

ORDINANCE NO. 2008-10

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, ADOPTING AN AMENDED AND RESTATED DEVELOPMENT ORDER FOR EAGLE RIDGE MALL DEVELOPMENT OF REGIONAL IMPACT, CONSISTING OF APPROXIMATELY 179.1 ACRES OF LAND LOCATED IN THE SOUTHEAST QUADRANT OF THE INTERSECTION OF HIGHWAY 27 AND CHALET SUZANNE ROAD, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 380.06, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, it is the intent of the State of Florida, as expressed in chapter 380, Florida Statutes, to protect the natural resources and environment of the State, facilitate orderly and will planned development, and to protect the health, welfare, safety and the quality of life of the residents of the State of Florida;

WHEREAS, the State of Florida has established land and water management policies to guide and coordinate local decisions relating to growth and development, and has determined that such policies should, to the maximum possible extent, be implemented by local governments through existing processes through the guidance of growth and development and has also determined that all the existing rights of private property shall be preserved in accord with the Constitutions of the State of Florida and the United States;

WHEREAS, the Development of Regional Impact Program has been established by the State of Florida in recognition that certain development projects will, because of their character, magnitude or location, have a substantial effect on the health, safety or welfare of the citizens of more that one County;

WHEREAS, Polk County Board of County Commissioners (the "County Commission") adopted a Development Order with conditions of approval on June 26, 1990 for the Eagle Ridge Mall Development of Regional Impact ("Original Development Order"), more particularly described in attached Exhibit "A," (the "Property");

WHEREAS, the County Commission adopted a resolution amending the Original Development Order on January 10, 1995 ("First Amendment") (together the Original Development Order and the First Amendment are referred to as the "Development Order");

WHEREAS, The Development Order approved 1,200,000 square feet of commercial development (the "Project");

WHEREAS, the City of Lake Wales annexed the Property on September 5, 1995 and assumed the Development Order;

WHEREAS, Eagle Ridge Mall, LP, a Delaware limited partnership (hereinafter referred to as "Developer") is the developer of the Property;

WHEREAS, on November 16, 2006 the Developer filed a Request for a Substantial Deviation to the already approved Development of Regional Impact for the purpose of revising the build-out dates, revising the termination date and removing the Eagle Management Plan (due to the loss of eagle nest);

WHEREAS, the City is the local government having jurisdiction over the Project:

WHEREAS, this Amended Development Order has been reviewed by the City as to consistency with the City comprehensive Plan and Land Development Regulations;

WHEREAS, a review of this Amended Development Order has been performed by the Central Florida Regional Planning Council, the City and other governmental agencies, in accordance with the requirements of Chapter 380, Florida Statutes.

BE IT ENACTED BY THE CITY OF LAKE WALES, FLORIDA:

SECTION 1. The City of Lake Wales as the authority to adopt this Ordinance pursuant to Chapters 166 and 380, Florida Statutes.

SECTION 2. The City of Lake Wales hereby amends the Development Order as provided for in the Amended and Restated Development Order for Eagle Ridge Mall attached hereto as Exhibit "B" and incorporated herein by the reference (the "Amended Development Order") and hereby authorizes the Mayor, or in his absence, the Vice-Mayor, to execute the Amended Development Order.

SECTION 3. The provisions of this Ordinance, including attached "Exhibits "A" and "B", are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held invalid, unlawful or unconstitutional, such decision shall not be held to impair the validity, force or effect of the remaining sections, sentences, clauses or phrases or part thereof of this Ordinance. It being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. This Ordinance shall become effective immediately upon its passage, however, the Amended Development Order shall be effective as provided in Section IV of the Amended Development Order.

READ FIRST TIME AND PUBLIC HEARING HELD: June 4, 2008

READ SECOND TIME AND PUBLIC HEARING HELD: June 17, 2008

PASSED AND ADOPTED THIS 17th DAY OF June, 2008 BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA.

