are true and correct and incorporate them herein by this reference thereto.

2. Agreement to Convey. The Owner agrees to convey the Owner Property to City in exchange for City conveying the State Office Building Property to Owner, in accordance with the terms and conditions of this Agreement. For the purposes of this Agreement, the Owner Property and the State Office Building Property are sometimes each referred to as the "Property", and sometimes together referred to as the Properties, as applicable and as the context may require. Each conveyance shall be free from all encumbrances except Permitted Exceptions (defined below), with all appurtenances pertaining thereto.

3. Title Insurance. Within fifteen (15) days following the Effective Date hereof, City shall cause Old Republic National Title Insurance Company ("City's Title Company"), through its agent, Brown, Garganese, Weiss & D'Agresta, P.A. ("City's Title Agent"), to issue and deliver to Owner an ALTA title commitment ("Owner's Title Commitment") accompanied by one (1) copy of each document supporting any exception to the Title Commitment to the State Office Building Property.

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

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

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

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

4. Survey. Either party may, at its expense and if it so desires, within thirty (30) days of the Effective Date hereof, obtain a current survey of the Property it is to receive in this exchange (each, a "Survey"). Any Survey shall be prepared by a duly licensed land surveyor in accordance with the minimum technical standards for surveyors in the State of Florida. If the Survey reveals any encroachment, hiatus, overlap, or other survey defect, then the same shall be treated as an objection to title, which objection must be made, if at all, by the respective party by written notice to the other party before the expiration of five (5) business days after receipt of the Survey. In such event, the objecting party shall state what matters depicted in the Survey are objectionable, and the other party shall undertake to eliminate such objections in accordance with the same standards and requirements set forth in Section 3 for title objections. In the event the other party is unable with the exercise of reasonable diligence to satisfy said objections prior to Closing, the objecting party may, in its sole discretion, (i) accept title subject to the Survey objections, in which event said objections shall be deemed Permitted Exceptions and shall be waived for all purposes, or (ii) rescind this Agreement and this Agreement shall be of no further force and effect (except for any indemnifications which survive hereunder). Any amount spent by a party to satisfy Survey objections shall be included in the \$5,000.00 maximum described in Section 3.

5. Inspection Period. Each party shall have until 5:00 p.m. on the date which is forty-five (45) days after the Effective Date ("Inspection Period") to perform any surveys, soil test borings environmental testing, environmental audit, or any other studies, tests or research on or about the Property they are to receive as a result of this exchange as they may desire or deem necessary. Either party may extend the Inspection Period by fifteen (15) days (to a total of 60 days), upon written notice to the other party delivered within forty (40) days after the Effective Date. To the extent that either party obtains an environmental testing, environmental audit or other analysis or report during the Inspection Period, such analysis or report shall be in favor of both parties such that both parties shall be entitled to rely on such analysis or report. During the Inspection Period, either party may, at each's sole discretion and for any reason, upon written notice to the other party, terminate this Agreement. If either party does not deliver written notice to the other of its election to terminate this Agreement before the expiration of the Inspection Period, each party shall be deemed to have waived its right to terminate this Agreement. Upon termination by either party pursuant to this Section 5, neither party shall have any further obligation to the other under the terms of this Agreement except for those terms and conditions that specifically survive the termination of this Agreement. To the extent allowed by law, both parties agree to indemnify, defend and hold each other harmless from and against all fines, expenses, penalties, costs, claims, liabilities and expenses, including reasonable attorneys' fees and other costs, incurred, sustained by, or asserted against the other party arising from the inspections and entries by or on behalf of a party on the State Office Building Property or the Owner Property, respectively. The foregoing indemnification shall survive the Closing or the earlier termination of this Agreement for whatever reason.

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

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

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

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

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

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

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

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

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

8. Representations and Warranties. The following representations and warranties made by each party to the other party are true and correct as of the Effective Date and shall be true and correct as of the date of Closing and the truthfulness and correctness thereof shall constitute conditions precedent to either party's obligation to exchange the Property. Each of the following representations and warranties are, however, subject to and limited by the disclosures set forth elsewhere in this Agreement.

A. Authority. Each party is duly organized, validly existing and in good standing under the laws of the State of Florida and of the United States. The individual executing this Agreement has full and lawful authority to bind and obligate their corporation or entity to perform its obligations as herein provided, and upon execution hereof, this Agreement shall be the binding and legal obligation of the parties hereto and is enforceable against each under the laws of the State of Florida.

