



CITY COMMISSION

AGENDA

(*REVISED – 4/22/2020)

REMOTE ELECTRONIC ATTENDANCE

**As per State of Florida – Office of the Governor
EXECUTIVE ORDER NUMBER 20-69**

(Visit link below for details to join this meeting or offer Public Comment)

<http://www.cwgd.com/Calendar.aspx?EID=157>

300 W. Plant Street
Winter Garden, Florida

REGULAR MEETING

April 23, 2020

6:30 p.m.

CALL TO ORDER

Determination of a Quorum

Opening Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES

Regular Meeting Minutes – April 9, 2020

2. REGULAR BUSINESS

- A. **RESOLUTION 20-01**: A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, (THE “CITY”) PERMITTING PROPERTY ASSESSED CLEAN ENERGY (“PACE”) PROGRAMS WITHIN THE CORPORATE LIMITS OF THE CITY OF WINTER GARDEN; APPROVING AGREEMENTS WITH THE FLORIDA GREEN FINANCE AUTHORITY, THE FLORIDA RESILIENCY AND ENERGY DISTRICT AND THE FLORIDA PACE FUNDING AGENCY AND THE GREEN CORRIDOR PACE DISTRICT; UTILIZING VOLUNTARY NON-AD VALOREM ASSESSMENTS TO FINANCE QUALIFYING IMPROVEMENTS ONLY ON COMMERCIAL PROPERTIES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE SAID AGREEMENTS; AND PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS, SCRIVENER’S ERRORS, LIMITATION OF CITY LIABILITY, CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE – **Finance Director Zielonka**
- B. Recommendation to approve distribution of \$11,083 awarded Edward Byrne Memorial Justice Assistance Grant (JAG) Local Solicitation funds to purchase entry tools for use by our Police Department SWAT team, with public comment – **Police Chief Graham**
- C. Recommendation to approve Binding Lot Agreement for 945, 951, and 933 Carter Road (Palm Coast Enterprise) - **Community Development Director Pash**
- D. Selection of Mayor Pro-Tem – **City Commission**

3. **MATTERS FROM PUBLIC** – *(Limited to 3 minutes per speaker)*
4. **MATTERS FROM CITY ATTORNEY** - Kurt Ardaman
5. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer
 - A. *Recommendation to approve Right-of-Way Maintenance Agreement for 707 West Plant Street (Garden West)
6. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to **Regular Meeting** on Thursday, **May 14, 2020** at **6:30 p.m.** in City Hall Commission Chambers, 300 W. Plant Street, 1st floor, Winter Garden, Florida

NOTICES:

In accordance with Florida Statutes 286.0105, if any person decides to appeal any decision made by said body with respect to any matter considered at such meeting, he/she will need a record of the proceedings and, for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City of Winter Garden does not prepare or provide such record.

Any opening invocation that is offered before the official start of the Commission meeting shall be the voluntary offering of a private person, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Commission or the city staff, and the City is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance at the City Commission meeting are invited to stand during the opening invocation and to stand and recite the Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered or to participate in the Pledge of Allegiance. You may remain seated within the City Commission Chambers or exit the City Commission Chambers and return upon completion of the opening invocation and/or Pledge of Allegiance if you do not wish to participate in or witness the opening invocation and/or the recitation of the Pledge of Allegiance. (Reference Resolutions 15-04 and 16-02)

	Those needing assistance to participate in any of these proceedings should contact the City Clerk's Office at least 48 hours in advance of the meeting (407) 656-4111 x2297.		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Department (407) 656-4111 x5455.
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CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

April 9, 2020

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida via Remote Electronic Attendance as per State of Florida, Office of the Governor (Executive Order Number 20-69). An Opening Invocation and Pledge of Allegiance given.

Present: Mayor John Rees and Commissioners

Lisa L. Bennett – District 1

Bob Buchanan – District 2

Mark A. Maciel – District 3

Colin Sharman – District 4

Also Present: City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, City Clerk Angee Grimmage, Assistant City Manager of Administrative Services Frank Gilbert, Assistant City Manager of Public Services Jon Williams, Community Development Director Stephen Pash, Information Technology Director Chad Morrill, Fire Chief Matt McGrew and Police Chief Stephen Graham

1. **APPROVAL OF MINUTES**

Motion by Commissioner Buchanan to approve regular meeting minutes of March 12, 2020 as submitted. Seconded by Commissioner Sharman and carried unanimously 5-0.

2. **GENERAL ELECTION RESULTS**

A. **Resolution 20-02:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON MARCH 17, 2020 FOR MAYOR/COMMISSIONER DISTRICT 5 AND COMMISSIONER DISTRICT 1, AUTHORIZING ISSUANCE OF CERTIFICATES AND OTHER SUCH MATTERS AS PERMITTED BY LAW

City Attorney Ardaman read Resolution 20-02 by title only. City Clerk Grimmage stated that Resolution 20-02 declares results of the 2020 General Election for Mayor/Commissioner District 5 and Commissioner District 1; also noting that this Election was a Piggyback of the Presidential Preference Primary Election. She read the results as Mayor/Commissioner District 5 John Rees duly elected by virtue of no opposition and Commissioner District 1 Lisa L. Bennett duly elected by receiving the majority of votes cast. Staff recommends approval of Resolution 20-02 and request authorization to issue certificates of election to the candidates elected.

Motion by Commissioner Buchanan to approve Resolution 20-02. Seconded by Commissioner Maciel and carried unanimously 5-0.

B. **Resolution 20-03:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE CHARTER ELECTION HELD MARCH 17, 2020

City Attorney Ardaman read Resolution 20-03 by title only. City Clerk Grimmage stated that Resolution 20-03 declares results of the Charter Election of March 17, 2020. There were nine amendment questions presented to the electorate; seven amendments passed and two amendments failed. The amendment questions, official results, and statistical data are all a part of Resolution 20-03. Staff recommends approval.

Motion by Commissioner Bennett to approve Resolution 20-03. Seconded by Commissioner Maciel and carried unanimously 5-0.

3. **OATH OF OFFICE**

- A. Mayor/Commissioner District 5 – John Rees was administered the Oath of Office by City Clerk Grimmage
- B. Commissioner District 1 – Lisa L. Bennett was administered the Oath of Office by City Clerk Grimmage

4. **REGULAR BUSINESS**

- A. Recommendation to approve Eighth Amendment to the Restated Interlocal Agreement for Joint Planning Area Between Orange County and the City of Winter Garden
City Manager Bollhoefer displayed a map and referred to the Joint Planning Area (JPA) for Winter Garden. He noted an area on the map the City wishes to add. He stated that this does not mean that the City will annex and is not required to annex. He explained that the JPA is an area the City could annex without challenge from the County should the City so desire to do so. Staff recommends approval of the JPA.

Commissioner Buchanan inquired as to how much this would add to the JPA. City Manager Bollhoefer responded that it is approximately 10 acres and is a very small piece.

Motion by Commissioner Sharman to approve Eighth Amendment to the Restated Interlocal Agreement for Joint Planning Area between Orange County and the City of Winter Garden. Seconded by Commissioner Buchanan and carried unanimously 5-0.

- B. Recommendation to approve FINAL PLAT for 707 West Plant Street (Garden West)
City Manager Bollhoefer referred to a PowerPoint display and noted the property's proximity to the Winter Oaks subdivision. He noted the lengthiness of the project and informed of past approval of the planned development by the City Commission. He indicated that the approval of this final plat allows the developer to sell the lots.

Motion by Commissioner Buchanan to approve FINAL PLAT for 707 West Plant Street (Garden West). Seconded by Commissioner Bennett and carried unanimously 5-0.

- C. Recommendation to approve change order with Engineered Sprayed Solutions, LLC in the amount of \$600,000 for the rehabilitation of fiberglass manhole structures on SR50
City Manager Bollhoefer reminded the City Commission of issues on State Road 50 where the road was starting to sink. After investigation, the discovered problem was the manholes. He described the repair and noted that initially budgeted was \$650,000 to do approximately 25 manholes. He described the completion of two repairs on Ninth Street; noting that they were checked and worked very well. Staff recommends adding an additional \$592,000 that includes a contingency for the completion of all 48 manholes on State Road 50. He mentioned savings for completing them all at once.

Commissioner Buchanan asked would contributions come from the Florida Department of Transportation (FDOT). Mr. Bollhoefer responded no. Commissioner Buchanan noted his previous inquiry into a repair for this issue in front of the Seacoast Bank; noting that it was shared at that time, that FDOT would do the repair. Mr. Bollhoefer stated that he believes in that instance, because the City paid for part of the project out of the Superfund, repairs were at the City's cost for those manholes. There was discussion on the repair and its durability.

Motion by Commissioner Buchanan to approve change order with Engineered Sprayed Solutions, LLC in the amount of \$600,000 for the rehabilitation of fiberglass manhole structures on SR50. Seconded by Commissioner Maciel and carried unanimously 5-0.

- D. Recommendation to approve CDBG Rehab Debt Forgiveness for 526 S. Boyd Street (Michelle Ford Gentry), with public comment

City Manager Bollhoefer stated that when using a Community Development Block Grant, a mortgage, which is placed on the home, remains for 10 years. He explained that this is so that the owner for a profit does not immediately sell it after the rehabilitation. He explained there was interruption of the homeowner's employment due to the Coronavirus pandemic and she now has an opportunity to refinance her home and lower the payments. He noted that she does not intend on selling the home, this will not cost the City, and would not put the City in jeopardy of having to pay anything in the future. Staff recommends approval in order to help this resident; noting also there is no perceived risk of losing the home.

Mayor Rees opened the public hearing. He read a dedicated phone number and instructions for the public's participation in this meeting. After waiting several minutes and receiving no public calls or comments, he closed the public hearing.

Motion by Commissioner Bennett to approve CDBG Rehab Debt Forgiveness for 526 S. Boyd Street (Michelle Ford Gentry). Seconded by Commissioner Buchanan and carried unanimously 5-0.

5. **MATTERS FROM PUBLIC**

Mayor Rees opened the public hearing. He read a dedicated phone number and instructions for the public's participation in this meeting. After waiting several minutes and receiving no public calls or comments, he closed the public hearing.

6. **MATTERS FROM CITY ATTORNEY** - There were no items.

7. **MATTERS FROM CITY MANAGER**

Coronavirus Update

City Manager Bollhoefer gave updates on steps the City is taking to address the Coronavirus pandemic. He spoke of suspended recreation programs, shift adjustments for staff, and supplies instituted for safety precautions and maintaining healthy work environments. He noted the suspension of late fees for utility bills and no turn-off of services due to the suspension of in-person payments at the Utility Billing office; noting other payment options.

He spoke of businesses curbside services setup within the downtown. He recognized Economic Development Director Tanja Gerhartz for her work in assisting businesses with getting small business loans noting the challenge of programs rapidly changing.

Aid to East Winter Garden

City Manager Bollhoefer noted that this pandemic has hit low-income communities hard. Staff requests budgeting \$40,000 for collaborating a food delivery program with Healthy West Orange who have already set aside \$25,000. He noted that they would target seniors and those stay-at-home seniors in East Winter Garden community who are unable to get out and get food and toilet paper. He noted that the actual cost is unknown at this time and gave an estimated breakdown for a short time period. He noted that not only would the City work with Healthy West Orange, but also with churches and non-profits in the area in order to identify the needs of the community.

Motion by Commissioner Buchanan to approve \$40,000 to assist East Winter Garden low-income seniors and shut-in residents during the Coronavirus pandemic.

Commissioner Bennett suggested also checking with Anthony Hodge of Finding the Lost Sheep as a good source.

Motion seconded by Commissioner Maciel and carried unanimously 5-0.

Program Updates

City Manager Bollhoefer informed that new dates would later be provided for events such as Bloom 'N Grow and Evening at the Pops; discussion ensued on event dates and locations.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Sharman commented about teleconferencing.

Commissioner Maciel thanked staff for their efforts during this crisis; noting there is no playbook for how to handle it. He feels that City Manager Bollhoefer is being modest for what is being done for East Winter Garden; noting the hard impact of this on African-American and low-income communities. He commended and thanked Mr. Bollhoefer and Economic Development Director Tanja Gerhartz for their efforts in helping target those most in need.

Commissioner Bennett thanked First responders and City staff for their response to this unusual situation. She noted that efforts have been very inventive as well as balanced with keeping people safe and keeping merchants and the downtown in business.

Commissioner Buchanan apologized to Commissioner Maciel regarding an earlier motion he made for East Winter Garden after later recognizing that was his district. Commissioner Maciel acquiesced.

Commissioner Buchanan thanked those he feels already have hazardous jobs, now compounded with this crisis. He thanked City Manager Bollhoefer and City staff; noting that he feels they are doing a great job during this unusual time.

Mayor Rees echoed prior comments and stated that staff and City Manager Bollhoefer have done an excellent job. He noted that these are difficult times and as a resident, he is appreciative.

The meeting adjourned at 6:57 p.m.

APPROVED:

Mayor John Rees

ATTEST:

City Clerk Angee Grimmage, CMC

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Laura Zielonka, Finance Director

Via: Michael Bollhoefer, City Manager

Date: April 17, 2020

Meeting Date: April 23, 2020

Subject: Resolution 20-01 – Multi Provider PACE Resolution

Issue: PACE (Property Assessed Clean Energy) is a financing mechanism used for energy efficiency, renewable energy, and wind mitigation upgrades to properties.

Florida Statute 163.08 authorizes PACE financing to be repaid as a non-ad valorem special assessment on the property's regular tax bill which is processed the same way as other local public benefit assessments such as neighborhood improvement or special taxing districts.

