

# WINTER HAVEN

## *The Chain of Lakes City*

**SPECIAL CITY COMMISSION MEETING  
WEDNESDAY, DECEMBER 4, 2019**

**6:30 PM**

City Hall, John Fuller Auditorium  
451 Third Street NW  
Winter Haven, FL 33881

1. **CALL TO ORDER** - Bradley T. Dantzler, Mayor
2. **INVOCATION**
3. **PLEDGE OF ALLEGIANCE** - Vanessa Castillo, MMC, City Clerk
4. **ROLL CALL** - Vanessa Castillo, MMC, City Clerk
5. **COMMENTS FROM THE AUDIENCE**
6. **RESOLUTION(S)**
  - 6.A. **R-19-37 – Administrative Request for Disposal of Approximately 203 +/- Acres of Real Property Assets from the City’s Municipal Utility System ( General Location: South of Pollard Road)**

*Staff Contact: Brittany Overstreet , Senior Executive Assistant , [boverstreet@mywinterhaven.com](mailto:boverstreet@mywinterhaven.com)*

[Summary - Resolution R-19-37](#)  
[R-19-37](#)  
[Exhibit A](#)  
[Exhibit B](#)  
[Exhibit C](#)
  - 6.B. **R-19-38 – Resolution R-19-38 finding compliance with City Policy 2018-01 relating to sale, conveyance, and/or disposition of surplus City owned real estate; and approving an Agreement for Sale and Purchase of Real Property for 77.53 +/- acres of City owned real estate and authorizing the City Manager and other appropriate City officials to execute and deliver same**

*Staff Contact: Brittany Overstreet, Senior Executive Assistant, [boverstreet@mywinterhaven.com](mailto:boverstreet@mywinterhaven.com)*

[Summary - Resolution R-19-38](#)  
[R-19-38](#)  
[Location Map](#)  
[Agreement for Sale and Purchase of Real Property](#)  
[Preliminary Conceptual Site Plan](#)  
[Mancuso Appraisal Services, Inc. Appraisal O-19-36](#)  
[Pennoni Opinion 10-17-2019](#)  
[Policy No. 2018-01](#)
7. **NEW BUSINESS**

**7.A. Lease Agreement between the City and Summerlin Land & Cattle LLC, Administrative Request to Exercise Early Termination Option**

*Staff Contact: Brittany Overstreet, Senior Executive Assistant , boverstreet@mywinterhaven.com*

[Summary - Summerlin Lease](#)  
[Lease Agreement between Winter Haven and Summerlin](#)

**8. ADJOURNMENT**

If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and that, for such purpose, they may need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105). In accordance with the Americans with Disabilities Act and Florida Statutes, Section 286.26, persons with disabilities needing special accommodations to participate in this proceeding, should contact the City Clerk's Office, 451 Third Street, NW, Winter Haven, Florida 33881, in writing, not later than 48 hours prior to the proceeding; if not in writing, then not later than four (4) days prior to the proceeding at (863) 291-5600. Vision or hearing impaired please call (800) 955-8771 for assistance.

**CITY OF WINTER HAVEN FACT SHEET**  
**CITY COMMISSION SPECIAL MEETING**  
**December 4, 2019**

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**DATE:** November 19, 2019

**TO:** Honorable Mayor and City Commissioners

**FROM:** Mike Herr, City Manager

**SUBJECT:** Resolution R-19-37 – Administrative Request for Disposal of Approximately 203 ± Acres of Real Property Assets from the City of Winter Haven Municipal Utility System (General Location: South of Pollard Road)

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**BACKGROUND:**

The City of Winter Haven’s municipal water and wastewater utility system is comprised of 22 production wells, 9 operational water plants, 2 operational wastewater plants, 500 miles of water mains and 300 miles of wastewater mains. City Wastewater Treatment Plant No. 3 (“WWTP 3”), generally located on Pollard Road South of Eloise Loop Road, treats approximately 4 Million gallons of municipal wastewater per day to advanced reuse water quality standards. The majority of WWTP3 treated water is discharged after treatment to the Peace River via the Peace Creek Canal system.

WWTP 3 was originally constructed in 1975 as a regional wastewater processing facility. The original design for WWTP 3 included the public treatment plant and a large spray field to the South for natural reclamation of treated wastewater. Between 2006 and 2008, WWTP 3 was converted to an advanced wastewater treatment facility, eliminating the need to use a spray field in the reclamation process. Even though lands comprising the former WWTP 3 spray field have been removed from active service after conversion to advanced treatment, for purposes of the City’s utility bonds and loan documents, former WWTP 3 spray field lands are generally considered to be component parts of the City’s utility system.

In 2007, approximately 320 ± acres of former WWTP 3 spray field lands were sold to Evansville Western Railway for development as an Integrated Logistics Center (“ILC”) adjacent to the CSX Transportation railroad line. In 2014, an additional approximately 930 ± acres of former WWTP 3 spray field lands were sold to Winter Haven Industrial Investors, LLC. Before completion of these transactions, the City “removed” or “disposed” of the lands as formal assets of the utility system as required by the City’s bond covenants and loan documents.

Approximately 203 ± acres of City owned undeveloped former spray field land South of Pollard Road and WWTP 3 has been identified to be removed from the City's Utility System for proposed development. Before a portion of this City land may formally become the subject of a real estate transaction, the City must remove the land's utility system designation through the utility system "disposal" process.

As permitted by the City's bond covenants and loan documents, the City may remove undeveloped real estate assets from the municipal utility system so long as: (a) removal is in the economic best interest of the City; (b) removal will not materially impair or restrict the City's ability to generate its obligated utility revenue streams; and (c) removal will not materially reduce the utility system's operational integrity.

Resolution R-19-37 is an administrative request that the City Commission make formal factual findings supporting "disposal" of the 203 ± acre property from the utility system in compliance with the City's utility bond covenants and utility loan documents. To support the Resolution, statements from the Utility Services Department Director and the City's Qualified Independent Consultant are attached to the Resolution and incorporated as Exhibits B and C. A map of the complete 203 ± acre administrative disposal request is attached to the Resolution and incorporated as Exhibit A. Formal disposal of the property from the roll of utility system assets will permit proceeds, if any, that may be realized from one or more property sales to be used by the City for any lawful purpose.

**RECOMMENDATION:**

Staff recommends that the City Commission adopt Resolution R-19-37 to authorize disposal of approximately 203 ± Acres of real property assets from the City of Winter Haven Municipal Utility System (General Location: South of Pollard Road).

**ATTACHMENTS:**

Resolution R-19-37

RESOLUTION NO. R-19-37

A RESOLUTION OF THE CITY OF WINTER HAVEN, FLORIDA, APPROVING THE FINDINGS OF ITS UTILITY SERVICES DEPARTMENT DIRECTOR AND ITS QUALIFIED INDEPENDENT CONSULTANT REGARDING DISPOSAL OF PORTIONS OF THE CITY'S WATER AND SEWER SYSTEM; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Winter Haven, Florida (the "City") has previously issued its Utility System Refunding Revenue Bond, Series 2010 (the "Series 2010 Bond"), its Utility System Refunding Revenue Bonds, Series 2015 (the "Series 2015 Bonds"), and its Utility System Refunding Revenue Bond, Series 2015B (the "Series 2015B Bond", and together with the Series 2010 Bond, and the Series 2015 Bonds, the "Bonds") for the primary purpose of financing and/or refinancing the cost of constructing and acquiring certain additions, extensions and improvements to the City's Water System and Sewer System (collectively, the "Utility System"); and

WHEREAS, the Bonds were authorized by Resolution No. R-98-13 duly adopted by the City Commission of the City (the "Commission") on April 13, 1998, as amended and supplemented from time to time, and as particularly amended by Resolution No. R-98-21 adopted by the Commission on June 24, 1998, Resolution No. R-05-32 adopted by the Commission on July 11, 2005, and Resolution No. R-15-06 adopted by the Commission on January 12, 2015 (collectively, the "Bond Resolution"); and

WHEREAS, the City has previously entered into (i) Clean Water State Revolving Fund Planning Loan Agreement WW531300 with the State of Florida Department of Environmental Protection and Clean Water State Revolving Fund Loan Agreement WW531320 with Florida Water Pollution Control Financing Corporation (collectively, the "SRF Loan Agreements") and (ii) Guaranty Agreement for Polk Regional Water Cooperative Drinking Water State Revolving Fund Planning Loan Agreement DW532000 with the State of Florida Department of Environmental Protection (the "Polk Agreement," and together with the SRF Loan Agreements, the "Agreements"); and

WHEREAS, the City does not have any other indebtedness secured with revenues of the Utility System; and

WHEREAS, any capitalized undefined terms used herein shall have the meanings set forth in the Bond Resolution or the Agreements; and

WHEREAS, the City currently owns approximately 203 ± acres of undeveloped, real property adjacent to its Wastewater Treatment Plant #3 ("WWTP3") and identified in the map with red boundaries attached hereto as Exhibit A (the "Disposed Property"); and

WHEREAS, the City did not use proceeds of tax-exempt bonds to acquire the Disposed Property; and

WHEREAS, WWTP3 and the Disposed Property are each considered to be a part of the Utility System; and

WHEREAS, the City now desires to dispose the Disposed Property from the Utility System in accordance with the requirements of Subsection 20(F)(iii) of the Bond Resolution, Section 4.05 of the SRF Loan Agreements, and Section 4.03 of the Polk Agreement; and

WHEREAS, for purposes of Subsection 20(F)(iii) of the Bond Resolution, the Utility Services Department Director is the "City Officer" charged with the normal acquisition, construction, operation, maintenance and repair of the portion of the Utility System in question; and

WHEREAS, in the certificate attached hereto as Exhibit B, as required by Subsection 20(F)(iii) of the Bond Resolution, the City Officer made a finding that disposition of the Disposed Property (i) will not materially impair or restrict the City's ability to realize Gross Revenues, Sewer System Development Charges and Water System Development Charges in compliance with the requirements therefor as set forth in the Bond Resolution and (ii) is in the economic best interests of the City; and

WHEREAS, in the certificate attached hereto as Exhibit B, as required by Section 4.05 of the SRF Loan Agreements and Section 4.03 of the Polk Agreement, the City Officer made a finding that disposition of the Disposed Property will not materially reduce operational integrity or Gross Revenues of the Utility System; and

WHEREAS, for purposes of Subsection 20(F)(iii) of the Bond Resolution, Pennoni Inc. is the "Qualified Independent Consultant;" and

WHEREAS, in the certificate attached hereto as Exhibit C, as required by Subsection 20(F)(iii) of the Bond Resolution, the Qualified Independent Consultant made a finding that that disposition of the Disposed Property (i) will not materially impair or restrict the City's ability to realize Gross Revenues, Sewer System Development Charges and Water System Development Charges in compliance with the requirements therefor as set forth in the Bond Resolution and (ii) is in the economic best interests of the City; and

WHEREAS, in the certificate attached hereto as Exhibit C, as required by Section 4.05 of the SRF Loan Agreements and Section 4.03 of the Polk Agreement, the Qualified Independent Consultant made a finding that disposition of the Disposed Property will not materially reduce operational integrity or Gross Revenues of the Utility System; and

WHEREAS, pursuant to Subsection 20(B)(5) of the Bond Resolution, to the extent that the City is current on all payments required by the Bond Resolution in full and is in full compliance with all the covenants and provisions of the Bond Resolution, as of the date of disposition of the Disposed Property, the City deems the proceeds, if any, as then being available to be used by the City for any lawful purpose in accordance with Subsection 20(B)(5) of the Bond Resolution.

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

SECTION 1. The Commission hereby approves and confirms the findings in the certificates attached hereto as Exhibit B and Exhibit C.

SECTION 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA this 4th day of December, 2019.

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Mayor-Commissioner

ATTEST:

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City Clerk

APPROVED AS TO FORM

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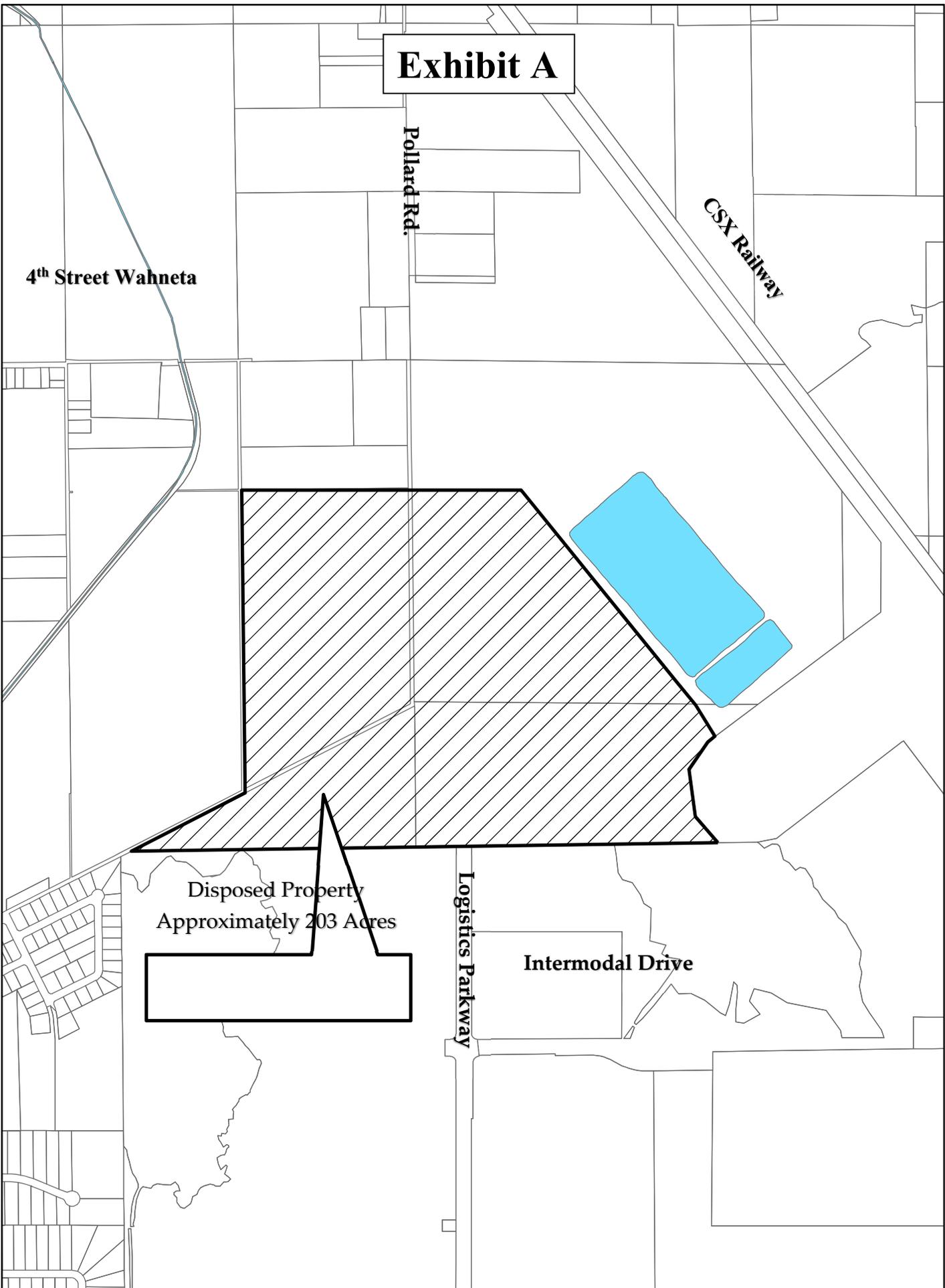
City Attorney

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**

# Exhibit A



CITY OF WINTER HAVEN, FLORIDA

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CERTIFICATE OF UTILITY SERVICES  
DEPARTMENT DIRECTOR

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The undersigned hereby finds, determines and declares:

1. The City of Winter Haven, Florida (the "City") has previously issued its Utility System Refunding Revenue Bond, Series 2010 (the "Series 2010 Bond"), its Utility System Refunding Revenue Bonds, Series 2015 (the "Series 2015 Bonds"), and its Utility System Refunding Revenue Bond, Series 2015B (the "Series 2015B Bond", and together with the Series 2010 Bond, and the Series 2015 Bonds, the "Bonds") for the primary purpose of financing and/or refinancing the cost of constructing and acquiring certain additions, extensions and improvements to the City's Water System and Sewer System (collectively, the "Utility System").

2. The Bonds were authorized by Resolution No. R-98-13 duly adopted by the City Commission of the City (the "Commission") on April 13, 1998, as amended and supplemented from time to time, and as particularly amended by Resolution No. R-98-21 adopted by the Commission on June 24, 1998, Resolution No. R-05-32 adopted by the Commission on July 11, 2005, and Resolution No. R-15-06 adopted by the Commission on January 12, 2015 (collectively, the "Bond Resolution").

3. The City has previously entered into (i) Clean Water State Revolving Fund Planning Loan Agreement WW531300 with the State of Florida Department of Environmental Protection and Clean Water State Revolving Fund Loan Agreement WW531320 with Florida Water Pollution Control Financing Corporation (collectively, the "SRF Loan Agreements") and (ii) Guaranty Agreement for Polk Regional Water Cooperative Drinking Water State Revolving Fund Planning Loan Agreement DW532000 with the State of Florida Department of Environmental Protection (the "Polk Agreement," and together with the SRF Loan Agreements, the "Agreements" ).

4. The City does not have any other indebtedness secured with revenues of the Utility System.

5. Any capitalized undefined terms used herein shall have the meanings set forth in the Bond Resolution or the Agreements.

6. The City currently owns approximately 203± acres of undeveloped, real property south of its Wastewater Treatment Plant #3 ("WWTP3") as identified on Exhibit A (the "Disposed Property").

7. WWTP3 and the Disposed Property are each considered to be a part of the Utility System.

8. The City now desires to dispose the Disposed Property from the Utility System in accordance with the requirements of Subsection 20(F)(iii) of the Bond Resolution, Section 4.05 of the SRF Loan Agreements, and Section 4.03 of the Polk Agreement.

9. For purposes of Subsection 20(F)(iii) of the Bond Resolution, the Utility Services Department Director is the "City Officer" charged with the normal acquisition, construction, operation, maintenance and repair of the portion of the Utility System in question.

10. Disposition of the Disposed Property (i) will not materially impair or restrict the City's ability to realize Gross Revenues, Sewer System Development Charges and Water System Development Charges in compliance with the requirements therefor as set forth in the Bond Resolution and (ii) is in the economic best interests of the City.

11. Disposition of the Disposed Property will not materially reduce operational integrity or Gross Revenues of the Utility System.

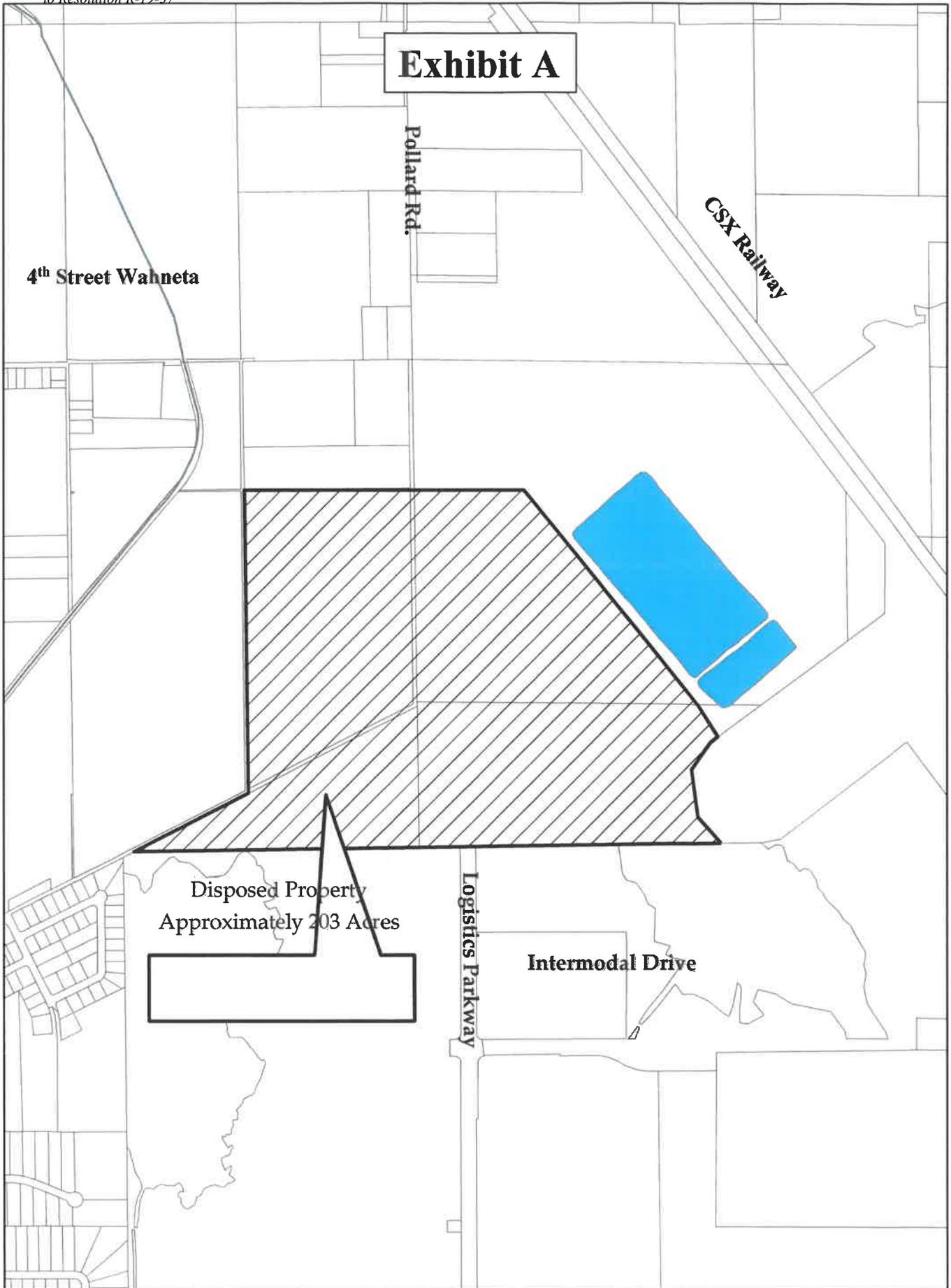
EXECUTED this 20<sup>th</sup> day of November, 2019.

CITY OF WINTER HAVEN, FLORIDA

By: \_\_\_\_\_

Name: Gary M. Hubbard, P.E.

Title: Utility Services Department Director



CITY OF WINTER HAVEN, FLORIDA

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CERTIFICATE OF  
QUALIFIED INDEPENDENT CONSULTANT

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The undersigned hereby finds, determines and declares:

1. The City of Winter Haven, Florida (the "City") has previously issued its Utility System Refunding Revenue Bond, Series 2010 (the "Series 2010 Bond"), its Utility System Refunding Revenue Bonds, Series 2015 (the "Series 2015 Bonds"), and its Utility System Refunding Revenue Bond, Series 2015B (the "Series 2015B Bond", and together with the Series 2010 Bond, and the Series 2015 Bonds, the "Bonds") for the primary purpose of financing and/or refinancing the cost of constructing and acquiring certain additions, extensions and improvements to the City's Water System and Sewer System (collectively, the "Utility System").

2. The Bonds were authorized by Resolution No. R-98-13 duly adopted by the City Commission of the City (the "Commission") on April 13, 1998, as amended and supplemented from time to time, and as particularly amended by Resolution No. R-98-21 adopted by the Commission on June 24, 1998, Resolution No. R-05-32 adopted by the Commission on July 11, 2005, and Resolution No. R-15-06 adopted by the Commission on January 12, 2015 (collectively, the "Bond Resolution").

3. The City has previously entered into (i) Clean Water State Revolving Fund Planning Loan Agreement WW531300 with the State of Florida Department of Environmental Protection and Clean Water State Revolving Fund Loan Agreement WW531320 with Florida Water Pollution Control Financing Corporation (collectively, the "SRF Loan Agreements") and (ii) Guaranty Agreement for Polk Regional Water Cooperative Drinking Water State Revolving Fund Planning Loan Agreement DW532000 with the State of Florida Department of Environmental Protection (the "Polk Agreement," and together with the SRF Loan Agreements, the "Agreements").

4. Any capitalized undefined terms used herein shall have the meanings set forth in the Bond Resolution or the Agreements.

5. The City currently owns approximately 203± acres of undeveloped, real property south of its Wastewater Treatment Plant #3 ("WWTP3") as identified on Exhibit A (the "Disposed Property").

6. WWTP3 and the Disposed Property are each considered to be a part of the Utility System.

7. The City now desires to dispose the Disposed Property from the Utility System in accordance with the requirements of Subsection 20(F)(iii) of the Bond Resolution, Section 4.05 of the SRF Loan Agreements, and Section 4.03 of the Polk Agreement.

8. For purposes of Subsection 20(F)(iii) of the Bond Resolution, Pennoni Inc. is the "Qualified Independent Consultant."

9. Disposition of the Disposed Property (i) will not materially impair or restrict the City's ability to realize Gross Revenues, Sewer System Development Charges and Water System Development Charges in compliance with the requirements therefor as set forth in the Bond Resolution and (ii) is in the economic best interests of the City.

10. Disposition of the Disposed Property will not materially reduce operational integrity or Gross Revenues of the Utility System.

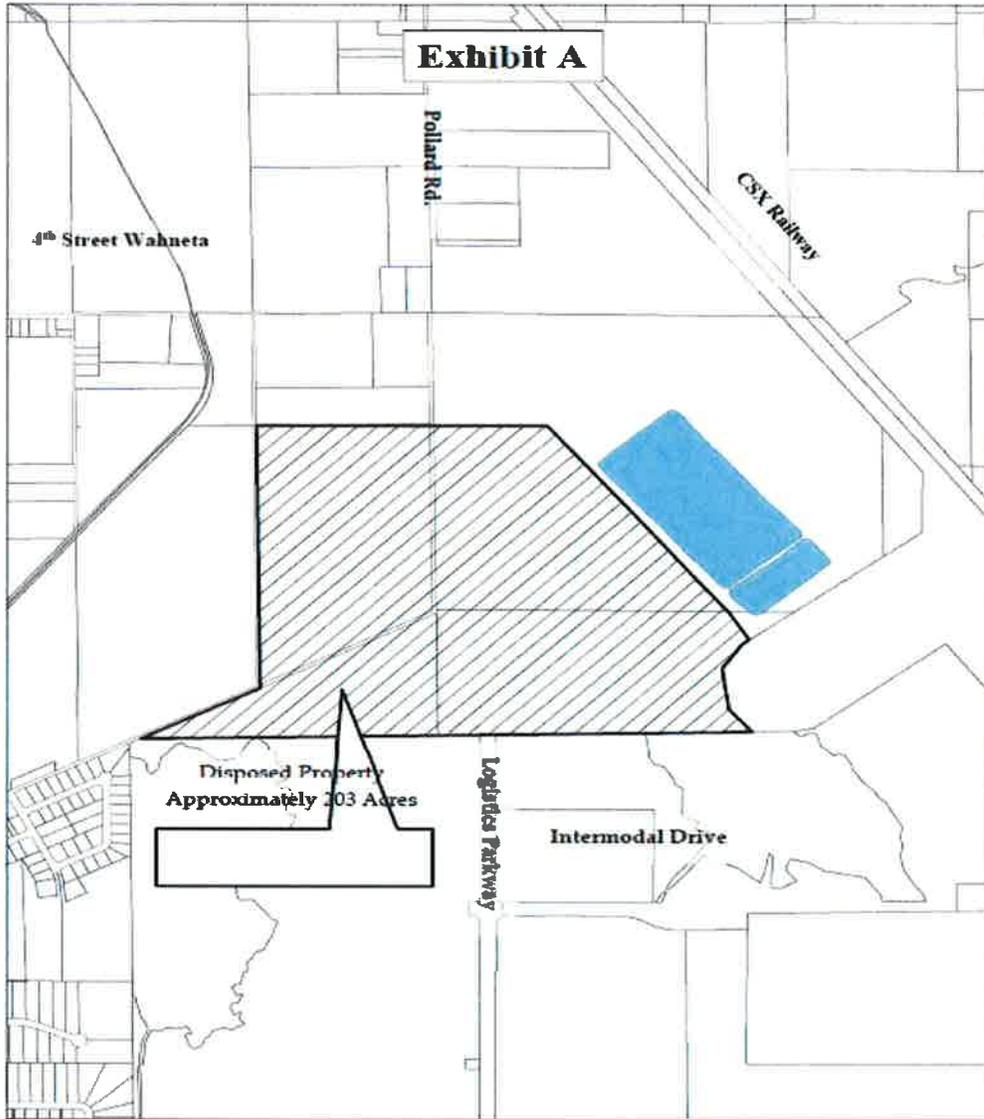
EXECUTED this 19<sup>th</sup> day of November, 2019.

PENNONI INC.

By:  \_\_\_\_\_

Name: Steven Elias, P.E.

Title: Municipal/Environmental Engineering Division Manager



**CITY OF WINTER HAVEN FACT SHEET  
CITY COMMISSION SPECIAL MEETING  
December 4, 2019**

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**DATE:** November 22, 2019

**TO:** Honorable Mayor and City Commissioners

**FROM:** Mike Herr, City Manager

**SUBJECT:** Approval of Resolution R-19-38 finding compliance with City Policy 2018-01 relating to sale, conveyance, and/or disposition of surplus City owned real estate; and approving a Purchase and Sale Agreement for 77.53 ± acres of City owned real estate and authorizing the City Manager and other appropriate City officials to execute same.

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**BACKGROUND:**

The City Manager, the City's Growth Management Department Director and the Winter Haven Economic Development Council President have met with representatives of Caribbean Distillers LLC d/b/a Florida Caribbean Distillers (the "Potential Buyer"), a local manufacturing and distilling company with facilities currently located in Winter Haven, Lake Alfred, Auburndale and Puerto Rico. Discussions regarding a substantial expansion of their local operations in Winter Haven to include construction of an advanced manufacturing facility in excess of 300,000 sf to produce food grade aluminum cans and potentially create 160 new jobs (Project Sugar Cane) ensued. The Potential Buyer has determined that 77.53 ± acres, subject to a survey, (the "Subject Property") is necessary to adequately facilitate the anticipated first phase of development, consisting of the construction of an approximately 300,000 sf advanced manufacturing facility and potential future growth in two additional phases of approximately 150,000 sf and 350,000 sf respectively. Total development of this three-phase project could yield approximately 800,000 sf of advanced manufacturing, potentially creating over 500 new jobs.

The Subject Property is a portion of 203 ± acres of City owned property (Available Property) located immediately south of Wastewater Treatment Plant #3 (WWTP#3) and proximate to the CSX Intermodal Terminal, Logistics Parkway and SR-60. This property is located in census tract 145.01 that, at the request of the Winter Haven Economic Development Council and the City of Winter Haven, was designated as a Federal Opportunity Zone in 2018 by Governor Rick Scott pursuant to the Tax Cut and Jobs Act of 2017. The Winter Haven City Commission subsequently designated this area an Industrial Development Zone at the request of the Winter Haven Economic Development Council and City staff on May 29, 2018 by the adoption of Resolution R-18-21 as one of three designated areas within the City of Winter Haven intended for future industrial development and to serve as a major employment center for the community.

On August 28, 2019, the City's Growth Management Director directed Mancuso Appraisal Services, Inc. to proceed with an appraisal of 120 acres of the Available Property, as 120

acres of the Available Property was estimated to be upland and developable for industrial purposes. Subject to specific assumptions provided to the appraiser, Mancuso Appraisal Services, Inc., determined the value per upland acre to be between \$40,000 and \$45,000 per acre, depending on the presence or absence of market assumptions.

On October 14, 2019 the City Commission transmitted, to the Department of Economic Opportunity (DEO), an Administrative Future Land Use Map Amendment, Ordinance O-19-36 to amend the Future Land Use on the Available Property from Institutional to Industrial. Staff anticipates DEO review to be concluded within approximately 30 days allowing for a second reading and adoption public hearing to be conducted by the City Commission in December, 2019.

Planning Division Staff is currently drafting a Planned Unit Development (PUD) zoning district ordinance which will be heard by the Planning Commission at its December 2, 2019 meeting.

Pursuant to the aforementioned Future Land Use amendment, PUD zoning district change, and proposed sale of the Subject Property, additional acreage of Available Property will remain for future use.

## **UTILITY SYSTEM**

On October 17, 2019, Pennoni Associates, Inc. (Pennoni), issued an “Opinion Regarding the Sale of Certain City Property in Light of Revenue Bond Requirements and Loan Agreements” and executed a Certificate attached to Resolution R-19-37 (“Exhibit C - Pennoni Opinion”). The City’s Utility Services Director has also executed a Certificate attached to Resolution R-19-37 (“Exhibit B – Utility Services Director Opinion”).

Working in conjunction with the City’s Utility Services Director, Pennoni has verified and confirmed that:

1. Disposition of the 203 ± acre tract (i) will not materially impair or restrict the City’s ability to realize Gross Revenues, Sewer System Development Charges, and Water System Development Charges in compliance with the requirements therefore as set forth in the Bond Resolutions and, (ii) is in the economic best interest of the City.
2. Disposition of the 203 ± acre tract will not materially reduce operational integrity or Gross Revenues of the Utility System.

Resolution R-19-37 formally accepts the Pennoni Opinion and the opinion of the City’s Utility Services Director, and formally removes the 203 ± acre tract, which includes the Subject Property, from the list of the City’s Utility Services system assets.

### **COMPETITIVE LOCATIONS:**

The Potential Buyer is currently engaged in business and real estate due diligence evaluations to confirm the business and locational viability of constructing and operating the advanced manufacturing facility on the Subject Property. Such investigations include numerous considerations including the willingness of the City to enter into a Purchase and Sale Agreement on the Subject Property at the recommended price herein. Alternative locations considered for this project include a location in Georgia and a site near the Potential Buyer's affiliated company location in Puerto Rico.

### **ECONOMIC IMPACT:**

The initial economic impact of this project, will include revenue from the land purchase of 77.53 ± acres; construction jobs created from site development and facility construction; and equipment installations. It is anticipated that these investments will exceed \$120 million in 2020-2021. Thereafter it is anticipated that the operations of the facility will create approximately 160 total jobs by 2022, of which at least 110 will pay above 115% of Polk County's average annual wage of \$41,047. The additional estimated 50 jobs that will be created will pay above 100% of Polk County's average annual wage of \$41,047. Construction activities are anticipated to create over 275 jobs, and in addition to the 160 direct jobs created by the Potential Buyer's operations, approximately 4,200 indirect jobs are projected to be added in the County over a 20-year period, for an average of 200 indirect jobs per year. The first phase of this project has the potential to create approximately \$25 million in disposable personal income each year through 2038.

