

# *W*INTER HAVEN

*The Chain of Lakes City*

## MEETING NOTICE

The Downtown Advisory Committee meeting will be held on **Monday, February 8, 2010 at 5:30 pm** in the John Fuller Auditorium in City Hall. The meeting agenda packet is attached for your review prior to this meeting.

# **Winter Haven Community Redevelopment Agency**

## **DOWNTOWN ADVISORY COMMITTEE**

**February 8, 2010**

**5:30 p.m.**

**Winter Haven City Hall  
John Fuller Auditorium  
451 Third Street, N.W., Winter Haven, Florida**

### **AGENDA**

1. Call to Order
2. Roll Call
3. Approval of Minutes  
    May 11, 2009  
    August 10, 2009  
    November 9, 2009
4. 2010 Meeting Schedule
5. Project Updates  
    South Park Design
6. Proposed CRA Expansion
7. Brownfield Area Designation
8. Funding and Cooperative Use Agreement between the City of  
    Winter Haven and the Ridge Art Association
9. Comments from the Committee
10. Adjournment

If a person decides to appeal any decision made by the CRA with respect to any matter considered at such meetings or hearing, they will need a record of the proceedings, and that, for such purposes, they need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105). In accordance with the Americans with Disabilities Act and Florida Statutes, Section 286.26, persons with disabilities needing special accommodations to participate in this proceeding, should contact the CRA Director's Office, 451 Third Street, NW, Winter Haven, FL 33883, in writing no later than 48 hours prior to the proceeding. If not in writing, not later than four (4) days prior to the proceeding at (863) 291-5600. If hearing impaired call (863) 291-5624, or voice (800) 955-8770, for assistance.

**WINTER HAVEN COMMUNITY REDEVELOPMENT AGENCY**  
***Downtown Advisory Committee***  
**FACT SHEET**  
**February 8, 2010**

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**DATE:** January 27, 2010  
**TO:** Downtown Advisory Committee  
**VIA:** Dale L. Smith, City Manager/CRA Director  
**FROM:** Sheandolen P. Dunn, Executive Assistant/Deputy City Clerk  
**SUBJECT:** 2010 Annual Meeting Schedule

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**BACKGROUND**

Florida Statutes 189.417 requires governing bodies for each special district to file a quarterly, semiannual or annual schedule of its regular meetings with the local governing authority. The Winter Haven CRA is considered a special district under Florida Statutes.

The CRA Board, Florence Villa Advisory Committee and Downtown Advisory Committee currently meet on a quarterly basis as required by the CRA By-Laws.

On December 14, 2009, the CRA Board approved the following 2010 meeting schedules:

<b>Winter Haven CRA Board</b>	<b>Downtown Advisory Committee</b>	<b>Florence Villa Advisory Committee</b>
March 8, 2010	February 8, 2010	January 11, 2010
June 14, 2010	May 10, 2010	April 12, 2010
September 13, 2010	August 9, 2010	July 12, 2010
December 13, 2010	November 8, 2010	October 11, 2010
Meetings will be held at 5:00 p.m. at Winter Haven City Hall	Meetings will be held at 5:30 p.m. at Winter Haven City Hall	Meetings will be held at 5:00 p.m. at Winter Haven City Hall

**WINTER HAVEN COMMUNITY REDEVELOPMENT AGENCY**  
***Downtown Advisory Committee***  
**FACT SHEET**  
**February 8, 2010**

---

**DATE:** January 27, 2010

**TO:** Downtown Advisory Committee

**VIA:** Dale L. Smith, City Manager

**FROM:** T. Michael Stavres, Director of Community Services

**SUBJECT:** South Central Park Design - Update

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In January 2009, staff commenced work with Envisors, LLC on the design and construction documents for the redevelopment of South Central Park and the surrounding roadways (the project). The intent of the project is to repurpose and renovate South Central Park consistent with recent work completed in Central and Virginia Miller Parks and throughout the downtown, including expansion of the park boundaries to the east. The project also includes the creation of a parking piazza along 4<sup>th</sup> and 5<sup>th</sup> Streets, SW immediately adjacent to the Park, allowing for unobstructed pedestrian flow and additional programmable space during special events. The roadway project incorporates streetscaping along Avenue A, SW and Magnolia Avenue and parking enhancements throughout the project area.