This resolution authorizes the Commercial PACE program to be administered within the limits of the City on a non-exclusive basis. Commercial properties will be able to utilize voluntary non-ad valorem assessments to finance qualifying improvements under the PACE program.

Recommended action:

Staff recommends approval of Resolution 20-01.

RESOLUTION NO. 20-01

A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, (THE “CITY”) PERMITTING PROPERTY ASSESSED CLEAN ENERGY (“PACE”) PROGRAMS WITHIN THE CORPORATE LIMITS OF THE CITY OF WINTER GARDEN; APPROVING AGREEMENTS WITH THE FLORIDA GREEN FINANCE AUTHORITY, THE FLORIDA RESILIENCY AND ENERGY DISTRICT AND THE FLORIDA PACE FUNDING AGENCY AND THE GREEN CORRIDOR PACE DISTRICT; UTILIZING VOLUNTARY NON-AD VALOREM ASSESSMENTS TO FINANCE QUALIFYING IMPROVEMENTS ONLY ON COMMERCIAL PROPERTIES; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE SAID AGREEMENTS; AND PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS, SCRIVENER’S ERRORS, LIMITATION OF CITY LIABILITY, CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, Section 163.08, *Florida Statutes* (the "Supplemental Act"), authorizes counties, municipalities and certain separate local government entities to establish and administer financing programs (sometimes referred to as “PACE” or “PACE financing”) pursuant to which owners of real property may obtain funding for energy conservation and efficiency, renewable energy and wind resistance improvements (as referred to therein, the "Qualifying Improvements"), and repay such funding through voluntary special assessments, sometimes referred to as non-ad valorem assessments ("Special Assessments"), levied upon the improved property pursuant to financing agreements between the property owner thereof and a local government (the "Financing Agreements"); and

WHEREAS, the Florida Green Finance Authority, the Green Corridor PACE District, the Florida Resiliency and Energy District and the Florida PACE Funding Agency (individually the “Agency”, collectively the “Agencies”) are currently four (4) separate legal entities and units of local government within the State of Florida which were established by separate interlocal agreements for the express purpose of providing a scalable platform to facilitate the financing of Qualifying Improvements throughout Florida; and

WHEREAS, pursuant to the Supplemental Act or as otherwise provided by law, local governments may enter into agreements with other local governments for the purpose of providing and financing Qualifying Improvements; and

WHEREAS, the City of Winter Garden (“City”) has expressed its desire to limit PACE to commercial properties (i.e., all properties other than residential properties with one to four dwelling units) (sometimes referred to as “commercial PACE” or “C-PACE”) as allowed by law; and

WHEREAS, the installation of Qualifying Improvements to commercial properties may increase energy efficiency and improve the wind resistance of existing structures within the CITY thereby reducing the burdens from fossil fuel energy production, increase resiliency against inclement weather events and contributing to the local economy by cost savings to property owners, enhancing property values and increasing job opportunities; and

WHEREAS, existing financing options may be insufficient for commercial property owners to access cost-effective financing for energy-saving or wind-resistance property improvements due to requirements associated with traditional debt or equity financing options; and

WHEREAS, the City has been informed that the Agencies have created a turn-key solution for the financing, levy and collection process to implement C-PACE programs, without cost to or assumption of liability by, or demand upon the credit of the City; and

WHEREAS, the City Commission deems this Resolution to be in the best interest of the businesses and residents of the City to authorize the appropriate the City official(s) to execute agreements with the Agencies in an effort to provide an alternative, supplemental and non-exclusive means to achieve, inter alia, immediate and careful local economic development, commerce and job creation, and other goals in accordance with the compelling state interests and public purposes described in the Supplemental Act.

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

SECTION 1. LEGISLATIVE FINDINGS AND INTENT. The forgoing recitals are incorporated in this Resolution as if fully set forth herein and are approved and adopted. The City Commission has complied with all requirements and procedures of Florida law in processing and noticing this Resolution.

SECTION 2. ESTABLISHMENT OF C-PACE PROGRAM. The City Commission hereby authorizes the C-PACE program to be administered within the jurisdictional limits of the City on a non-exclusive basis.

SECTION 3. APPROVAL OF AGREEMENTS; AUTHORIZATION TO EXECUTE, ETC.

- (a). The City Commission approves the following agreements on a non-exclusive basis and subject to the terms of this Resolution:
 - (1). Florida Green Finance Authority C-PACE agreement attached hereto and incorporated herein as Exhibit “A”.
 - (2). Florida PACE Funding Agency C-PACE agreement attached hereto and incorporated herein as Exhibit “B”.
 - (3). Florida Resiliency Energy District C-PACE agreement attached hereto and incorporated herein as Exhibit “C”.
 - (4). Green Corridor PACE District C-PACE agreement attached hereto and incorporated herein as Exhibit “D”.

- (b). The City Commission hereby authorizes the CITY Manager to execute the aforementioned C-PACE agreements.

SECTION 4. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager is hereby authorized and directed to take such actions as he/she may deem necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 5. SCRIVENER'S ERRORS. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. LIMITATION ON CITY LIABILITY. Nothing in this Resolution shall be construed 1) to create any liability or debt on the part of the City; 2) to authorize the Agencies to bind the City to any obligation or debt; 3) as a waiver of the City's sovereign immunity or any other defense that the City may have under F.S. 768.28 or any other law; or 4) as a pledge of the City's taxing power, faith, or credit.

SECTION 7. CONFLICTS. In the event of a conflict between this Resolution and any other resolution of the City, this Resolution shall control to the extent of the conflict, as allowable under the law.

SECTION 8. SEVERABILITY. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION 9. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this __th day of _____ A.D., 2020.

**JOHN REES, MAYOR
CITY OF WINTER GARDEN, FLORIDA**

ATTEST:

**ANGEE GRIMMAGE
CITY CLERK**

Exhibit “A”

Florida Green Finance Authority C-PACE agreement

**Party Membership Agreement
To The Florida Green Finance Authority**

WHEREAS, Section 163.01, F.S., the “Florida Interlocal Cooperation Act of 1969,” authorizes local government units to enter into interlocal agreements for their mutual benefit; and

WHEREAS, the Town of Lantana, Florida, a Florida municipal corporation (“Lantana”) and the Town of Mangonia Park, Florida, a Florida municipal corporation, (“Mangonia Park”) entered into an Interlocal Agreement, dated June 11, 2012, first amended on August 11, 2014 and second amended on April 7, 2016 with document execution May 9, 2016, establishing the Florida Green Finance Authority (sometimes herein the “Authority”) as a means of implementing and financing a qualifying improvements program for energy and water conservation and efficiency, renewable energy and wind-resistance improvements, and to provide additional services consistent with law; and

WHEREAS, the City of Winter Garden desires to become a member of the Florida Green Finance Authority in order to facilitate the financing of qualifying improvements for properties located within the City of Winter Garden.

NOW, THEREFORE, it is agreed as follows:

1. The Interlocal Agreement between the Florida Green Finance Authority, the Town of Lantana and the Town of Mangonia Park, entered into on June 11, 2012 and as amended on August 11, 2014 and April 7, 2016 with document execution May 9, 2016 (the “Interlocal Agreement”), for the purpose of facilitating the financing of qualifying improvements for properties located within the Authority’s jurisdiction via the levy and collection of voluntary non-ad valorem assessments on improved property, is hereby supplemented and amended on the date last signed below by this Party Membership Agreement, which is hereby fully incorporated into the Interlocal Agreement, to include the City of Winter Garden, a Florida municipal corporation (herein “City” or “City of Winter Garden”). Capitalized words used herein shall have the same meaning as defined in the Interlocal Agreement unless otherwise defined herein.
2. The Florida Green Finance Authority, together with its member Parties, and the City of Winter Garden, with the intent to be bound thereto, hereby agree that the City of Winter Garden shall become a Party to the Interlocal Agreement together with all of the rights and obligations of Parties to the Interlocal Agreement.
3. The Service Area of the Florida Green Finance Authority shall include the legal boundaries of the City of Winter Garden, as the same may be more specifically designated by the City of Winter Garden or amended from time to time.
4. Any PACE program administered by the Authority within the City (the “Program”), and the Interlocal Agreement, are non-exclusive, meaning the City of Winter Garden specifically reserves the right to join any other entity providing a similar program under Section 163.08, Florida Statutes, or to create its own program under Section 163.08, Florida Statutes. understands and agrees that City is not authorizing properties with single-family or multi-family

residential structures to participate in the Program, thus the Authority shall not offer the Program to and for such residential properties.

5. The Authority, including its staff and Third Party Administrator (“TPA”), shall be solely responsible for all matters associated with origination, funding, financing, collection and administration of each of the Authority’s authorized non-ad valorem assessments. This Authority responsibility includes, (1) subject to the limitations in Section 768.28, Florida Statutes, the Authority defending and indemnifying and holding harmless the City of Winter Garden and its officers, officials, attorneys and employees from any and all claims, causes of action, penalties, adverse matters or damages (including attorneys’ fees and costs at all trial and appellate levels) incurred by or brought against City of Winter Garden relating to the Program, the Program’s bond or debt obligation, the Program’s financing agreements, the Program’s qualifying improvements, the Interlocal Agreement, this Party Membership Agreement, the acts or omissions of the Authority and its officers, directors, employees or TPA, any other aspect of the Program, or any combination thereof; (2) the Authority responding to any inquiries, requests for information, comments, objections, demonstrations, etc. by participants, tax certificate holders, lenders or others relating to the Program’s non-ad valorem assessments, the Program’s financing agreements, the Program’s qualifying improvements, or any other aspect of the Program; and (3) the Authority ensuring and being responsible for compliance with all laws, rules and regulations in the imposition and collection of any non-ad valorem assessments levied upon property owned by participating property owners who have entered into a financing agreement.

6. Nothing herein shall be deemed or construed as a waiver of any sovereign immunity of or any other defense, privilege or immunities as set forth at Sec. 768.28, Florida Statutes or other law, afforded to the City of Winter Garden or its officials, officers, attorneys and employees, or to the Authority and its officials, officers, attorneys and employees. Nothing in this Party Membership Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

7. The Authority acknowledges that the City has no authority to bind the County Tax Collector and the County Property Appraiser, and the Authority entered into separate agreement(s) with the County Tax Collector and/or the County Property Appraiser, which shall establish the fees (if any) to be charged by the Tax Collector and Property Appraiser for the collection or handling of the Program’s non-ad valorem assessments. The Authority shall be solely responsible for professionally coordinating all interface with the County Tax Collector and County Property Appraiser, and use its best efforts to minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of this Party Membership Agreement and the Interlocal Agreement. The Authority shall take such actions as are necessary for the lawful levy of the non-ad valorem assessments against all lands and properties specially benefitted by the acquisition, construction and financing of qualifying improvements. The City shall not incur or ever be requested to authorize any obligations secured by non-ad valorem assessments associated with qualifying improvements imposed by the Authority.

8. In no event shall the City of Winter Garden be liable for or obligated to pay or perform any debts, liabilities, conditions or obligations arising as a result of any financing agreement, any non-

12. This Party Membership Agreement shall be recorded by the Authority with the Clerk of the Court in the Public Records of Palm Beach County as an amendment to the Interlocal Agreement and recorded in the public records of Orange County, in accordance with Section 163.01(11), Florida Statutes.

IN WITNESS WHEREOF, the Parties hereto subscribe their names to this Interlocal Agreement by their duly authorized officers.

ATTEST: **The Florida Green Finance Authority**, a separate legal entity established pursuant to Section 163.01(7), Florida Statutes

By: _____
Secretary of the Authority

By: _____
Chair of the Authority

Approved by Authority Attorney
as to form and legal sufficiency

Authority Attorney

ATTEST: **City of Winter Garden**, through its **City Commission**

Angela Grimmage, City Clerk
Clerk of the City Commission of the
City of Winter Garden, Florida

By: _____
John Rees, Mayor

____ day of _____, 20__.

{SEAL}

Approved as to form by:
A. Kurt Ardaman
City of Winter Garden, City Attorney
Fishback Dominick
1947 Lee Road
Winter Garden, FL 32789

By: _____
A. Kurt Ardaman (Date)
City Attorney

Exhibit “B”

Florida PACE Funding Agency C-PACE agreement

**A NON-EXCLUSIVE INTERLOCAL SUBSCRIPTION AGREEMENT
RELATING TO THE FUNDING AND FINANCING
OF QUALIFYING IMPROVEMENTS BY THE
FLORIDA PACE FUNDING AGENCY**

THIS NON-EXCLUSIVE INTERLOCAL SUBSCRIPTION AGREEMENT is made and entered into as of [REDACTED], 2020 (this "Subscription Agreement"), by and between City of Winter Garden, Florida (the "Subscriber"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7)(g), Florida Statutes, (the "Agency"), by and through their respective governing bodies. The purpose of the Subscription Agreement is to secure, in an efficient and uniform manner, for the Property Owners (as hereinafter defined) within the jurisdiction and boundaries of the Subscriber the privileges, benefits, powers and terms provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended (the "Supplemental Act"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the Subscriber and the Agency hereby agree, stipulate and covenant as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

SECTION 1.01. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

"Board of Directors" means the governing body of the Agency.

"Agency Charter Agreement" or **"Charter"** means, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments and supplements hereto executed and delivered in accordance with the terms thereof.

"Financing Agreement" means the agreement authorized hereunder and by the Act (specifically including section 163.08(4) thereof) between the Agency and a Property Owner providing for the funding to finance Qualifying Improvements and the imposition of a non-ad valorem Special Assessment against the Property Owner's assessed property.

"Financing Documents" shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other

instrument relating to the issuance or security of any bond or Obligations of the Agency and any agreement between the Agency and the Subscriber, pursuant to which the Subscriber and Property Owners obtain access to funds provided by the Agency.

