

Prepared by and return to:
Clifford B. Shepard
2300 Maitland Center Parkway, Ste. 100
Maitland, Florida 32751

**DEVELOPMENT AGREEMENT
(Maitland Station)**

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into this ____ day of _____, 2015, by and among the **CITY OF MAITLAND, FLORIDA**, a Florida municipal corporation (“**City**”), whose address is 1776 Independence Lane, Maitland, FL 32751 and **EPOCH PROPERTIES, INC.**, a Florida corporation (“**Developer**”), whose address is 359 Carolina Avenue, Winter Park, FL 32789.

R E C I T A L S:

WHEREAS, Parker Lumber Company, Inc., a Florida corporation (“**Parker Lumber**”) has fee simple title to certain lands located at 851 N. Orlando Avenue in Orange County, Florida, and within the corporate limits of the City of Maitland, Florida, said lands being more particularly described in **Exhibit “A”** attached hereto and by this reference made a part hereof (the “**Parker Lumber Property**”); and

WHEREAS, Developer warrants it or its affiliates have contracted to purchase the Parker Lumber Property upon completion of site plan approval and issuance of various other development approvals, permits and agreements with respect to the Parker Lumber Property, including, without limitation this Agreement; and

WHEREAS, through the adoption of the Downtown Maitland Master Plan (“**Master Plan**”), the Downtown Maitland Revitalization Plan (“**DMRP**”), and the Ordinance creating the Downtown Maitland Zoning District (“**DMZD**”), and Downtown Maitland Special District (“**DMSD**”) including regulations and design standards, City committed to more aggressively seek improvements to enhance the economic vitality and vibrancy of the City and to implement pedestrian-oriented environments complementary to the cultural corridor of the community; and

WHEREAS, the City desires the Parker Lumber Property to be redeveloped as a key area of the City’s Downtown Maitland corridor consistent with the City’s Comprehensive Development Plan (“**CDP**”), DMZD, DMRP, DMSD, and Master Plan; and

WHEREAS, Developer desires to redevelop the Parker Lumber Property and to receive assurances from City related to Developer’s proposed redevelopment, as set forth herein; and

WHEREAS, City and Developer have recognized the benefits of cooperation to redevelop this key area of City; and

WHEREAS, Developer intends to construct a transit-oriented multifamily residential project (defined below as the “**Project**”) consisting generally of those components described in the Conceptual Site Plans attached hereto as **Exhibit “B”** and made a part hereof, as same may hereafter be modified in accordance with this Agreement; and

WHEREAS, City and Developer have recognized the mutual benefits of cooperation to redevelop this Parker Lumber Property, including the economic revitalization of an otherwise stagnant area, its proximity to the SunRail Station and the fulfillment of the City’s desire to make the City an attractive place to conduct business, live, shop and play; and

WHEREAS, City desires to encourage private sector redevelopment of the Parker Lumber Property and are willing to enter into this Development Agreement to provide for, implement and encourage a quality urban infill, transit-oriented residential development accordingly; and

WHEREAS, the City’s representations and obligations as set forth in paragraphs 3 and 5 below are a material inducement to enter into this Agreement; and

WHEREAS, the Project includes several significant benefits in light of the step-back bonus requested pursuant to section 23-2.7.2(a)(2)a., such as the undergrounding of approximately 800 linear feet of utility lines, the removal of corresponding utility poles, the removal of the existing billboard, and other improvements the City determines to be a public benefit as set forth herein; and

WHEREAS, the Project is projected to generate significant local construction related earnings, provide a substantial capital realization benefit to the City and fulfill objectives of the CDP, Master Plan, DMSD, DMZD, and DMRP, including the improvement of City infrastructure, promotion of SunRail ridership, and increased residential activity; and

WHEREAS, §163.3167, *Florida Statutes*, provides that each local government is encouraged to articulate its vision for the future physical appearance and qualities of its community in its Comprehensive Plan; and

WHEREAS, City are authorized by home-rule powers to enter into agreements regarding the development and redevelopment of property; and

WHEREAS, the Florida Legislature has recognized that transit-oriented development is integral to the success of many urban infill and redevelopment projects and that urban infill and redevelopment is to be encouraged; and

WHEREAS, in consideration for the Developer’s redeveloping a key and critical parcel within the City which has been in a blighted state for a significant period of time and that the City’s codes require pedestrian walkways and streetscaping along Parker Lumber Property to serve pedestrians walking to and from the Project and to serve the general pedestrian traffic, and City finds that, under Sec. 12-57 and Sec. 12-62 of the Code, the Developer shall be credited for its non-transferable transportation impact fees for the construction of the streetscaping in the right of way along the street adjacent to the Parker Lumber Property

consistent with the design standards established by the City and as approved herein (the “**Streetscape Improvements**”); and

WHEREAS, on February 3, 2015, the City gave proper notice of a public hearing before the Maitland Planning & Zoning Commission (“**P&Z**”) to consider this Agreement; and

WHEREAS, P&Z held said public hearing on February 19, 2015, and heard all persons desiring to speak for and against this Agreement; and

WHEREAS, P&Z held a recommendation meeting on this Agreement on April 16, 2015; and

WHEREAS, P&Z provided for the Maitland City Council its recommendations in a report dated April 16, 2015 and

WHEREAS, the Maitland City Council has considered the recommendation of P&Z; and

WHEREAS, the Maitland City Council (the “**City Council**”) duly scheduled, advertised and held a joint public hearing on April 27, 2015, to consider this Agreement, and heard all persons desiring to speak for or against this Agreement; and

WHEREAS, the City Council considered the remarks and comments offered regarding the Agreement made at said public hearings; and

WHEREAS, the City Council finds Developer has made the requisite showing under the CDP, the DMSD, DMZD, DMRP, and Master Plan for the approval of the Project and to receive the bonuses, waivers, permitted conditional use(s), and approvals set forth herein; and

WHEREAS, the City Council finds it to be in the best interest of the City and the health, safety and welfare of the citizens of Maitland, have offered to facilitate a portion of this redevelopment and revitalization project on the terms and conditions set forth herein, with the expectation that their involvement will encourage and accelerate the timing of the redevelopment, thus generating additional TIF revenues in the redevelopment area, and will result in enhanced economic benefit to downtown and provide stability for SunRail ridership; and

WHEREAS, all Parties desire to enter into this Agreement to provide the citizens of City a quality development in the form of the Project; and

WHEREAS, Developer hereby affirms and acknowledges that everything contracted for, negotiated, acknowledged and affirmed herein by Developer is done freely and voluntarily.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** Each and all of the foregoing recitals are declared to be true and correct and are incorporated herein by this reference. City and Developer shall hereinafter collectively be referred to as the “**Parties.**”

2. **Transit Oriented Residential Project.** In accordance with the terms and conditions of this Agreement, the Developer represents and warrants to the City that it will expeditiously redevelop the Project on the Property, at Developer’s expense (except as set forth herein below), as a transit-oriented residential development (the “**Development Improvements**”). Subject to approval of this Agreement and issuance of engineering and site plan approval for the Project and the Parker Lumber Property by the City, the Developer represents and warrants that the Project will be developed reasonably consistent with the conceptual site development plans attached hereto and incorporated herein as **Exhibit “B”** (the “**Conceptual Site Plans**”). City acknowledges that the Development Improvements include up to 293 residential units, pool, courtyards, and a parking garage (up to five (5) levels and sixty-eight (68) feet in height). The Development Improvements shall have a maximum height of approximately fifty-five (55) feet measured from average grade to the eave of the building. Stairwells, elevator shafts and the ridge line for proposed roof elements and focal points not intended for human occupation may extend another 15 feet in height.

3. **Objectives of Agreement.** The Parties’ objectives, each of which is deemed material to the Parties’ decision to enter into this Agreement, include but are not limited to the following:

- (a) City Objectives –
 - (i) To obtain from Developer all information that is necessary to proceed with City’s redevelopment and site plan review process for the Development Improvements for the Project; and
 - (ii) To ensure that the design and construction of the Development Improvements are consistent with the terms of this Agreement; and
 - (iii) To ensure the design and construction of the Development Improvements for the Project are consistent with the design standards adopted in the DMZD, DMSD, DMRP, the Master Plan, site plan review requirements and City and other applicable regulations and specifications; and
 - (iv) To ensure timely completion of City’s construction obligations such that all performance schedules are met in substantial accordance with the schedule and terms set forth herein; and
 - (v) To ensure Developer provides for the “under-grounding” of all overhead utilities fronting the Project; and
 - (vi) To reserve a limited cross-access easement to benefit the property

adjacent to the north of the Parker Lumber Property; and

- (vii) To provide Developer with transportation impact fee credits for constructing eligible Streetscape Improvements along the streets adjacent to the Parker Lumber Property.

