



CITY COMMISSION - CITY OF WILDWOOD

Mayor/Commissioner – Ed Wolf – Seat 1

Mayor Pro-Tem/Commissioner – Pamala Harrison-Bivins – Seat 2 Robby Strickland – Seat 3

Don C. Clark – Seat 4 Julian Green – Seat 5

Bill Ed Cannon – City Manager

AGENDA

SPECIAL CALLED MEETING

JANUARY 7, 2014 - 5:00 PM

City Hall Commission Chamber

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Department, ADA Coordinator, at 352-330-1330, Ext. 102, forty-eight (48) hours in advance of the meeting.

F.S.S. 286.0105A - If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Wildwood DOES NOT provide this verbatim record.

City Hall Commission Chamber - 100 N. Main Street, Wildwood, FL 34785

1. CALL TO ORDER:

- INVOCATION
- FLAG SALUTE
- PLEASE TURN OFF ALL CELL PHONES AND PAGERS

2. ORDINANCES FIRST READING ONLY (NO VOTE)

- a. O2014-05: *An Ordinance of the City of Wildwood, Florida; amending Section 3, Paragraph G of Ordinance O2013-37; and providing for an effective date.* This is a First Amendment to Lakeside Landings PD Agreement. The Amendment will clarify a discrepancy in the setbacks for corner lots within the Lakeside Landings development. (Attachments)

3. FINANCIAL & CONTRACTS & AGREEMENTS

- a. Workshop/Discussion Proposed Landstone Agreement. Attachments include: Fact Sheet and Proposed Agreement. Discussion only.

4. CITY MANAGER REPORTS

- a. Long term Strategic Planning Workshop/Discussion. (No Attachment)

5. CITY ATTORNEY REPORTS

6. ADJOURNMENT

CITY COMMISSION OF THE CITY OF WILDWOOD

EXECUTIVE SUMMARY

SUBJECT: Ordinance O2014-05: First Amendment to Lakeside Landings PD Agreement

REQUESTED ACTION: Approval of Ordinance O2014-05

<input type="checkbox"/> Work Session (Report Only)	DATE OF MEETING: <u>1/7/14 First Reading</u>
<input type="checkbox"/> Regular Meeting	<u>1/13/14 Adoption</u>
	<input type="checkbox"/> Special Meeting

CONTRACT: <input checked="" type="checkbox"/> N/A	Vendor/Entity: _____
Effective Date: _____	Termination Date: _____
Managing Division / Dept: _____	_____

BUDGET IMPACT: _____

<input type="checkbox"/> Annual	FUNDING SOURCE: _____
<input type="checkbox"/> Capital	EXPENDITURE ACCOUNT: _____
<input checked="" type="checkbox"/> N/A	

HISTORY/FACTS/ISSUES:

The applicant seeks approval from the City Commission for a Planned Development amendment to Ordinance O2013-37.

This amendment will clarify a discrepancy in the setbacks for corner lots within the Lakeside Landings development.

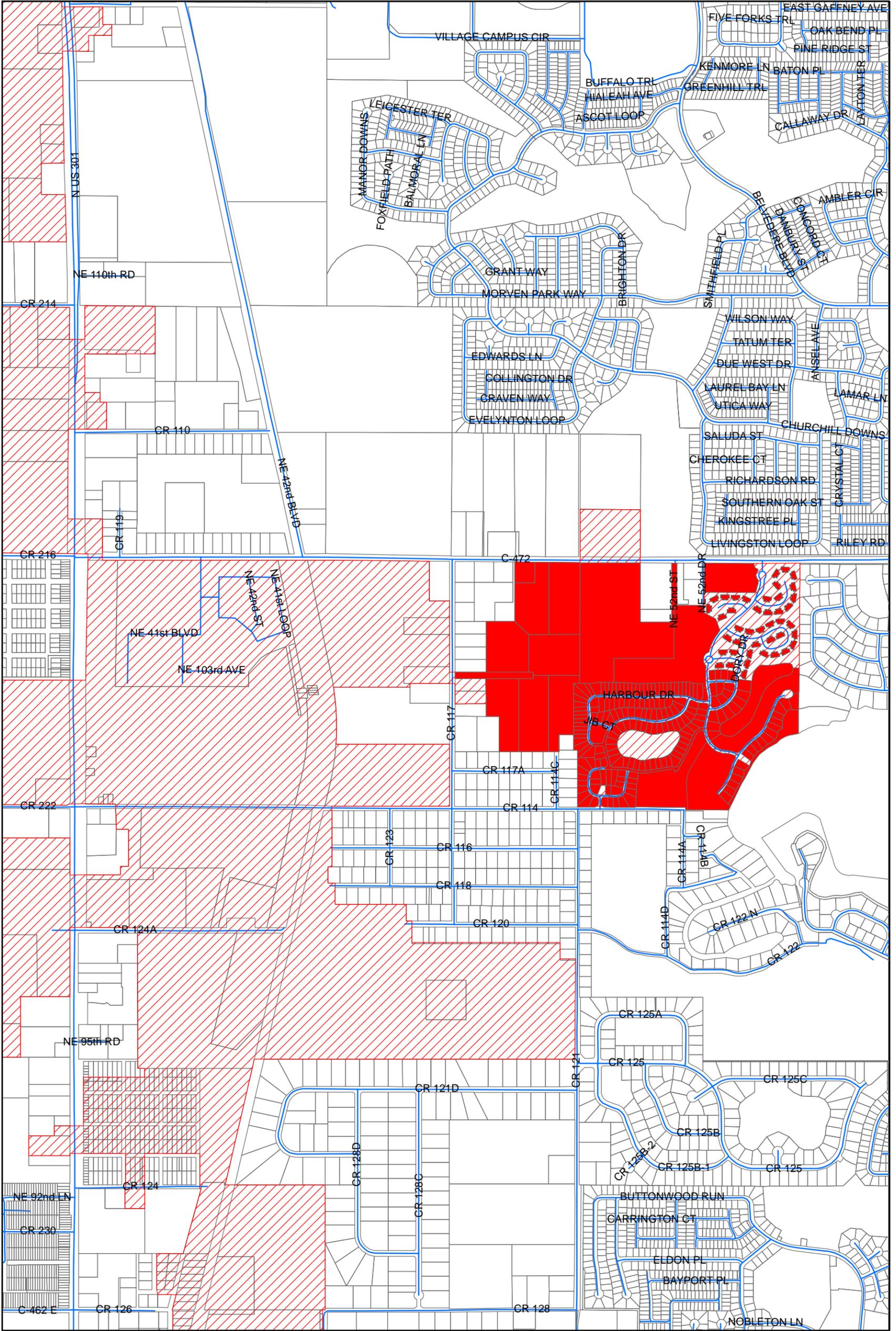
Ordinance O2014-05 amends Section 3, Paragraph G, (Setbacks) of Ordinance O2013-37.

Staff recommends approval of Ordinance O2014-05.