“Obligations” shall mean a series of bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, certificates or any other obligations of the Agency issued hereunder or pursuant hereto, or under any general law provisions, and pursuant to the Financing Documents. The term shall also include any lawful obligation committed to by the Agency or pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administrative expenses.

“Program” means the program operated by the Agency to provide financing for Qualifying Improvements undertaken within the jurisdiction of the Subscriber. Unless determined otherwise by the Subscriber, the Agency’s Program will be non-exclusive; and, the Subscriber may embrace or authorize any similar program under the Act as the Subscriber sees fit and in the interest of the public.

“Property Owner” means, collectively, all of the record owners of real property subject to a Financing Agreement.

“Qualifying Improvements” means those improvements for energy efficiency, renewable energy, or wind resistance described in the Supplemental Act authorized to be affixed and/or installed by the record owner of an affected property. The term does not include similar improvements underwritten or financed by local, state or federal programs including, but not limited to State Housing Initiatives Partnership or SHIP Program, which are not secured by a special or non-ad valorem assessment.

“Special Assessments” means the non-ad valorem assessments authorized by the Supplemental Act and levied by the Agency on property owned by participating property owner who has entered into a Financing Agreement with the Agency to fund the costs of Qualifying Improvements.

SECTION 1.02 CONSTRUCTION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, shall refer to this Subscription Agreement; the term “heretofore” shall mean before the date this Subscription Agreement is executed; and the term “hereafter” shall mean after the date this Subscription Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other party to this Subscription Agreement. Both parties have independently reviewed this Subscription Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the Subscriber or the Agency by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Subscription Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Subscription Agreement nor affect its meaning, construction or effect.

SECTION 1.04. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The State has declared it the public policy of the State to develop energy management programs aimed at promoting energy conservation and wind resistance or 'hardening' programs achieving hurricane and wind damage mitigation.

(B) The State Legislature has determined there is a compelling state interest in enabling property owners to voluntarily finance Qualifying Improvements with local government assistance. The actions authorized by the Supplemental Act, including the financing of Qualifying Improvements through the execution of Financing Agreements and the related imposition of a Special Assessment, are reasonable and are necessary for the prosperity and welfare of the State, the Subscriber and its property owners and inhabitants.

(C) The Agency has secured a binding final judgment, binding and only advantageous to the Agency, which has statewide effect. Such judgment carefully relieves the Subscriber from cost and liability associated with implementation of the Agency's Program.

(D) The Agency's Program has assembled open public governance and oversight, staffing, third-party administration, third-party originators, third-party tax roll administration, Program counsel, and an independent institutional trustee; the Agency is immediately ready to commence origination of Special Assessments for Qualifying Improvements; and that the Agency presently has funding in place and available under executed bond purchase agreements and trust indentures.

(E) The availability of the non-exclusive Program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the Subscriber) and the voluntary participation in the Program by Property Owners will provide an alternative financing option to finance and repay the costs to provide and install Qualifying Improvements.

(F) This Agreement provides an alternative, supplemental and non-exclusive means to achieve, *inter alia*, immediate and careful local economic development, commerce and job creation, as well as the compelling State interests and public purposes described in the Supplemental Act.

(G) The Agency understands and agrees that City is not authorizing properties with single-family or multi-family residential structures to participate in the Program, thus the Agency shall not offer the Program to and for such residential properties.

ARTICLE II SUBSCRIPTION

SECTION 2.01. AUTHORITY.

(A) The execution hereof has been duly authorized by the resolution of the governing bodies of each party hereto.

(B) The Agency by this Subscription Agreement is hereby authorized to act to provide its services, and conduct its affairs, within the boundaries of the Subscriber's jurisdiction.

(C) The execution of this Subscription Agreement evidences the express authority and concurrent transfer of all necessary powers to the Agency, and the covenant to reasonably cooperate by the Subscriber, so that the Agency may facilitate, administer, implement and provide Qualifying Improvements, facilitate Financing Agreements and non-ad valorem assessments only on properties subjected to same by the record owners thereof, develop markets, structures and procedures to finance same, and to take any actions associated therewith or necessarily resulting there from, as contemplated by the Supplemental Act as the same may be amended from time to time.

(D) By resolution of the governing bodies of each of the parties and as implemented pursuant by this Subscription Agreement, all power and authority available to the Agency under its Charter and general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the Agency within the boundaries of the Subscriber.

(E) This Subscription Agreement may be amended only by written amendment hereto.

SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED.

The Agency shall not be empowered or authorized in any manner to create a debt as against the State, county, or any municipality, and may not pledge the full faith and credit of the State, any county, or any municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, county or any municipality shall not be obligated to pay the same or the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law, the Charter Agreement, or this Subscription Agreement shall not directly or indirectly or contingently obligate the State, or any county or municipality to levy or to pledge any form of ad valorem taxation whatever therefore or to make any appropriation for their payment.

SECTION 2.03. ADOPTION OF RATES, FEES AND CHARGES.

(A) The Board of Directors may adopt from time to time such rates, fees or other charges for the provision of the services of the Agency to be paid by the Property Owner, pursuant to a Financing Agreement described in the Supplemental Act.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the Financing Documents, and to pay the principal and interest on the Obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Subscription Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services over time) or combination of factors affecting the demand or cost of the services furnished or provided to administer the services and affairs of the Agency as may be determined by the Board of Directors from time to time.

(D) Notwithstanding anything in this Subscription Agreement to the contrary, the Agency may establish a general fund and/or performance assurance account into which moneys may be deposited from an annual surcharge upon the Special Assessments imposed, pledged to or collected by the Agency. Any moneys deposited to such general fund account from such a surcharge shall be considered legally available for any lawful purpose approved by the Board of Directors. Moneys in such general fund and/or performance assurance account may be used to pay for or reimburse initial costs and expenses advanced or associated with start-up costs, feasibility studies, economic analysis, financial advisory services, program development or implementation costs or enhancements, public education, energy audits, administration, quality control, vendor procurement, and any other purpose associated with the purpose or mission of the Agency approved by the Board of Directors.

SECTION 2.04. FINANCING AGREEMENTS.

(A) The Agency shall prepare and provide to each participating property owner the form of the Financing Agreement which complies with the Supplemental Act and is in accordance with the Financing Documents as designated by the Board of Directors from time to time.

(B) The Agency, not the Subscriber, shall be solely responsible for all matters associated with origination, funding, financing, collection and administration of each of the Agency's authorized non-ad valorem assessments.

SECTION 2.05. IMPOSITION OF SPECIAL ASSESSMENTS PURSUANT TO FINANCING AGREEMENTS.

(A) Upon execution by the Property Owner and the Agency of the Financing Agreement, the Financing Agreement or a summary or memorandum thereof shall be recorded by the Agency within five (5) days of execution as required by Section 163.08(8), Florida Statutes. The recorded Financing Agreement, or summary or memorandum thereof, provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(B) In a reasonably cooperative and uniform manner the Agency is authorized to and shall provide a digital copy to the property appraiser or tax collector of the recorded Financing Agreement or summary memorandum thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information necessary for the tax collector to collect such amounts on behalf of the Agency pursuant to Sections 197.3632 and 163.08, Florida Statutes, as a non-ad valorem assessment.

SECTION 2.06. COLLECTION OF SPECIAL ASSESSMENTS.

(A) The Agency shall be solely responsible for professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of the Supplemental Act subscribed to by the Subscriber. The Agency shall ensure and be responsible for compliance with all laws, rules and regulations applicable in the imposition and collection of any Special Assessments levied upon property owned by participating property owners who have entered into a Financing Agreement. Subscriber hereby respectfully requests and encourages the tax collector or property appraiser to only impose, charge, or deduct the minimum amount allowed by general law for the collection or handling of the Special Assessments which are the subject of this Subscription Agreement.

(B) To advance Program acceptance and to minimize Program participation costs, and because each Property Owner is voluntarily undertaking to achieve and underwrite the unique and compelling State interests described in the Supplemental Act, the Subscriber urges either the waiver of such fees by the tax collector and property appraiser or a flat five dollar (\$5) fee per year per tax parcel for such purposes which shall be paid by the Agency via deduction, by the institutional trustee required by the Financing Documents, or as otherwise reasonably agreed to by the Agency and these parties.

SECTION 2.07. PLEDGE OF PROCEEDS FROM NON AD VALOREM ASSESSMENTS.

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of Qualifying Improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency or Subscriber shall be satisfied that any such assessment is so irregular or defective

that the same cannot be enforced or collected, the Agency is authorized to take all necessary steps to cause a new assessment to be made for the whole or any part of any Qualifying Improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.

(B) Pursuant to the Financing Documents and this Subscription Agreement, the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from Special Assessments to the repayment of any debt obligation issued by the Agency pursuant to the Financing Documents.

(C) The Subscriber shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Agency.

(D) Each series of Financing Documents shall be secured forthwith equally and ratably by a pledge of and lien upon the Special Assessments. The obligations of the Agency under and pursuant to the Financing Documents shall not be or constitute general obligations or an indebtedness of the Subscriber as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a lien upon and pledge of the Special Assessments as provided herein. Neither the Agency nor any holder of any debt obligation issued by the Agency pursuant to the Financing Documents shall ever have the right to compel the exercise of the ad valorem taxing power of the Subscriber or taxation in any form of property therein to pay any amount due under any Financing Documents or any Special Assessment. The Financing Documents shall not constitute a lien upon any property of or in the Subscriber except as to the respective Special Assessments in the manner provided herein and by law.

SECTION 2.08. CARBON OR SIMILAR CREDITS. The form of Financing Agreement in each instance shall provide for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to the Agency, with such revenues therefrom, if any ever materialize, to be used by the Agency to underwrite generally its operation, mission and purpose. By execution hereof any such interest in mitigation credits shall be assigned by the Subscriber to the Agency without any future action by the parties. Provided, however, the Subscriber shall upon request from time to time execute and deliver all such documents as may be reasonably required to further evidence the assignment and transfer of such interests to the Agency. Such credits expressly exclude investment tax credits available under the Internal Revenue Code or monetary rebates available to the Property Owner.

ARTICLE III GENERAL PROVISIONS

SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS. This Subscription Agreement constitutes a joint exercise of power, privilege or authority by and between the Subscriber and the Agency and shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Subscription

Agreement shall be filed by the Agency with the Clerk of the Circuit Court of the county in which the Subscriber is located.

SECTION 3.02. DISCLOSURE.

(A) The Agency has provided a copy of (1) the Supplemental Act, (2) the Agency's Charter Agreement, (3) the Final Judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and (4) other relevant disclosure information and background materials to the Subscriber prior to execution hereof. Subscriber, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing.

(B) The objective of the Agency's mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of Qualifying Improvements and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so, each subscribing local government by entering into a subscription agreement of this nature authorizes the availability of the Agency's uniform program to property owners in the subscribing jurisdiction. Accordingly, the Agency has engaged, and may engage in the future, various advisors, consultants, attorneys or other professionals or firms with recognized expertise necessary to accomplish the Agency's mission.

(C) The Subscriber and Agency recognize, consider and acknowledge the fact or possibility that one or more of the various professionals or firms may serve as the advisor to the Agency in its mission, and to the Subscriber or another client in providing other similar professional services, outside of the provision, funding and financing of Qualifying Improvements. Such circumstance is acceptable and will not be construed as a conflict, be objected to unreasonably, nor be used as the basis for its disqualification of such professionals or firms from any continued or future representation of either party hereto which can otherwise be resolved by a reasonable waiver.

SECTION 3.03. TERM OF AGREEMENT; DURATION OF AGREEMENT; EXCLUSIVITY.

(A) This Subscription Agreement shall commence as of the date first above written, and shall remain in effect until terminated as herein provided. Either party (the "non-breaching party") may terminate this Subscription Agreement by providing the other party (the "breaching party") 10 days prior written notice ("Termination Notice") in the event the breaching party breaches this Subscription Agreement and such breach is not cured within thirty (30) days following notice of such breach, or as long thereafter as reasonably necessary to cure such breach. Beginning on the date the Agency receives from, or gives to, the Subscriber a Termination Notice ("Termination Date"), the Agency shall not approve any new applications affecting property within the legal boundaries of the Subscriber. Additionally, the Subscriber shall have the right to terminate this Subscription Agreement at any time with at least ninety (90) days written notice to the Agency. The initial term of this Subscription Agreement shall be for five (5) years, and the

Subscription Agreement shall automatically renew for five-year terms unless either party provides the other with written notice of the intention not to renew at least thirty (30) days prior to the expiration of the term that is then current, unless terminated earlier.

(B) In the event of any termination hereunder, and so long as the Agency has Obligations outstanding which are secured by pledged revenues derived from Financing Agreements relating to any properties within the jurisdiction or boundaries of the Subscriber, or the Agency has projects for Qualified Improvements underway therein, the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of Agency then underway, shall remain in effect and survive such termination until such time as those obligations and all associated remaining Program responsibilities are fulfilled (including, but not limited to the collection of assessments in due course).

SECTION 3.04. AMENDMENTS AND WAIVERS.

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Subscription Agreement shall be binding unless executed in writing by the Subscriber and Agency.

(B) To the extent the Agency has no outstanding bonds, Obligations or other evidence of indebtedness, this Subscription Agreement may be amended or modified or provisions hereto waived upon the written consent of all parties hereto.

(C) To the extent the Agency has outstanding bonds, Obligations or other evidence of indebtedness arising from Financing Agreements relating to properties within the jurisdiction or boundaries of the Subscriber, this Subscription Agreement may not be amended or modified in any way that is materially adverse to holders of such bonds, Obligations or other evidence of indebtedness without the consent in writing of the holders of at least two-thirds (2/3) or more in principal amount of such bonds, Obligations or other evidence of indebtedness (exclusive of any warrants issued by the Agency) then outstanding, or any insurer duly authorized to provide such consent on behalf of such holders.

