

BCC Mtg. Date: November 29, 2016

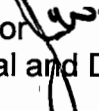


**Interoffice Memorandum**

**AGENDA ITEM**

November 9, 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: **John Smogor, Planning Administrator**  
**Planning Division 407-836-5616 and**  
**[john.smogor@ocfl.net](mailto:john.smogor@ocfl.net)**

SUBJECT: November 29, 2016 - Consent Item  
Request for Rescission of the Vinings at Cypress Pointe  
Development of Regional Impact (DRI)

The Vinings at Cypress Pointe Development of Regional Impact (DRI) was originally approved on December 22, 1992, and contains 69.93 acres. The project is generally located south of Vinings Way Boulevard and east of South Apopka Vineland Road. The existing DRI development program, along with the Vinings at Cypress Pointe Planned Development (PD) entitlements, consists of 1,000 multi-family / timeshare units, 109,026 square feet of tourist commercial uses, and 150 hotel rooms.

Pursuant to Section 380.06(29), Florida Statutes, areas within the Urban Service Area of Orange County, Florida are recognized as a Dense Urban Land Area ("DULA"). Comprehensive Plan Policy FLU1.1.1 states that urban uses shall be concentrated within the Urban Service Area and other specified areas, including Growth Centers, further within the definition of a DULA. Section 380.115, Florida Statutes, states that a DRI located within a DULA may be rescinded upon demonstrating that all required mitigation related to the amount of development that existed on the date of rescission has been completed.

Per the attached "Request for Rescission" of the Vinings at Cypress Pointe DRI, the applicant indicated that all required mitigation related to the amount of existing development has been completed, and that no unmitigated development exists. Upon rescission of the DRI Development Order (DO) concurrent with approval of the pending revisions (CDR-16-03-105) to the Vinings at Cypress Pointe PD/LUP, Lot 8 will be aggregated into Lot 6. Upon rescission of the DO and approval of the related amendment to the Vinings at Cypress Pointe PD/LUP, development entitlements will consist of 1,000 units of multi-family/timeshare; 86,008 square feet of tourist

Page Two

November 29, 2016 - Consent Item

Request for Rescission of the Vinings at Cypress Pointe Development of Regional Impact (DRI)

commercial; and 320 hotel rooms. All existing DRI / DO conditions were previously added as PD conditions of approval by the BCC on December 22, 1992.

On October 19, 2016, the Orange County Development Review Committee (DRC) recommended approval of the "Request for Rescission" of the Vinings at Cypress Pointe DRI and the related PD substantial change.

Finally, the Specific Project Expenditure Report and Relationship Disclosure Form have been completed in accordance with the requirements of Ordinance 2008-14. Copies of these forms may be located in the Planning Division for further reference.

**ACTION REQUESTED: Approval and execution of Order Approving Rescission of the Development Order for the Vinings at Cypress Pointe Development of Regional Impact. District 1**

JVW/JS/OH:rep:jam

Attachment

BCC Mtg. Date: November 29, 2016

**ORDER APPROVING RESCISSION OF  
THE DEVELOPMENT ORDER FOR THE VININGS AT CYPRESS POINTE  
DEVELOPMENT OF REGIONAL IMPACT**

THIS ORDER APPROVING RESCISSION OF THE DEVELOPMENT ORDER FOR THE VININGS AT CYPRESS POINTE DEVELOPMENT OF REGIONAL IMPACT AND NOTICE THEREOF is issued by **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (the "County"), whose address is P.O. Box 1393, Orlando, Florida 32802-1393.

**FACTUAL BACKGROUND**

1. The Development Order for The Vinings at Cypress Pointe Development of Regional Impact (the "DRI", or "The Vinings at Cypress Pointe DRI") was approved by the Orange County Board of County Commissioners on December 22, 1992, and recorded in Official Records Book 4653, at Pages 1479-1494, inclusive, of the Public Records of Orange County, Florida.
2. Orange County, Florida meets the criteria for a "dense urban land area" (DULA) pursuant to Section 380.06(29), Florida Statutes, and is identified as a DULA on the State of Florida list of qualifying communities published by the Florida Department of Economic Opportunity.
3. As a DRI within a DULA, The Vinings at Cypress Pointe DRI is exempt from further DRI review. Pursuant to Section 380.115, Florida Statutes: "[i]f requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies."
4. The Property included in the DRI is Lots 1 through 8, inclusive, and Tracts A, B, C and D, The Vinings at Cypress Pointe, according to the Plat thereof recorded in Plat Book 23, at Pages 145 through 147 of the Public Records of Orange County, Florida. Amprop Corporation (the "Successor Owner") is the owner of the remaining undeveloped or partially developed land in The Vinings at Cypress Pointe DRI, consisting of only Lots 6 and 8 of The Vinings at Cypress Pointe PD is the only undeveloped or partially developed property which is subject to the terms, mitigations and conditions of the Development Order. [Although the Development Order includes within the DRI Lots 1-5 and Lots 7 and 8 identified previously in this paragraph, Section III(8) of the Development Order provides that "the development of Lot 6 alone shall be subject to the terms, mitigations and conditions of the Development Order for the project".]
5. An amended Request for Rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact (the "Request") dated July 22, 2016, was submitted to Orange County by the Successor Owner, a copy of which is attached hereto as **Composite Exhibit "A"**.
6. The Land Use Plan of The Vinings at Cypress Pointe PD, as amended, will govern any future development of the Property.
7. Based on the information contained in the Request and information provided in the related pending amendment (CDR-16-03-105) of The Vinings at Cypress Pointe PD, County has confirmed that any required mitigation under the Development Order for existing development has been completed, or will be completed under an existing permit or equivalent authorization. Upon rescission of the Development Order final permitting of any future development on the Property will be subject to review and approval, including and not limited to capacity constraints of County's Transportation Concurrency Management System; any such approval will not exclude the possibility of a proportionate share payment in order to mitigate any transportation deficiencies.
8. Pursuant to Section 380.115(1), Florida Statutes, a change in any Development of Regional Impact guideline or standard does not abridge or modify any vested or other right or duty or obligation pursuant to any development order or agreement that is applicable to a Development of Regional Impact.

9. The Vinings at Cypress Pointe PD, as amended concurrently with the rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact, will control any future development in The Vinings at Cypress Pointe PD. Upon rescission of the DRI Development Order concurrent with approval of the pending revisions (CDR-16-03-105) to The Vinings at Cypress Pointe Land Use Plan (PD), the development entitlements of Lots 6 and 8 of the PD will be aggregated. Upon rescission of the Development Order and approval of the related amendment to The Vinings at Cypress Pointe Land Use Plan development entitlements of the PD revert to the pre-DRI PD entitlements.

10. Regarding the entitlements of The Vinings at Cypress Pointe PD:

10.1. At the time of approval of the Development Order and the corresponding land use plan for The Vinings at Cypress Pointe PD, the total then-available Tourist Commercial usage allowed in the PD on Lots 6 and 8 of the PD was 109,026 sf.

10.2. Upon rescission of the Development Order and the related pending amendment of The Vinings at Cypress Pointe the entitlements for the PD shall be as follows:

PD DEVELOPMENT PROGRAM COMPARISON TABLE ENTITLEMENTS WITH DRI/ENTITLEMENTS WITHOUT DRI		
Use	Existing Entitlements Prior to Rescission of Development Order and Amendment of PD	Entitlements Post Rescission of Development Order and Amendment of PD
Multi-Family/Timeshare	1,000 units	1,000 units
Tourist Commercial	109,026 sq. ft.	86,008 sq. ft.
Hotel	150 rooms	320 rooms <sup>1</sup>
<b>Note 1:</b> The increase in approved hotel rooms from 150 rooms to 320 rooms does not represent additional development entitlements. The related amendment of The Vinings at Cypress Pointe PD includes approval of a conversion matrix for development entitlements. The additional 170 hotel rooms allowed under the amended PD is a result of application of the conversion matrix allowed development of 170 hotel rooms to 23,649 sq. ft. Tourist Commercial development (at the matrix conversion factor of 0.1354 times number of hotel rooms), and the reduction of the pre-rescission Tourist Commercial entitlements of 109,026 sq. ft. by the equivalent square footage for the 170 hotel rooms (23,649 sq. ft.).		