(b) Developer's Objectives –

- (i) To ensure that the City services required to support the redevelopment of the Project on the Property will be available as set forth below; and
- (ii) To ensure that capacity is available for off-site and on-site stormwater facilities; and
- (iii) To ensure sewer lines and other infrastructure upgrades necessary for sufficient sewer capacity to serve the Project are funded and under construction by August 1, 2015 and completed on or before August 1, 2016 so as not to delay its completion; and
- (iv) To obtain approval of the Conceptual Site Plans; and
- (v) To obtain bonuses, waivers, and permitted conditional use(s) for the Project approved by the City through the DMZD and DMSD; and
- (vi) To underground the existing overhead electrical lines (as set forth in paragraph 10(b) below) as part of the Development Improvements; and
- (vii) To have the City provide the option of obtaining non-transferable sewer and water impact fee credits if the Developer makes certain sewer and water improvements along the frontage consistent with this Agreement; and
- (viii) To construct the Streetscape Improvements in the rights of way adjacent to the Parker Lumber Property consistent with the City's design standards and to receive non-transferable transportation impact fee credits, where eligible.

Developer shall only be required to use commercially reasonable efforts to acquire the Parker Lumber Property and to subsequently apply for required governmental licenses, approvals and permits for the Project and related improvements. The Parties intend that their respective objectives will be accomplished as set forth herein.

4. **City Findings.** City finds that the Developer has made the requisite showing under the CDP, the DMZD, DMRP and the Master Plan for the approval of the Project. Specifically, City finds that the Project is consistent with the Architectural Design Standards established for the Sawmill District in the DMZD, DMSD, DMRP and the Master Plan as set forth below.

5. **Development of Maitland Station.**

(a) **Developer Obligations as to the Project.** Except as otherwise set forth herein as the responsibility of the City, Developer shall design, permit and construct, at its own cost and expense, all Development Improvements related to the Project.

- (i) The Development Improvements shall be constructed in accordance with the construction plans approved by City through its standard site plan review process, and shall also be consistent with the design standards adopted in the DMZD, DMSD, DMRP and other applicable City ordinances and regulations.
- (ii) Developer's entitlements hereunder shall be applicable to the entire Parker Lumber Property as a whole and may not be subdivided, split, severed, segmented or allocated to any portion of the Property at any time. This restriction shall survive the expiration of this Agreement, unless such Agreement is terminated prior to construction.
- (iii) Developer shall construct the Streetscape Improvements within the rights of way along the street adjacent to the Parker Lumber Property.
- (iv) Developer shall construct the utility and off-site improvements for which it receives credit in accordance with the City's codes, standards, and specifications.
- (v) Developer shall reserve a vehicular ingress and egress cross-access easement to benefit the property adjacent to the north of the Parker Lumber Property, as generally depicted on the Conceptual Site Plans attached hereto as **Exhibit "B"**.
- (vi) At the time of issuance of any building permits for the Project, Developer shall pay all impact fees (less any credits) and Orange County School impact fees in amounts which are in effect at the time of building permit issuance.
- (vii) The Developer will receive eligible non-transferable transportation, water and sewer impact fee credits for improvements made as set forth in **Exhibit "C"** in amounts which are in effect at the time Developer constructs such improvements.
- (viii) The Developer shall be responsible for the permitting, design and construction of the northbound left-turn lane on US 17/92 at the site's full access drive.

(b) **City Obligations as to the Project.** In consideration of the Developer undertaking the Project, and provided Developer is not in default of this Agreement, the City

shall undertake the actions set forth in this Section. Unless otherwise provided below, the City shall undertake the following actions:

- (i) The City acknowledges that the Developer is entitled to impact fee credits for existing grandfathered improvements as set forth in Exhibit “C.”
- (ii) The City shall give transportation impact fee credits for eligible Streetscape Improvements constructed or installed by Developer in the right of way adjacent to the Parker Lumber Property along with water and sewer impact fee credits for water and sewer improvements, all as set forth in Exhibit “C”.
- (iii) As set forth in Section 3(b)(iii), the City shall make any facility and infrastructure upgrades necessary to ensure that there is sufficient sewer capacity to serve the Project and the Development Improvements.
- (iv) The Project is not required to pay a stormwater connection fee for any portion of its stormwater that is treated on-site.
- (v) As permitted under the DMZD and DMRP, the City approves the conditional use, development bonuses and waivers to Developer, as set forth in Exhibit “D”.
- (vi) City shall grant such permanent non-exclusive easements which the City has authority to grant in favor of Developer, the Project and the Parker Lumber Property as are necessary in order to facilitate the use of conveyance, pipes, fire hydrants and utilities, including, without limitation, the drainage of surface water and stormwater from the Project into the Master Stormwater System, and the construction and maintenance of improvements associated therewith.
- (vii) The City, at its option, may fund the design and construction of an additional level of parking (at least 100 spaces) to be added to the Project’s structured garage (“City Parking Option”). The City must give Developer notice of its exercise of the City Parking Option within thirty (30) days of the Effective Date of the Agreement. Subsequently, the City and Developer may enter into an agreement for City to fund the design and construction of the additional level, grant necessary easements, and any additional matters as determined by the parties (“Parking Garage Agreement”). The Parking Garage Agreement shall address the location of the City parking spaces (first floor priority) and the enforcement measures for such spaces. This section does not obligate the Developer to build or the City to fund the additional level of parking unless such Parking Garage Agreement is effective and in place ninety (90) days after the City exercises its City Parking Option. In the event that the City exercises its City Parking Option but no

Parking Garage Agreement is approved and executed by the parties, the Developer shall receive transportation impact fee credits for the actual cost of any design costs spent in furtherance of plans to accommodate the additional level of parking.

6. **Flexibility in design standards application.** The need for design flexibility is specifically anticipated within the Downtown Maitland Special District as described in Code Section 23-2.2

(a) The City has reviewed the Developer's design waiver requests and made the following findings:

- (i) The Project is consistent with the CDP, the purpose of the Code and DMZD, DMRP, and Master Plan.
- (ii) The proposed waivers will not have a material negative impact on adjacent uses, or the Developer, by Developer's performance under this Agreement, will mitigate the negative impact to be created by the waivers.
- (iii) Compliance by Developer with all aspects of the Code requirements is technically impractical, physically impossible or undesirable based on Project's specific site conditions, or approval of the waivers will result in superior design and achievement of the objectives of the CDP, DMRP, DMSD, DMZD, Code and Master Plan.
- (iv) The requests would not have a material negative effect on the public health, safety, and welfare of the City and its residents.

(b) Based on the City's findings listed in (i)-(iv) above, the City has approved the design waivers pursuant to Sec. 23-2.2 of the Code, all as set forth in **Exhibit "D"**.

7. **Development Bonuses.** The need for a Bonus Program is specifically anticipated within the Downtown Maitland Special District (DMSD). The City recognizes in Sec. 23-2.7.2 that all potential development bonuses are subject to approval by the City.

(a) The types of development bonuses allowed for consideration by City Code include, as applicable to this Project: Building step-back bonus.

(b) The City has reviewed the Developer's requests for a bonus and has made the following findings pursuant to Sec. 23-2.7.2:

- (i) The improvement proposed by the Developer provides a significant public benefit in light of the bonus requested; and

- (ii) The proposed design relating to the requested bonus will result in a superior product on the Property that is compatible with the surrounding neighborhood.

(c) Based on the City's findings listed in (i)-(ii) above, the City has approved the development bonus pursuant to Sec. 23-2.7.2 of the Code, all as set forth in **Exhibit "D"**.

8. **Conditional Uses.** Sec. 21-19b requires that multi-family residential, ground floor residential receive a conditional use in the DMZD. The Developer is granted a conditional use on the Project for multi-family residential, ground floor residential for the reasons set forth in **Exhibit "D"**.

9. **Parking.** An alternative parking study was submitted pursuant to Sec. 21-22(1)(f) to evaluate required parking to serve the Project, using professionally accepted methods for review and approval by the City. The Parking Study attached as **Exhibit "E"** demonstrates that the Project will have sufficient off-street parking spaces on-site and that no parking deficit is anticipated at the present time by providing a 1.5 parking space per unit. Based on the findings in the Parking Study, the City has determined that 440 off-street parking spaces or one parking space per bedroom, whichever is greater, is adequate and shall be the minimum required for the Project.

