



CITY OF DELAND
REGULAR MEETING OF THE CITY COMMISSION
JUNE 5, 2023 AT 7:00 PM
CITY HALL, COMMISSION CHAMBERS
120 SOUTH FLORIDA AVENUE

AGENDA

CALL TO ORDER

INVOCATION-Pastor Dan Glenn, Stetson Baptist Church

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATIONS

1. Proclamation re DeLand Middle School-Lady Terrier Basketball Team Championship.

CONSENT AGENDA

1. Resolution Approving FY 2022-2023 Budget Amendment.

Presentation of a budget amendment for FY 2022/2023.

2. Consideration re Utility Service Agreement for The Canopy at Blue Lake.

Staff recommends that the City Commission approve the Utility Service Agreement for The Canopy at Blue Lake.

3. Consideration re Utility Service Agreement for the McGarvey Lift Station.

Staff recommends that the City Commission approve the Utility Service Agreement for the McGarvey Lift Station at the Alliance Community Retirement Center.

4. Consideration re Acceptance and Recognition of Bill of Sale Lift Station Tract and Infrastructure for Andover Ridge Subdivision.

It is recommended that the City Commission accept the Bill of Sale for the Lift Station and related infrastructure from the Developer of Andover Ridge Subdivision.

PETITIONS AND REQUESTS FROM THE PUBLIC PRESENT

OLD BUSINESS

1. CONTINUATION of First Reading of Ordinance Changing the Zoning for GlassHouse Square PD, on Approximately 0.868 Acre of Property, Located at 130 West New York Avenue from C-2A to Planned Development (First Reading September 26, 2022).

The applicant, GlassHouse Square, LLC has submitted an application to rezone the property located at 130 West New York Avenue from C-2A, Downtown Commercial to GlassHouse Square PD.

NEW BUSINESS

1. First Reading of Ordinance Amending Section 33-91.03 of the Code of Ordinances re Indoor Parking Requirements in the Core Gateway District.

It is recommended that the city commission approve the proposed Ordinance.

2. Resolution Approving Community Development Block Grant (CDBG) Budget for Fiscal Year 2023-2024.

Community Development Block Grant Budget for Fiscal Year 2023-2024.

3. Consideration re Appointment of City Commission Representative to a Selection Committee for Civil & Traffic Engineering, Site Plan and Final Plat Review Consultants.

Staff recommends that the City Commission select a member of their board to serve on a selection committee for civil and traffic engineering, site plan and final plat review consultants.

4. Consideration re Change of Meeting Date for Fourth of July Holiday.

Staff is recommending that the City Commission reschedule the July 3rd Commission Meeting to Wednesday, July 5, 2023 because of the Fourth of July holiday.

5. Consideration re Request to schedule Budget Workshops for FY 2024 for July 10 - 13, 2023 at 5:30 p.m., with Friday, July 14, 2023 held as a reserve date.

Request for the City Commission to formally schedule the Budget Workshops for FY 2024.

CITY MANAGER REPORT

CITY ATTORNEY REPORT

CITY CLERK REPORT

CITY COMMISSION

ADJOURNMENT

The DeLand City Commission holds its regular meetings on the first and third Mondays of each month at 7:00 p.m. in the DeLand City Commission Chambers, 120 South Florida Avenue, DeLand. Notice of special meetings, workshops, changes in dates, times or locations are provided by separate Public Notices, which are posted at City Hall and on the City's web site.

The City of DeLand may take action on any matter during this meeting, including items that are not set forth within this agenda.

Public participation is encouraged on any matter on the agenda. If you desire to be recognized by the Mayor, please fill out a Speaker's Card and present it to the City Clerk.

Minutes of the DeLand City Commission meetings are not transcribed verbatim. If any person decides to appeal a decision made by the City Commission with respect to any matter considered at a public meeting or hearing, he/she will need a record of the proceedings including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made by a court reporter, at the person's own expense.

In accordance with the American Disabilities Act, persons needing a special accommodation in order to participate in the proceedings should notify the City Clerk's Office at least 48 hours in advance of the meeting: 626-7132.

Assisted Listening System receivers are available for the hearing impaired, and can be obtained from the City Clerk.

If you wish to obtain information regarding the City Commission's Agenda, please call the City Clerk's Office: 626-7132.

We respectfully request that all pagers and cell phones be turned OFF during City Commission meetings.

Electronic Information! City Commission agendas and short form minutes are now available on the City's web page: www.deland.org.



The CITY OF DELAND
Volusia County, Florida

Certificate of Recognition

Presented to

The 2022-2023 DeLand Middle School Lady Terrier Basketball Team

*Navi Ayulo
Riley Barrow
Gianna Dolata
Janiya Felton
Janiya French
India Johnson*

*Niya Monroe
Tashiya Pettis
Anna Radice
Mimi Ross
Kaylynn Sanchez
Kaylin Spor
Sasha Volondina*

*Coach Mike Dalia
Coach Kevin Farris
Alonzo Talley, Team Manager
Tarrance Lee, Team Videographer*

Whereas, the DeLand Middle School Lady Terriers Basketball Team achieved a 13-1 regular season record, 14-1 overall, and were the highest scoring team in Volusia County – averaging 33.5 points per game; and

Whereas, during the season, they scored a season high of 56 points vs. Galaxy Middle School and held River Springs and Hinson to a season low of only 7 points; and

Whereas, the Lady Terriers were the second-best defense in Volusia County allowing an average of just 18.2 points per game; and

Whereas, the Lady Terriers won the Volusia County Championship, 24-7 vs. an undefeated Hinson Middle School team that had the best defense in the county; and

Whereas, the 2022-2023 Lady Terriers' 13 wins was the most in a season since the return of basketball in the 2016-2017 school year, earning them their first Westside County Championship, as well as their Volusia County Championship since the 1981-1982 school year.

Now, therefore, I, Christopher M. Cloudman, Mayor of the City of DeLand, and on behalf of the City Commission and all our citizens do hereby tender this Certificate of Recognition to DeLand Middle School Lady Terrier Basketball Team for their athletic accomplishments and congratulate them on winning the County Championship.

Done and proclaimed this 5th day of June 2023.

Christopher M. Cloudman, Mayor

Attest

Julie A. Hennessy, City Clerk - Auditor

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Resolution Approving FY 2022-2023 Budget Amendment.

DEPARTMENT: Finance

PREPARED BY: Daniel Stauffer, Finance Director

ATTACHMENTS: Resolution, FY 22-23 Budget Amendment Details

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

The budget amendments proposed are detailed in the attached summary and recommended after review of actual expenditures to date. The amendments proposed are primarily revisions to reflect anticipated actual revenues and expenditures.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The Resolution amends the budget to reflect recommended changes with the impact on each fund itemized in the attached summary.

Operating Contingency balances after these amendments are as follows:

General Fund	\$78,825
Water & Sewer Fund	\$299,903
Airport Fund	\$0
Stormwater Fund	\$0
Permits & Inspections Fund	\$0

RECOMMENDATION:

Staff recommends the City Commission adopt the Resolution amending the FY 22/23 budget as presented.

BACKGROUND/DISCUSSION:

The significant General Fund budget amendments include promoting the Purchasing Coordinator to a new Purchasing Manager position, adding another Senior Planner Position and changing the Community Development Deputy Director position to a new Chief Planner position. In addition, regular and overtime Fire salaries are being increased due to expected annual actuals. The regular salary increases are due to the approved union negotiated increases while overtime increases are due to increased operational needs.

The significant Water and Sewer Fund budget amendments include adding a new Utility Distribution Foreman position as well as downgrading a Lead Worker position to a new Utility Tech III position.

The significant Permits and Inspections Fund budget amendments include purchasing Agency Counter software to replace the e-permit hub software and professional services for a complete update to the Accela Citizen Portal.

RESOLUTION NO. 2023 -

A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA, AMENDING THE BUDGET FOR THE GENERAL FUND, WATER AND SEWER FUND, AIRPORT FUND, STORMWATER FUND AND PERMITS AND INSPECTIONS FUND FOR THE FISCAL YEAR 2022-2023; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is necessary to amend the budget for the City of DeLand for fiscal year 2022-2023; and

WHEREAS, the City Commission is vested by the Charter of the City of DeLand with the authority to amend the budget.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. The budget of the City of DeLand for fiscal year 2022-2023 is amended in the following manner:

GENERAL FUND

Account Number	Account Description	Current Budget	Increase	Decrease	Revised Budget
REVENUES		48,530,949	8,865	0	48,539,814
	Miscellaneous Revenue				
001-0000-369-920	INSURANCE PROCEEDS	9,588	7,254	0	16,842
	Other Sources Revenue				
001-9998-382-401	CONTRIBUTION FROM W&S FUND	700,238	1,289	0	701,527
001-9998-382-430	CONTRIBUTION FROM AIRPORT FUND	284,121	215	0	284,336
001-9998-382-450	CONTRIBUTION FROM STORMWATER FUND	280,057	107	0	280,164
EXPENDITURES		48,530,949	118,412	109,547	48,539,814
	Finance				
001-0103-412-100	REGULAR SALARIES & WAGES	496,415	1,856	0	498,271
001-0103-415-100	SPECIAL PAY	7,212	9	0	7,221
001-0103-421-100	FICA TAXES	53,496	143	0	53,639
001-0103-422-100	RETIREMENT CONTRIBUTIONS	50,197	140	0	50,337
	Community Development				
001-1117-552-000	HARDWARE/SOFTWARE	3,375	4,000	0	7,375
	Planning				
001-1118-412-100	REGULAR SALARIES & WAGES	368,157	18,030	0	386,187
001-1118-415-100	SPECIAL PAY	45,788	174	0	45,962
001-1118-421-100	FICA TAXES	43,197	1,393	0	44,590
001-1118-422-100	RETIREMENT CONTRIBUTIONS	42,350	1,365	0	43,715
001-1118-423-100	LIFE & HEALTH INSURANCE	53,369	2,348	0	55,717
	Fire				
001-1222-412-100	REGULAR SALARIES & WAGES	2,912,818	20,000	0	2,932,818
001-1222-414-100	OVERTIME	384,466	60,000	0	444,466
001-1222-546-100	BUILDING MAINTENANCE	16,000	7,254	0	23,254
001-1222-551-100	OFFICE SUPPLIES	2,200	0	1,700	500
001-1222-554-100	BOOKS & MEMBERSHIPS	2,650	1,700	0	4,350
	Contingency				
001-9990-999-200	RESERVE CONTINGENCY	233,952	0	80,000	153,952
001-9990-999-100	CONTINGENCY	106,672	0	27,847	78,825

WATER AND SEWER FUND

Account Number	Account Description	Current Budget	Increase	Decrease	Revised Budget
REVENUES		94,654,719	0	0	94,654,719
EXPENDITURES		94,654,719	24,153	24,153	94,654,719
	Water Distribution				
401-4204-412-100	REGULAR SALARIES & WAGES	1,269,802	14,129	661	1,283,270
401-4204-415-100	SPECIAL PAY	45,260	136	0	45,396
401-4204-421-100	FICA TAXES	103,632	1,091	51	104,672
401-4204-422-100	RETIREMENT CONTRIBUTIONS	155,016	1,070	50	156,036
401-4204-423-100	LIFE & HEALTH INSURANCE	248,051	2,346	0	250,397
	Wastewater Collection				
401-4210-552-200	OPERATING CAPITAL	14,530	4,092	0	18,622
401-4210-664-000-UT2337	CONCRETE MIXER	8,285	0	4,092	4,193
	Transfers				
401-9998-992-001	CONTRIBUTION TO GENERAL FUND	700,238	1,289	0	701,527
	Contingency				
401-9990-999-100	CONTINGENCY	319,202	0	19,299	299,903

AIRPORT FUND

Account Number	Account Description	Current Budget	Increase	Decrease	Revised Budget
REVENUES		11,040,116	215	0	11,040,331
430-0000-361-100	INTEREST EARNINGS	4,990	215	0	5,205
EXPENDITURES		11,040,116	215	0	11,040,331
	Transfers				
430-9998-992-001	CONTRIBUTION TO GENERAL FUND	284,121	215	0	284,336

STORMWATER FUND

Account Number	Account Description	Current Budget	Increase	Decrease	Revised Budget
REVENUES		3,652,998	107	0	3,653,105
450-0000-343-350	WATER-OTHER INCOME	2,092,280	107	0	2,092,387
EXPENDITURES		3,652,998	107	0	3,653,105
	Transfers				
450-9998-992-001	CONTRIBUTION TO GENERAL FUND	280,057	107	0	280,164

PERMITS AND INSPECTIONS FUND

Account Number	Account Description	Current Budget	Increase	Decrease	Revised Budget
REVENUES		3,691,094	110,000	0	3,801,094
480-0000-380-000	USE OF RESERVES	1,323,401	110,000	0	1,433,401
EXPENDITURES		3,691,094	110,000	0	3,801,094
480-4800-531-100	PROFESSIONAL SERVICES	140,000	55,000	0	195,000
480-4800-663-110-PI2301	AGENCY COUNTER	0	55,000	0	55,000

Section 2. In all other respects the Budget of the City of DeLand, Florida for fiscal year 2022-2023 is hereby ratified and confirmed as adopted by Resolutions 2022-77, 2022-108, 2022-109, 2023-07, 2023-18, 2023-26, 2023-30 and 2023-33.

Section 3. This Resolution shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 5th day of June, 2023.

Christopher M. Cloudman
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

FY 22-23 Budget Amendment Details

ACCOUNT	Account Description	Increase	Decrease	Description
GENERAL FUND				
REVENUES		8,865	0	
001-0000-369-920	INSURANCE PROCEEDS	7,254		increase funding for elevator repair reimbursement
001-9998-382-401	CONTRIBUTION FROM W&S FUND	1,289		increase funding for new Purchasing Manager promotion
001-9998-382-430	CONTRIBUTION FROM AIRPORT FUND	215		increase funding for new Purchasing Manager promotion
001-9998-382-450	CONTRIBUTION FROM STORMWATER FUND	107		increase funding for new Purchasing Manager promotion
EXPENDITURES		118,412	109,547	
001-0103-412-100	REGULAR SALARIES & WAGES	1,856		increase appropriation for new Purchasing Manager promotion
001-0103-415-100	SPECIAL PAY	9		increase appropriation for new Purchasing Manager promotion
001-0103-421-100	FICA TAXES	143		increase appropriation for new Purchasing Manager promotion
001-0103-422-100	RETIREMENT CONTRIBUTIONS	140		increase appropriation for new Purchasing Manager promotion
001-1117-552-000	HARDWARE/SOFTWARE	4,000		increase appropriation for computer for new Senior Planner
001-1118-412-100	REGULAR SALARIES & WAGES	18,030		increase appropriation for new Senior Planner
001-1118-415-100	SPECIAL PAY	174		increase appropriation for new Senior Planner
001-1118-421-100	FICA TAXES	1,393		increase appropriation for new Senior Planner
001-1118-422-100	RETIREMENT CONTRIBUTIONS	1,365		increase appropriation for new Senior Planner
001-1118-423-100	LIFE & HEALTH INSURANCE	2,348		increase appropriation for new Senior Planner
001-1222-412-100	REGULAR SALARIES & WAGES	20,000		increase appropriation for Fire Salaries
001-1222-414-100	OVERTIME	60,000		increase appropriation for Fire Overtime
001-1222-546-100	BUILDING MAINTENANCE	7,254		increase appropriation for elevator repairs
001-1222-551-100	OFFICE SUPPLIES		1,700	decrease appropriation for Office Supplies
001-1222-554-100	BOOKS & MEMBERSHIPS	1,700		increase appropriation for Books and Memberships
001-9990-999-200	RESERVE CONTINGENCY		80,000	decrease appropriation for Fire Salaries and Overtime. This is the FD share of the union negotiations
001-9990-999-100	CONTINGENCY		27,847	decrease appropriation for new Senior Planner and computer and Purchasing Manager promotion
WATER & SEWER FUND				
REVENUES		0	0	
EXPENDITURES		24,153	24,153	
401-4204-412-100	REGULAR SALARIES & WAGES	14,129		increase appropriation for new Utility Distribution Foreman I
401-4204-415-100	SPECIAL PAY	136		increase appropriation for new Utility Distribution Foreman I
401-4204-421-100	FICA TAXES	1,091		increase appropriation for new Utility Distribution Foreman I
401-4204-422-100	RETIREMENT CONTRIBUTIONS	1,070		increase appropriation for new Utility Distribution Foreman I
401-4204-423-100	LIFE & HEALTH INSURANCE	2,346		increase appropriation for new Utility Distribution Foreman I
401-4204-412-100	REGULAR SALARIES & WAGES		661	decrease appropriation for position downgrade from Lead Worker to Utility Technician III
401-4204-421-100	FICA TAXES		51	decrease appropriation for position downgrade from Lead Worker to Utility Technician III
401-4204-422-100	RETIREMENT CONTRIBUTIONS		50	decrease appropriation for position downgrade from Lead Worker to Utility Technician III
401-4210-552-200	OPERATING CAPITAL	4,092		increase appropriation for concrete mixer
401-4210-664-000-UT2337	CONCRETE MIXER		4,092	decrease appropriation for concrete mixer (moved to operating)
401-9998-992-001	CONTRIBUTION TO GENERAL FUND	1,289		increase appropriation for new Purchasing Manager promotion
401-9990-999-100	CONTINGENCY		19,299	decrease appropriation for new Utility Distribution Foreman I (net of reduction of position downgrade)
AIRPORT FUND				
REVENUES		215	0	
430-0000-361-100	INTEREST EARNINGS	215		increase funding for new Purchasing Manager promotion
EXPENDITURES		215	0	
430-9998-992-001	CONTRIBUTION TO GENERAL FUND	215		increase appropriation for new Purchasing Manager promotion

FY 22-23 Budget Amendment Details

ACCOUNT	Account Description	Increase	Decrease	Description
STORMWATER FUND				
REVENUES				
450-0000-343-350	WATER-OTHER INCOME	107	0	increase funding for new Purchasing Manager promotion
EXPENDITURES				
450-9998-992-001	CONTRIBUTION TO GENERAL FUND	107	0	increase appropriation for new Purchasing Manager promotion
PERMITS & INSPECTIONS FUND				
REVENUES				
480-0000-380-000	USE OF RESERVES	110,000	0	increase funding for Agency Counter and Gray Quarter Wizard
EXPENDITURES				
480-4800-531-100	PROFESSIONAL SERVICES	55,000	0	increase appropriation for Accela Citizen Portal Complete Update
480-4800-663-110-PI2301	AGENCY COUNTER	55,000		increase appropriation for Agency Counter software

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Consideration re Utility Service Agreement for The Canopy at Blue Lake.

DEPARTMENT: Utilities

PREPARED BY: Jim Ailes, Deputy Public Serv. Director/Utilities Director

ATTACHMENTS: Agreement

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

The Canopy at Blue Lake residential subdivision will be located approximately at the northeast corner of Wisconsin Avenue and Miller Road in DeLand. The proposed residential subdivision will provide twelve residential lots when completed. The attached Utility Service Agreement contains the usual terms and conditions required by the city for utility service. No reimbursement for oversizing of offsite utilities is provided.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

Infrastructure

FISCAL IMPACT:

At buildout, the city will receive water and sewer impact fees and ongoing utility revenue from the residential subdivision once constructed.

RECOMMENDATION:

Staff recommends that the City Commission approve the attached Utility Service Agreement for The Canopy at Blue Lake.

BACKGROUND/DISCUSSION:

N/A

**UTILITY SERVICE AGREEMENT
FOR
THE CANOPY AT BLUE LAKE**

THIS AGREEMENT is entered into this 8 day of MAY, 2023, between the City of DeLand (City) and YEDLIN & CO, LLC (Developer) regarding utility service for the, The Canopy At Blue Lake project. In consideration of the mutual covenants and conditions in this Agreement, and subject to any necessary approval by any other governmental agency having jurisdiction, the parties agree as follows:

Section 1. City to furnish service. Upon the terms and conditions in this Agreement, and in accordance with the City's rules and regulations, the City shall provide and shall have the exclusive right to furnish potable water, domestic sewer and reuse irrigation services to the real property located approximately 150ft North East of the intersection of East Wisconsin Avenue and Miller Road, FL and described as:

TAX PARCEL NUMBERS

701000000300

10 17 30 E 1/2 OF SE 1/4 OF NW 1/4 OF SE 1/4 EXC S 25 FT PER DC OR 5514 PG 3558
PER OR 5593 2944 PER OR 8271 PG 4183

Section 2. Service conditioned on construction and acceptance of systems. No water, wastewater or reuse service shall be provided to any part of the property, and no connections to such systems shall be allowed, until the Developer has installed system facilities and improvements in accordance with approved plans and specifications and the City has accepted the conveyance of the systems in writing. The Developer shall apply in writing to the City Engineer for acceptance of the systems. Upon acceptance of the systems, all construction guarantees in favor of the City shall be released.

Section 3. Installation of improvements. The Developer shall install, at its own initial cost and expense (including engineering costs), all lines, pipes, manholes, lift stations, generators, RTU, machinery and other facilities which may be required on and off Developer's property to provide the buildings and occupants with water, wastewater or reuse service and to connect the property to existing City facilities and systems. Upon completion, all off-site and onsite utility improvements shall be conveyed and dedicated to the City. The improvements to be constructed by the Developer off the Developer's property (off-site improvements) shall include:

- Water main connection to existing 8" stub out and approximately 270 LF +/- of 8" PVC or HDPE piping required for extension to get to proposed subdivision.
- Sewer gravity main connection will require one 12" core on existing manhole and approximately 312 LF +/- of 12" PVC piping for extension to proposed subdivision.

Any other installations required in accordance with the plans and specifications for the subject development or which are otherwise required in accordance with sound utility engineering practices.

All connections to City facilities shall be made at Developer's expense. All water meters 2" and smaller will be installed by the City at the Developer's expense. All onsite water and sewer improvements shall be conveyed and dedicated to the City.

Section 4. Approval of design and plans. The design and construction of all facilities to be transferred to and owned and operated by the City shall be subject to prior approval by the City Engineer. The Developer's engineer shall incorporate all applicable standards and specifications of the City into the Developer's engineering design, plans and specifications. The City shall provide assistance to the Developer's engineers as to design and construction requirements and must approve all construction plans and specifications in writing prior to any construction being commenced. The Developer shall obtain all necessary state, county and local permits required for construction, acceptance and operation of the improvements.

Section 5. Access to construction; approval of work and materials. The City may inspect the construction to ensure compliance with the approved plans and specifications and shall retain the power of final approval of work and materials.

Section 6. Testing during and after construction. The Developer's engineer shall properly supervise construction and shall certify to the City Engineer that the systems are installed in accordance with the approved design plans and specifications. The Developer shall conduct at its own expense whatever tests are deemed by the City Engineer to be necessary and reasonable to ensure that the systems are being constructed in accordance with the approved engineering plans and specifications.

Section 7. Conveyance of easements and improvements. The Developer shall at its expense grant to the City adequate transferable easements for water, sewer and reuse lines, for access to lift stations and water stations and related appurtenances as may be deemed necessary by the City.

Section 8. Evidence of conveyance of facilities. By this Agreement Developer hereby transfers to the City the title to the water, wastewater and reuse systems, facilities and improvements to be installed pursuant to this Agreement, effective without further action upon the completion and acceptance by the City of the installation of those systems. As further evidence of this transfer of title, the Developer shall provide to the City a copy of the recorded plat, if any; a bill of sale for the facilities; written easements; deeds to the land on which lift stations, water stations or similar facilities are located; and other evidences of conveyance required by the City.

Section 9. Additional documents to be provided before acceptance of facilities. In addition to the documents of title listed in the previous paragraph, the Developer shall provide to the City the following documents prior to acceptance of the facilities: As-built drawings of utility improvements, (one hard copy signed and sealed, one PDF and one AUTOCAD delivered on a USB drive) furnished one week prior to final inspection; an accounting of the actual costs (schedule of values) for on-site and off-site construction; letters of acceptance from the appropriate regulatory agency for the systems; certification by the design engineer that the system was constructed as designed; and right-of-way use permits and other permits and licenses obtained from applicable government agencies.

Section 10. Uninterrupted supply not guaranteed. The City does not guarantee an uninterrupted supply of water or reuse at any particular pressure, nor does it assume any duty or obligation to furnish water for extinguishing fires. The City reserves the right to shut off the water in its mains temporarily for necessary purposes. The City shall not be responsible for any damage caused by low pressure, interruption of service or variations in water quality or content.

Section 11. Connections subject to rates and fees. All connections to the water, wastewater and reuse systems shall be subject to the continuing operating rules and regulations of the City including, without limitation, the periodic payment of water, wastewater and reuse charges and fees as provided in the City's rate schedule, and payment of all deposits, meter charges and other fees, rates and charges, including development fees. The rates charged by the City for water, sewer, or reuse service shall be in accordance with its rate schedule, which shall be subject to change from time to time.

Section 12. Reimbursement for oversizing of off-site improvements. This Section Not Used

Section 13. Surcharge for non-domestic waste. The terms wastewater or sanitary sewage used in this agreement are meant to include only human waste, including liquids and solid matter carried from plumbing fixtures normally carried off by drains and sewers, and, except where specifically excluded, bath and toilet wastes, laundry wastes, kitchen wastes and other similar wastes. This service agreement, and any charges contained in this agreement, is based on normal domestic sewage, defined herein as containing not more than two hundred (200) parts per million biochemical oxygen demand or two hundred (200) parts per million suspended solids. Whenever water which contains more than these amounts is to be admitted to the sewers the City and all other pollution control agencies must specifically agree to the connection and an additional charge shall be imposed in accordance with City regulations.

Section 14. Developer to obtain permits. The Developer shall obtain all governmental approvals, licenses and permits necessary for the design, routing, construction, connection and use of the water, wastewater and reuse systems to be installed under this agreement. The City shall render assistance to the Developer in obtaining these approvals, licenses and permits.

Section 15. Service of other properties. The City reserves the right to service other properties through the facilities conveyed by the Developer, and nothing in this Agreement shall be deemed to prohibit or prevent the City from extending its water, wastewater or reuse facilities to any other area.

Section 16. Default by Developer. The Developer's failure to carry out any provision in this agreement shall relieve the City from its obligation to provide water, wastewater or reuse service to the property.

Section 17. Covenant to support annexation. As a condition of supplying potable water, sanitary sewer or reuse service to the proposed The Canopy At Blue Lake, Developer agrees to sign a covenant to support annexation to the City of DeLand. This covenant shall be recorded and shall be binding upon all successors and assigns.

Section 18. Entire Agreement; amendment. It is expressly agreed and understood that this is the entire Agreement between the Developer and the City, and that there are no other written or verbal agreements applicable to the subject of this Agreement between the Developer and the City. This Agreement may be amended and modified from time to time by written agreement of the parties.

YEDLIN & CO, LLC

Name: VIATCHESLAV YEDLIN

Title: MANAGER

ATTEST:

Name: Yevgeny Khaykin

Secretary

Witness

Witness

CITY OF DELAND

Christopher M. Cloudman
Mayor

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Witness

Witness

PROVINCE OF ONTARIO
CITY OF TORONTO,
CANADA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2023 by Christopher M. Cloudman, Mayor-Commissioner of the City of DeLand, Florida who is ☐ personally known to me or ☐ who has produced, _____ as identification

Notary Public - State of Florida

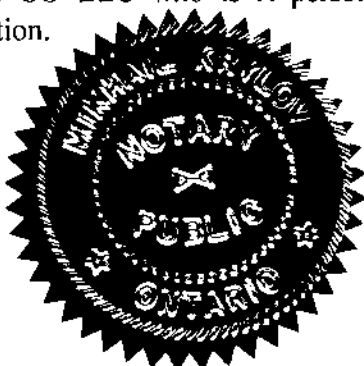
Name: _____

My Commission expires: _____

PROVINCE OF ONTARIO

CITY OF TORONTO, CANADA

The foregoing instrument was acknowledged before me by means of X physical presence or ☐ online notarization, this 8 day of May, 2023 by Viatcheslav Yedlin, the manager of Yedlin & CO LLC who is X personally known to me and has produced, his passport as identification.



Notary Public - Province of Ontario

Name: Mikhail Krylov

My Commission expires: Does Not Expire

Contact Information:

APPLICANT/ YEDLIN & CO, LLC
PROPERTY OWNER: 5200 OLD WINTER GARDEN ROAD
ORLANDO, FLORIDA 32811
PHONE: (416) 400-4767
EMAIL: SLAVA@YEDLIN.CA

CIVIL ENGINEER / NEWKIRK ENGINEERING, INC.
PROJECT MANAGER / 1230 NORTH US HIGHWAY 1, SUITE 204
LANDSCAPE ARCHITECT: ORMOND BEACH, FL 32174
PHONE: (386) 872-7794
EMAIL: TYLERM@NEWKIRK-ENGINEERING.COM

GEOTECHNICAL: BECHTOL ENGINEERING AND TESTING, INC.
605 W NEW YORK AVENUE
DELAND, FL 32720-5243
PHONE: (386) 734-8444
FAX: (386) 734-8541
EMAIL: LOVE@BECHTOL.COM

SURVEYOR: BLACKWELL & ASSOCIATES LAND SURVEYORS, INC.
995 W VOLUSIA AVENUE
DELAND, FL 32720-5243
PHONE: (386) 734-8850
FAX: (386) 734-7860

ENVIRONMENTAL: ECOLOGICAL CONSULTING SOLUTIONS, INC.
235 HUNT CLUB BOULEVARD, SUITE 202
LONGWOOD, FL 32779
PHONE: (407) 869-8434
EMAIL: BGRIFFY@ECSFL.CC

Utility Contact

PLANNING - CITY OF DELAND PLANNING DIVISION (386) 626-7016
BUILDING - CITY OF DELAND BUILDING DEPARTMENT (386) 626-7135
WATER - CITY OF DELAND UTILITIES DIVISION (386) 626-7250
WASTEWATER - CITY OF DELAND UTILITIES DIVISION (386) 626-7250
SOLID WASTE - WCA WASTE CORPORATION 1-(855) 263-0955
GAS - FLORIDA PUBLIC UTILITIES (386) 668-2600
ELECTRIC - DUKE ENERGY (800) 700-8744
TELEPHONE - AT&T (386) 254-8550
CABLE - SPECTRUM (386) 760-9950

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Consideration re Utility Service Agreement for the McGarvey Lift Station.

DEPARTMENT: Utilities

PREPARED BY: Jim Ailes, Deputy Public Serv. Director/Utilities Director

ATTACHMENTS: Agreement

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

The Alliance Community Retirement Center is installing a private lift station labeled as McGarvey, located approximately at the northwest corner of South Palmetto Avenue and West Winnemissett Avenue in DeLand. The proposed lift station will provide sewer service to several buildings onsite in the community when completed. The attached Utility Service Agreement contains the usual terms and conditions required by the city for utility service. No reimbursement for oversizing of offsite utilities is provided.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

Infrastructure

FISCAL IMPACT:

At buildout, the City will receive water and sewer impact fees and ongoing utility revenue from the retirement community once constructed.

RECOMMENDATION:

Staff recommends that the City Commission approve the attached Utility Service Agreement for the McGarvey Lift Station at the Alliance Community Retirement Center.

BACKGROUND/DISCUSSION:

N/A

**UTILITY SERVICE AGREEMENT
FOR
McGARVEY SANITARY LIFT STATION**

THIS AGREEMENT is entered into this 19th day of May, 2023, between the City of DeLand (City) and ALLIANCE COMMUNITY RETIREMENT LIVING, INC (Developer) regarding utility service for the, McGarvey Sanitary Lift Station project. In consideration of the mutual covenants and conditions in this Agreement, and subject to any necessary approval by any other governmental agency having jurisdiction, the parties agree as follows:

Section 1. City to furnish service. Upon the terms and conditions in this Agreement, and in accordance with the City's rules and regulations, the City shall provide and shall have the exclusive right to furnish potable water, domestic sewer and reuse irrigation services to the real property located on the northwest side of the intersection of South Palmetto Ave and West Winnemisset Ave, FL and described as:

TAX PARCEL NUMBERS

701635030010

LOTS 1 TO 6 INC & 9 TO 12 INC BLK 3 & LOT 3 EXC IRREG PART M EAS 99.71 FT ON
N/L & 35 FT ON E/L & 49.50 FT ON S/WLY LINE & LOTS 4 TO 12 INC BLK 4 &
VACATED PORTION OF PALMETTO AVE I

Section 2. Service conditioned on construction and acceptance of systems. No water, wastewater or reuse service shall be provided to any part of the property, and no connections to such systems shall be allowed, until the Developer has installed system facilities and improvements in accordance with approved plans and specifications and the City has accepted the conveyance of the systems in writing. The Developer shall apply in writing to the City Engineer for acceptance of the systems. Upon acceptance of the systems, all construction guarantees in favor of the City shall be released.

Section 3. Installation of improvements. The Developer shall install, at its own initial cost and expense (including engineering costs), all lines, pipes, manholes, lift stations, generators, RTU, machinery and other facilities which may be required on and off Developer's property to provide the buildings and occupants with water, wastewater or reuse service and to connect the property to existing City facilities and systems. Upon completion, all off-site and onsite utility improvements shall be conveyed and dedicated to the City. The improvements to be constructed by the Developer off the Developer's property (off-site improvements) shall include:

- Existing manhole will need a 6" core completed, 4" pipe inserted and hydraulic cemented packed around opening to seal inside and out.
- Approximately 18 LF +/- of 4" PVC piping to edge of ROW.
- Existing manhole must be lined per city detail and approved vendor.

Any other installations required in accordance with the plans and specifications for the subject development or which are otherwise required in accordance with sound utility engineering practices.

All onsite sewer gravity lines, force main, and lift station will be installed by the developer and will remain privately owned, operated and maintained in perpetuity by the property owner. The City will maintain force main from the manhole to the 4" gate valve at property right of way.

Section 4. Approval of design and plans. The design and construction of all facilities to be transferred to and owned and operated by the City shall be subject to prior approval by the City Engineer. The Developer's engineer shall incorporate all applicable standards and specifications of the City into the Developer's engineering design, plans and specifications. The City shall provide assistance to the Developer's engineers as to design and construction requirements and must approve all construction plans and specifications in writing prior to any construction being commenced. The Developer shall obtain all necessary state, county and local permits required for construction, acceptance and operation of the improvements.

Section 5. Access to construction; approval of work and materials. The City may inspect the construction to ensure compliance with the approved plans and specifications and shall retain the power of final approval of work and materials.

Section 6. Testing during and after construction. The Developer's engineer shall properly supervise construction and shall certify to the City Engineer that the systems are installed in accordance with the approved design plans and specifications. The Developer shall conduct at its own expense whatever tests are deemed by the City Engineer to be necessary and reasonable to ensure that the systems are being constructed in accordance with the approved engineering plans and specifications.

Section 7. Conveyance of easements and improvements. The Developer shall at its expense grant to the City adequate transferable easements for water, sewer and reuse lines, for access to lift stations and water stations and related appurtenances as may be deemed necessary by the City.

Section 8. Evidence of conveyance of facilities. By this Agreement Developer hereby transfers to the City the title to the water, wastewater and reuse systems, facilities and improvements to be installed pursuant to this Agreement, effective without further action upon the completion and acceptance by the City of the installation of those systems. As further evidence of this transfer of title, the Developer shall provide to the City a copy of the recorded plat, if any; a bill of sale for the facilities; written easements; deeds to the land on which lift stations, water stations or similar facilities are located; and other evidences of conveyance required by the City.

Section 9. Additional documents to be provided before acceptance of facilities. In addition to the documents of title listed in the previous paragraph, the Developer shall provide to the City the following documents prior to acceptance of the facilities: As-built drawings of utility improvements, (one hard copy signed and sealed, one PDF and one AUTOCAD delivered on a USB drive) furnished one week prior to final inspection; an accounting of the actual costs (schedule of values) for on-site and off-site construction; letters of acceptance from the appropriate regulatory agency for the systems; certification by the design engineer that the system was constructed as designed; and right-of-way use permits and other permits and licenses obtained from applicable government agencies.

Section 10. Uninterrupted supply not guaranteed. The City does not guarantee an uninterrupted supply of water or reuse at any particular pressure, nor does it assume any duty or obligation to furnish water for extinguishing fires. The City reserves the right to shut off the water in its mains temporarily for necessary purposes. The City shall not be responsible for any damage caused by low pressure, interruption of service or variations in water quality or content.

Section 11. Connections subject to rates and fees. All connections to the water, wastewater and reuse systems shall be subject to the continuing operating rules and regulations of the City including, without limitation, the periodic payment of water, wastewater and reuse charges and fees as provided in the City's rate schedule, and payment of all deposits, meter charges and other fees, rates and charges, including development fees. The rates charged by the City for water, sewer, or reuse service shall be in accordance with its rate schedule, which shall be subject to change from time to time.

Section 12. Reimbursement for oversizing of off-site improvements. This Section Not Used

Section 13. Surcharge for non-domestic waste. The terms wastewater or sanitary sewage used in this agreement are meant to include only human waste, including liquids and solid matter carried from plumbing fixtures normally carried off by drains and sewers, and, except where specifically excluded, bath and toilet wastes, laundry wastes, kitchen wastes and other similar wastes. This service agreement, and any charges contained in this agreement, is based on normal domestic sewage, defined herein as containing not more than two hundred (200) parts per million biochemical oxygen demand or two hundred (200) parts per million suspended solids. Whenever water which contains more than these amounts is to be admitted to the sewers the City and all other pollution control agencies must specifically agree to the connection and an additional charge shall be imposed in accordance with City regulations.

Section 14. Developer to obtain permits. The Developer shall obtain all governmental approvals, licenses and permits necessary for the design, routing, construction, connection and use of the water, wastewater and reuse systems to be installed under this agreement. The City shall render assistance to the Developer in obtaining these approvals, licenses and permits.

Section 15. Service of other properties. The City reserves the right to service other properties through the facilities conveyed by the Developer, and nothing in this Agreement shall be deemed to prohibit or prevent the City from extending its water, wastewater or reuse facilities to any other area.

Section 16. Default by Developer. The Developer's failure to carry out any provision in this agreement shall relieve the City from its obligation to provide water, wastewater or reuse service to the property.

Section 17. Covenant to support annexation. As a condition of supplying potable water, sanitary sewer or reuse service to the proposed McGarvey Sanitary Lift Station, Developer agrees to sign a covenant to support annexation to the City of DeLand. This covenant shall be recorded and shall be binding upon all successors and assigns.