Jason McHugh
Development Services Coordinator

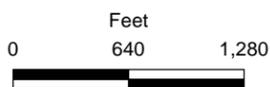




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City of Wildwood
 100 North Main Street
 Wildwood, FL 34485
 Phone: (352) 330-1330
 www.wildwood-fl.gov

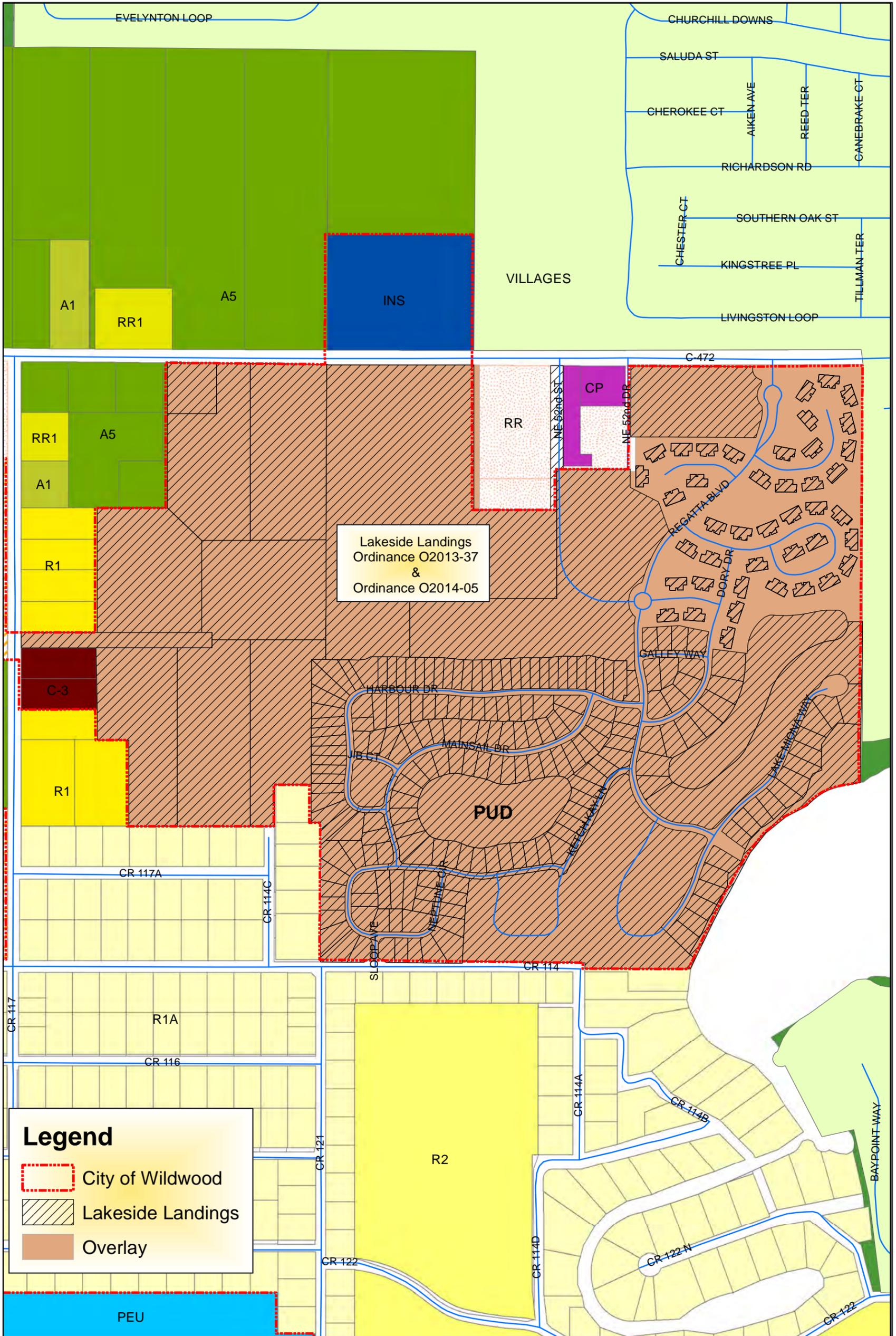


**LAKESIDE LANDINGS
 RZ 1212-01**

WILDWOOD, FLORIDA

SEPTEMBER 2013

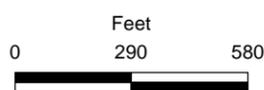
LOCATION MAP



I:\Terr\GIS\Maps\Existing & Proposed Zoning\Proposed Overlay Zoning - Lakeside Landings.mxd - 1/2/2014 11:24:11 AM - tonreal



City of Wildwood
100 North Main Street
Wildwood, FL 34485
Phone: (352) 330-1330
www.wildwood-fl.gov



LAKESIDE LANDINGS
RZ 1212-01

WILDWOOD, FLORIDA

JANUARY 2014

**PROPOSED OVERLAY
ZONING**

ORDINANCE NO. O2014-05

AN ORDINANCE OF THE CITY OF WILDWOOD FLORIDA;
AMENDING SECTION 3, PARAGRAPH G OF ORDINANCE
O2013-37; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Power Corporation (hereinafter the “Developer”) filed an application for a Planned Development which together with supporting documents, analyses, maps, charts, and other evidence and instruments, the advice, report, and recommendation of the Project Review Committee and the testimony adduced and evidence received at the Public Hearing by the Planning and Zoning Board on October 10, 2013;

WHEREAS, based upon such materials and otherwise being fully informed the City Commission duly adopted Ordinance O2013-37 on October 28, 2013; and

WHEREAS, at this time, the Developer desires to make certain amendments to Ordinance O2013-37.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the City Commission of Wildwood, Florida, as follows:

SECTION 1. All terms and provisions of Ordinance O2013-37 shall remain the same unless specifically amended below.

SECTION 2. Section 3, Paragraph G, (Setbacks) is amended to modify the Setbacks as follows:

G. Setbacks. The Project shall contain the following minimum setbacks:

1) Single Family Detached Dwellings:

25’ front setback

10’ separation between structures

Corner lots: Side setback along the right-of-way shall be 7.5’ (one side only). There shall be no minimum side setback on the opposite side of the lot provided the 10’ separation between structures is maintained.

2) Single Family Attached Dwellings.

25’ front setback

20’ between structures

3) Commercial Parcel:

35’ front setback (from CR 472)

25’ side and rear setbacks

SECTION 3. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a Court or competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of said Ordinance.

SECTION 4. This Ordinance shall take effect upon its final reading by the City Commission of the City of Wildwood.

DONE AND ORDAINED this _____ day of _____, 2014, by the City Commission of the City of Wildwood, Florida.

CITY COMMISSION
CITY OF WILDWOOD, FLORIDA

S E A L

Ed Wolf, Mayor

ATTEST: _____
Joseph Jacobs, City Clerk

First Reading: _____

Second Reading: _____

Approved as to form:

Ashley Hunt, City Attorney

LANDSTONE AGREEMENT

Wright Ranch

- Approximately 4,050 Acres
- Developer's annexation agreement City, Tony Mendola, LLC and Landstone Communities, LLC approved on Jan. 7, 2007
- Annex to the City on Jan. 22, 2007 by Ordinance 503
- Memorandum of Understanding (MOU) with Landstone-Wright, LLC (successor to Tony Mendola, LLC & Landstone Communities, LLC) effective on April 4, 2008
 - 19 Acres for waste water treatment plant site
 - 25 Acres for wet weather storage of effluent
 - City to provide utilities (water, sewer and reuse)
 - Water Connection Fees, \$1,103.62/ERU, to be paid on first 2,000 units \$2,207,240.
 - 50% upfront - \$1,103,620.
 - 25% at building permit
 - 25% at Certificate of Occupancy
 - Water TIE Fees, \$636.24/ERU, to be paid on first 2,000 units, \$1,272,480
 - 50% upfront - \$636,240.
 - 25% at building permit
 - 25% at certificate of occupancy
 - Wastewater Connection fees, \$2,342.32, to be paid on first 2,000 units, \$4,684,640.
 - 50% upfront - \$2,342,320.
 - 25% at building permit
 - 25% at certificate of occupancy
 - Wastewater TIE fees, the MOU is silent in regards to Wastewater TIE fees. My assumption is because there were no offsite wastewater lines needed due to the WWTP being constructed on site.
 - Paragraph C. Vested Rights, subparagraph 1. *"The City hereby acknowledges that based upon the City's approval of the Developer's Annexation Agreement and execution of this Agreement (MOU), the Owner/Developer has and will undertake extensive obligations and incur significant expenses in moving forward with the Project and its continued work on a Utility Agreement and/or Developer's Agreement,"*
 - **TOTAL UPFRONT COSTS** **\$4,082,180**
 - These fees were due and payable upon execution of the Development Order.
 - MOU required the City to fund and construct the following utilities:
 - Any capacity upgrades required at the CR 501 water treatment plant. Funding would be from upfront fee (\$1,103,620) plus additional from a municipal bond issue capitalized over a period of years.

