

ORDINANCE 3246-22

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE SALE AND CONVEYANCE OF THE APPROXIMATELY .695 ACRE CITY OWNED PROPERTY LOCATED WEST OF SWOOPE AVENUE AND DEPICTED AS PARCEL A AS IN THE ATTACHED EXCHANGE AGREEMENT; 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 undertook an advertised notice of disposal solicitation to solicit proposals for the benefit of the citizens of the City of Winter Park which satisfied the requirements of Chapter 163, Florida Statutes and which was subsequently approved by the City Commission; and

WHEREAS, the City has determined that there is not a municipal use of the property depicted as Parcel A in the attached Exchange Agreement ("Property") and that the proposed use will benefit the citizens of the City of Winter Park and the City.

WHEREAS, the City Commission deems it advisable to sell and convey the Property, pursuant to the attached Exchange Agreement or an agreement to be negotiated by the City Manager which is subject to further approval of the City Commission by an affirmative vote of at least four members of the City Commission.

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

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

SECTION 2. The City Commission of the City of Winter Park hereby authorizes and approves the sale, transfer, and conveyance of the Property pursuant to the attached Exchange Agreement or an agreement to be negotiated by the City Manager which is subject to further approval of the City Commission by an affirmative vote of at least four members of the City Commission.

SECTION 3. 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 said transfer and conveyance of the Property set forth above, and the City Commission of the City of Winter Park hereby authorizes the Mayor and City Manager, or either of them to execute the Exchange Agreement, deed, and other documents on behalf of the City, as may be required to effectuate and complete the transaction.

SECTION 4. CONFLICTS. This Ordinance controls to the extent of any conflict with other Ordinances.

SECTION 5. 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 22nd day of June, 2022.

Mayor Phillip M. Anderson

ATTEST:

City Clerk Rene Cranis

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (hereinafter the "**Agreement**") is made and entered into as of the Effective Date of this Agreement (as hereinafter defined), by and between the CITY OF WINTER PARK, a Florida municipal corporation (hereinafter the "**City**"), and ELEVATION PLAZA, LLC, a Florida limited liability company (hereinafter "**Elevation**").

WITNESSETH:

WHEREAS, the City is the fee simple owner of that certain parcel of real property of approximately .695 acres in size located in Winter Park, Florida, more particularly depicted as Parcel A on the attached Exhibit "A" (hereinafter the "**City Property**");

WHEREAS, Elevation is the fee simple owner of that certain parcel of real property of approximately .426 acres in size located in Winter Park, Florida, more particularly depicted as Parcel C on the attached Exhibit "A" (hereinafter the "**Elevation Property**");

WHEREAS, the City wishes to convey to Elevation the City Property in exchange for Elevation conveying the Elevation Property to the City, paying the City the sum of \$1,000,000.00, and Elevation agreeing to construct a new office building of the greater of (a) a minimum 14,000 square feet or (b) such square footage as the City permits Elevation to build if Elevation obtains additional parking space from Lumen (hereinafter the "**New Office Building**") upon the City Property, all upon and subject to the terms and condition set forth herein.

WHEREAS, in conjunction with the above transaction, the City wishes to convey to Elevation an easement benefitting the City Property that is more particularly described hereinafter (hereinafter the "**Easement Benefitting City Property**") and Elevation wishes to convey to the City an easement benefitting the Elevation Property that is more particularly described hereinafter (hereinafter the "**Easement Benefitting Elevation Property**").

NOW, THEREFORE, in consideration of the mutual promises set forth herein and Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the City and Elevation do hereby agree as follows:

1. **RECITALS**. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **AGREEMENT TO CONVEY**. The City agrees to convey to Elevation the City Property and the Easement Benefitting City Property and Elevation agrees to convey to the City the Elevation Property and the Easement Benefitting Elevation Property upon the terms and conditions set forth herein.

3. **EARNEST MONEY.**

A. Within five (5) business days after the Effective Date, Elevation shall deliver to Fishback Law Firm (the “**Escrow Agent**”) an earnest money deposit in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “**Earnest Money Deposit**”), which Earnest Money Deposit shall be in the form of a federal wire transfer or cashier’s check issued by a bank whose deposits are federally insured and that has an office for taking deposits in Orange County, Florida.

B. If the Earnest Money Deposit is not delivered by Elevation to Escrow Agent in accordance with the time frame set forth herein, and such failure continues for a period of two (2) business days after written notice from the City, then either party may terminate this Agreement by written notice to the other party. If this Agreement is so terminated, this Agreement shall be deemed to have terminated, and there shall be no remedy hereunder to either the City or Elevation other than the termination of this Agreement.

C. The Earnest Money Deposit shall be held in escrow by the Escrow Agent and invested in a non-interest-bearing account, and held and disbursed in accordance with the terms and provisions of this Agreement.

D. The Earnest Money Deposit shall become non-refundable to Elevation following expiration of the Inspection Period, except if the City willfully fails or refuses to close.

4. **EASEMENTS.**

A. The Easement Benefitting City Property shall be a non-exclusive perpetual twenty foot wide easement over a portion of Parcel B depicted on the attached Exhibit “A” for ingress, egress and utilities from N. New York Avenue to the parking lot entrance just west of the well pump house depicted on the Proposed Concept 2 attached hereto as Exhibit “B”.

B. The Easement Benefitting Elevation Property shall be a non-exclusive perpetual twenty foot wide easement over property owned by Elevation that is just south of the City Property for ingress, egress and utilities from West Swoope Avenue to the Elevation Property as depicted on the Proposed Concept 2 attached hereto as Exhibit “B”.

