



CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 7/25/2006

SUBJECT: FINAL PLAT & PLANS, SUBDIVISION IMPROVEMENT AGREEMENT, AND CONCURRENCY AND FAIR-SHARE AGREEMENT / PORT ORANGE PLANTATION PHASE IV CASE NO. 05-50000015

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION: To **approve** the Final Plat & Plans for the Port Orange Plantation Phase IV Subdivision, as recommended by the Planning Commission, and to approve the Subdivision Improvement Agreement (S.I.A.) and Concurrency and Fair-Share Agreement for this project. The Planning Commission's recommendation for approval is subject to the following conditions:

- Resolution of outstanding technical comments before scheduling for City Council review;
- City Council approval of the concurrency/fair-share agreement.
- Review by the City Attorney as to legal form and content.

SUMMARY: Planning Commission Action:

At its May 25, 2006 meeting, the Planning Commission unanimously recommended approval, (7-0), of the Final Plat and Plans for Port Orange Plantation, Phase IV, subject to the conditions listed above. The 26.21-acre site is located west of Williamson Boulevard and north of Town West Boulevard. If approved, Phase IV will be developed with 93 single-family lots, with associated common areas, infrastructure and stormwater improvements.

The Concurrency and Fair Share Agreement for this project addresses impacts to several nearby roads and intersections, including the intersection of Dunlawton Avenue and Clyde Morris Boulevard, the extension of Summertrees Road, the addition of a second north-bound right-turn lane from Williamson Boulevard onto Taylor Road, the planned improvements at the I-95 interchange, the widening of Williamson Boulevard from Willow Run Boulevard to the City limits, and the installation of a traffic light at the intersections of Williamson Boulevard and Madeline Avenue, Williamson Boulevard and Willow Run Boulevard and Williamson Boulevard and Town West Boulevard.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	<i>Richard Wells</i>	Richard Wells	Date	<i>7/14/06</i>
FINANCE DEPARTMENT	N/A	Approved as to Budget Requirements	Date	
CITY ATTORNEY	<i>Mr. J. K. Kite</i>	Approved as to Form and Legality	Date	<i>7-14-06</i>
CITY MANAGER	<i>Kell</i>	Approved Agenda Item For:		<i>7/25/06</i>

COUNCIL ACTION: Approved as Recommended Disapproved

Tabled Indefinitely Continued to Date Certain Approved with Modification



STAFF REPORT

CASE NO. 05-50000015

FINAL PLAT AND PLANS / PORT ORANGE PLANTATION, PHASE IV

Sue McCoy, P.S.M., President, Harpster Engineering & Surveying, Inc., applicant

Property located west of Williamson Boulevard and north of Royal Palm Subdivision

May 19, 2006

INTRODUCTION:

Sue McCoy, P.S.M., of Harpster Engineering & Surveying, Inc., applicant, on behalf of D. R. Horton, Inc. - Jacksonville, owner, requests approval of the proposed final plat and plans for Port Orange Plantation, Phase IV. The subdivision proposal includes 93 single-family lots with associated infrastructure and stormwater improvements on approximately 26.21 acres. The subject property is located west of Williamson Boulevard, north of Royal Palm Subdivision (Exhibit "A").

OVERVIEW:

The subject property, which is currently vacant, is zoned "PC-A" (Planned Community – Agricultural) and has a future land use designation of *Planned Community No. 1*. The future land use and zoning designations of the parcels immediately surrounding the subject property are the same in all directions, and are noted below.

Future Land Use: *Planned Community No. 1*

Existing Land Use: Vacant

Zoning: "PC-A" (Planned Community - Agricultural)

The overall development concept for the entire D. R. Horton property calls for two separate developments – Port Orange Plantation, which will be developed with 404 single-family units over five phases, and Villas of Port Orange, a multi-family project, consisting of 346 units, to be constructed in two phases. Phase I of Port Orange Plantation was approved by the City on April 27, 2004 and is built out. Phase II of this project was approved by the City on November 27, 2005 and is currently under construction. The Planning Commission approved the Preliminary plat and plans for Phase IV on May 26, 2005. The Final plat and plans for Phase III –V are to be heard by the Planning Commission on May 25, 2006.

DISCUSSION:

Development Proposal Overview:

The final plat and plans would develop this fourth phase of the subdivision with 93 single-family lots and associated infrastructure and stormwater improvements on 26.21 acres. Phase IV will have connections to the internal roadway systems in Phases II and V, but will not have direct access from any of the adjacent major collector roads. A majority of the lots in this phase will either back up to a retention lake. Finally, a 30'-wide landscape buffer will be installed along the Coraci Boulevard frontage.

Consistency with the Comprehensive Plan:

The future land use classification of the subject property is *Planned Community No. 1*. Per the comprehensive plan amendment adopted in 2002, the maximum gross residential density for property with this designation is four units/acre. The densities for specific areas within Planned Community No. 1 were established by the Macro CDP. The Macro CDP allows up to eight units per acre for the east half of the Port Orange Plantation development (including Phases I and III), and up to four units per acre for the west half (Phases II, IV, and V). The proposed density in Phase IV is 3.55 units per acre. Therefore, Phase IV is consistent with the maximum density permitted by the future land use designation.

Consistency with the Land Development Code:

The property is currently zoned "PC-A" (Planned Community - Agricultural) and is part of the *Neighborhood District* within this zoning classification. Within the "PC-A" zoning district, single-family detached residences are required to have a minimum lot width of 50 feet and a minimum lot size of 5,000 square feet. Phase IV of Port Orange Plantation will contain a mix of various width lots, with a minimum design area of 5,100 square feet and an average design size of 5,500 square feet. Therefore, the final plat and plans for which approval is being sought have been designed according to the dimensional standards outlined in Chapter 17, Section 29, of the City's Land Development Code (LDC) for minimum lot width and minimum required lot area.

