

## MEMORANDUM

To: Honorable Mayor and Council Members

From: Christine Davis, Finance Director 

Date: February 10, 2008

Re: Sparkman Supplemental Developer Agreement Resolution No. 527-09

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### **Purpose:**

Resolution No. 527-09, authorizes the Mayor and other authorized officers or employees of the city to execute any and all documents necessary for the supplemental developer agreement with Sparkman, LLC for the Sparkman Avenue Extension road and utility project which sets forth the terms and conditions agreed to by both the City and Sparkman, LLC regarding said Sparkman Avenue Extension Project.

### **Background**

Sparkman, LLC is the owner and developer of Sparkman Ridge Project. The project consists of a 50.72 acre parcel of land which is located within the municipal boundaries of the city. In 2005, the city and Sparkman, LLC entered into a Developer's Agreement for Sparkman Ridge Project, which established guidelines and standards for the orderly development of the property. The agreement set forth that Sparkman, LLC was obligated to install all on-site and off-site improvements necessary to sustain the ultimate development of the property, including the installation of a utility line and the roadway. Pursuant to the terms of the original agreement, the city is authorized to assess the actual and verified cost of completing these improvement obligations against the property if Sparkman fails to undertake and complete its obligations pursuant to the terms of the original agreement. Sparkman, LLC has agreed to have the city contract with the county and the school board to construct the Sparkman Avenue Extension Project and assess the actual and verified costs against the property through a special assessment program.

The Sparkman, LLC Project will be specially benefited by the Sparkman Avenue Extension Project. The design, construction, and installation of the Sparkman Avenue Extension Project will enhance the utilization and enjoyment of the property by: (1) establishing adequate ingress and egress and increasing the property's immediate development potential; and (2) protecting and enhancing the value and integrity of the Property through the provisions of essential roadway and water utility line.

The adoption of Resolution No. 527-09 is a supplemental agreement to the original agreement and the supplement clearly sets forth the terms and conditions agreed to by the City and Sparkman, LLC for the Sparkman Avenue Extension Project.

The developer agreement among other things, requires that if at any time Sparkman, LLC transfers the Property in total to any other party, the entire outstanding amount for the Sparkman Avenue Extension Project Assessment Program costs and capital costs, plus a 1% prepayment penalty on the original \$750,000 loan and any cost associated with the title transfer and loan payoff shall be due to the city at the time the property is transferred and prior to releasing the lien assessment.

Later tonight the Council will consider Resolution No. 528-09 that if adopted will authorize the borrowing of money from Branch Banking and Trust (BB&T) in the amount of \$750,000 to finance certain costs of the Sparkman Avenue Extension Project.

**Recommendation:**

Staff respectfully requests Council's approval of Resolution 527-09, which authorizes the Mayor and other authorized officers or employees of the city to execute any and all documents necessary for the supplemental developer agreement with Sparkman, LLC.

**RESOLUTION NO. 527-09**

**A RESOLUTION OF THE CITY OF ORANGE CITY, FLORIDA, APPROVING A SUPPLEMENTAL DEVELOPER'S AGREEMENT BETWEEN THE CITY OF ORANGE CITY, FLORIDA AND SPARKMAN LLC, DEVELOPERS OF SPARKMAN RIDGE SUBDIVISION R-PUD; REPEALING ALL RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, on June 28, 2005, the City Council of the City of Orange City approved the Sparkman Ridge R-PUD Application and Preliminary Master Development Plan via Resolution No. 214-05; and

**WHEREAS**, the City of Orange City and Sparkman, LLC entered into a Developers Agreement to establish the standards for the development of 94 single-family residential dwelling units and 108 townhome units to be constructed in said development; and

**WHEREAS**, pursuant to the terms of that agreement, Sparkman, LLC was obligated to install all on-site and off-site improvements necessary to sustain the development of the property to include installation of a potable water distribution system and internal and external roadway system; and

**WHEREAS**, pursuant to the terms of this original Developer's Agreement, the City is authorized to assess the actual and verified cost of completing these improvement obligations against the property if Sparkman, LLC fails to undertake and complete its obligations pursuant to the terms of the original Developer's Agreement; and

**WHEREAS**, construction on the Property has not commenced to date as required in the terms of the original Developer's Agreement; and

**WHEREAS**, Volusia County and the Volusia County School Board are currently constructing 1) W. Rhode Island Avenue and 2) the High School DDD and both parties are willing to include the Sparkman Avenue Extension Project within the scope of their respective projects; and

**WHEREAS**, Sparkman, LLC is desirous of having the City contract with Volusia County and the Volusia County School Board to construct the Sparkman Avenue Extension Project and assess the actual and verified costs thereof against the property; and

**WHEREAS**, the City has executed a Joint Project Agreement with Volusia County and the Volusia County School Board to complete the Sparkman Avenue Extension including utilities; and

**WHEREAS**, the City agrees to finance the cost of the aforesaid improvements in accordance with the terms of the Supplemental Developer Agreement attached hereto as Exhibit "A" to include repayment through the establishment of a non-ad valorem assessment program.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY:**

**SECTION 1.** To express the contract between the City and Sparkman, LLC, the City does hereby authorize the execution and delivery on behalf of the City by the City Manager under the seal of the City, attested by the City Clerk, of the Supplemental Developer Agreement by and between the City and Sparkman, LLC (the "Supplemental Developer Agreement"). The Supplemental Developer Agreement shall be in substantially the form attached hereto and marked Exhibit "A" and is hereby approved, with such changes therein as shall be approved by any of the authorized officers executing the same, with such execution to constitute conclusive evidence of such officer's approval and the City's approval of any changes therein to the form of the Supplemental Developer Agreement attached hereto.

**SECTION 2.** The Mayor, the City Manager and the officers and agents of the City of Orange City, Florida, are hereby authorized and directed to do all acts and things required by them by the provisions of the Supplemental Developer Agreement and this Resolution, to the extent that full compliance with the terms hereof and thereof shall be effected.

