

# City of Palm Coast, Florida

## Agenda Item

Agenda Date: February 7, 2023

<b>Department</b>	COMMUNITY DEVELOPMENT	<b>Amount</b>
<b>Division</b>		<b>Account #</b>
<b>Subject</b>	ORDINANCE 2023-XX HARBORSIDE MASTER PLANNED DEVELOPMENT – APPLICATION # 5132	
<b>Presenter: Ray Tyner, Deputy Chief Development Officer, Bill Hoover, Senior Planner, AICP</b>		
<b>Background :</b> <b>THIS IS A QUASI-JUDICIAL ITEM. PLEASE REMEMBER TO DISCLOSE ANY EX PARTE COMMUNICATIONS.</b>		
<b><u>UPDATE FROM THE JANUARY 17, 2023 BUSINESS MEETING.</u></b> On January 17, 2023, the City Council conditionally approved the item at first reading but directed staff and the applicants to try and reach a compromise on the number of units allowed as well as the conditions in Section 10 of the Master Planned Development (MPD) Agreement.  In accordance with City Council direction, the applicant and staff reanalyzed the request and allowable density and determined that 371 units and a density of 21.9 units/per acre was an acceptable compromise. This is a reduction of 61 units and a reduction in density of 3.6 units/per acre from what the applicant was proposing. This is very important in improving the project’s compatibility with neighboring properties as the 61-unit reduction will occur on Lots 3 and 4 (western half) of their MPD Master Plan and closest to Palm Harbor Parkway.  The applicant and staff have generally agreed upon the conditions in Section 10 of the MPD Agreement in order to comply with Comprehensive Plan Policy 1.1.2.2 that would allow an increase in residential units to 371 and density to 21.9 units/per acre. However, staff recommends the City Council add two items to the applicant’s proposed Section 10:  <div><div>1.</div><div>Owner to construct a paved 5-foot-wide sidewalk accessible to the public that would connect from the existing trail located on the west side of the Intracoastal Waterway and then traveling west adjacent to the drainage canal and south of the Condominium and the Parking Garage out to the sidewalk located south of Palm Coast Resort Boulevard and east of Palm Harbor Parkway.</div></div> <div><div>2.</div><div>The existing boat ramp shall remain and be available for official government operations during emergency events.</div></div>		
Additional changes to the applicant’s proposed Master Planned Development Agreement are shown in track change format: underlining for additions and strikethrough for deletions. Additional emails received from residents after first reading have been attached as well. A staff report supplement has been provided reflecting the updated case analysis and the discussions between staff and the applicant. More specifically, the applicant is proposing the following:		

## **SECTION 10. PROJECT DENSITY.**

The City Council of the City of Palm Coast has determined the Project satisfies the criteria set forth in Policy 1.1.2.2 of the Comprehensive Plan's Future Land Use Element permitting an increase in densities and/or intensities for the Project. The residential unit count within the Project shall initially be limited to 264 total units but may be increased as provided in this Section 10. Owner may elect, at any time, to increase the residential unit count to 371 total residential units by a one-time fulfillment of the following conditions ("Public Benefit Conditions") occurring prior to or concurrent with, and conditioned upon, issuance of the first Technical (or other "final") Site Plan approval allowing the Project to first exceed 264 total residential units. In this regard, Owner shall:

- (a) Provide the City with an easement co-terminus with this MPD Agreement to maintain a "Welcome to Palm Coast" type panel comprising at least 25% of Owner's sign or a minimum of 15 square feet in area on the Intracoastal Waterway, which sign shall be subject to regulatory approval and compatible in all respects with other panels on Owner's private sign in the same location. Such sign may be a freestanding sign up to 128 square feet in area and following the City's multitenant development standards for signs.
- (b) Design, construct, and fund the reasonable cost of the sign referenced above, including the City's panel.
- (c) Renovate, remodel, or construct (or submit an application for permits for same) the pavilion/gazebo along the Intracoastal Waterway, to the extent permitted by applicable regulatory agencies. Such gazebo project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units.
- (d) Renovate, remodel, or construct (or submit an application for permits for same) the Ship's Store, which may include and be combined with a restaurant. Such Ship's Store project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units. Such Ship's Store project must consist of at least material renovation work exceeding modest cosmetic upgrades.
- (e) Maintain a Clean Marina designation pursuant to the Florida Department of Environmental Protection ("FDEP") Clean Marina Program or a comparable environmental program; or maintain adherence to the substantive criteria for the FDEP's Clean Marina Program as exists as of the date of this MPD Agreement. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (e) shall be regulated exclusively by means equivalent to municipal code enforcement.
- (f) Operate a marine vessel fuel sale operation at the marina (subject to regulatory approval and commercially reasonable viability).
- (g) Provide the City of Palm Coast with a one-time right of first offer (i.e., first opportunity to negotiate in good faith) to purchase the marina, prior to Owner pursuing a sale of the marina to a third party. Such one-time right of first offer shall expire one (1) year after issuance of the first Certificate of Occupancy of any portion of the Project which causes total constructed residential units to exceed 264.
- (h) Provide a minimum of three (3) marina wet slips for restaurant patron short term daily use, but only to the extent a sit-down restaurant with at least 4,000 square feet of gross floor area and at least 75 seats for patrons is open and operating within the Project. The enforcement rights and obligations of the City and Owner as to this

ongoing (as opposed to one-time) condition (h) shall be regulated exclusively by means equivalent to municipal code enforcement.

**ORIGINAL BACKGROUND FROM THE JANUARY 17, 2023 BUSINESS MEETING.**

**Note: This item was scheduled to be heard on November 15, 2022. However, the Applicant requested a continuance. Council continued this item. This item is now ready to be heard on first read by City Council.**

JDI Palm Coast, LLC, as the applicant, is proposing to rezone 17.64 +/- acres with an existing marina, ship's store, 84 wet slips, a 72-unit residential condominium building, a 525-space parking garage, infrastructure, and vacant cleared land. The property is located on the east and northeast sides of the intersection between Palm Harbor Parkway and Clubhouse Drive, adjacent to the south side of the Clubhouse Waterway and along the west side of the Intracoastal Waterway. The proposed rezoning is from Harborside Inn & Marina PUD to Harborside Master Planned Development (MPD) for a multi-family/marina project with 432 multi-family units (360 new, 72 existing) with the potential for additional General Commercial (COM-2) uses such as a restaurant or hotel.

First Planning and Land Development Regulation Board (PLDRB) Meeting on September 20, 2022: This project was heard by the PLDRB on September 20, 2022. Planning staff recommended "denial" of the project due to the proposed very high density and compatibility issues with neighboring properties which also did not meet various goals and policies of the Comprehensive Plan and sections of the Land Development Code (LDC). After a very lengthy meeting the PLDRB voted 6-0 to continue the project "date certain" until the October 19, 2022, PLDRB meeting and requested that the applicant and Planning staff get together to see if they could minimize their differences in the MPD Development Agreement.

Updated Information Between the September 20<sup>th</sup> and October 19<sup>th</sup> Planning and Land Development Regulation Board Meetings: The applicant and staff held several meetings discussing the issues between the two parties which resulted in agreement on a majority of the outstanding items. However, the major issue that remained and remains to this time, is the maximum project density. The applicant is seeking 25.5+ units/per acre. Staff and the applicant differ on the interpretation of the Comprehensive Plan and applicable sections of the LDC that determine maximum project densities.

On October 6<sup>th</sup>, City Staff initiated and sent the applicant a proposed new Section 10 to be included within the MPD Development Agreement, which outlines the standards required for the project to obtain additional density over the allowable 15 units per acre in the Mixed-Use District. Staff in their professional planning opinion suggested that if these standards were implemented within the project, the project could obtain a maximum of 18.3 units/acre, and staff could consider the project consistent with the Comprehensive Plan and the LDC; specifically, with Comprehensive Plan Policy 1.1.2.2. Staff's proposed eight development standards are attached as Exhibit "A."

Staff opines that 18.3 units/acre would be consistent with the Comprehensive Plan and the LDC if the applicant implemented all eight items listed in Exhibit "A." At 18.3 units/per acre this would yield a maximum of either 310 units on 16.94 acres or if Lot 3 was developed for a hotel and/or restaurant then 273 units on 14.94 acres. This is an increase of 22% over the maximum 15 units/per acre allowed in the Mixed-Use District.

The 22% increase in density is consistent with the previous PUD approval which permitted a 22% increase in base intensity which increased the Floor Area Ratio from 55% to 67%. Staff believes the suggested eight standards would make the project consistent with Policy 1.1.2.2 and the previous MPD standards that were used to increase the Floor Area Ratio intensity. These eight standards, if met, would allow staff to support a 22% increase for density and is based on consistency with the Comprehensive Plan and LDC. Staff believes the eight standards listed in Exhibit "A" would make the 18.3 units/ per acre project compatible with the surrounding neighborhood. In staff's professional opinion, the applicant's proposal of 25.5+ units per acre is an increase of 70% over the base density and not close to compatible with neighboring properties, as required by several sections in the LDC.

The applicant reviewed staff's proposal for 18.3 units/acre with the eight standards, and on October 10<sup>th</sup>, the applicant provided a written response that is attached as Exhibit "B." The applicant suggested that much of staff's proposed text should be deleted and proposed seemingly more lenient standards with alternative text be included (see Exhibit "B"). The applicant proposed it only needed to meet some of staff's eight standards to be entitled to 432 units and a density of 25.5+ units/per acre.

Continued Planning and Land Development Regulation Board (PLDRB) Meeting on October 19, 2022: This project was heard again by the PLDRB on October 19, 2022. Planning staff still recommended "denial" of the project due to the proposed very high density and compatibility issues with neighboring properties which also did not meet various goals and policies of the Comprehensive Plan and sections of the LDC. After a lengthy meeting the PLDRB voted 7-0 to recommend "denial" of the project to the City Council.

Applicant's Modified MPD Proposals Since the October 19, 2022, Planning and Land Development Regulation Board Meeting: Since the PLDRB recommended "denial" to the City Council at its October 19, 2022, public hearing, staff has received three revised proposed MPD Development Agreements from the applicant dated October 28, November 11, and December 16, 2022. Staff has reviewed these draft MPD Development Agreements and discussed them with the applicant. However, staff does not find any of these proposals rectifying the issues on why the staff and the PLDRB have both recommended "denial." Staff has attached the applicant's latest MPD Development Agreement (DA) dated December 16, 2022, to the City Council agenda package.

Public Participation: A neighborhood information meeting was held at 11:00 AM on September 8, 2022, at the 3<sup>rd</sup> floor of the on-site parking garage. A letter was sent out previously to all neighbors living within 300 feet of the boundaries of the project inviting them to this meeting. By staff's count 48 persons attended this meeting including three persons representing the developer and one City staff member. The developer erected two City provided signs along Palm Harbor Parkway, notifying the general public at least 14 days prior to each of the PLDRB meetings. The City ran a news advertisement 20 days prior to the September 20, 2022, PLDRB meeting and since the project was continued ("date certain" to October 19<sup>th</sup>) by the PLDRB no additional newspaper advertisement was required. Two new signs have been erected and a newspaper advertisement ran prior to this City Council meeting.

A total of 29 persons from the public spoke at the two PLDRB meetings with 11 speaking at the first PLDRB meeting and 18 speaking at the second PLDRB meeting. Staff noticed only 2-3 persons speaking at both hearings as the City Attorney announced that those speaking at the first hearing were already on the record and there was no need to speak again. All or nearly all speakers had concerns with the project and their concerns primarily involved: project density



and number of units, building height, traffic, stormwater and flooding issues, utility issues and lack of specific development plans by the developer.

**Recommended Action :**

**THE PLANNING AND LAND DEVELOPMENT REGULATION BOARD RECOMMENDED DENIAL TO CITY COUNCIL TO REZONE 17.64 +/- ACRES FROM HARBORSIDE INN & MARINA PUD TO HARBORSIDE MPD.**

**GIVEN THE RECENT CHANGES TO THE REQUEST, AS PRESENTED, FOLLOWING THE FIRST READING, PLANNING STAFF RECOMMENDS THAT THE CITY COUNCIL APPROVE THE PROPOSED MPD APPLICATION NO. 5132 AND THE HARBORSIDE MPD DEVELOPMENT AGREEMENT TO REZONE 17.64 +/- ACRES FROM HARBORSIDE INN & MARINA PUD TO HARBORSIDE MPD WITH THE ADDITIONAL FOLLOWING CONDITIONS:**

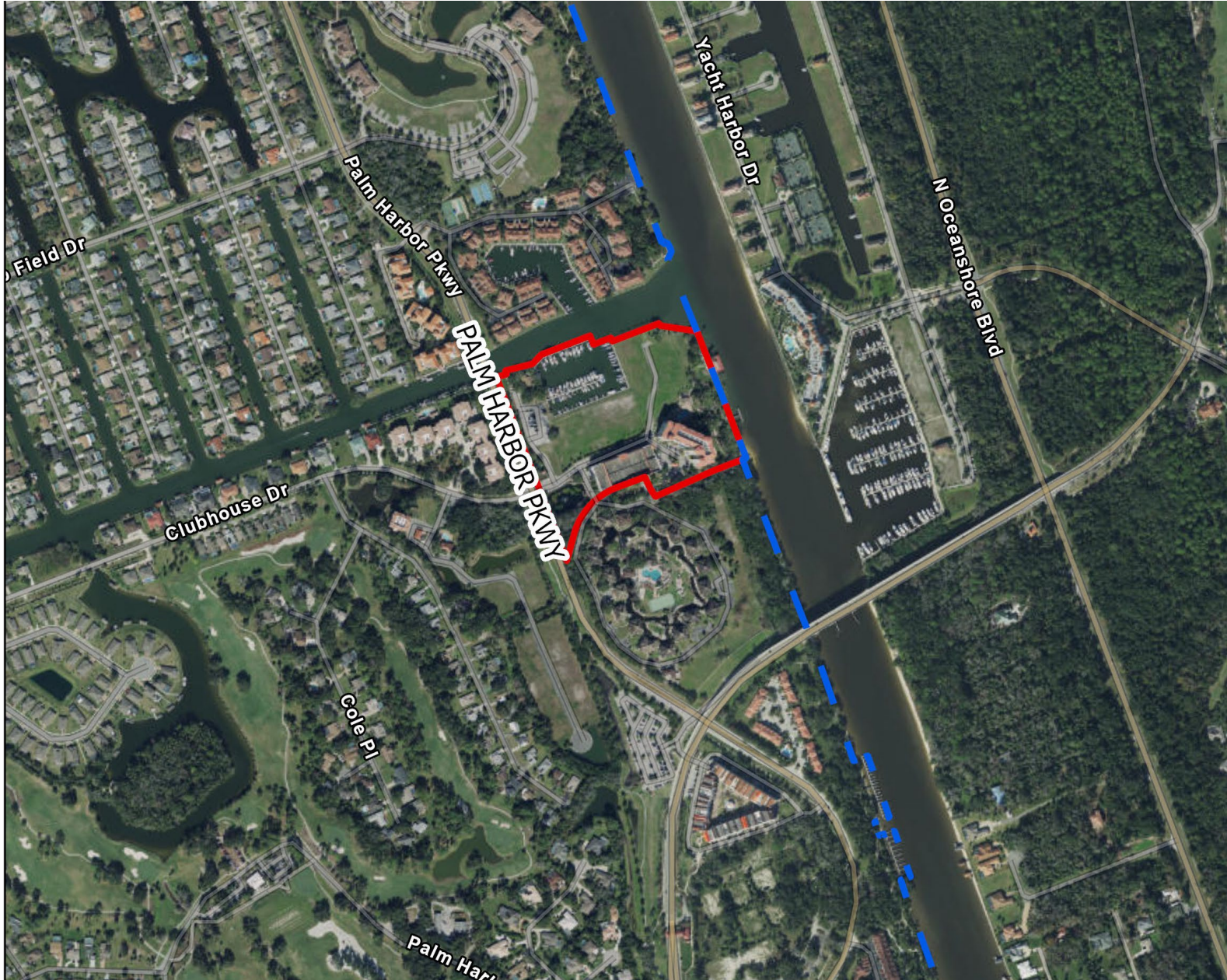
- **OWNER TO CONSTRUCT A PAVED 5-FOOT-WIDE SIDEWALK ACCESSIBLE TO THE PUBLIC THAT WOULD CONNECT FROM THE EXISTING TRAIL LOCATED ON THE WEST SIDE OF THE INTRACOASTAL WATERWAY AND THEN TRAVELING WEST ADJACENT TO THE DRAINAGE CANAL AND SOUTH OF THE CONDOMINIUM AND THE PARKING GARAGE OUT TO THE SIDEWALK LOCATED SOUTH OF PALM COAST RESORT BOULEVARD AND EAST OF PALM HARBOR PARKWAY.**
- **THE EXISTING BOAT RAMP SHALL REMAIN AND BE AVAILABLE FOR OFFICIAL GOVERNMENT OPERATIONS DURING EMERGENCY EVENTS.**
  - **AS CONDITIONED IN THE MPD DA, THE PROJECT MEETS THE FOLLOWING REQUIREMENTS OF THE COMPREHENSIVE PLAN'S GOAL 1.1 AND POLICIES 1.1.1.2 AND 1.1.2.2 AND THE LAND DEVELOPMENT CODE'S SECTIONS 3.03.04, 3.03.04.B.2 AND 3.03.04.D.**

# **HARBORSIDE MASTER PLANNED DEVELOPMENT**

**City Council Public Hearing  
on February 7, 2023**

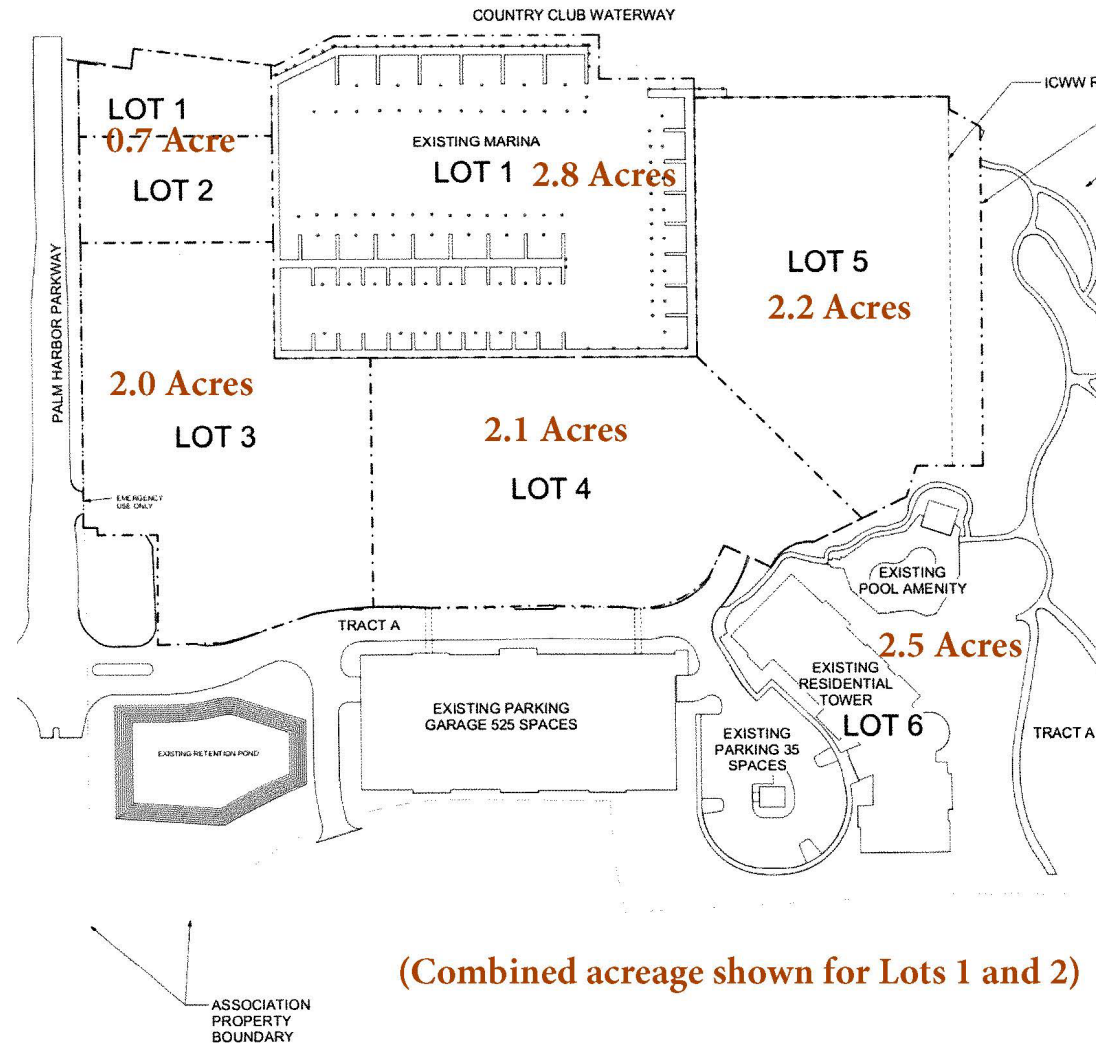
# Location Map

Harborside is 17.64 +/- acres and is located on the east side of Palm Harbor Parkway at its intersection with Clubhouse Drive. Owner wants to rezone it from PUD to MPD to complete the project.





# Applicant and Staff Consensus on Number of Units



Lots 1 and 2 are shown to be continued as marina/restaurant uses so 0.70-acre of land area is not available for residential density.  $17.64 - 0.7 = 16.94$  acres of residential area. Applicant had proposed 432 units and 25.5 units/per acre. Staff conditionally proposed 310 units and 18.3 units/per acre. The updated analysis and consensus found the mid-point of the two proposals was the best solution which was 371 units and a density of 21.9 units/per acre.



# Applicant's Expected Uses on MPD Conceptual Plan



- Lot 1 - ship's store with fuel sales and 84-slip marina
  - Lot 2 - sit-down restaurant (may be combined with updated or new ship's store)
  - Lots 3 and 4 - up to 269 new multi-family homes
  - Lot 5 - 30 new townhomes
  - Lot 6 - existing 72-unit condominium and 5-story parking garage
- Maximum of 371 homes



# Applicant's Expected Uses on MPD Conceptual Plan Cont.



The new residential uses will be located on Lots 3, 4 and 5; with Lot 5 still planned for a townhome product of about 30 units.

This means the reduction of 61 multi-family units will be taken from Lots 3 and 4 which makes the project much more compatible with the existing neighborhood.

## Comprehensive Plan Policy 1.1.2.2

Permitted densities and intensities within a MPD shall generally follow those allowed with the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible in order to promote and encourage creatively planned projects and in recognition of special geographical features, environmental conditions, economic issues, or other unique circumstances.



# MPD's Conditions for Compliance with Policy 1.1.2.2

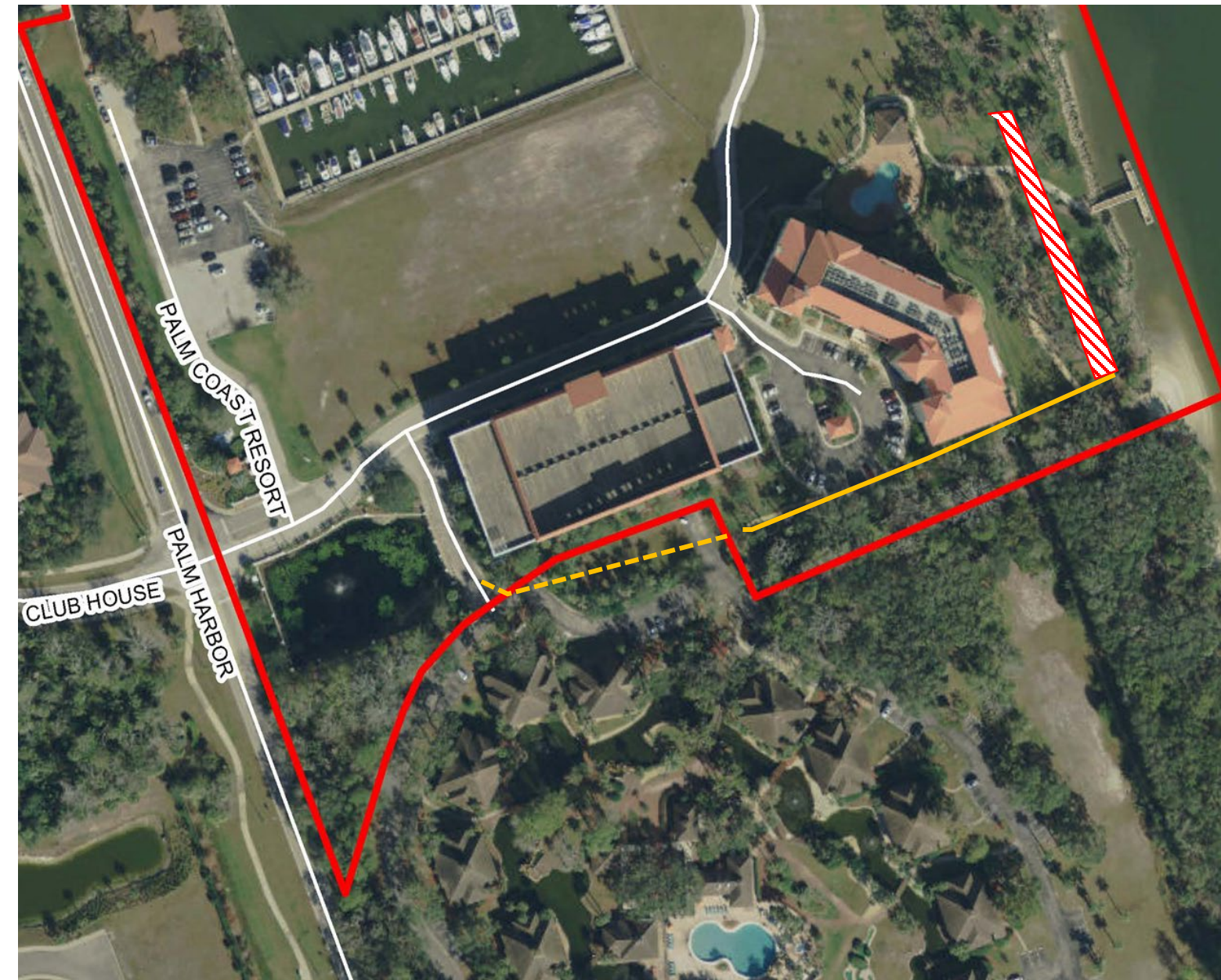
- City Council recommended that the applicant and staff get together to reach a compromise on staff's original eight conditions and applicant's conditions.
- Consensus has been reached on the following:
  - Owner to provide the City an easement and construct a "Welcome to Palm Coast" sign on ¼ of their monument sign (min. of 15 s.f.) along ICW.
  - Owner to renovate or remodel the pavilion/gazebo along ICW.
  - Owner shall do a material renovation or construct a new ship's store.
  - Owner to maintain Clean Marina Program or those same standards.
  - Owner to continue operating marina fuel sales as long as commercially reasonable viable.
  - Owner to provide the City a right of first offer for one year from D.O.
  - Owner to provide 3 wet slips for restaurant use.
  - Lot 2 reserved for restaurant or restaurant combination uses only.



# Staff Conditions for the MPD

## Staff Condition 1.

Owner to construct a paved 5-foot-wide sidewalk accessible to the public that would connect from the existing trail located on the west side of the Intracoastal Waterway and then traveling west adjacent to the drainage canal and south of the Condominium and the Parking Garage out to the sidewalk located south of Palm Coast Resort Boulevard and east of Palm Harbor Parkway.





## Staff Conditions for the MPD cont.



### Staff Condition 2.

The existing boat ramp shall remain and be available for official government operations during emergency events.

# Planning and Land Development Regulation Board Recommended Action

**ON OCTOBER 19, 2022, THE PLANNING AND LAND DEVELOPMENT  
REGULATION BOARD RECOMMENDED DENIAL TO CITY COUNCIL TO  
REZONE 17.64 +/- ACRES FROM HARBORSIDE INN & MARINA  
PLANNED UNIT DEVELOPMENT (PUD) TO HARBORSIDE MPD.**



# Staffs Recommended Action

**GIVEN THE RECENT CHANGES TO THE REQUEST, AS PRESENTED, FOLLOWING THE FIRST READING, PLANNING STAFF RECOMMENDS THAT THE CITY COUNCIL APPROVE THE PROPOSED MPD APPLICATION NO. 5132 AND THE HARBORSIDE MPD DEVELOPMENT AGREEMENT TO REZONE 17.64 +/- ACRES FROM HARBORSIDE INN & MARINA PUD TO HARBORSIDE MPD WITH THE ADDITIONAL FOLLOWING CONDITIONS:**

- 1. OWNER TO CONSTRUCT A PAVED 5-FOOT-WIDE SIDEWALK ACCESSIBLE TO THE PUBLIC THAT WOULD CONNECT FROM THE EXISTING TRAIL LOCATED ON THE WEST SIDE OF THE INTRACOASTAL WATERWAY AND THEN TRAVELING WEST ADJACENT TO THE DRAINAGE CANAL AND SOUTH OF THE CONDOMINIUM AND THE PARKING GARAGE OUT TO THE SIDEWALK LOCATED SOUTH OF PALM COAST RESORT BOULEVARD AND EAST OF PALM HARBOR PARKWAY.**

# Staffs Recommended Action cont.

**2. THE EXISTING BOAT RAMP SHALL REMAIN AND BE AVAILABLE FOR OFFICIAL GOVERNMENT OPERATIONS DURING EMERGENCY EVENTS.**

**AS CONDITIONED IN THE MPD DA, THE PROJECT MEETS THE FOLLOWING REQUIREMENTS OF THE COMPREHENSIVE PLAN'S GOAL 1.1 AND POLICIES 1.1.1.2 AND 1.1.2.2 AND THE LAND DEVELOPMENT CODE'S SECTIONS 3.03.04, 3.03.04.B.2 AND 3.03.04.D.**

Applicant's team has a brief PowerPoint Presentation that follows:

# Questions?

# Applicant's Expected Uses on MPD Conceptual Plan



The new residential uses will be located on Lots 3, 4 and 5; with Lot 5 still planned for a townhome product of about 30 units.

This means the reduction of 61 multi-family units will be taken from Lots 3 and 4 which makes the project much more compatible with the existing neighborhood.





COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT FOR HARBORSIDE MPD  
CITY COUNCIL 2<sup>ND</sup> PUBLIC HEARING  
FEBRUARY 7, 2023

## OVERVIEW

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Application Number: 5132

Applicant: JDI Palm Coast, LLC

Property Description: 17.64 +/- acres of property located on the east and northeast sides of the intersection between Palm Harbor Parkway and Clubhouse Drive

Property Owners: JDI Palm Coast, LLC and Palm Coast Resort Community Association, Inc.

Parcel ID #: 38-11-31-0000-01030-0000 and 38-11-31-7103-000F0-0000

Current FLUM designation: Mixed Use

Current Zoning designation: Centex Harborside Inn & Marina PUD

Current Use: Residential condos, parking garage, marina with wet slips, infrastructure, and vacant cleared land

Requested Action: Rezoning from Harborside Inn & Marina PUD to Harborside Master Planned Development (MPD)

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## SUPPLEMENT TO STAFF REPORT FOR JANUARY 17, 2023 CITY COUNCIL 1<sup>ST</sup> HEARING

On January 17, 2023, the City Council conditionally approved the item at first reading but directed staff and the applicants to try and reach a compromise on the number of units allowed as well as the conditions in Section 10 of the MPD Development Agreement.

In accordance with City Council direction, the applicant and staff reanalyzed the request and allowable density and determined that 371 units and a density of 21.9 units/per acre was an acceptable compromise. This is a reduction of 61 units and a reduction in density of 3.6 units/per acre from what the applicant was proposing. This is very important in improving the project's compatibility with neighboring properties as the 61-unit reduction will occur on Lots 3 and 4 (western half) of their MPD Master Plan and closest to Palm Harbor Parkway.

The applicant and staff have generally agreed upon the conditions in Section 10 of the MPD Agreement in order to comply with Comprehensive Plan Policy 1.1.2.2 that would allow an increase in residential units to 371 and density to 21.9 units/per acre. However, staff recommends the City Council add two items to the applicant's proposed Section 10:

1. Owner to construct a paved 5-foot-wide sidewalk accessible to the public that would connect from the existing trail located on the west side of the Intracoastal Waterway and then traveling west adjacent to the drainage canal and south of the Condominium and the Parking Garage out to the sidewalk located south of Palm Coast Resort Boulevard and east of Palm Harbor Parkway.
2. The existing boat ramp shall remain and be available for official government operations during emergency events.

The applicants' proposed Section 10 conditions are shown on Exhibit "A".

## EXHIBIT "A"

**SECTION 10. PROJECT DENSITY.**

The City Council of the City of Palm Coast has determined the Project satisfies the criteria set forth in Policy 1.1.2.2 of the Comprehensive Plan's Future Land Use Element permitting an increase in densities and/or intensities for the Project. The residential unit count within the Project shall initially be limited to 264 total units but may be increased as provided in this Section 10. Owner may elect, at any time, to increase the residential unit count to 371 total residential units by a one-time fulfillment of the following conditions ("Public Benefit Conditions") occurring prior to or concurrent with, and conditioned upon, issuance of the first Technical (or other "final") Site Plan approval allowing the Project to first exceed 264 total residential units. In this regard, Owner shall:

- (a) Provide the City with an easement co-terminus with this MPD Agreement to maintain a "Welcome to Palm Coast" type panel comprising at least 25% of Owner's sign or a minimum of 15 square feet in area on the Intracoastal Waterway, which sign shall be subject to regulatory approval and compatible in all respects with other panels on Owner's private sign in the same location. Such sign may be a freestanding sign up to 128 square feet in area and following the City's multitenant development standards for signs.
- (b) Design, construct, and fund the reasonable cost of the sign referenced above, including the City's panel.
- (c) Renovate, remodel, or construct (or submit an application for permits for same) the pavilion/gazebo along the Intracoastal Waterway, to the extent permitted by applicable regulatory agencies. Such gazebo project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units.
- (d) Renovate, remodel, or construct (or submit an application for permits for same) the Ship's Store, which may include and be combined with a restaurant. Such Ship's Store

project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units. Such Ship's Store project must consist of at least material renovation work exceeding modest cosmetic upgrades.

- (e) Maintain a Clean Marina designation pursuant to the Florida Department of Environmental Protection ("FDEP") Clean Marina Program or a comparable environmental program; or maintain adherence to the substantive criteria for the FDEP's Clean Marina Program as exists as of the date of this MPD Agreement. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (e) shall be regulated exclusively by means equivalent to municipal code enforcement.
- (f) Operate a marine vessel fuel sale operation at the marina (subject to regulatory approval and commercially reasonable viability).
- (g) Provide the City of Palm Coast with a one-time right of first offer (i.e., first opportunity to negotiate in good faith) to purchase the marina, prior to Owner pursuing a sale of the marina to a third party. Such one-time right of first offer shall expire one (1) year after issuance of the first Certificate of Occupancy of any portion of the Project which causes total constructed residential units to exceed 264.
- (h) Provide a minimum of three (3) marina wet slips for restaurant patron short term daily use, but only to the extent a sit-down restaurant with at least 4,000 square feet of gross floor area and at least 75 seats for patrons is open and operating within the Project. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (h) shall be regulated exclusively by means equivalent to municipal code enforcement.



COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT FOR HARBORSIDE MPD  
CITY COUNCIL  
JANUARY 17, 2023

## OVERVIEW

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Application Number: 5132

Applicant: JDI Palm Coast, LLC

Property Description: 17.64 +/- acres of property located on the east and northeast sides of the intersection between Palm Harbor Parkway and Clubhouse Drive

Property Owners: JDI Palm Coast, LLC and Palm Coast Resort Community Association, Inc.

Parcel ID #: 38-11-31-0000-01030-0000 and 38-11-31-7103-000F0-0000

Current FLUM designation: Mixed Use

Current Zoning designation: Centex Harborside Inn & Marina PUD

Current Use: Residential condos, parking garage, marina with wet slips, infrastructure, and vacant cleared land

Size of subject property: 17.64 +/- acres

Requested Action: Rezoning from Harborside Inn & Marina PUD to Harborside Master Planned Development (MPD)

Recommendation: Denial

## ANALYSIS

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### REQUESTED ACTION

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JDI Palm Coast, LLC as the applicant is proposing to rezone 17.64 +/- acres with an existing marina, ship's store, 84 wet slips, a 72-unit residential condominium building, a 525-space parking garage, infrastructure, and vacant cleared land. The property is located on the east and northeast sides of the intersection between Palm Harbor Parkway and Clubhouse Drive, adjacent to the south side of the Clubhouse Waterway and along the west side of the Intracoastal Waterway. The proposed rezoning is from Harborside Inn & Marina PUD to Harborside Master Planned Development (MPD) for a multi-family/marina project with 432 multi-family units (360 new, 72 existing) with the potential for additional General Commercial (COM-2) uses such as a restaurant or hotel.

## BACKGROUND/SITE HISTORY

The 154-room Sheraton resort hotel with a restaurant, bar and meeting rooms was constructed in the 1970's. In 1986, the harbor master's office and ship store were constructed. In 1988, the pavilion along the Intracoastal Waterway was constructed and in 2000, bulkheads and the boat slips were constructed at the marina. In 2004, the property was still occupied by the marina and the Sheraton resort hotel along with lots of surface parking.

The City Council on May 17, 2005, adopted Ordinance # 2005-18, that approved the rezoning of the 17.64 +/- acre site from General Commercial (C-2) to Harborside Inn and Marina Planned Unit Development (PUD). In addition to the marina, the 2005 PUD added a 209-unit hotel condominium, up to 47,000 sq. ft. of accessory hotel uses including restaurants and conference areas, a harbor master/ship store with fueling services, 169 resort condominium units, a parking garage, and related recreational uses.

On July 29, 2005, Centex Homes purchased the subject property and in early 2006, they had the Sheraton resort hotel and its surface parking area removed. In late 2006/early 2007, the 72-unit seven-story condominium building was constructed which was followed by construction of the five-level parking garage. These two buildings were located on the 8.36 +/- acre parcel to the south of the applicant's 9.28 +/- acre parcel that comprises the northern portion of the PUD.

On October 16, 2007, the City Council adopted Ordinance No. 2007-24, which amended and restated the Harborside Inn & Marina PUD. On February 26, 2009, Centex Homes turned over the balance of the southern tract of land that was not owned by individual condominium owners to the Palm Coast Resort Community Association, Inc.

On December 28, 2016, Centex Homes sold the northern 9.28 +/- acre tract to the applicant (JDI Palm Coast, LLC).

## FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN AND DENSITY

Residential density calculations cannot include lands that are being used for non-residential purposes so the 0.7 +/- acre of non-residential land area for Lots 1 and 2 is subtracted from the project size while if Lot 3 is developed for a hotel and/or restaurant the 2.7 +/- acres of non-residential land area for Lots 1 - 3 would be subtracted from the project size. (Note that hotels and commercial uses are governed by intensity limits, typically using floor area ratios, rather than density limitations.) The proposed 432 units would have an overall project density of 25.5 units/per acre on the 16.94 +/- acres of 25.5 units/per acre or if Lot 3 is developed for a hotel and/or restaurant the overall project density would be 28.9 units/per acre on the remaining 14.94 +/- acres. The proposed density of either 25.5 or 28.9 dwelling units/acre is inconsistent with the Comprehensive Plan as it exceeds by 70% the maximum density for a Master Planned Development (MPD) within a Mixed Use FLUM of 15 dwelling units/acre (Policy 1.1.1.2).

As proposed the MPD Development Agreement (DA) is inconsistent with Comprehensive Plan Policy 1.1.2.2 which reads, Permitted densities and intensities within a MPD shall generally follow those allowed within the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible to promote and encourage creatively planned projects and in recognition of special geographical features, environmental conditions, economic issues, or other unique circumstances.

As currently constructed, the MPD-DA is not consistent with the intent of Policy 1.1.2.2 that allows deviations from density and intensity standards if a project promotes and encourages creatively planned projects and recognizes special geographical features, environmental conditions, economic issues, or other unique circumstances.

As originally approved in 2005 (Ord. 2005-18), the City approved a Floor to Area Ratio (FAR) above the maximum FAR for the zoning district, as provided for in Policy 1.1.2.2 (from a maximum of .55 to .67), in recognition of the project's vision and goal to promote the following:

- develop a creatively planned icon resort project,
- a project that recognizes the special and unique location of the site by promoting a hotel with conference and meeting facility which takes advantage of the property's unique location at the intersection of Clubhouse Waterway and the Intracoastal Waterway,
- a project that recognizes the need to update the hotel facility and amenities (including conference and meeting space) to attract business guests and tourists to the City as a way to provide economic benefits to City businesses, and
- enhances the City's overall quality of life.

Additionally, the development program approved in the 2005 PUD-DA, included 47,000 sq. ft. of accessory hotel uses including ballrooms, restaurant, kitchen, ship's store with boat fuel service, trails, and other amenities.

The 2005 PUD Rezoning staff report stated that the economic impacts of the project were analyzed using the Florida Fiscal Impact Analysis Modeling System developed by Fishkind and Associates. The study stated the icon destination resort hotel's impacts would create the following (shown in 2005 dollars):

- \$18 million in gross state sales tax receipts to the State over the next 20 years,
- 457 jobs with 268 being permanent jobs and an additional 103 jobs based on indirect impacts, and
- \$17 million in annual employee wages.

As proposed within Lot 3, the proposed MPD Development Agreement (DA) shows the likelihood of developing a very high number of multi-family units with other more unlikely options being townhomes or a hotel and/or restaurant. Furthermore, although the declarant recognizes the significance and importance of the marina facilities, the declarant has provided no assurance of its continued operation. This is of great importance since the continued operation of a marina, as well as the presence of an iconic resort with amenities including a restaurant, are the main elements in justifying deviation from the permitted density and intensity on the property. Absent of the presence of a hotel/conference room venue, restaurant and marina operations which were originally envisioned in the approval of the original PUD as a "creatively planned icon resort project", the project instead is more typical of the other multi-family residential projects with marinas or wet slips for residents located in the surrounding area which have significantly lower density and height (see Marina Cove with a density of 7.8 units/per acre, Waterside Condominiums with a density of 7.6 units/per acre, and Bella Harbor with a density of 10.5 units/per acre). These three nearby projects located in the City have heights between two to four floors. Across the Intracoastal Waterway and within the unincorporated area of Flagler County, Harbor Village Marina has a density of 6.7 units/per acre and a height of seven stories but is a part of the larger Hammock Dunes DRI that has an overall density of 4.1 units/per acre.

### Analysis of Consistency with Policy 1.1.1.3

Policy 1.1.1.3 – Measured on a citywide, or cumulative basis, the following density and intensity limitations shall be placed on the FLUM designations:

...

Mixed Use - A maximum of 20% of the total land area within this FLUM designation (citywide) may be zoned or developed for residential use with a maximum of 33% of the residential units occurring at a density equal to or greater than 15 units/per acre. A maximum of 25% of the total land area within this FLUM designation (citywide) may be zoned or developed at an intensity equal to or greater than a 0.55 Floor Area Ratio.

As stated in Policy 1.1.1.3 above, the Comprehensive Plan provides for additional limitations on the density and intensity within the Mixed Use land use designation. As a negotiated agreement, the appropriate densities, and intensities in a MPD Development Agreement (DA) are controlled by other policies within the Comprehensive Plan and criteria established in the Land Development Code and is not a given.

As stated in the narrative in this section, the DA as written has not provided any assurance or created conditions that allows for a density or intensity to deviate from the underlying zoning district if the project promotes and encourages creatively planned projects and in recognition of special geographical features, environmental conditions, economic issues, or other unique circumstances, as allowed by Policy 1.1.2.2.

Between the September 20<sup>th</sup> and October 19<sup>th</sup> PLDRB meetings, staff and the applicant continued to dialogue to create development standards that may satisfy the Comprehensive Plan and the LDC and permit Staff to recommend the project have a density greater than the 15 du units/acre allowed in a typical MPD, to satisfy various provisions in the Comprehensive Plan, including policy 1.1.2.2. These development standards are shown in Exhibit “A” to this staff report. However, the applicant has not agreed to those development standards or to even limit the density to 18.3 units/per acre.

Additionally, in reviewing a Master Planned Development, the Planning and Land Development Regulation Board, and City Council need to consider criteria found in Section 2.09.04 (in italics below) when determining the appropriate densities and intensities for an MPD.

....

C. Degree of departure of the proposed development from surrounding areas in terms of character and density/intensity. (Response included in D. below.)

D. Compatibility within the development and relationship with surrounding neighborhoods.

As discussed in more detail later in this staff report the requested maximum densities for the MPD (a minimum of 25.5 dwelling units/acre) and the potential impact from a density that is 3 times greater than the average density of the surrounding community is inconsistent and therefore would not justify a deviation from the established density for this project of 15 dwelling units/acre.

As such, although Policy 1.1.1.3 allows the PLDRB to recommend and the City Council to approve development to occur at a density equal to or greater than 15 units/per acre, there are other policies and LDC provisions that mitigate against exceeding 15 units/per acre. It should be noted that no other mixed use or residential rezoning projects in the City have exceeded 15 units/per



acre. In fact, only the Tuscan Reserve Apartments rezoning (Madison Green and Tuscan Reserve MPD) is above 12 units/per acre and is at 15 units/per acre. Policies established in the Comprehensive Plan as well as criteria established in the Land Development Code provide standards as to when such “deviations” may occur.

Staff spelled out specific development standards in Exhibit “A” which the applicant had the option of inserting in their MPD DA so that Staff could have recommended a density increase to 18.3 units/per acre (22% increase over the 15 units/per acre), but the applicant chose to reject Staff’s proposed package of standards prior to the October 19<sup>th</sup> PLDRB. Instead, the applicant devised optional and much more lenient standards that the applicant claimed would be consistent with the Comprehensive Plan and the LDC and allow the project to go 70% beyond the 15 dwelling units/acre, without even satisfying Policy 1.1.2.2, and have densities at 25.5+ units/per acre.

