

City of Palm Coast, Florida Agenda Item

Agenda Date: November 15, 2022

| | | |
|--|---|------------------|
| Department | COMMUNITY DEVELOPMENT | Amount |
| Division | PLANNING | Account # |
| Subject | ORDINANCE 2022-XX HARBORSIDE MASTER PLANNED DEVELOPMENT | |
| Presenter: Ray Tyner, Deputy Chief Development Officer and Bill Hoover, Senior Planner, AICP | | |
| <p>Background: JDI Palm Coast, LLC, as the applicant is proposing to rezone 17.64 +/- acres that has an existing marina with 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. It is also located 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 potential mixed-use project that is intended to include a marina with ship's store, townhouses, multi-family units and possibly a restaurant and/or hotel.</p> <p>The applicant is requesting two options for the development, one primarily adding residential units and the second primarily adding residential units and a hotel. Per LDC Section 3.05.03.C, residential density calculations cannot include lands being used for commercial purposes so in scenario one 0.7 +/- acre of commercial land area for Lots 1 and 2 are subtracted from the project size while on scenario two, 2.7 +/- acres of commercial land area for Lots 1 - 3 are subtracted from the project size. (Note that hotels and commercial uses are governed by intensity limits, typically using maximum floor area ratios, rather than density limitations.) In scenario one, the proposed 432 units would have an overall project density on the 16.94 +/- acres of 25.5 units/per acre. In scenario two, the proposed 432 units would have an overall project density on the 14.94 +/- acres of 28.9 units/per acre.</p> <p><u>Planning and Land Development Regulation Board (PLDRB) Meeting on September 20, 2022:</u> 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 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 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.</p> <p><u>Updated Information:</u> The applicant and staff held several meetings discussing the issues between the two parties which resulted in agreement on most all items. However, the major issue that remains is the maximum project density. The applicant is seeking 25.5 or 28.9</p> | | |

units/per acre depending on the applicant's choice of two development options. 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. Staff's professional planning opinion suggested that if eight development standards were implemented within the project, and the project was limited to 18.3 units/acre, Staff could consider the project consistent with the Comprehensive Plan and the LDC; and specifically, with Comprehensive Plan Policy 1.1.2.2. Staff's proposed eight development standards are attached in the Staff report 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 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, absent the inclusion of the types of changes allowed in Policy 1.1.2.2 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 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 their suggested eight development items would make the project equivalent in nature to the previous project regarding Policy 1.1.2.2. These eight standards 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 to 28.9 units per acre is not 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 10th, the applicant provided a written response that is attached in the Staff Report as Exhibit "B". The applicant suggested that much of staff's proposed text should be deleted, and suggested alternative text be included with approximately the same development standards (one standard was dropped by the applicant). (Note applicant's proposed MPD DA includes their proposed alternative standards.) The applicant argued that if they met even some of staff's eight standards, the project would be entitled to 432 units and a density of 25.5 or 28.9 units/per acre.

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 recommended "denial" of the project due to the proposed very high density and compatibility issues with neighboring properties which 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.

Public Participation: A neighborhood information meeting was held at 11:00 a.m. on September 8, 2022, at the 3rd floor of the on-site parking garage. 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 at least 14 days prior to each of the PLDRB meetings and will do so again 14 days prior to each City Council public

hearings. 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, 2022) by the PLDRB no additional news ad was required. News ads are being run 13 days prior to each City Council public hearing.

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 did not notice anyone speaking at both hearings as the City Attorney announced 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 concerns, and lack of specific development plans by the developer.

Recommended Action:

The Planning and Land Development Regulation Board found, by a vote of 7 to 0, the proposed MPD Application No. 5132 not in compliance with the Comprehensive Plan’s Goal 1.1 and Policies 1.1.1.2 and 1.1.2.2 and not in compliance with the Land Development Code’s Sections 3.03.04, 3.03.04.B.2, and 3.03.04.D and recommended denial to City Council to rezone 17.64 +/- acres from Harborside Inn & Marina PUD to Harborside MPD.

LIVINGSTON & SWORD, P.A.

Attorneys At Law

November 14, 2022

Jason DeLorenzo
Chief Development Officer
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

Subject: Request for Continuance to Date Certain
Harborside Master Planned Development Rezoning

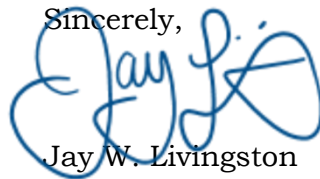
Dear Mr. Delorenzo:

I am writing to confirm, per our recent discussions, JDI Palm Coast, LLC's request to continue the Harborside Master Planned Development Rezoning currently scheduled for first reading at the City of Palm Coast City Council's November 15, 2022 business meeting. JDI Palm Coast, LLC is requesting that this matter be rescheduled to a time certain for the December 13, 2022, and January 3, 2022, City Council meetings.

We intend to resubmit a revised Master Planned Development Agreement to you and your staff. The continuance will provide time for you and your staff to review the revisions and for any additional discussions needed before it is finalized this week, well in advance of City Council's consideration.

Please contact me if you have any questions or comments.

Sincerely,



Jay W. Livingston

CC: JDI Palm Coast, LLC
Tarik Bateh
Michael Chiumento III, Esq.
Ray Tyner
Neysa Borkett, Esq.

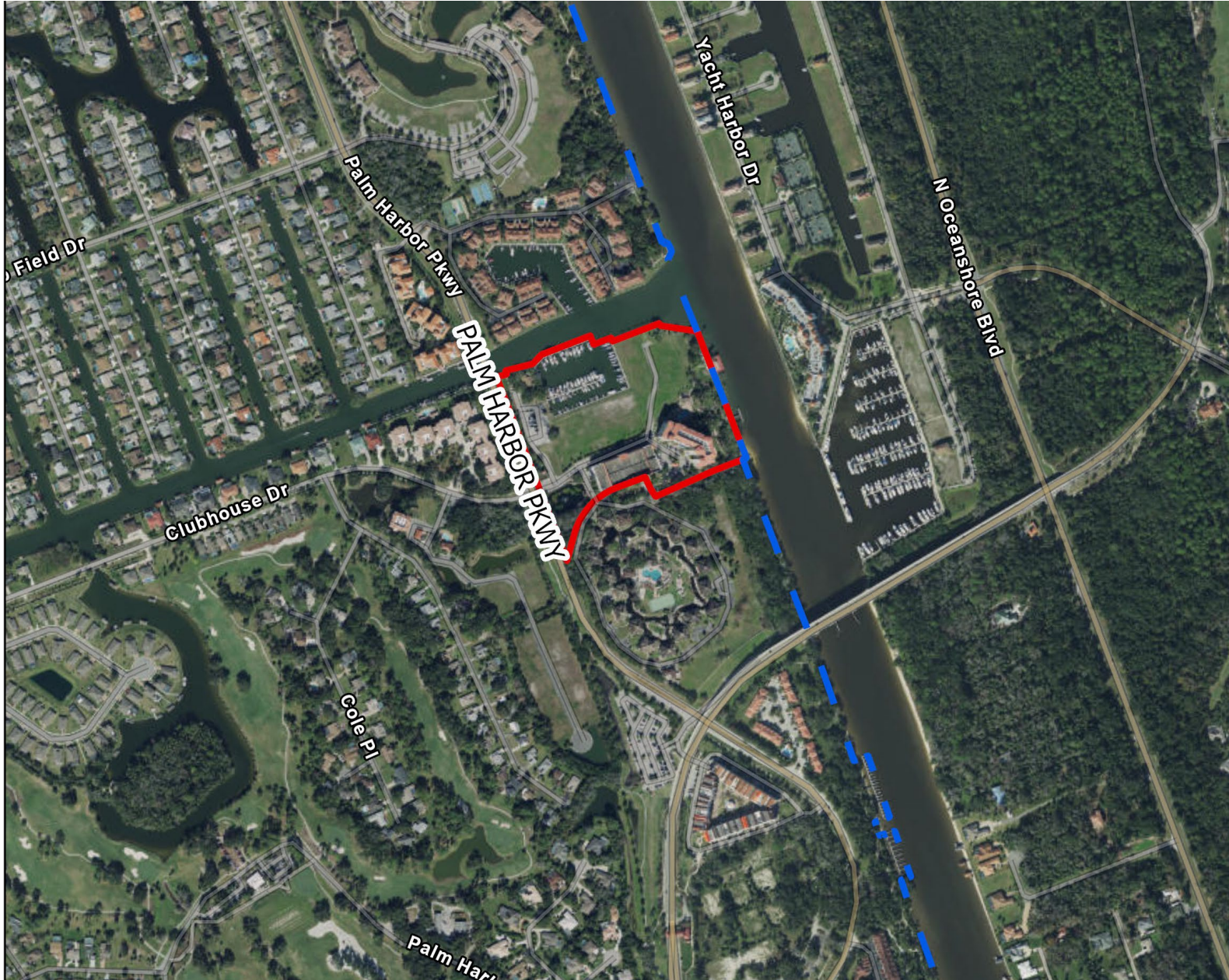
**391 Palm Coast Parkway SW #1
Palm Coast, Florida 32137
T 386.439.2945
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jay.livingston314@protonmail.ch**

HARBORSIDE MPD

**City Council Public Hearing
on November 15, 2022**

Location Map

Harborside is 17.64 +/- acres and is located on the east and northeast sides of Palm Harbor Parkway at its intersection with Clubhouse Drive.



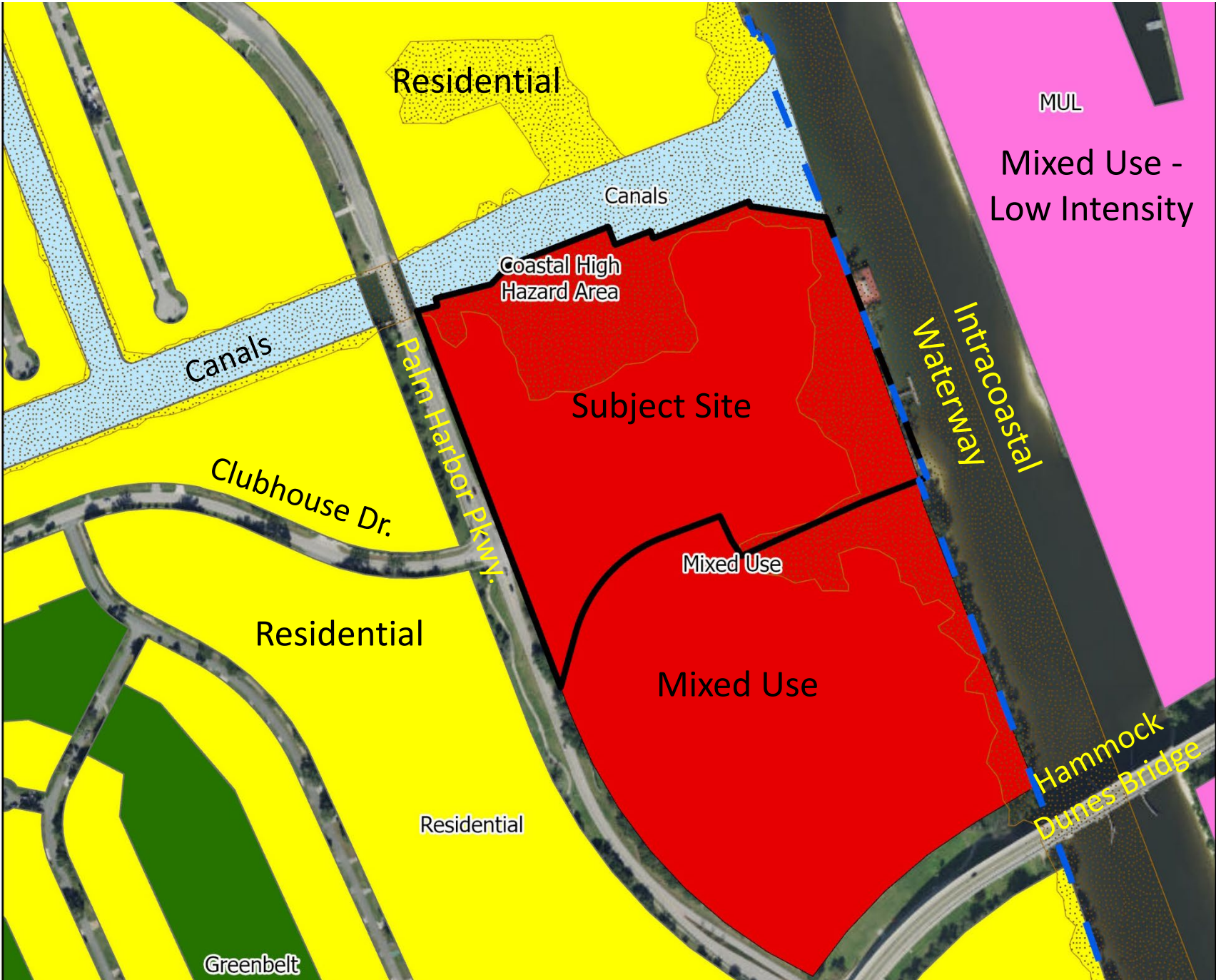


Close-up Aerial

Applicant, JDI Palm Coast, LLC wants to rezone the property from Harborside Inn & Marina PUD to Harborside MPD in order to complete development of this project and are requesting 432 homes (includes 72 existing and 360 new homes) and COM-2 uses.

FLUM

Subject property and the land to the south are Mixed Use. Lands to the west and north are Residential. To the east across the ICW is a Flagler County parcel designated Mixed-Use Low Intensity.



Zoning Map

Site and lands to the north and south are MPD.
Lands to the west are MFR-1.
Land to the East is zoned Flagler County PUD.



