

**ORDINANCE 2009 – 30**

**AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM VOLUSIA COUNTY'S R-3, URBAN SINGLE FAMILY RESIDENTIAL AND R-3C, URBAN SINGLE FAMILY RESIDENTIAL WITH THOROUGHFARE OVERLAY TO CITY'S PD, PLANNED DEVELOPMENT, ON PROPERTY LOCATED ON THE SOUTH SIDE OF WEST INTERNATIONAL SPEEDWAY BOULEVARD APPROXIMATELY 300' FROM STATE ROAD 15A, APPROVING A PLANNED DEVELOPMENT PLAN CONSISTING OF APPROXIMATELY ± 13.72 ACRES OF PROPERTY; MAKING FINDINGS OF CONSISTENCY WITH THE COMPREHENSIVE LAND USE PLAN FOR THE CITY OF DELAND; DIRECTING CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT APPROVAL ON A DETERMINATION OF CONCURRENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Miller Brothers Properties, LTD, (hereinafter referred to as "Applicant"), owns ± 13.72 acres of land located on the south side of West International Speedway Boulevard approximately 300' from State Road 15A, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

**WHEREAS**, the Applicant has applied for a change of zoning from the present zoning classification of Volusia County's R-3, Urban Single Family Residential and R-3C, Urban Single Family Residential with Thoroughfare Overlay to City's PD, Planned Development District; and

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

**WHEREAS**, the Applicant has submitted an application for the approval of a development plan in order to develop the property for Commercial purposes to encompass all of the property described in Exhibit "A" (hereinafter the "Property" or the "Project"); and

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

**WHEREAS**, the proposed development plan is consistent with the Business Retail land use designation which encourages intensified development in outlying or newly developed areas for a variety of commercial and office needs; encourages clustering of new development to promote shared facilities and access and to discourage linear development along collector and arterial level roadways; permits cost effective delivery of services; and requires properly designed ingress and egress to avoid undue traffic hazards or congestion.

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

**Section 1.** The City Commission has held a public hearing to approve the change of zoning from Volusia County's R-3 Urban Single Family Residential and R-3C, Urban Single Family Residential with Thoroughfare Overlay to City's PD, Planned Development, on the property located on the south side of West International Speedway Boulevard approximately 300' from State Road 15A, to develop the property for commercial purposes.

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

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

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

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

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

**Section 7.** Pursuant to Article 5 of the City's Land Development Regulations, the Applicant shall comply with all applicable infrastructure regulations.

**Section 8.** The City Commission may rezone any portion of the Project which has not obtained a site plan or preliminary plat approval within five years from the date of adoption of this Ordinance.

**Section 9.** Prior to the issuance of a building permit for any nonresidential development, Applicant shall submit an easement document, acceptable to the City of DeLand, permitting additions to shared access, parking, utilities, and stormwater.

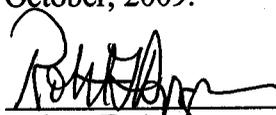
**Section 10.** The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

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

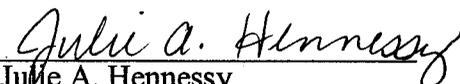
**Section 12.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

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

**PASSED AND DULY ADOPTED** this 19<sup>th</sup> day of October, 2009.

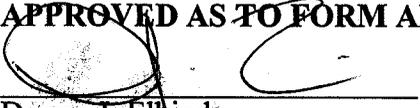
  
\_\_\_\_\_  
Robert F. Apgar  
Mayor - Commissioner

**ATTEST:**

  
\_\_\_\_\_  
Julie A. Hennessy  
City Clerk - Auditor

Passed on first reading: August 17, 2009  
Adopted on second reading: October 19, 2009

**APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
Darren J. Elkind  
City Attorney

2MLP-J1/BNDRY DESC/02-16-09/LAT

**DESCRIPTION:**

ALL OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4479, PAGES 2766-2768, AND OFFICIAL RECORDS BOOK 6278, PAGES 71-75, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LOCATED IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 01°33'05" EAST, ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 1050.50 FEET, TO A POINT ON THE WESTERLY EXTENSION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 92 (INTERNATIONAL SPEEDWAY BOULEVARD), A 200.00 FOOT RIGHT-OF-WAY; THENCE NORTH 88°58'50" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 378.64 FEET, TO THE NORTHWEST CORNER OF AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4479, PAGES 2766-2768, ALSO BEING THE NORTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4395, PAGE 110, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND THE POINT OF BEGINNING; THENCE CONTINUE NORTH 88°58'50" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 949.05 FEET, TO A POINT ON THE EAST LINE OF THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF OF SAID SECTION 5, SAID POINT ALSO BEING ON THE WEST LINE OF SCARLETT SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN DEED BOOK G, PAGE 660 AND MAP BOOK 12, PAGE 141, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 01°31'21" EAST, ALONG SAID LINE, A DISTANCE OF 633.37 FEET, TO THE NORTHEAST CORNER OF CASCADES PARK PHASE 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 49, PAGES 178-179, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 89°34'00" WEST, ALONG THE NORTH LINE THEREOF, AND ALONG THE NORTH LINE OF CASCADES PARK PHASE 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 50, PAGES 61-62, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, A DISTANCE OF 953.06 FEET, TO THE SOUTHWEST CORNER OF AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 6278, PAGES 71-75, ALSO BEING THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3319, PAGES 1391-1392, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE NORTH 01°09'59" WEST, ALONG THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3319, PAGES 1391-1392, AND ALONG THE EAST LINE OF AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4395, PAGE 110, A DISTANCE OF 623.60 FEET, TO THE POINT OF BEGINNING.

CONTAINING 13.72 ACRES, MORE OR LESS.

2.09.32

**Received**

APR 20 2009

Planning & Zoning

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PLANNED DEVELOPMENT AGREEMENT

IN THE CITY COMMISSION OF THE

CITY OF DELAND, FLORIDA

IN RE: Z-09-32, Application of

MILLER BROTHERS PROPERTIES, LTD

ORDINANCE # 2009- 30

ORDER AND RESOLUTION

GRANTING A REQUEST FOR CHANGE OF ZONING FROM

VOLUSIA COUNTY R-1 & R-3C TO

MILLER PD (PLANNED DEVELOPMENT)

The application of Miller Brothers Properties, LTD, hereinafter, "Applicant", for rezoning was heard by and before the City Commission, DeLand Florida, on August 17, 2009 and October 19, 2009. Based upon the verified Application and other supporting documents, maps, charts, overlays, other evidence and instruments; the advice, report, and recommendations of the Community Development, and other Departments and agencies of DeLand, Florida; and the testimony adduced and evidence received at the Public Hearing on this Application by the Planning Board on July 15, 2009, and otherwise being fully advised, the City Commission does hereby find and determine as follows:

GENERAL FINDINGS

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A. That the application of Miller Brothers Properties, LTD was duly and properly filed herein on February 16<sup>th</sup>, 2009 as required by law.

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

C. That the applicant is the owner of a 13.7 acre parcel of land which is situated in DeLand, Florida. This parcel of land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

D. That the Applicant has complied with the concept plan provision as required by Land Development Regulations Ordinance # 2002-09, as amended.

E. That the Applicant has complied with the "Due Public Notice" requirements of the City Commission, Land Development Regulations Ordinance # 2002-09, as amended.

FINDINGS REGARDING REZONING

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A. That the Applicant has applied for a change of zoning from the present zoning classifications of the parcel described in Exhibit "A" from Volusia R-3 & R-3C (Urban Single-Family Residential) to Miller PD (Planned Development).

B. That the said rezoning to a PD is consistent with both the City of DeLand Comprehensive Plan Ordinance # 1990-04, as amended, and the intent and purpose of the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY COMMISSION CHAMBERS, 120 SOUTH FLORIDA AVENUE, DELAND, FLORIDA, THIS 19<sup>th</sup> DAY OF OCTOBER, 2009, AS FOLLOWS:

A. That the Application of Miller Brothers Property, LTD for the rezoning of the subject parcel is hereby granted.

B. That the zoning classification of the subject parcel described in Exhibit "A" attached hereto is hereby amended from R-3 & R-3C to Miller PD as described in Article IV, Section 33-32 of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

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C. That the Official Zoning Map of the City of DeLand, is hereby amended to show the rezoning of said parcel to Miller PD.

