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KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA  
JOLSON Receipt#1684432

## City of North Port



2013154907

ORDINANCE NO. 2013-16

### (Adoption of an Amendment to the Heron Creek DRI Development Order)

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE PREVIOUSLY ADOPTED DEVELOPMENT ORDER FOR THE HERON CREEK DEVELOPMENT OF REGIONAL IMPACT ADOPTED BY ORDINANCE NO. 2011-33; PROVIDING FOR FINDINGS; PROVIDING FOR INCORPORATION OF THE AMENDMENT INTO THE DEVELOPMENT ORDER; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SERVICE AND RECORDING; PROVIDING FOR CONSENT TO THE PROVISIONS OF THE ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on January 31, 2012, the City of North Commission approved by Ordinance 2011-33 and all referenced documents, a Notice of Proposed Change for the previously approved Heron Creek DRI; and

**WHEREAS**, the developer now submits to change specific language found in Section 4 Additional Local Conditions, Number 4.10 of the adopted Ordinance 2011-33 (Attachment 1), which now serves as the amended and restated Development Order for the Heron Creek DRI; and

**WHEREAS**, the City of North Port staff has reviewed the proposed change to Section 4 Additional Local Conditions, Number 4.10 of the adopted Ordinance 2011-33 which now serves as the amended and restated Development Order, for compliance with the approved Development of Regional Impact; and

**WHEREAS**, on September 5, 2013 the Planning and Zoning Advisory Board, after discussion at its regularly scheduled meeting voted to approve the proposed amendment to Section 4 Additional Local Conditions, Number 4.10 of Ordinance 2011-33 which serves as the Heron Creek Development Order; and

**WHEREAS**, on September 23, 2013, the City of North Port Commission at its regularly scheduled meeting voted to approve Ordinance 2013-16 to amend Section 4 Additional Local Conditions, Number 4.10 of Ordinance 2011-33 which serves as the the Heron Creek Development Order.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:**

**SECTION 1. FINDINGS.**

The Commission hereby makes the following findings:

**1.01** On November 7, 1996, Marsh Creek Properties Inc., through its authorized agent Betsy Benac submitted to the City of North Port, Florida, the Southwest Florida Regional Planning Council (SWFRPC), and to the Division of Resource Planning and Management of the Florida Department of Community Affairs (DCA), an Application for Development Approval (ADA) in accordance with Section 380.06 Florida Statutes for approval of a Development of Regional Impact

**1.02** (DRI) to be known as Marsh Creek DRI (now known as Heron Creek), located in the incorporated City of North Port within Sarasota County, north of Appomattox Drive, south of the Snover Waterway, east of the Myakkahatchee Creek, west of Blueridge Waterway, abutting Sumter Boulevard, and approximately two miles south of I-75. The legal description, hereby incorporated as Attachment #1, was subsequently corrected by the adoption of Resolution 01-R-5; and

**1.03** The ADA was subsequently amended to add additional lands; to add an additional applicant Renea M Glendinning as Trustee, the owner of the additional lands; to modify the conceptual site plan and the mix of proposed uses and to change the name of the project to Heron Creek DRI; and

**1.04** The ADA as amended proposed 1,970 residential units (903 single-family and 1,067 multi-family units), 500,000 gross square feet of retail service, and 250,000 gross square feet of office, 269.38 acres of recreation and open space, 27 holes of golf, buffers and tennis center, 44 acres of conservation lands (wetlands and scrub jay habitat), 105 acres of lakes for water management, and 5 acres of internal road rights-of-way on a project site containing a total of 831.38 acres; and

**1.05** Pursuant to Section 380.06(11) Florida Statutes, public hearing notice for hearings on said ADA before the City Commissioners of North Port were duly published in the North Port Sun Herald on May 17, 2000 and were duly provided to the Florida Department of Community Affairs (DCA) the Southwest Florida Regional Planning Council, and other persons designated by DCA rules;

**1.06** On June 17, 2000, in accordance with Section 380.06(12) Florida Statutes, the SWFRPC rendered its report and recommendations on the regional impact of the proposed Heron Creek DRI;

**1.07** On August 17, 2000, the City of North Port Planning and Zoning Advisory Board (PZAB) held a duly noticed public hearing on said ADA and received all pertinent evidence including the SWFRPC report and recommendation and the testimony of the general public and recommended

approval of the ADA for the Heron Creek DRI subject to certain conditions as contained in the recommendation to the City Commission;

**1.08** On August 28 and September 11, 2000, the City Commission of the City of North Port held a duly noticed public hearing on the ADA and received all pertinent evidence including the reports and recommendations of the SWFRPC and the PZAB and the testimony of the general public;

**1.09** On July 11, 2005, the Development Order was amended by modifying Section 4 dealing with Local Conditions, Section 4.2 addressing sheltered bus stops, and Section 4.6 addressing sidewalks and by adding the specific number of trips to Item 2;