- Water mains between the CR 501 WTP and the project. Funding would be from upfront fee (\$632,240) plus additional from a municipal bond issue capitalized over a period of years.
- A new wastewater treatment plant facility, minimum capacity of 3.0 MGD, estimated cost is \$8.00 - \$10.00/gallon or \$24,000,000 to \$30,000,000 . Funding would be from upfront fee (\$2,342,320) plus additional from a municipal bond issue capitalized over a period of years.
- Maximum WWTP size was set at 12.0 MGD.
- Amended and Restated Development Order (ARDO) entered into on Dec. 13, 2010
 - Residential Units 8,025 Units
 - Commercial/Retail 652,500 SF
 - Office 150,000 SF
 - Warehouse/Industrial 500,000 SF
 - Hotel 250 Rooms
 - Mine 280 Acres
 - Golf Course 18 Holes
 - Parks 80.1 Acres
 - Elementary School 650 Students
- Paragraph E. Public Facilities; 1. Utilities; (a) Water, Wastewater and Reuse states;
“The City and the Developer agree to enter into a separate Utilities Agreement to further address the provision of water, wastewater and reuse water to the Project.”

PROPOSED UTILITIES AGREEMENT BETWEEN THE CITY OF WILDWOOD, FLORIDA AND LANDSTONE-WRIGHT, LLC

- **Advantages to the City**
 - Not required to fund capacity improvements for the development at the CR 501 WTP
 - Not required to fund water main extension for the development from the CR 501 WTP to the project.
 - Not required to fund the construction of a minimum 3.0 MGD wastewater treatment plant unless City opts to construct due to other development in the area.
- **Advantages to Landstone**
 - Does not have to put \$4,082,180 upfront to reserve capacity.
 - Option to control own destiny by not depending on City to have funding for water and wastewater capacity improvements.
 - Gets Connection and TIE fee credits for construction costs of:
 - Capacity improvements at the CR 501 WTP
 - TIE fee credits for construction of water main from the CR 501 WTP to project.
 - Connection fee credits for construction of wastewater treatment facilities

- Obtains entitlements without putting \$4,000,000 upfront.
- Gets reuse water equivalent to the amount of influent the project sends to the WWTP.

The agreement has been a year in its formulation with, myself, the City Attorney (Jerri), Chuck Piper and the development's attorney Cecilia Bonifay very actively participating in the final version of the document.

On August 1, 2013 I received the following email from Jerri.

Bruce,

I have reviewed the agreement and would recommend that it could be sent to the Commission for consideration at this point. It appears that our concerns have been met.

*Respectfully yours,
Jerri A. Blair*

UTILITIES AGREEMENT BETWEEN
THE CITY OF WILDWOOD, FLORIDA AND
LANDSTONE-WRIGHT, LLC

This agreement, effective this ____ day of _____, 2013, made and entered into by and between the **CITY OF WILDWOOD, FLORIDA**, a Florida municipal corporation (hereinafter called "City"), and **LANDSTONE-WRIGHT, LLC**, a Delaware limited liability company with a mailing address of c/o Hearthstone, Inc., 300 Drakes Landing Road, Suite 269, Greenbrae, CA 94904 (hereinafter called "Developer").

W I T N E S S E T H:

WHEREAS, the Developer has purchased certain parcels of real Property located within the City of Wildwood which are more particularly described in **Exhibit A** attached hereto and made a part hereof by this reference, including all buildings and other improvements located thereon (collectively, the "Property"); and

WHEREAS, the Property has been annexed by the City pursuant to Ordinance No. 503, effective on January 22, 2007; and

WHEREAS, the City approved the Developer's Annexation Agreement between Tony Mendola, LLC, a Florida limited liability company and Landstone Communities, LLC, a Delaware limited liability company, and the City at its regularly scheduled meeting of January 8, 2007. Developer is the successor in interest to both Tony Mendola, LLC and Landstone Communities, LLC under the Developer's Annexation Agreement; and

WHEREAS, the City approved the Memorandum of Understanding (the "MOU") between Developer and the City at its regularly scheduled meeting of January 28, 2008; and

WHEREAS, subject to existing laws, the City adopted an amendment to its Comprehensive Plan (the "CPA") and a Development Order (the "DO") for the Property at a public hearing on October 30, 2008 and the City rezoned the Property to permit the uses and conditions identified in the Developer's Annexation Agreement and the Memorandum of Understanding; and

WHEREAS, the Department of Community Affairs appealed the Development Order for the Property. City and the Department of Community Affairs entered into a Settlement Agreement which was adopted by City and approved an Amended and Restated Development Order ("ARDO") which was effective as of March 18, 2011; and

WHEREAS, City is a regional water and wastewater provider; and

WHEREAS, Developer desires to procure services, including, but not limited to, potable water (hereinafter also referred to as "water"), wastewater and reuse water from the City for the Property described in **Exhibit A**; and

WHEREAS, Developer and City have agreed that the Developer has the option to construct a wastewater treatment plant ("WWTP") on the Property. City to own and operate WWTP and to provide reuse water; and

WHEREAS, Developer's proposed development will include retail, commercial, warehouse/industrial, office, hotel, mining and residential development and requires access to wastewater service and water service, in order to develop the Property at the proposed densities and intensities; and,

WHEREAS, the City of Wildwood desires to provide wastewater, water and reuse water to Developer's property and/or allow Developer to provide wastewater and reuse services to its property; and

WHEREAS, the parties hereto are desirous of entering into a Public/Private partnership to assist the City in serving not only the needs of the Project, but also those of the greater surrounding community; and

WHEREAS, the parties desire to enter into an agreement setting forth the mutual understandings and undertakings regarding the furnishing of said services, including, but not limited to, water, wastewater and reuse water for the Property described in **Exhibit A**; and

WHEREAS, this Agreement and all stipulations and covenants made herein are acknowledged to be subject to the approval of every County, Regional, State and Federal regulatory agency having jurisdiction over the subject matter of this Agreement; and

WHEREAS, the City has approved this Agreement and has authorized the proper City officials to execute this Agreement by motion passed at a regular City Council meeting on _____, 2013.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and undertakings of City and Developer and other good and valuable considerations, these parties covenant and agree with each other as follows:

PART I. DEFINITIONS

A. The term "connection fee" shall be construed as defined in City of Wildwood ordinances and resolutions.

B. The term "Developer" shall refer to **Landstone-Wright, LLC**, a Delaware limited liability company with a mailing address of c/o Hearthstone, Inc., 300 Drakes Landing Road, Suite 269, Greenbrae, CA 94904.

C. The term "Equivalent Residential Connection" as defined by City ordinance shall be referred to in this Agreement as "ERC" and shall be defined by Section 19-343 of the City of Wildwood Code.