### **SALE AND PURCHASE AGREEMENT:**

Attached to Resolution R-19-38 as Exhibit 'B' is a proposed agreement for the sale and purchase of the Subject Property. Pursuant to the agreement's terms:

- the Subject Property will be sold to the Potential Buyer in "as is" condition, without any warranty (use or otherwise) by the City;
- the Potential Buyer will, within one week of the effective date, place a good faith deposit of \$100,000 with the City Attorney's office;
- the Potential Buyer will have a due diligence inspection period of 120 days from the date of formal approval of the agreement by the City Commission;
- the Potential Buyer will, within the last month of the due diligence period, acquire a title commitment and acquire a survey of the Subject Property;
- the City will receive from the Potential Buyer at closing the amount of \$42,439.50 per gross acre as surveyed, rounded to the nearest one-hundredth of an acre (the currently presumed total sales price is estimated to be \$3,290,334.40);
- Closing will occur on Friday, June 5, 2020, or such earlier date as may be mutually agreed upon by the parties, at a place as close to Winter Haven, Florida as

possible;

- at Closing, the Potential Buyer will pay the costs of recording the deed, documentary stamp tax on the deed, survey costs, title insurance costs, mortgage costs (including documentary stamp tax and intangibles tax), costs associated with Buyer-related document preparation, its legal fees and its broker fees;
- at Closing, the City will pay for costs associated with curing defects in title, costs associated with Seller-related document preparation and its legal fees;
- the Potential Buyer may assign the Agreement only with the City's written consent which shall not be unreasonably conditioned or withheld.

### **ELIGIBLE INCENTIVES:**

Closing under the sale and purchase agreement is conditioned on a number of matters that will be addressed during the due diligence time period such as negotiation and approval of a Developer's Agreement between the Potential Buyer and the City addressing local economic incentives, required transportation construction and other appropriate site development matters. In addition separate Agreements and/or actions relating to Ad Valorem Tax Exemption by Polk County; State of Florida Qualified Target Industry (QTI) Tax Refund; Polk County Bonus Incentive Program (PCBI); and Polk County Impact Fee Mitigation incentives will also need to be negotiated and approved by the appropriate entities as conditions of the Potential Buyer's requirement to close. Securing these inducements will significantly increase the likelihood that the Potential Buyer will select Winter Haven over alternate locations in Georgia or a site near the Potential Buyer's affiliated company location in Puerto Rico. The Subject Property is under strong consideration due to its proximity to the CSX Intermodal Terminal; a willing property seller; and competitive incentives as referenced above. Additionally, the future availability of the City's dark fiber infrastructure to the Subject Property is conducive to the facilities advanced manufacturing operations.

### **PROJECTED REVENUE:**

Estimated Sale Proceeds: \$3,290,334.44 (subject to modification by survey)

Estimated Ad Valorem: Up to \$679,000 annually

Water/Wastewater: TBD upon receipt of additional information from the Potential Buyer  
Utility and Franchise: TBD upon receipt of additional information from the Potential Buyer and TECO

### **SURPLUS DESIGNATION:**

City Policy 2018-01, adopted September 24, 2018, allows the City Commission to designate City-owned real estate to be "surplus" and eligible for sale if it is no longer needed for public facilities and will, if sold, provide a greater public benefit to the City of

Winter Haven and its citizens than it does in its current state. Factors to be weighed by the City Commission in making a surplus decision include whether the property is in current use by a City Department; whether the property is vacant; whether the property is an “under-performing” or “non-performing” City asset; and whether the property can be used to create one or more significant economic development opportunities. If sale will either (i) relieve the City of the potential liabilities and costs of ownership; (ii) create or enhance the property tax increment by returning it to the property tax rolls, (iii) stimulate the local economy by providing an opportunity for significant private sector investment; (iv) generate needed revenue for the City; or (v) generate greater economic value for the City than a long term ground lease, the City Commission can, pursuant to its policy, declare land to be surplus and eligible for sale.

As previously discussed, the sale of the Subject Property is expected to generate a \$120 Million investment impact, create 160 local advanced manufacturing jobs and create 275 short-term construction jobs. Long term, the sale of the Subject Property is expected to generate 360 or more direct and indirect jobs annually, and \$25 Million in disposable personal income annually. City ad valorem tax revenue is expected to be up to \$679,000 per year.

The Subject Property is vacant land and part of the City’s former WWTP 3 reclamation spray field. The City currently leases part of the Subject Property to an area cattle rancher in exchange for \$3,500 of annual property maintenance savings and ground rent of \$12 per year. The ground lease expires on December 11, 2021 and may be terminated by the City with or without cause on 180 days’ notice.

**CONCLUSION:**

Based upon the facts, actions, and projections enumerated above, the potential sale, conveyance, and/or disposition of the Subject Property is consistent with the policies and procedures of City Commission Policy Number 2018-01 related to the sale, conveyance, and/or disposition of surplus City owned real estate.

**RECOMMENDATION:**

Approval of Resolution R-19-38 finding compliance with City Policy 2018-01 relating to sale, conveyance, and/or disposition of surplus City owned real estate; and approving a Purchase and Sale Agreement with the Potential Buyer for 77.53 ± acres of City owned real estate; and authorizing the City Manager and other appropriate City officials to execute same and take all further actions necessary thereto.

**ATTACHMENTS:**

Purchase and Sale Agreement

Location map

Preliminary conceptual site plan

Resolution R-19-38

Mancuso Appraisal Services, Inc. Appraisal

Proposed Ordinance O-19-36

Pennonni Opinion

Policy Number 2018-01

**RESOLUTION NO. R-19-38**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA RELATING TO THE SALE, CONVEYANCE AND DISPOSITION OF SURPLUS CITY OWNED REAL ESTATE; MAKING FINDINGS; DESIGNATING AN APPROXIMATELY 77.53 ± ACRE PARCEL OF CITY OWNED REAL ESTATE GENERALLY LOCATED SOUTH OF POLLARD ROAD AND SOUTH OF CITY WASTEWATER TREATMENT PLANT NO. 3 AS SURPLUS PURSUANT TO POLICY NO. 2018-01; APPROVING THE SALE OF SURPLUS CITY OWNED REAL ESTATE TO CARIBBEAN DISTILLERS LLC IN ACCORDANCE WITH THE TERMS OF THAT AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY ATTACHED HERETO AS EXHIBIT 'B'; AUTHORIZING THE CITY MANAGER, CITY ATTORNEY AND CITY CLERK TO EXECUTE AND DELIVER SAID AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY WITH CARIBBEAN DISTILLERS LLC AS ATTACHED TO THIS RESOLUTION AS EXHIBIT 'B'; PROVIDING FOR SEVERABILITY AND THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; REPEALING CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Winter Haven, Florida is a municipal corporation with home rule authority granted by Article VIII, § 2 of the Florida Constitution and the *Municipal Home Rule Powers Act*, Chapter 166, Florida Statutes; and

**WHEREAS**, on September 24, 2018, the City Commission approved Policy No. 2018-01 relating to the disposition of surplus City owned real estate; and

**WHEREAS**, City Staff has identified an approximately 77.53 ± acre parcel of land, generally located South of Pollard Road and South of City Wastewater Treatment Plant No. 3 ("WWTP 3"), such parcel being subject to verification by survey and more particularly identified on the attached and incorporated Exhibit 'A' (the "Property"), as real estate that (a) is no longer needed for public facilities and (b) will, when disposed, provide a greater public benefit to the City of Winter Haven and its citizens; and

**WHEREAS**, the Property (a) is not currently in use by a City department; (b) is vacant; and (c) is, at the time of consideration of this Resolution, an under-performing asset; and

**WHEREAS**, greater value, through the creation of significant economic development opportunities, can be generated for the public at large and the City through sale of the Property; and

**WHEREAS**, the City Commission, being fully advised of the factual circumstances

and of the sale and disposition factors listed in Policy No. 2018-01, finds that a surplus designation and sale of the Property will (a) relieve the City of the potential liabilities and costs inherent with continued Property ownership and maintenance; (b) create and enhance the property tax increment by returning the Property to the property tax rolls; (c) stimulate the local economy by providing an opportunity for significant private sector investment within the City's municipal limits; (d) generate revenue for the City; and (e) generate greater economic value for the City than a ground lease, which is not a feasible option given the apparent investment required to improve the Property for reasonable commercial development; and

**WHEREAS**, the Property, which was used by the City between 1976 and 2006 as a spray field for the natural reclamation of treated wastewater, has been formally removed by the City Commission from the roll of City utility real property assets in compliance with the City's bond financing covenants and loan agreements; and

**WHEREAS**, in the performance of municipal due diligence, the City has obtained a recent appraisal of the Property from a competent Florida-licensed appraiser opining the value of the land to lie between \$40,000.00 and \$45,000.00 per acre, depending on the presence or absence of certain market assumptions; and

**WHEREAS**, the City has received a negotiated offer from Caribbean Distillers LLC, a Florida limited liability company, in the form of a proposed Agreement for Sale and Purchase of Real Property, a copy of which is attached and incorporated as Exhibit 'B', for the sale and purchase of the 77.53 ± acre Property, subject to survey verification, at a per acre offer price of \$42,439.50; and

**WHEREAS**, the City Commission finds Caribbean Distillers LLC's per acre offer price for the Property to be reasonable and to meet the minimum of the surplus land sale and/or disposition valuation requirements of Policy No. 2018-01; and

**WHEREAS**, the City Commission, being fully advised of the factual circumstances, finds that a sale of the Property to Caribbean Distillers LLC for the per acre offer price and other terms in that Agreement for Sale and Purchase of Real Property, a copy of which is attached and incorporated as Exhibit 'B' to be proper and in full accord with the Charter and Code of Ordinances of the City of Winter Haven, City Commission Policy and applicable law; and

**WHEREAS**, the City Commission finds the proximity of the Property to the Evansville Western Railway Intermodal Logistics Center and business park, all of which are former City real estate assets, gives it wide exposure to the general public of the Property's potential for development; further, the offer by Caribbean Distillers LLC to purchase constitutes a significant and desired opportunity for economic growth in the City and the greater Winter Haven area, which, when considered, justifies action by the City Commission without the need for a general solicitation or public form of advertisement; and

**WHEREAS**, pursuant to Policy 2018-01, the City Commission finds the Property to be a surplus asset and finds the terms and conditions of the proposed Agreement for Sale and Purchase of Real Property with Caribbean Distillers LLC, attached and incorporated as Exhibit 'B', to be the appropriate and City Commission-authorized method for sale and/or disposition of the Property from the roll of City real estate assets;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA AS FOLLOWS:**

**Section 1: Findings of Fact**

The aforementioned findings and whereas clauses are found to be true and correct statements of fact, are incorporated herein by reference, and are hereby made a part of this Resolution.

**Section 2: Designation of Approximately 77.53 ± Acres of City Real Estate as Surplus Property Eligible for Sale and/or Disposition**

Pursuant to Policy 2018-01, the City Commission formally designates City-owned real estate of approximately 77.53 ± acres, generally located South of Pollard Road and South of WWTP 3, being subject to verification by survey and more particularly identified on the attached and incorporated Exhibit 'A', as surplus. Being so designated, the City Commission declares said City-owned real estate to be eligible for sale and/or disposition as authorized by general law and the policies of the City of Winter Haven.

**Section 3: Authorization to Sell to Caribbean Distillers LLC; and Approval of Agreement for Sale and Purchase of Real Property**

The City Commission authorizes sale of the Property to Caribbean Distillers LLC and approves the proposed Agreement for Sale and Purchase of Real Property between the City of Winter Haven and Caribbean Distillers LLC, attached and incorporated as Exhibit 'B'. The City Manager, City Attorney and City Clerk are authorized to execute the Agreement for Sale and Purchase of Real Property and to deliver a copy to an authorized officer for Caribbean Distillers LLC and take all further actions necessary and incidental thereto.

**Section 4: Severability**

It is declared to be the intent of the City Commission of the City of Winter Haven, Florida that, if any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 5: Administrative Correction of Scrivener's Errors**

Typographical errors in this Resolution and its Exhibits which do not affect the intent of the City Commission may be authorized by the City Manager or his designee without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

**Section 6: Repeal of Conflicting Resolutions**

All resolutions in conflict with any provision of this Resolution are hereby repealed to the extent of any conflict.

**Section 7: Effective Date**

This Resolution shall take effect immediately upon passage by the City Commission.

INTRODUCED AND PASSED by the City Commission of the City of Winter Haven, Florida in special session this 4th day of December, 2019.

CITY OF WINTER HAVEN, FLORIDA

\_\_\_\_\_  
MAYOR-COMMISSIONER

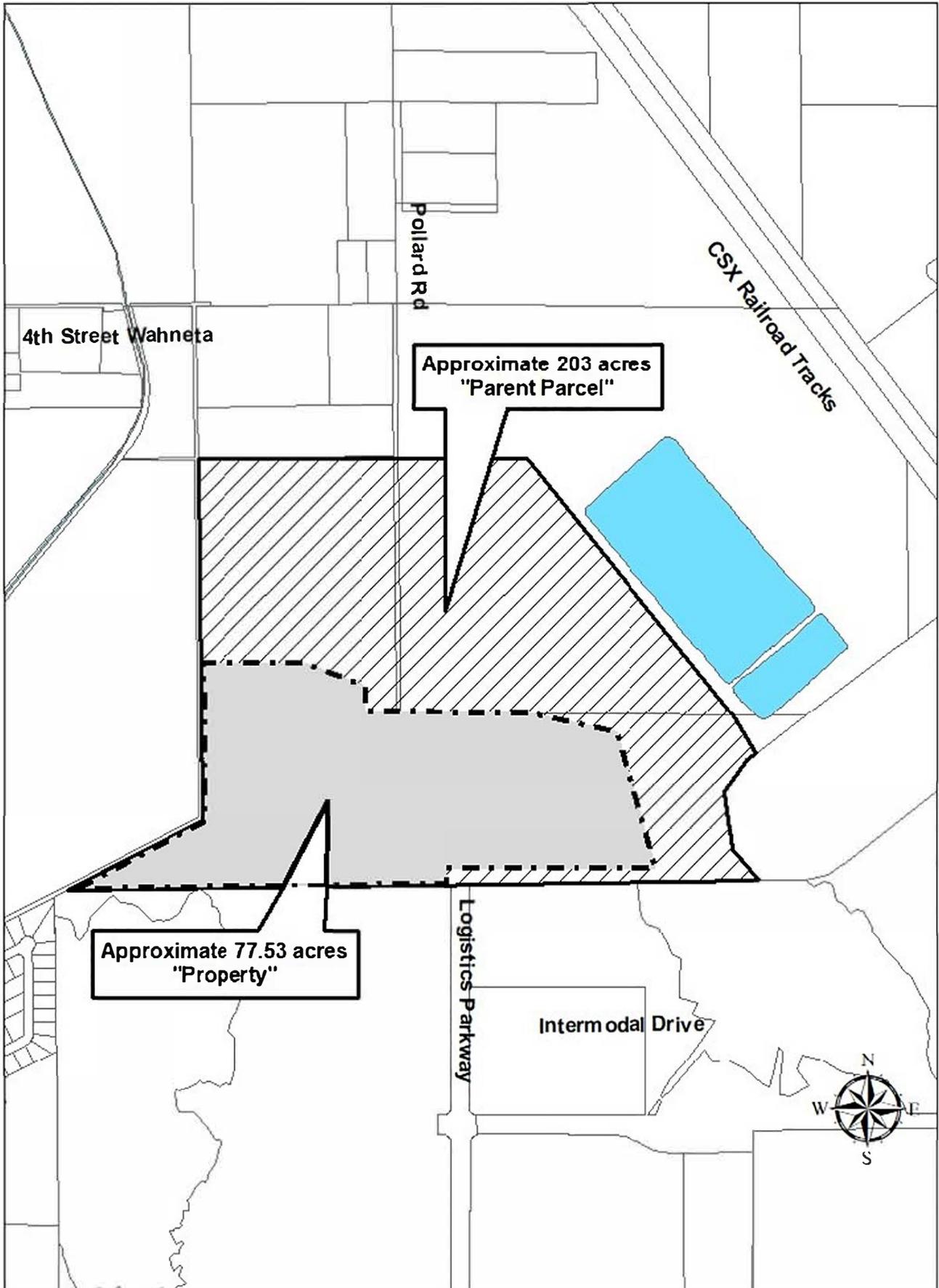
ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

# Map of Parent Parcel and Property



**AGREEMENT FOR SALE**  
**AND**  
**PURCHASE OF REAL PROPERTY**

THIS AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY (the “Agreement”) is between **CITY OF WINTER HAVEN, FLORIDA**, a Florida municipal corporation, the address of which is Attn: City Manager, P.O. Box 2277, Winter Haven, FL 33883-2277 (the “Seller”) and **CARIBBEAN DISTILLERS LLC**, a Florida limited liability company, the address of which is P.O. Box 1447, Lake Alfred, FL 33850 (the “Buyer”).

WITNESSETH:

A. The Seller owns real property (the “Parent Parcel”) in Polk County, Florida, consisting of approximately 203.00 ± acres, as more particularly described on the attached **Exhibit “A”**.

B. The Buyer is in the business of manufacturing aluminum products and desires to purchase the Property from the Seller to construct an aluminum processing advanced manufacturing facility (the “Intended Use” or “Buyer’s Intended Use”).

C. The Buyer wishes to purchase approximately 77.53 ± acres of the Parent Parcel, such portion also being more particularly described on the attached **Exhibit “A”** (the “Property”).

D. The parties believe it to be in their best interests to set forth their full understanding of the terms and conditions of the sale and purchase of the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Sale and Purchase of Property. Upon and subject to all of the terms and conditions contained herein and the performance by each of the parties hereto of their respective obligations, the Buyer shall purchase and acquire from the Seller, and the Seller shall sell, convey, transfer, assign and deliver to the Buyer the Property.

2. Purchase Price of Property. The Buyer shall, in consideration of the covenants, conditions and agreements of the Seller and as full consideration for the purchase of the Property, pay to the Seller at closing the sum of **Forty Two Thousand Four Hundred Thirty Nine Dollars and fifty cents (\$42,439.50)** per gross acre constituting the Property as certified by the Surveyor as set forth in Section 6 herein (the “Purchase Price”).

3. Payment of Purchase Price. The Buyer agrees to pay to the Seller the Purchase Price of the Property in the following manner:

(a) An Initial Deposit in the amount of **One Hundred Thousand Dollars**

**(\$100,000.00)** shall be paid on or before the expiration of seven (7) days from the Effective Date by the Buyer to the Escrow Agent (as defined below in Section 11);

(b) An Additional Deposit in the amount of **One Hundred Thousand Dollars (\$100,000.00)**, if required by the terms of Section 5(b) herein, paid on or before the expiration of the Inspection Period (as defined below in Section 5(a)) by the Buyer to the Escrow Agent; and

(c) The balance of the Purchase Price due, together with all of the Buyer's Closing Costs, shall be tendered by the Buyer to the Escrow Agent no later than three (3) days before the date for Closing (as defined below in Section 8(a)). Upon consummation of the purchase and sale of the Property, Escrow Agent shall disburse the Initial Deposit, the Additional Deposit if any, and balance of the Purchase Price to the Seller.

4. Time for Acceptance and Effective Date.

(a) If this Agreement is not executed by an authorized officer of the Seller and an authorized officer of the Buyer on or before December 6, 2019, at the option of the Seller this Agreement shall thereafter be null and void.

(b) As used herein, the term "Effective Date" shall mean the date on which the last one of the City Manager of the Seller and an authorized officer of the Buyer has executed this Agreement.

5. Rights of Inspection and Cancellation; Additional Deposit.

(a) Inspection Period. Buyer shall have a period of time, commencing on the Effective Date and ending at 5:00 p.m. one hundred twenty (120) days after the date the City Commission of Seller approves this Agreement, in which to conduct its due diligence prior to consummation of the purchase and sale of the Property (the "Inspection Period"). During the Inspection Period, Buyer may enter upon the Property with its agents or engineers, as needed, to inspect, examine, survey and otherwise do whatever Buyer deems necessary to determine whether the Property is suitable for Buyer's purposes, such determination to be made at Buyer's sole and absolute discretion. Said privilege shall include, without limitation, the right, at Buyer's sole cost and expense, to perform traffic studies, make soil tests, borings, percolation tests and other tests to obtain information necessary to determine surface, subsurface, environmental and topographic conditions, to delineate wetlands, obtain acceptable access to the Property consistent with Buyer's Intended Use, and to obtain from applicable governmental authorities information regarding access, utilities, rights-of-way, and development permits regarding the Property. Buyer will coordinate access to the Property during this period with the City Manager or of the Seller, or the City Manager's designee, and provide reasonable notice to said official prior to any entry. Buyer shall share the results of its physical investigations of the Property with the Seller at such time as they become available and promptly upon Buyer's receipt of same (whether in hard copy or electronic form). Buyer shall be solely liable for all costs and expenses, or damage or injury to any person or property resulting from any such inspection, whether caused by the acts of Buyer or any of its employees, agents, contractors, consultants or representatives, and Buyer shall indemnify, defend and hold harmless Seller from any liability, claims and expenses (including, without

limitation, construction liens and/or reasonable attorneys' fees and costs) resulting therefrom. In the event any notice to owner or claim of lien is filed by any of Buyer's contractors, subcontractors, professionals, laborers, or suppliers, Buyer shall promptly obtain a release of lien from the claimant or lienor, or, alternatively, where appropriate, Buyer may transfer such a lien to a cash bond pursuant to the requirements of Chapter 713, Florida Statutes. Buyer agrees that all contracts or agreements regarding the Property with any and all of Buyer's contractors, subcontractors, professionals, laborers, and materialmen shall contain language substantially similar to the following: "Buyer hereby represents that it is the Contract Buyer and not the owner of the Property. Buyer shall be responsible for all payments due under the provisions of this Agreement, and the interest of the owner of the Property shall not be subject to liens for improvements, services, materials or labor made by or on behalf of the Buyer." Buyer shall restore the Property to substantially the same condition as it existed prior to Buyer's activities and shall remove and dispose of any waste generated by Buyer's activities in compliance with all applicable laws, regulations and requirements. The obligations of Buyer under this paragraph shall survive termination of this Agreement.

In addition to the inspection rights set forth above, commencing on the Effective Date and terminating on the expiration date of the Inspection Period, Buyer may obtain at Buyer's sole cost and discretion, environmental studies (including, but not limited to, Phase I and II studies), audits and tests of the Property to determine the existence of any environmental matters to the Property (the "Environmental Studies"). Buyer shall share the results of Environmental Studies with the Seller at such time as they become available and promptly upon Buyer's receipt of same (whether in hard copy or electronic form).

(b) Conditions to Close; Additional Deposit. Buyer shall, on or before the expiration date of the Inspection Period, formally notify Seller in writing whether the Conditions to Close identified in Section 8(g) herein have been met.

- (i) If one or more of the Conditions to Close in Section 8(g) have not been met by the expiration of the Inspection Period and Buyer has timely provided written notice thereof to Seller, Buyer may elect to pay an Additional Deposit in the amount of **One Hundred Thousand Dollars (\$100,000.00)** before the expiration of the Inspection Period to the Escrow Agent. Upon timely payment of the Additional Deposit by Buyer to the Escrow Agent:
  - a. The Initial Deposit shall become non-refundable and the property of the Seller and Seller may, at any time before the date for Closing, request disbursement of the Initial Deposit from the Escrow Agent, who upon such written request by Seller shall disburse said Initial Deposit to Seller;
  - b. Buyer shall have a period of time between the expiration of the Inspection Period and the fifteenth (15th) day prior to the date for Closing to determine whether any unsatisfied condition in the Conditions to Close in Section 8(g) is satisfied; and

- c. At any time between the expiration of the Inspection Period and the fifteenth (15th) day prior to the date for Closing, Buyer may cancel this Agreement by giving written notice thereof to Seller. Upon such cancellation, Buyer shall have no obligation to make any further deposit, Escrow Agent shall pay the Initial Deposit to Seller if not already paid, Escrow Agent shall pay the Additional Deposit to Buyer, and neither party shall have any further obligations to the other under this Agreement except those that expressly survive termination.
- (ii) If Buyer has timely provided written notice thereof to Seller that the Conditions to Close in Section 8(g) have all been met before the expiration of the Inspection Period; or Buyer fails to give formal notice in writing to the Seller before the expiration of the Inspection Period regarding the status of the Conditions to Close; and/or Buyer fails to timely pay the Additional Deposit to the Escrow Agent:
    - a. The Initial Deposit shall become non-refundable and the property of the Seller and Seller may, at any time before the date for Closing, request disbursement of the Initial Deposit from the Escrow Agent, who upon such written request by Seller shall disburse said Initial Deposit to Seller; and
    - b. All unsatisfied conditions in the Conditions to Close in Section 8(g) herein shall be waived and Buyer will proceed to close this Agreement.

Seller agrees to deliver to Buyer within ten (10) days of the Effective Date copies of any and all inspections, reports, studies, surveys, appraisals, environmental studies, traffic studies, soil tests, or such similar information regarding the Property as Seller may have in Seller's custody and control.

(c) Cancellation of Agreement by Buyer during Inspection Period. At any time prior to the expiration of the Inspection Period, Buyer may cancel this Agreement by giving written notice thereof to Seller. Upon such cancellation, Buyer shall have no obligation to make any further deposit, Escrow Agent shall pay the Initial Deposit to Buyer, and neither party shall have any further obligations to the other under this Agreement, except those that expressly survive termination.

(d) Developer's Agreement. During the Inspection Period, Seller and Buyer will devote their best efforts to draft a mutually acceptable Developer's Agreement which will outline further obligations and conditions regarding the Buyer's Intended Use of the Property. In the event a mutually acceptable Developer's Agreement cannot be reached before the expiration of the Inspection Period, the Buyer or the Seller may, before the last day of the Inspection Period, cancel this Agreement by giving written notice thereof to the other party. Upon such cancellation,

Buyer shall have no obligation to make any further deposit, Escrow Agent shall pay the Initial Deposit to Buyer, and neither party shall have any further obligations to the other under this Agreement, except those that expressly survive termination.

(e) Development Incentives. Seller and Buyer acknowledge that, due to the size and scale of Buyer's intended use for the Property, Buyer may be eligible to receive government development incentives including but not limited to ad valorem tax abatement from Polk County, State of Florida grant funds, federal funds, and other similar incentives. The nature and amount of these incentives is a primary motivation of Buyer to proceed with execution of this Agreement and to purchase the target Property. Seller and Buyer acknowledge that the agreements required to secure these incentives will be negotiated and codified under separate agreements with the relevant parties. Seller shall work in good faith with Buyer to maximize any and all incentives available to Buyer. In the event Buyer cannot secure commitments for its desired development incentives before the expiration of the Inspection Period, the Buyer may, before the last day of the Inspection Period, cancel this Agreement by giving written notice thereof to the Seller. Upon such cancellation, Buyer shall have no obligation to make any further deposit, Escrow Agent shall pay the Initial Deposit to Buyer, and neither party shall have any further obligations to the other under this Agreement, except those that expressly survive termination.

(f) Permits and Applications. During the Inspection Period, Buyer shall make application for, and in good faith use its best efforts to obtain, all necessary environmental resource permits, surface water management permits, consumptive use permits, or other similar permits from governmental authorities with jurisdiction (individually each a "Permit" and collectively the "Permits") to allow the Property to be used by Buyer for the Intended Use. Buyer's good faith best efforts shall include, but not be limited to, ensuring that applications for Permits are completed, filed, and accepted by the governmental authorities with jurisdiction for consideration, before the expiration of the Inspection Period. If Buyer fails to complete, file, and take all steps required for a governmental authority with jurisdiction to accept an application for a necessary Permit before the expiration of the Inspection Period, Buyer waives the Condition to Close in Section 8(g)(iii) herein with respect to such Permit and Buyer shall proceed to close this Agreement.

6. Survey; Relationship of the Property to the Parent Parcel.

(a) The Buyer shall, at the Buyer's expense and at least thirty (30) days prior to the end of the Inspection Period, obtain and finalize a survey (the "Survey") of the Parent Parcel and the Property. The Survey shall comply with and be prepared in accordance with the Minimum Technical Standards of Chapter 21HH-6, Florida Administrative Code, as amended, for Land or Boundary Surveys, as defined therein, and Section 472.027 of the Florida Statutes, and shall certify compliance therewith and the gross acreage of the Property to the nearest hundredth of an acre. The Survey shall be signed and certified (to Seller, Buyer, the Title Agent (as defined below in Section 7(a)) and the Title Company (as defined below in Section 7(c)) by a registered and/or licensed land surveyor in Florida and shall have the surveyor's seal affixed to the Survey. The surveyor's registration or license number shall be indicated thereon, and the legal description of the parcel of property shall be set forth on the Survey. Upon the survey being obtained, the legal description prepared by the Surveyor of the Property shall be deemed for all purposes of this

Agreement the legal descriptions for the Parent Parcel and the Property and Exhibit "A" attached shall be deemed modified accordingly.

(b) For purposes of this Agreement, the Property shall include an approximately 77.53 ± portion of the Parent Parcel as generally depicted on Exhibit "A". The Property does not include approximately 125.47 ± acres of the Parent Parcel, which is comprised of: (i) land necessary to construct an appropriate public right-of-way along a mutually approved path in accordance with the standards of Seller's *Code of Ordinances*, any other applicable laws and any other applicable regulations of the Florida Department of Transportation; and (ii) other lands retained by the Seller for future sale and/or development.

7. Evidence of Title for Property.

(a) Title Agent. For purposes of this Agreement, the "Title Agent" shall be Jere F. Daniels, Jr. of Winderweede Haines Ward & Woodman, P.A., 329 Park Avenue North, Second Floor, Winter Park, Florida 32789, (407) 423-4246, jdaniels@whww.com.

(b) Marketable Title. For purposes of this Agreement, "Marketable Title" of the Property shall be a fee simple marketable record title vested in the Seller as of the date of Closing, as determined according to the current Uniform Title Standards adopted by authority of The Florida Bar, and not subject to any leasehold interests including but not limited to any cattle lease(s) existing as of the Effective Date.

(c) Title Information and Report. The Buyer shall, at the Buyer's expense and at least thirty (30) days prior to the end of the Inspection Period, cause to be issued through the Title Agent using a nationally recognized title underwriter (the "Title Company") and delivered to Buyer (with a copy promptly to Seller) a title insurance commitment (the "Title Commitment") committing the Title Company to insure the Buyer's title in and to the Property. The Title Commitment and the resulting owner's title insurance policy (the "Title Policy" or "Title Policies") shall be in the aggregate amount of the Purchase Price and shall be on ALTA standard forms as currently authorized and approved for use in the State of Florida. The Title Commitment shall set forth the state of the title of the Property, listing all exceptions and conditions to such title, including, without limitations, all easements, reservations, rights-of-way, covenants, restrictions, limitations and encumbrances affecting such parcel which would appear in the Title Policy, if and when issued, and shall be accompanied by a copy of each document affecting the such parcel and constituting an exception in the Title Commitment. The Title Policies shall insure Marketable Title to the Property.

The Buyer shall, within fourteen (14) days of the date of issuance of the Title Commitment, give to the Seller written notice that the condition of the title to the Property as set forth in the Title Commitment and the Survey either is or is not acceptable. In the event that the condition of the title is not acceptable, the Buyer shall give Seller a list of objections stating which exceptions in the Title Commitment are not acceptable, and the Seller shall undertake to eliminate the unacceptable exceptions in the manner set forth below; provided, however, that at Closing, mortgages shall be satisfied by Seller or the liens thereof partially released from the Property, as the case may be. The Seller shall, at the Seller's sole cost and expense, promptly undertake to use

the Seller's best efforts to eliminate all unacceptable matters to the reasonable satisfaction of the Buyer. In the event the Seller is unable, with the exercise of reasonable diligence, to eliminate the unacceptable or objectionable matters within forty-five (45) days after such notice, the Buyer may, at the Buyer's option, (i) accept title subject to the exceptions raised by the Buyer, without an adjustment in the Purchase Price, in which event such objections shall be deemed to be waived for all purposes, or (ii) decline to purchase the Property, whereupon the Buyer shall be entitled to retain all deposits made and the parties shall be relieved of any further responsibilities or obligations under this Agreement, except those that expressly survive termination.

8. Closing.

(a) Date and Place of Closing. Subject to the conditions set forth herein, Closing shall take place at such place as close to Winter Haven, Polk County, Florida as may be mutually agreed upon by the parties, and shall occur either: (i) on Friday, June 5, 2020 or such earlier time as may be mutually agreed upon by the parties, the Title Agent and the Escrow Agent in writing; or (ii), in the event the Buyer has timely given notice to Seller of unacceptable title exceptions, fourteen (14) days after all unwaived conditions, title defects or encumbrances have been removed or cured; whichever date is later (the "Closing" or the "Closing Date").

(b) The Seller's Obligations at Closing of the Property. At the Closing of the Property, the Seller shall do the following:

- (i) Execute, acknowledge, and deliver to the Buyer a general municipal deed without warranty (the "Deed") conveying Marketable Title to the subject property to the Buyer subject to the exceptions disclosed in the Title Commitment and not timely objected to by Buyer hereunder, which Deed shall be in form for recording with all required documentary stamps in the proper amount affixed thereto or provided for, and with the legal description of such parcel as contained in such Deed being identical to the legal description of such parcel as contained in the Survey of the subject parcel and the Title Commitment, as endorsed prior to Closing;
- (ii) Deliver to the Buyer and the Title Company evidence satisfactory to them of the Seller's authority to execute and deliver the documents necessary or advisable to consummate the applicable Closing, and that the person(s) executing same on behalf of the Seller has the full right, power, and authority to do so;
- (iii) Execute, acknowledge, and deliver to the Buyer and the Title Company an affidavit of no liens satisfactory to the Buyer and the Title Company to remove the materialmen and mechanic's lien and parties-in-possession standard exceptions from the Title Commitment;

- (iv) Execute, acknowledge, and deliver to the Buyer such affidavit or certificate in compliance with FIRPTA affirming that the Seller is not a "foreign person," as defined in the Internal Revenue Code of 1986, as amended;
- (v) Execute, acknowledge, and/or deliver any corrective instruments that may be required in connection with Marketable Title to the Property, and such other documents as the Title Company may reasonably require to be executed and/or delivered to complete the transaction contemplated hereunder.

(c) The Buyer's Obligations at Closing of the Property. Subject to the terms, conditions, and provisions hereof, and contemporaneously with the performance by the Seller of the Seller's obligations set forth in subparagraphs (b) and (c) above, the Buyer, at the Closings, shall do the following:

- (i) Execute and deliver such documents as may reasonably be required to satisfy Buyer's obligations under this Agreement; and
- (ii) Pay to the Seller the cash sum required to close the transaction contemplated hereunder after application of the Initial Deposit and the Additional Deposit if any.

(d) The Seller's Closing Costs. The Seller shall pay at Closing the following costs and expenses:

- (i) The cost of recording or curing defects in the title and delivering Marketable Title to the Property;
- (ii) The cost of preparing, obtaining, furnishing, recording and/or delivering any other document or instrument required to be prepared, obtained, furnished, recorded and/or delivered by the Seller hereunder; and
- (iii) The Seller's counsel fees, if any.

(e) The Buyer's Closing Costs. The Buyer shall pay at Closing the following costs and expenses:

- (i) The costs of recording the Deed, along with all documentary stamps or other taxes which are required to be affixed to the Deed;
- (ii) The cost of the Survey;

- (iii) The cost of the respective Title Policies and all searches and endorsements related thereto at State of Florida promulgated rates, less any applicable rebate from the Title Agent;
- (iv) The cost of obtaining, furnishing and/or delivering any other documents and instruments required to be obtained, furnished and/or delivered by the Buyer hereunder;
- (v) The Buyer shall pay the cost of recording any mortgage and any documentary stamp tax and intangible tax related thereto;
- (vi) The Buyer's counsel fees, if any; and
- (vii) The Buyer's broker fees, if any.

(f) At Closing, the Title Company shall issue Buyer a marked copy of the Title Commitment reflecting insurance of fee simple title in the name of the Buyer, subject to such encumbrances and other matters affecting title that: (a) are expressly acceptable to the Buyer, or (b) have been waived by the Buyer as part of the Title Commitment review process in Section 7 this Agreement.