C. Within sixty (60) days from the Effective Date, the City’s attorney shall prepare the Easement Benefitting City Property and the Easement Benefitting Elevation Property and shall provide copies of the same to Elevation for review. Unless the City and Elevation mutually agree to a different form for each of said easements or one of the parties terminates the Agreement during the Inspection Period, the easement forms provided shall be the ones executed and used in conjunction with the Closing.

5. **CONSIDERATION.** In exchange for the City conveying the City Property and the Easement Benefitting City Property to Elevation, Elevation shall convey the Elevation Property and the Easement Benefitting Elevation Property to the City, pay the City the sum of One Million and 00/100 Dollars (\$1,000,000.00), and construct the New Office Building on the City Property in the manner set forth hereinafter. The conveyances shall be in the manner set forth herein and the payment of the \$1,000,000.00 by Elevation to the City shall be by federal wire transfer of funds at closing, all of which shall be subject to appropriate credits, adjustments and prorations as provided herein.

6. **INSPECTION PERIOD.**

A. The City and Elevation shall each have ninety (90) days after the Effective Date (the "**Inspection Period**"), to determine, in each party's sole and absolute discretion, that the subject property is suitable and satisfactory for the party's intended use. Each party shall have the unconditional and absolute right to terminate this Agreement for any reason whatsoever during the Inspection Period. In order to terminate the Agreement, a party must provide the other party with written notice so stating no later than the expiration of the Inspection Period. If a party elects to terminate the Agreement during the Inspection Period, then Escrow Agent shall return the Earnest Money Deposit to Elevation, and thereafter the parties shall have no further duties, obligations or responsibilities hereunder, except for those specified herein to survive termination of this Agreement.

B. From the Effective Date through the end of the Inspection Period, the City shall have the right of going upon the Elevation Property and the Easement Benefitting Elevation Property with its agents and engineers as needed to inspect, examine and otherwise undertake those actions which the City, in its discretion and at its sole cost and expense, deems necessary or desirable to determine the suitability of the subject property for the City's intended use, including without limitation, the right to perform soil tests, borings, percolation tests, compaction tests, environmental tests, surveys and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the subject property. The City shall promptly restore any physical damage caused by the City to said property by the aforesaid inspections, tests and other activities, and the City shall indemnify and hold the Elevation harmless from and against any suits, claims, damages, costs, expenses and liabilities asserted against or incurred by Elevation as a result of the City's exercise of its rights under this Section 5.B. The foregoing repair, indemnity and defense obligations do not apply to (a) any loss, liability cost or expense to the extent arising from or related to the acts or omissions of Elevation, or its agents or consultants, (b) any diminution in value in the subject property arising from or relating to matters discovered by the City during its investigation, (c) any latent defects in the subject discovered by the City, or (d) the release or spread of any Hazardous Substances (hereinafter defined) which are discovered (but not deposited) on or under the subject property by the City. The provisions of this Section 5.B shall survive the Closing or earlier termination of this Agreement until the later of: (i) expiration of all applicable statutes of limitations; (ii) and the final resolution of any claims, litigation and appeals that may have been made or filed.

C. Elevation agrees to deliver or otherwise make available to the City, within five (5) days after the Effective Date, what Elevation believes to the best of Elevation's knowledge to be copies in Elevation's possession, if any, of title insurance policies, title insurance commitments, surveys, environmental reports, permits, applications, remedial action plans, contamination assessment reports, notices and orders and determinations relating to any contamination or assessment or cleanup or monitoring of the Elevation Property or the Easement Benefitting Elevation Property, subdivision plans, development plans, technical data, studies, site plans, utility capacity information, soils reports, surveys, hydrological reports, zoning confirmations, concurrency information, and any other documentation pertaining to said property which will facilitate the City's investigation of said property during the Inspection Period. However, unintentional failure to deliver any or all of the foregoing shall not constitute a default or breach of this Agreement.

D. From the Effective Date through the end of the Inspection Period, Elevation shall have the right of going upon the City Property and the Easement Benefitting City Property with its agents and engineers as needed to inspect, examine and otherwise undertake those actions which the Elevation, in its discretion and at its sole cost and expense, deems necessary or desirable to determine the suitability of the subject property for Elevation's intended use, including without limitation, the right to perform soil tests, borings, percolation tests, compaction tests, environmental tests, surveys and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the subject property. Elevation shall promptly restore any physical damage caused by Elevation to said property by the aforesaid inspections, tests and other activities, and Elevation shall indemnify and hold the City harmless from and against any suits, claims, damages, costs, expenses and liabilities asserted against or incurred by the City as a result of the Elevation's exercise of its rights under this Section 5.D. The foregoing repair, indemnity and defense obligations do not apply to (a) any loss, liability cost or expense to the extent arising from or related to the acts or omissions of the City, or its agents or consultants, (b) any diminution in value in the subject property arising from or relating to matters discovered by Elevation during its investigation, (c) any latent defects in the subject discovered by the Elevation, or (d) the release or spread of any Hazardous Substances (hereinafter defined) which are discovered (but not deposited) on or under the subject property by Elevation. The provisions of this Section 5.D shall survive the Closing or earlier termination of this Agreement until the later of: (i) expiration of all applicable statutes of limitations; (ii) and the final resolution of any claims, litigation and appeals that may have been made or filed.

