

This instrument prepared by:  
Beau Falgout  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

## PRE-ANNEXATION AND ECONOMIC DEVELOPMENT AGREEMENT

THIS PRE-ANNEXATION AND ECONOMIC DEVELOPMENT AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2017, by and between the **City of Palm Coast**, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), whose address is 160 Lake Avenue, Palm Coast, Florida 32164, and **Sunbelt Palm Coast Marina, LLC**, a Nevada limited liability company and **WGA Investments, LLC**, a Nevada limited liability company (the "Property Owners"), whose address is 3129 Springbank Lane, Charlotte, North Carolina 28226 .

### RECITALS

- A. The Property Owners own certain real property in the unincorporated area of Flagler County, Florida, which is described on **Exhibit "A"** hereto (the " Property").
- B. The Property Owners are empowered to enter into this Agreement.
- C. The Property is contiguous to an existing boundary of the City.
- D. The Property Owners have requested that the City annex the Property into the City.
- E. The provisions of Section 171.062(2), *Florida Statutes*, provide that:

"[i]f the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area."
- F. Section 171.062(1), *Florida Statutes*, provides as follows:

"An area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality and shall be entitled to the same privileges and benefits as other parts of that municipality upon the effective date of the annexation."

G. The City has determined that further high quality development of the Property consistent with appropriate protections of natural resources will be of substantial economic benefit to the City and its citizens; and

H. Section 166.021 (b) and (c), *Florida Statutes*, specifically states, with regard to economic development, that:

"(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection."

and

"(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for expansion of businesses existing in the community or the attraction of new businesses to the community."

I. On Flagler County's Future Land Use Map, the Property is designated Residential Medium Density, Commercial Low Intensity and Conservation. On Flagler County's Official Zoning Map, the Property is classified Planned Unit Development. The Property Owners have entered into the Harbor View PUD Development Agreement with the Board of County Commissioners of Flagler County. A copy is attached as Exhibit B. These approvals will be referred to as the "County Land Use Approvals". The City hereby acknowledges and accepts the County Land Use Approvals.

J. The purpose of this Agreement is to set forth the understandings and agreements of the parties with respect to the foregoing, and other matters as set forth herein.

K. This Agreement is authorized by, permitted by, and consistent with the provisions of the City's Home Rule Charter; the City's Comprehensive Plan, Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*; the State Comprehensive Plan (Chapter 187, *Florida Statutes*); Article VIII, Section 2(b), *Constitution of the State of Florida*, and other applicable law and serves and advances a vital public purpose.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals.

(a) The above Recitals are adopted as the findings of the City Council.

(b) The above Recitals are true and correct, are incorporated into this Agreement by reference thereto, and form a material part of this Agreement upon which the parties have relied, including but not limited to, the assertions that the Property Owners own the Property and is empowered to enter into this Agreement and make binding commitments to the City.

2. Petition for Voluntary Annexation.

The Property Owners hereby petition for voluntary annexation of the Property into the City pursuant to Chapter 171.044, *Florida Statutes* (the "Annexation Petition"). The City will consider adopting an ordinance in accordance with Chapter 171.044, *Florida Statutes*, thereby annexing the Property to the City and redefining the boundaries to the City to include the Property. A proposed draft of the annexation ordinance is attached as **Exhibit "C"** hereto.

No fees, costs or expenses will be charged to or become due from the Property Owners to the City or any other governmental authority, private individual or entity on account of or in connection with the City's review and processing of the Annexation Petition or the annexation of the Property into the corporate limits of the City; provided, however, that the Property Owners will pay its own attorney fees and consulting fees.

3. Public Facilities.

(a) Solid waste collection services are available to serve the demands generated by the Property and will be provided as it is to any other owner of land within the City and will be available concurrent with the impacts of the development of the Property.

(b) All drainage issues will be appropriately addressed in the development approvals pertaining to the Property and the impacts of stormwater drainage will be addressed in accordance with state law and other applicable regulatory requirements.

(c) The City will provide fire, and EMS facilities, equipment and services as necessary to serve the Property. All such public services will be available to support the development of the Property.

