



## Interoffice Memorandum

September 7, 2017

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

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

CONTACT PERSON: David Jones, P.E., CEP, Manager  
Environmental Protection Division  
(407) 836-1405

SUBJECT: September 19, 2017 – Public Hearing  
Brownfield Area Applications for Brixton Landing, Ltd. and  
Wellington Park, Ltd.

### **Reason for Public Hearing**

Two applicants, Brixton Landing, Ltd. ("Brixton") and Wellington Park, Ltd. ("Wellington"), have requested that their properties be designated as brownfield areas (BFAs) to be known as Brixton Landing Green Reuse Area: ROCC (Redeveloping Orange County Communities) and Wellington Park Green Reuse Area: ROCC, respectively.

The proposed Brixton BFA includes parcel ID: 15-21-28-0000-00-015 and is located at 442 E. 13<sup>th</sup> Street, Apopka within unincorporated Orange County. The proposed Wellington BFA property consists of parcel ID: 11-21-28-0000-00-007 and is located at 1225 Apley Circle, Apopka. Property location maps are provided in the proposed resolutions (Attachments A and B). The subject properties are located in Orange County Commission District 2.

In accordance with section 376.80(2)(c), Florida Statutes (F.S.), which covers requests for BFA designation by persons other than a governmental entity, this request is being brought to the Board of County Commissioners (Board) for consideration.

### **Background**

#### *Receipt and Initial Review of Applications*

The applications requesting BFA designation were submitted to the Environmental Protection Division (EPD) by the applicants' agent on December 9, 2016 for Brixton and December 14, 2016 for Wellington, respectively. (Attachments C and D)

An application review conference call occurred on January 6, 2017 between EPD staff and representatives from the applicants' authorized agent, The Goldstein Environmental Law Firm, P.A. (Goldstein Firm). Following the call, a request for additional information was submitted by EPD staff to the Goldstein Firm. On January 9, 2017 the supplemental information was received through email correspondence. (Attachment E)

### *Property History and Environmental Site Assessments*

- In early 2016, both the Brixton and Wellington properties consisted of vacant, mostly vegetative, land.
- According to the Phase I Environmental Site Assessment (ESA), the north portion of the Brixton property was developed as a citrus grove from at least the late 1930s through the 1980s. The ESA noted that "Typically, citrus grove operations include the use of pesticides, herbicides and fertilizers which may contain hazardous materials, including arsenic . . . While the FDEP does not require the cleanup of agriculturally applied compounds, the presence of these compounds in excess of the exposure concentrations may present a future liability on the redeveloped property. Although not a recognized environmental condition, it may be prudent to complete soil sampling to determine if these compounds are present in concentrations that exceed the State of Florida cleanup criteria prior to any future redevelopment."
- Based on a review of available aerial photographs, the Phase I ESA indicated that the Wellington property appears to have been undeveloped with trees and low lying vegetation at least back to 1947 and it appears to have been operated as a nursery from 1969 to 2006. The ESA indicated that "Past use of the subject property as a nursery appears as a likely recognized environmental condition (REC). Nurseries typically store, handle, and over use pesticides, herbicides and fertilizers which may contain hazardous materials, including arsenic. The proper storage and handling of approved chemicals do not constitute a REC. However, the over use or a release from the storage and handling of these agricultural compounds has been shown, at times, to leave these agricultural compounds in the soil above the recommended exposure levels established by the Florida Department of Environmental Protection. Based on the environmental assessment reports (provided by the owner) and the states approved resolution (to the dieldrin release), the likelihood of the subject property being adversely impacted appears low." In addition, the ESA noted that the facility operated as a non-retail fuel user that maintained an Underground Storage Tank that was removed by January 1992 and three aboveground tanks that were removed by June 2005. Petroleum releases to the environment were documented in 1992 and 1994, but the ESA indicated that Site Rehabilitation Completion Orders were issued for both releases; therefore, "the likelihood of the subject property being adversely impacted appears low." The landscaping nursery operation appeared to no longer be present after 2006 and by 2007 all structures appear to have been razed.

### *Redevelopment Plans*

The developer of both properties is Jonathan Wolf with Wendover Housing Partners, LLC. Both properties are planned for residential apartment complexes to be used for affordable housing. Both projects have received the minimum local match for the state tax credit program, plus Wellington received a variance to the last Board-approved school impact fee increase.

The Brixton property is completely built and fully leased. It has 80 units with 72 units allocated for residents 55 and older whose income does not exceed 65% of area median income. The Wellington property is 80% complete. It is a 120-unit affordable housing development with 36 one-bedroom, 66 two-bedroom, and 18 three-bedroom units. The facility is anticipating to start accepting lease applications in November 2017.

Normally, applications for BFA designations are received prior to redevelopment of a property. Since the applications were submitted relatively late in the development process, EPD initiated a conference call between representatives of EPD, the County Attorney's Office, and the Goldstein Firm on January 31, 2017. During the call, staff questioned the timing of the submission and requested that the Goldstein Firm provide clarification on the intent for the BFA designation since it did not seem that negotiating a Brownfield Site Rehabilitation Agreement (BSRA) with the Florida Department of Environmental Protection (FDEP) was immediately expected. The Goldstein Firm confirmed that while the Florida Brownfield Redevelopment Act (the "Act") does not specify application timeframes for designation of BFAs, their client met the requirements for the designation and expected certain incentives and benefits that were not dependent on the execution of a BSRA.

On February 16, 2017, the Goldstein Firm provided a written response to staff's request which outlined three specific incentives their client was planning to seek: lender liability protection, sales tax refund on eligible materials for affordable housing redevelopment, and future BSRA accessibility.

#### *Community Meeting, First Public Hearing, and Additional Correspondence*

The Goldstein Firm held a community meeting on July 10, 2017 at the First United Methodist Church in Apopka. EPD staff and Commissioner Nelson were present during the meeting.

On July 14, 2017, the Goldstein Firm provided information through email correspondence indicating they had a deadline for the sales tax refund for Brixton of September 26, 2017 and requested that staff ensure that the public hearing for the Board be conducted before that date.

The first public hearing was held at the John Bridges Community Center on August 15, 2017. A teleconference between County staff and the Goldstein Firm was held on August 18 to further discuss the timing of the applications and the issue of the perception of contamination as a hindrance to development. As was noted above, the applications were submitted much later in the redevelopment process than is typical. Initially, this raised concerns as to whether or not the proposed BFA designations met the intent of the Act. The Act defines Brownfield sites as "real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination." Staff initially questioned whether complications of redevelopment and perceptions of contamination could be maintained as applicable conditions once it was determined that no environmental contamination requiring cleanup was necessary and redevelopment was well underway or almost completed. However, the Act does not address timing required for submission of BFA applications. In addition, perceived environmental contamination is not defined in the Act and is an inherently subjective concept. Between August 18 and 24, 2017, the Goldstein Firm submitted supplemental information with respect to each property through email correspondence. As part of that correspondence, included as Attachment F, are affidavits from the developer attesting to how the perception of contamination at both projects complicated redevelopment, reuse, and expansion of the subject properties.

### **Benefits of Brownfield Designation**

The Act is intended to reduce public health and environmental hazards on existing commercial and industrial sites to foster their use and reuse as sources of employment, housing, recreation, and open space areas. The Act establishes incentives to encourage responsible persons to voluntarily develop and implement cleanup plans.

The following is a listing of incentives that become available upon adoption of a resolution designating a BFA:

- Job creation bonus refund (up to \$2,500 per full-time job created with benefits under the State of Florida Brownfields Redevelopment Program) and
- State loan guarantees: up to 50% on Brownfield sites and up to 75%, if the property is redeveloped with affordable housing.

The following additional incentives become available upon entry into a BSRA:

- Sales tax credit on building materials purchased for the construction of an affordable housing project or mixed-use affordable housing project;
- 50% voluntary cleanup tax credit (VCTC); 25% additional VCTC if the property is redeveloped with affordable housing;
- Makes available risk-based cleanup criteria using Chapter 62-780, Florida Administrative Code (F.A.C.) and Chapter 62-777, F.A.C.;
- Brownfield Federal Tax Incentives: allows environmental cleanup costs to be fully deductible in the same year they occur;
- Cleanup liability protection;
- Lender liability protection; and
- Federal grants/loans available for cleanup (if applicable).

Based on supplemental information received from the Goldstein Firm on behalf of the applicants, dated February 16, 2017, specific benefits being sought on both proposed BFAs are the following (note that the summary below is an excerpt from the response received):

- **Lender liability protection**, “existing and potential lenders are provided statutory immunity for environmental liability pursuant to §376.82(4)(b), F.S.”
- **Sales tax refund on eligible materials for affordable housing redevelopment**, “under §212.08, F.S., the Florida Department of Revenue (“FDR”) administers a powerful financial incentive for the construction of affordable housing projects in the form of a 100% sales tax refund on eligible construction materials”
- **BSRA Accessibility** – “having the designation in place allows for swift negotiation and execution of a BSRA, which would then immediately lock into place developer-specific liability protection and the ability to obtain a second, important financial incentive – state corporate income tax credits for eligible costs of contamination assessment and remediation.”

**Criteria for consideration of BFA designation under Section 376.80(2)(c), F.S.**

The Act indicates that when a BFA is proposed by persons other than a local government, the applicant must establish that they meet each of the following five criteria. The criteria and responses from the applicants' authorized agent are noted below (note that in some cases the information below is an excerpt of what was provided by the Goldstein Firm).

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the site.
  - *"Brixton Landing satisfies this criterion in that it currently owns the Subject Property and has agreed to rehabilitate it . . ."* Redevelopment has been completed for Brixton.
  - *"Wellington Park meets this criterion in that it currently owns the Subject Property by virtue of a Special Warranty Deed . . . Wellington Park has additionally agreed to rehabilitate and redevelop the Subject Property."* Redevelopment has been 80% completed for Wellington.
2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions . . . However, the job creation requirement does not apply the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in section 420.0004 . . . .
  - *"Brixton Landing satisfies this criterion in that the Project will result in significant economic productivity of the area. The budget for rehabilitation and redevelopment is approximately \$15.5 million, which is being spent in part on local labor, contractors, consultants, construction materials, furnishings, infrastructure improvements, and impact fees. Because all of the units at the Subject Property will be rented to Income Eligible Households under the Low Income Housing Tax Credit Program, rehabilitation and redevelopment of the subject property will 'provide affordable housing as defined in s. 420.0004.' Accordingly, the employment creation threshold of at least 5 new permanent jobs is not applicable to the Project. Notwithstanding the aforementioned exemption, approximately 3 new permanent jobs will be created specifically for the Project to operate the Subject Property."*
  - *"Wellington Park satisfies this criterion in that the Project will result in significant economic productivity of the area. The budget for rehabilitation and redevelopment is approximately \$22 million, which is being spent in part on local labor, contractors, consultants, construction materials, furnishings, infrastructure improvements, and impact fees. Because all of the units at the Subject Property will be rented to Income Eligible Households under the Low Income Housing Tax Credit Program, rehabilitation and redevelopment of the subject property will 'provide affordable housing as defined in s. 420.0004.' Accordingly, the employment creation threshold of at least 5 new permanent jobs is not applicable to the Project. Notwithstanding the aforementioned exemption,*

*approximately 5 new permanent jobs will be created specifically for the Project to operate the Subject Property."*

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations
  - o *"Brixton Landing satisfies this criterion in that the Subject Property is located in Orange County's Low-Medium Density Residential Future Land Use Designation of the Comprehensive Plan, which allows up to 10 dwelling units per acre of land . . . In addition, the Subject Property is located in the R-3 Multiple-Family Dwelling District, which permits residential uses at high population densities . . . This consistency and permissibility is also reflected in the enclosed Orange County Building Permits . . ."*
  - o *"Wellington Park satisfies this criterion in that the Subject Property is located in Orange County's Low-Medium Density Residential Future Land Use Designation of the Comprehensive Plan, which allows up to 10 dwelling units per acre of land . . . In addition, the Subject Property is located in the Planned Development District, which permits planned residential communities . . . The Subject Property's redevelopment as described above is thus an allowable use in such designations. This consistency and permissibility is also reflected in, and effectuated by the enclosed Florida Housing Finance Corporation Local Government Verification of Status of Site Plan Approval for Multifamily Developments, signed by Orange County's Chief Planner . . ."*
4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subparagraph must be posted in the affected area.

A notice of the first public hearing was published on August 6, 2017 in the *Orlando Sentinel* and notices were mailed to property owners within a 500-foot buffer of the proposed BFAs. In addition, notices of the meeting were posted on the properties proposed for BFA designation. On August 15, 2017, Orange County held a public hearing near the proposed areas to be designated in accordance with section 376.80(1)(c)4.a., F.S. During the first public hearing, information on the Florida Brownfields Redevelopment Program was presented and copies of the proposed resolutions and area designation maps of the proposed Brixton Landing Green Reuse Area: ROCC and Wellington Park Green Reuse Area: ROCC were provided. In addition, a representative from the Goldstein Firm was present to discuss how the proposed BFAs met the criteria for BFA designation listed in section 376.80(2)(c), F.S. In addition, the applicants' agent held a community meeting near the areas proposed for designation prior to the first public meeting organized by County staff.