SECTION 3.05. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for “next business day” service) to the parties at the following addresses:

Subscriber: City of Winter Garden
City/Town/Village/c/o Michael Bollhoefer, City Manager
300 W. Plant St.
Winter Garden, FL 34787

With a copy to: A. Kurt Ardaman
City Attorney
1947 Lee Road
Winter Park, FL 32789

Agency: Mike Moran
Executive Director
Florida PACE Funding Agency
c/o Southern Sky Energy
4411 Bee Ridge Rd., #134
Sarasota, Florida 34233

With a copy to: Program Counsel for the Florida PACE Funding Agency
P.O. Box 14043
Tallahassee, Florida 32317-4043

(B) Any of the parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

SECTION 3.06. QUALITY CONTROL AND COMMUNICATION. For quality control purposes the Agency and Subscriber desire, and the Agency covenants to develop, implement and employ policies, systems and procedures which are within industry standards; with such standards being reasonably expected to change and evolve over time. An ongoing positive and informal line of communication between staff and agents for the parties is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, the Subscriber is encouraged to objectively and specifically communicate to the Agency in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by the Agency. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) and follow-up accordingly; and, also promptly communicate any such response, follow-up, and all related communication to the Board of Directors for review.

SECTION 3.07. IMMUNITY; LIMITED LIABILITY.

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the

parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Subscription Agreement.

(B) The Subscriber and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the incorporators or members of the Agency shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The Subscriber and Agency acknowledge and agree that the Agency shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. Nothing in this Subscription Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(C) Neither the Subscriber, nor the local governments who are either or both the incorporators or members of the Agency, nor any subsequently subscribing or participating local government in the affairs of the Agency shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency, except to the extent otherwise mutually and expressly agreed upon, and neither the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate either the Subscriber, the local governments who are either or both the incorporators or members of the Agency, nor any subsequently subscribing or participating local government in the affairs of the Agency in any manner.

(D) In no event shall the Subscriber be liable for or obligated to pay or perform any debts, liabilities, conditions or obligations arising as a result of any Financing Agreement, Financing Documents, Special Assessment, Qualifying Improvements or any act or omission of any Property Owner or its/their agents. Subscriber shall have no monetary, appropriation or budgetary obligations under this Subscription Agreement or any authorizing resolution.

SECTION 3.08. BINDING EFFECT. This Subscription Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

SECTION 3.09. SEVERABILITY In the event any provision of this Subscription Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 3.10. EXECUTION IN COUNTERPARTS. This Subscription Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 3.11. APPLICABLE LAW. The exclusive venue of any legal or equitable action that arises out of or relates to this Subscription Agreement shall be the appropriate state court in Orange County, Florida. In any such action, Florida law shall apply and the parties waive any right to jury trial.

SECTION 3.12. ENTIRE AGREEMENT. This Subscription Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Subscription Agreement to be duly executed and entered into as of the date first above written.

CITY OF WINTER GARDEN

(SEAL)

By: _____
Michael Bollhoefer
City Manager

Attest:

Angee Grimmage
City Clerk

IN WITNESS WHEREOF, the undersigned have caused this Subscription Agreement to be duly executed and entered into as of the date first above written.

THE FLORIDA PACE FUNDING AGENCY

(SEAL)

By: _____
Mike Moran, Executive Director

ATTEST:

James Ley, Secretary

Exhibit “C”

Florida Resiliency Energy District C-PACE agreement

This instrument was prepared by or under the supervision of (and after recording should be returned to):

Joseph P. Stanton
Nelson Mullins, Broad and Cassel
Bank of America Center
390 North Orange Avenue
Suite 1400
Orlando, FL 32801-4961

(SPACE reserved for Clerk of Court)

**LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT BETWEEN THE
FLORIDA RESILIENCY AND ENERGY DISTRICT AND [NAME OF
LOCALITY]**

This Limited Purpose Party Membership Agreement (the "Agreement") is entered into this ___ day of _____, 20__ by and between the **FLORIDA RESILIENCY AND ENERGY DISTRICT ("FRED")**, a public body corporate and politic created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, and Winter Garden, a political subdivision of the State of Florida (the "CITY") (collectively, the "Parties") for the purpose of providing a Property Assessed Clean Energy ("PACE") program within the legal boundaries of the CITY.

W I T N E S S E T H

WHEREAS, pursuant to Section 163.08(1), Florida Statutes, the legislature determined that access to financing for certain renewable energy, energy efficiency and conservation and wind resistance improvements ("Qualifying Improvements") through voluntary assessment programs such as the PACE program provides a special benefit to real property by alleviating the property's burden from energy consumption and/or reducing the property's burden from potential wind damage; and

WHEREAS, in order to make such Qualifying Improvements more affordable and assist property owners who wish to undertake such improvements, the legislature also determined that there is a compelling state interest in enabling property owners to voluntarily finance such Qualifying Improvements with the assistance of local governments, through the execution of financing agreements and the related imposition of voluntary, non-ad valorem special assessments; and

WHEREAS, an Interlocal Agreement, dated September 6, 2016, as amended and supplemented from time to time (the "Interlocal Agreement") was entered into between the Town of Lake Clarke Shores, the City of Fernandina Beach, and any subsequent parties thereto (the "Public Agencies") and, in the limited capacity described therein, the Florida Development Finance Corporation ("FDFC") and, together with the Public Agencies, the "Parties"), for the purpose of facilitating the financing of Qualifying Improvements for

properties located within FRED's aggregate legal boundaries via the levy and collection of voluntary non-ad valorem special assessments on improved property; and

WHEREAS, the **CITY** agrees with such legislative determinations and finds that the financing of Qualifying Improvements through the PACE program provides a special benefit to participating real property within its legal boundaries; and

WHEREAS, the Parties to this Agreement desire to supplement the Interlocal Agreement to include the **CITY** as a Limited Member, as such term is defined in the Interlocal Agreement, on the date last signed below.

NOW, THEREFORE, in consideration of the above recitals, terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

SECTION 1. DEFINITIONS. Any capitalized terms used in this Agreement, but not otherwise defined herein, shall have the meaning specified for such term in the Interlocal Agreement.

SECTION 2. PURPOSE. The purpose of this Agreement is to facilitate the financing of Qualifying Improvements through a PACE program, in accordance with Section 163.08, Florida Statutes, and provide an efficient process for real property owners within the legal boundaries of the **CITY** to access the PACE program and permit FRED to administer the PACE program within such legal boundaries. This Agreement is non-exclusive for the **CITY**, meaning that the **CITY** specifically reserves the right to join any other entity providing a similar program under Section 163.08, Florida Statutes or create its own program under Section 163.08, Florida Statutes.

SECTION 3. RIGHTS OF PARTIES. FRED, together with its member Parties, and the **CITY**, with the intent to be bound thereto, hereby agree that the **CITY** shall become a Party to the Interlocal Agreement together with only those rights and obligations of Parties to the Interlocal Agreement as are necessary to fulfill the purposes described in this Agreement, including access to financing and processing of non-ad valorem special assessments by FRED, within the legal boundaries of the **CITY**, as more specifically described below, and in accordance with federal, state, and local laws, rules, regulations, ordinances, and all operational program standards of the **CITY**.

SECTION 4. INCORPORATION OF RECITALS AND LEVY OF SPECIAL ASSESSMENTS. The Parties hereby acknowledge and agree with each recital to this Agreement and incorporate such findings herein as their own. The non-ad valorem special assessments arising from a property owner's voluntary participation in the PACE program shall be levied by FRED on properties within the legal boundaries the **CITY** and the receipt and distribution of any non-ad valorem special assessments imposed by FRED are purely ministerial acts.

FRED shall be solely responsible for all matters associated with origination, funding, financing, collection and administration of each of the FRED's authorized non-ad valorem assessments. FRED's responsibility includes, (1) FRED defending, indemnifying and holding harmless the CITY and its officers, officials, attorneys and employees as provided in the Interlocal Agreement; (2) FRED responding to any complaints or inquiries by participants, tax certificate holders, lenders or others relating to the Program's special assessments, the Program's financing agreements, the Program's qualifying improvements, or any other aspect of the Program; and (3) FRED ensuring and being responsible for compliance with all laws, rules and regulations in the imposition and collection of any special assessments levied upon property owned by participating property owners who have entered into a financing agreement.

SECTION 5. QUALIFYING IMPROVEMENTS. FRED may provide access to financing for Qualifying Improvements to real property within the legal boundaries of the CITY, in accordance with Section 163.08, Florida Statutes, and subject to the terms of this Agreement, as well as applicable federal, state, and CITY law.

SECTION 6. FINANCING AGREEMENT. Before extending any financing or subjecting any participating real property within the legal boundaries of the CITY to the non-ad valorem special assessment authorized therein, FRED and FDFC, through their designees, shall, on a non-exclusive basis pursuant to the Section 163.08, Florida Statutes and this Agreement, enter into a financing agreement (the "Financing Agreement") with property owner(s) within the legal boundaries of the CITY who qualify for financing through FRED. The Financing Agreement shall include a thorough explanation of the PACE financing process and specify at what point in the process the special assessment will be added to the real property's owner's property tax bills (after completion of the project(s), permit approval, and approval by the property owner).

SECTION 7. BOUNDARIES OF THE PACE PROGRAM. For the limited purposes of administering the PACE program and imposing non-ad valorem special assessments as described in this Agreement, the legal boundaries of FRED shall include the legal boundaries of the CITY, which legal boundaries may be limited, expanded to reflect annexation, or more specifically designated from time to time by the CITY by providing written notice to FRED. Upon execution of this Agreement and written request thereafter, the CITY agrees to provide FRED the current legal description of the legal boundaries of the CITY.

SECTION 8. ELIGIBLE PROPERTIES. Within the legal boundaries of the CITY, improved non-residential real property may be eligible for participation in the PACE program within the limits otherwise prescribed in Section 163.08, Florida Statutes. The CITY is not authorizing properties with single-family or multi-family residential structures for participation in the PACE program.

SECTION 9. SURVIVAL OF SPECIAL ASSESSMENTS. During the term of this Agreement, FRED may levy voluntary non-ad valorem special assessments on participating properties within the legal boundaries of the CITY to help secure the financing of costs of Qualifying Improvements constructed or acquired on such properties based on the finding of special benefit by the CITY incorporated into Section 3 hereof. Those properties receiving financing for Qualifying Improvements shall be assessed by FRED until such time as the financing for such Qualified Improvement is repaid in full, in accordance with Section 163.08, Florida Statutes, and other applicable law. Notwithstanding termination of this Agreement or notice of a change in the legal boundaries of the CITY as provided for herein, those properties that have received financing for Qualifying Improvements shall continue to be a part of FRED, until such time that all outstanding debt has been satisfied.

SECTION 10. TERM. This Agreement shall remain in full force and effect from the date of its execution by both Parties. Any Party may terminate this Agreement for convenience upon ninety (90) days' prior written notice ("Termination Notice") in accordance with the terms of the Interlocal Agreement. Beginning on the date FRED receives a Termination Notice from the CITY ("Termination Date"), FRED shall not approve any new applications affecting property within the legal boundaries of the CITY referenced in the Termination Notice. Notwithstanding termination of this Agreement, however, property owners whose applications were approved prior to the Termination Date, and who received funding through the PACE program, shall continue to be a part of FRED, for the sole purpose of FRED imposing assessments for the repayment of such property's outstanding debt, until such time that all outstanding debt has been satisfied.

SECTION 11. CONSENT. This Agreement, together with the resolution by the governing board of the CITY approving this Agreement, shall be considered the Parties' consent to authorize FRED to administer the PACE program within the legal boundaries of the CITY, as required by Section 163.08, Florida Statutes.

SECTION 12. CITY COORDINATOR. The Finance Director of the CITY shall serve as the CITY's primary point of contact and coordinator. The CITY will advise FRED of any changes to the CITY's primary contact and coordinator within 30 days of such changes.

SECTION 13. CARBON OR SIMILAR CREDITS. To the extent permitted by law, in the event that the Financing Agreement or any other PACE agreement with the property owner provides for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to FRED, any such carbon or similar mitigation credits derived from properties within the legal boundaries of the CITY, shall be shared in equal parts between FRED and the CITY.

SECTION 14. LIMITED OBLIGATIONS. Neither FRED nor FDFC is authorized to issue bonds, or any other form of debt, on behalf of the CITY. The CITY

shall have no monetary liability pursuant to or arising from this Agreement. To the extent that FRED or FDFC issues PACE-related bonds under its own authority in connection with this Agreement, the security for such bonds may be secured by non-ad valorem special assessments imposed by FRED on participating properties within the legal boundaries of the CITY. The issuance of such bonds shall not directly or indirectly or contingently obligate the CITY to levy or to pledge any form of taxation whatever, or to levy ad valorem taxes on any property within their territorial limits to pay the bonds, and the bonds shall not constitute a lien upon any property owned by the CITY. For any such bonds, the bond disclosure document, if any, shall include references to the fact that the CITY is not an obligated party, and also adequately disclose material attendant risks with PACE programs.

SECTION 15. LIABILITY, INDEMNIFICATION AND SOVEREIGN IMMUNITY.