D. That the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, is consistent with the provisions of the "Development Agreement" as hereinafter set forth in this Ordinance and with respect to any conflict between Land Development Regulations Ordinance # 2002-09, as amended, and the "Development Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No. 02-09, as amended, shall govern with respect to any matter not covered by the "Development Agreement." The City of DeLand, will ensure overall compliance with this Ordinance.

E. Unless otherwise provided for herein the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended, shall apply to the PD in the same manner as the Business Retail zoning classification.

F. Nothing in this Ordinance shall abridge the requirements of any City of DeLand Ordinance other than Ordinance 2002-09, as amended. Timing and review procedures contained in this Order and Resolution may be modified to comply with the City of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended. Further, nothing in the Development Agreement is intended to abridge the requirements of Ordinance No. 2002-09, as amended, and any other City Ordinances.

DEVELOPMENT AGREEMENT

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A. Development Concept the property shall be developed as a PD substantially in accordance with the Planned Development Plan. The Planned Development Plan shall govern the development of the property as a PD and shall regulate the future land use of this parcel.

1. Planned Development Plan The Planned Development Plan shall consist of the Development Plan Map prepared by Bowyer-Singleton & Associates, Inc. dated June 22, 2008 and this development agreement. The Planned Development Plan is hereby approved and incorporated in this Ordinance by reference as Exhibit "B". The Planned Development Plan shall be filed and retained for public inspection in the Planning Department and it shall constitute a supplement to the Official Zoning Map of the City of DeLand.

2. Amendments. All amendments of the Planned Development Plan, other than those deemed by the Planning Department to be minor amendments as set out in the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended, shall require the review and recommendation of the Planning Board and action by the City Commission in the same manner as a rezoning of the parcel.

3. Subdivision Approval. After the Planned Development Plan is recorded, and prior to any construction, including clearing and landfill, a preliminary and final plat of the area to be subdivided shall be submitted for review and approval in the manner required by Article 13 of the City of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended.

4. Final Site Plan Approval. Prior to the development of individual lots

1 not designed and permitted as part of the platting, a Final Site Plan shall be prepared and  
2 submitted for review and approval in the manner required by Article 12 of the City of  
3 DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

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5 B. Unified Ownership. The Applicant or his successors shall maintain unified  
6 ownership of the subject parcel until after the recording of the Final Plat.

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8 C. Phases of Development. The site may be constructed in phases. It is the  
9 intent that the developer be given the flexibility to develop any lot, so long as the necessary  
10 common area infrastructure necessitated by that lot is constructed prior to or in conjunction  
11 with the development of that lot. During the site planning and construction of each lot,  
12 unless previously constructed, the portion of the master sanitary sewer, water, storm and  
13 road systems needed to provide services to that lot shall be designed, permitted and  
14 constructed. The first lot developed will require the design, permitting and construction of  
15 the stormwater pond for the entire site, the lift station, force main connection to the city  
16 system, the gravity sanitary sewer system necessary for that lot down to the lift station, the  
17 water trunk line from the connection to the city system back to the lot and require paving  
18 the access road from the closest of the two access points on CR 92 identified in the  
19 Planned Development Plan to the farthest limit of the lot being developed. Each  
20 subsequent phase will require that the sanitary sewer, water system, and access be  
21 expanded to reach that particular lot and carried to the furthest limit of that lot.

