



**Mayor**  
ROB MEDINA  
**Deputy Mayor**  
KENNY JOHNSON  
**Councilmembers**  
JEFF BAILEY  
RANDY FOSTER  
DONNY FELIX

## **AGENDA**

### **Regular Council Meeting 2020-42 Thursday**

**December 3, 2020 - 7:00 PM  
Council Chambers, 120 Malabar Road SE, Palm Bay FL 32907**

#### **CALL TO ORDER:**

#### **INVOCATION:**

1. Bishop Merton L. Clark - Truth Revealed International Ministries, Palm Bay.

#### **PLEDGE OF ALLEGIANCE:**

#### **ROLL CALL:**

#### **ANNOUNCEMENTS:**

1. Two (2) terms expiring on the Infrastructure Advisory and Oversight Board (represents 'at-large' positions).++
2. One (1) vacancy on the Recreation Advisory Board (represents 'at-large' position).++
3. One (1) vacancy on the Business Improvement District Board (represents 'bank or financial institution' position).++
4. Three (3) vacancies on the Disaster Relief Committee.++
5. One (1) vacancy on the Youth Advisory Board (represents 'at-large student member' position).++

#### **AGENDA REVISIONS:**

#### **CONSENT AGENDA:**

**There will be no separate discussion on those items listed under Consent Agenda (indicated with asterisks(\*)). They will be enacted by the City Council on one motion. If discussion is desired by the City Council, that item will be removed from the Consent Agenda by Council and will be considered in the order that it appears on the agenda.**

1. Adoption of Minutes: Regular Council Meeting 2020-39; November 5, 2020.
2. Adoption of Minutes: Regular Council Meeting 2020-40; November 19, 2020.

3. Adoption of Minutes: Special Council Meeting 2020-41; November 23, 2020.
4. Award of Bid: Drainage pipe connection, St. Johns Heritage Parkway to Fire Station retention pond – IFB 12-0-2021 – Public Works Department (MJC Land Development, LLC - \$145,163).
5. Resolution 2020-61, naming a park site located at the northeast corner of Wake Forest Road and Barnes Avenue as 'West Pine Estates Park'.
6. Consideration of the sale of nine (9) surplus escheated properties in Holiday Park (\$51,570).
7. Consideration of utilizing additional funding from the General Fund Undesignated Fund balance for the increased estimates of eleven (11) replacement vehicles for the Police Department (\$21,646).
8. Consideration of appropriation of funds from Building Department Undesignated Fund Balance for new positions within the Building Department (\$133,651).
9. Consideration of appropriation of funds for engineering and other contractual services for removal of an abandoned water main at Jupiter bridge/C-1 canal (\$35,000).
10. Consideration of a grant application to Firehouse Subs Public Safety Foundation to obtain dive equipment for the Police Department dive team.
11. Consideration of travel and training for specified employee (Fire Department).

#### **RECOGNITIONS AND PROCLAMATIONS:**

1. Proclamation: Family Christmas Day Extravaganza - December 19, 2020. (Mayor Medina)

#### **PUBLIC COMMENTS/RESPONSES:**

**Public comments will be heard by the City Council on non-agenda issues. Speakers must complete 'Public Comment Cards' (orange) and are limited to three (3) minutes each.**

#### **PUBLIC HEARINGS:**

1. Ordinance 2020-82, amending the Code of Ordinances, Chapter 37, Growth Management Department, by modifying provisions related to the Land Development Division (T-35-2020, City of Palm Bay), first reading.
2. Ordinance 2020-83, amending the Code of Ordinances, Chapter 40, Building Department, by modifying duties and responsibilities of the department (T-35-2020, City of Palm Bay), first reading.
3. Ordinance 2020-84, amending the Code of Ordinances, Chapter 174, Floodplain and Stormwater Management, Subchapter 'Floodplain Management', by modifying provisions contained therein (T-35-2020, City of Palm Bay), first reading.
4. Resolution 2020-58, granting approval of a Planned Unit Development (PUD) Preliminary Development Plan of a single-family residential subdivision to be known as 'Gardens of Waterstone Phase 1 PUD', which property is located west of and adjacent to Mara Loma Boulevard, in the vicinity south of Melbourne Tillman Water Control District Canal 38 (44.65 acres) (Case PD-32-2020, Waterstone Farms, LLC) (Quasi-Judicial Proceeding).
5. Resolution 2020-59, granting a conditional use to allow an assisted living facility to be known as 'Hampton Manor of Palm Bay' in IU (Institutional Use District) zoning on property located in the vicinity south of Koutnik Road, between Ruffin and Buffing Circles (20.19 acres) (Case CU-30-2020, DSG, LLC and Gus & Son, LLC) (Quasi-Judicial Proceeding).
6. Resolution 2020-60, granting a conditional use to allow for an automotive fuel dispensary in LI



(Light Industrial and Warehousing District) zoning on property located at the southeast corner of Taylor Avenue and Kirby Circle (1.6 acres) (Case CU-31-2020, WJJ Land Holdings, LLC) (Quasi-Judicial Proceeding).

7. Request by Palladio Development, LLC, for a variance to allow the east side of a proposed single-family home to exceed the allowable finish floor elevation by a maximum of 2.2 feet, as established by Section 174.073(A)(3), Palm Bay Code of Ordinances (0.23 acres) (V-26-2020) (Quasi-Judicial Proceeding).
8. Request by Dale Herscher, for a variance to allow a proposed covered carport to encroach 6.5 feet into the 8-foot side interior building setback as established by Section 185.033(F)(7)(b), Palm Bay Code of Ordinances (0.23 acres) (V-28-2020) (Quasi-Judicial Proceeding).

#### **PROCUREMENTS:**

1. Award of Bid: Malabar Road pipe repair – IFB 05-0-2021 – Public Works Department (Insituform Technologies, LLC - \$1,151,152).
2. Award of Bid: Road bond paving, Unit 17 – IFB 07-0-2021 – Public Works Department (Ranger Construction Industries - \$1,569,051.75).

#### **COUNCIL REPORTS:**

#### **NEW BUSINESS:**

1. Consideration of adopting Christmas Eve (December 24) as an official holiday observed by the City of Palm Bay. (Deputy Mayor Johnson)
2. Consideration of the City's state legislative priorities.
3. Consideration of an interlocal agreement with Brevard Public Schools for the purpose of sharing the use of sports and recreational facilities.
4. Consideration of a pay adjustment for sworn and communications center personnel within the Police Department (\$478,350).

#### **ADMINISTRATIVE AND LEGAL REPORTS:**

**PUBLIC COMMENTS/RESPONSES: Speakers are limited to 3 minutes.**

#### **ADJOURNMENT:**

**Councilmembers who are members of the Space Coast Transportation Planning Organization (TPO) may discuss TPO issues which may subsequently be addressed by the TPO.**

**If an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a record of the proceedings will be required, and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.**

**Any aggrieved or adversely affected person desiring to become a party in the quasi-judicial proceeding shall provide written notice to the City Clerk which notice shall, at a minimum, set forth the aggrieved or affected person's name, address, and telephone number, indicate how the aggrieved or affected person qualifies as an aggrieved or affected person and indicate whether the aggrieved or affected person is in favor of or**

**opposed to the requested quasi-judicial action. The required notice must be received by the Clerk no later than five (5) business days at the close of business, which is 5 p.m., before the hearing. (Section 59.03, Palm Bay Code of Ordinances).**

**In accordance with the Americans with Disabilities Act, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the City Clerk at (321) 952-3414 or Florida Relay System at 711.**

**Pursuant to Council Policies and Procedures, members of the public wishing to use electronic media when addressing City Council must provide the electronic file to staff for screening no later than 2:00 P.M. on the day of the meeting; audio presentations must be submitted to the City Clerk at least twenty-four (24) hours prior to the meeting.**

**THIS MEETING IS BROADCAST LIVE ON THE CITY'S WEBSITE AND TELEVISED ON THE SPACE COAST GOVERNMENT TV CHANNEL.**



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Terese Jones, City Clerk

**DATE:** 12/3/2020

**RE:** Adoption of Minutes: Regular Council Meeting 2020-39; November 5, 2020.

The minutes for Regular Council Meeting 2020-39 (November 5, 2020), shall be distributed prior to the December 3, 2020, Council meeting date.

**REQUESTING DEPARTMENT:**  
Legislative



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Terese Jones, City Clerk

**DATE:** 12/3/2020

**RE:** Adoption of Minutes: Regular Council Meeting 2020-40; November 19, 2020.

The minutes for Regular Council Meeting 2020-40 (November 19, 2020), shall be distributed prior to the December 3, 2020, Council meeting date.

**REQUESTING DEPARTMENT:**  
Legislative



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Terese Jones, City Clerk

**DATE:** 12/3/2020

**RE:** Adoption of Minutes: Special Council Meeting 2020-41; November 23, 2020.

**REQUESTING DEPARTMENT:**

Legislative

**ATTACHMENTS:**

**Description**

Minutes - SCM 2020-41

## **CITY OF PALM BAY, FLORIDA**

### **SPECIAL COUNCIL MEETING 2020-41**

Held on Monday, the 23<sup>rd</sup> day of November 2020, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 6:02 P.M.

#### **ROLL CALL:**

<b>MAYOR:</b>	William Capote	Present
<b>DEPUTY MAYOR:</b>	Kenny Johnson	Present
<b>COUNCILMEMBER:</b>	Harry Santiago, Jr.	Present
<b>COUNCILMEMBER:</b>	Jeff Bailey	Present
<b>COUNCILMEMBER:</b>	Brian Anderson	Present
<b>ACTING CITY MANAGER:</b>	Suzanne Sherman	Present
<b>CITY ATTORNEY:</b>	Patricia Smith	Present
<b>CITY CLERK:</b>	Terese Jones	Present

#### **BUSINESS:**

##### **1. Certification of the results of the General Municipal Election held on November 3, 2020.**

The City Clerk read the names of the candidates and the votes received for each. The results were as follows:

#### **OFFICE OF MAYOR**

Kay Maragh	26,699 votes
<b>Rob Medina</b>	<b>31,554 votes</b>

#### **CITY COUNCIL SEAT 2**

<b>Donny Jean Felix</b>	<b>28,886 votes</b>
Peter J. Filiberto	26,763 votes

#### **CITY COUNCIL SEAT 3**

<b>Randy Foster</b>	<b>33,858 votes</b>
Thomas L. Gaume Jr.	21,831 votes

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to certify the election results of the general municipal election held on November 3, 2020. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

Mayor Capote and Councilmembers Santiago and Anderson gave their outgoing speeches.

**2. The Honorable Christina Serrano, 18th Judicial Circuit, Brevard County Circuit Court, to administer the Oath of Office to the official for Office of the Mayor.**

Judge Serrano administered the oath of office for Office of the Mayor to Rob Medina and presented him with a Certificate of Election.

**3. City Attorney Patricia Smith to administer the Oath of Office to the officials for City Council Seats 2 and 3.**

Judge Serrano administered the oath of office for City Council Seat 2 to Donny Felix and City Council Seat 3 to Randy Foster. Each official received a Certificate of Election.

Councilmembers Felix and Foster gave their incoming speeches.

Mayor Medina gave his incoming speech.

**4. Selection by councilmembers of a Deputy Mayor.**

Motion by Mr. Foster, seconded by Mr. Felix, to reappoint Councilman Johnson as Deputy Mayor. Motion carried with members voting as follows: Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at the hour of 7:03 P.M.

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Robert Medina, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Frank Watanabe, Public Works Director, City Engineer and Juliet Misconi, Chief Procurement Officer

**DATE:** 12/3/2020

**RE:** Award of Bid: Drainage pipe connection, St. Johns Heritage Parkway to Fire Station retention pond – IFB 12-0-2021 – Public Works Department (MJC Land Development, LLC - \$145,163).

This project is comprised of the installation of a 48" drainage pipe from the newly construction pipe beneath the St Johns Heritage Parkway to the existing Fire Station Retention pond within the City of Palm Bay. Construction includes: dewatering, deep trenching, cofferdam operation, two manhole box structures and approximately 500 Linear feet of pipe.

Six (6) bids were received. The Procurement Department staff reviewed the bids for responsiveness. Public Works Department evaluated the bids for responsibility and ability to perform the scope of services. The Department found the lowest responsive bid to be acceptable.

The City's projected budget for this project was \$365,878. The lowest bid is \$145,163. Public Works Engineering staff has reviewed the low bidder's Summary of Pay Items, proposed Subcontractors, Equipment List and References and is satisfied with the evidence provided by the contractor. Staff recommends MJC Land Development, LLC, 1128 Royal Palm Beach Blvd, Royal Palm Beach, Florida for award of IFB #12-0-2021 – Drainage Pipe Connection to Fire Station Pond.

Local Preference was applied; however, the preference did not impact the outcome of the tabulation.

**REQUESTING DEPARTMENT:**  
Public Works, Procurement

**FISCAL IMPACT:**

The estimated budget for this project was \$365,878. Total project award will be \$145,163. Funds are available in the I-95 Interchange Fund account 306-7090-541-6303 in the amount of \$56,379 and in the Connector Road I-95 Fund account 308-7090-541-6303 in the amount of \$309,499 for a total of \$365,878 in project 15PW11 South I-95 Interchange/Parkway. Unspent funds will be returned to Fund balance at the end of the project.



**RECOMMENDATION:**

Motion to approve award of IFB #12-0-2021 Drainage Pipe Connection to Fire Station Pond to MJC Land Development, LLC, out of Royal Palm Beach, Florida.

**ATTACHMENTS:**

**Description**

**Tabulation Sheet**

				Local Preference: Not requested		Local Preference: Not requested		Local Preference: C		Local Preference: Not Requested	
	<b>IFB #12-0-2021/MS Pipe Connection to Fire Station Pond</b>			<b>MJC Land Development, LLC</b>		<b>Johnson-Davis Incorporated</b>		<b>Gregori Construction, Inc.</b>		<b>Timothy Rose Contracting</b>	
				<b>1128 Royal Palm Beach Blvd #340</b>		<b>863 S. Kings Hwy</b>		<b>3435 S. Hopkins Ave., Suite #6</b>		<b>1360 Old Dixie Hwy, Suite 106</b>	
				<b>Royal Palm Beach, FL 33411</b>		<b>Ft. Pierce, FL 34945</b>		<b>Titusville, FL 32780</b>		<b>Vero Beach, FL 32962</b>	
				<b>561-688-5004</b>		<b>772-468-9200</b>		<b>321-567-4010</b>		<b>772-564-7800</b>	
				<a href="mailto:mike@mjclanddev.com">mike@mjclanddev.com</a>		<a href="mailto:ccryer@johnsondavis.com">ccryer@johnsondavis.com</a>		<a href="mailto:agregori@gregori-inc.com">agregori@gregori-inc.com</a>		<a href="mailto:timrose7@comcast.net">timrose7@comcast.net</a>	
ITEM	ITEM DESCRIPTION	Est. Annual Qty	UOM	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Mobilization	1	LS	\$ 15,600.00	\$ 15,600.00	\$ 13,000.00	\$ 13,000.00	\$ 20,000.00	\$ 20,000.00	\$ 35,900.00	\$ 35,900.00
2	Maintenance of Traffic	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 850.00	\$ 850.00
3	Erosion Control	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 1,500.00	\$ 1,500.00	\$ 10,000.00	\$ 10,000.00	\$ 5,200.00	\$ 5,200.00
4	Clearing and Grubbing	0.24	AC	\$ 14,000.00	\$ 3,360.00	\$ 10,000.00	\$ 2,400.00	\$ 12,500.00	\$ 3,000.00	\$ 3,200.00	\$ 768.00
5	Dewatering/Well Points	1	LS	\$ 8,600.00	\$ 8,600.00	\$ 17,500.00	\$ 17,500.00	\$ 30,000.00	\$ 30,000.00	\$ 24,000.00	\$ 24,000.00
6	Cofferdam Operation	1	LS	\$ 8,600.00	\$ 8,600.00	\$ 3,000.00	\$ 3,000.00	\$ 7,000.00	\$ 7,000.00	\$ 90,000.00	\$ 90,000.00
7	Junction Box, Drainage, Utility >10 ft	2	EA	\$ 10,800.00	\$ 21,600.00	\$ 9,600.00	\$ 19,200.00	\$ 10,000.00	\$ 20,000.00	\$ 12,250.00	\$ 24,500.00
8	Pipe Culvert, Round 48" S/CD (PPP)	412	LF	\$ 165.00	\$ 67,980.00	\$ 200.00	\$ 82,400.00	\$ 300.00	\$ 123,600.00	\$ 216.00	\$ 88,992.00
9	Mitered End Section Round 48" S/CD (PPP)	1	EA	\$ 7,425.00	\$ 7,425.00	\$ 6,240.00	\$ 6,240.00	\$ 6,500.00	\$ 6,500.00	\$ 6,000.00	\$ 6,000.00
10	Performance Turf, Sod	1,176	SY	\$ 4.25	\$ 4,998.00	\$ 10.00	\$ 11,760.00	\$ 6.00	\$ 7,056.00	\$ 3.25	\$ 3,822.00
TOTAL BID AMOUNT				\$145,163.00		\$158,500.00		\$228,656.00		\$280,032.00	
										Note: Line 1 and Line 6 - Obvious errors corrected. Line 4 - Unit price prevails, extended price and total corrected.	

				Local Preference: Not Requested		Local Preference: Not Requested	
	<b>IFB #12-0-2021/MS Pipe Connection to Fire Station Pond</b>			<b>Hinterland Group, Inc.</b>		<b>W.T. Comp Inc.</b>	
				<b>5580 State Road 524</b>		<b>853 State Road 436</b>	
				<b>Cocoa, FL 32926</b>		<b>Casselberry, FL 32707</b>	
				<b>321-633-7066</b>		<b>321-972-9373</b>	
				<a href="mailto:info@hinterlandgroup.com">info@hinterlandgroup.com</a>		<a href="mailto:ramtin.azar@wtcomp.com">ramtin.azar@wtcomp.com</a>	
ITEM	ITEM DESCRIPTION	Est. Annual Qty	UOM	Unit Price	Total Price	Unit Price	Total Price
1	Mobilization	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 100,000.00	\$ 100,000.00
2	Maintenance of Traffic	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 8,500.00	\$ 8,500.00
3	Erosion Control	1	LS	\$ 4,500.00	\$ 4,500.00	\$ 50,000.00	\$ 50,000.00
4	Clearing and Grubbing	0.24	AC	\$ 20,000.00	\$ 4,800.00	\$ 17,500.00	\$ 4,200.00
5	Dewatering/Well Points	1	LS	\$ 65,000.00	\$ 65,000.00	\$ 50,000.00	\$ 50,000.00
6	Cofferdam Operation	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 35,000.00	\$ 35,000.00
7	Junction Box, Drainage, Utility >10 ft	2	EA	\$ 18,000.00	\$ 36,000.00	\$ 8,500.00	\$ 17,000.00
8	Pipe Culvert, Round 48" S/CD (PPP)	412	LF	\$ 450.00	\$ 185,400.00	\$ 180.00	\$ 74,160.00
9	Mitered End Section Round 48" S/CD (PPP)	1	EA	\$ 6,500.00	\$ 6,500.00	\$ 7,500.00	\$ 7,500.00
10	Performance Turf, Sod	1,176	SY	\$ 5.00	\$ 5,880.00	\$ 6.00	\$ 7,056.00
<b>TOTAL BID AMOUNT</b>				<b>\$340,580.00</b>		<b>\$353,416.00</b>	



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Fred Poppe, Director of Parks and Recreation

**DATE:** 12/3/2020

**RE:** Resolution 2020-61, naming a park site located at the northeast corner of Wake Forest Road and Barnes Avenue as 'West Pine Estates Park'.

On October 27, 2020, the Parks and Recreation Department was contacted by Tim Graver, President of the West Pine Estates Neighborhood association, requesting to name the park site that is currently under development on Wake Forest Rd NW, "West Pine Estates Park".

At the November 10, 2020 regular meeting, the Recreation Advisory Board unanimously voted to recommend to the Council that the park site named "West Pine Estates Park". This recommendation follows the Guidelines for Naming Parks and Recreation Facilities adopted by Council in that it bestows Group Recognition for outstanding contributions and services to the community. The West Pine Estates Neighborhood Association provided the initial footwork and vision for the development of the park.

**REQUESTING DEPARTMENT:**

Parks & Recreation

**FISCAL IMPACT:**

There is no fiscal impact.

**RECOMMENDATION:**

Motion to approve the Wake Forest Park Site, being named "West Pine Estates Park".

**ATTACHMENTS:**

**Description**

Request Letter

Park Naming Guidelines

Resolution 2020-61

October 27, 2020

Palm Bay Recreation Advisory Board,

My name is Tom Graver, I am the President of the West Pine Estates Neighborhood Association located in the northwest corner of the city of Palm Bay. It is my understanding a small park featuring a basketball court is being considered to be constructed near the west end of Wake Forest Road in our neighborhood. We support this park being built because it is a needed addition and will allow our children to play safer by getting out of the roadway and playing on flimsy, top-heavy mobile basketball poles placed in the front yards of some of our homes.

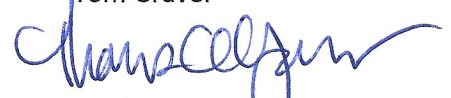
I hope this park will eventually become larger with more options for our children to play safely and for adults to exercise or relax because there are no parks of this kind currently in our neighborhood. Throughout the years my wife and I have driven to Lynne Manion Nungesser Park for any combination of our eight children to play and have witnessed other people arriving by bicycle or walking because it was close to where they live. This is the destination type of park our Board of Directors would like to see in our neighborhood.

We realize there are many discussions and processes that still must occur before any dirt will be moved. We're also aware of the future development coming to west Emerson Road, St. Johns Heritage Parkway and within the borders of our own neighborhood. When these future discussions occur, we want the citizens throughout Palm Bay to know geographically where West Pine Estates is located. Our Association is known by some as the "ladies at the church" that provided the early footwork and vision for this park to be built in the first place. The work, passion and reputation of Ronnie and AnneMarie has been recognized by many city leaders, and they have asked a new generation to stand up on their behalf. We want to preserve their energy and commitment into the West Pine Estates branding and ensure it is known to everyone and not forgotten.

Therefore, the Board of Directors for the West Pine Estates Neighborhood Association respectfully request the Palm Bay Recreation Advisory Board to please consider naming the park being considered to be constructed on the west end of Wake Forest Road to be called: "West Pine Estates Park".

Thank you for this consideration and your support of our Association.

Tom Graver



President- West Pine Estates  
Neighborhood Association

## **PARKS AND RECREATIONAL FACILITIES, NAMING**

### **NAMING PARKS AND FACILITIES**

The City Council adopted the Palm Bay Recreation Advisory Board's recommended criteria and guidelines for naming public parks and recreational facilities within the City. (RCM 2003-06; 02-06-03)

### **CRITERIA AND GUIDELINES**

A. Written recommendations, petitions, etc. requesting the naming of a park site or recreation facility are to be submitted to the Palm Bay Recreation Advisory Board for consideration. The Board will review the request and make a recommendation to the City Council. If more than one recommendation for a name is received, the names will be prioritized by the Board in its recommendation to Council.

B. The Board will consider all proposals and make a recommendation to Council as to whether the requested name should be approved or rejected. The Council shall make the final decision.

C. Names proposed for a park site or recreational facility shall adhere to one or more of the following categories:

- 1) Honoring a Living Person – A living person whose contribution or significant gift is of the most extraordinary nature;
- 2) Memorializing a Deceased Person – An individual whose service or gift to the parks/recreation system was extraordinary, and a period of at least twelve (12) months has passed from the time of the person's death;
- 3) Services Rendered – A name which reflects the nature of the services logically rendered at the park or facility;
- 4) Geographic Location – Immediate geographic location logically associated with the park or facility;
- 5) History – An historical person, place, culture, or event logically associated with the physical location;
- 6) Donor – The name of the donor or a name specified by a donor who donated the land or facility to the City;
- 7) Group Recognition – An organization for outstanding contributions and services to the community;
- 8) Geography – A geographical characteristic of the park or facility with special consideration given to archeology, geology, topography, botany, zoology, or man-made geographical characteristics;
- 9) Adjacent Street, School, Subdivision – A street, school, or subdivision adjacent to the park or facility.

D. Renaming a Park or Facility. Out of respect for the current name, only under extraordinary conditions (shortened, inappropriate, ineffectual names) will a park or facility be renamed.

E. Plaques, Markers, Memorials, or Identifying Structures– Recognition structures must complement existing signage. Costs and maintenance of the structures will be determined by the City Council. Structures should designate history related to the park or facility or recognize groups or individuals who contributed significantly through donations or their efforts to the City.

## **RESOLUTION**

Upon approval by the City Council of a name for a park or facility, a resolution shall be adopted to officiate Council's action.

## RESOLUTION 2020-61

**A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, NAMING APPROXIMATELY 7.43 ACRES LOCATED AT THE NORTHEAST CORNER OF WAKE FOREST ROAD AND BARNES AVENUE, AS 'WEST PINES ESTATES PARK'; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Palm Bay Recreation Advisory Board approved to name the site at its meeting held on November 10, 2020, and

**WHEREAS**, the City of Palm Bay desires to formally name approximately 7.43 acres, located at the northeast corner of Wake Forest Road and Barnes Avenue, as 'West Pines Estates Park'.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA**, as follows:

**SECTION 1.** The above recitals are true and correct and, by this reference, are hereby incorporated into and made an integral part of this resolution.

**SECTION 2.** The City Council of the City of Palm Bay, Brevard County, Florida, hereby formally names approximately 7.43 acres, located at the northeast corner of Wake Forest Road and Barnes Avenue, as 'West Pines Estates Park'.

**SECTION 3.** This Resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2020- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2020.

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Robert Medina, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK





## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Joan Junkala-Brown, Community & Economic Development

**DATE:** 12/3/2020

**RE:** Consideration of the sale of nine (9) surplus escheated properties in Holiday Park (\$51,570).

On August 20, 2019, the Brevard County Board of County Commissioners approved Resolution 2019-133 escheating ten (10) parcels, located within the boundaries of Palm Bay, to the City. These properties were previously escheated to the County for nonpayment of taxes pursuant to the tax certificates/tax deeds sale procedures of the Chapter 197, Florida Statutes, which also mandates the County to convey such properties to the City unless the County has identified a designated use for the property.

Of the ten (10) parcels, seven (7) are located within the Port Malabar Holiday Park mobile home community, the remaining three are not located within Holiday Park. Additionally, the City owns two other properties within Port Malabar Holiday Park located at 171 Holiday Park Boulevard and 220 Blossom Lane NE, which were deeded to the City during a previous escheatment.

In November 2019, the City paid outstanding utility bills for all properties totaling \$25,161.51 and wrote off approximately \$203,796.77 in code compliance liens. In June 2020, the City paid a total of \$22,372.58 in outstanding non-ad valorem taxes for the 2019 property tax year.

At the Regular Meeting scheduled on August 20, 2020, City Council declared the all nine (9) escheated properties in Holiday Park as surplus real estate and authorized staff to publicly notice for 30 days the availability of the properties for sale per Administrative Code G.34.1, Real Estate Policy.

On September 2, 2020, the City publicly noticed the availability of nine (9) surplus properties in Holiday Park for sale. The City received a total of 25 offers. Staff has reviewed all offers and makes a recommendation to accept the following best and final offers totaling \$51,570:

- 146 Holiday Park Blvd NE, Scott A. Martin, \$2,526
- 194 Holiday Park Blvd NE, Martha Hall, \$5,044
- 254 Holiday Park Blvd NE, Jacquelyn Slusher, \$7,000
- 340 Holiday Park Blvd NE, Jennifer Miller, \$6,100
- 357 Holiday Park Blvd NE, Sandra McAvoy, \$5,500
- 1285 Dove Court NE, Patricia Clark, \$7,000

- 1042 Moonlight Court NE, Dawn A. Hill, \$9,000
- 171 Holiday Park Blvd NE, Devin Hogue, \$6,400
- 220 Blossom Lane NE, Holiday Park Recreation District Mobile Home Park District, \$3,000

**REQUESTING DEPARTMENT:**

Community & Economic Development

**FISCAL IMPACT:**

All funds from the sale of surplus real property would result in revenue of \$51,570 to 001-0000-388-1001 (Sale Proceeds).

**RECOMMENDATION:**

Motion to authorize the Acting City Manager to execute the sale contracts for all nine (9) properties for a total of \$51,570 in sale proceeds.

**ATTACHMENTS:**

**Description**

30-day Public Notice (Florida Today)

Final Offers (Holiday Park Escheated Properties)

146 Holiday Park Blvd NE (Scott A Martin)

171 Holiday Park Blvd NE (Devin Hogue)

194 Holiday Park Blvd NE (Martha Hall)

220 Blossom Ln (Holiday Park Recr District)

254 Holiday Park Blvd NE (Jacquelyn Slusher)

340 Holiday Park Blvd NE (Jennifer Miller)

357 Holiday Park Blvd NE (Sandra Mcavoy)

1042 Moonlight Court NE (Dawn A Hill)

1285 Dove Court NE (Patricia Clark)



**Classified Ad Receipt  
(For Info Only - NOT A BILL)**

**Customer:** CITY OF PALM BAY  
**Address:** 120 MALABAR RD SE  
PALM BAY FL 32907  
USA

**Ad No.:** 0004356079  
**Pymt Method** Invoice  
**Net Amt:** \$149.63

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 09/02/20

**Text of Ad:**

AD#4356079 9/2/2020  
CITY OF PALM BAY  
PUBLIC NOTICE  
NOTICE OF AVAILABILITY OF SURPLUS  
LAND

Pursuant to the procedures set forth in the City's Administrative Code G.34.2 Real Estate Policy, Section 6 Unsolicited Offers/Disposition by Public Notice, the City of Palm Bay hereby notifies the general public of the availability for purchase of City-owned residential land for private ownership. The subject surplus properties were escheated to the City from Brevard County by way of Tax Deed. Purchaser should understand and agree that additional action will be required to clear title to the Mobile Homes. At the Regular Meeting of City Council held on August 20, 2020, City Council has declared the following lands as surplus real estate.

146 Holiday Park Boulevard NE (Tax Account 2843502)  
171 Holiday Park Boulevard NE (Tax Account 2843441)  
194 Holiday Park Boulevard NE (Tax Account 2843322)  
254 Holiday Park Boulevard NE (Tax Account 2843750)  
340 Holiday Park Boulevard NE (Tax Account 2843067)  
357 Holiday Park Boulevard NE (Tax Account 2843129)  
220 Blossom Lane NE (Tax Account 2843382)  
1285 Dove Court NE (Tax Account 2843306)  
1042 Moonlight Court NE (Tax Account 2842902)

All lots are zoned Residential Mobile Home and are located within the Port Malabar Holiday Park Mobile Home Park Recreation District, a deed restricted community.

All offers will be accepted 30 days from the date in which this notice is published. Offers shall be submitted on the FARBAR "AS IS" Residential Contract for Sale and Purchase. Offers should be sent to Joan Junkala-Brown, Community & Economic Development Director via email to [econdev@palmbayflorida.org](mailto:econdev@palmbayflorida.org) or via regular mail to City of Palm Bay, Attn: Joan Junkala-Brown, 120 Malabar Road SE, Palm Bay, FL 32907. For inquiries, contact Community & Economic Development at (321) 409-7187.

Holiday Park Escheated Parcels  
FINAL OFFERS

Property Address	Buyer	Offer
146 Holiday Park Blvd NE	Scott A. Martin	\$ 2,526.00
194 Holiday Park Blvd NE	Martha Hall	\$ 5,044.00
254 Holiday Park Blvd NE	Jacquelyn Slusher	\$ 7,000.00
340 Holiday Park Blvd NE	Jennifer Miller	\$ 6,100.00
357 Holiday Park Blvd NE	Sandra Mcavoy	\$ 5,500.00
1285 Dove Court NE	Patricia J. Clark	\$ 7,000.00
1042 Moonlight Court NE	Dawn A. Hill	\$ 9,000.00
171 Holiday Park Blvd NE	Devin Hogue	\$ 6,400.00
220 Blossom Lane NE	Holiday Park Recr District	\$ 3,000.00
TOTAL ESTIMATED REVENUE		\$ 51,570.00

# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1\* **PARTIES:** City of Palm Bay ("Seller"),  
2\* and Scott A. Martin ("Buyer"),  
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and  
5 any riders and addenda ("Contract"):

## 1. PROPERTY DESCRIPTION:

- 7\* (a) Street address, city, zip: 146 Holiday Park Blvd NE, Palm Bay, FL 32907  
8\* (b) Property is located in: Brevard County, Florida. Real Property Tax ID No.: 2843502  
9\* (c) Real Property: The legal description is Lot 19, Block 15, PM Holiday Park Unit 1  
10  
11  
12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached  
13 wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms  
14 of this Contract.  
15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which  
16 are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase  
17 range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and  
18 draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access  
19 devices, and storm shutters/panels ("Personal Property").  
20\* Other items included in this purchase are: \_\_\_\_\_ as is  
21  
22 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.  
23\* (e) The following items are excluded from the purchase: \_\_\_\_\_  
24

## PURCHASE PRICE AND CLOSING

- 26\* **2. PURCHASE PRICE (U.S. currency):** ..... ~~\$ 2500.00~~ **2526.00**  
27\* (a) Initial deposit to be held in escrow in the amount of (**checks subject to COLLECTION**) ... ~~\$ 500.00~~  
28 The initial deposit made payable and delivered to "Escrow Agent", named below  
29\* (**CHECK ONE**): (i) ☐ accompanies offer or (ii) ☒ is to be made within 3 (if left blank,  
30 then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii)  
31 SHALL BE DEEMED SELECTED  
32\* Escrow Agent Information: Name: Majesty Title Services  
33\* Address 1400 N. Highway A1A Indianantic, FL 32903  
34\* Phone: 321-327-6240 E-mail: joan.read@majestytitle.com Fax: \_\_\_\_\_  
35\* (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10)  
36\* days after Effective Date..... \$ \_\_\_\_\_  
37 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")  
38\* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 .....  
39\* (d) Other: ..... \$ \_\_\_\_\_  
40 (e) Balance to close (not Including Buyer's closing costs. prepaids and prorations) by wire  
41\* transfer or **COLLECTED** funds..... ~~\$ 2000.00~~ **2026.00**  
42 **NOTE: For the definition of "COLLECTION" OR "COLLECTED" see STANDRD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- 44\* (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before \_\_\_\_\_  
45\* \_\_\_\_\_, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to  
46 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the  
47 counter-offer is delivered.  
48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed  
49 and delivered this offer or final counter-offer ("Effective Date").

50 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and  
51 the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing")  
52\* on or before October 30, 2020 ("Closing Date"), at the time established by the Closing Agent.

## 5. EXTENSION OF CLOSING DATE:

- 54 (a) If Closing funds from Buyers lender(s) are not available al time of Closing due to Truth In Lending Act (TILA) notice  
55 requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not to  
56 exceed 7 days.

Buyer's Initials SM

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Seller's Initials \_\_\_\_\_

(b) if extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes: (i) disruption of utilities or other services essential for Closing, or (ii) Hazard, Wind, Flood or Homeowners' insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing, and availability of applicable Hazard, Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not occurred within \_\_\_\_\_ (if left blank, then 14) days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**6. OCCUPANCY AND POSSESSION:**

(a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.

(b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING:** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, See Rider U. POST-CLOSING OCCUPANCY BY SELLER.

**7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this Contract.

**FINANCING**

**8. FINANCING:**

☒ (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to Buyer's obligation to close.

☐ (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a ☐ conventional ☐ FHA ☐ VA or ☐ other \_\_\_\_\_ (describe) loan on the following terms within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Commitment Date") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate loan in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract **up to the earlier of:**

- i. Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or
- ii. 7 days prior to Closing Date

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Properly related conditions of the Loan Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

- ☐ (c) Assumption of existing mortgage (see rider for terms).
- ☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

#### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Other: \_\_\_\_\_
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Loan Expenses
- Appraisal Fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owners Policy Premium (if Paragraph 9 (c) (iii) is checked.)
- Other: \_\_\_\_\_

- (c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search, municipal lien search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below

##### (CHECK ONE):

☒ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for closing services related to Buyer's lender's policy and endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements, and loan closing; or

☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title Insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

- (d) **SURVEY:** At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date

- (e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home

warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreements warranty period.

- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. installments prepaid or due for the year of Closing shall be prorated.

☒ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

Buyer's Initials fm

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Seller's Initials \_\_\_\_\_

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## DISCLOSURES

### 10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is 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 health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance through the National Flood Insurance Program, Buyer may terminate this Contract by delivering written notice to seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Reform Act of 2012 (referred to as Biggert-Waters 2012) may phase in actuarial rating of pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 80% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.**
- (i) **FIRPTA TAX WITHHOLDING:** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"), Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental, or safety code violation.

## PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

- 11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

Buyer's Initials 

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Seller's Initials \_\_\_\_\_



228 **12. PROPERTY INSPECTION; RIGHT TO CANCEL:**

- 229\* (a) **PROPERTY INSPECTION AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, than 15) days  
230 after Effective Date ("Inspection Period") within which to have such inspections of the Property performed  
231 as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the  
232 Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice or such  
233 election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the  
234 Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further  
235 obligations under this Contract; however, Buyer shall be responsible for prompt payment for such  
236 inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and  
237 shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall  
238 survive termination or this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer  
239 accepts the physical condition of the Property and any violation of governmental, building, environmental,  
240 and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance  
241 Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's  
242 lender.
- 243 (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to  
244 time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up  
245 walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the  
246 Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement  
247 and has met all other contractual obligations
- 248 (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of  
249 the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written  
250 documentation or other information in Seller's possession, knowledge, or control relating to improvements to the  
251 Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with  
252 Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's  
253 obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents  
254 necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling  
255 such obligation, Seller shall not be required to expend, or become obligated to expend, any money.
- 256 (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost,  
257 Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

258

**ESCROW AGENT AND BROKER**

- 259 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and  
260 other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the  
261 State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract.  
262 Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the  
263 Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions  
264 permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this  
265 Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its  
266 disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or  
267 Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents  
268 a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such  
269 action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously  
270 delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as  
271 amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow  
272 disbursement order.
- 273 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in  
274 any proceeding where Agent interpleads the subject matter of escrow, Agent shall recover reasonable attorney's  
275 fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be  
276 liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful  
277 breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this  
278 Contract.
- 279 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square  
280 footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals  
281 for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction  
282 contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all  
283 representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER**  
284 **AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES**  
285 **FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT**  
286 **PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.**

Buyer's Initials 

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Seller's Initials \_\_\_\_\_

Buyer and Seller (individually, the "indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

## DEFAULT AND DISPUTE RESOLUTION

### 15. DEFAULT:

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.
- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract

### 16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.


### 17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

### 18. STANDARDS:

#### A. TITLE:

- (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f)

Buyer's Initials 

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Seller's Initials \_\_\_\_\_

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of terms identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or If Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or If Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**B. SURVEY:** If Survey discloses encroachments on the Real Property or that Improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

**C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

**D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s), the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s), fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

**E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller, and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been Improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for construction lien or a claim for damages have been paid or will be paid at Closing.

**F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.**

Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5.00 p.m. (where the Property is located) of the next business day.

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and which, by: exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this contract, provided, however, if such Force Majeure continues to prevent performance

Buyer's Initials                     

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Seller's Initials

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

**H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

### **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior years millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current years tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% or estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If Cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange..

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the Context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such Broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED In Closing Agent's accounts.

**T. LOAN COMMITMENT:** "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** If a Seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person", provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b).

Otherwise, Buyer shall withhold 10% of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 25 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold 10% of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable

Buyer's Initials

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Seller's Initials

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

**W. RESERVED**

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract, for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

**ADDENDA AND ADDITIONAL TERMS**

**19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- |                                                    |                                                               |                                                                     |
|----------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> A. Condominium Rider      | <input type="checkbox"/> M. Defective Drywall                 | <input type="checkbox"/> X. Kick-out Clause                         |
| <input type="checkbox"/> B. Homeowners' Assn.      | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> Y. Sellers Attorney Approval               |
| <input type="checkbox"/> C. Seller Financing       | <input type="checkbox"/> O. Insulation Disclosure             | <input type="checkbox"/> Z. Buyer's Attorney Approval               |
| <input type="checkbox"/> D. Mortgage Assumption    | <input type="checkbox"/> P. Lead Based Paint Disclosure       | <input type="checkbox"/> AA. Licensee-Personal Interest in Property |
| <input type="checkbox"/> E. FHA/VA Financing       | (Pre 1978 Housing)                                            | <input type="checkbox"/> BB. Binding Arbitration                    |
| <input type="checkbox"/> F. Appraisal Contingency  | <input type="checkbox"/> Q. Housing for Older Persons         | <input type="checkbox"/> Other _____                                |
| <input type="checkbox"/> G. Short Sale             | <input type="checkbox"/> R. Rezoning                          | _____                                                               |
| <input type="checkbox"/> H. Homeowners'/Flood Ins. | <input type="checkbox"/> S. Lease Purchaser/Lease Option      | _____                                                               |
| <input type="checkbox"/> I. RESERVED               | <input type="checkbox"/> T. Pre-Closing Occupancy by Buyer    | _____                                                               |
| <input type="checkbox"/> J. Interest-Bearing Acct. | <input type="checkbox"/> U. Post-Closing Occupancy by Seller  | _____                                                               |
| <input type="checkbox"/> K. RESERVED               | <input type="checkbox"/> V. Sale of Buyer's Property          | _____                                                               |
| <input type="checkbox"/> L. RESERVED               | <input type="checkbox"/> W. Back-up Contract                  | _____                                                               |

**20. ADDITIONAL TERMS:**

**COUNTER-OFFER/REJECTION**

☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).

☐ Seller rejects Buyer's offer.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

*Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

Buyer's Initials

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Seller's Initials

564 AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE  
565 COMPLETED.

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568\* Buyer: Scott G. Martins Date: 10/1/2020

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573\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

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578\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

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583\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

584  
585 Buyer's address for purposes of notice Seller's address for purposes of notice  
586\* 285 McClain Drive \_\_\_\_\_  
587\* West Melbourne, FL 32904 \_\_\_\_\_  
588\* \_\_\_\_\_  
589 \_\_\_\_\_

590 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to  
591 compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to  
592 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties  
593 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed  
594 funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to  
595 Cooperating Brokers.

596  
597\* \_\_\_\_\_  
598 Cooperating Sales Associate, If Any Listing Sales Associate  
599  
600\* \_\_\_\_\_  
601 Cooperating Broker, If Any Listing Broker



RECEIVED  
SEP 29 2020



# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

**PARTIES:** City of Palm Bay ("Seller"),  
and Devin Hogue ("Buyer"),  
agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

## 1. PROPERTY DESCRIPTION:

- (a) Street address, city, zip: 171 Holiday Park Boulevard NE, Palm Bay FL 32907  
(b) Located in: Brevard County, Florida. Property Tax ID #: 2843441  
(c) Real Property: The legal description is PORT MALABAR HOLIDAY PARK UNIT 1 LOT 14 BLK 14

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

- (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").

Other Personal Property items included in this purchase are: Mobile Home Located on the Property

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- (e) The following items are excluded from the purchase:

## PURCHASE PRICE AND CLOSING

**2. PURCHASE PRICE** (U.S. currency): \$ 6,400.00

- (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** \$

The initial deposit made payable and delivered to "Escrow Agent" named below  
**(CHECK ONE):** (i) ☐ accompanies offer or (ii) ☐ is to be made within (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name:

Address:

Phone: E-mail: Fax:

- (b) Additional deposit to be delivered to Escrow Agent within (if left blank, then 10) days after Effective Date \$

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8

- (d) Other: \$

- (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other **COLLECTED** funds \$

**NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before 10/10/2020, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

**4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on TBD ("Closing Date"), at the time established by the Closing Agent.

Buyer's Initials DH  
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Seller's Initials



53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.
- 58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.
- 68\* (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
69 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
70 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
71 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
72 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
73 of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
74 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
75 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
76 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 77\* **7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under  
78\* this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this  
79 Contract.

80 **FINANCING**

81 **8. FINANCING:**

82\* ☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
83 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
84 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
85 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

86\* ☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other  
87\* \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
88\* Period") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph  
89\* 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
90\* creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

91\* (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
92 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
93 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
94 by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

95 Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
96 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited  
97 to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
98 mortgage broker and lender in connection with Buyer's mortgage loan application.

99 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
100 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
101 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
102 statements, to Seller and Broker.

103 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

104 (iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to  
105 expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been  
106 unable to obtain Loan Approval and has elected to either:

- 107 (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
108 (2) terminate this Contract.

(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see rider for terms).

☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: See Section 20

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: See Section 20
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### (CHECK ONE):

☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☒ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

- ☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.
- (d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- (e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**
- ☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.
- ☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## DISCLOSURES

### 10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is 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 health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

- 11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").
- 12. PROPERTY INSPECTION; RIGHT TO CANCEL:**
- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

### DEFAULT AND DISPUTE RESOLUTION

#### 15. DEFAULT:

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under

this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

- 16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

- 17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

#### 18. STANDARDS:

##### A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,



## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

383 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which  
384 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or  
385 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has  
386 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)  
387 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all  
388 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and  
389 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,  
390 thereby releasing Buyer and Seller from all further obligations under this Contract.

391 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon  
392 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable  
393 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of  
394 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later  
395 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and  
396 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a  
397 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the  
398 preparation of such prior survey, to the extent the affirmations therein are true and correct.

399 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to  
400 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

401 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from  
402 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security  
403 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)  
404 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit  
405 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or  
406 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph  
407 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller  
408 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this  
409 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under  
410 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations  
411 thereunder.

412 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing  
413 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or  
414 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been  
415 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all  
416 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth  
417 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges  
418 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been  
419 paid or will be paid at Closing.

420 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other  
421 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates  
422 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur  
423 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property  
424 is located) of the next business day.

425 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be  
426 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of  
427 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force  
428 Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,  
429 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent  
430 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including  
431 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents  
432 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under  
433 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering  
434 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all  
435 further obligations under this Contract.

436 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,  
437 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters  
438 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

**I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated



## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.**

**T. RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

### W. RESERVED

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

## ADDENDA AND ADDITIONAL TERMS

**19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- |                                                    |                                                               |                                                         |
|----------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> A. Condominium Rider      | <input type="checkbox"/> K. RESERVED                          | <input type="checkbox"/> T. Pre-Closing Occupancy       |
| <input type="checkbox"/> B. Homeowners' Assn.      | <input type="checkbox"/> L. RESERVED                          | <input type="checkbox"/> U. Post-Closing Occupancy      |
| <input type="checkbox"/> C. Seller Financing       | <input type="checkbox"/> M. Defective Drywall                 | <input type="checkbox"/> V. Sale of Buyer's Property    |
| <input type="checkbox"/> D. Mortgage Assumption    | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> W. Back-up Contract            |
| <input type="checkbox"/> E. FHA/VA Financing       | <input type="checkbox"/> O. Insulation Disclosure             | <input type="checkbox"/> X. Kick-out Clause             |
| <input type="checkbox"/> F. Appraisal Contingency  | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978)  | <input type="checkbox"/> Y. Seller's Attorney Approval  |
| <input type="checkbox"/> G. Short Sale             | <input type="checkbox"/> Q. Housing for Older Persons         | <input type="checkbox"/> Z. Buyer's Attorney Approval   |
| <input type="checkbox"/> H. Homeowners/Flood Ins.  | <input type="checkbox"/> R. Rezoning                          | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> I. RESERVED               | <input type="checkbox"/> S. Lease Purchase/ Lease Option      | <input type="checkbox"/> BB. Binding Arbitration        |
| <input type="checkbox"/> J. Interest-Bearing Acct. |                                                               | <input type="checkbox"/> Other: _____                   |

**20. ADDITIONAL TERMS:** Buyer to pay all closing costs; Section 12 is hereby deleted and also lines 609 through 618 are deleted.

Parties shall be responsible for their own attorney fees.

## COUNTER-OFFER/REJECTION

☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).

☐ Seller rejects Buyer's offer.

Buyer's Initials DH  
FloridaRealtors/FloridaBar-ASIS-5

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Seller's Initials \_\_\_\_\_

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THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

Buyer:  Date: 09-27-2020

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's address for purposes of notice	Seller's address for purposes of notice
<u>690 Ridge Rd</u>	_____
<u>Lewisberry PA, 17339</u>	_____
_____	_____

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

Cooperating Sales Associate, if any	Listing Sales Associate
-------------------------------------	-------------------------

Cooperating Broker, if any	Listing Broker
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SEP 29 2020



# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

**PARTIES:** City of Palm Bay ("Seller"),  
and Martha Hall ("Buyer"),  
agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

## 1. PROPERTY DESCRIPTION:

- (a) Street address, city, zip: 194 Holiday Park Boulevard NE, Palm Bay FL 32907  
(b) Located in: Brevard County, Florida. Property Tax ID #: 2843322  
(c) Real Property: The legal description is PORT MALABAR HOLIDAY PARK UNIT 1 LOT 63 BLK 7

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

- (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").

Other Personal Property items included in this purchase are: Mobile Home Located on the Property

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- (e) The following items are excluded from the purchase:

## PURCHASE PRICE AND CLOSING

- 2. PURCHASE PRICE** (U.S. currency): \$ 5,044.00

- (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** \$

The initial deposit made payable and delivered to "Escrow Agent" named below

**(CHECK ONE):** (i) ☐ accompanies offer or (ii) ☐ is to be made within (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name:

Address:

Phone: E-mail: Fax:

- (b) Additional deposit to be delivered to Escrow Agent within (if left blank, then 10) days after Effective Date \$

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8

- (d) Other: \$

- (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other **COLLECTED** funds \$

**NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before 10/10/2020, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

- 4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on TBD ("Closing Date"), at the time established by the Closing Agent.

Buyer's Initials *MA*  
FloridaRealtors/FloridaBar-ASIS-5

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Seller's Initials

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53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.
- 58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.
- 68\* (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
69 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
70 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
71 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
72 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
73 of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
74 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
75 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
76 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 77\* **7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under  
78\* this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this  
79 Contract.

80 **FINANCING**

81 **8. FINANCING:**

82\* ☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
83 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
84 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
85 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

86\* ☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other  
87\* \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
88\* Period") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph  
89\* 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
90\* creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

91\* (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
92 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
93 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
94 by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

95 Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
96 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited  
97 to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
98 mortgage broker and lender in connection with Buyer's mortgage loan application.

99 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
100 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
101 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
102 statements, to Seller and Broker.

103 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.  
104 (iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to  
105 expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been  
106 unable to obtain Loan Approval and has elected to either:

- 107 (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
108 (2) terminate this Contract.



(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see rider for terms).

☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: See Section 20

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: See Section 20
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### (CHECK ONE):

☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☒ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

- ☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.
- (d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- (e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments (**CHECK ONE**):
- ☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.
- ☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## DISCLOSURES

### 10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is 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 health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

- 11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").
- 12. PROPERTY INSPECTION; RIGHT TO CANCEL:**
- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,



consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

### DEFAULT AND DISPUTE RESOLUTION

#### 15. DEFAULT:

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under

this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

- 16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

- 17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

#### 18. STANDARDS:

##### A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

383 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which  
384 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or  
385 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has  
386 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)  
387 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all  
388 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and  
389 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,  
390 thereby releasing Buyer and Seller from all further obligations under this Contract.

391 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon  
392 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable  
393 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of  
394 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later  
395 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and  
396 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a  
397 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the  
398 preparation of such prior survey, to the extent the affirmations therein are true and correct.

399 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to  
400 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

401 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from  
402 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security  
403 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)  
404 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit  
405 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or  
406 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph  
407 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller  
408 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this  
409 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under  
410 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations  
411 thereunder.

412 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing  
413 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or  
414 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been  
415 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all  
416 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth  
417 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges  
418 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been  
419 paid or will be paid at Closing.

420 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other  
421 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates  
422 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur  
423 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property  
424 is located) of the next business day.

425 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be  
426 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of  
427 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force  
428 Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,  
429 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent  
430 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including  
431 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents  
432 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under  
433 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering  
434 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all  
435 further obligations under this Contract.

436 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,  
437 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters  
438 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

### **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated



STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

**T. RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

### W. RESERVED

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

## ADDENDA AND ADDITIONAL TERMS

**19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- |                                                    |                                                               |                                                         |
|----------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> A. Condominium Rider      | <input type="checkbox"/> K. RESERVED                          | <input type="checkbox"/> T. Pre-Closing Occupancy       |
| <input type="checkbox"/> B. Homeowners' Assn.      | <input type="checkbox"/> L. RESERVED                          | <input type="checkbox"/> U. Post-Closing Occupancy      |
| <input type="checkbox"/> C. Seller Financing       | <input type="checkbox"/> M. Defective Drywall                 | <input type="checkbox"/> V. Sale of Buyer's Property    |
| <input type="checkbox"/> D. Mortgage Assumption    | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> W. Back-up Contract            |
| <input type="checkbox"/> E. FHA/VA Financing       | <input type="checkbox"/> O. Insulation Disclosure             | <input type="checkbox"/> X. Kick-out Clause             |
| <input type="checkbox"/> F. Appraisal Contingency  | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978)  | <input type="checkbox"/> Y. Seller's Attorney Approval  |
| <input type="checkbox"/> G. Short Sale             | <input type="checkbox"/> Q. Housing for Older Persons         | <input type="checkbox"/> Z. Buyer's Attorney Approval   |
| <input type="checkbox"/> H. Homeowners/Flood Ins.  | <input type="checkbox"/> R. Rezoning                          | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> I. RESERVED               | <input type="checkbox"/> S. Lease Purchase/ Lease Option      | <input type="checkbox"/> BB. Binding Arbitration        |
| <input type="checkbox"/> J. Interest-Bearing Acct. |                                                               | <input type="checkbox"/> Other: _____                   |

**20. ADDITIONAL TERMS:** Buyer to pay all closing costs; Section 12 is hereby deleted and also lines 609 through 618 are deleted.

Parties shall be responsible for their own attorney fees.

## COUNTER-OFFER/REJECTION

☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).

☐ Seller rejects Buyer's offer.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

Buyer: Martha Hall Date: 09-24-2020

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's address for purposes of notice	Seller's address for purposes of notice
<u>1341 Shermans Valley Rd</u>	_____
<u>Hopewell PA, 16650</u>	_____
_____	_____

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

_____	_____
<b>Cooperating Sales Associate, if any</b>	<b>Listing Sales Associate</b>

_____	_____
<b>Cooperating Broker, if any</b>	<b>Listing Broker</b>

# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



**PARTIES:** City of Palm Bay ("Seller"),  
and Port Malabar Holiday Park Mobile Home Park Recreation District ("Buyer"),  
agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
(collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase  
and any riders and addenda ("Contract"):

**1. PROPERTY DESCRIPTION:** 220 Blossom Lane, NE, Palm Bay FL 32907  
(a) Street address, city, zip: \_\_\_\_\_  
(b) Located in: Brevard County, Florida, Property Tax ID #: 2843382  
(c) Real Property: The legal description is Port Malabar Holiday Park Unit 1, Lot 83 Blk 12

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and  
attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or  
by other terms of this Contract.

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items  
which are owned by Seller and existing on the Property as of the date of the initial offer are included in the  
purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),  
drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate  
and other access devices, and storm shutters/panels ("Personal Property").

Other Personal Property items included in this purchase are: Mobile Home Located on Property

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

(e) The following items are excluded from the purchase: \_\_\_\_\_

## PURCHASE PRICE AND CLOSING

**2. PURCHASE PRICE (U.S. currency):** ..... \$ 2,000.00  
1000.00

(a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION) ..... \$

The initial deposit made payable and delivered to "Escrow Agent" named below  
(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within \_\_\_\_\_ (if left  
blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN  
OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

(b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10)  
days after Effective Date ..... \$

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

(c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... \$

(d) Other: ..... \$

(e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire  
transfer or other COLLECTED funds ..... \$

**NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

(a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before  
10/10/2020, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to  
Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day  
the counter-offer is delivered.

(b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or  
initiated and delivered this offer or final counter-offer ("Effective Date").

**4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur  
and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered  
("Closing") on TBD ("Closing Date"), at the time established by the Closing Agent.

Buyer's Initials SP  
FloridaRealtors/FloridaBar-ASIS-5

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Seller's Initials \_\_\_\_\_

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53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.  
58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.  
68\* (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
69 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
70 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
71 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
72 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
73 of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
74 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
75 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
76 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 77\* **7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under  
78\* this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this  
79 Contract.

80 **FINANCING**

81 **8. FINANCING:**

82\* ☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
83 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
84 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
85 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

86\* ☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other  
87\* \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
88\* Period") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph  
89\* 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
90\* creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

91\* (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
92 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
93 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
94 by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

95 Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
96 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to,  
97 timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
98 mortgage broker and lender in connection with Buyer's mortgage loan application.

99 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
100 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
101 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
102 statements, to Seller and Broker.

103 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

104 (iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to  
105 expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been  
106 unable to obtain Loan Approval and has elected to either:

- 107 (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
108 (2) terminate this Contract.

(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see rider for terms).

☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: See Section 20

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: See Section 20
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### (CHECK ONE):

☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☒ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

☐ (iii) [MIAMI-DADE/BROWARD REGIONAL PROVISION]: Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

(d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments (**CHECK ONE**):

☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## DISCLOSURES

### 10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is 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 health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.

(e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE:** BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

12. **PROPERTY INSPECTION; RIGHT TO CANCEL:**

- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

#### ESCROW AGENT AND BROKER

- 13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

- 14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

#### DEFAULT AND DISPUTE RESOLUTION

**15. DEFAULT:**

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under

this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

- 16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

- 17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

#### 18. STANDARDS:

##### A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,



## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

383 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which  
384 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or  
385 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has  
386 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)  
387 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all  
388 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and  
389 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,  
390 thereby releasing Buyer and Seller from all further obligations under this Contract.

391 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon  
392 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable  
393 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of  
394 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later  
395 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and  
396 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a  
397 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the  
398 preparation of such prior survey, to the extent the affirmations therein are true and correct.

399 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to  
400 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

401 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from  
402 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security  
403 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)  
404 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit  
405 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or  
406 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph  
407 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller  
408 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this  
409 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under  
410 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations  
411 thereunder.

412 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing  
413 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or  
414 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been  
415 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all  
416 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth  
417 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges  
418 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been  
419 paid or will be paid at Closing.

420 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other  
421 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates  
422 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur  
423 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property  
424 is located) of the next business day.

425 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be  
426 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of  
427 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force  
428 Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,  
429 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent  
430 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including  
431 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents  
432 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under  
433 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering  
434 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all  
435 further obligations under this Contract.

436 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,  
437 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters  
438 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

### **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated



## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

**T. RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

**W. RESERVED**

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

**ADDENDA AND ADDITIONAL TERMS**

**19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- |                                                    |                                                               |                                                         |
|----------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> A. Condominium Rider      | <input type="checkbox"/> K. RESERVED                          | <input type="checkbox"/> T. Pre-Closing Occupancy       |
| <input type="checkbox"/> B. Homeowners' Assn.      | <input type="checkbox"/> L. RESERVED                          | <input type="checkbox"/> U. Post-Closing Occupancy      |
| <input type="checkbox"/> C. Seller Financing       | <input type="checkbox"/> M. Defective Drywall                 | <input type="checkbox"/> V. Sale of Buyer's Property    |
| <input type="checkbox"/> D. Mortgage Assumption    | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> W. Back-up Contract            |
| <input type="checkbox"/> E. FHA/VA Financing       | <input type="checkbox"/> O. Insulation Disclosure             | <input type="checkbox"/> X. Kick-out Clause             |
| <input type="checkbox"/> F. Appraisal Contingency  | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978)  | <input type="checkbox"/> Y. Seller's Attorney Approval  |
| <input type="checkbox"/> G. Short Sale             | <input type="checkbox"/> Q. Housing for Older Persons         | <input type="checkbox"/> Z. Buyer's Attorney Approval   |
| <input type="checkbox"/> H. Homeowners/Flood Ins.  | <input type="checkbox"/> R. Rezoning                          | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> I. RESERVED               | <input type="checkbox"/> S. Lease Purchase/ Lease Option      | <input type="checkbox"/> BB. Binding Arbitration        |
| <input type="checkbox"/> J. Interest-Bearing Acct. |                                                               | <input type="checkbox"/> Other: _____                   |

**20. ADDITIONAL TERMS:** Buyer to pay all closing costs; Section 12 is hereby deleted, and also lines 609 through 6185 are deleted. Parties shall be responsible for their own attorney fees.

**COUNTER-OFFER/REJECTION**

- ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).
- ☐ Seller rejects Buyer's offer.

Buyer's Initials \_\_\_\_\_  
FloridaRealtors/Florida Bar-ASIS-5

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Seller's Initials \_\_\_\_\_

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

Buyer: J. Laugher - Holiday Pk. Bk. of Trustees - 1<sup>st</sup> Vice Chair Date: 9/25/2020

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's address for purposes of notice

Seller's address for purposes of notice

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

Cooperating Sales Associate, if any

Listing Sales Associate

Cooperating Broker, if any

Listing Broker

**"As Is" Contract For Sale And Purchase**

FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

**"As Is"**

1\* **PARTIES:** City of Palm Bay ("Seller"),  
 2\* and Jacquelyn Slusher ("Buyer"),

3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")  
 4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract");

5 **I. DESCRIPTION:**

6\* (a) Legal description of the Real Property located in Brevard County, Florida: \_\_\_\_\_  
 7\*

8\* (b) Street address, city, zip, of the Property: 254 Holiday Park Blvd N.E., Palm Bay, Florida 32907

9 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless  
 10 specifically excluded below.

11\* Other Items included are: \_\_\_\_\_  
 12\*

13\* Items of Personal Property (and leased items, if any) excluded are: \_\_\_\_\_  
 14\*

15\* **II. PURCHASE PRICE** (U.S. currency): ..... \$ \$7000.00

16 **PAYMENT:**

17\* (a) Deposit held in escrow by \_\_\_\_\_ ("Escrow Agent") in the amount of (checks subject to clearance) \$ \_\_\_\_\_  
 18\* Escrow Agent's address: \_\_\_\_\_ Phone: \_\_\_\_\_

19\* (b) Additional escrow deposit to be made to Escrow Agent within \_\_\_\_\_ days after Effective Date in the amount of ..... \$ \_\_\_\_\_

20\* (c) Financing in the amount of ("Loan Amount") see Paragraph IV below ..... \$ \_\_\_\_\_

21\* (d) Other ..... \$ \_\_\_\_\_

22 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject  
 23\* to adjustments or prorations ..... \$ \_\_\_\_\_

24 **III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:**

25 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or  
 26\* before \_\_\_\_\_, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **Unless other-**  
 27 **wise stated, the time for acceptance of any counteroffers shall be 2 days from the date the counteroffer is delivered.**

28 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the  
 29 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for  
 30 acceptance of this offer or, if applicable, the final counteroffer.

31 **IV. FINANCING:**

32\* ☒ (a) This is a cash transaction with no contingencies for financing;

33\* ☐ (b) This Contract is contingent on Buyer obtaining written loan commitment which confirms underwriting loan approval for a loan to purchase  
 34\* the Property ("Loan Approval") within \_\_\_\_\_ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONLY  
 35\* ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the Loan Amount (See Paragraph II.(c)) at an initial interest rate not to  
 36\* exceed \_\_\_\_\_%, and for a term of \_\_\_\_\_ years. Buyer will make application within \_\_\_\_\_ days (if blank, then 5 days) after Effective Date.

37 **BUYER:** Buyer shall use reasonable diligence to: obtain Loan Approval; **notify Seller in writing of receipt of Loan Approval by Loan Approval**  
 38 **Date;** satisfy terms of the Loan Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall  
 39 not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. Buyer authorizes the mortgage broker(s) and  
 40 lender(s) to disclose information regarding the conditions, status, and progress of loan application and Loan Approval to Seller, Seller's attorney,  
 41 real estate licensee(s), and Closing Agent.

42 **SELLER:** If Buyer does not deliver to Seller written notice of Loan Approval by Loan Approval Date, Seller may thereafter cancel this Contract by  
 43 delivering written notice ("Seller's Cancellation Notice") to Buyer, but not later than seven (7) days prior to Closing. Seller's Cancellation Notice shall  
 44 notify Buyer that Buyer has three (3) days to deliver to Seller written notice waiving this Financing contingency, or the Contract shall be cancelled.

45 **DEPOSIT(S) (for purposes of this Financing Paragraph IV(b) only):** If Buyer has used reasonable diligence but does not obtain Loan Approval  
 46 by Loan Approval Date, and thereafter either party elects to cancel this Contract, the deposit(s) shall be returned to Buyer. If Buyer obtains Loan  
 47 Approval or waives this Financing contingency, and thereafter the Contract does not close, then the deposit(s) shall be paid to Seller; provided how-  
 48 ever, if the failure to close is due to: (i) Seller's failure or refusal to close or Seller otherwise fails to meet the terms of the Contract, or (ii) Buyer's lender  
 49 fails to receive and approve an appraisal of the Property in an amount sufficient to meet the terms of the Loan Approval, then the deposit(s) shall be  
 50 returned to Buyer.

51\* ☐ (c) Assumption of existing mortgage (see rider for terms); or

52\* ☐ (d) Purchase money note and mortgage to Seller (see "As Is" Standards B and K and riders; addenda; or special clauses for terms).

53\* **V. TITLE EVIDENCE:** At least \_\_\_\_\_ days (if blank, then 5 days) before Closing a title insurance commitment with legible copies of instruments listed as  
 54 exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms) shall be obtained by:

55\* **(CHECK ONLY ONE):** ☐ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or

56\* ☐ (2) Buyer at Buyer's expense.

57\* **(CHECK HERE):** ☐ If an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

58\* **VI. CLOSING DATE:** This transaction shall be closed and the closing documents delivered on \_\_\_\_\_ ("Closing"), unless  
 59 modified by other provisions of this Contract. In the event of extreme weather or other conditions or events constituting "force majeure", Closing will be  
 60 extended a reasonable time until: (i) restoration of utilities and other services essential to Closing, and (ii) availability of Hazard, Wind, Flood, or Homeowners'  
 61\* insurance. If such conditions continue more than \_\_\_\_\_ days (if blank, then 14 days) beyond Closing Date, then either party may cancel this Contract.

62 **VII. RESTRICTIONS; EASEMENTS; LIMITATIONS:** Seller shall convey marketable title subject to: comprehensive land use plans, zoning,  
63 restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise  
64 common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record  
65 (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side  
66 lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see  
67\* addendum); provided, that ~~there exists at Closing no violation of the foregoing and~~ none prevent use of the Property for \_\_\_\_\_  
68\* \_\_\_\_\_ purpose(s).

69 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended  
70 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to "AS IS" Standard  
71 F. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable  
72 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

73 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed pro-  
74 visions of this Contract in conflict with them.

75\* **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may  
76\* assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

77 **XI. DISCLOSURES:**

78 (a) The Property may be subject to unpaid special assessment lien(s) imposed by a public body ("public body" does not include a  
79 Condominium or Homeowners' Association). Such lien(s), if any, whether certified, confirmed and ratified, pending, or payable in installments,  
80\* as of Closing, shall be paid as follows: ☐ by Seller at closing ☐ by Buyer (if left blank, then Seller at Closing). If the amount of any  
81 assessment to be paid by Seller has not been finally determined as of Closing, Seller shall be charged at Closing an amount equal to the  
82 last estimate or assessment for the improvement by the public body.

83 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to per-  
84 sons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.  
85 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

86 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information  
87 regarding mold, Buyer should contact an appropriate professional.

88 (d) Buyer acknowledges receipt of the Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

89 (e) If the Real Property includes pre-1978 residential housing, then a lead-based paint rider is mandatory.

90 (f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

91 (g) **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIA-**  
92 **TION/COMMUNITY DISCLOSURE.**

93 (h) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT**  
94 **OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNER-**  
95 **SHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES.**  
96 **IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.**

97 **XII. MAXIMUM REPAIR COSTS: DELETED**

98\* **XIII. HOME WARRANTY:** ☐ Seller ☐ Buyer ☐ N/A will pay for a home warranty plan issued by \_\_\_\_\_  
99\* at a cost not to exceed \$\_\_\_\_\_.

100\* **XIV. INSPECTION PERIOD AND RIGHT TO CANCEL:** (a) Buyer shall have \_\_\_\_\_ days from Effective Date ("Inspection Period") within  
101 which to have such inspections of the Property performed as Buyer shall desire and utilities service shall be made available by the  
102 Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage  
103 to and restoration of the Property resulting from such inspections and this provision (b) shall survive termination of this Contract;  
104 and (c) if Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may cancel this Contract  
105 by delivering facsimile or written notice of such election to Seller prior to the expiration of the Inspection Period. If Buyer timely  
106 cancels this Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of  
107 all further obligations under this Contract, except as provided in this Paragraph XIV. Unless Buyer exercises the right to cancel  
108 granted herein, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building,  
109 environmental, and safety codes, restrictions or requirements and shall be responsible for any and all repairs and improvements  
110 required by Buyer's lender.

111 **XV. RIDERS; ADDENDA; SPECIAL CLAUSES: CHECK** those riders which are applicable AND are attached to and made part of this Contract:

112\* ☐ CONDOMINIUM ☐ VA/FHA ☐ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT ☐ COASTAL CONSTRUCTION CONTROL LINE  
113\* ☐ INSULATION ☐ EVIDENCE OF TITLE (SOUTH FLORIDA CONTRACTS) ☐ Other Comprehensive Rider Provisions ☐ Addenda

114\* Special Clause(s): \_\_\_\_\_

115\* Letter of Intent sent to Joan Junkala-Brown, in Economic Development of Palm

116\* Bay, on 9/17/2020 with a bid of \$7000.00 for tax account #28443750 (254 Holiday Park Blvd N.E,

117\* Palm Bay, Florida 32907 ).

118\* \_\_\_\_\_  
119\* \_\_\_\_\_  
120\* \_\_\_\_\_  
121\* \_\_\_\_\_  
122\* \_\_\_\_\_  
123\* \_\_\_\_\_  
124\* \_\_\_\_\_  
125\* \_\_\_\_\_

126 **XVI. "AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS ("AS IS" Standards):** Buyer and Seller acknowledge receipt of a copy  
127 of "AS IS" Standards A through Z on the reverse side or attached, which are incorporated as part of this Contract.

128

129

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,  
SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

130

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THIS "AS IS" FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.  
Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a  
particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining  
positions of all interested persons.  
AN ASTERISK(\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

135\*

Jacquelyn Slusher

9/21/2020

City of Palm Bay

9/21/2020

136

(BUYER)

(DATE)

(SELLER)

(DATE)

137



9/21/2020

138

(BUYER)

(DATE)

(SELLER)

(DATE)

139\*

Buyers' address for purposes of notice

Sellers' address for purposes of notice

140\*

4407 White Ave Baltimore, Md 21206

120 Malabar Rd., Palm Bay, FL 32907

141\*

443-570-1301

Phone

321-952-3400

Phone

142

143

144\*

Name:

145

Cooperating Brokers, if any

Listing Broker

## "AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS

**A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this "AS IS" Standard.

**B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

**C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

### **D. WOOD DESTROYING ORGANISMS: DELETED**

**E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof and title to the Real Property is insurable in accordance with "AS IS" Standard A without exception for lack of legal right of access.

**F. LEASES:** Seller shall at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

**G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

**H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

**I. TIME:** Calendar days shall be used in computing time periods except periods of less than six (6) days, in which event Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

**J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

**K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for related closing services, title search, and closing fees (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

**L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of current year's tax bill.

### **M. (RESERVED - purposely left blank)**

### **N. INSPECTION AND REPAIR: DELETED**

**O. RISK OF LOSS:** If, after the Effective Date, the Property is damaged by fire or other casualty ("Casualty Loss") before Closing and cost of restoration (which shall include the cost of pruning or removing damaged trees) does not exceed 1.5% of the Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract, and if restoration is not completed as of Closing, restoration costs will be escrowed at Closing. If the cost of restoration exceeds 1.5% of the Purchase Price, Buyer shall either take the Property as is, together with the 1.5% or receive a refund of deposit(s) thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be the cost of pruning or removal.

**P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this "AS IS" Standard shall be waived. Unless waived as set forth above the following



**"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)**

219 closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2)  
 220 if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall  
 221 have 30 days from date of receipt of such notification to cure the defect; (3) If Seller fails to timely cure the defect, all deposits and closing funds shall, upon  
 222 written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal  
 223 Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) If Buyer fails to make timely demand  
 224 for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of war-  
 225 ranties contained in the deed or bill of sale.

226 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit  
 227 them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to  
 228 clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, con-  
 229 tinue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall  
 230 determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents  
 231 a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent  
 232 shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with  
 233 provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in  
 234 any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to  
 235 be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable  
 236 to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this  
 237 Contract or gross negligence of Agent.

238 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such liti-  
 239 gation, which, for purposes of this "AS IS" Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by  
 240 Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

241 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by  
 242 Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for  
 243 the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller  
 244 at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title mar-  
 245 ketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's  
 246 deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

247 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES:** Neither this Contract nor any notice of it shall be recorded in any public records.  
 248 This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and  
 249 one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party.  
 250 All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile or electronic (including "pdf") copy of this  
 251 Contract and any signatures hereon shall be considered for all purposes as an original.

252 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as  
 253 appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the  
 254 request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

255 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No mod-  
 256 ification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

257 **W. SELLER DISCLOSURE:** (1) There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or  
 258 which have not been disclosed to Buyer; (2) *Seller extends and intends no warranty and makes no representation of any type, either express or implied,*  
 259 *as to the physical condition or history of the Property;* (3) *Seller has received no written or verbal notice from any governmental entity or agency as*  
 260 *to a currently uncorrected building, environmental or safety code violation;* (4) *Seller has no knowledge of any repairs or improvements made to the*  
 261 *Property without compliance with governmental regulation which have not been disclosed to Buyer.*

262 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the Property, including,  
 263 but not limited to lawn, shrubbery, and pool in the condition existing as of Effective Date, ordinary wear and tear and Casualty Loss excepted. Seller shall, upon  
 264 reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that  
 265 all items of Personal Property are on the Real Property and that the Property has been maintained as required by this "AS IS" Standard. Seller will assign all  
 266 assignable repair and treatment contracts and warranties to Buyer at Closing.

267 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property  
 268 under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, includ-  
 269 ing the execution of documents; provided (1) the cooperating party shall incur no liability or expense related to the Exchange and (2) the Closing shall not be  
 270 contingent upon, nor extended or delayed by, such Exchange.

271 **Z. BUYER WAIVER OF CLAIMS:** *Buyer waives any claims against Seller and, to the extent permitted by law, against any real estate licensee involved*  
 272 *in the negotiation of the Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the*  
 273 *Buyer or anyone claiming by, through, under or against the Buyer.*



**Joan Junkala**

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**From:** jacquelyn.slusher@verizon.net  
**Sent:** Thursday, October 1, 2020 8:45 PM  
**To:** EconDev  
**Subject:** "As Is" for #28443750 254 Holiday Park Blvd N.E.  
**Attachments:** thumbnail (4).jpg; thumbnail (5).jpg; 2020-10-01\_202655\_2.jpg

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sorry that this might be a duplicate email, but I wanted to send documents from my own email so it could be more identifiable by my name and not my employer's.

many thanks,  
Jacquelyn Slusher  
James Haslbeck

## Joan Junkala

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**From:** Jim Haslbeck <boesbobcat@yahoo.com>  
**Sent:** Thursday, September 17, 2020 8:34 PM  
**To:** EconDev  
**Subject:** Attn: Joan Junkala-Brown Bid Proposal #28443750

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Regarding tax account # 28443750, bid proposal for 254 Holiday Park Blvd. N.E., Palm Bay, FA 32907.

I, James Haslbeck, am offering \$7000.00 for the lot and mobile home currently on this property.

My intention, as I am the owner of the neighboring lot and occupied mobile home at 252 Holiday Park Blvd

N.E., is to immediately demo the existing mobile home on this lot. This mold and rat infested dwelling is a

hazard to our neighborhood. Within the past 6 months, I have had to invest \$2000.00 in pest control

because rats entered my home. Two neighbors have confirmed they have also had to invest in pest control

as well. It is most likely that this abandoned property could be part of the rodent issue. My interest is in

beautifyng the park and maintaining its safety. I have inquired about an estimate from a demo contractor to remove the mobile home, all

concrete, and to seed and straw. My next step would be to put a new home on this lot.

Thank you for considering my bid proposal.

sincerely,

James Haslbeck

443-570-1301

**"As Is" Contract For Sale And Purchase**

FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

**"As Is"**

1\* **PARTIES:** City of Palm Bay ("Seller"),  
 2\* and Jacquelyn Slusher ("Buyer"),

3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")  
 4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

5 **I. DESCRIPTION:**

6\* (a) Legal description of the Real Property located in Brevard County, Florida: \_\_\_\_\_  
 7\* \_\_\_\_\_

8\* (b) Street address, city, zip, of the Property: 254 Holiday Park Blvd N.E., Palm Bay, Florida 32907

9 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless  
 10 specifically excluded below.

11\* Other items included are: \_\_\_\_\_  
 12\* \_\_\_\_\_

13\* Items of Personal Property (and leased items, if any) excluded are: \_\_\_\_\_  
 14\* \_\_\_\_\_

15\* **II. PURCHASE PRICE** (U.S. currency): \_\_\_\_\_ \$ \$7000.00

16 **PAYMENT:**

17\* (a) Deposit held in escrow by \_\_\_\_\_ ("Escrow Agent") in the amount of (checks subject to clearance) \$ \_\_\_\_\_  
 18\* Escrow Agent's address: \_\_\_\_\_ Phone: \_\_\_\_\_

19\* (b) Additional escrow deposit to be made to Escrow Agent within \_\_\_\_\_ days after Effective Date in the amount of \_\_\_\_\_ \$ \_\_\_\_\_

20\* (c) Financing in the amount of ("Loan Amount") see Paragraph IV below \_\_\_\_\_ \$ \_\_\_\_\_

21\* (d) Other \_\_\_\_\_ \$ \_\_\_\_\_

22 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject  
 23\* to adjustments or prorations \_\_\_\_\_ \$ \_\_\_\_\_

24 **III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:**

25 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or  
 26\* before \_\_\_\_\_, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **Unless other-**

27 **wise stated, the time for acceptance of any counteroffers shall be 2 days from the date the counteroffer is delivered.**

28 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the  
 29 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for  
 30 acceptance of this offer or, if applicable, the final counteroffer.

31 **IV. FINANCING:**

32\* ☒ (a) This is a cash transaction with no contingencies for financing;

33\* ☐ (b) This Contract is contingent on Buyer obtaining written loan commitment which confirms underwriting loan approval for a loan to purchase

34\* the Property ("Loan Approval") within \_\_\_\_\_ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONLY

35\* ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the Loan Amount (See Paragraph II.(c)) at an initial interest rate not to

36\* exceed \_\_\_\_\_%, and for a term of \_\_\_\_\_ years. Buyer will make application within \_\_\_\_\_ days (if blank, then 5 days) after Effective Date.

37 **BUYER:** Buyer shall use reasonable diligence to: obtain Loan Approval; **notify Seller in writing of receipt of Loan Approval by Loan Approval**

38 **Date;** satisfy terms of the Loan Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall

39 not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. Buyer authorizes the mortgage broker(s) and

40 lender(s) to disclose information regarding the conditions, status, and progress of loan application and Loan Approval to Seller, Seller's attorney,

41 real estate licensee(s), and Closing Agent.

42 **SELLER:** If Buyer does not deliver to Seller written notice of Loan Approval by Loan Approval Date, Seller may thereafter cancel this Contract by

43 delivering written notice ("Seller's Cancellation Notice") to Buyer, but not later than seven (7) days prior to Closing. Seller's Cancellation Notice shall

44 notify Buyer that Buyer has three (3) days to deliver to Seller written notice waiving this Financing contingency, or the Contract shall be cancelled.

45 **DEPOSIT(S) (for purposes of this Financing Paragraph IV(b) only):** If Buyer has used reasonable diligence but does not obtain Loan Approval

46 by Loan Approval Date, and thereafter either party elects to cancel this Contract, the deposit(s) shall be returned to Buyer. If Buyer obtains Loan

47 Approval or waives this Financing contingency, and thereafter the Contract does not close, then the deposit(s) shall be paid to Seller; provided how-

48 ever, if the failure to close is due to: (i) Seller's failure or refusal to close or Seller otherwise fails to meet the terms of the Contract, or (ii) Buyer's lender

49 fails to receive and approve an appraisal of the Property in an amount sufficient to meet the terms of the Loan Approval, then the deposit(s) shall be

50 returned to Buyer.

51\* ☐ (c) Assumption of existing mortgage (see rider for terms); or

52\* ☐ (d) Purchase money note and mortgage to Seller (see "As Is" Standards B and K and riders; addenda; or special clauses for terms).

53\* **V. TITLE EVIDENCE:** At least \_\_\_\_\_ days (if blank, then 5 days) before Closing a title insurance commitment with legible copies of instruments listed as

54 exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms) shall be obtained by:

55\* **(CHECK ONLY ONE):** ☐ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or

56\* ☐ (2) Buyer at Buyer's expense.

57\* **(CHECK HERE):** ☐ If an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

58\* **VI. CLOSING DATE:** This transaction shall be closed and the closing documents delivered on \_\_\_\_\_ ("Closing"), unless

59 modified by other provisions of this Contract. In the event of extreme weather or other conditions or events constituting "force majeure", Closing will be

60 extended a reasonable time until: (i) restoration of utilities and other services essential to Closing, and (ii) availability of Hazard, Wind, Flood, or Homeowners'

61\* insurance. If such conditions continue more than \_\_\_\_\_ days (if blank, then 14 days) beyond Closing Date, then either party may cancel this Contract.

62 **VII. RESTRICTIONS; EASEMENTS; LIMITATIONS:** Seller shall convey marketable title subject to: comprehensive land use plans, zoning,  
63 restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise  
64 common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record  
65 (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side  
66 lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see  
67\* addendum); provided, that ~~there exists at Closing no violation of the foregoing and~~ none prevent use of the Property for \_\_\_\_\_  
68\* \_\_\_\_\_ purpose(s).

69 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended  
70 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to "AS IS" Standard  
71 F. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable  
72 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

73 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed pro-  
74 visions of this Contract in conflict with them.

75\* **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may  
76\* assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

77 **XI. DISCLOSURES:**

78 (a) The Property may be subject to unpaid special assessment lien(s) imposed by a public body ("public body" does not include a  
79 Condominium or Homeowners' Association). Such lien(s), if any, whether certified, confirmed and ratified, pending, or payable in installments,  
80\* as of Closing, shall be paid as follows: ☐ by Seller at closing ☐ by Buyer (if left blank, then Seller at Closing). If the amount of any  
81 assessment to be paid by Seller has not been finally determined as of Closing, Seller shall be charged at Closing an amount equal to the  
82 last estimate or assessment for the improvement by the public body.

83 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to per-  
84 sons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.  
85 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

86 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information  
87 regarding mold, Buyer should contact an appropriate professional.

88 (d) Buyer acknowledges receipt of the Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

89 (e) If the Real Property includes pre-1978 residential housing, then a lead-based paint rider is mandatory.

90 (f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

91 (g) **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIA-  
92 TION/COMMUNITY DISCLOSURE.**

93 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT  
94 OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNER-  
95 SHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES.  
96 IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

97 **XII. MAXIMUM REPAIR COSTS: DELETED**

98\* **XIII. HOME WARRANTY:** ☐ Seller ☐ Buyer ☐ N/A will pay for a home warranty plan issued by \_\_\_\_\_  
99\* at a cost not to exceed \$\_\_\_\_\_.

100\* **XIV. INSPECTION PERIOD AND RIGHT TO CANCEL:** (a) Buyer shall have \_\_\_\_\_ days from Effective Date ("Inspection Period") within  
101 which to have such inspections of the Property performed as Buyer shall desire and utilities service shall be made available by the  
102 Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage  
103 to and restoration of the Property resulting from such inspections and this provision (b) shall survive termination of this Contract;  
104 and (c) if Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may cancel this Contract  
105 by delivering facsimile or written notice of such election to Seller prior to the expiration of the Inspection Period. If Buyer timely  
106 cancels this Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of  
107 all further obligations under this Contract, except as provided in this Paragraph XIV. Unless Buyer exercises the right to cancel  
108 granted herein, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building,  
109 environmental, and safety codes, restrictions or requirements and shall be responsible for any and all repairs and improvements  
110 required by Buyer's lender.

111 **XV. RIDERS; ADDENDA; SPECIAL CLAUSES: CHECK** those riders which are applicable AND are attached to and made part of this Contract:

112\* ☐ CONDOMINIUM ☐ VA/FHA ☐ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT ☐ COASTAL CONSTRUCTION CONTROL LINE  
113\* ☐ INSULATION ☐ EVIDENCE OF TITLE (SOUTH FLORIDA CONTRACTS) ☐ Other Comprehensive Rider Provisions ☐ Addenda

114\* Special Clause(s): \_\_\_\_\_

115\* Letter of Intent sent to Joan Junkala-Brown, in Economic Development of Palm

116\* Bay, on 9/17/2020 with a bid of \$7000.00 for tax account #28443750 (254 Holiday Park Blvd N.E,

117\* Palm Bay, Florida 32907 ).  
118\* \_\_\_\_\_  
119\* \_\_\_\_\_  
120\* \_\_\_\_\_  
121\* \_\_\_\_\_  
122\* \_\_\_\_\_  
123\* \_\_\_\_\_  
124\* \_\_\_\_\_  
125\* \_\_\_\_\_

126 **XVI. "AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS ("AS IS" Standards):** Buyer and Seller acknowledge receipt of a copy  
127 of "AS IS" Standards A through Z on the reverse side or attached, which are incorporated as part of this Contract.

128 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,**  
129 **SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

130 THIS **"AS IS"** FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.  
131 Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a  
132 particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining  
133 positions of all interested persons.  
134 AN ASTERISK(\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

135*	<u>Jacquelyn Slusher</u>	<u>9/21/2020</u>	<u>City of Palm Bay</u>	<u>9/21/2020</u>
136	(BUYER)	(DATE)	(SELLER)	(DATE)
137*	_____	_____	_____	_____
138	(BUYER)	(DATE)	(SELLER)	(DATE)
139*	Buyers' address for purposes of notice _____		Sellers' address for purposes of notice _____	
140*	<u>4407 White Ave Baltimore, Md 21206</u>		<u>120 Malabar Rd., Palm Bay, FL 32907</u>	
141*	<u>443-570-1301</u> Phone _____		<u>321-952-3400</u> Phone _____	
142	<b>BROKERS:</b> The brokers (including cooperating brokers, if any) named below are the only brokers entitled to compensation in connection with			
143	this Contract:			
144*	Name: _____		Name: _____	
145	<b>Cooperating Brokers, if any</b>		<b>Listing Broker</b>	

## **"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS**

**A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this "AS IS" Standard.

**B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

**C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

### **D. WOOD DESTROYING ORGANISMS: DELETED**

**E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof and title to the Real Property is insurable in accordance with "AS IS" Standard A without exception for lack of legal right of access.

**F. LEASES:** Seller shall at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

**G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

**H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

**I. TIME:** Calendar days shall be used in computing time periods except periods of less than six (6) days, in which event Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

**J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

**K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for related closing services, title search, and closing fees (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

**L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of current year's tax bill.

**M. (RESERVED - purposely left blank)**

### **N. INSPECTION AND REPAIR: DELETED**

**O. RISK OF LOSS:** If, after the Effective Date, the Property is damaged by fire or other casualty ("Casualty Loss") before Closing and cost of restoration (which shall include the cost of pruning or removing damaged trees) does not exceed 1.5% of the Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract, and if restoration is not completed as of Closing, restoration costs will be escrowed at Closing. If the cost of restoration exceeds 1.5% of the Purchase Price, Buyer shall either take the Property as is, together with the 1.5% or receive a refund of deposit(s) thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be the cost of pruning or removal.

