

AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM R-1AA, SINGLE FAMILY DWELLING TO PD, PLANNED DEVELOPMENT DISTRICT, ON DESCRIBED PROPERTY LOCATED ON THE NORTHEAST CORNER OF MINNESOTA AVENUE AND HAZEN ROAD; APPROVING A DEVELOPMENT PLAN FOR FOREST TRACE SUBDIVISION, A PLANNED DEVELOPMENT CONSISTING OF APPROXIMATELY 35.8 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, IP Acquisition Corporation (hereinafter referred to as "Applicant"), owns a 35.8 acre parcel of land located on the northeast corner of Minnesota Avenue and Hazen Road, 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 City R-1AA, Single Family, 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 Forest Trace 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 Low 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 City R-1AA, Single Family, 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 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 Forest Trace 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.

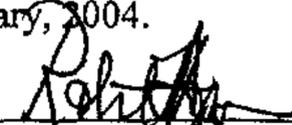
**Section 10.** The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

**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.

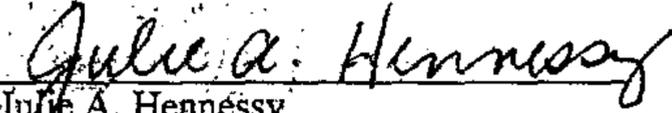
**Section 12.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

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

**PASSED AND DULY ADOPTED** this 21<sup>st</sup> day of January, 2004.

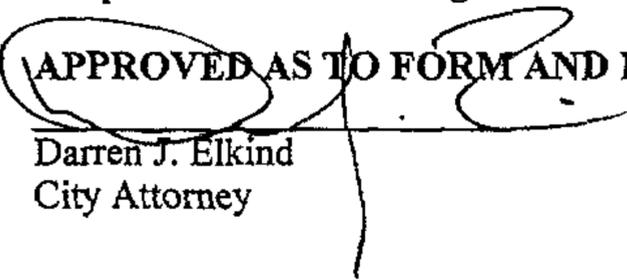
  
Robert F. Angar  
Mayor - Commissioner

**ATTEST:**

  
Julie A. Hennessy  
City Clerk - Auditor

Passed on first reading: January 5, 2004  
Adopted on second reading: January 21, 2004

**APPROVED AS TO FORM AND LEGALITY:**

  
Darren J. Elkind  
City Attorney

Book: 5270  
Page: 2153

EXHIBIT "A"

LEGAL DESCRIPTION:

(Per OR Book 4178, Page 4555, Volusia County Records)

The West 1187.16 Feet of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 7, Township 17 South, Range 30 East, Volusia County, Florida.

Subject to zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record.

1 FOREST TRACE PD PLANNED DEVELOPMENT AGREEMENT

2 IN THE CITY COMMISSION OF THE

3 CITY OF DELAND, FLORIDA

4 IN RE REZ-03-13, Application of

5 **IP Acquisition Corporation**

6 ORDINANCE NO. 2004-03

7 *(Ordinance No. to be provided after Commission approval)*

8 ORDER AND RESOLUTION

9 GRANTING A REQUEST FOR CHANGE OF ZONING FROM **R-1AA**

10 TO

11 RESIDENTIAL PD (PLANNED DEVELOPMENT)

12  
13 The application of **IP Acquisition Corporation**, hereinafter, "Applicant", for rezoning  
14 was heard by and before the City Commission, DeLand Florida, on **January 5, 2004, and**  
15 **January 21, 2004**. Based upon the verified Application and other supporting documents,  
16 maps, charts, overlays, other evidence and instruments; the advice, report, and  
17 recommendations of the Community Development, and other Departments and agencies  
18 of DeLand, Florida; and the testimony adduced and evidence received at the Public  
19 Hearing on this Application by the Planning Board on **October 15, 2003, November 19,**  
20 **2003, and December 17, 2003**, and otherwise being fully advised, the City Commission  
21 does hereby find and determine as follows:  
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GENERAL FINDINGS

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A. That the application of **IP Acquisition Corporation** was duly and properly filed herein on **September 18, 2003** 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 **authorized agent** of a **35.8-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 No. 2002-09, as amended.

E. That the Applicant has complied with the "Due Public Notice" requirements of the City Commission, Land Development Regulations Ordinance No. 2002-09, as amended.

F. That the owner of the property, **Drake Matthew Adams, Trustee**, agrees with the provisions of the Development Agreement.