(d) Except as otherwise provided herein, the City will provide water and sewer services to the Property, subject to standard requirements relating to the Property Owners' contributions-in-aid-of-construction, payment of connection fees, dedication of lift stations and other sites, granting of appropriate easements, and dedication of other facilities as necessary or appropriate. The Property Owners will execute the necessary standard City Utility Agreement at the appropriate time and connect to water and sewer as soon as it is available.

4. Land Use and Development Approvals.

(a) The Property is currently zoned PUD pursuant to a PUD Agreement with the County. . Until the City adopts a Comprehensive Plan amendment, the City shall recognize and be bound by the County Land Use approvals as if the City had issued the County Land Use Approvals. Upon annexation of the Property, the City may, in accordance with applicable law, proceed to re-designate the Property with reference to the City's Comprehensive Plan, so long as the uses authorized for the Property under the County Land Use Approvals are consistent with the new City land use designation for the Property. The City may also, in its discretion, proceed to adopt an initial zoning ordinance and PUD Agreement, so long as the new City zoning ordinance and PUD Agreement incorporate all the material terms and conditions of the County Land Use Approvals, and so long as the new PUD Agreement is otherwise consistent with and no more restrictive than the County Land Use Approvals. The Property has obtained a preliminary Plat including construction plan approvals consistent with the PUD Agreement with the County. The City shall recognize and be bound by the County Preliminary Plat and Construction Plan approvals as if the City had issued the County Preliminary Plat and Construction Plan approvals. The parties acknowledge that a secondary emergency access for the residents of Palm Coast Plantation is an important safety component for the community and consistent with the City's Comprehensive Plan. The Property Owners will maintain, at a minimum, an emergency vehicular access, and will continue to work with the applicable Homeowners' Associations for permanent access for Palm Coast Plantation residents. The Property Owners will construct accessible sidewalk connections to Palm Coast Plantation for bicycle and pedestrian access as well.

(b) The City will expediently process any applications for the proposed land uses, densities/intensities and other aspects of the proposed uses for the Property.

(c) The City acknowledges that it will process an application to provide that the Property, upon annexation into the City, is located within the Utility Service Area.

(d) The parties acknowledge that the City cannot contract to approve specific comprehensive plan or zoning amendments.. The City's only obligation with respect to comprehensive plan and rezoning amendments is to initiate and process the applications expeditiously, consistent with the Property Owners' proposed uses for the Property, consider all evidence presented in support of and in opposition to the amendments and make decisions to approve or deny the amendments based upon the legal standards that govern actions by local governments when considering comprehensive plan and zoning amendments. In partial consideration for Property Owners entering into this Agreement, the City will initiate and process applications for a comprehensive plan amendment and rezoning consistent with Property Owners' proposed use for the Property at no cost to Property Owners ; provided, however, Property Owners will cooperate with the City by providing the City with all necessary and desirable data and analysis in connection with the comprehensive plan amendments and rezonings.

(e) The Property Owners will submit to the City such applications and such other documentation and support data and analysis and comply with all procedures set forth in the City's Land Development Regulations as may be normally and customarily required by the City for platting parcels, site plan applications and applications for any and all other development approvals, orders and permits. The Property Owners acknowledge and agree that the City will not be responsible for any fees, costs, expenses or other financial expenses resulting to the Property

Owners if applications are denied in accordance with the provisions of the City's Land Development Regulations or state law.

(f) The City and the Property Owners will cooperate at all times in good faith in the implementation and exercise of **Sunbelt Palm Coast Marina, LLC** development rights and entitlements in the Property and with regard to sound developmental practices and procedures. This good faith cooperation by the City and the Property Owners will extend to the acquisition by the Property Owners of all necessary local, state and federal permits, development orders, licenses, easements and other approvals or rights in connection with the development of the Property in accordance with all applicable land use, zoning, land development, building and construction regulations; provided, however, the City will incur no costs relative to such matters and Property Owners will bear any and all costs.

5. Conflicts.

After adoption of the City's FLUM designation on the Property, all building codes, zoning ordinances and other land development regulations of the City, including, without limitation, any concurrency management requirements as may be amended from time to time will be applicable to the Property.

