

## AGREEMENT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made as of the 9<sup>th</sup> day of September in the year 2013, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **KIMBERLY A. SCHULTE**, whose address is 127 7<sup>th</sup> Street, Leesburg Florida 34748 (hereinafter referred to as the “PROFESSIONAL”).

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

**1. Services.** The PROFESSIONAL shall perform the following services described in which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects. The PROFESSIONAL will serve as the Special Magistrate to address code enforcement issues in the City. The Special Magistrate will be responsible for attending all code enforcement hearings per City Ordinance. These meetings are currently held on the third Tuesday after the first Monday of each month. Approximately 10 to 20 cases are addressed at each meeting. The PROFESSIONAL will be reimbursed for actual time spent conducting Code Enforcement meetings, reviewing Orders of Enforcement, minutes, answering questions, and other code enforcement related services as requested or directed by the City representative. All services will be provided in accordance with City Ordinance 04-27, II, Division 2. This City of Leesburg Ordinance is incorporated by reference and made a part thereof. The current version of this ordinance is attached as ATTACHMENT “A” for reference.

**2. Compensation.** The PROFESSIONAL will be compensated for services provided at a rate of \$125.00 per hour.

**3. Payment.** CITY shall compensate PROFESSIONAL for their services in the following manner: No other costs or services shall be billed to the CITY.

**4. Authorized Expenses.** The CITY will not be liable for any expenses incurred by the PROFESSIONAL prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

**5. Term.** This Agreement shall commence immediately upon execution by both parties. The term shall end on September 30<sup>th</sup> of each year and automatically renew annually on October 1<sup>st</sup> at the end of the initial term of this Agreement and any subsequent renewal term. This Agreement may be terminated with or without cause by either party providing written notice to the other no less than 30 days in advance of the automatic renewal.

**6. Termination.** All or part of this Agreement may be terminated under the following conditions;

- a. **For Convenience.** All or part of this Agreement may be terminated by the CITY for its convenience on thirty (30) days written notice to the PROFESSIONAL. In such event, the PROFESSIONAL will be entitled to compensation for services competently performed up to the date of termination.
- b. **For Cause.** CITY may terminate the Agreement for cause if PROFESSIONAL;
  - i. becomes Insolvent/Bankrupt, or

- ii. commits a material breach of the Agreement which does not otherwise have a specified contractual remedy, provided that:
  - 1. CITY shall first provide PROFESSIONAL with detailed written notice of the breach and of CITY's intention to terminate the Agreement, and
  - 2. PROFESSIONAL shall have failed, within the number of days indicated in the written notice, to commence and diligently pursue cure of the breach.
  
- c. **Non-Appropriation of Funds.** The PROFESSIONAL understands and agrees any and every Agreement is subject to the availability of funds to the CITY to purchase the specified services. As used herein, a "non-appropriation" shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified services or other amounts owed pursuant to any Agreement, from the Source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under Contract. The CITY may terminate an Agreement, with no further liability to the vendor other than compensation for services competently performed up to the date of termination, effective the first day of a fiscal period provided that:
  - i. a non-appropriation has occurred, and
  - ii. The CITY has provided the vendor with written notice of termination not less than fifteen (15) days before the proposed termination date.
  - iii. Upon the occurrence of such non-appropriation the City shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

**7. Insurance.** The PROFESSIONAL will maintain throughout this Agreement the following insurance: SEE EXHIBIT "A."

- A.** The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by PROFESSIONAL prior to starting work, together with evidence that the premiums have been paid.
- B.** All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."
- C.** The PROFESSIONAL shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- D.** The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- E.** The required insurance shall not limit the liability of the PROFESSIONAL. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the PROFESSIONAL'S interests or liabilities, but are merely required minimums.
- F.** All liability insurance, except professional liability, shall be written on an occurrence basis.
- G.** The PROFESSIONAL waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- H.** Insurance required of the PROFESSIONAL, or any other insurance of the PROFESSIONAL shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

- I. Except for workers' compensation and professional liability, the PROFESSIONAL'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.
- J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

**City of Leesburg**  
**Attention: Mike Thornton, Purchasing Manager**  
**P.O. Box 490630**  
**Leesburg, Florida 34749-0630**

- K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- L. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- N. The PROFESSIONAL, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the PROFESSIONAL'S liability coverage(s).

**8. Codes, Laws, and Regulations.** PROFESSIONAL will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

**9. Permits, Licenses, and Fees.** PROFESSIONAL will obtain and pay for all permits and licenses required by law that are associated with the PROFESSIONAL'S performance of the Scope of Services.

