

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of City of Bartow, Florida,
Regarding a Territorial Dispute with Tampa
Electric Company, Polk County, Florida.

DOCKET No. 011333 - E u
Filed: _____

**PETITION OF CITY OF BARTOW TO MODIFY
TERRITORIAL AGREEMENT OR, IN THE ALTERNATIVE, TO
RESOLVE TERRITORIAL DISPUTE IN POLK COUNTY, FLORIDA**

Petitioner, CITY OF BARTOW, FLORIDA ("Bartow"), pursuant to section 366.04(2)(e), Florida Statutes, and Florida Administrative Code Rule 25-6.0441, hereby petitions the Florida Public Service Commission ("Commission") to modify the territorial agreement or, in the alternative, to resolve a territorial dispute between Bartow and TAMPA ELECTRIC COMPANY ("TECO"). In support of its petition, Bartow states as follows:

1. All notices and pleadings in this matter should be served on the following:

For Bartow: Mr. Davisson F. Dunlap, Jr.
Dunlap & Toole, P.A.
2057 Delta Way
Tallahassee, FL 32303
850-385-5000
850-385-7636 Facsimile

2. Bartow owns, maintains operates a municipal electrical distribution system that provides retail electrical services to customers within and adjacent to the city of Bartow, Polk County, Florida.

3. TECO is an investor-owned electric utility that owns, maintains, and operates electrical distribution systems serving retail electrical customers in the vicinity of the city of Bartow.

4. By this petition, Bartow seeks a modification of its territorial agreement with TECO.

DOCUMENT NUMBER-DATE

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5. Bartow and TECO are subject to the jurisdiction of the Commission for the purpose of resolving territorial disputes pursuant to section 366.04(2)(e), Florida Statutes.

6. On or about April 16, 1985, Bartow and TECO entered into a territorial boundary agreement, a copy of which is attached as Exhibit A. The final order of the Public Service Commission approving the territorial agreement was dated December 31, 1985.

7. The territorial boundary agreement has a termination and modification clause that appears in section 1.1 and states:

[For] fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this agreement.

That 15-year term has now expired and Bartow is seeking to terminate or modify the agreement.

8. The territorial agreement establishes a boundary line that is described in paragraph 2.2 as follows:

The area generally north of said boundary line (a) and generally west of said boundary line (B) is reserved to TECO (as relates to BARTOW), and the area generally south of said boundary line (a) and generally east of said boundary line (b) is reserved to BARTOW (as relates to TECO), with respect to services to retail customers.

9. At the time that the 1985 agreement was reached, there were no electrical customers in the area and neither utility was providing electrical services to what is now known as the Old Florida Plantation (“OFP”) property.

10. The territorial dividing line reached in the 1985 agreement runs from east to west and divides the OFP property.

11. On August 7, 2000, the entire area comprising OFP was annexed into the city of Bartow. This included portions of the areas that lie north of Bartow’s territorial boundary line. A copy of Ordinance no. 1923-A, which includes a legal description, is attached as Exhibit B.

12. In August 1996, pursuant to section 380, Florida Statutes, OFP submitted an application for development approval. The Old Florida Plantation property is now owned by Old Florida Plantation, Ltd. A map depicting the site of the Old Florida Plantation is attached as Exhibit C. Pursuant to the submissions of Old Florida Plantation and after due consideration, an ordinance was adopted by the city of Bartow issuing a development order to OFP, a copy of which is attached as Exhibit D.

13. At the current time, the city of Bartow does provide some electrical services to a location in the OFP development, which is located within Bartow's current territorial boundary.

14. The developer of the property has requested that the city of Bartow provide all of the utility services, including electrical services to the development.

15. The city of Bartow will provide utility services for the development, including garbage pick up, sewer services, potable water and police and fire protection.

16. The city of Bartow will own and operate certain of its own facilities located in that portion of the development lying north of its territorial boundary line, including a fire station, auxiliary police station, sewer lift stations, and street lights, all of which it will serve with its electrical power.

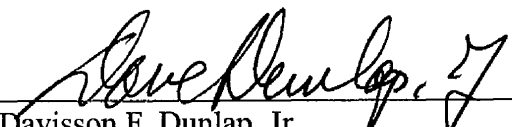
17. Bartow can serve the territory more economically than can TECO. Bartow's distribution substations that would provide power to the site currently have the capacity to accommodate the new development.

18. Bartow currently has distribution lines bordering the property.

19. There is a benefit to the future customers in the development in being able to have all their utilities supplied by the city of Bartow, as opposed to having to deal with two separate entities to receive their utility services.

WHEREFORE, Petitioner, City of Bartow, requests that the Commission will take jurisdiction of the parties and the subject matter and modify the territorial agreement adjusting the current territorial boundary lines to include all of the OFP development lying inside the Bartow city limits.

Dated this 4th day of October, 2001.




Davisson F. Dunlap, Jr.
Florida Bar Number 0136730
DUNLAP & TOOLE, P.A.
2057 Delta Way
Tallahassee, FL 32303
850-385-5000
850-385-7636 Facsimile

Attorneys for Petitioner, City of Bartow

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing petition has been furnished by United States mail on this 4th day of October, 2001, to:

Tampa Electric Company
c/o its Registered Agent
S. M. McDevitt
702 North Franklin Street
Tampa, FL 33602



Attorney

**TERRITORIAL BOUNDARY AGREEMENT
BETWEEN
TAMPA ELECTRIC COMPANY
AND
THE CITY OF BARTOW, FL.**

Section 0.1 THIS AGREEMENT, made and entered into this 16th day of APRIL, 1985, by and between TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as "TECO" and the CITY of BARTOW - Electric Department, a city incorporated and existing under the laws of the State of Florida, herein referred to as "BARTOW";

WITNESSETH:

Section 0.2 WHEREAS, TECO is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.3 WHEREAS, BARTOW is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.4 WHEREAS, the areas in which each party is supplying retail electric service are in close proximity and abut in Polk County, TECO and BARTOW desire to cooperate in the public interest in supplying service in a manner so as to avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area.

Section 0.5 WHEREAS, the execution of this AGREEMENT by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.6 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 **TERM:** After this AGREEMENT becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until termination or until modification shall be mutually agreed upon, or until termination or modification shall be mandated by governmental entities or courts with appropriate jurisdiction. Fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this AGREEMENT.

ARTICLE II

ESSENCE OF AGREEMENT

Section 2.1 The boundary line delineating the retail electric service areas of the parties is marked on the map attached hereto and labeled Exhibit A, and said boundary line is further described in (a) and (b) as follows:

WINTER HAVEN

(a) Commence at the southeast corner of the northeast 1/4 of Section 30, Township 29, Range 26 east, run thence north along the east boundary of said Section 30 to the northeast corner of said Section 30, run thence west along the north boundary of said Section 30 to the southeast corner of the southwest 1/4 of Section 19, Township 29 south, Range 26 east, run thence north to the southeast corner of the southwest 1/4 of Section 18, Township 29 south, Range 26 east, run thence west along the south boundary of said Section 18 to the southwest corner of said Section 18, run thence north along the

west boundary of said Section 18 to the intersection of the said west boundary and the south right-of-way of State Road 559, run thence westerly in a straight line along the projected right-of-way of State Road 559 to the easterly right-of-way of line of State Road 555, run thence southwesterly along said right-of-way line to a point 900 feet west of the east boundary of Section 22, Township 29 south, Range 25, run thence south parallel to and 900 feet west of the east boundary of said Section 22 to the south boundary of said Section 22, run thence west along the south boundaries of Sections 22 and 21, Township 29 south, Range 25 east, to the southwest corner of said Section 21, run thence north along the west boundary of said Section 21 into Lake Hancock to a point of intersection with the westerly projected north boundary of Section 22, Township 29 south, Range 25 east, run thence west along the projected north boundary of said Section 21 to a point in Lake Hancock located 1,900 feet east of the southeast corner of Section 13, Township 29 south, Range 24 east, for a point of termination. All lying in Polk County, Florida.

PLANT CITY

(b) Commence at the southeast corner of the southwest 1/4 of Section 3, Township 31 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of Section 15, Township 30 south, Range 24 east, run thence east along the north boundaries of Sections 15 and 14, Township 20 south, Range 24 east, to the northeast corner of the northwest 1/4 of said Section 14, run thence

north to the center of Section 2, Township 30 south, Range 24 east, run thence west to the center of Section 3, Township 30 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 3, run thence east along the north boundary of said Section 3 to the southeast corner of the southwest 1/4 of Section 34, Township 29, south Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 34 for a point of termination. All lying in Polk County, Florida.

Section 2.2 The area generally north of said boundary line (a) and generally west of said boundary line (b) is reserved to TECO (as relates to BARTOW), and the area generally south of said boundary line (a) and generally east of said boundary line (b) is reserved to BARTOW (as relates to TECO), with respect to service to retail customers.

Section 2.3 The parties agree that neither party, except as provided in Section 2.4, will provide or offer to provide electric service at retail to future customers within the territory reserved to the other party.

Section 2.4 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time to time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances, upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s). By the execution of this AGREEMENT, the parties acknowledge that TECO may continue to provide retail electric service to existing and future phosphate customers and/or customers served at transmission voltage (69 KV and above) in the area of Polk County reserved for BARTOW.

Section 2.5 This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto and shall have absolutely no application or effect with respect to either party's sale of "bulk power supply for resale," which is defined to mean all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any persons for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

Section 2.6 Nothing in this AGREEMENT is intended to affect the power plants, transmission lines, or substations of one party which are now located, or may in the future be located in the service area of the other party, and any problems between the respective parties involving these types of facilities shall be settled at the General Office level of the parties.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise, this AGREEMENT shall insure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 3.4 The parties recognize and agree that both companies are subject to the jurisdiction of the Florida Public Service Commission (hereinafter called the "Commission") and further agree that this AGREEMENT shall have no force and effect unless and until it is submitted to and approved by the Commission in accordance with applicable procedures. The parties further agree that the AGREEMENT, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only by Order of the Commission. No modification or termination of this AGREEMENT by the parties hereto shall be effective unless and until approved by the Commission. Each party agrees to promptly notify the other in writing of any petition, application or request for modification of the AGREEMENT made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5 This AGREEMENT shall be effective on the date it is approved by the Florida Public Service Commission in accordance with Section 3.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

TAMPA ELECTRIC COMPANY

BY: [Signature]
Secretary

BY: [Signature], 4-16-85
Vice President Date

ATTEST:

CITY OF BARTOW, FL

BY: [Signature]
City Clerk

BY: [Signature] APR 4 1985
Vice Mayor Date

Approved as to correctness
and form:

Approved as to substance:

