

BCC Mtg. Date: Feb. 9, 2016

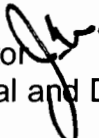


**Interoffice Memorandum**

**AGENDA ITEM**

January 13, 2016

TO: Mayor Teresa Jacobs  
–AND–  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director   
Community, Environmental and Development  
Services Department

**CONTACT PERSON: Lori Cunniff, CEP, CHMM, Deputy Director  
Community, Environmental and Development  
Services Department  
407-836-1405**

SUBJECT: February 9, 2016– Consent Item  
Agreement Concerning Termination of Carlsbad Orlando, LLC  
Agreement, and Termination of Carlsbad Orlando, LLC  
Agreement

On June 10, 2008, the Board of County Commissioners (BCC) approved an agreement between Orange County and Carlsbad Orlando, LLC regarding site investigation and potential remediation of the property with tax parcel identification number 32-23-31-0000-00-002, which was known as the Starwood Development of Regional Impact. Maps prepared by the U.S. Army Corps of Engineers indicated that a large portion of the 2,549-acre property was located within an area of the former Pinecastle Jeep Range, a Formerly Used Defense Site. Because of the potential presence on the property of munitions and explosives of concern (MEC), discarded military munitions, and soil and groundwater contamination from munitions constituents (MC), the County determined that a comprehensive site investigation was necessary to protect human health and the environment. The agreement established the terms under which the site investigation would be conducted and the procedures to remove any MEC found on the property and to remediate any MC-related soil or groundwater contamination.

The property owner has requested termination of the agreement based on the anticipated annexation of the property by the City of Orlando. If approved by the City, the development of the property is no longer subject to the jurisdiction of the County.

Page Two  
February 9, 2016 – Consent Item  
Termination Agreements for Carlsbad Orlando LLC

The owners of the property also plan to sell, in lieu of condemnation, acreage on the northern boundary of the property to Central Florida Expressway Authority (CFX) for expansion of the Beachline/State Road 528 and construction of the All Aboard Florida high-speed rail lines. Termination of the agreement would allow for the earlier release of a significant amount of CFX funds that are being held in escrow.

The proposed termination agreement would not become effective unless and until the annexation is final. Therefore, a separate agreement stipulates that the executed termination agreement would be held in escrow and not recorded until the annexation ordinance has been approved on second reading by the City and after the appeal period has run its course with no appeals being filed or, if any appeal is filed, after successful resolution of the appeal. If annexation does not occur for any reason, the escrow agent must release the termination agreement to the County without recording it.

**ACTION REQUESTED: Approval and execution of (1) the Agreement Concerning Termination of Carlsbad Orlando, LLC Agreement Regarding Site Investigation and Potential Remediation and Escrow Agreement, with its Exhibits; and (2) the Termination of Carlsbad Orlando, LLC Agreement Regarding Site Investigation and Potential Remediation. District 4**

JVW/LC: mg

Attachments

BCC Mtg. Date: Feb. 9, 2016

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:

Miranda F. Fitzgerald, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
Account No. 802  
215 North Eola Drive  
Post Office Box 2809  
Orlando, FL 32802-2809  
(407) 843-4600

**AGREEMENT CONCERNING TERMINATION OF  
CARLSBAD ORLANDO, LLC AGREEMENT REGARDING  
SITE INVESTIGATION AND POTENTIAL REMEDIATION AND ESCROW  
AGREEMENT**

**THIS AGREEMENT CONCERNING TERMINATION OF CARLSBAD ORLANDO, LLC AGREEMENT REGARDING SITE INVESTIGATION AND POTENTIAL REMEDIATION AND ESCROW AGREEMENT** (this "Agreement") is made and entered as of the 9 day of Feb., 2016, by and between CARLSBAD ORLANDO, LLC, a Florida limited liability company (the "Owner"), and ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida corporation (the "County").

