

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

JOAN MATTHEWS, MICHAEL MATTHEWS,
JULIE SCOTT, SUSAN BOUCHER,
PATRICIA WILLIAMSON, and DAVID
JOHNSON

CASE NO.: 2004-CA-7679
CASE NO.: 2005-CA-4082

Plaintiffs,

vs.

CITY OF MAITLAND, CITY OF MAITLAND CITY
COUNCIL, and CITY OF MAITLAND FLORIDA
COMMUNITY REDEVELOPMENT AGENCY

Defendants.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into by and between the City of Maitland, Florida, City of Maitland City Council, City of Maitland Florida Community Redevelopment Agency (collectively, the "City"), BREF/BSP Partners / Maitland, LP, a Delaware limited partnership and BSP/Florida, LLC, a Florida limited liability company (collectively, "BSP"), and Joan Matthews, Michael Matthews, Julie Scott, Susan Boucher, Patricia Williamson, and David Johnson (collectively, the "Plaintiffs").

Recitals

A. On November 29, 2005, the Court entered an order granting summary judgment on all counts in favor of the City in the case styled *Joan Matthews, et al., Plaintiffs, v. City of Maitland, et al, Defendant, Case No. 2004-CA-7679, Division 37, in the Circuit Court of the*

Ninth Judicial Circuit in and for Orange County, Florida (the "Lawsuit"). Plaintiffs have announced their intention to appeal the Court's ruling.

B. The City, Plaintiffs and BSP, through mediation, have entered into good faith settlement negotiations with respect to issues and disputes relating to claims made in the Lawsuit. The good faith settlement negotiations have resulted in this Agreement.

C. The purpose of this Agreement is to settle the claims of Plaintiffs, without admission by the Plaintiffs, the City or BSP with respect to any issue. Each party believes that the settlement of the claims and disputes between the parties is in its best interest.

D. The parties desire to memorialize their agreement.

NOW, THEREFORE, in exchange for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.**

The above recitals are true and correct and are incorporated herein by reference.

2. **Terms and Conditions.**

a. The project to be constructed by BSP on the Property it owns within the City of Maitland, Florida shall be governed by the terms of that certain Agreement for the Acquisition and Disposition of Real Property (Uptown Maitland West Project) dated August 20, 2004 and entered into between the City and BSP/Florida, LLC, a Florida limited liability company (the "Agreement"), with the following exceptions: (i) the definition of "Development Improvements" on the second page of the Agreement shall be modified to allow a minimum of 200 and a maximum of 300 multi-family residential units on the property; and (ii) the maximum height permitted for the Development Improvements in Sections 2(b)(iii) and 4 of the Agreement

is hereby modified to allow the maximum height on the east side of the building to be sixty-six feet (66'), as measured from the finished first floor elevation to the eave of the building, excluding roof elements and focal points not intended for human occupation which shall not exceed fifteen feet (15') in height; provided, however that only the areas shaded on the attached Exhibit "A" shall be affected by the height limitation set forth in this Section 2.a.(ii).

b. The City agrees to voluntarily withdraw its claims for sanctions: (i) under the Court's order dated August 1, 2005, granting sanctions, and (ii) Magistrate Glatt's Report and Recommendation dated October 6, 2005.

c. BSP agrees that it shall not contest or object to any height ordinance proposed by the City that limits the height of future approvals of buildings in Downtown Maitland to fifty-five feet (55') or less, including roof structures. The Plaintiffs acknowledge this agreement by BSP shall not apply to any such ordinance that would purport to effect the Development Improvements.

d. The City agrees that the height and density of the Development Improvements shall not be precedent for any future projects within the City of Maitland.

e. At the time a building permit is issued for the Development Improvements, BSP will make a payment of \$300,000.00 to an after-school program or programs located in the City of Maitland chosen by BSP. This payment is being made in lieu of the \$300,000.00 BSP intended to pay for additional landscape buffering on the east side of the Public Improvements.

f. BSP agrees to make a donation to the Performing Arts of Maitland fund, as follows: (i) \$50,000.00 at the time a building permit is issued for the Development Improvements; and (ii) \$50,000.00 at the time a certificate of occupancy is issued for the

Development Improvements. Such payment shall be paid by Developer check made payable to the Performing Arts of Maitland fund, and delivered to the City Manager.