E. The City agrees to deliver or otherwise make available to Elevation, within five (5) days after the Effective Date, what the City believes to the best of the City's knowledge to be copies in the City's possession, if any, of title insurance policies, title insurance commitments, surveys, environmental reports, permits, applications, remedial action plans, contamination assessment reports, notices and orders and determinations relating to any contamination or assessment or cleanup or monitoring of the City Property or the Easement Benefitting City property, subdivision plans, development

plans, technical data, studies, site plans, utility capacity information, soils reports, surveys, hydrological reports, zoning confirmations, concurrency information, and any other documentation pertaining to said property which will facilitate Elevation's investigation of said property during the Inspection Period. However, unintentional failure to deliver any or all of the foregoing shall not constitute a default or breach of this Agreement.

7. **SURVEY AND TITLE MATTERS.**

A. Within sixty (60) days after the Effective Date, the City shall, at Elevation's expense, obtain a survey of the City Property and the Easement Benefitting City Property (hereinafter the "**City Property Survey**") in a form and substance acceptable to Elevation and sufficient to delete the standard survey exception from the Title Policy, certified to Elevation, the City and the Title Company (as hereinafter defined). The legal descriptions in the City Property Survey shall be used in the City Deed and the Easement Benefitting City Property and all other closing documents related thereto.

B. Within sixty (60) days after the Effective Date, the City shall, at the City's expense, obtain a survey of the Elevation Property and the Easement Benefitting Elevation Property (hereinafter the "**Elevation Property Survey**") in a form and substance acceptable to the City and sufficient to delete the standard survey exception from the Title Policy, certified to the City, Elevation and the Title Company (as hereinafter defined). The legal descriptions in the Elevation Property Survey shall be used in the Elevation Deed and the Easement Benefitting Elevation Property and all other closing documents related thereto.

C. Within thirty (30) days after the Effective Date, the City shall obtain, at the City's expense, a current title insurance commitment for the City Property and for the Easement Benefitting City Property ("**City Property Title Commitment**") issued by Fishback Law Firm, as agent for Stewart Title Guaranty Company, or such other title insurance company acceptable to the City and Elevation ("**Title Company**"), and copies of all exceptions referred to therein. The Title Commitment shall obligate the Title Company to issue an Owners title insurance policy in favor of Elevation in the amount of \$2,020,000.00 (the "**City Property Title Policy**"). The City Property Title Policy shall insure Elevation's fee simple title to the City Property and the easement interest in the Easement Benefitting City Property, subject only to the Permitted Exceptions, as hereinafter defined.

D. Within thirty (30) days after the Effective Date, the City shall obtain, at Elevation's expense, a current title insurance commitment for the Elevation Property and for the Easement Benefitting Elevation Property ("**Elevation Property Title Commitment**") issued by Fishback Law Firm, as agent for Stewart Title Guaranty Company, or such other title insurance company acceptable to the City and Elevation ("**Title Company**"), and copies of all exceptions referred to therein. The Title Commitment shall obligate the Title Company to issue an Owners title insurance policy in favor of the City in the amount of \$2,020,000.00 (the "**Elevation Property Title Policy**"). The Elevation Property Title Policy shall insure the City's fee simple title to the

Elevation Property and the easement interest in the Easement Benefitting Elevation Property, subject only to the Permitted Exceptions, as hereinafter defined.

E. Within twenty (20) days after the receipt of each of the Elevation Property Title Commitment and the Elevation Property Survey, the City shall provide Elevation with notice of any matters set forth in the Elevation Property Title Commitment or Elevation Property Survey (as applicable) which are unacceptable to the City ("**Elevation Property Title Defects**"). Any matters set forth in the Elevation Property Title Commitment or Elevation Property Survey to which the City does not timely object shall be referred to collectively herein as the "**Elevation Property Permitted Exceptions**".

F. Within five (5) business days after receipt of notice from the City, Elevation shall notify the City whether Elevation will attempt to cure such Elevation Property Title Defects. In the event Elevation fails to notify the City of its intent to cure the Elevation Property Title Defects within said five (5) business day period, Elevation shall be deemed to have refused to cure the Elevation Property Title Defects. If Elevation elects to attempt to cure such Elevation Property Title Defects, Elevation shall have sixty (60) days in which to use its best efforts to cure such Elevation Property Title Defects to the satisfaction of the City and the Title Company; provided, however, Elevation shall not be obligated to bring suit or expend funds to cure any Elevation Property Title Defects. In the event Elevation refuses or fails to cure any Elevation Property Title Defects as set forth hereinabove, then the City, at its option, by providing Elevation with written notice within five (5) business days after the expiration of the applicable period as described above, but in no event later than expiration of the Inspection Period, may (i) terminate this Agreement, and no party hereto shall have any further rights, obligations or liability hereunder except as expressly provided otherwise whereupon all Earnest Money Deposit shall be returned to Elevation; or (ii) accept title to the Elevation Property subject to such Elevation Property Title Defects without reduction of the consideration to be paid to Elevation and proceed to Closing.

G. Within twenty (20) days after the receipt of each of the City Property Title Commitment and the City Property Survey, Elevation shall provide the City with notice of any matters set forth in the City Property Title Commitment or the City Property Survey (as applicable) which are unacceptable to the Elevation ("**City Property Title Defects**"). Any matters set forth in the City Property Title Commitment or City Property Survey to which Elevation does not timely object shall be referred to collectively herein as the "**City Property Permitted Exceptions**".