Legend

| | | |
|------------------------|-------|----------------|
| Palm Coast City Limits | MFR-1 | SFR-4 |
| Harborside | MPD | Flagler Zoning |
| Palm Coast Zoning | PSP | PUD |
| DPX | SFR-2 | R/C |

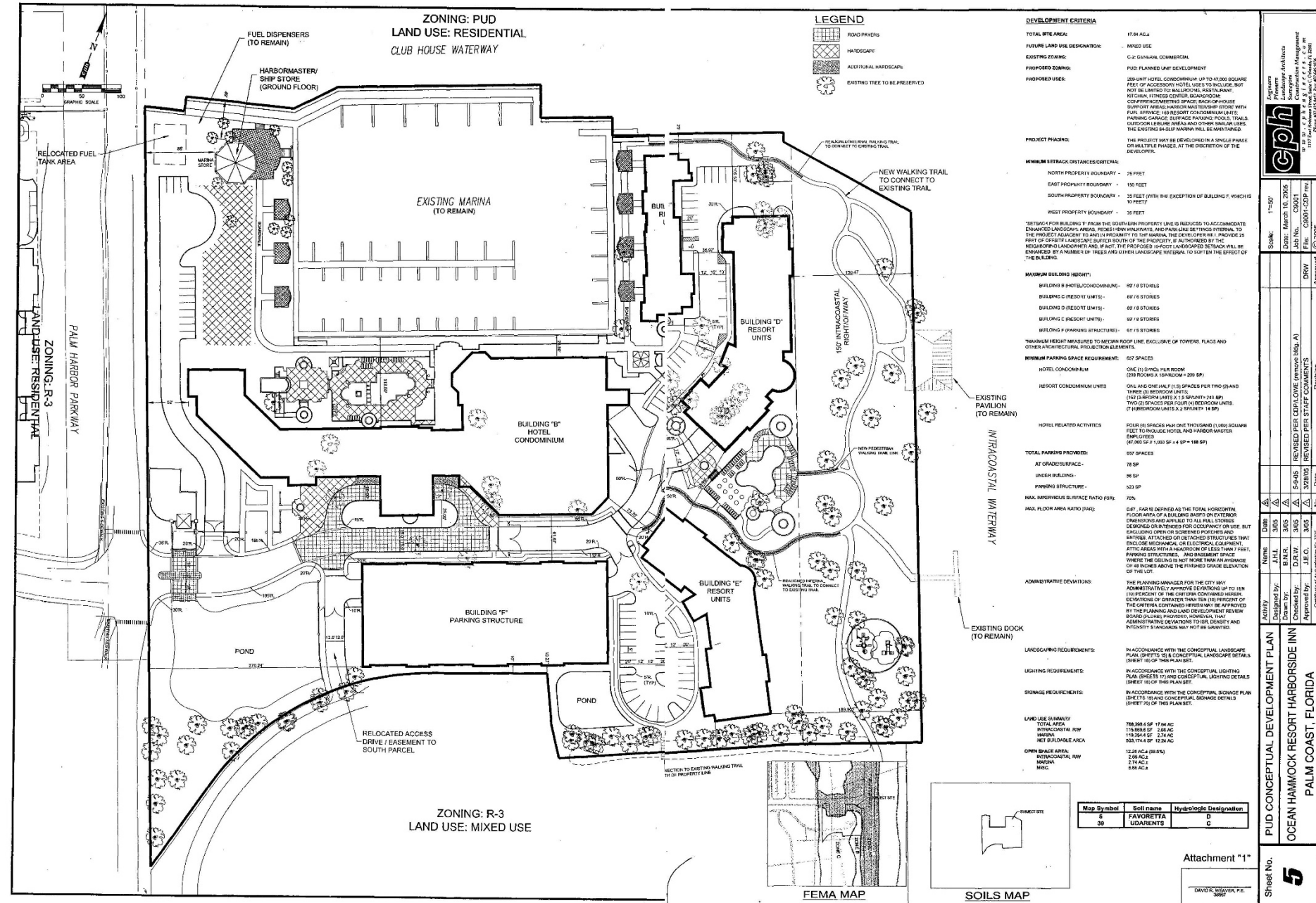
Background/History



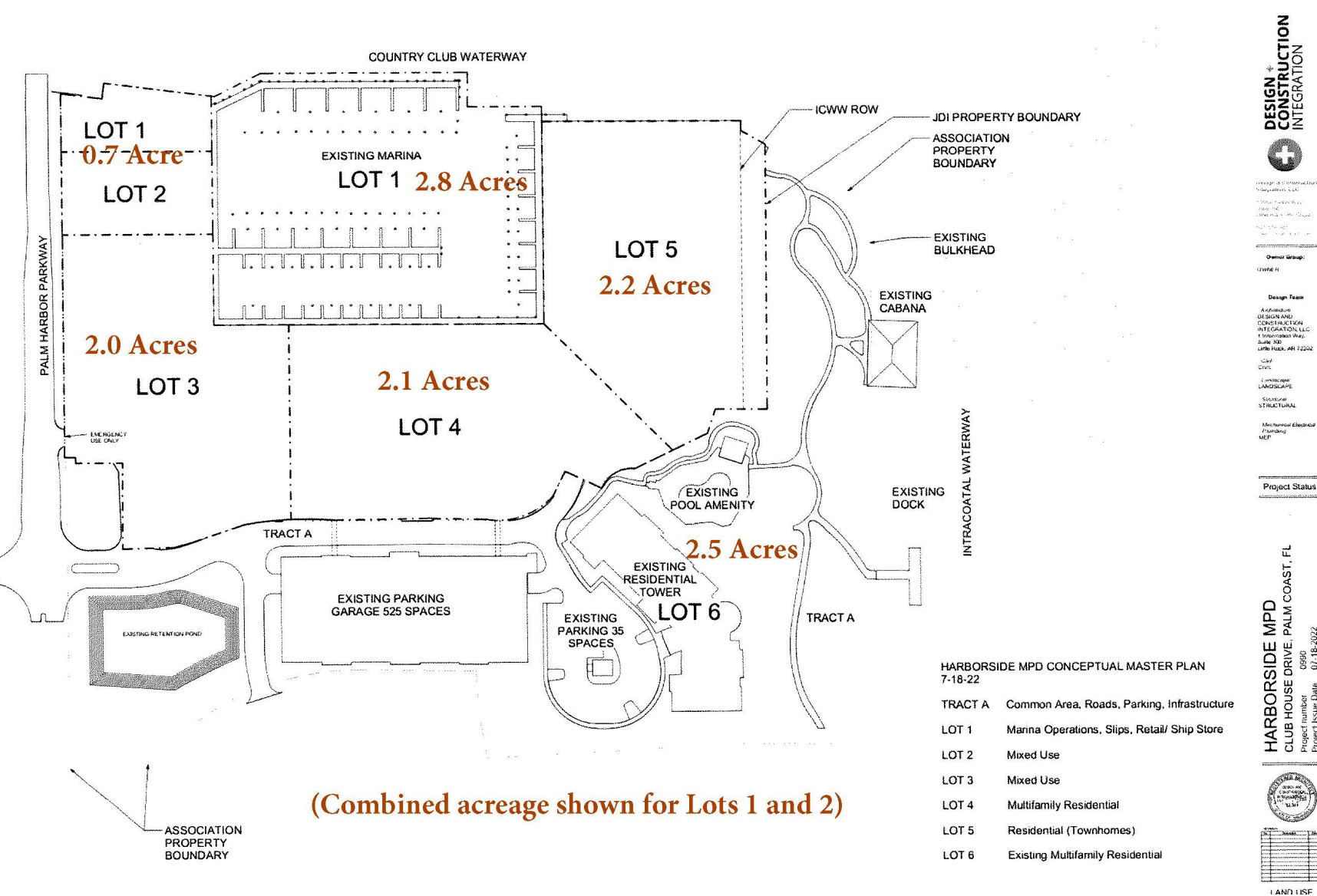
- 1970's, 154-room Sheraton resort hotel with a restaurant, bar and meeting rooms was constructed.
- 1986, the ship store, marina wet slips and bulkhead were constructed.
- 2005, Centex Homes bought the site.
- 2006, hotel and parking removed.
- 2007, 72-unit, seven-story condo building was constructed.
- 2016, applicant purchased north half of site.

Previous 2005 PUD Master Plan

Commercial uses were approved on what is now shown as Lots 1 – 4. Later the 2007 PUD Amendment allowed more development flexibility but did not change the development entitlements.



Proposed Density Compared to 2005/2007 PUDs



Previous PUDs had Lots 1 – 4 with COM-2 uses and the project development limits were governed by FAR. This is the building area divided by lot size. A 2-story building with 5,000 s.f. per floor = 10,000 s.f., so on a 20,000 s.f. lot it would have a FAR of 0.50.

Applicant's MPD Possible Conceptual Plan



Lot 1 and 2 are for ship store and possible restaurant.

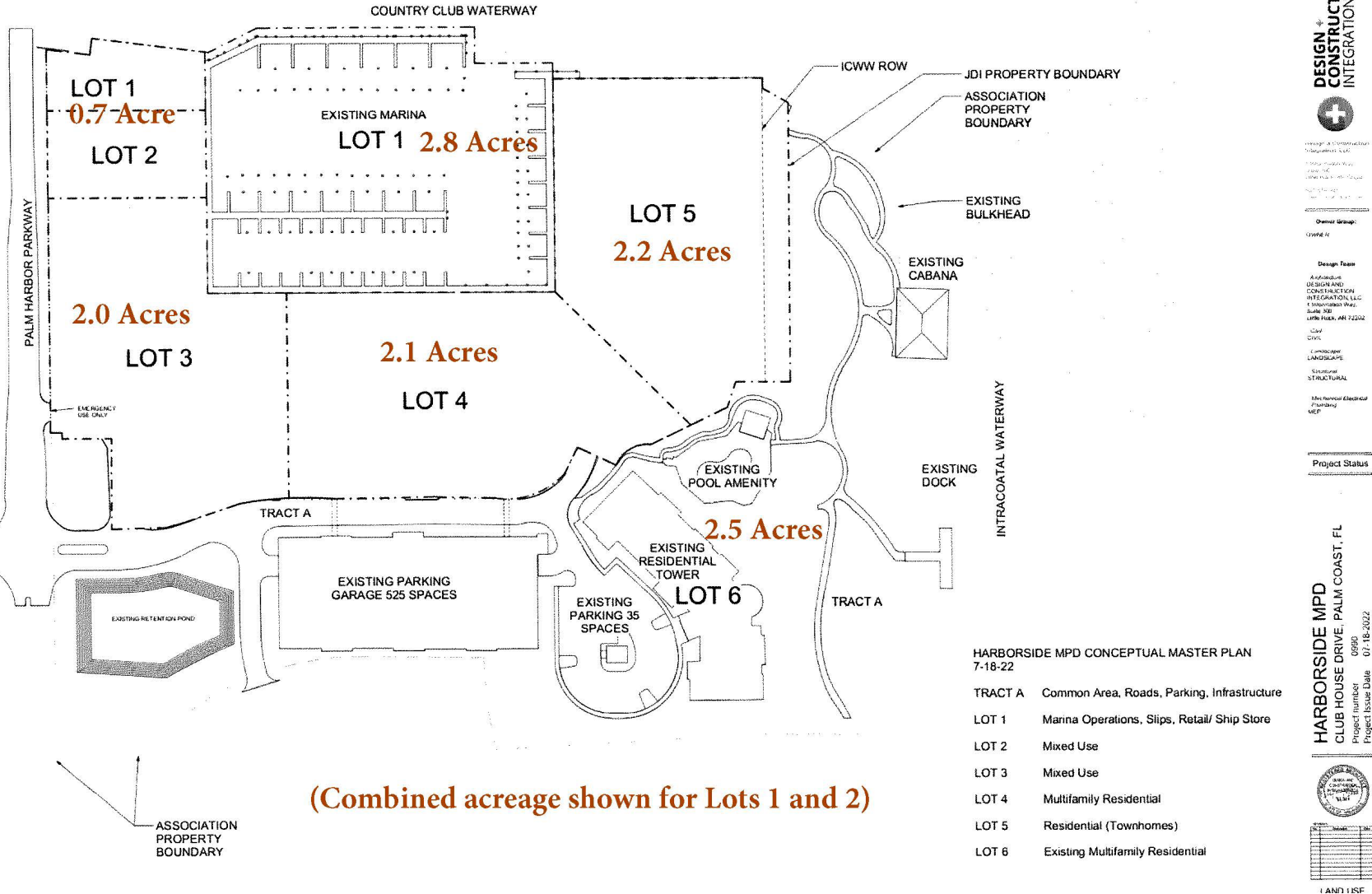
Lot 3 is for a possible hotel, multi-family or townhomes.

Lot 4 is for multi-family.

Lot 5 has 30 townhomes.

Proposed MPD Master Plan with Density Calculations

LDC Section 3.05.03.C. advises lands in a mixed use district cannot be counted for both commercial intensity and residential density.



Total Site = 17.64 Acres

Scenario 1: Lot 1 and 2 used for COM-2.

432 Units/16.94 Acres = 25.5 Units/Per Acre.

Scenario 2: Lots 1, 2 and 3 used for COM-2.

432 Units/14.94 Acres = 28.9 Units/Per Acre.

MPD Possible Conceptual Plan – Reflects Scenario 2



This conceptual plan is only showing 302 units on 14.94 acres for a density of 20.2 units/ per acre. However, applicant is requesting 432 units for a density of 28.9 units/per acre.



Density Comparison (in units/per acre)

| | |
|-------------------------------------|------|
| N – Marina Cove | 7.8 |
| NW - Bella Harbor | 10.5 |
| W – Waterside | 7.6 |
| S – Celebrity Resorts | 5.2 |
| E – F.C.'s Harbor Village Marina | 6.7 |
| Average density = | 7.6 |

Applicant is proposing
25.5 or 28.9 units/per
acre, about three times
the above average.

Five Review Criteria from Sec. 2.05.05 of LDC

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

Five Review Criteria from Sec. 2.05.05 of LDC

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

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;

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

Five Review Criteria from Sec. 2.05.05 of LDC

Findings: The applicant is requesting two basic scenarios:

Scenario 1, proposes 432 units on 16.94+/- acres with a density of 25.5 units/acre.

Scenario 2, proposes 432 units on 14.94+/- acres with a density of 28.9 units/acre.

The proposed density of either 25.5 or 28.9 units/acre exceeds the maximum density of 15 units/acre for a MPD with a Mixed Use designation on the FLUM (Policy 1.1.1.2).

The MPD Agreement is not consistent with Policy 1.1.2.2 which may permit 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.

Five Review Criteria from Sec. 2.05.05 of LDC

Findings (Continued): Does not meet Goal 1.1 of Comprehensive Plan as it does not preserve the character of residential communities.

Is not in compliance with LDC Section 3.03.04 as the MPD does not show it will produce a functional, enduring and desirable environment with no significant adverse impacts to adjacent properties.

Is not meeting LDC Section 3.03.04.B.2 as the MPD does not encourage a more compatible and harmonious development of contiguous lands.

Is out of compliance with LDC Section 3.03.04.D as the residential density exceeds what is permitted within the Comprehensive Plan for a MPD within the mixed use district on the FLUM.

Review Findings from Sec. 2.09.04 of LDC

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:

Staff has provided detailed findings of these eleven criteria within the staff report.

Planning and Land Development Regulation Board Meetings

- A neighborhood meeting was held on September 8, and signs were erected along Palm Harbor Pkwy and news ads run per LDC.
- Initially the project was heard at the Sept. 20 PLDRB and the PLDRB voted to continue the project “date certain” to the Oct. 19 PLDRB meeting and requested staff and the applicant to get together in order to minimize the differences between the applicant’s proposal and what staff would support.
- The key differences between the two parties were resolved before the second meeting except for the density issue.