6. Further Assurances.

In addition to the acts recited in or set forth in this Agreement, the City and the Property Owners will perform or cause to be performed, in a timely manner, any and all further acts as may be reasonably necessary to implement the provisions of this Agreement including, but not limited to, the execution and or recordation of further instruments; provided, however, that the City's obligations will be subject to such limitations of law as may be applicable to municipalities.

7. Limitations of Remedies.

The parties will not pursue an award of monetary damages for a breach of or non-performance under this Agreement. The only remedies available against the non-performing party will be either to withhold further performance under this Agreement until the non-performing party cures the non-performance or seek a court order from the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida requiring the non-performing party to fulfill its obligations under this Agreement. The City will not be deemed to have waived sovereign immunity in any manner or respect.

8. Disclaimer of Third Party Beneficiaries.

This Agreement is solely for the benefit of the City and the Property Owners and no right or cause of action will accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns.

9. Effectiveness of Agreement.

This Agreement will become effective upon its being duly executed by both of the parties hereto. If, for any reason, the City does not annex the Property by March 1, **2018**, then either party may terminate this Agreement by notice to the other party in which event this Agreement will terminate and be of no further force or effect, and the Property Owners will be entitled to record, at the City's expense, a Notice of Termination of this Agreement in the Public Records of Flagler County, Florida.

10. Time Of The Essence.

Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they will diligently and expeditiously pursue their respective obligations set forth in this Agreement.

11. Successors and Assigns.

This Agreement will be binding upon and inure to the benefit of the City and the Property Owners and their respective successors in interest.

12. Applicable Law.

This Agreement will be construed, controlled and interpreted according to the laws of the State of Florida. Further, to the extent permissible under the laws of the State of Florida, if there is a conflict between this Agreement and the terms of the City's land development regulations, the terms of this Agreement will control.

13. Binding Effects.

Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

14. Recording.

The City will, within five (5) business days following full execution of this Agreement, at the City's sole cost and expense, record a fully executed counterpart of this Agreement in the Public Records of Flagler County, Florida.

15. Choice of Law and Venue.

Florida law will govern the interpretation and enforcement of this Agreement. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue will be in Flagler County, Florida and Orlando Middle District for federal actions.

16. Effect of Change in Law.

If state or federal laws are enacted after execution of this Agreement which are applicable to and preclude the party's compliance with the terms of this Agreement, this Agreement will be modified or revoked as is necessary to comply with the relevant state or federal laws and the intent of the parties hereto; provided, however, that the City will not modify this Agreement in any manner which would in any way be inconsistent with the intent of the parties to provide for development of the Property in accordance with the terms and conditions hereof.

17. Construction or Interpretation of the Agreement.

This Agreement is the result of *bona fide* arms length negotiations between the City and the Property Owners . Both parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement will not be construed or interpreted more strictly against any one party than against any other party.

18. Attorneys' Fees and Costs.

In the event of any action to enforce the terms of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

19. Captions/Exhibits.

(a) The headings or captions of the sections and subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance and will not be afforded any.

(b) The exhibits to this Agreement are hereby incorporated into this Agreement and are an integral part of this Agreement.

20. Parties Bound.

Following the recordation of this Agreement, the benefits and burdens of this Agreement will become a covenant running with the title to the Property, and all parts and parcels thereof, and this Agreement will be binding upon and inure to the benefit of both the City, the Property Owners and their assigns and successors in interest to the Property, and all parts and parcels thereof.

21. Severability.

If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by either party to the Agreement or substantially increase the burden of either party to the Agreement, is held to be unconstitutional, invalid or unenforceable to any extent by a court of competent jurisdiction, such portion will be deemed a separate, distinct, and independent provision and the same will not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.



WHEREFORE, the parties hereto have caused these presents to be signed all as of the date and year first above written.

**Attest:**

**City of Palm Coast**

\_\_\_\_\_  
Virginia Smith, City Clerk

\_\_\_\_\_  
Milissa Holland, Mayor

STATE OF FLORIDA     )  
COUNTY OF FLAGLER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 , by **Virginia Smith** and **Milissa Holland**, the Clerk and Mayor respectively, for and on behalf of the City of Palm Coast, Florida, who are personally known to me and who did not take an oath.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2017 .