(g) Conditions to Close. Buyer's obligation to close under this Agreement is conditioned upon:

- (i) Buyer obtaining purchase commitments satisfactory to Buyer from Buyer's intended client,
- (ii) Buyer approving, in its sole discretion, the environmental condition of the Property;
- (iii) Buyer obtaining any and all environmental resource permits, surface water management permits, consumptive use permits, or other similar permits to allow the Property to be used by Buyer for the Intended Use; and
- (iv) Buyer receiving, after diligent efforts by Buyer and with Seller's reasonable cooperation, government development incentives at levels and in amounts disclosed by Buyer to Seller within fifteen (15) days of the Effective Date of this Agreement.

Buyer shall, on or before the expiration date of the Inspection Period, formally notify Seller in writing whether the Conditions to Close identified herein have been met.

If Buyer has timely paid an Additional Deposit as provided for in Section 5(b) of this Agreement, Buyer shall also, on or before the fifteenth (15th) day before the date for Closing, formally notify Seller in writing whether the Conditions to Close identified herein have been met.

If Buyer fails to give formal notice to the Seller regarding the status of the Conditions to Close as required herein, all unsatisfied Conditions to Close provided for in this Section shall be waived and Buyer will proceed to close this Agreement.

Notwithstanding Section 31 of this Agreement, Buyer may, at any time, waive any or all of the Conditions to Close provided for in this Section by providing written notice of such waiver to the Seller.

Any Condition to Close that is waived shall, for purposes of this Agreement, be deemed satisfied.

9. “As Is” Purchase and Sale; No Warranties By Seller. Buyer acknowledges and agrees that, except as expressly set forth in this Agreement, Seller is selling the Property in its “AS IS, WHERE IS” condition and without any warranty, representation, guaranty, promise or inducement, express or implied, by Seller or any representative, agent, officer, or employee of Seller, as to its condition or suitability for any use or purpose whatsoever, including, without limitation, Buyer’s Intended Use. EXCEPT AS SET FORTH HEREIN, NO PERSON HAS BEEN AUTHORIZED BY SELLER TO MAKE ANY REPRESENTATION OR WARRANTY RELATING TO THE SELLER OR THE PROPERTY, OR OTHERWISE, IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY, AND, IF MADE, SUCH REPRESENTATION OR WARRANTY MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE SELLER. SPECIFICALLY, AND WITHOUT LIMITATION, SELLER MAKES NO WARRANTY TO BUYER WITH RESPECT TO THE PHYSICAL OR ENVIRONMENTAL CONDITION OR THE LAND USE, ZONING AND DEVELOPMENT STATUS OF THE PROPERTY, EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE SUITABILITY OF THE PROPERTY FOR BUYER’S INTENDED USE.

10. General Provisions. The following general provisions shall apply:

(a) Seller shall not be liable for any development costs related to the Property or Buyer’s Intended Use.

(b) Buyer shall have neither the power nor authority to create any liens on any of the Property while it is in the name of the Seller.

11. Escrow Agent; Duties. For purposes of this Agreement, the “Escrow Agent” shall be Frederick J. Murphy, Jr. of Boswell & Dunlap LLP, 245 South Central Avenue, Bartow, Florida 33830, (863) 533-7117, fjm@bosdun.com; beth@bosdun.com. The Escrow Agent shall perform its escrow duties pursuant to this paragraph. The Seller and the Buyer acknowledge and agree that the duties of the Escrow Agent are purely ministerial and are limited to the safekeeping of the Deposits made pursuant to this Agreement, including any interest earned thereon, and the disposition of same in accordance with the terms of this Agreement. If all or any part of the Deposits delivered to the Escrow Agent is in the form of a check or in any form other than cash, the Escrow Agent shall deposit same as required but shall not be liable for the non-payment thereof nor responsible to enforce collection thereof. The Escrow Agent shall not be deemed to have

knowledge of any matter unless and until the Escrow Agent receives actual written notice thereof, and the Escrow Agent shall not be charged with constructive notice whatsoever. In the event the Escrow Agent shall be uncertain as to its duties, or shall receive instructions or demands which, in the Escrow Agent's sole opinion, are conflicting or violative of any provision of this Agreement, then the Escrow Agent shall be entitled to refrain from taking any action until the Escrow Agent shall be directed in writing by the Seller and the Buyer (and, at the Escrow Agent's sole discretion, consented to by any third person) or by any final order or judgment of a court of competent jurisdiction, or the Escrow Agent may deposit the subject of escrow with the Clerk of the Circuit Court of the county in which the Property is located, and upon notifying the Seller and the Buyer of such action, all liability on the part of the Escrow Agent shall immediately and fully terminate except to the extent of accounting for any items delivered out of escrow. In the event that Escrow Agent interpleads the escrowed funds, Escrow Agent will pay the filing fees and court costs from the escrowed funds and will recover reasonable attorneys' fees and court costs from the escrowed funds in accordance with an agreement between Seller and Buyer or as awarded by the court. The Seller and the Buyer agree that the Escrow Agent shall not be liable to any party or person for any reason unless the Escrow Agent willfully, purposefully, and wrongfully breaches the terms of this Agreement in the misdelivery of any property held in escrow, or is grossly negligent in its duties. Buyer hereby acknowledges that Boswell & Dunlap LLP represents the Seller in the sale of the Property and is also acting as Escrow Agent. Buyer hereby agrees and consents that Escrow Agent may represent Seller if any dispute or enforcement action arises regarding this Agreement or any other matter. Buyer further acknowledges and consents that Boswell & Dunlap LLP's representation of Seller shall not be limited in any manner or by any means.

12. Brokers. Seller warrants to Buyer that it has not dealt with any real estate broker or salesperson with regards to this transaction. Buyer warrants to Seller that it has dealt solely with Chris Stephens of Lake Ivanhoe Real Estate Group, LLC, and that the total commission due to Mr. Stephens and/or Lake Ivanhoe Real Estate Group, LLC is by separate agreement with the Buyer, payable at Closing. Buyer shall compensate Mr. Stephens and/or Lake Ivanhoe Real Estate Group, LLC out of its separate funds at Closing. Buyer agrees to indemnify and hold Seller harmless from any and all commissions claimed by Chris Stephens and/or Lake Ivanhoe Real Estate Group, LLC, and any broker or third party arising by virtue of this transaction whose commissions might legally arise from acts of Buyer.

13. Survival of Representations, Warranties and Covenants. Notwithstanding any investigation made by either party or its authorized representatives before or after Closing, the express warranties, representations, covenants and agreements of the Seller and the Buyer as set forth in this Agreement are being made by that party with the knowledge and expectation that the other party is placing reasonable reliance thereon. The express warranties, representations, covenants and agreements made by either party herein shall be deemed to apply as of Closing of the Property being acquired by Buyer and shall be construed as continuing warranties, representations, covenants and agreements that shall survive the Closing, and shall be fully enforceable at law or in equity against that party and that party's successors and assigns, and by the other party and its successors and assigns.

14. Buyer's Actions Prior to Closing. Commencing as of the Effective Date continuing for the entire period in which this Agreement remains in effect:

(a) The Buyer shall not take any action or fail to take any action which would cause any of the representations or warranties made by the Buyer in this Agreement to be in any way not completely true, complete and accurate;

(b) The Buyer will not perform any act or permit any act to be performed which might cause damage, waste or destruction of the Property, except for those actions of Buyer party that may be provided for in the Buyer Easement Agreement;

(c) The Buyer shall comply with all federal, state and local laws, statutes, ordinances, regulations and orders relating to the Property; and

(d) The Buyer shall diligently perform or cause to be performed and take all action as otherwise set forth in this Agreement to be done by the Buyer.

15. Risk of Loss Prior to Closing. Prior to the Closing, the Seller shall bear all risk, all loss of, any damage to, or destruction of the Property, except as otherwise specifically provided herein.

16. Destruction and Condemnation.

(a) If, prior to Closing, there shall occur any substantial damage or destruction to any or all of the Property not yet purchased by Buyer, by fire, earthquake, erosion, flooding or force of nature, then Seller shall immediately notify Buyer of such fact in writing. Buyer shall then have the option, in its sole discretion and judgment, either to terminate this Agreement or to complete the transaction described in this Agreement. Buyer shall give written notice of such election to Seller and to Escrow Agent on or before the date which is thirty (30) days after Buyer shall have received written notice of such damage or destruction from Seller, and if necessary, the respective closing date shall be extended to allow Buyer at least thirty (30) days within which to make said election. Upon any election by Buyer to terminate this Agreement pursuant hereto, Escrow Agent shall pay the Initial Deposit and/or the Additional Deposit to the party entitled to receipt under the terms of this Agreement, and neither party shall have any further rights, duties or obligations hereunder, except those that expressly survive termination. If Buyer fails to make any election within the time permitted, it will be deemed to have elected to proceed with this transaction.

(b) If, prior to Closing, there shall occur any condemnation of all or any portion of the subject property, Seller shall give prompt written notice thereof to Buyer, and Buyer shall have the option, in its sole judgment and discretion, either to terminate this Agreement or to complete this transaction as provided for in this Agreement. Buyer shall give written notice of such election to Seller and to Escrow Agent on or before the date which is thirty (30) days after buyer shall have received written notice from Seller of such condemnation and if necessary, the Closing Date shall be extended to allow Buyer at least thirty (30) days within which to make such election. If Buyer elects to terminate this Agreement pursuant hereto, Escrow Agent shall pay the Initial Deposit and/or the Additional Deposit to the party entitled to receipt under the terms of this Agreement, and neither party shall have any further rights or obligations hereunder, except those

that expressly survive termination. If Buyer fails to make any election within the time permitted therefor, it shall be deemed to have elected to proceed with this transaction.

17. Failure of Performance and Default; Limitation of Remedies. If the Buyer fails to perform this Agreement within the time specified (including payment of any portion of the Initial Deposit and/or Additional Deposit, as applicable), as it pertains to the Property, the deposits previously paid by the Buyer may be retained by or for the account of the Seller as agreed upon and liquidated damages, consideration for the execution of this Agreement and in full settlement of any claims; whereupon, the Buyer and the Seller shall be relieved of all obligations under this Agreement except those that expressly survive termination; or the Seller, at the Seller's option, may proceed in equity to enforce the Seller's rights under this Agreement. Seller hereby waives any other rights or remedies it may have at law or equity in connection with a default by Buyer. If, for any reason other than the failure of the Seller to make such property have Marketable Title after diligent effort, the Seller fails, neglects or refuses to perform this Agreement, the Buyer may, as its sole and exclusive remedy, have the right to either (i) cancel this Agreement and receive a return of any refundable deposit previously paid, whereupon the Buyer and the Seller shall be relieved of all obligations under this Agreement except those that expressly survive termination; or (ii) seek specific performance to enforce Buyer's rights under this Agreement. Buyer hereby waives any other rights or remedies it may have at law or equity in connection with a default by Seller.

18. RADON GAS DISCLOSURE. PURSUANT TO AND IN ACCORDANCE WITH SECTION 404.056(5) OF THE FLORIDA STATUTES, THE SELLER AND THE BUYER HEREBY ACKNOWLEDGE AND ARE AWARE THAT RADON GAS IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH UNIT.

19. Choice of Law and Venue. This Agreement shall be construed and interpreted under the laws of the State of Florida, without giving effect to principles of conflict of laws, except where specifically preempted by federal law. The Seller and the Buyer agree that the proper venue with respect to any litigation in connection with this Agreement shall be in Polk County, Florida and lie exclusively with the Florida state court system, which, as of the Effective Date of this Agreement, consists of the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida and the County Court in and for Polk County, Florida.

20. Notices. All notices provided for herein may be delivered in person or may be mailed in the United States mail as follows:

TO BUYER: Caribbean Distillers LLC  
Attn: Jose Rivera, General Manager  
P.O. Box 1447  
Lake Alfred, Florida 33850

with copy to: Jere F. Daniels, Jr.  
(which shall not Winderweedle Haines Ward & Woodman, P.A.  
constitute notice) P.O. Box 880  
Winter Park, FL 32790-0880

TO SELLER: City of Winter Haven  
Attn: Mike Herr, City Manager  
P.O. Box 2277  
Winter Haven, Florida 33882-2277

with copy to: Frederick J. Murphy, Jr., Esq.  
(which shall not City Attorney  
constitute notice) Boswell & Dunlap, LLP  
245 S. Central Avenue  
Bartow, Florida 33830-4620

If given to the Title Company, any such notice shall be addressed as follows:

Jere F. Daniels, Jr.  
Winderweedle Haines Ward & Woodman, P.A.  
P.O. Box 880  
Winter Park, FL 32790-0880

with copies to the Seller and Buyer.

If given to the Escrow Agent, any such notice shall be addressed as follows:

Frederick J. Murphy, Jr., Esq.  
Boswell & Dunlap, LLP  
245 S. Central Avenue  
Bartow, Florida 33830-4620

with copies to the Seller and the Buyer.

21. Assignment. The Buyer shall not have the right to assign this Agreement to another entity without written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed.

22. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns, except as otherwise provided herein.

23. Incorporation of Exhibits and Captions. The exhibits attached hereto are incorporated into this Agreement as if set forth in full in this Agreement. The descriptive section headings and captions contained in this Agreement are for the convenience of the parties only and

do not in any way modify, amplify, alter, control, affect the meaning or construction, or give full notice of the provisions thereof.

24. Time of the Essence. The parties hereto acknowledge that time is of the essence for each time and date specifically set forth in this Agreement.

25. Time Periods. The calculation of the number of days that have passed during any time period prescribed shall be based on calendar days, and any such period shall commence on the day immediately following the action or event giving rise to the commencement of the period and shall expire at 5:00 p.m., Florida time, on the last day of the time period. Furthermore, any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday shall extend to 5:00 p.m., Florida time, of the next day that is not a Saturday, Sunday, or legal holiday. For purposes of this Agreement, a “legal holiday” is a public holiday identified in 5 U.S.C. § 6103(a).

26. Attorneys' Fees and Costs. In connection with any litigation, including appellate proceedings, arising out of or by reason of this Agreement, the prevailing party shall be entitled to recover all reasonable costs, charges, and expenses, including without limitation attorneys' fees and court costs expended or incurred in connection therewith.

27. Further Acts. Any party hereto, upon the request of any other party, agrees to perform the further acts, and to execute and deliver such other documents that are reasonably necessary to carry out the provisions of this Agreement.

28. Entire Agreement and Severability. This Agreement contains the entire agreement and understandings among the parties relating to the transaction contemplated in this Agreement, and all prior or contemporaneous agreements, understandings, representations, and statements pertaining the subject matter hereof, whether oral or written, are merged into this Agreement and shall have no further force and effect. Should any portion of this Agreement be declared invalid or unenforceable, then that portion shall be deemed to be severed from this Agreement and shall not affect the remainder of this Agreement, unless the portion is so material that its severance from this Agreement would alter the intent and purpose of this Agreement.

29. Amendments. Any amendment to this Agreement shall not bind any of the parties hereto unless such amendment is in writing and executed by authorized officers of the parties to this Agreement. Any amendment to this Agreement shall be binding upon the Seller and the Buyer as soon as it has been executed by both.

30. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement; provided, however, that each of the counterparts shall have been executed by the parties hereto.

31. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not

be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

32. Execution by Facsimile. The parties hereto agree this Agreement may be signed by facsimile and such signature shall be enforceable as if it were an original.

33. Number and Gender. Except as otherwise required by the context of this Agreement, whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular. One gender shall encompass all. The words "Seller" and "Buyer" shall include their respective successors and permitted assigns, if any.

34. Seller Approval Required. The Seller's performance under this Agreement is contingent upon receipt of approval from Seller's City Commission. Notwithstanding the Seller's execution by the City Manager or anything substantive herein to the contrary, the Seller shall not be required to perform any of its obligations under this Agreement without the City Commission's approval of the purchase and sale, the Purchase Price, and all other provisions herein given at a duly called public meeting after notice in accordance with the Commission's general rules of business.

IN WITNESS WHEREOF, each of the parties has executed this sixteen (16) page Agreement for Sale and Purchase of Real Property as of the date indicated.

SELLER:

CITY OF WINTER HAVEN, FLORIDA

\_\_\_\_\_  
Mike Herr, City Manager

\_\_\_\_\_  
Date

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Vanessa Castillo, City Clerk

\_\_\_\_\_  
Frederick J. Murphy, Jr., City Attorney

BUYER:

CARIBBEAN DISTILLERS LLC

\_\_\_\_\_  
Member-Manager

\_\_\_\_\_  
Date

WITNESSES:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Printed Name:

**EXHIBIT “A”**  
TO  
AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY  
BETWEEN CITY OF WINTER HAVEN, FLORIDA AND CARIBBEAN DISTILLERS LLC

**Parent Parcel**

**Legal Description of the Parent Parcel:** (To be finalized and provided by the surveyor pursuant to Section 6(a) of the Agreement)

**General Description of the Parent Parcel:** Land lying South of City of Winter Haven Wastewater Treatment Plant No. 3; Southwest of the City of Winter Haven Effluent Storage Ponds; West of the Evansville Western Railway Intermodal Logistics Center; North of property owned by Winter Haven Industrial Investors, LLC; and East and Southeast of property owned by Highland Cassidy, LLC; as depicted on the attached map and containing some or all of lands assigned Polk County Property Appraiser Parcel ID No. 26-29-21-000000-021000, No. 26-29-21-000000-021010, No. 26-29-22-000000-012020 and No. 26-29-22-000000-013010.

Approximately 203.00 ± Acres

**Property**

**Legal Description of the Property:** (To be finalized and provided by the surveyor pursuant to Section 6(a) of the Agreement)

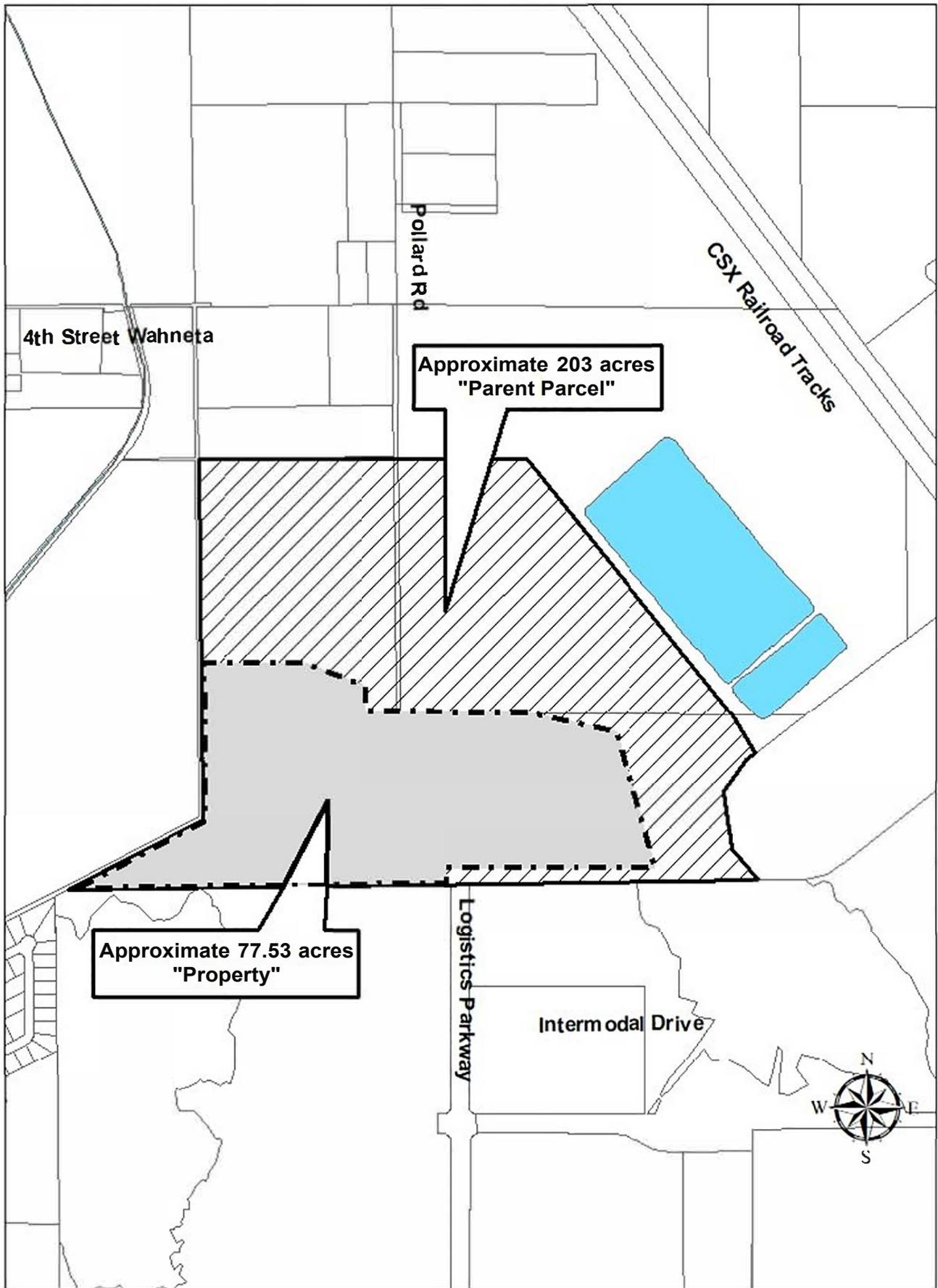
**General Description of the Property:** A portion of the Parent Parcel described generally as land lying North of property owned by Winter Haven Industrial Investors, LLC; East of property owned by Highland Cassidy, LLC; and South, Southwest and West of property to be retained by the Seller for future sale and/or development; such portion being depicted on the attached map and likely containing some or all of lands assigned Polk County Property Appraiser Parcel ID No. 26-29-21-000000-021000, No. 26-29-21-000000-021010, and No. 26-29-22-000000-012020.

Approximately 77.53 ± Acres

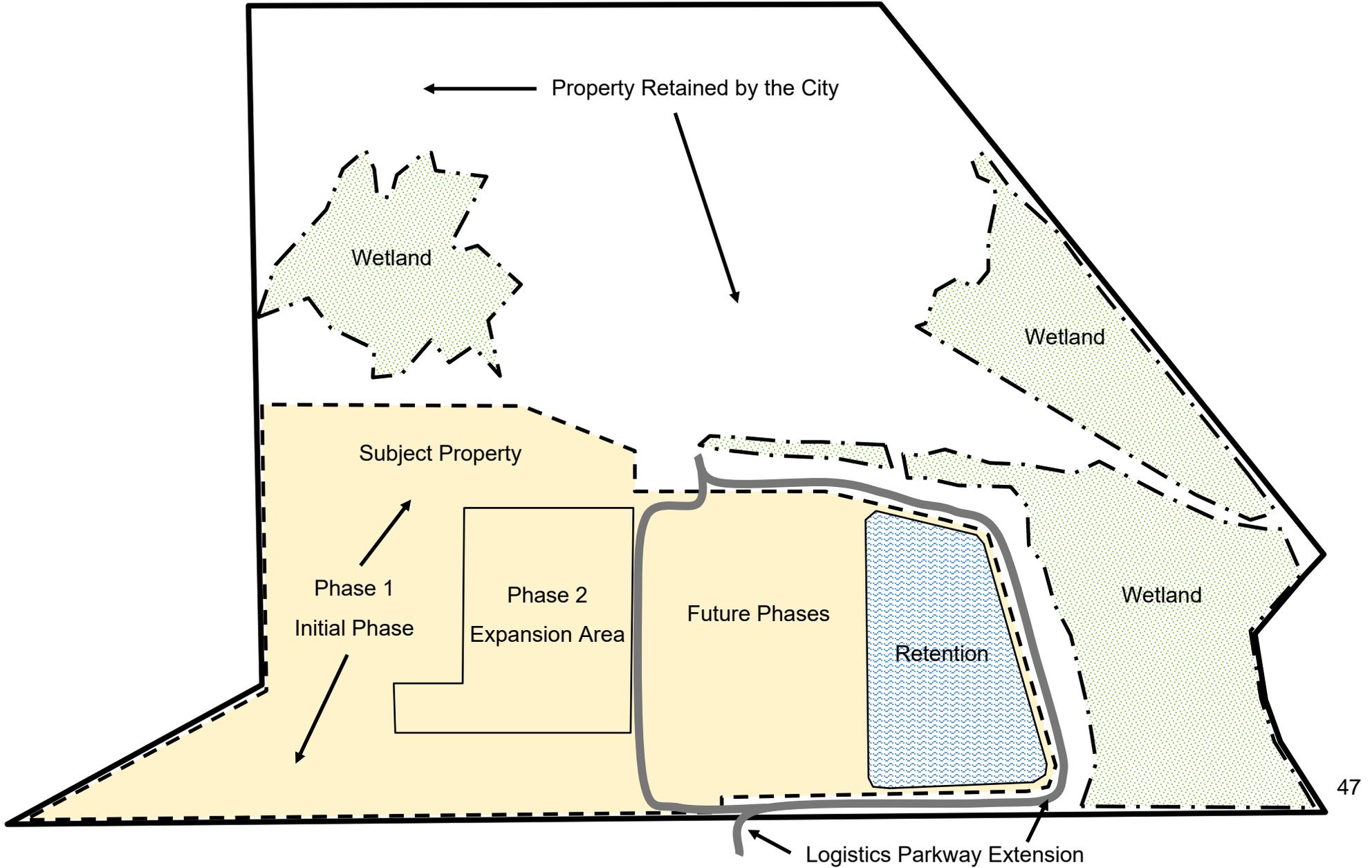
Upon a survey being obtained as provided for in Section 6(a) of the Agreement, the legal descriptions prepared by the Surveyor of the Parent Parcel and the Property shall be deemed the legal descriptions for the Parent Parcel and the Property and this Exhibit “A” shall be modified accordingly.

Attachment: Map of Parent Parcel and Property

# Map of Parent Parcel and Property



Draft Concept Plan



**AN APPRAISAL OF  
FS 288.075 – PROJECT SUGAR CANE  
203.0± ACRES OF LAND  
LOCATED AT  
NORTH TERMINUS OF LOGISTICS PARKWAY  
WINTER HAVEN, POLK COUNTY, FL 33880  
OUR FILE NO.: 19-102 NM**

**AS OF  
SEPTEMBER 6, 2019**

**AT THE REQUEST OF  
MR. ERIC LABBE, AICP  
GROWTH MANAGEMENT DIRECTOR  
CITY OF WINTER HAVEN  
451 THIRD STREET, NW  
WINTER HAVEN, FL 33881**

**PREPARED BY  
MANCUSO APPRAISAL SERVICES, INC.  
377 E. CENTRAL AVENUE  
WINTER HAVEN, FLORIDA 33880**

# Mancuso Appraisal Services, Inc.

## APPRAISALS/CONSULTING

*Nicholas J. Mancuso, MAI*

State-certified general real estate appraiser RZ 542

*Kevin Nogues*

State-registered trainee real estate appraiser RI21884

September 23, 2019

Mr. Eric Labbe, AICP  
Growth Management Director  
City of Winter Haven  
451 Third Street, NW  
Winter Haven, FL 33881

Dear Mr. Labbe:

In accordance with your request, I have completed an appraisal of the 203.0± gross acre tract of land with approximately 120 acres +/- of uplands, located at the northern terminus of Logistics Parkway within the Florida's Gateway intermodal logistics center, north of State Road 60 and west of CSX rail terminal in Winter Haven, Polk County, Florida. The scope of work for this assignment will consist of the Sales Comparison Approach with the information and analyses presented in a narrative format.

The purpose of this appraisal was to estimate the Market Value of the fee simple interest in the subject property, as of a current date.

The attached appraisal report provides a description of this property and my method of valuation. The Table of Contents following this letter serves as an outline of the report.

Based on the data presented in the following appraisal, it is my opinion that the current **Market Value** of the fee simple interest of the herein described property based on the extraordinary assumptions regarding a zoning/land use change and net useable upland acreage, as of September 6, 2019, was:

**FIVE MILLION FOUR HUNDRED THOUSAND DOLLARS**  
**(\$5,400,000)**

*This appraisal is based on the extraordinary assumptions that the subject property will obtain approval for a zoning change to I-1 Light Industrial with a future land use classification of Industrial and that the subject's upland land area is 120 acres of net useable area (per client instructions).*

377 E. Central Avenue Winter Haven, FL 33880  
Office (863) 294-2331 \* Fax: (863) 324-6656  
Website: [www.mancusoappraisal.com](http://www.mancusoappraisal.com)

Mr. Eric Labbe  
September 23, 2019  
Page 2 of 2

This appraisal is subject to the Assumptions and Limiting Conditions and other comments stated herein. I appreciate being considered for this assignment. Please feel free to call on me should you or any user of this report need further clarification or assistance

Respectively submitted,

**MANCUSO APPRAISAL SERVICES, INC.**

A handwritten signature in cursive script, appearing to read "Nicholas J. Mancuso".

Nicholas J. Mancuso, MAI  
State-certified general real estate appraiser RZ 542

NJM/eap

Attachments

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## SUMMARY OF FACTS AND CONCLUSIONS

<u>Property Identification:</u>	northern terminus of Logistics Parkway, and west of the CSX RR terminal, Winter Haven, Polk County, Florida.
<u>Property Type:</u>	Vacant land
<u>Legal Description:</u>	<b>Parcel #26-29-21-690500-021000:</b> WAHNETA FARMS PB 1 PGS 82A 82B LOTS 210 211 229 230 233 274 AND 275 <b>Parcel #26-29-21-000000-021010:</b> E2300 FT OF SE1/2 OF S1/2 LESS THAT PT LYING WITHIN PARCEL 2A WEST AS DESC IN OR 9285-551 <b>Portion of Parcel #26-29-22-000000-012020:</b> E 1980 FT OF N1/2 W OF R/R & S1/2 LESS THAT PT LYING WITHIN FOLL:COMM SW COR OF SEC 15 N1-00-16W ALONG W LINE OF SEC 3748.4 FT TO SWLY R/W OF CSX RR S37-02-21E ALONG SWLY R/W 877.23 FT TO POB S37-02-21E ALONG SAID R/W 13893.92 FT S89-29-08W 85.86 FT N37-02-21W 1005.25 FT N56-42-55W 305.69 FT N72-40-30W 1159.77 FT S89-26-28W 1391.88 FT S89-58-48W 3042.67 FT N0-23-45E 1329.05 FT TO S LINE OF SEC 22 N89-55-24E ALONG <b>Portion of Parcel #26-29-22-000000-013010:</b> W 3300 FT OF N1/2 W OF R/R LESS THAT PT LYING WITHIN FOLL:COMM SW COR OF SEC 15 N1-00-16W ALONG W LINE OF SEC 3748.4 FT TO SWLY R/W OF CSX RR S37-02-21E ALONG SWLY R/W 877.23 FT TO POB S37-02-21E ALONG SAID R/W 13893.92 FT S89-29-08W 85.86 FT N37-02-21W 1005.25 FT N56-42-55W 305.69 FT N72-40-30W 1159.77 FT S89-26-28W 1391.88 FT S89-58-48W 3042.67 FT N0-23-45E 1329.05 FT TO S LINE OF SEC 22 N89-55-24E ALONG SAID LINE 1561.21 FT N0-03-53W
<u>Property Rights Appraised:</u>	Fee Simple
<u>Date of Value:</u>	September 6, 2019
<u>Date of Report:</u>	September 23, 2019
<u>Census Tract No.:</u>	145.01, Polk County
<u>Land Area:</u>	120.0± acres – Net Useable Uplands Assumption per client 83.0± acres – Wetlands/Conservation/Retention Assumption per client 203.0± acres
<u>Zoning/Future Land Use:</u>	Public Institutional / Institutional (current) Industrial (proposed)
<u>Topography/Soil:</u>	Primary soil type: Immokalee sand (34.2%)
<u>Highest &amp; Best Use:</u>	Industrial / distribution warehouse use
<u>Estimated Exposure Time:</u>	6 to 9 Months
<u>Current Market Value Estimates:</u>	\$5,400,000

*This appraisal is based on the extraordinary assumptions that the subject property will obtain approval for a zoning change to I-1 Light Industrial with a future land use classification of Industrial and that the subject's net useable upland land area is 120 acres (per client instructions).*

## SCOPE OF APPRAISAL

The scope, or extent of the process of collecting, confirming and reporting data, of this appraisal consists of the following:

<b>REPORT TYPE</b>	Appraisal report
<b>PROPERTY IDENTIFICATION</b>	<p>Tax ID: 26-29-21-690500-021000, 26-29-21-000000-021010, 26-29-22-000000-012020, and 26-29-22-000000-013010</p> <p>Brief Legal: <b>Parcel #26-29-21-690500-021000:</b> WAHNETA FARMS PB 1 PGS 82A 82B LOTS 210 211 229 230 233 274 AND 275  <b>Parcel #26-29-21-000000-021010:</b> E2300 FT OF SE1/2 OF S1/2 LESS THAT PT LYING WITHIN PARCEL 2A WEST AS DESC IN OR 9285-551  <b>Portion of Parcel #26-29-22-000000-012020:</b> E 1980 FT OF N1/2 W OF R/R &amp; S1/2 LESS THAT PT LYING WITHIN FOLL:COMM SW COR OF SEC 15 N1-00-16W ALONG W LINE OF SEC 3748.4 FT TO SWLY R/W OF CSX RR S37-02-21E ALONG SWLY R/W 877.23 FT TO POB S37-02-21E ALONG SAID R/W 13893.92 FT S89-29-08W 85.86 FT N37-02-21W 1005.25 FT N56-42-55W 305.69 FT N72-40-30W 1159.77 FT S89-26-28W 1391.88 FT S89-58-48W 3042.67 FT N0-23-45E 1329.05 FT TO S LINE OF SEC 22 N89-55-24E ALONG  <b>Portion of Parcel #26-29-22-000000-013010:</b> W 3300 FT OF N1/2 W OF R/R LESS THAT PT LYING WITHIN FOLL:COMM SW COR OF SEC 15 N1-00-16W ALONG W LINE OF SEC 3748.4 FT TO SWLY R/W OF CSX RR S37-02-21E ALONG SWLY R/W 877.23 FT TO POB S37-02-21E ALONG SAID R/W 13893.92 FT S89-29-08W 85.86 FT N37-02-21W 1005.25 FT N56-42-55W 305.69 FT N72-40-30W 1159.77 FT S89-26-28W 1391.88 FT S89-58-48W 3042.67 FT N0-23-45E 1329.05 FT TO S LINE OF SEC 22 N89-55-24E ALONG SAID LINE 1561.21 FT N0-03-53W</p> <p>Street Address: 0 Pollard Rd., Winter Haven, Polk County, Florida</p>
<b>PROPERTY RIGHTS APPRAISED</b>	Fee simple interest
<b>EFFECTIVE DATE OF VALUE</b>	09/06/2019
<b>DATE OF REPORT RESEARCH ANALYSIS</b>	08/28/2019 through 09/23/2019
<b>INSPECTION</b>	Physical inspection of the subject property, various photographs and notes on condition
<b>APPRAISER(S)</b>	Nicholas J. Mancuso, MAI State Certified General Real Estate Appraiser 542
<b>INTENDED USE</b>	Internal use, including but not limited to, rendering a decision relative to a possible sale of the subject property.
<b>INTENDED USER</b>	The intended users are Mr. Eric Labbe and the City of Winter Haven and no other user has the right to rely on this appraisal or any value conclusions stated herein.
<b>MARKET AREA RESEARCH</b>	Market area researched for sales consisted of the Central and Eastern Florida market area, over the past three year period
<b>APPRAISAL APPROACHES USED</b>	Sales Comparison Approach
<b>APPRAISAL APPROACHES EXCLUDED</b>	To the degree that the assignment results produce a credible report for the intended use and user; we have not included the Cost Approach and Income Approach. The elimination of the Cost Approach and Income Approach in this assignment is not felt to hinder the valuation or analysis and the subject appraisal is considered credible.