#### LAND USE AND ZONING INFORMATION

##### USE SUMMARY TABLE:

CATEGORY:	EXISTING:	PROPOSED:
Future Land Use Map (FLUM)	Mixed Use	Mixed Use
Zoning District	Planned Unit Development (PUD)	Master Planned Development (MPD)
Use	Marina with ship’s store and 84 wet slips, 72-unit residential condominiums, 525-space parking garage, infrastructure, and vacant land	Marina with ship’s store and 84 wet slips, 360 more multi-family residential units including townhouses and possibly a hotel and/or restaurant
Acreage	17.64 +/- acres	17.64 +/- acres

##### SURROUNDING LAND DESIGNATIONS AND USES:

NORTH:	FLUM:	Canals then Residential
	Zoning:	Public/Semi-Public (PSP) then Master Planned Development (MPD)
	Uses:	Residential Condominiums with boat slips
EAST:	FLUM:	Intracoastal Waterway then Flagler County Mixed Use – Low Intensity
	Zoning:	Intracoastal Waterway then Flagler County Hammock Dunes DRI/PUD
	Uses:	Intracoastal Waterway then Residential Condominiums and single-family homes with boat slips
SOUTH:	FLUM:	Mixed Use
	Zoning:	Master Planned Development (MPD)
	Uses:	Time-share multi-family community

WEST:	FLUM:	Residential
	Zoning:	Multi-family Residential (MFR-1)
	Uses:	Residential Condominiums with boat slips

#### ANALYSIS BASED ON UNIFIED LAND DEVELOPMENT CODE, CHAPTER 2, SECTION 2.05.05

The Unified Land Development Code, Chapter 2, Part II, Section 2.05.05 states: When reviewing a development order application, the approval authority shall determine whether sufficient factual data was presented in order to render a decision. The decision to issue a development order shall be based upon the following, including but not limited to:

A. The proposed development must not be in conflict with or contrary to the public interest;

Staff Finding: The proposed development is in conflict with and contrary to the public interest as the proposed density is not compatible with neighboring projects (it is three times the average of other surrounding residential projects) and exceeds the density that is allowed within the Comprehensive Plan.

B. The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC;

Staff Finding: As outlined previously, the request is inconsistent with some of the following objectives and policies of the Comprehensive Plan:

- Chapter 1 Future Land Use Element:

-Goal 1.1 – Preserve the character of residential communities, prevent urban sprawl and protect open space and environmental resources, while providing a mix of land uses, housing types, services, and job opportunities in mixed use centers and corridors.

The project's proposed density of 3 times the average of four neighboring projects prevents urban sprawl but does not protect the character of the overall neighborhood community.

-Policy 1.1.1.2 – The future land use designations shall permit the zoning districts listed and generally described in the following table. The maximum densities and intensities for each future land use designation and zoning district are also included in the table. The table states the maximum densities/intensities for an MPD within the Mixed Use District are 15 units per acre and/or 0.55 floor area ratio.

The FLUM designates the subject property as Mixed Use and Master Planned Development (MPD) is an allowed zoning district for the Mixed Use designation within this FLUM table. This policy is not met as the subject property is proposed for a MPD rezoning with densities substantially exceeding the maximum of 15 units/per acre.

-Policy 1.1.2.2 – Permitted densities and intensities within a MPD shall generally follow those allowed within the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible in order to promote and encourage creatively planned

projects and in recognition of special geographical features, environmental conditions, economic issues, or other unique circumstances.

The proposed zoning reclassification is to Master Planned Development (MPD). A MPD is allowed to have up to 15 units/per acre if located within the Mixed Use District on the Future Land Use Map which this project meets. Staff outlined in Exhibit "A" development standards that would allow staff to support the project having a density of up to 18.3 units/per acre, but these were not agreed to by the applicant. For example, these included the developer constructing a 4,000 sq. ft. sit-down restaurant having at least 75 seats for patrons. Since these development standards are not being committed to by the applicant, then the project is not really a creatively planned project having special economic benefits for City and neighboring residents and the density should be limited to 15 units/per acre.

-Policy 1.1.4.1 – The Mixed Use land use designation is intended to provide opportunities for residents to work, shop, engage in recreational activities, and attend school and religious services in reasonably close proximity to residential dwellings.

Residents in the on-site community will be able to utilize recreational activities at the marina but not necessarily a restaurant and/or hotel with accessory uses, which are at the applicant's option. As proposed the marina wet slips will be limited to on-site residents unless a restaurant is constructed and in that case the applicant has stated they will have three wet slips for restaurant patrons use. Additionally, the applicant has not agreed to relocate the trail that is currently located along the eastern side of the subject property and adjacent to the Intracoastal Waterway. Currently, signs are located along this public trail advising potential trail users that it is private property. It should be noted that the previously approved PUD project located the restaurant, the hotel's meeting space and other public facilities on the NE corner of the project adjacent to the Intracoastal Waterway. The applicant's new MPD proposal relocates the optional restaurant and hotel to the NW portion of the project adjacent to Palm Harbor Parkway. As a result, City Staff has agreed to support a design in Exhibit "A" whereby the public trail would be relocated to provide public access to these facilities while also providing improved privacy for the existing 72 residences of this project.

C. The proposed development must not impose a significant financial liability or hardship for the City;

Staff Finding: Public roadways and public utilities are available to serve the site and the developer will construct needed improvements at the intersection of Clubhouse Drive and Palm Harbor Parkway, if deemed applicable by their traffic impact study. A traffic study has not been provided to City staff as part of this application.

D. The proposed development must not create an unreasonable hazard, or nuisance, or constitute a threat to the general health, welfare, or safety of the City's inhabitants;

Staff Finding: The proposed standards in the MPD rezoning allow a density of at least 25.5 units/per acre which will create an unreasonable nuisance to the City's inhabitants, especially those on neighboring properties due to the proposed project's densities that are three times the average of neighboring multi-family properties.

E. The proposed development must comply with all other applicable local, state and federal laws, statutes, ordinances, regulations, or codes.

Staff Finding: As proposed the project does not comply with the City's Land Development Code and Comprehensive Plan as the proposed density of 25.5+ units/per acre far exceeds what is allowable for this project within the MPD Zoning District.

#### ANALYSIS BASED ON UNIFIED LAND DEVELOPMENT CODE, CHAPTER 2, SECTION 2.09.04

The Unified Land Development Code, Chapter 2, Part II, Sec. 2.09.04 states, "The Planning and Land Development Regulation Board and City Council shall consider the following criteria, in addition to the findings listed in Subsection 2.05.05, when reviewing a master planned development application:"

- A. Consistency with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.

Staff Finding: The proposed application is inconsistent with various goals and objectives of the Comprehensive Plan as previously outlined in this staff report. These primarily involve the proposed density for the project of 25.5+ units/per acre and the DA being constructed in a way that provides no assurance at all of the creation of an iconic creatively planned project which recognizes the project's special geographical features, environmental conditions, economic issues, or other unique circumstances.

- B. Consistency with the general intent of the LDC.

Staff Finding: The proposed density calculations and development standards in the MPD are inconsistent with various specific standards established by the LDC as previously outlined in this staff report. Section 3.03.04.D. of the LDC states that "projects shall not exceed the density or intensity permitted within the Comprehensive Plan Future Land Use Map category where the particular master planned development is proposed." Additionally, as previously described, the proposed project does not meet the intent of the Master Planned District as outlined in LDC Section 3.03.04.B.2 which states, "Encourage a more compatible and harmonious development of contiguous lands."

Due to the project's proposed maximum density between 25.5+ units/per acre, Planning staff does not believe Section 3.03.04 is met where it states, "An application for rezoning to a Master Planned Development District shall show that the planned development will produce a functional, enduring, and desirable environment, with no significant adverse impacts to adjacent properties."

- C. Degree of departure of the proposed development from surrounding areas in terms of character and density/intensity.

Staff Finding: Staff has determined the proposed development is out of character and too intense at this location. For example, density to the north at Marina Cove is 7.8 units/per acre, to the northwest at Bella Harbor is 10.5 units/per acre, directly west at Waterside is 7.6 units/per acre, directly south at Celebrity Resorts is 5.2 units/per acre and across the Intracoastal Waterway at Harbor Village Marina is 6.7 units/per acre. These five projects have an average density of only 7.6 units/per acre.

- D. Compatibility within the development and relationship with surrounding neighborhoods.

Staff Finding: As proposed the very high density of the project is out of character with neighboring properties and other properties along Palm Harbor Parkway as described in detail previously in this staff report.

- E. Adequate provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control, and soil conservation as shown in the development plan.

Staff Finding: As required by the LDC, future development applications will be analyzed in further detail to determine if there is adequate public infrastructure capacity to serve the development. Other public service needs will also be reviewed in more detail as the development review progresses. For example, future applications for development will require traffic studies, utility agreements, and coordination with Flagler Schools, etc. before approval. The subject project will be required to pay applicable impact fees to accommodate its impact on the public infrastructure and services.

- F. The feasibility and compatibility of development phases to stand as independent developments.

Staff Finding: The developer has not shown any specific phasing for continued development of the project. However, the proposed lots within the MPD are situated where they can be adequately developed independently through the platting process.

- G. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed development.

Staff Finding: A traffic impact study will be required during the Subdivision Master Plan to demonstrate that all roadways within the project's study area and the intersection of Clubhouse Drive and Palm Harbor Parkway, with the project's traffic included, will operate at the City's adopted level of service.

- H. The benefits within the proposed development and to the general public to justify the requested departure from standard development requirements inherent in a Master Planned Development District classification.

Staff Finding: The applicant has not demonstrated a benefit to the City in order to exceed the 15 units/per acre of the MPD Zoning District located within a Mixed Use District unless specific development standards (see Exhibit "A") are met to allow the project to increase its density by 22% to 18.3 units/per acre. The applicant has proposed a 70% increase over the base density to 25.5+ units/per acre.

- I. The conformity and compatibility of the development with any adopted development plan of the City of Palm Coast.

Staff Finding: The project's proposed density is over 3 times the averages of what has already been developed in neighboring multi-family projects.

- J. Impact upon the environment or natural resources.

Staff Finding: The landowners will be required to submit all applicable environmental reports or studies as required by the LDC. These studies may include environmental resource assessments, cultural resources, stormwater calculations, floodplain analysis, and threatened

and endangered species studies during the site plan or platting process for any new development within the MPD.

K. Impact on the economy of any affected area.

Staff Finding: The residents that will inhabit these new homes should have a positive impact on State and local income including permit and impact fees, taxes, and other sources.

#### FIRST PLANNING AND LAND DEVELOPMENT REGULATION BOARD (PLDRB) MEETING ON SEPTEMBER 20, 2022

This project was heard by the PLDRB on September 20, 2022. Planning staff recommended “denial” of the project due to the proposed very high density and compatibility issues with neighboring properties which also did not meet various goals and policies of the Comprehensive Plan and sections of the LDC. After a very lengthy meeting the PLDRB voted 6-0 to continue the project “date certain” until the October 19, 2022 PLDRB meeting and requested that the applicant and Planning staff get together to see if they could minimize their differences in the MPD Development Agreement.

#### UPDATED INFORMATION BETWEEN THE SEPTEMBER 20<sup>TH</sup> AND OCTOBER 19<sup>TH</sup> PLANNING AND LAND DEVELOPMENT REGULATION BOARD MEETINGS

The applicant and staff held several meetings discussing the issues between the two parties which resulted in agreement on a majority of the outstanding items. However, the major issue that remained and remains to this time, is the maximum project density. The applicant is seeking 25.5+ units/per acre. Staff and the applicant differ on the interpretation of the Comprehensive Plan and applicable sections of the LDC that determine maximum project densities.

On October 6th, City Staff initiated and sent the applicant a proposed new Section 10 to be included within the MPD Development Agreement, which outlines the standards required for the project to obtain additional density over the allowable 15 units per acre in the Mixed Use District. Staff in their professional planning opinion suggested that if these standards were implemented within the project, the project could obtain a maximum of 18.3 units/acre, and Staff could consider the project consistent with the Comprehensive Plan and the LDC; specifically, with Comprehensive Plan Policy 1.1.2.2. Staff’s proposed eight development standards are attached as Exhibit “A.”

Staff opines that 18.3 units/acre would be consistent with the Comprehensive Plan and the LDC if the applicant implemented all eight items listed in Exhibit “A.” At 18.3 units/per acre this would yield a maximum of either 310 units on 16.94 acres or if Lot 3 was developed for a hotel and/or restaurant then 273 units on 14.94 acres. This is an increase of 22% over the maximum 15 units/per acre allowed in the Mixed Use District.

The 22% increase in density is consistent with the previous PUD approval which permitted a 22% increase in base intensity which increased the Floor Area Ratio from 55% to 67%. Staff believes the suggested eight standards would make the project consistent with Policy 1.1.2.2 and the previous MPD standards that were used to increase the Floor Area Ratio intensity. These eight standards, if met, would allow staff to support a 22% increase for density and is based on consistency with the Comprehensive Plan and LDC. Staff believes the eight standards listed in Exhibit "A", would make the 18.3 units/ per acre project compatible with the surrounding neighborhood. In staff's professional opinion the applicant's proposal of 25.5+ units per acre is an increase of 70% over the base density and not close to compatible with neighboring properties, as required by several sections in the LDC.

The applicant reviewed staff's proposal for 18.3 units/acre with the eight standards, and on October 10<sup>th</sup>, the applicant provided a written response that is attached as Exhibit "B". The applicant suggested that much of staff's proposed text should be deleted and proposed seemingly more lenient standards with alternative text be included (see Exhibit "B"). The applicant proposed it only needed to meet some of staff's eight standards to be entitled to 432 units and a density of 25.5+ units/per acre.

#### CONTINUED PLANNING AND LAND DEVELOPMENT REGULATION BOARD MEETING ON OCTOBER 19, 2022

This project was heard again by the PLDRB on October 19, 2022. Planning staff still recommended "denial" of the project due to the proposed very high density and compatibility issues with neighboring properties which also did not meet various goals and policies of the Comprehensive Plan and sections of the Land Development Code (LDC). After a lengthy meeting the PLDRB voted 7-0 to recommend "denial" of the project to the City Council.

#### APPLICANT'S MODIFIED MPD PROPOSALS SINCE OCTOBER 19, 2022 PLANNING AND LAND DEVELOPMENT BOARD MEETING

Since the PLDRB recommended "denial" to the City Council at its October 19, 2022 public hearing, staff has received three revised proposed MPD Development Agreements from the applicant dated October 28, November 11 and December 16, 2022. Staff has reviewed these draft MPD Development Agreements and discussed them with the applicant. However, staff does not find any of these proposals rectifying the issues on why the staff and the PLDRB have both recommended "denial". Staff has attached the applicant's latest MPD Development Agreement (DA) dated December 16, 2022, to the City Council agenda package. and some of the key changes since the last PLDRB meeting are described below.

#### PUBLIC PARTICIPATION

Unified Land Development Code Chapter 2, Part II, Section 2.05.02 requires developers or property owners who are requesting to rezone property within the City to notify neighboring property owners within 300 feet of the area proposed for development and hold a Neighborhood Information Meeting.

To comply with this standard, the applicant notified neighboring property owners via regular mail on August 30, 2022, of an upcoming neighborhood information meeting that was held September

8, 2022, at 11:00 a.m. at the 3<sup>rd</sup> deck of the on-site parking garage. Approximately 48 persons attended this meeting including the applicant's three representatives and one City staff member. The meeting ended at approximately 12:15 PM.

Two City provided signs were erected on the subject property along Palm Harbor Parkway on September 6, 2022, to notify neighbors and the general public of the public hearing for the Planning and Land Development Regulation Board on September 20, 2022. The applicant erected two new October 4<sup>th</sup> notifying of the October 19, 2022 PLDRB meeting. The City ran a news ad 20 days prior to the September 20, 2022 PLDRB meeting and since the project was continued ("date certain" to October 19<sup>th</sup>) by the PLDRB no additional newspaper ad was required. The City will run news ads 13 days prior to each City Council public hearing and the applicant will erect two signs on the property at least 14 days prior to each City Council meeting.

A total of 29 persons from the public spoke at the two PLDRB meetings with 11 speaking at the first PLDRB meeting and 18 speaking at the second PLDRB meeting. Staff noticed only 2-3 persons speaking at both hearings as the City Attorney announced that those speaking at the first hearing were already on the record and there was no need to speak again. All or nearly all speakers had concerns with the project and their concerns primarily involved: project density and number of units, building height, traffic, stormwater and flooding issues, utility issues and lack of specific development plans by the developer.

## RECOMMENDATION

The Planning and Land Development Regulation Board recommended denial to City Council to rezone 17.64 +/- acres from Harborside Inn & Marina PUD to Harborside MPD.

In addition to the PLDRB's recommendation of denial, the Planning staff recommends that the City Council deny the proposed MPD Application No. 5132 to rezone 17.64 +/- acres from Harborside Inn & Marina PUD to Harborside MPD for the reasons provided in the staff report and presentation and because it is not in compliance with the following required provisions:

- Comprehensive Plan Goal 1.1 and Policies 1.1.1.2 and 1.1.2.2
- Land Development Code Sections 3.03.04, 3.03.04.B.2, and 3.03.04.D



## EXHIBIT "A"

STAFF'S VERSION ON 10-6-22 (ITEM 3 ON PAGE 12 CLARIFIED ON 10-26-22)

**SECTION X. PROJECT DENSITIES AND INTENSITIES**

- (a) The Subject Property was partially developed prior to approval of the PUD in 2007, and these improvements included: the Existing Condominium, the Parking Garage, marina with ship's store and 84 slips, a fishing dock and gazebo along the Intracoastal Waterway, a master stormwater system, and a central roadway with utilities. Additionally, the previous owner of the Harborside Property made a payment of \$200,000 to the City to partially fund a public boat ramp elsewhere in the City to remedy the loss of the boat ramp to the public. Based on these improvements and the fact that the Comprehensive Plan was modified to 15 units/per acre for MPDs in 2010, the Project is entitled to a density of 15 residential units/per acre as allowed in an area designated Mixed Use on the Future Land Use Element (FLUM) with a MPD Agreement.
- (b) Per Policies 1.1.1.3 and 1.1.2.2 of the Comprehensive Plan, the 2007 PUD allowed a 22% increase from 55% to 67% in the maximum Floor Area Ratio for a MPD located within a Mixed Use designation on the FLUM. The increase was justified since the project development was for an icon destination resort that would include enhanced conference and meeting facilities and a variety of recreational and leisure activities. That project was expected to provide tourism and economic development while maintaining public access along the Intracoastal Waterway adjacent to the site. The destination resort was intended to continue the 84-slip marina, allow for 169 resort condominiums (including the 72-unit Existing Condominium), and a 209-unit icon resort condominium hotel with up to 47,000 square feet of accessory hotel uses that could include: ballrooms, restaurant, fitness center, conference meeting space, pools, trails, and harbor master/ship store with fuel service.

- (c) The Owner no longer wants to develop the PUD as previously approved and has applied for a new MPD Agreement which primarily changes the basis of the MPD development limits from FAR (intensity) to residential density. Since a destination icon resort is no longer intended, the owner has agreed to provide the following to justify an increase in density beyond 15 residential units/per acre. If the Owner provides all of the following in the shown time frames, the residential density of the Project shall be increased by 22% to 18.3 residential units/per acre:
- 1) Construct a sit-down restaurant on Lots 1, 2 or 3 that would have a minimum of 4,000 sq. ft. of gross floor area and at least 75 seats for patrons. (Constructed prior to exceeding 15 units/per acre.)
  - 2) Remodel or construct a new ship's store that can include the sit-down restaurant within the same building. (Constructed prior to exceeding 15 units/per acre.)
  - 3) Keep the marina open including fuel sales to the public and at least 25% of wet slips available for non-transient/restaurant (limit of 75% of slips to onsite residents) use. A slip space to include accommodations for commercial use (i.e smaller barge for bulkhead repairs).
  - 4) If the Owner decides to sell the marina the City shall have the first right of refusal.
  - 5) Maintain existing boat ramp to be utilized by public entities for public related activities such as emergency events.
  - 6) Maintain a "Clean Marina" designation from the DEP.
  - 7) Construct a paved 5' wide sidewalk that would connect from the existing trail located on the west side of the Intracoastal Waterway west adjacent to the drainage canal and running westerly south of the Condominium and then south of the Parking Garage. The existing trail easement along the Intracoastal Waterway would be vacated by the City upon completion of the new trail. (Constructed in the initial phase or commencing construction

within 18 months and completion within 24 months of the approval of the MPD Agreement, whichever is earlier.)

- 8) Provide prototype Palm Coast entry way sign or as agreed to by both parties along the Intracoastal Waterway. The sign can be combined with developers sign.

## EXHIBIT "B"

APPLICANT'S VERSION RECEIVED ON 10-9-22

**SECTION 10. PROJECT DENSITY**

The City has determined that the Project satisfies the criteria set forth in Policy 1.1.2.2 of the Comprehensive Plan's Future Land Use Element permitting an increase in densities and/or intensities for the Project. The residential unit count within the Project shall be limited to 254 units, except as provided in this Section X. In addition, Owner may elect, at any time, to increase the residential unit count above 254 total units by fulfilling one or more of the following conditions ("Density Bonus Incentive Conditions"):

1. 50 additional residential units: Owner shall construct a sit-down restaurant on Lots 1, 2 and/or 3 with at least 4,000 sq.ft. of gross floor area and at least 75 seats for patrons.
2. 50 additional residential units: Owner shall provide the City of Palm Coast with a one-time right of first offer (i.e., one-time first opportunity to negotiate in good faith) to purchase the marina, prior to Owner pursuing a sale of the marina to a third party.
3. 25 additional residential units: Owner shall renovate, remodel, or construct a new Ship's Store, which may include and be combined with the sit-down restaurant described above.
4. 25 additional residential units: Owner shall be maintaining or have obtained a Clean Marina designation pursuant to the Florida Department of Environmental Protection ("FDEP") Clean Marina Program, or a comparable program if the FDEP's Clean Marina Program is discontinued, at the time the request for the additional units is made in an application for site plan approval.
5. 25 additional residential units: Owner shall be operating a marine vessel fuel sale operating at the marina (subject to commercially reasonable viability) at the time the request for the additional units is made in an application for site plan approval.

6. 25 additional residential units: Owner shall open and be operating a private boat ramp at the marina (subject to commercially reasonable viability) at the time the request for additional units is made in an application for site plan approval.
7. 25 additional residential units per wet slip: Owner shall make a wet slip at the Marina available for public daily short-term transient use.
8. 25 additional residential units: Owner shall provide the City with a license to construct, at the City's expense, a Welcome sign on the ICW, which sign shall be compatible in size with Owner's private sign in the same location.
9. 25 additional residential units: Owner shall fund the costs of installing the City's welcome sign on the ICW as described above.

Under no circumstances will more than 432 residential units be permitted within the Project.

**ORDINANCE 2023-\_\_\_\_**  
**REZONING APPLICATION # 5132**  
**HARBORSIDE MPD**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP AS ESTABLISHED IN SECTION 2.06 OF THE CITY OF PALM COAST UNIFIED LAND DEVELOPMENT CODE; AMENDING THE OFFICIAL ZONING MAP FOR 17.64+/- ACRES OF CERTAIN REAL PROPERTY GENERALLY LOCATED AT THE EAST AND NORTHEAST SIDES OF THE INTERSECTION BETWEEN CLUB HOUSE DRIVE AND PALM HARBOR PARKWAY, AND BEING MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT “A”, FROM HARBORSIDE INN & MARINA PLANNED UNIT DEVELOPMENT (PUD) TO MASTER PLANNED DEVELOPMENT (MPD) ZONING DISTRICT; APPROVING THE HARBORSIDE MASTER PLANNED DEVELOPMENT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, JDI Palm Coast, LLC, as the Applicant, is the owner of Parcel Number 38-11-31-0000-01030-0000 consisting of 9.28+/- acres, located at the northeast corner of the intersection between Club House Drive and Palm Harbor Parkway in the City of Palm Coast, Flagler County, Florida, more particularly described in Exhibit “A”; and

**WHEREAS**, the Applicant has the permission of the abutting owner to the south, Palm Coast Resort Community Association, Inc., that owns Parcel Number 38-11-31-7103-000F0-0000 consisting of 8.36 +/- acres, also more particularly described on Exhibit “A,” to include that property within this rezoning; and

**WHEREAS**, combined the two properties comprise 17.64 +/- acres; and

**WHEREAS**, the Applicant desires to complete development of the subject property (“Project”) to meet the increasing residential and commercial demands of Palm Coast residents as it continues to grow; and

**WHEREAS**, as a result, the Applicant requests approval for a Master Planned Development (MPD) on the Property per the conditions set forth in this Development Agreement; and

**WHEREAS**, the Applicant voluntarily agrees with the conditions, terms, and restrictions hereinafter recited, and has agreed voluntarily to their imposition as an incident to development of the Property; and

**WHEREAS**, the City of Palm Coast City Council (“City Council”) finds that this Development Agreement (DA) has been properly conditioned with terms and restrictions to be consistent with the City’s Comprehensive Plan (2035) (the “Comprehensive Plan”) and Unified Land Development Code (the “LDC”), and that the conditions, terms, restrictions, and requirements set forth herein are necessary to ensure compliance with the Comprehensive Plan and LDC and the protection of the public health, safety, and welfare of the citizens of the City; and

**WHEREAS**, the City Council further finds that this DA is consistent with and an exercise of the City’s powers under the Municipal Home Rule Powers Act; Article VIII, Section 2(b) of the Constitution of the State of Florida; Chapter 166, Florida Statutes; the City of Palm Coast City Charter; other controlling law; and the City’s police powers; and

**WHEREAS**, additional conditions of approval may also be included within the minutes of relevant meetings of the Planning and Land Development Regulation Board and City Council. Furthermore, any representations or promises made by the Applicant during the zoning review and approval process for the Project (whether oral or in writing) shall also be additional conditions of approval if deemed appropriate by the City; and

**WHEREAS**, this is a non-statutory Development Agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220 -163.3243, Florida Statutes; and

**WHEREAS**, the Applicant intends to classify and develop the Property as a Master Planned Development (MPD) as set forth in a MPD Development Agreement (MPD DA); and

**WHEREAS**, the Applicant’s application for a Master Planned Development is approved subject to the MPD DA’s terms and conditions; and

**WHEREAS**, the Planning and Land Development Regulation Board and City Staff of the City of Palm Coast have recommended denial of this Ordinance and the City Planning Staff has found this requested change and recommended conditions of approval inconsistent with the City of Palm Coast Comprehensive Plan; and

**WHEREAS**, the City Council of the City of Palm Coast held a duly noticed public hearing on the proposed zoning change set forth hereunder and considered findings and advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and the recommendation of the Planning and Land Development Regulation Board which voted 7 - 0 to deny at the regularly scheduled meeting conducted on October 19, 2022 and after complete deliberation, the City Council hereby finds the requested change consistent with the City of Palm Coast Comprehensive Plan and that sufficient, competent, and substantial evidence supports the zoning change set forth hereunder; and

**WHEREAS**, the City Council of the City of Palm Coast hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Palm Coast, Florida.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:**

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. ZONING MAP AMENDMENT AND MPD AGREEMENT.**

(a) That the Official Zoning Map of the City of Palm Coast as described in City of Palm Coast Unified Land Development Code Section 3.01.02. is hereby amended to include a change of classification to City of Palm Coast Master Planned Development District (MPD) for the property legally described on Exhibit “A,” which is attached and incorporated herein by this reference. City Staff is hereby directed to promptly amend the Official Zoning Map upon the effective date of this Ordinance.

(b) The Harborside Master Planned Development Agreement (“Development Agreement”) and its exhibits attached hereto as Exhibit “B”, and made a part hereof, with all appropriate signatures and joinders, is hereby adopted and approved by the City Council



of the City of Palm Coast and shall constitute the regulations for this specific MPD District. The Development Agreement shall be recorded in the Official Records of Flagler County, Florida, by the City Clerk at the Applicant's expense.

**SECTION 3. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 4. CONFLICTS.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this 17<sup>th</sup> day of January 2023.

Adopted on the second reading after due public notice and hearing this 7<sup>th</sup> day of February 2023.

*ATTEST:*

**CITY OF PALM COAST**

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachments:

Exhibit "A" – Legal Description of subject property subject to Official Zoning Map amendment

Exhibit "B" – MPD Development Agreement

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF COMMENCEMENT REFERENCE BEING THE SOUTHEASTERLY CORNER OF THE SUBDIVISION PLAT COUNTRY CLUB COVE SECTION-3 MAP BOOK 6, PAGE 8, THENCE NORTH 20°57'23" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (104' R/W) (PLATTED AS YOUNG PARKWAY) A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE NORTH 20°57'23" WEST, A DISTANCE OF 568.90 FEET TO A POINT ON THE SOUTHERLY LINE OF CLUB HOUSE WATERWAY, THENCE DEPARTING PALM HARBOR PARKWAY RUN NORTH 75°49'57" EAST ALONG THE SOUTHERLY LINE OF SAID WATERWAY, A DISTANCE OF 50.71 FEET, THENCE DEPARTING SAID SOUTHERLY LINE OF WATERWAY RUN NORTH 14°10'03" WEST, A DISTANCE OF 18.32 FEET, THENCE RUN 75°49'57" EAST, A DISTANCE OF 137.00 FEET, THENCE RUN 43°22'03" EAST, A DISTANCE OF 61.55 FEET, THENCE RUN NORTH 68°48'16" EAST, A DISTANCE OF 255.62 FEET, THENCE RUN SOUTH 20°57'23" EAST, A DISTANCE OF 41.83 FEET, THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 90.90 FEET, THENCE RUN SOUTH 20°57'23" EAST ALONG THE EASTERLY LINE OF THE MARINA BASIN, A DISTANCE OF 18.31 FEET, THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 245.01 FEET, THENCE RUN SOUTH 20°49'47" EAST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF THE INTRACOASTAL WATERWAY, A DISTANCE OF 11.95 FEET, THENCE DEPARTING SAID LINE RUN SOUTH 81°28'20" EAST, A DISTANCE OF 34.51 FEET; THENCE RUN SOUTH 20°49'46" EAST, A DISTANCE OF 326.24 FEET; THENCE RUN SOUTH 69°10'14" WEST, A DISTANCE OF 64.03 FEET; THENCE RUN SOUTH 02°50'30" EAST, A DISTANCE OF 31.50 FEET; THENCE RUN SOUTH 43°14'16" WEST, A DISTANCE OF 101.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 49.19 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 70°45'50", A RADIUS OF 39.82 FEET, A CHORD BEARING OF SOUTH 39°02'14" WEST AND A CHORD DISTANCE OF 46.12 FEET TO THE POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN NORTH 86°30'35" WEST, A DISTANCE OF 48.71 FEET; THENCE RUN SOUTH 13°15'43" WEST, A DISTANCE OF 5.88 FEET; THENCE RUN SOUTH 05°49'47" WEST, A DISTANCE OF 26.63 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE WESTERLY A DISTANCE OF 90.81 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 52°29'13", A RADIUS OF 99.13 FEET, A CHORD BEARING OF SOUTH 48°39'52" WEST AND A CHORD DISTANCE OF

87.67 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 70°21'07" WEST, A DISTANCE OF 73.04 FEET; THENCE RUN SOUTH 68°05'47" WEST, A DISTANCE OF 113.67 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE WESTERLY A DISTANCE OF 102.04 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°59'42", A RADIUS OF 417.75 FEET, A CHORD BEARING OF SOUTH 67°15'17" WEST AND A CHORD DISTANCE OF 101.79 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 56°08'49" WEST, A DISTANCE OF 25.68 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE WESTERLY A DISTANCE OF 49.37 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 16°51'18", A RADIUS OF 167.81 FEET, A CHORD BEARING OF SOUTH 49°22'57" WEST AND A CHORD DISTANCE OF 49.19 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 53°30'16" WEST, A DISTANCE OF 18.15 FEET; THENCE RUN SOUTH 17°59'47" EAST, A DISTANCE OF 16.81 FEET TO A POINT ON A NON-TANGENT CURVE NORTHEASTERLY, THENCE WESTERLY A DISTANCE OF 57.34 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°08'25" WEST, A RADIUS OF 250.00 FEET, A CHORD BEARING OF SOUTH 75°00'53" WEST AND A CHORD DISTANCE OF 57.21 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH 69°02'37" WEST, A DISTANCE OF 82.92 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 434,771 +/- SQUARE FEET OR 9.98 ACRES.

## PARCEL 2

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF THE PLAT, COUNTRY CLUB COVE SECTION-3, MAP BOOK 6, PAGE 8, THENCE NORTH 20°57'23" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (PLATTED AS YOUNG PARKWAY) (104' R/W) A DISTANCE OF 125.00 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY RUN NORTH 69°02'37" EAST, A DISTANCE OF 82.92 FEET TO A POINT OF CURVATURE, CONCAVE SOUTHERLY, THENCE EASTERLY A DISTANCE OF 57.34 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°08'25", A RADIUS OF 250.00 FEET, A CHORD BEARING OF NORTH 75°00'53" EAST AND A CHORD DISTANCE OF 57.21 FEET TO THE POINT OF INTERSECTION WITH A NON-TANGENT LINE, THENCE RUN NORTH 17°59'47" WEST, A DISTANCE OF 16.81 FEET, THENCE RUN NORTH 53°30'16" EAST, A DISTANCE OF 18.51 TO A POINT OF CURVATURE CONCAVE SOUTHWESTERLY, THENCE EASTERLY A DISTANCE OF 49.37 FEET ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL

ANGLE OF 16°51'18" EAST, A RADIUS OF 167.81 FEET, A CHORD BEARING OF NORTH 49°22'57" EAST AND A CHORD DISTANCE OF 49.19 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 56°08'49" EAST, A DISTANCE OF 25.68 FEET TO A POINT OF CURVATURE CONCAVE NORTHERLY, THENCE EASTERLY A DISTANCE OF 102.04 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°59'42", A RADIUS OF 417.75 FEET, A CHORD BEARING OF NORTH 67°15'17" EAST AND A CHORD DISTANCE OF 101.79 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 68°05'47" EAST, A DISTANCE OF 113.67 FEET; THENCE RUN NORTH 70°21'07" EAST, A DISTANCE OF 73.04 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE EASTERLY A DISTANCE OF 90.81 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 52°29'13", A RADIUS OF 99.13 FEET, A CHORD BEARING OF NORTH 48°39'52" EAST AND A CHORD DISTANCE OF 87.67 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 05°49'47" EAST, A DISTANCE OF 26.63 FEET; THENCE RUN NORTH 13°15'43" EAST, A DISTANCE OF 5.88 FEET; THENCE RUN SOUTH 86°30'35" EAST, A DISTANCE OF 48.71 FEET TO A POINT OF NON-TANGENCY OF A CURVE CONCAVE NORTHWESTERLY, THENCE EASTERLY A DISTANCE OF 49.19 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 70°45'50", A RADIUS OF 39.82 FEET, A CHORD BEARING OF NORTH 39°02'14" EAST AND A CHORD DISTANCE OF 46.12 FEET TO A POINT OF NON-TANGENCY; THENCE RUN NORTH 43°14'16" EAST, A DISTANCE OF 101.07 FEET; THENCE RUN NORTH 02°50'30" WEST, A DISTANCE OF 31.50 FEET; THENCE RUN NORTH 69°10'14" EAST, A DISTANCE OF 64.03 FEET; THENCE RUN NORTH 20°49'46" WEST, A DISTANCE OF 326.24 FEET; THENCE RUN SOUTH 81°28'20" EAST, A DISTANCE OF 148.73 FEET; THENCE RUN SOUTH 21°16'59" EAST A DISTANCE OF 668.31 FEET; THENCE RUN SOUTH 69°02'37" WEST, A DISTANCE OF 165.00 FEET; THENCE RUN SOUTH 66°01'12" WEST, A DISTANCE OF 317.67 FEET; THENCE RUN NORTH 33°24'47" WEST, A DISTANCE OF 43.00 FEET; THENCE RUN NORTH 25°19'15" WEST, A DISTANCE OF 65.48 FEET; THENCE RUN SOUTH 69°37'11" WEST, A DISTANCE OF 144.48 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE WESTERLY A DISTANCE OF 323.49 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 54°12'33", A RADIUS OF 341.91 FEET, A CHORD BEARING OF SOUTH 42°30'58" WEST AND A CHORD DISTANCE OF 311.56 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH 15°24'47" WEST, A DISTANCE OF 133.48 FEET TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (PLATTED AS YOUNG PARKWAY) (104' R/W); THENCE RUN NORTH 20°57'23" WEST ALONG THE AFORESAID EAST RIGHT-OF-WAY, A DISTANCE OF 267.58 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

CONTAINING AN AREA OF 333,736 +/- SQUARE FEET OR 7.66 ACRES.

LESS AND EXCEPT

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF COMMENCEMENT REFERENCE BEING THE SOUTHEASTERLY CORNER OF THE SUBDIVISION PLAT COUNTRY CLUB COVE SECTION-3 MAP BOOK 6, PAGE 8, THENCE SOUTH 20°57'23" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (104' R/W) (PLATTED AS YOUNG PARKWAY) A DISTANCE OF 267.58 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE NORTH 15°24'47" WEST, A DISTANCE OF 133.45 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY, THENCE EASTERLY A DISTANCE OF 323.49 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 54°12'33", A RADIUS OF 341.91 FEET, A CHORD BEARING OF NORTH 42°30'58" EAST AND A CHORD DISTANCE OF 311.56 FEET TO THE POINT OF INTERSECTION WITH A TANGENT LINE; THENCE RUN NORTH 69°37'11" EAST, A DISTANCE OF 144.48 FEET; THENCE RUN SOUTH 25°19'15" EAST, A DISTANCE OF 65.48 FEET; THENCE RUN SOUTH 33°24'47" EAST, A DISTANCE OF 43.0 FEET; THENCE RUN NORTH 66°01'12" EAST, A DISTANCE OF 317.67 FEET; THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 1.68 FEET; THENCE RUN NORTH 20°57'23" WEST, A DISTANCE OF 42.23 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE RUN SOUTH 69°07'02" WEST, A DISTANCE OF 96.22 FEET; THENCE RUN NORTH 21°15'26" WEST, A DISTANCE OF 71.09 FEET; THENCE RUN NORTH 43°37'11" WEST, A DISTANCE OF 34.38 FEET; THENCE RUN NORTH 65°56'39" WEST, A DISTANCE OF 153.68 FEET; THENCE RUN NORTH 24°09'52" EAST, A DISTANCE OF 97.87 FEET; THENCE RUN SOUTH 65°50'56" EAST, A DISTANCE OF 211.30 FEET; THENCE RUN SOUTH 20°57'23" EAST, A DISTANCE OF 130.99 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 29,503 +/- SQUARE FEET OR 0.677 ACRES.

**EXHIBIT “B”**  
**MASTER PLANNED DEVELOPMENT AGREEMENT**  
**ORDINANCE 2023-\_\_\_\_\_**

**HARBORSIDE  
MASTER PLAN DEVELOPMENT AGREEMENT  
(Amended and Restated PUD Agreement)**

**THIS MASTER PLAN DEVELOPMENT AGREEMENT**, (herein referred to as the “MPD Agreement”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF PALM COAST**, a Florida municipal corporation (the “City”), whose address is 160 Lake Avenue, Palm Coast, Florida, 32164; **JDI PALM COAST, LLC**, a Georgia limited liability company (“Owner”) whose address is 1 Information Way, Suite 350, Little Rock, AR 72202; and the **PALM COAST RESORT COMMUNITY ASSOCIATION, INC.**, a Florida Not for Profit Corporation (“Association”) who address is 1 Information Way, Suite 350, Little Rock, AR 72202.

**WITNESSETH:**

**WHEREAS**, JDI Palm Coast, LLC is the principal owner and developer of certain real property located within the municipal limits of the City, as more particularly described on that certain Special Warranty Deed recorded in Official Records Book 2178, Page 1106, of the Public Records of Flagler County, Florida (**“Harborside Property”**); and

**WHEREAS**, the Palm Coast Resort Community Association, Inc., is the principal owner of certain real property located within the municipal limits of the City, as more particularly described on that certain Special Warranty Deed recorded in Official Records Book 1706, Page 1481, of the Public Records of Flagler County, Florida (**“Association Property”**); and

**WHEREAS**, the Owner desires to complete the development of the Harborside Property and the Association Property for a mixed use development (the “Project”); and

**WHEREAS**, the Project is located on that certain real property consisting of 17.64

acres, which includes the Harborside Property and the Association Property, as more particularly described on **Exhibit “A”** (the “Subject Property”, with “Parcel 1” constituting the “Harborside Property” and Parcel 2 constituting the “Association Property”); and

**WHEREAS**, the Subject Property has a Future Land Use Map designation of Mixed-Use; and

**WHEREAS**, the Subject Property is subject to Ordinance 2007-24 as recorded in Official Records Book 1624, Page 311 of the Public Records of Flagler County, Florida, which amended and restated the Planned Unit Development Agreement recorded in Official Records Book 1253, Page 1924 of the Public Records of Flagler County, Florida embracing 17.64 acres of land (the “PUD”); and

**WHEREAS**, a portion of the Association Property was developed pursuant to the PUD, including, without limitation, a gazebo and fishing dock along the Intracoastal Waterway, a parking structure consisting of 525 parking spaces (“Parking Garage”), a master stormwater system, and other supporting improvements, all located on the Association Property and supporting the Project; and an 8 story residential tower consisting of 72 residential units as established by the Declaration of Condominium for Palm Coast Resort as recorded in Official Records Book 1560, Page 799 of the Public Records of Flagler County, Florida, as amended (the “Existing Condominium”); and a marina and supporting uses on the Harborside Property; and

**WHEREAS**, the infrastructure existing on the Association Property and the marina and supporting uses on the Harborside Property, as described above, provide a sound planning basis for the expansion of uses on the Harborside Property and assists in meeting the requirements of the City of Palm Coast Comprehensive Plan Policy 1.1.2.2.;



WHEREAS, the City's Comprehensive Plan Policy 1.1.2.2. provides the ability for the City to approve an increase in the maximum number of residential units per acre for mixed use development if a project promotes and encourages creative planning, and recognizes special geographical features, environmental conditions, economic issues, or other unique circumstances; and

WHEREAS, Owner has agreed to the Public Benefit Conditions as contained in Section 10 of this Agreement, which City Staff believes assists the Project in meeting Comprehensive Plan Policy 1.1.2.2; and

WHEREAS, the Project and this MPD Agreement do not affect the Existing Condominium entitlements, which ~~was~~were permitted, developed and constructed pursuant to the PUD; and

**WHEREAS**, this MPD Agreement shall amend, restate, replace and supersede the PUD; and

**WHEREAS**, the Owner and the Association are in voluntary agreement with the conditions, terms, and restrictions hereinafter recited, and have agreed voluntarily to their imposition; and

**WHEREAS**, the City of Palm Coast City Council finds that this MPD Agreement is consistent with the City's Comprehensive Plan and Unified Land Development Code ("LDC") and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the protection of the public health, safety, and welfare of the citizens of the City; and

**WHEREAS**, the City of Palm Coast City Council further finds that this MPD Agreement is consistent with and an exercise of the City's powers under the *Municipal Home Rule*

*Powers Act; Article VIII, Section 2(b) of the Constitution of the State of Florida; Chapter 166, Florida Statutes; the City of Palm Coast City Charter; other controlling law; and the City's police powers; and*

**WHEREAS**, this is a non-statutory MPD Agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220 -163.3243, *Florida Statutes*.

**NOW, THEREFORE**, it is hereby resolved and agreed by and between the City, the Association, and the Owner that the Master Plan Development is approved subject to the following terms and conditions:

**SECTION 1. RECITALS.**

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this MPD Agreement upon which the City, the Owner, and the Association have relied.

**SECTION 2. REPRESENTATIONS OF OWNER AND ASSOCIATION.**

- (a) The Owner hereby represents and warrants to the City that it is the principal owner of the Harborside Property in accordance with the title opinion or title certification provided by the Owner to the City issued by an attorney or title insurance company licensed to provide services in the State of Florida showing all liens, mortgages, and other encumbrances not satisfied or released of record relative to the Harborside Property.
- (b) The Association hereby represents and warrants to the City that it is the principal owner of the Association Property in accordance with the title opinion or title certification provided by the Association to the City issued by an attorney or title insurance company licensed to provide services in the

State of Florida, showing all liens, mortgages, and other encumbrances not satisfied or released of record relative to the Association Property.

- (c) The Owner represents and warrants to the City that it has the power and authority to enter into and consummate the terms and conditions of this MPD Agreement; that all acts, approvals, procedures, and similar matters required in order to authorize this MPD Agreement have been taken, obtained or followed, as the case may be; that this MPD Agreement and the proposed performance of this MPD Agreement by the Owner is not an *ultra vires* act; and that, upon the execution of this MPD Agreement by the parties, this MPD Agreement shall be valid and binding upon the parties hereto and their successors in interest.
- (d) The Association represents and warrants to the City that it has the power and authority to enter into and consummate the terms and conditions of this MPD Agreement; that all acts, approvals, procedures, and similar matters required in order to authorize this MPD Agreement have been taken, obtained or followed, as the case may be; that this MPD Agreement and the proposed performance of this MPD Agreement by the Association is not an *ultra vires* act; and that, upon the execution of this MPD Agreement by the parties, this MPD Agreement shall be valid and binding upon the parties hereto and their successors in interest.
- (e) The Owner and Association hereby represent to the City that all required joinders and consents have been obtained and set forth in a properly executed form on this MPD Agreement. Unless otherwise agreed to by the

City, all liens, mortgages, and encumbrances not satisfied or released of record must be subordinated to the terms of this MPD Agreement and joinders must be executed by any mortgagees. It is the responsibility of the Owner and the Association to ensure that said subordinations and joinders occur in a form and substance acceptable to the City Attorney prior to the City's execution of this MPD Agreement. If the Owner and Association fail to attain the joinder and consent, then the Owner and Association shall lose all rights and benefits deriving hereunder.

**SECTION 3. APPROVAL OF MASTER PLAN DEVELOPMENT**

- (a) The City Council at its business meeting of \_\_\_\_\_ 2023, adopted Ordinance No. 2023-\_\_\_\_\_ rezoning the Subject Property to Master Planned Development, subject to the terms and conditions of this MPD Agreement.
- (b) The Owner and Association acknowledge that if this MPD Agreement is ever terminated, the approval shall be deemed null and void and any land uses approved for the Subject Property that have not received Master Site Plan, Master Subdivision, or Technical Site Plan approval or other City issued authorization to commence construction shall no longer be permitted and shall revert to their prior zoning as defined in the PUD, unless otherwise approved by the City Council.
- (c) The current provisions of the LDC, as may be amended from time-to-time, shall be applicable to the Subject Property unless otherwise specifically stated herein. Any City Code provision not specifically so identified will not

be affected by the terms of this MPD Agreement, and will be subject to enforcement and change under the same criteria as if no MPD Agreement were in effect.