**10. Access to Records.** PROFESSIONAL will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during PROFESSIONAL'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

**11. Contingent Fees Prohibited.** The PROFESSIONAL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROFESSIONAL any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability, and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

**12. Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the PROFESSIONAL (or by such subconsultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the PROFESSIONAL shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the PROFESSIONAL.

**13. Independent Contractor.** The PROFESSIONAL agrees that it is an independent contractor and not an agent, joint venturer, or employee of the CITY, and nothing in this Agreement shall

be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the PROFESSIONAL. PROFESSIONAL will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The PROFESSIONAL shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

**14. Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

**15. No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the PROFESSIONAL and the CITY.

**16. Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

**17. Contact Person.** The primary contact person under this Agreement for the PROFESSIONAL shall be **Kimberly A. Schulte**. The primary contact person under this Agreement for the CITY shall be **Police Chief Bill Chrisman**

**18. Notice to Owner.** All Notice to Owners (NTO) issued by sub-contractors and material suppliers must be mailed or delivered to:

**CITY OF LEESBURG  
ATTN: PURCHASING MANAGER  
RE: RFQ -130023  
501 W. MEADOW ST  
LEESBURG, FL 34748**

**19. Disclosure of Conflict.** The PROFESSIONAL has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the PROFESSIONAL and his duties under this Agreement.

**20. Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The CITY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

**21. Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

**THE CITY OF LEESBURG, FLORIDA**

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

ATTEST:

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

Approved as to form and content:

\_\_\_\_\_  
City Attorney

**KIMBERLY A. SCHULTE**

By: *Kimberly A. Schulte*

Printed: Kimberly A. Schulte

Its: attorney/Special Negotiator  
Title

AN ORDINANCE AMENDING SECTIONS 2-66 THROUGH 2-75, INCLUSIVE, OF CHAPTER 2, ARTICLE IV, DIVISION 2 OF THE CODE OF ORDINANCES OF THE CITY OF LEESBURG, FLORIDA, PERTAINING TO MUNICIPAL CODE ENFORCEMENT; ABOLISHING THE CURRENTLY EXISTING CODE ENFORCEMENT BOARD; PROVIDING FOR THE APPOINTMENT OF ONE OR MORE SPECIAL MASTERS TO HEAR AND DECIDE CASES INVOLVING THE ENFORCEMENT OF THE MUNICIPAL CODES AND ORDINANCES; SETTING A TIME LIMIT FOR APPOINTMENT OF ONE OR MORE SPECIAL MASTERS; PROVIDING FOR RECOVERY OF COSTS TO ENFORCE MUNICIPAL ORDINANCES; AUTHORIZING THE CITY OF LEESBURG TO MAKE REPAIRS IF AN ORDER OF THE CODE ENFORCEMENT BOARD IS NOT COMPLIED WITH; PROVIDING FOR ASSESSMENT OF THE COST OF REPAIRS; PROVIDING THAT NO FINE SHALL BE REDUCED TO LESS THAN \$125.00 PLUS THE ACTUAL COST TO THE CITY OF THE ENFORCEMENT PROCEEDING; CONFORMING THE CODE OF ORDINANCES TO STATUTORY CHANGES IN MUNICIPAL CODE ENFORCEMENT PROCEDURES; PROVIDING TRANSITIONAL DETAILS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA:

SECTION I.

The Code Enforcement Board created by and existing under §2-66 of the Code of Ordinances of the City of Leesburg, as constituted prior to enactment of this Ordinance, is hereby abolished, effective as of the date on which the City Commission appoints a Special Master to hear and decide code enforcement cases under the provisions of this Ordinance. This Ordinance shall not, however, negate any action taken by the Code Enforcement Board so long as it remains in operation, nor shall this Ordinance be construed to invalidate any action taken by the Code Enforcement Board, or any lien or order of enforcement entered by it prior to the effective date of its abolition, all of which shall remain in full force and effect. This Ordinance shall not be construed to prohibit the enforcement of the City's codes and ordinances by any other means available under the law, including but not limited to citation directing a violator to appear in County Court, and the procedures established hereby are deemed supplemental to and not exclusive of any and all other enforcement methods.

SECTION II.

Sections 2-66 through 2-75, inclusive, contained in Chapter 2, Article IV, Division 2 of the Code of Ordinances of the City of Leesburg, Florida, pertaining to enforcement of municipal codes, are hereby amended in their entirety to read as follows:

## DIVISION 2. ENFORCEMENT OF MUNICIPAL CODES.

### Sec. 2-66. Special Master.

One or more Special Masters designated by the City Commission shall have the authority to hold hearings and assess fines against violators of the codes and ordinances of the City of Leesburg.