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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 **R-1AA to Forest Trace PD** (Planned Development).

B. That the said rezoning to a PD is consistent with both the City of DeLand Comprehensive Plan Ordinance No. 1990-04, as amended, and the intent and purpose of the City of DeLand Land Development Regulations Ordinance No. 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, 121 WEST RICH AVENUE, DELAND, FLORIDA, THIS 5<sup>th</sup> and 21st DAY of January 2004, AS FOLLOWS:

A. That the Application of **IP Acquisition Corporation** 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-1AA to Forest Trace PD** as described in Article VII of the City of DeLand, Land Development Regulations Ordinance No. 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 **Forest Trace PD**.

D. That the City of DeLand Land Development Regulations Ordinance No. 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 No. 2002-09, as amended, and the "Development Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No. 2002-09, 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 No. 2002-09, as amended, shall apply to the PD in the same manner as the R-1AA zoning classification. Nothing in this Ordinance shall abridge the requirements of any City of DeLand Ordinance other than Ordinance No. 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 County Ordinances.

DEVELOPMENT AGREEMENT

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2  
3 A. Development Concept. The property shall be developed as a PD  
4 substantially in accordance with the Planned Development Plan. The Planned  
5 Development Plan shall govern the development of the property as a PD and shall regulate  
6 the future land use of this parcel.

7  
8 1. Development Plan. The Development Plan shall consist of the  
9 Development Plan prepared by **CCL Consultants, Inc. dated September 5 2003, last**  
10 **revised January 21, 2004** and this Development Agreement. The Development Plan is  
11 hereby approved and incorporated in this Ordinance by reference as Exhibit "B". The  
12 Development Plan shall be filed and retained for public inspection in the Planning  
13 Department and it shall constitute a supplement to the Official Zoning Map of the City of  
14 DeLand.

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

21  
22 3. Subdivision Approval. After the Planned Development Plan is  
23 recorded, and prior to any construction, including clearing and landfill, *an application for a*  
24 *preliminary and/or a final plat* of the area to be subdivided shall be submitted for review and

1 approval in the manner required by Article 13 of the City of DeLand Land Development  
2 Regulations, Ordinance No. 2002-09, as amended.

3  
4 B. Unified Ownership. The Applicant or his successors shall maintain unified  
5 ownership of the subject parcel until after issuance of the Final Development Order Plat(s).

6  
7 C. Phases of Development. The project shall be developed in one phase. The  
8 first phase shall commence within three months of receiving all of the necessary permits to  
9 develop the site.

10  
11 D. Land Uses Within the PD. The development of the parcel shall be consistent  
12 with the uses prescribed for each area within the proposed Residential PD. The location  
13 and size of said land use areas are shown on the Development Plan, Exhibit "B". The  
14 following land uses shall be allowed as permitted principal uses and structures along with  
15 their customary accessory uses and structures:

16  
17 **Single Family**

18 E. Development Standards:

- 19 1. *Minimum lot area* **9,690 sq. ft.**  
20 2. *Minimum lot width and/or depth* **85' X 114'**  
21 3. *Minimum yard size (building)*  
22 a. *Front yard:* **25 ft.**  
23 b. *Rear yard:* **25 ft.**  
24 c. *Side yard:* **12 1/2 ft.**

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- d. *Streetside yard:* **20 ft.**
- 4. *Minimum floor area:* **2,000\* sq. ft.**
- 5. *Maximum lot coverage* **40%**
- 6. *Maximum building height* **1 story – 25 feet**
- 7. *Landscape buffer requirements* **30' West Hazen Road,  
30' S. Minnesota Avenue,  
10' north and 10' east.**
- 8. *Perimeter building setbacks* **25 feet**
- 9. *Minimum building separation* **25 feet**
- 10. *Open Space and/or Common Area requirements meeting the Land  
Development Regulations Ordinance No. 2002-09.*

\* Includes heated/AC & garage space – 1600 sq. ft., AC/heat 400 sq. ft.

garage.

F. Environmental Considerations. The minimum requirements of the Land Development Regulations Ordinance No. 2002-09, as amended, shall be met.

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. The Project shall be serviced by the City of DeLand with Public Water and Wastewater Service.

H. Stormwater Drainage. Provision for stormwater retention shall be in accordance with the Land Development Regulations Ordinance No. 2002-09, as amended.