Staff received 60% construction/design documents December 30, 2009. These plans depict only minor changes from the 30% drawings, but do include significantly more engineering data. The plans are presently being reviewed by various City departments.

A presentation specific to the 60% drawings was made to the Main Street Winter Haven Design Committee January 20, 2010. Initial comments during the meeting were favorable with some concerns about the proposed pavilion space. The Committee Chair stated that the group would provide written comments once they have had an opportunity to further discuss the improvements as a group. Other presentations being scheduled include the Main Street Winter Haven Board of Directors and the downtown stakeholders/merchants. A public workshop to further solicit input will be scheduled for late February.

There is only one right of way issue outstanding at this time. Staff was scheduled to meet with the property owner January 19 but the property owner had to reschedule due to an out of town emergency. A new meeting is yet to be determined.

**WINTER HAVEN COMMUNITY REDEVELOPMENT AGENCY**  
***Downtown Advisory Committee***  
**FACT SHEET**  
**February 8, 2010**

---

**DATE:** January 27, 2010

**TO:** Downtown Advisory Committee

**VIA:** Dale L. Smith, City Manager/CRA Manager  
David Dickey, Community Development Director

**FROM:** Erin Tilghman, Sustainability Manager  
Sean Byers, Senior Planner

**SUBJECT:** Proposed CRA Expansion

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**Downtown CRA**

The Winter Haven Community Redevelopment Agency established the Downtown CRA by Resolution No. R-00-07 on March 13, 2000.

The Downtown CRA consists of approximately 2,000 parcels and covers 850 acres. Since its creation in 2000 the boundaries to the CRA have not been modified. However, due to subsequent annexations and recent development proposals, the City is exploring the possibility of expanding the Downtown CRA. This expansion would include approximately 24 parcels covering 26.65 acres.

It should be noted that the majority of properties in the proposed expansion area are owned by either CSX or Vigoro. Vigoro has recently shuttered its plant and has begun the process of demolishing the remaining improvements.

**Planning/Visioning Efforts**

As early as 2000, and reiterated in the City Commission visioning process in 2006/07, the community identified as one of its primary goals the redevelopment of its lakeshores for more appropriate uses including restaurants, hotels, recreation, etc. Multi-family residential development (apartments/condos) was also identified as a key component to an active, healthy City waterfront.

In conjunction with Kimley-Horn & Associates, the City prepared an Urban Lakefront Revitalization Study in July 2003. This study focused on the Lake Lulu/Shipp/Howard waterfronts and concluded that these areas were in need of a consistent redevelopment strategy including a network of trails connecting the lakefronts to downtown, as well as a

redevelopment of the waterfronts with residential and appropriate commercial uses.

### **Conclusion**

The City has taken several proactive steps in transforming a declining industrial area to mixed-use that encourages retail and residential development. The proposed CRA expansion is the next step in the City's efforts in generating additional sales tax, as well as new jobs in these difficult economic times. As noted above, one of the property owners in the proposed CRA expansion area has shuttered its plant and begun the process of demolishing its remaining improvements.

Additional incentives available through the proposed CRA expansion are critical to continued efforts in the redevelopment of this area.

### **RECOMMENDATION:**

Staff recommends that the Downtown Advisory Committee approve the process of CRA Expansion and forward the recommendation to the CRA Board.