The final plat and plans for Phase IV show that the lots backing onto the retention lakes will be platted back to the normal water level. This has been done in previous phases of Port Orange Plantation, as well as in other subdivisions within the City. As stated above, the LDC permits this type of subdivision design. However, as with previous phases, staff is obligated to point out that the amount of usable back yard space property owners abutting a lake will have for the construction of accessory structures or building additions will be quite minimal. No permanent structures may be built in the 22' drainage, maintenance and access easement; therefore, the future property owners of lots abutting a retention pond will have 4' of room for sheds, pools, patio, screen rooms or other customary accessory structures, if their home occupies the entire depth of the building envelope (As shown on the "Retention Area Mean Annual Stage" detail Exhibit "B"). While there is no code requirement that yard space must be usable, it is an issue of which the Planning Commission and City Council should be made aware, since this may lead to an increase in the number of variance and easement vacation requests from property owners choosing to make upgrades to their investments.

The project engineer has noted on the plat that the rear setback for these lots will be 26 feet, which will place the home 20 feet from the top of bank or the mean annual water line. The project engineer has also added a note to the plat for additional clarity, which states that where drainage easements conflict with listed building setbacks, the drainage easement will take precedence. Additionally, the project engineer has also added a note on the plat stating that the construction of "any structures" within the 22-foot easement is prohibited.

Phase IV meets the requirements specified in the code with regard to open space, and common open space, and is able to "stand alone" in this regard.

Concurrency Review:

Concurrency is the finding that the public facilities and services necessary to support new development are available, or will be made available, concurrent with the impacts of the development. As mandated by State law, all municipalities must conduct concurrency reviews on development proposals and make a finding of concurrency before any development orders or permits can be issued. Concurrency reviews evaluate a project's impact on the following six public facilities and services:

- | | |
|-------------------|------------------------|
| 1. Transportation | 4. Solid Waste |
| 2. Sanitary Sewer | 5. Stormwater Drainage |
| 3. Potable Water | 6. Recreation |

The concurrency management system for the City of Port Orange is established by policy in the City's Comprehensive Plan, and administered through regulations contained within the City's Land Development Code (LDC). The following discussion and table examine the impacts the proposed development will have on the public facilities and services listed above.

Transportation

Per the Institute of Transportation Engineers *Trip Generation Manual, 7th Edition*, in addition to the traffic generated by phase III, phase IV will generate approximately 70 AM peak-hour (0.75 trips x 93 units) and 94 PM peak-hour trips (1.01 trips x 93 units). The traffic generated from phase III-V will contribute to the Level-of-Service (LOS) failures of six intersections and two road segments. These are discussed in greater detail below. Similar to other developments which have impacted the City's roadway network, the developer of this project will be required to enter into a Fair-Share and Concurrency Agreement with the City to pay for part of the scheduled improvements. The Agreement must be finalized and accepted by the City Council in order for the proposed development to meet its concurrency requirements. Please note that the Agreement is still being finalized as of now, but will be presented to the City Council at the same time as the plat and plans.

The developer, D.R. Horton, has financed the following improvements: Dunlawton Avenue and Clyde Morris Boulevard intersection, Williamson Boulevard and Town West Boulevard intersection and Williamson Boulevard and Taylor Road intersection (Summertrees Road Extension) projects through an executed Capital Recovery Agreement. However, the determination of a fair share payment for each project is required, so that the City can subtract the fair share payment from the total cost of the project. Therefore, the City would subtract D.R. Horton's fair share payment from the total cost of the each project, to determine the amount of the reimbursement payment to be issued to D.R. Horton once all the money has been collected for each project.

Dunlawton Avenue at I-95 interchange: To ensure an acceptable level of service, the City of Port Orange entered into a Local Funding Reimbursement Agreement (LFRA) with the Florida Department of Transportation (FDOT) to improve the Dunlawton Avenue/I-95 interchange. The project will construct one additional eastbound thru-lane on Taylor Road from the southbound on-ramp to just west of the northbound off-ramp. The project will also include one additional left-hand lane

onto the northbound on-ramp; installation of a signal to accommodate the two left-turn lanes onto the northbound on-ramp; and a dedicated eastbound lane onto the southbound on-ramp. The project will also include several other improvements to increase the capacity and safety of this high-traffic area. The failure is expected to occur on the eastbound lanes during the peak hours of the day. The fair-share contribution is calculated based on the additional capacity provided by one additional eastbound travel lane.

Dunlawton Avenue and Clyde Morris Boulevard: The City is taking the lead on coordinating the necessary improvements at this intersection, the cost of which will be borne by developments impacting it. The improvement primarily involves the addition of a southbound and northbound left turn lane within the existing right-of-way, along with new traffic signals and mast-arm poles. Through an arrangement with Volusia County and FDOT, the City has secured the financing and is preparing the design, while the construction and permitting will be overseen by Volusia County. The fair-share contribution is calculated based on the impact to the single-most critical of four turning movement combinations.

Williamson Boulevard and Taylor Road (Summertrees Road Extension): Recent traffic impact studies have shown that the northbound right-turn and southbound right-turn movements at the intersection of South Williamson Boulevard and Taylor Road failed due to current and vested trips. Port Orange Plantation, Phase III-V, will contribute to those failures as it is built out by 2008. To address the northbound failure, the County will construct a second northbound right-turn lane from S. Williamson Blvd. onto Taylor Road as part of its S. Williamson Blvd. (formerly Airport Road) widening project. The cost of this additional turn lane will be reimbursed to the County by developers whose projects will impact this intersection. The City will collect a proportionate "fair-share" payment from developers, then use it to reimburse Volusia County.