**1.10** On February 12, 2007, the Development Order was amended to reduce the number of Multi-family dwelling units from 1,067 to 300 (a reduction of 767 units), reduce the number of tennis courts from 12 to 5 courts ( a reduction of 7 courts), reduce the amount of medical office square footage from 130,000 square feet to 43,000 square feet (a reduction of 87,000 square feet), reduce the amount of general office square footage from 120,000 square feet to 40,000 square feet (a reduction of 80,000 square feet), increase the amount of retail commercial from 500,000 square feet to 745,500 square feet (an increase of 245,500 square feet), with no change in the boundaries of land areas designed for residential or non-residential development;

**1.11** On January 31, 2011, a Notice of Proposed Change (NOPC) that was approved by the City of North Port Commission to update Map H to depict existing and proposed development, address affordable housing stipulations in the current Development Order approved with Ordinance 06-46, revise the current stipulations relating to the proposed pathway along the Myakkahatchee Creek to specify if the City chooses to construct and use other materials, the funding from the Applicant shall be at the comparable cost of an at-grade shell surface, and propose a land use conversion matrix that would allow the Applicant to convert approved uses from one area to another as shown in Section 3.01 with no increase in external impacts;

**1.12** The Applicant has now submitted a proposal to amend Section 4 Additional Local Conditions, Number 4.10 of Ordinance 2011-33 to adjust the timing of the sidewalk extension from the property perimeter to Salford Boulevard and the pedestrian bridge across the Blueridge Waterway and after staff review language in Attachment 2 was agreed upon;

**1.13** The proposed changes are presumed not to create a substantial deviation pursuant to Chapter 380.06(19)(e)2.I, F.S.; however, the Applicant has provided the report from the Regional Planning Council (RPC) and the Department of Economic Opportunity, thereby substantiating the change is not a substantial deviation;

**1.14** The proposed development is not located in an Area of Critical State Concern designated pursuant to the provisions of Section 380.05 Florida Statutes;

**1.15** The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan;

**1.16** The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Comprehensive Plan;

**1.17** The proposed development subject to the conditions imposed herein, is consistent with the North Port Comprehensive Plan and does not appear to conflict with other local land development regulations;

**1.18** The proposed development subject to the conditions imposed herein, is consistent with the report and recommendation of the Southwest Florida Regional Planning Council (SWFRPC) pursuant to Section 380.06(12) Florida Statutes;

**1.19** The proposed change affects only Section 4 Additional Local Conditions, Number 4.10 of Ordinance 2011-33, which serves as the Development Order for Heron Creek DRI (Attachment #2).

## **SECTION 2. INCORPORATION OF AMENDMENT AND ASSOCIATED DOCUMENTS IN THE DEVELOPMENT ORDER.**

**2.01** The following information, commitments, and impacting mitigating provisions submitted by the Applicant and all documents referenced herein are hereby incorporated as an amendment to Ordinance 2011-33 and all referenced documents, which serves as the Development Order for Heron Creek DRI, hereafter referred as the amended Development Order;

## **SECTION 3. ENFORCEMENT.**

**3.01** All conditions, restrictions, requirements, commitments, and impact mitigating provisions contained or incorporated by reference in the amended Development Order for Heron Creek DRI, may be enforced by the City of North Port by action at law or equity.

**3.02** In the event it is determined by the City Commission of the City of North Port, after notice and hearing, that the Applicant has failed to comply with any conditions, restrictions, requirements, or impact mitigating provisions contained or incorporated by reference in the amended Development Order, the City Commission may temporarily suspend the amended Development Order during which no development permit applications shall be granted within the development until compliance is achieved.

**3.03** The obligations of amended Development Order shall run with the land. The Applicant is bound by the terms of the amended Development Order so long as it owns such property. The amended Development Order shall be binding upon and inure to the benefit of the Applicant and its assignees or successors in interest. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designed as successor in interest thereto, or which otherwise possess any of the powers and duties of any referenced governmental agency in existence on the effective date of this amended Development Order.

#### **SECTION 4. SERVICE AND RECORDING.**

**4.01** This Ordinance shall be binding upon the Applicant, its successors and assigns and upon the City of North Port. Notice of the adoption of this Ordinance shall be recorded by the Applicant in accordance with Section 380.06(15)(t), Florida Statutes.

**4.02** The City of North Port Clerk shall certify the date upon which certified copies of this Ordinance are deposited in the U.S. Mail for Department of Economic Opportunity Division of Community Planning and Development, the SWFRPC, and the Applicant.

#### **SECTION 5. CONSENT TO PROVISIONS OF ORDINANCE**

**5.01** The Applicant by signing this document in the space herein provided, signifies its approval of and assent to the provisions of the amended Development Order. Such signature shall also constitute a certification by the Applicant that it has delivered to the Southwest Florida Regional Planning Council and the Department of Economic Opportunity Division of Community Planning and Development a complete copy of all documents specified in Section 3.01 above.