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23 D. Land Uses Within the PD. All uses allowed under the City of DeLand's  
24 Business Retail zoning classification, as the same may be amended from time to time,

1 shall be allowed within this PD with the exception of the following uses, which shall be  
2 permitted only as conditional uses requiring City Commission Approval in Tract A: catering  
3 service and cafeterias; communication towers; day care facilities; drugstores and  
4 pharmacies; hotels, motels, may include restaurants or conference facilities; mortuary,  
5 funeral homes, and crematoriums; photographic, art, dance, gymnastics, music supplies,  
6 studios, and shops; restaurants, including drive-through facilities and fast food; theaters  
7 and assembly halls; and grocery, vegetable, fruit, fish, meat, milk, dairy, and poultry  
8 products retail sales in excess of 15,000 sq. feet. In addition, any business located on  
9 Tract A may only be operated between the hours of 7:00 a.m. and 9:00 p.m., 365 days per  
10 year. No other uses shall be allowed.

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12 E. Development Standards.

- 13 1. Minimum lot area: 1 acre
- 14 2. Minimum lot width and/or depth: 180 ft.
- 15 3. Minimum building setback:
  - 16 Perimeter: 40 ft.
  - 17 Dumpsters and their enclosures shall not be allowed in the setback
  - 18 area unless the dumpster is located between
  - 19 commercially zoned areas.
  - 20 Internal:
    - 21 a. Front: 20 ft.
    - 22 b. Rear: 10 ft.
    - 23 c. Side: 10 ft.
- 24 4. Maximum floor area ratio (FAR): 0.25
- 25 5. Maximum lot coverage: 70%
- 26 6. Maximum building height: 35 ft.
- 27 7. Landscape buffer requirements:
  - 28 Perimeter:

1 Adjacent to CR 92: 40 ft.

2 Planting types, sizes and quantity shall meet or exceed the  
3 Emerging Corridor Landscape requirements and minimum  
4 requirements stated in Sections 33-96 and 33-92 of the City of  
5 DeLand, Land Development Regulations Ordinance # 2002-  
6 09, as amended.

7 Eastern Boundary: 25 ft.\*

8 \*If the zoning of the adjacent parcel changes to a commercial  
9 zoning type then this buffer becomes 0 ft.

10 Planting types, sizes and quantity shall meet or exceed the  
11 minimum requirements of City of DeLand, Land Development  
12 Regulations Ordinance # 2002-09, as amended.

13 Western Boundary: 0 ft.

14 Planting types, sizes and quantity shall meet or exceed the  
15 minimum requirements of City of DeLand, Land Development  
16 Regulations Ordinance # 2002-09, as amended.

17 Southern Boundary: 25 ft.

18 A wall at least 7 ft. in height from pre-development grade is to  
19 be constructed in the southern 10 ft. of this buffer. The final  
20 materials for construction and design of the wall are subject to  
21 City Commission approval. The existing healthy trees and  
22 natural vegetation in this buffer are to be preserved. Exception  
23 is made for the purposes of constructing the wall. The wall  
24 shall be constructed contemporaneously with any  
25 development of Tract A.. In the event that either two (2)  
26 outparcels or 50% or more of the area designated for  
27 outparcels on the Planned Development Plan are developed  
28 prior to the development of Tract A, then a 6' high chain link  
29 fence must be erected from the west property line to the east  
30 property line, and south of the area designated for outparcels  
31 and any internal roadways. Said fence shall be removed when  
32 the permanent wall is constructed pursuant to the

requirements of this Planned Development Agreement.  
Consistent with good tree planting methodologies, as part of  
the development of Tract A, as many as possible of the trees  
required to be planted to develop that Tract shall be planted  
within this landscape buffer. Planting types, sizes and quantity  
shall meet or exceed the minimum requirements of City of  
DeLand, Land Development Regulations Ordinance # 2002-  
09, as amended.