#### **SECTION 4. PROJECT DESCRIPTION; PERMITTED USES.**

- (a) The Project ~~is planned to be~~, as proposed and approved herein, is a mixed-use project consisting of commercial, marina, residential and supporting uses. The development plan for the Project is generally outlined below and depicted on the MPD Conceptual Master Plan, which is attached as Exhibit “B” hereto (the “MPD Conceptual Master Plan”). Commercial uses may include all uses permitted in the COM-2 zoning district, including, without limitation, general retail, restaurants, bars, hotels, marinas, and ancillary supporting uses. Additionally, microbreweries will be permitted uses within this mixed use Project. Marina uses include wet slip storage, a marina ship store, marina dockmaster/management offices, and fueling facilities. Residential uses may include all uses permitted in the MFR-2 zoning district, including, without limitation, multi-family residential units and townhouses. The uses listed above, all uses permitted in the COM-2 or MFR-2 zoning districts on or after the Effective Date of this MPD Agreement, and all uses listed below in Section 4(c) are permitted by right (the “Permitted Uses”). Any uses not listed herein shall be determined by the Land Use Administrator (“LUA”) per Section 3.01.07 of the Unified Land Development Code (LDC). Adequate parking shall be provided for all uses proposed for development in accordance with the parking ratios set forth at



Section 8, Table 8.1. For any permitted uses not listed in Table 8.1, the parking ratios as set forth in the LDC shall control.

- (b) The Project includes the Parking Garage, gazebo and fishing dock, master stormwater management system, and other common elements located on the Association Property, which were previously constructed pursuant to the PUD. The MPD Conceptual Master Plan identifies lots and tracts where the Permitted Uses may be developed on the Subject Property. The final locations, sizes and configurations of the Lots, Tracts and associated Permitted Uses will be determined by an application or applications for Master Site Plan or Master Subdivision Plan for each lot or tract, which must be approved before the issuance of any technical site plan or preliminary plat development orders authorizing construction.
- (c) The Permitted Uses shall be permitted on the lots and tracts depicted in the MPD Conceptual Master Plan as follows:
  - 1) TRACT A and LOTS 1-6: Roads, driveways, sidewalks and paths, parking areas, landscaping, utilities, stormwater facilities, signage, infrastructure, amenities, the Parking Garage which was already constructed, and other common areas and supporting elements.
  - 2) LOT 1: Marina and marina support facilities, which may include berthing slips for vessels and liveaboard vessels; a private boat ramp to support marina operations; a dockmaster facility and office; vessel refueling station; restrooms for boaters; ship's store; boat, kayak, and other water-based recreation equipment rentals; restaurants, microbreweries, and bars with

both indoor and outdoor sitting and service areas; and general retail uses that complement and support the marina. To the extent a private boat ramp is contained in the Project, then it shall be available for official government entity use for emergency situations.

- 3) LOT 2: All uses permitted in the COM-2 zoning district and all uses permitted in Lot 1, provided that such uses include ~~restaurant~~ Restaurant, sit down use. For the sake of clarity, and to the extent any uses exist on Lot 2, ~~restaurant~~ the Restaurant, sit down use may, but need not, be the sole use. Lot 2 shall be at least 75 feet in Lot Width and a minimum Lot Size of 20,000 square feet.
- 4) LOT 3: All uses permitted in the COM-2, including, without limitation, hotels, restaurants, microbreweries and bars with both indoor and outdoor sitting and service areas, and/or MFR-2 zoning districts, including, ~~without limitation, short term rentals~~ but not limited to Townhouses. Residential uses and commercial uses are permitted within the same buildings.
- 5) LOT 4: All uses permitted in the MFR-2 zoning district, including, ~~without limitation, short term rentals~~ but not limited to multifamily and townhouses and ancillary supporting uses.
- ~~6) LOT 5: Townhouses, which may be on individually platted lots, with no setback between units. Short term rentals shall be permitted for the townhouses.~~ LOT 5: Townhouses.
- ~~6) The setback between individual buildings shall be as defined in Table 8.2, except as required by Building and Fire Codes. Each townhouse will have~~

~~a garage and driveway sufficient to meet the parking requirements set forth in Table 8.1.~~

- 7) LOT 6: All uses permitted in the MFR-2 zoning district, the Existing Condominium which was already constructed pursuant to the PUD, and ancillary supporting uses.

8) For all Lots permitting Residential uses: For purposes of this MPD Agreement, the terms "Townhouse" and "Townhouses" shall mean three or more attached single-family dwelling units constructed in a series or group of attached units with shared walls and may, but need not, be on individually platted lots with property lines separating such units, with no setback between units. Each townhouse will have a garage and driveway sufficient to meet the parking requirement set forth in Table 8.1. Townhouses on individually platted lots shall have a minimum unit width of at least 20 feet, provided however that at least half of the platted townhouse units constructed at any time must be at least 25 feet in width. Required landscape planting area widths on the front façade of platted townhouse units shall be a minimum of 20% of the unit's front façade. The setback between individual buildings shall be as defined in Table 8.2, except as required by Building and Fire Codes. Residential dwelling units may be rented on a short term (less than 30 calendar days) or long term (more than 30 calendar days) basis.

8)9) Temporary Sales/Construction Trailers and Model Units. Temporary sales and construction trailers and model units may be located within the

Project.

## **SECTION 5. MARINA / SHIP'S STORE**

The Owner represents to the City that the Owner has the bona fide and good faith present intent to maintain the marina, ship's store, dock master office, fueling and pump out facility (hereinafter "Marina Facilities") as a viable economic enterprise into the foreseeable economic future. Further, the Owner recognizes the significance and importance of the Marina Facilities to the citizens of the City, the general public, and the historic maritime community of users of the Marina Facilities. The Owner shall use commercially reasonable efforts to operate and maintain the marina facilities in good working order and condition. The owner may replace or relocate the existing ship's store and dockmaster facility on Lot 1 and/or Lot 2, as provided in Section 4(c) of this Agreement.

## **SECTION 6. DEVELOPMENT PLAN**

- (a) The MPD Conceptual Master Plan depicts the general land use areas for the entire development for the Project. The exact location of structures, lot lines, roadways, parks, community amenities, internal landscape buffers, wetlands, drainage facilities and other improvements shown on the MPD Conceptual Master Plan may be modified during review of the site development plans and subdivision plat and plans. Additionally, Lots 1 and 2 may be combined into one or more integrated Lot(s) allowing all of the Permitted Uses for Lots 1 and 2 as noted in Section 4(c). As well, Lots 3 and 4 may also be combined into one or more integrated Lot(s) allowing all of the Permitted Uses noted in Section 4(c) for both Lots 3 and 4; provided

that Lot 4, as shown on the MPD Conceptual Master Plan, is not utilized for commercial uses.

- (b) Adjustments to the MPD Conceptual Master Plan are anticipated to occur during the site development of the Project and subdivision plat review processes. Revisions to the MPD Conceptual Master Plan which meet the intent and purpose of the City's Comprehensive Plan and LDC shall be approved subject to the reasonable determination of the LUA, if the substantial integrity of the MPD Conceptual Master Plan and the development standards contained herein are maintained. Modifications to the exact type of residential units, locations and the number of lots, roadways, primary sidewalk and pathway system, and other improvements that do not increase the intensity, density or types of development uses or buildings heights shall be approved by the LUA. Any modification to the MPD Conceptual Master Plan that increases the intensity, density or types of development uses, increases building heights, reduces the total amount of open space, or decreases the size of any perimeter buffer within the Project shall require the approval of the City Council following the review of the City of Palm Coast Planning and Land Development Regulation Board ("PLDRB").
- (c) The Project may be developed in multiple phases as depicted on the MPD Conceptual Master Plan and as provided herein.
- (d) Limitation on Construction Traffic — Construction vehicles access to the Project shall be from Palm Harbor Parkway to the fullest extent practical.



Construction vehicles are prohibited from using Club House Drive west of its intersection with Palm Harbor Parkway to enter or exit the Project site. Owner or Owner's representative shall inform all contractors regarding this requirement.

- (e) The existing Parking Garage as depicted on the MPD Conceptual Master Plan contains a total of 525 parking spaces. ~~A maximum of 73 spaces in the Parking Garage shall be allocated to the Existing Condominium. The remaining~~The spaces in the Parking Garage, together with existing and future surface and garage parking, (including but not limited to townhouse garage and driveway spaces), may be used to meet the parking requirements of the Project, including garage requirements for multifamily units. The Owner shall be permitted to construct elevated pedestrian walkways from the Parking Garage to any proximate structure or structures.

## **SECTION 7. LAND DEVELOPMENT CODE APPLICABILITY**

The LDC applies to the Project, unless expressly otherwise provided in this MPD Agreement. The provisions of this Section supersede any inconsistent provisions of the LDC or other ordinances of the City.

- (a) Architecture. The architectural features of the Project shall be primarily of Mediterranean and/or Florida vernacular styles, reflective of coastal Florida's historic architectural styling which are deemed to be compatible or complementary with the architecture of the existing Parking Garage and Condominium as they exist as of the date of this MPD Agreement.

- (b) Stormwater. The Property includes a previously permitted and constructed stormwater system for the entire development area, which presently is operated and maintained by the Association.
- (c) Landscape. The Project will be enhanced through adjustments of building, parking, and roadway locations to provide landscaping that will accentuate residential areas, commercial areas, entrances, and other common spaces. All ornamental landscape beds and lawn areas will be irrigated. Florida Water Star landscaping standards are encouraged where feasible.
- (d) Entry Features and Signage. All common area sign elements will have a complementary design throughout the community. There are two existing entrance signs, one at the primary entrance from Palm Harbor Parkway, and one at the Intracoastal Waterway entry. These two entrance signs may be updated to provide overall project identity. Due to the diverse nature of the development, a directional sign program will be designed to provide direction for visitors and residents. Directional signage may include the identity of the facility or amenity and each directional sign will not exceed three feet in height and nine square feet in area. Monument and wall signs will be constructed per the City of Palm Coast LDC. Signs will be allowed on multiple frontages on the Lots that front: Tract A, the Marina, Country Club Waterway, and the Intracoastal Waterway.
- (e) Roads, Streets and Alleys. The Project is being developed with private roads, the standards for which shall be established during Master Site Plan, Master Subdivision, or Technical Site Plan approval as appropriate; and

shall be maintained by the Association or respective owner of such road. The Project shall provide and maintain two access points onto Palm Harbor Parkway. One of the access points shall be at the existing improved entrance to the Subject Property as depicted on the MPD Conceptual Master Plan. The second access point may be a stabilized grass emergency right of way for emergency vehicle access only and shall be constructed to support a 75,000 pound emergency vehicle and completed with the First Phase of the Project. Should an access point become available through the property to the south, the Association shall use commercially reasonable efforts to allow for emergency-only use from this additional access point through Association property for the Project.

- (f) School Bus Stops. Improved school bus stops for use by residents, consisting of benches or pads, may be provided by the Owner at or nearby the Palm Harbor Parkway entrance. The specific locations and design of school bus stops for the Project shall be determined by the Flagler County Public School District.
- (g) Recreation. Recreation facilities shall be provided consistent with the LDC level of service standard. Recreation facilities may include existing facilities developed and constructed pursuant to the PUD.
- (h) Pedestrian / Bicycle Access. The Project shall provide pedestrian and bicycle interconnectivity using sidewalks and pathways with bicycle racks at convenient locations.

- (i) Lighting. Decorative pole mounted lighting fixtures shall have complementary design and be provided throughout the Project. Such lighting may include, but not be limited to, solar powered lighting fixtures. Additional landscape lighting may include low level lighting and occasional accent lighting.
- (j) Vehicle Charging Stations. Subject to financial viability, the Owner shall make a good faith, commercially reasonable effort to install electric vehicle charging stations within the Project.
- ~~(k) Nothing in this Section 7 shall be deemed a prohibited exaction under Fla. Stat. Section 70.45, and Owner and the Association agree they have not suffered any damages under that statute.~~

## **SECTION 8. SITE DEVELOPMENT REQUIREMENTS**

- (a) The following table lists the general uses, maximum square footage and minimum parking requirements for the Project. Parking requirements may be modified at Owner's request during site plan submittals based on parking ratio criteria in the Site Development Data Table that are applicable within the Property.

**TABLE 8.1 – SITE DEVELOPMENT REQUIREMENTS**

Use	Tract / Lot	Maximum Quantity	Unit	Minimum Parking Spaces	per Quantity of Units
<b>Infrastructure/Common Area/etc.</b>	A	N/A	N/A	0	0
<b>Marina</b>	1	100	Slips	1	4
<b>Ship Store / Dock Master</b>	1,2	3,000	SF	1	375
<b>Restaurant / Bar</b>	1,2	10,000	SF	1	100 <sup>1</sup>
<b>Hotel</b>	3	150	Keys	1	1

<sup>1</sup> Includes outdoor eating/drinking areas.

Hotel Meeting Space	3	5,000	SF	1	200
<del>Townhomes</del> <b>Townhouses</b>	<del>3</del> <sup>4</sup> and/or 5	<del>60</del> <sup>299</sup> <sup>2</sup>	Units	2	1
<b>Multifamily Residential</b>	<del>3</del> <sup>4</sup> and/or 1	<del>300</del> <sup>299</sup>	Units	1.5	1
<b>Existing Multifamily Residential</b>	6	72	Units	1.5	1

<sup>2</sup> The maximum number of ~~townhomes allowed~~ total residential units permitted in the Project ~~shall be sixty (60)~~ is 371, which may ~~be placed on Lot 3, Lot 5~~ consist of multifamily residences, condominiums, or ~~both townhouses~~.

**TABLE 8.2 – SETBACK<sup>3</sup>, HEIGHT<sup>4</sup> AND OTHER REQUIREMENTS**

	<b>TRACT A</b>	<b>LOT 1</b>	<b>LOT 2</b>	<b>LOT 3<sup>5</sup></b>	<b>LOT 4</b>	<b>LOT 5</b>	<b>LOT 6</b>
<b>Maximum Height</b>	N/A <sup>6</sup>	35'	35'	80'	80'	45'	N/A <sup>7</sup>
<b>Minimum ICW ROW Setback</b>	N/A	N/A	N/A	N/A	N/A	0'	0'
<b>Minimum Country Club Waterway Setback</b>	0'	0'	0'	N/A	N/A	10'	N/A
<b>Minimum Marina Setback</b>	0'	0'	10'	10'	10'	10'	N/A
<b>Minimum Tract A Setback</b>	N/A	0'	0'	0'	0'	0'	0'
<b>Minimum Interior Side Setback<sup>8</sup></b>	0'	0'	0'	10'	10'	N/A	N/A
<b>Maximum ISR<sup>9</sup></b>	N/A	0.7	0.7	0.7	0.7	0.7	N/A
<b>Maximum FAR<sup>10</sup></b>	N/A	0.55	0.55	0.55	0.55	0.55	N/A

(b) Emergency Services. Fire protection requirements for the Project will be met through a system of fire hydrants installed by the Owner in accordance

<sup>3</sup> All setbacks will be measured from the lot line to the foundation of the vertical building structure.

<sup>4</sup> Building heights shall be measured in accordance with the LDC.

<sup>5</sup> Those portions of any buildings lying within the westerly 60' of Lot 3 shall be limited to a Height of 60'; however portions of such Lot 3 buildings situated east of such mark shall be limited to a Height of 80'.

<sup>6</sup> The existing Parking Garage is limited to its existing height.

<sup>7</sup> The Existing Condominium is limited to its existing height.

<sup>8</sup> Interior side setbacks may be eliminated if Lots as depicted on the MPD Conceptual Master Plan are combined for development.

<sup>9</sup> ISR (impervious surface ratio) is calculated on the total acreage embraced by the MPD (17.64 +/- acres) rather than individual lots, and all of the marina basin and stormwater pond areas shall be calculated as "open space"

<sup>10</sup> FAR (floor area ~~ratio~~ratio) is only applicable to non-residential uses and calculated on the total acreage embraced by the MPD rather than individual lots.



with City standards. The locations of fire hydrants will be shown on the final site plans or subdivision plans. The water requirements for the fire system will be served by the City.

- (c) Maintenance. All lands within the Project shall be maintained by their respective owners, and not by the City.
- (d) All services for the Project, including utilities, fire protection, solid waste, telephone, electricity, cable television, fiber optics, and stormwater management shall be provided by the responsible parties. All new utilities serving the Project shall be installed underground except wells and pump stations. Water and wastewater services will be provided by the City of Palm Coast.

**SECTION 9. TRAFFIC.** A traffic impact analysis methodology reasonably acceptable to the Applicant and City will be determined prior to initiating the Traffic Impact Analysis to determine the specific analysis criteria (i.e. times and locations). In general, a traffic impact analysis will be performed consisting of the review of projected AM and PM peak hour flows on the study area roadways and intersections. The review will include capacity analysis for roadways and intersections utilizing projected AM and PM peak hour flows in order to determine the adequacy of existing roadways/intersections and the need for improvement recommendations. The traffic impact analysis must be submitted by the Owner with each application for subdivision master plan or master site plan review, which shall include an analysis of the intersection of Club House Drive and Palm Harbor Parkway to determine the necessity of a traffic signal and/or turn lanes.

**SECTION 10. PROJECT DENSITY.**

The City Council of the City of Palm Coast has determined ~~that~~ the Project satisfies the criteria set forth in Policy 1.1.2.2 of the Comprehensive Plan's Future Land Use Element permitting an increase in densities and/or intensities for the Project. The residential unit count within the Project shall initially be limited to 264 total units, ~~except but may be increased~~ as provided in this Section 10. Owner may elect, at any time, to increase the residential unit count to ~~432~~371 total residential units by ~~fulfilling a one-time fulfillment of~~ the following ~~nine (9)~~ conditions ("Public Benefit Conditions") occurring prior to or concurrent with, and conditioned upon, issuance of the first Technical (or other "final") Site Plan approval allowing the Project to first exceed 264 total residential units. In this regard, Owner shall:

- (a) ~~Owner shall provide~~Provide the City with an easement co-terminus with this MPD Agreement to ~~construct~~maintain a "Welcome sign to Palm Coast" type panel comprising at least 25% of Owner's sign or a minimum of 15 square feet in area on the Intracoastal Waterway, which sign shall be subject to regulatory approval and compatible in size all respects with other panels on Owner's private sign in the same location. Such sign may be a freestanding sign up to 128 square feet in area and following the City's multitenant development standards for signs.
- (b) ~~Owner shall~~Design, construct, and fund the reasonable cost of the ~~City's welcome sign on the Intracoastal Waterway as described~~sign referenced above, including the City's panel.
- (c) ~~Owner shall renovate~~Renovate, remodel, or construct ~~a new~~(or submit an application for permits for same) the pavilion/gazebo along the Intracoastal Waterway, to the extent permitted by applicable regulatory agencies. Such gazebo project may be conducted and completed simultaneously with any

other ~~project activity~~ which causes the Project to exceed 264 constructed total residential units.

~~(d) Owner may elect to construct and operate a private boat ramp and to the extent such boat ramp is open and operating then it shall be available for official government entity use for emergency situations.~~

~~(d) Owner shall be maintaining or have obtained~~Renovate, remodel, or construct  
(or submit an application for permits for same) the Ship's Store, which may include and be combined with a restaurant. Such Ship's Store project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units. Such Ship's Store project must consist of at least material renovation work exceeding modest cosmetic upgrades.

(e) Maintain a Clean Marina designation pursuant to the Florida Department of Environmental Protection ("FDEP") Clean Marina Program or a comparable environmental program ~~(subject to program availability and commercially reasonable viability) at the time the request for the additional units is made in an application for site plan approval;~~ or maintain adherence to the substantive criteria for the FDEP's Clean Marina Program as exists as of the date of this MPD Agreement. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (e) shall be regulated exclusively by means equivalent to municipal code enforcement.

(f) ~~Owner shall be operating~~Operate a marine vessel fuel sale operation at the marina (subject to regulatory approval and commercially reasonable viability) ~~at the time the request for the additional units is made in an application for site plan approval.~~

~~(g) Owner shall renovate, remodel, or construct a new Ship's Store, which may include and be combined with a restaurant. Such Ship's Store project may be conducted simultaneously with any other project which causes the Project to exceed 264 total units.~~

~~(h)(g)~~ Owner shall provide Provide the City of Palm Coast with a one-time right of first offer (i.e., first opportunity to negotiate in good faith) to purchase the marina, prior to Owner pursuing a sale of the marina to a third party. Such one-time right of first offer shall expire one (1) year after ~~the effective date of this MPD Agreement~~ issuance of the first Certificate of Occupancy of any portion of the Project which causes total constructed residential units to exceed 264.

~~(i)(h)~~ To Provide a minimum of three (3) marina wet slips for restaurant patron short term daily use, but only to the extent and at the times a sit-down restaurant on Lots 1, 2 and/or 3 with at least 4,000 square feet of gross floor area and at least 75 seats for patrons is open and operating within the Project, then to the extent the marina is also open and operating Owner shall make a minimum of three (3) wet slips available for restaurant patron short term daily use. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (h) shall be regulated exclusively by means equivalent to municipal code enforcement.

**SECTION 11. REAL PROPERTY RIGHTS.** Nothing in this MPD Agreement shall deemed a prohibited exaction under Fla. Stat. ~~SECTION 11.70.45~~, and Owner agrees it has not suffered any damages under that statute.

**SECTION 12. BREACH; ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION.**

- (a) In the event of a breach hereof by either party hereto, the other party hereto shall have all rights and remedies allowed by law, including the right to specific performance of the provisions hereof.
- (b) In the event that a dispute arises under this MPD Agreement, the parties shall attempt to resolve all disputes informally. In the event of a failure to informally resolve all disputes, the City, the Association, and Owner agree to engage in mediation before a certified Circuit Court mediator selected by the parties. In the event that the parties fail to agree to a mediator, a certified mediator may be selected by each party and the certified mediators so selected shall then select a single certified mediator, who is not one of the originally selected mediators, to serve as the sole mediator. The parties shall equally pay all costs of mediation. A party who unreasonably refuses to submit to mediation may not later object in Circuit Court that the other party failed to comply with this Section 10(b) by not participating in the mediation prior to filing suit.
- (c) Prior to the City filing any action or terminating this MPD Agreement as a result of a default under this MPD Agreement, the City shall first provide the Owner written notice of the said default. Upon receipt of said notice, the Owner shall be provided a thirty (30) day period in which to cure the default to the reasonable satisfaction of the City prior to the City filing said action or terminating this MPD Agreement. If thirty (30) days is not a reasonable period of time in which to cure the default, the length of the cure period shall be extended for a time period acceptable to the City, but in no case shall

the cure period exceed three hundred sixty (360) days from the initial notification of default. Upon proper termination of the MPD Agreement, the Owner shall immediately be divested of all rights and privileges granted hereunder only as pertains to all undeveloped portions of the Project which have not yet received Master Site Plan, Master Subdivision, or Technical Site Plan approval, and not as pertains to portions of the Project which have received such approval(s). The remaining unapproved property will be considered to be zoned pursuant to the PUD.

#### **SECTION ~~12~~13. NOTICES.**

- (a) All notices required or permitted to be given under this MPD Agreement shall be in writing and must be delivered to the City, the Association, or the Owner at its address set forth below (or such other address as may be hereafter be designated in writing by such party).
- (b) Any such notice shall be personally delivered or sent by registered or certified mail or overnight courier.
- (c) Any such notice will be deemed effective when received (if sent by hand delivery, or overnight courier) or on that date which is three (3) days after such notice is deposited in the United States mail (if sent by registered or certified mail).
- (d) The parties' addresses for the delivery of all such notices are as follows:

As to the City:                      City Manager  
   160 Lake Avenue  
   Palm Coast, Florida, 32164

As to the Owner:                      JDI Palm Coast, LLC  
   1 Information Way, Suite 350



Little Rock, AR 72202

As to the Association: Palm Coast Resort Community Association, Inc.  
1 Information Way, Suite 350  
Little Rock, AR 72202

**SECTION ~~13~~14. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this MPD Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this MPD Agreement shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this MPD Agreement.

**SECTION ~~14~~15. SUCCESSORS AND ASSIGNS.**

- (a) This MPD Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the City, the Owner, and the Association, and their respective successors-in-interest. The terms and conditions of this MPD Agreement similarly shall be binding upon the Subject Property and shall run with the land and the title to the same.
- (b) This MPD Agreement touches and concerns the Subject Property.
- (c) The Owner and the Association have expressly covenanted and agreed to this provision and all other terms and provisions of this MPD Agreement.

**SECTION ~~15~~16. GOVERNING LAW/VENUE/COMPLIANCE WITH LAW.**

- (a) This MPD Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the Code of Ordinances of the City.
- (b) Venue for any dispute shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida, or the Middle District of Florida, for federal actions.

- (c) The Owner and the Association shall fully comply with all applicable local, state, and federal environmental regulations and all other laws of similar type or nature.
- (d) Without waiving the Owner's and the Association's potential rights, remedies and protections or the City's defenses pursuant to Chapter 70 of the Florida Statutes, as may be amended, this MPD Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development generally applicable to the entire area of the City, such as requiring compliance with the City capital facilities plan; parks master plan, including parks and trail dedications; utility construction and connections; mandating utility capacities; requiring street development or other such similar land development regulations and requirements.
- (e) If state or federal laws are enacted after execution of this MPD Agreement, which are applicable to and preclude the parties' compliance with this MPD Agreement, this MPD Agreement shall be modified as necessary to comply with the relevant law.
- (f) This MPD Agreement shall also not be construed to prohibit the City from adopting lawful impact fees applicable to the Project and the master planned development authorized hereunder.

**SECTION 4617. TERM / EFFECTIVE DATE.** This MPD Agreement shall be effective upon adoption by the City Council of the City and execution of this MPD Agreement by all parties. This MPD Agreement may be developed in phases and shall remain active, provided new construction commences within 5 years from its effective date and is

completed within 15 years of its effective date. The term of this MPD Agreement may be extended for additional 5 year periods by the City Council, at a duly noticed public hearing held no later than three (3) months after the expiration of the then current term, after review by the PLDRB.

**SECTION ~~17~~18. RECORDATION.** Upon adoption by the City Council of the City of Palm Coast, Florida and execution of this MPD Agreement by all parties, this MPD Agreement and any and all amendments hereto shall be recorded by the City with the Clerk of the Circuit Court of Flagler County within thirty (30) days after its execution by the City at the Owner's expense, and the MPD Agreement shall run with the land.

**SECTION ~~18~~19. PERMITS.**

- (a) The failure of this MPD Agreement to address any specific City, county, state, or federal permit, condition, term, or restriction shall not relieve the Owner or the City of the requirement of complying with the law governing said permitting requirements, conditions, terms, or restrictions.
- (b) All development and impact fees charged by the City for construction or development of subdivisions or site plans, applicable to the Project, shall be paid by the Owner or applied to any impact fee credits held by the Owner at the time the City issues a building permit or a certificate of occupancy.

**SECTION ~~19~~20. THIRD PARTY RIGHTS.** This MPD Agreement is not a third-party beneficiary contract, and shall not in any way whatsoever create any rights on behalf of any third party.

**SECTION ~~20~~21. TIME IS OF THE ESSENCE.**

- (a) Strict compliance shall be required with each and every provision of this

MPD Agreement.

- (b) Time is of the essence to this MPD Agreement and every right or responsibility required herein shall be performed within the times specified.

**SECTION ~~24~~22. ATTORNEY'S FEES.** In the event of any action to enforce the terms of this MPD Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and all costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the trial, or appellate level.

**SECTION ~~22~~23. FORCE MAJEURE.** The parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specific time period ("Time Period") constitutes a default under terms of this MPD Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party including, but not limited to, acts of God, acts of government authority (other than the City's own acts), acts of public enemy or war, terrorism, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such party, or severe adverse weather conditions ("Uncontrollable Event"), then notwithstanding any provision of this MPD Agreement to the contrary, that failure shall not constitute a default under this MPD Agreement and any Time Period prescribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event.

**SECTION ~~23~~24. CAPTIONS.** Sections and other captions contained in this MPD Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this MPD Agreement, or any provision hereof.

**SECTION ~~24~~25. INTERPRETATION.**

- (a) The Owner, the Association, and the City agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this MPD Agreement.
- (b) This MPD Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this MPD Agreement.

**SECTION ~~25~~26. FURTHER ASSURANCES.** Each party agrees to sign any other and further instruments and documents consistent herewith, as may be necessary and proper to give complete effect to the terms of this MPD Agreement.

**SECTION ~~26~~27. COUNTERPARTS.** This MPD Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one (1) and the same document.

**SECTION ~~27~~28. MODIFICATIONS / AMENDMENTS/NON-WAIVER.**

- (a) Amendments to and waivers of the provisions herein shall be made by the parties only in writing by formal amendment. This MPD Agreement shall not be modified or amended except by written agreement executed by all parties hereto and upon approval of the City Council of the City.
- (b) Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

**SECTION ~~28~~29. ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENTS.**

This MPD Agreement constitutes the entire agreement between the parties and supersedes all previous oral discussions, understandings, and agreements of any kind and nature as between the parties relating to the subject matter of this MPD Agreement.

**(SIGNATURES AND NOTARY BLOCKS ON NEXT PAGE)**



**IN WITNESS WHEREOF**, the City, the Owner, and the Association have caused this MPD Agreement to be duly executed by his/her/its/their duly authorized representative(s) as of the date first above written.

**OWNER'S CONSENT AND COVENANT:**

**COMES NOW**, the Owner on behalf of itself and its successors, assigns and transferees of any nature whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this MPD Agreement.

WITNESSES:

JDI Palm Coast, LLC  
A Georgia Limited Liability Company

\_\_\_\_\_

(print)

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

\_\_\_\_\_

(print)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, the manager of \_\_\_\_\_, which is the manager of JDI Palm Coast, LLC, a Georgia limited liability company, on behalf of the JDI Palm Coast, LLC. He \_\_\_ is personally known to me or \_\_\_ who has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**ASSOCIATION'S CONSENT AND COVENANT:**

**COMES NOW**, the Association on behalf of itself and its successors, assigns and transferees of any nature whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this MPD Agreement.

WITNESSES:

Palm Coast Resort Community Association,  
Inc.  
A Florida Not for Profit Corporation

\_\_\_\_\_

(print)

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

\_\_\_\_\_

(print)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, the President of the Palm Coast Resort Community Association, Inc., a Florida Not for Profit Corporation, on behalf of the Corporation. He \_\_\_ is personally known to me or \_\_\_ who has produced \_\_\_\_\_(type of identification) as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
David Alfin, Mayor

ATTEST:

\_\_\_\_\_  
Virginia A. Smith, City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Neysa Borkert, City Attorney

STATE OF FLORIDA

COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by David Alfin, Mayor \_\_\_\_\_ (date) by \_\_\_\_\_ (name of person acknowledging) , who is personally known to me or who has produced (type of identification) as identification.

\_\_\_\_\_  
Notary Public – State of Florida

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## **EXHIBIT "A"**

### **Legal Description of Subject Property**

#### **PARCEL 1 ("Harborside Property")**

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF COMMENCEMENT REFERENCE BEING THE SOUTHEASTERLY CORNER OF THE SUBDIVISION PLAT COUNTRY CLUB COVE SECTION-3 MAP BOOK 6, PAGE 8, THENCE NORTH 20°57'23" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (104' R/W) (PLATTED AS YOUNG PARKWAY) A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE NORTH 20°57'23" WEST, A DISTANCE OF 568.90 FEET TO A POINT ON THE SOUTHERLY LINE OF CLUB HOUSE WATERWAY, THENCE DEPARTING PALM HARBOR PARKWAY RUN NORTH 75°49'57" EAST ALONG THE SOUTHERLY LINE OF SAID WATERWAY, A DISTANCE OF 50.71 FEET, THENCE DEPARTING SAID SOUTHERLY LINE OF SAID WATERWAY RUN NORTH 14°10'03" WEST, A DISTANCE OF 18.32 FEET, THENCE RUN NORTH 75°49'57" EAST, A DISTANCE OF 137.00 FEET, THENCE RUN NORTH 43°22'02" EAST, A DISTANCE OF 61.55 FEET, THENCE RUN NORTH 68°48'16" EAST, A DISTANCE OF 255.62 FEET, THENCE RUN SOUTH 20°57'23" EAST, A DISTANCE OF 41.83 FEET, THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 90.90 FEET, THENCE RUN SOUTH 20°57'23" EAST ALONG THE EASTERLY LINE OF THE MARINA BASIN, A DISTANCE OF 18.31 FEET, THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 245.01 FEET, THENCE RUN SOUTH 20°49'47" EAST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF THE INTRACOASTAL WATERWAY, A DISTANCE OF 11.95 FEET, THENCE DEPARTING SAID LINE RUN SOUTH 81°28'20" EAST, A DISTANCE OF 34.51 FEET; THENCE RUN SOUTH 20°49'46" EAST, A DISTANCE OF 326.24 FEET; THENCE RUN SOUTH 69°10'14" WEST, A DISTANCE OF 64.03 FEET; THENCE RUN SOUTH 02°50'30" EAST, A DISTANCE OF 31.50 FEET; THENCE RUN SOUTH 43°14'16" WEST, A DISTANCE OF 101.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 49.19 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 70°45'50", A RADIUS OF 39.82 FEET, A CHORD BEARING OF SOUTH 39°02'14" WEST AND A CHORD DISTANCE OF 46.12 FEET TO THE POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN NORTH 86°30'35" WEST, A DISTANCE OF 48.71 FEET; THENCE RUN SOUTH 131°5'43" WEST, A DISTANCE OF 5.88 FEET; THENCE RUN SOUTH 05°49'47" WEST, A DISTANCE OF 26.63 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE WESTERLY A DISTANCE OF 90.81 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 52°29'13", A RADIUS OF 99.13 FEET, A CHORD BEARING OF SOUTH 48°39'52" WEST AND A CHORD DISTANCE OF 87.67 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 70°21'07" WEST, A DISTANCE OF 73.04 FEET; THENCE RUN SOUTH 68°05'47" WEST, A DISTANCE OF 113.67 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 102.04 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 13°59'42", A RADIUS OF 417.75 FEET, A CHORD BEARING OF SOUTH 67°15'17" WEST AND A CHORD DISTANCE OF 101.79 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 56°08'49" WEST, A DISTANCE OF 25.68 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 49.37 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 16°51'18", A RADIUS OF 167.81 FEET, A CHORD BEARING OF SOUTH 49°22'57" WEST AND A CHORD DISTANCE OF 49.19 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH

53°30'16" WEST, A DISTANCE OF 18.51 FEET; THENCE RUN SOUTH 17°59'47" EAST, A DISTANCE OF 16.81 FEET TO A POINT ON A NON-TANGENT CURVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 57.34 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 13°08'25" WEST, A RADIUS OF 250.00 FEET, A CHORD BEARING OF SOUTH 75°00'53" WEST AND A CHORD DISTANCE OF 57.21 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH 69°02'37" WEST, A DISTANCE OF 82.92 FEET TO THE POINT OF BEGINNING.

PARCEL 2 ("Association Property")

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF THE PLAT, COUNTRY CLUB COVE SECTION - 3, MAP BOOK 6, PAGE 8, THENCE NORTH 20°57'23" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (PLATTED AS YOUNG PARKWAY) (104' R/W) A DISTANCE OF 125.00 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY RUN NORTH 69°02'37" EAST, A DISTANCE OF 82.92 FEET TO A POINT OF CURVATURE, CONCAVE SOUTHERLY, THENCE EASTERLY A DISTANCE OF 57.34 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°08'25", A RADIUS OF 250.00 FEET, A CHORD BEARING OF NORTH 75°00'53" EAST AND A CHORD DISTANCE OF 57.21 FEET TO THE POINT OF INTERSECTION WITH A NON-TANGENT LINE, THENCE RUN NORTH 17°59'47" WEST, A DISTANCE OF 16.81 FEET, THENCE RUN NORTH 53°30'16" EAST, A DISTANCE OF 18.51 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE EASTERLY A DISTANCE OF 49.37 FEET ALONG THE ARC OF SAID CURVE, TO THE RIGHT, HAVING A CENTRAL ANGLE OF 16°51'18" A RADIUS OF 167.81 FEET, A CHORD BEARING OF NORTH 49°22'57" EAST AND A CHORD DISTANCE OF 49.19 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 56°08'49" EAST, A DISTANCE OF 25.68 FEET TO A POINT OF CURVATURE CONCAVE SOUTHERLY, THENCE EASTERLY A DISTANCE OF 102.04 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°59'42", A RADIUS OF 417.75 FEET, A CHORD BEARING OF NORTH 67°15'17" EAST AND A CHORD DISTANCE OF 101.79 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 68°05'47" EAST, A DISTANCE OF 113.67 FEET; THENCE RUN NORTH 70°21'07" EAST, A DISTANCE OF 73.04 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE EASTERLY A DISTANCE OF 90.81 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 52°29'13", A RADIUS OF 99.13 FEET, A CHORD BEARING OF NORTH 48°39'52" EAST AND A CHORD DISTANCE OF 87.67 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 05°49'47" EAST, A DISTANCE OF 26.63 FEET; THENCE RUN NORTH 13°15'43" EAST, A DISTANCE OF 5.88 FEET; THENCE RUN SOUTH 86°30'35" EAST, A DISTANCE OF 48.71 FEET TO A POINT OF NON-TANGENCY OF A CURVE CONCAVE SOUTHEASTERLY, THENCE EASTERLY A DISTANCE OF 49.19 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 70°45'50", A RADIUS OF 39.82 FEET, A CHORD BEARING OF NORTH 39°02'14" EAST AND A CHORD DISTANCE OF 46.12 FEET TO A POINT OF NON-TANGENCY; THENCE RUN NORTH 43°14'16" EAST, A DISTANCE OF 101.07 FEET; THENCE RUN NORTH 02°50'30" WEST, A DISTANCE OF 31.50 FEET; THENCE RUN NORTH 69°10'14" EAST, A DISTANCE OF 64.03 FEET; THENCE RUN NORTH 20°49'46" WEST, A DISTANCE OF 326.24 FEET; THENCE RUN SOUTH 81°28'20" EAST, A DISTANCE OF 148.73 FEET; THENCE RUN SOUTH 21°16'59" EAST A DISTANCE OF 668.31 FEET; THENCE RUN SOUTH 69°02'37" WEST, A DISTANCE OF 165.00 FEET; THENCE RUN SOUTH 66°01'12" WEST, A DISTANCE OF 317.67 FEET; THENCE RUN NORTH 33°24'47" WEST, A DISTANCE OF 43.00 FEET; THENCE RUN NORTH 25°19'15" WEST, A DISTANCE OF 65.48 FEET; THENCE RUN SOUTH 69°37'11" WEST, A DISTANCE OF 144.48 FEET TO A POINT OF

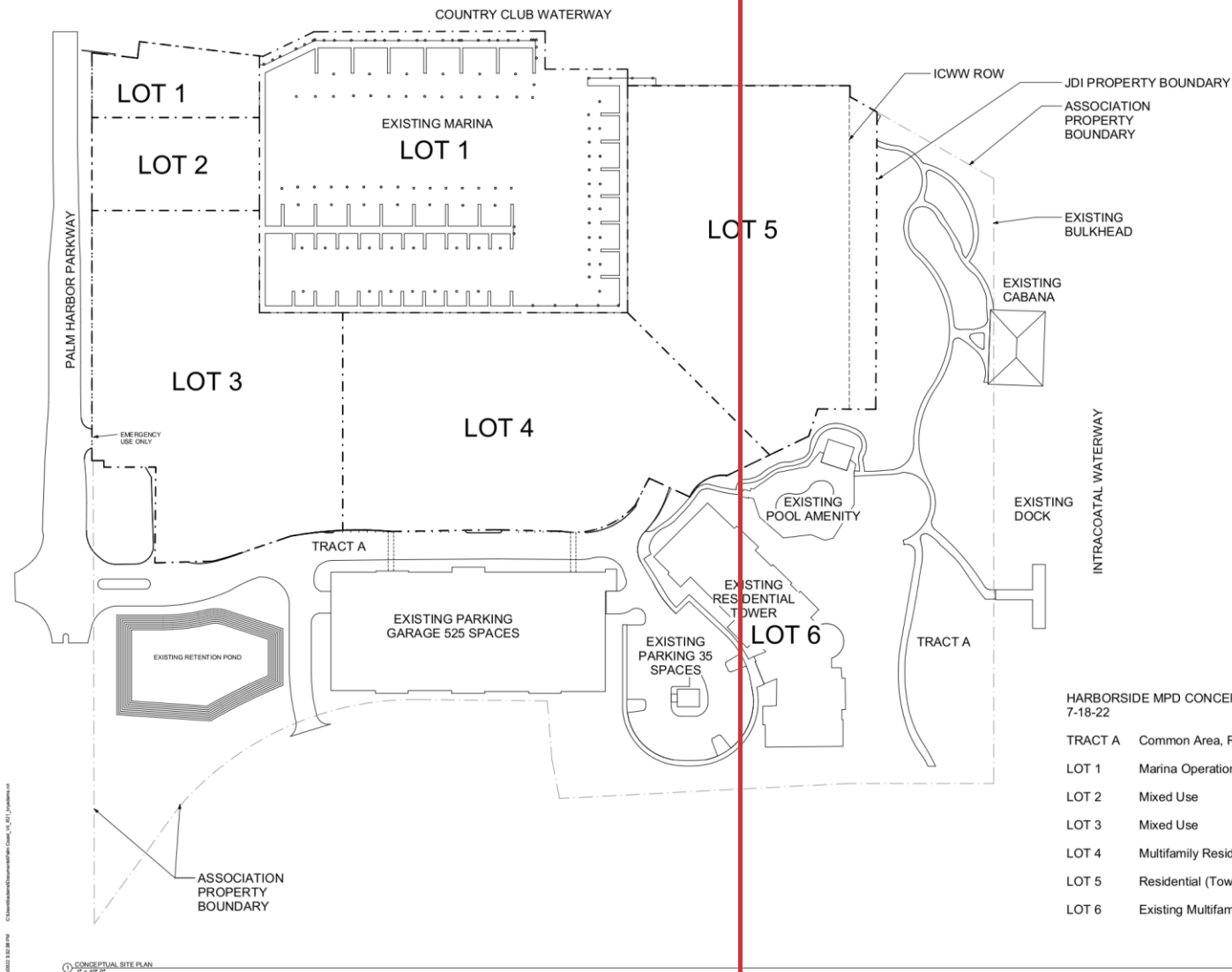
CURVATURE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 323.49 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF  $54^{\circ}12'33''$ , A RADIUS OF 341.91 FEET, A CHORD BEARING OF SOUTH  $42^{\circ}30'58''$  WEST AND A CHORD DISTANCE OF 311.56 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH  $15^{\circ}24'47''$  WEST, A DISTANCE OF 133.46 FEET TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (PLATTED AS YOUNG PARKWAY) (104' R/W); THENCE RUN NORTH  $20^{\circ}57'23''$  WEST ALONG THE AFORESAID EAST RIGHT-OF-WAY, A DISTANCE OF 267.58 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

**EXHIBIT “B”**

MPD Conceptual Master Plan

On Following Page





# HARBORSIDE MPD CONCEPTUAL MASTER PLAN 7-18-22

- TRACT A Common Area, Roads, Parking, Infrastructure
- LOT 1 Marina Operations, Slips, Retail/ Ship Store
- LOT 2 Mixed Use
- LOT 3 Mixed Use
- LOT 4 Multifamily Residential
- LOT 5 Residential (Townhomes)
- LOT 6 Existing Multifamily Residential

DESIGN +  
CONSTRUCTION  
INTEGRATION



Design & Construction  
Integration, LLC  
1 Information Way  
Suite 300  
Little Rock, AR 72202  
501-375-0017  
www.dci-services.com

Owner Group:  
OWNER

Design Team  
Architecture:  
DESIGN AND  
CONSTRUCTION  
INTEGRATION, LLC  
1 Information Way  
Suite 300  
Little Rock, AR 72202  
Civil:  
CIVIL  
Landscape:  
LANDSCAPE  
Structural:  
STRUCTURAL  
Mechanical/Electrical  
Plumbing:  
MEP

Project Status

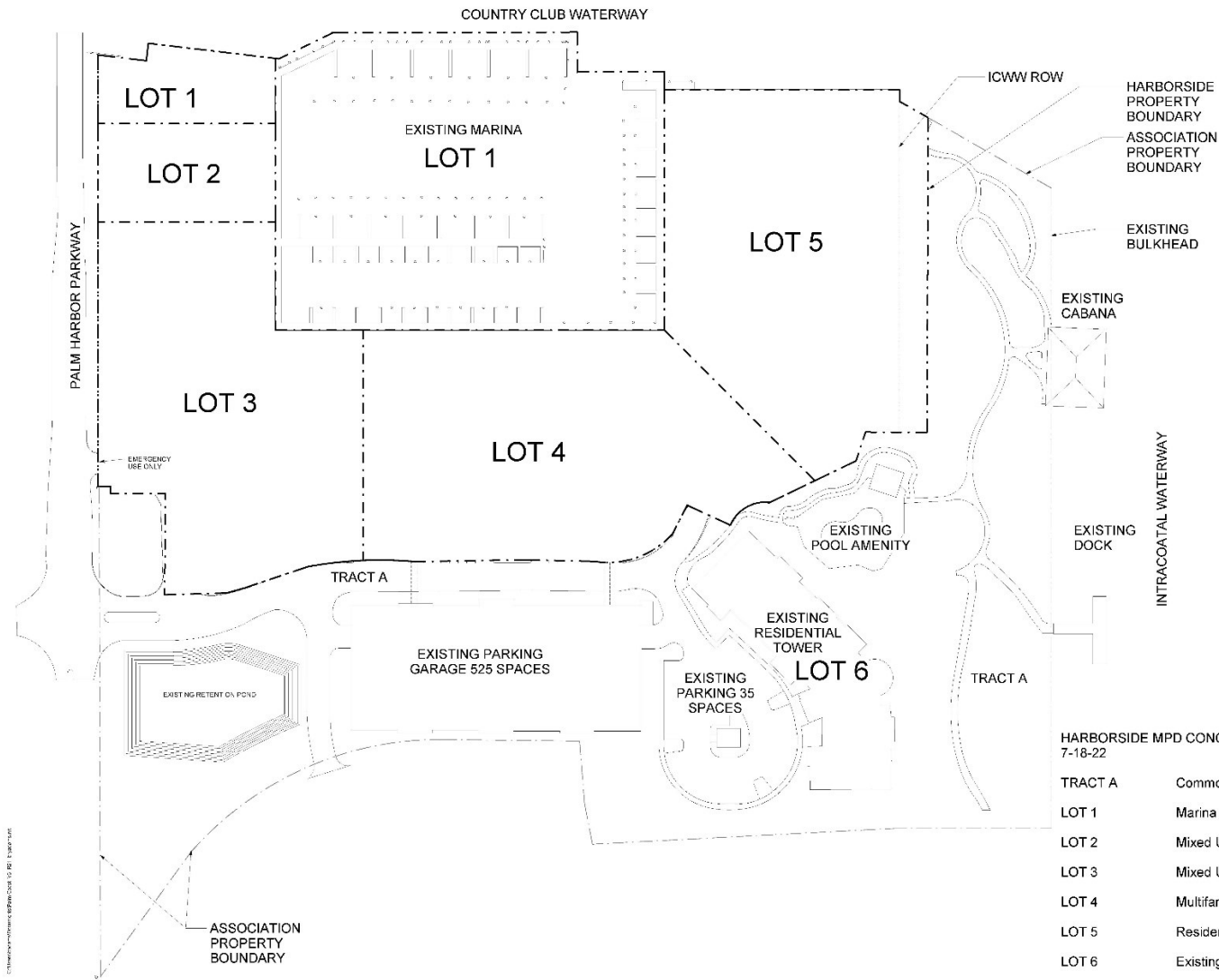
HARBORSIDE MPD  
CLUB HOUSE DRIVE, PALM COAST, FL  
Project number: 0900  
Project Issue Date: 07-18-2022



No.	Revised	By

LAND USE  
PLAN

A102  
Scale: 1" = 100'



# HARBORSIDE MPD CONCEPTUAL MASTER PLAN 7-18-22

TRACT A	Common Area, Roads, Parking, Infrastructure
LOT 1	Marina Operations, Slips, Retail/ Ship Store
LOT 2	Mixed Use
LOT 3	Mixed Use
LOT 4	Multifamily Residential
LOT 5	Residential (Townhomes)
LOT 6	Existing Multifamily Residential
LOTS 1-5	Harborside Property
TRACT A & LOT 6	Association Property

1. CONCEPTUAL SITE PLAN  
1" = 400'



Design & Construction  
Integration, LLC  
1 Information Way  
Suite 300  
Little Rock, AR 72202  
501-246-0017  
www.dci-integration.com

Owner Group:  
OWNER

Design Team:  
Architect:  
DESIGN AND  
CONSTRUCTION  
INTEGRATION, LLC  
1 Information Way,  
Suite 300  
Little Rock, AR 72202  
Civil:  
Civil  
Landscape:  
LANDSCAPE  
Structural:  
STRUCTURAL  
Mechanical/ Electrical/  
Plumbing  
MEP

Project Status:

HARBORSIDE MPD  
CLUB HOUSE DRIVE, PALM COAST, FL  
Project number: 0990  
Project Issue Date: 11-09-2022



1" = 400'

LAND USE  
PLAN

A102  
Rev. 11-09-2022

**HARBORSIDE  
MASTER PLAN DEVELOPMENT AGREEMENT  
(Amended and Restated PUD Agreement)**

**THIS MASTER PLAN DEVELOPMENT AGREEMENT**, (herein referred to as the “MPD Agreement”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF PALM COAST**, a Florida municipal corporation (the “City”), whose address is 160 Lake Avenue, Palm Coast, Florida, 32164; **JDI PALM COAST, LLC**, a Georgia limited liability company (“Owner”) whose address is 1 Information Way, Suite 350, Little Rock, AR 72202; and the **PALM COAST RESORT COMMUNITY ASSOCIATION, INC.**, a Florida Not for Profit Corporation (“Association”) who address is 1 Information Way, Suite 350, Little Rock, AR 72202.