D. The term "Property" or "Developer's Property" refers to the real property described in **Exhibit A**, attached to and incorporated into this Agreement.

E. The term "Transmission Infrastructure Extension Fee" shall be referred to as a TIE fee and shall be as defined by City ordinances and resolutions.

PART II. DEVELOPMENT PROGRAM

A. **Proposed Development.** The City understands that the Developer's proposed development program ("the Project"), as expressed in the adopted Comprehensive Plan Amendment and Amended and Restated Development Order for the Property, is intended to offer a mixed use village with a combination of residential, retail/commercial, warehouse/industrial, office, hotel and mining uses, as same may be modified through the Development of Regional Impact ("DRI") approval process. The residential units are intended to consist of a mix of detached single-family units, attached single-family units, townhouses and apartments. The residential uses are intended to be designed to enhance the interaction with the non-residential uses and to offer architectural features that will be aesthetically pleasing. The goal of the development is to implement good community design and land use practices.

B. **Vested Rights.**

1. The City hereby acknowledges that based upon the City's approval of the Developer's Annexation Agreement, MOU, CPA, ARDO and PUD zoning and by execution of this Agreement, the Developer has and will undertake extensive obligations

and incur significant expenses in moving forward with the Project in good faith reliance on the understandings and commitments contained therein and herein.

2. Developer acknowledges it will be responsible for payment of any and all impact fees applicable to the property including, but not limited to, any City imposed police, traffic or other impact fees, subject to any credits discussed herein, or that it is otherwise entitled to by law. If required, Developer will also be required to pay water connection fees as provided in Section III, and wastewater connection fees as provided in Section III, subject to any credits discussed herein. Said fees are to be due and payable as provided herein.

3. Developer will also be responsible to work with Sumter County and to pay any applicable impact fees imposed by the County for transportation, fire, or any other applicable impact fee, subject to any applicable credits. Said fees are to be due and payable at the time of issuance of building permit, or as otherwise required by Sumter County ordinances and regulations.

C. **Proportionate Share Contribution.** City agrees that any improvements, contributions, donations, exactions, or fees required from the Developer must directly relate to the need created by the Project and must be calculated based on the proportionate impact of the Project. In order to ensure Developer pays only its proportionate share of the impacts created, City agrees to give the Developer impact fee credits available from the City for City imposed impact fees and to enter into reimbursement agreements in compliance with its proportionate share ordinance, and any applicable state or county laws. The City further agrees that it will work with

Developer and County to ensure that the Project's cost burden shall be limited to its proportionate share.

D. **Development Option.** Developer may, fund and construct the WWTP on the Property as follows:

1. Notwithstanding this option, if the City determines there is a need to proceed with permitting and construction, it may do so at any time. It shall provide developer with notice that it is initiating the process.

2. If the City has not begun the permitting process, Developer may exercise this option by providing the City with notice that it wishes to initiate the permitting and construction process. City and Developer shall then enter into a construction agreement. As long as Developer is able to comply with City's requirements for construction, Developer has the option of permitting and constructing the WWTP.

3. After construction and permitting, the WWTP shall be conveyed to City.

4. In lieu of constructing the WWTP itself, Developer may also opt to enter into an agreement to fund the construction of the WWTP and the city shall construct the WWTP.

5. Any agreement contemplated by this section shall be in writing executed by both parties. Any such agreement must be fully executed within a reasonable time after Developer provides City with notice of its intent to permit, construct or fund the WWTP. For purposes of this agreement, a reasonable time shall

be no more than one (1) month, unless the time for execution of an agreement is agreed to by both parties.

E. **Land Dedications.** Developer shall make certain land dedications to the City for the siting of the WWTP and wet weather storage facilities on the Property.

1. **Fee Simple Dedication.** In further consideration of the provision by the City for water, wastewater and reuse water services to the Property, Developer agrees that it will provide City with clear title, subject to all matters of record except monetary encumbrances, to the following:

(a) Nineteen (19) \pm acres to be used for a sub-regional wastewater treatment plant ("WWTP") and public access reuse storage and pumping facilities, generally in the location shown on **Exhibit B**, attached hereto and incorporated herein ("WWTP Site").

(b) Twenty-five (25) \pm acres to be used for wet weather storage and access thereto, generally in the location shown on **Exhibit B**, attached hereto and incorporated herein ("Wet Weather Storage Site").

Items I.E.1 (a) and (b) may hereinafter be jointly referred to as the "Donated Property".

2. **Location.** Developer agrees that it will diligently work with the City to locate the Donated Properties, generally in conformance with **Exhibit B**, and to transfer fee simple title to the City in a timely manner and pursuant to this Agreement, so that City may complete the design, permitting and construction of the WWTP.

3. **Access.**

(a) Temporary Construction Easement (City constructs WWTP).

In the event that the City constructs the WWTP, Developer will grant the City a non-exclusive temporary construction easement over, upon and across the Property, in a location mutually agreed upon by Developer and City, to permit the City to access the Donated Property to construct the WWTP and wet weather storage facilities. Such rights to gain access over the Property shall continue in effect until the completion of a public access improvement thereto. If no public access improvement is actually completed from the public access roads in the development to the wet weather storage facility, the City shall continue to have the right to access or cross property which will be designated by Developer and the City as the wet weather storage facility. The City shall coordinate the timing of the construction of the WWTP and wet weather storage facilities to limit interference with the development of the Property.

(b) City shall exercise reasonable care when exercising its rights of access hereunder, and shall minimize, to the extent reasonably possible, its interference with the use and enjoyment of the Property. If City causes any damage to the Property during its exercise of rights hereunder, City shall promptly restore such property to substantially the same condition as previously existed and in a manner consistent with the overall development plan and schedule and at the City's sole expense.

(c) Non-Exclusive Perpetual Easement. The City may enter upon the Property to gain access to the WWTP Site and the Wet Weather Storage Site from time to time to maintain, repair, or replace the WWTP and/or wet weather storage

facilities. Access roads to the WWTP Site and the Wet Weather Storage Site will be coordinated with Developer and shall be adjusted, by the Developer, as needed—as development plans change^[c1]. The City shall provide reasonable notification to Developer or its successors and assigns of its intent to access the WWTP Site and the Wet Weather Storage Site via the Property for non-emergency construction purposes that would have impact on the Project. Upon construction of public access improvements, the City's access shall be limited to the area of those improvements and the easements are then considered vacated. City shall exercise reasonable care when exercising its rights of access hereunder, and shall minimize, to the extent reasonably possible, its interference with the use and enjoyment of the Property. If City causes any damage to the Property during its exercise of rights hereunder, City shall promptly restore such property to substantially the same condition as previously existed and in a manner consistent with the overall development plan and schedule and at the City's sole expense.

F. **Design, Permitting and Construction of WWTP and Wet Weather Storage.**

The design, permitting, and construction of the WWTP may be at either the Developer's expense or the City's expense, as provided for in this agreement. Operation and maintenance of the WWTP shall be at the City's expense. The site layout shall include buffering from adjacent land uses as approved by the Developer. Buffering shall not impede the City's ability to use the site as intended. Such approval by Developer is not to be unreasonably withheld. Developer shall be responsible for

conducting a one-time gopher tortoise relocation at the time of dedication of the WWTP Site.; and^[c2]

The design, permitting, and construction of the Wet Weather Storage Facility may be at either the Developer's or the City's expense. The operation and maintenance of the Wet Weather Storage Site shall be at the City's expense and site layout shall include buffers from adjacent land uses, as approved by the Developer. Such approval by Developer is not to be unreasonably withheld. Developer shall be responsible for any wetland permitting which may be necessary to construct a single lane access drive to the Wet Weather Storage Site and a one-time gopher tortoise relocation at the time of dedication of the Wet Weather Storage Site.