B. Marketable Title. Each party shall convey and deliver at Closing good and marketable title to their respective Property by Special Warranty Deed, in form and content reasonably acceptable to each, free and clear of all mortgages, liens, encumbrances, leases, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments and other matters affecting title, except for Permitted Exceptions.

C. No Condemnation Pending or Threatened. Each party has no knowledge of any pending or threatened condemnation or similar proceeding affecting their Property or any portion thereof, nor does either party have knowledge that such action is contemplated.

D. Adverse Information. Neither party has any knowledge of any changes contemplated in any applicable laws, ordinances or regulations, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial conditions upon their Property which would prevent, limit, impede or render more costly, the current use of the Property.

E. Compliance with Laws. Neither party has any knowledge of any violation of any applicable laws, ordinances, regulations, rules or restrictions pertaining to or affecting their Property. Each party has no knowledge that performance of this Agreement would result in any breach of or constitute any default under or result in the imposition of any lien or encumbrance upon their Property under any agreement or other instrument to which either party is a party or to which either party or their Property might be bound. Neither party has received any notices from any association, city, county, state, or other governmental authority of building, land use, zoning or health code violations in respect to their Property that have not been corrected.

F. Pending Litigation. There are no legal actions, suits, or other legal or administrative proceedings including condemnation cases pending. Neither party has any knowledge of any legal actions, suits, or other legal or administrative proceedings threatened

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

G. No Special Assessments or Obligations for Improvements. Except for the Orange Avenue assessment applicable to the Owner Property, neither party has any knowledge that any portion of their Property is affected by any special assessments or obligations for roads or other improvements.

H. Access to Highways and Roads. Neither party has any knowledge of any fact or condition which would result in the termination of ingress and egress to publicly maintained and dedicated streets and access ways.

I. Commitments to Governmental Authority. To each party's knowledge, except for the Orange Avenue assessment applicable to the Owner Property, no commitments have been made to any governmental authority, Owner, utility company, school board, church or other religious body or any property owners' association or to any other organization, group or individual relating to their Property which would impose an obligation upon the other party or its successors and assigns to make any contribution or dedications of money or land or to construct, install, or maintain any improvements of a public or private nature on or off their Property. There is no requirement that any Owner or owner of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with any development of the Property or any part thereof. The provisions of this Section shall apply to any regular or non-discriminatory local real estate taxes assessed against the Property.

J. Subsurface Conditions. Except as otherwise disclosed in this Agreement or in the Records, neither party has any knowledge of any environmental, soil, or subsurface conditions located on its Property which would impair the usability or developability of such Property for its present use.

K. Environmental. To each party's knowledge, all of the statements regarding environmental matters contained in this Agreement are true and correct.

L. Contracts. Each party represents that there are no leases, rights of first refusal, options or contracts, oral or written, in existence pertaining to their Property. Neither party, nor any person authorized to act on its behalf, is a party to any written, oral or implied contract, agreement, lease or other commitment affecting or relating to their Property, including, without limitation, agreements for the purchase of goods or the rendering of services.

M. Insolvency. There has not been filed by or against either party a petition in bankruptcy or any other insolvency proceeding, or for the reorganization or appointment of a receiver or trustee, nor has either party made an assignment for the benefit of creditors, nor filed a petition for arrangement, nor entered into an arrangement with creditors, nor admitted in writing its inability to pay debts as they become due.

N. Physical Condition of Improvements. Except as may be set forth in the representations and warranties contained herein, neither party makes any representation or warranty as to the condition of the buildings, structures and other improvements located on their

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

9. Covenants Pending Closing. Following the execution of this Agreement and at all times prior to the Closing:

A. No Transfers. Neither party shall transfer, sell, assign or otherwise dispose of or pledge, mortgage, hypothecate or otherwise encumber, or lease or sublease all or any portion of their Property or any interest therein during the pendency of this Agreement.

B. Leases. Neither party shall, without the prior written consent of the other party hereto in each instance, (i) enter into any new leases or occupancy agreements for space at their Property, (ii) modify, amend, terminate, renew, extend or waive any rights under an existing leases, (iii) apply any rental security deposits against sums payable under any leases, (iv) grant any concessions, rebate, allowance or free rent to any tenant for any period, or (v) accept the surrender of or terminate any lease.