#### **SECTION 6. CONFLICTS.**

**6.01** In the event of any conflicts between the provisions of this Ordinance and any other Ordinance, the provisions of this Ordinance shall prevail to the extent of such conflict.

#### **SECTION 7. SEVERABILITY.**

**7.01** If any section, sentence, clause, phrase or word of this Development Order is for any reason held or declared to be invalid inoperative or void, such holding of invalidity shall not affect the remaining portions of this Development Order, and it shall be construed to have been the intent to pass this Development Order, without such invalid or inoperative part herein, and the remainder, exclusive of such part or parts, shall be deemed and held to be valid as if such parts had not been included herein, unless to do so would frustrate the intent of this Development Order.

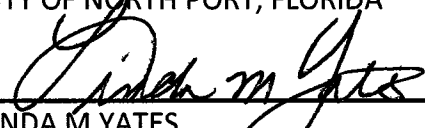
#### **SECTION 8. EFFECTIVE DATE.**

**8.01.** This Ordinance shall take effect upon execution of the consent provided for in Section 5 of this Ordinance and transmittal of the copies of said Ordinance to the parties specified in Section 380.07(2), Florida Statutes, the expiration of any appropriate appeal period or the resolution of any appeal, whichever is later.

**READ BY TITLE ONLY** in public session this 23<sup>rd</sup> day of September, 2013.

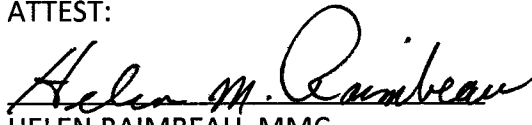
**PASSED and ADOPTED** on second and final reading in public session this 14<sup>th</sup> day of October, 2013.

CITY OF NORTH PORT, FLORIDA

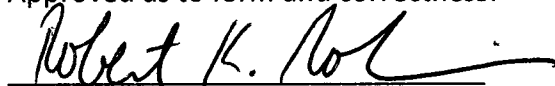
  
\_\_\_\_\_  
LINDA M YATES,  
MAYOR

  
\_\_\_\_\_  
RON YORK  
Development Manager,  
Heron Creek Associates, Ltd.

ATTEST:

  
\_\_\_\_\_  
HELEN RAIMBEAU, MMC  
City Clerk

Approved as to form and correctness:

  
\_\_\_\_\_  
ROBERT K. ROBINSON  
City Attorney



## City of North Port

### ORDINANCE NO. 2011-33

#### (Development Order for Heron Creek a Development of Regional Impact)

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, ADOPTING AN AMENDED AND RESTATED DEVELOPMENT ORDER FOR THE HERON CREEK DRI, AMENDING THE DEVELOPMENT ORDER ORIGINALLY ADOPTED BY ORDINANCE 2000-13, AMENDED BY ORDINANCE 05-28 AND 06-46, FOR THE DEVELOPMENT OF REGIONAL IMPACT (DRI) KNOWN AS HERON CREEK, PROVIDING FOR FINDINGS AND CONCLUSIONS OF LAW, PROVIDING FOR INCORPORATION OF THE APPLICATION FOR DEVELOPMENT APPROVAL (ADA) AND ASSOCIATED DOCUMENTS INTO THE DEVELOPMENT ORDER, PROVIDING FOR THE APPROVAL OF THE HERON CREEK DRI WITH CONDITIONS, PROVIDING FOR ADDITIONAL LOCAL CONDITIONS, PROVIDING FOR THIS ORDINANCE TO BE DEEMED THE DEVELOPMENT ORDER, PROVIDING FOR BUILD OUT AND DEVELOPMENT ORDER TERMINIATION DATES FOR THE HERON CREEK DRI, PROVIDING FOR ENFORCEMENT, PROVIDING FOR SEVERABILITY, PROVIDING FOR SERVICE AND RECORDING, PROVIDING FOR RELATIONSHIP TO OTHER REGULATIONS, PROVIDING FOR CONSENT TO THE PROVISIONS OF THE ORDINANCE, PROVIDING FOR CONFLICT, AND PROVIDING FOR AN EFFECTIVE DATE.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:**

#### **SECTION 1. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

The Commission of the City of North Port hereby makes the following findings of fact and conclusions of law:

**1.01** On November 7, 1996 Marsh Creek Properties Inc., through its authorized agent Betsy Benac submitted to the City of North Port, Florida, the Southwest Florida Regional Planning Council (SWFRPC), and to the Division of Resource Planning and Management of the Florida Department of Community Affairs (DCA), an Application for Development Approval (ADA) in accordance with Section 380.06 Florida Statutes for approval of a Development of Regional Impact

(DRI) to be known as Marsh Creek DRI (now known as Heron Creek), located in the incorporated City of North Port within Sarasota County, north of Appomattox Drive, south of the Snover Waterway, east of the Myakkahatchee Creek, west of Blueridge Waterway, abutting Sumter Boulevard, and approximately two miles south of I-75. The legal description, hereby incorporated as Attachment #1, was subsequently corrected by the adoption of Resolution 01-R-5;