**SECTION 3.** That all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

**SECTION 4.** That this resolution shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

**ROLL CALL VOTE AS FOLLOWS:**

Jim Mahoney	_____	Donald C. Sherrill	_____
Don Sandford	_____	Tom Abraham	_____
Tom Laputka	_____	Jeff Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.**

**ATTEST:**

**AUTHENTICATED:**

\_\_\_\_\_  
Deborah J. Renner, CMC, City Clerk

\_\_\_\_\_  
Harley Strickland, Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
W. E. Reischmann, City Attorney

**SUPPLEMENTAL DEVELOPER'S AGREEMENT**  
**for**  
**SPARKMAN RIDGE SUBDIVISION R-PUD**

\_\_\_\_\_, 2009

**THIS AGREEMENT** is entered into and made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF ORANGE CITY, FLORIDA**, (hereinafter referred to as the "City"), and **SPARKMAN, LLC**, registered to do business in Florida as a limited liability company (hereinafter referred to as the "Sparkman").

**WITNESSETH**

**WHEREAS**, Sparkman, LLC is the owner and developer of certain real property lying within the municipal boundaries of the City of Orange City, consisting of a 50.72 acre parcel of land which is situated on the north side of West Rhode Island Avenue approximately 1,961.00 feet west of South Volusia Avenue (US 17-92). This parcel of land is more particularly described in the survey and legal description, a true copy of the legal description is attached hereto as Exhibit A (hereinafter referred to as the "Property"); and

**WHEREAS**, after complying with all relevant City procedures, the City Council of Orange City held a public hearing on or about June 28, 2005, and reviewed and approved the Sparkman Ridge R-PUD Application and the Preliminary R-PUD Master Development Plan. Said approval was performed by the adoption of Resolution Number 214-05; and

**WHEREAS**, on or about August 8, 2005, the City and Sparkman entered into that certain Developer's Agreement for Sparkman Ridge R-PUD, to establish guidelines and standards for the orderly development of the Property in compliance with the laws and regulations of the City, and of other governmental authorities (the "Original Agreement"); and

**WHEREAS**, the Original Agreement allowed ninety-four (94) single-family residential dwelling units and one hundred eight (108) townhome units to be constructed on the Property; and

**WHEREAS**, pursuant to the terms of the Original Agreement, Sparkman was obligated to install all on-site and off-site improvements necessary to sustain the ultimate development of the property, including the installation of a potable water distribution system and an internal and external roadway system; and

**WHEREAS**, the required off-site improvements needed to serve the Property include an extension of Sparkman Avenue from Ohio Avenue to Rhode Island Avenue,

including all road and ancillary improvements, demolition, select clearing and grubbing, excavating, stabilization, pervious asphalt concrete wearing surface, sod, culvert installation and/or replacement, guardrail and/or handrail installation, grading, turnout construction, erosion control, signs, traffic striping, construction layout, as-built drawings, maintenance of traffic and related improvements, environmental mitigation, realignment, and also including the construction of approximately 1,900 linear feet of 12-inch water line to be installed in the right-of-way along this new roadway segment of Sparkman Avenue, and all other related expenses (collectively the "Sparkman Avenue Extension Project"); and

**WHEREAS**, pursuant to the terms of the Original Agreement, the City is authorized to assess the actual and verified cost of completing these on-site and off-site improvement obligations against the Property if Sparkman fails to undertake and complete its obligations pursuant to the terms of the Original Agreement; and

**WHEREAS**, substantial construction on the Property has not commenced to date by Sparkman; and

**WHEREAS**, Volusia County (the "County") is currently constructing the portion of Rhode Island Avenue that will connect to the Sparkman Avenue Extension Project and is willing to include the roadway portion of the Sparkman Avenue Extension Project within the scope of its current road project; and

**WHEREAS**, the School Board of Volusia County (the "School Board") is currently constructing a water line along the portion of Rhode Island Avenue that will connect to the Sparkman Avenue Extension Project and is willing to include the water line portion of the Sparkman Avenue Extension Project within the scope of its current utility project; and

**WHEREAS**, Sparkman is desirous of having the City contract with the County and the School Board to construct the Sparkman Avenue Extension Project and assessing the actual and verified costs thereof against the Property; and

**WHEREAS**, the City, the County, and Sparkman have determined that it would be in the best interest of the public and to the economic advantage of all parties involved to have the County construct the road portion of the Sparkman Avenue Extension Project while its contractors are mobilized on-site for the Rhode Island Avenue road work and the City and the County have entered into a Joint Project Agreement to accomplish the same; and

**WHEREAS**, the City, the School Board, and Sparkman have determined that it would be in the best interest of the public and to the economic advantage of all parties involved to have the School Board construct the water line portion of the Sparkman Avenue Extension Project while its contractors are mobilized on-site and the City and the School Board have entered into a Joint Project Agreement to accomplish the same.

**NOW** in consideration of the mutual promises and covenants herein contained, the City and Sparkman agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of the Agreement.

**SECTION 2. OWNERSHIP AND TITLE.**

(A) Sparkman represents that it is vested with fee simple title of record to the Property, which is the subject of this Agreement. The legal description of the Property subject to this Agreement is set forth in Exhibit A Legal Description and Exhibit B Sparkman Ridge Subdivision R-PUD Master Development Plan attached hereto and by this reference made a part hereof.

(B) Sparkman will provide to the City no later than February 18, 2009, in advance of the City's execution of this Agreement, a title opinion of any attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing marketable title to the Property to be in the name of the Sparkman and showing all liens, mortgages, easements, and other encumbrances not satisfied or released of record.

**SECTION 3. SPARKMAN AVENUE EXTENSION PROJECT.**

(A) Pursuant to the terms of the Original Agreement, Sparkman is responsible for the design, installation, construction, inspection, and financing of all on-site and off-site improvements for the Sparkman Ridge Subdivision, as contained in the R-PUD Master Development Plan attached hereto as Exhibit B, which contains the work included within the Sparkman Avenue Extension Project.