C. Service Contracts and Permits. Neither party will terminate or enter into any renewal, extension, modification or replacement of any existing permits or enter into any new employment, maintenance, service, supply or other agreement relating to their Property without the prior written consent of the other party. Each party will use its best efforts to renew all of the permits as they expire from time to time and shall notify the other party at least thirty (30) days prior to the expiration date or threatened cancellation date of any permit.

D. Insurance. Each party shall maintain hazard and liability insurance in commercially reasonable amounts, but in no event less than the amount currently carried, with respect to their Property, and all such policies shall be kept in full force and effect until the Closing.

10. Compliance With Laws. In the event that there shall be any notices of violations of law, ordinances, orders, protective covenants, development standards, requirements or regulations issued subsequent to the date hereof, but prior to the Closing, by any federal, state, county municipal or other governmental or quasi-governmental department, agency, or authority relating to their Property, each party will provide written notice thereof to the other party, and the owner of the property will cause the same to be complied with, at the owner's sole cost and expense, prior to the Closing, or the owner shall escrow sufficient funds at Closing or make such other arrangements to satisfy the other party.

11. Provisions with Respect to Closing.

A. Closing Date. The consummation of the transaction contemplated by this Agreement ("Closing") shall occur on or before thirty (30) days following the expiration of the Inspection Period, at the offices of City's counsel, Brown, Garganese, Weiss & D'Agresta, P.A. ("Closing Agent").

B. Obligations at Closing. On the Closing Date, Owner and City shall each deliver all of the following closing documents, duly executed in accordance with applicable law (together, the "Closing Documents"):

- (i) Special warranty deeds conveying the respective Properties subject only to the Permitted Exceptions. The legal description of the Property on the deeds shall be as contained in the Surveys and the Title Commitments;
- (ii) Standard form owner's affidavit attesting (among other things) to the lack of any parties in possession of their respective Property (or identifying any tenants and the leases under which they occupy the same), the lack of any unrecorded easements affecting their respective Property and certifying that no improvements have been undertaken thereon within the preceding ninety (90) days for which the cost thereof has not been paid;
- (iii) Such other affidavits as may reasonably be required by either party, the Owner's Title Company, the City's Title Company or Closing Agent;
- (iv) A closing statement, an Affidavit of Interest In Real Property (in the case of Owner), the form of which is attached hereto as Exhibit "D" (to be completed with this Agreement), and such other documents and instruments or assignments as may reasonably be requested by either party to consummate the exchange of the Properties;
- (v) Easement along Morse Boulevard as mentioned in Section 12 below and shown in attached Exhibit "E" attached;
- (vi) Notice of Reverter described in Section 12;
- (vii) Special Assessment Agreement or Lien on State Office Building Property, as described in Section 12;
- (viii) the Letter of Credit described in Section 13; and
- (ix) Such other documents and agreements as may be reasonably required by either party or as are contemplated by this Agreement to effectuate the Closing.

C. Closing Expenses. Each party shall deliver to Closing Agent its share of the Closing expenses. Each party shall be responsible for the payment of the Florida documentary stamp tax payable on the special warranty deed(s) in which it is named as grantor (regardless of the provisions of Florida law exempting the City from the payment thereof), as well as for the premium for the title insurance policy to be delivered to it. Each party shall be responsible for the per-page cost of recording the deeds in which it is named as grantor and for one-half of the per-page cost of recording the other documents to be recorded in connection therewith. Promptly after Closing, Closing Agent shall issue to each party its owner's policy of title insurance with only the Permitted Exceptions as exceptions to the coverage afforded thereby. Each party shall pay their own attorney fees.

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

D. Proration of Rents, Taxes, Utilities, and Miscellaneous Expenses. Taxes for all years prior to the year of the Closing, and taxes for the year of Closing if then due, shall be paid by the owner of the Property being conveyed prior to or at Closing. The conveyance shall be subject to taxes for subsequent years. Taxes for the tax year of Closing shall be prorated to the date of Closing, based upon the amount of taxes due for such year, if known, or the taxes for the preceding year, based upon the maximum discount allowable as of the date of Closing; provided, however, that upon the issuance of the actual tax statement or bill for the year of the Closing, if the actual tax varies from the amount prorated by more than five percent (5%), the parties shall promptly make such re-prorations as may be necessary to ensure that the actual amount of such taxes for the year of Closing shall be prorated between the parties, said agreement to survive Closing hereunder. All special assessments which have been levied or certified prior to Closing shall be paid in full by the owner of the Property being conveyed and any pending assessments shall be assumed by the party taking title to the Property at Closing.