By: [Signature]
City Attorney

By: [Signature]
City Manager

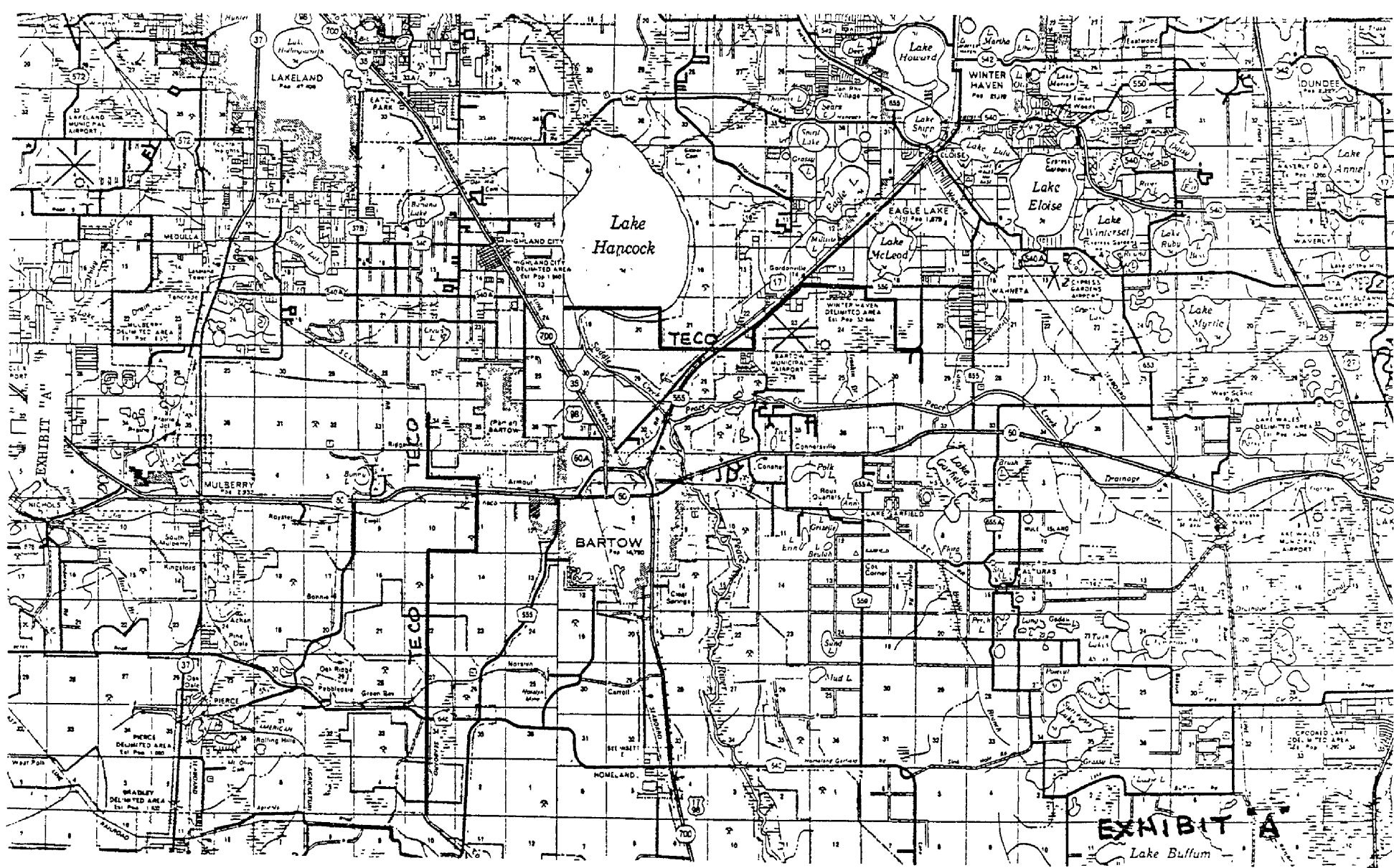


EXHIBIT A
Lake Butlum

ORDINANCE NO. 1923-A

AN ORDINANCE ANNEXING UPON THE PETITION OF THE OWNER THEREOF CERTAIN LANDS LOCATED IN SECTIONS 9, 10, 15, 16, 19, 20, 21, 22, 28, 29, 30, 32 AND 33, TOWNSHIP 29 SOUTH, RANGE 25 EAST, POLK COUNTY, FLORIDA, KNOWN AS OLD FLORIDA PLANTATION; AND PROVIDING FOR AN EFFECTIVE DATE UPON FINAL PASSAGE.

Whereas, the owner of the hereinafter-described lands, known as Old Florida Plantation, has heretofore petitioned for said lands without the city limits of the City of Bartow, Florida, to be annexed, and

Whereas, said lands are unincorporated and lie contiguous to the present territorial limits of the City of Bartow, Polk County, Florida, and

Whereas, the Planning and Zoning Commission has, after holding a duly noticed public hearing thereon, recommended that said lands be annexed to the City of Bartow, and

Whereas, the City Commission determines that it is in the best interest of the citizens of the City of Bartow to annex the said lands and to redefine the territorial limits of the City accordingly in accordance with the recommendation of the Planning and Zoning Commission;

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF BARTOW, FLORIDA:

Section 1. That the City of Bartow, upon the petition of the owner of certain lands located in Sections 9, 10, 15, 16, 19, 20, 21, 22, 28, 29, 30, 32 and 33, Township 29 South, Range 25 East, Polk County, Florida, known as Old Florida Plantation, as described and depicted on Exhibit "A"

hereto attached, does hereby annex said lands lying contiguous to the present territorial limits of the City of Bartow, Polk County, Florida, in accordance with the provisions of Section 171.044, Florida Statutes, and the territorial limits of the City of Bartow, Florida, are hereby redefined and extended to embrace the said lands.

Section 2. After passage on first reading, at least three correct copies of this ordinance in the form in which it has been passed on first reading shall be made available for public inspection in the office of the City Clerk, and there shall be published once a week for two consecutive weeks in the Polk County Democrat, a newspaper published and of general circulation in the City of Bartow, a notice describing this ordinance in brief and general terms and stating that it is available for public inspection in the office of the City Clerk, together with the time and place when and where it will be considered on second reading at the public hearing, which shall be held approximately ten days after the second publication of said notice. Said notice shall give the ordinance number and a brief, general description of the area proposed to be annexed, and shall include a map clearly showing the said area and a complete legal description thereof. A copy thereof shall be mailed by certified mail to the Board of County Commissioners of Polk County.

Section 3. After final passage, there shall be published in the Polk County Democrat, a newspaper published and of general circulation in the City of Bartow, a notice describing this ordinance in brief and general terms and stating that it is available for public inspection in the office of the City Clerk.

Section 4. Within seven days after the effective date of this ordinance the City Clerk is ordered and directed to file this ordinance with the Clerk of the Circuit Court of Polk County, Florida, the Board of County Commissioners of Polk County, Florida, and with the Department of State of the State of Florida.

PASSED ON FIRST READING July 17, 2000

PASSED AND ENACTED ON SECOND READING August 7, 2000



ATTEST WITH SEAL:

By: [Signature]
City Clerk

Approved as to correctness and form:

By: [Signature]
City Attorney

CITY OF BARTOW

By: [Signature]
Mayor

Approved as to substance:

By: [Signature]
City Manager

EXHIBIT A

OLD FLORIDA PLANTATION

Legal Description

IN TOWNSHIP 29 SOUTH, RANGE 25 EAST, POLK COUNTY, FLORIDA:

That portion of the west half of Section 28 lying westerly of CSX Railroad right of way and southeasterly of Old Bartow-Winter Haven Road;

AND:

That portion of the southeast quarter of the southeast quarter of Section 29 lying southeasterly of Old Bartow-Winter Haven Road;

AND:

That portion of the northeast quarter of the northeast quarter of Section 32 lying southeasterly of Old Bartow-Winter Haven Road;

AND:

Begin at the NW corner of Section 33, Township 29 South, Range 25 East, then run East along the North boundary line of said Section 33 a distance of 706.71 feet to a point on the West boundary line of the right-of-way of the Seaboard Coast Line Railroad Company, then run South-westerly along said right-of-way line a distance of 1477.74 feet to a point on the West boundary line of said Section 33, then run North along the west boundary line of said Section 33 a distance of 1318.20 feet to the point of beginning.

All lying in Township 29 South, Range 25 East, Polk County, Florida.

AND:

All that portion of CSX Railroad right-of-way according to Right-of-Way and Track Map V-3g-4 and S-4 lying within Section 28, Township 29 South, Range 25 East, Polk County, Florida, less and except road rights-of-ways.

AND:

All that certain portion of Grantor's former operating property line and being near Bartow, Polk County, Florida, situate in the west half of the northwest quarter of Section 33, Township 29 South,

Range 25 East and lying on either side of Grantor's former centerline of railroad track, more particularly described as follows:

Beginning with the intersection of said centerline and the west line of Section 33; extending in a northeasterly direction 1,730 feet, more or less, and ending with the intersection of said centerline and the north line of Section 33, said former operating property being 100 feet wide, 50 feet on either side of said centerline in the southwest quarter of the northwest quarter of said Section 33 and 200 feet wide,

100 feet on either side of said centerline in the northwest quarter of the northwest quarter of said Section 33. Containing 7.25 acres, more or less, and being as shown crosshatched on fragment print of Grantor's Valuation Section V3g Fla, Map 4, marked Exhibit A-1 attached hereto.

LESS AND EXCEPT the portion thereof conveyed to the State of Florida Department of Transportation described in Final Judgment of Civil Action No. 666-81-2637, and recorded among the Official Records of Polk County, Florida in Book 2079, Page 1652.

Leaving a net conveyance of 6.6 acres, more or less.

BEING a portion of the property granted to the Jacksonville, Tampa & Key West Railway Company, a predecessor of Grantor, from the State of Florida pursuant to Section 24 of an Act approved by the Florida Legislative on February 19, 1874 (Chapter 1987, Laws of Florida 1874).

Under foreclosure of April 8, 1893 the Jacksonville, Tampa & Key West Railway Company conveyed its property to the Plant Investment Company. On June 26, 1885, the Plant Investment Company conveyed a portion of its property to the South Florida Railroad Company, which changed its name to the Savannah, Florida and Western Railway Company. The Savannah, Florida and Western Railway Company was merged into the Atlantic Coast Line Railroad Company, effective July 1, 1902. On July 1, 1967 the Atlantic Coast Line Railroad Company merged with the Seaboard Air Line Railroad Company to form the Seaboard Coast Line Railroad Company. On December 29, 1982 the Louisville and Nashville Railroad Company merged into Seaboard Coast Line Railroad Company, and the name of the surveying corporation changed to Seaboard System Railroad, Inc. On July 1, 1986, Seaboard System Railroad, Inc. changed its name to CSX Transportation, Inc.

AND:

That part of the Northeast Quarter (NE 1/4) of Section 28, Township 29 South, Range 25 East, Polk County, Florida, lying northwesterly of the right of way for State Road 555 (U.S. Highway 17) and southeasterly of the right of way for Old Bartow-Winter Haven Road (a/k/a Bartow-Eagle Lake Road), according to Map Book 2, Pages 137-140, public records of Polk County, Florida; less and except that portion of the above-described property lying within the railroad right of way of CSX Transportation, Inc. and less and except that portion lying within the maintained right of way of Crossover Road according to Map Book 5, Pages 243, public records of Polk County, Florida.

AND

Lot 4 lying west of Old Bartow-Winter Haven Road; and that part of Lot 17 lying west of Old Bartow-Winter Haven Road less the South 374 feet thereof; and the North 294 feet of Lot 18; all according to the revised plat of Gordonville according to plat thereof recorded in Plat Book J, Page 43, public records of Polk County, Florida.

In Township 29 South, Range 25 East, Polk County, Florida:

Section 9: the fractional S-1/2.

Section 10: SW-1/4

Section 15: That part of Section 15, lying within a tract described as: Begin at the intersection of the north right-of-way line of the Old Winter Haven-Bartow Road and the west boundary of the E-1/4 of W-1/2 of Section 22, Township 29 South, Range 25 East, Polk County, Florida, run thence north along said west boundary 2743.2 feet, thence deflect right $33^{\circ}15'41''$ and run 1234 feet to the east boundary of the W-1/2 of Section 15, thence north along said east boundary 4854.2 feet, thence West 200 feet, thence south parallel to the east boundary of the W-1/2 of Section 15, 1350 feet, thence West 600 feet, thence South 660.6 feet, thence East 600 feet, thence South 2786.6 feet, thence deflect right $33^{\circ}42'22''$ and run 1234 feet, thence deflect left $33^{\circ}15'41''$ and run 2902.96 feet to the north right-of-way line of the Old Winter Haven-Bartow Road, thence northeasterly along the north right-of-way line 225.96 feet to the point of beginning.

The W-1/2, and the W-1/2 of the NW-1/4 of SE-1/4, and the SW-1/4 of SE-1/4, LESS that part of the E-1/2 of W-1/2 cited above.

That part of the North 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 15, lying West of Sheffield Road and begin further described as follows: Commence at the Northeast corner of said Northwest 1/4 of the Northeast 1/4 of Section 15; thence North $89^{\circ}41'12''$ West along the North line of said Section 15 a distance of 311.21 feet to the intersection with the North and Westerly right-of-way line of aforesaid Sheffield Road, said point also being the Point of Beginning; thence continue North $89^{\circ}41'12''$ West still along said North section line 1015.00 feet to the northwest corner of aforesaid Northwest 1/4 of the Northeast 1/4; thence South $00^{\circ}09'42''$ West along the west line of said Northwest 1/4 of the Northeast 1/4 a distance of 661.12 feet to the southwest corner of the aforesaid North 1/2 of the Northwest 1/4 of the Northeast 1/4; thence South $89^{\circ}43'24''$ East along the south line of said North 1/2 a distance of 631.58 feet to the aforesaid north and westerly right-of-way line of Sheffield Road; thence North $19^{\circ}24'55''$ East along said right-of-way line 435.95 feet to the point of curvature of a curve concave to the southwesterly having a radius of 411.97 feet and a central angle of $49^{\circ}30'11''$; thence along said curve 355.94 feet to the Point of Beginning. Said tract containing 11.57 acres, more or less.

Section 16: All fractional section.

Section 19: The fractional NE-1/4 LESS the E-1/2 of NE-1/4 of NE-1/4, the fractional SE-1/4 of NW-1/4, the SE-1/4, and that part of the E-1/2 of SW-1/4 lying east of Saddle Creek, LESS that part of the SE-1/4 of SW-1/4 east of Saddle Creek lying within a tract described as: Commence at the southwest corner of Section 19, run thence East 2056.34 feet to the POINT OF BEGINNING, thence deflect to the right 66°35' and run southerly 69.81 feet, thence deflect 90 left and run northeasterly 180 feet, thence deflect 90 left and run northwesterly 100 feet, thence deflect 90 left and run southwesterly 180 feet, thence deflect 90 left and run southeasterly 30.19 feet to the point of beginning.

Section 20: All fractional section.

