

ORDINANCE NO. 2005-09

AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM IPUD, INDUSTRIAL PLANNED UNIT DEVELOPMENT TO PD, PLANNED DEVELOPMENT DISTRICT, ON DESCRIBED PROPERTY LOCATED ON THE ACREAGE SOUTHEAST OF THE CORNER OF HAZEN ROAD AND MINNESOTA AVENUE; APPROVING A DEVELOPMENT PLAN FOR MARONDA MINNESOTA PLANNED DEVELOPMENT, A PLANNED DEVELOPMENT CONSISTING OF APPROXIMATELY 76.3 ACRES OF PROPERTY; DIRECTING A CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT APPROVAL ON A DETERMINATION OF CONCURRENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Maronda Homes (hereinafter referred to as "Applicant"), owns a 76.3 acre parcel of land located on the southeast corner of Hazen Road and Minnesota Avenue, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, Applicant has applied for a change of zoning from the present zoning classification of Volusia County IPUD, Industrial Planned Unit Development, to 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, Applicant has submitted an application for approval of a development plan for the Maronda Minnesota PD 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 medium density residential 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 energy and 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 IPUD, Industrial Planned Unit Development, to PD, Planned Development District.

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 Maronda Minnesota 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 the Maronda Minnesota PD, including the Development Plan Agreement, Map and other supporting documentation (on file with the City Planning Department), are incorporated herein by reference which is 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 certificate of occupancy 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.

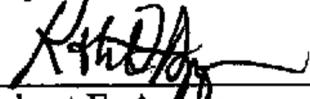
Section 10. The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

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.

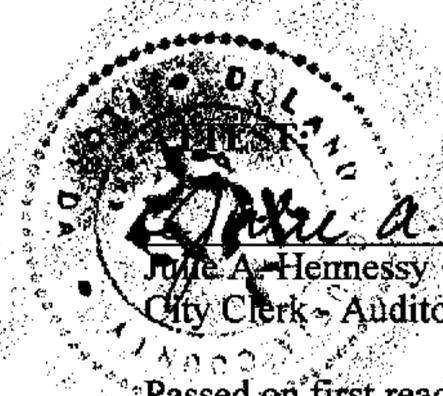
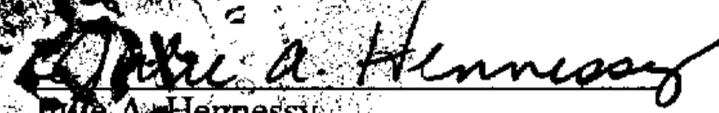
Section 12. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

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

PASSED AND DULY ADOPTED this 21st day of February, 2005.

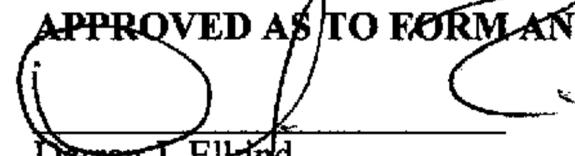


Robert F. Appert
Mayor - Commissioner

Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: February 7, 2005
Adopted on second reading: February 21, 2005

APPROVED AS TO FORM AND LEGALITY:


Darren J. Elkind
City Attorney

EXHIBIT B

PLANNED DEVELOPMENT AGREEMENT

IN THE CITY COMMISSION OF THE

CITY OF DELAND, FLORIDA

IN RE: Mallory Woods PD, Application of

MARONDA HOMES, INC. OF FLORIDA

ORDINANCE # 2005-09

Received
AUG 01 2005
Planning & Zoning

ORDER AND RESOLUTION

GRANTING A REQUEST FOR CHANGE OF ZONING FROM VOLUSIA COUNTY I-1

(INDUSTRIAL) TO THE

MALLORY WOODS PLANNED DEVELOPMENT

The application of Maronda Homes, Inc. of Florida, hereinafter, "Applicant", for rezoning was heard by and before the City Commission of DeLand Florida, on February 21, 2005. 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 January 20, 2005, and otherwise being fully advised, the City Commission does hereby find and determine as follows:

GENERAL FINDINGS

A. That the application of Maronda Homes, Inc. of Florida was duly and properly filed herein on December 16, 2004 as required by law.

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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 contract purchaser of a 76.3 acre parcel of land which is situated in the City of DeLand, Florida. This parcel of land is described more particularly in the legal description, a true and correct 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.

F. That the owners of the property, John Ruzicka, Iris Ruzicka, Wayne Suttles, Antoinette Augustine and Jim Warner, agree with the provisions of the Development Agreement.

FINDINGS REGARDING REZONING

A. That the Applicant has applied for a change of zoning from the present zoning classification(s) of the parcel described in Exhibit "A" from Volusia County IPUD (Industrial Planned Unit Development) to PD (Planned Development).