***WITNESSETH:***

**WHEREAS**, JDI Palm Coast, LLC is the principal owner and developer of certain real property located within the municipal limits of the City, as more particularly described on that certain Special Warranty Deed recorded in Official Records Book 2178, Page 1106, of the Public Records of Flagler County, Florida (**“Harborside Property”**); and

**WHEREAS**, the Palm Coast Resort Community Association, Inc., is the principal owner of certain real property located within the municipal limits of the City, as more particularly described on that certain Special Warranty Deed recorded in Official Records Book 1706, Page 1481, of the Public Records of Flagler County, Florida (**“Association Property”**); and

**WHEREAS**, the Owner desires to complete the development of the Harborside Property and the Association Property for a mixed use development (the “Project”); and

**WHEREAS**, the Project is located on that certain real property consisting of 17.64

acres, which includes the Harborside Property and the Association Property, as more particularly described on **Exhibit “A”** (the “Subject Property”, with “Parcel 1” constituting the “Harborside Property” and Parcel 2 constituting the “Association Property”); and

**WHEREAS**, the Subject Property has a Future Land Use Map designation of Mixed-Use; and

**WHEREAS**, the Subject Property is subject to Ordinance 2007-24 as recorded in Official Records Book 1624, Page 311 of the Public Records of Flagler County, Florida, which amended and restated the Planned Unit Development Agreement recorded in Official Records Book 1253, Page 1924 of the Public Records of Flagler County, Florida embracing 17.64 acres of land (the “PUD”); and

**WHEREAS**, a portion of the Association Property was developed pursuant to the PUD, including, without limitation, a gazebo and fishing dock along the Intracoastal Waterway, a parking structure consisting of 525 parking spaces (“Parking Garage”), a master stormwater system, and other supporting improvements, all located on the Association Property and supporting the Project; and an 8 story residential tower consisting of 72 residential units as established by the Declaration of Condominium for Palm Coast Resort as recorded in Official Records Book 1560, Page 799 of the Public Records of Flagler County, Florida, as amended (the “Existing Condominium”); and a marina and supporting uses on the Harborside Property; and

**WHEREAS**, the infrastructure existing on the Association Property and the marina and supporting uses on the Harborside Property, as described above, provide a sound planning basis for the expansion of uses on the Harborside Property and assists in meeting the requirements of the City of Palm Coast Comprehensive Plan Policy 1.1.2.2.;

**WHEREAS**, the City’s Comprehensive Plan Policy 1.1.2.2. provides the ability for the City to approve an increase in the maximum number of residential units per acre for mixed use development if a project promotes and encourages creative planning, and recognizes special geographical features, environmental conditions, economic issues, or other unique circumstances; and

**WHEREAS**, Owner has agreed to the Public Benefit Conditions as contained in Section 10 of this Agreement, which City Staff believes assists the Project in meeting Comprehensive Plan Policy 1.1.2.2; and

**WHEREAS**, the Project and this MPD Agreement do not affect the Existing Condominium entitlements, which were permitted, developed and constructed pursuant to the PUD; and

**WHEREAS**, this MPD Agreement shall amend, restate, replace and supersede the PUD; and

**WHEREAS**, the Owner and the Association are in voluntary agreement with the conditions, terms, and restrictions hereinafter recited, and have agreed voluntarily to their imposition; and

**WHEREAS**, the City of Palm Coast City Council finds that this MPD Agreement is consistent with the City’s Comprehensive Plan and Unified Land Development Code (“LDC”) and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the protection of the public health, safety, and welfare of the citizens of the City; and

**WHEREAS**, the City of Palm Coast City Council further finds that this MPD Agreement is consistent with and an exercise of the City’s powers under the *Municipal Home Rule*

*Powers Act; Article VIII, Section 2(b) of the Constitution of the State of Florida; Chapter 166, Florida Statutes; the City of Palm Coast City Charter; other controlling law; and the City's police powers; and*

**WHEREAS**, this is a non-statutory MPD Agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220 -163.3243, *Florida Statutes*.

**NOW, THEREFORE**, it is hereby resolved and agreed by and between the City, the Association, and the Owner that the Master Plan Development is approved subject to the following terms and conditions:

**SECTION 1. RECITALS.**

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this MPD Agreement upon which the City, the Owner, and the Association have relied.

**SECTION 2. REPRESENTATIONS OF OWNER AND ASSOCIATION.**

- (a) The Owner hereby represents and warrants to the City that it is the principal owner of the Harborside Property in accordance with the title opinion or title certification provided by the Owner to the City issued by an attorney or title insurance company licensed to provide services in the State of Florida showing all liens, mortgages, and other encumbrances not satisfied or released of record relative to the Harborside Property.
- (b) The Association hereby represents and warrants to the City that it is the principal owner of the Association Property in accordance with the title opinion or title certification provided by the Association to the City issued by an attorney or title insurance company licensed to provide services in the

State of Florida, showing all liens, mortgages, and other encumbrances not satisfied or released of record relative to the Association Property.

- (c) The Owner represents and warrants to the City that it has the power and authority to enter into and consummate the terms and conditions of this MPD Agreement; that all acts, approvals, procedures, and similar matters required in order to authorize this MPD Agreement have been taken, obtained or followed, as the case may be; that this MPD Agreement and the proposed performance of this MPD Agreement by the Owner is not an *ultra vires* act; and that, upon the execution of this MPD Agreement by the parties, this MPD Agreement shall be valid and binding upon the parties hereto and their successors in interest.
- (d) The Association represents and warrants to the City that it has the power and authority to enter into and consummate the terms and conditions of this MPD Agreement; that all acts, approvals, procedures, and similar matters required in order to authorize this MPD Agreement have been taken, obtained or followed, as the case may be; that this MPD Agreement and the proposed performance of this MPD Agreement by the Association is not an *ultra vires* act; and that, upon the execution of this MPD Agreement by the parties, this MPD Agreement shall be valid and binding upon the parties hereto and their successors in interest.
- (e) The Owner and Association hereby represent to the City that all required joinders and consents have been obtained and set forth in a properly executed form on this MPD Agreement. Unless otherwise agreed to by the



City, all liens, mortgages, and encumbrances not satisfied or released of record must be subordinated to the terms of this MPD Agreement and joinders must be executed by any mortgagees. It is the responsibility of the Owner and the Association to ensure that said subordinations and joinders occur in a form and substance acceptable to the City Attorney prior to the City's execution of this MPD Agreement. If the Owner and Association fail to attain the joinder and consent, then the Owner and Association shall lose all rights and benefits deriving hereunder.

**SECTION 3. APPROVAL OF MASTER PLAN DEVELOPMENT**

- (a) The City Council at its business meeting of \_\_\_\_\_ 2023, adopted Ordinance No. 2023-\_\_\_\_\_ rezoning the Subject Property to Master Planned Development, subject to the terms and conditions of this MPD Agreement.
- (b) The Owner and Association acknowledge that if this MPD Agreement is ever terminated, the approval shall be deemed null and void and any land uses approved for the Subject Property that have not received Master Site Plan, Master Subdivision, or Technical Site Plan approval or other City issued authorization to commence construction shall no longer be permitted and shall revert to their prior zoning as defined in the PUD, unless otherwise approved by the City Council.
- (c) The current provisions of the LDC, as may be amended from time-to-time, shall be applicable to the Subject Property unless otherwise specifically stated herein. Any City Code provision not specifically so identified will not

be affected by the terms of this MPD Agreement and will be subject to enforcement and change under the same criteria as if no MPD Agreement were in effect.

**SECTION 4. PROJECT DESCRIPTION; PERMITTED USES.**

- (a) The Project, as proposed and approved herein, is a mixed-use project consisting of commercial, marina, residential and supporting uses. The development plan for the Project is generally outlined below and depicted on the MPD Conceptual Master Plan, which is attached as Exhibit “B” hereto (the “MPD Conceptual Master Plan”). Commercial uses may include all uses permitted in the COM-2 zoning district, including, without limitation, general retail, restaurants, bars, hotels, marinas, and ancillary supporting uses. Additionally, microbreweries will be permitted uses within this mixed use Project. Marina uses include wet slip storage, a marina ship store, marina dockmaster/management offices, and fueling facilities. Residential uses may include all uses permitted in the MFR-2 zoning district, including, without limitation, multi-family residential units and townhouses. The uses listed above, all uses permitted in the COM-2 or MFR-2 zoning districts on or after the Effective Date of this MPD Agreement, and all uses listed below in Section 4(c) are permitted by right (the “Permitted Uses”). Any uses not listed herein shall be determined by the Land Use Administrator (“LUA”) per Section 3.01.07 of the Unified Land Development Code (LDC). Adequate parking shall be provided for all uses proposed for development in accordance with the parking ratios set forth at Section 8, Table 8.1. For any

permitted uses not listed in Table 8.1, the parking ratios as set forth in the LDC shall control.

- (b) The Project includes the Parking Garage, gazebo and fishing dock, master stormwater management system, and other common elements located on the Association Property, which were previously constructed pursuant to the PUD. The MPD Conceptual Master Plan identifies lots and tracts where the Permitted Uses may be developed on the Subject Property. The final locations, sizes and configurations of the Lots, Tracts and associated Permitted Uses will be determined by an application or applications for Master Site Plan or Master Subdivision Plan for each lot or tract, which must be approved before the issuance of any technical site plan or preliminary plat development orders authorizing construction.
- (c) The Permitted Uses shall be permitted on the lots and tracts depicted in the MPD Conceptual Master Plan as follows:
  - 1) TRACT A and LOTS 1-6: Roads, driveways, sidewalks and paths, parking areas, landscaping, utilities, stormwater facilities, signage, infrastructure, amenities, the Parking Garage which was already constructed, and other common areas and supporting elements.
  - 2) LOT 1: Marina and marina support facilities, which may include berthing slips for vessels and liveaboard vessels; a private boat ramp to support marina operations; a dockmaster facility and office; vessel refueling station; restrooms for boaters; ship's store; boat, kayak, and other water-based recreation equipment rentals; restaurants, microbreweries, and bars with

both indoor and outdoor sitting and service areas; and general retail uses that complement and support the marina. To the extent a private boat ramp is contained in the Project, then it shall be available for official government entity use for emergency situations.

- 3) LOT 2: All uses permitted in the COM-2 zoning district and all uses permitted in Lot 1, provided that such uses include a Restaurant, sit down use. For the sake of clarity, and to the extent any uses exist on Lot 2, the Restaurant, sit down use may, but need not, be the sole use. Lot 2 shall be at least 75 feet in Lot Width and a minimum Lot Size of 20,000 square feet.
- 4) LOT 3: All uses permitted in the COM-2, including, without limitation, hotels, restaurants, microbreweries and bars with both indoor and outdoor sitting and service areas, and/or MFR-2 zoning districts including but not limited to Townhouses. Residential uses and commercial uses are permitted within the same buildings.
- 5) LOT 4: All uses permitted in the MFR-2 zoning district, including but not limited to multifamily and townhouses and ancillary supporting uses.
- 6) LOT 5: Townhouses.
- 7) LOT 6: All uses permitted in the MFR-2 zoning district, the Existing Condominium which was already constructed pursuant to the PUD, and ancillary supporting uses.
- 8) For all Lots permitting Residential uses: For purposes of this MPD Agreement, the terms "Townhouse" and "Townhouses" shall mean three or more attached single-family dwelling units constructed in a series or group

of attached units with shared walls and may, but need not, be on individually platted lots with property lines separating such units, with no setback between units. Each townhouse will have a garage and driveway sufficient to meet the parking requirement set forth in Table 8.1. Townhouses on individually platted lots shall have a minimum unit width of at least 20 feet, provided however that at least half of the platted townhouse units constructed at any time must be at least 25 feet in width. Required landscape planting area widths on the front façade of platted townhouse units shall be a minimum of 20% of the unit's front façade. The setback between individual buildings shall be as defined in Table 8.2, except as required by Building and Fire Codes. Residential dwelling units may be rented on a short term (less than 30 calendar days) or long term (more than 30 calendar days) basis.

- 9) Temporary Sales/Construction Trailers and Model Units. Temporary sales and construction trailers and model units may be located within the Project.

## **SECTION 5. MARINA / SHIP'S STORE**

The Owner represents to the City that the Owner has the bona fide and good faith present intent to maintain the marina, ship's store, dock master office, fueling and pump out facility (hereinafter "Marina Facilities") as a viable economic enterprise into the foreseeable economic future. Further, the Owner recognizes the significance and importance of the Marina Facilities to the citizens of the City, the general public, and the historic maritime community of users of the Marina Facilities. The Owner shall use commercially reasonable efforts to operate and maintain the marina facilities in good working order and

condition. The owner may replace or relocate the existing ship's store and dockmaster facility on Lot 1 and/or Lot 2, as provided in Section 4(c) of this Agreement.

## **SECTION 6. DEVELOPMENT PLAN**

- (a) The MPD Conceptual Master Plan depicts the general land use areas for the entire development for the Project. The exact location of structures, lot lines, roadways, parks, community amenities, internal landscape buffers, wetlands, drainage facilities and other improvements shown on the MPD Conceptual Master Plan may be modified during review of the site development plans and subdivision plat and plans. Additionally, Lots 1 and 2 may be combined into one or more integrated Lot(s) allowing all of the Permitted Uses for Lots 1 and 2 as noted in Section 4(c). As well, Lots 3 and 4 may also be combined into one or more integrated Lot(s) allowing all of the Permitted Uses noted in Section 4(c) for both Lots 3 and 4; provided that Lot 4, as shown on the MPD Conceptual Master Plan, is not utilized for commercial uses.
- (b) Adjustments to the MPD Conceptual Master Plan are anticipated to occur during the site development of the Project and subdivision plat review processes. Revisions to the MPD Conceptual Master Plan which meet the intent and purpose of the City's Comprehensive Plan and LDC shall be approved subject to the reasonable determination of the LUA, if the substantial integrity of the MPD Conceptual Master Plan and the development standards contained herein are maintained. Modifications to the exact type of residential units, locations and the number of lots,

roadways, primary sidewalk and pathway system, and other improvements that do not increase the intensity, density or types of development uses or buildings heights shall be approved by the LUA. Any modification to the MPD Conceptual Master Plan that increases the intensity, density or types of development uses, increases building heights, reduces the total amount of open space, or decreases the size of any perimeter buffer within the Project shall require the approval of the City Council following the review of the City of Palm Coast Planning and Land Development Regulation Board (“PLDRB”).

- (c) The Project may be developed in multiple phases as depicted on the MPD Conceptual Master Plan and as provided herein.
- (d) Limitation on Construction Traffic — Construction vehicles access to the Project shall be from Palm Harbor Parkway to the fullest extent practical. Construction vehicles are prohibited from using Club House Drive west of its intersection with Palm Harbor Parkway to enter or exit the Project site. Owner or Owner’s representative shall inform all contractors regarding this requirement.
- (e) The existing Parking Garage as depicted on the MPD Conceptual Master Plan contains a total of 525 parking spaces. The spaces in the Parking Garage, together with existing and future surface and garage parking (including but not limited to townhouse garage and driveway spaces), may be used to meet the parking requirements of the Project, including garage requirements for multifamily units. The Owner shall be permitted to



construct elevated pedestrian walkways from the Parking Garage to any proximate structure or structures.

## **SECTION 7. LAND DEVELOPMENT CODE APPLICABILITY**

The LDC applies to the Project, unless expressly otherwise provided in this MPD Agreement. The provisions of this Section supersede any inconsistent provisions of the LDC or other ordinances of the City.

- (a) Architecture. The architectural features of the Project shall be primarily of Mediterranean and/or Florida vernacular styles, reflective of coastal Florida's historic architectural styling which are deemed to be compatible or complementary with the architecture of the existing Parking Garage and Condominium as they exist as of the date of this MPD Agreement.
- (b) Stormwater. The Property includes a previously permitted and constructed stormwater system for the entire development area, which presently is operated and maintained by the Association.
- (c) Landscape. The Project will be enhanced through adjustments of building, parking, and roadway locations to provide landscaping that will accentuate residential areas, commercial areas, entrances, and other common spaces. All ornamental landscape beds and lawn areas will be irrigated. Florida Water Star landscaping standards are encouraged where feasible.
- (d) Entry Features and Signage. All common area sign elements will have a complementary design throughout the community. There are two existing entrance signs, one at the primary entrance from Palm Harbor Parkway, and one at the Intracoastal Waterway entry. These two entrance signs may

be updated to provide overall project identity. Due to the diverse nature of the development, a directional sign program will be designed to provide direction for visitors and residents. Directional signage may include the identity of the facility or amenity and each directional sign will not exceed three feet in height and nine square feet in area. Monument and wall signs will be constructed per the City of Palm Coast LDC. Signs will be allowed on multiple frontages on the Lots that front: Tract A, the Marina, Country Club Waterway, and the Intracoastal Waterway.

- (e) Roads, Streets and Alleys. The Project is being developed with private roads, the standards for which shall be established during Master Site Plan, Master Subdivision, or Technical Site Plan approval as appropriate; and shall be maintained by the Association or respective owner of such road. The Project shall provide and maintain two access points onto Palm Harbor Parkway. One of the access points shall be at the existing improved entrance to the Subject Property as depicted on the MPD Conceptual Master Plan. The second access point may be a stabilized grass emergency right of way for emergency vehicle access only and shall be constructed to support a 75,000 pound emergency vehicle and completed with the First Phase of the Project. Should an access point become available through the property to the south, the Association shall use commercially reasonable efforts to allow for emergency-only use from this additional access point through Association property for the Project.

- (f) School Bus Stops. Improved school bus stops for use by residents, consisting of benches or pads, may be provided by the Owner at or nearby the Palm Harbor Parkway entrance. The specific locations and design of school bus stops for the Project shall be determined by the Flagler County Public School District.
- (g) Recreation. Recreation facilities shall be provided consistent with the LDC level of service standard. Recreation facilities may include existing facilities developed and constructed pursuant to the PUD.
- (h) Pedestrian / Bicycle Access. The Project shall provide pedestrian and bicycle interconnectivity using sidewalks and pathways with bicycle racks at convenient locations.
- (i) Lighting. Decorative pole mounted lighting fixtures shall have complementary design and be provided throughout the Project. Such lighting may include, but not be limited to, solar powered lighting fixtures. Additional landscape lighting may include low level lighting and occasional accent lighting.
- (j) Vehicle Charging Stations. Subject to financial viability, the Owner shall make a good faith, commercially reasonable effort to install electric vehicle charging stations within the Project.

## **SECTION 8. SITE DEVELOPMENT REQUIREMENTS**

- (a) The following table lists the general uses, maximum square footage and minimum parking requirements for the Project. Parking requirements may be modified at Owner's request during site plan submittals based on parking

ratio criteria in the Site Development Data Table that are applicable within the Property.

**TABLE 8.1 – SITE DEVELOPMENT REQUIREMENTS**

Use	Tract / Lot	Maximum Quantity	Unit	Minimum Parking Spaces	per Quantity of Units
<b>Infrastructure/Common Area/etc.</b>	A	N/A	N/A	0	0
<b>Marina</b>	1	100	Slips	1	4
<b>Ship Store / Dock Master</b>	1,2	3,000	SF	1	375
<b>Restaurant / Bar</b>	1,2	10,000	SF	1	100 <sup>1</sup>
<b>Hotel</b>	3	150	Keys	1	1
<b>Hotel Meeting Space</b>	3	5,000	SF	1	200
<b>Townhouses</b>	3, 4 and/or 5	299 <sup>2</sup>	Units	2	1
<b>Multifamily Residential</b>	3, 4	299	Units	1.5	1
<b>Existing Multifamily Residential</b>	6	72	Units	1.5	1

<sup>1</sup> Includes outdoor eating/drinking areas.

<sup>2</sup> The maximum number of total residential units permitted in the Project is 371, which may consist of multifamily residences, condominiums, or townhouses.

**TABLE 8.2 – SETBACK<sup>3</sup>, HEIGHT<sup>4</sup> AND OTHER REQUIREMENTS**

	<b>TRACT A</b>	<b>LOT 1</b>	<b>LOT 2</b>	<b>LOT 3<sup>5</sup></b>	<b>LOT 4</b>	<b>LOT 5</b>	<b>LOT 6</b>
<b>Maximum Height</b>	N/A <sup>6</sup>	35'	35'	80'	80'	45'	N/A <sup>7</sup>
<b>Minimum ICW ROW Setback</b>	N/A	N/A	N/A	N/A	N/A	0'	0'
<b>Minimum Country Club Waterway Setback</b>	0'	0'	0'	N/A	N/A	10'	N/A
<b>Minimum Marina Setback</b>	0'	0'	10'	10'	10'	10'	N/A
<b>Minimum Tract A Setback</b>	N/A	0'	0'	0'	0'	0'	0'
<b>Minimum Interior Side Setback<sup>8</sup></b>	0'	0'	0'	10'	10'	N/A	N/A
<b>Maximum ISR<sup>9</sup></b>	N/A	0.7	0.7	0.7	0.7	0.7	N/A
<b>Maximum FAR<sup>10</sup></b>	N/A	0.55	0.55	0.55	0.55	0.55	N/A

(b) Emergency Services. Fire protection requirements for the Project will be met through a system of fire hydrants installed by the Owner in accordance

<sup>3</sup> All setbacks will be measured from the lot line to the foundation of the vertical building structure.

<sup>4</sup> Building heights shall be measured in accordance with the LDC.

<sup>5</sup> Those portions of any buildings lying within the westerly 60' of Lot 3 shall be limited to a Height of 60'; however portions of such Lot 3 buildings situated east of such mark shall be limited to a Height of 80'.

<sup>6</sup> The existing Parking Garage is limited to its existing height.

<sup>7</sup> The Existing Condominium is limited to its existing height.

<sup>8</sup> Interior side setbacks may be eliminated if Lots as depicted on the MPD Conceptual Master Plan are combined for development.

<sup>9</sup> ISR (impervious surface ratio) is calculated on the total acreage embraced by the MPD (17.64 +/- acres) rather than individual lots, and all of the marina basin and stormwater pond areas shall be calculated as "open space"

<sup>10</sup> FAR (floor area ratio) is only applicable to non-residential uses and calculated on the total acreage embraced by the MPD rather than individual lots.

with City standards. The locations of fire hydrants will be shown on the final site plans or subdivision plans. The water requirements for the fire system will be served by the City.

- (c) Maintenance. All lands within the Project shall be maintained by their respective owners, and not by the City.
- (d) All services for the Project, including utilities, fire protection, solid waste, telephone, electricity, cable television, fiber optics, and stormwater management shall be provided by the responsible parties. All new utilities serving the Project shall be installed underground except wells and pump stations. Water and wastewater services will be provided by the City of Palm Coast.

**SECTION 9. TRAFFIC.** A traffic impact analysis methodology reasonably acceptable to the Applicant and City will be determined prior to initiating the Traffic Impact Analysis to determine the specific analysis criteria (i.e. times and locations). In general, a traffic impact analysis will be performed consisting of the review of projected AM and PM peak hour flows on the study area roadways and intersections. The review will include capacity analysis for roadways and intersections utilizing projected AM and PM peak hour flows in order to determine the adequacy of existing roadways/intersections and the need for improvement recommendations. The traffic impact analysis must be submitted by the Owner with each application for subdivision master plan or master site plan review, which shall include an analysis of the intersection of Club House Drive and Palm Harbor Parkway to determine the necessity of a traffic signal and/or turn lanes.

**SECTION 10. PROJECT DENSITY.**

The City Council of the City of Palm Coast has determined the Project satisfies the criteria set forth in Policy 1.1.2.2 of the Comprehensive Plan's Future Land Use Element permitting an increase in densities and/or intensities for the Project. The residential unit count within the Project shall initially be limited to 264 total units but may be increased as provided in this Section 10. Owner may elect, at any time, to increase the residential unit count to 371 total residential units by a one-time fulfillment of the following conditions ("Public Benefit Conditions") occurring prior to or concurrent with, and conditioned upon, issuance of the first Technical (or other "final") Site Plan approval allowing the Project to first exceed 264 total residential units. In this regard, Owner shall:

- (a) Provide the City with an easement co-terminus with this MPD Agreement to maintain a "Welcome to Palm Coast" type panel comprising at least 25% of Owner's sign or a minimum of 15 square feet in area on the Intracoastal Waterway, which sign shall be subject to regulatory approval and compatible in all respects with other panels on Owner's private sign in the same location. Such sign may be a freestanding sign up to 128 square feet in area and following the City's multitenant development standards for signs.
- (b) Design, construct, and fund the reasonable cost of the sign referenced above, including the City's panel.
- (c) Renovate, remodel, or construct (or submit an application for permits for same) the pavilion/gazebo along the Intracoastal Waterway, to the extent permitted by applicable regulatory agencies. Such gazebo project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units.
- (d) Renovate, remodel, or construct (or submit an application for permits for same) the Ship's Store, which may include and be combined with a restaurant. Such

Ship's Store project may be conducted and completed simultaneously with any other activity which causes the Project to exceed 264 constructed total residential units. Such Ship's Store project must consist of at least material renovation work exceeding modest cosmetic upgrades.

- (e) Maintain a Clean Marina designation pursuant to the Florida Department of Environmental Protection ("FDEP") Clean Marina Program or a comparable environmental program; or maintain adherence to the substantive criteria for the FDEP's Clean Marina Program as exists as of the date of this MPD Agreement. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (e) shall be regulated exclusively by means equivalent to municipal code enforcement.
- (f) Operate a marine vessel fuel sale operation at the marina (subject to regulatory approval and commercially reasonable viability).
- (g) Provide the City of Palm Coast with a one-time right of first offer (i.e., first opportunity to negotiate in good faith) to purchase the marina, prior to Owner pursuing a sale of the marina to a third party. Such one-time right of first offer shall expire one (1) year after issuance of the first Certificate of Occupancy of any portion of the Project which causes total constructed residential units to exceed 264.
- (h) Provide a minimum of three (3) marina wet slips for restaurant patron short term daily use, but only to the extent and at the times a sit-down restaurant with at least 4,000 square feet of gross floor area and at least 75 seats for patrons is open and operating within the Project. The enforcement rights and obligations of the City and Owner as to this ongoing (as opposed to one-time) condition (h)



shall be regulated exclusively by means equivalent to municipal code enforcement.

**SECTION 11. REAL PROPERTY RIGHTS.** Nothing in this MPD Agreement shall be deemed a prohibited exaction under Fla. Stat. 70.45, and Owner agrees it has not suffered any damages under that statute.

**SECTION 12. BREACH; ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION.**

- (a) In the event of a breach hereof by either party hereto, the other party hereto shall have all rights and remedies allowed by law, including the right to specific performance of the provisions hereof.
- (b) In the event that a dispute arises under this MPD Agreement, the parties shall attempt to resolve all disputes informally. In the event of a failure to informally resolve all disputes, the City, the Association, and Owner agree to engage in mediation before a certified Circuit Court mediator selected by the parties. In the event that the parties fail to agree to a mediator, a certified mediator may be selected by each party and the certified mediators so selected shall then select a single certified mediator, who is not one of the originally selected mediators, to serve as the sole mediator. The parties shall equally pay all costs of mediation. A party who unreasonably refuses to submit to mediation may not later object in Circuit Court that the other party failed to comply with this Section 10(b) by not participating in the mediation prior to filing suit.

- (c) Prior to the City filing any action or terminating this MPD Agreement as a result of a default under this MPD Agreement, the City shall first provide the Owner written notice of the said default. Upon receipt of said notice, the Owner shall be provided a thirty (30) day period in which to cure the default to the reasonable satisfaction of the City prior to the City filing said action or terminating this MPD Agreement. If thirty (30) days is not a reasonable period of time in which to cure the default, the length of the cure period shall be extended for a time period acceptable to the City, but in no case shall the cure period exceed three hundred sixty (360) days from the initial notification of default. Upon proper termination of the MPD Agreement, the Owner shall immediately be divested of all rights and privileges granted hereunder only as pertains to all undeveloped portions of the Project which have not yet received Master Site Plan, Master Subdivision, or Technical Site Plan approval, and not as pertains to portions of the Project which have received such approval(s). The remaining unapproved property will be considered to be zoned pursuant to the PUD.

**SECTION 13. NOTICES.**

- (a) All notices required or permitted to be given under this MPD Agreement shall be in writing and must be delivered to the City, the Association, or the Owner at its address set forth below (or such other address as may be hereafter be designated in writing by such party).
- (b) Any such notice shall be personally delivered or sent by registered or certified mail or overnight courier.

(c) Any such notice will be deemed effective when received (if sent by hand delivery, or overnight courier) or on that date which is three (3) days after such notice is deposited in the United States mail (if sent by registered or certified mail).

(d) The parties' addresses for the delivery of all such notices are as follows:

As to the City: City Manager  
160 Lake Avenue  
Palm Coast, Florida, 32164

As to the Owner: JDI Palm Coast, LLC  
1 Information Way, Suite 350  
Little Rock, AR 72202

As to the Association: Palm Coast Resort Community Association, Inc.  
1 Information Way, Suite 350  
Little Rock, AR 72202

**SECTION 14. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this MPD Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this MPD Agreement shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this MPD Agreement.

**SECTION 15. SUCCESSORS AND ASSIGNS.**

(a) This MPD Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the City, the Owner, and the Association, and their respective successors-in-interest. The terms and conditions of this MPD Agreement similarly shall be binding upon the Subject Property and shall run with the land and the title to the same.

- (b) This MPD Agreement touches and concerns the Subject Property.
- (c) The Owner and the Association have expressly covenanted and agreed to this provision and all other terms and provisions of this MPD Agreement.

**SECTION 16. GOVERNING LAW/VENUE/COMPLIANCE WITH LAW.**

- (a) This MPD Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the Code of Ordinances of the City.
- (b) Venue for any dispute shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida, or the Middle District of Florida, for federal actions.
- (c) The Owner and the Association shall fully comply with all applicable local, state, and federal environmental regulations and all other laws of similar type or nature.
- (d) Without waiving the Owner's and the Association's potential rights, remedies and protections or the City's defenses pursuant to Chapter 70 of the Florida Statutes, as may be amended, this MPD Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development generally applicable to the entire area of the City, such as requiring compliance with the City capital facilities plan; parks master plan, including parks and trail dedications; utility construction and connections; mandating utility capacities; requiring street development or other such similar land development regulations and requirements.
- (e) If state or federal laws are enacted after execution of this MPD Agreement, which are applicable to and preclude the parties' compliance with this MPD

Agreement, this MPD Agreement shall be modified as necessary to comply with the relevant law.

- (f) This MPD Agreement shall also not be construed to prohibit the City from adopting lawful impact fees applicable to the Project and the master planned development authorized hereunder.

**SECTION 17. TERM / EFFECTIVE DATE.** This MPD Agreement shall be effective upon adoption by the City Council of the City and execution of this MPD Agreement by all parties. This MPD Agreement may be developed in phases and shall remain active, provided new construction commences within 5 years from its effective date and is completed within 15 years of its effective date. The term of this MPD Agreement may be extended for additional 5 year periods by the City Council, at a duly noticed public hearing held no later than three (3) months after the expiration of the then current term, after review by the PLDRB.

**SECTION 18. RECORDATION.** Upon adoption by the City Council of the City of Palm Coast, Florida and execution of this MPD Agreement by all parties, this MPD Agreement and any and all amendments hereto shall be recorded by the City with the Clerk of the Circuit Court of Flagler County within thirty (30) days after its execution by the City at the Owner's expense, and the MPD Agreement shall run with the land.

**SECTION 19. PERMITS.**

- (a) The failure of this MPD Agreement to address any specific City, county, state, or federal permit, condition, term, or restriction shall not relieve the Owner or the City of the requirement of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

- (b) All development and impact fees charged by the City for construction or development of subdivisions or site plans, applicable to the Project, shall be paid by the Owner or applied to any impact fee credits held by the Owner at the time the City issues a building permit or a certificate of occupancy.

**SECTION 20. THIRD PARTY RIGHTS.** This MPD Agreement is not a third-party beneficiary contract, and shall not in any way whatsoever create any rights on behalf of any third party.

**SECTION 21. TIME IS OF THE ESSENCE.**

- (a) Strict compliance shall be required with each and every provision of this MPD Agreement.
- (b) Time is of the essence to this MPD Agreement and every right or responsibility required herein shall be performed within the times specified.

**SECTION 22. ATTORNEY'S FEES.** In the event of any action to enforce the terms of this MPD Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and all costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the trial, or appellate level.

**SECTION 23. FORCE MAJEURE.** The parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specific time period ("Time Period") constitutes a default under terms of this MPD Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party including, but not limited to, acts of God, acts of government authority (other than the City's own acts), acts of public enemy or war, terrorism, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings

beyond the control of such party, or severe adverse weather conditions (“Uncontrollable Event”), then notwithstanding any provision of this MPD Agreement to the contrary, that failure shall not constitute a default under this MPD Agreement and any Time Period prescribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event.

**SECTION 24. CAPTIONS.** Sections and other captions contained in this MPD Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this MPD Agreement, or any provision hereof.

**SECTION 25. INTERPRETATION.**

- (a) The Owner, the Association, and the City agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this MPD Agreement.
- (b) This MPD Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this MPD Agreement.

**SECTION 26. FURTHER ASSURANCES.** Each party agrees to sign any other and further instruments and documents consistent herewith, as may be necessary and proper to give complete effect to the terms of this MPD Agreement.

**SECTION 27. COUNTERPARTS.** This MPD Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken

together, shall constitute one (1) and the same document.

**SECTION 28. MODIFICATIONS / AMENDMENTS/NON-WAIVER.**

- (a) Amendments to and waivers of the provisions herein shall be made by the parties only in writing by formal amendment. This MPD Agreement shall not be modified or amended except by written agreement executed by all parties hereto and upon approval of the City Council of the City.
- (b) Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

**SECTION 29. ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENTS.**

This MPD Agreement constitutes the entire agreement between the parties and supersedes all previous oral discussions, understandings, and agreements of any kind and nature as between the parties relating to the subject matter of this MPD Agreement.

**(SIGNATURES AND NOTARY BLOCKS ON NEXT PAGE)**



**IN WITNESS WHEREOF**, the City, the Owner, and the Association have caused this MPD Agreement to be duly executed by his/her/its/their duly authorized representative(s) as of the date first above written.

**OWNER'S CONSENT AND COVENANT:**

**COMES NOW**, the Owner on behalf of itself and its successors, assigns and transferees of any nature whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this MPD Agreement.

WITNESSES:

JDI Palm Coast, LLC  
A Georgia Limited Liability Company

\_\_\_\_\_

(print)

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

\_\_\_\_\_

(print)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, the manager of \_\_\_\_\_, which is the manager of JDI Palm Coast, LLC, a Georgia limited liability company, on behalf of the JDI Palm Coast, LLC. He \_\_\_ is personally known to me or \_\_\_ who has produced \_\_\_\_\_(type of identification) as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**ASSOCIATION'S CONSENT AND COVENANT:**

**COMES NOW**, the Association on behalf of itself and its successors, assigns and transferees of any nature whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this MPD Agreement.

WITNESSES:

Palm Coast Resort Community Association,  
Inc.  
A Florida Not for Profit Corporation

\_\_\_\_\_

(print)

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

\_\_\_\_\_

(print)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, the President of the Palm Coast Resort Community Association, Inc., a Florida Not for Profit Corporation, on behalf of the Corporation. He \_\_\_ is personally known to me or \_\_\_ who has produced \_\_\_\_\_(type of identification) as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
David Alfin, Mayor

ATTEST:

\_\_\_\_\_  
Virginia A. Smith, City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Neysa Borkert, City Attorney

STATE OF FLORIDA

COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by David Alfin, Mayor \_\_\_\_\_ (date) by \_\_\_\_\_ (name of person acknowledging) , who is personally known to me or who has produced (type of identification) as identification.

\_\_\_\_\_  
Notary Public – State of Florida

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## **EXHIBIT "A"**

### **Legal Description of Subject Property**

#### **PARCEL 1 ("Harborside Property")**

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF COMMENCEMENT REFERENCE BEING THE SOUTHEASTERLY CORNER OF THE SUBDIVISION PLAT COUNTRY CLUB COVE SECTION-3 MAP BOOK 6, PAGE 8, THENCE NORTH 20°57'23" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (104' R/W) (PLATTED AS YOUNG PARKWAY) A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE NORTH 20°57'23" WEST, A DISTANCE OF 568.90 FEET TO A POINT ON THE SOUTHERLY LINE OF CLUB HOUSE WATERWAY, THENCE DEPARTING PALM HARBOR PARKWAY RUN NORTH 75°49'57" EAST ALONG THE SOUTHERLY LINE OF SAID WATERWAY, A DISTANCE OF 50.71 FEET, THENCE DEPARTING SAID SOUTHERLY LINE OF SAID WATERWAY RUN NORTH 14°10'03" WEST, A DISTANCE OF 18.32 FEET, THENCE RUN NORTH 75°49'57" EAST, A DISTANCE OF 137.00 FEET, THENCE RUN NORTH 43°22'02" EAST, A DISTANCE OF 61.55 FEET, THENCE RUN NORTH 68°48'16" EAST, A DISTANCE OF 255.62 FEET, THENCE RUN SOUTH 20°57'23" EAST, A DISTANCE OF 41.83 FEET, THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 90.90 FEET, THENCE RUN SOUTH 20°57'23" EAST ALONG THE EASTERLY LINE OF THE MARINA BASIN, A DISTANCE OF 18.31 FEET, THENCE RUN NORTH 69°02'37" EAST, A DISTANCE OF 245.01 FEET, THENCE RUN SOUTH 20°49'47" EAST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF THE INTRACOASTAL WATERWAY, A DISTANCE OF 11.95 FEET, THENCE DEPARTING SAID LINE RUN SOUTH 81°28'20" EAST, A DISTANCE OF 34.51 FEET; THENCE RUN SOUTH 20°49'46" EAST, A DISTANCE OF 326.24 FEET; THENCE RUN SOUTH 69°10'14" WEST, A DISTANCE OF 64.03 FEET; THENCE RUN SOUTH 02°50'30" EAST, A DISTANCE OF 31.50 FEET; THENCE RUN SOUTH 43°14'16" WEST, A DISTANCE OF 101.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 49.19 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 70°45'50", A RADIUS OF 39.82 FEET, A CHORD BEARING OF SOUTH 39°02'14" WEST AND A CHORD DISTANCE OF 46.12 FEET TO THE POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE RUN NORTH 86°30'35" WEST, A DISTANCE OF 48.71 FEET; THENCE RUN SOUTH 131°5'43" WEST, A DISTANCE OF 5.88 FEET; THENCE RUN SOUTH 05°49'47" WEST, A DISTANCE OF 26.63 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE WESTERLY A DISTANCE OF 90.81 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 52°29'13", A RADIUS OF 99.13 FEET, A CHORD BEARING OF SOUTH 48°39'52" WEST AND A CHORD DISTANCE OF 87.67 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 70°21'07" WEST, A DISTANCE OF 73.04 FEET; THENCE RUN SOUTH 68°05'47" WEST, A DISTANCE OF 113.67 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 102.04 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 13°59'42", A RADIUS OF 417.75 FEET, A CHORD BEARING OF SOUTH 67°15'17" WEST AND A CHORD DISTANCE OF 101.79 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH 56°08'49" WEST, A DISTANCE OF 25.68 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 49.37 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 16°51'18", A RADIUS OF 167.81 FEET, A CHORD BEARING OF SOUTH 49°22'57" WEST AND A CHORD DISTANCE OF 49.19 FEET TO A POINT OF NON-TANGENCY; THENCE RUN SOUTH

53°30'16" WEST, A DISTANCE OF 18.51 FEET; THENCE RUN SOUTH 17°59'47" EAST, A DISTANCE OF 16.81 FEET TO A POINT ON A NON-TANGENT CURVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 57.34 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 13°08'25" WEST, A RADIUS OF 250.00 FEET, A CHORD BEARING OF SOUTH 75°00'53" WEST AND A CHORD DISTANCE OF 57.21 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH 69°02'37" WEST, A DISTANCE OF 82.92 FEET TO THE POINT OF BEGINNING.