Section 21: That part of the E-1/2 and of the East 330 feet of the W-1/2 lying north of the Old Bartow-Winter Haven Road (the East 330 feet of the SE-1/4 of NW-1/4 being otherwise described as the East 330 feet of Lots 1 and 5 of A.B. Ferguson's Subdivision, according to the plat thereof recorded in Deed Book 61, Page 36, Polk County.

The fractional W-1/2, LESS the East 330 feet thereof.

Section 22: That part of Section 22, lying within a tract described as: Begin at the intersection of the north right of way line of the Old Winter Haven-Bartow Road and the west boundary of the E-1/4 of W-1/2 of Section 22, run thence north along said west boundary 2743.2 feet, thence deflect right 33°15'41" and run 1234 feet to the east boundary of the W-1/2 of Section 15, Township 29 South, Range 25 East, thence north along said east boundary 4854.2 feet, thence West 200 feet, thence south parallel to the east boundary of the W-1/2 of Section 15, 1350 feet, thence West 600 feet, thence South 660.6 feet, thence East 600 feet, thence South 2786.6 feet, thence deflect right 33°42'22" and run 1234 feet, thence deflect left 33°15'41" and run 2902.96 feet to the north right of way line of the Old Bartow-Winter Haven Road, thence northeasterly along the north right of way line 225.96 feet to the point of beginning.

The N-1/2 of NW-1/4, and the SW-1/4 of NW-1/4, and the W-1/2 of SE-1/4 of NW-1/4, and the W-3/4 of SW-1/4 lying north of the Old Bartow-Winter Haven Road (being otherwise described as Blocks 5 through 12, and Blocks 19 through 24, and Blocks 35 through 37, and that part of Blocks 34, 3B, and 46 lying north of the Old Bartow-Winter Haven Road, of Gordonville, according to the revised plat thereof recorded in Plat Book 3, Page 43, Polk County, Florida), LESS that part of the E-1/2 of W-1/2 described above.

Section 28: That part of the E-1/2 and of the East 330 feet of the W-1/2 lying north of the Old Bartow-Winter Haven Road.

That part of Section 28, described as: Begin on the west boundary of Section 28 at a point 50 feet north of the north right-of-way line of the Old Bartow-Winter Haven Road, run thence north to northwest corner of Section 28, thence east to the northeast corner of the NW-1/4 of NE-1/4 of NE-1/4 of NW-1/4, thence south to the north right-of-way line of the Old Bartow-Winter Haven Road, thence southwesterly along said north right-of-way line to a point directly east of the point of beginning, thence west to the point of beginning.

Aug-04-00 09:58A

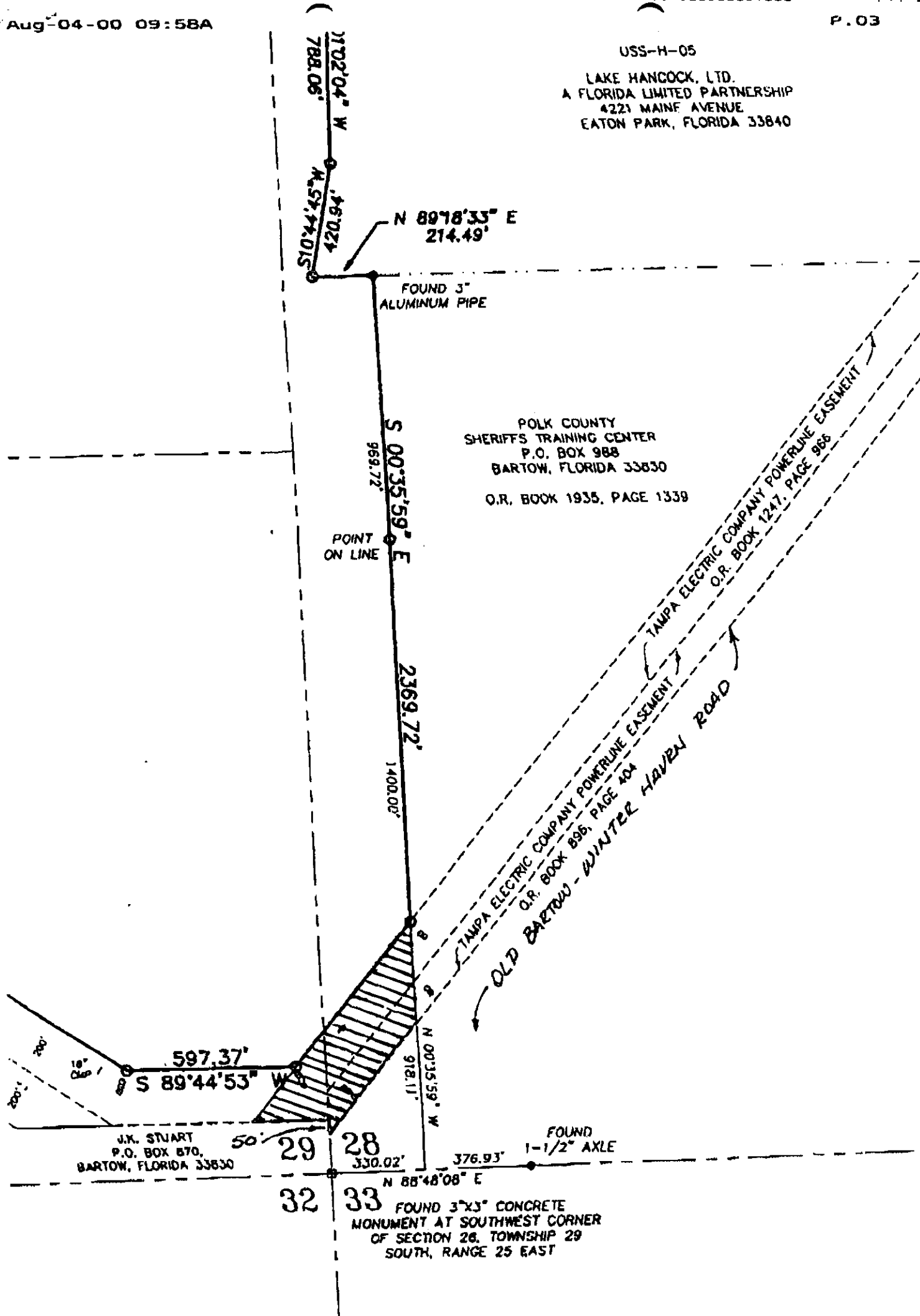
P. 02

LESS AND EXCEPT

That portion of lands within Tampa Electric Company's power line easements recorded in O.R. Book 1247, Page 966 and O.R. Book 896, Page 404, Public Records of Polk County, Florida; said lands being in Sections 28 & 29, Township 29 South, Range 25 East and lying west of the east line of the west 330 feet of said Section 28 and lying northerly of Old Bartow - Winter Haven Road and lying northeasterly of the following described line; begin at the intersection of the east line of said Section 29 and the northerly right-of-way line of said Old Bartow - Winter Haven Road; thence north along said east line of Section 29 a distance of 50.00 feet; thence west to the northerly line of said Tampa Electric Company Easement as recorded in O.R. Book 1247, Page 966.

USS-H-05

LAKE HANCOCK, LTD.
A FLORIDA LIMITED PARTNERSHIP
4221 MAINE AVENUE
EATON PARK, FLORIDA 33840



DESCRIPTION SKETCH

LEGEND:

- INDICATES SET 5/8" STEEL ROD WITH CAP STAMPED "P&A COR LB 364"
- INDICATES FOUND 4"x4" CONCRETE MONUMENT

SURVEYOR'S

- 1.) The bearings : North 89°36'30" southwest 1/4 29 South, Range 25 East
- 2.) An abstract (and Associates appear as a
- 3.) Legal description client request

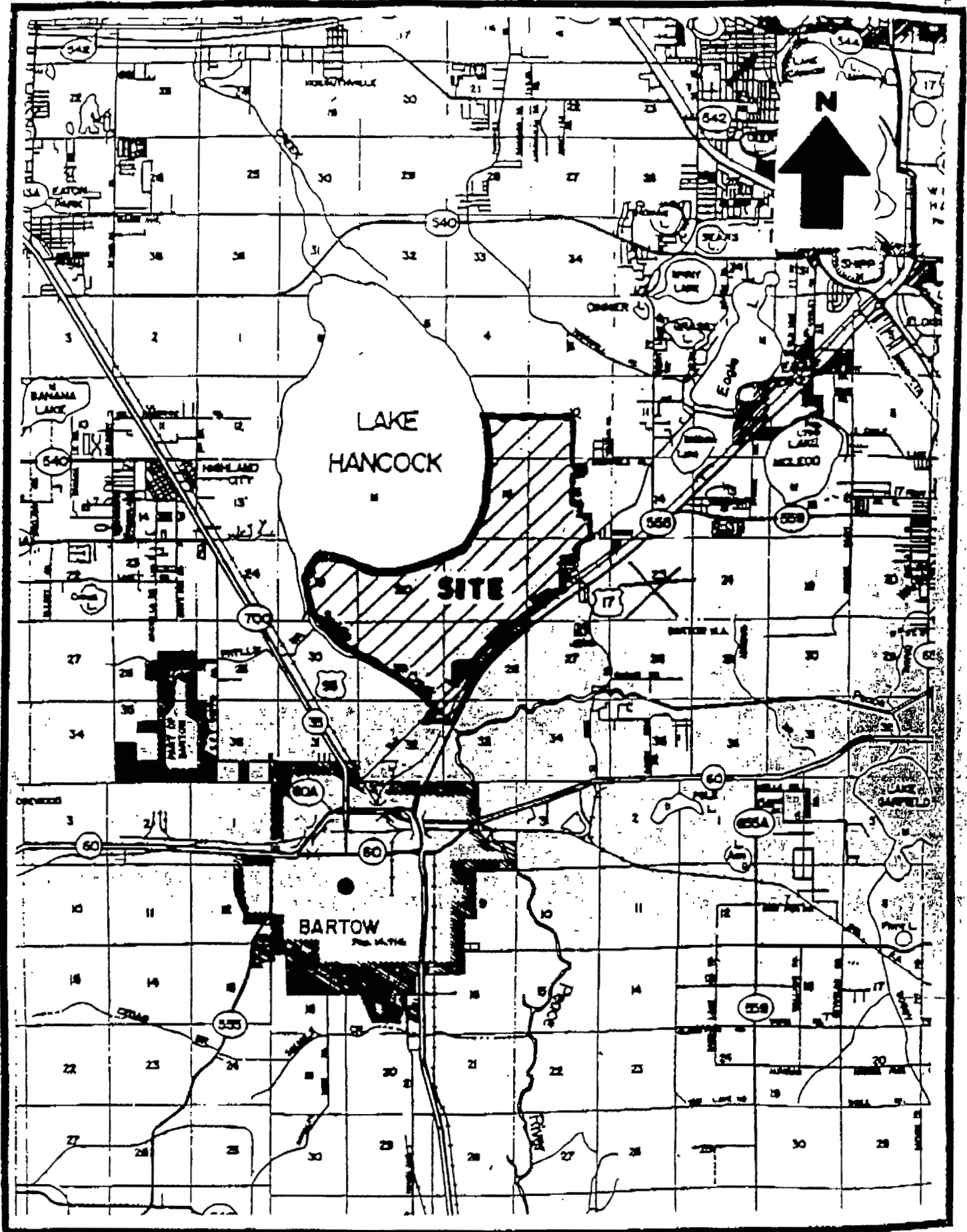
less the following described parcel:

Begin on the west boundary of Section 28, Township 29 South, Range 25 East and run east for 330 feet to the point where the line will intersect with the north boundary of the Old Bartow-Winter Haven Road for a point of beginning; thence run north along a line 330 feet east of the western boundary of Section 28 for a distance of 2770 feet; thence run East 1980 feet to a point which is 330 feet west of the centerline of Section 28; thence run south along a line 330 feet west of said centerline to the north boundary of the Old Bartow-Winter Haven Road; thence southwesterly along the north road boundary to the point of beginning. This parcel all lies in the west half of Section 28, Township 29 South, Range 25 East and north of the Old Bartow-Winter Haven Road in Polk County, Florida.

Section 29: That part of Section 29, described as: Begin on the east boundary of Section 29 at a point 50 feet north of the north right-of-way line of the Old Bartow-Winter Haven Road, run thence west to a point 200 feet northeasterly of, and measured at right angles to, the northeasterly bank of Saddle Creek, thence run northwesterly along a line parallel to and 200 feet northeasterly of (measured at right angles to) said northeasterly bank to the west boundary of Section 29; thence north to the northwest corner of the section, thence east to the northeast corner of the section, thence south to the point of beginning.