**P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this "AS IS" Standard shall be waived. Unless waived as set forth above the following



**"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)**

219 closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2)  
 220 if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall  
 221 have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon  
 222 written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal  
 223 Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand  
 224 for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of war-  
 225 ranties contained in the deed or bill of sale.

226 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit  
 227 them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to  
 228 clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, con-  
 229 tinue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall  
 230 determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents  
 231 a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent  
 232 shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with  
 233 provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in  
 234 any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to  
 235 be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable  
 236 to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this  
 237 Contract or gross negligence of Agent.

238 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such liti-  
 239 gation, which, for purposes of this "AS IS" Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by  
 240 Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

241 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by  
 242 Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for  
 243 the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller,  
 244 at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title mar-  
 245 ketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's  
 246 deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

247 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES:** Neither this Contract nor any notice of it shall be recorded in any public records.  
 248 This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and  
 249 one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party.  
 250 All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile or electronic (including "pdf") copy of this  
 251 Contract and any signatures hereon shall be considered for all purposes as an original.

252 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as  
 253 appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the  
 254 request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

255 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No mod-  
 256 ification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

257 **W. SELLER DISCLOSURE:** (1) There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or  
 258 which have not been disclosed to Buyer; (2) *Seller extends and intends no warranty and makes no representation of any type, either express or implied,*  
 259 *as to the physical condition or history of the Property;* (3) *Seller has received no written or verbal notice from any governmental entity or agency as*  
 260 *to a currently uncorrected building, environmental or safety code violation;* (4) *Seller has no knowledge of any repairs or improvements made to the*  
 261 *Property without compliance with governmental regulation which have not been disclosed to Buyer.*

262 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the Property, including,  
 263 but not limited to lawn, shrubbery, and pool in the condition existing as of Effective Date, ordinary wear and tear and Casualty Loss excepted. Seller shall, upon  
 264 reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that  
 265 all items of Personal Property are on the Real Property and that the Property has been maintained as required by this "AS IS" Standard. Seller will assign all  
 266 assignable repair and treatment contracts and warranties to Buyer at Closing.

267 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property  
 268 under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, includ-  
 269 ing the execution of documents; provided (1) the cooperating party shall incur no liability or expense related to the Exchange and (2) the Closing shall not be  
 270 contingent upon, nor extended or delayed by, such Exchange.

271 **Z. BUYER WAIVER OF CLAIMS:** *Buyer waives any claims against Seller and, to the extent permitted by law, against any real estate licensee involved*  
 272 *in the negotiation of the Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the*  
 273 *Buyer or anyone claiming by, through, under or against the Buyer.*



SEP 29 2020



# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

**PARTIES:** City of Palm Bay ("Seller"),  
and Jennifer Miller ("Buyer"),  
agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

## 1. PROPERTY DESCRIPTION:

- (a) Street address, city, zip: 340 Holiday Park Boulevard NE, Palm Bay FL 32907  
(b) Located in: Brevard County, Florida. Property Tax ID #: 2843067  
(c) Real Property: The legal description is PORT MALABAR HOLIDAY PARK UNIT 1 1ST REPLAT IN LOT 15 BLK 16

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

- (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").

Other Personal Property items included in this purchase are: Mobile Home Located on the Property

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- (e) The following items are excluded from the purchase:

## PURCHASE PRICE AND CLOSING

**2. PURCHASE PRICE** (U.S. currency): \$ 6,100.00

- (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION) \$

The initial deposit made payable and delivered to "Escrow Agent" named below

(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name:

Address:

Phone: E-mail: Fax:

- (b) Additional deposit to be delivered to Escrow Agent within (if left blank, then 10) days after Effective Date \$

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8

- (d) Other: \$

- (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other COLLECTED funds \$

**NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before 10/10/2020, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

**4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on TBD ("Closing Date"), at the time established by the Closing Agent.

Buyer's Initials JM  
FloridaRealtors/FloridaBar-ASIS-5

Page 1 of 12

Seller's Initials

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53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.
- 58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.
- 68\* (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
69 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
70 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
71 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
72 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
73 of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
74 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
75 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
76 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 77\* **7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under  
78\* this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this  
79 Contract.

80 **FINANCING**

81 **8. FINANCING:**

82\* ☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
83 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
84 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
85 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

86\* ☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other  
87\* \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
88\* Period") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph  
89\* 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
90\* creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

91\* (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
92 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
93 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
94 by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

95 Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
96 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited  
97 to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
98 mortgage broker and lender in connection with Buyer's mortgage loan application.

99 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
100 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
101 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
102 statements, to Seller and Broker.

103 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

104 (iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to  
105 expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been  
106 unable to obtain Loan Approval and has elected to either:

- 107 (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
108 (2) terminate this Contract.

(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see rider for terms).

☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: See Section 20

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: See Section 20
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### (CHECK ONE):

☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☒ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

- ☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.
- (d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- (e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments (**CHECK ONE**):
- ☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.
- ☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## DISCLOSURES

### 10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is 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 health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.



- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

- 11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").
- 12. PROPERTY INSPECTION; RIGHT TO CANCEL:**
- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

### DEFAULT AND DISPUTE RESOLUTION

#### 15. DEFAULT:

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under

this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

**16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

**17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

**STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

**18. STANDARDS:**

**A. TITLE:**

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,

Buyer's Initials

*LM*

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Seller's Initials

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## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

383 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which  
384 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or  
385 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has  
386 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)  
387 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all  
388 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and  
389 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,  
390 thereby releasing Buyer and Seller from all further obligations under this Contract.

391 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon  
392 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable  
393 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of  
394 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later  
395 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and  
396 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a  
397 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the  
398 preparation of such prior survey, to the extent the affirmations therein are true and correct.

399 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to  
400 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

401 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from  
402 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security  
403 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)  
404 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit  
405 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or  
406 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph  
407 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller  
408 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this  
409 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under  
410 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations  
411 thereunder.

412 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing  
413 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or  
414 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been  
415 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all  
416 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth  
417 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges  
418 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been  
419 paid or will be paid at Closing.

420 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other  
421 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates  
422 specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur  
423 on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property  
424 is located) of the next business day.

425 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be  
426 liable to each other for damages so long as performance or non-performance of the obligation, or the availability of  
427 services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force  
428 Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God,  
429 unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent  
430 effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including  
431 Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents  
432 performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under  
433 this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering  
434 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all  
435 further obligations under this Contract.

436 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,  
437 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters  
438 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

### **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated

## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

**T. RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the



STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.  
(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

**W. RESERVED**

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

**ADDENDA AND ADDITIONAL TERMS**

**19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- |                                                    |                                                              |                                                         |
|----------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> A. Condominium Rider      | <input type="checkbox"/> K. RESERVED                         | <input type="checkbox"/> T. Pre-Closing Occupancy       |
| <input type="checkbox"/> B. Homeowners' Assn.      | <input type="checkbox"/> L. RESERVED                         | <input type="checkbox"/> U. Post-Closing Occupancy      |
| <input type="checkbox"/> C. Seller Financing       | <input type="checkbox"/> M. Defective Drywall                | <input type="checkbox"/> V. Sale of Buyer's Property    |
| <input type="checkbox"/> D. Mortgage Assumption    | <input type="checkbox"/> N. Coastal Construction Control     | <input type="checkbox"/> W. Back-up Contract            |
| <input type="checkbox"/> E. FHA/VA Financing       | Line                                                         | <input type="checkbox"/> X. Kick-out Clause             |
| <input type="checkbox"/> F. Appraisal Contingency  | <input type="checkbox"/> O. Insulation Disclosure            | <input type="checkbox"/> Y. Seller's Attorney Approval  |
| <input type="checkbox"/> G. Short Sale             | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978) | <input type="checkbox"/> Z. Buyer's Attorney Approval   |
| <input type="checkbox"/> H. Homeowners/Flood Ins.  | <input type="checkbox"/> Q. Housing for Older Persons        | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> I. RESERVED               | <input type="checkbox"/> R. Rezoning                         | <input type="checkbox"/> BB. Binding Arbitration        |
| <input type="checkbox"/> J. Interest-Bearing Acct. | <input type="checkbox"/> S. Lease Purchase/ Lease Option     | <input type="checkbox"/> Other: _____                   |

**20. ADDITIONAL TERMS:** Buyer to pay all closing costs; Section 12 is hereby deleted and also lines 609 through 618 are deleted.

Parties shall be responsible for their own attorney fees.

**COUNTER-OFFER/REJECTION**

☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).

☐ Seller rejects Buyer's offer.

Buyer's Initials fm  
FloridaRealtors/FloridaBar-ASIS-5

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Seller's Initials \_\_\_\_\_

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**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE  
ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

594

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

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*Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the  
terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and  
conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all  
interested persons.*

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600

AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK  
TO BE COMPLETED.

601\*

Buyer:  Date: 09-27-2020

602\*

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

603\*

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

604\*

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

605  
606\*  
607\*  
608\*

Buyer's address for purposes of notice

360 North Main St

Spring Grove PA, 17362

Seller's address for purposes of notice

609  
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613  
614

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers  
entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct  
Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage  
agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has  
retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation  
made by Seller or Listing Broker to Cooperating Brokers.

615\*

Cooperating Sales Associate, if any

Listing Sales Associate

616

617\*

Cooperating Broker, if any

Listing Broker

618

Buyer's Initials 

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Seller's Initials \_\_\_\_\_

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**"As Is" Contract For Sale And Purchase**  
FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

**"As Is"**



1\* **PARTIES:** City of Palm Bay Florida  
2\* and Sandra Mcavoy  
3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")  
4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract");

5 **I. DESCRIPTION:**

6\* (a) Legal description of the Real Property located in Brevard County, Florida:  
7\*  
8\* (b) Street address, city, zip, of the Property: 357 Holiday Park Blvd. Palm Bay FL 32907  
9 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless  
10 specifically excluded below.  
11\* Other items included are:  
12\*  
13\* Items of Personal Property (and leased items, if any) excluded are:  
14\*

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SEP 23 2020  
SEP 23 2020

15\* **II. PURCHASE PRICE** (U.S. currency): ..... \$ 5500  
16 **PAYMENT:**

17\* (a) Deposit held in escrow by ..... ("Escrow Agent") in the amount of (checks subject to clearance) \$ .....  
18\* Escrow Agent's address: ..... Phone: .....  
19\* (b) Additional escrow deposit to be made to Escrow Agent within \_\_\_\_\_ days after Effective Date in the amount of ..... \$ .....  
20\* (c) Financing in the amount of ("Loan Amount") see Paragraph IV below ..... \$ .....  
21\* (d) Other ..... \$ .....  
22 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashier's or official bank check(s), subject  
23\* to adjustments or prorations ..... \$ .....

24 **III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:**

25 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on  
26\* before \_\_\_\_\_, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **Unless otherwise stated, the time for acceptance of any counteroffers shall be 2 days from the date the counteroffer is delivered.**  
27  
28 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the  
29 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for  
30 acceptance of this offer or, if applicable, the final counteroffer.

31 **IV. FINANCING:**

32\* ☒ (a) This is a cash transaction with no contingencies for financing;  
33\* ☐ (b) This Contract is contingent on Buyer obtaining written loan commitment which confirms underwriting loan approval for a loan to purchase  
34\* the Property ("Loan Approval") within \_\_\_\_\_ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the Loan Amount (See Paragraph II.(c)) at an initial interest rate not to  
35\* exceed \_\_\_\_\_%, and for a term of \_\_\_\_\_ years. Buyer will make application within \_\_\_\_\_ days (if blank, then 5 days) after Effective Date.  
36\* **BUYER:** Buyer shall use reasonable diligence to: obtain Loan Approval; **notify Seller in writing of receipt of Loan Approval by Loan Approval Date;** satisfy terms of the Loan Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall  
37 not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. Buyer authorizes the mortgage broker(s) or  
38 lender(s) to disclose information regarding the conditions, status, and progress of loan application and Loan Approval to Seller, Seller's attorney,  
39 real estate licensee(s), and Closing Agent.

42 **SELLER:** If Buyer does not deliver to Seller written notice of Loan Approval by Loan Approval Date, Seller may thereafter cancel this Contract by  
43 delivering written notice ("Seller's Cancellation Notice") to Buyer, but not later than seven (7) days prior to Closing. Seller's Cancellation Notice shall  
44 notify Buyer that Buyer has three (3) days to deliver to Seller written notice waiving this Financing contingency, or the Contract shall be cancelled.  
45 **DEPOSIT(S) (for purposes of this Financing Paragraph IV(b) only):** If Buyer has used reasonable diligence but does not obtain Loan Approval  
46 by Loan Approval Date, and thereafter either party elects to cancel this Contract, the deposit(s) shall be returned to Buyer. If Buyer obtains Loan  
47 Approval or waives this Financing contingency, and thereafter the Contract does not close, then the deposit(s) shall be paid to Seller; provided how  
48 ever, if the failure to close is due to: (i) Seller's failure or refusal to close or Seller otherwise fails to meet the terms of the Contract, or (ii) Buyer's lender  
49 fails to receive and approve an appraisal of the Property in an amount sufficient to meet the terms of the Loan Approval, then the deposit(s) shall be  
50 returned to Buyer.

51\* ☐ (c) Assumption of existing mortgage (see rider for terms); or  
52\* ☐ (d) Purchase money note and mortgage to Seller (see "As Is" Standards B and K and riders; addenda; or special clauses for terms).

53\* **V. TITLE EVIDENCE:** At least \_\_\_\_\_ days (if blank, then 5 days) before Closing a title insurance commitment with legible copies of instruments listed in  
54 exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms) shall be obtained by  
55\* **(CHECK ONLY ONE):** ☐ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or  
56\* ☐ (2) Buyer at Buyer's expense.

57\* **(CHECK HERE):** ☐ If an abstract of title is to be furnished instead of title insurance, and attach rider for terms.

58\* **VI. CLOSING DATE:** This transaction shall be closed and the closing documents delivered on \_\_\_\_\_ ("Closing"), unless  
59 modified by other provisions of this Contract. In the event of extreme weather or other conditions or events constituting "force majeure", Closing will be  
60 extended a reasonable time until: (i) restoration of utilities and other services essential to Closing, and (ii) availability of Hazard, Wind, Flood, or Homeowner



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62 **VII. RESTRICTIONS; EASEMENTS; LIMITATIONS:** Seller shall convey marketable title subject to: comprehensive land use plans, zoning  
63 restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise  
64 common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record  
65 (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side  
66 lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see  
67\* addendum); provided, that ~~there exists at Closing no violation of the foregoing and~~ none prevent use of the Property for \_\_\_\_\_  
68\* \_\_\_\_\_ purpose(s).

69 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended  
70 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to "AS IS" Standard  
71 F. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable  
72 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

73 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions  
74 of this Contract in conflict with them.

75\* **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☒ may  
76\* assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

77 **XI. DISCLOSURES:**  
78 (a) The Property may be subject to unpaid special assessment lien(s) imposed by a public body ("public body" does not include  
79 Condominium or Homeowners' Association). Such lien(s), if any, whether certified, confirmed and ratified, pending, or payable in installment  
80\* as of Closing, shall be paid as follows: ☐ by Seller at closing ☒ by Buyer (if left blank, then Seller at Closing). If the amount of a  
81 assessment to be paid by Seller has not been finally determined as of Closing, Seller shall be charged at Closing an amount equal to the  
82 last estimate or assessment for the improvement by the public body.

83 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons  
84 who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.  
85 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

86 (c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information  
87 regarding mold, Buyer should contact an appropriate professional.

88 (d) Buyer acknowledges receipt of the Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

89 (e) If the Real Property includes pre-1978 residential housing, then a lead-based paint rider is mandatory.

90 (f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

91 (g) **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE.**

92  
93 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT  
94 OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP  
95 OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES.  
96 IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

97 **XII. MAXIMUM REPAIR COSTS: DELETED**

98\* **XIII. HOME WARRANTY:** ☐ Seller ☐ Buyer ☐ N/A will pay for a home warranty plan issued by \_\_\_\_\_  
99\* at a cost not to exceed \$\_\_\_\_\_.

100\* **XIV. INSPECTION PERIOD AND RIGHT TO CANCEL:** (a) Buyer shall have \_\_\_\_\_ days from Effective Date ("Inspection Period") within  
101 which to have such inspections of the Property performed as Buyer shall desire and utilities service shall be made available by the  
102 Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage  
103 to and restoration of the Property resulting from such inspections and this provision (b) shall survive termination of this Contract  
104 and (c) if Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may cancel this Contract  
105 by delivering facsimile or written notice of such election to Seller prior to the expiration of the Inspection Period. If Buyer timely  
106 cancels this Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released  
107 from all further obligations under this Contract, except as provided in this Paragraph XIV. Unless Buyer exercises the right to cancel  
108 granted herein, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building  
109 environmental, and safety codes, restrictions or requirements and shall be responsible for any and all repairs and improvements  
110 required by Buyer's lender.

111 **XV. RIDERS; ADDENDA; SPECIAL CLAUSES: CHECK** those riders which are applicable AND are attached to and made part of this Contract  
112\* ☐ CONDOMINIUM ☐ VAFHA ☒ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT ☐ COASTAL CONSTRUCTION CONTROL. LID  
113\* ☐ INSULATION ☐ EVIDENCE OF TITLE (SOUTH FLORIDA CONTRACTS) ☐ Other Comprehensive Rider Provisions ☐ Addenda  
114\* Special Clause(s): \_\_\_\_\_

115\* \_\_\_\_\_  
116\* \_\_\_\_\_  
117\* \_\_\_\_\_  
118\* \_\_\_\_\_  
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123\* \_\_\_\_\_  
124\* \_\_\_\_\_  
125\* \_\_\_\_\_

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126 **XVI. "AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS ("AS IS" Standards):** Buyer and Seller acknowledge receipt of a copy  
127 of "AS IS" Standards A through Z on the reverse side or attached, which are incorporated as part of this Contract.

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THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,  
SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

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THIS "AS IS" FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.  
Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a  
particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining  
positions of all interested persons.  
AN ASTERISK(\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

135\* Sandra Mcavoy 9-22-2020  
136 (BUYER) (DATE) (SELLER) (DATE)  
137\* x Sandra McAvoy 9/20/20  
138 (BUYER) (DATE) (SELLER) (DATE)  
139\* Buyers' address for purposes of notice Sellers' address for purposes of notice  
140\* 416 Neighborly Ct. N.E. Palm Bay FL 32907  
141\* 860-514-5504 Phone  
142 **BROKERS:** The brokers (including cooperating brokers, if any) named below are the only brokers entitled to compensation in connection with  
143 this Contract:  
144\* Name: Cooperating Brokers, if any Listing Broker  
145

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SEP 23 2020

Sept.22, 2020

Good morning Joan. I am interested in buying a trailer from City of Palm Bay located in Holiday Park. The property address is 357 Holiday Park Blvd N.E. Palm Bay, Fl. 32907. Tax Account is 2843129. My offer is in the amount of \$5500.

Thank You

Sandra Mcavoy

Phone # 860-514-5504

Email socchok@aol.com



**RECEIVED**

**SEP 23 2020**



# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

1\* **PARTIES:** City of Palm Bay  
 2\* and Dawn A. Hill  
 3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
 4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase  
 5 and any riders and addenda ("Contract"):

6 **1. PROPERTY DESCRIPTION:**  
 7\* (a) Street address, city, zip: 1042 1042 Moonlight Ct NE Palm Bay 32907  
 8\* (b) Located in: Brevard County, Florida. Property Tax ID #: 2842902  
 9\* (c) Real Property: The legal description is  
 10 Port Malabar Holiday Park Unit 1 Lot 27 & Nw'ly 12.86 Ft Of Lot 28 Blk 9

11 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and  
 12 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or  
 13 by other terms of this Contract.

14 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items  
 15 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the  
 16 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),  
 17 drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate  
 18 and other access devices, and storm shutters/panels ("Personal Property").  
 19 Other Personal Property items included in this purchase are: \_\_\_\_\_

20\* Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.  
 21  
 22 (e) The following items are excluded from the purchase: \_\_\_\_\_  
 23\*  
 24

## PURCHASE PRICE AND CLOSING

25  
 26\* **2. PURCHASE PRICE (U.S. currency):** .....\$ 9,000.00  
 27\* (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** .....\$ 1,000.00  
 28 The initial deposit made payable and delivered to "Escrow Agent" named below  
 29\* **(CHECK ONE):** (i) ☐ accompanies offer or (ii) ☐ is to be made within \_\_\_\_\_ (if left  
 30 blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN  
 31 **OPTION (ii) SHALL BE DEEMED SELECTED.**  
 32\* Escrow Agent Information: Name: \_\_\_\_\_  
 33\* Address: \_\_\_\_\_  
 34\* Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_  
 35\* (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10)  
 36\* days after Effective Date .....\$ \_\_\_\_\_  
 37 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")  
 38\* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 .....\$ \_\_\_\_\_  
 39\* (d) Other: .....\$ \_\_\_\_\_  
 40 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire  
 41\* transfer or other **COLLECTED** funds .....\$ 8,000.00  
 42 **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

43 **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**  
 44 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before  
 45\* 10/09/2020, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to  
 46 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day  
 47 the counter-offer is delivered.  
 48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or  
 49 initialed and delivered this offer or final counter-offer ("Effective Date").

50 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur  
 51 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered  
 52\* ("Closing") on 10/30/20 ("Closing Date"), at the time established by the Closing Agent.

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**5. EXTENSION OF CLOSING DATE:**

- (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.
- (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

**6. OCCUPANCY AND POSSESSION:**

- (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.
- (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this Contract.

**FINANCING**

**8. FINANCING:**

☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other \_\_\_\_\_ (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval Period") for **(CHECK ONE)**: ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

(i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's mortgage broker and lender in connection with Buyer's mortgage loan application.

(ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application, Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status and progress, and release preliminary and finally executed closing disclosures and settlement statements, to Seller and Broker.

(iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

(iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been unable to obtain Loan Approval and has elected to either:

- (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
(2) terminate this Contract.

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(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv) above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) on (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see rider for terms).

☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

### CLOSING COSTS, FEES AND CHARGES

#### 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: \_\_\_\_\_

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: \_\_\_\_\_
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)

(c) **TITLE EVIDENCE AND INSURANCE:** At least 15 (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### (CHECK ONE):

☒ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

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- ☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]**: Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.
- (d) **SURVEY**: On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- (e) **HOME WARRANTY**: At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
- (f) **SPECIAL ASSESSMENTS**: At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE)**:
- ☒ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.
- ☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

## DISCLOSURES

### 10. DISCLOSURES:

- (a) **RADON GAS**: Radon is a naturally occurring radioactive gas that, when it is 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 health department.
- (b) **PERMITS DISCLOSURE**: Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD**: Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION**: Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE**: Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

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- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE:** BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ USING THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

#### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

**11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

#### 12. PROPERTY INSPECTION; RIGHT TO CANCEL:

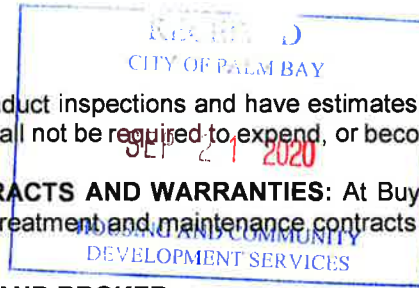
- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have 0 (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

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consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order. In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

### DEFAULT AND DISPUTE RESOLUTION

#### 15. DEFAULT:

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under

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this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

- 16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

- 17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

#### STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

#### 18. STANDARDS:

##### A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,

Buyer's Initials

[Signature]

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Seller's Initials

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# STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

**C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

**D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

**E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

**F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

**H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

Buyer's Initials

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Seller's Initials

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

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transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

**I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated

Buyer's Initials

[Signature]

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Seller's Initials

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## STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

**T. RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

Buyer's Initials

[Handwritten Signature]

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Seller's Initials

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**STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED**

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

**W. RESERVED**

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

**ADDENDA AND ADDITIONAL TERMS**

**19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- |                                                    |                                                               |                                                                                   |
|----------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <input type="checkbox"/> A. Condominium Rider      | <input type="checkbox"/> K. RESERVED                          | <input type="checkbox"/> T. Pre-Closing Occupancy                                 |
| <input type="checkbox"/> B. Homeowners' Assn.      | <input type="checkbox"/> L. RESERVED                          | <input type="checkbox"/> U. Post-Closing Occupancy                                |
| <input type="checkbox"/> C. Seller Financing       | <input type="checkbox"/> M. Defective Drywall                 | <input type="checkbox"/> V. Sale of Buyer's Property                              |
| <input type="checkbox"/> D. Mortgage Assumption    | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> W. Back-up Contract                                      |
| <input type="checkbox"/> E. FHA/VA Financing       | <input type="checkbox"/> O. Insulation Disclosure             | <input type="checkbox"/> X. Kick-out Clause                                       |
| <input type="checkbox"/> F. Appraisal Contingency  | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978)  | <input type="checkbox"/> Y. Seller's Attorney Approval                            |
| <input type="checkbox"/> G. Short Sale             | <input type="checkbox"/> Q. Housing for Older Persons         | <input type="checkbox"/> Z. Buyer's Attorney Approval                             |
| <input type="checkbox"/> H. Homeowners/Flood Ins.  | <input type="checkbox"/> R. Rezoning                          | <input type="checkbox"/> AA. Licensee Property Interest                           |
| <input type="checkbox"/> I. RESERVED               | <input type="checkbox"/> S. Lease Purchase/ Lease Option      | <input type="checkbox"/> BB. Binding Arbitration                                  |
| <input type="checkbox"/> J. Interest-Bearing Acct. |                                                               | <input type="checkbox"/> CC. Miami-Dade County Special Taxing District Disclosure |
|                                                    |                                                               | <input type="checkbox"/> Other:                                                   |

**20. ADDITIONAL TERMS:**

~~purchase price reflects the risk of purchaser incurring Legal fees to obtain quiet title on the manufactured home title.~~



**COUNTER-OFFER/REJECTION**

- ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).
- ☐ Seller rejects Buyer's offer.

Buyer's Initials [Signature]

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Seller's Initials \_\_\_\_\_

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**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

*Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

**AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.**

Buyer:  Date: 09/21/2020  
9/21/2020 5:21:17 PM EDT Dawn A. Hill

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

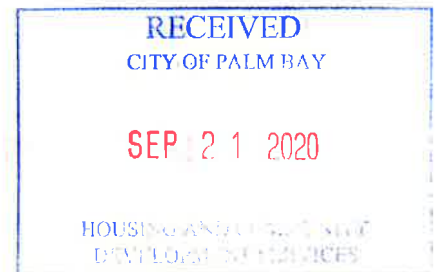
Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's address for purposes of notice	Seller's address for purposes of notice
_____	_____
_____	_____
_____	_____

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

Cooperating Sales Associate, if any	Listing Sales Associate
_____	_____

Cooperating Broker, if any	Listing Broker
_____	_____



## Joan Junkala

---

**From:** Tyler Torpy <tyler@torpypro.com>  
**Sent:** Monday, September 21, 2020 5:28 PM  
**To:** Joan Junkala  
**Subject:** Moonlight ct. offer  
**Attachments:** Moonlight ct..pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Let me know if I am missing anything or if you have any questions.

Thanks,

Tyler Torpy  
Torpy Properties LLC  
[tyler@torpypro.com](mailto:tyler@torpypro.com)  
321.506.7881

# "AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



PARTIES: City of Palm Bay ("Seller"),  
and Patricia J. Clark ("Buyer"),  
agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
(collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase  
and any riders and addenda ("Contract"):

## 1. PROPERTY DESCRIPTION:

- (a) Street address, city, zip: 1285 Dove Court NE, Palm Bay FL 32907  
(b) Located in: Brevard County, Florida. Property Tax ID #: 2843306  
(c) Real Property: The legal description is \_\_\_\_\_

\_\_\_\_\_ together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

- (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels ("Personal Property").

Other Personal Property items included in this purchase are: all contents on the property

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- (e) The following items are excluded from the purchase: \_\_\_\_\_

## PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): \_\_\_\_\_ \$ 7,000.00

- (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION) ..... \$ \_\_\_\_\_

The initial deposit made payable and delivered to "Escrow Agent" named below  
(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within \_\_\_\_\_ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN  
OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Information: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

- (b) Additional deposit to be delivered to Escrow Agent within \_\_\_\_\_ (if left blank, then 10) days after Effective Date ..... \$ \_\_\_\_\_

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... \$ \_\_\_\_\_

- (d) Other: \_\_\_\_\_ \$ \_\_\_\_\_

- (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other COLLECTED funds ..... \$ \_\_\_\_\_

NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.

## 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before 30 days, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

## 4. CLOSING DATE: Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on \_\_\_\_\_ ("Closing Date"), at the time established by the Closing Agent.

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53 **5. EXTENSION OF CLOSING DATE:**

- 54 (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due  
55 to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"),  
56 then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such  
57 period shall not exceed 10 days.  
58 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the  
59 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be  
60 extended as provided in STANDARD G.

61 **6. OCCUPANCY AND POSSESSION:**

- 62 (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the  
63 Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed  
64 all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices  
65 and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of  
66 loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date,  
67 and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.  
68 (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is  
69 subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the  
70 facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall  
71 be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that  
72 the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery  
73 of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer  
74 shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.  
75 Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to  
76 be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 77 **7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under  
78 this Contract; ☐ may assign but not be released from liability under this Contract; or ☐ may not assign this  
79 Contract.

80 **FINANCING**

81 **8. FINANCING:**

- 82 ☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's  
83 obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges  
84 that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend  
85 the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

- 86 ☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other  
87 (describe) loan within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan Approval  
88 Period") for (CHECK ONE): ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph  
89 2(c)), at an initial interest rate not to exceed \_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's  
90 creditworthiness), and for a term of \_\_\_\_\_ (if left blank, then 30) years ("Financing").

- 91 (i) Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days  
92 after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms  
93 ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale  
94 by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

95 Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a  
96 default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited  
97 to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's  
98 mortgage broker and lender in connection with Buyer's mortgage loan application.

- 99 (ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application,  
100 Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose  
101 such status and progress, and release preliminary and finally executed closing disclosures and settlement  
102 statements, to Seller and Broker.

- 103 (iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

- 104 (iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to  
105 expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been  
106 unable to obtain Loan Approval and has elected to either:

- 107 (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or  
108 (2) terminate this Contract.

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109 (v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to  
110 expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract  
111 will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract  
112 by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

113 (vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in  
114 default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller  
115 from all further obligations under this Contract.

116 (vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer  
117 fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's  
118 default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval  
119 have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal  
120 of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the  
121 Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this  
122 Contract.

123\* ☐ (c) Assumption of existing mortgage (see rider for terms).

124\* ☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

125

#### CLOSING COSTS, FEES AND CHARGES

#### 126 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

##### 127 (a) COSTS TO BE PAID BY SELLER:

- |                                                                         |                                                 |
|-------------------------------------------------------------------------|-------------------------------------------------|
| 128 • Documentary stamp taxes and surtax on deed, if any                | • HOA/Condominium Association estoppel fees     |
| 129 • Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)      | • Recording and other fees needed to cure title |
| 130 • Title search charges (if Paragraph 9(c)(iii) is checked)          | • Seller's attorneys' fees                      |
| 131* • Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked) | • Other: _____                                  |

132 If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11  
133 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at  
134 Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay  
135 such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

##### 136 (b) COSTS TO BE PAID BY BUYER:

- |                                                                     |                                        |
|---------------------------------------------------------------------|----------------------------------------|
| 137 • Taxes and recording fees on notes and mortgages               | • Loan expenses                        |
| 138 • Recording fees for deed and financing statements              | • Appraisal fees                       |
| 139 • Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked) | • Buyer's inspections                  |
| 140 • Survey (and elevation certification, if required)             | • Buyer's attorneys' fees              |
| 141 • Lender's title policy and endorsements                        | • All property related insurance       |
| 142 • HOA/Condominium Association application/transfer fees         | • Owner's Policy Premium (if Paragraph |
| 143 • Municipal lien search (if Paragraph 9(c)(ii) is checked)      | 9 (c)(iii) is checked.)                |
| 144* • Other: _____                                                 |                                        |

145\* (c) **TITLE EVIDENCE AND INSURANCE:** At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked,  
146 then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida  
147 licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title  
148 Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be  
149 obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a  
150 copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy  
151 premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set  
152 forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated  
153 and allocated in accordance with Florida law, but may be reported differently on certain federally mandated  
154 closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a  
155 search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded  
156 liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

##### 157 (CHECK ONE):

158\* ☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the  
159 premium for Buyer's lender's policy and charges for closing services related to the lender's policy,  
160 endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other  
161 provider(s) as Buyer may select; or

162\* ☐ (ii) Seller shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing  
163 services related to Buyer's lender's policy, endorsements and loan closing; or

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- 164\* ☐ (iii) [MIAMI-DADE/BROWARD REGIONAL PROVISION]: Seller shall furnish a copy of a prior owner's policy  
165 of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence,  
166 which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C)  
167 municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's  
168\* policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$\_\_\_\_\_  
169 (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.  
170 (d) **SURVEY**: On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property  
171 surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real  
172 Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.  
173\* (e) **HOME WARRANTY**: At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by  
174\* \_\_\_\_\_ at a cost not to exceed \$\_\_\_\_\_. A home  
175 warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in  
176 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.  
177 (f) **SPECIAL ASSESSMENTS**: At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body  
178 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and  
179 ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an  
180 improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being  
181 imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may  
182 be paid in installments (**CHECK ONE**):  
183\* ☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.  
184 Installments prepaid or due for the year of Closing shall be prorated.  
185\* ☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.  
186 IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.  
187 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district  
188 (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

#### 189 DISCLOSURES

#### 190 10. DISCLOSURES:

- 191 (a) **RADON GAS**: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in  
192 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that  
193 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding  
194 radon and radon testing may be obtained from your county health department.  
195 (b) **PERMITS DISCLOSURE**: Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller  
196 does not know of any improvements made to the Property which were made without required permits or made  
197 pursuant to permits which have not been properly closed. If Seller identifies permits which have not been  
198 properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans,  
199 written documentation or other information in Seller's possession, knowledge, or control relating to  
200 improvements to the Property which are the subject of such open permits or unpermitted improvements.  
201 (c) **MOLD**: Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or  
202 desires additional information regarding mold, Buyer should contact an appropriate professional.  
203 (d) **FLOOD ZONE; ELEVATION CERTIFICATION**: Buyer is advised to verify by elevation certificate which flood  
204 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to  
205 improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"  
206 or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and  
207 Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or  
208 flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage  
209 through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer  
210\* may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after  
211 Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further  
212 obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone  
213 designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums  
214 for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured  
215 or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial  
216 rating.  
217 (e) **ENERGY BROCHURE**: Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure  
218 required by Section 553.996, F.S.

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- 219 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is  
220 mandatory.
- 221 (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS**  
222 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS'**  
223 **ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- 224 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT  
225 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO  
226 PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY  
227 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER  
228 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE  
229 COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- 230 (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if  
231 Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer  
232 and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller  
233 is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status,  
234 under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD  
235 V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax  
236 advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to  
237 FIRPTA.
- 238 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are  
239 not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding  
240 sentence, Seller extends and intends no warranty and makes no representation of any type, either express or  
241 implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller  
242 has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected  
243 building, environmental or safety code violation.

244 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

- 245 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the  
246 Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS  
247 IS Maintenance Requirement").

248 **12. PROPERTY INSPECTION; RIGHT TO CANCEL:**

- 249 (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have \_\_\_\_\_ (if left blank, then 15)  
250 days after Effective Date ("Inspection Period") within which to have such inspections of the Property  
251 performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole  
252 discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering  
253 written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely  
254 terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall  
255 be released of all further obligations under this Contract; however, Buyer shall be responsible for  
256 prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting  
257 from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the  
258 preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to  
259 terminate granted herein, Buyer accepts the physical condition of the Property and any violation of  
260 governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to  
261 Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all  
262 repairs and improvements required by Buyer's lender.
- 263 (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior  
264 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and  
265 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal  
266 Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS  
267 Maintenance Requirement and has met all other contractual obligations.
- 268 (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection  
269 of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans,  
270 written documentation or other information in Seller's possession, knowledge, or control relating to  
271 improvements to the Property which are the subject of such open or needed Permits, and shall promptly  
272 cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve  
273 such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

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consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

(d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

#### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

**14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

#### DEFAULT AND DISPUTE RESOLUTION

##### **15. DEFAULT:**

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under

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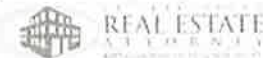


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329 this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's  
330 rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall  
331 be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share  
332 shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.  
333 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after  
334 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,  
335 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting  
336 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific  
337 performance.  
338 This Paragraph 15 shall survive Closing or termination of this Contract.  
339 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and  
340 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled  
341 as follows:  
342 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to  
343 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph  
344 16(b).  
345 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida  
346 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").  
347 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be  
348 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16  
349 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph  
350 16 shall survive Closing or termination of this Contract.  
351 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted  
352 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in  
353 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover  
354 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the  
355 litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

356 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

357 **18. STANDARDS:**  
358 **A. TITLE:**  
359 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in  
360 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall  
361 be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at  
362 or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance  
363 in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property,  
364 subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions,  
365 prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the  
366 Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of  
367 entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than  
368 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and  
369 subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach  
370 addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing  
371 any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall  
372 be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance  
373 with law.  
374 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller  
375 in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is  
376 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of  
377 receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after  
378 receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer  
379 shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver  
380 written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this  
381 Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If  
382 Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,





# STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

**C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

**D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

**E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

**F. TIME:** Calendar days shall be used in computing time periods. Time is of the essence in this Contract. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

**H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

Buyer's Initials

*BC*

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Seller's Initials

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

**I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, subject to **COLLECTION** of all closing funds, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

**J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

**K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1<sup>st</sup> of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

**L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

**M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated

Buyer's Initials

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Seller's Initials

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REAL ESTATE  
ATTORNEYS

# STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

**N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

**O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

**P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

**Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

**S. COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

**T. RESERVED.**

**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

**V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

Buyer's Initials

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Seller's Initials

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REAL ESTATE  
ASSOCIATION OF FLORIDA





592 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE  
593 ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

594 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

595 Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the  
596 terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and  
597 conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all  
598 interested persons.

599 AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK  
600 TO BE COMPLETED.

601\* Buyer: Patricia J. Clark Date: 10-23-20  
602\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_  
603\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_  
604\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

605 Buyer's address for purposes of notice Seller's address for purposes of notice  
606\* 1256 Dove Court, NE \_\_\_\_\_  
607\* Palm Bay, FL 32907 \_\_\_\_\_  
608\* \_\_\_\_\_

609 BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers  
610 entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct  
611 Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage  
612 agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has  
613 retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation  
614 made by Seller or Listing Broker to Cooperating Brokers.

615\* \_\_\_\_\_  
616 Cooperating Sales Associate, if any Listing Sales Associate  
617\* \_\_\_\_\_  
618 Cooperating Broker, if any Listing Broker



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Nelson Moya, Chief of Police

**DATE:** 12/3/2020

**RE:** Consideration of utilizing additional funding from the General Fund Undesignated Fund balance for the increased estimates of eleven (11) replacement vehicles for the Police Department (\$21,646).

On September 3, 2020, Council approved the use of one-time funds to address certain capital needs, including replacement vehicles for the Police Department. A transfer \$1,380,773 in surplus funds from the Risk Management Fund plus \$500,000 in unexpended funds available from the end of FY20 were approved to fund an estimated total of \$1,830,773 in unapproved capital requests identified during the FY21 budget planning process. Within this request was a total of 11 replacement vehicles for the Police Department estimated at \$329,734. On October 1, 2020, the Florida Sheriff's Association released the latest Cooperative Purchasing Program contracts for public safety vehicles. The FSA20-VEL28.0 Pursuit, Administrative, and Other Vehicles contract, valid October 1, 2020 thru September 30, 2022, now reflects significant increases to the base prices of popular public safety vehicles such as the 2021 Dodge Charger and 2021 Dodge Durango. Specifically, the base purchase price for 2021 Dodge Chargers increased by 26%. Additionally, prices increased for the other equipment required to outfit the vehicles for law enforcement use. With the assistance of the Fleet Department, Police reviewed the original estimates for the 11 vehicles requested to evaluate the updated costs focusing on an effort to minimize the overall impact of the price increases that occurred due to the effects of COVID-19 on the vehicle industry.

Upon completion of the revised estimates, the Police Department is now requesting \$21,646 additional funds from the General Fund Undesignated Fund balance in order to purchase the 11 vehicles previously approved by Council on September 3, 2020. A detailed breakdown of the additional funds requested is provided as Attachment B.

### **REQUESTING DEPARTMENT:**

Police Department

### **FISCAL IMPACT:**

Council previously approved \$329,734 from the General Fund Undesignated Fund Balance (Account# 001-0000-392-1001) originating from a one-time use of surplus funds from the Risk Management Fund for the purchase of 11 replacement vehicles for the Police Department. The requested additional funding from the

Undesignated Fund Balance of \$21,646 would increase the total fiscal impact for Police vehicles from the Undesignated Fund Balance to \$351,380.

**RECOMMENDATION:**

Motion to approve the use of an additional \$21,646 from the General Fund Undesignated Fund balance towards the increased estimates of the 11 replacement vehicles for the Police Department.

**ATTACHMENTS:**

**Description**

**Attachment A - Legislative Memo Capital requests 9.3.2020**

**Attachment B - FY21 PD Vehicles Additional Funding Request**



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**DATE:** 9/3/2020

**RE:** Consideration of allocation of funding for capital asset needs.

At the August 4, 2020 Budget Workshop, Staff discussed an option for the use of one-time funds to address certain capital needs, including vehicle replacements, in FY 2021. The Risk Management Fund as of September 2019 had a cash and investment balance of over \$6 Million, with the actuarial reserves recommendation closer to \$4 Million. Staff is recommending a transfer of these surplus funds back to the originating sources (funds). This will result in a transfer of \$1,380,773 into the General Fund, and these funds would then be placed into unassigned reserves, if not otherwise allocated to a specific purpose.

Staff is requesting the ability to use these funds to address certain capital needs as further provided in the attachment. Additionally, it is expected that there will be unexpended funds available at the end of FY 2020. Staff is also requesting the ability to allocate an additional \$500,000 toward the capital needs list, for an estimated total of \$1,830,77.

The capital items include replacement vehicles, playground replacements (units removed in FY 2020 and those due for replacement), certain fleet equipment replacement/upgrades, signal wire respan for Emerson/Malabar and Eldron/Malabar intersections, and a large format printer for Traffic Operations to replace/upgrade the equipment used for City street signs and vehicle wraps.

**REQUESTING DEPARTMENT:**  
City Manager's Office

**FISCAL IMPACT:**  
The use of \$1,380,773 in excess funded prior years allocation from the Risk Management Fund, and \$500,000 in unexpended FY 2020 funding (if available), would return to unassigned General Fund fund balance if not allocated to a specific purpose.

**RECOMMENDATION:**  
Motion to approve the allocation of \$1,380,773 in excess funded prior years allocation from the Risk Management Fund, and \$500,000 in unexpended FY 2020 funding (if available) for FY 2021 capital purchases.



**ATTACHMENTS:**

**Description**

**FY 2021 Capital Requests**

**FY 2021 - Capital Requests**

<b>Police Vehicles</b>	<b>Estimate</b>
K9 Dodge Durango #11	\$ 39,435.04
K9 Dodge Durango #10	\$ 39,435.04
Unmarked Dodge Equinox #6	\$ 26,089.10
Unmarked Dodge Charger #3	\$ 28,176.36
Unmarked Dodge Equinox #7	\$ 26,089.10
Unmarked Dodge Altima #8	\$ 21,105.10
Unmarked Dodge Durango #1	\$ 33,374.28
Unmarked Dodge Durango #2	\$ 33,374.28
Unmarked Dodge Durango #4	\$ 33,374.28
Unmarked Dodge Altima #9	\$ 21,105.10
Unmarked Dodge Charger #5	\$ 28,176.36

<b>Fire Vehicles</b>	
Squad Truck/Ford F350	\$ 54,000.00
District Chief Silverado 2500 Crew Cab	\$ 45,000.00
Brush truck retrofit for wildland fires	\$ 35,000.00

<b>Parks Vehicles</b>	
3/4 Ton Pickup 4x2 Crew Cab	\$ 24,500.00
3/4 Ton Pickup 4x2 Crew Cab	\$ 24,500.00
1 Ton Pickup 4x2	\$ 30,000.00
1 Ton Pickup 4x2	\$ 30,000.00

<b>Parks Playground Replacements</b>	
Liberty Park - removed FY 20	\$ 120,000.00
Riviera Park - removed FY 20 (playground/new dog park)	\$ 105,000.00
Veterans Park - removed FY 20	\$ 125,000.00
Oakwood Park - removed FY 20	\$ 95,000.00
Knecht Park	\$ 70,000.00
Lynbrook Park	\$ 75,000.00

<b>Public Works/Fleet/Traffic Operations</b>	
Bucket Lift Truck for traffic operations	\$ 150,000.00
Rubber Tire Excavator CAT 315 for pipe program	\$ 160,000.00
Tractor with side cutter head attachment	\$ 150,000.00
Signal Respan - Emerson/Malabar; Eldron/Malabar	\$ 80,754.00
Large Format Printer	\$ 44,089.00
Replace fleet vehicle lifts (3)	\$ 40,000.00
Overhead crane fleet heavy equipment	\$ 20,000.00
Gasboy System Upgrades - Malabar/Main St	\$ 26,000.00
Phase 1: Gasboy system and tank upgrades - FS 4	\$ 40,000.00

<b>Total Capital Requests FY 2021:</b>	<b>\$ 1,873,577.04</b>
----------------------------------------	------------------------

<u>Account #</u>	<u>Police Request</u>	<u>Original Estimate</u>	<u>Revised Quotes</u>	<u>Additional Funding Requested</u>
521-7070-519.49-04 OTHER CURRENT CHARGES / TAGS/TITLES/PERMITS	Tags & Titles (Marked K9 Durangos)	\$ 260	\$ 260	\$ -
521-7070-519.49-04 OTHER CURRENT CHARGES / TAGS/TITLES/PERMITS	Tags & Titles (Unmarked Durangos)	\$ 390	\$ 390	\$ -
521-7070-519.49-04 OTHER CURRENT CHARGES / TAGS/TITLES/PERMITS	Tags & Titles (Unmarked Chargers)	\$ 260	\$ 260	\$ -
521-7070-519.49-04 OTHER CURRENT CHARGES / TAGS/TITLES/PERMITS	Tags & Titles (Unmarked Equinox)	\$ 260	\$ 260	\$ -
521-7070-519.49-04 OTHER CURRENT CHARGES / TAGS/TITLES/PERMITS	Tags & Titles (Unmarked Altimas)	\$ 260	\$ 260	\$ -
<b>521-7070-519.49-04 TOTAL TRANSFER:</b>		<b>\$ 1,430</b>	<b>\$ 1,430</b>	<b>\$ -</b>
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	K9 Dodge Durango #11	\$ 29,021	\$ 31,000	\$ 1,979
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	K9 Dodge Durango #10	\$ 29,021	\$ 31,000	\$ 1,979
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	K9 Retro Kit (Marked K9 Durangos)	\$ 12,350	\$ 15,300	\$ 2,950
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Window Tinting (Marked K9 Durangos)	\$ 400	\$ 300	\$ (100)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Outlets, Inverters, & Antennas (Marked K9 Durangos)	\$ 820	\$ 820	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Seat Covers (Marked K9 Durangos)	\$ 480	\$ 480	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Lighting, Sirens, PA etc (Marked K9 Durangos)	\$ 6,174	\$ 9,200	\$ 3,026
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	K9 Vehicle Graphics (Marked K9 Durangos)	\$ 642	\$ 700	\$ 58
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Dodge Durango #1	\$ 29,021	\$ 31,000	\$ 1,979
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Dodge Durango #1	\$ 29,021	\$ 31,000	\$ 1,979
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Dodge Durango #1	\$ 29,021	\$ 31,000	\$ 1,979
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Window Tinting (Unmarked Durangos)	\$ 600	\$ 450	\$ (150)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Outlets, Inverters, & Antennas (Unmarked Durangos)	\$ 1,230	\$ 1,230	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Seat Covers (Unmarked Durangos)	\$ 720	\$ 720	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Lighting, Sirens, PA etc (Unmarked Durangos)	\$ 9,261	\$ 10,350	\$ 1,089
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Dodge Charger #3	\$ 23,243	\$ 28,350	\$ 5,107
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Dodge Charger #5	\$ 23,243	\$ 28,350	\$ 5,107
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Window Tinting (Unmarked Chargers)	\$ 400	\$ 240	\$ (160)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Outlets, Inverters, & Antennas (Unmarked Chargers)	\$ 820	\$ 820	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Seat Covers (Unmarked Chargers)	\$ 480	\$ 480	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Lighting, Sirens, PA etc (Unmarked Chargers)	\$ 6,174	\$ 7,000	\$ 826
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Chevrolet Equinox #6	\$ 21,879	\$ 21,000	\$ (879)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Chevrolet Equinox #7	\$ 21,879	\$ 21,000	\$ (879)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Window Tinting (Unmarked Equinox)	\$ 400	\$ 300	\$ (100)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Outlets, Inverters, & Antennas (Unmarked Equinox)	\$ 820	\$ 820	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Seat Covers (Unmarked Equinox)	\$ 480	\$ 480	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Lighting, Sirens, PA etc (Unmarked Equinox)	\$ 6,174	\$ 3,000	\$ (3,174)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Nissan Altima #8	\$ 18,328	\$ 19,500	\$ 1,172
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Unmarked Nissan Altima #9	\$ 18,328	\$ 19,500	\$ 1,172
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Window Tinting (Unmarked Altimas)	\$ 400	\$ 260	\$ (140)
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Outlets, Inverters, & Antennas (Unmarked Altimas)	\$ 820	\$ 820	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Seat Covers (Unmarked Altimas)	\$ 480	\$ 480	\$ -
521-7070-519.64-03 MACHINERY AND EQUIPMENT / LIGHT VEHICLES	Lighting, Sirens, PA etc (Unmarked Altimas)	\$ 6,174	\$ 3,000	\$ (3,174)
<b>521-7070-519.64-03 TOTAL TRANSFER:</b>		<b>\$ 328,304</b>	<b>\$ 349,950</b>	<b>\$ 21,646</b>
<b>PD FY21 Capital Request BA# 1 TOTAL:</b>		<b>\$ 329,734</b>	<b>\$ 351,380</b>	<b>\$ 21,646</b>



## **LEGISLATIVE MEMORANDUM**

**TO: Honorable Mayor and Members of the City Council**

**FROM: Suzanne Sherman, Acting City Manager**

**THRU: Valentino Perez, Chief Building Official**

**DATE: 12/3/2020**

**RE: Consideration of appropriation of funds from Building Department Undesignated Fund Balance for new positions within the Building Department (\$133,651).**

The Building Department is requesting to increase its budget to cover the cost of creating a Part-Time Senior Plans Examiner and a Senior Permit Technician. Currently the Building Department has a vacant Full-time Sr. Plans Examiner position. Alex Juan is currently working within this FTE as a temporary Part-time employee for the Building Department. The full-time position has been posted with intent to fill. This would leave no funding or FTE's to retain Mr. Juan. Mr. Juan was a longtime Sr. Plans Examiner for the city before retiring and as such plays a critical role in the Building Department now due to his history and knowledge with the city. Staff is requesting authorization to add the part-time position in order to retain Mr. Juan as a PT employee working no more than 27 hours per week.

Currently the Building Department pays an outside Plans Examiner at a significantly higher salary. By filling the full-time position and retaining Mr. Juan, the City will no longer need to rely on outside Plans Examiners to process plans, which would provide significant savings. Current budgeted allocations are for the vacant FT position. The annual recurring cost for the new PT position will be \$63,869, including salary and recurring operating costs. The one-time cost of \$4,600 is for a computer, software, and furniture for the vacant full-time position.

In addition, the Building Department is requesting to add a Senior Permit Technician to the Department. Due to significant increase of current and anticipated future construction within the City, the Building Department has and will experience a sharp increase in permit applications and customer service. The Building Department is in need of a dedicated position to monitor, assist, and coordinate the workflow of the Permit Technicians to ensure proper deadlines are met. This position will act as the liaison between the Building Official, Administrative Services Manager, and contractors. The salary for this position will be \$35,910. The annual recurring cost for this new position, including salary and benefits will be \$60,882 and additional one-time cost of \$4,300. Total cost for both positions will be \$133,651.

**REQUESTING DEPARTMENT:**  
Building Department

**FISCAL IMPACT:**

Transfer funds available of \$133,651 in Building Department Undersigned Fund Balance account number 451-0000-392-3006 to personal services and operational Building accounts as outlined in Budget Amendment.

**RECOMMENDATION:**

Motion to approve budget amendment from Building Department Undesignated Fund Balance account 451-0000-392-3006 to Building Department accounts.

**ATTACHMENTS:****Description**

**Budget Amendment Forms**

**Budget Amendment Form pg 2**



**Requesting Department/Division**  
**City Council Approval Date**

[illegible]**Justification for Budget Amendment Request**

--

## Supporting Documentation Attached

Yes

Yes	No	Justification, if "No" →

### Signature/Approval Requirements

Authorized Department Designee

Budget Office Representative

**Budget Office Use Only:**

Budget Amendment #  
Budget Amendment Date  
Prepared By

H.T.E. Entry Date  
Entered By  
Date Journalized

City Council Approval Date

### Justification for Budget Amendment Request

--

Justification, if "No" →

Budget Office Representative

H.T.E. Entry Date  
Entered By  
Date Journalized



## **LEGISLATIVE MEMORANDUM**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Christopher A. Little, P.E.; Yvonne McDonald

**DATE:** 12/3/2020

**RE:** Consideration of appropriation of funds for engineering and other contractual services for removal of an abandoned water main at Jupiter bridge/C-1 canal (\$35,000).

In 2010, the relocation of the Jupiter Bridge water main at the C-1 canal was completed (Project #08WS14) and the portion of the 12" water main that was mounted to the bridge structure was abandoned in place. Based on the Florida Department of Transportation (FDOT) inspection performed on March 20, 2018, removal of the abandoned water main is required. Approximately 370 linear feet of 12" steel water main must be removed as well as other appurtenances which are no longer in use.

In FY20, the Utilities Department prepared a scope of services and the Procurement Office solicited for contractor services to remove the abandoned water main. No bids were received. The work was budgeted as a BAR in FY20, and the funds were returned to fund balance since they were not used in FY20.

The Utilities Department wishes to utilize our Engineering Consultants to prepare construction documents and to bundle the project with other water main projects that are budgeted for FY21. The cost for engineering services is \$5,000 and the cost for other contractual services for removal of the water main is \$30,000. Funding is available in the Utilities Operating Fund.

### **REQUESTING DEPARTMENT:**

Utilities, Finance

### **FISCAL IMPACT:**

Total estimated cost for engineering services is \$5,000 and other contractual services is estimated at \$30,000. A budget amendment will be submitted to cover funding for the project in FY 21. Pending approval of the budget amendment, funds will be available in the Utilities Department's Utilities Operating Fund 421-8020-533-3121/Project #21WS24 (\$5,000) and 421-8020-533-3409/Project #21WS24 (\$30,000).

### **RECOMMENDATION:**

Motion to approve the appropriation of funds in the amount of \$35,000 on the next scheduled FY 21 budget amendment.

**ATTACHMENTS:****Description**

**FDOT Bridge Inspection Report**

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM****Inspection/CIDR Report with PDF attachment(s)  
Inspection****Structure ID: 705909****DISTRICT: D5 - Deland****INSPECTION DATE: 3/20/2018 TUUI**

BY:	Ayres Associates	STRUCTURE NAME:	Jupiter Blvd-M-T Canal
OWNER:	4 City/Municipal Hwy Agy	YEAR BUILT:	1975
MAINTAINED BY:	4 City/Municipal Hwy Agy	SECTION NO.:	70 000 207
STRUCTURE TYPE:	5 Prestressed Concrete - 02 Stringer/Girder	MP:	5.408
LOCATION:	1 mi N of Malabar Road	ROUTE:	00000
SERV. TYPE ON:	5 Highway-pedestrian	FACILITY CARRIED:	Jupiter Blvd.
SERV. TYPE UNDER:	5 Waterway	FEATURE INTERSECTED:	Melbourne Tillman Canal

☒ FUNCTIONALLY OBSOLETE☐ STRUCTURALLY DEFICIENT

TYPE OF INSPECTION: Regular NBI

DATE FIELD INSPECTION WAS PERFORMED: ABOVE WATER: 3/20/2018 UNDERWATER: 3/20/2018

SUFFICIENCY RATING: 77.1  
HEALTH INDEX: 99.57

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
Inspection/CIDR Report with PDF attachment(s)  
Inspection**

Structure ID: 705909

DISTRICT: D5 - Deland

INSPECTION DATE: 3/20/2018 TUUI

BY: Ayres Associates	STRUCTURE NAME: Jupiter Blvd-M-T Canal
OWNER: 4 City/Municipal Hwy Agy	YEAR BUILT: 1975
MAINTAINED BY: 4 City/Municipal Hwy Agy	SECTION NO.: 70 000 207
STRUCTURE TYPE: 5 Prestressed Concrete - 02 Stringer/Girder	MP: 5.408
LOCATION: 1 mi N of Malabar Road	ROUTE: 00000
SERV. TYPE ON: 5 Highway-pedestrian	FACILITY CARRIED: Jupiter Blvd.
SERV. TYPE UNDER: 5 Waterway	FEATURE INTERSECTED: Melbourne Tillman Canal

- ☐ THIS BRIDGE CONTAINS FRACTURE CRITICAL COMPONENTS
- ☐ THIS BRIDGE IS SCOUR CRITICAL
- ☐ THIS REPORT IDENTIFIES DEFICIENCIES WHICH REQUIRE PROMPT CORRECTIVE ACTION
- ☒ FUNCTIONALLY OBSOLETE ☐ STRUCTURALLY DEFICIENT

TYPE OF INSPECTION: Regular NBI

DATE FIELD INSPECTION WAS PERFORMED: ABOVE WATER: 3/20/2018 UNDERWATER: 3/20/2018

**OVERALL NBI RATINGS:**

DECK: 7 Good	CHANNEL: 7 Minor Damage
SUPERSTRUCTURE: 7 Good	CULVERT: N N/A (NBI)
SUBSTRUCTURE: 7 Good	SUFF. RATING: 77.1
PERF. RATING: 2 - Good	HEALTH INDEX: 99.57

**FIELD PERSONNEL / TITLE / NUMBER:****INITIALS**

Narvaez, Ricardo - Bridge Inspector (CBI #447) (lead)

Ahrens, Charles - Bridge Inspector (CBI #00539)

Hutcheson, Reed - Assistant Bridge Inspector

RSU

\_\_\_\_\_

\_\_\_\_\_

**REVIEWING BRIDGE INSPECTION SUPERVISOR:**

Maslyn, Rick - Bridge Inspector (CBI #00271)

RM

**CONFIRMING REGISTERED PROFESSIONAL ENGINEER:**

Scherer, Michael - Professional Engineer (P.E. #56898) Ayres Associates (C. A. #4356)

8875 Hidden River Pkwy

Suite 200

Tampa FL 33637

SIGNATURE: DATE: 5/17/2018

This report contains information relating to the physical security of a structure and depictions of the structure. This information is confidential and exempt from public inspection pursuant to sections 119.071(3)(a) and 119.071(3)(b), Florida Statutes. Only the cover page of this report may be inspected and copied.



# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

## Inspection/CIDR Report with PDF attachment(s) Inspection

Structure ID: 705909

DISTRICT: D5 - Deland

INSPECTION DATE: 3/20/2018 TUUI

### All Elements

#### DECKS : Decks/Slabs

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8098 / 3	Conc Deck on PC Panel	4226	98.69	50	1.17	6	0.14	0	.	4282 (SF)
0	1080 / 3	Delamination/Spall/Patched Area	0	.	0	.	6	100	0	.	6 (SF)
0	1130 / 3	Cracking (RC and Other)	0	.	50	100	0	.	0	.	50 (SF)

#### Element Inspection Notes:

8098/3 Note: There is a 13 in. diameter steel utility pipe attached along the right fascia of the structure.

#### Previously Noted:

CS3 = The deck top in Span 1 has several gouges up to 36 in. x 1 in. x 1/2 in. deep.

The underside of Bay 1-1 Panel 8 has a 4 in. x 3 in. x 1-1/2 in. spall with exposed steel in the southeast corner. Refer to Photo 1.

Span 1 left overhang adjacent to Abutment 1 has a 7 in. x 5 in. x 1 in. spall with no exposed steel at a drill hole.

CS2 = The deck top has map cracking up to 1/32 in. wide throughout the structure.

Several of the precast deck panels have transverse cracks in the deck underside up to 1/64 in. wide x various lengths.

#### INCIDENTAL:

#### Curbs / Sidewalks:

The northeast corner of the left curb has an 8 in. x 3 in. x 1-1/2 in. deep spall with no exposed steel.

The southwest corner of the right curb has a spall 5 in. x 4 in. x 1 in. deep with no exposed steel.

The right curb at Abutment 4 north face has an 18 in. x 8 in. x 3/4 in. spall with no exposed steel.

There is a light to moderate accumulation of dirt and debris along each curb.

The utility pipe along the right side of the structure has areas of heavy corrosion and is leaking. Refer to Photo 2. REPAIR

1080/3 Refer to Parent Element

1130/3 Refer to Parent Element

#### DECKS : Joints

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	301 / 3	Pourable Joint Seal	72	52.94	20	14.71	44	32.35	0	.	136 ft
0	2320 / 3	Seal Adhesion	0	.	20	33.33	40	66.67	0	.	60 ft
0	2340 / 3	Seal Cracking	0	.	0	.	4	100	0	.	4 ft

#### Element Inspection Notes:

301/3 Previously Noted:

CS3 = All expansion joints have adhesion failures up to 10 ft. long each. Refer to Photo

**FLORIDA DEPARTMENT OF TRANSPORTATION**  
**BRIDGE MANAGEMENT SYSTEM**  
**Inspection/CIDR Report with PDF attachment(s)**  
**Inspection**

Structure ID: 705909

DISTRICT: D5 - Deland

INSPECTION DATE: 3/20/2018 TUUI

**3. REPAIR**

Bent 2 joint has two cracked and spalled repairs in Lane 2 up to 3 ft. x 3 in. x 1-1/2 in. deep. REPAIR

Bent 3 joint has two repairs with shrinkage cracks and a spalled area 40 in. x 8 in. x 2 in. along Span 2 side of the joint. Refer to Photo 4. REPAIR

CS2 = Abutment 1 and 4 joints have minor adhesion loss with minor vegetation growth in Lane 2.

2320/3 Refer to Parent Element

2340/3 Refer to Parent Element

**MISCELLANEOUS : Channel**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8290 / 3	Channel	0	.	1	100	0	.	0	.	1 (EA)
0	9140 / 3	Debris	0	.	1	100	0	.	0	.	1 (EA)

**Element Inspection Notes:**

8290/3 Previously Noted:  
Refer to Element 8396, Other Slope Protection for related comments.

CS2 = There are scattered sand cement bags under the bridge from the channel banks to 10 ft. channel side of the intermediate bents.

There is light drift throughout the channel.

9140/3 Refer to Parent Element

**MISCELLANEOUS : Other Elements**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8477 / 3	Other Wingwall/Retaining Wall	66	100	0	.	0	.	0	.	66 ft

**Element Inspection Notes:**

8477/3 Note: This element represents the cinder block walls at the four corners of the structure.

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	215 / 3	Re Conc Abutment	67	98.53	1	1.47	0	.	0	.	68 ft
0	1080 / 3	Delamination/Spall/Patched Area	0	.	1	100	0	.	0	.	1 ft

**Element Inspection Notes:**

215/3 Previously Noted:  
CS2 = The top edge of Abutment 1 Cap at the east utility has a 10 in. long x 3 in. wide delamination. Refer to Photo 5.

1080/3 Refer to Parent Element

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

## Inspection/CIDR Report with PDF attachment(s) Inspection

Structure ID: 705909

DISTRICT: D5 - Deland

INSPECTION DATE: 3/20/2018 TUUI

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	226 / 3	Pre Conc Pile	0	.	10	100	0	.	0	.	10 (EA)
0	1190 / 3	Abrasion(PSC/RC)	0	.	10	100	0	.	0	.	10 (EA)

**Element Inspection Notes:**

226/3            Previously Noted:  
CS2 = The lower 3 ft. of the piles have scale damage up to 1/16 in. deep.

1190/3          Refer to Parent Element

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	234 / 3	Re Conc Pier Cap	68	100	0	.	0	.	0	.	68 ft

**Element Inspection Notes:**

234/3            Previously Noted:  
INCIDENTAL:  
Numerous small rocks are on top of Bent 3 cap between Beams 3-2 and 3-3.

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8396 / 3	Other Abutment Slope Protection	2518	100	0	.	0	.	0	.	2518 (SF)

**Element Inspection Notes:**

8396/3          Note: This element represents the sand-cement rip rap bags and fabric formed concrete slope protection.

Previously Noted:  
INCIDENTAL:  
The fabric formed concrete slope protection near centerline of the north slope protection at the toe has no undermining present. There are approximately 25 open filter points.

INCIDENTAL:  
There is moderate to heavy vegetation growing on the slope protection at all four corners of the bridge. Refer to Photo 6.

The toe of the fabri-form mat at Abutment 1 is exposed up to 6 in. high within a 15 ft. length near centerline.

**SUPERSTRUCTURE : Bearings**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	310 / 3	Elastomeric Bearing	24	100	0	.	0	.	0	.	24 each

**Element Inspection Notes:**

310/3          No Notes

**SUPERSTRUCTURE : Superstructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	109 / 3	Pre Opn Conc Girder/Beam	505	100	0	.	0	.	0	.	505 ft

**Element Inspection Notes:**

109/3          No Notes

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**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM**

**Inspection/CIDR Report with PDF attachment(s)  
Inspection**

**Structure ID: 705909**

**DISTRICT: D5 - Deland**

**INSPECTION DATE: 3/20/2018 TUUI**

**SUPERSTRUCTURE : Superstructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	331 / 3	Re Conc Bridge Railing	253	100	0	.	0	.	0	.	253 ft

**Element Inspection Notes:**

331/3                  No Notes

**Total Number of Elements\*: 11**

\*excluding defects/protective systems

**Structure Notes**

BRIDGE OWNER: CITY OF PALM BAY

This structure was inventoried from south to north.

**TRAFFIC RESTRICTIONS:**

Based on the results of the most recent load rating analysis dated 3/11/85, posting is not required. This structure is currently not posted.

As stated in section 3.4 of the Bridge and Other Structures Inspection and Reporting as of 11/24/2009 superstructure unit numbering (Section 3.4.2.2) and substructure unit numbering (Section 3.4.3) are designated NOT BY ORDER IN WHICH THE ELEMENTS WERE CONSTRUCTED AND PUT INTO SERVICE. Plans sheet or drawing in Topic G, Bridge Description and Drawings section of the bridge folder can confirm all references to these elements prior to this date.

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
Inspection/CIDR Report with PDF attachment(s)  
Inspection**

**Structure ID: 705909****DISTRICT: D5 - Deland****INSPECTION DATE: 3/20/2018 TUUI**

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**INSPECTION NOTES:                      TUUI                      3/20/2018**

Sufficiency Rating Calculation Accepted by KNAAHR at 4/23/2018 3:07:01 PM

**LOAD RATING EVALUATION:**

This inspection noted no changes in the structure condition that would warrant a new load rating. The load rating dated 3/11/85 appears to still apply.

The lead underwater inspector for the current routine inspection is Sebastian Narvaez (CBI #00447).

The following underwater elements were inspected:

226 Pre Conc Pile - Bents 2 and 3 each with five 18 in. concrete piles.

8290 Channel

**Non-Structural Items:****Graffiti:****Previously Noted:**

There is graffiti on both abutments, both intermediate bent caps, all piles, the north slope and retaining walls. Refer to Photo 7. REPAIR

**Guardrails:****Previously Noted:**

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to Photo 8. REPAIR

**Approach Roadways:****Previously Noted:**

The asphalt at both approach roadways has transverse cracks up to 1/16 in. wide x various lengths.

**Noted this Inspection:**

Minor settlement at approach roadway bridge transition up to 1/2 in. D.

**Striping:****Previously Noted:**

The deck striping is moderate to heavily chipped and worn on the structure but in good condition at both approach roadways. Refer to Photo 9. REPAIR

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT  
ADDENDUM**

**CONTENTS OF ADDENDUM**

	Bridge Location Map		Sketches and Photos
*	Additional Element Inspection Notes		Recommended Corrective Action
	Load Rating Analysis Summary		Scour Evaluation
*	Posting Photos	*	Fracture Critical Inspections

\* This section is not included in this report.

**PREPARED FOR: FDOT  
BRIDGE OWNER: CITY OF PALM BAY  
PREPARED BY: AYRES ASSOCIATES**

**REPORT IDENTIFICATION**

Bridge Number: 705909 – Regular NBI	Inspection Date: 03/20/2018
-------------------------------------	-----------------------------

Bridge Name: Jupiter Blvd over Tillman Canal

Facility Carried: Jupiter Blvd

Featured Intersected: Tillman Canal



South Approach



# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM BRIDGE INSPECTION REPORT

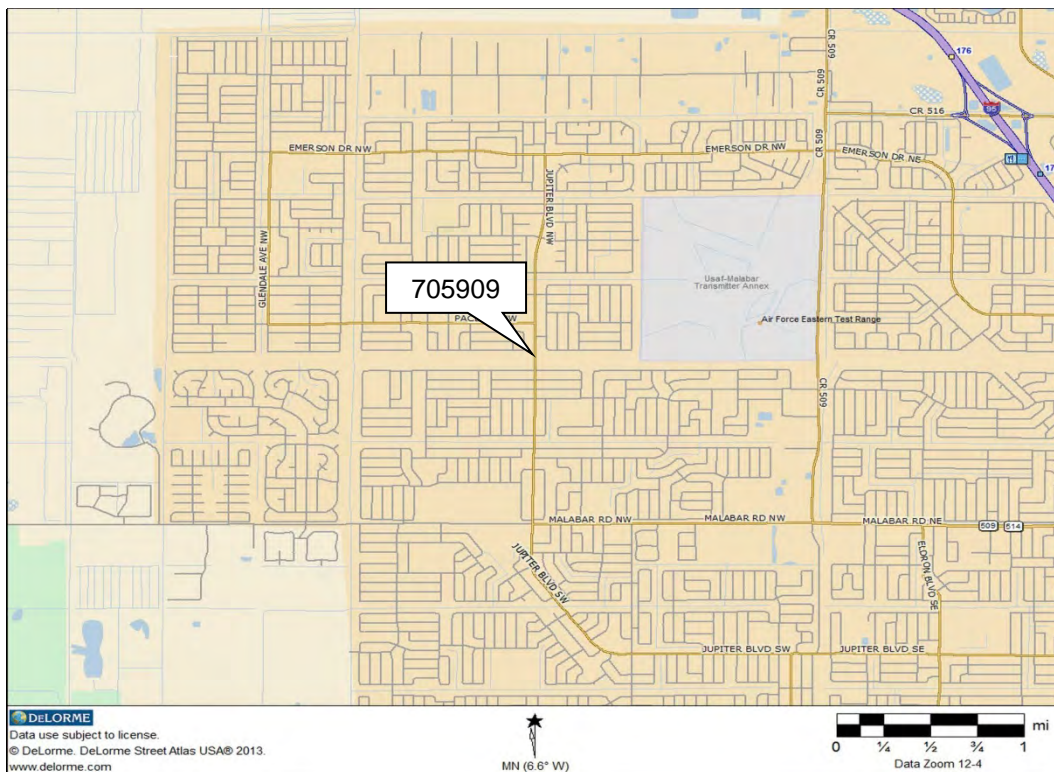
Bridge No: 705909

Inspection Date: 03/20/2018

## BRIDGE LOCATION MAP



West Elevation



Jupiter Blvd over Tillman Canal

1.0 Mile North of Malabar Rd

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

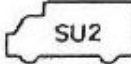
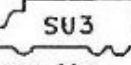
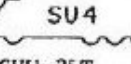
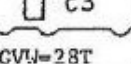
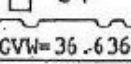
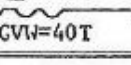
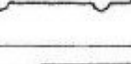

Inspection Date: 03/20/2018

## LOAD RATING ANALYSIS SUMMARY

Bridge No: 705909

## D. LOAD CAPACITY INFORMATION

## GUIDE

LOAD RATING SUMMARY									
Rating Performed By: <u>Jim P. [Signature]</u> P.E. # <u>23379</u>									
Date of Computations: <u>3-11-85</u> , Computer Program: <u>Arizona</u>									
Loading Classification	TYPE OF LOADING	RATING LEVEL	Moment Capacity of Slab *	Moment Capacity of Beams	Shear Capacity of Beams	Critical Rating		No Posting Req'd.	
 GVW=17T	Inventory		25.9	42.6	36.7	25.9	> 17		
	Operating			47.3	53.1	42	✓		
 GVW=33T	Inventory		38.0	44.4	38.5	38.0	> 33		
	Operating			49.9	55.7	44	✓		
 GVW=35T	Inventory		47.4	43.8	40.1	40.1	> 35		
	Operating			48.7	58.1	44	✓		
 GVW=28T	Inventory		42.7	63.9	58.0	42.7	> 28		
	Operating			71.0	84.0	64	✓		
 GVW=36-636T	Inventory		42.2	61.8	51.7	42.2	> 36.6		
	Operating			68.7	74.9	62	✓		
 GVW=40T	Inventory		46.1	65.3	58.5	46.1	> 40		
	Operating			72.6	84.7	65	✓		
	Inventory		H21.0	H38.6	H34.2				
	Operating			H42.9	H49.6				
	Inventory		HS21.0	HS29.6	HS25.0	40.8	✓		
	Operating			HS32.9	HS36.2	53.2	✓		

OTES: 1. Governing span length for Design Load is 40.25' 12.27m ✓

2. Moment ~~XXXX~~ controls for this structure.

\* See attached calculations by service load method.



FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT

Bridge No: 705909

Inspection Date: 03/20/2018

## SKETCHES AND PHOTOS



Photo 1: Element 8098: Showing spall with exposed steel Panel 8 in Bay 1-1



Photo 2: Element 8098: Showing heavy corrosion and leaking utility pipe on right side of the structure.



**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**SKETCHES AND PHOTOS**



Photo 3: Element 301: Showing typical adhesion failure of expansion joint sealant.



Photo 4: Element 301: Showing spalled area at Bent 3 joint.



**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**SKETCHES AND PHOTOS**



Photo 5: Element 215: Showing delamination at top edge of Abutment 1 Cap.



Photo 6: Element 8396: Showing vegetation growth at north slope protection.



FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT

Bridge No: 705909

Inspection Date: 03/20/2018

## SKETCHES AND PHOTOS



Photo 7: Inspection Notes: Showing graffiti on bridge underside.



Photo 8: Inspection Notes: Showing broken and missing guardrail mounted reflectors.



**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**SKETCHES AND PHOTOS**



Photo 9: Inspection Notes: Heavily chipped and worn deck striping.

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**RECOMMENDED CORRECTIVE ACTION**

8098 Conc Deck on PC Panel

Replace / repair corroded and leaking utility pipe along the right side of the structure.

301 Pourable Joint Seal

Repair all areas where the expansion joint sealant has adhesion loss.

Repair the failed repaired area along Bent 3 joint in Lane 2.

Non-Structural Items:Graffiti

Cover all graffiti.

Guardrails

Replace all broken or missing guardrail reflectors.

Striping

Apply new striping on the bridge deck.

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**SCOUR EVALUATION**

**LEFT SIDE**

		02/08/88	03/02/16	03/20/18	Change
Abutment 1		7.0	7.0	7.0	0.0
Bent 2		23.5	26.2	25.2	1.0
C/L of Channel		24.9	25.3	25.8	-0.5
Bent 3		20.6	21.8	21.3	0.5
Abutment 4		7.0	7.0	6.9	0.1

Waterline at C/L of Channel	20.9	21.2	20.1
-----------------------------	------	------	------

**RIGHT SIDE**

		02/08/88	03/02/16	03/20/18	Change
Abutment 1		7.9	6.7	6.9	-0.2
Bent 2		22.0	23.1	23.1	0.0
C/L of Channel		24.9	24.8	25.6	-0.8
Bent 3		20.9	21.5	22.1	-0.6
Abutment 4		7.3	7.8	7.3	0.5

Waterline at C/L of Channel	20.9	21.2	20.1
-----------------------------	------	------	------

NOTE: - = An increase in degradation.

Blank box = No previous measurement available.

Relative Channel Plots Are Not To Scale.

Any Vertical Curvature Of Datum Point Is Not Reflective In Plot.

The waterline and mudline measurements, in reference to the top of the curb, are provided for future comparison. All measurements are in feet.

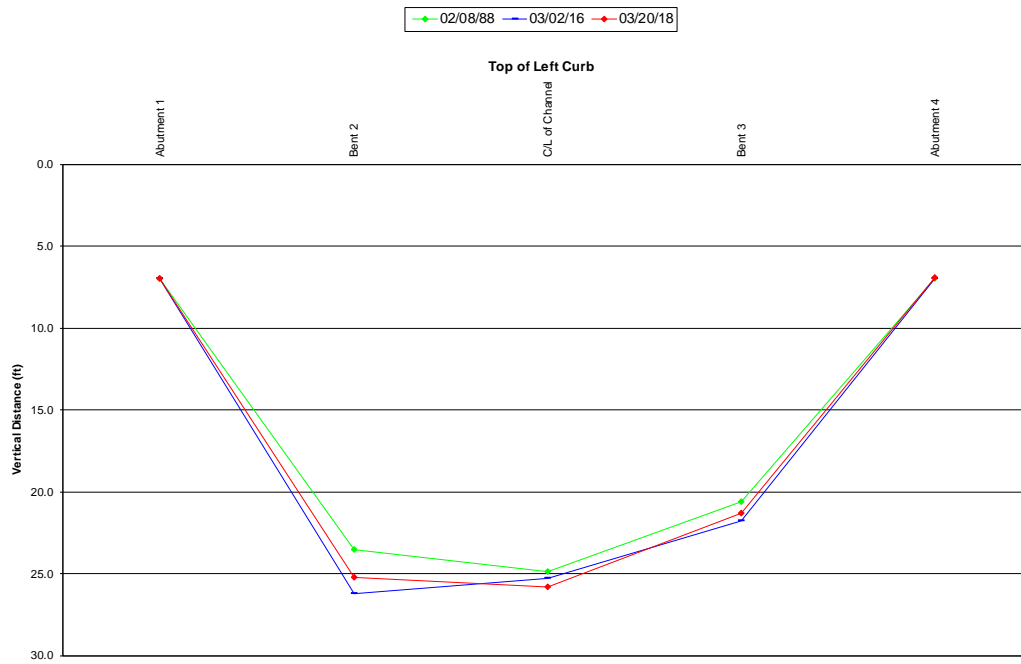
# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM BRIDGE INSPECTION REPORT

Bridge No: 705909

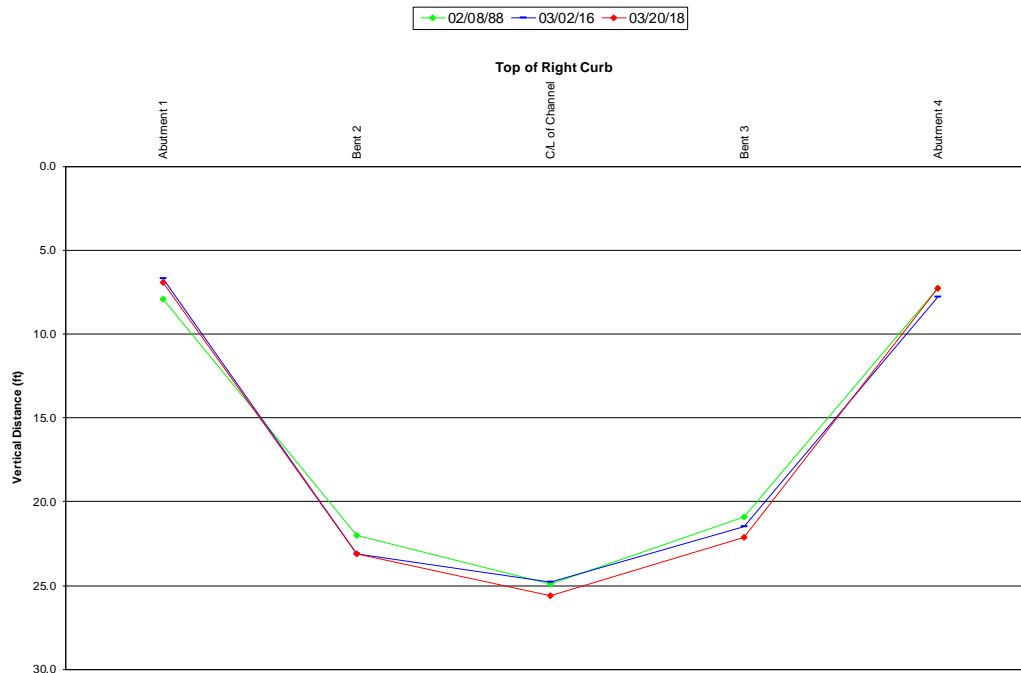
Inspection Date: 03/20/2018

## SCOUR EVALUATION

### LEFT SIDE SOUNDINGS



### RIGHT SIDE SOUNDINGS



Relative Channel Plots Are Not To Scale.  
Any Vertical Curvature Of Datum Point Is Not Reflective In Plot.

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**SCOUR EVALUATION**



Channel Looking West



Channel Looking East

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM  
BRIDGE INSPECTION REPORT**

Bridge No: 705909

Inspection Date: 03/20/2018

**FIELD PREPARATION**

## A. Tools and Equipment

Full Size Cargo Van:	Yes: <u>X</u>	No: <u>—</u>	Pick-up Truck:	Yes: <u>—</u>	No: <u>X</u>
Automobile:	Yes: <u>—</u>	No: <u>X</u>	Video:	Yes: <u>—</u>	No: <u>X</u>
Camera:	Yes: <u>X</u>	No: <u>—</u>			
NDT Equipment:	Yes: <u>—</u>	No: <u>X</u>			
NDT Type: N/A					
Binoculars:	Yes: <u>—</u>	No: <u>X</u>			
Diving Performed:	Yes: <u>X</u>	No: <u>—</u>	Max Depth: <u>5.7 ft.</u>	Current: <u>&lt; 1 fps</u>	

Dive Mode: Level II Commercial Scuba

Hand Tools: (i.e. Chipping Hammer, 6' Ruler, etc.)

1. Standard Inspection Tools
3. Flashlights
5. Inspection Hand Tools

2. Chipping Hammers
4. Carpenter Ruler

Other: —

## B. Services

Flag Crew: N/A  
Electrician: N/A

Snooper: N/A  
Other: N/A

## C. Scheduling (Brief Explanation)

Topside with Underwater:

Topside Hours: 2 hrs. Underwater Hours: 1 hrs. Travel Time: 3 hrs.