(B) The City has entered into a Joint Project Agreement with the County to have the road portion of the Sparkman Avenue Extension Project designed, installed, constructed, and inspected by the County in order to achieve efficiencies and economies for all parties.

(C) The City has entered into a Joint Project Agreement with the School Board to have the water line portion of the Sparkman Avenue Extension Project designed, installed, constructed, and inspected by the School Board in order to achieve efficiencies and economies for all parties.

(D) The City will either internally finance or will secure a bank loan in the amount of \$750,000.00 (the "Note") with an estimated funding date of February 19, 2009, to cover the estimated project cost for the Sparkman Avenue Extension Project plus all related costs, including, but not limited to: (1) any amounts necessary for a reserve fund and capitalized interest account; (2) all costs, fees and expenses incurred

by the City in connection with the securing and issuance of the loan, including but not limited to, financing fees, the fees and disbursements of bond counsel; (3) the fees and disbursements of the City's investment banker; (4) the costs of preparing all documentation supporting issuance of the debt; (5) the costs incurred by the City for the initial design and implementation of the non-ad valorem assessment program; and (6) all other costs and expenses that are reasonably related to the Sparkman Avenue Extension Project under generally accepted accounting principles (collectively referred to as the "Capital Costs").

(E) Unless payment in full is received by the City as provided in paragraph (F) below, no later than February 19, 2009, the City will record a lien against the Property in the amount of \$750,000.00 for the full estimated amount of the Sparkman Avenue Extension Project Capital Costs, as provided in Section 7 hereof. Said lien shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims, until paid.

(F) No later than the close of business on February 11, 2009, Sparkman shall pay to the City the full estimated amount of the Sparkman Avenue Extension Project Capital Costs. If the City does not receive the full amount of the Sparkman Avenue Extension Project Capital Costs from Sparkman by this date, Sparkman will be deemed to have consented to have a non-ad valorem assessment levied against its Property in accordance with Section 4 hereof.

(G) In the event the total Capital Cost of the Sparkman Avenue Extension Project exceeds \$750,000.00, Sparkman shall have thirty (30) days following receipt of a written notice from the City to pay this additional amount (the "Capital Cost Overage") to the City. If the City does not receive the Capital Cost Overage from Sparkman by this date, Sparkman will be deemed to have consented to have these costs included in a non-ad valorem assessment levied against its Property in accordance with Section 4 hereof. The annual non-ad valorem assessment payment of \$92,192.00 provided in Section 4(B) below shall be adjusted accordingly to include any Capital Cost Overage.

(H) In the event the total Capital Cost of the Sparkman Avenue Extension Project is less than \$750,000.00, any excess funds shall be applied to pay down the Note upon the completion of the Sparkman Avenue Extension Project. The annual non-ad valorem assessment payment of \$92,192.00 provided in Section 4(B) below shall be adjusted accordingly to provide credit for any excess funds paid toward the Note.

#### **SECTION 4. NON-AD VALOREM ASSESSMENT PROGRAM.**

(A) If the full estimated amount of the Sparkman Avenue Extension Project Capital Costs are not paid to the City by the close of business on February 11, 2009, the City shall levy a non-ad valorem assessment against the Property to recover the total amount of the Sparkman Avenue Extension Project Capital Costs, plus all annual

costs related to the administration and collection of the non-ad valorem assessments, including, but not limited to: (1) costs related to the annual implementation and administration of the assessment program; (2) annual fees paid to the tax collector pursuant to Section 197.3632, Florida Statutes; (3) annual offsets for the statutory discount; and (4) and all other annual costs and expenses that are reasonably related to the non-ad valorem assessment program (collectively the "Assessment Program Costs").

(B) The non-ad valorem assessments shall be collected pursuant to the Uniform Method of Collection, as provided in Section 197.3632, Florida Statutes, in fifteen (15) annual installments of \$92,192.00, plus any Capital Cost Overage, or until the Sparkman Avenue Extension Project Capital Costs and Assessment Program Costs, plus accrued interest and penalties, if any, have been repaid to the City in full.

(C) The Property will be specially benefited by the Sparkman Avenue Extension Project. The design, construction, and installation of the Sparkman Avenue Extension Project will enhance the utilization and enjoyment of the Property by: (1) establishing adequate ingress and egress to the Property and increasing the Property's immediate development potential; and (2) protecting and enhancing the value and integrity of the Property through the provision of essential roadway and potable water infrastructure.

(D) The special benefits to be provided to the Property by the Sparkman Avenue Extension Project bear a logical relationship to the methods used to apportion the Capital Costs. The non-ad valorem assessment program provides an equitable method of funding the Capital Costs of the Sparkman Avenue Extension Project, which costs are fair and reasonable and in proportion to the special benefits received by the Property.

(E) The terms, conditions, and assumptions of the Sparkman Avenue Extension Project non-ad valorem assessment program, which shall be contained in the Initial Assessment Resolution, including but not limited to: (1) assignment of the Equivalent Dwelling Units and Connections to the Property; (2) computation of the annual non-ad valorem assessment amounts; and (3) reallocation of the annual assessments upon subdivision of the Property are fair and reasonable and in proportion to the special benefits to be provided to the Property by construction of the Sparkman Avenue Extension Project.

(F) Upon the adoption of the assessment roll for the Sparkman Avenue Extension Project non-ad-valorem assessment program, the non-ad valorem assessments shall constitute a lien against the Property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims, until paid. The lien for the Sparkman Avenue Extension Project non-ad valorem assessment shall be deemed perfected upon the City

Council's adoption of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable. The lien for Sparkman Avenue Extension Project non-ad valorem assessment collected under the Uniform Assessment Collection Act shall attach to the Property included on the assessment roll as of the prior January 1, the lien date for ad valorem taxes imposed under the Tax Roll. Once the Sparkman Avenue Extension Project non-ad valorem assessment roll is adopted by the City Council, the existing lien of record on the Property for the Capital Costs of the Sparkman Avenue Extension Project shall be supplanted by the lien resulting from certification of the assessment roll, as applicable, to the Tax Collector.