H. Within five (5) business days after receipt of notice from the Elevation, the City shall notify Elevation whether the City will attempt to cure such City Property Title Defects. In the event the City fails to notify Elevation of its intent to cure the City Property Title Defects within said five (5) business day period, the City shall be deemed to have refused to cure the City Property Title Defects. If the City elects to attempt to cure such City Property Title Defects, the City shall have sixty (60) days in which to use its best efforts to cure such City Property Title Defects to the satisfaction of Elevation and the Title Company; provided, however, the City shall not be obligated to bring suit

or expend funds to cure any City Property Title Defects. In the event the City refuses or fails to cure any City Property Title Defects as set forth hereinabove, then Elevation, at its option, by providing the City with written notice within five (5) business days after the expiration of the applicable period as described above, but in no event later than expiration of the Inspection Period, may (i) terminate this Agreement, and no party hereto shall have any further rights, obligations or liability hereunder except as expressly provided otherwise whereupon all Earnest Money Deposit shall be returned to Elevation; or (ii) accept title to the City Property subject to such City Property Title Defects without reduction of the consideration to be paid to the City and proceed to Closing.

8. **CONDITIONS TO CLOSING.**

A. The City's obligation to complete the transactions set forth in this Agreement shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (the "**City's Closing Conditions**"):

1. The City's City Commission approving this Agreement, which the City's staff shall place on the Commission agenda within thirty days of Elevation executing and delivering this Agreement to the City.
2. The City's City Commission approving any required comprehensive plan amendment, rezoning, conditional use permit and subdivision or lot split approval for the Elevation Property and the City Property for the intended use of said properties. However, the City's City Commission is not obligated to grant any such approvals.
3. Elevation shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by Elevation at or prior to Closing.

B. In the event any of the foregoing City's Closing Conditions are not satisfied to the City's reasonable satisfaction prior to the Closing Date, but in no event later than 180 days following the Effective Date, then the City shall provide Elevation with written notice thereof, and the City shall have the right, but not the obligation, to terminate this Agreement whereupon Escrow Agent shall pay Elevation the Earnest Money Deposit within five (5) days of the termination.

C. Elevation's obligation to complete the transactions set forth in this Agreement shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (the "**Elevation's Closing Conditions**"):

1. The City's City Commission approving this Agreement, which the City's staff shall place on the Commission agenda within thirty days of Elevation executing and delivering this Agreement to the City.

2. The City's City Commission approving any required comprehensive plan amendment, rezoning, conditional use permit and subdivision or lot split approval for the Elevation Property and the City Property for the intended use of said properties. However, the City's City Commission is not obligated to grant any such approvals.

3. The City shall have performed and complied with all covenants and agreements contained herein which are to be performed and complied with by the City at or prior to Closing.

D. In the event any of the foregoing Elevation's Closing Conditions are not satisfied to the Elevation's reasonable satisfaction prior to the Closing Date, but in no event later than 180 days following the Effective Date, then Elevation shall provide the City with written notice thereof, and Elevation shall have the right, but not obligation, to terminate this Agreement whereupon Escrow Agent shall pay Elevation the Earnest Money Deposit within five (5) days of the termination.

9. **CLOSING.**

A. Closing Date. Subject to satisfaction of the City Closing Conditions and the Elevation Closing Conditions, the City Property and the Elevation Property shall be closed thirty (30) days after the later of the expiration of the Inspection Period and expiration of the appeals period for the approvals required pursuant to Sections 8. A. 2. and 8. C. 2. (the "**Closing**" or "**Closing Date**") at the offices Fishback Law Firm., 1947 Lee Road, Winter Park, Florida 32789, or the parties may, at their election, effectuate the closing by mail.

B. Conveyance of the City Property. At Closing, the City shall execute and deliver to Elevation a Warranty Deed ("**City Deed**") conveying fee simple record title to the City Property and the Easement Benefitting City Property, which conveyances shall be free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances whatsoever, excepting only the City Property Permitted Exceptions. In the event any mortgage, monetary lien or other monetary encumbrance (not created by the actions or inactions of Elevation) encumbers the City Property or the Easement Benefitting City Property and is not paid and satisfied by the City, such mortgage, monetary lien or monetary encumbrance, at Elevation's election, shall be satisfied and paid with the proceeds of the amount due to the City. The City and Elevation 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 City Property Title Policy, a certificate duly executed by the City certifying that the City is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), which certificate shall include the City's taxpayer identification number and address, and an assignment from the City to Elevation assigning all of the City's right, title and interest in and to the

development approvals, permits, entitlements and other rights benefitting the City Property.

C. Conveyance of the Elevation Property. At Closing, Elevation shall execute and deliver to the City a Warranty Deed ("**Elevation Deed**") conveying fee simple record title to the Elevation Property and the Easement Benefitting Elevation Property, which conveyances shall be free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances whatsoever, excepting only the Elevation Property Permitted Exceptions. In the event any mortgage, monetary lien or other monetary encumbrance (not created by the actions or inactions of the City) encumbers the Elevation Property or the Easement Benefitting Elevation Property and is not paid and satisfied by Elevation, such mortgage, monetary lien or monetary encumbrance, at the City's election, shall be satisfied and paid with the proceeds of the amount due to Elevation. The City and Elevation 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, a certificate duly executed by the Elevation certifying that Elevation is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), which certificate shall include the Elevation's taxpayer identification number and address, and an assignment from the Elevation to the City assigning all of the Elevation's right, title and interest in and to the development approvals, permits, entitlements and other rights benefitting the Elevation Property.

D. Prorating of City Taxes and Assessments. All real property ad valorem taxes and general assessments applicable to the City Property, if any, shall be prorated as of the Closing Date between the City and Elevation, said proration to be based upon the most recently available tax or general assessment rate and valuation with respect to the City Property at the November discounted amount. There shall not be any reprorations after Closing. All past due real estate taxes, and special assessments which have been levied or certified prior to Closing shall be paid in full by the City.

