



CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE: 6/22/2010

**SUBJECT: PUBLIC IMPROVEMENTS AGREEMENT FOR BARCELO DEVELOPMENT, INC.
5460 RIDGEWOOD AVENUE
CASE NO. 10-80000003**

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:

To approve the Public Improvements Agreement for Barcelo Development, Inc.

SUMMARY:

Barcelo Development, Inc. has provided a Public Improvements Agreement for off-site public road improvements to Ridgewood Avenue including paving, curbing, sidewalk improvements and associated facilities. The improvements are part of the redevelopment of the site as a construction storage and garage facility for Masci Construction Inc. The agreement requires that this work is completed within one-year from the Development Permit issuance and that a one-year maintenance bond for the work be provided with the completion and final acceptance of the development.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD

Wayne Clark
Community Development Director

Date 6/15/10

Asst **CITY ATTORNEY**

Approved as to Form and Legality

Date 6/15/10

CITY MANAGER

Approved Agenda Item For:

Date 6/22/10

COUNCIL ACTION:

Approved as Recommended

Disapproved

Tabled Indefinitely

Continued to Date Certain

Approved with Modification

This Document Prepared By:
Margaret T. Roberts, City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

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

Plans Stamped "Approved for Construction"
on: _____, 2010

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

Parcel No. 6314-02-00-0040 & 0060

CITY OF PORT ORANGE, FLORIDA
PUBLIC IMPROVEMENTS AGREEMENT
(BARCELO DEVELOPMENTS, INC.)

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2010, 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 Barcelo Developments, Inc., a Florida corporation, mailing address: 5752 South Ridgewood Ave., Harbor Oaks, Florida 32127 (the "Developer").

WITNESSETH

WHEREAS, the Developer warrants that it is the current record title owner of the property (the "subject property") legally described on **Exhibit "A"** attached hereto and by this reference made a part hereof.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Developer warrants that it will complete the improvements reflected on the plans submitted by Developer dated May 20, 2010, as prepared by Daniel Johns, P.E., Florida Certificate Number 54037, said plans approved by the City. The public improvements, including but not limited to off-site public road improvements to Ridgewood Avenue (U.S. 1), including paving, curbing, sidewalk improvements and associated facilities shall be completed in accordance with City Standard Construction Details, the Port Orange Land Development Code and any other applicable regulations, ordinances or laws. 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.

2. All improvements shall be completed within twelve (12) months of the date the construction plans are stamped and initialed by the Community Development Engineer as "Approved for Construction."
3. Execution of this agreement and provision of a financial guarantee prepared and recorded in the public records of Volusia County in accordance with Section 255.05, Florida Statutes (2009), 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 shall allow the Developer to proceed with development of the subject property upon compliance with the requirements of the Land Development Code. If all 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 when a financial guarantee is not required by the City Council, but no certificate of occupancy shall be issued 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. The Developer hereby grants to the City a temporary access, ingress, egress and construction easement for the purposes set forth in this paragraph.
5. Notwithstanding the foregoing, no Certificate of Occupancy shall be issued for any site located on the subject Property until all improvements reflected on the plans approved by the City referenced in Paragraphs 1 and 2, above, have been completed and accepted by the City.
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. The Developer agrees to require the Contractor who will be constructing the improvements to name the City as a third party beneficiary under the construction contract, with all rights, remedies, indemnification and insurance coverage afforded the Developer thereunder and in compliance with the City of Port Orange Land Development Code, Chapter 6, Section 6 (b) (3).
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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

WITNESSES AS TO BOTH
SIGNATORIES:

CITY OF PORT ORANGE, FLORIDA
A Chartered Municipal Corporation

Name: _____

By: _____
Allen Green, Mayor

Name: _____
(Witnesses as to Both)

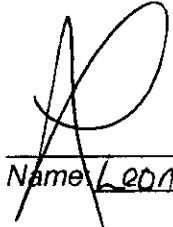
Attest: _____
Kenneth W. Parker, City Manager

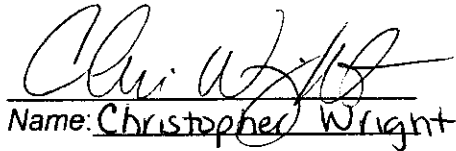
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, 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:*

WITNESSES:


Name: Leonel Masci


Name: Christopher Wright

BARCELO DEVELOPMENTS, INC.,
a Florida corporation
"Developer"

By: 
Name: Leticia Masci
Title: President

(Company Seal)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14 day of June, 2010 by Leticia Masci of Barcelo Developments, Inc., a Florida corporation, on behalf of the corporation. She is personally known to me, or has produced _____ as identification.

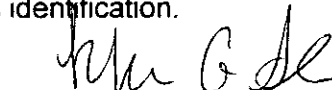

Notary Public, State of Florida
Printed, typed or stamped name, commission
and Expiration of commission term:



EXHIBIT "A"

PARCEL 1:

The Southerly 75 feet of Lot 4, and the Northerly 74.29 feet of Lot 5, HARBORDALE, according to the plat thereof as recorded in Map Book 19, Page 24, Public Records of Volusia County, Florida.

PARCEL 2:

The Southerly 25.71 feet of Lot 5 as measured along Ridgewood Avenue, and the Northerly 74.29 feet of Lot 6 as measured along Ridgewood Avenue, HARBORDALE SUBDIVISION, according to the plat thereof recorded in Map Book 19, Page 24, Public Records of Volusia County, Florida.