## D. Site Conditions

Boat Needed: Yes Type of Boat: Jon BoatLocation of Boat Ramp: N/ALengthy Travel Required: NODifficult Access: NOWater Obviously Polluted: NOWater quality is fair (partially meets use): YESStrong Water Current: NOOther: NONE

## E. UNDERWATER ELEMENTS INSPECTED:

226 Pre Conc Pile – Bents 2 and 3 each with five 18 in. concrete piling  
8290 Channel



# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

### Description

#### Structure Unit Identification

Bridge/Unit Key: 705909 0  
 Structure Name: Jupiter Blvd-M-T Canal  
 Description: SPANS 1, 2 AND 3  
 Type: M - Main

#### Roadway Identification

NBI Structure No (8): 705909  
 Position/Prefix (5): 1 - Route On Structure  
 Kind Hwy (Rte Prefix): 5 City Street  
 Design Level of Service: 1 Mainline  
 Route Number/Suffix: 00000 / 0 N/A (NBI)  
 Feature Intersect (6): Melbourne Tillman Canal  
 Critical Facility: Not Defense-crit  
 Facility Carried (7): Jupiter Blvd.  
 Mile Point (11): 5.408  
 Latitude (16): 028d00'48.9" Long (17): 080d41'48.2"

#### Roadway Traffic and Accidents

Lanes (28): 2 Medians: 0 Speed: 45 mph  
 ADT Class: 3 ADT Class 3  
 Recent ADT (29): 9633 Year (30): 2014  
 Future ADT (114): 11174 Year (115): 2034  
 Truck % ADT (109): 7  
 Detour Length (19): 2.0 mi  
 Detour Speed: 45 mph  
 Accident Count: -1 Rate:

#### Roadway Classification

Nat. Hwy Sys (104): 0 Not on NHS  
 National base Net (12): 0 - Not on Base Network  
 LRS Inventory Rte (13a): 70 000 207 Sub Rte (13b): 00  
 Functional Class (26): 16 Urban Minor Arterial  
 On Federal Aid System: Yes  
 Defense Hwy (100): 0 Not a STRAHNET hwy  
 Direction of Traffic (102): 2 2-way traffic  
 Emergency: ☐

#### Roadway Clearances

Vertical (10): 99.99 ft Appr. Road (32): 24.5 ft  
 Horiz. (47): 27.9 ft Roadway (51): 27.9 ft  
 Truck Network (110): 0 Not part of natl netwo  
 Toll Facility (20): 3 On free road  
 Fed. Lands Hwy (105): 0 N/A (NBI)  
 School Bus Route: ☒  
 Transit Route: ☐

#### NBI Project Data

Proposed Work (075A): Not Applicable (P)  
 Work To Be Done By (075B): Not Applicable (P)  
 Improvement Length (076): 0 ft

Improvement Cost (094): \$ 0.00  
 Roadway Improvement Cost (095): \$ 0.00  
 Total Cost (096): \$ 0.00  
 Year of Estimate (097):

#### NBI Rating

Channel (61): 7 Minor Damage  
 Deck (58): 7 Good  
 Superstructure (59): 7 Good  
 Substructure (60): 7 Good

Culvert (62): N N/A (NBI)  
 Waterway (71): 8 Equal Desirable  
 Unrepaired Spalls: -1 sq.ft.  
 Review Required: ☒

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

### Structure Identification

Admin Area: Space Coast  
 District (2): D5 - Deland  
 County (3): (70)Brevard  
 Place Code (4): Palm Bay  
 Location (9): 1 mi N of Malabar Road  
 Border Br St/Reg (98): Not Applicable (P) Share: 0 %  
 Border Struct No (99):  
 FIPS State/Region (1): 12 Florida Region 4-Atlanta  
 NBIS Bridge Len (112): Y - Meets NBI Length  
 Parallel Structure (101): No || bridge exists  
 Temp. Structure (103): Not Applicable (P)  
 Maint. Resp. (21): 4 City/Municipal Hwy Agy  
 Owner (22): 4 City/Municipal Hwy Agy  
 Historic Signif. (37): 5 Not eligible for NRHP

### Structure Type and Material

Curb/Sidewalk (50): Left: 1.9 ft Right: 1.9 ft  
 Bridge Median (33): 0 No median  
 Main Span Material (43A): 5 Prestressed Concrete  
 Appr Span Material (44A): Not Applicable  
 Main Span Design (43B): 02 Stringer/Girder  
 Appr Span Design (44B): Not Applicable

## Appraisal

### Structure Appraisal

Open/Posted/Closed (41): A Open, no restriction  
 Deck Geometry (68): 2 Intolerable - Replace  
 Underclearances (69): N Not applicable (NBI)  
 Approach Alignment (72): 8-No Speed Red thru Curv  
 Bridge Railings (36a): 0 Substandard  
 Transitions (36b): 0 Substandard  
 Approach Guardrail (36c): 1 Meets Standards  
 Approach Guardrail Ends (36d): 0 Substandard  
 Scour Critical (113): 5 Stable w/in footing

### Minimum Vertical Clearance

Over Structure (53): 99.99 ft  
 Under (reference) (54a): N Feature not hwy or RR  
 Under (54b): 0 ft

## Schedule

### Current Inspection

Inspection Date: 03/20/2018  
 Inspector: KNAAARN - Ricardo Narvaez  
 Bridge Group: C9J75  
 Alt. Bridge Group:  
 Primary Type: Regular NBI  
 Review Required: ☒

### Geometrics

Spans in Main Unit (45): 3  
 Approach Spans (46): 0  
 Length of Max Span (48): 42.1 ft  
 Structure Length (49): 126.3 ft  
 Total Length: 126.3 ft  
 Deck Area: 4282 sqft  
 Structure Flared (35): 0 No flare

### Age and Service

Year Built (27): 1975  
 Year Reconstructed (106): 0  
 Type of Service On (42a): 5 Highway-pedestrian  
 Under (42b): 5 Waterway  
 Fracture Critical Details: Not Applicable

### Deck Type and Material

Deck Width (52): 33.9 ft  
 Skew (34): 0 deg  
 Deck Type (107): 2 Concrete Precast Panel  
 Surface (108): 0 None  
 Membrane: 0 None  
 Deck Protection: None

### Navigation Data

Navigation Control (38): Permit Not Required  
 Nav Vertical Clr (39): 0 ft  
 Nav Horizontal Clr (40): 0 ft  
 Min Vert Lift Clr (116): 0 ft  
 Pier Protection (111): Not Applicable (P)

### NBI Condition Rating

Sufficiency Rating: 77.1  
 Health Index: 99.57  
 Structural Eval (67): 7 Above Min Criteria  
 Deficiency: Functionally Obsolete

### Minimum Lateral Underclearance

Reference (55a): N Feature not hwy or RR  
 Right Side (55b): 0 ft  
 Left Side (56): 0 ft

### Next Inspection Date   Scheduled

NBI: 03/20/2020  
 Element: 03/20/2020  
 Fracture Critical:  
 Underwater: 03/20/2020  
 Other/Special:

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

## Schedule Cont.

### Inspection Types Performed

NBI ☒Element ☒Fracture Critical ☐Underwater ☒Other Special ☐

### Inspection Intervals

#### Required (92)

#### Frequency (92)

#### Last Date (93)

#### Inspection Resources

Fracture Critical ☐

mos

Crew Hours: 4

Underwater ☒

24 mos

03/20/2018

Flagger Hours: 0

Other Special ☐

mos

Helper Hours: 0

NBI

24 mos

(91) 03/20/2018 (90)

Snooper Hours: 0

Special Crew Hours: 3

Special Equip Hours: 0

## Bridge Related

### General Bridge Information

Parallel Bridge Seq:

Channel Depth: 5.7 ft

Radio Frequency: -1

Phone Number:

Exception Date:

Exception Type: Unknown

Accepted By Maint: 01/01/1975

Warranty Expiration: 00/00/0000

Performance Rating: 2 - Good

Bridge Rail 1: Concrete post &amp; beam

Bridge Rail 2: Not applicable-No rail

Electrical Devices: No electric service

Culvert Type: Not applicable

Maintenance Yard: Not FDOT Maintained

FIHS ON / OFF: No Routes on FIHS

Previous Structure:

2nd Previous Structure:

Replacement Structure:

Permitted Utilities: Power ☐ Water ☐ Gas ☐ Fiber Optic ☐ Sewage ☐ Other ☒

### Bridge Load Rating Information

Inventory Type (065): 2 AS Allowable Stress

Operating Type (063): 2 AS Allowable Stress

Original Design Load (031): 5 MS 18 (HS 20)

Date: 03/11/1985

Initials: GH

Load Rating Rev. Recom.:

Load Rating Plans Status: Unknown

Inventory Rating (066): 37.8 tons

Operating Rating (064): 59.2 tons

FL120 Permit Rating: -1.0 tons

HS20/FL120 Max Span Rating: 59.2 tons

Dynamic Impact in Percent: 30 %

Governing Span Length: 40.4 ft

Minimum Span Length:

Distribution Method: AASHTO formula

Load Rating Notes:

### LEGAL LOADS

SU2: 47.3 tons

SU3: 49.4 tons

SU4: 48.7 tons

C3: 71.0 tons

C4: 68.7 tons

C5: 72.6 tons

ST5: -1.0 tons

Posting (070): 5 At/Above Legal Loads

Open/Posted/Closed (041): A Open, no restriction

### FLOOR BEAM (FB)

FB Present: No

FB Span Length, Gov: 0.0 ft

FB Spacing, Gov: 0.0 ft

FB OPR Rating: 0.0 tons

FB SU4 OPR Rating: 0.0 tons

FB FL120 Rating: 0.0 tons

### SEGMENTAL (SEG)

SEG Wing-Span: -1.0 ft

SEG Web-to-Web Span: -1.0 ft

SEG FL120 Transverse: -1.0 tons

SEG Single Axle Transverse: -1.0 tons

SEG Tandem Axle Transverse: -1.0 tons

### Bridge Scour and Storm Information

Pile Driving Record: No pile driving records

Foundation Type: No foundation details

Mode of Flow: Riverine

Rating Scour Eval: Low Risk - Low

Highest Scour Eval: Phase I completed

Scour Evaluation Method:

Scour Recommended I: Stop scour evaluations

Scour Recommended II: No recommendation

Scour Recommended III: No recommendation

Scour Elevation: 999 ft

Action Elevation: 999 ft

Storm Frequency: 999

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

**Elements**

Inspection Date: 03/20/2018 TUUI

**DECKS : Decks/Slabs**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8098 / 3	Conc Deck on PC Panel	4226	98.69	50	1.17	6	0.14	0	.	4282 (SF)
0	1080 / 3	Delamination/Spall/Patched Area	0	.	0	.	6	100	0	.	6 (SF)
0	1130 / 3	Cracking (RC and Other)	0	.	50	100	0	.	0	.	50 (SF)

**DECKS : Joints**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	301 / 3	Pourable Joint Seal	72	52.94	20	14.71	44	32.35	0	.	136 ft
0	2320 / 3	Seal Adhesion	0	.	20	33.33	40	66.67	0	.	60 ft
0	2340 / 3	Seal Cracking	0	.	0	.	4	100	0	.	4 ft

**MISCELLANEOUS : Channel**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8290 / 3	Channel	0	.	1	100	0	.	0	.	1 (EA)
0	9140 / 3	Debris	0	.	1	100	0	.	0	.	1 (EA)

**MISCELLANEOUS : Other Elements**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8477 / 3	Other Wingwall/Retaining Wall	66	100	0	.	0	.	0	.	66 ft

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	215 / 3	Re Conc Abutment	67	98.53	1	1.47	0	.	0	.	68 ft
0	1080 / 3	Delamination/Spall/Patched Area	0	.	1	100	0	.	0	.	1 ft

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	226 / 3	Pre Conc Pile	0	.	10	100	0	.	0	.	10 (EA)
0	1190 / 3	Abrasion(PSC/RC)	0	.	10	100	0	.	0	.	10 (EA)

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	234 / 3	Re Conc Pier Cap	68	100	0	.	0	.	0	.	68 ft

**SUBSTRUCTURE : Substructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	8396 / 3	Other Abutment Slope Protection	2518	100	0	.	0	.	0	.	2518 (SF)

**SUPERSTRUCTURE : Bearings**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	310 / 3	Elastomeric Bearing	24	100	0	.	0	.	0	.	24 each

**SUPERSTRUCTURE : Superstructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
0	109 / 3	Pre Opn Conc Girder/Beam	505	100	0	.	0	.	0	.	505 ft

**SUPERSTRUCTURE : Superstructure**

Str Unit	Elem/Env	Description	Qty1	%1	Qty2	%2	Qty3	%3	Qty4	%4	T Qty
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This report contains information relating to the physical security of a structure and depictions of the structure. This information is confidential and exempt from public inspection pursuant to sections 119.071(3)(a) and 119.071(3)(b), Florida Statutes. Only the cover page of this report may be inspected and copied.

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

0	331 / 3	Re Conc Bridge Railing	253	100	0	.	0	.	0	.	253 ft
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**Total Number of Elements\*: 11**

\*excluding defects/protective systems

### Inspection Information

**Inspection Date:** 03/20/2018**Type:** Regular NBI**Inspector:** KNAAARN - Ricardo Narvaez**Inspection Notes:** Sufficiency Rating Calculation Accepted by KNAAHR at 4/23/2018 3:07:01 PM**LOAD RATING EVALUATION:**

This inspection noted no changes in the structure condition that would warrant a new load rating. The load rating dated 3/11/85 appears to still apply.

The lead underwater inspector for the current routine inspection is Sebastian Narvaez (CBI #00447).

The following underwater elements were inspected:

226 Pre Conc Pile - Bents 2 and 3 each with five 18 in. concrete piles.  
8290 Channel

**Non-Structural Items:****Graffiti:**

Previously Noted:

There is graffiti on both abutments, both intermediate bent caps, all piles, the north slope and retaining walls. Refer to Photo 7. REPAIR

**Guardrails:**

Previously Noted:

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to Photo 8. REPAIR

**Approach Roadways:**

Previously Noted:

The asphalt at both approach roadways has transverse cracks up to 1/16 in. wide x various lengths.

**Noted this Inspection:**

Minor settlement at approach roadway bridge transition up to 1/2 in. D.

**Striping:**

Previously Noted:

The deck striping is moderate to heavily chipped and worn on the structure but in good condition at both approach roadways. Refer to Photo 9. REPAIR

**Inspection Date:** 03/02/2016**Type:** Regular NBI**Inspector:** KNAAAOJ - John O'Grady

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

### Inspection Information

**Inspection Notes:**

Sufficiency Rating Calculation Accepted by KNAAST-P at 2016-03-28 10:35:39

**LOAD RATING EVALUATION:**

This inspection noted no changes in the structure condition that would warrant a new load rating. The load rating dated 3/11/85 appears to still apply.

The lead underwater inspector for the current routine inspection is Charles Ahrens (CBI #00539).

The following underwater elements were inspected:

204 P/S Conc Column - Bents 2 and 3 each with five 18in. concrete piles.  
290 Channel

**Non-Structural Items:**
**Graffiti:**

Previously Noted:

There is graffiti on both abutments, both intermediate bent caps, all piles, the north slope and retaining walls. Refer to Photo 10. REPAIR

**Guardrails:**

Previously Noted:

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to Photo 11. REPAIR

**Approach Roadways:**

Previously Noted:

The asphalt at both approach roadways has transverse cracks up to 1/16in. wide x various lengths.

**Striping:**

Previously Noted:

The deck striping is moderate to heavily chipped and worn on the structure but in good condition at both approach roadways. Refer to Photo 12. REPAIR

**Inspection Date:**

03/04/2014

**Type:** Regular NBI

**Inspector:** KNVOLRO - Rick O'Connor

**Inspection Notes:**
**LOAD RATING EVALUATION:**

This inspection noted no changes in the structure condition that would warrant a new load rating. The load rating dated 3/11/85 appears to still apply.

The lead underwater inspector for the current routine inspection is Victoria Hitch (CBI #00414).

The following underwater elements were inspected:

204 P/S Conc Column - Bents 2 and 3 each with five 18in. concrete piles.  
290 Channel

**Non-Structural Items:**
**Graffiti:**

There is graffiti on both abutments, both caps, all piles, north slope and retaining walls. Refer to Photo 8. REPAIR

**Guardrails:**

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to Photo 9. REPAIR

**Approach Roadways:**

The asphalt at both approach roadways has transverse cracks up to 1/32in. wide - NEW.

**Deck Striping:**

The deck striping is moderate to heavily chipped and worn on the structure but in good condition at both approach roadways - NEW. Refer to Photo 10. REPAIR

**Inspection Date:**

03/21/2012

**Type:** Regular NBI

**Inspector:** KNVOLSH - Scott Hughes



# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

### Inspection Information

**Inspection Notes:** Sufficiency Rating Calculation Accepted by KNVOLCW-P at 2012-03-29 14:00:37

**LOAD RATING EVALUATION:**

This inspection noted nothing that warrants a new load rating. The current load rating dated 3/11/85 appears to still apply.

The lead underwater inspector for the current routine inspection is Scott Hughes (CBI #00379).

The following underwater elements were inspected:

204 P/S Conc Column - ten piling in Bents 2 and 3.

**Non-Structural Items:**

**Graffiti:**

There is graffiti on both abutments, both caps, all piles, north slope and retaining walls. Refer to Photo 6. REPAIR

**Guardrails:**

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to Photo 7. REPAIR

**Inspection Date:** 03/31/2010 **Type:** Regular NBI

**Inspector:** KNAAAOJ - John O'Grady

**Inspection Notes:** Sufficiency Rating Calculation Accepted by KNKCRL-P at 2010-06-03 08:22:43

**Non-Pontis Items:**

**Approach Roadways:**

Noted This Inspection:

**CORRECTIVE ACTION TAKEN:**

A new asphalt surface was installed at both approach roadways prior to this inspection.

**Approach Slopes/Shoulders:**

Noted This Inspection:

**CORRECTIVE ACTION TAKEN:**

The approach shoulders have been leveled with new asphalt at all four corners to allow for drainage.

**Graffiti:**

Noted This Inspection:

There is graffiti on both abutments, both caps, all piles, north slope and retaining walls. Refer to photo 7.

**Guardrails:**

Previously Noted:

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to photo 8.

**Reflectors:**

Noted This Inspection:

**CORRECTIVE ACTION TAKEN:**

New object markers have been installed at the southwest, northwest and northeast corners of the structure.

**Striping:**

Noted This Inspection:

**CORRECTIVE ACTION TAKEN:**

New roadway striping was applied across the structure and approach roadways prior to this inspection.

**Inspection Date:** 03/05/2008 **Type:** Regular NBI

**Inspector:** KN238JK - James Kelley

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

### Inspection Information

**Inspection Notes:**

Sufficiency Rating Calculation Accepted by kn238jk-P at 2008-03-31 16:32:52

Non-Pontis Items:

Approach Roadways:

Previously Noted:

The approach roadway asphalt overlays exhibit 1/4in. to 3/8in. wide longitudinal and transverse cracks in various locations.

Noted This Inspection:

The south approach roadway, approximately 30ft. from the structure, has a 15ft. long x 4ft. wide x 2in. area of rutted and crumbling asphalt. Refer to photo 14.

Approach Slopes/Shoulders:

Previously Noted:

The approach shoulders are up to 1ft. higher than the approach roadways, which restricts the drainage of the roadway.

Guardrails:

Previously Noted:

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails. Refer to photo 15.

Reflectors:

Noted This Inspection:

The southwest, northwest and northeast object markers are leaning. Refer to photo 16.

Corrective Action Taken:

The southeast object marker has been reset.

Striping:

Noted This Inspection:

The roadway striping over the structure is heavily faded. Refer to photo 17.

**Inspection Date:**

03/21/2006

**Type:** Regular NBI
**Inspector:**
**Inspection Notes:**

Sufficiency Rating Calculation Accepted by kn538pl-P at 2006-04-13 11:03:29

Non-Pontis Items:

Approach Roadways- Previously Noted:

The approach roadway asphalt overlays exhibit 1/4in. to 3/8in. wide longitudinal and transverse cracks in various locations.

Approach Slopes/Shoulders - Previously Noted:

The approach shoulders are up to 1ft. higher than the approach roadways, which restricts drainage of the roadway.

Noted This Inspection:

Corrective Action Taken:

The northeast approach shoulder erosion adjacent to the approach roadway near the northeast guardrail end terminal appears to have been filled in.

Guardrails - Previously Noted:

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails.

Reflectors - Noted This Inspection:

All four hazard markers are leaning in various directions. Refer to photo 10.

**Inspection Date:**

03/24/2004

**Type:** Regular NBI**Inspector:** KNAAAOJ - John O'Grady

# FLORIDA DEPARTMENT OF TRANSPORTATION BRIDGE MANAGEMENT SYSTEM

REPORT ID: INSP005

## Inspection/CIDR Report with PDF attachment(s)

Structure ID: 705909

CIDR

DATE PRINTED: 5/16/2018

### Inspection Information

**Inspection Notes:**

Sufficiency Rating Calculation Accepted by kn538oj-P at 2004-05-03 10:14:56  
Non-PONTIS Items:

Approach Roadway - Previously Noted:

The approach roadway asphalt overlays exhibit 1/4in. to 3/8in. wide longitudinal and transverse cracks in various locations.

Approach Slopes/Shoulders - Previously Noted:

The approach shoulders are up to 1ft. higher than the approach roadways, which restricts drainage of the roadway. The northeast approach shoulder exhibits an area of erosion measuring approximately 14ft. x 3ft. x 8in. deep adjacent to the approach roadway near the northeast guardrail end terminal.

Guardrails - Previously Noted:

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails.

**Inspection Date:**

03/19/2002

**Type:** Regular NBI

**Inspector:**
**Inspection Notes:**

Sufficiency Rating Calculation Accepted by kn238cn at 6/7/02 10:16:18  
KN538SF inspection comments -  
Structure 705909 -  
Date 3/19/02 - This structure was inventoried from south to north.

Non-PONTIS Items:

Approach Slopes/Shoulders -

> The approach shoulders are up to 1.0' higher than the approach roadways, which restricts drainage of the roadway.  
> The northeast approach shoulder exhibits an area of erosion measuring approximately 14' L x 3' W x 8" D adjacent to the approach roadway near the northeast guardrail end terminal.

Guardrails -

> Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails.

Approach Roadway -

> The approach roadway asphalt overlays exhibit 1/4" to 3/8" wide longitudinal and transverse cracks in various locations.

Reflectors -

> Type 3 bridge end reflectors have been provided at the corners of the structure and Type 2 object marker reflectors have been provided at the approach ends of the guardrails.

**Inspection Date:**

03/08/2000

**Type:** Regular NBI

**Inspector:**
**Inspection Notes:**

Sufficiency Rating Calculation Accepted by kn538el at 3/29/00 10:29:58  
KN538EL inspection comments -  
Structure 705909 -  
Date 3/8/00 - This structure was inventoried from south to north.

Non-PONTIS Items.

Approach Slopes/Shoulders

The following deficiencies were previously reported 2/10/92 through 3/2/98 and show little or no significant change, unless otherwise noted:

The approach shoulders are up to 1.0' higher than the approach roadways, which restricts drainage of the roadway.

The northeast approach shoulder exhibits an area of erosion measuring approximately 14' L x 3' W x 8" D adjacent to the approach roadway near the northeast guardrail end terminal.

Guardrails

Several guardrail mounted reflectors are either broken or missing throughout the approach guardrails.

Approach Roadway

As previously reported 3/20/96 and 3/2/98, the approach roadway asphalt overlays exhibit 1/4" to 3/8" wide longitudinal and transverse cracks in various locations. Refer to the North Approach Photo in the Addendum.

Reflectors

As previously reported 3/20/96 and 3/2/98, Type 3 bridge end reflectors have not been provided at the corners of the structure and Type 2 object marker reflectors have not been provided at the approach ends of the guardrails.

Previous comments > (none)

**FLORIDA DEPARTMENT OF TRANSPORTATION  
BRIDGE MANAGEMENT SYSTEM**

REPORT ID: INSP005

**Inspection/CIDR Report with PDF attachment(s)**

Structure ID: 705909

**CIDR**DATE PRINTED: 5/16/2018

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**Structure Notes**

BRIDGE OWNER: CITY OF PALM BAY

This structure was inventoried from south to north.

**TRAFFIC RESTRICTIONS:**

Based on the results of the most recent load rating analysis dated 3/11/85, posting is not required. This structure is currently not posted.

As stated in section 3.4 of the Bridge and Other Structures Inspection and Reporting as of 11/24/2009 superstructure unit numbering (Section 3.4.2.2) and substructure unit numbering (Section 3.4.3) are designated NOT BY ORDER IN WHICH THE ELEMENTS WERE CONSTRUCTED AND PUT INTO SERVICE. Plans sheet or drawing in Topic G, Bridge Description and Drawings section of the bridge folder can confirm all references to these elements prior to this date.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Joan Junkala-Brown, Community & Economic Development

**DATE:** 12/3/2020

**RE:** Consideration of a grant application to Firehouse Subs Public Safety Foundation to obtain dive equipment for the Police Department dive team.

Firehouse Subs Public Safety Foundation provides funding for lifesaving equipment for first responders through its no-match grant program. The "Foundation" emerged in the aftermath of Hurricane Katrina when Firehouse Subs co-founders Chris and Robin Sorensen, both former firefighters, donated food to first responders in Mississippi in 2005. The need to support first responders in the field became a corporate mission and Firehouse Subs launched its grant award program.

The City of Palm Bay Fire Department received Foundation funding in 2018 for battery operated cutter tools commonly known as "The Jaws of Life" which are used to rescue accident victims trapped in vehicles.

The City of Palm Bay Police Department's six-officer dive team has been responding to what are often emergency calls for assistance and participating in training exercises using equipment that is many years old, and in a condition which potentially exposes divers to biological contaminants and toxic chemicals present in what are often murky, swamp-like dive conditions with unknown hazards.

The current dive-gear equipment inventory includes:

- Drysuits (DUI manufacturer) – 5 total (2 purchased in 2016, the other 3 purchased in 2005)
- Regulators (3 Sherwood and 3 AquaLung) – (all purchased before 2005)
- Buoyancy Compensators (Zeagle) – 4 (all purchased approximately 2005)
- AGA Full Face Masks (Divator) – 5 ( 2 purchased around 2015, 3 purchased approximately 2000, 1 is just used for parts to keep others functioning)
- OTS Wireless Communications (Buddy Phones) – 1 system and it is broken (purchased approximately 2000)

The City of Palm Bay Police Department would like to pursue a grant not to exceed the maximum award amount of \$50,000, to replace the existing, aging dive equipment, including new suits, masks, and wireless communication phones for the six-officer dive team.

The funder application provides the following statement/requirement. “Only one vendor quote can be submitted. Your application will be marked incomplete if more than one quote is submitted.” In order to comply with this requirement and avoid disqualification, the City has historically submitted a single vendor quote and has requested that the Foundation purchase and donate the equipment.

The new Firehouse Subs Public Safety funding cycle will open on January 1, 2021, at which time, with Council approval, a completed grant application will be submitted for consideration as one of only 600 applications accepted quarterly by the Foundation. Award notifications for prevailing applicants will be issued approximately two months following submission.

Approval is also being sought so that if the City of Palm Bay application is not funded the first quarter of 2021, authorization is granted to re-submit the application quarterly until such time as the grant may be awarded to the Palm Bay Police Department for this equipment or until another funding stream is utilized for this purchase. The Foundation grant policy provides guidance which includes a request that awardee organization/agencies apply no more frequently than every two years. Should the City receive an award in 2021, the next window to apply for this grant with a new request would begin in 2023.

**REQUESTING DEPARTMENT:**

City Manager's Office, Community & Economic Development, Police Department

**FISCAL IMPACT:**

If awarded, there will be no match required. A cost-savings will be realized over the first two years after the dive gear is put into service as the new equipment will not require the repair and upkeep presently needed to maintain the aging suits, masks and masks. The funder application provides the following statement/requirement. “Only one vendor quote can be submitted. Your application will be marked incomplete if more than one quote is submitted.” In order to comply with this requirement and avoid disqualification, the City has historically submitted a single vendor quote and has requested that the Foundation purchase and donate the equipment.

**RECOMMENDATION:**

Motion to request approval to submit a grant application to Firehouse Subs Public Safety Foundation for the purpose of obtaining dive equipment for the City of Palm Bay Police Department dive team and to re-submit quarterly, if needed, to continue competitive efforts to secure this grant funding in 2021.

**ATTACHMENTS:**

**Description**





## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Leslie Hoog, Fire Chief

**DATE:** 12/3/2020

**RE:** Consideration of travel and training for specified employee (Fire Department).

Palm Bay Fire Rescue requests authorization to send Granville Krauss, the Assistant Fire Marshal, to a Youth Firesetting Intervention program hosted by the National Fire Academy. This valuable training will provide the necessary tools to institute a youth firesetter diversion program in the City of Palm Bay. We currently must use resources outside of the City. The total estimated cost is \$310.00.

**REQUESTING DEPARTMENT:**

Fire Department

**FISCAL IMPACT:**

Funding will be available in Account Number 001-6012-522-5501 in the amount of \$250.00, and Account Number 001-6012-522-4002 in the amount of \$60.00.

**RECOMMENDATION:**

Motion to authorize travel for Fire Rescue personnel as stated above.

**ATTACHMENTS:**

**Description**

Travel Request



# CITY OF PALM BAY, FLORIDA

Travel Request/Advance Request

Control # \_\_\_\_\_

Request Date: 11/20/2020

Contact/Ext Marvena Petty 4676

<b>Name:</b> Granville Krauss		<b>Destination:</b> Vero Beach, FL			
<b>Department/Division:</b> Fire Rescue/ Fire Prevention		<b>Departure</b>		<b>Return</b>	
		<b>Date of:</b> 1/11/2021		<b>1/14/2021</b>	
<b>Account To Be Charged:</b> 001-6012-552-5501 \$250.00		<b>Time of:</b> 7:00 AM		<b>6:00 PM</b>	
<b>Account To Be Charged:</b> 001-6012-522-4002 \$60.00		<b>Estimated Cost:</b> <span style="float:right">\$310.00</span>			
<b>Purpose of Travel</b> (Specify Conference, School or Other Reason) - ATTACH ITINERARY					
To attend a National Fire Academy Youth Firesetting Prevention and Intervention training.					
<b>Date Approved By Council:</b> _____					
<b>Transportation:</b> boldface or circle choice(s)		POV - Estimated Mileage _____		City Vehicle _____	
<b>Common Carrier (complete below)</b>					
<b>PREPAID EXPENSES</b>	<b>VENDOR/ADDRESS</b>	<b>EXPLANATION</b>	<b>AMOUNT</b>	<b>FINANCE USE ONLY</b>	
Registration	Event Managers, LLC 3108 SE 21st Court Okeechobee, FL 34974	Course registration	\$250.00	Vendor #	Check #
Due Date _____					Date
Hand Carry Y N					
Lodging		Rate _____		Vendor #	Check #
Due Date _____		# Nights _____		Date	
Hand Carry Y N					
Common Carrier (if applicable)				Vendor #	Check #
Due Date _____				Date	
Hand Carry Y N					
Other Expenses				Vendor #	Check #
Due Date _____				Date	
Hand Carry Y N					
Other Expenses				Vendor #	Check #
Due Date _____				Date	
Hand Carry Y N					
<b>PER DIEM ADVANCE: <u>Advanced</u> or Upon Return (circle one)</b> <b>Refer to <a href="http://www.gsa.gov">www.gsa.gov</a> for rates - attach proof of rate</b> (Lodging prepaid - receipt required)				Vendor #	Check #
Breakfast _____	@	\$13.00 =	\$0.00		Date
Lunch <u>4</u> _____	@	\$15.00 =	\$60.00		
Dinner _____	@	\$23.00 =	\$0.00		
Incidentals _____	@	\$5.00 =	\$0.00		
			\$60.00		

## TRAVEL APPROVALS

Department Head

11-20-2020  
Date

Finance

Date

(if applicable)

City Manager

Date



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Ordinance 2020-82, amending the Code of Ordinances, Chapter 37, Growth Management Department, by modifying provisions related to the Land Development Division (T-35-2020, City of Palm Bay), first reading.

The City of Palm Bay (Growth Management Department) has submitted a textual amendment to the Code of Ordinances, Title XVII, Land Development Code (LDC) for changes to the Floodplain Ordinance (Section 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021, which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Section 37 and Section 40 to acknowledge the relocation of the Floodplain Administrator/CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NFIP). The City participates in FEMA's Community Rating System (CRS) which currently allows property owners within the City to receive a 15-percent reduction in their flood insurance rates.

In 2018, the Federal Emergency Management Agency (FEMA) conducted a Flood Insurance Study (FIS) for all of Brevard County, and as a result, the FIRM maps have been updated. The maps now show Coastal High Hazard Zones in Palm Bay along the shoreline of the Indian River. In a letter dated July 29, 2020, FEMA directed the City to make the appropriate changes to its Floodplain Ordinance. Both the maps and floodplain ordinance are being revised to accommodate these changes. It should be noted that no existing enclosed residential or commercial structures will be impacted by these new maps.

Given that the new FIRM maps will become effective on January 29, 2021, changes to the LDC should also have the same effective date.

### REQUESTING DEPARTMENT:

Growth Management

### RECOMMENDATION:

Motion to to approve Case T-35-2020, as described in the staff report with an effective date of January 29, 2021.

### Planning and Zoning Board Recommendation:

Unanimous approval of the request as described in the staff report with an effective date of January 29, 2021.

**ATTACHMENTS:**

**Description**

**Case T-35-2020**

**Board Minutes**

**Ordinance 2020-82**



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

### Prepared by

Laurence Bradley, AICP, Growth Management Director

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**CASE NUMBER**

T-35-2020

**PLANNING & ZONING BOARD HEARING DATE**

November 4, 2020

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**PROPERTY OWNER & APPLICANT**

City of Palm Bay, Growth Management  
Department

**PROPERTY LOCATION/ADDRESS**

Not Applicable

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**SUMMARY OF REQUEST**

Changes to the Floodplain Ordinance (Sec. 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021 which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Sec. 37 and Sec. 40 to acknowledge the relocation of the Floodplain Administrator/CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NFIP).

**Existing Zoning**

Not Applicable

**Existing Land Use**

Not Applicable

**Site Improvements**

Not Applicable

**Site Acreage**

Not Applicable

**APPLICABILITY**

Citywide

**COMPREHENSIVE PLAN****COMPATIBILITY**

Not Specifically Addressed

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**BACKGROUND:**

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code (LDC), changes to the Floodplain Ordinance (Sec. 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021 which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Sec. 37 and Sec. 40 to acknowledge the relocation of the CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NGIP).

On July 29, 2020 the City of Palm Bay received a letter from the Federal Emergency Management Agency (FEMA) which directed the City to make changes to its Floodplain Ordinance as a condition of the City's continued participation in the National Flood Insurance Program (NFIP). The City of Palm Bay also participates in the Community Rating System (CRS). CRS is a voluntary program from FEMA which allows participating municipalities to lower flood insurance rates for their residents by promoting awareness and taking proactive measures to reduce the community's risk of flood hazards. The FEMA CRS program ranks communities on a scale of 1 to 10 with level 10 being the lowest grade and level 1 being the highest grade. Each grade level that a community achieves lowers the flood insurance rates by 5% for each level. The City of Palm Bay is currently rated as a grade 7, which allows property owners within the City to receive a 15% reduction in their flood insurance rates.

Periodically, FEMA updates the FIRM maps by conducting new Flood Insurance Studies (FIS). An FIS uses updated engineering and storm data to reassess the risk of flooding within the study area. In 2018, FEMA conducted a new FIS for all of Brevard County and as a result the FIRM maps have been updated. The updated maps now show Coastal High Hazard Zones in Palm Bay along the shoreline of the Indian River; thus, both the maps and floodplain ordinance need revisions to recognize these changes.

Proposed language for this amendment in legislative style with additions between >>arrow<< symbols and deletions in strikethrough format, is attached.

**ANALYSIS:**

In August 2020, the Acting City Manager proposed several reorganizational changes. One of these changes was to create a separate Building Department out of the Growth Management Department. Thus, the role of the Floodplain Administrator and CRS Coordinator was shifted from the Land Development Division of Growth Management to the Building Department. The changes proposed in Chapter 37 and Chapter 40 of the City Code of Ordinances are being requested to have these chapters match the new staff assignments established by the CMO for the Floodplain and CRS functions.



The remainder of the proposed changes are all within the Floodplain Ordinance (Sec. 174). FEMA provided to the City the actual text that is required to be adopted. These revisions are being made to recognize the changes that need to be made when the FIRM maps become effective on January 29, 2021. The current FIRMs were adopted on March 17, 2014, but they did not contain any Coastal High Hazard Areas (V-Zone), thus the Floodplain ordinance did not have within it the necessary definitions or design standards to properly regulate structures within V-Zones.

It should be noted that although the maps are being revised, no inhabited structures are located in the V-zone. The FIRM maps have different flood zones. They include several different categories including: V-zones (Coastal High Hazard Zones), A-Zone (High Risk Zones) and X-Zones (Low to Moderate Risk Zones). These zones have very different design standards and regulatory requirements. Many of these standards have also been incorporated into the Florida Building Code.

There is also a category designated as a "Coastal A-Zone" which is regulated using V-Zone standards. The Coastal A-Zones can be found on the FIRM maps located waterward of the LiMWA-Line which, will be shown on the new maps. Within the City of Palm Bay only one permissible structure (an open-air pavilion at Castaway Point Park) is located partially waterward of the LiMWA line. Also, one property proposed for future development on Bay Boulevard, as part of the Steamboat Landing project, is located partially waterward of the LiMWA line.

The remaining impacts associated with these changes in the FIRM maps and Floodplain Ordinance do not contain any habitable structures adjacent to the Indian River Lagoon. Impacts include the development and design standards for the placement of fill and the construction of accessory structures such as docks, decks and patios, walls and fences, retaining walls, and seawalls. Construction of these types of structures will need to be reviewed by the Floodplain Manager by applying the new standards that will be adopted as part of this amendment.

Given that the new FIRM maps will become effective on January 29, 2021, changes to the LDC should also have the same effective date.

**STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed changes as described herein with an effective date of January 29, 2021.

## **TITLE III: ADMINISTRATION**

### **CHAPTER 37: GROWTH MANAGEMENT DEPARTMENT**

#### **§ 37.03 DEPARTMENTAL DIVISIONS.**

(A) *Land Development Division.*

(1) Maintains the City of Palm Bay's Comprehensive Plan, revisions to the Land Development Code, administrative review of site plans, tracks Census data, ~~oversees the FEMA CRS program~~, and provide data and analysis. Staff members of the Division serve as liaison to the Planning and Zoning Board/Local Planning Agency.

### **CHAPTER 40: BUILDING DEPARTMENT**

#### **§ 40.03 DUTIES AND RESPONSIBILITIES.**

The Building Department is responsible for the review and issuance of permits for new and existing buildings in accordance with the Florida Building Code to ensure construction meets the requirements of all state, city and fire prevention codes for the safety and welfare of the citizens. >>The Floodplain Administrator within the department oversees the FEMA CRS program.<<

## **TITLE XVII: LAND DEVELOPMENT CODE**

### **CHAPTER 174: FLOODPLAIN MANAGEMENT**

#### **PART 1 - ADMINISTRATION**

#### **§ 174.002 APPLICABILITY.**

(C) *Basis for establishing flood hazard areas.* The Flood Insurance Study for Brevard County, Florida, and Incorporated Areas, dated >>January 29, 2021<< ~~March 17, 2014~~, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Hall Annex Building, 120 Malabar Road SE, Palm Bay, Florida 32907.

#### **§ 174.003 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.**

(A) *Designation.* The Floodplain Administrator in the >>Building<< ~~Growth Management~~ Department is designated to administer the floodplain management program for the City of Palm Bay. The Floodplain Administrator may delegate performance of certain duties to other employees.

(H) *Other duties of the Floodplain Administrator.* The Floodplain Administrator shall have other duties, including but not limited to:

(1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § [174.003](#)(D), of this ordinance;

(2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);

(3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;

(4) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete; and

(5) Notify the Federal Emergency Management Agency when the corporate boundaries of City of Palm Bay are modified, >>and<<:

>>(6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."<<

#### **§ 174.005 SITE PLANS AND CONSTRUCTION DOCUMENTS.**

(A) *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

(1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.

(2) Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with subsection (C)(2) or (3) of this section.

(3) Where the parcel on which the proposed development will take place will have more than fifty (50) lots or is larger than five (5) acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with subsection (C)(1) of this section.

(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures>>; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.<<

(5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

(6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

>>(7) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.<<

>>(8)<< (7) Existing and proposed alignment of any proposed alteration of a watercourse.

(D) *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in § [174.005\(E\)](#), of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

(2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.

(3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in subsection (E) of this section.

>>(4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.<<

>>(5)<<(4) For new principal residential and non-residential structures proposed to be located in a special flood hazard area, the applicant shall submit an application for a Letter of Map Amendment (LOMA) or a Letter Of Map Revision based on Fill (LOMR-F) to FEMA, and a copy of the applicants' submitted application to FEMA shall be submitted to the Floodplain Administrator prior to issuance of the certificate of occupancy. Substantially improved or substantially damaged buildings or structures are exempt from this requirement.

## **PART 2 - DEFINITIONS**

### **§ 174.020 DEFINITIONS.**

>>**COASTAL HIGH HAZARD AREA.** A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.<<

~~**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 3, 1980.~~

~~**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

~~**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 3, 1980.~~

>>**SAND DUNES.** Naturally occurring accumulations of sand in ridges or mounds landward of the beach.<<

## § 174.032 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS.

>>(F) *Limitations on sites in coastal high hazard areas (Zone V).* In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 105.3(4) of this ordinance demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section 307.8(3) of this ordinance.<<

## § 174.033 MANUFACTURED HOMES.

(A) All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to Fla. stat. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.

(B) *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that >>:<<

>>(1) In flood hazard areas (Zone A) other than coastal high hazard areas, << are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.2 and this ordinance.

>>(2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.3 and this ordinance.<<

(C) *Anchoring.* All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(D) *Elevation.* >>All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V). << ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with subsection (E) or (F) of this section, as applicable.~~

~~(E) *General elevation requirement.* Unless subject to the requirements of subsection (F) of this section, all manufactured homes that are placed, replaced, or substantially improved on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon~~



which a manufactured home has incurred “substantial damage” as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code*, Residential Section R322.2 (Zone A).

~~(F) Elevation requirement for certain existing manufactured home parks and subdivisions.~~ Manufactured homes that are not subject to subsection (E) of this section, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

~~(1) Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code*, Residential Section R322.2 (Zone A); or~~

~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above grade.~~

>>(E)<< ~~(G)~~ *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code*, Residential Section R322 >>or R322.3<< for such enclosed areas: >>, as applicable to the flood hazard area.<<

>>(F)<< ~~(H)~~ *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code*, Residential Section R322: >>, as applicable to the flood hazard area.<<

## **§ 174.035 TANKS.**

(B) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of subsection (C) of this section shall be >>:<<

>>(1) Be<< permitted in flood hazard areas >>(Zone A) other than coastal high hazard areas,<< provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

>>(2) Not permitted in coastal high hazard areas (Zone V).<<

## **§ 174.036 OTHER DEVELOPMENT.**

>>(F) *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four (4) inches.

(G) *Decks and patios in coastal high hazard areas (Zone V).* In addition to the requirements of the *Florida Building Code*, in coastal high hazard areas, decks and patios shall be located, designed, and constructed in compliance with the following:

(1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.

(2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.

(4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(H) *Other development in coastal high hazard areas (Zone V).* In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

(2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and

(3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(l) *Nonstructural fill in coastal high hazard areas (Zone V).* In coastal high hazard areas:

(1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.

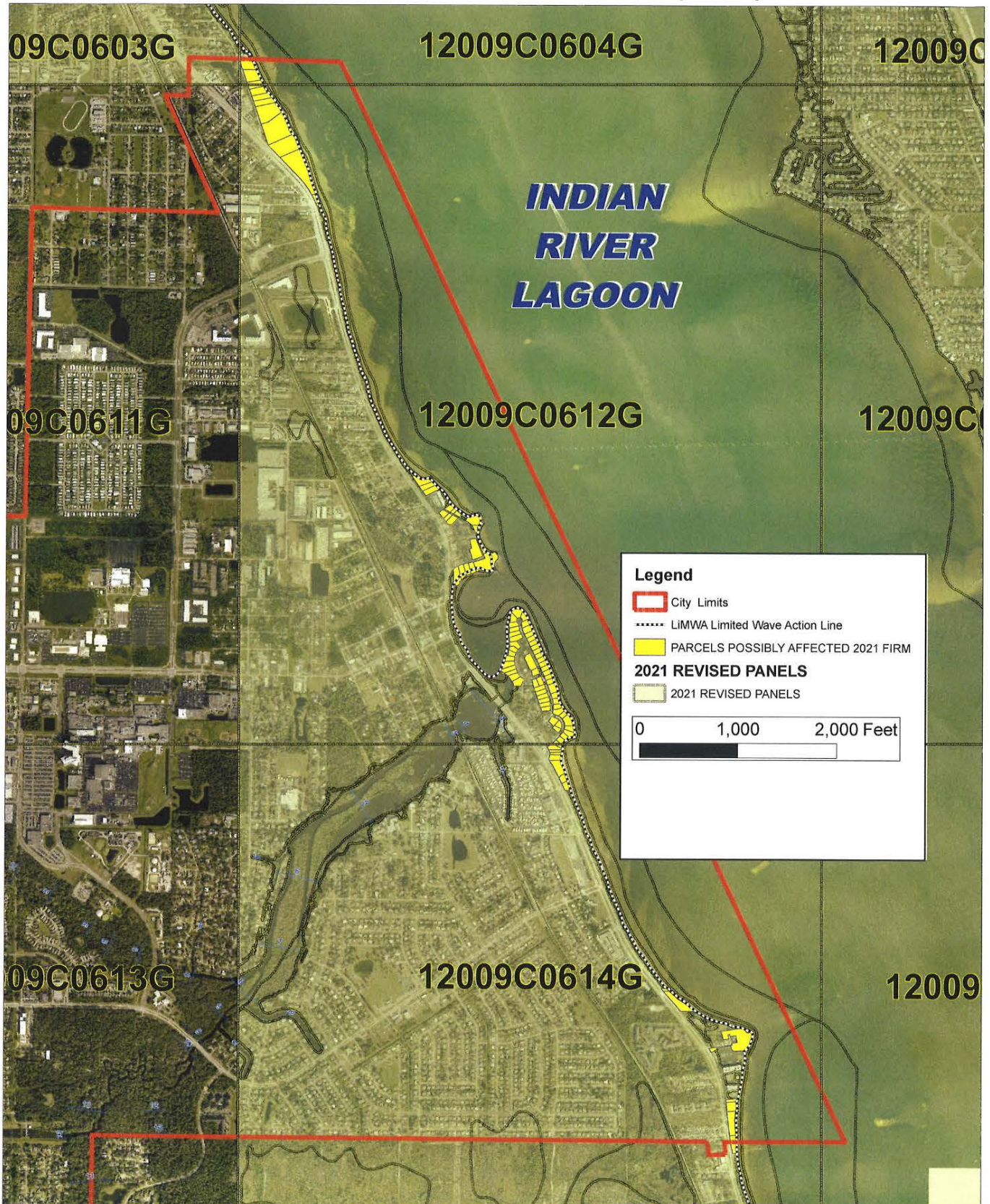
(2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

(3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.<<





# 100 PARCELS POSSIBLY AFFECTED BY NEW 2021 COASTAL FLOOD INSURANCE RATE MAP (FIRM)



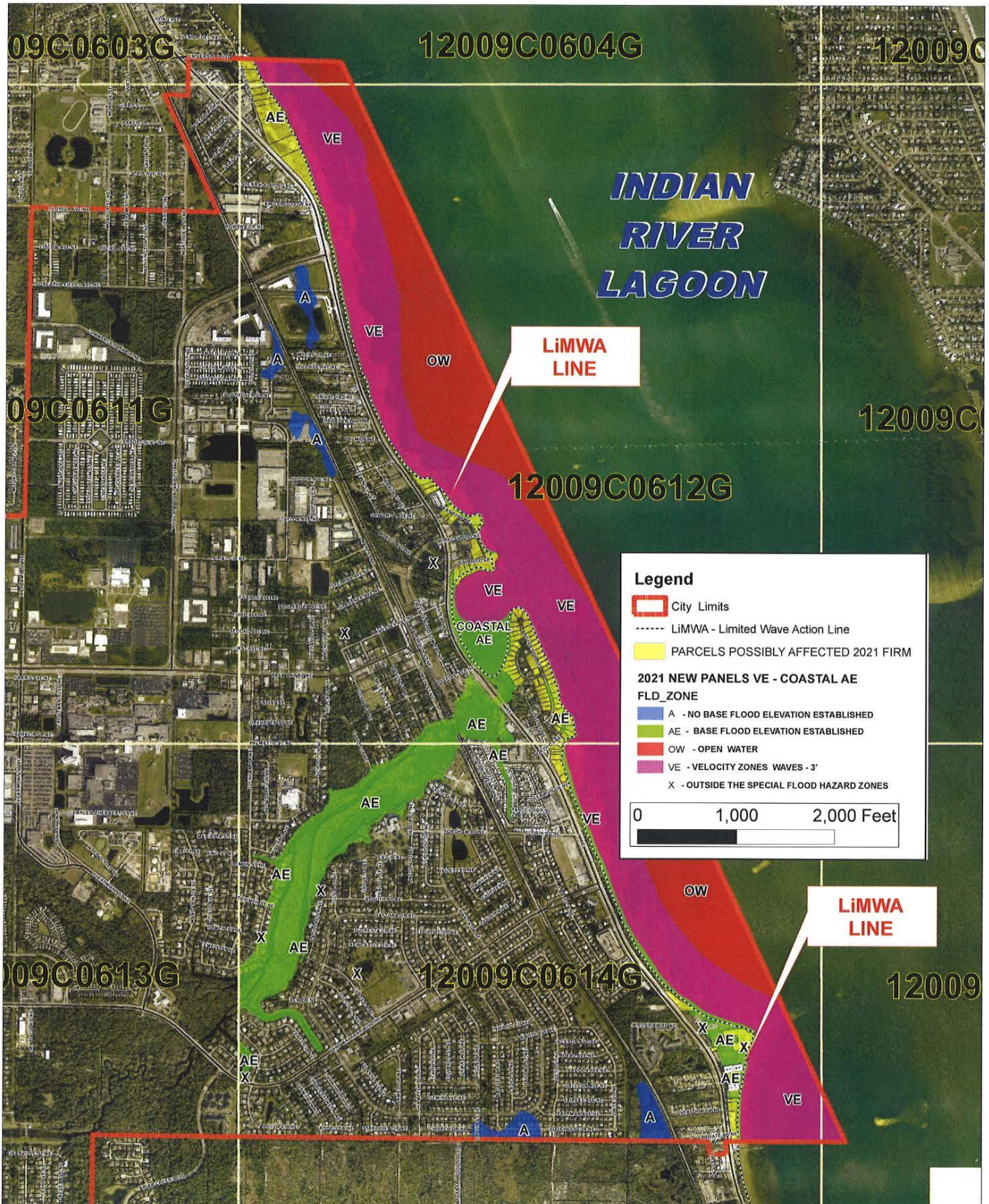
## Legend

- City Limits
- LIMWA Limited Wave Action Line
- PARCELS POSSIBLY AFFECTED 2021 FIRM
- 2021 REVISED PANELS**
- 2021 REVISED PANELS

0 1,000 2,000 Feet



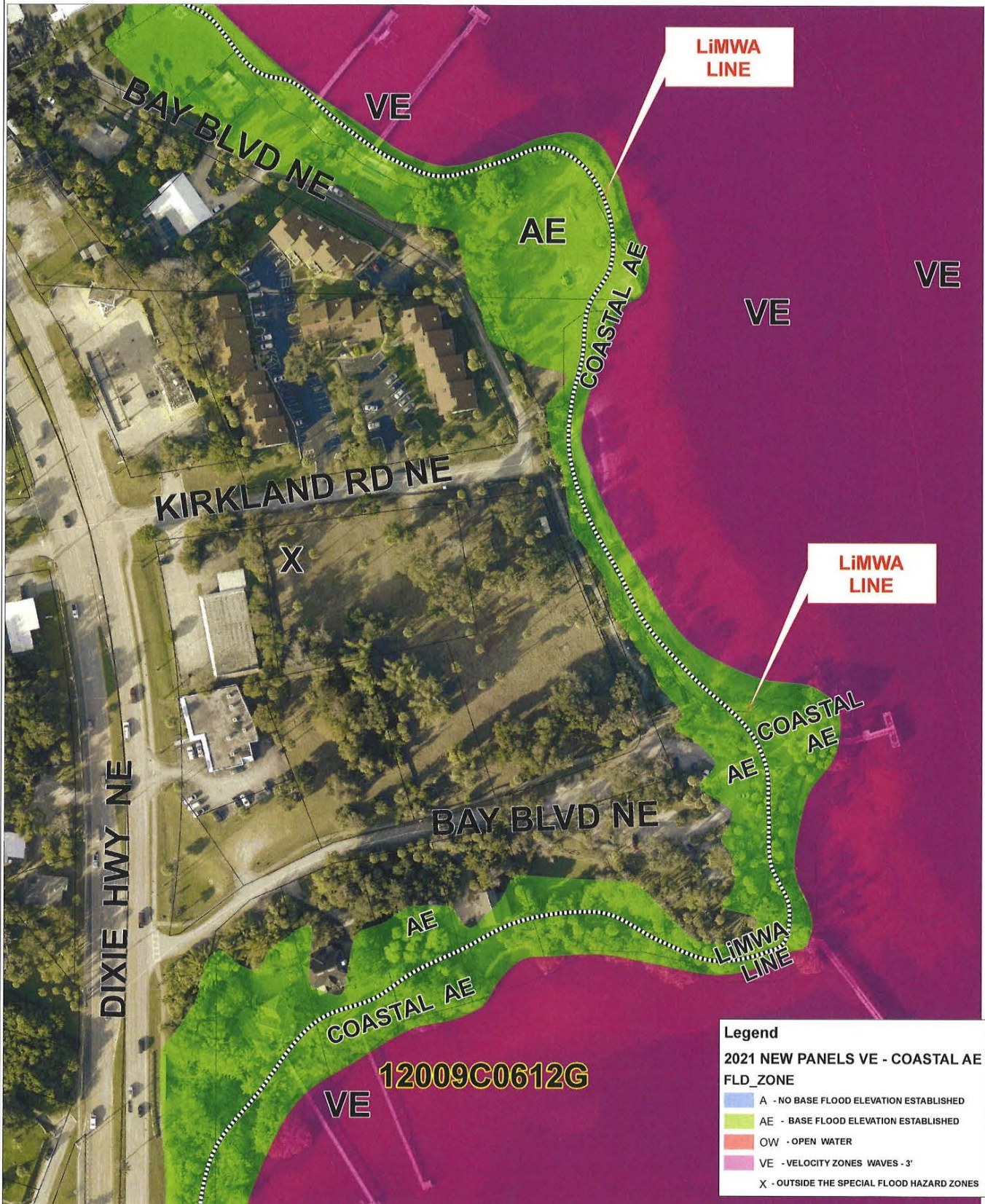
# NEW COASTAL AE ZONES ARE AE ZONES LOCATED EAST OF LIMWA LINE 2021 FLOOD INSURANCE RATE MAP (FIRM)







TURKEY BAY -  
CASTAWAY POINT PARK - SHORELINE  
2021 COASTAL  
FLOOD INSURANCE RATE MAP











# GRAN AVE NE 2021 COASTAL FLOOD INSURANCE RATE MAP





**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopmentweb@palmbayflorida.org

**CODE TEXTUAL AMENDMENT APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

**ORDINANCE SECTION(S) PROPOSED TO BE CHANGED:**

Section 37.03;  
Section 40.03; and  
Sections 174.002, 174.003, 174.005, 174.020, 174.032, 174.033, 174.035, and 174.036

**PROPOSED LANGUAGE (attach addendum if necessary):**

See attached.

**JUSTIFICATION FOR PROPOSED CHANGE (attach other documents if necessary)**

The amendment will adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard areas, providing for applicability, severability, and an effective date of January 29, 2021.



CITY OF PALM BAY, FLORIDA  
CODE TEXTUAL AMENDMENT APPLICATION  
PAGE 2 OF 2

THE APPLICATION FEE MUST BE SUBMITTED WITH APPLICATION TO PROCESS THIS REQUEST:

☐ **\*\$1,500.00 Application Fee. Make Check payable to "City of Palm Bay."**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing code textual amendment application and that the facts stated in it are true.

Signature of Applicant Laurence Bradley Digitally signed by Laurence Bradley  
DN: dc=org, dc=palmbayflorida, ou=Community  
Planning & Economic Development, ou=Land  
Development, cn=Laurence Bradley  
Date: 2020.10.16 09:43:03 -04'00' Date 10/13/2020

Printed Name of Applicant Laurence Bradley, AICP, Growth Management Director

Full Address 120 Malabar Road SE, Palm Bay, FL 32907

Telephone (321) 733-3042 Email laurence.bradley@palmbayflorida.org

PERSON TO BE NOTIFIED (If different from above):

Printed Name \_\_\_\_\_

Full Address \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

6. **T-33-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY COUNCILMAN JEFF BAILEY)**  
***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg stated that Councilman Jeff Bailey had requested a continuance of Case T-33-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Ms. Jordan, seconded by Mr. Warner to continue Case T-33-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear Case T-33-2020 on December 17, 2020.

7. **T-34-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY DEPUTY MAYOR KENNY JOHNSON)**  
***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg stated that Deputy Mayor Kenny Johnson had requested a continuance of Case T-34-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Mr. Felix, seconded by Ms. Maragh to continue Case T-34-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear Case T-34-2020 on December 17, 2020.

8. **T-35-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT)**

Mr. Bradley presented the staff report for Case T-35-2020. The applicant had requested a textual amendment to the Code of Ordinances, Title III: Administration, to transfer the Federal Emergency Management Agency Community Rating System (FEMA CRS) program from Chapter 37, Growth Management Department to Chapter 40, Building Department; and to amend Title XVII, Land Development Code, Chapter 174: Floodplain Management, to adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard



areas, providing for applicability, severability, and an effective date of January 29, 2021. Staff recommended Case T-35-2020 for approval with an effective date of January 29, 2021.

The board had no comments regarding the request.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Mr. Hill, seconded by Mr. Boerema to submit Case T-35-2020 to City Council for approval of a textual amendment to the Code of Ordinances, Title III: Administration, to transfer the Federal Emergency Management Agency Community Rating System (FEMA CRS) program from Chapter 37, Growth Management Department to Chapter 40, Building Department; and to amend Title XVII, Land Development Code, Chapter 174: Floodplain Management, to adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard areas, providing for applicability, severability, and an effective date of January 29, 2021. The motion carried with members voting unanimously.

#### **OTHER BUSINESS:**

1. The board congratulated Mr. Donny Felix on his election to the City Council.

#### **ADJOURNMENT:**

The meeting was adjourned at approximately 8:23 p.m.

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Philip Weinberg, CHAIRPERSON

Attest:

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Chandra Powell, SECRETARY

\*\*Quasi-Judicial Proceeding.

## **ORDINANCE 2020-82**

**AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE III, ADMINISTRATION, CHAPTER 37, GROWTH MANAGEMENT DEPARTMENT, BY MODIFYING PROVISIONS RELATED TO THE LAND DEVELOPMENT DIVISION; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:**

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title III, Administration, Chapter 37, Growth Management Department, Section 37.03, Departmental Divisions, is hereby amended and shall henceforth read as follows:

**“Section 37.03 DEPARTMENTAL DIVISIONS.**

(A) The City shall comply with all applicable Federal laws and State statutes.

(1) Maintains the City of Palm Bay's Comprehensive Plan, revisions to the Land Development Code, administrative review of site plans, tracks Census data, ~~oversees the FEMA CRS program,~~ and provide data and analysis. Staff members of the Division serve as liaison to the Planning and Zoning Board/Local Planning Agency.

\* \* \*

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 3.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 4.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 5.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2020-\_\_\_\_\_, held on \_\_\_\_\_, 2020; and  
read in title only and duly enacted at Meeting 2020-\_\_\_\_\_, held on \_\_\_\_\_, 2020.

---

William Capote, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

**~~Strikethrough~~ words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.**



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Ordinance 2020-83, amending the Code of Ordinances, Chapter 40, Building Department, by modifying duties and responsibilities of the department (T-35-2020, City of Palm Bay), first reading.

The City of Palm Bay (Growth Management Department) has submitted a textual amendment to the Code of Ordinances, Title XVII, Land Development Code (LDC) for changes to the Floodplain Ordinance (Section 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021, which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Section 37 and Section 40 to acknowledge the relocation of the Floodplain Administrator/CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NFIP). The City participates in FEMA's Community Rating System (CRS) which currently allows property owners within the City to receive a 15-percent reduction in their flood insurance rates.

In 2018, the Federal Emergency Management Agency (FEMA) conducted a Flood Insurance Study (FIS) for all of Brevard County, and as a result, the FIRM maps have been updated. The maps now show Coastal High Hazard Zones in Palm Bay along the shoreline of the Indian River. In a letter dated July 29, 2020, FEMA directed the City to make the appropriate changes to its Floodplain Ordinance. Both the maps and floodplain ordinance are being revised to accommodate these changes. It should be noted that no existing enclosed residential or commercial structures will be impacted by these new maps.

Given that the new FIRM maps will become effective on January 29, 2021, changes to the LDC should also have the same effective date.

### REQUESTING DEPARTMENT:

Growth Management

### RECOMMENDATION:

Motion to to approve Case T-35-2020, as described in the staff report with an effective date of January 29, 2021.

### Planning and Zoning Board Recommendation:

Unanimous approval of the request as described in the staff report with an effective date of January 29, 2021.

**ATTACHMENTS:**

**Description**

**Case T-35-2020**

**Board Minutes**

**Ordinance 2020-83**



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

### Prepared by

Laurence Bradley, AICP, Growth Management Director

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**CASE NUMBER**

T-35-2020

**PLANNING & ZONING BOARD HEARING DATE**

November 4, 2020

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**PROPERTY OWNER & APPLICANT**

City of Palm Bay, Growth Management  
Department

**PROPERTY LOCATION/ADDRESS**

Not Applicable

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**SUMMARY OF REQUEST**

Changes to the Floodplain Ordinance (Sec. 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021 which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Sec. 37 and Sec. 40 to acknowledge the relocation of the Floodplain Administrator/CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NFIP).

**Existing Zoning**

Not Applicable

**Existing Land Use**

Not Applicable

**Site Improvements**

Not Applicable

**Site Acreage**

Not Applicable

**APPLICABILITY**

Citywide

**COMPREHENSIVE PLAN****COMPATIBILITY**

Not Specifically Addressed

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**BACKGROUND:**

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code (LDC), changes to the Floodplain Ordinance (Sec. 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021 which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Sec. 37 and Sec. 40 to acknowledge the relocation of the CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NGIP).

On July 29, 2020 the City of Palm Bay received a letter from the Federal Emergency Management Agency (FEMA) which directed the City to make changes to its Floodplain Ordinance as a condition of the City's continued participation in the National Flood Insurance Program (NFIP). The City of Palm Bay also participates in the Community Rating System (CRS). CRS is a voluntary program from FEMA which allows participating municipalities to lower flood insurance rates for their residents by promoting awareness and taking proactive measures to reduce the community's risk of flood hazards. The FEMA CRS program ranks communities on a scale of 1 to 10 with level 10 being the lowest grade and level 1 being the highest grade. Each grade level that a community achieves lowers the flood insurance rates by 5% for each level. The City of Palm Bay is currently rated as a grade 7, which allows property owners within the City to receive a 15% reduction in their flood insurance rates.

Periodically, FEMA updates the FIRM maps by conducting new Flood Insurance Studies (FIS). An FIS uses updated engineering and storm data to reassess the risk of flooding within the study area. In 2018, FEMA conducted a new FIS for all of Brevard County and as a result the FIRM maps have been updated. The updated maps now show Coastal High Hazard Zones in Palm Bay along the shoreline of the Indian River; thus, both the maps and floodplain ordinance need revisions to recognize these changes.

Proposed language for this amendment in legislative style with additions between >>arrow<< symbols and deletions in strikethrough format, is attached.

**ANALYSIS:**

In August 2020, the Acting City Manager proposed several reorganizational changes. One of these changes was to create a separate Building Department out of the Growth Management Department. Thus, the role of the Floodplain Administrator and CRS Coordinator was shifted from the Land Development Division of Growth Management to the Building Department. The changes proposed in Chapter 37 and Chapter 40 of the City Code of Ordinances are being requested to have these chapters match the new staff assignments established by the CMO for the Floodplain and CRS functions.

The remainder of the proposed changes are all within the Floodplain Ordinance (Sec. 174). FEMA provided to the City the actual text that is required to be adopted. These revisions are being made to recognize the changes that need to be made when the FIRM maps become effective on January 29, 2021. The current FIRMs were adopted on March 17, 2014, but they did not contain any Coastal High Hazard Areas (V-Zone), thus the Floodplain ordinance did not have within it the necessary definitions or design standards to properly regulate structures within V-Zones.

It should be noted that although the maps are being revised, no inhabited structures are located in the V-zone. The FIRM maps have different flood zones. They include several different categories including: V-zones (Coastal High Hazard Zones), A-Zone (High Risk Zones) and X-Zones (Low to Moderate Risk Zones). These zones have very different design standards and regulatory requirements. Many of these standards have also been incorporated into the Florida Building Code.

There is also a category designated as a "Coastal A-Zone" which is regulated using V-Zone standards. The Coastal A-Zones can be found on the FIRM maps located waterward of the LiMWA-Line which, will be shown on the new maps. Within the City of Palm Bay only one permissible structure (an open-air pavilion at Castaway Point Park) is located partially waterward of the LiMWA line. Also, one property proposed for future development on Bay Boulevard, as part of the Steamboat Landing project, is located partially waterward of the LiMWA line.

The remaining impacts associated with these changes in the FIRM maps and Floodplain Ordinance do not contain any habitable structures adjacent to the Indian River Lagoon. Impacts include the development and design standards for the placement of fill and the construction of accessory structures such as docks, decks and patios, walls and fences, retaining walls, and seawalls. Construction of these types of structures will need to be reviewed by the Floodplain Manager by applying the new standards that will be adopted as part of this amendment.

Given that the new FIRM maps will become effective on January 29, 2021, changes to the LDC should also have the same effective date.

**STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed changes as described herein with an effective date of January 29, 2021.

## **TITLE III: ADMINISTRATION**

### **CHAPTER 37: GROWTH MANAGEMENT DEPARTMENT**

#### **§ 37.03 DEPARTMENTAL DIVISIONS.**

(A) *Land Development Division.*

(1) Maintains the City of Palm Bay's Comprehensive Plan, revisions to the Land Development Code, administrative review of site plans, tracks Census data, ~~oversees the FEMA CRS program~~, and provide data and analysis. Staff members of the Division serve as liaison to the Planning and Zoning Board/Local Planning Agency.

### **CHAPTER 40: BUILDING DEPARTMENT**

#### **§ 40.03 DUTIES AND RESPONSIBILITIES.**

The Building Department is responsible for the review and issuance of permits for new and existing buildings in accordance with the Florida Building Code to ensure construction meets the requirements of all state, city and fire prevention codes for the safety and welfare of the citizens. >>The Floodplain Administrator within the department oversees the FEMA CRS program.<<

## **TITLE XVII: LAND DEVELOPMENT CODE**

### **CHAPTER 174: FLOODPLAIN MANAGEMENT**

#### **PART 1 - ADMINISTRATION**

#### **§ 174.002 APPLICABILITY.**

(C) *Basis for establishing flood hazard areas.* The Flood Insurance Study for Brevard County, Florida, and Incorporated Areas, dated >>January 29, 2021<< ~~March 17, 2014~~, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Hall Annex Building, 120 Malabar Road SE, Palm Bay, Florida 32907.

#### **§ 174.003 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.**

(A) *Designation.* The Floodplain Administrator in the >>Building<< ~~Growth Management~~ Department is designated to administer the floodplain management program for the City of Palm Bay. The Floodplain Administrator may delegate performance of certain duties to other employees.

(H) *Other duties of the Floodplain Administrator.* The Floodplain Administrator shall have other duties, including but not limited to:

(1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § [174.003](#)(D), of this ordinance;

(2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);

(3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;

(4) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete; and

(5) Notify the Federal Emergency Management Agency when the corporate boundaries of City of Palm Bay are modified, >>and<<:

>>(6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."<<

#### **§ 174.005 SITE PLANS AND CONSTRUCTION DOCUMENTS.**

(A) *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

(1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.

(2) Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with subsection (C)(2) or (3) of this section.

(3) Where the parcel on which the proposed development will take place will have more than fifty (50) lots or is larger than five (5) acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with subsection (C)(1) of this section.

(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures>>; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.<<

(5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

(6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

>>(7) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.<<

>>(8)<< (7) Existing and proposed alignment of any proposed alteration of a watercourse.

(D) *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in § [174.005](#)(E), of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

(2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.



(3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in subsection (E) of this section.

>>(4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.<<

>>(5)<<(4) For new principal residential and non-residential structures proposed to be located in a special flood hazard area, the applicant shall submit an application for a Letter of Map Amendment (LOMA) or a Letter Of Map Revision based on Fill (LOMR-F) to FEMA, and a copy of the applicants' submitted application to FEMA shall be submitted to the Floodplain Administrator prior to issuance of the certificate of occupancy. Substantially improved or substantially damaged buildings or structures are exempt from this requirement.

## **PART 2 - DEFINITIONS**

### **§ 174.020 DEFINITIONS.**

>>**COASTAL HIGH HAZARD AREA.** A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.<<

~~**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 3, 1980.~~

~~**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

~~**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 3, 1980.~~

>>**SAND DUNES.** Naturally occurring accumulations of sand in ridges or mounds landward of the beach.<<

## § 174.032 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS.

>>(F) *Limitations on sites in coastal high hazard areas (Zone V).* In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 105.3(4) of this ordinance demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section 307.8(3) of this ordinance.<<

## § 174.033 MANUFACTURED HOMES.

(A) All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to Fla. stat. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.

(B) *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that >>:<<

>>(1) In flood hazard areas (Zone A) other than coastal high hazard areas, << are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.2 and this ordinance.

>>(2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.3 and this ordinance.<<

(C) *Anchoring.* All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(D) *Elevation.* >>All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V). << ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with subsection (E) or (F) of this section, as applicable.~~

~~(E) *General elevation requirement.* Unless subject to the requirements of subsection (F) of this section, all manufactured homes that are placed, replaced, or substantially improved on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon~~

which a manufactured home has incurred “substantial damage” as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code*, Residential Section R322.2 (Zone A).

~~(F) Elevation requirement for certain existing manufactured home parks and subdivisions.~~ Manufactured homes that are not subject to subsection (E) of this section, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

~~(1) Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code*, Residential Section R322.2 (Zone A); or~~

~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above grade.~~

>>(E)<< ~~(G)~~ *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code*, Residential Section R322 >>or R322.3<< for such enclosed areas: >>, as applicable to the flood hazard area.<<

>>(F)<< ~~(H)~~ *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code*, Residential Section R322: >>, as applicable to the flood hazard area.<<

## **§ 174.035 TANKS.**

(B) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of subsection (C) of this section shall be >>:<<

>>(1) Be<< permitted in flood hazard areas >>(Zone A) other than coastal high hazard areas,<< provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

>>(2) Not permitted in coastal high hazard areas (Zone V).<<

## **§ 174.036 OTHER DEVELOPMENT.**

>>(F) *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four (4) inches.

(G) *Decks and patios in coastal high hazard areas (Zone V).* In addition to the requirements of the *Florida Building Code*, in coastal high hazard areas, decks and patios shall be located, designed, and constructed in compliance with the following:

(1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.

(2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.

(4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(H) *Other development in coastal high hazard areas (Zone V).* In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

(2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and

(3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(l) *Nonstructural fill in coastal high hazard areas (Zone V).* In coastal high hazard areas:

(1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.

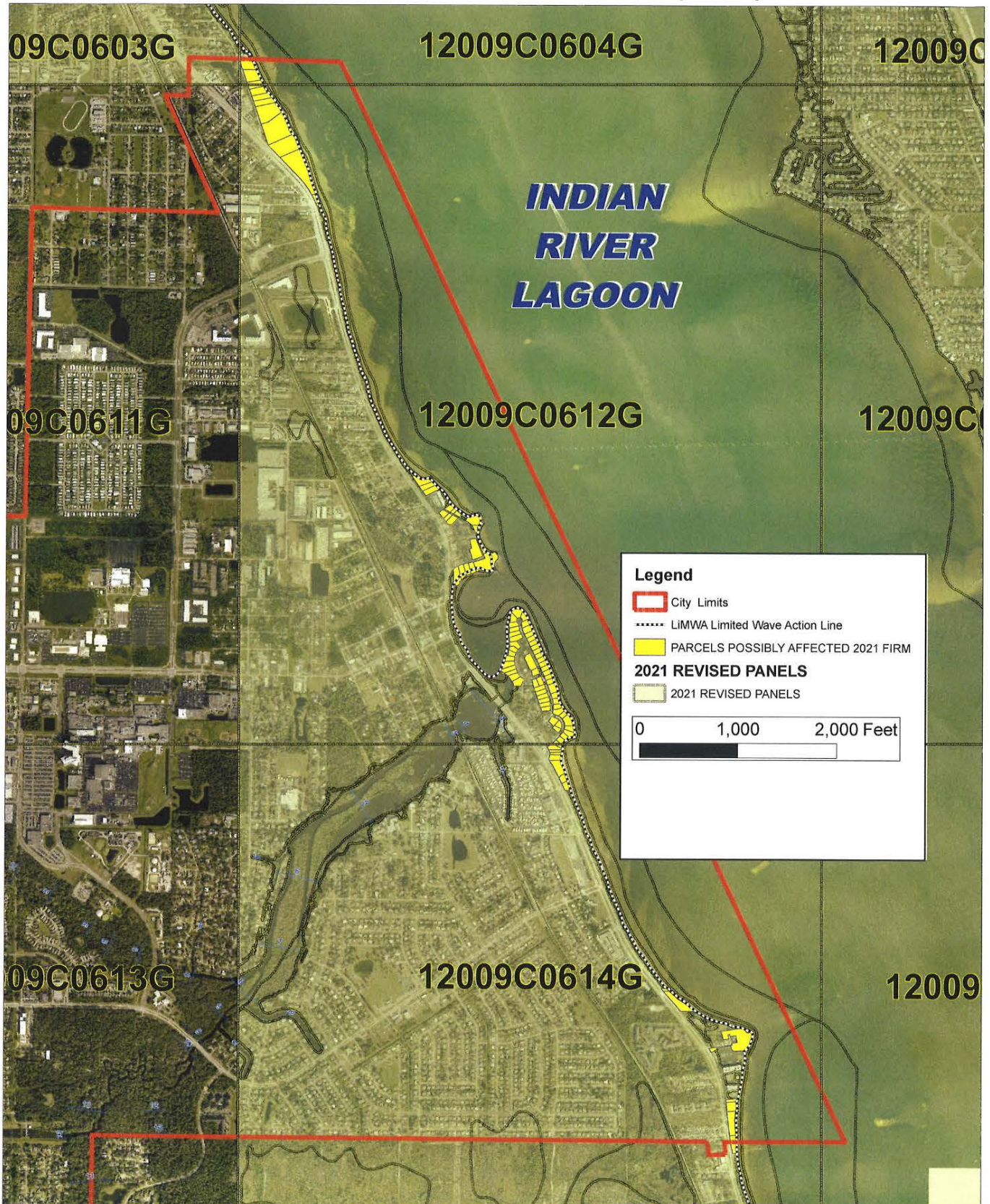
(2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

(3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.<<





# 100 PARCELS POSSIBLY AFFECTED BY NEW 2021 COASTAL FLOOD INSURANCE RATE MAP (FIRM)



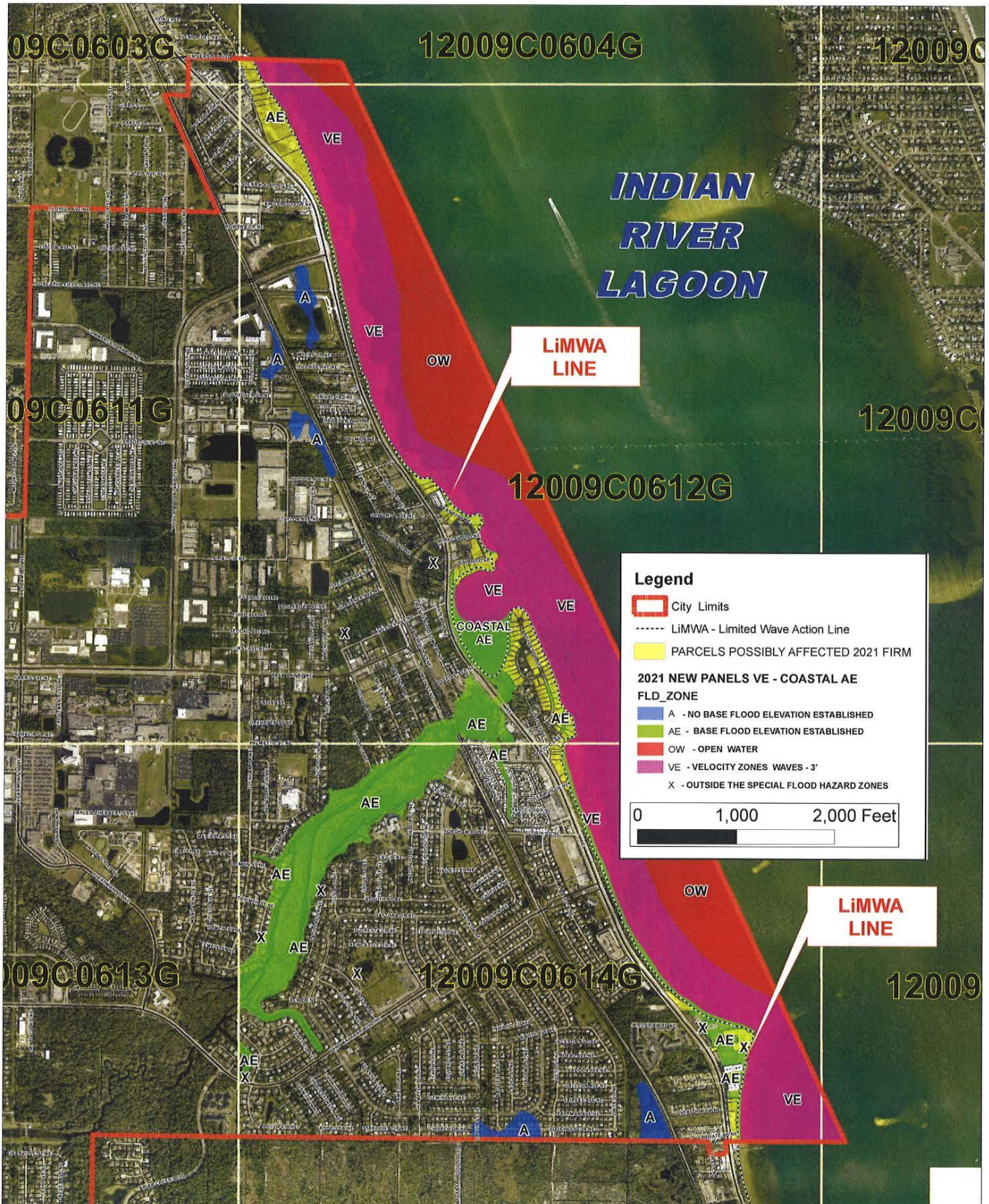
## Legend

- City Limits
- LIMWA Limited Wave Action Line
- PARCELS POSSIBLY AFFECTED 2021 FIRM
- 2021 REVISED PANELS**
- 2021 REVISED PANELS

0 1,000 2,000 Feet



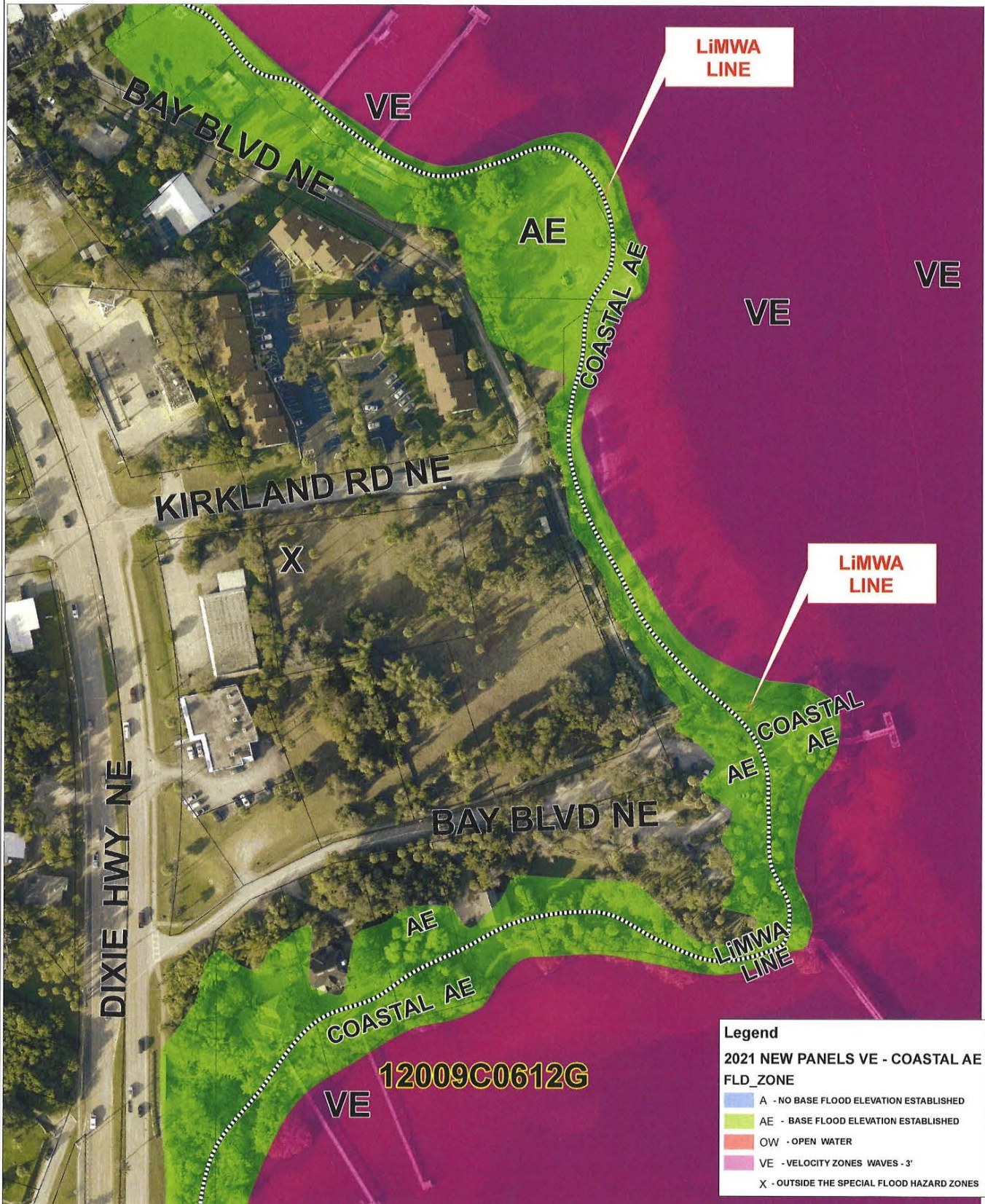
# NEW COASTAL AE ZONES ARE AE ZONES LOCATED EAST OF LIMWA LINE 2021 FLOOD INSURANCE RATE MAP (FIRM)







TURKEY BAY -  
CASTAWAY POINT PARK - SHORELINE  
2021 COASTAL  
FLOOD INSURANCE RATE MAP







# ANGLERS POINT NE 2021 COASTAL FLOOD INSURANCE RATE MAP







# GRAN AVE NE 2021 COASTAL FLOOD INSURANCE RATE MAP







**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopmentweb@palmbayflorida.org

**CODE TEXTUAL AMENDMENT APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

**ORDINANCE SECTION(S) PROPOSED TO BE CHANGED:**

Section 37.03;  
Section 40.03; and  
Sections 174.002, 174.003, 174.005, 174.020, 174.032, 174.033, 174.035, and 174.036

**PROPOSED LANGUAGE (attach addendum if necessary):**

See attached.

**JUSTIFICATION FOR PROPOSED CHANGE (attach other documents if necessary)**

The amendment will adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard areas, providing for applicability, severability, and an effective date of January 29, 2021.

CITY OF PALM BAY, FLORIDA  
CODE TEXTUAL AMENDMENT APPLICATION  
PAGE 2 OF 2

THE APPLICATION FEE MUST BE SUBMITTED WITH APPLICATION TO PROCESS THIS REQUEST:

☐ **\*\$1,500.00 Application Fee. Make Check payable to "City of Palm Bay."**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing code textual amendment application and that the facts stated in it are true.

Signature of Applicant Laurence Bradley Digitally signed by Laurence Bradley  
DN: dc=org, dc=palmbayflorida, ou=Community  
Planning & Economic Development, ou=Land  
Development, cn=Laurence Bradley  
Date: 2020.10.16 09:43:03 -04'00' Date 10/13/2020

Printed Name of Applicant Laurence Bradley, AICP, Growth Management Director

Full Address 120 Malabar Road SE, Palm Bay, FL 32907

Telephone (321) 733-3042 Email laurence.bradley@palmbayflorida.org

PERSON TO BE NOTIFIED (If different from above):

Printed Name \_\_\_\_\_

Full Address \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

6. **T-33-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY COUNCILMAN JEFF BAILEY)**  
***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg stated that Councilman Jeff Bailey had requested a continuance of Case T-33-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Ms. Jordan, seconded by Mr. Warner to continue Case T-33-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear Case T-33-2020 on December 17, 2020.

7. **T-34-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY DEPUTY MAYOR KENNY JOHNSON)**  
***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg stated that Deputy Mayor Kenny Johnson had requested a continuance of Case T-34-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Mr. Felix, seconded by Ms. Maragh to continue Case T-34-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear Case T-34-2020 on December 17, 2020.

8. **T-35-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT)**

Mr. Bradley presented the staff report for Case T-35-2020. The applicant had requested a textual amendment to the Code of Ordinances, Title III: Administration, to transfer the Federal Emergency Management Agency Community Rating System (FEMA CRS) program from Chapter 37, Growth Management Department to Chapter 40, Building Department; and to amend Title XVII, Land Development Code, Chapter 174: Floodplain Management, to adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard

areas, providing for applicability, severability, and an effective date of January 29, 2021. Staff recommended Case T-35-2020 for approval with an effective date of January 29, 2021.

The board had no comments regarding the request.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Mr. Hill, seconded by Mr. Boerema to submit Case T-35-2020 to City Council for approval of a textual amendment to the Code of Ordinances, Title III: Administration, to transfer the Federal Emergency Management Agency Community Rating System (FEMA CRS) program from Chapter 37, Growth Management Department to Chapter 40, Building Department; and to amend Title XVII, Land Development Code, Chapter 174: Floodplain Management, to adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard areas, providing for applicability, severability, and an effective date of January 29, 2021. The motion carried with members voting unanimously.

#### **OTHER BUSINESS:**

1. The board congratulated Mr. Donny Felix on his election to the City Council.

#### **ADJOURNMENT:**

The meeting was adjourned at approximately 8:23 p.m.

---

Philip Weinberg, CHAIRPERSON

Attest:

---

Chandra Powell, SECRETARY

\*\*Quasi-Judicial Proceeding.



## **ORDINANCE 2020-83**

**AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE III, ADMINISTRATION, CHAPTER 40, BUILDING DEPARTMENT, BY MODIFYING DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:**

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title III, Administration, Chapter 40, Building Department, Section 40.03, Duties and Responsibilities, is hereby amended and shall henceforth read as follows:

**“Section 40.03 DUTIES AND RESPONSIBILITIES.**

The Building Department is responsible for the review and issuance of permits for new and existing buildings in accordance with the Florida Building Code to ensure construction meets the requirements of all state, city and fire prevention codes for the safety and welfare of the citizens. >>The Floodplain Administrator within the department oversees the FEMA CRS program.<<”

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 3.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 4.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 5.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2020- , held on , 2020; and  
read in title only and duly enacted at Meeting 2020- , held on , 2020.

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William Capote, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

**~~Strikethrough~~ words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.**



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Ordinance 2020-84, amending the Code of Ordinances, Chapter 174, Floodplain and Stormwater Management, Subchapter 'Floodplain Management', by modifying provisions contained therein (T-35-2020, City of Palm Bay), first reading.

The City of Palm Bay (Growth Management Department) has submitted a textual amendment to the Code of Ordinances, Title XVII, Land Development Code (LDC) for changes to the Floodplain Ordinance (Section 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021, which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Section 37 and Section 40 to acknowledge the relocation of the Floodplain Administrator/CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NFIP). The City participates in FEMA's Community Rating System (CRS) which currently allows property owners within the City to receive a 15-percent reduction in their flood insurance rates.

In 2018, the Federal Emergency Management Agency (FEMA) conducted a Flood Insurance Study (FIS) for all of Brevard County, and as a result, the FIRM maps have been updated. The maps now show Coastal High Hazard Zones in Palm Bay along the shoreline of the Indian River. In a letter dated July 29, 2020, FEMA directed the City to make the appropriate changes to its Floodplain Ordinance. Both the maps and floodplain ordinance are being revised to accommodate these changes. It should be noted that no existing enclosed residential or commercial structures will be impacted by these new maps.

Given that the new FIRM maps will become effective on January 29, 2021, changes to the LDC should also have the same effective date.

### REQUESTING DEPARTMENT:

Growth Management

### RECOMMENDATION:

Motion to to approve Case T-35-2020, as described in the staff report with an effective date of January 29, 2021.

### Planning and Zoning Board Recommendation:

Unanimous approval of the request as described in the staff report with an effective date of January 29, 2021.

**ATTACHMENTS:**

**Description**

**Case T-35-2020**

**Board Minutes**

**Ordinance 2020-84**



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

### Prepared by

Laurence Bradley, AICP, Growth Management Director

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**CASE NUMBER**

T-35-2020

**PLANNING & ZONING BOARD HEARING DATE**

November 4, 2020

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**PROPERTY OWNER & APPLICANT**

City of Palm Bay, Growth Management  
Department

**PROPERTY LOCATION/ADDRESS**

Not Applicable

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**SUMMARY OF REQUEST**

Changes to the Floodplain Ordinance (Sec. 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021 which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Sec. 37 and Sec. 40 to acknowledge the relocation of the Floodplain Administrator/CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NFIP).

**Existing Zoning**

Not Applicable

**Existing Land Use**

Not Applicable

**Site Improvements**

Not Applicable

**Site Acreage**

Not Applicable

**APPLICABILITY**

Citywide

**COMPREHENSIVE PLAN****COMPATIBILITY**

Not Specifically Addressed

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**BACKGROUND:**

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code (LDC), changes to the Floodplain Ordinance (Sec. 174) to recognize an upcoming revision in the FEMA Flood Insurance Rate Maps (FIRM) effective January 29, 2021 which includes a new Coastal High Hazard Zone (V-Zone) and a new Limit of Moderate Wave Action (LiMWA) Line. Also, changes to Sec. 37 and Sec. 40 to acknowledge the relocation of the CRS Coordinator from the Growth Management Department to the Building Department. These changes are required by FEMA for the City's continued participation in the National Flood Insurance Program (NGIP).