Remaining Key Issue is Residential Density

- Prior to the second PLDRB meeting on October 19th, staff sent the applicant 8 proposed development standards that would allow staff to support a density of 18.3 units/per acre which would allow 310 units under Scenario 1 on 16.94 acres or 273 units under Scenario 2 on 14.94 acres.
- The 22% increase in density (15 units + 22% increase = 18.3 units/per acre) is consistent with the previous PUD approval, which in staff's opinion would make the project equivalent in nature to the previous PUD which was granted a 22% increase in base intensity from 55% to 67% for its maximum Floor Area Ratio, due to the commercial project having a destination resort hotel with numerous benefits for City residents so it met Policy 1.1.2.2 of the Comp. Plan.
- Policy 1.1.2.2 states, *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.*



Standard 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.)

Standard 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.)





Standard 3.

Keep the marina open including fuel sales to the public and at least 25% of wet slips available for transient/restaurant (not for on-site residential use).

A slip space to include accommodations for commercial use (i.e smaller barge for bulkhead repairs).



Standards 4./6.

If the Owner decides to sell the marina the City shall have the first right of refusal.

Maintain a “Clean Marina” designation from the DEP.

Standard 5.

Maintain existing boat ramp to be utilized by public entities for public related activities such as emergency events.



Standard 7.



Construct a paved 5' wide sidewalk that would connect from the existing trail located on the west side of the ICW 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 ICW would be vacated by the City upon completion of the new trail. (Constructed in the initial phase or within 18 months and completion within 24 months of the approval of the MPD Agreement, whichever is earlier.)



Standard 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.

Owner's Response to Staff's Eight Standards

| Staff Item# | <u>Owner's Response to Staff</u> | Developer's Proposed Units* | Developer's Proposed Density* |
|-------------|--|-----------------------------|-------------------------------|
| | Owner may elect, at any time, to increase the residential unit count above 254 total units by fulfilling 1 or more of the following conditions ("Density Bonus Incentive Conditions"): <i>Note: Staff's proposal would have yielded an increase of 56 units and 3.3 units/per acre.</i> | | |
| | MPD Base Density is 15 units/per acre | 254 | 15 per/acre |
| 1) | 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 75 seats for patrons | + 50 | 3 per/acre |
| 2) | Owner shall renovate, remodel, or construct a new Ship's Store, which may include and be combined with the sit-down restaurant described above. | + 25 | 1.5 per/acre |
| 3) | 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. | + 25 | 1.5 per/acre |
| 3) | Owner shall make a wet slip at the Marina available for public daily short-term transient use. | + 525 (25 per slip) | 31 per/acre |
| 4) | 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. | + 50 | 3 per/acre |

**These are based on Scenario 1 (COM-2 on Lots 1 & 2 with no hotel on Lot 3) so residential area is 16.94 +/- acres.*

Owner's Response to Staff's Eight Conditions

| Staff Item# | <u>Owner's Response to Staff</u> Owner may elect, at any time, to increase the residential unit count above 254 total units by fulfilling 1 or more of the following conditions ("Density Bonus Incentive Conditions"): <i>Note: Staff's proposal would have yielded an increase of 56 units and 3.3 units/per acre.</i> | Developer's Proposed Units* | Developer's Proposed Density* |
|-------------|--|-----------------------------|-------------------------------|
| 5) | 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. | + 25 | 1.5 per/acre |
| 6) | Owner shall be maintaining or have obtained a Clean Marina designation pursuant to the Florida Department of Environmental Protection 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. | + 25 | 1.5 per/acre |
| 7) | Construct a 5' wide sidewalk run from existing trail along Intracoastal Waterway along south side of project | NA | No response |
| 8) | 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. | + 25 | 1.5 per/acre |
| 8) | Owner shall fund the costs of installing the City's welcome sign on the ICW as described above. | + 25 | 1.5 per/acre |
| | Totals | 1029** | 60.7 per/acre** |

*These are based on Scenario 1 (COM-2 on Lots 1 & 2 with no hotel on Lot 3) so residential area is 16.94 +/- acres.

**Developer stated they would cap units at 432 equal to a density of 25.5 units/per acre in Scenario 1.

Previous PUD Approval

As approved in 2005 and somewhat modified in 2007, the project was approved a maximum Floor to Area Ratio increase of 22% (from .55 to .67) for the zoning district, as provided for in Policy 1.1.2.2. The 2007 PUD is still in effect.

This was in recognition of the project's vision and goal to promote a destination resort hotel with meeting and conference rooms that would attract business conventions and tourists.

Additionally, the development program approval included: 47,000 sq. ft. of accessory hotel uses including ballrooms, restaurant, kitchen, ship store with fuel service, trails, and maintain the existing 84 marina slips.

Economic Impact from 2005 PUD Rezoning Staff Report

The economic impacts of the project were analyzed using the Florida Fiscal Impact Analysis Modeling System developed by Fishkind and Associates. 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 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.

Summary of Staff Analysis

- Staff finds that absent of conditions that create a destination resort hotel with amenities such as marina, sit-down restaurant, and/or conference space, or other facility as suggested by staff, then the justifications that warrant exceeding the permitted densities and intensities on the subject property no longer exist.
- As proposed, the project is more typical of other multi-family residential projects with likely similar financial challenges for viability that have no plan for a creative project which takes advantage of the site's geographical features or unique circumstances and produces special economic benefits to area and City-wide residents.

Next Steps

- 2nd City Council Public Hearing for this Rezoning
- If approved, it would return to the PLDRB during the Subdivision Master Plan process and to PLDRB and City Council for any site plans having more than 100 multi-family homes.

Recommendation

The Planning and Land Development Regulation Board found the proposed MPD Application No. 5132 not in compliance with the Comprehensive Plan's Goal 1.1 and Policies 1.1.1.2 and 1.1.2.2 and not in compliance with the Land Development Code's Sections 3.03.04, 3.03.04.B.2, and 3.03.04.D and recommended denial to City Council to rezone 17.64 +/- acres from Harborside Inn & Marina PUD to Harborside MPD.

The applicant's team has a PowerPoint Presentation that follows:

ORDINANCE 2022-____
REZONING APPLICATION NO. 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, more particularly described on Exhibit “A” to include that property within this rezoning; and

WHEREAS, combined the two properties comprise the 17.64 +/- acres of the subject property; and

WHEREAS, the Applicant desires to complete development the subject property (“Project”) to meet the residential 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 Development 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, additional conditions of approval may also be included within the minutes of relevant meetings of the Planning & 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 Development Agreement’s terms and conditions; and

WHEREAS, the Planning and Land Development Regulation Board and City Staff of the City of Palm Coast have recommended approval of this Ordinance and the Planning and Land Development Regulation Board has found this requested change and recommended conditions of approval consistent 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”, 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 MPD District. The Development Agreement shall be recorded in the Official Records of Flagler County, Florida, by the City Clerk.

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 _____ day of _____, 20__

Adopted on the second reading after due public notice and hearing this _____ day of _____ 20__.

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 No. 20



COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT FOR HARBORSIDE MPD
CITY COUNCIL
NOVEMBER 15, 2022

OVERVIEW

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

REQUESTED ACTION

JDI Palm Coast, LLC as the applicant is proposing to rezone 17.64 +/- acres that has an existing marina with 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. It is also located 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 potential mixed-use project that is intended to include a marina with ship's store, townhouses, multi-family units and possibly a restaurant and/or hotel.

The applicant is requesting two options for the development, one primarily adding residential units

and the second primarily adding residential units and a hotel. Per LDC Section 3.05.03.C, residential density calculations cannot include lands being used for commercial purposes so in scenario one 0.7 +/- acre of commercial land area for Lots 1 and 2 are subtracted from the project size while on scenario two, 2.7 +/- acres of commercial land area for Lots 1 - 3 are 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.) In scenario one, the proposed 432 units would have an overall project density on the 16.94 +/- acres of 25.5 units/per acre. In scenario two, the proposed 432 units would have an overall project density on the 14.94 +/- acres of 28.9 units/per acre.

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

The applicant is requesting two basic scenarios, one primarily adding residential units and the second primarily adding residential units and a hotel. Residential density calculations cannot include lands that are being used for commercial purposes so in scenario one 0.7 +/- acre of commercial land area for Lots 1 and 2 are subtracted from the project size while on scenario two, 2.7 +/- acres of commercial land area for Lots 1 - 3 are subtracted from the project size. In scenario one, the proposed 432 units would have an overall project density on the 16.94 +/- acres of 25.5 units/per acre. In scenario two, the proposed 432 units would have an overall project density on the 14.94 +/- acres of 28.9 units/per acre. The proposed density of either 25.5 or 28.9 dwelling units/acre is inconsistent with the Comprehensive Plan as it exceeds 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. In contrast the DA proposes 10,000 sq. ft. of restaurants and a 3,000 sq. ft. ship store but does not commit to the restaurant.

As proposed within Lot 3, the DA provides the option of constructing townhomes, multi-family units or a hotel with meeting space. Furthermore, although the declarant recognizes the significance and importance of the marina facilities, there is 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, 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 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 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, Bella Harbor with a density of 10.5 units/per acre, and Celebrity Resorts with a density of 5.2 units/per acre). These four nearby projects 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 actually located within 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 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 20th and October 19th 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 discussed in Exhibit "A" to this staff report. However, the applicant has not agreed to limit the density to 18.3 du/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 (25.5 or 28.9 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 projects in the City have exceeded 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 19th 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 substantially beyond the 15 dwelling units/acre, without even satisfying Policy 1.1.2.2, and achieve densities up to 28.9 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 and thus exceeds what 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 2.5 to 3 times of 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 based on its previous development. 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 all of 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 and those residing nearby 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. 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 provide for densities exceeding 25 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 about three times the average of neighboring 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 exceeding 25 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 some goals and objectives of the Comprehensive Plan as previously outlined in this staff report. These primarily involve the proposed density for the project exceeding 25 units/per acre and the DA being constructed in a way that provides no assurance 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 - 29 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 MFR-2 Zoning 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 maximum density between 25 - 29 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 about 2.5 to 3 times what has already been developed in neighboring 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.

PLANNING AND LAND DEVELOPMENT REGULATION BOARD MEETING ON SEPT. 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 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 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

The applicant and staff held several meetings discussing the issues between the two parties which resulted in agreement on most all items. However, the major issue that remains is the maximum project density. The applicant is seeking 25.5 or 28.9 units/per acre depending on the applicant’s choice of two development options. 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. Staff in their professional planning opinion suggested that if eight development standards were implemented within the project, and the project was limited to 18.3 units/acre, Staff could consider the project consistent with the Comprehensive Plan and the LDC; and 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 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, absent the inclusion of the types of changes allowed in Policy 1.1.2.2 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 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 their suggested eight development items would make the project equivalent in nature to the previous project regarding Policy 1.1.2.2. These eight standards 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 to 28.9 units per acre is not 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 10th, 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 suggested alternative text be included with approximately the same development standards (one standard was dropped by the applicant). (Note applicant's proposed MPD DA includes their proposed alternative standards.) The applicant argued that if they met even some of staff's eight standards, the project would be entitled to 432 units and a density of 25.5 or 28.9 units/per acre.

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 recommended "denial" of the project due to the proposed very high density and compatibility issues with neighboring properties which 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.

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 3rd 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 4th 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 19th) by the PLDRB no additional newspaper ad was required. The City will run news ad 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 did not notice anyone 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 found the proposed MPD Application No. 5132 not in compliance with the Comprehensive Plan's Goal 1.1 and Policies 1.1.1.2 and 1.1.2.2 and not in compliance with the Land Development Code's Sections 3.03.04, 3.03.04.B.2, and 3.03.04.D and recommended denial to City Council to rezone 17.64 +/- acres from Harborside Inn & Marina PUD to Harborside MPD.

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.