11. Based on the information contained herein, Orange County hereby rescinds the Development Order for The Vinings at Cypress Pointe Development of Regional Impact.

12. The Vinings at Cypress Pointe PD, as may be amended from time to time, shall govern any future development of the Property which was subject to the Development Order for The Vinings at Cypress Pointe Development of Regional Impact prior to this Order.

ADOPTED THIS \_\_\_\_\_ DAY OF NOV 29 2016, 2016.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*  
Title: Orange County Mayor  
Date: 11.30.16

ATTEST:

Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Craig A. Stopysa*  
Deputy Clerk  
Print Name: Craig A. Stopysa

**AMENDED REQUEST FOR RESCISSION OF DEVELOPMENT ORDER FOR THE  
VININGS AT CYPRESS POINTE DEVELOPMENT OF REGIONAL IMPACT**

---

Amprop Corporation, as the owner of the real property which is subject to the terms and provisions of the Development Order for the Vinings at Cypress Pointe Development of Regional Impact ("Development Order"), hereby submits this Amended Request to Orange County, Florida for the rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact, amending and restating the prior Request for Rescission, dated March 29, 2016, previously submitted to Orange County regarding the DRI rescission (DO-16-03-111), and in support thereof states:

**1. Project Background**

- 1.1. On November 17, 1987 TCR II, LP, a Texas limited partnership ("Owner/Developer") was the owner of certain real property located in Orange County, Florida described on attached EXHIBIT "A" ("Original Property"), and on said date Orange County reviewed and approved a "Plan of Development" for a mixed-use real estate project named "The Vinings at Cypress Pointe" for the uses and development intensities described on attached EXHIBIT "B" ("Original Entitlements").
- 1.2. Subsequent to the approval of the Plan of Development for The Vinings at Cypress Pointe development occurred on portions of the property by parties not the Owner/Developer, which development was consistent with the approved Plan of Development.
- 1.3. Effective on January 7, 1992 Owner/Developer and the State of Florida Department of Community Affairs, an agency of the State of Florida ("DCA") entered into a Development Agreement for The Vinings at Cypress Pointe, a copy of which is shown on attached EXHIBIT "C", the contents of which are incorporated into this Request for all purposes ("Development Agreement"). Under the terms of the Development Agreement:
  - 1.3.1. Owner/Developer and DCA agreed that the Plan of Development of The Vinings at Cypress Pointe in its then-approved form was not a Development of Regional Impact (DRI).
  - 1.3.2. The potential development intensity of Lot 6 of the Original Property was increased (from the allowed development in the Original Entitlements listed on attached EXHIBIT "B") to the following intensity:

"a hotel or hotels containing an aggregate of 450 to 500 rooms, together with restaurants, meeting rooms, parking, swimming pools and related amenities"

which Owner/Developer and DCA agreed caused the project to be a DRI as defined by Section 380.06, Florida Statutes.
  - 1.3.3. Owner/Developer agreed to make application for approval of a DRI for The Vinings at Cypress Pointe under the provisions of Chapter 380 of the Florida Statutes.
  - 1.3.4. The Owner/Developer and DCA also agreed that future development of Lots 1-5, inclusive, and Lots 7 and 8 of The Vinings at Cypress Pointe could continue, and that Lots 1-5, inclusive, and Lots 7 and 8 would not be subject to the provisions of Section 380.06(19), Florida Statutes, and that only the development of Lot 6 would be subject to the terms and conditions of any DRI Development Order issued for the project.
- 1.4. On or about April 6, 1992 Owner/Developer filed an Application for Development Approval ("ADA") for a Development of Regional Impact to be named "The Vinings at Cypress Pointe Development of Regional Impact" for all of the Original Property (including Lot 6). The ADA was subsequently reviewed by, and recommendations provided by, the East Central Florida Planning District, and public hearings as required by Section 380.06 of the Florida Statutes were duly noticed and held.

- 1.5. On August 26, 1992 Owner/Developer submitted to the County a Land Use Plan for a Planned Development ("PD") for the Original Property, in conjunction with the submittal of the ADA for The Vinings at Cypress Pointe Development of Regional Impact.
  - 1.6. On December 22, 1992, the Board of County Commissioners of Orange County approved a Development Order for The Vinings at Cypress Pointe Development of Regional Impact, which was subsequently recorded in Official Records Book 4563, at Page 1479 of the Public Records of Orange County, Florida ("Development Order"), a copy of which is shown in attached **EXHIBIT "D"**.
  - 1.7. The Development Order provided, in addition to other terms, that development of Lot 6 alone would be subject to the terms, mitigation, and conditions of the Development Order; that the original Owner/Developer would be responsible for all mitigation on behalf of Lot 1 through 8, inclusive, required by the Development Order; and that PD Lots 1 through 5, and 7 and 7 would not be subject to the provisions of sub-Section 380.06(19) of the Florida Statutes.
  - 1.8. As of the date of this Request Lot 6 is fully developed, in compliance with the terms of both the Development Order for The Vinings at Cypress Pointe Development of Regional Impact and The Vinings at Cypress Pointe PD. Mitigation requirements under the Development Order were completed prior to the development of Lot 6.
2. **Development of DRI Property after Rescission of DRI Development Order.**
- 2.1. Upon the rescission of the DRI Development Order for The Vinings at Cypress Pointe Development of Regional Impact (the "PD") will remain in effect and control the development of all of the Original Property in the PD, including Lots 6, 7, and 8. The rescission of the DRI Development Order would be approved concurrent with approval of pending revisions (Project No. CDR-16-03-01-105) to the Cypress Pointe land-use plan (PD) and preliminary subdivision plans of The Vinings at Cypress Pointe PD, to revert the PD entitlements back to the PD entitlements existing immediately prior to the approval of the Development of Regional Impact Development Order for The Vinings at Cypress Pointe DRI. No additional entitlements are proposed for the PD, therefore all requested revisions would be considered non-substantial changes. At the time of approval of the DRI Development Order and the corresponding PD Amendment the total then available retail usage allowed in the PD was 109,026 sf of Retail.
  - 2.2. Upon rescission of the DRA Development Order and reversion to the PD entitlements which existed immediately prior to the approval of the Development Order for The Vinings at Cypress Pointe DRI the entitlements for Lots 6, 7, and 8 of the PD (with Lot 8 aggregated with Lot 6) shall be as follows:

	Allowed		Existing	
Lot 6 (Aggregated with Lot 8)				
Retail	79,201 sf		67,649 sf	
Hotel		170 rms		170 rms
Lot 7				
Retail	6,807 sf		6,807 sf	

- **Hotel Conversion:** 170 rms x 0.1354 = 23,649 sf
- **Lot 6:** 109,026 sf allowed – 23,018 sf (hotel) – 6,807 sf (lot 7 existing) = 79,201 sf

Therefore, the entitlements will have reverted back to the entitlements existing immediately prior to the approval of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact on December 22, 1992, and the current remaining entitlement for Lots 6, 7 and 8, aggregated, are 11,552 sf of Retail.