12. Additional Owner Obligations. As additional consideration for the conveyance of the State Office Building Property to Owner, the Owner hereby further agrees to the following (all as more particularly described in this Section 12): (i) a reverter provision by which, after Closing, each party will convey its respective property back to the other party in the event certain conditions are not satisfied; and (ii) Owner will pay to the City's Community Redevelopment Agency (CRA), on an annual basis for a total of fourteen (14) years (i.e., 14 payments), the sum of Thirty Thousand Dollars (\$30,000) per year (the "Owners CRA Contribution").

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

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

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

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

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

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

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

13. Letter of Credit. Owner shall deliver an irrevocable Letter of Credit issued by a bank licensed to conduct business as a national association bank or licensed to conduct business in Florida, with a branch or office located in Orange County, Florida (in this regard, the City agrees that CNLBank is acceptable) (the "Letter of Credit"). This Letter of Credit shall be delivered to the City at Closing and shall be in the amount of Two Hundred Nineteen Thousand Dollars (\$219,000.00), and will be payable to the City. The Letter of Credit shall be held by the City subject to the following schedule and conditions:

A. Owner shall submit a preliminary CU Application to the City on or before 90 days after Closing. Upon timely filing of a complete preliminary CU Application as set forth above, the Letter of Credit shall be reduced by twenty-five percent (25%) to the principal amount of One Hundred Sixty-Four Thousand Two Hundred Fifty Dollars (\$164,250.00). The City shall process and review the preliminary CU Application in a diligent and timely manner, and shall hold the Planning and Zoning Commission meeting and the City Commission meeting (together, the "Commission Meetings") to review and consider the preliminary CU Application within 45 days of the submittal by Owner. No less than 30 days in advance of the submittal of the preliminary CU application, Owner will submit all necessary documents and fees to the City Planning Department to facilitate the required City-wide notice. In the event the City fails to schedule and hold the Commission Meetings (and to consider the preliminary CU Application at such meetings) as described in this subparagraph A, and if such failure is due to force majeure, the City shall have an additional 15 days to hold the Commission Meetings. In the event either: (i) the City fails to hold the Commission Meetings within 45 days of the submittal of the CU Application by Owner, or (ii) in the case of force majeure, the City fails to hold the Commission Meetings within 60 days after the submittal by Owner of the preliminary CU Application, then in either event the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit.

B. Subject to the City's satisfaction of its obligations to hold the Commission Meetings as set forth in subparagraph A above, Owner shall submit a final CU Application to the City on or before 90 days after the City Commission meeting approving the preliminary CU Application. Upon the timely filing of a complete final CU Application as set forth above, the Letter of Credit shall be reduced by an additional Sixty-Four Thousand Two Hundred Fifty Dollars (\$64,250.00) to the principal amount of One Hundred Thousand Dollars (\$100,000.00). The City shall process and review the final CU Application in a diligent and timely manner, and shall hold the Commission Meetings to review the final CU Application within 45 days of submittal by Owner. In the event the City fails to schedule and hold the Commission Meetings (and to consider the final CU Application at such meetings) as described in this subparagraph B, and if such failure is due to force majeure, the City shall have an additional 15 days to hold the Commission Meetings. In the event either: (i) the City fails to hold the Commission Meetings within 45 days of the submittal of the final CU Application by Owner, or (ii) in the case of force majeure, if the City fails to hold the Commission Meetings within 60 days after submittal by Owner of the final CU Application, or (iii) the City approves the final CU Application but such approval is challenged or appealed by a third party, then in any such event the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit.

C. The Owner shall submit the application for the Building Permit for the New Office Project within one (1) year of the City's final, non-appealable (and non-appealed) approval of the final CU Application. The City shall review and process the Building Permit application with reasonable diligence and in good faith. The Owner shall commence construction of the New Office Project within thirty (30) days after the issuance of the Building Permit. Upon the commencement of construction, the Letter of Credit shall be returned by the City to the Owner, and the City shall have no further rights in connection with the Letter of Credit.