Harborside Inn & Marina



Legend

 Palm Coast City Limits

 Harborside



0 450 900 Feet

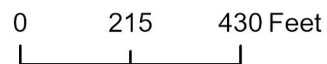


Harborside Inn & Marina

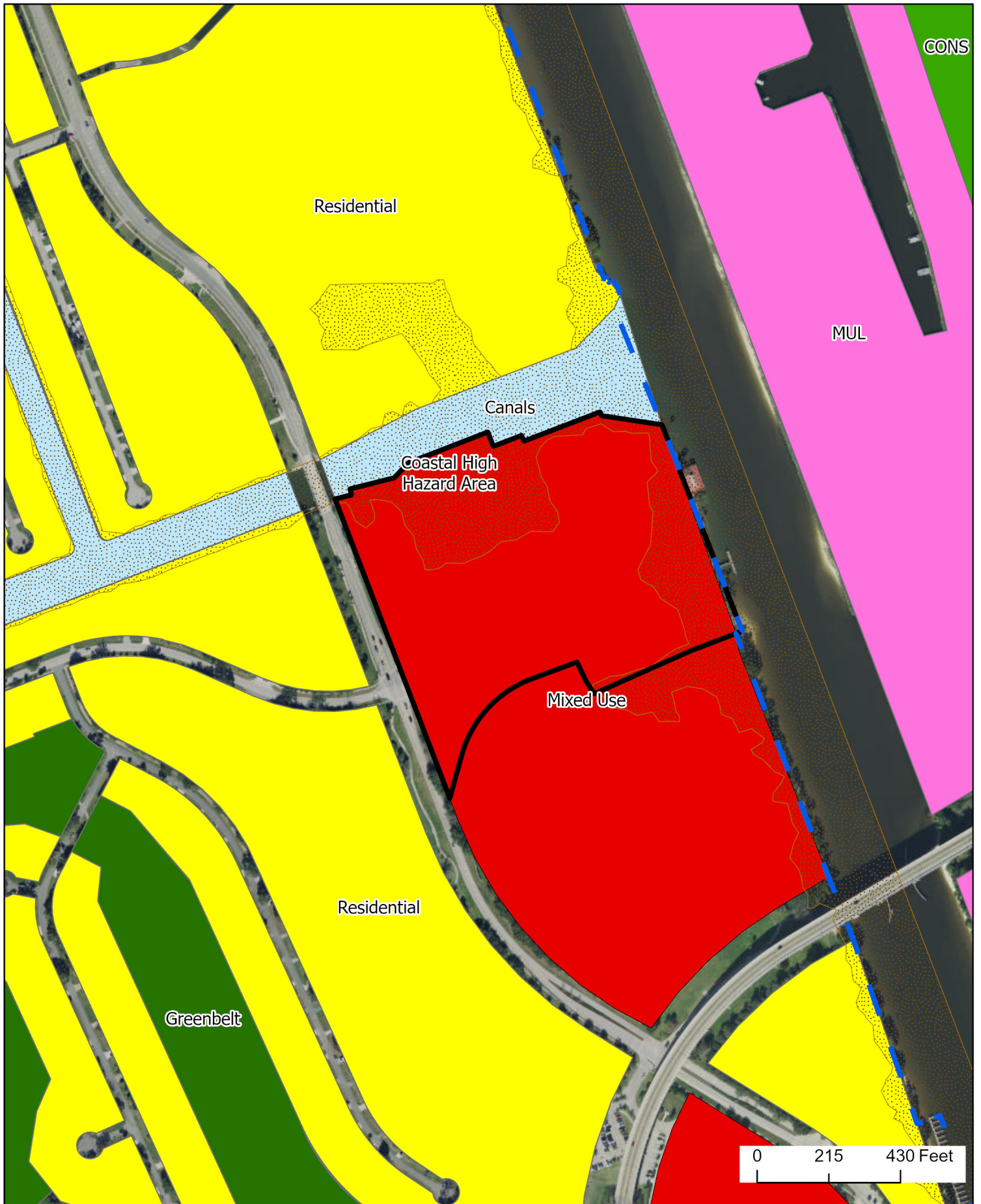


Legend

-  Palm Coast City Limits
-  Harborside



Harborside Inn & Marina-FLUM

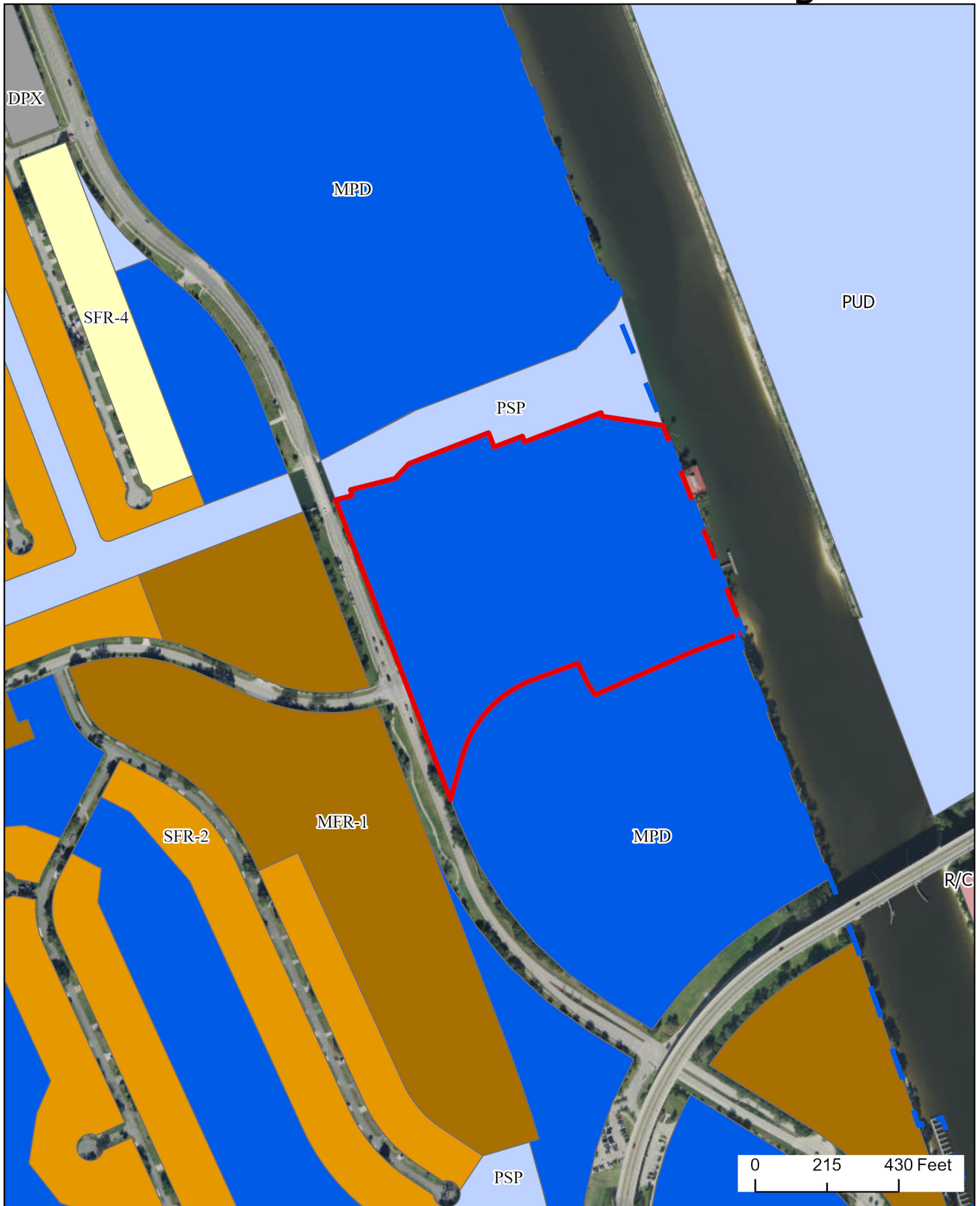


Legend

- | | | |
|------------------------|--------------------------|--------------|
| Palm Coast City Limits | Coastal High Hazard Area | Flagler FLUM |
| Harborside | Greenbelt | CONS |
| Palm Coast FLUM | Mixed Use | MUL |
| Canals | Residential | |



Harborside Inn & Marina-Zoning



Legend

- | | | |
|------------------------|-------|-----------------------|
| Palm Coast City Limits | MFR-1 | SFR-4 |
| Harborside | MPD | Flagler Zoning |
| DPX | PSP | PUD |
| SFR-2 | R/C | |






Harborside - Surrounding Densities




Legend

 Palm Coast City Limits

 Harborside

0 140 280 Feet



LIVINGSTON & SWORD, P.A.

Attorneys At Law

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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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.

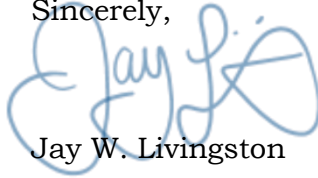
The proposed development is compatible with the surrounding uses and development patterns. The eastern portion of the property is limited to townhouse with higher density residential uses to the west. This will ensure compatibility with the existing multi-family tower and avoid any conflicts with the 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 blue ink, appearing to read "Jay W. Livingston". The signature is stylized and cursive.

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



| OWNER: | APPLICANT / AGENT: |
|---|---|
| Name: JDI Palm Coast LLC | Name: Livingston & Sword, P.A. |
| Mailing Address: P.O. Box 64 Little Rock, AR 72203 | Mailing Address: 391 Palm Coast Pkwy SW, #1 Palm Coast, FL 32137 |
| Phone Number: | Phone Number: 386-439-2945 |
| E-mail Address: | E-mail Address: jay.livingston314@gmail.com |

| MORTGAGE HOLDER: | ENGINEER OR PROFESSIONAL: |
|--|--|
| Name: Chambers Bank | Name: CPH, Inc. |
| Mailing Address: P.O. Box 609 Danville, AR 72833 c/o: Philip Alexander | Mailing Address: 520 Palm Coast Pkwy SW Palm Coast, FL 32137 c/o Jason Kellogg |
| Phone Number: 479-495-4625 | Phone Number: 386-445-6569 |
| E-mail Address: philipalexander@chamber-bank.com | E-mail Address: jkellogg@cphcorp.com |

| PLANNER: | TRAFFIC ENGINEER: |
|------------------|-------------------|
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| Phone Number: | Phone Number: |
| E-mail Address: | E-mail Address: |

| SURVEYOR: | LANDSCAPE ARCHITECT: |
|------------------|----------------------|
| Name: | Name: |
| Mailing Address: | Mailing Address: |
| Phone Number: | Phone Number: |
| E-mail Address: | E-mail Address: |

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

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

Signature of owner OR person authorized to represent this application

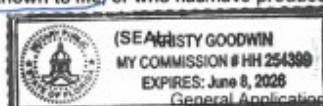
Signature(s) Jay Livingston

Printed or typed name(s): Jay W. Livingston

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.

K. Goodwin
Signature of Notary Public, State of Florida



General Application (sheet 2 of 2)

9.3 Parking.

| Development Type | Off street Parking |
|-------------------------------------|--|
| Hotel Condominium | One space per room (209 x 1 space = 209 spaces) Total: 209 spaces |
| Resort Condominium Units | <ul style="list-style-type: none"> One and one half space per two (2) and three (3)-br units (162 3-br units x 1.5 = 243); Two spaces per four (4) br units 7 4-br units x 2 = 14; 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"> 47,000 SF / 1,000 SF x 4 = 188 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

LIVINGSTON & SWORD, P.A.

Attorneys At Law

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

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.

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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.

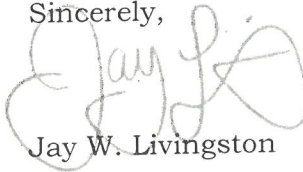
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G. Whether it accomplishes a legitimate public purpose.

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,

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Jay W. Livingston

CC: JDI Palm Coast, LLC



GENERAL APPLICATION: Rezoning Special Exception
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 Master Site Plan Nonresidential Controlling Master Site Plan
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 Variance Parking Flexibility
 Wireless Communication Facility (new structure)

CD Plus Application #: _____ Application Submittal Date: _____
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 Employee Name Accepting Application (print name) _____
 Rejected on _____ Rejected by: _____
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A. PROJECT NAME: Harborside

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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"

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F. FUTURE LAND USE MAP DESIGNATION Mixed Use EXISTING ZONING DISTRICT: MPD
 OVERLAY DISTRICT: District 2

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 Tier 1 (up to 40,000 sq. ft. / 40 units)
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| OWNER: | | APPLICANT / AGENT: | |
|------------------|------------------------------------|--------------------|--|
| Name: | JDI Palm Coast LLC | Name: | Livingston & Sword P A |
| Mailing Address: | P O Box 64 Little Rock AR 72203 | Mailing Address: | 391 Palm Coast Pkwy SW, #1 Palm Coast, FL 32137 |
| Phone Number: | | Phone Number: | 386-439-2945 |
| E-mail Address: | | E-mail Address: | jay.livingston314@gmail.com |

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| Name: | Chambers Bank | Name: | CPH Inc |
| Mailing Address: | P O Box 609 Danville, AR 72833 c/o Philip Alexander | Mailing Address: | 520 Palm Coast Pkwy SW Palm Coast, FL 32137 c/o Jason Kellogg |
| Phone Number: | 479-495-4625 | Phone Number: | 386-445-6569 |
| E-mail Address: | philipalexander@chamber-bank.com | E-mail Address: | jkollogg@cphcorp.com |

| PLANNER: | | TRAFFIC ENGINEER: | |
|------------------|--|-------------------|--|
| Name: | | Name: | |
| Mailing Address: | | Mailing Address: | |
| Phone Number: | | Phone Number: | |
| E-mail Address: | | E-mail Address: | |

| SURVEYOR: | | LANDSCAPE ARCHITECT: | |
|------------------|--|----------------------|--|
| Name: | | Name: | |
| Mailing Address: | | Mailing Address: | |
| Phone Number: | | Phone Number: | |
| E-mail Address: | | E-mail Address: | |

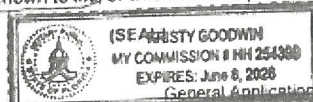
| ATTORNEY: | | DEVELOPER OR DOCKMASTER: | |
|------------------|--|--------------------------|--|
| Name: | Livingston & Sword, P A | Name: | |
| Mailing Address: | 391 Palm Coast Pkwy SW, #1 Palm Coast, FL 32137 | Mailing Address: | |
| Phone Number: | 386-439-2945 | Phone Number: | |
| E-mail Address: | jay.livingston314@gmail.com | 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): [Signature]
Printed or typed name(s): Jay W. Livingston

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



9.3 Parking.

| Development Type | Off street Parking |
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| Hotel Condominium | One space per room (209 x 1 space = 209 spaces) Total: 209 spaces |
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| 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

**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 _____, 2022, 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”); 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 Project and this MPD Agreement do not affect the Existing Condominium, which was 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 Planning and Land Development Regulation Board (“PLDRB”) and 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 _____ 2022, adopted Ordinance No. 2022-_____ 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 shall be 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 and configuration of the 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 and LOT 2: 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. A private boat ramp, if any, shall be available for official government entity use for emergency situations only.
 - 3) LOT 3: All uses permitted in the COM-2, including, without limitation, 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. Residential uses and commercial uses are permitted within the same buildings.
 - 4) LOT 4: All uses permitted in the MFR-2 zoning district, including, without limitation, short term rentals.
 - 5) LOT 5: Townhouses, which may be on individually platted lots, with no

setback between units. Short term rentals shall be permitted for the townhouses. 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.

- 6) 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.
- 7) 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.

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 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 spaces in the Parking Garage, together with existing and future surface parking, may be used to meet the parking requirements of the Project. 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 herein 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 |
|---|---------------|------------------|-------|------------------------|-----------------------|
| Infrastructure/Common Area/etc. | A | N/A | N/A | 0 | 0 |
| Marina | 1 | 100 | Slips | 1 | 4 |
| Ship Store / Dock Master | 1,2 | 3,000 | SF | 1 | 375 |
| Restaurant / Bar | 1,2 | 10,000 | SF | 1 | 100 ¹ |
| Hotel | 3 | 150 | Keys | 1 | 1 |
| Hotel Meeting Space | 3 | 5,000 | SF | 1 | 200 |
| Townhomes | 3 and/or 5 | 60 ² | Units | 2 | 1 |
| Multifamily Residential | 3 and/or 4 | 300 | Units | 1.5 | 1 |
| Existing Multifamily Residential | 6 | 72 | Units | 1.5 | 1 |

¹ Includes outdoor eating/drinking areas.

² The maximum number of townhomes allowed in the Project shall be sixty (60) which may be placed on Lot 3, Lot 5, or both.

TABLE 8.2 – SETBACK³, HEIGHT⁴ AND OTHER REQUIREMENTS

| | TRACT A | LOT 1 | LOT 2 | LOT 3⁵ | LOT 4 | LOT 5 | LOT 6 |
|--|------------------|--------------|--------------|--------------------------|--------------|--------------|------------------|
| Maximum Height | N/A ⁶ | 35' | 35' | 80' | 80' | 45' | N/A ⁷ |
| Minimum ICW ROW Setback | N/A | N/A | N/A | N/A | N/A | 0' | 0' |
| Minimum Country Club Waterway Setback | 0' | 0' | 0' | N/A | N/A | 10' | N/A |
| Minimum Marina Setback | 0' | 0' | 10' | 10' | 10' | 10' | N/A |
| Minimum Tract A Setback | N/A | 0' | 0' | 0' | 0' | 0' | 0' |
| Minimum Interior Side Setback⁸ | 0' | 0' | 0' | 10' | 10' | N/A | N/A |
| Maximum ISR⁹ | N/A | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 | N/A |
| Maximum FAR¹⁰ | 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

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

⁴ Building heights shall be measured in accordance with the LDC.