**1.02** The ADA was subsequently amended to add additional lands; to add an additional applicant Renea M. Glendinning as Trustee, the owner the of additional lands; to modify the conceptual site plan and the mix of proposed uses and to change the name of the project to Heron Creek DRI;

**1.03** The ADA as amended proposed 1,970 residential units (903 single-family and 1,067 multi-family units), 500,000 gross square feet of retail service, and 250,000 gross square feet of office, 269.38 acres of recreation and open space, 27 holes of golf, buffers and tennis center, 44 acres of conservation lands (wetlands and scrub jay habitat), 105 acres of lakes for water management, and 5 acres of internal road rights-of-way on a project site containing a total of 831.38 acres more particularly described in Exhibit F;

**1.04** Pursuant to Section 380.06(11) Florida Statutes, public hearing notice for hearings on said ADA before the City Commissioners of North Port were duly published in the North Port Sun Herald on May 17, 2000 and were duly provided to the Florida Department of Community Affairs (DCA) the Southwest Florida Regional Planning Council, and other persons designated by DCA rules;

**1.05** On June 17, 2000, in accordance with Section 380.06(12) Florida Statutes, the SWFRPC rendered its report and recommendations on the regional impact of the proposed Heron Creek DRI;

**1.06** On August 17, 2000, the City of North Port Planning and Zoning Advisory Board (PZAB) held a duly noticed public hearing on said ADA and received all pertinent evidence including the SWFRPC report and recommendation and the testimony of the general public and recommended approval of the ADA for the Heron Creek DRI subject to certain conditions as contained in the recommendation to the City Commission;

**1.07** On August 28 and September 11, 2000, the City Commission of the City of North Port held a duly noticed public hearing on the ADA and received all pertinent evidence including the reports and recommendations of the SWFRPC and the PZAB and the testimony of the general public;

**1.08** On July 11, 2005, the Development Order was amended by modifying Section 4 dealing with Local Conditions, Section 4.2 addressing sheltered bus stops, and Section 4.6 addressing sidewalks and by adding the specific number of trips to Item 2 (Affordable Housing, Exhibit E);

**1.09** On February 12, 2007, the Development Order was amended to reduce the number of Multi-family dwelling units from 1,067 to 300 (a reduction of 767 units), reduce the number of tennis courts from 12 to 5 courts ( a reduction of 7 courts), reduce the amount of medical office square footage from 130,000 square feet to 43,000 square feet (a reduction of 87,000 square



feet), reduce the amount of general office square footage from 120,000 square feet to 40,000 square feet (a reduction of 80,000 square feet), increase the amount of retail commercial from 500,000 square feet to 745,500 square feet (an increase of 245,500 square feet), with no change in the boundaries of land areas designed for residential or non-residential development (Exhibit F);

**1.10** The Applicant has now submitted on March 10, 2010, a Notice of Proposed Change (NOPC) that would update Map H to depict existing and proposed development, address affordable housing stipulations in the current Development Order approved with Ordinance 06-46, revise the current stipulations relating to the proposed pathway along the Myakkahatchee Creek to specify if the City chooses to construct and use other materials, the funding from the Applicant shall be at the comparable cost of an at-grade shell surface, and propose a land use conversion matrix that would allow the Applicant to convert approved uses from one area to another as shown in Section 3.01 with no increase in external impacts;

**1.11** The proposed changes are presumed to create a substantial deviation pursuant to Chapter 380.06(19), F.S.; however, the Applicant has provided the Technical Memorandum dated March 10, 2010 and two subsequent sufficiency responses, thereby rebutting the presumption of a substantial deviation;

**1.12** The proceedings herein relating to the Heron Creek DRI ADA, have been conducted in compliance with the provisions of Section 380.06 Florida Statutes and all conditions precedent to the granting of development approval required by Section 380.06 Florida Statutes have occurred;

**1.13** The proposed development is not located in an Area of Critical State Concern designated pursuant to the provisions of Section 380.05 Florida Statutes;

**1.14** The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan;

**1.15** The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Comprehensive Plan;

**1.16** The proposed development subject to the conditions imposed herein, is consistent with the North Port Comprehensive Plan and does not appear to conflict with other local land development regulations;

**1.17** The proposed development subject to the conditions imposed herein, is consistent with the report and recommendation of the Southwest Florida Regional Planning Council (SWFRPC) pursuant to Section 380.06(12) Florida Statutes;

**1.18** When developed in accordance with the conditions imposed by this Development Order, the Heron Creek development:

- (a) will have a favorable impact on the environment and natural historical resources in the area;

- (b) will have a favorable economic impact on the economy of the region by providing new employment and business for the residents of the region;
- (c) will efficiently use water, sewer, solid waste disposal, public school facilities, and other necessary public facilities;
- (d) will effectively use public transportation facilities;
- (e) will favorably affect the ability of people to find adequate housing reasonably accessible to their place of employment; and
- (f) will comply with such other criteria for determining regional impact as the regional planning agency deems appropriate including but not limited to the extent to which the development would create additional demand for or additional use of energy.