### **ATTACHMENT:**

Proposed Downtown CRA Expansion Map

**WINTER HAVEN COMMUNITY REDEVELOPMENT AGENCY**  
***Downtown Advisory Committee***  
**FACT SHEET**  
**February 8, 2010**

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**DATE:** January 25, 2010

**TO:** Downtown Advisory Committee

**VIA:** Dale L. Smith, City Manager/CRA Director

**FROM:** David Dickey, Community Development Director  
Bethany Owen, Executive Assistant

**SUBJECT:** Establishing a Brownfield Area

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**BACKGROUND:**

With the passage of the Brownfields Redevelopment Act in 1997, Florida established a model for overcoming the barriers to Brownfield redevelopment. The Act was created to enable the Florida Department of Environmental Protection (FDEP) and other regulatory agencies to assist in the reduction of public health and environmental hazards and incentivize the reuse of these lands. For purposes of the Act, a Brownfield is defined as:

*abandoned, idled, or underused industrial or commercial properties  
where expansion, reuse, or redevelopment may be complicated by  
real or perceived environmental conditions.*

The existence of a Brownfield within a community may contribute to, or may be a symptom of, overall community decline, lack of educational and employment opportunities, and infrastructure decay. The environment is an important element of the quality of life in any community and Brownfield redevelopment and when properly done, can be a significant element in community revitalization.

A public meeting to introduce the Brownfield concept was held on Tuesday, August 4, 2009, at 6:00 p.m. at the Chain O'Lakes Complex. Flyers were distributed to property owners within the proposed Brownfield area and a notice was posted in the News Chief. John Segó, a Brownfield Coordinator with the Florida Department of Environmental Protection, provided a presentation and addressed questions from the public.

## **BROWNFIELD AREA DESIGNATION:**

The initial step in the redevelopment process is for a local government to designate the Brownfield area. The local government then notifies FDEP of its action which must include a resolution including a map that clearly delineates the parcels and acreage included in the designated Brownfield area.

A designated Brownfield area may include one or more parcels of land. If a property owner within the area proposed for designation requests in writing to have his/her property removed from the proposed designation, the local government shall grant the request.

## **REASONS TO REDEVELOP:**

Cleaning up and reinvesting in Brownfield properties facilitates job growth, utilizes existing infrastructure, increases the local tax base, removes development pressures on undeveloped open land as well as improving and protecting the environment.

The majority of the proposed project area also lies within the City's Downtown Community Redevelopment Area (CRA) District. City staff is working with Polk County to expand the Downtown CRA to include those parcels proposed to be designated within the Brownfield area not currently included in the CRA. CRA designation provides for certain financing incentives otherwise not available.

The designation of a Brownfield area allows for certain state and federal economic incentives. These include a \$2,500 per job corporate income tax credit, 50% state loan guarantees for primary lenders for site rehabilitation and development costs, sales tax credit for building material purchases, and a 50% voluntary cleanup tax credit applied against Florida corporate tax.

## **PROJECT AREA LOCATION:**

The proposed area consists of 158 acres and is located east and west of US Highway 17, east of Lake Shipp, and south of Avenue R, SW.

## **ATTACHMENT:**

Brownfield Area Aerial Map

**WINTER HAVEN COMMUNITY REDEVELOPMENT AGENCY**  
***Downtown Advisory Committee***  
**FACT SHEET**  
**February 8, 2010**

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**DATE:** January 22, 2010

**TO:** Downtown Advisory Committee Members

**VIA:** Dale L. Smith, City Manager

**FROM:** T. Michael Stavres, Director of Community Services

**SUBJECT:** Funding and Cooperative Use Agreement between the City of Winter Haven and the Ridge Art Association

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**BACKGROUND:**

At its August 17, 2006 Regular Meeting, the City Commission authorized the purchase of the former Social Security Building located at 245 W. Central Avenue for \$1,099,168. The closing of this transaction occurred September 29, 2006. The purchase was part of a larger initiative whereby properties were acquired by the City for future development of a parking structure to serve downtown.

For a period following the closing, the Social Security Administration continued to occupy the property until their new offices were constructed on Havendale Boulevard. Since their departure in September 2007, the building has remained vacant.

Staff continues to explore opportunities for development of the parking structure. However, the lack of funding opportunities at this time (internal and external) has pushed this development further back. In light of this, staff continues to rent the City-owned properties on Third Street, NW but has not sought out a lease tenant for the W. Central Avenue property. Recognizing an opportunity to create additional synergy in the downtown area through increased activity, staff began exploring the opportunity to relocate the Ridge Art Association (RAA) from the Chain O'Lakes Complex to this vacant facility.