(A) CITY and FRED are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(0), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the founders or members of FRED shall not be held jointly liable for the torts of the officers or employees of the FRED, or any other tort attributable to FRED, and that FRED alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. CITY and FRED acknowledge and agree that FRED shall have all of the applicable privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. CITY is completely independent of FRED. To the extent provided by law, FRED shall indemnify, defend and hold harmless CITY from any and all damages, claims, and liability arising from the negligence or intentional misconduct of FRED relating to operation of the PACE program. Nothing in this Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(B) Neither CITY, nor the local governments who are either or both the founders or members of the Agency, nor any subsequently joining or participating local government as members of FRED shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of FRED, the governing board of FRED or any other agents, employees, officers or officials of FRED, except to the extent otherwise mutually and expressly agreed upon, and neither FRED, the governing board of FRED or any other agents, employees, officers or officials of FRED have any authority or power to otherwise obligate either CITY, the local governments who are either or both the founders or members of FRED, nor any subsequently subscribing or participating local government in the business of FRED in any manner.

(C) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Agreement.

SECTION 16. AGREEMENTS WITH TAX COLLECTOR AND PROPERTY APPRAISER. This Agreement shall be subject to the express condition precedent that FRED enter into separate agreement(s) with the tax collector and the property appraiser having jurisdiction over the legal boundaries of the CITY, which shall provide for the collection of any non-ad valorem special assessments imposed by FRED within the legal boundaries of the CITY. If required by the tax collector and property appraiser, the CITY agrees to enter into those agreements as a third-party to facilitate the collection of the non-ad valorem special assessments imposed by FRED.

FRED shall be solely responsible for professionally coordinating all interface with the tax collector and property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of this Agreement and the Interlocal Agreement. FRED shall take such actions as are necessary for the lawful levy of the special assessments against all lands and properties specially benefitted by the acquisition, construction and financing of qualifying improvements. The CITY shall not incur or ever be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by FRED.

SECTION 17. OPINION OF BOND COUNSEL. FRED warrants, based on counsel's review of the bond validation judgment and the underlying bond documents that the FDFC PACE program's structure complies with the bond validation judgment and the underlying bond documents.

SECTION 18. AGENTS OF FRED. FRED shall ensure that its agents, administrators, subcontractors, successors and assigns are, at all times, in compliance with the terms of this Agreement and applicable CITY, state and federal laws.

SECTION 19. NOTICES. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, or by electronic mail, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to FRED:

The Florida Resiliency and Energy District
c/o Florida Development Finance Corporation
William "Bill" F. Spivey, Jr.
Executive Director
156 Tuskawilla Road, Suite 2340
Winter Springs, FL 32708
bspivey@fdcbonds.com

and Issuer's Counsel with Nelson Mullins Broad and Cassel
Joseph Stanton, Esq.
Bank of America Center
390 North Orange Avenue
Suite 1400
Orlando, FL 32801-4961
407.839.4200 (t)
jstanton@nelsonmullins.com

If to CITY:
CITY Coordinator,
Laura Zielonka, Finance Director
300 West Plant Street
Winter Garden, Florida 34787
lzielonka@cwgd.com

SECTION 20. AMENDMENTS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this agreement and executed by the CITY and FRED or other delegated authority authorized to execute same on their behalf.

SECTION 21. JOINT EFFORT. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

SECTION 22. MERGER. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 23. ASSIGNMENT. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

SECTION 24. THIRD PARTY BENEFICIARIES. None of the Parties intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement; provided, however, that counsel to the Parties may rely on this Agreement for purposes of providing any legal opinions required by the issuance of debt to finance the Qualifying Improvements.

SECTION 25. RECORDS. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

SECTION 26. RECORDING. This Limited Purpose Party Membership Agreement shall be filed by FRED with the Clerk of the Circuit Court in the Public Records of the CITY and recorded in the public records of the CITY as an amendment to the Interlocal Agreement, in accordance with Section 163.01(11), Florida Statutes.

SECTION 27. SEVERABILITY. In the event a portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

SECTION 28. EFFECTIVE DATE. This Agreement shall become effective upon the execution by both Parties hereto.

SECTION 29. LAW, JURISDICTION, AND VENUE. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Ninth Judicial Circuit in and for Orange County, Florida, the United States District Court for the Middle District of Florida or United States Bankruptcy Court for the Middle District of Florida, as appropriate.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on this ____ day of _____, 2020.

CITY OF WINTER GARDEN, FLORIDA

By: _____ Date _____
John Rees, Mayor

For the CITY of WINTER GARDEN,

Attest:

By: _____
Angela Grimmage, City Clerk
Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, _____ of the City of Winter Garden, Florida, who is personally known to me/has produced _____ as identification.

(SEAL)

Printed/Typed Name: _____
Notary Public-State of Florida
Commission Number:

[SIGNATURE PAGE TO LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT]

WITNESS:

WITNESS:

FLORIDA DEVELOPMENT FINANCE
CORPORATION on behalf of FLORIDA
RESILIENCY AND ENERGY DISTRICT

By:

William "Bill" F. Spivey, Jr.
Executive Director

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by William "Bill" F. Spivey, Jr., Executive Director of the Florida Development Finance Corporation, who is personally known to me/has produced _____ as identification.

(SEAL)

Printed/Typed Name: _____

Notary Public-State of Florida

Commission Number:

Exhibit “D”

Green Corridor PACE District C-PACE agreement

**MEMBERSHIP AGREEMENT
BETWEEN THE
GREEN CORRIDOR PROPERTY ASSESSMENT CLEAN ENERGY (PACE) DISTRICT
AND THE CITY OF WINTER GARDEN**

This Membership Agreement (the “Membership Agreement”) is entered into this ___ day of ____, 20__ by and between the Green Corridor Property Assessment Clean Energy (PACE) District, a public body corporate and politic (the “Green Corridor”), and the City of Winter Garden, Florida, a municipal corporation of the State of Florida (the “City”) (collectively, the “Parties”) for the purpose of providing a PACE program within the City.

RECITALS

WHEREAS, on August 6, 2012, the Green Corridor was created as a separate legal entity pursuant to Section 163.01(7), Florida Statutes, to finance qualifying improvements in accordance with Section 163.08, Florida Statutes; and

WHEREAS, on _____, the City adopted Resolution No. _____ agreeing to join the Green Corridor as a non-voting member in order to finance qualifying improvements in the City in accordance with Section 163.08, Florida Statutes; and

WHEREAS, the Parties have determined that entering into this Membership Agreement is in the best interest and welfare of the property owners within the Green Corridor and City.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

Section 1. Recitals Incorporated. The above recitals are true and correct and incorporated herein.

Section 2. Purpose. The purpose of this Membership Agreement is to facilitate the financing of qualifying improvements for property owners within the City in accordance with Section 163.08, Florida Statutes, by virtue of the City’s joining the Green Corridor as a non-voting member and utilizing the Green Corridor’s existing program (the “Program”).

Section 3. Qualifying Improvements. The City shall allow the Green Corridor to provide financing of qualifying improvements, as defined in Section 163.08, Florida Statutes, on properties within the City. Green Corridor understands and agrees that City is not authorizing residential properties (i.e. those properties zoned with any residential zoning district or improved with residential structures) to participate in the Program, thus Green Corridor shall not offer the Program to and for such residential properties.

Section 4. Non-Exclusive. The Green Corridor Program is non-exclusive, meaning the City specifically reserves the right to join any other entity providing a similar program under Section 163.08, Florida Statutes, or create its own program under Section 163.08, Florida Statutes.

Section 5. Program Guidelines. The Parties agree that, unless the City desires to implement its own local program guidelines as described below, the Program to be offered in the City will be wholly governed by the Green Corridor’s Program Guidelines. If the City desires to implement its own local program guidelines, it may do so upon sixty (60) day’s written notice to

the Green Corridor. Any such local program guidelines can be amended and changed only by the authorized designee of the City. These local program guidelines shall be consistent with the Green Corridor's guidelines. The City may adopt more restrictive guidelines than that of the Green Corridor. However, if there is a conflict between the Green Corridor's guidelines and the City's guidelines, the Green Corridor's guidelines shall control.

Section 6. Boundaries. Pursuant to this Membership Agreement, the boundaries of the Green Corridor shall include the legal boundaries of the City, which boundaries may be limited, expanded, or more specifically designated from time to time by the City by providing written notice to the Green Corridor. As contemplated in the Interlocal Agreement (as defined in Section 8) and as supplemented by this Membership Agreement, the Green Corridor will, on a non-exclusive basis, levy voluntary non ad valorem special assessments on the benefitted properties within the boundaries of the City to help finance the costs of qualifying improvements for those individual properties. Those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with Section 163.08, Florida Statutes and other applicable law. Notwithstanding termination of this Membership Agreement or notice of a change in boundaries by the City as provided for above, those properties that have received financing for qualifying improvements shall continue to be a part of the Green Corridor, until such time that all outstanding debt has been satisfied.

Section 7. Financing Agreement. The Parties agree that the Green Corridor may enter into a financing agreement, pursuant to Section 163.08, Florida Statutes, with property owner(s) within the City who obtain financing through the Green Corridor.

Section 8. Amended and Restated Interlocal Agreement. The Parties agree that the City shall be subject to all terms, covenants, and conditions of the Amended and Restated Interlocal Agreement recorded in the Official Records of Miami-Dade County at Official Records Book 28217, Page 0312, which created the Green Corridor (the "Interlocal Agreement"). In the event of any conflict between the Interlocal Agreement and this Membership Agreement, this Membership Agreement shall control the rights and obligations of the City.

Section 9. Responsibilities of the Green Corridor; Indemnification. The Green Corridor shall be solely responsible for all matters associated with origination, funding, financing and administration of each of the Green Corridor's authorized non-ad valorem assessments, including responding to any complaints or inquiries by participants, tax certificate holders, lenders or others relating to the Program's special assessments, the Program's financing agreements, the Program's qualifying improvements, or any other aspect of the Program. The Parties understand that indemnification of the Green Corridor members is provided for in Section 16 of the Interlocal Agreement, and that such provisions shall apply to the City. In addition to the indemnification provided pursuant to the Interlocal Agreement, the Green Corridor will directly indemnify and hold harmless the City, its respective officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with performance or nonperformance by the Green Corridor, its officers, contractors and agents for all matters associated with origination, funding, financing and administration of each of the Green Corridor's authorized non-ad valorem assessments, including responding to any complaints or inquiries by participants, tax certificate holders, lenders or others relating to the Program's special assessments, the Program's financing agreements, the Program's qualifying improvements, or any other aspect of the Program. This grant of indemnification shall not be deemed or treated as a waiver by the Green Corridor of any immunity

to which it is entitled by law, including but not limited to the District's sovereign immunity as set forth in Section 768.28, Florida Statutes. Additionally, nothing in this Agreement or the Interlocal Agreement shall be construed to authorize Green Corridor to bind the City to any obligation or liability whatsoever, nor as a pledge of the City's ad valorem taxing power or any other power or property of the City. The City shall have no monetary, appropriation or budgetary obligations under this Agreement, the Program, the Interlocal Agreement or any authorizing resolution or ordinance. This Section shall survive termination of this Agreement.

Section 10. Agreements with Tax Collector, Property Appraiser and Municipalities. The Green Corridor acknowledges that the City has no authority to bind the County Tax Collector and the County Property Appraiser, and the Green Corridor will be required to enter into separate agreement(s) with the County Tax Collector and/or the County Property Appraiser, which shall establish the fees (if any) to be charged by the Tax Collector and Property Appraiser for the collection or handling of the Program's special assessments.

Green Corridor shall be solely responsible for professionally coordinating all interface with the County Tax Collector and County Property Appraiser, and use its best efforts to minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of this Agreement and the Interlocal Agreement. Green Corridor shall take such actions as are necessary for the lawful levy of the non-ad valorem assessments against all lands and properties specially benefitted by the acquisition, construction and financing of qualifying improvements. The City shall not incur or ever be requested to authorize any obligations secured by non-ad valorem assessments associated with qualifying improvements imposed by Green Corridor.

Section 11. Resale or Refinancing of a Property. The Green Corridor recognizes that some lenders may require full repayment of the Program's special assessments upon resale or refinancing of a property subject to the Program's special assessments. The Green Corridor agrees to provide written disclosure of this matter to all City property owners that may utilize the Program.

Section 12. Term. This Membership Agreement shall remain in full force and effect from the date of its execution by both Parties. Any Party may terminate this Membership Agreement upon ninety (90) days prior written notice.

Section 13. Consent. This Membership Agreement and any required resolution or ordinance of an individual Party shall be considered the City's consent to joining the Green Corridor and participation therein, as required by Section 163.08, Florida Statutes.

Section 14. Voting Rights. The Parties agree that the City shall be a non-voting member of the Green Corridor for the term of this Membership Agreement.

Section 15. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to Green Corridor:
Paul Winkeljohn, Executive Director
Green Corridor
5385 Nob Hill Rd.

Sunrise, FL 33351

If to City:
Michael Bollhoefer, City Manager
300 W. Plant St.
Winter Garden, FL 34787

With a Copy to: City Attorney
300 W. Plant Street
Winter Garden, FL 34787

Section 16. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto.

Section 17. Joint Effort. The preparation of this Membership Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

Section 18. Merger. This Membership Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Membership Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no change, amendment, alteration, or modification in the terms and conditions contained herein shall be effective unless contained in a written document, executed with the same formality, and of equal dignity herewith by all Parties to this Membership Agreement.

Section 19. Assignment. The respective obligations of the Parties set forth in this Membership Agreement shall not be assigned, in whole or in part, without the written consent of the other Party hereto.

Section 20. Records. The Parties shall each maintain their own respective records and documents associated with this Membership Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 21. No Third Party Beneficiaries. It is the intent and agreement of the Parties that this Agreement is solely for the benefit of the Parties and no person not a party hereto shall have any rights or privileges hereunder.

Section 22. Severability. In the event a portion of this Membership Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 23. Venue. The exclusive venue of any legal or equitable action against the City that arises out of or relates to this Membership Agreement shall be the appropriate state court in Orange County, Florida.