10. **Streetscape; Utility Line Improvements.**

(a) **Streetscape Improvements.** Developer shall design, permit, and construct the Streetscape Improvements within the FDOT's right of way adjacent to the Parker Lumber Property along US 17-92, consistent with the Conceptual Site Plans, inclusive of waivers and Developer's requests for flexibility, consistent with the City's design standards and the design standards in the DMRP, DMSD and DMZD.

(b) **Overhead Utility Line Improvements.** Developer shall cause the undergrounding of all power lines and any other utility lines (including without limitation cable and communications lines) co-located on power line poles located in right-of-way adjacent to the Parker Lumber Property. The Developer shall have no obligation to cause the undergrounding of power lines or any other utility lines beyond the southern and northern property boundary of the Parker Lumber Property.

11. **Sewer Improvements.** The City will complete Lift Station #4 Diversion (the "**Sewer Improvements**") with same to be permitted and operational and capacity allocated and available on or before August 1, 2016. City shall be responsible for the maintenance of the Sewer Improvements and all sewer, water and reclaimed water lines in public right-of-way and providing reserved and allocated capacities for water, sewer and reclaimed water (if applicable) necessary for the Project. Developer shall be responsible for connecting the Property to the City's Sewer Improvements to ensure the Property is connected to wastewater facilities necessary for the Project. Developer, at its expense, shall design, permit and construct sewer and water utility lines and meters internal to and in support of the Project and connecting such to the City's Sewer Improvements before the issuance of any certificates of occupancy for any dwelling units for the Project. Developer shall receive impact fee credits for extending the

sanitary sewer lines to and along the frontage of the Parker Lumber Property. If required by the City, Developer will extend the sewer lines to the northern boundary of the Parker Lumber Property and receive sewer impact fee credits for such extension and upsizing of the lines (if any). Such impact fee credits shall not exceed the sewer impact fee amount due. All of the City's Code, requirements and specifications concerning utility connections and all of the City's Code requirements concerning wastewater collection apply to the Property and development thereof.

12. **Consistency with City's Comprehensive Development Plan (CDP).** City hereby finds that this Agreement is consistent with the CDP and other City governing documents, and is a legislative act of the City Council. City further finds that this Agreement promotes the public health, safety, and welfare, and is consistent with, and a proper exercise of, City's powers under the Municipal Home Rule Powers Act, as provided in Section 2(b), Article VIII of the Florida Constitution, Chapter 166.021, *Florida Statutes*, and City's police powers. The Conceptual Site Plans are consistent with the CDP, applicable development regulations, and service levels adopted by City. Moreover, the Conceptual Site Plans ensures that the future development of the Property is directed in a harmonious pattern with existing development and the natural environment so as to maintain and improve the City's image as a residential community.

13. **Minor Amendments and Adjustments.**

(a) The Parties agree that a project of this type requires ongoing day-to-day decisions that may result in minor or insignificant changes to the Project, this Agreement, and the Conceptual Site Plans. Minor amendments to this Agreement may be reviewed and approved consistent with Code Section 7.5-43, however nothing herein shall convert this Agreement to an agreement entered into pursuant to the Florida Local Government Development Agreement Act.

(b) Developer may seek to change the building footprints as final drawings are implemented into the Project design. Minor adjustments are those which do not materially affect or modify the Project and are typical of developments of this type and which do not alter, modify, deviate from, or otherwise adversely impact the criteria outlined in the approved Conceptual Site Plan, approved final site plan, or approved permits ("Minor Adjustments"). Developer is authorized, upon approval by City Manager or designee (delivered in writing, setting forth the exact nature of the subject change/modification requested) to make such Minor Adjustments. It is the intention of the City Council that changes to the approved Conceptual Site Plans within the minimum and maximums established in this Agreement for density and height are not considered additions to or deletions from the square footage of the Project and, will not require an amendment to this Agreement.

14. **Obligation to Adhere to Requirements of Law.** Developer and City agree that each and their respective successors and assigns will be bound by the provisions of this Agreement, as well as all Federal, State and local laws, as the same may be amended or created from time to time. No clause or provision of this Agreement shall be construed or excuse the observance of any requirement of any law by Developer or City. Failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Developer or City of the

necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

15. **Covenants and Terms.**

(a) The conditions and covenants set forth herein shall be construed as covenants running with the Property, and shall be binding upon Developer, City and their assigns and successors in interest, and shall inure to the benefit of Developer, City and their assigns and successors in interest, but shall not be deemed to extend private rights to any person or entity other than the Parties hereto and their successors and assigns. This Agreement, except as permitted expressly below, shall not be assignable by Developer without City's prior written approval, which shall not be unreasonably withheld. Notwithstanding the foregoing, (i) this Agreement may be assigned by Developer to any related entity or Parker Lumber without approval by the City and (ii) in the event that a project mortgagee (or its nominee) shall acquire title to the Parker Lumber Property through foreclosure or deed in lieu of foreclosure, such project mortgagee (or its nominee) shall be deemed a permitted assignee under this Agreement, provided such assignee gives City prompt notice of the acquisition thereby of the Parker Lumber Property, and such assignee agrees to assume and timely perform all of the covenants and obligations of Developer under this Agreement accruing from and after the date of such acquisition of title. This Agreement shall be effective for a period of four (4) years from the Effective Date unless sooner terminated by Developer or City pursuant to a specific right of termination set forth in this Agreement. Once the Project (including public infrastructure) have been completed and all obligations herein satisfied, this Agreement shall be deemed terminated except as expressly set forth in this Agreement. Within twenty (20) days following the written request of Developer, City shall execute an instrument in recordable form acknowledging that any and all obligations under and pursuant to this Agreement have been fully satisfied and performed, and that this Agreement has terminated, or if satisfaction or performance has not then occurred, specifying which, if any, obligations under this Agreement remain unsatisfied or unperformed, and Developer may record any such instrument in the Public Records of Orange County, Florida.

(b) Developer may assign this Agreement to Parker Lumber with Parker Lumber consent (notwithstanding paragraph 15(a)), or if such consent is not given within 10 days from the date of delivery of a written request by Developer to Parker Lumber, terminate this Agreement no later than six (6) months after the Effective Date if litigation by a third party is initiated to invalidate this Agreement. Parker Lumber, as current owner of fee simple title to the Parker Lumber Property, upon delivery of written notice of same to the City and Developer, shall have the right to terminate or assume or assign the rights and obligations of this Agreement: (i) if Developer fails to acquire the Parker Lumber Property on or before January 5, 2016 or as may be extended by Developer and Parker Lumber or (ii) on such earlier date in the event of termination of Developer's contract to purchase the Parker Lumber Property from Parker Lumber. Upon any such termination, Developer and Parker Lumber shall have no further obligations under this Agreement and all entitlements provided hereunder are void.

(c) City may terminate this Agreement at any time, by appropriate action of the City Council, without cost or penalty to City, after the occurrence of any of the following:

- (i) Developer fails to acquire fee title to the Parker Lumber Property on or before January 5, 2016 or as may be extended by Developer and Parker Lumber, or fails to provide copies of the executed and recorded deeds evidencing all such acquisitions to City upon the City's request for same;
- (ii) Developer fails to provide the City with commercially reasonable proof of available financing or funds for construction of the entire Project within one year of the date upon which the Developer acquires title to the Property;
- (iii) Developer fails to complete construction of the Development Improvements within four (4) years of the date of this Agreement; or
- (iv) Developer defaults hereunder and such default is not cured as required in this Agreement.

(d) Upon any such termination, City shall have no further obligations under this Agreement and all entitlements provided hereunder are void. In addition to termination of this Agreement, City may bring such actions for specific performance, injunctive relief and/or damages as are expressly provided for in this Agreement and none other.

(e) Any rights, remedies, obligations and/or entitlements which shall have accrued under and pursuant to this Agreement prior to the termination or expiration hereof shall survive any termination or expiration of this Agreement insofar as is necessary to give legal effect to any rights, remedies and/or entitlements set forth and described in this Agreement intended by their terms to survive such termination or expiration.