Section 18. Entire Agreement; amendment. It is expressly agreed and understood that this is the entire Agreement between the Developer and the City, and that there are no other written or verbal agreements applicable to the subject of this Agreement between the Developer and the City. This Agreement may be amended and modified from time to time by written agreement of the parties.

ALLIANCE COMMUNITY RETIREMENT
LIVING, INC

Name: WILLIAM A. ANDERSON
Title: EXECUTIVE DIRECTOR

CITY OF DELAND

Christopher M. Cloudman
Mayor

ATTEST:

Name: _____
Secretary

Witness

Heather D. Ellixson
Witness

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Witness

Witness

STATE OF FLORIDA
COUNTY OF VOLUSIA

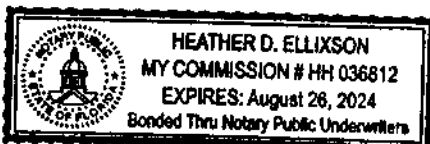
The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2023 by Christopher M. Cloudman, Mayor-Commissioner of the City of DeLand, Florida who is ☐ personally known to me or ☐ who has produced, _____ as identification

Notary Public - State of Florida

Name: _____
My Commission expires: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 19th day of May, 2023 by William A. Anderson, the Executive Director of Alliance Community Retirement Living, INC who is ☐ personally known to me or ☐ who has produced, _____ as identification.



Heather D. Ellixson
Notary Public - State of Florida

Name: Heather D. Ellixson
My Commission expires: 8/26/2024

Contact Information:

<u>Owner</u>
Alliance Community Retirement living, Inc. 1175 Peachtree St Ne Ste 350 Atlanta, Ga 30305

<u>Civil Engineer</u>
Baker Design Build 219 N. Newnan Street, 2nd Floor Jacksonville, FL 32202 Ph: (904) 356-8520 Fx: (904) 559-2678

Utility Contact

WATER - CITY OF DELAND UTILITIES DIVISION (386) 626-7250
WASTEWATER - CITY OF DELAND UTILITIES DIVISION (386) 626-7250

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Consideration re Acceptance and Recognition of Bill of Sale Lift Station Tract and Infrastructure for Andover Ridge Subdivision.

DEPARTMENT: Utilities

PREPARED BY: Jim Ailes, Deputy Public Serv. Director/Utilities Director

ATTACHMENTS: Andover Ridge Bill of Sale

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

In 2021, the City Commission executed a Utility Service Agreement with the developers of Andover Ridge Subdivision regarding utility service to that project. Part of that agreement required the developer to provide a bill of sale for the new lift station facilities, water, sewer and reclaimed piping both onsite and offsite as required to serve the new development. The attached document fulfills that requirement.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

Facilities & Infrastructure

FISCAL IMPACT:

Acceptance of the Bill of Sale has no fiscal impact on the City.

RECOMMENDATION:

It is recommended that the City Commission accept the Bill of Sale for the Lift Station and related infrastructure from the Developer of Andover Ridge Subdivision.

BACKGROUND/DISCUSSION:

N/A

Short Tax Parcel Identification Numbers:

701800000993 (Altkey: 6765197),
701800000995 (Altkey: 6766219),
701800000997 (Altkey: 6736669),
701800000998 (Altkey: 6778728),
701800000999 (Altkey: 6778736),
701800001003 (Altkey: 8013558),
701800001004 (Altkey: 8013556),

ANDOVER RIDGE SUBDIVISION BILL OF SALE

KNOW ALL BY THESE PRESENTS, that this Bill of Sale is made and entered into the day and year below written by and between STRADA DEVELOPMENT LLC, a Florida limited liability company, whose address is 3400 St. Johns Parkway, Sanford, Florida 32771, hereinafter referred to as “STRADA,” and the CITY OF DELAND, a municipality of the State of Florida, whose mailing address is City Hall, 120 South Florida Avenue, DeLand, Florida 32720, hereinafter referred to as the “CITY.”

IN CONSIDERATION of the sum of One Dollar (\$1.00) and all of the matters set forth in that certain document styled “Utility Service Agreement For Andover Ridge,” dated January 28, 2021, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, STRADA does hereby grant, bargain, sell, transfer, convey, remise, release and deliver unto the CITY, its successors and assigns, forever, the following described utility facilities, to-wit: all of the lines, pipes, mains, improvements, infrastructure, assets, equipment and related personal property and appurtenances thereto pertaining to the water, wastewater and reuse water facilities and systems which are located on or in the property that is platted as the Andover Ridge subdivision (formerly Belmore Oaks, CITY Case Number 2019-S-ODP-0296). The utility facilities shall be owned by the CITY, its successors and assigns, forever, for its own use free and clear and discharged of and from any and all obligations, claims, encumbrances and liens relating thereto arising under any theory of law or equity.

STRADA DOES HEREBY COVENANT to and with the CITY, its successors and assigns, that STRADA is lawfully seized and possessed of the utility facilities, has good and lawful right to grant, bargain, sell, transfer, convey, remise, release and deliver the utility facilities, and that the utility facilities are free from all mortgages, notes, claims, liens and any and all other types or forms of security interests or encumbrances in favor of any person whosoever including, but not limited to, claims for labor or materials of any type or nature whatsoever, and that STRADA will warrant and defend the transfer of the utility facilities hereby made, unto the CITY, its successors and assigns, against any and all mortgages, notes, claims, liens and any and all other types or forms of security interests or encumbrances in favor of any person whosoever. STRADA warrants and represents to the CITY that the fitness, condition, safety, suitability and utility of the utility facilities are adequate for their intended purposes and that the utility facilities are free from all defects and faults in materials or workmanship and that the utility facilities conform to CITY’s standards for utility facilities. Further, STRADA warrants title to any right-of-way previously, or to be, dedicated to the CITY, and easements previously dedicated or granted to, or to be

dedicated or granted to, and accepted by the CITY, all at no cost to the CITY. The after acquired title doctrine shall be applied to all matters set forth herein.

TO HAVE AND TO HOLD the same absolutely unto the CITY, its successors and assigns, forever and STRADA plenary releases the CITY and shall fully protect, defend, discharge, indemnify and hold harmless the CITY, its successors and assigns (to include, but not be limited to, their officers, employees, agents and representatives), from and against any and all liability for damages, injuries, losses, damages, causes of action, or other liability of any type or nature arising from, in connection with, or related in any way to the construction of the utility facilities, with regard to any person or property to any party, causes of action, demands, or actions of whatsoever kind or nature, and, further, from and against any other claims, costs and fees (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs).

STRADA AGREES THAT THE CITY is not responsible for the construction or creation of public facilities or the provisions of utility capacity in order to facilitate development by or for STRADA. STRADA agrees to the granting of any and all utility easements to the CITY which the CITY deems necessary to implement the use of the utility facilities. STRADA hereby agrees that the CITY has shown an essential nexus between a legitimate CITY interest and the conditions imposed herein. Further, STRADA agrees that the CITY has established that all proposed conditions are roughly proportional to the impacts of the development by STRADA upon the public facilities addressed herein based upon an individualized determination that the required dedication/commitment is related in both nature and extent to the impacts of the development by STRADA upon public facilities. Moreover, without limiting the foregoing in any extent, STRADA agrees that there have been no unlawful exactions imposed by the CITY upon STRADA of any type or nature with regard to the utility facilities and associated matters. In order to implement the foregoing, STRADA covenants not to sue the CITY.

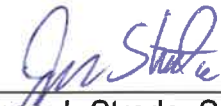
IN WITNESS WHEREOF, STRADA has caused this Bill of Sale to be signed, sealed and delivered in its name by its proper officer the day and year below written.

SIGNATURE BLOCKS FOLLOW:

Witnesses:

**STRADA DEVELOPMENT LLC, a Florida
limited liability company,**


Signature
Printed Name: Sasha Prens

By: 
Joseph Strada, Sole Manager


Signature
Printed Name: Jokeen Ruiz

ACKNOWLEDGMENT

STATE OF FLORIDA)

COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Joseph Strada, Sole Manager of Strada Development LLC {✓} who is personally known to me or { } who produced _____ as identification and he acknowledged before me that he executed the same. Sworn and subscribed before me, by the said person by means of {✓} physical presence or { } online notarization on the 10 day of May, 2023, the said person did take an oath and was first duly sworn by me, on oath, said person, further, deposing and saying that he has read the foregoing and that the statements and allegations contained herein are true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this 10 day of May, 2023.



Marcia Wood
Notary Public
State of Florida
Comm# HH102413
Expires 3/9/2025


Notary Public; State of Florida
(Affix Notarial Seal)
Printed Name: Marcia Wood
My Commission Expires: 3/9/25

ADDITIONAL SIGNATURE BLOCK FOLLOWS:

TERMS AND CONDITIONS AGREED UPON:

ATTEST:

CITY OF DELAND

Christopher Cloudman
Mayor – Commissioner
Date: _____

Julie A. Hennessy, MMC
City Clerk - Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: CONTINUATION of First Reading of Ordinance Changing the Zoning for GlassHouse Square PD, on Approximately 0.868 Acre of Property, Located at 130 West New York Avenue from C-2A to Planned Development (First Reading September 26, 2022).

DEPARTMENT: Planning

PREPARED BY: Rick Werbiskis, Community Dev. Director

ATTACHMENTS: Ordinance, Exhibit A , Exhibit B-Proposed PD Agreement w Exhibits, Glasshouse Square Development Plan - Phase I - 1-11-2023, Glasshouse Square Development Plan - Phase II - 1-11-2023, Acquisition and redevelopment agreement signed 7-9-20, Sec. 20 Noise - Code of Ordinances, Report - An Overview of Risks in Adjacent Demolition and Construction, Report - Protecting a Historic Structure during Adjacent Construction , Z21-186 Staff Report Glass House Square 130 W. New York Ave. (July), Z21-186 Aerial Map, Z21-186 Zoning and Location Map, Glasshouse Pedestrian Easement - DRAFT

APPROVED BY: Michael Pleus, City Manager, May 29, 2023

SUMMARY/HIGHLIGHT:

The applicant, GlassHouse Square, LLC has submitted an updated application to rezone the property located at 130 W. New York Avenue from C-2A, Downtown Commercial to GlassHouse Square PD. The site consists of a single structure and parking that was the former location of the County jail and is currently under the ownership of the City. The applicant has entered into an Acquisition and Redevelopment Agreement (ARA) that was executed by the City of DeLand and GlassHouse Square, LLC on July 9, 2020. The former jail is to be demolished by the City at a maximum cost of \$300,000 to the City with GlassHouse responsible for any additional costs, and a phased redevelopment project built in its place. The proposed development plan is for a two-story retail/commercial and office building with rooftop entertainment space along New York Avenue, 15 off-street parking spaces along Georgia Avenue together with a pedestrian walkway and a gathering space (Phase 1); and a two-story mixed-use building, including 5 residential units, adjacent to Georgia Avenue (Phase 2). The current plan does not have a definitive timeframe for the development of Phase 2.

The City Commission reviewed the proposed PD agreement at first reading on September 22, 2022. At this meeting, there was discussion related to the pedestrian walkway, activity space and the number and location of off-street parking spaces. The updated PD agreement provides further clarity on these matters. The redevelopment of the property will be guided by the proposed development agreement which includes the following provisions:

1. A minimum of 50 parking spaces, 40 spaces for Phase 1 and 10 spaces for Phase 2, will be provided either on-site (maximum of 15), offsite to be located within 800' of the site, or through payment of a "parking mitigation fee" in the amount of \$10,000 per waived parking space. By way of information, development agreements typically identify the location of parking areas;
2. Phase 1 includes the development of 15 on-site parking spaces that may or may not include landscaping;
3. A publicly accessible green square that may or may not include a water feature will be constructed in Phase 1;
4. A Pedestrian Walkway will be constructed in Phase 1 that will generally be open to the public between 8:00 a.m. until midnight. A draft of the easement agreement that would regulate the Pedestrian Walkway is attached

to this agenda item.

5. The project must comply with architectural standards that maintain consistency with the character of the historic downtown area. The Historic Preservation Board approved a conditional Certificate of Appropriateness related to the overall building design at their August 4, 2022 meeting. The Board required that the applicant submit additional information related to proposed building materials at a later date;
6. Uses will be the same as C-2A with a few additions and restrictions; and
7. Vibrations will have to be monitored and minimized during construction (demolition of the existing jail building will be completed by the City; steps will be taken to prevent damage to adjacent structures during the demolition process).

With respect to the applicant's request to provide for a payment in lieu of parking, Section 33-91.03(k) provides for the creation of a special parking district by the City Commission where parking or transit facilities may be provided by the city, thus lessening the demand for on-site parking. For development proposed in these districts, the City Commission may allow the developer to pay a fee in lieu of providing some or all of the spaces required by this section. The fee shall be a one-time, nonrefundable fee per parking space avoided, paid to the city prior to the issuance of a certificate of occupancy. The amount of the fee shall be determined by the City Commission and shall be equal to the land acquisition, construction and maintenance costs of parking spaces that are deferred by this provision. These fees shall be used by the city solely for the purchase, construction, operation and maintenance of parking or transit facilities serving the area of the development. The City Commission may, at the time of accepting the fee, enter into an agreement with the developer to construct or provide parking or transit facilities. Currently, no special parking district has been established. No such parking district has ever been created and none is planned at this time, but it certainly could be if the City Commission gave such direction.

The City Attorney has explained that, as with other PD's, the City Commission has discretion in determining whether to approve or deny the PD rezoning. The City Attorney has further explained that in this case, the City Commission should determine whether, in the best interests of the City, the Commission desires the property to be developed in the manner provided for in the proposed PD agreement. In making its decision, it is appropriate for the City Commission to consider the ARA as well as any other development related matters it deems appropriate. The City Commission must, of course, conduct a proper quasi-judicial rezoning hearing, but the Commission has broad discretion in deciding whether to approve or deny the requested PD zoning as set forth in the attached PD agreement. The City Attorney has advised that the City Commission should, as part of its consideration of this matter, decide whether it wants to see the property developed in the manner provided for in the proposed PD agreement.

While the ARA is NOT binding upon the City Commission in conducting this re-zoning hearing, the proposed GlassHouse Square PD Agreement may not be consistent with the approved ARA for the following reasons:

- The ARA defines Phase 1 of the project to include up to a three-story, 30,000 sf building with rooftop space along with the Pedestrian Walkway, Gathering Space and Private Parking Lot. The proposed PD defers the location and design of the offsite parking (if any is provided) to be approved by the City Commission at a later undefined date.
- Exhibit C (Preliminary Site Plan and Parking) of the ARA identifies the offsite parking to be developed in support of this project on a parcel located at the corner of South Florida Avenue and West Howry Avenue. This has not been included in the proposed PD and the location of the off-site parking has not been identified.

A draft of an easement agreement is included with this agenda item. If the PD is approved on first reading, it is anticipated that the City Attorney and the applicant's attorney will finalize the terms of the easement and present that item with second reading.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Strategic Focus Area: Institute Smart Growth Principles:

Strategies:

Redevelopment

Action Steps:

3. Promote downtown commercial redevelopment with MainStreet DeLand.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

After development, the subject property will be placed back on the tax roll.

RECOMMENDATION:

Staff recommends that the City Commission either approve on first reading or deny the requested rezoning with its associated Planned Development Agreement. In conducting its deliberations, staff recommends that the City Commission, along with all other matters the City Commission deems appropriate, consider the following factors: determine if it is in the city's best interest to create a special parking district to allow for the payment in lieu of parking; clarify what amenities will be provided in the publicly accessible green space, finalize the design of the on-site parking with respect to landscaping and, determine if the proposed Planned Development Agreement is in conformity to the Acquisition and Redevelopment Agreement.

BACKGROUND/DISCUSSION:

On June 18, 2018, the City Commission directed staff to issue a Request for Proposal (RFP) for the redevelopment of the former county jail located at 130 West New York Avenue together with the option to also redevelop a former county parking lot located off Georgia Avenue. Both locations are currently owned by the City of DeLand. Staff issued an RFP on July 25, 2018. At the December 17, 2018 meeting of the City Commission, the Commission ranked the three submitted proposals for the redevelopment of the former County Jail and selected Deltran Operations USA, Inc. as most responsive to the RFP. At the May 28, 2019 joint meeting of the Downtown Community Redevelopment Agency and City Commission, a Memorandum of Understanding was approved that provided the guidelines for the drafting of an Acquisition and Redevelopment Agreement for the redevelopment of the former County Jail site. The guidelines included the provision that "Parking may be provided off-site to each Parcel to be developed. Except as otherwise provided, specific parking ratios and standards shall be addressed in the PD Agreement applicable to each Parcel". A Private Parking Lot to serve the needs of GlassHouse was included in Phase 1 of the project in the Agreement. The Acquisition and Redevelopment Agreement was approved on July 9, 2020. The Commission received an Annual Report update for the project on March 7, 2022. The Planning Board reviewed this PD application at their July 20, 2022 meeting and recommended approval subject to the applicant addressing issues related to off-site parking and vibratory protection for adjacent properties, among others. The City Commission reviewed the proposed Planned Development zoning on first reading on September 22, 2022 and continued the hearing to allow the applicant to address questions related to required parking.

The Planning Board reviewed this application at their July 20, 2022 meeting and recommended approval subject to the applicant addressing the following:

1. PD will not be effective until the property is transferred.
2. Reference that noise monitoring will utilize the commercial standard and not residential.
3. Construction specifications are required that will address monitoring and limitations causing vibrations need to be approved by the City Engineer and Chief Building Official and included in the PD agreement.

4. Parking to be provided within 800' and open to the public. The times available to the general public to be worked out to help provide additional parking for the downtown and in particular the Georgia Ave area. The Board desired more than the 50 spaces contained in the PD if possible (was not in the motion however). They also wanted the location of the parking identified in the PD rather than to wait until the site plan is submitted.
5. The walkway along the eastern boundary shall remain open to the public (accepted that it may be closed for special events as provided in agreement).

ORDINANCE NO. 2023 -

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, CHANGING THE ZONING FROM C-2A & H, DOWNTOWN COMMERCIAL AND HISTORIC TO CITY'S PLANNED DEVELOPMENT, GLASSHOUSE SQUARE PD, ON PROPERTY LOCATED AT 130 WEST NEW YORK AVENUE; APPROVING A PLANNED DEVELOPMENT PLAN CONSISTING OF APPROXIMATELY 0.868 +/- ACRES OF PROPERTY MAKING FINDINGS OF CONSISTENCY WITH THE COMPREHENSIVE LAND USE PLAN FOR THE CITY OF DELAND; DIRECTING CHANGE IN THE COMPREHENSIVE ZONING MAP; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the applicant, Frank Ford, Jr., (hereinafter referred to as "Applicant"), on behalf of the owner, GlassHouse Square, LLC, owns approximately 0.868 +/- acres of land located at 130 West New York Avenue, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, the Applicant has applied for a change of zoning designations from C-2A, Downtown Commercial to GlassHouse Square PD, Planned Development; and

WHEREAS, said rezoning is consistent with both the Comprehensive Plan and the purpose and intent of Section 33-32 of the Code of Ordinances of the City of DeLand (the "Code"); and

WHEREAS, the applicant has submitted an application for the approval of a development plan in order to amend the property zoning designation so as to change certain development standards for the property described in Exhibit "A" (hereinafter the "Property" or the "Project"); and

WHEREAS, the proposed development plan meets or exceeds the minimum conditions and standards for the PD District with respect to minimum development size, perimeter setbacks, comprehensive plan consistency, internal compatibility, external compatibility, open spaces, sidewalks, environmental constraints, internal access and circulation, external transportation access, off-street parking, public facilities and unified control; and

WHEREAS, the proposed development plan is consistent with the Downtown Commercial and Historic future land use designation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. The City Commission has held a public hearing to approve the change of zoning from C-2A & H, Downtown Commercial to GlassHouse Square Planned Development (PD), on property located at 130 West New York Avenue, consisting of approximately 0.868 +/- acres of property.

Section 2. Pursuant to the determination made at public hearing, the City Commission hereby amends the Comprehensive Zoning Map of the City to include the land described in Exhibit "A" as GlassHouse Square, Planned Development District.

Section 3. The zoning of the Property as PD, Planned Development District, is made pursuant to Section 33-32 of the Code and the development of the Property shall take place in accordance with that Section and in substantial compliance with the Development Plan Agreement, Maps and other supporting documentation submitted by Applicant which shall be filed and retained for public inspection in the office of the City Planning Department and constitute a supplement to the official Zoning Map of the City.

Section 4. The approved Development Plan for GlassHouse Square PD, Planned Development District, including the Development Plan Agreement, Map and other supporting documentation (on file with the City Planning Department), are attached hereto as Exhibit "B" and by this reference made a part hereof.

Section 5. The failure of the approved Development Plan to address a particular permit, condition, term or restriction shall not relieve the Applicant of the necessity of complying with any law governing said permitting requirements, conditions, terms or restrictions, as same may be amended or enacted from time to time in the future. All current land development regulations of the City are applicable to the PD District except to the extent that they conflict with a specific provision of the approved Development Plan.

Section 6. At the time of development, the Applicant shall comply with all relevant building codes and development standards contained in the City’s Code of Ordinances or in the Development Plan; provided, however, that the development standards contained in the adopted Development Plan shall supersede comparable standards contained in the Code of Ordinances.

Section 7. The City Commission may rezone any portion of the Project which has not obtained a site plan approval within five years from the date of adoption of this Ordinance.

Section 8. Prior to the issuance of a building permit, Applicant shall submit an easement document, acceptable to the City of DeLand, permitting additions to shared access, parking, utilities, and stormwater.

Section 9. Pursuant to Article 5 of the City’s Land Development Regulations, the Applicant shall comply with all applicable infrastructure regulations.

Section 10. The City Engineer, Planning Director, and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

Section 11. No rights to obtain final development orders nor any rights to develop the property have been granted or implied by this Ordinance. Final development orders for the property including, but not limited to, subdivision and site plan approval shall be subject to a determination of concurrency.

Section 12. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 13. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this _____ day of _____, 2023.

Christopher M. Cloudman
Mayor - Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

Passed on first reading:
Adopted on second reading:

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

LEGAL DESCRIPTION

PARCEL A:

The West 73 feet of Lot 3, Block 3 and the East 64.84 feet of Lot 4, Block 3, Map of Howry's Addition to DeLand, according to the map or plat thereof as recorded in Deed Book G, PAGE 701, Public Records of Volusia County, Florida, Less any portion within the Rights of Way of New York Avenue and Georgia Avenue (F/K/A Short Street).

Also described as:

That portion of Lot 3, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", Page 701, Public Records of Volusia County, Florida, lying West of the Westerly line of Miller Hardware Company's Re-Subdivision Map Book 5, Page 156 of aforesaid Public Records, Less any portion lying within the Rights of Way of New York Avenue, a 66 foot wide R/W, and Georgia Avenue (F.K.A. Short Street). Together with that portion of Lot 4, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", Page 701, Public Records of Volusia County, Florida, lying East of the following described line; Beginning at a point on the South line of West New York Avenue, as now laid out 66 feetwide, said point being 191.9 feet East of the center line of S. Florida Avenue, said point also being 57 feet East of the established and recognized Northwest corner of said Lot 4, Block 3, Howry's Addition to DeLand, thence South at right angles to West New York Avenue 274.7 feet, more or less, to a point on the North side of Shore Street sometimes called Georgia Avenue, which point is 184.45 feet East of the center line of S. Florida Avenue, and 57 feet East of the Southwest corner of said Lot 4, Block 3, Howry's Addition as established and recognized and marked by an iron pipe.

GLASSHOUSE SQUARE PLANNED DEVELOPMENT AGREEMENT

CITY COMMISSION OF THE

CITY OF DELAND, FLORIDA

IN RE: (Case #), Application of

GLASSHOUSE SQUARE, LLC

ORDINANCE # _____

ORDER AND RESOLUTION

GRANTING A REQUEST FOR CHANGE OF ZONING FROM C2-A Historic Overlay

(C2 – AH) TO

GLASSHOUSE SQUARE PD (PLANNED DEVELOPMENT)

The application of GlassHouse Square, LLC, (together with its successors and assigns, "Applicant") for rezoning was heard by and before the City Commission, DeLand Florida, on _____, 2022. Based upon the verified Application and other supporting documents, maps, charts, overlays, other evidence and instruments; the advice, report, and recommendations of the Community Development Department, and other City departments and agencies of DeLand, Florida; and the testimony adduced and evidence received at the Public Hearing on this Application by the Planning Board on _____, 2022, and otherwise being fully advised, the City Commission does hereby find and determine as follows:

GENERAL FINDINGS

A. The application of GlassHouse Square, LLC was duly and properly filed herein on October 4th, 2021 as required by law.

B. All fees and costs which are by law, regulation, or Ordinance required to be borne and paid by the Applicant have been paid.

C. The Applicant is the contract purchaser of an approximately 0.868-acre parcel of land situated in DeLand, Florida. This parcel of land is described more

1 particularly in the survey and legal description, a true copy of which is attached hereto as
2 Exhibit "A" (the "Property").

3 D. The City of DeLand is the owner of the Property, which has frontage on W.
4 New York Avenue and W. Georgia Avenue and is the former site of the Volusia County
5 Jail. The Property is located within the DeLand Downtown Community Redevelopment
6 Area as well as the City's Historic District. The existing jail building is in a deteriorated
7 condition, contains asbestos, is unsightly, and is hindering the continued redevelopment
8 that is and has been occurring in the immediate area in which the jail building is located.
9 The City desires that the Property be redeveloped for a mixed use, in-fill project with a
10 variety of permitted uses including, without limitation, general offices, professional offices,
11 medical offices, retail, commercial, multifamily residential and residential lofts, and
12 entertainment and event spaces, all of which are to be consistent with the aesthetic
13 qualities of downtown DeLand, and in furtherance of the City's Downtown DeLand
14 Redevelopment Plan, and the Florida Community Redevelopment Act of 1969, Florida
15 Statutes, Chapter 163. The Applicant intends to redevelop the Property with a mixture of
16 uses including, without limitation, the aforementioned uses, consistent with the terms set
17 forth herein.

18 E. The Applicant has complied with the concept plan provision as required by
19 Land Development Regulations Ordinance # 2013-11, as amended.

20 F. The Applicant has complied with the "Due Public Notice" requirements of
21 the City Commission, Land Development Regulations Ordinance # 2013-11, as amended.

22 G. The owner of the Property agrees with the provisions of the Development
23 Agreement.

24 FINDINGS REGARDING REZONING

25 A. The Applicant has applied for a change of zoning of the Property from the
26 present zoning classification(s) of the Property from C-2A Historic Overlay (C2 – AH) to
27 GlassHouse Square Planned Development (PD).

28 B. The said rezoning to a Mixed Use Planned Development is consistent with
29 both the City of DeLand Comprehensive Plan Ordinance # 1990-04, as amended, and
30 the intent and purpose of the City of DeLand Land Development Regulations Ordinance
31 # 2013-11, as amended, and does promote the public health, safety, morals, general

1 welfare, and orderly growth of the area affected by the rezoning request.

2 NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF
3 DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY
4 COMMISSION CHAMBERS, 120 SOUTH FLORIDA AVENUE, DELAND, FLORIDA,
5 THIS ___ DAY OF _____, A.D., 2023, AS FOLLOWS:

6 A. The Application of GlassHouse Square, LLC for the rezoning of the Property
7 is hereby granted.

8 B. The zoning classification of the Property is hereby amended from C-2A
9 Historic Overlay (C2 – AH) to GlassHouse Square Planned Development (PD) as
10 described in Article VII of the City of DeLand, Land Development Regulations Ordinance
11 # 2013-11, as amended.

12 C. The Official Zoning Map of the City of DeLand, is hereby amended to show
13 the rezoning of said Property to GlassHouse Square Planned Development (PD).

14 D. The City of DeLand Land Development Regulations Ordinance # 2013-11,
15 as amended, is consistent with the provisions of the "Development Agreement" as
16 hereinafter set forth in this Ordinance and with respect to any conflict between Land
17 Development Regulations Ordinance # 2013-11, as amended, and the "Development
18 Agreement", the provisions of the "Development Agreement" shall govern. Ordinance
19 No. 2013-11, as amended, shall govern with respect to any matter not covered by the
20 "Development Agreement." The City of DeLand, will ensure overall compliance with this
21 Ordinance.

22 E. Unless otherwise provided for herein, the City of DeLand, Land
23 Development Regulations, Ordinance # 2013-11, as amended, shall apply to the Property
24 in the same manner as the C2 Historic Overlay (C2 – AH) zoning classification.

25 F. Nothing in this Ordinance shall abridge the requirements of any City of
26 DeLand Ordinance other than Ordinance 2013-11, as amended. Timing and review
27 procedures contained in this Order and Resolution may be modified to comply with the
28 City of DeLand Land Development Regulations, Ordinance No. 2013-11, as amended.
29 Further, nothing in the Development Agreement is intended to abridge the requirements
30 of Ordinance No. 2013-11, as amended, and any other City Ordinances, except as
31 provided herein.

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3 DEVELOPMENT AGREEMENT

4 A. Development Concept. The Property shall be developed as a Planned
5 Development (PD) substantially in accordance with the Planned Development Plan
6 described below. The Planned Development Plan shall govern the development of the
7 Property as a Planned Development and shall regulate the future land use of the Property.

8 1. Planned Development Plan. The Planned Development Plan shall
9 consist of the attached Development Plan Map prepared by CPH, Inc. (as modified by
10 Exhibit "C" for Phase 1) and this Development Agreement. The Development Plan Map
11 is hereby approved and incorporated in this Ordinance by reference as Exhibit "B" and
12 Exhibit "C". The Planned Development Plan shall be filed and retained for public
13 inspection in the Planning Department and it shall constitute a supplement to the Official
14 Zoning Map of the City of DeLand.

15 2. Amendments. All amendments of the Planned Development Plan
16 shall require the review and recommendation of the Planning Board and action by the
17 City Commission in the same manner as a rezoning of the parcel. The foregoing
18 notwithstanding, minor amendments not altering the intent and purpose of the Planned
19 Development Plan may be approved by the Planning Director after such departmental
20 comment as he or she deems appropriate. The Planning Director may not authorize
21 administrative amendments which change approved land uses or location thereof, the
22 development standards set forth in Section E of this Development Agreement, or any
23 special condition, or any specific requirement of this Development Agreement.

24 3. Subdivision Approval. Subdivision Plat Approval is not required. If
25 Applicant chooses to subdivide the Property, aa preliminary and a final plat application
26 for the area to be subdivided shall be submitted for review and approval in the manner
27 required by Article 13 of the City of DeLand Land Development Regulations, Ordinance
28 No. 2013-11, as amended.

29 4. Final Site Plan Approval. After the Planned Development Plan is
30 recorded and prior to issuance of any permits for construction, other than for asbestos
31 abatement, demolition, clearing and landfill by the City of DeLand, a Final Site Plan shall

1 be prepared and submitted for review and approval in the manner required by Article 12
2 of the City of DeLand, Land Development Regulations Ordinance # 2013-11, as
3 amended.

4 B. Unified Ownership. The Applicant shall maintain unified ownership of the
5 Property (after title is conveyed to it) until after issuance of the Final Site Plan
6 Development Order.

7 C. Phases of Development. Applicant may, in its sole discretion, develop the
8 Property in two (2) phases and, if Applicant so elects, the order of the phases for
9 development shall be sequential (i.e., Phase 1 shall precede Phase 2). Applicant may
10 commence development of Phase 2 prior to completion of Phase 1, but the Certificate of
11 Occupancy for Phase 2 shall not be issued until Phase 1 is substantially completed.

12 D. Land Uses Within the PD. The development of the Property shall be
13 consistent with the uses prescribed for each area within the proposed GlassHouse
14 Square Planned Development. The location and approximate size of said land use areas
15 are shown on the Development Plan Map, Exhibit "B". The following land uses shall be
16 allowed as permitted principal uses, conditional uses, and special exceptions, along with
17 their customary accessory uses and structures:

18 1. All permitted uses, conditional uses, and special exceptions within the C2
19 – AH zoning district, subject to the following restrictions:

20 a. Financial Institutions and restaurants, are permitted only without
21 drive through service.

22 b. Drugstore and pharmacies, are permitted only without drive through
23 service.

24 c. Uses requiring a DBPR 3PS liquor license (package sales) may be
25 permitted as a special exception.

26 d. Residential units are only allowed on the second floor of Building 2.

27 e. Nursing homes are not a permitted use.

28 f. Commercial parking lots are not permitted as a primary use.

29 2. Outdoor entertainment.

30 3. Outdoor events including, without limitation, weddings, receptions, parties,
31 farmers' markets, food trucks, outdoor markets, temporary vendor booths,

1 concerts, and festivals. These events may be open to the public or may be private,
2 and may include outdoor consumption of alcohol.

3 4. Gallery (commercial).

4 5. Research and Development facilities.

5 6. Pet Supply store.

6 7. Craft beverage and food sales and production.

7 8. Craftsmen shops.

8 9. Structures associated with the uses listed, such as shade structures, fixed
9 awnings, and porticos.

10 E. Development Standards. The minimum site design regulations that will be
11 used to govern development within the in PD are as follows:

12 1. Minimum lot area - no minimum.

13 2. Minimum lot width and/or depth - no minimum.

14 3. Minimum yard size (building) - no minimum.

15 4. Maximum front yard – 10 feet along New York Avenue and
16 Georgia Avenue.

17 5. Minimum stories and floor area:

18 a. Building 1 as shown on the Development Plan Map (“Building 1”)
19 - Not less than two (2) stories and not less than 20,000 gross square feet.

20 b. Building 2 as shown on the Development Plan Map (“Building 2”)
21 - Not less than two (2) stories and not less than 7,000 gross square feet.

22 6. Maximum stories and building height:

23 a. Building 1 - Maximum of two (2) stories, plus rooftop space.
24 The top of all enclosures shall be not more than sixty (60') feet above the finished
25 floor elevation of the first floor of the building.

26 b. Building 2 –Maximum of two stories and forty (40') feet
27 above the finished floor elevation of the first floor of the building.

28 7. Maximum lot coverage:

29 100%.

30 8. Landscape requirements - No perimeter landscape buffer or other
31 landscaping is required.

1 9. Perimeter building setbacks:

2 5 foot minimum setback on the entire east property line. There is no setback
3 required on the north, south or west property lines.

4 10. Minimum building separation –

5 None.

6 11. Off-street parking requirements.

7 a. Required spaces/optional mitigation fee: Applicant contemplates
8 developing the Property in phases and shall provide a minimum of forty (40) parking
9 spaces for Phase 1 and ten (10) parking spaces for Phase 2, for a total parking
10 requirement of not less than fifty (50) spaces. In lieu of providing actual parking spaces,
11 Applicant may elect to satisfy some or all parking space requirements by paying a parking
12 mitigation fee to City. The parking mitigation fee, if opted by Applicant, shall be in the
13 amount of Ten Thousand (\$10,000.00) Dollars per each parking space elected by
14 Applicant to be satisfied through payment of the parking mitigation fee. The City shall use
15 such funds for development of public parking.

16 b. Location:

17 i. For Phase One:

18 Parking may be located onsite in combination with offsite parking
19 lot(s) or payment of the parking mitigation fee, or both. If applicant elects to have onsite
20 parking for Phase 1 the total number of onsite spaces and configuration shall be generally
21 in accordance with Exhibit C and shall not exceed fifteen (15) spaces. Any such onsite
22 parking area may be limited to access for tenants and customers, or otherwise, at any
23 time between the hours of 2:00 a.m. and 5:00 p.m.. Development of onsite parking with
24 permeable pavers or similar materials is permitted. In lieu of standard code dimensional
25 requirements, Applicant may elect to provide drive aisle widths of 20' or more. Driveway
26 access to the onsite parking shall not be through the Pedestrian Walkway. Parking space
27 dimensions shall be in accordance with code. Applicant is permitted but, notwithstanding
28 the depiction shown on Exhibit C, not required to provide islands, trees or landscaping for
29 the onsite parking lot.

30 ii. For Phase Two:

31 Parking requirements shall be met either offsite or by payment of the

1 parking mitigation fee, or by a combination of both.

2 c. Offsite parking:

3 It is anticipated that the Applicant or its successors may seek variances or
4 other accommodations from City related to the design of its offsite parking lot(s), to the
5 extent reasonably necessary to make efficient use of space in the downtown area. Offsite
6 parking, if any, shall be in a lot(s) which is within 800 feet of the Property in order to count
7 for purposes of the minimum parking requirements. For the sake of clarity, this means
8 that the nearest point on any parcel of property upon which offsite parking lot(s) is located
9 shall be within 800 feet of any point on the boundary of the Property. The exact location
10 of the offsite parking lot(s), if any, are subject to approval by the City Commission, which
11 approval shall not constitute an amendment to this Development Agreement.

12 d. Land development code standards. Except as otherwise provided
13 herein, issues involving the parking shall be addressed in the site plan review process
14 and parking shall otherwise be provided in accordance with the Land Development
15 Regulations Ordinance No. 2013-11, as amended.

16 12. Signage requirements. Notwithstanding Section 33-73.02, market
17 lights (i.e., strands of lights) are permitted in the Pedestrian Walkway, onsite parking area
18 permitted in Phase 1 and the Plaza without staff approval, subject to Applicant complying
19 with Section 33-73.02 (f) 2. and 3. The Pedestrian Walkway and Plaza may be treated as
20 additional street frontages, and each building may be treated as a separate parcel, to the
21 extent doing so allows Applicant greater allowance in the height, dimensions, location or
22 number of signs, or otherwise allows Applicant greater flexibility in regard to signage. For
23 purposes of determining permitted signage, Building 2 shall not be considered a
24 residential land use. Except as otherwise provided herein, signs shall comply with
25 applicable requirements of the Land Development Regulations Ordinance No. 2013-11,
26 as amended, Article VII, Signs, as applicable to the C2- AH district.

27 13. Open Space/Common Area. Notwithstanding the requirements of
28 the City's Land Development Code, open space and/or common area requirements for
29 the Property shall be satisfied by the pedestrian walkway shown as "Glasshouse
30 Alleyway" on the Development Plan Map ("Pedestrian Walkway"), and gathering space
31 shown as "Plaza Area" on the Development Plan ("Plaza"), which satisfy such

1 requirements. These requirements shall be initially satisfied in development of Phase 1.
2 Notwithstanding that the Plaza and Pedestrian Walkway are depicted on the
3 Development Plan as completely paved, Applicant may include landscaping and other
4 improvements to beautify them. Provided, however, such improvements must allow the
5 Pedestrian Walkway to continue to function as a pedestrian way.

