



AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Regular Commission Meeting
Wednesday, June 15, 2011, 7:00 p.m.
Lake Park Town Hall
535 Park Avenue

	—	Mayor
Kendall Rumsey	—	Vice-Mayor
Steven Hockman	—	Commissioner
Jeanine Longtin	—	Commissioner
Patricia Osterman	—	Commissioner
.....		
Maria V. Davis	—	Town Manager
Thomas J. Baird, Esq.	—	Town Attorney
Vivian M. Lemley, CMC	—	Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, 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. *Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.*

A. **CALL TO ORDER**

B. **INVOCATION**

C. **PLEDGE OF ALLEGIANCE**

D. **ROLL CALL**

E. **ADDITIONS/DELETIONS - APPROVAL OF AGENDA**

F. **PUBLIC and OTHER COMMENT**

This time is provided for audience members to address items that **do not** appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember comments are limited to a **TOTAL** of three minutes.

G. **CONSENT AGENDA:** All matters listed under this item are considered routine and action will be taken by **one** motion. There will be no separate discussion of these items unless a Commissioner or person so requests, in which event the item will be removed from the general order of business and **considered in its normal**

sequence on the Agenda. Any person wishing to speak on an Agenda item is asked to complete a public comment card located on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.

For Approval:

1. Regular Commission Meeting Minutes of May 18, 2011 Tab 1
2. Special Call Commission Attorney-Client Meeting Minutes of May 23, 2011 Tab 2
3. Resolution No. 22-06-11 Interlocal Agreement National Pollutant Discharge Elimination System (NPDES) Third Term Permit Tab 3
4. Resolution No. 23-06-11 Signatures on Bank Account Tab 4

H. ORDINANCE ON FIRST READING:

5. Ordinance No. 04-2011 – K-Mart Rezoning

Tab 5

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE TOWN'S OFFICIAL ZONING MAP AND REZONING THE PROPERTY KNOWN AS THE K-MART PLAZA FROM C-1 TO PLANNED UNIT DEVELOPMENT ("PUD"); PROVIDING FOR WAIVERS; AND PROVIDING FOR AN EFFECTIVE DATE.

I. COMMISSIONER COMMENTS, TOWN ATTORNEY, TOWN MANAGER:

J. ADJOURNMENT:

Consent Agenda

TAB 1



**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: June 15, 2011

Agenda Item No. *Tab 1*

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> DISCUSSION/POSSIBLE ACTION |
| <input type="checkbox"/> ORDINANCE ON SECOND READING | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> PRESENTATION/PROCLAMATION | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> Other: | |

SUBJECT: Regular Commission Meeting Minutes of May 18, 2011

RECOMMENDED MOTION/ACTION: To Approve the Regular Commission Meeting Minutes of May 18, 2011.

Approved by Town Manager *W. G. Davis*

Date: *6/10/11*

Vin Lely
Name/Title

May 27, 2011
Date of Actual Submittal

Originating Department: Town Clerk	Costs: \$0 Funding Source: 0 Acct. # 0	Attachments: Meeting Minutes and Exhibits A and B
Department Review: <input type="checkbox"/> Attorney _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____	<input type="checkbox"/> Grants _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Information Technology _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____	<input type="checkbox"/> PBSO _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Recreation _____ <input checked="" type="checkbox"/> Town Clerk <i>VMC</i> <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <i>VMC</i> Please initial one.

Summary Explanation/Background:



Minutes
Town of Lake Park, Florida
Regular Commission Meeting
Wednesday, May 18, 2011, 7:00 p.m.
Town Commission Chamber, 535 Park Avenue

The Town Commission met for the purpose of a Regular Commission Meeting on Wednesday, May 18, 2011 at 7:00 p.m. Present were Vice-Mayor Kendall Rumsey, Commissioners Steven Hockman, Jeanine Longtin, Patricia Osterman, Town Manager Maria Davis, Town Attorney Thomas Baird, and Town Clerk Vivian Lemley.

Vice-Mayor Rumsey led the Invocation and the Pledge of Allegiance. Town Clerk Vivian Lemley performed the Roll Call.

ADDITIONS/DELETIONS/APPROVAL OF AGENDA:

Vice-Mayor Rumsey requested item number 6 Resolution No. 17-05-11 Fourth Amendment to the Northlake Boulevard Task Force Interlocal Agreement for a Five Year Extension be deferred until after the Special Election on June 28, 2011.

Commissioner Longtin requested the addition of an appointment of a temporary Commissioner/Mayor, and the additions of signers on the bank accounts.

Commissioner Hockman stated that Resolution 20-05-11 Establishing a Qualifying Period for Commissioner was placed on the dais, which also needed to be added to the agenda.

Motion: A motion was made by Commissioner Hockman to approve the Agenda as amended; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 4-0

PROCLAMATION(S):

National Public Works Week May 16-20, 2011

Vice-Mayor Rumsey read the proclamation and presented it to the Public Works Director Dave Hunt and staff. Public Works Director Dave Hunt thanked the Commission on behalf of the entire Public Works staff. He stated that they are honored and proud to serve the Town. Verdree Patterson thanked the Commission and stated that he has been employed with the Town for 29 years and it has been a real joy. He introduced each of the Public Works members and stated the amount of years of service they each have with the Town of Lake Park.

Commissioner Longtin thanked the Public Works department and stated that they are the people that stay during and after a hurricane. She stated that if this service were ever outsourced, she doubted the Town would receive the personal care that they provide to the Town. She recalled when her nieces lived in Town the Public Works staff were always very nice and kind to them and she thanked them for their services.

Jeffrey Davis Blakely

Vice-Mayor Rumsey read the proclamation and presented it to Mr. Blakely. Mr. Blakely thanked the Commission for appointing him to the boards and for acknowledging his services.

National Missing Children's Day

Vice-Mayor Rumsey read the proclamation and presented it to Mr. Edward Russo the Outreach Specialist for the National Center for Missing and Exploited Children. Mr. Russo thanked the Commission and stated that their office is in Lake Park and they appreciated the support from the Town. He encourage all parents to speak to their children for 25 minutes on May 25, 2011 about personal safety. He stated that if anyone was interested they offer free child identification kits and conversation starters.

PUBLIC AND OTHER COMMENTS:

Helen Gardener owner of Slippers and Slides on Old Dixie Highway stated that she was requesting the signage Ordinance be relaxed, during the summer, for banners or feather flags due to the difficult economic time. She stated that it would provide another method of promoting their business at minimal cost. She asked for assistance for businesses that were not directly on Park Avenue. She indicated that the businesses are willing to pay for the permits; they just want an opportunity to survive.

Vice-Mayor Rumsey request that staff work with Ms. Gardener on this issue.

Jim Lloyd 220 Lake Shore Drive stated that the Town's municipal government was broken. He stated that a Commissioner lives in Stuart and everyone is aware, yet she remains on the dais. He stated that in his opinion none of her votes since last October should count. He stated that Supervisor of Election Susan Bucher explained to him that the Town has until May 31, 2011 for candidates to qualify for a Mayoral and Commission election to be held simultaneously on June 28, 2011. He stated that the current administration is running in secrecy and stated that the most current example of it was the seizing of the largest vessel in the Marina. He explained that an out of town law firm was hired without the Commissioners' approval. He explained that the Sunshine

Law mandates open and transparent government. He then announced his candidacy for Lake Park Mayor.

Edie McConville 638 West Kalmia Drive stated that she was representing the Lake Park Kiwanis, which has been operating in Lake Park for ten years. She stated that the organization's main purpose is to make a difference in a child's life. She thanked the Commission for their support of Kiwanis over the years. She stated that this year the Lake Park Kiwanis was having BUG (Bringing Up Grades) awards. She explained that 200 Lake Park Elementary students will receive BUG awards and free ice cream. She explained that in addition to the awards, the fifth grade class will have their graduation breakfast in the Mirror Ballroom. She stated that they have had a graduation breakfast for students for the past seven years. She stated that almost every child has had an experience with the Lake Park Kiwanis. She explained that she has provided a photograph with Mayor DuBois and three of the five children from the Homework Club. She explained that for the past two years the Homework Club has met and those children have now made the honor roll. She stated that Mayor DuBois would frequently visit and would encourage them to study hard so that they could achieve opportunities. She explained that in honor of Mayor DuBois, the Lake Park Kiwanis has established a scholarship fund. She explained how donations can be made to the scholarship fund. She thanked the Commission for their continued support and expressed how proud the Lake Park Kiwanis is for making a difference in the Town.

Diane Bernhard withdrew her request to speak.

CONSENT AGENDA:

1. Regular Commission Meeting Minutes of April 6, 2011
2. Regular Commission Meeting Minutes of April 20, 2011
3. Regular Commission Meeting Minutes of May 4, 2011
4. Resolution No. 13-05-11 Amend the Job Description of the Deputy Town Clerk
5. Resolution No. 14-05-11 Amend the Job Description of Town Clerk
6. Resolution No. 17-05-11 Fourth Amendment to the Northlake Boulevard Task Force Interlocal Agreement For A Five Year Extension
7. Resolution No. 18-05-11 Special Election Poll Workers
8. Replacement of Damaged Sidewalks at Various Locations Throughout Town
9. Replacement of Commercial Driveway Approaches
10. A Nomination for the City Spirit Award from the Florida League of Cities

Vice-Mayor Rumsey reminded the Commission that item number 6 has been deferred until after the June 28, 2011 Special Election.

Commissioner Hockman requested to have item numbers 4,5, 8, and 9 pulled and Commissioner Longtin requested that item number 7 be pulled.

Motion: A motion was made by Commissioner Hockman to approve item numbers 1 through 3 and 10 on the Consent Agenda; Commissioner Longtin made the second.

Vote on Motion:

Commission	Aye	Nay	Other
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Member			
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 4-0

Commissioner Hockman stated that the job descriptions for item numbers 4 and 5 had been switched. He requested that the correct job descriptions be placed with the correct Resolution.

Motion: A motion was made by Commissioner Hockman to approve item numbers 4 and 5 with the modification on the Consent Agenda; Commissioner Longtin made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 4-0

Commissioner Longtin asked if Resolution 18-05-11 Special Election Poll Workers was for the June 28, 2011 Special Election for Mayor only.

Attorney Baird explained that Resolution 20-05-11 has been added to the end of the agenda establishing a qualifying period for candidates for Commissioner.

Commissioner Longtin questioned if the Resolutions were being adopted in the wrong order.

Attorney Baird stated that he did not believe so, but that the Commission could choose to reorder the agenda.

Commissioner Longtin stated that if Resolution 18-05-11 was for the adoption of Poll Workers for the Mayoral Special Election on June 28, 2011 that she would approve it.

Attorney Baird explained that Resolution 18-05-11 was for the appointment of Poll Workers for the June 28, 2011 Special Election for whatever positions were available.

Motion: A motion was made by Commissioner Hockman to approve item number 7 on the Consent Agenda; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 4-0

Commissioner Hockman stated that in reviewing item number 8, the Replacement of Damaged Sidewalks at Various Locations throughout the Town, he noticed that there were many inconsistencies in the quotes. He stated that there is no consistency standard and that we need to make sure we compare apples to apples. He stated that he wanted to make sure that everyone was bidding on the same things because each of the quotes was different. He provided some examples of the inconsistencies. His explanations included different square footage provided by the bidders in that some had concrete included while others did not include concrete. He explained that some of the quotes provided the thickness of the concrete while others provided only the total amount of concrete without specifying the thickness.

Public Works Director Dave Hunt stated that each of the four bidders were given identical informal bid packets with the specifications requested for the project. He explained that the bid packet would be referred to with any issues on the project. He explained that the deviations was the contractors way of annotating or condensing the specifications they were provided. He explained that the contract would be for what was specified in the bid packet and the awarded contractor would be held to the bid packet.

Town Manager Davis explained that the sidewalks that are to be repaired are marked, so each contractor is aware of where they will begin and end. She stated that each contractor was provided with the basic specifications for the project.

Commissioner Hockman requested that in the future the bid specifications be provided as backup.

Vice-Mayor Rumsey asked for clarification as to what Commissioner Hockman would like to receive from staff in the future.

Commissioner Hockman explained that he is requesting that the bid specifications be included as backup to the bid award to know exactly what the contractor will be expected to perform.

Town Manager Davis stated that the information will be included in the future.

Public Works Director Hunt indicated that the Town documents shall prevail, but will include the information requested in the future.

Commissioner Longtin stated that her concerns were similar to those of Commissioner Hockman and added that if Town documents prevail that the specific language be stated on the bid. Commissioner Longtin requested that the item be tabled until the full document is provided. She stated that the awarded contractor's status was not in the Florida Division of Corporations and in the future she wanted to see information regarding their status with the Secretary of State and copies of the insurance and licenses for the contractors.

Motion: A motion was made by Commissioner Longtin to table item number 7 on the Consent Agenda until the next Commission Meeting; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey		X	
Vice-Mayor Osterman	X		
Mayor			

Motion passed 3-1

Commissioner Hockman stated the he had the same concerns for agenda item number 9 Replacement of Commercial Driveway Approaches, as he did with the replacement of damaged sidewalks at various locations throughout the Town. He stated that there was no consistency with the information and requested the bid specifications be included as backup then they could see what the project would include.

Motion: A motion was made by Commissioner Hockman to table item number 8 on the Consent Agenda until the next Commission Meeting; Commissioner Longtin made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey		X	
Vice-Mayor Osterman	X		
Mayor			

Motion passed 3-1

BOARD MEMBERSHIP APPOINTMENTS:

Vice-Mayor Rumsey explained that there were two applicants to the Planning and Zoning Board as alternate members, for which the Commission had been given ballots. He asked if the applicants were in the audience and if they would like to introduce themselves to the Commission to step to the podium.

Roger Michaud introduced himself to the Commission and gave a brief background and history of his experiences.

Vice-Mayor Rumsey instructed the Commissioner to fill out their ballots and pass them to the Clerk and as they move forward on the agenda, the Clerk will let him know when the ballots have been tallied.

DISCUSSION AND POSSIBLE ACTION:

Resolution 19-05-11 Approval of Calendar for July Commission Meeting and Budget Workshops

Town Manager Davis explained that pursuant to the Town Code, a Resolution is necessary to change the scheduled meeting in July. She explained that in the month of July, the Commission will need to have a Budget Workshop and therefore staff is recommending canceling the first and second meetings in July and conducting a Special Call Commission Meeting on July 13, 2011 and conducting a Budget Workshop on July 27, 2011.

Commissioner Longtin requested clarification of the Special Call Commission meeting of July 13, 2011.

Town Manager Davis explained that the Special Call Commission meeting of July 13, 2011 would be to discuss regular items on the agenda, while the Budget Workshop scheduled for July 27, 2011 would be to only discuss the budget.

Vice-Mayor Rumsey explained that with the Independence Day holiday before the first Commission meeting in July, it would be more difficult to put the agenda together.

Motion: A motion was made by Commissioner Hockman to approve Resolution 19-05-11; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 4-0

Commissioner Longtin asked if Resolutions do not get read. Attorney Baird stated that Resolutions do not get read only Ordinances.

Flagler Boulevard Irrigation System

Vice-Mayor Rumsey explained that he was being credited for bringing back the item because of a statement he made at the last Commission meeting. He explained what had taken place at a meeting in April where he called himself out for not approving items on the agenda because he was not getting along with the other Commissioners. He explained that earlier in the week, the Commission received information that a grant is available to replace the entire Flagler Boulevard irrigation system. He stated that it has been mentioned in the past that if there was money, the irrigation system would be replaced. He explained that he would approve the grant to replace the irrigation system on Flagler Boulevard under the following conditions; that the Commission wait to see what happens with the grant and vote up or vote down on the irrigation system. He stated that he had a few stipulations before he will support the new irrigation system and those stipulations were as follows:

1. There would be a \$15,000 cap to do the work.
2. That the project be done by outside resources and not staff.
3. There are to be three quotes from licensed vendors.
4. Commissioner Hockman must return the key to the sprinkler system.

5. Receive a unanimous consensus from the Commission that no one receives keys for any Town equipment without the consensus from the majority of the Commission.

Commissioner Osterman stated that she felt all the Commissioners want the sprinkler system fixed, but the Town should not have to go into reserves to do the work. She stated that she would add one additional stipulation and that would be to have staff bring back items to be cut out from the budget to keep from spending \$15,000 from reserves. She stated that she would like it to be a budget neutral item and not have the funds come out of reserves. She stated that the budget is in a very dangerous place.

Commissioner Hockman stated that he had every intention to return the key. He stated that he doesn't want to table this for two weeks, but if we are approved for the grant this will become obsolete. He felt the item could be tabled until the next Commission meeting because the Town should be notified by then if it has been awarded the grant. He stated that he would really like to see the system fixed and did not feel it would cost \$15,000. He explained that he felt that staff can do the minor repairs necessary to get the irrigation fixed. He recommended tabling the item until the next Commission Meeting.

Commissioner Osterman stated that she understood what Commissioner Hockman was saying but felt that if the grant did not get awarded to the Town, staff could prepare options to pay for the projects. Staff can also provide the Commission with item that can be cut from the budget and the Commission can make a decision at the next meeting. She stated that the recommendation on where staff was going to cut from the budget to pay for the project needed to come from staff and not the Commission.

Commissioner Longtin stated that the Commission had the final say and did not understand why the Commission could not direct staff to work on something that they should be working on anyway. She stated that she is not in favor of a grant to replace the entire system when all it needs is a few grand, \$5,000, or less to maintain the system. She indicated that she would prefer to see the grant used for curbing to protect the investment of the irrigation system. She stated that she would prefer to see the grant used for curbing on the Date Palm Drive area. She stated that she is not in favor of replacing the entire system when all it needs is general maintenance. She expressed her concern over the lack of general maintenance that is being done in the Town. She explained that she does not have a problem with anyone on the Commission working with the Town Manager as far as getting something done. She felt that the Town Manager was very kind in turning over the key and she and Commissioner Hockman were able to get a look at what the system really needed. She stated that she and Commissioner Hockman realized that there was not a lot that was needed to be done to the system besides general maintenance. She stated that she hopes staff will look into getting curbing for either Flagler Boulevard or Date Palm Drive or both of those areas. She recommended tabling the item. She stated that even if the money were taken from reserves, money had been taken out of reserves to keep an employee on that the Commission was told there was not enough work for the employee to do. She indicated that in her opinion, reserves are not that important. She clarified her statement by saying that reserves are not that important to some, but however in this case when someone is driving down Flagler Boulevard, which she drives everyday, and now that the Town Manager has the electric cut off the area the concrete

pole looks like a slum area. She recommended tabling the item and including the Flagler Boulevard irrigation system in the budgeting process as it should have been done over the past few years. She asked if a motion had been made to table the item.

Vice-Mayor Rumsey clarified a few statements made by Commissioner Longtin. He asked Commissioner Longtin if she was recommending withdrawal of the grant application.

Commissioner Longtin stated that she would like to see other options for the grant and see if it is possible to obtain curbing.

Vice-Mayor Rumsey explained that when the grant application is submitted it must include what project would be done with the grant.

Commissioner Longtin stated that she was not aware that the grant had been submitted.

Vice-Mayor Rumsey stated that the decision for the grant will be decided tomorrow. He requested clarification from the Town Manager.

Town Manager Davis stated that the deadline for the grant submittal was May 10, 2011.

Commissioner Longtin questioned if the Commission had been made aware before the grant was submitted.

Vice-Mayor Rumsey explained that an email had been sent out earlier in the week to the Commission notifying them. He explained that several meetings ago, a grant had been submitted to fix the tennis courts, which was denied because the tennis court project was considered maintenance and the grant was for replacement not for repair. He explained that staff took the proactive approach and submitted the replacement of the Flagler Boulevard irrigation system. He asked Commissioner Longtin to clarify her request.

Commissioner Longtin stated that she also appreciates a proactive staff and did not realize when she received the email that it had been done. She felt the Commission should have been strongly consulted before the submission of the grant. She stated that a whole new system is not necessary. She stated that the other Commissioners could approve it, but that she was not going to make the motion.

Vice-Mayor Rumsey explained that he had clearly stated how he would vote in favor of the project.

Commissioner Longtin stated that she did not agree with his stipulations of forbidding staff from doing basic maintenance, and that she found that stipulation to be bazaar.

Vice-Mayor Rumsey stated that it sounded like they were at an impasse again on the system. He asked Commissioner Osterman if she was going to make a motion on the budget and repair.

Commissioner Osterman stated that there needs to be some give and take and there did not seem to be any of either taking place.

Commissioner Hockman stated that he recommended tabling the item because when he was made aware that the grant was for \$50,000 for a new system he felt that it was not necessary. He stated that he would have preferred taking a grant to have some landscaping done around the Town. He stated that the current system is old technology, but it was a functioning system. He stated that \$6,000 was paid to get the system functioning and now that is was just a matter of locating and cleaning the sprinkler heads, not putting in a new system.

Vice-Mayor Rumsey asked Commissioner Hockman if that was his motion.

Commissioner Hockman stated that he had made a motion to table and would have liked to have seen the grant to see what was involved and reiterated that staff is capable of maintaining the system.

Attorney Baird explained that a second was need for the motion and that motions to table are not debatable. He explained that once an item is tabled then the proper motion is to take it off the table. He explained that assuming a motion to table was approved, the appropriate steps would be to have the Commission take the item off the table and discuss it again and that a motion should come forward to that effect.

Motion: A motion was made by Commissioner Hockman to table the Flagler Boulevard Irrigation System until the next Commission Meeting; Commissioner Longtin made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 4-0

Employee Cost Savings Incentive Program

Vice-Mayor Rumsey explained that during the last budget process he had suggested that an employee cost savings program be developed. He explained that staff had not received a raise in many years.

Town Manager Davis clarified that it has been three years.

Vice-Mayor Rumsey explained that staff takes five additional days off a year at no pay and he was trying to come up with ideas that would provide employees with an incentive to save the Town money. He explained that this idea came from his brother and his brother's employer and provided an example of the program. He provided some examples of how the program may work for the Town.

Town Manager Davis indicated that the ideas were culminated by each of the department heads.

Human Resource Director Bambi Turner explained that the program was a suggestion program with input from each of the departments in which suggestion boxes would be located at Town Hall, Library and Public Works. She stated that the suggestions would be collected monthly and reviewed with the Town Manager. She explained that if the suggestions would provide the Town with a quantifiable cost savings then the employee would receive a certificate for between one and five days off with pay depending on the amount of the cost savings. She continued to explain that the employee with the most cost savings to the Town in a fiscal year would receive a proclamation presented by the Commission. She stated that all employees would be eligible to participate in the program.

Vice-Mayor Rumsey asked if an employee does not take all of their vacation days does the time roll over to the next year.

Human Resource Director Turner explained that vacation time does rolls over to the next year.

Vice-Mayor Rumsey stated that he understands that sometimes taking vacation is very difficult and would hope that the person could roll those days over to the next year.

Commissioner Longtin asked if the roll over days were capped.

Finance Director Anne Costello stated that an employee can accumulate many hours, but upon termination of employment they would be paid up to 240 hours of accumulated vacation time.

Commissioner Longtin asked who would be deciding what incentives would be implemented.

Town Manager Davis stated that ultimately it would be the Town Manager who would decide whose ideas would be implemented.

Commissioner Longtin stated that five days was way too excessive. She stated that she would suggest giving a \$100 bonus. She stated that she would not vote in favor because she finds five days off with pay too excessive for implementing an idea that an employee who loves their job should suggest anyway.

Vice-Mayor Rumsey suggested some changes to the proposed language. He gave a hypothetical scenario of an employee who saves the Town \$50,000 and receives five days off, the employees pay for five days may equate to \$800, he asked if she would be in favor of something similar.

Commissioner Longtin stated that using the same hypothetical scenario, if an employee saved the Town \$1 million then that would be considered a significant cost savings and it should come before the Commission and not just at the discretion of the Town Manager. She stated that she could not vote in favor of this item because it was too excessive.

Vice-Mayor Rumsey asked if she was against the entire program.

Commissioner Longtin stated that she liked the concept, but was looking at a \$100 bonus and stated that she found five days off with pay at the discretion of the Town Manager excessive.

Vice-Mayor Rumsey asked if it were a committee of three department heads and not the Town Manager would she be in favor of the program.

Commissioner Longtin stated that she felt it should be up to the Commission and that if an employee had a suggestion that they should come forth with it even if they do not receive anything in return for the suggestion.

Vice-Mayor Rumsey stated that in a perfect world that would be great.

Commissioner Longtin stated that not even in a perfect world and that if she has a suggestion she provides it to her employer whether they accept the idea or not.

Town Manager Davis clarified by stating that it would be up to five days off with pay. She stated that not every suggestion would merit five days off with pay.

Commissioner Hockman asked if guidelines had been established for the program.

Town Manager Davis stated that they had not developed the details of the program and that the Commission was being provided a general concept of the program. She stated that when it comes to giving employees money it was difficult as some of the departments are larger than others and other factors are taken into consideration.

Vice-Mayor Rumsey asked if an employee pension is factored in depending on the amount given to an employee.

Finance Director Costello explained that the pension is a defined contribution so it would not be factored in. She explained that if it were paid through payroll that the amount would be factored in percentage.

Commissioner Osterman stated that she agreed with Commissioner Longtin in that a more formalized set of guidelines was necessary, but also understood how this can be challenging. She stated that she was in favor of a rewards program for cost savings and

felt a committee would be best. She asked staff if they had found any grids that they could use to compare.

Human Resource Director Turner stated that she had not found any so far.

Commissioner Osterman stated that it was the challenging part of putting a program together and how although it may be a small dollar amount in savings for that particular item, it could be a significant percentage in savings. She gave a few examples and stated that it may be more difficult to put the program together because of the different factors. She stated that when there is a level of open-endedness it could cause employees confusion and feeling unfair. She stated that she would feel better with a rubric of sorts.