B. That the said rezoning to 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

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1 COMMISSION CHAMBERS, 121 WEST RICH AVENUE, DELAND, FLORIDA, THIS 21ST
2 DAY OF FEBRUARY, A.D., 2005, AS FOLLOWS:

A. That the Application of Maronda Homes, Inc. of Florida 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 Volusia County IPUD to PD as described in Article VII
of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

C. That the Official Zoning Map of the City of DeLand, is hereby amended to show
the rezoning of said parcel to Mallory Woods 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
R-1 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

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1 Development Agreement is intended to abridge the requirements of Ordinance No. 2002-09, as
2 amended, and any other City Ordinances.

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DEVELOPMENT AGREEMENT

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

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1. Planned Development Plan The Planned Development Plan shall consist
9 of the Development Plan Map prepared by Bowyer-Singleton, Inc. and dated May 2005 and this
10 Development Agreement. The Planned Development Plan is hereby approved and incorporated
11 in this Ordinance by reference as Exhibit "B". The Planned Development Plan shall be filed and
12 retained for public inspection in the Planning Department and it shall constitute a supplement to
13 the Official Zoning Map of the City of DeLand.

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2. Amendments. All amendments of the Planned Development Plan, other
15 than those deemed by the Planning Department to be minor amendments as set out in Ordinance
16 No. 2002-09, as amended, shall require the review and recommendation of the Planning Board
17 and action by the City Commission in the same manner as a rezoning of the parcel.

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

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1 B. Phases of Development. The number and schedule of phases has not yet been
2determined. It is anticipated that the project will begin construction in September, 2005 and will
3take 3 years to complete.

4 C. Land Uses Within the PD. The development of the parcel shall be consistent with
5the uses prescribed for each area within the proposed PD. The location and size of said land use
6areas are shown on the Development Plan Map, Exhibit "B". The following land uses shall be
7allowed as permitted principal uses and structures along with their customary accessory uses and
8structures: Single Family Residential dwelling units.

9 D. Development Standards

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1. Density.

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(a) A maximum of 255 single family units shall be permitted within
12 the PD.

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(b) Lots within the PD shall have a minimum area of 5,500 square
14 feet.

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(c) Each unit shall have a minimum square footage (living area) of
16 1,400 square feet. Ninety percent (90%) of the units constructed shall have a
17 minimum square footage of 1,500 square feet; fifty percent (50%) of the units
18 constructed shall have a minimum square footage of 1,850 square feet or greater.

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(d) At least ten percent (10%) of lots within the development shall be
20 sixty-five (65) feet in width; all remaining lots shall be at least fifty (50) feet in
21 width, measured at the building line. Notwithstanding that requirement, lots
22 located on roadway curves are permitted to contain less than fifty (50) feet of
23 frontage, but must be at least twenty-five (25) feet in width.
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2. Setbacks. Each lot within the development shall contain the following
27 setbacks:

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(a) Front yard: 20 ft.

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(b) Rear yard: 20 ft.

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(c) Side yard: 5 ft.

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(d) Corner Side yard: 10 ft.

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(e) Maximum impervious lot coverage shall be 65.0%.

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(f) The maximum building height of each dwelling unit shall be 2 stories, or thirty-five (35) feet in height.

3. Landscaping/Open Space.

(a) A forty (40) foot natural perimeter landscape buffer shall be provided.

(b) At the time of preliminary plat approval, the Applicant shall submit a landscape plan showing plantings within the Hazen Avenue and Minnesota Avenue perimeter buffer areas which shall provide an opaque visual screen within three (3) years of planting.

(c) A walking trail shall be established within the perimeter landscape buffer and shall be owned and maintained by the Homeowners Association, as hereinafter defined.

(d) a 1.5 acre passive recreation area shall be provided.

F. Environmental Considerations. Subject to permitted wetland impacts authorized by the City of Deland and the St. Johns River Water Management District, all other wetlands within the project's boundaries will be protected during construction and in post-development by a conservation easement dedicated to and in accordance with the City of DeLand or the St. Johns River Water Management District requirements.

G. Sewage Disposal and Potable Water. Provision for sewage disposal and potable water needs of the PD will be provided in accordance with the Comprehensive Plan, Ordinance No.1990-04, as amended, the Land Development Regulations Ordinance No. 2009-09, as amended, and State of Florida Administrative Code 64E-6.

H. Stormwater Drainage. Provision for stormwater retention shall be in accordance with the Land Development Regulations Ordinance # 2002-09, as amended. At the time of preliminary plat approval, the City Commission reserves the right to alter stormwater retention layouts provided by the Applicant.