PART III. DEVELOPER'S OBLIGATIONS

A. **Water, Reuse Water and Wastewater Lines and Lift Stations on the Property.** This section concerns only water, reuse water and wastewater lines and lift stations that are constructed by Developer for service on Developer's Property and requires:

1. Developer, at its expense and at no expense to the City, shall design, construct, and install all necessary water, reuse water, distribution and wastewater collection lines, and any necessary lift stations over, through, under and across the Property in accordance with the plans, specifications and engineering data as required by Florida regulatory agencies and the City or its authorized representative; and said water distribution lines shall be installed and connected to City existing water distribution lines which are serviced by the existing WTP operated by the City located on C.R. 501, all of which work shall be paid for by the Developer. Developer's portion of the water system on the Property shall end at the point of connection to the individual

water service meters for residential and non-residential users. Developer's portion of the wastewater system on the Property shall end at the point of connection to the WWTP to be built either by the Developer, at its sole discretion, or by the City on the Property or on an interim basis to the wastewater main or lift station located at the Coleman Federal Prison. Developer and City agree that City will accept the mainlines and lift stations, and that Developer shall transfer and City shall accept and maintain such mainlines and lift stations upon completion of construction thereof as long as they are constructed to City standards, and inspected and accepted by City.

2. All installations of all lines referred to herein shall be installed at Developer's expense, unless otherwise agreed to herein, and shall include, without limitation, all water lines, effluent reuse lines, gravity flow mains, force mains, pump stations and lift stations required for the furnishing of service on the Property. At the time of submission of plans, specifications and engineering data by Developer to the City, the Developer shall pay to the City a Plan Review Fee. Said Plan Review Fee is to compensate City for City's expense in having said plans, specifications and engineering data reviewed. This shall occur at each phase of the development.

3. Developer, its Project Engineer, and its Contractor shall arrange for and hold a preconstruction meeting or meetings with the City or its authorized representative. Notification of said meeting shall be made in writing and received by all parties seventy-two (72) hours in advance of said meeting. The meeting shall be held at least twenty-four (24) hours prior to start of each phase of construction.

4. The work to be performed by Developer, as provided in this Agreement, shall not commence until all plans and specifications covering the work to be performed are approved in writing by the City or its authorized representative.

5. During construction and at the time periodic inspections are required, the City or its authorized representative may be present and Developer's engineer shall be present to observe and witness tests for determination of conformance to approved plans and specifications. Copies of the approved test results shall be furnished to the City on successful completion of each test.

6. The work to be performed by Developer, pursuant to the provisions set forth herein, shall be in accordance with all requirements of the regulatory agencies which have jurisdiction over the subject matter of this Agreement, as well as all applicable Federal and State Statutes, County and City ordinances.

7. Developer shall, at its own expense and at no expense to the City, furnish to the City five (5) complete sets of reproducible as-built drawings and one (1) electronic copy on a ~~.dwg~~ generally acceptable format prepared by the Florida registered engineer who designed the water distribution and wastewater collection systems. As-built drawings shall be certified by the Developer's engineer and shall show all pertinent information as to all mains, services and appurtenances belonging to, and affecting the water distribution, wastewater collection and reuse systems and service lines as constructed in the field. As-built drawings shall also be certified by a Florida registered surveyor as to the actual location of all surface and subsurface features of these systems and easements and rights-of-way which are part of or adjacent to the Property.

8. If City has agreed or agrees in the future to accept transfer of any portions of the wastewater collection and/or water distribution systems placed on the Property by Developer, constructed in conformance with City standards. Developer shall also provide to the City information concerning the costs of construction of the water distribution and wastewater collection systems to be transferred to the City.^[c3]

9. Twenty foot (20') easements along the boundaries of the Property for the City's use for utility expansion. Said utility easements may be located within buffer areas on the boundary of the Property.

10. Developer shall provide the City with whatever easements are necessary to maintain the mainlines and lift stations on the Property, which shall not be in excess of requirements included in the ARDO.

11. Any easements provided in the paragraphs above shall not minimize or reduce density and/or setback lines for any improvements on the Property and all easements shall be subject to the right of the Developer to install and maintain curbing, landscaping, and driveway entrances necessary for the development, use and operation of the Property. If the City disturbs any such land or improvements, it shall not be responsible for replacing or restoring the same. Developer may also choose to place signage and fencing within the easement. However, if the signage or fencing is damaged through the City's use of the easement, Developer shall be responsible for such damage, unless said damage is caused by the City's negligence.

B. **Connection and TIE Fees.**

1. **Potable Water.** The City currently owns and operates the Wildwood Water Treatment Plant ("WTP") within close proximity to the Property. The

City's master plan indicates an expansion of this existing WTP with a connection to the Property.

(a) The City hereby agrees to provide water to the Property. The City will reserve capacity for the Developer at the point in time that Developer pays for capacity as provided for in this Agreement.

(b) Developer shall pay to the City fifty percent (50%) of the prevailing rate for water connection fees upon approval of the first Preliminary Plan or at whatever time the Developer requests capacity reservation, whichever comes first. The payment by the Developer to the City of 50% of the prevailing rate for water connection fees shall establish the rate to be used in the calculation of the payment of the remaining connection fees due and payable to the City, regardless of the point in time that the connection fees are paid. An additional twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of a building permit. The final twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of certificate of occupancy. If Developer fails to complete payment of connection fees for the capacity reservation within ten years of initial purchase, the City has the discretion to repurchase any unused capacity from Developer at the initial rate at any time thereafter. If the City does not elect to repurchase the unused capacity from the Developer, the unused capacity shall remain under the control of the Developer until such time as the Developer or a party designated by the Developer shall pay the connection fees for the remaining capacity.

(c) In order to proceed with the reservation of capacity beyond the uses approved in the first Preliminary Plan or at whatever time the Developer

requests capacity reservation, whichever comes first. Developer must pay fifty percent (50%) of the prevailing water connection reservation fees at the time of subsequent Preliminary Plan approvals. The payment by the Developer to the City of 50% of the prevailing rate for water connection fees shall establish the rate to be used in the calculation of the payment of the remaining connection fees due and payable to the City, regardless of the point in time that the connection fees are paid. An additional twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of a building permit. The final twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of a certificate of occupancy. If Developer fails to complete payment of the connection fees for the capacity reservation within ten years of initial purchase, the City has the discretion to repurchase any unused capacity from Developer at the initial rate at any time thereafter. If the City does not elect to repurchase the unused capacity from the Developer, the unused capacity shall remain under the control of the Developer until such time as the Developer or a party designated by the Developer shall pay the connection fees for the remaining capacity.

(d) In addition to the water connection fees discussed above, Developer will be responsible for the design, permitting and cost including, but not limited to, the cost of labor, materials, easements, and any other cost for construction of lines from its Property to the City's Water Treatment Plant. All such lines shall be built to the City's specifications and shall be located in the City's existing public right-of-way. The exact location within the right-of-way shall be determined at the time of design and shall be such that the location will not effect future road widening.

(e) Developer will not be responsible for the payment of water TIE fees for the Project given Developer's commitment to design, permit and construct the necessary water lines from the Property to the City's WTP.

(f) City agrees to diligently proceed to amend the allocation beyond 2013 in its Water Use Permit ("WUP") from the Southwest Florida Water Management District ("SWFWMD") to enable the City to provide the Project with sufficient water for the Project at build out. However, Developer understands that no capacity is reserved until the City is paid the first fifty (50%) percent of the water connection fees.