Vice-Mayor Rumsey suggested that staff put together a grid and a more finalized structured program, with a committee of five with three department heads and two employees who will then review the amount of days off an employee would get and develop a structured program for review and adoption with the new budget season.

Commissioner Hockman asked if the number of days off would be limited per year to be achieved.

Town Manager Davis stated that staff would develop whatever the Commission directed.

Vice-Mayor Rumsey recapped that a more structured program be developed and brought back to the Commission.

Commissioner Longtin stated that she is not in favor of a committee because it is the same reason that the Merit Board was removed and would prefer that the Commission review and gauge.

Vice-Mayor Rumsey asked if there would be a dollar amount limit before it would come before the Commission or whether all suggestions should be brought before the Commission.

Commissioner Longtin stated that it should be brought at the end of each year.

Vice-Mayor Rumsey stated that the intention was to reward shortly after the suggestion was made and not many months later.

Commissioner Longtin asked if it should be done quarterly or immediately. She stated that it would be a lot of work to be doing.

Vice-Mayor Rumsey stated that it would depend on when the meeting is held. He stated that it would be a lot of work and his conversation with staff has been that it is something they are interested in doing.

Commissioner Hockman suggested having it done on a yearly basis and come before the Commission at the end of spring or during the budget because then the Commission could see how much was saved during the year. He suggested that it would then provide

the employee the opportunity to take the time off during the holidays or carry them over to the next year.

Vice-Mayor Rumsey stated that the Commission has offered some direction for staff to be able to go back and continue to work on the details of the program.

Commissioner Osterman stated that she preferred that the employee be recognized more regularly because if someone does something in January then they have to wait until the end of the year to be rewarded. She suggested that an advisory committee be selected that would then bring the recommendations back to the Commission for final approval.

Commissioner Longtin stated that she agreed with quarterly versus annual review because it is just too long. She stated that as with children and animals you want to praise and discipline quickly and quarterly would be nice. She stated that she meant no disrespect to anyone.

Vice-Mayor Rumsey stated that he felt the Commission had come to consensus that they were in favor of looking at the program. He stated that the Human Resources Director can develop a program and bring back for review and adoption by the next budget season.

Commissioner Longtin suggested that every quarter, staff bring all the suggestions and let the Commission review and rate them and maybe that way everyone can get something.

Vice-Mayor Rumsey agreed that the Commission should honor the work of the staff.

The Commission recessed for a three minute break at 8:10 p.m.

The Commission reconvened at 8:13 p.m.

Board Membership Appointments

Town Clerk Vivian Lemley announced that Roger Michaud was appointed as the first alternate member of the Planning and Zoning Board. She explained that the Commission was split on the appointment of James Lloyd to the Planning and Zoning Board as second alternate.

Vice-Mayor Rumsey asked Attorney Baird for direction.

Attorney Baird stated that unless a member of the Commission wished to change their vote, appointments to Town Boards were appointed by majority vote. He stated that the Planning and Zoning Board was not expected to have a meeting in June, therefore it would afford additional time for another member to be appointed to the Planning and Zoning Board. He explained that by the time the Planning and Zoning board met again there should be a full Commission and Mr. Lloyd may be Mayor and not eligible to be on the Planning and Zoning Board anyway.

Vice-Mayor Rumsey congratulated Mr. Michaud for his appointment to the Planning and Zoning Board as first alternate.

Appointment of Temporary Commissioner/Mayor

Commissioner Longtin stated that earlier in the meeting the Town Manager made a reference to the Town Code, which was why she was bringing this item up. She read from the Town Code "vacancies shall be filled by the appointment of a new temporary Commissioner by the remaining members of the Town Commission until the next election". She stated "shall be filled by the appointment of a new temporary Commissioner", and that although she felt that the Commission would not be able to agree upon someone, the Code should not be ignored. She stated that the Town Clerk should have brought it up and shame on her for not doing so. She stated that she felt the Town Attorney should have brought it up and shame on him for not doing so. She stated that shame on the Town Manager for not bringing it up. She stated that it is the Code and wanted to discuss the appointment or not appointment of temporary person to serve until the election.

Vice-Mayor Rumsey asked if the appointment would be for Mayor or Commissioner.

Commissioner Longtin stated that she did not know anything about what he was referring to and was only discussing the Mayoral election.

Attorney Baird explained that at the previous Commission meeting he provided the Commission with a memo stating that the Charter is crafted in such a way that it does recognize the appointment of a temporary Mayor. He explained that currently the Commission only has an opening for Mayor, which will be appointed at the June 28, 2011 special election.

Commissioner Hockman read the memo and stated that the Charter does not specify if an appointment is necessary by the Commission for a temporary Mayor and noticed that it was written only one way.

Attorney Baird repeated that at the last Commission meeting, he wrote a memo explaining that the Charter does not recognize for the appointment of a temporary Mayor.

Commissioner Longtin requested another legal opinion on that section of the Charter and felt that the language needed to be tightened up. She stated that she felt future Commissions would have issues.

Vice-Mayor Rumsey asked Commissioner Longtin what was the response from the attorney at the City of Lake Worth.

Commissioner Longtin stated that she did not receive a response from the attorney at the City of Lake Worth.

Vice-Mayor Rumsey stated that he wanted to be clear that the Charter for the Town of Lake Park is different than that of the City of Lake Worth and stated that he was confused as to why she had contacted the City of Lake Worth.

Commissioner Longtin stated that she assumed that the Charter for Lake Park was different than that of the City of Lake Worth and she was doing research. She stated that he was pointing out that he knew that she had contacted Lake Worth and that it was fine that he had contacts there.

Attorney Baird stated that he was at a seminar in Tampa when the Lake Worth attorney told him Commissioner Longtin had left a message. He explained that both attorneys had a conversation regarding the Charter.

Vice-Mayor Rumsey stated that he was told by a Commissioner in Lake Worth and not by Attorney Baird.

Commissioner Longtin stated that her contacting the attorney at Lake Worth had nothing to do with anything except that Vice-Mayor Rumsey was simply letting her know that he had been made aware of her call.

Vice-Mayor Rumsey agreed.

Commissioner Longtin stated that in her opinion, someone should be appointed as Mayor and barring that it will not happen, which is fine, but that the Charter should not be ignored and the verbiage should be tightened up.

Vice-Mayor Rumsey stated that he agreed that the Charter language should be tightened up. He stated publicly he does not want to be in the Mayor's seat. He stated that the additional stress that has been put upon him has been more than what he ever wanted. He stated that it made him realize that he never wants to be Mayor. He agreed that the Charter needed to be tighten up, but that it should wait until there was a full Commission.

Commissioner Longtin stated that it was the Federal government that started this entire process and did not know if they needed to be contacted to make changes to the Charter. She stated that she would like a legal person to review the Charter. She stated that she did not have any people to suggest for Mayor for the Commission to consider. She indicated that she was open to any suggestions if that is what the Commission chose to do. She stated that it could be possible for the Commission to agree on a person and that she did not want to ignore the Code.

Commissioner Hockman stated that he has spoken with his father who was a Commissioner in the 1980's and at that time, the Commission would vote on who would be Mayor, which explains why the Charter is written this way. He stated that the Commissioners appointing a temporary person as Mayor was not mentioned because of this. He stated that unfortunately when the Charter was rewritten that section was not changed. He stated that on the other hand, for the next few meetings the Commission could end up with having a two/two split on agenda items, which was most unfortunate.

Commissioner Longtin stated for the record the Lake Worth attorney never responded to her call, which would have been a considerate thing to do. She asked if the Commission could direct the attorney to change the wording to include the Mayor.

Vice-Mayor Rumsey explained that in order to change the Charter it would have to go to referendum.

Commissioner Longtin stated that the Federal government changed the Charter without going to referendum.

Attorney Baird explained that the amendments to the Charter regarding the Commissioners was done by a Federal court order, which was why it did not require a referendum. He explained that Federal law in the case superseded the Town Charter and state law.

Commissioner Longtin asked if the Federal government could clarify their position on the issue.

Vice-Mayor Rumsey stated that maybe they could and if she left a message that they may respond in thirty days.

Commissioner Longtin clarified by saying that she did not mean for this specific situation, but for the future.

Vice-Mayor Rumsey stated that he was not trying to cut her off from speaking, but they all agree that it was an issue that they needed to have addressed. He stated that they also agreed that it needed to be addressed as a full Commission. He suggested that it be brought back when they had a full Commission.

Commissioner Longtin agreed.

Attorney Baird explained that the Federal government decision on Town Charter was an isolated incident and that the Federal government does not have review authority over the Charter. He stated that in this case, the Town had a stipulated agreement order with the Federal government that the Town would change the Charter and based on that the judge issued an order that required the change of the Charter to change the elective system on how Commissioners are elected. He explained that other than that, the Federal government would have nothing to do with the Charter, the Commission controls the Charter.

Signers on Bank Account

Commissioner Longtin stated that it may be rude, but the signers on the account need to be changed. She stated that the agendas are still reflecting a Mayor who is no longer Mayor. She explained that there are signatures on the checks that should not be on the checks. She stated that the email address for the former Mayor has not been updated and those emails are not going to receive responses. She stated that she knew it was rude, but could the emails stop and made a motion to have the Vice-Mayor and Commissioner Hockman as signers on the account.

Finance Director Anne Costello explained that the former Mayors name was removed last week and that the Clerk has a form for the Vice-Mayor to sign so that the signature card

on the account can be updated and a new stamp be created with the Vice-Mayor's name on it. She explained that after the special election, a Resolution would be placed on the agenda to add the new Mayor's name.

Commissioner Longtin stated that her motion stands requesting Vice-Mayor Rumsey and Commissioner Hockman to be on the account.

Finance Director Costello explained that it would require a Resolution, which will be brought back after the special election.

Commissioner Longtin wanted to know why it had to wait until the special election.

Finance Director Costello stated that the electronic computer system name signature cost than \$600 each time it is changed.

Vice-Mayor Rumsey interrupted and said that a second to the motion was necessary before the discussion continued.

Motion: A motion was made by Commissioner Longtin to change the name of the signature on the bank account to Vice-Mayor Rumsey and Commissioner Hockman; Commissioner Hockman made the second.

Commissioner Osterman asked that the Finance Director repeat what she stated with regards to the cost involved with a new signature card.

Finance Director Costello repeated that the cost of the new signature card would be \$600 and she did not want to have the Town pay that twice, which was why she was waiting until after the special election to bring a Resolution to change the electronic signature system. She requested waiting until after the special election because the Finance Department does not have enough funds to cover the expense twice.

Commissioner Longtin stated that her motion stands.

Finance Director Costello explained that they need three signatures, which are the Mayor or Vice-Mayor, the Finance Director, and one Commissioner. She stated that they currently have Commissioner Osterman, Vice-Mayor Rumsey, and herself, which means she is in compliance with the Code.

Commissioner Longtin stated that she wanted it to be as her motion stated with Vice-Mayor Rumsey and Commissioner Hockman.

Attorney Baird stated that if he understood the motion it would be to have a Resolution brought back with the names as signatures on the checks.

Vice-Mayor Rumsey stated that the Resolution would be brought back at the next meeting of June 1, 2011. He asked Attorney Baird if it would require the Resolution to be brought back a second time.

Attorney Baird stated that it would not require a second time.

Finance Director Costello indicated that she can bring the Resolution back at the next meeting and not bring it back after the special election.

Attorney Baird stated that a vote needed to be taken on the motion.

Vice-Mayor Rumsey repeated that there was a motion and a second , and all in favor say Aye.

Motion: A motion was made by Commissioner Longtin to change the name of the signature of the bank account to Vice-Mayor Rumsey and Commissioner Hockman; Commissioner Hockman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin	X		
Commissioner Hockman			X
Commissioner Rumsey		X	
Vice-Mayor Osterman		X	
Mayor			

Motion failed 2-1

Commissioner Hockman stated that he did not vote because he did not know what was being voted on.

Attorney Baird explained that Commissioner Hockman seconded Commissioner Longtin's motion, which was to change the signature on the bank account to Vice-Mayor Rumsey and Commissioner Hockman and the Finance Director.

Commissioner Hockman stated that his understanding was that a second was necessary to discuss the item.

Commissioner Longtin stated that Commissioner Hockman made the second to her motion.

Commissioner Hockman stated that his second was to discuss the item. He stated that now there was a vote.

Vice-Mayor Rumsey and Attorney Baird explained that the process is to discuss an item and then vote on it. There was some discussion to clear the confusion Commissioner Hockman had with the vote and why the motion had failed.

Commissioner Longtin stated that before they moved on to the next agenda item, shame on the Finance Director for not bringing the item forward in a timely manner. She also shamed the Clerk and the Town Manager for not addressing the issue in a timely manner.

**Resolution No. 20-05-11 Establishing a Qualifying Period for Commissioner
A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE
PARK, FLORIDA, ESTABLISHING A QUALIFYING/FILING PERIOD OF
NOON FRIDAY MAY 20, 2011 THROUGH TUESDAY MAY 31, 2011 AT NOON
FOR THE OFFICE OF COMMISSIONER; AND PROVIDING AN EFFECTIVE
DATE.**

Vice-Mayor Rumsey read the Resolution.

Commissioner Longtin requested that he repeat it because she did not have a copy of the Resolution.

Vice-Mayor Rumsey stated that there was a printed copy on the dais when she arrived.

Town Manager Davis stated that it had been emailed to the Commission.

Commissioner Longtin stated that she had received the electronic copy, but had not printed it.

Vice-Mayor Rumsey asked if she still needed him to read it again.

Commissioner Longtin said no.

Commissioner Hockman asked if Resolution 20-05-11 pertained to a Commission qualifying period and was confused because there were four Commissioners.

Vice-Mayor Rumsey explained that everyone was notified earlier in the day by the Town Manager that Commissioner Osterman had submitted her resignation.

Commissioner Hockman stated that the phone call he received was that Commissioner Osterman had resigned last night, therefore why was she still on the dais. He questioned if Commissioner Osterman has resigned then why is her name still appearing on checks. He stated that if she has resigned that it was fine, but that he had not seen any resignation letter and did not know when it was effective.

Commissioner Osterman stated that she submitted her resignation letter yesterday afternoon and it was effective June 27, 2011. She stated that her seat for Commissioner will go up at the same time as the Mayor's seat during the June 28, 2011 special election. She stated that she has other comments which she will reserve until Commissioner comments.

Commissioner Longtin stated that she did not understand and in all fairness to the public most people do not know, although the Commission knows, about the resignation. She

stated that if we have an opportunity for the public to run for the election then they should speak about it. She stated that all the under-the-covers is silly. She explained that at the last Commission meeting, the Commission had to pass a Resolution for the Mayoral race because of the constraints of time and to give everyone enough time to run for Mayor. She stated that now they are throwing in another election without that same kind of time and stated that she did not find it fair to the people that may want to run to squeeze this in. She stated that she felt that they needed to give as much time, even if they were within the legal timeframe. She stated that people have had a month or so to consider and consult with their families to decide to run for Mayor. She stated that now they are throwing in another seat within a few weeks or something and felt confused by it.

Vice-Mayor Rumsey explained that at the last meeting it was his understanding that a Resolution had to be passed to establish a special election within 60 days.

Attorney Baird agreed.

Vice-Mayor Rumsey explained that the Charter states that the Town must have an election within 60 days of the Mayor's death.

Attorney Baird agreed.

Vice-Mayor Rumsey explained that for a Commission seat, they must have an election within 60 days as well.

Attorney Baird agreed.

Vice-Mayor Rumsey pointed out that they were still within the 60 days although two weeks have passed.

Attorney Baird agreed.

Vice-Mayor Rumsey explained that it is because of those reasons that Resolution 20-05-11 would fit into the 60 days. He stated that he disagreed with one of Commissioner Longtin's statements that they have had a month to prepare because no one has had a month to prepare for what was taking place. He stated that the Mayor passed away on April 30, 2011 and at the first meeting in May the Commission set forth the special election, which would be held 60 days later. He explained that a 10-day qualifying period had been designated to qualify for Mayor, which is still within the 60 days and another ten days would be set aside to qualify for Commissioner.

Commissioner Longtin stated that there has been no advertising of this and many people are just hearing it for the very first time.

Vice-Mayor Rumsey explained that there was no advertising for the Mayor either.

Commissioner Longtin stated that everyone knew the Mayor passed.

Vice-Mayor Rumsey agreed and stated that he was sure many phone calls had started spreading the news about Commissioner Osterman resignation.

Commissioner Longtin stated that she had not been on the phone.

Vice-Mayor Rumsey stated that there has been a lot of talk out there and he repeated that they were still within the 60-day time period. He explained that everyone has the same amount of time to qualify. He asked if Commissioner Longtin was requesting a second election.

Commissioner Longtin stated that it was not what she was requesting, but felt it was what was being thrust upon the Commission and felt that in all fairness to the citizens of the Town, since most have no idea about this, that until something actually happens she does not believe rumor to be true. She questioned why if Commissioner Osterman had resigned was she still sitting on the dais and felt confused by it and felt that most citizens do not know this is happening and they need time.

Commissioner Hockman stated that he received the call today and was not really sure what was happening. He stated that he had questions, which he asked of the Town Manager and the Clerk because he had concerns about the time. He stated that he called the Supervisor of Elections to double check and verify what is required by the State. He stated that Supervisor of Elections Susan Bucher said to him that there is nothing written in stone on time limit. He stated that she said that the only thing she needs to know by May 31, 2011 are the available seats to place them on the ballot, otherwise it cannot happen. He stated that it was good news to hear because he only wanted one election. He stated that he told Susan Bucher that he was not completely sure that it was happening because he has not seen anything in writing saying it was true. He stated that a lot of things that have happened in the last year without having it in writing and he was skeptical. He stated that he was hesitant just like the grant money that he was told about last week. He stated that when he received the agenda packet, he called the Town Manager and asked her what was going on and she replied with a memo. He stated that he is new to this and there is probably a resignation letter, which everyone has seen long before he, but he was not given any dates and only assumed by the conversation that the resignation was effective last night. He stated that this is the first time he hears that it is for the end of June and again has not received an email with the notice.

Vice-Mayor Rumsey stated that he received his call at about 8:15 a.m.

Town Manager Davis stated that she was confused by Commissioner Hockman's statement because in the conversation it was specifically stated that it was effective June 28, 2011, but in fact it is effective June 27, 2011. She stated that she meant that it was effective for the special election of June 28, 2011.

Vice-Mayor Rumsey stated that one of the comments made by Commissioner Hockman was that Susan Bucher had indicated that the qualifying period had to end by May 31, 2011 and that date has been placed on Resolution 20-05-11. He stated that we are in compliance with all the legal timeframes.

Motion: A motion was made by Commissioner Osterman to approve Resolution 20-05-11; Commissioner Hockman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Longtin		X	
Commissioner Hockman	X		
Commissioner Rumsey	X		
Vice-Mayor Osterman	X		
Mayor			

Motion passed 3-1

COMMENTS BY COMMISSION, TOWN MANAGER, TOWN ATTORNEY

Commissioner Longtin stated that she would like a proclamation given to Todd Dry as he was the Vice-Chair of the Planning and Zoning Board. She stated that Edie McConville has been very active in Town and has done many things for the kids of Lake Park including being involved with Kiwanis and the Lutheran Church. She stated that the kids know her and love her. She asked for consensus from the Commission to give a proclamation to Edie McConville.

The Commission came to consensus to give proclamations to Todd Dry and Edie McConville.

Commissioner Longtin read from a prepared statement as follows (Verbatim): “ Meetings are run by whoever is running the meeting, duh, which in this case is the Mayor or in the Mayors absence the Vice-Mayor. Roberts Rules of Order is often the prevailing guide to running a meeting. To allow or not allow discussion at various times during a meeting is decided by whoever is in charge of the meeting. Lately discussion has not been allowed. There are pro and cons to allowing discussion or not. Ultimately someone will think it should be done other than it is; you can’t please everyone. At the end of our meeting we have Commissioner comments, discussion is usually not allowed. At the end of our April 20, 2011 meeting comments were made that I wish to address, but only a couple of them will I address at this time. Vice-Mayor Rumsey stated that I voted against the lighting issue for the Town because he voted for it. Mr. Rumsey I have not given you that power in my votes. The reason I reluctantly voted against the issue was because of the exorbitant cost, it was like \$7 or \$8 million. I could not and still cannot see strapping the tax payers of Lake Park with that much debt. Lake Park already has (I think) it is the fourth highest tax rate of all the municipalities in Palm Beach County. I don’t see our tax rate going down anytime soon. I ask that we contemplate the lesser \$1 million dollar plan with the consensus of the Commission was not to. At the beginning of the lighting discussion Vice-Mayor Rumsey you asked for my thoughts on the issue. I told you that I

was elated that we were discussing lighting, in fact when I was campaigning in 2010 I was giving you accolades for keeping the lighting issue alive. You stated that you have been voting against fixing the sprinkler system on Flagler Boulevard because I was in favor of it. Please remember that we are here on behalf of the Town as a whole don't accuse me of that which you are guilty of. Roberts Rules notwithstanding I will call out when you proclaim me guilty when indeed I am innocent."

Commissioner Longtin continued as follows (Verbatim):

"Patricia Plasket-Osterman I know of no one that faults you for moving out of Town. As a parent you have to do whatever puts your mind at ease regarding your child. You have moved to a gated community in Stuart, Martin County and that obviously puts your mind at ease. Why you continue to sit up here is still a question in my mind, but what I would like to address is your fear of Lake Park. I have lived in Lake Park for over 30 years and have owned my home for much of that time. Prior to purchasing my home I lived in what is now the Opabola Square Apartments behind Someplace Restaurant as well as what is now the Humani Court Apartments on 9th Street. I've never been afraid. I've walked my dog late at night or even early mornings without fear. Sometimes even now when I can't sleep, which is way too often, I'll walk at night or early morning. Imagine if only everyone would live by the golden rule, do unto others as you would have others do unto you. What a beautiful world we would have, but they don't. Bad stuff can happen anywhere even in a gated community. You are afraid to live in Lake Park so you moved, good for you, that's what you should have done. You owe the Town of Lake Park an apology, it is not a place to fear."

Commissioner Longtin stated that she hope everyone had a lovely Mother's Day

Vice-Mayor Rumsey stated that with everything going on the last few weeks we have not been able to recognize some people that should have been recognized. He stated that Mr. Pisano and the Marina had an amazing fishing tournament a month ago, which brought in about \$15,000 in revenue. He congratulated them on a great job and appreciated all the hard work that goes into the event. He also mentioned what a success the Sunset Celebration was at the end of April. He stated that they have really made that event a great success. He mentioned that Public Works had a few events like the Great American Cleanup and the Arbor Day Celebration. He stated that he has attended the last four Arbor Day Celebrations over which this year he had the honor of presiding, and it is really a nice event with the children of Lake Park Baptist and Bright Futures. He thanked all staff for stepping up over the past few weeks and he really appreciated it and everyone has noticed. He stated that a letter was given to them that was requested to be read into the record. (See Exhibit "A")

Vice-Mayor Rumsey explained that for about a year now there has been a project that some have been in favor of and some have been against, and that project is the United States Army Reserve. He stated that he would be the first to admit that he was against the project. He explained that the United States Army Reserve was looking to purchase a piece of land on Congress Avenue and Silver Beach Road to use as a Reserve center. He explained that he met with one of the Commanders about three weeks ago to discuss the project. He stated that each of the Commissioners were contacted to meet with the Army individually to discuss the project. He stated that it was about that time the Commission

learned that the Army had chosen the Congress Avenue property to build the Reserve site. He stated that a press release has been issued by the Army Corps of Engineers and a memo sent by Ken Beyer. (See Exhibit "B"). He read from the memo. He stated that there will be a Army Reserve site that will be opening on Congress Avenue and in the discussion with the Army Corps of Engineers, the Town was able to get some changes made to the design that will make the Town proud. He stated that one of the changes was the layout of the property where the main entrance will now be on Congress Avenue instead of Silver Beach Road. He stated that the Army Corp will have some type of Emergency Operations Center (EOC) included for the community. He mentioned that the design of the building has also been changed to a Mizner style building instead of a standard government building. He stated that he was proud of the changes and he told the Commander that when the Army Reserve comes to Lake Park that he would fully support them, which he plans on doing.

Commissioner Longtin stated that she understood that he had spoken with the Army, but she had not received a copy of the letter and did not know what was included. She was confused as to why she had not received a copy of the letter.

Vice-Mayor Rumsey explained that the only reason why he had a copy of the letter was because of a phone call he received from the Commander in which the press release was mentioned in the conversation. He explained that he strongly suggested that a copy of the press release be sent because he was not aware that it was being released, let alone with his comments in it. He stated that he made another phone call on Monday, May 16, 2011 and spoke to the Commander's assistant and had receive the press release Tuesday, May 17, 2011. He stated that he would provide his copy to the Clerk so that she could distribute it to everyone.

Commissioner Longtin stated that she had spoken with the Commander and she was told where everyone stood on the project and she really appreciated the time the Vice-Mayor took to speak with him. She stated that she was not told who made what comments, but was told of the general comments and wanted to publicly thank the Vice-Mayor.

Commissioner Hockman stated that there were a few activities that had taken place over the weekend. He stated that the Community Garden held a wonderful barbeque and although it rained it was a nice event. He stated that he attended the Art on Park Gallery reception with the high school students, which was a very nice event. He stated that he attended the Citizens on Patrol (COP) meeting and it was a very interesting meeting. He stated that over the past few weeks, he has received comments of concern. He stated that he stressed to them that the Town is safe and that people were very upset to hear the comments made by a fellow Commissioner that the Town was unsafe to raise a child. He stated that comments like that are not good from the leaders of the Town. He stated that the Town is as safe as any other Town and was sure Lieutenant Palenzuela would back that up. He stated that there is no place that does not have problems in this country, whether it's a gated community or not and even places where there is a bridge to get into they have activities. He stated that he had to explain to people that the comments were hurtful to him as well as a resident. He stated that he walks around Town with his family all the time and he has not noticed any problems with the community. He stated that it is a key thing for everyone to get to know their neighbors and if they see strange people

around your neighborhood contact the Sheriff. He stated that these are the things that make a community safe. He stated that he was upset by that.