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1 I. Access and Transportation System Improvements. All access and transportation
2 system improvements shall be provided in accordance with the Land Development Regulations,
3 Ord. 02-09, as amended. The parcel shall be developed in substantial accordance with the
4 following access and transportation system improvements:

5 1. Access. Ingress and egress to the site will be from Hazen Road and
6 Minnesota Avenue.

7 2. Transportation System Improvements/Traffic Signal. At the time of final
8 plat approval, the Applicant shall place funds in escrow as its contribution towards the
9 installation of a traffic signal and other associated intersection improvements for the
10 intersection of Minnesota Avenue and Spring Garden Avenue (the "Traffic
11 Improvements"). The exact amount of the Applicant's contribution for the Traffic
12 Improvements shall be a percentage of the overall cost of the Traffic Improvements. To
13 calculate the percentage of the total cost for the Traffic Improvements that Applicant is
14 responsible for, the City shall take the total number of Lots approved within the PD and
15 divide by 625.

16 J. Internal Roadways. Road right-of-ways will be 50 feet wide. All internal roads
17 will be dedicated to the city. At the time of preliminary plat approval, the City Commission
18 reserves the right to alter roadway layouts provided by the Applicant.

19 K. Homeowners Association. The Applicant shall create a homeowners association
20 for the PD (the "Homeowners Association"). The Articles of Incorporation and by-laws of said
21 Homeowners Association and any other agreements, covenants, easements or restrictions shall be
22 furnished to the City of DeLand at the time of creation. The applicant shall be responsible for
23 recording said information in the Public Records of Volusia County, Florida. Also, the applicant
24 shall bear and pay all costs for recording all of the aforementioned documents.

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1 With respect to the enforcement of said agreements, covenants, easements or restrictions
2 entered into between the applicant and the owners or occupiers of property within the PD, the
3 City of DeLand shall only enforce the provisions of the "Development Agreement" and City of
4 DeLand Land Development Regulations Ordinance # 2002-09, as amended, whichever is
5 applicable, and not the private agreements entered into between the aforementioned parties.

6 L. Dwelling Unit Criteria. At the time of final plat approval, the Applicant shall
7 submit a minimum of six (6) dwelling unit floor plans that shall include multiple sizes and
8 elevations. Said floor plans shall also include a minimum of two (2) shingle colors in an
9 overlapping shingle style as well as twelve (12) exterior color options (collectively the "Unit
10 Criteria"). So long as Applicant has complied with the Unit Criteria as contemplated herein,
11 Applicant shall be entitled to provide other floor plans, elevations, shingle colors and/or exterior
12 color options within the PD.

13 M. Reverter Provision: The City Commission may rezone any portion of the project
14 which has not secured a final record plat on or before 5 years from the effective date of this
15 ordinance as may be necessary or appropriate to protect adjoining properties or the public health,
16 safety and welfare, unless the City Commission, for good cause shown, shall extend the time
17 period indicated in this paragraph.

18 N. Binding Effect of Plans; Recording; and Effective Date. The Planned
19 Development Plan, including any and all amendments shall bind and inure to the benefit of the
20 Applicant and his successor in title or interest. The PD zoning, provisions of the "Development
21 Agreement," and all approved plans shall run with the land and shall be administered in a manner
22 consistent with Article 12 of the City of DeLand Land Development Regulations Ordinance #
23 2002-09, as amended.

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

8 DONE and ORDERED by the City Commission, City of DeLand, Florida, this
9 21st day of February, 2005.

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12 ATTEST:

City Commission of DeLand Florida

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Mike Abels

16 Mike Abels
17 City Manager

Robert Apgar

Robert Apgar
Mayor

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ATTEST:



Julie A. Hennessy
Julie A. Hennessy, CMG
City Clerk - Auditor

20 STATE OF FLORIDA

21 CITY OF DELAND

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The foregoing instrument was acknowledged before me this 10th day of
24 AUGUST, 2005 (mo/yr), by Mike Abels and Robert Apgar, as City Manager and
25 Mayor, City of DeLand, respectively, on behalf of the City of DeLand, and who
26 are personally known to me.

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NOTARY PUBLIC, STATE OF FLORIDA

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Type or Print Name:

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Shellen Pope

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Instrument# 2005-257488 # 12

Book: 5654

Page: 3589

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Suellen Pope
MY COMMISSION # DD275341 EXPIRES
January 20, 2008
BONDED THRU TROY FAJN INSURANCE, INC.

Commission No.: DD 275341

My Commission Expires: 1/20/08

[Signature blocks continued on following page.]