PARCEL 2 ("Association Property")

A PARCEL OF LAND LYING IN GOVERNMENT SECTIONS 38 AND 39, TOWNSHIP 11 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF THE PLAT, COUNTRY CLUB COVE SECTION - 3, MAP BOOK 6, PAGE 8, THENCE NORTH 20°57'23" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (PLATTED AS YOUNG PARKWAY) (104' R/W) A DISTANCE OF 125.00 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY RUN NORTH 69°02'37" EAST, A DISTANCE OF 82.92 FEET TO A POINT OF CURVATURE, CONCAVE SOUTHERLY, THENCE EASTERLY A DISTANCE OF 57.34 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°08'25", A RADIUS OF 250.00 FEET, A CHORD BEARING OF NORTH 75°00'53" EAST AND A CHORD DISTANCE OF 57.21 FEET TO THE POINT OF INTERSECTION WITH A NON-TANGENT LINE, THENCE RUN NORTH 17°59'47" WEST, A DISTANCE OF 16.81 FEET, THENCE RUN NORTH 53°30'16" EAST, A DISTANCE OF 18.51 FEET TO A POINT OF CURVATURE CONCAVE SOUTHEASTERLY, THENCE EASTERLY A DISTANCE OF 49.37 FEET ALONG THE ARC OF SAID CURVE, TO THE RIGHT, HAVING A CENTRAL ANGLE OF 16°51'18" A RADIUS OF 167.81 FEET, A CHORD BEARING OF NORTH 49°22'57" EAST AND A CHORD DISTANCE OF 49.19 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 56°08'49" EAST, A DISTANCE OF 25.68 FEET TO A POINT OF CURVATURE CONCAVE SOUTHERLY, THENCE EASTERLY A DISTANCE OF 102.04 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 13°59'42", A RADIUS OF 417.75 FEET, A CHORD BEARING OF NORTH 67°15'17" EAST AND A CHORD DISTANCE OF 101.79 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 68°05'47" EAST, A DISTANCE OF 113.67 FEET; THENCE RUN NORTH 70°21'07" EAST, A DISTANCE OF 73.04 FEET TO A POINT OF CURVATURE CONCAVE NORTHWESTERLY, THENCE EASTERLY A DISTANCE OF 90.81 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 52°29'13", A RADIUS OF 99.13 FEET, A CHORD BEARING OF NORTH 48°39'52" EAST AND A CHORD DISTANCE OF 87.67 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 05°49'47" EAST, A DISTANCE OF 26.63 FEET; THENCE RUN NORTH 13°15'43" EAST, A DISTANCE OF 5.88 FEET; THENCE RUN SOUTH 86°30'35" EAST, A DISTANCE OF 48.71 FEET TO A POINT OF NON-TANGENCY OF A CURVE CONCAVE SOUTHEASTERLY, THENCE EASTERLY A DISTANCE OF 49.19 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 70°45'50", A RADIUS OF 39.82 FEET, A CHORD BEARING OF NORTH 39°02'14" EAST AND A CHORD DISTANCE OF 46.12 FEET TO A POINT OF NON-TANGENCY; THENCE RUN NORTH 43°14'16" EAST, A DISTANCE OF 101.07 FEET; THENCE RUN NORTH 02°50'30" WEST, A DISTANCE OF 31.50 FEET; THENCE RUN NORTH 69°10'14" EAST, A DISTANCE OF 64.03 FEET; THENCE RUN NORTH 20°49'46" WEST, A DISTANCE OF 326.24 FEET; THENCE RUN SOUTH 81°28'20" EAST, A DISTANCE OF 148.73 FEET; THENCE RUN SOUTH 21°16'59" EAST A DISTANCE OF 668.31 FEET; THENCE RUN SOUTH 69°02'37" WEST, A DISTANCE OF 165.00 FEET; THENCE RUN SOUTH 66°01'12" WEST, A DISTANCE OF 317.67 FEET; THENCE RUN NORTH 33°24'47" WEST, A DISTANCE OF 43.00 FEET; THENCE RUN NORTH 25°19'15" WEST, A DISTANCE OF 65.48 FEET; THENCE RUN SOUTH 69°37'11" WEST, A DISTANCE OF 144.48 FEET TO A POINT OF

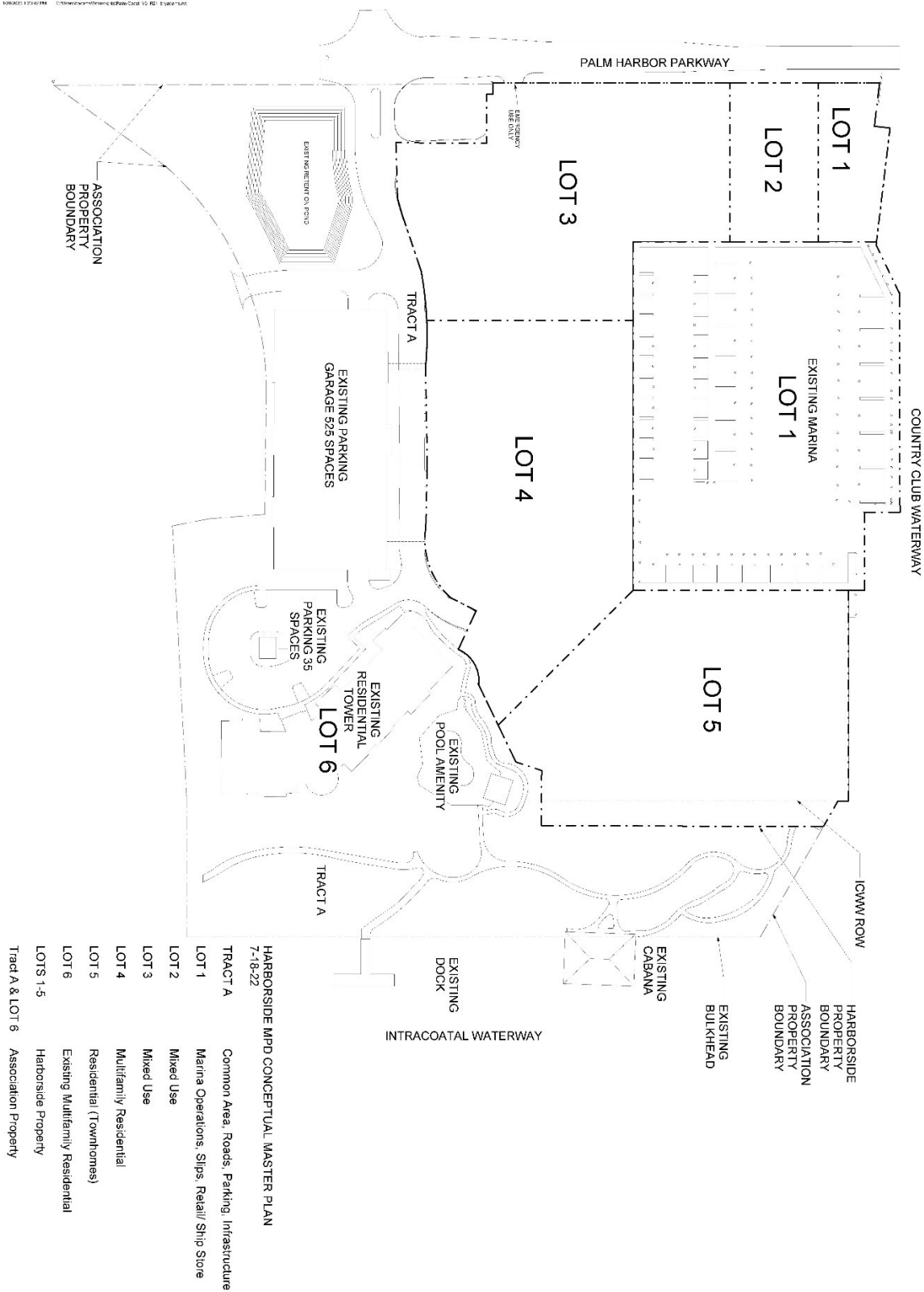
CURVATURE CONCAVE SOUTHEASTERLY, THENCE WESTERLY A DISTANCE OF 323.49 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF  $54^{\circ}12'33''$ , A RADIUS OF 341.91 FEET, A CHORD BEARING OF SOUTH  $42^{\circ}30'58''$  WEST AND A CHORD DISTANCE OF 311.56 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH  $15^{\circ}24'47''$  WEST, A DISTANCE OF 133.46 FEET TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF PALM HARBOR PARKWAY (PLATTED AS YOUNG PARKWAY) (104' R/W); THENCE RUN NORTH  $20^{\circ}57'23''$  WEST ALONG THE AFORESAID EAST RIGHT-OF-WAY, A DISTANCE OF 267.58 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

**EXHIBIT “B”**

MPD Conceptual Master Plan

On Following Page

① CONCEPTUAL SITE PLAN  
1" = 40'-0"



**A102**  
PUBLISHED BY THE  
FBI

LAND USE  
PLAN

**HARBORSIDE MPD**  
CLUB HOUSE DRIVE, PALM COAST, FL  
Project number: 0990  
Project Issue Date: 11-08-2022

Project Status

**Design Team**  
Architect:  
DESIGN AND  
CONSTRUCT ON  
INTERSTATE, LLC  
1 Information Way,  
Suite 300  
The Rock, AR 72202

**City:**  
CIVIL

**Landscaper:**  
LANDSCAPE  
STRUCTURAL  
STRUCTURAL

**Structural:**  
STRUCTURAL

**MECHANICAL:**  
MECHANICAL

**PLUMBING:**  
PLUMBING

**MEP**

**Design & Construction:**  
Integration, LLC  
1 Information Way  
Suite 300  
Little Rock, AR 72202  
501-376-1017  
www.dci-integration.com




**DESIGN +  
CONSTRUCTION**  
INTEGRATION



# Harborside Inn & Marina



## Legend

 Palm Coast City Limits

 Harborside

0 450 900 Feet




Map Created By: Planning Division




# Harborside Inn & Marina



## Legend

 Palm Coast City Limits

 Harborside

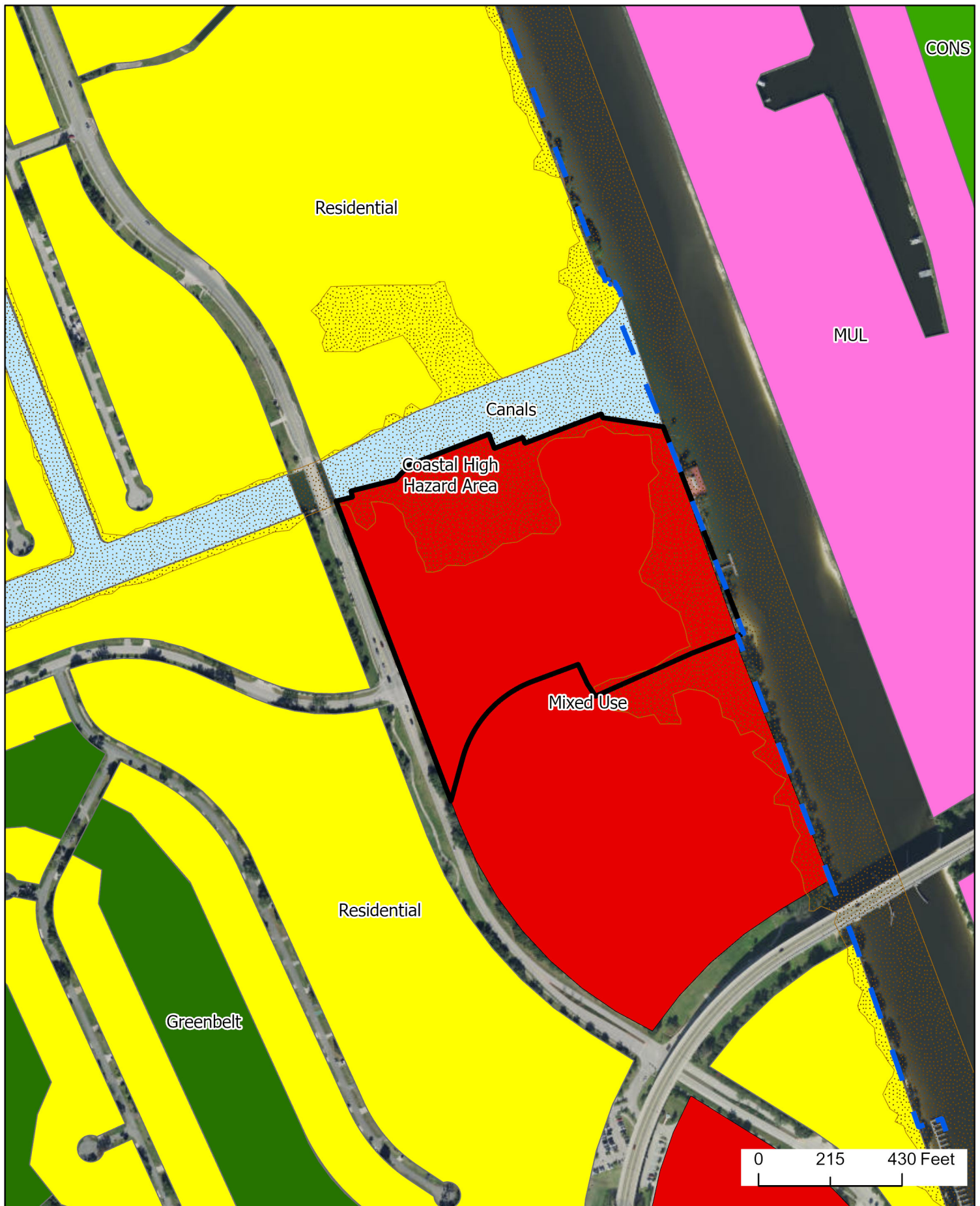
0 215 430 Feet







Map Created By: Planning Division







# Harborside Inn & Marina-FLUM



## Legend

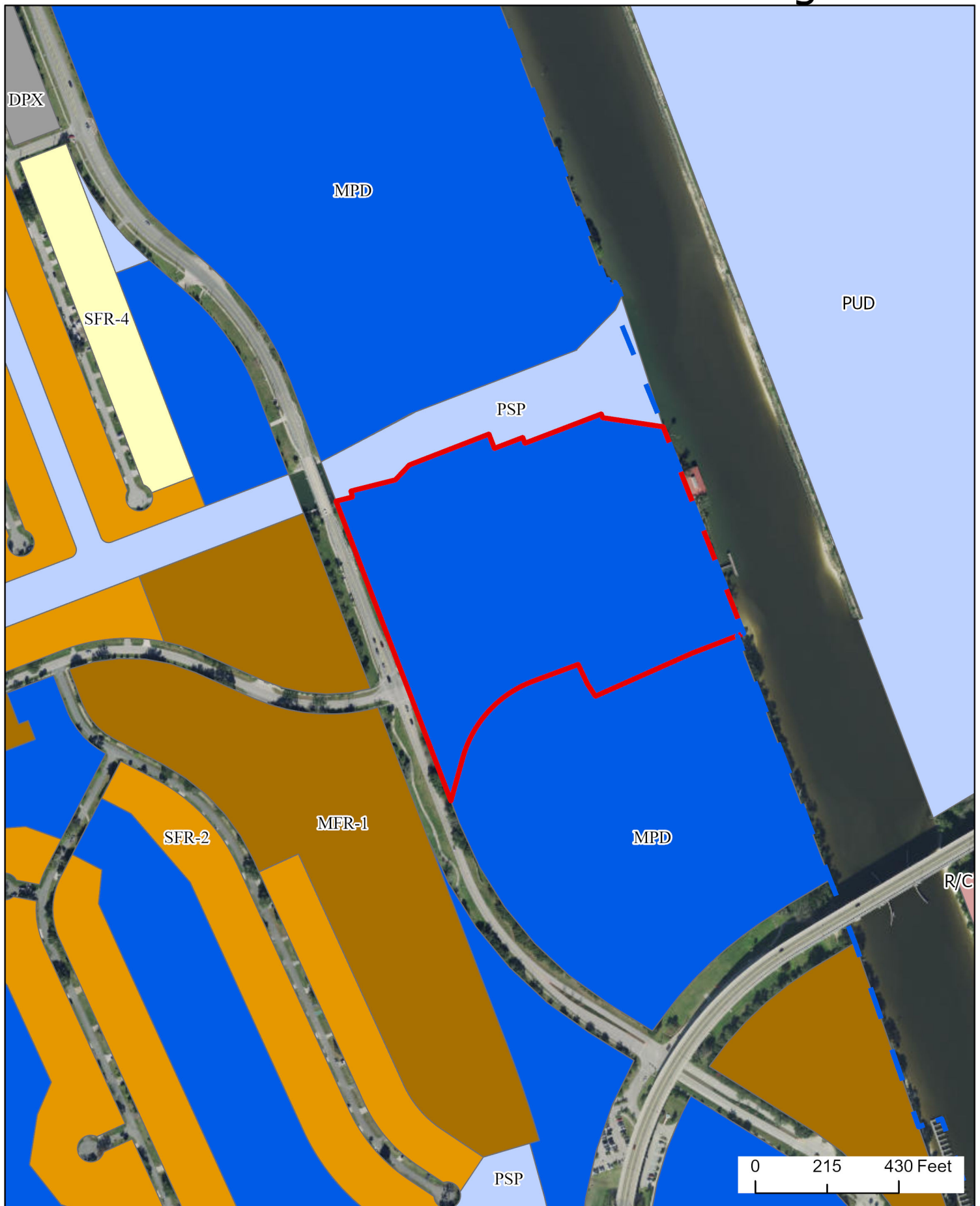
-  Palm Coast City Limits
-  Harborside
-  Palm Coast FLUM
-  Canals

-  Coastal High Hazard Area
-  Greenbelt
-  Mixed Use
-  Residential

-  Flagler FLUM
-  CONS
-  MUL



# Harborside Inn & Marina-Zoning



## Legend

Palm Coast City Limits  
 Harborside  
 Palm Coast Zoning  
 DPX

MFR-1  
 MPD  
 PSP  
 SFR-2

SFR-4  
 Flagler Zoning  
 PUD  
 R/C



# LIVINGSTON & SWORD, P.A.

## Attorneys At Law

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May 31, 2022

Ray Tyner  
Deputy Development Director  
City of Palm Coast  
Palm Coast, Florida 32164

Subject: JDI Palm Coast, LLC  
Application for Rezoning to Master Planned Development (MPD)

Dear Mr. Tyner:

Please find enclosed an application to rezone the property described in the application to MPD. In addition to the application for rezoning, which is enclosed with this letter, the requirements for the application are being submitted along with this letter via the City's Online Development Services portal.

An application for rezoning requires an analysis based upon the review findings as outlined in subsection 2.05.05 and subsection 2.06.03 of the Unified Land Development Code. This letter is a preliminary analysis of the criteria and will be supplemented and finalized before the application is considered by the Planning and Land Development Regulation Board after we receive and respond to staff comments to the application.

The review findings and analysis for subsection 2.05.05 are as follows:

- A. The proposed development must not be in conflict with or contrary to the public interest.

**Rezoning the property to MPD is not in conflict with or contrary to the public interest. The property is already subject to an existing PUD, which is being modified pursuant to the proposed Development Agreement. The proposed zoning entitlements and plan of development are compatible with the existing multi-family tower and consistent with the property's Mixed Use designation on the Future Land Use Map.**

- B. The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC.

**The property is within the Mixed Use future land use designation. The proposed zoning district is consistent with that designation as well as the relevant goals and objectives in the City of Palm Coast's comprehensive plans. The project**

---

391 Palm Coast Parkway SW #1  
Palm Coast, Florida 32137  
T 386.439.2945  
F 866.896.5573  
jay.livingston314@protonmail.ch

**proposes a mixture of residential and non-residential uses, including marina support facilities, residential and townhomes, as well as a hotel, restaurant and bar. The proposed densities and intensities for the project are consistent with Policy 1.1.1.3 and Objective 1.1.2 of the Future Land Use Element. Specifically, Policy 1.1.2.2 permits deviations from density and intensity standards “to promote and encourage creatively planned projects”.**

- C. The proposed development must not impose a significant financial liability or hardship for the City.

**The proposed development will not impose any financial liability or hardship on the City. In fact, the development will contribute impact fees to offset the impacts on City infrastructure and services. After the property is developed it will also increase the residential and non-residential tax base of the City as well as provide additional sales tax revenue.**

- D. The proposed development must comply with all other applicable local, state, and federal laws, statutes, ordinances, regulations, or codes.

**Development of the property will be in compliance with all relevant laws and regulations as part of the development review and approval process.**

The review findings and analysis for subsection 2.06.03 are as follows:

- A. Whether the rezoning is consistent with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.

**The requested rezoning is consistent with the property’s Mixed Use future land use designation. It is also consistent with and furthers the goals and objectives of all relevant adopted elements of the City’s Comprehensive Plan as explained in more detail above.**

- B. Its impact upon the environment or natural resources.

**The proposed development is within an existing mixed use development, which has already addressed environmental and natural resources on site and in the immediate area. The proposed development avoids and minimizes impacts to these resources.**

- C. Its impact on the economy of any affected area.

**The proposed development will have a positive impact on the economy of the affected area.**

- D. Its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste, or transportation systems.

**The proposed development will contribute all applicable impact fees for sewage disposal, potable water, drainage, fire, police protection, solid waste, or transportation, less any credits for previously paid but unused capacity reservations for water and sewer. The residential components of the project will contribute impact fees for schools as well as any proportionate fair share mitigation obligation that may be required to address any student station needs created by the development.**

E. Any changes in circumstances or conditions affecting the area.

**The surrounding area is and remains planned as a mixed use area suitable for the proposed mixture of residential and non-residential uses.**

F. Compatibility with proximate uses and development patterns, including impacts to the health, safety, and welfare of surrounding residents.

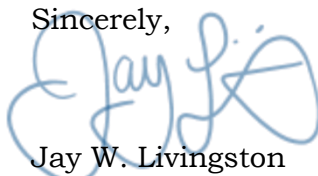
**The proposed development is compatible with the surrounding uses and development patterns. The eastern portion of the property is limited to townhouse with higher density residential uses to the west. This will ensure compatibility with the existing multi-family tower and avoid any conflicts with the non-residential uses proposed for the western portion of the property. It will also avoid non-residential traffic in the residential areas of the project. The location for the proposed hotel, restaurant, bar and marina support facilities will further these compatibility goals while also ensuring commercial visibility from the adjacent Palm Harbor Parkway.**

G. Whether it accomplishes a legitimate public purpose.

**The proposed development will provide a mixture of residential and non-residential uses to serve the onsite residents as well as the neighborhood and City as a whole. It will also ensure the long term viability of the marina, which is and has been a landmark in the City of Palm Coast since before the incorporation of the City.**

Please contact me if you have any questions, comments or require additional information.

Sincerely,



Jay W. Livingston

CC: JDI Palm Coast, LLC





**GENERAL APPLICATION:** ☒ Rezoning ☐ Special Exception  
☐ Nonstatutory Land Division/Parcel Reconfiguration ☐ Vacating Plat  
☐ Subdivision Master Plan ☐ Preliminary Plat ☐ Final Plat  
☐ Master Site Plan ☐ Nonresidential Controlling Master Site Plan  
☐ Technical Site Plan ☐ Site Plan Addition ☐ Development Order Modification  
☐ Variance ☐ Parking Flexibility  
☐ Wireless Communication Facility (new structure)

CD Plus Application #: \_\_\_\_\_ Application Submittal Date: \_\_\_\_\_  
Fee Paid: \$ \_\_\_\_\_ Date of Acceptance: \_\_\_\_\_  
Employee Name Accepting Application (print name): \_\_\_\_\_  
Rejected on \_\_\_\_\_ Rejected by: \_\_\_\_\_  
Reason for Rejection: \_\_\_\_\_

A. PROJECT NAME: Harborside  
B. LOCATION OF SUBJECT PROPERTY (PHYSICAL ADDRESS): \_\_\_\_\_  
15 Palm Coast Resort Blvd, Palm Coast, FL 32137; 120 Palm Coast Resort Blvd, Palm Coast, FL 32137  
C. PROPERTY APPRAISER'S PARCEL NUMBER(s): \_\_\_\_\_  
38-11-31-0000-01030-0000; 38-11-31-7103-000F0-0000  
D. LEGAL DESCRIPTION: \_\_\_\_\_ Subdivision Name: N/A Section: 38-39 Block: N/A Lot  
Phase Two, Bldg "D"; Phase Three, Bldg "C"; Phase One, Bldg "E"  
E. SUBJECT PROPERTY ACRES / SQUARE FOOTAGE: 17.6426 acres in total  
F. FUTURE LAND USE MAP DESIGNATION: Mixed Use EXISTING ZONING DISTRICT: MPD  
OVERLAY DISTRICT: District 2  
G. FLOOD ZONE: AE, X COMMUNITY PANEL NUMBER: 0129 DATE: 6/6/2018  
H. PRESENT USE OF PROPERTY: Air / Marina (2000); Condo Parking Garage (2804)  
I. DESCRIPTION OF REQUEST / PROPOSED DEVELOPMENT (MAY ATTACH ADDITIONAL SHEETS): \_\_\_\_\_  
MPD / Mixed-Use Development  
J. PROPOSED NUMBER OF LOTS: 5 lots (1-5) + 1 tract (A)  
K. CHECK APPROPRIATE BOX FOR SITE PLAN:  
☐ Tier 1 (up to 40,000 sq. ft. / 40 units)  
☐ Tier 2 (up to 100,000 sq. ft. / 100 units)  
☒ Tier 3 (exceeding 100,000 sq. ft. / 100 units)  
L. LIST BELOW ANY APPLICATIONS CURRENTLY UNDER REVIEW OR RECENTLY APPROVED ASSOCIATED WITH THIS APPLICATION:  
N/A  
M. WATER/SEWER PROVIDER: City of Palm Coast  
N. IS THERE AN EXISTING MORTGAGE? ☒ Yes ☐ No

General Application (sheet 1 of 2)

October 1, 2009 (Revised 4-9-2010)

VIII-43



**OWNER:**

Name: JDI Palm Coast LLC  
 Mailing Address: P.O. Box 64  
 Little Rock, AR 72203  
 Phone Number:  
 E-mail Address:

**APPLICANT / AGENT:**

Name: Livingston & Sword, P.A.  
 Mailing Address: 391 Palm Coast Pkwy SW, #1  
 Palm Coast, FL 32137  
 Phone Number: 386-439-2945  
 E-mail Address: jay.livingston314@gmail.com

**MORTGAGE HOLDER:**

Name: Chambers Bank  
 Mailing Address: P.O. Box 609  
 Danville, AR 72833  
 c/o: Philip Alexander  
 Phone Number: 479-495-4625  
 E-mail Address: philipalexander@chamber-bank.com

**ENGINEER OR PROFESSIONAL:**

Name: CPH, Inc.  
 Mailing Address: 520 Palm Coast Pkwy SW  
 Palm Coast, FL 32137 c/o  
 Jason Kellogg  
 Phone Number: 386-445-6569  
 E-mail Address: jkellogg@cphcorp.com

**PLANNER:**

Name:  
 Mailing Address:  
 Phone Number:  
 E-mail Address:

**TRAFFIC ENGINEER:**

Name:  
 Mailing Address:  
 Phone Number:  
 E-mail Address:

**SURVEYOR:**

Name:  
 Mailing Address:  
 Phone Number:  
 E-mail Address:

**LANDSCAPE ARCHITECT:**

Name:  
 Mailing Address:  
 Phone Number:  
 E-mail Address:

**ATTORNEY:**

Name: Livingston & Sword, P.A.  
 Mailing Address: 391 Palm Coast Pkwy SW, #1  
 Palm Coast, FL 32137  
 Phone Number: 386-439-2945  
 E-mail Address: jay.livingston314@gmail.com

**DEVELOPER OR DOCKMASTER:**

Name:  
 Mailing Address:  
 Phone Number:  
 E-mail Address:

I HEREBY CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS CORRECT:

Signature of owner OR person authorized to represent this application

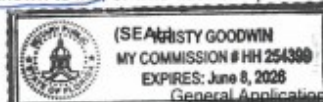
Signature(s)

Printed or typed name(s):

NOTARY: This instrument was acknowledged before me on this 31 day of May, 2022 by

Jay Livingston who is/are personally known to me or who has/have produced  
K. Goodwin as identification.

Signature of Notary Public, State of Florida



General Application (sheet 2 of 2)

October 1, 2009 (Revised 4-9-2010)


VIII-44



# Harborside - Surrounding Densities



## Legend

 Palm Coast City Limits

 Harborside

0 140 280 Feet





**ORDINANCE 2007-24**  
**AMENDING AND RESTATING ORDINANCE NUMBER 2005-18**  
**CENTEX PUD HARBORSIDE INN & MARINA**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AND AMENDING AND RESTATING ORDINANCE NUMBER 2005-18 (ORB 1288, PAGE 1924 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA) APPROVING THE PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT BETWEEN CENTEX HOMES (DBA AS CENTEX DESTINATION PROPERTIES) AND THE CITY OF PALM COAST FOR THE HARBORSIDE INN AND MARINA PUD, REZONING PROPERTY (17.64 ACRES AS DESCRIBED IN THIS ORDINANCE) FROM PUD TO A REVISED PUD; AMENDING THE CITY OF PALM COAST OFFICIAL ZONING DISTRICT MAP; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE TAKING OF IMPLEMENTING ADMINISTRATIVE ACTIONS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION AND PROVIDING FOR A CONTINGENT EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

**SECTION 1: LEGISLATIVE FINDINGS AND INTENT.**

- (a) The City Council of the City of Palm Coast hereby adopts the City staff report relating to the Development Agreement (DA) of the Harborside Inn Marina PUD as findings.
- (b) The City of Palm Coast has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.
- (c) This Ordinance is consistent with the Goals, Objectives and Policies of the *City of Palm Coast Comprehensive Plan*.

**ORDINANCE 2007-24**  
**Page 1 of 3**

- (d) The PUD DA will not adversely affect the orderly development of the City of Palm Coast.
- (e) The PUD DA will not adversely affect the health and safety of the residents or workers in the area proximate to the property described in this Ordinance and will not be detrimental to the use of the adjacent properties or the general neighborhood.

## **SECTION 2: DEVELOPMENT AGREEMENT**

- (a) Upon enactment of this Ordinance the PUD DA, an integral part of the existing Harborside Inn and Marina PUD, shall affect the following property zoned PUD:

### **LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A"**

- (b) The PUD DA and its exhibits, as attached hereto, with all appropriate signatures and joinders, is hereby adopted and approved by the City Council of the City of Palm Coast and shall constitute the regulations for the specific PUD District.
- (c) The PUD DA shall be recorded in the Official Records of Flagler County, Florida (Land Records) by the City Clerk.

## **SECTION 3. SEVERABILITY.**

If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

## **SECTION 4. CONFLICTS.**

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed with regard to the zoning classification assigned to the subject property.

## **SECTION 5. NON-CODIFICATION.**

This Ordinance shall be not be codified in the *City Code of the City of Palm Coast* or the *Land Development Code of the City of Palm Coast*; provided, however, that the actions taken herein shall be depicted on the zoning maps of the City of Palm Coast.

## **SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon passage and adoption; provided, however, that the change in the zoning from the current PUD to the PUD approved in this Ordinance shall not take effect until the running of the appeal periods relative to appealing the quasi-judicial

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Page 2 of 3

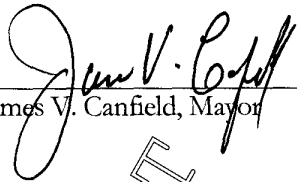
action of the City in rezoning the property that is the subject of this Ordinance or an action under Section 163.3215, *Florida Statutes* (30 days from the date of rendering) relative to the action taken in this Ordinance, or the successful defense of any timely filed appeal(s); provided, further, however, that that subject property shall not be deemed to be assigned the PUD zoning district until Ordinance Number 2007- ~~23~~ has become effective and, if Ordinance Number 2007-~~23~~ shall not become effective, then the subject property shall retain its current zoning classification/district; provided, further, however, that if an appeal is not filed as to either ordinance, then this Ordinance and Ordinance Number 2007-~~23~~ shall become effective simultaneously. The effective date of this Ordinance shall be memorialized by the filing of an affidavit by the City Manager in the Public Records of Flagler County evidencing the fact that this Ordinance has become effective consistent with the provisions of this Section.

**APPROVED** upon first reading the second day of October 2007.

**ADOPTED** upon second reading after due public notice and public hearing the sixteenth day of October 2007.

CITY OF PALM COAST, FLORIDA

ATTEST:

  
James V. Canfield, Mayor

  
Clare M. Hoeni, City Clerk

DOCUMENT

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**EXHIBIT "A"****HARBORSIDE INN AND MARINA****FIRST AMENDED AND RESTATED PLANNED UNIT DEVELOPMENT  
AGREEMENT (ORIGINAL RECORDED AT ORB 1253, PAGE 1924)****1.0 Introduction**

This is an amended and restated Planned Unit Development Agreement (this "PUD Agreement"), which amends and restates the prior agreement that is recorded at Official Records Book 1253, Page 1924, of the Public Records of Flagler County, Florida (the Original PUD Agreement). This PUD Agreement provides for the redevelopment of the development which has been known as the Harborside Inn and Marina on approximately 17.64 +/- acres located on Palm Harbor Parkway, in the City of Palm Coast, Florida, south of the Club House Waterway and west of the Intracoastal Waterway (the "Property" which is described in Exhibit "1" hereto). The development that was formerly on the site consisted of a 154-unit hotel, an 84-boat slip marina, restaurant, conference/meeting space, fueling facility, harbor master's shop, recreation facilities and associated parking. The Property is owned by Centex Homes, a Nevada general partnership, d/b/a Centex Destination Properties (herein the "Developer"), whose address is 1064 Greenwood Boulevard, Suite 200, Lake Mary, Florida 32746 (herein the "Developer"). The Developer and the City of Palm Coast (herein the "City") are collectively referred to herein as the "Parties." The City Council of the City has taken all actions relating to the zoning district change and the rezoning actions set forth herein in accordance with the requirements and procedures mandated by State law. This PUD Agreement is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Palm Coast*. The parties recognize the importance of the area of the Property with regard to the historical development of the City and the initial plans and development of the City both prior to incorporation and after.

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## 2.0 Project Description

**2.1 General** - The Developer shall be entitled to redevelop the Property as an icon destination resort to include enhanced conference and meeting facilities and a variety of recreational and leisure activities.

The Developer shall be entitled to redevelop the Property into a 209 unit icon resort condominium hotel and/or hotel with up to 47,000 square feet of accessory hotel uses to include, but not be limited to, ballrooms, restaurant, kitchen, fitness center, boardroom, conference/meeting space, back-of-house support areas, harbor master/ship store with fuel service, a parking garage, surface parking, pools, trails, outdoor leisure areas and other similar uses. The Developer shall be entitled to continue use of the Property for the existing 84 slip marina in order to provide slips for resort guests, private members and members of the public.

In addition, the Developer shall be entitled to develop up to 169 new resort condominium units, 72 of which have been constructed and issued a certificate of occupancy for Building "E" as depicted on the Conceptual Master Development Plan (Exhibit "2") (The improvements described above, together with the redevelopment referred to in Section 2.2 are collectively referred to as the "Project").

### 2.2 Redevelopment Of Ship Store; Developer's Intent; Contingent Rights Of City –

The Developer represents to the City that the Developer has the bona fide and good faith present intent to maintain the ship store and fueling and pump out facility (hereinafter "ship store") as a viable economic enterprise into the foreseeable economic future. The Developer, further, recognizes the significance and importance of the ship store to the citizens of the City, the general public, and the historic maritime community of users of the ship store.

The Developer shall be entitled to redevelop the existing ship store, which ship store shall be open to the general public. During the redevelopment of the structure encompassing the Ship Store the Developer shall be entitled to conduct its Ship Store operations from an appropriate trailer located in the general vicinity of the Ship Store.

Should the Developer determine that, based upon demonstrable economic and market considerations, the ship store cannot reasonably be maintained as a viable economic enterprise and use by the Developer, then, in such case, the Developer agrees that the City may utilize the ship store on a temporary basis (which shall mean the period of time during which the Developer does not intend to operate the ship store), after

accomplishing appropriate due diligence and entering into an appropriate lease with the Developer, at a rent of \$10.00 per month, with the City and the Developer engaging in bona fide and good faith negotiations to enter a lease agreement whereby the City would be granted adequate real property interests to continue the ship store use and operation for the temporary period. The Developer also agrees that it shall phase all development activities in a manner to reasonably ensure that any disruption in the operation or activities of the ship store is minimized to the greatest extent reasonably practicable and that such phasing, to the greatest extent reasonably practicable, eliminates any necessity for the ship store and its operations to be suspended for any period of time beyond a de minimus suspension for routine maintenance of a normative nature. Should such suspension of the activities of the ship store beyond a de minimus extent be reasonably necessary, the Developer shall provide reasonable written notice to the City prior to such suspension occurring in order for the City to have an adequate period of time to notify maritime users and the boating public of such suspension of use.

### **3.0 Boat Launch Facility/Boat Ramp Contribution.**

As a result of the Project, the Developer closed the privately-owned boat ramp on the Property. Prior to adoption of this PUD Agreement, the Developer has contributed the sum of \$200,000.00 to the City to partially fund a public boat launch facility/boat ramp in the City or to otherwise assist the City in remedying the loss of the boat ramp to the public as determined by the City. The Developer has no further obligations with respect thereto.

### **4.0 Land Use and Zoning**

**4.1 Future Land Use Map (FLUM)** - The FLUM designation for the Property set forth in the City's Comprehensive Plan is Mixed Use. This PUD Agreement and redevelopment of the site as set forth herein is consistent with the *Comprehensive Plan*.

**4.2 Zoning** - The zoning designation assigned to the Property is and shall be Planned Unit Development ("PUD").

### **5.0 PUD Conceptual Development Plan; Development Review**

**5.1 Development Plan Overview** - The PUD Conceptual Development Plan (Exhibit "2") depicts Project characteristics and the approximate location of boundaries, streets, easements, property lines and intended uses. The PUD Conceptual Development Plan depicts 209 unit hotel condominium and/or hotel; up to 47,000 square feet of accessory hotel uses to include, but not be limited to: ballrooms, restaurant, kitchen,



fitness center, boardroom; conference/meeting space; back-of-house support areas; harbor master/ship store with fuel service; 169 resort condominium units; parking garage; surface parking; pools, trails, outdoor leisure areas and other similar uses. The Developer shall be entitled to continue use of the Property for the 84 slip marina in order to provide slips for resort guests, private members and members of the public. The Developer shall be entitled to redevelop the Ship Store and fueling facility/pump out facility, which ship store and fueling facility shall be open to the general public. The PUD Conceptual Development Plan (Exhibit "A") also illustrates the general location of proposed access points, driveways, landscape buffers, and other pertinent information.

**5.2 Architecture** – The architectural features of the Project shall be a combination of Spanish Colonial, Spanish Mission, and Spanish Eclectic styles reflective of St. Augustine's Spanish architectural styling as substantially shown on the Conceptual Architectural Character attached (Exhibit "3").

**5.3 Modifications to the PUD Conceptual Development Plan** – The exact location and number of structures and units, roadways and other improvements as provided for in Exhibit "2" are subject to change as a result of the City's development review process and such modifications shall not require amendment of this PUD Agreement. The PUD Conceptual Development Plan (Exhibit "2") and the other plans and details attached to this PUD Agreement indicate an approved plan of development for the Project, but development of the Project is not limited to the specific details indicated on the aforesaid attachments. The exact location and number of structures and units, roadways and other improvements as provided for in Exhibit "2" may be subject to change as a result of the development review process and such modifications, if deemed Administrative Modifications as stated elsewhere in this PUD Agreement shall not require amendment of this PUD Agreement. Modifications to the exact location and number of structures and units, roadways and other improvements may be requested by the Developer and may be approved by the City Manager, acting as the Land Use Administrator ("LUA"), or designee, during review of conceptual site plan, construction documents, preliminary plats and final site plans for the Project or portions thereof provided, however, that the development standards contained in this PUD Agreement shall be maintained as expressed elsewhere. Moreover, the LUA is authorized to approve modifications to the Conceptual Development Plan, conceptual site plan, construction documents, and final site plans for the Property or portions thereof (collectively, "Plans" and individually, a "Plan") including, without limitation:

- (i). the Plans provide for no less than 209 resort condominium hotel and/or hotel units and the accessory hotel uses as described above;
- (ii). no Plan increases the maximum building height of any building or decreases the minimum required parking (for the applicable density) as otherwise provided in this PUD Agreement;
- (iii). setbacks from the Property's existing (as of the date this PUD Agreement is signed by the Parties) boundary lines are not decreased;
- (iv). the maximum Floor Area and Impervious Surface Ratio (each as hereinafter defined) are not exceeded; and
- (v). the applicable Plan maintains the development standards as expressed elsewhere in this PUD Agreement. All such modifications are hereinafter referred to as "Administrative Modifications".

The parties recognize that the Developer was entitled, prior to the approval of this PUD Agreement, to develop 97 additional resort condominium units inasmuch as the Developer having constructed an 8 story building (Building "E") comprised of 72 units and associated parking garage (Building "F"), thereby using 72 of the 169 condominium resort unit development entitlements. The Developer has, therefore, remaining entitlements to construct an 8 story resort condominium building (Building "D") and a 6 story resort condominium building (Building "C") consisting of 97 resort condominium units as well as an 8 story resort condominium hotel building (Building "B") consisting of 209 resort condominium hotel units

Additionally, this PUD Agreement provides the Developer with alternative entitlement scenarios to enable development of additional resort condominium hotel and/or hotel units, as follows:

(i). The Developer may, at the Developer's discretion, convert Building "D" into 2 buildings containing resort condominium, condominium hotel and/or hotel units/rooms, which buildings shall not exceed a maximum height of 6 stories with no additional unit entitlements being granted, but the Developer retaining the right to construct Building "B" and Building "C" to the extent of remaining unit entitlements.

(ii). The Developer may convert the units entitled to be developed as resort condominium units and/or condominium hotel units into hotel units; with all buildings complying with the height limitations stated elsewhere in this PUD Agreement and with no additional unit entitlements being granted.

(iii). The Developer may convert portions of the resort condominium units and condominium hotel units into hotel units within the hotel building complying with the height limitations stated elsewhere in this PUD Agreement and with no additional unit entitlements being granted.

**5.4 Conflicts between the PUD Agreement and PUD Conceptual Development Plan** - In the event of a conflict between the terms of this PUD Agreement and the PUD Conceptual Development Plan, the provisions of this PUD Agreement shall prevail.

**5.5 Land Development Code Applicability** –The development of the Project shall proceed in accordance with the terms of this PUD Agreement. In the event of an inconsistency between the terms of this PUD Agreement and the City's *Land Development Code (LDC)*, as it exists now or as it may be amended in the future, the terms of this PUD Agreement shall prevail. Where specific requirements are not contained in this PUD Agreement, the *LDC* shall apply to the extent that it does not conflict with the provisions of this PUD Agreement or the general intent of the PUD Conceptual Development Plan.

**5.6 Conceptual Site Plan Approval and Development Review Process** Approval of this PUD Agreement shall constitute conceptual site plan approval for the Project and approval of the Conceptual Development Plan. The Conceptual Development Plan contains a level of detail satisfactory to permit the Project to proceed directly to the processing of conceptual site plan, construction documents, preliminary plats and final site plans without requiring overall development plan review. The LUA is authorized to approve construction plans, preliminary plats and final site plans for the Project without further review of the Planning and Land Development Regulation Board ("PLDRB") or the City Council, provided however, that the hotel footprint (Building "B") as depicted herein, if reconfigured, not be extended northerly.

## **6.0 Phasing and Duration; Construction Traffic**

**6.1 Phasing** -The Project may be developed in a single phase or multiple phases, at the discretion of the Developer. Notwithstanding the above Phasing provisions, and upon reactivation of the Development, the initial phase of development shall include no more than 1 building containing resort condominium units. At the sole discretion of the Developer, the initial phase and/or the next phase of development thereafter shall include the Resort Hotel (Building "B") and related amenities including, but not be limited to, ballrooms, restaurant, kitchen, fitness center, boardroom and conference/meeting space. Infrastructure necessary to support each phase of the Project shall be constructed concurrently with or prior to that phase. The Developer shall notify the LUA of proposed phasing at the time of construction document submittal(s). Subject to the foregoing, phasing of the Project shall be within the sole discretion of the Developer. Each phase may include temporary construction trailers, which shall be removed upon completion of work in each applicable phase. In addition, during the redevelopment of the structure encompassing the Ship Store,

the Developer may install an appropriate trailer located in the general vicinity of the Ship Store. Any construction trailers, sales trailers, a trailer substituting for the Ship Store and construction staging areas shall be screened with LUA approved landscaping or other screening methods to the extent reasonable to minimize their view from Palm Harbor Parkway, Marina Cove and the Intracoastal Waterway. The location and screening of the existing construction and sales trailers currently located on the Property have been approved by the LUA. Each phase may include a temporary real estate sales trailer, which will be removed upon completion of work in each applicable phase or completion of sales activity, whichever occurs later.

**6.2 Duration of Construction Activities** - As to each of Buildings "B", Building "C", and Building "D," as may be modified, Developer shall not be permitted to commence the construction of any of those buildings unless the Developer has applied for the building permit for such building within 5 years after Effective Date (as hereinafter defined) of this PUD Agreement and thereafter maintains the active status of such permit; provided, however, that extensions of this time period, in increments of 2 years each, shall be granted by the City Council unless it concludes that to do so would adversely affect the health, safety and welfare of the community.

Developer may, at any time and from time to time, amend the previously submitted Plan(s), including, without limitation, the phasing shown thereon. Such amended Plan(s) shall be subject to approval of the LUA in the same fashion as the initial Plan(s) pursuant to Sections 5.3 and 5.7 above.

**6.3 Limitation on Construction Traffic** - Construction vehicle access to the Project shall be from Palm Harbor Parkway. Construction vehicles are prohibited from using Club House Drive west of its intersection with Palm Harbor Parkway to enter or exit the Project site.

## **7.0 Project Infrastructure**

The Project will include infrastructure to support the proposed uses, including water and wastewater service, drainage, private roads, vehicular and pedestrian internal and access facilities, and off site improvements needed to meet the City's concurrency requirements.

**7.1 Water/Wastewater** - The Project is located wholly within the City Limits and is therefore within the City's water and wastewater service areas. All proposed permanent uses within the Project will be served by central water and sewer services and shall meet the level of service concurrency requirements of the City's Comprehensive Plan for water and sewer. The City shall be the potable water and wastewater service provider for the Project upon payment of applicable fees. The City will operate and

maintain onsite water utilities dedicated to the City by the Developer. The City is under no obligation to accept the dedication of any facility.

All uses within the Project shall connect to central water and sewer services prior to issuance of a certificate of occupancy. Reclaimed water service is not currently available to the Project. The Developer shall meet applicable St. Johns River Water Management District (SJRWMD) rules for consumptive use of water, including requirements pertaining to use of the lowest quality water source as indicated in Rule 40C-2.301(4)(g), *Florida Administrative Code* ("F.A.C."). Further, as provided in Rule 40C-2.301(4)(f), F.A.C., "[w]hen reclaimed water is readily available it must be used in place of higher quality water sources unless the applicant demonstrates that its use is not economically, environmentally or technologically feasible."

The Project may include a master irrigation system(s) for common landscape areas. A master irrigation system(s) may utilize water sources as allowed by Chapter 40C-2, F.A.C., including, but not limited to groundwater, surface water, reclaimed water, and/or potable water. Appropriate permits will be obtained for consumptive uses of water.

**7.2 Internal Sidewalks and Vehicular Access** – The Project shall incorporate pedestrian and bicycle friendly internal sidewalks and vehicular access and shall be substantially as provided in the PUD Conceptual Development Plan ( Exhibit "2") and Conceptual Landscape Plan and Details (Exhibit "4"). A bicycle lane, 2' in width, shall be included within the internal driveway. Buildings shall be interconnected using walking paths or sidewalks, and bicycle racks shall be provided by the Developer for all buildings in locations to be reasonably determined by the Developer. The Project shall retain its existing access to Palm Harbor Parkway at Club House Drive. The linear walking trails located within the Intracoastal right-of-way shall be available for use by the general public. Access to the St. Joe Walkway shall be maintained. Notwithstanding the right of the public to utilize the aforesaid trails and walkway, the City shall have no obligation to maintain the same. The Project currently includes a private drive for internal movement and circulation. A new replacement private drive has recently been constructed by the Developer substantially in accordance with the PUD Conceptual Development Plan. The Developer has entered into a cross access agreement with the adjacent property owner(s) to the south to accommodate the driveway connection. The internal driveway will be privately owned and maintained, but the City shall have third party beneficiary rights therein. Easements of ingress and egress including, but not limited to, cross access easements as appropriate, shall be provided among and between tracts within the Property at the time of the recording of a plat establishing the individual

tracts to ensure interconnectivity between tracts and to ensure that all tracts will have access to a public roadway.

**7.3 Transportation Concurrency** – A traffic analysis has been submitted to the City that demonstrates that concurrency for the Project will be met. Any future concurrency analysis shall consider only new trips generated by the Project (trips in addition to those generated by the previous use on the site). Concurrency for the Project may be reserved upon the non-refundable payment of 25% of the applicable City impact fees by the Developer which payment shall be calculated to include those impact fees paid by the Developer prior to the date of this PUD Agreement. These fees shall be nonrefundable, but shall be credited against total impact fees due for the Project. The vesting of capacity will run with the vesting of the project, and cannot be transferred to another project.

**7.4 Drainage** - The Project shall include a management and storage of surface waters ("MSSW") system, as permitted by the SJRWMD. The MSSW system shall be planned, designed, permitted, and constructed by the Developer and maintained by the Developer and/or an Association as set forth herein. The MSSW system shall include management of stormwater runoff lakes, underground storage chambers, structures, piping, and facilities. Best Management Practices (BMPs) to treat, control, attenuate, and convey stormwater and surface waters may include, but are not limited to, vegetated natural buffers, swales, dry retention, and wet detention. BMPs shall include the aeration of stormwater ponds as determined to be necessary by the City. The Developer shall reserve unto itself and its respective successors and assigns, drainage easements for MSSW system access, construction, operation, repair, maintenance and replacement.