5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site.

- *Brixton Landing – “The total capital budget of \$15.5 million for the Project is fully funded. See Wells Fargo Building Loan Agreement . . . See Florida Community Loan Fund Loan Agreement . . . Based on the current financial position of Brixton Landing, its affiliate, a proven history of leveraging assets with other capital sources, an impressive track record of success, and a staff of highly experienced and sophisticated development officials, Brixton Land has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.”*
- *Wellington Park – “The total capital budget of \$22 million for the Project is fully funded. See Wells Fargo Letter of Interest . . . See Neighborhood Lending Partners, Inc. Letter of Interest . . . Based on the current financial position of Wellington Park, its affiliate, a proven history of leveraging assets with other capital sources, an impressive track record of success, and a staff of highly experienced and sophisticated development officials, Wellington Park has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.”*

### **Staff Recommendations**

Staff has reviewed the applications and additional information provided by the applicant. Based on an evaluation of the criteria in Section 376.80(2)(c), F.S., staff recommends approval of both requests for BFA designations.

*For proposed Brixton Landing Green Reuse Area: ROCC*

**ACTION REQUESTED:** Approval of a Resolution of the Orange County Board of County Commissioners regarding designating certain land within unincorporated Orange County Parcel ID 15-21-28-0000-00-015, as the Brixton Landing Green Reuse Area: ROCC (Redeveloping Orange County Communities) and as a brownfield area for the purpose of environmental remediation, rehabilitation, and economic development. District 2

*For proposed Wellington Park Green Reuse Area: ROCC*

**ACTION REQUESTED:** Approval of a Resolution of the Orange County Board of County Commissioners regarding designating certain land within unincorporated Orange County Parcel ID 11-21-28-0000-00-007, as the Wellington Park Green Reuse Area: ROCC (Redeveloping Orange County Communities) and as a brownfield area for the purpose of environmental remediation, rehabilitation, and economic development. District 2

# Attachment A



# RESOLUTION

*of the*  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**  
*regarding*

**DESIGNATING CERTAIN LAND WITHIN  
UNINCORPORATED ORANGE COUNTY CONSISTING OF  
PARCEL ID 15-21-28-0000-00-015 AS THE BRIXTON LANDING  
GREEN REUSE AREA: ROCC (REDEVELOPING ORANGE  
COUNTY COMMUNITIES) AND AS A BROWNFIELD AREA  
FOR THE PURPOSE OF ENVIRONMENTAL REMEDIATION,  
REHABILITATION AND ECONOMIC DEVELOPMENT**

**Resolution No. \_\_\_\_\_**

WHEREAS, the Brownfields Redevelopment Act, (the "Act"), Sections 376.77 - 376.85, Florida Statutes, authorizes and provides for designation by resolution, at the request of the property owner, of certain lands as a "Brownfield Area," and for the corresponding provision of environmental remediation, rehabilitation, and economic development for such areas; and

WHEREAS, Brixton Landing, Ltd. ("Brixton"), the property owner of property parcel ID: 15-21-28-0000-00-015; located at 442 E. 13<sup>th</sup> Street, within unincorporated Orange County, has requested that the property be designated as the BRIXTON LANDING GREEN REUSE AREA: ROCC (Redeveloping Orange County Communities), more particularly described in Exhibit "A," attached hereto and incorporated by reference herein, and as a brownfield area; and

WHEREAS, on August 15, 2017 and September 19, 2017, public hearings were held near the area to be designated and at the Orange County Board of County Commissioners (the "Board"), respectively, to provide an opportunity for public input on the size of the area; the objectives for rehabilitation; job opportunities and economic developments anticipated; neighborhood residents' considerations; and other relevant local concerns in accordance with Section 376.80, Florida Statutes; and

WHEREAS, the Board has reviewed the requirements for designation set forth in Section 376.80(2)(c), Florida Statutes, and based on the representations of Brixton, has determined that the proposed area qualifies for designation as a Brownfield Area because the following requirements have been satisfied:

1. The property owner, Brixton, has requested the designation and has agreed to rehabilitate and redevelop the potential brownfield site;
2. The job creation requirement of Section 376.80(2)(c)2., Florida Statutes does not apply to rehabilitation and redevelopment of this brownfield site

because it will provide affordable housing as defined in Section 420.0004, Florida Statutes;

3. The redevelopment of the proposed brownfield site is consistent with the Orange County 2010-2030 Comprehensive Policy Plan and is a permissible use under the County's land development regulations;
4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to Section 376.80(1)(c), Florida Statutes, and Brixton has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation; and
5. Brixton has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site; and

WHEREAS, the Board wishes to notify the Florida Department of Environmental Protection ("FDEP") of its decision to designate a Brownfield Area for remediation, rehabilitation, and economic development for the purposes set forth in the Act; and

WHEREAS, the procedures set forth in Section 376.80(1), Florida Statutes, including the notice and public hearing requirements set forth in Sections 125.66, 125.66(4)(b)1., and 125.66(4)(b)2., Florida Statutes, have been complied with.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

**Section 1.** The recitals and findings set forth in the Preamble to this Resolution are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

**Section 2.** Upon application by Brixton, the property described in Exhibit "A," attached hereto and incorporated herein by reference, which is located within and coincides with the boundaries of that portion located in the unincorporated area of the County, less any real property for which a property owner within the area depicted in Exhibit "A" requests in writing to have his or her property removed from the designation provided for herein, is hereby designated as the "Brixton Landing Green Reuse Area: ROCC (Redeveloping Orange County Communities)" which shall hereafter be known as the "BRIXTON LANDING GREEN REUSE AREA: ROCC" and as a brownfield area for

environmental remediation, rehabilitation, and economic development as set forth in the Act, under the following terms and conditions:

a. Pursuant to Section 376.80(3), Florida Statutes, Brixton shall be the "person responsible for the brownfield site rehabilitation" as that term is defined in Section 376.79(15), Florida Statutes.

b. The designation of the brownfield area by this Resolution does not in any sense render Orange County or its Board responsible for any costs or liabilities associated with site remediation, rehabilitation, economic development, or source removal, as those terms are defined in the Act.

c. Nothing in this Resolution shall be deemed to prohibit, limit, or amend the authority and power of the Board, otherwise legally available, to designate any other property or properties as a brownfield site or brownfield area, or to modify, amend, or withdraw the designation as established herein.

**Section 3.** In accordance with Section 376.80(1), Florida Statutes, the Board hereby directs the Orange County Environmental Protection Division to notify the FDEP of Orange County's decision to designate this brownfield area for the purposes of remediation, rehabilitation, and economic development.

**Section 4.** This Resolution shall take effect upon the date of its adoption.

ADOPTED THIS \_\_\_\_\_ DAY OF September, 2017.

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Teresa Jacobs  
Orange County Mayor

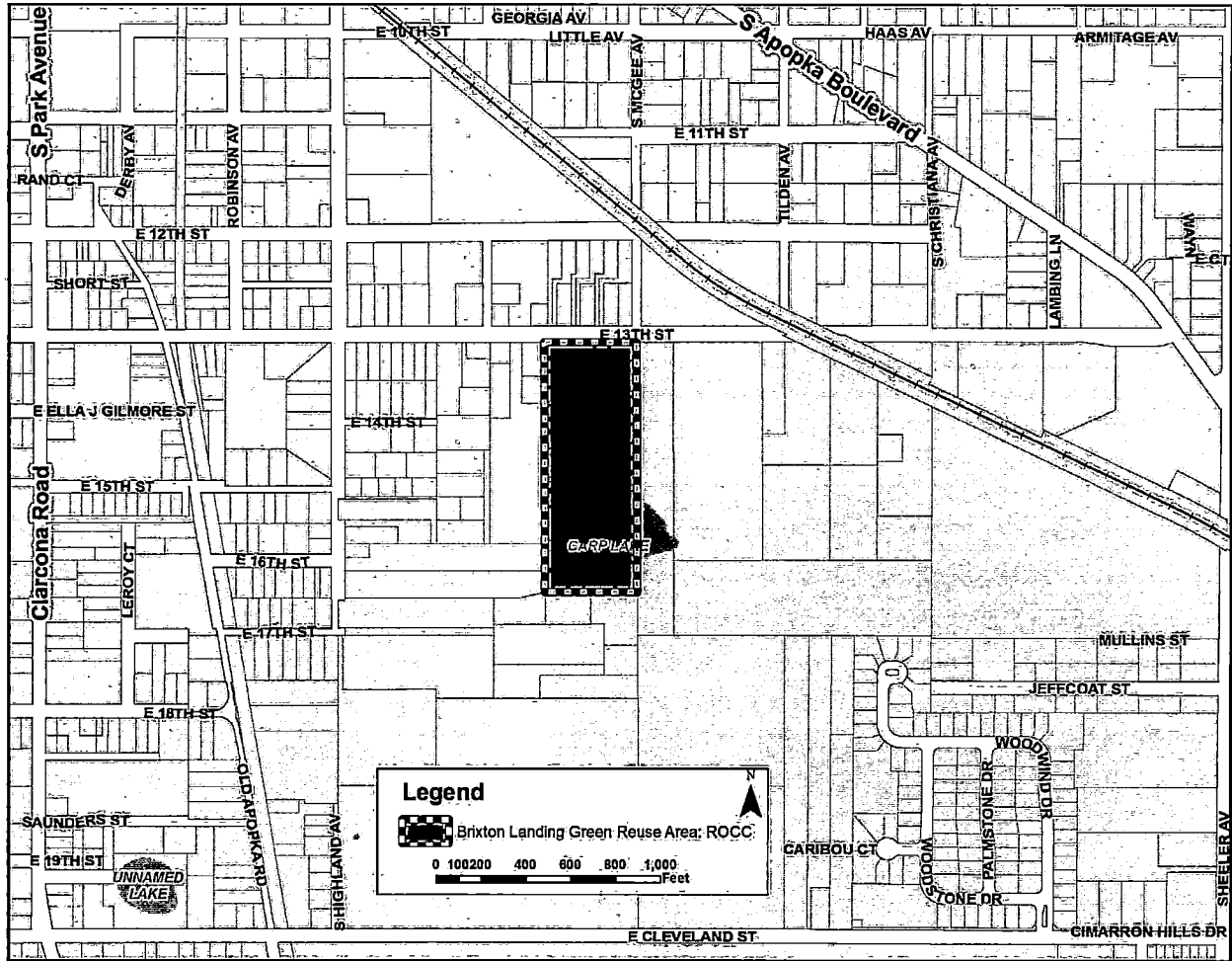
ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

## EXHIBIT A

### Proposed Brownfield

Parcel ID: 15-21-28-0000-00-015



# Attachment B

# RESOLUTION

*of the*  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**  
*regarding*  
**DESIGNATING CERTAIN LAND WITHIN  
UNINCORPORATED ORANGE COUNTY CONSISTING OF  
PARCEL ID 11-21-28-0000-00-007 AS THE WELLINGTON  
PARK GREEN REUSE AREA: ROCC (REDEVELOPING  
ORANGE COUNTY COMMUNITIES) AND AS A BROWNFIELD  
AREA FOR THE PURPOSE OF ENVIRONMENTAL  
REMEDICATION, REHABILITATION AND ECONOMIC  
DEVELOPMENT**

**Resolution No. \_\_\_\_\_**

WHEREAS, the Brownfields Redevelopment Act, (the "Act"), Sections 376.77 - 376.85, Florida Statutes, authorizes and provides for designation by resolution, at the request of the property owner, of certain lands as a "Brownfield Area," and for the corresponding provision of environmental remediation, rehabilitation, and economic development for such areas; and

WHEREAS, Wellington Park, Ltd. ("Wellington"), the property owner of property parcel ID: 11-21-28-0000-00-007; located at 1225 Apley Circle within unincorporated Orange County, has requested that the property be designated as the WELLINGTON PARK GREEN REUSE AREA: ROCC (Redeveloping Orange County Communities), more particularly described in Exhibit "A," attached hereto and incorporated by reference herein, and as a brownfield area; and

WHEREAS, on August 15, 2017 and September 19, 2017, public hearings were held near the area to be designated and at the Orange County Board of County Commissioners (the "Board"), respectively, to provide an opportunity for public input on the size of the area; the objectives for rehabilitation; job opportunities and economic developments anticipated; neighborhood residents' considerations; and other relevant local concerns in accordance with Section 376.80, Florida Statutes; and

WHEREAS, the Board has reviewed the requirements for designation set forth in Section 376.80(2)(c), Florida Statutes, based on the representations of Wellington, and has determined that the proposed area qualifies for designation as a Brownfield Area because the following requirements have been satisfied:

1. The property owner, Wellington, has requested the designation and has agreed to rehabilitate and redevelop the potential brownfield site;
2. The job creation requirement of Section 376.80(2)(c)2., Florida Statutes does not apply to rehabilitation and redevelopment of this brownfield site



because it will provide affordable housing as defined in Section 420.0004, Florida Statutes;

3. The redevelopment of the proposed brownfield site is consistent with the Orange County 2010-2030 Comprehensive Policy Plan and is a permissible use under the County's land development regulations;
4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to Section 376.80(1)(c), Florida Statutes, and Wellington has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation; and
5. Wellington has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site; and

WHEREAS, the Board wishes to notify the Florida Department of Environmental Protection ("FDEP") of its decision to designate a Brownfield Area for remediation, rehabilitation, and economic development for the purposes set forth in the Act; and

WHEREAS, the procedures set forth in Section 376.80(1), Florida Statutes, including the notice and public hearing requirements set forth in Sections 125.66, 125.66(4)(b)1., and 125.66(4)(b)2., Florida Statutes, have been complied with.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

**Section 1.** The recitals and findings set forth in the Preamble to this Resolution are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

**Section 2.** Upon application by Wellington, the property described in Exhibit "A," attached hereto and incorporated herein by reference, which is located within and coincides with the boundaries of that portion located in the unincorporated area of the County, less any real property for which a property owner within the area depicted in Exhibit "A" requests in writing to have his or her property removed from the designation provided for herein, is hereby designated as the "Wellington Park Green Reuse Area: ROCC (Redeveloping Orange County Communities)" which shall hereafter be known as the "WELLINGTON PARK GREEN REUSE AREA: ROCC" and as a brownfield area for

environmental remediation, rehabilitation, and economic development as set forth in the Act, under the following terms and conditions:

a. Pursuant to Section 376.80(3), Florida Statutes, Wellington shall be the "person responsible for the brownfield site rehabilitation" as that term is defined in Section 376.79(15), Florida Statutes.

b. The designation of the brownfield area by this Resolution does not in any sense render Orange County or its Board responsible for any costs or liabilities associated with site remediation, rehabilitation, economic development, or source removal, as those terms are defined in the Act.

c. Nothing in this Resolution shall be deemed to prohibit, limit, or amend the authority and power of the Board, otherwise legally available, to designate any other property or properties as a brownfield site or brownfield area, or to modify, amend, or withdraw the designation as established herein.

**Section 3.** In accordance with Section 376.80(1), Florida Statutes, the Board hereby directs the Orange County Environmental Protection Division to notify the FDEP of Orange County's decision to designate this brownfield area for the purposes of remediation, rehabilitation, and economic development.

**Section 4.** This Resolution shall take effect upon the date of its adoption.

ADOPTED THIS \_\_\_\_\_ DAY OF September, 2017.

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Teresa Jacobs  
Orange County Mayor

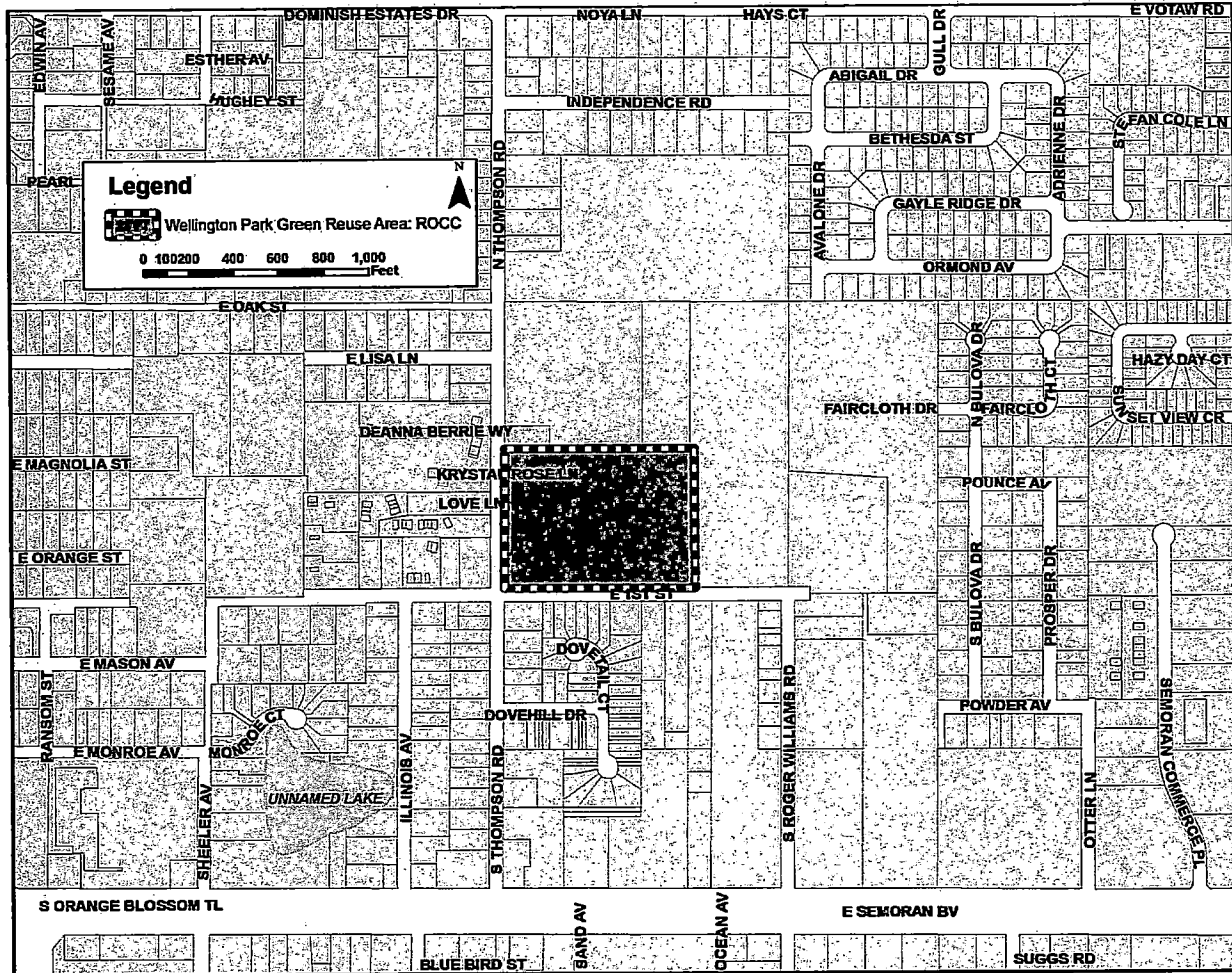
ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

# EXHIBIT A

## Proposed Brownfield

Parcel ID: 11-21-28-0000-00-007



# Attachment C

## Attachment C contains the following Items:

Description	Document date	Comments
Confirmation of Legal Representation	01/09/2017	
Updated BFA OCEPD Application	01/09/2017	New signature date
Brixton BFA Application	12/6/2016	Rec'd 12/09/2015
Exhibit A – Property Legal description	12/6/2016	Property Appraiser's info excluded
Exhibit B – OCEPD Application	12/6/2016	Replaced with 01/19/2017 application - Intentionally excluded to reduce size of staff report
Exhibit C – Green Reuse Area Designation Eligibility Statement	12/6/2016	
Attachment A – F.S. 376.80	12/6/2016	Intentionally excluded to reduce size of staff report
Attachment B – Special Warranty Deed	12/6/2016	Intentionally excluded to reduce size of staff report
Attachment C – Financial spreadsheet	12/6/2016	Intentionally excluded to reduce size of staff report
Attachment D – County Building Permit	12/6/2016	Intentionally excluded to reduce size of staff report
Attachment E – Building Loan Agreement	12/6/2016	Intentionally excluded to reduce size of staff report
Attachment F – Loan Agreement	12/6/2016	Intentionally excluded to reduce size of staff report

**BRIXTON LANDING, LTD.**

**1105 KENSINGTON PARK DRIVE, SUITE 200  
ALTAMONTE SPRINGS, FLORIDA 32714**

**TEL: (407) 333-3233**

**FAX: (407) 333-3919**

January 9, 2017

Mr. Robert Durant  
Environmental Program Supervisor, PRP  
Orange County Petroleum Restoration Program  
3165 McCrory Place, Suite 200  
Orlando, FL 32803

**Re: Confirmation of Legal Representation; Brixton Landing Green Reuse Area – ROCC  
Designation**

Dear Mr. Durant:

This will confirm that The Goldstein Environmental Law Firm, P.A., and its lawyers are authorized to represent Brixton Landing, Ltd., in connection with any aspect of Florida's Brownfields Program, including but not limited to designation of property located at 442 East 13<sup>th</sup> Street, Orange County, FL 32703 (the "Subject Property"), as a Brownfield Area or Green Reuse Area pursuant to §376.80, Florida Statutes, and submittal and execution of any documents, including but not limited to any application materials, necessary to seek a designation or any right or incentive available pursuant to Florida's Brownfields Program.

Thank you for your attention to this matter and your cooperation and assistance with rehabilitation and redevelopment of the Subject Property.

Sincerely,



Jonathan L. Wolf  
Manager of Brixton Landing GP, LLC  
General Partner of Brixton Landing, Ltd.

/jlw

cc: Michael R. Goldstein, Esq., Environmental Counsel to Brixton Landing, Ltd.  
Lindsay C. Walton, Esq., Environmental Counsel to Brixton Landing, Ltd.



**REDEVELOPING ORANGE COUNTY COMMUNITIES (ROCC)  
BROWNFIELDS PROGRAM APPLICATION FOR BROWNFIELDS  
DESIGNATION OR TRANSFER OF BSRA**

Please complete this form to request an area for brownfield designation or transfer of BSRA if a PRFBRS was identified by Resolution. It is important to complete all applicable sections and attach all necessary information. The County Brownfield Program Staff will schedule a Brownfields Pre-application meeting with the applicant/property owner before submitting this application to resolve any questions and go over the Orange County Brownfield designation process. If you should have any questions concerning completion of this application or wish to schedule a Pre-application Meeting, please contact Carlos Gonzalez at [Carlos.Gonzalez2@ocfl.net](mailto:Carlos.Gonzalez2@ocfl.net) or call at 407-836-1425.

**PROPERTY INFORMATION**

Property Name: Brixton Landing

Address: 442 E. 13th Street

City: Orange County State: FL

Zip Code: 32703

Attach map showing location of property.

Property Size (acres/square feet): 10.43 acres

Parcel/Folio Number(s): 15-21-28-0000-00-015

**PROPERTY DESCRIPTION**

Briefly describe property (for example, vacant land, unoccupied): Vacant Residential

Current Zoning/Land Use: R-3 Multiple-Family Dwelling District

Future Land Use Designation: Low-Medium Density Residential

☐ Community Redevelopment Area  
☐ Enterprise Zone  
☐ Empowerment Zone  
☐ Other \_\_\_\_\_

Located within one-half mile of an existing major street? X Yes \_\_\_ No

Public Street Access? X Yes \_\_\_ No

Outside floodplain area? \_\_\_ Yes \_\_\_ No

Please describe all outstanding property taxes due on the property: N/A

### APPLICANT INFORMATION

Name: Brixton Landing, Ltd.

Address: 1105 Kensington Park Drive, Suite 200

City: Altamonte Springs

State: FL

Zip Code: 32714

Phone: 407-333-3233

E-mail: bblakely@wendovergroup.com

Interest in Property: Owner

### CURRENT PROPERTY OWNER(S) (if different from applicant)

Name:

Address:

City:

State:

Zip Code:

Phone:

E-mail:

Legal Status of the Current Property Owner(s):

☐ Individual/Sole Proprietorship

☐ General Partnership

☐ Limited Liability Company

☒ Limited Partnership

☐ Florida Corporation

☐ Out of State Corporation -----State of Incorporation:

### ENVIRONMENTAL STATUS

Briefly describe the nature and geographical extent of contamination by hazardous substances and/or pollutants, if known: \_\_\_\_\_

Please see enclosed application.

Briefly describe any previous or current remedial action:

Please see enclosed application.

If remediation is needed, will you agree to enter into a Brownfield Site Rehabilitation Agreement with the Florida Department of Environment Protection or authorized designee? ☒ Yes ☐ No

Please Attach Phase I or Phase II Environmental Reports, if available.  
Please see enclosed application.

## **DEVELOPMENT PLAN**

General Description of Redevelopment Plans:  
Please see enclosed application.

Attach further illustrative or graphic information, as appropriate.  
Please see enclosed application.

How many new permanent full-time or part-time jobs will the project create after remediation, and what are the job titles?  
Please see enclosed application.

## **FINANCIAL RESOURCES**

Reasonable assurances must be provided by the applicant that sufficient financial resources are available to the applicant to implement and complete a rehabilitation agreement and redevelopment plan.

Attach a statement, as well as any other appropriate information, outlining the financial resources available to the applicant for rehabilitation and redevelopment. Please see enclosed application.