1 I. Access and Transportation System Improvements. All access and  
2 transportation system improvements shall be provided in accordance with the Land  
3 Development Regulations, Ord. 2002-09, as amended. The parcel shall be developed in  
4 substantial accordance with the following access and transportation system improvements:  
5

6 1. Access. The Primary Access shall be from Minnesota Avenue. This  
7 county street will provide access to the residential development. In addition, a secondary  
8 access on Hazen Road shall be provided, and to the undeveloped land to the east a future  
9 connection shall be provided, as shown on the Development Plan, Exhibit "B". A non-  
10 vehicular access line shall be shown on the final plat along the proposed right-of-way line  
11 for Hazen Road and Minnesota Avenue. The line shall be continuous except for the  
12 openings as shown on the Development Plan, Exhibit "B".  
13

14 2. Temporary Construction Access. All construction access shall be  
15 limited to Minnesota Avenue. The point of ingress/egress to the site shall be the southeast  
16 corner of the property, as shown on the Development Plan, Exhibit "B".  
17

18 3. Transportation System Improvements. The primary and secondary  
19 access to the property is two existing two-lane roads (Minnesota Avenue and Hazen  
20 Road). The roadway is adequate and no off-site improvements are anticipated. The  
21 Applicant shall conduct a Traffic Warrant Study in cooperation with Volusia County and  
22 FDOT prior to receiving final plat approval. If the Traffic Warrant Study concludes that a  
23 signal is necessary then the developer shall be responsible for paying a pro rata share of  
24 the cost of the signal, up to 50% of the cost of that signal.

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J. Internal Roadways. The internal right-of-ways are 50 feet. The typical roadway section includes 24 feet of pavement with 2 ft. valley gutters on each side of the pavement. The pedestrian circulation will be accomplished by providing 5 ft. sidewalks on each side of the road.

K. Landscape Buffer. A 20-foot wide "Common" Landscape Buffer shall be provided along Minnesota Avenue and Hazen Road. IN ADDITION, THE REAR 10 FEET OF ALL LOTS ALONG MINNESOTA AVENUE AND HAZEN ROAD SHALL BE LEFT IN A NATURAL STATE WITH NO BUILDINGS OR ANCILLARY STRUCTURES. The landscape buffer shall consist of a 2½-ft. high berm. The landscaping shall include a double row of 3-gallon viburnum suspensum planted horizontally on 24 to 30 inch centers. In addition, Raphiolepis Indica (Indian Hawthorne) shall be used to accent the landscape buffer. A 4-foot high black vinyl fence shall be installed near the top of the berm to provide a physical barrier for the landscape buffer. The proposed landscape shall be irrigated to maintain proper growth. The buffer shall be opaque within 18 months of the approval and recording of the final plat and be maintained as an opaque buffer by the Property Owners Association. Existing trees, located within the landscape buffer shall be retained, where possible, where voids in the buffers are created new trees shall be planted. A copy of the typical buffer is shown on the Landscape Buffer Plan, Exhibit "C". The landscaping at both entrances shall be in conformance with the typical Landscape Buffer Plan, Exhibit "C".

L. Above-Ground Pools. No above-ground pools may be installed.

1 M. Building or Property Owners Association. The charter and by-laws of said  
2 association and any other agreements, covenants, easements or restrictions shall be  
3 furnished to the City of DeLand at the time of creation. The Property Owners Association  
4 shall be responsible for but not limited to the maintenance of the landscape buffers (along  
5 Hazen Road and Minnesota Avenue), the water management tracts, the recreational  
6 areas, the outfalls from the public right-of-ways, and the entry features including  
7 landscaping, irrigation, and signage. The Applicant shall be responsible for recording said  
8 information in the Public Records of Volusia County, Florida. Also, the Applicant shall bear  
9 and pay all costs for recording all of the aforementioned documents.

10  
11 With respect to the enforcement of said agreements, covenants, easements or  
12 restrictions entered into between the Applicant and the owners or occupiers of property  
13 within the **Forest Trace PD**, the City of DeLand shall only enforce the provisions of the  
14 "Development Agreement" and City of DeLand Land Development Regulations Ordinance  
15 No. 2002-09, as amended, whichever is applicable, and not the private agreements  
16 entered into between the aforementioned parties.

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18 N. Utilities. All utilities shall be constructed underground.

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20 O. Reverter Provision. The City Commission may rezone any portion of the  
21 project which has not secured a final Development Order on or before five years from the  
22 effective date of this ordinance as may be necessary or appropriate to protect adjoining  
23 properties or the public health, safety and welfare, unless the City Commission, for good  
24 cause shown, shall extend the time period indicated in this paragraph.