**SECTION 5. DEVELOPMENT RIGHTS.** Sparkman acknowledges and agrees that the execution of this Agreement or any activity resulting herefrom does not affect any existing rights to develop the Property in a specific manner, nor does this Agreement confer any new or additional development rights upon Sparkman.

**SECTION 6. DUE ON SALE.**

(A) If at any time Sparkman transfers the Property in total to any other party, the entire outstanding amount for the Sparkman Avenue Extension Project Assessment Program Costs and Capital Costs, plus a 1% prepayment penalty on the original \$750,000.00 amount of the Note and any costs incurred by the City due to the transfer and prepayment of the Note, shall be due to the City at the time the Property is transferred.

(B) Sparkman shall provide the City with notice of impending transfer of the Property in total not less than 30 days prior to the closing and shall provide the City with the transfer documents, closing statements and all other necessary documentation as reasonably requested by the City. Upon receipt of notice of impending transfer from Sparkman, the City will provide Sparkman with an invoice within ten (10) business days setting forth the amount due under the Note, including but not limited to the outstanding principal amount, accrued interest, assessment program costs, the prepayment penalty, and the costs of the City's counsel, assessment consultants, and investment banker in assisting with the Note payoff. This invoice shall be paid prior to or at the closing for the Property transfer.

**SECTION 7. ENFORCEMENT.**

(A) Subject to to the limitation imposed by Section 768.28, Florida Statutes, in any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, costs and expenses incurred.

(B) The recording of this Agreement shall constitute a lien upon the property for the full \$750,000.00 of the Note, until said is paid or until the lien is otherwise

supplanted in accordance with Section 4 hereof, in addition to such other obligations as this agreement may impose upon the Property and Sparkman.

**SECTION 8. HOLD HARMLESS, INDEMNIFICATION, AND SOVEREIGN IMMUNITY.**

(A) The City shall at all times be entitled to the protection and benefits of Florida Statute 768.28 *et seq.* and the sovereign immunity laws of the State. Nothing contained within this Agreement is intended to or shall be construed to waive such rights.

(B) Sparkman and its assigns and successors in interest shall indemnify and hold harmless the City from and against all claims, demands, disputes, damages, costs, expenses (to include attorney's fees whether or not litigation is necessary and if necessary, both at trial and on appeal), incurred by the City as a result, directly or indirectly, of the use or development of the Property, except those claims or liabilities caused by or arising from the gross negligence of the City, or its employees or agents. It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the Property, including, but not limited to, drainage or sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.

(C) Sparkman hereby agrees to and shall hold the City, its elected and appointed boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damages for personal injury, including death, as well as claims for property damage which may arise from Sparkman or its respective contractors, agents or employees operating under this Agreement, whether such operations be by Sparkman or by any of its respective contractors or subcontractors, agents or employees.

**SECTION 9. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provisions of this Agreement, the parties hereby agree to cooperate in defending such action.

**SECTION 10. ENTIRE AGREEMENT.**

(A) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

(B) This Agreement may be one in a series of development approvals relating to the Property. This Agreement shall not operate to supersede, release or satisfy any commitment or condition in any other development order or permit, nor shall the entry of this Agreement operate to limit the imposition of terms, conditions and commitments in other development orders or permits unless expressly provided herein or inconsistent herewith. To the extent not expressly modified herein, the terms and conditions of the Original Agreement shall remain in full force and effect.

**SECTION 11. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 12. NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the date such notice is delivered by hand or facsimile transmission or three days after the date mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

City: City of Orange City  
Office of the City Manager  
205 East Graves Avenue  
Orange City, Florida 32763

with a copy to: William E. Reischmann, Jr.  
City Attorney  
111 N. Orange Ave., Suite 2000  
P.O. Box 2873  
Orlando, Florida 32802-2873

Sparkman: Mr. Ronald Schwartz  
Sparkman, LLC  
Post Office Box 536428  
Orlando, Florida 32853

with a copy to: Kim C. Booker, Attorney at Law  
Booker & Associates, P.A.  
1019 Town Center Drive, Suite 201  
Orange City, Florida 32763

Either of the above parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other

communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission or three days after the date mailed.

**SECTION 13. BINDING EFFECT.** This Agreement shall be recorded in the Public Records of Volusia County and, to the extent provided herein, shall be binding upon the City, Sparkman and the Sparkman's successors in interest to the Property. The provisions of this Agreement shall run with the land.

**SECTION 14. EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 15. CONSTRUCTION.**

(A) This Agreement shall not be construed against any party on the basis of it being the drafter of the Agreement. The parties agree that the parties herein played an equal part in reciprocity in drafting this Agreement.

(B) Capitalized terms contained herein shall have no more force nor effect than uncapitalized terms.

(C) Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

(D) There are no third party beneficiaries to this Agreement. This Agreement is entered into exclusively for the benefit of the parties herein.

**SECTION 16. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**SECTION 17. JURISDICTION AND VENUE.** The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State, whether state, local or federal, and further agrees that venue shall lie in Volusia County, Florida.

**SECTION 18. RECORDING.** This Agreement shall be recorded, at Sparkman's expense, among the Public Records of Volusia County, Florida no later than February 19, 2009.

**IN WITNESS WHEREOF**, the City Council of the City of Orange City, Florida, has caused this Agreement to be executed and delivered as of the day and year first above written.

**CITY OF ORANGE CITY, FLORIDA**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
City Attorney  
City of Orange City, Florida

**IN WITNESS WHEREOF, Ronald Schwartz** has caused this Agreement to be executed and delivered as of the day and year first above written.

By: \_\_\_\_\_  
Ronald Schwartz,  
Managing Partner

WITNESSES:

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

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

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2009, by Ronald Schwartz, as the Managing Partner of Sparkman LLC, on behalf of Sparkman LLC.