The Ridge Art Association has been housed at the Chain O'Lakes Complex since the facility opened in 1977, utilizing the gallery and one office for its exhibits and operations. The size of the space currently used is a limiting factor in RAA being able to host larger exhibits and display permanent collection pieces. Conflicts can also arise during times when the gallery is used for smaller Theatre Winter Haven productions such as monologues or special readings.

With the revitalization efforts along Central Avenue and Third Street, the construction of the Library on Fourth Street, NW and the renovation of Central and Virginia Miller Parks, there has been a noted benefit to the downtown businesses. The addition of culturally based special events throughout the year have also added to the success of the dining and entertainment establishments, as will the completion of the historic Ritz Theatre. It is staff's belief that a permanent art gallery with exhibits and learning opportunities will further establish downtown as a destination and additionally attract new merchants and customers.

Staff initiated discussions with RAA in late 2008 pertaining to possible occupancy of the former Social Security Building and began negotiating a Funding and Cooperative Use Agreement. The intent of the Agreement is to further revitalize downtown through additional activity, provide an opportunity for RAA to expand its services to the community and enhance the aesthetics and functionality of a vacant City property through cooperative funding. The following is a summary of the Agreement:

- The term of the Agreement is ten years and may thereafter be extended for three separate five year terms unless otherwise terminated.
- RAA will utilize designated space within the City-owned building at 245 W. Central Avenue for the purpose of providing cultural art classes, programs, displays, services and instruction. RAA's use of the area shall be free of charge so long as the services provided are consistent with promoting and providing for education related to cultural arts and services are made available to all persons.
- RAA is required to pay a proportionate share for utilities based on the percentage of space assigned.
- The City reserves the right to utilize the facility as needed for public purpose or otherwise during the term of the Agreement. Such use shall be coordinated so as to not interfere with any previously scheduled RAA programs/activities.
- RAA is responsible for the payment of any taxes attributable to its operation under the terms of the Agreement including, but not limited to, sales tax and property tax assessed on the facility if RAA's use causes such taxes to be applicable.
- RAA is not allowed to materially alter or improve the facility without permission from the City. The interest of the City shall not be subject to liens for improvements made or contracted for by RAA.
- RAA agrees that prior to opening, RAA will contribute \$100,000 towards the renovation of the facility roof, façade and interior in accordance with the design and construction documents on file with the City. This contribution can be inclusive of cash, materials and/or in-kind services. The City shall commit \$100,000 in matching funds from the Downtown CRA toward the completion of this work and any additional improvements completed by RAA as authorized by the City. The availability of the City's matching funds will be no sooner than October 1, 2010.
- RAA is responsible for all minor repairs (value of less than \$250) associated with its use of the facility and agrees to keep the facility clean and in good order.

- RAA must obtain the City's approval on any signage.
- RAA is required to secure General Liability, Workers Compensation and Automobile insurance where applicable and in amounts designated by the City. The City is to be named as an additional insured party. RAA and the City are each responsible for maintaining its own property insurance.
- RAA shall hold harmless and indemnify the City, its officers, employees, representatives and agents against any claim, action, loss, damage, injury, liability or expense including reasonable attorney's fees arising out of or incidental to RAA's operation under this Agreement, whether or not caused by the negligence of the City, its officers, employees, representatives or agents excluding the sole negligence of the City, its officers, employees, representatives or agents. Nothing within the Agreement shall be construed as a waiver of the City's Sovereign Immunity.
- The Agreement shall not be assigned nor may the facility be sublet without the prior written consent of the City.
- The Agreement may be terminated by either party at any time without cause with one year written notice to the other. Upon termination, RAA shall remove any and all of its property and return the facility to its original condition, ordinary wear and tear expected.
- RAA shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and written policies. Failure to do so shall result in immediate suspension or termination of the Agreement.
- It is expressly understood and agreed that the rights granted by this Agreement are non-exclusive and the City reserves the right to grant similar privileges to another provider(s) at its sole discretion.
- The venue for any actions arising out of this Agreement shall be in the State Courts in and for Polk County, Florida.