- 8. Minimum building separation: 25 ft.  
Front to rear: 50 ft.
- 9. Off-street parking requirements:  
Minimum Vehicle Use Separation: 2 ft. from interior lot line  
With the exception of meeting the vehicle use separation  
requirement, the site shall meet or exceed the minimum  
requirements of Section 33-91, of the City of DeLand, Land  
Development Regulations Ordinance # 2002-09, as amended.
- 10. Signage requirements:  
Shall meet or exceed the minimum requirements of Article VII  
of the City of DeLand, Land Development Regulations  
Ordinance # 2002-09, as amended. An additional sign shall be  
allowed in the access easement to State Road 15A of no  
larger than 64 sq. ft.
- 11. Open Space and/or Common Area requirements:  
Shall meet or exceed the minimum requirements of City of  
DeLand, Land Development Regulations Ordinance # 2002-  
09, as amended.
- 12. Outparcel Combination:  
Any combination of the four (4) outparcels depicted on the  
Planned Development Plan may be accomplished by way of  
minor amendment to this Planned Development. However, a  
major amendment to this Planned Development shall be  
required in order for the property to be developed with fewer

1 than two (2) outparcels, or for any combination of Tract A with  
2 any of the area designated for outparcels on the Planned  
3 Development Plan.

4 13. Site work - Tract A:

5 There shall be no clearing or other site work on Tract A prior to  
6 the site plan approval and issuance of construction permits for  
7 the development of Tract A.

8 14. Architectural Review – Tract A:

9 The City Commission shall review the architectural design on  
10 Tract A, including but not limited to the permanent wall to be  
11 constructed on the southerly portion of Tract A.

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13 F. Environmental Considerations. The Applicant or his successors or assigns  
14 shall comply with the City's ordinances providing for tree protection, and shall meet or  
15 exceed the minimum requirements of the City of DeLand, Land Development Regulations  
16 Ordinance # 2002-09, as amended.

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18 G. Sewage Disposal and Potable Water. Provision for sewage disposal and  
19 potable water needs of the Miller PD will be provided in accordance with the  
20 Comprehensive Plan, Ordinance No.1990-04, as amended, the City of DeLand, Land  
21 Development Regulations Ordinance # 2002-09, as amended, and State of Florida  
22 Administrative Code 64E-6. The specific engineering plan for connections of water and  
23 sewer service to City facilities shall be provided at preliminary plat. The Applicant shall  
24 enter into a Utility Service Agreement with the City in accordance with Chapter 30 of the  
25 Code of Ordinances to reserve sufficient capacity for the development.

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27 H. Stormwater Drainage. Provision for stormwater retention shall be in

1 accordance with the City of DeLand, Land Development Regulations Ordinance # 2002-09,  
2 as amended. The development shall meet or exceed the requirements for the stormwater  
3 management and conservation provision of the Code of Ordinances. Areas identified as  
4 retention areas on the Planned Development Plan may be shifted or altered for stormwater  
5 management purposes without the necessity of amendment of this Development  
6 Agreement and its exhibits.

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8 I. Access and Transportation System Improvements. All access and  
9 transportation system improvements shall be provided in accordance with the City of  
10 DeLand, Land Development Regulations Ordinance # 2002-09, as amended. The parcel  
11 shall be developed in substantial accordance with the following access and transportation  
12 system improvements:

13 1. Access. Access to the site will be through direct connection to CR 92  
14 and to SR 15A. The locations of the points of access are shown in the Planned  
15 Development Plan. The eastern CR 92 connection will be a new full intersection at the  
16 existing median opening. The western CR 92 connection will be through the existing  
17 intersection at the east end of the adjacent parcel. Access to SR 15A will be by easement  
18 across the rear of the adjacent parcel to the west. Outparcels will provide access to at  
19 least one adjacent outparcel.

20 An access easement shall be provided to the property to the east. The  
21 access easement shall be granted adjacent to the proposed driveway connection, through  
22 the tree preservation area and meet the City of DeLand, Land Development Regulations  
23 Ordinance # 2002-09, as amended and County driveway connection permit standards.  
24 The City shall require the adjacent property owner, to the extent legally permissible, to

1 replace any trees removed from the area necessarily cleared on this site for the installation  
2 of the joint access drive, and to provide the equivalent area of tree preservation lost on this  
3 site on the adjacent property. It is the intent of this PD that the additional tree preservation  
4 area and tree replacement on the property to the east which is described herein will be in  
5 addition to any tree preservation and tree replacement requirements for such property then  
6 in effect. The Applicant shall have no duty to construct, maintain or otherwise pay for the  
7 additional roadway necessary for joint access to the property to the east of this site. The  
8 City shall approve the exact location of the joint access when the property to the east is  
9 developed, in accordance with sound engineering practices and after giving the then  
10 owner(s) of this site notice of the proposed location and a reasonable opportunity to  
11 provide comments on the location.

