

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM
US 17-92 COMMUNITY REDEVELOPMENT AGENCY**

SUBJECT: US 17-92 CRA Redevelopment Partnership Grant Application
Lowe's Home Centers Inc.

DEPARTMENT: Economic Development **DIVISION:** US 17-92 CRA

AUTHORIZED BY: William McDermott **CONTACT:** Kevin Fall  **EXT.** 7133

Agenda Date <u>1/23/07</u>	Regular <input checked="" type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Approve the US 17-92 CRA Redevelopment Partnership Grant Agreement between the US 17-92 CRA and Lowe's Home Centers, Inc. in the amount of \$500,000 related to the proposed Lowe's in Fern Park Redevelopment Project, as recommended by the US 17-92 Redevelopment Planning Agency, and authorize Chairman to execute the agreement.

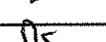
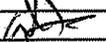
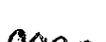
BACKGROUND:

This item had been scheduled on the December 12, 2006 meeting of the US 17-92 Community Redevelopment Agency but was withdrawn by the applicant to allow for a project presentation from the applicant to the CRA with all members present.

Lowe's Home Centers, Inc. hopes to build a 167,000 square foot Home Improvement Center at 6735 S US 17-92, the site of the long vacated Kmart just south of Fernwood Blvd. The site is currently underutilized, generating limited tax revenue and has several environmental and safety concerns.

Due to extraordinary costs associated with the redevelopment of this site, Lowe's Home Centers, Inc. has applied for assistance from the 17-92 CRA Redevelopment Partnership Grant Program. Representatives from Lowe's have modified their original presentation to the CRA to remove "US 17-92 Traffic Signalization" from the list of Public Purpose Investments and replace with "Architectural Upgrades Façade/Parapet System".

The 17-92 CRA Redevelopment Partnership Grant Program provides performance based financial incentives to property owners whom significantly redevelop or renovate their property/business whereby such large scale redevelopment also serves to enhance the overall aesthetic appeal of the surrounding area.

Reviewed by:	
Co Atty:	
DFS:	
Other:	
DCM:	
CM:	
File No.	<u>CCRA4</u>

The proposed project presents extraordinary redevelopment costs, but would result in an estimated private capital investment of \$16,500,000 and the creation of 120-150 new jobs with an estimated annual local payroll of \$3,000,000. Lowe's 100+ new full time jobs will have an average wage exceeding \$12 per hour before benefits.

Lowe's typically invests between \$9M and \$11M per new retail site. Recently updated project cost estimates for the project have escalated to \$13,500,000, a large portion of which is the result of extraordinary site constrictions and/or redevelopment costs, remediation concerns and architectural upgrades.

The property generated \$52,042 in property tax revenues in 2006. The proposed project, once completed, is anticipated to generate in excess of \$150,000 in annual property tax revenues. As a comparison, the Home Depot store in Casselberry and the Lowe's store in Sanford generated \$120,000 and \$217,000 respectively, in property tax revenue in 2006.

On October 27, 2006, the US 17-92 Redevelopment Planning Agency recommended forwarding the attached 17-92 CRA Redevelopment Partnership Grant Agreement to the US 17-92 CRA for consideration of financial assistance from the US 17-92 CRA Redevelopment Trust Fund.

Funding is available within the FY 06/07 US 17-92 CRA reserves for contingency account. The current balance of the reserve account is \$2,900,839.

Attch: 17-92 CRA Redevelopment Grant Agreement

US 17-92 CRA REDEVELOPMENT GRANT AGREEMENT

THIS AGREEMENT is effective this _____ day of _____, 20____, by and between the US 17-92 Community Redevelopment Agency, a public agency created by Resolution No. 97-R-130, pursuant to Florida Statutes 165.031, 163.356, or 163.357 of and in the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771 (hereinafter referred to as "CRA") and Lowe's Home Centers, Inc., authorized and doing business in the State of Florida, whose address is 1605 Curtis Bridge Road, North Wilkesboro, NC 28659, and whose Employer ID Number is 56-0748358 (hereinafter referred to as the "COMPANY").

W I T N E S S E T H

WHEREAS, the Board of County Commissioners of Seminole County, Florida (the "BOARD") has established the CRA in accordance with the Community Redevelopment Act of 1969, Chapter 163, Part III, Florida Statutes, in recognition of the need to address, prevent, and eliminate blighted conditions within the community; and

WHEREAS, the BOARD enacted Ordinance Number 97-54 adopting the US 17-92 Corridor Redevelopment Plan (the "PLAN") for the purposes of community redevelopment within the US 17-92 Community Redevelopment Area (the "AREA"); and

WHEREAS, the CRA is authorized to undertake and carry out community redevelopment projects and related activities in accordance with Florida Statutes, Section 163.370; and

WHEREAS, the CRA has identified the need to eliminate blight conditions, increase commercial activity, improve pedestrian safety, and provide job opportunities for area residents in the PLAN; and

WHEREAS, the US 17-92 Redevelopment Planning Agency (the "RPA") is empowered to review redevelopment projects, programs, and opportunities and provide recommendations to the CRA as authorized by the Multiparty Interlocal Agreement Establishing the US 17-92 Redevelopment Planning Agency; and

WHEREAS the RPA has reviewed the proposal for commercial redevelopment of the shopping plaza located at 6735 S. US Highway 17-92 in Fern Park (the "PROJECT"), presented by the COMPANY and found the PROJECT consistent and complementary to the goals of the PLAN; and

WHEREAS, the PROJECT is consistent with the following strategies identified in the PLAN:

(a) Promote and locate strategic land use activities of regional importance within the redevelopment area to capture emerging market opportunities while reinforcing the unique character of the community;

(b) Establish a partnership between the public sector and the private sector for the purpose of understanding the mutual benefits of proposed redevelopment projects; and

WHEREAS, on September 22, 2006, the RPA unanimously endorsed the PROJECT and recommended the PROJECT be forwarded to the CRA for approval; and

WHEREAS, the COMPANY is proposing as part of the PROJECT to redevelop the former K-Mart shopping center as described in Exhibit A - Development Proposal (attached), located in unincorporated Seminole County within the geographic boundaries of the AREA, at an approximate cost of THIRTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS(\$13,500,000), which sum represents a significant capital investment; and

WHEREAS, on _____, 2006, the CRA authorized financial assistance from the 17-92 Redevelopment Trust Fund in the form of CRA Economic Redevelopment Grant Agreement to the COMPANY to assist the COMPANY in the construction of the PROJECT; and

WHEREAS, the CRA and the COMPANY desire to enter into this Agreement for the purpose of establishing additional assurances to the CRA that expenditures of the CRA related to the PROJECT will produce a positive economic effect in the AREA as a result of COMPANY's activities in the AREA;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

SECTION 1. RECITALS

A. The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

B. The CRA finds and declares that it is in the public's best interest and serves a public purpose to award a CRA Economic Redevelopment Grant from the 17-92 Redevelopment Trust Fund to the COMPANY in the amount of FIVE HUNDRED THOUSAND AND NO/100 (\$500,000.00) pursuant to the terms of this Agreement.

SECTION 2. DEFINITIONS

A. PROJECT includes all development, renovation, construction, and redevelopment as proposed in Exhibit A. The PROJECT is to be completed by December 31, 2008.

B. COMPLETION THRESHOLDS: The PROJECT shall be deemed completed when a specified capital investment amount has been achieved, as verified by the Seminole County Property Appraisers Office, in the amount of THIRTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 (\$13,500,000.00) or greater.

C. AWARD PAYOUT: Award Payout for the PROJECT shall be made only after the COMPANY has satisfied the completion thresholds for the PROJECT within the prescribed time period referenced in Section 2(A) and Section 2(B) of the Agreement, and these threshold achievements have been verified with the official records maintained by the Seminole County Property Appraisers Office.

The award upon the completion of the PROJECT shall be FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00). This amount represents 100 percent of the total grant award of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

D. *ALLOWABLE COSTS* are any costs allowable by law associated with the redevelopment, renovation, and construction of the PROJECT as described in Exhibit A. Said costs may include site development costs, construction costs, construction materials costs, impact fees, and/or professional service fees associated with the PROJECT.

SECTION 3. REPRESENTATIONS OF THE COMPANY. The COMPANY hereby represents and warrants to the CRA the following:

A. The COMPANY is duly organized and validly existing under the laws of the State of Florida and is authorized to do business in the State of Florida.

B. The COMPANY has the corporate power, authority, and legal right to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement by the COMPANY have been duly authorized by all necessary corporate and shareholder action.

C. The COMPANY's PROJECT manager shall be Michael Reynolds or his designee.

SECTION 4. COVENANTS OF THE COMPANY. The COMPANY hereby covenants with CRA to do the following:

A. The COMPANY agrees to redevelop the property (the former K-Mart Shopping Center) as more specifically described in Exhibit A and

in accordance with the schedule set forth in Section 2.A. of this Agreement.

B. The COMPANY agrees to satisfy the terms as described in Section 2.B. of this Agreement before requesting disbursement of the award. The COMPANY will not request disbursement of the award funds until the terms and conditions of Section 2.B. have been satisfied as confirmed in the official records maintained by the Seminole County Property Appraiser.

C. The COMPANY shall provide written verification, satisfactory to the CRA, demonstrating compliance with this Agreement.

D. When the PROJECT is completed, the COMPANY shall cause notice to be given to the CRA and will make any related documentation available for review and inspection by the CRA.

SECTION 5. COVENANTS OF THE COMMUNITY REDEVELOPMENT AGENCY. Upon submission of proof of satisfaction of the terms described in Section 2.B. and submission of allowable costs incurred by the COMPANY as a result of activities described in EXHIBIT A, which are satisfactory to the CRA, the CRA will cause to be issued a payment to the COMPANY for demonstrated and allowable costs incurred up to FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) for redevelopment costs.

SECTION 6. TERM. This Agreement shall become effective upon execution by the CRA and the COMPANY and shall remain in effect through close out of the Agreement pursuant to and consistent with its terms.

This Agreement will terminate upon completion of the construction of all activities described in Exhibit A by the COMPANY and upon satisfaction of the terms and conditions of this Agreement, as evidenced by a report prepared by the COMPANY and forwarded to the CRA outlining the COMPANY's satisfaction of the terms and conditions of this Agreement.

SECTION 7. REPORTS. Upon completion of the PROJECT, the COMPANY shall provide a Report to the CRA demonstrating the COMPANY's satisfaction of the terms and criteria listed in Exhibit A.

SECTION 8. FORCE MAJEURE. In the event any party hereunder fails to satisfy a requirement imposed in a timely manner due to a hurricane, flood, tornado, or other Act of God or *force majeure*, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

SECTION 9. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors in interest, transferees, and assigns of the parties.

SECTION 10. ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written approval of the other.

SECTION 11. PUBLIC RECORDS. The COMPANY shall allow public access to all documents, papers, letters, or other materials which have been made or received by the COMPANY in conjunction with this Agreement.

SECTION 12. RECORDS AND AUDITS.

A. The COMPANY shall maintain at its place of business all books, documents, papers, and other evidence pertaining to work performed under this Agreement. Such records shall be and remain available at the COMPANY's place of business at all reasonable times during the term of this Agreement and for two(2) years after Agreement closing.

B. The COMPANY agrees that until the expiration of two(2) years after Agreement closure the CRA or its duly-authorized representatives shall have access to examine any of the COMPANY's books, documents, papers, and records involving transactions related to this Agreement. The COMPANY agrees that payments made under this Agreement shall not be subject to reduction for amounts charged which are found, based on audit examinations, not to constitute allowable costs.

C. All required records shall be maintained until an audit has been completed and all questions arising from it are resolved or until two (2) years after closure of the Agreement, in writing, and submission of the final invoice, whichever is sooner. COMPANY will provide proper facilities for access to inspection of all required records.

SECTION 13. NOTICES.

A. Whenever either party desires to give notice unto the other, notice may be sent to:

CRA:

US 17-92 Community Redevelopment Agency
1101 East First Street
Sanford, Florida 32771

With copies to:

Seminole CRA Economic Development Department
Kevin Fall, Coordinator, US 17-92 Community Redevelopment Agency
1101 East First Street
Sanford, Florida 32771

COMPANY:

Lowe's Home Centers, Inc.
Michael Reynolds, Sr. Site Development Manager
1605 Curtis Bridge Road
North Wilkesboro, NC 28659

B. Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

SECTION 14. INDEMNITY AND INSURANCE.

A. Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

B. To the extent allowed by law, each party to this Agreement shall indemnify, save, and hold harmless the other party and all of its respective officers, agents, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description whatsoever, including claims for property damage and claims for injury to or death of persons brought or recovered against the other party to this Agreement by reason of any

act or omission of the responsible party, its respective officers, agents, subcontractors, or employees, in the execution of the work relating to this Agreement.

C. The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the CRA beyond the waiver provided for in Section 768.28, Florida Statutes.

D. The COMPANY shall provide necessary workers' compensation coverage and unemployment compensation for its employees.

Section 15. Conflict of Interest.

A. The COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the CRA or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

B. The COMPANY hereby certifies that no officer, agent, or employee of the CRA has any material interest (as defined in Section 112.312, Florida Statutes), either directly or indirectly, in the business of THE COMPANY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

C. Pursuant to Section 216.347, Florida Statutes, the COMPANY hereby agrees that monies received from the CRA pursuant to this

Agreement will not be used for the purpose of lobbying the legislature or any other state or federal agency.

D. The COMPANY agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

SECTION 16. COMPLIANCE WITH LAWS AND REGULATIONS. In performing under this Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any material violation of said laws, statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 17. EMPLOYEE/COMPANY STATUS.