**7.5 Landscaping** - General landscaping around parking lots, roadways, entrances, and other common areas shall include ornamental and native plant material in accordance with the LDC. These areas shall be landscaped to include courtyards, foundation and other types of landscaping to reflect outdoor spaces and to blend with the natural vegetation, all as substantially provided in the Conceptual Landscape Plan and Details attached hereto as Exhibit "4", which were approved under Ordinance No. 2005-18, and are included within the Plans. All ornamental landscape beds and lawn areas shall have supplemental irrigation. Flexibility within this PUD Agreement allows for further refinement of site development, landscaping and preservation of existing vegetation. Supplemental landscaping substantially as shown on the Conceptual Landscape Plan and Details shall be required in buffer areas or other areas lacking in or devoid of natural vegetation.

**7.6 Lighting** – The lighting shall be substantially as provided in the Conceptual Lighting Plan and Details attached to this PUD Agreement as

Exhibit "5", which were approved under Ordinance No. 2005-18, and are included within the Plans. As to lighting sources installed after the Effective Date, (i) Developer shall provide lighting around all buildings and in the parking lot areas to enhance security for all residents, (ii) appropriate shielding methods, as approved by the LUA, shall be utilized to reasonably minimize off site glare to existing residential areas so as to prevent such glare from unreasonably interfering with existing residential areas, and (iii) the same shall not unreasonably interfere with the traveling public, either on or off site. Methods may include, but are not limited to, glare shields, full cut off fixtures and low wattage light fixtures.

**7.7 Signage** – Signage for the Project shall be as provided in the Conceptual Signage Plan and Details attached to this PUD Agreement as Exhibit "6", which were approved under Ordinance No. 2005-18, and are included within the Plans.

**7.8 Fire Protection** - Fire protection requirements for the Project shall be met through a system of fire hydrants installed on the site by the Developer in accordance with City standards. The locations of fire hydrants shall be shown on all construction documents. The water requirements for the fire system will be served by the City. The Project shall comply with the City's fire protection requirements. The City will provide fire protection services to the Project.

**7.9 Utilities** - All internal utility lines for the Project shall be placed underground by the Developer. The Developer shall provide all necessary utilities for the development of the Property.

**7.10 Interconnectivity** - A bicycle/pedestrian connection shall be constructed by the Developer between Palm Harbor Parkway and the Intracoastal Waterway, and walkway(s) and sidewalks shall be constructed by the Developer along Palm Harbor Parkway in front of the Project, substantially as shown on the Conceptual Interconnectivity Plan attached as Exhibit "7".

## **8.0 Resource Protection**

**8.1 Wetlands** - No wetlands exist within the Project. A ditch is located at the southeast boundary of the Project. No impacts to this ditch will occur unless approved by the LUA.

**8.2 Water Resources** - Water conservation strategies shall be incorporated by the Developer into the construction, operation, and maintenance phases of the Project, and shall be included in the covenants and deed restrictions. Landscaping shall be substantially as provided in the Conceptual Landscape Plan and Details (Exhibit "4").

**8.3 Stormwater Pollution Prevention** - A stormwater pollution prevention plan shall be attached to and incorporated into the construction and permit documents for all projects constructed within the Project, pursuant to the requirements of applicable State and Federal regulations.

**8.4 Air Quality** - The following fugitive dust control measures, at a minimum, shall be undertaken during all construction and demolition activities throughout the construction process of the Project and may be enforced or modified by the LUA to protect the public interest. The Developer shall ensure that all contractors working within the Property moisten soil, demolition debris and related materials which shall include, at a minimum, all roads, parking lots or material stockpiles as necessary to control dust and that contractors working within the Property remove soil and other dust-generating material deposited on paved streets by vehicular traffic, earth moving equipment or soil erosion; and, after final grade and within 60 days thereof, that the contractors shall use mulch, hydro-seeding or sod on all open areas to control dust.

**8.5 Hurricane Evacuation** - All purchasers of property interests within the Property shall be provided with information regarding the vulnerability of the Property to the impacts of hurricanes. This information shall take the form of educational materials designed to increase evacuation participation.

## 9.0 General Building Criteria

The general building criteria specified below includes minimum setback distances from Buildings "B", Building "C", Building "D", Building "E" and Building "F" to the Property's existing boundaries, maximum building height limitations, minimum property widths, off street parking requirements, maximum impervious area and floor area and procedures to address deviations from the criteria contained herein. Where reference is made in other Sections to particular buildings or unit types, the references are to the buildings and unit types shown on the PUD Conceptual Development Plan for the Project attached to this PUD Agreement as Exhibit "1". Such building and unit designations are subject to modification and relocation as Administrative Modifications as provided elsewhere in this PUD Agreement, provided that the minimum setback distances (measured from the Property's existing boundary lines) are not decreased, maximum building heights are not exceeded, minimum property widths are not reduced, minimum parking requirements (for the applicable density) are met, maximum impervious area is not exceeded and floor area and maximum unit/room requirements are not violated.



9.1 Setbacks Distances/Criteria –

Property Boundary	Minimum Setback
NORTH	25'
EAST	150'
SOUTH	35 ' (with the exception of Building F, which is 10'( <sup>1</sup> )
WEST	35'

These setbacks shall be measured from the Property’s existing boundary lines. To maintain the integrity and design character of the PUD Conceptual Development Plan, if the Property is subdivided into parcels, the setbacks described herein or by the City’s *LDC* shall not apply to any newly created parcels. Only those setbacks required for fire safety reasons, as determined by the LUA, shall apply to any newly created parcels.

9.2 Building Height -

Development Type	Maximum Vertical Height* Feet/Stories
Building “B” (Hotel)	89’ / 8 <sup>1</sup> / <sub>8</sub> Stories
Building “C” (Resort Units)	69’ / 6 <sup>1</sup> / <sub>6</sub> Stories
Building “D” (Resort Units)	89’ / 8 <sup>1</sup> / <sub>8</sub> Stories
Building “E” (Resort Units)	89’ / 8 <sup>1</sup> / <sub>8</sub> Stories
Building “F” (Parking Structure)	61’ / 5 Stories
* Maximum height measured to median roof line. Flags and architectural projection elements shall be in substantial conformity with Exhibit “3”.	

Where reference is made in this Section to particular buildings (and unit types), the references are to the buildings (and unit types) shown on the PUD Conceptual Development Plan for the Project attached to this PUD Agreement as Exhibit “1”. Such building (and unit type) designations are subject to modification as Administrative Modifications as provided elsewhere in this PUD Agreement, provided that the maximum height of any unconstructed building does not exceed 89’/8 stories (Building “D” as delineated on PUD Conceptual Development Plan (Exhibit “2”), and

<sup>1</sup> Setback for Building F from the southern property line is reduced to accommodate enhanced landscape areas, pedestrian walkways, and park-like settings internal to the Project adjacent to and in close proximity to the Marina. The Developer shall provide 25’ of offsite landscape buffer south of the Property, if authorized by the neighboring landowner and, if not, a landscaped setback shall be enhanced by tree plantings and other landscape material planting, as approved by the LUA, to soften the effect of the Building.

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provided that any building located in the area occupied by Building “C” as shown on the PUD Conceptual Development Plan (Exhibit “2”) shall not exceed 6 stories or 69’ to include replacement of Building “C” and “D” with 3 smaller buildings not exceeding 69’ in height.

9.3 Parking. -

Development Type	Off street Parking
Hotel Condominium/Hotel	1 space per room
Resort Condominium Units	<ul style="list-style-type: none"><li>• 1.5 spaces per 2 and 3-bedroom units;</li><li>• 2 spaces per 4 bedroom unit;</li></ul>
Hotel related activities	4 spaces per 1000 square feet (if maximum of 47,000 square feet is constructed 188 spaces would be required) to include hotel and harbor master employees

The total spaces required for the Project are subject to adjustment based on the density of the Project.

9.4 Maximum Impervious Surface Ratio (“ISR”) – The maximum ISR for the Project shall be 0.70.

9.5 Maximum Floor Area Ratio (“FAR”) – The maximum FAR for the Project shall be 0.67. FAR is defined as the total horizontal floor area of a building based on exterior dimensions and applied to all full stories designed or intended for occupancy or use, but excluding open or screened porches and entries, attached or detached structures that enclose mechanical or electrical equipment, attic areas with a headroom of less than 7’, parking structures, and basement space where the ceiling is not more than an average of 48” above the finished grade elevation of the lot. The FAR for the Project is consistent with the City's Comprehensive Plan.

9.6 Finished Floor Elevations – The minimum finished floor elevations for livable heated or cooled area shall be at least 1 foot above the 100 year flood elevation. Garage structures and unlivable spaces, may be constructed at or above the site’s one hundred (100)-year flood elevations, contingent upon allowing inflow and outflow of surface water being adequate within the unlivable areas.

10.0 Permits and Certificates of Occupancy

Immediately upon the issuance of a development order for a phase of horizontal construction and upon receipt of a bond for that phase’s site

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improvements, the City will accept and process applications for building permits for specific buildings or facilities to be constructed in that phase, so as to permit simultaneous horizontal and vertical construction if the Developer has obtained all necessary State and Federal permits for the Project. Certificates of occupancy will be issued by the City when infrastructure improvements that are necessary to serve the specific building(s), rather than the entire phase or Project, have been completed and all project closeout documentation for such building has been provided to and accepted by the City.

#### **11.0 Property Owners' Association(s)**

The Developer may establish, in its discretion, 1 or more property owners' association(s) for the Project (the "Association"). The Association shall own and be responsible for maintenance of internal roadways, lighting, common landscape improvements, fencing, signage, pedestrian easements, the MSSW system components and any common property or facilities within the Project. The Association and/or Developer shall have the right to transfer the maintenance obligation and title to any of the common property or facilities to any successor-in-interest, or to the City or other appropriate entity if authorized by City; provided, however, that the City is under no obligation to accept the transfer of title. The duties and responsibilities of multiple associations shall be reasonably harmonized and coordinated pursuant to the documents assigning responsibilities to the various organizations. The Association shall provide for a person or persons who shall be responsible for providing reasonable coordination with the City relative to development activities and related matters.

#### **12.0 Platting**

Due to the nature of the Project, no platting will be required. Notwithstanding the foregoing, the Developer may elect to subdivide and plat all or a portion of the Property. The LUA is authorized to approve any such preliminary plat, provided that the development standards contained in this PUD Agreement are maintained.

#### **13.0 Successors and Assigns**

This PUD Agreement shall be binding on the City and the Developer, and their respective successors and assigns. Each party represents and warrants to the other that it has all necessary power and authority to enter into and consummate the terms and conditions of this PUD Agreement, that all acts, approvals, procedures and similar matters required in order to authorize this PUD Agreement have been taken, obtained or followed, as the case may be, that this PUD Agreement and the proposed performance of this PUD Agreement by such party is not an ultra vires act and that

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upon the execution of this PUD Agreement by both Parties, this PUD Agreement shall be valid and binding upon the Parties hereto and their successors in interest. The terms and conditions of this PUD Agreement, similarly, shall be binding upon the Property and shall run with the title to same.

#### **14.0 Amendment of this PUD Agreement**

Modifications to the terms of this PUD Agreement, other than those to the Conceptual Development Plan and Administrative Modifications permitted hereunder, shall be made in accordance with the requisite PUD amendment procedures. In addition, *de minimus* amendments to this PUD Agreement may be approved administratively by the LUA.

#### **15.0 Applicable Law; Venue**

**15.01 Law** - This PUD Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida.

**15.02 Venue** - Venue for any proceeding arising under this PUD Agreement shall be the Seventh Judicial Circuit in and for Flagler County, Florida.

#### **16.0 Construction of Agreement**

**16.1 Interpretation** - This PUD Agreement shall not be construed against either Party on the basis of it being the drafter of this PUD Agreement. The Parties agree that both herein played an equal part in drafting this PUD Agreement.

**16.2 Capitalizations** - Capitalized terms contained herein shall have the meaning assigned to them in the City's ordinances and, if not defined in the City's ordinances, shall have no more force or effect than uncapitalized terms.

**16.3 Captions** - Captions and section headings in this PUD Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation or construction of meaning of this PUD Agreement.

**16.4 Force Majeure.** No party shall be considered in default in performance of its obligations hereunder, and the duty to accomplish such obligation shall be reasonably suspended, to the extent that, and during such period that, performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, permit, approval, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or

different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the reasonable control and without the fault or negligence of the party seeking relief under this Section.

### **17.0 Severability**

If any provision of this PUD Agreement, or its application to any person, entity or circumstances is specifically held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this PUD Agreement and the application of the provisions hereof to other persons, entities or circumstances shall not be affected thereby and, to that end, this PUD Agreement shall continue to be enforced to the greatest extent possible consistent with law and the public interest. Notwithstanding the foregoing, if the effect of a determination or holding by a court that a particular term, clause or provision of this PUD Agreement is invalid or unenforceable is such that either party to this PUD Agreement shall no longer have the substantial benefit of its respective bargain under this PUD Agreement or any material portion of this PUD Agreement, then, and in such event, whichever of the Parties is thus adversely affected, may, at its option and in its sole and absolute discretion, cancel and terminate this PUD Agreement upon its delivery of written notice thereof to the other party. If practicable, this PUD Agreement shall be modified as necessary to maintain the original intent of this PUD Agreement.

### **18.0 Exhibits**

The Exhibits to this PUD Agreement are hereby incorporated herein by the references made thereto, are a part of this PUD Agreement upon which the Parties have relied as if set forth in the text of this PUD Agreement verbatim and are included within the Plans.

### **19.0 Effective Date and Duration**

The Effective Date (herein so called) of this PUD Agreement shall be the later to occur of: (i) the expiration date of all appeal periods with respect to passage and/or adoption of Ordinance Number 2007-23 and Ordinance Number 2007-24 (collectively, the "Ordinances"); and (ii) if an appeal is made with respect to the passage, adoption and/or any other element of either of the Ordinances, the date on which any and all such appeals are resolved in favor of the passage and adoption of the Ordinances as initially enacted. If any such appeal is made, the Developer shall have the right, at any time up to the Effective Date, in Developer's sole and absolute discretion, to terminate this PUD Agreement and cease any activities with respect to defending against the appeal. In addition, the Developer may, at its absolute and sole discretion, elect in writing to waive conditions (i) and (ii) above causing the Effective Date of this PUD

Agreement to be the same date said written waiver is made. The Original PUD Agreement shall continue in full force and effect, and the Property shall retain its current PUD zoning classification/district, until such time, if any, as the Effective Date shall occur. Following the Effective Date, this PUD Agreement shall remain in effect for as long as this Ordinance is valid. This PUD Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall, together, constitute one and the same instrument.

**20.0 Notices**

- (a). Any required notices shall be furnished to the party entitled to such notice at least 30 days prior to the effective date of said notice.
- (b). Any notices required or permitted hereunder shall be in writing and shall be deemed properly made when delivered by certified United States mail, postage prepaid, and addressed as set forth herein, or at such address as shall have been specified by written notice to the other party delivered in accordance herewith:

**FOR THE CITY:**

James Landon  
City Manager  
City of Palm Coast  
2 Commerce Boulevard  
Palm Coast, Florida 32164

**FOR THE DEVELOPER:**

James Riley  
Centex Homes  
1274 GranBay Parkway  
Suite 2400  
Jacksonville, Florida 32258

With a copy to:

Michael D. Chimento III, Esquire  
Chimento and Guntharp, P.A.  
4 Old Kings Road North, Suite B  
Palm Coast, Florida 32137

*CMH*

- (c). The Parties agree not to claim any waiver by the other party of such notice requirements based upon the other party having actual knowledge, implied, verbal or construction notice, lack of prejudice or any other grounds as a substitute for the failure of the other party to comply with the express written notice requirements herein.
- (d). Computer notification (e-mails and message boards) do not constitute proper "written notice" under the terms of this PUD Agreement.
- (e). Either of the parties may change, by written notice as provided herein, the addresses or persons designated for receipt of notice.

IN WITNESS WHEREOF, the Parties have executed this PUD Agreement on the dates set forth below.

CITY COUNCIL  
CITY OF PALM COAST

By:

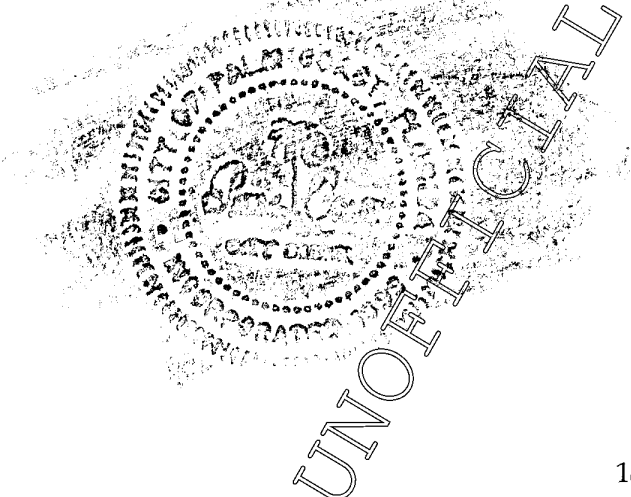
  
JAMES CANFIELD, MAYOR

ATTEST:

By:   
CLARA HOENI, CITY CLERK

**Clara M. Hoeni**  
**City Clerk**

(REMAINDER OF PAGE IS INTENTIONALLY BLANK)



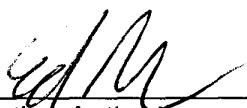
*CMH*


**CENTEX**

**DEVELOPER/CENTEX HOMES**, a  
Nevada general partnership, d/b/a  
Centex Destination Properties

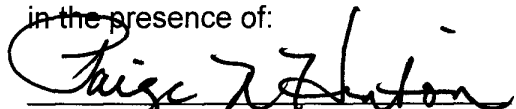
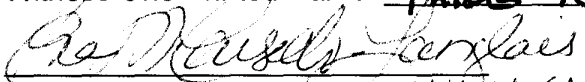
By: **CENTEX REAL ESTATE  
CORPORATION**,  
a Nevada corporation,  
its Managing General Partner

ATTEST:

By:   
Attesting Authority  
Date: 10/23/07

By:   
Lawfully Authorized Signatory

Signed, sealed and delivered  
in the presence of:

  
Witness One Printed Name: PAIGE N. HANFON  
  
Witness Two Printed Name: ENAM. CARSELL LANGLAIS

**ACKNOWLEDGEMENT**

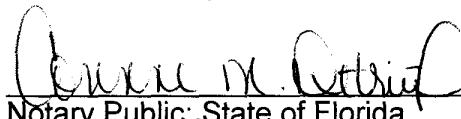
STATE OF Florida )  
COUNTY OF Seminole

I HEREBY CERTIFY that on this day, before me, an officer duly  
authorized to administer oaths and take acknowledgments, personally appeared  
the above signatories and witnesses the signatories executing on behalf of and  
stating that they have authority to bind Centex Destination Properties said  
persons having acknowledged executing the same in the presence of two  
subscribing witnesses freely and voluntarily under requisite corporate/entity  
authority and they are personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid  
this 23<sup>rd</sup> day of October, 2007.

(Affix Notary Seal)



  
Notary Public, State of Florida  
Print Name: Corinne M. Detroit



LIST OF EXHIBITS

Exhibit “1”	Legal Description.
Exhibit “2”	PUD Conceptual Development Plan.
Exhibit “3”	Conceptual Architectural Character.
Exhibit “4”	Conceptual Landscape Plan and Details.
Exhibit “5”	Conceptual Lighting Plan and Details.
Exhibit “6”	Conceptual Signage Plan and Details.
Exhibit “7”	Conceptual Interconnectivity Plan.

UNOFFICIAL DOCUMENT

Exhibit /

Sheraton Hotel lands

## DESCRIPTION:

OFF REC 0550 PAGE 1669

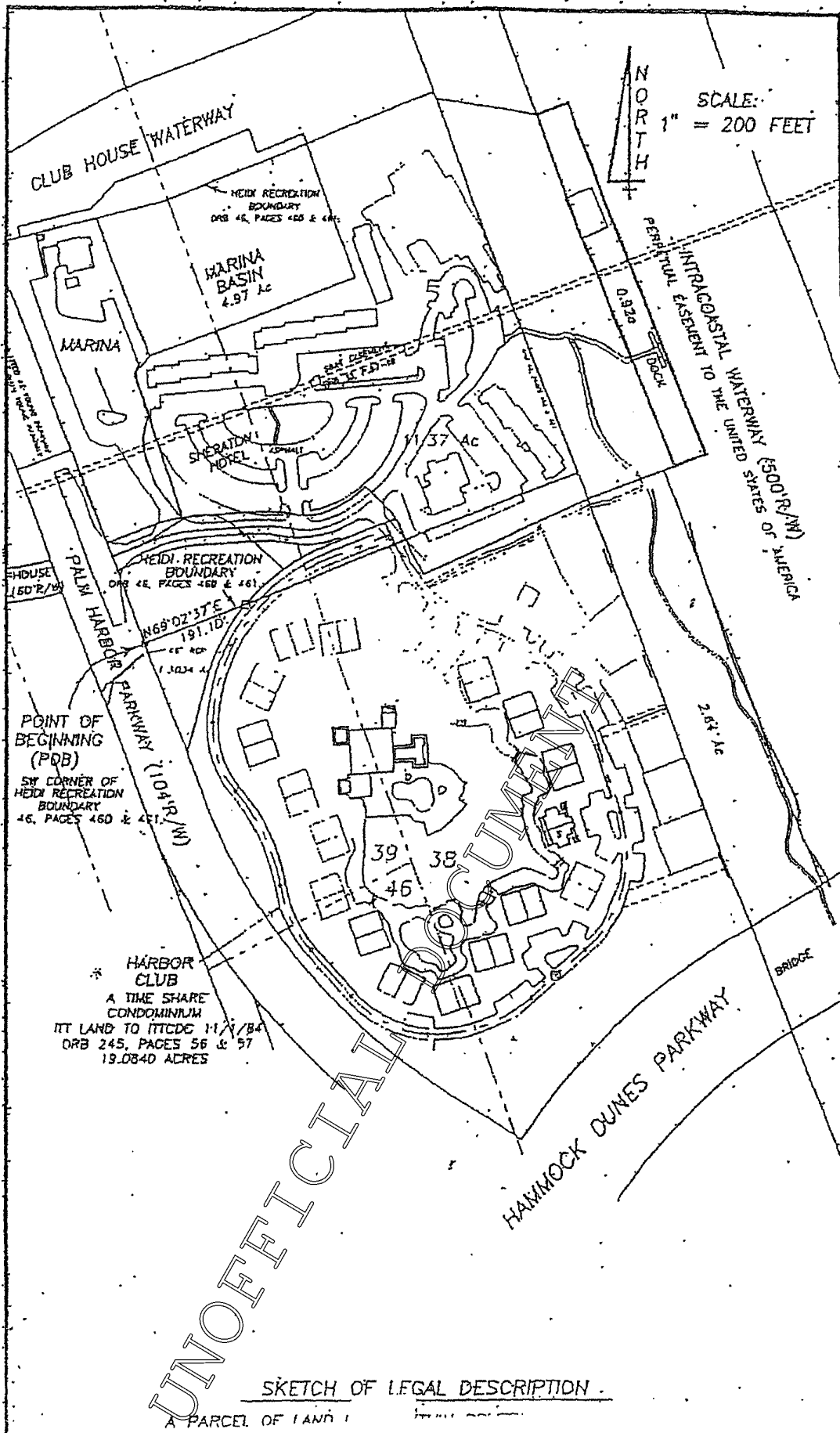
A parcel of land lying in Government Sections 38 and 39, Township 11 South, Range 31 East, Flagler County, Florida, being more particularly described as follows;

A POINT OF BEGINNING being the southeast corner of the Plat Country Club Cove Section-3, Map Book 6, Page 8, thence North 20°57'23" West along the East right-of-way line of Palm Harbor Parkway (platted as Young Parkway) (104'R/W) a distance of 123.00 feet, thence departing said right-of-way North 69°02'37" East a distance of 82.92 feet to a point of curvature, concave Southerly, thence Easterly a distance of 57.32 feet along the arc of said curve to the right having a central angle of 11°56'32", a radius of 275.00 feet, a chord bearing of North 75°00'53" East and a chord distance of 57.21 feet to the point of intersection with a non-tangent line, thence North 17°59'47" West a distance of 188.91 feet, thence North 15°07'19" West a distance of 80.85 feet, thence North 38°28'13" East a distance of 38.06 feet, thence North 69°02'37" East a distance of 400.00 feet, thence North 20°57'23" West a distance of 250.00 feet, thence North 69°02'37" East a distance of 45.00 feet, thence South 20°49'47" East along the westerly right-of-way line of the Intracoastal Waterway a distance of 11.95 feet, thence departing said line South 81°28'20" East a distance of 183.24 feet, thence South 21°16'59" East a distance of 668.31 feet, thence South 69°02'37" West a distance of 165.00 feet to a point on the West right-of-way line of the Intracoastal Waterway, thence departing said right-of-way South 66°01'12" West a distance of 317.67 feet, thence North 33°24'47" West a distance of 43.00 feet, thence North 25°19'15" West a distance of 65.48 feet, thence South 69°37'11" West a distance of 144.48 feet to a point of curvature, concave Southeasterly, thence Westerly a distance of 323.49 feet along the arc of said curve to the left having a central angle of 54°12'26", a radius of 341.92 feet, a chord bearing of South 42°30'58" West and a chord distance of 311.56 feet to a point of tangency, thence South 15°24'47" West a distance of 133.46 feet, thence North 20°57'23" West a distance of 267.58 feet to the POINT OF BEGINNING.

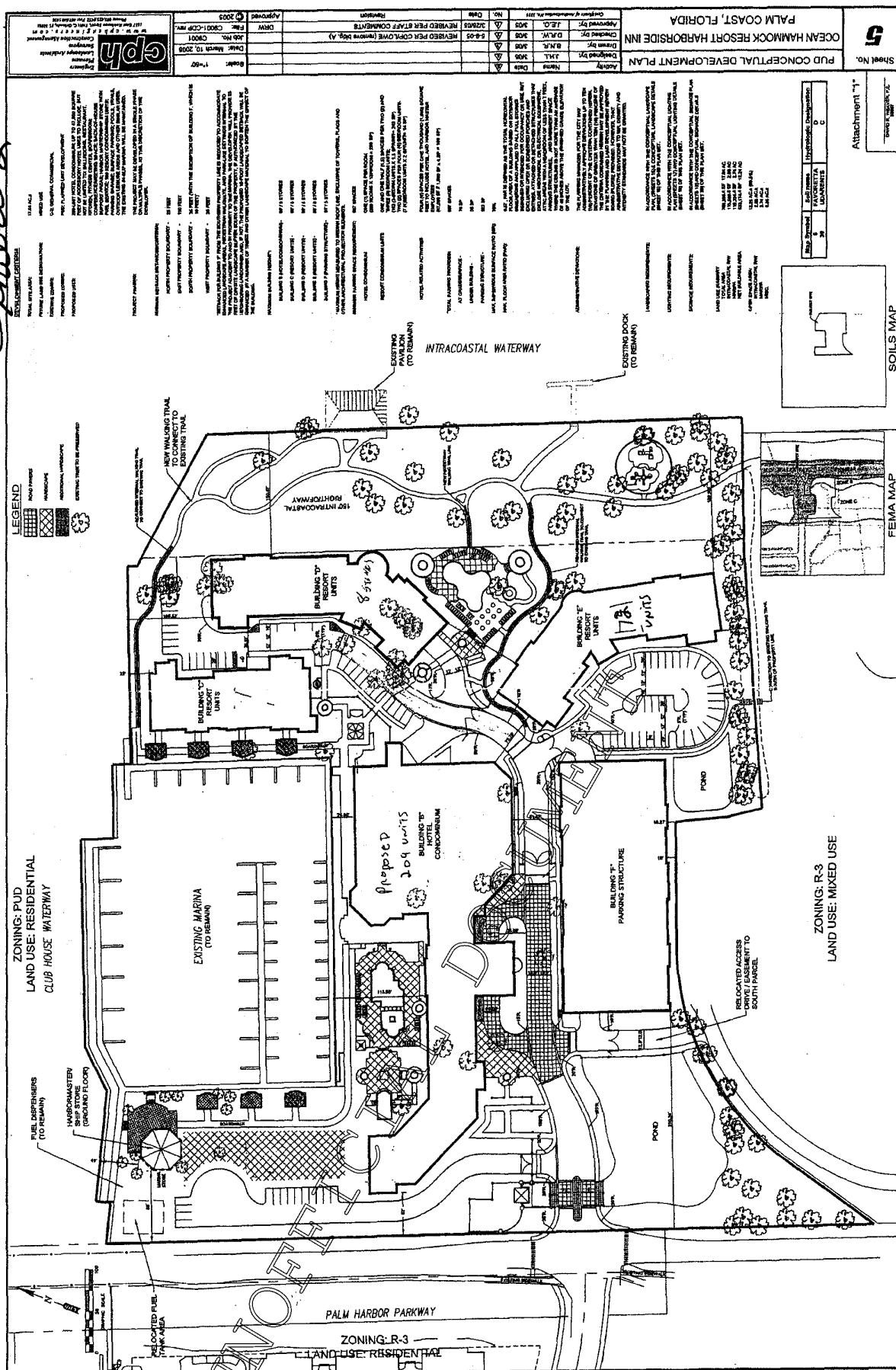
Subject to a perpetual easement to the United States of America for the Intracoastal Waterway (500'R/W) Map Book 4, Pages 1 through 19, of the Public Records of Flagler County, Florida.

Parcel containing 12.6686 acres more or less.

TOGETHER WITH the boat dock and pavillion located on and adjacent to the above described property and as more particularly shown on the attached Exhibit B.

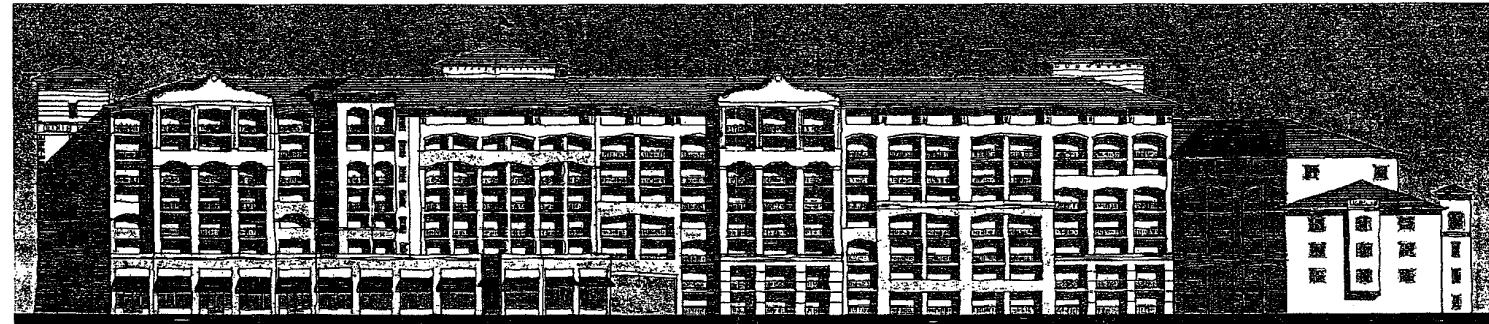


REF 0550 PAGE 1670

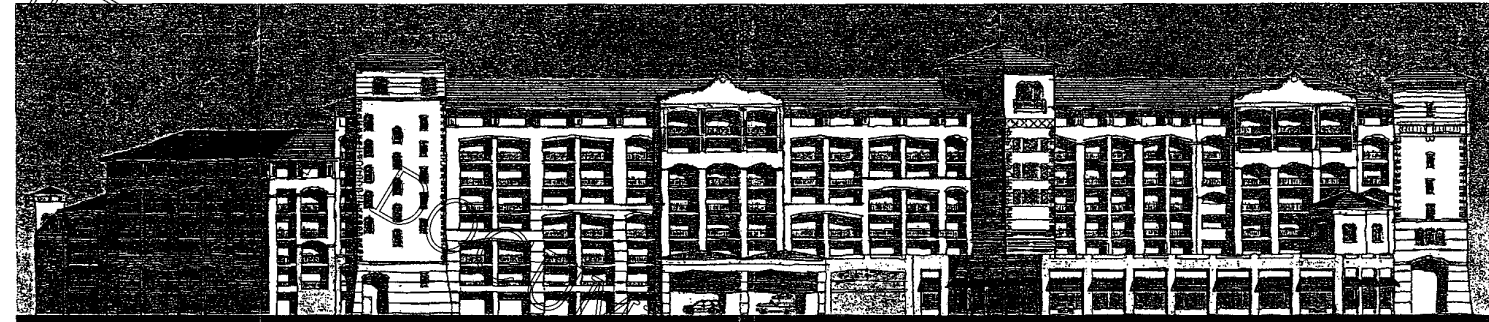


cm H

UNOFFICIAL



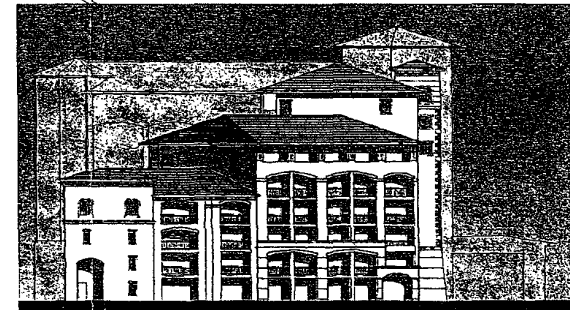
BUILDING B  
NORTH ELEVATION



BUILDING B  
SOUTH ELEVATION



BUILDING B  
WEST ELEVATION



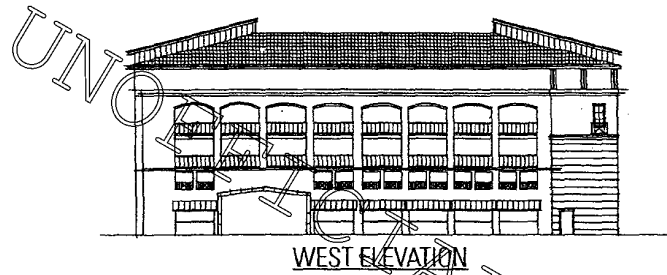
BUILDING B  
EAST ELEVATION

CMH

2012 Hansen Street  
Suite 100  
Denver, CO 80202  
Phone: 303.869.2799

**OZ**  
ARCHITECTURE

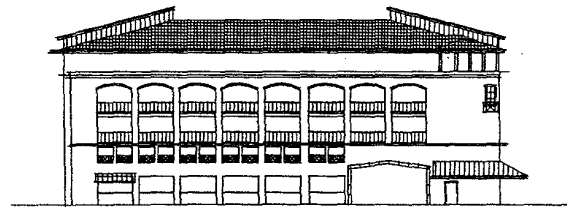
Harborside Inn and Marina  
Palm Coast, Florida



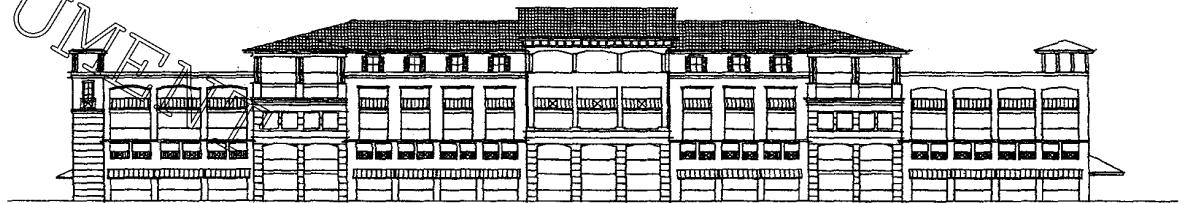
WEST ELEVATION



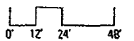
BUILDING F  
NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION



2012 Hiram Street  
Suite 100  
Orlando, FL 32807  
Phone: 305.951.5704



Harborside Inn and Marina  
Palm Coast, Florida



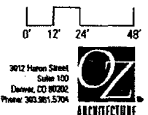
NORTH ELEVATION

BUILDING D  
EAST ELEVATION



SOUTH ELEVATION

WEST ELEVATION

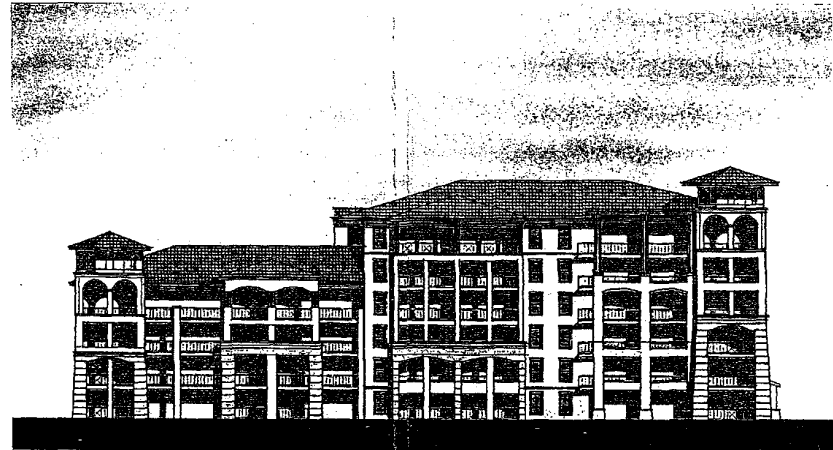


Harborside Inn and Marina  
Palm Coast, Florida

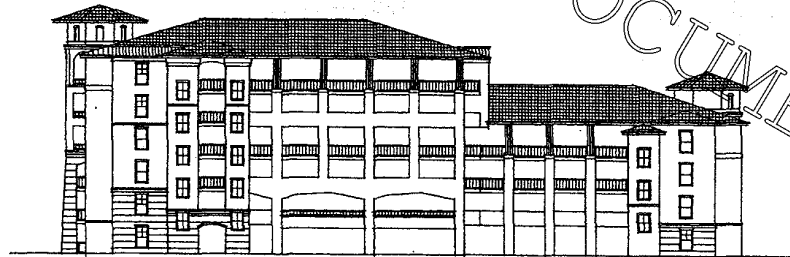
AWD

UNOFFICIAL

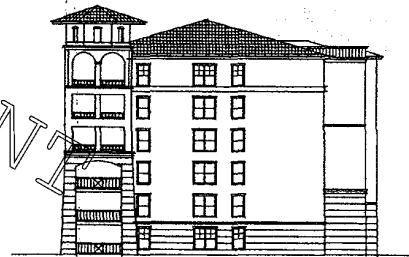
DOCUMENT



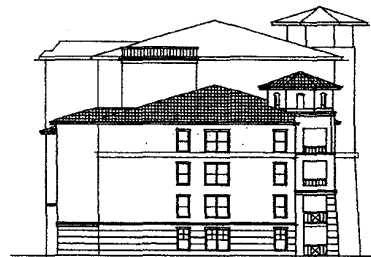
BUILDING C  
WEST ELEVATION



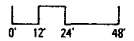
EAST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION



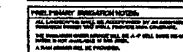
3012 Harbor Street  
Suite 100  
Denver, CO 80202  
Phone: 303.581.5704



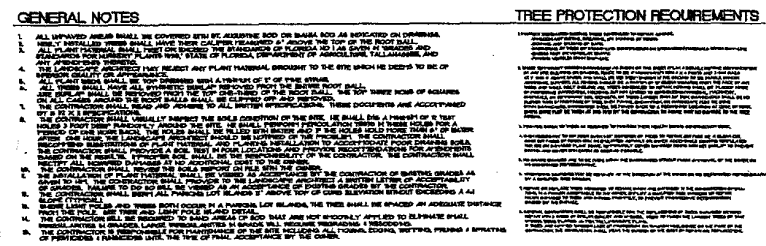
Harborside Inn and Marina  
Palm Coast, Florida

AWD



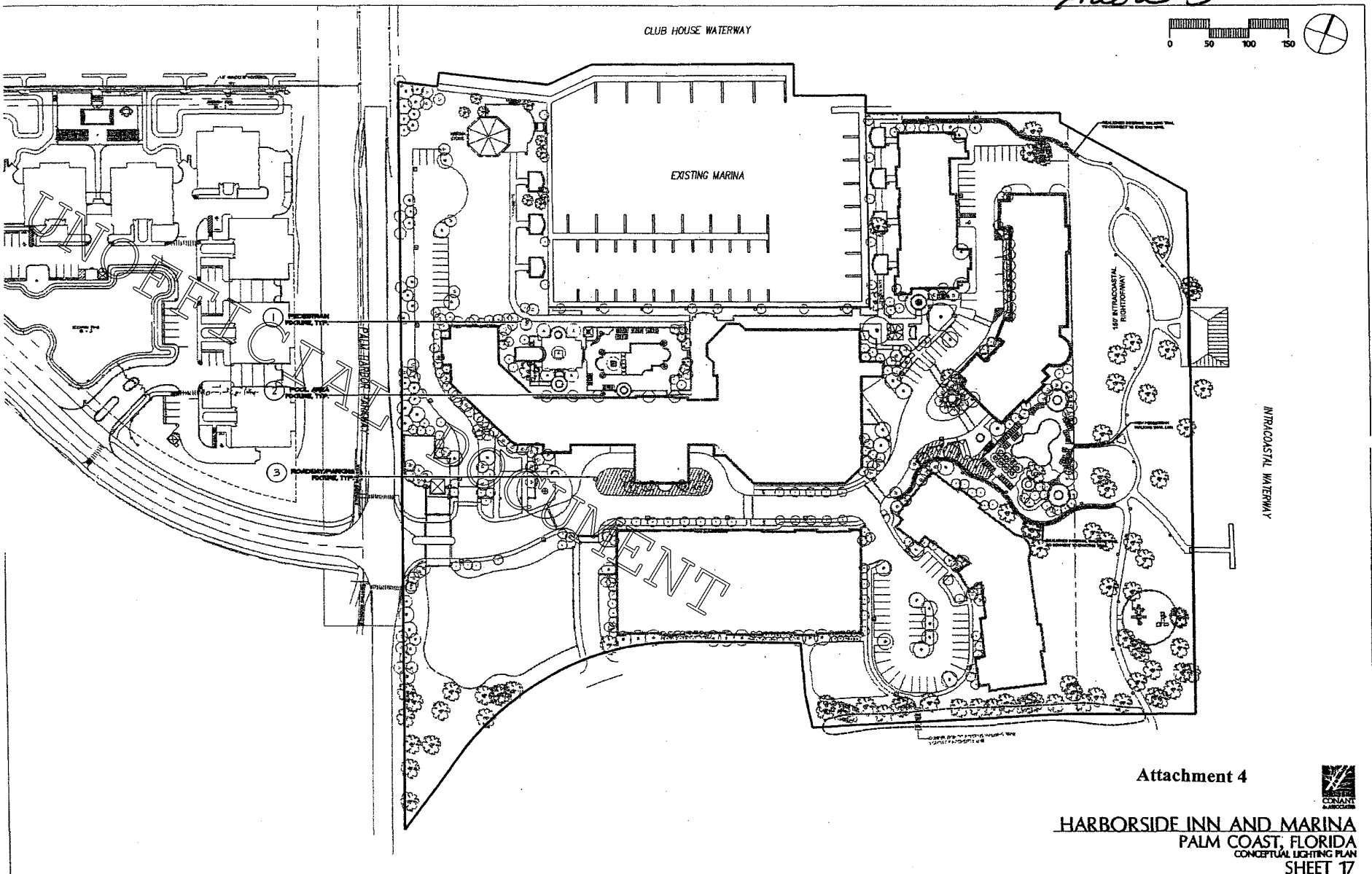


**HARBORSIDE INN AND MARINA**  
**PALM COAST, FLORIDA**  
CONCEPTUAL LANDSCAPE PLAN  
**SHEET 15**



CMH

Exhibit S



Attachment 4



HARBORSIDE INN AND MARINA  
PALM COAST, FLORIDA  
CONCEPTUAL LIGHTING PLAN  
SHEET 17

CMA

STRENGTHENING

1100A/1100B RICHMOND SERIES

SPECIFICATIONS

**GENERAL**

The 1100A/1100B series is a specially selected fixture which is of solid construction, made of die-cast aluminum, and is designed to provide a long life span. The fixture is designed to provide a long life span. The fixture is designed to provide a long life span.

**FINISH**

The fixture shall be painted with a high quality paint. The paint shall be a high quality paint. The paint shall be a high quality paint.

**INSTALLATION**

The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions.

**REQUIREMENTS**

The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions.

Job Name	1100A/1100B RICHMOND SERIES	REQUIRED INFORMATION
Type	STRENGTHENING	
Location	1100A/1100B RICHMOND SERIES	
Notes		

STRENGTHENING

3900 RICHMOND SERIES

SPECIFICATIONS

**GENERAL**

The 3900 series is a specially selected fixture which is of solid construction, made of die-cast aluminum, and is designed to provide a long life span. The fixture is designed to provide a long life span. The fixture is designed to provide a long life span.

**FINISH**

The fixture shall be painted with a high quality paint. The paint shall be a high quality paint. The paint shall be a high quality paint.

**INSTALLATION**

The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions.

**REQUIREMENTS**

The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions.

Job Name	3900 RICHMOND SERIES	REQUIRED INFORMATION
Type	STRENGTHENING	
Location	3900 RICHMOND SERIES	
Notes		

DESIGNER FLOOD

DF7 7" DIAMETER

SPECIFICATIONS

**GENERAL**

The DF7 7" diameter series is a specially selected fixture which is of solid construction, made of die-cast aluminum, and is designed to provide a long life span. The fixture is designed to provide a long life span. The fixture is designed to provide a long life span.

**FINISH**

The fixture shall be painted with a high quality paint. The paint shall be a high quality paint. The paint shall be a high quality paint.

**INSTALLATION**

The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions.

**REQUIREMENTS**

The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions. The fixture shall be installed in accordance with the manufacturer's instructions.