6 14. Architectural Design Standards: The Architectural standard for the
7 Property shall be consistent with the aesthetic qualities of downtown DeLand and
8 complementary to the brick architecture which currently exists along Georgia Avenue.
9 Full-depth brick veneer which gives the appearance of brick construction is permissible.
10 Subject to review through the City's Historic Preservation Board process, the materials,
11 general architectural standards, elevations and concepts set forth on Exhibit D shall apply
12 to the Property, and are deemed consistent and complementary with said aesthetic
13 qualities and architecture along Georgia Avenue. Reflective glass shall not be used for
14 windows on the first floor of either building. Any materials lawfully approved by the City's
15 Historic Preservation Board may be used, in addition to or in lieu of those shown on
16 Exhibit D.

17 15. Minimum residential unit exterior sound attenuation: Sound
18 Transmission Class (STC) 60 Rating for exterior walls. For fenestration: STC35. (As
19 established by LEED Enhanced Acoustical Credits).

20 16. Residential units – The maximum number of residential units on the
21 Property is five (5). Residential units shall be permitted only in Building 2.

22 17. Pedestrian Walkway – The Pedestrian Walkway, will be generally left
23 open to the public during the hours of 8:00 a.m. until midnight. However, it is
24 contemplated Applicant may close it for private events and may leave it open to the public
25 for longer hours than stated above. It may also be used for landscaping, utilities, storm
26 water vaults, emergency access, conducting repair and maintenance of improvements
27 both on and off the Property, and for vehicular access. Outdoor seating for restaurants is
28 also contemplated for the Pedestrian Walkway. There shall be a separate agreement
29 entered into between Applicant, or its successors or assigns, and the City, consistent with
30 this Development Agreement, regulating specific parameters related to the public use of
31 the Pedestrian Walkway, the adoption or future amendment of which shall not be deemed

1 a zoning of the Property. Either or both buildings shall be permitted to overhang the
2 Pedestrian Walkway provided a ground clearance of at least 14 feet shall be maintained
3 for permanent structures. Connectivity with the adjoining property to the east, and
4 improvements to facilitate such connectivity are both permitted and encouraged.

5 F. Environmental Considerations. The Property is currently covered by
6 structures and hardscape and contains no trees and no green space. Although trees and
7 landscaping are not required under current code (Section 33-57.07), even if such code
8 provisions change in the future, no tree protection area or landscaping shall be required.

9 G. Sewage Disposal and Potable Water. Provision for sewage disposal and
10 potable water needs of the PD will be provided in accordance with the Comprehensive
11 Plan, Ordinance No.1990-04, as amended, the Land Development Regulations
12 Ordinance No. 2013-11, as amended, and State of Florida Administrative Code 64E-6.

13 H. Stormwater Drainage. Provision for stormwater retention shall be in
14 accordance with the requirements of the St. Johns River Water Management District
15 ("SJRWMD"). Neither the City's land development regulations, nor any other applicable
16 regulation of the City shall impose any on-site storm water treatment or storage
17 requirements which are in any way greater than SJRWMD's requirements. It is
18 anticipated that all stormwater from the Property will outfall to the City's Stormwater
19 System. Pursuant to a separate agreement, the City has the option to install or upsize (as
20 the case may be), and maintain, an underground stormwater system beneath the
21 Pedestrian Walkway, to the extent space and capacity is available therefor, as determined
22 by sound engineering principles.

23 I. Access and Transportation System Improvements. All access and
24 transportation system improvements shall be provided in accordance with the Land
25 Development Regulations, Ord. 2013-11, as amended. The Property shall be developed
26 in substantial accordance with the following access and transportation system
27 improvements. Vehicular access may be provided to the Property from New York Avenue
28 on the Pedestrian Walkway, and from Georgia Avenue. The Applicant may restrict or
29 prohibit public vehicular access to the Property.

30 J. Internal Roadways. No internal roadways are anticipated at this time.

31 K. Building or Property Owners Association. It is not the current intent of the

1 Applicant to subdivide the Property and therefore no building or property owner's
2 association would be required. However, if the Applicant or its successors or assigns later
3 subdivide the Property, then an owners association shall be required. With respect to the
4 enforcement of agreements, covenants, easements, or restrictions entered into between
5 the Applicant and the owners' or occupiers of property within the GlassHouse Square
6 Planned Development, the City of DeLand shall only enforce the provisions of the
7 "Development Agreement" and City of DeLand Land Development Regulations
8 Ordinance # 2013-11, as amended, whichever is applicable, and not the private
9 agreements entered into between the aforementioned parties.

10 L. Other:

11 1. Minimizing Disruption. Development of the Property:

12 a. Building 1 shall be designed to reasonably minimize the disruption to
13 the existing public parking on the City's parcel, Tax Parcel No. 7016-01-03-0070, without
14 unreasonably interfering with construction of the project(s) on the Property.

15 b. The site plan for each phase shall include measures to mitigate
16 disruption to such existing public parking, which shall be part of the City's review process
17 and shall be depicted on the site plan for each respective phase. Such mitigation
18 measures may include, without limitation, the Applicant maintaining its laydown area and
19 all construction staging operations on the Property or on the City's lot located at 224 South
20 Florida Avenue, or other measures to avoid impacts to Georgia Avenue.

21 c. Prior to construction, a standard pre-construction survey of
22 immediately adjacent buildings shall be conducted. Further, prior to construction a
23 vibration monitoring plan must be approved by the City engineer, chief building official or
24 other qualified person designated by the City Manager. For all phases of construction as
25 determined appropriate by Applicant's engineer, construction vibration monitoring shall
26 be conducted. Pile driving and vibratory compaction construction methods shall be
27 avoided in Applicant's development of the Property. Provided, however, where
28 determined appropriate by the Applicant's geotechnical engineer, such processes may

be utilized for implementation of sheeting and shoring, or other appropriate solution, where implemented to protect nearby structures as a result of excavation in the vicinity of such existing structures.

d. For clarification, the “use occupancy” of the Property under the City’s Noise Ordinance (Ordinance No. 75-7, as amended) is deemed to be commercial.

e. Prior to commencement and during the period of site development and construction of the buildings on the Property, Applicant or its contractor shall procure and maintain insurance for general liability arising out of such activities, with policy limits of at least \$5 Million (including umbrella coverage), per occurrence. Such insurance shall be maintained in place at all times during construction or development. Applicant or its contractor shall cause a certificate of insurance to be provided to the City’s Risk Manager, demonstrating such coverage, prior to commencement of site development and construction.

2. Additional Restrictions. The following additional restrictions apply to the Property, as set forth below:

a. Building 1 (Shall be Phase 1, if development occurs in phases.)	FIRST FLOOR *Not to exceed 10,500 GSF provided, however, allowable area (not to exceed an additional 2,000 GSF) may be permitted upon Applicant addressing any additional demand for parking, as may be reasonably determined by City staff. *No more than 30% of 1 st floor space to be for general, professional, medical or government offices. *No residential use.
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	SECOND FLOOR *Not to exceed 10,500 GSF provided, however, allowable area (not to exceed an additional 2,000 GSF) may be permitted upon Applicant addressing any additional demand for parking, as may be reasonably determined by City staff. *No residential use.
	ROOFTOP *Not to exceed 10,500 GSF. *Rooftop space enclosures including, without limitation, enclosures for stairways, elevator landing, enclosed restroom, and other enclosures, shall not exceed 1,500 GSF. * All enclosures except for stairway enclosures, elevator shafts and landings, and mechanical rooms shall be set back at least 10 feet from the edge of the roof. *No residential use.

1

b. Building 2 (Shall be Phase 2, if development occurs in phases	FIRST FLOOR – *Not to exceed 4,200 GSF provided, however, allowable area (not to exceed an additional 1,000 GSF) may be permitted upon Applicant addressing any additional demand for parking, as may be reasonably determined by City staff. *No more than 30% of 1st floor space to be general, professional, medical or government offices. *No residential use.
--	---

	SECOND FLOOR - *Not to exceed 5,000 GSF provided, however, allowable area (not to exceed an additional 1,000 GSF) may be permitted upon Applicant addressing any additional demand for parking, as may be reasonably determined by City staff.
--	--

3. Before issuance of the Certificate of Occupancy for Building 1, Applicant shall construct the Plaza and Pedestrian Walkway, as generally consistent with the Development Plan Map.

4. Except as otherwise provided herein, the City of DeLand Land Development Regulations, Ordinance Number 2013-11, as amended, shall apply to the Property in the same manner as the C-2 Historical Overlay (C2 – AH) zoning classification.

M. Reverter Provision: (i) Provided the Applicant has commenced development of the project within five (5) years from the Effective Date (as defined below) and has completed development or has continued to actively develop ongoing phases as demonstrated by issuance of development permits and building permits, or actual construction activities, then no rezoning by the City shall occur unless otherwise requested by the then owner. (ii) If the Applicant does not meet the guidelines under subsection (i) above, the City Commission may rezone any portion of the Property which has not secured a final development order on or before 5 years from the Effective Date of this ordinance as may be necessary or appropriate to protect adjoining properties or the public health, safety, and welfare, unless the City Commission shall extend the time indicated in this paragraph.

N. Binding Effect of Plans; Recording; and Effective Date. The Planned Development Plan, including any and all amendments, shall bind and inure to the benefit of the Applicant. The PD zoning, provisions of the "Development Agreement," and all approved plans shall run with the land and shall be administered in a manner consistent with Article 12 of the City of DeLand Land Development Regulations Ordinance # 2013-11, as amended.

This Ordinance and all subsequent amendments shall be filed with the Clerk of the Court and recorded within forty-five (45) days following its effective date as defined below,

1 in the Public Records of Volusia County, Florida. One copy of the document, bearing the
2 book and page number of the Official Record in which the document was recorded, shall
3 be submitted to the Planning Department for placement in the public file. The Applicant
4 shall pay all filing costs for recording documents.

5 This Ordinance and Development Agreement shall become effective on the date
6 on which title to the Property, more particularly described in the Exhibit "A" attached
7 hereto, is transferred by the City of DeLand to the Applicant. in accordance with that
8 certain Acquisition and Redevelopment Agreement dated July 9, 2020, as amended.
9 Should said agreement be terminated, then this Ordinance and Development Agreement
10 shall be of no further force or effect.

DONE and ORDERED by the City Commission, City of DeLand, Florida,
this ____ day of _____, 2023.

ATTEST:

City Commission of DeLand Florida

Michael Pleus
City Manager

Christopher M. Cloudman
Mayor

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2023 by Michael P. Pleus and Christopher M. Cloudman, as City Manager and Mayor, City of DeLand, respectively, on behalf of the City of DeLand, and who are personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name:

Commission No.: _____
My Commission Expires: _____

1
2 WITNESSES:

GLASSHOUSE SQUARE, LLC, a
Florida limited liability company

3
4
5
6 By: _____

Michael Prelec, Manager

7
8
9
10
11
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15 STATE OF FLORIDA
16 COUNTY OF VOLUSIA
17

18 The foregoing instrument was acknowledged before me by means of ☐
19 physical presence or ☐ online notarization this ____ day of
20 _____, by Michael Prelec, Manager of Glasshouse Square,
21 LLC, who is personally known to me or who has produced
22 _____ as identification.
23
24

25
26 NOTARY PUBLIC, STATE OF FLORIDA
27 Type or Print Name:
28

29
30 Commission No.: _____
31 My Commission Expires: _____
32
33

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EXHIBIT A
LEGAL DESCRIPTION

LEGAL DESCRIPTION

PARCEL A:

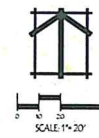
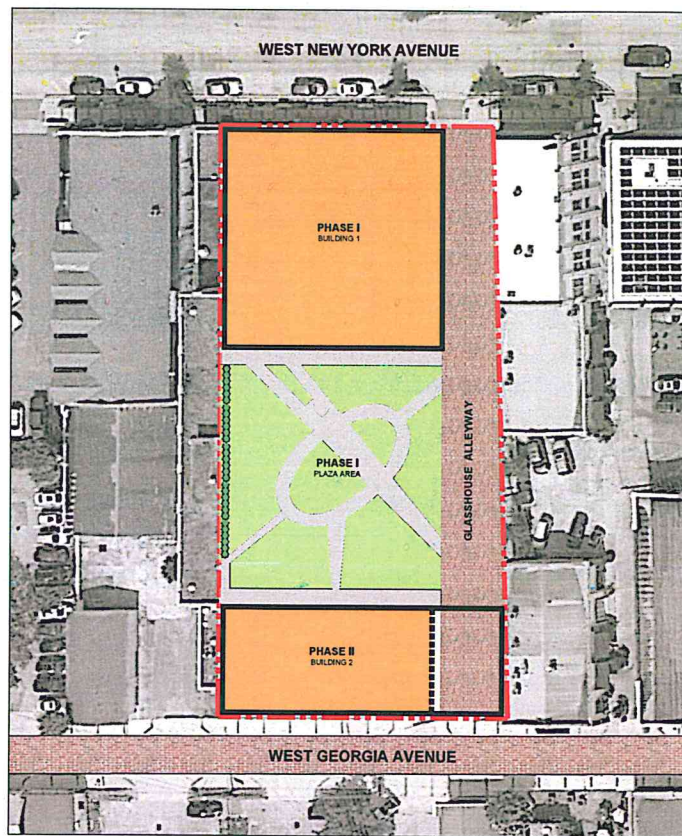
The West 73 feet of Lot 3, Block 3 and the East 64.84 feet of Lot 4, Block 3, Map of Howry's Addition to DeLand, according to the map or plat thereof as recorded in Deed Book G, PAGE 701, Public Records of Volusia County, Florida, Less any portion within the Rights of Way of New York Avenue and Georgia Avenue (F/K/A Short Street).

Also described as:

That portion of Lot 3, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", Page 701, Public Records of Volusia County, Florida, lying West of the Westerly line of Miller Hardware Company's Re-Subdivision Map Book 5, Page 156 of aforesaid Public Records, Less any portion lying within the Rights of Way of New York Avenue, a 66 foot wide R/W, and Georgia Avenue (F.K.A. Short Street). Together with that portion of Lot 4, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", Page 701, Public Records of Volusia County, Florida, lying East of the following described line; Beginning at a point on the South line of West New York Avenue, as now laid out 66 feetwide, said point being 191.9 feet East of the center line of S. Florida Avenue, said point also being 57 feet East of the established and recognized Northwest corner of said Lot 4, Block 3, Howry's Addition to DeLand, thence South at right angles to West New York Avenue 274.7 feet, more or less, to a point on the North side of Shore Street sometimes called Georgia Avenue, which point is 184.45 feet East of the center line of S. Florida Avenue, and 57 feet East of the Southwest corner of said Lot 4, Block 3, Howry's Addition as established and recognized and marked by an iron pipe.

1
2
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EXHIBIT B
DEVELOPMENT PLAN MAP

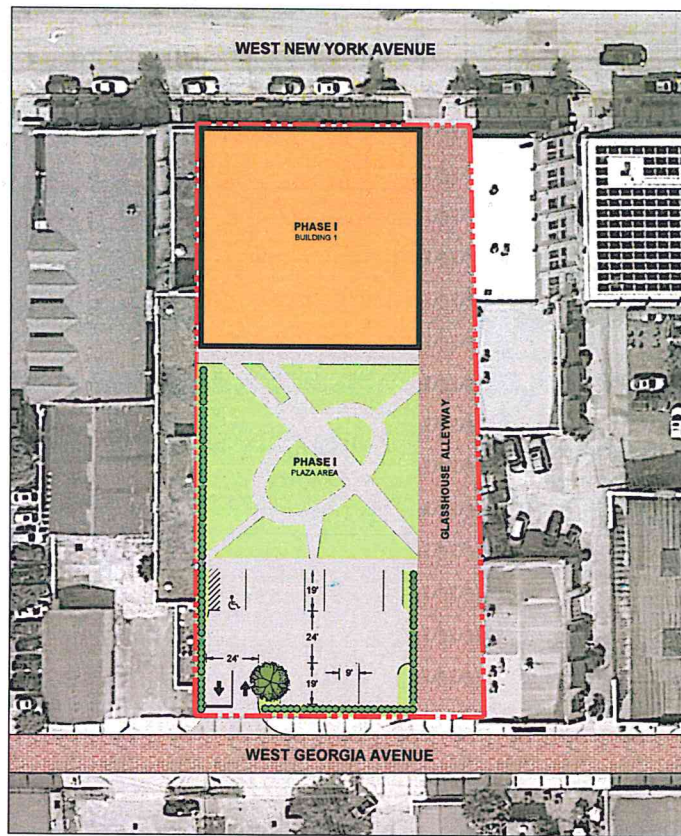


PHASE II - DEVELOPMENT PLAN
January 11, 2023



1
2
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EXHIBIT C
PARKING PLAN

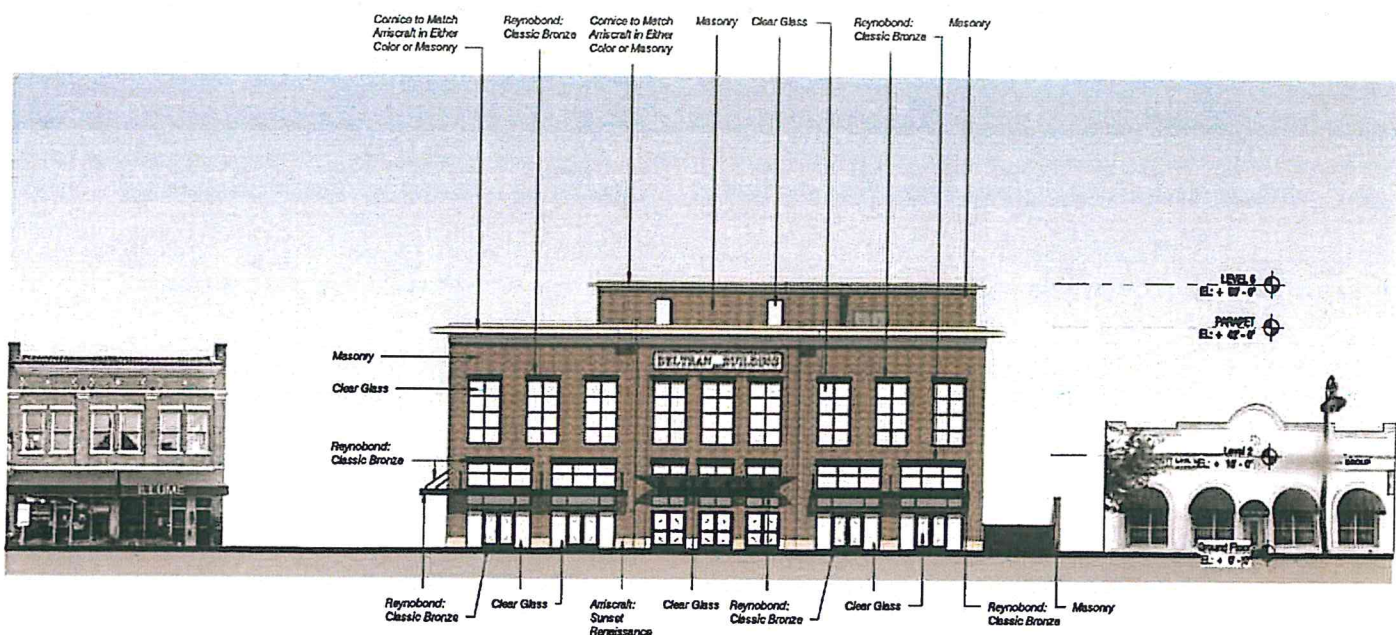


PHASE I - DEVELOPMENT PLAN
January 11, 2023



1
2
3

EXHIBIT D
ARCHITECTURAL STANDARDS



All measurements are subject to change. Not for construction.

GLASSHOUSE SQUARE - Schematic Design - PD Submittal

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NORTH ELEVATION - A

1/16" = 1'-0"

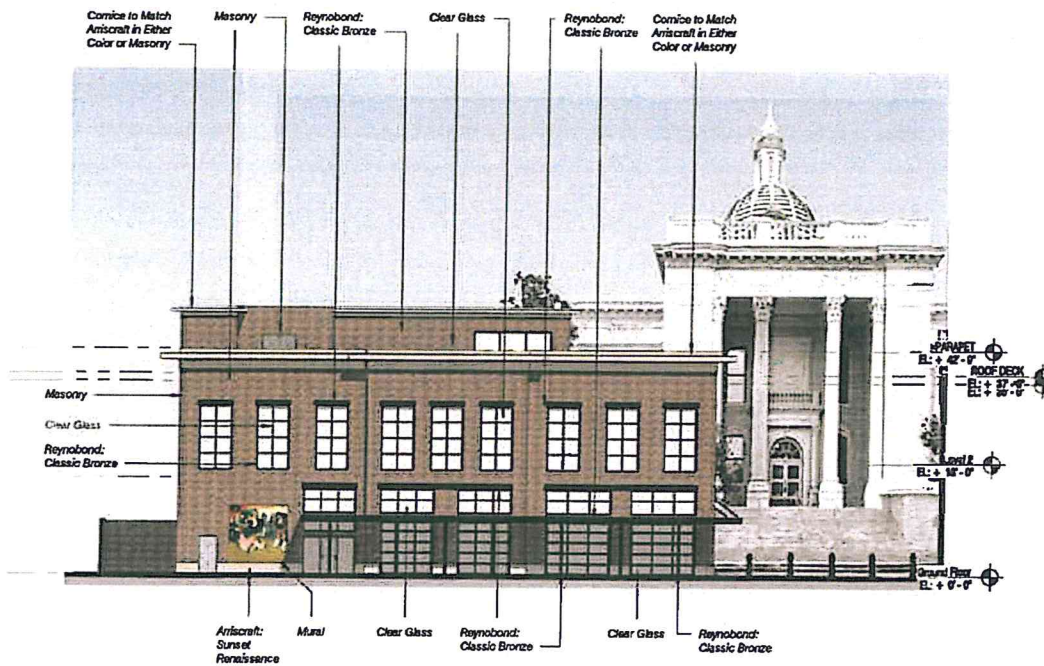
July 20, 2021

ZYSCOVICH
ARCHITECTS

3508 Park Ave. Ste 510
Winter Park, FL 32789
1 407.924.1859

• info@zyscovich.com
• www.zyscovich.com

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SOUTH ELEVATION - A

1/16" = 1'-0"

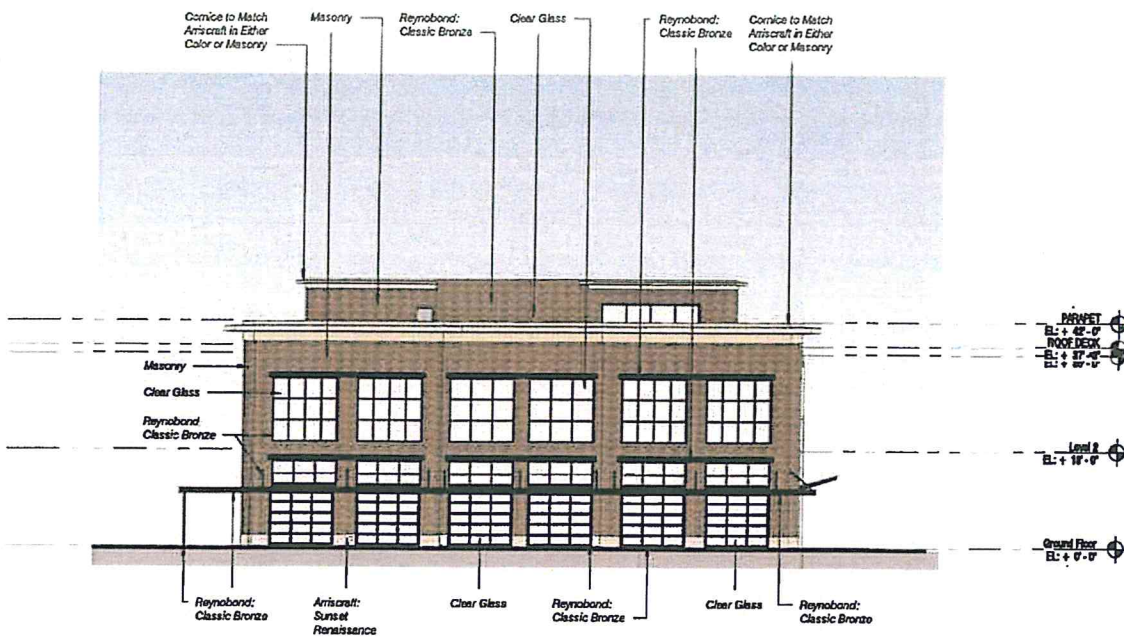
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320 S Park Ave., Ste 310
West Park, FL 32789
1 407.474.1469

e info@zyscovich.com
w www.zyscovich.com

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EAST ELEVATION - A

1/16" = 1'-0"

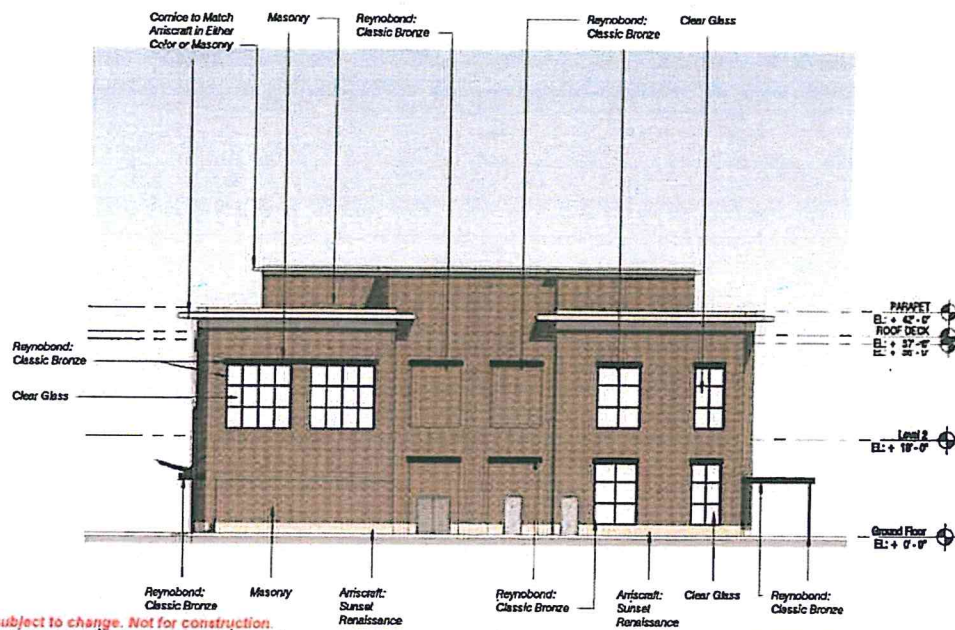
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ARCHITECTS

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WEST ELEVATION

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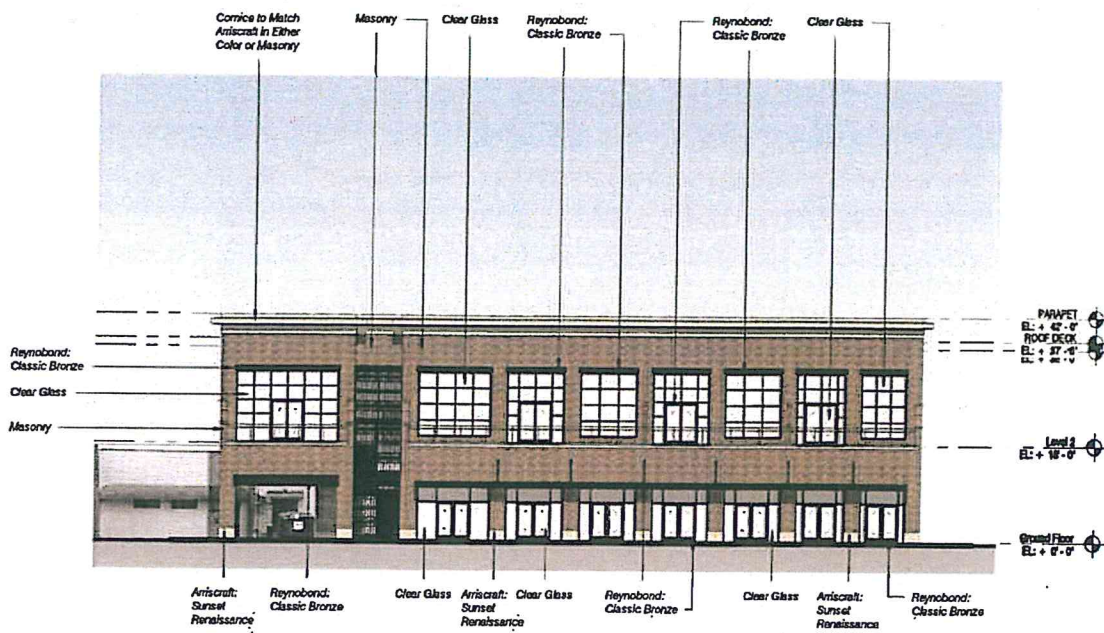
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1 407.574.1850

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NORTH ELEVATION - B

1/16" = 1'-0"

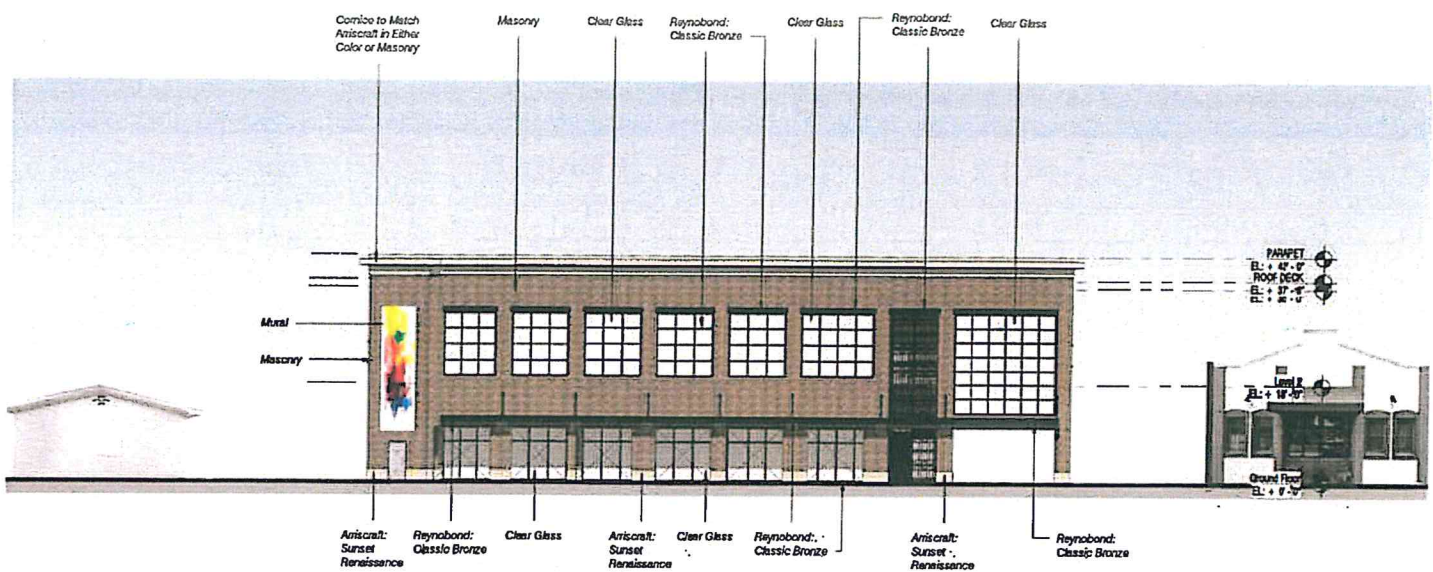
July 20, 2021

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ARCHITECTS

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Miami Park, FL 33155
1 407.674.1908

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SOUTH ELEVATION - B

1/16" = 1'-0"

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1-407-874-1169

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VIEW 1

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ARCHITECTS

2500 Park Ave., Ste 310
Winter Park, FL 32789
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VIEW 2

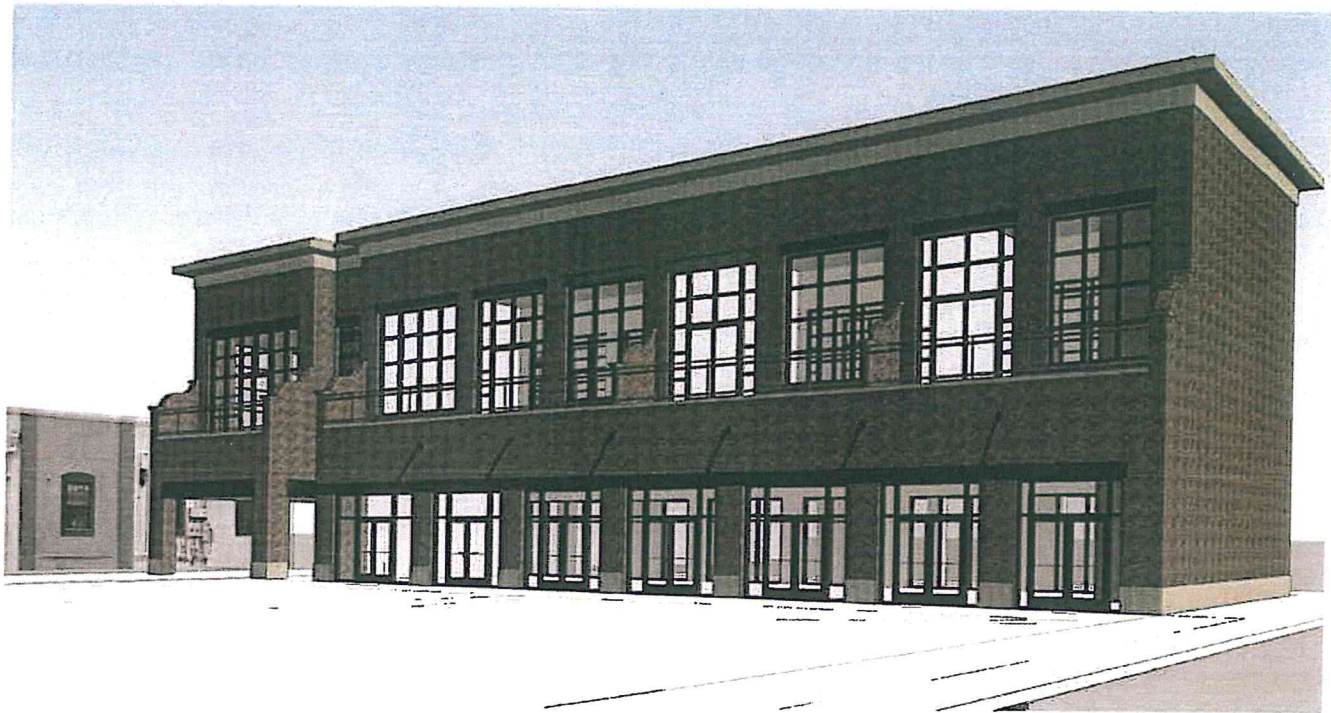
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222 S. Park Ave., Ste 515
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VIEW 4