g. Plaintiffs agree that they shall not take, encourage, support or assist in any further efforts against: (i) the Agreement or the matters contained therein, (ii) the construction of the Development Improvements or the Public Improvements (as defined in the Agreement), or (iii) the Agreement for the Acquisition and Disposition of Real Property (Uptown Maitland West Project) dated April 12, 2005 and entered into between the City and BREF/BSP Partners/Maitland, L.P., a Delaware limited partnership (the "Second Agreement"), including the agreement herein to terminate the Second Agreement. Plaintiffs will affirmatively withdraw all objections to the pending requests for modification to Permit No. 40-095-91505-03 currently before the St. Johns River Water Management District. Plaintiffs (but not their attorneys) also agree that they shall not take, encourage, support or assist in any further efforts to challenge in any way BSP's project in the City of Winter Park, Florida known as the Carlisle.

h. The execution of this Agreement by the City and BSP shall: (i) modify the Agreement as set forth herein, and (ii) automatically terminate the Second Agreement.

i. Within forty (40) days after execution of this Settlement Agreement by all parties hereto without notice of appeal of the City's approval being filed, Plaintiffs shall file a Notice of Voluntary Dismissal of both above-styled causes with prejudice and shall dismiss all appeals related thereto.

j. This Agreement is not to be considered an admission of liability by City or BSP, but is in full settlement and compromise of any and all claims of Plaintiffs, including Plaintiffs' claims in the Lawsuit.

3. **Mutual Release**

Except for the matters set forth herein, Plaintiffs, City, BSP, their representatives, stockholders, directors, officers, employees, agents, principals, successors, heirs and assigns, on behalf of themselves and their past, present and future parent, subsidiary and affiliate companies, as well as their representatives, directors, officers, employees, agents, principals successors, heirs and assigns, hereby release and forever discharge one another of and from all claims, suits, loss, costs, expenses and damages whatsoever, in law, in equity, or otherwise, including but not limited to Plaintiffs' claims asserted in the Lawsuit. Plaintiffs, City and BSP understand they are completely giving up and discharging any and all rights, claims and counterclaims which they have or could have had against one another.

4. **Binding Effect.**

This Settlement Agreement shall be binding upon the parties' respective officers, directors, shareholders, agents, servants, employees, attorneys, predecessors, successors, assigns, heirs, executors, administrators, legal representatives, successors, parent, subsidiary and affiliate companies, of the parties hereto and all of those holding title under either of them and the pronouns herein shall include, where appropriate, either gender or both singular and plural.

5. **Modification in Writing; Severability.**

This Settlement Agreement may not be changed orally, but only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. If any clause or provision in this Settlement Agreement is found to be void, invalid, or unenforceable, it shall be severed from the remaining provisions and clauses which shall remain in full force and effect.

6. **Attorneys' Fees**

Each party shall bear its own attorneys' fees and costs in connection with reaching this Agreement.

7. **Applicable Law**

This Settlement Agreement shall be governed by the laws of the State of Florida.

8. **Joint Authorship**

The parties affirm that this Settlement Agreement is the product of negotiation and joint authorship. The parties agree that this Settlement Agreement shall not be construed against either party on the basis of sole authorship.

9. **Warranties and Representations**

a. Stephen R. Walsh represents and warrants that he has full authority to bind BSP with respect to the matters set forth herein.

b. The attorney executing this Agreement for the Plaintiffs represents and warrants that he has full settlement authority for all Plaintiffs with regard to the matters set forth herein.

c. BSP and Plaintiffs acknowledge that the terms of this Settlement Agreement must be approved by the City of Maitland City Council and the City of Maitland Community

Redevelopment Agency to be binding. City of Maitland City Council and the City of Maitland Community Redevelopment Agency agree to consider approval of this Settlement Agreement on or before February 15, 2006.

d. The parties warrant and represent that they have been represented by independent legal counsel of their choosing throughout the negotiations which preceded the execution of this Settlement Agreement, and that each party has executed this Settlement Agreement with the consent and on the advice of such independent legal counsel.

10. **Counterparts; Facsimiles.** The parties may execute this agreement in counterpart original, and faxed or electronic transmittals shall be acceptable as well as original signatures.

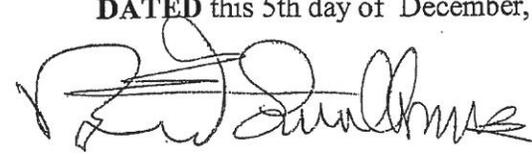
11. **Further Assurances.** The parties hereto agree to execute any further documents necessary to effectuate this settlement or payment hereunder.

12. **Filing with Court.** This Settlement Agreement, within forty (40) days after execution of this Settlement Agreement by all parties hereto without notice of appeal of the City's approval being filed, shall be filed with the Court and the Court may enter an Order ratifying this Settlement Agreement and reserving jurisdiction to enforce the terms of this Settlement Agreement and reopen the file upon the event of a default.

[Signatures begin on following page]

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be executed and delivered effective the date and year first written above.