Name of Notary \_\_\_\_\_

Personally Known \_\_\_\_\_ or  
Produced I.D. \_\_\_\_\_  
Type of I.D. Produced \_\_\_\_\_

Signature \_\_\_\_\_

(NOTARY SEAL)

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

## Exhibit A

### Legal Description Sparkman Ridge R-PUD Property

Parcel ID: 8010-00-00-0020

Acreage: 50.72

Legal  
Description: A portion of Section 10, Township 18 South, Range 30 East being in Volusia County, Florida, more particularly described as follows:

Begin at the South  $\frac{1}{4}$  corner of Section 10, Township 18 South, Range 30 East being in Volusia County, Florida; thence run S89°38'34"W along the South line of the Southwest  $\frac{1}{4}$  of said Section 10 for a distance of 1998.90 feet to the East line of the West 660.00 feet of the Southwest  $\frac{1}{4}$  of said Section 10; thence N00°37'21"W along the East line of the West 660.00 feet of the Southwest  $\frac{1}{4}$  of said Section 10 for a distance of 1109.77 feet; thence N 89°52'06"E along the South line of the North 216.50 feet of the South  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of said Section 10 for a distance of 1997.29 feet to a point on the centerline of Sparkman Avenue, Block 30, Map of Orange City as recorded in Map Book 3, Page 86 of the Public Records of Volusia County, Florida and also being the East line of the Southwest  $\frac{1}{4}$  of said Section 10; thence S00°42'33"E along the East line of the Southwest  $\frac{1}{4}$  of said Section 10 for a distance of 1101.91 feet to the Point of Beginning.

Containing 2,209,512 square feet (50.72 acres, more or less)

**EXHIBIT B**

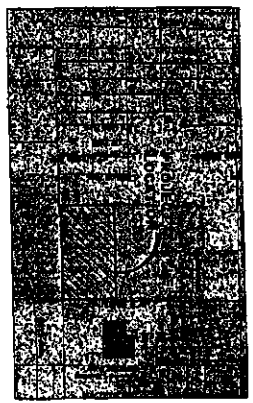
**SPARKMAN RIDGE R-PUD MASTER DEVELOPMENT**

PRELIMINARY PLANNED UNIT DEVELOPMENT  
 FOR

# SPARKMAN RIDGE SUBDIVISION

ORANGE CITY, FLORIDA

PREPARED FOR:  
**SPARKMAN, LLC**



VICINITY MAP

- OWNER:**  
 SPARKMAN, LLC  
 2548 EMERALD DRIVE  
 DUNEDIN, FLORIDA 33424  
 PHONE: (813) 251-1111  
 FAX: (813) 251-1112  
 E-MAIL: SPARKMAN@SPARKMAN.COM  
 JOHN SCHWARTZ
- OWNERS REP:**  
 JOHN SCHWARTZ  
 2548 EMERALD DRIVE  
 DUNEDIN, FLORIDA 33424  
 PHONE: (813) 251-1111  
 FAX: (813) 251-1112  
 E-MAIL: SPARKMAN@SPARKMAN.COM  
 JOHN SCHWARTZ
- LAND PLANNER/ AGENT:**  
 CMI ENGINEERS, INC.  
 25 EAST TINE STREET  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO
- CIVIL ENGINEER:**  
 CMI ENGINEERS, INC.  
 25 EAST TINE STREET  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO
- LANDSCAPE ARCHITECT:**  
 CMI ENGINEERS, INC.  
 25 EAST TINE STREET  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO
- TRAFFIC ENGINEER:**  
 LINE TRANSPORTATION ENGINEERING CONSULTANTS  
 25 EAST TINE STREET  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO
- SURVEYOR:**  
 CMI ENGINEERS, INC.  
 25 EAST TINE STREET  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO
- ENVIRONMENTAL:**  
 LINE TRANSPORTATION ENGINEERING CONSULTANTS  
 25 EAST TINE STREET  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO
- UTILITY:**  
 FLORIDA PUBLIC UTILITIES  
 1000 N. GULF AVENUE  
 ORANGE CITY, FLORIDA 32767  
 PHONE: (407) 825-4444  
 FAX: (407) 825-4445  
 E-MAIL: JAMES@CMIENGINEERS.COM  
 JAMES E. ORLANDO

**LEGAL DESCRIPTION**

A portion of Section 16, Township 28 North, Range 29 West, County of Orange, Florida, containing the following described land, to-wit: ...

**SHEET INDEX**

- 1 COVER SHEET
- 2 PRELIMINARY PUD MASTER PLAN
- 3 PRELIMINARY GRADING PLAN
- 4 PRELIMINARY UTILITY PLAN
- 5 COMPOSITE GENERAL AREA PLAN
- 6 BOUNDARY & TOPOGRAPHIC SURVEY
- 7 PRELIMINARY LANDSCAPE PLAN
- 8 PRELIMINARY LANDSCAPE PLAN
- 9 LANDSCAPE NOTES AND DETAILS