D. Upon default by Owner by failing to meet any of the above mentioned deadlines, the Letter of Credit shall be immediately payable to the City in its then-current amount and will fund without any defense or objection by the Owner. Notwithstanding anything in this Section 13 to the contrary, however, the Owner shall not be deemed in default hereunder (and the Letter of Credit shall not be payable to the City) if and to the extent the Owner is unable, in good faith, to meet any of the above-mentioned deadlines as a result of a force majeure event. For the purposes of this subparagraph D, "force majeure" shall mean that Owner is unable, in good faith, to meet any of the above-mentioned deadlines as a result of cause or causes beyond Owner's control, including, but not limited to, labor disputes, civil commotion, war, terrorism, fire or other casualty, shortage of supplies and materials, the general unavailability of development and construction financing unrelated to Owner's financial condition, due to mutually recognized and severe economic conditions, or through acts of God. In the event of any of the circumstances described in the foregoing clause, the Owner shall have up to three (3) years after the issuance of final, non-appealable CU Application approval by the City within which to obtain the Building Permit for the New Office Project.

E. In the event the City, for any reason, denies either the preliminary CU Application or the final CU Application, the Letter of Credit shall be returned by the City to the Owner and the City shall have no further rights in connection with the Letter of Credit. For the purposes of

this Section 13, the default curative periods described in Section 14 shall not apply to any of the required performance time frames described in this Section 13. The terms and conditions of this Section 13 shall specifically survive the Closing hereunder, and the parties shall cooperate in good faith to execute and record such further agreements as may be reasonable or necessary to memorialize the terms and conditions of this Section 13.

14. Default. Except as expressly provided otherwise herein, if either party defaults or fails to perform any of its obligations hereunder within the time or times specified herein and such default or failure continues for ten (10) days after its receipt of written notice thereof from the other party (or, if such default or failure is not by its nature curable within ten (10) days but such party fails to commence such cure within ten (10) days and to thereafter diligently pursue such cure), then the non-defaulting party shall have the option to either (a) terminate this Agreement by written notice to the defaulting party, or (b) seek specific performance of the defaulting party's obligations hereunder.

15. Assignment or Sale. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, except the Owner may assign its rights and obligations under this Agreement prior to Closing, without the City's consent and in whole or in part, to another entity that will remain wholly owned or controlled by Owner or any of its respective principals, affiliates or subsidiaries. Owner shall notify the City of any such assignment within ten (10) days after the date thereof. In addition to the foregoing, upon and after the Closing hereunder, the Owner shall not sell the State Office Building Property to an unrelated third party (i.e., to an entity or party that is not wholly owned or controlled by the Owner or any of its respective principals, affiliates or subsidiaries) for a period of two (2) years after Closing without the City's prior consent; in the event of such consent and sale, to the extent the Owner receives net consideration for such conveyance in excess of the sum of (x) the agreed-upon value of the Owner Property for purposes of the exchange of the Properties, plus (y) all of Owner's documented costs associated with the acquisition of the State Office Building Property and the development and construction of the New Office Project, the Owner shall pay to the City one-half (½) of such excess proceeds.

16. Brokerage/Hold Harmless. Owner and the City each hereby represent and warrant that no broker or finder has been employed by them in connection with this Agreement. Each party shall indemnify and hold harmless the other party from and against any commissions or fees or claims for commissions or fees arising under the indemnifying party, which indemnification shall expressly survive Closing.

17. Tax Reporting Numbers. The parties agree to provide their tax identification numbers to the Closing Agent prior to Closing.

18. Notices. Any notice or other communication permitted or required hereunder shall be in writing and shall be sent either by hand delivery, U.S. certified mail, return receipt requested, or by overnight delivery service (e.g. Federal Express), to the party entitled or required to receive the same, at the address set forth below or at such other address as may be specified by like notice, and shall be deemed delivered when delivery is made or attempted and refused, as indicated on the receipt:

TO OWNER: Progress Point, LLC
c/o CNL Commercial Real Estate
420 S. Orange Avenue, Suite 950
Orlando FL 32801
Attn: Thom Cunningham
Telephone: 407-540-2736
Fax: _____

COPY TO: Lowndes, Drosdick, Doster, Kantor and Reed, P.A.
215 North Eola Drive
P.O. Box 2809
Orlando, FL 32802
Attn: M. Rebecca Wilson, Esquire
Telephone: 407-418-6250
Fax: 407-843-4444

TO CITY: City of Winter Park
401 Park Avenue South
Winter Park, FL 32789
Attn: Randy Knight, City Manager
Telephone: 407-599-3399
Fax: 407-599-3436

COPY TO: Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave., Ste. 2000
P.O. Box 2873
Orlando, FL 32802-2873
Attn: Usher L. Brown, Esq.
Telephone: 407-425-9566
Fax: 407-425-9596

19. Entire Agreement: Modification. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into and superseded by this Agreement. No representations, agreements, understandings, warranties or indemnities shall be in force hereafter or deemed to exist between the parties unless expressly set forth herein. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

20. Governing Law and Binding Effect. This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida, and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, as well as their respective successors and permitted assigns. Venue for enforcement shall be in Orange County, Florida. The parties shall comply with and will enter whatever agreements or documents are necessary with respect to the

reversionary interest, as required by Sections 689.18(4) and 712.05, Florida Statutes. The parties agree that the reversionary interest provided for in this Agreement shall not be in violation of these statutes and that the term of such reversionary interest does not exceed the permissible time period set out therein.