<b>EXTRAORDINARY ASSUMPTION</b>	An assumption, directly related to a specific assignment, which if found to be false, could alter the appraiser's opinion or conclusion. This appraisal is based on the extraordinary assumptions that the subject property will obtain approval for a zoning change to I-1 Light Industrial with a future land use classification of Industrial and that the subject's upland land area is 120 acres of net useable area (per client instructions). The 83 acres +/- of additional land area will contain the land area for storm water retention, along with potential wetlands and conservation areas.
<b>HYPOTHETICAL CONDITIONS</b>	Hypothetical conditions are defined as those conditions, which are contrary to what exists, but are supposed for the purpose of analysis. In this appraisal, there are no hypothetical conditions.

**Market Value**, as used in this appraisal, is defined as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>1</sup>

**Exposure Time:**

Based on conversations and discussions with various real estate brokers and market participants, the exposure time for the subject property is estimated at 6 to 9 months. Exposure time is defined as the period prior to the date of valuation considered necessary to achieve the estimated value.

**NEIGHBORHOOD DATA**

The subject property is located at the southern edge of the City of Winter Haven, north of State Road 60 and a few miles west of U.S. Highway 27. This area of Central Polk County has historically been utilized as pasture land and citrus groves, along with various areas of flood prone land and wetlands.

The CSX railway railroad lines traverse in a northwest to southeast direction through this area and are a major influence on the immediate subject neighborhood. In recent years the CSX Intermodal Terminal was developed and constructed along the southwest side of the railroad lines. This terminal is one of about 40 in the United States and is located on a 318 acre site and serves domestic intermodal freight.

<sup>1</sup> Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989

The terminal features five 3,000-foot loading tracks and two 10,000-foot arrival and departure tracks. The terminal is intended to provide an anchor for economic development in the region and position Florida future growth while reducing congestion on the highways. The terminal employs 43 CSX employees and can process up to 300,000 containers a year.

The subject property is located adjacent to the 932.83 acre Florida's Gateway project which is planned for over 8 million square feet of industrial development with the first building constructed (407,400 square foot tilt-wall warehouse). This project is anticipated to create 8,500 jobs once built-out.

Much of the industrial development occurring in Polk County is mega-distribution warehouse uses and business parks with distribution warehousing and the primary draw is Interstate 4 located approximately 20 miles north of the subject property. The most active area being the intersection of I-4 and U.S. 27 which is basically the geographical center of the State of Florida. The central location offers connectivity to 18 million people within a half day's drive.

As the population of this area has increased, the I-4 corridor between Orlando and Tampa has had a corresponding increase to the demands of commercial development activity. The northwest quadrant of Interstate 4 and U.S. 27 has been heavily developed with several large distribution warehouse type uses with several large buildings. The activity within the last few years for land located in the northwest quadrant of I-4 and U.S. 27 has been substantial with Fed Ex and Walmart buying a large tract of land for a mega distribution centers.

Additional industrial and distribution development has been occurring in the Haines City area along SR 544 and includes a large distribution center for Aldi's grocery store chain and the recent announcement of Carvana proposing to build a \$42,000,000 facility. The largest planned facility in Polk County consists of the \$240 million Nucor facility which is planned for a 400 +/- acre site at the southern edge of Polk County, near Frostproof.

The strength of the subject area lies in the fact that it is central to the major growth area of Florida, it's overall population, it's locality near State Road 60 and U.S. Hwy 27, and access to the I-4 corridor, This area of East and Central Polk County is expected to see additional growth for the upcoming years.

## **SUBJECT PROPERTY**

### **Site Data**

**Size and Shape:** The subject site is an irregular shaped tract with a total site area estimated at approximately 203.00 acres (per client). Per client instructions for this assignment, the subject property is assumed to contain approximately 120 acres of net useable upland soils that is not considered as wetlands or conservation area. The 83 acres +/- of additional land area will contain the land area for storm water retention, along with potential wetlands and conservation areas. The actual upland acreage is subject to survey and is an extraordinary assumption of this appraisal.

**Road Frontage / Access:** The subject property does not have any actual road frontage but has road access from a public road. Access to the subject property is via Logistics Parkway, a two-lane paved public roadway. The subject property is located at the northern terminus of the paved Logistics Parkway which is a two lane paved roadway that extends southward approximately 2.0 miles to intersect with

State Road 60.

**Utilities:** Public utilities available to the subject include water and sewer services from the City of Winter Haven. Electric service is provided by Tampa Electric.

**Rail Access:** The subject property will have the potential to rail access via a proposed easement across property under the ownership of the City of Winter Haven to the CSX rail lines to the east of the subject.

**Topography/Soil:** The subject appears to have a sandy soil base and is generally level and at road grade. Per soil maps for the area, the subject property has eleven soil types. The primary soil type is identified as Immokalee sand (#21). This poorly drained soil is in broad areas on flatwoods. Slopes are smooth to concave and are 0 to 2 percent. This soil has a seasonal high water table within 12 inches of the surface for 1 to 4 months in most years. The available water capacity is low. Permeability is moderate in the subsoil. AOI – 34.2%

The remaining soil types are:

- Pomona fine sand (#7) – This poorly drained soil is in broad areas on flatwoods. Slopes are smooth to concave and are 0 to 2 percent. This soil has a seasonal high water table within 12 inches of the surface for 1 to 4 months during most years. The available water capacity is low. Permeability is moderate or moderately slow in the lower part of the subsoil. AOI – 19.1%
- Samsula muck, frequently ponded, 0 to 1 percent slopes (#13) – This very poorly drained, organic soil is in swamps and marshes. Slopes are smooth and are less than 2 percent. This soil has a seasonal high water table at or above the surface except during extended dry periods. Areas of flood plains are subject to frequent flooding as well as to ponding. The available water capacity is high. Permeability is rapid. AOI – 5.2%
- Smyrna and Myakka fine sands (#17) – This soil consists of poorly drained soils in broad areas on flatwoods. This soil has a seasonal high water table within 12 inches of the surface for 1 to 4 months in most years. The available water capacity is low. Permeability is moderate or moderately rapid in the subsoil. AOI – 6.4%
- Pomello fine sand (#22) – This moderately well drained soil is on low, broad ridges and low knolls on flatwoods. Slopes are smooth to convex and are 0 to 2 percent. This soil has a seasonal high water table at a depth of 24 to 40 inches for 1 to 4 months in most years. The available water capacity is very low. Permeability is moderately rapid in the subsoil. AOI – 2.3%
- Ona-Ona, wet, fine sand, 0 to 2 percent slopes (#23) – This poorly drained soil is in broad areas on flatwoods. Slopes are smooth to concave and are 0 to 2 percent. This soil has a seasonal high water table within 12 inches of the surface for 1 to 4 months in most years. The available water capacity is low. Permeability is moderate in the subsoil. AOI – 9.0%
- Placid and Myakka fine sands, depressional (#25) – This soil consists of very poorly drained Placid and Myakka soils in depressions mostly on flatwoods. This soil is ponded for at least 6 months during most years. The available water capacity is moderate. Permeability is rapid. AOI – 4.6%
- St. Lucie fine sand, 0 to 5 percent slopes (#29) – This excessively drained soil is on dune-like ridges and isolated knolls. Slopes are smooth to concave. This soil does not have a water table within a depth of 72 inches. The available water capacity is very low. Permeability is very rapid. AOI – 2.4%

- Kaliga muck, frequently ponded, 0 to 1 percent slopes (#32) – This very poorly drained soil is in marshes and swamps. Slopes are smooth to concave and are less than 2 percent. Unless this soil is drained, it has a seasonal high water table at the surface or is ponded except during extended dry periods. Areas of flood plains are subject to frequent flooding as well as to ponding. The available water capacity is very high. Permeability is slow or very slow. AOI – 3.3%
- Felda fine sand (#42) – This poorly drained soil is in sloughs or low hammocks on flatwoods. Slopes are smooth to concave and are 0 to 2 percent. This soil has a seasonal high water table within 12 inches of the surface for 2 to 4 months during most years. The available water capacity is low. Permeability is moderately rapid. AOI – 2.2%
- Oldsmar fine sand (#43) – This poorly drained soil is in broad areas on flatwoods. Slopes are smooth and convex and are 0 to 2 percent. This soil has a seasonal high water table with 12 inches of the surface for 1 to 4 months during most years and at a depth of 12 to 40 inches for more than 6 months. The available water capacity is low. Permeability is slow or very slow in the loamy subsoil. AOI – 11.4%

**Flood Zone:** According to the Federal Flood Insurance Map Community Panel No. 12105C0530G dated December 22, 2016, the majority of the subject property is classified as being in Zone “X” which is an area not prone to flooding. In the northwestern corner, southeastern corner, and southwestern corner, the flood zone is “X5” which is 0.2% annual chance flood hazard. Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one sq. mile.

**Zoning / Land Use Classification:**

Per the client’s instructions, the appraiser was to appraise the subject property under the extraordinary assumption that the subject property will receive approval for zoning and future land use that would allow industrial development including manufacturing activity. Specifically the zoning would be changed to I-1 Light Industrial and the future land use would be changed to Industrial. It is noted that the adjacent property to the south of the subject which is the Florida Gateway Intermodal Logistics Center has a future land use classification of Industrial.

The city of Winter Haven’s zoning code for I-1 Industrial use is defined as:

The I-1 light industrial district is intended primarily for the manufacture of small articles and nonobjectionable products not involving the use of any materials, processes or machinery likely to cause undesirable effects upon nearby or adjacent business and residential property. Permitted uses include cold storage and frozen food lockers; dairy; laundry plant; manufacturing; storage of sand/gravel/blocks; truck/vehicle repair for large vehicles/trucks; truck stop.

The city of Winter Haven’s Future Land Use classification of Industrial is defined as:

Industrial. Distribution, business and office parks, research and development facilities, manufacturing, processing, and storage land uses shall be mapped as Industrial on the Future Land Use Map. Areas designated as Industrial are intended to be high intensity employment and trade centers requiring convenient access to major highways and rail facilities for the movement of goods. Secondary uses within areas designated as Industrial may include convenience retail and services, daycare, hotels/motels, and restaurant

According to the city of Winter Haven Planning Department, the subject property has a current zoning classification of Public Institutional (PI) and a future land use classification of Institutional (municipal owned property). The purpose of the PI district is to establish locations for existing or future public and private institutional uses, such as local, State and Federal government buildings and facilities; schools, hospitals, major medical clinics, hospices, nursing homes, adult and child care facilities, churches, colleges and universities.

**Real Estate Tax Assessment:**

The subject property is identified and assessed by the Polk County Property Appraisers Office as tax parcel numbers 26-29-21-690500-021000, 26-29-21-000000-021010, portion of 26-29-22-000000-012020 and portion of 26-29-22-000000-013010. The following is the **proposed 2019** real estate assessments and taxes.

Parcel #	LAND VALUE	IMPROVED VALUE	CAP DIFF.	ASSESSED VALUE	EXEMPT VALUE	TOTAL TAXES
262921-690500-021000	\$ 29,765	\$ 0	\$ 0	\$ 29,765	\$ 29,765	\$ 0
262921-000000-021010	\$ 364,650	\$ 0	\$ 0	\$ 364,650	\$ 364,650	\$ 0
262922-000000-012020*	\$ 829,456	\$ 0	\$ 0	\$ 829,456	\$ 829,456	\$ 0
262922-000000-012020*	\$ 2,104,449	\$ 386,503	\$ 961,962	\$ 1,528,990	\$ 1,528,990	\$ 0
<b>Totals</b>	<b>\$ 3,328,320</b>	<b>\$ 386,503</b>	<b>\$ 961,962</b>	<b>\$ 2,752,861</b>	<b>\$ 2,752,861</b>	<b>\$ 0</b>

**\*The subject property is only a portion of these properties. These figures are for the parent tract.**

There are no delinquent taxes due for the subject property.

**Existing Improvements:**

None

**Ownership / Occupancy / Recent Sales History:**

The current owner of the subject property is the City of Winter. There have been no recorded sales transactions involving the subject property in the past three years. The subject property is reportedly not currently listed for sale or actively being marketed for sale.

**Highest and Best Use**

The term “Highest and Best Use,” as used herein, is that likely or probable use or uses of the property which will support its greatest value. A Highest and Best Utilization must be legally permissible, physically possible and financially feasible.

**Legal Considerations:** The subject property has been appraised under the extraordinary assumption that the subject property will be approved for a zoning change from its current Public Institutional zoning and land use classification to zoning and future land use that would allow industrial development including manufacturing activity. The city of Winter Haven’s zoning code for Industrial use is I-1 Light Industrial and the future land use classification would be Industrial.

**Physical Characteristics of the Property:** The subject site is an irregular shaped vacant tract of land with a total site area estimated at approximately 203.0 acres +/-, of which the net usable acreage is assumed (per client instructions) to be 120.0 acres. The subject site appears generally level to gradually sloping and to be of a sandy soil base for the useable land area. Access to the subject property is via the two lane paved public road known as Logistics Parkway which extends southward to intersect with State Road 60. The subject property is located at the northern terminus of Logistics Parkway, adjacent to the 932.83 acre Florida's Gateway Intermodal Logistics Center and the CSX Intermodal terminal. Public water and sewer are available from the City of Winter Haven and electric from Tampa Electric Company. The subject property will have the potential to rail access via a proposed easement across property under the ownership of the City of Winter Haven to the CSX rail lines.

**Economic Feasibility:** The subject property consists of a 120 +/- net useable upland acre vacant tract of land with an assumed zoning and land use classification of industrial that will permit manufacturing use.

The subject property is located adjacent to the 932.83 acre Florida's Gateway project which is planned for over 8 million square feet of industrial development with the first building constructed (407,400 square foot tilt-wall warehouse). This is also the location of the CSX Intermodal Terminal which is one of 40 terminals located throughout the United States. This terminal is located on a 318 acre site and serves domestic intermodal freight. The terminal features five 3,000-foot loading tracks and two 10,000-foot arrival and departure tracks. The terminal is intended to provide an anchor for economic development in the region and position Florida future growth while reducing congestion on the highways.

The most likely buyer/user of the subject property would be a developer or owner-occupant for a large distribution or manufacturing type use that would utilize the subject's access, zoning/land use classification, infrastructure available and proximity to the CSX intermodal terminal.

### **Conclusion as to Highest and Best Use**

Considering the subject's location, access, zoning / land use classification, site size, soil conditions and surrounding uses, it is my opinion that the highest and best use of the subject property, as vacant, would be for industrial distribution or manufacturing type use(s).

### **METHOD OF APPRAISAL**

There are three traditional approaches that can be utilized to estimate market value, i.e., the Cost Approach, the Sales Comparison Approach, and the Income Approach. The Cost Approach and the Income Approach are applicable to improved properties, whereas the Sales Comparison Approach is applicable to both improved and unimproved properties.

The Sales Comparison Approach is based on a direct comparison of the subject property with recent sales of similar, vacant properties.

In valuing the subject, the Sales Comparison approach is believed to be the only applicable approach and has thus been utilized. There is currently adequate sales data of similarly located and zoned parcels to provide a credible appraisal based on use of the Sales Comparison Approach only.

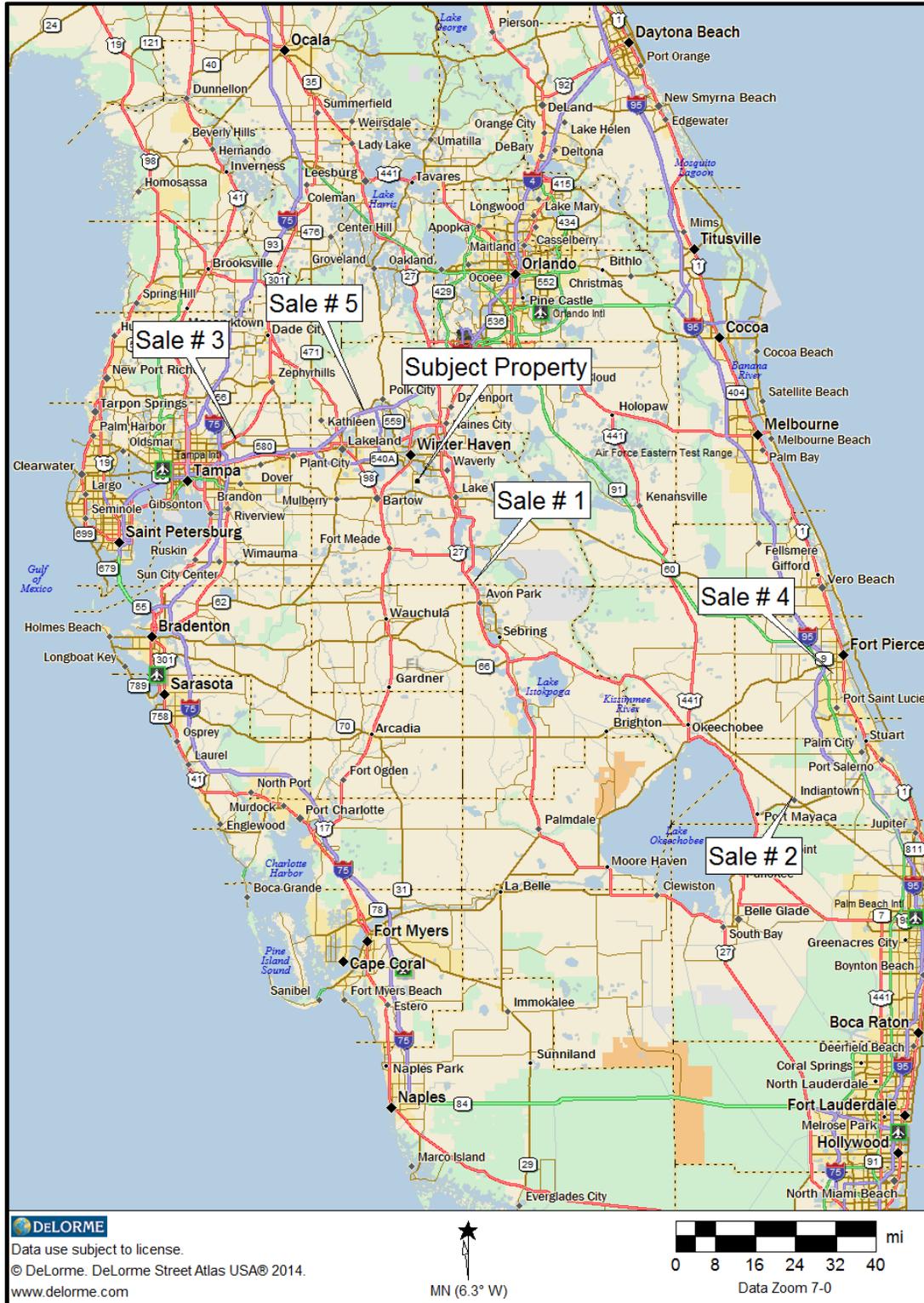
## SALES COMPARISON APPROACH

The following chart summarizes the sales data felt to be the most comparable to the subject property. Sale location maps and sale data write ups of each sale follow.

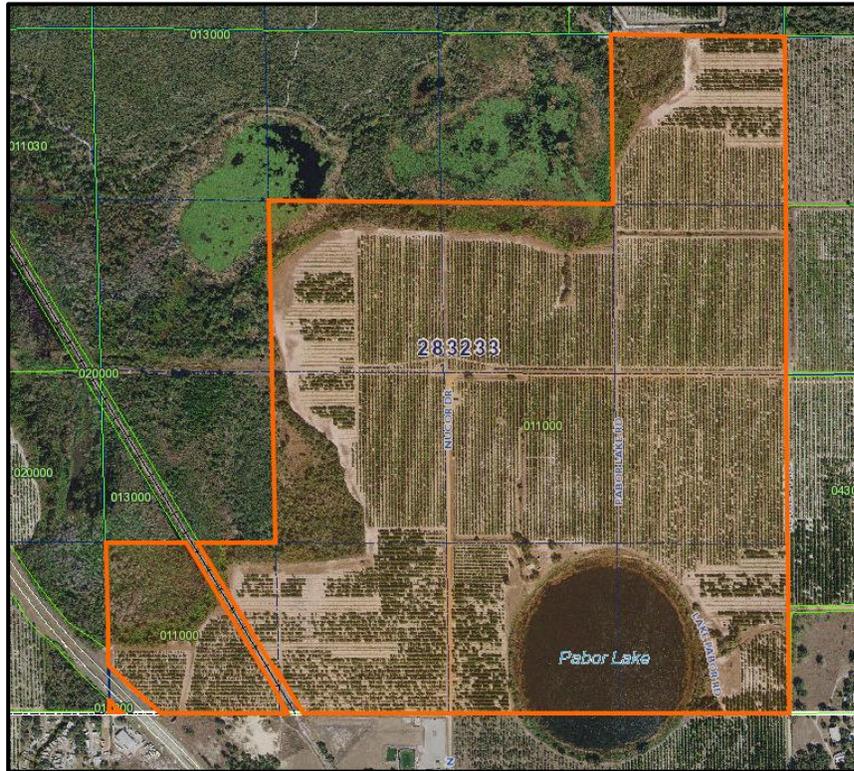
### SALES SUMMARY AND ADJUSTMENT CHART

SALE NO.	Subject	Land Sale 1	Land Sale 2	Land Sale 3	Land Sale 4	Land Sale 5
Location:	Logistics Parkway	US 27 & Lake Pabor Rd	SW Warfield Road	12341 CR 579	3896 Selvitz Road	8100 SR 33
City	Winter Haven	Frostproof	Indiantown	Thonotosassa	Fort Pierce	Lakeland
County	Polk	Polk	Martin	Hillsborough	St. Lucie	Polk
Date of Sale	N/A	Sept.-18	Dec.-2016	Dec-17	March.-18	Aug.-18
Sales Price	N/A	\$12,000,000	\$7,870,000	\$2,500,000	\$1,992,000	\$3,300,000
Total Acres	203 acres±	441.25 acres±	144.69 acres±	61.62 acres±	52.59 acres±	49.67 acres±
Useable Acres	120 acres±	383.11 acres±	135.81 acres±	61.62 acres±	50.0 acres±	45.37 acres±
Zoning/FLU	Industrial I-1	INDX	M-3	PD-Mixed Use	I-3 / HI	Indust. / BP
\$ / Upland Acre		\$31,323	\$57,949	\$40,571	\$39,840	\$72,735
Adjustments:						
Property Rights Conveyed		Similar	Similar	Similar	Similar	Similar
Financing		Similar	Similar	Similar	Similar	Similar
Conditions of Sale		Similar	Similar	Similar	Similar	Similar
Expend. Immed. After Purchase		Similar	Similar	Similar	Similar	Similar
Market Conditions		<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>	<u>Similar</u>
Adjusted Sales Price		\$12,000,000	\$7,870,000	\$2,500,000	\$1,992,000	\$3,300,000
Adjusted \$/Upland Acre		\$31,323	\$57,949	\$40,571	\$39,840	\$72,735
Physical Adjustments:						
Location		Inferior	Superior	Similar	Similar	Superior
Exposure/Access		Similar	Similar	Similar	Similar	Similar
Size		Larger /Inferior	Similar	Smaller/superior	Smaller/superior	Smaller/superior
Soils/ Shape		Similar	Similar	Similar	Similar	Similar
Site Improvements		Similar	Similar	Similar	Similar	Similar
Utilities		Inferior	Superior	Similar	Similar	Similar
Rail Access		Similar	Similar	Inferior	Inferior	Inferior
Zoning/FLU		<u>Similar</u>	<u>Similar</u>	<u>Inferior</u>	<u>Similar</u>	<u>Similar</u>
Net Adjustment		Inferior	Superior	Similar	Similar	Superior
Adjusted \$/Upland Acre		\$31,323	\$57,949	\$40,571	\$39,840	\$72,735

# SALES LOCATION MAP



## SALE 1



<b>PROPERTY TYPE:</b>	Vacant industrial development land
<b>LOCATION:</b>	East side of US 27, north side of Lake Pabor Rd, west side of Retreat Rd., bordering the Polk/Highlands County line, on Polk County side, Frostproof, Florida.
<b>TAX ID #:</b>	28-32-33-000000-011000
<b>O.R. BOOK/ PAGE:</b>	10611 / 1169, Official Records Polk County
<b>GRANTOR:</b>	Ben Hill Griffin, Inc.
<b>GRANTEE:</b>	Nucor Steel Florida, Inc.
<b>LAND SIZE:</b>	441.25± acres gross; 383.11 acres +/- net upland acres
<b>ZONING/LAND USE:</b>	INDX in a RDA in the Southeast SAP, Polk County
<b>PROPERTY DATA:</b>	Irregular shaped vacant industrial acreage along the east side of the paved four lane road of US 27, which was improved as a citrus grove at the time of sale. Additional road frontage along the north side of Lake Pabor Rd., and the west side of Retreat Rd. which are all dirt roads. Railroad access in the southwestern corner of the property. Approximately 383.11 acres of useable uplands with rail access.

**PRICE:** \$12,000,000

**DATE (OF TRANSACTION):** September 12, 2018

**TERMS:** Cash to seller

**VERIFICATION WITH:** By Nick Mancuso with public records, Costar and various published articles

**COMMENTS:** The property was not on the market prior to the sale. The local development council assisted Nucor to identify this as one of their potential development sites when they were shopping for a location for their new plant. The price and other features of the property, including rail access led Nucor to choose this property. The City of Frostproof intends on annexation of the property and will provide water and fire protection services, if annexed. Nucor plans construction of a \$240 million steel plant for rebar manufacturing.

**CONDITIONS OF SALE:** Typical, open market transaction

**UNIT PRICE:** \$ 27,196 per gross acre  
\$ 31,323 per net upland acre

## LAND SALE 2



**PROPERTY TYPE:** Vacant industrial development land

**LOCATION:** Located on the west side of SW Warfield Rd., east of SW Silver Fox LN, west of SW Allapattah Rd., Indiantown, Martin County, FL

**TAX ID #:** 35393800000000111

**O.R. BOOK/ PAGE:** 2896/2907, Official Records Martin County

**GRANTOR:** Gerdau Ameristeel US Inc.

**GRANTEE:** Floridian Natural Gas Storage Company, LLC

**LAND SIZE:** 144.69± acres; 135.81 acres +/- net upland acres

**ZONING/LAND USE:** M-3 / Industrial, Martin County

**PROPERTY DATA:** Vacant industrial site with approximately 3,296 ft. of frontage on the west side of SW Warfield Rd. Approximately 135.81 acres of the site are considered usable uplands. Frontage along railroad lines adjacent to road frontage.

**PRICE:** \$7,870,000

**DATE (OF TRANSACTION):** December 15, 2016

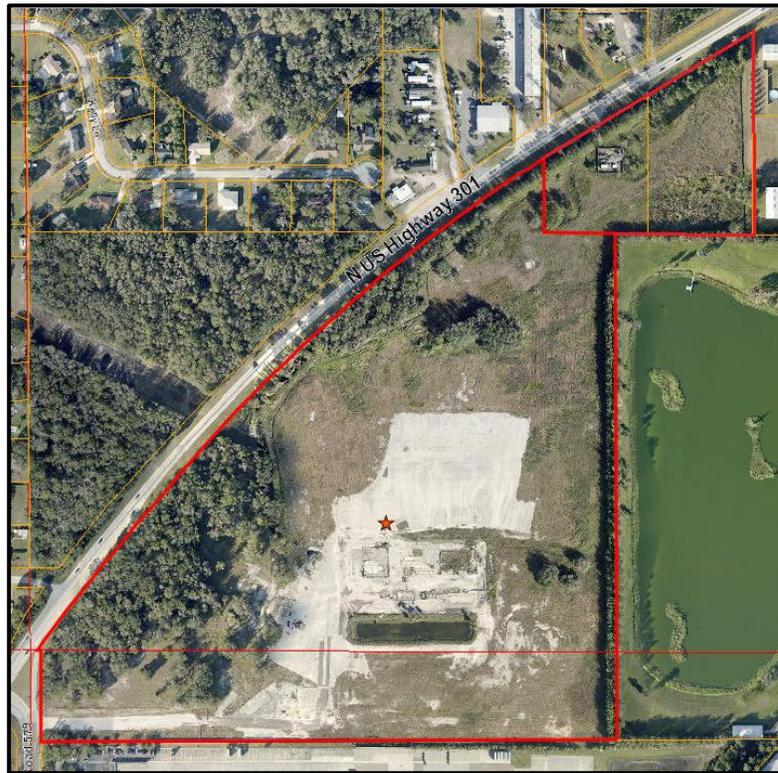
**TERMS:** Cash to seller; financed \$3,900,000 with American State Bank

**COMMENTS:** The site was purchased for use as an above ground storage facility for liquefied natural gas. The site was selected because of its location with both of Florida's natural gas supply pipelines from the Gulf Coast are nearby. This site is located in an industrial area of Indiantown adjacent to a large power plant

**CONDITIONS OF SALE:** Typical, open market transaction

**UNIT PRICE:** \$54,392 per gross acre  
\$57,949 per net upland acre

### SALE 3



**PROPERTY TYPE:** Vacant industrial use land

**LOCATION:** 12341 County Road 579, Thonotosassa, Hillsborough County, FL / NE quadrant of C.R. 579 and N. US Hwy. 301

**FOLIO #:** 059849-0010, 059835-0000, 059846-0100

**O.R. BOOK/ PAGE:** 25440 / 353, Official Records Hillsborough County

**GRANTOR:** Delta Asphalt Paving Company

**GRANTEE:** CoPart of Connecticut

**LAND SIZE:** 61.62± acres gross and uplands

**ZONING/LAND USE:** 059849-0010: PD Mixed Use (53.92 acres)  
059835-0000 (2.59 acres) and 059846-0100 (5.11 acres): ASC-1, Hillsborough County

**PROPERTY DATA:** Irregular shaped vacant mixed use acreage located on the east side of US Hwy. 301, a two-lane paved road, and at the northern terminus of C.R. 579, a two-lane paved road. The property has approximately 2,995 ft. of road frontage on the east side of US Hwy. 301.

**PRICE:** \$2,500,000  
**DATE (OF TRANSACTION):** December 18, 2017  
**TERMS:** Cash to seller  
**VERIFICATION WITH:** By Nick Mancuso with Trey Carswell, real estate broker  
September 17, 2019  
**COMMENTS:** The buyer purchased the property for parking cars.  
**CONDITIONS OF SALE:** Typical, open market transaction  
**UNIT PRICE:** \$ 40,571 per gross and upland acre

## SALE 4



**PROPERTY TYPE:** Vacant industrial development land

**LOCATION:** 3896 Selvitz Rd., Fort Pierce, St. Lucie County, FL /  
Approximately 1,080 ft. east of Selvitz Rd., west of S. 25<sup>th</sup> St.,  
and approximately 1,200 ft. west of Fort Pierce Central High  
School.

**TAX ID #:** 2432-123-0001-000-8

**O.R. BOOK/ PAGE:** 4104 / 373, Official Records St. Lucie County

**GRANTOR:** BHT of Florida 4008 LLC

**GRANTEE:** D.S.E. Holdings, Inc.

**LAND SIZE:** 52.59± acres gross; 50 +/- acres uplands

**ZONING/LAND USE:** I-3 / HI (Heavy Industrial), St. Lucie County

**PROPERTY DATA:** Irregular shaped vacant industrial acreage located approximately  
1,080 ft. east of Selvitz Rd., a two-lane paved road. The  
property is accessed from Selvitz Rd. by an access easement  
from the seller. The property was vacant at the time of sale.

**PRICE:** \$1,992,000

**DATE (OF TRANSACTION):** March 2, 2018

**TERMS:** Cash to seller

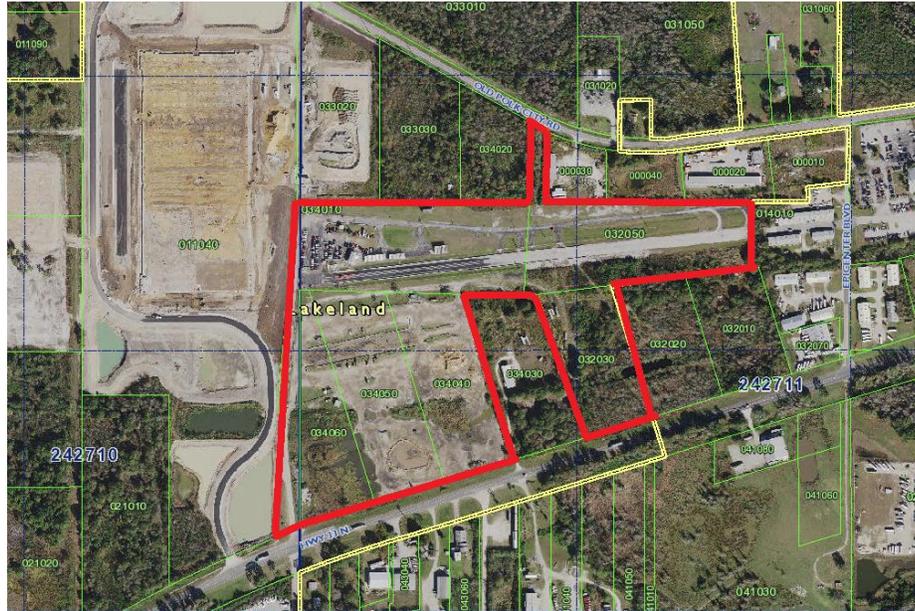
**VERIFICATION WITH:** By Nick Mancuso per public records and newspaper articles

**COMMENTS:** The buyer purchased the property to build a concrete recycling  
plant.

**CONDITIONS OF SALE:** Typical, open market transaction

**UNIT PRICE:** \$ 37,878 per gross acre  
\$ 39,840 per net upland acre

## SALE 5



**PROPERTY TYPE:** Vacant land / former Lakeland drag strip

**LOCATION:** 8100 State Road 33 North, Lakeland, Polk County, FL

**TAX ID #:** 24-27-11-000000-032050, 24-27-11-000000-034010, 24-27-11-000000-032030, 24-27-11-000000-034040, 34050 and 34060

**O.R. BOOK/ PAGE:** 10570/701, Official Records Polk County

**GRANTOR:** Lakeland Drag Strip, Inc.

**GRANTEE:** Knapp Ackerman Lakeland, LLC

**LAND SIZE:** 49.67± acres gross; 45.37 +/- acres uplands

**ZONING/LAND USE:** Industrial / Business Park, city of Lakeland

**PROPERTY DATA:** Former Lakeland drag strip site consisting of vacant land and various paving. Located along north side of SR 33, northeast of interchange with Interstate 4. Site is irregular in shape and has approximately 1,524 feet of road frontage along SR 33 and also has access to Old Polk City Road. City water (12" line) and sewer to the site from City of Lakeland.

**PRICE:** \$3,300,000

**DATE (OF TRANSACTION):** August 2, 2018

**TERMS:** Cash to seller

**VERIFICATION WITH:** Buyer, Randy Knapp, by Nick Mancuso on February 5, 2019

**COMMENTS:** Buyer purchased to for development of a proposed 700,000 square foot warehouse.

**CONDITIONS OF SALE:** Typical, open market transaction

**PRESENT USE:** Vacant land and former drag strip

**UNIT PRICE:** \$66,438 per gross acre  
\$72,735 per net upland acre

## Comparable Sales Discussion

The unit of comparison felt to be applicable in analysis of the subject property is the sales price per upland acre. All five sales were arms-length transactions.