**SECTION 2. INCORPORATION OF APPLICATION FOR DEVELOPMENT APPROVAL (ADA) AND ASSOCIATED DOCUMENTS IN THE DEVELOPMENT ORDER.**

**2.01** The following information, commitments, and impacting mitigating provisions submitted by the Applicant are hereby incorporated in this Development Order by reference:

- (a) Heron Creek's Notice of Proposed Change submitted March 10, 2010.
- (b) Heron Creek's first response to sufficiency comments.
- (c) Heron Creek's second response to sufficiency comments incorporating amended application for Development Approval.
- (d) Heron Creek's previously approved Development Order, Ordinance No. 06-46 (Exhibit F) with referenced Exhibits.

**2.02** In construing and enforcing the provisions of the documents incorporated in this Development Order by Subsection 2.1 above, the following shall apply:

- (a) The most recent response of the Applicant in the above referenced documents shall control over any previous response wherever there is a conflict, otherwise the responses shall be considered cumulative;
- (b) Any information, commitments, or impact mitigating provisions in the above referenced documents which are inconsistent with the specific conditions set forth in this Ordinance and the exhibits hereto, shall be deemed superseded and inapplicable.

**SECTION 3. APPROVAL OF THE HERON CREEK DEVELOPMENT OF REGIONAL IMPACT WITH CONDITIONS.**

**3.01** The amended ADA for the Heron Creek DRI is hereby approved for the following land uses and phases, and land use conversion matrix subject to the conditions contained herein consistent with the revised Map H (Attachment 3 of DO), and is subject to the other provisions of the Development Order (including Attachment 4 of DO):

**Land Use**

Land Use	Phase I (‘97-2001)	Phase II (‘02-2006)	Phase III (‘07-2011)	Phase IV (‘12-2017)
Residential Single Family (LUC 210)	275 DU	377 DU	251 DU	
Residential Multi-Family (LUC 220)	125 DU		175 DU	
Golf Course (LUC 430)	18 Holes	9 Holes		
Tennis Club (LUC 492)		5 Courts		
Medical/Professional (LUC 720)			43,000 GLA	
Office General (LUC 710)			40,000 GLA	
Retail Shopping Center (LUC 820)	90,000 GLA	30,000 GLA	488,000 GLA	137,500 GLA

The Land Use Table, as specified above, may be modified by the Developer without further amendment to this Development Order, subject to the following.

a. This transfer or conversion may occur subject to the following conversion table:

Land Use		To				
		Single Family	Multi Family	Medical/ Professional	Office General	Retail Shopping Center
		(d.u.)	(d.u.)	(sq.ft.)	(sq.ft.)	(sq.ft.)
<b>From</b>	Single Family (Per d.u.)	1.0	1.5	443	685	365
	Multi Family (Per d.u.)	0.7	1.0	291	450	239
	Medical/ Professional (Per 1,000 sq.ft.)	2.3	3.4	1000	1544	822
	General Office (Per 1,000 sq.ft.)	1.5	2.2	648	1000	533
	Retail Shopping Center (Per 1,000 sq.ft.)	2.7	4.2	1216	1878	1000

- (b) The transfer or conversion may occur provided that: 1) the external trips approved for the DRI remain the same and 2) no additional impact will occur to other public facilities (such as sewer and water). Further, no alteration to the Map H may occur as a result of the conversion.
- (c) Forty Five (45) days notice of any conversion must be provided to the City, the Department of Economic Opportunity Division of Community Planning and Development, and Southwest Florida Regional Planning Council. In addition, the amount of the conversion must be reported as part of the subsequent monitoring report and petition to develop. When a petition to develop which includes a transfer or conversion of land use is submitted to the City, proof that no adverse impact is being caused by the transfer or conversion or any combination thereof must be provided.
- (d) The transfer or conversion does not increase the allotted number of units on any particular parcel to a level above what is permitted in the DRI or the City of North Port Land Development Code and does not exceed the substantial deviation criteria of subsection 380.06(19)(b), F.S.

**3.02** The City of North Port, Planning Division is hereby designated as the local government department responsible for monitoring the development, enforcing and monitoring the terms of the Development Order, and for receiving the biennial report required by Section 380.06, Florida Statutes.