21. No Pledge of Credit. Nothing herein contained, and nothing contained in any of the Closing Documents, shall constitute or be deemed a pledge by the City of its credit or taxing power or of any ad valorem tax revenues.

22. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

23. Counterparts. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

24. Severability. If any sentence, phrase, section, provision, or portion of this Agreement is for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining provisions hereon unless the deletion of such provision would have a material adverse affect on the benefits intended to be afforded hereby to either of the parties.

25. Litigation and Attorneys' Fees. In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party in any such litigation shall be entitled to recover from the other party, in addition to any other relief granted as a result of such litigation, all costs and expenses of such litigation, including, but not limited to, reasonable attorneys' fees and paralegal's fees incurred prior to trial, at trial, on appeal and in connection with any administrative or bankruptcy proceedings.

26. Time. Time is of the essence of this Agreement and in the performance of all conditions, covenants and obligations to be performed or satisfied by the parties hereto. Waiver of performance or of any condition, covenant, or obligation by a party shall not be implied or deemed given, and shall not be deemed to be a waiver of the performance of any other condition, covenant, or obligation, unless specifically stated in writing. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

27. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

28. Effective Date. The Effective Date hereof shall be the date upon which the last of the parties hereto have executed this Agreement.

29. City Commission Approval. This Agreement is conditioned upon and subject to the conditional and final approval of the City Commission of the City of Winter Park, Florida (which final approval shall be evidenced by the City's execution of this Agreement), the Charter of the City of Winter Park, Florida, and any other requirements of Florida laws.

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

[signatures to follow]

WITNESSES:



Alex Rosario
(print)

Rebecca Hueber

Rebecca Hueber
(print)

WITNESSES:

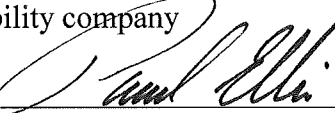


Randy B. Knight
(print)



Dori L. DeBord
(print)

PROGRESS POINT, LLC, a Florida limited liability company

By: 

Print name: Paul Ellis

Title: AUTHORIZED REPRESENTATIVE

Date: 11/17/2011

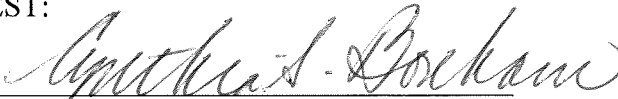
CITY OF WINTER PARK, a Florida municipal corporation

By: Kenneth W. Bradley

Print name: Kenneth W. Bradley

Title : Mayor

ATTEST:

By: 
Cynthia S. Bonham, City Clerk

Date: 11-14-11

EXHIBIT "A"
[OWNER PROPERTY]

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

EXHIBIT "B"
[STATE OFFICE BUILDING PROPERTY]

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

EXHIBIT "C"
[SKETCH OF RESTRICTED PORTION]