The Agreement has been reviewed by the City Attorney and includes his comments/revisions. Upon approval by the City Commission and full execution by both parties, Ridge Art Association will begin its fundraising efforts. Upon securing the necessary funds, the renovation work will commence under the oversight of the City's Community Services Department.

**RECOMMENDATION:**

Staff recommends that the Downtown CRA Advisory Committee support the Funding and Cooperative Use Agreement between the City and the Ridge Art Association and its transmittal to the CRA Board for consideration and action.

**ATTACHMENT:**

Funding and Cooperative Use Agreement between the City of Winter Haven and the Ridge Art Association

**FUNDING AND COOPERATIVE USE AGREEMENT  
BETWEEN  
THE CITY OF WINTER HAVEN  
AND  
THE RIDGE ART ASSOCIATION**

**THIS** Funding and Cooperative Use Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF WINTER HAVEN, a Florida municipal corporation, hereinafter referred to as the “CITY”, and the RIDGE ART ASSOCIATION, a registered 501(c)3 Florida non-profit organization, hereinafter referred to as “RIDGE ART”.

WITNESSETH:

**WHEREAS**, Ridge Art exists as a non-profit organization committed to enhancing the quality of life in the greater Winter Haven area through the promotion of cultural arts; and

**WHEREAS**, the City is committed to ensuring cultural art opportunities for its residents and has allocated funding and resources to help support Ridge Art in their mission; and

**WHEREAS**, Ridge Art has utilized office and gallery space within the Chain O'Lakes Complex since \_\_\_\_ for the administration and delivery of these services; and

**WHEREAS**, it is the City's intent to pursue the redevelopment of the Chain O'Lakes Complex and surrounding property; and

**WHEREAS**, Ridge Art has expressed interest in relocating from the Chain O'Lakes Complex to a facility that would allow for expansion of their services, and

**WHEREAS**, the City owns certain real property located at 245 West Central Avenue hereafter referred to as the “FACILITY”, and

**WHEREAS**, it is the desire of the City to encourage expansion of cultural art opportunities within the downtown core area; and

**WHEREAS**, Ridge Art has committed to pursuing a capital campaign to help secure funding for the renovation of the Facility to include a gallery, classroom and administrative offices.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties do hereby agree as follows:

1. Recitals. The above recitals are hereby incorporated as a factual basis for the entry into this Agreement between the City of Winter Haven and the Ridge Art Association.

2. Term. The initial term of the Agreement shall be for a period of ten years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and continuing through the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the "Termination Date", unless earlier terminated under the terms of this Agreement. This Agreement may thereafter be renewed for three separate five year terms at the mutual consent of both parties unless otherwise terminated.

3. Facility. Ridge Art shall utilize designated space within the Facility located at 245 West Central Avenue, Winter Haven, Florida for the purpose of providing cultural art classes, programs, displays, services and instruction in accordance with the Ridge Art Association mission statement. A site sketch of the area to be utilized is attached hereto as Exhibit "A". Ridge Art shall be permitted to utilize the designated space free of charge so long as the services provided are consistent with promoting and providing for education related to cultural arts and that said services are made available to all persons regardless of age, race, religion, national origin, sex, and or physical disability. Ridge Art will be required to remit to the City on a monthly basis a proportionate share payment for utilities (electric, water, sewer and solid waste) based on the percentage of space assigned in relation to the overall square footage of the facility.

The City reserves the right to utilize the facility as needed for public purpose or otherwise during the term of the Agreement. Any such use will be coordinated with Ridge Art in advance of said use and all efforts will be pursued to not interrupt any previously scheduled Ridge Art classes, programs, displays, services and/or instruction.

4. Taxes. Ridge Art shall be responsible for paying and reporting any and all taxes attributable to its operation under the terms of this Agreement, including but not limited to sales tax and property tax, assessed on the Facility, if Ridge Art's activities cause said property to incur such taxes and charges. The same shall be paid to the City by Ridge Art on or before 60-days from the delivery by the City of notice to Ridge Art concerning such taxes and charges.