As for the southbound right-turn movement, it has been determined by City and County staff that it is not feasible to construct a second right-turn lane at this intersection. This is due to the fact that a large concrete power transmission pole is located on the northwest corner of this intersection, making it infeasible to expand this intersection beyond the improvements already being designed by the County with the widening of Williamson Boulevard. Instead, the additional turning capacity will be accommodated by the construction of the Summertrees Road extension, extending from the Taylor road and Summertrees Road intersection north and east to Williamson Boulevard north of Taylor Road. Because the extension of Summertrees Road is needed to address this transportation concurrency failure at Williamson Blvd. and Taylor Road, the City will collect fair-share payments to recoup the cost. Developments that impact the southbound right-turn movement at the intersection of Williamson Boulevard and Taylor Road will be required to enter into a Concurrency and Fair Share Agreement with the City to ensure that their proportionate share for the cost of this roadway extension.

Williamson Boulevard and Madeline Avenue: As part of the subdivision improvements for other developments in the City, a traffic light will be installed at the

intersection of Williamson Boulevard and Madeline Avenue. It is likely that the traffic light will be installed prior to build-out of Port Orange Plantation (Phase III - V). It is anticipated that installation of the traffic light will alleviate failures during the AM and PM peak hours at this intersection.

Williamson Boulevard and Willow Run Boulevard: As part of the subdivision improvements for other developments in the City, a traffic light will be installed at the intersection of Williamson Boulevard and Willow Run Boulevard. It is likely that the traffic light will be installed prior to build-out of Port Orange Plantation (Phase III - V). It is anticipated that installation of the traffic light will alleviate failures during the AM and PM peak hours at this intersection.

Williamson Boulevard and Town West Boulevard: A signal warrant study performed by the City's traffic consultant shows that a signal will be warranted upon build-out of Port Orange Plantation (Phase III-V) Because the County will only approve a signal based on actual traffic conditions, the City is requiring the developer to place into an escrow account the full engineering and construction costs associated with the future signalization of this intersection or a fair-share portion of the costs. Once the County and City receive a justified traffic signal warrant at this location, the developer will be advised on how to proceed.

Williamson Boulevard (Madeline Avenue to the City Limits): With the existing and vested trips information, Williamson Boulevard fails during both AM and PM peak hours from Madeline Avenue to the northern city limits. Port Orange Landings Phase II was the first development to trigger this failure, resulting in the need to four-lane this segment.

Williamson Boulevard (Willow Run Boulevard to Madeline Avenue): With the additional trips coming from Port Orange Plantation Phase III-V, Woodhaven Phase I or Town West Plaza, whichever comes first, Williamson Boulevard from Madeline Avenue to Willow Run Boulevard, will fail. The City has included or is in the process of including this project's construction phases within the next 3 year and is actively accepting proportionate fair-share payments toward their cost.

As part of the roadway improvements that are being constructed with Phase I & II, dedicated right- and left-turn lanes will be installed on both Royal Plantation Boulevard and Town West Boulevard to accommodate traffic flow and turning movements at full build-out of the entire Port Orange Plantation development.

Water, Sewer, Reclaimed Water

The proposed development will be served by potable water, sanitary sewer, and reclaimed water. Staff from the Public Utilities Department have worked extensively with the applicant to master design the utilities for the entire project, in order to ensure that adequate capacity would exist and that correct connections would be provided to the property to the west, which is also currently under subdivision review by staff.

Stormwater Drainage

The City's Comprehensive Plan and Land Development Code require that there be no net loss of stormwater retention function as a result of development. The entire system has been designed to meet the regulations stated in Chapter 10, Section 11(b), LDC, which prohibits discharge from the developed site from exceeding the discharge existing before development of the site occurred. Stormwater drainage within the entire Port Orange Plantation development will function as a single system using a series of interconnected wet retention ponds.

The entire Port Orange Plantation property, which has historically been used as pasture land, has a series of wetlands and agricultural ditches running through the site. Prior to development, these ditches carried stormwater run-off through the property and eventually into Tributary #1 of the B-19 Canal. Based on supplementary information provided with the final plat and plan submittal, and discussions with the project engineer, it appears that these ditches within the entire Port Orange Plantation development are to be filled and the stormwater run-off is to be collected and conveyed through a curbing and storm drainage piping system to a series of interconnected retention areas. The retention areas are also designed to accommodate the stormwater run-off from the roads being constructed around the perimeter of Port Orange Plantation. The final outfall for the retention areas will be into the existing ditch at its intersection with McGinnis Boulevard just east of retention area #11. The existing ditch eventually becomes Tributary #1 which flows into the B-19 Canal.

In order to accommodate the historic drainage patterns and stormwater run-off that traversed the property which is to be occupied by Port Orange Plantation, the project engineer proposes the construction of a separate stormwater drainage system, independent of the retention ponds that would convey stormwater around the perimeter of the Port Orange Plantation project. The separate stormwater drainage system will be constructed as part of the subdivision improvements for Phase IV. More specifically the proposal is the construction of a 48" storm drainage pipe that would initially provide a stormwater outfall for the Royal Palm Phase III subdivision and an easterly section of the Coquina Cove subdivision. The majority of the 48" storm drainage pipe would be located in the rights of way of Coraci Boulevard, Street "D" and McGinnis Boulevard and would be dedicated to the City of Port Orange for ownership and maintenance. In the future the 48" storm drainage pipe would also serve as a stormwater outfall for the proposed school site and commercial area located north of Street "D".