3. **Cypress Pointe Mitigation.**

Pursuant to its terms the Development Order for The Vinings at Cypress Pointe Development of Regional Impact was applicable only to Lot 6. Lot 6 has been fully developed, in compliance with the terms of both the Development Order for The Vinings at Cypress Pointe Development of Regional Impact and The Vinings at Cypress Pointe PD.

**4. Criteria for Rescission.**

4.1. Orange County is designated as a "dense urban land area" (DULA) pursuant to Section 380.06(29), F.S. and is identified on the State of Florida list of qualifying communities, as published by the Florida Department of Economic Opportunity.

4.2. As a DRI within a DULA, the Cypress Pointe is exempt from further DRI review. Pursuant to Section 380.115, Florida Statutes:

"[I]f requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in Section 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies."

4.3. The Vinings at Cypress Pointe DRI is within the adopted urban service area for Orange County.

4.4. Under the terms of The Vinings at Cypress Pointe Development Order the Owner/Developer of Lots 1-5, inclusive, and Lots 7 and 8, would be responsible for any mitigation requirements under the Development Order. The only mitigation requirements under the Development Order were that the developer shall have undertaken through the Florida Gaming and Freshwater Fish Commission (FGFWFC) Permit process, either: (a) acquisition of a minimum of 1.9 acres of accepted gopher tortoise habitat; or (b) contribution to the FGFWFC Wildlife Habitat Trust Fund in the amount of \$10,910.33 designated to acquire and manage gopher tortoise habitat properties. To the best of Applicants knowledge this mitigation required under the Development Order was completed prior to further development of the project subsequent to the approval of the Development Order.

4.5. Since the terms of the terms of the Development Order apply only to development of Lot 6 (now fully developed) of The Vinings at Cypress Pointe PD, Lots 1-5, inclusive, and Lots 7 and 8, The Vinings at Cypress Pointe PD are not subject to the mitigation provisions of the Development Order, or provisions of Section 380.06(19), Florida Statutes.

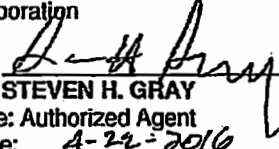
4.6. Based upon those facts stated previously in this Request, the undersigned owner of Lot 6 of The Vinings at Cypress Pointe PD respectfully requests that Orange County rescind the Development Order for The Vinings at Cypress Pointe Development of Regional Impact.

**5. Proposed Order Approving DRI Rescission.**

5.1. Included as EXHIBIT "E" is a proposed form of an Order Approving Rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact that Orange County may wish to use once it has determined that any required mitigation for existing development has been performed.

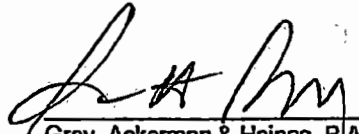
This Request for Rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact is executed by the Owner, Amprop Corporation, on the 22<sup>nd</sup> day of July, 2016.

AMPROP CORPORATION, a Florida  
corporation

By:   
STEVEN H. GRAY

Title: Authorized Agent

Date: 4-22-2016



Gray, Ackerman & Haines, P.A.

Steven H. Gray, Esquire

125 NE First Avenue, Suite 1

Ocala, FL 34470

(352) 732-8121

[sgray@gahlaw.com](mailto:sgray@gahlaw.com)

Attorneys for Amprop Corporation

Date: 7-22-16



**EXHIBIT "A"**  
**ORIGINAL PROPERTY**

Lots 1 through 8, inclusive, and Tracts A, B, C and D, The Vinings at Cypress Pointe, according to the plat thereof recorded in Plat Book 23, Pages 145 through 147, Public Records of Orange County, Florida.

**EXHIBIT "B"**  
**ORIGINAL ENTITLEMENTS – THE VININGS AT CYPRESS POINTE PD.**

<b>Lot(s)</b>	<b>Uses</b>	<b>Allowed</b>
1	Hotel	150 rooms
2, 3, 4 & 5	Multi-Family Residential	1,000 units
6	Tourist Commercial Retail	109,026 sf
7	Tourist Commercial Retail	7,000 sf
8	Tourist Commercial Retail	5,000 sf

\* As modified pursuant to Public Hearing November 17, 1987.

EXHIBIT "C"  
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT  
FOR  
THE VININGS AT CYPRESS POINTE

THIS DEVELOPMENT AGREEMENT FOR THE VININGS AT CYPRESS POINTE ("Agreement") is entered into between TCR ORLANDO II LIMITED PARTNERSHIP, a Texas limited partnership ("Owner/Developer"), and the STATE OF FLORIDA, DEPARTMENT OF COMMUNITY AFFAIRS ("Department").

WHEREAS, the Department is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380 of the Florida Statutes, which includes provisions relating to developments of regional impact ("DRI's"); and

WHEREAS, the Department is authorized to enter into development agreements pursuant to §380.032(3) and §380.06(8), Florida Statutes (1989); and.

WHEREAS, the Owner/Developer represents and states that:

A. The Owner/Developer is a Texas limited partnership which owns certain property in Orange County, Florida, more particularly described as:

Lot 6, The Vinings at Cypress Pointe, according to the plat thereof recorded in Plat Book 23, Pages 145 through 147, Public Records of Orange County, Florida ("Lot 6");

No other person or entity has any interest in Lot 6, including but not limited to rights arising out of a contract for sale.

B. Lot 6 is a portion of a development known as "The Vinings at Cypress Pointe", which includes all of the property described on Exhibit "A" attached hereto and made a part hereof. Uses approved include hotel, multi-family residential and commercial.

C. On November 17, 1987 Orange County reviewed and approved a "Plan of Development" for The Vinings at Cypress Pointe, for those uses and quantities shown on Exhibit "B" attached hereto and made a part hereof.

D. Development of the buildings has occurred on other portions of The Vinings at Cypress Pointe by parties not the Owner/Developer, which development is consistent with the approved planned development.

AXC:TCR0H:AA2  
12/9/91

EXHIBIT "C"  
DEVELOPMENT AGREEMENT

E. The Plan of Development in its currently approved form is not a DRI.

F. The Owner/Developer wishes to modify the density of use for Lot 6 (to the uses and density shown on the attached Exhibit "C"), and with such modification to Lot 6 the Plan of Development as modified will become a DRI (the "Project"), as defined by §380.06, Florida Statutes.

G. The Owner/Developer desires to allow development of the Project, excluding Lot 6, to continue prior to issuance of a final development order.

H. The Owner/Developer has provided the owners of Lots 1-5 and 7 and 8 with notice of its intentions to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, it is hereby understood and agreed:

1. Representations. The Owner/Developer asserts and warrants that all of the representations and statements concerning the Project made to the Department contained in this Agreement (including the recitals) are true, accurate and correct. Based upon the representations and statements, the Department concludes that this Agreement is in the best interest of the state and local government, is necessary and beneficial to the Department in its role as the state agency with the responsibility for the administration and enforcement of Chapter 380 of the Florida Statutes, and reasonably applies and effectuates the provisions and intent of Chapter 380 of the Florida Statutes.

2. Pre-Application and ADA. The Project is a development of regional impact as defined by §380.06, Florida Statutes. Within forty-five (45) days from the date of execution of this Agreement, the Owner/Developer shall meet with the East Central Florida Regional Planning Council for the pre-application conference required by §380.06(7), Florida Statutes. Within three (3) months from the date of execution of this Agreement the Owner/Developer shall file an Application for Development Approval ("ADA") for the Project, which shall include all that land described on Exhibit "A". The ADA shall assess all of the impacts associated with the development of the entire Project.