1  
2 P. Binding Effect of Plans; Recording; and Effective Date. The Planned  
3 Development Plan, including any and all amendments shall bind and inure to the benefit of  
4 the Applicant and his successor in title or interest. The Residential PD zoning, provisions  
5 of the "Development Agreement," and all approved plans shall run with the land and shall  
6 be administered in a manner consistent with Article 12 of the City of DeLand Land  
7 Development Regulations Ordinance No. 2002-09, as amended.

8  
9 This Ordinance and all subsequent amendments shall be filed with the Clerk of the  
10 Court and recorded within forty-five (45) days following execution of the document by the  
11 City Commission, in the Official Records of Volusia County, Florida. One copy of the  
12 document, bearing the book and page number of the Official Record in which the  
13 document was recorded, shall be submitted to the Planning Department for placement in  
14 the public file. The date of recording of this document shall constitute the effective date of  
15 the Residential PD or its subsequent amendments. The Applicant shall pay all filing costs  
16 for recording documents.

17  
18 Q. Conceptual Approval. The parties hereto acknowledge that reductions in  
19 density and/or intensity may and do occur; and that minor changes to roadway design,  
20 location and size of structures, actual location of parking spaces, specific locations for land  
21 uses, and locations and design of stormwater storage, landscape buffers and upland  
22 buffers may result to comply with the City of DeLand Land Development Regulations  
23 Ordinance No. 2002-09, as amended. Upon determination of the Planning Department,  
24 these revisions may be processed as minor amendments as set forth in the City of DeLand

1 Land Development Regulations Ordinance No. 2002-09, as amended. The Applicant  
2 agrees to revise and record the Revised Preliminary Plan, which reflects any such changes  
3 with the City Clerk immediately following the expiration of the 30-day period for appealing  
4 Development Review Committee (DRC) decisions to the County Council. A copy of the  
5 Revised Preliminary Plan, bearing the book and page number of the Official Record in  
6 which the document was recorded, shall be submitted to the Planning Department.

1 DONE and ORDERED by the City Commission, City of DeLand, Florida, this 21<sup>st</sup>  
2 day of January, 2004

4 ATTEST:

City Commission of DeLand Florida

5  
6 *Mike Abels*  
7 Mike Abels  
8 City Manager  
9

*Robert Apgar*  
Robert Apgar  
Mayor

ATTEST

*Julie A. Hennessy*  
Julie A. Hennessy, City Clerk

11 STATE OF FLORIDA

12 CITY OF DELAND

14 The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of  
15 Jan., 2004 (mo/yr), by Mike Abels and Robert Apgar, as City Manager and  
16 Mayor, City of DeLand, respectively, on behalf of the City of DeLand, and who are  
17 personally known to me.

19 NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

*Kimberly K Cline*

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



Kimberly K Cline  
My Commission CC993859  
Expires January 15, 2005

Book: 5270  
Page: 2168

1 WITNESSES:

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*Drake Matthew Adams*  
Owner of Property  
Drake Matthew Adams, Trustee

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of  
February 2004 Drake Matthew Adams (mo/yr), by ( NAME ), who is personally known to  
me or who has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Nikki J. Ciminelli

Commission No.: DD 161797

My Commission Expires: Feb. 8<sup>th</sup> 2004



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Page: 2169

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*[Handwritten signature]*

Thomas C. Rouse, V.P.  
Applicant's Name & Title  
IP Acquisition Corporation

The foregoing instrument was acknowledged before me this 27 day of  
January 2004 (mo/yr), by ( THOMAS C. ROUSE NAME ), who is personally known to  
me or who has produced \_\_\_\_\_ as identification.