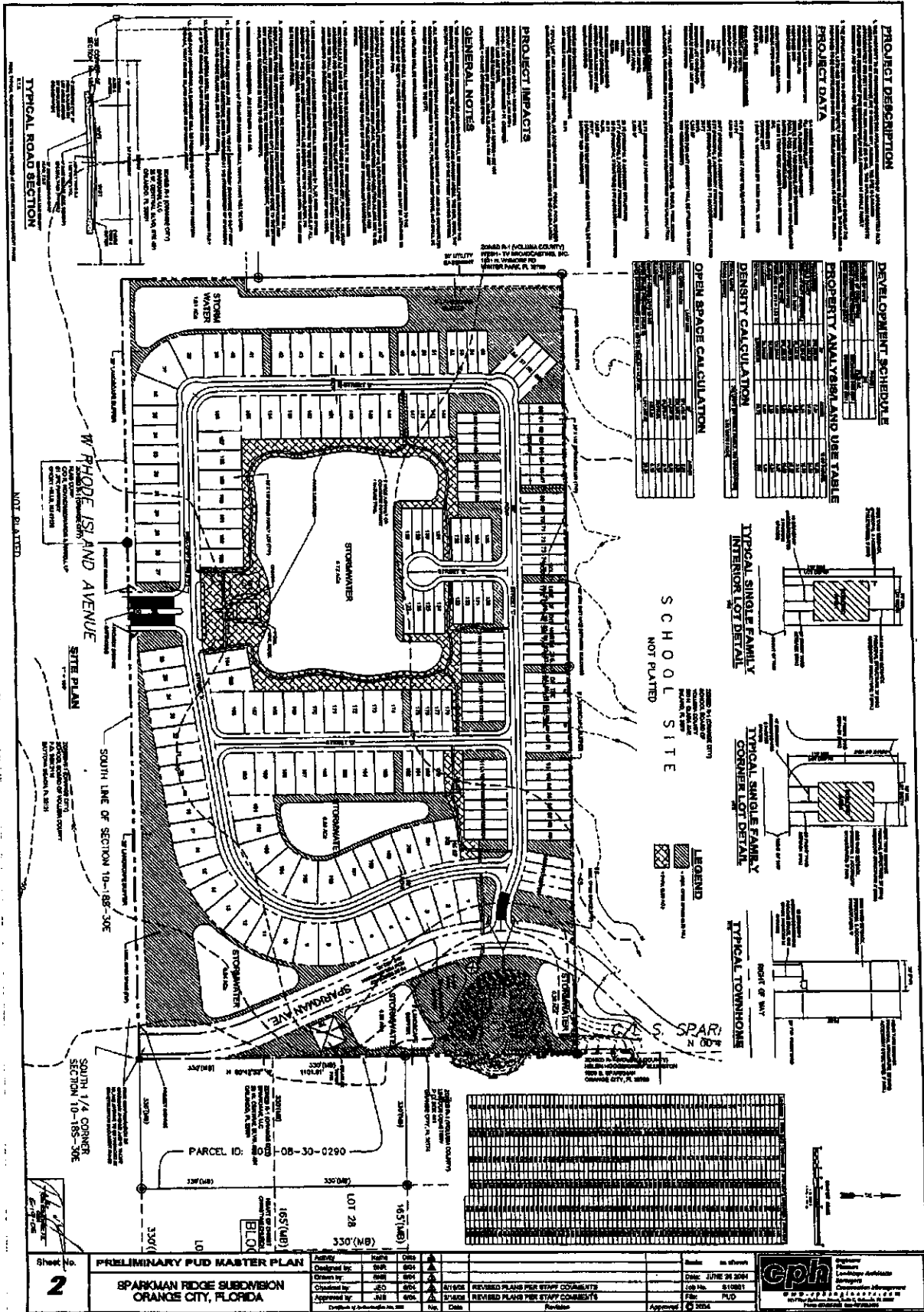


NO.	DATE	DESCRIPTION	BY	CHECKED
1	5-14-05	PRELIMINARY PUD MASTER PLAN	J.E.O.	J.E.O.
2	5-14-05	PRELIMINARY GRADING PLAN	J.E.O.	J.E.O.
3	5-14-05	PRELIMINARY UTILITY PLAN	J.E.O.	J.E.O.
4	5-14-05	COMPOSITE GENERAL AREA PLAN	J.E.O.	J.E.O.
5	5-14-05	BOUNDARY & TOPOGRAPHIC SURVEY	J.E.O.	J.E.O.
6	5-14-05	PRELIMINARY LANDSCAPE PLAN	J.E.O.	J.E.O.
7	5-14-05	PRELIMINARY LANDSCAPE PLAN	J.E.O.	J.E.O.
8	5-14-05	LANDSCAPE NOTES AND DETAILS	J.E.O.	J.E.O.

ORANGE CITY  
 RECEIVED  
 MAY 20 2005  
 DEVELOPMENT  
 SERVICES

Exhibit B

J.E.O.  
 5-14-05



Sheet No. **2**

**PRELIMINARY PUD MASTER PLAN**  
**SPARKMAN RIDGE SUBDIVISION**  
**ORANGE CITY, FLORIDA**

Activity	Rate	Cost	Notes
Designed by:	SWP	600	
Drawn by:	JSD	400	
Checked by:	JSD	400	
Approved by:	JMS	400	

Revised	By	Date	Description
1	JMS	6/26/04	REVISED PLANS PER STAFF COMMENTS
2	JMS	6/26/04	REVISED PLANS PER STAFF COMMENTS

Title: as shown  
 Date: JUNE 26 2004  
 Job No.: S1081  
 File: PUD  
 Approved: [Signature]

Exhibit "B"