3. Development Order Conditions.

A. Although the following described parcels shall be included in the legal and Project descriptions and important analyses of the ADA for the purpose of determining the aggregate impacts associated with the development of the Project (including any revised authorized development on Lot 6), these parcels

EXHIBIT "C"  
DEVELOPMENT AGREEMENT

Except as provided in Subsection B below) shall not be subject to any retroactive or prospective terms, conditions or mitigation of the development order issued for the Project:

Lots 1-5, inclusive, and Lots 7 and 8 of The Vinings at Cypress Pointe, according to the Plat thereof recorded in Plat Book 23, Pages 145 through 147, of the Public Records of Orange County, Florida ("Lots 1-5, and 7 and 8")

The development of Lot 6 alone shall be subject to the terms, mitigations and conditions of the development order for the Project. The Owner/Developer shall be responsible for all mitigation on behalf of Lots 1-8 that is required by the DRI Development Order.

B. Lots 1-5 and 7 and 8 shall not be subject to the provisions of §380.06(19), Florida Statutes. However, all proposed modifications to Lot 6 shall be reviewed to determine if the proposed modification or modifications are a substantial deviation under the criteria set forth in §380.06(19), Florida Statutes. In making the determination of whether such proposed modification exceeds the criteria set forth in §380.06(19), Florida Statutes, the County, the Department and the East Central Florida Regional Planning Council shall consider and count toward substantial deviation criteria the cumulative changes that have been approved for Lots 1-5 and 7 and 8 subsequent to the date hereof.

4. Preliminary Development Authorized. The owners and developers of Lots 1-5 and 7 and 8 shall have the right to continue development on those parcels in the quantities and uses set forth on Exhibit "B". No development shall occur on Lot 6 until such time as the final development order has been issued for the Project and any appeal which has been taken is resolved; provided, however, the Owner/Developer shall be allowed to remove trees and plants damaged by fire (set by vandals) prior to the issuance of the final development order.

5. No Waiver. Nothing in this Agreement shall constitute a waiver by any party of the right to appeal any development order pursuant to §380.07, Florida Statutes.

6. Time. Time is of the essence. Failure by the Owner/Developer to timely attend the pre-application conference or to timely file the ADA or to otherwise fail to diligently proceed in good faith to obtain a final development order shall constitute a breach of this Agreement.

7. Limited Effect of Agreement. This Agreement affects the rights and obligations of the parties under Chapter 380 of the

EXHIBIT "C"  
DEVELOPMENT AGREEMENT

Florida Statutes. It is not intended to determine or influence the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals which might be required by state law or local ordinance for any development authorized by this Agreement. This Agreement shall not prohibit the East Central Florida Regional Planning Council from reviewing or commenting on any regional issue that the East Central Florida Regional Planning Council determines should be included in the East Central Florida Regional Planning Council's report on the ADA. This Agreement does not supersede Orange County's requirements that the Project comply with: (1) consistency with the local comprehensive plan, and/or (2) concurrency, pursuant to Chapter 163, Florida Statutes, and Chapter 9J-5, F.A.C.

8. Miscellaneous. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. The Owner/Developer shall ensure and provide that any successor in interest in and to any lands or parcels affected by this Agreement is bound by the terms of this Agreement. The Owner/Developer shall record this Agreement in the Public Records of Orange County, Florida and shall provide the Department with a copy of the recorded Agreement, including book and page number, within two (2) weeks of the date of execution of this Agreement.

9. Date of Agreement. The date of execution of this Agreement shall be the date that the last party signs and acknowledges this Agreement.

10./\* *Ch DA*

Witnesses:

TCR ORLANDO II LIMITED  
PARTNERSHIP, a Texas Limited  
Partnership

By: TC Residential North  
Florida, Inc.

By: *Long Hobbs*  
Its *president*

*Thomas J. For*  
*Bruce B. Wagner*

Date of Execution: *12/10/91*

\*Refer to supplemental page number one.

EXHIBIT "C"  
DEVELOPMENT AGREEMENT

STATE OF FLORIDA, DEPARTMENT  
OF COMMUNITY AFFAIRS

By: Madeline Kelly  
Its Assistant Secretary

Date of Execution: 1/7/92

Approved as to form and legal  
sufficiency.

Kathleen C. Carter  
Attorney, Department of  
Community Affairs

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10th  
day of December, 1991 by Doug Beckema, the President  
of TC Residential North Florida, Inc., a Texas  
corporation, the General Partner of TCR Orlando II  
Limited Partnership, a Texas Limited Partnership, on behalf of  
said corporation.

(NOTARIAL SEAL)

Beverly B. Wagner  
Notary Public

My commission expires:

Notary Public, State of Florida  
My Commission expires Jan. 23, 1993

STATE OF FLORIDA

COUNTY OF LEON

The foregoing instrument was acknowledged before me this  
7th day of January, 1992 by Randell Kelly as Assistant  
Secretary II of the State of Florida, Department of Community  
Affairs, on behalf of the Department.

(NOTARIAL SEAL)

Jack R. Bass  
Notary Public

My Commission Expires: 1/1/93

EXHIBIT "C"  
DEVELOPMENT AGREEMENT

SUPPLEMENTAL PAGE NUMBER ONE

\* 10. Enforcement. In the event of a breach by Owner/Developer of this Agreement, or if this Agreement is based upon materially inaccurate information, the Department may terminate this Agreement. *JAH*



EXHIBIT "B"

- \* 1. 100,000 square feet of tourist commercial retail on Lots 6, 7, and 8; 88,000 square feet of tourist commercial retail has been allocated to Lot 6, 7,000 square feet of tourist commercial retail has been allocated to Lot 7 and 5,000 square feet of tourist commercial retail has been allocated to Lot 8
- 2. 150 hotel rooms on Lot 1
- 3. 1,000 residential units on Lots 2, 3, 4, and 5.

\* as modified pursuant to public hearing held November 17, 1987

**EXHIBIT "D"**  
**PROPOSED DEVELOPMENT ORDER**

**DEVELOPMENT ORDER APPROVING RESCISSION OF  
THE DEVELOPMENT ORDER FOR THE VININGS AT CYPRESS POINTE  
DEVELOPMENT OF REGIONAL IMPACT**

THIS ORDER APPROVING RESCISSION OF THE DEVELOPMENT ORDER FOR THE VININGS AT CYPRESS POINTE DEVELOPMENT OF REGIONAL IMPACT AND NOTICE THEREOF is issued ORANGE COUNTY, a political subdivision of the State of Florida (the "County"), whose address is P.O. Box 1393, Orlando, Florida 32802-1393