\_\_\_\_\_  
Notary Public, State of  
My Commission Expires:

**Sunbelt Palm Coast  
Marina, LLC,**  
a Nevada limited liability company

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2017 , by \_\_\_\_\_ as \_\_\_\_\_, for and on behalf  
of Sunbelt Palm Coast Marina, LLC, who is personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public, State of  
My Commission Expires:

**WGA Investments, LLC,**  
a Nevada limited liability company

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2017 , by \_\_\_\_\_ as \_\_\_\_\_, for and on behalf  
of WGA Investments, LLC, who is personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public, State of

My Commission Expires:

**Exhibit A**

A PART OF SECTIONS 34 AND 35, TOWNSHIP 11 SOUTH, RANGE 31 EAST, AND SECTION 2, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF PALM COAST PLANTATION PUD UNIT 2, AS RECORDED IN PLAT BOOK [33, PAGES 54 THROUGH 61](#) OF THE PUBLIC RECORDS OF SAID COUNTY, SAID CORNER ALSO LYING ON THE EAST RIGHT OF WAY LINE OF COLBERT LANE (A 200 FOOT WIDE RIGHT OF WAY, AS NOW ESTABLISHED) THENCE NORTH 71°35'39" EAST ALONG THE SOUTHERLY LINE OF SAID PALM COAST PLANTATION PUD UNIT 2, A DISTANCE OF 219.53 FEET TO THE NORTHWEST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORD BOOK [569, PAGE 759](#) OF SAID PUBLIC RECORDS; THENCE SOUTH 18°24'03" EAST ALONG THE WESTERLY LINE OF SAID LANDS, A DISTANCE OF 700.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 18°24'03" EAST ALONG SAID LINE, A DISTANCE OF 716.28 FEET TO THE SOUTHWEST CORNER OF SAID LANDS; THENCE NORTH 80°54'30" EAST ALONG THE SOUTHERLY LINE OF SAID LANDS, A DISTANCE OF 1097.79 FEET TO THE SOUTHEAST CORNER OF SAID LANDS; THENCE NORTH 18°24'16" WEST ALONG THE EASTERLY LINE OF SAID LANDS, A DISTANCE OF 60.80 FEET TO THE SOUTHWEST CORNER OF TRACT I, PALM COAST PLANTATION PUD UNIT 4 AS RECORDED IN PLAT BOOK PAGES 5 THROUGH 11, INCLUSIVELY, THENCE EASTERLY AND SOUTHERLY ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID PALM COAST PLANTATION PUD UNIT 4 THE FOLLOWING FOUR COURSES; NORTH 80°54'30" EAST, A DISTANCE OF 726.45 FEET; THENCE SOUTH 51°44'16" EAST, A DISTANCE OF 425.31 FEET; THENCE NORTH 80°54'30" EAST, A DISTANCE OF 1101.40 FEET; THENCE SOUTH 19°11'49" EAST, A DISTANCE OF 1358.39 FEET; THENCE WESTERLY ALONG THE NORTHERLY LINES OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK [554, PAGE 832](#) AND RECORDED IN SAID PUBLIC RECORDS THE FOLLOWING NINE COURSE, SOUTH 79°29'51" WEST, A DISTANCE OF 304.73 FEET; THENCE SOUTH 70°14'27" WEST, A DISTANCE OF 92.41 FEET; THENCE NORTH 83°02'12" WEST, A DISTANCE OF 51.54 FEET; THENCE SOUTH 77°10'19" WEST, A DISTANCE OF 619.14 FEET; THENCE NORTH 89°14'51" WEST, A DISTANCE OF 475.82 FEET; THENCE NORTH 73°01'14" WEST, A DISTANCE OF 142.83 FEET; THENCE NORTH 75°05'25" WEST, A DISTANCE OF 97.11 FEET; THENCE SOUTH 71°00'23" WEST, A DISTANCE OF 69.80 FEET; THENCE NORTH 55°45'02" WEST, A DISTANCE OF 70.36 FEET; THENCE SOUTH 00°16'47" EAST, ALONG THE WESTERLY LINE OF SAID LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK [554, PAGE 832](#), A DISTANCE OF 52.58 FEET; THENCE NORTH 25°14'03" WEST, A DISTANCE OF 156.53 FEET; THENCE WESTERLY ALONG THE SOUTHERLY LINE AND ITS EASTERLY PROLONGATION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK [678, PAGE 1352](#), SOUTH 89°10'59" WEST, A DISTANCE OF 1717.09 FEET TO THE INTERSECTION OF AFOREMENTIONED EASTERLY RIGHT OF WAY LINE OF COLBERT LANE, SAID RIGHT OF WAY LINE ALSO BEING A CURVE CONCAVE WESTERLY AND