Commissioner Hockman stated that there have been quite a few emails and phone calls over the past few weeks regarding a boat at the Marina that was seized last week. He stated that he had received some information and his reaction was if someone owes money and they are not paying, then naturally we have to do what we have to do. He stated that at the same time he heard that they are making payments, but that it is not the full amount, regardless the boat was seized. He stated that in reviewing some of the emails he is asking that the Town change a few things. He stated that the statement that was sent showed a balance of what was owed and it showed no payments since September 2010 and one payment from two months ago. He stated that he would like to see, so that there is no confusion all the information, because in reviewing the one statement it does not show payments were made. He stated that to have all the other information that provides the backup it does look like the person was not paying. He stated that in the future he would like to see the total bill and if they are making payments that it is reflected and what invoice the payment is made towards. He stated that if interest is being charged, as in this case, then the monthly interest that they are accruing and not wait until it gets to the point in which it did. He stated that his other concern was that he did not have all the paperwork and that there is always two sides to the story. He asked if the proper procedure was followed. He stated that he has heard that there was no notification by letter or any other means that if the full payment was not made by a certain time then the necessary action would be taken. He stated that we jumped the gun thinking that the person would jump ship because he was after a day contract with another city. He explained that emails and comments went out asking why didn't we work with the boat owner and use the boat as a restaurant. He recalled sitting in the audience about a year ago when the Department of Environmental Protection (DEP) presented and there was a discussion about a floating restaurant at the Marina and whether a Commission would need to be paid to DEP. He explained that he resents the email that says that a floating restaurant was never discussed because it was discussed. He stated that he hopes that this does not cause any other problems with the tenant and the boating industry. He stated that boaters talk just like artist talk and if someone is treated incorrectly and unfairly they talk and it will give our great Marina a bad reputation. He felt we need to make peace with the boat owner and not treat someone badly and call them names, as has been done in some of the emails. He stated that it is an embarrassment to the Town. He hoped that things be worked out and he asked for information as to why an outside attorney was hired and our Town attorney was not used instead of the Maritime attorney. He stated that he searched the attorney by name and found one in Hobe Sound and he was not sure if it was the same person, since it showed that the attorney was general law not maritime. He was confused as to why another attorney was hired and multiple attorneys are now involved. He stated that the Town attorney needs to be utilized as much as possible. He stated that he was shocked by the fees that were shown to be owed and that the amounts are really high, including the interest. He stated that the amount the Town figured was different than that of the attorneys. He explained that in the future everything should be done in writing. He stated that the comments he has been told are that the controller was not notified. He mentioned that about a year ago agreements were made and that the boat owner has been making his payments each month, but not the full balance. He stated that he understood that the boat

owner had some hopeful wishes of ways to pay the Town back and that everyone has hopeful wishes. He stated that the economy is not there, but the boat owner was making payments. He stated that his concern was that the boat owner was making his payments. He stated that something could have been worked out where the boat owner could have paid an additional \$5,000 a month and pay a little bit more. He stated that he wants the Town to be known as a friendly Town and does not want the attitude that has been going around for the past two years where people are saying that we are not business friendly or resident friendly. He wanted every effort to be made to change the attitude and that the Town should hold true to the agreements it has with vendors. He stated that it was very important that the Town Manager do whatever and use the old customer saying of "the customer is always right up" to a certain point of course and that we need to treat our customers with respect. He stated that he did not want to just go out and do things and jeopardize as we have.

Commissioner Osterman stated that she wanted to take a few moments tonight to speak to those at home. She explained that yes she has resigned her seat as Commissioner effective June 27, 2011, so that her seat will go up at the same time as the Mayoral seat, thereby saving the Town the cost of another election. She explained that had the Mayor not passed she would not be handing in her resignation, but since then she has been reflecting on the important things in life. She stated that for the first time in her life she had two of her contemporaries die within a week of one another. She stated that she has to do what she feels is best for her and her family and that this has become a place of frustration and embarrassment. She stated that they have been able to accomplish so little in the past fifteen months. She explained that she has mixed emotions because this is her hometown and loves the Town and is very committed to those who voted her into office. She stated that she takes her commitments very seriously. She stated that as much as her political foes want to say that she does not live in Town, she does live in Town at her mother's home and will remain there until she is no longer needed. She stated that it is a relief to her that she will not have to deal with what she considered a black hole of sucking energy and that there is so much strife that nothing positive has happened. She explained that she is afraid of where the Town will go. She stated that she wants to talk about the upcoming election and the direction the Town will take. She explained that it is her sincere hope that with two seats going up at the same time that the Town will make a clear choice of its direction. She hoped that there will be no ambiguity and there will be no on-the-fence. She hopes it will be a very clear statement of the direction the Town wants, so the Commission can get a clear idea and move forward in that way. She stated that the first thing she wants to address is the rumors and false information that are spread, repeated and not questioned. She stated that she wanted the residents to really question the information they are given. She explained that the spin that is being placed on things is very deliberate, manipulative, and intentional. She stated that one example is that she made a comment that her son was not safe there meaning her mother's house. She stated that it has been repeated as her son was not safe here, which seems like a simple word choice difference, but it has a huge difference in meaning. She explained that the reason she said her son was not safe in her mother's home is because of her pool and her seawall. She stated she had witness him go under in the pool and was unable to get out and she had to jump in, which took place the day before the last Commission meeting. She repeated what she stated in the last meeting which was that her son was not safe there, which is a big difference. She stated that tonight everyone heard questions

being made as to the timing of the election and that \$30,000 would be spent on an election. She asked if that was because the voters really would not have enough time to get ready, she stated that she does not believe that is the reason. She felt it was because they wanted to run a person of their choice and wanted to get one person into each available seat. She stated that it was what she thought and it did not mean it was true, but she said she would ask herself why someone would want to spend another \$29,000 on an election, when everything is within the legal means. She stated that she is concerned about the division that has begun to happen and continues to happen in the Town. She stated that when the Department of Justice stepped in and changed the voting direction of the Town the driving impetuses for the Commission was to find a solution where the Town would not be divided. She stated that instead it is exactly what has happened. She explained that it is absolutely true that the majority of the voting block is east of Federal Highway. She explained that it is where the high number of votes comes from and that there are more people living west but more voters that vote living east. She asked how do we get the entire Town to participate if only a small part is directing everything; should it be changed, should there be an attempt to get the others involved and not just the small percentage of voters that vote on the local election? She felt that categorically yes because this Town will survive as a whole or not as a whole. She stated that the people that are living in Town need to step up and get involved, but asked those on Lake Shore Drive to broaden their perspective. She expressed concern that the viewpoint especially with the promenade, is very myopic, very short-sighted and for nothing else for practicality. She hopes that everyone will consider their property values because the Town needs to do whatever it can do to improve economic development so that the entire image of the Town can improve. She stated that with regard to the promenade it is either we build the promenade or we pay back to the County the \$2.4 million. She repeated her statement of building the promenade or paying back the money. She stated that it was in the contract that everyone including Mayor DuBois signed. She stated that the agreement with the County was to provide water access for everyone and the opportunity for everyone to have and enjoy waterfront; that is what the funds were for. She explained that the Town has five years to build the promenade and if it is not built, then the Town will need to get a bond and ad valorem taxes to pay whether there is a promenade or not. She stated that they need to figure out what type of promenade will work and everyone should ask themselves how much value is in that traffic light. She asked if it is worth \$10,000, \$20,000; how will your property value be affected and is it worth driving six blocks north to get to the traffic light. She stated that she does not want to be paying additional taxes and not have something in return. She reiterated that this is a very special election in many ways and it will determine the direction of the Town and hoped that everyone would take a look around the Town and view it as if for the first time. She asked that people look around the Town as if they were going to make an investment and what will move the Town forward in the best possible way, so that everyone will succeed. She hoped that as the election moves forward that everyone holds the candidates and the remaining members of the Commission to a vision. She said if they do not have a vision of what the Town should look like in two, five, or ten years, then they do not deserve your vote because everyone should have a vision. She stated that you cannot lead without direction and she has only heard over the past 15 months what not to do and no real clear direction of where the Town is going. She stated that as people begin to campaign that moving the Town forward be a major focus. She expressed how the other members of the Commission will actively engage in creating a vision that can be transferable to other

other people and that everyone can get behind. She recapped by saying that a vision for a promenade that will work for everyone at the Marina or everyone will have to pay taxes for nothing. She reminded everyone that paying taxes for nothing will hurt everyone and including the property values. She stated that if the current Commission cannot work with the Town Manager then be upfront about it and be prepared to pay out about \$10,000 to terminate the contract. She stated that then the cost of a headhunter would be about \$20,000 and if that is where the money needs to be spent then fine, but know what the candidates intend to do and where they intend to lead the Town. She stated that we are in a economic situation where change is happening rapidly and the direction will be decided by this Commission. She encouraged residents to ask questions and not to believe what is being told and ask "why am I being told this and what am I not being told." She stated that unless questions are asked, it will be the blind leading the blind. She stated that she loves this Town and is very happy to serve and will continue to serve until the election and apologized to her supporters for stepping down early, but it is what she needs to do for her family. She stated that she has her son living with her now that it is summer and he is safe in the pool and he loves swim partners if anyone is interested. She announced that her mother finished her chemotherapy protocol and for the first time there is some positive result on her blood disorder, and although she remains in hospice care it's the first positive thing that she has seen in months. She stated that her mother is feeling stronger and that it did a world of good to see everyone last week even under the circumstances. She appreciated the love that everyone has shown her. She finished by saying that Lake Park will find its way one way or another and that she hopes the Commission is diversified and will represent all aspects of the community, not just one part.

Attorney Baird stated that he wanted to thank Commissioner Hockman and that he appreciated the endorsement of using his law firm as much as possible.

Town Manager Davis stated that she did not want to get into what happened with the boat owner at the Marina, but would address a few of the comments made by Commissioner Hockman. She invited Commissioner Hockman to meet with her and staff so that he can hear the other side of the story. She stated that it was clear from his comments that he heard one side of the story and not the other. She stated that they acted properly and they gave this client countless opportunities and it was not that they were mistreated and there was no interest placed on those bills because they were trying to work with him. She repeated that it was clear that he needs to hear the other side of the story, and she and staff would have been remiss in their duties to the Town and their stewardship of taxpayer dollars had they not done what they did. She welcomes any of the Commissioners to sit with her and staff on this issue.

Town Manager Davis congratulated Vice-Mayor Rumsey on his negotiations with the Army Corps with the EOC command and thought it was a brilliant idea and that it will be an asset to the Town. She referred to an email sent earlier in the week regarding an Attorney-Client Session that would need to take place regarding the Marina lawsuit and would like to get a date this evening.

After some discussion the Commission decided on Monday, May 23, 2011 at 7:00 p.m.

She announced that Lake Park is hosting the American Cancer Society Relay for Life on Friday, May 20, 2011 at 6:00 p.m. and concluding at 11:00 a.m. on Saturday, May 21, 2011 at Lake Shore Park, and that the Lake Park team has raised \$1,400 and all together the society has raised \$17,000. She announced that on Saturday, May 21, 2011 from 5:00 to 8:00 p.m., there will be a Classic Car Show on Park Avenue. She announced that also on Saturday, May 21, 2011 there will be the Palm Beach Justice Association 10th Annual Fishing Tournament, weigh-in is from 3:00 to 6:00 p.m. She announced the Marina Sunset Celebration on May 27, 2011 from 6:00 to 8:00 p.m. She announced that at the Library there will be a family game night on Tuesday, May 24, 2011 at 5:30 p.m. sponsored by Bridges of Lake Park. She announced that there will be a Couponing Workshop on Tuesday, May 31, 2011 at 5:30 p.m., also sponsored by the Bridges at Lake Park. She announced the eight week Summer Camp will begin on June 13, 2011 and will end on August 5, 2011 and for information contact the Parks and Recreation Department at 561-881-3338. She said that her final announcement was to congratulate the opening of Casper's on Park at 850 Park Avenue and recommended that everyone go for breakfast, lunch or dinner.

ADJOURNMENT

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Osterman and seconded by Commissioner Hockman, and by unanimous vote, the meeting adjourned at 9:47 p.m.

Mayor

Town Clerk, Vivian Lemley, CMC

Town Seal

Approved on this _____ of _____, 2011

Tuesday, May 17, 2011

Maria V. Davis and Town of Lake Park Commission
Town of Lake Park
535 Park Ave.
Lake Park, FL 33403

Dear Ms. Davis and Commissioners of Lake Park :

Thank you for your kind and thoughtful expressions of condolence on the passing of my wife, Desca DuBois. I feel honored to have received such warm concern for my welfare from so many of the commissioners and the town's administrative officers and staff.

It was with great compassion that such sympathy was given to me when so many of those who offered it were themselves grieving the loss of their own dear friend.

Thank you also for opening the CRA's Art Gallery for Desca's Memorial Reception, for scheduling the Mirror Ballroom at such short notice, and for the beautiful flower arrangements.

I hope you will extend these thoughts of gratitude to the community at large as Desca's neighbors in Lake Park have also been so kind and thoughtful in their expressions of condolence as well.

Sincerely,



James DuBois

Kendall R. Rumsey
Vice-Mayor, Town of Lake Park

535 Park Avenue
Lake Park, FL 33403
(561) 881-3306 Phone

-----Original Message-----

From: Beyer, Kenneth E LRL [mailto:Kenneth.E.Beyer@usace.army.mil]
Sent: Monday, May 16, 2011 2:00 PM
To: Kendall Rumsey
Subject: Press release on U.S Army Reserve

Sir,

Attached is the press release that went out announcing the U.S. Army Reserve location in Lake Park, Florida. I apologize again for the error in this release being out without it being reviewed by you. A multitude of errors led to this occurring. This is not the standard operating procedure of this office or the U.S. Army Corps of Engineers.

VR,

Ken Beyer
Public Affairs Specialist
U.S. Army Corps of Engineers, Louisville District
502.315.6912 -- Office
502.689.8407 -- Blackberry
kenneth.e.beyer@usace.army.mil



NEWS RELEASE

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG.

For Immediate Release:
May 10, 2010

Contact:
Ken Beyer, 502-315-6875
Kenneth.e.beyer@usace.army.mil

U.S. ARMY RESERVE ANNOUNCES LOCATION OF RESERVE CENTER

The U.S. Army Reserve, in coordination with congressional and local representatives, announces that an Army Reserve Center will be constructed at Congress Avenue and Silver Beach Road, Lake Park, as part of the Army's Combat Service Support Reset initiative to support the Army's growth of combat forces.

"This Reserve Center is a positive addition to the Lake Park community," said Lake Park Vice-Mayor Kendall R. Rumsey. "In partnership with the Reserve, the center may also serve as a Lake Park emergency operations center during hurricanes."

The Army Reserve completed an Environmental Assessment, required under the National Environmental Policy Act and signed a Findings of No Significant Impact identifying the preferred site located at Congress Avenue and Silver Beach Road.

Community leaders and Army representatives are coordinating for the facility to be compatible with the local, traditional Florida architecture. In addition, the facility will offer economic benefits to the region through construction contracts and contracts for landscaping and grounds maintenance, janitorial and catering services. In the near future, the Army will host an Industry Day Forum for contractors to present information on bidding opportunities for this project.

It is estimated 15-30 full-time personnel will use the facility. The new Army Reserve Center will serve about 205 members during normal drill weekends, and about 600 personnel during mobilization for federal missions.

The proposed Army Reserve Center will include administrative, educational, assembly, library, learning center, physical fitness areas for the assigned Army Reserve units. Associated support facilities include an Organizational Maintenance Shop, and an unheated storage building in addition to parking for military and privately-owned vehicles.

Contacts:

Lake Park Vice-Mayor Kendall R. Rumsey
Lake Park, Florida

Phone: 561-881-3300

Fax: 561-881-3314

krumsey@lakeparkflorida.gov

information@lakeparkflorida.gov

U.S. ARMY CORPS OF ENGINEERS – LOUISVILLE DISTRICT
P.O. Box 59, Louisville, KY 40201-0059
www.lrl.usace.army.mil

TAB 2



**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: June 15, 2011

Agenda Item No. *Tab 2*

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> DISCUSSION/POSSIBLE ACTION |
| <input type="checkbox"/> ORDINANCE ON SECOND READING | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> PRESENTATION/PROCLAMATION | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> Other: | |

SUBJECT: Special Call Commission Meeting Minutes for the May 23, 2011 Attorney-Client Session

RECOMMENDED MOTION/ACTION: To Approve the Special Call Commission Meeting Minutes for the May 23, 2011 Attorney-Client Session.

Approved by Town Manager *W. Davis* Date: *6/9/11*
Vinny L... *June 6, 2011*
 Name/Title Date of Actual Submittal

Originating Department: Town Clerk	Costs: \$0 Funding Source: 0 Acct. # 0	Attachments: Meeting Minutes
Department Review: <input type="checkbox"/> Attorney _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____	<input type="checkbox"/> Grants _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Information Technology _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____	<input type="checkbox"/> PBSO _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Recreation _____ <input checked="" type="checkbox"/> Town Clerk <i>(YMC)</i> <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case <i>(YMC)</i> Please initial one.

Summary Explanation/Background:



Town of Lake Park
Special Call Commission Meeting Minutes
For Attorney-Client Session
Town Hall Commission Chambers
535 Park Avenue, Florida 33403
Monday, May 23, 2011 7:00 p.m.

The Town Commission met for the purpose of a Special Call Attorney-Client Session on Monday, May 23, 2011 at 7:00 p.m. Present were Vice-Mayor Kendall Rumsey, Commissioners Steve Hockman, Jeanine Longtin, and, Patricia Osterman, Town Attorney Thomas Baird, Attorney Joseph Downs, Town Manager Maria Davis, Town Clerk Vivian Lemley and an appointed court reporter.

Vice-Mayor Rumsey led the Pledge of Allegiance.
Town Clerk Vivian Lemley performed the Roll Call.

Please take notice that Vice-Mayor Kendall Rumsey and Commissioners Jeanine Longtin, Steve Hockman, and Patricia Osterman will convene a Special Call Meeting of the Lake Park Town Commission. At this meeting the Town Commission referenced hereinabove will announce its intention to meet in a private Attorney-Client Session in the Town Hall Conference Room with Special Town Counsel, Joseph Downs, Town Attorney Thomas Baird and Town Manager Maria Davis to discuss pending litigation concerning a lawsuit between the Town of Lake Park and Defendants Applied Technology Management, Bridge Design Associates, Murphy Construction, 3rd party Defendants Current Connections, Draydy Construction, Florida Floats, and 4th party Defendant Carter Sloope at 7:00 p.m. or as soon thereafter as possible. The private Attorney-Client Session is anticipated to last at least one hour. Also, be advised that at the conclusion of the private Attorney-Client Session, the Town Commission will continue its Special Call Town Commission Meeting. The private Attorney-Client session was convened at 7:02 p.m.

The Special Call Commission Meeting was reconvened at 8:16 p.m.

ADJOURNMENT

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Osterman and seconded by Commissioner Hockman, and by unanimous vote, the meeting adjourned at 8:17 p.m.

Vice-Mayor Kendall Rumsey

(Town Seal)

Town Clerk Vivian Lemley, CMC

Approved on this _____ day of _____, 2011

TAB 3



Town of Lake Park Town Commission

Agenda Request For

Meeting Date: June 15, 2011

Agenda Item No. *Tab 3*

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> DISCUSSION/POSSIBLE ACTION |
| <input type="checkbox"/> ORDINANCE ON SECOND READING | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> PRESENTATION/PROCLAMATION | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> Other: | |

SUBJECT: Interlocal Agreement with Northern Palm Beach County Improvement District, Designating the District as Lead Permittee to Coordinate the Joint Activities Required Under the MS4 NPDES Third Term Permit.

RECOMMENDED MOTION/ACTION: Approve Agreement

Approved by Town Manager *W. Davis* Date: *6/9/11*

David Hunt/Public Works Director
Name/Title

June 8, 2011
Date of Actual Submittal

Originating Department: Public Works	Costs: \$3,403.00 (First Year) Funding Source: FY '11/'12 Stormwater Utility Fund Acct. # 402-53-538-402-34010	Attachments: Resolution Agreement Attorney Approval Year 2003, Former Agreement
Department Review: <input checked="" type="checkbox"/> Attorney <u>(See Attached)</u> <input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <u><i>DMC 6/8/11</i></u> <input type="checkbox"/> Fire Dept	<input type="checkbox"/> Grants _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Information Technology _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____	<input type="checkbox"/> PBSO _____ <input checked="" type="checkbox"/> Public Works <u><i>JDL 6/9/11</i></u> <input type="checkbox"/> Recreation _____ <input type="checkbox"/> Town Clerk _____ <input checked="" type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u><i>JDL</i></u> Please initial one.

Summary Explanation/Background: In 1996, the United States Environmental Protection Agency (EPA) issued the First Term National Pollutant Discharge Elimination System (NPDES) Permit to 40 governmental entities designated as the Palm Beach County-Municipal Separate Storm Sewer System (MS4) Permittees. Due to the number of Permittees and the common tasks that each entity has to perform pursuant to the Permit, it was decided that it would be more economically and administratively feasible to share duties, responsibilities, and costs between all Permittees by establishing a Lead Permittee. The Northern Palm Beach County Improvement District was designated as the Lead Permittee for the purposes of an Interlocal Agreement.

The Town of Lake Park entered into an Interlocal Agreement with the Lead Permittee along with all the other Palm Beach County Permittees for the First and Second Term Permits. As the Second Term Permit was set to expire, the Lead Permittee negotiated with the EPA and the Florida Department of Environmental Protection (FDEP) on behalf of all the Co-Permittees to gain more favorable terms on the conditions being required in the newly executed Third Term Permit.

All Co-Permittees have enjoyed the mutual benefits of the Lead Permittee's retention of the necessary legal and engineering consultants required to execute all three of these permits. Throughout the term of each Permit, these consultants have also assisted the Co-Permittees in the areas of regulatory and operational compliance, staff training, and Annual Report submittal in order ensure that the terms of the permit are carried out. The consultants also represent the Co-Permittees whenever their permits are reviewed and audited.

In order to retain the services provided by the Lead Permittee, the Town of Lake Park must execute the attached Interlocal Agreement which covers the entire term of the Third Term Permit (approximately five years). A condition of the Agreement requires the Town to proportionately contribute to the annual budget established by the Lead Permittee which pays for the group's professional services. The Fiscal Year 2011/2012 Budget requires the Town to contribute Three thousand four hundred and three (\$3,403.00) Dollars. This contribution may change year to year depending upon the workload of the consultants negotiating with the regulatory agencies.

It is more cost effective and efficient to submit the Town's Annual Report with all of the other County Co-Permittees and take advantage of the "economy of scale" versus answering to the FDEP and the EPA alone.

RESOLUTION NO. 22-06-11

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM ("NPDES") THIRD TERM PERMIT INTERLOCAL AGREEMENT BETWEEN THE TOWN OF LAKE PARK AND THE NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town of Lake Park ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town and The Northern Palm Beach County Improvement District ("NPBCID") have previously agreed to enter into an Interlocal Agreement whereby the NPBCID administers the National Pollutant Discharge Elimination System ("NPDES") permitting for the Town as well as other municipalities in Palm Beach County; and

WHEREAS, NPBCID has proposed that the Town enter into a Third Term NPDES Permit Interlocal Agreement; and

WHEREAS, the Town Commission has determined that it is in the best interest of the Town and the County to enter into the Third Term Interlocal Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

SECTION 1.

The whereas clauses are hereby incorporated as true and correct as the findings of fact and conclusions of law of the Town Commission.

SECTION 2.

The Mayor is hereby directed and authorized to execute the NPDES Third Term Permit Interlocal Agreement.

SECTION 3.

This Resolution shall take effect immediately upon its adoption.

**NPDES THIRD TERM PERMIT
INTERLOCAL AGREEMENT**

This Interlocal Agreement (the "Agreement") is being entered into by and between NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT, 359 Hiatt Drive, Palm Beach Gardens, Florida 33418 (hereinafter referred to as the "Lead Permittee"), and TOWN OF LAKE PARK (hereinafter referred to as "the Co-Permittee").

WITNESSETH:

WHEREAS, the United States Environmental Protection Agency (hereinafter referred to as "EPA") on the 9th day of December, 1996, issued its National Pollutant Discharge Elimination System ("NPDES") Permit No. FLS000018 (with it and all such subsequent permits being hereinafter referred to as the "MS4 NPDES Permit") to approximately forty (40) governmental entities designated as the Palm Beach County-Municipal Separate Storm Sewer System ("MS4") Permittees (hereinafter referred to jointly as the "Permittees"); and

WHEREAS, EPA has since delegated its regulatory and enforcement authority relating to the MS4 NPDES Permit to the Florida Department of Environmental Protection ("FDEP"); and

WHEREAS, Section 403.0885, Florida Statutes, established the federally approved state NPDES Program; and

WHEREAS, FDEP Rule 62-4.052, F.A.C., implemented an annual regulatory program and also set fees to effect the legislative intent that FDEP's costs for administering the NPDES Permit be borne by the regulated entities; and

WHEREAS, at or before the expiration of each MS4 NPDES Permit, the Permittees must file a re-application to FDEP for renewal of the MS4 NPDES Permit for a subsequent term; and

WHEREAS, the MS4 NPDES Permits granted by FDEP to the Permittees contain separate obligations and responsibilities for each individual Permittee, as well as obligations and responsibilities that may be performed jointly by the Permittees; and

WHEREAS, due to the number of Permittees and the tasks that must be performed pursuant to each MS4 NPDES Permit, it would be more economically and administratively feasible to allocate duties, responsibilities, and costs associated with the MS4 NPDES Permits pursuant to individual interlocal agreements between each Co-Permittee and the Lead Permittee; and

WHEREAS, the Permittees previously established a 7-member Steering Committee comprised of 2 representatives of large municipalities, 2 representatives of smaller municipalities, 1 representative of special districts, 1 representative from Palm Beach County, and the Lead Permittee, which Committee will continue to coordinate the joint activities required under the MS4 NPDES

Permit, including but not limited to recommending to the Lead Permittee retention of necessary consultants to execute each MS4 NPDES Permit; and

WHEREAS, the parties hereto are authorized pursuant to Chapter 163, Part I, Florida Statutes, as amended, to enter into this Agreement and do hereby adopt, ratify and confirm the provisions and incorporation herein of Subparagraph (9), Section 163.01, Florida Statutes.