**3.03** Biennial Report Requirements. The Applicant shall submit a biennial report pursuant to the requirements of Section 380.06(18) Florida Statutes Rule 9J.2.025(7) Florida Administrative Code (F.A.C.) and procedures established by the Southwest Florida Regional Planning Council (SWRPC). This report shall be submitted on the anniversary of the effective date of the Development Order or on such other date as agreed upon by the Applicant, City of North Port, the Southwest Florida Regional Planning Council, and the Department of Economic Opportunity Division of Community Planning and Development formerly the Department of Community Affairs (DCA), until and including such time as all terms and conditions of the Development Order are satisfied, unless otherwise specified herein. The date upon which the biennial report is required to be submitted may be established to coincide with the same date upon which the Heron Creek biennial report is required to be submitted. The Applicant shall submit this biennial report to the City of North Port department responsible for land development services, the Southwest Florida Regional Planning Council (SWRPC), the Department of Economic Opportunity Division of Community Planning and Development, and all affected permitting agencies required by law on Form RPM BSP Annual Report I, as the same may be amended from time to time. The biennial report shall contain all information required by rule 9J.2.025(7)(a) through (g) F.A.C. as the same may be amended from time to time.

Upon notification that the biennial report is not received by the Southwest Florida Regional Planning Council (SWRPC), Department of Economic Opportunity Division of Community Planning and Development, or upon non-receipt of the report by the City of North Port, the City shall request in writing that the Applicant submit the report within thirty (30) days. Failure to submit the report after 30 days shall result in the City of North Port temporarily suspending this

Development Order and no new development permit applications shall be granted within the development until the requirements of this subsection are met.

**3.04** The Applicant shall submit to the City of North Port department responsible for land development services any monitoring reports specified in the conditions contained in Attachment #4. The director of the department responsible for land development services for the City of North Port shall be the local official responsible for assuring compliance by the Applicant with this Development Order.

**3.05** The Applicant shall submit a site access analysis for approval by the City of North Port prior to issuance of any building permits resulting from changes proposed in the NOPC submitted on March 10, 2010. It shall include an analysis of the intersection of Sumter and Price Boulevard and shall identify all necessary improvements including site access, turn lanes, and improvements required to maintain acceptable level of service at the aforesaid intersection and at site access driveways.

#### **SECTION 4. ADDITIONAL LOCAL CONDITIONS.**

**4.01** The Heron Creek DRI is partially located in Activity Center #2, identified in the Comprehensive Plan, adopted November 10, 1997 by Ordinance No. 97-27 (as amended). All non-residential development (except the golf course, clubhouse, and fitness center) will be located in the Town Center, a subcategory of Activity Center #2. The Town Center is designated as a mixed use pedestrian oriented development. The Applicant has heretofore submitted to the City, a pattern book that includes design guidelines that dictate urban form and architectural controls for non-residential development in the Town Center. The pattern book also addresses the urban form for the City of North Port's civic development in the northeast quadrant of Price and Sumter Boulevard. The City has adopted the pattern book.

The Applicant has completed the grocery store located in the southwest quadrant of Price and Sumter. This store has adhered to the design guidelines set forth in the Heron Creek Pattern Book.

**4.02** The Applicant has constructed two (2) bus shelters, with two shelters remaining to be built, as approved. All other shelter locations are to be mutually agreed upon between the City and the Applicant. The Applicant is not responsible for any shelters in the City of North Port's civic development. The shelter design shall be as approved in the Urban Design Standards Pattern Book.

**4.03** All roads in the Heron Creek DRI are private. If the Applicant seeks approval to transfer jurisdiction from Applicant/homeowner's association to the City of North Port, a public hearing shall be held and this Ordinance amended.

**4.04** Open swales shall not be allowed in the right-of-way for Price and Sumter Boulevards when they are improved or expanded in the town center. This requirement shall not preclude use of open swales in other areas of the Heron Creek development.

4.05 The Applicant shall promote efficient pedestrian and bicycle movement within the development. This shall be achieved through the design of bike lanes, shade trees, and provisions for bicycle racks in the Town Center. Bike lanes will be designed to be either on street, off street, or other design acceptable to the City of North Port.

4.06 The Applicant shall provide permanent sidewalks along both sides of Price and Sumter Boulevards within the project limits. All development within the Town Center will construct sidewalks concurrent with the development of the adjacent property.

If all roadway improvements have not been designed or completed, the Applicant shall be able to put in temporary sidewalk sections that may be replaced with a permanent sidewalk at a later date. If the City of North Port damages any permanent or temporary sidewalk due to on-going improvements to Price or Sumter Boulevards, the City shall be responsible for the replacement of such sidewalk.

4.07 The Applicant and the City of North Port have heretofore entered into a Developer's Agreement that includes the following projects, time frames, and funding commitments:

- (1) Sumter Boulevard (4 lanes adjacent to the proposed development). Sumter Boulevard four-laning may be subject to impact fee credits, and may be paid for from the proposed proportionate share contributions outlined in Table 2 of Attachment #4. Project substantially complete by the end of Phase II, or 2177 trips gross p.m. peak hour estimates.
- (2) If the transportation analysis, to be completed for Phase IV, indicates that four-laning of Price Boulevard is warranted due to existing or expected traffic from the development, the development agreement shall be revised to provide for four-laning Price Boulevard adjacent to the proposed development prior to the completion of Phase IV (2017).
- (3) Provided that the transportation analysis, to be completed showing the addition of two lanes to Sumter Boulevard, does not reduce the expected additional traffic on Pan American Boulevard from the development below 5%, the Applicant agrees to pay a proportionate share of the traffic calming improvements proposed by the City.