Section 30: Those parts of the NE-1/4, and of the NE-1/4 of NW-1/4 lying northeast of Saddle Creek, in Section 30, LESS that part of the NE-1/4 of NW-1/4 east of Saddle Creek lying within a tract described as: Commence at the southwest corner of Section 19, Township 29 South, Range 25 East, run thence East 2056.34 feet to the POINT OF BEGINNING, thence deflect to the right 66° 35' and run southerly 69.81 feet, thence deflect 90 left and run northeasterly 180 feet, thence deflect 90 left and run northwesterly 100 feet, thence deflect 90 left and run southeasterly 30.19 feet to the point of beginning.

General Location Map



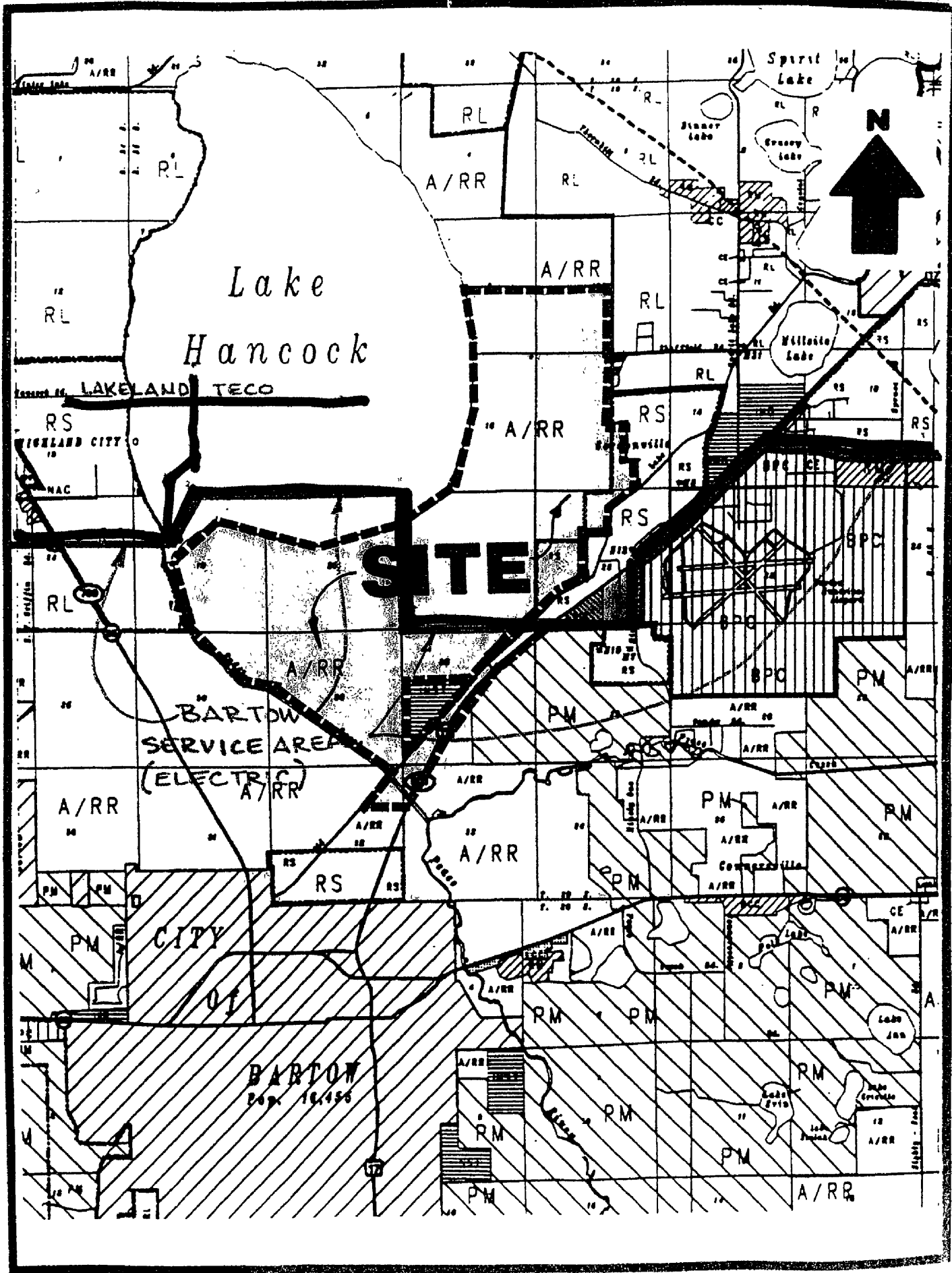


EXHIBIT C

ORDINANCE NO. 1933-A

AN ORDINANCE OF THE CITY OF BARTOW, FLORIDA, ISSUING A DEVELOPMENT ORDER OF APPROVAL WITH CONDITIONS FOR AN APPLICATION OF A DEVELOPMENT OF REGIONAL IMPACT KNOWN AS THE OLD FLORIDA PLANTATION DEVELOPMENT, SUBMITTED BY OLD FLORIDA PLANTATION, LTD.; SETTING FORTH FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONDITIONS OF APPROVAL PURSUANT TO CHAPTER 380, *FLORIDA STATUTES*, AND PROVIDING FOR AN EFFECTIVE DATE UPON FINAL PASSAGE.

WHEREAS, the City Commission of Bartow, Florida, hereafter referred to as "the Commission", as the government having jurisdiction pursuant to Section 380.06, *Florida Statutes*, is authorized and empowered to consider applications for a development of regional impact; and

WHEREAS, Old Florida Plantation, LTD., hereafter referred to as "Old Florida Plantation" or "OFP", has filed an Application for Development Approval, hereafter referred to as "the application", dated August 1, 1996 seeking approval of a master planned community of regional impact ("the project"); and

WHEREAS, on August 7, 2000 Old Florida Plantation was annexed by the City of Bartow which action generated the need to adopt a revised Development Order recognizing the change of responsible jurisdiction; and

WHEREAS, the Commission held a duly noticed public hearing on said application on October 16, 2000 as required by Section 380.06, *Florida Statutes*; and

WHEREAS, OFP, other units of government, local agencies and interested citizens were afforded the opportunity to participate in all proceedings before the Commission relating to the application and were provided the opportunity to present witnesses, evidence and argument on all issues, conduct cross-examination, and submit rebuttal evidence; and

WHEREAS, the Commission has reviewed all of the evidence.

NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF BARTOW, FLORIDA:

Section I. That the City Commission hereby makes the following findings of fact:

- A. OFP submitted an Application for Development Approval (ADA) pursuant to Chapter 380, *Florida Statutes*, on August 1, 1996, a Response to Requests for Additional Information on November 6, 1996, a Second Response to Requests for Additional Information on March 7, 1997, and a Consolidated Application for Development Approval on October 1, 1997 (hereinafter referred to as the "Consolidated ADA"), said application and responses being hereby incorporated and made a part of this Ordinance by reference, for information purposes only, together with the *Old Florida Plantation Community Planner* dated July 1997, hereinafter referred to as "*the Planner*."

EXHIBIT D

- B. The OFP development involves approximately 3,535 acres that are currently owned by Old Florida Plantation, Ltd. A complete legal description of the land to be developed, herein called "the property," is attached as Exhibit A.
- C. The proposed development is not located in an area of critical state concern as designated pursuant to Section 380.05, *Florida Statutes* (F.S.).
- D. The State of Florida has adopted a statewide comprehensive plan.
- E. The Central Florida Regional Planning Council has adopted a Strategic Regional Policy Plan that has been determined compatible with the State plan.
- F. The Commission has adopted a comprehensive plan pursuant to Section 163.3161, *Florida Statutes*, which is applicable to the development site.
- G. OFP has previously submitted a request to Polk County, Florida to rezone the property to the appropriate Planned Unit Development (PUD) district.
- H. In considering whether the Development should be approved subject to the conditions, restrictions, and limitations provided herein the City of Bartow, Florida ("the City") has considered the criteria stated in Section 380.06, *Florida Statutes*.
- I. A comprehensive review of the impacts generated by the Development has been conducted by the City of Bartow, the Central Florida Regional Planning Council and other affected agencies.
- J. The Commission has adopted a Comprehensive Plan Amendment for the OFP Development of Regional Impact (DRI) pursuant to Section 163.3184, *Florida Statutes*.
- K. The data and information contained in the application were sufficient for the Commission to conduct the necessary review pursuant to Section 380.06, *Florida Statutes*.
- L. On August 7, 2000 the Commission convened the required public hearing on the OFP application for annexation, heard testimony and received evidence and documents pertaining to the application including the report and recommendation of the Central Florida Regional Planning Council, and the recommendation of the City of Bartow Administration.

Section II. That The City Commission hereby makes the following conclusions of law:

- A. The Commission's review of the application has been conducted pursuant to and in Compliance with the provisions of Chapter 380, *Florida Statutes*.
- B. The Notification of Proposed Changes as submitted, complies with the requirements of Section 380.06, *Florida Statutes*, and Chapters 28-24 and 9J-2, Florida Administrative Code.
- C. The development, as modified by the conditions herein, is consistent with the

recommendation of the Central Florida Regional Planning Council.

- D. The development, as modified by the conditions herein, is consistent with the City of Bartow Comprehensive Plan and Unified Land Development Code.
- E. All development activities described in the application shall be subject to the terms of this Development Order and shall not be subject to further development of regional impact review pursuant to Section 380.06, *Florida Statutes*. Any proposed changes to the Development Order shall be submitted for review pursuant to Section 380.06, *Florida Statutes*.
- F. The provisions of this Development Order shall not be construed as a waiver or exception to any rule, regulation, or ordinance of the City of Bartow. Further review and approval required by the City of Bartow shall be subject to all such applicable rules, regulations or ordinances in effect at the time of such review.
- G. The Bartow City Manager, or appropriate designee, shall be the local official responsible for assuring compliance with this Development Order.
- H. The provisions of this Development Order shall not be construed as a waiver or exception to any rules or standards of the Florida Department of Transportation (FDOT). The FDOT shall not be bound to permit or approve any connection, traffic control device, or any other site related improvement as specified in a development order process separate from the official connection approval process described in Rule 14-96 and specified under Sections 334.044(2), 335.182(2), 335.183, and 335.184, *Florida Statutes* and implemented by Sections 334.044(14), 335.18-335.187, *Florida Statutes*.

Section III. That the City Commission approves Old Florida Plantation's application and hereby issues its development order subject to the following conditions:

A. Land Use

1. **Land Use Schedule** — The schedule of land uses pursuant to this Development Order shall be as illustrated in the attached Map H (Land Use Plan) and as recited in Table A, below.
2. **Planned Development Approvals** — OFP shall obtain all Planned Development approvals from the City of Bartow. Planned Development review and approvals shall be consistent with the intent and purpose of *the Planner*. The Neo-traditional planning practices outlined in *the Planner* shall be used to the greatest extent practicable in the design and review of conceptual and tentative Planned Development approvals. OFP may, prior to obtaining said Planned Development Zoning, begin construction of the proposed golf course and the internal road network, including related infrastructure and improvements.
3. **Additional Lands** — In the event that OFP acquires the Burnham McCall Center for Law Enforcement Training Facility Site, OFP may request to transfer a portion of the uses shown in Table A to that parcel. Such a transfer shall require that a Notice of Proposed Change be submitted for review pursuant to Section 380.06, *Florida Statutes*. The proposed change shall be consistent with the City of Bartow Comprehensive Plan.

4. **Non-residential Office Development** – The non-residential office development proposed for parcels fronting US 17 (see Map H, Parcels V-19 through V-26) shall be limited to 100,000 total square feet in size (exclusive of public safety improvements as outlined in Section III.B.2., below) until 65% of the total residential development is platted, or until a significant relationship is demonstrated between the non-residential land uses and the residential land uses which justifies the need for additional non-residential development to serve the project, whichever occurs first. Specific requirements for this justification shall be included in the methodology for annual monitoring (see Section III.J., Annual Report).
5. **Residential Sub-components** — Residential sub-components containing more than 200 residential units shall provide a collector roadway, designed to City standards, that will serve that sub-component, meeting the requirements of *the Planner* described in Section III.A.2.
6. **Plan Review Committee** — OFP shall create a Plan Review Committee consistent with *the Planner*, to review all plans for each phase and sub-phase of the project so that construction is consistent with *the Planner* as a guide for review. The Plan Review Committee shall mean and refer to the group established by the OFP to act on behalf of OFP in establishing standards and procedures for the review of plans for new construction, to accept and review requests to approve or reject such requests, and to enforce such criteria and standards, and any additions or revisions, as contained in *the Planner* for OFP as described in Section III.A.2. Compliance certification from the Plan Review Committee shall be submitted to the City with each building permit or subdivision plan application.