### Explanation of Adjustments:

#### **Conditions of Sale**

All five sales were considered arms-length sales.

#### **Financing**

All five sales were either cash or cash to seller, terms of sale.

#### **Sale Date**

The five sales all took place within the past 2.5 years +/- under market conditions that were relatively similar. I was unable to provide statistical analysis or paired sales evidence of changes in market conditions or value increases over this time period.

#### **Location**

Sale 1 is located in a more remote location of Eastern Polk County and felt to be inferior to the subject in regards to location. Sale 2 is located in an industrial area of SE Florida very near a major power plant in an area that exhibits higher land values and was felt to be superior to the subject. Sales 3 and 4 were considered similar to the subject. Sale 5 is located near a full interchange with Interstate 4 in an area experiencing high demand for distribution warehousing and is considered superior to the subject in regards to location.

#### **Exposure/Access**

All five sales are located along public paved roadways and were considered similar in regards to exposure and/or access.

#### **Size**

The comparables range in size from 45.37 acres to 383.11 upland acres and the subject property contains 120 upland acres +/- . Smaller tracts tend to sell for higher unit indexes when all other factors are similar. Sale 2 is felt to be comparable to the subject in this regard. Sales 3, 4 and 5 are smaller and felt to be superior or indicate a higher unit index due to size. Sale 1 is much larger and therefore felt to indicate a lower unit index due to size.

#### **Soils / Shape**

The subject property is somewhat irregular in shape but not of a shape that would limit utility. All five comparable sales were all felt to be similar in this regard. The comparables were all analyzed on an upland acre basis and the soils are felt to be relatively similar.

#### **Site Improvements**

None of the comparable sales had any significant site improvements of contributory value.

### Utilities

The subject property is serviced with public water and sewer and electric services. Sale 1 need to be annexed into the city of Frostproof and have utilities extended to the site and is considered inferior in regards to utilities. Sale 2 is located adjacent to a large power plant and considered superior. Sales 3, 4 and 5 were considered similar.

### Rail Access

The subject property will have potential for rail access and Sales 1 and 2 are considered to be similar. Sales 3, 4 and 5 do not have rail access potential and were considered inferior.

### Zoning/Land Use Classification

Four of the five sales have industrial and/or manufacturing use type of zoning/land use classification and were considered similar. Sale 3's zoning is mixed use PD and considered inferior.

### Correlation and Conclusion – Fee Simple Valuation

The five comparable sales utilized are felt to be the best and most comparable properties available to compare with the subject and indicated unit indexes between \$31,323 and \$72,735 per upland acre.

The unit indexes and overall comparison to the subject property are summarized in the chart below.

Sale #	Overall Comparison	Price / Upland Acre
Sale 5	<b>Superior</b>	<b>\$72,735</b>
Sale 2	<b>Superior</b>	<b>\$57,949</b>
Subject	-	-
Sale 3	<b>Similar</b>	<b>\$40,571</b>
Sale 4	<b>Similar</b>	<b>\$39,840</b>
Sale 1	<b>Inferior</b>	<b>\$31,323</b>

Sale 5 at \$72,735 per upland acre and Sale 2 at \$57,949 per upland acre are felt to be superior and felt indicate unit indexes higher than that applicable to the subject. Sale 1 at \$31,323 is much larger and located in a more remote location and is considered to be inferior. These three sales are felt to represent the upper and lower end of the ranges applicable to the subject.

Sales 3 and 4 at \$40,571 and \$39,840 per upland area are considered to be the most similar to the subject property.

In addition to the above five comparable sales I am also aware of an 80 +/- acre tract of land located in East Polk County which is currently under contract. The property is currently listed at approximately \$47,500 per acre and the contract price is reportedly close to asking price. Due to confidentiality issues, the site location cannot be disclosed. The property is however zoned for Industrial use, has public water and sewer service, electric and natural gas to the site and the property has paved road frontage. There is also reportedly potential for a rail spur to be extended to the site.

There is also one other current listing which is felt to be pertinent and consists of the 472 acre Pebble

Ridge Industrial Park located along U.S. Highway 27, near Frostproof, Florida. This site is being marketed for sale as an industrial park but is not yet developed. Gas, water and electric are available to the site along with rail access to the CSX railroad lines adjacent to the property. The property is currently being marketed for sale as either the entire site or parcels starting at 10 acres to 100 acres for \$55,000 per usable acre. I contacted the listing agent for the property, Jared Bonshire with Cushman & Wakefield, and he stated that a 100 acre parcel would have an asking price of approximately \$40,000 per usable acre.

**Sales Comparison Approach Conclusion:**

In my opinion, the unit index applicable to the subject property is felt to be similar to those of Sales 3 and 4 and below that of the current listing at \$47,500, or approximately \$40,000 per upland acre.

The comparable sales were analyzed on a per upland acre basis, whereas the instructions for this appraisal were to consider the subject to consists of 120 acres of *net useable* uplands, with the storm water retention area to be located within the remaining 83 acres of land area that makes up the subject property. The comparable sales consist of either all upland land areas for upland and wetland land areas in which the wetland areas would not permit use storm water retention areas. This results in the subject property have a greater amount of net useable land area than the comparable sales. Storm water retention typically consists of between 10% and 15% of the overall land area for land development and therefore a 12.5% upward adjustment is applied to the subject's concluded unit index of \$40,000 per upland acre ( $\$40,000 \times 1.125 = \$45,000$ ).

The concluded unit index for the subject property is therefore \$45,000 per net useable upland acre.

Therefore:

**Subject Land Value –**

120.0 upland acres @ \$45,000 per net useable upland acre = **\$5,400,000**

## FINAL VALUE CONCLUSION

The purpose of this appraisal report was to provide a current estimate of market value of the subject property as of a current date, based on its highest and best use and based on certain assumptions regarding zoning and land use changes, along with an assumption that the subject property consists of 120 acres of net useable uplands.

The intended users of this appraisal report are Eric Labbe and the City of Winter Haven and the intended use is for obtaining an opinion of the current Market Value of the fee simple interest in the subject property as of a current date, based on the above stated extraordinary assumptions. The effective date of the report is September 6, 2019, representing my last physical inspection of the subject property.

The subject property consists of vacant land with a highest and best use considered as land for industrial distribution or manufacturing type use and the only applicable approach for estimation of the current market value was felt to be the Sales Comparison Approach. The Sales Comparison Approach is based on a direct comparison of the subject property with recent sales of similar vacant properties.

Based on the data presented in this appraisal, it is my opinion that the current **Market Value** of the fee simple interest of the herein described property based on the extraordinary assumptions regarding a zoning/land use change and net useable upland acreage, as of September 6, 2019, was:

**FIVE MILLION FOUR HUNDRED THOUSAND DOLLARS**  
**(\$5,400,000)**

*This appraisal is based on the extraordinary assumptions that the subject property will obtain approval for a zoning change to I-1 Light Industrial with a future land use classification of Industrial and that the subject's net useable upland land area is 120 acres (per client instructions).*



## ASSUMPTIONS AND LIMITING CONDITIONS

Certain information pertaining to the subject property and/or the comparable sales presented was summarized in the report presented, however, the data presented was thoroughly researched and analyzed in estimating the market value of the subject property.

In accepting this appraisal report, the employer agrees that the legal description set forth herein correctly describes the property which was to be appraised.

No responsibility is assumed by the appraiser for legal matters, nor is any opinion on the title rendered herewith. The appraiser assumes that the title to the property is good and marketable.

Unless stated otherwise in this report, all existing liens and encumbrances, if any, have been disregarded, and the property is appraised as though free and clear.

Certain information used in compiling this report was furnished the appraiser by outside sources which he considers reliable. The appraiser, however, does not warrant the accuracy of such data, although so far as possible has checked the information and believes it to be correct.

Neither I, nor anyone employed by me, has any present or contemplated interest in the property appraised.

The appraiser, by reason of this report, is not required to give court testimony unless arrangements have been previously made therefore.

Drawings in this report are approximate ground plans of the site and/or improvements presented to assist the reader in visualizing the property.

Unless stated otherwise in this report, no responsibility is assumed for physical defects in the subject property which would not be readily ascertainable upon typical visual inspection, including but not limited to subsoil, drainage, boundary and potential soil contamination.

Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances.

The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value.

No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

Disclosure of the contents of this appraisal report is governed by the By laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the Appraisal Institute or to the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior written consent and approval of the undersigned.

Individual line items or separation of values within the report are not to be considered reliable value conclusions.

## **CERTIFICATION STATEMENT: APPRAISAL REPORT**

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with *Uniform Standards of Professional Appraisal Practice and FIRREA*.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.
- As of the date of this report, Nicholas J. Mancuso, MAI has completed the requirements under the continuing education program of the State of Florida.
- The undersigned appraiser is considered as being competent to perform this appraisal report of the herein described type of real estate through either prior appraisal experience of similar type properties, educational background, and/or possible professional guidance from a third party which would be stated within the body of the report and within this certification.

**MANCUSO APPRAISAL SERVICES, INC.**



Nicholas J. Mancuso, MAI  
State-certified general real estate appraiser # RZ542

September 23, 2019  
Date

**QUALIFICATIONS OF APPRAISER**  
**NICHOLAS J. MANCUSO, MAI**  
**State-certified general real estate appraiser RZ 542**

**Biographic Data:** Born Sept 9, 1962 in Stoneboro, Pennsylvania; Florida resident since 1972.

**Education:**

- Winter Haven High School - 1981
- Polk Community College (AA degree) - 1983
- Florida State University (BS degree in both real estate and finance) - 1985
- Completed Commercial Investment Course CI 101 of the Real Estate National Marketing Institute in 1985
- Completed the following Appraisal Institute Courses from 1986 – to present:  
Standards of Professional Practice, Real Estate Appraisal Principles, Basic Valuation Procedures, Capitalization Theory & Technique Parts A & B, Residential Valuation, Case Studies in Real Estate Valuation
- Completed all requirements necessary for obtaining the MAI designation in 1991 and submitted to membership with the Appraisal Institute as MAI Member 9446.
- Completed the following appraisal seminars from 1992 – 2019:  
Appraising Troubled Properties; Legal Rules and Appraisal Practices in Condemnation; Appraisal Office Management; Court Preparation for Litigation; Dynamics of Office Building Valuation; Appraisal of Retail Properties, Less than Fee Acquisitions; USPAP Update; Case Studies in Uniform Standards; Analyzing Operating Expenses; Internet Search Strategies for Real Estate Appraisers; SPP-C, Business Practices and Ethics; Scope of Work; Subdivision Valuation; Eminent Domain and Condemnation; Analyzing Distressed Real Estate; Appraising Convenience Stores; Small Hotel/Motel Valuation; Yellow Book/USPAP for Federal Land Acquisitions; Neighborhood Analysis; Communicating the Appraisal; Residential Development Valuation, Trends, Issues, Challenges; Appraisal of Nursing Homes; Marshall and Swift Commercial Cost Training; Ad Valorem Tax Consultation; Appraisal Curriculum Overview – General and Residential; Florida Law Updates

**Employment:**

8/93 – Present:	Mancuso Appraisal Services, Inc.
5/90 – 8/93:	Reed Appraisal Company; Associate Appraiser
1/89 - 4/90:	Arthur G. Pollard, MAI; Assoc. Appraiser
1/88 - 1/89:	Appraisal Specialists; Co-Owner
10/85 – 12/87:	Brakora & Associates; Assoc. Appraiser

**Appraisal Assignments:**

*Commercial* – proposed and existing office buildings, apartment complexes, motels, restaurants, neighborhood shopping centers, multi-tenant retail centers, net lease retail buildings, net leased sites, used car lots, automobile dealerships, medical offices, mobile home parks, branch banks, convenience stores, and various types of retail buildings.

*Industrial* – proposed and existing warehousing, light manufacturing, and self-storage facilities, citrus packing plant, citrus processing facility, and various miscellaneous industrial use buildings.

*Residential Development* – proposed and existing subdivisions, Planned Unit Developments, condominium developments, DRI (Development of Regional Impact).

*Special Purpose* – recreational vehicle parks, golf courses, and adult care living facilities, churches, bowling alley, marine/boat storage, airplane hanger

*Agricultural* – vacant acreage, row crops, citrus groves and pastureland.

*Eminent Domain / Condemnation Assignments/Court Testimony:* utility easement acquisitions for Polk County Utilities and Public Works, partial takings for road right of way for parcels with and those without damage issues, whole taking assignments,, whole taking and flowage easements for SWFWMD (Lake Hancock Project), worked with a team of appraisers involved in appraisals of numerous parcels acquired for a natural gas pipeline for Gulfstream Natural Gas, property owner representation and consultations for local attorneys involved in condemnation; court testimony for deficiency judgment hearings; court testimony for eminent

domain cases; testimony on behalf of clients/attorneys for land use issues, property issues, etc.

**Professional Affiliations:**

- MAI – Member, Appraisal Institute, Certificate No. 9446, awarded May, 1992.
- Alumni of Leadership VI of the Winter Haven Area Chamber of Commerce.

**Department of Professional Regulation/FREC:**

- State Certified General Appraiser RZ 542, awarded September 1990
- Licensed Florida Real Estate Broker since 1981.

**Qualified as Expert Witness:**

- 10<sup>th</sup> Judicial Circuit Court (Polk County)
- 5<sup>th</sup> Judicial Circuit Court (Marion County)
- United States District Court – Middle District – Tampa, Florida

**Appraisal Clients:**

FDIC, SunTrust Bank, Wells Fargo, Bank of America, CenterState Bank, BB&T, MidFlorida Credit Union, Citizens Bank, USAmeriBank, Valley National Bank, Sunshine Bank, Iberia Bank, TD Bank, Atlantic Coast Bank, Collateral Evaluation Services, Regions Bank, Fifth Third Bank, Polk State College, City of Winter Haven, City of Lakeland, City of Davenport, City of Dundee, City of Eagle Lake, City of Haines City, Lakeland Electric, Polk County Board of Commissioners, State of Florida Department of Natural Resources, Florida Department of Environment Protection, Southwest Florida Water Management District, South Florida Water Management District, Holland and Knight law firm, Neill, Griffin, Tierney, Neill & Marquis law firm, Roetzel and Andres law firm, investors, developers, individual attorneys, Realtors, CPA’s and property owners.



**ADDENDA**

## **POLK COUNTY AREA DATA**

### **Location/History**

Polk County is located near the geographic center of the state of Florida, both east to west and north to south. Polk is located approximately 25 miles east of Tampa and 35 miles southwest of Orlando. Polk borders 10 other counties and is 2,011 square miles making it bigger than Rhode Island and slightly smaller than Delaware. Geographically, Polk is notable for its 554 natural lakes. The Green Swamp, which covers the northern section of the county, is a source for the Withlacoochee, Hillsborough, Peace and Ocklawaha rivers. Polk was formed in 1860 and was Florida's 39<sup>th</sup> County. It was named for James Knox Polk, the 11<sup>th</sup> President of the United States.

### **Population:**

Florida has the fourth largest population in the United States, estimated at 20.84 million residents, and Polk County is Florida's 9<sup>th</sup> most populous county with an estimated 673,028 residents in 2018. Polk County was the 12<sup>th</sup> fastest growing county in Florida in 2018 with an 11.8 percent increase in population since 2010. Approximately 10 million people live within a one hundred mile radius of Polk County making it the largest population base in the Southeastern United States. Within the same 100 mile radius, Polk County has access to 500,000 students at three major research universities, colleges and technical schools.

As of 2018, Polk County had an estimated population of 673,028. The County ranked 10<sup>th</sup> in Florida for percentage of the population aged 17 or younger (22.6%) and 31<sup>st</sup> in the percentage of residents 65 and older (19.8%). Polk County has a median age of 40.9.

The Lakeland-Winter Haven metropolitan area grew by more than 22,000 people (3.2%) from July 1, 2017, to July, 2018, according to the US Census's Top 10 metropolitan areas in percentage growth list.

### **Income Levels and Cost of Living:**

The estimated median household income in 2018, in Polk County, was \$45,988 as compared to the statewide average of \$50,883. The unemployment rate in Polk County was 3.4 percent in November 2018. This rate was 0.9 percent lower than a year ago rate of 4.3 percent. The labor force was 302,279, up 7,482 (+2.5) over the year. There were 10,148 unemployed residents in Polk. The 2018 economy in Polk County continued its upward momentum adding +8,400 jobs for an annual growth rate of 3.8%.

### **Economic Trends and Diversification:**

Polk County has become the home of many of the nation's largest retail companies' distribution centers such as McKesson Pharmaceuticals, FedEx, Publix, Rooms to Go, Coca Cola Enterprises, Haverty's, Home Depot Supply, Lowe's, Sherwin Williams, Wal-Mart, W.S. Badcock Corporation, Advance Discount Auto Parts, JC Penny, Best Buy, Ford Motor Company, Cardinal Pharmaceutical, Colorado Boxed Beef, Ferguson, Saddle Creek Corporation, Adams Cold Storage, Aldi Markets, Amazon, Southern Wine and Spirits, United Parcel Service, USF Distribution, Commercial Carrier Corporation, O'Reilly Auto Parts, and US Foodservice and Star Distribution.

According to the Florida Department of Economic Opportunity, Polk County has a number of public and private employers with employment in excess of 1,000. Many prominent companies are also headquartered in Polk County with operations across Florida and the U.S. Polk County's largest private employer is Publix Super Markets, Inc., which has its headquarters in Lakeland. The company has approximately 192,000 employees in seven states including 12,000 in Polk County. Central Florida is home to more than 11,500 high-tech companies, including several state-of-the-art data and disaster recovery centers. The inland location offers a strategic choice for companies in search of protection against flooding and other natural disasters that may affect the rest of the state.

Companies in the Aerospace, Defense and National Security industries benefit from Polk County's central location and multimodal infrastructure. Defense giant Draken International is headquartered in Polk County, taking advantage of Lakeland Linder Regional Airport to house its 120,000-square foot hangar. The Lakeland-based company operates the largest fleet of privately owned tactical aircraft in the world.

Amazon is opening a cargo hub facility at Lakeland Linder Regional Airport. Construction is scheduled to begin on July 3, 2019, and be completed by July 2020. This cargo hub will be the largest Amazon facility in the southeast. Amazon will lease 47 acres of a 110-acre piece of land in the northwest section of the airport. Amazon will build a 223,000 sq. ft. building and two smaller accessory buildings, no larger than 60,000 sq. ft. combined. The initial lease term is for 20 years with three 10-year renewal opportunities. The facility will add 800 to 1,000 jobs for the area.

According to the Central Florida Development Council of Polk County, the following is a list of the top employers in Polk County as of April 23, 2018:

Polk County School Board	- Administration, Staff & Educators	-	13,000
Publix Super Markets	- Education	-	12,000
Lakeland Regional Health	- Main Hospital & Clinics	-	5,605
Walmart	- E-commerce, Distribution, Retail	-	5,100
City of Lakeland	- All City Operations	-	2,300
Geico	- Contact Center	-	2,222
Polk County BCC	- All County Operations	-	2,200
Winter Haven Hospital	- Main Hospital & Clinics	-	2,079
Polk County Sheriff's Office	- Operation Center & Public Safety	-	1,955
Watson Clinic	- All Clinic Operations	-	1,851
Southeastern University	- Administration, Staff, & Faculty	-	1,557
Legoland	- Entertainment	-	1,500
Mosaic	- Manufacturing & Office Operations	-	1,380
Sykes	- Contact Center	-	1,150
State Farm	- Operations Center	-	1,000
Amazon	- Distribution Center	-	1,000
GC Services	- Contact Center	-	1,000
Polk State College	- Administration, Staff & Faculty	-	932
Rooms to Go	- Distribution	-	900
Florida's Natural Growers	- Headquarters, Manufacturing & Production	-	645

Lakeland remained one of the top industrial markets for new construction in the Tampa Bay region with 1.8 msf of distribution space delivered in 2018. Scannell Properties completed Best Buy's new 650,808 sf distribution center in the northwest submarket. Center State Logistics had a 605,920 sf distribution center delivered with Quaker/Gatorade as a single tenant building user. Blue Steel Development completed the first building of Key Logistics Center, which included a 520,000 sf built-to-suit distribution center for DHL/Ikea.

Several new developments for Polk County:

- Intram Investments begin construction on the first phase of Posner Village in the third quarter of 2018 with a delivery date in the second quarter of 2019. Posner Village is a 29-acre site in Posner City Center, just south of the I-1/US 27 interchange in Davenport. The development will have 100,000 sq. ft. of inline commercial space.
- Elevation Development has plans for a 42.42 acre, mixed-use development about a mile south of Posner Park mall on US 27. The development will be called Shoppes at Citrus Ridge and will have 75,000 sf of retail and 300 townhomes. The residential element will begin April 2019 and end the third quarter of 2019.
- Nucor is constructing a \$240 million steel mill on a 400-acre site on US 27 just south of Frostproof. The "micro mill" will make steel rebar from scrap metal. It will bring 250 new jobs to the County.
- CNC Cabinetry of Polk County opened a new 110,000 sf manufacturing and warehousing facility in Davenport. They manufacture and distribute kitchen cabinets, countertops, bathroom vanities and tops.

Lakeland-Winter MSA Not Seasonally Adjusted 4Q 2018 report:

- The Lakeland-Winter MSA had the fastest annual job growth rate compared to all the metro areas in the state in professional and business services (+12.3 percent)
- The professional and business services (+12.3 percent); manufacturing (+7.1 percent); and trade, transportation, and utilities (+2.4 percent) industries grew faster than statewide over 2018.
- The industries gaining in jobs over 2018 were: professional and business services (+3,700 jobs); trade, transportation, and utilities (+1,400 jobs); manufacturing (+1,200 jobs); leisure and hospitality (+800 jobs); mining, logging, and construction (+700); financial activities (+300 jobs); education and health services (+200 jobs); and other services (+100 jobs).

With almost fifty thousand Florida farms, nine million acres of agricultural land, and over two million people working in agriculture – Polk County contributes to more than its share to the agricultural empire when it comes to feeding people. Green groves, open pastures and other agricultural lands cover 45% of Polk County. There is a total of 520,899 acres of agricultural land, the second highest amount in the state. On this land there are 3,114 farms with the average farm being 216 acres.

Polk County agriculture is so much more than just growing fruits and vegetables. There are field crops such as sugarcane, corn, cottonseed, hay, peanuts, pecans, soybeans, and wheat. Polk County agriculture also encompasses: Livestock – including dairy, beef, poultry, alpacas, and hogs. Polk County horticulture leads the state in: foliage plants, potted flower plants, tree nurseries, along with bedding and gardening plants. Polk County agricultural efforts also include: Bees and honey, along

with forestry, wood and paper products. Polk County agriculture includes aquaculture enterprises such as: Ornamental fish, aquatic planets, and even alligator and wild hog harvesting.

With five major medical centers and a host of specialty clinics, healthcare is one of Polk County's fastest-growing industries supporting 20,000 employees. A prime location for research and patient trials, the region is home to two institutional review boards at two major not-for-profit hospitals – Winter Haven Hospital and Lakeland Regional Health (formerly Lakeland Regional Medical Center), Florida's fifth-largest hospital and home to the busiest single-site emergency department in Florida. Another R&D powerhouse, the Center for Retina and Macular Disease research program is one of the largest in the country for a community-based practice and rivals those of some of the largest academic medical centers. Strategic partnerships with major research institutions including the University of Florida College of Medicine and Shands Healthcare further elevate Polk County's cutting-edge research. In total, Florida universities invest more than \$1 billion in life science research each year.

Polk County is dedicated to the growth and development of sports and the sports industry. Polk County is recognized nationally as a leader in the sports field. The USA Water Ski, the United States Olympic Committee's National Governing Body, and the Independent Softball Association are all based in Polk County. Lake Myrtle Sports Complex, a multi-purpose sports complex located in Auburndale is the home facility for Polk's women's soccer team. The site currently consists of 11 soccer fields, five baseball fields and facilities to host top-level sports events. All playing surfaces are sodded with type-419 Bermuda grass, are fully irrigated and lighted. The stadium field is equipped with an electronic scoreboard and has seating for 1,000 spectators. There are over 1000 parking spots throughout the complex for both soccer and baseball.

#### **Single-family Residential Market:**

Building permits on single family homes through the 4th quarter of 2018 finished at 4,864. Polk County closed 2017 with 3,961 single family permits. As of February 2019 the County has issued 724 single family structure permits. The Central Florida Development Council stated that the County is experiencing tremendous growth along its Interstate 4 corridor, particularly in the northeast.

As of April 2019, 1473 homes have been sold as well as 195 condos, 213 townhouses, and 23 multi-family units. Most homes for sale in the County stay on the market for 68 days and receive one offer.

Several new developments are in the works for Polk County:

- Continental Properties is planning a gated, 302-unit apartment complex in the Posner mixed-use district. The mix will be 2-story and 3-story buildings and 4,340 s.f. clubhouse with pool. The unit mix would have 50 studios, 100 one-bedroom units, 127 two-bedroom units and 25 three-bedroom units.
- D.R. Horton will build a 550 lot vacation resort community on 186 acres on Masee Road in Haines City.
- Cassidy Organization will develop a 367-lot subdivision on Haines City's Scenic Hwy; Citrus Crossing, a 182-lot subdivision on Forest Lakes Drive in Davenport; a 457-lot subdivision on US 17/92 and Davenport Blvd.; and Madison Place, a 346-unit townhome community on US 27, across from the Heart of Florida Regional Medical Center.
- CBD Real Estate Investments LLC will develop a 297-lot single family subdivision on 80 acres located on the north side of Robinson Rd. and 30<sup>th</sup> Street in Haines City called Bonnie's

Landing. CBD will also develop a 256-lot subdivision call Covered Bridge at Liberty Bluff on the south side of Robinson Rd. and 30<sup>th</sup> St.

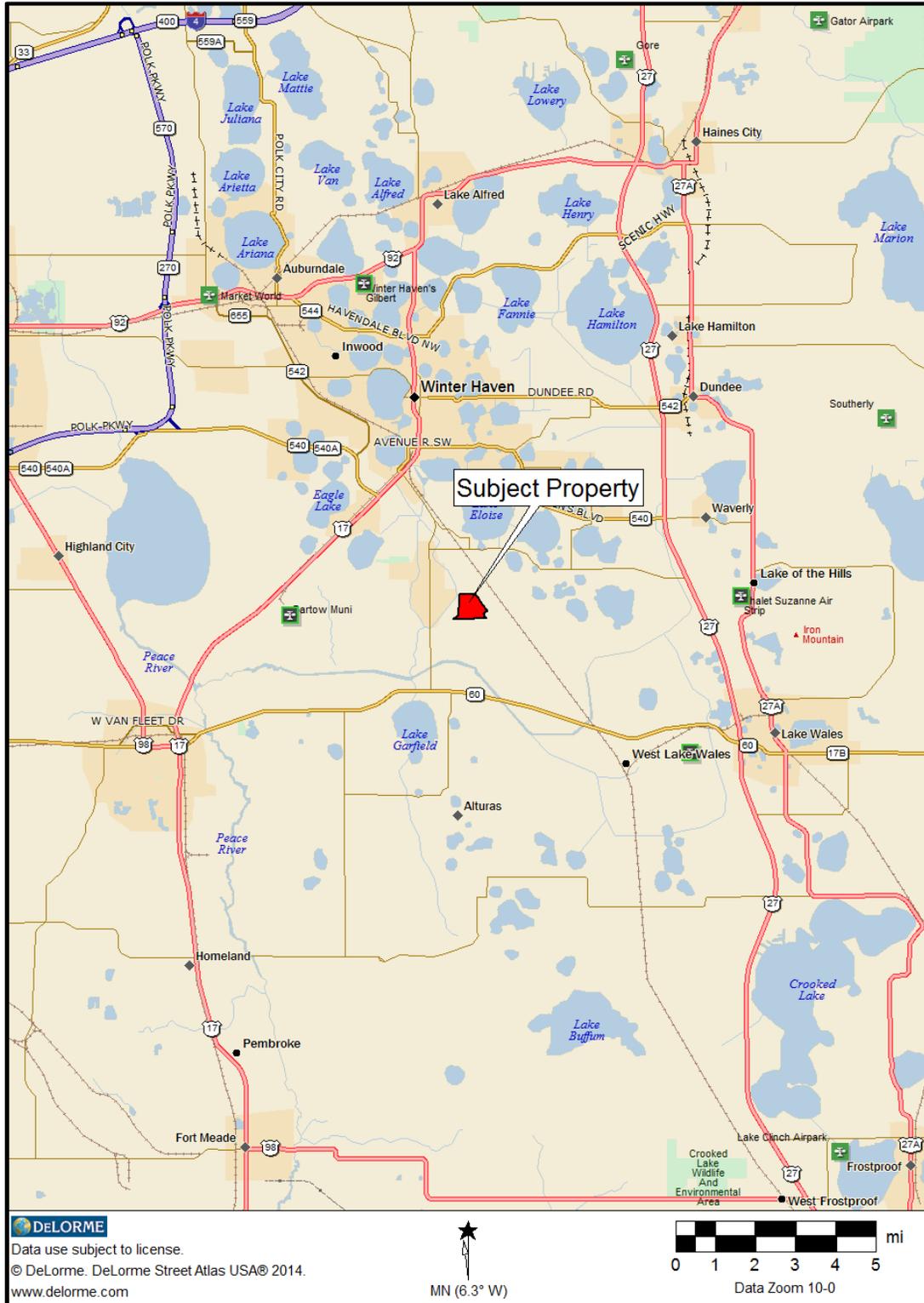
- Feltrim Group is developing a residential community on Roe Rd. in Haines City. The development will be known as Tarpon Bay and will have 363 homes.
- Marsan Real Estate Group is developing a gated community on a former 149 acre citrus grove near the intersection of US 27 and Scenic Highway in Haines City. This development will be known as Bellaviva and has a preliminary plat for 349 homes on Little Lake Hamilton.

#### **Education:**

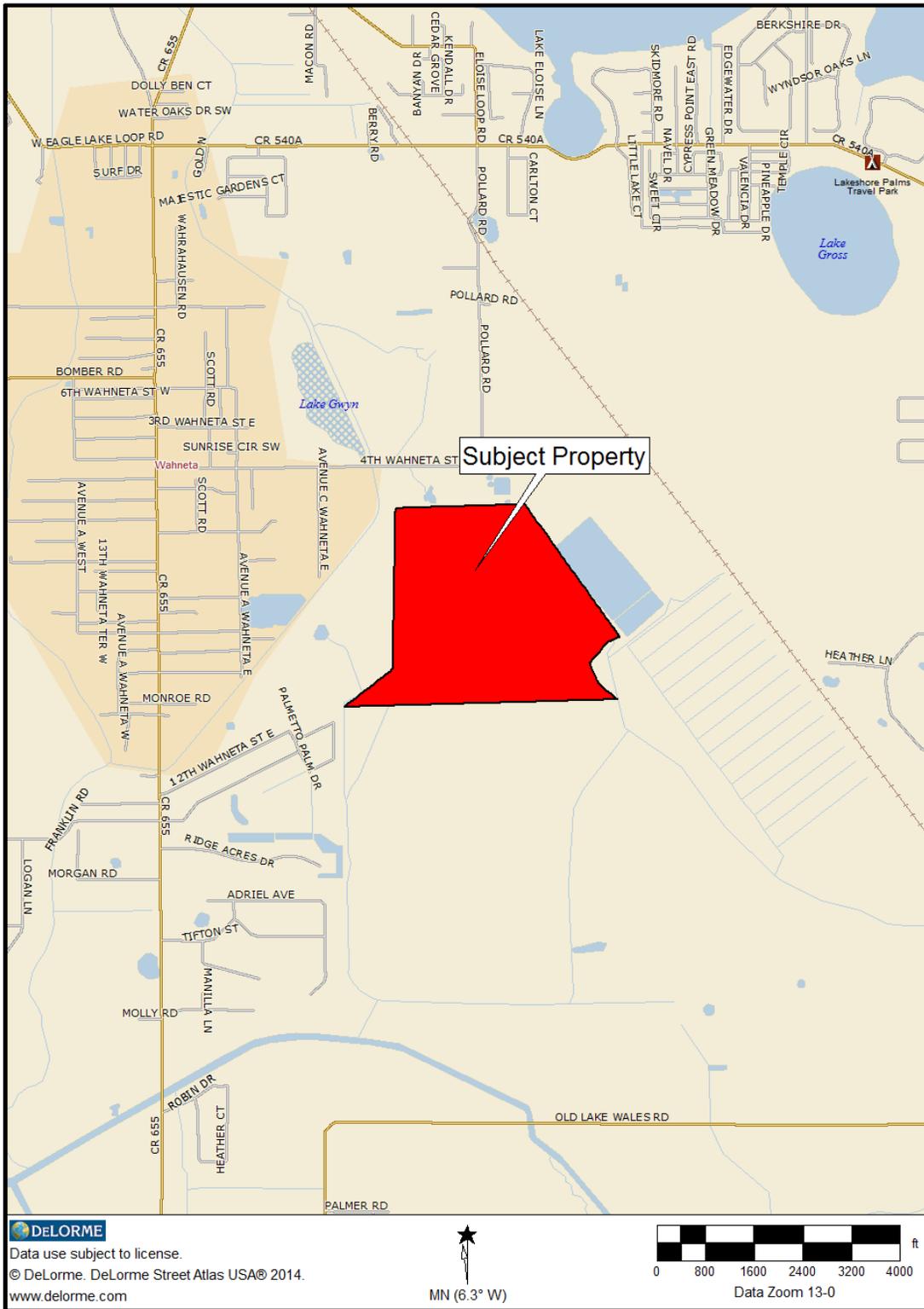
Polk County has the eighth-largest school district in Florida and 30<sup>st</sup> largest in the U.S. Within the district are several school “types.” Some specialize in the arts, some are schools of choice and others are magnet schools that have specific curricula. Polk has 167 school sites and centers. More than 104,000 students are enrolled in prekindergarten through 12<sup>th</sup> grades. Polk County enjoys three excellent vocational schools, Ridge Career Center in Winter Haven, Florida Technical College in Lakeland, and Traviss Vo-Tech in Lakeland. Polk County is also served by 12 higher level institutions. The Polk County School District is the largest employer in Polk County with more than 13,000 employees which half of those are employed as teachers.

**Conclusion** - Because of Polk County’s strategic location between Tampa and Orlando, coupled with the diversification of the local economy and emergence as a key distribution location, Polk County should continue to see steady growth in both the job market and population. The current trends affecting the subject property within its immediate neighborhood are more fully discussed in the Neighborhood Data section of this report.