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WITNESSES: Maronda Homes, Inc. of Florida, a Florida corporation

Denise C Nicolai

By: Mark D. Fark
Its: VICE PRESIDENT
FL LAND OPERATIONS

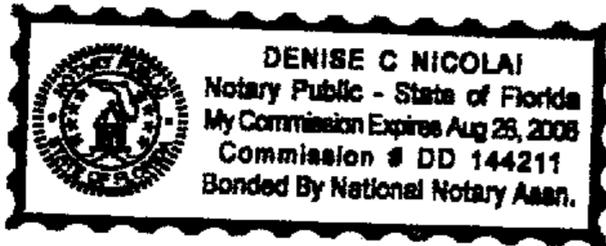
Date: 7/29/05

11 STATE OF FLORIDA

12 COUNTY OF Seminole

13 The foregoing instrument was acknowledged before me this 29 day of
14 July, 2005 by Mark D. Fark, as Vice Pres. of Maronda Homes,
15 Inc. of Florida, a Florida corporation, on behalf of the corporation. He She is personally known
16 to me or who has produced _____ as identification.

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NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: Denise Nicolai
Commission No.: DD 144211
My Commission Expires: 8-28-08

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EXHIBIT A
SURVEY AND LEGAL DESCRIPTION

LEGAL DESCRIPTION:

(current as of 06/07/05)

PARCEL 1-A

LOTS 1, 2, 4, 5, AND 6 AND THE EAST 1/2 OF LOT 3, ACCORDING TO THE MAP OF THE HULL 60 ACRE GROVE AS RECORDED IN MAP BOOK 1, PAGE 153, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

PARCEL 1-B

THAT PART OF THE WEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, LYING NORTHERLY OF THE NORTHERLY RIGHT-OF-WAY LINE OF THE ATLANTIC COASTLINE RAILROAD.

PARCEL 2-A

THE EAST 1/2 OF THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 LYING NORTH OF THE NORTH RIGHT-OF-WAY LINE OF THE ATLANTIC COASTLINE RAILROAD; SECTION 7, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA;

LESS AND EXCEPT:

THE NORTH 175.00 FEET OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 7.

ALSO EXCEPT:

THE SOUTH 155.00 FEET OF THE NORTH 330.00 FEET OF THE WEST 315.00 FEET OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 7.

ALSO EXCEPT:

THE SOUTH 340.00 FEET OF THE NORTH 670.00 FEET OF THE WEST 582.17 FEET OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 7.

PARCEL 2-C

THE WEST 200.00 FEET OF THAT PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 LYING NORTH OF THE NORTH RIGHT-OF-WAY LINE OF THE ATLANTIC COASTLINE RAILROAD; SECTION 7, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA;

LESS AND EXCEPT:

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1THE NORTH 175.00 FEET OF THE WEST 200.00 FEET OF THE NORTHEAST 1/4
2OF THE SOUTHEAST 1/4, OF SAID SECTION 7.

3PARCEL 2-D

4LOTS 58, 59, 60, 61, AND 62, ACCORDING TO THE PLAT OF STETSON PLAZA,
5RECORDED IN PLAT BOOK 9, PAGE 165, PUBLIC RECORDS OF VOLUSIA
6COUNTY, FLORIDA.

7AND:

8THE NORTH 1/2 OF THE VACATED 15 FOOT ALLEY LYING SOUTH AND
9ADJACENT TO SAID LOTS 58 THROUGH 62, ACCORDING TO SAID PLAT OF
10STETSON PLAZA.

11AND:

12A PORTION OF THE UNNAMED 25 FOOT STREET LYING SOUTH OF MARTIN
13STREET AND WEST AND ADJACENT TO THE AFOREMENTIONED LOT 58,
14ACCORDING TO SAID PLAT OF STETSON PLAZA, SAID UNNAMED STREET
15(VACATED PER OR BOOK 934, PG 411).

16PARCEL 2-E

17LOTS 10 AND 11 ACCORDING TO THE PLAT SHOWING A SUBDIVISION OF LOT
1823, OF STETSON PLAZA, RECORDED IN PLAT BOOK 9, PAGE 171, PUBLIC
19RECORDS OF VOLUSIA COUNTY, FLORIDA.

20AND:

21THE SOUTH 1/2 OF THE VACATED 15 FOOT ALLEY LYING NORTH AND
22ADJACENT TO SAID LOTS 10 AND 11 ACCORDING TO SAID PLAT SHOWING A
23SUBDIVISION OF LOT 23.

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25PARCEL 3 (James Warner parcel)

26THE WEST 582.17 FEET OF THE SOUTH 340 FEET OF THE NORTH 670 FEET OF
27THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, SECTION 7,
28TOWNSHIP 17 SOUTH, RANGE 30 EAST.

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