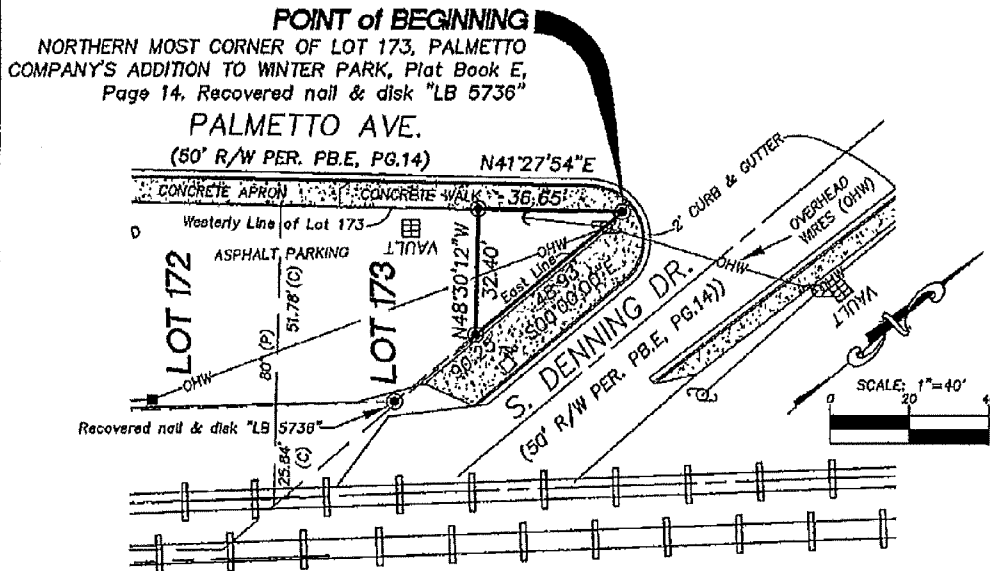
Boundary Survey

DESCRIPTION:

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

COMMENCE AT THE NORTHERN MOST CORNER OF SAID LOT 173, AS THE POINT OF BEGINNING; THENCE RUN S 00°00'00" E, ALONG THE EAST LINE THEREOF, 48.93 FEET; THENCE RUN N 48°30'12" W, 32.40 FEET TO THE WESTERLY LINE OF SAID LOT 173; THENCE RUN N 41°27'54" E, ALONG SAID WESTERLY LINE, 36.85 FEET TO THE POINT OF BEGINNING.

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



Surveyors Notes:

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

(UNLESS OTHERWISE NOTED)		L.B. LICENSED BUSINESS P.S.M. PROFESSIONAL SURVEYOR & MAPPER
● SET 5/8" IRON ROD & CAP "LB 5736"	● SET NAIL & DISC "LB 5736"	
<p>CONCRETE AREAS</p> <p>WATER METER</p> <p>POWER METER</p> <p>EDGE OF ASPHALT PAVEMENT</p> <p>LIGHT POLE</p> <p>CENTERLINE</p>		
<p>WOODEN UTILITY POLE</p> <p>CHAIN LINK FENCE (CLF)</p> <p>ELECTRIC HAND HOLE</p> <p>MEASURED</p> <p>PLAT</p> <p>CALCULATED</p> <p>UTILITY VAULT</p>		
LEGEND:		

I CERTIFY THAT THIS SURVEY MEETS OR EXCEEDS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, IN CHAPTER 61G17-6 FLORIDA ADMINISTRATIVE CODE PURSUANT TO FLORIDA STATUTE 472.027

BY: 

ROBERT D.M. SEARS P.S.M. FLORIDA REGISTRATION No. 4263

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



**SEARS
SURVEYING
COMPANY**

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

EXHIBIT "D"

AFFIDAVIT OF INTEREST IN REAL PROPERTY – F.S. 286.23

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered into this _____ day of _____, 2011, for the sole purpose of compliance with Section 286.23 of the Florida Statutes.

The undersigned hereby swears and affirms that the following is true:

1. The undersigned is the _____ of PROGRESS POINT, LLC, a Florida limited liability company, the legal title holder of the real property described on the attached Exhibit "A."

2. The name(s) and address(es) of every person having a beneficial interest in the real property described on the attached Exhibit "A" however small or minimal is/are":

	Name	Address
a)		
b)		
c)		

FURTHER AFFIANT SAYETH NAUGHT.

[SIGNATURES ON FOLLOWING PAGE]

WITNESSES:

(print)

(print)

PROGRESS POINT, LLC, a Florida limited liability company

By: _____

Print name: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

SWORN TO and subscribed before me this ____ day of _____, 2011, by _____, the _____ of PROGRESS POINT, LLC, (check one) • who is personally known to me or • who provided _____ as identification.

Print Name: _____

Notary Public: _____

EXHIBIT "E"

[SKETCH OF MORSE BLVD. EASEMENT AREA]