⁵ 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'.

⁶ The existing Parking Garage is limited to its existing height.

⁷ The Existing Condominium is limited to its existing height.

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

⁹ 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"

¹⁰ FAR (floor area ration) 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 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.

SECTION 11. 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. 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. 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. 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. 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 16. 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. 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. 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. 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. 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 21. 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. 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. 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. 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. 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. 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. 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. 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 _____, 2022 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 _____, 2022 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 _____, 2022, 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

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.

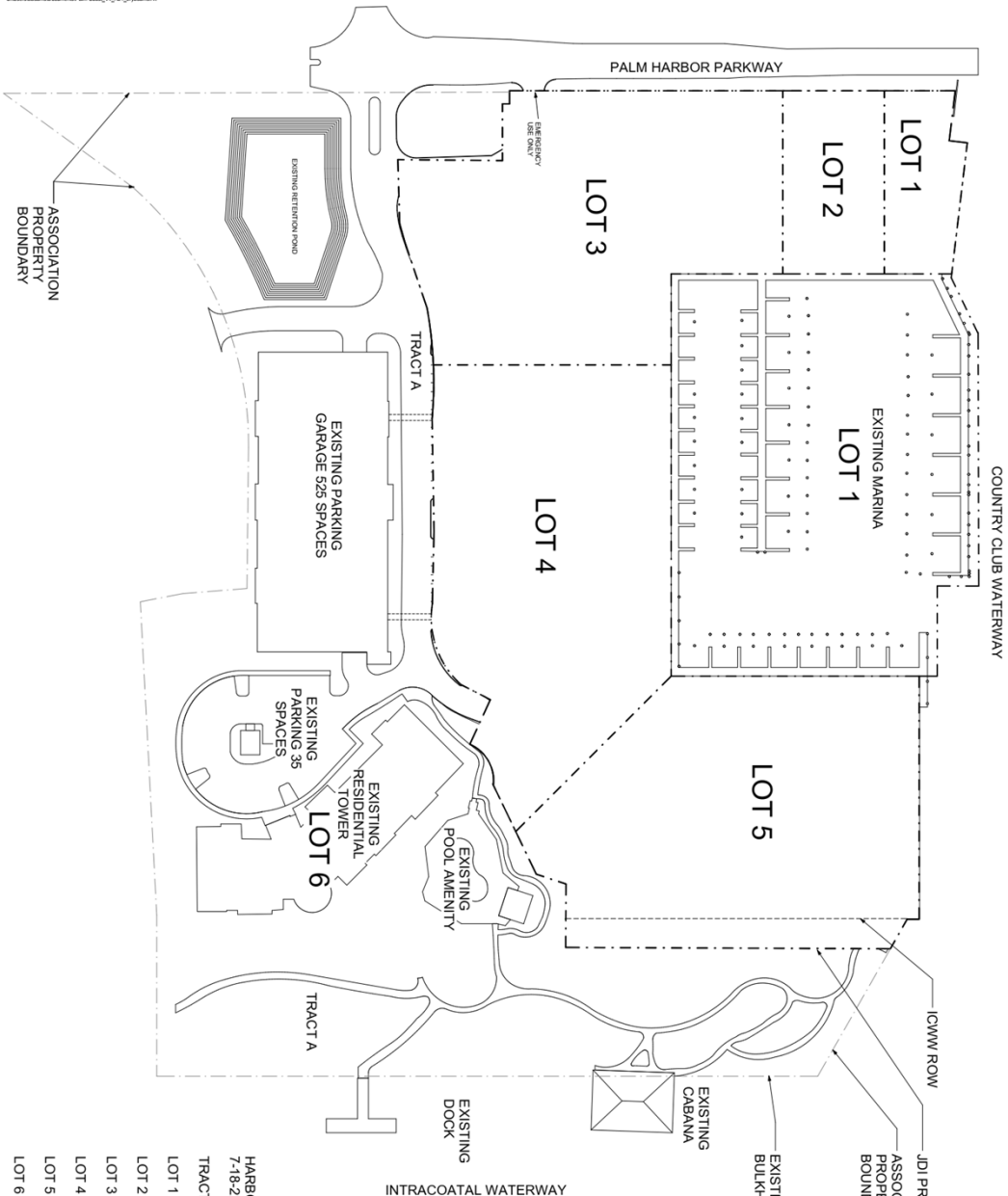
CONTAINING AN AREA OF 29,503 +/- SQUARE FEET OR 0.677 ACRES.

EXHIBIT "B"

MPD Conceptual Master Plan

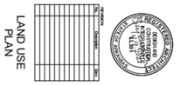
On Following Page

CONCEPTUAL SITE PLAN



- 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 |

A 102
PLAN



HARBORSIDE MPD
CLUB HOUSE DRIVE, PALM COAST, FL
Project number: 0990
Project Issue Date: 07-18-2022

Project Status

Design Team
Architect:
DESIGN + CONSTRUCTION
INTEGRATION, LLC
3000 N. US HWY 1
SUITE 200
PALM COAST, FL 32909
CFL
OWNER:
Landscape Architecture:
STRATEGIC
STRUCTURAL
MECHANICAL/ELECTRICAL/PLUMBING
MEP

Design & Construction
Design & Construction
Integrations, LLC
3000 N. US HWY 1
SUITE 200
PALM COAST, FL 32909
561.215.5044
561.215.5044 ext. 1000
www.dci-integrations.com



LIVINGSTON & SWORD, P.A.

Attorneys At Law

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

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**

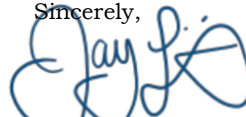
Dear Property Owner:

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 2nd and 3rd floor of the parking garage. The meeting will be held near the elevator on the 3rd 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

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

| NAME | ADDRESS | PHONE NUMBER | EMAIL |
|--------------------|------------------------------|----------------|----------------------------|
| DAVIN THORNBURN | 4 Marina Point Pl. | 678-425-0911 | DAVINTHORNB@AOL.COM |
| Joe Danaher | 9 Marina Point Pl | 859-420-3755 | JoeDanaher@gmail.com |
| Ronald DeCesive | 104 eug house br 409 pc | 386-763-0777 | RonaldDeCesive@mcn.com |
| Diana Kischel | 4140 RCR Unit 904 | 545-527-2230 | AKischel@gmail.com |
| Deborah Jackson | 146 PCR B Unit 108 | 561-703-0739 | deborah.jc@gmail.com |
| Amy Fries | 1 Magna Point Pl | 804-513-2490 | ayofries@gmail.com |
| Robbie Ote | 146 PCR # 508 | 386-283-4746 | |
| Linda Haffenberg | 146 PCR # 705 | 586-283-5738 | lindahill49@bellsouth.net |
| Angela Joe Conitt | Unit 302 RCR | 386-5033387 | angelaconitt@yahoo.com |
| Rita + Steve Lamos | # 204 | 561-8187611 | RVT79@aol.com |
| Elda Torrente | 146 Palm Coast R #306 | (305) 245-1278 | eldatorrente@comcast.net |
| Linda Kellman | 146 PCR # 401 | 986 337 4816 | |
| Jerry Di Modico | 146 PCR # 304 | (201) 207-1506 | zora vette 206@gmail.com |
| Flora Fidy Budnik | 76 Rivers Edge Ln | 407-925-2338 | flora@pepperlands.com |
| Bob Vanden | 741 Pcr #401 | 386-951-7588 | ericvanden@gmail.com |
| Bob Leathman | 49 Rivers Edge Ln Palm Coast | 407 402 9541 | BobLeathman@yahoo.com |
| Alan & Kathy Ford | 146 PCR # 703 | 770-617-6375 | mcpsocial@yahoo.com |
| Cristina Costa | 146 Palm Coast 1123 505 | 986 973 8610 | Cristina.Costa23@yahoo.com |
| HARRY LITTLE | 146 PCR Blvd 505 | 586 264 8802 | PTMISS5@HOTMAIL.COM |
| DANNY LOBLE | | | PTMISS5@HOTMAIL.COM |



Page: 1
Date: 10/20/2023 10:00 AM
User: [redacted]

The signs are up and the photos are below. They should remain in place until the parking area signs are not required after the project has completed. Thank you.

Bill Brown
1000 N. 1st St.
Tampa, FL 33604
Tel: 813.255.1111
www.impact.com



Name: Bill Brown - City Impact (bill@impact.com)
Email: billbrown@impact.com
Phone: 813.255.1111
Address: 1000 N. 1st St.
Tampa, FL 33604

Photos of the updated signs that were posted today are attached. Let me know if you need anything else.

Bill Brown
1000 N. 1st St.
Tampa, FL 33604
Tel: 813.255.1111
www.impact.com





From: [CHARLES and MARY KACZOREK](#)
To: [Bill Hoover](#)
Cc: [Nick Klufas](#); [Irene Schaefer](#); RTyner@palmcoast.gov
Subject: JDI/VCC development
Date: Monday, October 17, 2022 6:07:16 PM

As a resident of Palm Coast Resort, I am writing to express my opposition to the planned 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
Subject: Harborside MPD Application No. 5132
Date: Tuesday, October 18, 2022 4:58:51 PM

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 of 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 20th 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

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.² 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
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

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

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*.

- (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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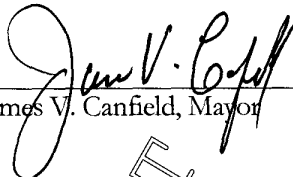
action of the City in rezoning the property that is the subject of this Ordinance or an action under Section 163.3215, *Florida Statutes* (30 days from the date of rendering) relative to the action taken in this Ordinance, or the successful defense of any timely filed appeal(s); provided, further, however, 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

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ORDINANCE 2007-~~23~~
Page 3 of 3

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/ship store, 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

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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,

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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.

Initials JC-2

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:

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- (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.

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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,

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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

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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

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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").

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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

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9.1 Setbacks Distances/Criteria –

| Property Boundary | Minimum Setback |
|-------------------|---|
| NORTH | 25' |
| EAST | 150' |
| SOUTH | 35' (with the exception of Building F, which is 10' ⁽¹⁾) |
| 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 ¹ / ₈ Stories |
| Building "C" (Resort Units) | 69' / 6 ¹ / ₆ Stories |
| Building "D" (Resort Units) | 89' / 8 ¹ / ₈ Stories |
| Building "E" (Resort Units) | 89' / 8 ¹ / ₈ Stories |
| Building "F" (Parking Structure) | 61' / 5 ¹ / 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

¹ 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"> • 1.5 spaces per 2 and 3-bedroom units; • 2 spaces per 4 bedroom unit; |
| 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

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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

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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

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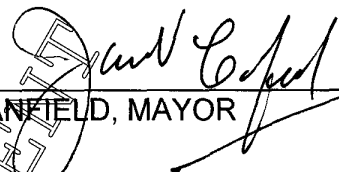
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- (c). The Parties agree not to claim any waiver by the other party of such notice requirements based upon the other party having actual knowledge, implied, verbal or construction notice, lack of prejudice or any other grounds as a substitute for the 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

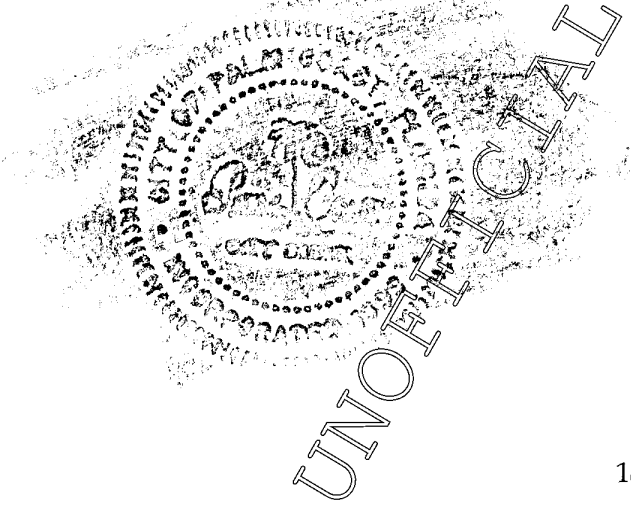
ATTEST:

By: 

 CLAIR HOENI, CITY CLERK

**Clair M. Hoeni
City Clerk**

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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: *[Signature]*
Attesting Authority
Date: 10/23/07

By: *[Signature]*
Lawfully Authorized Signatory

Signed, sealed and delivered
in the presence of:

[Signature]
Witness One Printed Name: PAIGE N. HANFORD
[Signature]
Witness Two Printed Name: ENAM. CARSELL LANGLOIS

ACKNOWLEDGEMENT

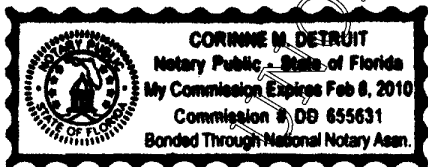
STATE OF Florida)
COUNTY OF Seminole

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 23rd day of October, 2007.

(Affix Notary Seal)

[Signature]
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.