2. **Wastewater.**

(a) Developer can exercise its right to design and construct the WWTP on the Property as provided for in this agreement or the City can design and construct the WWTP by way of the Developer's payment of Connection Fees. The planned capacity for the WWTP on the Property is projected to be a minimum of 2.1 mgd ADF and in no event shall it be larger than a 12 mgd ADF public access reuse facility. The City or the Developer can exercise its right to build the sub-regional wastewater treatment plant in increments of less than 2.1 mgd ADF of wastewater demand. At build out, the Project is expected to generate approximately 2.1 mgd ADF of wastewater treatment demand. The City and Developer agree to participate, to the extent necessary, in any applications by the City to secure funding for the new WWTP.

(b) Should the City design, permit and construct the WWTP, the Developer shall pay to the City fifty percent (50%) of the prevailing rate for wastewater connection fees upon approval of its first Preliminary Plan or at whatever time the

Developer requests capacity reservation, whichever comes first. The payment by the Developer to the City of 50% of the prevailing rate for wastewater connection fees shall establish the rate to be used in the calculation of the payment of the remaining connection fees due and payable to the City, regardless of the point in time that the connection fees are paid. An additional twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of the building permit. The final twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of a certificate of occupancy. If Developer fails to complete payment of connection fees for the capacity reservation within ten years of initial purchase, the City has the discretion to repurchase the capacity from Developer at the initial rate at any time thereafter. If the City does not elect to repurchase the unused capacity from the Developer, the unused capacity shall remain under the control of the Developer until such time as the Developer or a party designated by the Developer shall pay the connection fees for the remaining capacity.

(c) In order to proceed with reservation of capacity beyond the approval of the first Preliminary Plan, Developer must pay fifty percent (50%) of the then prevailing wastewater connection reservation fee for the additional units requested. The payment by the Developer to the City of 50% of the prevailing rate for wastewater connection fees shall establish the rate to be used in the calculation of the payment of the remaining connection fees due and payable to the City, regardless of the point in time that the connection fees are paid. An additional twenty-five percent (25%) of the connection fee is due and payable pro rata upon issuance of the building permit. The final twenty-five percent (25%) of the connection fee is due and payable pro rata upon

issuance of certificate of occupancy. If Developer fails to complete payment of connection fees for the capacity reservation within ten years of initial purchase, the City has the discretion to repurchase the capacity from Developer at the initial rate at any time thereafter. If the City does not elect to repurchase the unused capacity from the Developer, the unused capacity shall remain under the control of the Developer until such time as the Developer or a party designated by the Developer shall pay the connection fees for the remaining capacity.

(d) Should the Developer design, permit and construct the WWTP or if Developer elects to fund the cost of the WWTP construction, such actions by Developer shall satisfy the connection fee requirement for the ERC capacity constructed. If Developer requires capacity beyond that constructed or paid for by Developer, Developer shall be required to pay connection fees for the additional capacity at the rate in effect at that time, subject to the terms of this Agreement.

(e) Developer agrees to convey to City and City agrees to accept, the land dedications referenced above in paragraphs I.E.1. (a) and (b) at such point as the City determines it needs title to the land to complete the application for financing, permitting and construction of the wastewater treatment plant, or, if Developer opts to construct the WWTP, after the WWTP is completed. There shall be no wastewater TIE fee for the Project as the Developer is providing land dedication as described in paragraphs I.E.1.(a) and (b) in full satisfaction thereof.

The parties agree that Developer will dedicate land for a Wet Weather Storage Site pursuant to paragraph I.E.1.(b) sufficient to provide area for three days of wet weather storage, sufficient to meet the demands of the Project, plus up to 1.0 mgd of

effluent from the Coleman Federal Prison, with treatment to public access reclaimed water standards if the City constructs, owns and operates the WWTP on Developer's Property. In no event shall Developer be responsible for providing more than twenty five (25) acres or for providing wet weather storage area for the ultimate wastewater treatment plant capacity (i.e. greater than 2.1 mgd ADF). City agrees that any other users of the WWTP on the Property shall be responsible for their own storage area if more than 25 acres are required and that such burden shall not be placed on Developer.

(f) City will be responsible for obtaining any easements necessary to receive the wastewater from the Coleman Federal Prison site, as well as any costs for transmission system design, permitting, construction, operation and maintenance associated with the Coleman Federal Prison wastewater service.

(g) City acknowledges that Developer may have to tie into the wastewater line currently serving the Coleman Federal Prison on a temporary basis until such time that the City constructs the WWTP on the Property or Developer constructs the WWTP on the Property. City will provide Developer with the right of first refusal to tie into the wastewater line currently serving the Coleman Federal Prison, even though such service may be on a temporary basis if there is sufficient capacity to allow such a tie in.

3. **Reuse Water.** The City agrees to provide reuse water service, defined herein to mean non-restricted public access reuse, to the property in the amount that would result from the quantity of wastewater effluent generated by the development:

a) Additional quantities of reuse water, from other projects generating effluent to the “Landstone” WWTP, may be supplied to the property after the City has met its internal needs and its contractual commitments for reuse water in place at the time of approval of this agreement.

b) Developer recognizes that currently there is no reuse capacity available.

c) Recognizing the limited availability of reuse water service, City agrees that Developer can use any existing permitted wells on the Property for irrigation purposes until reuse water capacity is available from the City, at which time Developer agrees to discontinue use of said wells. If a permit is required, irrigation wells shall be required to have a valid Water Use Permit (WUP) from the Southwest Florida Water Management District (SWFWMD).

d) City agrees that the Property shall not be used for reuse water and storage capabilities of other developments other than the Developer.

e) Reuse water capacity, as defined above, is herein reserved by the Developer through agreement with the City based on the rules and regulations in effect in the City and Developer shall be treated in the same manner as other similarly situated owners of property located within the City.

f) Developer agrees to pay the rate in place per City Ordinances for all reuse water services the Project shall consume. City acknowledges the Developer will not pay any TIE fees for reuse water and is therefore required to construct all reuse mains necessary for delivery of reuse to the project. Developer will be responsible for reuse lines within the project.

C. **Potable Water Capacity**

The City's existing infrastructure is designed to accommodate peak user demand plus fire flow capacities of 500 gallons per minute for residential uses and 1,500 gallons per minute for commercial uses. The City agrees that it will provide the Project with service levels in accordance with City laws and regulations. In the event development of the Project creates a need for enhanced fire flow volumes and pressures above these standards, Developer will be required to pay for any improvements needed to supplement the existing potable water delivery. City agrees that Developer shall be entitled to impact fee credits for any improvements required under this paragraph if said improvements benefit the water pressure available to the city water system as a whole that are required by the City and subject to a City impact fee related to utilities.

D. **Connection Fees.**

1. If connection fees (both water and wastewater) are to be paid by Developer, they shall be calculated according to the rate schedule adopted by the City at the time the Developer reserves capacity.

2. The following actions must precede the reservation of either water or wastewater connection fees/capacity:

(a) The Developer must complete the applicable Connection Fee and Reuse Utility forms.

(b) The City must approve the Connection Fee and Reuse Utility forms.

(c) The Developer and the City must both execute the water and wastewater ERU availability schedule form.

(d) This Agreement must be fully executed.

3. Capacity is reserved for a particular location and pre-supposes that the City will be prepared to serve that capacity according to the agreed upon availability schedule at that location and no other.

4. Developer may not transfer any water or wastewater capacity reserved without written notice to the City. As Developer develops the property and sells parcels to third parties, such sales shall not be deemed a transfer requiring notice to the City.