This statement can include financial resources the applicant anticipates to obtain (private loans, equity and assistance) through designation as a Brownfield Area. In short, describe your general financial plan for your project.

Please see enclosed application.

Have you had a Brownfields Pre-application Meeting? ☐ Yes ☒ No (It is required that applicants have a Pre-application Meeting. Please call Carlos Gonzalez, 407-836-1425, for more information.)

## **SERVICES TO BE PROVIDED**

In order to better assist you, please check the type of designation you are requesting and the type of assistance/incentives (check all that apply) you are seeking through this designation:

Type of Designation: ☐ Several parcels ☒ Single parcel ☐ BSRA Transfer (new PRFBSR)

Please describe in greater detail the services you would like to receive as a participant in the Brownfields Program (Optional):  
Please see enclosed application.

What are your goals with respect to the property (for example, sale, redevelopment, or business expansion)?  
Please see enclosed application.

Will the applicant reimburse the County for all costs associated with the Brownfield Designation (i.e. Public Noticing/Meeting Announcement i.e. Orlando Sentinel advertisement, meeting room rental charges etc. (if applicable)? Yes ☒ No ☐

The contents of this application shall be considered public records of the County. The undersigned affirms that the information contained in this application is true and accurate.

**Applicant:**

Signature: [Signature] Date: 1/9/11

Print/Type Name: Michael R. Goldstein

**For Office Use Only:**

Application Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Application Completeness Review Completed By: \_\_\_\_\_

Status of Application: \_\_\_\_\_ Complete \_\_\_\_\_ Incomplete (Specify reason[s] below):

Applicant Contacted on: \_\_\_\_\_

Date Information Received to Complete Application (if applicable): \_\_\_\_\_

Signature of Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

BCC proposed HEARING DATE(S) FOR DESIGNATION OF SITE AS A BROWNFIELD  
AREA: 1<sup>st</sup> meeting \_\_\_\_\_ 2<sup>nd</sup> Meeting \_\_\_\_\_

Estimated Cost Public Notice \$ 1,500.00: verify will applicant reimburse : Y X N \_\_\_\_\_

**THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.**

*Brookfields, Transactions, Due Diligence, Development, Permitting, Cleanups & Compliance*

One Southeast Third Avenue, Suite 2120

Miami, Florida 33131

Telephone: (305) 777-1680

Facsimile: (305) 777-1681

[www.goldsteinenvlaw.com](http://www.goldsteinenvlaw.com)

Michael R. Goldstein, Esq.

Direct Dial: (305) 777-1682

Email: [mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com)

December 6, 2016

**Via Email & FedEx**

Carlos Gonzalez, Environmental Program Supervisor  
Orange County Environmental Protection Division  
800 Mercy Drive, Suite 4  
Orlando, FL 32808

**Re: Request for Designation of the Property Located at the 442 East 13<sup>th</sup> Street, Orange County, FL 32703 and Further Identified by Folio Numbers 15-21-28-0000-00-015 as a Green Reuse Area Pursuant to §376.80(2)(c), Florida Statutes**

Dear Mr. Gonzalez:

On behalf of Brixton Landing, Ltd. ("Brixton Landing"), we are pleased to submit this Request for Designation of the property located at 442 E. 13<sup>th</sup> Street, Orange County, FL 32703, Folio Number 15-21-28-0000-00-015 (the "Subject Property"), as a Green Reuse Area (the "Letter Request") pursuant to Chapter 376.80(2)(c), Florida Statutes. When fully redeveloped as an affordable residential rental community for the elderly, including veterans and those with disabilities, the Subject Property will feature one 80-unit garden-style building. Community amenities will include a pool, victory garden, gazebo with barbeque area, community room, fitness studio, computer room, and hair salon. The development will incorporate energy saving features and Energy Star rated appliances. A legal description and property cards depicting the location of the Subject Property are enclosed herein at Exhibit A.

Brixton Landing is applying for the Green Reuse Area Designation due to the fact that there is a significant perception of contamination that exists on the Subject Property that arises from historical citrus grove cultivation that occurred there for over 40 years. This type of agricultural use is commonly associated with the application of chemical pesticides, herbicides, and fertilizers that are

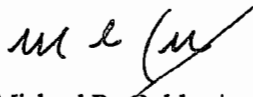
Carlos Gonzalez, Environmental Program Supervisor  
December 6, 2016  
Page 2

known to result in soil and groundwater contamination. This has required, and will continue to require, that Brixton Landing incur significant time and expense for technical, engineering, and legal consultants in order to properly conduct environmental assessment and remediation, if necessary. The designation has thus become a key part of this ambitious project's ultimate viability by enabling Brixton Landing to access certain regulatory and economic incentives to mitigate and manage the risk and expense associated with the discovery of contamination and the necessary response. It is also key to attracting major new capital investment in Orange County.

In considering a request for this type of designation, a local government must evaluate and apply the criteria set forth in Chapter 376.80(2)(c), Florida Statutes. As reflected in the Orange County Brownfields Program Application incorporated herein at Exhibit B and the Statement of Eligibility incorporated herein at Exhibit C, Brixton Landing meets such statutory criteria. Accordingly, based on the foregoing, we respectfully request that staff recommend approval. Of course, as you evaluate the application and supporting materials, please feel free to contact us with any questions or should further information be required. Thank you.

Very truly yours,

**THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.**

  
Michael R. Goldstein  
/mrg

Enclosures

cc: Brixton Landing, Ltd.

# Exhibit A



**EXHIBIT "A"**

**The land referred to herein below is situated in the County of Orange, State of Florida, and is described as follows:**

**Begin at the NE corner of the SW 1/4, run West 411.75 feet, South 1133 feet, East 411.75 feet, North 1133 feet in Section 15, Township 21 South, Range 28 East, Orange County, Florida; less and except the road right of way thereof.**

## Exhibit C

## Green Reuse Area Designation Eligibility Statement

Brixton Landing Green Reuse Area  
442 East 13<sup>th</sup> Street, Orange County, FL 32703  
Folio Number 15-21-28-0000-00-015

Brixton Landing, Ltd. ("Brixton Landing") proposes to redevelop and rehabilitate a parcel of land located at 442 East 13<sup>th</sup> Street, Orange County, FL 32703, Folio Number 15-21-28-0000-00-015 (the "Subject Property"). Once redeveloped as an affordable residential rental community for the elderly, including veterans and those with disabilities, the Subject Property will feature one 80-unit garden-style building. Community amenities will include a pool, victory garden, gazebo with barbeque area, community room, fitness studio, computer room, and hair salon. The development will additionally incorporate energy saving features and Energy Star rated appliances (the "Project"). As demonstrated herein, the Project meets all five of the applicable brownfield area designation criteria set forth at Section 376.80(2)(c), Florida Statutes.<sup>1</sup> In addition, the Subject Property meets the definition of a "brownfield site" pursuant to Section 376.79(3), Florida Statutes.

### I. Subject Property Satisfies the Statutory Criteria for Designation

**1. Agreement to Redevelop the Brownfield Site.** As the first requirement for designation, Florida Statutes § 376.80(2)(c)(1) provides that "[a] person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site."

*Brixton Landing satisfies this criterion in that it currently owns the Subject Property and has agreed to rehabilitate it. A copy of the Special Warranty Deed is enclosed at Attachment B. Accordingly, Brixton Landing meets this first criterion.*

**2. Economic Productivity.** As the second requirement for designation, Florida Statutes § 376.80(2)(c)(2) provides that "[t]he rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the rehabilitation agreement or an agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement shall not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks."

*Brixton Landing satisfies this criterion in that the Project will result in significant economic productivity of the area. The budget for rehabilitation and redevelopment is approximately \$15.5 million,<sup>2</sup> which is being spent in part on local labor, contractors, consultants, construction materials, furnishings, infrastructure improvements, and impact fees. Because all of the units at the Subject Property will be rented to Income Eligible Households under the Low Income Housing Tax Credit program, rehabilitation and redevelopment of the Subject Property will "provide affordable housing as defined in s. 420.0004." Accordingly, the employment creation threshold of at least 5 new permanent jobs is not applicable to the Project. Notwithstanding the aforementioned exemption, approximately 3 new permanent jobs will be created specifically for the Project and to operate the Subject Property. For the reasons discussed herein, Brixton Landing meets this second criterion.*

<sup>1</sup> A copy of § 376.80, Florida Statutes, can be found as Attachment A to this Eligibility Statement.

<sup>2</sup> See Sources and Uses Statement at Attachment C to this Eligibility Statement.

**3. Consistency with Local Comprehensive Plan and Permittable Use under Local Land Development Regulations.** As the third requirement for designation, Florida Statutes § 376.80(2)(c)(3) provides that "[t]he redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations."

*Brixton Landing satisfies this criterion in that the Subject Property is located in Orange County's Low-Medium Density Residential Future Land Use Designation of the Comprehensive Plan, which allows up to 10 dwelling units per acre of land. See the Orange County Florida Comprehensive Plan. In addition, the Subject Property is located in the R-3 Multiple-Family Dwelling District, which permits residential uses at high population densities. See Chapter 38, Article VI of the Orange County Florida Code of Ordinances. The Subject Property's redevelopment as described above is thus an allowable use in such designations. This consistency and permissibility is also reflected in the enclosed Orange County Building Permits enclosed at Attachment D. Accordingly, Brixton Landing meets the third criterion.*

7.8 ACRES  
R-3  
2.63  
WASTE  
LAND

**4. Public Notice and Comment.** Florida Statutes § 376.80(2)(c)(4) stipulates that "[n]otice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be posted in the affected area." Additional notice requirements pertaining to applicants other than a governmental entity can be found at Florida Statutes § 376.80(1)(c)(4)(b) and consist of publication in a newspaper of general circulation in the area, publication in ethnic newspapers or local community bulletins, and announcement at a scheduled meeting of the local governing body before the actual public hearing.

*Brixton Landing satisfies all applicable notice and opportunity to comment requirements established by Florida Statutes § 376.80(2)(c)(4) and § 376.80(1)(c)(4)(b) as follows:*

- (i) *notice is being posted at the Subject Property;*
- (ii) *notice is being published in the Orlando Sentinel;*
- (iii) *notice is being published in the Orange County community bulletin section of Craig's List; and*
- (iv) *a community meeting will be held at the North Orange Branch Library.*

*All notices will contain substantially the following narrative:*

*Representatives for Brixton Landing, Ltd. will hold a community meeting on December 20, 2016, from 6:00 p.m. to 7:30 p.m. for the purpose of affording interested parties the opportunity to provide comments and suggestions about the potential designation of land located at 442 East 13<sup>th</sup> Street, Orange County, Florida 32703, as a Green Reuse Area. The designation is being made pursuant to Section 376.80, Florida Statutes, of Florida's Brownfield Redevelopment Act, and will involve two public hearings before the Palm Beach Board of County Commissioners. The community meeting will also address future development and rehabilitation activities planned for the site.*

*The community meeting will be held at North Orange Branch Library, 1211 Semoran Blvd., Apopka, FL 32703, and is free and open to all members of the public.*

*For more information regarding the community meeting, including directions, the dates of the two public hearings, or to provide comments and suggestions regarding designation, development, or rehabilitation at any time before or after the meeting date, please contact Michael R. Goldstein, who can be reached by telephone at (305) 777-1682, U.S. Mail at The Goldstein Environmental Law Firm, P.A., 1 SE 3rd Avenue, Suite 2120, Miami, FL 33131, and/or email at [mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com).*

*Proof of publication or posting, as appropriate, will be provided to the County.*

5. **Reasonable Financial Assurance.** As the fifth requirement for designation, Florida Statutes § 376.80(2)(c)(5) provides that "[t]he person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan."

*The total capital budget of \$15.5 million for the Project is fully funded. See Wells Fargo Building Loan Agreement at Attachment E. See Florida Community Loan Fund Loan Agreement at Attachment F.*

*In addition, Brixton Landing's affiliate, Wendover Housing Partners, LLC ("Wendover Housing"), is a sophisticated, experienced, and credentialed developer of housing communities, and one of the Southeast's premier affordable housing companies with an impressive portfolio of affordable housing and mixed-income developments. Wendover Housing has a proven history of procuring funding through state and local housing finance authorities, as well as international financial institutions and pension advisory firms. Wendover Housing and Brixton Landing principals have more than 30 years of experience developing, financing, and managing over 4,000 multi-family, affordable, single family and mixed-use units. Based on the current financial position of Brixton Landing, its affiliate, a proven history of leveraging assets with other capital sources, an impressive track record of success, and a staff of highly experienced and sophisticated development officials, Brixton Landing has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan. It therefore satisfies this fifth criterion.*

## II. Subject Property Meets the Definition of Brownfield Site

Section 376.79(3), Florida Statutes, defines "brownfield site" to mean "... real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination." The facts here evidence that the Subject Property falls within the definition of the term "brownfield site" in that there is a significant perception of contamination that exists on the Subject Property arising out of its past use as a citrus grove from the 1930s through the 1980s.