16. **Cooperation.** Subject to the provisions of Paragraph 35 herein ("Relationship of the Parties"), Developer and City shall reasonably cooperate with each other to achieve the terms, conditions, and intentions of this Agreement. In connection with Developer's applications for City development licenses, permits and approvals necessary to construct the Project and Development Improvements in accordance with the final site plan, City agrees to process and review any and all applications associated with Developer's licenses, permits (including building permits) and approvals in good faith and in a prompt and diligent manner. However, Developer recognizes and concedes that, in the exercise of its regulatory police power, City must review and act upon Developer's permit applications in substantially the same manner as in the case of applications for all other property owners, and City's decision-making in the course of exercising its police power cannot be waived, divested, or otherwise diminished by contract. City further agrees to formally designate the City Manager or his designee to facilitate approvals, expedite permits and to act as liaison between City and Developer.

17. **Amendments.** This Agreement may not be amended, unless evidenced in writing and executed by all Parties hereto.

18. **Indemnification.** Developer shall defend, indemnify and hold harmless City from and against any and all suits, claims, damages, losses, liabilities, reasonable costs and expenses whatsoever (including attorneys' fees), which City may incur (or which may be claimed against City by any party whomsoever) by reasons of or in connection with the design, construction or maintenance of the Development Improvements. Nothing herein shall require Developer to indemnify City or its agents for their own negligence. This paragraph shall survive expiration or earlier termination of this Agreement.

19. **Default.** Failure by a Party to perform any of its obligations hereunder shall constitute a default hereunder, entitling the non-defaulting Party to terminate this Agreement or to pursue the remedies of specific performance, injunctive relief or damages as set forth in this Agreement. Prior to termination of this Agreement or any Party filing any action as a result of a default by the other Party under this Agreement, the non-defaulting Party exercising such right shall first provide the defaulting Party and the owner of the Parker Lumber Property with written notice specifying such default and the actions needed to cure same, in reasonable detail. Upon receipt of said notice, the defaulting Party shall be provided a thirty (30) day opportunity within which to cure such default. City agrees that the owner of the Parker Lumber Property and any project mortgagee shall have the right (but not the obligation) to cure any default by Developer within the time provided under this Agreement. Notwithstanding the foregoing, the City acknowledges that City's obligations with respect to Lift Station #4 Diversion Project and any other City obligations set forth in Paragraph 5(b) (together the "**City Projects**") are time sensitive and must be completed within the time periods provided for in this Agreement in order for Developer to use, occupy and lease the Development Improvements for their intended purposes upon completion of same. Accordingly, in the event that the City has not commenced or is not proceeding diligently with any of the City Projects in such a manner as to complete same within the applicable deadlines as provided in this Agreement, Developer, after notice and opportunity to cure as provided herein above, may elect to commence or complete any such City Project so that same will be completed by (or as soon as reasonably possible after) the applicable completion date for same as provided in this Agreement. If Developer elects to commence or complete any City Project, the City shall within thirty (30) days of notice of such election, deposit collected impact fees applicable to Lift Station #4 Diversion Project and City's share of the cost into an escrow account pursuant to an escrow agreement to be mutually agreed to and entered into on or before August 1, 2015. The Developer shall have access to such escrow funds to fund the Developer's out of pocket costs to complete any such City Project.

20. **Attorneys' Fees.** In the event of default, the prevailing Party shall have the right to recover all reasonable attorneys' fees and court costs incurred as a result thereof, in addition to all other remedies provided herein.

21. **Bankruptcy.** In the event (a) an order or decree is entered appointing a receiver for Developer or its assets or (b) a petition is filed by Developer for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty days after the filing thereof, then City shall have

the right to terminate immediately this Agreement and accelerate, making immediately due and payable, all sums levied against the Property at the time of the occurrence of an event described in (a) or (b) above. The occurrence of an event described in (a) or (b) above shall not afford any person the right to refuse, discontinue or defer payment of said sums or to challenge their validity.

22. **No Liability or Monetary Remedy.**

(a) Notwithstanding anything herein to the contrary, except as specifically provided in Paragraph 19 hereinabove, Developer and City on behalf of themselves, and their respective successors and assigns, hereby agree that neither Party shall be liable to the other for any direct, indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of services, revenues, profits or business opportunities, and hereby waive any and all claims and causes of action for the recovery of such direct, indirect, special, punitive or consequential damages.

(b) Notwithstanding the restrictions set forth in this Paragraph, Developer, on behalf of itself and its successors and assigns, hereby reserves any and all legal and equitable remedies against any third party who may challenge this Agreement. Developer, on behalf of itself and its successors and assigns, also agrees to join with City in any legal challenge to this Agreement by a third party against City. As part of this commitment, Developer agrees to pay all of its own legal fees and one-half (1/2) of any legal fees and costs associated with a third party legal challenge against City, incurred by City.

23. **Force Majeure.** Except as otherwise expressly provided in this Agreement, no Party shall be liable for any breach of this Agreement for any delay or failure of performance resulting from any cause beyond such Party's reasonable control, including but not limited to the weather, strikes or labor disputes, adverse rulings in third-party lawsuits, casualty, war, terrorist acts, riots or civil disturbances, acts of civil or military authorities, or acts of God (individually, a "force majeure") provided the Party affected takes all reasonably necessary steps to resume full performance; provided however, that if any such force majeure shall continue for three hundred sixty-five (365) consecutive days, any Party shall have the right to terminate this Agreement without incurring any penalty.

24. **Gender, Number and Subtitles.** As used in this Agreement, the plural includes the singular, and the singular includes the plural. Use of one gender includes all genders. Subtitles of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Agreement.

25. **Authority.** Each Party hereby represents and warrants to the other that each has full power and authority to enter into this Agreement. Developer further represents that it has the authority to perform contracts reasonably necessary to acquire the Parker Lumber Property. City further represents that all requirements and procedures, including, without limitation, public hearings, have been properly conducted so that the execution hereof by City shall

constitute the final action of City. City and Developer each represent to the other that this Agreement is binding and enforceable against them in accordance with its terms.

26. **Joinder.** Parker Lumber, as owner of the Parker Lumber Property during the permitting process, by its execution of a separate joinder which is attached hereto, subject to its terms, hereby confirms that it has authorized the Developer to file and pursue any and all applications for development orders, permits and approvals required or associated with redevelopment of the Project on the Parker Lumber Property consistent with the Conceptual Site Plans and this Agreement, including, but not limited to, applications for rezoning, final site plan approval, preliminary and final subdivision approval and stormwater and utility agreements and permits.

27. **Notice.** Any notice required or allowed to be delivered hereunder shall be in writing and shall be: (a) hand delivered to the official hereinafter designated, effective upon such delivery; (b) deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, effective upon receipt of such notice; (c) deposited with a nationally recognized overnight courier service (*e.g.*, Federal Express, United Parcel Service, Purolator, Airborne, Express Mail, etc.), effective one (1) business day after such deposit; or (d) delivered by facsimile (fax) transmission, effective upon confirmed transmission; addressed to a Party at the address specified below, or such other address as from time to time may be provided by written notice:

To City: City of Maitland
Attn: James S. Williams, City Manager
1776 Independence Lane
Maitland, FL 32751

And a Copy To: City Attorney
Clifford B. Shepard
Shepard, Smith & Cassidy, P.A.
2300 Maitland Center Parkway
Suite 100
Maitland, FL 32751
Fax: 407-622-1884
Tel: 407-622-1772

To Developer: Epoch Properties, Inc.
359 Carolina Avenue
Winter Park, FL 32789
Attn: Justin Sand
Fax: 407-644-9855

Tel: 407-644-9055

And a copy to: Lowndes, Drosdick, Doster, Kantor and Reed, P.A.
Attn: M. Rebecca Wilson, Esq.
215 N. Eola Drive
Orlando, FL 32801
Fax: 407- 843-4444
Tel: 407-843-4600

And a copy to: Godbold Downing Sheahan & Bill, P.A.
Attn: Gene Godbold, Esq.
222 W. Comstock Ave.
Winter Park, FL 32789

To Property Owner: Parker Lumber Company, Inc.
c/o Brandon Partners
Attn: Stephen Brandon
200 Pasadena Place
Orlando, FL 32803
Fax: 407-835-9955

And a copy to: James P. Panico, PA
Attn: James P. Panico
111 South Maitland Avenue, Suite 100
Maitland, FL 32751

28. **Severability.** Invalidation of any word, clause, sentence, or section contained herein due to illegality, unconstitutionality, or for any other reason and as determined by a court of competent jurisdiction shall not act to cause this entire Agreement to be found to be invalid, illegal or unconstitutional, and said documents shall be read without such invalid, illegal or unconstitutional word, clause, sentence or section.