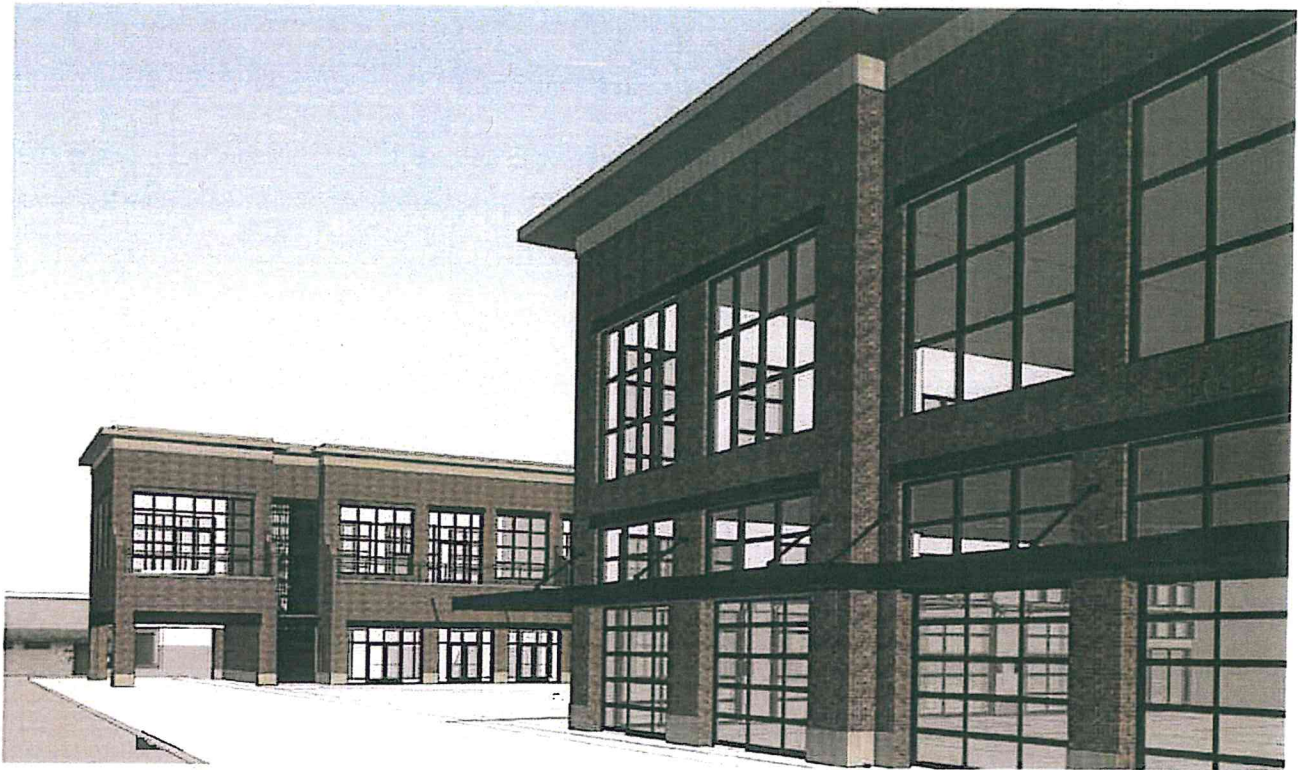
July 20, 2021

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ARCHITECTS

320 S Park Ave., Ste 510
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VIEW 5

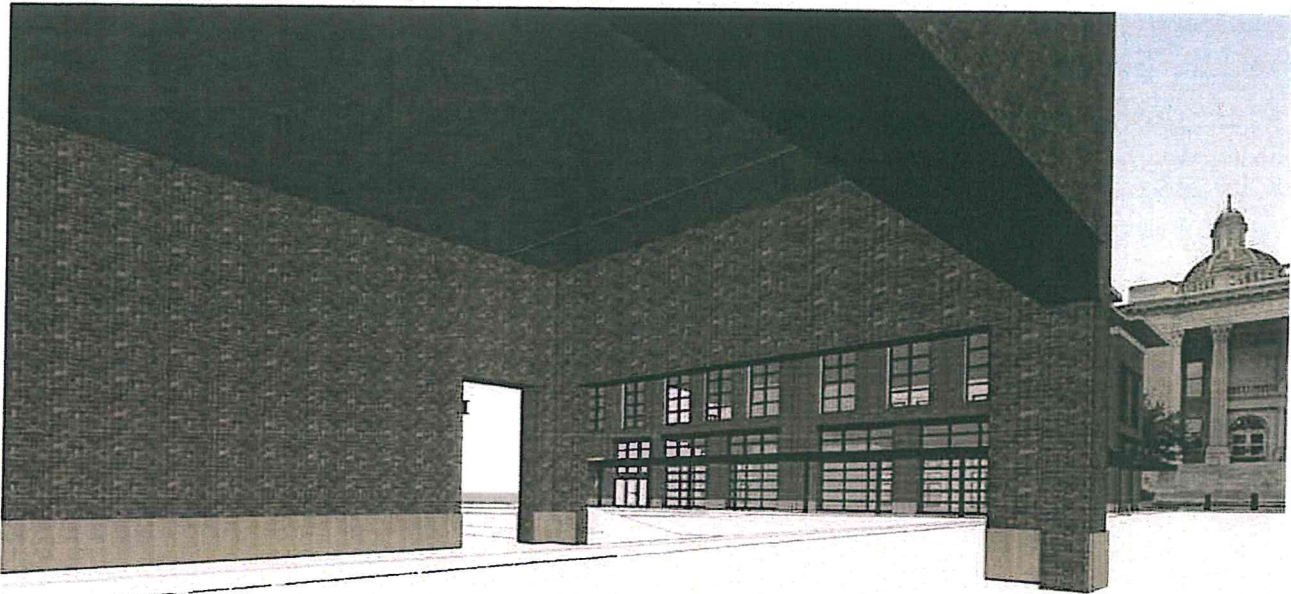
July 20, 2021

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ARCHITECTS

250 S. Park Ave., Ste 210
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VIEW 6

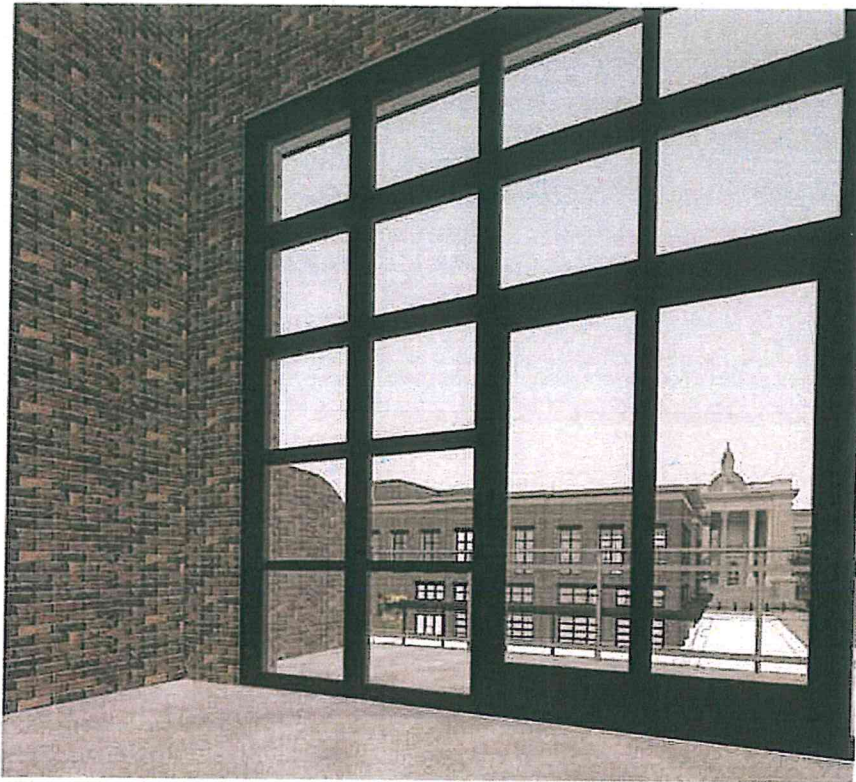
July 20, 2021

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ARCHITECTS

250 N. Park Ave., Ste 210
Winter Park, FL 32789
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VIEW 7

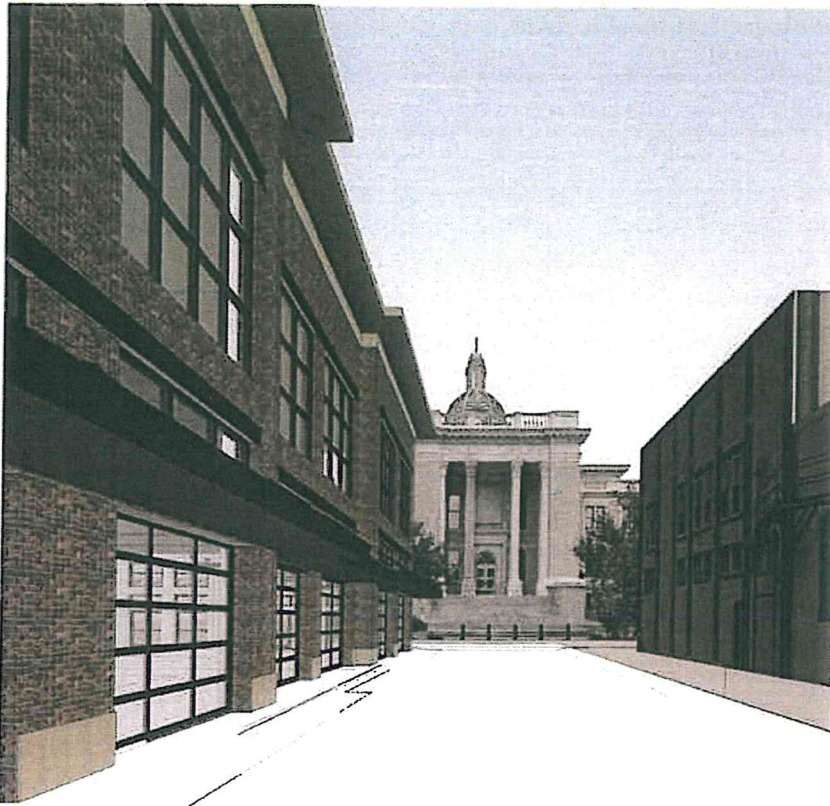
July 20, 2021

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250 S. Park Ave., Ste 810
West Palm Beach, FL 33411
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VIEW 8

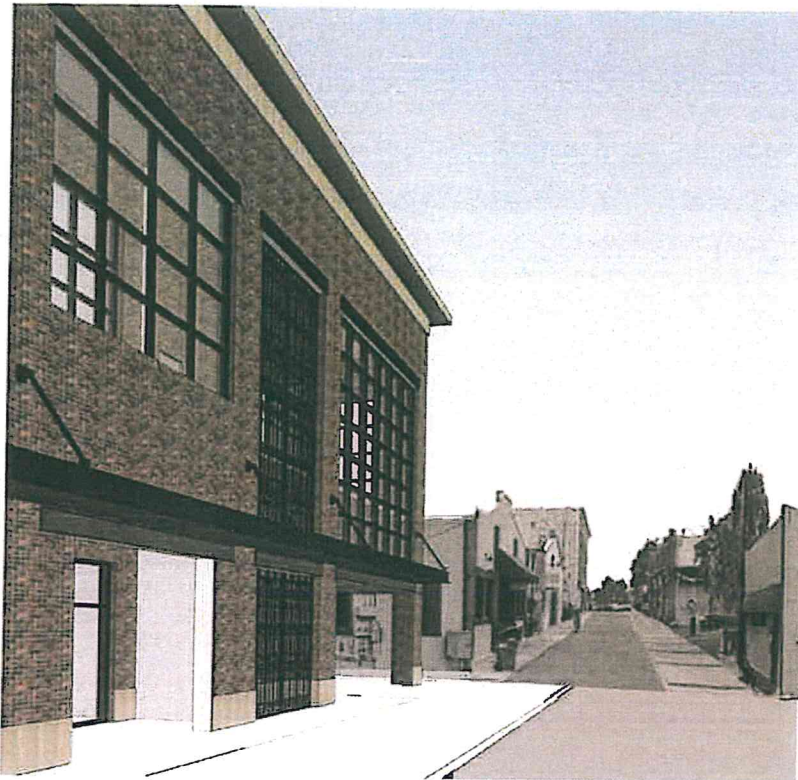
July 20, 2021

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ARCHITECTS

200 S. Park Ave., Ste 810
Winter Park, FL 32789
P 407.824.1000

E info@zyscovich.com
W www.zyscovich.com

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t 407.274.1858

e info@zyscovich.com
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24

TOTAL SIGN / COPY AREA = 0.5 SF PER 1 LINEAR FT OF BUILDING FRONTAGE
 114.54 LIN FT X 0.5 SF = 57.27 SF OF COPY AREA
 DELTRAN BUILDING SIGN = 26.99 SF
 (4) FUTURE SIGNS = 7 SF EACH = 28 SF



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North Elevation Copy Area

1/16" = 1'-0"

July 20, 2021

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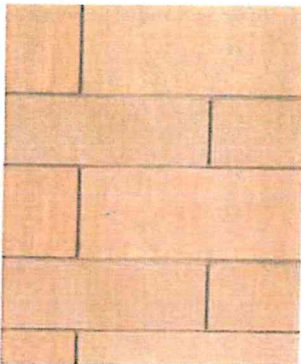
250 S Park Ave., Box 510
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1-407-924-1000

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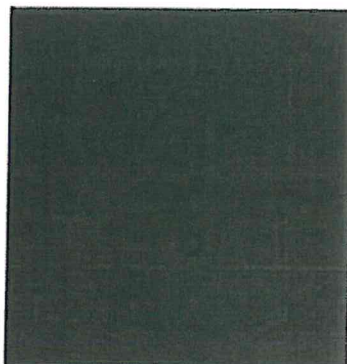
25

GLASSHOUSE

MATERIALS



ARRISCRAFT:
SUNSET RENAISSANCE
(CORNICES AND TRIMS WILL
MATCH IN EITHER COLOR OR
MASONRY)



CLASSIC BRONZE REYNOBOND
(STOREFRONTS AND CANOPIES)



ELDORADO STONE: BRACCIANO
ROMABRICK



COLOMBUS BRICK COMPANY:
BURLINGTON QUEEN

GROUT: AMERIMIX. DANDELION

VIRACON
800.533.2000 / viracon.com

VT	81%
Ext. Reflection	8%
Winter U-Value	1.02
Summer U-Value	.93
SC	1.03
SHGC	.90
LSG	1.61

CLEAR GLASS: VIRACON

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Material Board

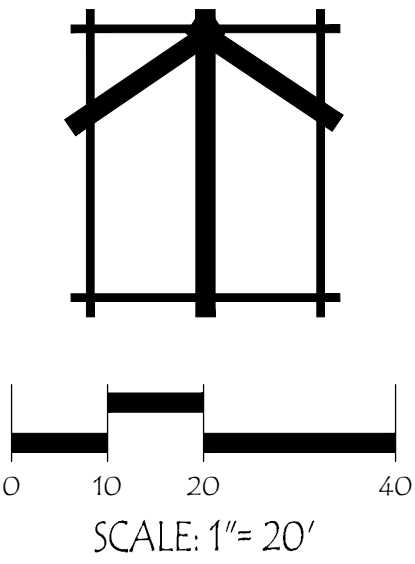
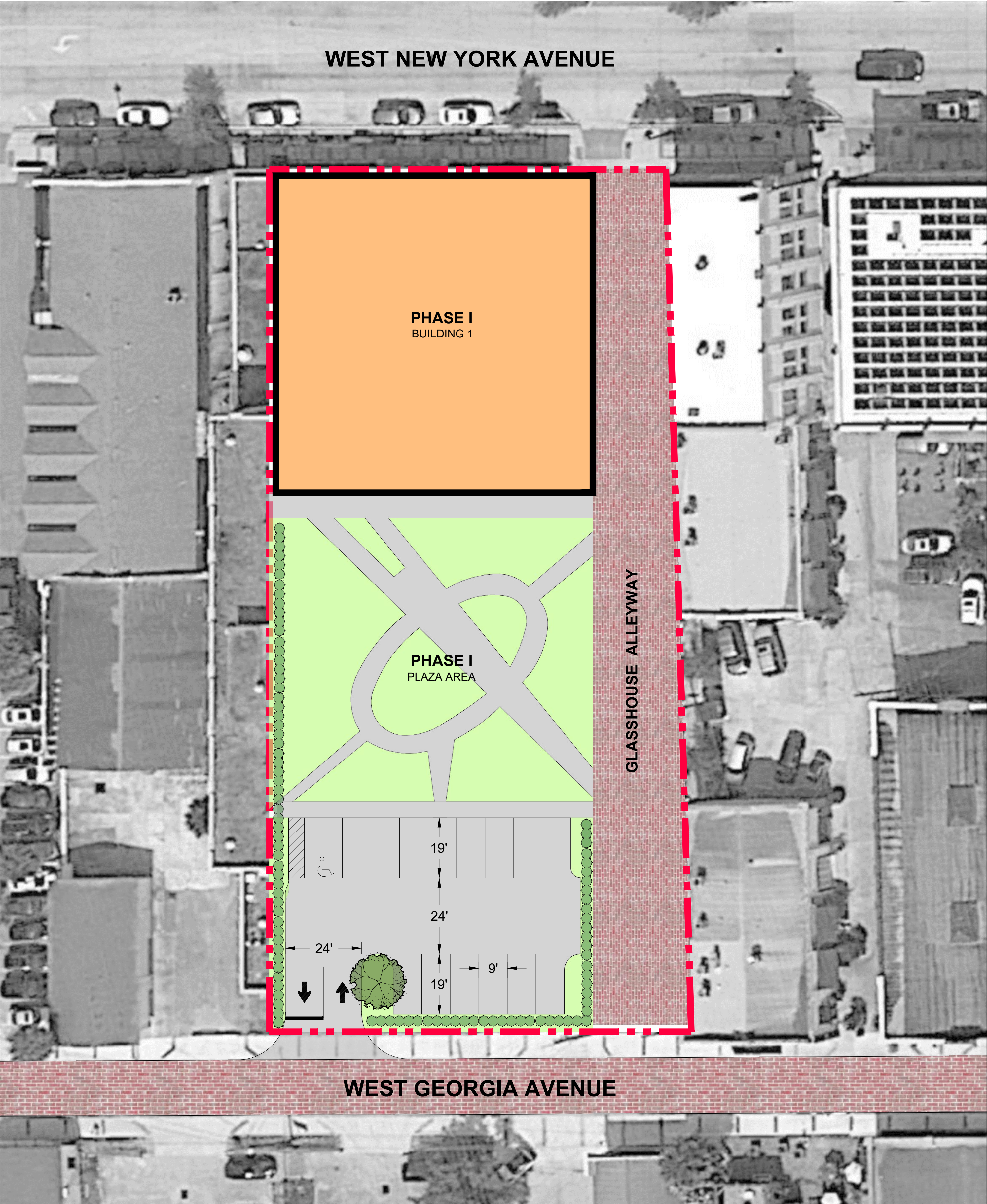
July 20, 2021

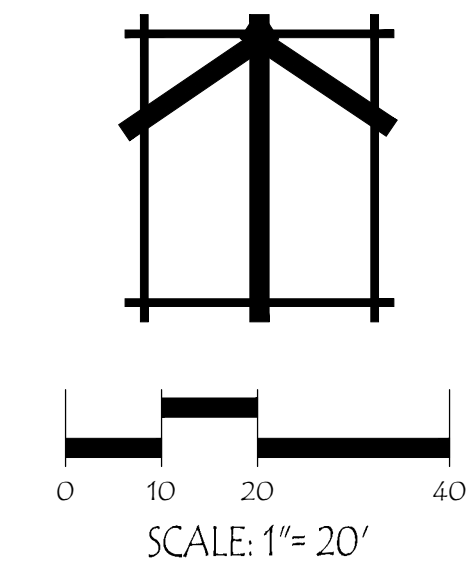
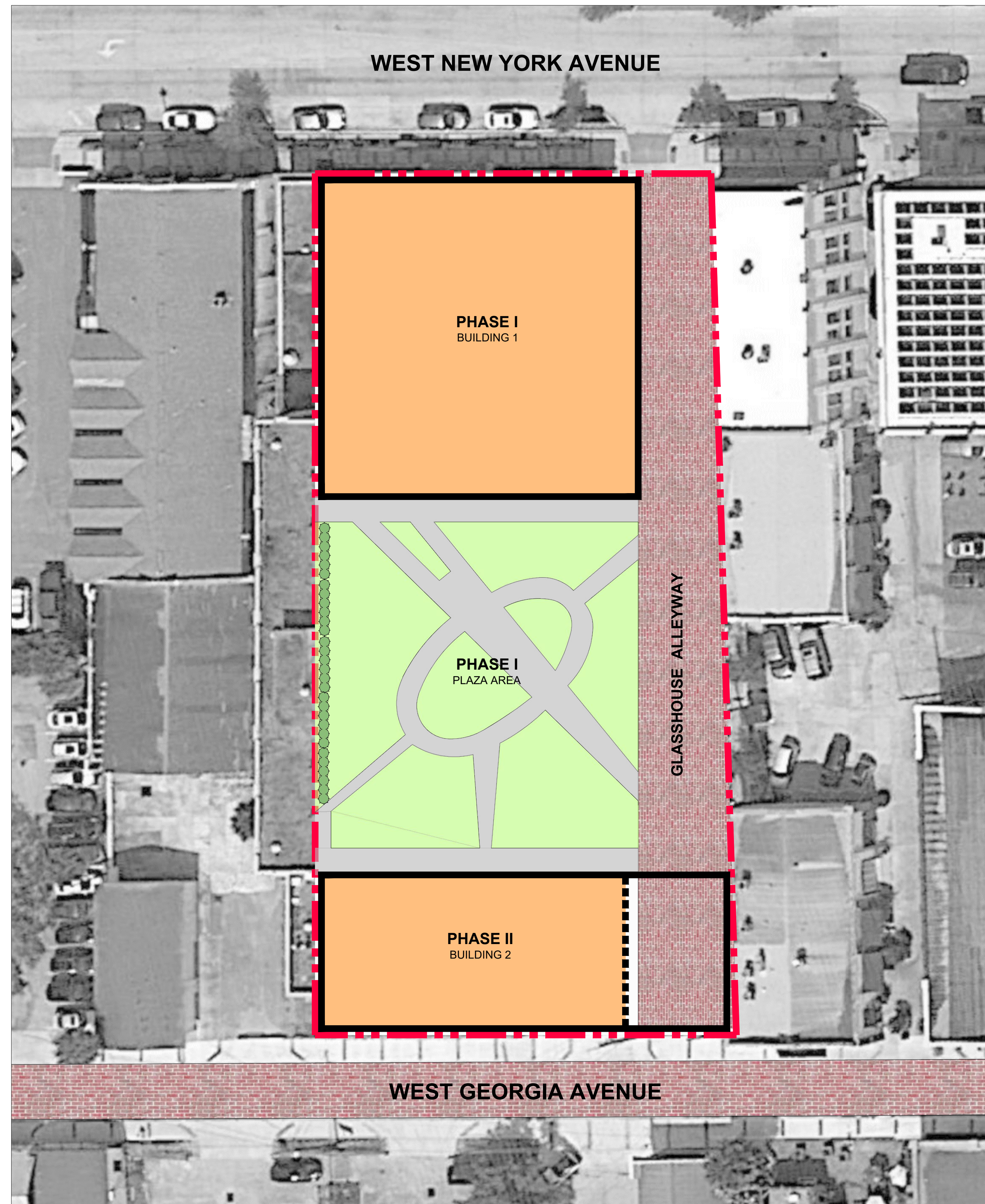
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ARCHITECTS

350 S Park Ave., Ste 810
Winter Park, FL 32789
1.407.474.1900

• info@zyscovich.com
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26





PHASE II - DEVELOPMENT PLAN

January 11, 2023

ACQUISITION AND
REDEVELOPMENT AGREEMENT

THIS ACQUISITION AND REDEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of the 9th of July, 2020 (the “Effective Date”), by and between the City of DeLand, a Florida municipal corporation (the “City”), the City of DeLand Downtown Community Redevelopment Agency (the “CRA”) and GlassHouse Square, LLC, a Florida limited liability company (“GlassHouse”).

STATEMENT OF PURPOSE

The City is the owner of certain property with frontage on W. New York Avenue and W. Georgia Avenue which is the former site of the Volusia County Jail, being more particularly described on Exhibit A, attached hereto and incorporated by this reference (the “Property”). The Property is located within the DeLand Downtown Redevelopment District as well as the City’s Historic District. The existing jail building is in a deteriorated condition, contains asbestos, is unsightly, and is hindering the continued redevelopment that is and has been occurring in the immediate area in which the jail building is located. The City desires that the Property be redeveloped for a mixed use, in-fill project with a variety of uses including, without limitation, professional offices, retail, commercial, multifamily residential and residential lofts, and entertainment and event spaces, all of which are to be consistent with the aesthetic qualities of downtown DeLand, and in furtherance of the City’s Downtown Community Redevelopment Plan, and the Florida Community Redevelopment Act of 1969, Florida Statutes, Chapter 163.

The City is the owner of certain property with frontage on W. Georgia Avenue which is the former site of a Volusia County employee parking lot, being more particularly described on Exhibit B, attached hereto and incorporated by this reference (the “Option Parcel”). The City desires that the Option Parcel be redeveloped for an in-fill project allowing a variety of uses, including, without limitation, retail commercial, multifamily residential and residential lofts, entertainment and event space uses, consistent with the aesthetic of downtown DeLand, and in furtherance of the City’s Downtown Community Redevelopment Plan, and the Florida Community Redevelopment Act of 1969, Florida Statutes, Chapter 163.

The City issued a Request for Proposals (the “RFP”) seeking private sector proposals for redevelopment of the Property and the Option Parcel, GlassHouse responded to the RFP, and the City selected GlassHouse as the developer with whom it desired to negotiate an agreement for redevelopment of the Property and the Option Parcel. Pursuant to a public hearing on May 28th, 2019, the City and GlassHouse executed a “Memorandum of Understanding” summarizing the development and business terms pursuant to which Glasshouse would redevelop the Property with a mix of uses anchored by the Deltran Operations U.S.A. Inc. world headquarters. The parties desire to enter into a binding contract related to this project as set forth in this Agreement.

GlassHouse is undertaking considerable financial risk by agreeing to develop the Property pursuant to this Agreement. The City, finding this economic development opportunity to be in the best interest of the City and the health, safety and welfare of the citizens of DeLand, has offered to facilitate the downtown redevelopment project by providing certain economic incentives to GlassHouse with the expectation that the City's involvement will encourage and accelerate the timing of the redevelopment, thus generating additional tax revenues, benefiting the downtown economy and enhancing the potential for future development of neighboring properties.

The City finds that City's provision of the economic incentives pursuant to this Agreement constitutes a public purpose, and the Florida Legislature has found that government sponsored public-private arrangements and the promotion and support, including financial assistance, of economic development activities are in the public interest and achieve a public benefit.

The CRA, is a community redevelopment agency created by the City pursuant to the Community Redevelopment Act of 1969, Part III, Chapter 163, Florida Statutes (the "Act") and is charged with undertaking redevelopment functions and managing the tax increment fund for the City of DeLand's Downtown Community Redevelopment Area.

The CRA finds that the obligations undertaken by it pursuant to this Agreement are consistent with the intent and requirements of the Act, and that the provisions of this Agreement are consistent with and further the goals and objectives of the Downtown DeLand Redevelopment Plan.

The parties hereto have agreed to memorialize the terms and conditions pursuant to which the City will convey the Property to GlassHouse and convey the Option Parcel to GlassHouse if GlassHouse exercises its option, and under which GlassHouse shall redevelop the Property and (if applicable) the Option Parcel, and under which the CRA shall pay and otherwise perform as provided herein. Nothing in this Agreement is intended to bind the City, the CRA or any agency or employee thereof with regard to any required zoning or development related approval, receipt of such approvals being a condition of performance by GlassHouse as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing matters, which are incorporated herein by reference, mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:
 - 1.1. *City Code* - The Code of Ordinances of City of DeLand.
 - 1.2. *Completion* - The date when the City issues certificates of occupancy for the majority of units or certificates of completion (or similar approval) for a majority of units which are ready for tenant/owner finishes before occupancy, for a particular Phase or Project.

- 1.3. *Development Order* - Rezoning to a planned unit development, site plan approval, issuance of a building permit or similar action by the City and all other government entities with jurisdiction over a Project necessary for GlassHouse to develop a Project pursuant to the requirements of this Agreement including, without limitation, all permits required from the U.S. Army Corps of Engineers, St. Johns River Water Management District, Florida Department of Environmental Protection, Florida Department of Transportation, County of Volusia, and the City of DeLand.
- 1.4. *Month* - When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date or event; for example, two months after February 15, 2020, is April 15, 2020.
- 1.5. *PD Agreement* - The Planned Development Agreement, as amended from time to time, by and between the City and GlassHouse rezoning the Property for the redevelopment program contemplated herein. It is acknowledged that the Option Parcel, if the option therefor is exercised by GlassHouse, will be developed under a separate planned development agreement.
- 1.6. *Parcel* – One of the parcels of real estate upon which a Project or Projects may be constructed. The Parcels shall be described as set forth in Section 3.3 below.
- 1.7. *Phase* - One or more of the phases of development of the Property or, as applicable, the Option Parcel. The term is sometimes used in connection with the Project to be constructed as a Phase. The term is somewhat interchangeable with “Project” but is primarily used with reference to the order of development of a Project vis-à-vis other Projects.
- 1.8. *Project* - One or more of the following development projects contemplated to be developed by GlassHouse under this Agreement:
 - 1.8.1. GlassHouse Square Project - The development of the Property pursuant to this Agreement, as set forth in Section 3.4.1.a.
 - 1.8.2. Option Parcel Project - The plans for development of the Option Parcel pursuant to this Agreement, as set forth in Section 3.4.1.c.

2. **Purpose.** The purpose of this Agreement is to provide for the redevelopment of the Property and, if applicable, the Option Parcel, in accordance with Section 3, so as to enhance the quality of life and the aesthetic and useful enjoyment of the DeLand downtown area, fulfill the goals of the RFP, promote economic development and investment in the downtown area, and further the objectives of the Downtown Community Redevelopment Plan, all while providing GlassHouse with the tools to gain financial reward commensurate with the risk it is undertaking.

3. **Redevelopment Program.** Subject to the provisions of this Agreement, GlassHouse shall redevelop the Property pursuant to the provisions of this Section and the PD Agreement and, if applicable, the Option Parcel pursuant to a separate planned unit development

agreement. GlassHouse's redevelopment of the Property and, if applicable, the Option Parcel, consistent with this Agreement and in furtherance of the RFP and Downtown Community Redevelopment Plan is a material inducement for the City and the CRA to enter into this Agreement. The ability of GlassHouse to redevelop the Property and, if applicable, the Option Parcel, consistent with this Agreement is a material inducement for GlassHouse to enter into this Agreement. GlassHouse shall develop each Project on the Property in a manner which is consistent with the Conceptual Development Plan, attached hereto as Exhibit C and incorporated by reference (the "CDP"). The conceptual development plan for the Option Parcel has not yet been developed, and development of the Option Parcel will be governed by a separate planned unit development agreement that will need to be approved by the City. The obligations as set forth in Sections 3.4.3, 3.5, 5.2.2, 5.2.4, 5.3, 5.6, 5.7, 5.9, 5.10, 5.11, 6.3 and any other provision of this Agreement which expressly survives or by its terms is logically and necessarily intended to survive the conveyance of the Property and, as applicable, the Option Parcel, shall in fact survive the conveyance of the Property and, as applicable, the Option Parcel, to GlassHouse.

3.1. Right to Market. Prior to the earlier of conveyance of the Property and the Option Parcel, or termination of this Agreement, GlassHouse shall have the right to market the Property and the Option Parcel for sale or lease consistent with the CDP. In conducting such marketing activities, GlassHouse shall make clear that it does not act on behalf of, or as an agent of, the City or the CRA. The City agrees that it will not market the Property or the Option Parcel during the term of this Agreement. The City and others on its behalf shall, however, be entitled to advertise, promote and otherwise refer to the redevelopment of the Property and Option Parcel as contemplated by this Agreement. GlassHouse shall also have the right to seek any development order associated with redevelopment of the Property or the Option Parcel consistent with the CDP for the Project, as applicable. The City shall not, during the term of this Agreement, market the Property or the Option Parcel, or attempt to sell or lease either of them, except pursuant to this Agreement or with the express written consent of GlassHouse. GlassHouse's rights to market and redevelop the Property and the Option Parcel consistent with this Agreement is a material term of this Agreement.

3.2. Land Use and Zoning.

3.2.1. The parties intend that the Property and, if applicable, the Option Parcel, be redeveloped as described in this Section 3 and as to the Property as shown on the CDP. The parties understand that the Projects, as may be modified pursuant to the terms of this Section, are not currently consistent with the Property's and Option Parcel's C-2A with Historic Overlay zoning designation but are consistent with their "Downtown Commercial" Future Land Use classifications under the City's Comprehensive Plan. GlassHouse's obligations hereunder are contingent upon obtaining rezoning of the Property and, as applicable, the Option Parcel, to PD, with a PD Agreement in form and content satisfactory to GlassHouse in its sole and absolute discretion, as well as all other necessary Development Orders for Phase 1 and 2, as required for each Project under that Phase as described in

this Agreement. Should the City not approve a PD Agreement acceptable to GlassHouse in its sole and absolute discretion within twelve (12) months of the Effective Date, then GlassHouse may terminate this Agreement by providing notice of termination to the City within thirteen (13) months of the Effective Date, following which this Agreement shall be of no further force or effect. The permitted uses for the Property shall be as provided in the PD Agreement, and for the Option Parcel as provided in a separate planned unit development agreement, provided that nothing herein prevents future amendment of the PD Agreement or any other planned unit development agreement through the City's amendment process. Open space requirements for the Property shall be satisfied with the Green Square/water feature area/gathering space and pedestrian walkway proposed on Parcel 1 and 2, as shown on the CDP. Landscape and hardscape areas, site design, and architectural design shall all be consistent with the CDP.

- 3.2.2. The parties acknowledge that the CDP represents only conceptual development plans for the Property, based on the parties' reasonable understanding of market demands, design feasibility, and urban planning best practices. Additional engineering and market feasibility studies shall be required to ensure an economically viable redevelopment program, which is in all parties' best interests. Therefore, layouts and design of each Project may be modified pursuant to the City's development review process, which changes shall not require amendment of this Agreement provided that the changes are consistent with the other provisions of this Section 3, including those concerning section 3.4.1.

3.3. Parcels.

- 3.3.1. The Property and the Option Parcel are currently two (2) separate legal lots each of which shall be the location for construction of the Project(s) described with reference thereto, but in the future they may be combined or further subdivided in accordance with the City's subdivision ordinance. The CDP depicts the approximate configurations of the Parcels for the Property.

- 3.3.2. Each Project shall be constructed on a Parcel. Concurrent with submission of site plan applications for each Project to be developed on the Property and, as applicable, the Option Parcel, GlassHouse shall submit to the City, together with all other documents required by the City's Land Development Regulations, a survey of the legal description of the Parcel or portion of the Parcel upon which the Project is to be constructed.

- 3.4. Redevelopment Program for the Property and Option Parcel. GlassHouse shall redevelop the Property and, as applicable, the Option Parcel, consistent with the CDP, and the provisions of this Section. GlassHouse shall seek to reasonably maximize the redevelopment potential of the Property and, if applicable, the Option Parcel, consistent with economic conditions and in an architectural style that is complementary to the brick architecture which currently exists along Georgia Avenue, as determined by GlassHouse in its reasonable discretion. Except as

otherwise provided in this Agreement, GlassHouse shall undertake the development program set forth in this Section 3 at its sole cost and expense.

3.4.1. The Redevelopment Program for the Property shall be for mixed-use, allowing a variety of uses including office, entertainment, commercial, and if applicable, for the Option Parcel shall allow for such uses and for residential uses, to be developed in Phases, consistent with the terms set forth in the PD Agreement or, as it relates to the Option Parcel, a separate planned unit development agreement, as exists from time to time.

a. The anticipated redevelopment of the Property is described as follows:

PROJECT/ PHASE	PARCEL	STORIES (NOT TO EXCEED)	PERMITTED USE(S)
Phase 1: Building 1	1	3, plus rooftop assembly use space	FIRST FLOOR Up to 10,000 GSF Office*/Commercial to be further defined in the PD Agreement *No more than 30% of 1 st floor space to be office.
			SECOND FLOOR Up to 10,000 GSF office/commercial to be further defined in the PD Agreement
			THIRD FLOOR Up to 10,000 GSF office/commercial to be further defined in the PD Agreement
			ROOFTOP Up to 10,000 GSF Rooftop assembly use space (event space) to be further defined in the PD Agreement. Rooftop space is contemplated to have an elevator landing, enclosed restroom and other incidental enclosures, and all enclosures shall be set back an appropriate distance, to be identified in the PD Agreement, from the edge of

PROJECT/ PHASE	PARCEL	STORIES (NOT TO EXCEED)	PERMITTED USE(S)
			the roof. The top of all enclosures shall be less than eighty (80') feet above the finished floor elevation of the first floor of the building.
			Up to 1,500 GSF of Gallery/ event space.
Phase 2: Building 2	2	2	Ground floor up to 3,500 GSF Office*/Commercial to be further defined in the PD Agreement *No more than 30% of 1 st floor space to be office.
			Second floor up to 5,000 GSF office/commercial, Gallery/event space and/or up to 5 "Artist's Lofts" to be further defined in the PD Agreement
Phase 1: Gathering Space		N/A	Green square / water feature area and/or other gathering space to be further defined in the PD Agreement
Phase 1: Pedestrian Walkway		N/A	To be further defined in the PD Agreement, to include provisions for an easement (the "Easement") for underground utilities, stormwater vaults, emergency access and the right to grant temporary ingress and egress to adjacent property owners with zero lot line buildings for periodic maintenance of those buildings. It is GlassHouse's current intention that the pedestrian walkway will generally remain open for access by members of the public as invitees as is the case with the nearby Artisan Alley. It is also GlassHouse's intention to construct a portion of Building 2 over a portion of

PROJECT/ PHASE	PARCEL	STORIES (NOT TO EXCEED)	PERMITTED USE(S)
			the pedestrian walkway, leaving approximately 14' of airspace from the ground level to the overhanging portion of Building 2.
Phase 1: Private Parking Lot		N/A	Private parking lot to serve needs of GlassHouse, location to be determined in the PD Agreement.

- b. Building 1 in Phase 1 shall be not less than two (2) stories and not less than 20,000 gross square feet.
- c. The anticipated redevelopment of the Option Parcel, if applicable, shall be in accordance with a PD agreement to be entered into in accordance with rezoning of the Option Parcel, and if applicable, other lands. Buildings on the Option Parcel shall be limited to three (3) stories and shall not have any rooftop event space.
- d. Parking may be provided off-site to each Parcel to be developed. Except as otherwise provided, specific parking ratios and standards shall be addressed in the PD Agreement applicable to each Parcel.
- e. Any residential units shall be constructed to provide exterior sound attenuation to standards to be addressed in the PD Agreement. There shall be no residential units on the first floor adjacent to Georgia Avenue.
- f. The references to square feet of non-residential use and number of residential units in Section 3.4.1. are only estimates. Adoption of square footages in the PD Agreement approved by the City through the normal rezoning / development review process shall be deemed to modify this Agreement without the need for any written amendment to this Agreement. If GlassHouse fails within 180 days of the Effective Date to make a complete application for a planned development rezoning, then the City may follow the procedures outlined under Section 9.2 of this Agreement regarding notice and opportunity to cure, and City shall thereafter be entitled to terminate this Agreement.

- 3.4.2. The order of Phases described in Section 3.4.1. is the presently anticipated order of development and is used only for descriptive purposes. For example, GlassHouse may, in its sole discretion, commence development of Phase 2 as the initial Phase of development for the Property. In addition, GlassHouse may commence development of more than one Phase consistent with the terms of this Agreement. In any event, development of the Phases shall be designed to minimize the disruption to the existing public parking on the Option Parcel without unreasonably interfering with construction of the Project(s). The site plan for each Phase shall include measures to mitigate disruption to such existing public parking, which shall be part of the City's review process and shall be depicted on the site plan for each respective Phase. Such mitigation measures may include Glasshouse maintaining its laydown area and all construction staging operations on the Property or on the City's lot located at 224 South Florida Avenue and possibly other measures to avoid impacts to Georgia Avenue. GlassHouse will use its best efforts to ensure that, prior to its provision of substitute public parking that is reasonably equivalent to that which is currently on the Option Parcel, as set forth in Section 3.5 below, its construction force does not park in the public parking currently located on the Option Parcel. The City may implement additional off-site mitigation measures including, but not limited to, informational signage directing visitors to alternative public parking areas. The City shall allow Glasshouse to use the City owned vacant lot located at 224 South Florida Avenue at no cost to Glasshouse for construction staging and construction worker parking. GlassHouse shall provide liability insurance in an amount no less than one million (\$1,000,000.00) dollars per occurrence, two million (\$2,000,000.00) dollars annual aggregate limit covering property damage and personal injury liability for that lot during the time that it is used for construction parking and such insurance shall name the City of DeLand as an additional insured.
- 3.4.3. The City represents that as of the Effective Date, neither the City's land development regulations, nor any other applicable regulation of the City, imposes any on site storm water treatment or storage requirements which are in any way greater than the requirements of the St. Johns River Water Management District. The City shall have the option to install, or upsize as the case may be, and maintain, stormwater vaults underneath the Easement area, and beneath the Pedestrian Walkway, to the extent space is available therefor, as determined by sound engineering principles. The cost for installation thereof, or the cost related to upsizing as the case may be, shall be the sole cost of the City. The City shall pay all costs for future maintenance if it installs its own stormwater vaults, or for its proportionate share (determined by the percent of total capacity comprised of the City's upsizing) of future maintenance costs, if it upsizes Glasshouse's Stormwater Vaults.