NOW, THEREFORE, in accordance with Chapter 163, Part I, Florida Statutes, as amended, the undersigned parties, for and in consideration of the mutual benefits set forth herein, do hereby enter into this Agreement and represent, covenant, and agree with each other as follows:

SECTION ONE
REPRESENTATIONS

1.01. Recitals. The recitals and representations as set forth hereinabove are true and correct to the best of the knowledge of the parties and are incorporated herein by this reference.

SECTION TWO
DESIGNATION OF PARTIES

2.01. Lead Permittee. Northern Palm Beach County Improvement District is hereby designated as the Lead Permittee for the purposes of this Agreement and each MS4 NPDES Permit.

2.02. Co-Permittee. The Town of Lake Park is hereby designated as a Co-Permittee for the purposes of this Agreement and each MS4 NPDES Permit.

SECTION THREE
TERM OF AGREEMENT

3.01. Agreement Term. The term of this Agreement begins as of the date it is signed by the last of the parties, and shall continue from year to year, subject to the annual Funding Year (as hereinafter defined) renewal process set forth in following Section 3.03, unless otherwise terminated in accordance with other provisions of this Agreement. The parties to this Agreement shall undertake a mutual review of this Agreement during the final year of the term of each Permit.

3.02. Funding Year. The term "Funding Year" is defined as a fiscal year beginning on October 1 and ending on September 30.

3.03. Renewal. This Agreement shall be automatically renewed as of the beginning date of each Funding Year and continue in full force and effect from Funding Year to Funding Year, unless: (i) a party to this Agreement provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current Funding Year, or (ii) the Agreement has been previously terminated as provided herein.

SECTION FOUR
SCOPE OF WORK AND ALLOCATION OF DUTIES AND OBLIGATIONS

4.01. Allocation of Duties and Obligations

(i) The Lead Permittee shall be responsible for those duties and obligations which are specifically identified and delineated in Exhibit "A" which is attached hereto and incorporated herein (the "Lead Permittee Services"). The Lead Permittee Services may be revised from time to time as required by the MS4 NPDES Permit. Any such revisions shall be agreed to in writing by the Co-Permittee and incorporated into Exhibit "A" and made a part of this Agreement. All revisions to Exhibit "A" shall be attached sequentially to the original Agreement so that all modifications to the Lead Permittee Services that occur over time may be determined.

(ii) The Co-Permittee shall be responsible for such other duties and obligations which are specifically identified and delineated in Exhibit "B" which is attached hereto and incorporated herein.

4.02. Modifications to MS4 NPDES Permit

In accordance with Section 403.067, Florida Statutes, NPDES permits must be consistent with the requirements of adopted TMDLs. A MS4 NPDES Permit may be reopened and revised during its term to adjust effluent limitations or monitoring requirements should future adopted TMDL, water quality studies, FDEP-approved changes in water quality standards, or other information show a need for a different limitation or monitoring requirement. It is understood and agreed that any other changes, modifications, revisions, or additions to the terms of the MS4 NPDES Permit made subsequent to the Effective Date of this Agreement are expressly excluded from and not a subject of this Agreement unless and until incorporated herein by written agreement of the parties.

SECTION FIVE
BUDGET AND FUNDING

5.01. Administrative Procedures. The procedures to be followed by the Lead Permittee regarding the collection, management and disbursement of the Co-Permittee payments are set forth in a resolution titled "Resolution of the Board of Supervisors of Northern Palm Beach County Improvement District Approving the NPDES Steering Committee Administrative Procedures for Collection, Management and Disbursement of NPDES Interlocal Agreement Funds" (the "Resolution"), which was adopted by the Lead Permittee, a copy of which is attached hereto as Exhibit "B."

Section 2 of the Resolution incorporates by reference the "NDPES Steering Committee Administrative Procedures for Collection, Management and Disbursement of NPDES Interlocal Agreement Funds" (the "Procedures") which are incorporated into this Agreement and are to be followed by the parties to this Agreement.

The Resolution and the Procedures may be amended from time to time upon the approval of the NPDES Steering Committee and the Lead Permittee. However, the Co-Permittee shall be given a minimum of 60 days advance written notice of any proposed amendments to the Resolution or the Procedures, and shall be afforded the opportunity to offer comments to the Lead Permittee and/or the NPDES Steering Committee prior to any action being taken on said proposed amendments. Any amendment that is incorporated into this Agreement shall also be agreed to in writing by the Co-Permittee.

5.02. Annual Budget. Since this Agreement is anticipated to be renewed for a number of Funding Years, the parties acknowledge that it is not in their respective best interests to project the potential costs the Lead Permittee may be required to incur for future Funding Years in order to carry out the Lead Permittee Services. Therefore, the parties agree to arrive at a mutually acceptable payment amount on a per Funding Year basis in order to more accurately calculate the amount that will be required to be paid by the Co-Permittee to the Lead Permittee for the provision of Lead Permittee Services during each Funding Year.

5.03. Prior Funding. The parties agree that any surplus funds previously paid by the Co-Permittee to the Lead Permittee pursuant to any prior interlocal agreement it has entered into with the Lead Permittee involving a MS4 NPDES Permit shall be applied to and used for the provision of Lead Permittee Services during the next Funding Year period.

5.04. First Funding Year Payment. In addition to the surplus funds referenced in Section 5.03 above, the parties agree that for the upcoming 2011/2012 Funding Year, the Co-Permittee has paid the Lead Permittee the sum of THREE THOUSAND FOUR HUNDRED THREE AND NO/100 (\$3,403.00) DOLLARS, which sum represents payment of both the Lead Permittee's Services for the upcoming Funding Year of this Agreement and the ten percent (10%) Reserve Fund Contingency required pursuant to Section 5.05.

5.05. Reserve Contingency. The parties acknowledge that each Funding Year payment will include a ten percent (10%) reserve fund contingency (the "Reserve Fund Contingency") for unexpected additional costs and expenses incurred in the preparation and implementation of a MS4 NPDES Permit.

5.06. Current Funding. The parties believe that the funding specified in above Section 5.04 will be sufficient to satisfy the current MS4 NPDES Permit requirements for the 2011/2012 Fiscal Year unless unexpected additional costs and expenses of the nature described in following Section 6.03 are incurred.

5.07. Future Funding Year Payments. The parties: (i) acknowledge that on or before January 31, 2011, the Lead Permittee provided a budget to the Steering Committee of the amount the Permittees will each be requested to pay during the next Funding Year, and (ii) agree that all subsequent Funding Year budget estimates will be provided on or about January 31st of each following year. The Lead Permittee and Co-Permittee shall have until July 31st of each year to arrive at a mutually acceptable dollar amount to be paid by the Co-Permittee to the Lead Permittee for the immediately upcoming Funding Year, which shall be paid pursuant to Section Six of this

Agreement. If the parties cannot agree upon a mutually acceptable dollar amount by the aforementioned deadline, this Agreement shall be deemed terminated unless otherwise agreed to in writing by and between the parties.

5.08. Final Funding Year of a MS4 NPDES Permit Term. It is assumed that during the last Funding Year of the term of each MS4 NPDES Permit, the Permittees and FDEP will commence to negotiate the provisions of the next MS4 NPDES Permit. As a result, allocation of the Scope of Services that are required to be provided hereunder may be modified. Due to this uncertainty, each party's duties and obligations hereunder, together with the funding process for provision of Lead Permittee Services, will be reexamined during the last Funding Year of the term of each MS4 NPDES Permit.

5.09. Separate Co-Permittee Expenses. In addition to the payments required to be paid by the Co-Permittee to the Lead Permittee pursuant to Sections 5.03 through 5.07, the Co-Permittee shall be responsible for all other costs and expenses relating to its individual duties and obligations under a MS4 NPDES Permit, including, but not limited to: (1) all costs of the Co-Permittee's preparation and submittal of such of its own individual annual report(s) that may be separately required by a MS4 NPDES Permit, (2) costs of all monitoring that may be the Co-Permittee's individual responsibility, (3) costs of gathering, compiling, coordinating, and submitting all necessary data that may be individually required of the Co-Permittee by a MS4 NPDES Permit, and (4) all other costs of carrying out any other individual responsibility of the Co-Permittee according to the requirements of a MS4 NPDES Permit.

SECTION SIX PAYMENT PROCEDURE

The Co-Permittee agrees to pay each of its Funding Year payments as follows:

6.01. First Funding Year. The First Funding Year payment for the current MS4 NPDES Permit Term will be paid in either a single lump sum payment on or before November 15, 2011 or in twelve (12) equal monthly installments commencing on October 15, 2011, and thereafter on the 15th day of each subsequent month during the First Funding Year (such payment dates being hereinafter referred to as "Payment Due Date(s)"). In addition, an alternative payment schedule allowing for quarterly payments, pursuant to the Procedures found herein may be utilized by the Co-Permittee, unless and until such time as the Procedures are amended to eliminate said alternate payment schedule. The initial Funding Year for all future MS4 NPDES Permits shall be referred as the First Funding Year.

6.02. Subsequent Funding Year Payments. Once a Funding Year payment amount has been agreed upon, the Co-Permittee may, at its option, pay the entire agreed-upon amount in a single lump sum on or before November 15 of that particular Funding Year, or in twelve (12) equal monthly installments commencing on October 15th of that Funding Year and thereafter on the 15th day of each subsequent month during that Funding Year (such payment dates also being hereinafter referred to as "Payment Due Date(s)"). In addition, an alternative payment schedule allowing for quarterly payments, pursuant to the Procedures found herein may be utilized by the Co-Permittee, unless and

until such time as the Procedures are amended to eliminate said alternate payment schedule.

6.03. Additional Costs. Since it is possible that following the parties' agreement as to a particular Funding Year's payment amount, unexpected additional costs and expenses may arise which will need to be paid in order for the Lead Permittee to carry out its Lead Permittee Services for that Funding Year, the parties agree as follows:

(i) If the Lead Permittee determines that unexpected additional costs and expenses must be incurred in order for it to timely provide its Lead Permittee Services, the Lead Permittee shall promptly notify the Co-Permittee, in writing, of the nature and estimated amount of the Co-Permittee's allocable share of these unexpected additional costs and expenses, as well as the Lead Permittee's intent to draw down funds from the Co-Permittee's Reserve Fund Contingency in order to pay said Co-Permittee's allocable share of the unfunded and unexpected additional costs and expenses.

(ii) If the Co-Permittee's allocable share of the unexpected additional costs and expenses exceeds the amount held in the Co-Permittee's Reserve Fund Contingency account, the Lead Permittee shall address the need for such excess amount in the above subparagraph (i) notice to the Co-Permittee. The Lead Permittee and Co-Permittee shall then attempt to negotiate a payment procedure for the unfunded and unexpected additional costs and expenses.

(iii) If the Lead Permittee and Co-Permittee agree as to the need and amount of the unfunded and unexpected additional costs and expenses, their agreement shall be reduced to writing. The agreed upon unfunded and unexpected additional costs and expenses shall be paid either by a lump sum payment within thirty (30) days of their agreement in writing or divided by the remaining months of that particular Funding Year and paid to the Lead Permittee in equal monthly installments for the remainder of the subject Funding Year.

(iv) If the Lead Permittee and Co-Permittee are not able to timely agree as to the need and/or amount of the unfunded and unexpected additional costs and expenses, the Lead Permittee may suspend or terminate this Agreement, at its sole discretion, following the provision of thirty (30) days prior written notice to the Co-Permittee.

6.04. Failure to Pay. Unless otherwise agreed to in writing by and between the parties hereto, if a Funding Year payment or agreed upon unfunded and unexpected additional costs and expenses payment is not timely paid within thirty (30) days of a Payment Due Date, the duties and obligations assumed by the Lead Permittee under the terms of this Agreement may be suspended and/or terminated by the Lead Permittee, at its sole discretion, following the provision of thirty (30) days prior written notice to the Co-Permittee unless cured by the Co-Permittee by payment in full of the omitted payment within said thirty (30) day notice time period.

SECTION SEVEN OPTION TO TERMINATE

7.01. Termination. Either party to this Agreement shall have the right to terminate this

Agreement at will and without cause, provided that the party wishing to terminate the Agreement must provide thirty (30) days prior written notice to the other party of said terminating party's decision to terminate this Agreement. Said termination shall not be effective until said thirty (30) day prior notice period has elapsed (the "Termination Date"). In addition to the aforementioned termination rights, the Agreement may be terminated as provided in Sections 5.07, 6.03(iv), and 6.04.

7.02. Effect of Termination. In the event of termination of this Agreement by the Co-Permittee, the Co-Permittee shall thereupon be individually and solely responsible for all requirements of the applicable MS4 NPDES Permit which are designated therein as the individual responsibility of said Co-Permittee. Thereafter, the Lead Permittee and other Permittees shall not be responsible for said terminating Co-Permittee's individual obligations under the applicable MS4 NPDES Permit.

7.03. Costs and Expenses. Irrespective of which party elects to terminate this Agreement or in the event of a failure to pay by the Co-Permittee to the Lead Permittee the amounts due under and pursuant to the terms of this Agreement, the parties agree that any costs and expenses previously incurred or obligated to be paid by the Lead Permittee as of the Termination Date shall still be due and owing and the right to collect said amount(s) shall survive termination of this Agreement.

7.04. Refunds. The parties acknowledge that the Lead Permittee anticipates entering into contracts with one or more consultants or contractors for the provision of services required in order for the Lead Permittee to provide some or all of its Lead Permittee Services. Since the Co-Permittee's payments under this Agreement represent only a portion of what the Lead Permittee will have to pay its consultants and contractors for their services, the Co-Permittee will not be entitled to receive a refund from the Lead Permittee for any monies that the Co-Permittee has previously paid pursuant to this Agreement unless the Lead Permittee is able to obtain a reduction in its contractual obligations with its consultants or contractors as a result of the termination of this Agreement. In that event, the Lead Permittee shall be obligated to reimburse the Co-Permittee for its allocable share of the amount of such reduction in costs and expenses.

7.05. Documentation and Data. In the event this Agreement is cancelled or terminated, all documentation and data previously collected by the Lead Permittee in accordance with its duties and obligations as assumed herein, shall be made available to the Co-Permittee.

SECTION EIGHT ENFORCEMENT, VIOLATIONS, AND/OR DEFAULT

8.01. Enforcement. The designation herein of the Lead Permittee is not intended nor shall it be construed as authorizing, granting or permitting the Lead Permittee to accept or assume any powers of enforcement of the applicable MS4 NPDES Permit as to the other party.

8.02. Violations. Neither party to this Agreement shall be deemed to have assumed any liability for any negligent or wrongful acts or omissions of the other party, and in no event shall any of the provisions of this Agreement be construed as a waiver by either party of its sovereign

immunity rights or of the liability limits established in Section 768.28, Florida Statutes.

8.03. Dispute Resolution Process. Any dispute or conflict between the parties that arises from any of the terms or conditions of this Agreement, including any exhibits thereto, shall be presented in writing by the complaining party to the other party. The parties' representatives shall then meet to discuss the disputed issues and attempt in good faith to resolve the dispute or conflict prior to either party initiating the intergovernmental conflict resolution process per Ch. 164, F.S., or litigation or any other formal dispute resolution process.

SECTION NINE
MISCELLANEOUS PROVISIONS

9.01. Notices. 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 prepaid express overnight courier or messenger service, telecommunicated (including telex, facsimile, telegraphic, or electronic mail (e-mail) communication) with confirmation of receipt, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

As to Lead Permittee: Northern Palm Beach County Improvement District
359 Hiatt Drive
Palm Beach Gardens, Florida 33418
Attn: Executive Director
Phone: (561) 624-7830
Fax: (561) 624-7839

With a copy to: Betsy S. Burden, Esq.
Caldwell Pacetti Edwards Schoech & Viator LLP
One Clearlake Centre
250 South Australian Avenue, Suite 600
West Palm Beach, Florida 33401
Phone: (561) 655-0620
Fax: (561) 655-3775

As to Co-Permittee: Town of Lake Park
535 Park Avenue
Lake Park, FL 33403
Attn: J. David Hunt
Phone: 561-881-3345
Fax: 561-881-3349

9.02. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof.

9.03. Construction. The preparation of this Agreement is considered a joint effort of the

parties and accordingly this Agreement shall not be construed more severely against one of the parties than the other.

9.04. Discrimination. The Lead Permittee and the Co-Permittee agree that no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status or sexual orientation be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

9.05. Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

9.06. Assignability. The responsibility for carrying out any task assumed by a party to this Agreement, but not the obligation to pay, may be assigned by the party upon receipt of written approval from the other party, which approval shall not be unreasonably withheld.

9.07. Severability. If any part of this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible, unless the prohibited or invalid provision reduces the payment obligations of the Co-Permittee, in which event this Agreement may be thereupon terminated by the Lead Permittee.

9.08. Governing Law and Venue. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to any contrary conflicts of laws principle. Venue of all proceedings in connection herewith shall be exclusively in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, and each party hereby waives whatever their respective rights may have been in the selection of venue.

9.09. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

9.10. Remedies. The failure of any party to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that the party may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

9.11. NPDES Permit. If there is any inconsistency between the terms of this Agreement and the applicable MS4 NPDES Permit, then the applicable MS4 NPDES Permit shall preempt, supersede, and control the provisions of this Agreement.

9.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument.

9.13. Clerk of Court. A copy of this Agreement shall be filed with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida.

9.14. Termination of Prior Agreements. All previous interlocal agreements entered into between the parties to this Agreement regarding the application or execution of a MS4 NPDES Permit shall terminate as of the Effective Date of this Agreement.

9.15. Effective Date. This Agreement shall be effective as of the date it is filed with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida.

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IN WITNESS WHEREOF, the parties have set their hand and seals the day and year hereafter written.

EXECUTED by Lead Permittee this _____ day of _____, 2011.

ATTEST:

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

By: _____
Secretary

By: _____
Print: _____
Title: _____

[DISTRICT SEAL]

EXECUTED by Co-Permittee this _____ day of _____, 2011.

ATTEST:

TOWN OF LAKE PARK

By: _____
_____, Town Clerk

By: _____
Print: _____
Title: _____

[SEAL]

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____

EXHIBIT "A"

LEAD PERMITTEE RESPONSIBILITIES

The responsibilities of the Lead Permittee as to the implementation and execution of the MS4 NPDES Permit No. FLS000018 are generally as follows:

- I. The timely preparation, coordination, and execution of interlocal agreements necessary to establish and implement the joint activities required by the Permit.
- II. The timely preparation, coordination, and submittal to FDEP each year during the term of this Agreement, of an annual report describing the activities carried out jointly to fulfill requirements in the permit.
- III. The timely preparation, coordination, and distribution of standardized forms and guidance documents as approved by NPDES Steering Committee to assist permittees in carrying out the terms of the MS4 NPDES Permit.
- IV. The timely preparation, coordination, and execution of a countywide public education and outreach program required by Part III.A.6, Part III.A.7.e. and Part III.A.7.f. as approved by the NPDES Steering Committee.
- V. The timely preparation and coordination of training materials to fulfill the requirements of Part III.A.6, Part III.A.7.c, Part III.A.7.d., Part III.A.9.b, and Part III.A.9.c of the MS4 NPDES permit, as approved by the NPDES Steering Committee.
- VI. The timely preparation, coordination, and submittal to FDEP of major watershed pollutant load estimates required by Part V.A. of the MS4 NPDES Permit.
- VII. The timely preparation, coordination, and execution of a monitoring program required by Part V.B. of the MS4 NPDES Permit.
- VIII. The timely coordination, assessment, monitoring, and execution of activities associated with FDEP's Total Maximum Daily Load (TMDL Program) as required by Part VIII.
- IX. The preparation and coordination of all MS4 NPDES Steering Committee workshops and meetings.
- X. The timely remittance of all necessary permit fees to FDEP, subject to the timely and sufficient collection of same for all other permittees.

The Lead Permittee Services described herein may be revised from time to time as required by each MS4 NPDES Permit, as agreed to in writing between the MS4 NPDES Steering Committee and Northern Palm Beach County Improvement District, which revisions shall be incorporated herein and made a part of this agreement.

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EXHIBIT "B"

**RESOLUTION NO. 2011-04
RESOLUTION OF THE BOARD OF SUPERVISORS OF
NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT
APPROVING THE NPDES STEERING COMMITTEE ADMINISTRATIVE
PROCEDURES FOR COLLECTION, MANAGEMENT AND DISBURSEMENT
OF NPDES INTERLOCAL AGREEMENT FUNDS.**

WHEREAS, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT ("Northern") is an independent special district duly organized and validly existing under the Constitution and the Laws of the State of Florida, including applicable provisions of Chapter 298, Florida Statutes, and Chapter 59-994, Laws of Florida, as amended and/or supplemented; and

WHEREAS, the United States Environmental Protection Agency issued its National Pollutant Discharge Elimination System Permit No. FLS000018 (the "MS4 NPDES Permit") which is applicable to a number of governmental entities located in Palm Beach County, including Northern; and

WHEREAS, the Co-Permittees who make up the governmental bodies subject to the NPDES Permit have nominated and appointed Northern as the "Lead Permittee" for the purposes of assisting all Co-Permittees in the collection of general data required to be collected pursuant to the MS4 NPDES Permit and submission of reports to the Florida Department of Environmental Protection and the United States Environmental Protection Agency; and

WHEREAS, the Lead Permittee, Northern, is entering into separate Interlocal or Joint Participation Agreements with each of the Co-Permittees, which Agreements set forth the parties' respective duties and obligations regarding fulfillment of the terms and conditions of the MS4 NPDES Permit; and

WHEREAS, a seven member NPDES Steering Committee has been selected by the Co-Permittees, which Steering Committee is comprised of two (2) representatives of large municipalities, two (2) representatives of smaller municipalities, one (1) representative of special districts, one (1) representative for Palm Beach County, and the Lead Permittee; and

WHEREAS, on January 19, 2011 the NPDES Steering Committee, in order to provide a level of accountability and fiscal control for the benefit of all NPDES Co-Permittees as it relates to the Interlocal and/or Joint Participation Agreements being entered into between Northern and each Co-Permittee, adopted Administrative Procedures for the collection, management and disbursement of NPDES Interlocal Agreement Funds, a true and correct copy of which is attached hereto and identified as the NPDES Steering Committee Administrative Procedures; and

WHEREAS, Northern has been requested to adopt and comply with the aforementioned NPDES Steering Committee Administrative Procedures for purposes of

administering the funds to be paid to it pursuant to each NPDES Interlocal or Joint Participation Agreement.

NOW, THEREFORE, be it resolved by the Board of Supervisors of Northern Palm Beach County Improvement District as follows:

1. Northern Palm Beach County Improvement District does hereby adopt and agree to comply with the terms and conditions of the NPDES Steering Committee Administrative Procedures.

2. That Northern Palm Beach County Improvement District does hereby incorporate by reference the NPDES Steering Committee Administrative Procedures into each NPDES Interlocal and/or Joint Participation Agreement that it enters into with a Committee.

3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

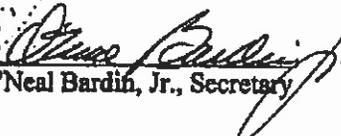
4. This resolution shall take effect immediately upon its adoption.

THIS RESOLUTION PASSED AND WAS ADOPTED THE 23RD DAY OF FEBRUARY, 2011.

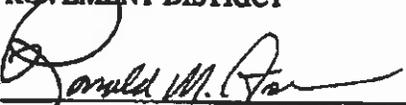
(DISTRICT SEAL)

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

ATTEST:


O'Neal Bardin, Jr., Secretary

BY:


Ronald M. Ash, President

**NPDES STEERING COMMITTEE ADMINISTRATIVE PROCEDURES
FOR COLLECTION, MANAGEMENT AND DISBURSEMENT
OF NPDES INTERLOCAL AGREEMENT FUNDS**

The NPDES Steering Committee (which is comprised of two (2) representatives of large municipalities, two (2) representatives of smaller municipalities, one (1) representative of special districts, one (1) representative for Palm Beach County, and the Lead Permittee), has adopted the following administrative procedures in order to provide a level of accountability and fiscal control for the benefit of the NPDES Co-Permittees.

The administrative procedures adopted by the Steering Committee are as follows:

1. Alternative NPDES Interlocal Agreement Payment Schedules. In addition to the two (2) payment options set forth in Paragraphs 6.01 and 6.02 of the NPDES Interlocal Agreement, a Co-Permittee shall also be entitled to elect to pay the annual Funding Year payments on an equal quarterly installment basis. If this additional payment option is selected by a Co-Permittee, the quarterly payments for the First Funding Year are required to be paid on or before October 1, 2010, January 1, 2011, April 1, 2011 and July 1, 2011, with all future Funding Year quarterly payments to be paid in accordance with the same quarterly payment schedule.