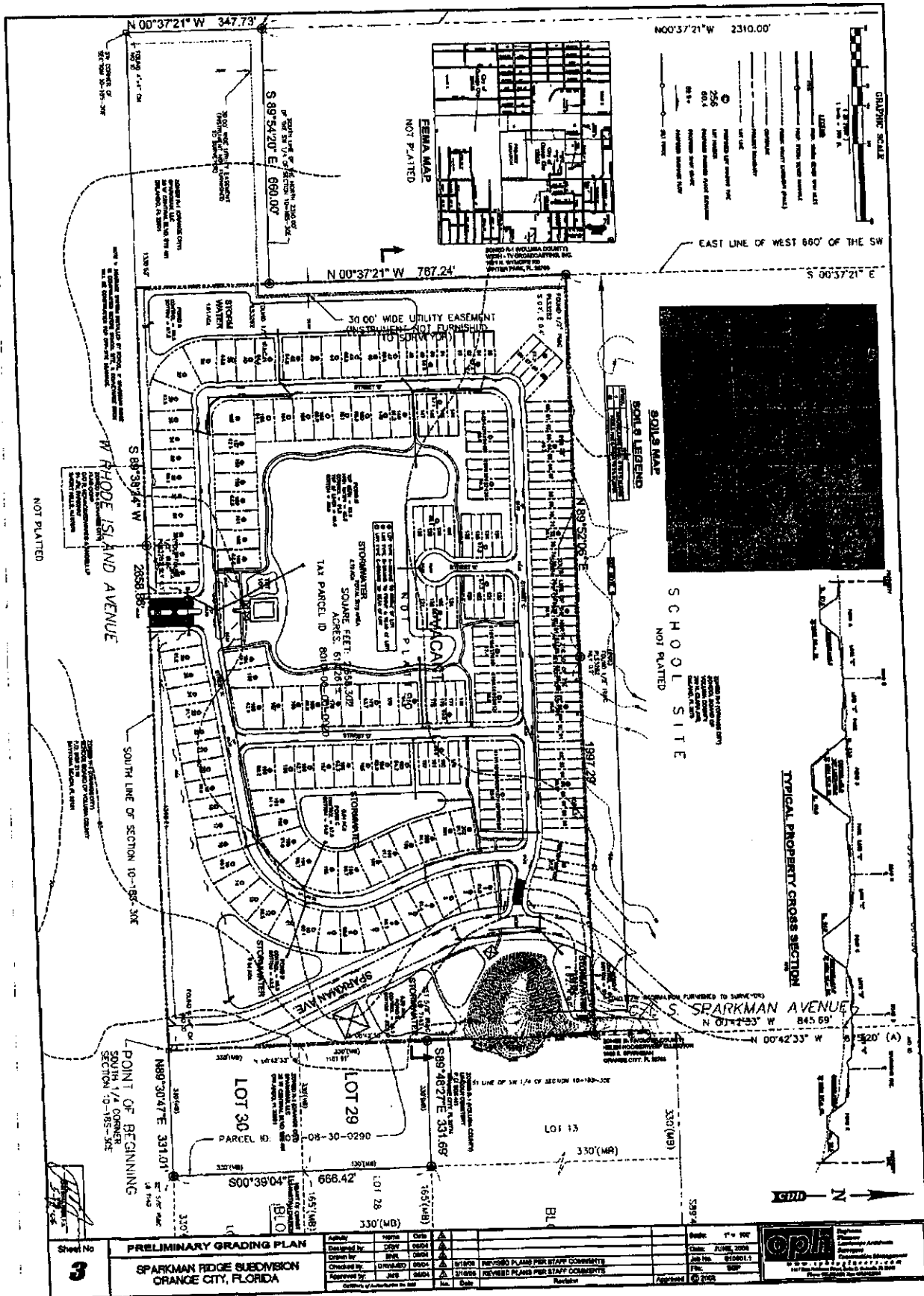
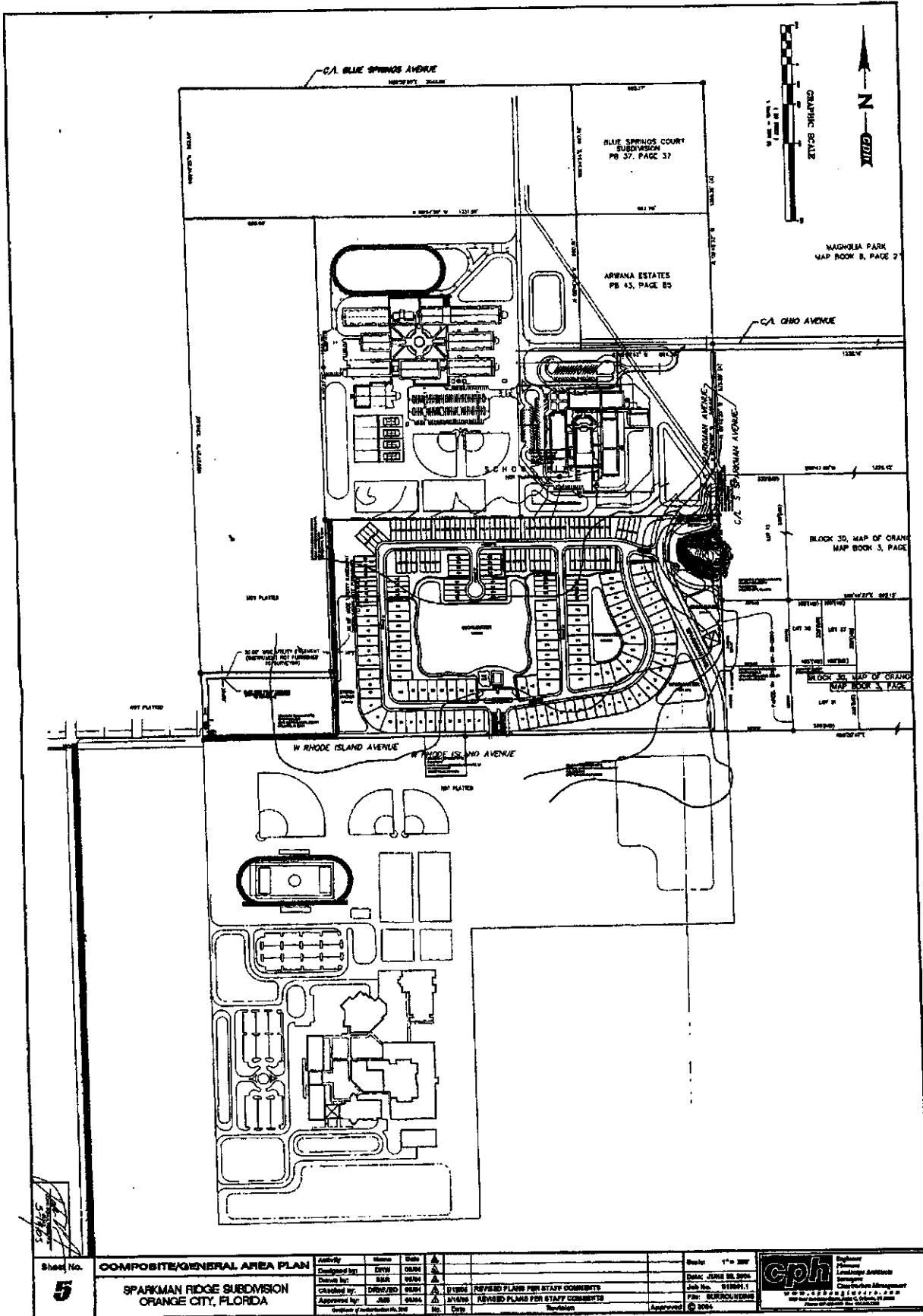