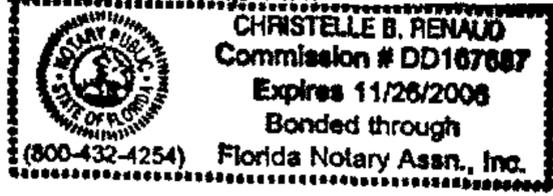
NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

CHRISTELLE B. RENAUD

Commission No.: DD167687

My Commission Expires:



LIST OF EXHIBITS

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A Legal Description

B Development Plan

C Landscape Buffer Plan

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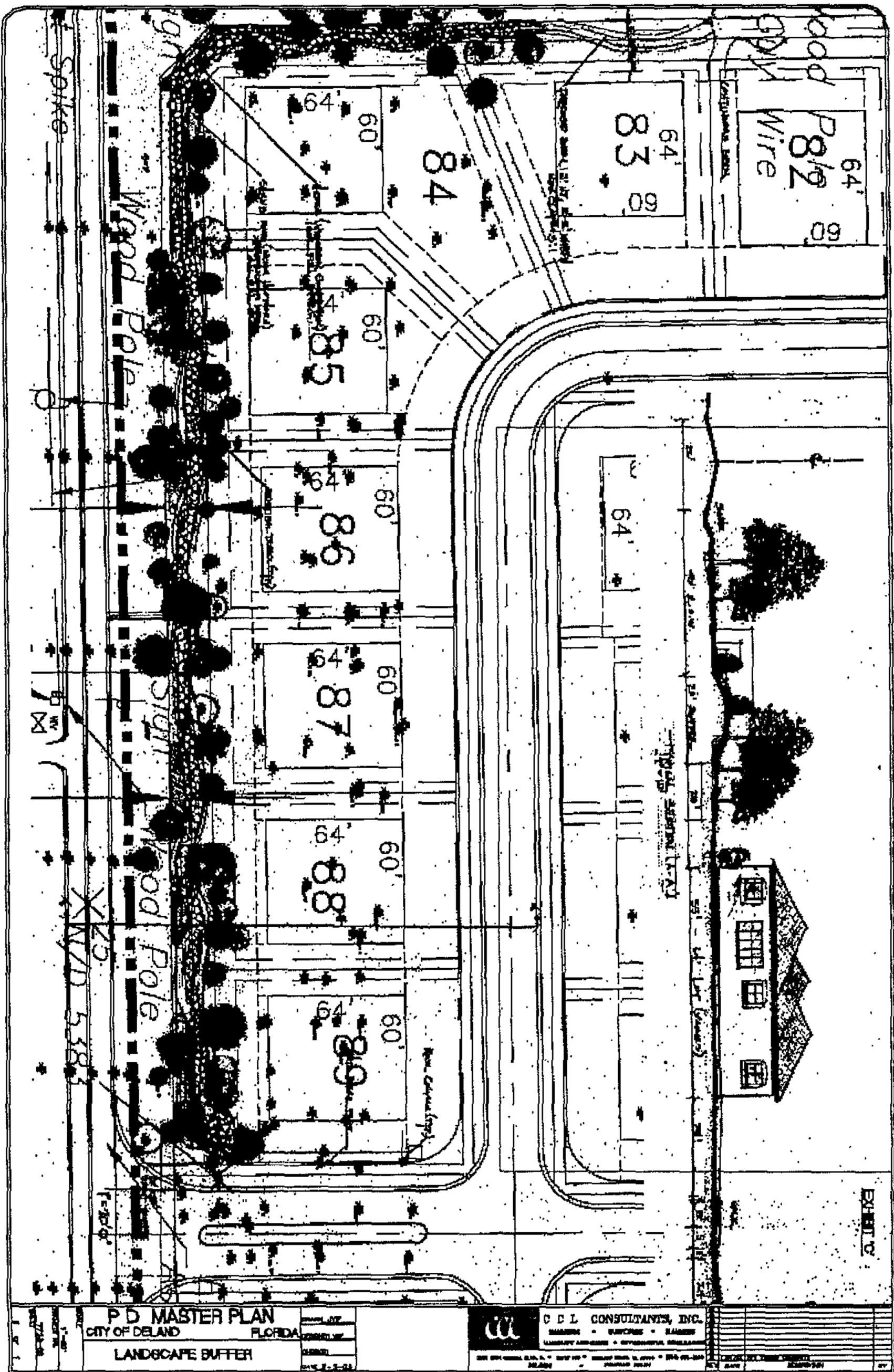
EXHIBIT "A"

Legal Description

The west 1187.16 feet of the southeast ¼ of the northwest ¼ of Section 7,  
Township 17 South, Range 30 East, Volusia County, Florida.



Book: 5270  
Page: 2173  
Diane H. Matousek  
Volusia County, Clerk of Court



PD MASTER PLAN  
CITY OF DELAND  
FLORIDA

LANDSCAPE BUFFER

C. E. L. CONSULTANTS, INC.  
PLANNING • SURVEYING • ENGINEERING



EXHIBIT C