NPBCID will be issuing one (1) invoice to each Co-Permittee for its annual Funding Year payment amount, following which the Co-Permittee shall then have thirty (30) days from the date of receipt of the invoice within which to select one of the three (3) payment options and to make its initial payment in accordance with the option so selected.

2. Income and Disbursement Accounting Documentation.

(A) A quarterly income and disbursement report shall be prepared by NPBCID. The report shall be delivered to the Steering Committee within forty-five (45) days following the end of each Funding Year quarter and thereafter distributed by the Steering Committee to the representative(s) of each Co-Permittee as identified in the NPDES Interlocal Agreements.

(B) The quarterly income and disbursement report shall be prepared by NPBCID in accordance with the format set forth in attached Attachment "A."

3. Budget Accounting Documentation. A quarterly budget accounting report shall be prepared by NPBCID. The report shall be delivered to the Steering Committee within forty-five (45) days following the end of each Funding Year quarter and thereafter distributed by the Steering Committee to the representative(s) of each Co-Permittee as identified in the NPDES Interlocal Agreement.

4. Reserve Fund Contingency Expenditures. Prior to any expenditures by NPBCID of funds contained in the Reserve Fund Contingency account identified in the NPDES Interlocal Agreement, NPBCID shall be required to subject its request to the Steering Committee members and receive approval from a super-majority of at least five (5) of the Steering Committee members.

5. Unexpected Additional Costs and Expenses. Prior to NPBCID incurring an obligation that will require a Co-Permittee to pay unexpected additional costs and expenses exceeding the amount held in the Reserve Fund Contingency, NPBCID shall be required to submit to the Steering Committee the nature of the event and the amount of the unexpected additional cost and expense. Upon receipt of such notification, the Steering Committee shall present the matter to the Co-Permittees at the next regularly scheduled Steering Committee NPDES meeting (unless it is an emergency matter in which event a special meeting will be promptly scheduled and notice given to all Co-Permittees) for consideration and vote by those representatives of the Co-Permittees present at the meeting. An affirmative vote by a simple majority (i.e., over fifty percent) of those representatives of the Co-Permittees present at the meeting (with only one (1) representative of each Co-Permittee being entitled to vote on the matter at issue) will be required before NPBCID is authorized to incur the subject unexpected additional costs and expenses.

6. NPDES Interlocal Agreement Budget Adoption Process. All future NPDES Interlocal Agreement Funding Year budgets shall be adopted in accordance with the following procedure:

(A) On or before March 1st of each Funding Year, NPBCID shall prepare and present to the Steering Committee a proposed budget for the next Funding Year.

(B) The Steering Committee shall consider the proposed next Funding Year budget at a regular Steering Committee meeting and open the matter to discussion by those Co-Permittee representatives present and attending the meeting.

(C) Adoption of the next Funding Year's budget shall require the approval of a super-majority of at least five (5) members of the Steering Committee.

(D) As a part of the Steering Committee's consideration of the next Funding Year's budget and calculation of each Co-Permittee's allocable share and responsibility for the funding of the budget, the Steering Committee may consider the application of any existing surplus funds as a credit towards each Co-Permittee's allocable funding shares. "Surplus funds" for the purpose of this administrative guideline may include unexpended and unencumbered present Funding Year funds or Reserve Fund Contingency amounts, plus accrued interest thereon, if any.

(E) The Steering Committee shall also be responsible for approving, by a simple majority of those Steering Committee members in attendance (provided there is a quorum) at a Steering Committee meeting, line item budget transfers.

APPROVED AND ADOPTED THIS 19TH DAY OF JANUARY, 2011.

ATTACHMENT "A"

NPDES QUARTERLY INCOME AND DISBURSEMENT REPORT
FISCAL YEAR _____
FOR PERIOD _____ TO _____

<u>CASH ON HAND (date)</u>		<u>XXX,XXX.XX</u>
REVENUE: _____ TO _____		
AGREEMENT FEES	<u>XXX,XXX.XX</u>	
<u>TOTAL REVENUES</u>	<u>XXX,XXX.XX</u>	<u>XXX,XXX.XX</u>
TOTAL CASH AND REVENUES AVAIL FOR EXPENDITURES		<u>XXX,XXX.XX</u>
EXPENDITURES PAID DURING _____ TO _____		
ENGINEERING	XXX	
OTHER PROFESSIONAL FEES	XXX	
MISCELLANEOUS EXPENSES	XXX	
GOVERNMENTAL REGISTRATION FEES	XXX	
LEGAL	XXX	
<u>TOTAL EXPENDITURES</u>	<u>XXX</u>	<u>X.XX</u>
<u>FUND BALANCE AT (date)</u>		<u>XXX,XXX.XX</u>
RESERVE FOR CONTINGENCIES		<u>-XX,XXX.XX</u>
<u>UNRESERVED FUND BALANCE</u>		<u>XXX,XXX.XX</u>

David Hunt

From: Baird, Thomas J. <tbaird@jones-foster.com>
Sent: Wednesday, May 25, 2011 9:35 AM
To: David Hunt
Cc: Maria Davis
Subject: RE: NPDES Interlocal Agreement

Good to go.

From: David Hunt [mailto:dhunt@lakeparkflorida.gov]
Sent: Tuesday, May 24, 2011 5:41 PM
To: Baird, Thomas J.
Cc: Maria Davis
Subject: NPDES Interlocal Agreement

Hello Tom,

Attached find the third term, National Pollutant Discharge Elimination System (NPDES) Interlocal Agreement between the Town and the Lead Permittee, Northern Palm Beach County Improvement District. The term of the permit is expected to run five years, however the last permit was extended out to eight years per the State's Department of Environmental Protection. This Interlocal will be in effect for the length of the permit.

I intend to bring this item before the Commission at the June 15th meeting for their approval. I would appreciate your review along with any comments.

Give me a call if you care to discuss this further.

Dave Hunt
Town of Lake Park
Public Works Director
650 Old Dixie Highway
Lake Park, Florida 33403

Office: 561.881.3345
Fax: 561.881.3349

Copy

**NPDES SECOND TERM PERMIT
INTERLOCAL AGREEMENT**

This Agreement shall be effective as of the 21st day of March, 2003 ("the Effective Date"), and is being entered into by and between NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT, 357 Hiatt Drive, Palm Beach Gardens, Florida 33418, (hereinafter referred to as "the Lead Permittee"), and TOWN OF LAKE PARK (hereinafter referred to as the "Co-Permittee").

WITNESSETH:

WHEREAS, the United States Environmental Protection Agency (hereinafter referred to as "EPA") on the 9th day of December, 1996, issued its National Pollutant Discharge Elimination System ("NPDES") Permit No. FLS000018 (hereinafter referred to as the "NPDES Permit") to governmental entities designated as the Palm Beach County-Municipal Separate Storm Sewer System Permittees (hereinafter referred to as "the Permittees"); and

WHEREAS, EPA has since delegated its regulatory and enforcement authority relating to this permit to the Florida Department of Environmental Protection ("FDEP"); and

WHEREAS, Section 403.0885, Florida Statutes, established the federally approved state NPDES Program; and

WHEREAS, FDEP Rule 62-4.052, F.A.C., implemented an annual regulatory program and fees to effect the legislative intent that FDEP's costs for administering the NPDES Program be borne by regulated parties; and

WHEREAS, the Permittees timely filed a re-application to FDEP to be granted a renewal for the second term of the NPDES Permit (hereinafter referred to as "the NPDES Second Term Permit"); and

WHEREAS, on November 18, 2002, FDEP granted said Second Term Permit with certain conditions enumerated therein; and

WHEREAS, the NPDES Second Term Permit, like the NPDES Permit, contains certain separate obligations and responsibilities on the part of each individual Permittee, as well as some obligations and responsibilities that may be performed jointly by all of the Group Permittees; and

WHEREAS, due to the number of Group Permittees and the tasks that must be performed under the NPDES Second Term Permit, it would be most economically and administratively feasible to allocate duties, responsibilities, and costs associated therewith under the terms of this Agreement; and

WHEREAS, the Permittees have established a 6-member Steering Committee comprised of 2 representatives of large municipalities, 2 representatives of smaller municipalities, 1 representative of special districts, and 1 representative of Palm Beach County, which Committee coordinates the joint activities in Palm Beach County's NPDES Program, including but not limited to recommending to the Lead Permittee retention of necessary consultants to execute the Program; and

WHEREAS, the parties had previously executed Agreements in 1997, with Palm Beach County's execution in 1998 and the Florida Department of Transportation's (FDOT's) execution of a Joint Participation Agreement in 1999, setting forth the terms and conditions of the parties' obligations and responsibilities required of them during the first 5 years of the NPDES Permit; and

WHEREAS, these agreements were extended by the parties prior to the termination date of September 30, 2002, until generally such time as the parties execute additional agreements as required by the NPDES Second Term Permit; and

WHEREAS, the parties hereto are authorized pursuant to Chapter 163, Part 1 of Florida Statutes, to enter into this additional Interlocal Agreement and do hereby wish to adopt, ratify and confirm the provisions and incorporation herein of Subparagraph (9) of Section 163.01, Florida Statutes.

NOW, THEREFORE, in accordance with Chapter 163, Part I, Florida Statutes, the undersigned parties, for and in consideration of the mutual benefits set forth herein, do hereby enter into this Interlocal Agreement and represent, covenant, and agree with each other as follows:

SECTION ONE
REPRESENTATIONS

1.01. Recitals. The recitals and representations as set forth hereinabove are true and correct to the best of the knowledge of the parties and are incorporated herein by this reference.

SECTION TWO
DESIGNATION OF PARTIES

2.01. Lead Permittee. Northern Palm Beach County Improvement District is hereby designated as the Lead Permittee for the purposes of this Agreement and the NPDES Second Term Permit.

2.02. Co-Permittee. The Town of Lake Park is hereby designated as a Co-Permittee for the purposes of this Agreement and the NPDES Second Term Permit.

SECTION THREE
NPDES SECOND TERM PERMIT

3.01. Term of Permit. The NPDES Second Term Permit has an issuance date of November 18, 2002 (the "NPDES Second Term Permit Issuance Date") and an expiration date of November 17, 2007 (the "NPDES Second Term Permit Expiration Date").

3.02. Annual Reports. The NPDES Second Term Permit requires that certain reports be submitted to FDEP generally on an annual basis throughout the duration of the NPDES Second Term Permit.

SECTION FOUR
TERM OF AGREEMENT

4.01. Term. The anticipated term of this Agreement shall be from the Agreement's Effective Date through November 17, 2007, but subject to an annual Fiscal Year (as hereinafter defined) renewal process pursuant to the following Section 4.03, unless otherwise terminated in accordance with other provisions of this Agreement.

4.02. Fiscal Year. The term "Fiscal Year" is defined for the purposes of this Agreement as the following fiscal year periods:

- (i) 2002 - from October 1, 2002 through September 30, 2003.
- (ii) 2003 - from October 1, 2003 through September 30, 2004.
- (iii) 2004 - from October 1, 2004 through September 30, 2005.
- (iv) 2005 - from October 1, 2005 through September 30, 2006.
- (v) 2006 - from October 1, 2006 through September 30, 2007.
- (vi) 2007 - from October 1, 2007 through September 30, 2008.

4.03. Renewal. This Agreement shall be automatically renewed as of the beginning date of each Fiscal Year, and at the beginning of the Fiscal Year commencing immediately after the conclusion of the 2007 Fiscal Year, and will remain in full force and effect during the pendency of any re-application or renewal of the NPDES Second Term Permit until such time as FDEP grants same, unless a party to this Agreement provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the prior Fiscal Year, or unless the Agreement has been previously terminated as provided herein.

SECTION FIVE
SCOPE OF WORK AND ALLOCATION OF
DUTIES AND OBLIGATIONS

5.01. Scope of Work

The Scope of Work contemplated under this Agreement is applicable to the implementation and execution of the NPDES Second Term Permit, which Permit is incorporated herein, to be facilitated and coordinated by the Steering Committee, and is generally described as follows:

- (i) The timely preparation, coordination, and execution of all interlocal agreements necessary to carry out the terms of the NPDES Second Term Permit.
- (ii) The timely preparation, coordination, and submittal to FDEP of all system-wide annual reports.
- (iii) The timely implementation, coordination, and execution of all monitoring required by Part V.B. of the NPDES Second Term Permit.
- (iv) The timely preparation, coordination, and submittal to FDEP of major watershed pollutant load estimates as required by Part V.A. of the NPDES Second Term Permit.
- (v) The timely development, implementation, and execution of all system-wide public education programs required by the NPDES Second Term Permit.
- (vi) The timely development, implementation, and execution of all storm water management programs required by the NPDES Second Term Permit.
- (vii) The timely preparation, coordination, and distribution of standardized forms necessary to carry out the terms of the NPDES Second Term Permit.
- (viii) The timely payment of all applicable permit fees.
- (ix) The timely and adequate performance of any other necessary and reasonable task required by the NPDES Second Term Permit.

5.02. Allocation of Duties and Obligations

- (i) The Lead Permittee shall be responsible for those duties and obligations which are specifically identified and delineated in Attachment "A" which is attached hereto and incorporated herein (the "Lead Permittee Services").

(ii) The Co-Permittee shall be responsible for such other duties and obligations as are identified as being its individual responsibility in the NPDES Second Term Permit.

5.03. Modifications to NPDES Second Term Permit

It is understood and agreed that any changes, modifications, revisions, or additions to the terms of the NPDES Second Term Permit made subsequent to the Effective Date of this Agreement are expressly excluded from and not a subject of this Agreement.

SECTION SIX
FUNDING AND ALLOCATION OF COSTS AND EXPENSES

As required by Sect. 2 of the Resolution adopted by the Lead Permittee on September 24, 1997 approving the NPDES Steering Committee Administrative Guidelines for Collection, Management and Disbursement of NPDES Interlocal Agreement Funds, attached hereto as Attachment "B", said guidelines are hereby incorporated by reference into this Interlocal Agreement.

6.01. Annual Budget. In that this Agreement is anticipated to be renewed for a number of Fiscal Years, the parties acknowledge that it is difficult to project the potential costs the Lead Permittee may be required to incur in future Fiscal Years in order to carry out the Lead Permittee Services.

Due to the above, the parties agree that it is in their mutual best interests to arrive at a payment amount on an annual advance Fiscal Year basis in order to more reasonably calculate the amount that will be required to be paid by the Co-Permittee to the Lead Permittee for the provision of Lead Permittee Services.

6.02. Prior Funding. The parties agree that any surplus funds previously paid by the Co-Permittee pursuant to any prior Interlocal Agreement it has entered into with the Lead Permittee that relates to the NPDES Permit application process, or the reapplication process for the Second Term, shall be applied to and used for the provision of Lead Permittee Services by the Lead Permittee during the 2002 Fiscal Year.

6.03. 2003 Fiscal Year Payment. In addition to the funds referenced in above Section 6.02, the parties agree that for the 2003 Fiscal Year, the Co-Permittee shall also pay to the Lead Permittee the sum which represents the combined payment of the Lead Permittee's Services during the 2003 Fiscal Year term of this Agreement and the Section 6.04 ten percent (10%) Reserve Fund Contingency pursuant to the terms of this Agreement.

6.04. Reserve Contingency. The parties acknowledge that each Fiscal Year payment required to be paid by the Co-Permittee to the Lead Permittee for the provision of the Lead Permittee Services will include a reserve fund contingency (the "Reserve Fund Contingency") for unexpected additional costs and expenses. The Reserve Fund Contingency amount shall be equal to ten percent (10%) of each Fiscal Year's payment amount.

6.05. Current Funding. The parties acknowledge that the aforementioned funding will be sufficient to satisfy the current NPDES Second Term Permit requirements for the 2002 Fiscal Year unless unexpected additional costs and expenses of the nature described in following Section 7.03 are incurred.

6.06. Future Funding. As to future Fiscal Year payments that will be required to be paid by the Co-Permittee to the Lead Permittee, the parties agree that on or before March 1, 2003, the Lead Permittee shall provide a cost estimate to the Co-Permittee of the amount the Co-Permittee will be requested to pay during the 2003 Fiscal Year, with all subsequent Fiscal Year estimates to be sent on or before March 1st of each following Fiscal Year. The Lead Permittee and Co-Permittee shall then have until sixty (60) days before the beginning of the next Fiscal Year to agree in writing upon a mutually acceptable dollar amount to be paid by the Co-Permittee to the Lead Permittee for the applicable Fiscal Year, all of which shall be paid pursuant to Section Seven of this Agreement. If, however, the parties cannot agree upon a mutually acceptable dollar amount by the aforementioned deadline, then in that event this Agreement shall be deemed terminated unless otherwise agreed to in writing by and between the parties.

6.07. 2006 Fiscal Year. It is possible that during the 2006 Fiscal Year, the Co-Permittees and FDEP will commence to negotiate or renegotiate the terms of the NPDES Second Term Permit. As a result, allocation of the Scope of Services that are required to be provided hereunder may be modified. Due to this uncertainty, the allocation of each party's duties and obligations hereunder, together with the funding process for provision of services, will be reexamined during the 2007 Fiscal Year of this Agreement.

6.08. Separate Co-Permittee Expenses. Except for such amounts as are required to be paid by the Co-Permittee to the Lead Permittee pursuant to above Sections 6.02 through 6.07, the Co-Permittee shall be responsible for all other costs and expenses relating to its individual duties and obligations under the NPDES Second Term Permit, including but not limited to: (1) all costs of the Co-Permittee's preparation and submittal of such of its own individual Annual Report(s) that may be separately required by the NPDES Second Term Permit, (2) costs of all monitoring that may be the Co-Permittee's individual responsibility, (3) costs of gathering, compiling, coordinating, and submitting all necessary data that may be individually required of the Co-Permittee by the NPDES Second Term Permit, and (4) all other costs of carrying out any other individual responsibility of the Co-Permittee according to the terms of the NPDES Second Term Permit.

SECTION SEVEN
PAYMENT PROCEDURE

The Co-Permittee agrees to pay its annual Fiscal Year payments as follows:

7.01. 2003 Fiscal Year. The 2003 Fiscal Year payment amount specified in above Section 6.03 may, at the option of the Co-Permittee, be paid in either a single lump sum payment due and payable on or before December 15, 2003; in twelve (12) equal monthly installments commencing on October 1, 2003, and thereafter on the 1st day of each subsequent month of the 2003 Fiscal Year (said payment dates being hereinafter referred to as the "Payment Due Dates"); or quarterly payments made on December 1, 2003; March 1, 2004; May 1, 2004; and September 1, 2004.

7.02. Subsequent Fiscal Year Payments. Once a subsequent Fiscal Year payment amount has been agreed to in writing by and between the Lead Permittee and the Co-Permittee, the Co-Permittee may, at its option, pay the entire agreed-upon amount in either a single lump sum payment due and payable on or before December 15 of that Fiscal Year; in twelve (12) equal monthly installments commencing on October 1 of that Fiscal Year, and thereafter on the 1st day of each subsequent month of that Fiscal Year (said payment dates being hereinafter referred to as the "Payment Due Dates"); or quarterly payments made on December 1, March 1, May 1, and September 1 of that Fiscal Year.

7.03. Additional Costs. Since it is possible that following the parties' finalization of an agreed upon Fiscal Year payment amount, unexpected additional costs and expenses may arise which will need to be paid in order for the Lead Permittee to carry out its Lead Permittee Services for that Fiscal Year, and in order to address same, the parties agree as follows:

(i) In order to ameliorate the possibility of unexpected additional costs and expenses resulting from the theft, loss, or destruction of equipment required for provision of the Lead Permittee Services, the parties agree that the Lead Permittee is authorized to include as a portion of the cost of providing its Lead Permittee Services, funding for the acquisition of loss, theft, and property damage insurance for said equipment.

(ii) If the Lead Permittee determines that unexpected additional costs and expenses must be incurred in order for it to timely provide its Lead Permittee Services, then in that event, the Lead Permittee shall promptly notify the Co-Permittee, in writing, of the nature and estimated amount of the Co-Permittee's allocable share of these unexpected additional costs and expenses, as well as the Lead Permittee's intent to draw down funds from the Co-Permittee's Reserve Fund Contingency in order to pay said the Co-Permittee's allocable share of the unfunded and unexpected additional costs and expenses.

(iii) Further, if the Co-Permittee's allocable share of the unexpected additional costs and expenses exceeds the amount held in the Co-Permittee's Reserve Fund Contingency account, the Lead Permittee shall include in the aforementioned notice to the Co-Permittee said

excess amount. The Lead Permittee and Co-Permittee shall then attempt to negotiate the payment procedure for said unfunded and unexpected additional costs and expenses.

(iv) If the Lead Permittee and Co-Permittee are able to agree as to the need and amount of the unfunded and unexpected additional costs and expenses, said agreement shall be reduced to writing and executed with the same formalities of this Agreement. The agreed upon unfunded and unexpected additional costs and expenses shall be divided by the remaining months of that particular Fiscal Year and paid to the Lead Permittee at the same time as the remaining regular Fiscal Year payments pursuant to preceding Section 7.02.

(v) If the Lead Permittee and Co-Permittee are unable to agree as to the need and/or amount of the unfunded and unexpected additional costs and expenses then in that event the Lead Permittee may suspend or terminate this Agreement, at its sole discretion, following the provision of thirty (30) days prior written notice to the Co-Permittee.

7.04. Failure to Pay. Unless otherwise agreed to in writing by and between the parties hereto, if a Fiscal Year payment or agreed upon unfunded and unexpected additional costs and expenses payment is not timely paid within thirty (30) days of a Payment Due Date, then in that event the duties and obligations assumed by the Lead Permittee under the terms of this Agreement may be suspended and/or terminated by the Lead Permittee, at its sole discretion, following the provision of thirty (30) days prior written notice to the Co-Permittee unless remedied by the Co-Permittee within said thirty (30) day notice time period.

SECTION EIGHT OPTION TO TERMINATE

8.01. Termination. Either party to this Agreement shall have the right to terminate this Agreement, provided, however, that the party wishing to terminate the Agreement must provide thirty (30) days prior written notice to the other party of said terminating party's decision to terminate this Agreement and the termination shall not be effective until said thirty (30) days have elapsed.

8.02. Effect of Termination. In the event of termination of this Agreement by the Co-Permittee, the Co-Permittee shall be individually responsible, as of the effective date of termination, for all requirements of the NPDES Second Term Permit as designated therein as the individual responsibility of the Co-Permittee, and neither the Lead Permittee nor any other Co-Permittee shall be responsible for the terminating Co-Permittee's individual obligations.

8.03. Costs and Expenses. Irrespective of which party elects to terminate this Agreement under one of the optional termination provisions of this Agreement, or in the event of a failure to pay by the Co-Permittee to the Lead Permittee the amounts due under and pursuant to the terms of this Agreement, the parties agree that any costs and expenses previously incurred or obligated to be paid by the Lead Permittee as of the date of its issuance or receipt of a notice of termination shall still be

due and owing and the right to collect said amount(s) shall survive the termination of this Agreement.

8.04. Refunds. The parties acknowledge that the Lead Permittee anticipates entering into annual agreements, on a Fiscal Year basis, with one or more consultants or contractors for the provision of certain services required in order for the Lead Permittee to provide its Lead Permittee Services on behalf of all Co-Permittees. In that the Co-Permittee's payments under this Agreement represent only a portion of what the Lead Permittee will have to pay its consultants and contractors for their services, it is unlikely that if this Agreement is terminated for any reason, that the Co-Permittee will be entitled to receive a refund from the Lead Permittee for any monies the Co-Permittee has previously paid pursuant to this Agreement. However, to the extent the Lead Permittee is able to obtain a reduction in its contractual obligations with its consultants or contractors as a result of the termination of this Agreement, then in that event, the Lead Permittee shall be obligated to reimburse the Co-Permittee for the amount of such a reduction in costs and expenses.

8.06. Documentation and Data. In the event this Agreement is cancelled or terminated, all documentation and data previously collected by the Lead Permittee in accordance with its duties and obligations as assumed herein, shall be made available to the Co-Permittee, provided, however, that said Co-Permittee shall be responsible for any costs incurred in making available such documentation.

SECTION NINE ENFORCEMENT, VIOLATIONS, AND/OR DEFAULT

9.01. Enforcement. The designation of one of the parties under this Agreement as the Lead Permittee is not intended nor shall it be construed as authorizing, granting or permitting the Lead Permittee to accept or assume any powers of enforcement of the NPDES Second Term Permit as to the other party.

9.02. Violations. Neither party to this Agreement shall be deemed to have assumed any liability for any negligent or wrongful acts or omissions of the other party, and in no event shall any of the provisions of this Agreement be construed as a waiver by either party of the liability limits established in Section 768.28, Florida Statutes.

9.03. Costs and Attorney's Fees. In the event of any litigation or administrative proceeding to settle issues arising hereunder, the prevailing party shall be entitled to recover against the other party its costs and expenses, including reasonable attorney's fees, which shall include but not be limited to any fees and costs for any appeal that may be taken.

SECTION TEN
MISCELLANEOUS PROVISIONS

10.01. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including telex, facsimile, telegraphic, or electronic mail (e-mail) communication) and shall be (as elected by the person giving such notice) hand delivered by prepaid express overnight courier or messenger service, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

As to Lead Permittee: Caldwell & Pacetti, LLP
324 Royal Palm Way, Suite 300
Palm Beach, Florida 33480
Attn: Betsy S. Burden, Esq.
Phone: (561) 655-0620
Fax: (561) 655-3775

As to the Co-Permittee:

Town of Lake Park
650^(name) Old Dixie Hwy.
Street Address
LaKE Park, FL 33403
City Zip
Attn: Paul E. Carlisle
Phone: 844-4644
Fax: 848-0356

10.02. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof.

10.03. Construction. The preparation of this Agreement is considered a joint effort of the parties and accordingly this Agreement shall not be construed more severely against one of the parties than the other.