Recreation and Open Space

Phase IV of the proposed project would generate the need for an additional 0.97 acres of parkland, while at build-out, the entire single-family portion of the Port Orange Plantation project will require an additional 4.20 acres of parkland. Per the City's 2005 Concurrency Management Report, the City currently has a surplus of 394 acres of parkland City-wide. Therefore, no additional parkland must be acquired by the City in order to meet the recreation and open space levels of service outlined in the City's *Comprehensive Plan – Update '98*. However, while the City may have surplus parkland City-wide, there should also be parkland located nearby to serve the residents of the area. To that end, the City has purchased 12 acres of parkland to the east of Phase IV and 36 more acres northwest of the subject property. Residents of Phase IV will easily

be able to bike or walk to the 12-acre park, which will have direct access from White Willow Lane in Phase III. The 36-acre park, which is approximately one-half mile from Phase IV, will also be accessible to residents by either foot or bicycle. The City has recently begun to plan and design these park facilities, although it is not known at this time when they will be constructed.

Summary of Impacts

The following table reflects the anticipated impacts of Phase IV as well as the cumulative impacts of the proposed single-family portion of this subdivision at build-out, on available public infrastructure.

Table 1 - Infrastructure Impact Assessment

DEVELOPMENT VARIABLE	PHASE IV IMPACT	CUMULATIVE IMPACT (PHASES I-V)
Residential Units – Single-family	93	404
Population¹	242	1,050
A.M./P.M. Peak Hour Trips²	70/94	303/408
Sanitary Sewer (gallons per day)³	21,390	92,920
Potable Water (gallons per day)⁴	23,715	103,020
Stormwater Drainage⁵	See Note	See Note
Solid Waste (lbs. Per day)⁶	777	3,371
Recreation & Open Space (acres)⁷	0.97	4.20

Notes:

1. Population: 2.6 persons/single-family unit
2. Transportation: All rates are for A.M. and P.M. peak hour of adjacent street traffic. A.M. peak-hour trips = 0.75 trips/unit. P.M. peak-hour trips – 1.01 trips/unit.
3. Sanitary Sewer: 230 gallons per day per Equivalent Residential Unit
4. Potable Water: 255 gallons per day per Equivalent Residential Unit
5. Stormwater Drainage: Drainage will be master-planned for the entire Port Orange Plantation Subdivision, subject to current standards contained in the Land Development Code. The City's adopted level-of-service standard for stormwater management is the 25-year, 24-hour storm event. More specifically, the City's facilities should be capable of treating and conveying the runoff from the 25-year, 24-hour storm without causing flooding or polluting the receiving water bodies.
6. Solid Waste Collection: 3.21 pounds per day per capita
7. Parkland: 1 acre/250 persons (0.004 acres/person)

Sources:

2005 Port Orange Concurrency Management Report
ITE Trip Generation Manual, 7th Edition

School Capacity

Over the past two years, the School Board planning staff have made the City aware of existing school capacity shortages in Port Orange. The shortage was made worse from a regulatory standpoint with passage of the school class size amendment to the state constitution.

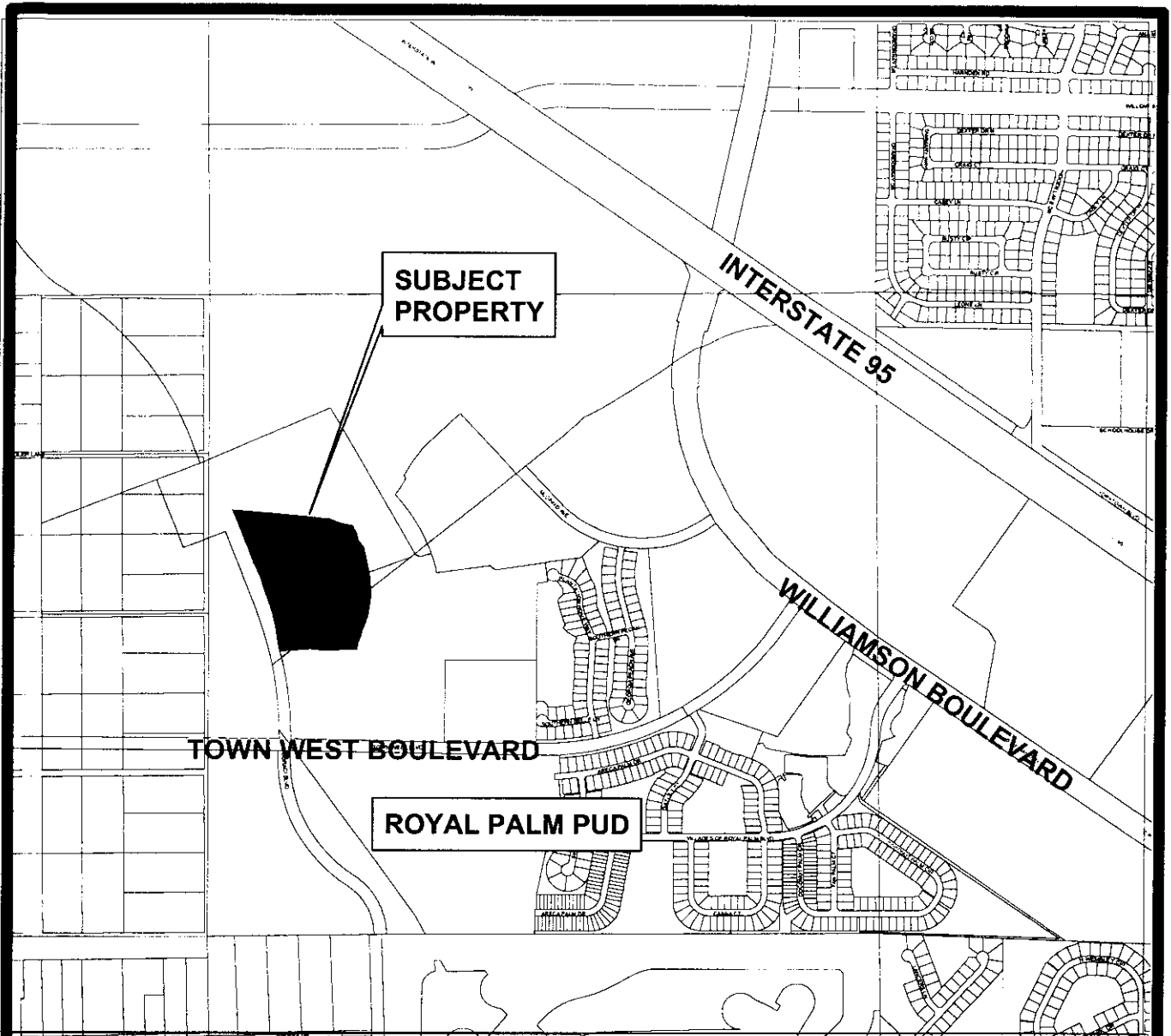
The latest class size counts from the '05-'06 school year show that Horizon Elementary now has 918 students, which is almost double its official capacity of 510 students. Horizon Elementary is the nearest elementary school to the Port Orange Plantation Phase IV subdivision, which will add to the number of students. Although a new elementary school will be opening on S. Williamson Boulevard by late 2006, and an additional site on Big Tree Road is planned, these schools will not address the immediate impact of additional children at Horizon that will be coming from this development. In the short term, the School Board has arranged to add six temporary portables to the City's Willow Run Park, adjacent to Horizon Elementary, in order to accommodate the expected student population, until such time as the new schools could be built.