Job Name	DESIGNER FLOOD	REQUIRED INFORMATION
Type	DESIGNER FLOOD	
Location	DESIGNER FLOOD	
Notes		

1 PEDESTRIAN LIGHTING

SCALE: NTS

2 POOL AREA LIGHTING

SCALE: NTS

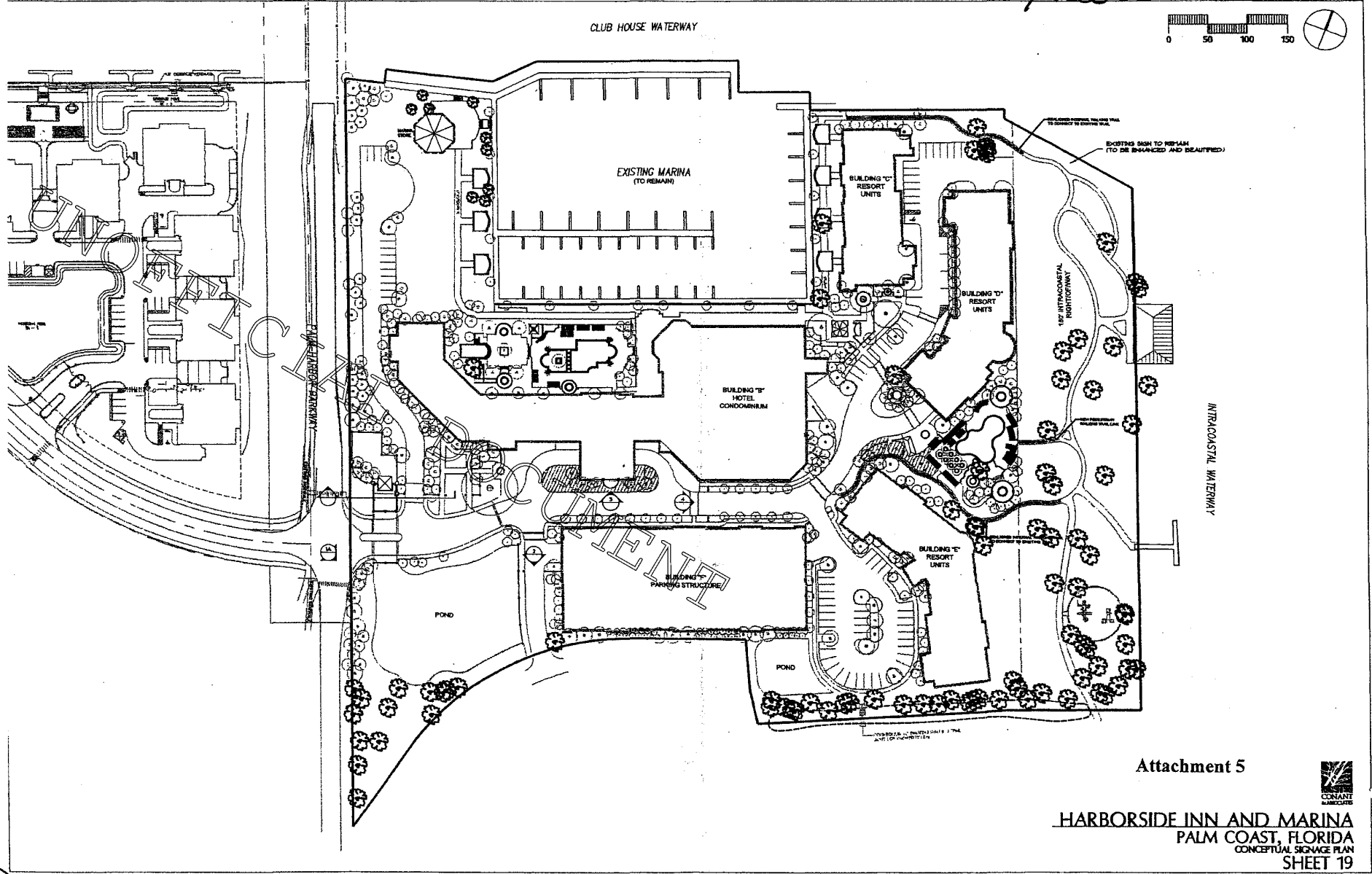
ROADWAY & PARKING LIGHTING

SCALE: NTS

CMX

HARBORSIDE INN AND MARINA  
PALM COAST, FLORIDA  
CONCEPTUAL LIGHTING DETAILS  
SHEET 18

Exhibit 6

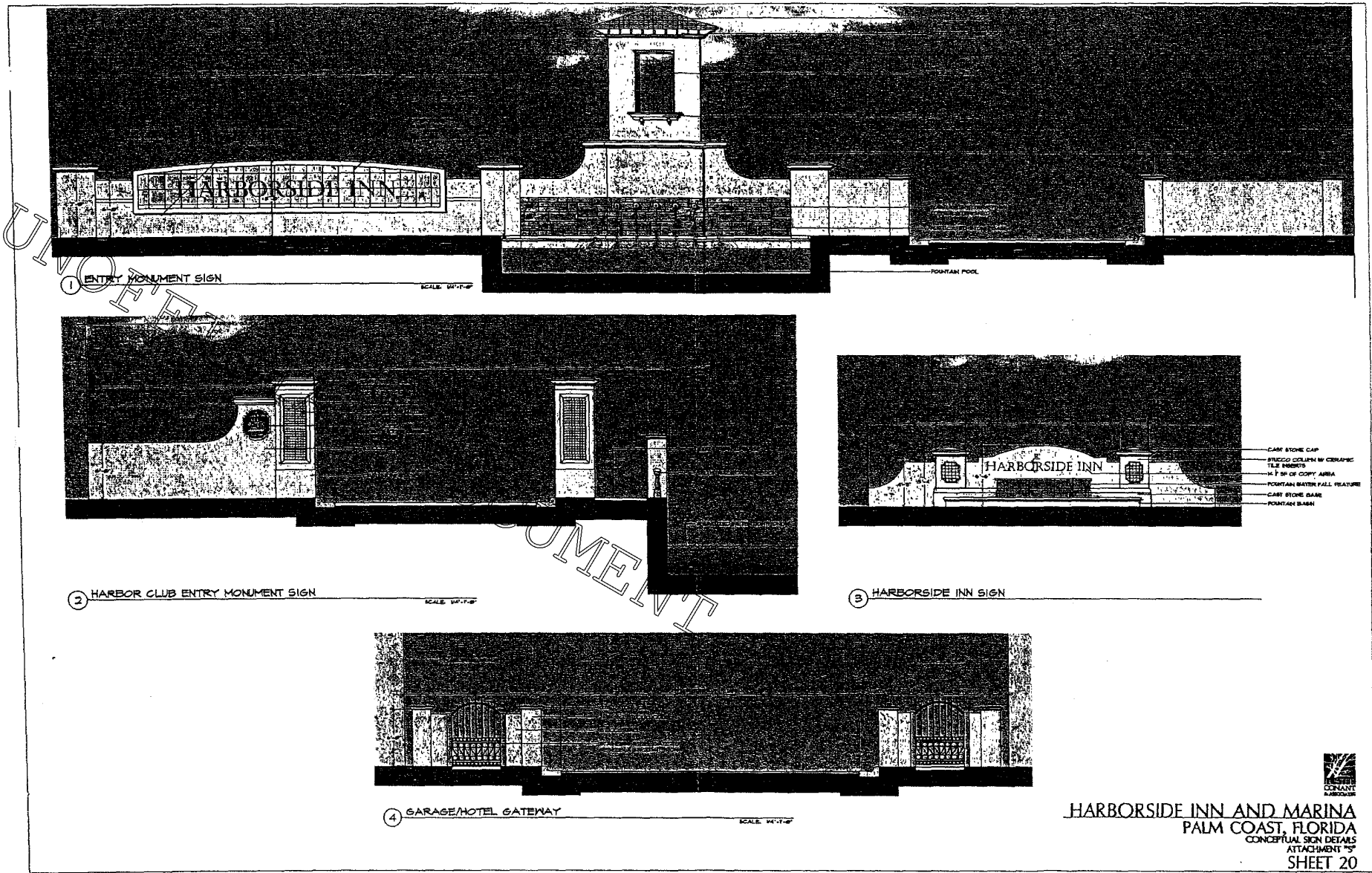


CMH

Attachment 5



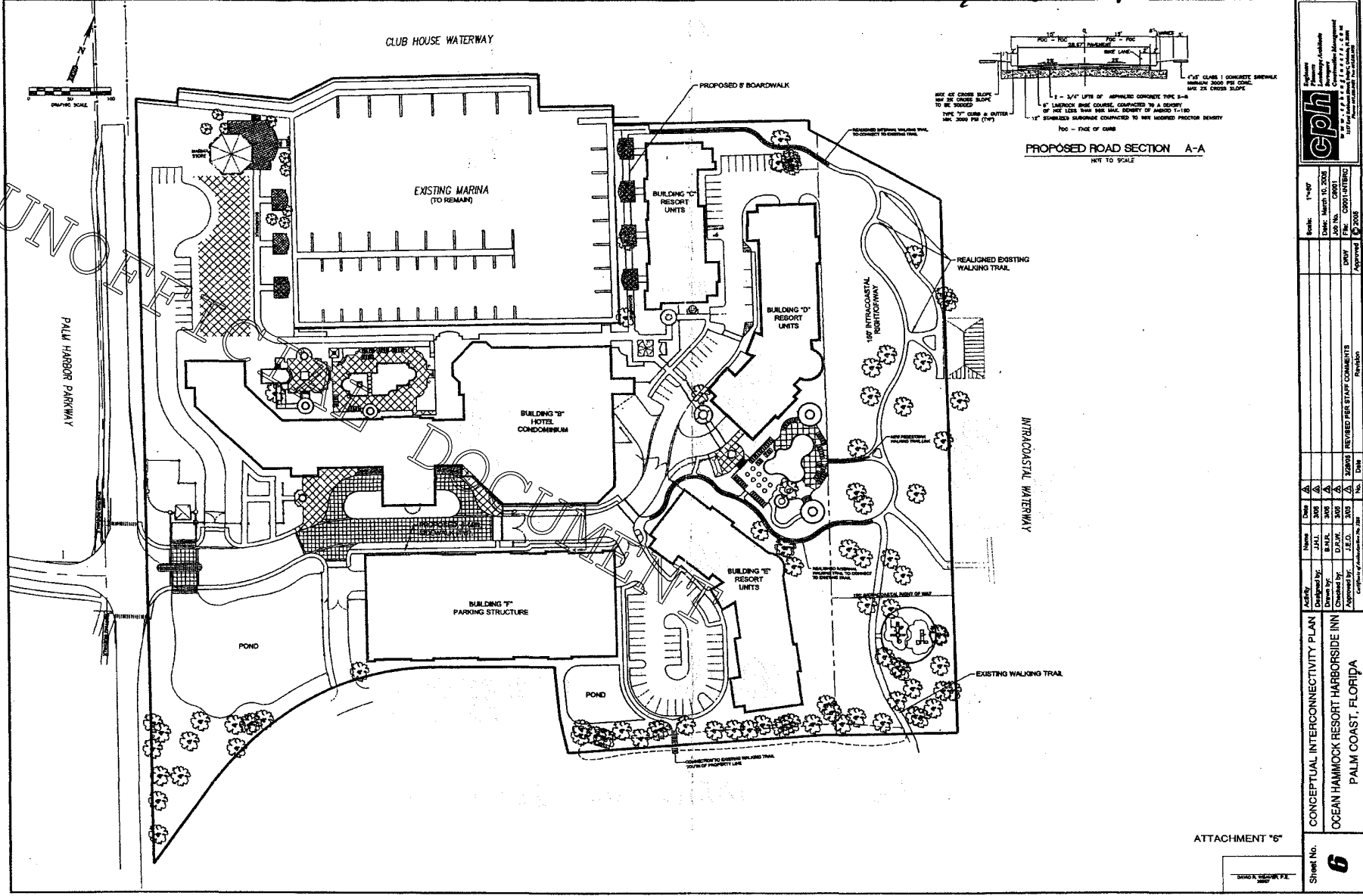
HARBORSIDE INN AND MARINA  
PALM COAST, FLORIDA  
CONCEPTUAL SIGNAGE PLAN  
SHEET 19



CMH

Exhibit 7

AND



# **LIVINGSTON & SWORD, P.A.**

## **Attorneys At Law**

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### **MEMORANDUM**

**TO:** Ray Tyner  
Bill Hoover  
Jordan Myers

**FROM:** Jay W. Livingston, Esq.

**CC:** Tarik Bateh  
Bob Dickinson

**DATE:** September 14, 2022

**SUBJECT:** Harborside MPD – Neighborhood Meeting

---

The neighborhood meeting for the Harborside Master Planned Development rezoning application was held on September 8, 2022, on the third floor of the parking garage located at the project site. The attached notice of the meeting was mailed to all owners within 300' of the project site. The attached sign in sheet lists all the neighbors that were in attendance.

First, Tarik Bateh, a representative of the landowner, welcomed the audience and gave an overview of the existing PUD and the proposed MPD Plan, pointing to a large print out of a colored conceptual plan. A copy of the colored plan presented at the meeting is attached. Tarik noted that the original Centex resort plan provided more intense uses, particularly as to height and non-residential space. Many residents expressed they'd prefer more residential as opposed to a hotel but did not outright oppose a hotel. Everyone seemed to be excited about a restaurant. The residents of the existing condo liked that the residential uses in the MPD Conceptual Master Plan are thoughtfully bifurcated from the commercial uses. The condo residents also liked this feature of the plan because it largely protects the views of the water.

Next, Mr. Bateh fielded audience questions and provided responses, which are summarized as follows:

- How many stories will the townhomes be?
  - At least 2, possibly 3.
- Avg size of townhomes?
  - 3BR maybe 4BR-5BR.
  - Minimum 1,800. Could be closer to +/-2,600 sf.
- Cost of building townhomes?
  - \$350-450/sf.

---

391 Palm Coast Parkway SW #1  
Palm Coast, Florida 32137  
T 386.439.2945  
F 866.896.5573  
jay.livingston314@protonmail.ch



- Price of townhomes
  - Minimum \$600k, could be \$900k or over a million.
- Who owns/controls marina?
  - JDI Palm Coast, LLC.
- Same access into the property?
  - Yes – One shared main entrance for entire master plan.
- What type of hotel?
  - It will likely be a Marriott Springhill Suites or a similar product
  - Absolutely will not build poor quality. It will not be a Motel 6, which would wreck the overall project
  - Hotel is the most challenging component financially so there could be more residential in lieu of a hotel. That option was well received
- Where will people park?
  - Townhomes self-parked
  - Multifamily both surface and garage
  - Restaurant some surface and rest garage
  - Hotel largely garage except short term parking
  - Marina users in garage
  - Condo residents in parking circle and garage
- Questions about Emergency Access Points
  - One will be provided north of existing entrance
  - If one can also be provided south of retention pond, then that's great would like to have that too
  - Same for southeast side of overall property, if one can be provided that's great and would love to connect into it
  - The more emergency access points the better
- Various traffic related questions relating to ingress/egress.
  - Guessing 700 cars in fully built and fully occupied development, plus Legacy time share
  - Traffic study required at Plat/Site Plan applications.
- One person claimed 2 cars per multifamily unit
  - That's incorrect, more like 1.25 cars per unit
  - Demographics suggest more mature residents, often 1 person occupying 2- or 3-bedroom unit hence lower parking needs and fewer cars
- Traffic lights at intersection with more people?
  - We do not think that will be needed but traffic study will confirm.
- Multifamily unit sizes and rents
  - This will be Class A and very nice
  - This will be extremely expensive to build no matter what, whether we like it or not
  - 800-1400 SF and \$2100-\$3500 rents
- Hotel size?
  - Limited to 80ft per application but likely +/-4 stores for ~125 rooms
- Discussion of Restaurant
  - Suggested Golden Lion operator could be candidate
  - One audience member said call it "The Blue Lion" and everyone laughed
- Vertical mixed use in any building with ground floor retail?
  - Very unlikely, very complicated and expensive and not demanded by market

- At most, hotel may have a restaurant.
- One member thought that the plans were not specific enough
  - Replied this is zoning not civil site plan approval and zoning must allow reasonable flexibility
  - Our presentation demonstrates most likely scenario so as not to mislead
- How mitigate construction nuisance of noise, debris
  - As best as possible, will consider optimal sequencing subject to market forces as to what gets built in what order and when
  - Want to minimize discomfort to neighbors, want to be a good neighbor
  - Whatever Construction Company does this will have massive experience on similar projects and know how to handle this best
- When would construction start?
  - Dictated by city and planning of Palm Coast
  - Hope Zoning by Thanksgiving, 12-24 months before start of vertical construction from now
- Are you taking into consideration FedEx routes?
  - Yes, will be confirmed by traffic study.
- Are there any new amenities that are being built that condo gets to use?
  - Gazebo renovation is planned, Fishing Dock, Park spaces by water, Restaurant
- How long start to finish – construction timeline?
  - Really hoping less than 5 years, but unlikely faster than 36 months.
- Colliers has a listing online – marketing by lot size?
  - Colliers does not have an exclusive listing, Jacoby may have initiated those sorts of conversations
  - It's very likely we self-develop all the residential, but we might sell a hotel pad because hotels are a specialized operating business more than a real estate business
- If this is luxury, will we be able to support it or have low occupancy.
  - If market doesn't support Class A, we wouldn't build.
- Gazebo plans?
  - Plan to renovate or completely redo but want it as an amenity.
- Complaints about the general public walking onto private property via the sidewalk / trail system on the southern end of the property.
  - Note this is private property and unauthorized people should not be coming onto private property as that's trespassing.
  - Noted Planning Staff had requested public access but noted Applicant rejected this request because it's a taking and because it creates liability issues so working hard to keep private property private.
  - Condo residents we very concerned about this and supported fencing it off because many timeshare visitors use that area to the dismay of condo residents.
- What will happen to Marina?
  - Keeping fuel
  - Plan to renovate marina to make nicer
  - No plans for boat launch
  - Hope to have kayak launch either at marina or fishing dock but not sure where

- Impact of construction on street.
  - Discussed setback of height on buildings closest to Palm Harbor Pkwy as noted in submitted MPD DA
- Marina slips for people staying at hotel.
  - Yes, likely to provide some transient slips for people coming to eat at restaurant and such
  - Not planning a boat ramp.
- How maintain parking circle adjacent to condo as exclusive to condo
  - Intention is roundabout area exclusive use for condo residents
  - Condo Association can gate it if they would like.
- What if the elevated walkway falls and blocks the driveway then people are trapped?
  - Very unlikely but can just exit via garage instead.
- Petro truck delivering gas to marina – Please make sure to account for space.
  - Will do via civil engineering plans
- When is the first planning meeting?
  - Tuesday September 20.
- How involved will developer be regarding security?
  - Very. Critical to financial success. Same for parking enforcement. Will have professional management company.
- Hotel amenity?
  - Gym, Pool will likely be required by any flag.
  - Hotel will likely not want to share amenities with other parcels

# **LIVINGSTON & SWORD, P.A.**

## **Attorneys At Law**

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August 29, 2022

### **NOTIFICATION OF NEIGHBORHOOD MEETING FOR THE HARBORSIDE MASTER PLAN DEVELOPMENT REZONING**

**RE: Proposed Development Project – Harborside Master Plan Development  
Adjacent Property Owner Notification of Neighborhood Meeting**

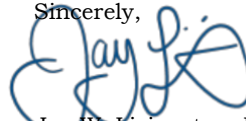
Dear Property Owner:

A Neighborhood Meeting to discuss the application for rezoning to Master Planned Development for the project known as Harborside located at 15 Palm Coast Resort Blvd, Palm Coast, FL 32137 with parcel ID # 38-11-31-0000-01030-0000 and 38-11-31-7103-000F0-0000, is scheduled at the project site on **September 8, 2022 from 11 AM to 12:30 PM on the third floor of the parking garage at 120 Palm Coast Resort Blvd., Palm Coast, FL 32137**. Attendees should park on the 2<sup>nd</sup> and 3<sup>rd</sup> floor of the parking garage. The meeting will be held near the elevator on the 3<sup>rd</sup> floor. The meeting will be at the project site and seating will not be available. If you require seating please bring a lawn or folding chair.

The applicant has submitted an application to rezone the property to Master Planned Development to develop a mixed use project consisting of commercial, marina, residential and supporting uses. A copy of the conceptual master plan is attached for your use and reference.

We hope you can attend the above referenced meeting where the proposed project and the development review process at the City of Palm Coast will be discussed. If you have any questions, please contact me at (386) 439-2945.

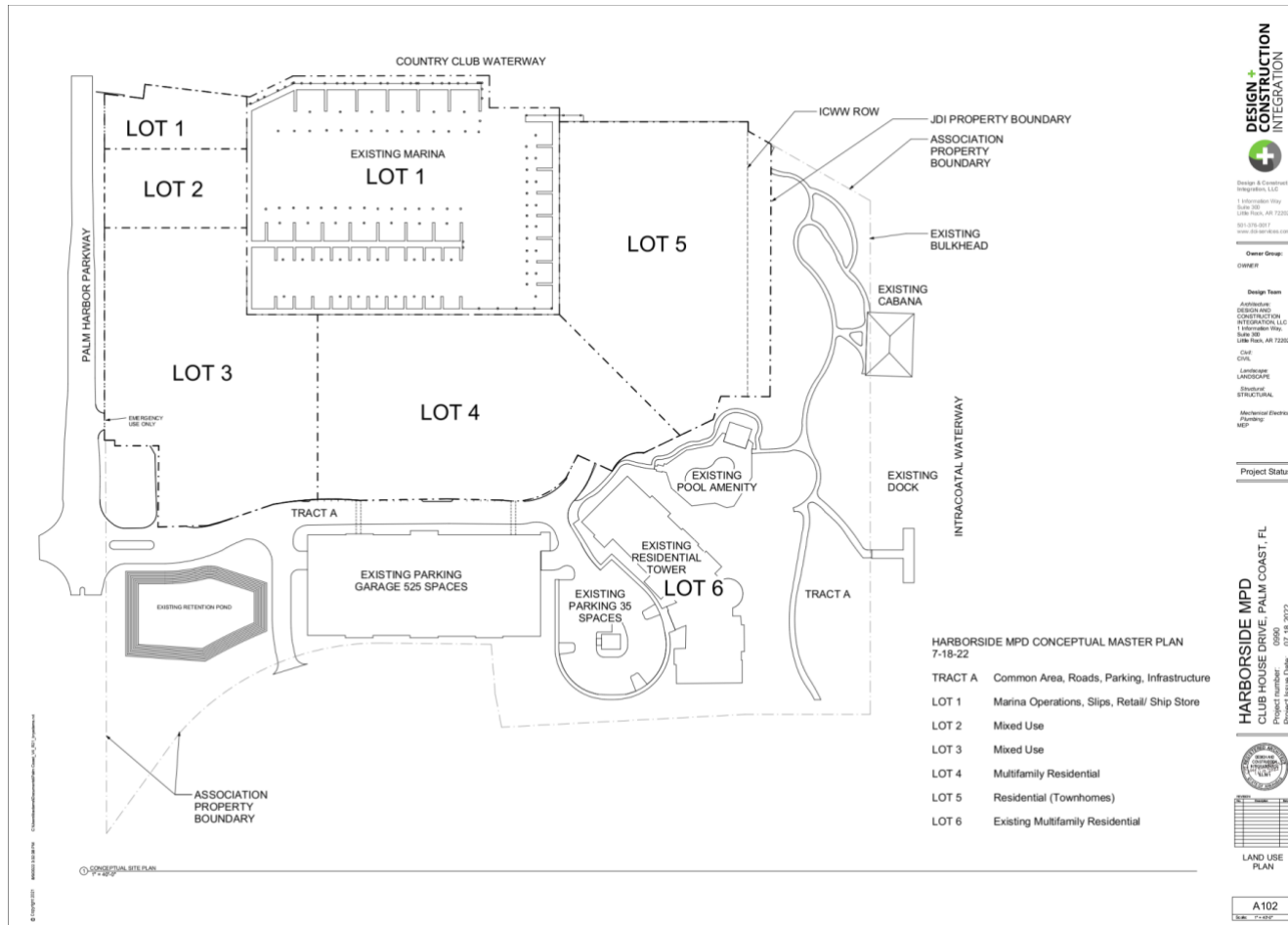
Sincerely,



Jay W. Livingston, Esq.  
Attorney for JDI Palm Coast LLC

---

391 Palm Coast Parkway SW #1  
Palm Coast, Florida 32137  
T 386.439.2945  
F 866.896.5573  
jay.livingston314@gmail.com



**DESIGN + CONSTRUCTION INTEGRATION**

**Design & Construction Integration, LLC**  
1 Information Way  
Suite 200, Apt 72002  
Little Rock, AR 72002  
501-578-0317  
www.dci-ar.com

**Owner Group:**  
OWNER

**Design Team:**  
Architecture  
DESIGN AND CONSTRUCTION  
INTERIOR, LLC  
1 Information Way  
Suite 200  
Little Rock, AR 72002  
Civil  
Landscape  
Landscape  
Structural  
Mechanical/Electrical  
Plumbing  
MEP

**Project Status:**

**HARBORSIDE MPD**  
CLUB HOUSE DRIVE, PALM COAST, FL  
Project Number: 0090  
Project Issue Date: 07/18/2022

**LAND USE PLAN**

**A102**  
Rev. 1-1-2022

**SIGN IN SHEET**  
**Neighborhood Meeting**  
**Harborside Master Plan Development Rezoning**  
**September 8, 2022 @ 11 AM to 12:30 PM , 3<sup>rd</sup> Level Parking Garage**  
**120 Palm Coast Resort Blvd., Palm Coast, FL 32137**

[illegible]

**SIGN IN SHEET**  
**Neighborhood Meeting**  
**Harborside Master Plan Development Rezoning**  
**September 8, 2022 @ 11 AM to 12:30 PM, 3<sup>rd</sup> Level Parking Garage**  
**120 Palm Coast Resort Blvd., Palm Coast, FL. 32137**

[illegible]







# **LIVINGSTON & SWORD, P.A.**

## **Attorneys At Law**

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September 4, 2022

Ray Tyner  
Deputy Development Director  
City of Palm Coast  
Palm Coast, Florida 32164

Subject: JDI Palm Coast, LLC  
Application for Rezoning to Master Planned Development (MPD)

Dear Mr. Tyner:

Please find enclosed an application to rezone the property described in the application to MPD. In addition to the application for rezoning, which is enclosed with this letter, the requirements for the application are being submitted along with this letter via the City's Online Development Services portal.

An application for rezoning requires an analysis based upon the review findings as outlined in subsection 2.05.05 and subsection 2.06.03 of the Unified Land Development Code. This letter is a preliminary analysis of the criteria and will be supplemented and finalized before the application is considered by the Planning and Land Development Regulation Board after we receive and respond to staff comments to the application.

The review findings and analysis for subsection 2.05.05 are as follows:

A. The proposed development must not be in conflict with or contrary to the public interest.

**Rezoning the property to MPD is not in conflict with or contrary to the public interest. The property is already subject to an existing PUD, which is being modified pursuant to the proposed Development Agreement. The proposed zoning entitlements and plan of development are compatible with the existing multi-family tower and consistent with the property's Mixed Use designation on the Future Land Use Map.**

B. The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC.

**The property is within the Mixed Use future land use designation. The proposed zoning district is consistent with that designation as well as the relevant goals and objectives in the City of Palm Coast's comprehensive plans. The project**

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391 Palm Coast Parkway SW #1  
Palm Coast, Florida 32137  
T 386.439.2945  
F 866.896.5573  
jay.livingston314@protonmail.ch

proposes a mixture of residential and non-residential uses, including marina support facilities, residential and townhomes, as well as a hotel, restaurant and bar. The proposed densities and intensities for the project are consistent with Policy 1.1.1.3 and Objective 1.1.2 of the Future Land Use Element. Specifically, Policy 1.1.2.2 permits deviations from density and intensity standards "to promote and encourage creatively planned projects".

Objective 1.1.2 of the Future Land Use Element of the Comprehensive Plan ("FLUE") encourages the use of innovative land development regulations by permitting Master Planned Developments ("MPD") in any FLUM designation. Policy 1.1.1.3 allows for 20% of the total land area in the City with a Mixed Use Future Land Use Map (FLUM) designation to be residential and 33% of the residential units developed in these areas to occur at a density equal to or greater than 15 units per acre. The FLUE allows deviations in the permitted uses, intensities and densities on land zoned MPD.

The Harborside MPD proposes a maximum density greater than 15 units per acre. This is permitted because the property is designated Mixed Use on the FLUM, is already in the PUD zoning district under the existing PUD as recorded in Official Records Book 1253, Page 1924 (the "PUD") (which already permits residential density greater than 15 units per acre) and the pending application proposes to rezone the property to MPD. Policy 1.1.2.2 of the FLUE provides:

Permitted densities and intensities within a MPD shall generally follow those allowed within the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible in order to promote and encourage creatively planned projects and in recognition of special geographic features, environmental conditions, economic issues, or other unique circumstances.

First, it must be noted that this policy was already utilized for the entitlements approved in the existing PUD. Excerpts from the PUD are enclosed with this letter. Due to the justifications provided by the prior owner/developer, the City approved the PUD to allow for a deviation from the maximum Floor Area Ratio of 0.55 to 0.67. This permitted a project that combined multiple residential buildings with a "condominium hotel" and a significant intensity of non-residential uses along with the marina and supporting uses. To support the increased intensity of the project the prior developer constructed a stormwater system and 525 space parking structure. Unfortunately, after a single 8-story, 72-unit residential tower was constructed the market was impacted by the Global Financial Crisis and the remaining portions of the project were not developed.

The Harborside MPD proposes a creatively planned mixed use project with a reduction in the non-residential intensity and modest increase in the residential density. This will allow for a mixed use project that is financially feasible and fully utilizes the infrastructure already constructed pursuant to the PUD. The



increased density is justified under Policy 1.1.2.2 for the foregoing reasons and the following:

#### **Promotes and Encourages Creatively Planned Projects**

The Harborside MPD is a creatively planned mixed use project that includes a synergistic mix of uses including hotel, restaurant & bar, retail /ship store, office / dockmaster, marina with wetslips, fueling and ancillary supporting services, and sufficient density of residential uses to make the project financially feasible; particularly if hotel use ultimately proves to be infeasible.

#### **Geographic/Natural Features**

The project site was developed as a hotel and marina long before the City of Palm Coast existed. After the hotel exceeded its useful life and was demolished it was planned and significantly built out as one, if not the single most, dense master plans in the City of Palm Coast. The portions built to date include an 8-story residential building (believed to be the tallest building in the City) and a parking garage with 525 parking spaces (believed to be the only multi-level parking garage in the City). The PUD and resultant project were only possible by application of Policy 1.1.2.2. The parcel size and development area predated the incorporation of the City of Palm Coast, which must be taken into account when considering an appropriate use for this exceptionally unique location.

The unique, double-waterfront location, fronting both entrance to the saltwater canals from the Intracoastal Waterway ("ICW") and the ICW itself, is the perfect and only remaining location in the City to create walkable density at a level which complements surrounding existing uses on both sides of the ICW. The existing PUD and the elements of it which have been constructed are the most clear, convincing and substantial evidence that this location at the confluence of two navigable waterways offering direct access to the ICW plus views of the Atlantic Ocean at even moderate heights should be, and in fact already has been, approved and developed to a density in excess of 15 units per acre according to Policy 1.1.2.2. Projects in the immediate vicinity of the Harborside project are also more densely developed than is typically found elsewhere within either the City limits or Flagler County as a whole. For example, nearby and within the City limits there is an abundance of 4-story, tightly spaced residential buildings, including directly across Palm Harbor Parkway from the project site. The densely developed Yacht Harbor Village is directly across the ICW in unincorporated Flagler County.

#### **Economic Issues**

The City maximizes its benefit from the unique intersection of two navigable waterways via a mix of uses with an orientation around the waterfronts. However, mixed use developments are extremely expensive, complicated and time consuming - much more so than conventional single use development. The waterfront location of this site makes it both highly desirable and very expensive. Expensive to purchase, develop and maintain. Not merely expensive to purchase.

But also to develop and maintain. Far more expensive than other non-waterfront locations.

The existing and proposed mix of uses, marina, waterfront dining and the infrastructure and parking necessary to accommodate them are not now and have not historically been profitable endeavors for developers. They are not financially viable now nor are they likely to be in the foreseeable future in light of the enormous cost to develop and maintain without even considering the cost to acquire the underlying land. But these amenities provide a material public benefit and are enjoyed by the community at large as well as the residents and their guests of the mixed-use project. They create a sense of place, a neighborhood feel with authenticity. They create community. But they are also "money losers". But with a thoughtful mix of uses and densities, they can become "loss leaders" such that the whole is greater than the sum of the parts.

To offset the unavoidably high cost of a mixed use project of this type, other financially viable uses must be developed. Otherwise, these amenities cannot be developed much less maintained for the life of the project. In the project location residential is the only use which is both appropriate and financially viable. More specifically, residential uses must be developed at a level necessary to attain "economies of scale" from both a development cost and operating cost perspective. Such economies of scale are not attainable on this site at a density of only 15 units per acre.

The 432 requested residential units (of which 72 exist today) is necessary to attain reasonable economies of scale in development costs – which are elevated due to the coastal, waterfront location and necessary sustainability measures including storm resistance. Similarly, the requested unit quantity is necessary to operate efficiently a first-class residential project without overburdening residents with excessive, unsustainable ongoing costs for repairs, maintenance and the like.

In order to feasibly develop a mixed-use project with some degree of public benefit in the form of waterfront dining and recreation, residential density as requested must be permitted because of the site-specific requirements of construction and the more general costs of operation.

#### Other Unique Circumstances

The application is to allow modifications to a previously approved mixed use project providing residential, hospitality, marina and outdoor recreation uses. To best bolster mixed-use projects, a sufficient residential density is necessary to provide stability and predictability to the overall plan from a use and activity standpoint. Commercial uses and users frequently come and go but residential uses are a constant, predictable, stabilizing element. A case in point is European Village, which has had material struggles over time with stability in its retail and other non-residential spaces. Additional residential uses provide sustainable



activity and pedestrian life to what may otherwise be perceived as a bit of a ghost town.

Finally, as noted above, the infrastructure constructed to accommodate the intensity permitted in the PUD by application of Policy 1.1.2.2 must be taken into account. These unique features of the project site, namely the stormwater infrastructure and parking garage, were constructed with the increased intensity allowed only because of Policy 1.1.2.2. Any deviation from the PUD plan should ensure that the existing capacity of this infrastructure is utilized both to prevent waste and to prevent an undue burden being placed on existing residents of the 72-unit residential tower who could be left to bear the lion's share of the cost to operate and maintain such immense infrastructure. The proposed Harborside MPD does just that by increasing the residential density as allowed by Policy 1.1.2.2 without sacrificing the mixed use nature of the project, which will also include the marina, marina supporting uses and a retail ships store, restaurants and bars, and a hotel if allowed by market conditions.

- C. The proposed development must not impose a significant financial liability or hardship for the City.

**The proposed development will not impose any financial liability or hardship on the City. In fact, the development will contribute impact fees to offset the impacts on City infrastructure and services. After the property is developed it will also increase the residential and non-residential tax base of the City as well as provide additional sales tax revenue.**

- D. The proposed development must comply with all other applicable local, state, and federal laws, statutes, ordinances, regulations, or codes.

**Development of the property will be in compliance with all relevant laws and regulations as part of the development review and approval process.**

The review findings and analysis for subsection 2.06.03 are as follows:

- A. Whether the rezoning is consistent with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.

**The requested rezoning is consistent with the property's Mixed Use future land use designation. It is also consistent with and furthers the goals and objectives of all relevant adopted elements of the City's Comprehensive Plan as explained in more detail above.**

- B. Its impact upon the environment or natural resources.

**The proposed development is within an existing mixed use development, which has already addressed environmental and natural resources on site and in**

**the immediate area. The proposed development avoids and minimizes impacts to these resources.**

C. Its impact on the economy of any affected area.

**The proposed development will have a positive impact on the economy of the affected area.**

D. Its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste, or transportation systems.

**The proposed development will contribute all applicable impact fees for sewage disposal, potable water, drainage, fire, police protection, solid waste, or transportation, less any credits for previously paid but unused capacity reservations for water and sewer. The residential components of the project will contribute impact fees for schools as well as any proportionate fair share mitigation obligation that may be required to address any student station needs created by the development.**

E. Any changes in circumstances or conditions affecting the area.

**The surrounding area is and remains planned as a mixed use area suitable for the proposed mixture of residential and non-residential uses.**

F. Compatibility with proximate uses and development patterns, including impacts to the health, safety, and welfare of surrounding residents.

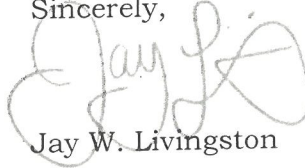
**The proposed development is compatible with the surrounding uses and development patterns. The eastern portion of the property is limited to townhouse with higher density residential uses to the west. This will ensure compatibility with the existing multi-family tower and avoid any conflicts with the non-residential uses proposed for the western portion of the property. It will also avoid non-residential traffic in the residential areas of the project. The location for the proposed hotel, restaurant, bar and marina support facilities will further these compatibility goals while also ensuring commercial visibility from the adjacent Palm Harbor Parkway.**

G. Whether it accomplishes a legitimate public purpose.

**The proposed development will provide a mixture of residential and non-residential uses to serve the onsite residents as well as the neighborhood and City as a whole. It will also ensure the long term viability of the marina, which is and has been a landmark in the City of Palm Coast since before the incorporation of the City.**

Please contact me if you have any questions, comments or require additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay W. Livingston". The signature is stylized with a large, looped "J" and "L".

Jay W. Livingston

CC: JDI Palm Coast, LLC





**GENERAL APPLICATION:** ☒ Rezoning ☐ Special Exception  
☐ Nonstatutory Land Division/Parcel Reconfiguration ☐ Vacating Plat  
☐ Subdivision Master Plan ☐ Preliminary Plat ☐ Final Plat  
☐ Master Site Plan ☐ Nonresidential Controlling Master Site Plan  
☐ Technical Site Plan ☐ Site Plan Addition ☐ Development Order Modification  
☐ Variance ☐ Parking Flexibility  
☐ Wireless Communication Facility (new structure)

CD Plus Application #: \_\_\_\_\_ Application Submittal Date: \_\_\_\_\_  
Fee Paid: \$ \_\_\_\_\_ Date of Acceptance: \_\_\_\_\_  
Employee Name Accepting Application (print name): \_\_\_\_\_  
Rejected on: \_\_\_\_\_ Rejected by: \_\_\_\_\_  
Reason for Rejection: \_\_\_\_\_

A. PROJECT NAME: Harborside

B. LOCATION OF SUBJECT PROPERTY (PHYSICAL ADDRESS) \_\_\_\_\_  
15 Palm Coast Resort Blvd, Palm Coast, FL 32137, 120 Palm Coast Resort Blvd, Palm Coast, FL 32137

C. PROPERTY APPRAISER'S PARCEL NUMBER(s): \_\_\_\_\_  
38-11-31-0000-01030-0000; 38-11-31-7103-000F0-0000

D. LEGAL DESCRIPTION \_\_\_\_\_ Subdivision Name, N/A Section, 38-39 Block, N/A Lot  
Phase Two, Bldg "D"; Phase Three, Bldg "C"; Phase One, Bldg "E"

E. SUBJECT PROPERTY ACRES / SQUARE FOOTAGE: 17 6426 acres in total

F. FUTURE LAND USE MAP DESIGNATION Mixed Use EXISTING ZONING DISTRICT: MPD  
OVERLAY DISTRICT: District 2

G. FLOOD ZONE: AE, X COMMUNITY PANEL NUMBER: 0129 DATE: 6/6/2018

H. PRESENT USE OF PROPERTY: Air / Marina (2000), Condo Parking Garage (2804)

I. DESCRIPTION OF REQUEST / PROPOSED DEVELOPMENT (MAY ATTACH ADDITIONAL SHEETS): \_\_\_\_\_  
MPD / Mixed-Use Development

J. PROPOSED NUMBER OF LOTS: 5 lots (1-5) + 1 tract (A)

K. CHECK APPROPRIATE BOX FOR SITE PLAN

- ☐ Tier 1 (up to 40,000 sq. ft. / 40 units)  
☐ Tier 2 (up to 100,000 sq. ft. / 100 units)  
☒ Tier 3 (exceeding 100,000 sq. ft. / 100 units)

L. LIST BELOW ANY APPLICATIONS CURRENTLY UNDER REVIEW OR RECENTLY APPROVED ASSOCIATED WITH THIS APPLICATION.  
N/A

M. WATER/SEWER PROVIDER: City of Palm Coast

N. IS THERE AN EXISTING MORTGAGE? ☒ Yes ☐ No

General Application (sheet 1 of 2)

October 1, 2009 (REVISED 4-9-2010)

VIII-43



**OWNER:**

Name: JDI Palm Coast LLC  
Mailing Address: P O Box 64  
Little Rock, AR 72203

Phone Number:

E-mail Address:

**APPLICANT / AGENT:**

Name: Livingston & Sword, P.A.  
Mailing Address: 391 Palm Coast Pkwy SW, #1  
Palm Coast, FL 32137

Phone Number: 386-439-2945

E-mail Address: jay.livingston314@gmail.com

**MORTGAGE HOLDER:**

Name: Chambers Bank  
Mailing Address: P.O. Box 609  
Danville, AR 72833  
c/o: Philip Alexander

Phone Number: 479-495-4625

E-mail Address: philipalexander@chamber-bank.com

**ENGINEER OR PROFESSIONAL:**

Name: CPH, Inc.  
Mailing Address: 520 Palm Coast Pkwy SW  
Palm Coast, FL 32137 c/o  
Jason Kellogg

Phone Number: 386-445-6569

E-mail Address: jkellogg@cphcorp.com

**PLANNER:**

Name:

Mailing Address:

Phone Number:

E-mail Address:

**TRAFFIC ENGINEER:**

Name:

Mailing Address:

Phone Number:

E-mail Address:

**SURVEYOR:**

Name:

Mailing Address:

Phone Number:

E-mail Address:

**LANDSCAPE ARCHITECT:**

Name:

Mailing Address:

Phone Number:

E-mail Address:

**ATTORNEY:**

Name: Livingston & Sword, P.A.  
Mailing Address: 391 Palm Coast Pkwy SW, #1  
Palm Coast, FL 32137

Phone Number: 386-439-2945

E-mail Address: jay.livingston314@gmail.com

**DEVELOPER OR DOCKMASTER:**

Name:

Mailing Address:

Phone Number:

E-mail Address:

I HEREBY CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS CORRECT:

Signature of owner OR person authorized to represent this application

Signature(s):

Printed or typed name(s):

NOTARY: This instrument was acknowledged before me on this 31 day of May, 2022 by

Jay Livingston who is/are personally known to me or who has/have produced

as identification.

[Signature]

Signature of Notary Public, State of Florida



SEARISTY GOODWIN  
MY COMMISSION # NH 254390  
EXPIRES: June 6, 2026  
General Application (sheet 2 of 2)

October 1, 2009 (Revised 4-9-2010)

VIII-44

### 9.3 Parking.

Development Type	Off street Parking
Hotel Condominium	One space per room ( $209 \times 1 \text{ space} = 209 \text{ spaces}$ ) Total: 209 spaces
Resort Condominium Units	<ul style="list-style-type: none"> <li>One and one half space per two (2) and three (3)-br units (<math>162 \text{ 3-br units} \times 1.5 = 243</math>);</li> <li>Two spaces per four (4) br units <math>7 \text{ 4-br units} \times 2 = 14</math>;</li> </ul> Total: 257 spaces
Hotel related activities	4 spaces per 1000 square feet (188 spaces) to include hotel and harbor master employees <ul style="list-style-type: none"> <li><math>47,000 \text{ SF} / 1,000 \text{ SF} \times 4 = 188</math></li> </ul> Total: 188 Spaces
Total Required for all uses:	654 Spaces

9.4 Maximum Impervious Surface Ratio ("ISR") – The maximum ISR for the Project shall be 0.70.

9.5 Maximum Floor Area Ratio ("FAR") – The maximum FAR for the Project shall be 0.67. FAR is defined as the total horizontal floor area of a building based on exterior dimensions and applied to all full stories designed or intended for occupancy or use, but excluding open or screened porches and entries, attached or detached structures that enclose mechanical or electrical equipment, attic areas with a headroom of less than 7 feet, parking structures, and basement space where the ceiling is not more than an average of 48 inches above the finished grade elevation of the lot.

The underlying Mixed Use Future Land Use Map designation allows a maximum FAR of 0.55. An increase to 0.67 is permissible under Comprehensive Plan Future Land Use Element Policy 1.1.2.2, which states:

- Permitted densities and intensities within a PUD shall generally follow those allowed within the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible in order to promote and encourage creatively planned projects and in recognition of special geographical features,

environmental conditions, economic issues, or other unique circumstances.

The FAR for the Project is consistent with Future Land Use Element Policy 1.1.2.2 of the City of Palm Coast Comprehensive Plan in that the Project:

- Promotes and encourages a creatively planned icon resort project.
- Recognizes the special and unique location of the site at the "intersection" of Club House Drive and the Intracoastal Waterway, and near the Palm Coast Parkway Bridge. As such, it is the only non-highway oriented hotel, conference and meeting facility in the City.
- Recognizes the need to update the hotel facility and amenities, including conference and meeting space, to attract business guests to the City, which will provide economic benefits to City businesses.
- Recognizes the need to update the hotel facility and amenities to attract tourists, which will also provide economic benefits to City businesses.
- Minimizes adverse impacts to the environment through creatively-designed landscaping and lighting design.
- Enhances the City's overall quality of life.

Further, under Future Land Use Element Policy 1.1.1.3, up to 25 percent of the land area within the Mixed Use designation citywide may be developed at an intensity greater than 0.55 FAR.

9.6 Finished Floor Elevations - The minimum finished floor elevations for livable heated or cooled area shall be at least one (1) foot above the site's 100-year flood elevation. Garage structures and unlivable spaces, may be constructed at or above the site's 100-year flood elevations, contingent upon provisions being made to allow inflow and outflow of surface water in the unlivable areas.

9.7 Administrative Deviations - The Planning Manager for the City may administratively approve deviations up to ten (10) percent of the criteria contained herein. Deviations of greater than ten (10) percent of the criteria contained herein may be approved by the Planning and Land Development Review Board (PLDRB); provided, however, that administrative deviations to ISR and FAR maximum standards may not be granted.

#### 10.0 Permits and Certificates of Occupancy

Immediately upon the issuance of a Development Order for a Phase of horizontal construction and upon receipt of a bond for that Phase's site improvements, the City will accept applications for Building Permit(s) for specific buildings or facilities to be constructed in that phase, so as to permit simultaneous horizontal and vertical construction, provided the Developer has obtained the necessary State

**From:** [CHARLES and MARY KACZOREK](#)  
**To:** [Bill Hoover](#)  
**Cc:** [Nick Klufas](#); [Irene Schaefer](#); [RTyner@palmcoast.gov](mailto:RTyner@palmcoast.gov)  
**Subject:** JDI/VCC development  
**Date:** Monday, October 17, 2022 6:07:16 PM

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As a resident of Palm Coast Resort, I am writing to express my opposition to the planed JDI/VCC development being proposed adjacent to our property. I have spoken to many other concerned residents, who also share my view of this project.

The proposed density and heights of the JDI/VCC plan with either of their 2 scenarios is not consistent with the surrounding communities..It was indicated at the prior development board meeting that the JDI/VSCC plan would be 2 times the previous original plan and also the original plan was for condominium units....The project is simply too massive and the height of the apartments is inconsistent with Palm Coast structural plans.

One of the JDI arguments for this project is that the 5 story garage is already built ...so a high rise apartment and hotel would be compatible to what is already there... That is is ridiculous!!!! It is truly the tail wagging the dog!!

The rental units being proposed also do not add value to the area.