# LOCATION MAP



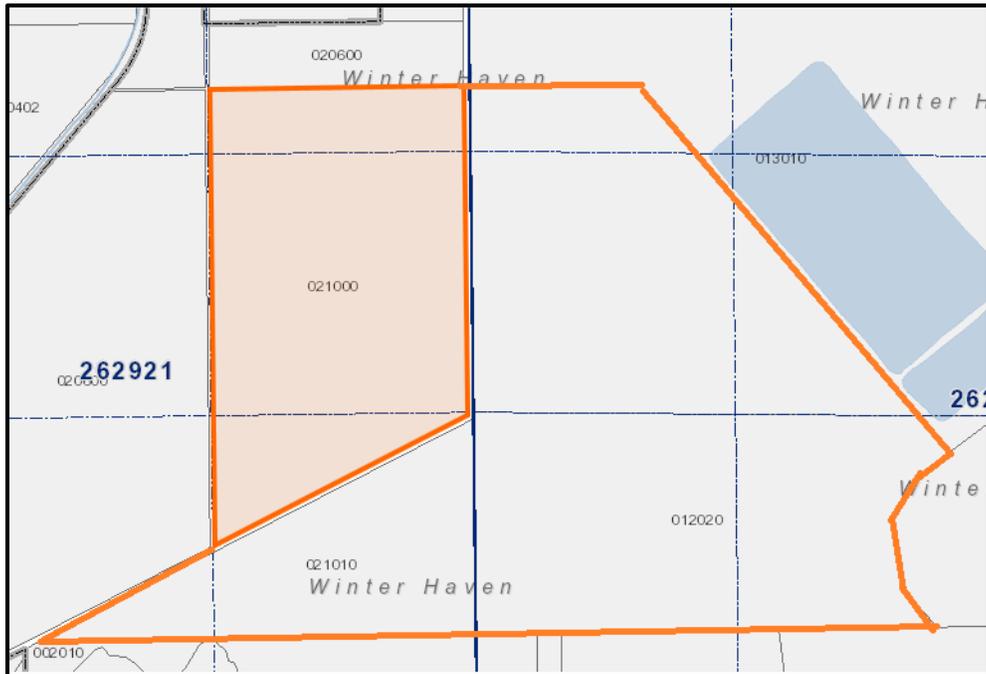
# NEIGHBORHOOD MAP



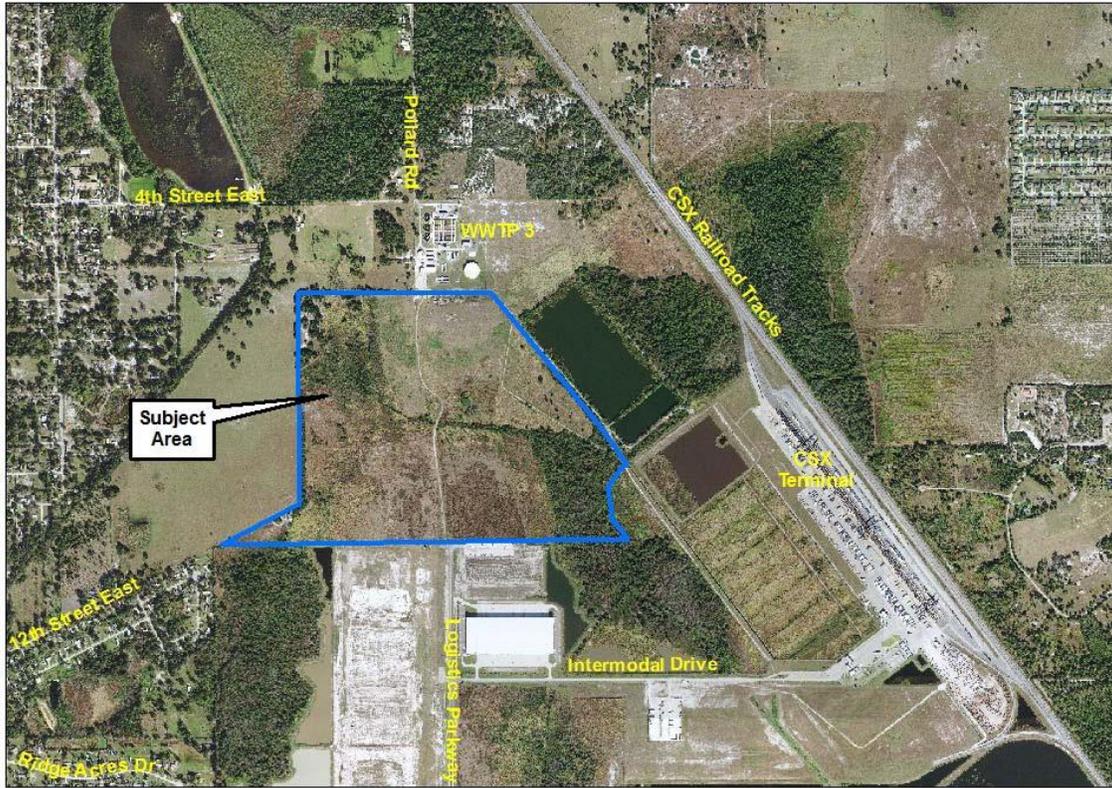
**AERIAL / PLAT OF SUBJECT**



**PLAT OF SUBJECT**



**AERIAL / PLAT OF SUBJECT  
(Supplied by City of Winter Haven)**



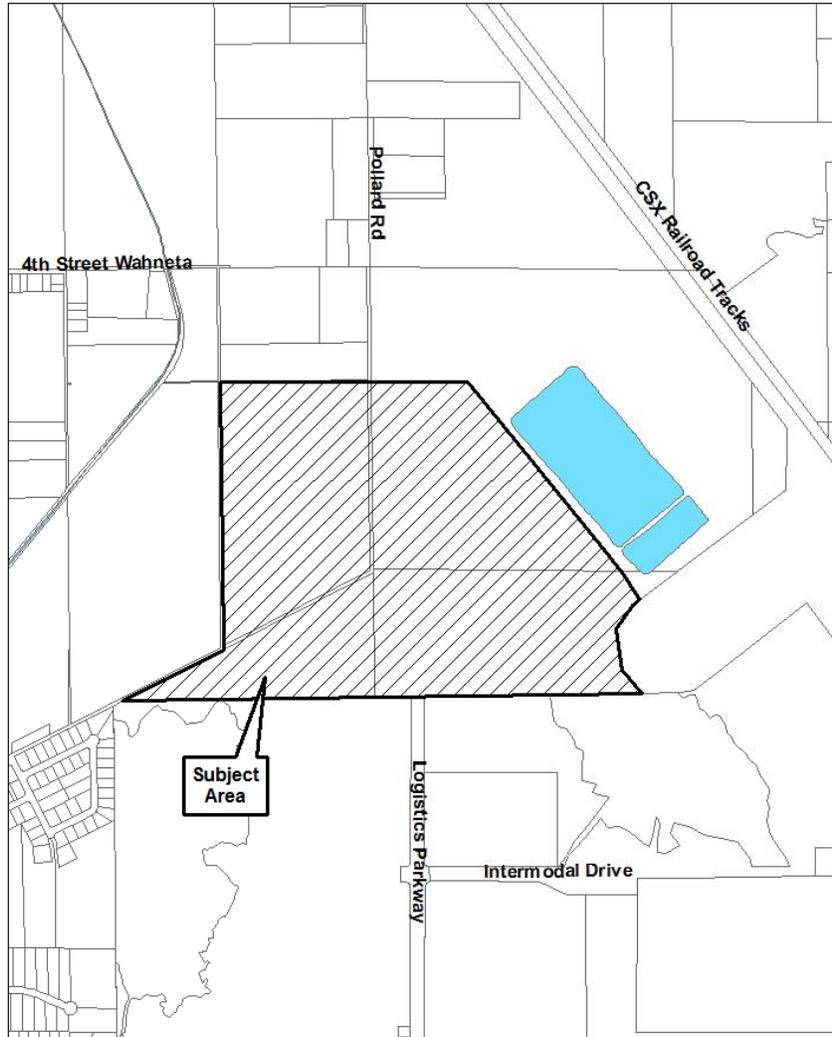
The map is created from a subset of data from the City of Winter Haven Geographic Information System (GIS) database. The City of Winter Haven makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the City, including the implied validity of any uses of such data.



**PLAT OF SUBJECT  
(supplied by City of Winter Haven)**



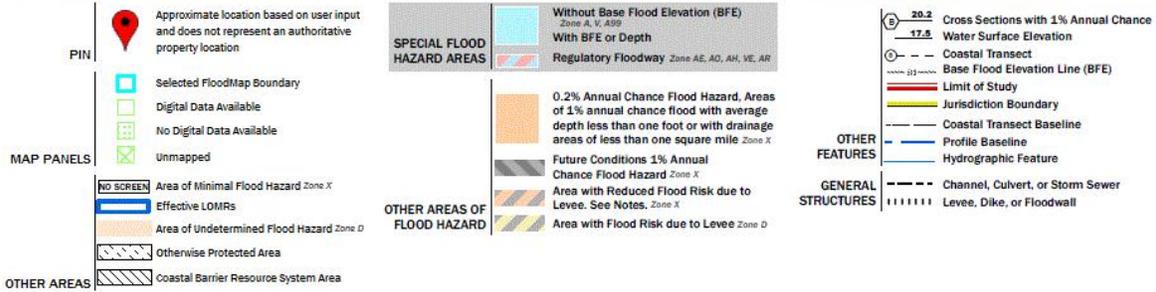
Location Map  
P-19-36



The map is created from a subset of data from the City of Winter Haven Geographic Information System (GIS) database. The City of Winter Haven makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the City, including the implied validity of any use of such data.



# FLOOD MAP



**SUBJECT PHOTOGRAPHS**



**View of Subject Property Looking NE from Northern Terminus of Logistics Parkway**



**View south along Logistics Parkway**



**View NW from South**



**View East from South-Central Area**



**View North of Northwest portion of Subject**



**View NE of Northeast portion**

**From:** Eric Labbe [mailto:[elabbe@mywinterhaven.com](mailto:elabbe@mywinterhaven.com)]  
**Sent:** Wednesday, August 28, 2019 9:47 AM  
**To:** 'Nicholas Mancuso'  
**Cc:** Mike Herr; Bruce Lyon; [fjm@bosdun.com](mailto:fjm@bosdun.com)  
**Subject:** Confidential per FS 288.075 - Project Sugar Cane

Nick,

Please find attached a sheet of general assumptions for the appraisal of the City owned property that we previously discussed. Pursuant to your previous email indicated that the fee for appraisal services for this property would be \$3,000, please utilize this email as notice to proceed with the appraisal.

I will call you shortly to confirm receipt of this email and discuss the assumptions, if necessary.

Sincerely,

Eric Labbe, AICP  
Growth Management Director  
City of Winter Haven  
451 Third Street, NW  
Winter Haven, FL 33881  
863.291.5600 x241 (P)/863.232.6466 (C)  
[elabbe@mywinterhaven.com](mailto:elabbe@mywinterhaven.com)

**General Guidelines and Assumptions for Appraisal of Vacant Land**

Owner: City of Winter Haven  
Parent Parcel Size: 203 Acres (4 tax parcels)  
Uplands Assumption for Appraisal: 120 acres  
Wetlands/Conservation: Assumption for Appraisal: 83 acres  
  
Value to be appraised: Market Value

General Assumptions

Environmental Assumptions: No adverse environmental conditions which impact the property.  
Conditions of Sale: All cash or same as cash  
Purpose of Appraisal: Establish Market value for potential sale of property for development  
  
Zoning: Assume FLU/ zoning will allow Industrial Development including Manufacturing activity  
Building Code: Assume all building codes will permit use of property for manufacturing or industrial purpose facility.  
  
Wetland Conservation Areas: Assume wetland conservations areas are suitable for water retention to serve the 120 acres of upland areas.  
  
Highest and Best Use: Development of Industrial or Manufacturing facility

**ORDINANCE NO. O-19-36**

AN ORDINANCE AMENDING ORDINANCE 11-03, THE 2025 WINTER HAVEN COMPREHENSIVE PLAN, BY REVISING THE FUTURE LAND USE MAP SERIES BY AMENDING THE FUTURE LAND USE ON TWO (2) PARCELS AND TWO (2) ADDITIONAL PARCELS FROM INSTITUTIONAL TO INDUSTRIAL; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE. (General Location: The four parcels generally located north of Logistics Parkway, approximately 2,100 feet west of the CSX Railroad Tracks. The area covered by this request is 203± acres.)

WHEREAS, a proposed amendment to the Winter Haven Comprehensive Plan, Future Land Use Map Series, has been studied, documented, advertised, and heard by the Winter Haven Planning Commission; and

WHEREAS, the proposed amendment has been transmitted to, and returned from, the State of Florida in accordance with Chapter 163 of the Florida Statutes; and,

WHEREAS, the City Commission of the City of Winter Haven, Florida, deems it appropriate to amend the Comprehensive Plan in order to further the public interest and the general welfare of the citizens of the City of Winter Haven;

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. That the Future Land Use Map Series of the Comprehensive Plan of the City of Winter Haven, Florida, is hereby amended by re-designating the areas as shown on Exhibit "A" from "Institutional" Future Land Use to "Industrial" Future Land Use; as classified by the City of Winter Haven's Future Land Use Element.
2. This ordinance shall not be codified, but the City Clerk shall retain this ordinance as a permanent record of action taken by the City Commission.

3. All ordinances in conflict herewith are hereby repealed.
4. The effective date of this plan amendment shall be: the date a final order is issued by the State Land Planning Agency (Department of Economic Opportunity's Community Planning and Development Office) finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S.; or the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S.

INTRODUCED on first reading this 14<sup>th</sup> day of October, 2019.

PASSED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF WINTER HAVEN, FLORIDA

\_\_\_\_\_  
MAYOR-COMMISSIONER

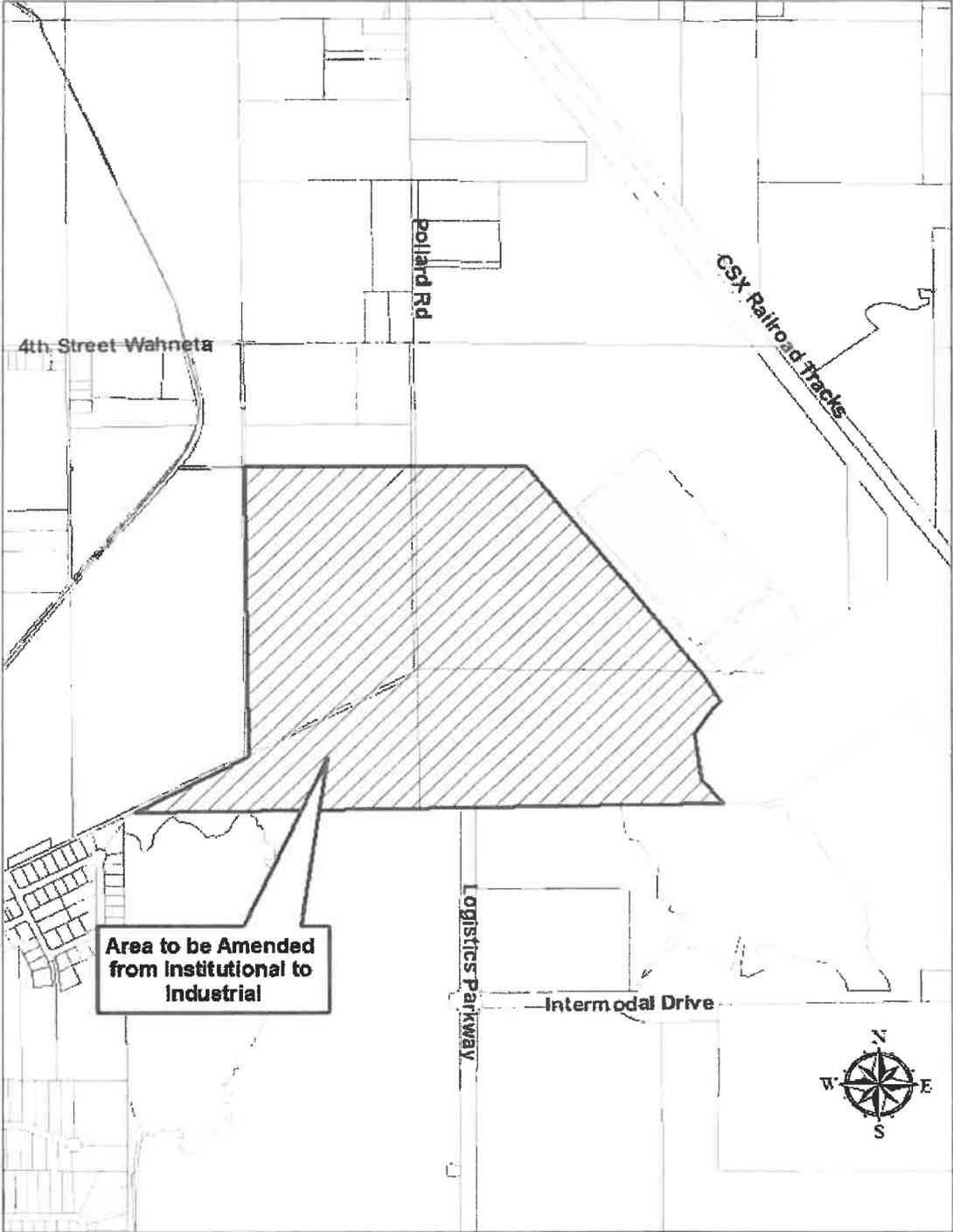
ATTEST:

\_\_\_\_\_  
CITY CLERK

Approved as to form:

\_\_\_\_\_  
CITY ATTORNEY

Exhibit "A"



October 17, 2019

Job No. 1904463

Mr. Calvin Bowen, Finance Director  
City of Winter Haven  
451 Third Street, NW  
Winter Havens, Florida 33881

**RE: OPINION REGARDING THE SALE OF CERTAIN CITY PROPERTY IN LIGHT OF REVENUE BOND REQUIREMENTS AND LOAN AGREEMENTS**

Dear Mr. Bowen:

The City of Winter Haven owns approximately 446 acres, which includes the City's Wastewater Treatment Plant (WWTP) #3, located in the southern portion of the City. This property includes approximately 203 undeveloped acres located south of WWTP #3 that are under consideration for sale to a privately-owned company for industrial development purposes (Attachment A). The property is subject to the following Revenue Bond requirements and Loan Agreements, which require an opinion from a Qualified Independent Consultant regarding the sale of Utility System property prior to the sale. This letter constitutes that opinion.

1. The City of Winter Haven, Florida (the "City") previously issued its Utility System Refunding Revenue Bond, Series 2010, which matures 2028 (the "Series 2010 Bond"); its Utility System Refunding Revenue Bond, Series 2015, which matures 2035 (the "Series 2015 Bonds"); and its Utility System Refunding Revenue Bond, Series 2015B, which matures 2020 (the "Series 2015B Bond," and together with the Series 2010 Bond, and the Series 2015 Bonds, the "Bonds") for the primary purpose of financing and/or refinancing the cost of constructing and acquiring certain additions, extensions, and improvements to the City's Water System and Sewer System (collectively, the "Utility System").
2. The Bonds were authorized by Resolution No. R-98-13 duly adopted by the City Commission of the City (the "Commission") on April 13, 1998, as amended and supplemented from time to time, and as particularly amended by Resolution No. R-98-21 adopted by the Commission on June 24, 1998, Resolution No. R-05-32 adopted by the Commission on July 11, 2005, and Resolution No. R-15-06 adopted by the Commission on January 12, 2015 (collectively, the "Bond Resolution").
3. The City has previously entered into (i) Clean Water State Revolving Fund Planning Loan Agreement WW531300 with the State of Florida Department of Environmental Protection and Clean Water State Revolving Fund Loan Agreement WW531320 with Florida Water Pollution Control Financing Corporation (collectively, the "SRF Loan Agreements") and (ii) Guaranty Agreement for Polk Regional Water Cooperative Drinking Water State Revolving Fund Planning Loan Agreement DW532000 with the State of Florida Department of Environmental Protection (the "Polk Agreement," and together with the SRF Loan Agreements, the "Agreements").

Pennoni's review included a site visit, discussion with Utility System Staff, and review of the following material requested by Pennoni and supplied by the City:

- A map prepared by the City and identified as "Wastewater Treatment Plant #3 Expansion Area" (Attachment B)
- Fiscal Year 2019/20 Adopted Operating Budgets and Fiscal Year 2020/21 Adopted Planned Operating Budgets
- The most recent City Wastewater and Reclaimed Water Master Plan(s) dated 2007
- The City's Capital Improvements Budget for FY 2020 – FY 2024 dated 10/1/19
- Capacity Analysis Report for WWTP #3 dated October 2015
- Florida Department of Environmental Protection (FDEP) Domestic Wastewater Facility Permit for WWTP #3 dated 8/5/16
- Winter Haven 50-year Population, Demand & Capacity Needs Projections prepared by the City for the Polk Water Cooperative and provided to Pennoni on 10/14/19

The results of our review indicate the following:

1. The property is an approximate 203-acre site located south of the City's WWTP #3 and north of property owned by Winter Haven Industrial Investors, LLC (Attachment A: 203 +/- acre "Disposed Property").
2. The City is considering sale of the property for the intended private development of industrial type use(s).
3. Prior to 2007, the property was part of a large tract owned by the City consisting of approximately 1,696 acres. This acreage was originally purchased by the City in 1975 in order to apply overland treatment of wastewater effluent from WWTP #3. The stated purpose of the overland flow was to reduce the nitrogen content of the effluent prior to ultimate disposal into the Peace Creek Drainage System.
4. A 2006 Preliminary Engineering Report determined the feasibility of reducing nitrogen in the wastewater effluent by an alternative method to overland flow. The report found that nitrogen could be reduced sufficiently to meet FDEP permit requirements by an upgrade to WWTP #3, converting it to an advanced wastewater treatment plant.
5. The City upgraded WWTP #3 in 2007. This upgrade resulted in establishing advanced treatment of wastewater effluent, which includes the removal of nitrogen. Therefore, overland application of effluent was no longer required.
6. Subsequent to the City's upgrade of WWTP #3, the City sold adjacent property which was no longer required for overland flow application of effluent. Specifically, approximately 320 acres were sold in 2007 to CSX/Evansville Western Railroad for the development of an Intermodal Rail Terminal; and approximately 932 acres were sold in 2014 to GEM Realty Capital, Inc./Winter Haven Industrial Investors, LLC for the development of a warehouse and industrial Intermodal Logistics Center.
7. The current permitted capacity of WWTP #3 is 7.5 Million Gallons Per Day (MGD) with a current annual average daily flow of approximately 4.0 MGD, for both treatment and disposal via surface water discharge. In addition, City WWTF #2 in northern Winter Haven has a permitted treatment capacity of 1.7 MGD, resulting in a current City-wide permitted capacity of 9.2 MGD.

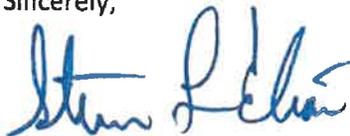
8. The latest maturity date for the City's Revenue Bonds referenced above is 2035 (Utility System Refunding Revenue Bonds, Series 2015).
9. The most recent wastewater and associated reuse water flow projections estimate City-wide wastewater flows requiring treatment will increase to approximately 9.2 MGD in the year 2035 and 14.9 MGD in 2060. This will reasonably require doubling the size of the current WWTF#3 footprint and capacity to 15 MGD by 2060.
10. The existing "footprint" or area used for the WWTP #3 facility is approximately 20 acres. A map prepared by the City (Attachment B: Wastewater Treatment Plan #3 Expansion Area) indicates that an 18-acre area north of the existing facility, currently owned by the City and not included within the 203-acre tract being considered for sale, can be used to double the size of the existing facility; thereby, reasonably enabling a doubling the permitted treatment capacity of WWTF#3 to approximately 15 MGD.
11. The 203-acre tract is not needed for overland application of wastewater effluent and is not identified in any City planning documents, including the City's Wastewater Master Plan, as needed for future expansion of WWTP #3.

**Opinions:** Based on our analysis and the facts stated above, it is Pennoni's opinion that:

1. Disposition of the 203-acre tract (i) will not materially impair or restrict the City's ability to realize Gross Revenues, Sewer System Development Charges, and Water System Development Charges in compliance with the requirements therefor as set forth in the Bond Resolutions and, (ii) is in the economic best interest of the City.
2. Disposition of the 203-acre tract will not materially reduce operational integrity or Gross Revenues of the Utility System.

Should you have any questions or require additional information about our review of the matter, please contact me.

Sincerely,



Steven L. Elias, PE

Division Manager, Municipal and Environmental Engineering

Attachments:

Exhibit A: 203 +/- acre Disposed Property

Exhibit B: Wastewater Treatment Plant #3 Expansion Area

ATTACHMENT A  
203 +/- acre Disposed Property

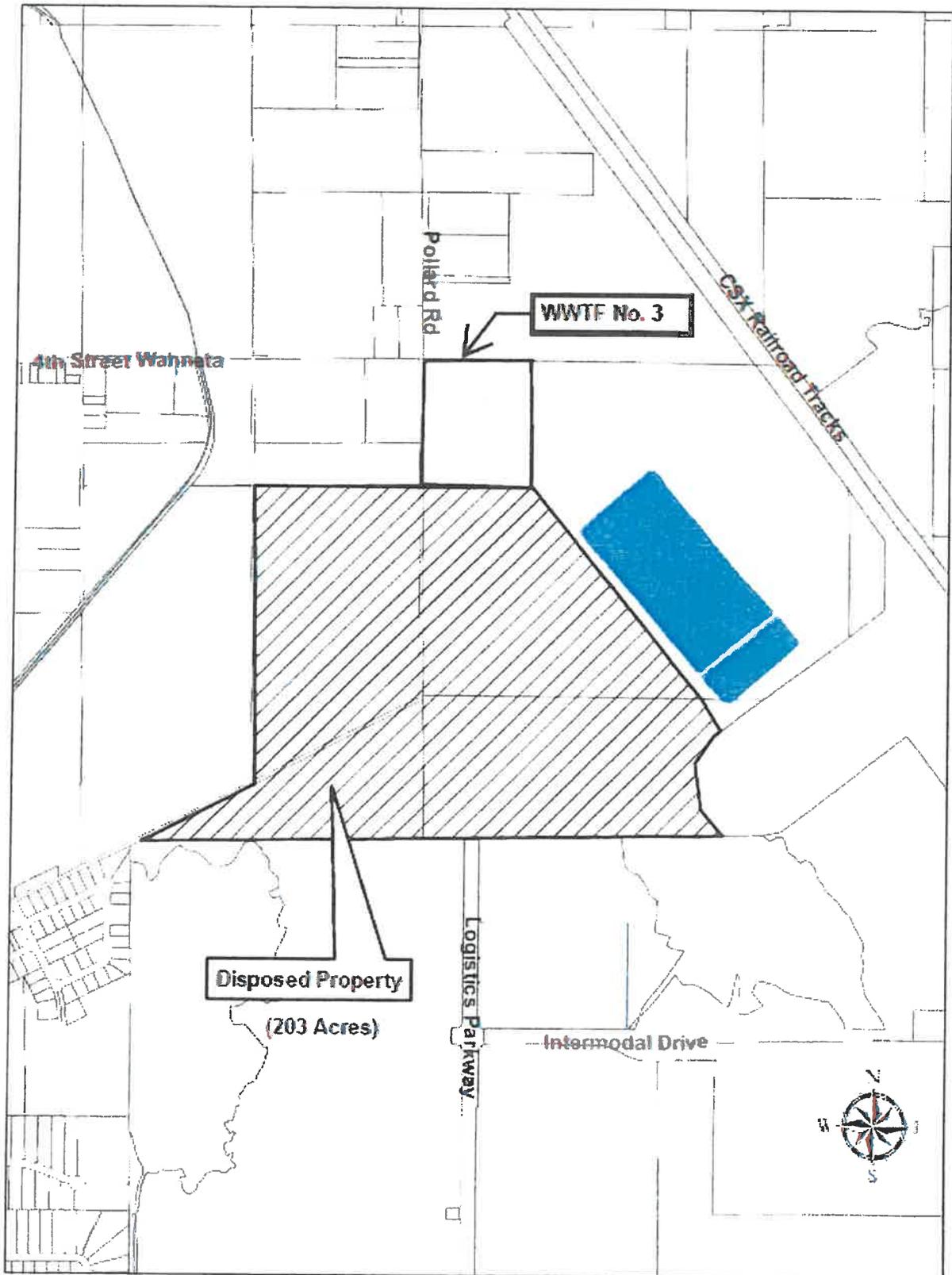
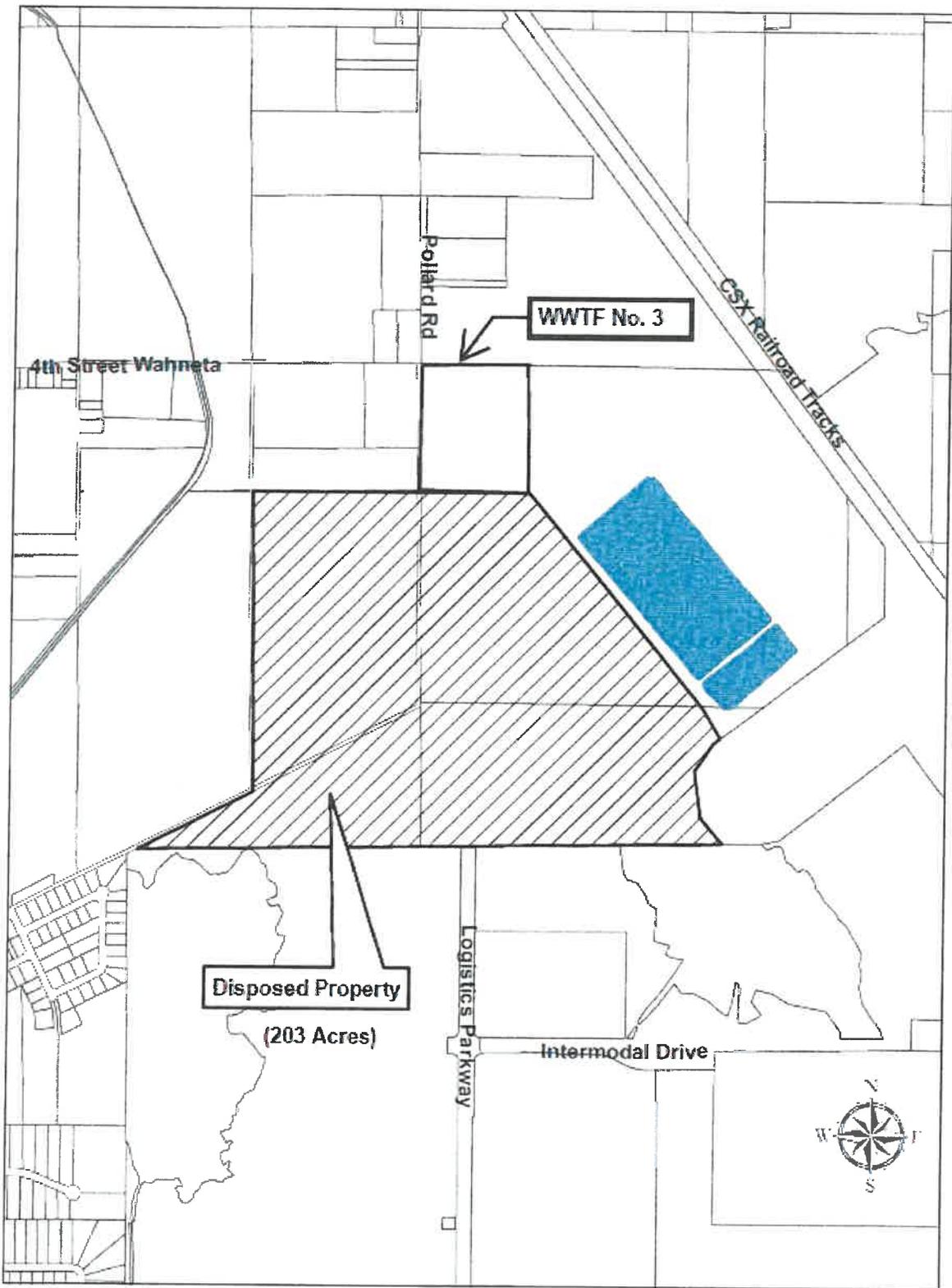




EXHIBIT A



**CITY OF WINTER HAVEN  
CITY COMMISSION POLICY  
DISPOSITION OF SURPLUS CITY OWNED REAL ESTATE**

**POLICY NO.: 2018-01**

**POLICY TITLE: POLICY RELATING TO SALE, CONVEYANCE, AND/OR  
DISPOSITION OF SURPLUS CITY OWNED REAL ESTATE**

**WHEREAS**, the City Commission has the authority to sell, convey, or dispose of City owned real estate which is not needed or suitable for municipal purposes; and

**WHEREAS**, the City's Procurement Manual specifically exempts real estate transactions from its application; and

**WHEREAS**, the City Commission has determined it to be desirable and beneficial for the citizens and residents of the City of Winter Haven to adopt a policy relating to the sale, conveyance, and/or disposition of surplus City owned real estate;

**NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER HAVEN AS A POLICY OF THE CITY:**

*Sale, Conveyance, and/or Disposition of Surplus City owned Real Estate Policy*

The following sets forth administrative policies and procedures that the City Manager will adhere to in the sale, conveyance, and/or disposition of any surplus City owned real estate.

1. Title must be solely vested in the City of Winter Haven and obtained by purchase, donation, quit claim deed, or foreclosure.
2. Real Estate Review

As part of an overall management plan for the City's real estate assets, the City Manager will review the City's property inventory to determine which properties are no longer needed for public facilities or are surplus and whose disposition will provide a greater public benefit. A City owned property may become available for sale and/or disposition if:

- The property is not currently used by a City department or does not support a municipal function.
- The property is vacant and has no foreseeable use by the City.
- The property is a non-performing or under-performing asset and

- greater value can be generated by its sale and/or disposition.
- Significant economic development opportunities can be generated by selling and/or disposing of the property.

Factors to be considered in determining whether a property should be sold and/or disposed of include:

- Will the City be relieved of potential liabilities and/or cost of maintaining property that does not generate income or provide public benefit?
  - Property tax increment that will be created by returning the properties to the tax rolls.
  - Stimulation of the economy by providing opportunities for private sector investment.
  - Generation of revenue for the City.
  - The sale and/or disposition of the property will generate greater economic value than a ground lease, if a ground lease is a feasible option.
3. City owned properties that have been identified by the City Manager as candidates for sale and/or disposition will be presented to the City Commission for approval for disposition. If a property is of a type and location that would make a ground lease feasible, an economic analysis of the benefits of lease vs. sale will be conducted.

If the City Commission determines that the property may be sold and/or disposed, it shall authorize the City Manager to sell and/or dispose of the property for a price equal to or greater than a minimum price established by a current (less than six month old) appraisal performed by a competent real estate appraiser or under terms as determined by the City Commission which will be set forth in the enabling Resolution. The authorization to sell and/or dispose of the property will be valid for twelve months from the date of City Commission action. Provided however that, for properties with a tax assessable value of \$100,000 or less, the fair market value determined by Polk County's Property Appraiser may be used as the fair market value of the property in lieu of an appraisal. If the tax assessable value of the property is in excess of \$100,000, a fair market value may be as determined by a competent real estate appraiser. The City Manager, in his discretion, however, may obtain the services of a competent real estate appraiser, for any properties with less than a tax assessable value of \$100,000.

If the property is divided into two or more parcels, the price of each parcel shall be prorated on the basis of an amount per square foot which shall be

determined by dividing the fair market value and/or the authorized purchase price by the total square footage of the property.

If the City Manager chooses to, after authorization from the City Commission, to proceed with a sale and/or disposition, the City Manager may either negotiate with a purchaser or post advertisements for competitive bids consistent with terms/parameters and in a manner deemed appropriate by the City Manager. If the City Manager determines to post an advertisement for competitive bids, the advertisement for such bids for the sale and/or disposition of the property shall be placed in a newspaper and/or publication with general circulation in Winter Haven and advertised and/or published in any other manner that the City Manager deems appropriate. The notice shall provide that the City may reject any and all bids and/or waive bidding irregularities.