Specifically, citrus plant cultivation is commonly associated with the handling and improper disposal of hazardous materials, including the application of chemical pesticides, herbicides, and fertilizers that are known to result in localized soil and groundwater impacts. In this case, it is confirmed through site assessment activities that such agricultural chemicals were in fact utilized on the Subject Property. This has complicated redevelopment efforts for Brixton Landing by imposing design and construction changes on the Subject Property that would not be required but for the perception of contamination. This perception increases Brixton Landing's exposure to environmental and regulatory liability with respect to the Subject Property and makes it materially more expensive and time consuming to move forward with the Project.

In sum, perceived contamination on the Subject Property creates a material level of regulatory, construction, health, and legal liability risk, complicates redevelopment efforts, and requires significant time and money for environmental, engineering, and legal consultants to property investigate and address. Accordingly, this designation, if granted, will allow for Brixton Landing to access limited but important state-based economic incentives to help underwrite the unanticipated and unbudgeted costs associated with managing the environmental risk as well as, generally, to put the Project to a more certain financial ground. In this sense, the designation will not only play a critical role in the successful redevelopment of the Subject Property, but also in the larger revitalization efforts for this area of Orange County.

Based on all the foregoing, the Subject Property clearly falls within the definition of "brownfield site" as set forth in § 376.79(3), Florida Statutes.

### **III. Conclusion**

Brixton Landing has demonstrated that the Subject Property meets the definition of a "brownfield site" and that it satisfies the five statutory criteria for designation. Accordingly, designation of the Subject Property as a Green Reuse Area pursuant to § 376.80(2)(c), Florida Statutes, of Florida's Brownfield Redevelopment Act is appropriate.

# Attachment D



## Attachment D contains the following Items:

Description	Document date	Comments
Confirmation of Legal Representation	01/09/2017	
Updated BFA OCEPD Application	01/09/2017	New signature date
Wellington BFA Application	12/13/2016	Rec'd 12/09/2015
Exhibit A – Property Legal description	12/13/2016	Property Appraiser's info excluded
Exhibit B – OCEPD Application	12/13/2016	Replaced with 01/19/2017 application - Intentionally excluded to reduce size of staff report
Exhibit C – Green Reuse Area Designation Eligibility Statement	12/13/2016	
Attachment A – F.S. 376.80	12/13/2016	Intentionally excluded to reduce size of staff report
Attachment B – Special Warranty Deed	12/13/2016	Intentionally excluded to reduce size of staff report
Attachment C – Financial spreadsheet	12/13/2016	Intentionally excluded to reduce size of staff report
Attachment D – County Building Permit	12/13/2016	Intentionally excluded to reduce size of staff report
Attachment E – Building Loan Agreement	12/13/2016	Intentionally excluded to reduce size of staff report
Attachment F – Loan Agreement	12/13/2016	Intentionally excluded to reduce size of staff report

# WELLINGTON PARK APARTMENTS, LTD.

1105 KENSINGTON PARK DRIVE, SUITE 200  
ALTAMONTE SPRINGS, FLORIDA 32714

TEL: (407) 333-3233  
FAX: (407) 333-3919

January 9, 2017

Mr. Robert Durant  
Environmental Program Supervisor, PRP  
Orange County Petroleum Restoration Program  
3165 McCrory Place, Suite 200  
Orlando, FL 32803

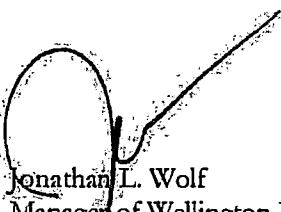
**Re: Confirmation of Legal Representation; Wellington Park Apartments Green Reuse Area – ROCC Designation**

Dear Mr. Durant:

This will confirm that The Goldstein Environmental Law Firm, P.A., and its lawyers are authorized to represent Wellington Park Apartments, Ltd., in connection with any aspect of Florida's Brownfields Program, including but not limited to designation of property located at the NE Corner of N. Thompson Road and E. 1<sup>st</sup> Street, Orange County, FL 32704 (the "Subject Property"), as a Brownfield Area or Green Reuse Area pursuant to §376.80, Florida Statutes, and submittal and execution of any documents, including but not limited to any application materials, necessary to seek a designation or any right or incentive available pursuant to Florida's Brownfields Program.

Thank you for your attention to this matter and your cooperation and assistance with rehabilitation and redevelopment of the Subject Property.

Sincerely,



Jonathan L. Wolf  
Manager of Wellington Park GP, LLC  
General Partner of Wellington Park Apartments, Ltd.

/jlw

cc: Michael R. Goldstein, Esq., Environmental Counsel to Wellington Park Apartments, Ltd.  
Lindsay C. Walton, Esq., Environmental Counsel to Wellington Park Apartments, Ltd.

**REDEVELOPING ORANGE COUNTY COMMUNITIES (ROCC)  
BROWNFIELDS PROGRAM APPLICATION FOR BROWNFIELDS  
DESIGNATION OR TRANSFER OF BSRA**

Please complete this form to request an area for brownfield designation or transfer of BSRA if a PRFBRSR was identified by Resolution. It is important to complete all applicable sections and attach all necessary information. The County Brownfield Program Staff will schedule a Brownfields Pre-application meeting with the applicant/property owner before submitting this application to resolve any questions and go over the Orange County Brownfield designation process. If you should have any questions concerning completion of this application or wish to schedule a Pre-application Meeting, please contact Carlos Gonzalez at [Carlos.Gonzalez2@ocfl.net](mailto:Carlos.Gonzalez2@ocfl.net) or call at 407-836-1425.

**PROPERTY INFORMATION**

Property Name: Wellington Park

Address: NE Corner of N. Thompson Rd. and E. 1st St.

City: Orange County    State: FL

Zip Code: 32703

**Attach map showing location of property.**

Property Size (acres/square feet): 14.72 acres

Parcel/Folio Number(s): 11-21-28-0000-00-007,  
11-21-28-0000-00-233, 11-21-28-0000-00-246

**PROPERTY DESCRIPTION**

Briefly describe property (for example, vacant land, unoccupied): Vacant residential

Current Zoning/Land Use: Planned Development

Future Land Use Designation: Low-Medium Density Residential

☐ Community Redevelopment Area  
☐ Enterprise Zone  
☐ Empowerment Zone  
☐ Other \_\_\_\_\_

Located within one-half mile of an existing major street? X Yes \_\_\_ No

Public Street Access? X Yes \_\_\_ No

Outside floodplain area? \_\_\_ Yes \_\_\_ No

Please describe all outstanding property taxes due on the property: N/A

## APPLICANT INFORMATION

Name: Wellington Park Apartments, Ltd.

Address: 1105 Kensington Park Drive, Suite 200

City: Altamonte Springs

State: FL

Zip Code: 32714

Phone: (407) 333-3233

E-mail: rmuse@wendovergroup.com

Interest in Property: Owner

## CURRENT PROPERTY OWNER(S) (if different from applicant)

Name: N/A

Address:

City:

State:

Zip Code:

Phone:

E-mail:

Legal Status of the Current Property Owner(s):

☐ Individual/Sole Proprietorship

☐ General Partnership

☐ Limited Liability Company

☒ Limited Partnership

☐ Florida Corporation

☐ Out of State Corporation -----State of Incorporation:

## ENVIRONMENTAL STATUS

Briefly describe the nature and geographical extent of contamination by hazardous substances and/or pollutants, if known:

Please see application.

Briefly describe any previous or current remedial action:

Please see application.

If remediation is needed, will you agree to enter into a Brownfield Site Rehabilitation Agreement with the Florida Department of Environment Protection or authorized designee? ☒ Yes ☐ No

Please Attach Phase I or Phase II Environmental Reports, if available.

Please see application.

## **DEVELOPMENT PLAN**

General Description of Redevelopment Plans:  
Please see application.

Attach further illustrative or graphic information, as appropriate.  
Please see application.

How many new permanent full-time or part-time jobs will the project create after remediation, and what are the job titles?  
Please see application.

## **FINANCIAL RESOURCES**

Reasonable assurances must be provided by the applicant that sufficient financial resources are available to the applicant to implement and complete a rehabilitation agreement and redevelopment plan.

**Attach a statement, as well as any other appropriate information, outlining the financial resources available to the applicant for rehabilitation and redevelopment. Please see application.**

This statement can include financial resources the applicant anticipates to obtain (private loans, equity and assistance) through designation as a Brownfield Area. In short, describe your general financial plan for your project. Please see application.

Have you had a Brownfields Pre-application Meeting? ☐ Yes ☒ No (It is required that applicants have a Pre-application Meeting. Please call Carlos Gonzalez, 407-836-1425, for more information.)

## **SERVICES TO BE PROVIDED**

In order to better assist you, please check the type of designation you are requesting and the type of assistance/incentives (check all that apply) you are seeking through this designation:

Type of Designation: ☒ Several parcels ☐ Single parcel ☐ BSRA Transfer (new PRFBSR)

Please describe in greater detail the services you would like to receive as a participant in the Brownfields Program (Optional):  
Please see application.

What are your goals with respect to the property (for example, sale, redevelopment, or business expansion)?  
Please see application.

Will the applicant reimburse the County for all costs associated with the Brownfield Designation (i.e. Public Noticing/Meeting Announcement i.e. Orlando Sentinel advertisement, meeting room rental charges etc. (if applicable)? Yes ☒ No ☐

The contents of this application shall be considered public records of the County. The undersigned affirms that the information contained in this application is true and accurate.

**Applicant:**

Signature: Michael R. Goldstein

Date: 1/9/17

Print/Type Name: Michael R. Goldstein

**For Office Use Only:**

Application Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Application Completeness Review Completed By: \_\_\_\_\_

Status of Application: ☐ Complete ☐ Incomplete (Specify reason[s] below):

Applicant Contacted on: \_\_\_\_\_

Date Information Received to Complete Application (if applicable): \_\_\_\_\_

Signature of Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

BCC proposed HEARING DATE(S) FOR DESIGNATION OF SITE AS A BROWNFIELD  
AREA: 1<sup>st</sup> meeting \_\_\_\_\_ 2<sup>nd</sup> Meeting \_\_\_\_\_

Estimated Cost Public Notice \$ 1,500.00: verify will applicant reimburse : Y ☒ N ☐

**THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.**  
*Brownfields, Transactions, Due Diligence, Development, Permitting, Cleanups & Compliance*

One Southeast Third Avenue, Suite 2120  
Miami, Florida 33131  
Telephone: (305) 777-1680  
Facsimile: (305) 777-1681  
[www.goldsteinenvlaw.com](http://www.goldsteinenvlaw.com)

Michael R. Goldstein, Esq.  
Direct Dial: (305) 777-1682  
Email: [mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com)

December 13, 2016

**Via Email & FedEx**

Mr. Robert Durant, Environmental Program Supervisor  
Environmental Protection Division  
Orange County Petroleum Restoration Program  
3165 McCrory Place, Suite 200  
Orlando, FL 32803

**Re: Request for Designation of the Property Located at the Northeast Corner of North Thompson Road and East 1<sup>st</sup> Street, Orange County, FL 32703 and Further Identified by Folio Numbers 11-21-28-0000-00-007, 11-21-28-0000-00-233, and 11-21-28-0000-00-246 as a Green Reuse Area Pursuant to §376.80(2)(c), Florida Statutes**

RECEIVED  
O.C. ENVIRONMENTAL  
PROTECTION DIVISION  
2016 DEC 14 AM 11:48

Dear Mr. Durant:

On behalf of Wellington Park Apartments, Ltd. ("Wellington Park"), we are pleased to submit this Request for Designation of the property located at the Northeast Corner of N. Thompson Rd. and E. 1<sup>st</sup> St., Orange County, FL 32703, Folio Nos. 11-21-28-0000-00-007, 11-21-28-0000-00-233, and 11-21-28-0000-00-246 (the "Subject Property"), as a Green Reuse Area (the "Letter Request") pursuant to Chapter 376.80(2)(c), Florida Statutes. When fully redeveloped as an affordable residential rental community, the Subject Property will consist of 5 garden-style buildings with 120 units. Community amenities will include a pool, victory garden, gazebo with barbeque area, "tot lot," and patio area. The development will incorporate energy saving features and Energy Star rated appliances. A legal description and property cards depicting the location of the Subject Property are enclosed herein at Exhibit A.