To the contrary ...they decrease the value of surrounding areas. It is widely understood that no one takes more care and pride of property than owners. The final straw is that they will not be the developer or builder of the hotel or restaurant.

That it will be subcontracted out .When JDI was questioned on this ,the reply was "trust us" ..it will be high end.... Furthermore if a hotel is not developed..will there be more rental apartments built in its place?

Are we to trust someone who was combative and disrespectful to the entire planning board and insensitive to the surrounding community.??!!

Another big concern is safety..the garage has always been an issue for local residents. There have been multiple thefts of property, drug dealings and vagrancy....We do not have on site security to deal with the additional concerns that will arise with increased use.

I disagree with JDI assessment that the garage can handle all the increase use that will come from this development. There numbers are grossly understated.... Hotel guests,,restaurant patrons.employees..230 unit apartment..condo owners....what if each apartment unit has multiple cars!!....There is also only one elevator!!

Additional safety concern is the fact that at this time there is only one road in and out of the complex. I have witnessed multiple accidents at that intersection..The area is already densely populated with the European Village and the intercostal bridge traffic volume...A traffic impact study needs to be initiated before any approval is done.

We are just recovering from the latest hurricane ..... this last storm had water that breached the shore line and came half way up to the existing condo...I hope a safety study will take all of this into consideration. Alternate evacuation plans for this proposed increased density is needed to a avoid a disaster.

This project will also put a strain on our water and sewage services. I hope the proper studies are done to determine what the correct density would be for the existing systems...I have seen overflowing drainage in the area and hope that city engineers sign off on the safety of this project also.

We consider Palm Coast as an undiscovered gem in Florida..I hope and pray that you support the residents with intelligent planned growth and not the greedy developers , who will be long gone when the problems surface.

Charles and Mary Kaczorek  
146 Palm Coast Resort Blvd  
Unit 308

**From:** [Doreen Koenigsamen](#)  
**To:** [PLDRB](#)  
**Cc:** [David Alfin](#); [Edward Danko](#); [John M. Fanelli](#); [eddiebranquinho@palmcoastgov.com](mailto:eddiebranquinho@palmcoastgov.com)  
**Subject:** Harborside MPD Application No. 5132  
**Date:** Tuesday, October 18, 2022 4:58:51 PM

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Dear Planning Board Members,

As a condominium owner at 146 Palm Coast Resort Blvd. since 2008, I am writing in regard to the hearing of JDI Palm Coast's Rezoning Proposal for a Mixed-Use Project that will be presented on October 19, 2022.

The area in question is bounded by:

1. Palm Harbor Pkwy. and Clubhouse Drive
2. The Clubhouse Waterway along with an existing Marina
3. The Intracoastal Waterway
4. A Retention Pond, an existing Garage Facility, Palm Coast Resort Blvd. and the existing condominium building at 146 PCRB.

Also of note is the property abutting 146, Legacy Resort, which uses PCRB as it means of access and egress.

Over the years, the development plan for this property has changed always with increasing density. As I understand it, JDI PC's Rezoning Proposal before you now for approval has several remaining issues that have not been finalized. Furthermore, that JDI PC is proposing that the issues regarding density left to be made at a future date BE AT THEIR OPTION. From reading published backup information, your Department's Staff's professional opinion and JDI PC's opinion do not agree on certain FACTS regarding density. It is felt that JDI PC is not in compliance and recommend denial of this application to the City Council.

Your staff has been at the site. I believe you can understand the concerns of local residents. The proposed density and additional contemplated development will have a major adverse - and possibly dangerous - affect on the site.

Along with safety problems regarding traffic, security and parking there is only one elevator in the garage. When the Boat Parade is held in December, Palm Coast Resort feels compelled to hire security. When nearby European Village holds events, there is off-road parking leading up to then onto PCRB and then overflowing into the garage. At these times, Palm Coast finds it necessary to send out traffic control agents. As it is now, patrol cars are sometimes on the upper levels of the garage because of cars ignoring the stop sign at the entrance to PCRB and speeding on Palm Harbor Parkway.

I'm sure others in the area have brought issues and concerns to you also. I hope you will give them all your thoughtful attention. Palm Coast offers so much to enhance our way of life and I hope you will decide to keep its future in our hands and not have a Developer make decisions that will affect our quality of life.

Thank you for this opportunity.

Doreen Koenigsamen

Sent from my iPhone

To The Palm Coast Commissioners and Mayor  
September 19, 2022 (Corrected to include footnote A )

Dear Commissioners and Mayor,

On September 1, 2022 May Management sent out a notice from the Palm Coast Resort (PCR) Condominium Homeowner Association Board, telling our homeowners that a deal had been reached with JDI (VCC), the new owners of the Master Association previously owned by JDI (Jacoby). That notice specifically says, "For the Master Board to agree to the above mentioned property transfers and dedicated parking, we have agreed that the PCR Condominium Association Board would not object to the development plans being proposed to the City of Palm Coast by JDI." It goes on to say, "The next step is to execute a Memorandum of Understanding (MOU) addressing the areas of agreement between the Master Board and PCR." While we as independent homeowners or as groups of homeowners can object, the Board will not. Furthermore, a homeowner vote is not required. So let me express my views, as well as that of other homeowners, as suggested by our Board.

Density:

The following are the density rates of abutting or nearby communities, as best as I can determine them.

1. Bella Harbor 13.93 units per acre (42 units on 3.14 acres)
2. Waterside 9.42 units per acre (39 units on 4.14 acres)
3. Marina cove 8.17 units per acre (65 units on 7.96 acres)
4. Canopy walk 4.15 units per acre (220 units on 52.98 acres)
5. JDI(VCC)Plan 22.2 units per acre (230 units on 10.4 acres) (A) Footnote page 4.

The density of JDI (VCC)'s development plan is substantially above the others shown. It is also substantially above the density of the original, Commission approved, Master Association Plan Centex proposed, as well Pulte's later plan. Most of our condominium units were sold under expectations of far less density and no rental apartment complexes. Furthermore, none of the above listed communities has a planned hotel of 125 keys, an 84-slip operating marina (with numerous, "live-a-board" residents) and a planned restaurant. In short, we have gone from a low density, "premier" condominium complex (where units sold in excess of \$1 million) to a high-density condominium and apartment complex.

### Safety:

With this increased density, residents, guests, patrons, visitors, employees and contractors of Legacy Vacation Resorts (72 units), the planned hotel (125 keys), the existing Marina (80 slips) the planned townhouses (30 units) the rental complex (200 units) and 146 Palm Coast Resort Blvd. (72 units) must all pass through single entrance at Palm Harbor Parkway and Club-House Drive. (That is a total of 579 units, keys and slips.) That entrance has a concrete wall and deep water retention pond on one side and a dead-end marina entrance (and canal) on the other. In the event of a natural disaster or serious emergency drivers have no choice but to exit through that single entrance. No other vehicular entrance or exits are available today. That may well be a safety issue, as you would know.

### Garage, Elevator Volume and Safety:

The existing garage serving the Master Association development has a maximum capacity of about 500 cars on four floors. The developer's planned apartment complex will be five floors and contain 200 rental units. PCR currently owns 11.5% of the Master Association and is allotted 1.5 cars per residential unit or 108 parking spaces. Assuming apartment renters are also allotted 1.5 cars per unit, that is another 300 cars, for a total of 408 spaces, excluding usage by guests, hotel customers (125 keys), marina patrons and visitors, various contractors and employees. There are already times, which I have observed, when Marina parking is full and overflows onto the grass which abuts it.

While the garage may have the numerical capacity to handle this volume, it has only one 3,500 pound capacity elevator. That elevator holds a maximum of 21 people (i.e., 167 pounds per person, on average).

It concerns me that JDI(VCC) expects that renters of its "luxury complex" (their words) would be willing to pay rents of \$2,100 per month (\$25,200 per year) to \$3,500 per month (\$42,000 per year) for an apartment with a one-elevator garage serving up to 500 cars. One elevator may be a safety issue. Especially in the event of a natural disaster or that single elevator breaking down. Many of PCR's residents are older and unable to walk up or down multiple ramps or stairways.



#### Townhouses:

The JDI(VCC) conceptual plan calls for the construction of 30 townhomes. The townhomes are logically located along the intercoastal waterway, the Club-House canal and the Marina. Those townhouses were described as “luxury residences” of up to 2,600 square feet, selling from \$600,000 to \$900,000 each.

But no community pool is included in the plan and the townhouses are not described as having private garages or nearby, on-street guest parking. The parking included in the plan is located at the south end of the property, as much as a football field away. Furthermore, the Pavilion is in disrepair and may not be used. It should be repaired or replaced, as one of the few amenities in this “luxury” development. While it is described as a “conceptual” plan, even as such it appears to need more work and possibly community input.

#### Security:

One of our Deputy Sheriffs lives at Palm Coast Resorts. He has graciously agreed to park his police vehicle in a highly visible space, when at home, to act as a deterrent to crime. PCR has experienced trespassing, vandalism, substance abuse, and thefts in the JDI/VCC garage, at the fishing pier and at the Pavilion which will now serve a much larger Master Association community. The entire community and garage are ungated. As such, security at the Tidelands, Grand Haven, Yacht Harbor, Waterside and other local communities is clearly superior to that of JDI/VCC’s development plan. This is a serious concern, unaddressed at the conceptual plan level.

#### September 20 or 21, 2022 Commission Meeting:

It seems to me, as a layman, that this entire process has moved along too quickly. JDI(VCC)’s attorneys, Livingston & Sword, first announced the zoning plan to nearby communities on August 29, 2022. On September 1, 2022 our Board announced what PCR homeowners would receive as part of the deal, without a description of JDI(VCC)’s development plan. That came on September 8, in a “neighborhood” garage meeting set up by a JDI/VCC representative. That is a total of no more than 22 days for the community and Commission to consider JDI/VCC’s plan.

There are enough issues involving density, traffic, safety, security, the condition of the Marina and the Pavillion (and others which I have not highlighted) to warrant further review. If I were an elected Commission member, I would suggest a delay of any zoning changes until these and other questions, surely to be raised by other Palm Coast residents, can be satisfactorily addressed.

Thank you for your understanding and service to the Palm Coast Community, ranked several times as one of the “best places to live and retire in Florida”. I appreciate your work and patience.

John R. Mueller  
146 Palm Coast Resort Blvd  
Unit 208  
Palm Coast, Florida 32137

(A) Footnote: The City of Palm Coast Harborside MPD - Application #5132 of September 20, 2022 referred to a density of 25.5 units per acre (432 units on 16.94 acres) and 26.9 units per acre (402 units on 14.94 acres) depending on different building plans. Where the numbers come from is not explained. But both density numbers, as well as my own calculation, show density at far greater levels than our neighbors and the Centex/Pulte plans which were approved by the City. In fact, the City suggested to JDI(VCC) that a density of 12 to 15 units per acre would be acceptable.

Michael and Lisa Fisher  
7 Avenue de la Mer, Unit 401  
Palm Coast, Florida 32137

October 13, 2022

City of Palm Coast Planning Board  
160 Lake Avenue  
Palm Coast, Florida 32164

Re: Harborside MPD – Application #5132

Mr. Chairman and Board Members:

I am the owner of unit 506 at Palm Coast Resort, and bought it from the original developer, Centex. I was at the previous Hearing on September 20, 2022, and like many of my fellow owners, I was appalled at the rudeness of the applicant and his presentation. Many times he said that he heard the owners concerns and he addressed them. That has not been the case. To the contrary, the developer had their plans in mind and their application has no compromise. At the Hearing, the Applicant relentlessly bullied his plan forward, and demanded a decision... even if it were a denial. It seemed to me that he feels he will receive a favorable decision from the County Council. Although I would like to see the property developed, I hope that reasonable minds will prevail and perhaps the Applicant will reconsider the input from the Planners and the residents of Palm Coast Resort and make their application something that ALL OF US can be proud of, as this “signature site” so deserves.

I have several issues that concern me. Other community members have other concerns. Here are mine:

- 1) I had mentioned at a public forum set up by the developer (Jacoby) at the Community Center on Palm Coast Parkway prior to Covid, and as I reiterated at the September 20<sup>th</sup> Hearing, building an 8 Story Building opposite and parallel to the tall parking garage is a terrible planning detail. It creates a “Canyon Effect” as we drive past to the Palm Coast Resort. My opposition is not to the building height, it is to the closeness and orientation that should be better planned. Better planning details should be considered and utilized.
- 2) At the September Hearing it was stated that 378 units were originally approved. 72 units were built in the existing Palm Coast Resort building. This leaves 306 units unbuilt that were approved. The developer has proposed 33%-40% more units than the 306 unbuilt (402 and 432 units). I do not have a problem with the developer requesting a rezoning, **BUT** as a condition of approval a maximum number of units should be stated. Although others may feel this too many, I suggest that maximum number to be 306 units. That is still very generous, as when the original plan was approved, the property was designated a “Signature Site” for the City. This plan is not even comparable in quality to the Centex plan.

- 3) Before any number of units are approved, many items need to be satisfied, including utilities, parking, and traffic. The original Plan was approved almost 2 decades ago. The population has grown considerably since the original approval. No matter how units are considered, I believe that the Planning Board and the County Council should have a full traffic report in front of them to make any decision. To my knowledge, this applicant has not submitted a full traffic report.

If the Applicant chooses to push this application forward without reasonably including the neighborhoods concerns, I urge both the Planning Board and the County Council to deny this application.

Thank you for your consideration,

*Michael Fisher*

Michael Fisher

**From:** [Irene Schaefer](#)  
**To:** [rpcservicesllc@aol.com](mailto:rpcservicesllc@aol.com)  
**Cc:** [Ray Tyner](#)  
**Subject:** FW: The Harborside Master Plan Development Rezoning  
**Date:** Wednesday, September 14, 2022 2:38:00 PM  
**Attachments:**

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Good afternoon Mr. Crocetta:

Thank you for contacting the Planning and Land Development Regulation Board (PLDRB) , your letter shown below will be included in the PLDRB September 20<sup>th</sup> agenda packet for the PLDRB members review. Please note that letters are not read aloud at the PLDRB meetings. After the September 20<sup>th</sup> PLDRB meeting City staff will call you to discuss next steps.

Sincerely,

Irene Schaefer  
Administrative Coordinator Planning  
160 Lake Avenue  
Palm Coast, FL 32164  
Tel: 386-986-3749  
[www.palmcoast.gov](http://www.palmcoast.gov)



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**From:** PLDRB <PLDRB@palmcoastgov.com>  
**Sent:** Wednesday, September 14, 2022 1:51 PM  
**To:** Irene Schaefer <ISchaefer@palmcoastgov.com>; Ray Tyner <RTyner@palmcoastgov.com>  
**Subject:** FW: The Harborside Master Plan Development Rezoning

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**From:** robert crocetta  
**Sent:** Wednesday, 14 September 2022 13:49:09 (UTC-05:00) Eastern Time (US & Canada)  
**To:** PLDRB; [jaylivington314@gmail.com](mailto:jaylivington314@gmail.com)  
**Cc:** Jayne A. Eversen; Clay Kincaid; Richard DeCeglie; Rick Pinson; Lisa Lovvorn  
**Subject:** The Harborside Master Plan Development Rezoning

Date September 14, 2022

To, The City of Palm Coast, Planning Department

RE: Public hearing proposed for September 20, 2022, Harborside

Master Plan Development. Currently known as Palm Coast Resort site on Palm Harbor Parkway

Centex Corporation originally developed the site and built a 72-unit condominium with a parking garage. During construction I owned a unit at Waterside Condominiums, 114 Clubhouse Dr. Palm Coast. First phase of construction appeared to be fast tracked. We experienced a lot of construction noise, blowing debris and workers with a complete disregard, throwing trash out their windows and not securing construction materials in the back of pickup trucks. Then came the housing bust.

The residence of Waterside certainly understands that at some point the balance of the site would be developed. Under the leadership of Mayor Jon Netts, Waterside communicated their position and concerns of future development. Any new developer taking over control of the site agreed with the city that the city had an option to take over the marina and run it. Providing a fueling station for local residents and travelers of the intracoastal. All concerned parties at that time understood that adjoining property owners would have a level of influence on how the site would be built out. From 2007 to date, I have been president of the Waterside Condominium Association. We have several residents that live on the street side of Palm Harbor Parkway. The way their units are configured, their living rooms, master bedrooms and verandas are all facing Palm Harbor Parkway. One can realize how significantly those folks would be impacted. Currently the traffic impact since the new exit off of I-95 has generated an increase. The four way stop at the end of Clubhouse to Palm Harbor Parkway including the entrance to Palm Coast Resort has its safety issues. Many cars traveling on Palm Harbor Parkway blow through the stop signs. I'm sure that any project that is being reviewed by the planning commission

would require a current traffic study, proposed streetlight with possible turning lanes.

We understand that the property owner is seeking a new zoning agreement. The Waterside Community is most concerned about parcel two and three of proposed plot plan. The nature of rezoning would give them great flexibility. High density per acre. I understand that if this rezoning is approved that they could build a structure up to 40,000 ft.<sup>2</sup> with no public input required. From our perspective this is unacceptable because we have no idea where the buildings would be placed. Type of architecture, building height, exterior materials, roof design, site lighting, refuge areas, parking, landscaping and buffering landscaping. All of the above are potential impacts to our residents on street side. It is the responsibility of our community, City of Palm Coast to recognize and be passionate for protecting the residents of Waterside Condominiums.

The last time I met with city planning officials it was stated that the walking path to the intracoastal would be maintained and an additional vehicle exit for any proposed project is required. How will that work?

Does the city currently have an agreement with the developer establishing impact fees, such as, water, sewer, traffic control and our public schools.

The Waterside Community respectfully would like to be included in all phases of any proposed construction to protect their quality of life and financial investment.

We are requesting a meeting with the planning department for further details on this proposed project. We expect full transparency and

cooperation for our concerns.

In closing, I respectfully request that this letter be put on your meeting agenda, under communications and read aloud to the attendees.

Thank you for your time and considerations.

Respectfully,

Robert Crocetta, President, Waterside Condominiums at Palm Coast.

e-mail [rpcservicesllc@aol.com](mailto:rpcservicesllc@aol.com)

Cell-386-623-5858



Date October 19, 2022

To, The City of Palm Coast, Planning Department

Re: Public hearing for October 19, 2022 at 5:30 PM, Harborside Master Plan Development. Site known as Palm Coast Resort on Palm Harbor Parkway.

At City Hall, Council Chambers in the community wing, 160 Lake Ave., Palm Coast.

The residence at Waterside Condominiums have great concerns. Here are some of our observations.

Has an updated, 500 year storm management plan been provided by a licensed engineer?

Has a up-dated environmental review been done?

Municipal water supply, currently we run low pressures in the system.

Municipal sanitary sewer, from time to time, there is a sewer manhole in front of Waterside on Palm Harbor Parkway that has pushed raw sewer out of the top of the steel manhole lit. It seems to be evidence that the downstream trunk line is at capacity.

In general, traffic in our city has increased significantly. The new exit on I-95 has increased traffic on Palm Harbor Parkway. At the intersection of Clubhouse Drive is a four way stop. Every day several vehicles blow right through that intersection. There have been many accidents. Has a current traffic study been submitted to the City Engineer? It appears it is not required by MPD zoning until after the zoning application is approved. Putting the cart before the horse.

This site will require a separate exit. Where might that be?

I find it rather odd that a finished proposed site plan is not required or available by this developer? It is highly unusual most municipalities require a submittal of all information pertaining to the site and buildings when applying for re-zoning. The community and adjoining property owners are deceived by this process. It truly illustrates a lack of transparency by all parties.

Density per acre currently proposed is extraordinary. The surrounding properties have a density per acre on average 7.9. The developer who has not made up their mind are seeking a density of 26 to 32. What is the true number? This high density should be unacceptable to all stakeholders and is incompatible with other properties in this area.

There's a lot of questions surrounding this proposed project. We are asking this planning board to deny this application as presented.

A recommendation, the developer should make contact with all neighboring communities and schedule workshop sessions to reach alternative proposals.

We respectfully request that this letter be put in the minutes for the October 19, 2022 hearing, Harborside.

Submitted by,  
Robert Crocetta, President of Waterside Condominiums for 16 years.  
114 Clubhouse Dr. unit 206B  
Palm Coast, FL 32137  
Cell phone 386-623-5858  
e-mail [rpcservicesllc@aol.com](mailto:rpcservicesllc@aol.com)

Date November 6, 2022

To: The City of Palm Coast, City Council

From: Waterside Condominiums at Palm Coast  
114 Clubhouse Dr., Palm Coast Florida  
Robert Crocetta, President of the Condominium Association.

Re: Public hearing November 15, 2022, Harborside Master Planned Development. Site known as Palm Coast Resort on Palm Harbor Parkway. To be held at City Hall Palm Coast Florida, 160 Lake Ave.

Waterside Condominiums are located on the corner of Clubhouse Drive and Palm Harbor Parkway across from the proposed development. The residents of our community will be seriously impacted by this project, views will be blocked with 60' and 80' foot high buildings. Environmental impacts, extreme high density of units per acre, noise, increased traffic congestion and impacting values.

In 2005 Centex Corporation received an approval for a PUD. In 2007 they returned to the City Council to increase number of units per acre.

Original PUD agreement gave the developer 10 years to finish. We believe the agreement has expired. All special zoning and use agreements have an expiration date.

We have asked the Planning Department several times to arrange a meeting with the developer to discuss their proposed project and our concerns. It never happened demonstrating arrogance and disc-concern for our community and residents. The Planning Boards public hearing of September 19 no residence from the Palm Coast Resort Condominiums of 72 units opposed the proposed project. There is some history. There was a dispute between this developer and the condominium association dealing with the parking garage rights and other legal matters. We understand that they settled their differences with the developer before presenting their application to the planning commission.

Marina Cove Condominium's also appeared to have no objection. We believe there needs and concerns were no high-rise buildings along the intracoastal where the low two-story townhouses are proposed.

It appears that those projects had a level of influence to negotiate their concerns. We feel Waterside will be more impacted than anyone else.

If their application for a Master Planned Development is approved as submitted or modified by the City Council, it should not allow the developer unusual rights to modify or relocate proposed structures on any one of the four parcels identified with in their current site plan application or modification.

We are concerned about the architectural appearance of any proposed structure and where it would be positioned on the site.

Where is the updated environmental impact study and how could it change the proposed site plan?

Where is the updated 500-year storm management plan? It could affect a site plan.

What will be the impact on the communities' public water and sanitary sewer infrastructure?

Increased traffic. The total traffic impact if approved as submitted would increase traffic at the four way stop. The simple calculation every vehicle would exit 4 times and enter four times in a 24 Hr. period. That would be a total of 3416 vehicles alone. It's a dangerous intersection currently and would become more dangerous.

Density per acre. If this project were to get approved based on its current submittal, would allow a total of 427 units on a 17-acre parcel. That is a density of 25 units per acre. This proposed high density is unusual for a small city to allow. This high density is incompatible with our community. Currently in this area the average density per acre is 7.9. The planning department had brought forward eight different points for consideration by the developer. The board's recommendation for density is still very incompatible. Perhaps no more than 12

units per acre. The Developers counterproposal to the planning boards eight points suggested they should have an increased entitlement of density per acre called bonuses. No bonuses please.

There's a lot of questions and concerns surrounding this proposed project. We are asking the City Council to deny this application as presented.

We are hopeful that the City Council will require the developer to resubmit a proposal that is compatible with this area.

We are willing to support a project that is fair and equitable to all stakeholders.

We respectfully request that our remarks be put in the minutes of your November 15, 2022 hearing.

Respectfully submitted,

Robert Crocetta, President of Waterside Condominiums for 16 years.

114 Clubhouse Dr. Unit 206B

Palm Coast, FL 32137

Cell phone 386-623-5858

E-mail [rpcservicesllc@aol.com](mailto:rpcservicesllc@aol.com)

## Virginia Smith

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**From:** John Mueller <jrmueller1947@gmail.com>  
**Sent:** Monday, January 9, 2023 8:29 AM  
**To:** David Alfin; Theresa Carli Pontieri; Cathy Heigher; Nick Klufas; Edward Danko  
**Cc:** Jason DeLorenzo; Virginia Smith  
**Subject:** Fwd: VCC USA Research  
**Attachments:** VCC USA Research.pdf

Dear Council Members and Mr. Mr. Mayor,

Attached is business research on VCC, the investment entity/developer of the "Harborside" property. I think you will find it helpful as you consider the zoning changes proposed by VCC. As you already know, VCC replaced Jacoby Development Corporation (JDI) and now controls Palm Coast Resort's Master Association as well.

Many of the 72 owners of Palm Coast Resorts Condominium Association, of which I am one, are concerned about the Harborside proposal, as it is currently structured.

May I also respectfully request that this research be included in the City Council's reference materials and record for your January 17 meeting with VCC's representatives. Our owners, whose emails I have, will receive copies of this research as well.

Thank you for your work and consideration.

----- Forwarded message -----

From: **John Mueller (via Google Docs)** <[jrmueller1947@gmail.com](mailto:jrmueller1947@gmail.com)>  
Date: Mon, Jan 9, 2023 at 8:01 AM  
Subject: VCC USA Research  
To: <[jrmueller1947@gmail.com](mailto:jrmueller1947@gmail.com)>

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To: Palm Coast City Council Members and Mr. Mayor  
From: J. R. Mueller for the Concerned Homeowners at Palm Coast Resort (PCR)  
Date: January 9, 2023

VRATSINAS CONSTRUCTION COMPANY (VCC USA) and JDI/VCC  
(New Majority Owner which controls the PCR Community "Master" Association)

PCR's Board of Directors announced on September 1, that the "majority ownership of JDI changed several months ago when an investment group headed by VCC (a development company located in New Colony Texas) bought out Jim Jacoby, the former owner of JDI."

VCC USA, the construction company, was started about 35 years ago by Gus Vratsinas and Sam Alley in Little Rock, Arkansas. The company's website (VCCUSA.com) describes VCC as a large, national general construction contractor. Sam's son Derek Alley is currently VCC USA's CEO and is also the lead member of the investment company, probably an Limited Liability Corporation (LLC), that now controls the Palm Coast Resort Community "Master" Association.

As a privately owned company, financial information on VCC USA and its investment company are not publicly available. However their website and press releases say VCC USA builds retail outlets, big box stores, hotels, apartments, multi-use buildings and much more, for large commercial and investment entities including real estate developers, some of which are in the rental apartment business. According to a VCC USA press release dated September 7, 2021\*\* (which announced Derek Alley as its new CEO) VCC USA, "posted over \$950 million in revenue in 2019. They have also completed projects of over \$25 billion."

VCC is described as being involved with their clients, from the pre-bid, pre-construction process through to the close out and warranty of their construction jobs. VCC USA does not describe itself as an owner/operator of any of the rental apartments and other complexes they build. (Possibly because that could place them in competition with the clients they serve.) However Derek Alley said at our December 21, 2022, Master Association Board meeting that "we would own, but not operate, Harborside's apartment complex". So apparently they sometimes own as well as build.

\*\* See VCCUSA/wp-content/uploads/2021/08/press-release



The multi-use developments VCC USA has completed (and show on their website) are often large complexes, apparently with high density rates; built in commercial cities like Chapel Hill, NC, Houston, Texas, Charlotte, NC, and others. Here are a few examples, even though there are many more on their website:

1- In Chapel Hill, NC, they built the “Elliott” multi-family complex for RAM Realty. It has 5 and 6 levels, 272 units and is a “wrap style” complex. (Like the U shaped building proposed at Harborside). It contains 295,000 square feet of space.

2- In Houston, Texas, VCC built “Tanglewood Towers” for Transwestern Retail Advisory Services, a rental apartment complex, 8 stories tall, with 246 units. With units that “average 1,420 sq. ft.” the building totals 349,000 square feet. (That is also the size of roughly 7 football fields, stacked on top of each other, excluding the end zones and anything past the sidelines.) It may be appropriate for Houston, but obviously not for the Harborside location.

3- In Charlotte, NC, they built the “Gateway Apartments”, also a “wrap style” building for Dominion Realty Partners with 297 rental units on only 3.5 acres. Far too dense for the Harborside location.

While these are attractive new buildings, they are built in cities where dense, rental apartments are appropriate. That is possible, in part, because there is a strong, commercial economy and a far younger labor force, in such places, with higher paying jobs to support these developments. That is just part of the current demographics of these cities.

Palm Coast’s building codes, demographics and culture are clearly different, as you also know. Ask yourself if Harborside’s high-end rental units, ranging in price (according to JDI/VCC) from \$2,100 per month to \$3,500 per month, will draw the type of renters needed to keep it viable? Probably not. Hopefully this will not become a European Village type development, which took years to occupy. Furthermore, the City and JDI/VCC will need to make significant investments in the City’s infrastructure, possibly a new traffic intersection, the Marina, the Garage, the Pavilion and others which the Harborside location requires. VCC USA must know that but has avoided making such commitments so far. Why? I believe because it has not done the planning involved.

As you also know, the City needs housing the market will bear. That market currently includes retirees, teachers, food, medical, hospitality service workers and others who, at this stage of their careers, are unable to afford the \$25,200 to \$42,000 per year rental rates JDI/VCC has told us Harborside will charge. Let’s be realistic about this.

Keep in mind too that when Centex, and Pulte after them, were developing the Palm Coast Resorts community, they had the ultimate consumer, a condominium owner, in mind. That was the market they served. As a large construction contractor VCC USA serves, among others, commercial real estate developers, like Dominion Realty Partners. That may well explain why JDI/VCC views a density ratio of 26 to 29 units per acre as acceptable for Harborside; why they are asking for an eight story building in an area of three and four story buildings; and why “hard ball” negotiating has been their approach so far. That does not work here, in my view.

### VCC's VISION FOR HARBORSIDE

Pulte had a vision, much like Centex's before it. Properly locate and build quality condominium buildings; find a solid owner/operator to run a destination-like hotel on the water; and provide a restaurant and some boutique stores that would attract shoppers and boaters alike. Their plans (while never executed because of the real estate melt down at the time) would have added to the character and economy of the City of Palm Coast over a longer-term period.

When many of us moved to Palm Coast, like other Floridians, it was from large fast paced, crowded cities with traffic congestion, overcrowded transit systems, high taxes, etc. Those types of cities today are witnessing residents moving away. Not to similar cities, but to places like Palm Coast. I came here, as did many others, for a better quality of life. That is something the City leadership has always protected; a city with a great quality of life. That has been our hallmark. Thank you for that, Mr. Mayor, the City Council and the Zoning Board.

VCC USA's vision is really tactical, based on the transactional nature of their business. It is not a long-term view with the best interests of the community in mind, in my opinion. Apartment construction and rentals is where the market is today. VCC USA intends to build an apartment complex with as many rental units as can be negotiated with the City, over 200 if possible. They will locate them next to the Garage to avoid duplicating that expense. Units will be rented at prevailing market rates, not those quoted by VCC, using a rental apartment operator who they will engage. Such rental apartments will generate “evergreen income” which may help to balance the cyclical nature of VCC USA's construction business.

VCC will “farm out the hotel”, Terik Bateh of JDI/VCC said at a Zoning Board meeting, to an owner/operator experienced in that business. That is because VCC, at its core, is a construction company, not a hotel operator. VCC USA has built hospitality complexes across the United States, according to their website, but they do not mention owning or operating any of them.

The same is true for the Marina. That is not their business. How many of the Zoning Board’s demands for the Marina, like agreeing to keep it operating, or maintaining DEP “clean marina” standards, has JDI/VCC agreed to meet? Has JDI/VCC agreed to give the City the right of first refusal in the event that JDI/VCC decides to sell or outsource that part of Harborside too? Ask yourself why they would want to keep it? They have expressed no longer-term vision to include a marina. What happens if they cannot sell it? What happens if they cannot find a hotel owner-operator for the planned hotel as well?

#### PALM COAST RESORTS WILL SUPPORT SOUND DEVELOPMENT

Let me say this once again. Our owners would welcome the development of our abutting property, the Master Association, which we help pay for and have an 11.5% voting interest. We will support responsible development that is appropriate for this location. We did that before when we bought our homes from Centex and Pulte. We signed on to their vision of a high quality, less dense, ownership model back then, and continue to believe that type of development is in the best interests of the Harborside location, our neighborhood, and the City of Palm Coast.

Having read the work of the Planning and Zoning Board, I would like to express my appreciation for their reports. They are extensive, complex and make sound recommendations to the City Council. This is a great place to call home. We truly appreciate the Council’s and the Mayor’s leadership keeping it that way, as we grow responsibly. Thank you so much and have a happy and healthy New Year.

Finally, congratulations to the two new Members, Cathy Heighter and Teresa Carli Pontieri, of the City Council, who were recently elected and started serving on December 6, 2022. We expect to hear and follow their voices too, as part of this place we are proud to call home.

Thank you so much,

John Mueller [jrmueller1947@gmail.com](mailto:jrmueller1947@gmail.com) for concerned homeowners at Palm Coast Resorts (PCR) and its friends and neighbors.

POSTSCRIPT: As a general construction contractor like many others, when VCC USA is not paid by its client developer, as scheduled, it may result in the general contractor slowing or not paying its subcontractors on a timely basis. Levelset.com, an online service designed, in part, to help subcontractors get paid on time, has the following reported on its website, authored by Christopher Bokum:

“General contractor VCC is also facing at least 12 different contractor payments as of July 2020 for a project at The Esplanade at Aventura shopping center (Miami, Florida). At this point VCC owes a total of \$10,418,112.50 in mechanic lien filings.” \*\*\*

As a privately owned company, financial data on VCC USA is not available to the public. I trust the City of Palm Coast has checked VCC/USA's credit ratings and done other appropriate financial and legal due diligence on the firm. As Harborside's builder and the owner of the apartment complex, possibly through an LLC, this could become a future issue as it did in Miami.

\*\*\* See: [levelset.com/news/-drive-shack-new-orleans-contractors-owed](https://levelset.com/news/-drive-shack-new-orleans-contractors-owed). Then scroll down to the Miami, Florida, VCC paragraph.

Abbreviations for the companies:

JDI: Jacoby Development Company controlled by Jim Jacoby

VCC USA: The national, privately held, construction contractor started as Vratsinas Construction Company. Derek Alley is its CEO.

JDI/VCC: A name I have used for the investment group, probably a limited liability company, controlled by VCC USA. It is also headed by Derek Alley and is the majority owner of Palm Coast Resort's Master Association.

November 16, 2022

Letter Regarding: Harborside (Currently known as Palm Coast Resort) Comments Addressed to Palm Coast City Council

From: Harry W. Price of 110 Club House Drive

Mr. Mayor and City Council,

Please do not approve the application which allows for exceeding density of homes on the site. If you have not see or aware of the original proposal for the Palm Coast Resort it is important you review that before rendering a decision. The Palm Coast Resort was designed and approved to be as the name suggests a Resort. It was not intended, designed or approved to be a mixed-use development. Its use was to be a resort. The proposed mixed-use rezoning is attempting to use the "logic" for the Resorts approval to justify their desire to construct higher density than any of the surrounding communities.

Outlined below are the issues I see that should be factored into your decision after the PLDRB has unanimously denied their application.

- 1) The applicate has failed to demonstrate a good reason for the city of Palm Coast and this City Council to approve the higher density. This higher density will be incompatible with and adversely affect the surrounding committee with no benefit to the city or surrounding community.
  - a. The original approved plans and agreement were based on there being a Resort Development on the site, which would bring commerce and revenue to PC. The applicant's current rezoning is unlikely to do so and certainly not to the scale and volume as conceived by the Resort development. However, the applicant is using the previous approval as justification for their requesting allowance for greater density.
  - b. It is a far stretch to use the original agreement of a Resort as a basis to be a modified agreement for 5 separate mixed-use plats. They state, what they are showing will likely NOT be what is developed.
  - c. The Applicant wants to offer 5 separate lots to be developed by a yet to be determined number of developers on essentially the same property with ONE access to be developed.
  - d. This flaw # 1
- 2) Flaw # 2 As conceived with the Marina being Lot # 1 there is no parking allotted to the marina. It is unrealistic to believe that all who use the marina would park in the garage.
- 3) Flaw # 3 There is no stated provision to provide access through Lots 2 & 3 for the 18-wheel fuel truck to make weekly deliveries to the marina.
- 4) Flaw # 4 Original agreement provided public access to the intercoastal for the community. The applicant proposal prohibits public/community access to the intercoastal waterway except at the marina.
- 5) Flaw # 5 To allow a premier intercoastal corner site to be developed for 30 townhomes is a gross underutilization of Palm Coast's prime real estate.

- 6) Flaw #6 The applicant's proposal is 5 separate and distinctly different Lots for individual development. My experience tells me these separate areas will be very hard to sell or develop unless all 5 are developed by one owner with one vision. Otherwise "owners" will insist to know "who" the "neighbors" will be necessitating all agreeing to sign a deal at the same time. Hence it will likely remain a partially developed site. The result will be this developer will build on the zones they want for housing and apartments and the remaining "mixed-use" parcels will remain undeveloped.
- 7) Flaw # 7 Life safety issues. Inadequate consideration for access and egress in case of emergency, for deliveries, trash removal and safe ingress and egress for people who live there.
- 8) Additionally, as conceived referring to the drawing of the Land Use Map A102, not their colored site plan (which they state is not what will be built)
  - a. Lot 2 is a poor location for single restaurant with nothing similar near-by. It will likely be overlooking the Marina building, showers, store, and fuel dock. With little to no access to the water. Provided is very limited convenient parking as majority is to park in the garage.
  - b. Lot 3 Lack of a good reason for the hotel "Spring Hill Suites" type of hotel to be situated along a very busy road in a residential community. Especially requiring garage and or valet parking to the garage as proposed.
  - c. The plan that "all share" the top floors of the parking garage is not convenient to restaurant, hotel, or marina.
  - d. There is no marketable reason to mix an 8-story residential condominium building, with townhomes and a huge apartment building. It will not create a sense of place and community.
  - e. In fact, the entire proposed design lacks a sense of place, a heart for the reason of a mixed-use development. And it lacks design integrity needed for it to be successful.
- 9) There are at least 3 other sizable properties within ½ mile of this location. They have been sitting undeveloped for a number of years. At some point they will likely come to the city for rezoning with different owner and/or developers. Approving a higher density at this location sets a precedence for higher density at these yet to be developed lots. Further creating issues with traffic and safety for the community, neighbors, and Palm Coast.
- 10) A traffic study for this property should be completed prior to approval of higher density. I know this may not be the ordinary process and procedure for the City. But you should be aware of the traffic implications before the rezoning is approved in order to fully understand it's impact. The study also must include the other yet to be developed lots based on their allowable densities. Since the new I 95 ramp was added the traffic, speeding and nuisance rapid acceleration drivers has dramatically increased. Making the intersection of Club House Dr, the entrance to the Palm Coast Resort (Harbor Side) and Palm Harbor Parkway a very busy intersection and increasingly a location for accidents. It's as if traveling west from the stop sign the race starter waves a green flag. Many drivers speed their way past Waterside as high of an acceleration that their cars can provide.
- 11) Lastly, Applicant on more than one occasion has stated they will "Be in Control" of what and how the lots are developed. The applicant has also stated the marina, garage, or the gazebo area all in need of major repair and maintenance. Yet, since owning the property since 2016 they have not been motivated to care for these three assets. Yet, we are to believe that the applicant when they state they will "control" and maintain anything that goes onto the site. Especially in consideration that the owner has had the property listed for sale for over a year. It's listing was removed just 2 days before it was brought the Planning Committee.

This property has so much potential. It could be a sensational development and an asset to the community and Palm Coast. This applicant has failed to take advantage of the unique location and attributes of the plat with their ideas.

I was an elected Township Supervisor in PA prior to moving to FL. I am fully versed in the process of approving and denying development.

I sincerely hope City Council, you deny this development. They can do better. We can inspire better.

Thank you for your consideration.

Harry W. Price

## Virginia Smith

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**From:** Darren Novi <dnov99@yahoo.com>  
**Sent:** Thursday, January 26, 2023 8:49 AM  
**To:** David Alfin; Theresa Carli Pontieri; Cathy Heighter; Nick Klufas; Edward Danko; Jason DeLorenzo; Virginia Smith  
**Subject:** Harborside City Council Meeting

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear City Council Members and Mr. Mayor,

I am writing today, with my thoughts regarding the proposed Harborside Development by JDI/VCC. My wife and I are original owner's at Palm Coast Resort from 2008, when we purchased directly from Centex. At the time we purchased, we fell in love with the location, vision and future development that was planned by Centex. It was going to be a peaceful and beautiful development for us to eventually retire to as we are full time NJ residents planning to retire to the Palm Coast area in the next year. Sadly as we know, the financial and real estate crisis followed shortly after we purchased and further development was ceased.

Fast forward to where we are today and we are looking at a potential massive, high density residential plan by VCC that is completely opposite of what was originally planned. We are all for reasonable development, especially in an area as beautiful as where we currently live, but it has to and should be as what was originally planned. The density factor that VCC has asked for would be a complete nightmare in regards to traffic and safety in the area, in addition to bringing down the quality of life. Sadly if this plan is approved at the current or any high density we certainly would look to move out of Palm Coast Resort. Thank you for your time and attention to this matter.

Regards,  
Darren Novi

dnov99@yahoo.com



## Virginia Smith

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**From:** John Mueller <jrmueller1947@gmail.com>  
**Sent:** Friday, January 27, 2023 10:04 AM  
**To:** David Alfin; Edward Danko; Nick Klufas; Theresa Carli Pontieri; Cathy Heigher; Jason DeLorenzo; Virginia Smith  
**Subject:** Fwd: Harborside development

----- Forwarded message -----

**From:** Paul Bailey <[PAULBAILEY7@msn.com](mailto:PAULBAILEY7@msn.com)>  
**Date:** Thu, Jan 26, 2023 at 7:32 PM  
**Subject:** Harborside development  
**To:** John Mueller (via Google Docs) <[jrmueller1947@gmail.com](mailto:jrmueller1947@gmail.com)>

THE FLOWING EMAIL was sent to me from one of our owners who will not be able to attend the February 7, City Council meeting. Paul is a retired US Air Force Lt. Col. who, as you will read, loves Palm Coast and Palm Coast Reasorts. There are many City residents who feel the same way, not just at the Harborside location. His email speaks for itself. Thank you for what you do.

John,

Regarding the density issue with the VCC/JDI Harborside zoning change, I will express my point of view, one I expect, is shared by most of my fellow PRC owners and many Palm Coast residents.

First, thank you for continuing the Palm Coast tradition to enlightened planning that upholds a commitment to natural beauty, peace, and quiet.

I spoke at the Planning Council meeting that wisely and unanimously rejected VCC/JDI proposal to double the density of the current zoning for the PALM COAST RESORT. At that time, I stressed what the proposed density would do to the safety of our and adjacent neighborhoods. After seeing what disasters hurricanes brought to other cities in our State, I argued that limited access to an evacuation route, such as we have at PCR, was strong reason to avoid increasing population density.

I am a native Floridian, born in Miami, moved to Orlando in 1963 (before Disney), with children and grandkids in Jacksonville. After I retired from the USAF and education, I wanted to move back to Florida. I searched for three years before finding my favorite place in all Florida. It wasn't the place I was born, or the place I graduated from High school or the place my brothers and sister live or even the place my children and grandchildren live. None of these places came close to Palm Coast for one obvious reason. None of these other places had the foresight and commitment to avoid congestion and crowding brought about by high density development.

The day we got off I-75, first saw the "Welcome to Palm Coast" sign and then took the Palm Coast Parkway East through Royal Oaks laden with Spanish moss we know we were home. Then, when we were shown the Palm Coast RESORT we were sold. It had everything, beautiful walks, a pavilion, a pool, a marina, all situated among nice quiet neighborhoods. We absolutely love Palm Coast. And we know this beauty, peace, and calm are not an accident but the product of the selfless commitment of the Palm Coast Planning Commission, Mayor, and City Council.

Please don't let big developers motivated by the almighty dollar diminish our city's peace and beauty by increasing population density in what once was envisioned as a jewel in the Palm Coast crown.

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**Lisa Annaheim**

46 Cottonwood Court

Palm Coast, FL 32137

386-864-1620

lannaheim62@gmail.com

January 28, 2023

Mayor David Alfin, City Council and Staff

Palm Coast City Counsel

Palm Coast City Manager

Re: Harborside Development Proposal

Dear Mayor David Alfin, City Council and Staff,

I am writing to you today regarding the proposed development at the Harborside site at the intersection of Palm Harbor Parkway and Clubhouse Drive. I have been following this proposal through the process and would like to express my concerns. I am urging you to not approve the plan as currently presented by the developers.

I wanted to provide you with some information on my background. I have lived in Palm Coast since 2005. Since my retirement in 2019 from "Corporate America", I became a Realtor in the community. Prior to becoming a Realtor, I spent 35+ years working for real estate developers, construction companies, home builders, and resort and hotel operators. I worked for the company that owned this parcel of land prior to its sale to Centex. Additionally, I spent many years working and living in Breckenridge, Colorado. During my time there, I held the position of Director of Real Estate Development for Vail Resorts (the owner of many ski resorts all over the world). During my employment, I was integrally involved in the approval process of master plan modifications for resort development in Breckenridge. I am acutely familiar with MPD's and what is required to modify them. During this process, I learned that developers and government entities must work together for the best interest of the community. There must be a "give and take," if you will.

The City Planning Staff did a fantastic job presenting the proposed development as well as the history of the parcel and the current MPD. In my opinion, the developer's proposal is too vague and does not commit them to make the much-needed improvements to the parcel.

This site is ripe for development. The current owners purchased this parcel for pennies on the dollar. With the parking garage already in place, the site is optimal for commercial density – including a restaurant and a hotel (as was originally planned in the MPD). The City of Palm Coast does not have a decent waterfront restaurant or hotel. This location would be ideal for a hotel and a restaurant.

The developer mentioned that no hotel operators would be interested in this site. I would disagree with that! With the infrastructure in place (parking garage) a hotel operator would find this site extremely desirable.

The developer wants to add more residential units to the site, which do not provide significant benefits to the City. The City has been adding more and more beds to the community without adding employment opportunities for those that live here. A hotel and restaurant would provide more benefits to the community than more residential units. Adding commercial (i.e., restaurant and hotel) would provide jobs to residents of the City. Also, sales tax revenues and transient tax revenues would be generated. This is a better option than adding more beds.

If the City approves a rezoning plan for this site, I urge the City to require the developer to build/develop the amenities or conditions of approval first. The marina is in disrepair and needs to be updated. I urge the City Council to be mindful of the detrimental impacts of adding so much density to this site. The developer wants as much density as possible to maximize their profits. Do not give more to developers without holding them responsible for needed improvements. We need certainty for the improvements, not just empty promises.

I hope that the City makes the right decision for the residents of the City.

Sincerely,

Lisa M. Annaheim