HAVING A RADIUS OF 7734.00 FEET; THENCE NORTHERLY ALONG SAID CURVE AND SAID RIGHT OF WAY LINE AN ARC DISTANCE OF 1.62 FEET AND SUBTENDED BY A CHORD BEARING OF NORTH 07°55'11" WEST AND A CHORD DISTANCE OF 1.62 FEET TO A POINT ON SAID CURVE; THENCE NORTH 82°08'24" EAST, A DISTANCE OF 50.24 FEET; THENCE NORTH 07°51'36" WEST, A DISTANCE OF 60.00 FEET; THENCE SOUTH 82°08'24" WEST, A DISTANCE OF 50.54 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AFOREMENTIONED COLBERT LANE, SAID RIGHT OF WAY LINE BEING A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 7734.00 FEET; THENCE NORTHERLY ALONG SAID CURVE AND SAID RIGHT OF WAY LINE AN ARC DISTANCE OF 1354.22 FEET AND SUBTENDED BY A CHORD BEARING OF NORTH 13°23'11" WEST AND A CHORD DISTANCE OF 1352.49 FEET TO THE POINT OF TANGENCY OF SAID CURVE AND SAID RIGHT OF WAY LINE; THENCE NORTH 18°24'09" WEST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 340.96 FEET; THENCE NORTH 71°35'57" EAST, DEPARTING FROM SAID RIGHT OF WAY LINE, A DISTANCE OF 219.50 FEET TO THE POINT OF BEGINNING.

# Exhibit B

Inst No: 2008004551; 02/14/08 10:50AM; Book: 1644 Page: 317; Total Pgs: 21  
GAIL WADSWORTH, FLAGLER Co.

## ORDINANCE NO. 2006 - 20

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA AMENDING THE ZONING CLASSIFICATION OF 112.7 ACRES, MORE OR LESS, LOCATED ON THE EAST SIDE OF COLBERT LANE AND NORTH OF ROBERTS ROAD, FROM THE INDUSTRIAL DISTRICT DESIGNATION TO PUD (PLANNED UNIT DEVELOPMENT) DISTRICT; CREATING HARBOR VIEW MARINA PUD; PROVIDING FOR FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Great Star Inventors, LLC as the submitted Application #2591 for rezoning a 112 acre parcel described herein; and

**WHEREAS**, said parcel is classified as Industrial on the Flagler County Future Land Use Plan Map; and

**WHEREAS**, on June 13, 2006 the Planning Board conducted a public hearing on this request and voted to recommend approval of the PUD rezoning subject to the conditions identified at the hearing, described in the staff report and indicated in the Conceptual Plan and Development Agreement.

**WHEREAS**, public notice of this action has been provided in accordance with Chapter 125.66, F.S. and Section 2.07.00, Flagler County Land Development Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS:**

### **Section 1. FINDINGS**

A. The Board of County Commissioners, pursuant Section 3.04.02 of the Flagler County Land Development Code, finds as follows:

1. The proposed PUD does not adversely affect the orderly development of Flagler County and complies with applicable Comprehensive Plan goals, objectives and policies; and,
2. The proposed PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

### **Section 2. ZONING MAP AMENDMENT**

A. The real property containing approximately 122.7 acres more or less, legally described in Exhibit "A" to the PUD Development Agreement is hereby rezoned

in the Planned Unit Development (PUD) District. The Official Zoning Map of Flagler County shall be amended to reflect this amendment.