5. Renovation.

A. Approval Required; Ownership of Improvements. Ridge Art shall not alter or improve the Facility without the prior written consent of the City to do so, and any and all alterations, additions, improvements, and fixtures made or placed in or on the Facility shall on expiration, or sooner termination of this Agreement, belong to the City without compensation to Ridge Art; provided however, that the City shall have the option, to be exercised on expiration or sooner termination of this Agreement, to require Ridge Art to remove any or all of such additions, improvements, or fixtures.

B. Liens for Improvements. The City does not expressly agree to any particular improvement made, or contracted for, by Ridge Art during the term or any extended term of this Agreement. The interest of the City shall not be subject to liens for improvements made, or contracted for, by Ridge Art. Ridge Art shall notify the contractor making any such improvement that the City's liability for the improvement is expressly prohibited by this Agreement.

C. Required Improvements. As consideration for this Agreement, Ridge Art does hereby agree that prior to opening, Ridge Art shall contribute \$100,000 toward the renovation of the Facility roof, façade and interior in accordance with the design and construction documents on file with the City. The City will commit up to \$100,000 in matching funds toward the completion of this work and any additional improvements completed by Ridge Art within the Facility as may be authorized by the City. Availability of the City's matching funds will not occur prior to October 1, 2010. The matching commitment from Ridge Art can be in the form of cash, donated materials and/or in-kind labor/services. Documentation of in-kind services and donated materials must be provided by Ridge Art and will serve as the basis for payment of the City's contribution.

6. Repairs and Maintenance. Ridge Art agrees to keep the leased premises in good order and repair, reasonable wear and tear excepted. Ridge Art further agrees to keep the leased premises clean, and is responsible for any minor repairs to the Facility associated with use of the same. For purposes of this Agreement a minor repair shall be defined as a repair, the cost of which does not exceed \$250.00.

7. Signage. Ridge Art shall review with, and obtain, the City's approval on all signage. The City's approval shall not be unreasonably withheld provided all signage complies with applicable City Codes pertaining thereto.

8. Insurance.

A. General Liability Insurance. Ridge Art shall, at its expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the City, Commercial General Liability Insurance insuring Ridge Art against liability arising from Ridge Art's use or occupancy of the Facility and Ridge Art's operations necessary or incidental thereto. Except as otherwise agreed in writing by the City, the insurance shall be provided on a form no more restrictive than the Standard Commercial General Liability Form (ISO FORM CG 00 01) without any restrictive endorsements, and the City shall be included as an "Additional Insured" on a form no more restrictive than Form CG 20 10, Additional Insured – Owners, Lessees, or Contractors (Form B). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operation Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

B. Worker's Compensation Insurance. If at any time during the term of this Agreement Ridge Art employs personnel, Ridge Art shall, at its expense, procure and maintain, with insurers acceptable to the City, a Worker's Compensation policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Worker's Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One - "Statutory"  
Part Two - \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

C. Automobile Liability Insurance. If at any time during the term of this Agreement Ridge Art owns or operates vehicles in association with the use of the Facility, Ridge Art shall, at its expense, procure and maintain, with insurers acceptable to the City, Automobile Liability Insurance in a form no more restrictive than that provided by Section II (Liability Coverage) of the Standard Business Auto Policy (ISO Form CA 00 01) and shall cover all Ridge art owned, non-owned, and hired autos. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$2,000,000 Each Occurrence – Bodily Injury and Property Damage  
Combined

D. Property Insurance. Ridge Art and the City are each responsible for maintaining its own property insurance. Regardless of whether Ridge Art purchases property insurance or not, Ridge Art hereby expressly waives and releases any cause of action or right of recovery which Ridge Art may have hereafter against the City for any loss arising out of loss or damage to Ridge Art's property on, about, or a part of, the City's property.