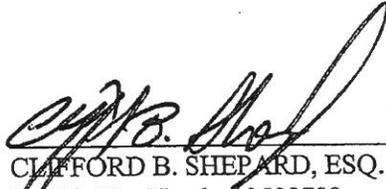
DATED this 5th day of December, 2005.



DAVID SMOLKER
Florida Bar No.
BRICKLEMYER, SMOLKER & BOLVES, P.A.
500 E. Kennedy Boulevard, Suite 200,
Tampa, Florida 33602
ATTORNEYS FOR PLAINTIFF



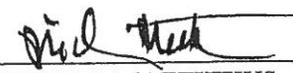
JACK C. McELROY, ESQ.
Florida Bar No. 0818150
SHUTTS & BOWEN LLP
Post Office Box 4956
Orlando, Florida 32802-4956
(407) 423-3200
ATTORNEYS FOR DEFENDANT



CLIFFORD B. SHEPARD, ESQ.
Florida Bar Number 0508799
Langston, Hess, Bolton, Shepard
& Augustine, P.A.,
P.O. Box 945050
Maitland, Florida 32794-5050
Telephone: 407-629-4323
ATTORNEYS FOR CITY



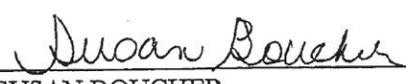
JOAN MATTHEWS
Date: 12/5/05



MICHAEL MATTHEWS
Date: 12/5/05



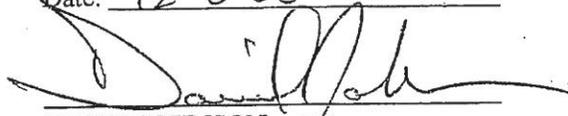
JULIE SCOTT
Date: 12/05/05



SUSAN BOUCHER
Date: 12-6-05



PATRICIA WILLIAMSON
Date: 12-06-05



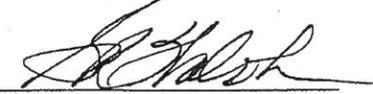
DAVID JOHNSON
Date: 12/15/05

BREF/BSP PARTNERS/MAITLAND,
L.P., a Delaware limited partnership

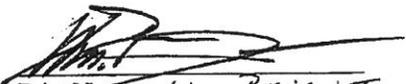
By: BSP/Maitland, LLC, a Florida
limited liability company, its
General Partner

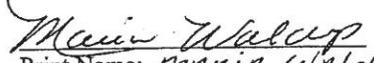
By: 
Stephen R. Walsh, Manager

BSP/FLORIDA, LLC, a Florida
limited liability company

By: 
Stephen R. Walsh, Manager

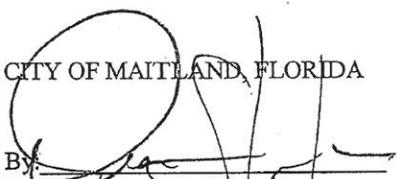
Signed, sealed and delivered
in the presence of:


Print Name: Wm. Brian Jones

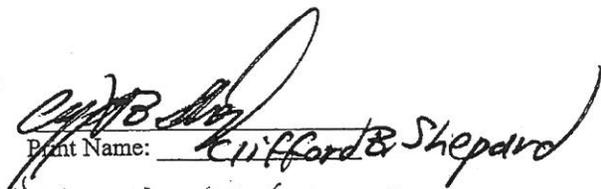
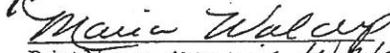

Print Name: MARIA WALDROP

Attest:

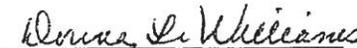

Donna L. Williams, City Clerk

CITY OF MAITLAND, FLORIDA
By: 
Dean Sprague, City Manager

Date: 2-13-06


Print Name: Clifford B. Shepard

Print Name: MARIA WALDROP

Attest:


Donna L. Williams, City Clerk

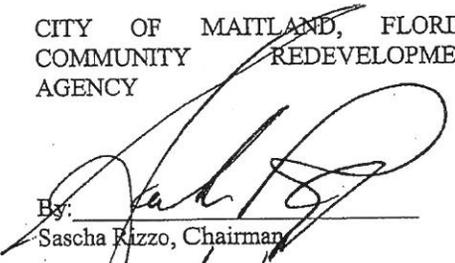
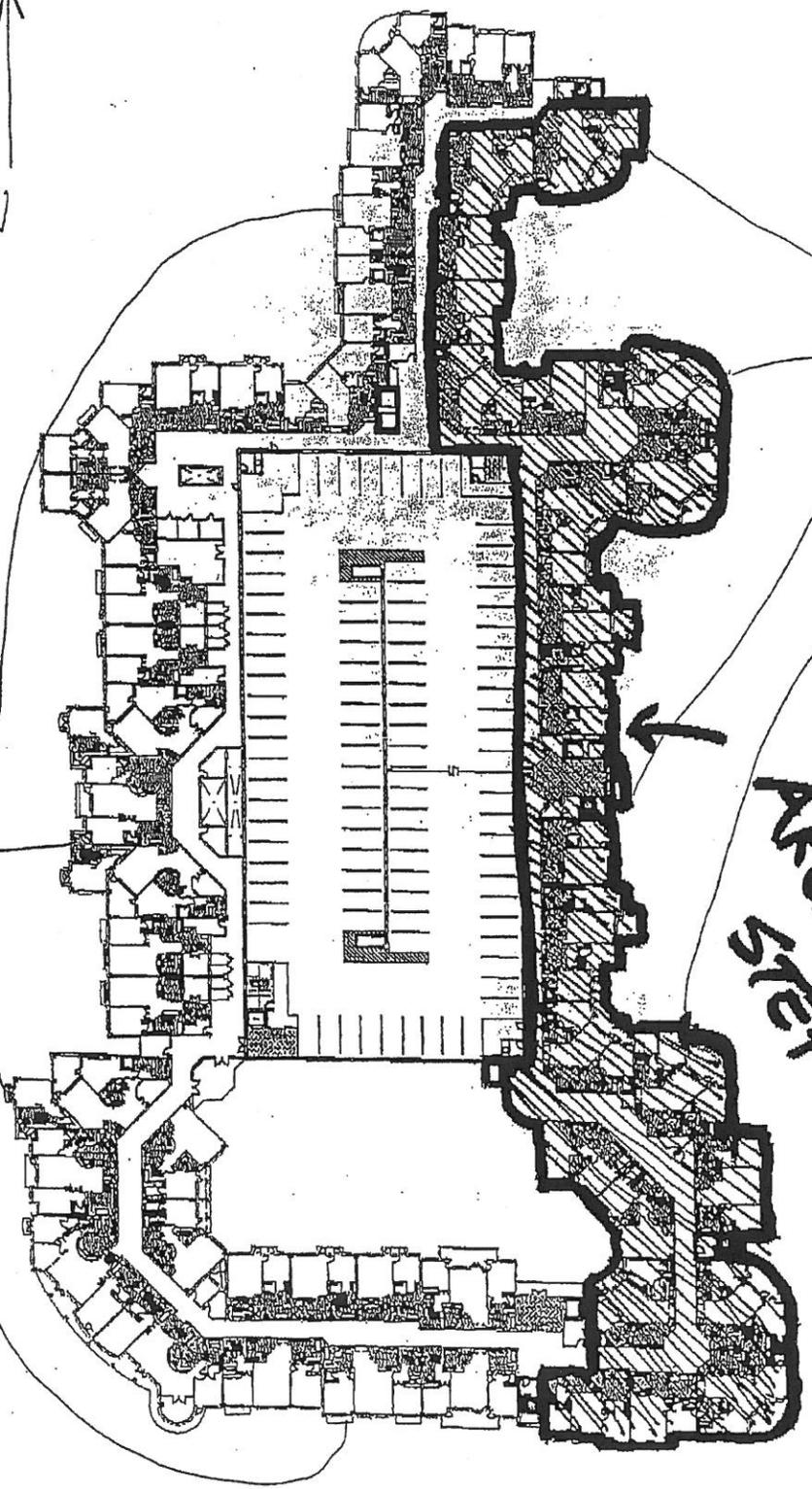
CITY OF MAITLAND, FLORIDA
COMMUNITY REDEVELOPMENT
AGENCY
By: 
Sascha Rizzo, Chairman
Date: 2/13/06

Exhibit "A"

MAXIMUM HEIGHT OF 66' (EXCLUDING ROOF ELEMENTS AND FOCAL POINTS NOT INTENDED FOR HUMAN OCCUPATION AND MEASURED FROM THE FINISHED FIRST FLOOR ELEVATION TO THE EAVE OF THE BUILDING)*

Area to Area



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* Consistent with Section 4 OF THE ~~Development~~ Agreement FOR REDEVELOPMENT AND DISPOSITION OF PROPERTY (UPDOWN MAINLAND WEST PROJECT) DATED AUGUST 20TH 2004

17-12

MAXIMUM HEIGHT OF 76' (EXCLUDING ROOF ELEMENTS AND FOCAL POINTS NOT INTENDED FOR HUMAN OCCUPATION AND MEASURED FROM THE FINISHED FIRST FLOOR ELEVATION TO THE EAVE OF THE BUILDING)*