Mayor/Commissioner, City of Lake Wales

ATTEST:

Clara VanBlargan
City Clerk

EXHIBIT A

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTH 1/2 OF SECTION 16, THE NORTH 1/2 OF SECTION 21 AND THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22 IN TOWNSHIP 29 SOUTH, RANGE 27 EAST, IN POLK COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID SECTION 21; THEN RUN N.89°45'46"E. ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,333.87 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22; THEN RUN S.00°59'34"W. ALONG THE EAST LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,304.76 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22; THEN RUN S.89°31'54"W. ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,332.04 FEET TO THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22; THEN RUN N.00°54'15"E. ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,210.22 FEET; THEN RUN N.44°28'27"W. FOR 140.48 FEET TO THE NORTH LINE OF THE NORTH 1/2 OF SAID SECTION 21; THEN RUN N.89°51'10"W. ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 21, FOR 456.53 FEET; THEN RUN S.44°07'00"W. FOR 373.71 FEET; THEN RUN S.60°37'37"W. FOR 406.43 FEET THEN RUN S.25°23'00"E. ALONG A LINE 1,000.00 FEET EASTERLY OF AND PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 27 (FLORIDA STATE ROAD NO. 22), AS SHOWN ON THE RIGHT-OF-WAY MAP PREPARED BY THE STATE OF FLORIDA STATE ROAD DEPARTMENT, UNDER SECTION AND JOB NO. 1618-202, DATED 12/31/53, FOR 172.67 FEET; THEN RUN S.64°37'00"W. FOR 1,000.00 FEET, TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 27; THEN RUN N.25°23'00"W. ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 27, FOR 3,178.32 FEET, TO THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 27 AND THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 17A (STATE ROAD NO. S-17-A), AS SHOWN ON THE RIGHT-OF-WAY MAP, AS PREPARED BY W. K. DAUGHERTY & ASSOCIATES, FOR THE STATE OF FLORIDA STATE ROAD DEPARTMENT, UNDER SECTION AND JOB NO. 16670-2153, DATED 8/4/58; THEN RUN N.88°24'30"E. ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 17A, FOR 2,409.04 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2,914.79 FEET; THEN CONTINUE NORTHEASTERLY, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 17A, ON THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 19°20'55", FOR AN ARC DISTANCE OF 984.32 FEET, TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 16; THEN RUN S.00°17'41"W. ALONG THE EAST LINE OF SAID SECTION 16, FOR 1,512.58 FEET, TO THE POINT OF BEGINNING, CONTAINING 179.12439 ACRES, MORE OR LESS.

NOTE:

BEARINGS BASED ON THE BEARING OF THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 27, AS SHOWN ON THE ABOVE SAID RIGHT-OF-WAY MAP.

CITY OF LAKE WALES
P.O. BOX 1320
LAKE WALES, FL 33859-1320

INSTR # 2008110313
BK 07663 PGS 1797-1808 PG(s)12
RECORDED 06/27/2008 10:02:34 AM
RICHARD M WEISS, CLERK OF COURT
POLK COUNTY
RECORDING FEES 103.50
RECORDED BY X Thao

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:
M. Rebecca Furman, Esquire
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 North Eola Drive
Post Office Box 2809
Orlando, FL 32802-2809
(407) 843-4600

**AMENDED AND RESTATED
DEVELOPMENT ORDER FOR EAGLE RIDGE MALL
("Amended Development Order")**

WHEREAS, it is the intent of the State of Florida, as expressed in Chapter 380, Fla. Stat., to protect the natural resources and environment of the State, facilitate orderly and well planned development, and to protect the health, welfare, safety, and the quality of life of the residents of the State of Florida;

WHEREAS, the State of Florida has established land and water management policies to guide and coordinate local decisions relating to growth and development, and has determined that such policies should, to the maximum possible extent, be implemented by local governments through existing processes through the guidance of growth and development and has also determined that all the existing rights of private property shall be preserved in accord with the Constitutions of the State of Florida and the United States;

WHEREAS, the Development of Regional Impact Review Program has been established by the State of Florida in recognition that certain development projects will, because of their character, magnitude or location, have a substantial effect on the health, safety or welfare of the citizens of more than one County;

WHEREAS, Polk County Board of County Commission (the "County Commission") adopted a Development Order with conditions of approval on June 26, 1990 for the Eagle Ridge Mall Development of Regional Impact ("Original Development Order"), more particularly described in attached Exhibit "A," (the "Property");