**FACTUAL BACKGROUND**

1. On November 17, 1987 TCR II, LP, a Texas limited partnership, ("Owner/Developer") was the owner of certain real property located in Orange County, Florida and described on attached Exhibit "A" (the "Vining Property") and on said date Orange County reviewed and approved a "Plan of Development" for a mixed-use planned development project named "The Vining at Cypress Pointe PD" for uses and development intensities approved by Orange County.
2. On January 7, 1992 Owner/Developer and the State of Florida Department of Community Affairs, an agency of the State of Florida ("DCA") entered into a Development Agreement for The Vining at Cypress Pointe under the terms of which:
  - 2.1. Owner/Developer and DCA agreed that the Plan of Development for The Vining at Cypress Pointe PD, in its then-approved form, did not constitute a Development of Regional Impact ("DRI") as defined by Section 380.06, Florida Statutes.
  - 2.2. The potential development intensity of Lot 6 in The Vining at Cypress Pointe PD was increased from the original development entitlements to an intensity of "a hotel or hotels containing 400-500 rooms, together with restaurants, meeting rooms, parking, swimming pools and related amenities" which Owner/Developer and DCA agreed caused the project to be a DRI as defined under the Florida Statutes.
  - 2.3. Owner/Developer agreed to make application for approval of a DRI under the provisions of Chapter 380 of the Florida Statutes.
  - 2.4. It was agreed that future development of Lots 1-5, inclusive, and Lots 7 and 8, of The Vining at Cypress Pointe PD could continue, that Lots 1-5, inclusive, and Lots 7 and 8 would not be subject to the provisions of Section 380.06(19), Florida Statutes, and that the development of only Lot 6 would be subject to the terms and conditions of a DRI Development Order issued for the project.
3. On or about April 16, 1992, Owner/Developer submitted to DCA an Application for Development Approval ("ADA") for a Development of Regional Impact called "The Vining at Cypress Pointe Development of Regional Impact". The ADA was subsequently reviewed by, and recommendations provided by, the East Central Florida Planning District, and public hearings as required by Section 380.06, Florida Statutes, were duly noticed and held.
4. On December 22, 1992 the Orange County Board of County Commissioners approved the Development Order for The Vining at Cypress Pointe Development of Regional Impact, which was subsequently recorded on May 17, 1993 in Official Records Book 4653, at Pages 1479-1494, inclusive, of the Public Records of Orange County, Florida (the "Development Order").
5. Orange County meets the criteria for a "dense urban land area" (DULA) pursuant to Section 380.06(29), Florida Statutes, and is identified as a DULA on the State of Florida list of qualifying communities published by the Florida Department of Economic Opportunity.

6. As a DRI within a DULA, The Vinings at Cypress Pointe DRI is exempt from further DRA review. Pursuant to Section 380.115, Florida Statutes:

"[I]f requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies." F.S. 380.115(1)(b)

7. Amprop Corporation (the "Successor Owner") is the owner of the remaining undeveloped land in the Vinings Property, ownership of Lot 8 and a portion of Lot 6 of the Property, as more particular described in Exhibit "A" attached hereto (the "Property"), of The Vinings at Cypress Pointe, the only undeveloped property which is subject to the terms of the Development Order.
8. A request for Rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact ("Request") dated \_\_\_\_\_, was submitted to Orange County by the Successor Owner, a copy of which is attached hereto as Exhibit "B", providing documentation that: (i) the property is located within the adopted urban service area for Orange County; and (ii) all required mitigation under the terms of the Development Order has been completed.
9. The Vinings at Cypress Pointe PD will govern future development of the Property.
10. Based on the information contained in the Request, the County has confirmed that all required mitigation related to the amount of existing development has been completed.
11. Pursuant to Section 380.115(1), Florida Statutes, a change in any Development of Regional Impact guideline or standard does not abridge or modify any vested or other right or duty or obligation pursuant to any Development Order or Agreement that is applicable to a Development of Regional Impact.
12. The Vinings at Cypress Pointe PD will remain in effect and will control the development of the Property once the DRI Development Order is rescinded. The following provisions included in the Development Order for The Vinings at Cypress Pointe shall be incorporated into The Vinings at Cypress Pointe PD to aggregate the shopping center areas of Lot 8 with Lot 6:

"Lot 6 (8.78 Acres) Development:

Up to 500 hotel rooms  
Or 527 Time-share units  
Or 88,000 gross square feet of commercial  
Or a combination of these uses which will not generate more than 6,525 ADT or 604 P.M. peak hour trips."

THIS SPACE LEFT BLANK INTENTIONALLY

**RESCISSION OF THE DEVELOPMENT ORDER**

Based on the information contained herein, Orange County hereby rescinds the Development Order for The Vinings at Cypress Pointe Development of Regional Impact.

The Vinings at Cypress Pointe PD, as may be amended from time to time, shall govern development of the Vinings Property which was subject to the Development Order for The Vinings at Cypress Pointe Development of Regional Impact prior to this Order.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

**ORANGE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Clerk to the  
Board of County Commissioners  
Print Name: \_\_\_\_\_

APPROVED BY THE BOARD OF COUNTY  
COMMISSIONERS AT THEIR MEETING

DEC 22 1992

PSR

EXHIBIT "D"

DEVELOPMENT ORDER FOR

THE VININGS AT CYPRESS POINTE

DEVELOPMENT OF REGIONAL IMPACT

I. FINDING OF FACT AND CONCLUSIONS OF LAW

1. On or about April 6, 1992, TCR Orlando II Limited Partnership, a Texas Limited Partnership ("Developer"), whose principal place of business is at c/o Trammell Crow Residential, 1353 Palmetto Avenue, Suite 100, Winter Park, Florida, 32789-4959, filed an Application for Development Approval ("ADA") for a Development of Regional Impact ("DRI") called The Vinings at Cypress Pointe DRI for certain property in Orange County, Florida. The ADA is incorporated herein by reference. The Property is described in Exhibit "A", which is attached hereto and incorporated herein.

2. The Developer has the authority to file an ADA and to obtain a Development Order with respect to the Property in accordance with Section 380.06, Florida Statutes (Supp. 1992).

3. The Property does not lie within an area of critical state concern.

4463812 ORANGE CO. FL.  
05/17/93 02:15:55pm

4. The ADA has been reviewed by, and recommendations have been received from, the East Central Florida Regional Planning Council ("ECFRPC").

OR4563 PG 1479

5. Public hearings, as required by Section 380.06, Florida Statutes (Supp. 1992), have been duly noticed and held.

6. On August 26, 1992, the Developer submitted to the County a Land Use Plan for a Planned Development ("PD") for the Property

Rec Fee \$ 65.00 MARTHA O. HAYNE 1  
Add Fee \$ 8.50 Orange County  
Doc Tax \$ \_\_\_\_\_ Comptroller  
Int Tax \$ \_\_\_\_\_ By PS  
Total \$ 73.50 Deputy Clerk

RETURN TO CLERK OF BCC, 4TH FLOOR ADMINISTRATION CENTER, ELAINE

in conjunction with the ADA for the DRI.

7. The proposed development of the Vinings at Cypress Pointe DRI/PD consists of the following:

(A) Total Acreage: Approximately 68.69 +/- Acres

(B) Land Use: Activity Center Mixed Use (ACMU)

Total Development:

<u>Type of Land Use</u>	<u>GROSS SQ.FT/UNITS</u>	<u>ACRES</u>
<u>Exclusive of Lot 6 Development:</u>		
Multi Family/Time Share	1,000 Units	39.63
Commercial	12,000 Gross Sq.Ft.	2.12
Hotel	150 Hotel Rooms	5.08
Conservation Area		1.17
Retention		8.73
Roadway		3.18

Lot 6 Development:

Up to 500 Hotel Rooms  
or 527 Time-share Units  
or 88,000 Gross Square Feet of Commercial  
or a combination of these uses which will not  
generate more than 6,525 ADT or 604 P.M. peak  
hour trips.

Lot 6		<u>8.78</u>
	total acres	68.69

(C) Potential External Traffic Generation: 16,173 ADT

(D) Water Supply Provided By: Orange County

(E) Wastewater Service Provided By: Orange County

(F) Fire Protection Provided By: Orange County

(G) Project Phasing: 1 Phase

8. Developer's authorized agent is J. Brailey Odham, whose principal place of business is 1020 N. Orlando Avenue, Suite A, Winter Park, Florida, 32789.

9. The development of the Vinings at Cypress Point DRI/PD, pursuant to the ADA, will be consistent with the achievement of the objectives of the adopted State Land Development Plan, and therefore will not unreasonably interfere with those objective.

10. The development of the Vinings at Cypress Pointe DRI/PD, pursuant to the ADA, will be consistent with the Orange County land development regulations.