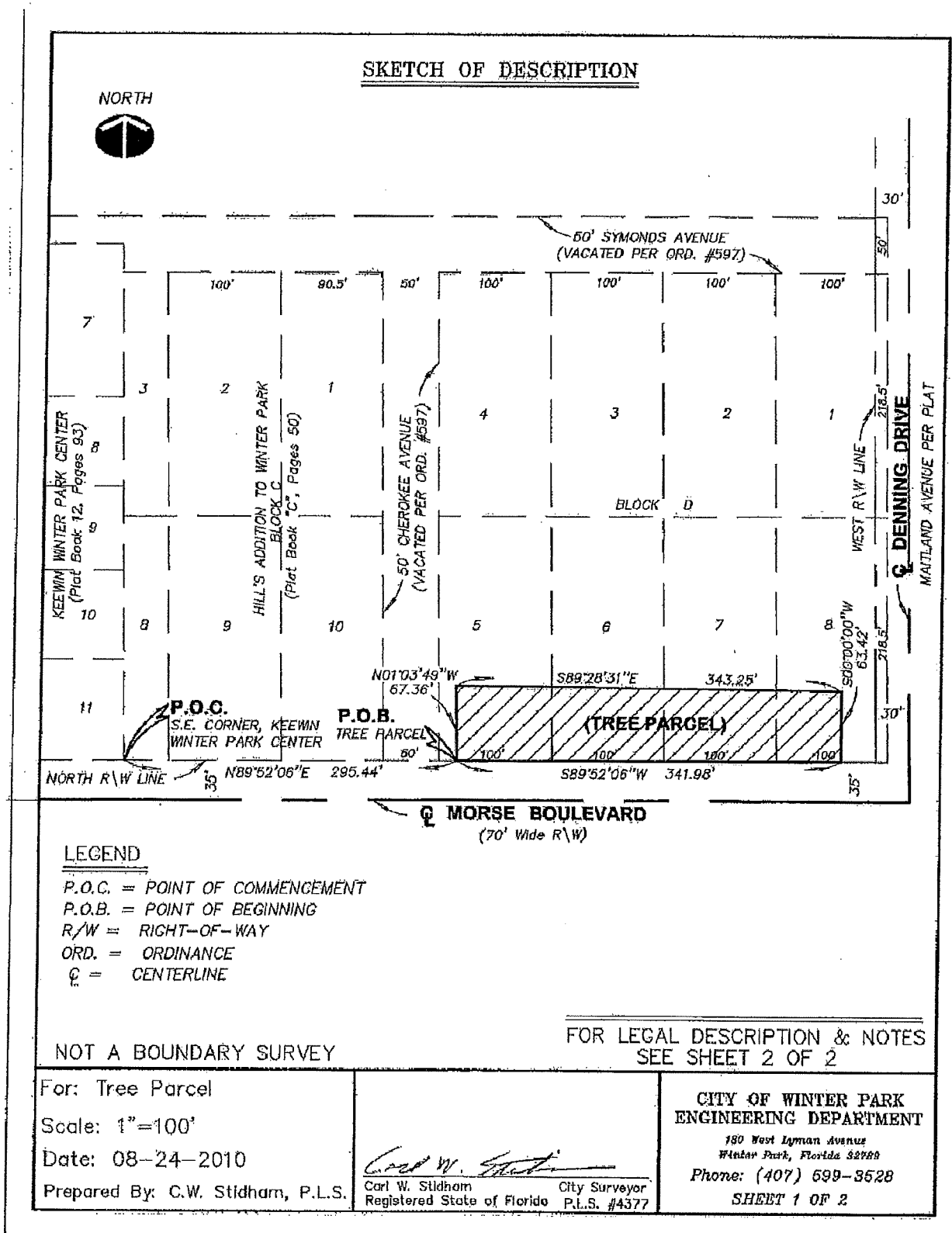


EXHIBIT "E" CONTINUED

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

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

1. CONSERVATION EASEMENT

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

WITNESSETH:

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

WHEREAS, Grantor grants this conservation easement for a tree and canopy area; and

WHEREAS, Grantor desires to preserve the Property in its current condition in perpetuity;

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

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

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property. The Grantor agrees to fully comply with the Mitigation Plan for the Property, attached hereto as **Exhibit "B."**

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.

(c) Removing or destroying trees, shrubs, or other vegetation.

(d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.

(e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Grantor reserves the right to implement the Mitigation Plan attached as **Exhibit "B"**.

4. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

(a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy

upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

6. Grantee's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantors, nor any person or entity claiming by or through Grantors, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property.

7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.

8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Orange County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

9. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

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

WITNESSES:

CNL REALTY & DEVELOPMENT CORP., a
Florida corporation

(signature)

By: _____

(print name)

Print name: _____

(signature)

Title: _____

(print name)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ the _____ of CNL REALTY & DEVELOPMENT CORP. (check one) ☐ who is personally known to me or ☐ who produced _____ as identification.

Notary Public

Print Name: _____

My Commission expires: _____

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