### Sec. 2-67. Appointments; compensation.

(a) A committee composed of the City Manager or his designee, the Chief of Police, and the Community Development Director, shall solicit applications from persons willing to serve as Special Masters, shall interview and evaluate applicants, and shall make recommendations to the City Commission regarding appointment of one or more Special Masters under this Division.

(b) Every Special Master appointed hereunder shall be a member of the Florida Bar in good standing, for at least 5 years prior to appointment, shall demonstrate satisfactory knowledge of municipal law and the general procedures for enforcement of municipal codes, and shall demonstrate a temperament suitable for the exercise of the quasi-judicial powers vested in each Special Master.

(c) Each Special Master shall be appointed for a term of three years, and shall be compensated in accordance with a written contract approved by the City Commission, based on recommendations from the committee referenced above.

### Sec. 2-68. Rules and regulations.

The Special Master(s) may adopt rules and regulations to govern code enforcement proceedings so long as such rules are not in conflict with any state law, or any ordinance or charter provision of the City of Leesburg, and do not deny any participant in the code enforcement proceedings due process of law. All such rules and regulations shall be in written form and shall be provided to parties to the proceedings upon request.

### Sec. 2-69. Personnel.

The City Attorney shall serve as counsel to the Code Enforcement Officer, to assist in the preparation and prosecution of cases to the extent desired by the Code Enforcement Officer and as approved by the City Manager. The City Manager shall provide adequate clerical assistance to the Special Master, including a notary public to serve as clerk during code enforcement proceedings.

### Sec. 2-70. Enforcement procedures.

(a) Proceedings before the Special Master shall be initiated by the code enforcement officers, who shall consist of all Leesburg police officers, all animal control officers, the Building Official, the fire inspector, the Community Development Director, and such other persons who may be designated from time to time as code enforcement officers by the City Manager. The Special Master shall not have the power to initiate proceedings.

(b) Except as provided in subsections (c) and (d) below, if a violation is found, the code enforcement officer shall notify the violator and specify a reasonable time to correct the

violation. If the violation continues beyond the time specified for correction, a hearing shall be scheduled before the Special Master and written notice of this hearing shall be served on the violator in the manner provided below. The Special Master may hear and decide the case even if the violation is corrected prior to its meeting, if the violation is not corrected within the time specified by the code enforcement officer in the initial notice to the violator, or if the violation recurs after having been corrected, and the notice informing the violator of the hearing shall so state.

(c) If the code enforcement officer has reason to believe that the violation or the condition causing the violation presents a serious threat to the public health, safety and welfare, or if the violation is transitory in nature, such that it is unlikely to recur, or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator, and may immediately set a hearing on the violation before the Special Master.

(d) "Repeat violation" shall mean a violation of a provision of a code or ordinance by a person whom the Special Master, or the Code Enforcement Board prior to its abolition, has previously found to have violated the same provision of the Code within 5 years prior to the current violation. If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify the Special Master and request a hearing. The Special Master, through clerical staff, shall schedule a hearing and notice of the hearing shall be provided to the violator as specified elsewhere in this Code. The case may be presented to the Special Master even if the repeat violation has been corrected prior to the hearing, and the notice shall so state.

(e) If the owner of property which is subject to an enforcement proceeding transfers ownership of such property between the time the initial notice to appear was served and the time of the hearing, such owner shall disclose, in writing, the existence and the nature of the proceeding to the prospective transferee; deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor; disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding; file a notice with the Code Enforcement Officer of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer. Failure to make the disclosures required by this subsection, before the transfer, creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

#### Sec. 2-71. Conduct of Hearings.

(a) Upon request of the Code Enforcement Officer, or at such other times as may be necessary, the Special Master may convene a hearing on one or more pending code enforcement cases. Minutes shall be kept of all hearings and all hearings and proceedings shall be open to the public. The City Manager shall provide clerical and administrative personnel as may be reasonably required by the Special Master for the proper performance of his duties.

(b) Each case heard by the Special Master shall be presented by the Code Enforcement Officer or the City Attorney. If the City prevails in prosecuting a case before

the Special Master, it shall be entitled to recover all costs incurred in prosecuting the case, and the Order of Enforcement shall assess those costs upon presentation of proper proof thereof.