29. **Condition of Obligations.** Until such time as Developer has actually acquired fee simple title to the Parker Lumber Property, Developer shall have the right to terminate this Agreement and shall have no further obligations hereunder.

30. **Recording in Public Records.** This Agreement shall be recorded in the Public Records of Orange County, Florida (“Effective Date”). The City Clerk shall ensure the proper recording is accomplished within fourteen (14) days after the execution of this Agreement by all parties.

31. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute on and the same instrument.

32. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Amendment to or waivers of the provisions herein shall be made by the Parties in writing.

33. **Negotiation.** Each Party hereto hereby acknowledges that he was properly represented in the negotiation of this Agreement and this Agreement shall not be more strictly construed against one Party or the other as a result of such Party’s participation in the drafting of this Agreement.

34. **No Third-Party Beneficiaries.** The Agreement is solely for the benefit of the Parties signing hereto and their successors and assigns, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

35. **Relationship of the Parties.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among City or Developer. Developer cannot create any obligation or responsibility on behalf of City or bind City in any manner. Each Party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each Party acknowledges that none of the other Parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. Developer further represents and acknowledges that no one was paid a fee, commission, gift or other consideration by Developer as an inducement to entering into this Agreement.

36. **Controlling Law.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted.

37. **Venue.** The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange

County, Florida.

38. **Personal Liability.** No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of City in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of City hereunder.

39. **No General Obligation.** In no event shall any obligation of City under this Agreement be or constitute a general obligation or indebtedness of City, a pledge of the ad valorem taxing power of City, or a general obligation or indebtedness of City within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither the Developer nor any other Party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of City or any other governmental entity or taxation in any form on any real or personal property to pay City's obligations or undertakings hereunder.

40. **Agency.** Developer and City, and their agents, contractors or subcontractors, shall perform all activities described in this Agreement as independent entities and not as agents of each other.

41. **Sovereign Immunity.** Nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity for tort claims under and subject to §768.28, *Florida Statutes*.

42. **City's Police Power and Regulatory Powers.** City hereby reserves all police and regulatory powers granted to City by law. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as City's bargaining away, surrendering, or in any way diminishing its police or regulatory powers.

43. **Interpretation.** The Parties hereby acknowledge and agree that each has participated equally in the drafting of this Agreement, and no Party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the Parties. Any reference in this Agreement to a whole paragraph number (*e.g.*, Paragraph 2) shall also include all subparagraphs or subparts/sub-sub paragraphs set forth below the whole paragraph number (*e.g.*, Paragraph 2 (a), (b), (c), (i), (ii), etc.)

44. **Deadline for Developer Obligations.** For any Developer obligation contained herein for which no performance deadline is specified, the deadline shall be on or before, and a condition precedent to, City's issuance of the final certificate of occupancy for the Project.

45. **Condemnation.** If, prior to obtaining all necessary permits and approvals to construct the Public Infrastructure and/or Development Improvements, all or any part of the Property is subjected to a bona fide threat of condemnation by a body having the power of eminent domain or is taken by eminent domain or condemnation (or sale in lieu thereof), or if City and/or Developer has received written notice that any condemnation action or proceeding with respect to the Property is contemplated by a body having the power of eminent domain, each shall give the other immediate written notice of such threatened or contemplated condemnation

or of such taking or sale, and each may, by written notice to the other, given within thirty (30) days after the receipt of such notice, elect to cancel this Agreement as it relates to the portion of the Property affected by such condemnation. Further, City agrees not to use its powers of eminent domain in any way which would modify or alter the Conceptual Plan, provided that this paragraph shall not abrogate City's police powers.

46. **Effective Date.** The "Effective Date" of this Agreement is the date when this Agreement is duly recorded in the Public Records of Orange County, Florida.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have set their hands and seals onto this Agreement prior to the Effective Date.

Signed, sealed and delivered
in the presence of:

CITY OF MAITLAND, FLORIDA

Name: _____

By: _____
Jim Williams, City Manager

Date: _____

Name: _____

Attest: _____
Maria Waldrop, City Clerk

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this ____ day of _____, 2015, by Jim Williams, City Manager of the City of Maitland, on behalf of the CITY OF MAITLAND, FLORIDA, a Florida municipal corporation, who is __ personally known to me or has produced _____ as identification.

Notary Public

Print Name: _____

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

EPOCH PROPERTIES, INC., a Florida corporation

Name: _____

By: _____

Name: _____

Its: _____

Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this ____ day of _____, 2015, by _____, as _____ of **Epoch Properties, Inc.**, a Florida corporation, on behalf of the company, who is ___ personally known to me or has produced _____ as identification.

Notary Public

Print Name: _____

JOINDER AND CONSENT TO DEVELOPER'S AGREEMENT

THIS JOINDER AND CONSENT is given as of this _____ day of _____, 2015, by PARKER LUMBER COMPANY, INC., a Florida corporation (hereinafter "Parker Lumber"), with a mailing address of 851 N. Orlando Avenue, Maitland, Florida 32751.

RECITALS

WHEREAS, Parker Lumber is the fee simple title holder of that certain real property located in Orange County, Florida, more particularly described as the "Parker Lumber Property" in the Agreement; and

WHEREAS, Developer and the City have entered into the Agreement for the redevelopment of the Project on the Parker Lumber Property; and

WHEREAS, Developer has entered into a Contract to purchase the Parker Lumber Property from Parker Lumber upon completion of site plan approval and issuance of various other development approvals, permits and agreements with respect to the Parker Lumber Property, including, without limitation the Agreement; and

WHEREAS, Parker Lumber, as owner of the Parker Lumber Property, desires to join in and consent to the Agreement.

NOW, THEREFORE, in consideration of the premises hereof and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Parker Lumber hereby states and declares as follows:

1. This Joinder is subject to Developer closing on the pending purchase transaction with Parker Lumber thereby acquiring title to the Property on or before January 5, 2016 (or as may be extended between Developer and Parker Lumber Company) or assigning its interest in the Development Agreement to Parker Lumber or it's assigns with the consent of Parker Lumber.
2. Parker Lumber acknowledges that it has authorized the Developer to file and pursue any and all applications for development orders, permits and approvals required or associated with redevelopment of the Project on the Parker Lumber Property consistent with the Conceptual Site Plans and the Agreement, including, but not limited to, applications for final site plan approval, preliminary and final subdivision approval and stormwater and utility agreements and permits, provided however that such approvals shall be conditioned upon the acquisition of title to the Parker Lumber Property by Developer, or its successors and assigns.
3. Parker Lumber acknowledges that as the owner of the Parker Lumber Property, it has an interest in the Agreement and hereby joins in and consents to the Agreement for the purpose of subjecting the Parker Lumber Property to the terms and conditions of the Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Parker Lumber has caused these presents to be executed in manner and form sufficient to bind it as of the date and year first written above.

Signed, sealed and delivered in the presence of:

PARKER LUMBER COMPANY, INC., a Florida corporation

Name: _____

By: _____

Name: _____

Its: _____

Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2015, by _____, as _____ of **PARKER LUMBER COMPANY, INC.**, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Notary Public