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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;

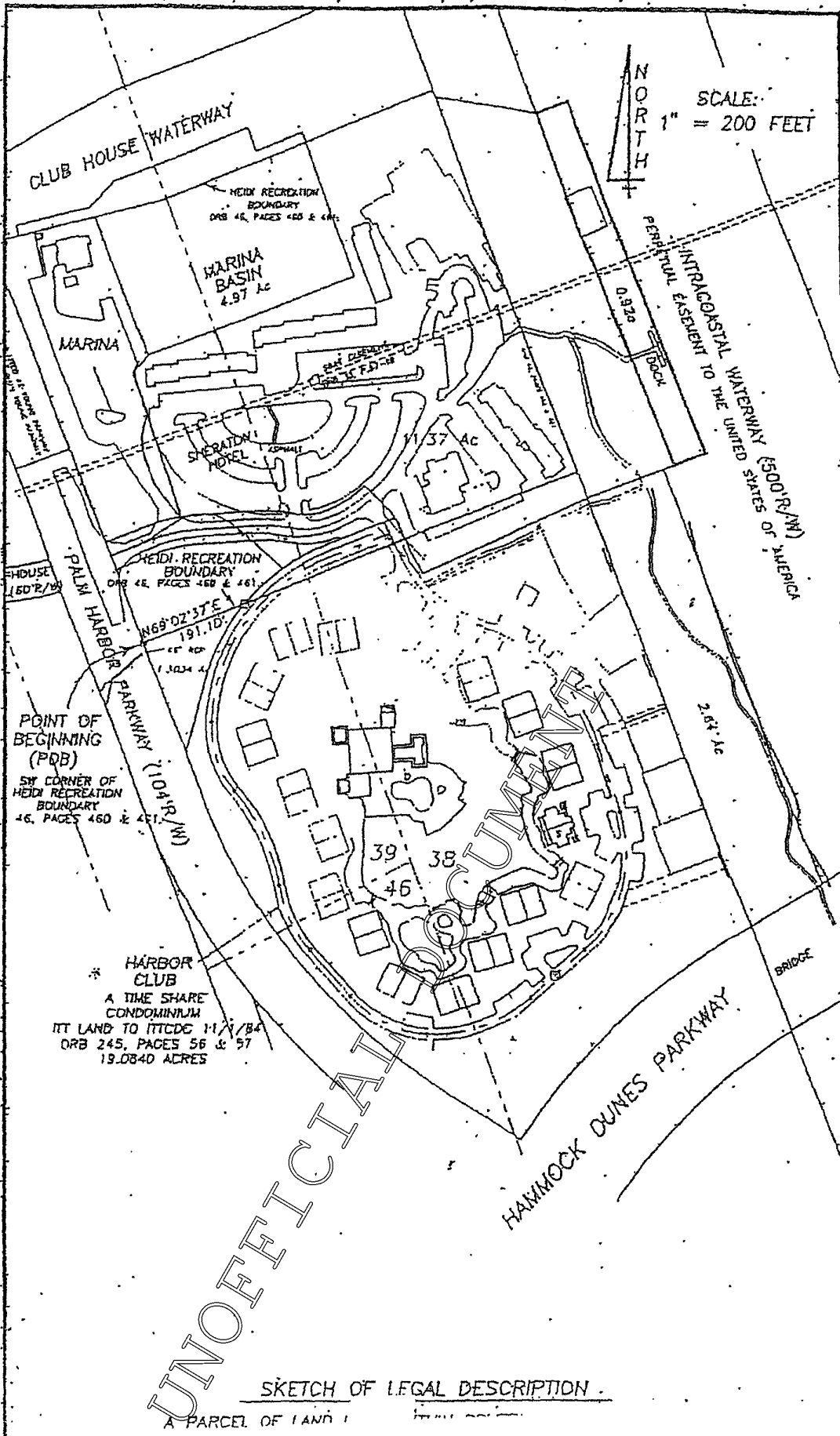
A POINT OF BEGINNING being the southeast corner of the Plat Country Club Cove Section-3, Map Book 6, Page 8, thence North $20^{\circ}57'23''$ West along the East right-of-way line of Palm Harbor Parkway (platted as Young Parkway) (104'R/W) a distance of 123.00 feet, thence departing said right-of-way North $69^{\circ}02'37''$ 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 $11^{\circ}56'32''$, a radius of 275.00 feet, a chord bearing of North $75^{\circ}00'53''$ East and a chord distance of 57.21 feet to the point of intersection with a non-tangent line, thence North $17^{\circ}59'47''$ West a distance of 188.91 feet, thence North $15^{\circ}07'19''$ West a distance of 80.85 feet, thence North $38^{\circ}28'13''$ East a distance of 38.06 feet, thence North $69^{\circ}02'37''$ East a distance of 400.00 feet, thence North $20^{\circ}57'23''$ West a distance of 250.00 feet, thence North $69^{\circ}02'37''$ East a distance of 45.00 feet, thence South $20^{\circ}49'47''$ East along the westerly right-of-way line of the Intracoastal Waterway a distance of 11.95 feet, thence departing said line South $81^{\circ}28'20''$ East a distance of 183.24 feet, thence South $21^{\circ}16'59''$ East a distance of 668.31 feet, thence South $69^{\circ}02'37''$ 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 $66^{\circ}01'12''$ West a distance of 317.67 feet, thence North $33^{\circ}24'47''$ West a distance of 43.00 feet, thence North $25^{\circ}19'15''$ West a distance of 65.48 feet, thence South $69^{\circ}37'11''$ 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 $54^{\circ}12'26''$, a radius of 341.92 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 South $15^{\circ}24'47''$ West a distance of 133.46 feet, thence North $20^{\circ}57'23''$ 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.

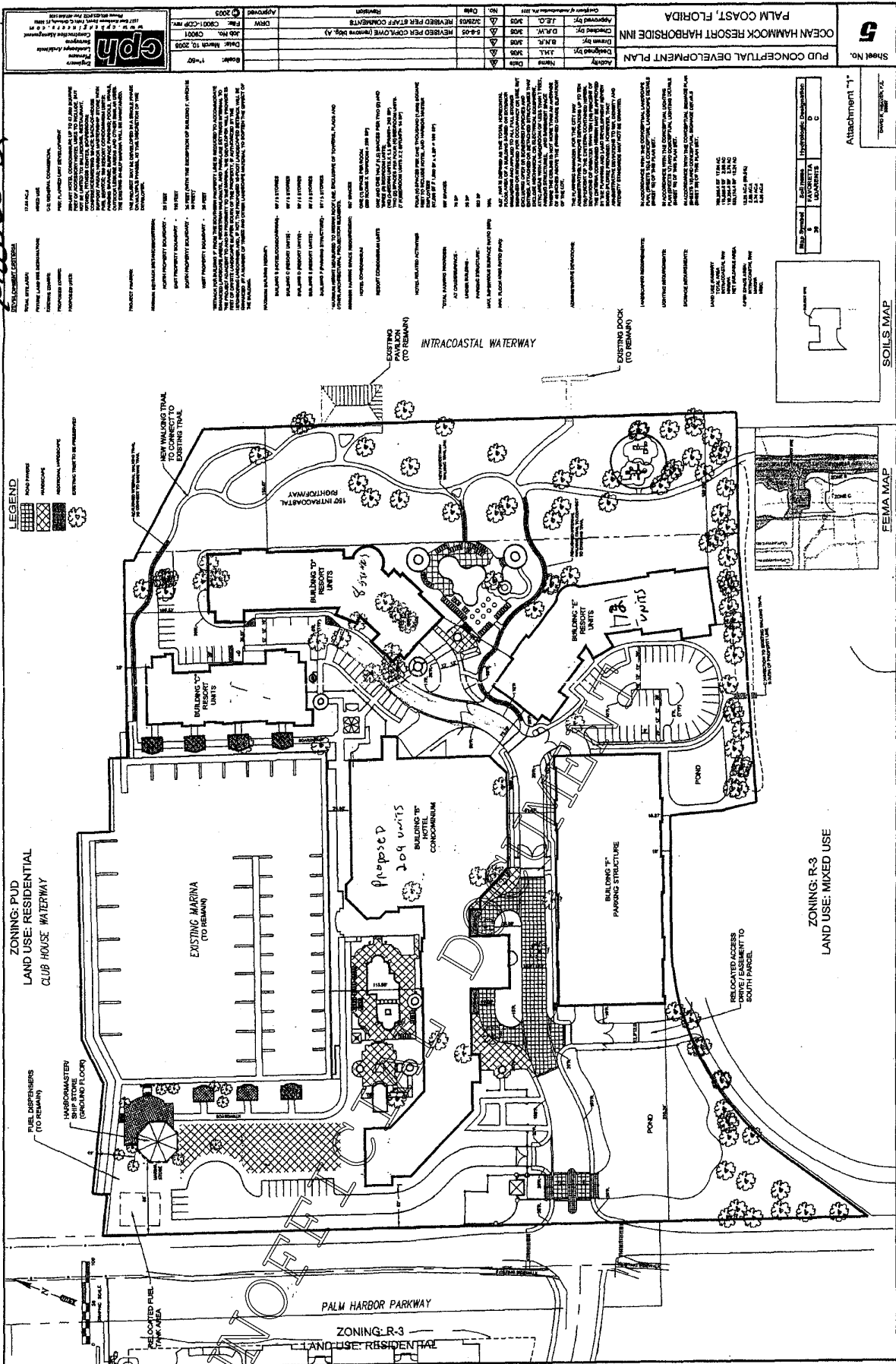
TOGETHER WITH the boat dock and pavillion located on and adjacent to the above described property and as more particularly shown on the attached Exhibit B.

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REC 0550 PAGE 1670

Exhibit 2



LEGEND

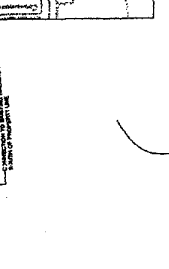
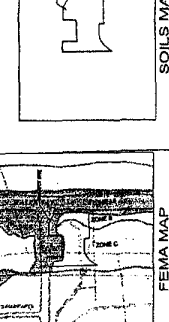
- ROAD PAVEMENT
- PAVING LAIR AND DRIVEWAYS
- EXISTING DRIVEWAYS
- PROPOSED DRIVEWAYS
- EXISTING TRAILS TO BE PRESERVED
- NEW WALKING TRAIL TO CONNECT TO EXISTING TRAIL
- 150' INTRACOASTAL PROWALKWAY
- EXISTING MARINA (TO REMAIN)
- EXISTING POND
- PROPOSED POND
- RELOCATED ACCESS DRIVE/EASEMENT TO SOUTH PARCEL
- RELOCATED FUEL TANK AREA
- FUEL DISPENSERS (TO REMAIN)
- HANDICAPPED (GROUND FLOOR)
- EXISTING TRAIL TO BE PRESERVED

NOTES

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PALM COAST ZONING ORDINANCE AND THE PALM COAST SUBDIVISION AND DEVELOPMENT CODE.
2. THE DEVELOPER SHALL OBTAIN ALL NECESSARY PERMITS FROM THE CITY OF PALM COAST AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP).
3. THE DEVELOPER SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES TO REMAIN.
4. THE DEVELOPER SHALL PROVIDE ALL NECESSARY UTILITY CONNECTIONS AND SERVICE TO THE PROPOSED DEVELOPMENT.
5. THE DEVELOPER SHALL PROVIDE ALL NECESSARY EROSION CONTROL MEASURES TO PREVENT SOIL EROSION AND SEDIMENTATION.
6. THE DEVELOPER SHALL PROVIDE ALL NECESSARY LANDSCAPING AND PLANTING TO IMPROVE THE AESTHETIC APPEARANCE OF THE DEVELOPMENT.
7. THE DEVELOPER SHALL PROVIDE ALL NECESSARY LIGHTING TO ILLUMINATE THE DEVELOPMENT AND IMPROVE NIGHTTIME SAFETY.
8. THE DEVELOPER SHALL PROVIDE ALL NECESSARY SIGNAGE TO IDENTIFY THE DEVELOPMENT AND PROVIDE DIRECTION TO VISITORS.
9. THE DEVELOPER SHALL PROVIDE ALL NECESSARY FENCING TO SECURE THE DEVELOPMENT AND PREVENT UNAUTHORIZED ACCESS.
10. THE DEVELOPER SHALL PROVIDE ALL NECESSARY SECURITY MEASURES TO PROTECT THE DEVELOPMENT AND ITS RESIDENTS.
11. THE DEVELOPER SHALL PROVIDE ALL NECESSARY MAINTENANCE AND REPAIRS TO THE DEVELOPMENT AND ITS UTILITIES.
12. THE DEVELOPER SHALL PROVIDE ALL NECESSARY RECORD DRAWINGS AND AS-BUILT DRAWINGS TO THE CITY OF PALM COAST.
13. THE DEVELOPER SHALL PROVIDE ALL NECESSARY CONSTRUCTION SCHEDULES AND GANTT CHARTS TO THE CITY OF PALM COAST.
14. THE DEVELOPER SHALL PROVIDE ALL NECESSARY COMMUNITY MEETINGS AND PUBLIC HEARINGS TO OBTAIN FEEDBACK FROM THE COMMUNITY.
15. THE DEVELOPER SHALL PROVIDE ALL NECESSARY COMMUNITY BENEFITS AND AMENITIES TO IMPROVE THE QUALITY OF LIFE FOR THE COMMUNITY.

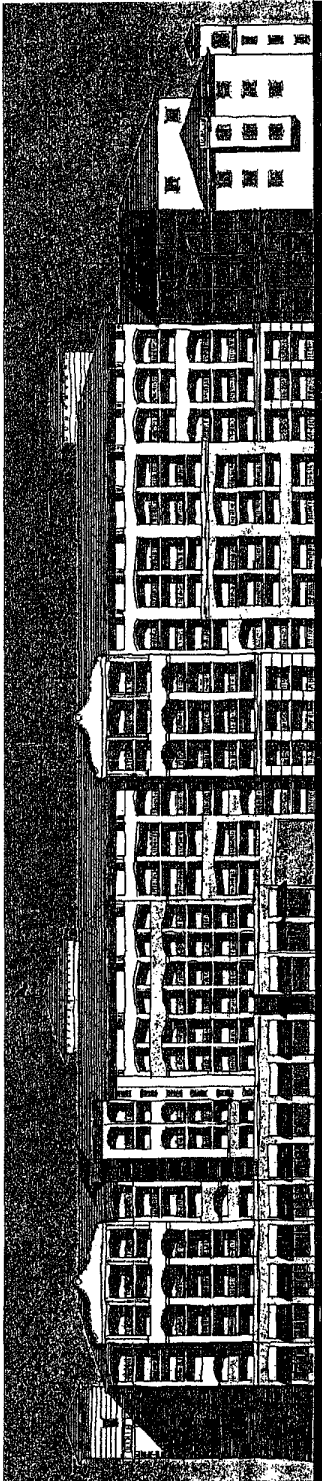
PROPOSED PERmits

| NO. | DATE | DESCRIPTION |
|-----|------------|--|
| 1 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 2 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 3 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 4 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 5 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 6 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 7 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 8 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 9 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |
| 10 | 12/15/2023 | REVERSED PER CONCEPTUAL DEVELOPMENT PLAN |