(c) The Special Master shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the Special Master shall issue findings of fact, based on evidence of record, and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted by this Ordinance and State law. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in §162.09(1), Fla. Stat., the cost of repairs may be included along with the fine if the order is not complied with by the date set. A certified copy of the order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the Special Master shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

#### Sec. 2-72. Powers of Special Master.

The Special Master shall have the power to:

(a) Adopt rules for the conduct of hearings, including rules and policies relating to the reduction of fines, all of which shall be published in writing and shall be available to any party to the proceedings upon request.

(b) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or any officer of the Leesburg Police Department.

(c) Subpoena evidence to hearings.

(d) Take testimony under oath.

(e) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

#### Sec. 2-73. Fines and Liens.

(a) The Special Master, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or, upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the Special Master for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. The Special Master shall, whenever it is practical to do so, set the amount of the fine to be imposed as part of the initial order of enforcement, and if this is done the fine shall be self-executing upon failure of the violator to achieve compliance within the

set time. In addition, if the violation is found to present a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the Special Master may notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance, and charge the violator with the reasonable cost of the repairs, along with the fine imposed pursuant to this section. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of an order imposing a fine, or for a fine set in the initial Order of Enforcement to begin to accrue on the date scheduled for compliance if the violations have not been remedied fully by that date.

(b) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a) above. If the Special Master finds that the violation is irreparable or irreversible in nature, the Special Master may impose a fine not to exceed \$5,000.00 per violation.

(c) In determining the amount of the fine, if any, the Special Master shall consider the following factors, among other evidence:

1. The nature, extent and gravity of the violation;
2. Any actions taken by the violator to correct the violation;
3. Any previous violations committed by the violator; and
4. The harm or potential harm to the public as a result of the existence or continuance of the violation.

(d) The Special Master may reduce a fine imposed pursuant to this section upon written request by the violator, if the violation which led to the imposition of the fine has been fully corrected and the property is in compliance. The Special Master is authorized to adopt rules and guidelines governing the reduction of fines. If the violator fails to pay the reduced fine within 60 days from the date on which the order reducing the fine is entered, or within such other time as may be set by the Special Master, which shall not be less than 60 days nor more than 120 days, then the original fine shall be reinstated. No fine shall be reduced below the sum of \$125.00 plus the actual cost to the City of prosecuting the violation and perfecting its lien against the property. Furthermore, absent a showing of extraordinary extenuating circumstances by the violator, no fine shall be reduced to less than 10% of the amount of the fine prior to reduction, plus the actual cost to the City of prosecuting the violation and perfecting its lien against the property.

(e) A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. The duration of the lien shall be for a period of twenty years after it is first recorded in the Public Records of Lake County, Florida. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this ordinance shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, or reduce the lien to money judgment whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the

City Commission and the Special Master is hereby authorized to execute a satisfaction or release of any lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the Special Master may request the City Commission to authorize the city attorney to foreclose on the lien, or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Art. X, §4 of the Florida Constitution.

(f) In an action to foreclose on a lien or to recover a money judgment based on an order of enforcement, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The City of Leesburg shall be entitled to collect all costs incurred in recording and satisfying a code enforcement lien.

Sec. 2-74. Appeal and rehearing.

(a) An aggrieved party, including the City Commission, may appeal a final order of the Special Master to the Circuit Court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. The appellant shall be responsible for providing a verbatim transcript of the proceedings as part of the record on appeal. An appeal shall be filed within 30 days of rendition of the order to be appealed.

(b) An aggrieved party, including the City Commission, may move for rehearing of an order entered by the Special Master. A motion for rehearing must be filed within 10 days of entry of the order as to which rehearing is sought. The Special Master may also rehear a case on his own initiative by providing written notice to the parties within this 10 day period. A motion for rehearing shall toll the time to appeal the order until 30 days after the decision of the Special Master on the motion for rehearing. If an appeal is filed while a motion for rehearing is pending, the motion for rehearing shall be considered to have been waived. The motion for rehearing shall include a concise statement of the legal and factual grounds for rehearing. Once a motion for rehearing is filed, the Special Master shall consider it at the next meeting, without hearing any testimony or argument from the movant, to determine whether the motion is facially valid and sets forth grounds which, under this subsection, would justify rehearing. If the Special Master determines that the motion is facially defective, he may deny the motion without hearing testimony or conducting further proceedings. If the Special Master determines that the motion is facially valid, then either at that meeting or at its next meeting, he may hear legal argument, and if the basis for the motion is factual, may also hear testimony, in favor of and in opposition to the motion. The grounds for rehearing an order of the Special Master are limited to the following only:

1. Errors on the face of the record.
2. Misconduct of the Code Enforcement Officer or the Special Master.
3. Misconduct of a witness or other third party who participated materially in the original hearing.
4. Newly discovered evidence which could not have been discovered prior to, or at the time of, the initial hearing, through the exercise of due diligence.