Table A
Land Use Densities and Intensities

Land Use	Phase I 2001-2005	Phase II 2006-2010	Phase III 2011-2015	TOTAL
Residential High DU	1,455	2,270	1,072	4,797
Acres	295.5	443.8	200.6	939.8
Commercial (Retail) Square Feet (SF)	45,000	75,000	111,287	232,287
Office Square Feet (SF)	30,000	50,000	50,000	130,000
Recreation (Marina & Barn) Square Feet (SF)	7,109	0	0	7,109
Marina Slips	12-16	12-16	12-16	24 - 48
Stables Square Feet (SF)	6,500	0	0	6,500
Golf Maintenance Square Feet (SF)	4,000	0	0	4,000
Golf Course Acres	346.0	0	0	346.0

7. **Land Use Exchange Matrix** — OFP may exchange land uses within the development provided that the exchange does not result in a net increase in total PM peak hour trips generated by the development. Any exchanges between different land uses shall be consistent with the City of Bartow Comprehensive Plan. Any proposed exchange shall not be subject to additional regional or state review provided that the following constraints have been met:

- a) The trip generation rates listed in Table B shall be used to evaluate the exchange. These rates shall be revised as appropriate to remain current with the latest edition of the Institute of Transportation Engineer's Trip Generation Manual;
- b) Changes in the development program that are made through this exchange shall be reported individually and cumulatively in each DRI annual report including an updated Map H reflecting each change. When this Development Order is amended pursuant to Section 380.06, *Florida Statutes*, Map H shall also be amended to reflect any exchange.

Table B
Trip Generation Rates for Land Use Exchange
 Based on 6th Edition of ITE Trip Generation Manual

LAND USE	ITE Code	ADA Quantity	ITE PM Peak Hour Trip Rate	Maximum Limit of Exchange ⁽¹⁾
Commercial (2)	820	232,287 S.F.	4.71/1,000 S.F.	34,843 S.F.
Office (2)	710	130,000 S.F.	1.73/1,000 S.F.	19,500 S.F.
Marina/Stables	495	17,609 S.F.	1.75/1,000 S.F.	No exchanges permitted in these land uses.
Marina Slips	N/A	24 - 32	N/A	
Golf Course	430	36 holes	2.74/hole	
Congregate Care	252	315 units	0.17/unit	
Retirement Single Family	N/A	3,081 units	0.28/unit	462 Units
Primary Single Family	210	1,321 units	1.01/unit	198 Units
Retirement Multi-Family	N/A	56 units	0.28/unit	8 Units
Primary Multi-Family	220	24 units	0.62/unit	3 Units

- (1) No exchange shall increase any land use quantity by more than 15 percent cumulatively.
- (2) Hotel/Motel is an allowable use under both commercial and retail uses. For purposes of trip generation calculations and allowable use conversions, the following ratio shall be utilized:
 1,000 sf of commercial = 10 hotel/motel rooms; 1,000 sf of office = 6 hotel/motel rooms.

B. Government Services

1. **Land Reservation** — All reservations of land and the subsequent conveyance of title as required herein shall not, at the election of OFP, result in any reduction of residential units or non-residential square footage previously approved by the Bartow City Commission. OFP may transfer development from any parcel of land reserved for conveyance to any government facility, or for the provision of any non-residential space for a government facility, to any other area within the Project, provided that such transfer shall not result in any of the transferred development or space being built in an earlier phase. Such a transfer shall not require a Notice of Proposed Change pursuant to Section 380.06, *Florida Statutes*, if such transfer is consistent with the City of Bartow Comprehensive Plan.
2. **Public Safety** — OFP shall designate and reserve a parcel of land and construct improvements thereon for conveyance of title, at no cost, to the City for a Public Safety facility limited to police, fire, and emergency medical services. The parcel of land shall be a minimum of one-half (1/2) acre, but no more than one and one-half (1.5) acre in size and shall be located in the Town Center (Village 14 as shown on Map H). OFP shall offer the land for the above parcel to

the City within thirty (30) days of the recording of the first plat on the development. The extent of the improvements constructed thereon shall be mutually agreeable between OFP and the City and sized for protection of the OFP development. Under no circumstances shall OFP be responsible for more than \$250,000 of the costs of the improvements, subject to adjustment for the percentage increase, if any, in the Consumer Price Index [CPI-U, US city average, all items (or its successor)] from the date of this DO. Assuming that the improvement costs are no greater than OFP's commitment, it is anticipated that the public safety improvements to be constructed thereon shall be completed by OFP prior to the issuance of the certificate of occupancy representing a cumulative fifty percent (50%) of the approved residential units for the OFP development. The facility's external design shall be in character with *the Planner* if determined to be financially feasible by the Commission and approved by the Plan Review Committee which approval shall not be unreasonably withheld.

3. ***Educational Facilities*** — OFP shall reserve a parcel of land, to be located within Village 8, as shown on Map H, for conveyance of title, at no cost, to the Polk County School Board for the restricted use of an elementary and/or middle school site ("the school"). The parcel shall be no less than twenty-five (25) acres and no more than forty (40) acres. OFP shall designate and reserve a parcel suitable for construction of such a facility to the Polk County School Board within thirty (30) days of the recording of the first plat on the Project. Once accepted by the Polk County School Board, the parcel shall not retain entitlements for residential, commercial, or office uses, but OFP may use said entitlements in other areas of the Project without having to file a Notice of Proposed Change.

If accepted by the Polk County School Board, the school's external design shall be in character with *the Planner* if determined to be financially feasible by the Polk County School Board and approved by the Plan Review Committee which approval shall not be unreasonably withheld. If accepted by the Polk County School Board and not used as a school facility, and if OFP reacquires the site, the underlying land use densities and intensities may be reallocated to the site through a Notice of Proposed Change review pursuant to Section 380.06, *Florida Statutes*.

4. ***Proximity to the Burnham McCall Center for Law Enforcement Training Facility*** — OFP shall not allow any residences to be located within seventy-five (75') feet of the Burnham McCall Center for Law Enforcement Training Facility, as indicated on Map H by the parcel labeled as "outparcel" just south of map parcel V-17. In addition, for each residential plat to be recorded in an area bounded on the east by V-17 and the outparcel, and bounded on the west by what is presently known as reclamation parcel USS-H-O3, OFP shall cause a notation to be placed in the plat(s) notifying the purchaser of any residential lot contiguous to the outparcel or located within seventy-five (75') feet thereof, that their lot is situated adjacent to the Burnham McCall Center for Law Enforcement Training Facility, which includes the use of firearms for training purposes.
5. ***Solid/Hazardous/Medical Waste*** — The preparation of a hazardous waste management plan shall be prepared and presented to the City of Bartow for approval at the time of submittal of a site plan for a facility generating that type of waste.

C. Potable Water, Wastewater, Reuse, Natural Gas and Electric

The City shall provide and OFP shall look solely to the City to provide all natural gas and electric power, paying any hook-up charges and impact fees pursuant to any City ordinances applied City-wide at the time of development. Consistent with City of Bartow Ordinance No. 1864-A, adopted August 16, 1990 (now incorporated in the Bartow City Code, Ordinance No. 78-1), the City of Bartow shall provide potable water and wastewater treatment and disposal services to the project, provided, however, that with the consent and agreement of the City, said services may be provided by Polk County Florida.

D. Environmental

1. **Wetlands** — OFP shall provide mitigation for any impacted wetlands according to local and state requirements.
2. **Bald Eagles** — OFP shall respect all applicable U.S. Fish & Wildlife Service (USF&WS) setback zones.
3. **On-Site Rookery** — To protect the existing on-site rookery, the location of which is reflected in correspondence from OFP to the Florida Fish and Wildlife Conservation Commission (FF&WCC), dated December 11, 1997, OFP agrees to the following conditions:
 - a) OFP shall place and maintain vegetative screens at strategic locations as identified in OFP's second ADA sufficiency response (dated March 7, 1997); and
 - b) No boating access shall be allowed nor permitted by OFP to the lake immediately surrounding the rookery; and
 - c) Development will not be permitted on a 7.85 acre parcel located in the northwest portion of the project site - east of Lake Hancock, north of the proposed golf course and west of the interior lakes (a portion of Parcel V-1). This parcel shall be planted with trees and maintained according to a conservation plan to be mutually agreed upon between OFP and the FF&WCC. This area shall be included in the OFP "primary" upland/wetland conservation area as described in item 5, below.
4. **Access to Lake Hancock** — No direct access to Lake Hancock shall be allowed except as specified in the ADA/DRI, or as may additionally be approved by the SWFWMD and the FDEP. Approved access points shall include, but not be limited to, one boat ramp facility located in Village 16 and specified in Map H of this Development Order, together with various boardwalks, docks in the northern and southwest areas of the project, and an access canal in the southwest area of the project. Said boardwalks and docks shall meet FDEP and City of Bartow standards.
5. **Wildlife Habitat Plan** —
 - a) OFP shall implement the wildlife habitat plan in order to foster and advance the concept of the Integrated Habitat Network as promulgated by FDEP, the FF&WCC, and the SWFWMD. The areas to be included in this wildlife habitat

plan are as outlined in the attached Map G-5 of the Consolidated ADA, said map dated December 10, 1997 and attached hereto, and are designated as Recreation and Open Space or wetlands (or Conservation). The uses/intensities allowed in wetlands (or Conservation) areas shall be consistent with the City of Bartow Comprehensive Plan. Areas identified as wetlands and mixed forested wetlands along the shores of Lake Hancock shall be designated as Conservation. In furtherance of the implementation of the wildlife habitat plan, OFP shall submit and the City shall approve a habitat management plan prior to first plat approval. The FDEP, FF&WCC, and SWFWMD shall be given an opportunity to review and comment on the management plan prior to submittal to the City. The City, at OFP's expense, may rely on an environmental consultant for purposes of reviewing the management plan.

The areas covered by the wildlife habitat management plan which are outside the designated wetland (or Conservation) areas shall be designated as Recreation and Open Space (ROS). The ROS land use category comprise primary, secondary, and tertiary habitat areas consistent with Map G-5. The ROS land use category shall allow uses consistent with those permitted for primary, secondary, and tertiary habitat area as identified below. Following plat approval, these habitat areas may then be used as specified in this Development Order.

- b) The "primary" habitat areas are areas which shall be designated on future plats as "conservation areas" that will preserve natural conditions and prohibit future development. ("conservation areas" should not be confused with Conservation as defined in the Bartow Comprehensive Plan nor the conservation land use designation in the Future Land Use Element). The primary habitat areas shall consist of those areas as outlined on Map G-5, but specifically include:
- i. Mixed forested wetland areas along Lake Hancock and Saddle Creek, inclusive of those areas that have been agreed to be restricted in use per the terms of the Environmental Resource Permit(s) (ERP) approved by the SWFWMD for the project on February 23, 1999 which are designated as Wetlands/Conservation on Map H and Conservation on the Comprehensive Plan; and
 - ii. The interior sections of what are presently identified as Reclamation Areas USS-H-O1 and USS-H-O3 (excluding residential areas and lot extension areas as depicted on Map H), and
 - iii. The interior section of what is presently identified as Reclamation Areas USS-H-O2 (excluding residential areas and lot extension areas as depicted on Map H) except for the easternmost 150 acres of this interior section which shall be classified as "secondary" habitat as defined in Section III.D.5.c., below; and
 - iv. A 7.85 acre parcel located in the northwest portion of the project site, east of Lake Hancock, north of the proposed golf course and west of the interior lakes, as described in Section III.D.3.c., above; and

- v. Reclaimed wetland and upland areas within the interior portion of the site: Once platted, uses within these conservation areas will be restricted to passive recreational activities, such as hiking and equestrian trails, birdwalks and nature studies. OFP reserves the right to construct nature trails (including pedestrian and golf cart access) and equestrian trails within these primary habitat areas. The primary habitat areas in USS-H-O2 may be used for golf course uses if the design for a golf course is reviewed and determined by FF&WCC to enhance the overall wildlife value for these areas.
- c) The “secondary” habitat areas are areas that will have specific restrictions on future uses within future plats. The secondary zones are mostly former mined upland areas that have been reclaimed and have become established as mixed upland hardwoods. Uses within the secondary areas will be restricted, but not be limited to, agricultural and recreational uses as may be allowed under open space uses, as well as a golf course in the easternmost 150 acres of the interior of USS-H-O2 (see Section III.D.5.b. iii, above)
- d) All “tertiary” areas will remain under the control of OFP or its successors or assignees, with future uses anticipated to be active and passive recreational uses.
- e) Together, the “primary” and “secondary” wildlife areas represent approximately, 1431 acres, or forty percent (40%) of the total project acreage. Portions of “primary” and “secondary” habitat areas shall be platted as conservation areas as non-habitat land is platted. OFP shall, at a minimum, plat land as “primary” and “secondary” habitat at the same ratio as “primary” and “secondary” habitat acreage bears to non-habitat acreage as designated and depicted on Map G5-A dated December 10, 1997. The responsibility for the management and maintenance of these conservation areas shall be the responsibility of the OFP homeowners association (HOA) or possibly a community development district (CDD) should one be formed by OFP and approved according to law. It is the intent and requirement of this condition that upon completion of all development activity, all “primary” and “secondary” habitat areas depicted on Map G5-A, dated December 10, 1997, shall be platted as such.
- f) If at any time during the development, OFP’s ability to plat and develop any portion of the non-habitat land is adversely affected by the enforcement of an environmental restriction due to the presence of or use of any part of the property by a state or federal threatened or endangered species, or species of special concern (herein referred to as the “affected area”), then the inclusion of primary and secondary habitat areas into conservation areas within all future plats, within and outside of the affected area, shall cease until a mutually acceptable resolution of the wildlife enforcement issues is agreed upon for the affected area between OFP and the regulating agency. Until such mitigation plan for the affected area is agreed upon, OFP shall be prohibited from platting in the affected area, but shall be allowed to plat elsewhere within the project. Such a delay in the platting of primary and secondary conservation areas shall not constitute a notice of proposed change, nor shall it be considered a substantial change to, or deviation from this Development Order.