11. The development of the Vinings at Cypress Pointe DRI/PD, pursuant to the ADA will be substantially consistent with the report and recommendations of the ECFRPC received pursuant to the Section 380.06(12), Florida Statutes (Supp. 1992).

12. This Development Order also constitutes the Development Order approving the use of the Property pursuant to the Land Use Plan for a PD, as particularly detailed in Paragraph 7 of Part I of this Development Order.

NOW, THEREFORE, BE IT HEREBY ORDERED AND RESOLVED by the Board of County Commissioners of Orange County, Florida that, subject to the following terms and conditions, the Vinings at Cypress Pointe Development of Regional Impact is APPROVED pursuant to Section 380.06, Florida Statutes (Supp. 1992).

II. DEFINITION

OR 4563 PG 1481

For purposes of this Development Order the terms listed below shall be defined as follows:

1. Concurrency Management System - Any and all ordinances, resolutions and regulations adopted by Orange County to implement the requirements of Section 163.3202(2)(g) Florida Statutes (1991).

2. Developer - The person and/or entity proposing to develop the property subject to this development order and his successors or assigns.

3. ECFRPC - East Central Florida Regional Planning Council.

4. FGFWFC - Florida Game and Freshwater Fish Commission.

5. Major Roads - Roads or streets functionally classified as arterial or collector roads.

6. MSTU/MSBU - A Municipal Service Taxing Unit or Municipal Service Benefit Unit as those units may be created by Orange County pursuant to Section 125.01(1)(q) or (r), Florida Statutes (1992 Supp.)

7. The Property or this Property - The real property subject to this development order as specifically described in Exhibit A and any portion thereof which may be sold, transferred, assigned or otherwise subsequently conveyed.

8. Property Owner - The person and/or entity currently holding title to the real property subject to this development order and each of his successors or assigns for any portion of the property.

9. Project - The structures, amenities and improvements which have been or shall in the future be situated, constructed or developed on the Property.



**III. CONDITIONS OF APPROVAL 1/**

1. Development shall conform to Lot 6 of the Vinings at Cypress Pointe Development of Regional Impact (DRI)/Land Use Plan dated "Received August 26, 1992," and to the following conditions of approval. Development based upon this approval shall comply with all other applicable federal, state, and county laws, ordinances, and regulations which are incorporated herein by reference, except to the extent [the applicable laws, ordinances, and regulations] are expressly waived or modified by these conditions, or by action approved by the Orange County Board of County Commissioners (BCC), or by action of the Board of County Commissioners (BCC).
2. The Project shall be developed in accordance with the information, data, plans and commitments contained in the Vinings at Cypress Pointe DRI/ADA and supplemental information unless otherwise directed by the conditions enumerated below. For the purposes of this condition, the Application for Development Approval shall consist of the following item:
  - a. Application for Development Approval dated April 6, 1992.
3. The Project shall consist of no more than a total of 1,000 multi-family units, 150 hotel rooms, and 12,000 gross square feet of retail, exclusive of Lot 6 development. The project site consists of 68.69 +/- acres, inclusive of Lot 6.

The development of Lot 6 of the Project may include up to 500 hotel rooms, 527 time-share units or 88,000 gross square feet of commercial or combination of these uses which will not generate more than 6,525 average daily trips or 604 P.M. peak hour trips, using the same method of calculation as the ADA. When the development program is proposed for Lot 6 or any portion thereof, the developer shall submit a notice that described the proposal to Orange County, The Florida Department of Community Affairs (DCA), and the East Central Florida Regional Planning Council (ECFRPC). If the Lot 6 development program is within these development limitations and is consistent with all other conditions of the development order, then no further comment or review of this change by the DCA or the ECFRPC is required. A description of the approved change shall be

1/ CONDITIONS OF APPROVAL NUMBER 2 THROUGH NUMBER 8 WERE RECOMMENDED BY THE ECFRPC AND ADOPTED HEREIN BY ORANGE COUNTY

included in the next following DRI annual report. If additional development or other changes to the development order are proposed, then the proposed change shall be subject to the applicable portions of paragraph 380.06(19)(f), Florida statutes.

4. To compensate for the loss of 12.43 acres of gopher tortoise habitat, the developer shall have undertaken through the Florida Game and Freshwater Fish Commission (FGFWFC) permit to "take" process, one of the following prior to additional development on the site:
  - a. Acquire a minimum of 1.9 acres of gopher tortoise habitat in a location contiguous with existing public lands and approved by the FGFWFC, and restrict its development uses by conveying fee simple title to the game commission. The developer shall also develop a management plan for this property which includes, at a minimum, measures that will promote the continued protection of the gopher tortoise population and provide financing mechanisms sufficient to implement the plan; or
  - b. Contribute to the FGFWFC Wildlife Habitat Trust Fund the amount \$10,910.33 (1.9 acres x \$5,742.33 per acre) designated to acquire and manage the requisite acreage within the Commission Mitigation Park Facility located within the boundaries of the ECFRPC. This contribution includes a percentage for management needs for the parcel.
5. Except as otherwise allowable by this Development Order, site development related activities shall not result in the harming, pursuit or harassment of wildlife species classified as endangered, threatened, or a species of special concern by either the state or federal government in contravention of applicable state or federal laws. Should such species be determined to be residing on, or be otherwise significantly dependent upon the project site, the developer shall cease all activities which might negatively affect that individual or population and immediately notify FGFWFC, the U.S. Fish and Wildlife Service and Orange County. Proper protection and habitat management, to the satisfaction of the above agencies, shall be provided by the developer.

"Harming" and "harassment" as used in this recommendation shall be defined in the same manner as "harm" and "harass" respectively are defined in 50 CFR Section 17.3.
6. To minimize dependence on group irrigation and to promote retention of wildlife habitat, Xeriscape principles of

landscaping (as defined in subsection 373.185, Florida Statutes) shall be utilized in areas not planned to be served by reclaimed water irrigation, Ecologically viable portions of natural upland plant communities shall be preserved in their original state to the extent reasonable possible, taking into account customary site design and natural conditions.

7. To meet the non-potable water use demands of the project, the development shall use, in order of priority:
  - a. All treated wastewater made available to the site by Orange County, up to the entire non-potable water demand,
  - b. treated stormwater, and
  - c. non-potable quality ground water; unless prohibited by the Florida Department of Environmental Regulation, the South Florida Water Management District or other regulatory agency.
8. Although the following described parcels shall be included in the legal and Project descriptions and important analyses of the ADA for the purpose of determining the aggregate impacts associated with the development of the Project (including any revised authorized development on Lot 6), these parcels shall not be subject to any retroactive or prospective terms, conditions or mitigation of the development order issued for the Project:

Lots 1-5, inclusive, and Lots 7 and 8 of the Vinings at Cypress Pointe, according to the Plat thereof recorded in Plat Book 23, Pages 145 through 147, of the Public Records of Orange County, Florida (Lots 1-5, and 7 and 8")

The development of Lot 6 alone shall be subject to the terms, mitigations and conditions of the development order for the Project. The Property Owner/Developer shall be responsible for all mitigation on behalf of Lots 1-8 that is required by the DRI Development Order.

9. Lots 1 through 5 and 7 and 8 shall not be subject to the provision of subsections 380.06(19), Florida Statutes. However, all proposed modifications to Lot 6 shall be reviewed to determine if the proposed modification or modifications are substantial deviation under the criteria set forth in subsection 380.06(19) Florida Statutes. In making the determination of whether such

proposed modification exceeds the criteria set forth in subsection 380.06(19), Florida Statutes, the County, the Department of Community Affairs, and the East Central Florida Regional Planning Council shall consider and count toward substantial deviation criteria the cumulative changes that have been approved for Lots 1 through 5 and 7 and 8 subsequent to the date hereof.