5. The purchase of ERC's does not act to set the price for future purchases. Any future purchases will be at the price set by the City at time of payment.

E. **Default**

1. Should Developer be in default of this Agreement, it is agreed that the City shall have the right to exercise any of the following sanctions or penalties:

(a) There shall be an interest penalty equal to the maximum rate allowed by Florida State Law on any payments due to City from Developer which are not paid. The penalty, when applicable, shall accrue from the due date of payment as provided in this Agreement. The rate of interest shall be established by Resolution of the City.

(b) All capacity purchased by Developer under this Agreement shall revert back to City upon default by Developer and Developer forfeits all claim to reimbursement of the monies paid to City for connection fees. Given the long-term nature of the build out of the Project, Developer shall not be held liable or subject to a default due to the failure of subsequent purchasers or owners of some or all of the

Property. However, if there is a default by Developer, City shall provide developer with written notice of the default and Developer shall have 30 days to cure the default. If the default is not cured within 30 days, the capacity shall automatically revert to City. However, if the default is caused by events outside of Developer's control, Developer shall have an additional 30 days.

(c) The City shall be entitled to lien the Property and foreclose the lien in satisfaction of any payments due under this Agreement.

(d) City shall be entitled to any other remedy at law and failure to exercise any remedy shall not constitute a waiver of said remedy.

F. **Easement, Bill of Sale, Bond or Any Portions of Water and Wastewater Systems to be Transferred to City.**

If Developer and the City agree that City will accept some portion of the mainlines and/or lift stations placed on the property by Developer, no later than the time of completion, approval and acceptance of the work required to be done, Developer shall, without cost to the City:

1. Convey to City and its successors and assigns, by good and sufficient easement deed, in a form satisfactory to City a perpetual right, easement and privilege to operate, maintain, repair or replace all such accepted wastewater mainlines (from manhole to manhole): reuse water (if applicable) mainline; pumps and lift stations; water mains and pipes to meters and meters (hereinafter water and wastewater transmission facility) within granted easements upon the property in connection with supplying water, wastewater and reuse (if applicable) service to the inhabitants, occupants and customers in Developer's Property and secure from each

mortgagee and lienor a release of mortgagee's and lienors' interest in the easement and fixtures thereon for so long as the easement is used for the operation, maintenance, repair or replacement of water and wastewater mains, pipes, connections, pumps and meters within the easement including any other easement necessary to allow the City to provide the service contemplated by this agreement to Developer. Developer retains all rights not inconsistent with City's right to use easements; and,

2. Transfer to City by Bill of Sale Absolute all Developer's right, title and interest in and to any water and wastewater transmission facilities transferred to the City under this Agreement; and,

3. For any portion of the system transferred to the City under this Agreement, furnish the City with an Affidavit that all persons, firms or corporations who furnished labor or materials used directly or indirectly in the prosecution of the work required to be performed by this Agreement have been paid, or in the event of a dispute between the Developer and a contractor or sub-contractor, furnish the City with a bBond in the amount in dispute and in a form acceptable to the City; and,

4. For any portion of the system transferred to the City under this Agreement, Developer shall maintain accurate cost records establishing the construction costs of all utility facilities constructed by Developer and proposed to be transferred to the City. Construction costs shall be defined to include permitting, design and legal costs incurred in the construction of the utility facility, as well as the cost of actual construction. Such cost information shall be prerequisite for the acceptance by City of the portion of the water distribution and wastewater collection system constructed by Developer; and,

5. For any portion of the system transferred to the City under this Agreement, Developer shall furnish the City with a satisfactory surety bond or letter of credit in the amount of fifty percent (50%) of the cost of the work, in a form acceptable to the City, guaranteeing all work installed pursuant to this Agreement which is transferred to the City pursuant to this Agreement against defects in materials, equipment or construction for a period of one (1) year from date of acceptance by the City.

G. **Developer's Responsibility After Connection to City's Water and Wastewater System.**

After connection to City's water and wastewater systems:

1. Developer shall be responsible for all wastewater lines on Developer's side of the point of connection to the City's wastewater system, unless, as stated above, the City has accepted maintenance of said lines.

2. The Developer shall be responsible for all water distribution lines from the Developer's side of the water meter (point of connection), unless, as stated above, the City has accepted maintenance of said lines.-

3. The Developer shall provide the City with any easement necessary to access the water meter once the placement for the meter is identified.

PART IV. CITY'S OBLIGATIONS

A. The City shall provide potable water, wastewater and reuse water services to the Property, as and when available or reserved, and as set forth herein in more detail. City agrees to continue working to ensure it has the capacity to provide for build out of the Project in a timely manner, so as to accommodate the projected development schedule of the Project. The City will provide water, wastewater and reuse water

services as indicated in this Agreement, its ordinances and resolutions and other public records.

B. In the event that any of the infrastructure improvements for water, wastewater and/or reuse water discussed herein are not already contained in the City's Capital Improvements Plan, the City agrees to amend its Capital Improvement Plan to include the infrastructure improvements, during its next scheduled update cycle, as applicable.

C. When, at no cost to City,

(1) the water distribution and wastewater collection and reuse systems have been satisfactorily installed, inspected, tested and approved and certified in writing by Developer's engineer, with the City, or its authorized representative;

(2) Developer has satisfied the conditions of this Agreement; and

(3) the City's authorized representative has inspected the constructed facilities, permitting documents and construction "as-built" drawings, and received five (5) sets of completed "as-built" drawings, then the City shall thereafter connect the water distribution system, and wastewater collection systems within granted easements upon Developer's Property to the City's water and wastewater system and the mainlines and lift stations will be transferred to the City. The City shall have at least thirty (30) days from completion of construction to review drawings and constructed facilities.

D. The City shall provide all water, wastewater and reuse water to the Property. Given the long term nature of the Project, the Developer requests the right to discuss at some time in the future the ability for the Developer to provide wastewater

and reuse water to the site. The City has the right to review said request and either deny or approve said request.

PART V. COMMUNITY DEVELOPMENT DISTRICT

The parties acknowledge that Developer may seek the establishment of an independent community development district ("CDD"), under Chapter 190, Florida Statutes.

A. The City agrees that CDDs are an acceptable alternative way to provide infrastructure to developing areas such as the Property. The City agrees that if one or more community development districts are established over the Property, the CDD(s) may finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain projects, systems and facilities for the purposes set forth in Section 190.012, Florida Statutes, including but not limited to, any obligation or requirement of development approval for the Property, whether on site or offsite.

B. The City agrees that if the Developer is required to provide, pay for or otherwise cause to be provided infrastructure, schools, projects, systems or facilities set forth in Chapter 190, Florida Statutes including, without limitation, those in Section 190.012(1) and (2), then a CDD may independently satisfy such obligations.

C. Developer acknowledges that City will be the sole provider of all water, wastewater and reuse water provided that Developer has received reasonable assurances the City has the capacity and ability to serve the Project. The Property will also be subject to all applicable City or other government entity imposed impact fees and/or impact fee credits.

PART VI. MUTUAL COVENANTS

It is mutually agreed by and between the parties that the preambles contained at the beginning of this Agreement are true and correct and in addition to them it is mutually covenanted and agreed as follows:

A. In addition to binding Developer, the provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of successors to title to the property or any part thereof after this Agreement has been recorded in the Public Records of Sumter County, Florida. However, any other assignment or transfer of Developer's rights and obligations is prohibited unless:

1. Assignment shall be done in writing in the same formality as this Agreement.

2. City shall be a party of said assignment and shall not withhold approval of assignment unreasonably.

3. Developer shall remain primarily liable to City for the terms and conditions of this Agreement unless assignment is made in compliance with this section. City agrees to execute a "Satisfaction by Assignment" for Developer if this Agreement is properly assigned.