WHEREAS, the County Commission adopted a resolution amending the Original Development Order on January 10, 1995 ("First Amendment") (together the Original Development Order and the First Amendment are referred to as the "Development Order");

WHEREAS, the Development Order approved 1,200,000 square feet of commercial development (the "Project");

WHEREAS, the City of Lake Wales (the "City") annexed the Property on September 5, 1995 and assumed the Development Order;

WHEREAS, Eagle Ridge Mall, LP, a Delaware limited partnership (hereinafter referred to as "Developer") is the developer of the Project;

WHEREAS, on November 16, 2006 the Developer filed a Request for a Substantial Deviation to the already approved Development of Regional Impact for the purpose of revising the build-out dates, revising the termination date and removing the Eagle Management Plan (due to the loss of the subject eagle nest);

WHEREAS, the City is the local government having jurisdiction over the Project;

WHEREAS, this Amended Development Order has been reviewed by the City as to consistency with the City Comprehensive Plan and Land Development Regulations; and

WHEREAS, a review of this Amended Development Order has been performed by the Central Florida Regional Planning Council ("CFRPC"), the City and other governmental agencies, in accordance with the requirements of Chapter 380, Fla. Stat.

NOW, THEREFORE, it is hereby ordered and resolved by the City Commission of Lake Wales that, based upon the Findings of Fact and Conclusions of Law set forth below, this Amended and Restated Development Order for Eagle Ridge Mall is approved pursuant to section 380.06, Fla. Stat., subject to the terms and conditions set forth herein to which the Developer agrees:

I. FINDINGS OF FACT

1. The recitals set forth above are true and correct and are incorporated herein as part of the Findings of Fact.

2. The Property does not lie within an Area of Critical State Concern.

3. The development of the Project will not interfere with the achievement of the objectives of the State Land Development Plan applicable to the area. Further, the development of the Project is consistent with the State Comprehensive Plan.

4. All public notices and hearings as required in connection with the Project, by section 380.06, Fla. Stat., have been duly noticed and held.

5. The existing and planned public utilities to be made available to the Project are adequate to service the Project.

II. CONCLUSIONS OF LAW

Based upon the Findings of Fact, the submittals made by Developer to the governmental agencies, and the Conditions of Approval hereinafter set forth, the City Commission makes the following conclusions of law:

1. The development permitted by this Amended Development Order is consistent with the achievement of the objectives of the State Comprehensive Plan and the State Land Development Plan and therefore will not unnecessarily interfere with those objectives.
2. The development permitted by this Amended Development Order is consistent with the report and recommendations of the CFRPC.
3. The development of the Project is consistent with the City's Comprehensive Plan and with the City's Land Development Regulations.
4. All development activities shall be subject to the terms and conditions of this Amended Development Order and shall not be subject to future development of regional impact review, pursuant to section 380.06, Fla. Stat., unless a proposed change or failure of a condition constitutes a substantial deviation, pursuant to section 380.06, Fla. Stat., or the provisions of this Amended Development Order.
5. The rights and obligations set forth in this Amended Development Order shall inure to the benefit of and be binding upon the Developer, and subsequent property owners affected by this Amended Development Order and their successors, assigns and grantees.
6. The City's Director of the Department of Planning and Development shall be the local official responsible for assuring compliance with this Amended Development Order.
7. This Amended Development Order constitutes acceptance of the proposed uses, sizes, type and intensity of the Project. Development shall occur strictly in accordance with this Amended Development Order and other applicable regulations.
8. Unless otherwise provided herein, governing regulations, rules, ordinances, fee schedules, maps, permits, and jurisdictional determinations regarding design, improvements, exactions, construction standards and specifications, applicable to development of the Project, shall be those rules, regulations, and official policies enforced at the time of adoption of this Amended Development Order.