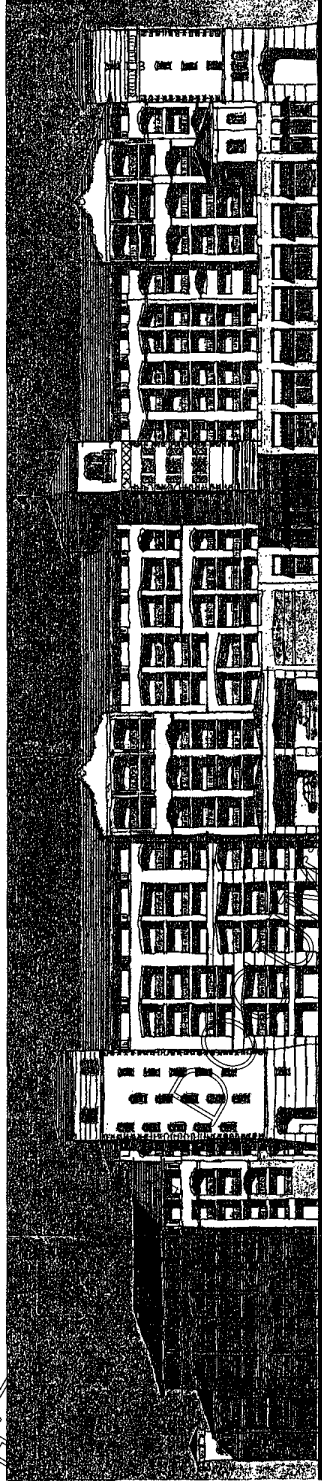


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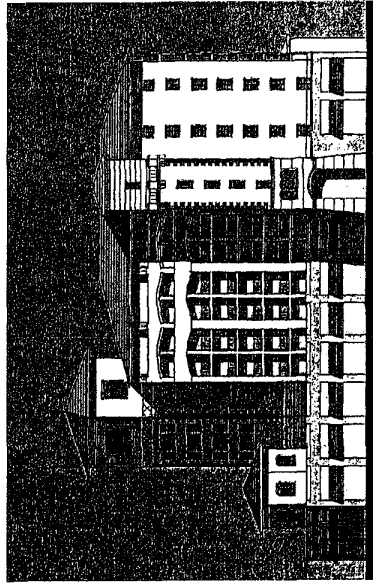
Exhibit 3



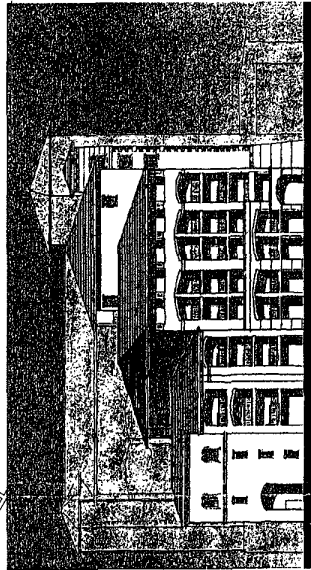
BUILDING B
NORTH ELEVATION



BUILDING B
SOUTH ELEVATION



BUILDING B
WEST ELEVATION



BUILDING B
EAST ELEVATION

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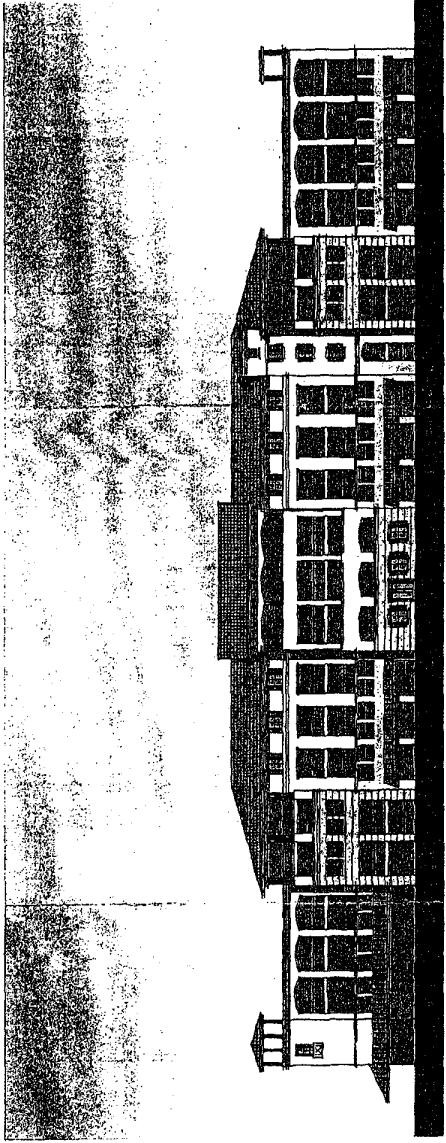


2012 Harborside Drive
Suite 100
Palm Coast, FL 32137
Phone: 386.329.2000

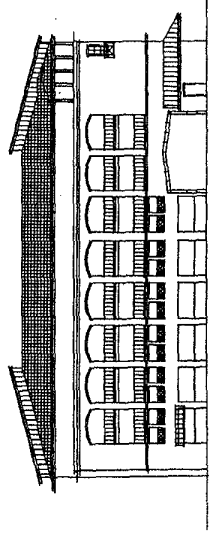
Harborside Inn and Marina
Palm Coast, Florida

9
ARCHITECTURE

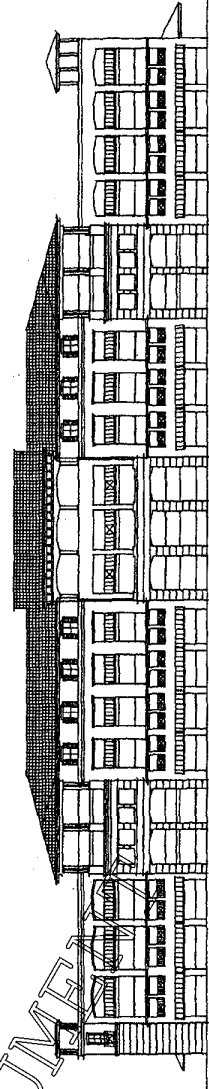
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BUILDING F
NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

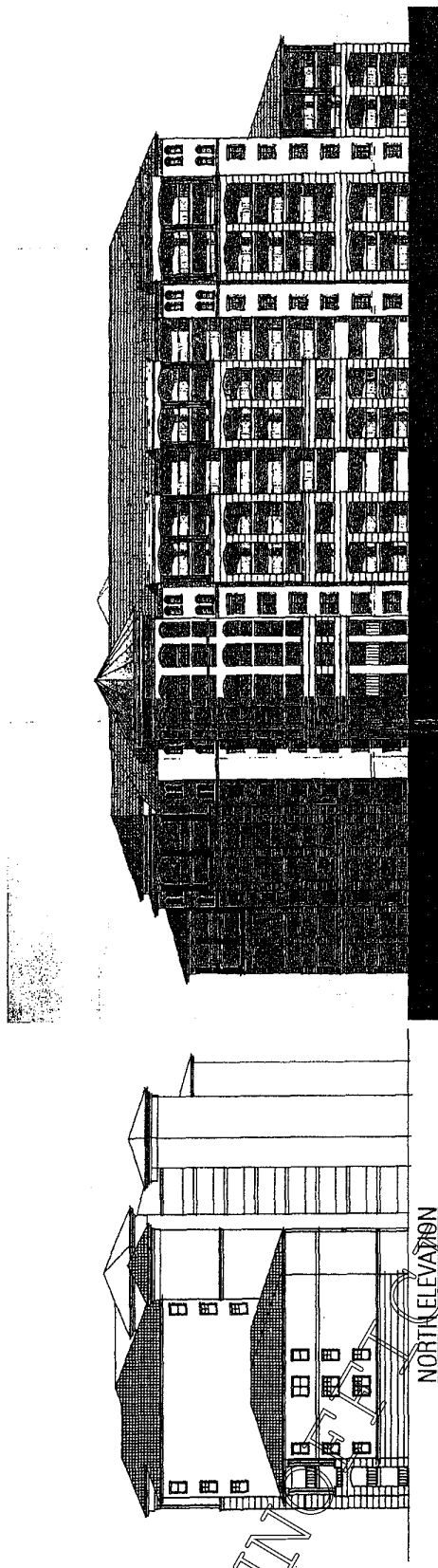
EAST ELEVATION



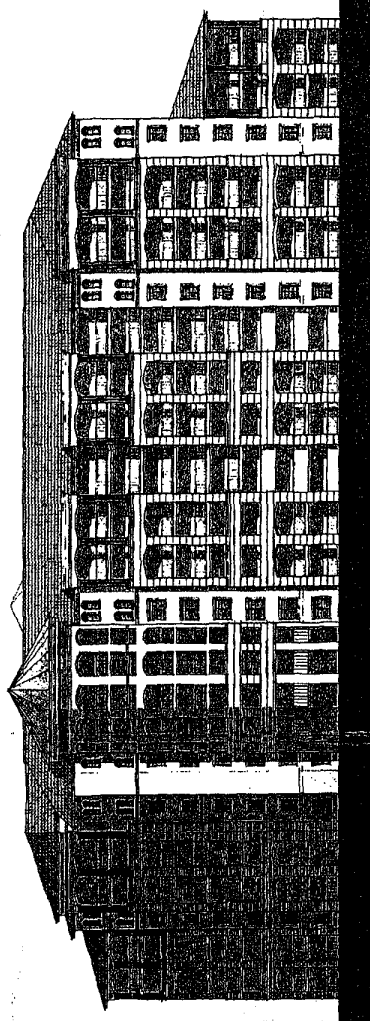
Harborside Inn and Marina
Palm Coast, Florida

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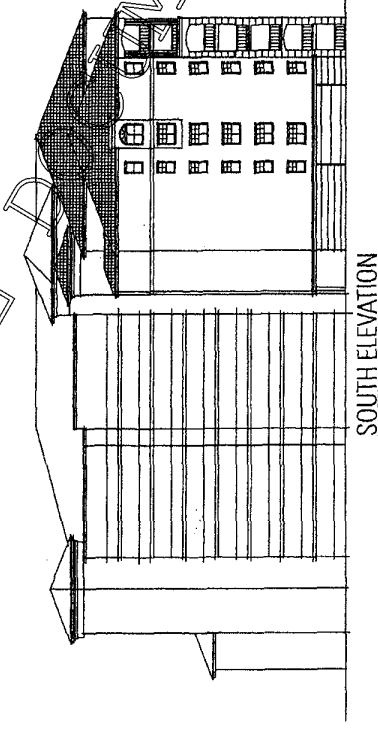
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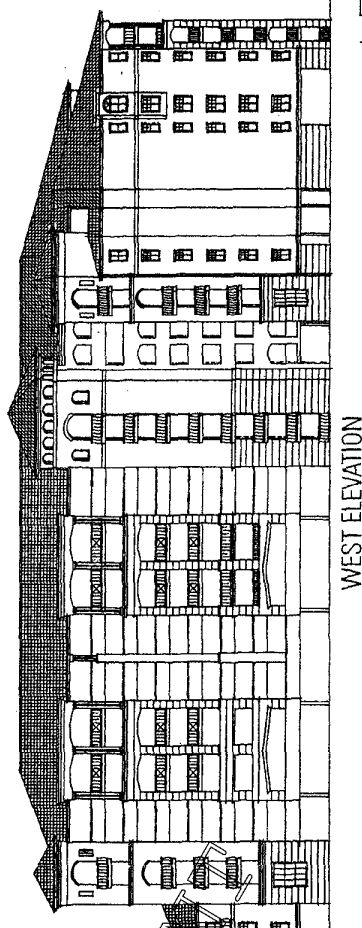
NORTH ELEVATION



BUILDING D
EAST ELEVATION



SOUTH ELEVATION

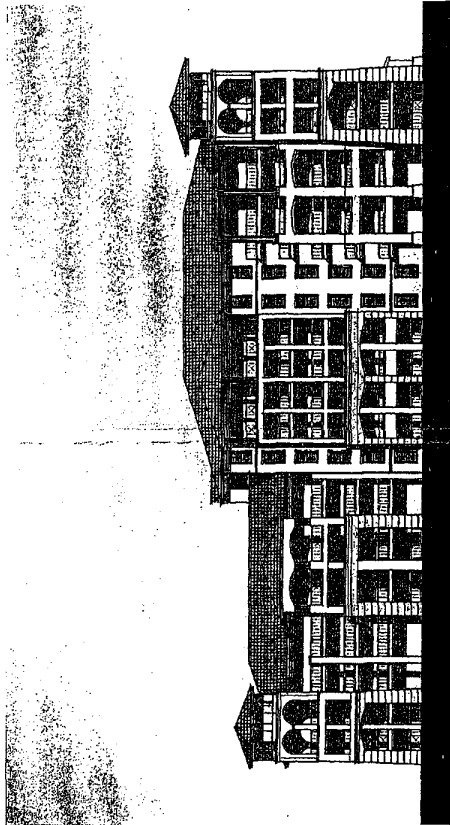


WEST ELEVATION

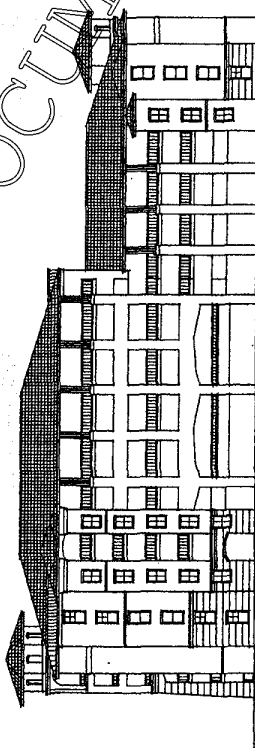


AWD

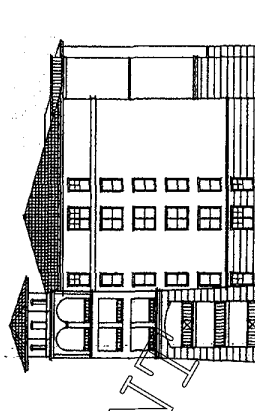
Harborside Inn and Marina
Palm Coast, Florida