B. City shall have the exclusive right to furnish water service and wastewater collection and reuse service to consumers within the Property covered by this Agreement.

C. Developer, his successors and assigns, and the Owners and occupants of buildings on Developer's Property shall not install or shall not be connected to any potable water system other than the City's system, except for outdoor irrigation purposes.

D. City shall have the right to promulgate from time to time reasonable rules and regulations relating to the furnishing of water service and wastewater collection service to consumers within the Property encompassed by this Agreement. Such rules and regulations may relate to, but are not limited to, rates, deposits, and connection charges and the right to discontinue services under certain conditions. The water and wastewater rates to be charged by City to said customers shall be the rates now or hereafter charged to other customers within the area of service of the Developer's Property. Developer hereby acknowledges and agrees that rates are subject to change at any time by City. Developer further acknowledges that it shall be subject to City ordinances related to water and wastewater services.

E. City shall not be liable or responsible for maintenance or operation of any pipes, pipelines, valves, fixtures or equipment on any of the properties of the customers, consumers or users on Developer's Property other than the water service lines and wastewater collection system accepted for maintenance by the City and located within granted easements to City pursuant to this Agreement.

F. Unless otherwise specified in this Agreement, this Agreement shall not be binding until fully executed, but once executed, it shall have a retroactive effect commencing from the date of the Commission meeting at which it was approved.

G. If the development includes single family homes, it is assumed that a single family home on the Property will be serviced by a $\frac{5}{8}$ x $\frac{3}{4}$ inch water meter. If a larger water meter is needed, then the Owner (whether Developer, Assignee, or Homeowner) will be charged additional connection fees which must be paid at the rate

prevailing at the time of the application for a larger meter for additional ERC's to accommodate the larger meter^[c4].

H. Each consumer of water service or wastewater collection service on Developer's Property shall keep:

1. All wastewater lines, service lines, connections and necessary fixtures and equipment on the premises occupied by said consumer, and within the lateral lines from the main line to the lot occupied by the consumer in good order and condition. A "Clean-out" for the wastewater lateral shall be at the Property or easement line. The "clean-out" is for inspection purposes only; and

2. Water lines, connections and necessary fixtures on the consumers side of the water meter in good order and condition. The sale of water by City to the consumer shall occur at the consumer's side of the entire meter installation, but the obligation for the maintenance of the lines shall be set forth above and in applicable City regulations. -

I. No water from City's water distribution system shall be used or disbursed by Developer or his agents, through fire hydrants or water mains, or by any person, firm, corporation or agency, public or private, unless adequate provisions have first been made for compensating City for such water, as provided for within the City's Ordinance.

J. Any temporary cessation or interruptions of the furnishings of water and wastewater service to the Property described herein at any time caused by Act of God, fires, strikes, casualties, accidents, power failures, necessary maintenance work, breakdowns, damaged equipment or mains, civil or military authority, riots or other cause beyond the control of the City shall not constitute a breach of the provisions

contained herein nor impose liability upon the City by the Developer, his successors and assigns.

K. If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

L. A ~~N~~notice of this Agreement shall be recorded by the City among the Public Records of Sumter County, Florida, for the particular purpose of placing all Owners or occupants of properties in Developer's Property connected to or to be connected to said water and sewer systems of City upon notice of each and every one of the provisions herein contained to the same extent and with the same force and effect as if said Owners and occupants had joined with the parties to this Agreement in the execution thereof; and the acquisition or occupancy of real Property in Developer's Property connected to or to be connected to the said water and sewer systems of City shall be deemed conclusive evidence of the fact that the said Owners or occupants have consented to and accepted the Agreement herein contained and have become bound thereby.

M. It is mutually agreed that the City shall be held harmless from any and all liability for damages if City's obligations under this Agreement cannot be fulfilled as a result of any ruling or order by any other governmental or regulatory agency having jurisdiction over the subject matter hereof; and in such event, this Agreement shall be null and void and unenforceable by either party regarding that portion of the Developer's Property for which City cannot perform its obligations.

N. The calculation of connection fees in this agreement are based upon developer's representation of the intended development on the property. If Developer has provided City with inaccurate information it could result in additional connection fees.

O. **Force Majeure**. Neither party shall be responsible for damages or delays caused by events beyond the control of the party and which could not have been reasonably anticipated or prevented (hereinafter "Force Majeure"). For purposes of this Agreement, Force Majeure includes, without limitation: 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; government-declared moratorium; or act of God. If a 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.

P. All prior Developer Agreements or Agreements pertaining to the supply of water and wastewater service affecting the Property are hereby cancelled and declared of no force and effect upon that Property which is the subject matter of this Agreement^[c5].

PART VII. NOTICE

Whenever either party desires to give notice to the other, it shall be given by written notice, sent by prepaid, certified, United States, mail, with the return receipt

requested, addressed to the party for whom it is intended, at the place specified as the place for giving notice, which shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for the giving of notice:

CITY OF WILDWOOD

City of Wildwood
100 N. Main Street
Wildwood, Florida 32786
Attn: City Manager

WITH A COPY TO

Jerri A. Blair, Esq.
JERRI A. BLAIR, P.A.
P.O. Box 130
Tavares, FL 32778

FOR THE DEVELOPER

Landstone-Wright, LLC
c/o Hearthstone, Inc.
300 Drakes Landing Road
Suite 269, Greenbrae, CA 94904
Attn: Tracy Carver, Esq.

WITH A COPY TO

Akerman Senterfitt
c/o Cecelia Bonifay, Esq.
420 S. Orange Avenue, Suite 1200
Orlando, FL 32801

WITH A COPY TO

Chuck Piper
13506 Summerport Village Parkway
Windermere, FL 34786

Notice so addressed and sent by prepaid certified mail, with return receipt requested, shall be deemed given when it shall have been so deposited in the United States mail.

PART VIII. ADDITIONAL PROVISIONS

A. The parties agree that in the event it becomes necessary for any party to this Agreement to litigate in order to enforce its rights under the terms of this Agreement then, and in that event, the prevailing party shall be entitled to receive reasonable attorney's fees and the cost of such litigation including appellate litigation.

B. Exhibits

The following exhibits are attached, as part of this Agreement and are incorporated into this Agreement:

EXHIBIT "A" - Legal description of the Property.

EXHIBIT "B" – Land Dedications.

Remainder of this page intentionally left blank.

IN WITNESS WHEREOF, authorized representatives of each of the Parties have executed this Agreement and such Agreement is to be effective as of the date of execution by the City set forth below.

Signed, sealed and delivered in the presence of:

WITNESS

WITNESS

CITY OF WILDWOOD

BY:

Ed Wolf
Mayor

ATTEST

Joseph Jacobs, City Clerk
Date: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2012, by Ed Wolf, Mayor of the **City of Wildwood**, who has produced _____ as identification or is personally known to me.

Notary Public, State of Florida
Commission #
My Commission Expires:

(Additional signature and acknowledgement appears on the following page.)

LANDSTONE-WRIGHT, LLC, a
Delaware limited liability company

By: **Hearthstone, Inc.**

By: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____ 2012, by _____ of **Hearthstone, Inc.**, a Member of **LANDSTONE-WRIGHT, LLC**, on behalf of the corporation, who has produced _____ as identification or is personally known to me.

Notary Public, State of _____
Commission # _____
My Commission Expires: _____