Section 24. Effective Date. This Membership Agreement shall become effective upon the execution by the Parties hereto.

[This space intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the day first written above.

ATTEST:

GREEN CORRIDOR PROPERTY
ASSESSMENT CLEAN ENERGY (PACE)
DISTRICT

By: _____
District Secretary

By: _____
Executive Director

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Weiss Serota Helfman
Cole & Bierman P.L., District Attorney

ATTEST:
FLORIDA

THE CITY OF WINTER GARDEN,

By: _____
Angee Grimmage, City Clerk

By: _____
John Rees, Mayor

[SIGNATURE PAGE TO MEMBERSHIP AGREEMENT]

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Steve Graham, Police Chief

Via: City Manager Mike Bollhoefer

Date: April 16, 2020

Meeting Date: April 23, 2020

Subject: Recommendation to approve distribution of \$11,083 awarded Edward Byrne Memorial Justice Assistance Grant (JAG) Local Solicitation funds to purchase entry tools for use by our Police Department SWAT team and allow any public comment.

Issue: The Fiscal Year 2019 Local Solicitation Edward Byrne Memorial Justice Assistance Grant (JAG) Program has earmarked \$11,083 for the Winter Garden Police Department. The Police Department is requesting to utilize this money to purchase items needed for our officers assigned to SWAT. These specific entry tools will enhance their capabilities to access areas during high-risk situations.

Recommended action: Approve the distribution of awarded grant funds to purchase entry tools and equipment for the Police Department.

Attachment: Cost proposal for equipment to be purchased
Grant announcement and awarded funds

SWAT Team entry tool equipment

Stihl electric cut off machine with battery and charger	\$1565.00
Hydraulic engineered tools for breaching: door pusher, jamb spreader Bolt cutter, and low-profile spreader for windowsills, gates, and trunk lids.	\$8358.51
Hydraulic backpack carrying case for pump and engineered tools	\$480.00
17' tactical ladder	\$220.00
Shipping/handling	\$128.00
Total	\$10,751.51

2019 FLORIDA LOCAL JAG ALLOCATIONS

Below are all jurisdictions in the state that are eligible for FY 2019 JAG funding, as determined by the JAG formula. For additional details regarding the JAG formula and award calculation process, with examples, please refer to the JAG Technical report here: <https://www.bja.gov/Jag/pdfs/JAG-Technical-Report.pdf> and current JAG Frequently Asked Questions here: <https://www.bja.gov/Funding/JAGFAQ.pdf>.

Finding your jurisdiction:

- (1) Disparate jurisdictions are listed in shaded groups below, in alphabetic order by county.
- (2) Direct allocations are listed alphabetically below the shaded, disparate groupings.
- (3) Counties that have an asterisk (*) under the "Direct Allocation" column did not submit the level of violent crime data to qualify for a direct award from BJA, but are in the disparate grouping indicated by the shaded area. The JAG legislation requires these counties to remain a partner with the local jurisdictions receiving funds and must be a signatory on the required Memorandum of Understanding (MOU). A sample MOU is provided online at: <https://www.bja.gov/Funding/JAGMOU.pdf>. Disparate jurisdictions do not need to abide by the listed individual allocations, which are provided for information only. Jurisdictions in a funding disparity are responsible for determining individual amounts within the Eligible Joint Allocation and for documenting individual allocations in the MOU.

State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
FL	PALM BAY CITY	Municipal	\$38,106	
FL	PALM BEACH COUNTY	County	\$141,531	
FL	PANAMA CITY	Municipal	\$22,911	
FL	PASCO COUNTY	County	\$100,324	
FL	PENSACOLA CITY	Municipal	\$25,219	
FL	PINELLAS PARK CITY	Municipal	\$16,997	
FL	PLANT CITY	Municipal	\$13,103	
FL	POLK COUNTY	County	\$93,064	
FL	PORT ST LUCIE CITY	Municipal	\$17,214	
FL	PUTNAM COUNTY	County	\$18,440	
FL	RIVIERA BEACH CITY	Municipal	\$34,115	
FL	SANFORD CITY	Municipal	\$34,571	
FL	SANTA ROSA COUNTY	County	\$16,276	
FL	SARASOTA CITY	Municipal	\$23,344	
FL	SARASOTA COUNTY	County	\$37,192	
FL	SEMINOLE COUNTY	County	\$42,721	
FL	ST JOHNS COUNTY	County	\$23,440	
FL	SUMTER COUNTY	County	\$17,045	
FL	TAMPA CITY	Municipal	\$143,984	
FL	TAYLOR COUNTY	County	\$12,766	
FL	TITUSVILLE CITY	Municipal	\$25,219	
FL	VOLUSIA COUNTY	County	\$46,039	
FL	WALTON COUNTY	County	\$11,973	
FL	WEST PALM BEACH CITY	Municipal	\$66,931	
FL	WINTER GARDEN CITY	Municipal	\$11,083	
FL	WINTER HAVEN CITY	Municipal	\$14,809	
	Local total		\$5,758,087	

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Steve Pash, Community Development Director

Via: Mike Bollhoefer, City Manager

Date: April 16, 2020

Meeting Date: April 23, 2020

Subject: Binding Lot Combination Agreement
Palm Coast Enterprise
945, 951, and 933 Carter Road (3.98 ± Acres combined)
Parcel ID # 24-22-27-0000-00-023; 24-22-27-0000-00-030; 24-22-27-0000-00-015

Issue: Applicant is requesting to bind three existing Winter Garden lots zoned I-2 (General Industrial District).

Discussion:

The applicant is proposing to combine three lots located along the east side of Carter Road. The applicant intends to combine the lots in order to construct a collision auto repair center. This is an expansion of the already existing collision center that is north of the property.

Recommended action:

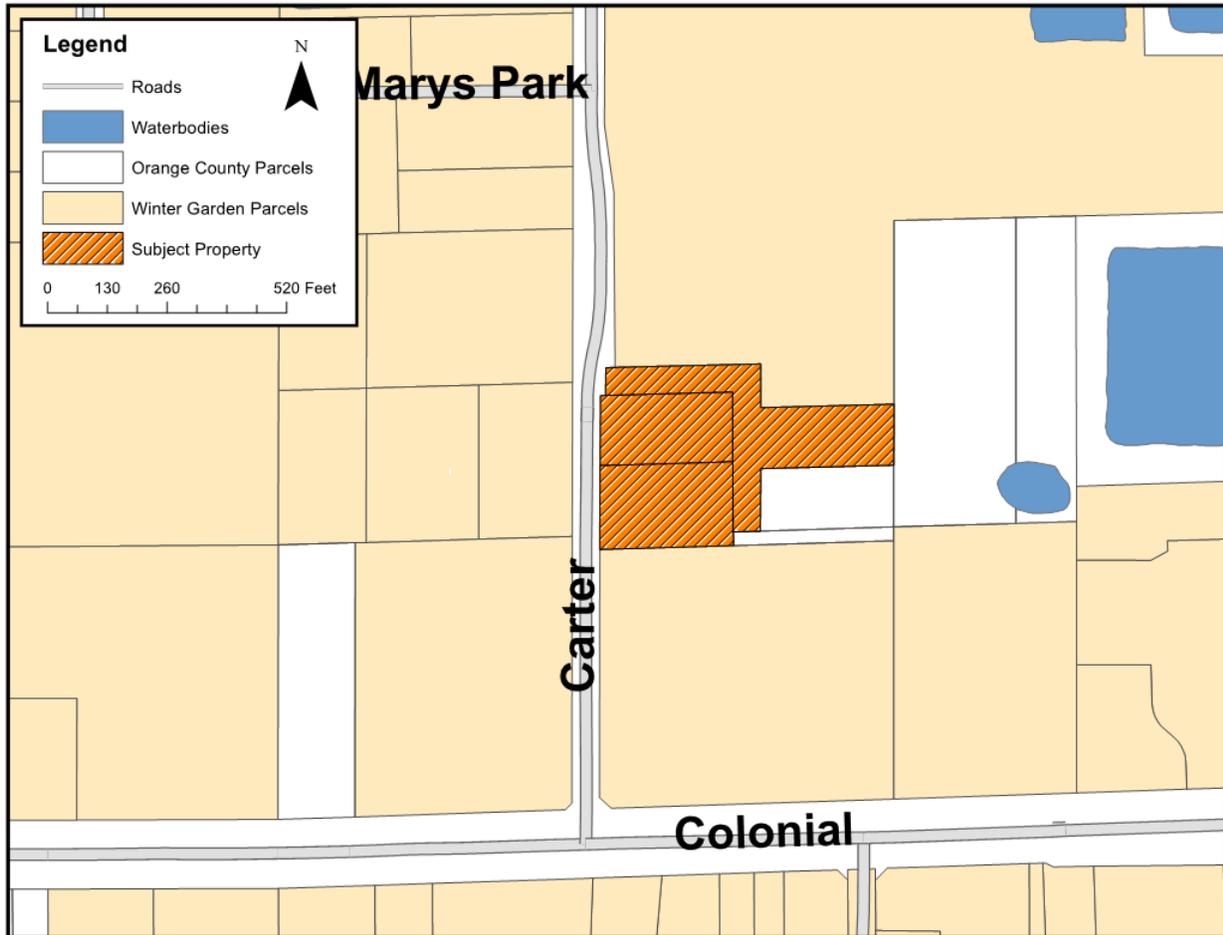
Staff recommends approval of the Binding Lot Combination Agreement.

Attachments/References:

Location Map
Binding Lot Combination Agreement

LOCATION MAP

945, 951, and 933 Carter Road



After Recording Return to:

City of Winter Garden
City Clerk
300 West Plant Street
Winter Garden, Florida 34787

BINDING LOT COMBINATION AGREEMENT

THIS BINDING LOT COMBINATION AGREEMENT (this "Agreement") is made and entered into on this _____ day of _____ 2020, by and between **PALM COAST ENTERPRISE, LLC**, a Florida profit corporation, whose address is P.O. Box 1385, Windermere, FL (the "Owner"), and the **City of Winter Garden**, a Florida municipal corporation, whose address is 300 West Plant Street, Winter Garden, FL 34787 (the "City"),

WITNESSETH

WHEREAS, the Owner is the fee simple owner of two platted lots adjacent to each other located within the corporate limits of the City of Winter Garden, County of Orange, State of Florida and legally described to wit:

Begin at a Point South 88 Degrees 35'30" West 350.23 feet and South 0 Degrees 01'30" East 364 feet from the Northeast Corner of the Southwest 1/4 of the Southeast 1/4 of Section 24, Township 22, South Range 27 East, Orange County, Florida, Run Thence South 88 Degrees 35'30" West 290 feet; Thence South 0 Degrees 01'30" East 152 feet; Thence North 88 Degrees 35'30" East 290 Feet; Thence North 0 Degrees 01'30" West 152 feet to the Point of Beginning

AND

Begin at a point 134.32 feet North of the Southeast corner of the Northeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 24, Township 22 South, Range 27 East, run West 290 feet, thence North 73 feet, East 290.06 feet, South 73 feet, to the Point of Beginning.

AND

Begin 304 feet North of the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of the Southeast 1/4, run East 304 feet, South 304 feet, East 76.29 feet, North 208.51 feet, East 290.06 feet, North 60 feet, West 290.06 feet, North 95 feet, West 350 feet, South to Point of Beginning, being in Section 24, Township 22, Range 27, Public Records of Orange County, Florida.

AND

Begin at the South 152 feet of the West 320 feet of the Northeast 1/4 of the Southeast 1/4 of Section 24, Township 22 South, Range 27 East, Orange County, Florida, Less the East 100 feet and less the West 30 feet for Road Right-of-Way.

Also Less and Except:

The East 100 feet of the South 152 feet of the West 304 feet of the Northeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 24, Township 22 South, Range 27 East, as recorded in the public records of Orange County, Florida.

AND

Begin at the East 100 feet of the West 320 feet of the south 152 feet of the Northeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 24, Township 22 South, Range 27 East, Less the North 516 feet, said property in Orange County, Florida.

Together with:

The North 30 feet of the West 320 feet of the Southeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of said Section to Carter Road for the purpose of ingress and egress, Section 24, Township 22 South, Range 27 East, said property in Orange County, Florida.

herein the "Property;" and

WHEREAS, the Owner desires to develop the Property as a single building site in service of a single principal use; and

WHEREAS, for reasons of land development code compliance, including concerning setbacks requirements and other requirements of the City of Winter Garden Code of Ordinances ("City Code") and for good principals of planning and engineering, the Owner is required to permanently combine the two adjacent lots (making up the Property described above) into one legal parcel of property, and

WHEREAS, the Property shall at all times be held and remain as a single, integral parcel and shall not be subdivided, sold or otherwise disposed of in lesser constituent parcels; and

WHEREAS, this Agreement allows the interior lot setback requirements to be disregarded so that the Property may be developed as a single development in service of a single principal use in compliance with the City Code; and

WHEREAS, this Agreement is a condition of City approval for site plan and lot combination to allow the development of the Property as requested by the Owner.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration given each to the other, the receipt and sufficiency of which is hereby acknowledged, the Owner and the City agree as follows:

1. RECITALS. The recitals contained above are true and correct and are incorporated herein as part of this Agreement.

2. LOT COMBINATION. The Property shall therefore be retained in single ownership, and shall remain as a single, integral parcel, and shall not be subdivided, severed, sold, leased, encumbered, or otherwise disposed of in lesser constituent parcels. So long as the Property complies with this requirement, the interior lot setback requirements of the City Code shall not apply, and any applicable setback requirements shall be established from the building site perimeter of the Property. Any sale, subdivision, lease or other disposal of the Property in violation of this Agreement shall be null, void and of no legal effect whatsoever.

