

ORDINANCE NO. 2010-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ORCHID, FLORIDA, PROPOSING TO ANNEX REAL PROPERTY, CONTAINING 44.65 GROSS ACRES MORE OR LESS, AND GENERALLY KNOWN AS MARSH ISLAND AREA BEING CONTIGUOUS TO THE BOUNDARIES OF THE TOWN OF ORCHID, MORE PARTICULARLY AND LEGALLY DESCRIBED ON EXHIBIT "A," ATTACHED HERETO AND FULLY INCORPORATED HEREIN BY THIS REFERENCE; PROVIDING FOR THIS ORDINANCE TO BE SUBMITTED TO A VOTE OF THE REGISTERED ELECTORS OF THE MARSH ISLAND AREA PROPOSED TO BE ANNEXED; PROVIDING FOR THE AMENDMENT OF THE ORCHID CHARTER, APPENDIX A, TO INCORPORATE THE REAL PROPERTY INTO THE TOWN BOUNDARIES IF THE ANNEXATION IS APPROVED BY MAJORITY VOTE OF SAID REGISTERED ELECTORS AT A DULY HELD REFERENDUM; PROVIDING FOR THE FILING OF THE REVISED ORCHID CHARTER WITH THE DEPARTMENT OF STATE UPON SAID APPROVAL; PROVIDING FOR REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, SEVERABILITY, AND PROVIDING FOR A CONTINGENT EFFECTIVE DATE.

WHEREAS, Chapter 171, *Florida Statutes*, provides the exclusive method of municipal annexation, in order to ensure sound urban development and efficient provision of urban services; and

WHEREAS, on October 12, 2010, the Town filed the Urban Services Report, prepared by Kimley-Horn and Associates, Inc., with Indian River County in accordance with Section 171.042, *Florida Statutes*; and

WHEREAS, MARSH ISLAND DEVELOPMENT CO., LLC., hereinafter "MIDC" owns property identified by Indian River County Tax Parcel ID Numbers 31-39-27-00005-0000-00011.0, 31-39-27-00005-0000-00016.0, 31-39-27-00005-0000-00001.0, 31-39-27-00005-0000-00000.2, 31-39-27-00005-0000-00000.1, 31-39-27-00005-0000-00008.4, 31-39-27-00005-0000-00000.4, 31-39-27-00005-0000-00000.3, 31-39-27-00005-0000-00019.0, 31-39-27-00005-0000-000032.0, included in the property described in **Exhibit "A,"** attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, WANADOO LLC, hereinafter "Property Owner 1", owns property identified

by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00008.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, JOHN AND SUSAN VON HAGEN, hereinafter "Property Owner 2", own property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00009.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, SHARYNT.MANN, hereinafter "Property Owner 3", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00012.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, KYLE PRECHTL LEGG, hereinafter "Property Owner 4", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00031.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, ROBERT C. LYLES, JR. AND MARSH ISLAND LLC, hereinafter "Property Owner 5", own property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00024.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, THOMAS G. GILLINGHAM AND DARLENE D. GILLINGHAM, hereinafter "Property Owner 6", own property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00025.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, DARWYN A. JONES AND JILL JARVI JONES, hereinafter "Property Owner 7", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00017.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, PAUL WAYNE SHOQUIST AND SHANNON YU-HANG SHOQUIST, hereinafter "Property Owner 8", own property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00015.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, KJL INVESTMENTS, LLC, hereinafter "Property Owner 9", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00027.0, included

in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, LISA C. BECKER, INDIVIDUALLY AND AS TRUSTEE OF THE LISA C. BECKER REVOCABLE TRUST U/A/D JULY 27, 2006, hereinafter "Property Owner 10", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00026.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, PATRICIA S. ALLEN AND GEORGE F. ALLEN, hereinafter "Property Owner 11", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00023.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, INDIAN RIVER DEVELOPMENT, LC, hereinafter "Property Owner 12", owns property identified by Indian River County Tax Parcel ID Numbers 31-39-27-00005-0000-00013.0 and 31-39-27-00005-0000-00014.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, THOMAS MALCOLM FELTON AND CAROLE M. FELTON, hereinafter "Property Owner 13", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00020.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, ROBERT A. PELLICONE AND JAMES PATRICK MACGILVRAY, hereinafter "Property Owner 14", owns property identified by Indian River County Tax Parcel ID Number 31-39-27-00005-0000-00022.0, included in the property described in Exhibit "A," attached hereto and incorporated herein by this reference, contiguous to the corporate limits of the Town of Orchid; and

WHEREAS, the properties owned by MIDC and Property Owners 1 through 14 are hereinafter collectively referred to as the "Consenting Annexation Properties," totaling approximately 25.5 acres and illustrated in **Exhibit "B,"** attached hereto; and

WHEREAS, the Consenting Property Owners have consented, in writing, to the annexation of the Consenting Annexation Properties; and

WHEREAS, the Consenting Property Owners are the owner of parcels of land representing more than fifty percent (50%) of the parcels of land in the area and more than fifty percent (50%) of the land area to be annexed; and

WHEREAS, upon the effective date of this ordinance, there are eight (8) registered electors

on the Consenting Annexation Properties; and

WHEREAS, in accordance with Chapter 171, *Florida Statutes*, the Town wishes to annex the Consenting Annexation Properties and other property located adjacent to or near the Consenting Annexation Properties, which area is generally known as Marsh Island and includes approximately 16.21 acres of contiguous submerged land between Marsh Island and the western municipal boundary of the Town as described in Exhibit "A," comprising approximately 44.65 acres in total; and

WHEREAS, the Town has determined that the area proposed to be annexed is contiguous and reasonably compact, is developable for urban purposes, is not within the boundaries of another municipality, and has met all other requirements of Chapter 171, *Florida Statutes*, including but not limited to the prerequisites for annexation; and

WHEREAS, the Town Council has determined that the annexation of the area proposed to be annexed as more specifically set forth herein, has met all procedural requirements and that it will promote sound urban development and efficient provision of urban services; and

WHEREAS, the annexation is in compliance and consistent with the goals and objectives of the Town of Orchid Comprehensive Plan, Charter, and Town Code; and

WHEREAS, in the best interest of the public health, safety, and welfare of the citizens of Orchid, the Town Council of the Town of Orchid desires to annex the real property generally described below into the municipal boundaries of the Town of Orchid; and

WHEREAS, if the referendum is approved by the registered electors of the area proposed to be annexed, the municipal boundary lines of the Town of Orchid, contained in the Town of Orchid Charter, Appendix A, shall be redefined to include the area proposed to be annexed in accordance with Section 171.0413, Florida Statutes.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF ORCHID HEREBY ORDAINS, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and are fully incorporated herein by this reference.

Section 2. Fifty Percent Compliance Finding and Declaration. The Town Council hereby finds and declares that the Town has received and accepted written annexation consents from approximately 60% of the land owners located in the area proposed to be annexed and written annexation consents from property owners owning approximately 57% of the land area proposed to be annexed, which written consents are attached hereto as **Exhibit "C"**. Therefore, the Town Council hereby finds and certifies that the proposed annexation complies with the property owner consent requirements set forth in Section 171.0413, Florida Statutes. Further, the Town Council also

finds that annexation of the proposed area shall become effective if a majority of the registered electors of the area proposed to be annexed approve the referendum ballot required by Section 4 of this Ordinance.

Section 3. Annexation of Real Property. The Town Council hereby desires and proposes to annex the area of real property, which is more particularly described in the metes and bounds legal description and map attached hereto as Exhibit "A", contingent upon the approval of the registered electors of the area of real property proposed to be annexed. Approval or disapproval of the annexation shall be put to a vote of said registered electors by referendum duly held at a special election by mail ballot. Exhibit "A" is hereby fully incorporated herein by this reference.

Section 4. Referendum Election. The Town Council hereby calls a referendum to be conducted only in the area of real property proposed to be annexed by this Ordinance. The referendum shall be at the expense of the Town of Orchid and held pursuant to the Mail Ballot Election Act. The referendum shall not be held sooner than thirty (30) days following the final adoption of this Ordinance.

Section 5. Annexation Ballot Question. Concurrent with the scheduled election stated in Section 4 herein, the following question shall be placed on the ballot for consideration by the registered electors of the area of real property proposed to be annexed by this Ordinance. The caption and question shall be worded substantially as follows:

**TOWN OF ORCHID ANNEXATION
OF MARSH ISLAND AREA**

Shall the Town of Orchid annex the area of real property generally known as the Marsh Island area, as that property is described in Ordinance Number 2010-04 of the Town of Orchid, Florida, effective upon approval by a majority vote of the registered electors of that property?

_____ Yes.

_____ No.

Section 6. Coordination with Supervisor of Elections. The Town Clerk is hereby authorized and directed to instruct and coordinate with the Supervisor of Elections of Indian River County to include the above-described question on the ballot for the area of real property proposed to be annexed by this Ordinance.

Section 7. Town Boundaries Redefined; Orchid Charter Amended. Pursuant to Section 166.031(3), *Florida Statutes*, and Section 171.091, *Florida Statutes*, the Town of Orchid Charter Appendix A shall hereby be amended to redefine the corporate boundaries of the Town of

Orchid to include the area of real property described in Section 3 of this Ordinance, providing the annexation is approved by a majority vote of the registered electors pursuant to referendum called and conducted pursuant to this Ordinance. The Town Clerk shall file the revised Orchid Charter, Appendix A, with the Department of State within thirty (30) days upon said approval; otherwise, if the annexation is not approved by the registered electors, then the Town Clerk shall not file the revision of the Orchid Charter.

Section 8. Repeal of Prior Inconsistent Ordinances and Resolutions. All ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed to the extent of the conflict.

Section 9. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 10. Effective Date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Orchid, Florida, however, the annexation proposed by this Ordinance shall only become effective if the proposed annexation receives approval by a majority vote of the registered electors of the area of real property proposed to be annexed by this Ordinance.

ADOPTED by the Town Council of the Town of Orchid, Florida, in a regular meeting assembled on the _____ day of _____, 2010.

Ordinance 2010-04 was moved for adoption by _____ and seconded by _____, and adopted by the following roll call vote:

Mayor Dunlop _____
Vice Mayor Joyce _____
Councilmember Johnson _____
Councilmember Oatway _____
Councilmember Troxell _____

Mayor Richard Dunlop, Town of Orchid

ATTEST:

Terri Wallace, Town Clerk

Approved as to legal form and sufficiency for the Town of Orchid only:

Anthony A. Garganese, Town Attorney

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "C"