Name: _____

Commission No.: _____

My Commission Expires: _____

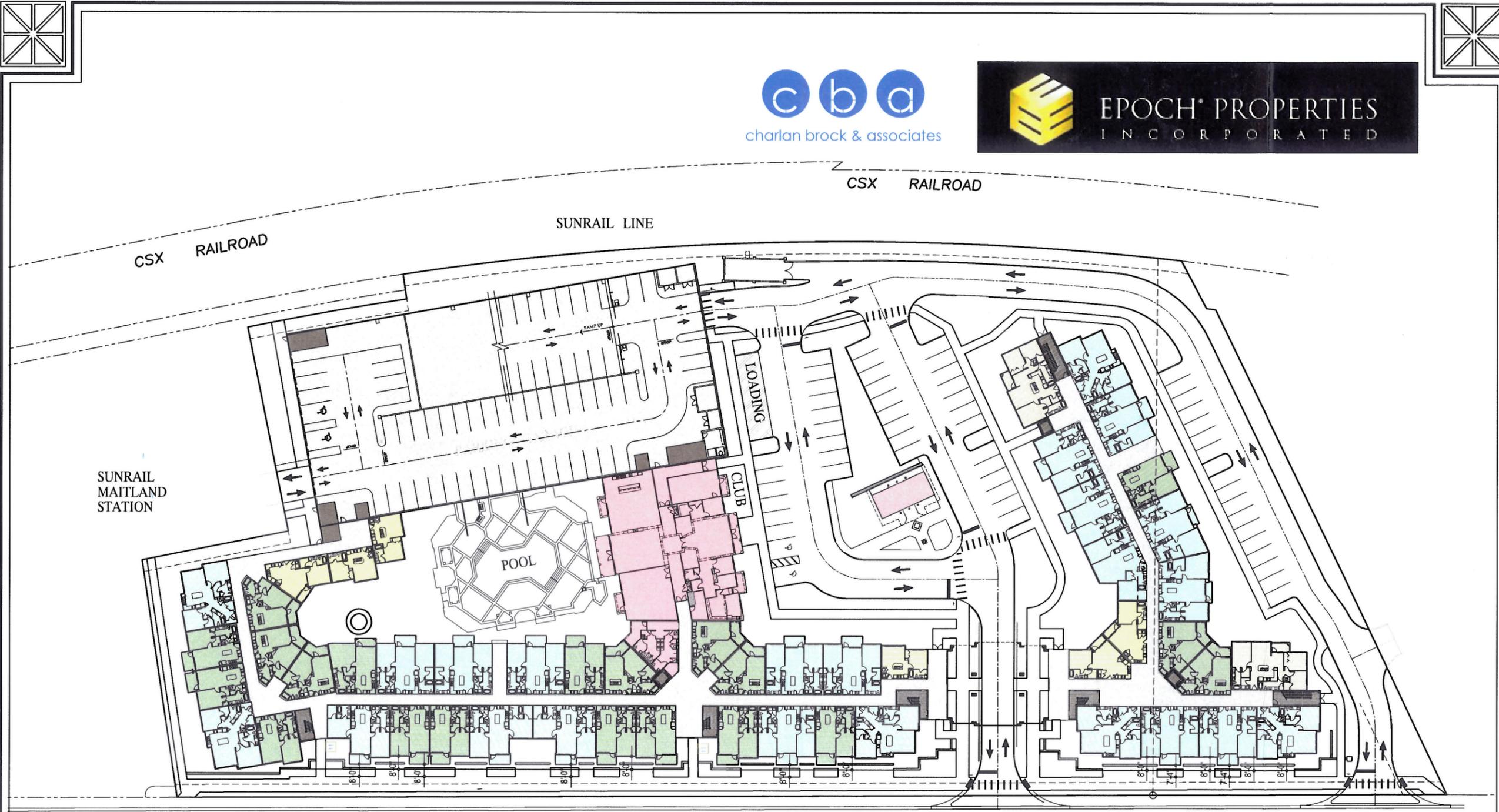
EXHIBIT "A"

LEGAL DESCRIPTION OF THE PARKER LUMBER PROPERTY

Begin at the Intersection of the North Line of the SW 1/4 of the NW 1/4 of Section 30, Township 21 S, Range 30 E and the Westerly right-of-way line of U.S. Highway 17-92, State Road No. 15 & 600, North Orlando Avenue per State Road Department right-of-way map Section 75030-2205 and 75030-2502, thence along said Westerly right of way line S 35°55'07" W a distance of 611.68 feet to a point on the Northerly right of way line of Parcel 162C as recorded in Official Record Book 10315, Page 4435, Public Records of Orange County, Florida, and the Northerly right of way line of Parcel 162A as recorded in Official Records Book 10315, Page 4435, Public Records of Orange County, Florida, thence the following six courses along said Northerly right of way lines: N 62°24'58" W a distance of 150.38 feet; thence N 24°51'56" E a distance of 93.06 feet; thence N 65°08'04" W a distance of 130.25 feet; thence N 24°51'56" E a distance of 12.06 feet to a point on a non-tangent curve concave Southeasterly, having a radius of 1869.33 feet, a central angle of 2°44'03 and a chord bearing of N 26°13'58" E; thence from a tangent bearing of N 24°51'56" E, Northeasterly 89.20 feet along the arc of said curve; thence N 62°24'01" W a distance of 15.75 feet to a point on the Easterly right of way of the CSX Railroad per CFCRT, Segment G, Section 75000, F.P. ID No. 412994-2, Deed Book EE, Pages 539 through 541 and also being a point on a non-tangent curve concave Southeasterly having a radius of 1885.08 feet, a central angle of 14°53'05 and a chord bearing of N 35°02'31" E; thence from a tangent bearing of N 27°35'59" E, Northeasterly a distance of 489.72 feet along the arc of said curve and said Easterly right of way line to a point on the Southerly line of that Parcel as described in Official Record Book 4946, page 618, Public Records of Orange County, Florida; thence the following four courses along said Southerly line: S 81°54'10" E a distance of 33.74 feet; thence N 41°54'11" E a distance of 6.02 feet; thence S 80°19'16" E a distance of 181.25 feet; thence S 78°30'40" E a distance of 155.74 to a point on the aforementioned Westerly right-of-way line of U.S. Highway 17-92 (also being a point lying S 35°55'07" W 210.41 feet from the intersection of said Westerly right of way line and a line described as being 319.44 feet North of and parallel with the South line of the NW 1/4 of the NW 1/4 of Section 30, Township 21 S, Range 30 E); thence along said Westerly right of way line, S 35°55'07" W a distance of 184.94 feet to the POINT OF BEGINNING.

The above described parcel contains 5.34 acres, more or less.

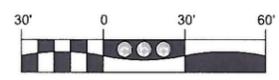
“EXHIBIT B”
CONCEPTUAL SITE PLANS



Parker Lumber - Conceptual Site Plan

April 7, 2015

Maitland, Florida



architects · planners
1770 kennel st. • maitland, florida 32751-7208 • (407) 860-8900 • fax (407) 875-9948
www.cbarchitects.com

charlan · brock & assoc., inc.

CONCEPTUAL
ARCHITECTURAL
SITE PLAN

date:
job no:
drawn by: DFA
reviewed by: CBA
revisions:

A0.10

charlan brock & associates, inc. hereby reserves its common law copyright and other property rights in these plans, ideas, and designs. these ideas, designs, and plans are not to be reproduced, changed or copied in any form or manner whatsoever, nor are they to be assigned to any third party, without first obtaining the express written permission from c.b.a., inc. written dimensions shall have precedence over scale dimensions.

EXHIBIT “C”

CITY IMPACT FEE CREDITS

Infrastructure Eligible for Impact Fee Credit

Relevant Impact Fee	Eligible Infrastructure Improvements
Transportation Impact Fee (estimated to be \$232,642)	Developer shall be responsible for constructing and paying for all streetscape improvements within the right of way along the street adjacent to the Parker Lumber Property as approved herein. Such streetscapes are intended to provide safe and attractive pedestrian access from properties to the north to the SunRail station. Such streetscapes will widen sidewalks, increase the usability of such sidewalks by removing barriers (such as utility poles, and reduce the linear footage of curbcuts. Developer shall receive credit up to, but no more than, the amount of transportation impact fee otherwise required to be paid. If construction of streetscape improvements costs more than the amount to construct, Developer shall be responsible for paying the difference.
Sewer Impact Fee (estimated to be \$404,717)	Consistent with Paragraph 11, Developer shall receive impact fee credits for extending the sanitary sewer lines to and along the frontage of the Parker Lumber Site. If required by City, Developer shall also receive sewer impact fee credits for extending sewer to northern property boundary.
Water Connection Fee (estimated to be \$202,000)	The Developer shall replace the existing water line along the frontage of the Parker Lumber Property and receive impact fee credits for such capital improvement to the City’s water system.

Existing Grandfathered Improvement Impact Fee Credit

The Parker Lumber Property is currently developed as various commercial retail buildings and warehouses comprising a total of 33,487 s. f. The below impact fee credits were calculated based on such development’s square footage and fixture counts.