**WITNESSETH:**

**WHEREAS**, the Owner is the owner of that certain real property located within Orange County which is more particularly described on Exhibit "A" attached hereto (the "Property"); and

**WHEREAS**, the Owner and the County entered into that certain Carlsbad Orlando, LLC Agreement Regarding Site Investigation and Potential Remediation dated June 18, 2008 and recorded July 2, 2008 in Official Records Book 9722, Page 3947, of the Public Records of Orange County, Florida which encumbered the Property and which is referred to herein as the "Site Investigation Agreement"; and

**WHEREAS**, at the time of the Site Investigation Agreement, the County was the jurisdictional entity responsible for the regulation of the development of the Property; and

**WHEREAS**, Owner has submitted an application for annexation with the City of Orlando whereby it is anticipated that the entire Property shall be annexed into the city limits of Orlando and the County shall no longer have jurisdiction over the regulation of development of the Property; and

**WHEREAS**, Section 12 of the Site Investigation Agreement provides that the Site Investigation Agreement may be terminated by the agreement of the parties (the "Termination Document"); and

**WHEREAS**, in anticipation of the annexation of the Property, Owner and the County desire to terminate the Site Investigation Agreement effective upon the final annexation of the Property into the City of Orlando, and hold in escrow the final original executed Termination Document until such time as the annexation ordinance has been finally approved by the City of Orlando, and either (i) the timeframe for expiration of all appeals of such annexation has passed or (ii) if any appeals have been filed, the successful resolution of any such appeal has been concluded with the annexation remaining in effect; and

**WHEREAS**, the parties are delivering the original Termination Document to the law firm of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. (the "Escrow Agent") for purposes of holding the original Termination Document in escrow until the annexation ordinance has been approved and all appeal periods successfully expired as set forth above pursuant to the terms hereof;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Owner hereby acknowledge and agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein and made a part of this Agreement as if fully set forth herein.

2. Execution of Termination Document. The parties acknowledge that Owner has applied for annexation of the Property into the City of Orlando and will diligently pursue such annexation from and after the date of this Agreement. Accordingly, it is contemplated that, upon approval of such annexation, the County shall no longer have jurisdiction over the development of the Property. Based upon such anticipated annexation, upon execution of this Agreement by both Owner and County, Owner and County shall also execute a Termination Document in the form attached hereto as Exhibit "B."

3. Escrow of Termination Document. Promptly upon the execution of this Agreement and the execution of the Termination Document, the parties shall deliver the original Termination Document to the law firm of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., as the Escrow Agent. The Escrow Agent shall hold the original Termination Document in escrow until the annexation ordinance has been approved on second reading by the City of Orlando and either (i) the timeframe for expiration of all appeals of such annexation has passed; or (ii) if appeals have been filed following approval of the annexation ordinance, successful resolution of any such appeal has been concluded with the annexation remaining in effect. Upon the satisfaction of condition (i) or (ii), the Escrow Agent is hereby authorized by Owner and County to immediately record the Termination Document in the Public Records of Orange County, Florida without further consent from or notice to Owner or County. Upon confirmation that the Termination Document has been recorded, Escrow Agent will notify Owner and County of the recording reference thereof. If for any reason condition (i) or (ii) is not satisfied within thirty (30) months following the date of this Agreement, Escrow Agent shall deliver the executed Termination Document to the County without recording and all parties recognize that the Termination Document shall thereafter be null and void.

In the event of a dispute among the parties concerning release of the Termination Document, the Escrow Agent may, in its sole discretion, continue to hold the Termination Document until the parties mutually agree to the disposition thereof or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or may deposit and interplead the Termination Document with the Clerk of the Circuit Court of Orange County, at its option, without further liability or responsibility on its part. All costs, expenses and attorney's fees associated with any such interpleader may be recovered by the Escrow Agent as a part of any award made by the Court having jurisdiction in such interpleader action.

4. Duties and Liability of Escrow Agent.

(a) It is agreed that the duties of Escrow Agent are purely ministerial in nature and shall be expressly limited to the safekeeping of the Termination Document (the "Escrowed Property") as provided for hereunder, and for the disposition of same in accordance with this Agreement. No duties or obligations on the part of Escrow Agent under and pursuant to this Agreement shall be implied from the terms of this Agreement. Escrow Agent assumes no duties, obligations or liabilities under this Agreement except as specifically set forth herein. Escrow Agent shall not be under an obligation, nor shall Escrow Agent be authorized, to exercise any discretion in the disbursement of any Escrowed Property, and Escrow Agent shall have no responsibilities, duties or obligations with respect to the Escrowed Property other than as expressly stated in this Agreement and to faithfully perform and discharge joint written directions and instructions received from Owner and the County or such other directions as may be required by order of a court of competent jurisdiction for the disposition of the Escrowed Property.