B. Development within the boundaries of the PUD District as approved shall take place in accord with the Flagler County Land Development Code as may be modified or amended and the PUD Conceptual Site Plan prepared by Parker Mynchenberg & Associates, Inc., Professional Engineers and Landscape Architects, received June 7, 2006 by Flagler County Planning & Zoning Department and the Harbor View Marina PUD Development Agreement executed by owner and Flagler County pursuant to this Ordinance. A copy of said Agreement containing the PUD Conceptual Site Plan is attached hereto as Exhibit 1 and made a part hereof.

C. The applicant shall signify its acceptance of this PUD designation by filing its written acceptance with the Clerk of the Circuit Court within thirty (30) days.

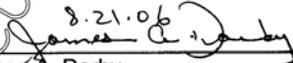
**Section 3. EFFECTIVE DATE**

This Ordinance shall take effect upon Official Acknowledgement by the Secretary of State that the Ordinance has been filed.

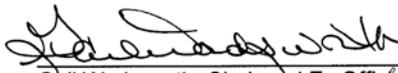
**PASSED AND GRANTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 24<sup>TH</sup> DAY OF JULY, 2006.**

Effective date per  
Florida Statute 125.66  
August 25, 2006

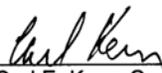
**BOARD OF COUNTY  
COMMISSIONERS  
OF FLAGLER COUNTY, FLORIDA**

8.21.06  
  
James A. Darby,  
Chairman

**ATTEST:**

  
Gail Wadsworth, Clerk and Ex Officio  
to the Board

**APPROVED AS TO FORM:**

  
Carl E. Kern, County Attorney

UNOFFICIAL DOCUMENT

**HARBOR VIEW PUD DEVELOPMENT AGREEMENT**

The parties, GRAHAM PC FLORIDA, INC., a Florida Corporation (Hereinafter "DEVELOPER") and FLAGLER COUNTY, a political subdivision of the State of Florida, state as follows:

WHEREAS, the DEVELOPER is the owner of a 112.7 acre, more or less, parcel of land which is situated in Flagler County. This parcel of land is to be known as HARBOR VIEW PUD, and is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A:" and

WHEREAS, the DEVELOPER desires to create a Planned Unit Development, composed of 622 residential units featuring waterfront and natural amenities, with all facilities and amenities to be owned and operated by one or more Homeowners Associations, as well as seven acres of commercial low intensity uses along Colbert Lane.; and

WHEREAS, the DEVELOPER has applied for a change of zoning from the present zoning classification(s) of the parcel described in Exhibit "A" from Mixed Use High Intensity, Industrial, Rural Residential and Agricultural to Planned Unit Development (PUD) and the Planning Board has recommended same with conditions; and

WHEREAS, the said rezoning to PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request,

THEREFORE, the parties agree as follows:

1. The proposed PUD does not affect adversely the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler

County Board of Commissioners; and the proposed PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

2. (a) The Development Agreement consists of this Development Agreement and Exhibit "B", which is a plan consisting of one (1) sheet prepared by Parker Mynchenberg and Associates, Inc., containing a graphic depiction of the Planned Unit Development. The Development Agreement shall be filed and retained for public inspection in the office of the County Planning and Zoning Department. All Development Agreement amendments other than those deemed by the Director of Development Services to be minor amendments to either this Agreement or to any exhibit hereto, as set forth in Section 3.04.02 (G) Flagler County Land Development Code, shall require the review and recommendation of the Planning Board and of the Board of County Commissioners in the same manner as for the original rezoning.

(b) The Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution of the document by the Board of County Commissioners. The DEVELOPER shall pay all recording costs.

(c) Final Plat Approval: The DEVELOPER is required to obtain final plat approval for all improvements provided for in Exhibit "B" including, but not limited to, landscaping and infrastructure improvements.

(d) The Developer or its successor shall maintain unified ownership of the subject parcel until approval of the Master Final Plat for areas to be subdivided.

3. Land Use: The development of the parcel shall be consistent with the limits for use as prescribed for each land use area within the proposed PUD. The location and size of the land use areas are shown on Exhibit "B". Uses within the residential area shall be as provided in paragraph 4 of this Agreement. Uses within the neighborhood commercial area shall be as provided in paragraph 5 of this Agreement.