E. Prorating of Elevation Taxes and Assessments. All real property ad valorem taxes and general assessments applicable to the Elevation Property, if any, shall be prorated as of the Closing Date between Elevation and the City, said proration to be based upon the most recently available tax or general assessment rate and valuation with respect to the Elevation Property at the November discounted amount. There shall not be any reprorations after Closing. All past due real estate taxes, and special assessments which have been levied or certified prior to Closing shall be paid in full by Elevation.

F. Closing Costs and Expenses for the City Property. The City shall, at the Closing, pay the cost of documentary stamps to be affixed to the City Deed and the Easement Benefitting City Property and the cost of the owner's title insurance policy and related costs for the City Property and the Easement Benefitting City Property. Documentary stamp tax shall be paid based upon a consideration of \$2,020,000.00,

which is the \$1,000,000.00 of cash the City is receiving plus the fair market value of the Elevation Property the City is receiving, which is \$1,020,000.00. Elevation shall pay the cost of recording the City Deed, the Easement Benefitting City Property and the cost of the City Property Survey. Each party shall pay its own attorneys' fees and costs.

G. Closing Costs and Expenses for the Elevation Property. Elevation shall, at the Closing, pay the cost of documentary stamps to be affixed to the Elevation Deed, the Easement Benefitting Elevation Property and the cost of the owner's title insurance policy and related costs for the Elevation Property and the Easement Benefitting Elevation Property. Documentary stamp tax shall be paid based upon a consideration of \$1,600,000.00, which is the fair market value of the City Property that Elevation is receiving. The City shall pay the cost of recording the Elevation Deed and the Easement Benefitting Elevation Property and the cost of the Elevation Property Survey. Each party shall pay its own attorneys' fees and costs.

10. **NEW OFFICE BUILDING.** Provided the approvals required by Sections 8.A.2 and 8.C.2 have been obtained, Elevation shall obtain all remaining necessary permits and approvals in order to commence construction of the New Office Building subject to the City Code requirements, and Elevation shall commence construction of the New Office Building within five (5) years from the Closing Date, and shall thereafter diligently pursue, with reasonable commercial efforts, and complete the construction of the New Office Building (collectively, Elevation's Building Obligation), failing which the City may pursue all monetary damages, including without limitation, the present and future loss of ad valorem real property taxes and other revenue that would have been likely or reasonable for the City to have received if the New Office Building had been completed within the five (5) year period. In addition, if Elevation, or Elevation's successors or assigns, breach, or for any reason do not meet, Elevation's Building Obligation and Elevation receives any bona fide offer from a third party to purchase or acquire the City Property and such offer is acceptable to Elevation, then Elevation agrees to notify City in writing, giving the price, terms, provisions, and conditions of such offer, and City shall have forty five (45) days from and after the receipt of such notice from Elevation in which to elect to purchase or acquire the City Property on the price, terms, provisions, and conditions contained in such bona fide offer. If the City does not elect to purchase or acquire the City Property, or fails to give notice to Elevation within said 45-day period, Elevation shall be free to close under the offer it received within the period provided in such offer without further notice to the City. If the sale or transfer does not close with the third party within the period provided in the offer, the City's right of first refusal will remain in effect. If City elects to purchase or acquire the City Property, the City must provide written notice of said election to Elevation within 45 days of the City's receipt of Elevation's written notice of the third party offer and close the purchase or acquisition of the City Property within the later of the period provided in the third party offer or sixty (60) days thereafter. If the City exercises its right of first refusal and enters into a purchase agreement with Elevation and the City elects not to close within said period for reasons other than unacceptable title, survey objections, or contamination of the City Property, the City's election not to close shall operate as an extinguishment of this right of first refusal. Otherwise, the City's right of first refusal remains effective. If the City timely notifies Elevation of City's intent to purchase or acquire the City Property, then on

or before seven (7) business days thereafter, the parties shall execute a mutually acceptable purchase agreement in form and substance customary to such transaction. The City's failure to exercise the City's right of first refusal and/or the City's failure to close on the purchase or acquisition of the City Property does not in any way relieve Elevation of Elevation's Building Obligations. Any amendment to the price, terms, provisions, and conditions, or any of them, contained within the original offer ("Amended Offer") provided to the City requires Elevation to submit the Amended Offer to the City for the City's determination of whether to purchase or acquire the City Property. Since the City would not have entered into this Agreement except for the inclusion of this Section 10, this provision shall be liberally construed in order to insure compliance and/or a suitable remedy for the City in the event Elevation fails to comply. The provisions of this Section 10 shall be set forth in the City Deed to Elevation, shall inure to the benefit of the City and its successors and assigns, shall run with the land, and shall be binding upon Elevation and its successors and assigns.

11. **DEFAULTS**. In the event either party breaches or fails to comply with or perform any of the covenants, agreements or obligations to be performed by such party under the terms and provisions of this Agreement, the other party, in the other party's sole discretion, shall be entitled to one of the following remedies: (i) terminate the Agreement in which event the Escrow Agent shall return the Earnest Money Deposit to Elevation; (ii) enforce specific performance of this Agreement against the other party; or (iii) if specific performance is not an adequate remedy, maintain an action for damages, provided, however, the amount of damages shall only include the actual and documented out-of-pocket expenses incurred, but not any consequential, punitive, or speculative damages.