Exhibit B





Sheet No. **5**

**COMPOSITE/GENERAL AREA PLAN**  
**SPARKMAN RIDGE SUBDIVISION**  
**ORANGE CITY, FLORIDA**

Activity	Name	Date	Notes
Designed by	EPH	02/04	
Drawn by	MAE	02/04	
Checked by	DR/ED	02/04	✓
Approved by	JMB	02/04	✓
City of Orange			REVIEW PLANS FOR STAFF COMMENTS
City of Orange			REVIEW PLANS FOR STAFF COMMENTS

Scale: 1" = 30'  
 Date: JUNE 08, 2005  
 Job No.: 01004.1  
 File: BURKHOLDER

**eph**  
 Engineer  
 Licensed Architect  
 Landscape Architect  
 Construction Management

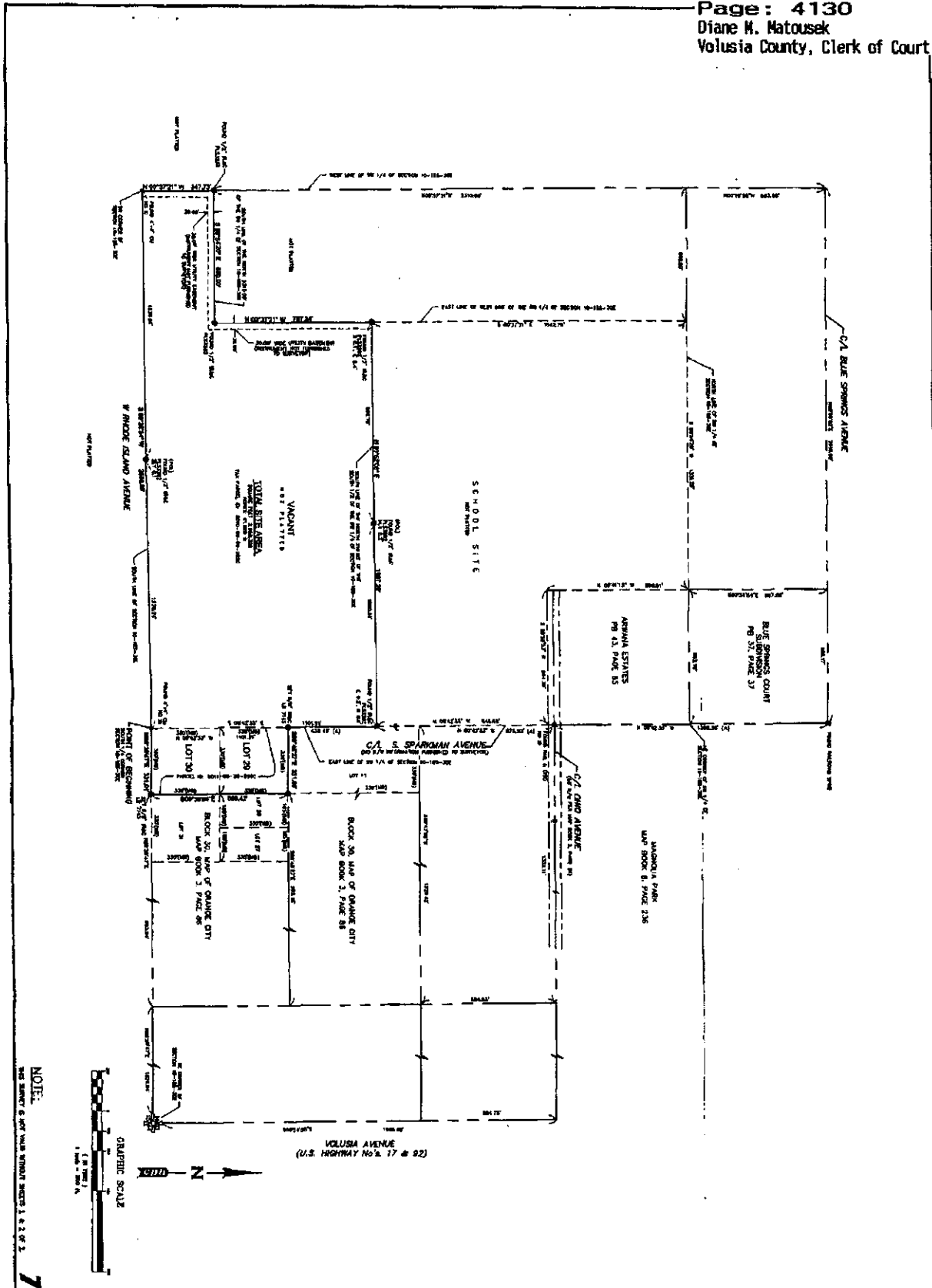
Exhibit "B"











NOTE:  
 THE SURVEY IS NOT VALID UNLESS SHEETS 1, 2, & 3.

Sheet No. <b>2</b> of 3	<b>BOUNDARY SURVEY</b> <b>SPARKMAN, L.L.C.</b> SPARKMAN RIDGE RESIDENTIAL SUBDIVISION <small>IN A SUBDIVISION MAP, ORANGE COUNTY, FLORIDA</small>	Surveyed by	J.P.	1981	△	Date: 1-1-05 Drawn: JAN, 2004 Job No.: 210004 File: 040004.DWG Approved: [Signature]
		Checked by	W.C.S.	1981	△	
		Approved by	W.C.S.	1981	△	Engineer Planner Landscape Architect Surveyor Construction Management <small>INCORPORATED IN FLORIDA</small>

Exhibit "B"