Summary of Outstanding Comments:

The proposed subdivision was reviewed at the February 8, 2006 Staff Development Review Committee (SDRC) meeting. The outstanding technical comments for this project, as of May 15, 2006 are attached to this report for review. Of the six outstanding technical comments from staff, four concern labeling errors or missing information on the plat, which are minor in nature and can be easily corrected. The two comment issued by the City Attorney's office pertain to the placement of drainage pipes within the rights-of-way of Coraci Boulevard, Street "D" and McGinnis Boulevard. Both comments will ultimately be subject to City Council approval of this improvement.

RECOMMENDATION:

Based upon the fact that the project as designed meets the minimum technical requirements of the Land Development Code, staff recommends **approval** of the final plat and plans for Port Orange Plantation, Phase IV, subject to the resolution of all outstanding technical comments.



Case No.: 05-50000015

Requested Action:

Applicant: Sue McCoy, P.S.M.,
President Harpster Engineering
and Surveying, Inc.

Approval of the proposed final plat and plans for Port Orange Plantation, Phase IV. The subdivision will be developed for 93 single-family lots with associated infrastructure and stormwater improvements on approximately 26.21 acres.

Location: West of Williamson Boulevard,
north of Royal Palm Subdivision

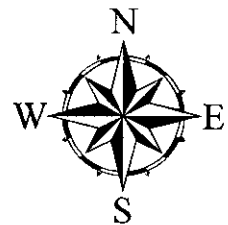


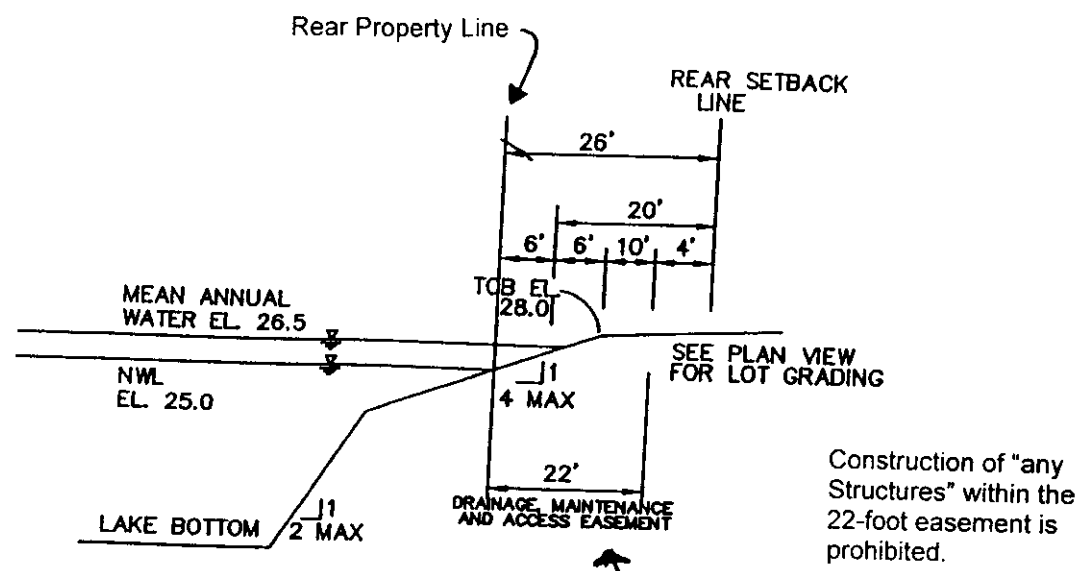
Exhibit "A"

LOCATION MAP

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Construction of "any Structures" within the 22-foot easement is prohibited.