On July 29, 2020 the City of Palm Bay received a letter from the Federal Emergency Management Agency (FEMA) which directed the City to make changes to its Floodplain Ordinance as a condition of the City's continued participation in the National Flood Insurance Program (NFIP). The City of Palm Bay also participates in the Community Rating System (CRS). CRS is a voluntary program from FEMA which allows participating municipalities to lower flood insurance rates for their residents by promoting awareness and taking proactive measures to reduce the community's risk of flood hazards. The FEMA CRS program ranks communities on a scale of 1 to 10 with level 10 being the lowest grade and level 1 being the highest grade. Each grade level that a community achieves lowers the flood insurance rates by 5% for each level. The City of Palm Bay is currently rated as a grade 7, which allows property owners within the City to receive a 15% reduction in their flood insurance rates.

Periodically, FEMA updates the FIRM maps by conducting new Flood Insurance Studies (FIS). An FIS uses updated engineering and storm data to reassess the risk of flooding within the study area. In 2018, FEMA conducted a new FIS for all of Brevard County and as a result the FIRM maps have been updated. The updated maps now show Coastal High Hazard Zones in Palm Bay along the shoreline of the Indian River; thus, both the maps and floodplain ordinance need revisions to recognize these changes.

Proposed language for this amendment in legislative style with additions between >>arrow<< symbols and deletions in strikethrough format, is attached.

**ANALYSIS:**

In August 2020, the Acting City Manager proposed several reorganizational changes. One of these changes was to create a separate Building Department out of the Growth Management Department. Thus, the role of the Floodplain Administrator and CRS Coordinator was shifted from the Land Development Division of Growth Management to the Building Department. The changes proposed in Chapter 37 and Chapter 40 of the City Code of Ordinances are being requested to have these chapters match the new staff assignments established by the CMO for the Floodplain and CRS functions.

The remainder of the proposed changes are all within the Floodplain Ordinance (Sec. 174). FEMA provided to the City the actual text that is required to be adopted. These revisions are being made to recognize the changes that need to be made when the FIRM maps become effective on January 29, 2021. The current FIRMs were adopted on March 17, 2014, but they did not contain any Coastal High Hazard Areas (V-Zone), thus the Floodplain ordinance did not have within it the necessary definitions or design standards to properly regulate structures within V-Zones.

It should be noted that although the maps are being revised, no inhabited structures are located in the V-zone. The FIRM maps have different flood zones. They include several different categories including: V-zones (Coastal High Hazard Zones), A-Zone (High Risk Zones) and X-Zones (Low to Moderate Risk Zones). These zones have very different design standards and regulatory requirements. Many of these standards have also been incorporated into the Florida Building Code.

There is also a category designated as a "Coastal A-Zone" which is regulated using V-Zone standards. The Coastal A-Zones can be found on the FIRM maps located waterward of the LiMWA-Line which, will be shown on the new maps. Within the City of Palm Bay only one permissible structure (an open-air pavilion at Castaway Point Park) is located partially waterward of the LiMWA line. Also, one property proposed for future development on Bay Boulevard, as part of the Steamboat Landing project, is located partially waterward of the LiMWA line.

The remaining impacts associated with these changes in the FIRM maps and Floodplain Ordinance do not contain any habitable structures adjacent to the Indian River Lagoon. Impacts include the development and design standards for the placement of fill and the construction of accessory structures such as docks, decks and patios, walls and fences, retaining walls, and seawalls. Construction of these types of structures will need to be reviewed by the Floodplain Manager by applying the new standards that will be adopted as part of this amendment.

Given that the new FIRM maps will become effective on January 29, 2021, changes to the LDC should also have the same effective date.

**STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed changes as described herein with an effective date of January 29, 2021.

## **TITLE III: ADMINISTRATION**

### **CHAPTER 37: GROWTH MANAGEMENT DEPARTMENT**

#### **§ 37.03 DEPARTMENTAL DIVISIONS.**

(A) *Land Development Division.*

(1) Maintains the City of Palm Bay's Comprehensive Plan, revisions to the Land Development Code, administrative review of site plans, tracks Census data, ~~oversees the FEMA CRS program~~, and provide data and analysis. Staff members of the Division serve as liaison to the Planning and Zoning Board/Local Planning Agency.

### **CHAPTER 40: BUILDING DEPARTMENT**

#### **§ 40.03 DUTIES AND RESPONSIBILITIES.**

The Building Department is responsible for the review and issuance of permits for new and existing buildings in accordance with the Florida Building Code to ensure construction meets the requirements of all state, city and fire prevention codes for the safety and welfare of the citizens. >>The Floodplain Administrator within the department oversees the FEMA CRS program.<<

## **TITLE XVII: LAND DEVELOPMENT CODE**

### **CHAPTER 174: FLOODPLAIN MANAGEMENT**

#### **PART 1 - ADMINISTRATION**

#### **§ 174.002 APPLICABILITY.**

(C) *Basis for establishing flood hazard areas.* The Flood Insurance Study for Brevard County, Florida, and Incorporated Areas, dated >>January 29, 2021<< ~~March 17, 2014~~, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Hall Annex Building, 120 Malabar Road SE, Palm Bay, Florida 32907.

#### **§ 174.003 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.**

(A) *Designation.* The Floodplain Administrator in the >>Building<< ~~Growth Management~~ Department is designated to administer the floodplain management program for the City of Palm Bay. The Floodplain Administrator may delegate performance of certain duties to other employees.

(H) *Other duties of the Floodplain Administrator.* The Floodplain Administrator shall have other duties, including but not limited to:

(1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § [174.003](#)(D), of this ordinance;

(2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);

(3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;

(4) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete; and

(5) Notify the Federal Emergency Management Agency when the corporate boundaries of City of Palm Bay are modified, >>and<<:

>>(6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."<<

#### **§ 174.005 SITE PLANS AND CONSTRUCTION DOCUMENTS.**

(A) *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

(1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.

(2) Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with subsection (C)(2) or (3) of this section.

(3) Where the parcel on which the proposed development will take place will have more than fifty (50) lots or is larger than five (5) acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with subsection (C)(1) of this section.

(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures>>; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.<<

(5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

(6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

>>(7) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.<<

>>(8)<< (7) Existing and proposed alignment of any proposed alteration of a watercourse.

(D) *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in § [174.005](#)(E), of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

(2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.



(3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in subsection (E) of this section.

>>(4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.<<

>>(5)<<(4) For new principal residential and non-residential structures proposed to be located in a special flood hazard area, the applicant shall submit an application for a Letter of Map Amendment (LOMA) or a Letter Of Map Revision based on Fill (LOMR-F) to FEMA, and a copy of the applicants' submitted application to FEMA shall be submitted to the Floodplain Administrator prior to issuance of the certificate of occupancy. Substantially improved or substantially damaged buildings or structures are exempt from this requirement.

## **PART 2 - DEFINITIONS**

### **§ 174.020 DEFINITIONS.**

>>**COASTAL HIGH HAZARD AREA.** A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.<<

~~**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 3, 1980.~~

~~**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

~~**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 3, 1980.~~

>>**SAND DUNES.** Naturally occurring accumulations of sand in ridges or mounds landward of the beach.<<

## § 174.032 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS.

>>(F) *Limitations on sites in coastal high hazard areas (Zone V).* In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 105.3(4) of this ordinance demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section 307.8(3) of this ordinance.<<

## § 174.033 MANUFACTURED HOMES.

(A) All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to Fla. stat. § 320.8249, and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.

(B) *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that >>:<<

>>(1) In flood hazard areas (Zone A) other than coastal high hazard areas, << are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.2 and this ordinance.

>>(2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.3 and this ordinance.<<

(C) *Anchoring.* All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(D) *Elevation.* >>All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V). << ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with subsection (E) or (F) of this section, as applicable.~~

~~(E) *General elevation requirement.* Unless subject to the requirements of subsection (F) of this section, all manufactured homes that are placed, replaced, or substantially improved on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon~~

which a manufactured home has incurred “substantial damage” as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code*, Residential Section R322.2 (Zone A).

~~(F) Elevation requirement for certain existing manufactured home parks and subdivisions.~~ Manufactured homes that are not subject to subsection (E) of this section, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

~~(1) Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code*, Residential Section R322.2 (Zone A); or~~

~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above grade.~~

>>(E)<< ~~(G)~~ *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code*, Residential Section R322 >>or R322.3<< for such enclosed areas: >>, as applicable to the flood hazard area.<<

>>(F)<< ~~(H)~~ *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code*, Residential Section R322: >>, as applicable to the flood hazard area.<<

## § 174.035 TANKS.

(B) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of subsection (C) of this section shall be >>:<<

>>(1) Be<< permitted in flood hazard areas >>(Zone A) other than coastal high hazard areas,<< provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

>>(2) Not permitted in coastal high hazard areas (Zone V).<<

## § 174.036 OTHER DEVELOPMENT.

>>(F) *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four (4) inches.

(G) *Decks and patios in coastal high hazard areas (Zone V).* In addition to the requirements of the *Florida Building Code*, in coastal high hazard areas, decks and patios shall be located, designed, and constructed in compliance with the following:

(1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.

(2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.

(4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(H) *Other development in coastal high hazard areas (Zone V).* In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

(2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and

(3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(l) *Nonstructural fill in coastal high hazard areas (Zone V).* In coastal high hazard areas:

(1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.

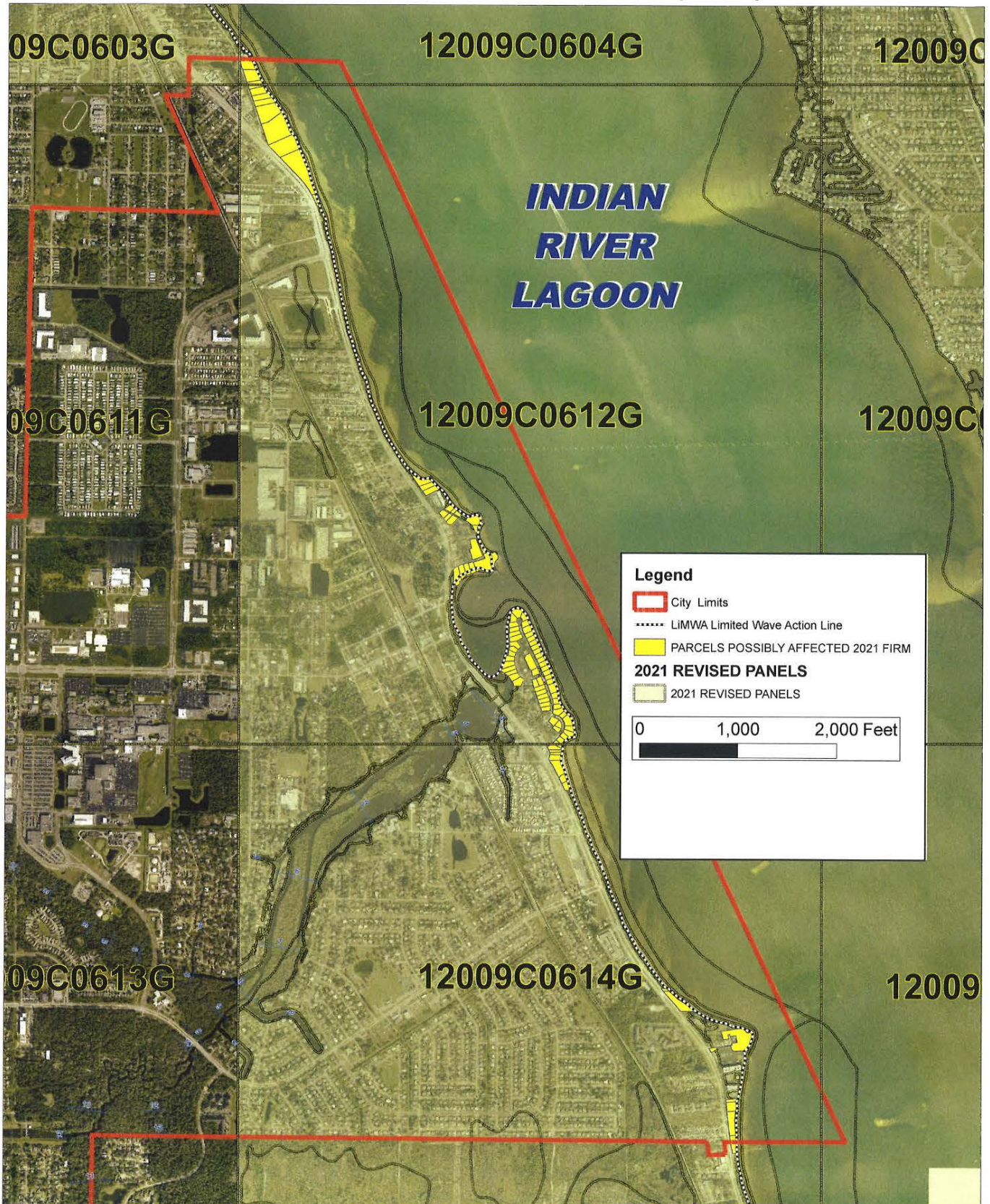
(2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

(3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.<<





# 100 PARCELS POSSIBLY AFFECTED BY NEW 2021 COASTAL FLOOD INSURANCE RATE MAP (FIRM)



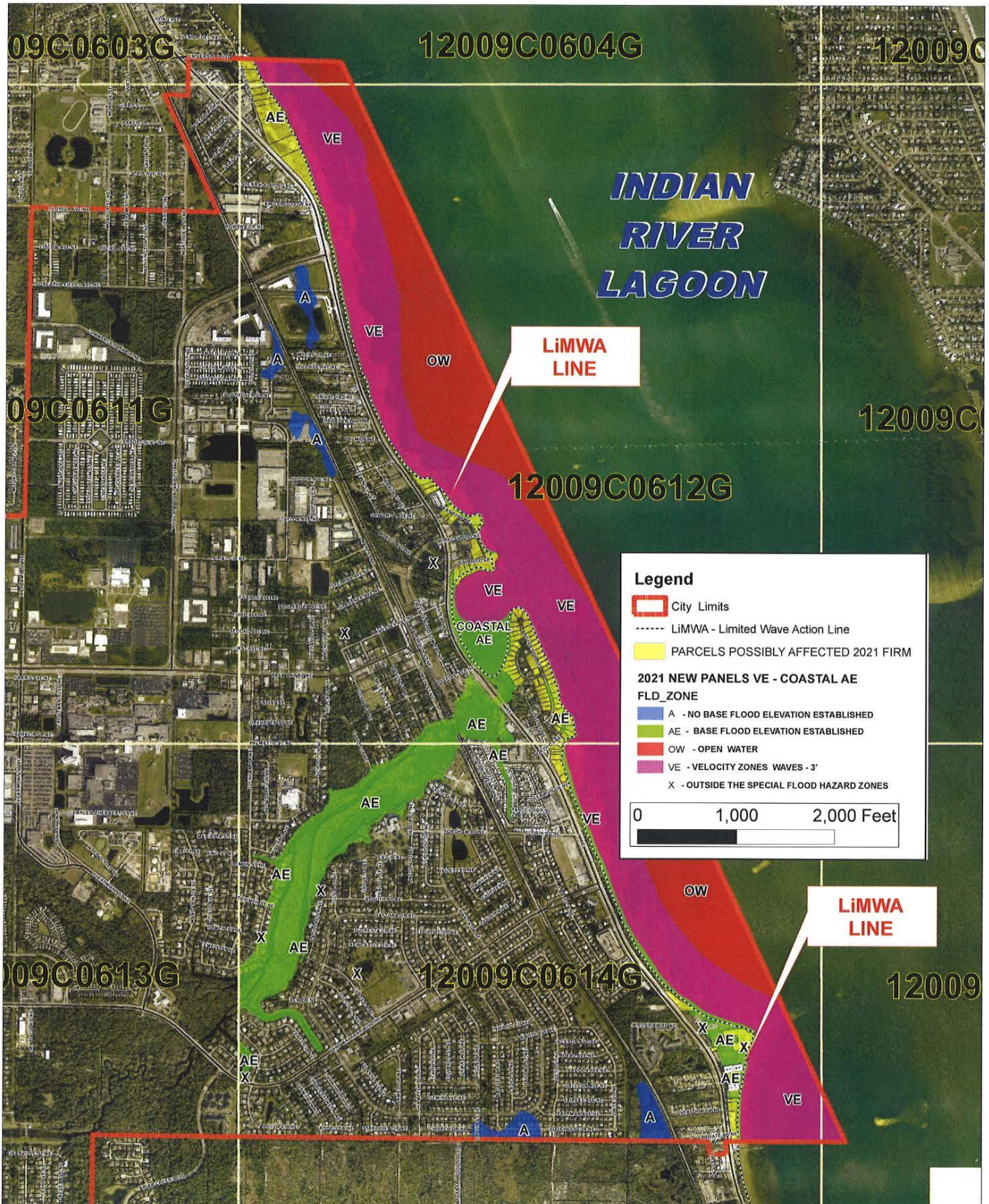
## Legend

- City Limits
- LIMWA Limited Wave Action Line
- PARCELS POSSIBLY AFFECTED 2021 FIRM
- 2021 REVISED PANELS**
- 2021 REVISED PANELS

0 1,000 2,000 Feet



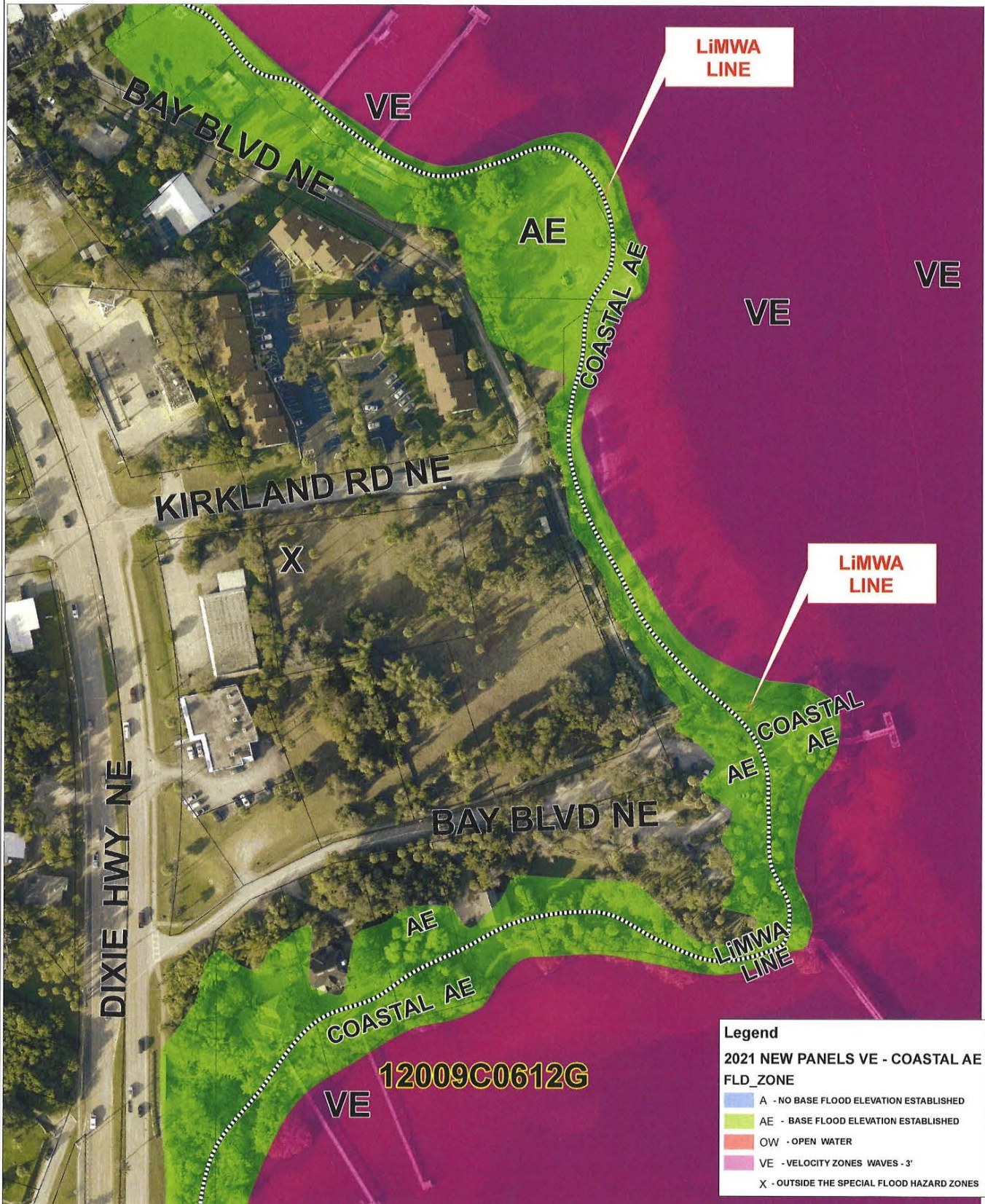
# NEW COASTAL AE ZONES ARE AE ZONES LOCATED EAST OF LIMWA LINE 2021 FLOOD INSURANCE RATE MAP (FIRM)







TURKEY BAY -  
CASTAWAY POINT PARK - SHORELINE  
2021 COASTAL  
FLOOD INSURANCE RATE MAP







# ANGLERS POINT NE 2021 COASTAL FLOOD INSURANCE RATE MAP







# GRAN AVE NE 2021 COASTAL FLOOD INSURANCE RATE MAP







**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopmentweb@palmbayflorida.org

**CODE TEXTUAL AMENDMENT APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

**ORDINANCE SECTION(S) PROPOSED TO BE CHANGED:**

Section 37.03;  
Section 40.03; and  
Sections 174.002, 174.003, 174.005, 174.020, 174.032, 174.033, 174.035, and 174.036

**PROPOSED LANGUAGE (attach addendum if necessary):**

See attached.

**JUSTIFICATION FOR PROPOSED CHANGE (attach other documents if necessary)**

The amendment will adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard areas, providing for applicability, severability, and an effective date of January 29, 2021.

CITY OF PALM BAY, FLORIDA  
CODE TEXTUAL AMENDMENT APPLICATION  
PAGE 2 OF 2

THE APPLICATION FEE MUST BE SUBMITTED WITH APPLICATION TO PROCESS THIS REQUEST:

☐ **\*\$1,500.00 Application Fee. Make Check payable to "City of Palm Bay."**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing code textual amendment application and that the facts stated in it are true.

Signature of Applicant Laurence Bradley Digitally signed by Laurence Bradley  
DN: dc=org, dc=palmbayflorida, ou=Community  
Planning & Economic Development, ou=Land  
Development, cn=Laurence Bradley  
Date: 2020.10.16 09:43:03 -04'00' Date 10/13/2020

Printed Name of Applicant Laurence Bradley, AICP, Growth Management Director

Full Address 120 Malabar Road SE, Palm Bay, FL 32907

Telephone (321) 733-3042 Email laurence.bradley@palmbayflorida.org

PERSON TO BE NOTIFIED (If different from above):

Printed Name \_\_\_\_\_

Full Address \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

6. **T-33-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY COUNCILMAN JEFF BAILEY)**  
***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg stated that Councilman Jeff Bailey had requested a continuance of Case T-33-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Ms. Jordan, seconded by Mr. Warner to continue Case T-33-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear Case T-33-2020 on December 17, 2020.

7. **T-34-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY DEPUTY MAYOR KENNY JOHNSON)**  
***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg stated that Deputy Mayor Kenny Johnson had requested a continuance of Case T-34-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Mr. Felix, seconded by Ms. Maragh to continue Case T-34-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear Case T-34-2020 on December 17, 2020.

8. **T-35-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT)**

Mr. Bradley presented the staff report for Case T-35-2020. The applicant had requested a textual amendment to the Code of Ordinances, Title III: Administration, to transfer the Federal Emergency Management Agency Community Rating System (FEMA CRS) program from Chapter 37, Growth Management Department to Chapter 40, Building Department; and to amend Title XVII, Land Development Code, Chapter 174: Floodplain Management, to adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard

areas, providing for applicability, severability, and an effective date of January 29, 2021. Staff recommended Case T-35-2020 for approval with an effective date of January 29, 2021.

The board had no comments regarding the request.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Mr. Hill, seconded by Mr. Boerema to submit Case T-35-2020 to City Council for approval of a textual amendment to the Code of Ordinances, Title III: Administration, to transfer the Federal Emergency Management Agency Community Rating System (FEMA CRS) program from Chapter 37, Growth Management Department to Chapter 40, Building Department; and to amend Title XVII, Land Development Code, Chapter 174: Floodplain Management, to adopt the revised flood insurance study and flood insurance rate maps, incorporate requirements for coastal high hazard areas, providing for applicability, severability, and an effective date of January 29, 2021. The motion carried with members voting unanimously.

#### **OTHER BUSINESS:**

1. The board congratulated Mr. Donny Felix on his election to the City Council.

#### **ADJOURNMENT:**

The meeting was adjourned at approximately 8:23 p.m.

---

Philip Weinberg, CHAIRPERSON

Attest:

---

Chandra Powell, SECRETARY

\*\*Quasi-Judicial Proceeding.



## ORDINANCE 2020-84

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 174, FLOODPLAIN AND STORMWATER MANAGEMENT, SUBCHAPTER 'FLOODPLAIN MANAGEMENT', BY MODIFYING PROVISIONS CONTAINED THEREIN; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 174, Floodplain and Stormwater Management, Subchapter 'Floodplain Management, Part 1 – Administration', is hereby amended and shall henceforth read as follows:

**"Section 174.001 TITLE.**

\* \* \*

**Section 174.002 APPLICABILITY.**

\* \* \*

(C) *Basis for establishing flood hazard areas.* The Flood Insurance Study for Brevard County, Florida, and Incorporated Areas, dated ~~March 17, 2014~~ >>January 29, 2021<<, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Hall Annex Building, 120 Malabar Road SE, Palm Bay, Florida 32907.

\* \* \*

**Section 174.003 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.**

(A) *Designation.* The Floodplain Administrator in the **Growth Management >>Building<<** Department is designated to administer the floodplain management program for the City of Palm Bay. The Floodplain Administrator may delegate performance of certain duties to other employees.

\* \* \*

(H) *Other duties of the Floodplain Administrator.* The Floodplain Administrator shall have other duties, including but not limited to:

\* \* \*

(4) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete; **and**

(5) Notify the Federal Emergency Management Agency when the corporate boundaries of City of Palm Bay are modified; **>>, and<<**

**>>(6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."<<**

\* \* \*

#### **Section 174.005 SITE PLANS AND CONSTRUCTION DOCUMENTS.**

(A) *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

\* \* \*

(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures**>>; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.<<**

\* \* \*

**>>(7) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.<<**

(7)>8<<) Existing and proposed alignment of any proposed alteration of a watercourse.

\* \* \*

(D) *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

\* \* \*

>>(4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.<<

(4)>5<<) For new principal residential and non-residential structures proposed to be located in a special flood hazard area, the applicant shall submit an application for a Letter of Map Amendment (LOMA) or a Letter Of Map Revision based on Fill (LOMR-F) to FEMA, and a copy of the applicants' submitted application to FEMA shall be submitted to the Floodplain Administrator prior to issuance of the certificate of occupancy. Substantially improved or substantially damaged buildings or structures are exempt from this requirement.

\* \* \*<sup>11</sup>

**SECTION 2.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 174, Floodplain and Stormwater Management, Subchapter 'Floodplain Management, Part 2 – Definitions', is hereby amended and shall henceforth read as follows:

**"Section 174.020 DEFINITIONS.**

(A) Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

\* \* \*

>>**COASTAL HIGH HAZARD AREA.** A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or

seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.<<

\* \* \*

~~**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.**~~ A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 3, 1980.

~~**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.**~~ The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

\* \* \*

~~**NEW MANUFACTURED HOME PARK OR SUBDIVISION.**~~ A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 3, 1980.

\* \* \*

>>**SAND DUNES.** Naturally occurring accumulations of sand in ridges or mounds landward of the beach.<<

\* \* \*"

**SECTION 3.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 174, Floodplain and Stormwater Management, Subchapter 'Floodplain Management, Part 3 – Flood Resistant Development', is hereby amended and shall henceforth read as follows:

**"Section 174.030 BUILDINGS AND STRUCTURES.**

\* \* \*

**Section 174.032 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS.**

\* \* \*

>>(F) *Limitations on sites in coastal high hazard areas (Zone V).* In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 105.3(4) of this ordinance demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section 307.8(3) of this ordinance.<<

**Section 174.033 MANUFACTURED HOMES.**

\* \* \*

(B) *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that >>:<<

>>(1) In flood hazard areas (Zone A) other than coastal high hazard areas,<< are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.2 and this ordinance.

>>(2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the *Florida Building Code*, Residential Section R322.3 and this ordinance.<<

\* \* \*

(D) *Elevation.* ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with subsection (E) or (F) of this section, as applicable.~~ >>All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V).<<

(E) ~~General elevation requirement.~~ Unless subject to the requirements of subsection (F) of this section, all manufactured homes that are placed, replaced, or substantially improved on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an



existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code*, Residential Section R322.2 (Zone A);

(F) — *Elevation requirement for certain existing manufactured home parks and subdivisions.* Manufactured homes that are not subject to subsection (E) of this section, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

(1) — Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code*, Residential Section R322.2 (Zone A); or

(2) — Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above grade.

(G) — *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code*, Residential Section R322 or R322.3 for such enclosed areas, as applicable to the flood hazard area.

(H) — *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code*, Residential Section R322, as applicable to the flood hazard area.

\* \* \*

#### Section 174.035 TANKS.

\* \* \*

(B) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of subsection (C) of this section shall be:

(1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement

resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

>>(2) Not permitted in coastal high hazard areas (Zone V).<<

\* \* \*

#### **Section 174.036 OTHER DEVELOPMENT.**

\* \* \*

>>(F) *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

(1) Structurally independent of the foundation system of the building or structure;

(2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and

(3) Have a maximum slab thickness of not more than four (4) inches.

(G) *Decks and patios in coastal high hazard areas (Zone V).* In addition to the requirements of the *Florida Building Code*, in coastal high hazard areas, decks and patios shall be located, designed, and constructed in compliance with the following:

(1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.

(2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.

(4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(H) *Other development in coastal high hazard areas (Zone V).* In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

(2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and

(3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(I) *Nonstructural fill in coastal high hazard areas (Zone V).* In coastal high hazard areas:

(1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.

(2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

(3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.<<"

**SECTION 4.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 5.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 6.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 7.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2020- , held on , 2020; and  
read in title only and duly enacted at Meeting 2020- , held on , 2020.

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William Capote, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

**~~Strikethrough~~ words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.**





## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Resolution 2020-58, granting approval of a Planned Unit Development (PUD) Preliminary Development Plan of a single-family residential subdivision to be known as 'Gardens of Waterstone Phase 1 PUD', which property is located west of and adjacent to Mara Loma Boulevard, in the vicinity south of Melbourne Tillman Water Control District Canal 38 (44.65 acres) (Case PD-32-2020, Waterstone Farms, LLC) (Quasi-Judicial Proceeding).

Mr. Benjamin E. Jefferies, Waterstone Farms, LLC (Represented by Jake Wise of CEG Engineering Group, LLC and Rochelle Lawandales of Waterstone Development, LLC) has submitted for Preliminary Planned Unit Development approval of a 154-unit residential subdivision to be known as Gardens of Waterstone Phase 1 PUD. This 44.65-acre phase of development is located west of and adjacent to Mara Loma Boulevard SE and south of Melbourne Tillman Water Control District Canal 38.

In 2004, the overall development was annexed into the City (Ordinance 2004-35) totaling 1,167 acres, and between 2005 and 2018, a series of 37 future land use map amendments has brought the total amount of entitled units to 2,596. This specific phase of the development will be constructed in one phase and will consist of a gated entrance, a neighborhood park, walking trails, recreation and open space areas, stormwater management ponds, and private roadways. The density proposed for the subject request is 3.44 units per acre.

### **REQUESTING DEPARTMENT:**

Growth Management

### **RECOMMENDATION:**

Motion to approve Case PD-32-2020, subject to the staff comments contained in the staff report and the following items being submitted with a Final PUD application:

- A. A preliminary subdivision plat and a boundary & title opinion;
- B. Deed restrictions establishing development standards and minimum dwelling sizes;
- C. Specific layout and architectural drawings illustrating the amenities and walking trails;
- D. The technical comments generated by the Development Review Staff shall be observed and incorporated into all future subdivision designs.

### **Planning and Zoning Board Recommendation:**

Unanimous approval of the request, subject to the staff comments contained in the staff report.

**ATTACHMENTS:**

**Description**

**Case PD-32-2020**

**Board Minutes**

**Resolution 2020-58**

**Resolution 2020-58, Exhibit A**

**Resolution 2020-58, Exhibit B**



**REVISED**

# **STAFF REPORT**

## **LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

### **Prepared by**

Christopher Balter, Senior Planner

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#### **CASE NUMBER**

PD-32-2020

#### **PLANNING & ZONING BOARD HEARING DATE**

November 4, 2020

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#### **PROPERTY OWNER & APPLICANT**

Benjamin E. Jefferies - Waterstone Farms, LLC

#### **PROPERTY LOCATION/ADDRESS**

A portion of Tax parcels 250 and 500, Section 4, Township 30, Range 37, and a portion of Tract 1 of the San Sebastian Farms Subdivision

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#### **SUMMARY OF REQUEST**

Preliminary Planned Unit Development approval for a 154-unit residential subdivision to be known as Gardens of Waterstone Phase 1 PUD.

##### **Existing Zoning**

PUD, Planned Unit Development

##### **Existing Land Use**

Single-Family Residential Use

##### **Site Improvements**

Vacant Unimproved Land (Former Orange Groves)

##### **Site Acreage**

44.65 acres, more or less

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#### **SURROUNDING ZONING & USE OF LAND**

##### **North**

Melbourne-Tillman Drainage Canal No. 38

##### **East**

PUD; Heron Bay at Waterstone PUD; Single-Family Homes

##### **South**

PUD; The Lakes at Waterstone PUD; Single-Family Homes and Undeveloped Land

##### **West**

PUD; Waterstone at Palm Bay; Undeveloped Land

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#### **COMPREHENSIVE PLAN COMPATIBILITY**

The future land use designation of the subject property is Single-Family Residential Use. The development of a single-family planned unit development is compliant with the Single-Family Residential Use future land use designation. The proposed density is 3.44 units per acre, which is below the maximum density defined in the City's Comprehensive Plan for Single-Family Residential Use (up to 5 units per acre).

---

**BACKGROUND:**

The subject property is located north of and adjacent to Mara Loma Boulevard SE, and west of Babcock Street SE. Specifically a portion of Tax parcels 250 and 500, Section 4, Township 30, Range 37, and a portion of Tract 1 of San Sebastian Farms Subdivision of Brevard County Florida. This Preliminary PUD request includes approximately 44.65 acres of land.

In 2004 the subject property was annexed into the City via Ordinance 2004-35 totaling 1,167 acres. The original Future Land Use amendment designated all of the lands as Single-Family Residential Use via Ordinance 2004-52; which stated that 1,800 units could be placed on the lands of Waterstone or Cypress Bay Preserve. Site specific conditions were placed on the amendment via Ordinance 2004-48. Between 2005 and 2018, a series of 37 future land use map amendments were made bringing the total units entitled to 2,596. The total entitlements encumbered are as follows: 1802 units on the west side of Babcock Street, and 362 units on the east side of Babcock Street.

**ANALYSIS:**

The applicant is requesting Preliminary Development Plan (PDP) approval for a Planned Unit Development (PUD), to construct a single-family residential subdivision called Gardens at Waterstone Phase 1. The planned unit development is a concept which encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage, setbacks and open space, from those elements required in any singular zoning classification found in the city's Zoning Code.

The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as commercial uses designed to serve the inhabitants of the proposed community. The planned unit development process simplifies the procedure for obtaining approval of these developments through simultaneous review of the proposed land use, site consideration, public needs and requirements, and health and safety factors.

Specifically, the PDP proposes a 154-unit single-family development that will be constructed in one phase. Per the PDP, typical lots within the residential development are 40' x 125'. The minimum size home will need to be identified in the Declaration of Covenants and Restrictions. The development will consist of a gated entrance with amenities neighborhood park, walking trails, recreation and open space areas, stormwater management ponds, and private roadways.

Lastly, technical staff review comments are attached to this report.

**CONDITIONS:**

In order to receive Preliminary Planned Unit Development approval, the proposal must meet the requirements of Section 185.066 of the City of Palm Bay's Code of Ordinances. Upon review, it appears that the request is in conformance with the applicable requirements of this section, subject to the following items being submitted with a Final PUD application:

- A. A preliminary subdivision plat and a boundary & title opinion;
- B. Deed restrictions establishing development standards and minimum dwelling sizes;

**C. Construction drawings;**

**D.>>C.<<** Specific layout and architectural drawings illustrating the amenities and walking trails;

**E.>>D.<<** The technical comments generated by the Development Review Staff (attached) shall be observed and incorporated into all future subdivision designs.

**STAFF RECOMMENDATION:**

Case PD-32-2020 is recommended for approval, subject to the staff comments contained in this report.



## **TECHNICAL COMMENTS**

### **CASE PD-32-2020 – Gardens at Waterstone Phase 1 PUD**

#### **BREVARD COUNTY (Jeffrey Ball, Planning and Zoning Manager):**

Brevard County has no concerns at this time. The applicant has previously acknowledged that a Traffic Signal Warrant Analysis will be conducted with the completion of Cypress Bay and the Gardens developments. They have also previously advised that a traffic signal, if warranted, will be the responsibility of the developer to provide for the design, permitting, and construction of said traffic signal.

#### **PUBLIC WORKS (Natalie Shaber, Engineer II):**

The Public Works Department has the following comments:

- An updated signal warrant, and traffic impact analysis will be required because of the constructed elementary school, adjacent Cypress Bay Development, and constructed St. John's Heritage Parkway.
- Additional safety features such as a cross walk across Mara Loma Blvd.
- Please make sure the proposed Mara Loma Blvd improvements comply with the City of Palm Bay Public Works manual, right-of-way manual as well as the ss184.18 Roadway Design City of Palm Bay Ordinances.
- Please evaluate the flow capacity and cross section of the ditch off site, the condition of the pipe in the Sotille drainage right of way (by the Willowbrook right-of-way). Replace pipe if required.
- Please provide landscape plans for the Mara Loma Blvd Extension.
- Please provide reliable tree root containment to prevent damage of the roadway and sidewalks in the Mara Loma Blvd. right-of-way.
- Make sure the proposed landscaping does not interfere with the sight distance.
- A two-year maintenance bond shall be required prior to the certificate of completion. The maintenance bond is 25 percent of the total value of the work in the public right-of-way.
- Please provide a Landscape agreement for the right-of-way to be executed between the Waterstone PUD CDD (successors and assigns) and the City to perpetually maintain the proposed landscaping in the public right-of-way.
- Please be advised that all project improvements are privately maintained until publicly accepted and approved per City of Palm Bay Ordinance Chapter 182.
- The stormwater management system shall meet the most stringent criteria from the St. John's River Water Management District and the City of Palm Bay's Floodplain and Stormwater Management Ordinance Chapter 174, when those criteria conflict. (SS 174.071).
- Drainage easement shall be provided over the system where it connects to Waterstone Phase One.

- The Courtyards at Waterstone plan and the Waterstone Phase 1 Site plans shall be revised to include this new upstream subdivision that will be routed south.
- Grading of the rear lots 23-41 of the Gardens shall be Type A.
- ADA compliant sidewalks shall connect to the existing sidewalks on Mara Loma Blvd.

#### **UTILITIES (Christopher Little, Utilities Director):**

The Utilities Department has no objection to the proposed 154 single-family residential units.

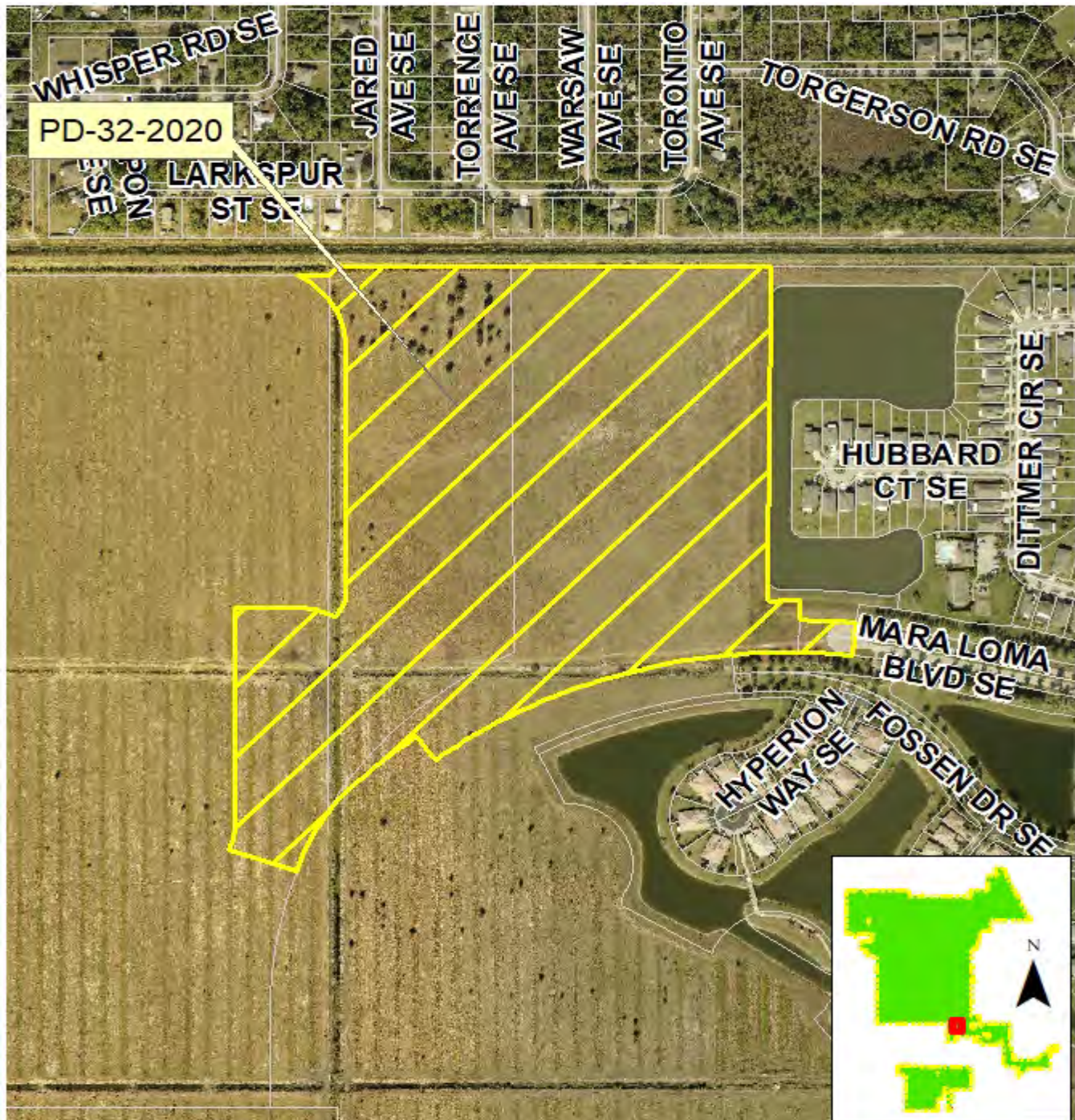
Upon development of the site, the following shall apply for connection to the City's Water and Sewer Utilities System:

1. The applicant/owner, at their expense, will be required to design, permit, install, inspect and test water & sewer systems of adequate size to accommodate the development and to connect to the City's water & sewer system. [§ 200.11(D)(1) – On-Site Facilities]
2. The applicant/owner may be required to extend and/or loop service from the On-Site Facilities to the existing water and sewer connection points. [§ 200.11(D)(2) – Off-Site Facilities].
3. The applicant/owner will be responsible for the property's hydraulic share for the new utilities required to serve the development. Oversizing of utilities at the request of the Utilities Department will be subject to a refunding agreement or refundable advance [§ 200.11(D) & (E)]. The City of Palm Bay's 2017 Wastewater Master Plan & 2017 Water Master Plan, both of which are available by request, identify proposed mainline extensions with the City's current pipe sizing requirements.
4. A City of Palm Bay "Utility Agreement" shall be executed between the Property Owner and the City. All Utility impact/connection charges noted in the "Utility Agreement" must be paid as outlined in the terms and conditions of the Utility Agreement. All fees are subject to change annually on October 1. The Property Owner shall submit a certified copy of the property deed as verification of ownership as part of the Utility Agreement.
5. All utility construction, materials, and testing shall be in accordance with the latest revision of the Palm Bay Utility Departments Policies, Procedures and Standards Handbook and the Standard Detail Drawings. Prior to any construction, all required FDEP Permit applications for the Water and Sanitary Sewer Construction shall be processed through and copies of the Permits filed with the Utilities Department.

#### **BUILDING (James Williams, Flood Plain Administrator):**

The entire site is in Floodzone X, no floodplain permits are required.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



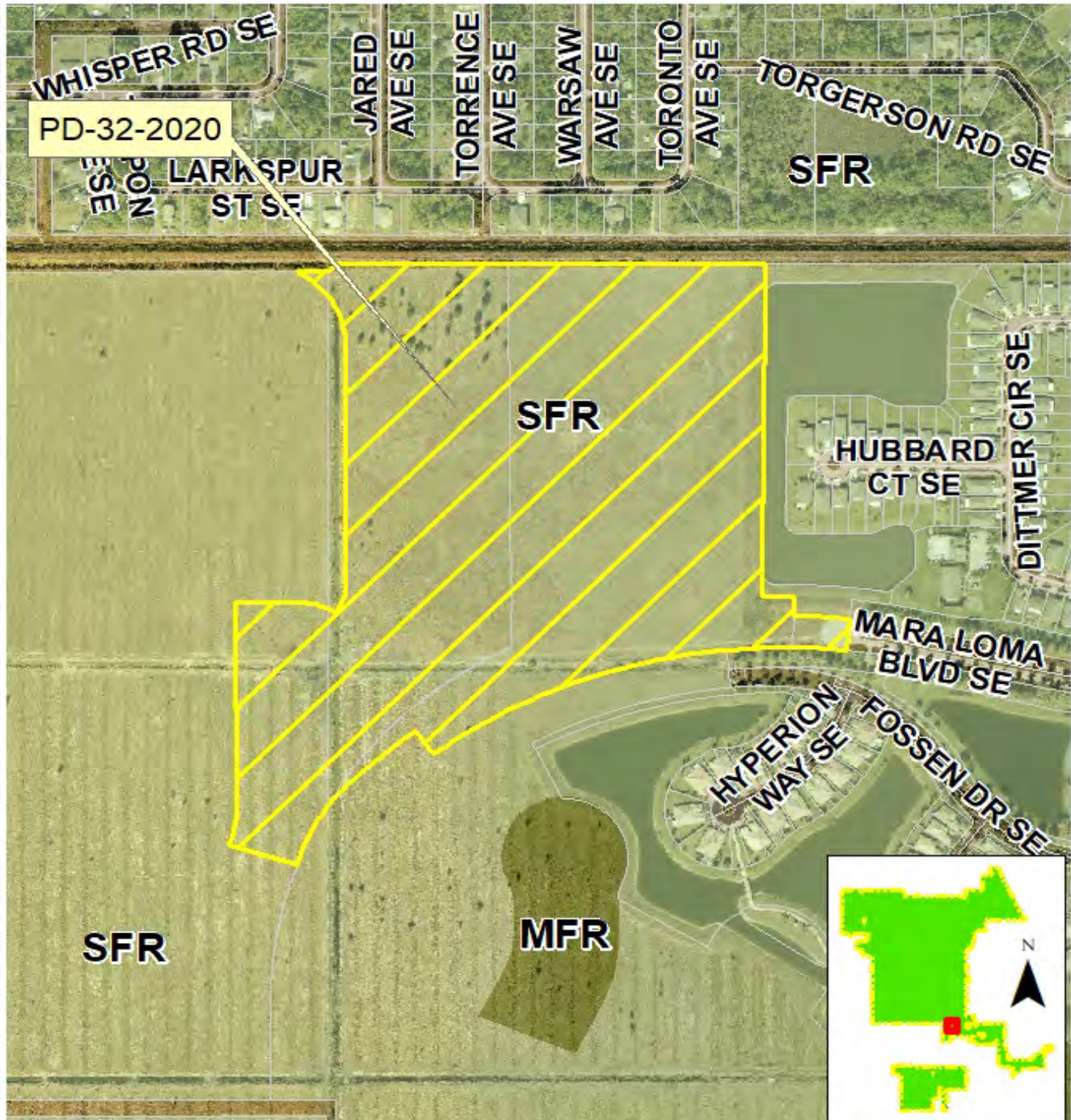
## AERIAL LOCATION MAP CASE PD-32-2020

### Subject Property

West of and adjacent to Mara Loma Boulevard SE and south of the Melbourne Tillman Water Control District Canal 38



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## FUTURE LAND USE MAP CASE PD-32-2020

### Subject Property

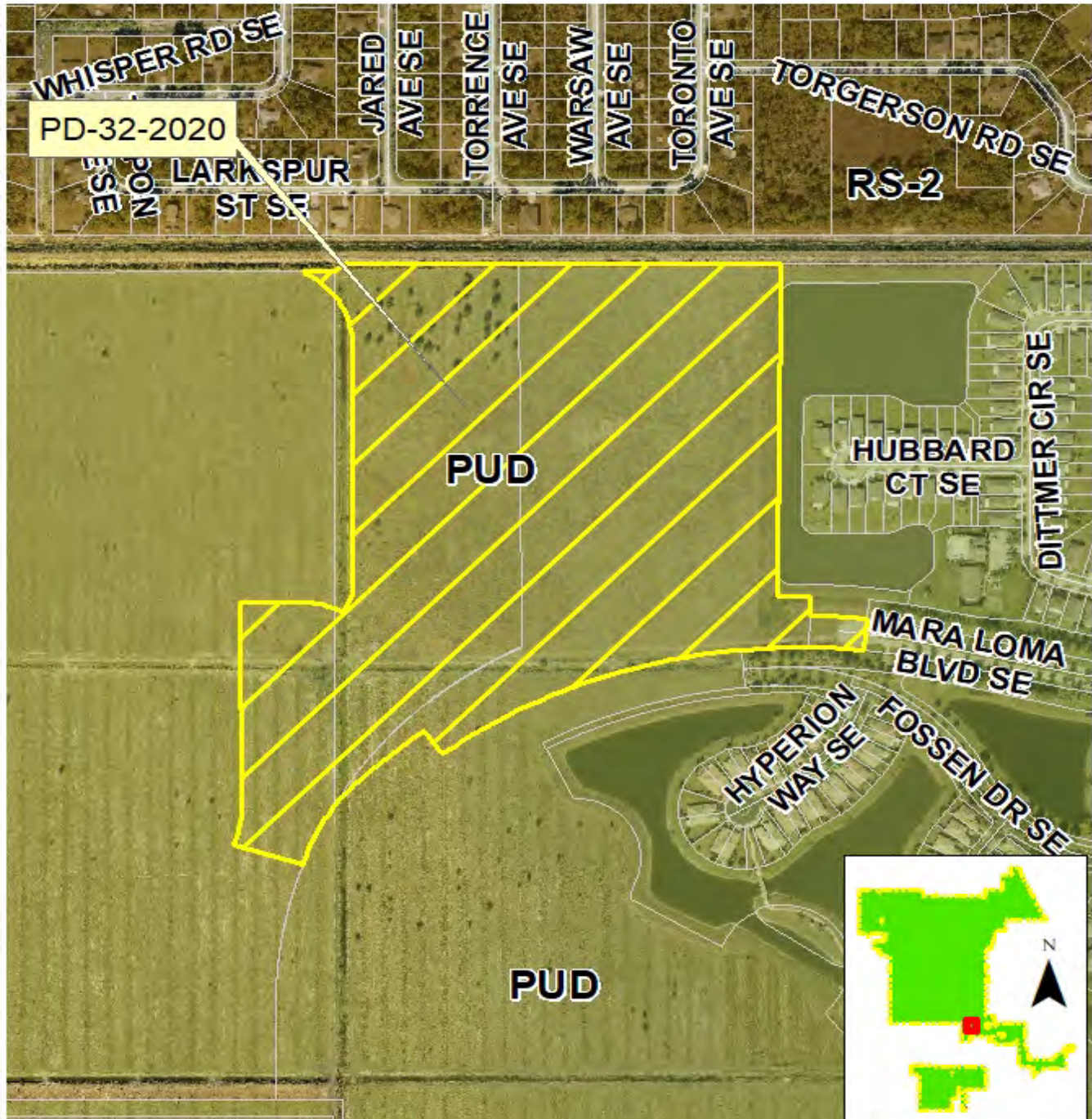
West of and adjacent to Mara Loma Boulevard SE and south of the Melbourne Tillman Water Control District Canal 38

### Future Land Use Classification

SFR – Single Family Residential Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## ZONING MAP

## CASE PD-32-2020

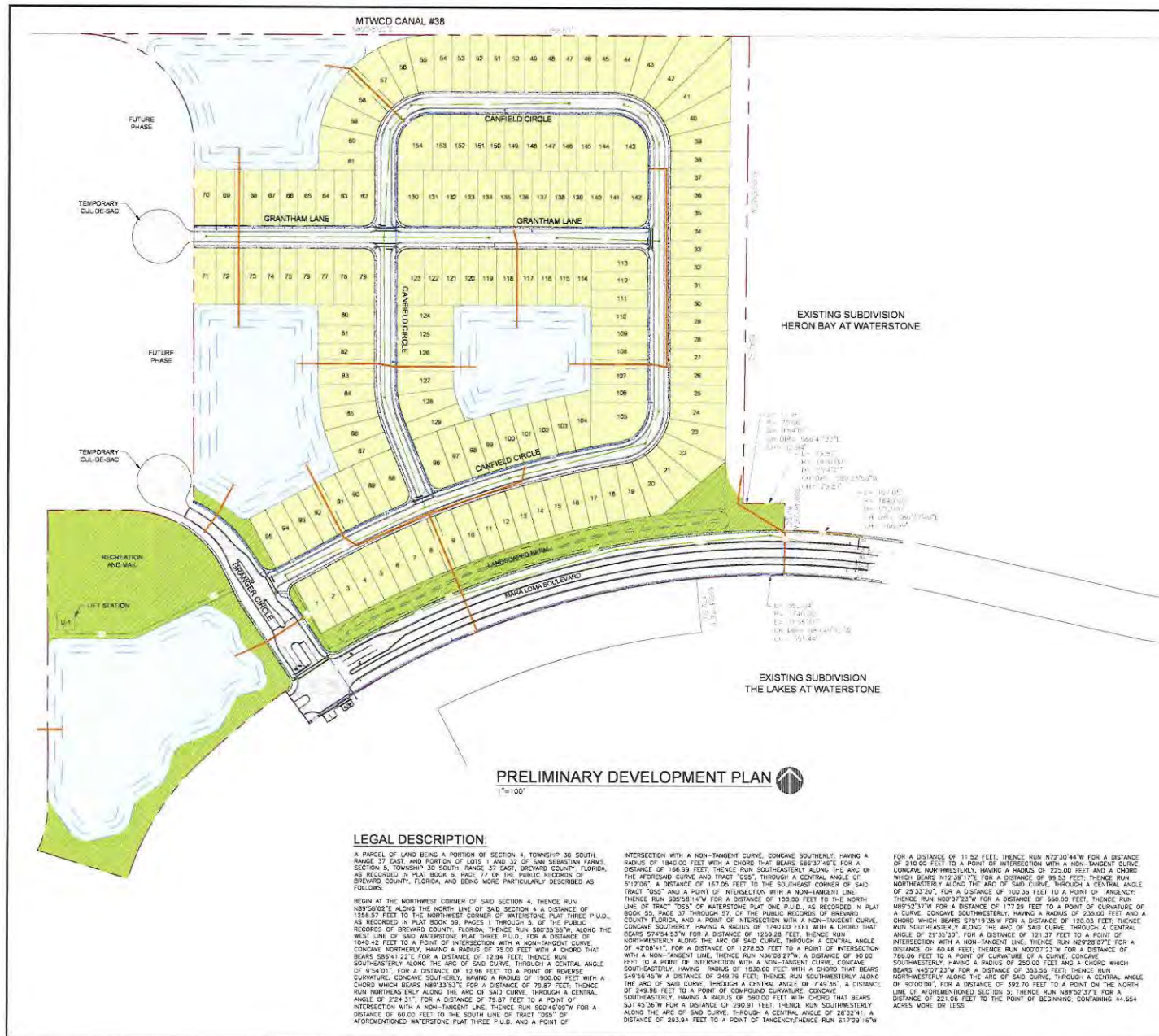
### Subject Property

West of and adjacent to Mara Loma Boulevard SE and south of the Melbourne Tillman Water Control District Canal 38

### Current Zoning Classification

PUD – Planned Unit Development





# PROJECT DATA:

**GENERAL STATEMENT:**  
THE PROPOSED PROJECT CONSISTS OF INFRASTRUCTURE AND SITE IMPROVEMENTS TO ACCOMMODATE A 154 LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION INCLUDING VEHICULAR ACCESS, SIDEWALKS, PEDESTRIAN EXERCISE TRAILS, A FUTURE AMENITY CENTER, LANDSCAPING, WATER, SEWER AND STORMWATER SYSTEMS. IT PROPOSES TO EXTEND MARK LOMA BOULEVARD AND CONTINUE THE MANICURED LANDSCAPED BEAMS.

**OWNER/APPLICANT:**  
WATERSTONE FARMS, LLC  
235 WEST DRIVE  
MELBOURNE, FL 32904  
TEL: (321) 757-5600

**CIVIL ENGINEER:**  
JAKE T. WISE, P.E.  
7651 EAU GALIE BLVD. SUITE A  
MELBOURNE, FLORIDA 32935  
TEL: (321) 610-1760  
E-MAIL: JWISE@ENGINEERING.COM

**SURVEYOR:**  
HORIZON SURVEYORS OF CENTRAL  
FLORIDA, INC.  
390 PONCHANA DRIVE  
MELBOURNE, FL 32935  
TEL: (321) 254-8133  
EMAIL: BOS@HORIZONSURVEYORS.COM

**LOCATION:**  
SECTION 35  
TOWNSHIP 25  
RANGE 36E  
PARCEL 101

**TAX ACCOUNT:**  
30-37-04-00-560  
30-37-09-HF-1  
30-37-04-00-250  
300216, 300017, 301060

SETBACKS	PROPOSED	LOT COUNT
FRONT:	25 FT	40 1/2" LOTS = 154
SIDE:	5 FT	MAXIMUM BUILDING HEIGHT
REAR:	20 FT	2 STORY: 25 FT
SIDE CORNER:	15 FT	MINIMUM WIDTH:
		SIDEWALKS: 5 FT
		RIGHT-OF-WAY WIDTH: 50 FT

CALCULATED STORMWATER BASIN COVERAGE	ACRE	PERCENT
IMPERVIOUS:	745.350	17.11
RESIDENTIAL (60%):	259.985	5.97
RIGHT-OF-WAY:	75.369	1.73
RECREATIONAL AREA:	1,080.754	24.81
TOTAL IMPERVIOUS:	1,162.220	2.67
PERVIOUS:	748.205	17.17
POND:	1,345.128	44.55
TOTAL:		100

OPEN SPACE REQUIREMENTS	ACRE
OVERALL AREA (44.55 ACRES)	
COMBINED ON SITE PONDS (75% MAXIMUM CREDIT FOR REQUIRED AREA)	13.20 AC
RECREATION AREA	2.16 AC
PROVIDED:	12.06 AC
REQUIRED:	11.16 AC



LOCATION MAP

## LEGEND:

PROJECT BOUNDARY	---
POND CONTOURS	---
STORM PIPE	---
WATER MAIN	---
SANITARY SEWER LINE	---
FORCE MAIN	---
RECREATION, LANDSCAPING AND OPEN SPACE	---
SINGLE FAMILY LOTS	---
STORM POND	---
ROADWAY	---
TEMPORARY CUL-DE-SAC	---
CONCRETE SIDEWALK	---

## LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 30 SOUTH, RANGE 37 EAST, AND PORTION OF LOTS 1 AND 22 OF SAN SEBASTIAN FARMS, SECTION 5, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 56, PAGE 77 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 4, THENCE RUN N89°50'02"E ALONG THE NORTH LINE OF SAID SECTION 4 A DISTANCE OF 128.57 FEET TO THE NORTHWEST CORNER OF WATERSTONE PLAT THREE P.U.D., AS RECORDED IN PLAT BOOK 56, PAGES 1 THROUGH 5, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, THENCE RUN S00°33'50"W, ALONG THE WEST LINE OF SAID WATERSTONE PLAT THREE P.U.D., FOR A DISTANCE OF 154.42 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 75.00 FEET WITH A CHORD THAT BEARS S88°12'21"E, FOR A DISTANCE OF 12.84 FEET, THENCE RUN S00°33'50"W, ALONG THE WEST LINE OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 45°41'01", FOR A DISTANCE OF 15.96 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 180.00 FEET WITH A CHORD WHICH BEARS N89°33'37"E, FOR A DISTANCE OF 79.87 FEET, THENCE RUN N08°52'37"E, FOR A DISTANCE OF 60.00 FEET TO THE SOUTH LINE OF TRACT 0551 OF AFOREMENTIONED WATERSTONE PLAT THREE P.U.D. AND A POINT OF

INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 184.00 FEET WITH A CHORD THAT BEARS S88°37'42"E, FOR A DISTANCE OF 166.59 FEET, THENCE RUN SOUTHEASTERLY ALONG THE ARC OF THE AFORESAID CURVE AND TRACT 0551, THROUGH A CENTRAL ANGLE OF 51°20'06", A DISTANCE OF 167.95 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 0551 AND A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, THENCE RUN S02°58'14"W, FOR A DISTANCE OF 100.00 FEET TO THE NORTH LINE OF TRACT 0551 OF WATERSTONE PLAT ONE P.U.D., AS RECORDED IN PLAT BOOK 55, PAGE 37 THROUGH 57, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 174.00 FEET WITH A CHORD THAT BEARS S24°24'53"W, FOR A DISTANCE OF 250.28 FEET, THENCE RUN N08°52'37"E, FOR A DISTANCE OF 127.53 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, THENCE RUN N08°52'37"E, FOR A DISTANCE OF 90.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 18.00 FEET WITH A CHORD THAT BEARS S49°58'45"W, A DISTANCE OF 249.75 FEET, THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 74°02'35", A DISTANCE OF 249.98 FEET TO A POINT OF COMPOUND CURVATURE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 290.91 FEET, THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°22'41", A DISTANCE OF 233.34 FEET TO A POINT OF TANGENCY, THENCE RUN S17°29'15"W

FOR A DISTANCE OF 11.52 FEET, THENCE RUN N72°30'44"W, FOR A DISTANCE OF 210.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 225.00 FEET AND A CHORD WHICH BEARS N72°30'17"E, FOR A DISTANCE OF 99.53 FEET, THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°33'20", FOR A DISTANCE OF 102.36 FEET TO A POINT OF TANGENCY, THENCE RUN N00°07'23"W, FOR A DISTANCE OF 66.00 FEET, THENCE RUN N89°52'37"E, FOR A DISTANCE OF 177.29 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, THENCE RUN N08°52'37"E, FOR A DISTANCE OF 121.37 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, THENCE RUN N08°52'37"E, FOR A DISTANCE OF 60.48 FEET, THENCE RUN N00°07'23"W, FOR A DISTANCE OF 78.06 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 250.00 FEET AND A CHORD WHICH BEARS N45°07'53"W, FOR A DISTANCE OF 333.55 FEET, THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", FOR A DISTANCE OF 392.00 FEET TO A POINT ON THE NORTH LINE OF AFOREMENTIONED SECTION 3, THENCE RUN N89°52'37"E, FOR A DISTANCE OF 221.00 FEET TO THE POINT OF BEGINNING, CONTAINING 44.55 ACRES MORE OR LESS.

DATE	09/18/20
SCALE	1"=100'
PROJ. NO.	190081
DESIGNED BY	CCM
DRAWN BY	EMB
CHECKED BY	JTW
DRAWING NO.	GW-1

**CONSTRUCTION ENGINEERING GROUP**  
Consulting Engineers

**GARDENS OF WATERSTONE**  
WATERSTONE FARMS, LLC  
MARK LOMA BOULEVARD, PALM BAY, FLORIDA  
PRELIMINARY DEVELOPMENT PLAN



Land Development Division  
120 Malabar Road SE  
Palm Bay, FL 32907  
321-733-3042  
Landdevelopmentweb@palmabayflorida.org

## PRELIMINARY DEVELOPMENT PLAN APPLICATION

This application must be completed, legible, and returned, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, Monday through Friday, during division office hours, to be processed for consideration by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

### APPLICATION TYPE:

☒ **PUD**

Planned Unit Development  
(Section 185.060)

☐ **PMU**

Parkway Mixed Use District  
(Preliminary Design Plan)  
(Section 185.057)

☐ **PCRD**

Planned Community  
Redevelopment District  
(Section 185.055)

☐ **RAC**

Regional Activity Center District  
(Preliminary Concept Plan)  
(Section 185.056)

PROPOSED DEVELOPMENT NAME Gardens at Waterstone

PARCEL ID Parcel ID:30-37-04-00-250 Portions of:Parcel ID:30-37-04-00-500/Parcel ID:30-37-05-HF-1

TAX ACCOUNT NO. Portions of Account:3010608/3000217/3000216

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

See attached

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 44.654 acres plus or minus

TOTAL LOTS PROPOSED (list by use): 154 Single family homes

DEVELOPER DEVELOPER IS UNKNOWN AT THIS TIME; OWNER/APPLICANT: Rochelle Lawandales, FAICP

Full Address for WATERSTONE FARMS, LLC 235 West Drive, Melbourne, FL 32904

Telephone 321.223.4664 Email rochelle.lawandales@gmail.com

ENGINEER Jake Wise, PE CEG

Full Address 32935 2651 Eau Gallie Blvd., Suite A, Melbourne, FL 32935

Telephone Tel. 321.253.1221 Email jwise@cegengineering.com

SURVEYOR Horizon Surveyors

Full Address 390 Poinciana Drive Melbourne, FL 32935

Telephone 321.254.8133 Email bob@horizonsurveyors.com



**PRELIMINARY PLAN CRITERIA FOR SUBMITTAL:**

TWO (2) COPIES OF THE FOLLOWING EXHIBITS SHALL BE ATTACHED TO THE PRELIMINARY APPLICATION. THE EXHIBITS SHALL ALSO BE PROVIDED ON MEMORY DRIVE.

- A) Vicinity map clearly outlining subject property and showing the relationship between the site and its surrounding area including adjacent streets and thoroughfares.
- B) Preliminary Development Plan that shall contain maps, drawings and narrative, as appropriate, providing the following information:
  - 1) A general plan for the use of all lands within the proposed development. Such plans shall indicate the general location of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).
  - 2) Proposed name or title of project, the name of the engineer, architect, and developer.
  - 3) North arrow, scale (1 inch = 200 feet or larger), date and legal description of the proposed site.
  - 4) Boundaries of tract shown with bearings, distances, closures, and bulkhead liner. All existing easements, section lines, and all existing streets and physical features in and adjoining the project, and the existing zoning.
  - 5) Proposed parks, school sites, or other public or private open space.
  - 6) Off-street parking, loading areas, driveways and access points.
  - 7) Site data including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary residential and secondary non-residential uses, and the total number of dwelling units, the maximum height of all structures, the minimum setbacks of all structures (and parking areas) and the total area of pervious and impervious surfaces.
  - 8) Delineation of phased development, if applicable.
  - 9) Proposed means of drainage for the site.
- C) A plan of vehicular and pedestrian circulation showing the general locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.
- D) Schematic drawing of the elevation and architectural construction of the proposed primary and secondary nonresidential structures.
- E) A Traffic Study meeting generally accepted engineering practices examining the impact of the proposed development on the surrounding roadway network. (If applicable)
- F) Narrative describing in detail how the proposed Preliminary Development Plan meets the requirements of the Land Development Code and the Palm Bay Comprehensive Plan.

**ADDITIONAL CONDITIONS MUST BE MET AND INCORPORATED INTO THE SITE PLAN FOR THE SPECIFIC TYPE OF DEVELOPMENT REQUESTED (PUD, PMU, PCRD, RAC).** The additional criteria are listed in the Code of Ordinances and available from staff.

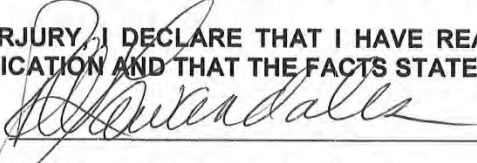
CITY OF PALM BAY, FLORIDA  
PRELIMINARY DEVELOPMENT PLAN APPLICATION  
PAGE 3 OF 3

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS PRELIMINARY DEVELOPMENT PLAN APPLICATION:

- ☒ \*A \$1,000.00 application fee shall accompany the Development Plan application for the purposes of administration. Make check payable to "City of Palm Bay."
- ☒ Vicinity Map (see Item A).
- ☒ Preliminary Development Plan (see Item B).
- ☒ Vehicular and Pedestrian Circulation Plan (see Item C).
- ☒ Schematic Drawing (see Item D).
- ☒ Traffic Study (see Item E).
- ☒ Narrative (see Item F).
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at 321-633-2060.)
- ☒ Citizen Participation Plan. Refer to Section 169.005 of the Land Development Code for guidelines.
- ☒ School Board of Brevard County School Impact Analysis Application (if applicable).
- TBD Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guidelines.
- NA **Where property is not owned by the applicant**, a letter must be attached giving the notarized consent of the owner to the applicant to apply for the preliminary development plan.

I, THE UNDERSIGNED UNDERSTAND THAT THIS PRELIMINARY DEVELOPMENT PLAN APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING PRELIMINARY DEVELOPMENT PLAN APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Applicant  Date 9-21-2020

Printed Name of Applicant Rochelle W. Lawandales, FAICP

Full Address 235 West Drive, Melbourne, FL 32904

Telephone Cell: 321.223.4664 Email rochelle.lawandales@gmail.com

\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 30 SOUTH, RANGE 37 EAST, AND PORTION OF LOTS 1 AND 32 OF SAN SEBASTIAN FARMS, SECTION 5, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 6, PAGE 77 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 4; THENCE RUN N89°58'02"E ALONG THE NORTH LINE OF SAID SECTION 4 A DISTANCE OF 1258.57 FEET TO THE NORTHWEST CORNER OF WATERSTONE PLAT THREE P.U.D., AS RECORDED IN PLAT BOOK 59, PAGES 1 THROUGH 5, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE RUN S00°35'55"W, ALONG THE WEST LINE OF SAID WATERSTONE PLAT THREE P.U.D., FOR A DISTANCE OF 1040.42 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 75.00 FEET WITH A CHORD THAT BEARS S86°41'22"E FOR A DISTANCE OF 12.94 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 9°54'01", FOR A DISTANCE OF 12.96 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1900.00 FEET WITH A CHORD WHICH BEARS N89°33'53"E FOR A DISTANCE OF 79.87 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°24'31", FOR A DISTANCE OF 79.87 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN S00°46'09"W FOR A DISTANCE OF 60.00 FEET TO THE SOUTH LINE OF TRACT "OS5" OF AFOREMENTIONED WATERSTONE PLAT THREE P.U.D. AND A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1840.00 FEET WITH A CHORD THAT BEARS S86°37'49"E FOR A DISTANCE OF 166.99 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF THE AFORESAID CURVE AND TRACT "OS5", THROUGH A CENTRAL ANGLE OF 5°12'06", A DISTANCE OF 167.05 FEET TO THE SOUTHEAST CORNER OF SAID TRACT "OS5" AND A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN S05°58'14"W FOR A DISTANCE OF 100.00 FEET TO THE NORTH LINE OF TRACT "OS5" OF WATERSTONE PLAT ONE P.U.D., AS RECORDED IN PLAT BOOK 55, PAGE 37 THROUGH 57, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA, AND A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1740.00 FEET WITH A CHORD THAT BEARS S74°54'53"W FOR A DISTANCE OF 1250.28 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 42°06'41", FOR A DISTANCE OF 1278.53 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N36°08'27"W, A DISTANCE OF 90.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING RADIUS OF 1830.00 FEET WITH A CHORD THAT BEARS S49°56'45"W A DISTANCE OF 249.79 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 7°49'36", A DISTANCE OF 249.98 FEET TO A POINT OF COMPOUND CURVATURE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 590.00 FEET WITH CHORD THAT BEARS S31°45'36"W FOR A DISTANCE OF 290.91 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°32'41, A DISTANCE OF 293.94 FEET TO A POINT OF TANGENCY; THENCE RUN S17°29'16"W FOR A DISTANCE OF 11.52 FEET; THENCE RUN N72°30'44"W FOR A DISTANCE OF 210.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 225.00 FEET AND A CHORD WHICH BEARS N12°39'17"E FOR A DISTANCE OF 99.53 FEET; THENCE RUN



NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°33'20", FOR A DISTANCE OF 100.36 FEET TO A POINT OF TANGENCY; THENCE RUN N00°07'23"W FOR A DISTANCE OF 660.00 FEET; THENCE RUN N89°52'37"W FOR A DISTANCE OF 177.29 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 235.00 FEET AND A CHORD WHICH BEARS S75°19'38"W FOR A DISTANCE OF 120.03 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°35'30", FOR A DISTANCE OF 121.37 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N29°28'07"E FOR A DISTANCE OF 60.48 FEET; THENCE RUN N00°07'23"W FOR A DISTANCE OF 786.06 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 250.00 FEET AND A CHORD WHICH BEARS N45°07'23"W FOR A DISTANCE OF 353.55 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", FOR A DISTANCE OF 392.70 FEET TO A POINT ON THE NORTH LINE OF AFOREMENTIONED SECTION 5; THENCE RUN N89°52'37"E FOR A DISTANCE OF 221.06 FEET TO THE POINT OF BEGINNING; CONTAINING 44.654 ACRES MORE OR LESS.

September 21, 2020

Re: Letter of Authorization

As the property owner of the site legally described as:

Account:3000216Parcel ID:30-37-04-00-500/Account:3000217Parcel ID:30-37-05-HF-1/  
Account:3010608Parcel ID:30-37-04-00-250/Account:3000219Parcel ID:30-37-05-HF-750

I, Owner Name: Benjamin E. Jefferies, Managing Member, Waterstone Farms, LLC

Address: 235 West Drive Melbourne, Florida 32904

Telephone: 321.258.7984

Email: ben@waterstonefl.com

hereby authorize:

Representative: Jake T. Wise, PE (CEG, Engineering)

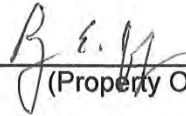
Address: 2651 Eau Gallie Blvd. Suite A Melbourne, Florida 32935

Telephone: 321.610-1760

Email: jwise@cegengineering.com

to represent the request(s) for:

Any and all applications regarding properties owned by Waterstone Farms, LLC



(Property Owner Signature)

STATE OF

Florida

COUNTY OF

Brevard

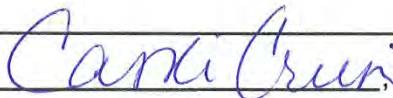
The foregoing instrument was acknowledged before me by means of ☒ physical  
presence or ☐ online notarization, this 23 day of Sept., 2020 by

Ben Jefferies

, property owner.



Cami Crupi  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG117304  
Expires 6/21/2021



Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

September 21, 2020

Re: Letter of Authorization

**As the property owner of the site legally described as:**

Account:3000216Parcel ID:30-37-04-00-500/Account:3000217Parcel ID:30-37-05-HF-1/  
Account:3010608Parcel ID:30-37-04-00-250/Account:3000219Parcel ID:30-37-05-HF-750

I, Owner Name: Benjamin E. Jefferies, Managing Member, Waterstone Farms, LLC

Address: 235 West Drive Melbourne, Florida 32904

Telephone: 321.258.7984

Email: ben@waterstonefl.com

**hereby authorize:**

Representative: Rochelle W. Lawandales, FAICP

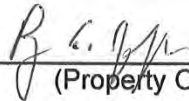
Address: 235 West Drive Melbourne, Florida 32904

Telephone: 321.223.4664

Email: rochelle.lawandales@gmail.com

**to represent the request(s) for:**

Any and all applications regarding properties owned by Waterstone Farms, LLC



(Property Owner Signature)

STATE OF

Florida

COUNTY OF

Brevard

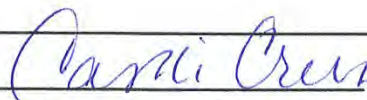
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23 day of September, 2020 by

Ben Jefferies

, property owner.



Cami Crupi  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG117304  
Expires 6/21/2021



Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

**TAB C**

**Gardens at Waterstone  
Preliminary Development Plan Amendment  
Compliance and Justification Report**

**Prepared by:**  
**Rochelle W. Lawandales, FAICP**  
**Waterstone Development Company, LLC for**  
**Applicant:**  
**Waterstone Farms, LLC**

**September 24, 2020**



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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**PROJECT: GARDENS AT WATERSTONE**

Gardens is a 154 lot single family subdivision with supporting infrastructure and site improvements including vehicular access, sidewalks, pedestrian/exercise trails, a future amenity center, landscaping, utilities, and stormwater to be located at the west end of the existing Mara Loma Boulevard. Map A shows the project location.

**OWNER:**

Benjamin E. Jefferies, Waterstone Development Company, LLC Managing Member of Waterstone Farms, LLC.

**EXISTING ZONING:** Planned Unit Development

**LAND USE:** Single Family Residential

**REQUEST:**

The owner seeks approval for a new Preliminary Development Plan in an existing PUD district zoning for a project to be called "Gardens at Waterstone", which is a portion of the prior approved Master development plan located west of Heron Bay. It was originally part of the Heron Bay subdivision, designed for 38' and 40' lots and this project seeks to construct 154, 40' x 125' lots.

**APPLICATION PACKAGE SUBMISSION:**

This package includes the following required items from the City's PUD application form:

**TAB:**

- A. 1. CHECK IN THE AMOUNT OF \$1,000
  - 2. APPLICATION AND LETTERS OF AUTHORIZATION
  - B. PRELIMINARY DEVELOPMENT PLAN BY CEG, SHOWING VICINITY, VEHICULAR AND PEDESTRIAN CIRCULATION AND ALL ITEMS IN (B)
  - C. NARRATIVE COMPLIANCE AND JUSTIFICATION REPORT, WHICH INCLUDES:
    - 1. APPROVED PRELIMINARY DEVELOPMENT PLAN 2005 ESTABLISHING ZONING
    - 2. CONCURRENCY DETERMINATION INFORMATION
    - 3. RESUME OF ROCHELLE W. LAWANDALES, FAICP
    - 4. OCTOBER, 2019 LETTER FROM LARRY BRADLEY REGARDING ZONING AND PUD
  - D. ENVIRONMENTAL ASSESSMENT BY JON SHEPHARD ATLANTIC ENVIRONMENTAL SERVICES
  - E. LASSITER TRANSPORTATION GROUP CONCURRENCY LETTER DATED APRIL 11, 2018 to CHRISTOPHER BALTER, CITY OF PALM BAY
  - F. STORMWATER PERMIT
  - G. CITIZEN PARTICIPATION PLAN
  - H. LIST OF ADJACENT PROPERTY OWNERS FROM BREVARD COUNTY PLANNING
-



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

**EXECUTIVE SUMMARY**

Property owned by Wheeler Farms was annexed into the City in 2004 via Ordinance 2004-35 totaling 1167 acres. The original Future Land Use amendment designating all the lands single family residential was accomplished in 2004 via Ordinance 2004-52 and 1800 residential units could be placed on either Waterstone (west of Babcock Street) or the original acres owned by Wheeler on lands currently known as Cypress Bay Preserve (east of Babcock Street). Site specific conditions were placed on the amendment in Ordinance 2004-48, in Policy FU 8.3 (G), adopted the same date as Ordinance 2004-52. Between 2005 and 2018, a series of 37 future land use map amendments have been made bringing the total units entitled for construction to be over 2,500. The Table 1 below shows the current entitlements:

Table 1  
Current Residential Entitlements

WATERSTONE AND CYPRESS BAY			
ORIGINAL APPROVALS		WESTSIDE*	EASTSIDE*
As of October 2014 David Watkins' letter		2191	1058**
Less platted (Heron Bay and Lakes)		-296	
Total as of October 2014 David Watkins' letter		1895	1058
Number adjustments required for City failure to process small scale amendments by Divosta:			
Less 41 acreage as multifamily @ 10 units per acre		-417	
Plus 41 acres single family @1.5 units/ac		60	
Revised Total as of 2017		1538	1058
2018 and 2019 MODIFICATIONS			
Cypress Bay Farms Residential PUD	(FD 18-2018/ Ord 2019-02 APPROVED JANUARY, 2019)		-396
Courtyards PD	( FD-19-2019/Ord 2019-69 APPROVED JANUARY 2, 2020)	-201	
Waterstone Small Scale Amendments from SF to MF totalling 16.487 acres @ 10 units/ac	(CP-6-7-8-2018 approved by Ordinances 2018-20, 21, 22)	165	
Transfer of 300 to West Side per Original approval and David Watkins letter		300	-300
GRAND TOTAL ALL UNITS AS OF JUNE, 2020		1802	362
*WESTSIDE refers to the area on the west side of Babcock Street known as Waterstone (Including Waterstone Farms, LLC and Waterstone Holdings, LLC)			
*EASTSIDE refers to the lands on the east side of Babcock Street referred to Cypress Bay owned by Cypress Bay Farms, LLC			
**300 original units were able to go to west side.			

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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The Project underwent an ownership change and Pulte (Divosta Division) brought forth a Preliminary Development Plan for the 1167 acres and obtained Final Development Plan approval and PUD zoning in 2005 (See Map B) and began to permit, develop and complete several phases, including Heron Bay and the Lakes of Waterstone, which included 296 units, an elementary school site, and recreational amenities which are built and sold out today. The approval also included concurrency for 900 units, water and sewer, and other infrastructure. Map C shows the original development plan, and the area now proposed for the Gardens.

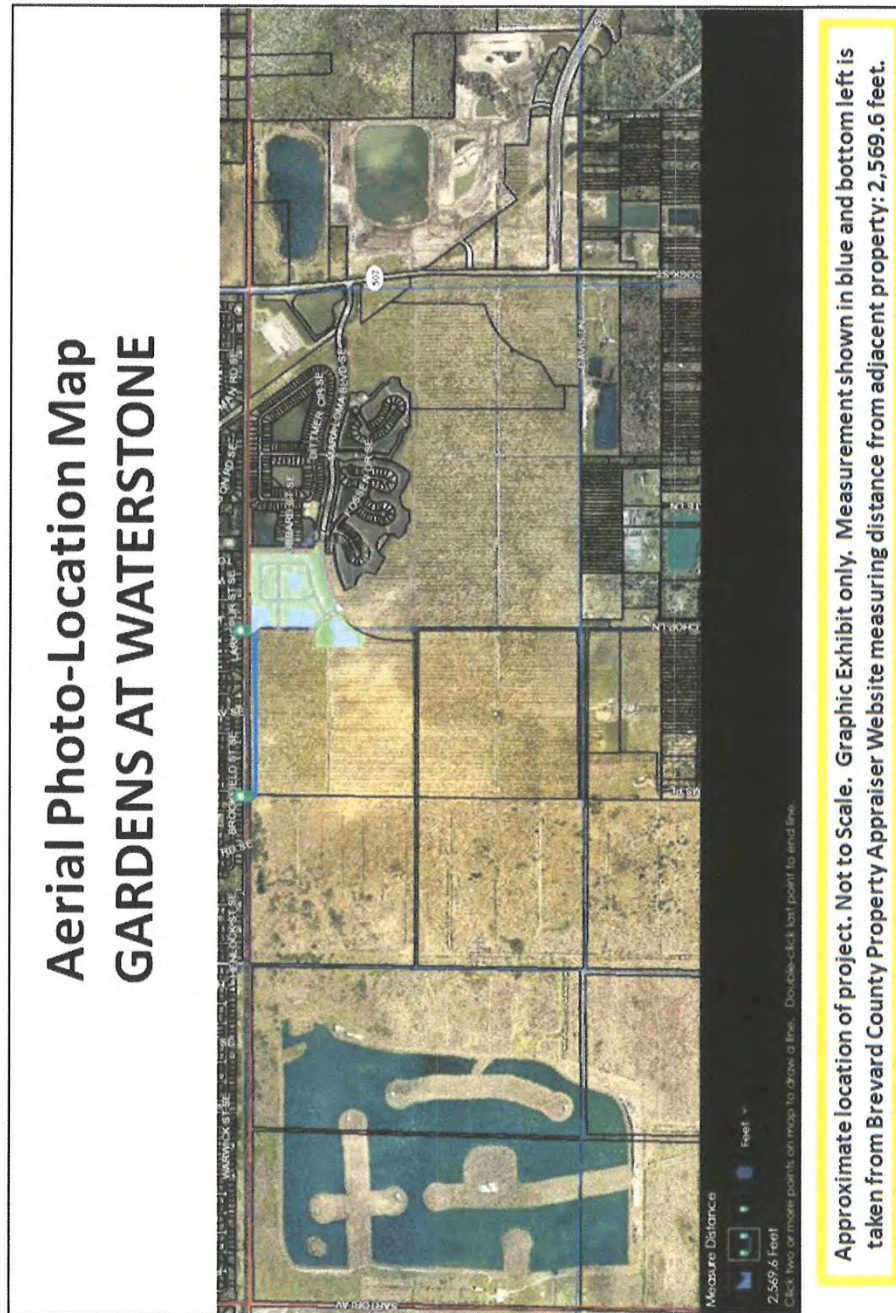
Waterstone revised the project lay-out in 2017 and submitted a new Preliminary Development Plan for the lands on the west side of Babcock Street to amend the 2005 development plan. The City Council granted Preliminary Development Plan approval on January 18, 2018. Final Development Plan/Preliminary Plat approval was granted by City Council action on June 7, 2018 for the 'Gardens at Waterstone', a phase of Waterstone in the northwest segment. That project was not adopted properly and became void.

With this new application, the owners, Waterstone Farms, LLC are petitioning the City for approval of a new preliminary development plan only for the Gardens Phase 1. Construction would begin after approval of a Final Development Plan, Preliminary Plan and construction plans. Map D shows the design, layout, vehicular and pedestrian circulation, open space, utilities, and stormwater system to meet the code requirements.