3.5. Public Parking Lot. If GlassHouse exercises its option to purchase the Option Parcel and the City conveys the Option Parcel to GlassHouse as provided herein, GlassHouse will replace all currently existing regular and handicap accessible public parking spaces displaced by any Project to be developed on the Option Parcel with an equal number of such parking spaces, at its sole cost and expense. In addition to the provisions of Section 6, closing on the Option Parcel shall be in accordance with the following standards:

3.5.1. The parking lot containing the replacement public parking spaces (the "Public Parking Lot") shall be completed not later than closing on the Option Parcel or, at GlassHouse's option, GlassHouse may grant to the City a temporary easement for such public parking on the Option Parcel until the replacement public parking is provided and receive title to the Option Parcel. The term of such temporary parking easement shall have a duration which is no longer than the term of the Option or the date that title to the Option Parcel is reconveyed to the City, all as set forth in Section 5.10. If any public parking spaces located on the Option Parcel are agreed, in the PD Agreement for the Option Parcel, to be left in service for public parking after closing on the Option Parcel, City shall reserve an easement as to those spaces and the existence of those spaces shall be addressed in the PD Agreement on the Option Parcel.

3.5.2. GlassHouse shall construct the Public Parking Lot on lands to be conveyed to the City, which lands shall be located within two hundred fifty (250') feet of the Option Parcel. After closing on the Option Parcel, City shall be responsible for the operation and maintenance of the Public Parking Lot. If any public parking spaces are left on the Option Parcel after closing on the Option Parcel, GlassHouse shall maintain those spaces pursuant to a separate maintenance agreement with the City, executed prior to closing on and conveyance of the Option Parcel to GlassHouse.

4. **Other GlassHouse Obligations.** Unless otherwise provided in this Agreement, GlassHouse shall undertake the actions set forth in this Section 4 at its sole cost.

4.1. Other Obligations. GlassHouse shall provide the information required in Section 6.1 and acquire the Parcels as set forth in Section 6.

4.2. Deadlines. Subject to the deadlines provided below and following closing on each respective Parcel, GlassHouse shall control the timing for construction of each Phase on the Property.

4.2.1. Within the later of nine (9) months of approval of the PD Agreement or eighteen (18) months of the Effective Date, GlassHouse shall submit the following, consistent with the CDP:

- 4.2.1.1. Preliminary and final plats - The initial plat which may divide the site into at least two (2) lots will be prepared during the first phase. The two (2) lots will consist of the sites for Parcel 1 (for Building 1), and Parcel 2 (for Building 2). The City will execute without delay such owner authorizations required by the City's applicable land development regulations when same are presented to the City for signature. The final plat for the Property will be fully executed at or prior to closing, and delivered to the City Attorney in escrow for recording immediately following the closing.
 - 4.2.1.2. A site plan for development of the first Phase (i.e., the site improvements necessary for the preliminary and final plats for the Parcel and associated easements). The City will execute without delay such owner authorizations required by the City's applicable land development regulations when same are presented to the City for signature.
 - 4.2.1.3. Complete construction plans for Building 1 (recognizing that any part of the interior of Building 1 may be unfinished shell space).
 - 4.2.2. GlassHouse shall make commercially reasonable efforts to obtain approval for the above permit applications for the first Phase within twenty-four (24) months of the Effective Date.
 - 4.2.3. GlassHouse shall make commercially reasonable efforts to commence construction of the first Phase within fifteen (15) months of approval of the PD Agreement. GlassHouse shall make commercially reasonable efforts to complete construction of the first Phase within twenty-four (24) months of commencement of construction.
- 4.3. Extensions. Extensions to deadlines provided for in this Agreement can only be approved by the parties hereto in writing.
- 4.4. Report to City Commission. Until the Redevelopment Program for the Property has been completed, GlassHouse shall appear before the City Commission at least once per year to provide a report on the progress of the proposed Projects and the performance of its obligations under this Agreement.
- 4.5. Compliance with Other Provisions of Applicable Law.
 - 4.5.1. GlassHouse shall construct each Project in compliance with all applicable laws, regulations and ordinances, including but not limited to provisions of the City's Land Development Code regulating platting.
 - 4.5.2. The City shall join in any plat of the Property or, as applicable, the Option Parcel, to the extent necessitated by any easement or other rights therein retained by the City, provided that such plat(s) do not interfere with the

development or use of the Property or Option Parcel so acquired by GlassHouse under this Agreement.

5. **City and CRA Obligations.** In consideration of GlassHouse undertaking the Projects, the City and the CRA shall undertake the actions set forth in this Section. Unless otherwise provided below, the City and the CRA shall undertake such actions at their sole cost.

5.1. Joinder and Applications. The City, as owner of the Property and the Option Parcel shall join in any application for development orders associated with redevelopment of the Property and, if applicable, the Option Parcel consistent with the Redevelopment Programs, including, but not limited to, applications for final rezoning, site plan or plat approval and stormwater permits, and other Development Orders. Nothing in this Agreement shall be intended to bind the City or otherwise impose upon the City any obligation to approve any applications in which the City joins pursuant to this Agreement.

5.2. City and CRA Contributions.

5.2.1. The City shall convey the Property and, if applicable, the Option Parcel, to GlassHouse pursuant to the terms of Section 6, free and clear of any liens or encumbrances except as otherwise provided in Section 6.7. Conveyance of the Property shall occur prior to GlassHouse's commencement of construction of Phase 1.

5.2.2. GlassHouse shall pay all City application fees in regard to all applications for Development Orders, all City and County impact fees subject to any applicable credits and any other fees customarily required for obtaining development permits. GlassHouse shall be entitled to all impact fee and connection fee credits currently available to the Property and, as applicable, the Option Parcel.

5.2.3. Except as otherwise provided herein, GlassHouse shall pay all city, state or federal application or permit fees, and such general and usage fees or charges for water, sewer, or other services provided by the City to the Property or, as applicable, the Option Parcel, following closing on such lands.

5.2.4. The City and GlassHouse shall collaborate to establish a parking signage program for the public parking on the Public Parking Lot, which shall be designed to be consistent with the design and character of the Projects, and shall be installed on the Parcels as set forth on the site plan for the respective Parcels. The City shall provide such information as is necessary for inclusion on the respective site plan in a timely manner to permit GlassHouse to submit its site plans consistent with the schedule set forth in Section 4.2. The City or the CRA shall pay all costs relating to the parking signage improvements, shall install such improvements on the Parcels as set forth on the site plan for such Parcels, and shall thereafter maintain such signage, pursuant to a separate maintenance agreement.

5.2.5. The City or the CRA shall, at their sole cost and expense, procure a boundary and topographic survey of the Property. The survey shall include the boundaries of the Property, all public utilities located on public property within seventy five (75') feet of the Property including visible surface and invert depths, and elevations of the property from the edge of the buildings to the property line. The boundary survey shall be in ALTA form. The survey shall be certified to GlassHouse, its lender and title insurer. The City or the CRA shall provide the survey to GlassHouse not later than ninety (90) days from the Effective Date.

5.2.6. The City or the CRA shall, at their sole cost and expense, cause to be performed, a Phase I Environmental Site Assessment for the Property and, the Option Parcel (the "Phase I"), and a Phase 2 Environmental Site Assessment if the Phase 1 assesment identifies any Recognized Environmental Condition (as defined by the Phase I). The parties shall cooperate in good faith to fund through the Florida or federal brownfield program incentives, as available, any additional Phase II environmental site assessment and/or remediation of the Property and, if applicable, the Option Parcel and adjust the deadlines in Section 4.2 to address any delays associated with additional site assessment and/or remediation which the parties agree to undertake. Should the City reasonably determine that the length of time and or the cost to perform additional environmental assessments or remediate the site is too great, the City shall have the right in its sole discretion to terminate this Agreement upon thirty (30) days written notice. The environmental site assessments shall be certified to GlassHouse, its lender and title insurer. City and CRA shall provide three (3) originals of the Phase I environmental site assessments to GlassHouse not later than one hundred fifty (150) days from the Effective Date.

5.2.7. The City or the CRA shall, at their sole cost and expense, cause the Property to have a geotechnical survey completed. The geotechnical survey will be based upon geotechnical borings conducted in appropriate locations within the parking areas of the Property, and nothing in this Agreement shall be deemed to require the City or CRA to conduct borings within the locations on the Property that are currently occupied by structures. The geotechnical survey shall include foundation design recommendations for the planned heights of the buildings, and percolation analysis for underground exfiltration storm water systems subject to any limitations imposed by the presence of buildings being located on the Property. The geotechnical survey shall be certified to GlassHouse, its lender and title insurer. The City or the CRA shall provide three (3) originals of the Geotechnical Survey to GlassHouse not later than one hundred twenty (120) days from the Effective Date.

5.2.8. The City or the CRA shall cause the aforesaid survey, environmental inspection reports and geotechnical survey to be certified to GlassHouse and

shall name GlassHouse as an intended third-party beneficiary of the contract between the City and the provider of such reports.

5.2.9. The City or the CRA shall, at their cost and expense, cause such underground stormwater vaults as they deem appropriate, consistent with the intended use and development of the Pedestrian Walkway, to be constructed simultaneously with or prior to GlassHouse's development of the Pedestrian Walkway.

5.3. Acceptance and Maintenance of Public Improvements. If applicable, following the City's customary procedures for acceptance of public improvements, the City shall accept, and thereafter maintain pursuant to the provisions of Section 3.5, the Public Parking Lot improvements.

5.4. Other Obligations. The City shall provide technical assistance with respect to the development order applications filed by GlassHouse for the Projects. City shall maintain the Property and the Option Parcel in its current condition during the term of this Agreement prior to conveyance of the Property and, if applicable, the Option Parcel except as otherwise provided for in this Agreement. City shall comply with the provisions of Section 6 of this Agreement.

5.5. City Cooperation. The City shall exercise its best efforts and cooperate with GlassHouse in submitting and obtaining any state and federal licenses, permits, and governmental authorizations necessary to the completion of the Projects; provided, however, except as otherwise provided herein, all costs associated therewith shall be the sole responsibility of GlassHouse. The City's obligations shall not affect the City's right and authority to act in regulatory matters in accordance with applicable laws or ordinances. GlassHouse acknowledges that the City does not, and as a matter of law cannot, agree by way of a contract to pre-approve its applications. This is because the law forbids the government from contracting away its legislative authority in the land development approval process. GlassHouse acknowledges that it has no claim or cause of action against the City in the event that the Project, and all elements thereof, are not approved by the City through the development review and approval process.

5.6. Available Incentives. The City and GlassHouse shall cooperate to obtain any incentives available pursuant to the Florida Brownfields Program or the federal brownfields program, including, but not limited to, obtaining Brownfield Assessment Grant funds from the U.S. Environmental Protection Agency to conduct the Phase 1 assesment.

5.7. Easements.

5.7.1. The City shall grant to GlassHouse a temporary construction easement for the purpose of allowing GlassHouse to utilize the vacant lot located at 224 S. Florida Avenue for staging and parking related to the construction of the Projects and the Public Parking Lot, as set forth in the site plans for each respective Phase. These easements shall be identified and agreed upon not

later than approval of the PD Agreement on the Property or the Option Parcel, as applicable, and shall be delivered upon the closings on the Property and the Option Parcel, as applicable.

5.7.2. Concurrent with the conveyance of the Property as set forth in Section 6, the City shall:

5.7.2.1. Convey to GlassHouse a ten (10') foot wide easement, in a location reasonably acceptable to GlassHouse and the City, for pedestrian ingress and egress across the Option Parcel, connecting the Property to lands lying South of the Option Parcel. Such easement shall run with the land and inure to the benefit of the individual unit buyers, property owners or condominium owner's association, and successors and assigns, to the Property.

5.7.2.2. The City shall reserve the Easement over, upon, under and across the Pedestrian Walkway.

5.8. No Pledge of Full Faith and Credit. The City's and the CRA's payment obligations hereunder do not, and shall not be deemed to, constitute a general obligation of the City or the CRA, nor do they constitute a pledge of the full faith and credit of the City or the CRA within the meaning of the Constitution and laws of the State of Florida. They shall be binding obligations only to the extent that City or CRA has funds available to meet them, and shall be subject to the City's or CRA's appropriation of such funds. GlassHouse' obligations to meet the deadlines set forth in Section 4.2 shall be tolled an equal time for any period in which the City or CRA fails to appropriate such funds.

5.9. Upon GlassHouse obtaining all necessary permits, approvals and authorizations from all applicable governmental authorities for the site development of the Property and construction of Building 1, GlassHouse will provide to the City a letter from a lending institution or other party reasonably acceptable to the City ("Loan Commitment"), or other reasonably acceptable evidence of financial capacity or other reasonably acceptable security guaranteeing completion of Phase 1 of the Project ("Proof of Financial Capacity"). Thereafter, the City will demolish the former Volusia County Jail building ("Jailhouse"), leave the Property cleared and development-ready, and remove all Asbestos from the Property, to be completed not later than one hundred twenty (120) days following the City's approval of the Loan Commitment in accordance with the following standards:

5.9.1. City has caused a survey of the Property to be conducted according to Florida Statutes, Chapter 469 ("Survey"), which was performed by an Asbestos Surveyor acting under the direction of a Florida licensed Asbestos Consultant. Within thirty (30) days of the Effective Date, the City shall provide GlassHouse with a copy of the Survey.

5.9.2. Prior to demolition of the Jailhouse and not later than one hundred twenty (120) days following the Effective Date, the City shall cause Abatement

specifications for Abatement of all Asbestos on the Property to be prepared by and under the direction of a Florida licensed Asbestos Consultant. The Abatement specifications shall provide for Abatement to be by Removal and Disposal of the Asbestos on the Property and not by Encapsulation, Enclosure or other means besides Removal and Disposal. The proposed Abatement specifications shall be provided to GlassHouse for review not later than thirty (30) days prior to the City releasing bids for the demolition work. GlassHouse shall have fourteen (14) days from receipt of the Abatement specifications to comment on them, but shall have no duty to comment and shall have no duty to the City or any other party in regard to any comment which GlassHouse makes in regard to the proposed Abatement specifications. Any comment made by GlassHouse is solely for the benefit of Glasshouse and for the benefit of no other person or party.

5.9.3. The Removal and Disposal of all Asbestos-containing Materials must be performed by a Florida licensed Asbestos Contractor and monitored by a Florida licensed Asbestos Consultant.

5.9.4. All Asbestos-containing Materials must be abated according to all applicable laws, rules and regulations including, without limitation, AHERA, ASHARA, NESHAP, NIOSH, Florida Statutes Ch. 469 and FAC Ch. 61E-1, and those of the United States Environmental Protection Agency, OSHA and the Florida Department of Environmental Protection.

5.9.5. Prior to closing and subsequent to the Abatement, and not later than thirty (30) days following completion of the Jailhouse demolition, the City shall cause an inspection of the Property to be performed by a Florida licensed Asbestos Consultant and the City shall provide a new or updated Survey reporting the results of said inspection to GlassHouse upon receipt of said Survey to provide reasonable assurance that the Asbestos on the Property has been abated.

5.9.6. GlassHouse's review of and comment on the asbestos Surveys and the Abatement specifications as described herein, and all other provisions of this section or otherwise related to Asbestos on the Property, the Abatement of Asbestos on the Property, the asbestos Surveys and the Abatement specifications, or any one or more of them, are solely for the benefit of GlassHouse, and do not, and shall not, create any duty on the part of GlassHouse arising from or related thereto.

5.9.7. All capitalized terms in this Section 5.9 which are not otherwise defined herein shall have the meaning as defined under Section 469.001, Florida Statutes, unless the context requires otherwise.

5.9.8. Each Asbestos Consultant and Asbestos Contractor as described herein must be licensed and financially responsible under the provisions of Florida law including, without limitation, FAC 61E1 and Florida Statutes Chapter 469.

If the cost to demolish the Jailhouse and remove the Asbestos exceeds the sum of three hundred thousand (\$300,000.00) dollars, the City shall give notice to GlassHouse within thirty (30) days of the City's receipt of the bid therefor but not later than one hundred twenty (120) days from the Effective Date, within which to notify GlassHouse of the amount of the overage. Upon the City giving such notice, GlassHouse will have the option of paying the excess amount or terminating this Agreement. GlassHouse must exercise its option to terminate by giving written notice of its election to do so within thirty (30) days of its receipt of notice of the amount of overage from the City. Following the City's receipt of GlassHouse's notice of termination, this Agreement will be deemed terminated and of no further force or effect. If GlassHouse does not notify the City of its election to terminate in said thirty (30) day period, then GlassHouse shall be deemed to have agreed to pay the difference and the amount of such difference shall be paid by GlassHouse to the City within thirty (30) days thereafter.

- 5.10. The City grants to GlassHouse a five-year option to purchase the Option Parcel (the "Option" as further defined herein). A memorandum of the Option will be recorded in the Public Records of Volusia County at the time of conveyance of the Property. The term of the Option shall be for a period commencing with recording of the Memorandum and shall run through five (5) years following the issuance of the first certificate of occupancy for a Project. The Option shall provide that GlassHouse is entitled to buy the Option Parcel for the lesser of (a) the fair market value (based upon an MAI appraisal certified to City, GlassHouse and GlassHouse's lender paid for by GlassHouse but obtained by the City from an appraiser on the approved list of appraisers by GlassHouse's lender) of the Option Parcel as of the date of transfer of title to the Property, with an adjustment for the change in the Consumer Price Index for all Urban Consumers, published by the U.S. Bureau of Labor Statistics, from the date of the appraised value to the date the option is exercised or (b) the then current fair market value as of the exercise of the option, determined by an appraiser selected and paid in the same manner as set forth above. Conveyance of the Option Parcel to GlassHouse pursuant to this option shall be subject to the following conditions:

- 5.10.1. GlassHouse shall be required to replace the existing displaced parking spaces in the Option Parcel, and as set forth herein, as well as provide all parking required for the development of the Option Parcel. Such displaced parking will be within two hundred fifty (250') feet of the Option Parcel. For the sake of clarity, the nearest point on any parcel of property upon which replacement parking is located shall be within two hundred fifty (250') feet of any point on the boundary of the Option Parcel. GlassHouse shall convey to the City fee simple title to the area containing the replacement parking, which shall include a minimum of two (2) ADA compliant handicapped parking spaces, drive aisles sufficient to fully access all parking spaces, and areas to support light fixtures for the parking spaces. GlassHouse shall also grant to the City one or more perpetual easements, if

the configuration of the remainder of the parking area so requires, allowing for access to the parking spaces conveyed to the City.

5.10.2. In the event that GlassHouse does not develop the Option Parcel with a minimum of three thousand eight hundred (3,800) square feet of commercial or mixed use development within five (5) years of conveyance of the Option Parcel by the City to GlassHouse, then the City shall have the option to repurchase the Option Parcel. In order to exercise this repurchase option, the City shall, not later than twelve (12) months following the expiration of the five year development period described above in this Section 5.10.2 (ie. six (6) years from the date of conveyance of the Option Parcel to GlassHouse), provide written notice of the City's election to repurchase. GlassHouse shall have one hundred eighty (180) days following the giving of such notice to obtain a site plan and complete building permits for the Option Parcel, and if GlassHouse does obtain the same, an additional eighteen (18) months from issuance of the building permits to complete construction of the improvements on the Option Parcel. Should GlassHouse fail to meet either deadline following notice from the City as set forth in this Section 5.10.2, then GlassHouse shall convey the Option Parcel to the City. At the time of conveyance of the Option Parcel to the City, the City shall pay to GlassHouse the full amount originally paid to the City by GlassHouse for the purchase of the Option Parcel and any costs related to recording fees, documentary stamp taxes, etc. related to such purchase. At the time of the conveyance of the Option Parcel to GlassHouse by the City, a memorandum of this repurchase option, and any other document reasonably necessary to render it enforceable, shall be recorded in the Public Records.

5.10.3. Any building located on the Option Parcel shall be limited to three (3) stories in height.

5.10.4. Any residential units shall be constructed to provide exterior sound attenuation, to an identifiable standard as set forth in the applicable PD Agreement. No residential units may be located on the first floor of the building fronting West Georgia Avenue.

5.11. Commencing with the first calendar year after the year of issuance of the certificate of occupancy for Phase 1, Building 1 (for the sake of clarity, January 1 of the year immediately following issuance of the said certificate of occupancy), and for a period of ten (10) years, forty five (45) days following payment by GlassHouse of the ad valorem taxes due in that year, the CRA shall pay GlassHouse an amount equal to the "pro rata portion" of ad valorem tax collections for Volusia County and the City of DeLand millage paid into the Downtown DeLand Community Redevelopment Trust Fund for Building 1 and the underlying lot on which it sits. The "pro rata portion" shall be determined by applying the ratio of the square

footage under roof that the offices for the company or employer referred to in the next to last sentence of this Section 5.11, up to a maximum of ten thousand (10,000) gross square feet or thirty three and 1/3 percent (33.33%) of the gross square footage of the building under roof, whichever is less, bears to the total square footage under roof of Building 1. The payment due each year will be made only after the ad valorem taxes for the entire Property have been paid for that year. In the event the said taxes on the Property have not been paid for any year, the aforesaid payment to GlassHouse shall be made by the CRA within sixty (60) days after the taxes have been paid. As a condition of this payment, during the year for which the payment is due, there must have been maintained on the Property during the year for which the payment is due one company or employer with a minimum of thirty (30) full time equivalent employees with an average annual salary of at least sixty seven thousand one hundred forty two and (00/100) dollars (\$67,142.00). There shall be no extension of the term of the abatement nor any partial or pro-rated payment for any year that they do not meet the minimum employment and salary standards and GlassHouse or any subsequent owner of Parcel 1 will not seek grants from the CRA during the abatement period.

6. Conveyance of Parcels.

- 6.1. Adequate Assurances. As a condition precedent to the City's obligation to convey the Property (but not the Option Parcel) as required by Section 5.2.1, GlassHouse shall provide and deliver its proof of Financial Capacity to the City at or before closing on the Property.
- 6.2. Conveyance. Conveyance of the Property shall be subject to the City's determination that GlassHouse has obtained all permits required to construct and has the financial ability to develop Phase 1, such determination not to be unreasonably withheld. In the event that construction of Phase 1 is to be financed through a private lending institution, equity group, or by means other than a commercial lending institution, then the City's determination shall be to the City's reasonable satisfaction of the financial ability of that entity.
- 6.3. Closing Date. Unless otherwise agreed to by the parties in writing, the closing date for conveyance of the Property shall be ninety (90) days after the Jailhouse has been removed from the Property, the Abatement of the Asbestos has been completed and the Property is cleared and ready for development (the "Closing Date"). As and when applicable, the closing date for conveyance of the Option Parcel shall be the later of GlassHouse completing the improvements for the Public Parking Lot required by Section 3.5 of this Agreement (unless the temporary easement as described in Section 3.5.1 is provided) or sixty (60) days following GlassHouse providing the City with notice that it is exercising the said option. The Closing Date or the closing date for the Option Parcel may be extended for up to one month pursuant to a written agreement executed by GlassHouse and the City Manager without the necessity of amending this Agreement.

- 6.4. Form of Conveyance and Closing Costs. The City shall convey the Property and, as applicable, the Option Parcel, to GlassHouse pursuant to a special warranty deed. Documentary stamp taxes, if any, on the special warranty deed shall be the expense of GlassHouse. GlassHouse shall pay for the cost of recording curative instruments, the title insurance commitment, and the owner's title policy if issued, recording of the deed and all expenses associated with any financing. Each party shall pay its respective attorney's fees. Conveyance shall be subject to a reservation by the City of the Easement, the terms and conditions of which shall be agreed upon between the City and GlassHouse in the PD Agreement applicable to the Property (but which may be subsequently amended by agreement between them without amending the PD Agreement). The Easement shall provide for the City to restore any damage caused by or related to its use of the Easement including, without limitations, arising out of its maintenance, repair or replacement of the City's facilities within the Easement.

The conveyance of the Property shall also be subject to a reverter clause ("Reverter Clause") reserved by the City. The terms and conditions for the Reverter Clause shall be agreed upon between the City and GlassHouse prior to closing on the Property. The general conditions of the Reverter Clause shall be that, unless extended by this Agreement (including, without limitation, Sections 4.5 and 12) or by mutual agreement of City and GlassHouse, construction of Phase 1, Building 1 must have commenced within twenty four (24) months from the closing on the Property, and must be ready for occupancy within thirty six (36) months from the commencement of construction. If either deadline is not achieved, the City may at any time thereafter (while that condition continues to exist) serve GlassHouse with the City's notice of intention to invoke the Reverter Clause, which notice shall state with specificity what deadline has not been met. GlassHouse shall have one hundred-eighty (180) days after receipt of the City's notice within which to cure that condition. After the expiration of the one hundred eighty (180) day period and prior to the time the condition has been cured, City may then invoke the Reverter Clause by providing written notice to GlassHouse of such election. Within fifteen (15) days of such notice, GlassHouse shall convey title of the Property by special warranty deed. Upon the City sending such notice, the Option shall automatically terminate. Should GlassHouse fail to convey the Property to the City, the City shall be entitled to immediately seek specific performance of this provision in a court of competent jurisdiction. A memorandum setting forth the terms of the Reverter Clause shall be recorded in the Public Records of Volusia County, Florida. The City will subordinate the reversionary interests evidenced by the Reverter Clause to any commercially reasonable mortgage recorded against the Property which mortgage is solely for the development of the Property. Once development of the Property is completed, this reversionary interest will terminate and otherwise be deemed to be extinguished, and the City shall record a notice of the termination of the reversionary interest in the Public Records upon completion of the development of the Property.

- 6.5. Payment by GlassHouse. Except as otherwise set forth herein, GlassHouse shall provide payment of the following:

- 6.5.1. Closing costs as set forth herein associated with conveyance of the Property and as applicable, the Option Parcel, except that the City shall bear its own attorney fees.
- 6.5.2. City application fees associated with the entitlement process.
- 6.5.3. City and County impact fees, subject to any applicable credits.
- 6.5.4. City permit fees.
- 6.5.5. All other typical development fees related to development of the Project.
- 6.6. AS IS. Except as otherwise provided in this Agreement, the City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to the Property and, as applicable, the Option Parcel. GlassHouse agrees that with respect to the Property and the Option Parcel, GlassHouse has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of the City (except as expressly set forth in this Agreement) or any agent of the City. GlassHouse represents that it is a knowledgeable purchaser of real estate and that (except as to the express representations and warranties as set forth in this Agreement), it is relying solely on the Geotechnical Survey, Phase 1 (and Phase 2, as applicable), and the surveys and Survey provided by City pursuant to Sections 5.2.5, 5.2.6 and 5.9, respectively), and its own expertise and that of its consultants, and that in addition to the inspection reports provided by the City, GlassHouse will conduct such inspections and investigations of the Property and, if applicable, the Option Parcel, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, which may not have been revealed by those inspections and investigations. GLASSHOUSE ACKNOWLEDGES AND AGREES THAT UPON CLOSING, THE CITY SHALL SELL AND CONVEY TO GLASSHOUSE, AND GLASSHOUSE SHALL ACCEPT THE PROPERTY AND, AS APPLICABLE, THE OPTION PARCEL "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN THE DEED TO BE DELIVERED AT CLOSING), COLLATERAL TO OR AFFECTING THE PROPERTY AND, IF APPLICABLE, THE OPTION PARCEL BY CITY, ANY AGENT OF THE CITY OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF THE CITY. The terms and conditions of this Section shall expressly survive the closing and not merge into the deed(s) to be executed and delivered at Closing.
- 6.7. Title Insurance.
 - 6.7.1. GlassHouse shall obtain, at GlassHouse's expense, within thirty (30) days of the Effective Date, a commitment (the "First Commitment") for an

Owner's Title Insurance Policy agreeing to insure title to the Property and the Easements or, at GlassHouse's election, the Property, the Easement and the Option Parcel, in an amount that GlassHouse estimates is equal to the value of the Property, the Easement and, as applicable, the Option Parcel. The First Commitment shall be subject to: no exceptions other than those matters herein permitted; those which will be discharged prior to or at Closing; and the standard printed exceptions and exclusions from coverage customarily contained in an Owner's Policy from the title company.

- 6.7.1.1. GlassHouse shall provide the City a copy of the First Commitment within ten (10) days of receipt of same.
- 6.7.1.2. Within thirty (30) days of its receipt of the First Commitment, GlassHouse shall notify the City of any objections thereto. If GlassHouse fails to do so, it shall be deemed to have accepted the First Commitment and title to the Property and the Easements and, as applicable, the Option Parcel, as evidenced thereby.
- 6.7.1.3. GlassHouse shall take title subject to zoning, restrictions and prohibitions imposed by governmental authority which would not inhibit, restrict or prohibit redevelopment of the Property, the Easements and Option Parcel consistent with the CDP. No other restrictions and/or easements shall affect the title.
- 6.7.1.4. If the First Commitment discloses unpermitted exceptions or matters that render the title non-marketable or otherwise objectionable to GlassHouse in its sole discretion, the City, at its option, shall have forty-five (45) days from the date of receiving written notice of defects from GlassHouse within which to have the exceptions removed from the First Commitment, or the defects cured to the reasonable satisfaction of GlassHouse. If the City fails to have the First Commitment exceptions removed or the defects cured within the specified time, GlassHouse may terminate this Agreement, or GlassHouse may elect, upon notice to the City within ten (10) days after the expiration of the curative period, to take title as it then is notwithstanding such exceptions or title defects.
- 6.7.2. Thereafter, GlassHouse may obtain at GlassHouse's expense, within thirty (30) days prior to Closing on the Property, the Option Parcel, or both, an updated commitment (a "Subsequent Commitment") for an owner's title insurance policy.
 - 6.7.2.1. In the event that a Subsequent Commitment contains any unpermitted exceptions or matters that render the title non-marketable; and such exceptions or matters were not set forth in the First Commitment, the following provisions shall apply:

6.7.2.1.1. In the event that the new exceptions or matters arise by, though, under or against the Property or, as applicable, the Option Parcel, the City shall exercise reasonable diligence in the curing of any such exceptions or matters, including the payment and discharge of any liens or encumbrances affecting the title of the subject lands.

6.7.2.1.2. Otherwise, the provisions of Section 6.7.1.4 shall apply.

6.7.3. At closing, the City shall provide a standard seller's affidavit so the title company may provide GlassHouse with standard "gap" coverage in the custom as established by title insurance practices in Florida.

6.7.4. Subsequent to closing, the title company, at GlassHouse's expense, shall provide an owner's title policy showing good and marketable title in GlassHouse through the date of recording the special warranty deed and subject only to the permitted exceptions and any matters created at closing.

6.7.5. The Closing of each Parcel shall be thirty (30) days after the later of: (a) the date that the City advises GlassHouse that it elects not to cure the title defects or the expiration of the time frame for the City to cure the defects (if it elects to do so); or (b) the time for closing expressly set forth in the Agreement.

7. **Representations and Warranties of the City and the CRA.** The City and the CRA hereby represent and warrant the following:

7.1. This Agreement and each document contemplated hereby to which the City and the CRA will be a party has been duly authorized and will be executed and delivered by the City and the CRA and neither their execution and delivery, nor compliance with the terms and provisions of this Agreement: (i) require the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (ii) contravene any existing law, judgment, governmental rule, regulation or order applicable to or binding upon the City or the CRA, or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance on the City or the CRA.

7.2. This Agreement and each document contemplated hereby to which the City and the CRA will be a party, will constitute a legal, valid and binding obligation of the City or the CRA enforceable against the City or CRA in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.

7.3. To the knowledge of the City and the CRA, there is no suit, litigation or action pending or threatened against the City or the CRA which questions the validity of this

Agreement or any document contemplated hereunder or challenges the power or any approvals of the City or the CRA to authorize the execution and delivery of same.

- 7.4. The City and the CRA shall use their best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control of the City or the CRA and shall act so as not to unreasonably delay the completion of the Projects.
- 7.5. The City and the CRA shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of the City and the CRA.
- 7.6. The City shall assist GlassHouse in accomplishing the development of the Projects in accordance with this Agreement and the plans for the Projects, and will not violate any applicable laws, ordinances, rules, regulations, orders, contracts, or agreements, or approve or enter into any agreement that will result in this Agreement or any part hereof, or any other instrument contemplated hereby, to be in violation thereof.
- 7.7. The City and the CRA shall discharge, vacate, or release any lien, encumbrance, easement, right-of-way or other property interest the City or the CRA has or owns on or in the Property and, as applicable, the Option Parcel (other than those arising under this Agreement) on or before the closing of the conveyance of the Property and, as applicable, the Option Parcel to GlassHouse.
- 7.8. The City and the CRA represent that the Property and the Option Parcel are not on any "Superfund" list under any applicable environmental law, nor is the Property or the Option Parcel currently subject to any lien related to any environmental matter. Except as specifically set forth herein, the City and the CRA make no other representations or warranties, expressed or implied, concerning the environmental condition of the Property or the Option Parcel.
- 7.9. Seller is and, as of the Closing Date and the closing date for the Option Parcel, will be:
 - 7.9.1. In possession of the Property and, as applicable, the Option Parcel, free of any tenants and rights of third-parties.
 - 7.9.2. The Owner of fee simple legal and beneficial title to the Property and, as applicable, the Option Parcel.

8. **Representations and Warranties of GlassHouse.** GlassHouse hereby represents and warrants the following:

- 8.1. GlassHouse is a validly existing limited liability company under the laws of the State of Florida, has all requisite power and authority to carry on its business, to own and hold property, to enter into and perform its obligations under this Agreement and consents to service of process on its registered agent in Florida.

- 8.2. This Agreement and each document to which GlassHouse is or will be a party has been duly authorized and will be executed and delivered by GlassHouse and neither their execution and delivery, nor compliance with the terms and provisions: (i) requires the approval and consent of any other party, except as have been obtained or as are specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on GlassHouse, or (iii) results in any default or results in the creation of any lien on the property or assets of GlassHouse which will have a material adverse effect on its ability to perform its obligations hereunder.
- 8.3. This Agreement and each document contemplated to which GlassHouse will be a party, will constitute a legal, valid and binding obligation of GlassHouse enforceable against GlassHouse in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.
- 8.4. To the knowledge of GlassHouse, there is no suit, litigation or action pending or threatened against GlassHouse, which questions the validity of this Agreement or which will have a material adverse effect on its ability to perform its obligations hereunder.
- 8.5. GlassHouse shall use its best efforts to timely fulfill all of the conditions and obligations expressed in this Agreement which are within the control or are the responsibility of GlassHouse.
- 8.6. During the period the obligations of GlassHouse are in effect, GlassHouse shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of GlassHouse.
- 8.7. GlassHouse shall use its best efforts to accomplish the development of the Projects in accordance with this Agreement, the Proposal and the Project plans, and will not violate any applicable laws, ordinances, rules, regulations or orders in its efforts to do so.
- 8.8. GlassHouse has or will use its best efforts to obtain all state and local permits or other governmental authorizations and approvals required by law in order to proceed with the development of the Projects, subject to the fee waivers contemplated or permitted herein, if any.
- 8.9. GlassHouse shall not take any action or omit to take any action which would knowingly and intentionally cause the taxable value of the Property or, as applicable, the Option Parcel to diminish (other than the right as provided by law to petition the Value Adjustment Board or to otherwise challenge the valuation assigned to the Property or, as applicable, the Option Parcel by the Volusia County Property Appraiser).

8.10. GlassHouse shall promptly notify the City Manager in writing of any actual or reasonably anticipated delays in the construction of the Projects.

9. Default

9.1. Force Majeure. Neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as set forth below.

9.2. Notice and Opportunity to Cure.

9.2.1. Prior to declaring a default hereunder, other than with regard to the situations specifically enumerated in Sections 3.2.1, 3.4.1, 5.2.6, 5.9 and 6.4, the non-defaulting party must provide the defaulting party with written notice and at least thirty (30) days to cure such default; provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter diligently undertakes and pursues such cure to completion.

9.2.2. Further provided, however, that no prior notice or opportunity to cure needs to be provided in the event the defaulting party has previously breached a provision of this Agreement, and thereafter breaches the same provision.

9.3. Remedies. If a default occurs, the non-defaulting party may terminate this Agreement as to any portion of the Property or Option Parcel that have not yet been conveyed, institute an action to compel specific performance or seek other equitable relief, or suspend its own performance hereunder, or pursue any other remedy available at law or equity other than a suit for damages. In the event that the City shall fail to convey the Property or Option Parcel pursuant to this Agreement, and GlassHouse shall not otherwise be in material and substantial default of this Agreement, then GlassHouse shall provide the City written notice of such default. The City shall have thirty (30) days from receipt of such notice to cure its default. If the City shall fail to cure such default within the thirty (30) day time period, then GlassHouse shall be entitled to bring an action for declaratory relief, specific performance or other equitable relief as allowed by law as against a governmental entity or, notwithstanding the other provisions of this Section, terminate this Agreement and recover all reasonable fees and costs incurred in the performance of its obligations set forth in Sections 3 and 4 within thirty (30) days of written termination of this Agreement by GlassHouse as its sole remedy. The specified rights and remedies to which the City and GlassHouse are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which the City or GlassHouse may have, including specific performance. The foregoing notwithstanding, under no circumstances will the City or GlassHouse be liable for consequential damages, including lost profits, the right to such damages being expressly waived.