(b) The Owner hereby indemnifies Escrow Agent and holds it harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees or charges of any character or nature (including but not limited to reasonable attorneys' fees and costs), which it may incur or with which it may be threatened directly or indirectly arising from or in any way connected with this Agreement or which may result from Escrow Agent's following of instructions from Owner, except to the extent any of the same is caused by or contributed to by the gross negligence or willful misconduct of the Escrow Agent.

(c) The Escrow Agent hereby retains its right to represent Owner in connection with this transaction, and the parties hereto acknowledge and consent to such representation.

5. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida, without regard to principles of conflicts of laws.

6. Amendment. This Agreement and the Termination Document to be granted hereunder shall not be changed, altered or amended except by an instrument in writing duly executed by the parties hereto. This Agreement shall be recorded at the expense of the Owner upon execution by both parties and shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest and assigns, as well as the beneficiaries of any

such party bound by this Agreement. This Agreement shall automatically terminate upon recordation of the Termination Document and be of no further force or effect. If for any reason the Termination Document is not recorded within thirty (30) months following the date of this Agreement, this Agreement shall automatically terminate and be of no further force or effect.

7. Further Assurances. The parties agree to do and take further and additional acts and actions and execute, acknowledge, and deliver such further and additional documents, instruments and writing which are not specifically referred to herein as may be necessary, required or appropriate for the purpose of fully effectuating the provisions of this Agreement.

8. Severance of Provisions. Every provision of this Agreement is hereby declared to be independent of and separate from every other provision. If any such provision shall be held to be invalid or unenforceable, that holding shall be without effect upon the validity or enforceability of any other provisions of this Agreement. Every provision hereof shall be interpreted, to the extent possible, in such a way to make it valid, binding and enforceable.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

[Signatures appear on following pages]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

County Seal

ORANGE COUNTY

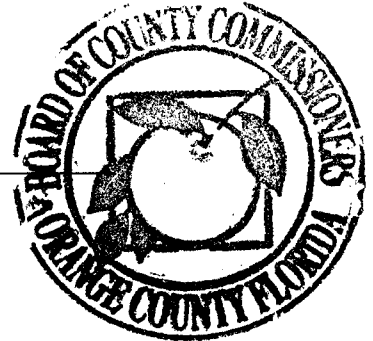
By: Board of County Commissioners

ATTEST <sup>for</sup> Martha O. Haynie  
Carol Foglesong  
As Clerk of the Board of County Commissioners

By: Teresa Jacobs  
Teresa Jacobs  
Orange County Mayor

By: Craig A. Stapp  
<sup>for</sup> Deputy Clerk

Date: 2.9.16



[Signatures continue on following page]

Name: Susan C. Bringle  
SUSAN C. BRINGLE  
Name: Amanda Durham  
Amanda Durham

**OWNER**

**CARLSBAD ORLANDO, LLC**, a Florida limited liability company

By: Steven H. Gray  
Name: Steven H. Gray  
Title: Manager

STATE OF FLORIDA  
COUNTY OF Marion

SWORN TO AND SUBSCRIBED before me this 8<sup>th</sup> day of January, 2016, by Steven H. Gray, as Manager of Carlsbad Orlando, LLC, a Florida limited liability company. He is personally known to me or produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

**SUSAN C. BRINGLE**  
Notary Public, State of Florida  
My comm. expires October 13, 2016  
Comm. No. EE 835579

Susan C. Bringle  
Notary Public Signature  
Name: SUSAN C BRINGLE  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

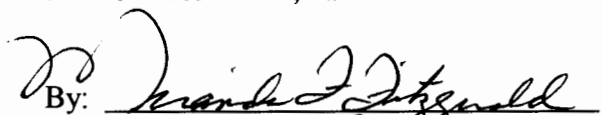


**CONSENT AND ACCEPTANCE**

The undersigned, as Escrow Agent, hereby consents to and agrees to comply with the terms of this Agreement, and to hold in escrow the original Termination of Carlsbad Orlando, LLC Agreement Regarding Site Investigation and Potential Remediation, as contemplated by Sections 3 and 4 above.