3. BINDING NATURE OF THIS AGREEMENT. This Agreement shall be binding upon the successors, heirs, executors, administrators, and assigns of the Owner, and shall be a covenant running with the Property and this Agreement shall not be terminated unless the City agrees in writing to such termination. Said Agreement shall inure to the benefit of and be enforceable by all parties and persons claiming under them. The parties further agree that this Agreement is intended to and shall so bind future use and development of the Property and shall survive any conveyance by the Owner to any other party or purchaser and shall not merge into any contract, sale or deed, and shall remain in effect despite any separate conveyance of the individual lots merged by this Agreement.

4. JOINDER AND CONSENT. Simultaneously with the execution of this Agreement, the Owner hereby agrees to obtain any necessary Joinder and Consent to this Agreement from any superior interest, right, title, mortgage, lien, or encumbrance to the Property and record the same in the public records of Orange County, Florida concurrently with the recording of this Agreement. The Joinder and Consent shall subordinate the particular interest to this Agreement. A violation of this provision by Owner shall be a material default of this Agreement.

5. ENFORCEMENT. The Owner hereby covenants and agrees that this Agreement is enforceable through injunctive relief since monetary damages would be insufficient to redress a violation of this Agreement. Further, in the event Owner violates this Agreement, such violation as constitute a violation of the City Code and conditions of development orders, which the City may prosecute as through code enforcement proceedings or through other remedies afforded by law.

6. EFFECTIVE. This Agreement is to take effect immediately upon its execution.

7. INTERPRETATION. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

8. MISCELLANEOUS.

- a. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussion, understandings, and agreements. Amendment to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, written or oral, regarding the subject matter this Agreement shall be deemed to exist or to bind either party hereto.
- b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining parties hereto.
- c. This Agreement shall, at Owner's expense, be recorded in the Public Records of Orange County, Florida.
- d. Owner hereby acknowledges that it has freely voluntarily entered into this Agreement and that it has had the benefit or both given the opportunity to receive the advice independent legal counsel for all negotiations in connection with this Agreement.
- e. In the event it shall be necessary for the City to bring suit to enforce this Agreement on account of any breach of this Agreement by the Owner, the prevailing party shall be entitled to attorneys' fees and litigation costs against the non-prevailing party at both trial and appellate levels.
- f. Nothing in this Agreement shall constitute or be deemed to constitute or require the City to issue any approval by the City for any rezoning, Comprehensive Plan amendment, variance, special exception, site plan, construction plan preliminary subdivision plan, final subdivision plan, building permit, grading, stormwater drainage, engineering, or any other land use or development order or permit.

9. CONTROLLING LAWS.

- a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the City of Winter Garden now in effect and those hereinafter adopted.
- b. The location for the settlement of any and all claims, controversies or disputes, arising out of or relating to this Agreement, or any breach hereof, shall be in Orange County, Florida.

- c. The Owner agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the Property subject to this Agreement.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed as of the day and year first written above.

WITNESSES:

Owner

PALM COAST ENTERPRISE, LLC

(Signature)

Sucil Ramsammy, President

(Print Name)

(Signature)

(Print Name)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____ 2020
by Sucil Ramsammy, as President of Palm Coast Enterprise, LLC

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

WITNESSES:

CITY OF WINTER GARDEN

(Signature)

Michael Bollhoefer, City Manager

(Print Name)

(Signature)

(Print Name)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of 2020 by Michael Bollhoefer as City Manager of the City of Winter Garden.

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

LOCATION MAP

Garden West Subdivision



After recording return to:

City of Winter Garden
Attn: City Clerk
300 West Plant Street
Winter Garden, Florida 34787

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

RIGHT-OF-WAY MAINTENANCE AGREEMENT

THIS RIGHT-OF-WAY MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into this 11 day of November, 2019, by and between the **CITY OF WINTER GARDEN**, a Florida municipal corporation, ("**City**"), **J&J BUILDING, LLC** ("**Developer**"), and **GARDEN WEST HOMEOWNERS ASSOCIATION, INC.**, a Florida non-profit corporation ("**HOA**").

WITNESSETH:

WHEREAS, Developer is the fee simple owner of that approximately +/- 3.07 acres real property generally located on Plant Street and Brayton Road in Winter Garden, Orange County, Florida, being more particularly described on **Exhibit "A"** attached hereto and by this reference hereby incorporated herein ("**Subject Property**"); and

WHEREAS, Developer is in the process of developing the Subject Property as a residential project known as Garden West ("**Project**"); and

WHEREAS, Developer and the HOA desire to obtain a non-exclusive right to provide, install and maintain certain landscaping, irrigation, pavement, signage and other improvements (hereinafter collectively referred to as the Landscaping and Improvements) along and within certain rights-of-way which are adjacent to the Project and are more particularly identified on **Exhibit "B"** attached hereto and by this reference hereby incorporated (hereafter collectively referred to as the "**Roads**"); and

WHEREAS, said Landscaping and Improvements require substantially more extensive maintenance than is typical for the City to perform within and along public rights-of-way; and

WHEREAS, the City has raised certain concerns regarding the responsibility for and future maintenance of the Landscaping and Improvements; and

WHEREAS, Developer and HOA, in order to satisfy the concerns of the City, so as to receive permission to provide, install and maintain the Landscaping and Improvements in the public right-of-way, have agreed to the terms, conditions and requirements set forth in this Agreement; and

WHEREAS, the Landscaping and Improvements to be provided, installed and maintained by the Developer and the HOA shall be as set forth in this Agreement and that certain Landscaping Plan prepared by Agora Design, dated 5/1/18 (the "**Landscape Plan**"), a copy of which is retained by the City in the offices of the Public Works Director and incorporated herein by this reference; and

WHEREAS, Developer and HOA acknowledge that the primary beneficiary of said Landscaping and Improvements will be the Developer in marketing the Project and the HOA and the residents of the Project in beautifying the Roads; and

WHEREAS, in light of the foregoing, the Developer and HOA are willing to provide, install and maintain the Landscaping and Improvements pursuant to this Agreement; and

WHEREAS, the City requires that the Developer and HOA undertake certain commitments and covenants to assure the continuous maintenance of the Landscaping and Improvements within or along the Roads during the term of this Agreement;

NOW, THEREFORE, for and in consideration of the above premises, the promises and provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the parties, the Developer, the HOA, and the City agree as set forth herein.

1. **Recitals.** The above premises are true and correct and are incorporated herein as material provisions of this Agreement.
2. **License.** Subject to the terms and conditions provided in this Agreement, the City hereby grants Developer and the HOA the non-exclusive right, privilege and license to use the Roads for the purposes described hereinafter. The license granted herein by the City is terminable by the City as provided for in this Agreement. Termination of the Agreement shall constitute termination of the license.
3. **Construction and Maintenance of Landscaping and Improvements.**
 - A. **Installation of Landscaping.** The Developer, at the Developer's sole cost and expense, shall design, permit, construct, provide and install the Landscaping and Improvements within, along and for the Roads adjacent to the Subject Property in accordance with the Landscape Plan and this Agreement.
 - B. **Maintenance.** Any and all Landscaping and Improvements installed, constructed or maintained within the Roads shall be operated and maintained by Developer and the HOA in good, clean, attractive, sanitary, safe and serviceable condition, order and repair in accordance with the Landscape Plan and this Agreement. No portion of the Landscaping and Improvements shall be maintained in such a manner as may interfere with the use of the Roads by the

public or create a safety hazard, as determined by the City in the City's sole discretion.

C. **Compliance with the Law.** Unless otherwise provided for herein, in designing, constructing, installing and maintaining the Landscaping and Improvements, the Developer and the HOA shall comply with any and all laws, ordinances, and regulations of the City, county, state and federal governments, related to its activities, including but not limited to laws and regulations concerning landscaping, trees, planting, maintenance, and signage within and along public and private rights-of-way. Said laws and ordinances include, but are not limited to, Chapter 62 and Chapter 114 of the City Code, as such may be amended from time to time.

D. **Additional Requirements.** In addition to the requirements of Subsection C. above, all plantings must comply with the following conditions:

1. All trees must be planted at least seven (7) feet from any utility box and at least seven (7) feet from the side lot lines of the adjacent lots.
2. No tree or vegetation may be planted or allowed to grow in such manner as to interfere with the "triangle of visibility" as defined in FDOT Road Design Index #546.
3. A permit must be issued by the City's Public Services Director before any tree is planted within the right-of-way.
4. All trees must be planted a minimum of four (4) feet behind the back of the curb.
5. All trees and other vegetation as planted or maintained must not pose a safety hazard.

To the extent of any conflict between the additional requirements set forth above and any current or future City, county, state or federal law or regulation, the more stringent requirement shall control unless preempted by law.

E. **Road Work.** Developer, the HOA, or their agents, shall not, while installing or maintaining the Landscaping and Improvements, damage or disturb any portion of the Roads without the prior written approval of the City and the City's prior written approval of a plan to restore the Roads. The Developer, the HOA, or their agents, shall take all safety measures required by law for construction and maintenance work in and along public rights-of-way, including the placing and display of caution signs and signals, when working in the Roads, and shall prevent any obstructions to the Roads which are or may become dangerous to the

traveling public. In the event that any work to be conducted by the Developer or the HOA requires streets or traffic lanes to be closed or obstructed, the Developer or the HOA shall, pursuant to the City ordinances, obtain all permits from and pay all applicable fees to the City, and shall obtain approval of its maintenance of traffic plan from the City's Police and Public Services Departments prior to commencing such work. In the event that the Developer, or the HOA, or their agents, damages any portion of the Roads while maintaining or installing the Landscaping and Improvements, the Developer or the HOA, as the case may be, at its sole expense, shall restore such portion of the Roads to their prior condition.

- F. **Changes to the Landscape Plan.** Variations from the Landscape Plan must be reviewed and approved by the City in writing prior to any work commencing.
- G. **Irrigation.** All irrigation arising from matters contained in the Landscaping Plan for the Project shall be compatible with future connection to the City's reclaimed water system.
- H. **Water Conservation.** Developer and the HOA shall encourage water conservation in the design and development of the Landscaping and Improvements, including but not limited to, water conserving techniques, water efficient landscaping, proper soil preparation, irrigation systems and equipment and the use of reclaimed water, upon its availability.
- I. **Impact Fees.** Neither the Developer nor the HOA shall receive any compensation, impact fee or tax credits for any landscaping or improvements described herein.
- J. **Non-Interference with Other Interests.** Developer and the HOA, in the performance and exercise of their rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any public rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, rights of adjoining property owners, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable laws. Developer and the HOA, jointly and severally, shall be liable to the City or to the third party owner, as the case may be, for the cost of any repairs made necessary by any displacement, damage, or destruction of City or third party property and shall pay such costs upon written demand within thirty (30) days of receipt of such demand. In addition, Developer and the HOA, jointly and severally, shall be responsible for any and all damage to street pavements, curbs, gutters, sidewalks and other improvements on, above, below or adjacent to the Roads arising from the installation, maintenance, repair or removal of the Landscaping and Improvements, and shall repair, replace and restore in kind, the

said damaged property at its expense.

4. **Removal/Relocation.** If, in the sole discretion of the City, all or any portion of the Landscaping and Improvements, or maintenance thereof: (a) interferes with any construction, widening, reconstruction, alteration or improvement which the City desires to perform on, around, over, through or under the Roads or Subject Property; or (b) said Landscaping and Improvements, or maintenance thereof, unreasonably interferes in any way with the convenient, safe, or continuous use of the Roads; or (c) the non-emergency removal of any or all Landscaping and Improvements is necessary to serve the health, safety or general welfare of the citizens of Winter Garden, the Developer or the HOA, upon receipt of written notice from the City to either of them, shall remove or relocate within the right-of-way that portion of the Landscaping and Improvements as requested by the City within thirty (30) days of receipt of said notice. Any such relocation or removal of any or all Landscaping and Improvements shall be at the sole expense of the Developer or the HOA and the Developer or the HOA shall restore the Roads to their prior condition save for the removal of the Landscaping and Improvements. Notwithstanding anything to the contrary, no Landscaping and Improvements may be removed without the prior written consent of the City, except that fallen vegetation and signage may be removed without prior written consent when reasonably necessary to remedy a threat to public safety.

5. **Homeowners Association.**

- A. **Amendment to Declaration.** Prior to the issuance of the fiftieth (50th) Certificate of Occupancy for a residential dwelling within the Project by the City, the HOA shall cause to be recorded in the Public records of Orange County, Florida, an amendment to its declaration of covenants, rules and restrictions or other recorded governing document (the "**Amendment to the Declaration**") which shall apply to all properties within the Subject Property. Said Amendment to the Declaration shall not be subject to the prior approval by the City but shall provide, *inter alia*, for the assumption and acceptance by HOA of all of the Developer's responsibilities, obligations, commitments, covenants, burdens, and duties as provided in this Agreement and any amendment thereto. Notwithstanding the foregoing, this Agreement is binding upon the HOA upon its execution by the parties and the Amendment to Declaration is intended solely to place notice on the public record for all future owners within the Project of the HOA's obligations hereunder. The adoption or failure to adopt such Amendment to Declaration shall not affect the validity of this Agreement or in any way impair or otherwise reduce HOA's obligations hereunder.
- B. **Release of Developer.** At such time as HOA has properly enacted and recorded the Amendment to the Declaration and written approval is obtained from the City, Developer shall be fully released from its obligations and responsibilities as provided for in this Agreement. From and after the release of Developer, any amendments or modifications to this Agreement may be made by written

agreement between the City and HOA without the consent of the Developer, provided, however, that no retroactive amendment or modification affecting the rights or obligations of Developer may be made without the prior written consent of the Developer.