- 9.4. **No Waiver.** The failure by the City, the CRA or GlassHouse to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that the City, the CRA or GlassHouse may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.
- 9.5. **Effect of Termination.** In the event that a party terminates this Agreement under this Section 9 or any other provision of this Agreement, such termination shall not affect the obligations of the parties as to Projects the land for which has been conveyed by the City to GlassHouse.
10. **Agreement to Run with Land.** This Agreement shall run with the Property and, as applicable, the Option Parcel and any portion thereof.
- 10.1. This Agreement, and any amendments hereto, shall be binding and inure to the benefit of, and be enforceable by, the City, the CRA and GlassHouse, and the heirs, successors and assigns of the foregoing.
- 10.2. In the event of a conveyance of any portion of the Property or the Option Parcel, this Agreement may be amended by the owner of one portion thereof without the necessity of joinder or consent of other owner(s) provided that the amendment does not amend the rights or obligations of such other owner(s). This Section supplements Section 15.4 and 15.5 of this Agreement.
11. **Survival.** Notwithstanding the termination of this Agreement or the prior performance by the parties hereunder, Sections 16 through 37 of this Agreement, as well as those provisions set forth in Section 3 of this Agreement, shall survive and remain effective.
12. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; declaration of a state of emergency by an applicable jurisdiction; or act of God, shall be deemed events of "Force Majeure" and such delays shall be excused in the manner herein provided. If such party is delayed in any work pursuant to this Agreement for occurrence of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.
13. **Insurance.**
- 13.1. In addition to the insurance required by Section 3.4.2, GlassHouse agrees to maintain during development or construction of any Project the following insurance policies:

- 13.1.1. Builder's Risk Insurance Policy for physical damage or loss, as a result of fire, flood, and other hazards or risks customarily insured against in DeLand, FL.
- 13.1.2. Comprehensive General Liability Coverage of at least one million (\$1,000,000.00) dollars per occurrence, two million (\$2,000,000.00) dollars annual aggregate.
- 13.1.3. Workers' Compensation Coverage as required by the laws of the State of Florida.
- 13.2. Prior to commencement of construction, and within ten (10) days of the City's request thereafter, GlassHouse shall furnish to the City proof of compliance with these insurance provisions.
- 13.3. All insurance policies required by this Agreement shall provide such policies or agreements cannot be substantially modified or canceled until after at least one (1) month prior written notice has been given to the City.

14. Notice.

- 14.1. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by notice complying with the terms of this Section:
 - 14.1.1. For the City and CRA: Community Development Director, City of DeLand, 120 South Florida Ave., DeLand, FL 32720.
 - 14.1.2. For GlassHouse: 801 E International Speedway Blvd., DeLand, FL 32724, Attn: Michael Prelec, Jr., with a copy to F.A. (Alex) Ford, Jr., Landis Graham French PA, 145 East Rich Avenue, Suite C, DeLand, FL 32724.
- 14.2. Each such notice shall be deemed delivered: on the date of delivery if by personal delivery; and if the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; or (c) the date upon which notice is designated by the postal authorities as not delivered. Notwithstanding the foregoing, service by personal delivery delivered after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 14.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.
- 14.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

15. Assignment.

15.1. Assignment.

15.1.1. GlassHouse shall be entitled to assign its rights and obligations under this Agreement as to one or more Projects to a parent, subsidiary, or affiliated entity in which GlassHouse or its members are the management authority and are members or interest holders, including but not limited to, a single-asset entity or joint venture entity. The foregoing or any other provision of this Agreement, GlassHouse shall not be entitled to assign its obligation to maintain its Headquarters on the Property in order to receive the payments provided for in Section 5.11.

15.1.2. Other than as provided for in Section 15.1.1, any assignment of GlassHouse's rights and obligations as to one or more Projects which is made prior to Completion of such Project shall require the consent of the City, which may be withheld or conditioned by the City in its sole discretion.

15.1.3. Otherwise, GlassHouse shall be entitled to assign its rights and obligations under this Agreement as to one or more Projects.

15.2. GlassHouse shall provide notice of a permitted assignment to the City prior to or simultaneously with making the assignment. The notice of assignment shall provide all information to the City sufficient for the City to verify that the assignment is a permitted assignment under Section 15.1 and the assignee's address for the purposes of notice under Section 14 of this Agreement. Upon the City's confirmation that the assignment is a permitted assignment, the City Manager shall execute a document acknowledging the City's acceptance of such assignment.

15.3. Upon any assignment, the rights and obligations contained herein shall be binding on successors in interest to the affected portion of the Property and, as applicable, the Option Parcel, and the terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and any respective successors and assigns.

15.4. In the event of an assignment hereunder:

15.4.1. The assignee will have all rights and obligations of GlassHouse as to the Project that is the subject of the assignment.

15.4.2. The assignee shall be entitled to amend or terminate the provisions of this Agreement that concern the assigned Project without the necessity of joinder or consent of GlassHouse or any assignee of any other Project, provided that no such amendment or termination shall amend the rights or obligations of GlassHouse, or concerning any other Project or other portion of the Property or Option Parcel, without joinder or consent of the affected party.

- 15.5. By executing this Agreement, GlassHouse agrees, and by accepting any assignment, each assignee agrees, the foregoing provisions of this Section concerning the ability of an assignee to amend or terminate this Agreement as to the Project assigned to the assignee.
16. **Amendment.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.
17. **City's Police Powers.** Nothing in this Agreement shall serve to affect or limit the City's police powers in the exercise of zoning or land development decisions or other governmental action associated with the proposed redevelopment of the Property or the Option Parcel, as applicable, or any development order associated therewith.
18. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law.
19. **Resolving any Invalidity.** The City, the CRA and GlassHouse hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for GlassHouse undertaking the Projects.
20. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
21. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.
22. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among the City, the CRA and GlassHouse, or any of them. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that the other party hereto is not acting as a fiduciary for nor as an adviser to it in respect of this Agreement.
23. **Personal Liability.** No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the City, the CRA or GlassHouse in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of GlassHouse, the City or the CRA hereunder.

24. **Exclusive Venue.** The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of or concerns or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Volusia County, Florida.
25. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
26. **Recording.** Except as expressly provided for herein, neither this Agreement nor any memoranda hereof, shall be recorded in the Public Records of Volusia County, Florida.
27. **Counterparts; Copies.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument. Additionally, signed facsimiles shall have the same force and effect as a signed original, and, in lieu of an original, any party hereto may use a photocopy of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.
28. **Language.** Whenever used in this Agreement: the singular form of a term or phrase shall include the plural and the plural of a term or phrase shall include the singular, and the use of any gender shall include all genders where the context permits; references to Sections shall include all subsections (and other divisions) thereunder; the word "or" may be read "and," if the context permits or requires it; and the words "include," "includes," "including" shall be deemed to be followed by the phrase "without limitation."
29. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement; or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement; then the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable

as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

30. **Successors and Assigns.** All covenants, Agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
31. **Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.
32. **Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
33. **Exhibits.** Any exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
34. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
35. **No Third Party Beneficiaries.** No person or entity other than GlassHouse, the City and the CRA and their respective assigns are intended beneficiaries of this Agreement, and no person or entity other than them shall have any right to enforce the terms of this Agreement or claim any benefit of this Agreement.
36. **Time.** Time is of the essence of all of the provisions and terms of this Agreement.
37. **Entire Understanding.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties with the exception of those specific provisions of a PD Agreement which, to the extent of conflict herewith, shall control over this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THEREFORE, the parties have executed this Agreement on the Effective Date set forth above.

Signed, sealed and delivered in the presence of:

THE CITY OF DELAND,
FLORIDA, a Florida municipal
corporation

Vickie Belanger
Witness 1

By: [Signature]
Robert E. Apgar, Mayor

Vickie Belanger
Print Name of Witness 1

Attest:

[Signature]
Witness 2

By: Julie A. Hennessy
Julie A. Hennessy
City Clerk-Auditor

Teri Byrnes
Print Name of Witness 2

Date: 7.9.2020

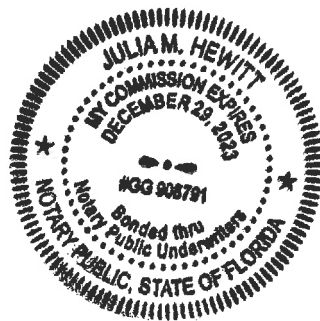
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 9th day of July, 2020 by ROBERT F. APGAR, Mayor and JULIE A. HENNESSY, City Clerk-Auditor, respectively, of the City of DELAND, Florida, a chartered municipal corporation, on behalf of the City, who are personally known to me or who have produced _____ as identification.

[Signature]
Notary Public
Commission No.: 96908791

Approved as to legal form:

By: [Signature]
Darren J. Elkind, City Attorney



Signed, sealed and delivered in the presence of:

**THE DOWNTOWN
COMMUNITY
REDEVELOPMENT AGENCY
OF THE CITY OF DELAND,
FLORIDA, organized under
Chapter 163, Part III, Florida
Statutes**

Vickie Belanger
Witness 1

Vickie Belanger
Print Name of Witness 1

[Signature]
Witness 2

Teri Byrnes
Print Name of Witness 2

By: [Signature]
Robert F. Apgar, Chair

Attest:

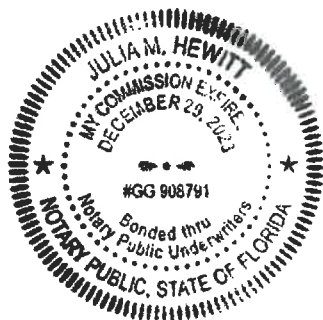
By: Julie A. Hennessy
Julie A. Hennessy
City Clerk-Auditor

Date: 7.9.2020

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 9th day of July, 2020 by ROBERT F. APGAR, Chair of the Community Redevelopment Agency of the City of DeLand organized under Chapter 163, part III, Florida Statutes, on behalf of the Agency, who is personally known to me or who has produced _____ as identification.

[Signature]
Notary Public
Commission No.: AA908791



Approved as to legal form:

By: [Signature]
Darren J. Elkind, City Attorney

Signed, sealed and delivered in the presence of:

**GLASSHOUSE SQUARE, LLC, a
Florida limited liability company**

Witness 1

Tasheldon Starke

Print Name of Witness 1

Witness 2

Kristen Sparks

Print Name of Witness 2

By:

Michael L. Paelec ^{Jr}
Managing Member

Date:

7/6/20

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 6 day of July, 2020 by
Michael L. Paelec, a Florida resident, as managing member of GlassHouse Square,
LLC, who is personally known to me or who has produced FLDL as identification.

P812-552-82-166-8

Dustin Kalmbach
Notary Public

Commission No.: 66283115

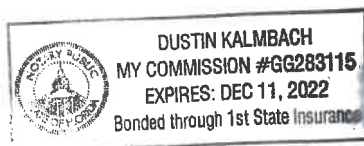


EXHIBIT A

(Legal Description for the Property)

That portion of Lot 3, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", page 701, Public Records of Volusia County, Florida, lying West of the Westerly line of Miller Hardware Company's Re-subdivision Map Book 5, Page 156 of aforesaid Public Records, Less any portion lying within the Rights of Way of New York Avenue, a 66 foot wide R/W, and Georgia Avenue (F.K.A. Short Street). Together with that portion of Lot 4, Block 3, Howry's Addition to DeLand, as recorded in Deed Book "G", page 701, Public Records of Volusia County, Florida, lying East of the following described line; Beginning at a point on the South line of West New York Avenue, as now laid out 66 feet wide, said point being 191.9 feet East of the center line of S. Florida Avenue, said point also being 57 feet East of the established and recognized Northwest corner of said Lot 4, Block 3, Howry's Addition to DeLand, thence South at right angles to West New York Avenue 274.7 feet, more or less, to a point on the North side of Shore Street sometimes called Georgia Avenue, which point is 184.45 feet East of the center line of S. Florida Avenue, and 57 feet East of the Southwest corner of said Lot 4, Block 3, Howry's Addition as established and recognized and marked by an iron pipe.

Property Appraiser's Tax Parcel No. 7016-01-03-0030

EXHIBIT B

(Legal Description for the Option Parcel)

The Northeast $\frac{1}{4}$ of Lot 7, Block 3 and the West $\frac{1}{2}$ of Lot 7 except the South 157.7 feet, Block 3, Map of Howery's addition to DeLand, Deed Book "G", Page 701, Public Records of Volusia County, Florida.

Property Appraiser's Tax Parcel No. 7016-01-03-0070

EXHIBIT C

- No. 1 (Phase I)
BUILDING No. 1 (430,000 SQFT)
• RETAIL/COMMERCIAL - FIRST FLOOR (10,000 SQFT.)
• INNOVATION CENTER - SECOND FLOOR (10,000 SQFT.)
• CORPORATE OFFICE - THIRD FLOOR (POTENTIAL)
• ±10,000 SQFT.
• ROOFTOP EVENT SPACE
- No. 2 (Phase II)
BUILDING No. 2 (48,500 SQFT)
• RETAIL/COMMERCIAL - FIRST FLOOR (43,500 SQFT.)
• RETAIL/COMMERCIAL/RESIDENTIAL - SECOND FLOOR
(±5,000 SQFT.)
- No. 3 (Phase I)
GLASSHOUSE ALLEYWAY
• PEDESTRIAN CONNECTION BETWEEN WEST GEORGIA AVENUE AND WEST NEW YORK AVENUE
- No. 4 (Phase I)
AMENITY AREA
• INTERACTIVE FOUNTAIN
• VENDORS

PRELIMINARY SITE PLAN AND PARKING



Chapter 20 NOISE¹

Sec. 20-1. Legislative findings; declaration of necessity.

It is found and declared that:

- (1) The making and creating of excessive, unnecessary or unusually loud noises within the limits of the City of DeLand is a condition which has existed for some time and the amount and intensity of such noises is increasing;
- (2) The making, creation or maintenance of such excessive unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the citizens of the City of DeLand;
- (3) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the City of DeLand and its inhabitants.

(Ord. No. 75-7, § 1, 7-7-75)

Sec. 20-2. Prohibitions.

It shall be unlawful, except as expressly permitted herein, to make, cause, or allow the making of any noise or sound which exceeds the limits set forth in this chapter.

(Ord. No. 75-7, § 1, 7-7-75)

Sec. 20-3. Noise limitations.

- (a) *Definitions.* For the purpose of this section of this chapter, certain words and phrases used herein are defined as follows:
- (1) A *band level* is the total sound level of all noise as measured with a sound level meter using the "A" weighting network. The unit of measurement is the dB(A).
 - (2) *Decibel* is a unit of level equal to ten times the logarithm (base 10) of the ratio of any two quantities proportional to power.

¹Editor's note(s)—Sections 20-1—20-4 "Noise," adopted with the original codification, were deleted by the adoption on July 7, 1975, of § 1 of Ord. No. 75-7, which deleted the entire ch. 20 and substituted in lieu thereof ch. 20, §§ 20-1—20-7, "Noise."

Charter reference(s)—Authority of city to abate nuisances generally, § 21.

Cross reference(s)—Mechanical musical devices, § 8-6, et seq.; noise constituting disorderly conduct, § 21-8.

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- (3) *Sound pressure level*, in decibels, of sound is 20 times the logarithm to the base ten of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.
 - (4) *Sound-level meter* is an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner.
 - (5) *Noise level* is the sound pressure level as measured in dB(A) by a sound level meter.
 - (6) *Person* is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.
 - (7) *Emergency work* is work made necessary to protect persons or property from exposure to danger.
 - (8) All *time* referred to in this chapter shall be the then current legal time in the City of DeLand, Florida.
 - (9) *Daytime* is defined as 7:00 a.m. to 11:00 p.m. and "nighttime" from 11:00 p.m. to 7:00 a.m. in commercial and manufacturing use occupancies. "Daytime" is defined as 7:00 a.m. to 10:00 p.m. and "nighttime" from 10:00 p.m. to 7:00 a.m. in residential use occupancies.
 - (10) All technical definitions are in accordance with American Standard S1. 1-1960 entitled "Acoustical Terminology".
 - (11) Plainly audible shall mean any noise produced by any source, or reproduced by a radio, audio equipment, musical instrument, sound amplifier or other mechanical or electronic sound making device that can be clearly heard by a person using his or her normal hearing faculties, at a distance as defined in subsection 20-4(c) from the property line or right-of-way line of the source of the noise. The detection of a rhythmic bass reverberating type of noise disturbance is sufficient to constitute a plainly audible sound or noise.
- (b) *Classification of use occupancies.*
- (1) *Classification.* For purposes of defining the "use occupancy", all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing businesses where sales, professional, or other commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In cases of multiple use, the more restrictive use category shall prevail. Hospitals, schools, church areas, and Stetson University are considered residential. Any area not otherwise classified shall conform to commercial standards.
 - (2) Reserved.
- Editor's note(s)—Former § 20-3(b)(2), concerning projection of noise, was repealed by Ord. No. 88-41, § 1, adopted Nov. 21, 1988.
- (c) *Measurement of noise.*
- (1) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for Sound Level Meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.
 - (2) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.

- (3) The measurement shall be made at any point on the property into which the noise is being transmitted and shall be made at least three feet away from any ground, wall, floor, ceiling, roof and other plane surface.
- (4) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall not be made within three feet of any ground, wall, floor, ceiling, roof, or other plane surface.
- (5) All noise measurements provided for in this chapter will be made by designated officials of the city who are qualified to operate the apparatus used to make the measurements as provided for in this chapter.
- (6) Noise in violation of subsection 20-4(c) shall be confirmed by a police officer. The police officer who hears a noise that may be plainly audible shall assess the noise by measuring the distance from the property line or right-of-way line of the source of the noise according to the following standards:
 - a. The primary means of detection shall be the investigating officer's normal hearing faculties, provided the investigating officer's hearing is not enhanced by any mechanical or medical device, such as a hearing aid.
 - b. The investigating officer shall have a direct line of sight and hearing to the real property that is the source of the noise so that the investigating officer can identify the offending source of such noise and the distance involved.

(d) *Tables of noise level limits.*

- (1) *Table I.* Table I specifies noise level limits in dB(A) which if exceeded will have a high probability of producing permanent hearing loss in anyone in the area where the noise levels are being exceeded. No noise shall be permitted within the city which exceeds in duration or noise level that as stated in Table I as follows:

TABLE I
PERMISSIBLE NOISE EXPOSURES*

Duration per day, continuous hours	Noise level dB(A)
8	90
6	92
4	95
3	97
2	100
1 ½	102
1	105
½	110
¼ or less	115

*When the daily noise exposure is composed of two or more periods of noise exposure at different levels, their combined effect should be considered, rather than the individual effect of each. If the sum of the following fractions: $C_1/T_1 + C_2/T_2 \dots C_n/T_n$ exceeds unity, then, the mixed exposure should be considered to exceed the noise level limit value. C_n indicates the total time of exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level.

If the device producing the noise whose noise levels are in excess of Table I cannot be toned down so that the noise levels are less than those in Table I, then protection should be provided for those in the

area of the noise. The protection must reduce the noise level to below the limits of Table I and must not, itself, produce a safety hazard. Procedures must exist which guarantee that the people in the area of the noise will use the protection.

- (2) *Table II.* Table II specifies noise level which represent limits which if exceeded interfere with the peace, quiet, and general welfare of the city and its inhabitants. No noise shall be permitted within the city which exceeds the noise level limits of Table II, except as expressly authorized by this chapter.

TABLE II
MAXIMUM ALLOWABLE NOISE LEVEL LIMITS IN dB(A) FOR
RESIDENTIAL, COMMERCIAL AND MANUFACTURING OCCUPANCIES

These levels may not be exceeded for more than three cumulative minutes out of any continuous 60 minute period.

District	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Residential	61	55
	Day (7:00 a.m. to 11:00 p.m.)	Night (11:00 p.m. to 7:00 a.m.)
Commercial	66	60
Manufacturing	71	65

- (e) *Motor vehicles.* It shall be unlawful to operate a motor vehicle, or combination of vehicles towed by such motor vehicle which creates a noise or sound which exceeds the noise level limits in Table II except when said vehicle(s) are traveling on public streets, highways, driveways, parking lots and ways open to vehicle travel. It shall be unlawful to operate a motor vehicle in such manner as to exceed the noise level limits of Table III when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle travel. Normal operation includes normal acceleration, deceleration and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.

TABLE III
NOISE LEVEL LIMITS FOR MOTOR VEHICLES*

- (1) *Trucks and buses.* Eighty-five dB(A) measured 50 feet from the source.
- (2) *Passenger cars, motorcycles and other motor vehicles.* Seventy-nine dB(A) measured at 50 feet from the source.

*The measurement is made as the vehicle drives past. If the reading is above that listed in (1) or (2) of Table III at any time, the vehicle is in violation of the chapter. All distances are measured from center of vehicle or center of driving lane in which the vehicle is being driven.

- (f) *Enclosed places of public entertainment.* It shall be unlawful to sustain in any enclosed place of entertainment to which the public is invited, including but not limited to, a restaurant, bar, cafe, discotheque or dance hall, any noise level equal to or in excess of the standards listed in Table I.
- (g) *Exemptions.* The following uses and activities shall be exempt from noise level regulations except as listed in Table I:
- (1) Air conditioners and lawn mowers are exempt from provisions of Table II of this chapter when this equipment is functioning in accord with the manufacturer's specifications and with all manufacturers' mufflers and noise reducing equipment in use and in proper operating condition.
- (2) Nonamplified crowd noises resulting from the activities such as those planned by student, governmental or community groups.

-
- (3) Construction operations for which building permits have been issued, or construction operations not requiring permits due to ownership to the project by an agency of government; providing such equipment is operated in accord with the manufacturer's specifications and with all manufacturers' mufflers and noise reducing equipment in use and in proper operating condition.
 - (4) Noises of safety signals, warning devices, and emergency pressure relief valves.
 - (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
 - (6) Noises resulting from emergency work as defined in section 20-3(A)(7).
 - (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with section 20-3(A). Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in section 20-3(A).
 - (8) Noises made by persons having obtained a permit to use the streets are exempt from Table II.
 - (9) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of section 20-3 as well as the other regulations of this chapter. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.
 - (10) All noises coming from the normal operations of railroad trains are exempt from Table II.
- (h) *Special permits.* Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter except from Table I may be made in writing to the city manager or his duly authorized representative. Any permit granted by the city manager hereunder must be in writing and shall contain all conditions upon which said permit shall be effective. The city manager, or his duly authorized representative may grant the relief as applied for under the following conditions:
- (1) The city manager may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.
 - (2) *Permits for entertainment.* Permits may be granted for the purposes of entertainment under the following conditions:
 - a. The function must be open to the public (admission may be charged).
 - b. The function must take place on public property.
 - c. The permit will be given for only four hours in one 24-hour day.
 - d. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.
 - (3) *Other.* Special permits for nonentertainment special purposes may be issued under the following conditions:
 - a. i. If the special purpose related to the operation of a trade or business that the special purpose not be in the ordinary course of that trade or business; or
 - ii. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and
 - b. If the special purpose be a recurring purpose, that it not recur more often than four times each calendar year; and

- c. i. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or
 - ii. If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and
 - d. Except in emergency situations, as determined by the city manager, the special permit may be issued only for hours between 7:00 a.m. and 11:00 p.m. on weekdays; and
 - e. Special permits may be issued for no longer than one week, renewable by further application to the city manager.
- (4) No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building which at any time exceeds the noise level limits in Table II except those used for emergency warnings.

(Ord. No. 75-7, § 1, 7-7-75; Ord. No. 2019-41, §§ 1, 2, 12-2-19)

Cross reference(s)—Streets, sidewalks and other public places, Ch. 26.

Sec. 20-4. Noises prohibited; unnecessary noise standard; statement of intent; sworn complaint required.

- (a) Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of Table I, II, or III, but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the City of DeLand.

Noises prohibited by this section 20-4 are unlawful notwithstanding the fact that no violation of section 20-3 is involved, and notwithstanding the fact that the activity complained about is exempt in section 20-3(g).

Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive, namely:

- (1) The sounding of any horn or signalling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.
 - (2) The using, operating, or permitting to be played, used or operated any radio, television, tape or record player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound, any prolonged sounds made by people, and the keeping of any animal or bird which by causing frequent or long continuous noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such sound emitter is operated and who are voluntary listeners thereto. Quieter standards are expected during the nighttime hours.
- (b) Any person making a complaint under this section shall be required to sign a sworn complaint either prior to or immediately after an arrest is made, otherwise no such complaint will be honored.
- (c) No person shall create on residentially zoned property a sound that is plainly audible at the time and distance requirements set forth in the following table:

Time of Day	Distance
-------------	----------

7:00 a.m.—10:00 p.m.	300 feet or more
10:01 p.m.—6:59 a.m.	150 feet or more

(Ord. No. 75-7, § 1, 7-7-75; Ord. No. 2019-41, § 3, 12-2-19)

Sec. 20-5. Violations, warnings and penalties.

- (a) (1) When a designated official of the city determines in compliance with subsection 20-3(c) that there is a violation of the noise level limits contained herein, he shall issue an official warning to the person or persons responsible for the noise. The warning shall advise the person or persons of the violation of the allowable noise limits, and of the possible penalty if they fail to reduce or eliminate the noise to such allowable limits.
- (2) After the person or persons responsible for the noise are given such warning, a reasonable time to comply with the same shall be given. If the limits of Table I in subsection 20-3(d)(1) are exceeded a "reasonable time" is instanter. Absent special circumstances "reasonable time" (where Table I limits are not exceeded) as used herein is considered 15 minutes in the case of nonvehicular noise emitters and two calendar days for vehicular noise emitters.
- (3) For the purposes of this section, it is sufficient warning for all prohibited noises if the person or persons responsible for any succeeding noises are warned of one offending noise of the same type per 24-hour period.
- (b) (1) If the noise level is not reduced or eliminated to allowable limits within a "reasonable time" after the warning as prescribed in subsection 20-5(a), the person or persons so warned and not complying shall be arrested for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-6 of the DeLand Code of Ordinances. Each day that such violation continues shall be considered a separate offense.
- (2) Any person or persons responsible for an unlawful noise shall be subject to the loss of the noise emitter or emitters if they are convicted three times hereunder within a 12-month period and if the convictions were for noises created by the same or same type of noise emitter. Upon their third conviction the appropriate court shall confiscate said noise emitter or emitters and deposit them with the city manager until such time as the offender can positively demonstrate to the court his willingness and ability to operate the emitter within the limits prescribed by this chapter. Any further conviction shall result in permanent confiscation by the appropriate court.
- (3) The city manager shall notify the operator of any device which produces noise in excess of the limits set by Table I, subsection 20-3(d)(1) that it is a health hazard. The city manager shall have the power and authority to have such devices removed or toned down instanter until such time as they can be otherwise operated in compliance with this chapter.
- (c) The owner, tenant or lessee of property, or a manager, overseer or agent, or any other person or persons lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this chapter, and each may be punished for violations of this chapter. It shall not be a lawful defense to assert that some other person caused such noise, but the lawful possessor of the premises shall be responsible for operating or maintaining such premises in compliance with this chapter and shall be punished whether or not the person actually causing such noise is also punished.
- (d) (1) When a police officer determines in compliance with subsection 20-4(c) that there is a violation of the noise level limits contained therein, the officer shall issue a warning to the person or persons responsible for the noise. The warning shall advise the person or persons of the violation of the allowable noise limits, and of the possible penalty if they fail to reduce or eliminate the noise to such allowable limits. The officer shall

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document the warning in writing, recording the date, time, property address, and name or identity of the person given the warning.

- (2) After the person or persons responsible for the noise are given such warning, a reasonable time to comply with the same shall be given. A reasonable time shall generally be deemed immediately or so long as it would take a reasonably diligent person to reduce the noise level.
- (3) If the noise level is not reduced or eliminated to allowable limits within a "reasonable time" after the warning as prescribed in subsection 20-5(d)(2), or if the person or persons so warned comply with the warning, but violate subsection 20-4(c) again within four hours of the first warning, the person or persons so warned and not complying shall either be arrested or the officer shall forward a criminal complaint to the office of the city attorney for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-6 of the DeLand Code of Ordinances.
- (4) The following penalties apply to violations of subsection 20-4(c):
 - a. First violation: warning (unless the warning is not complied with in which case arrest may be made pursuant subsection 20-5(d)(3);
 - b. Second violation within 12 months of initial warning: \$250.00 civil citation;
 - c. Third violation within 12 months of initial warning: \$500.00 civil citation with mandatory court appearance;
 - d. Fourth violation within 12 months of initial warning: constitutes a misdemeanor criminal violation of this chapter subject to the penalties designated in section 1-6 of the DeLand Code of Ordinances.

(Ord. No. 75-7, § 1, 7-7-75; Ord. No. 2019-41, § 4, 12-2-19)

Sec. 20-6. Additional remedy; injunction.

The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions hereof which endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(Ord. No. 75-7, § 1, 7-7-75)

Sec. 20-7. Manner of construction.

It is the intention of the city commission that each separate provision of this chapter shall be deemed independent of all other provisions herein, and it is further the intention of the city commission that if any provisions of this chapter be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

(Ord. No. 75-7, § 1, 7-7-75)

BY JUSTIN M. SPIVEY

Senior Associate
Wiss, Janney, Elstner Associates, Inc.

BY ALEXANDAR J. MLYNARCZYK

Senior Associate
Wiss, Janney, Elstner Associates, Inc.

Planning for new building projects should consider the impacts of demolition, excavation, dewatering, and construction on adjacent buildings.

Locations:

WJE Philadelphia
601 Walnut Street, Suite 875W
Philadelphia, PA 19106

WJE Princeton
5 Vaughn Drive, Suite 100
Princeton, NJ 08540

Contact:

T: 215.567.0703
E: jspivey@wje.com

T: 609.799.7799
E: amlynarczyk@wje.com

www.wje.com

WJE ENGINEERS
ARCHITECTS
MATERIALS SCIENTISTS
Wiss, Janney, Elstner Associates, Inc.

An Overview of Risks in Adjacent Demolition and Construction

With effective planning and communication, the risks of demolition and construction next to existing buildings can be evaluated and managed, reducing the likelihood of damage and disputes between adjacent property owners. Many of the same physical risks also apply where a building is demolished or constructed next to an existing one with the same owner.

Construction activities next to existing buildings are a common occurrence, not only in urban environments where buildings adjoin property lines or share party walls, but also in many projects involving building additions. Demolition, excavation, dewatering, and construction carry greater risk of causing damage when performed close to existing buildings (Figure 1), especially if the new building is taller or extends deeper into the ground than its predecessor. New buildings can also move differently in response to wind or earthquake loading, redirect the flow of water from precipitation, or alter the pattern of snow drift formation, creating new demands that existing buildings might not have the capacity to accommodate.

The Need for Communication

The risk of damage to existing buildings is typically lower on projects where adjacent property owners proactively communicate, where experienced design professionals are engaged to evaluate risks and develop mitigation strategies, and where qualified contractors are hired to implement them. A peer review of the proposed adjacent design can identify potential risks to the adjacent property. Mitigation strategies often include monitoring of building movement and/or ground vibration, which could be performed by a design professional, subcontractor, or

third-party consultant. It is recommended that owners of existing buildings retain their own consultants for an independent review of the risk mitigation strategies proposed by the new building design team and any issues that arise during project execution.

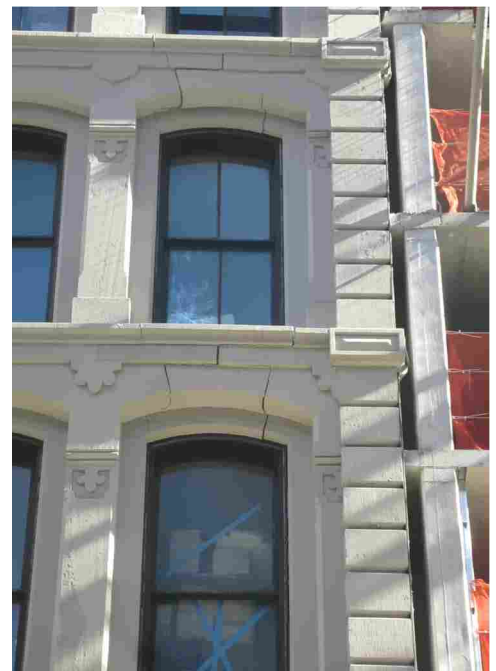


Figure 1. Cracking and displacement of existing stone arches due to foundation settlement associated with adjacent construction. New floor slabs also extend into a required seismic gap, where they can apply damaging earthquake loads to the existing building.

An Overview of Risks in Adjacent Demolition and Construction (CONTINUED)



Figure 2. Inadequately secured sheets of plywood, intended for roof protection, can be dislodged by wind. This city's building code requires the plywood to be fastened over a layer of scaffold plank.



Figure 3. Installation of seismograph (at right) and monitoring data logger (at left) in progress at foundation wall of existing building.

The property owner and design team for the new building should be aware of the vulnerabilities of existing buildings and minimum building code requirements for protection of adjacent properties (Figure 2). Experienced consultants and knowledgeable attorneys can help inform existing building owners about their rights to protection and their duties to provide access for installing monitoring and protection measures. These rights and duties are established in the building code and can be further defined through legal contracts such as a license or access agreement between adjacent property

owners. In some instances, these agreements include payment of a license fee by the developer for use of an adjacent property.

Although consultants and attorneys should remain involved throughout the duration of a project, it is critical to engage them during the planning phase to help set expectations, limit miscommunication, and mitigate risks posed by demolition, excavation, dewatering, and construction.¹ Negotiating an access agreement requires adjacent property owners to achieve compromise on the scope of monitoring and protection measures, which may increase project cost but reduce the risk of even greater expenditures in the event of damage or collapse. Access agreements should include provisions for independent review of all proposed construction details affecting the existing building, including those discussed in the following sections. Failure to reach an agreement may result in litigation, with the new building project proceeding without communication between parties. In some cities, failure to reach an agreement can result in the responsibility for underpinning and other protections being assigned to the owners of existing adjacent buildings.

If the opportunity for communication is missed during project planning, e.g., due to adversarial relationships or limited knowledge of building code requirements, schedule and budget pressures may discourage consideration of risk mitigation measures, or make them more challenging or costly to implement, once work is under way. Also, the rising new building can obstruct access to existing walls along property lines, making it significantly more difficult and expensive to perform needed bracing or weatherproofing work. Although

it may still be possible to mitigate risks to existing buildings later in the project, this often comes at an increased cost due to litigation, work stoppage or delay, and inefficient out-of-sequence work.

Typical Risks and Mitigation Strategies

Project plans should anticipate how the new building could impact adjacent properties, not only during demolition, excavation, and construction, but also in its completed state. Typical risks and mitigation strategies to be considered by the new building design team, and the adjacent property owners and consultants reviewing their work, include the following:

Preparation: Before starting work, monitoring of background (ambient) vibrations, pre-construction condition assessments of existing buildings, installation of crack width gauges or monitors, and optical surveying or laser scanning can identify vulnerabilities and set a baseline for evaluation of any subsequent reports of adjacent building movement or damage. Some building codes include limits on building movement and vibration. For existing buildings of exceptional sensitivity or significance, preemptive stabilization or bracing, temporary removal of fragile contents, or lower-than-typical movement and vibration limits may be appropriate.² Access should be arranged for installing monitoring and protection measures before work begins (Figure 3).

Demolition: Where demolition is necessary to clear the site for the new building, plans should consider limiting vibration from demolition equipment and falling material, protecting lower roof surfaces and adjacent areas from uncontrolled debris, carefully removing joists from party walls and filling the resulting pockets, and preventing collapse due to structural instability

An Overview of Risks in Adjacent Demolition and Construction (CONTINUED)



Figure 4. Timber sheeting at underpinning approach pit with adjacent areas improperly excavated alongside the existing foundation, increasing the risk of soil movement.

as bracing elements are removed. If temporary backfill of the basement or cellar is required after demolition, existing adjacent foundation walls should be evaluated and braced as necessary to resist lateral earth pressure imposed by the backfill. Water management measures, such as pumps with backup power, should be considered to prevent water from precipitation, dust control, or other construction operations from collecting in open cellars and infiltrating through foundation walls of adjacent buildings. Existing wall surfaces and roof edges exposed by demolition should be assessed for air and water penetration resistance and weatherproofed, at least for the duration of temporary exposure, if not also to provide a continuous weathertight building envelope for each adjacent building.

Excavation and Foundations: Removal of soil from beneath an existing foundation (undermining) is generally unacceptable, except in controlled underpinning operations. Excavating vertically downward alongside an existing foundation (Figure 4) should also be avoided, as it removes lateral support provided by the soil beneath or adjacent to the foundation, which may slide downward or buckle outward into the excavation. Excavation support systems (e.g., sequential underpinning with concrete piers, soldier piles with timber lagging, secant piles, and soil berms or benches) and associated dewatering schemes should be selected to keep vertical and lateral soil movement within acceptable limits. Equipment for installing excavation support systems, drilling or driving deep foundation elements, and removing rock should be selected to prevent excessive vibrations from damaging adjacent buildings. Water management measures should be considered to prevent precipitation, groundwater, drilling fluids, and water leaking from utility lines from infiltrating through foundation walls of adjacent buildings, promoting settlement of supporting soil, or causing erosion of soil berms or benches within the excavation.

Superstructure Construction: The risks of adjacent building movement and damage due to foundation settlement or lateral displacement may decrease once the new building's foundation walls are braced by the permanent structure of the first floor, allowing monitoring to be reduced or discontinued. However, it may be prudent to continue some monitoring until after the new building is "topped out," as the increasing dead load on its foundations may cause additional settlement of soil supporting the foundations of adjacent buildings. Building code may also require horizontal separations, also called seismic

gaps, to allow new and existing buildings to displace independently in response to wind and earthquake forces without impacting each other or transferring loads between lateral force-resisting systems. Required separations may be filled with compressible material but should be clear of rigid protrusions that reduce their width. As in the demolition phase, the need to protect lower roof surfaces and adjacent areas from falling material should be considered.

Building Interfaces: Vertical and skyward-facing interfaces between new and existing buildings should be detailed to exclude water and vermin. Where the new building rises above adjacent buildings, existing roof drainage systems should be evaluated for additional flow from precipitation running down rising walls onto lower roof surfaces (Figure 5). Existing roof structures should be evaluated for the additional weight of snow sliding from higher roof surfaces or forming drifts against rising walls. The need for extending or redirecting existing chimney flues, exhaust ducts, plumbing vents, fire escapes, means of egress, and similar items should also be evaluated. Openings in walls covered by the new building typically require infill; fire resistance considerations may apply to the detailing of infill or to the protection of existing openings in adjacent walls.