Dated this 11<sup>th</sup> day of January, 2016

LOWNDES, DROSDICK, DOSTER,  
KANTOR & REED, P.A.

By:   
Name: Miranda F. Fitzgerald  
Its: Vice President

**EXHIBIT "A"**

DESCRIPTION (Based on ORB 7269 PG. 3564):

That portion of Section 32, lying North of a line extended between the Easterly  $\frac{1}{4}$  corner and the Northwest corner;

That portion of Section 33, lying North of a line extended between the Southeast corner and the West  $\frac{1}{4}$  corner and lying south of State Road 528 (Beeline Expressway);

And all of Sections 34 and 35, all lying in Township 23 South, Range 31 East.

AND

All of Section 2;

LESS AND EXCEPT the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  and that portion of Section 3, lying North of a line extended between the Easterly  $\frac{1}{4}$  corner and the Northwest corner, all being in Township 24 South, Range 31 East.

Said land lying and being in Orange County, Florida.

**EXHIBIT "B"**

**Form of Termination Document**

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:

Miranda F. Fitzgerald, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
Account No. 802  
215 North Eola Drive  
Post Office Box 2809  
Orlando, FL 32802-2809  
(407) 843-4600

**TERMINATION OF CARLSBAD ORLANDO, LLC AGREEMENT REGARDING SITE  
INVESTIGATION AND POTENTIAL REMEDIATION**

**THIS TERMINATION OF CARLSBAD ORLANDO, LLC AGREEMENT  
REGARDING SITE INVESTIGATION AND POTENTIAL REMEDIATION** (this  
"Termination") is dated as of the \_\_\_ day of \_\_\_\_\_, 201\_\_, by and between  
CARLSBAD ORLANDO, LLC, a Florida limited liability company (the "Owner"), and  
ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of  
Florida corporation (the "County").

**WITNESSETH:**

**WHEREAS**, the Owner is the owner of that certain real property located within Orange  
County which is more particularly described on Exhibit 1 attached hereto (the "Property"); and

**WHEREAS**, the Owner and the County entered into that certain Carlsbad Orlando, LLC  
Agreement Regarding Site Investigation and Potential Remediation dated June 18, 2008 and  
recorded July 2, 2008 in Official Records Book 9722, Page 3947, of the Public Records of  
Orange County, Florida (the "Agreement") which encumbered the Property; and

**WHEREAS**, the Property has been annexed into the City of Orlando and, the  
development of the Property is no longer subject to the jurisdiction of the County; and

**WHEREAS**, accordingly, the County and the Owner desire to terminate the Agreement.

**WHEREAS**, Section 12 of the Agreement provides that the Agreement may be  
terminated by the agreement of the parties;

**OWNER**

**CARLSBAD ORLANDO, LLC**, a Florida limited liability company

Name: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: Steven H. Gray

Title: Manager

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me this \_\_\_ day of \_\_\_\_\_, 20\_\_ by Steven H. Gray, as Manager of Carlsbad Orlando, LLC, a Florida limited liability company. He is personally known to me or produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature  
Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[Escrow Agent's Consent and Acceptance appears on following page]

**EXHIBIT 1**

DESCRIPTION (Based on ORB 7269 PG. 3564):

That portion of Section 32, lying North of a line extended between the Easterly  $\frac{1}{4}$  corner and the Northwest corner;

That portion of Section 33, lying North of a line extended between the Southeast corner and the West  $\frac{1}{4}$  corner and lying south of State Road 528 (Beeline Expressway);

And all of Sections 34 and 35, all lying in Township 23 South, Range 31 East.

AND

All of Section 2;

LESS AND EXCEPT the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  and that portion of Section 3, lying North of a line extended between the Easterly  $\frac{1}{4}$  corner and the Northwest corner, all being in Township 24 South, Range 31 East.

Said land lying and being in Orange County, Florida.