The City Manager will report out on the price, terms and conditions of all transactions.

4. Any real property that cannot be used for development because of size limitations may be offered by the City Manager to an adjacent property owner based on the City Manager's discretion. If the City Manager elects to proceed in this manner then notification to adjacent property owners shall be made advising that the property is available for purchase and that the City will accept sealed bids from each adjacent owner. However, if one of the adjacent properties is smaller than the standard building lot (60 feet by 100 feet), the City Manager may, first, offer to sell it to the adjacent owner whose property is smaller than the standard building lot. If more than one of the adjacent properties is smaller than the standard building lot, the City Manager may subdivide the parcel and offer equivalent portions to each adjacent property owner. Notwithstanding the above, if only one adjacent property meets the City's existing zoning and land use requirements, the City Manager may sell directly to the owner of said property in accordance with paragraph 3 above.
5. In accordance with the provisions of Section 166.0451 of the Florida Statutes, property which will be used for the development of affordable housing for persons whose household income meets the requirements of an applicable Affordable Housing Program may be offered by the City Manager for sale and the proceeds may be used to purchase land for the development of affordable housing or to increase any funds that the City may earmark for affordable housing, or may be sold with a restriction that requires the development of the property as permanent affordable housing, or may be donated to a nonprofit housing organization for the construction of permanent affordable housing. Alternatively, the City

Manager may otherwise make the property available for use for the production and preservation of permanent affordable housing. Persons who are qualified for assistance under funding from the U. S. Department of Housing and Urban Development's Community Development Block Grant Program must have a total household income that is not more than 80% of the median income for the Lakeland-Winter Haven metropolitan statistical area (MSA). Persons who are qualified for assistance under funding from the State Housing Incentive Program (SHIP) must have a total household income that is not more than 120% of the median income for the Lakeland-Winter Haven metropolitan statistical area (MSA).

6. Method of Sale and/or Disposition

Properties may be sold and/or disposed by any method allowed by City Commission Policy and/or Resolution and applicable law, Charter and Code of Ordinances. This includes direct negotiation, request for proposal, listing with a broker, sealed bid, auction or other appropriate method as determined by the City Manager and approved by the City Commission. Possible method of sale and/or disposition for all properties will be included in the enabling resolution authorizing their sale and/or disposition.

7. Marketing

Subject to the provisions herein, it is the City Commission's intent that properties offered for sale and/or disposition shall receive the widest possible exposure to the open market place. This may be accomplished through direct marketing techniques, such as requests for proposals (RFPs), advertising, exposure through the real estate media, posting the property on the multiple listing service or any other appropriate method as determined by the City Manager. When appropriate, properties may be listed for sale with qualified real estate brokers as more specifically addressed in paragraph 8 below.

8. Real Estate Brokers

The City Manager may, with City Commission authorization, retain the services of a real estate broker, or may sell such surplus property without a real estate broker. The authorization to utilize the services of a real estate broker will be contained in the enabling resolution authorizing the sale.

If real estate brokers are used to represent the City in the sale of its properties then each real estate broker will be selected for individual assignments through Requests for Proposals (RFP) or Requests for Qualifications (RFQ) and a subsequent bid or other method that results in

the City receiving the services of a qualified broker at the best value to the City. The maximum approved commission rate will be contained in the enabling resolution for the property's sale. If the property is listed with a real estate broker, the City reserves the right to exclude from the listing agreement potential purchasers whose interest in purchasing a subject property has been made a part of the record prior to the execution of such agreement.

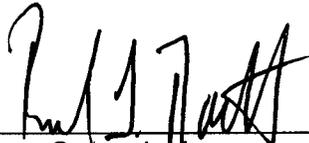
9. Easements

The City will receive current fair market value as determined by appraisal or by the City Commission for the removal of restrictive easements or access rights previously paid for and/or acquired by the City or other governmental agency or reserved in a sale of City property.

10. After negotiating an acceptable price and other terms, the City Manager shall obtain authorization from the City Commission to dispose of the property pursuant to an approved written sales contract. The City Attorney shall review and approve as to form all documents associated with any transaction including but not limited to the deed and appropriate closing documents to transfer title to the approved purchaser in accordance with all applicable provisions of law, City Charter and Code of Ordinances and Resolutions. The deed shall be signed by the Mayor and attested by the City Clerk. The City Manager or his designated representative shall sign all other required closing documents. The deed of conveyance may contain clauses which enable the City to reclaim or repurchase the property from the purchaser and/or its successor in title if the property is not developed in conformance with an appropriate site plan or is not developed within the time specified. The City recognizes that each parcel of property is unique unto itself. In order to ensure that each proposed purchase or development of City owned real estate significantly contributes to the surrounding neighborhood and/or promotes a goal of the City Commission, the City reserves the right (but is not obligated) to place other clauses in the deed of conveyance which will guarantee the community's interest in the proper and timely development of property.
11. A copy of the closing documents shall be provided to the City's Financial Services Director for proper disposition of the property from the City's Property Control records.
12. The policies and procedures contained herein are to be used for guidance only and are not intended to grant rights in any prospective purchaser of real property. The policies and procedures are subject to change in accordance with provisions of law.

APPROVED by motion at the regular meeting of the City Commission of the  
City of Winter Haven, Florida this 24<sup>th</sup> day of September, 2018.

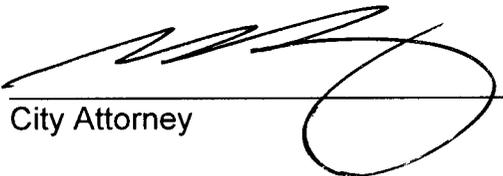
CITY OF WINTER HAVEN

  
\_\_\_\_\_  
Mayor-Commissioner

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**CITY OF WINTER HAVEN FACT SHEET  
CITY COMMISSION SPECIAL MEETING  
December 4, 2019**

---

**DATE:** November 19, 2019

**TO:** Honorable Mayor and City Commissioners

**FROM:** Mike Herr, City Manager

**SUBJECT:** Lease Agreement Between City of Winter Haven and Summerlin Land & Cattle LLC; Administrative Request to Exercise Early Termination Option

---

**BACKGROUND:**

In December 2017, the City leased to Summerlin Land & Cattle, LLC, a Florida limited liability company (“Summerlin”) approximately 90.29 ± acres of former reclamation spray field lands generally located Southwest of Pollard Road and City Wastewater Treatment Plant No. 3 (“WWTP 3”) as pasture for cattle grazing. The lease agreement is valued at approximately \$3,500 ± per year in annual property maintenance savings and \$12 per year in rent. The initial term of the lease expires on December 11, 2021.

Recently, an approximately 77.53 ± acre parcel of former spray field land South of Pollard Road and WWTP 3 was identified for development. The proposed sale of the parcel is projected to net ± \$3,290,334.40 in sale revenue for the City. The contemplated investments necessary to allow expected development are projected to generate significant economic impacts that will benefit the residents, citizens and businesses in Winter Haven and Polk County, Florida.

The City’s lease with Summerlin encumbers a significant portion of the proposed development parcel. Pursuant to § 4.4 of the Lease Agreement, the City may “with or without cause, terminate [the] Agreement upon one hundred eighty (180) Days written notice to” Summerlin. If the City Commission decides to exercise its option to terminate the lease early (such that notice may be provided on or before December 5, 2019), Staff expects possession of the leased parcel to be returned to the City on or before Thursday, June 4, 2020.

**RECOMMENDATION:**

Staff recommends that the City Commission exercise its option for early termination of the Summerlin Land & Cattle LLC lease pursuant to § 4.4 of the December 11, 2017 Lease Agreement and authorize the City Manager and City Attorney to take all further necessary actions related thereto.

**ATTACHMENTS:**

Lease Agreement

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (hereafter the “Agreement”), is made as of the 11th day of December, 2017, by and between the CITY OF WINTER HAVEN a Florida municipal corporation (hereinafter “City/Lessor”), and SUMMERLIN LAND & CATTLE, LLC (hereinafter “Lessee”).

### **FACTUAL RECITALS**

**WHEREAS**, Section 166.021, Florida Statutes and Section 2(b), Article III of the Florida Constitution authorizes the City to enter into this Agreement with the Lessee; and

**WHEREAS**, Lessor is the owner of certain premises as depicted on Exhibit “A” attached hereto, suitable for Lessee’s use as cattle pasture and/or grazing land(s); and

**WHEREAS**, Lessor incurs an average yearly expense of approximately \$3,500.00 in and/or for the maintenance and mowing of the Leased Premises (as defined in §2.1 of this Agreement); and

**WHEREAS**, Lessor has determined that the Leased Premises (as defined in §2.1 of this Agreement) are not currently used nor contemplated to be necessary for the City’s operation of its water and wastewater utility system; and

**WHEREAS**, Lessor desires to lease the Leased Premises (as defined in §2.1 of this Agreement) to Lessee in order to ensure the ongoing maintenance and preservation of the Leased Premises and eliminate the Lessor’s expense(s) associated with same;

**WHEREAS**, Lessee acknowledges that the ongoing maintenance and preservation of the Leased Premises (as defined in §2.1 of this Agreement) and the elimination of Lessor’s expense(s) for same is a primary and material purpose and/or consideration for Lessor’s entry into this Agreement; and

**WHEREAS**, Lessee is currently leasing the real property adjacent to the Leased Premises (as defined in §2.1 of this Agreement) under the terms of an Agricultural Lease for Cattle Grazing and related matters; and

**WHEREAS**, while and so long as the Lessee continues to have access to such adjacent property, Lessee desires to lease the Leased Premises (as defined in §2.1 of this Agreement) from Lessor, pursuant to the terms and conditions set forth in this Agreement; and

**WHEREAS**, Lessee acknowledges and represents that, in consideration for the Lessor’s entry into this Agreement, the Lessee will maintain and preserve the Leased Premises during the Term (as defined in §1.2(k) of this Agreement) pursuant to the terms and conditions set forth and/or prescribed in this Agreement; and

**WHEREAS**, Lessee acknowledges and represents that, prior to the Effective Date ~~(as defined §1.2(i))~~ of this Agreement, it has performed any and all necessary due diligence and that the Leased Premises (as defined §2.1 of this Agreement) does not contain any Hazardous Substances (see §4.2 herein) and is suitable for the uses identified in this Agreement; and

**WHEREAS**, Lessee acknowledges that its use and occupation of the Leased Premises (as defined §2.1 of this Agreement) is subordinate and/or subject to the the Lessor's rights of ingress and egress over the Leased Premises as determined by Lessor to be necessary and/or desirable; and

**WHEREAS**, Lessee acknowledges and represents that, in addition to any consideration for the Lessor's entry into this Agreement, Lessee agrees to install and/or construct and maintain a fence (or fences including but not limited to gates) pursuant to the terms set forth in this Agreement ; and

**WHEREAS**, the parties agree that the consideration to be paid by Lessee to Lessor as provided for in this Agreement represents fair market value; and

**WHEREAS**, the Lessee represents that, prior to executing this Agreement, it has fully read this Agreement and inspected the Leased Premises; and

**WHEREAS**, the Lessee represents that, prior to executing this Agreement, it has reviewed this Agreement with its legal counsel and fairly negotiated this Agreement at arm's length; and

**WHEREAS**, the Lessee has elected to enter into this Agreement for a term of four (4) years with an option to renew for one additional two (2) year term which commences on the Effective Date (as defined in §1.2(i) of this Agreement); and

**WHEREAS**, the Lessee acknowledges that "time is of the essence" as related to this Agreement; and

**WHEREAS**, the Lessee acknowledges that, in the event of any breach and/or failure of the Lessee to strictly adhere to and/or perform pursuant to the provisions of this Agreement, the Lessor may retain legal counsel to enforce the provisions of this Agreement; and

**WHEREAS**, the Lessee acknowledges that, in the event the Lessor retains the services of an attorney to enforce the provisions of this Agreement, any and all attorneys' fees and/or costs will be charged to the Lessee as additional rent; and

**WHEREAS**, the Lessee acknowledges that the Leased Premises (as defined in §2.1 of this Agreement) requires the exercise of ordinary care in maintaining same and keeping the Leased Premises safe; and

**WHEREAS**, it is in the best interests and will promote the health, safety and welfare of all citizens and residents of the City to enter into this Agreement.

**NOW, THEREFORE**, in exchange for the mutual consideration given herein, receipt of which is acknowledged by the City and Lessee, the parties agree as follows:

**ARTICLE 1  
GENERAL PROVISIONS**

§1.1 – Incorporation of Recitals. The foregoing recitals are incorporated herein by the parties as true and correct statements which form the material and factual basis for entry into this Agreement between the City and Lessee.

§1.2 – Definitions. Words used in this Agreement and/or any and all attachments and/or exhibits incorporated herein and made a part hereof shall possess their everyday and ordinary meaning, provided however, that where one (1) of the following listed terms is used in this Agreement, such term(s) shall possess the corresponding meaning, as follows:

(a) “*Applicable Laws*” means the City of Winter Haven Code of Ordinances and any other applicable laws, rules, regulations, statutes, ordinances and any and all other authority, as more specifically set forth in Section 1.12 of this Agreement herein.

(b) “*Bankruptcy and Bankruptcy Laws*” means any and all applicable laws, rules, regulations, and statutes contained and/or provided by or within the United States Bankruptcy Code.

(c) “*Day(s)*” means calendar day unless specifically stated otherwise.

(d) “*Calendar Days*” means any and all days in a 365-day calendar year.

(e) “*Business Days*” means each calendar day which is not a Saturday, Sunday or a recognized holiday by the City of Winter Haven, Florida.

(f) “*City*” and/or “*Lessor*” means the City of Winter Haven, a municipal corporation, vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and the City is therefore vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes.

(g) “*City’s Representative*” means the City Manager, or his designated appointee, who is authorized to act on the City’s behalf in the administration of

this Agreement. The City's Representative does not have the authority to waive or modify any condition or term of this Agreement.

(h) "*City Commission*" means the duly elected City Commission and/or governing body of the City.

(i) "*Effective Date*" shall be the date that this Agreement has been approved by the governing body of the City.

(j) "*Leased Premises*" means the real property, facilities and any and all improvements thereto, as more particularly set forth in §2.1 of this Agreement and depicted and described in Exhibit "A" attached hereto and which shall be utilized by the Lessee only as contemplated in this Agreement and any exhibits as described in §2.2 of this Agreement, which are incorporated by reference in this Agreement.

(k) "*Term*" means the duration of this Agreement which shall commence on the Effective Date and shall expire and/or terminate in accordance with the provisions set forth in §2.3 of this Agreement.

(l) "*Rent*" means the Annual Rent (as defined by §2.2(b) of this Agreement), any and all applicable tax(es) set forth in §3.3 of this Agreement, and shall include any and all monies owed by the Lessee to the Lessor as Additional Rent.

(m) "*Additional Rent*" means any and all cost(s), fee(s), expense(s), and/or any and all sums or charges which the Lessee covenanted to reimburse and/or pay to the Lessor, as prescribed by §3.4 of this Agreement and/or pursuant to the terms of this Agreement.

§1.3 – Construction. The Lessor and Lessee acknowledge that the Agreement has been fairly negotiated by each party's respective legal counsel and at arm's length; and, as such, the Agreement shall be interpreted in accordance with the terms contained herein.

§1.4 – Calculation of Time Periods. The calculation of the number of days that have passed during any time period prescribed shall be based on Calendar Days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of Days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall commence on the day immediately following the Effective Date.

§1.5 – Assignment. The Lessee shall not, without the prior written consent of the City, assign, sublease, encumber, dispose of, convey or transfer this Agreement or any

interest under it, which consent by the City shall be subject to the terms and conditions hereinafter set forth. The Lessee shall not allow any assignment, subletting or other transfer of this Agreement or any lien upon the Lessee's interest by operation of law or by voluntary or involuntary bankruptcy, insolvency or reorganization proceedings. The Lessee's request for an assignment or other transfer shall be in writing to the City and will only be considered by the City if the Lessee is not in breach and/or default of any provision of this Agreement. If the City shall consent to any assignment, the assignee shall assume all obligations of the Lessee under this Agreement and as otherwise expressly provided herein, neither the Lessee nor any assignee shall be relieved of any liability under this Agreement. If the Lessee's interest in this Agreement be assigned or if the Leased Premises (as defined in §2.1) or any part thereof be sublet, the City may, after an event of default by the Lessee, collect the rent from the assignee or sub-lessee and apply the net amount collected to the rent or other consideration due from the Lessee. No such collection shall be deemed a waiver of the covenant herein against sale, transfer, mortgage, assignment and subletting or release of the Lessee from the performance of the covenants herein contained. In the event of such breach and/or default, the Lessee hereby assigns the rent and/or other consideration due from the sub-lessee or assignee to the City, and hereby authorizes such sub-lessee or assignee to pay rent and/or other consideration directly to the City. If any transfer, sale, pledge or other disposition of the Lessee's stock and/or ownership interests shall occur, or power to vote and/or control be changed, then the Lessee shall so notify the City and the City shall have the right, at the City's option, to terminate this Agreement upon ten (10) Days written notice to the Lessee. Any assignment, subletting, or other transfer of the Leased Premises (as defined in §2.1) by the Lessee without the City's written consent shall be, at the option of the City, null and void, and shall constitute an event of default under this Agreement. The Lessee shall, at all times, protect and defend, at its own cost and expense, the City's ownership from and against all claims, liens, and legal processes of creditors of the Lessee and will keep the property free and clear from all such claims, liens, and processes.

§1.6 – Governing Law and Venue. This Agreement shall be governed by the laws of the State of Florida. Venue for any litigation arising hereunder shall be exclusively in the state courts in and for Polk County, Florida.

§1.7 – Attorneys' Fees. In the event either the City or the Lessee brings an action against the other to interpret and/or enforce this Agreement and/or any condition, covenant and/or provision herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs, including, without limitation, any such fees or costs related to appellate or bankruptcy proceedings.

§1.8 – Limitation on Municipal Indemnity. To the extent that this Agreement calls for the Lessor to indemnify the Lessee, or any party, or to the extent that any transaction made before, during or subsequent to the Term of this Agreement requires the Lessor to indemnify any third-party, the following sentence shall be appended to the indemnity and shall control the indemnity as if set forth therein:

The Lessor does not intend to waive any sovereign immunity. Further regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the Lessor under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to section 768.28, Florida Statutes, as that section existed on the Effective Date of this Agreement, as between the Lessor and Lessee.

The addition of this language pursuant to this Agreement shall not be construed to create Lessor indemnification(s) where none are expressly made in the terms and conditions of the Agreement, nor shall it create indemnification(s) where none are expressly made in the terms and conditions of any transaction made before, during or subsequent to the Term of this Agreement, whether implied or otherwise.

§1.9 – Severability. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed by a court of competent jurisdiction to be lawfully invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law. The City and Lessee further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

§1.10 – Section Headings. Any section or paragraph headings appearing in this Agreement have been inserted for the sole purpose of convenience and ready reference of the parties. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections and paragraphs to which they may pertain.

§1.11 – Gender Neutral. For purposes of this Agreement, any and all gender specific references, classifications and/or language shall be interpreted to be gender neutral.

§1.12 – Compliance with Applicable Laws. The Lessee shall comply with any and all Applicable Laws which includes, but shall not be limited to, the following: applicable statutes, laws, rules, regulations, charter provisions, ordinances and resolutions of the United States of America, State of Florida, Polk County, City of Winter Haven and any and all other public authority which may be applicable to the Leased Premises (as defined in §2.1).

§1.13 – Notices. All notices under this Agreement shall be in writing and may be given by any of the following methods: (1) personal delivery, (2) certified mail, postage prepaid, or (3) overnight delivery service, prepaid, when sent to the following:

THE CITY/LESSOR:

City of Winter Haven  
Attn: City Manager  
P.O. Box 2277  
451 Third Street, NW  
Winter Haven, Florida 33883

COPY TO: (*which shall not constitute notice*)

Frederick J. Murphy, Jr., City Attorney  
Boswell & Dunlap, LLP  
245 South Central Avenue, Post Office Drawer 30  
Bartow, Florida 33831

THE LESSEE:

Summerlin Land & Cattle, LLC  
Attn: Randall C. Summerlin, Managing Member  
909 U. S. Highway 17-92 South  
Post Office Box 981 (33836)  
Davenport, Florida 33837

Any notice required or permitted to be given hereunder shall be given by (1) personal delivery and shall be deemed given on the date of delivery; (2) registered or certified mail and shall be deemed given the third day following the date of mailing; or (3) guaranteed overnight delivery and shall be deemed given the day following deposit with the overnight delivery company.

§1.14 – Representations and Warranties. Each party signing this Agreement on behalf of City and Lessee represents and warrants that he or she has read, understands and acknowledges any and all of the conditions and requirements as set forth herein.

§1.15 – Modification. This Agreement may not be modified in any way, unless such modification is in the form of a written amendment properly executed by both the City and Lessee and approved by the governing body of the City. Moreover, no oral modifications will be effective or binding on either the City or Lessee regardless of whether the person(s) attempting to make such modifications appeared to have the authority to make such modification.

§1.16 – Force Majeure. In the event either the City and/or Lessee shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, failure of power, riots, insurrection, war, acts of God, or other reason beyond that party's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

§1.17 – Authority. Both the City and Lessee represent to the one another that all the necessary actions to execute this Agreement have occurred and that both parties

possess the legal authority to enter into this Agreement and undertake all the obligations imposed herein.

§1.18 – No Third Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party.

§1.19 – Exhibits. All exhibits annexed hereto are incorporated by reference and made a part of this Agreement.

§1.20 – Waiver. Failure of the City to enforce any right hereunder shall not be deemed a waiver of such right. The inaction and/or failure of the City to address and/or remedy any breach of the covenants, conditions, and/or provisions of this Agreement shall not constitute a waiver of such party's rights hereunder with respect to such action, non-action and/or default. No covenant, condition and/or provision of this Agreement can be waived, except with the written consent of both the City and Lessee. Any such waiver, in one instance, shall not constitute a waiver of a subsequent default or for any other past, present or future default, unless the waiver specifically states and/or identifies such default in the written consent. No payment by either the City or the Lessee, or the acceptance thereof, of a lesser amount of monies and/or consideration than shall be due from one (1) party to the other shall be treated as payment-in-full, except for such lesser payments and/or consideration which are incidental and/or complimentary to a written consent that is executed by both the City and Lessee. In the event such lesser payment(s) and/or consideration are made and accepted, without a written and executed consent/waiver, such lesser payment(s) shall be treated as a payment and/or consideration on-account and credited towards the full amount owed.

§1.21 – Duty to Cooperate and Act in Good Faith. The City and Lessee acknowledge and agree that it is in their best interests and the best interests of the public that the Leased Property (as defined in §2.1) be operated and managed in accordance with the terms, covenants and conditions contained herein; and both the City and Lessee shall, in all instances, cooperate and act in good faith in complying with all of the terms, covenants and conditions contained herein.

§1.22 – Entire Agreement. The City and Lessee agree that this Agreement sets forth the entire agreement between the parties and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the parties pertaining to the subject matter of this Agreement, whether written or oral.

§1.23 – Merger. The voluntary or other surrender of this Agreement by the Lessee, or a mutual cancelation thereof, or a termination by the City, shall not operate as a merger, and shall, at the sole option of the City, terminate any and all existing subtenancies or may, at the sole option of the City, operate as an assignment to the City of any and all such subtenancies.

§1.24 – Subordination. This Agreement shall be deemed, without need for any further documentation, subordinate to any ground lease, mortgage, bond indebtedness or any other hypothecation or security now or hereafter placed upon the real property of which the Leased Premises (as defined in §2.1) is a part and to any advances made on the security thereof and to any and all renewals, modifications and/or extensions thereof and the City's rights of ingress and egress in, over and to the Leased Premises. The Lessee agrees to execute any and all documents required to effectuate an attornment or subordination. The Lessee's failure to execute such documents within ten (10) Days after receipt of the City's written request for such documents shall constitute a material breach of this Agreement.

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

§1.26 – Waiver of Jury Trial. In all actions to recover possession of the Leased Premises (as defined in §2.1) by reason of a default by the Lessee in the performance of the conditions, covenants and provisions of this Agreement, the City and Lessee agree that any such action for possession shall be tried and/or adjudicated before the court, the right to a jury trial of such issues is hereby waived.

§1.27 – Easements. The City reserves to itself the right, from time to time, to grant such easements, rights, and dedications that the City, in its sole discretion, deems necessary or desirable, and to cause the recordation of site plans, restrictions and any and all other similar instruments so long as such easements, rights, dedications and restrictions do not unreasonably interfere with the use of the Leased Premises (as defined in §2.1) by the Lessee. The Lessee shall sign any of the aforementioned documents upon the written request of the City and/or the City's Representative, and the Lessee's failure to do so shall constitute a material breach of this Agreement.

§1.28 – Lessor's Access to Leased Premises. Lessor (and its agents, employees, contractors and representatives) shall, upon reasonable prior notice to Lessee, have the right to enter the Leased Premises at all reasonable times (or at any time without prior notice in the event of an emergency) for the purposes of ingress and egress to enable Lessor access to the adjacent property owned by Lessor and for inspecting or making repairs to the same or for any other reasonable purposes and Lessee agrees to make access available to the Leased Premises at all reasonable times. For purposes of this section, "reasonable prior notice" shall mean no less than one (1) Calendar Day.

§1.29 – Time of Essence. Time is of the essence with respect to the performance of every condition and provision of this Agreement.

§1.30 – Transfer of Lessor’s Interest. In the event of any transfer or transfers of Lessor’s interest in the Leased Premises, the Lessor shall be automatically relieved of any and all of its obligations and liabilities accruing from and after the date of such transfer.

§1.31 – Signage. The Lessee shall not paint or place any sign(s), placards, or any other notice or advertisement of any type or character in, on, or upon the Leased Premises without the prior written consent of the Lessor which Lessor may, in its sole and absolute discretion, withhold any such consent.

§1.32 – Liens. The Lessee shall not mortgage, pledge or otherwise encumber its interest(s) (i) in the Leased Premises, and (ii) under this Agreement. The Lessee shall, at Lessee’s sole cost and expense, keep the Lessor’s interest(s) in and to the Leased Premises free and clear from and against all claim(s), lien(s), and legal process(es) of the Lessee’s creditors; and the Lessee shall protect and defend the Lessor’s interest(s) against the same.

§1.33 – Acceptance of Leased Premises; Assumption of Risk.

- (a) The Lessee acknowledges the Lessor has not made any representation to the Lessee as to whether the Leased Premises is suitable or safe for the Lessee’s intended use. The Lessee has examined the condition of the Leased Premises, determined that the Leased Premises is acceptable for its intended and permitted use, and waives any and all defects that may exist on and/or within the Leased Premises and any structures or other improvements thereon.
- (b) By the Lessee’s execution of this Agreement, the Lessee does hereby assume all risk(s) associated with its occupancy and use of the Leased Premises and acknowledges that it shall be solely responsible and liable for any and all accidents and/or injury(ies) to persons or property occurring in, on, or around the Leased Premises, without regard to the limit(s) of Tenant’s liability insurance required pursuant to this Agreement.
- (c) The Lessor shall not be required or obligated to make any repair(s) or improvement(s) to the Leased Premises.
- (d) The Lessor shall not be responsible to the Lessee, its officers, agents, employees, guests or invitees, for any damage(s) or injury(ies) caused by or due to the Leased Premises, or any structure(s), improvement(s), or any appurtenance(s) thereof, unless such damage(s) or injury(ies) result from the sole negligence of the Lessor and then only to the extent permitted in accordance with Section 768.28 of the Florida Statutes.

**ARTICLE 2**  
**PREMISES, PURPOSE, AND TERM**

§2.1 – The Premises. The City owns the real property which is more particularly described as follows:

The lands as described and depicted on Exhibit “A” attached hereto.

(Hereafter referred to as the “Leased Premises”)

§2.2 – The Purpose.

(a) The City, as owner of the Leased Premises, hereby leases to the Lessee, and the Lessee hereby leases from the City the use of the Leased Premises, as more particularly depicted on Exhibit “A” attached hereto and incorporated herein by reference, for the purpose of grazing cattle and activities related thereto in accordance with the provisions of this Agreement. The Lessee agrees to do the following, at Lessee’s expense:

1. Erect and maintain all necessary fencing.
2. Not to pasture livestock that continue to break through fences. Should any animal be found outside the pasture on at least three (3) occasions, the Lessor may request its removal.
3. Supervise supply of water to livestock.
4. Furnish labor for repair of water system, if any.
5. Furnish materials for repair of water system, if any.
6. Furnish salt and minerals, if any.
7. Return stray animals to pasture.
8. Call veterinarian in case of emergency.
9. Pay veterinary expenses.
10. Furnish supplementary feed, if needed.
11. Provide facilities for fly control and keep such facilities in working order, and remove the same upon termination of this Agreement.
12. Provide and maintain a loading chute and headgate, and remove the same upon termination of this Agreement.

(b) Pursuant to the terms, conditions, covenants and provisions of this Agreement, the City, as owner of the Leased Premises, hereby leases to the Lessee, and the Lessee hereby rents from the City the Leased Premises for an annual rental amount of Twelve Dollars and Zero Cents (\$12.00) plus any applicable sales tax (hereafter the “Annual Rent”). In addition, Lessee shall operate and maintain the Leased Premises as set forth herein and, as follows:

1. *Lessee, at its sole cost and expense, shall install and/or erect or cause to be installed and/or erected and thereafter a fence (or*

fences) including but not limited to gates around the perimeter of the Leased Premises, provided, however, Lessee shall first consult with Lessor's City Manager or his designee and provide the City with a written and visual depiction of any fences including but not limited to gates to be constructed and erected on the Leased Premises prior to actually constructing and/or erecting same in order to obtain the City's approval of same;

2. Subject to Lessee's approval, Lessee shall install a gate or gates, at Lessee's sole cost and expense and provide Lessor keys and/or codes to open said gates, for the purpose of Lessor's ingress and egress to, through, and/or across the Leased Premises;
3. On or before the Termination of this Agreement (as defined in §2.3), the Lessee shall cause any fences including but not limited to gates to be removed and restore the Leased Premises to the same or similar condition as existed on the Effective Date, normal wear and tear excepted; and
4. Lessee, at its sole cost and expense, shall cause the Leased Premises to be mowed and perform ongoing maintenance and preservation of the Lease Premises during the term of this Agreement. Mowing shall be done at least quarterly if no cattle grazing is occurring or as may be directed by the Lessor in writing to Lessee.
5. As additional consideration to Lessor, Lessee agrees to consent to the granting of an Easement for ingress and egress in favor of Lessor by the owner of the adjacent land which land Lessee is currently leasing from said owner and cooperate with Lessor in the procurement and obtaining of said easements from the Owner of the adjacent land in the form attached hereto as Exhibit "B".

§2.3 – Term of Agreement. The Term of this Agreement shall be four (4) years. The Term shall commence on the Effective Date and shall continue through and terminate on December 11, 2021 (hereafter the "Termination"). Lessee shall have an option for one – two (2) year renewal upon terms and conditions agreed to between Lessee and Lessor at that time, provided Lessee provides the Lessor notice in writing at least sixty (60) days prior to the termination of this Agreement of its intent to exercise this renewal option. Notwithstanding anything herein to the contrary, the term of this Agreement shall expire and/or terminate, automatically after six (6) months following the expiration and/or termination of that Agricultural Lease between Lessee and Highland Cassidy LLC for approximately 112+/- acres of land adjacent to the Leased Premises which Agricultural Lease commenced on August 1, 2014.

§2.4 – End of Term. At the Termination of this Agreement, Lessee shall surrender the Leased Premises to Lessor in as good condition and repair (ordinary wear and tear excepted) as existed on the Effective Date, and the Lessee shall leave the Leased Premises in a clean and sanitary condition. At the Termination of this Agreement, the Lessee shall remove any fence and/or fixture(s) annexed to the Leased Premises by the

Lessee during the Term of this Agreement; and, so long as Lessee is not in default, at or prior to the Termination, Lessee may remove any equipment, furniture, and/or other personal property placed in and/or located on the Leased Premises. Provided however, Lessee promptly repairs any damage to the Leased Premises caused by any such removal.

§2.5 – Holdover. Unless the Lessor and Lessee agree in writing to a specific move-out and/or surrender date occurring on a date beyond the Termination and/or date on which the Lessee is required to surrender possession of the Leased Premises to the Lessor, the Lessee shall be considered a holdover. If a holdover occurs, then Lessee shall be subject to the holdover provision(s) of this Agreement, as follows: (1) the Lessee shall pay to the Lessor holdover in advance on a month-to-month basis and may become delinquent without notice or demand; and (2) holdover rent for the holdover period shall include, but not be limited to, (i) two hundred percent (200%) of the Annual Rent, any applicable sales tax which shall be payable on and/or for the holdover rent, and any Additional Rent (as defined in §1.2(m)). For purposes of this Agreement, holdover rent shall be payable in the same manner as Rent (see §3.1 of this Agreement).

### **ARTICLE 3 RENT AND ADDITIONAL RENT**

§3.1 – Rent. The Lessee shall pay Rent (as defined in §1.2(l)) to the Lessor as set forth herein. For purposes of this Agreement, **Time is of the essence** as related to the payment of Rent.

§3.2 – Annual Rent Payable. During the Term, the Lessee shall pay to Lessor the Annual Rent (as defined in §2.2(b)). The Annual Rent shall be payable in advance on or before the first Anniversary date that this Agreement is in effect without notice, demand, setoff or deduction. The first Annual Rent payment shall be due on the date which this Agreement is executed by the parties hereto.

§3.3 – Tax and Additional Rent. In addition to the Annual Rent, the Lessee shall also pay to the Lessor, upon demand by Lessor, any real property tax, and other applicable tax(es) and similar such assessments relating to and/or arising out of the Lessee's operation and use of the Leased Premises, and any Additional Rent (as defined in §1.2(m)) which is due and payable to Lessor.

§3.4 – Additional Rent.

§3.4.1 – For purposes of this Agreement, Additional Rent shall include, but not be limited to, the following:

§3.4.1.1 – Any sum(s) owed for costs incurred by Lessor for any required Lessee improvements upon which Lessor and Lessee have agreed.

§3.4.1.2 – All utilities for the Leased Premises including, but shall not be limited to, water, wastewater, garbage, electric, gas, and telephone services.

§3.4.1.3 – Any sum(s) required to be reimbursed and/or paid to Lessor pursuant to §4.4.1 of this Agreement.

§3.4.1.4 – Any other sum(s) owed by Lessee to Lessor in connection with Lessee's occupancy of the Leased Premises, including, but shall not be limited to, the cost(s) of collection and disposal of any wastes generated at and/or on the Leased Premises.

§3.4.1.5 – All real estate, sales and similar such taxes and other such assessments arising out of and/or due as a result of the Lessee's use of the Leased Premises.

§3.4.1.6 – In the event grazing activities cease or Lessor determines, in its sole and absolute discretion, the Leased Premises requires additional maintenance, pursuant to §2.2, Lessee shall cause the Leased Premises to be mowed and/or maintained as Lessor may direct Lessee in writing. In the event Lessee fails to maintain the Leased Premises pursuant to the terms of this Agreement and/or as Lessor may direct in writing then, the Lessor may, in its sole discretion, pay to have the Leased Premises maintained. Any costs incurred by the Lessor in maintaining the Leased Premises shall be paid by Lessee as Additional Rent.

§3.4.1.7 – Any amounts payable by the Lessee to Lessor under any provision of this Agreement shall be payable as Additional Rent and the payment of such amount(s) shall be enforceable by Lessor in the same manner as the payment of Rent.