III. TERMS AND CONDITIONS OF DEVELOPMENT

In accordance with Chapter 380.06, Fla. Stat., the Eagle Ridge Development of Regional Impact (the "Eagle Ridge DRI") is hereby approved subject to the following conditions:

1. The approved development program for the Project, as indicated on the Master Plan of Development (Map H) attached hereto as Exhibit "B," consists of the following:

Land Use	Phase 1 (1990-2012) Build Out	Phase 2 (2012 -2015) Build Out	Total
Retail	1,000,000 sq ft GLA*	200,000 sq ft GLA	1,200,000 sq ft GLA

*Gross Leasable Area

2. In order to provide the Developer with an acceptable degree of flexibility to meet future demands, and to promote governmental efficiency, the approved development program retail square footage may be converted to office or hotel uses in accordance with the conversion mechanism below which shall not result in any increase in regional impacts. For purposes of this Amended Development Order, a conversion is defined as a change in a portion of the approved square footage from retail use to office or hotel use. The identified square footage will be withdrawn from the total 1.2 million square feet of retail gross leasable area and converted to office or hotel uses by utilizing trip generation rates. The land use conversion mechanism calculations shall be based on the most recent edition of the Institute of Transportation Engineers' Trip Generation.

3. For the purposes of the land use conversion mechanism calculations, the following shows the maximum allowable cumulative net external trip generation by stage:

	ADT	Peak Hour
Phase 1	24,267	2,290
Phase 2	27,662	2,614

These allowable maximums assume the trip generation and pass-by capture rates of the existing buildout of the mall (664,743 sq. ft., 22.5% capture), and proposed buildout and capture rates (20% capture Phase 1, 19% capture Phase 2).

4. Conversion of land uses shall be applied against total GLA square footage at the time of application for a building permit for office or hotel uses. Such conversion shall require a detailed land use equivalency matrix with written notice to the City, CFRPC and the Florida Department of Community Affairs ("the DCA") thirty days prior to such change taking effect. Such change shall not require an amendment to this Amended Development Order and shall be reflected in the next required DRI Biennial Report as well as any modification to this Amended Development Order that may be required in the future.

5. The surface water management system and wetland mitigation serving the Project shall be designed and constructed in accordance with the Southwest Florida Water Management District ("SWFWMD") Policies and Guidelines that were in effect at the time the Original Development Order was adopted. Under no circumstances shall post-development peak runoff-rate exceed pre-development peak runoff-rate. The permitted and constructed surface water management systems shall be operated and maintained in accordance with the SWFWMD permit

conditions. Further, compensatory storage shall be provided in the same floodplain for the 100 year flood in order to maintain storage capacity within the flood plain.

6. Prior to obtaining a certificate of occupancy for any structure hereinafter built located on the Project site, the Developer shall remove all Brazilian pepper which grows on site. Xeriscape landscaping, in accordance with water management district guidelines, shall be used in the Project.

IV. TRANSPORTATION CONDITIONS [TO BE FURTHER REFINED]

1. Project Trip Generation. For the purposes of the transportation conditions, the Eagle Ridge DRI shall be divided into the following traffic phases as follows:

Phase	Average Daily Trips	Daily Trips Cumulative	Daily External	Daily External Cumulative	Peak Hour	Peak Hour Cumulative	External Peak Hour Trips	External Peak Hour Cumulative
Phase 1	30,334	30,334	24,267	24,267	2,862	2,862	2,290	2,290
Phase 2	3,817	34,151	3,395	27,662	365	3,227	324	2,614

2. Phase I Impacted Roadway Segments and Intersections.

A. No building permits shall be issued for development when the biennially monitored trips are equal to or greater than the net external one-way p.m. peak hour trip threshold identified in Table 1 until either:

- a) Contracts have been let for the roadway widening or construction projects identified in Table 1 under "Improvements;" or
- b) A local government development agreement consistent with Sections 163.3220 through 163.3243, Fla. Stat., has been executed; or
- c) The Developer has paid its proportionate share as identified in Table 2 or has entered into a binding agreement to pay its proportionate fair-share pursuant to Section 163.3180(16), Fla. Stat.; or
- d) The required improvement has been included in the first three years of the Polk County Five-Year Road Program, The Lake Wales Five Year Road Program, or the Florida Department of Transportation Five-Year Work Program; or
- e) An analysis has been conducted that demonstrates the indicated improvement(s) are not needed. The methodology for such analysis and the study results shall be provided to the Central Florida Regional Planning Council (CFRPC) and the FDOT for review and shall be approved the Department of Community Affairs (DCA); or
- f) Polk County or Lake Wales has adopted a long-term concurrency management system (CMS) and includes the indicated improvement(s) in the CMS.

Table 1.