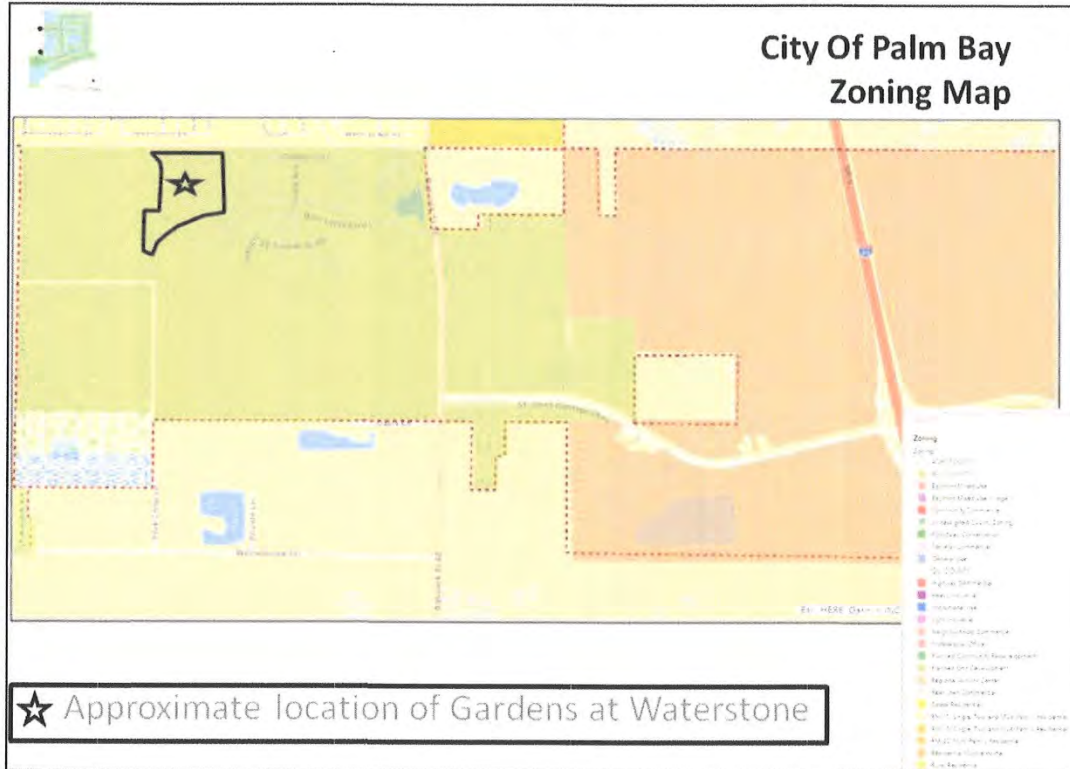
WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

MAP A  
LOCATION MAP



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

**MAP B  
CITY ZONING MAP**



**HISTORY OF WATERSTONE**

During the period from 2006 to 2010, Pulte Homes and their subsidiary, DiVosta Homes, completed a wide variety of permits, agency approvals, traffic and engineering studies, environmental studies, comprehensive land use and zoning approvals for Waterstone. Pulte constructed a .6 mile long connector roadway off of Babcock Street called Mara Loma Boulevard, obtained County and City traffic concurrency for 900 units and provided for lands for an elementary school. Regional water and sewer mains were extended from just north of Valkaria Road to the western terminus of Mara Loma Boulevard. 296 Single family homes were constructed in the communities of Heron Bay and The Lakes at Waterstone. The Brevard County School Board constructed Sunrise Elementary School. Pulte Homes left the City of Palm Bay as a result of the financial crash in 2008. Pulte closed out Heron Bay and The Lakes at Waterstone communities by the end of 2010. The remaining PUD property was acquired by the applicants.

As required by the original land use approvals, Waterstone provides a mix of uses with the Waterstone Commercial Center with its significant frontage on the west side of Babcock Street. It will contain 133 acres, more or less, broken into lots and tracts sufficient in size for a variety of retail, office and related commercial uses to support the region. FDOT has completed the I-95 Interchange and the City has completed construction of the St. Johns Heritage Parkway (SJHP) from Babcock Street east to I-95.



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

Numerous commercial developers and commercial project owners are ready to come into the City of Palm Bay, and with the roadway network now available and more residential units being planned and constructed, the demand for and support of commercial ventures will rise.

A three mile water and sewer main running along Babcock Street from Valkaria Road south to Mara Loma Boulevard was installed completely at the developer's expense for the Waterstone project. In addition, when Mara Loma Boulevard was extended west from Babcock Street approximately 2,600 feet, large force mains, water mains, and three sewer lift stations were installed. All totaled, over \$10 million has been spent over the course of time on infrastructure improvements, including Mara Loma Blvd., 3 lift stations and utilities, permits, traffic/planning/environmental studies, stormwater management, environmental mitigation, and dedication of Rights-of-Way for the Parkway, among other items for the Waterstone project. The City has made commitments to assure future capacity through wastewater plant expansions.

Additionally, over the last 3 years, numerous meetings regarding the Waterstone/Cypress Bay master plans, transportation and infrastructure requirements and improvements, utility needs and extensions, have been held not only with Palm Bay officials and staff, but also with Brevard County, FDOT, Florida Power and Light, environmental regulatory agencies, and others to assure not only the highest quality product, but one that also will be a signature project for the City of Palm Bay.

The remaining land outside of the first phases developed by Pulte Homes is under the ownership of Waterstone Farms, LLC, and Waterstone Holdings, LLC. These companies have been working diligently over the last 10 years and have:

1. Obtained environmental permits from the Army Corps of Engineers and conceptual SJRWMD for the proposed residential areas of Waterstone;
2. Submitted traffic studies to the City and County for the developments planned for Waterstone;
3. Performed a signal warrant study for the Babcock/St. Johns Heritage Parkway (SJHP) intersection; and submitted requests for County permits for driveways and an access management plan for Babcock Street;
4. Obtained Final SJRWMD permits for the Waterstone Commercial Center;
5. Obtained Preliminary PUD approval for Waterstone (lands west of Babcock) in January, 2018;
6. Obtained Conceptual SJRWMD permits for 803 acres under a master stormwater system (on file with SJRWMD);
7. Obtained Final PUD approval for a 283 lot subdivision called the Gardens at Waterstone on June 7, 2018;
8. Obtained Final SJRWMD permit for 101 acres, covering the Gardens at Waterstone, for a the stormwater system to serve the subdivision;
9. Obtained Final PUD approval for 201 lot subdivision called 'Courtyards at Waterstone' in January, 2020. That project is under construction.

On January 18, 2018, Waterstone Holdings, LLC, Waterstone Farms, LLC and DR Horton, as co applicants, obtained approval of a revised Preliminary Development Plan amending the 2005 Master Plan for the undeveloped property on the west side of Babcock Street for a 1770 unit residential development. This approval included the Waterstone Commercial Center containing 133 acres fronting Babcock Street and Waterstone at Palm Bay consisting of 604 acres west of the commercial center, south and west of The Lakes at Waterstone and Heron Bay communities for a series of residential subdivisions.



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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The first development phase of Waterstone at Palm Bay was intended to be "The Gardens of Waterstone at Palm Bay"; however, no construction has commenced nor other final development plans filed for other phases of the project since approval of the preliminary development plan or Gardens' final development plan. Therefore, under the City's code both preliminary and final development plans have expired.

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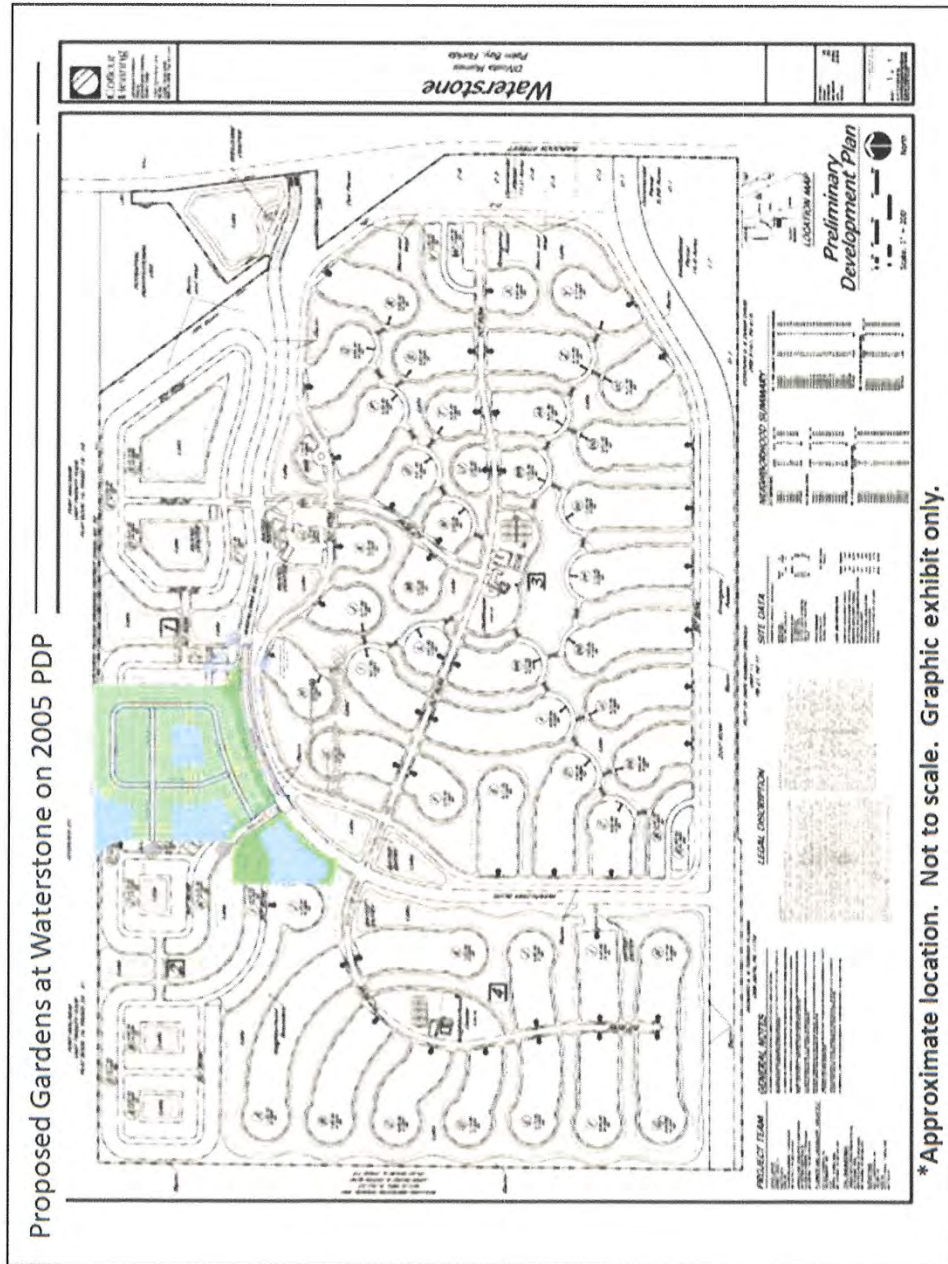
**PRELIMINARY DEVELOPMENT PLAN (Map D) for 'GARDENS OF WATERSTONE'**

Gardens is a 154 lot subdivision. The project will use a new access point to be created off Mara Loma Boulevard on a new private road to be called Rixford Way. There are utilities available to service the development and Waterstone retains County traffic concurrency for 403 units.

The following discussion relates specifically to this proposed subdivision and application. Map D shows the proposed Gardens preliminary development plan. The project data table below identifies the number and type of lots, percentages for categorical site areas and improvements, and open space.

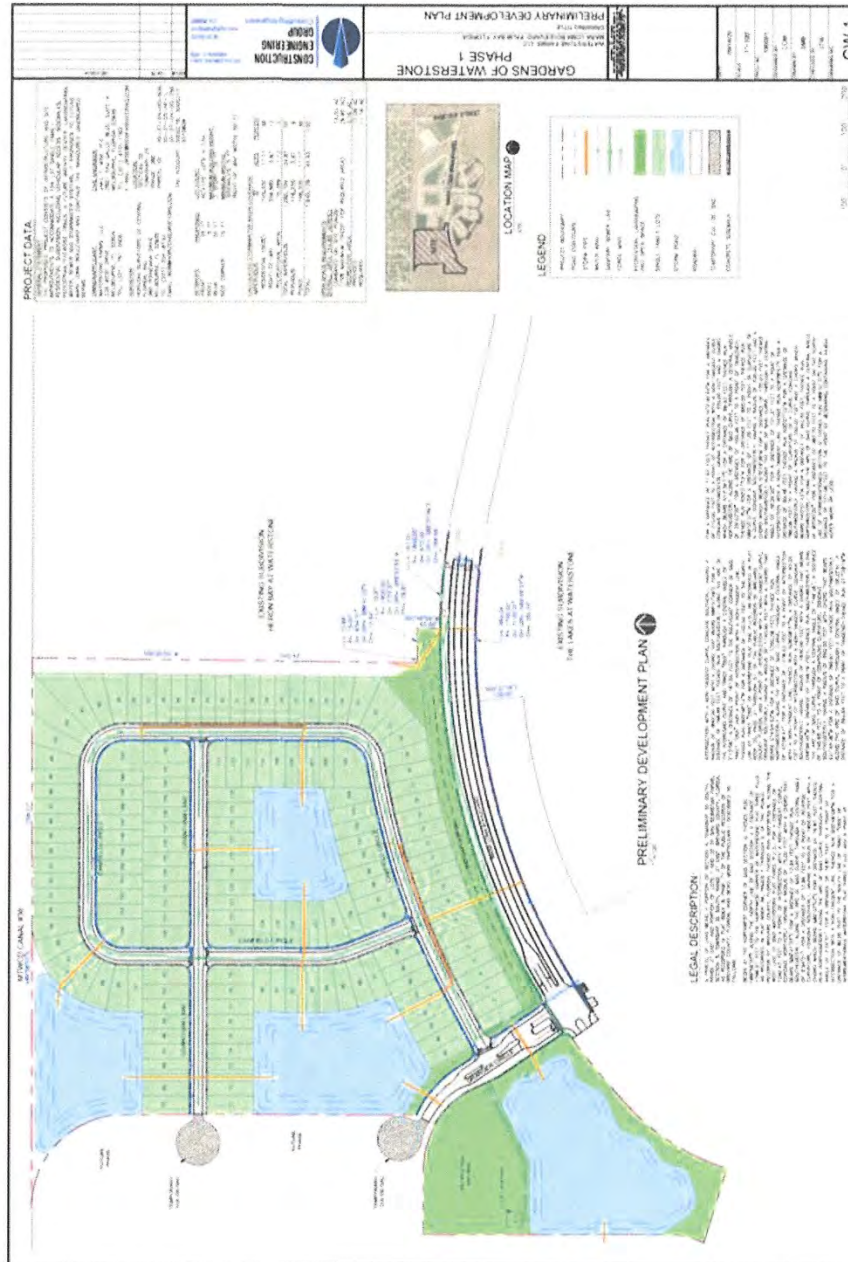
WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

MAP C  
ORIGINAL PRELIMINARY DEVELOPMENT PLAN FOR WATERSTONE AT PALM BAY WITH APPROXIMATE  
LOCATION OF GARDENS





**MAP D**  
**PROPOSED PRELIMINARY DEVELOPMENT PLAN FOR GARDENS AT WATERSTONE SUBDIVISION (Large**  
**version in Tab B)**



**WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE**

**Table 2  
PROJECT DATA**

<u>SETBACKS</u>	<u>PROPOSED:</u>	<u>LOT COUNT:</u>	
FRONT:	25 FT	40'x125' LOTS = 154	
SIDE:	5 FT	<u>MAXIMUM BUILDING HEIGHT:</u>	
REAR:	20 FT	2 STORY: 25 FT	
SIDE CORNER:	15 FT	<u>MINIMUM WIDTHS:</u>	
		SIDEWALKS: 5 FT	
		RIGHT-OF-WAY WIDTH: 50 FT	
<u>CALCULATED STORMWATER BASIN COVERAGE:</u>			
<u>IMPERVIOUS:</u>	<u>SF</u>	<u>ACRE</u>	<u>PERCENT</u>
RESIDENTIAL (60%):	745,350	17.11	38
RIGHT-OF-WAY	259,985	5.97	13
RECREATIONAL AREA:	75,369	1.73	4
TOTAL IMPERVIOUS:	1,080,704	24.81	56
PERVIOUS:	116,220	2.67	6
POND:	748,205	17.17	38
TOTAL:	1,945,129	44.65	100
<u>OPEN SPACE REQUIREMENTS:</u>			
<u>OVERALL AREA (44.65 ACRES):</u>			
COMBINED ON SITE PONDS:			13.20 AC
(75% MAXIMUM CREDIT FOR REQUIRED AREA):			(9.90 AC)
RECREATION AREA:			2.16 AC
PROVIDED:			12.06 AC
REQUIRED:			11.16 AC

Source: Project Data taken from Preliminary and Final Development Plans, dated September 22, 2020

**DEVELOPMENT PHASING**

As it currently stands, the project is one phase.

**DEVELOPMENT SCHEDULE**

The project will commence upon receipt of construction plan approval in early 2021. It will take approximately 1-2 years to build out with an anticipated take down of 75 units per year.

**CONSISTENCY WITH THE COMPREHENSIVE PLAN and FUTURE LAND USE MAP**

Based upon my knowledge of the City's Comprehensive Plan and its contents, Gardens Preliminary development plans are consistent with the Goals, Objectives and Policies of the Comprehensive Plan and the Future Land Use Map. The City received a compliance determination for the initial approved land uses and subsequent amendments on the property. Those documents are on public record with the City and State Department of Economic Opportunity.



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

**LAND USE**

Map E, uses the City's GIS system to depict the future land uses for the project which is all Single Family Residential (SFR). Gardens is a single-family subdivision, including ancillary infrastructure, stormwater management, open space and recreational amenities. Stormwater or lands devoted to infrastructure can be done in any category. No land use changes are necessary. The Zoning is Planned Unit Development "PUD" awarded in 2005. Therefore, the project site and single family uses are in conformance with the City's Comprehensive Plan, Future Land Use Map and Existing Zoning Map

**MAP E  
FUTURE LAND USE MAP FROM CITY WEBSITE**

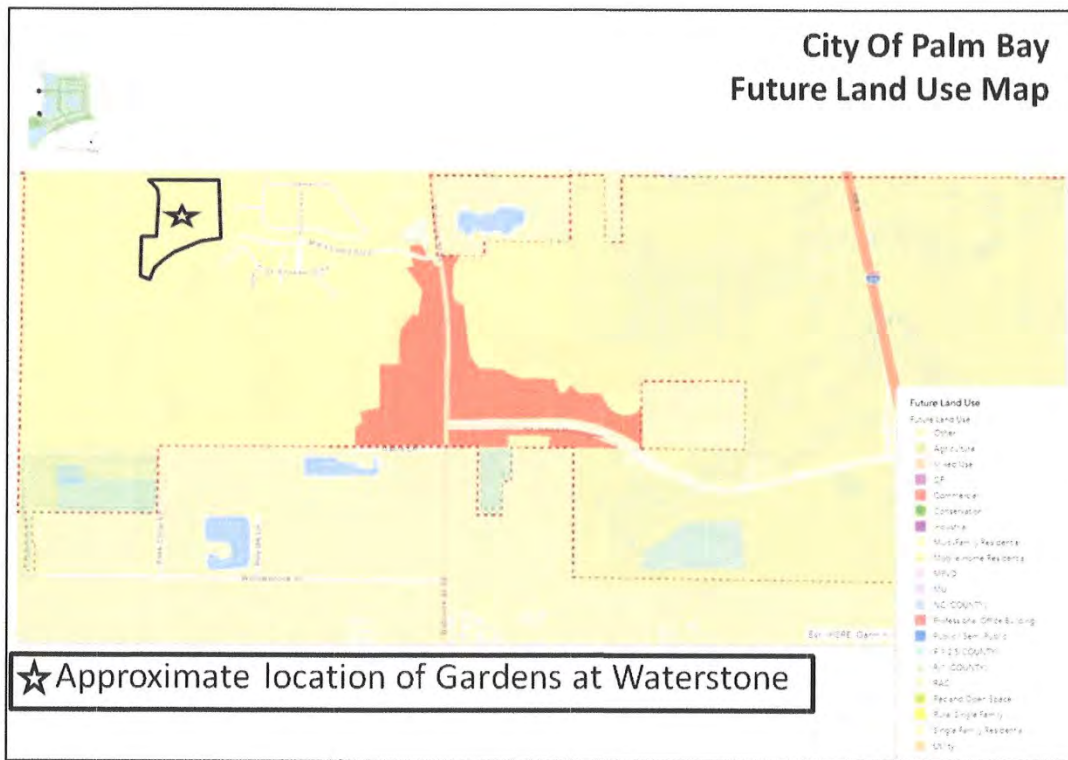


Figure 1 below also shows the land uses within the City's Study Area Boundary taken from the Comprehensive Plan in the City's website. Figure 2 shows the project is contained within the urban service boundary and also shows the historic location of the western St. Johns Heritage Parkway.

**WATERSTONE FARMS, LLC  
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PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE**

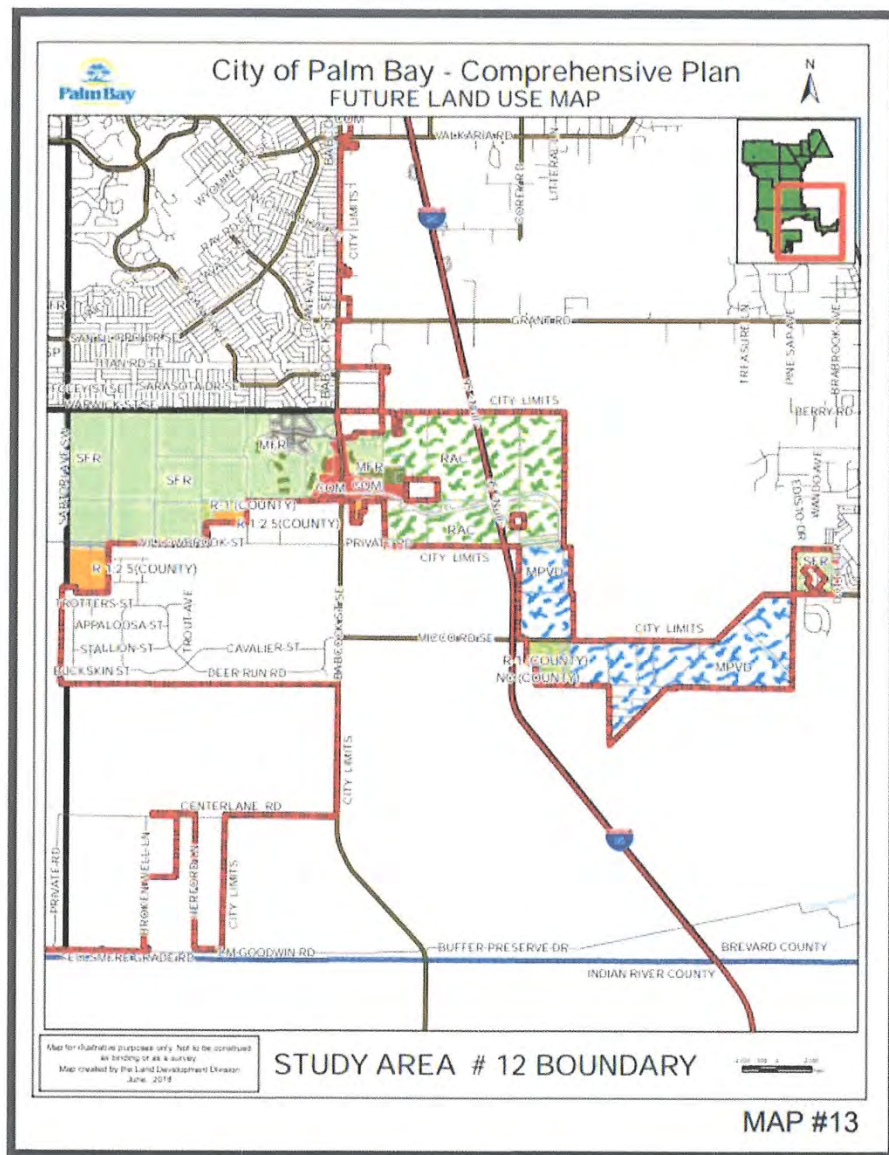


Figure 1: Future Land Use Map taken from the City's Comprehensive Plan on the City of Palm Bay Website, April, 2019



WATERSTONE FARMS, LLC  
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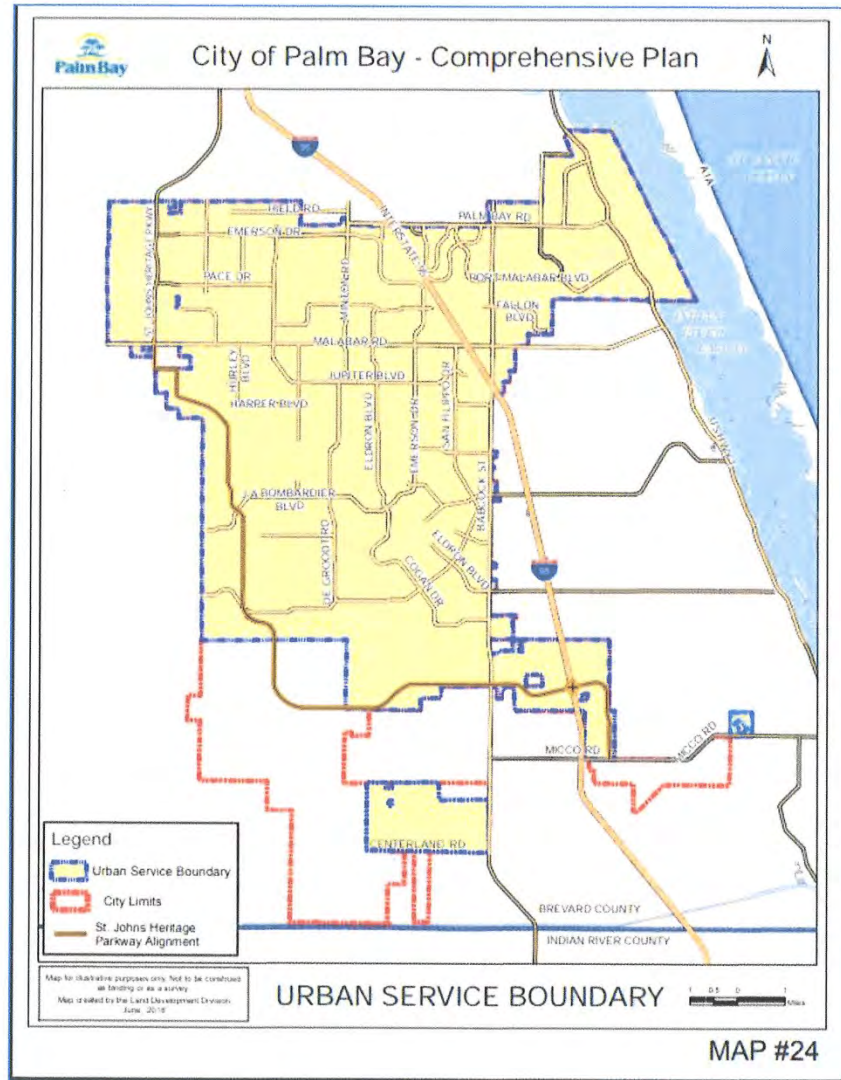


Figure 2 Urban Services Boundary Map adopted by the City in the EAR, October 2017; as shown on the City of Palm Bay website, April, 2019.

The following Objectives or Policies are implemented via this proposed development plan:

- OBJECTIVE FLU-1.3 Land Development Regulations shall provide for planned unit developments, planned commercial developments, planned industrial developments, planned residential developments, and mixed-use developments.

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

- POLICIES FLU-1.3A The City shall continue to implement Land Development Regulations for Planned Unit Developments.
- OBJECTIVE FLU-1.4 Establish an Urban Service Area to control urban sprawl.
  - POLICIES FLU-1.4A The Urban Service Area maps shall be adopted for the ten-year time frame of the Comprehensive Plan as depicted in the adopted Urban Service Boundary Map.
- OBJECTIVE FLU-2.1 By 2001, adopt land development regulations which create a full range of types and styles, including planned unit developments, multi-family housing, ranges of single family densities, and mixed use with residential/nonresidential consistent with the needs of all age groups, incomes and lifestyles.
  - POLICIES FLU-2.1A The Zoning Code shall be amended to provide for a variety of types and densities of residential development in conformance with this Element and the Future Land Use Map.
  - POLICIES FLU-2.1B Continue to utilize Planned Unit Development (PUD) techniques to protect environmentally sensitive areas, protect amenities, and mitigate flood hazards.
- OBJECTIVE FLU-2.2 Residential development which can be served by public and community services meeting all LOS standards.
  - POLICIES FLU-2.2A Base residential development decisions on the adopted LOS standards for community facilities and services, the Future Land Use Map, and the policies of the Comprehensive Plan.
  - (Original Wheeler) FLU-8.3G The following special conditions shall be applicable to Case No. CP-12-2003 adopted by City Council as Ordinance No. 2004-52.
    1. Maximum residential density is capped at 1,800 residential units. **(THIS HAS INCREASED OVER TIME DUE TO 37 LAND USE AMENDMENTS)**
    2. A future school site be designated on the property at a suitable location and of suitable size as determined by negotiation between the developer and the Brevard County School Board. **(SCHOOL SITE CONSTRUCTED-SUNRISE ELEMENTARY)**
    3. The developer is required to identify and apply for the necessary Future Land Use Map amendment to provide commercial and public/semipublic uses necessary to service the proposed development within 5 years or prior to development of 600 units, whichever occurs first. **(133+/- ACRES HAVE BEEN DESIGNATED FOR COMMERCIAL LAND USE)**

**CITIZEN PARTICIPATION/COUNTY COORDINATION**

Several meetings have been held with the existing HOA's of Waterstone, and a Neighborhood meeting was held as recently as September 17, 2019 for the Courtyards at Waterstone neighboring development plan and project. Labels for notifying everyone within 500' are provided to the City for mailing the courtesy notice under Tab H.



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

**JOINT PLANNING AGREEMENT**

The City's Growth Management staff regularly distributes the required courtesy copies of documents to the County planning staff pursuant to a 2016 Joint Planning Agreement.

**UTILITIES**

The development will connect to City water and wastewater. One additional lift station is proposed to be extended into the development from Mara Loma Boulevard to provide utility services. The City has long planned for an expansion to its wastewater plant and has made expansions to the water plant. The City recently approved the staff to proceed with planning/design/permitting of the expansion.

**STORMWATER/DRAINAGE**

Permit #96251-24 is provided in the Tabs, but is shown below. It is for a larger area than the 44 acres currently being applied for, which includes future phases of Gardens subdivision. All retention areas shall be owned and maintained by the residential homeowners association and shall be permitted through the Water Management District. The project will be designed to meet all pre and post development stormwater management as currently by the various agencies and the City by obtaining all required permits.

**ENVIRONMENTAL ISSUES**

A former grove, there are no environmental issues, no trees, no habitat or endangered species, no wetlands, or other known environmental issues on the proposed subdivision's lands. The property was originally a citrus grove. It was later converted into the existing cattle pasture. The proposed project is designed to and will be consistent with the following Goals, Objectives and Policies of the City's Comprehensive Plan.

GOAL FLU-6 Wise and efficient use of the City's natural resources.

- OBJECTIVE FLU-6.1 An intensity and distribution of land use and development which minimizes the impact on the natural environment.

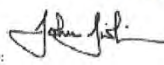
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT Post Office Box 1429 Palatka, Florida 32178-1429	
PERMIT NO: 96251-24	DATE ISSUED: April 26, 2018
PROJECT NAME: Waterstone at Palm Bay - Phase I	
A PERMIT AUTHORIZING: Authorization of a Stormwater Management System for Waterstone at Palm Bay - Phase I, a 101.37 - acre project to be constructed and operated as per plans received by the District on April 4, 2018.	
LOCATION: Section(s): 4 Brevard County	Township(s): 30S Range(s): 37E
Receiving Water Body:	
Name: Scrub Canal	Class: III Fresh
ISSUED TO: Waterstone Farms, LLC 235 West Dr Melbourne, FL 32904-1043	
The permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.	
This permit does not convey to the permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.	
This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes.	
PERMIT IS CONDITIONED UPON: See conditions on attached "Exhibit A", dated April 26, 2018	
AUTHORIZED BY: St. Johns River Water Management District Division of Regulatory Services	
By:  John Julianna Regulatory Coordinator	

Figure 3 SJRWMD Permit covering the proposed 44 acre project

WATERSTONE FARMS, LLC  
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PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

- 
- POLICIES FLU-6.1A Land use decisions shall be based upon the support capability of the natural environment as determined by conformance to the Floodplain Management Ordinance, the Stormwater Management and Conservation Ordinance, the Trees and Shrubbery Ordinance, and the Zoning Ordinance.

Map F, Environmental Issues, shows via a recent aerial, the cleared land and current conditions of this project. A report from Jon Shepherd, Atlantic Environmental Services (AES) is attached to this document and identified as Tab D. That report reflects the possible existence, as determined by SJRWMD, of a

Crested Caracara on adjacent property, over 2500' away, owned by others. The AES report demonstrates that there are no specimen or signature trees on the property. The conclusion of that report is: AES determined that the Property supports approximately 44.654 acres of uplands and therefore can proceed with the planned development.



WATERSTONE FARMS, LLC  
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**Map F**  
**Environmental Issues**

# Environmental Issues



AES Environmental Study of the Gardens, in the Appendix, notes no known habitats for any protected bird species. The email from Jon Shepherd, dated April 17, 2018, shows no specimen or signature trees. Of note, SJRWMD requested and provided a map, (emails and maps included in the AES report) a determination of the existence of the Crested Caracara, previously known to frequent the adjacent property, in an approximated area shown in red. The Gardens project is 2,570' +/- away from that area.



# PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE



## Page 25



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

Traffic studies by Lassiter Transportation Group have been submitted by the owner to the City and County for Waterstone for all projects since 2017. Those studies are on record with the Growth Management Department of the City of Palm Bay and Brevard County Public Works. A memorandum from Lassiter Transportation Group regarding the Gardens concurrency can be found in Tab E.

**SCHOOL CONCURRENCY**

The owners worked with the School Board on land for an elementary school, and Sunrise Elementary is now open and serving the public. There are no other schools to be provided by Waterstone as a result of the proposed project. School Capacity and Concurrency applications will be completed by the applicant. The City is responsible for submitting the application and required Local Determination form to the School Board. Note that a Check for \$200 for a School Capacity determination is attached.

**OPEN SPACE/RECREATION/AMENITIES**

**Gardens** will have a neighborhood park, passive recreation areas, and interconnected meandering walking trails connecting the subdivision to Mara Loma and other future sections of the larger community all under control of the Gardens at Waterstone Homeowners Association, Inc.

**DEVELOPMENT STANDARDS AND GOVERNANCE**

**Section 185.061 (A)** The planned unit development is a concept which encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage, setbacks, open space, and other Land Development Regulations and open space from than required in any one (1) residential land use classification under the zoning regulations of the city. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types as well as commercial uses designed to serve the inhabitants of the planned unit development. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subchapter, while departing from the strict application of conventional use and dimension requirements of other zoning districts and subdivision regulations." (Source: City Code, American Legal Publishing)

The project's zoning of Planned Unit Development gives the owner the ability to establish and restrict the allowable uses within the project and set the development standards. This will be done through Declaration of Covenants, Bylaws and Articles of Incorporation for the Homeowners Association provided in the Final Development Plan application package submittal. There will also be areas that are dedicated to the public and governed by either a regulatory agency or local government (streets and utilities). Subdivisions will be governed by the City and Chapter 177 Florida Statutes. Building permits and construction plan approval will be required by the City.

Therefore, this entire PUD has been creatively designed to assure a diverse mix of residential units and styles with non-residential and commercial uses that serve the community and region. The Deed restrictions will provide for specific uses, development standards, architectural and site design features, required landscaping/lighting/signage/materials, architectural review boards, maintenance, and the like. The project has been designed to be consistent with the Comprehensive Plan and Land Development Codes, and compatible with the surrounding area.

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
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The following is a general overview of the proposed uses, as well as dimensional information.

**GENERAL RESIDENTIAL USES**

The proposed project is a subdivision within a planned unit development zoning district consisting solely of 154 single family homes on 40' X 125' (on average) lots, ancillary recreation, utilities, and infrastructure. Figure 6 shows potential examples of what the residences may look like.

Residential uses will be controlled by the Deed Restrictions submitted with the application for final development plan approval. A Homeowner's Association will provide for maintenance.

**Single Family Minimum Yard requirements (Setbacks):**

All single family:

Front Yard:	25 feet
Rear Yard:	20 feet
Side yard:	5 feet
Side Corner:	15 feet
Pool Setback:	5 feet

**Single Family Height: 2 stories (25 feet)**

**COMPATIBILITY WITH SURROUNDING AREA**

The project is being placed on former groves and is a phase of a Master Planned community started in 2005. Heron Bay and the Lakes of Waterstone are 2 subdivisions that have been constructed containing 296 units. Homes on the Gardens 40' lots will range from 1200 square feet minimum with values from \$225,000 to over \$350,000 depending on size and amenity packages. This project will be compatible in style, type, value, and amenities with its surrounding area, including the large scale planned Regional Activity Center Emerald Lakes (approved in 2011 and 2016) and Cypress Bay PUD (2018) to the east. With over 1500 units remaining to be developed in the Waterstone project, the developers will not build any product that will destroy the future potential of various planned subdivisions. Therefore, the Gardens will be comparable to and compatible with the remaining subdivisions with the planned development in size, scale, character, intensity, and design as well.

**COMFORMANCE WITH LAND DEVELOPMENT CODE (REVIEW CRITERIA)**

All of the lands in Waterstone are zoned Planned Unit Development. The applications submitted for the Gardens project recognizes the expiration of the Waterstone at Palm Bay preliminary development plan as approved January 2018 and seeks to amend the 2005 Master Development Plan by ***obtaining approval of a new Preliminary Development Plan for the specific area of the Gardens at Waterstone.***

This document and narrative demonstrates how the Gardens project is consistent with the Comprehensive Plan, compliant with Land Development Code, and meets the review criteria in Chapter 185.066 of the City's Code, warranting approval. Since the project is zoned Planned Unit Development Zoning, therefore, a rezoning is not required.

**CHAPTER 185.066 PRELIMINARY DEVELOPMENT PLAN PROJECT JUSTIFICATION: COMPLIANCE WITH REVIEW CRITERIA TAKEN FROM THE CITY'S LAND DEVELOPMENT CODE ON AMERICAN LEGAL'S WEB-SITE.**



WATERSTONE FARMS, LLC  
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**185.066 (B) (5) Review criteria.** The decision of the Planning and Zoning Board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the Planning and Zoning Board shall consider the following facts:

(a) Degree of departure of proposed planned unit development from surrounding residential areas in terms of character and density.

**JUSTIFICATION:** Gardens at Waterstone is part of an approved project and plan that was given Planned Unit Development Zoning in 2005. The project is southeast of the built subdivisions of Heron Bay and Lakes of Waterstone, which were begun by Pulte/Divosta around 2006. Completed with 296 homes and an elementary school, utilities are permitted, sized and installed to serve the entire planned development in lines run from Valkaria Road to Mara Loma Blvd, and 2600' feet of Mara Loma Blvd is constructed and dedicated.

Land use entitlements exist on 1200+/- acres straddling both sides of south Babcock Street. The proposed project is one of several large scale developments stimulated and supported by the new I-95 interchange and Parkway. Therefore, there is little departure from the current or proposed residential areas by the proposed project, which is in complete conformance with the character, density, and intensity of development approved by the State and City for this area.

(b) Compatibility within the planned unit development and relationship with surrounding neighborhoods.

**JUSTIFICATION:** Projects on adjacent lands have received City and/or State approval for similar mixed use, large scale developments with commensurate land use and zoning. As an extension of the original planned development, Gardens is compatible in size, scale, character, intensity, and design with both built subdivisions and future planned subdivisions.

(c) Prevention of erosion and degrading of surrounding area.

**JUSTIFICATION:** Gardens will meet all required agency permitting processes and procedures and create no off-site drainage issues. Preliminary St. John's River Water Management District Permits have been received and are on file with the City.

(d) Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

**JUSTIFICATION:** The original Waterstone Development donated land for an elementary school, Sunrise Elementary, which is open and serving the public. There are no other schools to be provided by Waterstone. Gardens will have on site recreation amenities for use by its residents. All utilities will be planned for and installed by the developer(s), approved by the City, served by the City and permitted by the required Agencies. All required environmental permits will be obtained through the respective agencies. Currently, ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT PERMIT #96251-24 gives conceptual approval to the master planned drainage system for the Gardens multiple phases on 101 acres. That permit is on public record and file with the City.

(e) The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.



WATERSTONE FARMS, LLC  
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**JUSTIFICATION:** The overall Waterstone project's residential areas will ultimately provide approximately 180 acres of recreational and open space amenities in both active and passive recreational areas. The Gardens will have its own smaller localized recreation area that may include such elements as tot-lots and other active or passive play amenities, and may contain fountains, gazebos, and trails. A 'Gardens at Waterstone Homeowners Owner's Association, Inc.' (HOA) will be responsible for operation and maintenance of the amenities within the residential areas.

(f) The feasibility and compatibility of the development plan to function as an independent development.

**JUSTIFICATION:** Each neighborhood within the Waterstone project will function on its own. Utilities provided by the owner to serve the existing Waterstone community will serve this project. The Gardens will have its own deed restrictions, HOA/POA, articles of incorporation and by-laws, permits, and plat.

(g) The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

**JUSTIFICATION:** Numerous Traffic Studies by Lassiter Transportation Group analyzing the roadway impacts and what improvements are necessary have been submitted over the years and are on file with the City and County. A Technical Memorandum was prepared for the Courtyards submittal with the 2018 application and is on file with the City. It shows that when the Cypress Bay Residential project of 400 is complete and the Gardens is complete, a traffic signal warrant study will be needed for the Mara Loma intersection with Babcock Street. Brevard County is conducting a PDE for widening of the roadway. The new interchange and Parkway is open. There is adequate roadways to support the project.

(h) The availability and adequacy of water and sewer service to support the proposed planned unit development.

**JUSTIFICATION:** Gardens will utilize the lines provided for the existing Waterstone Communities and tie into the City's water and wastewater system. The City began long range planning in 2012 with its consultants Wade-Trim for the utility needs for the new communities planned for Northwest and Southern Palm Bay. The City has begun the long planned expansion to its wastewater plant and has made expansions to the water plant. The City will be the provider of the requisite services. The owner engineer, CEG, working in concert with the City's Utilities department, has been advised that there is capacity available to serve this project.

(i) The benefits within the proposed development and to the general public to justify the requested departure from standard land use requirements inherent in a planned unit development classification.

**JUSTIFICATION:** Unlike using singular zoning districts and subdivision practices, Gardens is planned to be a quality, integrated, creative development similar in style and value to the existing Waterstone and Bayside Lakes Subdivisions. Landscaped roads, themed signage, entry features, underground utilities, specialty lighting, and deed restrictions will dictate and govern the uses, standards, character and quality of the development. In most cases, the requirements will be stricter than the City code. Because it's within the PUD district, there is greater control and quality than in a single development zone.



WATERSTONE FARMS, LLC  
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(j) The conformity and compatibility of the planned unit development within any adopted development plan of the city.

**JUSTIFICATION:** This project is in compliance with the Comprehensive Plan of the City.

(k) The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses within the proposed planned unit development.

**JUSTIFICATION:** This project includes active and passive recreational uses for common enjoyment by the residents. There are no commercial uses within the Gardens.

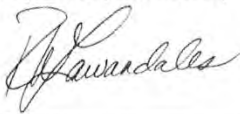
**CONCLUSION**

Several supporting documents are included in the Appendices. Exhibits required by the applications are under separate cover. Based upon my review of the documents, in my opinion, as a Fellow of the American Institute of Certified Planners, with 40 years of professional planning practice in the state of Florida, the proposed Gardens Preliminary Development Plan is:

- ***consistent with the Planned Unit Development Zoning Classification currently on the property,***
- **consistent with the Comprehensive Plan,**
- **compliant with the City's land development code, and ,**
- **compatible with the surrounding community.**

This narrative report, required by the application, is intended to serve as substantial competent evidence and testimony in all public hearings related to the Gardens.

Respectfully submitted,



Rochelle W. Lawandales, FAICP  
Waterstone Development Company, LLC

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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**MAPS AND FIGURES**

**MAPS**

- MAP A: GARDENS LOCATION MAP**  
**MAP B: CITY ZONING MAP**  
**MAP C: ORIGINAL PRELIMINARY DEVELOPMENT PLAN FOR WATERSTONE AT PALM BAY  
WITH APPROXIMATE LOCATION OF GARDENS**  
**MAP D: PROPOSED PRELIMINARY DEVELOPMENT PLAN**  
**MAP E: CITY FUTURE LAND USE MAP**  
**MAP F: ENVIRONMENTAL ISSUES**

**FIGURES**

- FIGURE 1** Future Land Use Map taken from the City's Comprehensive Plan on the City of Palm Bay Website, April, 2019  
**FIGURE 2** Urban Services Boundary Map adopted by the City in the EAR, October 2017; as shown on the City of Palm Bay website, April, 2019.  
**FIGURE 6** SJRWMD Permit covering the proposed 44 acre project  
**FIGURE 4** Comprehensive Plan Wetlands Map, dated June, 2018, taken from the City of Palm Bay's website, April, 2019  
**FIGURE 5** Comprehensive Plan FEMA 100 Year Floodplain Map, taken from the City of Palm Bay's website, April, 2019  
**FIGURE 7** Single Family residential examples

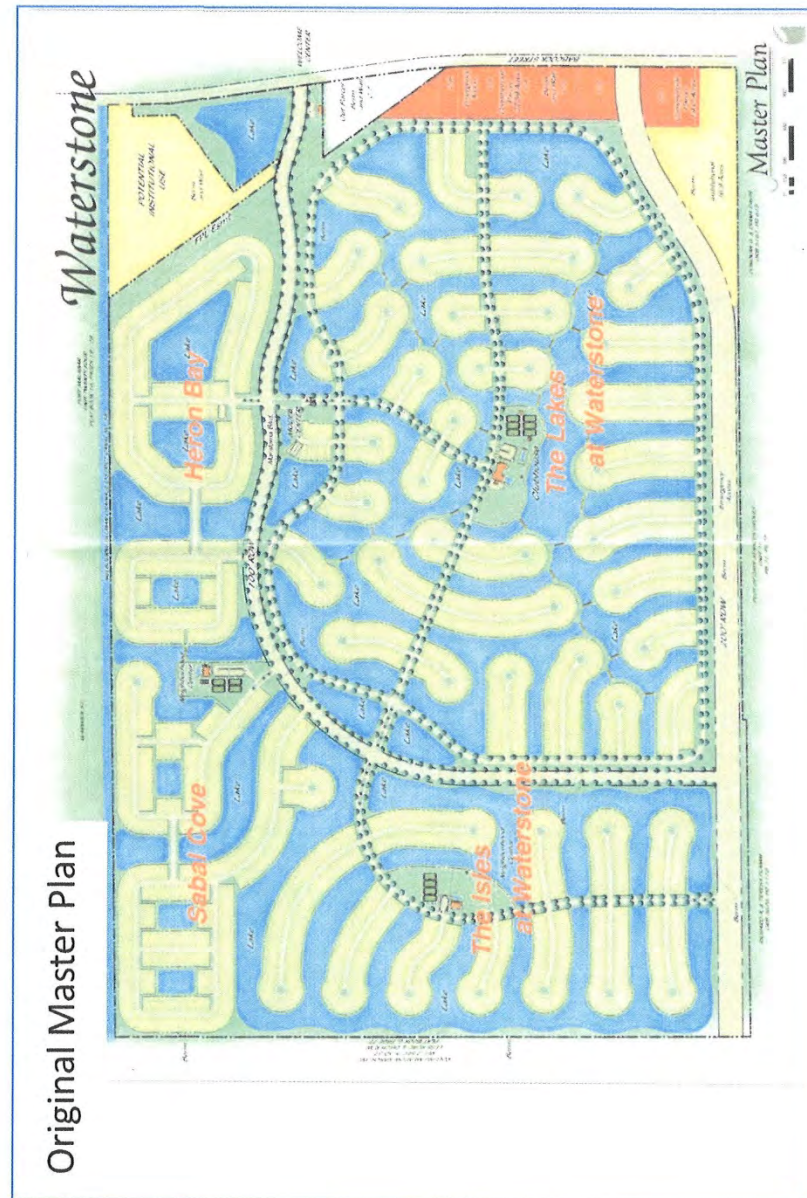
**APPENDICES**

- 1. APPROVED PRELIMINARY DEVELOPMENT PLAN 2005 ESTABLISHING ZONING**
- 2. CONCURRENCY DETERMINATION INFORMATION**
- 3. RESUME OF ROCHELLE W. LAWANDALES, FAICP**
- 4. OCTOBER, 2019 LETTER FROM LARRY BRADLEY REGARDING ZONING AND PUD**

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

APPENDICES

1. APPROVED ORIGINAL MASTER PLAN





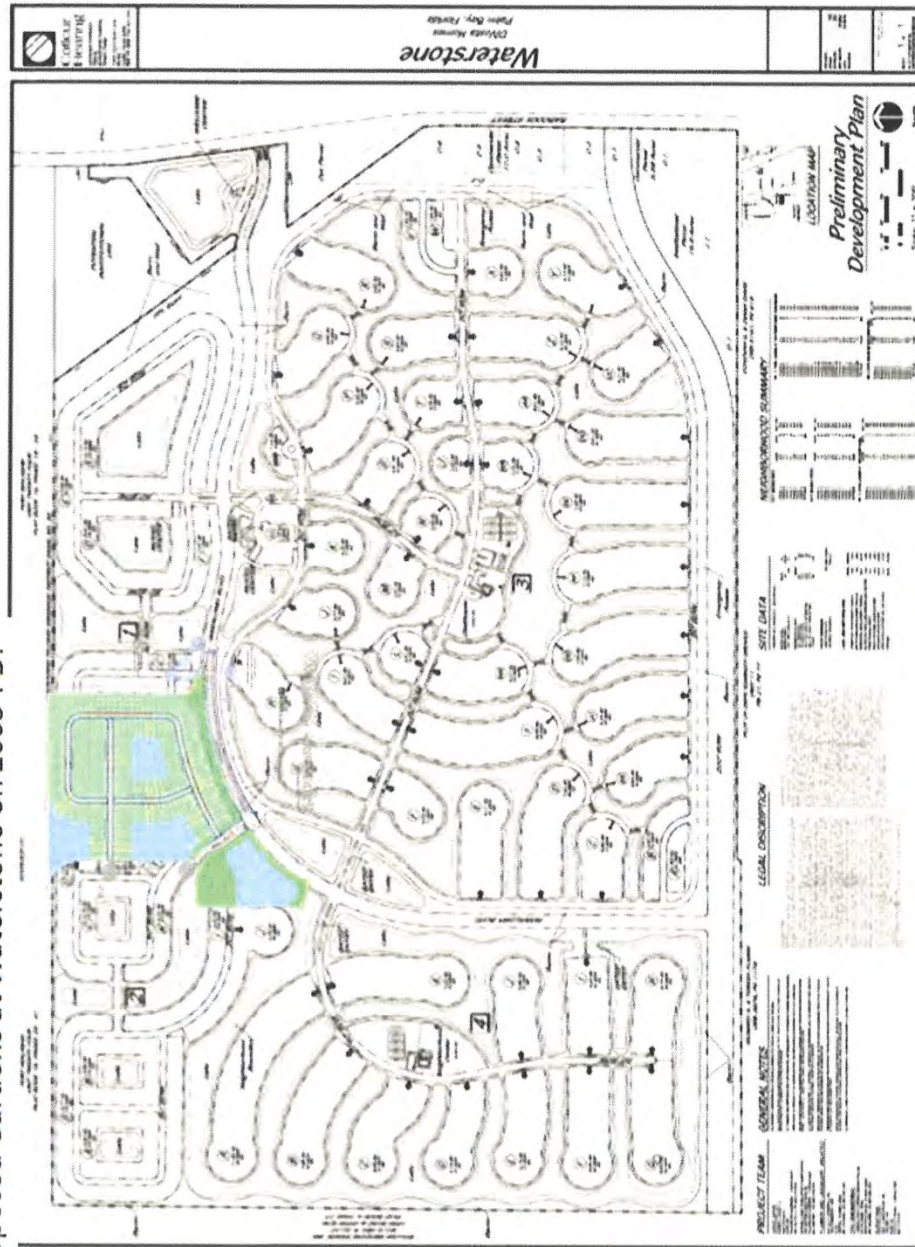
May 15, 2005 FINAL PUD Approval

Resulted in PUD Zoning  
Shown on City's GIS today



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

Proposed Gardens at Waterstone on 2005 PDP



\*Approximate location. Not to scale. Graphic exhibit only.

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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**2. CONCURRENCY DETERMINATION INFORMATION**



**BREVARD COUNTY**  
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE  
MEMORANDUM**

TO: George Clark, Roadway and Landscaping

FROM: Rich Votapka, P.E., Traffic Engineering *R.B. Votapka*

DATE: April 29, 2005

SUBJECT: Babcock Street/Waterstone PUD Driveway Connections Revised  
**April 20, 2005** for Roadway & Easement Improvement Application  
No. 0175908

I have reviewed the April 19, 2005 response comment letter written by David Leach of PBS & J to John Denninghoff and the April 18, 2005 revised plans received by our office today. As a result, I requested additional information which was provided by David Leach, Project Manager, to you on April 27, 2005. After reviewing the information with John Denninghoff, Transportation Engineering Director, and R.W. Thompson, Traffic Engineering Director, it was agreed that the responses and the plans are in satisfactory compliance with both the Transportation Engineering and Traffic Engineering comments stated in my letter of April 18, 2005. Therefore, the April 19, 2005 PBS & J plans are approved with the following conditions:

1. The land use shall not be altered from the 900 unit Waterstone Planned Unit Development (PUD) adjacent to Babcock Street in Palm Bay, Florida including the proposed elementary school. Any changes in use or traffic circulation (including connections outside the PUD) shall require a new review by Brevard County concerning the concurrency determination and engineering details to confirm that Brevard County approval of this project can still remain in full force and effect.
2. According to the March 29, 2005 Traffic Analysis as prepared by PBS & J, Inc. for the Waterstone PUD, a traffic signal will eventually be warranted for the intersection of Babcock Street and Mara Loma Drive. When the traffic signal becomes warranted, Bayside Lakes Development, Inc. the developer, or the Waterstone Homeowners Association (HOA) shall be required to modify the Brevard County Driveway/Access Connection Permit (no. p0175908) for this project and have the traffic signal installed at the developer's or the HOA's expense.

3. At such time that Bayside Lakes Development, Inc. purchases the large tract of land that contains a borrow pit on the east side of the Babcock Street right-of-way and that lies directly opposite the Waterstone PUD, Bayside Lakes Development, Inc. agrees to accommodate the stormwater runoff from the future widening of Babcock street along the entire frontage of Waterstone PUD abutting the Babcock Street right-of-way.
- c: Deborah Adkison, Eng. 1, Transportation Eng.  
John Denninghoff, Transportation Eng. Director  
Bob Kamm, Director, Office of Transportation Planning  
R.W. Thompson, Traffic Eng. Director



Construction is not to interfere with drainage



**BREVARD COUNTY**  
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE  
MEMORANDUM**

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- c: Deborah Adkison, Eng. I, Transportation Eng.  
John Denninghoff, Transportation Eng. Director  
Bob Kamm, Director, Office of Transportation Planning  
R.W. Thompson, Traffic Eng. Director

BREVARD COUNTY FEE COLLECTION  
DEVELOPMENT RECEIPT

TYPE II FEES		TYPE I FEES	
ROADS:	0.00	CS ENVIRON:	0.00
FIRE RESCUE:	0.00	CS LAND USE:	0.00
CORRECTIONAL:	0.00	CONCURRENCY:	0.00
SW DISPOSAL:	0.00	DRIVEWAY:	500.00 P
EMS:	0.00	DRIVEWAY BOND:	0.00
LIBRARY:	0.00	BUILDING PERMIT:	0.00
SCHOOL:	0.00	FLOOD ZONE:	0.00
CREDITS:	0.00	RADON/BOAT:	0.00
TOTAL IMPACT FEES:	0.00	REPOSITORY:	0.00
SEWER CONNECTION:	0.00	LANDSCAPE:	0.00
MING WATER:	0.00	UTIL RESERVE:	0.00
SERVICE FEES:	0.00	ADD BEDROOM:	0.00
BLDG REINSP FEE:	0.00	ADDRESS:	0.00
BUILD REINSP DUE:	0.00	SEPTIC FEES:	0.00
TYPE II FIRE:	0.00	TYPE I FIRE:	0.00
UTIL REINSP FEE:	0.00	LOT DRAINAGE:	0.00
UTIL REINSP DUE:	0.00	TOTAL TYPE I FEE:	500.00
DRIVEWAY REINSP:	0.00	TYPE I BAL DUE:	0.00
DRWAY REINSP DUE:	0.00		
SEPTIC REINSP FEE:	0.00		
SEPTIC REINSP DUE:	0.00		
DRAINAGE REINSP:	0.00		
DRAIN REINSP DUE:	0.00		
EST. TYPE II FEES:	0.00		
TYPE II DUE:	0.00		

\* NOTE TYPE II DUE AMOUNT MAY VARY DUE TO ADDITIONAL FEES OR FEE REDUCTION  
CREDIT REASON:

TOTAL FEES: 500.00  
TOTAL PAYMENTS TYPE 1: 500.00 TOTAL PAYMENTS TYPE 2: 0.00

ADDRESS: 9150 BABCOCK ST PALM BAY

CONTROL NUMBER: P0231945 PERMIT NUMBER: P0175906

LEGAL DESC: 30 3704

APPROVED BY: BC CHECK NUMBER: 2329 DEPOSIT-AREA: C

PERSON ACCEPTING-FEE: KDD DATE: 2004/11/17

BLDG INSPECTIONS: 633-2187 ENV. HEALTH: 633-2100, PUB. WORKS: 633-2079



BREVARD COUNTY FEE COLLECTION  
DEVELOPMENT RECEIPT

TYPE II FEES		TYPE I FEES	
ROADS:	0.00	CS ENVIRON:	0.00
FIRE RESCUE:	0.00	CS LAND USE:	0.00
CORRECTIONAL:	0.00	CURRENCY:	0.00
SW DISPOSAL:	0.00	DRIVEWAY:	500.00
EMS:	0.00	DRIVEWAY BOND:	0.00
LIBRARY:	0.00	BUILDING PERMIT:	0.00
SCHOOL:	0.00	FLOOD ZONE:	0.00
CREDIT:	0.00	RADON/BCAL:	0.00
TOTAL IMPACT FEES:	0.00	REPOSITORY:	0.00
SEWER CONNECTION:	0.00	LANDSCAPE:	0.00
MINE WATER:	0.00	UTIL RESERVE:	0.00
SERVICE FEES:	0.00	ADD BEDROOM:	0.00
BLDG REINSP FEE:	0.00	ADDRESS:	0.00
SOLD REINSP DUE:	0.00	SEPTIC FEES:	0.00
TYPE II FIRE:	0.00	TYPE I FIRE:	0.00
UTIL REINSP FEE:	0.00	LOT DRAINAGE:	0.00
UTIL REINSP DUE:	0.00	TOTAL TYPE I FEE:	500.00
DRIVEWAY REINSP:	0.00	TYPE I BAL DUE:	0.00
DRWAY REINSP DUE:	0.00		
SEPTIC REINSP FEE:	0.00		
SEPTIC REINSP DUE:	0.00		
DRAINAGE REINSP:	0.00		
DRAIN REINSP DUE:	0.00		
EST. TYPE II FEES:	0.00		
TYPE II DUE:	0.00		

\* NOTE TYPE II DUE AMOUNT MAY VARY DUE TO ADDITIONAL FEES OR FEE REDUCTION

CREDIT REASON:

TOTAL FEES: 500.00  
TOTAL PAYMENTS TYPE 1: 500.00 TOTAL PAYMENTS TYPE 2: 0.00

ADDRESS: 9150 BABCOCK ST PALM BAY

CONTROL NUMBER: P0237020 PERMIT NUMBER: P0180177

LEGAL DESC: 30 3704

APPROVED BY: BC CHECK NUMBER: 2351 DEPOSIT-AREA: C

PERSON ACCEPTING-FEE: NJA DATE: 2005/01/18

BLDG INSPECTIONS: 633-2187 ENV. HEALTH: 633-2100 PUB. WORKS: 633-2079



# BREVARD COUNTY

BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

TO: Billy Osborne, Roadways & Landscaping Director  
George Clark, Roadways & Landscaping Department

FROM: John P. Denninghoff, P.E., Transportation Engineering Director

SUBJECT: Waterstone PUD Driveway Connections

DATE: February 15, 2005

Transportation Engineering has completed a review of two proposed driveway connections to Babcock Street for the above referenced development. Based on recently received site data including a traffic study as submitted by the applicant (letter dated February 3, 2005) and the subsequent positive concurrency determination by the Transportation Planning office as well as a letter regarding this developments approval status from the City of Palm Bay, we recommend the following prior to issuance of the requested permit:

1. Final approval of the engineering plans (see attached memo from Traffic Engineering dated February 2, 2005) is required. The required revisions appear to be minor.
2. The traffic study shall be revised to reflect the trips anticipated from the school and other minor study revisions that are required in accordance with the comments provided by the Transportation Planning office (see attached memo dated February 8, 2005). The revisions are not considered to be major and are not anticipated to affect concurrency.
3. The intersection of Babcock Street and the southerly entrance may require signalization (the final traffic analysis should address this possibility). The permit shall stipulate that in the event a traffic signal becomes warranted the development (either the HOA or the developer) shall modify the permit and complete the installation of the signal.
4. The permit shall stipulate that the land use shall not be altered from the 900 unit PUD including an elementary school. Changes in use or traffic circulation (including connections outside the PUD) shall require a review of the concurrency determination and the engineering details to confirm that the approval can stand.
5. The other typical conditions including time frame for expiration shall apply.

### Attachments

CC: Dick Thompson, P.E., Traffic Engineering Director  
Bob Kamm, MPO Director  
Ed Washburn, P.E., Interim Assistant County Manager  
Peggy Busacca, Interim County Manager  
Randy Oller, Planning & Zoning  
Ben Jeffries, Applicant  
Sue Hann, Deputy City Manager, Palm Bay

Post-It® Fax Note		7571	Call 215127	Pages 6
To	Den 3	From	John Denninghoff	
Co Dept		CC		
Phone #		Phone #	612 9202	
Fax #	952 0921	Fax #	612 2022	



February 11, 2005

John Denninghoff, P.E.,  
Director of Transportation Engineering  
Brevard County  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940

RE: Waterstone PUD

Dear John:

In confirmation of our meeting with City staff and Mr. Jeffries earlier this week, the Waterstone PUD is currently a self-contained project and does not interconnect with any other projects that would add trips to Babcock Street. In the event that connections to other projects are contemplated, City staff will advise Brevard County staff and work with County staff to evaluate any impacts to Babcock Street. This will likely include traffic impact analyses and concurrency determinations. In addition, the City is working with the developers in this area to facilitate the construction of a southern leg of the Palm Bay Parkway, ultimately connecting to Interstate 95. I would ask that the County staff cooperate in pursuing this opportunity such that we can collectively deliver the necessary transportation infrastructure in this area of South Brevard County.

Please note that the Waterstone site plan does show a connection to the south east of Tract 13 (school site); however, there is no development plan for this property at this time.

Please let me know if additional information is required.

Sincerely,



Susan Hann, P.E.,  
Deputy City Manager

cc: Lee R. Feldman, City Manager  
Dave Watkins, Growth Management Director  
Ben Jeffries

Office of the City Manager

120 Malabar Road, SE • Palm Bay, FL 32907  
Phone: 321.952.3413 • Fax: 321.952.3412 • [www.palmbayflorida.org](http://www.palmbayflorida.org)

# MEMORANDUM

TO: Ed Washburn, Interim Assistant County Manager

FROM: Bob Kamm, Director, Office of Transportation Planning  
Kama Dobbs, Transportation Planner, Office of Transportation Planning

DATE: February 8, 2005

RE: Waterstone Subdivision Preliminary Traffic Analysis

Transportation Planning staff has reviewed the Waterstone Subdivision Preliminary Traffic Analysis and has the following comments:

1. Based on the method the County uses for determining concurrency and the segmentation of Babcock Street (Indian River Co. to Valkaria Rd.), this project meets concurrency requirements. However, when the links that make up the IRC to Valkaria segment are examined, the project causes the northernmost link from Grant Rd. to Valkaria Rd. to fail on a daily traffic basis.
2. The site plan shows no connections to the adjacent city street system or to potential future developments to the west and south. In the interest of providing safe and convenient access to the site and to destinations within the City, we strongly encourage the City and applicant consider providing site access via existing or future City streets, in addition to the Babcock St. access. Alternate access will, first, - reduce traffic loadings on Babcock. Second, trip lengths for residents to reach commercial sites in Palm Bay, especially those in the far western section of the project, will be shorter. Third, the project contains a school site that will likely draw on elementary students inside the City. Providing a connection will enable students and parents to safely access the school on foot and bicycle, eliminate the need for all parents to use Babcock Street and create more of a "neighborhood school" that parents now consistently expect.
3. We agree with the general assumption on page 4, regarding the likelihood of 90% of site traffic being to/from the north.
4. Please show the calculations used in Table 2. Our calculations, using average trip generation rates for daily traffic (9.57 trips per day per unit) yield 8,613 daily trips, not 7,548.
5. Please recalculate directional distribution based on corridor-specific data, rather than using the FDOT K and D that are for the entire County. Raw count data can be provided by the MPO for calculations. A direction value of 53.08% seems inconsistent with the 90% trip distribution to the north.
6. In order to maintain travel speeds and enhance safety at the driveways, NB left turn lanes should be provided at the project entrances. There is potential for serious rear-end collisions on this segment due to the 55 mph speed limit.
7. Please show calculations used to determine the data shown in Table 3. It is unclear how the consultant arrived at the existing peak hour volumes that are shown. These differ significantly from the MPO's raw data.
8. What is the spacing between driveways? The plat on page 3 is difficult to read. We can't determine the scale, nor can we locate the 2<sup>nd</sup> driveway onto Babcock.
9. Please show sources/calculations for Table 4. Add background traffic growth from 2004 - 2010. Although traffic counts "spiked" in 1996 and 1997, and the TRENDS analysis programmed showed negative growth, professional judgment should be used to determine the growth trend from 1999 - 2004. If the consultant believes that growth is negative, a substantial amount of justification should be provided.



10. The project reserves land for an elementary school site. School traffic is not included in the trip generation calculations. The only use considered was residential. Given that schools can be a significant trip generator, the trip generation calculations should show values with and without a school. The level of service calculation based on daily traffic should also be amended to show with and without school scenarios.



**BREVARD COUNTY**  
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE  
MEMORANDUM**

TO: George Clark, Special Projects Coordinator III, Roadways Permitting

FROM: R.W. Thompson, P.E., Traffic Engineering Director *R.W. Thompson*

DATE: February 2, 2005

SUBJECT: Babcock Street/Waterstone Subdivision and School Access Drives  
Permit No. P0175908

We have completed our review of subject plans and have listed our comments below.

- 1) Please provide additional right-of-way for future 4-laning of Babcock Street. Current design standards for an urban arterial street requires a minimum of 114' right-of-way, plus an additional 12' on each side for right turn lanes. It appears that Babcock Street right-of-way is 100' wide. If so, we will need 7' on the west side for the entire length of the parent property and an additional 12' where ever a right turn lane could be required.
- 2) Show northbound left turn lanes for each access drive intersecting Babcock Street. Design speed shall be 55mph. Queue distance shall be determined by traffic engineering study. Widening transitions shall meet FDOT Standard Index No. 526, sheet 2 of 8 for a 55mph design speed.
- 3) Provide a traffic impact analysis, performed by a licensed professional engineer, that routinely performs traffic engineering reports.
- 4) Please provide more detailed plans, so as to clearly spell out what these two access roads will be serving, so that we can make sound engineering design decisions on concurrency and roadway/intersection design and spacing of access drives, in regard to final approval of your permit request.
- 5) Show pavement/roadbed design proposed for all work to be completed within the Babcock Street right-of-way.
- 6) Show 50' radii on all drive radii.
- 7) Show actual cross sections, with elevations and slopes, on Babcock @ 100' intervals, plus sections at centerline of each drive, at north ends of proposed right turn lanes and cross sections @ 100' intervals from the beginning of the widening for the northbound left turn lanes to the north end of the transition areas. If the 3-lane widened areas are less than 500' apart, the roadway shall become a 36' 3-lane roadway continuous.
- 8) Show the right turn lanes to be squared off at the north end of the tapers and stripe out the excess asphalt, behind the taper, with thermoplastic material.

- 9) Show 4' paved shoulder with 6' turf shoulder @ 6% slope along all new construction of turn lanes and along the left turn lane widening areas. Shoulder slopes shall be 6:1 and back slopes shall be 4:1.
- 10) Show 6' wide x 6" thick fiber reinforced concrete sidewalk along all public road frontage
- 11) Provide corner cuts for future traffic signal poles.
- 12) Show all applicable signs and pavement markings. All signs shall have high intensity faces. All signs shall be per FDOT and Brevard County Standards. All pavement markings shall be per FDOT Std. Index Nos. 17346 and 17352.
- 13) Provide a plan view of all right-of-way improvements on Babcock, from 1000' south of the south access drive, to 1000' north of the north access drive. This includes both sides of Babcock Street.
- 14) Show the hard median noses extended east with striping and RPM's, to the point where the nb left turning radius and the eb left turning radius intersect.
- 15) The south driveway shall have a 2<sup>nd</sup> 30" stop sign in the median, with an R4-7 median nose sign & Type I Object Marker on the back side (facing Babcock Street).
- 16) Please size your site's storm water ponds to be capable of future runoff of a 6-laned Babcock Street, for the entire length of this parent property.

If you have any questions concerning the above comments, please call me at 321 633-2077.

WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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**3. RESUME OF ROCHELLE W. LAWANDALES, FAICP**



## ROCHELLE W. LAWANDALES, FAICP

### EDUCATION

- Graduate Degree:** MASTER OF CITY AND REGIONAL PLANNING  
CLEMSON UNIVERSITY, CLEMSON, S.C. 1979
- Bachelor of Arts:** SOCIOLOGY/PSYCHOLOGY  
CLEMSON UNIVERSITY, CLEMSON, S.C. 1977
- Other Studies:** ALLIANCE FRANÇAISE, PARIS, FRANCE (1976)
- Certifications:** American Institute of Certified Planners
- Honors:** Inducted into the College of Fellows by the American Planning Association/American Institute of Certified Planners, 2018

### EXPERIENCE

**Private Consultation Service:** Lawandales Planning Affiliates, Inc.,(LPA), owned by Rochelle W. Lawandales, AICP, has been serving communities and individuals with planning services since 1989, including, but not limited to:

- Local governments including, Palm Bay, Palm Shores, Melbourne Beach, Malabar, Melbourne, Fellsmere, Cocoa Beach, Satellite Beach, New Smyrna Beach, Tampa, Savannah, Georgia, South Daytona, Rockledge, Cocoa, Port Orange
- National and Local developers, including, but not limited to: American Tower Systems, a subsidiary of CBS, Inc.(site selection for telecommunication towers across Florida), Lennar Homes(zoning, land development), Mercedes Homes(zoning/land development approvals), Heritage Properties, St. Mary's Catholic Community Church(zoning/conditional use), Mattress Barn(comp plan and zoning), Boozier Properties, Plymel Realty, Charlie Boyd (zoning), FBC of Brevard(zoning), Richard Stottler d/b/a Cape Kennedy Shores, Inc., Ben Jefferies d/b/a Bayside Lakes Development Corporation, Waterstone Development Company, LLC; Mike Erdman, d/b/a as KEW, Inc., Roy Pence, Coy Clark, Centex Homes (zoning/land development), among others.
- Many noted Land Use/Real Estate Lawyers, individuals or developers who have needed expert planning services for development reviews and approvals, eminent domain, or expert witness testimony for quasi-judicial or legislative hearings. Ms. Lawandales has been certified as an expert witness in local government hearings, Circuit and District Courts in Florida, and Chapter 120 Administrative hearings.

#### **Comprehensive and Neighborhood Planning experience includes:**

- West Melbourne, Malabar, and Cocoa Comprehensive Plans
- Amendments for Melbourne Beach, Brevard County, Fellsmere, Palm Shores, South Daytona, Indian Harbor Beach, Cocoa, Palm Bay
- South Daytona Evaluation and Appraisal Report
- Neighborhood Strategic Plan for the City of Melbourne's North CDBG Target Area "Booker T. Washington Neighborhood
- Former City of Fellsmere Consulting Planner, Comprehensive Plan 2003 completion and several large scale Updates

#### **Redevelopment, Urban Design and Historic Preservation experience includes:**

- City of Titusville: Land Development Codes and Urban Design Manual with Kimley-Horn and Associates
- City of Port Orange: TDM/TSM Strategic Plan with Kimley-Horn and Associates

## ROCHELLE W. LAWANDALES, FAICP

- City of Rockledge: Community Redevelopment Area consulting Director, 2003-2010; CRA Plan Update 2009; Redevelopment Mixed Use District-Comprehensive Plan amendment, Land Development Code amendment, and Design Manual; Barton Boulevard Streetscape design;
- City of Fellsmere: Mixed-Use District Code and Urban Design/Streetscape Concepts; Findings of Necessity and established district with the Community Redevelopment Area Plan, 2005; City Hall Master Plan; Preparing Design Manual and Streetscape Plan for downtown;
- City of Palm Bay: Bayfront Redevelopment Area projects; Waterstreet Development Master Plan, Waterstreet Strategic Funding Plan, with Brad Smith Associates; Award winning Powell Subdivision Visioning, streetscape design; Palm Bay Road streetscape; Indian River Scenic By-ways establishment and Corridor Management Plan; Design Manual/Pattern Book for urban design in CRA district
- City of Cocoa: Redevelopment Area Streetscape/Urban Design Project; Heart of Cocoa, Delannoy Avenue, and Whitley Bay; in association with Baskerville-Donovan, Inc.
- City of Melbourne: Booker T. Washington Neighborhood Strategic Plan. Redevelopment, Urban Design and Streetscape concepts; *Eau Gallie Urban Infill and Community Redevelopment Plan, Streetscape, and Urban Design Concepts; CRA Expansion-Blight Study. This project won the 2003 National APA Community Initiative Award*; Blight Study for Downtown Melbourne Area Expansion; Downtown Blight Study and Evaluation/Audit of the CRA Redevelopment Plan; Babcock Street Blight Study and first Community Redevelopment Plan, with HDR, Inc and Brad Smith Associates.
- Town of Melbourne Beach: Ocean Avenue Redevelopment, Streetscape and Design Guidelines; Ocean Avenue Traffic Light, Pavers, Colors, and Lighting Design; TEA-21 Enhancement Project Design/Streetscape Elements; Melbourne Beach Municipal Complex with Rood and Zwick, Architects in Association and Brad Smith Associates;
- City of South Daytona: Assisted in creation of redevelopment district, Redevelopment Plan and Urban Design Concepts
- City of Indian Harbor Beach: Mixed Use District Code and Urban Design/Streetscape Concepts
- City of Satellite Beach: Blight Study, creation of redevelopment district, Community Redevelopment Plan and Urban design recommendation
- Town of Palm Shores: Community Redevelopment Blight Study and Urban Design recommendations
- Harris Corporation Master Plan-a micro-"urban design" project, with Brad Smith Associates
- Cocoa Beach Redevelopment Area-SR 520 Urban Design/Beautification Project, with Brad Smith Associates
- Blight Study, Redevelopment Plan, Comprehensive Plan amendment and Land Development Code amendments for the Merritt Island Redevelopment Agency area expansion
- Conceptual redevelopment plan for the Max Brewer Causeway, part of the Titusville Redevelopment Area
- Conceptual Master Plan, Sandpoint Park, Honeycutt and Associates, part of Titusville Redevelopment Area

### Historic Preservation and Main Street

- Eau Gallie Arts District (EGAD) Economic Restructuring Plan, 2012
- Henegar Center for the Arts, Building Feasibility Study for use of 1920's High School, 2008
- Melbourne Main Street Strategic Plan
- Hamilton County Main Street Historic District Survey and Recommendations, Hamilton County, Florida
- Established an Historic District for the downtown area in Cocoa (Cocoa Village) and wrote Preservation and Development Guidelines
- Secured funding, assisted in the planning and supervised the \$500,000 rehabilitation of the E.P. Porcher House, a National Register Property in Cocoa
- Drafted a Model Historic Preservation Ordinance for graduate school

### Public Participation Workshop Facilitation and Visioning Processes

South Daytona, Melbourne, Melbourne Beach, Fellsmere, Zion Christian Church, Florida Air Academy, Eau Gallie, Satellite Beach, Cocoa, Palm Shores, Indian River Scenic Highway Coalition, Cocoa Beach, Rockledge,



## ROCHELLE W. LAWANDALES, FAICP

Palm Bay, Melbourne Main Street, Interstate Business Park, Le Centre, Savannah, Tampa Downtown Development Authority; New Smyrna Beach Redevelopment Agency

### Land Development Regulations include:

Complete Land Development Regulations for West Melbourne, Malabar, South Daytona, Fellsmere and Cocoa; and updates or changes to LDR's for Titusville(Form Based Code), Rockledge, Palm Shores, Fellsmere, Melbourne, Cocoa, Melbourne Beach, Indian Harbor Beach, and Satellite Beach. Performance Standards Zoning Code for Cocoa Redevelopment Agency, with Frielich-Leitner, Esq. Architectural and Site Design Guidelines; Recreation Impact Fee Ordinances; Performance Standards Zoning Codes; Historic Preservation Districts and Historic Preservation Land Development Code; Downtown Redevelopment Codes; Mixed-Use District Codes

### Grants experience:

Successes have included Historic Preservation, Florida Communities Trust, FRDAP, FIND, FCMP, Brownfields, Enterprise Zones/Foreign Trade zone designations, for a variety of programs, services and facilities; and overall obtaining over \$5M for a variety of local or county public improvements.

### Recreation projects:

Recreation master planning services have included Wabasso Causeway Park and Round Island Park with Brad Smith Associates for Indian River County; Melbourne Community Park Location and Design Study, Front Street Park, Sherwood Park and Carver Park for the City of Melbourne; City of Fellsmere Senior League, Little League Community Parks, and Grant Ave. Neighborhood Park; Waterstreet Redevelopment Plan with several Park Components for the City of Palm Bay; Westbrook Community Park for Lennar Homes; Indian River Lagoon Scenic Highway Program; Ryckman and Loggerhead Parks for the Town of Melbourne Beach; Palm Shores Shoreside Park; Sandpoint Park and Max Brewer Causeway, (Brevard County) with Honeycutt and Associates, Inc.

### Public Service:

Ms. Lawandales' first 10 years of practice were spent serving the public sector:

- West Melbourne, Florida: Planning Director, 1979-1980
- Melbourne, Florida: Special Projects and Grants Administrator, 1980-1983
- Cocoa, Florida: Redevelopment Director 1986; Community Improvement Administrator, 1986-1989.

### Other Employment

Since 2011, Ms. Lawandales has continued to serve as a sole proprietor planning consultant to the public and private sectors to provide expert testimony, planning consultation, code changes, and sustainability programs for various clients. In 2014, she was hired as the Professional Planner for Waterstone Development Company, LLC in Melbourne, FL.

### Miscellaneous talents and experience:

- Designing, Implementing, and Directing the We Care Program for the Brevard County Medical Society, Brevard County Health Unit, and area Hospitals, which brought private medical care to the indigent of Brevard County
- Counseling for troubled youth and their families as a caseworker for Devereux Outpatient Services
- Principal for religious schools for 4 years/teacher for 13
- Adjunct Professor, Planning and Urban Design, University of Central Florida, Fall, 2004
- Coldwater Creek, Retail Sales Associate, Part time, 2005-present

### Prior Affiliations:

- Florida Redevelopment Association, President, 2009-2010; Legislative Policy Committee; Board member 2006-2011; Treasurer, 2007-2008
- Florida Chapter American Planning Association: Legislative Policy Committee (almost 20 years and currently)
- American Institute of Certified Planners/American Planning Association (current)
- Florida League of Cities: Legislative Policy Committee

**ROCHELLE W. LAWANDALES, FAICP**

- Florida Chambers, Six Pillars Committee
- Florida League of Cities: Keys to the Cities Task Force, 2010
- Brevard Tomorrow

**Previous Community Service:**

- Past Chair(13 years) and Member (16 years), Satellite Beach Planning and Zoning Board
- Past Chair (4 years), Satellite Beach Community Redevelopment Agency Advisory Board,
- Past service on Melbourne's Planning and Zoning Board and Architectural Review Board
- Junior League of South Brevard, Various Executive Board, Board positions and member 19 years
- Former Chair, State Public Affairs Committee for the Junior Leagues of Florida; established the Growth Management Task Force
- Former Committee Member, Land Use and Growth Management Subcommittee, Brevard Tomorrow, Tourist Development Council Signage Committee; Landscape and Tree Preservation Ordinance, Brevard County
- Leadership Brevard 1994 Graduate



WATERSTONE FARMS, LLC  
AMENDMENT TO APPROVED MASTER DEVELOPMENT PLAN  
PRELIMINARY DEVELOPMENT PLAN APPLICATION FOR GARDENS AT WATERSTONE

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**4. OCTOBER, 2019 LETTER FROM LARRY BRADLEY REGARDING ZONING AND PUD**

October 1, 2019

Mr. Benjamin E. Jefferies, Managing Member  
Waterstone Farms, LLC/Waterstone Holdings, LLC  
235 West Drive  
Melbourne, FL 32904

RE: The Gardens of Waterstone at Palm Bay

Dear Mr. Jefferies:

On January 18, 2018, the City of Palm Bay City Council approved a preliminary development plan (Preliminary PUD) for the Waterstone Development (PUD-51-2017). On June 6, 2018, the City of Palm Bay City Council approved a final development plan for the Gardens of Waterstone at Palm Bay.

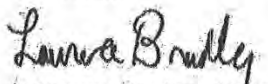
The Code of Ordinances for the City of Palm Bay requires a final development plan to be adopted within one year from the approval of a Preliminary PUD. Further, a final development plan must be adopted by ordinance.

The final development plan was adopted by motion. Consequently, the final development plan is deficient because it was not adopted by ordinance. Further, the Preliminary PUD is also deficient because the final development plan was not properly adopted within the required 1-year timeframe.

Therefore, it is the conclusion of the Growth Management Department that neither the Preliminary PUD adopted January 18, 2019, nor the final development plan approved on June 6, 2018 are valid for the reasons described herein. Further you have submitted new applications, which if approved properly and timely, would allow development on the PUD zoned property.

Please feel free to contact me or the Land Development staff in Growth Management if you have any questions or wish to discuss this matter further.

Sincerely,



Laurence Bradley, AICP  
Director of Growth Management

Page 2  
Letter to Benjamin Jeffaries  
October 1, 2019

Cc: Lisa Morelli, City Manager  
Patricia Smith, City Attorney  
Terese Jones, City Clerk  
Patrick Murphy, Assistant Director of Growth Management

**TAB D**  
**ENVIRONMENTAL ASSESSMENT BY JON SHEPHARD ATLANTIC**  
**ENVIRONMENTAL SERVICES**



**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

Mr. Boerema questioned whether diesel or gasoline fuel would be utilized, and if there would be an apparatus for spillage while trucks refueled. Mr. Bynum indicated that diesel fuel would be used, and that the third containment area and the professional pumps would control spillage.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Ms. Maragh, second by Mr. Hill to submit Case CU-31-2020 to City Council for approval of a conditional use to allow for proposed automotive fuel dispensary in an LI, Light Industrial and Warehousing District. The motion carried with members voting unanimously.

5. **\*\*PD-32-2020 – GARDENS AT WATERSTONE PHASE I –  
WATERSTONE DEVELOPMENT, LLC (JAKE WISE, P.E. AND  
ROCHELLE LAWANDALES, FAICP, REPS.)**

Mr. Balter presented the staff report for Case PD-32-2020. The applicant had requested Preliminary Development Plan approval for a PUD, Planned Unit Development to allow a proposed 154 single-family residential development called Gardens at Waterstone Phase I. Staff recommended Case PD-32-2020 for approval, subject to the staff comments contained in the staff report.

Mr. Balter indicated that construction drawings were no longer a condition for the project.

Ms. Rochelle Lawandales, FAICP with Waterstone Development, LLC (co-representative for the applicant) stated that the proposed single-family development would be an extension of Mara Loma Boulevard SE and was currently under contract with development company Forte Macaulay. Preliminary permits had been obtained from the St. Johns River Water Management District; environmental reports and traffic reports had been submitted; and staff conditions had been met for the preliminary subdivision plat, boundary and title opinion, deed restrictions, and construction drawings. An application for the Final Development Plan was submitted. She said that a Citizen Participation Plan (CPP) meeting was held; the

project would have its own recreation area; and future phases of the development would occur organically.

Mr. Boerema was concerned about the proposed 40-foot wide lots with the existing homes in the area. He asked if the concern was discussed at the CPP meeting. Ms. Lawandales noted that the original approval for the area was for 38-foot wide lots, and the Heron Bay development to the east had predominantly 50-foot wide lots. Lot sizes were not a concern discussed at the CPP meeting.

Ms. Maragh asked if the applicant was in agreement with the staff recommendations. Ms. Lawandales indicated her agreement with all staff comments and reiterated how three of the staff conditions had been met and addressed in the Final Development Plan submittal.

Mr. Jake Wise, P.E. of Construction Engineering Group, Inc. (civil engineer for the project and co-representative for the applicant) stated that the 40-foot wide lots of Phase I would offer a diversity in lot product as the Cypress Bay development under construction to the east had 50-foot wide lots. The two next phases of the subject development would offer more lot sizes. He commented on how helpful the CPP meetings had become, and how the residents in the area were anxious for commercial development.

Ms. Maragh inquired about when the commercial development would occur. Mr. Wise stated that commercial development was based on rooftops and would occur once the subject development and Cypress Bay to the east were constructed. Ms. Lawandales added that each residential project brought the area nearer to supporting commercial development.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Mr. Boerema, seconded by Ms. Jordan to submit Case PD-32-2020 to City Council for Preliminary Development Plan approval of a PUD, Planned Unit Development to allow a proposed 154 single-family residential development called Gardens at Waterstone Phase I, subject to the staff comments contained in the staff report. The motion carried with members voting unanimously.

## **RESOLUTION 2020-58**

**A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING APPROVAL OF A PLANNED UNIT DEVELOPMENT (PUD) PRELIMINARY DEVELOPMENT PLAN OF A SINGLE-FAMILY RESIDENTIAL SUBDIVISION TO BE KNOWN AS 'GARDENS OF WATERSTONE PHASE 1 PUD' IN PUD (PLANNED UNIT DEVELOPMENT) ZONING; WHICH PROPERTY IS LOCATED WEST OF AND ADJACENT TO MARA LOMA BOULEVARD, IN THE VICINITY SOUTH OF MELBOURNE TILLMAN WATER CONTROL DISTRICT CANAL 38, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR FILING OF THE FINAL PLANNED UNIT DEVELOPMENT APPLICATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, application for Planned Unit Development (PUD) Preliminary Development Plan in PUD (Planned Unit Development) zoning to permit a single-family residential subdivision to be known as 'Gardens of Waterstone Phase 1 PUD' on property legally described herein, has been made by Waterstone Farms, LLC, and

**WHEREAS**, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on November 4, 2020, which voted to recommend to the City Council approval of the application, and

**WHEREAS**, all provisions applicable to the Preliminary PUD under Chapter 185, Zoning, of the Palm Bay Code of Ordinances, have been satisfied by the applicant, and

**WHEREAS**, the City Council of the City of Palm Bay has determined that such Preliminary PUD will neither be injurious to adjacent lands nor otherwise detrimental to the public welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA**, as follows:



**SECTION 1.** The City Council of the City of Palm Bay hereby grants PUD Preliminary Development Plan approval for “Gardens of Waterstone Phase 1 PUD” on property zoned PUD (Planned Unit Development), which property is legally described herein as Exhibit ‘A’.