SECTION B-B
RETENTION AREA MEAN ANNUAL STAGE
 N.T.S.
LAKES 6 & 7

RETENTION AREA MEAN ANNUAL STAGE		
RETENTION AREA	NORMAL WATER LEVEL (FEET)	MEAN ANNUAL WATER LEVEL (FEET)
6	25.00	26.5
7	25.00	26.5

SUBDIVISION FINAL PLAT & PLANS
PORT ORANGE PLANTATION PHASE IV
CASE NO. 05-5000015
OUTSTANDING TECHNICAL COMMENTS AS OF 5/18/06

ENGINEERING: (Larry Littlefield 506-5663/llittlefield@port-orange.org; or Chip Glor – 506-5662 (Plat review only)/ cglor@port-orange.org):
PLAT (5/10/06)

1. Previous comment: Complete name, easement, and documentation recording information labels referenced on the plat when the referenced documentation is recorded. (F.S. Ch. 177.071).
2. Previous comment: Complete adjacent owner information labels and adjacent right-of-way information labels at this time. All areas have not been addressed.
3. Previous comment: The statement granting drainage easements to the HOA in the dedication is to also state, "...for the purposes described in the general notes". The phrase was added to the wrong sentence in the dedication.
4. Previous comment: Show all witness monumentation and offset dimensions for all PRM and lot corner monumentation that may be in the water. As per the plans and elevations, some corners will be at normal water elevation or in the water as was the case with phase 1. The plat is to show and label a top of bank witness line at the elevation location that planning required rear setbacks to be measured from (elev.=28.00). The plat is to show a drainage maintenance and access easement 10.00 feet beyond the top of bank location. The plat setback notes are to be revised to state that rear setback for the lot numbers that are around the lake(s) is to be 20.00 feet from top of bank witness line.

CITY ATTORNEY: (Linda D. Johnson CLA, Paralegal for Margaret T. Roberts - 506-5538; paralegal@port-orange.org or Betty Gaddy – 506-5527):

Policy Issues:

1. Offsite Improvements to be Constructed with Phase IV
The Developer proposes to reroute 2400 feet of existing drainage way currently bisecting Developers property. The drainage way rerouting follows Coraci Blvd., Future Street "D," and McGinnis Avenue for a total distance of 5400 feet. Since the year 2000, the storm water drainage systems for private lands have been primarily located within the private property and maintained by the private property owner. If placed within the public r/w as proposed, the drainage system would become the responsibility and liability of the City unless the private property owner (and its successor HOAs) enters into an agreement with the City for a license and for perpetual maintenance and related responsibilities. The City is liable for any drainage system that it owns or is otherwise responsible for maintaining.

It has been represented but not confirmed by City Staff that the proposed rerouting has the capacity to serve other properties in addition to the subject development phases.

Since Willow Run is downstream and subject to a history of flooding, it is imperative that the City's drainage consultants and engineers be satisfied that the design of this proposed rerouted system will properly handle the stormwater runoff for the impacts to upstream and downstream properties.

If the Council determines that it will permit the re-routed drainage system within the right-of-ways, then the City Attorney's recommends a license and maintenance agreement by the subject Developer and any other properties served by the system.

2. In addition to the foregoing, within paragraph 1 of the SIA, general reference is made to off-site improvements (e.g., including out-fall ditch) to be completed as a part of this Phase IV of the Port Orange Plantation project. City staff has become aware of document recorded at OR Book 5700, pg. 1447 PRVCF, "Exclusive Non-transferable Access, Utility and Drainage Easement" in favor of School Board of Volusia County, encumbering a 90-ft. width of Future Road "D." Prior to City Council approval, please provide easement or deed of dedication that will be utilized for the segment of the drainage bypass pipe to be located along the northerly property line of Port Orange Phase V within Future Road "D."

Temporary Easements (Phases III, V, Villas I, and II)

All previous comments have been addressed.


Advisory Note: The Opinion of Title provided from which this review is based upon notes a records search effective as of January 6, 2005. Ch.5, §11(g)(2), of the Land Development Code requires, "An opinion of title updated to no more than two weeks prior to the proposed date for recording." This office acknowledges the lead-time required for the circuit court clerk's office to index and record documents in the public records. At such time as the developer has an approved and finalized plat ready for signatures and recording, the City Attorney will accept for review a faxed copy of the updated opinion (with hard copy to follow) in order to expedite the plat recording process.

SUBDIVISION FINAL PLAT & PLANS
PORT ORANGE PLANTATION PHASE IV
CASE NO. 05-5000015
OUTSTANDING ADVISORY COMMENTS AS OF 5/18/06

CITY ATTORNEY: (Linda D. Johnson CLA, Paralegal for Margaret T. Roberts - 506-5538; paralegal@port-orange.org or Betty Gaddy – 506-5527):

Advisory Comment 1: Prior to Plat Recording: SJRWMD Conservation Easement, currently shown with recording data in blank, must be established and placed of record prior to recordation of this Phase IV plat.

The Concurrency and Fair Share Agreement for Port Orange Plantation, Phases III, IV and V has been combined into one agreement. The Agreement has been included for the City Council's approval in the agenda package for the Port Orange Plantation Phase III, Plat and Plans.

To: Mayor and City Council Members
Kenneth W. Parker, City Manager
Richard W. Wells, Director of Community Development
From: Margaret T. Roberts, City Attorney 
Re: Port Orange Plantation Phase IV, Plat and Plans.
Date: July 14, 2006

The developer proposes to reroute the existing drainage pattern off site to property owner lying north of the project. The drainage will be routed along an easement held by the School Board. The developer has the obligation to build the rerouted drainage system pursuant to the Subdivision Improvement Agreement. Prior to issuance of the development order, the developer must document that the developer has the clear legal right to build the rerouted drainage system on land that is not owned or controlled by the developer. The developer has represented that the School Board will agree to permit the developer to build the system within the easement held by the School Board and that appropriate documentation will be made available prior to the city council consideration.