12           2.     Transportation System Improvements. Improvements will be dictated  
13 by a City approved Traffic Impact Analysis (TIA) performed at the time of development of  
14 the applicable access points after review and approval by both Volusia County and FDOT.  
15 The TIA will be based on the entire project to determine the appropriate improvements to  
16 the transportation system. The Traffic Impact Analysis will be updated as each individual lot  
17 is developed. Furthermore, contemporaneously with and as a part of the Preliminary Plant  
18 approval process, the Applicant shall submit an intersection analysis which includes  
19 estimates based upon development of all of the property to determine if additional  
20 improvements are necessary.

21           3.     Truck Loading and Unloading. Truck loading and unloading to the rear  
22 of Tract A is restricted to between the hours of 7:00 am to 9:00 pm.

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24           J.     Internal Roadways. The internal road network is shown on the Planned

1 Development Plan, include layout and right-of-way widths. The road design shall meet or  
2 exceed the City of DeLand, Land Development Regulations Ordinance # 2002-09, as  
3 amended.

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5 K. Building or Property Owners Association. A Property Owner's Association  
6 shall be created by the Applicant to own, manage, and maintain the common areas.  
7 Common areas are defined to include perimeter buffers (including anything located inside  
8 buffers), tree protections areas, internal streets, stormwater facilities and ponds and signs.  
9 The owner of each lot shall be a member of the Association and shall be liable for, with a  
10 lien securing payment of, annual and special assessments collected by the Association for  
11 the improvement, maintenance, enhancement, enlargement and operation of common  
12 areas and for payment of taxes, governmental assessments, insurance, costs of material,  
13 equipment, labor, professional services, management and supervision necessary to carry  
14 out the authorized functions of the Association, and for payment of principal, interest and  
15 other charges connected with loans made to or assumed by the Association.

16 The charter and by-laws of said association and any other agreements, covenants,  
17 easements or restrictions shall be furnished to the City of DeLand at the time of creation.  
18 The applicant shall be responsible for recording said information in the Public Records of  
19 Volusia County, Florida. Also, the applicant shall bear and pay all costs for recording all of  
20 the aforementioned documents.

21 With respect to the enforcement of said agreements, covenants, easements or  
22 restrictions entered into between the applicant and the owners or occupiers of property  
23 within the Miller PD, the City of DeLand shall only enforce the provisions of the  
24 "Development Agreement" and City of DeLand Land Development Regulations Ordinance

1 # 2002-09, as amended, whichever is applicable, and not the private agreements entered  
2 into between the aforementioned parties.  
3

4 L. Reverter Provision: The City Commission may rezone any portion of the  
5 project which has not secured a final development order on or before 5 years from the  
6 effective date of this ordinance as may be necessary or appropriate to protect adjoining  
7 properties or the public health, safety and welfare. At the request of the Applicant, the City  
8 Commission, for good cause shown, may extend the time period indicated in this  
9 paragraph.  
10

11 M. Binding Effect of Plans; Recording; and Effective Date. The Planned  
12 Development Plan, including any and all amendments shall bind and inure to the benefit of  
13 the Applicant and his successor in title or interest. The Miller PD zoning, provisions of the  
14 "Development Agreement," and all approved plans shall run with the land and shall be  
15 administered in a manner consistent with Article 12 of the City of DeLand Land  
16 Development Regulations Ordinance # 2002-09, as amended.  
17

18 This Ordinance and all subsequent amendments shall be filed with the Clerk of the  
19 Court and recorded within forty-five (45) days following execution of the document by the  
20 City Commission, in the Official Records of Volusia County, Florida. One copy of the  
21 document, bearing the book and page number of the Official Record in which the  
22 document was recorded, shall be submitted to the Planning Department for placement in  
23 the public file. The date of recording of this document shall constitute the effective date of  
24 the Miller PD or its subsequent amendments. The applicant shall pay all filing costs for

1 recording documents.