**SECTION 2.** The PUD Preliminary Development Plan is granted subject to the staff comments contained in the Staff Report and the following items being submitted with a Final PUD application:

1. The final development plan and all required exhibits shall be submitted as part of the PUD application;
2. The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit ‘B’;
3. A preliminary subdivision plat and a boundary and title opinion;
4. Deed restrictions establishing development standards and minimum dwelling sizes;
5. Specific layout and architectural drawings illustrating the amenities and walking trails;
6. The technical comments generated by the Development Review Staff shall be observed and incorporated into all future subdivision designs; and
7. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.

**SECTION 3.** The developer shall have one (1) year from the date of this resolution in which to file a Final PUD application. Failure to file said application within one (1) year shall void the PUD Preliminary Development Plan approval unless an extension for filing the Final PUD application has been granted by the City Council.

**SECTION 4.** This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2020- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2020.

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Robert Medina, MAYOR

ATTEST:

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Terese M. Jones, CITY CLERK

Applicant: Waterstone Farms, LLC  
Case: PD-32-2020

cc: (date) Applicant  
Case File

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 4, TOWNSHIP 30 SOUTH, RANGE 37 EAST, AND PORTION OF LOTS 1 AND 32 OF SAN SEBASTIAN FARMS, SECTION 5, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 6, PAGE 77 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 4; THENCE RUN N89°58'02"E ALONG THE NORTH LINE OF SAID SECTION 4 A DISTANCE OF 1258.57 FEET TO THE NORTHWEST CORNER OF WATERSTONE PLAT THREE P.U.D., AS RECORDED IN PLAT BOOK 59, PAGES 1 THROUGH 5, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE RUN S00°35'55"W, ALONG THE WEST LINE OF SAID WATERSTONE PLAT THREE P.U.D., FOR A DISTANCE OF 1040.42 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 75.00 FEET WITH A CHORD THAT BEARS S86°41'22"E FOR A DISTANCE OF 12.94 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 9°54'01", FOR A DISTANCE OF 12.96 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1900.00 FEET WITH A CHORD WHICH BEARS N89°33'53"E FOR A DISTANCE OF 79.87 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°24'31", FOR A DISTANCE OF 79.87 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN S00°46'09"W FOR A DISTANCE OF 60.00 FEET TO THE SOUTH LINE OF TRACT "OS5" OF AFOREMENTIONED WATERSTONE PLAT THREE P.U.D. AND A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1840.00 FEET WITH A CHORD THAT BEARS S86°37'49"E FOR A DISTANCE OF 166.99 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF THE AFORESAID CURVE AND TRACT "OS5", THROUGH A CENTRAL ANGLE OF 5°12'06", A DISTANCE OF 167.05 FEET TO THE SOUTHEAST CORNER OF SAID TRACT "OS5" AND A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN S05°58'14"W FOR A DISTANCE OF 100.00 FEET TO THE NORTH LINE OF TRACT "OS5" OF WATERSTONE PLAT ONE P.U.D., AS RECORDED IN PLAT BOOK 55, PAGE 37 THROUGH 57, OF THE PUBLIC RECORDS OF BREVARD COUNTY FLORIDA, AND A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1740.00 FEET WITH A CHORD THAT BEARS S74°54'53"W FOR A DISTANCE OF 1250.28 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 42°06'41", FOR A DISTANCE OF 1278.53 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N36°08'27"W, A DISTANCE OF 90.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING RADIUS OF 1830.00 FEET WITH A CHORD THAT BEARS S49°56'45"W A DISTANCE OF 249.79 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 7°49'36", A DISTANCE OF 249.98 FEET TO A POINT OF COMPOUND CURVATURE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 590.00 FEET WITH CHORD THAT BEARS S31°45'36"W FOR A DISTANCE OF 290.91 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°32'41", A DISTANCE OF 293.94 FEET TO A POINT OF TANGENCY; THENCE RUN S17°29'16"W FOR A DISTANCE OF 11.52 FEET; THENCE RUN N72°30'44"W FOR A DISTANCE OF 210.00 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 225.00 FEET AND A CHORD WHICH BEARS N12°39'17"E FOR A DISTANCE OF 99.53 FEET; THENCE RUN

NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°33'20", FOR A DISTANCE OF 100.36 FEET TO A POINT OF TANGENCY; THENCE RUN N00°07'23"W FOR A DISTANCE OF 660.00 FEET; THENCE RUN N89°52'37"W FOR A DISTANCE OF 177.29 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 235.00 FEET AND A CHORD WHICH BEARS S75°19'38"W FOR A DISTANCE OF 120.03 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°35'30", FOR A DISTANCE OF 121.37 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN N29°28'07"E FOR A DISTANCE OF 60.48 FEET; THENCE RUN N00°07'23"W FOR A DISTANCE OF 786.06 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 250.00 FEET AND A CHORD WHICH BEARS N45°07'23"W FOR A DISTANCE OF 353.55 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", FOR A DISTANCE OF 392.70 FEET TO A POINT ON THE NORTH LINE OF AFOREMENTIONED SECTION 5; THENCE RUN N89°52'37"E FOR A DISTANCE OF 221.06 FEET TO THE POINT OF BEGINNING; CONTAINING 44.654 ACRES MORE OR LESS.





**REVISED**

## **STAFF REPORT**

### **LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

#### **Prepared by**

Christopher Balter, Senior Planner

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#### **CASE NUMBER**

PD-32-2020

#### **PLANNING & ZONING BOARD HEARING DATE**

November 4, 2020

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#### **PROPERTY OWNER & APPLICANT**

Benjamin E. Jefferies - Waterstone Farms, LLC

#### **PROPERTY LOCATION/ADDRESS**

A portion of Tax parcels 250 and 500, Section 4, Township 30, Range 37, and a portion of Tract 1 of the San Sebastian Farms Subdivision

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#### **SUMMARY OF REQUEST**

Preliminary Planned Unit Development approval for a 154-unit residential subdivision to be known as Gardens of Waterstone Phase 1 PUD.

##### **Existing Zoning**

PUD, Planned Unit Development

##### **Existing Land Use**

Single-Family Residential Use

##### **Site Improvements**

Vacant Unimproved Land (Former Orange Groves)

##### **Site Acreage**

44.65 acres, more or less

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#### **SURROUNDING ZONING & USE OF LAND**

##### **North**

Melbourne-Tillman Drainage Canal No. 38

##### **East**

PUD; Heron Bay at Waterstone PUD; Single-Family Homes

##### **South**

PUD; The Lakes at Waterstone PUD; Single-Family Homes and Undeveloped Land

##### **West**

PUD; Waterstone at Palm Bay; Undeveloped Land

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#### **COMPREHENSIVE PLAN COMPATIBILITY**

The future land use designation of the subject property is Single-Family Residential Use. The development of a single-family planned unit development is compliant with the Single-Family Residential Use future land use designation. The proposed density is 3.44 units per acre, which is below the maximum density defined in the City's Comprehensive Plan for Single-Family Residential Use (up to 5 units per acre).

**BACKGROUND:**

The subject property is located north of and adjacent to Mara Loma Boulevard SE, and west of Babcock Street SE. Specifically a portion of Tax parcels 250 and 500, Section 4, Township 30, Range 37, and a portion of Tract 1 of San Sebastian Farms Subdivision of Brevard County Florida. This Preliminary PUD request includes approximately 44.65 acres of land.

In 2004 the subject property was annexed into the City via Ordinance 2004-35 totaling 1,167 acres. The original Future Land Use amendment designated all of the lands as Single-Family Residential Use via Ordinance 2004-52; which stated that 1,800 units could be placed on the lands of Waterstone or Cypress Bay Preserve. Site specific conditions were placed on the amendment via Ordinance 2004-48. Between 2005 and 2018, a series of 37 future land use map amendments were made bringing the total units entitled to 2,596. The total entitlements encumbered are as follows: 1802 units on the west side of Babcock Street, and 362 units on the east side of Babcock Street.

**ANALYSIS:**

The applicant is requesting Preliminary Development Plan (PDP) approval for a Planned Unit Development (PUD), to construct a single-family residential subdivision called Gardens at Waterstone Phase 1. The planned unit development is a concept which encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage, setbacks and open space, from those elements required in any singular zoning classification found in the city's Zoning Code.

The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as commercial uses designed to serve the inhabitants of the proposed community. The planned unit development process simplifies the procedure for obtaining approval of these developments through simultaneous review of the proposed land use, site consideration, public needs and requirements, and health and safety factors.

Specifically, the PDP proposes a 154-unit single-family development that will be constructed in one phase. Per the PDP, typical lots within the residential development are 40' x 125'. The minimum size home will need to be identified in the Declaration of Covenants and Restrictions. The development will consist of a gated entrance with amenities neighborhood park, walking trails, recreation and open space areas, stormwater management ponds, and private roadways.

Lastly, technical staff review comments are attached to this report.

**CONDITIONS:**

In order to receive Preliminary Planned Unit Development approval, the proposal must meet the requirements of Section 185.066 of the City of Palm Bay's Code of Ordinances. Upon review, it appears that the request is in conformance with the applicable requirements of this section, subject to the following items being submitted with a Final PUD application:

- A. A preliminary subdivision plat and a boundary & title opinion;
- B. Deed restrictions establishing development standards and minimum dwelling sizes;

**C. Construction drawings;**

**D.>>C.<<** Specific layout and architectural drawings illustrating the amenities and walking trails;

**E.>>D.<<** The technical comments generated by the Development Review Staff (attached) shall be observed and incorporated into all future subdivision designs.

**STAFF RECOMMENDATION:**

Case PD-32-2020 is recommended for approval, subject to the staff comments contained in this report.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Resolution 2020-59, granting a conditional use to allow an assisted living facility to be known as 'Hampton Manor of Palm Bay' in IU (Institutional Use District) zoning on property located in the vicinity south of Koutnik Road, between Ruffin and Buffing Circles (20.19 acres) (Case CU-30-2020, DSG, LLC and Gus & Son, LLC) (Quasi-Judicial Proceeding).

DSG, LLC and Gus & Son, LLC (represented by Jake Wise of Construction Engineering Group, LLC) have submitted for a Conditional Use to allow for an Assisted Living Facility. The property is in the vicinity southeast of Eldron Boulevard SE and Koutnik Road SE, between Ruffin and Buffing Circles SE. The proposed project, Hampton Manor of Palm Bay, will only occupy the southern 7.65 acres of the 20.16-acre parcel.

The current proposal replaces the 60-lot single-family residential subdivision called Las Palmas that was approved for the site in 2006. The 2013 conditional use (Resolution 2013-42) for a 256-bed assisted living facility called Las Palmas and extended in 2014 (Resolution 2014-35) was allowed to expire in 2016. The current proposal for Hampton Manor ALF will be a single-story facility containing a total of 94 residential units, and its sole access will be from a driveway that extends from the eastern terminus of Pilgrim Lane SE.

City Council has the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings. The developer shall pay their Proportionate Fair Share of the cost for all necessary traffic improvements and is required to connect to the City's water and sewer system.

**REQUESTING DEPARTMENT:**  
Growth Management

### **RECOMMENDATION:**

Request for the City Council to determine if Case CU-30-2020 meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances. If the request should be approved, staff recommends the following conditions: Submit a traffic impact analysis; The developer shall pay their Proportionate Fair Share of the cost of all necessary traffic improvements; Construct a porte-cochere at the main entrance to the building; The opaque perimeter fence shall be constructed of either wood or PVC, and extended on the west side of the property north to Pilgrim Lane SE.; Building height shall be restricted to a maximum of 25 feet; and the developer shall work



closely with city staff to save as many existing specimen trees as practical; Emergency access to Satz Street SE for future development.

**Planning and Zoning Board Recommendation:**

Unanimous approval of the request, subject to staff conditions.

**ATTACHMENTS:**

**Description**

**Case CU-30-2020**

**Board Minutes**

**Resolution 2020-59**

**Resolution 2020-59, Exhibit A**

**Resolution 2020-59, Exhibit B**

**Correspondence (to Council)**



**REVISED**

# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmbayflorida.org](mailto:landdevelopmentweb@palmbayflorida.org)

### Prepared by

Patrick J. Murphy, Assistant Growth Management Director

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#### CASE NUMBER

CU-30-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

DSG, LLC and Gus & Son, LLC  
Being Represented by Jake Wise of  
Construction Engineering Group, LLC

#### PROPERTY LOCATION/ADDRESS

Located in the vicinity SE of Eldron Boulevard and  
Koutnik Road SE; between Ruffin and Buffing Circles.  
Access to the property is from Pilgrim Lane SE

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#### SUMMARY OF REQUEST

Conditional Use Approval for a for an Assisted Living Facility

##### Existing Zoning

IU, Institutional Use District

##### Existing Land Use

Public/Semi-public Use

##### Site Improvements

Vacant, Undeveloped Land

##### Site Acreage

20.19 acres, more or less

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#### SURROUNDING ZONING & USE OF LAND

##### North

RS-2, Single-Family Residential District; City Drainage Ditch

##### East

RS-2, Single-Family Residential District; Single-Family Homes

##### South

RS-2, Single-Family Residential District; Single-Family Homes

##### West

RS-2, Single-Family Residential District; Melbourne-Tillman Water  
Control District Canal No. 45

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#### COMPREHENSIVE PLAN

##### COMPATIBILITY

Yes

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**BACKGROUND:**

The subject property is in the vicinity SE of Eldron Boulevard and Koutnik Road SE; between Ruffin and Buffing Circles. Specifically, the property is Tax Parcel 2.0; located in Section 14, Township 29 south, Range 37 east, Brevard County, Florida. The size of the property is approximately 20.19 acres and it is presently vacant, undeveloped land.

On January 5, 2006 the Palm Bay City Council granted Final Subdivision approval for a 60-lot single-family residential subdivision called Las Palmas. Soon after the market and the economy took a downward turn and the project was abandoned.

On October 3, 2013 City Council (Council) approved a Future Land Use Map amendment changing the designation of the subject property from Single Family Residential Use to Public/Semi-public Use, with conditions (Ord 2013-17). On the same night, Council approved a rezoning of the property from RS-2, Single-Family Residential to IU, Institutional Use (Ord 2013-18). Also, on October 3, 2013, Council approved a Conditional Use (CU) request for an Assisted Living Facility, called Las Palmas, to be constructed upon the property with 256 beds (Resolution 2013-42). The one-year commencement period for constructing the ALF was extended via Resolution 2014-35. However, the CU approval expired on October 3, 2016.

The applicants, DSG, LLC. and Gus & Sons, LLC., are requesting conditional use approval for an Assisted Living Facility (ALF), as required by Section 185.047(D)(4) of the Palm Bay Code of Ordinances. The applicant is represented by their Civil Engineer, Jake Wise of CEG.

**ANALYSIS:**

Administrative site plans are currently under city staff review. The proposed project, Hampton Manor of Palm Bay, will only occupy the southern 7.65 acres of the 20.16-acre parcel. If the conditional use request were to be approved by Council, the property owners (or their successors and/or assigns) will require additional approvals to develop the remaining 12.51 acres. Hampton Manor proposes construction of one (1) 2 >>single<<-story building totaling 65,640 square feet, with interior courtyards and swimming pool. The footprint of the building covers roughly 26% of the development area. The buildings will contain a total of 94 residential units.

**CODE REQUIREMENTS:**

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

**Item (A):** Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and

control, and access in case of emergency.

Sole access to the site will be from a driveway that extends from the eastern terminus of Pilgrim Lane. There are no other driveways proposed or anticipated at this time. Staff recommends that a condition be placed upon the property to require an 'emergency access only' connection to Satz Street when the remainder of the parcel is submitted for review. Per Ordinance 2013-17, a traffic impact analysis is required at the time of the proposed development of the site. The developer shall pay their Proportionate Fair Share of the cost of all necessary traffic improvements for this, and any future, project. A sidewalk is proposed from the project, along Pilgrim Lane, with connection to Eldron Boulevard.

**Item (B):** Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.

Section 185.140(G)(8) requires a minimum of ½ parking spaces per dwelling unit, for elderly and handicapped housing. Therefore, a total of 47 spaces are required, of which at least two (2) spaces shall be handicap accessible. The site plan proposes 47 spaces; four (4) of which are handicap accessible. The site also includes a dedicated drop-off and pick-up loop in the front of the building. Staff believes this loop should be covered i.e. a *porte-cochere*. Lastly, the site shall require one (1) loading/unloading space meeting the provisions of Section 185.141.

**Item (C):** Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

The developer will be required to install water and sewer systems of adequate size to accommodate the development and to connect to the City's water & sewer system. The nearest connection point to sewer is a 12" force main on Emerson Drive. Extension of the force main from Emerson shall be along City road right-of-way's and not along the existing canal network. The nearest connection to potable water is a 12" distribution main on Eldron Boulevard. Additionally, "upsizing" of the existing 6" water main within Ruffin Circle may be required for the purpose of fire protection.

**Item (D):** Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

An eight foot (8') high opaque fence is proposed along the south, east, and west property lines where the "development area" is located. The Planning and Zoning Board (Board) and City Council shall determine if this fence should be extended north, to the project entrance at Pilgrim Lane (along the back of Lots 6-10, Block 2690, PMU 50). Staff recommends this fence is constructed of either wood or PVC (not metal). The ALF building is located 74' from existing homes to the east (on Buffing Circle) and 77' from the homes to the west (on Ruffin Circle). This exceeds the minimum setback of 25' required in the IU zoning district. A 25' building



setback and a 90' wide canal (Melbourne-Tillman Canal No. 45) separates the project from the existing homes located further south, on Sauders Road, by a distance of 115'.

**Item (E):** Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

Although no photometric plan or sign detail has been provided, it shall be noted that City codes require all lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties. Only one (1) detached sign would be allowed and it must meet all applicable location and dimension criteria.

**Item (F):** Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The yards and open space requirements of the Zoning Code have been met.

**Item (G):** The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.

According to the ITE Trip Generation Informational Report (10<sup>th</sup> Edition), Assisted Living Facilities are generally a low producer of overall traffic. Vehicle ownership levels are very low, and the facility's employees and services provided to the residents, generate most of the trips to the site. It is anticipated that Hampton Manor will generate less traffic than if the property were to be developed as a single-family residential subdivision.

**Item (H):** The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

The parcel is bordered by a large drainage canal to the south with medium residential density to the east and west. Assisted living facilities, besides being overall low generators of traffic, are typically quiet uses and do not appear to have an immediate impact on adjacent lands. The building height is restricted to 25', per Ordinance 2013-17, which is the same maximum building height of the surrounding area (PMU 50). According to the engineered site plans a total of 56 existing specimen trees are to be removed to accommodate this development. Most of these are pine trees. However, there are a few large oak trees (24-36" DBH) that staff believes can be saved through a minor redesign of a few areas of the site.

**Item (I):** Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

The Board and Council have the authority to impose any justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

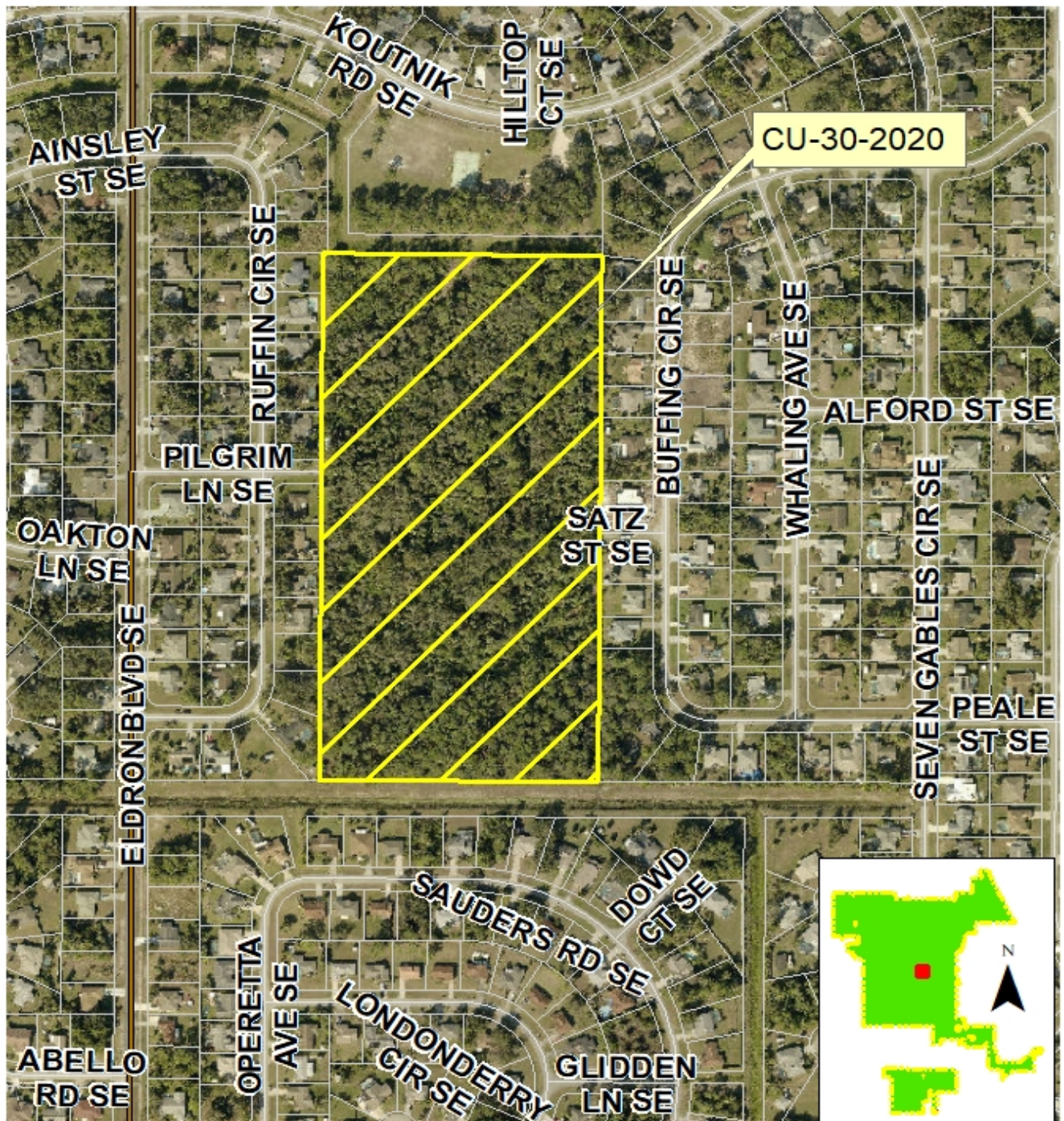
**STAFF CONCLUSION:**

The Planning and Zoning Board and City Council must determine if the request meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances. If the request should be approved, staff recommends the following conditions:

- Submit a traffic impact analysis;
  - The developer shall pay their Proportionate Fair Share of the cost of all necessary traffic improvements;
  - Construct a porte-cochere at the main entrance to the building;
  - The opaque perimeter fence shall be constructed of either wood or PVC;
  - Building height shall be restricted to a maximum of 25 feet; and
  - The developer shall work closely with city staff to save as many existing specimen trees as practical.
- Emergency access to Satz Street SE for future development.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## AERIAL LOCATION MAP CASE CU-30-2020

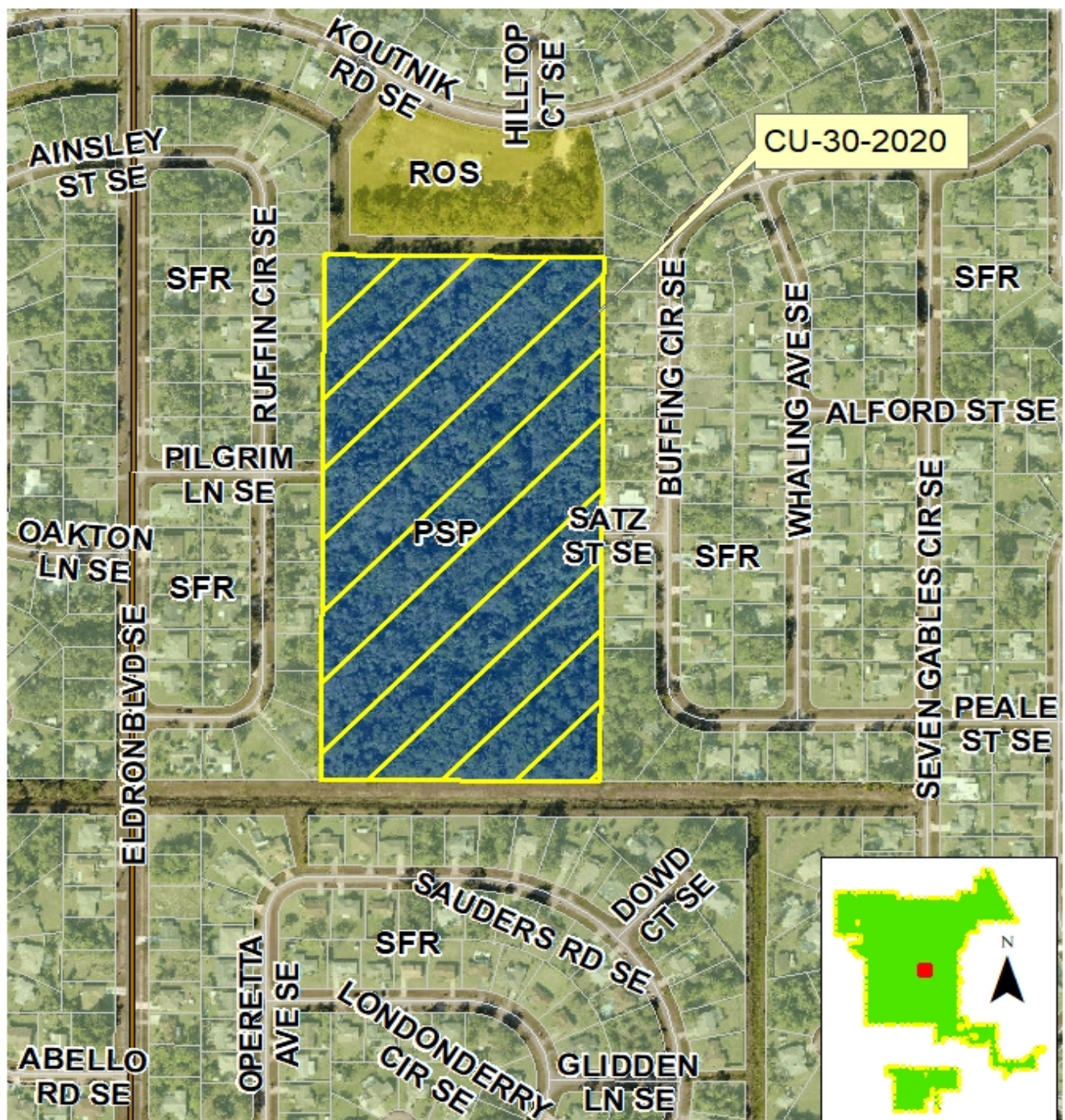
### Subject Property

East of and adjacent to Pilgrim Lane SE, in the vicinity east of Ruffin Circle SE and west of Buffing Circle SE





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## FUTURE LAND USE MAP

## CASE CU-30-2020

### Subject Property

East of and adjacent to Pilgrim Lane SE, in the vicinity east of Ruffin Circle SE and west of Buffing Circle SE

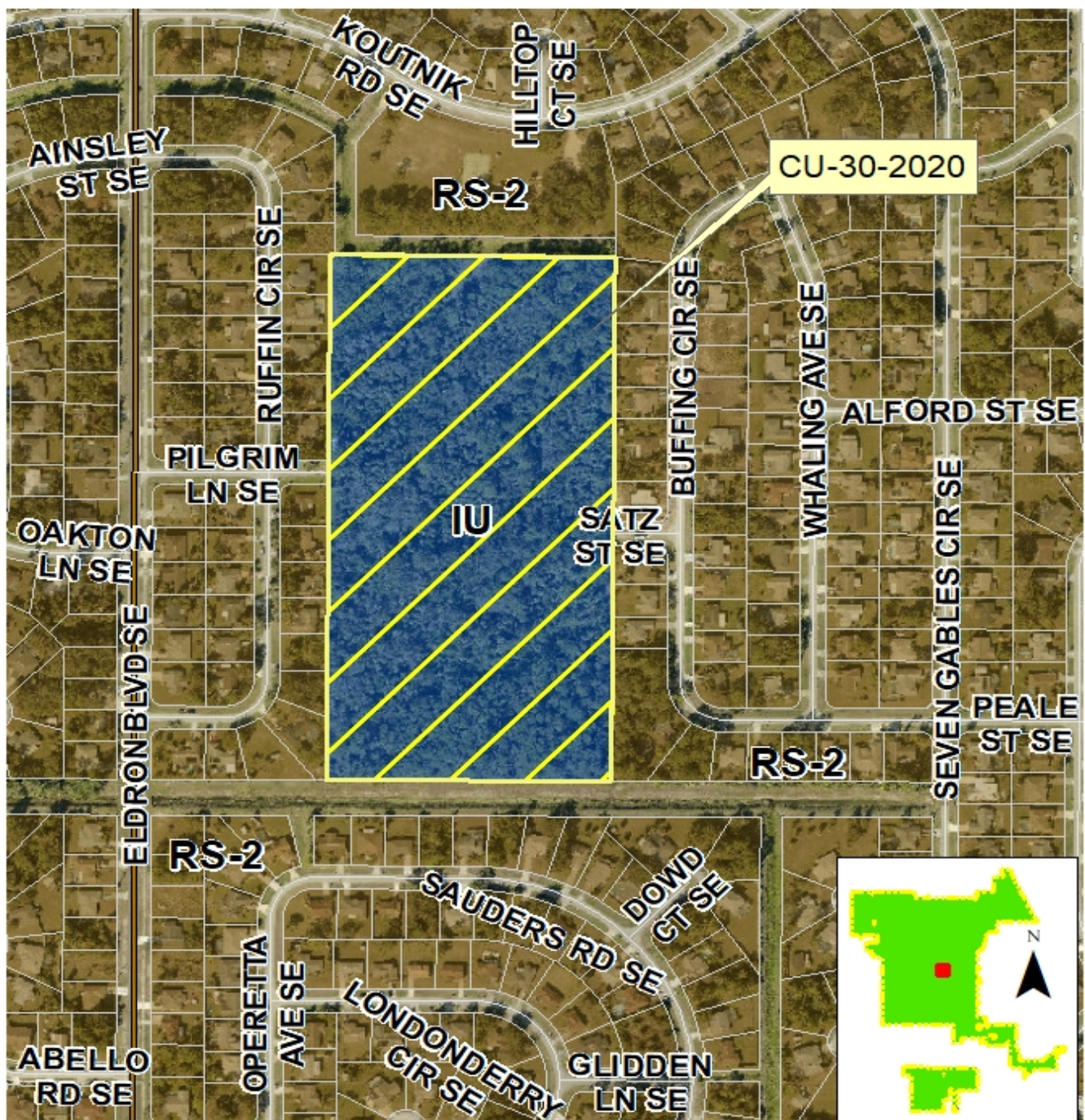
### Future Land Use Classification

PSP – Public Semi-Public Use





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## ZONING MAP

## CASE CU-30-2020

### Subject Property

East of and adjacent to Pilgrim Lane SE, in the vicinity east of Ruffin Circle SE and west of Buffing Circle SE

### Current Zoning Classification

IU – Institutional Use







**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopment@palmbayflorida.org

**CONDITIONAL USE APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

**PARCEL ID** 29-37-18-00-2

**TAX ACCOUNT NUMBER** 2938315

**LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:**

See attached

**SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):** +/- 7.65 acres

**ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.)** IU

**CONDITIONAL USE SOUGHT** Assisted living facility

**CONDITIONAL USE REQUIREMENTS FOR SUBMITTAL (Section 185.087):**

The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties per Section 185.085.

**A SITE SKETCH TO SCALE MUST BE PROVIDED, AND ALSO PROVIDED ON MEMORY DRIVE, OF THE FOLLOWING:**

- (A) Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
- (B) Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.

**CITY OF PALM BAY, FLORIDA**  
**CONDITIONAL USE APPLICATION**  
**PAGE 2 OF 3**

- (C) Adequate and properly located utilities that are available or may be reasonably provided to serve the proposed development.
- (D) Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.
- (E) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.
- (F) Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.
- (G) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.
- (H) Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

**ADDITIONAL CONDITIONS MUST BE MET AND INCORPORATED INTO THE SITE SKETCH FOR THE SPECIFIC CONDITIONAL USE.**

Additional criteria is listed in Section 185.088 and available from staff (check all that apply):

- ☐ **Church** (Sec. 185.088(A))
- ☐ **Club or Lodge** (Sec. 185.088(B))
- ☐ **Commercial Dog Kennel** (Sec. 185.088(C))
- ☐ **Planned Industrial Development** (industrially zoned site over 5 acres) (Sec. 185.088(D))
- ☐ **Public or Private School** (Sec. 185.088(E))
- ☐ **Self-Storage Facility** (Sec. 185.088(F))
- ☐ **Communication Tower and Facilities** (Sec. 185.088(G))
- ☐ **Dance Club** (Sec. 185.088(H))
- ☐ **Security Dwelling Unit** (Sec. 185.088(I))
- ☐ **Wedding Venue** (Sec. 185.088(J))
- ☐ **Event Hall** (Sec. 185.088(K))



CITY OF PALM BAY, FLORIDA  
CONDITIONAL USE APPLICATION  
PAGE 3 OF 3

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ \*\$650.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☒ Site Sketch (See page 1 for requirements). Site Sketch must also be provided on Memory Drive.
- ☒ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.
- ☒ Citizen Participation Plan. Refer to Section 169.005 of the Land Development Code for guidelines.
- ☒ **Where the property owner is not the representative for the request**, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

**Name of Representative** Jake Wise, PE- Construction Engineering Group, LLC

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

**Under penalties of perjury, I declare that I have read the foregoing Conditional Use application and that the facts stated in it are true.**

**Owner Signature**

**Date** 8-17-24

**Printed Name** Gregory Solis- Gus & Son, LLC

**Full Address** 10620 Quail Ridge Dr; Ponte Vedra, FL 32081

**Telephone** 904 476 7685 **Email** gregsolis@hotmail.ca

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

CITY OF PALM BAY, FLORIDA  
CONDITIONAL USE APPLICATION  
PAGE 3 OF 3

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ \*\$650.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☒ Site Sketch (See page 1 for requirements). Site Sketch must also be provided on Memory Drive.
- ☒ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.
- ☒ Citizen Participation Plan. Refer to Section 169.005 of the Land Development Code for guidelines.
- ☒ **Where the property owner is not the representative for the request**, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative Jake Wise, PE- Construction Engineering Group, LLC

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing Conditional Use application and that the facts stated in it are true.

Owner Signature

Date

7/27/20

Printed Name

Daniel Segina

-DSG, LLC

Full Address

8190 Highway A1A; Melbourne Beach, FL 32951

Telephone

321 720 8111

Email

SDIMABEAR@GMAIL.COM

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

July 29, 2020

Re: Letter of Authorization

As the property owner of the site legally described as:

Parcel ID 29-34-18-00-2

I, Owner Name: Daniel Segina - DSG, LLC

Address: 8190 Highway A1A; Melbourne, FL 32951

Telephone: 321 720 8111

Email: SEBINABEARD@GMAIL.COM

hereby authorize:

Representative: Jake Wise, PE- Construction Engineering Group, LLC

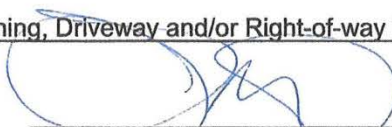
Address: 2651 W Eau Gallie Blvd; Suite A; Melbourne, FL 32935

Telephone: 321-610-1760

Email: jwise@cegengineering.com

to represent the request(s) for:

Conditional Use, Site Plan, CPA, Rezoning, Driveway and/or Right-of-way Requests, FLU, FDP & PDP



(Property Owner Signature)

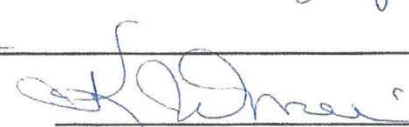
STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29<sup>th</sup> day of July, 2020 by

Daniel Segina, property owner.





, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

d.l.

7-28-20

, 20

Re: Letter of Authorization

As the property owner of the site legally described as:

Parcel ID 29-34-18-00-2

I, Owner Name: Gregory Solis- Gus & Son, LLC

Address: 10620 Quail Ridge Dr; Ponte Vedra, FL 32081

Telephone: 904-476-7105

Email: gregdis@hotmail.com

hereby authorize:

Representative: Jake Wise, PE- Construction Engineering Group, LLC

Address: 2651 W Eau Gallie Blvd; Suite A; Melbourne, FL 32935

Telephone: 321-610-1760

Email: jwise@cegengineering.com

to represent the request(s) for:

Conditional Use, Site Plan, CPA, Rezoning, Driveway and/or Right-of-way Requests, FLU, FDP & PDP

(Property Owner Signature)

STATE OF

Florida

COUNTY OF

Duval

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 28 day of July, 2020 by

Gregory Solis

, property owner.

Heather Jones, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:





**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

3. **\*\*CU-30-2020 – DSG, LLC AND GUS & SON, LLC (JAKE WISE, P.E., REP.)**

Mr. Murphy presented the staff report for Case CU-30-2020. The applicant had requested a conditional use to allow an assisted living facility called Hampton Manor of Palm Bay in an IU, Institutional Use District. The board had to determine if the request met the criteria of Section 185.087 of the Palm Bay Code of Ordinances. If approved, staff recommended conditions on the request.

Mr. Jake Wise, P.E. of Construction Engineering Group, Inc. (civil engineer for the project and representative for the applicant) explained that the current zoning and land use for the subject property allowed for an assisted living facility by conditional use. The 60-unit, single-family development previously approved for the 20-acre site would have generated more traffic and required the wooded property to be clear cut. The proposal to construct a 94-unit assisted living facility on the southern 7.6 acres of the site would have a much lower impact. The site was designed to be a good neighbor and to retain as much buffering as possible. Tree preservation was a concern discussed at the Citizen Participation Plan (CPP) meeting. Trees and buffering would serve as protection between the facility and the adjacent neighborhood. He explained that most residents of the facility would be under memory care and unable to drive, so traffic would be minimal. He described how the proposed building location would be distanced from current single-family homes and well buffered by existing preservation and the increased setbacks. The layout of the dry stormwater retention system, small wet pond, and 8-foot high fence would save trees. Onsite drainage would not impact the neighborhood, and a photometric study for lighting would be provided to ensure zero-foot candles. The project's extension of utilities to the site for water and wastewater would benefit the community. He stated that he was in agreement with the staff conditions.

Mr. Warner asked about the projects previously approved for the site and if including the emergency access lane as a condition of the project would be a problem. Mr. Wise explained how the subject proposal would replace the previous proposals. He clarified that an emergency access lane would only be required if there was a future addition to the subject request.

Mr. Hill asked whether any mitigation was planned for the removal of the large specimen trees. Mr. Wise confirmed that the large specimen trees would be mitigated and commented on how most of the large oak trees were on the north end of the property.

Ms. Maragh inquired whether the fence would be extended north to the project entrance as requested by staff. Mr. Wise confirmed that this was correct.

The floor was opened for public comments.

Ms. Nancy Glover (resident at Ruffin Circle SE) spoke against the request. She wanted to know what was planned for the north section of the property, and if the proposed fence would be erected around the entire site or just the subject development. Mr. Murphy stated that the remaining balance of the site would be left undisturbed or would be required to come back before the board and City Council with a development plan for that portion of the site.

Ms. Lisa Behuniak (resident at Buffing Circle SE) spoke against the request. She was concerned with how the wildlife on the subject site would be addressed. There had been sightings of tortoises, white-tailed and red-tailed hawks, and a Florida panther.

Mr. John Cayford (resident at Buffing Circle SE) spoke against the request. He wanted the land to be persevered for future generations. He stated how he had picked up garbage and maintained the trails on the property for 27 years, and that there were 200-year-old oak trees on the site. He believed the City would be better served by preservation and conservation of the land as a natural extension of Oakwood Park to the north.

Mr. William Roberts (resident at Operetta Avenue SE) spoke against the request. He did not want a two-story facility to abut his backyard.

Ms. Pamela Frazer (resident at Ruffin Circle SE) spoke against the request. She was concerned about her property value.

The floor was closed for public comments; and there was no correspondence in the file.

In response to comments from the audience, Mr. Wise indicated the portion of the site that was currently under review and reiterated that the balance of the property would remain undisturbed. He agreed to extend the 8-foot high fence to Pilgrim Lane SE. An environmental study was done for protected species, and the gopher tortoises on the site would be relocated per State guidelines. The City was unable to accommodate the balance of the subject site for a preservation addition to Oakwood Park. He clarified that the facility would be a beautifully maintained 25-foot high, single-story building. The developer had constructed immaculate assisted living facilities that typically increased surrounding property values.

Mr. Boerema inquired whether east to west fencing would be erected on the north side of the property. He was concerned about the residents of the facility becoming lost in the wooded area. Mr. Wise indicated the proposed placement of the fencing and noted that each resident of the facility would be individually monitored.

Motion by Mr. Boerema, seconded by Mr. Hill to submit Case CU-30-2020 to City Council for approval of a conditional use to allow an assisted living facility called Hampton Manor of Palm Bay in an IU, Institutional Use District, subject to staff conditions. The motion carried with members voting unanimously.

4. **\*\*CU-31-2020 – WJJ LAND HOLDINGS, LLC (JACOB BYNUM)**

Mr. Murphy presented the staff report for Case CU-31-2020. The applicant had requested a conditional use to allow for proposed automotive fuel dispensary in an LI, Light Industrial and Warehousing District. The board had to determine if the request met the criteria of Section 185.087 of the Palm Bay Code of Ordinances.

Mr. Jacob Bynum (applicant) stated that a concrete pumping business was proposed for the site, and that the requested automotive fuel dispensary would be double walled with a cinderblock wall as a third containment.

Mr. Warner inquired whether the tank could be removed in the future if the business was to shut down. Mr. Bynum stated that the aboveground tank could be removed.



## **RESOLUTION 2020-59**

**A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING A CONDITIONAL USE TO ALLOW AN ASSISTED LIVING FACILITY TO BE KNOWN AS 'HAMPTON MANOR OF PALM BAY' IN IU (INSTITUTIONAL USE DISTRICT) ZONING; WHICH PROPERTY IS LOCATED IN THE VICINITY SOUTH OF KOUTNIK ROAD, BETWEEN RUFFIN AND BUFFING CIRCLES, AND LEGALLY DESCRIBED HEREIN; GRANTING THE USE AS A CONDITIONAL USE; PROVIDING FOR CONSTRUCTION TO BE IN COMPLIANCE WITH THE SITE PLAN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, application for a conditional use in IU (Institutional Use District) zoning to allow an assisted living facility to be known as 'Hampton Manor of Palm Bay' on property legally described herein, has been made by DSG, LLC, and Gus & Son, LLC, and

**WHEREAS**, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on November 4, 2020, which voted to recommend to the City Council approval of the application, and

**WHEREAS**, all provisions applicable to the conditional use under Chapter 185, Zoning, Conditional Uses, Sections 185.085 and 185.086, and District Regulations, Section 185.047, of the Palm Bay Code of Ordinances, have been satisfied by the applicant, and

**WHEREAS**, the City Council of the City of Palm Bay has determined that such conditional use will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA**, as follows:

**SECTION 1.** The City Council of the City of Palm Bay hereby grants a conditional use to allow an assisted living facility to be known as 'Hampton Manor of Palm Bay' on property zoned IU (Institutional Use District), which property is legally described as follows:

The west half of the southeast quarter of the northeast quarter of Section 18, Township 29S, Range 37E, also known as Lot 15, Florida Indian River Land Company Subdivision, according to the plat thereof, recorded in Plat Book 1, Page 165, of the Public Records of Brevard County, Florida.

Less and except:

A portion of the west half of the southeast quarter of the northeast quarter of Section 18, Township 29S, Range 37E, also known as Lot 15, Florida Indian River Land Company Subdivision, according to the plat thereof, recorded in Plat Book 1, Page 165, of the Public Records of Brevard County, Florida, and being more particularly described as follows: Begin at the northwest corner of said Lot 15 and run S 89°30'06" E along the north line of said Lot 15 and along the south line of a 50' wide drainage right-of-way as shown on Port Malabar Unit 50, according to the plat thereof, as recorded in Plat Book 23, Pages 4-21 of said Public Records, a distance of 664.79 feet to the northeast corner of said Lot 15; thence S 00°22'38" W along the east line of said Lot 15 and along the west line of Blocks 2693 and 2694 of said Port Malabar Unit 50, a distance of 999.49 feet; thence west 376.98; thence N 00°09'46" E 231.12 feet to a Point of Curvature of a circular curve concave to the southwest, having a radius of 225.00 feet; thence run northwesterly along the arc of said curve, through a central angle of 90°00'00", an arc distance of 353.43 feet to a Point of Tangency; thence N 89°50'14" W to the intersection with the west line of said Lot 15; thence N 00°22'26" E along the west line of said Lot 15 and along the east line of Block 2687 of said Port Malabar Unit 50, a distance of 548.32 feet to the Point of Beginning; containing 12.54 acres, more or less.

**SECTION 2.** The conditional use is granted subject to the applicant complying with the following:

1. Constructing the assisted living facility in accordance with the site plan which is, by reference, incorporated herein as Exhibit 'A';
2. The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit "B".
3. Submittal of a traffic impact analysis;
4. The developer shall pay their Proportionate Fair Share of the cost of all necessary traffic improvements;
5. Construct a porte-cochere at the main entrance to the building;

6. The opaque perimeter fence shall be constructed of either wood or PVC, and extended on the west side of the property north to Pilgrim Lane;
7. The building height shall be restricted to a maximum of 25 feet and the developer shall work closely with city staff to save as many existing specimen trees as practical;
8. Allow for emergency access to Satz Street for future development;
9. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.

**SECTION 3.**

1. The conditional use must be commenced within one (1) year from the effective date of this resolution. Commencement shall mean the issuance of the appropriate permit(s) which must remain active. Failure to commence such construction within one (1) year of issuance of the first permit shall void the conditional use.
2. Failure to make payment of the business tax within one (1) year shall void the conditional use.

**SECTION 4.** This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2020-\_\_\_\_\_, of the City Council of the City of Palm Bay, Brevard County, Florida, held on \_\_\_\_\_, 2020.

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Robert Medina, MAYOR

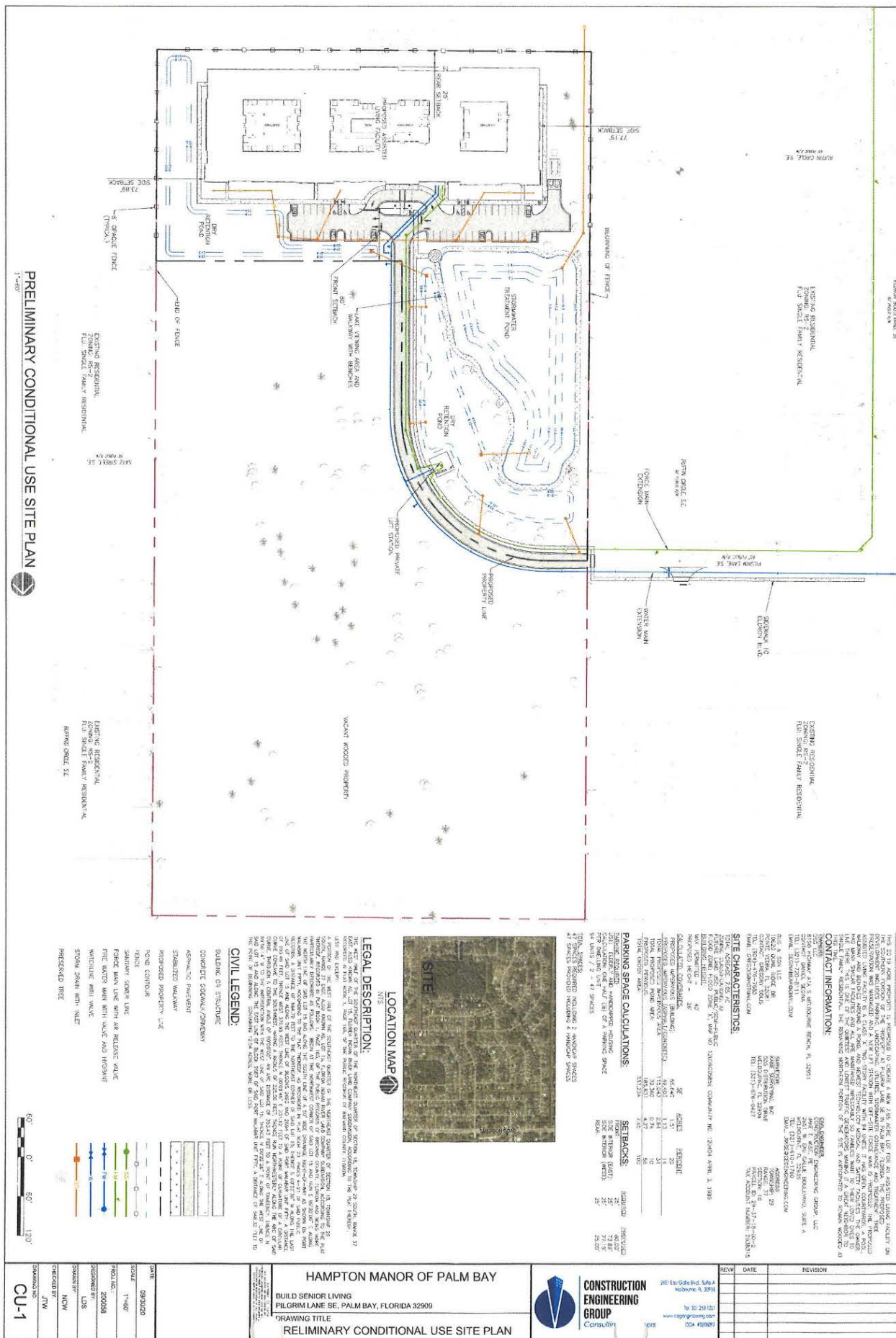
ATTEST:

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Terese M. Jones, CITY CLERK

Applicant: DSG, LLC, and Gus & Son, LLC  
Case: CU-30-2020

cc: (date) Brevard County Recording  
Applicant  
Case File







## STAFF REPORT

### LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmbayflorida.org](mailto:landdevelopmentweb@palmbayflorida.org)

#### Prepared by

Patrick J. Murphy, Assistant Growth Management Director

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#### CASE NUMBER

CU-30-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

DSG, LLC and Gus & Son, LLC  
Being Represented by Jake Wise of  
Construction Engineering Group, LLC

#### PROPERTY LOCATION/ADDRESS

Located in the vicinity SE of Eldron Boulevard and  
Koutnik Road SE; between Ruffin and Buffing Circles.  
Access to the property is from Pilgrim Lane SE

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#### SUMMARY OF REQUEST

Conditional Use Approval for a for an Assisted Living Facility

##### Existing Zoning

IU, Institutional Use District

##### Existing Land Use

Public/Semi-public Use

##### Site Improvements

Vacant, Undeveloped Land

##### Site Acreage

20.19 acres, more or less

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#### SURROUNDING ZONING & USE OF LAND

##### North

RS-2, Single-Family Residential District; City Drainage Ditch

##### East

RS-2, Single-Family Residential District; Single-Family Homes

##### South

RS-2, Single-Family Residential District; Single-Family Homes

##### West

RS-2, Single-Family Residential District; Melbourne-Tillman Water  
Control District Canal No. 45

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#### COMPREHENSIVE PLAN

##### COMPATIBILITY

Yes

**BACKGROUND:**

The subject property is in the vicinity SE of Eldron Boulevard and Koutnik Road SE; between Ruffin and Buffing Circles. Specifically, the property is Tax Parcel 2.0; located in Section 14, Township 29 south, Range 37 east, Brevard County, Florida. The size of the property is approximately 20.19 acres and it is presently vacant, undeveloped land.

On January 5, 2006 the Palm Bay City Council granted Final Subdivision approval for a 60-lot single-family residential subdivision called Las Palmas. Soon after the market and the economy took a downward turn and the project was abandoned.

On October 3, 2013 City Council (Council) approved a Future Land Use Map amendment changing the designation of the subject property from Single Family Residential Use to Public/Semi-public Use, with conditions (Ord 2013-17). On the same night, Council approved a rezoning of the property from RS-2, Single-Family Residential to IU, Institutional Use (Ord 2013-18). Also, on October 3, 2013, Council approved a Conditional Use (CU) request for an Assisted Living Facility, called Las Palmas, to be constructed upon the property with 256 beds (Resolution 2013-42). The one-year commencement period for constructing the ALF was extended via Resolution 2014-35. However, the CU approval expired on October 3, 2016.

The applicants, DSG, LLC. and Gus & Sons, LLC., are requesting conditional use approval for an Assisted Living Facility (ALF), as required by Section 185.047(D)(4) of the Palm Bay Code of Ordinances. The applicant is represented by their Civil Engineer, Jake Wise of CEG.

**ANALYSIS:**

Administrative site plans are currently under city staff review. The proposed project, Hampton Manor of Palm Bay, will only occupy the southern 7.65 acres of the 20.16-acre parcel. If the conditional use request were to be approved by Council, the property owners (or their successors and/or assigns) will require additional approvals to develop the remaining 12.51 acres. Hampton Manor proposes construction of one (1) 2 >>single<<-story building totaling 65,640 square feet, with interior courtyards and swimming pool. The footprint of the building covers roughly 26% of the development area. The buildings will contain a total of 94 residential units.

**CODE REQUIREMENTS:**

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

**Item (A):** Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and

control, and access in case of emergency.

Sole access to the site will be from a driveway that extends from the eastern terminus of Pilgrim Lane. There are no other driveways proposed or anticipated at this time. Staff recommends that a condition be placed upon the property to require an 'emergency access only' connection to Satz Street when the remainder of the parcel is submitted for review. Per Ordinance 2013-17, a traffic impact analysis is required at the time of the proposed development of the site. The developer shall pay their Proportionate Fair Share of the cost of all necessary traffic improvements for this, and any future, project. A sidewalk is proposed from the project, along Pilgrim Lane, with connection to Eldron Boulevard.

**Item (B):** Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.

Section 185.140(G)(8) requires a minimum of ½ parking spaces per dwelling unit, for elderly and handicapped housing. Therefore, a total of 47 spaces are required, of which at least two (2) spaces shall be handicap accessible. The site plan proposes 47 spaces; four (4) of which are handicap accessible. The site also includes a dedicated drop-off and pick-up loop in the front of the building. Staff believes this loop should be covered i.e. a *porte-cochere*. Lastly, the site shall require one (1) loading/unloading space meeting the provisions of Section 185.141.

**Item (C):** Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

The developer will be required to install water and sewer systems of adequate size to accommodate the development and to connect to the City's water & sewer system. The nearest connection point to sewer is a 12" force main on Emerson Drive. Extension of the force main from Emerson shall be along City road right-of-way's and not along the existing canal network. The nearest connection to potable water is a 12" distribution main on Eldron Boulevard. Additionally, "upsizing" of the existing 6" water main within Ruffin Circle may be required for the purpose of fire protection.

**Item (D):** Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

An eight foot (8') high opaque fence is proposed along the south, east, and west property lines where the "development area" is located. The Planning and Zoning Board (Board) and City Council shall determine if this fence should be extended north, to the project entrance at Pilgrim Lane (along the back of Lots 6-10, Block 2690, PMU 50). Staff recommends this fence is constructed of either wood or PVC (not metal). The ALF building is located 74' from existing homes to the east (on Buffing Circle) and 77' from the homes to the west (on Ruffin Circle). This exceeds the minimum setback of 25' required in the IU zoning district. A 25' building

setback and a 90' wide canal (Melbourne-Tillman Canal No. 45) separates the project from the existing homes located further south, on Sauders Road, by a distance of 115'.

**Item (E):** Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

Although no photometric plan or sign detail has been provided, it shall be noted that City codes require all lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties. Only one (1) detached sign would be allowed and it must meet all applicable location and dimension criteria.

**Item (F):** Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The yards and open space requirements of the Zoning Code have been met.

**Item (G):** The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.

According to the ITE Trip Generation Informational Report (10<sup>th</sup> Edition), Assisted Living Facilities are generally a low producer of overall traffic. Vehicle ownership levels are very low, and the facility's employees and services provided to the residents, generate most of the trips to the site. It is anticipated that Hampton Manor will generate less traffic than if the property were to be developed as a single-family residential subdivision.

**Item (H):** The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

The parcel is bordered by a large drainage canal to the south with medium residential density to the east and west. Assisted living facilities, besides being overall low generators of traffic, are typically quiet uses and do not appear to have an immediate impact on adjacent lands. The building height is restricted to 25', per Ordinance 2013-17, which is the same maximum building height of the surrounding area (PMU 50). According to the engineered site plans a total of 56 existing specimen trees are to be removed to accommodate this development. Most of these are pine trees. However, there are a few large oak trees (24-36" DBH) that staff believes can be saved through a minor redesign of a few areas of the site.

**Item (I):** Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.



The Board and Council have the authority to impose any justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

**STAFF CONCLUSION:**

The Planning and Zoning Board and City Council must determine if the request meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances. If the request should be approved, staff recommends the following conditions:

- Submit a traffic impact analysis;
  - The developer shall pay their Proportionate Fair Share of the cost of all necessary traffic improvements;
  - Construct a porte-cochere at the main entrance to the building;
  - The opaque perimeter fence shall be constructed of either wood or PVC;
  - Building height shall be restricted to a maximum of 25 feet; and
  - The developer shall work closely with city staff to save as many existing specimen trees as practical.
- Emergency access to Satz Street SE for future development.

## Terri Lefler

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**From:** Angela Burak  
**Sent:** Wednesday, November 25, 2020 1:01 PM  
**To:** Laurence Bradley; Patrick Murphy; Suzanne Sherman; Chandra Powell  
**Cc:** Rosemarie Saavedra; Meeshalle Sorenson; Christopher Balter; Terese Jones; Terri Lefler  
**Subject:** RE: proposed zoning change/ apartments

FYI. Thanks!

**From:** Lin Herz <[lin32905@gmail.com](mailto:lin32905@gmail.com)>  
**Sent:** Tuesday, November 24, 2020 2:51 PM  
**To:** Rob Medina <[Rob.Medina@palmbayflorida.org](mailto:Rob.Medina@palmbayflorida.org)>  
**Cc:** City Council <[CityCouncil@palmbayflorida.org](mailto:CityCouncil@palmbayflorida.org)>; Kenny Johnson <[Kenny.Johnson@palmbayflorida.org](mailto:Kenny.Johnson@palmbayflorida.org)>; Donny Felix <[Donny.Felix@palmbayflorida.org](mailto:Donny.Felix@palmbayflorida.org)>; Randy Foster <[Randy.Foster@palmbayflorida.org](mailto:Randy.Foster@palmbayflorida.org)>; Jeff Bailey <[Jeff.Bailey@palmbayflorida.org](mailto:Jeff.Bailey@palmbayflorida.org)>  
**Subject:** proposed zoning change/ apartments

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor Medina and Deputy Mayor Johnson, City Council Members Felix, Foster, and Bailey,

We're writing because I'm against the building of apartments on Glenham Drive North East. We live near the area proposed to be re-zoned.

The additional traffic will cause danger to students walking or riding their bicycles to school. This multi-family development will create many more cars than the single family housing the area is zoned for. There will be additional traffic issues and wait times for parents picking their children up and dropping them off at Palm Bay Elementary School due to having the people from the apartments driving on Glenham, and their guests, workman coming to their apartments, etc. The increased traffic will affect the ability of current residents to come and go using Glenham and create more traffic on nearby streets including Lemon and Mandarin in the Turkey Creek subdivision. The traffic in the morning with parents dropping off their children plus people trying to get to work who live in the area, plus people from both the apartments and others cutting through to Lemon and Mandarin to go south or north in the morning will overload the Glenham, Lemon, and Mandarin with much more traffic. The roads in the area are already in bad shape and this will make it worse.

I understand there are strips across Glenham counting cars. This week should certainly not count since for 2 days there will be no school and fewer people going to work.

Since Glenham Drive is a 2 lane road the additional garbage trucks needed to service those apartments coming three times a week, on two lane Glenham Drive will cause more traffic delays, as one can't get around them. This will cause the road to become even more worn very quickly. For all those who take Glenham to get to Palm Bay Road the apartments will make the traffic much worse. The apartments would also cause more traffic on the north end Palm Bay Road. That traffic has very much increased in the 4 years I have lived in Turkey Creek. The north end of Palm Bay Road goes from 4 lanes to 2. It is already difficult to get from Glenham onto Palm Bay Road due to increased traffic. This will



make it worse.

Glenham is narrow and the additional housing could cause danger in case of emergency. All the traffic issues would make it more difficult for emergency vehicles to get in and out of the area during peak traffic times (times people are going to and from work and children are going to and from school- even if they don't go to Palm Bay Elementary. )

Glenham Drive itself and the roads feeding it in the area are worn and past their prime. The additional traffic would wear them down much more.

In addition, if many students were living in those apartments the additional students would cause overcrowding at Palm Bay Elementary School. If there were enough students in the apartments it could cause rezoning for schools and some neighborhood children having to go to schools farther away. In the short term, until there is a vaccine for Covid-19 that people are able and willing to take, overcrowded classes would be more dangerous due to inability to socially distance at all. Crowded schools make it harder on students and teachers. It's harder for teachers to give the students what they need if their time is split between more students. Right now there is a big shortage of teachers in Brevard County. And due to Covid -19 many more teachers than usual have retired or quit. If the number of students increases, there are not teachers to take the additional teaching positions. I realize the city does not educate the children. However the children are our future and the city needs to be concerned.

I have seen gopher tortoises all over the area including crossing the street in many places along Glenham Drive. I'm sure there are gopher tortoises in the area proposed for the apartments. They would have to be moved .. But more importantly, gopher tortoises are a protected species. "**Gopher tortoises** must be relocated before any land clearing or development takes place, and property owners must obtain permits from the FWC before capturing and relocating **tortoises.**" If the apartments are built there will also be less habitat for other species and less green space. The paved parking lots will destroy mature growth trees that are wildlife habitat. Anything built in that area must take into account keeping as many trees as is humanly possible and other habitat. Many species of birds nest in the area such as pileated woodpeckers, owls, etc. etc. The area is a buffer between Harris and the communities of the Turkey Creek/Glenham area. The trees filter the air, lessen sound from Palm Bay Road, etc.

The paved parking lots for this multi-family apartments or condos will effect drainage and could create flooding problems for those who live in the area. And this could also create run-off into the precious Turkey Creek and lead to our Indian River Lagoon. We are currently paying additional taxes to help clean up our precious Lagoon. The Lagoon is a great asset to Palm Bay and Brevard. We should not do anything that may spoil it.

The quality of life for residents of the area would be lessened due to traffic and wait times. Higher population density often leads to more crime.

The construction phase of the project would be very disruptive for all the people who use Glenham. The detours and wait times due to construction would be difficult for everyone and dangerous for students. All the issues listed above would be much worse during the construction phase. When Troutman /Clearmont project was going on there was disruption and led to increased traffic. This will be far worse for those living in the area and for those living on and those who need to drive on Lemon, Mandarin, and Glenham.

Adding all those apartments to Palm Bay Utilities I imagine could strain the system and hurt water pressure in the area. I have been told by long time residents the water pressure is worse now than when the population of the area was lower. This will further weaken the water pressure.

If anything is to be built in that area - and I feel it should remain green space- it should be single family homes. And those homes should have a decent amount of yard-space or space between the lots to preserve the green space, help the environment and wildlife, and not impact traffic too much.





We hope the planning and zoning board and city council will take our points into consideration.

Sincerely,  
Lin and Margot Herz  
321-960-8194  
1012 Pineapple Avenue NE  
Palm Bay, Florida





## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Resolution 2020-60, granting a conditional use to allow for an automotive fuel dispensary in LI (Light Industrial and Warehousing District) zoning on property located at the southeast corner of Taylor Avenue and Kirby Circle (1.6 acres) (Case CU-31-2020, WJJ Land Holdings, LLC) (Quasi-Judicial Proceeding).

WJJ Land Holdings, LLC (Represented by Jacob Bynum, Member) has submitted for a Conditional Use to allow for an Automotive Fuel Dispensary. The property is located at the southeast corner of Kirby Circle NE and Taylor Avenue NE. The 1.6-acre site will be leased to Big Johnson Concrete Placement, LLC, a family owned and operated provider of concrete pumps, laser screeds, and finishing services. Installation of the 10,000 gallon above-ground fuel tank will allow Big Johnson to fuel their private fleet of vehicles.

The business planned for the site is considered an allowable use in the LI, Light Industrial and Warehousing zoning district; however, the latest safety protocols should be utilized to ensure compatibility with the adjacent properties. The Public Works Department (PWD) has identified the Brevard County Natural Resources Management Department as the responsible party for ensuring compliance with Chapter 62-761 and 62-762, of the Florida Administrative Code, which regulates petroleum storage facilities. Big Johnson must submit the above-ground storage tank specifications to the County for review and inspection of the facility.

City Council has the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

### **REQUESTING DEPARTMENT:**

Growth Management

### **RECOMMENDATION:**

Request for the City Council to determine if Case CU-31-2020 meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances.

### **Planning and Zoning Board Recommendation:**

Unanimous approval of the request.



## **ATTACHMENTS:**

### **Description**

**Case CU-31-2020**

**Board Minutes**

**Resolution 2020-60**

**Resolution 2020-60, Exhibit A**

**Resolution 2020-60, Exhibit B**



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmbayflorida.org](mailto:landdevelopmentweb@palmbayflorida.org)

### Prepared by

Patrick J. Murphy, Assistant Growth Management Director

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#### CASE NUMBER

CU-31-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

WJJ Land Holdings, LLC  
Jacob Bynum, Member

#### PROPERTY LOCATION/ADDRESS

2726 Kirby Circle NE 32905. Located at the SE corner  
of Kirby Circle NE and Taylor Avenue NE

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#### SUMMARY OF REQUEST

Conditional Use Approval for an Automotive Fuel Dispensary

##### Existing Zoning

LI, Light Industrial and Warehousing District

##### Existing Land Use

Industrial Use

##### Site Improvements

The site is presently under construction

##### Site Acreage

1.6 acres, more or less

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#### SURROUNDING ZONING & USE OF LAND

##### North

LI, Light Industrial District; (across Taylor) UPS Distribution Center

##### East

LI, Light Industrial District; Undeveloped Land

##### South

LI, Light Industrial District; Undeveloped Land

##### West

LI, Light Industrial District; (across Kirby) Warehouse

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#### COMPREHENSIVE PLAN

##### COMPATIBILITY

Yes

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**BACKGROUND:**

The subject property is located at 2726 Kirby Circle NE 32905, which is at the SE corner of Kirby Circle NE and Taylor Avenue NE. Specifically, the property is Parcel 3.0 of the Falls Commerce Park subdivision; located in Section 23, Township 28 south, Range 37 east, Brevard County, Florida. The size of the property is approximately 1.6 acres.

The property is presently under construction. Falls Commerce Park, which was recorded in the Brevard County Public Records on December 19, 2018, will consist of three (3) parcels for future industrial uses. Parcel 2 is being developed for the Lanta Industrial Park and Parcel 1 is currently for sale. The east 0.91 acres of the subject property (Parcel 3) contains a wetland area with a conservation easement recorded atop.

The applicant, WJJ Land Holdings, LLC. is requesting conditional use approval for an automotive fuel dispensary, as required by Section 185.045(D)(1) of the Palm Bay Code of Ordinances. The applicant is represented by a member of the LLC., Mr. Jacob Bynum.

**ANALYSIS:**

WJJ Land Holdings owns the property and has established a land lease with the Big Johnson Concrete Placement, LLC. Big Johnson is a family owned and operated provider of concrete pumps, laser screeds, and finishing services based in Stuart, Florida. The Kirby Circle facility is being developed to provide concrete pumping services to Brevard County, and beyond. They are seeking approval to install a 10,000 gallon above ground fuel tank that will provide fuel to their fleet of vehicles. This is not a retail automotive fuel facility that will be open to the public, the on-site fueling apparatus is solely for Big Johnson operations.

**CODE REQUIREMENTS:**

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

**Item (A):** Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of emergency.

Sole access to the site is via the existing driveway onto Kirby Circle. There are no other driveways proposed or anticipated at this time.

**Item (B):** Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.

Based upon the uses of the property, which are considered as Industrial Activities in the City's Parking Code, one (1) parking space shall be provided for every employee, or one (1) space for each 1,000 square feet of gross floor area, whichever is greater, plus one (1) space for each company vehicle operating from the premises. Site plan approval for Big Johnson was granted on November 20, 2019 (Sp #1354). Proposed site improvements indicate a 3,600 square foot operations building with four (4) paved parking spaces. In addition, a 36,000 square foot stabilized area will be provided for vehicle and equipment storage.

**Item (C):** Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

The proposed building will be connected to the City's water distribution and sewer collection systems. The property has both electric and phone services.

**Item (D):** Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

The proposed use is considered an allowable business service use in the LI zoning district. Per discussions with staff a 6' tall security fence will enclose the storage yard. As this site is located in the Kirby Industrial area, additional screening does not appear warranted.

**Item (E):** Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

Lighting and signage were not indicated on the approved site plans. It shall be noted that City codes require all lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties. Only one (1) detached sign would be allowed and it must meet all applicable location and dimension criteria.

**Item (F):** Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The yards and open space requirements of the Zoning Code have been met.

**Item (G):** The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.

Per City Code Section 185.045(D)(1)(a): All pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially owned land. No pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from



any municipal or public supply well. Upon review of the conceptual site plan, the proposed above ground tank location is approximately 660' west of the nearest residentially-owned land, 31' west of the nearest building, 27' north of the nearest property line, and almost 2 miles due north from the nearest municipal or public supply well.

**Item (H):** The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

As stated above, the facility is an allowable use in the LI zoning district. To ensure compatibility with adjacent properties, staff recommends that the project is supplied with the latest safety protocols, to include: protection bollards on all sides of the tank that are adjacent to vehicular areas, employment of a leak detection system, and that a double-walled steel tank is used.

**Item (I):** Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

The Board and Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

**Additional Staff Comments:**

The Public Works Department (PWD) has identified the Brevard County Natural Resources Management Department as the responsible party for ensuring compliance with Chapter 62-761 and 62-762, of the Florida Administrative Code, which regulates petroleum storage facilities. Big Johnson must submit the above-ground storage tank specifications to the County for review and inspection of the facility. The PWD has requested copies of the compliance documentation, once provided by the County, and that all inspection records be kept on-site.

**STAFF CONCLUSION:**

The Planning and Zoning Board and City Council must determine if the request meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances.

*Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.*



## **AERIAL LOCATION MAP      CASE CU-31-2020**

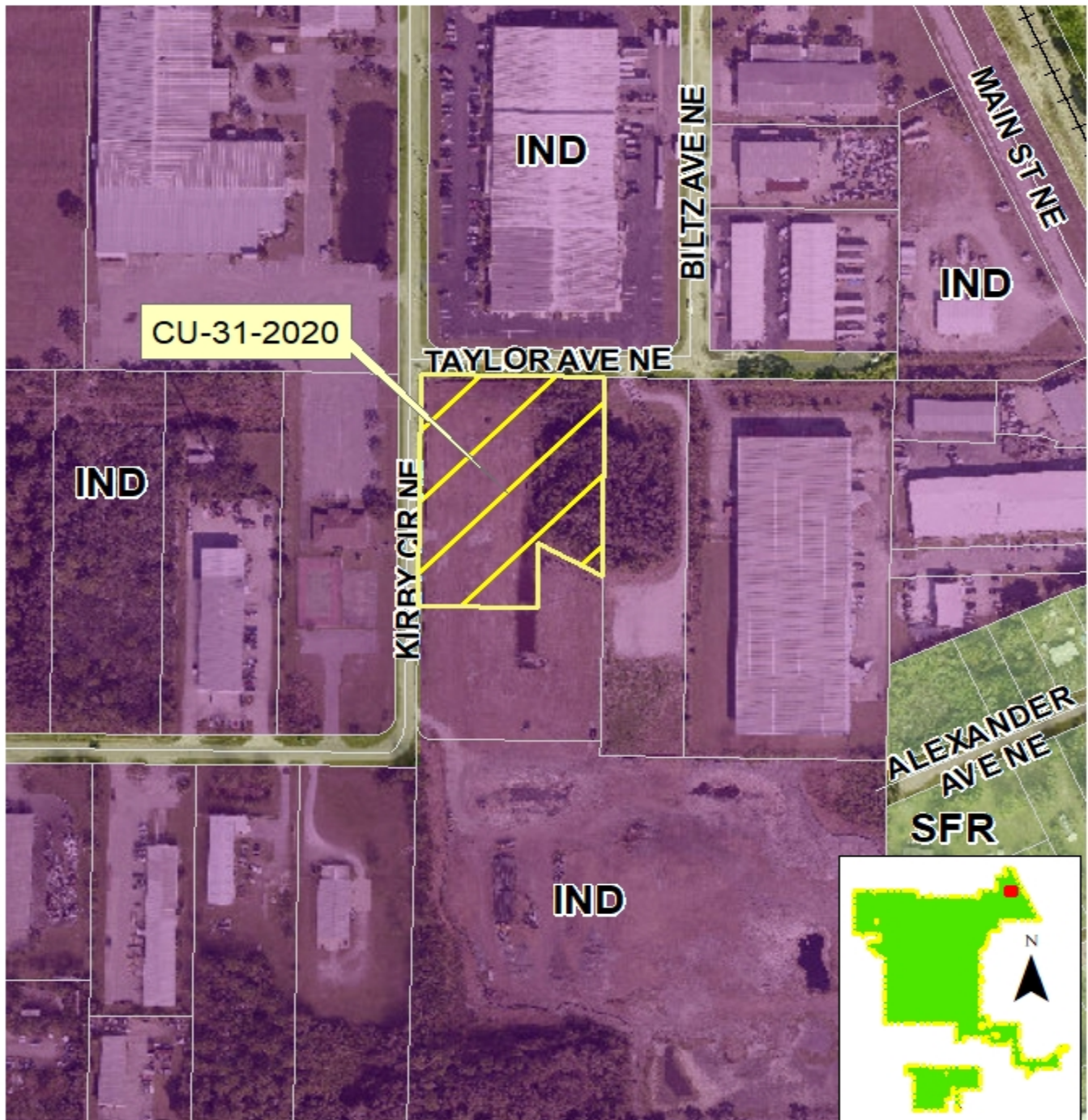
### **Subject Property**

Southeast corner of Taylor Avenue NE and Kirby Circle NE





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## FUTURE LAND USE MAP

## CASE CU-31-2020

### Subject Property

Southeast corner of Taylor Avenue NE and Kirby Circle NE

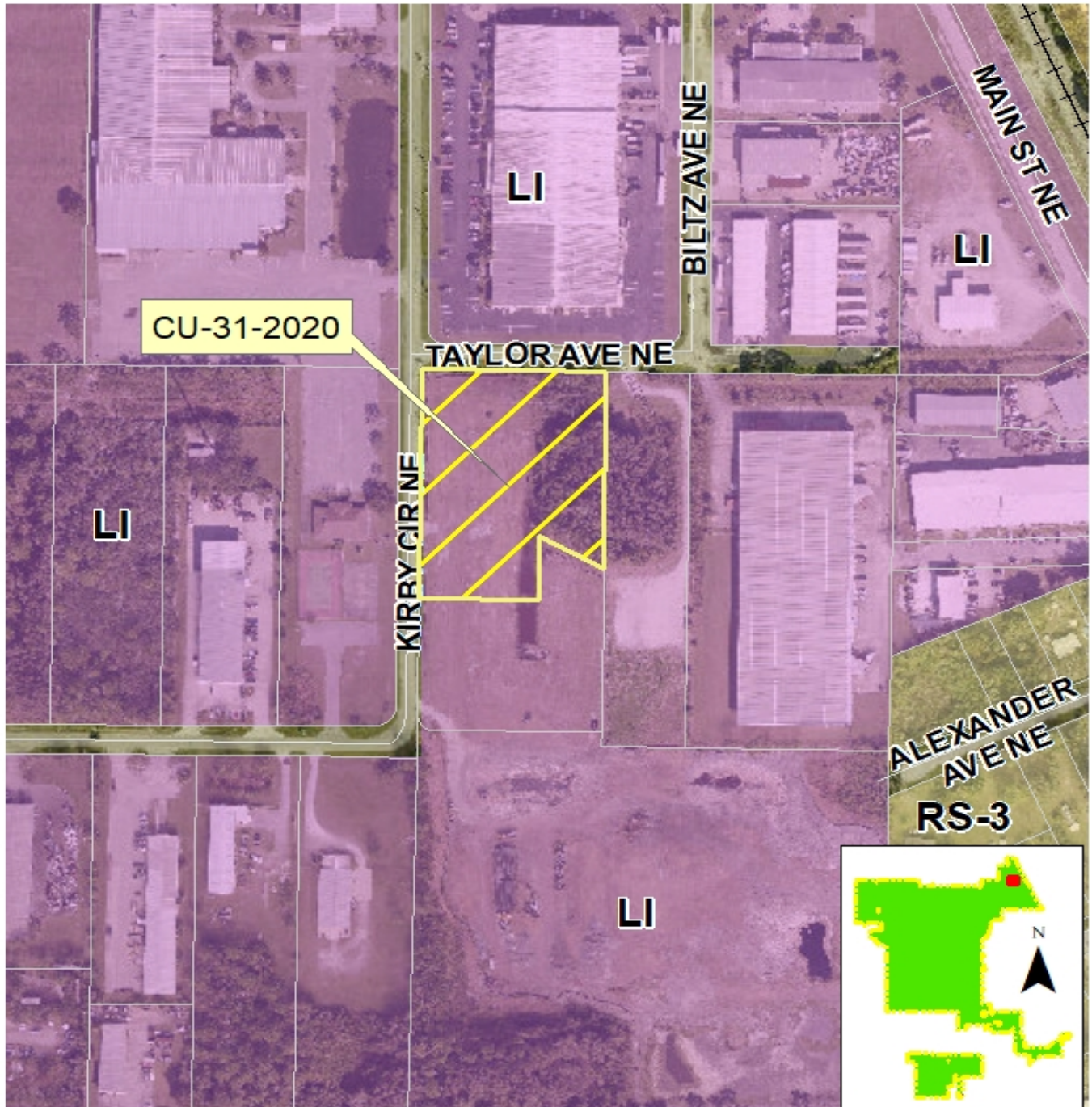
### Future Land Use Classification

IND – Industrial Use





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## ZONING MAP

## CASE CU-31-2020

### Subject Property

Southeast corner of Taylor Avenue NE and Kirby Circle NE

### Current Zoning Classification

LI – Light Industrial and Warehousing District

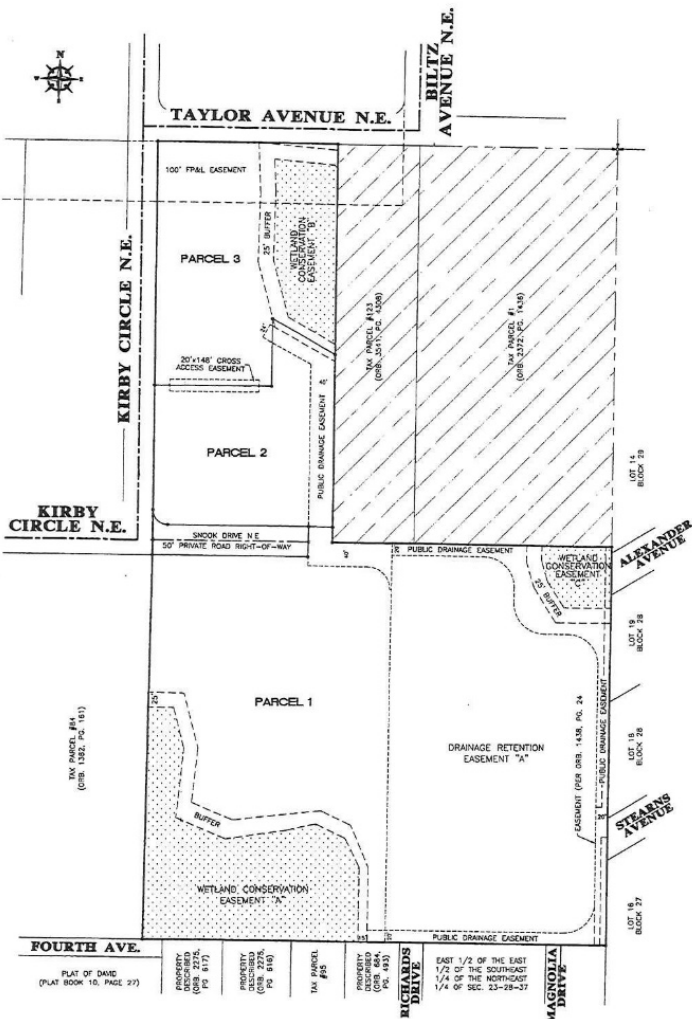


# PLAT OF FALLS COMMERCE PARK

LYING IN BREVARD COUNTY, FLORIDA SECTION 23, TOWNSHIP 28 SOUTH, RANGE 37 EAST AND IN THE CITY OF PALM BAY, FLORIDA.

## LEGAL DESCRIPTION:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 23, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA; THENCE SOUTH 07°36'41" WEST ALONG THE EAST LINE OF SAID NORTHEAST 1/4 OF SECTION 23 A DISTANCE OF 663.06 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY; THENCE CONTINUE SOUTH 07°36'41" WEST A DISTANCE OF 663.07 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF AFORESAID SECTION 23; THENCE NORTH 89°11'24" WEST ALONG THE SOUTH LINE OF AFORESAID NORTHEAST 1/4 OF SECTION 23, A DISTANCE OF 708.46 FEET TO THE SOUTHEAST CORNER OF PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 1382, PAGE 181, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 01°19'09" EAST ALONG THE EAST LINE OF SAID LAST REFERENCED PROPERTY A DISTANCE OF 838.10 FEET TO THE SOUTHEAST CORNER OF KIRBY CIRCLE N.E.; A 50 FEET WIDE RIGHT-OF-WAY; THENCE NORTH 00°37'23" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF KIRBY CIRCLE N.E., A DISTANCE OF 688.57 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF TAYLOR AVENUE N.E.; THENCE SOUTH 89°04'31" EAST ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 287.00 FEET TO THE NORTHWEST CORNER OF PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 3541, PAGE 4308; THENCE SOUTH 07°36'41" WEST, A DISTANCE OF 663.36 FEET TO THE SOUTHWEST CORNER OF AFORESAID PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 3541, PAGE 4308; THENCE SOUTH 89°04'45" EAST A DISTANCE OF 483.43 FEET TO THE POINT OF BEGINNING. CONTAINS 16.17 ACRES, MORE OR LESS.



## SITE DEVELOPMENT NOTES:

Zoning: U  
Light Manufacturing, Small Equipment  
Manufacturing Plants, Small Machine Shops,  
Instrument Manufacturing.

Total Acreage: 16.17  
Total No. of Parcels: 3

Notice: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county.

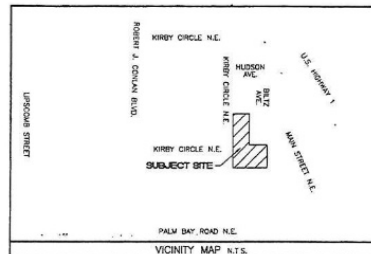
The consent and joinder of the mortgage to this plat is recorded in Official Records Book 1113, Page 1241 Public Records of Brevard County, Florida.

The declaration of covenants, conditions and restrictions to this plat is recorded in Official Records Book 1113, Page 1241 Public Records of Brevard County, Florida.

The Stormwater Agreement to this plat is recorded in Official Records Book \_\_\_\_\_ Page \_\_\_\_\_ Public Records of Brevard County, Florida.

## SURVEYORS NOTES:

- The bearings shown hereon (on Sheet 2) are based on the plat bearing being S00°35'41"E along the east line of the Northeast 1/4 of Section 23, being a grid bearing of the Florida Plane Coordinate System.
- The Drainage Easements shown hereon are dedicated for the purpose of a drainage system for the entire site. The consent of each of the numbered parcels shall have responsibility for maintenance, in accordance with the approved drainage plan and St. Johns River Water Management District permit, of that portion of the drainage system improvements located within their respective parcels. Parcels 2 and 3 shall have easement rights within all drainage easements for the purpose of discharge of drainage waters through and into the system.
- Wetland Conservation Easement A is hereby dedicated to the St. Johns River Water Management District. Wetland Conservation Easements B and C shall be maintained by the owners of the respective parcels in accordance with the requirements and restrictions as specified in the St. Johns River Water Management District Easement recorded in Official Records Book 5821, Page 8368.
- The Cross Access Easements are dedicated for the purpose of common driveways serving the respective Parcels in accordance with approved Site Plans.



## OVERALL MAP

SCALE IN FEET  
1 INCH = 100 FEET

PLAT BOOK 666 PAGE 67

SHEET 1 OF 2

SECTION 23 TWP. 28 S., RANGE 37 E.

## DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That the Limited Liability Corporation named below, being the owner in fee simple of the lands described in:

## FALLS COMMERCE PARK

hereby dedicates said lands and plot for the uses and purposes therein expressed and dedicates all roads, streets, alleys, thoroughfares, drainage easements, utility easements and rights of way easements shown hereon to the perpetual use of the public, and in WITNESS WHEREOF, has caused these presents to be signed and attested to by its officers named below and its corporate seal to be affixed hereto on Dec 5, 2018

By KIRBY CIRCLE, LLC, 13000 50TH WAY N. CLEARWATER, FL 33760

Attest:

Signed and sealed in the presence of:

STATE OF FLORIDA COUNTY OF BREVARD

THIS IS TO CERTIFY, That on Dec 5, 2018

before me, an officer duly authorized to take oaths in and for the State and County aforesaid, personally appeared:

and \_\_\_\_\_ President and \_\_\_\_\_

of the above named corporation incorporated under the laws of the State of Florida, to me known to be the individuals

and officials who executed the foregoing Dedication and severally acknowledged the execution thereof to be their free act and deed as such officers thereto duly authorized; that the official seal of said corporation is duly affixed thereto; and that the said Dedication is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

My Commission Expires 9/24/2022

## CERTIFICATE OF SURVEYOR

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being a licensed and registered land surveyor and mapper, does hereby certify that on June 25th, 2017, he completed the survey of the lands as shown on the foregoing plat; that said plat is a true and correct representation of a survey made under my responsible direction and supervision; that said plat complies with all of the survey requirements of Chapter 177, Part 1, Florida Statutes, and that said land is located in Brevard County, Florida.

Kevin A. Smith, PLS Registration No. 12540

Smith & Associates Surveying and Mapping, Inc., 1350 Melrose Road S.E., Suite 1, Palm Bay, Florida 32907

## CERTIFICATE OF REVIEWING SURVEYOR

FOR THE CITY OF PALM BAY

I HEREBY CERTIFY, That I have reviewed the foregoing plat and find that it is in conformity with Chapter 177, Part 1, Florida Statutes.

JOSEPH W. HALE, PLS No. 8366

Reviewing Surveyor for the City of Palm Bay

## CERTIFICATE OF APPROVAL BY MUNICIPALITY

THIS IS TO CERTIFY, that on June 7, 2018, the City Council of the City of Palm Bay

has approved the foregoing plat for record.

Attest: Mayor

12/11/18

## CERTIFICATE OF CLERK

I HEREBY CERTIFY, That I have reviewed the foregoing plat, and find that it complies in form with the provisions of Chapter 177, Florida Statutes, and was filed for record on 12/11/2018 at 5:00pm.