4.08 The City of North Port will prepare plans, utilizing their consultant, for the construction of an at-grade shell, or other cost comparable pervious material, pathway within existing City-owned right-of-way along the eastern bank of the Myakkahatchee Creek, from Appomatox Drive to Price Boulevard. These plans will be utilized by the City for the purpose of permitting the pedestrian/bicycle trail through appropriate regulatory agencies as well as for a Major Site and Development Plan Approval by the City. Within 120 days after Major Site and Development Plan Approval by the City, the applicant shall commence construction of the pathway as described above; or should the City elect to construct the pathway, the applicant shall provide funding that is cost comparable to the construction of an at-grade shell pathway. Should the City elect to construct the pathway other than at-grade or utilizing material other than pervious

shell, the City shall be responsible for providing funding above the Applicant's contribution as described above.

**4.09** The Public Works Director shall approve all access points to Price and Sumter Boulevards.

**4.10** Prior to the issuance of a Certificate of Occupancy for any development located at the southeast quadrant of Price and Sumter and the related roadway access. The developer shall construct an eight-foot sidewalk including a pedestrian bridge over the Blueridge waterway from the northeast corner of the site to the eastern right-of-way line of Salford Boulevard. If the Price Boulevard Corridor study is not complete by the time of certificate of occupancy, the developer shall donate to the City, the funds needed to construct the sidewalk. The City Engineer shall approve the amount of the funds, the location, and design of the sidewalk;

**4.11** The Applicant has installed sidewalks within the residential areas as approved by the City Commission pursuant to Petition No. WAV-08-144. Any remaining residential area shall have sidewalks installed pursuant to the approved sidewalk plan, unless the Applicant can provide evidence that the City Commission has waived this requirement;

**4.12** The Applicant has installed sidewalks on both sides of Creek Nine Drive from the terminus of the existing sidewalks to Sumter Boulevard pursuant to Ordinance No. 06-46 Subsection 4.12;

**4.13** The land use developed on the southeast corner of the intersection of Sumter and Price Boulevards shall be different than the land uses on the other three corners;

**4.14** The Applicant has submitted Map H (Attachment #3) and Land Use Matrix included in this petition to the City and the SWFRPC, updating the proposed development densities, intensities, and uses;

**4.15** The Applicant's Development Concept Plan (DCP)/Development Master Plan (DMP) shall:

- (a) address any additional impacts on the water sewer and reuse water systems and demonstrate how the plan will support the surrounding utility system;
- (b) include a water conservation plan for the site; and
- (c) indicate the proposed phasing and timing of the water sewer and reuse water service being requested;

**4.16** Prior to the issuance of a Development Master Plan, Subdivision Plan or Major Site and Development Plan approval, the developer shall hold a neighborhood meeting to explain and gain input on the design of the site and the buffer yard treatment along the eastern property line of the site. The developer shall notify the property owners within a 1320 foot radius from the property line of the development. The neighborhood meeting shall be held after 6 pm in a location convenient to the neighborhood. The developer shall copy City staff on all correspondence to the citizens in the neighborhood;

4.17 There may be requirements found in the City's Unified Land Development Code that will apply to this development that are not specified in this Ordinance.

#### **SECTION 5. ORDINANCE AS DEVELOPMENT ORDER.**

5.01 This Ordinance shall be deemed the Development Order required pursuant to Section 380.06 Florida Statutes for the Heron Creek Development of Regional Impact.

#### **SECTION 6. BUILD OUT AND DEVELOPMENT ORDER TERMINATION DATES FOR THE HERON CREEK DEVELOPMENT OF REGIONAL IMPACT.**

6.01 The build out date of this Development Order is December 31, 2017 provided however, additional analysis may be required in accordance with the provisions contained in Attachment #4.

6.02 The Heron Creek Development Order shall remain in effect until December 31, 2017.

#### **SECTION 7. ENFORCEMENT.**

7.01 All conditions, restrictions, requirements, commitments, and impact mitigating provisions contained or incorporated by reference in this Development Order may be enforced by the City of North Port by action at law or equity.

7.02 In the event it is determined by the City Commission of the City of North Port, after notice and hearing, that the Applicant has failed to comply with any conditions, restrictions, requirements, or impact mitigating provisions contained or incorporated by reference in this Development Order, the City Commission may temporarily suspend the Development Order during which no development permit applications shall be granted within the development until compliance is achieved.