	Location	Improvement	PM Peak Hour One-Way Net New External Trip Threshold
1	CR 655 (US 17 to Eloise Loop Road)	Improve to a 4L Road	1,188
2	US 27 and CR 17B/Hunt Brother Road	Signalization	1,132*
3	SR 17 and CR 17A/Burns Avenue	Signalization	547*

* In addition to the trip threshold, signal warranting criteria must be met to trigger this condition.

B. Table 2 provided below lists those locations which have been determined to have potential deficiencies through Phase 1 and their corresponding proportionate share costs.

Table 2.

Developer's Potential Phase 1 Proportionate Share

Location	Improvement	Cost	New Project Trips	Capacity Change	Percent Prop Share	Prop Share
CR 655: US 17 to Eloise Loop Rd	2L - 4L	\$52M	55	2950	1.86%	\$969,492
US 27 at CR 17B / Hunt Bros Rd	Signal	\$135K	124	3189	3.89%	\$5,249
SR 17 at CR 546 / Kokomo Rd	Add EBL	\$175K	0	59	0%	\$0
SR 17 at CR 17A / Burns Ave	Signal	\$135K	134	1805	7.42%	\$10,022
Thompson Nursery Rd @ CR 653	Add WBL, Xtd NBL	\$255K	0	308	0%	\$0
Chalet Suzanne Rd at W Mall Entrance	Signal	\$135K	1045	2119	49.3%	\$66,576

Impact fees will be levied prior to the issuance of a building permit, consistent with the City of Lake Wales Code of Ordinances. A credit based on improvement cost minus the proportionate share may be applied at that time.

C. Developer agrees that within sixty (60) days after the issuance, if any, of a notice to proceed with construction of a roadway entrance from the Property located directly north of the Property onto the County Road 17-A/Chalet Suzanne Road, which roadway entrance shall be located directly north of and opposite the westerly entrance to Eagle Ridge Mall from County Road 17-A/Chalet Suzanne Road, Developer shall pay to the City fifty percent (50%) of the reasonable actual out-of-pocket costs incurred by the City in connection with the design and construction of a new traffic signal at the resulting intersection, provided, however, (i) City shall first provide Developer with invoices and other documentation reasonably evidencing said costs, and (ii) in no event shall Developer's contribution toward said design and construction costs exceed \$200,000.00 in the aggregate.

3. Monitoring and Modeling Methodology. Prior to the initiation of Phase II the Developer shall conduct a monitoring/modeling program. This program shall ascertain the LOS on facilities where the Eagle Ridge DRI is estimated to contribute an amount of traffic greater than or equal to five percent (5%) of the adopted LOS volume. The methodology of the monitoring/modeling program shall be agreed upon by the CFRPC, the City, Polk County, the Florida Department of Transportation ("FDOT"), the DCA and the Developer. The depth of each monitoring and modeling effort shall be similar to that required within an Application for Development Approval. The LOS standards in such methodology shall be consistent with the requirements of the City's Comprehensive Plan as it relates to facilities within the City. With respect to other facilities outside of the City the LOS standard shall be consistent with the LOS standards required by other governmental agencies having jurisdiction over such facilities. All studies and monitoring/modeling program shall be consistent with the CFRPC's methodology. In the event that all parties cannot come to agreement on the methodology, the DCA, CFRPC, FDOT and the City shall be the final arbiters as follows: The City's decision shall be final as it relates to facilities within the City, the FDOT's decision shall be final on FIHS facilities and the CFRPC's and DCA's decision shall be final as it relates to all the other facilities.

4. Monitoring and Modeling Results/Mitigation.

A. The Project shall not commence beyond Phase I when service levels are below the minimum service level adopted in the applicable local government's comprehensive plan during the peak hour and the Project contributes, or is projected to contribute with the next phase of traffic, five percent (5%) of the adopted LOS service volume of the roadway or intersection as determined by the monitoring program required in the preceding recommendation, unless mitigation measures and/or improvements are secured and committed for completion of construction during the phase in which the impacts occur. The schedule of improvements shall be tied to the development level that the improvement is needed within each phase.