The developer is obligated to permit the existing drainage across the developers land. The drainage across the developer's land comes from Royal Palm, Coquina Cove, and a proposed commercial site and due to the rerouting will be next to the School Board Property. This system does not handle any drainage coming from Town West Boulevard, Coraci Boulevard or city park property. It has been determined to be adequate to handle bypass drainage. Normally the cost of handling the existing drainage system is the expense of the developer and the HOA who will maintain the system. In this case the developer is moving it offsite into the Coraci right-of-way and a future right-of-way.

Policy Question: Does the city agree to accept the ownership and maintenance of the rerouted system?

Conditions of approval, as applicable:

(1) The City's receipt of legal documentation giving the developer a clear right to build the bypass drainage system prior to the plans being stamped approved for construction.

(2) If the city does not agree to accept the ownership and maintenance, then as a condition of approval, the developer shall provide an agreement for the maintenance responsibility prior to the plans being stamped approved for construction.

This Document Prepared By:

Please Return Recorded Document to:
Office of Records Clerk
1000 City Center Circle
Port Orange FL 32129

Plans Stamped "Approved for Construction"
on: _____, 200__.

Space Reserved for Recording per §695.26(e)(1) Florida Statutes (2003)

**CITY OF PORT ORANGE, FLORIDA
SUBDIVISION IMPROVEMENT AGREEMENT**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2006, by and between the **City of Port Orange, Florida**, a chartered municipal corporation, hereinafter referred to as "the City", 1000 City Center Circle, Port Orange FL 32129; and **D.R. Horton, Inc. - Jacksonville**, mailing address: 9456 Phillips Highway, Suite #1, Jacksonville, Florida 32256, hereinafter referred to as "the Developer".

WITNESSETH

WHEREAS, the Developer warrants that it is the owner of the property ("the subject property") legally described on **Exhibit "A"** attached hereto and made a part hereof; and

WHEREAS, the Developer desires to subdivide the subject property and has submitted subdivision plans and a plat designated as Port Orange Plantation - Phase IV (name of subdivision); and

WHEREAS, upon approval of said plans and plat according to the requirements of the City's Land Development Code and the laws of Florida, the Mayor is authorized to execute this agreement to assure the completion of improvements shown on said plans.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Developer warrants that it will complete the on site and off site improvements, specifically the drainage bypass pipe from station 18+25 to station 35+56 on Coraci Boulevard and from station 35+56 on Coraci Boulevard along the north property line of Port Orange Plantation Phase V and Villas of Port Orange Plantation Phase I to station 46+65 on McGinnis Avenue, reflected on the plans approved by the City Council as prepared by Fred Harpster, P.E., Florida Registration No. 4724, of the firm, Harpster Engineering and Surveying, Inc. These improvements shall be

completed in accordance with Section 177.011, et. seq. Florida Statutes (2005) and the Port Orange Land Development Code and any other applicable regulations, ordinances or laws of the City. Failure to construct and complete such improvements in compliance with the terms of this agreement shall constitute grounds for the City to halt further development or construction under this agreement, and to withhold building permits, utility service, and certificates of occupancy for completed improvements on the subject property. In the event the subject property is undisturbed for 30 or more consecutive days, the City reserves the option to stabilize the site as necessary with seed and mulch and to place a lien of record against the subject property for the costs of such stabilization. The Developer warrants that the referenced plat comports with the requirements of Chapter 177, Florida Statutes (2005) regarding platting of land, and that the Developer will form or annex this property to an existing property owners' association (POA) for the purpose of collecting monies necessary to enforce the terms and provisions of covenants and restrictions approved for the referenced subdivision plat and as required by the Surface Stormwater Management No. 4-127-92263-1 issued by the St. Johns River Water Management District.

2. All improvements shall be completed within twelve (12) months of the date the plans are date stamped as Initial Approved for Construction.
3. Execution of this agreement shall allow the Developer the right to record the approved plat for the subject property upon compliance with the requirements of the Land Development Code and provision of a financial guarantee prepared and recorded in the public records of Volusia County in accordance with Section 255.05, Florida Statutes (2005), and as acceptable to the City, in an amount equal to one hundred ten percent (110%) of the cost estimate for the construction of the required improvements. If the required improvements are not completed as required under this agreement, the City shall be authorized to draw upon the financial guarantee funds to pay for the completion of said improvements, including reasonable administrative costs in the completion of the construction.
4. Execution of this agreement shall also allow the Developer to initiate the construction of improvements without providing a financial guarantee for completion, but the plat shall not be executed or recorded prior to the acceptance of improvements. However, should the improvements not be completed as required under this agreement, the City, after thirty (30) days written notice to the undersigned or any subsequent owner, successor in interest or assign, may install or have installed or completed said required improvements. Further, the City is hereby authorized to assess the cost of installing or completing said improvements against the subject property. Such improvement assessment shall constitute a lien thereon

until paid, which lien shall be superior and paramount to the interest on such property of any owner, lessee, tenant, mortgagee or other person, except the lien of ad valorem taxes.

5. If construction begins under paragraph 4 above, but the Developer desires to record the plat, it shall provide a financial guarantee for completion as required in paragraph 3 above to cover the cost of all improvements with no credit for partially completed construction.
6. At the time that construction is determined to be complete by the City, and prior to City acceptance of public improvements for maintenance, the Developer shall provide the City with a maintenance bond in the amount equal to ten percent (10%) of the final construction cost for the correction of any failures or defects that become apparent within one (1) year of City acceptance.
7. The Developer shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, injuries, liability, losses and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from the construction of improvements or performance of operations under this agreement.
8. This agreement shall be recorded in the Public Records of Volusia County, Florida. The provisions of this agreement shall constitute covenants running with the land applicable to all of the subject property described herein or any portion thereof. This agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
9. In the event of any claim, action, litigation or proceeding under this agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, by and through the duly authorized representatives, on the above date.