7.03 The obligations of this Development Order shall run with the land. The Applicant is bound by the terms of this Development Order so long as it owns such property. This Development Order shall be binding upon and inure to the benefit of the Applicant and its assignees or successors in interest. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designed as successor in interest thereto, or which otherwise possess any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

#### **SECTION 8. SEVERABILITY.**

8.01 If any section, sentence, clause, phrase or word of this Development Order is for any reason held or declared to be invalid inoperative or void, such holding of invalidity shall not affect the remaining portions of this Development Order, and it shall be construed to have been the intent to pass this Development Order, without such invalid or inoperative part herein, and the remainder, exclusive of such part or parts, shall be deemed and held to be valid as if such parts had not been included herein, unless to do so would frustrate the intent of this Development Order.



## **SECTION 9. SERVICE AND RECORDING.**

**9.01** This Ordinance shall be binding upon the Applicant, its successors and assigns and upon the City of North Port. Notice of the adoption of this Ordinance shall be recorded by the Applicant in accordance with Section 380.06(15)(t), Florida Statutes.

**9.02** The City of North Port Clerk shall certify the date upon which certified copies of this Ordinance are deposited in the U.S. Mail for Department of Economic Opportunity Division of Community Planning and Development, the SWFRPC, and the Applicant.

## **SECTION 10. RELATIONSHIP TO OTHER REGULATIONS.**

**10.01** This Development Order shall not be construed as an agreement on the part of the City of North Port to exempt the Applicant, its successors, and assigns from the operation of any ordinance or other governmental regulation now in effect or hereafter adopted by the City of North Port for the purpose of protection of public, health, welfare, and safety, which said ordinance or regulation shall be generally and equally applicable throughout the City of North Port, and which said ordinance or regulation does not impair or otherwise frustrate the development herein approve.

**10.02** This DRI shall not be subject to down-zoning, unit density reduction, or intensity reduction prior to December 31, 2017, unless the City of North Port can demonstrate that substantial changes in the conditions underlying the approval of the Development Order have occurred or that the Development Order was based on substantially inaccurate information provided by the Applicant or that the change is clearly established by the City of North Port to be essential to the public health, safety, or welfare.

**10.03** Prior to the first building permit issued for Phase II, the Applicant shall pay all application fees in accordance with Ordinance 2010-14.

## **SECTION 11. CONSENT TO PROVISIONS OF ORDINANCE**

**11.01** The Applicant by signing this document in the space herein provided, signifies its approval of and assent to the provisions of this Development Order. Such signature shall also constitute a certification by the Applicant that it has delivered to the Southwest Florida Regional Planning Council and the Department of Economic Opportunity Division of Community Planning and Development a complete copy of all documents specified in Section 2.2 above.

## **SECTION 12. CONFLICTS.**

**12.01** In the event of any conflicts between the provisions of this Ordinance and any other Ordinance, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 13. EFFECTIVE DATE.

13.01. This Ordinance shall take effect upon execution of the consent provided for in Section 11 of this Ordinance and transmittal of the copies of said Ordinance to the parties specified in Section 380.07(2), Florida Statutes, the expiration of any appropriate appeal period or the resolution of any appeal, whichever is later.

READ BY TITLE ONLY in public session this 9th day of January, 2012.

PASSED and ADOPTED on second and final reading in public session this 30th day of January, 2012.

CITY OF NORTH PORT, FLORIDA

Tom Jones  
TOM JONES,  
COMMISSION CHAIR

ATTEST:

Helen Raimbeau  
HELEN RAIMBEAU, MMC  
City Clerk

Approved as to form and correctness:

Robert K. Robinson  
ROBERT K. ROBINSON  
City Attorney

## Attachment 2

### SECTION 4. ADDITIONAL LOCAL CONDITIONS.

4.10 Prior to the issuance of a Certificate of Occupancy for any development beyond 286,000 Gross Square Feet of any Development within the 84 acre parcel south and adjacent to W. Price Boulevard, east and adjacent to S. Sumter Boulevard, west and adjacent to Blueridge Waterway, and just north of Abernant Avenue, located at the southeast quadrant of Price and Sumter and the related roadway access, the developer shall construct an eight-foot wide sidewalk including a pedestrian bridge over the Blueridge Waterway, if determined by the City, from the northeast corner of the site to the eastern right-of-way line of Salford Boulevard. The developer shall design the sidewalk and/or pedestrian bridge, if determined by the City, and the City Engineer shall approve the amount of the funds, the location and design of the sidewalk and/or the pedestrian bridge. In addition, the City may elect to construct the sidewalk and/or the pedestrian bridge in conjunction with proposed roadway improvements. Should the City elect to construct the sidewalk and/or the pedestrian bridge, prior to any Certificate of Occupancy being issued for development exceeding 286,000 Gross Square Feet of any development within the 84 acre parcel, as outlined above, the developer shall reimburse the City for the entire cost of the sidewalk and/or pedestrian bridge.