10. To the extent required to comply with the consistency provisions of the Growth Management Act, the following additional conditions shall be added to the conditions of approval:

- a. Uses limited to that stated in Policy 1.1.3 of the International Drive Activity Center Plan. Furthermore, Policy 1.1.6 of the International Drive Activity Center Plan dealing with prohibited uses shall apply to development approvals.
- b. If the housing linkage program is in place prior to development plan approval, development of non-residential development shall be conditioned upon the development of residential units within the area designated as Activity Center Residential on the Future Land Use Map.
- c. The Development Guidelines of the International Drive Activity Center shall apply to the subject property if they are established prior to building permit submittal, including but not limited to lighting standards, sign regulations, open space regulations, trip reduction program, access management controls, transit access design standards, building orientation and location of parking lots.
- d. The property owner shall be required to participate in a property owner's association upon its creation.
- e. The property owner understands and concedes that the property is located within the International Drive Activity Center as adopted by the Orange County Comprehensive Policy Plan and as such development on the property shall be subject to:
  - (1) A funding mechanism, such as but not limited to a Municipal Service Benefit Unit (MSBU) and/or Municipal Service Taxing Unit (MSTU), for financing underground utilities and lighting along major roads, including

**International Drive;**

- (2) A funding mechanism, such as but not limited to a MSTU and/or MSBU for financing maintenance of landscaping on public rights-of-way, including International Drive.
  - (3) Participation in a mass transit utility district or some other mechanism established to fund the acquisition, construction, and operation of the transportation system.
- f. A 15 foot wide transit easement along Apopka-Vineland shall be included in the development plan for Lot 6.
  - g. The development plan shall provide for interconnection of adjacent developments either by cross-access easement or public right-of-way.
  - h. Electrical distribution lines shall be underground.
  - i. Participation in a shuttle service connecting area attractions, major transportation centers and on-site development shall be required.
- 11. The developer shall obtain wastewater and water service from Orange County subject to County rate resolutions and ordinances. No construction plans will be approved until capacity has been obtained.

**IV. LOCAL MONITORING**

1. Orange County shall be responsible for monitoring the development and enforcing the provisions of this Development Order. The County shall not issue any permits or approvals or provide any extension of services if the Developer fails to act in substantial compliance with this Development Order.

2. The established review and approval process for review of development pursuant to Chapter 38, Zoning, Orange County Code, the Orange County Subdivision Regulations, Orange County Code, Chapter 34, and the Site Development Ordinance, Orange County Code, Chapter

30, Article VIII constitutes monitoring procedures for assuring compliance with this Development Order as specified in Section 380.06 (15)(c)1, Florida Statutes (Supp. 1992). The local official responsible for assuring compliance by the Developer with this Development Order shall be the County Administrator of Orange County or his designee.

V. COMPLIANCE DATES

The Developer has, as of the date hereof, either commenced and/or completed physical development of five percent (5%) of the Project, or shall commence physical development of five percent (5%) of the Project within three (3) years after the effective date of this Development Order. Five percent (5%) is deemed to mean land uses situated anywhere on the Property which generate 835.65 external ADTs. Otherwise, this Development Order shall expire. The Developer and Orange County estimate that approximately ten (10) years will be required to complete the development described in this Development Order. Accordingly, this Development Order shall terminate no later than December 31, 2003.

VI. DOWN ZONING, UNIT DENSITY REDUCTION OR INTENSITY REDUCTION

Until ten (10) years from the effective date of this Development Order, the approved development described in this Development Order shall not be subject to down zoning, unit density reduction or intensity reduction unless the County can demonstrate that substantial changes in the conditions underlying the approval of this Development order have occurred, or that this Development

Order was based upon substantially inaccurate information provided by the developer, or that the change is clearly established by the County to be essential to the public health, safety and welfare.

**VII. ANNUAL REPORTING REQUIREMENT**

1. The Developer shall submit an annual report on or before each anniversary date of the effective date of this Development Order throughout the term of this Development Order. The annual report shall be submitted on the appropriate form to Orange County, care of the Planning Department; the ECFRPC; the Florida Department of Community Affairs; the Bureau of Land and Water Management; and all affected permit agencies. The contents of the annual report shall comply with the relevant conditions of approval of this Development Order, Section 380.06(18) Florida Statutes (Supp. 1992), and Rule 9J-2.025(7), Florida Administrative Code, including at a minimum the following:

A. 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 next year;

B. A summary comparison of development activity proposed and actually conducted for the year;

C. Identification of undeveloped tracts of land, other than individual single-family lots, that have been sold to a separate entity or developer;

D. Identification and intended use of lands purchased, leased or optioned by the Developer adjacent to the original DRI site since the Development Order was issued;

E. A specific assessment of the Developer's and Orange County's compliance with each individual condition of approval contained in the DRI Development Order and the commitments which are contained in the ADA and which have been identified by Orange County, the ECFRPC, or the Department of Community Affairs as being significant;

F. Any known incremental DRI applications for development approval or requests for a substantial deviation determination that were filed in the reporting year and to be file during the next year;

G. An indication of a change, if any, in local government's jurisdiction for any portion of the development since this Development Order was issued.

H. A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;

I. A statement of all persons have been sent copies of the annual report in conformance with Subsections 380.06(15) and (18), Florida Statutes (Supp. 1992); and,

J. A copy of any recorded notice of the adoption of a development order or the subsequent modifications of an adopted development order that was recorded by the Developer pursuant to Subsection 380.06(15)(f), Florida Statutes (Supp. 1992).

2. If Orange County does not receive the annual report or receives notification that the ECFRPC, the Florida Department of Community Affairs, the bureau of Land and Water Management, or any



affected permit agency has not received a report, the County shall request in writing that the Developer submit the report within thirty (30) days. The failure to submit the report after thirty (30) days shall result in the temporary suspension of this Development Order by the County.

VIII. SUBSTANTIAL DEVIATIONS

1. No change shall be made to this Development Order or to the approved land uses, unless and until Orange County has approved and authorized the change.

2. The Developer shall fully comply with Section 380.06(19), Florida Statutes (Supp. 1992), regarding "substantial deviations."

IX. RECORDING

Notice of the adoption of this Development Order or any subsequent modification of this Development Order shall be recorded by the Developer in accordance with Section 28.222, Florida Statutes (1991), with the Clerk of the Circuit Court for Orange County, Florida, at the Developer's expense, immediately after the effective date of this Development Order or any subsequent modifications of this Development Order in compliance with Section 380.06(15)(f), Florida Statutes (Supp. 1992). The recording of this notice shall not constitute a lien, cloud, or encumbrance on the property, or actual or constructive notice of any such lien, cloud, or encumbrance on the property, or actual or constructive notice of any such lien, cloud, or encumbrance.

X. DEVELOPER'S CONSENT

The Developer and the property owner, by executing this

Development Order, acknowledge that this Development Order is binding upon the Property, and that the conditions of approval contained herein apply to and control all further development of the Property, and further that the conditions of approval run with the land are therefore applicable to and shall be complied with by any subsequent purchaser, owner, or assignee of any portion of the Property as described in Exhibit "A".

XI. EFFECTIVE DATE


This Development Order shall take effect upon transmittal by first class U.S. Mail to ECFRPC, the Florida Department of Community Affairs, and the Bureau of Land and Water Management.

ADOPTED THIS 22nd DAY OF December, 19 92.