B. Prior to the commencement of Phase II, the list of committed transportation improvements must be identified and incorporated into the this Amended Development Order by amendment pursuant to section 380.06(19), Fla. Stat. These improvements shall occur by the required threshold in order for the Project to proceed through the balance of the phase. If the Developer can demonstrate that a portion of a Phase II does not adversely affect the regional roadway network as determined by the monitoring and modeling tests discussed above, then the Developer may proceed with that portion of Phase II (and only that portion).

C. In the event that a roadway widening is identified which is not compatible with adopted policy of the FDOT (8 or 10 laning of a State roadway) or local government (constrained), the Developer, the DCA, the City, the CFRPC and the party having either maintenance or jurisdictional responsibility for the facility shall jointly determine alternative mitigation solutions to provide for the movement of people. Any transportation mitigation conditions shall be incorporated in this Amended Development Order pursuant to section 380.06(19), Fla. Stat.

V. BIENNIAL REPORTING REQUIREMENTS

The Developer shall submit a biennial report (each, a “Biennial Report”) on alternate years following the effective date of this Amended Development Order during the build-out of the Project. The Biennial Report shall be submitted to the City, the CFRPC, the DCA and all affected permit agencies.

The report shall include:

1. Any changes in the plan of development, or in the representations contained in the ADA, or in the phasing for the reporting year and for the year prior;
2. A comparison of development activity proposed and actually conducted for the period;
3. Undeveloped tracts of land that have been sold by the Developer to a separate entity;
4. Identification and intended use of lands purchased, leased or optioned by the Developer adjacent to the Property site since this Amended Development Order was issued;
5. Assessment of the Developer’s and the local government’s compliance with the conditions of approval contained in this Amended Development Order and which have been identified by the City, the CFRPC, or the DCA as being significant;
6. Any known incremental DRI applications for development approval or requests for a substantial deviation determination that were filed in the Biennial Reporting year or which are to be filed during the next year;
7. Any indication of a change in the local government jurisdiction for any portion of the Project since this Amended Development Order was issued;
8. A list of all local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;
9. A statement that all persons have been sent copies of the Biennial Report in conformance with sections 380.06(15) and (18), Fla. Stat; and

10. A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the Developer pursuant to section 380.06(15)(f), Fla. Stat.

11. A summary of driveway counts for the reporting period. The counts shall be conducted during January, February, or March and contain 72-hours of traffic data on a Tuesday, Wednesday, and/or Thursday.

VI. TERMINATION DATE AND DOWN-ZONING, UNIT DENSITY REDUCTION OR INTENSITY REDUCTION

This Amended Development Order shall terminate on December 31, 2023. Until fifteen (15) years from the Effective Date of this Amended Development Order, the approved development described in this Amended Development Order shall not be subject to down-zoning, unit density reduction or intensity reduction unless the City can demonstrate that substantial changes in the conditions underlying the approval of this Amended Development Order have occurred, or that this Amended Development Order was based upon substantially inaccurate information provided by the Developer, or that change is clearly established by the City to be essential to the public health, safety and welfare.

VII. COMPLIANCE

1. The City shall be responsible for monitoring development and enforcing the provisions of this Amended Development Order.

2. In the event the Developer fails, in the opinion of the City, to comply with the conditions of this Amended Development Order, the City shall issue a notice of such non-compliance to the Developer. The notice of non-compliance shall be hand delivered or mailed to the Developer by U.S. certified mail; return receipt requested. The notice of non-compliance shall set forth the provision of this Amended Development Order which, in the opinion of the City, has been violated and shall also establish what action on the part of the Developer is required to cure the non-compliance and whether the Developer must cease all development activities. If the Developer disagrees with the City's determination of non-compliance, it may, within fifteen (15) days from the date said notice is received, submit to the City a request for a hearing before the City Commission to appeal the City's notice of non-compliance. The City Commission shall set a public hearing at the next regularly scheduled meeting for the purpose of considering the Developer's appeal. The Developer's request for a hearing shall set forth the decision of the City alleged to be in error. At the hearing, the City shall consider evidence presented by the Developer and by the City, shall permit the examination and cross-examination of witnesses and the introduction of written testimony. All testimony shall be sworn. The City may continue the hearing from time to time. At the conclusion of the hearing, the City Commission shall, by majority vote, issue its Findings of Fact, Conclusions of Law and Order in connection with the Developer's appeal.