The No. 201827364

Scott Ellis by Scott Ellis, Mayor

Clerk of the Official City of Palm Bay

in and for Brevard County, Florida

PALM BAY NO. 12540

PREPARED BY:  
SMITH & ASSOCIATES  
SURVEYING & MAPPING, INC.  
1350 MELROSE ROAD S.E., SUITE 1  
PALM BAY, FLORIDA 32907  
TEL: 321.739.6400  
FAX: 321.739.6401  
E-MAIL: info@smithandassociates.com  
JOB NUMBER: 06-0087 PLAT.DWG  
DATE OF AUTHORIZATION: 1/2/28

# PLAT OF **FALLS COMMERCE PARK**

LYING IN BREVARD COUNTY, FLORIDA SECTION 23, TOWNSHIP 28 SOUTH, RANGE 37 EAST  
AND IN THE CITY OF PALM BAY, FLORIDA.

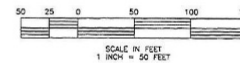
## LEGEND:

P.C. = POINT OF COMMENCEMENT  
P.O.B. = POINT OF BEGINNING  
P.M. = PERMANENT REFERENCE MONUMENT  
P.C.P. = PERMANENT CONTROL POINT  
P.T. = POINT OF TANGENCY  
P.C. = POINT OF CURVATURE  
P.C. = POINT OF COMPOUND CURVATURE  
P.C. = POINT OF REVERSE CURVATURE  
R.A. = RADIUS POINT  
S = SURVEY  
D = DELTA (CENTRAL ANGLE)  
S/R = RIGHT-OF-WAY  
C = CENTERLINE  
W = RECORD  
M = MORE OR LESS  
C = CALCULATED  
C.P. = CURVE PLANE GRID BEARING & DISTANCE  
O.R.B. = OFFICIAL RECORDS BOOK  
P.S. = PLAT BOOK

F.P. & L. = FLORIDA POWER AND LIGHT  
N.T.S. = NOT TO SCALE  
O/S = OFFSET  
B.B. = BUILT BOOK  
P.G. = PAGE  
L.B. = LAND SURVEYING BUSINESS  
● = 1/2" IRON ROD WITH PLASTIC CAP  
MARKED WITH "S.M. SMITH LB 7438"  
PERMANENT REFERENCE MONUMENT  
▲ = N.B. & S.M. MARKED "S.M. SMITH LB 7438"  
PERMANENT REFERENCE MONUMENT  
▲ = PERMANENT CONTROL POINT

TAX PARCEL #84  
O.R.B. 1382, PAGE 161

PREPARED BY:  
**SMITH & SONS**  
SURVEYING & ENGINEERING, INC.  
100 N.W. 100th St., Suite 1  
Palm Bay, FL 32909  
CERTIFICATE OF AUTHORIZATION L.B. 7428  
JOB NUMBER: 08-0087 PLAT.DWG



NOTE: THE NET AREA AS SHOWN IS THE RESULT OF SUBTRACTING THE AREA OF THE WETLAND CONSERVATION EASEMENTS INCLUDING WETLAND BUFFER AND DRAINAGE RETENTION EASEMENT "A" IN PARCEL 1, FROM THE GROSS AREA.

TAX PARCEL #193  
O.R.B. 8001 PG. 378

PLAT BOOK 66 PAGE 68

SHEET 2 OF 2  
SECTION 23 TWP. 28 S., RANGE 37 E.

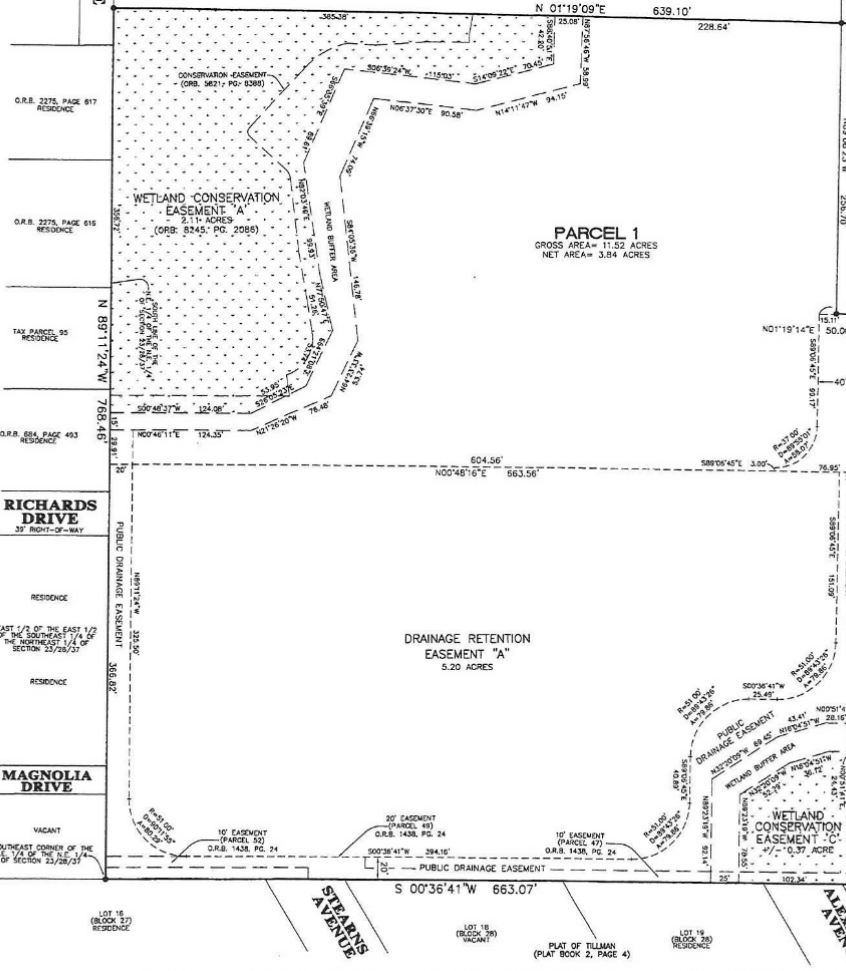


**KIRBY CIRCLE N.E.**

**TAYLOR AVENUE N.E.**

**BLITZ AVENUE N.E.**

**FOURTH AVENUE**



P.O.B.

P.O.C.





**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopment@palmbayflorida.org

**CONDITIONAL USE APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

**PARCEL ID** 28-37-23-02-3

**TAX ACCOUNT NUMBER** 3019273

**LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:**

Parcel 3, Falls Commerce Park, book 66, page 67 and 68, Brevard County, Florida

**SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):** 1.6

**ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.)** LI

**CONDITIONAL USE SOUGHT** Automotive Fuel

**CONDITIONAL USE REQUIREMENTS FOR SUBMITTAL ([Section 185.087](#)):**

The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties per [Section 185.085](#).

**A SITE SKETCH TO SCALE MUST BE PROVIDED, AND ALSO PROVIDED ON MEMORY DRIVE, OF THE FOLLOWING:**

- (A) Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
- (B) Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.



**CITY OF PALM BAY, FLORIDA  
CONDITIONAL USE APPLICATION  
PAGE 2 OF 3**

- (C) Adequate and properly located utilities that are available or may be reasonably provided to serve the proposed development.
- (D) Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.
- (E) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.
- (F) Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.
- (G) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.
- (H) Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

**ADDITIONAL CONDITIONS MUST BE MET AND INCORPORATED INTO THE SITE SKETCH FOR THE SPECIFIC CONDITIONAL USE.**

Additional criteria is listed in Section 185.088 and available from staff (check all that apply):

- ☐ **Church** (Sec. 185.088(A))
- ☐ **Club or Lodge** (Sec. 185.088(B))
- ☐ **Commercial Dog Kennel** (Sec. 185.088(C))
- ☐ **Planned Industrial Development** (industrially zoned site over 5 acres) (Sec. 185.088(D))
- ☐ **Public or Private School** (Sec. 185.088(E))
- ☐ **Self-Storage Facility** (Sec. 185.088(F))
- ☐ **Communication Tower and Facilities** (Sec. 185.088(G))
- ☐ **Dance Club** (Sec. 185.088(H))
- ☐ **Security Dwelling Unit** (Sec. 185.088(I))
- ☐ **Wedding Venue** (Sec. 185.088(J))
- ☐ **Event Hall** (Sec. 185.088(K))

CITY OF PALM BAY, FLORIDA  
CONDITIONAL USE APPLICATION  
PAGE 3 OF 3

**THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:**

- ☐ \*\$650.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ Site Sketch (See page 1 for requirements). Site Sketch must also be provided on Memory Drive.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guideline.
- ☐ Citizen Participation Plan. Refer to [Section 169.005](#) of the Land Development Code for guidelines.
- ☐ **Where the property owner is not the representative for the request, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.**

**Name of Representative** \_\_\_\_\_

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

**Under penalties of perjury, I declare that I have read the foregoing Conditional Use application and that the facts stated in it are true.**

**Owner Signature**



**Date** September 15, 2020

**Printed Name** Jacob Bynum, Member WJJ Land Holdings, LLC

**Full Address** PO BOX 340, Palm City FL 34991

**Telephone** 7722203435 **Email** jacob@bigjohnsonconcreteplacement.com

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

In response to comments from the audience, Mr. Wise indicated the portion of the site that was currently under review and reiterated that the balance of the property would remain undisturbed. He agreed to extend the 8-foot high fence to Pilgrim Lane SE. An environmental study was done for protected species, and the gopher tortoises on the site would be relocated per State guidelines. The City was unable to accommodate the balance of the subject site for a preservation addition to Oakwood Park. He clarified that the facility would be a beautifully maintained 25-foot high, single-story building. The developer had constructed immaculate assisted living facilities that typically increased surrounding property values.

Mr. Boerema inquired whether east to west fencing would be erected on the north side of the property. He was concerned about the residents of the facility becoming lost in the wooded area. Mr. Wise indicated the proposed placement of the fencing and noted that each resident of the facility would be individually monitored.

Motion by Mr. Boerema, seconded by Mr. Hill to submit Case CU-30-2020 to City Council for approval of a conditional use to allow an assisted living facility called Hampton Manor of Palm Bay in an IU, Institutional Use District, subject to staff conditions. The motion carried with members voting unanimously.

4. **\*\*CU-31-2020 – WJJ LAND HOLDINGS, LLC (JACOB BYNUM)**

Mr. Murphy presented the staff report for Case CU-31-2020. The applicant had requested a conditional use to allow for proposed automotive fuel dispensary in an LI, Light Industrial and Warehousing District. The board had to determine if the request met the criteria of Section 185.087 of the Palm Bay Code of Ordinances.

Mr. Jacob Bynum (applicant) stated that a concrete pumping business was proposed for the site, and that the requested automotive fuel dispensary would be double walled with a cinderblock wall as a third containment.

Mr. Warner inquired whether the tank could be removed in the future if the business was to shut down. Mr. Bynum stated that the aboveground tank could be removed.



Mr. Boerema questioned whether diesel or gasoline fuel would be utilized, and if there would be an apparatus for spillage while trucks refueled. Mr. Bynum indicated that diesel fuel would be used, and that the third containment area and the professional pumps would control spillage.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Ms. Maragh, second by Mr. Hill to submit Case CU-31-2020 to City Council for approval of a conditional use to allow for proposed automotive fuel dispensary in an LI, Light Industrial and Warehousing District. The motion carried with members voting unanimously.

5. **\*\*PD-32-2020 – GARDENS AT WATERSTONE PHASE I –  
WATERSTONE DEVELOPMENT, LLC (JAKE WISE, P.E. AND  
ROCHELLE LAWANDALES, FAICP, REPS.)**

Mr. Balter presented the staff report for Case PD-32-2020. The applicant had requested Preliminary Development Plan approval for a PUD, Planned Unit Development to allow a proposed 154 single-family residential development called Gardens at Waterstone Phase I. Staff recommended Case PD-32-2020 for approval, subject to the staff comments contained in the staff report.

Mr. Balter indicated that construction drawings were no longer a condition for the project.

Ms. Rochelle Lawandales, FAICP with Waterstone Development, LLC (co-representative for the applicant) stated that the proposed single-family development would be an extension of Mara Loma Boulevard SE and was currently under contract with development company Forte Macaulay. Preliminary permits had been obtained from the St. Johns River Water Management District; environmental reports and traffic reports had been submitted; and staff conditions had been met for the preliminary subdivision plat, boundary and title opinion, deed restrictions, and construction drawings. An application for the Final Development Plan was submitted. She said that a Citizen Participation Plan (CPP) meeting was held; the project would have its own recreation area; and future phases of the development

## **RESOLUTION 2020-60**

**A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING A CONDITIONAL USE FOR AN AUTOMOTIVE FUEL DISPENSARY IN LI (LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT) ZONING; WHICH PROPERTY IS LOCATED AT THE SOUTHEAST CORNER OF TAYLOR AVENUE AND KIRBY CIRCLE, AND LEGALLY DESCRIBED HEREIN; GRANTING THE USE AS A CONDITIONAL USE; PROVIDING FOR CONSTRUCTION TO BE IN COMPLIANCE WITH THE SITE PLAN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, application for a conditional use in LI (Light Industrial and Warehousing District) zoning to permit an automotive fuel dispensary on property legally described herein, has been made by WJJJ Land Holdings, LLC, and

**WHEREAS**, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on November 4, 2020, which voted to recommend to the City Council approval, and

**WHEREAS**, all provisions applicable to the conditional use under Chapter 185, Zoning, Conditional Uses, Sections 185.085 and 185.086, and District Regulations, Section 185.045, of the Palm Bay Code of Ordinances, have been addressed by the applicant, and

**WHEREAS**, the City Council of the City of Palm Bay has determined that such conditional use will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA**, as follows:

**SECTION 1.** The City Council of the City of Palm Bay hereby grants a conditional use for an automotive fuel dispensary on property zoned LI (Light Industrial and Warehousing District, which property is legally described as follows:

Tax Parcel 3, Falls Commerce Park Subdivision, of the Public Records of Brevard County, Florida; Section 23, Township 28S, Range 37E; containing 1.60 acres, more or less.

**SECTION 2.** The conditional use is granted subject to the applicant complying with the following:

1. Constructing the structures relevant to the automotive fuel dispensary in accordance with the site plan which is, by reference, incorporated herein as Exhibit 'A'.
2. The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit 'B'.
3. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.

**SECTION 3.**

1. The conditional use must be commenced within one (1) year from the effective date of this resolution. Commencement shall mean the issuance of the appropriate permit(s) which must remain active. Failure to commence such construction within one (1) year of issuance of the first permit shall void the conditional use.
2. Failure to make payment of the business tax within one (1) year shall void the conditional use.

**SECTION 4.** This Resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2020- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2020.

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Robert Medina, MAYOR

ATTEST:

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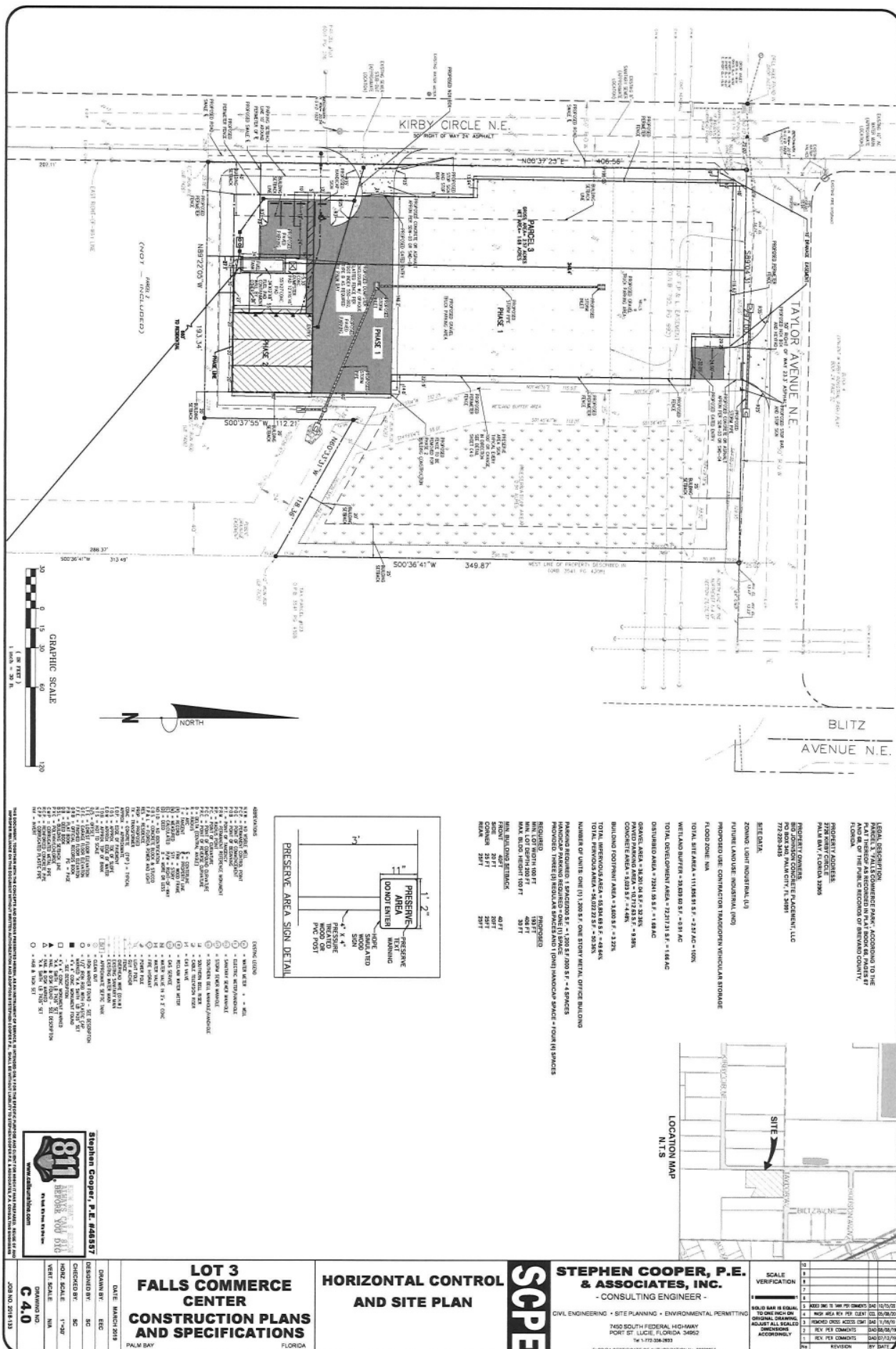
Terese M. Jones, CITY CLERK

City of Palm Bay, Florida  
Resolution 2020-    

Applicant: WJJJ Land Holdings, LLC  
Case: CU-31-2020

cc: (date) Brevard County Recording  
Applicant  
Case File







## STAFF REPORT

### LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

#### Prepared by

Patrick J. Murphy, Assistant Growth Management Director

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#### CASE NUMBER

CU-31-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

WJJ Land Holdings, LLC  
Jacob Bynum, Member

#### PROPERTY LOCATION/ADDRESS

2726 Kirby Circle NE 32905. Located at the SE corner  
of Kirby Circle NE and Taylor Avenue NE

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#### SUMMARY OF REQUEST

Conditional Use Approval for an Automotive Fuel Dispensary

##### Existing Zoning

LI, Light Industrial and Warehousing District

##### Existing Land Use

Industrial Use

##### Site Improvements

The site is presently under construction

##### Site Acreage

1.6 acres, more or less

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#### SURROUNDING ZONING & USE OF LAND

##### North

LI, Light Industrial District; (across Taylor) UPS Distribution Center

##### East

LI, Light Industrial District; Undeveloped Land

##### South

LI, Light Industrial District; Undeveloped Land

##### West

LI, Light Industrial District; (across Kirby) Warehouse

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#### COMPREHENSIVE PLAN

##### COMPATIBILITY

Yes

**BACKGROUND:**

The subject property is located at 2726 Kirby Circle NE 32905, which is at the SE corner of Kirby Circle NE and Taylor Avenue NE. Specifically, the property is Parcel 3.0 of the Falls Commerce Park subdivision; located in Section 23, Township 28 south, Range 37 east, Brevard County, Florida. The size of the property is approximately 1.6 acres.

The property is presently under construction. Falls Commerce Park, which was recorded in the Brevard County Public Records on December 19, 2018, will consist of three (3) parcels for future industrial uses. Parcel 2 is being developed for the Lanta Industrial Park and Parcel 1 is currently for sale. The east 0.91 acres of the subject property (Parcel 3) contains a wetland area with a conservation easement recorded atop.

The applicant, WJJ Land Holdings, LLC. is requesting conditional use approval for an automotive fuel dispensary, as required by Section 185.045(D)(1) of the Palm Bay Code of Ordinances. The applicant is represented by a member of the LLC., Mr. Jacob Bynum.

**ANALYSIS:**

WJJ Land Holdings owns the property and has established a land lease with the Big Johnson Concrete Placement, LLC. Big Johnson is a family owned and operated provider of concrete pumps, laser screeds, and finishing services based in Stuart, Florida. The Kirby Circle facility is being developed to provide concrete pumping services to Brevard County, and beyond. They are seeking approval to install a 10,000 gallon above ground fuel tank that will provide fuel to their fleet of vehicles. This is not a retail automotive fuel facility that will be open to the public, the on-site fueling apparatus is solely for Big Johnson operations.

**CODE REQUIREMENTS:**

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

**Item (A):** Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of emergency.

Sole access to the site is via the existing driveway onto Kirby Circle. There are no other driveways proposed or anticipated at this time.

**Item (B):** Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.

Based upon the uses of the property, which are considered as Industrial Activities in the City's Parking Code, one (1) parking space shall be provided for every employee, or one (1) space for each 1,000 square feet of gross floor area, whichever is greater, plus one (1) space for each company vehicle operating from the premises. Site plan approval for Big Johnson was granted on November 20, 2019 (Sp #1354). Proposed site improvements indicate a 3,600 square foot operations building with four (4) paved parking spaces. In addition, a 36,000 square foot stabilized area will be provided for vehicle and equipment storage.

**Item (C):** Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

The proposed building will be connected to the City's water distribution and sewer collection systems. The property has both electric and phone services.

**Item (D):** Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

The proposed use is considered an allowable business service use in the LI zoning district. Per discussions with staff a 6' tall security fence will enclose the storage yard. As this site is located in the Kirby Industrial area, additional screening does not appear warranted.

**Item (E):** Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

Lighting and signage were not indicated on the approved site plans. It shall be noted that City codes require all lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties. Only one (1) detached sign would be allowed and it must meet all applicable location and dimension criteria.

**Item (F):** Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The yards and open space requirements of the Zoning Code have been met.

**Item (G):** The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.

Per City Code Section 185.045(D)(1)(a): All pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially owned land. No pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from



any municipal or public supply well. Upon review of the conceptual site plan, the proposed above ground tank location is approximately 660' west of the nearest residentially-owned land, 31' west of the nearest building, 27' north of the nearest property line, and almost 2 miles due north from the nearest municipal or public supply well.

**Item (H):** The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

As stated above, the facility is an allowable use in the LI zoning district. To ensure compatibility with adjacent properties, staff recommends that the project is supplied with the latest safety protocols, to include: protection bollards on all sides of the tank that are adjacent to vehicular areas, employment of a leak detection system, and that a double-walled steel tank is used.

**Item (I):** Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

The Board and Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

**Additional Staff Comments:**

The Public Works Department (PWD) has identified the Brevard County Natural Resources Management Department as the responsible party for ensuring compliance with Chapter 62-761 and 62-762, of the Florida Administrative Code, which regulates petroleum storage facilities. Big Johnson must submit the above-ground storage tank specifications to the County for review and inspection of the facility. The PWD has requested copies of the compliance documentation, once provided by the County, and that all inspection records be kept on-site.

**STAFF CONCLUSION:**

The Planning and Zoning Board and City Council must determine if the request meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Request by Palladio Development, LLC, for a variance to allow the east side of a proposed single-family home to exceed the allowable finish floor elevation by a maximum of 2.2 feet, as established by Section 174.073(A)(3), Palm Bay Code of Ordinances (0.23 acres) (V-26-2020) (Quasi-Judicial Proceeding).

Palladio Development, LLC, Giro Katsimbrakis, Manager (Katja Jones, Rep.) has asked for a variance from Section 174.073(A)(3) for a proposed single-family home to exceed the maximum finished floor elevation. The .23-acre property is located north of and adjacent to Aladdin Street NE, in the vicinity north of Browning Avenue NE. The applicant intends to construct a new home with a two-car garage and approximately 1,865 square feet of living area.

The applicant appears to be burdened by the existing elevation of an adjacent property and by the presence of a side lot line ditch. Denial of the variance may confer a hardship upon the applicant, and staff believes the request is a reasonable solution to these circumstances. Literal interpretation of Chapter 174 would require the applicant to construct a home that would be subject to possible flooding, and alternative construction methods to alleviate potential runoff from the adjacent lot to the west could prove costly.

### REQUESTING DEPARTMENT:

Growth Management

### RECOMMENDATION:

Motion to request City Council to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

### Planning and Zoning Board Recommendation:

Unanimous approval of the request.

**ATTACHMENTS:**

**Description**

**Case V-26-2020**

**Board Minutes**



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmabayflorida.org](mailto:landdevelopmentweb@palmabayflorida.org)

### Prepared by

Patrick J. Murphy, Assistant Growth Management Director

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#### CASE NUMBER

V-26-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

Palladio Development, LLC,  
Giro Katsimbrakis, Manager

#### PROPERTY LOCATION/ADDRESS

North of and adjacent to Aladdin Street NE, in the  
vicinity north of Browning Avenue NE

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#### SUMMARY OF REQUEST

Variance from Section 174.073(A)(3) for a proposed single-family home to exceed the maximum finished floor elevation.

##### Existing Zoning

RS-2, Single-Family Residential

##### Existing Land Use

Single Family Residential Use

##### Site Improvements

Undeveloped Lot

##### Site Acreage

0.23 acres, more or less

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#### SURROUNDING ZONING & USE OF LAND

##### North

RS-2, Single-Family Residential; Melbourne-Tillman Canal No. 50

##### East

RS-2, Single-Family Residential; Single-Family Residence

##### South

RS-2, Single-Family Residential; Aladdin Avenue NE

##### West

RS-2, Single-Family Residential; Single-Family Residence

#### COMPREHENSIVE PLAN COMPATIBILITY

Not Specifically Addressed

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**BACKGROUND:**

The subject property is currently a vacant, undeveloped lot within the Port Malabar Unit (PMU) 7 subdivision. The property is a standard GDC lot with a dimension of 80' wide by 125' deep. There are homes on either side of the lot and the surrounding neighborhood is mostly developed with single-family dwellings. PMU 7 was provided with city water & sewer from 2002-2004. Applicable stormwater management standards applied to the subject property were adopted by City Council in 2006 (Ord 2006-62). The applicant intends to construct a new home with a 2-car garage and approximately 1,865 square feet of living area. Applicable setbacks and other zoning provisions have been met.

**ANALYSIS:**

Variances from the terms of the land development code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. An application must demonstrate that items 1 through 7 of Section 169.009 of the Code of Ordinances have been met. A review of these items is as follows.

**Item 1** - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district or situation."*

Section 174.073(A)(3) "In areas with municipal sanitary sewer service, the maximum height of the lowest finished floor elevation of a proposed dwelling cannot exceed one (1) foot above the highest finished floor elevation of any side adjacent existing dwelling."

The lowest finished floor elevation (FFE) of an existing, adjacent dwelling is that of the residence to the east, at 275 Aladdin Avenue. This home has an FFE of 26.8'. Since the above code allows for a maximum of one (1) foot above this elevation, the proposed home could not exceed an FFE of 27.8' without an approved variance.

The applicant has proposed a new dwelling upon the subject property with an FFE of 30.0' and thus desires a variance of 2.2'. A home could be built upon the subject property with an FFE of 27.8' and meet City codes. However, there are other factors involved. Specifically, the adjacent lot to the west (259 Aladdin) has an FFE of 31'. The applicant believes that this difference of almost 4' would cause drainage and "standing water" issues for their client along the west side of the property.

In addition, there is a side lot line ditch on the east side of the subject property that accepts stormwater from the Aladdin Street swale and conveys it to the canal running behind (to the north) the lots on this block. City codes also require setback and sloping requirements for

properties adjacent to such a ditch. Therefore, the builder must balance the placement of the home and its elevation between these two factors.

**Item 2 -** *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

None of the items discussed in Item 1 are a result of the actions of the applicant. Lot 17 was constructed to meet city ordinances in 2017 and the home on Lot 19 was also built to city standards, in 2019. Location of the side lot line ditch was a factor of the slope of Aladdin Street. As such, the request does not appear to be self-induced.

**Item 3 -** *"Literal interpretation and enforcement of the land development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the land development code, and would work unnecessary and undue hardship on the applicant."*

Literal interpretation and enforcement of Chapter 174 would require the applicant to construct a home that would be subject to possible flooding if built to conventional standards. Alternative constructions methods to alleviate potential runoff from the adjacent lot to the west may prove costly.

**Item 4 -** *"The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure."*

The applicant believes the Variance requested in this application is the minimum variance needed to safely accommodate construction of a new dwelling on the subject property.

**Item 5 -** *"Granting of the variance request will not confer on the applicant any special privilege that is denied by the land development code to other lands, buildings or structures in the same land use category, zoning district or situation."*

The intent of this item is that of equity. That is, standards in the Zoning Code are intended to be administered fairly. Variances from such codes are issued to provide relief to a property which is unfairly burdened. Due to the factors discussed in Item 1 of this report the applicant appears to be burdened by the existing elevations of adjacent properties and by the presence of the side lot line ditch. Denial of the variance may confer a hardship upon the applicant and staff believes the request is a reasonable solution to these unique set of circumstances that are not commonly found on other properties.

**Item 6 -** *"The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare."*

The Planning and Zoning Board and City Council shall determine if the variance requested in this Application is in keeping with the general intent of the applicable sections of the Land Development Code.

**Item 7** - *"The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to the variance request.

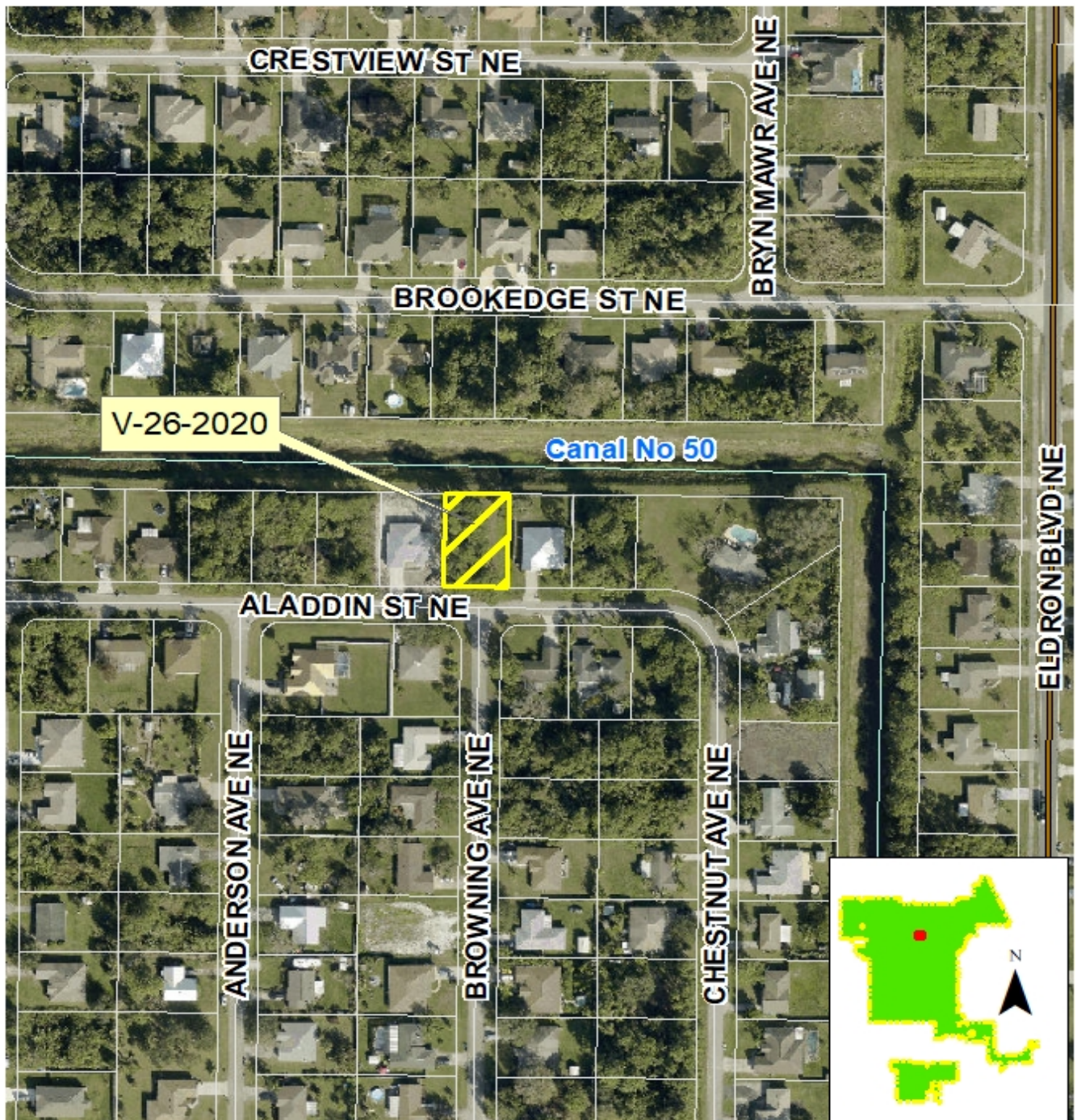
**STAFF CONCLUSION:**

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances and make recommendations to City Council for a final review. Under 59.05(A)(14) City of Palm Bay Code of Ordinances, "The quasi-judicial body shall direct the clerk or [city] attorney acting as the body's legal counsel to prepare the necessary and appropriate written order in accordance with the purpose of the hearing and findings of the quasi-judicial body. Pursuant to Florida Statutes, in the event relief is denied to the applicant, the specific provision of statute or code that was deficient shall be stated for record."





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## AERIAL LOCATION MAP CASE V-26-2020

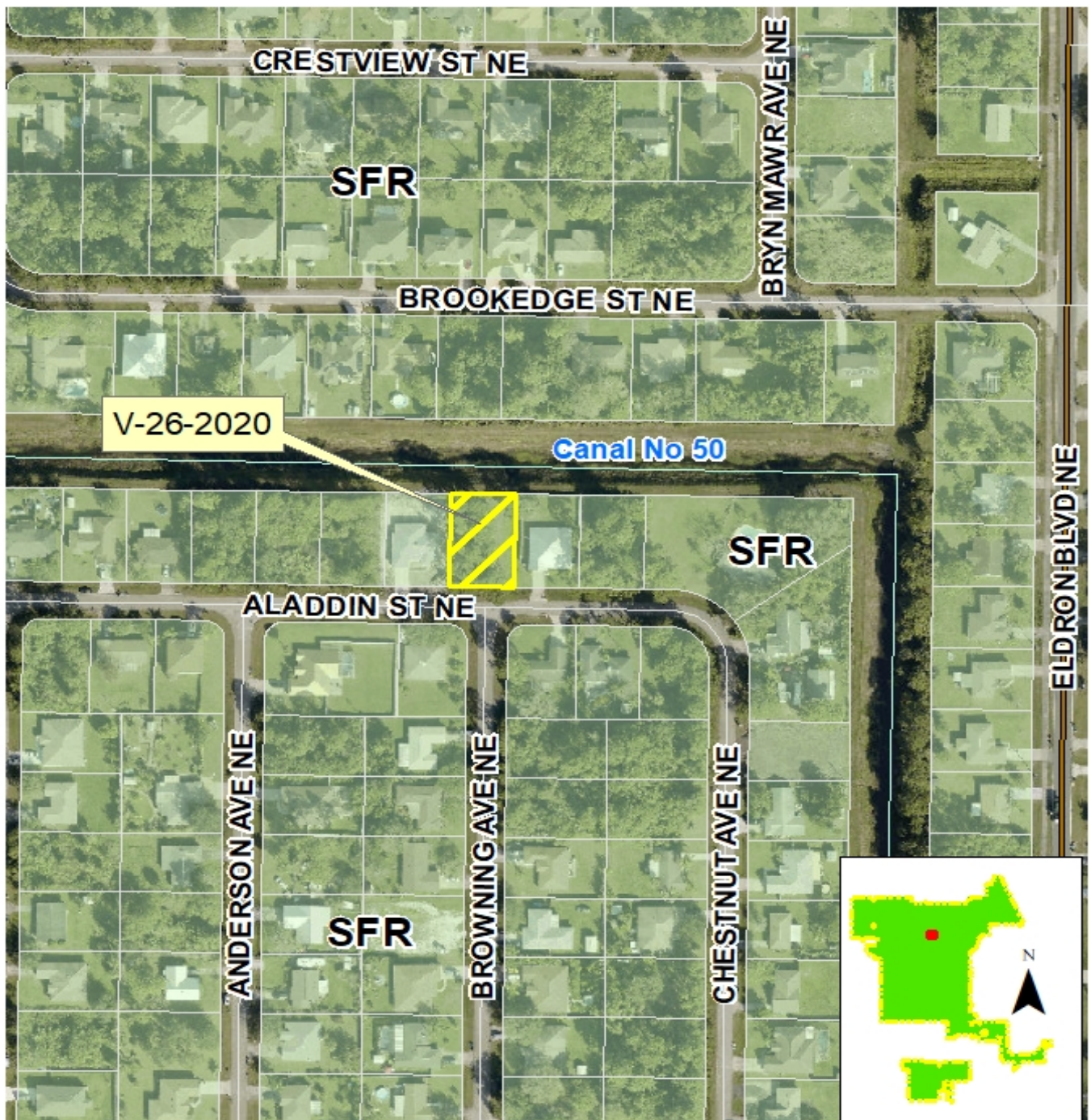
### Subject Property

North of and adjacent to Aladdin Street NE, in the vicinity north of Browning Avenue NE





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## FUTURE LAND USE MAP

## CASE V-26-2020

### Subject Property

North of and adjacent to Aladdin Street NE, in the vicinity north of Browning Avenue NE

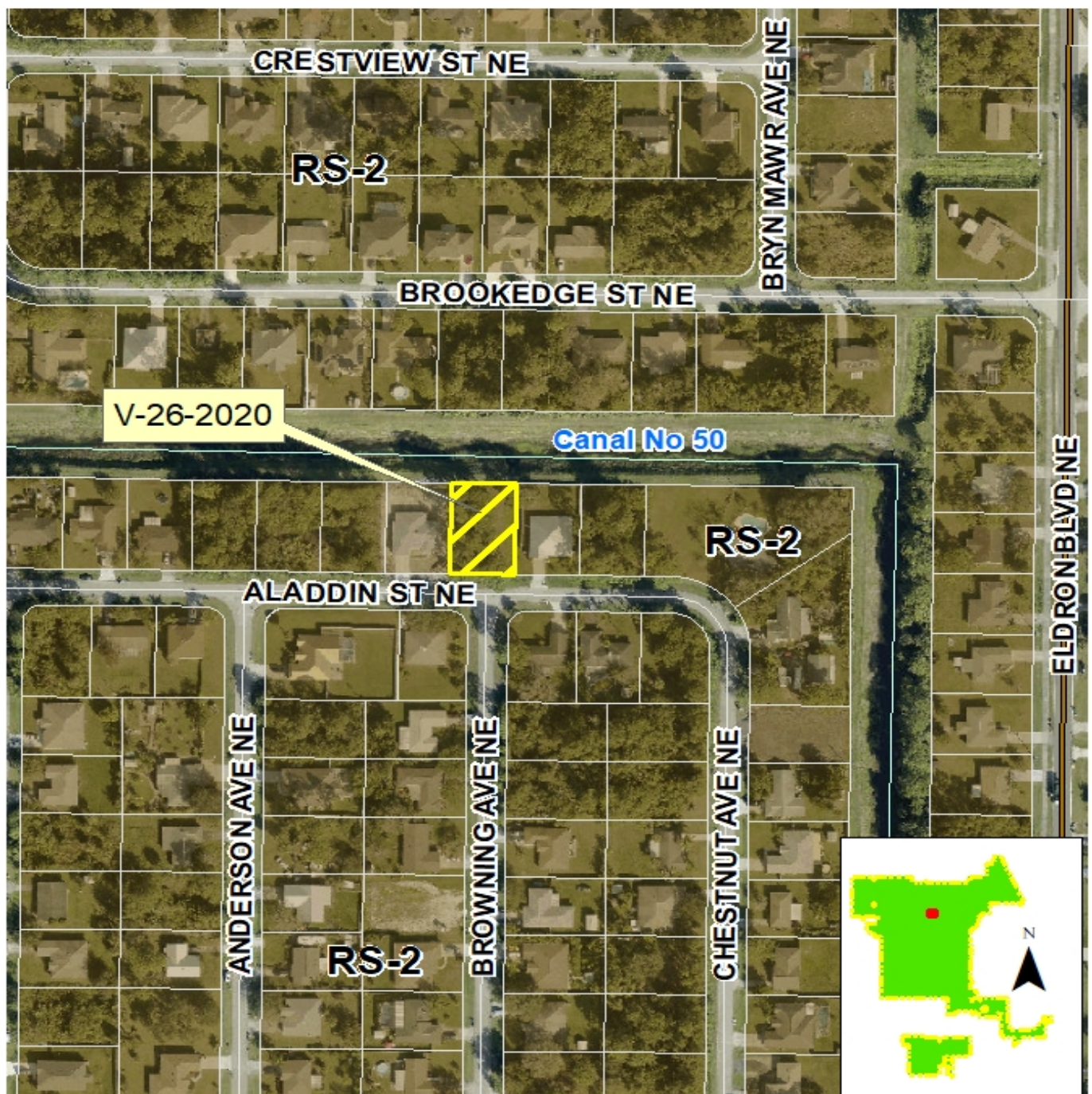
### Future Land Use Classification

SFR – Single Family Residential Use





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## ZONING MAP

## CASE V-26-2020

### Subject Property

North of and adjacent to Aladdin Street NE, in the vicinity north of Browning Avenue NE

### Current Zoning Classification

RS-2 – Single Family Residential District

# LEGEND

CONC	CONCRETE	CMP	CORRUGATED METAL PIPE
C/L	CENTERLINE	ACOMP	ASPHALT COATED CORRUGATED METAL PIPE
FB	PLAT BOOK	NGVD	NATIONAL GEODETIC VERTICAL DATUM OF 1929
EOP	EDGE OF PAVEMENT	PUDE	PUBLIC UTILITIES & DRAINAGE EASEMENT
ORB	OFFICIAL RECORD BOOK	NAVD	NORTH AMERICAN VERTICAL DATUM OF 1988
PC	FACE	-X20X	INDICATES PROPOSED GRADE (BY CLIENT)
WM	WATER METER	PLS	PROFESSIONAL LAND SURVEYOR
SS	SANITARY SEWER	PSM	PROFESSIONAL SURVEYOR & MAPPER
UB	UTILITY BOX	EL	ELEVATION
LP	LIGHT POLE	BM	BENCH MARK
S/W	SIDEWALK	CB	CONCRETE BLOCK
R/W	RIGHT OF WAY	CM	CONCRETE MONUMENT
QD	POWER POLE	FF	FINISH FLOOR
-OH-	OVERHEAD WIRES	LSB	LICENSED BUSINESS
O	CORNER MARKER RECOVERED	RGE	RANGE
PCP	CORNER MARKER SET	SEC	SECTION
PC	PERMANENT CONTROL POINT	TWP	TOWNSHIP
PT	POINT OF CURVE	COV	COVERED
PRC	POINT OF TANGENCY	INT	INTERSECTION
PCC	POINT OF REVERSE CURVE	AVE	AVENUE
PL	POINT OF COMPOUND CURVE	BLVD	BOULEVARD
CT	POINT OF INTERSECTION	COURT	COURT
INDICATES RECORD DATA		PL	PLACE
INDICATES GROUND ELEVATION		ST	STREET
INDICATES SURFACE WATER FLOW		SQ	SQUARE
INDICATES NAIL OR NAIL AND DISK		TERR	TERRACE
WELL		A/C	AIR CONDITIONER
		N/D	NAIL AND DISK

PROJECT REFERENCE BENCHMARK  
CITY OF PALM BAY CONTROL  
(PALM BAY CONTROL POINT)  
07-031 EL=26.917 NGVD29

JOB No. PMU 18 0208

MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.50

## NOTES:

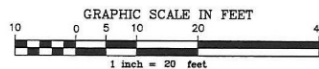
1. THE LANDS SURVEYED LIE WITHIN FLOOD ZONE X, PER FLOOD INSURANCE RATE MAP NO. 12009C, COMMUNITY 120404, PANEL 0595G, DATED MARCH 17, 2014. THIS LOCATION IS BASED ON MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. FINAL LOCATION AND FLOOD ZONE DETERMINATION REST WITH SAID AGENCY. THIS SURVEYOR ASSUMES NO RESPONSIBILITY FOR SAID LOCATION AND DETERMINATION.
2. THERE MAY OR MAY NOT BE RECORDED OR UNRECORDED RIGHTS OF WAY RESERVATIONS OR RESTRICTIONS AFFECTING THE LANDS SURVEYED.
3. UNLESS SHOWN OTHERWISE, THERE ARE NO ENCROACHMENTS, GAPS OR OVERLAPS. FENCE OWNERSHIP, IF ANY IS NOT KNOWN, FOUNDATIONS BENEATH THE SURFACE ARE NOT LOCATED.
4. UNLESS SHOWN OTHERWISE, DIMENSIONS AND DIRECTIONS SHOWN ARE FIELD MEASURED AND ARE THE SAME AS RECORD DATA.
5. THIS SURVEY DOES NOT REFLECT OR DETERMINE OWNERSHIP.
6. THIS SURVEY WAS MADE FOR THE PURPOSE DESCRIBED, AND SHALL BE USED FOR NO OTHER PURPOSE WHATSOEVER. "THE SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER", EXCEPT THOSE WITH ELECTRONIC SIGNATURE AND ELECTRONIC SEAL.
7. BEARINGS REFER TO THE LINE INDICATED BASED ON RECORD INFORMATION OBTAINED FROM PLAT OR DEED.
8. ELEVATIONS INDICATED HEREON ARE IN FEET AND DECIMALS, BASED ON THE PROJECT BENCHMARK DATUM AS SHOWN. PROJECT BENCHMARK ELEVATIONS ESTABLISHED BASED ON A LEVEL LOOP BENCH RUN REFERENCED TO DESCRIBED CONTROL MONUMENT.
9. THIS SURVEY WAS PREPARED FROM THE AVAILABLE DATA BASED ON THE DESCRIPTION PROVIDED BY THE CLIENT. THE UNDERSIGNED SURVEYOR DID NOT CONDUCT A TITLE SEARCH AND DID NOT RECEIVE ATTORNEY'S TITLE OPINION, UNLESS OTHERWISE NOTED HEREON. LANDS DESCRIBED AND GRAPHICALLY SHOWN ON THIS SURVEY WERE NOT ABSTRACTED FOR ANY ENCUMBRANCES WHATSOEVER. SURVEY AND DRAWING IS THE PROFESSIONAL STATEMENT OF THE SIGNING SURVEYOR, BASED ON FIELD AND DOCUMENTARY EVIDENCE.
10. THIS SURVEY AND DRAWING IS MADE TO COMPLY WITH THE STATE OF FLORIDA "STANDARDS OF PRACTICE, PER CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE".

## DESCRIPTION

THIS SURVEY IS CERTIFIED TO  
AND SPECIFICALLY MADE FOR  
PALLADIO DEVELOPMENT, LLC

LOT 18, BLOCK 208, PORT MALABAR  
UNIT SEVEN, ACCORDING TO THE  
PLAT THEREOF, RECORDED IN PLAT  
BOOK 14, PAGES 125 THROUGH 135.  
INCLUSIVE, OF THE PUBLIC RECORDS  
OF BREVARD COUNTY, FLORIDA.

DATE OF FIELD SURVEY: MAY 6, 2020



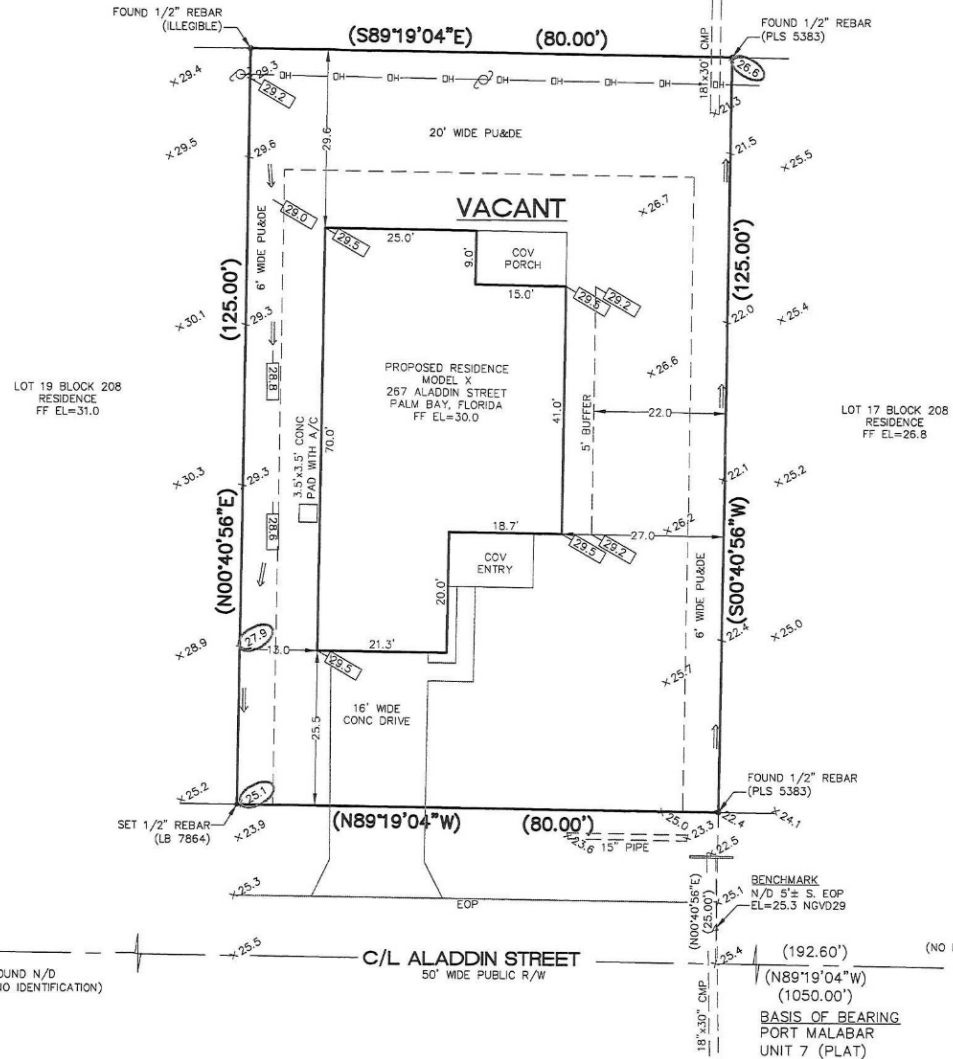
JON E. BRUNNER, FLORIDA PSM 6431  
STATE OF FLORIDA

**BRUNNER  
HAGEN**

801 Carolin Street Melbourne, FL 32901  
phone (321)728-1961 fax (321) 779-8607  
info@brunner-hagen.com  
LAND SURVEYORS LB No. 7864  
CONSULTING ENGINEERS CA No. 29254

MAP OF BOUNDARY/TOPOGRAPHIC SURVEY FOR  
**PALLADIO DEVELOPMENT, LLC**

PROJECT NO:  
373-20  
SEC. 32  
TWP. 28 S.  
RNG. 37 E.







**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopment@palmbayflorida.org

**VARIANCE APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

**PARCEL ID** 28-37-31-FR-208-18

**TAX ACCOUNT NUMBER** 2840335

**LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:**

Lot 18 Block 208 Port Malabar Unit Seven Plat Book 14 Page 126

**STREET ADDRESS OF PROPERTY COVERED BY APPLICATION:**

267 Aladdin Street, NE

**SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):** 0.23

**EXISTING ZONING CLASSIFICATION OF PROPERTY (ex.: RS-2, CC, etc.)** RS-2

**ARE THERE ANY STRUCTURES ON THE PROPERTY NOW?** ☐ YES ☒ NO

**HAS A VARIANCE APPLICATION PREVIOUSLY BEEN FILED FOR THIS PROPERTY?**  
☐ YES ☒ NO

**IF SO, STATE THE NATURE OF THE PREVIOUS APPLICATION, WHETHER THE REQUEST WAS APPROVED OR DENIED, AND DATE OF ACTION:**



**DESCRIBE THE EXTENT OF THE VARIANCE REQUESTED AND THE INTENDED USE OF THE PROPERTY IF THE VARIANCE IS GRANTED (SPECIFY NUMBER OF INCHES/FEET ENCROACHING INTO SPECIFIC REQUIRED YARD SETBACK OR HEIGHT RESTRICTIONS):**

Finish floor to be 3.2 feet above Lot 17, Block 208, exceeding city ordinance by 2.2 feet.

**CITE THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE AND ITS REQUIREMENT FROM WHICH VARIANCE IS REQUESTED (ex.: 185.034(f)(7)):**

174.073 (3)

**GIVE WRITTEN EXPLANATION(S) DEMONSTRATING HOW THE VARIANCE MEETS THE FOLLOWING CONDITIONS PER SECTION 169.009:**

- (a) That special conditions and circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same land use category, zoning district, or situation.
- (b) That special conditions and circumstances referred to above do not result from the actions of the applicant.
- (c) That literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district, or situation under the terms of the development code, and would work unnecessary and undue hardship on the applicant.
- (d) That if granted, the variance is the minimum variance necessary to make possible the reasonable use of the land, building or structure.
- (e) That granting the variance requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same land use category, zoning district, or situation.
- (f) That granting the requested variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.

The subject parcel is deemed unbuildable under the ordinance as written due to the excessive difference in the adjoining properties finish floor elevations.

**EVIDENCE MUST BE PROVIDED TO CONSIDER VARIANCES BASED ON THE FOLLOWING CLAIMS:**

- ☐ **BERT J. HARRIS PRIVATE PROPERTY RIGHTS PROTECTION ACT**, Chapter 95-181, Laws of Florida. Provide a copy of one of the following:
- ☐ Special master appointed in accordance with the act.
  - ☐ Court order as described in the act.
- ☐ **AMERICANS WITH DISABILITIES ACT**. Cite the section of the act from which the variance request will provide relief: \_\_\_\_\_

**THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:**

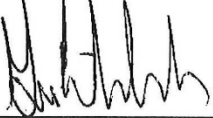
- ☒ \*\$350.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ A site plan drawn to scale which shows all property and yard dimensions, its structures (if any) and the variance desired, including abutting highway or road boundaries. The site plan shall also be provided on Memory Drive.
- ☐ Site plan data may be shown on a copy of the survey and must also be provided on Memory Drive.
- ☐ A survey prepared by a registered surveyor showing all property lines and structures. The survey shall also be provided on Memory Drive.
- ☐ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.
- ☐ **Where the property owner is not the representative for the request**, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

**Name of Representative** Katja Jones

**CITY OF PALM BAY, FLORIDA  
VARIANCE APPLICATION  
PAGE 4 OF 4**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

**Under penalties of perjury, I declare that I have read the foregoing Variance application and that the facts stated in it are true.**

**Owner Signature**  **Date** 9/15/2020

**Printed Name** Giro Katsimbrakis

**Full Address** 18021 sky park circle suite A, Irvine, Ca 92614

**Telephone** 949-379-8094 **Email** giro@palladiodevelopment.com

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

September 18, 2020

Re: Letter of Authorization

**As the property owner of the site legally described as:**

PORT MALABAR UNIT 7 LOT 18 BLOCK 208, 267 ALLADDIN STREET NE, PALM BAY,  
FLORIDA 32907

I, Owner Name: PALLADIO DEVELOPMENT LLC

Address: 18021 SKY PARK CIRCLE, SUITE A, IRVINE, CA 92614

Telephone: 949-379-8094

Email: GIRO@PALLADIODEVELOPMENT.COM

**hereby authorize:**

Representative: KATJA JONES

Address: 851 VANTAGE STREET SE, PALM BAY, FLORIDA 32909

Telephone: 321-427-8642

Email: KATJA.J@PALLADIODEVELOPMENT.COM

**to represent the request(s) for:**

VARIENCE



(Property Owner Signature)

STATE OF California

COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of ☐ physical  
presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_, property owner.



, Notary Public

☐ Personally Known or ☐ Produced the Following Type of Identification:



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

On 9/18/2020 before me, Janet E. Philamalee, Notary Public  
(insert name and title of the officer)

personally appeared Gino G. Katsimbrakis  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

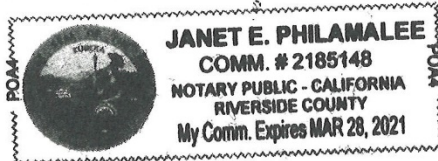
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Janet E. Philamalee

(Seal)



**2020 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT**

DOCUMENT# L14000094044

**Entity Name:** PALLADIO DEVELOPMENT LLC

**Current Principal Place of Business:**

18021 SKY PARK CIRCLE  
SUITE A  
IRVINE, CA 92614

**Current Mailing Address:**

18021 SKY PARK CIRCLE  
SUITE A  
IRVINE, CA 92614 US

**FEI Number:** 35-2510057

**Certificate of Status Desired:** Yes

**Name and Address of Current Registered Agent:**

LEGALINC CORPORATE SERVICES, INC.  
5237 SUMMERLIN COMMONS  
SUITE 400  
FORT MYERS, FL 33907 US

*The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.*

**SIGNATURE:**

Electronic Signature of Registered Agent

Date

**Authorized Person(s) Detail :**

Title MANAGER  
Name ZHAO, YINAN  
Address 18021 SKY PARK CIRCLE  
SUITE A  
City-State-Zip: IRVINE CA 92614

Title MANAGER  
Name KATSIMBRAKIS, GIRO G  
Address 18021 SKY PARK CIRCLE  
SUITE A  
City-State-Zip: IRVINE CA 92614

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

**SIGNATURE:** GIRO KATSIMBRAKIS

MANAGER

01/06/2020

Electronic Signature of Signing Authorized Person(s) Detail

Date

**CASE V-26-2020**

**CORRESPONDENCE**

**Chandra Powell**

---

**From:** Stephen Stomber <sjstomber49@gmail.com>  
**Sent:** Monday, October 26, 2020 11:26 AM  
**To:** Chandra Powell  
**Subject:** RE: Case V-26-2020  
**Attachments:** 89F7FD6C-C1DB-4965-82C8-A613C54DC545.JPG

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

TO: Planning & Zoning Board/Local Planning Agency  
City Council  
City of Palm Bay, Florida

I reside within 500 feet of the proposed variance at 259 Aladdin St., NE, Palm Bay, Florida (Lot 19, Block 208). My property is the adjacent property on the west side of Lot 18 Block 208.

The requested variance by Palladio Development asks to exceed the allowable finished floor elevation by a maximum of 2.2 feet. My understanding is that home construction must be 5 feet above the center of the road for flood purposes. If the builder requests an additional 2.2 ft, then the finish floor elevation would be 7.2 feet above the centerline of the road.

If this understanding is correct I strenuously object and request variance be refused. At 5 feet above the center of the road the swales cut deeply during rains. See the enclosed picture. If the Palladio Development property is 2.2 feet higher in finished floor elevation, the water run off will be worse causing even more erosion.

Sincerely

Stephen J. Stomber







**Chandra Powell**

---

**From:** Stephen Stomber <sjstomber49@gmail.com>  
**Sent:** Monday, October 26, 2020 1:33 PM  
**To:** Chandra Powell  
**Subject:** Re: Case V-26-2020

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Powell

Two more points. Pools in Palm Bay must be surrounded by a fence for protection of others. The benefits of a 6 ft privacy fence as to pool protection and simply family privacy are lost if the adjacent property is 7.2 feet higher elevation wise.

Sincerely

Stephen Stomber

On Mon, Oct 26, 2020 at 11:30 AM Chandra Powell <[Chandra.Powell@palmbayflorida.org](mailto:Chandra.Powell@palmbayflorida.org)> wrote:

Mr. Stomber,

Thank you for your comments, they will be provided to the Board and Council.

*Chandra Powell*

City of Palm Bay

Land Development Division

**120 Malabar Road SE**

**Palm Bay, FL 32907**

(321) 733-3041

**From:** Stephen Stomber <[sjstomber49@gmail.com](mailto:sjstomber49@gmail.com)>  
**Sent:** Monday, October 26, 2020 11:26 AM  
**To:** Chandra Powell <[Chandra.Powell@palmbayflorida.org](mailto:Chandra.Powell@palmbayflorida.org)>  
**Subject:** RE: Case V-26-2020

## Chandra Powell

---

**From:** Rosemarie Saavedra  
**Sent:** Wednesday, October 28, 2020 8:39 AM  
**To:** Laurence Bradley; Terese Jones; Terri Lefler; Suzanne Sherman  
**Cc:** Chandra Powell; Angela Burak; Meeshalle Sorenson  
**Subject:** FW: Request to Deny Case V-26-2020

Good morning,  
The email below was sent to Council yesterday.  
They may have already reached out to you.

Thanks.

*Rosemarie*



*Down to Earth and Up to Great Things™*



Rosemarie Saavedra  
Administrative Assistant

☎ 321.952.3414 or ext. 3414

---

**From:** Stephen Stomber <sjstomber49@gmail.com>  
**Sent:** Tuesday, October 27, 2020 5:04 PM  
**To:** City Council <CityCouncil@palmabayflorida.org>  
**Subject:** Request to Deny Case V-26-2020

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I reside on Lot 18 Block 208. The adjacent lot 19 Block 208 requests a variance to exceed allowable finished floor elevation by 2.2 ft. The current regulatory framework states finished floor elevations to be 5 ft above center of the road. My house on Lot 18 is 5 ft above road center.

If Variance is granted house on Lot 19 be 7 ft 2 in above road center. I object. There is no rationale reason Palladio Development to construct their model "Millennial 1" 4 bedroom home totaling 2834 square ft at 7 ft rather than 5 ft above road center line. The rain runoff from different soil elevations will cause more soil erosion.

My VA home has a privacy fence. What good is a privacy fence, where is the privacy if the house next door is on a 2 ft higher elevation. Likewise what good is a privacy fence to protect a swimming pool if the height of a pool fence is relegated from 6 ft to 4 ft due to a 7 ft floor elevation.

There is no reason why the builders can't squeeze their model home on Lot 19 with the standard 5 ft above road centerline. I don't mind having neighbors but I would expect privacy with my new VA home in Palm Bay.

Sincerely

Stephen J Stomber, Col, USA, Ret.

**CASE V-26-2020**

**CORRESPONDENCE**

Received after Planning and Zoning Board Packet was published



## Chandra Powell

---

**From:** sean hartley <seanhartley@outlook.com>  
**Sent:** Monday, November 2, 2020 8:54 PM  
**To:** Chandra Powell  
**Subject:** Case V-26-2020

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello

I own property (283 Aladdin St NE) within 500 ft of the proposed variance @ 259 Aladdin St NE. I do think allowing the elevation to be up to 2.2 feet higher than other new construction homes in the area benefits anyone. I believe this will cause questions regarding the area and sale-ability of existing homes in the area. This could negatively affect property values as buyers will think the area is high risk for flooding. I also believe that height will allow people in the surrounding homes to lose their privacy. Please do not allow this variance! **Please not that I am a real estate agent and I have seen these issues first hand.** I had a listing at 426 Harrisburg SW that had at least 10 people walk away from purchasing the property SOLELY on the fact the house next door is so much higher than surrounding homes and their entire yard was 2 feet higher than the house I had for sale, people were extremely concerned about flooding and was unable to ease their fears. This has caused about a 20% reduction in value to my clients home. If you have any questions or would like to discuss further, please contact me.

***Thank you and have a blessed day!***

Cyber criminals are targeting home buyers and sellers nationwide.

Prior to wiring any money, you should always verbally contact your real estate broker and title agent to confirm that the wiring information is accurate. Do not rely on telephone numbers or website addresses provided within an unverified email.



**Sean & Anamaria Hartley**

Your Real Estate Experts!

**321.323.9784**

**seanhartley@outlook.com**

www.theNOWteam.us - New Owner Wanted!



**Waterman Real Estate, Inc**  
**828 Malabar Rd SE**  
**Palm Bay, FL 32907**

The highest compliment my clients can give me is to recommend me to a friend. I truly appreciate your referrals!

The Four Agreements for Life (Don Miguel Ruiz with Janet Mills)

- Agreement 1: Be Impeccable With Your Word.
- Agreement 2: Don't Take Anything Personally.
- Agreement 3: Don't Make Assumptions.
- Agreement 4: Always Do Your Best.

The information contained in this email is confidential and intended solely for the addressees. Any unauthorized access, use, reproduction, or dissemination is prohibited. If you have received this e-mail in error, please notify me immediately and delete this copy from your system. Landing Title Agency Inc., and/or its affiliates shall not assume legal liability or responsibility for any incorrect, misleading, or altered information contained herein.

The greatest threat to the environment is waiting for someone else to save it.

**Chandra Powell**

---

**From:** shiv singh <shiv101singh@hotmail.com>  
**Sent:** Tuesday, November 3, 2020 5:09 PM  
**To:** Chandra Powell  
**Subject:** Increase of land elevation

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Powell,

Good Morning!

I hope my e-mail finds you well...

I own property (290 Aladdin St NE) approximately 500 ft of the proposed variance at 259 Aladdin St NE. I do not think by allowing the elevation to be up to 2.2 feet higher than other new construction homes in the area benefits anyone. I believe this will cause questions regarding the area and sale-ability of existing homes in the area. This will negatively affect my property value. I also believe that height will allow people in the surrounding homes to lose their privacy. Please do not allow this variance!

If you would like to discuss this further I can be reached at 252-904-5102.

Sincerely,  
Shiv Singh

**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.



## **ANNOUNCEMENTS:**

1. Mr. Weinberg addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to City Council.
2. Mr. James Stokes informed the board of his resignation as the board attorney due to work obligations, and he expressed his pleasure in serving the board. Ms. Jennifer Cockcroft was welcomed as the new counsel for the board.

## **OLD BUSINESS:**

1. **T-20-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT – REQUESTED BY COUNCILMAN JEFF BAILEY)**

***(REQUEST TO CONTINUE TO DECEMBER 2, 2020)***

Mr. Weinberg announced there was a request (second) to continue Case T-20-2020 to the December 2, 2020 Planning and Zoning Board meeting. Board action was required to continue the case.

Motion by Mr. Warner, seconded by Ms. Maragh to continue Case T-20-2020 to the December 2, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

City Council will hear the request on December 17, 2020.

## **NEW BUSINESS:**

1. **\*\*V-26-2020 – PALLADIO DEVELOPMENT, LLC (KATJA JONES, REP.)**

Mr. Murphy presented the staff report for Case V-26-2020. The applicant had requested a variance to allow a proposed home to exceed the allowable finish floor elevation by a maximum of 2.2 feet, as established by Section 174.073(A)(3) of the Palm Bay Code of Ordinances. The board had to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Ms. Katja Jones (representative for the applicant) stated that the intent of the subject request was to build a single-family home on the subject site, and that the proposed home was currently under contract.

The floor was opened for public comments.

Mr. Stomber (resident at Aladdin Street NE) spoke against the request. He stated that his home was built in 2019 to meet the floor elevation requirement of 5 feet above the center of the road. Allowing the proposed home to be constructed 2.2 feet higher would cause erosion to his property and negate his 4-foot high privacy fence. The two lots had no difference in size or elevation.

The floor was closed for public comments; there was three correspondence in the file in opposition to the request that included correspondence from Mr. Stomber.

Ms. Maragh inquired whether the requested increase in elevation would affect neighboring properties. Mr. Murphy stated that there was approximately 37 feet of land and a side lot line ditch between Mr. Stomber's property line and the east side of the proposed home. Any flow would enter the ditch well before reaching Mr. Stomber's property and would transfer north into the Melbourne-Tillman Water Control District Canal behind the lots. He explained how the subject property needed the proposed adjustment to compensate for the adjacent home on the west side that was built six feet above the crown of the road.

Ms. Maragh asked whether the subject home would become unbuildable without the variance. Mr. Murphy stated that construction options available for the home, such as a stem wall or stilts, would be excessive compared to other homes in the area.

Ms. Jordan questioned how the home to the west was permitted to build so high. Mr. Murphy explained that the code currently protected existing homes from new homes, and that the home to the west was built first at the higher elevation.

Mr. Weinberg stated that he would support the subject proposal which would allow the home to be built at 30 inches above the finish floor elevation since the home to the west was 31 inches above finish floor elevation.

Motion by Ms. Maragh, seconded by Mr. Felix to submit Case V-26-2020 to City Council for approval of a variance to allow a proposed home to exceed the allowable finish floor elevation by a maximum of 2.2 feet, as established by Section 174.073(A)(3) of the Palm Bay Code of Ordinances. The motion carried with members voting unanimously.

2. **\*\*V-28-2020 – DALE HERSCHER**

Mr. Balter presented the staff report for Case V-28-2020. The applicant had requested a variance to allow a proposed covered carport to encroach 6.5 feet into the 8-foot side interior setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances. The board had to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Mr. Dale Herscher (applicant) stated that a covered carport was being requested to protect his disabled wife when accessing their home and vehicle. The carport would be built to code by a contractor.

Mr. Boerema asked if a slab was present. Mr. Herscher confirmed that there was an existing slab.

Mr. Weinberg asked for confirmation that the carport would not extend beyond the existing slab. Mr. Herscher indicated that this was correct.

The floor was closed for public comments; there was one correspondence in the file in opposition to the request.

Motion by Mr. Hill, seconded by Ms. Jordan to submit Case V-28-2020 to City Council for approval of a variance to allow a proposed covered carport to encroach 6.5 feet into the 8-foot side interior setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances. The motion carried with members voting unanimously.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Laurence Bradley, AICP, Growth Management Director

**DATE:** 12/3/2020

**RE:** Request by Dale Herscher, for a variance to allow a proposed covered carport to encroach 6.5 feet into the 8-foot side interior building setback as established by Section 185.033(F)(7)(b), Palm Bay Code of Ordinances (0.23 acres) (V-28-2020) (Quasi-Judicial Proceeding).

Mr. Dale Herscher has asked for a variance to allow a proposed carport to encroach 6.5 feet into the 8-foot side interior building setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances. The .23-acre property is located south of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE.

In 2017, City Council granted the applicant a vacating of easement (Ordinance 2017-31) for the subject slab so that his wife, who has a bad hip, would not injure herself. The current request to place a carport on the slab will further protect his wife during inclement weather. Literal interpretation and enforcement of the Land Development Code would not allow the proposed carport to be built in the desired location. Staff has not identified any detrimental effect to public welfare.

### REQUESTING DEPARTMENT:

Growth Management

### RECOMMENDATION:

Request for City Council to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

### Planning and Zoning Board Recommendation:

Unanimous approval of the request.

### ATTACHMENTS:

Description

Case V-28-2020

Board Minutes





# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmbayflorida.org](mailto:landdevelopmentweb@palmbayflorida.org)

### Prepared by

Christopher Balter, Senior Planner

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#### CASE NUMBER

V-28-2020

#### PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

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#### PROPERTY OWNER & APPLICANT

Dale Herscher

#### PROPERTY LOCATION/ADDRESS

Lot 30, Port Malabar Unit 9, Section 05, Township 29,  
Range 37, Brevard County, Florida

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#### SUMMARY OF REQUEST

A variance to allow a proposed carport to encroach 6.5 feet into the 8-foot side interior building setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances.

##### Existing Zoning

RS-1, Single-Family Residential District

##### Existing Land Use

Single-Family Residential Use

##### Site Improvements

Single-Family Home

##### Site Acreage

0.23 acres, more or less

---

#### SURROUNDING ZONING & USE OF LAND

##### North

RS-1, Single-Family Residential; Single-Family Home

##### East

RS-1, Single-Family Residential; Single-Family Home

##### South

RS-1, Single-Family Residential; Melbourne-Tillman Canal No. 76

##### West

RS-1, Single-Family Residential; Single-Family Home

#### APPLICABILITY

Insert here

#### COMPREHENSIVE PLAN COMPATIBILITY

Insert here

---

**BACKGROUND:**

The subject property was built in 1984. The property is a standard GDC lot with a dimension of 80' wide by 125' deep. There are homes on either side of the property and the surrounding neighborhood is mostly developed. The applicant received a vacate of easement in 2017 via 2017-31.

**ANALYSIS:**

Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. An application must demonstrate that items 1 through 7 of Section 169.009 of the Code of Ordinances have been met. A review of these items is as follows.

**Item 1** - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district or situation."*

The applicant states that, "they vacated the easement in 2017 to put a slab in, so that his wife with a bad hip doesn't have to risk injuring herself." The applicant is requesting to put a carport on the existing slab so that it is even safer for his wife when it rains. This may be special circumstances that the Board and Council may wish to consider.

**Item 2** - *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

The special conditions and circumstances identified in item 1 is not a direct result of the actions of the applicant.

**Item 3** - *"Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the Land Development Code, and would work unnecessary and undue hardship on the applicant."*

Literal interpretation and enforcement of the Land Development Code would require the applicant to build within the applicable setbacks. Building within the required setbacks would not allow for the proposed carport in the desired location.

**Item 4** - *"The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building, or structure."*

A maximum of 6.5 feet into the 8-foot side interior building setback would be needed to meet the applicant's request.

**Item 5** - *"Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same land use category, zoning district or situation."*

Granting of the variance would confer upon the applicant a special privilege for the setback relief, as the same development standards apply to other properties in this community.

**Item 6** - *"The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare."*

Staff has not identified any detrimental effect to public welfare.

**Item 7** - *"The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

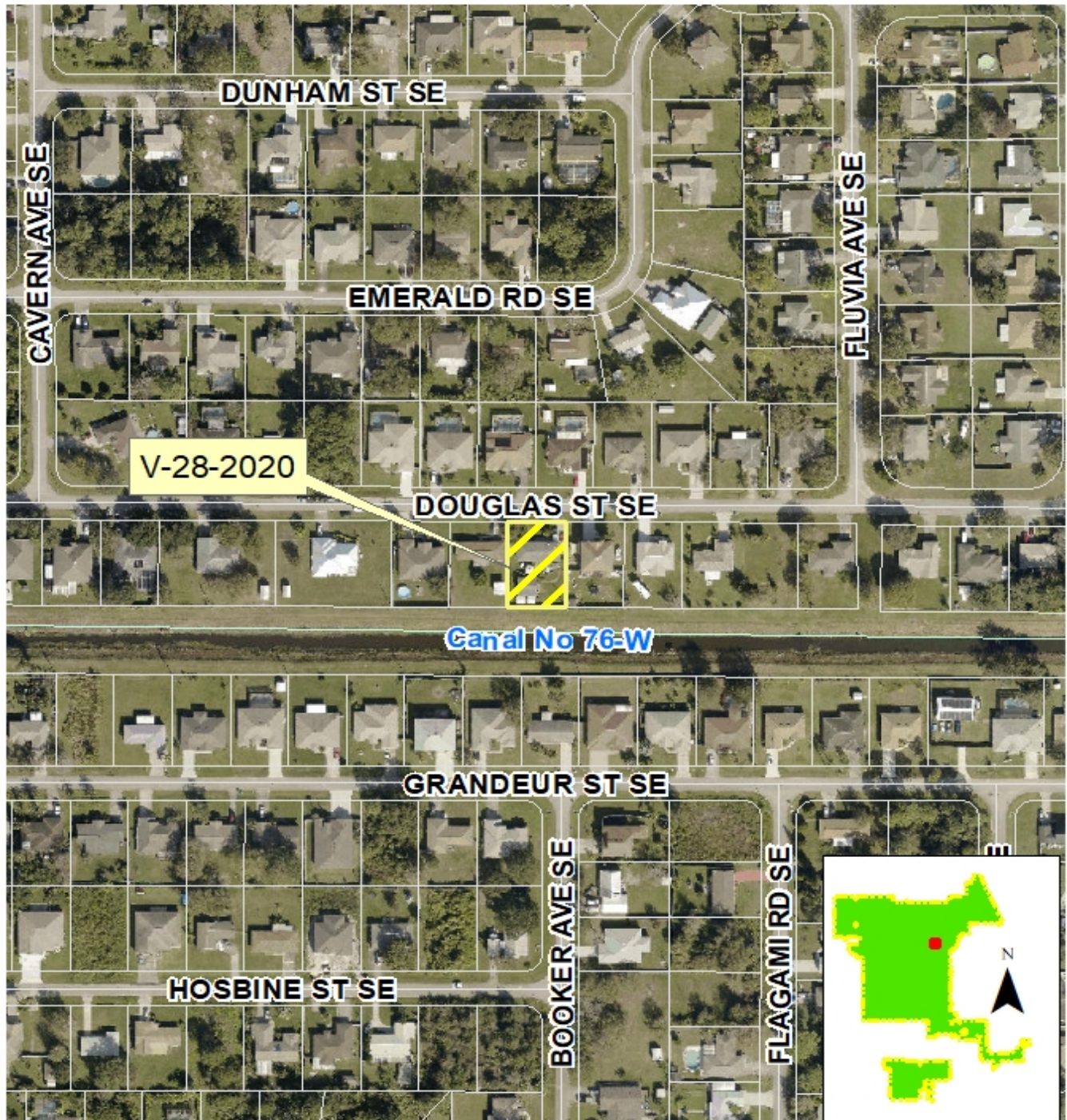
Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to the variance request.

#### **STAFF RECOMMENDATION:**

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief, is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances and make recommendations to City Council for a final review. Under 59.05(A)(14) City of Palm Bay Code of Ordinances, "The quasi-judicial body shall direct the clerk or [city] attorney acting as the body's legal counsel to prepare the necessary and appropriate written order in accordance with the purpose of the hearing and findings of the quasi-judicial body. Pursuant to Florida Statutes, in the event relief is denied to the applicant, the specific provision of statute or code that was deficient shall be stated for record."



*Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.*



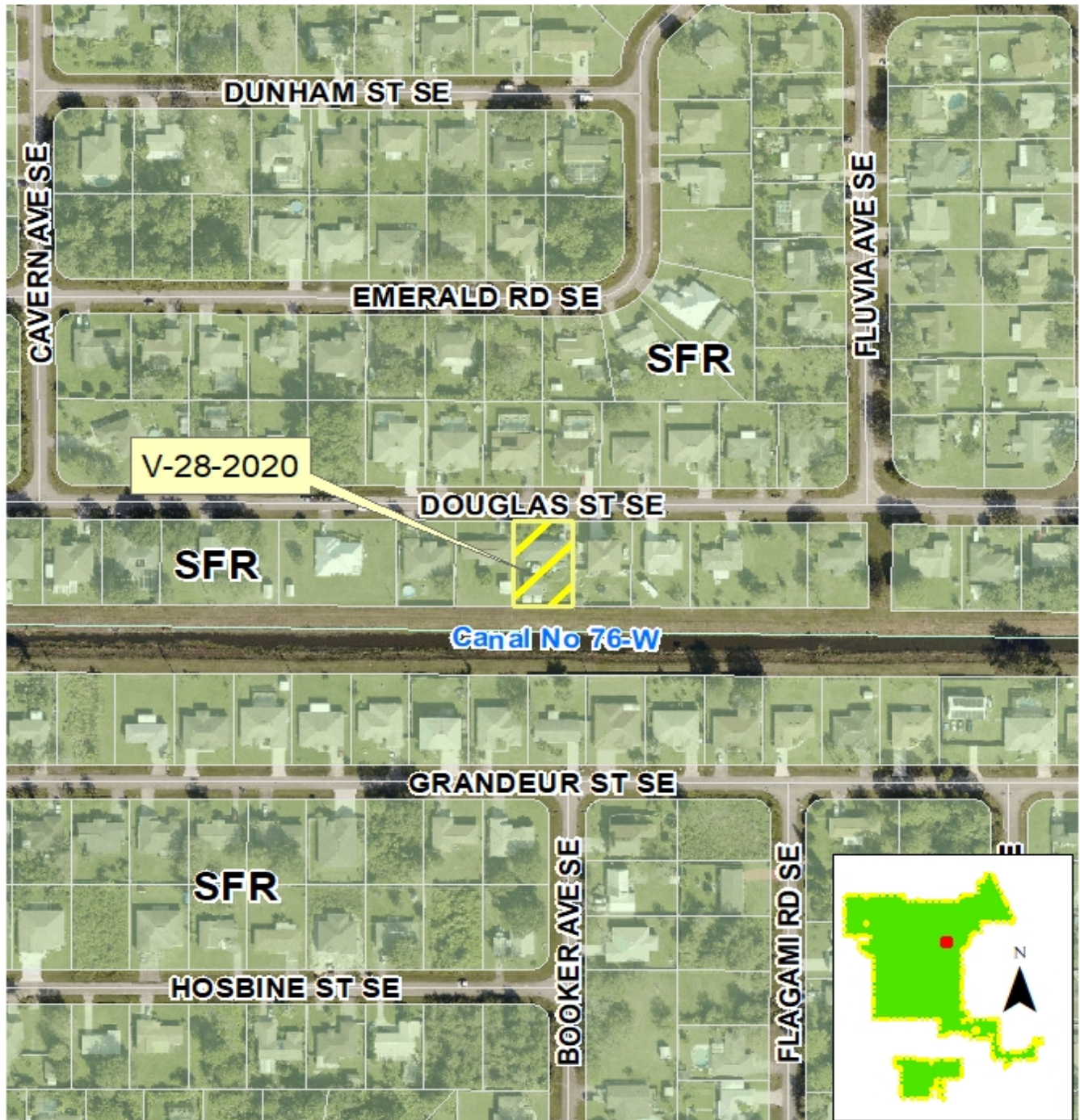
## **AERIAL LOCATION MAP      CASE V-28-2020**

### **Subject Property**

South of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE



*Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.*



## **FUTURE LAND USE MAP**

## **CASE V-28-2020**

### **Subject Property**

South of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE

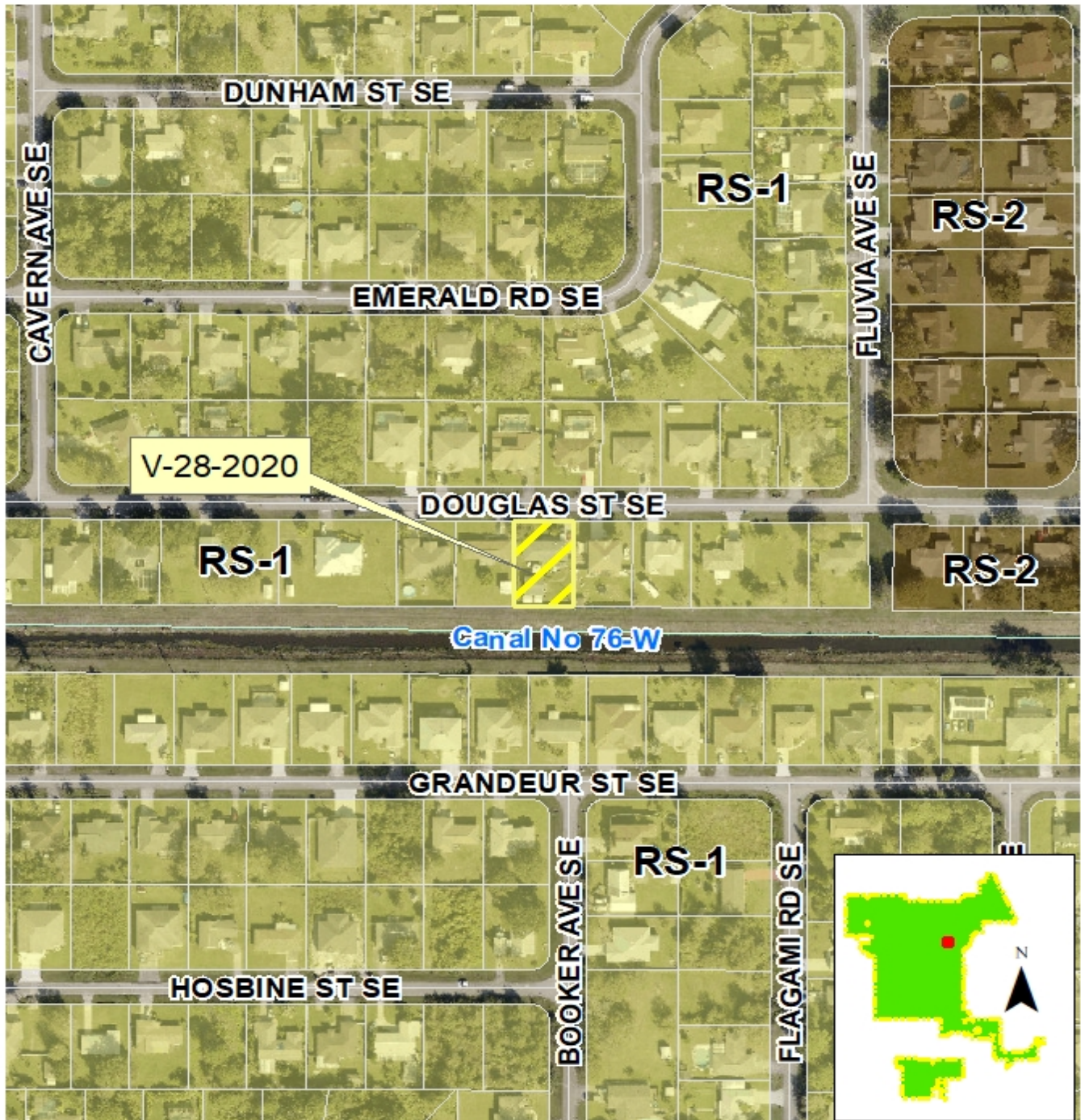
### **Future Land Use Classification**

SFR – Single Family Residential Use





Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



## ZONING MAP

## CASE V-28-2020

### Subject Property

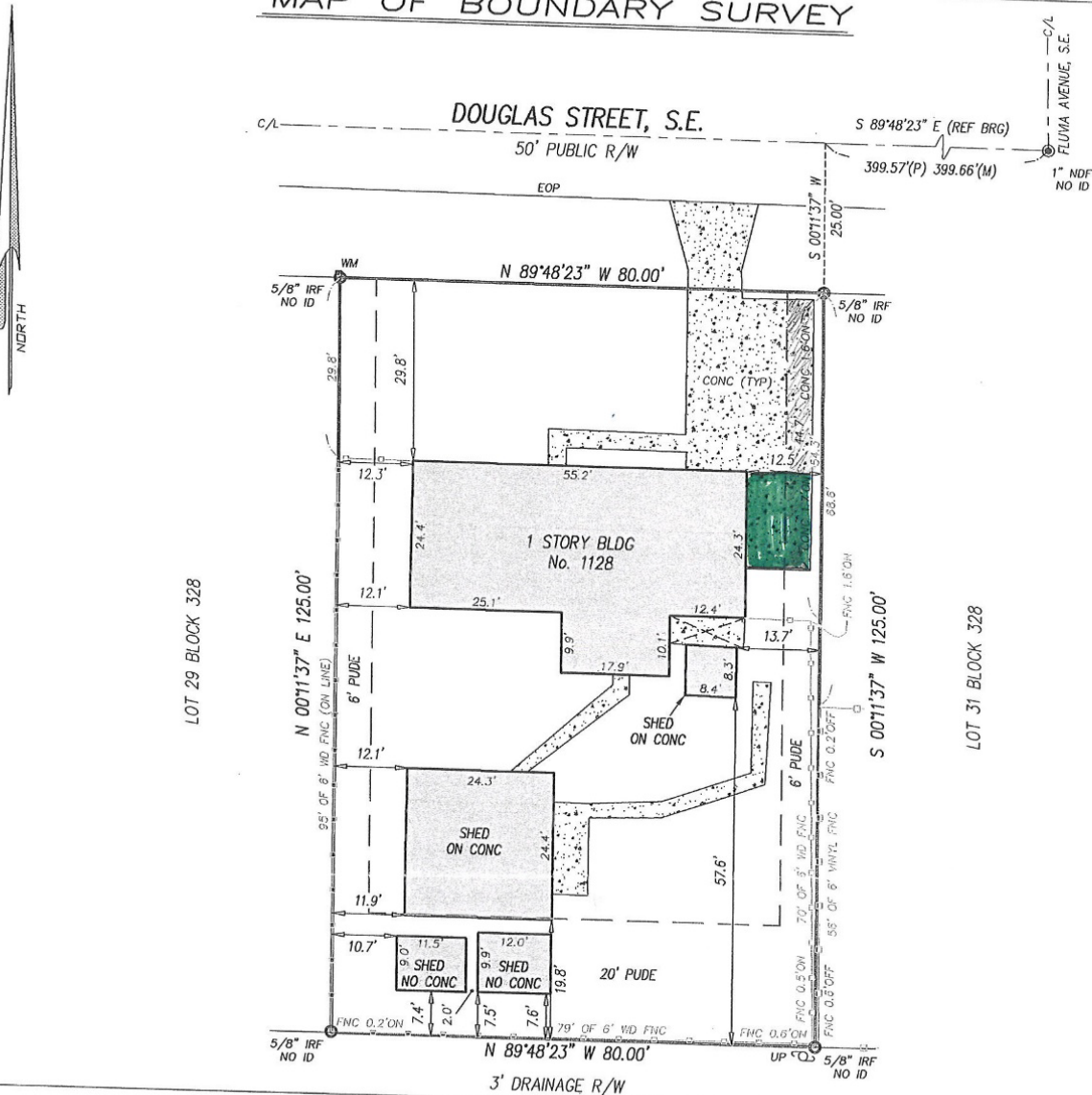
South of and adjacent to Douglas Street SE, in the vicinity west of Fluvia Avenue SE, specifically at 1128 Douglas Street SE

### Current Zoning Classification

RS-1 – Single Family Residential District



# MAP OF BOUNDARY SURVEY



A = ARC  
A/C = AIR CONDITIONER  
BFE = BASE FLOOD ELEVATION  
BLDG = BUILDING  
BLK = BLOCK  
BM = BENCHMARK  
BRG = BEARING  
(C) = CALCULATED  
CATV = CABLE TELEVISION  
CBS = CONCRETE BLOCK STRUCTURE  
CHD = CHORD  
CLF = CENTERLINE  
CMF = CHAIN LINK FENCE  
CMP = CORRUGATED METAL PIPE  
CONC = CONCRETE  
COR = CORNER  
(D) = DEED  
DB = DEED BOOK  
DA = DELTA ANGLE  
ELEC = ELECTRIC  
ELEV = ELEVATION  
ENC = ENCROACHMENT  
EOP = EDGE OF PAVEMENT  
ESMT = EASEMENT  
FB = FIELD BOOK

FEMA = FEDERAL EMERGENCY MANAGEMENT AGENCY  
FF = FINISHED FLOOR  
FNC = FENCE  
FND = FOUND  
FPL = FLORIDA POWER & LIGHT COMPANY  
ID = IDENTIFICATION  
IPF = IRON PIPE FOUND  
IRC = IRON ROD & CAP FOUND  
IRF = IRON ROD FOUND  
IRS = 5/8" IRON ROD SET "LB 7838"  
LB = LICENSED BUSINESS NUMBER  
LS = (RLS) or (PLS) REGISTERED OR PROFESSIONAL LAND SURVEYOR  
(M) = MEASURED  
NAVD = NORTH AMERICAN VERTICAL DATUM  
NDF = NAIL & DISK FOUND  
NDS = 1 1/4" NAIL & DISK SET "LB 7838"  
NGVD = NATIONAL GEODETIC VERTICAL DATUM  
No. = NUMBER  
O/H = OVERHEAD  
ORB = OFFICIAL RECORDS BOOK  
O/S = OFFSET  
(P) = PLAT  
PB = PLAT BOOK

PC = POINT OF CURVATURE  
PCC = POINT OF COMPOUND CURVATURE  
PCP = PERMANENT CONTROL POINT  
PI = POINT OF INTERSECTION  
PLS = PROFESSIONAL LAND SURVEYOR  
POB = POINT OF BEGINNING  
POC = POINT OF COMMENCEMENT  
PRC = POINT OF REVERSE CURVATURE  
PRM = PERMANENT REFERENCE MONUMENT  
PSM = PROFESSIONAL SURVEYOR AND MAPPER  
PT = POINT OF TANGENCY  
PUDE = PUBLIC UTILITY & DRAINAGE EASEMENT  
PUE = PUBLIC UTILITY EASEMENT  
R = RADIUS  
REF = REFERENCE  
RNG = RANGE  
R/W = RIGHT OF WAY  
SEC = SECTION  
SFHA = SPECIAL FLOOD HAZARD AREAS  
TEL = TELEPHONE RISER  
TWP = TOWNSHIP  
TYP = TYPICAL  
UP = UTILITY POLE  
WD = WOOD  
WIT-COR = 5/8" IRON ROD SET WITH CAP "WITNESS LB 7838"  
WM = WATER METER  
XCF = CROSS CUT FOUND

## LEGAL DESCRIPTION:

LOT 30, BLOCK 328, PORT MALABAR UNIT NINE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGES 1-9, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA

BOUNDARY	DATE: 8/30/16	JOB No. 35901
		FB 16-9-77
		PM9/L30B328

## CERTIFIED TO:

DALE F. HERSCHER

## CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED SURVEY WAS DONE UNDER MY DIRECTION AND MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER SJ-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027 FLORIDA STATUTES

JOEL A. SEYMOUR PROFESSIONAL LAND SURVEYOR AND MAPPER  
STATE OF FLORIDA No. LS 6133

DRAWN BY: JIL

DATE: 9/1/16

SCALE 1 INCH = 20 FEET

## NOTES:

- BEARINGS BASED ON THE C/L BEING S 89°48'23" E AS PER PLAT (SEE SKETCH)
- ELEVATIONS BASED ON
- FLOOD ZONE "X", MAP No. 12009C06800 COMMUNITY No. 120404, MARCH 17, 2014. FLOOD ZONE INFORMATION DEPICTED HEREON IS APPROXIMATE. FEMA RETAINS SOLE AUTHORITY REGARDING BOUNDARY AND EXTENT OF SFHA.
- HORIZONTAL CLOSURE MEETS OR EXCEEDS THE ACCURACY REQUIREMENTS FOR SUBURBAN LAND AS PER FLORIDA STATUTE 6J-17-6.003
- BEARINGS, DISTANCES OR NOT SHOWN ARE THE SAME AS PLAT, DEED OR RECORD UNLESS SHOWN OTHERWISE.
- NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY, IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY.
- THE SURVEYOR HAS NOT LOCATED NOR ATTEMPTED TO LOCATE ANY UNDERGROUND UTILITIES, FOUNDATIONS, OR STRUCTURES OTHER THAN THOSE THAT MAY BE SHOWN HEREON.
- ONLY BOUNDARY CORNER MONUMENTS AS SHOWN HEREON ARE TO BE USED FOR THE LOCATION AND CONSTRUCTION OF IMPROVEMENTS.
- UNLESS OTHERWISE INDICATED THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF A TITLE SEARCH OR ATTORNEY'S TITLE OPINION.