Figure 5. This interface between a rising wall and an existing roof will require careful detailing to exclude water. Any active chimney flues will also need to be extended above the new, higher roof line.

An Overview of Risks in Adjacent Demolition and Construction (CONTINUED)



Figure 6. Former shared wall following demolition of existing building, with short lengths of steel channel attached to anchors bracing the masonry to floor structure at each level.

Additional Considerations for Party Walls

Party walls, also known as shared walls, are located along property lines and provide support shared by the buildings on either side. If the building on one side is demolished, the party wall must be maintained in good condition to provide continuing support to the adjacent building (Figure 6). Responsibilities related to party walls may be defined in the building code, property easements, and/or access agreements.

Party walls are common in rows of homes or small commercial buildings that were built concurrently and intended to function together as one structure. As with many structures constructed prior to the development of modern building codes, row structures were not designed to resist wind pressure and other lateral loads. Instead, designers or builders chose wall thicknesses and floor and roof joist sizes and spacings based on empirical rules, which would allow relatively slender party

walls with as little as two wythes (vertical layers) of brick masonry between adjacent buildings in a row.

In row structures, party walls carry primarily gravity loads, are not exposed to wind pressure, and are braced against buckling by the floor and roof joists on both sides. The combined length of the front and rear facades helps compensate for the lateral resistance lost to door and window openings and gives the group a greater lateral resistance than the sum of its parts, which is known as the “bookend effect.”

The demolition of one or more buildings in a row structure can have several negative impacts on structural stability.³ The removal of floor and roof joists from one side of a party wall often means that the wall is no longer effectively braced against buckling in that direction, unless joist-to-wall anchors are installed as demolition proceeds. The resulting discontinuity in the front and rear facades disrupts the “bookend effect,” reducing the overall lateral resistance of the buildings that remain.

Disruption of the “bookend effect” can occur even when a building is removed from the end of a row structure, as the connections between front and rear facades and party walls at the interior of a row are typically not as strong as the exterior wall corners of end units. Disturbance of masonry at facade-to-party wall intersections during demolition can also reduce the bracing of party walls against buckling. Given that party walls were typically built of lower-quality materials not intended for exposure to weather, exposure by demolition can result in rapid deterioration of masonry, deterioration of wood framing embedded in masonry, moisture infiltration, and damage to interior finishes.

Bracing and waterproofing are typically recommended when existing party walls are exposed, especially if the new building is structurally independent and separated from adjacent buildings. If a former party wall is not properly anchored to the remaining floor and roof joists after the corresponding joists are removed from the opposite side, it could buckle into the gap between the buildings and/or collapse. While it may be less disruptive to install joist-to-wall anchors from the exposed face of a former party wall, they can also be installed from the interior, even after the exposed face is obstructed by the new building. Connections between front and rear facades and exposed party walls should also be reviewed and reinforced if necessary. If waterproofing of the exposed face is either temporary or omitted, it will be particularly critical to ensure that interfaces between new and existing buildings are properly sealed in accordance with details developed and reviewed by qualified design professionals.

Conclusions

Planning for new building projects should consider the impacts of demolition, excavation, dewatering, and construction on adjacent buildings. New buildings that rise above or extend below adjacent ones present additional risks and increase the need for evaluation. Where a new building replaces a demolished portion of a row structure, there are additional considerations related to bracing and weatherproofing of former party walls. In all cases, communication between adjacent property owners and independent review of proposed monitoring and protection measures by a qualified consultant can help limit the risk of damage to existing buildings.

An Overview of Risks in Adjacent Demolition and Construction (CONTINUED)

¹ For a more detailed discussion focused on historic buildings, see Chad Randl, *Preservation Tech Note 3: Protecting a Historic Structure During Adjacent Construction* (Washington, D.C.: National Park Service, 2001), <https://www.nps.gov/tps/how-to-preserve/tech-notes/Tech-Notes-Protection03.pdf>

² See Arne P. Johnson and W. Robert Hannen, "Vibration Limits for Historic Buildings and Art Collections," *APT Bulletin* 46:2-3 (2015), pp. 66-74, https://www.apti.org/assets/docs/Johnson-HannenHiRes_SampleArt_46.2-3.pdf

³ See Dan Eschenasy, "Cases of Failure of Unreinforced Brick Walls Due to Out-of-Plane Loads," *Structure* (May 2011), pp. 14-17, <https://www.structuremag.org/wp-content/uploads/2014/08/C-StrucForensics-Eschenasy-May111.pdf> ; Dan Eschenasy, "Development Along Old Party Walls," *Structure* (June 2017), pp. 12-15, <https://www.structuremag.org/wp-content/uploads/2017/05/C-StrucPractices-Eschenasy-Jun17.pdf>

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ENGINEERS
ARCHITECTS
MATERIALS SCIENTISTS

Wiss, Janney, Elstner Associates, Inc.

Locations:

WJE Philadelphia
601 Walnut Street
Suite 875W
Philadelphia, PA 19106

WJE Princeton
5 Vaughn Drive
Suite 100
Princeton, NJ 08540

Contact:

T: 215.567.0703 | E: jspivey@wje.com
T: 609.799.7799 | E: amlynarczyk@wje.com



IDENTIFYING AND AVOIDING RISKS FROM ADJACENT CONSTRUCTION

Valued for their ability to convey the past through existing materials and features, historic buildings must also survive in an ever-changing present. That change is often characterized by new building construction and demolition activities on neighboring sites. Whether it is the modest renovation of an existing building or the demolition of an existing structure and construction of a new high rise, physical damage to an adjacent historic building may occur. It is important for both the historic property owner and those responsible for the neighboring work to give careful consideration to the potential risks. Early planning offers the opportunity to identify these risks and to determine successful ways to avoid them.

Problem

The forces that contribute to the deterioration of a historic building, from atmospheric pollutants to the footsteps of visitors, often take decades and even centuries to exact their toll. Demolition activities and new construction on neighboring sites, however, can cause immediate harm to the physical integrity of a historic structure. In the instant it takes an improperly planned excavation blast to crack the foundation of an adjacent historic structure, or for a

steel beam to be dropped from a construction crane onto its roof, significant damage may occur. Additionally, adjacent construction work can expose the neighboring historic building to concentrations of dust, vibration and fire hazards that would normally be experienced only over the course of many years.

These concerns are often overlooked when a project is undertaken next to historic resources. In some situations, the historic property manager may be unaware of the nature and extent of work at an neighboring site. In other cases, the new construction team is not familiar with the particularly fragile character of the neighboring historic structure or decides to repair any damage after the fact rather than avoiding it from the beginning.

Solution

Effective planning and protective measures initiated before construction takes place can prevent most of the damage that may occur to adjacent historic buildings. Depending upon the nature of the project, protective measures may be limited to documenting and monitoring the historic structure or may encompass a broader plan that includes encasing windows, indepen-



TEMPORARY PROTECTION

NUMBER 3

Protecting a Historic Structure during Adjacent Construction

Chad Randl

Technical Preservation Services
National Park Service

When historic structures are exposed to adjacent construction or demolition work, a protective plan including documentation, monitoring and specific safeguards should be implemented to prevent damage and loss of historic fabric.

dent review of excavation procedures and a range of other precautions. Cooperation between all parties can help to ensure that construction activity continues without interruption and that the neighboring historic building is preserved unharmed.

The information provided in this *Tech Note* can serve as a basis for discussions between the historic property manager and the developer of the adjacent site aimed at ensuring the protection of the historic building in a cost-effective manner. This guidance is also applicable where new construction is undertaken on the same site as the historic structure.

Although adjacent construction work often poses a more immediate threat than the incremental impacts of weather or pollution, the best defense for both situations is that buildings be in good condition. A well maintained structure with tight mortar joints, strong connections between interior and exterior walls, solid foundations and sound plaster is at less risk from neighboring activity than a neglected structure.

Providing adequate protection involves the following steps: 1. consultation between the historic building owner and development team to identify potential risks, negotiate changes and agree upon protective measures; 2. documentation of the condition of the historic building prior to adjacent work; 3. implementation of protective measures at both the construction site and the historic site; and 4. regular monitoring during construction to identify damage, to evaluate the efficacy of protective measures already in place, and to identify and implement additional corrective steps.

Consultation

Early consultation between the historic property owner and the developer of the neighboring construction site is the first and often most important step. Establishing such contact has many advantages. Consultation provides the foundation for a mutually beneficial relationship that is cooperative rather than adversarial. The process gives the historic site owner an opportunity to become familiar with the scope of the impending project and for the development team to understand the historic structure's vulnerabilities. Consultation permits all parties a chance to propose, discuss, and negotiate changes to the construction plan that reduce the risk of damaging adjacent historic

resources. The ultimate goal is to draft a protection plan acceptable to both parties.

Resolving concerns before construction is underway can save time and money, as well as the need to repair damaged historic fabric. It is crucial that such discussions take place during the paper stage of the project, before final decisions are made. If not, the developer may conclude that changes would be cost prohibitive and that it is preferable to repair damage after it takes place. Early consultation also provides information that can be used to assess whether the level of insurance coverage is sufficient to meet the specific project risks.

The owner of a historic property cannot in most cases compel the support and cooperation of the development team. If, after consultation has been attempted, the level of protection provided is not sufficient, the aid of local building officials should be sought. Local building officials, through the permitting process, can often insist that changes be made to development plans to ensure that adjacent properties are protected. Local building codes may also provide safeguards by establishing certain conditions such as maximum vibration levels.

Other parties can also participate in and contribute to the consultation

process. The support of neighborhood committees, local non-profit preservation organizations, independent engineers and the historic district commission (if applicable) may be enlisted to ensure that protection concerns are fully addressed. The developer will benefit from the assembly of a team, including or representing the general contractor, architect, structural engineer, construction manager, and subcontractors, who can be present at consultation meetings and play a continuing role in balancing protection efforts with development interests.

Preconstruction meetings should address several issues. Most important, the parties should reach an understanding about what steps will be taken to protect the historic structure (see figure 1). Responsibility for implementing the agreed upon protections should be established among the developer, the general contractor and relevant subcontractors, and the historic property owner. Such decisions should be listed in performance specifications that accompany agreements between the contractor and the developer. A walk-through of the historic building by the development team is also advisable. Finally, schedules for major work such as excavation, and requirements for materials delivery, site storage, and other use of the premises by the con-

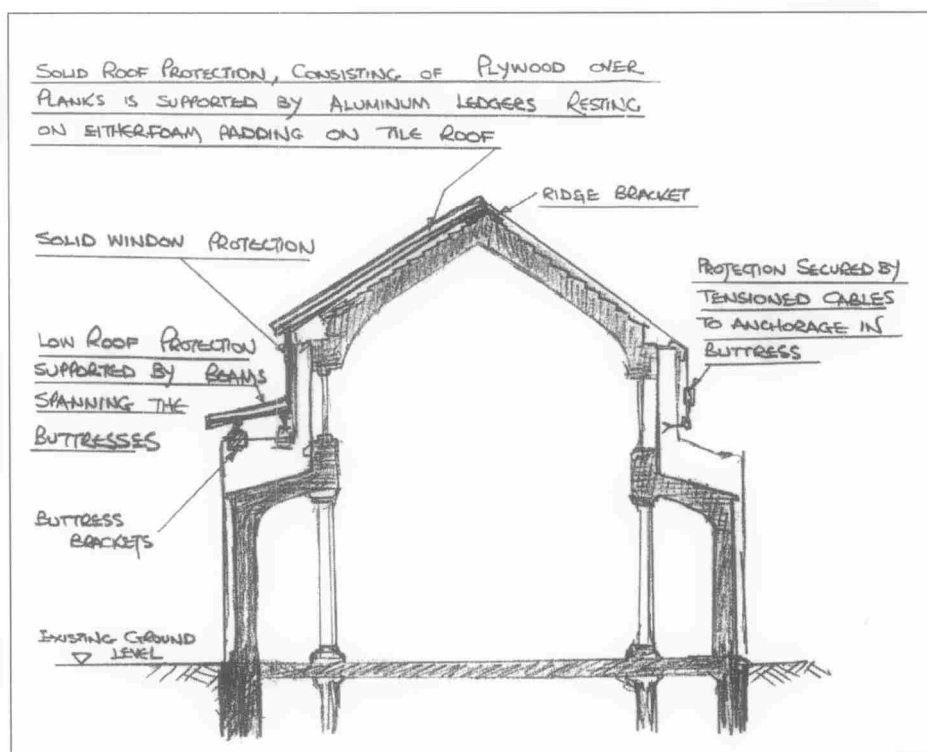


Figure 1. Before new construction was undertaken to the left of this church, a subcontractor was hired to design a protective system for the tile roof and clerestory windows. Drawing: Alan Shalders, Universal Builders Supply, Inc.

tractor should be discussed and arranged to minimize disruptions to the historic site.

Documentation

A crucial step following consultation with the developer is to document the existing condition of the historic structure. Such an investigation provides a "baseline" from which changes to the building during the adjacent construction can be identified, monitored and assessed. Like the consultation process, thorough documentation benefits both the historic property owner and the developer. For the former, it may be used to substantiate claims that damage occurred as a result of the neighboring construction work by illustrating the previously sound condition of the historic building. If the damage existed prior to construction work, the record can show that it was not caused by the developer's negligence. In the case of future litigation, the documentation record can serve as evidence along with the testimony of the professional who undertook the assessment.

Both parties should ensure that the documentation is objective and accurate. Joint surveys, in which both the developer and the historic property owner participate or sign off on noted conditions, are most likely to ensure that the resulting data are not in dispute. When the developer pays for the assessment, it is advisable that an independent professional be hired and that the survey results be accessible.

Information obtained through documentation can also be used in formulating a protection plan for the historic building. By characterizing existing damage and exposing potential weaknesses, the documentation process identifies areas of the structure that may require additional protection as well as appropriate locations for monitoring equipment. Features that should receive particular attention during visual inspections would also be highlighted. Although a formal building condition survey including analysis, repair proposals and cost estimates is not necessary, the property owner may find that the disruptive period during adjacent work provides an opportune time for a thorough survey program.

Documentation of existing conditions should take the form of written descriptions, 35mm color photographs and/or a videotape recording. Photographs should show both the interior and exterior of the building, with

close-up images of cracks, staining, indications of settlement or other fragile conditions. A complete interior and exterior crack survey should be undertaken to identify and characterize existing cracks (see figure 2). Their locations can then be plotted on a drawing of each wall or ceiling surface. While identifying every hairline crack may be impractical in a large building or one that exhibits a great deal of preexisting damage, the more thorough the documented record, the better. The condition of features such as arches, chimney stacks and parapet walls determined by the engineer to be particularly susceptible to distress should also be recorded even when no damage is apparent.

Common Risks and Protective Measures

Each instance of new construction or demolition next to an existing historic structure will involve varying risks to that structure. The proximity of the historic site to the project and the scope of the project are two of the most significant variables. Construction of a high rise building with deep foundations is more likely to affect a neighboring structure than the rehabilitation of a nearby rowhouse. However, the converse may be true if the rowhouse is

directly adjacent to and sharing a wall with the historic structure. Other factors influencing the degree of likely impact include the age, construction type and structural integrity of the historic building, as well as the depth and makeup of its foundation and its surrounding soil types.

Owners should also anticipate the effect increased dust, vibration and fire risk will have upon interior architectural features and furnishings. For the most sensitive objects, such as chandeliers, paintings and glassware, temporary removal to an off-site location may be the safest course. Those features that cannot be easily removed, including plaster ceiling medallions and cornices, can be cushioned and buttressed by padded wood supports. Additional information concerning the safeguarding of interior features can be found in the preceding *Tech Note* in this series, "Temporary Protection, Number 2. Specifying Temporary Protection of Historic Interiors During Construction and Repair."

The remainder of this section addresses some of the more common dangers to historic structures when new construction or demolition activities occur nearby. The description of each potential impact is accompanied by suggested approaches for reducing or eliminating those risks.

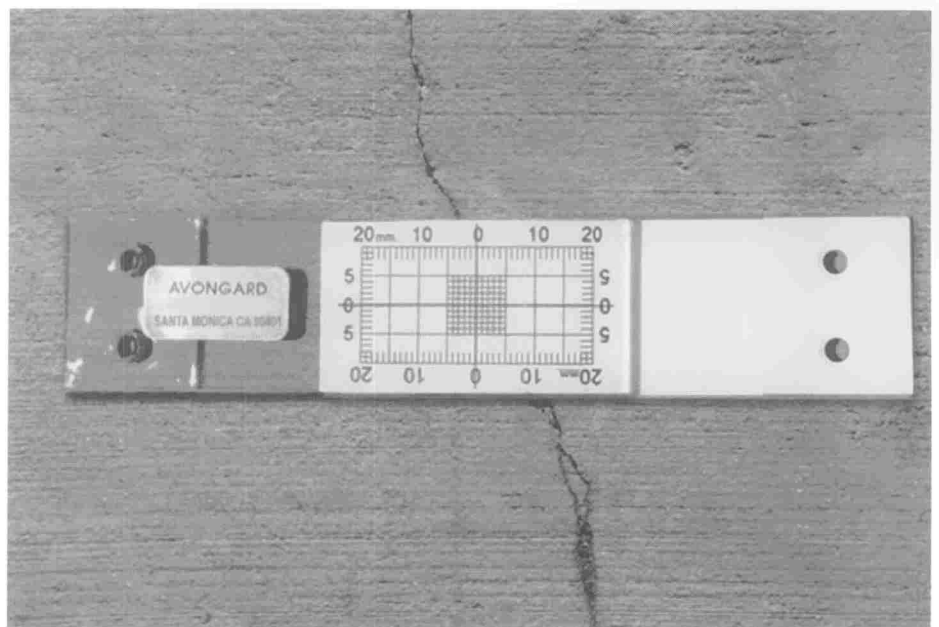


Figure 2. With advanced notice of adjacent construction activity, a crack monitor can be used to determine whether existing cracks in the historic building are stable or still experiencing movement. Compared with measurements taken during the monitoring phase, such information can help determine if subsequent movement resulted from work on the neighboring site. Photo: Avongard Products U.S.A., Ltd.

Vibration

Demolition and new foundation work are common sources of vibrations that can affect adjacent structures. The tools and methods used in demolition, such as impact hammers, wrecking balls, pavement breakers and implosion blasting, produce vibrations that may be transmitted to the historic structure. Similarly, techniques used to prepare new foundations (pile driving and blasting) create potentially dangerous vibrations. Vibrations may also be caused by increased truck traffic accompanying new construction or demolition work. In all cases, the force of the vibrations reaching the adjacent historic structure depends upon the activity generating the vibrations, the distance between the source and the existing structure, and the type of soil or pavement found between the two.

Historic structures may be particularly vulnerable to the effects of vibrations generated at an adjacent site. Deferred maintenance and past alterations may have produced structural weak points that are susceptible to damage. Historic finishes, such as plaster walls and ceilings, lack the flexibility to accommodate abnormal movement, while shallow foundations (common in historic buildings) may lack the rigidity to resist vibration induced movement.

Mitigating the effects of vibrations should begin during the consultation process when acceptable levels can be set and alternative processes explored. Hand demolition is an appropriate substitute when conventional demolition activities may cause excessive vibrations. If pile driving is likely to damage adjacent structures, the contractor may be able to employ non-displacement piles that are inserted in bored holes rather than driven. Lower vibration levels can also be achieved by "jacking-in" or pressing the piles into the ground. Locating delivery entry and exit points farther from the historic site may reduce vibrations caused by increased vehicular traffic. Once construction is under way, continual crack and vibration monitoring provides an effective warning system, indicating that established safe thresholds have been crossed.

Movement

Excavation and foundation work can also cause ground displacement and movement of an adjacent historic

building. New construction almost invariably calls for digging a foundation that is much deeper than the foundations of neighboring historic buildings. This is especially true for projects that include underground parking facilities. A historic structure, with a shallow masonry or stone foundation and wall footings, may experience corresponding displacement that can result in major structural damage.

Efforts to control movement should begin during the consultation phase. Whether the developer's engineer selects underpinning or strengthened excavation walls with tie backs as the means to resist movement of the adjacent structure, the historic building team should retain its own engineer to review the plans (*see figure 3*). The consulting engineer should ensure that the selected approach addresses the unique characteristics and vulnerabilities of the historic structure and that even incidental movement is restricted.

Water

A well functioning water drainage system is essential to the protection of any historic structure. This system can easily be rendered ineffective by neighboring construction or demolition work. Debris originating at the construction site often finds its way to the gutters, downspouts and drains of an

adjacent building. Drainage mechanisms may also become inoperable when excavation workers inadvertently seal off or collapse old pipes running from neighboring buildings. If blocked pipes cannot remove water from both above and below the surface of an historic site, excessive moisture levels or flooding may result.

Regular visual inspections (part of the monitoring program described later) are one of the best means of thwarting increased moisture levels. The inspection procedure should include checking gutters, valleys and exposed drains for any obstructions. Also, indications of dampness or water damage in the basement and where gutters and downspouts meet other building surfaces should be noted.

Construction site runoff from cement mixing and cleaning and dust suppression activities should not flow toward the historic property. Although placing screens and wire cages over exposed areas of the drainage system may provide some protection from obstructions, such installations need to be inspected just as frequently. Low-pressure water washes can occasionally be used to flush the system of dirt and debris. To reduce the possibility that drainpipes will be blocked at the adjacent construction site, all concealed pipes should be traced from their origins at the historic structure and the



Figure 3. Concrete pier underpinning to an existing building may be necessary when adjacent construction occurs. In this example, pits are hand dug beneath the foundation of the historic building to provide space for wood forms. After concrete is poured into the forms, the space between the top of the pier and the bottom of the original foundation is packed with a quicksetting grout. The historic building owner should retain an independent engineer to ensure that the underpinning plan adequately protects the historic structure. Photo: Professor Arpad Horvath, Department of Civil and Environmental Engineering, University of California, Berkeley.

information passed on to the appropriate contractors. Final landscaping and grading patterns on adjacent construction sites should be examined to ensure that rainwater is not routed towards the historic building.

In some cases, the lack of water beneath an historic structure can lead to damage. Buildings located in areas with a high water table were often constructed upon timber piles. When groundwater or storm water is removed from a neighboring site during foundation excavations (a process known as "dewatering"), the groundwater level beneath the historic site may also drop. Previously submerged timber piles that are exposed to air can quickly begin to undergo dryrot. If there is reason to suspect that the structure was built on such a foundation, the property manager should work with the neighboring construction team to maintain the existing water table. This can be done using watertight excavation support systems such as slurry walls which ensure that most of the water pumped out of the construction site does not come from adjacent properties. Dewatering of soft clay ground may also result in settlement of a neighboring building, as ground water pressure is reduced and the soil consolidates.

Fire and Security Concerns

The heightened possibility of fire accompanies many demolition and new construction activities. Temporary heating devices, torches, sparks, molten metal and undersized electrical utility panels are some of the most common sources of fire at construction sites. Additionally, the improper storage of fuels, cloth rags and brushes also presents opportunities for fire to ignite and spread. The *Tech Note*, "Specifying Temporary Protection of Historic Interiors during Construction and Repair," provides detailed information on reducing the likelihood of fire in situations involving work near historic structures.

The security of a historic building can be threatened when adjacent construction provides opportunities for illegal entry. Newly constructed floor levels at the building site may make the neighboring historic structure's ledges, windows and rooftops accessible to trespassers. Window openings on the historic building should be fastened and all doors from the roof to the interior should be locked. Where a historic structure is protected by an intruder

alarm system, that system should be upgraded to protect rooms that are rendered accessible from the outside. In cases where the historic structure does not directly abut new construction or demolition activity, attention should still be paid to the possibility that incidents of vandalism and theft will carry over to the historic site.

Physical Impact

Construction or demolition can cause direct physical damage to neighboring historic features and materials. Cranes, hoists and workers on upper floors of a construction site can drop building supplies and tools onto an adjacent historic structure. Misdirected debris chutes and backing vehicles may also leave their mark.

Generally, to counter these occurrences, protective barriers are placed over any area of the historic structure deemed at risk. If the new construction will rise above the historic building, plywood sheets should be placed over the roof to distribute the force of dropped materials (*see figure 4*). Plywood covers should also be placed over decorative roof embellishments such as finials and balustrades. Alternately, horizontal netting can be rigged to shield vulnerable rooftop features.

Facades that are directly exposed to adjacent construction sites should receive close attention. To avoid dam-

age, windows should be covered with plywood. Layers of cushioning materials can be placed between the plywood covering and particularly fragile windows, such as stained glass. If entire wall surfaces are vulnerable, scaffolding should be erected against the facade and debris netting placed on the outside of the scaffolding. Plastic sheeting can provide added protection in areas where acidic cleaning solutions may splash onto historic facades, windows and other surfaces.

The best means of protecting a historic structure from physical impact, however, is often to have adequate horizontal and vertical netting and barriers in place at the construction site. When adjacent buildings are adequately considered in the construction site netting and scaffolding plans, protective measures at the historic site can be less intrusive, and the likelihood of damage reduced even further.

Additional Dangers

Other byproducts of new construction and demolition, such as dirt and dust, can also pose threats to an adjacent historic structure. Dust suppression measures including the installation of fabric enclosure systems should first be employed at the building site (*see figure 5*). Despite these efforts, historic building owners will undoubtedly have to deal with raised levels of dust infiltration. Accordingly, vulnerable interi-



Figure 4. Dropped equipment, tools, and materials all present risks when new construction rises above neighboring historic structures. In this case, the historic slate roof was completely covered with sheets of exterior grade plywood. Photo: National Park Service files.



Figure 5. The historic building on the left is partially protected from debris and dust generated by the renovation of the structure to the right. Such temporary enclosure systems consist of a polyethylene or other fabric shell stretched between an aluminum frame. Photo: Walton Technology, Inc.

or objects and artifacts should be covered or temporarily moved to another location. Windows can be taped shut or temporarily sealed with clear polyethylene sheets. Additional mats or carpets near entrances can help reduce the amount of dirt tracked inside. An accelerated maintenance program that includes thorough and frequent cleaning and HVAC filter replacement, is an effective means of addressing the degraded environment surrounding a construction site. To lessen the chance of airborne asbestos infiltration, the exhaust from sealed work areas must be properly filtered and vented away from historic buildings.

The owner of a historic property should anticipate the increased rodent and pest presence that accompanies major demolition activity. Newly opened holes in old foundations are easy escape routes that should be promptly sealed. The construction or demolition site rodent control plan should include provisions for protecting adjacent historic resources. Concurrently, the historic property owner should consider securing a contract with an independent extermination company. Plans should include both preventive measures to reduce conditions favorable to infestation as well as a system of eradication such as rodenticide and traps.

Monitoring

A monitoring program should be established during the consultation and documentation phases and continued until adjacent work is finished. It is undertaken to detect, gauge, record and interpret structural movement, the effects of vibration and other changes to the historic building that result from neighboring construction or demolition work. Data collected during the monitoring program can serve as a baseline for any subsequent movement or changes to site drainage patterns that arise within the first years after construction is completed. Ultimately, monitoring shows the degree to which steps taken to protect an historic structure from adjacent construction are sufficient and successful.

Because of liability concerns, those responsible for a new development will often arrange to monitor an adjacent structure. As with a documentation program, the historic property owner may want to hire an independent engineer to review both the monitoring process and the measurements that result.

The extent of the monitoring program and the tools used will depend upon the scope of the adjacent activity. A basic plan to address concerns over vibration levels may include a single seismograph placed on the structure's

basement floor. More comprehensive measurements can be obtained by locating sensors at several points throughout the structure and the ground immediately adjacent to the historic building foundation (*see figure 6*).

Whether acceptable vibration levels are mandated by law or left to the discretion of a project engineer, thresholds should take into account surrounding soils, the makeup and condition of the adjacent foundation and the particular vulnerabilities of the historic resource. Construction projects that involve major excavation work next to historic structures should include a program of test blasting before work begins. Testing various charges, delays and blast design configurations will aid in developing a controlled program that limits blast induced damage to a neighboring property.

Structural movement as described in the preceding section is detected and recorded using a number of different tools. Electronic monitors that feed precise movement measurements to laptop computers can be placed across existing cracks (*see figure 7*). When budgets are tight or a large number of cracks are involved, inexpensive tell-tales made from two sheets of overlaid plastic with a grid can be used to track changes.

Optical survey instruments provide another means of detecting vertical and lateral movement within a historic building. Control points are established and marked by targets or reflectors on the historic structure facade and interior walls before adjacent construction begins. The location of each of these markers is precisely measured at regular intervals. Engineers then use the resulting information to determine whether the markers have shifted from their original positions and, if so, the rate and direction of movement.

A program of visual inspections undertaken by a qualified conservator or engineer is an important adjunct to technical monitoring procedures. Inspectors should look for newly opened cracks, other signs of settlement and movement, and evidence of increased dampness or water infiltration. Additionally, visual inspections should ensure that temporary protective coverings are secure, that dust and dirt are not accumulating in the historic building, and that fire and hazardous material protection provisions are being upheld. A checklist can be drawn up during the consulting and documentation phases for use during



Figure 6. A seismograph records vibrations transmitted at the ground level of an historic building. The instrument is wired to a light and siren designed to warn the excavation crew that vibration levels are approaching preset limits. Additional sensors are often installed in the basement and on sensitive features such as stained glass windows. Photo: Wilson, Ihrig & Associates, Inc.

each visual inspection. Such a systematic written record may also prove useful if disputes arise over the timing of and responsibility for damage.

Conclusion

Protecting a historic building from adjacent construction or demolition activity requires thoughtful planning and cooperation between the developer and the historic property owner. Thorough pre-construction documentation of the historic structure ensures a common understanding of present conditions and suggests appropriate damage prevention measures that can be taken at both the historic site and the construction site. A routine program of visual inspection and vibration and movement monitoring helps insure early detection of the effects neighboring construction work is having on the historic building. Early consideration of these issues, before damage takes place or worsens, can allow for the adoption of safeguards that protect the developer's schedule and budget and the physical integrity of the historic structure.



Figure 7. Electronic crack monitor and survey targets are shown installed on an existing wall. The crack monitor feeds movement data to a laptop computer. The targets are aligned and measured with optical survey equipment to determine the degree and direction of movement. Photo: McMullan and Associates, Inc.

Checklist for Historic Property Owner and Historic Site

- ☐ Consult with developer, and other parties to determine extent of work and identify necessary protective measures
- ☐ Conduct survey of existing conditions, including 35 mm photographs, crack inventory and description of other damage
- ☐ Include historic building in construction site fire plan
- ☐ Secure windows and rooftop doors that are made accessible by new construction
- ☐ Remove particularly fragile interior objects and furnishings from site
- ☐ Install temporary supports beneath fragile features that are not moved
- ☐ Place plywood coverings on openings that face construction area
- ☐ If adjacent construction rises above historic site, protect roof with plywood covering, encase rooftop embellishments
- ☐ If construction is directly adjacent, cover historic facade to protect against mortar and acidic cleaning solution
- ☐ Install temporary floor coverings at entrance and seal windows facing construction site to limit dust infiltration
- ☐ Remove dust from interior surfaces on accelerated schedule
- ☐ Clean HVAC system & filters on accelerated schedule
- ☐ Clear obstructions from gutters and drainage system regularly
- ☐ Establish monitoring program, including:
 - 1) Seismographs to ensure that effects of blasting, pile driving and other work are at acceptable levels
 - 2) Crack monitors and optical survey methods to detect movement
 - 3) Schedule of regular visual inspection

Checklist for Development Team and Construction Site

- ☐ Consult with historic property owner and other relevant parties to identify necessary protective measures
- ☐ Review and sign off on pre-construction condition survey of adjacent property
- ☐ Arrange delivery locations and times to limit disruption and possible damage to neighboring historic structure
- ☐ Explore excavation and demolition methods that produce low vibration levels
- ☐ Limit movement of adjacent building with sufficient underpinning or reinforced excavation walls
- ☐ Reduce changes to adjacent ground water level during dewatering
- ☐ Ensure water runoff is not directed toward historic structure
- ☐ Install appropriate debris nets to prevent dropped materials from impacting historic building
- ☐ Direct debris chutes away from historic structure
- ☐ Install fabric enclosure system to reduce spread of construction dust
- ☐ Include adjacent historic building fire plan and ensure fuels, rags and brushes are stored appropriately and not directly adjacent to historic site
- ☐ If asbestos or lead remediation is involved, ensure exhaust from sealed building is filtered and vented away from historic site and that lead chips are gathered and removed
- ☐ Include adjacent historic structure in rodent control program and seal openings in demolished foundation
- ☐ Participate in monitoring program at historic site to ensure that vibration levels or indications of movement are within established thresholds

This PRESERVATION TECH NOTE was prepared by the National Park Service. Charles E. Fisher, Heritage Preservation Services, serves as the Technical Editor. Special thanks go to Deborah Slaton and Michael J. Scheffler, P.E., of Wiss, Janney, Elstner Associates, Inc., Sharon Park, Kay Weeks and Michael Auer of the National Park Service's Heritage Preservation Services, and Marie Ennis of Einhorn Yaffee Prescott for their review and comments. Thanks also go to Denis McMullan, McMullan and Associates; Richard Ortega, PE, Ortega Consulting; Dorothy Richter, Hager-Richter Geoscience, Inc.; George Siekkinen and Gregory Mixon, National Trust for Historic Preservation; Suzanne Pentz, Keast & Hood Co.; Mark Richards, Moretrench American Corporation; Dr. Edward J. Cording, Department of Civil and Environmental Engineering, University of Illinois; Mark Gaudschaal, Schnabel Foundation Co.; William Stivale; Robert M. Powers, Powers and Associates; Martin P. Azola, Azola and Associates; and Margaret Gardiner and Mary Knapp at Merchant's House Museum, for their assistance. Tim Buehner, National Park Service, and Camille Martone provided initial research for this publication.

PRESERVATION TECH NOTES are designed to provide practical information on traditional practices and innovative techniques for successfully maintaining and preserving cultural resources. All techniques and practices described herein conform to established National Park Service policies, procedures and standards. This Tech Note was prepared pursuant to the National Historic Preservation Act which direct the Secretary of the Interior to develop and make available to government agencies and individuals information concerning professional methods and techniques for the preservation of historic properties.

Comments on the usefulness of this information are welcomed and should be addressed to PRESERVATION TECH NOTES, Technical Preservation Services NC200, National Center for Cultural Resources, National Park Service, 1849 C Street, NW, Washington, DC 20240.

ISSN: 0741-9023

PTN 42

July 2001

**PLANNING DEPARTMENT STAFF REPORT
TO
THE CITY OF DELAND PLANNING BOARD**

July 20, 2022

Continued from June 15, 2022

A. APPLICATION NO.: Z21-186 Glass House Square

APPLICANT: Frank Ford, Jr., Landis Graham, French P.A.

REQUEST: The applicant is requesting to amend the zoning
From: City C-2A&H (Downtown Commercial)

To: Glass House Square PD

Note: *This property is also located within the Downtown Historic District Overlay*
Change of Zoning C-2A&H to Glasshouse Square Planned Development

Developer is implementing provisions set forth in acquisition and redevelopment agreement (ADA) executed by city of DeLand and Glasshouse Square, LLC on July 9, 2020.

APPLICABLE ORDINANCES:

Article XII

ADMINISTRATION AND ENFORCEMENT

Sec. 33-135 – Procedure for text amendments and rezoning

Location: 130 W. New York Ave.

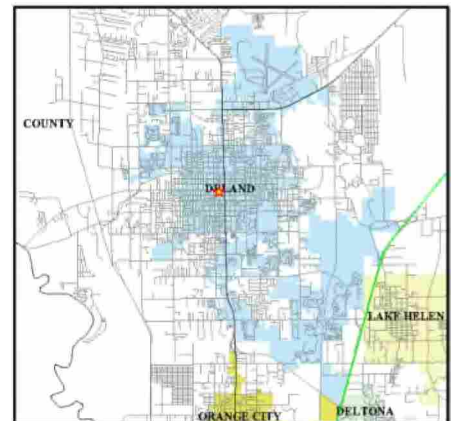
Downtown Support Design District

Parcel Size: 0.868± acres

Existing Use: Vacant

B. ANALYSIS:

The site currently consists of a single structure that was the former location of the County jail. Ultimately, the applicant will be demolish the structure and now wishes to have the property rezoned to the Glasshouse Square PD (Planned Development). The property could be developed in as many as 2 phases and will include a maximum of 5 residential units as well as a number of other potential commercial and office uses.



The development of the property will be guided by the development agreement provided and includes the provision of on-site and offsite parking, will follow the sign plan that is provided, will include a green square/water feature and comply with architectural standards that maintain consistency with the character of the historic downtown area. The property is currently subject to the Downtown Historic Overlay and will remain so

Z21-186 (BC)

1 of 7

Page 138 of 163

despite the request to rezone the property to a planned development. Section 33-135 provides the following criteria, which the City Commission shall utilize in reviewing a rezoning request:

1. Is the proposed rezoning consistent with the Comprehensive Land Use Plan, the land use, zoning pattern and character of the surrounding area?

The Land use designation for this property is Downtown Commercial. As outlined in the city's comprehensive plan, the policy guidelines state:

Land uses shall be mixed whenever possible to provide diversity. Major categories should include institutional/governmental office, commercial and retail, cultural, and residential. New developments shall be coordinated, even among separate developers, in order to develop a site/structure unity. In general, retail commercial uses shall be encouraged on the ground floors that front on to streets. Offices and residential should be encouraged to locate above the active ground floor.

The existing zoning designations are described as follows:

City of DeLand: C-2A Downtown Commercial

33-17.17. C-2A—Downtown Commercial District.

- (a) *Statement of intent.* The purpose of this zoning district is to provide for residential, retail, and service needs of the Central Business District (CBD). The list of permitted uses contains those land uses that are oriented to the downtown area.

City of DeLand: H Historic

Sec. 33-34. - Historic districts and landmarks.

3-34.01. Generally.