WITNESSES:

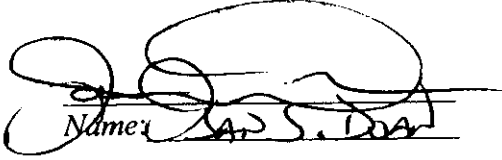
CITY OF PORT ORANGE, FLORIDA
A Chartered Municipal Corporation

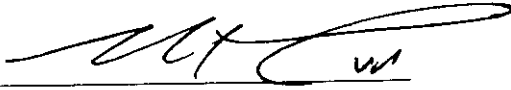
Name: _____


By: _____
Allen Green, Mayor

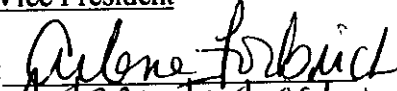
WITNESSES:

D.R. Horton, Inc. – Jacksonville
A Delaware corporation
"Developer"


Name: David S. Dean

By: 
Name: Philip A. Fremento
Title: Vice President


Name: Brett S. Lambert

Attest: 
Name: Arlene Forbich
Title: Assistant Secretary

(Witnesses as to Both)

(Corporate Seal)

EXHIBIT "A"

LEGAL DESCRIPTION PORT ORANGE PLANTATION, PHASE IV

A PORTION OF SECTION 13, TOWNSHIP 16 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MONUMENT MARKING THE SOUTHWEST CORNER OF SECTION 18, TOWNSHIP 16 SOUTH, RANGE 33 EAST; THENCE N89°50'24"W, 2767.32 FEET TO A 1" IRON PIPE MARKING THE OCCUPIED SOUTH 1/4 CORNER OF SAID SECTION 13; THENCE S89°29'27"W, 959.08 FEET; THENCE N28°29'28"W, 181.84 FEET; THENCE N35°48'24"W, 1644.75 FEET; THENCE N89°37'10"W, 50.00 FEET; THENCE N00°22'50"E, 100.00 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 3074.72 FEET, A CENTRAL ANGLE OF 12°39'21", A CHORD OF 677.78 FEET, AND A CHORD BEARING OF N05°56'51"W; THENCE ALONG SAID CURVE 679.16 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID CURVE CONCAVE WESTERLY HAVING A RADIUS OF 3074.72 FEET, A CENTRAL ANGLE OF 08°54'39", A CHORD OF 477.71 FEET, AND A CHORD BEARING OF N16°43'51"W; THENCE ALONG SAID CURVE 478.19 FEET TO THE POINT OF TANGENCY THEREOF; THENCE N21°11'11"W A DISTANCE OF 1015.06 FEET; THENCE S84°58'25"E A DISTANCE OF 827.77 FEET; THENCE S74°14'44"E A DISTANCE OF 107.31 FEET; THENCE S82°47'32"E A DISTANCE OF 50.47 FEET TO A NON TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 06°19'30", A CHORD OF 35.86 FEET, AND A CHORD BEARING OF S17°35'40"W; THENCE ALONG SAID CURVE 35.88 FEET; THENCE S44°41'58"E A DISTANCE OF 42.32 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 435.00 FEET, A CENTRAL ANGLE OF 24°10'12", A CHORD OF 182.15 FEET, AND A CHORD BEARING OF S32°36'53"E; THENCE ALONG SAID CURVE 183.50 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 2582.00 FEET, A CENTRAL ANGLE OF 07°56'56", A CHORD OF 357.92 FEET, AND A CHORD BEARING OF S16°33'19"E; THENCE ALONG SAID CURVE 358.21 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 735.00 FEET, A CENTRAL ANGLE OF 30°49'03", A CHORD OF 390.59 FEET, AND A CHORD BEARING OF S02°49'41"W; THENCE ALONG SAID CURVE 395.33 FEET TO THE POINT OF TANGENCY THEREOF; THENCE S18°14'13"W A DISTANCE OF 195.60 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 165.00 FEET, A CENTRAL ANGLE OF 18°19'22", A CHORD OF 52.54 FEET, AND A CHORD BEARING OF S09°04'32"W; THENCE ALONG SAID CURVE 52.77 FEET TO THE POINT OF TANGENCY THEREOF; THENCE S00°05'09"E A DISTANCE OF 61.59 FEET; THENCE S89°54'51"W A DISTANCE OF 270.00 FEET; THENCE N76°06'35"W A DISTANCE OF 45.69 FEET; THENCE S77°50'05"W A DISTANCE OF 105.00 FEET; THENCE S84°53'04"W A DISTANCE OF 50.39 FEET; THENCE S77°43'28"W A DISTANCE OF 140.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,141,776 SQUARE FEET = 26.21 ACRES MORE OR LESS

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Allen Green and Kenneth W. Parker, as Mayor and City Manager, respectively, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that they are duly authorized to execute the foregoing agreement on behalf of the city. They are personally known to me.

Notary Public, State of Florida at Large
*Printed, typed or stamped name, commission
and Expiration of commission term:*

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 13th day of June, 2006, by Philip A. Remento and Arlene Forbrich, as Vice President and Assistant Secretary of D.R. Horton, Inc. - Jacksonville, a Delaware corporation, on behalf of the corporation. They are personally known to me, or have produced _____ as identification.

AMBER MARIA LEHMAN
Notary Public, State of Florida
My comm. exp. Mar. 6, 2007
Comm. No. DD 189811

Amber Maria Lehman
Notary Public, State of Florida at Large
*Printed, typed or stamped name, commission
and Expiration of commission term: March 6, 2007*