3. If the notice of non-compliance requires that all development activities cease and the Developer requests a hearing as provided in section VII, ¶ 2 hereof, then development

activities shall be allowed to continue during the pendency of the proceedings before the City provided, however, that no new development permits shall be issued during said pendency.

VIII. PUBLIC FACILITIES CONCURRENCY.

The City acknowledges that, subject to the matters set forth herein, the City has adequate public infrastructure capacity to serve the Project. As part of this Amended Development Order, the City agrees to encumber all public infrastructure capacities to serve the Project. Further, subject to the matters set forth herein, the City acknowledges and agrees that the Property and Project are fully vested for concurrency in accordance with the City's Concurrency Management System.

IX. RECORDING OF NOTICE OF ADOPTION

Notice of the adoption of this Amended Development Order shall be recorded by the Developer in accordance with the provisions of section 380.06(15)(f), Fla. Stat.

IN WITNESS WHEREOF, the parties hereto made and executed this Agreement on the dates under the signature: The City of Lake Wales, through its City Commissioner, signed by and through its Mayor, authorized to execute the same by City Commission action on the 17th day of June, 2008.

ATTEST:

Clara VanZargan
City Clerk

City of Lake Wales
City Commission

By: [Signature]
Mayor

This 17th day of June, 2008.

Reviewed as to form and legality

[Signature] 6-17-08
City Attorney Date

EXHIBIT A

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTH 1/2 OF SECTION 15, THE NORTH 1/2 OF SECTION 21 AND THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22 IN TOWNSHIP 29 SOUTH, RANGE 27 EAST, IN POLK COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