6. **Postponed Development** — OFP shall forego the development of lots on the northern, western and southern sides of what is presently known as reclamation parcel USS-H-01 for a period of two (2) years from the recorded date of the project's first plat application so as to allow the City of Bartow, Polk County, any State agency, or established land trust or wildlife conservation group to purchase the lots approved for these areas.
7. **Environmentally Sensitive Plantings** — If development of lots on the northern, western and southern sides of what is presently known as reclamation parcel USS-H-01, hereinafter referred to as the "westernmost area", proceeds as permitted, and there is no purchase of same pursuant to Section III.D.6., above, then OFP shall amend the landscape pallet of *the Planner* consisting of acceptable planting materials so that they might be more conducive and attractive to avian wildlife patterns and employ the same in the westernmost area of lots. The Plan Review Committee shall be responsible for the implementation of this condition. An implementation plan, including a timeline for planting this area, shall be submitted concurrent with the submission of each plat for any residential lots in parcel USS-H-01.

E. Soils

1. **Radon Mitigation** — Passive and/or active radon gas mitigation techniques will be employed throughout the project, whichever shall be necessitated, if any, by the conditions on the particular building sites.
2. **Questionable Soils** — For purposes of this provision, all soils in the areas of the dikes and inside of previous clay settling area dikes, previously known as reclamation parcels USS-H-01, USS-H-02 and USS-H-03, shall be deemed questionable soils. All plans submitted to the City Building Department for development within these areas shall be accompanied by a certificate from a licensed professional geotechnical engineer registered in Florida that the soils have been adequately tested for bearing capacity, settlement and stability and that the foundations are adequate to support the proposed structures.

F. Stormwater Management & Surface Water Quality

1. **Stormwater Maintenance Entity** — OFP shall establish an entity that shall be responsible for the maintenance of the project's entire stormwater system. OFP shall demonstrate to the City that said entity has the financial resources, technical expertise and practical knowledge to maintain and operate the stormwater system. Polk County has requested, and OFP has agreed, that the County be offered the right to maintain surface water flowage through the development. In the event that the responsible entity does not maintain the water management system, the County, at its sole expense, may undertake emergency water management actions in order to allow the historical and permitted flow to enter and pass through the Old Florida Water Management System. OFP does not guarantee the capacity of the water management system beyond those quantities specified in the respective permits for OFP.
2. **Off-Site Flow** — OFP shall not adversely affect the historical flow of surface water entering the property from off-site sources. The quantity of surface water that constitutes historical flow will be determined in a study commissioned by Polk County and the Southwest Water Management District and performed by an engineer registered

in the State of Florida who specializes in the analysis of water management systems. The study is to be reviewed and approved by OFP, or its designee, and Polk County, then approved by the Southwest Florida Water Management District (SWFWMD). Based on the above, a control structure and pipe will be constructed, operated and maintained by Polk County at the upstream side of the property that will limit the quantity of off-site historical flow, unless otherwise approved by OFP. OFP will provide Polk County with a drainage easement from the flowage entrance into the Project for the control structure and pipe, such easement meeting the reasonable requirements of Polk County. In addition, OFP will also provide a flowage easement to Polk County from the terminus point of the above drainage easement through the property to an outfall into Lake Hancock. The flowage easement is for quantitative purposes only and does not provide quality capacity to off-site flows. Existing internal improvements to the OFP project drainage system will have been sized to accommodate the historical off-site flows. In the event Polk County desires to increase the flow across the OFP property to a level above historical flows, and OFP agrees to the increase in flows above the historical flow across its property, the cost of any required upgrades to the existing OFP system necessary to accommodate these increased flows will be paid for entirely by Polk County. OFP shall grant a defined, temporary easement prior to first plat approval. Within 30 days of Polk County receiving the final Environmental Resource Permit (ERP) from SWFWMD, OFP shall provide the final detailed easement with the submittal of the next plat.

G. Floodplains

1. **FEMA** — OFP shall obtain approval from the Federal Emergency Management Agency (FEMA) for modifications or revisions of the Flood Insurance Rate Maps (FIRM) for the entire project site to reflect appropriate floodplain boundaries and base flood elevations. OFP shall be responsible for all costs associated with the above map revisions and any detailed flood studies that may be completed in accordance with FEMA guidelines. The application to FEMA for the revision of the FIRM maps shall be concurrent with the submission of the first set of construction drawings and shall be completed before the issuance of the first Certificate of Occupancy (CO) of the project.
2. **Base Flood Elevations** — All roads shall be above the applicable base flood elevation (BFE), normally known as the 100-year elevation, but not less than 102.9' MSL (Mean Sea Level). The lowest finished floor elevation, as defined by FEMA of any dwelling or commercial structure shall be at least one (1) foot above the BFE, but not less than 105.5' MSL.

H. Transportation

1. **Project Access** — The installation of all project access improvements shall be the responsibility of OFP. All project access improvements shall meet the design and construction standards of agencies having jurisdiction, and shall include, at a minimum, those improvements listed below, or ones similar, if approved by the City of Bartow.
 - a) Required Site Access Improvements:
 - i. Prior to generating 217 PM peak hour trips at the main entrance, OFP shall reconstruct and extend (lengthen) Crossover Road as a 500 foot

long 4-lane divided facility and realign and reconstruct Old Bartow-Eagle Lake Road for approximately 0.6 miles in the vicinity of its Crossover Road intersection in order to accommodate the lengthening of Crossover Road. The reconstruction and extension of Crossover Road, and the realignment of Old Bartow-Eagle Lake Road shall be completed in coordination with Polk County.

- ii. OFP shall signalize the intersection of Crossover Road and Old Bartow – Eagle Lake Rd (when warranted) and make other intersection improvements that may then be necessary.
 - iii. OFP shall signalize the intersection of Crossover Rd and US 17 (when warranted) and make other intersection improvements that may be necessary.
 - iv. For purposes of traffic and concurrency management, the City may require construction of a second main access entry at Sheffield Road at the time the development reaches the equivalent trip generation threshold of two thousand seventy four (2074) P.M. peak hour trips, or when Crossover Road exceeds LOS “C” maximum service volume, whichever first occurs. An initial connection to Sheffield Road shall provide access for emergency vehicles and construction traffic from the inception of project development. In the event this improvement is required, the facility shall become part of the Concurrency Management Program and eligible for funding under that Program. Sheffield Road is not a regionally significant transportation facility and its inclusion in the Concurrency Management Program shall not be considered in the calculation of OFP’s “proportionate share”.
 - v. OFP shall construct additional village access roads to/from Old Bartow – Eagle Lake Road serving the development areas north and south of Crossover Road (two north of Crossover Road and one south of Crossover Road), as necessary to maintain acceptable level of service standards on Crossover Road, and as required to serve those development nodes. Any intersection improvements requiring new signals for the site entrances shall be determined wholly by the guidelines specified in the Signal Warrant Chapter of the most current Manual for Uniform Traffic Control Devices (MUTCD) as approved by the FDOT.
- b) OFP shall be entitled to reimbursement and/or credits for construction of the facilities described in Section III.H.1.a) i-v in accordance with the Concurrency Management Program described in paragraph H.3 below.
2. **On-Site Improvements** – The following on-site improvements shall be constructed by OFP:
- a) Spine Road — The main entrance road (hereinafter referred to as the “spine road”), a rural collector facility, shall have right-of-way dedicated so as to accommodate the development of a four-lane divided boulevard (or its capacity

equivalent in the form of alternative roadway improvements such as a one-way pair) for its entire length from the intersection with US 17 to the connection with Sheffield Road at its north end. The initial construction of this road will be as a two-lane boulevard its entire length until such time as traffic volume indicates the need to provide the additional two lanes. Any such upgrade of the spine road, including design costs, shall be born solely by OFP. Specific requirements for the determination of the timing for capacity enhancements shall be included in the methodology for annual monitoring. Roadway construction and Levels of Service shall meet the standards prescribed by the City of Bartow Comprehensive Plan and Unified Land Development Code at the time of development approval.

- b) OFP shall be fully responsible (100% of all costs) for all improvements to internal roadways, sidewalks, bicycle paths and intersection infrastructures.
- c) Any roads built then dedicated to the City of Bartow, Polk County or to the State of Florida shall be constructed in accordance with the design specifications and standards of the accepting jurisdiction and shall be warranted for the usual and customary period of time established by the accepting jurisdiction.

3. ***Transportation Mitigation: Creation of Concurrency Management Program***

OFP will have a demonstrated impact on several regionally significant transportation facilities within the project's impact area. The Program, hereafter described, requires certain actions of appropriate agencies and monetary contributions from OFP to address any significant and adverse impacts attributable to the Project. Quantification of the impact of the Project on area transportation facilities is based on an approved methodology. The Developer has identified the proposed uses for the project on Table A and the revised final development plan on Map H attached hereto and incorporated by reference.

The transportation impacts attributable to the Project shall be mitigated by (1) OFP's contribution of "proportionate share" as defined by the *Florida Administrative Code Rule 9J-2.045 Transportation Uniform Standard Rule* and (2) the allocation of this "proportionate share" along with other capital funds to the elimination of "adverse" conditions either at the time the impact occurs or within three years of the impact. The management of the Concurrency Management Program is the responsibility of the City of Bartow. The creation and implementation of this program is based upon the terms of Section 380.06, *Florida Statutes* (1999); Rule 9J-2, FAC; Section 163.3180, *Florida Statutes* (1999); and the Comprehensive Plan Amendment (CPA) as adopted by the City of Bartow in connection with this Development Order. Payment of the proportionate share contribution by OFP in accordance with this Development Order shall satisfy concurrency requirements and the terms of Section 380.06, *Florida Statutes*, and Rule 9J-2, *Florida Administrative Code*.

- a) Determination of Transportation Impact

The conditions precedent to consideration of a roadway segment or intersection as an element of the total impact of the project are as follows:

- i. The project's traffic on the roadway segment or intersection must equal or exceed 5% of the service volume capacity at the adopted level of service for the identified segment or intersection (i.e. the project's traffic must be "significant") and;
- ii. The total traffic volume, including OFP site traffic, on the roadway segment must result in the segment or intersection operating below the adopted level of service (i.e. the conditions on the segment or intersection must be "adverse").