Notwithstanding the foregoing provisions of this Section 11 or any other provision herein, the City shall have all available legal and equitable remedies in the event Elevation fails to comply with or perform the provisions of Section 10 above.

12. **ASSIGNMENT**. Either party may assign its rights under this Agreement provided the other party consents to such assignment in writing.

13. **POSSESSION OF PROPERTY**. The City shall deliver to Elevation full and exclusive possession of the City Property on the Closing Date and Elevation shall deliver to the City full and exclusive possession of the Elevation Property on the Closing Date.

14. **CONDEMNATION**.

A. In the event the City Property or any material portion or portions thereof shall be taken or condemned or be the subject to a bona fide threat of condemnation by any governmental authority or other entity prior to the Closing Date, Elevation shall have the option of (i) terminating this Agreement by giving written notice thereof to the City whereupon the Earnest Money Deposit shall be immediately returned to Elevation, and

this Agreement shall terminate except as expressly provided otherwise, (ii) requiring the City to convey the portions of the City Property remaining after the taking or condemnation based on a reduced price calculated pro-rata on the acreage lost as a result of the taking or condemnation, and shall retain all of the right, title and interest of the City in and to any award made or to be made by reason of such taking or condemnation, or (iii) requiring the City to convey the entirety of the City Property to Elevation for the entire consideration as if the taking or condemnation has not yet occurred, pursuant to the terms and provisions hereof, and to transfer and assign to Elevation at the Closing all of the City's right, title and interest in and to any award made or to be made by reason of such taking or condemnation. The City and Elevation further agree that Elevation shall have the right to participate in all negotiations with any such governmental authority relating to the City Property or to the compensation to be paid for any portion or portions thereof condemned by such governmental authority or other entity.

B. In the event the Elevation Property or any material portion or portions thereof shall be taken or condemned or be the subject to a bona fide threat of condemnation by any governmental authority or other entity prior to the Closing Date, the City shall have the option of (i) terminating this Agreement by giving written notice thereof to Elevation whereupon the Earnest Money Deposit shall be immediately returned to Elevation, and this Agreement shall terminate except as expressly provided otherwise, (ii) requiring Elevation to convey the portions of the Elevation Property remaining after the taking or condemnation based on a reduced price calculated pro-rata on the acreage lost as a result of the taking or condemnation, and shall retain all of the right, title and interest of Elevation in and to any award made or to be made by reason of such taking or condemnation, or (iii) requiring Elevation to convey the entirety of the Elevation Property to the City for the entire consideration as if the taking or condemnation has not yet occurred, pursuant to the terms and provisions hereof, and to transfer and assign to the City at the Closing all of Elevation's right, title and interest in and to any award made or to be made by reason of such taking or condemnation. The City and Elevation further agree that the City shall have the right to participate in all negotiations with any such governmental authority relating to the Elevation Property or to the compensation to be paid for any portion or portions thereof condemned by such governmental authority or other entity.

15. **REAL ESTATE COMMISSION.** The City and Elevation hereby represent and warrant to each other that neither has 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. The City and Elevation respectively hereby indemnify and agree to hold each other free and harmless from and against any and all liability, loss, cost, damage and expense, including, but not limited to, attorneys' fees and costs of litigation, both prior to and on appeal, which either shall ever suffer or incur because of any claim by any agent, broker or finder, engaged by the indemnifying party, 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. This Section 15 survives the termination of this Agreement and the Closing.

16. **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 actually received, whether same are personally delivered, transmitted electronically or sent by United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or sent by Federal Express or other overnight delivery service from which a receipt may be obtained evidencing the date and time delivery was made, and addressed as follows:

To Elevation at the following address:

Elevation Plaza, LLC
c/o T. Chris King, President
201 E. Pine Street
Suite 200
Orlando, Florida 32801
Telephone: (407) 215-1350
Email: cking@elevationfinancialgroup.com

With a copy to:

Stuart A. Heaton, Vice President
201 E. Pine Street
Suite 200
Orlando, FL 32801
Telephone: (407) 215-1353
Email: sheaton@elevationfinancialgroup.com

To the City at the following address:

City of Winter Park
Attn: Randy Knight, City Manager
401 S. Park Avenue
Winter Park, Florida 32789
Telephone: 407 599-3235
Email: Rknight@cityofwinterpark.org

With a copy to:

Fishback Law Firm
Attn: A. Kurt Ardaman, Esquire
1947 Lee Road
Winter Park, Florida 32789
Telephone: 407 262-8400
E-mail: ardaman@fishbacklaw.com

To Escrow Agent at the following address:

Fishback Law Firm
Attn: A. Kurt Ardaman, Esquire
1947 Lee Road

Winter Park, Florida 32789
Telephone: 407 262-8400
E-mail: ardaman@fishbacklaw.com

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

17. **GENERAL PROVISIONS.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, shall constitute a waiver of either 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 and otherwise, between the parties not embodied herein shall be of any force or effect. No amendment to this Agreement shall be binding upon any of the parties hereto unless such amendment is in writing and executed by the City and Elevation. 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, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or federal banking holiday, such time for performance shall be extended to the next day that is not a Saturday, Sunday or federal banking holiday. 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. This Agreement shall be interpreted under the laws of the State of Florida.

18. **SURVIVAL OF PROVISIONS.** Except as otherwise specified herein to the contrary, none of the covenants, representations and warranties set forth in this Agreement shall survive the Closing or any earlier termination of this Agreement.

19. **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 circumstances shall, for any reason and to the 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.

20. **RECORDING OF AGREEMENT.** Neither this Agreement nor a record or a memorandum thereof may be recorded in the Public Records of any county in the State of Florida.