10.04. Discrimination. The Lead Permittee and the Co-Permittee agree that no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status or sexual orientation be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

10.05. Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

10.06. Assignability. The responsibility for carrying out any task assumed by any party to this Agreement, but not the obligation to pay the amounts required to be paid as hereinabove set forth, may be assigned by any party to this Agreement upon receipt of written approval by the other party, which shall not be unreasonably withheld.

10.07. Severability. If any part of this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible, unless the prohibited or invalid provision reduces the payment obligations of the Co-Permittee, in which event this Agreement may be thereupon terminated by the Lead Permittee.

10.08. Governing Law and Venue. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to any contrary conflicts of laws principle. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida, and each party hereby waives whatever their respective rights may have been in the selection of venue.

10.09. Time of the Essence. Time is of the essence with respect to this Agreement.

10.10. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

10.11. Remedies. The failure of any party to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that the party may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

10.12. NPDES Second Term Permit. If there is any inconsistency between the terms of this Agreement and the NPDES Second Term Permit, then the NPDES Second Term Permit shall preempt, supersede, and control over the provisions of this Agreement.

10.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.14. Clerk of Court. A copy of this Agreement shall be filed with the Clerk of the Court in and for Palm Beach County, Florida.

10.15. Effective Date. This Agreement shall be effective as of the last date that it is signed by all parties hereto.

10.16. Termination of Prior Agreements. All previous interlocal agreements or amendments thereto entered into between the parties to this Agreement regarding the application or execution of the NPDES Permit shall terminate as of the Effective Date of this Agreement.

IN WITNESS WHEREOF, the parties have set their hand and seals the day and year hereinafter written.

EXECUTED by Lead Permittee this 26 day of March, 2003.

ATTEST:

BOARD OF SUPERVISORS, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT

By: *Diane Bassin*, Secretary

By: *Pamela M. Rauch*
Pamela M. Rauch, President

(SEAL)

EXECUTED by Co-Permittee this 20th day of MARCH, 2003.

ATTEST:

By: *Carol Simpkins*

By: *J. Michael Bellis*

(SEAL)



APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: *[Signature]*

ATTACHMENT "A"

TO
NPDES INTERLOCAL AGREEMENT
REGARDING SECOND TERM PERMIT

LEAD PERMITTEE RESPONSIBILITIES

The responsibilities of the Lead Permittee as to the implementation and execution of the NPDES Second Term Permit is generally as follows:

- (i) The timely preparation, coordination, and submittal to FDEP of the system-wide annual report.
- (ii) The preparation, coordination, and execution of interlocal agreements necessary to carry out the joint responsibilities of all permittees.
- (iii) The timely preparation, coordination and execution of any monitoring required by Part V.B. of the NPDES Second Term Permit.
- (iv) The timely preparation, coordination, and submittal to FDEP of major watershed pollutant load estimates as required by Part V.A. of the NPDES Second Term Permit.
- (v) The preparation, coordination, and distribution of standardized forms as approved by the NPDES Steering Committee as necessary to carry out the terms of the NPDES Second Term Permit.
- (vi) Coordination and assistance in carrying out the terms of the NPDES Second Term Permit.
- (vii) Conducting NPDES Steering Committee Workshops and meetings.
- (viii) The timely remittance of all necessary and reasonable permit fees, subject to the timely and adequate collection of same by all other responsible Co-Permittees.

ATTACHMENT "B"

RESOLUTION OF THE BOARD OF SUPERVISORS OF
NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT
APPROVING THE NPDES STEERING COMMITTEE ADMINISTRATIVE
GUIDELINES FOR COLLECTION, MANAGEMENT AND DISBURSEMENT
OF NPDES INTERLOCAL AGREEMENT FUNDS

WHEREAS, NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT ("Northern") is an independent special district duly organized and validly existing under the Constitution and the Laws of the State of Florida, including applicable provisions of Chapter 298, Florida Statutes, and Chapter 59-994, Laws of Florida, as amended and/or supplemented; and

WHEREAS, the United States Environmental Protection Agency has recently issued its National Pollutant Discharge Elimination System Permit No. FLS000018 (the "NPDES Permit") which is applicable to a number of governmental entities located in Palm Beach County, including Northern; and

WHEREAS, the Co-Permittees who make up the governmental bodies subject to the NPDES Permit have nominated and appointed Northern as the "Lead Permittee" for the purposes of assisting all Co-Permittees in the collection of general data required to be collected pursuant to the NPDES Permit and submission of reports to the Florida Department of Environmental Protection and the United States Environmental Protection Agency; and

WHEREAS, as the Lead Permittee, Northern is entering into separate Interlocal or Joint Participation Agreements with each of the Co-Permittees which Agreements set forth the parties respective duties and obligations regarding fulfillment of the terms and conditions of the NPDES Permit; and

WHEREAS, a five member NPDES Steering Committee has been selected by the Co-Permittees, which Steering Committee is comprised of two (2) representatives of large municipalities, two (2) representatives of smaller municipalities, one (1) representative of special districts and one (1) representative for Palm Beach County; and

WHEREAS, on September 17, 1997 the NPDES Steering Committee, in order to provide a level of accountability and fiscal control for the benefit of all NPDES Co-Permittees as it relates to the Interlocal and/or Joint Participation Agreements being entered into between Northern and each Co-Permittee, adopted Administrative Guidelines for the collection, management and disbursement of NPDES Interlocal Agreement Funds, a true and correct copy of which is attached hereto and

WHEREAS, Northern has been requested to adopt and comply with the aforementioned NPDES Steering Committee Administrative Guidelines for purposes of administering the funds to be paid to it pursuant to each NPDES Interlocal or Joint Participation Agreement.

NOW, THEREFORE, be it resolved by the Board of Supervisors of Northern Palm Beach County Improvement District as follows:

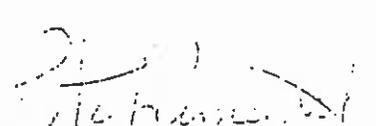
1. Northern Palm Beach County Improvement District does hereby adopt and agree to comply with the terms and conditions of the NPDES Steering Committee Administrative Guidelines.
2. That Northern Palm Beach County Improvement District does hereby incorporate by reference the NPDES Steering Committee Administrative Guidelines into each NPDES Interlocal and/or Joint Participation Agreement that it enters into with a Co-Permittee.
3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.
4. This resolution shall take effect immediately upon its adoption.

THIS RESOLUTION PASSED AND WAS ADOPTED THE 24th DAY OF SEPTEMBER 1997.

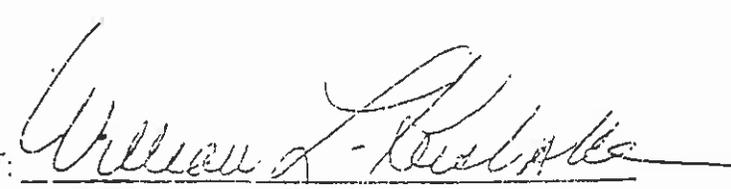
(DISTRICT SEAL)

NORTHERN PALM BEACH COUNTY
IMPROVEMENT DISTRICT

ATTEST:


Peter L. Pimental, Secretary

BY:


William L. Kerlake, President

NPDES STEERING COMMITTEE ADMINISTRATIVE GUIDELINES
FOR COLLECTION, MANAGEMENT AND DISBURSEMENT
OF NPDES INTERLOCAL AGREEMENT FUNDS

The NPDES Steering Committee, (which is comprised of two (2) representatives of large municipalities, two (2) representatives of smaller municipalities, one (1) representative of special districts and one (1) representative for Palm Beach County), has adopted the following administrative guidelines in order to provide a level of accountability and fiscal control for the benefit of the NPDES Co-Permittees.

The administrative guidelines adopted by the Steering Committee are as follows:

1. Alternative NPDES Interlocal Agreement Payment Schedules. In addition to the two (2) payment options set forth in Paragraph's 7.01 and 7.02 of the NPDES Interlocal Agreement, a Co-Permittee shall also be entitled to elect to pay the annual Fiscal Year payments on an equal quarterly installment basis. If this additional payment option is selected by a Co-Permittee, the quarterly payments for the First Fiscal Year are required to be paid on or before October 1, 1997, January 1, 1998, April 1, 1998 and July 1, 1998, with all future Fiscal Year quarterly payments to be paid in accordance with the same quarterly payment schedule.

NPBCID will be issuing one (1) invoice to each Co-Permittee for its annual Fiscal Year payment amount, following which the Co-Permittee shall then have thirty (30) days from the date of receipt of the invoice within which to select one of the three (3) payment options and to make its initial payment in accordance with the option so selected.

2. Income and Disbursement Accounting Documentation.

(A) A quarterly income and disbursement report shall be prepared by NPBCID. The report shall be delivered to the Steering Committee within forty-five (45) days following the end of each Fiscal Year quarter and thereafter distributed by the Steering Committee to the representative(s) of each Co-Permittee as identified in the NPDES Interlocal Agreements.

(B) The quarterly income and disbursement report shall be prepared by NPBCID in accordance with the format set forth in attached Exhibit "A".

3. Budget Accounting Documentation.

(A) A quarterly budget accounting report shall be prepared by NPBCID. The report shall be delivered to the Steering Committee within forty-five (45) days following the end of

each Fiscal Year quarter and thereafter distributed by the Steering Committee to the representative(s) of each Co-Permittee as identified in the NPDES Interlocal Agreements.

(B) The budget accounting report shall be prepared by NPBCID in accordance with the format set forth in attached Exhibit "B".

4. Reserve Fund Contingency Expenditures. Prior to any expenditure by NPBCID of funds contained in the Reserve Fund Contingency account identified in the NPDES Interlocal Agreement, NPBCID shall be required to submit its request to the Steering Committee members and receive approval from a super-majority of at least 75% of the Steering Committee members.

5. Unexpected Additional Costs and Expenses. Prior to NPBCID incurring an obligation that will require a Co-Permittee to pay unexpected additional costs and expenses exceeding the amount held in the Reserve Fund Contingency, NPBCID shall be required to submit to the Steering Committee the nature of the event and the amount of the unexpected additional cost and expense. Upon receipt of such notification, the Steering Committee shall present the matter to the Co-Permittees at the next regularly scheduled Steering Committee NPDES meeting (unless it is an emergency matter in which event a special meeting will be promptly scheduled and notice given to all Co-Permittees) for consideration and vote by those representatives of the Co-Permittees present at the meeting. An affirmative vote by a simple majority (i.e., over fifty percent) of those representatives of the Co-Permittees present at the meeting (with only one (1) representative of each Co-Permittee being entitled to vote on the matter at issue) will be required before NPBCID is authorized to incur the subject unexpected additional costs and expenses.

6. NPDES Interlocal Agreement Budget Adoption Process. All future NPDES Interlocal Agreement Fiscal Year budgets shall be adopted in accordance with the following procedure:

(A) On or before March 1st of each Fiscal Year, NPBCID shall prepare and present to the Steering Committee a proposed budget for the next Fiscal Year.

(B) The Steering Committee shall consider the proposed next Fiscal Year budget at a regular Steering Committee meeting and open the matter to discussion by those Co-Permittee representatives present and attending the meeting.

(C) Adoption of the next Fiscal Year's budget shall require the approval of a super-majority of at least 75% of the Steering Committee members.

(D) As a part of the Steering Committee's consideration of the next Fiscal Year's budget and calculation of each Co-Permittee's allocable share and responsibility for the funding of the budget, the Steering Committee may consider the application of any existing surplus funds as a credit towards each Co-Permittee's allocable funding share. "Surplus funds" for the purpose of

this administrative guideline may include unexpended and unencumbered present Fiscal Year funds or Reserve Fund Contingency amounts, plus accrued interest thereon, if any.

(E) The Steering Committee shall also be responsible for approving, by a simple majority of those Steering Committee members in attendance (provided there is a quorum) at a Steering Committee meeting, line item budget transfers.

APPROVED AND ADOPTED THIS 17TH DAY OF SEPTEMBER, 1997.

EXHIBIT "A"

NPDES QUARTERLY INCOME AND DISBURSEMENT REPORT
FIRST YEAR PROGRAM
FOR PERIOD MAY 2, 1997 - AUGUST 1, 1997
(SAMPLE)

CASH ON HAND MAY 2, 1997

\$ _____

REVENUE RECEIVED FOR QUARTER MAY 2, 1997 - AUGUST 1, 1997

AGREEMENT FEES \$ _____

INTEREST EARNINGS \$ _____

TOTAL REVENUES

\$ _____

\$ _____

TOTAL CASH AND REVENUES AVAILABLE FOR EXPENDITURES

\$ _____

EXPENDITURES PAID DURING QUARTER MAY 2, 1997 - AUGUST 1, 1997

ENGINEERING \$ _____

LEGAL \$ _____

MISC. EXPENSES \$ _____

TOTAL EXPENDITURES

\$ _____

\$ _____

FUND BALANCE AT AUGUST 1, 1997

\$ _____

RESERVE FOR CONTINGENCIES

\$ _____

UNRESERVED FUND BALANCE

\$ _____

EXHIBIT "B"

NPDDES QUARTERLY BUDGET -VS- ACTUAL REPORT
 FIRST YEAR PROGRAM
 FOR PERIOD MAY 2, 1997 - AUGUST 1, 1997
 (SAMPLE)

DESCRIPTION	BUDGET	ACTUAL BILLINGS THROUGH 8/1/97				ENCUMBERED	PERCENT OF BUDGET SPENT*
		M-R	CDM	C & P	NPDDES		
TOTAL							
Steering Committee Workshops	\$54,790.00						
Sub Committee Workshops	\$9,145.00						
EPA Coordination	\$3,975.00						
Permittee Coordination	\$22,250.00						
Interlocal Agreements	\$15,400.00					\$45,100.00	
Monitoring Program	\$53,050.00						
Annual Report	\$51,390.00					\$45,100.00	
TOTAL	\$219,000.00						

M-R = Mock, Roos & Associates, Inc.

CDM = Camp, Dresser & McKee

C & P = Caldwell & Pacelli

NPDDES = Northern Palm Beach County Improvement District

* Does not reflect encumbered dollars

TAB 4



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: June 15, 2011

Agenda Item No. *Tab 4*

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> DISCUSSION/POSSIBLE ACTION |
| <input type="checkbox"/> ORDINANCE ON SECOND READING | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> PRESENTATION/PROCLAMATION | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> Other: | |

SUBJECT: Signature Resolution

RECOMMENDED MOTION/ACTION: Approve Resolution

Approved by Town Manager *W. Davis* Date: *6/9/11*
Anne M. Costello *6/8/11*
 Anne M. Costello/Finance Director Date of Actual Submittal

Originating Department: Finance	Costs: \$ 36.00 for new manual signature stamp Funding Source: Acct. # 150-51000	Attachments: Resolution
Department Review: <input type="checkbox"/> Attorney _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____	<input type="checkbox"/> Grants _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Information Technology _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____	<input type="checkbox"/> PBSO _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Recreation _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
Advertised: Date: <u>N/A</u> Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case <u>n/a</u> Please initial one.

Summary Explanation/Background: Due to the of passing of Mayor Desca DuBois on April 30, 2011 and the resignation of Commissioner Patricia Osterman effective June 27, 2011, a special election will be held on June 28, 2011. There will be a 17-day period between the election and the

swearing-in of the new Mayor and Commissioner during which there will not be three authorized signatories on the bank accounts. It is necessary to pass this resolution to remove any unauthorized signatory and place new authorized signatories on the Town's bank accounts in order to conduct normal business operations during this 17-day period. After the swearing-in of the new members of the Commission another signature resolution will be brought forth for approval to add the newly elected mayor and appointed vice-mayor as signatories.

RESOLUTION NO. 23-06-11

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPOINTING VICE MAYOR KENDALL RUMSEY, COMMISSIONER STEVE HOCKMAN AND FINANCE DIRECTOR ANNE M. COSTELLO AS AUTHORIZED SIGNATORIES ON PNC BANK ACCOUNTS PAYABLE ACCOUNT # 1201423864, PAYROLL ACCOUNT #1201624885, REVENUE ACCOUNT #1201634645 AND NOW ACCOUNT #1203185468 REMOVING ANY UNAUTHORIZED SIGNATORY ON SAID ACCOUNTS, ANY PERSON PREVIOUSLY APPOINTED AS SUCH AND NOT NAMED HEREIN; DIRECTING THAT ALL AUTHORIZED SIGNATORIES ON SAID ACCOUNTS COMPLETE AND EXECUTE SIGNATURE CARDS, FACSIMILE SIGNATURE CARD, AND RESOLUTIONS AND/OR OTHER BANK DOCUMENTS NECESSARY TO EFFECT THE IMPLEMENTATION OF THIS RESOLUTION; DIRECTING THE TOWN CLERK TO PROVIDE CERTIFIED COPY OF THIS RESOLUTION TO THE BANKING INSTITUTION NAMED HEREIN; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS:

Section 1. The following persons are hereby appointed as authorized signatories on PNC Bank Accounts Payable Account #1201423864, Payroll Account #1201624885, Revenue Account #1201634645 and NOW Account #1203185468:

Vice Mayor Kendall Rumsey
Commissioner Steve Hockman

Finance Director Anne M. Costello

Section 2. All persons named herein as authorized signatories on said accounts are hereby directed to complete and execute signature cards, facsimile signature card, bank resolutions and/or other bank documents necessary to effect the implementation of this Resolution.

Section 3. The Town Clerk is hereby directed to provide a certified copy of this Resolution to the banking institution named herein.

Section 4. This Resolution shall become effective immediately upon its adoption.

TAB 5



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: June 15, 2011

Agenda Item No. *Tab 5*

- PUBLIC HEARING
- ORDINANCE ON FIRST READING
- ORDINANCE ON SECOND READING
- PRESENTATION/PROCLAMATION
- Other:
- RESOLUTION
- DISCUSSION/POSSIBLE ACTION
- BID/RFP AWARD
- CONSENT AGENDA

SUBJECT: K-MART PROPERTY REZONING

RECOMMENDED MOTION/ACTION:

APPROVAL OF REZONING FROM C-1 TO PUD, WITH APPLICABLE WAIVERS.

Approved by Town Manager *N. Di Tommaso* Date: *6/10/11*

Name/Title: Nadia Di Tommaso, Community Development Director Date of Actual Submittal: 06/08/2011

Originating Department: Community Development	Costs: \$ <u>0</u> Funding Source: Acct. #	Attachments: Staff Report and Exhibits Ordinance, justification Plans statement from applicant
Department Review: <input checked="" type="checkbox"/> Attorney <u>TJB</u> <input checked="" type="checkbox"/> Community Development <u>ND</u> <input type="checkbox"/> Finance <input type="checkbox"/> Fire Dept	<input type="checkbox"/> Grants <input type="checkbox"/> Human Resources <input type="checkbox"/> Information Technology <input type="checkbox"/> Library <input type="checkbox"/> Marina	<input type="checkbox"/> PBSO <input type="checkbox"/> Public Works <input type="checkbox"/> Recreation <input type="checkbox"/> Town Clerk <input type="checkbox"/> Town Manager
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone <u>ND</u> or Not applicable in this case _____ Please initial one.

Summary Explanation/Background:

Please refer to the enclosed STAFF REPORT.

Town Code Section 78-77 allows for the creation of a PUD (Planned Unit Development) District. The Applicant, SC Lake Park Associates LLLP, is requesting to rezone the subject site, the K-Mart property, from a C-1 (Commercial-1) to PUD. The PUD District allows the Applicant to apply for

waivers to the land development regulations contained within the underlying C-1 Zoning District and to the Northlake Boulevard Overlay Zone (NBOZ). The assignment of PUD zoning to the site together with the approval of the numerous proposed waivers requested will transform the site from an existing legal nonconforming use to a conforming use.

The property was built more than 40 years ago, which has resulted in the nonconforming status of the site. A property is unable to subdivide while nonconformities exist onsite. In order for this subdivision to take place, all existing nonconformities onsite must receive waivers through the PUD process. The PUD process was partly established for the purpose of allowing for this flexibility while ensuring a Unity of Control is in place to allow for consistent management and development of the site.

The Town will continue to have complete control over the site. For example, if the site is zoned PUD with waivers, and K-Mart decides to add a 15,000 square foot addition to the building in the future, the existing waiver to parking and landscaping, which would currently be in place, would only apply as a "minimum".

Staff Recommendation: Approval subject to the conditions of approval found in the staff report.

Town of Lake Park
Community Development Department



Meeting Date: June 15, 2011

From: Nadia Di Tommaso, Community Development Director

To: Town Commission

Re: K-Mart Retail Plaza Rezoning

REQUEST:

Gentile Holloway O'Mahoney & Associates, Inc., as the agent for the applicant, SC Lake Park Associates LLLP ("Applicant"), has requested the rezoning of the Kmart property which consists of approximately 15.991 acres of developed land ("Property"). The Property is located on the southwest corner of Northlake Boulevard and Old Dixie Highway. The Applicant requests that Property be rezoned from C-1 Commercial Zoning to a Planned Unit Development (PUD) Zoning District. The Property has a Future Land Use designation of "Commercial." Either the C-1 Commercial District or the PUD Zoning District would be consistent with the Future Land Use Designation of Commercial. It should also be noted that the Property is within the Northlake Boulevard Overlay Zone (NBOZ).

The PUD District allows for an overall site to be defined using a Unity of Control and allows the Applicant to apply for waivers of the land development regulations contained within the C-1 Zoning District. The Unity of Control document ensures that if the property is subdivided, one single entity remains responsible for the coordinated development or redevelopment of the Property. Unlike a regular zoning district, the PUD Zoning District establishes the setbacks, height restrictions and other land development regulations which will govern the development or redevelopment of the site. However, the C-1 District regulations will continue to apply until waivers are requested and approved for development of a parcel within the newly created PUD. At this time, no development is being proposed, rather, the Applicant is only seeking a rezoning from C-1 to the PUD Zoning District and the establishment of a Unity of Control for the entire site. Apparently, the Applicant intends to subdivide the Property creating parcels which would not otherwise have been able to meet the regulations of the C-1 Zoning District. In addition, the anchor tenants onsite-Staples, K-Mart and Chick-Fil-A, who currently lease from SC Lake Park Associates LLLP, would then have the opportunity to own their respective sites rather than leasing them, which these tenants see as beneficial. The property would be subdivided into Parcel A, B and C while retaining similar uses as outlined in Exhibit "C". The Applicant believes that creating separate parcels which will then be taxed separately will facilitate the Property's redevelopment and later result in an increase of the assessed value of the Property.

The creation of a PUD with waivers would transform the Property from its current status as a legal **nonconforming** use to a conforming use. If the property were to continue in its legal nonconforming use status, this could prohibit its redevelopment because the Town Code does not permit the expansion of a legal nonconforming use. Although there are no immediate plans for redevelopment, the assignment of PUD zoning to the property is more likely to facilitate future redevelopment. The PUD zoning district allows the developer or re-developer greater flexibility in the organization of uses, parking and open space on the property. However, the **Town Commission retains ultimate control over any proposed redevelopment of the property.**

In order to reflect the existing conditions on the Property, the Applicant is requesting waivers as part of the PUD. The waivers from the Code's land development regulation of the C-1 zoning district are identified in the table below.

PROPOSED WAIVERS TO REFLECT EXISTING SITE CONDITIONS

	Waiver#	Code Section (NBOZ or LP)	Description:	Required:	Existing:
1. Open Space	1	Section 6-2 (NBOZ)	Min. Open Space Required	15%	11%
2. Parking	2A	Section 78-142-1(LP)	Required No. of Parking Spaces	918 spaces	798 spaces
	2B	Section 6-2 (NBOZ)	Parking Setback	Front & Side Street: 10' Rear: 15'	3.3' & 8.82' 9'
	2C	Sec. 4-10 A.1 (NBOZ) Sec. 78-253(c)(1)(LP)	Parking area min. shade tree spacing	No Parking space more than 40' from shade tree	39 spaces affected
	2D	XXX	Landscape Islands	Required every 9 spaces	28 rows w/ more than 9 spaces in a row
3. Landscape	3A	Sec. 4-10 F1 (NBOZ) Sec. 78-253(h)(4) (LP)	Hedges/Screening	All parking, loading or storage areas shall have cont. 3' hedge	None provided loading
	3B	Sec. 4-11 (NBOZ) Sec. 78-253(h)(1) (LP)	Landscape Buffer Widths	R/W Buffer = 15' Min. (NBOZ) Perimeter Buffer = 8' Min. (LP)	5'-35' 8'-10'
	3C	Sec. 4-11 (NBOZ) Sec. 78-253(h)(2) (LP)	Planting – Buffer Trees	116 trees (NBOZ) 122 trees (LP)	85 Buffer Tree

PLANNING & ZONING BOARD RECOMMENDATION:

PLANNING & ZONING APRIL 4TH, 2011 MEETING:

At the April 4th Planning & Zoning Board meeting, the Board had two major concerns and requested a continuance:

- (1) The lack of visual content in the plans to facilitate the visualization of the waivers being requested.
- (2) The Applicant should provide additional landscaping (or other) to the property as a benefit to the Town, in order to minimize the waivers being requested.

Staff received the "Waiver Location Plan". This plan better visualized the waivers being requested.

In reviewing the *Waiver Location Plan*, staff remained of the opinion that the rezoning to PUD would provide the Applicant with greater flexibility if the property redeveloped in whole, or in part in the future. The waivers being requested are to both the Town Code and the Northlake Boulevard Overlay Zoning District (NBOZ), including: (a) to the number of parking spaces required for the shopping center; (b) the provision of a minimum number of shade trees and their spacing within parking areas; (c) the number of required shade trees and the provision of landscape islands within the shopping center's parking lot; (d) buffer trees along the shopping center's perimeter and the width of that buffer; (e) a landscaped buffer for the shopping center's trash collection site. All the waivers apply to the existing conditions only and will act as "minimums" for future development. No development is currently being proposed.