- (a) *Statement of intent.* The intent of the following regulations is to serve the best interest of the health, safety, prosperity and welfare of the citizens of DeLand by:
1. Protecting, enhancing and perpetuating historic resources that represent or reflect elements of the city's cultural, social, economic, political and architectural history.
 2. Stabilizing and improving property values through the revitalization of older residential and commercial properties and neighborhoods.
 3. Fostering an awareness and pride in the accomplishments and achievements of the past.
 4. Protecting and enhancing the city's historic attractions to residents, tourists and visitors which in turn serve to stimulate the local economy and draw new business and industry.
 5. Enriching the quality of life in DeLand by fostering knowledge of the living heritage of the past.
 6. Conserving existing housing stock and extending the economic life of housing units through the rehabilitation of such units under housing and neighborhood redevelopment programs.
- (b) *Statement of purpose.* The city commission shall identify, evaluate, recognize, preserve and protect historical land archaeological resources within the city limits of DeLand, in the best interest of the health, safety, prosperity and welfare of the citizens of DeLand by:
1. Creating a historic preservation board with the power to effectively administer the duties provided for herein.

2. Developing a process to designate individual properties (buildings, structures, sites, objects) and groups of properties (districts) as historically significant.
3. Protecting the integrity of designated historic resources by requiring a review of proposals to add to, demolish or in any way alter the exterior historic fabric of such resources.
4. Encouraging historic preservation by providing technical assistance and financial incentives.
5. Obtaining certified local government status as provided for in the National Historic Preservation Act of 1966, as amended in 1980 (P.L. 96-515) and as procedures dictate in 36 C.F.R. 61 (1987).

The proposed zoning designation is generally described as follows:

Glasshouse Square PD – Planned Development

33-17.22. *PD—Planned Development District.*

- (a) Statement of intent. The Planned Development District is intended to provide a method for consideration and approval of unique zoning districts for individual Planned Developments (PD) which are not provided for or allowed in the zoning districts otherwise established by this chapter. See also: section 33-32, Planned Development District and section 33-133, Review of Planned Development Plans.

A development agreement has been written to outline the unique zoning requirements by which the development will be constructed. For the sake of comparison, the chart below lists some of the lot and building requirements of the existing and proposed zoning categories:

Lot & Bldg Reqmts.	C-2A	Glasshouse Square PD
Min. lot area	n/a	n/a
Min. width	n/a	n/a
Setbacks	n/a	
Front	n/a	10 ft. along New York/Georgia
Rear	n/a	
Sides	n/a	
Perimeter bldg.		5 ft. min. on East, none on North, South, West.
Max density	20 upa	5 units max.
Min. floor area		Bldg 1 - not less than 2 stories, not less than 20,000 gross sq. ft.
		Bldg 2 - not less than 2 stories, not less than 7,000 gross sq. ft.
Efficiency	425 sf	
1 BR	525 sf	
	725 +	
2+ BR	150/add'l BR	
Max. lot coverage	n/a	100%
Max. bldg height	80 ft	Bldg 1 - Max. 2 stories + rooftop space, not more than 60 ft. above FFE
		Bldg 2 - Max. 2 stories, not more than 40 ft. above FFE
Landscaping		None required
Building separation		None required

2. Will the proposed rezoning have an impact upon the environment or natural resources?

Rezoning of the property will only amend the permitted uses of the property and not impact the environment or natural resources. The property is located within the heart of the downtown and for the most part has no environmental resources to speak of.

3. Will the proposed rezoning have an impact upon the economy of the affected area?

The property is currently vacant contributes only marginally to the tax base. The rezoning action will spur the development of commercial and residential uses on the site that will have an impact upon the economy.

4. Will the proposed rezoning have an impact upon governmental services?

The rezoning action will not impact governmental services. The property is located within the urban area and such services are already provided. No new services are anticipated to be required because of the rezoning action.

5. Are there changes in the circumstances or conditions affecting the area since the original assignment of zoning that will support the proposed zoning?

This building has been vacant and unused for a number of years. The City of DeLand obtained the site from the County in order to facilitate redevelopment. Immediately to the east of the site is located the area known as Artisan Alley, the location for regular pedestrian retail and social events as well as Georgia Ave. which has been redeveloped to curtail vehicular use as necessary to allow pedestrian activity as well. The redevelopment of this site will be a continuation of this type of activity in the area.

6. Was there a mistake in the original classification?

It does not appear that the classification was the result of a mistake because it is consistent with other zoning designations in the surrounding area.

7. Will the proposed rezoning have any effect upon the use or value of the affected area?

The proposed rezoning will permit virtually the same uses that the existing zoning with a few nuances as shown in the attached comparative list. New proposed uses are in keeping with uses that are permitted within the general area. Below is a table comparing the downtown commercial uses with the ones proposed under the PD development agreement.

C-2A	Type	GH Square PD
General/Professional Offices	P	General/Professional Offices
Financial Institutions	C20	Financial Institutions, but without drive through service
Medical office	P	Medical office
Drugstores and pharmacies	P	Drugstores and pharmacies, but without drive through service
Laboratories, hospitals and clinics	P	
Medical clinics over 5,000 square feet	P	
Nursing homes and adult congregate living facilities	P	
Veterinary clinics and pet grooming shops with overnight and/or outdoor boarding facilities and runs	C	
Mailbox and shipping shops	P	Mailbox and shipping shops
Copying, printing and lithography	P	Copying, printing and lithography
		Showroom commercial
Beauty salons, barbershops and day spas	P	Beauty salons, barbershops and day spas
Day care facilities, adult or child	P	Day care facilities, adult or child
Dry cleaning and laundry, retail	P	Dry cleaning and laundry, retail
Dry cleaning and laundry, self-service	P	
Mortuary, funeral homes and crematoriums	P	
Pet shops and pet grooming with no overnight boarding of animals	C	
Tailor shops and shoe repair	P	Tailor shops and shoe repair
Banquet facilities, catering services	P	Banquet facilities, catering services
		Event hosting
		Outdoor entertainment
		Outdoor consumption of alcohol
		Outdoor events including, without limitation, weddings, receptions, parties, farmers' markets, food trucks, outdoor markets, temporary vendor booths, concerts and festivals. These events may be open to the public or may be private.
Bed and breakfast inn	P	
Hotels or motels and associated accessory uses including restaurant and conference facilities	P	
Uses requiring a DBPR 3PS liquor license (package sales) or 4COP liquor license (bars, lounges, etc.)	E17	Uses requiring a DBPR 3PS liquor license (package sales) or 4COP liquor license (bars, lounges, etc.)
Package sales where beer and/or wine (no liquor) are sold for consumption off premises with DBPR 2APS license	C	Package sales where beer and/or wine (no liquor) are sold for consumption off premises with DBPR 2APS license
Restaurants including fast food and/or drive through facilities	C20	Restaurants including except fast food and/or drive through facilities
Restaurants and establishments serving alcohol requiring a DBPR 2COP, 3PS or 4COP license with special class	C	Restaurants and establishments serving alcohol requiring a DBPR 2COP, 3PS or 4COP license with special class
Bakery, pastry, gourmet, coffee and specialty beverage shops (retail)	P	Bakery, pastry, gourmet, coffee and specialty beverage shops (retail)
Bakeries wholesale, up to 1,000 square feet of floor area	C	
Convenience stores without gas pumps	P	Convenience stores without gas pumps
Furniture, appliances retail	P	Furniture, appliances retail
Furniture, appliances wholesale	P	
Grocery	P	Grocery
Retail sales	P	Retail sales
Used materials, sales or thrift shops; not including junk yards	P	Used materials, sales or thrift shops; not including junk yards
Multiple-family dwellings on the first floor	C*	
Residential dwelling units above the first floor or one residential	C	Residential dwelling units above the first floor (In Building 2, only)
Business colleges, professional or commercial schools	P	Business colleges, professional or commercial schools
Churches, houses of worship and religious institutions with	E8	
Government and public land uses and buildings	P	Government and public land uses and buildings
Private clubs and lodges	C9	
Museums	P	Museums
		Gallery (commercial)
discotheques	P	Music, dance, gymnasium, art school or studio, excluding discotheques
Parks, community and regional	E8	
Parks, mini and neighborhood	P	Parks, mini and neighborhood
Theatres and assembly halls	P	Theatres and assembly halls
		Research and Development facilities
		Pet supply store
Pest control and exterminating services	P	Craft beverage and food sales and production
		Craftsmen shops
Upholstering and reupholstering	P	
transmission towers	E8	
Commercial parking lots	P	
		All permitted uses within the C2-AH zoning district
		Other uses and structures of an accessory nature to the permitted uses listed above but not limited to shade structures, fixed awnings and porticos.

8. Will the proposed rezoning have an impact upon public health, safety and welfare?

City utilities are available for this property and new development is required to utilize the available water and water systems that are in place helping to maintain public health and the

Z21-186 (BC)

5 of 7

Page 142 of 163

area is served by police and fire. The rezone request will not adversely impact health, safety or welfare, however staff is still concerned about the location of the solid waste container and how it will be operated. Appears to be utilizing New York Avenue which is a heavily used roadway. The property is located within the developed urban core and the property is compatible with commercial/retail uses. This request is consistent with the area and not anticipated to adversely impact the area in that regard.

C. CONCLUSION:

This rezoning request aligns with the pattern of development in the surrounding area and will enhance the overall goals established for the downtown area including the provision of housing and the appropriate commercial use of the property.

The following comments were asked to be addressed by the Planning Board at their June meeting. The revisions are noted in bold **text** after each comment.

- Use engineering controls to mitigate risk during construction, in particular the impact from vibrations, for surrounding structures. Note: *the City will be including similar language in the agreement with the company that will be performing the demolition for the City.*

Suggested language is below for a new Section E(18) of Development Agreement:

E. 18. Mitigation of Risk to Surrounding Historic Structures. Construction of the Planned Development will occur in close proximity to several historic buildings. In order to mitigate the risk of damage to surrounding structures, the following strategies will be employed in connection with any construction activity undertaken on the Property.

1. Prior to commencement of any construction or demolition activities on the Property, a complete preconstruction survey of nearby historic buildings are required to document all existing conditions and possible concerns. This survey would include photographs, videos and engineering documentation all areas of the building (walls, foundations, roofing, plaster ceiling, etc.).

2. Methods of demolition and construction shall be used to limit vibratory action that could damage adjacent buildings. Pile driving and vibratory compaction shall be specifically prohibited.

3. During all phases of construction vibration monitoring shall be maintained at the edges of the Property adjacent to any historic structures.

4. The Developer shall permit independent review of the engineered construction documents, geotechnical investigation and utility reports by adjacent property owners in order to allow for collaboration aimed at limiting any potential damage to adjacent historic structures. **(Substitute Language has been added and will be reviewed by City Engineer and City Attorney prior to review by the City Commission)**

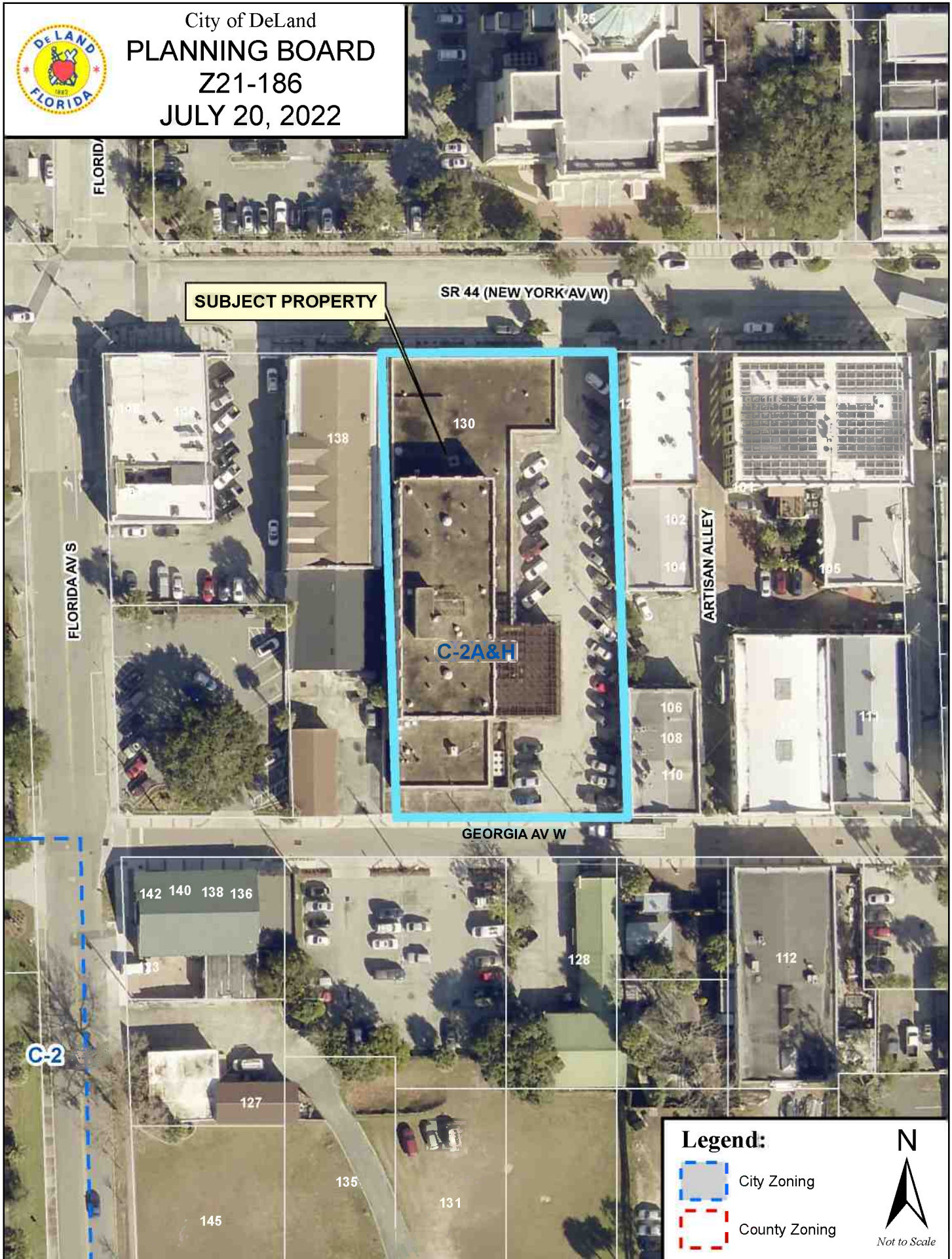
- Provide for maintenance easement along the east property line; **(Language has not been added)**
- Review if project creates opportunity to improve surrounding stormwater challenges; **(Proposed language allows for the city to provide additional storage above what may be required by SJRWMD)**
- Mandate public pedestrian walkway; **(walkway will be open 8AM to midnight, except during special events through separate agreement)**
- Insure design compatibility with downtown historic architecture by presenting to Historic Preservation Board; **(will be presented to the Historic Preservation Board in August for comments prior to Commission review, added prohibition of reflective glass on the first floor)**
- Identify a parking plan specifying where/when additional parking spaces will be available; **(parking to be decided through discussions with Commission)**
- Provide comparison between RFP and current plan; **(has not been provided, but development must be consistent with acquisition agreement)**
- Include noise ordinance clarity; **(noise attenuation will be provided for any residential units and unless specifically differentiated the residential portion of the building will use the residential noise level and not commercial, per Chapter 20-3. Noise limitations, Code of Ordinances)** and
- Work toward continuity with Artisan Alley. **(Language has been added to allow, but not to mandate as it must be between both parties, nothing in development agreement prohibits the interaction between the two properties)**

D. STAFF RECOMMENDATION:

Staff recommends that the Planning Board forward to the City Commission a recommendation of approval for the rezoning request, subject to revising the Development Agreement to addressing above comments.

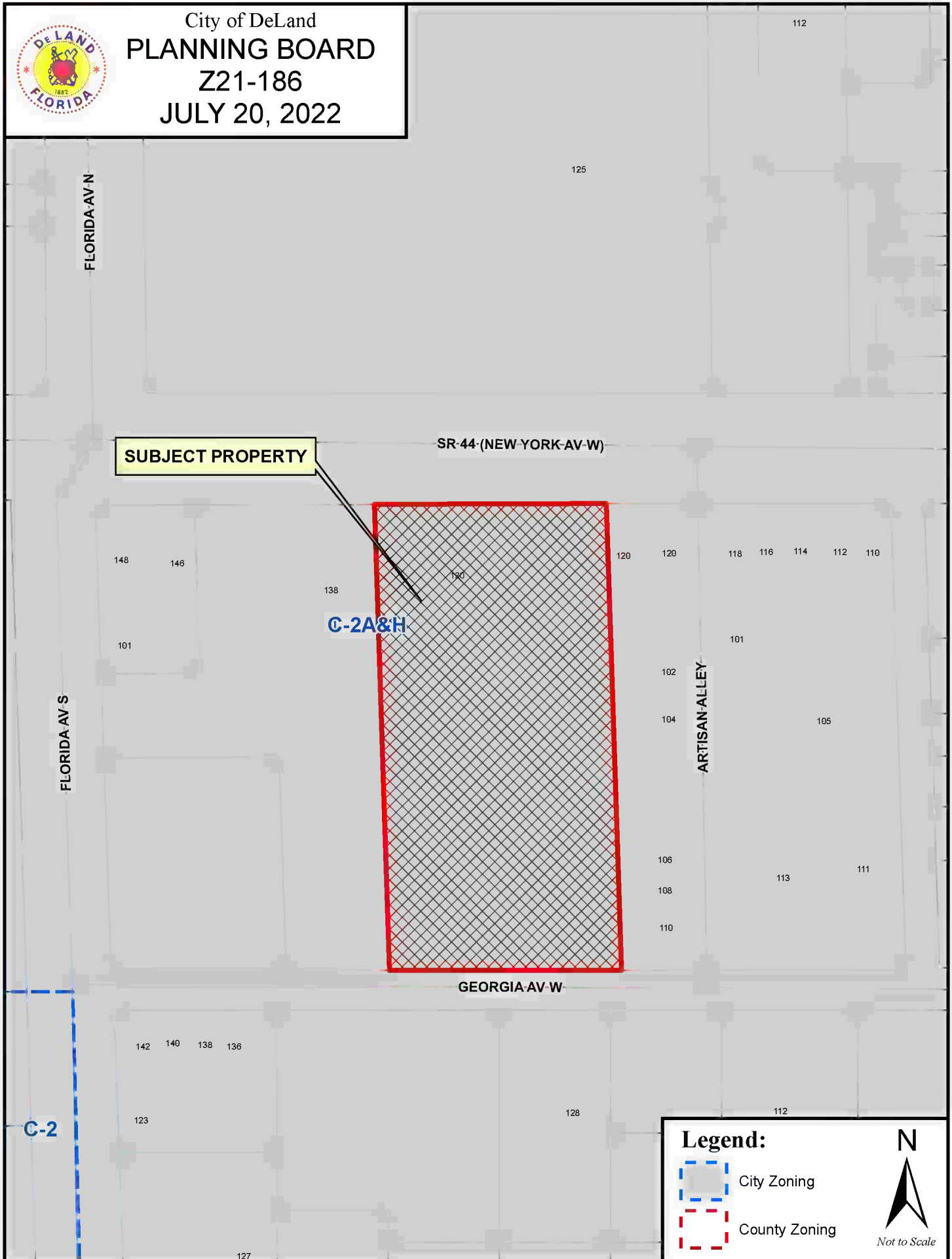


City of DeLand
PLANNING BOARD
Z21-186
JULY 20, 2022





City of DeLand
PLANNING BOARD
Z21-186
JULY 20, 2022



After recording return to:
City Clerk
City of DeLand
120 S. Florida Avenue
DeLand, FL 32720
Short Tax Parcel Identification Number: 701601030030 (Alternate Key: 2244577).

GLASSHOUSE SQUARE, L.L.C.
GRANT OF WALKWAY EASEMENT AND OTHER EASEMENTS

THIS GRANT OF WALKWAY EASEMENT AND OTHER EASEMENTS is hereby made this __ day of _____, 2023, by GLASSHOUSE SQUARE, L.L.C., whose address is 994 Island Grove Drive, DeLand, Florida 32724 (hereinafter the "GRANTOR"), and the City of DeLand, a municipality of the State of Florida, whose mailing address is City Hall, 120 South Florida Avenue, DeLand, Florida 32720 (hereinafter the "GRANTEE").

FOR AND IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00) together with other good and valuable consideration, in hand paid to the GRANTOR by the GRANTEE, the receipt and sufficiency of which is hereby acknowledged, the GRANTOR does hereby give, grant, bargain and sell unto the GRANTEE, its successors and assigns, a perpetual pedestrian walkway easement to provide City right-of-way for the purpose of allowing pedestrian traffic and use over, through and across the following described parcel or tract of real estate situated in Volusia County, Florida:

SEE ATTACHED EXHIBIT "A"

(hereinafter referred to as the "WALKWAY EASEMENT"). Provided, however, that the GRANTOR may construct structures over the area of the WALKWAY EASEMENT if the overhang of the structure is at least 14' above the finished level of the WALKWAY EASEMENT and otherwise complies with all applicable legal requirements. In addition, the GRANTOR may place movable planters, displays or other such items within the easement so long as they do not interfere with the intended pedestrian use of this WALKWAY EASEMENT.

THE USE OF THE WALKWAY EASEMENT may normally be utilized by the GRANTEE during the hours of 8:00 a.m. until midnight of each day. Outside of those hours, GRANTOR reserves the right to remove any and all persons, other than employees of the City while in the course of scope of their employment. provided, however, by mutual agreement between the GRANTOR and the GRANTEE, the GRANTOR may close pedestrian access over the WALKWAY EASEMENT for the purposes of implementing special private events [INCLUDE ANY LIMITATION ON THE NUMBER OF EVENTS ANNUALLY OR OTHER CONDITIONS HERE]. Routine maintenance of the WALKWAY EASEMENT shall be the responsibility of GRANTOR, which

maintenance shall include daily litter removal, spill cleaning, and the periodic pressure washing of the walking surface and appurtenances [SPECIAL PROVISIONS FROM PUBLIC WORKS – INSERT HERE].

GRANTOR SHALL BE RESPONSIBLE FOR ALL REPAIRS TO THE WALKWAY EASEMENT. GRANTOR shall make any repairs and perform all maintenance to the WALKWAY EASEMENT, except for such repairs or reconstruction which are required as a result of GRANTEE'S construction activities in the WALKWAY EASEMENT. Should the GRANTOR fail to perform any maintenance that is required to maintain the WALKWAY EASEMENT in at least as good a condition as the City of DeLand maintains its public pedestrian walking surfaces, then GRANTEE shall have the right, after thirty (30) days written notice to GRANTOR, to perform such maintenance and shall be authorized to file a lien against the real property on which the WALKWAY EASEMENT is located. For the sake of clarity, such lien right attaches only to the specific area where the WALKWAY EASEMENT is located and no other portion of GRANTOR'S property.

FURTHER, THE GRANTOR HEREBY GIVES, GRANTS, BARGAINS AND SELLS THE FOLLOWING EASEMENTS ON OVER AND UNDER THE WALKWAY EASEMENT to the GRANTEE for the following purposes, all of which easements are perpetual and which may be used as needed by the GRANTEE to accomplish its public purposes as it may determine to be necessary and which shall run with the land:

- (a) For utilities, all of which must be placed underground.
- (b) For underground storm water vaults and an underground stormwater system.
- (c) For emergency access.
- (d) For repair and maintenance purposes.
- (e) For vehicular access related to repair and maintenance.

GRANTEE shall in a timely manner restore the disturbed area to its previous condition following any construction work within the WALKWAY EASEMENT.

THE GRANTOR FURTHER AGREES not to build, construct, or create or permit others to build, construct or create any building or other structures in the WALKWAY EASEMENT.

THE GRANTOR FURTHER GRANTS the reasonable right for the GRANTEE to authorize third parties reasonable access to the WALKWAY EASEMENT at reasonable times for access to

the building and structures which are immediately adjacent to the WALKWAY EASEMENT for the limited purpose of performing maintenance to the western walls of such buildings or structures or for performing such maintenance that can only practicably be performed from within the WALKWAY EASEMENT. Such third parties must provide proof of insurance in an amount reasonably satisfactory to the City in order to protect the GRANTEE and the GRANTOR from any damages that may be caused by a third party's use of the WALKWAY EASEMENT for such maintenance purposes.

TOGETHER WITH ALL COMMON LAW COVENANTS OF SEISIN, this grant of easements includes the covenant of further assurances.

GRANTOR IS NOT GRANTING ANY RIGHTS TO ANY THIRD PARTY other than the GRANTEE, and no third party other than the GRANTEE shall have any right whatsoever to enforce the terms of this GRANT OF WALKWAY EASEMENT AND OTHER EASEMENTS.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal, the date and year first above written.

Signed, sealed and delivered in the presence of the following witnesses:

GLASSHOUSE SQUARE, L.L.C.

Signature of Witness # 1
Printed Name:_____

By: **RIGHT COAST VENTURES LLC**, its Manager,
By: _____
Chase R. Clarke
Manager

Signature of Witness # 2
Printed Name:_____

and

Jessica Clarke
Manager

Michelle V. Bryant
Manager

AND

By: **CLARKE SOLUTIONS LLC**, its Manager

By: _____
Carson R. Clarke
Manager

By: _____
Lauren Clarke
Manager

AND

By: **LAKE POINTE CONSULTING LLC**, its
Manager

By: _____
Michael L. Prelec, Jr.
Authorized Member

By: _____
Melissa R. Prelec
Authorized Member

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

ACKNOWLEDGMENT

THE FOREGOING INSTRUMENT was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this __ day of _____, 2023 by Chase R. Clarke, Jessica Clarke, Michelle V. Bryant, Carson R. Clarke, Lauren Clarke, Michael L. Prelec, Jr. and Melissa R. Prelec. They are personally known to me or have produced _____ as identification.

(NOTARY SEAL)

Signature of Notary Public

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: First Reading of Ordinance Amending Section 33-91.03 of the Code of Ordinances re Indoor Parking Requirements in the Core Gateway District.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: Ordinance

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

An ordinance is proposed which will amend Section 33-91.03 of the Code of Ordinances by removing the existing requirement for two indoor (garage) parking spaces solely within the Core Gateway Zoning District but maintaining the current requirements for the total number of parking spaces per residential unit. The City's planning staff would like to get the City Commission's input on whether it would prefer to remove the indoor (garage) parking space requirement for all residential units, other than planned unit development where that issue can be addressed on a project-by-project basis.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Preparing for the future/sustainability.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

No direct measurable fiscal impact is expected.

RECOMMENDATION:

It is recommended that the City Commission approve the proposed Ordinance.

BACKGROUND/DISCUSSION:

On May 16, 2022, the City Commission adopted Ordinance 2022-07 which made a plethora of changes to the City's Land Development Regulations in an effort to facilitate infill development and otherwise provide greater opportunities for affordable housing. City staff had proposed removing the existing requirement for two indoor (garage) parking spaces solely within the Core Gateway Zoning District. After a lengthy, thoughtful discussion related to parking, amongst many other issues, the motion that was ultimately made and voted upon provided that the parking requirements would remain the same. However, after listening to the audio recording of the City Commission meeting, it appears that it was the intent of the City Commissioners to approve staff's recommendation to remove the requirement for two indoor parking spaces in the Core Gateway Zoning District. As such, City staff is bringing this item back to the City Commission for consideration. The City's planning staff would also like to get the City Commission's input on whether it wants to remove the indoor (garage) parking space requirement for all residential units, other than planned unit developments where that

issue can be addressed on a project-by-project basis. As a practical matter, new subdivision developers will typically want to have garages, and this change would mostly be geared toward more affordable in-fill homes.

ORDINANCE NO. 2023 -

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, AMENDING SECTION 33-91.03 OF THE CODE OF ORDINANCES OF THE CITY OF DELAND RELATED TO INDOOR PARKING REQUIREMENTS IN THE CORE GATEWAY DISTRICT; PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of DeLand adopted Ordinance 2022-07 which made a plethora of changes to the City's Land Development Regulations in an effort to facilitate infill development and otherwise provide greater opportunities for affordable housing; and

WHEREAS, Section 21 of the aforesaid ordinance made changes to Section 33-91.03 of the Code of Ordinances which related to the number of parking spaces required for residential development; and

WHEREAS, the City Commission desires to further amend Section 33-91.03 of the Code of Ordinances by removing the existing requirement for two indoor (garage) parking spaces solely within the Core Gateway Zoning District; and

WHEREAS, the City Commission of the City of DeLand has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of DeLand and to further the public health, safety and welfare; and

WHEREAS, this Ordinance is enacted pursuant to the statutory and constitutional home rule powers of the City of DeLand as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; and Chapter 166, *Florida Statutes*, and other applicable controlling law to include, but not be limited to, Chapter 163, *Florida Statutes*; and

WHEREAS, the City of DeLand has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text, ~~strike-through~~ shall constitute deletions to the original text, and minor edits have been made without legislative coding.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. Chapter 33 of the Code of Ordinances of the City of DeLand is hereby amended by amending Section 33-91.03 "Number and type of parking spaces required" subsection (f) "Matrix." by inserting the new underlined language and by deleting the ~~strike-through language~~, to be read in full as follows:

33-91.03 *Number and type of parking spaces required.*

(f) Matrix.

Residential Uses	Minimum Off-Street Parking Requirement	Notes
Single-family and duplex	1, 2, 3 bedrooms: 2 4 interior spaces/ per unit 4 or more bedrooms: 3-5 spaces/ per unit	Single-family or duplex residential parking spaces may be tandem. <u>In all zoning districts except the Core Gateway District, a Mminimum of 2 outdoor of the required parking spaces for each unit must be indoor spaces to also be provided per lot. No indoor parking spaces are required within the Core Gateway District.</u> Parking is prohibited on front lawns.

*** Matrix ***

*** Text ***

Section 2. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 3. Codification; Direction to Code Codifier and City Staff; Correction of Scrivener's Errors.

(a). The provisions Section 1 of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of DeLand*, with all other sections not being codified.

(b). The Code codifier shall instruct the Municipal Code Corporation to make all changes necessary in the *Code of Ordinances of the City of DeLand* to implement the provisions of this Ordinance and is granted liberal authority to codify the provisions of this Ordinance in such manner and in such places as deemed advisable.

(c). In accordance with the City's ongoing codification program; the City Clerk, in conjunction with the City Attorney, may make corrections to the provisions of this Ordinance relative to Scrivener's errors of whatever type or nature.

Section 4. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED this ___ day of _____, 2023.

Christopher M. Cloudman
Mayor - Commissioner

ATTEST:

Julie A. Hennessy, MMC, City Clerk - Auditor

Passed on first reading:

Adopted on second reading: _____, 2023.

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind, City Attorney

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Resolution Approving Community Development Block Grant (CDBG) Budget for Fiscal Year 2023-2024.

DEPARTMENT: Planning

PREPARED BY: Carol Kuhn, Deputy Planning Director

ATTACHMENTS: CDBG Budget Reso 2023, Exhibit A

APPROVED BY: Michael Pleus, City Manager, May 30, 2023

SUMMARY/HIGHLIGHT:

A Resolution adopting the Community Development Block Grant (“CDBG”) Budget for Fiscal Year 2023-2024 is proposed to the City Commission. The CDBG Budget for Fiscal Year 2023-2024 will result in the expenditure of funds for the benefit of targeted areas of the City of DeLand upon approval of grant applications submitted to Volusia County.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The allocation and expenditure of CDBG funding authorized for the City of DeLand in the amount of \$164,734 will benefit the citizens of the City while using a funding source other than ad valorem tax revenues.

RECOMMENDATION:

It is recommended that the City Commission approve the Resolution adopting the CDBG Budget for Fiscal Year 2023-2024.

BACKGROUND/DISCUSSION:

The City of DeLand annually adopts a budget relating to the allocation of CDBG funds received from Volusia County and submits grant applications to Volusia County. Section 290.046(5), *Florida Statutes*, provides that the City “...may establish a citizen advisory task force composed of citizens in the jurisdiction in which the proposed project is to be implemented to provide input relative to all phases of the project process”. Thus, the creation and use of such a body is purely discretionary and voluntary on the part of the City Commission and a review and recommendation is not a statutorily mandated legal requirement. The City Commission did adopt Resolution Number 2008-29 creating the Community Advisory Task Force ("CATF") for the purpose of, among other things, reviewing CDBG grant applications and making recommendations to the City Commission. However, of necessity, as a result of the board having multiple vacancies and no quorum, the City cancelled the CATF meeting at which the CDBG budget and related matters would have been reviewed and recommendations on the current CDBG budget and grant applications would have been made.

Accordingly, it is necessary and appropriate for the City Commission to approve the CDBG Budget and grant applications for submission to Volusia County without the CATF making recommendations and, further, it is in the best interests of the City and consistent with the statutory and constitutional home rule powers of the City and other controlling law for the City Commission to adopt the proposed Resolution.

RESOLUTION NO. 2023 -

A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA, ADOPTING THE COMMUNITY DEVELOPMENT BLOCK GRANT BUDGET FOR FISCAL YEAR 2023-2024; AND AUTHORIZING CITY STAFF TO SUBMIT THE BUDGET AND GRANT APPLICATIONS TO VOLUSIA COUNTY; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of DeLand annually adopts a budget relating to the allocation of Community Development Block Grant (“CDBG”) funds received from Volusia County and submits grant applications to Volusia County; and

WHEREAS, the City Commission of the City of DeLand has reviewed the budget attached hereto as Exhibit “A” and has determined that the budget is consistent with the goals and objectives of the Community Development Block Grant Program; and

WHEREAS, the City Commission hereby determines that voting upon the CDBG budget and grant applications to submit to Volusia County is in the best interests of the City and the community at large; and

WHEREAS, the City Commission determines that the adoption of this Resolution is in the best interests of the health, safety and welfare of the citizens of the City of DeLand.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. The City Commission of the City of DeLand hereby adopts and incorporates into this Resolution, as the findings and intent of the City Commission, the recitals (whereas clauses) to this Resolution.

Section 2. The City Commission hereby approves the Community Development Block Grant budget for fiscal year 2023-2024 attached hereto as Exhibit “A” and authorizes the City’s professional staff to submit grant applications to Volusia County consistent with the said budget.

Section 3. All resolutions or parts of resolutions and other actions of the City Commission in conflict with this Resolution are hereby repealed.

Section 4. If any section, sentence, phrase, word or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Resolution not otherwise determined to be invalid, unlawful or unconstitutional.

Section 5. This Resolution shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED this 5th day of June, 2023.

Christopher M. Cloudman
Mayor - Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

"EXHIBIT A"

VOLUSIA URBAN COUNTY CDBG Budget - FY 2023/2024 City of DeLand

Actual Allocation - \$164,734

Updated - May 8, 2023

Department / Project / Activities:

**Funds
Requested:**

CAPITAL IMPROVEMENT PROJECTS:

♦ Utilities - <i>Standby Generator for Lift Station #13 Chris Ave/Blue Lake Heights</i>	\$55,000
♦ Public Works - <i>ADA Improvements</i>	\$73,024
♦ Parks & Recreation - <i>Two scoreboards for Chisholm Center Gymnasium</i>	\$12,000
85% for Capital Improvement Projects:	\$140,024

PROGRAM ACTIVITIES:

♦ Dr. Joyce M. Cusack Resource Center - <i>Personnel</i>	\$24,710
15% for Program Activities:	\$24,710

Total Projected Expenditures: \$164,734

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Consideration re Appointment of City Commission Representative to a Selection Committee for Civil & Traffic Engineering, Site Plan and Final Plat Review Consultants.

DEPARTMENT: Engineering

PREPARED BY: Ray Bahrami, City Engineer

ATTACHMENTS:

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

In 2017, the City conducted a selection process pursuant to the Consultants Competitive Negotiation Act for engineering consultants to provide continuing general civil engineering services for various City projects. When the process was completed, CPH, Inc. was selected to provide these services and they entered into contract with the City. Since that time, CPH has been awarded numerous project assignments.

Due to the age of this contract and the need for additional services, staff recommends that a new selection and competitive negotiation process be performed to select consultants for future projects. Staff also recommends that more than one consultant be selected to provide civil and traffic engineering, site plan and final plat review related services to match the capabilities of the consultant's personnel with the nature of the work anticipated.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The consultant selection process will not, in and of itself, have a fiscal impact to the City. When continuing service contracts are executed with selected firms and task orders for professional services are negotiated, the fiscal impact for those tasks will be presented to the Commission for consideration.

RECOMMENDATION:

Staff recommends that the City Commission select a member of their board to serve on a selection committee for civil and traffic engineering, site plan and final plat review consultants.

BACKGROUND/DISCUSSION:

N/A

CITY OF DELAND
Request for Commission Action
June 5, 2023

SUBJECT: Consideration re Change of Meeting Date for Fourth of July Holiday.

DEPARTMENT: City Clerk

PREPARED BY: Julie Hennessy, City Clerk

ATTACHMENTS:

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

Section 2-3 of the Code of Ordinances grants the City Commission the authority, within the ninety (90) days immediately preceding, to reschedule regular meetings which fall on a legal holiday, or fall within one (1) week of a legal holiday. The first regular City Commission meeting in July is scheduled for Monday, July 3, 2023. Staff is requesting that the City Commission discuss and reschedule the July 3rd meeting to Wednesday, July 5, 2023.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

None.

RECOMMENDATION:

It is recommended that the City Commission reschedule the July 3rd meeting to Wednesday, July 5, 2023.

BACKGROUND/DISCUSSION:

N/A

CITY OF DELAND
Request for Downtown Community Redevelopment Agency Action
June 5, 2023

SUBJECT: Consideration re Request to schedule Budget Workshops for FY 2024 for July 10 - 13, 2023 at 5:30 p.m., with Friday, July 14, 2023 held as a reserve date.

DEPARTMENT: Finance

PREPARED BY: Daniel Stauffer, Finance Director

ATTACHMENTS:

APPROVED BY: Michael Pleus, City Manager, May 26, 2023

SUMMARY/HIGHLIGHT:

Staff is requesting that the City Commission formally schedule the Budget Workshops for FY 2024 for July 10 - 13, 2023 at 5:30 p.m., with Friday, July 14, 2023 held as a reserve date, if needed.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

None

RECOMMENDATION:

Staff recommends the City Commission formally schedule the Budget Workshops for FY 2024 for July 10 - 13, 2023 at 5:30 p.m., with Friday, July 14, 2023 held as a reserve date, if needed.

BACKGROUND/DISCUSSION:

N/A