6. **Inspection; Violations; Remedies.**

- A. **Inspection.** At all times, the City shall have the right to inspect the installation, construction, and maintenance of the Landscaping and Improvements to ensure compliance with the terms of this Agreement.
- B. **Breach.** In the event any of the parties violate any material provision of this Agreement, the violating party shall be given thirty (30) days to cure such violation upon receipt of written notice of the violation from a non-violating party. Notwithstanding the preceding, no cure period need be given for a violation by the Developer or HOA which results in a threat or danger to the public health or safety. In the event a violation is not cured within the applicable cure period or the City is required to act without a cure period to remedy a threat to the public health or safety, the City shall have the right to pursue any and all legal and equitable remedies available to it, including the right to seek specific performance of this Agreement.
- C. **City's Right to Take Remedial Action.** In addition to the provisions and remedies set forth above, in the event that Developer or the HOA fail to take any action as required by the City to cure a violation within any applicable cure period, in addition to any and all other rights available to the City, the City shall have the right, but not the obligation to take the required action on behalf of Developer or the HOA. Notwithstanding the preceding, in the event that the City determines in its sole discretion that for reasons of public health or safety, immediate action is required to remedy a violation of this Agreement by Developer or the HOA, the City shall have the right, but not the obligation, to repair, replace, maintain or otherwise take such action as may be necessary to remedy the threat to public health or safety without prior written notice to the Developer or the HOA. In the event that for any reason the City repairs, replaces, maintains or otherwise services the Landscaping and Improvements or takes any other action as may be necessary to remedy a violation of this Agreement, the HOA shall be responsible for the payment of all of the costs incurred by the City and its agents in taking such action. Said payment by the HOA shall be made within thirty (30) days of written demand by the City. The City's exercise of its right to remedy a violation of this Agreement shall not limit the City from exercising any other rights or remedies available to it arising from such violation or impose any future or ongoing obligation on the City to continue to maintain, repair, replace or otherwise care for the Landscaping and Improvements

thereafter.

7. **Indemnification.**

- A. **HOA.** HOA shall save, defend, indemnify, release, and hold harmless City and City's employees, agents, contractors, and commission members against and from all disputes, lawsuits, injuries, losses, liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable consultants' and attorneys' fees which may be imposed upon, incurred by or asserted or claimed against them, resulting or arising from any or all of the following (i) the performance by HOA or its agents of any action under this Agreement or otherwise related to the Landscaping and Improvements or the Roads, (ii) HOA's failure to perform, or cause to be performed, any required action or obligation of HOA pursuant to this Agreement; (iii) the exercise or attempted exercise by HOA of any rights, privileges, or obligations under this Agreement, (iv) the City's or an agent of the City's performance of any obligation of Developer or HOA pursuant to paragraph 6.C. of this Agreement, or (v) any damage to the Landscaping and Improvements which may result from the use of the Roads by the City or other governmental authority or their agents due to maintenance, construction, widening, installation or other proper use within the Roads.
- B. **Developer.** Developer shall save, defend, indemnify, release, and hold harmless City and City's employees, agents, contractors, and commission members against and from all disputes, lawsuits, injuries, losses, liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable consultants' and attorneys' fees which may be imposed upon, incurred by or asserted or claimed against them, resulting or arising from any or all of the following (i) the performance by Developer or its agents of any action under this Agreement or otherwise related to the Landscaping and Improvements or the Roads, (ii) Developer's failure to perform, or caused to be performed, any required action or obligation of Developer pursuant to this Agreement; (iii) the exercise or attempted exercise by Developer of any rights, privileges, or obligations under this Agreement, (iv) the City's or an agent of the City's performance of any obligation of Developer or HOA pursuant to paragraph 6.C. of this Agreement, or (v) any damage to the Landscaping and Improvements which may result from the use of the Roads by the City or other governmental authority or their agents due to maintenance, construction, widening, installation or other proper use within the Roads. The provisions of this paragraph shall survive any assumption of obligations by the HOA pursuant to the Amendment to Declaration.
- C. **Joint and Several Liability.** Subject to the terms of Paragraph 5.B. above regarding the release of Developer upon the occurrence of certain events, HOA and Developer shall be jointly and severally liable for any and all obligations, responsibilities, and liabilities imposed upon either the HOA or Developer under this Agreement.

8. **Non-Approval.** Unless expressly authorized or granted herein, nothing in this Agreement shall constitute or be deemed to constitute any approval by the City of any rezoning, Comprehensive Plan amendment, variance, special exception, site plan, preliminary subdivision plan, final subdivision plan, or any other land use or development approval. Further, nothing in this Agreement shall be deemed to reduce, eliminate, derogate from or otherwise adversely affect or modify the approved Landscape Plans. Developer and the HOA shall be solely responsible for obtaining all governmental and private approvals which may be necessary or desirable for the performance of Developer's or the HOA's obligations under this Agreement and it is expressly understood and agreed upon that the City does not assume any responsibility for the securing of any such approvals, permits, licenses, easements or other interests, including but not limited to any necessary agreement with utility providers.

9. **Termination.** This Agreement may be terminated by the Developer, HOA, or the City at any time with or without cause upon thirty (30) days written notice to the other parties. Unless otherwise agreed to in writing by the City, in the event of termination of this Agreement, whether at the election of the Developer, HOA or the City, Developer (or HOA if Developer has been released in accordance with Paragraph 5.B. above) at its sole cost and expense shall remove any and all landscaping and improvements from the Roads, other than trees, and replace such landscaping and improvements with sod of a type approved by the City within thirty (30) days.

10. **Rights in Roads.** It is expressly stipulated that this Agreement shall not operate to create or vest any property rights to any portion of the Roads in Developer or HOA. Further, it is expressly understood by Developer and HOA that the City shall be under no obligation to acquire or condemn any rights-of-way, easement or other property right as part of this Agreement.

11. **Other Provisions.**

A. **Warranty of Authority and Ownership.** Developer and the HOA represent and warrant that it has all necessary power and authority to enter into and consummate the terms and conditions of this Agreement, that all acts, approvals, procedures, and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be, and that, upon the execution of this Agreement by all parties, this Agreement shall be valid and binding upon the parties hereto and their successors in interest and assigns. In addition, Developer represents and warrants to City that Developer is the owner of the Subject Property in fee simple.

B. **Notice.** All notices required or permitted to be given under this Development Agreement must be in writing and must be delivered to the City, the HOA or the Developer at its address set forth below (or such other address as may hereafter be designated by such party in writing). The parties' addresses for the delivery of all such notices are as follows:

City: City Manager
City of Winter Garden
300 West Plant Street
Winter Garden, FL 34787
Facsimile: (407) 656-1073

With a copy to: City Attorney
City of Winter Garden
300 West Plant Street
Winter Garden, FL 34787
Facsimile: (407) 656-1073

Developer: J&J Building, LLC
1020 Galston Aly
Winter Garden, FL 34787

HOA: Garden West Homeowner's Association, Inc.
1020 Galston Aly
Winter Garden, FL 34787

Notices shall be either: (1) personally delivered (including delivery by Federal Express or other courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; (2) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail; or (3) transmitted via telecopier using a telecopier number provided above, if any (or such other number as receiving party may have designated in writing), in which case the delivery shall be deemed to have occurred on the day of the transmission, provided that the day of transmission is a normal business day or, if not, the first normal business day after the transmission. Notices or communications to or from parties' attorneys will be deemed to be to or from that party.

- C. **Amendment.** This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except by writing signed by the parties hereto or their authorized assignees.
- D. **Severability.** If any portion of this Agreement is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the

balance of the Agreement shall continue in full force and effect.

- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the circuit court of and for Orange County, Florida.

- F. **Effective Date.** The effective date of this Agreement, for purposes of the performance of obligations by the parties under this Agreement, shall be the date the last of the parties hereto executes the Agreement.

- G. **Binding Effect and Successors.** The obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement.
- H. **Reimbursement.** On or before ten (10) days after the date of invoicing, Developer shall reimburse the City for the City's engineer and attorney fees for negotiations, inspections, conferences relating to or drafting of this Agreement for the City.
- I. **Time is of the Essence.** Time is hereby declared to be of the essence in the performance of the duties and obligations of the respective parties to this Agreement.
- J. **Captions.** The captions or paragraph headings of this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, or meaning of this Agreement.
- K. **Counterparts.** This Agreement may be executed in any number of counterparts; each of which when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same Agreement.
- L. **Independent Parties.** The parties are not partners and this Agreement is not a joint venture and nothing in this Agreement shall be construed to authorize any of the parties hereto to represent or bind any other party to matters not expressly authorized or provided in this Agreement.
- M. **Informed Execution.** This Agreement is entered into voluntarily by the Developer and HOA without duress and after full review, evaluation and consideration by the Developer and HOA. Developer and HOA are represented by counsel, or alternatively, have been afforded an opportunity to retain counsel for review of this Agreement.
- N. **Recording.** At any time during the term of this Agreement, the City may record this Agreement with the cost thereof to be borne by the Developer.
- O. **Interpretation.** None of the parties shall be considered the drafter of this Agreement for purposes of interpreting this Agreement, it being recognized that all parties have contributed substantially and materially to the preparation of this Agreement.
- P. **Non-Waiver of Sovereign Immunity.** Nothing contained in this Agreement or in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Grantee of its sovereign immunity under the Constitution and laws of the State of Florida.
- Q. **Police Power; City Ordinances.** Developer and HOA acknowledge that at all

times during the term of this Agreement, their rights shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation of the Public Rights-of-Way as the City shall hereafter by resolution or ordinance provide in the interests of health, safety and welfare of the public. Any inconsistency or ambiguity between the provisions of this Agreement and the lawful exercise of the City's police power shall be resolved in favor of the latter. Additionally, this Agreement and the privileges granted hereunder to Developer and HOA are subject to the general ordinance provisions now in effect and hereinafter made effective by the City.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE 13]

IN WITNESS WHEREOF, the Developer, the HOA and the City have executed this Agreement as of the day and year approved and accepted by the City.

<p>Signed, sealed and delivered in the presence of:</p> <p>ATTEST:</p> <p>By: _____ KATHY GOLDEN, City Clerk Angela Grimage</p> <p><u>Jennifer M. Vanasdale</u> Print Name: Jennifer M. Vanasdale Witness</p> <p><u>M. Dennis</u> Print Name: Martin Dennis Witness</p> <p><u>Jennifer M. Vanasdale</u> Print Name: Jennifer M. Vanasdale Witness</p> <p><u>M. Dennis</u> Print Name: Martin Dennis Witness</p>	<p>“CITY”</p> <p>CITY OF WINTER GARDEN, FLORIDA</p> <p>By: _____ JOHN REES, Mayor</p> <p>“DEVELOPER”</p> <p>By: <u>Jerel M. Miller</u> Print Name: Jerel M. Miller Its: Manager</p> <p>“HOA”</p> <p>Garden West Homeowners Association, Inc.</p> <p>By: <u>Jerel M. Miller</u> Print Name: Jerel M. Miller Its: Manager</p>
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STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was executed, sworn to and acknowledged before me this 11th of November, 2019, by Jerel M. Miller, as Manager of J&J Building, LLC, on its behalf. He (check one) is personally known to me, or has produced a valid driver's license as identification.



Lindsey Spence
Notary Public, State and County Aforesaid
Name: Lindsey Spence
My Commission Expires: 6.19.22
My Commission Number is: CG230095

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was executed, sworn to and acknowledged before me this 11th of November, 2019, by Jerel M. Miller, as Manager of Garden West Homeowners Association, Inc., on its behalf. He (check one) is personally known to me, or has produced a valid driver's license as identification.



Lindsey Spence
Notary Public, State and County Aforesaid
Name: Lindsey Spence
My Commission Expires: 6.19.22
My Commission Number is: CG230095

EXHIBIT "A"

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

COMMENCING at the North 1/4 corner of Section 22, Township 22 South, Range 27 East, Orange County, Florida, run East along the North line of said Section 22 for a distance of 833.74 feet to a point on the centerline of Brayton Road; thence South 00°58'00" East along said centerline of Brayton Road for a distance of 760.92 feet; thence departing said centerline run North 79°37'12" East for a distance of 30.41 feet to a point on the Easterly right-of-way line of said Brayton Road and the Southerly right-of-way line of West Orange Trail and the POINT OF BEGINNING; thence continue North 79°37'12" East along the said Southerly right-of-way line for a distance of 465.13 feet; thence run South 00°58'08" East for a distance of 231.93 feet to a point on the Northerly right-of-way line of West Plant Street (State Road 438), said point being on a curve concave Southeasterly having a radius of 2395.35 feet with a chord bearing of South 63°07'46" West and a distance of 154.76 feet; thence run Southwesterly along said curve and right-of-way line through a central angle of 03°42'09" an arc length of 154.79 feet for a point of tangency; thence run South 60°56'30" West along said Northerly right-of-way line of West Plant Street (State Road 438) for a distance of 231.03 feet; thence continue South 60°56'30" West along said Northerly right-of-way line of West Plant Street (State Road 438) for a distance of 73.49 feet to a point on the aforesaid East right-of-way line of Brayton Road; thence run North 10°22'00" West along said East right-of-way line for a distance of 312.33 feet; thence run North 00°58'00" West along said East right-of-way line of Brayton Road for a distance of 58.72 feet to the aforesaid Southerly right-of-way line of West Orange Trail and the POINT OF BEGINNING.

Containing 3.703 acres of land, more or less.

EXHIBIT "B"

DESCRIPTION OF THE ROADS

Tract RW-2 of Garden West, as recorded in Plat Book _____, Pages _____ of the public records of Orange County, Florida.