21. **ATTORNEYS' FEES AND VENUE.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising here from, the prevailing party shall be entitled to recover from the non-prevailing party, the prevailing party's 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, at trial or on appeal. Proper venue for any litigation regarding this Agreement shall be in Orange County, Florida.

22. **TIME FOR ACCEPTANCE.** Elevation shall execute and deliver this Agreement to the City and the City shall submit the same for approval to the City's City Commission. The Agreement shall remain a valid and binding offer provided the same is approved by the City's City Commission and then executed by the Mayor or other authorized representative of the City within forty-five (45) days from the date Elevation delivers the same to the City.

23. **EFFECTIVE DATE.** When used herein, the term "**Effective Date**" or the phrase "**the date hereof**" or "**the date of this Agreement**" shall mean the date City's City Commission approves this Agreement and the Agreement is thereafter signed by an authorized representative of the City.

24. **EXECUTION AND COUNTERPARTS.** To facilitate execution, the parties hereto agree that this Agreement may be executed and electronically mailed to the other party and that the executed telecopy shall be binding and enforceable as an original. This Agreement may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

25. **FURTHER ACTS AND RELATIONSHIP.** In addition to the acts and deeds recited herein and contemplated and performed, executed, and/or delivered by the City and Elevation, the City and Elevation agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Closing or after the Closing any and all such further acts, deeds, and assurances as may be reasonably necessary to consummate the transactions contemplated hereby. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between the City and Elevation.

26. **RADON GAS.** Pursuant to the provisions of Section 404.058(8), Florida Statutes, the City hereby notifies Elevation as to the City Property and Elevation hereby notifies the City as to the Elevation Property as follows: "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."

27. **WAIVER OF JURY TRIAL.** Both parties hereby waive trial by jury in any action, proceeding, claim or counter claim brought by either party or any matters arising out of or in any way in connection with this Agreement.

28. **HANDLING OF ESCROW.** Escrow Agent agrees to perform its duties as required by this Agreement. At the time of Closing, the Escrow Agent shall pay over to the City the Earnest Money Deposit held by the Escrow Agent under this Agreement, as provided in Section 3 hereof. In the event of a dispute as to the payment of the Earnest Money Deposit or if the Escrow Agent is in doubt as to its duties or liabilities under the provisions of this Agreement, the Escrow Agent shall continue to hold the Earnest Money Deposit until the parties mutually agree as to the distribution thereof or until a judgment of a court of competent jurisdiction determines the rights of the parties thereto. Alternatively, the Escrow Agent may interplead the Earnest Money Deposit into the Registry of the Circuit Court of Orange County, Florida, without further liability or responsibility on the Escrow Agent's part. In the event of any suit between the City and Elevation wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent or in the event of any suit in which the Escrow Agent interpleads the subject matter of this escrow, the Escrow Agent shall be entitled to recover its costs in connection therewith, including reasonable attorneys' fees and costs incurred in all trial, appellate and bankruptcy court proceedings, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that the Escrow Agent shall not be liable to any party or person whomsoever for misdelivery to the City or Elevation of monies subject to this escrow, unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of the Escrow Agent. The City and Elevation agree that the status of the City's legal counsel as the Escrow Agent under this Agreement does not disqualify such law firm from representing the City in connection with this transaction in any dispute that may arise between the City and Elevation concerning this transaction, including any dispute or controversy with respect to the Earnest Money Deposit. This Section 28 survives termination of this Agreement and the Closing.

29. **NOTICE REGARDING DISCLOSURE.** Elevation acknowledges receipt of a copy of Florida Statute 286.23, which requires entities selling or conveying real property to the City to make public disclosure in writing, under oath and subject to the penalties prescribed for perjury, stating the name and address of the entity and name and address of every person having a beneficial interest in the real property, and agrees to comply with said statute.

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

THE CITY:

CITY OF WINTER PARK
a Florida municipal corporation

By: _____

(Print Name)

Its: _____

Date: _____

ELEVATION:

ELEVATION PLAZA, LLC
a Florida limited liability company

By: Elevation Financial Group, LLC
a Florida limited liability company
Manager

By: _____
T. Chris King
Manager

Date: _____

EXHIBIT "A"