Relevant Impact Fee	Amount of Credit
Transportation	\$34,375.26
Water	\$8,280.00

EXHIBIT “D”

CONDITIONAL USES, WAIVERS AND BONUSES

I. Conditional Uses – Section 21-19b

Item	Conditional Use - Items	Reason	Response
1	Multi-Family Dwelling	Project has ground floor units	The applicant is proposing that the ground floor have only residential units and associated amenities. The residential project will serve as a catalyst for Sunrail ridership from Maitland. In addition, it will create patrons for the significant existing and planned commercial development in downtown Maitland. In addition, the leasing offices and clubhouse will provide for activity on the ground floor.
		<p>Maitland City Code - Chapter 7.5-83. II.(b)1-13, that sets forth the general requirements to enable the City to make a finding to be made that a permitted conditional use can be established. These same criteria are reflected within this report and are listed within Section II. Items 1-13. The proposed development has conformed to all 13 requirements and has therefore met the test for approval for the conditional use request.</p> <p>There are no additional conditions of approval listed within the DMZD which must be met to enable a multi-family use to be established as a permitted conditional use within the DMZD.</p> <p align="center">(Permitted conditional Use Recommended for Approval)</p>	<p>The City of Maitland 2030 (CDP) provides direction through policies and standards that support high-density residential development within Downtown Maitland. The CDP is even more specific concerning high density residential development as it relates to the 2009 Transportation Concurrency Exception Area (TCEA) the following policy states:</p> <p>POLICY 3.8: The City shall require high density development in proximity to large employment and retail centers, particularly within the Downtown Maitland portion of the 2009 TCEA, to increase transit usage and provide residential proximity to employment, with provisions for pedestrian and transit needs.</p> <p>STANDARD 3.8.1: Within development regulations, require high density residential development to provide access to nearby employment, transit and shopping facilities particularly within TCEAs.</p> <p>STANDARD 3.8.2: Within development regulations, require high density residential development to provide mass transit and bicycle facilities.</p> <p>The proposed project provides a direct connection to the SunRail site with covered walkways from the parking structure to the SunRail Station. Pedestrian connections for the 800 linear feet of street frontage is provided through a new 8 foot wide sidewalk; which will remove pedestrian barriers within the existing side walk system including removal of power poles and significant curb cut reduction.</p> <p>The TOD-A area focused on project walkability within a ¼ mile of the Sunrail Station. This project is adjacent to the SunRail which meets the intent of TOD-A.</p>

II. Waivers – Section 23-2.3(b)1-5. Flexibility in Design Standards.

The table below identifies the code section and waiver requested, the reason for the waiver and a statement as to how each of the waivers requested meet the required waiver criteria.

Item	Section/Waiver Description	Reason	Section 23-2.3 (b)1-5. Flexibility in Design Standards (Waivers)
A	Sec.21-22(2)(f) Loading (Quantity)	<p>The Maitland LDC, as it applies to residential loading, is modeled after requirements for suburban garden apartments.</p> <p>There is sufficient off-street area on the site to provide for that unloading will not encroach or interfere with the public use of streets and alleys by pedestrians.</p> <p>The Developer will manage the loading and unloading process by managing the move-in dates and coordinating locations to stage moving.</p>	<p>The loading area requirement would require six (6) loading spaces. One (1) permanently designated loading space (18’ by 54’) will be provided near the entrance of the garage. In the event that more than one loading space is needed, the Developer will coordinate an on-site location for any other loading or unloading.</p> <p>(1) The request is consistent with the CDP, the purpose of the LDC and the DMMP. The number and design of off-street loading areas is consistent with urban development. Additional loading areas may be designated when needed utilizing parking stalls and specifying hours of use for loading purposes, and other they may be used for parking purposes. This method is used successfully by the Developer in its other projects.</p> <p>(2) The proposed waiver will not have a material negative impact on adjacent uses as the loading areas are on-site, interior to the site.</p> <p>(3) Compliance with the requirement is undesirable because it would create additional, unnecessary pervious surface and/or fewer available parking spaces.</p> <p>(4) The request will not have a material negative impact on the public health, safety and welfare.</p> <p>(5) Additional information provided by applicant in “Reason” column.</p> <p>Section 21-22. Off-street parking and loading does not specify loading area size, only the number of spaces that area needed. In most cases throughout the City, the loading spaces provided have been the size of a parking stall generally 9’x18. Based upon the number of units proposed, 293 units, 6 loading spaces are required. The loading area provided has dimensions shown at 18’ X 54’ which is the size of 6 standard parking stalls. The designated space can be used for larger vehicles as well as accommodate a number of standard size vehicles for loading and loading purposes.</p> <p>The apartment management shall manage the loading and unloading process to ensure the loading area functions efficiently for the site. (No waiver is needed.)</p>
B	Sec. 23-2.4.1 Streetscape Street Type I	<p>In order to provide privacy gardens, vertical break-up of the building’s mass and landscaping with a decorative masonry wall, the Parkway [Activity area] portion of the Streetscape has been adjusted to include private areas.</p> <p>The intent of providing sufficient setback from</p>	<p>Due to the location on Orlando Avenue, in order to provide a privacy and safety buffer from the traffic, we are proposing a streetscape that is on average 31 feet wide as required by Sec. 23-2.4.1. However, there is a decorative masonry wall which is in one place as close to 3 feet from the sidewalk and in other areas more than 9 feet from the sidewalk.</p> <p>The setback from the street and the activity occurring in that setback (activity area, sidewalk, parkway, decorative wall and private gardens) will meet the intent of the Streetscape while also providing privacy and safety for the occupants.</p> <p>(1) The request is consistent with the CDP which encourages walkable pedestrian environments. The request is consistent with the purpose of the LDC and the Downtown Maitland Master Plan.</p>

Item	Section/Waiver Description	Reason	Section 23-2.3 (b)1-5. Flexibility in Design Standards (Waivers)
		<p>the Type I street is still maintained along with the City’s desire to have a park-like environment between the sidewalk and the building. In this case portions of the Parkway [Activity area] will be located behind the decorative masonry wall.</p> <p>The design of the masonry wall include cutouts so that drivers and pedestrians can enjoy glimpses into the private gardens along with modulation of the wall so as not to appear as a single wall along Orlando Ave.</p>	<p>(2) The proposed waiver will not have a material negative impact on adjacent uses because: (i) only impacts SR 17-92 ROW and (ii) it increases the setback it will provide for a more appropriate street scene for residential uses along SR 17-92.</p> <p>(3) Compliance with the requirement is undesirable because it would remove the variety of building depths provided and move the buildings closer to SR 17-92.</p> <p>(4) The request will have a positive impact on public health, particularly safety, and welfare.</p> <p>(5) Additional information provided by applicant in “Reason” column.</p> <p>(Recommended for approval Public benefit)</p> <p>Typical activity area is a public setting where public interaction occurs. The proposed use is a multi-family setting which does not warrant public interaction at the front/ back door of an individual’s home. The Applicant is required to increase the parkway width beyond the 10 foot minimum in areas with greater building inset and meander the sidewalk closer to the courtyard area. This will provide an enhanced pedestrian experience and is conducive to a safer environment while preserving the urban form and meeting the intent of the character that the City desires.</p>
C	<p><u>Sec. 23-2.4.2</u> Maximum accessway width</p>	<p>Due to the proposed site roadway configuration and geometry, it is not safe or practical to use 20’ wide drive lanes throughout the project.</p>	<p>The central area of the project is a small loop, which will have to accommodate emergency vehicles, moving trucks, and garbage trucks. Due to this, we have proposed 24’ wide drive lanes within the central portion of the project. The entrance and roadway along the northwest corner and north sides of the building will utilize a 20’ wide drive lane. We believe by doing so, we achieve a safe and practical design that is the minimum variance that will work while still complying with the City LDC where possible.</p> <p>(1) The request is consistent with the CDP, the purpose of the LDC and the DMMP. Such increase in drive-aisles will ensure safety and accessibility to the site.</p> <p>(2) The proposed waiver will not have a material negative impact on adjacent uses since these drive-aisles are either internal or on SR 17-92.</p> <p>(3) Compliance with the requirement is undesirable because it would create points of conflict for the maneuvering of emergency vehicles, moving trucks and garbage trucks.</p> <p>(4) The request will not have a material negative effect on the public health, safety, and welfare.</p> <p>(5) Additional information provided by applicant in “Reason” column.</p> <p>➤ <u>Waiver recommended for approval. (Public benefits)- Curb cut reductions have been a common goal historically listed in the Downtown Maitland Master Plan, (DMMP), Downtown Maitland Revitalization Plan (DMRP) and is again listed within the Downtown Maitland Special District (DMSD) i.e., Sec. 23-2.4.2. - Network patterns: site access and circulation.</u></p>

Item	Section/Waiver Description	Reason	Section 23-2.3 (b)1-5. Flexibility in Design Standards (Waivers)
			<p>The subject site currently has expansive curb cuts that exist along the roughly 800 linear feet of street frontage. One area alone has nearly 142 feet of curb cut along 17-92.</p> <p>The applicant is reducing the curb cuts to two for the entire length of the property. The two proposed curb cuts will be 20 feet in width, but are 24 feet internal to the site. This is consistent with the overall intent of curb cut reduction and efficient traffic flow for the site. Driveway apron widths at the entrances to the site are roughly 40 feet in width and are necessary for vehicular maneuvering to and from the site.</p>

III. Bonuses – Section 23-2.7.2

Types of development bonuses include: 1) Building step-back bonus.