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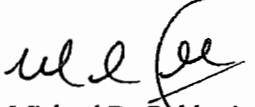
Mr. Robert Durant, Environmental Program Supervisor  
December 13, 2016  
Page 2

Wellington Park is applying for the Green Reuse Area Designation due to the fact that there is a significant perception of contamination that exists on the Subject Property that arises from the historic presence of actual contamination from its past uses as a plant nursery and fuel facility. This type of agricultural use is commonly associated with the application of chemical pesticides, herbicides, and fertilizers that are known to result in soil and groundwater contamination. More critically, there are documented historical petroleum releases at the Subject Property. This perception of contamination has required, and will continue to require, that Wellington Park incur significant time and expense for technical, engineering, and legal consultants in order to properly conduct environmental assessment and remediation, if necessary. The designation has thus become a key part of this ambitious project's ultimate viability by enabling Wellington Park to access certain regulatory and economic incentives to mitigate and manage the risk and expense associated with the discovery of contamination and the necessary response. It is also key to attracting major new capital investment in Orange County

In considering a request for this type of designation, a local government must evaluate and apply the criteria set forth in Chapter 376.80(2)(c), Florida Statutes. As reflected in the Orange County Brownfields Program Application incorporated herein at Exhibit B and the Statement of Eligibility incorporated herein at Exhibit C, Wellington Park meets such statutory criteria. Accordingly, based on the foregoing, we respectfully request that staff recommend approval. Of course, as you evaluate the application and supporting materials, please feel free to contact us with any questions or should further information be required. Thank you.

Very truly yours,

**THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.**

  
Michael R. Goldstein  
/mrg

Enclosures

cc: Wellington Park Apartments, Ltd.



# Exhibit A

**EXHIBIT "A"**

**Legal Description**

A portion of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 11, Township 21 South, Range 28 East, Orange County, Florida being more particularly described as follows:

The Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 11, TOGETHER WITH the West 235.39 feet of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 11, LESS rights-of way for East First Street (30 feet) and Thompson Road (30 feet): Containing 522,720.00 square feet or 12.0000 acres.

## Exhibit C

## Green Reuse Area Designation Eligibility Statement

### Wellington Park Green Reuse Area

Northeast Corner of North Thompson Road and East 1<sup>st</sup> Street, Orange County, FL 32703

Folio Numbers 11-21-28-0000-00-007, 11-21-28-0000-00-233, 11-21-28-0000-00-246

Wellington Park Apartments, Ltd. ("Wellington Park") proposes to redevelop and rehabilitate 3 parcels of land located at the Northeast Corner of N. Thompson Rd. and E. 1<sup>st</sup> St., Orange County, FL 32704, Folio Nos. 11-21-28-0000-00-007, 11-21-28-0000-00-233, and 11-21-28-0000-00-246 (the "Subject Property"). Once redeveloped as an affordable residential rental community, the Subject Property will feature 5 garden-style buildings with 120 units. Community amenities will include a pool, garden area, gazebo with barbeque area, "tot lot," and patio area. The development will additionally incorporate energy saving features and Energy Star rated appliances (the "Project"). As demonstrated herein, the Project meets all five of the applicable designation criteria set forth at Section 376.80(2)(c), Florida Statutes.<sup>1</sup> In addition, the Subject Property meets the definition of a "brownfield site" pursuant to Section 376.79(3), Florida Statutes.

#### I. Subject Property Satisfies the Statutory Criteria for Designation

1. **Agreement to Redevelop the Brownfield Site.** As the first requirement for designation, Florida Statutes § 376.80(2)(c)(1) provides that "[a] person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site."

*Wellington Park meets this criterion in that it currently owns the Subject Property by virtue of a Special Warranty Deed, enclosed at Attachment B. Wellington Park has additionally agreed to rehabilitate and redevelop the Subject Property. Accordingly, this first criterion is satisfied.*

2. **Economic Productivity.** As the second requirement for designation, Florida Statutes § 376.80(2)(c)(2) provides that "[t]he rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the rehabilitation agreement or an agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement shall not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks."

*Wellington Park satisfies this criterion in that the Project will result in significant economic productivity of the area. The budget for rehabilitation and redevelopment is approximately \$22 million,<sup>2</sup> which is being spent in part on local labor, contractors, consultants, construction materials, furnishings, infrastructure improvements, and impact fees. Because all of the units at the Subject Property will be rented to Income Eligible Households under the Low Income Housing Tax Credit program, rehabilitation and redevelopment of the Subject Property will "provide affordable housing as defined in s. 420.0004." Accordingly, the employment creation threshold of at least 5 new permanent jobs is not applicable to the Project. Notwithstanding the aforementioned exemption, approximately 5 new permanent jobs will be created specifically for the Project and to operate the Subject Property. For the reasons discussed herein, Wellington Park meets this second criterion.*

<sup>1</sup> A copy of § 376.80, Florida Statutes, can be found as Attachment A to this Eligibility Statement.

<sup>2</sup> See Sources and Uses Statement at Attachment C to this Eligibility Statement.

**3. Consistency with Local Comprehensive Plan and Permittable Use under Local Land Development Regulations.** As the third requirement for designation, Florida Statutes § 376.80(2)(c)(3) provides that "[t]he redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations."

*Wellington Park satisfies this criterion in that the Subject Property is located in Orange County's Low-Medium Density Residential Future Land Use Designation of the Comprehensive Plan, which allows up to 10 dwellings units per acre of land. See the Orange County Florida Comprehensive Plan. In addition, the Subject Property is located in the Planned Development District, which permits planned residential communities. See Chapter 38, Article VIII of the Orange County Florida Code of Ordinances. The Subject Property's redevelopment as described above is thus an allowable use in such designations. This consistency and permissibility is also reflected in, and effectuated by the enclosed Florida Housing Finance Corporation Local Government Verification of Status of Site Plan Approval for Multifamily Developments, signed by Orange County's Chief Planner, enclosed at Attachment D. Accordingly, Wellington Park meets the third criterion.*

**4. Public Notice and Comment.** Florida Statutes § 376.80(2)(c)(4) stipulates that "[n]otice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be posted in the affected area." Additional notice requirements pertaining to applicants other than a governmental entity can be found at Florida Statutes § 376.80(1)(c)(4)(b) and consist of publication in a newspaper of general circulation in the area, publication in ethnic newspapers or local community bulletins, and announcement at a scheduled meeting of the local governing body before the actual public hearing.

*Wellington Park satisfies all applicable notice and opportunity to comment requirements established by Florida Statutes § 376.80(2)(c)(4) and § 376.80(1)(c)(4)(b) as follows:*

- (i) notice is being posted at the Subject Property;*
- (ii) notice is being published in the Orlando Sentinel;*
- (iii) notice is being published in the Orange County community bulletin section of Craig's List; and*
- (iv) a community meeting will be held at the North Orange Branch Library.*

*All notices will contain the following narrative:*

*Representatives for Wellington Park Apartments, Ltd. will hold a community meeting on July 19 2016, — from 6:00 p.m. to 7:30 p.m. for the purpose of affording interested parties the opportunity to provide comments and suggestions about the potential designation of land located at the NE Corner of N. Thompson Rd. and E. 1<sup>st</sup> St., Orange County, Florida 32703, as a Green Reuse Area. The designation is being made pursuant to Section 376.80, Florida Statutes, of Florida's Brownfield Redevelopment Act, and will involve two public hearings before the Palm Beach Board of County Commissioners. The community meeting will also address future development and rehabilitation activities planned for the site.*

*The community meeting will be held at North Orange Branch Library, 1211 Semoran Blvd., Apopka, FL 32703, and is free and open to all members of the public.*

*For more information regarding the community meeting, including directions, the dates of the two public hearings, or to provide comments and suggestions regarding designation, development, or rehabilitation at any time before or after the meeting date, please contact Michael R. Goldstein, who can be reached by telephone at (305) 777-1682, U.S. Mail at The Goldstein Environmental Law Firm, P.A., 1 SE 3rd Avenue, Suite 2120, Miami, FL 33131, and/or email at [mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com).*

*Proof of publication or posting, as appropriate, will be provided to the County.*

5. **Reasonable Financial Assurance.** As the fifth requirement for designation, Florida Statutes § 376.80(2)(c)(5) provides that "[t]he person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan."

*The total capital budget of \$22 million for the Project will be fully funded. See Wells Fargo Letter of Interest at Attachment E. See Wells Fargo Updated Letter of Interest at Attachment F. See Neighborhood Lending Partners, Inc. Letter of Interest at Attachment G.*

*In addition, Wellington Park's affiliate, Wendover Housing Partners, LLC ("Wendover Housing"), is a sophisticated, experienced, and credentialed developer of housing communities, and one of the Southeast's premier affordable housing companies with an impressive portfolio of affordable housing and mixed-income developments. Wendover Housing has a proven history of procuring funding through state and local housing finance authorities, as well as international financial institutions and pension advisory firms. Wendover Housing and Wellington Park principals have more than 30 years of experience developing, financing, and managing over 4,000 multi-family, affordable, single family and mixed-use units. Based on the current financial position of Wellington Park, its affiliate, a proven history of leveraging assets with other capital sources, an impressive track record of success, and a staff of highly experienced and sophisticated development officials, Wellington Park has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan. It therefore satisfies this fifth criterion.*

Thompson  
Road  
LLC  
Sold to  
Wellington  
11/29/16

## II. Subject Property Meets the Definition of Brownfield Site

Section 376.79(3), Florida Statutes, defines "brownfield site" to mean "... real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination." The facts here evidence that the Subject Property falls within the definition of the term "brownfield site" in that there is a significant perception of contamination that exists on the Subject Property that arises from the historical presence of actual contamination from its past uses as a plant nursery and fueling facility.

Specifically, plant cultivation is commonly associated with the handling and disposal of hazardous materials, including the application of chemical pesticides, herbicides, and fertilizers that are known to result in localized soil and groundwater impacts. In this case, it is confirmed in site assessment reports that such agricultural chemicals were in fact utilized by previous owners of the Subject Property. In addition, the Subject Property formerly operated as a fueling facility with documented historical petroleum releases. A review of the Florida Department of Environmental Protection's online document database indicates that these releases appear to have been remedied by the former property owners; notwithstanding, the historical presence of actual contamination at the Subject Property creates a significant risk that contamination persists. This perception complicates redevelopment efforts for Wellington Park by imposing design and construction changes that would not otherwise be required. Additionally, it increases Wellington Park's exposure to environmental and regulatory liability with respect to the Subject Property and makes it materially more expensive and time consuming to move forward with the Project.

In sum, perceived contamination on the Subject Property creates a material level of regulatory, construction, health, and legal liability risk, complicates redevelopment efforts, and requires significant time and money for environmental, engineering, and legal consultants to property investigate and address. Accordingly, this designation, if granted, will allow for Wellington Park to access limited but important state-based economic incentives to help underwrite the unanticipated and unbudgeted costs associated with managing the environmental risk as well as, generally, to put the Project to a more certain financial ground. In this sense, the designation will not only play a critical role in the successful redevelopment of the Subject Property, but also in the larger revitalization efforts for this area of Orange County.

Based on all the foregoing, the Subject Property clearly falls within the definition of "brownfield site" as set forth in § 376.79(3), Florida Statutes.

### **III. Conclusion**

Wellington Park has demonstrated that the Subject Property meets the definition of a "brownfield site" and that it satisfies the five statutory criteria for designation. Accordingly, designation of the Subject Property as a Green Reuse Area pursuant to § 376.80(2)(c), Florida Statutes, of Florida's Brownfield Redevelopment Act is appropriate.

# Attachment E



# THE GOLDSTEIN ENVIRONMENTAL LAW FIRM, P.A.

*Brownfields, Transactions, Due Diligence, Development, Permitting, Cleanups & Compliance*

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One Southeast Third Avenue, Suite 2120

Miami, Florida 33131

Telephone: (305) 777-1680

Facsimile: (305) 777-1681

[www.goldsteinenvlaw.com](http://www.goldsteinenvlaw.com)

## MEMORANDUM

---

**TO:** Georgiana Holmes, Esq.  
Assistant County Attorney  
Orange County Attorney's Office

**FROM:** Michael R. Goldstein, Esq., The Goldstein Environmental Law Firm, P.A.  
Lindsay C. Walton, Esq., The Goldstein Environmental Law Firm, P.A.

**DATE:** February 16, 2017

**SUBJECT:** Regulatory and Financial Incentives Associated with Florida's Brownfields Redevelopment Program

---

Brixton Landing, Ltd. ("Brixton Landing"), and Wellington Park Apartments, Ltd. ("Wellington Park"), (together, the "Applicants"),<sup>1</sup> own the property located at 442 E. 13<sup>th</sup> Street, Orange County, FL 32703, and at the Northeast Corner of N. Thompson Road and E. 1<sup>st</sup> St., Orange County, FL 32703, respectively (the "Properties"), which are being redeveloped as affordable residential rental communities (the "Projects").<sup>2</sup> The Applicants are seeking designation of the Properties as Green Reuse Areas pursuant to § 376.80(2)(c), Florida Statutes, of Florida's Brownfields Redevelopment Act (the "Brownfields Act") due to the fact that there is a perception of contamination on the Properties from their former uses.<sup>3</sup> While there is no documented contamination at the Properties at this time, these designations, if granted, would enable the Applicants to qualify for certain regulatory and financial incentives (more particularly described in Section B below), which are needed to offset past costs and risks and potential future costs and risks related to the perceived contamination. As you review the Applications, please note the following regarding timing of the

---

<sup>1</sup> The Applicants are both affiliates of Wendover Housing Partners, LLC, an affordable housing developer.