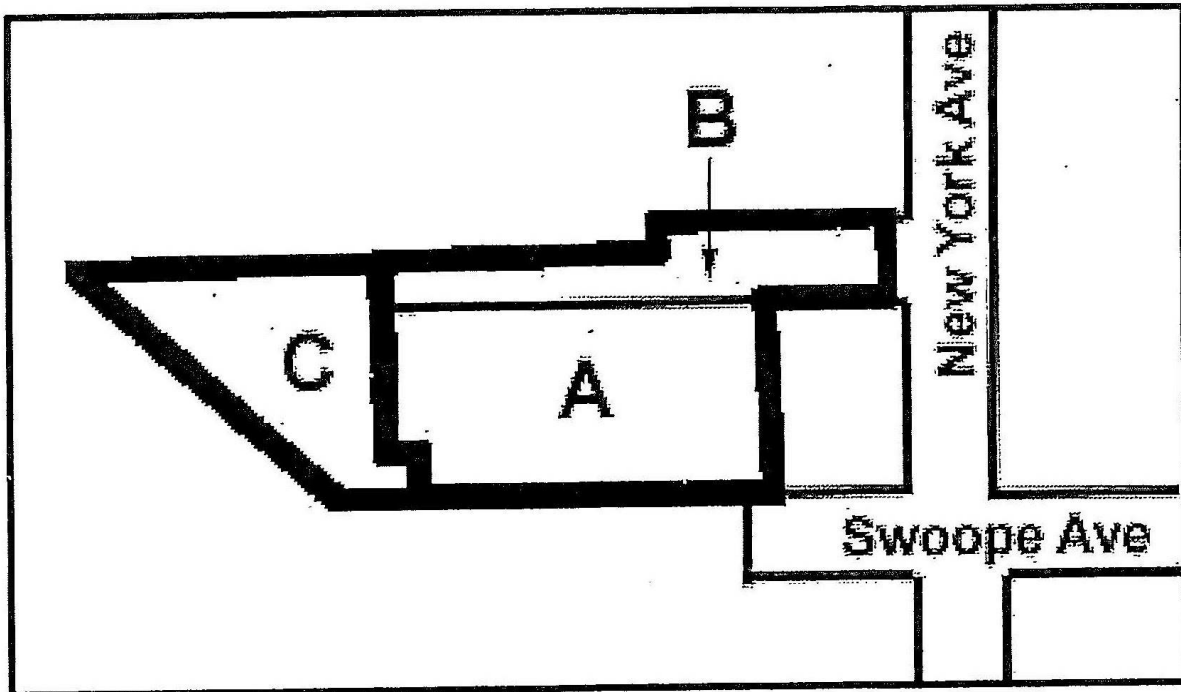
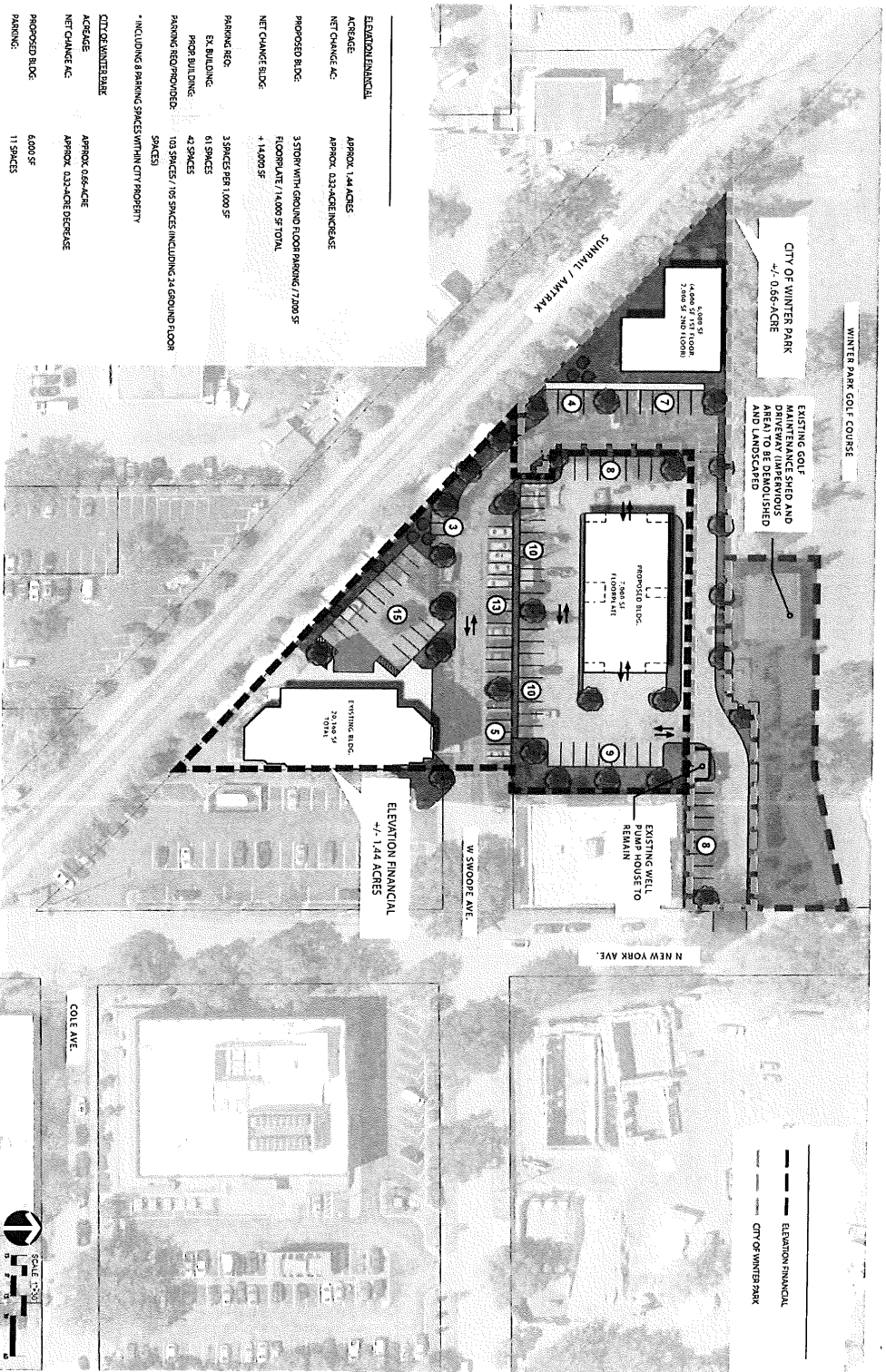


EXHIBIT "B"



NEW YORK AVE. LAND SWAP • WINTER PARK • PROPOSED CONCEPT 2
 PM 8/20/21 TO 8/20/21 | ELEVATION FINANCIAL

LandDesign.