The numerous waivers being requested are a consequence of the K-Mart Plaza having been developed over a span of almost 40 years, during which time the Town's land development regulations have been modified. The effect on the K-Mart Plaza has been to render the development within the K-mart Plaza nonconforming with respect to many of these land development regulations. During the years that the K-mart Plaza added new uses, the owner of the shopping center was apparently never required to meet the Town's existing land development regulations for landscaping and parking, nor was the owner required to make any improvements to mitigate or reduce the degree of the deficiencies in landscaping, parking, or buffers existing on the site. These improvements typically become part of a new plan for development.

As noted above, the Town Code prohibits the expansion of the site because it is a legal nonconforming use (as referenced above) with the Code and NBOZ. Thus, without some change to the existing land development regulations, the owner cannot expand the site because of the existing deficiencies in parking and landscaping. The rezoning of the K-mart Plaza to a PUD, with waivers, would eliminate any nonconformities onsite, thereby allowing the property to expand,

and/or redevelop in the future. The rezoning to PUD may encourage future reinvestment and redevelopment of the site.

Staff agreed with the Board that additional landscaping should be provided to the site in exchange for the granting of the numerous waivers requested.

The PUD Code is specific and it states under Section 78-77 4(a):

"A pre-existing commercial development may convert its site to a PUD in order to provide the subdivision of individual lots within the boundaries of the newly created PUD. Such a request shall not be required to conform to the regulations of this subsection 4, as part of such a request as long as no development is proposed. Any development or future development within the PUD site shall conform to the regulations in this subsection 4, and all other applicable provisions of the PUD regulations as set forth here."

Subsection 4 refers to the development standards, such as site configuration, density, architectural standards and so on, which are required for any new development within the PUD.

PLANNING & ZONING MAY 2nd, 2011 MEETING:

The Planning & Zoning Board recommended **approval** with the inclusion of a condition requiring the Applicant to add landscaping in the form of additional plantings to the hedge lines along the south and west property lines. The Applicant agreed to adding more plants and since the meeting has already filled in those areas with landscape that is consistent with the existing material.

STAFF RECOMMENDATION:

APPROVAL of the rezoning from the C-1 District to the PUD District. The staff also recommends approval of the waivers requested in **Exhibit "B"**.

CONSISTENCY WITH SURROUNDING LAND USES

The surrounding properties all have Future Land Use designations of "Commercial" or "Commercial/Light Industrial". The property to the west is a Target store and is zoned PUD. The property to the east is developed with a gas station and convenience store and is zoned "C-1". The properties to the south are light industrial in nature and zoned "C-4". The properties to the north are located in Palm Beach County and have been developed with commercial uses.

This request for a PUD is consistent with the Town's Comprehensive Plan, specifically, Future Land Use Policy 1.4 which requires all parcels of land to be kept consistent with the "Commercial" land use by which this parcel is defined. The subject site does not intend to deviate from this designation and currently

houses only commercial uses which are consistent with the Comprehensive Plan as well as with the surrounding area.

CONSISTENCY WITH FUTURE LAND USE POLICY

The application is also consistent with Future Land Use Policy 1.5 because it promotes development and redevelopment activities which can substantially increase the Town's tax base: In approving this PUD, the site will enable the Applicant who now owns the Property to subdivide. The subdivision of the Property is perceived by the Applicant as a means to facilitate the redevelopment of the Property thereby increasing its assessed value. Presumably this will increase the Town's tax base.

CONSISTENCY WITH PALM BEACH COUNTY TRAFFIC CONCURRENCY ORDINANCE

The Property has previously been determined to meet the County's Traffic Concurrency Ordinance. However, any future development will be presented to the Town and if certain thresholds are exceeded as part of a development or redevelopment application, the application will be required to demonstrate that it meets the County's Traffic Concurrency Ordinance, as applicable at the time of submittal.

STAFF RECOMMENDATION

Town staff recommends that the Town Commission grant **APPROVAL** of the rezoning from the C-1 District to the PUD District with the following conditions of approval:

- 1) The PUD is bound by the Unity of Control Document as outlined in **Exhibit "A"**.
- 2) All proposed waivers in **Exhibit "B"** shall be approved.
- 3) All underlying regulations in the C-1 that are not otherwise modified and approved as part of the PUD, shall apply to the PUD.
- 4) Approval of the requested waivers is applicable to the existing conditions only. Any and all significant future development will require the Applicant to follow development regulations in the Town Code as well as those directed by the respective Boards, specifically for the reinvestment of parking and landscaping to the site.
- 5) Any redevelopment of the Property shall meet Palm Beach County's Traffic Concurrency Ordinance, as applicable at the time when it is proposed.
- 6) Any revisions to the approved Site Plan, shall be submitted to the Community Development Department and shall be subject to its review and approval.
- 7) The K-Mart Plaza Rezoning shall be in compliance with the plans on file with the Town's Community Development Department or authorized revisions as noted below:

- a. Site Development Plan as sheet SP-1, dated 05-12-2011 prepared by Gentile Holloway O'Mahoney & Associates, Inc. who is the Planner of record for the Project.
 - b. Survey Plans as sheet S-1, S-2, and S-3, dated 05-06-2011 prepared by ATLA/ACSM Land Title Survey, as surveyor of record for the Project.
 - c. Waiver Location Plan as sheet WP-1, dated 05-12-2011 prepared by Gentile Holloway O'Mahoney & Associates, Inc. who is the Planner of record for the Project.
- 8) **Cost Recovery.** All fees and costs, including legal fees incurred by the Town in reviewing the Project and billed to the Owner or Applicant shall be paid to the Town within 10 days of receipt of an invoice from the Town. Failure by an Owner or an Applicant to reimburse the Town within the 10 day time period may result in the automatic revocation of any and all land development approvals by the Town and any other appropriate measures that the Town deems necessary and appropriate to secure payment.

Exhibit "A"

Unity of Control

**DECLARATION OF RESTRICTIONS, MAINTENANCE AND UNIFIED CONTROL
FOR THE
PLAZA AT LAKE PARK**

Prepared By/Record and Return To:

Andrew K. Fritsch, Esq.
Broad and Cassel
1 North Clematis St., Ste. 500
West Palm Beach, FL 33401

**DECLARATION OF RESTRICTIONS, MAINTENANCE AND UNIFIED CONTROL
FOR THE PLAZA AT LAKE**

THIS DECLARATION OF RESTRICTIONS, MAINTENANCE AND UNIFIED CONTROL FOR THE PLAZA AT LAKE PARK (this "Declaration") is made this _____ day of _____, 2010 by SC LAKE PARK ASSOCIATES, LLLP., a Florida limited liability limited partnership, the fee simple owner of the real property described in Article II, which hereby declares that such property is and shall be held, transferred, sold, conveyed and occupied subject to the restrictions, covenants, easements set forth below and is subject to all of the provisions hereof.

ARTICLE I

DEFINITIONS

The following terms as used herein shall have the meanings as set forth below:

- A. "Building" - the separate, free standing improvements constructed on the Properties.
- B. "Common Areas" - shall mean and refer to all portions of the Properties depicted on the Site Plan attached hereto as Exhibit "A" as parking areas, driveways, drive aisles, landscaping areas, street lights, and other improvements outside the boundaries of the Buildings, which are intended for the common use and enjoyment of the owners as set forth herein. The Common Areas shall not include any portions of the Buildings. The description of portions of the Properties as Common Areas shall not affect the fee simple ownership of the property upon which such Common Areas are located. The rights and obligations with respect to those Common Areas are in the nature of easements only.
- C. "Owner of Lot A" - SC LAKE PARK ASSOCIATES, LLLP, a Florida limited liability limited partnership, its successors and assigns, if such successor or assignee acquires Lot A, as described in Exhibit "B" attached hereto and is designated as such by Owner of Lot A or if such successor or assignee acquires Lot A by foreclosure or deed in lieu of foreclosure and opts to succeed to the Owner of Lot A's rights. The Owner of Lot A may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Owner of Lot A as to those rights which may have been assigned to them.
- D. "Institutional Lender" - any person or entity (i) holding a mortgage encumbering a Lot, which (ii) in the ordinary course of business makes purchases, guarantees or insures mortgage loans, which (iii) is not owned or controlled by the Owner of the Lot encumbered. An Institutional Lender may include, but is not limited to, a federal or state chartered bank or savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company; the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the Loted States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of the Owner of Lot A, whether or not such holder would otherwise be considered an Institutional Lender.

- E. "Lot" – a platted lot according to the Plat.
- F. "Owners" - the record owner(s), whether one or more persons or entities, of the fee simple title to a Lot.
- G. "Plat" – the subdivision plat for the Plaza at Lake Park, P.U.D., as recorded in the Public Records for Palm Beach County, Florida.
- H. "Project" – the Plaza at Lake Park.
- I. "Property" and/or "Properties" - all property and additions thereto (which additional property may or may not be contiguous to the real property described in Article II herein), as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Palm Beach County, Florida and is more particularly described in Exhibit "B" attached hereto and made a part hereof.

ARTICLE III

EASEMENTS

Section 1. Owners' Easements. Each Owner of a Lot and each tenant, agent and invitee of such Owner shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, parking areas, driveways and roads from time to time laid out on the Common Areas, for use in common with all such Owners, their tenants, agents and invitees. The portion of the Common Areas not used, from time to time, for walkways and/or driveways or lakes shall be for the common use and enjoyment of the several Owners and each Owner shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts. Further, each Owner shall have a perpetual easement for parking in the designated parking areas as reflected on the Plat, subject to such reasonable restrictions imposed by the Owner of Lot A, provided further that the parking shall be controlled by the Owner of Lot A to the extent necessary for the parking areas as a whole and with respect to any particular occupant of any part of the Properties to meet the parking requirements of the Town of Lake Park. In no event shall any Owner be entitled to alter its use of its Lot or the occupancy of any Building on its Lot without first complying with the applicable parking requirements and any development order and/or P.U.D. approval issued by the Town of Lake Park, and without first obtaining the written consent of the Owner of Lot A to such change where such change would result in an increase in demand for parking spaces.

Section 2. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Utility Easements. Public utilities may be installed underground in the Properties, when necessary for the service of the Properties or additional lands for which Owner of Lot A holds an option to purchase, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 4. Public Easements. Firefighters, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

Section 5. Assignment of Owner of Lot A's Rights. The Owner of Lot A shall have the right to assign to any other person or entity any or all of the Owner of Lot A's rights reserved in this Declaration, in whole or in part, with respect to all or any portion of the Properties. In the event of an assignment, the assignee shall not be liable for any action of a prior Owner of Lot A. Acquisition, development or construction lenders acquiring title to the Properties or any portion thereof by foreclosure or deed in lieu of foreclosure shall have the right, but not the obligation, to assume the Owner of Lot A's rights. Such acquisition, development or construction lender shall have the right to assign the Owner of Lot A's rights to a subsequent purchaser, regardless of whether or not the Owner of Lot A's rights were assumed by that lender.

ARTICLE IV

Section 1. Creation of the Common Area and Responsibility Therefor.

A. The Owner of Lot A, its successors and assigns, shall keep and maintain the Common Areas in a good condition consistent with Class A retail shopping center in Palm Beach County and in compliance with all applicable governmental regulations from time to time in effect. Except in the event of an emergency, the Owner of Lot A shall give the Owner of Lot B and the Owner of Lot C not less than ten (10) days prior written notice before performing any material repairs or replacements costing in excess of \$10,000. The Owner of Lot A agrees to use reasonable efforts to minimize the disruption to ingress and egress while performing such maintenance and repairs.

B. The Owner of Lot A shall advance the costs of maintaining and repairing the Common Area and the Owners shall be responsible for paying such costs of maintaining and repairing the Common Area in the following percentages:

Owner of Lot A	41.42%
Owner of Lot B	56.21%
Owner of Lot C	2.37%

Reimbursement to the Owner of Lot A for such costs shall be made by the Owner of Lot B and Owner of Lot C for their pro rata share of such costs within thirty (30) days of submittal of an invoice respecting such work and their pro rata share.

C. Notwithstanding Section 1-B above, if any damage to the Common Area is caused as a result of the negligence and/or willful misconduct of the Owner of Lot A, Owner of Lot B or the Owner of Lot C, the responsible Owner shall pay one hundred (100%) percent of the cost of repair therefore.

D. Any amounts not paid within thirty (30) days of submittal of an invoice under Sections 1-B or 1-C above, and any other amounts due under any provision of this Declaration, shall bear interest at the rate of twelve percent (12%) per annum (or the highest rate permitted by law, whichever is lower).

Section 2. Covenant for Maintenance Assessment.

A. The Owner of each Lot within the Property, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Owner of Lot A; (i) all charges in accordance with Section 1 above, (ii) Insurance premium charges in accordance with Section 3 to be established and collected as hereinafter provided, and (iii) fines and charges as may be established and implemented from time to time by the Owner of Lot A in accordance with this Declaration. The charges pursuant to this Section 2 and any Insurance Premium charges imposed pursuant to Section 3 below are herein jointly referred to as "Assessments." The Assessments, fines and other charges, together with interest, costs and reasonable attorneys' fees, shall be a charge on the Lot and shall constitute a lien upon the Lot, which lien shall attach upon the recording in the public records of Palm Beach County, Florida, of a claim of lien, specifying the amount of the lien then due, together with reasonable attorneys' fees, costs and interest thereon, which claim of lien shall be signed by the Owner of Lot A or an appropriate officer thereof. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the Assessment or other charge fell due. The delinquent Assessment shall remain a lien against the Lot until paid, except as provided in Section 2 D below.

B. The Assessments levied by the Owner of Lot A shall be used for the specific purposes set forth in this Declaration.

C. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate permitted by law. The Owner of Lot A may bring an action at law against Owner or foreclose the lien against the Lot and the Owner of such Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his Lot.

D. The lien of the Assessment provided for herein shall be subordinate to the lien of any first mortgage encumbering the Property or any portion thereof. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer; provided, however, the personal obligation to pay the Assessment shall not be extinguished. No sale or transfer shall relieve such Lot or Owner thereof from liability from any Assessments thereafter becoming due or from the lien thereof.

Section 3. Insurance.

A. The Owner of Lot A, the Owner of Lot B, and the Owner of Lot C shall each maintain throughout the term hereof commercial general liability insurance naming the other Owners as additional insureds and certificate holders, with limits of not less than Two Million (\$2,000,000.00) Dollars per occurrence. Such insurance policy: (a) shall be with a company licensed to do business in the State of Florida and such insurance company shall have a minimum rating of "A-" Class X or better by Best's Insurance Key Rating Guide published by A.M. Best Company and a Standard and Poor's rating group (claims paying ability) rating of AA or better; (b) shall provide that it is not subject to cancellation or reduction in coverage except after thirty (30) days' prior written notice to the other Owners, except in the event of a monetary default, in which case the prior written notice may be no less than ten (10) days; and (c) shall provide by endorsement for a waiver of all rights of subrogation against the other Owners. Each Owner's policy shall be primary insurance with regard to occurrences that take place on each Owner's respective Lot. The Owner of Lot A, the Owner of Lot B, and the Owner of Lot C shall each deliver to the other Owners from time to time or upon request a certificate of insurance evidencing the existence and amount of such policy; and, upon request, a certificate naming the respective Owner's lender and/or property manager as additional insured(s) and certificate holder(s).

B. The Owner of Lot A, the Owner of Lot B, and the Owner of Lot C may elect to jointly purchase insurance in satisfaction of the provisions of Section 3-A above. In addition, in the event that the Owner of Lot B or the Owner of Lot C or both shall fail to obtain the insurance required pursuant to Section 3-A, the Owner of the Lot A shall have the right to obtain such insurance for all of the Owners. In either such event, the Owner of Lot A shall be responsible for forty one and 42/100 percent (41.42%), the Owner of Lot B shall be responsible for fifty-six and 21/100 percent (56.21%), and the Owner of Lot C shall be responsible for two and 37/100 percent (2.37%), of the cost and expense therefor.

Section 4. Building Maintenance. The maintenance of the Buildings and such improvements to and portions of the Lots serving only that particular Lot shall be the complete maintenance responsibility of the owner(s) thereof. Owners shall maintain the Building(s) in a neat and orderly manner and to reasonable standards as may be established by the Owner of Lot A from time to time.

Section 5. Rules and Regulations. The Owner of Lot A, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines, which shall be levied as a Special Assessment as provided in this Declaration, and suspension of the right to vote on any matters calling for a vote hereunder. The Owner of Lot A shall, in addition, have the power to seek relief in any court for violations of this Declaration or the rules and regulations, or to abate nuisances.

Section 6. Exclusive and Prohibited Uses. The Owner of Lot A has established a list of exclusive uses for the Properties and/or portions thereof as specified on such list. Such list also includes a list of uses which are prohibited on the Property and no Owner may allow any portion of its Lot to be used for any such prohibited use. The list of exclusive and prohibited uses is attached hereto as Exhibit "C" (the "List of Uses"). The Owner of any Lot within the subdivision owns and holds its Lot subject to the List of Uses and may not use or allow to be used any part of its Lot, or the improvements thereon, for any listed prohibited use or for any use specified in the List of Uses as an

exclusive use assigned to another Lot or portion thereof. The List of Uses may be amended as set forth in Article VI, Section 3 below. Any such amendment or modification need not be recorded in the Public Records in order to be effective and binding on the Owner of the Lots.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Architectural Powers. For so long as the Owner of Lot A owns any portion of the Property, the Owner of Lot A shall have all powers as set forth in this Article V.

Section 2. Owner to Obtain Approval. No Owner shall make, install, place, or remove any building, fence, wall, landscaping and planting or any other alteration, addition, improvement, or change of any kind or nature to, in or upon any portion of the Common Areas, or Building exterior, or improvements dealing with the Lot's structural integrity, or the Owner's Lot, unless the owner first obtains the written approval of the Owner of Lot A to do the same (which approval may not be unreasonably withheld) except that such approval shall not be required for any maintenance or repair which does not result in a material change in any improvement including the color of the same. It is the intention of the Owners to maintain a common exterior appearance of Buildings and not to materially alter the same. Any changes which would reasonably be deemed to constitute a material change to the exterior of any Building, specifically including, but not limited to, (a) changes in the color of the exterior and (b) any such exterior changes, the cost of which exceeds Ten Thousand Dollars (\$10,000), shall require the approval of the Owner of Lot A.

Section 3. Owner of Lot A's Consent. Any request by an Owner for approval by the Owner of Lot A of any addition, alteration, improvement, or change shall be in writing and shall be accompanied by plans and specifications or other details as the Owner of Lot A may deem reasonably necessary in connection with its determination as to whether or not it will approve the same. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable development of any Lot. The Owner of Lot A shall notify the Owner of its approval or disapproval by written notice within thirty (30) days after a full and complete request for such consent is made in writing to the Owner of Lot A, and in the event the Owner of Lot A fails to disapprove any request within such thirty (30) day period, the request shall be deemed approved and upon request the Owner of Lot A shall give written notice of such approval. In consenting to any plans or specifications, the Owner of Lot A may condition such consent upon changes being made to the same. If the Owner of Lot A consents to any plans and specifications, the Owner may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the Owner of Lot A, and subject to any conditions of the Owner of Lot A's approval. Any and all improvements shall be subject to any and all applicable governmental approvals, including, but not limited to, approval by the Town of Lake Park, Florida.

Section 5. No Liability. The Owner of Lot A (or any Owner) shall not be liable to any Owner in connection with the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the Owner of Lot A shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects,

or in fact meet any standards, guidelines and/or criteria of the Owner of Lot A, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the Owner of Lot A shall not be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

Section 6. Remedy for Violations. In the event this Section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the Owner of Lot A, as the case may be, or is not made in strict conformance with any approval granted by the Owner of Lot A, the Owner of Lot A shall specifically have the right to demand that an Owner stop, remove and/or alter any alteration, addition, improvement or change in a manner which complies with the requirements of the Owner of Lot A, and the Owner of Lot A may pursue injunctive relief or any other legal or equitable remedy available to the Owner of Lot A in order to accomplish such purposes. Any action to enforce this Section must be commenced within one (1) year after the date of the violation. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Owner of Lot A or the Owner of any Lot subject to this Declaration, and their assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of 100% of the Lots and an instrument signed by the then Mortgagees of 100% of the mortgaged Lots have been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part. Any such termination shall be subject, however, to the prior approval of the Town of Lake Park.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended only by the written consent of all of the Lot Owners. Every amendment must have the written joinder and consent of the Owner of Lot A for so long as the Owner of Lot A owns any portion of the Properties. Any amendment must be recorded in the Public Records of Palm Beach County, Florida. No amendment may prejudice or impair the rights or priorities of Institutional Lenders granted hereunder unless all Institutional Lenders join in the execution of the amendment.

Section 4. Effective Date. This Declaration shall become effective upon its recordation in the Palm Beach County Public Records.

Section 5. Modifications. No modifications to the Common Area, including without limitation the erection of signs or other improvements not heretofore existing on the date hereof, shall be erected or constructed in the Common Area without the written approval of Owner of Lot A.

Section 6. Granting of Additional Rights. No Owner may grant easements, or additional rights in and to the Common Area without the express written permission of the other Owners.

Section 7. Eminent Domain. In the event the whole or any part of the Common Area shall be taken by eminent domain or similar authority of law, the award for the value of the land and improvements so taken shall belong to the parties hereto in the same proportion as provided for respective maintenance responsibility in Article IV, Section 1-B above.

Section 8. Successor in Interest and Other Parties. The obligations and covenants hereunder are not personal to the Owners, but run with the title to the Property and all portions thereof and are appurtenant to title within the Property and all portions thereof. Therefore, this Declaration shall be binding upon the successors in interest in title of the Owners, together with their respective successors and assigns, including, without limitation, all subsequent Owners whether or not so expressed in the instrument of conveyance or any other instrument.

Section 9. Waiver. Failure of an Owner to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Owner's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Declaration.

EXECUTED on the date first above written.

Signed, sealed and delivered
in the presence of:

SC LAKE PARK ASSOCIATES, LLLP,
Florida limited liability limited partnership

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

Mailing Address: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by _____, as _____ of SC LAKE PARK ASSOCIATES, LLP, a Florida limited liability limited partnership, on behalf of the foregoing limited liability partnership. He is personally known to me OR has produced _____ as identification.

[SEAL]

Notary Public – State of _____
My commission expires: _____
Commission Number: _____

JOINER AND CONSENT BY MORTGAGEE

The undersigned Mortgagee does hereby join in and consent to the foregoing Declaration of Restrictions, Cross Access and Parking Easements for the Plaza at Lake Park and agrees that the lien of the following described collateral documents and any other security or financing agreements held by said Mortgagee on said property, or any portion thereof, are hereby subject, subordinate and inferior to this Declaration, as may be amended or supplemented from time to time, said collateral documents being described as follows, all of which have been recorded in the Public Records of Palm Beach County, Florida: (a) that certain Mortgage, _____ recorded _____ in Official Records Book _____, Page _____; (b) that certain Assignment of Leases and Rents recorded in Official Records Book _____, Page _____; and (c) that certain UCC-1 Financing Statement recorded _____ in Official Records Book _____, Page _____.

The undersigned has caused this Joinder and Consent by Mortgagee to be executed by its duly authorized officer this ____ day of _____, 2010.

WITNESSES:

Print Name: _____

Name: _____

Title: _____

Mailing Address: _____

Print Name: _____

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 2010 before me, the undersigned officer, personally appeared _____, who is personally known to me, and who executed the foregoing instrument, as _____ of _____. The servicer and attorney-in-fact for _____ and acknowledged to and before me that he/she executed such instrument as such officer, and that said instrument is the free act and deed of _____ as said servicer and attorney in fact.

[SEAL]

Notary Public – State of _____
My commission expires: _____
Commission Number: _____

EXHIBIT "B"
TO
DECLARATION OF RESTRICTIONS, CROSS ACCESS AND PARKING EASEMENTS FOR
THE PLAZA AT LAKE PARK

PROPERTY SUBJECT TO DECLARATION

LEGAL DESCRIPTION:

All of the Plat of 6801 Lake Worth Road as recorded in Plat Book _____, Page _____, of the Public Records of Palm Beach County, Florida, formerly described as follows:

LOT A:

A PORTION OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID NORTHWEST ONE-QUARTER (NW 1/4); THENCE SOUTH 01°19'35" WEST, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER (NW 1/4), A DISTANCE OF 60.00 FEET; THENCE SOUTH 88°29'40" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAKE PARK ROAD WEST AS DESCRIBED IN OFFICIAL RECORDS BOOK 2290, PAGE 1011, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, SAID RIGHT-OF-WAY LINE BEING 60.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 20, A DISTANCE OF 506.72 FEET; THENCE SOUTH 01°29'28" WEST, A DISTANCE OF 9.00 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 88°29'40" EAST, A DISTANCE OF 13.77 FEET; THENCE SOUTH 50°30'01" EAST, A DISTANCE OF 8.41 FEET; THENCE NORTH 01°30'20" EAST, A DISTANCE OF 5.18 FEET; THENCE SOUTH 88°29'40" EAST, A DISTANCE OF 16.10 FEET; THENCE NORTH 01°30'20" EAST, A DISTANCE OF 9.00 FEET, THE LAST FIVE DESCRIBED COURSES BEING COINCIDENT WITH THE SOUTH RIGHT OF WAY LINE OF LAKE PARK ROAD WEST, AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 22296, PAGE 1317, OF SAID PUBLIC RECORDS; THENCE SOUTH 88°29'40" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAKE PARK ROAD WEST AS DESCRIBED IN OFFICIAL RECORDS BOOK 2290, PAGE 1011, OF SAID PUBLIC RECORDS, A DISTANCE OF 146.20 FEET; THENCE SOUTH 74°59'30" EAST, ALONG THE SOUTH LINE OF LOT 121, AS DESCRIBED IN THAT CERTAIN ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 10888, PAGE 1537 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, A DISTANCE OF 51.39 FEET TO A POINT OF 72.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 20; THENCE SOUTH 88°29'40" EAST, CONTINUING ALONG THE SOUTH LINE OF SAID LOT 121, A DISTANCE OF 159.76 FEET TO A POINT BEING AT THE INTERSECTION OF A LINE 72.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 20 AND TO A LINE BEING 200.00 FEET WEST OF THE WESTERLY R/W LINE OF DIXIE HIGHWAY AS MEASURED ALONG THE LAST DESCRIBED COURSE; THENCE

SOUTH 14°56'40" EAST ALONG A LINE PARALLEL TO SAID WESTERLY R/W LINE OF DIXIE HIGHWAY, A DISTANCE OF 127.06 FEET; THENCE SOUTH 88°29'40" EAST, A DISTANCE OF 200.00 FEET TO A POINT ON THE SAID WESTERLY R/W LINE OF SAID DIXIE HIGHWAY; THENCE SOUTH 14°56'40" EAST ALONG THE WESTERLY R/W LINE OF DIXIE HIGHWAY, A DISTANCE OF 501.92 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ONE-HALF (N 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 20; THENCE NORTH 88°29'28" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 759.44 FEET; THENCE NORTH 01°29'05" EAST, A DISTANCE OF 304.04 FEET; THE LAST DESCRIBED COURSE BEING ALONG A SOUTHERLY EXTENSION OF THE WEST EXTERIOR WALL AND THE NORTHERLY EXTENSION OF THE EXISTING ONE STORY COMMERCIAL (BIG K-MART) BUILDING; THENCE NORTH 88°30'36" WEST, A DISTANCE OF 10.92 FEET; THENCE NORTH 01°29'28" EAST, A DISTANCE OF 302.15 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE TOWN OF LAKE PARK, PALM BEACH COUNTY, FLORIDA, CONTAINING 383,484 SQUARE FEET OR 8.804 ACRES MORE OR LESS.