5. The decision of the Special Master is contrary to the law or there is absolutely no factual support for the decision in the record.

Sec. 2-75. Notices.

(a) All notices required by this ordinance shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the Code Enforcement Officer or other law enforcement officer, code inspector, or other person designated by the City Manager; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice. Absent actual knowledge on the part of the Code Enforcement Officer that an accused violator resides in some particular location other than the address shown on the Lake County Tax Roll for the accused violator, notice sent to the address shown for the accused violator on the Lake County Tax Roll shall be presumed valid whether or not actually received, provided that notice is also published or posted in accordance with this Section.

(b) In addition to providing notice as set forth in subsection (a), notice may also be served by publication or posting, as follows:

1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the Special Master is located. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.
2. Proof of publication shall be made as provided in §§ 50.041 and 50.051, Florida Statutes.

(c) In lieu of publication as described above, notice may be posted for at least 10 days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at City Hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(d) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail. Evidence that an attempt has been made to hand deliver or mail notice, together with proof of publication or posting, shall be sufficient to show that the notice requirements of this ordinance have been met, without regard to whether or not the alleged violator actually received such notice.

### SECTION III.

The following rules shall govern the transition of the code enforcement process from the existing Code Enforcement Board to a Special Master:

1. The initial Special Master(s) chosen under this Ordinance shall be appointed no later than the first regularly scheduled City Commission meeting held following expiration of a period of 60 days from the Effective Date of this Ordinance.

2. Once a Special Master has been appointed under this Ordinance, all pending code enforcement cases shall be dealt with by the Special Master and the Code Enforcement Board shall cease performing its duties. This shall apply to all cases, at any stage of the proceedings, including but not limited to the following:
  - A. Cases as to which the alleged code violator has been given an initial or subsequent warning notice by a Code Enforcement Officer but not a notice to appear before the Code Enforcement Board;
  - B. Cases where an alleged code violator has been given a notice to appear before the Code Enforcement Board. All such cases shall be heard before the Special Master at the date and time specified in the notice to the alleged code violator for the Code Enforcement Board meeting, and the Special Master shall have full power and authority to hear and decide those cases.
  - C. Cases which have been heard one or more times by the Code Enforcement Board but which remain open for any reason, such as but not limited to the need to assess a fine if compliance is not achieved, postponement at the request of any participant, or postponement or delay to allow time for the alleged code violator to take actions directed by the Code Enforcement Board. Regardless of the reason the cases were not disposed of fully by the Code Enforcement Board, the Special Master shall have the authority to take jurisdiction of the cases, to conduct all necessary proceedings, and to exercise all powers delegated to the Special Master by this Ordinance, just as if the cases had been initiated before a Special Master rather than the Code Enforcement Board.
  - D. Cases in which an Order of Enforcement was issued by the Code Enforcement Board but which require additional proceedings for any reason, including but not limited to requests for rehearing, petitions for reduction of fines, or proceedings subsequent to conclusion of an appellate proceeding related to the initial Order of Enforcement.

In the process of acting on any case which was commenced before the Code Enforcement Board, the Special Master is authorized to review all written records of prior proceedings, to listen to audio tapes or review any video tapes of prior proceedings, and to take into account any evidence introduced in prior proceedings before the Code Enforcement Board.

#### SECTION IV.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

#### SECTION V.

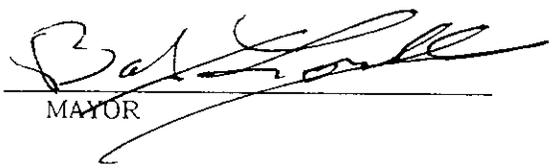
If any portion of this ordinance is declared invalid then that portion shall be severed herefrom and the remainder of this ordinance shall continue in full force and effect as if enacted without the invalidated portion, to the extent it is possible to do so without destroying the basic intent and purpose of the ordinance.

SECTION VI.

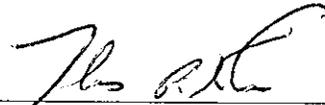
This ordinance shall become effective upon its passage and adoption according to law, provided however that the abolition of the Code Enforcement Board shall not take effect until appointment of a Special Master to hear and decide code enforcement cases has been accomplished, as set forth more particularly above.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida at its meeting held on the 28th day of October, 2002.

THE CITY OF LEESBURG, FLORIDA

BY: 

MAYOR

Attest: 

CITY CLERK