Table C identifies specific roadway and intersection improvements determined to be subject to the stated criteria and anticipated to require improvements to comply with the concurrency management system described in Article 6 of the Unified Land Development Code adopted by the City of Bartow.

b) **Determination of Proportionate Share**

The Proportionate Share is determined in accordance with Florida Administrative Code Rule 9J-2.045 Transportation Uniform Standard Rule and

Table C

Old Florida Plantation
Significant Roadway Segments and Intersections

Roadway Segments & Intersections				Traffic Characteristics & Improvements				Cost Information (4)	
From	To	Length	External OFF PM Peak Hour Trips		Projected Year Improvement Required (3)	Recommended Improvements	Cost Estimate (5)(6)	OFF Proportionate Share (7)	
			Significance (1)	Adverse (2)					
Entry Rd - Realign Old Bartow - Eagle Lake Rd @ Crossover Rd			0.6 miles	217	433	2003	Realign, lengthen & Separate	\$2,365,340	Developer Responsibility
City of Bartow Roadways									
Wilson Ave	Old Bartow- Eagle Lake Rd	SR 60A (Van Fleet)	0.38			2005	Widen - 2LU to 4LU	\$1,304,050	\$183,871
SR 60A (Van Fleet) @ Wilson Avenue			Intersection	650		2005	Lengthen NB, SB & EB left turn lanes	\$179,207	\$12,903
Polk County Roadways									
Old Bartow -Eagle Lake Rd	US 98	Wilson Ave	0.2 miles	217	2074	2010	Widen - 2LU to 4LU	\$630,305	\$340,109
US 98 @ Old Bartow - Eagle Lake Rd			Intersection	217		2010	Add NB right turn lane &	\$267,181	\$51,833
Old Bartow -Eagle Lake Rd	Wilson Ave	Crossover Rd	2.25 miles	217	2074	2010	Widen - 2LU to 4LU	\$7,741,724	\$5,148,246
Spain Lake Rd	US 17	SR 540	3.38 miles	1074	1700	2008	Widen - 2LU to 4LU	\$11,612,585	\$2,080,588
State Roadways									
US 1798	SR 60A Connector	SR 60B (Main St)	0.53 miles	433	433	2002	Widen - 2LU to 4LU	\$1,823,606	\$461,372
US 1798 @ SR 60B (Main)			Intersection	433		2013	Add WB right turn lane, NB left & right	\$86,020	\$10,580
SR 60A (Van Fleet)	Polk Street Overpass	SR 60B (Main St)	0.38 miles	866	866	2004	Widen - 2LU to 4LU	\$1,304,050	\$198,216
US 98	SR 540	Edgewood Dr	1.35 miles	1491	2074	2010	Widen - 4LD to 6LD	\$4,656,552	\$782,301
SR 699 (Combo) @ US 98			Intersection	1491	1491	2007	Add SB left turn lane	\$364,929	\$19,306
Edgewood Drive @ US 98			Intersection	1491	1491	2013	Lengthen NB left, SB right,	\$500,803	\$22,536
SR 540 @ US 98			Intersection	1283	1283	2006	Add SB left turn lane- Widen	\$1,767,955	\$35,101
CR 540 @ US 98			Intersection	1283	2571	2013	Lengthen NB left & SB right turn lanes	\$83,738	\$7,871
CR 540A @ US 98			Intersection	1283	2405	2012	Add NB left turn lane, lengthen SB left,	\$836,732	\$78,653
SR 60A (Van Fleet) @ US 98 (Broadway)			Intersection	1700	1700	2008	Add WB right turn lane, NB left & right turn lanes, lengthen EB left turn lane	\$923,403	\$77,566
Total Proportionate Share									\$9,511,482

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- (1) OFF Traffic must equal or exceed 5% of the service volume capacity at the adopted LOS
- (2) The total traffic volume, including OFF site traffic, on the segment or intersection must result in the segment or intersection operating below the adopted LOS
- (3) The year traffic conditions on the segment or intersection are projected to become "adverse" or OFF traffic becomes "significant" whichever is later (based on an assumed 1999 project start date)
- (4) All cost information is subject to verification
- (5) Cost calculations are based upon 1998 FDOT planning cost estimates for typical roadway improvements
- (6) cost of construction of an improvement necessary to maintain the adopted level of service including planning, engineering and design, right-of-way acquisition, inspection, and other associated physical development costs directly required and associated with the construction of the improvement.
- (7) Proportionate Share shall mean the costs of improvement attributable to the project at buildout, calculated in accordance with the formulas provided in III.E.3 of the Development Order.

shall mean the costs of improvements attributable to the Project based upon the sum of the cost of improving each significantly impacted state and regional roadway which will operate at less than the adopted level of service in a local government's comprehensive plan or the Florida Department of Transportation level of service standards for roads on the Florida Intrastate Highway System at Project buildout.

The proportionate share of the cost of improvements of each such roadway is calculated according to the following formula:

$$[\text{DRI trips}/(\text{SV Increase})] \times \text{Cost}$$

where

DRI trips = cumulative number of trips from the proposed development expected to reach the roadway during the peak hour from the complete buildout of the Project.

SV increase = the change in peak hour maximum service volume of the roadway resulting from construction of the improvement necessary to maintain the adopted level of service.

Cost = cost of construction of an improvement necessary to maintain the adopted level of service including planning, engineering and design, right-of-way acquisition, inspection, and other associated physical development costs directly required and associated with the construction of the improvement.

If all of the above conditions are true, then OFP's proportionate share of the cost of improving said roadway segments or intersections to acceptable levels of service shall be considered as OFP's fiscal impact on the transportation system. This Concurrency Management Program shall not include, and OFP shall not be responsible for, improvements which are under construction or which have been assigned a funding commitment in an approved transportation improvements program. **Table C** includes best estimates of the improvement cost and proportionate share attributed to each impacted roadway segment or intersection.

The City shall utilize available funds including the proportionate share contributions to implement improvements to the regionally significant transportation facilities identified in **Table D** and elsewhere herein.

c) **Verification of Contribution.**

Immediately following the adoption of this Development Order, and thereafter concurrent with the annual transportation monitoring statement, or at alternative times as agreed to by the City and the Developer, the Developer may apply to the City for verification of the continuing accuracy of the proportionate share contribution. The verification application shall be based upon the criteria contained in Rule 9J-2.045 F.A.C., as described herein. Copies of the application, along with supporting data and information supplied by the Developer, shall be provided to DCA, CFRPC and FDOT. The City will provide

Polk County a copy of the application and supporting documentation. The application shall contain sufficient information to permit verification by the City of the continuing accuracy of the proportionate share contribution in accordance with the described rule. If after review of the application, the City determines that the data shows that certain improvements referred to in **Table C** should no longer be considered as a factor in determination of the Developer's proportionate share contribution based upon applicable standards, then the proportionate share contribution shall be adjusted accordingly.

4. ***Funding for the Concurrency Management Program***

Funding for the implementation of the Concurrency Management Program consists of OFP's payment of an amount equivalent to or exceeding the proportionate share contribution for the Project calculated in accordance with the established standards for proportionate share contribution described above. The total is comprised of three funding sources, as follows:

- a) Polk County has adopted a transportation impact fee that will be imposed at the time of each building permit within the Project or any portion thereof. Transportation impact fees are collected by the City of Bartow at the issuance of each building permit. An estimate of the amount of Polk County Transportation Impact Fees to be generated by the Project thru buildout, utilizing the existing County Transportation Impact Fee structure, is included in **Addendum 1** to this Development Order. This estimate is based upon the fee schedule in effect at the time of the adoption of this Development Order and upon the density/ intensity of the Project as described in **Table A**. Nothing in this Development Order shall be construed to limit or alter the application of Polk County Transportation Impact Fees to development within the Project.
- b) OFP agrees to contribute \$1,500,000 toward the total funding of the Concurrency Management Program by way of the following described payments:
 - i. \$200,000 at the recording of the first residential plat of OFP; and
 - ii. \$150,000 a year for the next five (5) years thereafter (or every 300 units platted) - for a cumulative \$950,000; then
 - iii. \$110,000 a year for the next five (5) years thereafter (or every 400 units platted) - for a cumulative \$1.5 million
- c) The creation of a Facility Benefit Assessment (FBA) by the City of Bartow shall be applicable to development within the Project. The FBA shall be collected by the City at the issuance of each building permit. The amount of the FBA is calculated to equal, in combination with the Polk County Transportation Impact Fee (Section III.H.4.a) above and the OFP contribution (Section III.H.4.b) above, the "proportionate share" of Project through buildout.

Assuming that the Polk County Transportation Impact Fee is as illustrated in **Addendum 1**, then the estimated FBA is as illustrated in **Addendum 2**.

Revisions to the Facility Benefit Assessment – The City of Bartow may elect upon the request of the Developer or at its own initiative to amend the Facility Benefit Assessment under one or more of the following conditions:

- i. The improvement of a specific roadway segment or intersection described in **Table D** by the Developer, governmental agency or other party;
- ii. Modifications in the calculation of the “proportionate share” amount because of refinements in cost estimates;
- iii. Changes in traffic generation and trip distribution characteristics determined through annual monitoring and the traffic analyses required by this Development Order;
- iv. Increases or decreases in the Polk County Transportation Impact Fee assessment.

Note: The inflation factor is taken into account by the implementation of cost updates in item ii, above.

Additional Assessment Under the Facility Benefit Assessment - The City may and with the agreement of OFP increase the Facility Benefit Assessment to include the cost of Off-site improvements described in Section III.H.1 – Project Access. If the Facility Benefit Assessment is increased for this purpose, OFP or another entity constructing the required facilities shall be entitled to reimbursement from the additional proceeds generated in accordance with the Concurrency Management Program.

Credits on Transportation Impact Fees — OFP shall receive impact fee credits for improvements made to County roadways and intersections in accordance with Polk County Transportation Impact Fee Ordinance 89-40, as amended. OFP shall also receive impact fee credits for improvements made to City roadways and intersections in accordance with any transportation impact fee that may be adopted and uniformly applied by the City of Bartow.

5. ***Implementation of the Concurrency Management Program:***

The City of Bartow shall have the discretion, authority and responsibility to implement the Concurrency Management Program and to allocate and disburse all funds collected under this program in a manner consistent with the purposes and intent of this program and with sound fiscal management practice. Nothing in this Development Order shall be construed to prevent the City from expanding the scope of this program, from entering into agreements and cooperative efforts with other governmental entities and agencies, or from including other projects and properties into the Program so long as the entitlements and obligations contained in this Development Order are not abridged.

The total contribution described in Section III.H.4.b) (Developer Contribution) and Section III.H.4.c) (Facility Benefit Assessment), above, shall be used solely to implement improvements to the regionally significant road network as described within the Concurrency Management Program as more specifically described in **Table D**.

- The City shall transmit to FDOT that portion of the total contribution attributable to OFP impacts on the State Road network. OFP shall have the option to construct one or more of the improvements listed in **Table D** and shall be credited with the construction cost for said improvement against OFP's total proportionate share contribution. Prior to commencing design of an improvement, OFP shall enter into a design, permitting and construction agreement with the appropriate agency.

- a) **Five Year Improvement Program.** **Table D** identifies those roadway segments and intersections projected to require improvement during the first five years of the Project. Within six months of the adoption of the Development Order, the City of Bartow shall establish a capital improvements program scheduling these improvements in a manner consistent with the projected occurrence of "adverse" conditions and the availability of funds. **Addendum 3** illustrates the projected Five Year Capital Improvements Program.
- b) **Certificates of Concurrency -** OFP may, at the Developer's discretion and at any time during the buildout of the Project, submit development plans to the City of Bartow for the purposes of review and determination of concurrency representing development for up to five (5) succeeding years. Such plans shall be submitted in accordance with the City of Bartow Land Development Code and must include as a minimum the level of detail prescribed for review of preliminary subdivision plats or site development plans. In the event the development plans submitted by OFP extend beyond the First Five Year Improvement Program or any succeeding improvement program, the City of Bartow shall:
 - i. identify those segments and intersections designated within **Table D** where the impact of OFP traffic is projected to be significant and adverse; and
 - ii. establish an improvement program to remedy adverse conditions no later than three years from the date the adverse impact is projected to occur.

Upon the review of such plans and upon a finding of consistency with the City's Comprehensive Plan and this Development Order, and compliance with the Unified Land Development Code and other applicable ordinances, the City will issue a "Certificate of Concurrency" and will notify Polk County for inclusion of the trips generated by the approved development on the County's Concurrency System.

6. ***Annual Traffic Monitoring***

OFP will develop and maintain a program of Annual Traffic Monitoring. OFP will reimburse the City for the reasonable cost of the City's review of this Annual Traffic Monitoring Program.

The annual traffic report shall adhere to the guidelines specified in Section 380.06, Florida Statutes. Initial trip generation rates shall be based upon the ITE Trip Generation Report, 6th Edition. An annual traffic monitoring methodology shall be submitted to the FDOT, the CFRPC, the Polk County TPO, and any other agency the City deems appropriate for review

and comment to the City, with final approval of the annual traffic monitoring methodology solely by the City within one hundred eighty (180) days of the issuance of the final Development Order.

The methodology shall, at a minimum, include procedures to monitor acceptable levels of service, identify the actual trip generation and the actual distribution of project traffic on segments and roadways within the Concurrency Management Program as defined by **Table D** (refer to Section III H.3.), and evaluate the need for expanding the internal spine road and/or adding secondary entrances to the project. The annually collected data will be compared to the original data submitted with the ADA. The monitoring results may be used to establish the OFP trip generation rates for future update analyses and concurrency management purposes.

Annual traffic monitoring shall occur in February or March, taking into account peak season traffic counts. Counts will continue on an annual basis through project build-out. OFP shall, by July 15th of each year, submit copies of the annual traffic report to the CFRPC, the Polk County TPO, and any other appropriate agencies for review and comment to the City. The City of Bartow shall have final approval authority.

As a result of an Annual Monitoring Report, OFP shall be required to initiate a Notice of Proposed Change if a change in the overall OFP trips generated or OFP's trip distribution on any segment or intersection deviates from those contained in this Development Order by more than fifteen (15%) percent and causes OFP's impacts on the segment or intersection to become both significant and adverse.

7. *Incremental Traffic Studies*

Incremental traffic studies shall be prepared by OFP (i) upon reaching an equivalent trip generation thresholds of one thousand seventy-four (1,074) P.M. peak hour trips, or five (5) years from the effective date of the issuance of this Development Order, whichever occurs first, and (ii) upon reaching the equivalent trip generation threshold of two thousand seventy four (2,074) P.M. peak hour trips or the date five (5) years after the date of the first incremental traffic study, whichever, in the discretion of the City, is deemed appropriate. OFP will reimburse the City the reasonable cost of reviewing the Incremental Traffic Studies.