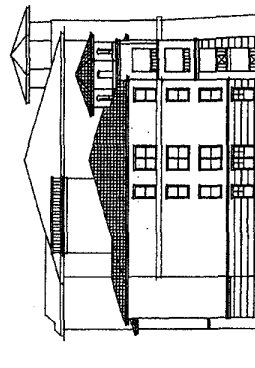
BUILDING C
WEST ELEVATION



EAST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION

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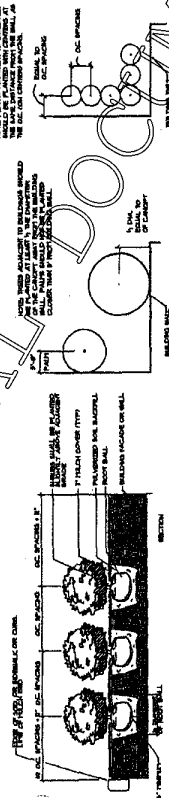
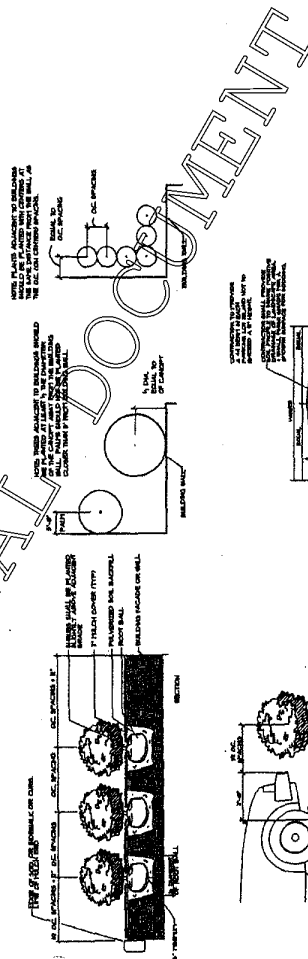
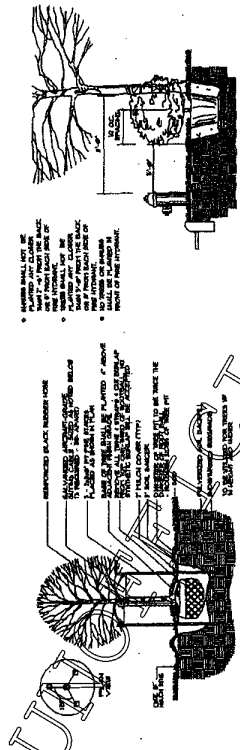
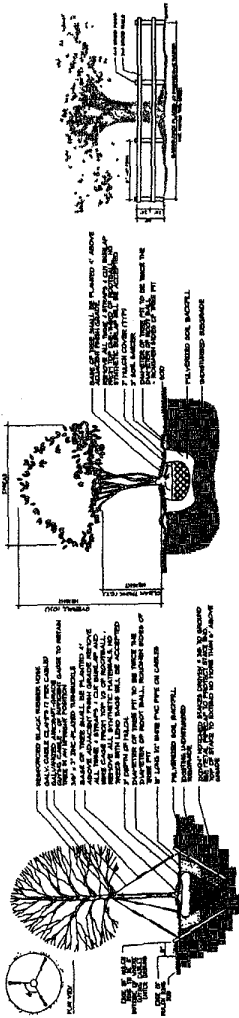


Harborside Inn and Marina
Palm Coast, Florida

Handwritten initials: CMH



HARBORSIDE INN AND MARINA
PALM COAST, FLORIDA
 CONCEPTUAL LANDSCAPE PLAN
SHEET 16



GENERAL NOTES

1. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).
2. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).
3. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).
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10. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

TREE PROTECTION REQUIREMENTS

1. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

2. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

3. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

4. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

5. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

6. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

7. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

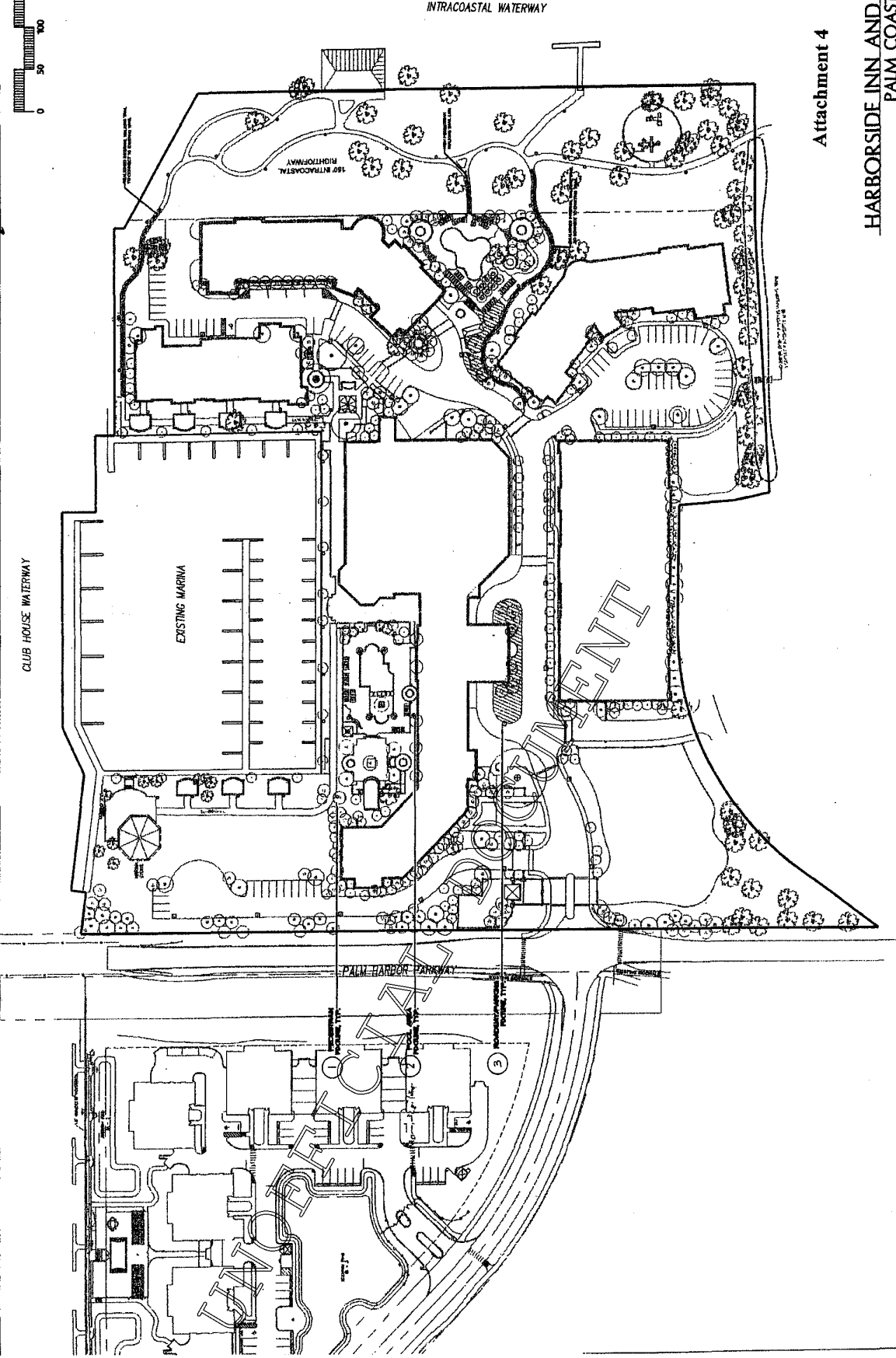
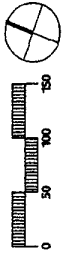
8. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

9. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

10. ALL PLANTING SHALL BE ACCORDING TO THE SPECIFICATIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE FLORIDA AGRICULTURAL MECHANICAL COLLEGE (FAMC).

CMT

Exhibit S

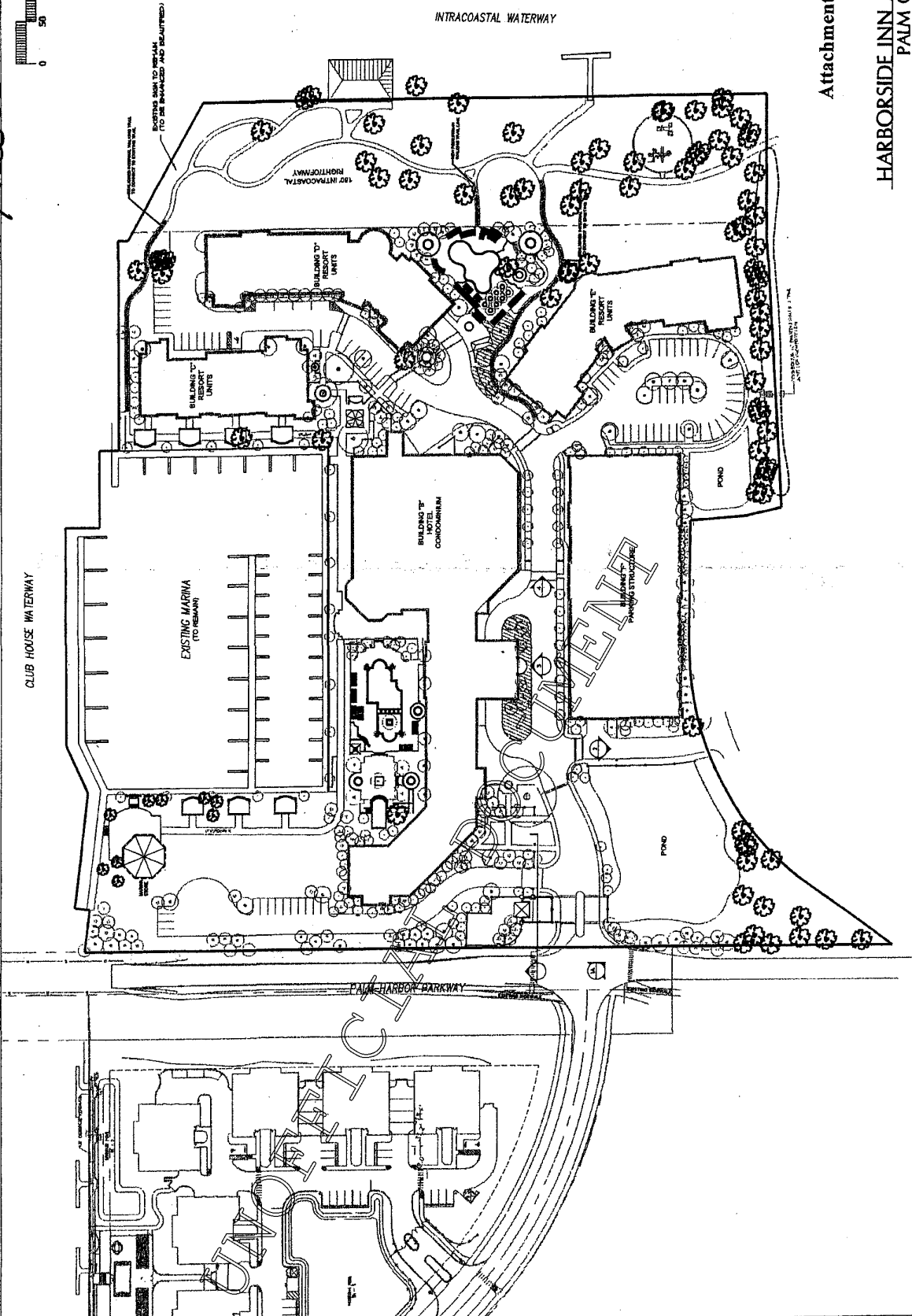


Attachment 4

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

CMAA

Exhibit 6



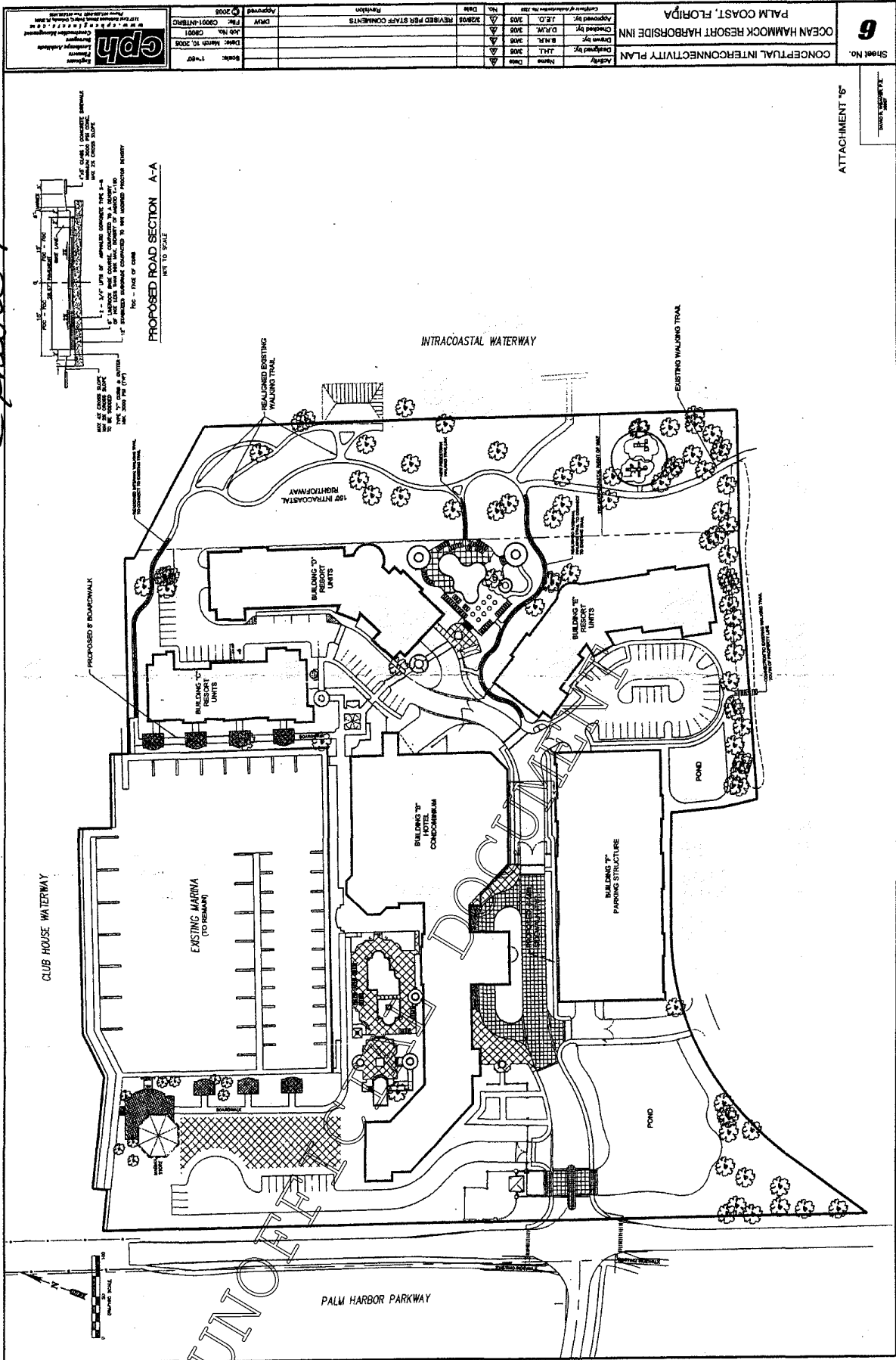
Attachment 5



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

CMH

Exhibit 17



| | | | | | | |
|--|--|--|-------------------------------------|---|--|---|
| | | Date: March 10, 2008 Scale: 1"=50' File: C:\001\INTBRO | Approved: [Signature] Date: 2008 | Reviewed Per Staff Comments Revision | No. 2008 Date: 2008 Checked By: J.H.L. Drawn By: J.H.L. Design By: J.H.L. Title: 2008 | Activity: CONCEPTUAL INTERCONNECTIVITY PLAN Project: OCEAN HAMMOCK RESORT HARBORESIDE INN Location: PALM COAST, FLORIDA |
|--|--|--|-------------------------------------|---|--|---|

ATTACHMENT 'S'

CMH