E. Evidence of Insurance. Ridge Art shall provide the City an appropriate Certificate of Insurance, which includes thirty (30) days written notice of cancellation to the City for all coverage and verifies inclusion of the City as an Additional Insured in the General Liability coverage. Until such insurance is no longer required by this Agreement, Ridge Art shall provide the City with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

9. Indemnification. Ridge Art shall hold harmless, indemnify and defend the City, its officers and employees, representative or agents against any claim, action, loss, damage, injury, liability, tax, cost or expense of whatever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of or incidental

to Ridge Art's operations under this Agreement, whether or not due or caused by the negligence of the City, its officers or employees, representatives or agents, excluding the sole negligence of the City, its officers or employees, representatives or agents.

10. Sovereign Immunity Not Waived By Agreement. Nothing herein shall be construed by the parties as a waiver of the City's Sovereign Immunity. Ridge Art ratifies that the limits of liability of the City pursuant to this Agreement, and the limits of liability of the City to Ridge Art, shall be those limits of liability as set forth in Section 768.28, Florida Statutes, as amended from time to time, regardless of whether the alleged cause of action sounds in tort, contract, products liability, negligence, strict liability or otherwise.

11. Assignment. Ridge Art shall not assign this Agreement nor sublet all or any portion of the Facility without the prior written consent of the City. In the event such consent is provided, each assignee shall assume in writing all of Ridge Art's obligations under this Agreement, and Ridge Art shall remain liable for each and every obligation under this Agreement.

12. Default and Termination. This Agreement may be terminated at anytime, without cause, by either party upon one year written notice served by U.S. mail to the last known address of the other party.

13. Upon termination of the Agreement, Ridge Art shall remove any and all of its property from the Facility without damage to the property, and otherwise replace the area to its current condition, ordinary wear and tear accepted.

14. Compliance with Laws. In performing under this Agreement, Ridge Art shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and written policies. Failure to comply with the requirements of this Section shall result in the Agreement's immediate suspension and/or termination. The determination as to whether to suspend or terminate the Agreement shall be made at the sole discretion of the City Manager or his/her designee.

15. Non-Exclusive Rights. Notwithstanding anything herein contained that may be or appear to be to the contrary, it is expressly understood and agreed that the rights granted by this Agreement are non-exclusive and the City reserves the right to grant similar privileges to another provider or providers at its sole discretion.

16. Notice. Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by Registered Mail, Return Receipt Requested, with postage and registration fees prepaid:

If to the City:

City of Winter Haven  
Attn: Dale L. Smith, City Manager  
P. O. Box 2277  
Winter Haven, FL 33883-2277

With copy to: Frederick J, Murphy, Jr., Esquire  
City Attorney  
Boswell & Dunlap LLP  
245 South Central Avenue  
Bartow, FL 33830

If to Ridge Art: Ridge Art Association  
Attn: Executive Director  
Chain O'Lakes Complex  
210 Cypress Gardens Blvd.  
Winter Haven, FL 33880

17. Headings. The headings in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any actions arising out of this Agreement shall be in the State Courts in and for Polk County, Florida.

19. Attorney's Fees. In the event it becomes necessary for the City to file an action to enforce any of the terms, conditions or covenants of this Agreement, the City shall be entitled to recover reasonable attorney's fees, including attorney's fees for appeal and court costs.

20. Entire Agreement. The terms and conditions of this Agreement constitute the entire Agreement between the parties hereto with respect to the subject matter of this Agreement, and supersede all previous communications, representations or agreements, either oral or written, between the parties relating to such subject matter. No change, alteration or modification of this Agreement shall be effective unless made in writing and signed by both parties hereto. If any provision of this Agreement is deemed to be invalid, it shall be considered deleted here from and shall not invalidate the remaining provisions.

21. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions herein.

22. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the County Health Department. Ridge

Art assumes all risks of liability for radon gas if any should be found in the Facility and further indemnifies and holds the City harmless from any and all claims and causes related thereto.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on the date first written above.

CITY OF WINTER HAVEN, FLORIDA

BY:

\_\_\_\_\_  
MAYOR

ATTEST:

BY:

\_\_\_\_\_  
CITY CLERK

RIDGE ART ASSOCIATION

BY:

\_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS