

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA**

PALM COAST HOLDINGS, INC.
and FLORIDA LANDMARK
COMMUNITIES, LLC

Plaintiffs,

CASE NO:2025 CA 000670
DIVISION:49

v.

CITY OF PALM COAST,
a Florida municipal corporation,

Defendant.

COMPLAINT

Plaintiffs, PALM COAST HOLDINGS, INC. and FLORIDA LANDMARK COMMUNITIES, LLC, sue Defendant, CITY OF PALM COAST, a Florida municipal corporation, and state the following:

INTRODUCTION

1. In 2003, Florida Landmark Communities, Inc. (“Developer”)¹ underwent the rigorous process of obtaining a Development of Regional Impact (“DRI”) from the City of Palm Coast for a proposed 1,557-acre mixed use development, referred to herein as the Town Center DRI.

¹ Florida Landmark Communities, Inc. was named as the Developer in the 2003 DRI. In the subsequent Amended and Restated DRIs, both Florida Landmark Communities, Inc. and Palm Coast Holdings, Inc. are named as the Developer. Regardless, both Florida Landmark Communities, LLC and Palm Coast Holdings, Inc. are successors in interest to the original Developer named in the 2003 DRI.

2. Through this negotiated process with the City, and pursuant to the statutory framework set forth for such development approvals, the Developer negotiated a guarantee from the City to develop the entitlements set forth in the DRI Development Order—and the necessary public services, such as potable water and wastewater associated with those entitlements—which was memorialized in 2003.

3. In return for the guarantee of development rights from the City, the Developer agreed to construct certain infrastructure improvements in the City, including roads and other transportation improvements, a water and wastewater collection and distribution system, underground electric service, a pedestrian/bicycle system, and other facilities, along with donations of real property to the City.

4. The Developer, along with the associated community development district, performed all obligations under their agreement with the City, expending \$35.5 million on the required improvements.

5. Plaintiffs are two successors in interest to the original Developer of the Town Center DRI and own the remaining undeveloped land holdings—and associated development entitlements—in the Town Center DRI.

6. In the summer of 2024, Plaintiffs attempted to sell some or all of those remaining land holdings and secured contracts to do so. However, the purchasers cancelled the sales agreements during the due diligence period upon learning that the City was refusing to guarantee the potable water availability and wastewater capacity associated with the remaining entitlements in the Town Center DRI.

7. Without the guarantee of potable water available and wastewater capacity for the remaining buildout of the lands in the Town Center DRI, Plaintiffs are left with nearly worthless vacant land.

8. This lawsuit seeks to remedy the extraordinary injustice that Plaintiffs face regarding their inability to develop the lands that the City promised they would be allowed to develop.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the breach of contract claim pursuant to section 26.012, Florida Statutes. Plaintiffs seek damages exceeding \$75,000, exclusive of interest, costs, and attorney's fees.

10. This Court has jurisdiction over the promissory estoppel claims, which arise in equity, pursuant to Article V, § 20(c)(3) of the Florida Constitution and section 26.012(2)(c), Florida Statutes.

11. Venue is proper in this Court pursuant to section 47.011, Florida Statutes. Defendant is a municipal corporation existing within the boundaries of Flagler County, Florida; this cause of action accrued in whole or part in Flagler County, Florida; and the real property at issue in this action is situated in Flagler County, Florida.

PARTIES

12. Plaintiff PALM COAST HOLDINGS, INC. ("Palm Coast Holdings") is a Florida corporation. At all times material, Palm Coast Holdings is the owner of real property in the Town Center at Palm Coast Development of Regional Impact ("Town Center DRI") located in the City of Palm Coast, Flagler County, Florida. Palm Coast Holdings is a Developer of the Town Center DRI.

13. Plaintiff FLORIDA LANDMARK COMMUNITIES, LLC, (“Florida Landmark Communities”) is a Florida limited liability company and, by corporate conversion, the successor in interest to Florida Landmark Communities, Inc. At all times material, Florida Landmark Communities is the owner of real property in the Town Center DRI. Plaintiff is a Developer of the Town Center DRI.

14. Defendant CITY OF PALM COAST (“City”) is a municipal corporation authorized and existing under the laws of the state of Florida. The City negotiated, approved, and entered into the development orders with Florida Landmark Communities, as referenced herein.

BACKGROUND

Developments of Regional Impact & Comprehensive Planning

15. Section 380.06, Florida Statutes, sets forth the statutory framework for Developments of Regional Impact (“DRI”). A DRI is “any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” § 380.06(1), Fla. Stat. Similar to the regulatory freeze of a development agreement, an approved DRI Development Order (“DO”) vests a developer with certain development rights. Once a DRI is approved, the right to develop pursuant to the terms of the DRI vests. *See* § 163.3167(5), Fla. Stat.²

16. Pursuant to statute, a city must ensure availability of public services, such as potable water and wastewater, prior to approval of a DRI:

2. A local government shall not approve a development of regional impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed

²“(5) Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith....”. § 163.3167(5), Fla. Stat. (2025).

development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order; however, a local government's failure to meet the requirements of subparagraph 1. and this subparagraph shall not preclude the issuance of a development order where adequate provision is made by the developer for the public facilities needed to accommodate the impacts of the proposed development. Any funds or lands contributed by a developer must be expressly designated and used to accommodate impacts reasonably attributable to the proposed development.

§ 380.06(15)(e)2., Fla. Stat. (Local Government Development Order).

17. The Town Center DRI was originally approved under a statutory scheme that required state land planning agency approval, regional agency sufficiency review, and then the local government's approval of a DO before undertaking a DRI. § 380.06(5), (10), (11), (15), Fla. Stat (2003).³ The DRI review process typically was long and detailed. It was common for a DRI DO to reflect the agreements reached after complex negotiations between or among the agencies, local government, and the Developer over offsite public facilities improvements and land dedications by the Developer in exchange for use of public facilities (i.e., roads, water, sewer) and for development rights. This case is no exception.⁴

18. Breach of those negotiated agreements, such as Plaintiffs' DOs, is analyzed under contract law, as they take on the attributes of a bilateral contract, i.e., the City promises the Developer vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.

³ Since 2011, significant statutory changes have placed oversight of DRIs squarely in the hands of local governments pursuant to their comprehensive plans, and the state land planning agency no longer approves DRIs.

⁴ See § 380.06(7)(a), Fla. Stat. (“ . . . For any proposed change to a previously approved development of regional impact . . . the review **must abide by any prior agreements or other actions vesting the laws and policies governing the development . . .**” (emphasis added)).

19. Approval of a DRI is frequently accompanied by related comprehensive plan amendments, for example, to adjust the Future Land Use Map for new land uses, amend the Capital Improvements Element to list facilities for which the Developer or local government is expected to fund, or map public and conservation lands dedicated by the Developer. At the conclusion of the process, the DRI DO must be consistent with the comprehensive plan, as amended.

20. The DRI regulatory framework imposes additional conditions on a developer and does not supplant obtaining amendments to the local government's comprehensive plan, where necessary. In adopting such amendments, the local government may not adopt a plan (or presumably an amendment thereto) that in effect amends a DRI DO. *Op. Att'y Gen. Fla. 1977-7.*

21. Pursuant to Chapter 163, Part II, Florida Statutes, the Community Planning Act ("Community Planning Act"), the City is statutorily required to adopt and implement a local comprehensive plan and to ensure that all development orders approved by the City are consistent with such plan.

22. A comprehensive plan must include certain "elements" for planning purposes, including, *inter alia*, a "capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities" § 163.3177(1)(a), (3)(a), Fla. Stat.

23. All elements of a comprehensive plan, including the capital improvements element, must be "based upon relevant and appropriate data and an analysis by the local government." §163.3177(1)(f).

24. The capital improvements element must "cover at least a 5-year period" and "must be reviewed by the local government on an annual basis." § 163.3177(3)(a)1., (3)(b), Fla. Stat.

25. The capital improvements element must include, *inter alia*:

- “[P]rinciples for construction, extension, or increase in capacity of public facilities, as well as . . . principles for correcting existing public facility deficiencies.” § 163.3177(3)(a)1., Fla. Stat.
- “Estimated public facility costs, **including a delineation of when facilities will be needed**, the general location of the facilities, and projected revenue sources to fund the facilities.” § 163.3177(3)(a)2., Fla. Stat.
- “**Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.**” § 163.3177(3)(a)3., Fla. Stat.

(emphasis added).

26. The City is required to monitor adopted levels of service in its 5-year capital improvements schedule for public facilities, including potable water and wastewater, under a concept known as “concurrency.” § 163.3177(4)(b), Fla. Stat. Procedurally, after substantial completion of construction, the City issues a certificate of occupancy that permits physical occupation of structures, presumably connected to water and sewer. Recently, the City has declined to guarantee that finished development would receive certificates of occupancy due to water and sewer capacity shortages. The instant dispute has arisen because the City may not use the concurrency provisions of § 163.3177, Florida Statutes, to limit or modify completion of Plaintiffs’ Town Center DRI. § 163.3167(5), Fla. Stat. (2025).

Town Center DRI Development Order

27. On July 11, 2003, the City and Florida Landmark Communities, Inc. (the “Developer”) entered into the Town Center at Palm Coast Development of Regional Impact Development Order (“2003 DO”), recorded as Instrument No. 2003039803 in Book 0959, Pages

1509–1584 on July 23, 2003, in the Public Records of Flagler County, Florida.⁵ [Exhibit A, 2003 DO].

28. The 2003 DO proposed a 1,557-acre mixed use development, referred to herein as the Town Center DRI, to be located at the northwest corner of the intersection of State Road 100 (“SR-100”) and Interstate 95 (“I-95”). The Town Center DRI is bordered by I-95 to the east, SR-100 to the south, a major drainage canal to the north, and Belle Terre Parkway to the west.

29. The City approved the following development entitlements in the 2003 DO:

<u>Land Use</u>	<u>Gross Bldg./Units or Area</u>	<u>Acreage *</u>
Residential	2,500/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,400,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	240 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

[Exhibit A at 7].

⁵ The Developer also entered into ancillary agreements related to the Town Center DRI, including a Planned Unit Development Agreement and amendments thereto. Copies of these other agreements can be provided to the Court as relevant to the issues herein.

30. The 2003 DO was proposed to be developed in three phases, as shown on the following schedule:

Land Use	Phase 1		Phase 2		Phase 3		Total	
	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units	Sq. ft.	Units
Residential		1,110/DU		865/DU		525/DU		2,500/DU
Office	325,000		575,000		500,000		1,400,000	
Retail	750,000		750,000		500,000		2,000,000	
Non-Retail	320,000		680,000		400,000		1,400,000	
Institutional	185,000		165,000		275,000		625,000	
Movie Theater		2,400						2,400
Lodging		140/rms		140/rms		200/rms		480/rms
Nursing Home		120/beds				120/beds		240/beds

Notes: 1) The non-residential uses are stated in square feet of gross building area.
 2) These land uses shall be integrated into the Town Center Mixed-Use Zoning as shown on the Master Plan.
 3) Common Area includes all open space, areas for preservation and greenbelts that shall be available for the common use and enjoyment of all Town Center DRI property owners and visitors.

[Exhibit A at 9].

31. As relevant to the allegations herein, through the 2003 DO, the City vested the Developer with the rights for both potable water and wastewater for the entitlements in Phase 1 of the Town Center DRI. [Exhibit A at 29 (“Sufficient [potable water] capacity exists to accommodate Phase 1 development of the Town Center DRI . . .”), 32 (“Sufficient [wastewater] capacity exists to accommodate Phase 1 development . . .”)].

32. The original termination and expiration date of the 2003 DO was December 31, 2025. As noted below, the termination and expiration date has been extended to April 12, 2036.

33. A companion Plan Amendment (CPA 03-01) for the Town Center DRI was adopted by the City on July 1, 2003. In its review, the state land planning agency required the City to add

Policy 1.1.12 to its Comprehensive Plan to identify no later than January 1, 2005, water supply strategies consistent with a groundwater withdrawal study to be performed in 2003–04. The privately owned water supply company was expected to reach the limits of its pumping permit by 2004 and to exceed the supply for daily peak demand by 2005. The water management district at that time warned that potable water would not be available in sufficient supply after the year 2020.

34. On May 20, 2008, the City passed Resolution 2008-89, Three Year Extension to Town Center at Palm Coast Development of Regional Impact, recorded as Instrument No. 2008017111 in Book 1664, Pages 1882–1883 on June 4, 2008, in the Public Records of Flagler County, Florida. Resolution 2008-89 extended the termination and expiration date of the 2003 DO to December 31, 2028, pursuant to statute.

35. On December 16, 2011, the City sent to the Developer a Development Order Extension Notification, recorded as Instrument No. 2011035606 in Book 1847, Pages 1486–1487 on December 28, 2011, in the Public Records of Flagler County, Florida. This notification approved a four-year extension of the termination and expiration date of the 2003 DO to December 31, 2032, pursuant to statute.

36. Effective November 27, 2018, Palm Coast Holdings and Florida Landmark Communities, as majority owners of the Town Center DRI, executed an Amendment to Town Center at Palm Coast Development of Regional Impact Development Order, approved by the City, recorded as Instrument No. 2018044365 in Book 2321, Pages 549–555 on November 28, 2018, in the Public Records of Flagler County, Florida. This amendment approved a minor amendment to the 2003 DO related to transportation improvements.

37. Effective July 5, 2022, the City and the Developer entered into the Town Center at Palm Coast 2022 Amended and Restated Development of Regional Impact Order (“2022 Amended

DO”), recorded as Instrument No. 2022039793 in Book 2711, Pages 1810–1889 on August 3, 2022, in the Public Records of Flagler County, Florida. [Exhibit B, 2022 Amended DO].

38. The 2022 Amended DO set forth the entitlements as of the amendment date, including approved conversions to date:

Land Use	Gross Bldg./Units or Area	Acreage *
Residential	2,750/DUs	190 Acres
Office	1,400,000/SF	110 Acres
Retail/Comm.	2,000,000/SF	250 Acres
Non-Retail/Comm.	1,195,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	485 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

[Exhibit B at 7].

39. The 2022 Amended DO also set forth the number of entitlements sold (and assigned to specific parcels) and those remaining, as of the date of the amendment, and reserved to the Developer the remaining entitlements:

Land Use	Approved	Sold	Remaining* ¹
Residential	2,750 Units	2,599 Units	151 Units
Office	1,400,000 Sq. Ft.	487,780 Sq. Ft.	912,220 Sq. Ft.

Retail/Commercial	2,000,000 Sq. Ft.	858,786 Sq. Ft.	1,141,214 Sq. Ft.
Non-Retail Commercial	1,195,000 Sq. Ft.	136,589 Sq. Ft.	1,058,411 Sq. Ft.
Institutional	625,000 Sq. Ft.	240,000 Sq. Ft.	385,000 Sq. Ft.
Movie Theater	2,400 Seats	2,400 Seats	0 Seats
Lodging	480 rooms	125 rooms	355 rooms
Assisted Living	485 rooms	202 rooms	283 rooms

* All remaining entitlements are owned by Developer and have not been assigned to any specific property.

¹ A chart showing the assignment of the listed entitlements is attached as Exhibit "K".

[Exhibit B at 7–8].

40. The 2022 Amended DO tied the phasing of the remaining buildout of the Town Center DRI to traffic trip generation, as follows:

	Daily Trips	PM Peak Hour	Cumulative	
			Daily Trips	PM Peak Hour
Phase 1	56,565	5,226	56,565	5,256
Phase 2	56,742	5,218	113,307	10,444
Phase 3	42,953	4,048	156,260	14,492

[Exhibit B at 9].

41. As relevant to the allegations herein, through the 2022 Amended DO, the City “vested” the Developer for all of the entitlements associated with the Town Center DRI (in all phases) for, *inter alia*, potable water and wastewater:

(b) Because Developer completed the DRI's offsite mitigation obligations, the City hereby agrees that all owners within the current DRI Property are vested for water, sewer, traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit B** at 15 (emphasis added)]. The City's "vesting" in this context was acknowledgement that Plaintiffs had fully performed their obligations under the negotiated agreements contained within the DO—the Town Center DRI was already vested by operation of state law.

42. The 2022 Amended DO extended the termination and expiration date of the 2003 DO to April 12, 2036. [**Exhibit B** at 13].

43. On January 16, 2024, the City passed Resolution 2024-04, Conversion to Residential Units within the Town Center at Palm Coast Development of Regional Impact Development Order. Resolution 2024-04 converted certain land uses within the Town Center DRI.

44. On February 6, 2024, the City and the Developer entered into the Town Center at Palm Coast Amended and Restated Development of Regional Impact Development Order ("2024 Amended DO"), recorded as Instrument No. 2024023350 in Book 2874, Pages 1215–1294 on June 5, 2024, in the Public Records of Flagler County, Florida. [**Exhibit C**, 2024 Amended DO]. The 2024 Amended DO supersedes the previous DOs and amendments to the 2003 DO and is the current governing document for the Town Center DRI. Collectively, the 2003 DO, the 2022 Amended DO, and the 2024 Amended DO will be referred to hereinafter as the "DOs."

45. The 2024 Amended DO sets forth the entitlements as of the amendment date, including approved conversions to date, which are unchanged from the 2022 Amended DO:

Land Use	Gross Bldg./Units or Area	Acreage *
Residential	3,575/DUs	190 Acres
Office	1,285,417/SF	110 Acres
Retail/Comm.	1,909,240/SF	250 Acres
Non-Retail/Comm.	1,195,000/SF	180 Acres
Institutional	625,000/SF	80 Acres
Movie Theater	2,400 seats	8 Acres
Lodging	480 rooms	15 Acres
Nursing Home	485 beds	10 Acres
Common Area	--	714 Acres

* The Town Center DRI is planned as a traditional neighborhood development. As a result, land uses will be integrated, rather than specifically assigned to designated areas. Consequently, acreage is approximate for each land use category.

[Exhibit C at 7].

46. The 2024 Amended DO also sets forth the number of entitlements sold (and assigned to specific parcels) and those remaining, as of the date of the amendment, and reserves to the Developer the remaining entitlements, which are unchanged from the 2022 Amended DO:

Land Use	Approved	Sold	Remaining*¹
Residential	3,575 Units	2,599 Units	775 Units
Office	1,285,417 Sq. Ft.	487,780 Sq. Ft.	797,637 Sq. Ft.

Retail/Commercial	1,909,240 Sq. Ft.	858,786 Sq. Ft.	1,141,214 Sq. Ft.
Non-Retail Commercial	1,195,000 Sq. Ft.	136,589 Sq. Ft.	1,058,411 Sq. Ft.
Institutional	625,000 Sq. Ft.	240,000 Sq. Ft.	385,000 Sq. Ft.
Movie Theater	2,400 Seats	2,400 Seats	0 Seats
Lodging	480 rooms	125 rooms	355 rooms
Assisted Living	485 rooms	202 rooms	283 rooms

* All remaining entitlements are owned by Developer and have not been assigned to any specific property.

¹ A chart showing the assignment of the listed entitlements is attached as Exhibit "K".

[Exhibit C at 7–8].

47. The 2024 Amended DO ties the phasing of the remaining buildout of the Town Center DRI to traffic trip generation, as follows, which is unchanged from the 2022 Amended DO:

	Daily Trips	PM Peak Hour	Cumulative	
			Daily Trips	PM Peak Hour
Phase 1	56,565	5,226	56,565	5,256
Phase 2	56,742	5,218	113,307	10,444
Phase 3	42,953	4,048	156,260	14,492

[Exhibit C at 9].

48. As relevant to the allegations herein, the 2024 Amended DO repeats the “vesting” language from the 2022 Amended DO:

Because Developer completed the DRI's offsite mitigation obligations, **the City hereby agrees that all owners within the current DRI Property are vested for water, sewer**, traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit C** at 15 (emphasis added)]. The City's "vesting" in this context was acknowledgement that Plaintiffs had fully performed their obligations under the negotiated agreements contained within the DO—the Town Center DRI was already vested by operation of state law.

Current Status of Town Center DRI

49. The 2003 DO set forth a list of on- and off-site major infrastructure improvements and land donations to be completed by the Developer pursuant to the negotiated agreements to mitigate the impacts of its development of the Town Center DRI, including roads and other transportation improvements, a water and wastewater collection and distribution system, underground electric service, a pedestrian/bicycle system, other facilities, and donations of real property to the City. [**Exhibit A** at 76].

50. By 2007, the Developer and its related community development district expended more than \$35.5 million to construct the above-described facilities.

51. In return for the Developer's completion of its mitigation requirements set forth in the 2003 DO, the City "vested" the Developer (and entities who purchased property and associated entitlements from the Developer) for potable water, wastewater, and other public services for the full buildout of the Town Center DRI, as acknowledged in the 2022 Amended DO and reiterated in the 2024 Amended DO:

Because Developer completed the DRI's offsite mitigation obligations, **the City hereby agrees that all owners within the current DRI Property are vested for water, sewer**, traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit B** at 15 (emphasis added); **Exhibit C** at 15 (emphasis added)]. The City’s “vesting” in this context was acknowledgement that Plaintiffs had fully performed their obligations under the negotiated agreements contained within the DO—the Town Center DRI was already vested by operation of state law.

52. In consideration of the entitlements set forth in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, the Developer conceded that the required mitigation projects are reasonably attributable to the development of the Town Center DRI:

The Developer acknowledges that the requirements and conditions of this Order as set forth herein result from the impacts of development of the DRI Property on public facilities and systems, are reasonably attributable to the development of the DRI Property
...

[**Exhibit C** at 20–21].

53. According to the traffic trip generation data in the Town Center DRI 2023 Biennial Traffic Report, dated April 2024, the Town Center DRI is currently within Phase 1, with a significant portion of the entitlements remaining to be built out. [**Exhibit D**, 2023 Biennial Traffic Report].

54. As of August 11, 2025, the following entitlements remain to be built out in the Town Center DRI:

Residential:	496 dwelling units
Office Buildings:	586,122 square feet
Retail:	1,205,045 square feet
Non-Commercial Retail:	977,003 square feet
Institutional:	290,000 square feet
Movie Theater:	0 seats
Lodging:	355 rooms
Nursing Home:	283 beds

[**Exhibit D**, Remaining Entitlements, at 1].

55. The potable water and wastewater generation capacity required for the remaining entitlements is as follows:

Land Use Type	Remaining Entitlements	Potable Water Demand Capacity (GPD)	Wastewater Generation Capacity (GPD)
Residential	496 dwelling units	148,800	97,613
Office Buildings	586,122 square feet	99,641	58,612
Retail	1,205,045 square feet	204,858	120,505
Non-Commercial Retail	977,003 square feet	48,850	48,850
Institutional	290,000 square feet	217,500	217,500
Movie Theater	0 seats	0	0
Lodging	355 rooms	44,375	35,500
Nursing Home	283 beds	425	354
Total		764,448	578,933

56. Plaintiffs own the remaining parcels within the boundaries of the Town Center DRI to be developed as part of the completion of the Town Center DRI development program:

Owner	Flagler County Property Appraiser Parcel ID	Property Address⁶	Approx. Acreage⁷
Palm Coast Holdings	04-12-31-1300-00010-0000	N/A	28.89
Palm Coast Holdings	05-12-31-0650-000A0-0018	1010 Town Center Blvd.	66.29
Palm Coast Holdings	06-12-31-5815-00000-0170	N/A	2.828
Palm Coast Holdings	06-12-31-5815-00000-0190	N/A	3.128
Palm Coast Holdings	06-12-31-5825-00000-0030	72 Lake Ave. 167 Park St.	2.007
Palm Coast Holdings	06-12-31-5825-00000-0040	143 Lake Ave.	8.851
Palm Coast Holdings	06-12-31-5825-00000-0050	235 Lake Ave. 287 City Pl.	4.186
Palm Coast Holdings	06-12-31-5825-00000-0080	35 City Pl. 1015 Central Ave.	1.289
Palm Coast Holdings	06-12-31-5825-00000-0140	1154 Central Ave.	3.92
Palm Coast Holdings	06-12-31-5825-00000-0160	1266 Central Ave.	2.68
Palm Coast Holdings	06-12-31-5825-00000-0170	1338 Central Ave.	6.326
Palm Coast Holdings	06-12-31-5825-00000-0180	1428 Central Ave.	5.657
Palm Coast Holdings	06-12-31-5825-00000-0240	1089 Central Ave. 36 City Pl.	3.305

⁶ Property address currently assigned by the Flagler County Property Appraiser.

⁷ Approximate acreage as reported by the Flagler County Property Appraiser.

Owner	Flagler County Property Appraiser Parcel ID	Property Address⁶	Approx. Acreage⁷
Florida Landmark Communities	<u>05-12-31-5855-00000-0010</u>	685 Town Center Blvd.	8.361
Florida Landmark Communities	<u>06-12-31-5825-00000-0130</u>	1096 Central Ave. 1096 Central Ave. Unit 110 1096 Central Ave. Unit 106 1096 Central Ave. Unit 107 1096 Central Ave. Unit 105 1096 Central Ave. Unit 104 1096 Central Ave. Unit 102 1096 Central Ave. Unit 109 1096 Central Ave. Unit 100 1096 Central Ave. Unit 101 1096 Central Ave. Unit 108 1096 Central Ave. Unit 103	2.969
Florida Landmark Communities	<u>06-12-31-5825-00010-0300</u>	145 City Pl. Unit 300A	0.386
Florida Landmark Communities	<u>07-12-31-5885-00000-0010</u>	201 Landing Blvd.	12.73
Florida Landmark Communities	<u>07-12-31-5885-00000-0020</u>	525 Landing Blvd. 640 Central Ave.	1.75
Florida Landmark Communities	<u>07-12-31-5885-00000-0030</u>	525 Landing Blvd. 640 Central Ave.	2.87
Florida Landmark Communities	<u>07-12-31-5885-00000-0040</u>	725 Central Ave.	15.91

City's Potable Water and Wastewater Capacity

57. Pursuant to statute, the City is charged with planning for and provision of sufficient public facilities—including potable water and wastewater utilities—for development approved within the City limits.

58. Plaintiffs are of information and belief that sometime after the City approved Plaintiffs' 2003 DO, the City fell short of its then-statutory duty to maintain a "financially feasible five-year schedule of capital improvements" to concurrently meet projected demand for services from this DRI's development. § 163.3177(3)(b)(1), Fla. Stat. (2007). Currently, the City is in

violation of its duty to have standards in its Capital Improvements Element to “**ensure the availability** of public facilities and the adequacy of those facilities to meet established levels of service.” § 163.3177(3)(a)3, Fla. Stat. (2025) (emphasis added).

59. Despite the City’s clear duty to properly plan for and provide sufficient potable water and wastewater capacity, and the Developer’s full compliance with the planning process by obtaining the 2003 DO (and amendments) and related comprehensive plan amendments, the City has essentially exhausted all of its potable water and wastewater capacity—without properly reserving the capacity promised to the Plaintiffs in the 2003 DO.

60. Through the comprehensive plan planning process, the City has known since at least 2010 (when it updated the City’s Comprehensive Plan 2035) that it only had potable water capacity sufficient to meet demand through 2023. This fact was never communicated to the Developer at any time during the process of amending the 2003 DO.

61. The City’s sewer treatment capacity is in a comparably deficient state, based on a record of state enforcement actions and recent discussions at City Commission meetings.

62. Repeated exceedance of the City’s state permit capping the volume of wastewater flowing into the treatment plant (Palm Coast WWTF #1) is the subject of a December 6, 2024, Consent Order (OGC File No. 24-2146) executed by the City with the Florida Department of Environmental Protection (“FDEP”). [**Exhibit E**, 2024 Consent Order]. The City’s sewage treatment plant also violated groundwater quality and effluent standards more than 50 times between November 2021 and February 2024. [**Exhibit E** at 2–5]. The City’s wastewater collection system spilled untreated sewage more than 70 times between September 30, 2022, and October 11, 2024. [**Exhibit E** at 5–10].

63. FDEP also took past enforcement action against the City for exceeding the permitted wastewater flow capacity 14 times in 2017–18 and for effluent quality violations. [Exhibit F, 2020 Consent Order].

64. The City has until December 28, 2028, to complete corrective actions under the 2024 Consent Order, including modifications to increase the flow capacity. [Exhibit E at 14].

65. The lack of capacity at the City’s wastewater treatment plants is now so dire that the City discussed during City Council meetings the potential of issuing a blanket stop development order within the City limits, which would prohibit all new development.

66. The problems with the lack of potable water availability and wastewater capacity is highlighted by the drastic downward trend in the City’s issuance of Certificates of Occupancy for new developments in recent years, another fact raised at a recent City Council meeting.

67. Plaintiffs have themselves experienced first-hand the impact of the lack of potable water availability and wastewater capacity. In 2024, Plaintiffs entered into two contracts for the sale of a large portion of their remaining real property holdings within the Town Center DRI. Both contracts were cancelled by the prospective purchasers during the due diligence phase upon learning that the City would not guarantee potable water availability and wastewater capacity for development within the Town Center DRI.

68. This action by the City of refusing to guarantee the availability of the contractually guaranteed potable water availability and wastewater capacity is nothing short of a repudiation of their contractual obligations under the DOs.

69. The City’s breach of the DOs, and the resulting cancellation of the sales contracts resulted in millions of dollars in damages to Plaintiffs, including but not limited to reliance damages and lost profits damages.

70. Given the above sequence of events, upon information and belief, the City will not issue Certificates of Occupancy for any development associated with Plaintiffs' remaining vested entitlements for the Town Center DRI.

71. As a result, Plaintiffs will continue to be damaged until the capacity issues are resolved and Plaintiffs are permitted to complete the development previously approved and vested in their Town Center DRI.

72. The City either knew or should have known of the capacity issues through the comprehensive plan planning process or at the very latest during review and approval of the Town Center DRI. § 380.06(15)(e)2, Fla. Stat.

73. Despite the City's failure to properly plan for provision of potable water and wastewater capacity for the existing lands within the City's borders, since 2010, the City has voluntarily annexed another seven square miles into the City, compounding the capacity issues.

74. The City has also diverted capacity to bulk water and wastewater services agreements that came after the Town Center DRI, some of which promise service to lands outside City limits. In one case, the City on January 4, 2022, entered into an interlocal subaward agreement with Flagler County to direct up to \$5.1 million in federal funding to extend sewer infrastructure to barrier islands developments including Hammock Community Center and Willow Woods Neighborhood. [**Exhibit G**, Interlocal Subaward Agreement]. On September 5, 2023, the City entered into an agreement with Flagler County to direct up to \$8 million in state funds to this sewer project serving the barrier islands. [**Exhibit H**, Interlocal Subaward Agreement].

75. These actions by the City of adding land as well as diverting potable water and wastewater capacity to lands outside the City limits—without first reserving capacity for the Town Center DRI—demonstrate bad faith on the part of the City.⁸

76. Plaintiffs expended millions of dollars on development of facilities infrastructure for the Town Center DRI upon the contractual guarantee by the City—as set forth in the 2003 DO and restated in the 2022 Amended DO and 2024 DO—that Plaintiffs would be able to actually develop the entitlements promised to them. As a result of the City’s failure to perform on its contractual guarantees (i.e., failure to reserve sufficient potable water and wastewater capacity for the Town Center DRI), Plaintiffs’ remaining parcels of real property within the Town Center DRI are now worth a small fraction of their full value.

COUNT I—BREACH OF CONTRACT

77. Plaintiffs re-allege paragraphs 1 through 76.

78. Count I is a claim for breach of contract, i.e., breach of the DOs, by Plaintiffs against the City.

79. The DOs are valid and enforceable contracts between the City and Plaintiffs (as successors in interest to the Developer).

80. In the 2003 DO, the City contractually guaranteed to the Developer of the Town Center DRI the right to complete the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	2,500 dwelling units
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⁸ Importantly, since the potable water availability and wastewater capacity issues have recently been at the forefront of City Council meetings, the City Council has had extensive discussions about ensuring capacity availability for another developer in the City, known as “ITT.” Despite the contractual guarantees of capacity availability for the Town Center DRI since 2003—and reiteration of that availability in 2022 and 2024—not once has the City Council ever raised the issue of ensuring capacity for the Town Center DRI.

Office:	1,400,000 square feet
Retail/Commercial:	2,000,000 square feet
Non-Retail/Commercial:	1,400,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	240 beds

[**Exhibit A** at 7; *see id.* at 29 (“vesting” Phase 1 of the Town Center DRI for potable water and wastewater)].

81. Following conversion of the entitlements, as set forth in the 2022 Amended DO and 2024 Amended DO, the City contractually guaranteed to the Developer of the Town Center DRI the right to complete the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	3,575 dwelling units
Office:	1,285,417 square feet
Retail/Commercial:	1,909,240 square feet
Non-Retail/Commercial:	1,195,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	485 beds

[**Exhibit C** at 7; *see id.* at 15 (“vesting” all phases of the Town Center DRI for potable water and wastewater)].

82. Once a DRI has been approved, the right to develop pursuant to the terms of the DRI vests. Therefore, the entitlements guaranteed to the Developer in the 2003 DO vested when it was approved in 2003, so long as the Developer (and Plaintiffs as successors in interest to the Developer) developed the Town Center DRI in accordance with the DOs. As set forth below, the Developer performed all of its obligations under the DOs, but the City has failed to do the same.

83. The Developer performed all of the essential requirements of the DOs, with the Developer and community development district expending more than \$35.5 million on the mitigation conditions in the DOs.

84. Indeed, the City acknowledged in the 2024 Amended DO that the Developer has fully performed on all of its contractual obligations to be vested for all entitlements for the full buildout of the Town Center DRI:

Because Developer completed the DRI's offsite mitigation obligations, **the City hereby agrees that all owners within the current DRI Property are vested for water, sewer,** traffic, park, and all other public services concurrency for the Present Entitlements identified . . . herein. . . .

[**Exhibit B** at 15 (emphasis added); **Exhibit C** at 15 (emphasis added); *see also* **Exhibit A** at 29 (vesting capacity for Phase 1)].

85. All conditions have been satisfied such that the City was—and is—required to fully perform under the DOs, including full provision of sufficient potable water availability and wastewater capacity for the remaining entitlements.

86. In accordance with the contractual guarantees made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, Plaintiffs, as successors in interest to the Developer and owners of real property within the Town Center DRI, have a right to fully build out the remaining entitlements in the Town Center DRI, including sufficient potable water and wastewater capacity to support such development:

Residential:	496 dwelling units
Office Buildings:	586,122 square feet
Retail:	1,205,045 square feet
Non-Commercial Retail:	977,003 square feet
Institutional:	290,000 square feet
Movie Theater:	0 seats
Lodging Rooms:	355 rooms
Nursing Home Beds:	283 beds

[**Exhibit D** at 1].

87. The City repudiation of its obligations under the DOs resulted in the cancellation of Plaintiffs' sales contracts for real property within the Town Center DRIs.

88. The City's repudiation involves a material and essential term of the DOs—provision of potable water and wastewater availability to fully build out the Developer's entitlements.

89. Plaintiffs have been damaged by the City's repudiation, causing general and special damages including but not limited to reliance damages; lost profits; a decline in the value of Plaintiffs' real property within the Town Center DRI; lost sales; loss of money, land, and construction-in-aid contributed in satisfaction of concurrency conditions under the DOs; increased costs; and, damages for construction interruption and delay.

90. Plaintiffs have retained undersigned counsel to represent them in this cause and have had to bring this action for damages and are entitled to an award of damages and taxable costs.