<sup>2</sup> The Projects are more particularly described in the underlying Request for Designation Applications. The Brixton Landing application was filed with Orange County on December 6, 2016; and the Wellington Park application on December 13, 2016 (together, the "Applications").

<sup>3</sup> The Brixton Landing property was historically utilized as a citrus grove for over 40 years; the Wellington Park property as a plant nursery and fuel facility. These former uses have created a significant perception of contamination on the Properties, which is described in detail in the Applications.

designation request and the incentives that are potentially available to the Applicants through the Florida Brownfields Redevelopment Program:

### **A. Timing of Green Reuse Area Designation Requests**

A brownfield area may be designated at any time during development and after development, as § 376.80(2)(c), F.S., does not provide a deadline for designation, which the Florida legislature has provided for elsewhere in brownfields related legislation.<sup>4</sup> In fact, local governments often designate multiple parcels of land in various stages of development as brownfield areas as part of a Community Redevelopment Area ("CRA"), which enables local governments and owners of property within the brownfield areas to utilize the incentives provided by the Florida Brownfields Program for the purposes of environmental remediation, rehabilitation, and economic development. Point in case, Orange County designated the Holden Heights ROCC Brownfield Area within its CRA on August 28, 2007, through Resolution No. 2007-M-31,<sup>5</sup> and the Innovation Way ROCC Brownfield Area within its Innovation Way Economic Development Corridor on September 16, 2008, through Resolution 2008-M-47.<sup>6</sup>

### **B. Regulatory and Financial Incentives**

As stated in the preceding paragraphs, the Florida Brownfields Redevelopment Program provides a robust toolbox of financial and regulatory incentives for sites located in brownfield areas. The Brownfields Act and § 212.08, F.S., contemplate two scenarios for a property owner within a designated brownfield area to receive such incentives; the first set of incentives are for brownfield areas with environmental contamination and the second set for brownfield areas without such contamination.

Where there is documented contamination within a brownfield area, a property owner may enter into a Brownfield Site Rehabilitation Agreement ("BSRA") with the Florida Department of Environmental Protection ("FDEP"). The incentives available through a BSRA are identified in §§ 376.77-85, F.S. Where there is no documented contamination within a brownfield area, a property owner *still has access to incentives*, albeit in more limited fashion. For example, under this second scenario (i.e., perceived contamination only), existing and potential lenders are provided statutory immunity for environmental liability pursuant to §376.82(4)(b), F.S. Also critical (and very relevant with respect to the Applications), under §212.08, F.S., the Florida Department of Revenue ("FDR") administers a powerful financial incentive for the construction of affordable housing projects in the form of a 100% sales tax refund on eligible construction materials. Finally, having the designation

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<sup>4</sup> See, e.g., Sec. 376.30781(5)(a), F.S., which establishes a bright-line eligibility deadline to submit an application for tax credits based on eligible costs for contamination assessment and remediation.

<sup>5</sup> See Resolution No. 2007-M-31 enclosed at Exhibit A.

<sup>6</sup> See Resolution 2008-M-47 enclosed at Exhibit B.

in place allows for swift negotiation and execution of a BSRA, which would then immediately lock into place developer-specific liability protection and the ability to obtain a second, important financial incentive – state corporate income tax credits for eligible costs of contamination assessment and remediation.

### **1. Lender Liability Protection**

Lender liability protection under the Brownfields Act is quite broad. For example, merely by virtue of a property being located in an existing brownfield area, any lender is already afforded certain key liability protections. This is so irrespective of whether there is a BSRA in place. Moreover, at any such time in the future that a BSRA is executed, additional – and every broader – statutory protections in favor of a lender are triggered.

Specifically, § 376.82(4)(b), F.S., consists of protection for lenders when it extends financing and after foreclosure, subject to certain criteria. Accordingly, the Green Reuse Area designations, if granted, will enable any lender on the Properties to maintain the liability protection afforded by § 376.82(4)(b), F.S., so long as it does not engage in decisionmaking control or management of site operations, has not caused or contributed to release of contamination, and, in the case of foreclosure, makes a good faith effort to sell the site as soon as practicable. This lender liability protection is acutely important when seeking financing on projects that have even a hint of environmental distress and potential regulatory liability, as is the case here.

### **2. Sales Tax Refund on Eligible Construction Materials for Affordable Housing Redevelopment**

In order to incentivize construction of affordable residential rental communities, the Florida legislature has created an important sales tax refund on eligible construction materials for affordable housing projects that are constructed within a designated brownfield area, among other areas (urban high-crime areas, empowerment zones, Front Port Communities, or urban infill areas). Pursuant to § 212.08(5)(2)(o), F.S., the FDR administers this incentive consisting of a 100% sales tax refund on building materials, which is defined in § 212.08(5)(2)(g)(8)(a), F.S., as the “tangible personal property that becomes a component part of a housing project.”

Because the Properties are being redeveloped as affordable housing, as defined in § 420.0004, F.S., the Green Reuse Area designations, if granted, will allow the Applicants to access this incentive to offset additional costs related to perceived contamination at the Properties, including costs associated with due diligence, environmental legal and technical professionals, and to address potential lender concerns by imposing design contingency requirements, and by forcing the Applicants to develop legal liability contingency plans for themselves, and, if required, for their lenders (including the Green Reuse Area designation application). Additional proceeds from the state sales tax refund will be reinvested back into the Projects. This incentive adds much needed capital to the Applicants' development pro forma, mitigating the extraordinary costs associated with

evaluating, structuring, and managing the environmental regulatory and legal liability risk created by the mere perception of contamination.

### **3. Brownfield Site Rehabilitation Agreement Accessibility**

As stated previously, the brownfield area designation of property by a local government is a prerequisite for a BSRA. Pre-designation of the brownfield area, therefore, allows for swift negotiation and execution of a BSRA, if necessary, which would then immediately trigger developer-specific liability protection, additional lender-specific liability protection, and enable a developer to qualify for financial incentives, such as state corporate income tax credits for eligible costs of contamination assessment and remediation.

Here, where there is a significant perception of contamination at the Properties due to their former uses, the designations would enable the Applicants to expeditiously enter in to a BSRA with the FDEP if contamination is discovered in the future. This would immediately afford the Applicants with the incentives available in §§ 376.77-85, F.S., including (a) protection from exposure to legal liability under state law by barring any state based third-party lawsuit for property damage, environmental cost recovery, and actions to compel additional cleanup; (2) providing the Applicants' lenders additional, and even broader, liability protections, as set forth in § 376.82(4)(a), F.S., (specifically all of those directly applicable to the borrower under § 376.82(2), F.S.); and (c) enabling the Applicants to recapture eligible cleanup costs through Voluntary Cleanup Tax Credits administered through the FDEP. The designations have thus become a key part of the Projects' environmental contingency plans and their ultimate viability by enabling the Applicants to enter into a BSRA, if necessary at a later time, in order to manage potential risk and expense associated with any future discovery of contamination and the necessary response.

# Exhibit A

2 AUG 28 2007 JWB

# RESOLUTION

4 of the  
ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

6 *regarding*  
DESIGNATING CERTAIN LAND WITHIN THAT  
8 PORTION OF THE ORANGE COUNTY COMMUNITY  
REDEVELOPMENT AREA LOCATED WITHIN  
10 UNINCORPORATED ORANGE COUNTY AS THE  
HOLDEN HEIGHTS: ROCC (REDEVELOPING  
12 ORANGE COUNTY COMMUNITIES) AREA AND AS  
A BROWNFIELD AREA FOR THE PURPOSE OF  
14 ENVIRONMENTAL REMEDIATION,  
REHABILITATION, AND ECONOMIC  
16 DEVELOPMENT

18 Resolution No. 2007-M-31

20 WHEREAS, Sections 376.77 - 376.85, of the Florida Statutes, as amended, (the  
"Brownfields Redevelopment Act" or the "Act") authorizes and provides for designation by  
22 resolution of certain lands as a "Brownfield Area", and for the corresponding provision of  
environmental remediation, rehabilitation, and economic development for such areas; and

24 WHEREAS, the Orange County Board of County Commissioners wishes to notify the  
Florida Department of Environmental Protection of its decision to designate a Brownfield Area  
26 for remediation, rehabilitation, and economic development for the purposes set forth in the Act;  
and

28 WHEREAS, the procedures set forth in Section 376.80(1) of the Act, including the  
30 notice and public hearing requirements set forth in Sections 125.66 and 125.66(4)(b)(2) Florida  
Statutes (2006), have been complied with.

32 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
34 ORANGE COUNTY, FLORIDA:

Section 1. The recitals and findings set forth in the Preamble to this Resolution are  
36 hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. The area described in Exhibit "A" as Holden Heights: ROCC, attached hereto  
38 and incorporated herein by reference, which is located within and coincides with the boundaries of  
that portion of the Orange County Community Redevelopment Area located in the unincorporated  
40 area of the County, less any real property for which a property owner within the area depicted in  
Exhibit "A" requests in writing to have his or her property removed from the designation provided

for herein, is hereby designated as the “Holden Heights: ROCC (Redeveloping Orange County Communities) a which shall hereafter be known as the “Holden Heights: ROCC” area and as a Brownfield Area for environmental remediation, rehabilitation, and economic development as set forth in the Act, under the following terms and conditions:

a. The designation of the Brownfield Area by this Resolution does not, by itself, render the Board of County Commissioners responsible for the costs and liabilities associated with site remediation, rehabilitation, economic development, or source removal, as those terms are defined in the Act, unless the Orange County Board of County Commissioners specifically designates itself as a responsible person pursuant to Section 376.80(3), thereof.

b. Nothing in this Resolution shall be deemed to prohibit, limit, or amend the authority and power of the Orange County Board of County Commissioners, otherwise legally available, to designate any other property or properties as a Brownfield Site or Brownfield Area, or to modify, amend, or withdraw the designation as established herein.

**Section 3.** In accordance with Section 376.80(1), Florida Statutes (2006), the Orange County Board of County Commissioners hereby directs the Orange County Environmental Protection Division to notify the Florida Department of Environmental Protection of Orange County's decision to designate this Brownfield Area for the purposes of remediation, rehabilitation, and economic development.

**Section 4.** This Resolution shall become effective August 28, 2007

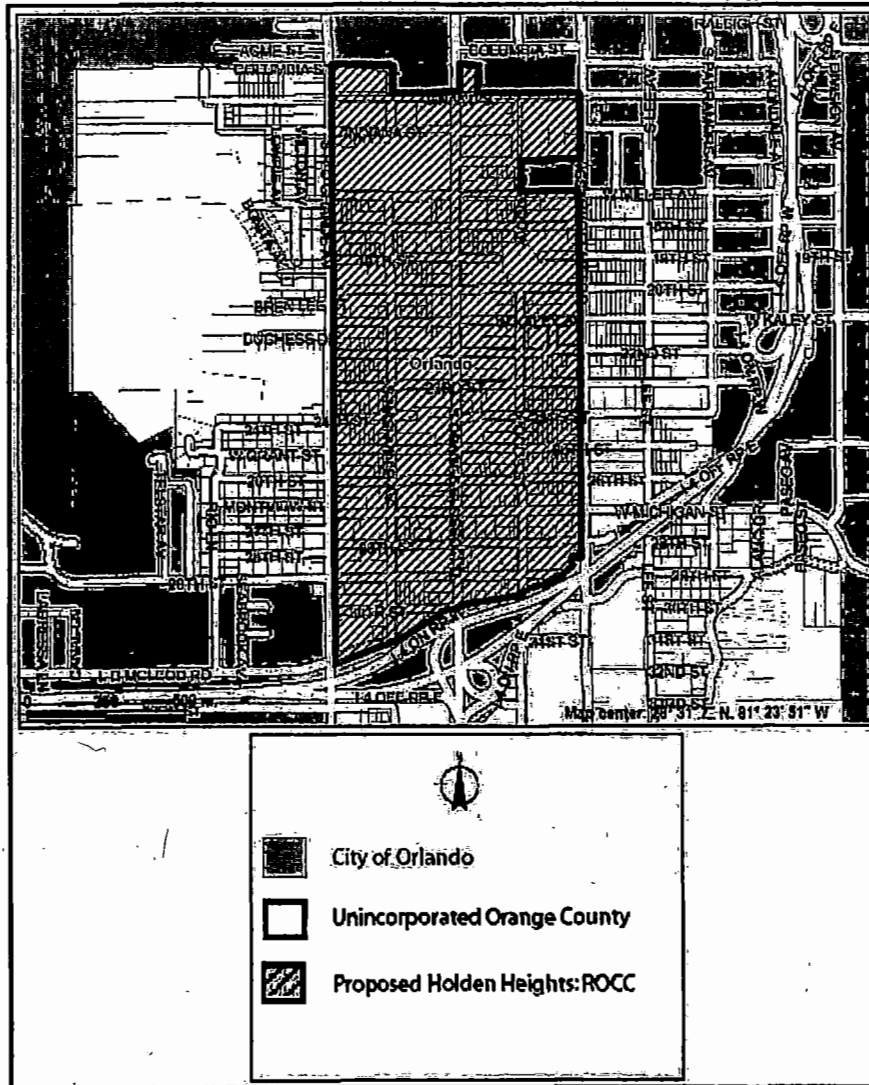
ADOPTED this 28 day of August, 2007.