Bonus Program 23-2.7.2	Bonus Available	Bonus Justification 23.-2.7.2 (a) (2)(i), (ii), and (c)
<p>Section 23-2.7.2(b) (3). Building step-back</p>	<p>Development projects within the Downtown may be eligible to utilize a vertical step-back approach in lieu of the horizontal step back per subsection 21-6(ii) (e)(6), provided the minimum height and building frontage requirements are met.</p>	<p>The proposed building meets the minimum height requirement of two (2) stories (the proposed building is five (5) stories) and adheres to the building frontage requirements of the Waterhouse district. The proposed building spans nearly 700 feet of the 800+/- feet of linear street frontage of the site along U.S.17-92. The intent of the building frontage requirement is to create a continuous urban form along the streets.</p> <p>Instead of providing a ten (10) foot horizontal setback above the fourth floor, the project is broken up vertically to appear as a series of buildings instead of one larger building. This is accomplished through material changes, color changes, varying setbacks and varying the size, location and height of the decorative masonry wall. In addition, the significant landscaping on both sides of the wall will provide a pleasing pedestrian (and driving) experience that, combined with the items described above, is more impactful than just pushing the fifth story back by ten (10) feet.</p> <p>The Developer is proposing to include the following eligible improvements into the Project for the design bonus requested above:</p> <p><u>Section 23-2.7.2(c)(6) Underground Utility lines.</u></p> <p>1) The Developer is undergrounding the utility lines (approximately 800 linear feet) from its northern property line to its southern property line which leads into the DMZD from the City's northern limits.</p> <p>The undergrounding may also include improvements extending to the north and south of the property lines, if required by Duke Energy. Visually, the area will be enhanced aesthetically with the elimination of the overhead power lines. Additionally, utility pole removal from the sidewalk areas will enhance the walkability and function of the sidewalk system for the area. (This is considered a public benefit.)</p> <p><i>Other improvements. Other improvements the City Council determines further the goals of the Downtown Maitland Zoning and Special Districts and the comprehensive development plan.</i></p> <p>2) The applicant is proposing removal of an existing billboard from the site. This will be a visual enhancement to the Downtown Area and is consistent with <u>Chapter 7.06 Prohibition of Certain Off-site Signage</u> of the City Charter, as it eliminates one of the remaining billboards within the City. (This is considered a public benefit.)</p> <p>3) Section 5(b)(viii) of this Development Agreement grants the City the option to fund an additional level to the proposed parking garage. Such additional parking would supplement parking for the SunRail Station and address the City's obligation to provide additional parking proximate to the SunRail Station. (This is considered a public benefit.)</p> <p>4) The applicant is constructing an additional sidewalk section adjacent to the southern portion of the building to provide enhanced connectivity to the SunRail Station without having to cross the entrance to the SunRail site. (This is considered a public benefit.)</p>

EXHIBIT “E”
ALTERNATIVE PARKING STUDY



TECHNICAL MEMORANDUM
Parking Demand Analysis for the Parker Lumber Site Apartments
Maitland, Florida

This parking analysis was conducted to review the parking requirements for apartments in order to determine a parking demand for the proposed Parker Lumber Apartments in Maitland, Florida. The proposed apartment development will consist of the following mix of units in five-story buildings:

- 155 one-bedroom units
- 128 two-bedroom units
- 10 three-bedroom units

Maitland Parking Requirements

Based upon the City's parking requirements, 2 parking spaces per residential unit are required. For the Parker Lumber Apartments, this results in a requirement of 586 parking spaces. The Applicant believes that this parking requirement is excessive considering the type of residential development under consideration. Based upon ITE's definition, the proposed apartment development in five-story buildings is considered high-rise apartments. Furthermore, the apartment site is located adjacent to the Maitland SunRail station.

TPD № 4598
Revised March 23, 2015



Alternative Parking Calculation

The following alternative parking calculations were made based upon ITE, Eno Foundation and FDOT parking generation rates/guidelines:

1) ITE Parking Calculation

The Institute of Transportation Engineers (ITE) provides parking generation data in its 4th Edition of the Parking Generation Report. The parking generation data provided consist of average peak period parking demand by apartment type as follows:

- ITE Code: 221 Low/Mid-Rise Apartment
 - On a weekday suburban location – 1.23 spaces per dwelling unit
 - On a weekday urban location – 1.20 spaces per dwelling unit
 - On a Saturday urban location – 1.03 spaces per dwelling unit
- ITE Code: 222 High-Rise Apartment
 - On a weekday central city location – 1.37 spaces per dwelling unit

ITE defines low/mid-rise apartments as having one to four levels (floors) whereas high-rise apartments have five or more floors with elevators. With five-story structure(s), the Parker Lumber Apartments would fall in ITE’s high-rise apartment category. Utilizing the average peak parking demand of 1.37 spaces per unit results in an average demand of 401 parking spaces. It should also be pointed out that the ITE study sites were within three blocks of transit service. The Parker Lumber site is adjacent t the Maitland SunRail station.

2) Eno Foundation Parking Indices

The Parking Report of the Eno Foundation for Transportation provides the following suggested peak parking indices for multi-family residential uses in suburban areas with minimum transit service:

- Condominium (all) 1.4 spaces per unit
- 1 – 2 Bedroom Apartments 1.5 spaces per unit
- 3 or more Bedroom Apartments 2.0 spaces per unit

Applying these indices to the Parker Lumber Apartments results in 445 parking spaces (283 X 1.5 + 10 X 2). This represents a parking generation of 1.52 spaces per unit (445 ÷ 293 = 1.52).

3) ULI Parking Ratios

In its Fifth Edition of “The Dimensions of Parking” ULI recommends the following parking ratios:

- Single Family less than 2,000 SF 1.00 space per unit
- Single Family 2,000 – 3,000 SF 2.00 spaces per unit
- Multi-Family (all) 1.65 spaces per unit

Applying the 1.65 per unit requirement to the proposed apartment development results in 484 parking spaces.

4) FDOT Transit Oriented Development Guidelines

Transit Oriented Development (TOD) guidelines being developed by the Florida Department of Transportation provide the following maximum residential parking demand by type area:

- Urban Core 1.00 spaces per unit
- Urban General 1.50 spaces per unit
- Suburban 2.00 spaces per unit

The Parker Lumber Apartments with commuter rail service falls under Urban General area type. The use of 1.5 spaces per unit results in 440 parking spaces for the proposed apartment project.

5) Alternative Parking Calculation Summary

The following is a summary of the alternative parking demand calculations as described above:

- ITE Parking Rates 1.37 spaces/unit (401 spaces)
- ENO Foundation Indices 1.52 spaces/unit (445 spaces)
- ULI Parking Ratios 1.65 spaces/unit (484 spaces)
- FDOT TOD Guidelines 1.50 spaces/unit (440 spaces)
- Average 1.51 spaces/unit (443 spaces)

City of Orlando/Orange County Parking requirements

The City of Orlando requires the following parking rates for multi-family dwellings in a mixed-use development within a one-half mile radius of a commuter rail station:

- 1-bedroom 1.25 spaces/unit
- 2-bedroom 1.50 spaces/unit
- 3 or more bedrooms 1.75 spaces/unit

Applying these requirements to the proposed development results in 403 parking spaces or 1.38 spaces per unit.

For TOD overlay zones located within one-half mile of commuter rail stations, Orange County parking requirements for multi-family dwellings are:

- 1-bedroom 1.50 spaces/unit
- 2-bedroom 1.75 spaces/unit
- 3 or more bedrooms 2.00 spaces/unit

Applying these requirements to the proposed apartment development results in 477 parking spaces (1.63 spaces per unit).

Parking Requirement Recommendation

Based upon the information provided herein, it is recommended that a minimum of 1.5 spaces per unit or 440 spaces be provided for this project.