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DONE and ORDERED by the City Commission, City of DeLand, Florida, this  
19<sup>th</sup> day of October, 2009.

ATTEST:

City Commission of DeLand Florida

Michael P. Pleus

Michael P. Pleus  
City Manager

Robert F. Apgar

ATTEST:

Robert F. Apgar  
Mayor

Julie A. Hennessy

**Julie A. Hennessy, MMC**  
City Clerk - Auditor

STATE OF FLORIDA  
CITY OF DELAND

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of  
OCTOBER, 2009, by Michael P. Pleus and Robert F. Apgar, as City  
Manager and Mayor, City of DeLand, respectively, on behalf of the City of  
DeLand, and who are personally known to me.



NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:  
SuelLEN POPE

Commission No.: 745282

My Commission Expires: 1/20/12

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WITNESSES:

MILLER BROTHERS PROPERTIES, LTD

*Th. A. Miller, As its Pres.*  
Applicant's Name, Title & Corporation  
MILLER MANAGEMENT, INC, ITS G.P.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Applicant's Name, Title & Corporation

\_\_\_\_\_

\_\_\_\_\_  
Owner of Property (if other than applicant)

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of  
OCTOBER, 2009, by THOMAS A. MILLER, who  
is personally known to me or who has produced  
\_\_\_\_\_ as identification.

*Pamela H. Browning*  
NOTARY PUBLIC, STATE OF FLORIDA

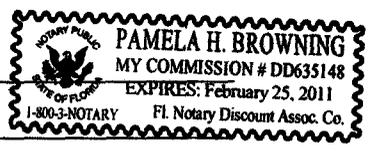
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Revised October 23, 2009 u/p/zone/pd\_doc

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Exhibit A

2MLP-J1/BNDRY DESC/02-16-09/LAT

**DESCRIPTION:**

ALL OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4479, PAGES 2766-2768, AND OFFICIAL RECORDS BOOK 6278, PAGES 71-75, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LOCATED IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 01°33'05" EAST, ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 1050.50 FEET, TO A POINT ON THE WESTERLY EXTENSION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 92 (INTERNATIONAL SPEEDWAY BOULEVARD), A 200.00 FOOT RIGHT-OF-WAY; THENCE NORTH 88°58'50" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 378.64 FEET, TO THE NORTHWEST CORNER OF AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4479, PAGES 2766-2768, ALSO BEING THE NORTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4395, PAGE 110, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND THE POINT OF BEGINNING; THENCE CONTINUE NORTH 88°58'50" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 949.05 FEET, TO A POINT ON THE EAST LINE OF THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF OF SAID SECTION 5, SAID POINT ALSO BEING ON THE WEST LINE OF SCARLETT SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN DEED BOOK G, PAGE 660 AND MAP BOOK 12, PAGE 141, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 01°31'21" EAST, ALONG SAID LINE, A DISTANCE OF 633.37 FEET, TO THE NORTHEAST CORNER OF CASCADES PARK PHASE 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 49, PAGES 178-179, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE SOUTH 89°34'00" WEST, ALONG THE NORTH LINE THEREOF, AND ALONG THE NORTH LINE OF CASCADES PARK PHASE 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 50, PAGES 61-62, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, A DISTANCE OF 953.06 FEET, TO THE SOUTHWEST CORNER OF AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 6278, PAGES 71-75, ALSO BEING THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3319, PAGES 1391-1392, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE NORTH 01°09'59" WEST, ALONG THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3319, PAGES 1391-1392, AND ALONG THE EAST LINE OF AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4395, PAGE 110, A DISTANCE OF 623.60 FEET, TO THE POINT OF BEGINNING.

CONTAINING 13.72 ACRES, MORE OR LESS.

**Received**

APR 20 2009

Planning & Zoning

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Exhibit B