**ARTICLE 4**  
**LESSEE'S USE OF THE LEASED PREMISES, SERVICES, ALTERATIONS,**  
**AND DESTRUCTION OF LEASED PREMISES**

§4.1 – Lessee's Use of Leased Premises.

§4.1.1 – The Lessee shall use and occupy the Leased Premises for cattle grazing and related purposes and for no other purpose. The Lessee shall not use or occupy the Leased Premises in violation of Applicable Law, and Lessee shall immediately discontinue any use of the Leased Premises that is declared by any governmental authority of the State of Florida to be in violation of any law, code, or regulation. The Lessee shall comply with any directive of any governmental authority which shall, by reason of the nature of Lessee's use or occupancy of the

Leased Premises, impose any duty upon Lessee or Lessor with respect to the Leased Premises or to the use or occupancy thereof.

§4.1.2 – The Lessee shall not permit anything to be done and/or performed on the Leased Premises that will invalidate or increase the cost of any fire or extended coverage insurance policy covering the Leased Premises and/or appurtenances located therein, and Lessee shall comply with any and all rules, orders, regulations and requirements of the appropriate Fire Rating Bureau or any other organization performing a similar function. The Lessee shall promptly, upon Lessor’s written notice or demand (see §1.13 herein), reimburse Lessor for any additional premiums charged for such insurance policy due to and/or resulting from the Lessee’s failure to comply with the provisions of this Section. The Lessee shall not permit anything to be done in, on or about the Leased Premises that would, in any manner, obstruct and/or interfere with the rights of the Lessor on and/or for the Leased Premises, or use and/or allow the Leased Premises to be used for any immoral, unlawful or objectionable purpose.

§4.1.2 – The Lessee shall not maintain or permit any waste in, on or about the Leased Premises.

§4.1.3 – The Lessee shall not maintain or permit any nuisance condition in, on or about the Leased Premises. For purposes of this Agreement, “nuisance condition” shall mean any action or inaction by Lessee or Lessee’s guest(s), invitee(s), agent(s), and /or employee(s) which is in violation of this Agreement, Applicable Law, and/or any rule, regulation, resolution, and/or ordinance of the City. Any noxious or offensive activity which the Lessor, in Lessor’s sole and absolute discretion, determines is harmful to the health, safety, and general welfare of the City, its residents, guests and/or invitees shall be deemed a nuisance condition.

Any and all nuisance conditions, regardless of whether such nuisance condition is considered public or private, shall not be conducted or maintained by any person(s) on the Leased Premises. For purposes of this Section, any person's failure to strictly comply with the restrictions, requirements, and/or standards prescribed by this Agreement shall be conclusively presumed to be a nuisance condition affecting the health, safety, and welfare of the City; and the Lessor may, in Lessor’s sole and absolute discretion, may take any enforcement and/or remedial measure(s) prescribed by this Agreement or otherwise authorized by Applicable Law to abate and/or remedy the nuisance condition.

For purposes of this Agreement, any cost(s) and/or expense(s) incurred by the Lessor for the abatement and/or remedy of a nuisance condition may, at the Lessor’s discretion, be collected as Additional Rent.

§4.2 – Hazardous Substances. The Lessee shall not cause or permit the release or disposal of any hazardous substances, wastes, or materials, on or about the Leased

Premises. Hazardous substances, wastes or materials shall include those which are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 USC Section 9601 et seq; the Resource Conservation and Recovery Act, as amended, 42 USC Section 5901 et seq; the Toxic Substances Control Act, as amended, 15 USC Section 2801 et seq; the medical waste regulations which have been promulgated by the state in which the Premises is located; and as further set forth in any federal and/or state and/or local laws and/or ordinances, and their corresponding regulations, including specifically those of the City. The Lessee shall comply with all rules and policies set by federal, state and local laws, regulations and ordinances, including, but not limited to, those which govern the use, storage, handling and disposal of hazardous substances, wastes or materials. The Lessee shall indemnify, defend and hold Lessor harmless from and against any claims or liability arising out of or connected with Lessee's failure to comply with the terms of this Section including but not limited to attorney's fees and costs incurred by Lessor related thereto; such obligation to indemnify, defend and hold harmless shall survive the Termination and/or expiration of this Agreement.

§4.3 – Signage. Subject to §1.31 of this Agreement, any signage desired by Lessee at and/or on the Leased Premises shall be expressly subject to the prior written consent of Lessor, which consent may be given or withheld in Lessor's sole and absolute discretion. In addition, all such signage: (a) must be in full compliance with Applicable Law; (b) must be installed at the sole cost and expense of Lessee; (c) must be removed at the Termination; and (d) the Lessee shall pay any and all cost(s) and/or expense(s) for damage and repair arising out of such removal at the Lessee's sole cost and expense.

§4.4 – Breach and Termination. The Lessor may, with or without cause, terminate this Agreement upon one hundred eighty (180) Days written notice to Lessee. In the event Lessee engages in a prohibited use and fails to cure such violation(s) within a commercially reasonable time, the Lessor may terminate this Agreement upon thirty (30) Days written notice to Lessee of such violation(s) or Lessor may terminate immediately in the event Lessor determine that the health, safety and welfare of the public will be adversely impacted by such conduct and/or violation.

§4.4 – Services.

§4.4.1 – The Lessor shall promptly and in a workmanlike manner perform, or shall cause to be performed, all maintenance and shall make, or shall cause to be made, all repairs and replacements required, in the opinion of Lessor to keep the Leased Premises in good order, condition and repair, except as specified in §4.4.2.

§4.4.2 – The Lessee shall be responsible for and shall pay for routine maintenance items required for the Leased Premises.

#### §4.5 – Alterations to Leased Premises.

§4.5.1 – The Lessee shall not make any changes, additions, alterations, improvements or additions to the Leased Premises or attach or affix any articles thereto without Lessor's prior written consent. All alterations, additions or improvements which may be made upon the Leased Premises by Lessor or Lessee (except unattached trade fixtures and office furniture and equipment owned by Lessee) shall not be removed by Lessee, but shall become and remain the property of Lessor unless Lessor otherwise requires the removal of same as provided by the provisions of this Agreement. All alterations, improvements and additions to the Leased Premises (as permitted by Lessor) shall be done only by licensed professionals or contractors or mechanics approved by Lessor, shall be made at Lessee's sole expense and must be made at such times and in such manner as Lessor may approve.

§4.5.2 – If the Lessee shall make any alterations, improvements or additions to the Leased Premises, Lessor may require Lessee, at the Termination and/or expiration of the Term, to restore the Leased Premises to substantially the same condition as existed on the Effective Date.

§4.5.3 – Any mechanics' or materialmen's lien for which Lessor has received a notice of intent to file or that has been filed against the Leased Premises arising out of work done for, or materials furnished to Lessee, shall be discharged, bonded over, or otherwise satisfied by Lessee within ten (10) Days following the earlier of the date on which the Lessor receives (1) notice of intent to file a lien, or (2) notice that the lien has been filed. If Lessee fails to discharge, bond over, or otherwise satisfy any such lien, Lessor may do so at Lessee's expense, and the amount(s) expended by Lessor, including reasonable attorneys' fees, shall be paid by Lessee, as Additional Rent, within ten (10) Days following Lessee's receipt of either written notice from Lessor or a bill from Lessor.

§4.5.4 – Subject to the provision(s), requirement(s), and/or condition(s) of this Agreement, the Lessee shall, at its sole cost and expense, install or cause to be installed a fence or fences (including but not limited to gates) which surrounds and encloses the Leased Premises.

#### §4.6 – Damage or Destruction of Leased Premises.

§4.6.1 – If the Leased Premises, other than any fences and/or gates installed by Lessee, are damaged by fire or other casualty (collectively "Casualty"), the damage shall be repaired by and at the expense of Lessor, provided such repairs can, in Lessor's sole and absolute discretion, be made within sixty (60) Days after the occurrence of such Casualty without the payment of overtime or other premiums. Until such repairs are made, the Rent shall be abated in proportion to the part of the Leased Premises that are unusable by Lessee. However, there shall be no abatement of Rent if any portion of the Leased

Premises is unusable for a period of one (1) Day or less, or if the Casualty is due to the negligence of Lessee.

§4.6.2 – If such repairs cannot, in Lessor’s sole and absolute discretion, be made within sixty (60) Days, Lessor may, at its option, make them within a commercially reasonable time, which shall not exceed one hundred twenty (120) Business Days, and in such event this Agreement shall continue in effect and the Rent shall be apportioned in the manner provided in §4.6.1. The Lessor’s election to make such repairs may be evidenced by written notice to Lessee within sixty (60) Days after the Casualty.

§4.6.3 – If the Lessor does not so elect to make such repairs that cannot be made within sixty (60) Days, then either party may, by written notice to the other, terminate this Agreement as of the date of the Casualty. A total destruction of the Leased Premises shall automatically terminate the Agreement.

**ARTICLE 5**  
**INSURANCE REQUIREMENTS; INDEMNITY**

§5.1 – Insurance Requirements.

§5.1.1 – Commercial General Liability Insurance. The Lessee shall, at its sole cost and expense, obtain and keep in full force and effect during the Term of this Agreement, with an insurance company approved by the Lessor, in writing, and licensed to do business in the State of Florida, Commercial General Liability Insurance (“CGL”) with coverage in an amount approved and accepted, in writing, by the City’s Representative; provided, however, such CGL policy shall not be less than \$2,000,000. The Lessee shall name the City as an additional insured. The CGL policy obtained by the Lessee shall include, but not be limited to, coverage for Environmental Liability in amounts approved and accepted, in writing, by the City’s Representative; provided, however, such policies shall not be less than \$2,000,000.

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

Except with respect to the coverage for Property Damage Liability, the Commercial General Liability coverage shall apply on a first dollar basis without any application of a deductible or a self-insured retention. The coverage for Property Damage Liability shall be subject to a maximum deductible of \$1,500 per occurrence.

§5.1.2 – Property Insurance. The Lessee agrees that it will keep in full force during the Term of this Agreement, insurance covering loss or damage to real property at the Leased Premises.

§5.1.3 – Personal Property. The Lessee shall, at its sole cost and expense, obtain and keep in full force and effect during the Term of this Agreement, with an insurance company approved by the City, in writing, and licensed to do business in the State of Florida, insurance for damage to the Lessee’s personal property at the Leased Premises.

§5.1.4 - Automobile Liability Insurance. Such insurance shall be no more restrictive than that provided by Section II of the latest occurrence edition of the standard Business Auto Coverage Form (ISO Form CA 00 01) as filed for use in the State of Florida by ISO without any restrictive endorsements other than those which are required by the State of Florida, or those which under an ISO filing, must be attached to the policy (i.e., mandatory endorsements). Coverage shall include all owned, non-owned and hired autos used in connection with this Agreement. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000    Each Occurrence - Bodily Injury and Property Damage Combined

§5.1.5 – Certificates of Insurance and Modification. The Lessee shall deliver to the City certificates of insurance evidencing the procurement of any and all insurance coverages required pursuant to this Article. The Lessee shall not allow or permit, due to negligence or non-action or willful act, allow or permit any insurance policy required under this Article to be canceled or reduced in amount; provided, however, such required insurance policies may be canceled or reduced after thirty (30) Business Days written notice to the City and subject to the City’s written consent thereto.

§5.1.6 – Lessee’s Insurance Primary. The insurance provided by the Lessee pursuant to this Agreement shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City.

§5.1.7 - Deductible or Self-Insured Retention Provisions. Except as otherwise specifically authorized in this Agreement, no deductible or self-insured retention for any required insurance provided pursuant to this Agreement will be allowed. If there is any deductible or self-insured retention for any required insurance, Lessee shall be responsible for paying on behalf of the City (and any other person or organization in this Agreement, agreed to include as an insured for the required insurance) any deductible or self-insured retention allowed under this Section.

§5.1.8 - Lessee’s Insurance as Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Lessee, or

its Subcontractors or Sub-subcontractors, employees or agents to the City or others. Any remedy provided to the City or the City's members, officials, officers or employees by the insurance shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

§5.1.9 - No Waiver by City Approval/Disapproval. Neither approval by the City nor failure to disapprove the insurance furnished by Lessee shall relieve Lessee of full responsibility to provide the insurance as required by this Agreement.

§5.1.10 – Release of the City from Liability and Waiver of Subrogation. The Lessee hereby agrees to release the City, and the City shall not be liable, for injury to the Lessee's business or any loss of income therefrom or for damage to the goods, merchandise or other property of the Lessee, employees of the Lessee, invitees, or any other person in or about the Leased Premises, nor shall the City be liable for injury to the Lessee, employees of the Lessee, invitees or any other person in or about the Leased Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Leased Premises, except when such damage or injury is caused by the willful acts and/or gross negligence of the City, its officials, employees or contractors. The City shall also not be liable for any damages arising from any act or negligence of any other Lessee, if any, of and/or on the Leased Premises. The Lessee, as the insured under any and all insurance policies obtained pursuant to this Article, further waives its rights of and/or for subrogation against the City as to any damages and/or liability identified in and/or by this Section.

§5.1.11 – Annual Review. Any and all insurance requirements provided for in this Agreement shall be subject to annual review at the request of the City or the City's Representative, and such insurance requirements may be adjusted upon the City's written approval and/or consent. In the event of a disagreement between the City and Lessee with regards to said insurance requirements, the City shall make the final determination regarding the insurance requirements under this Agreement.

§5.2 – Indemnification. To the extent permitted by law, including Section 768.28, Florida Statutes, each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other party (the "Non-Indemnifying Parties") from and against all claims, demands, suits or causes of action of any kind or nature, and the resulting losses, costs, expenses, including reasonable attorneys' fees and costs, liabilities, damages, taxes, orders, judgments, or decrees, brought against and/or sustained by the Non-Indemnifying parties based on governmental assessment, personal injury, bodily injury, death or property damage, and/or destruction received or reasonably claimed to be received or sustained by any person or persons arising out of or in connection with any negligent act

or omission of the Indemnifying Party, its agents, employees or assigns while performing the duties and obligations required by this Agreement. This indemnification shall survive the termination and/or expiration of this Agreement.

§5.3 – Indemnification and No Waiver. Compliance with §5.2 of this Agreement shall not relieve the Lessee of any liability or other obligation under this Agreement. It is understood and agreed that the City does not intend to waive any sovereign immunity it may have as provided by law. Further regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the City under the indemnification provisions of this Agreement shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to section 768.28, Florida Statutes, as that section existed on the Effective Date of this Agreement, as between the City and Lessee.

§5.4 – **DISCLAIMER OF LIABILITY TO LESSEE; INCORPORATION OF SECTION 768.28, FLORIDA STATUTES, AS A LIMITATION ON CITY/LESSOR’S LIABILITY**. Lessor expressly disclaims any liability whatsoever that may be owed to Lessee. Should Lessor be liable however, in any way or in any manner to Lessee, whether arising out of this Agreement or not, Lessee specifically agrees that, as Lessor is a Florida municipal corporation, the limits of Lessor’s liability shall be that as found in Section 768.28, Florida Statutes as it was written on the Effective Date of this Agreement. Nothing herein is intended to act as a waiver of the Lessor’s sovereign immunity and/or the limits of the Lessor’s liability set forth in Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability, or otherwise. This Disclaimer shall survive a termination of this Agreement.

## **ARTICLE 6 DEFAULT AND REMEDIES**

### §6.1 – Default.

§6.1.1 – The occurrence of any of the following shall constitute an event of default and a breach of this Agreement:

§6.1.1.1 – The vacating or abandonment of the Leased Premises by the Lessee prior to the Termination and/or expiration of the Term of this Agreement.

§6.1.1.2 – A failure by the Lessee to pay Rent (as defined by §1.2(1)) or to make any other payment or take or fail to take any other actions required to be made by the Lessee hereunder, when due, or within five (5) Business Days or perform any other obligations of Lessee to be performed under the terms of this Agreement.

§6.1.2 – The Lessee shall not be in default of any obligation provided for herein, except with reference to the payment of Rent, unless and until the Lessee has failed to perform such obligation within ten (10) Days after written notice by Lessor to Lessee of such default. In the event Lessee commits an act of default, Lessor may exercise one (1) or more of the remedies set forth in §6.2, in addition to all other rights and remedies at law or in equity whether or not stated in this Agreement.

§6.1.2 – The Lessor shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder and until it has failed to perform such obligation within thirty (30) Business Days after written notice by Lessee to Lessor specifying such default. Provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) Business Days are required for its performance, then Lessor shall not be deemed to be in default if it shall commence such performance within such thirty (30) Business Day period and thereafter diligently prosecute the same to completion.

#### §6.2 – Remedies.

§6.2.1 – Upon the occurrence of any event of default, Lessor may continue this Agreement in full force and effect and shall continue to have the ongoing right to collect Rent when due. During any period of time when Lessee is in default, Lessor may re-enter the Leased Premises with or without legal process and re-let such Leased Premises, or any part thereof, to third parties. The Lessee hereby expressly waives any and all claims for damages by reason of such re-entry as well as any and all claims for damages by reason of any distress warrants or other proceedings that Lessor may employ to recover said Rent. The Lessee shall be liable immediately to Lessor for all cost(s) Lessor incurs in re-letting the Leased Premises, including, without limitation, brokers' commissions, expenses of repairing and remodeling the Leased Premises and other cost(s) incurred by Lessor in connection with such re-letting or otherwise. Re-letting can be for a period shorter or longer than the remaining Term of this Agreement, and in no event shall Lessor be under any obligation to re-let the Leased Premises. On the date(s) when Rent is due, The Lessee shall pay to Lessor a sum equal to the Rent due under this Agreement, less any net rent Lessor actually receives from any re-letting (after deduction of all costs and expenses incurred by Lessor). No act by Lessor allowed by this Section shall cause the Agreement to terminate unless Lessor notifies Lessee in writing that Lessor elects to terminate the Agreement.

§6.2.2 – Upon the occurrence of any event of default, the Lessor may terminate the Agreement at any time. Upon termination, the Lessor shall have the right to collect an amount as Additional Rent which is equal to: all expenses incurred by Lessor in recovering possession of the Leased Premises, including reasonable attorneys' fees; all reasonable costs and charges for the care and repair of the Leased Premises while vacant; all renovation costs incurred in connection with the preparation of the Leased Premises for a new Lessee; and an amount by

which the aggregate Monthly Rent for the remainder of the Term exceeds the loss of Monthly Rent that Lessee proves could have been reasonably avoided.

§6.2.3 – The Lessor may avail itself of those remedies expressly set forth herein as well as any other remedies or damages allowed by law, in equity or otherwise. All rights, options and remedies of Lessor stated herein or elsewhere by law or in equity shall survive the termination of this Agreement and be deemed cumulative and not exclusive of one another.

**ARTICLE 7**  
**TERMINATION AS A RESULT OF DEATH OR DISABILITY**

§7.1 – Termination as a Result of Death or Disability.

§7.1.1 – Provided that if the Lessee is a sole proprietor or a corporation with one shareholder, and provided that the Lessee, at the time of such proprietor’s or shareholder’s death is not in default under any term or condition of this Agreement, the legal representative of his/her estate shall have the right to terminate the Agreement. Such notice of termination given as a result of death shall be effective only if it is in writing. The Lessee and his/her estate shall be liable for the Rent due under this Agreement through the end of the calendar month in which such notice of termination is received by Lessor, and shall remain liable for the Rent until such date that all of Lessee’s personal property, equipment and fixtures are removed from the Leased Premises, as required herein.

§7.1.2 – The right of termination shall also exist if such proprietor or shareholder is medically determined to be permanently disabled. The Lessee shall provide Lessor with thirty (30) Days prior written notice and Lessee shall be liable for the Rent due under this Agreement throughout such thirty (30) Day period, and shall remain liable until such date that all of Lessee’s personal property, equipment and fixtures are removed from the Leased Premises, as provided herein.

**ARTICLE 8**  
**NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND**  
**AMERICANS WITH DISABILITIES ACT (“ADA”)**

§8.1 – The City and Lessee agree that neither shall discriminate against any person in its employment, operations, activities and programs, services and initiatives as related to any and all of the duties, responsibilities and/or obligations required under this Agreement. The City and Lessee also agree that each party shall affirmatively comply with all Applicable Laws and applicable provisions of the Americans with Disabilities Act (“ADA”) in the course of providing any and all services at and/or on the Leased Premises, including Titles I and II of the ADA (regarding non-discrimination on the basis of disability), and any and all applicable regulations, guidelines, rules, procedures, policies and standards therein.

**ARTICLE 9  
ESTOPPEL CERTIFICATES**

§9.1 – The Lessee. The Lessee shall, at any time upon not less than five (5) Days prior written notice from the City, execute, acknowledge, and deliver to the City a statement in writing, as follows: (i) certifying that this Agreement is not modified and in full force and effect (or, if modified, stating the nature of such modifications and certifying that this Agreement, as so modified, is in full force and effect) and the date to which the Rent (as defined in §1.2(l)) and other charges are paid in advance, if any; (ii) acknowledging there are not any uncured defaults on the part of the City, or specifying such defaults if there are not any uncured defaults on the part of the City, or specifying such defaults if any are claimed; and (iii) any other statement within reason. Any such statement(s) may be conclusively relied upon by any prospective purchaser or encumbrancer of the Leased Premises.

§9.2 – The City. At the City's sole option, the Lessee's failure to deliver such statement(s) within such time shall be a material breach under this Agreement and/or shall be conclusive upon the Lessee, as follows: (i) that this Agreement is in full force and effect, without modification except as may be represented by the City; (ii) that there are no uncured defaults in the City's performance; and (iii) that not more than one month's Rent has been paid in advance.

§9.3 – Delivery of Financials. If the City, at its sole option, desires to finance, refinance, or sell the Leased Premises, or any part thereof, the Lessee agrees to deliver to any lender or purchaser designated by the City such financial statements of the Lessee as related to and/or connected with the Lessee's operations under this Agreement as may be reasonably required by such lender and/or purchaser.

**ARTICLE 10  
ADJUDICATION OF BANKRUPTCY; TRANSFER OF AGREEMENT**

§10.1 – It is agreed between the City and Lessee that, if the Lessee shall be adjudicated as bankrupt, in accordance with the Bankruptcy Laws, or insolvent or take the benefit of any Federal reorganization or composition proceeding or make a general assignment or take the benefit of any insolvency law, or if the Lessee's leasehold interest under this Agreement shall be sold under the execution or process of law, of a trustee in Bankruptcy or a receiver be appointed or elected for the Lessee (whether under Federal and/or State Laws), or if this Agreement or the Term hereof be transferred or pass to or devolve upon any person, firm, officer, or corporation other than the Lessee, then and in such events, this Agreement and the Term hereof, at the City's sole option, shall terminate, seven (7) Days after the City shall have provided the Lessee with written notice of such act, condition or default, and the Lessee agrees to immediately quit and surrender the Leased Premises to the City; provided, however, this shall not impair or affect the City's right to maintain summary proceedings for the recovery of the possession of the Leased Premises in all cases provided for in law.

**ARTICLE 11  
PUBLIC RECORDS**

The City and the Lessee agree that the Lessee shall comply with Florida's public records laws to specifically include the following:

Lessee agrees to:

- 11.1** Keep and maintain public records required by the City to perform any services.
- 11.2** Upon request from the City's custodian of records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
- 11.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Lessee does not transfer the records to the City.
- 11.4** Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Lessee or keep and maintain public records required by the City to perform any services. If the Lessee transfers all public records to the City upon completion of the Agreement, the Lessee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Lessee keeps and maintains public records upon completion of the Agreement, the Lessee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

**IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT WINTER HAVEN-863-291-5600, EXT. 232, [JTownsend@mywinterhaven.com](mailto:JTownsend@mywinterhaven.com), 451 THIRD STREET, N.W., WINTER HAVEN, FLORIDA 33881).**

If the Lessee does not comply with a public records request, City shall enforce the Agreement's provisions which may include immediate termination of this Agreement.

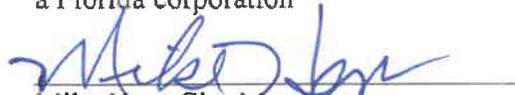
IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

**LESSOR**

CITY OF WINTER HAVEN, FLORIDA  
a Florida corporation

ATTEST:

  
\_\_\_\_\_  
Vanessa Castillo, MMC, City Clerk

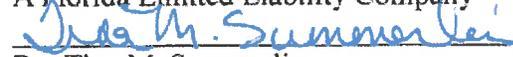
  
\_\_\_\_\_  
Mike Herr, City Manager

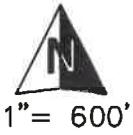
Approved as to form and legality:

  
\_\_\_\_\_  
Frederick J. Murphy, Jr., City Attorney

**LESSEE**

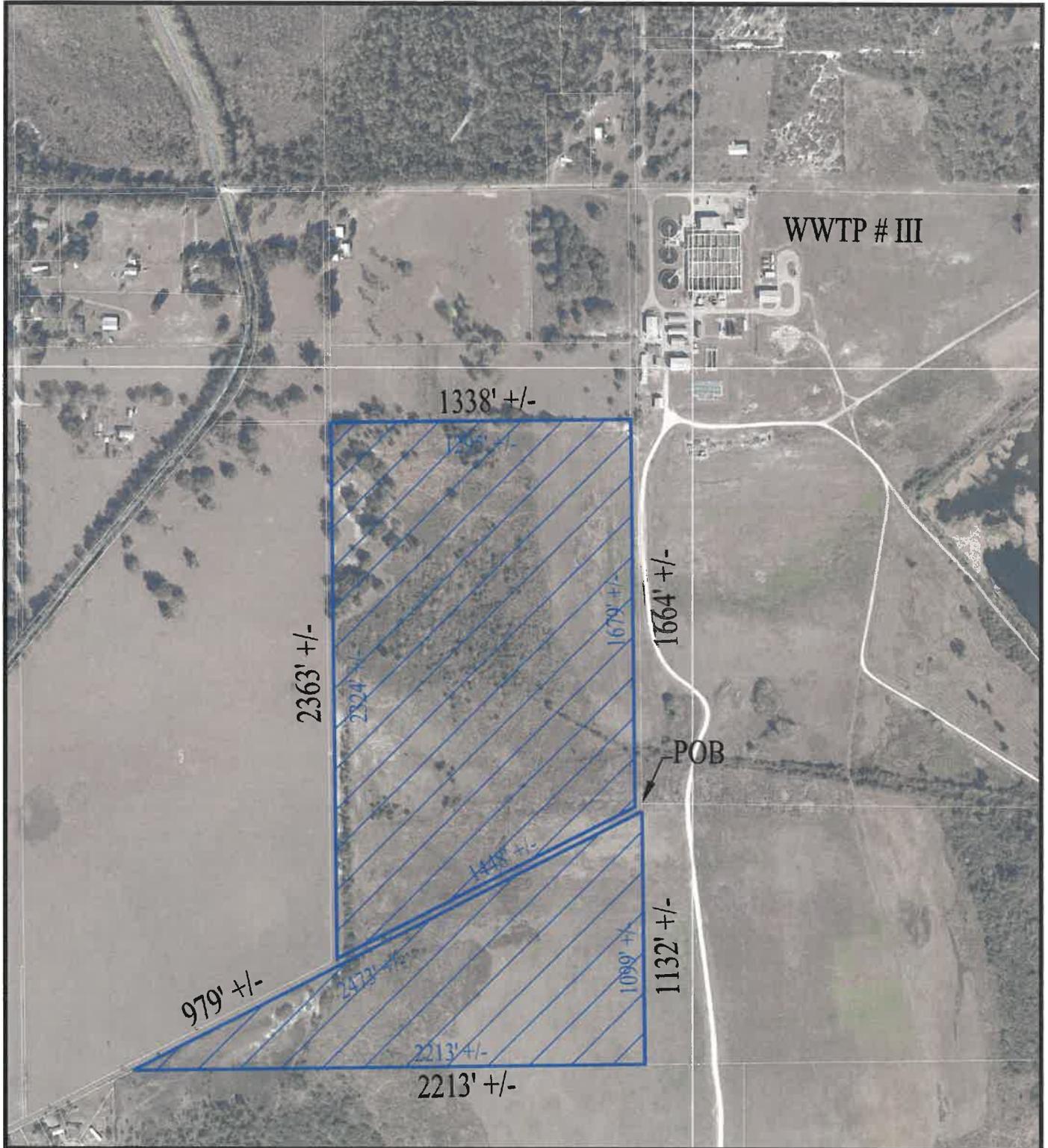
SUMMERLIN LAND & CATTLE LLC,  
A Florida Limited Liability Company

  
\_\_\_\_\_  
By: Tina M. Summerlin  
Its: Managing Member



# EXHIBIT A LEASE AREA DEPICTION

PAGE 1 OF 1



Drawing: F:\Engineering Drawings\In Progress\2017\17-040-IH LEASE EXHIBIT 262921\EXHIBIT.dwg  
Layout: EXHIBIT 1  
Jun 05, 2017, 4:06pm

## LEGEND

 TO BE LEASED

EXHIBIT "B" to Lease Agreement

Prepared by:  
City of Winter Haven  
Utility Services  
401 Sixth Street, S.W.  
Winter Haven, Fl. 33880

Return to:  
City Clerk's Office  
451 Third Street, N.W.  
Winter Haven, FL 33880

PARCEL ID. # 26-29-21-690500-020600  
26-29-21-690500-023401

**EASEMENT**

THIS EASEMENT made this \_\_\_\_\_ day of December, A.D. 2017, between HIGHLAND CASSIDY LLC, a Florida Limited Liability Company, 346 E. Central Avenue, Winter Haven, Florida 33880, as the Grantor, and the CITY OF WINTER HAVEN, a municipal corporation under the laws of the State of Florida, its post office address being P.O. Box 2277, 451 Third Street, N.W., Winter Haven, Florida 33883, as the Grantee.

WITNESSETH: That the Grantor, in consideration of the sum of Ten Dollars; and other valuable considerations paid, the receipt of which is hereby acknowledged, hereby grants unto the Grantee, its successors and assigns, an easement for the purpose of ingress and egress upon and through the following described land in Polk County, Florida, in perpetuity subject to termination as more specifically set forth herein, to wit:

**PARCEL 1**

Lots 234 and 269, WAHNETA FARMS, according to the map or plat thereof as recorded in Plat Book 1, Page(s) 82, Public Records of Polk County, Florida, LESS the West 100 feet thereof, and LESS the following described property:

Commence at the Southwest corner of lot 269, WAHNETA FARMS SUBDIVISION as recorded in Plat Book 1A, Pages 82A and 82B of the public records of Polk County, Florida, run thence North 64 degrees, 03 minutes 27 seconds East along the South boundary of said Lot 269, 171.02 feet to the Point of Beginning. Thence continue North 64 degrees 02 minutes 27 seconds East, 371.00 feet, thence North 00 degrees 01 minutes 27 seconds East, parallel with the West boundary of said Lot 269, 120.00 feet, thence South 64 degrees 02 minutes 27 seconds West, parallel with the South boundary of said Lot 269, 371.00 feet, thence South 00 degrees 01 minutes 04 seconds West, 120.00 feet to the Point of Beginning; AND

**PARCEL 2**

Lots 206, 209, 212, 228, 231, 232, 270, 271, 272, and 273, WAHNETA FARMS, according to the map or plat thereof as recorded in Plat Book 1, Page(s) 82, Public Records of Polk County, Florida, together with all lying between said Lots 206 and 209,

Hereinafter referred to as "Easement Area".

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To Have and to Hold the Same, together with the reasonable right to enter and depart over and upon adjoining lands of the Grantor for the purpose of exercising the rights herein granted in perpetuity. The Easement granted herein shall be a covenant running with the land. Provided, however, in the event Grantor sells any portion of the lands comprising the Easement Area that would actually impact the Grantee's continued use of the Easement granted herein, to a third party unrelated to Grantor, then Grantor and Grantee agree that this Easement may be terminated by Grantor providing written notice to Grantee at least one hundred twenty (120) days prior to termination. In that event Grantee and Grantor agree to revise the Easement granted herein so as to allow the Grantee continued use of any ingress and/or egress by Grantee related to the Grantee's access to its Wastewater Treatment Plant #3 located on lands to the East of the Easement Area. Grantor further agrees that no buildings, structures or obstacles (except fences) shall be located, constructed or created within the Easement Area that would prevent the Grantee's use of the Easement granted herein. Notwithstanding the foregoing if Grantor determines it desires to develop the lands comprising the Easement Area then any such development shall allow the continuation of the Easement granted herein and the Grantee and Grantor agree to cooperate and execute any further instruments that may be necessary to reflect the foregoing in order to allow the Grantee's continued use of the Easement granted herein.

Grantee is authorized to install a stabilized driveway and access gate within the Easement Area and will repair and replace in kind as a result of the use of this Easement, any and all damages created by the Grantee's employees and/or contractors under the Grantee's direction. Prior to installing such improvements Grantee shall advise Grantor in writing of all plans and specifications for same and coordinate all activities associated with the installation of such improvements with Grantor.

Grantee agrees to indemnify and hold the Grantor harmless, to the extent allowed under Section 768.28, Florida Statutes, from all claims, loss, damage and expense, arising from the negligent acts or omissions of Grantee's officers, employees, contractors and agents related to its use of the lands which are the subject of this Easement.

Nothing herein shall be deemed a waiver, express or implied of Grantee's sovereign immunity and the protections afforded Grantee under Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise.

The Grantor covenants to the Grantee that it is lawfully seized of said lands and that it has good, right, and lawful authority to grant this Easement.

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IN WITNESS WHEREOF the Grantor has hereunto set his / her / their hand and seal \_\_ this \_\_\_\_\_ day of December, A.D. 2017.

Signed, sealed, and delivered  
In the presence of:

HIGHLAND CASSIDY, LLC, by Highland Equities, Inc., and/or Cassidy Properties, Inc., its Managing Member

SIGNATURE \_\_\_\_\_

\_\_\_\_\_ (Seal)

PRINT \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

GRANTOR

SIGNATURE \_\_\_\_\_

PRINT \_\_\_\_\_  
witness

Note: Two (2) witness signatures required; notary may sign as a witness above.

STATE OF FLORIDA  
COUNTY OF POLK

Before me, the undersigned authority, this day personally appeared \_\_\_\_\_ as \_\_\_\_\_ of HIGHLAND CASSIDY, LLC, by Highland Equities, Inc., and/or Cassidy Properties, Inc., its Managing Member, to me well known and known to me to be the individual described in and/or produced \_\_\_\_\_ as identification and who executed the forgoing instrument, and was authorized on behalf of said \_\_\_\_\_ to execute same, and he/she/they severally acknowledged before me that he/she/they executed the same for the purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2017.

My Commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Florida at Large

CITY OF WINTER HAVEN, FLORIDA

ATTEST:

\_\_\_\_\_  
Vanessa Castillo, MMC, City Clerk

(Seal)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

GRANTEE

Approved as to form:

\_\_\_\_\_  
Frederick J. Murphy, Jr., Esquire  
City Attorney

STATE OF FLORIDA  
COUNTY OF POLK

Before me, the undersigned authority, this day personally appeared \_\_\_\_\_ as \_\_\_\_\_ of the CITY OF WINTER HAVEN, FLORIDA, a Florida municipal corporation, to me well known and known to me to be the individual described in and/or produced \_\_\_\_\_ as identification and who executed the forgoing instrument, and was authorized on behalf of said \_\_\_\_\_ to execute same, and he/she/they severally acknowledged before me that he/she/they executed the same for the purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_\_ day of December, A.D. 2017.  
My Commission expires:

\_\_\_\_\_  
Notary Public in and for the State of Florida at Large