**Kane Surveying, Inc.**  
FLORIDA LICENSED BUSINESS No. LB 7838  
505 DISTRIBUTION DRIVE  
MELBOURNE, FLORIDA 32904  
(321) 676-0427 FAX (321) 984-1448



**LAND DEVELOPMENT DIVISION**

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042  
Landdevelopment@palmabayflorida.org

**VARIANCE APPLICATION**

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID 29-37-05-GJ-328-30

TAX ACCOUNT NUMBER 2924147

**LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:**

LOT 30 BLOCK 328 PORT MALABAR UNIT NINE PLAT BOOK 15 PAGES 1-9

**STREET ADDRESS OF PROPERTY COVERED BY APPLICATION:**

1128 DOUGLAS ST. SE. PALM BAY, FL 32909

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 10,83 FT X 16,03 FT

EXISTING ZONING CLASSIFICATION OF PROPERTY (ex.: RS-2, CC, etc.) RS-1

ARE THERE ANY STRUCTURES ON THE PROPERTY NOW? ☒ YES ☐ NO

HAS A VARIANCE APPLICATION PREVIOUSLY BEEN FILED FOR THIS PROPERTY?  
☐ YES ☒ NO

IF SO, STATE THE NATURE OF THE PREVIOUS APPLICATION, WHETHER THE REQUEST WAS APPROVED OR DENIED, AND DATE OF ACTION:

EXTENT CURRENT DRIVE WAY WIDTH AND LENGTH



DESCRIBE THE EXTENT OF THE VARIANCE REQUESTED AND THE INTENDED USE OF THE PROPERTY IF THE VARIANCE IS GRANTED (SPECIFY NUMBER OF INCHES/FEET ENCROACHING INTO SPECIFIC REQUIRED YARD SETBACK OR HEIGHT RESTRICTIONS):

TO INSTALL A CARPORT TOP ALONG THE SIDE OF THE GARAGE TO PARK A CAR UNDER  
TO HELP MY WIFE WHEN IT RAINS SINCE SHE HAS A BAD HIP SO SHE WOULDN'T  
GET TOO WET,

CITE THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE AND ITS REQUIREMENT FROM WHICH VARIANCE IS REQUESTED (ex.: 185.034(f)(7)):

185.033 (F) (7) (b)

GIVE WRITTEN EXPLANATION(S) DEMONSTRATING HOW THE VARIANCE MEETS THE FOLLOWING CONDITIONS PER SECTION 169.009:

- (a) That special conditions and circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same land use category, zoning district, or situation.
- (b) That special conditions and circumstances referred to above do not result from the actions of the applicant.
- (c) That literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district, or situation under the terms of the development code, and would work unnecessary and undue hardship on the applicant.
- (d) That if granted, the variance is the minimum variance necessary to make possible the reasonable use of the land, building or structure.
- (e) That granting the variance requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same land use category, zoning district, or situation.
- (f) That granting the requested variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.

CITY OF PALM BAY, FLORIDA  
VARIANCE APPLICATION  
PAGE 3 OF 4

**EVIDENCE MUST BE PROVIDED TO CONSIDER VARIANCES BASED ON THE FOLLOWING CLAIMS:**



**BERT J. HARRIS PRIVATE PROPERTY RIGHTS PROTECTION ACT**, Chapter 95-181, Laws of Florida. Provide a copy of one of the following:

☐

Special master appointed in accordance with the act.

☐

Court order as described in the act.



**AMERICANS WITH DISABILITIES ACT**. Cite the section of the act from which the variance request will provide relief: \_\_\_\_\_

**THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:**

☐

**\*\$350.00 Application Fee. Make Check payable to "City of Palm Bay."**

☐

**List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)**

☐

A site plan drawn to scale which shows all property and yard dimensions, its structures (if any) and the variance desired, including abutting highway or road boundaries. The site plan shall also be provided on Memory Drive.

☐

Site plan data may be shown on a copy of the survey and must also be provided on Memory Drive.

☐

A survey prepared by a registered surveyor showing all property lines and structures. The survey shall also be provided on Memory Drive.

☐

Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.

☐

**Where the property owner is not the representative for the request, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.**

**Name of Representative** \_\_\_\_\_

CITY OF PALM BAY, FLORIDA  
VARIANCE APPLICATION  
PAGE 4 OF 4

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing Variance application and that the facts stated in it are true.

Owner Signature *Dale Herscher* Date SEPT. 25, 2020  
Printed Name DALE HERSCHER  
Full Address 1128 DOUGLAS ST. SE, PALM BAY, FL 32909  
Telephone 321-724-9045 Email DALEHERSCHER@ATT.NET

**\*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

- A) HAVE EXISTING SLAB THIS IS ONLY PLACE I CAN PUT UP A LEAN TO CAR PORT
- B) HAD SLAB INSTALLED IN 2017 AND GOT A VACATE FOR SLAB, TO PUT A VEHICLE ON IT. NOW I NEED TO PUT A LEAN TO CAR PORT (TOP ONLY) FOR A CAR TO GET CLOSER TO THE HOUSE SO MY WIFE WITH BAD HIP WON'T HAVE TO WALK AS FAR OR GET TOO WET IN THE RAIN
- C) PUTS CAR CLOSER TO GARAGE SO LESS IRRITATION ON HER HIP AND IF RAINING WON'T GET TOO WET SINCE SHE MOVES SLOWLY,
- D) CAR PORT WILL NOT GO BEYOND SLAB AND WILL BE DONE TO CODE WITH A CONTRACTOR
- E) NO OTHER REQUESTS WOULD BE NECESSARY,
- F) PUT CAR ~~PORT~~ UNDER CAR PORT USING A LEAN TO ROOF WITH STANDS.



**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/m**  
**LOCAL PLANNING AGENCY**  
**REGULAR MEETING 2020-13**

Held on Wednesday, November 4, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Richard Hill led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Philip Weinberg	Present
<b>VICE CHAIRPERSON:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Donald Boerema	Present
<b>MEMBER:</b>	Donny Felix	Present
<b>MEMBER:</b>	Richard Hill	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>NON-VOTING MEMBER:</b>	David Karaffa	Present
	(School Board Appointee)	

**CITY STAFF:** Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-12; October 7, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

Motion by Ms. Maragh, seconded by Mr. Felix to submit Case V-26-2020 to City Council for approval of a variance to allow a proposed home to exceed the allowable finish floor elevation by a maximum of 2.2 feet, as established by Section 174.073(A)(3) of the Palm Bay Code of Ordinances. The motion carried with members voting unanimously.

2. **\*\*V-28-2020 – DALE HERSCHER**

Mr. Balter presented the staff report for Case V-28-2020. The applicant had requested a variance to allow a proposed covered carport to encroach 6.5 feet into the 8-foot side interior setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances. The board had to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Mr. Dale Herscher (applicant) stated that a covered carport was being requested to protect his disabled wife when accessing their home and vehicle. The carport would be built to code by a contractor.

Mr. Boerema asked if a slab was present. Mr. Herscher confirmed that there was an existing slab.

Mr. Weinberg asked for confirmation that the carport would not extend beyond the existing slab. Mr. Herscher indicated that this was correct.

The floor was closed for public comments; there was one correspondence in the file in opposition to the request.

Motion by Mr. Hill, seconded by Ms. Jordan to submit Case V-28-2020 to City Council for approval of a variance to allow a proposed covered carport to encroach 6.5 feet into the 8-foot side interior setback as established by Section 185.033(F)(7)(b) of the Palm Bay Code of Ordinances. The motion carried with members voting unanimously.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Frank Watanabe, Public Works Director, City Engineer and Juliet Misconi, Chief Procurement Officer

**DATE:** 12/3/2020

**RE:** Award of Bid: Malabar Road pipe repair – IFB 05-0-2021 – Public Works Department (Insituform Technologies, LLC - \$1,151,152).

The Malabar Road Pipe Repair is a pilot project to seal and add structural reinforcement to the existing dual 72" reinforced concrete pipes and box structures as well as to stabilize the subsurface soil condition beneath Malabar Road. Based on a physical inspection of the drainage pipes and boxes, the existing drainage system was not properly sealed allowing water seepage into the pipes and boxes and creating voids in the compacted soil to become less dense. These subface voids have caused settling of the road base material, the uneven pavement surface and pavement sink holes along Malabar Road.

The proposed pilot project is a new economical approach in repairing large diameter pipes by spin casting concrete or a geopolymer to line the entire pipe and boxes with a continuous waterproof seal to create a "pipe within a pipe". This type of construction requires minimal lane closures to perform the spin cast operation within the existing pipes. The second component would be the grout injection of a high-density polyurethane into the subsurface area of the pipes and boxes to densify the soil and fill in any voids.

The limits of the pilot project include the intersection of Malabar Road at Emerson Drive and then extending 540 feet to the east and 450 feet to the west. The total length of the pilot project is approximately 990 linear feet. The length of the dual 72" pipe system to be repaired is 3,750 linear feet. As part of the close-out of the pilot project, the entire sealed pipes will be re-inspected after ten months to ensure no leakage. Once the existing pipes are proven to be water-tight and the soil condition stabilized with no signs of settlement, this section of Malabar Road will be placed on the road paving schedule.

Six (6) bids were received. The Procurement Department staff reviewed the bids for responsiveness as well as checked the references of the lowest bidder, and asked for additional qualification submittals as requested by the City Engineer, to include a Quality Assurance Plan, sampling and testing procedures, and quality control information on the material specifications. Public Works Department evaluated the bids for responsibility and ability to perform the scope of services. The Department found the lowest responsive bid to be acceptable.

The City's Engineers Estimate for the original project was estimated at \$500,000 to cover the project limit of 500 linear feet. During the design phase, the project was expanded to cover the worst section of Malabar Road which

extended the limit to 990 linear feet. At that time, the project budget was already set, so staff moved forward with the expanded project limit and noted that the bids will be much higher. Staff did confirm that additional funds were available from project savings to cover the higher cost. The lowest bid is \$1,151,152.40. Public Works Engineering staff has reviewed the low bidder's Summary of Pay Items, proposed Subcontractors, Equipment List, References and additional Qualification Submittals, and is satisfied with the evidence provided by the contractor. Staff recommends Insituform Technologies, out of Chesterfield, MO for award of IFB #05-0-2021 – Malabar Road Pipe Repair.

Local Preference was not applied, as the bids exceeded one million dollars. Note that the corporate headquarters is in Missouri, but Insituform has multiple locations in Florida.

**REQUESTING DEPARTMENT:**

Public Works, Procurement

**FISCAL IMPACT:**

The total project award of \$1,151,152.40 is appropriated from the Stormwater Utility Fund: (1) Stormwater Utility Fund unassigned funds in the amount of \$676,153 appropriated on BA#1 (2) G/L Account 461-7084-541-6309, Project # 20SU12 Malabar Road Drainage in the amount of \$475,000 for construction.

**RECOMMENDATION:**

Motion to approve award of IFB # 05-0-2021 Malabar Road Pipe Repair to Insituform Technologies, LLC, Chesterfield, MO.

**ATTACHMENTS:**

**Description**

**Tabulation**



	IFB #05-0-2021/MS Malabar Road Drainage Pipe Repair			Insituform Technologies, LLC	Hinterland Group, Inc	Universal Contracting & Construction, Inc.	Shenandoah General Construction, LLC	Vortex Services, LLC	Consel, Inc. of Florida
				17988 Edison Avenue	5580 State Road 524	9075 Ellis Road	1888 NW 22nd Street	5910 Hartford Street	7935 Drew Circle
				Chesterfield, MO 63005	Cocoa, FL 32926	West Melbourne, FL 32904	Pompano Beach, FL 33069	Tampa, FL 33619	Fort Meyers, FL 33967
				636-530-8000	321-633-7066	321-508-4444	954-975-0098	813-626-0700	239-313-5567
				<a href="mailto:dpartridge@aegion.com">dpartridge@aegion.com</a>	<a href="mailto:info@hinterlandgroup.com">info@hinterlandgroup.com</a>	<a href="mailto:jasonwadsworth@gmail.com">jasonwadsworth@gmail.com</a>	<a href="mailto:m.lary@shenandoahus.com">m.lary@shenandoahus.com</a>	<a href="mailto:corrigan@vortexcompanies.com">corrigan@vortexcompanies.com</a>	<a href="mailto:scromer@conselinc.com">scromer@conselinc.com</a>
ITEM	ITEM DESCRIPTION	Est. Annual Qty	UOM	Unit Price	Unit Price	Unit Price	Unit Price	Unit Price	Unit Price
1	Maintenanace of Traffic	1	LS	\$ 27,108.90	\$ 45,000.00	\$ 50,000.00	\$ 30,000.00	\$ 45,000.00	\$ 193,100.00
2	Cleaning and sealing pipes and boxes	1	LS	\$ 222,443.10	\$ 40,000.00	\$ 835,900.00	\$ 150,000.00	\$ 200,000.00	\$ 565,400.00
3	Spin cast concrete 72" RCP and four box structures	1	LS	\$ 701,103.40	\$ 1,100,000.00	\$ 713,230.00	\$ 625,000.00	\$ 1,584,000.00	\$ 869,050.00
4	Grout injection of subsurface area	1	LS	\$ 200,497.00	\$ 150,000.00	\$ 325,870.00	\$ 1,300,000.00	\$ 655,000.00	\$ 2,100,550.00
TOTAL BID AMOUNT				\$1,151,152.40	\$1,335,000.00	\$1,925,000.00	\$2,105,000.00	\$2,484,000.00	\$3,728,100.00



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Frank Watanabe, Public Works Director, City Engineer and Juliet Misconi, Chief Procurement Officer

**DATE:** 12/3/2020

**RE:** Award of Bid: Road bond paving, Unit 17 – IFB 07-0-2021 – Public Works Department (Ranger Construction Industries - \$1,569,051.75).

The Unit 17 Road Paving Project is another Year 2 (Phase 2) Road Bond Paving. The Year 2 program was endorsed by the Infrastructure Advisory Oversight Board (IAOB) on January 27, 2020 and then approved by City Council on February 6, 2020. The project consists of Milling and Paving, thin lift overlay and micro-surfacing of existing roadways within Unit 17. The project also includes thermoplastic striping and pavement markers.

Three (3) bids were received. The Procurement Department staff reviewed the bids for responsiveness. Public Works Department evaluated the bids for responsibility and ability to perform the scope of services. The Department found the lowest responsive bid to be acceptable.

The City's Engineers Estimate for the project was \$1,987,130. The lowest bid is \$1,426,410.75. Public Works Engineering staff has reviewed the pay items, proposed subcontractors, equipment list and checked references and is satisfied with the evidence provided by the contractor. Staff recommends Ranger Construction Industries, Inc., 4510 Glades Cutoff Road, Ft Pierce, Florida for the award of IFB #07-0-2021/SB – Road Bond Paving – Unit 17.

Local Preference was not applied to this project because all bids exceeded the one million-dollar threshold amount.

Staff is also recommending a 10% contingency fund of \$142,641 to cover any unforeseen change orders which is typical for construction projects. The contingency request is for funding appropriation of the project only. The City's Procurement Ordinance governs the Council approval process for change orders. The Chief Procurement Officer can approve change orders up to a cumulative total of 10%, or individual change orders not to exceed \$100,000, whichever is lower; any change order in excess of \$100,000 or any change orders which cumulatively exceed 10% will be brought before Council for approval. Any funds remaining once the project has been closed will be transferred back to Road Bonds.

**REQUESTING DEPARTMENT:**

Public Works, Procurement

**FISCAL IMPACT:**

Total project award will be \$1,426,410.75 plus \$142,641 for the contingency change orders will result in a total appropriation of \$1,569,051.75. Funds are available in the GO Road Bond unassigned funds to G/L Account 309-7090-541-6303, Project No 20GO17 Unit 17 Road Paving.

**RECOMMENDATION:**

Motion to approve award of IFB #07-0-2021 Road Bond Paving – Unit 17 to Ranger Construction Industries out of Ft. Pierce, Florida.

**ATTACHMENTS:**

**Description**

**Tabulation Sheet**

	<b>IFB #07-0-2021/SB Road Bond Paving - Unit 17</b>			<b>Ranger Construction Industries, Inc.</b>		<b>Asphalt Paving Systems, Inc.</b>		<b>Community Aspahlt Corp</b>	
				<b>4510 Glades Cutoff Road</b>		<b>9021 Wire Road</b>		<b>2975 Industrial Blvd</b>	
				<b>Ft. Pierce, FL 34981</b>		<b>Zephyrhills, FL 33540</b>		<b>Vero Beach, FL 32967</b>	
				<b>772-464-6460</b>		<b>813-788-0010</b>		<b>786-418-3557</b>	
				<a href="mailto:erik.jensen@rangerconstruction.com">erik.jensen@rangerconstruction.com</a>		<a href="mailto:dgannonaps@gmail.com">dgannonaps@gmail.com</a>		<a href="mailto:manuel.aguiar@ohlma.com">manuel.aguiar@ohlma.com</a>	
ITEM	ITEM DESCRIPTION	Est. Annual Qty	UOM	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
<b>UNIT 24</b>									
1	Mobilization	1	LS	\$ 31,948.85	\$ 31,948.85	\$ 28,989.00	\$ 28,989.00	\$ 159,550.42	\$ 159,550.42
2	Maintenance of Traffic	1	LS	\$ 49,160.00	\$ 49,160.00	\$ 44,050.00	\$ 44,050.00	\$ 113,957.45	\$ 113,957.45
3	Erosion Control	1	LS	\$ 568.20	\$ 568.20	\$ 500.00	\$ 500.00	\$ 368.06	\$ 368.06
4	Cut back vegetation, edge grading & spraying herbicide	1	LS	\$ 654.50	\$ 654.50	\$ 15,000.00	\$ 15,000.00	\$ 2,238.71	\$ 2,238.71
5	Minor asphalt leveling course & rework base	1	LS	\$ 2,518.65	\$ 2,518.65	\$ 10,000.00	\$ 10,000.00	\$ 169.97	\$ 169.97
6	Option Base, Base Group 06	4,280	SY	\$ 16.85	\$ 72,118.00	\$ 12.00	\$ 51,360.00	\$ 11.50	\$ 49,220.00
7	Milling Existing Asphalt Pavement 2" Ave. Depth	18,942	SY	\$ 1.65	\$ 31,254.30	\$ 2.00	\$ 37,884.00	\$ 1.54	\$ 29,170.68
8	Milling Exist Asphalt pavement 1.5" Ave Depth	59,157	SY	\$ 1.15	\$ 68,030.55	\$ 1.45	\$ 85,777.65	\$ 1.03	\$ 60,931.71
9	Superpave asphalt concrete, Traffic C, SP- 9.5, 1.5" Thin Lift	4,881	TN	\$ 111.75	\$ 545,451.75	\$ 113.00	\$ 551,553.00	\$ 113.62	\$ 554,579.22
10	Superpave asphalt concrete, Traffic C, SP-9.5, 2" overlay	2,084	TN	\$ 99.60	\$ 207,566.40	\$ 111.00	\$ 231,324.00	\$ 112.22	\$ 233,866.48
11	Micro-Surface (double application)	84,090	SY	\$ 4.10	\$ 344,769.00	\$ 3.75	\$ 315,337.50	\$ 4.10	\$ 344,769.00
12	Performance Turf Sod	11,700	SY	\$ 3.35	\$ 39,195.00	\$ 3.50	\$ 40,950.00	\$ 2.64	\$ 30,888.00
13	Raised reflective pavement marker	380	EA	\$ 4.55	\$ 1,729.00	\$ 3.10	\$ 1,178.00	\$ 3.60	\$ 1,368.00
14	Thermoplastic Standard White Solid 12" for crosswalk	1,741	LF	\$ 2.25	\$ 3,917.25	\$ 2.40	\$ 4,178.40	\$ 2.57	\$ 4,474.37
15	Thermoplastic Standard White Solid 24" Stop bar & crosswalk	330	LF	\$ 4.55	\$ 1,501.50	\$ 4.80	\$ 1,584.00	\$ 5.15	\$ 1,699.50
16	Thermoplastic Standard White message	1	EA	\$ 198.90	\$ 198.90	\$ 180.00	\$ 180.00	\$ 128.74	\$ 128.74
17	Thermoplastic Standard White Solid 6" line	12,286	LF	\$ 0.95	\$ 11,671.70	\$ 0.68	\$ 8,354.48	\$ 0.88	\$ 10,811.68
18	Thermoplastic Standard Yellow Solid 6" line	14,820	LF	\$ 0.95	\$ 14,079.00	\$ 0.68	\$ 10,077.60	\$ 0.88	\$ 13,041.60







## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Charleena Cox, Human Resources Director

**DATE:** 12/3/2020

**RE:** Consideration of adopting Christmas Eve (December 24) as an official holiday observed by the City of Palm Bay. (Deputy Mayor Johnson)

Human Resources is requesting to add Christmas Eve (December 24) as an official holiday in accordance with Administrative Code 31.5 Holidays (Rule 5). All other rules would be applicable under the guidelines of an Official Holiday (31.5.1) per the Human Resources Administrative Code. In collaboration with the Finance/Budget Department, there was a comparison and calculation based on a previous one-day holiday period to a two-day holiday period for FY20. By subtracting one-time expenses such as: Vacation, Sick and Fire Holiday Payouts, coupled with Buybacks, it was determined the estimated cost would be \$95,000. While taking into consideration FY21 3% Cost of Living Allowance (COLA), the cost is estimated to be \$97,925.

**REQUESTING DEPARTMENT:**

Finance, Human Resources

**FISCAL IMPACT:**

The fiscal impact would be \$95,072.86 plus the FY21 – 3% increase (1.03); an approximate total of \$97,925.05.

**RECOMMENDATION:**

Motion to adopt Christmas Eve (December 24) as an Official Holiday observed by the City of Palm Bay.

**ATTACHMENTS:**

**Description**

**Approximate Calculations**

Pay Dates 11/29/19 (includes 1 holiday) and 12/13/19 (includes 2 holidays)

Pay Date	Gross Pay	OT	Total
<b>12/13/2019*</b>	1,709,259.59	106,252.28	
<b>11/29/2019</b>	<u>1,631,142.44</u>	<u>89,296.57</u>	
<b>Difference</b>	78,117.15	16,955.71	95,072.86
		FY 21 - 3% increase	1.03
		<b>Estimated Cost</b>	<b>97,925.05</b>

**\*One-time expenses backed out of 12/13/2019 payroll amount**

12/13/2019 Payroll	1,992,121.59
Vacation Payout	-52,081.00
Sick Payout	-29,632.00
Fire Holiday Payout	-172,679.00
Buyback	<u>-28,470.00</u>
Adjusted 12/13/19 Payroll	1,709,259.59



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Joan Junkala-Brown, Community & Economic Development Director

**DATE:** 12/3/2020

**RE:** Consideration of the City's state legislative priorities.

In coordination with the City's state lobbying firm, Sunrise Consulting Group, staff has prepared a list of legislative priorities for the upcoming 2021 State Legislative Session. The session is expected to kick off with the Brevard Legislative Delegation meeting to be held in December 2020. The date and location has not yet been determined. The Community & Economic Development Department has met with all other departments to identify individual legislative policy reform or funding appropriation requests. The City is focused on requests that will advance existing projects and initiatives as well as enhance the economic viability of the community.

The COVID-19 pandemic has and will continue to impact state revenues and funding streams. To that end, it is the recommendation of Sunrise Consulting Group that the City focus primarily on legislative policy reform this session with a few funding appropriations as deemed necessary to the City's ability to serve the community during the ongoing pandemic. The following recommendations reflect a strategic and prudent approach to identify legislative priorities which yield the best possible outcome for our City and remain mindful of existing and potential future pandemic-related limitations. Staff is recommending three (3) funding appropriation requests and three (3) legislation/policy recommendations for a total of six(6) priorities for Council's consideration.

### Funding Appropriations

1. The Utilities Department is seeking funding for Septic-to-Sewer conversions which will result in the protection of the Floridan aquifer, canal systems, Turkey Creek, Indian River Lagoon and other natural water resources. The City is seeking funding appropriations for the connection of 150 residential parcels to the City's sewer system. It is anticipated that the average cost to connect is approximately \$7,500 per household. The total funding appropriation request for this item is \$1,125,000.
2. The Public Works Department is seeking funding appropriations for the installation of two Nutrient Separating Baffle Boxes/Treatment Trains to support the health and restoration of Turkey Creek, a natural tributary of the Indian River. The City will handle surveying, prepare design plans for the baffle boxes in-house, and cover the costs for permitting and in-house construction and engineering estimated at \$88,000. The estimated construction costs for both baffle boxes is \$500,000.
3. The Information Technology Department is seeking funding for enhanced cybersecurity to further protect the City from increasing cyber-attacks. Funding would enhance the City's ability to provide robust data loss prevention and protection of sensitive information, the enabling of citywide two-factor authentication,



increased security for mobile devices and implementation of proactive network monitoring. As established in the recently adopted draft of the 2021 Legislative Action Agenda, the Florida League of Cities (FLOC) continues to call upon the Florida Legislature to provide the resources necessary to keep cybercriminals from compromising data of citizens and businesses. The estimated cost for the proposed security enhancements is \$730,000. To support this funding appropriation request, staff is also requesting the use of \$200,000 in General Fund Reserves to serve as a local match.

#### Legislation/Policy Priorities

1. The Building Department is seeking legislation reform affecting the Building Enterprise Fund carryforward and use of funds. Through House Bill 447 enacted in 2019, Chapter 125.56 of the Florida Statutes imposes restrictions on Building Enterprise Fund carryforward. Local governments may not carry forward an amount exceeding the average of its operating budget for the previous four (4) fiscal years. Further, a local government shall only expend such excess funds to rebate and reduce building permit fees, or shall refund such at the discretion of the local government.
2. The Building Department is also requesting legislative support to amend the requirements for the carrying forward of funds so that local governments may undertake more effective fiscal planning for expenditures of this enterprise fund revenue. Staff is seeking support from legislators for a change in the Florida Statutes to reflect that the entirety, rather than an average, of four years of enterprise funds be held in reserve in order to withstand future economic downturns. Staff also requests amendments to State Statute 553.791 to reflect that planning and zoning activities be identified as allowable expenditures for enforcing Florida Building Code.
3. The Procurement Department is seeking support for legislative changes in Chapter 287.055, Florida Statutes, amending the Consultants Competitive Negotiation Act (CCNA) to allow agencies to undertake a 'best value' procurement process which would include the consideration of price in addition to the firm's qualifications. The CCNA was enacted by the Florida Legislature in 1973. This qualifications-based public procurement system fails to provide public agencies the ability to competitively award contracts for specific professional services through a 'best value' procurement process, which includes the opportunity to consider cost as one of the weighted criteria. This matter was brought before City Council on December 15, 2011 as Resolution No. 2011-55, which provided Council's support of the proposed amendments.

#### REQUESTING DEPARTMENT:

Community & Economic Development

#### FISCAL IMPACT:

The City is seeking approval to propose the use of \$200,000 in undesignated General Fund reserves as local match for Funding Appropriation Request #3 pertaining to cybersecurity. If the City is awarded a funding appropriation for this request during the 2021 Legislative Session, staff will bring forth a Budget Amendment to approve the transfer of funds from undesignated General Fund Reserves into the appropriate Information Technology account(s).

#### RECOMMENDATION:

Motion to approve the 2021 Legislative Priorities of the City and authorize City staff, in coordination with the City's state lobbying firm, to pursue the City's legislative agenda and seek legislative support and sponsorship from the Brevard Delegation; and approve the request for \$200,000 in General Fund reserves to serve as local match for Funding Appropriation Request #3 relating to cybersecurity.

#### ATTACHMENTS:

Description



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Fred Poppe, Director of Parks and Recreation

**DATE:** 12/3/2020

**RE:** Consideration of an interlocal agreement with Brevard Public Schools for the purpose of sharing the use of sports and recreational facilities.

City staff has been working with Brevard Public Schools (BPS) staff to develop a Joint Use Agreement that allows both parties to use each others facilities. The agreement includes a ten year term, 60 day termination by either party without cause, and covers all BPS facilities located in the City. Facilities will be used based on mutual agreement by both parties, based on availability. For BPS use of City facilities, BPS will not be charged a typical rental fee, but will pay costs related to any extra clean-up costs, personnel or utility costs, and will follow the Parks and Recreation fee schedule for nonprofit discounts. For City use of BPS facilities, the City will not be charged a typical rental fee, but will pay costs related to any extra clean-up costs, personnel or utility costs.

Additionally, City staff has been working with BPS staff to develop an agreement that allows the City to utilize the BPS-owned 24.22 acre property adjacent to Fred Poppe Regional Park for purposes of developing a new Disc Golf course that is being displaced by the Campground project. The term of the agreement is proposed for 10 years at a lease rate to be paid by the City for \$10.

As part of the agreement, the City would install fencing between the BPS property and the residential lots abutting the property. The estimated cost for the fencing is approximately \$8,500. To develop the site, staff anticipates spending approximately \$5,000 to hire a master course designer to design the site, and staff will be negotiating with the local Disc Golf Club for labor and materials to construct an 18 hole course. The City has an existing Community Partner agreement with the Club. Staff anticipates returning to Council with a future agenda request for allocation of funding for this project.

**REQUESTING DEPARTMENT:**  
Parks & Recreation

**FISCAL IMPACT:**

There is no fiscal impact for the use of BPS facilities, other than the direct costs as mentioned above, dependent upon use. The anticipated fiscal impact for development of the disc golf course will be brought back to City Council as an appropriations request at a future meeting.

**RECOMMENDATION:**

Motion to authorize and approve the City Manager to sign both agreements.

**ATTACHMENTS:**

**Description**

**Interlocal Agreement**

**Disc Golf Lease**

**Aerial View**

## **INTERLOCAL AGREEMENT**

By And Between The School Board Of Brevard County And City Of Palm Bay, Florida  
Relating To Use Of City and School Board Property

This Interlocal Agreement by and between the School Board of Brevard County, Florida (the "Board"), 2700 Judge Fran Jamieson Way, Melbourne, FL 32940, and the City of Palm Bay (the "City"), 120 Malabar Road, Palm Bay, FL 32907, for the purpose of sharing the use of sports and recreational facilities. This Agreement is entered into pursuant to the provisions of the Florida Interlocal Cooperation Act of 1969, set forth in section 163.01, et seq., Florida Statutes, and is further authorized pursuant to the parties' respective Home Rule powers granted by the Florida Constitution. This Interlocal Agreement was made on 15<sup>th</sup> day of December 2020,

### **RECITALS**

WHEREAS, the Board holds and controls certain real properties, (the Board property), located within the City of Palm Bay, Florida including school buildings that have sports and recreational facilities attached to these facilities;

WHEREAS, the City controls sports and recreational facilities at several locations throughout the City of Palm Bay, Florida, (the City property); City properties are located in the vicinity of the Board's school property;

WHEREAS, the Board and the City find it desirable to enter into a Interlocal Agreement;

WHEREAS, the City and the Board continue to seek mutual benefit by maintaining and redeveloping existing sports and recreational facilities on City and Board property;

WHEREAS, this Interlocal Agreement will permit the joint use to Board property located in the City of Palm Bay.

NOW, THEREFORE, in consideration of the premises, mutual covenants, and other good and valuable considerations, herein contained, the parties, each intending to be legally bound, agree as follows:

- 1) **Recitals.** The above recitals are true and correct and are hereby incorporated by reference.
- 2) **Effective Date, Renewal and Termination.** The Agreement shall remain in effect for a period of ten (10) years, amended by mutual Agreement by both parties, unless terminated by either the Board or the City. This Agreement shall become effective on December 15, 2020 and expire on December 14, 2030. If it is at the best interest of both parties, within 365 days from expiration, the City and the Board shall commence negotiations for renewal. Extensions of the Agreement shall be by mutual consent of both parties. The Board and the City may terminate this Agreement with or without cause by providing written notice to all other parties within this Agreement. Such termination shall be effective sixty (60) days from the receipt of the termination notice.



## INTERLOCAL AGREEMENT

By And Between The School Board Of Brevard County And City Of Palm Bay, Florida  
Relating To Use Of City and School Board Property

- 3) **Notices.** All notices must be in writing and sent to the party's address stated above by certified mail, return receipt requested.
- 4) **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties as to the subject matter hereof and supersedes all previous written or oral negotiations, Agreements, bids and/or understanding. There are no understandings, representations, warranties or Agreements with respect to the subject matter hereof unless set forth explicitly in this Agreement.
- 5) **Dispute Resolution.** If substantial violations of the Agreement occur, a written notice from one party to the other is required allowing 30 days to correct the violation. If the violation is not resolved mutually between both parties, and the dispute under this Agreement continues, the parties shall first attempt to resolve the dispute by non-binding arbitration, with each party paying equal costs of the arbitration. In no case shall either party take a dispute to court rather the only outcome of an unresolved dispute is that this agreement shall terminate.
- 6) **Properties and Facilities Covered by the Agreement.** The Agreement covers the Board's property located in Palm Bay, including all sports and recreation properties, located in the City limits. This Agreement shall only apply to existing facilities on the date the Agreement was signed. Usage of new or modified fields, buildings and facilities shall be permitted by mutual consent of both the Board and the City.
- 7) **Use of City facilities.** The City shall make available their facilities for Elementary, Middle School and High School team practice, meets and matches and other school functions as mutually agreed to by both the City and the School Board. When City facilities are being used by the Board, the Board shall be responsible for all actual costs to the City for extra utility costs, personnel cost (if this is required as an extra duty assignment), custodial clean-up costs, etc. per the Council approved Parks and Recreation fees and charges, including the provision for fee schedule for discounts.
- 8) **Use of Board facilities.** The Board has a recreational sharing agreement with Brevard County Board of County Commissioners (COUNTY) that gives them first right of refusal for the use of School Board recreational facilities. If Board facilities are not in use by the COUNTY, then the City may use the Board's Multi-Purpose Fields before other entities and groups are permitted access to do so. Should the City wish to use Board facilities it shall coordinate facility use with school administration, complete the district's use agreement form, be responsible for actual costs to the Board such as extra utility costs, personnel cost (if this is required as an extra duty assignment), custodial clean-up costs, etc. as outlined in Board Policy 7510 while the City is using in-door school auditoriums, gymnasiums, or Football Stadiums. No custodial use is need for outside practice fields and basketball courts - Upon request and as stated in this section, the Board agrees to allow the City the use of these facilities. Neither the City nor at the City's approval, shall it's recreation leagues or the general public be permitted to use school facilities for games, practices, or anything related to recreational activities during the school day or while school programs such as, but not

## INTERLOCAL AGREEMENT

By And Between The School Board Of Brevard County And City Of Palm Bay, Florida  
Relating To Use Of City and School Board Property

limited to the Board's before and after school childcare program is taking place until 30 minutes before school or 30 minutes after all school programs end each day. Should a school facility not be available due to unforeseen emergency events, the School Board, and Staff retain the right to cancel all recreational events that may have been scheduled prior to the emergency.

- 9) **Scheduling.** Use of Board and City facilities shall be subject to scheduling per mutual benefit of both parties and as outlined in sections 7, 8, and 10 .
- 10) **Usage Rates.** Use of City facilities shall be charged at a special reduced rate.
- 11) **Security.** The Board shall provide necessary supervision and security to reasonably ensure that the City's facilities are protected from damage. During the time that the City conducts programs or allows public use of facilities located on Board property, the City shall provide security at a level to reasonably ensure the Board's facilities are protected from damage.
- 12) **Indemnification.** To the extent allowed by law and subject to the provisions set forth in Sec. 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Sec. 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.
- 13) **Insurance.** The City shall name and maintain the Board as an additional insured on the City's liability policy. The Board shall provide the City with a copy of a "Notice of Coverage" upon request of the City.
- 14) **Intent of Agreement.** The Board shall not take actions, which will materially prevent the City from carrying out the public recreation intent of this Agreement.
- 15) **Delegation of Contract Management.** The City and the Board delegate ministerial and administrative powers to manage the intent of this Agreement to: On behalf of the City – City Manager or Designee; On behalf of the Board – Superintendent or Designee.
- 16) **Public Records.** Pursuant to section 119.0701, Florida Statutes, the Board and the City shall:
  - a. Retain all records in accordance with Chapter 119.
  - b. Keep and maintain public records required in order to perform the Agreement's requirements.

**INTERLOCAL AGREEMENT**

By And Between The School Board Of Brevard County And City Of Palm Bay, Florida  
Relating To Use Of City and School Board Property

- c. Upon request from the City or Board custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in State Statute or as otherwise provided by law.
- d. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements and are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement.
- e. If the City or Board, in its sole discretion, requests a copy of all Public records in possession of the other party, the Board or City shall duplicate and provide to the records, at no cost, all Public records in possession within a reasonable amount of time and in a format that is accessible.

17) **Compliance with local code, rules, policy and State Statutes.** If any provisions of this Agreement is determined to be in violation of any applicable Statutes, rule ordinance or policy, this Agreement shall be modified so as to be in compliance.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates below:

ATTEST:

City of Palm Bay

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legality for City \_\_\_\_\_

Print Name: \_\_\_\_\_

ATTEST:

School Board of Brevard County

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legality for Board \_\_\_\_\_

Print Name: \_\_\_\_\_

## **AMENDED AND RESTATED LEASE AGREEMENT**

**This AMENDED AND RESTATED LEASE AGREEMENT** (the "Agreement") is made and entered Into as of the last signature date set forth below (the "Effective Date"), by and between SCHOOL BOARD of Brevard County, Florida, a political subdivision of the State of Florida, with a principal place of business at 2700 Judge Fran Jamieson Way, Melbourne, FL 32940 ("SCHOOL BOARD"), and the City of Palm Bay, 120 Malabar Rd SE, Palm Bay, FL 32907 ("CITY")

**WHEREAS**, SCHOOL BOARD and CITY are desirous of cooperating with each other in order for CITY to utilize vacant property owned by SCHOOL BOARD ("PROPERTY") for Disc Golf;

**WHEREAS**, the PROPERTY is located on a 24.22-acre parcel of land in Port Malabar Unit 41 bordered on the North by Krassner Drive NW and on the West by Melbourne Tillman Canal #59 and Fred Poppe Regional Park, with said PROPERTY having been conveyed to SCHOOL BOARD by GENERAL DEVELOPMENT CORPORATION, a corporation no longer in existence;

**WHEREAS**, the PROPERTY has been designated for a future school site and SCHOOL BOARD wishes to lease the PROPERTY, on a temporary basis, until it is needed for the school construction, making improvements upon the PROPERTY which will inure to the benefit of SCHOOL BOARD as it will have to make such Improvements in order to build the future school;

**WHEREAS**, Disc Golf will provide physical activities for all residents;

**WHEREAS**, SCHOOL BOARD and CITY desire to enter into this Agreement subject to, and In accordance with, the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SCHOOL BOARD and CITY hereby agree to cooperate with each other in carrying out the above purposes and therefore covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Property.
  - a. The PROPERTY was conveyed by GENERAL DEVELOPMENT CORPORATION to SCHOOL BOARD by a certain Warranty Deed recorded on March 20, 1987 in Official Records Book 2784/, Page 2684, of the Public Records of Brevard County, Florida ("DEED"), a copy of which is attached hereto as Exhibit "A."
  - b. The DEED contained a restrictive covenant that the primary use of the PROPERTY be limited to the development, construction, and operation of a public school.
  - c. A copy of a sketch of the PROPERTY, and the overall area plan of the area is attached hereto as Exhibit "B."
  - d. Brevard County Government has assigned a temporary address (with Parcel ID# 28-36-33-01-A) for the PROPERTY that will not post to the Property Appraiser's website but will be in the Brevard County permitting system to enable the proper permits to be pulled by CITY.
3. Term. The term of this Agreement shall commence on December 15, 2020 and shall continue until 11:59 p.m. on December 14, 2030, unless terminated earlier, and may be renewed annually upon the express written consent of the Parties (the "Term").



4. License to Use. During the Term, subject to all provisions set forth herein, SCHOOL BOARD grants to CITY an exclusive license to use and occupy the PROPERTY, more particularly identified in Section 2 above for the purpose of Disc Golf and related Tournaments, subject to SCHOOL BOARD's right to use the PROPERTY for SCHOOL BOARD-related activities that do not interfere with the Disc Golf Course.
5. Use Fee.
  - a. In exchange for the right to use and occupy the PROPERTY as contemplated herein, CITY shall lease this property at a cost of \$10.00 per year.
  - b. Notwithstanding the foregoing, SCHOOL BOARD'S Superintendent reserves the right to waive any fees at his discretion.
6. Site Improvements.
  - a. CITY is solely responsible for the installation and cost of any site Improvements necessary for Disc Golf.
  - b. CITY shall cause for a barrier to be constructed to separate the improved and unimproved residential lots abutting the PROPERTY.
  - c. All leasehold Improvements shall remain on the site and will inure to the benefit of SCHOOL BOARD in the event of contract termination. Should termination take place, the SCHOOL BOARD will advise the CITY which improvement must stay and those that must be removed. The CITY shall be responsible for the cost of removal of improvements not wanted by the SCHOOL BOARD.
7. Conditions of Use.
  - a. CITY shall take all measures necessary to prevent disturbances of residents in the area of the PROPERTY when in use.
  - b. CITY shall take all measures necessary to prevent parking or trespassing on residential lots during the use of the PROPERTY.
  - c. CITY may, and SCHOOL BOARD hereby expressly waives its Policies related to, the sale, use, and consumption of beer, wine, and alcoholic beverages on the PROPERTY. CITY agrees to abide by all laws relating to the service of alcohol, including, but not limited to, Sections 562.11 (selling, giving, or serving alcoholic beverages to a person under 21 years of age), 562.111, and Chapter 856 of the Florida Statutes and any and all applicable ordinances, rules, or regulations from all entities having jurisdiction. CITY fully releases, indemnifies, and holds harmless SCHOOL BOARD, its agents, servants, and employees, with regard to any injury sustained by any person as a result of the service to or consumption of alcohol by any person during use of the PROPERTY.
  - d. The CITY shall be responsible for all activities, accidents, losses, and liabilities that occur on this property in the same manner as a property owner. The SCHOOL BOARD shall have no obligations or liabilities as a property owner that occurs on the site during the term of this lease as that right is being transferred to the CITY during the term of this lease.
  - e. The CITY shall be responsible for any exposures to general liability or pollution liability and any and all other risks associated with this property both those above ground and underground for the term of the lease. In the event there is any issue in either of these areas, the CITY shall resolve them at no cost to the SCHOOL BOARD.

8. Permits.

- a. The CITY shall obtain a permit from SCHOOL BOARD's Permitting Department for any site improvements necessary for Disc Golf. A Certificate of Completion for any such improvements shall be obtained prior to use of the PROPERTY.
- b. The CITY shall obtain and maintain any and all permits necessary for Disc Golf from all entities having jurisdiction.

9. Utilities. During the Term, the CITY shall be responsible for and shall pay all charges incurred for utility service to the PROPERTY, including electric, water, and sewer, as applicable. SCHOOL BOARD does not warrant the uninterrupted supply of any utility and shall not be liable for any damages resulting to the CITY from the interruption of any of the aforementioned services.

10. Legal Compliance. During the Term, the CITY shall comply with all federal, state, and local laws, regulations, or ordinances.

**11. NOTICE - CRIMINAL BACKGROUND SCREENING. THE CITY AFFIRMATIVELY STATES, AND SCHOOL BOARD EXPRESSLY ACKNOWLEDGES, THAT INDIVIDUALS WHO HAVE NOT BEEN SUBJECTED TO CRIMINAL BACKGROUND SCREENING AS REQUIRED UNDER SECTION 1012.32, FLORIDA STATUTES, MAY BE PRESENT ON THE PROPERTY DURING THE TERM.**

12. Assumption of Risk. The CITY expressly acknowledges and agrees that it assumes any and all risk of bodily injury, personal injury, death, or property damage or loss arising out of or related to the use of the PROPERTY for the purpose contemplated by this Agreement suffered by anyone utilizing the PROPERTY for Disc Golf. The CITY acknowledges and agrees that the SCHOOL BOARD has not made any promises, guarantees, or warranties regarding the adequacy or fitness of the PROPERTY for the purpose contemplated by this Agreement, and the City hereby agrees to accept the PROPERTY in an "AS IS" condition with all faults, known and unknown. TO THE EXTENT PERMITTED BY LAW, SCHOOL BOARD HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATED TO THE CITY'S USE OF THE PROPERTY FOR THE PURPOSE CONTEMPLATED BY THIS AGREEMENT. Nothing herein shall be deemed a waiver by SCHOOL BOARD of its sovereign immunity rights under the laws of the State of Florida, nor deemed as consent by SCHOOL BOARD to be sued by third parties.

13. Indemnification. To the extent allowed by law, City shall release, indemnify, defend, and hold harmless SCHOOL BOARD, their agents, servants, and employees, from all liability resulting from the City's negligence or intentional acts for any injury or damage which occurs on the PROPERTY or the adjacent properties pursuant to this Agreement and which occurs during the course of Disc Golf Activities. This Agreement to indemnify and hold harmless includes an obligation to indemnify and hold SCHOOL BOARD harmless for any negligence on the part of CITY. The CITY's promise to indemnify and hold harmless also includes an obligation to assume responsibility for reasonable expenses of investigation, litigation, judgment, and/or settlement of any complaint, claim, or legal action, up to the sovereign immunity limits. Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities granted to SCHOOL BOARD and the City of Palm Bay as provided by law.

14. Insurance.

- a. At all times during the Term, unless the CITY asserts its rights to the protections and coverage found in Florida Statute 768.28, the CITY shall provide and maintain, at its sole cost and expense, and furnish a Certificate of Insurance naming The School Board of Brevard County, Florida as certificate holder and additional insured with general liability limits of at least \$1,000,000.00 per occurrence, \$10,000,000.00 aggregate.

- b. Failure to have adequate proof of current insurance meeting the requirements of this section or to file such proof with SCHOOL BOARD shall entitle SCHOOL BOARD to Immediately suspend the privilege of the CITY to use the PROPERTY until such proof is furnished and shall warrant termination of this Agreement, provided; that SCHOOL BOARD notifies the CITY of the CITY'S failure to deliver such certificate, and further provided that the CITY does not deliver such certificate within ten (10) days after such notice by SCHOOL BOARD. By requiring this insurance, SCHOOL BOARD does not represent that coverage and limits will necessarily be adequate to protect the CITY, and such coverage and limits shall not be deemed as a limitation on the CITY's liability under this Agreement.
- c. Nothing herein shall be deemed a waiver by SCHOOL BOARD of its rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes, nor any sovereign immunity rights beyond any statutory limited waiver that may have been or may be adopted by the Florida Legislature. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity.

15. No Assignment or Subletting. The CITY shall not assign or transfer this Agreement or sublet any portion of the PROPERTY without the written consent of SCHOOL BOARD.

16. No Joint Venture. The CITY acknowledges and agrees that SCHOOL BOARD's sole role in this matter is to authorize the CITY to use and occupy the PROPERTY for the purposes described herein. This Agreement does not constitute a Joint venture between the CITY and the SCHOOL BOARD.

17. Public Records.

- a. IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BREVARD PRODUCTION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE SCHOOL BOARD'S CUSTODIAN OF PUBLIC RECORDS AT [Plguero.Casey@BrevardSchools.org](mailto:Plguero.Casey@BrevardSchools.org), 321-633-1000 ext. 453, The School Board of Brevard County, Florida, 2700 Judge Fran Jamieson Way, Viera, FL 32940.
- b. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. The CITY acknowledges its legal obligation to comply with Section 119.0701, F.S. The CITY shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by SCHOOL BOARD in order to perform the scope of services. The CITY shall comply with all requirements for retaining public records and shall transfer, at no cost to SCHOOL BOARD, all public records in the possession of the CITY upon a request for such public records. See Section 119.0701(2)(b)4, Florida Statutes, for additional record keeping requirements.
- c. A request to inspect or copy public records relating to SCHOOL BOARD's contract for services must be made directly to SCHOOL BOARD's Custodian of Public Records. If SCHOOL BOARD does not possess the requested records, SCHOOL BOARD's Custodian of Public Records shall immediately notify the CITY of the request. The CITY must provide a copy of the records to SCHOOL BOARD or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. If the CITY does

not timely comply with SCHOOL BOARD's request for records, SCHOOL BOARD shall be able to sue for breach of contract and the prevailing Party shall be entitled to attorney's fees.

- d. Should the CITY fail to provide the requested public records to SCHOOL BOARD within a reasonable time, the CITY understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, Florida Statutes.
- e. The CITY shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if the CITY does not transfer the records to SCHOOL BOARD. Upon completion, expiration, or termination of this Agreement, the CITY shall transfer, at no cost to SCHOOL BOARD, all public records in its possession or keep and maintain public records required by SCHOOL BOARD to perform the services. If the CITY transfers all public records to SCHOOL BOARD, the CITY shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the CITY keeps and maintains public records upon completion, expiration, or termination of this Agreement, the CITY shall meet all applicable requirements for retaining public records and provide requested records to SCHOOL BOARD pursuant to the requirements of this Article. All public records stored electronically must be provided to SCHOOL BOARD in a format that is compatible with the information technology systems of SCHOOL BOARD.

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

CITY: Parks and Recreation Director  
1150 DeGroodt Road SW  
Palm Bay, FL 32908  
Email: [Fred.Poppe@palmbayflorida.org](mailto:Fred.Poppe@palmbayflorida.org)

SCHOOL BOARD: Superintendent  
2700 Judge Fran Jamieson Way  
Viera, FL 32940  
Email: [aguirre.tammy@brevardschools.org](mailto:aguirre.tammy@brevardschools.org)

19. Non-Discrimination. During the Term, the CITY shall not discriminate on the basis of age, race, national origin, color, ethnicity, genetic information, religion, sex, gender, sexual orientation, pregnancy, disability, marital status, veteran status, ancestry, or political affiliation in any program or activity conducted on or about the Facility.
20. Force Majeure. If the PROPERTY is rendered unsuitable by reason of force majeure, the Parties are released from their respective obligations under this Agreement. Force majeure shall mean fire, earthquake, hurricane, water event, act of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, governmental agency or authority, or any other cause like or unlike any cause mentioned which is beyond the control of the Parties.

21. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of Florida, with venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Brevard County, Florida; each Party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

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

23. Counterparts. This Agreement may be executed in counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one original document. The Parties may execute different counterparts of this Agreement, and, If they do so, the signature pages from the different counterparts may be combined to provide one Integrated document and taken together shall constitute one and the same instrument.

24. Third Party Obligations. This Agreement is made solely for the benefit of the Parties named in this Agreement, and is not intended to create rights or any causes of action In any third parties.

25. Waiver. No waiver of any provision of this Agreement, or any right or remedy arising under any provision of this Agreement, shall be effective unless such waiver is In writing and executed by an authorized representative of the waiving Party. No waiver with respect to a specific circumstance or event shall be deemed a waiver as to any other circumstance or event.

26. Participation. All of the Parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any Party regardless of which Party is deemed to have drafted the Agreement.

27. Termination. This Agreement may be terminated by the SCHOOL BOARD or the CITY at any time and for any reason upon 60 days' written notice to the other Party. In the event of termination, a Party shall remain responsible for Its respective obligations arising under this Agreement during the period the Agreement remains In effect. Notwithstanding the foregoing, the obligations set forth in paragraphs 4, 6, 10, 12-17, and 20-25 shall survive the termination of this Agreement.

28. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any Party to the extent Incorporated into this Agreement.

29. Amendments and Modifications. No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the Parties.



**SIGNATURES TO FOLLOW**

**IN WITNESS WHEREOF**, THIS Agreement was executed on the date(s) set forth below.

**WITNESSES**

\_\_\_\_\_

Print: \_\_\_\_\_

\_\_\_\_\_

Print: \_\_\_\_\_

**CITY OF PALM BAY**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESSES**

\_\_\_\_\_

Print: \_\_\_\_\_

\_\_\_\_\_

Print: \_\_\_\_\_

**SCHOOL BOARD OF BREVARD COUNTY, FL**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

RETURN TO TC  
CHICAGO TITLE INSURANCE COMPANY  
670 NORTH COURTENAY PKWY.  
MERRITT ISLAND, FLA. 32952

This instrument prepared by:  
NED M. SHANDLOFF, ESQUIRE  
1111 So. Bayshore Drive  
Miami, Florida 33131

### GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED Made and entered this 12th day of March 1987 by GENERAL DEVELOPMENT CORPORATION, a corporation existing under the laws of Delaware, and having its principal place of business at 1111 South Bayshore Drive, Miami, Florida 33131, hereinafter called the Grantor, to THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, whose post office address is 1260 South Florida Avenue, Rockledge, Florida 32955, hereinafter called the Grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

WITNESSETH: That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee all that certain land situate in Brevard County, Florida, vis:

✓ Tract A of PORT MALABAR UNIT FORTY ONE, according to the plat thereof, as recorded in Plat Book 21, Pages 36 through 42, inclusive, of the Public Records of Brevard County, Florida.

This Deed is executed subject to taxes and special assessments assessed for the year 1987 and all subsequent years and to conditions, easements, limitations and restrictions of record.

Grantee acknowledges that a Development of Regional Impact Scheduling Agreement dated February 10, 1978 has been entered into between General Development Corporation and the Florida Division of State Planning. A Master Plan has been filed pursuant to said Agreement.

The Grantee's development and improvement of this real property shall be in compliance with the Master Plan described above and on file with the Florida Division of State Planning as of the date of the recording of this Deed, or a revised Master Plan with which said Grantee is in agreement. Chapter 380, Florida Statutes, and Chapter 27-F, Florida Administrative Code, shall be applied to this real property notwithstanding the existence of said Development of Regional Impact Scheduling Agreement, and said Grantee shall not be bound by any Development of Regional Impact filing commitments made by Grantor by virtue of said Agreement as distinguished from any legal responsibility imposed upon said Grantee by Chapter 380, Florida Statutes, and Chapter 27-F, Florida Administrative Code.

Further, the following restriction shall remain in full force and effect for a period of twenty years from the date of recordation of this Deed:

The parties acknowledge and agree that the premises shall be used for the sole purpose of school use, and any modification or change in such use will require the consent and approval of Grantor, which consent will not be unreasonably withheld.

If Grantor commences legal proceedings to enforce the provisions of the above restriction, Grantee, its successors or assigns, shall be obligated to pay Grantor's costs and legal expenses.

COEF. REC.

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TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

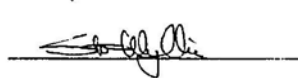
TO HAVE AND TO HOLD, THE SAME IN FEE SIMPLE FOREVER.

AND the Grantor hereby covenants with said Grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever, and that said land is free of all encumbrances except as above set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

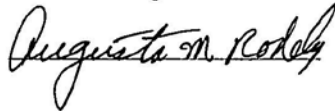
Signed, sealed and delivered  
in the presence of:

GENERAL DEVELOPMENT CORPORATION



BY 

HAROLD W. FENNO, SR. VICE PRES



(CORPORATE SEAL)


STATE OF FLORIDA)  
COUNTY OF DADE )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HAROLD W. FENNO, Senior Vice President of the corporation named as Grantor in the foregoing deed and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of March 1987.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EIP JULY 24, 1990  
BONDED THRU GENERAL INS. UNO.

  
NOTARY PUBLIC  
State of Florida at Large

BCSB  
Parcel  
28-36-33-01-A  
24.22 Acres

Fred Poppe  
Regional Park





Brevard County School Board Property Adjacent to FPRP







## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Suzanne Sherman, Acting City Manager

**THRU:** Nelson Moya, Chief of Police

**DATE:** 12/3/2020

**RE:** Consideration of a pay adjustment for sworn and communications center personnel within the Police Department (\$478,350).

Over the past year, the Palm Bay Police Department has experienced an increase in turnover for both Sworn Police Officers as well as Telecommunicators. With nearly two (2) dozen vacancies for Police Officers and eight (8) for Telecommunicators, to include five (5) positions frozen for FY21, the remaining Police personnel are shouldering growing workloads while the Training/Recruiting Department faces the challenge of hiring high quality candidates to serve the citizens of Palm Bay. One of the primary reasons for recent turnovers is due in part to salary in comparison to opportunities at other law enforcement agencies. Over the last year, 12 sworn police officers have left for higher paying positions at other agencies. Additionally, the Communications Center has lost several Telecommunicators to other departments within the City of Palm Bay for higher pay as well as more stable work schedules.

In March of 2020, Human Resources provided a salary/benefit comparison for the Telecommunicators in relation to other Brevard County agencies. In May of 2020, a similar pay study was conducted by the Police Department to identify where the current salary ranges for Police Officers, Police Sergeants, Police Lieutenants, Police Commanders, and Police Deputy Chief are ranked among other Brevard County and similar sized agencies within the region. Since that time, additional increases for Cocoa Police Department, West Melbourne Police Department, and the Brevard County Sheriff's Office were updated. Both the civilian and sworn pay studies identified a disparity between Palm Bay and the other county agencies with Palm Bay's ranking near or at the bottom of each position for salary ranges.

In order to continue to employ skilled, qualified personnel in each of these positions, the Police Department requests to provide the following pay adjustments:

- 2 step increases from current salary for all Police Officers, Police Sergeants, and Police Lieutenants
- 5 percent increase for all Telecommunicators and Communications Shift Supervisors
- 9 percent increase for all Commanders and the Deputy Chief of Police

These proposed increases will move Palm Bay Police Department's Sworn Police Officer starting salary to a more competitive range within Brevard County at \$41,525 while the Telecommunicator position starting salary of \$34,507 will become the second highest starting salary for the position within the county. For the sworn supervisor ranks (Sergeant, Lieutenant, Commander, and Deputy Chief) the salary adjustments will move Palm

Bay personnel to the mid-range for Brevard County.

As the largest municipal law enforcement agency in Brevard County serving a population of over 119,000 residents, the Palm Bay Police Department must address its current staffing shortages while focusing on retention and recruitment. The proposed pay adjustments for Sworn Personnel as well as Telecommunicators will address the primary challenge to staffing, salary disparity, while allowing the Palm Bay Police Department to connect, serve, and impact the citizens of Palm Bay to its fullest potential.

Based upon an effective date of December 5, 2020, the projected fiscal impact for the remainder of FY21 is \$478,350; the additional cost for the full year would have been \$646,022.

**REQUESTING DEPARTMENT:**

Police Department

**FISCAL IMPACT:**

Based upon an effective date of December 5, 2020, the projected fiscal impact for the remainder of FY21 is \$478,350 to be funded from state shared revenue to be reflected in the FY21 Budget through the first Budget Amendment of the fiscal year. Of the additional \$1,472,760 in additional revenue to be recorded, \$525,673 was previously appropriated by City Council at the November 5, 2020 Regular Council meeting; the remaining balance is currently unallocated. Please see Attachment A for detailed General Ledger Account budget appropriations.

**RECOMMENDATION:**

Motion to approve the implementation of the pay adjustments and the corresponding related expenditures as described herein up to \$478,350.

**ATTACHMENTS:**

**Description**

**Attachement A - Police FY21 Pay Adjustment General Ledger Budget Appropriations  
Salary Study Presentation**

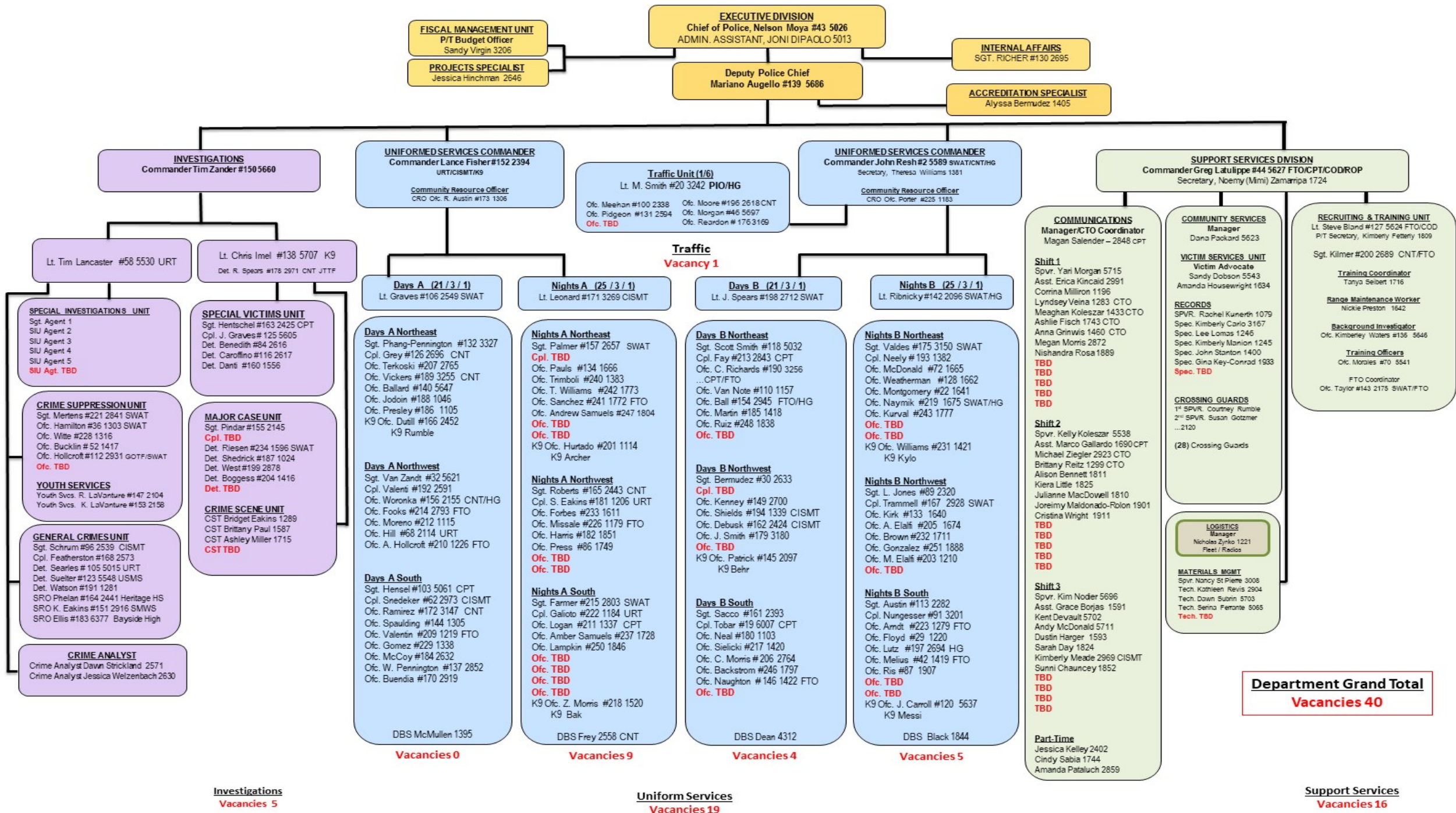
<u>Fund #/Name</u>	<u>Account #</u>	<u>Account Name</u>	<u>Expense</u>
001/General	001-5010-521.22-11	RETIREMENT CONTRIBUTIONS / RETIREMENT - PENSION FUND	\$ 68,778
001/General	001-5019-521.22-10	RETIREMENT CONTRIBUTIONS / RETIREMENT – ICMA	\$ 3,146
001/General	001-5010-521.12-10	FULL-TIME SALARIES/WAGES	\$ 8,695
001/General	001-5010-521.21-10	SOCIAL SECURITY/MEDICARE (Taxes)	\$ 665
001/General	001-5010-521.14-10	OVERTIME	\$ 88
001/General	001-5010-521.15-15	SPECIAL PAY/ADMIN PAY	\$ 165
001/General	001-5010-521.16-10	HOLIDAY	\$ 30
001/General	001-5011-521.12-10	FULL-TIME SALARIES/WAGES	\$ 20,134
001/General	001-5011-521.21-10	SOCIAL SECURITY/MEDICARE (Taxes)	\$ 1,540
001/General	001-5011-521.14-10	OVERTIME	\$ 1,082
001/General	001-5011-521.15-15	SPECIAL PAY/ADMIN PAY	\$ 961
001/General	001-5011-521.16-10	HOLIDAY	\$ 725
001/General	001-5012-521.12-10	FULL-TIME SALARIES/WAGES	\$ 214,688
001/General	001-5012-521.21-10	SOCIAL SECURITY/MEDICARE (Taxes)	\$ 16,424
001/General	001-5012-521.14-10	OVERTIME	\$ 13,362
001/General	001-5012-521.16-10	HOLIDAY	\$ 18,802
001/General	001-5013-521.12-10	FULL-TIME SALARIES/WAGES	\$ 45,466
001/General	001-5013-521.21-10	SOCIAL SECURITY/MEDICARE (Taxes)	\$ 3,478
001/General	001-5013-521.14-10	OVERTIME	\$ 13,472
001/General	001-5013-521.16-10	HOLIDAY	\$ 2,039
001/General	001-5019-521.12-10	FULL-TIME SALARIES/WAGES	\$ 34,946
001/General	001-5019-521.21-10	SOCIAL SECURITY/MEDICARE (Taxes)	\$ 2,674
001/General	001-5019-521.14-10	OVERTIME	\$ 3,900
001/General	001-5019-521.16-10	HOLIDAY	\$ 3,090
<b>TOTAL FISCAL IMPACT:</b>			<b>\$ 478,350</b>

# Palm Bay Police Department FY 21 Salary Study Sworn Personnel & Communications Center

Nelson Moya  
Chief of Police







# Recruitment and Retention

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## Sworn Personnel

- Over the last year, 12 Police Officers resigned for law enforcement positions at other agencies or in private sector positions.
  - Cumulative total of 47 Years of Service
  - 5 of the 12 had 5+ Years of Service
  - Vacancies from these departures are spread across all four Patrol Shifts as well as in each of the specialty units.
  - These vacancies create increasing workload demands on the remaining personnel.
- Challenges to Recruitment:
  - Lower end of pay scale, aging vehicle fleet
  - 25 current vacancies
  - Restricted one-time bonus for Certified Police Officers
- Request for pay adjustment equivalent to the value of 2 Steps for all Officers, Sergeants, and Lieutenants (FOP Bargaining Units).

# Police Officer Salary Comparison

Agency	Starting Salary (Highest to Lowest)	Benefits/Incentives
West Melbourne	\$45,000	Up to \$5,000 based on Experience, at Chief's discretion. Shift Differential 2-4%. Starting Salary will increase to \$46,000 in 2021.
Cocoa	\$42,120	2.25% per year of experience, up to 5 years.
Brevard County SO	\$42,120	\$47,424 w/experience plus a \$3,000 hiring bonus. Education Reimbursement. 3-5% Shift Differential. Longevity Pay. Sponsorship for Police Academy.
Indian Harbour Beach	\$42,119	3 to 5% pay increase w/experience.
<b>Palm Bay (Proposed)</b>	<b>\$41,525</b>	<b>Revised one-time bonus of \$1,000 per year up to \$4,000 for 4 years of prior experience.</b> Relocation incentive up to \$2,500 only for those who qualify.
Rockledge	\$41,100	Starting salary increased depending on experience. Longevity Pay. Education Pay \$10/weekly.
Melbourne PD	\$41,003	\$43,752 w/experience plus a \$2,500 hiring bonus and \$2,000 relocation incentive. 4% Shift Differential. Sponsorship for Police Academy. Longevity Pay and Cost of Living Adjustment (COLA).
Titusville PD	\$41,000	Experienced officers can start up to 3 steps higher depending on years of experience.
Melbourne Airport	\$40,726	No additional incentives currently.
Cocoa Beach	\$40,019	2-4% increase w/experience. Shift Differential.
Satellite Beach	\$39,618	No additional incentives currently.
<b>Palm Bay (Current)</b>	<b>\$39,143</b>	One time \$1000 with 3+years of experience. Relocation incentive up to \$2,500 only for those who qualify.
Indialantic	\$38,648	Shift Differential.
Melbourne Beach	\$35,500	\$37,000 w/experience.
Melbourne Village	\$33,000	2-5% pay increase w/experience.



# Sergeant & Lieutenant Salary Comparison

Agency	Sergeant Min	Sergeant Max
Port St. Lucie	\$82,286	\$94,246
Vero Beach	\$65,920	\$84,460
Brevard County SO*	\$60,299	\$73,195
West Melbourne*	\$59,500	\$68,000
Rockledge*	\$56,500	
Cocoa PD*	\$56,160	
Melbourne PD*	\$55,440	\$72,107
Cocoa Beach*	\$55,213	\$71,543
Indian Harbour Beach*	\$53,756	
<b>Palm Bay PD (Proposed)</b>	<b>\$53,559</b>	<b>\$81,012</b>
Daytona Beach	\$52,401	\$81,814
Titusville PD*	\$52,000	\$72,838
Satellite Beach*	\$51,630	\$82,608
Sebastian PD	\$51,357	\$90,234
<b>Palm Bay PD* (Current)</b>	<b>\$50,484</b>	<b>\$76,362</b>
*Brevard County Average Sergeant Starting Salary is \$55,098		

Agency	Lieutenant Min	Lieutenant Max
Port St. Lucie	\$104,640	\$119,900
Vero Beach	\$93,462	\$101,187
Brevard County SO*	\$70,325	\$85,883
West Melbourne*	\$69,500	\$78,000
Melbourne PD*	\$66,034	\$86,012
Rockledge*	\$65,920	\$65,920
<b>Palm Bay PD (Proposed)</b>	<b>\$64,111</b>	<b>\$94,151</b>
Titusville PD*	\$62,593	
Daytona Beach	\$61,921	\$98,558
<b>Palm Bay PD* (Current)</b>	<b>\$60,432</b>	<b>\$88,746</b>
Cocoa PD*	\$59,290	
Satellite Beach*	\$57,376	\$57,376
Sebastian PD	\$57,256	\$103,060
Cocoa Beach PD*	N/A	N/A
Indian Harbour Beach*	N/A	N/A
*Brevard County Average Lieutenant Starting Salary is \$63,934		



# Recruitment and Retention

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## Telecommunicators

- Total of 7 Telecommunicators have left for positions within the City of Palm Bay in the previous 18 months.
- Challenges to Recruitment:
  - Lower pay scale compared to Melbourne and Brevard County as well as within other departments at the City of Palm Bay
  - Mandatory Overtime due to numerous vacancies over an extended period
  - Other positions do not require Certification, have normal work hours, and higher pay
  - 2 Current Vacancies; 5 Frozen Positions
- Request to change Telecommunicator to Communications Officer Trainee (Grade H) and then progress to Communications Officer (Grade K) upon certification.
- Request to change Communications Shift Supervisor from Grade M to Grade P.

\*Telecommunicator Comparison Pay Study from HR available as attachment.

# Recruitment and Retention

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## Command Staff

- Largest municipal police department in Brevard County with a Command Staff totaling over 100 years of combined service to the City of Palm Bay.
  - Leadership experience with advanced training to include the FBI National Academy, Senior Management Institute for Police (SMIP), Southern Police Institute (SPI) Command Officers Development Course and the FBI-LEEDA Trilogy
- Current pay ranges and actual salaries are well below other Brevard agencies.
- With adjustments to the other sworn positions, disparity between Lieutenants earning higher salaries than their Commanders and the Deputy Chief.
- Request to reclassify Commanders to Grade AF with a 9% salary adjustment
- Request to reclassify Deputy Chief to Grade AH with a 9% salary adjustment

# Commander & Deputy Chief Salary Comparison

Agency	Commander Min	Commander Max
Vero Beach	\$105,708	\$108,879
Port St. Lucie	\$104,640	\$119,900
Sebastian PD	\$101,268	
Daytona Beach	\$100,302	\$105,555
Brevard County SO*	\$99,990	\$102,990
Melbourne PD*	\$92,091	\$99,463
Titusville PD*	\$89,752	
<b>Palm Bay PD (Proposed)</b>	<b>\$85,063</b>	<b>\$95,753</b>
Rockledge*	\$81,081	
Satellite Beach*	\$79,044	\$88,190
Cocoa PD*	\$78,291	\$83,300
Indian Harbour Beach*	\$77,584	
West Melbourne*	\$75,920	\$95,056
<b>Palm Bay PD* (Current)</b>	<b>\$75,766</b>	<b>\$88,413</b>
Cocoa Beach*	\$65,915	\$67,893
*Brevard County Average Commander Starting Salary is \$81,540		

Agency	Deputy Chief Min
Port St. Lucie	\$141,824
Brevard County SO*	\$140,000
Daytona Beach	\$133,343
Melbourne PD*	\$121,777
Sebastian PD	\$115,972
Titusville PD*	\$100,318
<b>Palm Bay PD (Proposed)</b>	<b>\$96,202</b>
West Melbourne*	\$95,160
<b>Palm Bay PD* (Current)</b>	<b>\$85,689</b>
Rockledge*	\$84,872
Cocoa Beach*	\$76,211
Cocoa PD*	N/A
Indian Harbour Beach*	N/A
Satellite Beach*	N/A
Vero Beach	N/A
*Brevard County Average Deputy Chief Starting Salary is \$100,598	

# Fiscal Impact of Salary Adjustment

## Estimate for 20 Remaining FY21 Pay Periods

	FISCAL IMPACT 20 Pay Periods
Officers (Salary/Taxes/Retirement)	\$ 280,648
Sergeants (Salary/Taxes/Retirement)	\$ 29,603
Lieutenants (Salary/Taxes/Retirement)	\$ 34,902
Command Staff (Salary/Taxes/Retirement)	\$ 34,714
Comm Center (Salary/Taxes/Retirement)	\$ 40,766
Sworn Personnel Admin Pay/Holiday/Overtime	\$ 50,727
Civilian Personnel Admin Pay/Holiday/Overtime	\$ 6,990
<b>TOTAL FISCAL IMPACT 20 Pay Periods:</b>	<b>\$ 478,350</b>

\*Based Upon an effective date of December 5, 2020 and costs for Comm Center are provided with 5 frozen positions per agreement for FY21.



# Fiscal Impact of Salary Adjustment

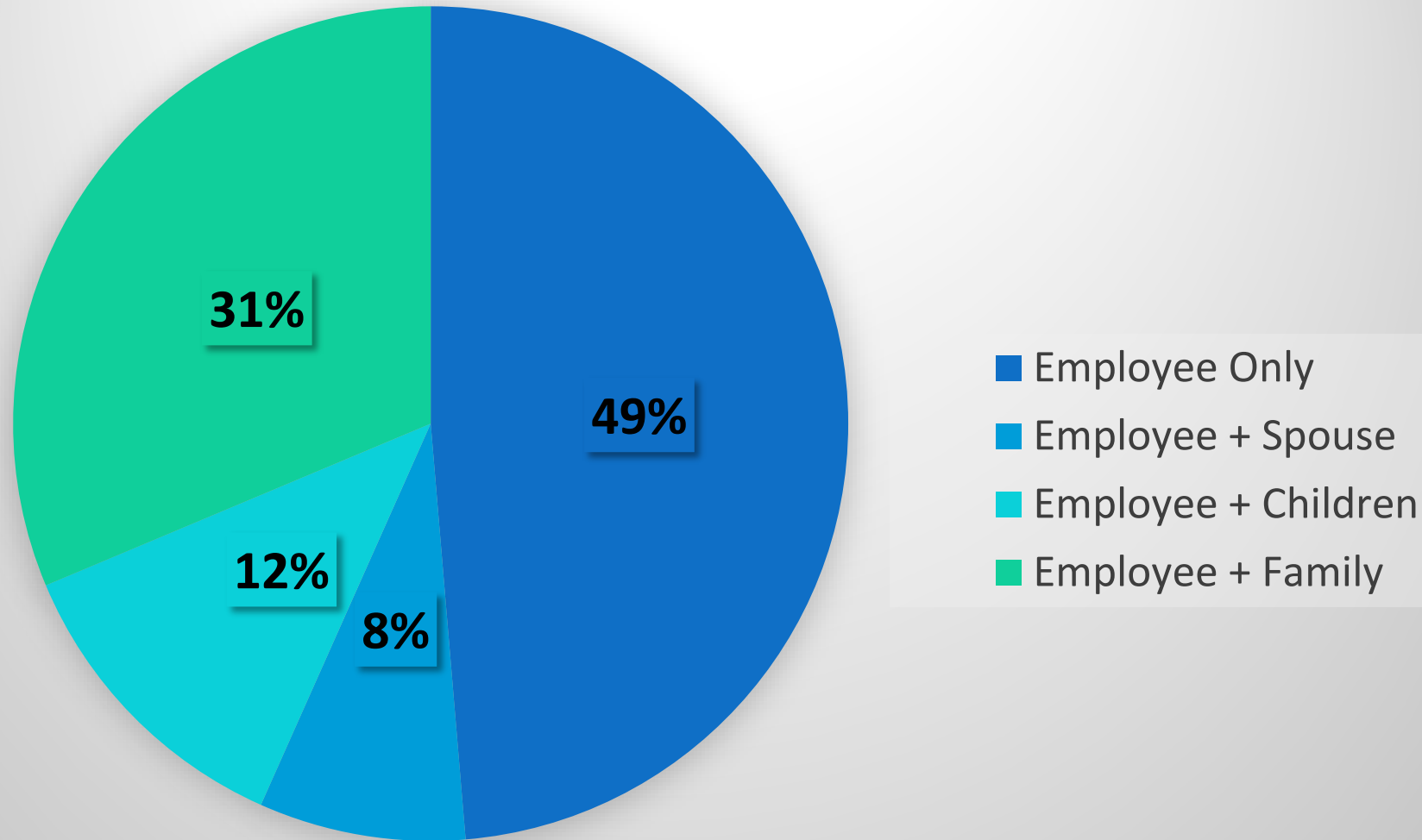
## Estimate for Additional Re-Occurring Costs (Full FY)

	FISCAL IMPACT Full FY
Officers (Salary/Taxes/Retirement)	\$ 394,553
Sergeants (Salary/Taxes/Retirement)	\$ 38,484
Lieutenants (Salary/Taxes/Retirement)	\$ 45,373
Command Staff (Salary/Taxes/Retirement)	\$ 39,136
Comm Center (Salary/Taxes/Retirement)	\$ 70,760
Sworn Personnel Admin Pay/Holiday/Overtime	\$ 50,726
Civilian Personnel Admin Pay/Holiday/Overtime	\$ 6,990
<b>TOTAL FISCAL IMPACT Full FY:</b>	<b>\$ 646,022</b>

\*Based upon no Frozen Positions in Comm Center to get an understanding of the re-occurring costs.

# Sworn Employee Medical Plan Coverage

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# Sworn Employee Only Benefit Comparison

City	Medical/Dental/Vision, etc.	Retirement	Total City Contribution
Satellite Beach	\$9,188.96	\$24,871.00	\$34,059.96
Melbourne	\$10,053.00	\$23,767.00	\$33,820.00
Brevard County SO	\$11,700.00	\$10,680.00	\$22,380.00
<b>Palm Bay</b>	<b>\$9,328.02</b>	<b>\$13,032.00</b>	<b>\$22,360.02</b>
Cocoa Beach	\$9,088.08	\$12,647.00	\$21,735.08
West Melbourne	\$7,561.32	\$13,140.00	\$20,701.32
Rockledge	\$8,665.54	\$5,900.00	\$14,565.54

# Sworn Family Benefit Comparison

City	Medical/Dental/Vision, etc.	Retirement	Total City Contribution
<b>Palm Bay</b>	<b>\$ 27,296.88</b>	<b>\$13,032.00</b>	<b>\$40,328.88</b>
Satellite Beach	\$14,908.24	\$24,871.00	\$39,779.24
Cocoa Beach	\$ 22,303.68	\$12,647.00	\$34,950.68
Melbourne	\$10,053.00	\$23,767.00	\$33,820.00
West Melbourne	\$ 17,412.36	\$13,140.00	\$30,552.36
Rockledge	\$15,475.20	\$5,900.00	\$21,375.20

Family Plan Comparison



# Sworn Employee + Spouse Benefit Comparison

City	Medical/Dental/Vision, etc.	Retirement	Total City Contribution
Satellite Beach	\$12,442.24	\$24,871.00	\$37,313.24
Cocoa Beach	\$23,378.40	\$12,647.00	\$36,025.40
Melbourne	\$10,053.00	\$23,767.00	\$33,820.00
<b>Palm Bay</b>	<b>\$16,982.68</b>	<b>\$13,032.00</b>	<b>\$30,014.68</b>
West Melbourne	\$12,992.88	\$13,140.00	\$26,132.88
Rockledge	\$12,985.70	\$5,900.00	\$18,885.70