The results of the Incremental Traffic studies shall be reviewed through the requirements set forth in Section 380.06, *Florida Statutes*. OFP shall submit a copy of its proposed Incremental Traffic Study methodology to the FDOT, the CFRPC, the Polk County TPO, and any other agency the City deems appropriate for review and comment to the City. A Traffic Methodology Meeting shall be held prior to conducting an incremental traffic study, and the Incremental Traffic Study methodology must be agreed upon by the City of Bartow and OFP.

As a result of an Incremental Traffic Study, OFP shall be required to initiate a Notice of Proposed Change if a change in the overall OFP trips generated or OFP's trip distribution on any segment or intersection deviates from those contained in this Development Order by more than fifteen (15%) percent.

8. *Vesting*

The intent and purpose of this Concurrency Management Program is to establish a reasonable mitigation program designed to address the transportation impacts generated by OFP and to

provide for the construction of new transportation facilities within the impacted area. OFP is approved in its entirety and OFP may proceed with development in accordance with the terms of this Development Order subject to revisions to these transportation mitigation conditions as may be required and prescribed herein.

9. ***Public Transportation System***

OFP shall take all reasonable steps to ensure the evaluation, incorporation and implementation of transportation assistance programs to serve transportation disadvantaged residents and employees within the Project. OFP shall facilitate the inclusion of the Project into any future public transportation system with the potential to serve Project residents.

10. ***Credits on Transportation Impact Fees***

OFP shall receive impact fee credits for improvements made to County roadways and intersections in accordance with Polk County Transportation Impact Fee Ordinance 89-40, as amended. OFP shall also receive impact fee credits for improvements made to City roadways and intersections in accordance with any transportation impact fee that may be adopted and uniformly applied by the City of Bartow.

**TABLE D
 OFP Concurrency Management Program**

		Potential
Required Improvements (Paragraph H.1)		
Realign Old Bartow-Eagle Lake Road and lengthen Crossover Road;	\$2,365,340	iv, viii
Project Access Improvements	Not Estimated	iv, viii
Programmed Improvements (Yr One thru Yr Five)		
Old Bartow – Eagle Lake Rd from US 98 to Wilson Ave.)	\$650,305	i,ii, iii
Wilson Avenue from SR 60A (Van Fleet Drive) to Old Bartow-Eagle Lake Road	\$1,304,050	i,ii, iii, v
US 98 @ Old Bartow-Eagle Lake Road	\$267,181	i, ii,iii, vi,vii
SR 60A (Van Fleet Drive) @ Wilson Avenue	\$179,207	ii,iii, vii
US 17/98 Connector (Proportionate Share)	\$155,344	ii, iii
SR 60B (Main) @ US 17/98 (Proportionate Share)	\$3,569	ii, iii
Facilities Projected to Require Improvement thru Buildout		
Old Bartow – Eagle Lake Rd (Wilson Ave to Crossover Rd)		i,ii,iii,vi
Spirit Lake Rd (US 17 to SR 540)		i,vi
Thornhill Road @ Spirit Lake Road		i,,ii,iii,vi
US 17 @ Spirit Lake Road		i,ii,iii,vi,vii
Sheffield Road @ Spirit Lake Road		i,ii,iii,vi
SR 540 @ US 98		ii, iii, vii
CR 540 @ US 98		i, ii,iii,vi
CR 540A @ US 98		i, ii,iii,vi
Segments to Be Monitored		
US 17 (SR 60A Connector to Crystal Beach Rd)		
Old Bartow-Eagle Lake Rd (Crossover Rd to Spirit Lake Rd)		
Old Bartow Rd (Spirit Lake Rd to Crystal Beach Rd)		
Crystal Beach Rd (Old Bartow Rd to US 17)		
Thornhill Rd (Spirit Lake Rd to SR 540)		

- Legend:**
- i = County Transportation Impact Fees (as described in III.H.4a))
 - ii = Facility Benefit Assessment (as described in III.H.4.c))
 - iii = Developer's Contribution to the City of Bartow (as described in III.H.4.b))
 - iv = Increased Facility Benefit Assessment (as described in III.H.4.c))
 - v = City of Bartow CIP
 - vi = Polk County CIP
 - vii = FDOT TIP
 - viii= Construction by Developer

Notes:

(1) The identification of potential funding sources is not intended to prohibit OFP from constructing, or participating in the construction of, one or more of the above described improvements and receiving credits for same in accordance with the terms of this Development Order.

I. Avigation Easement

OFF shall grant to the Bartow Municipal Airport an Avigation Easement over the entire project that is mutually acceptable to the City of Bartow and OFF. A copy of the executed easement shall be rendered to the City prior to the first plat approval.

J. Annual Report

1. **Submittal of Annual Report** — OFF shall submit an Annual Report to the City providing the status of the development relating to all major development order conditions. The annual report shall be submitted on, or before, July 15th of each year to the City, the Central Florida Regional Planning Council, the State Land Planning Agency, and all affected permitting agencies, including the Florida Department of Transportation, FDEP, and SWFWMD.
2. **Contents of Annual Report** — The report shall also describe the composition of OFF residents (retirement versus primary) and shall identify any land use exchanges that have occurred pursuant to Section III.A.7., above. This additional information in the report is intended as a guide to help determine if the reported impacts will significantly alter any proposed services such as school, police, fire and/or EMS.

K. Termination Date/Downzoning

1. **Termination/Commencement Date** — This amended Development Order shall be in full force and effect for twenty (20) years from the date of adoption by the City. The term may be extended by mutual consent of the parties or their successors in accordance with Section 380.06 and Sec. 163.3225, *Florida Statutes*. Physical Development shall commence on the site within three (3) years from the date of the adoption of this amended Development Order by the City.
2. **Downzoning** — The Development shall not be subject to downzoning, intensity reduction or change to a more restrictive land use category for twenty (20) years from the date of adoption of this Development Order, unless the City can demonstrate that substantial changes in the conditions underlying the approval of the Development Order have occurred, or the Development Order was based on substantially inaccurate information provided by OFF, or that the changes are clearly established by local government to be essential to the public health, safety, or welfare of the City residents. For the purposes of this Development Order, the term “downzoning” shall refer to any regulation that has the effect of reducing the total approved intensity as set forth in Section III.A.1., above. Provided, however, that nothing in Section III.A.1., above, shall be construed to prohibit:
 - a) legally enacted changes in zoning or land use regulations which do not decrease the development rights granted to OFF pursuant to this Development Order, or
 - b) any development rights which may arise as a result of this Development Order, or

- c) OFP from requesting any modifications to this Development Order or the subsequent zoning classifications at any time.

L. Recording Notice of Adoption

Notice of adoption of this Development Order shall be recorded by OFP in accordance with the provisions of Section 380.06(15)(f), *Florida Statutes* (1988) within ten (10) days after its effective date.

M. Extension of Development Rights

If the Lake Hancock restoration delays the project, the Commission may extend the build out date through a Notice of Proposed Change. Approval for such delay shall not unreasonably be withheld.

N. Severability

If any sentence, phrase, paragraph, provision or portion of this Development Order is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this Development Order.

O. Substantial Deviation

Development activity constituting a substantial deviation from the terms or conditions of this Development Order as defined by the criteria of Section 380.06(19), *Florida Statutes*, or other changes to the approved development plans which create a reasonable likelihood of additional adverse regional impact, shall result in further Development of Regional Impact review pursuant to Section 380.06, *Florida Statutes*, and may result in the City ordering a termination of development activity pending such review.

Section IV. After passage on first reading, at least three correct copies of this ordinance in the form in which it has been passed on first reading shall be made available for public inspection in the office of the City Clerk, and there shall be published in the Polk County Democrat, a newspaper published and of general circulation in the City of Bartow, a notice describing this ordinance in brief and general terms and stating that it is available for public inspection in the office of the City Clerk, together with the time and place and when and where it will be considered for final passage. Such publication shall be at least ten days prior to the time advertised.

Section V. After final passage, there shall be published in the Polk County Democrat, a newspaper published and of general circulation in the City of Bartow, a notice describing this ordinance in brief and general terms and stating that it is available for public inspection in the office of the City Clerk, and this ordinance shall take effect upon final passage.

PASSED ON FIRST READING _____
PASSED AND ENACTED ON SECOND READING _____

CITY OF BARTOW

By _____
Mayor

ATTEST WITH SEAL:

By _____
City Clerk

Approved as to correctness and form:

By _____
City Attorney

Approved as to substance:

By _____
City Manager

ADDENDUM 1

ESTIMATED COUNTY IMPACT FEE USING 1999 ORDINANCE

Land Use	Size	Bi-directional Peak Hour	Percent of Total PM Peak Hour	Estimated By	Impact Fee Per Unit
Commercial Space	106,973 sq. ft.	345	12.6%	\$81,193	\$759/1,000 sq.ft.
Office Space	130,000 sq. ft.	208	7.6%	\$91,910	\$707/1,000 sq.ft.
Town Center	125,314 sq. ft.	76	2.8%	\$95,113	\$759/1,000 sq.ft.
Marina/Stables	17,609 sq. ft.	3	0.1%	\$27,593	\$1,567/1,000 sq.ft.
Golf Course	346 acres	62	2.3%	\$263,306	\$761 /acre
Congregate Care	315 units	39	1.4%	\$186,165	\$591/unit
Single Family	4,402 units	1971	72.0%	\$3,842,946	\$873/unit
Multi-Family	80 units	33	1.2%	\$47,280	\$591/unit
		2,737	100%	\$4,635,506	

ADDENDUM 2

ESTIMATED SCHEDULE OF FACILITY BENEFIT ASSESSMENT

Land Use	Size	Bi-directional Peak Hour	Percent of PM Peak	Estimated By	Impact Fee
Commercial Space	106,973 sq. ft.	345	12.6%	\$425,539	\$3,978/1,000
Office Space	130,000 sq. ft.	208	7.6%	\$256,557	\$1,974/1,000
Town Center	125,314 sq. ft.	76	2.8%	\$93,742	\$748/1,000
Marina/Stables	17,609 sq. ft.	3	0.1%	\$3,700	\$210/1,000
Golf Course	346 acres	62	2.3%	\$76,474	\$221 /acre
Congregate Care	315 units	39	1.4%	\$48,104	\$153/unit
Single Family	4,402 units	1971	72.0%	\$2,431,125	\$552/unit
Multi-Family	80 units	33	1.2%	\$40,704	\$509/unit
		2,737	100%	\$3,375,946	

ADDENDUM 3

Five Year Capital Improvement Program

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
County Transportation Impact Fee	\$460,089	\$482,757	\$325,100	\$325,100	\$404,081	\$1,997,127
Developer Contribution	\$200,000	\$150,000	\$150,000	\$150,000	\$150,000	\$800,000
Facility Benefit Assessment	\$256,169	\$256,169	\$255,466	\$256,169	\$319,508	\$1,343,481
Total	\$916,258	\$888,926	\$730,566	\$731,269	\$873,589	\$4,140,608

ADDENDUM 3 (CONTINUED)

Programmed Improvements as Per Table D

	Year 1	Year 2	Year 3	Year 4	Year 5	
Main Entry (Old Bartow @ Crossover Rd)	\$2,365,340 0				0	\$2,365,340 0
Old Bartow – Eagle Lake (US 98 to Wilson)					\$650,305	\$650,305
Old Bartow – Eagle Lake @ US 98					\$267,181	\$267,181
Wilson Ave (Old Bartow to Van Fleet)					\$1,304,050 0	\$1,304,050 0
Wilson Ave @ Van Fleet					\$179,207	\$179,207
US 17/98 Connector					\$155,344	\$155,344
SR 60B (Main @ US 17/98)					\$3,569	\$3,569
TOTAL	\$2,364,340				\$2,559,656	\$4,924,996

ADDENDUM 3 (CONTINUED)

Alternative A: County Impact Fee Credits Applied

	Year 1	Year 2	Year 3	Year 4	Year 5	Balance
Developer Construction	\$2,365,340					
Bartow CIP					\$704,050	
County Transportation Impact Fee Credit					\$917,486	\$1,079,641
Developer Contribution					\$800,000	\$0
Facility Benefit Assessment					\$138,120	1,205,361
Concurrency Management Program Balance: End of Year Five						\$2,285,002

Alternative B: County Impact Fee Credits Not Applied

	Year 1	Year 2	Year 3	Year 4	Year 5	
Developer Construction	\$2,365,340					
Bartow CIP					\$704,050	
County Transportation Impact Fee Credit					\$0	\$1,997,127
Developer Contribution					\$800,000	\$0
Facility Benefit Assessment					\$1,055,606	\$287,875
Concurrency Management Program Balance: End of Year Five						\$2,285,002