WHEREFORE, Plaintiffs respectfully requests judgment from this Court as follows:

- a. An Order from this Court finding:
 - i. The 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, is a valid and enforceable contract that fully vests Plaintiffs (as successors in interest to the Developer) for the entitlements set forth therein, including but not limited to potable water availability and wastewater capacity;
 - ii. Plaintiffs performed all of their essential obligations under the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO,

entitling them to the full benefit and performance of the contractual guarantees under the 2003 DO, as amended;

iii. The City repudiated and breached the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, when it caused cancellation of Plaintiffs' 2024 sales contracts by refusing to provide the purchasers guaranteed potable water and wastewater capacity;

iv. Plaintiffs have been damaged by the City's breach of the 2003 DO, as amended;

- b. An award of general and special damages, including but not limited to reliance damages; lost profits; a decline in the value of Plaintiffs' real property within the Town Center DRI; lost sales; loss of money, land, and construction-in-aid contributed in satisfaction of concurrency conditions under the DOs; increased costs; and, damages for construction interruption and delay;
- c. An award of prejudgment and post-judgment interest, plus costs; and
- d. Any other relief that the Court determines to be just and proper.

COUNT II—PROMISSORY ESTOPPEL

91. Plaintiffs re-allege paragraphs 1 through 76.

92. Count II is pled in the alternative to Count I.

93. Count II is a claim for promissory estoppel by Plaintiffs against the City.

94. In the 2003 DO, the City promised to the Developer of the Town Center DRI the right to complete the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	2,500 dwelling units
Office:	1,400,000 square feet

Retail/Commercial:	2,000,000 square feet
Non-Retail/Commercial:	1,400,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	240 beds

[**Exhibit A** at 7; *see id.* at 29 (“vesting” Phase 1 of the Town Center DRI for potable water and wastewater)].

95. Following conversion of the entitlements, as set forth in the 2022 Amended DO and 2024 Amended DO, the City promised to the Developer of the Town Center DRI the right to build out the development associated with the following entitlements, including the availability of sufficient potable water and wastewater capacity:

Residential:	3,575 dwelling units
Office:	1,285,417 square feet
Retail/Commercial:	1,909,240 square feet
Non-Retail/Commercial:	1,195,000 square feet
Institutional:	625,000 square feet
Movie Theater:	2,400 seats
Lodging:	480 rooms
Nursing Home:	485 beds

[**Exhibit C** at 7; *see id.* at 15 (“vesting” all phases of the Town Center DRI for potable water and wastewater)].

96. In accordance with the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, Plaintiffs, as successors in interest to the Developer and owners of real property within the Town Center DRI, have a right to fully build out the remaining entitlements in the Town Center DRI, including sufficient potable water and wastewater capacity to support such development:

Residential:	496 dwelling units
Office Buildings:	586,122 square feet
Retail:	1,205,045 square feet
Non-Commercial Retail:	977,003 square feet
Institutional:	290,000 square feet

Movie Theater:	0 seats
Lodging Rooms:	355 rooms
Nursing Home Beds:	283 beds

[**Exhibit D** at 1].

97. Plaintiffs detrimentally relied on the promises made by the City as to the development entitlements set forth in the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO, including the availability of potable water and wastewater capacity to fully build out the development entitlements, by the Developer and community development district expending more than \$35.5 million on the mitigation conditions in the DOs.

98. The City reasonably should have expected the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO, to induce reliance in the form of action or forbearance on the part of Plaintiffs because the City had both a statutory duty to comply with the terms of the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO.

99. In this case, the City encouraged further reliance on its 2003 DO approval by agreeing in the 2022 Amended DO and 2024 Amended DO that Plaintiffs had met their conditional obligations to mitigate the impacts of the Town Center DRI on public infrastructure, including water, wastewater, roads, parks and open space. Plaintiffs had expended more than \$35.5 million to create and ensure access to public facilities for the completion of their approved Town Center DRI only to be told in 2024 that no further permits/certificates of occupancy would be issued due to lack of water and sewer capacity.

100. Injustice can be avoided only by this Court's enforcement of the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO. The City must be required to provide the potable water and wastewater capacity for the

entitlements guaranteed in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO, or be required to pay damages to Plaintiffs for their reliance damages and lost profits.

WHEREFORE, Plaintiffs respectfully requests judgment from this Court as follows:

- a. An Order from this Court finding:
 - i. Plaintiffs detrimentally relied on the promises in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO;
 - ii. The City reasonably should have expected the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and the 2024 Amended DO, to induce reliance in the form of action or forbearance on the part of Plaintiffs;
 - iii. Injustice can be avoided only by this Court's enforcement of the promises made by the City in the 2003 DO, as amended and restated in the 2022 Amended DO and 2024 Amended DO;
 - iv. If the City is unable to immediately provide the necessary potable water availability and wastewater capacity for the remaining entitlements, Plaintiffs are entitled to damages;
- b. An award of general and special damages, including but not limited to reliance damages; lost profits; a decline in the value of Plaintiffs' real property within the Town Center DRI; lost sales; loss of money, land, and construction-in-aid contributed in satisfaction of concurrency conditions under the DOs; increased costs; and, damages for construction interruption and delay;
- c. An award of prejudgment and post-judgment interest, plus costs; and

- d. Any other relief that the Court determines to be just and proper.

Date: October 23, 2025

/s/ Patrice Boyes

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