TOGETHER WITH:

LOT B:

A PORTION OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID NORTHWEST ONE-QUARTER (NW 1/4); THENCE SOUTH 01°19'35" WEST, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER (NW 1/4), A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 88°29'40" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAKE PARK ROAD WEST AS DESCRIBED IN OFFICIAL RECORDS BOOK 2290, PAGE 1011, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, SAID RIGHT-OF-WAY LINE BEING 60.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 20, A DISTANCE OF 172.30 FEET; THENCE SOUTH 76°01'30" EAST, A DISTANCE OF 41.68 FEET; THENCE SOUTH 88°29'40" EAST, A DISTANCE OF 109.76 FEET, THE LAST TWO (2) DESCRIBED COURSES BEING COINCIDENT WITH THE SOUGHT RIGHT-OF-WAY LINE OF LAKE PARK ROAD WEST AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 22296, PAGE 1317 OF SAID PUBLIC RECORDS, THENCE SOUTH 01°30'20" WEST, A DISTANCE OF 143.00 FEET; THENCE SOUTH 88°29'40" EAST, A DISTANCE OF 159.00 FEET; THENCE NORTH 01°30'20" EAST, A DISTANCE OF 143.00 FEET; THENCE SOUTH 88°29'40" EAST, ALONG SAID SOUTH RIGHT-OF-WAY-LINE, A DISTANCE OF 23.96 FEET; THENCE SOUTH 01°29'28" WEST, A DISTANCE OF 302.15 FEET; THENCE SOUTH 88°30'36" EAST, A DISTANCE OF 10.92 FEET; THENCE SOUTH 01°29'05" WEST, A DISTANCE OF 304.04 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ONE-HALF (N 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 20, THE LAST DESCRIBED COURSE BEING ALONG THE NORTHERLY EXTENSION OF THE WEST EXTERIOR WALL AND THE SOUTHERLY EXTENSION OF SAID WEST EXTERIOR WALL OF THE EXISTING

ONE STORY COMMERCIAL (BIG K-MART) BUILDING; THENCE NORTH 88°29'28" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 514.90 FEET TO A POINT ON THE WEST LINE OF NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 20; THENCE NORTH 01°19'35" EAST ALONG SAID WEST LINE, A DISTANCE OF 615.17 FEET, TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE TOWN OF LAKE PARK, PALM BEACH COUNTY, FLORIDA, CONTAINING 288,332 SQUARE FEET OR 6.619 ACRES MORE OR LESS.

TOGETHER WITH:

LOT C:

A PORTION OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID NORTHWEST ONE-QUARTER (NW 1/4); THENCE SOUTH 01°17'35" WEST, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER (NW 1/4), A DISTANCE OF 60.00 FEET; THENCE SOUTH 88°29'40" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAKE PARK ROAD WEST AS DESCRIBED IN OFFICIAL RECORDS BOOK 2290, PAGE 1011, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, SAID RIGHT-OF-WAY LINE BEING 60.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 20, A DISTANCE OF 172.30 FEET; THENCE SOUTH 76°01'30" EAST, A DISTANCE OF 41.68 FEET; THENCE SOUTH 88°29'40" EAST, A DISTANCE OF 109.76 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 88°29'40" EAST, A DISTANCE OF 159.00 FEET, THE LAST THREE (3) DESCRIBED COURSES BEING COINCIDENT WITH THE SOUTH RIGHT-OF-WAY LINE OF LAKE PARK ROAD WEST AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 22296, PAGE 1317 OF SAID PUBLIC RECORDS, THENCE SOUTH 01°30'21" WEST, A DISTANCE OF 143.00 FEET; THENCE NORTH 88°29'40" WEST, A DISTANCE OF 159.00 FEET; THENCE NORTH 01°30'20" EAST, A DISTANCE OF 143.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE TOWN OF LAKE PARK, PALM BEACH COUNTY, FLORIDA, CONTAINING 22,737 SQUARE FEET OR .522 ACRES MORE OR LESS.

4812-5189-4536 2
3812670001

Exhibit "B"

WAIVERS

PROPOSED WAIVERS TO REFLECT EXISTING SITE CONDITIONS

	Waiver#	Code Section (NBOZ or LP)	Description:	Required:	Existing:
1. Open Space	1	Section 6-2 (NBOZ)	Min. Open Space Required	15%	11%
2. Parking	2A	Section 78-142-1(LP)	Required No. of Parking Spaces	918 spaces	798 spaces
	2B	Section 6-2 (NBOZ)	Parking Setback	Front & Side Street: 10' Rear: 15'	3.3' & 8.82' 9'
	2C	Sec. 4-10 A.1 (NBOZ) Sec. 78-253(c)(1)(LP)	Parking area min. shade tree spacing	No Parking space more than 40' from shade tree	39 spaces affected
	2D	XXX	Landscape Islands	Required every 9 spaces	28 rows w/ more than 9 spaces in a row
3. Landscape	3A	Sec. 4-10 F1 (NBOZ) Sec. 78-253(h)(4) (LP)	Hedges/Screening	All parking, loading or storage areas shall have cont. 3' hedge	None provided loading
	3B	Sec. 4-11 (NBOZ) Sec. 78-253(h)(1) (LP)	Landscape Buffer Widths	R/W Buffer = 15' Min. (NBOZ) Perimeter Buffer = 8' Min. (LP)	5'-35' 8'-10'
	3C	Sec. 4-11 (NBOZ) Sec. 78-253(h)(2) (LP)	Planting – Buffer Trees	116 trees (NBOZ) 122 trees (LP)	85 Buffer Tree

Exhibit "C"

LIST OF USES

CONCEPTUAL

THE FOLLOWING USES ARE EXCLUSIVE TO LOT A:

BATTERIES PLUS: primary business is the operation of a battery supply store; provided, however, a convenience store, photography store, cell phone store or auto supply store will be allowed.

DOLLAR TREE STORES, INC.: a single price point variety retail store, and/or the operations with the word "Dollar" in their corporate and/or trade names.

GAMESTOP: primary use is the sale of new or used video games and video game systems. Primary Use will be defined as utilizing more than seventy-five (75) square feet of space as surface display area for the retail advertising or sale of said video games and/or video game systems.

LESLIE'S POOL SUPPLY: no other space containing less than eighteen thousand (18,000) square feet in the Property shall be used for the sale of swimming pool and spa supplies or swimming pools and spas. Notwithstanding the foregoing, other tenants may utilize no more than 100 square feet of their premises for the sale of competing items.

RAINBOW FASHION: primary use is to sell women's junior and children's apparel, and no other property in the Property will be permitted to change its use such that more than one thousand (1,000) square feet of space are used to sell women's junior and children's apparel.

PET SUPPLIES PLUS: primary business is the retail sale, for off premises consumption, of pet supplies, pet food and other pet related products. "Primary Business" is defined as deriving more than 5% of gross sales.

STAPLES, INC.: primary use is the sale or leasing of equipment (including computers and telecommunications equipment, furniture or supplies for business or office (including home office) use, or the provision of business or office services (including copying, printing, telecommunications, packing, shipping and business equipment repair services). No other space in the premises shall be used for such primary use.

THE FOLLOWING USES ARE EXCLUSIVE TO LOT B:

KMART CORPORATION: No part of the Property will be used: (i) as a discount department store having in excess of 66,000 square feet of floor area; (ii) for the sale of beer, wine or other alcoholic beverages for off-premises consumption; (iii) as a pharmacy or drug store requiring the services of a licensed pharmacist; (iv) as a discount footwear or retail shoe store unit (e.g., Payless, Shoe Carnival); or (v) a movie theatre. The foregoing restrictions will not apply to the sale of beer, wine or other alcoholic beverages in a grocery store or supermarket.

THE FOLLOWING USES ARE EXCLUSIVE TO LOT B:

CHICK-FIL-A: primary use is a restaurant selling or serving chicken as a principal menu item. For purposes hereof, "a restaurant selling or serving chicken as a principal menu item" shall mean any restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken. Further, no portion of the Property shall be leased, used or occupied by or for any of the following: Boston Market, Kenny Rogers, Kentucky Fried Chicken, Popeye's, Church's, Bojangles, Mrs. Winners, Tanner's, Chicken Out, Willie May's Chicken, Biscuitville, Zaxby's, Ranch One, El Pollo Loco, Koo-Koo Roo, Pollo Campero, Raising Cane's or Chester's.

THE FOLLOWING USES ARE PROHIBITED ANYWHERE ON THE PROPERTY:

No part of the Property, will be used for (i) any use which is a public or private nuisance; (ii) any use which produces noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness; (iii) any use which produces obnoxious odors; (iv) any use which produces dust, dirt or fly ash in excessive quantities; (v) any use which produces fire, explosion or other damaging or dangerous hazard (including the storage display or sale of explosives or fireworks); (vi) a warehouse; (vii) any assembling, manufacturing, industrial distilling, refining, smelting, agriculture or mining operation; (ix) any office use except ancillary to a retail use conducted from such site (excepting a doctor's office, dentist's office, insurance company office or real estate brokerage office); (x) a dry cleaning plant; (xi) living quarters, sleeping apartment or lodging rooms; (xii) any establishment selling or exhibiting pornographic materials; (xiii) a massage parlor or the sale, rental or display of "adult" materials, including, without limitation, magazines, books, movies, videos, and photographs; (xiv) a mortuary, funeral home or crematorium; (xv) any children's playground, play area or recreational Property, other than in connection with a "fast-food" restaurant or incidental to the use of the Demised Premises; (xvi) any lounge, tavern, nightclub, disco, discotheque, dance hall, strip show, restaurant or any business offering live entertainment of any kind, except for a restaurant such as Friday's, Bennigans, or Houlihans, or a sit down, family-style restaurant; (xvii) a pawn shop; (xviii) a flea market; (xix) a carnival, amusement park or circus; (xx) a casino, gaming hall, off-track betting facility or other gambling operation or facility; (xxi) a gymnasium, sport or health club or spa; (xxii) a gas station or car wash; (xxiii) a facility for the sale of new or used motor vehicles, trailers or mobile homes; (xxiv) a banquet hall, auditorium or other place of public assembly; (xxv) a training or educational facility (including, but not limited to, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers); (xxvi) a Laundromat; or (xxvii) a buffet-style restaurant.

No part of the Property will be used for any of the following: (i) tanning, health, exercise or racquet club or spa, gymnasium, bowling alley, skating rink or other sports or recreational facility; (ii) school, library, reading room, or house of worship; (iii) movie theatre, gallery, auditorium, meeting hall, hotel or motor inn, or any residential use; (iv) massage parlor, adult bookstore, a so-called "head" shop, off-track betting, gambling, gaming or check cashing facility; (v) car wash, automobile repair work or automotive service, automobile body shop, automobile, boat, trailer or truck leasing or sales, or Laundromat; (vi) tavern, bar amusement park, carnival, banquet facility, dance hall, disco, nightclub, or other entertainment facility, including video game, virtual reality or laser tag room or facility, pool hall, arcade, indoor children's recreational facility or other amusement Property; (vii) any manufacturing warehouse or office use (except incidental to a retail operation); (viii) funeral parlor, animal raising or storage (except incidental to a full-line retail pet supply operation, pawn shop, flea market or swap meet, junk yard; (ix) drilling for and/or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes; (x) adult entertainment; or (xi) any use which constitutes a public or private nuisance

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ORDINANCE NO. 04-2011

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE TOWN'S OFFICIAL ZONING MAP AND REZONING THE PROPERTY KNOWN AS THE K-MART PLAZA FROM C-1 TO PLANNED UNIT DEVELOPMENT ("PUD"); PROVIDING FOR WAIVERS; AND PROVIDING FOR AN EFFECTIVE DATE.

10 **WHEREAS**, the Town of Lake Park, Florida ("Town") is a duly constituted
11 municipality having such power and authority conferred upon it by the Florida
12 Constitution and Chapter 166, Florida Statutes; and

13 **WHEREAS**, the Town has adopted zoning regulations which have been codified
14 in Chapter 78 of the Town Code; and

15 **WHEREAS**, Town Code Section 78-77 allows for the creation of Planned Unit
16 Development (PUD) and the assignment of a PUD Zoning District to properties in the
17 Town; and

18 **WHEREAS**, Gentile Holloway O'Mahoney & Associates, Inc., as the agent for
19 the applicant, SC Lake Park Associates LLLP ("Applicant"), has submitted an
20 application proposing to rezone approximately 15.991 acres of developed land
21 ("Property") located on the southwest corner of Northlake Boulevard and Old Dixie
22 Highway from a C-1 Commercial Zoning District to a PUD Zoning District.

23 **WHEREAS**, Town staff and the Town's Planning and Zoning Board have
24 reviewed the proposed rezoning to PUD, together with the numerous waiver requests,
25 and have provided their respective recommendations to the Town Commission; and

26 **WHEREAS**, the Town Commission has conducted a duly noticed quasi-judicial
27 public hearing on the application at which time the Commission considered the evidence
28 presented by Town staff, the Town's Planning and Zoning Board, and other interested

1 parties and members of the public, and has determined that the proposed PUD
2 amendment be approved:

3 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION**
4 **OF THE TOWN OF LAKE PARK, FLORIDA THAT:**

5 **Section 1.** The whereas clauses are incorporated herein as the findings of fact and
6 conclusions of law of the Town Commission.

7 **Section 2.** The Town Commission hereby approves the amendment of the
8 Town's Official Zoning Map for the Property to change the zoning from C-1 to PUD.
9 The Town Commission also approves the waivers requested by the Applicant.

10 **Section 3.** This Ordinance shall take effect upon adoption.



GENTILE
HOLLOWAY
O'MAHONEY
& ASSOCIATES, INC.
Landscape Architects
Planners and Environmental
Consultants • LC-0000177

George G. Gentile, FASLA
M. Troy Holloway, ASLA
Emily O'Mahoney, ASLA

K-Mart Retail Plaza Rezoning

Town of Lake Park, Florida JUSTIFICATION STATEMENT

November 16, 2010

REVISED 5-11-11

REQUEST/LOCATION:

Gentile Holloway O'Mahoney & Associates, Inc. as agent for the applicant is requesting a rezoning for the K-Mart Shopping Center located at the southwest corner of Northlake Boulevard and Dixie Highway. Approval of the rezoning request will allow the applicant to utilize the design flexibility within the PUD section of the Town's code to address the site's existing conditions. Additionally this permits the property owner to create separate tracts within the PUD and encourage future reinvestment of the property. Currently, the applicant is not proposing any additional improvements to the property or increasing the existing square footage at this time.

The shopping center is located on a 15.991-acre parcel and has a Commercial Land Use Designation and a C-1 General Commercial Zoning Designation. The site is also within the boundaries of the Northlake Boulevard Overlay Zone, Central Sub-District.

PROJECT HISTORY

The project was originally constructed in 1974. The primary use since 1974 has been the K-Mart retail store. The remaining bays have seen a variety of end users since that time, but the overall appearance of the center had remained untouched until recently. Within the last 10 years, the property owners have sought approval from the Town for significant landscape and architectural improvements as well as the addition of the Chick-Fil-A fast food restaurant in 2008. Since 2008, the applicant has worked diligently to fill all the vacancies during an extremely difficult market period. During this time, the applicant was the catalyst to updating the PUD Ordinance in order to specifically address this property. The current owner is looking to continue promoting the economic opportunities of the shopping center and continue working with the Town to bring jobs and new business to the Town.

CONSISTENCY WITH COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE:

The proposed rezoning to PUD is consistent with the Commercial Land Use Designation and will not have any adverse impact the existing surrounding area. Northlake Boulevard is a commercial corridor and the rezoning to PUD is not intended to alter the commercial

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designation or uses on the site. The site is surrounded by other commercial and industrial uses.

The proposed rezoning is consistent with the intent of the PUD... in instances where it is often difficult or impossible to meet the conventional zoning regulations...it provides a method where the property is looked at as a unit rather than a lot by lot basis... provides an opportunity to more fully utilize the physical characteristics of the site through the reduction of waivers.

SURROUNDING ZONING AND LAND USE DESIGNATIONS

	EXISTING ZONING	EXISTING FLU
SUBJECT PROPERTY	C-1	Commercial
NORTH	CG (PBC)	CH/8 (PBC)
EAST	C-1	Commercial
SOUTH	C-4	Commercial/Light Industrial
WEST	PUD (PBG)	Commercial (PBG)

Along with creating a mechanism to allow the owner to subdivide within the shopping center, approval of the rezoning to PUD will allow the applicant to establish variations from code. As a PUD the center will still operate as a single approval. Section 78-77 4(a) states that a *“pre-existing commercial development may convert its site to a PUD in order to provide for the subdivision of individual lots within the boundaries of the newly created PUD. Such a request shall not be required to conform to the regulations of this subsection 4, as part of such a request as long as no development is proposed.”* Furthermore Section 78-77 1(i) also permits waiver of standard land development regulations. It is our intent to identify the waivers in order to reflect the existing conditions on the site as part of the rezoning. The NBOZ also permits waivers to the NBOZ regulations per Section 1-4 D(1) which states: *“waivers from the NBOZ regulations may be granted by the applicable reviewing jurisdiction in accordance with the applicable jurisdiction’s procedures for granting waivers from its own code.”*

K-Mart Retail Plaza Rezoning

Town of Lake Park, Florida

Summary of Waivers

April 19, 2011

The attached exhibit highlights the areas of variation, waivers from the code that are currently approved on the site. This plan serves to demonstrate the design standards that were used to develop the site. The waivers are primarily related to the parking areas as the number of trees, their placement and the number of parking islands, which are not consistent with standard code requirements. The exhibit also demonstrates that in areas where the current approved plan fails to meet standard code, there are companion areas that exceed the same code requirement. For example the parking lot staggers the island placement and tree placement in a different design pattern. Thus, the exhibit shows areas with 12 spaces in a row that don't meet code but they are adjacent to others with 7 parking spaces in a row before an island which exceeds code. Thus demonstrating that the PUD; and its waiver provision permit more flexibility in design. Other variations include the fact that the site is now under newer code provisions created by the Northlake Boulevard Overlay Zone (NBOZ.)

The waivers represent the conditions, as approved. No new requests are being made at this time. The rezoning to PUD is being done to allow for the individual ownership of parcels within the overall development plan while maintaining the integrity of the overall plan. Additionally, the rezoning to PUD allows the opportunity to create a clear record of the existing conditions with the site plan by documenting the design standards of the approved plan.

It should be further noted that consistent with the provisions of the PUD, specifically Section 78-77 4(a), the code states: "A pre-existing development may convert its site to a PUD in order to provide for the subdivision of individual lots within the boundaries of the newly created PUD. Such a request **shall not be required to conform to the regulations of this subsection 4 as part of such a request as long as no development is proposed.** Any development or future development within the PUD site shall conform to the regulations in this subsection 4 and all other applicable provisions of the PUD regulations as set forth here in." At this time the applicant is not proposing any development, and thus is consistent with this policy.

Again we would respectfully request your approval of the rezoning request to PUD, and the associated waivers, which are a representation of the existing conditions that enabled this site to develop.

PROPOSED WAIVERS TO REFLECT EXISTING SITE CONDITIONS

	Waiver#	Code Section (NBOZ or LP)	Description:	Required:	Existing:
1. Open Space	1	Section 6-2 (NBOZ)	Min. Open Space Required	15%	11%
2. Parking	2A	Section 78-142-1(LP)	Required No. of Parking Spaces	918 spaces	798 spaces
	2B	Section 6-2 (NBOZ)	Parking Setback	Front & Side Street: 10' Rear: 15'	3.3' & 8.82' 9'
	2C	Sec. 4-10 A.1 (NBOZ) Sec. 78-253(c)(1)(LP)	Parking area min. shade tree spacing	No Parking space more than 40' from shade tree	39 spaces affected
	2D	Sec 4-10 B (NBOZ)	Landscape Islands	Required every 9 spaces	28 rows w/ more than 9 spaces in a row
3. Landscape	3A	Sec. 4-10 F1 (NBOZ) Sec. 78-253(h)(4) (LP)	Hedges/Screening	All parking, loading or storage areas shall have cont. 3' hedge	None provided loading
	3B	Sec. 4-11 (NBOZ) Sec. 78-253(h)(1) (LP)	Landscape Buffer Widths	R/W Buffer = 15' Min. (NBOZ) Perimeter Buffer = 8' Min. (LP)	5'-35' 8'-10'
	3C	Sec. 4-11 (NBOZ) Sec. 78-253(h)(2) (LP)	Planting – Buffer Trees	116 trees (NBOZ). 122 trees (LP)	85 Buffer Tree

It should be noted that both the Town of Lake Park and NBOZ adopted architectural guidelines subsequent to this shopping center's more recent architectural improvements. While the center meets the intent of the general architectural provisions, it does not fully comply with all the current policies. Thus a general waiver to the architectural guidelines may be warranted.

Of further note, the Landscape Sections of both the NBOZ and the Town's Code, permit the continuation of existing non-conforming so long as there is no increase to the existing square footage, number of structures or increase in building height. Again, the intent of the rezoning request is not to increase the existing commercial intensity.

APPLICATION REQUIRED INFORMATION:

1) What is the nature of the request?

As stated above the applicant is requesting to rezone the property to PUD. This will allow the applicant to document existing site conditions with the current code.

via waivers and provide a mechanism that will encourage continued investment into the site by permitting internal subdivision.

2) The Requested Change Would Be Consistent with the Land Use Plan and would not have an adverse affect on the Comprehensive Plan?

The rezoning to PUD will have zero impact on the surrounding area and is consistent with the Town's Comprehensive Plan. By providing additional means for continued investment, the request may result in a positive impact on surrounding community.

3) The Requested Change is Consistent with the Land Use Pattern.

The surrounding land use pattern is a mix of commercial and industrial uses. Since 1974 the site has operated as a commercial shopping-center with K-Mart as its anchor tenant and the proposed rezoning is not intended to change the use of the property.

4) That the requested change will not result in an increase or overtaxing of public facilities.

There is no proposed new construction in terms of number of buildings or increased square footage on the site, thus no additional impact as the current concurrency approvals will remain in place. This is simply a rezoning to PUD.

5) That the requested change will not adversely impact Public Safety.

The request will not change the use or intensity that currently exists on the site. Public Safety will not be adversely impacted.

6) That the requested change will not adversely impact living conditions in the neighborhood or surrounding areas

The site is located within of the Town's primary commercial corridors and is not adjacent to any residential uses. The proposed request will not have any impact on living conditions within the surrounding area.

7) That there are substantial reasons why the property cannot be used in accord with existing zoning.

The use on the property will continue under the proposed PUD zoning. The PUD will allow opportunity to invite continued investment and provides flexibility from existing code provisions.

8) Whether the requested change will constitute a grant of special privilege to an individual land owner as contrasted with the public welfare.

The request to rezone to PUD in order to subdivide and address existing site conditions does not grant a special privilege, as rezoning to PUD has been granted to other land owners within the Town. A property to the west of the subject site (Target) is a PUD as is Earl Stewart Toyota. It was useful to apply the PUD to

both sites in order to provide the design flexibility necessary to accommodate the proposed development/redevelopment that was not afforded by the standard code. Again the standard code does not provide the flexibility needed to address the existing site conditions and limits the applicant's ability to continue to market the center over time..

CONCLUSION:

As stated throughout this Justification Statement, the approval of the rezoning to PUD will create greater flexibility to address current site conditions and to allow the property owner to continue marketing and investing in the center to keep it full and active for now and in the future. While we have addressed code variation, the applicant is not looking to increase square footage or intensity and is thus not required to bring the site into conformance at this time. The PUD will enable the Town and the applicant or a future applicant the ability to negotiate and work on addressing site and code related issues in the future. In the mean time the waivers will legitimize the existing conditions, many of which have been on the site since its approval in 1974. Therefore, on behalf of client, Gentile, Holloway, O'Mahoney & Associates, Inc. respectfully request approval of the proposed PUD and waivers as presented at this time.