ATTEST: Martha O. Haynie, County Comptroller  
As. Clerk of the Board of County Commissioners  
By: \_\_\_\_\_  
Deputy Clerk

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners  
By: David C. Heath, Jr.  
Crotty  
Orange County Mayor



# Exhibit A





## Exhibit B

# RESOLUTION

of the  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**

regarding  
**DESIGNATING CERTAIN LAND WITHIN THAT  
PORTION OF THE ORANGE COUNTY INNOVATION  
WAY AREA LOCATED WITHIN UNINCORPORATED  
ORANGE COUNTY AS THE INNOVATION WAY:  
ROCC (REDEVELOPING ORANGE COUNTY  
COMMUNITIES) AREA AND AS A BROWNFIELD  
AREA FOR THE PURPOSE OF ENVIRONMENTAL  
REMEDATION, REHABILITATION, AND  
ECONOMIC DEVELOPMENT**

**Resolution No. 2008-M-47**

**WHEREAS**, Sections 376.77 - 376.85, of the Florida Statutes, as amended, (the "Brownfields Redevelopment Act" or the "Act") authorizes and provides for designation by resolution of certain lands as a "Brownfield Area", and for the corresponding provision of environmental remediation, rehabilitation, and economic development for such areas; and

**WHEREAS**, the Orange County Board of County Commissioners wishes to notify the Florida Department of Environmental Protection of its decision to designate a Brownfield Area for remediation, rehabilitation, and economic development for the purposes set forth in the Act; and

**WHEREAS**, the procedures set forth in Section 376.80(1) of the Act, including the notice and public hearing requirements set forth in Sections 125.66 and 125.66(4)(b)(2) and 125.66(4)(b)(3) Florida Statutes, have been complied with.

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
ORANGE COUNTY, FLORIDA:**

**Section 1.** The recitals and findings set forth in the Preamble to this Resolution are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

**Section 2.** The area described in Exhibit "A" as Innovation Way: ROCC, attached hereto and incorporated herein by reference, which is located within and coincides with the boundaries of that portion of the Orange County Innovation Way Area located in the unincorporated area of the County, less any real property for which a property owner within the area depicted in Exhibit "A" requests in writing to have his or her property removed from the

designation provided for herein, is hereby designated as the "Innovation Way: ROCC (Redeveloping Orange County Communities) which shall hereafter be known as the "Innovation Way: ROCC" area and as a Brownfield Area for environmental remediation, rehabilitation, and economic development as set forth in the Act, under the following terms and conditions:

a. The designation of the Brownfield Area by this Resolution does not, by itself, render the Board of County Commissioners responsible for the costs and liabilities associated with site remediation, rehabilitation, economic development, or source removal, as those terms are defined in the Act, unless the Orange County Board of County Commissioners specifically designates itself as a responsible person pursuant to Section 376.80(3), thereof.

b. Nothing in this Resolution shall be deemed to prohibit, limit, or amend the authority and power of the Orange County Board of County Commissioners, otherwise legally available, to designate any other property or properties as a Brownfield Site or Brownfield Area, or to modify, amend, or withdraw the designation as established herein.

**Section 3.** In accordance with Section 376.80(1), Florida Statutes, the Orange County Board of County Commissioners hereby directs the Orange County Environmental Protection Division to notify the Florida Department of Environmental Protection of Orange County's decision to designate this Brownfield Area for the purposes of remediation, rehabilitation, and economic development.

**Section 4.** This Resolution shall become effective September 16, 2008

**ADOPTED** this 16<sup>th</sup> day of September, 2008.

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners  
By: [Signature]  
Deputy Clerk

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

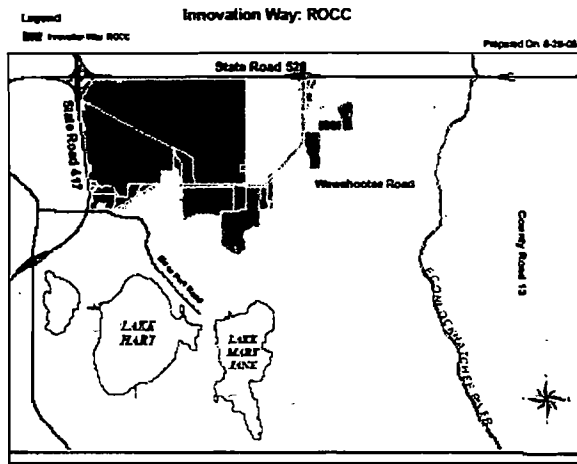
By: [Signature]

Richard T. Crotty

Orange County Mayor



## EXHIBIT A



# Attachment F

**AFFIDAVIT**

STATE OF FLORIDA                     )  
  ) SS.:  
COUNTY OF ORANGE                 )

BEFORE ME, the undersigned authority, personally appeared Jonathan L. Wolf, who, after being duly sworn, deposes and states:

1. My name is Jonathan L. Wolf. I am over the age of 18 and the facts in this affidavit are based on my own personal knowledge.
2. I am a Member of Wellington Park GP, LLC, the General Partner of Wellington Park Apartments, Ltd. ("Wellington Park").
3. Wellington Park owns the property located at the northeast corner of North Thompson Road and East 1<sup>st</sup> Street, Orange County, FL 32703, Folio Nos. 11-21-28-0000-00-007, 11-21-28-0000-00-233, and 11-21-28-0000-00-246 (the "Subject Property").
4. Due diligence conducted on behalf of Wellington Park by its retained engineering and environmental professionals documented historical use of the Subject Property as a plant nursery and fueling facility.
5. In Wellington Park's experience as a developer of similar sites in the state of Florida, and based on advice and counsel from its environmental technical and legal consulting team, Wellington Park is aware that the operation of plant nurseries is commonly and historically associated with the handling and improper disposal of hazardous materials, including the application of chemical pesticides, herbicides, and fertilizers (collectively, "agrichemicals") that are known to result in both localized and widespread soil and groundwater impacts.
6. It is confirmed in site assessment activities that agrichemicals were in fact utilized on the Subject Property.

7. As a result of a lengthy history of documented plant nursery operation at the Subject Property, Wellington Park has had and continues to have significant concerns regarding the legal liability risk, remediation costs, and incremental site development costs that would result from soil and/or groundwater contamination caused by the storage and use of agrichemicals.

8. These concerns are similar to those presented by other projects that Wellington Park affiliates have developed, in which additional cleanup costs and liability risk were increased as a result of historical agricultural use.

9. In addition, the Subject Property formerly operated as a fueling facility with documented historical petroleum releases. A review of the Florida Department of Environmental Protection's online document database indicates that these releases appear to have been remedied by the former property owners; notwithstanding, the historical presence of actual contamination at the Subject Property creates a significant risk that contamination persists. As such, there is no guarantee that additional impacts to soil and groundwater will not be discovered in the future.

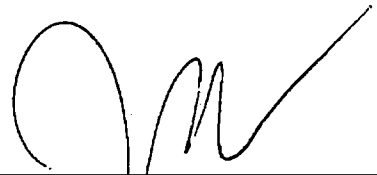
10. These concerns have complicated redevelopment and reuse of the Subject Property by creating additional exposure to potential environmental agency liability and private third-party legal liability, by creating additional costs for due diligence, by creating additional costs for environmental legal and technical professionals, by creating additional costs to address potential lender concerns, by imposing potential design contingency requirements, and by forcing Wellington Park to develop a legal liability contingency plan for itself and, if required, for its lenders, one material part of which is the application for brownfields designation (which expressly provides at 376.82(4)(b), Florida Statutes, for statutory immunity for lenders once a brownfield area designation has been approved).

11. Wellington Park would not have undertaken any of the actions described in paragraph 10 of this affidavit nor incurred any of the costs associated with the actions described in paragraph 10 of this affidavit but for the perception of contamination associated with the historical use of the Subject

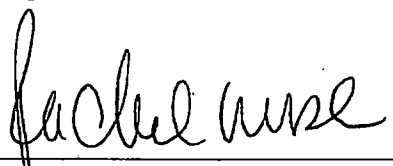
Property for operation of a plant nursery, what is commonly known about storage and application of agrichemicals at plant nurseries, and how such storage and application have frequently led to both localized and widespread soil and groundwater contamination in Florida.

12. I declare under penalty of perjury that the foregoing is true and correct.

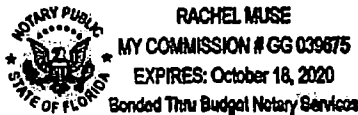
**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Jonathan L. Wolf

BEFORE ME, the undersigned authority, personally appeared, Jonathan L. Wolf, who is personally known to me and who did/did not take an oath and he acknowledged before me that he executed the foregoing on this the 24 day of August, 2017.

  
\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

My Commission Expires:





**AFFIDAVIT**

STATE OF FLORIDA                     )  
  ) SS.:  
COUNTY OF ORANGE                 )

BEFORE ME, the undersigned authority, personally appeared Jonathan L. Wolf, who, after being duly sworn, deposes and states:

1. My name is Jonathan L. Wolf. I am over the age of 18 and the facts in this affidavit are based on my own personal knowledge.

2. I am a Member of Brixton Landing GP, LLC, the General Partner of Brixton Landing, Ltd. ("Brixton Landing").

3. Brixton Landing owns the property located at 442 East 13<sup>th</sup> Street, Orange County, FL 32703, Folio No. 15-21-28-0000-00-015 (the "Subject Property").

4. Due diligence conducted on behalf of Brixton Landing by its retained engineering and environmental professionals documented historical use of the Subject Property as a citrus grove from the 1930s through the 1980s.

5. In Brixton Landing's experience as a developer of similar sites in the state of Florida, and based on advice and counsel from its environmental technical and legal consulting team, Brixton Landing is aware that citrus plant cultivation is commonly and historically associated with the handling and improper disposal of hazardous materials, including the application of chemical pesticides, herbicides, and fertilizers (collectively, "agrichemicals") that are known to result in both localized and widespread soil and groundwater impacts.

6. It is confirmed in site assessment activities that agrichemicals were in fact utilized on the Subject Property.

7. As a result of a lengthy history of documented citrus cultivation at the Subject Property, Brixton Landing has had and continues to have significant concerns regarding the legal

liability risk, remediation costs, and incremental site development costs that would result from soil and/or groundwater contamination caused by the storage and use of agrichemicals.

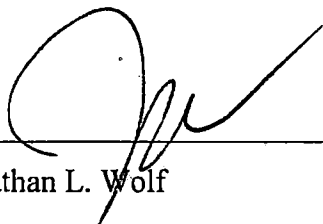
8. These concerns are similar to those presented by other projects that Brixton Landing affiliates have developed, in which additional cleanup costs and liability risk were increased as a result of historical agricultural use.

9. These concerns have complicated redevelopment and reuse of the Subject Property by creating additional exposure to potential environmental agency liability and private third-party legal liability, by creating additional costs for due diligence, by creating additional costs for environmental legal and technical professionals, by creating additional costs to address potential lender concerns, by imposing potential design contingency requirements, and by forcing Brixton Landing to develop a legal liability contingency plan for itself and, if required, for its lenders, one material part of which is the application for brownfields designation (which expressly provides at 376.82(4)(b), Florida Statutes, for statutory immunity for lenders once a brownfield area designation has been approved).

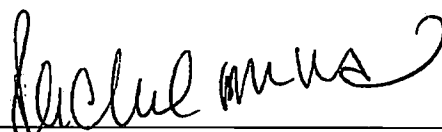
10. Brixton Landing would not have undertaken any of the actions described in paragraph 9 of this affidavit nor incurred any of the costs associated with the actions described in paragraph 9 of this affidavit but for the perception of contamination associated with the historical use of the Subject Property for citrus cultivation, what is commonly known about storage and application of agrichemicals at citrus sites, and how such storage and application have frequently led to both localized and widespread soil and groundwater contamination in Florida.

11. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

  
Jonathan L. Wolf

BEFORE ME, the undersigned authority, personally appeared, Jonathan L. Wolf, who is personally known to me and who did/did not take an oath and he acknowledged before me that he executed the foregoing on this the 24 day of August, 2017.

  
NOTARY PUBLIC, State of Florida

My Commission Expires:



RACHEL MUSE  
MY COMMISSION # GG 039875  
EXPIRES: October 18, 2020  
Bonded Thru Budget Notary Services