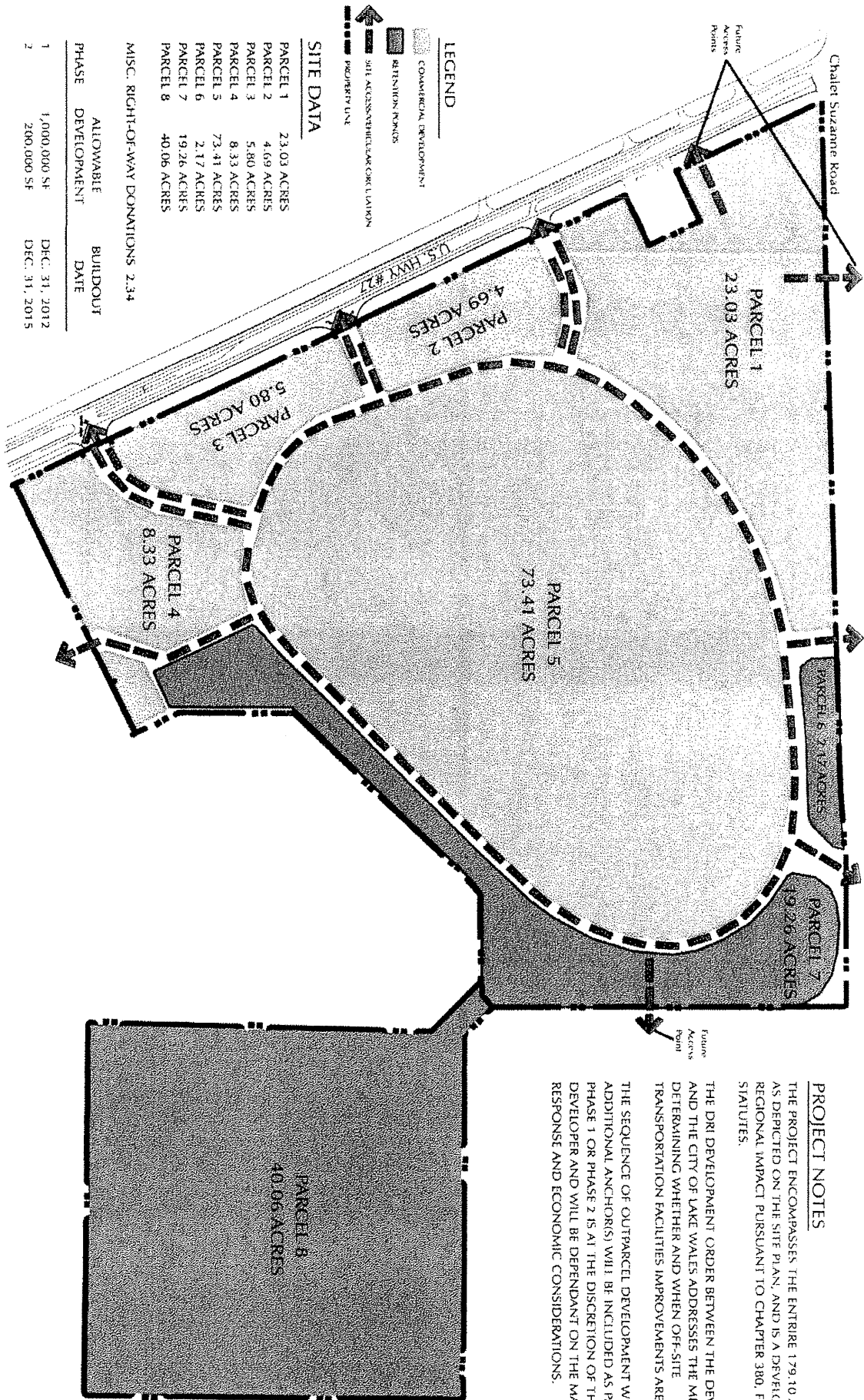
BEGIN AT THE NORTHEAST CORNER OF SAID SECTION 21; THEN RUN N.89°45'48"E. ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,333.87 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22; THEN RUN S.00°59'24"W. ALONG THE EAST LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,304.76 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22; THEN RUN S.89°31'34"W. ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,332.04 FEET TO THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22; THEN RUN N.00°54'15"E. ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22 FOR 1,210.22 FEET; THEN RUN N.14°28'27"W. FOR 140.48 FEET TO THE NORTH LINE OF THE NORTH 1/2 OF SAID SECTION 21; THEN RUN N.89°51'10"W. ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 21, FOR 456.53 FEET; THEN RUN S.14°07'00"W. FOR 373.71 FEET; THEN RUN S.60°37'37"W. FOR 406.45 FEET THEN RUN S.25°23'00"E. ALONG A LINE 1,000.00 FEET EASTERLY OF AND PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 27 (FLORIDA STATE ROAD NO. 22), AS SHOWN ON THE RIGHT-OF-WAY MAP PREPARED BY THE STATE OF FLORIDA STATE ROAD DEPARTMENT, UNDER SECTION AND JOB NO. 1618-202, DATED 12/31/53, FOR 172.67 FEET; THEN RUN S.64°37'00"W. FOR 1,000.00 FEET, TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 27; THEN RUN N.25°23'00"W. ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 27, FOR 3,178.32 FEET, TO THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 27 AND THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 17A (STATE ROAD NO. S-17-A), AS SHOWN ON THE RIGHT-OF-WAY MAP, AS PREPARED BY W. K. DAUGHERTY & ASSOCIATES, FOR THE STATE OF FLORIDA STATE ROAD DEPARTMENT, UNDER SECTION AND JOB NO. 16670-2153, DATED 8/4/58; THEN RUN N.88°24'30"E. ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 17A, FOR 2,409.04 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2,914.79 FEET; THEN CONTINUE NORTHEASTERLY, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 17A, ON THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 19°20'55", FOR AN ARC DISTANCE OF 984.32 FEET, TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 16; THEN RUN S.00°17'41"W. ALONG THE EAST LINE OF SAID SECTION 16, FOR 1,512.88 FEET, TO THE POINT OF BEGINNING, CONTAINING 179.12439 ACRES, MORE OR LESS.

NOTE:

BEARINGS BASED ON THE BEARING OF THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 27, AS SHOWN ON THE ABOVE SAID RIGHT-OF-WAY MAP.

Eagle Ridge Mall

Map H



EAGLE RIDGE MALL, LP

LAKE WALES, FLORIDA

LAKE WALES, FLORIDA

SCALE 1"=100'

DRAWN BY: DANIEL S. WOOD

DATE: MAY 2008

DESIGNED BY: DANIEL S. WOOD

DATE: MAY 2008

U R G E N T

URBAN RESOURCE GROUP