ORANGE COUNTY, FLORIDA

BY: Bill Dwyer  
For the County Chairman

DATE: APR 27 1993

  
WITNESSED: Martha G. Haynie, Comptroller  
Clerk to the Board  
of County Commissioners  
BY: Paul H. Chipok  
Deputy Clerk

FOR THE USE AND RELIANCE  
OF ORANGE COUNTY ONLY.  
APPROVED AS TO FORM  
April 13 1993

Paul H. Chipok  
Paul H. Chipok  
Assistant County Attorney

OR4563 PG 1492

TCR Orlando II Limited Partnership,  
a Texas Limited Partnership

BY: TC Residential North Florida,  
Inc., a Texas Corporation

By: *Douglas A. Hoeksema*  
as President

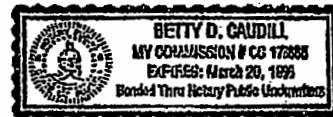
DATE: 3/19/93

STATE OF FLORIDA)  
COUNTY OF ORANGE)

SWORN to and subscribed freely and voluntarily for the  
purposes therein expressed before me by Douglas A. Hoeksema, known  
to me to be the person described in and who executed the foregoing  
on behalf of \_\_\_\_\_, this 19th day of March,  
1993.

WITNESS my hand and official seal in the County and State last  
aforesaid this 19th day of March, 1993.

*Betty D. Caudill*  
Notary Public  
My Commission Expires:



OR4563 PG1493

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE VININGS AT CYPRESS POINTE DRI/PD**

Lots 1 through 8, inclusive, and Tracts A, B, C, and D,  
the Vinings at Cypress Pointe, according to the plat  
thereof recorded in Plat Book 23, Pages 145 through 147,  
Public Records of Orange County, Florida.

**RECORDED & RECORD VERIFIED**

*Martha A. Haynes*  
County Comptroller, Orange Co., FL

\pud\daleford

OR4563 PG1494

**EXHIBIT "E"**

**ORDER APPROVING RESCISSION OF  
THE DEVELOPMENT ORDER FOR THE VININGS AT CYPRESS POINTE  
DEVELOPMENT OF REGIONAL IMPACT**

THIS ORDER APPROVING RESCISSION OF THE DEVELOPMENT ORDER FOR THE VININGS AT CYPRESS POINTE DEVELOPMENT OF REGIONAL IMPACT AND NOTICE THEREOF is issued by **ORANGE COUNTY**, a political subdivision of the State of Florida (the "County"), whose address is P.O. Box 1393, Orlando, Florida 32802-1393

**FACTUAL BACKGROUND**

1. The original Development Order ("Original Development Order") for The Vinings at Cypress Pointe Development of Regional Impact ("DRI", or "The Vinings at Cypress Pointe DRI") was approved by the Orange County Board of County Commissioners on December 22, 1992, and recorded in Official Records Book 4653, at Pages 1479-1494, inclusive, of the Public Records of Orange County, Florida.
2. On December 22, 1992 the Orange County Board of County Commissioners approved the Development Order for The Vinings at Cypress Pointe Development of Regional Impact, which was subsequently recorded on May 17, 1993 in Official Records Book 4653, at Pages 1479-1494, inclusive, of the Public Records of Orange County, Florida (the "Development Order").
3. Orange County meets the criteria for a "dense urban land area" (DULA) pursuant to Section 380.06(29), Florida Statutes, and is identified as a DULA on the State of Florida list of qualifying communities published by the Florida Department of Economic Opportunity.
4. As a DRI within a DULA, The Vinings at Cypress Pointe DRI is exempt from further DRI review. Pursuant to Section 380.115, Florida Statutes: "[i]f requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies."
5. Amprop Corporation (the "Successor Owner") is the owner of the remaining undeveloped land in The Vinings at Cypress Pointe DRI, being only Lot 8 and a portion of Lot 6 of The Vinings at Cypress Pointe PD (the "Property"). The only undeveloped property which is subject to the terms of the Development Order.
6. An amended Request for Rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact ("Request") dated \_\_\_\_\_, was submitted to Orange County by the Successor Owner, a copy of which is attached hereto as **Exhibit "B"**, and an Amended Request for Rescission of the Development Order was subsequently submitted by the Successor Owner, a copy of which is attached as **Exhibit "B-1"** providing documentation that: (i) the Property is located within the adopted urban service area for Orange County; and (ii) the terms of the Development Order did not impose any mitigation requirements on the Owner of the Property.
7. The Land Use Plan of The Vinings at Cypress Pointe PD will govern future development of the Property.
8. Based on the information contained in the Request and the related pending amendment of The Vinings at Cypress Pointe PD, the County has confirmed that any required mitigation under the Development Order has been completed.
9. Pursuant to Section 380.115(1), Florida Statutes, a change in any Development of Regional Impact guideline or standard does not abridge or modify any vested or other right or duty or obligation

pursuant to any development order or agreement that is applicable to a Development of Regional Impact.

10. The Vinings at Cypress Pointe PD, as amended concurrent with the rescission of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact, will control The Vinings at Cypress Pointe PD development once the DRI Development Order is rescinded. Including future development, or additional development, on Lot 6, 7 and 8 of the PD. The rescission of the DRI Development Order would be concurrent with approval of the pending revisions (Project No. CDR-16-03-01-105) to the Cypress Pointe Land Use Plan (PD) and preliminary subdivision plans of The Vinings at Cypress Pointe PD, the entitlements of Lots 6, 7 and 8 (with Lot 8 aggregated with Lot 6) will revert to the PD entitlements of the PD existing immediately prior to the approval of the Development of Regional Impact Development Order for The Vinings at Cypress Pointe DRI. No additional entitlements are proposed for the PD, therefore all requested revisions to the PD shall be considered non-substantial.

11. Regarding the revisions to entitlements of The Vinings at Cypress Pointe PD:

- 11.1. At the time of approval of the DRI Development Order for The Vinings at Cypress Pointe Development of Regional Impact, and the corresponding PD amendment, the total then-available retail usage allowed in the PD in Lots 6, 7 and 8 of the PD was 109,026 sf of Retail.
- 11.2. Upon rescission of the DRI Development Order and reversion of the entitlements in the PD to those entitlements which existed immediately prior to the approval of the Development Order for The Vinings at Cypress Pointe DRI, the entitlements for Lot 6, 7 and 8 of the PD (with Lot 8 aggregated with Lot 6) shall be as follows:

	Allowed		Existing	
Lot 6 (Aggregated with Lot 8)				
Retail	79,201 sf		67,649 sf	
Hotel		170 rms		170 rms
Lot 7				
Retail	6,807 sf		6,807 sf	

- Hotel Conversion:  $170 \text{ rms} \times 0.1354 = 23,649 \text{ sf}$
- Lot 6:  $109,026 \text{ sf allowed} - 23,018 \text{ sf (hotel)} - 6,807 \text{ sf (lot 7 existing)} = 79,201 \text{ sf}$

Therefore, the entitlements shall revert back to the entitlements existing in The Vinings at Cypress Pointe PD immediately prior to the approval of the Development Order for The Vinings at Cypress Pointe Development of Regional Impact on December 22, 1992, which are the current remaining entitlements for Lots 6, 7 and 8 (Lot 8 being aggregated with Lot 6) in the DRI, which are 11,552 sf of Retail.

**RESCISSION OF THE DEVELOPMENT ORDER**

Based on the information contained herein, Orange County hereby rescinds the Development Order for The Vinings at Cypress Pointe Development of Regional Impact.

The Vinings at Cypress Pointe PD, as may be amended from time to time, shall govern development of the Property which was subject to the Development Order for The Vinings at Cypress Pointe Development of Regional Impact prior to this Order.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

**ORANGE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Clerk to the  
Board of County Commissioners  
Print Name: \_\_\_\_\_