BCC Mtg. Date: Feb. 9, 2016

**THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:**

Miranda F. Fitzgerald, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
Account No. 802  
215 North Eola Drive  
Post Office Box 2809  
Orlando, FL 32802-2809  
(407) 843-4600

**TERMINATION OF CARLSBAD ORLANDO, LLC AGREEMENT REGARDING SITE  
INVESTIGATION AND POTENTIAL REMEDIATION**

**THIS TERMINATION OF CARLSBAD ORLANDO, LLC AGREEMENT  
REGARDING SITE INVESTIGATION AND POTENTIAL REMEDIATION** (this  
"Termination") is dated as of the 9 day of Feb., 2016, by and between  
CARLSBAD ORLANDO, LLC, a Florida limited liability company (the "Owner"), and  
ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of  
Florida corporation (the "County").

**WITNESSETH:**

**WHEREAS**, the Owner is the owner of that certain real property located within Orange  
County which is more particularly described on Exhibit 1 attached hereto (the "Property"); and

**WHEREAS**, the Owner and the County entered into that certain Carlsbad Orlando, LLC  
Agreement Regarding Site Investigation and Potential Remediation dated June 18, 2008 and  
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Orange County, Florida (the "Agreement") which encumbered the Property; and

**WHEREAS**, the Property has been annexed into the City of Orlando and, the  
development of the Property is no longer subject to the jurisdiction of the County; and

**WHEREAS**, accordingly, the County and the Owner desire to terminate the Agreement.

**WHEREAS**, Section 12 of the Agreement provides that the Agreement may be  
terminated by the agreement of the parties;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and  
other good and valuable consideration, the receipt and sufficiency of which are hereby  
acknowledged, the County and Owner hereby acknowledge and agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein and made a part of this Termination as if fully set forth herein.

2. Termination of Agreement. Effective as of the date that this Termination is recorded in the Public Records of Orange County, Florida, the Agreement is and shall be terminated and of no further force and effect whatsoever and will never be automatically revived. Neither party shall have any obligations under or pursuant to the Agreement, and the Agreement shall have no further encumbrance upon the Property.

3. Record Notice. The Owner and the County are executing and recording this Termination to place all third parties on record notice of the termination, cancellation and the extinguishment of the Agreement.

4. Binding Effect/Successors and Assigns Bound. This Termination shall be binding upon and inure to the benefit of Carlsbad Orlando, LLC and all successors and assigns of Carlsbad Orlando, LLC, including all successors in title to the Property.

**IN WITNESS WHEREOF**, this Termination has been duly executed by the parties hereto as of the day and year first written above.

County Seal

**ORANGE COUNTY**

By: Board of County Commissioners

ATTEST: <sup>for</sup> Martha O. Haynie  
Carol Jeglesong  
As Clerk of the Board of County  
Commissioners

By: Tefesa Jacobs  
Orange County Mayor

By: Craig A. Stopyna  
Deputy Clerk

Date: 2.9.16



[Signatures continue on following page]

Name: Susan C. Bringle  
SUSAN C BRINGLE

Name: Amanda Durham  
Amanda Durham

**OWNER**

**CARLSBAD ORLANDO, LLC**, a Florida limited liability company

By: Steven H. Gray  
Name: Steven H. Gray  
Title: Manager

STATE OF FLORIDA  
COUNTY OF Marion

SWORN TO AND SUBSCRIBED before me this 8<sup>th</sup> day of January, 2016 by Steven H. Gray, as Manager of Carlsbad Orlando, LLC, a Florida limited liability company. He is personally known to me or produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

Susan C. Bringle  
Notary Public Signature  
Name: SUSAN C. BRINGLE  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**SUSAN C. BRINGLE**  
Notary Public, State of Florida  
My comm. expires October 13, 2016  
Comm. No. EE 835579



**EXHIBIT 1**

DESCRIPTION (Based on ORB 7269 PG. 3564):

That portion of Section 32, lying North of a line extended between the Easterly  $\frac{1}{4}$  corner and the Northwest corner;

That portion of Section 33, lying North of a line extended between the Southeast corner and the West  $\frac{1}{4}$  corner and lying south of State Road 528 (Beeline Expressway);

And all of Sections 34 and 35, all lying in Township 23 South, Range 31 East.

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LESS AND EXCEPT the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  and that portion of Section 3, lying North of a line extended between the Easterly  $\frac{1}{4}$  corner and the Northwest corner, all being in Township 24 South, Range 31 East.

Said land lying and being in Orange County, Florida.