A. Persons employed or retained by the COMPANY in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the CRA's officers and employees either by operation of law or by the CRA.

B. The COMPANY assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and federal, state and local employment taxes, if any, attributable to

the COMPANY personnel or contractors and agrees to indemnify and hold the CRA harmless from any responsibility for same.

C. In performing this Agreement, planning, developing, constructing, equipping, and operating the PROJECT or carrying out any of the activities to be carried out by the COMPANY, the COMPANY will be acting independently, in the capacity of an independent entity, and not as a joint venturer, partner, associate, employee, agent, or representative of the CRA.

SECTION 18. NO THIRD-PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to the COMPANY's interest in the Project, and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder or as a result of this Agreement or any right to enforce any provisions of this Agreement.

SECTION 19. CONTINGENT FEES/CONFLICTING EMPLOYMENT.

A. The COMPANY covenants that it has employed and retained only bona fide employees working for the COMPANY and attorneys and consultants to solicit or secure this Agreement. The CRA warrants that it has not paid or agreed to pay any person, the COMPANY, corporation, individual, or firm, other than a bona fide employee working for the COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award for making this Agreement.

B. The COMPANY agrees that at the time of execution of this Agreement it has no retainer or employment agreement, oral or written, with any third party relating to any matters which adversely affect any interest or position of the CRA. During the term of this Agreement, the COMPANY shall not accept any retainer or employment from a third party whose interests appear to be conflicting or inconsistent with those of the CRA.

SECTION 20. GOVERNING LAW/ATTORNEYS' FEES. This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be entitled to recover from the other reasonable trial and appellate attorneys' fees and costs.

SECTION 21. CONSTRUCTION OF AGREEMENT. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, CRA and the COMPANY, have contributed substantially and materially to the preparation hereof.

SECTION 22. CONSTITUTIONAL AND STATUTORY LIMITATION ON AUTHORITY OF THE CRA. The terms and conditions of this Agreement placed upon the CRA are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the CRA. Specifically, the parties acknowledge that the CRA is without

authority to grant or pledge a security interest in any of the CRA's revenue sources or property.

SECTION 23. EVENTS OF DEFAULT/REMEDIES. For purposes of this Agreement, "Event of Default" shall mean any of the following:

A. The COMPANY shall misapply or cause the misapplication of CRA funds or credits received pursuant to this Agreement.

B. Any representation or warranty made by the COMPANY herein or in any statement, invoice, or certificate furnished to the CRA in connection with the performance of the Agreement that proves to be untrue in a material respect as of the date of issuance or making thereof and not corrected or brought into compliance within thirty (30) days after written notice thereof to the COMPANY by the CRA.

C. The COMPANY shall materially breach any covenant contained in this Agreement and such breach shall not be corrected or cured within thirty (30) days after written notice thereof to the COMPANY by the CRA; provided, however, that the CRA may declare a lesser cure period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety, or welfare.

D. The COMPANY fails to provide to the CRA the written verification, satisfactory to the CRA, of its performance obligations herein.

E. The COMPANY fails to expend CRA Funds in accordance with this Agreement.

F. The COMPANY fails to satisfy the terms and conditions of Exhibit A.

G. If within forty-five (45) days after receiving written notice from the CRA that an Event of Default has occurred, the COMPANY shall refund such disbursed funds which the CRA determines have been misapplied under the terms of this Agreement, or, in the alternative, deposit such funds into the registry of the Court, subject to determination of the CRA's entitlement thereto. The CRA may proceed to assert any and all legal or equitable remedies provided by law.

SECTION 24. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

SECTION 25. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

SECTION 26. TIME. Time is of the essence of this Agreement.

SECTION 27. SEVERABILITY. If any provision, term, or clause of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, said determination shall not, in any way, effect the obligation of the parties as provided for or referred to herein and, to that end, the provisions of this Agreement shall be deemed severable. However, such invalidity or unenforceability shall

preclude the continuing effect of this Agreement if a failure of consideration were to occur.

SECTION 28. ENTIRE AGREEMENT.

A. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

B. No waiver or consent to any departure from any term, condition, or provision of this Agreement shall be effective or binding upon any party hereto unless such waiver or consent is in writing and signed by an authorized officer of the party giving the same and delivered to the other party.

C. The COMPANY agrees that no representations have been made by the CRA in order to induce the COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

LOWES HOME CENTERS, INC.

, Secretary

By: _____
, President

[CORPORATE SEAL]

Date: _____

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

Approved as to form and
legal sufficiency.

As authorized for execution by
the Board of County Commissioners
at their _____, 20____
regular meeting.

County Attorney

AWS:jjr

12/1/06

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