4. Residential Land Use Description: In addition to those areas designated as residential, the following uses are also expressly permitted: open space and recreational use as provided on Exhibit B. Mobile homes are specifically prohibited as a permitted use. Temporary mobile construction offices may be permitted during construction, any such structure shall be removed within three (3) months from the receipt of a Certificate of Occupancy and/or a Certificate of Completion.

(a) Details of PUD:

(1) Total number of residential units:

- a. Single family lots: 161 (See Lots 1-161)
- b. Multi family units: 461 (See Lots 162-165)

(2) Single Family Parcel Minimum Building Setbacks: All setbacks will be measured from the adjacent property line or roadway easement to the nearest point of the dwelling unit, unless otherwise noted below:

- a. Side: 5.0 feet from the side property line; 10 feet abutting any street.
- b. Front: 20 feet
- c. Rear: 25 feet from rear lot line, Ten (10) feet from rear lot line or conservation easement, for swimming pools, screened enclosures, get-wet pools, hot tubs, patios and porches.

(3) Multi Family Parcel Minimum Building Setbacks: All setbacks will be measured from the adjacent property line or roadway easement to the nearest point of the dwelling structure, unless otherwise noted below:

- a. Side: 10 feet from the side property line;
- b. Front: 25 feet

c. Rear: 25 feet from rear lot line, or 10 feet from any conservation easements (whichever is greater) for in ground swimming pools, screened enclosures, get-wet pools, hot tubs, patios and porches.

(4) Minimum Square Footage of living area per Unit:

- a) Single Family 1,500 sq. ft. per unit
- b) Multi Family 1,200 sq. ft. per Unit

(5) Maximum Lot Coverage for principal and accessory buildings: The total area covered with principal and accessory buildings shall not exceed 65%.

(6) Maximum Building Height:

- a) Single Family 45 feet
- b) Multi Family a "net" eighty (80) feet from existing ground elevations, including all garages, common areas, and habitable space within each building on the Harborview Parcel, not to exceed a gross height of 95 feet, as defined and measured in the Flagler County Land Development Code.

Maximum building height to be 95 feet overall (7 residential stories over 1 story of enclosed parking). Any portion of the roof line exceeding 89 feet will be for screening of rooftop mechanical equipment and/or architectural features. Height to be measured in accordance with FCLDC Section 3-08.02 definition of "Height of Building."

(8) Minimum Separation between principal building and accessory structure on a lot: 7.5 feet

(9) Minimum Lot Size:

- a) Single family 4,000 square feet/40 feet width.

5. Commercial Land Use Description: Lot 166 is the commercial tract shown on

Exhibit "B" hereto. The uses to be permitted on said parcel shall be those uses permitted in any retail or business and professional offices less adult uses, fast food restaurant (drive thru), filling stations, no individual establishment may exceed 40,000 square feet gross floor area. The technical specification for such lot is as follows:

a) Building Setbacks: All setbacks will be measured from the adjacent property line to the nearest point of the building, unless otherwise noted below:

1. Side: 10 feet from the side property line 25 feet abutting any street.
2. Front: 25 feet
3. Rear: 25 feet from rear lot line
4. Colbert Lane 25 feet which shall be landscaped.

b) Maximum Gross Floor Area: 45,738 square feet

c) Maximum Lot Coverage for principal and accessory buildings: The total area covered shall not exceed 65%.

d) Maximum Building Height: 50 feet

e) Minimum Separation between buildings on a lot: shall be 7.5 feet, unless otherwise required to meet commercial fire safety code.

f) Minimum Lot Size: 20,000 square feet

6. SIGNS. There shall be permitted an Identification Sign on Colbert Lane with a decorative structure. The sign and structure may not exceed 10 feet in height. The copy area may not exceed 80 square feet.

7. Environmental Considerations: The Developer will provide for the preservation of jurisdictional wetland habitats and associated upland buffers, as

provided on the Site Development Plan.

(a) All lands within the jurisdiction of the Florida Department of Environmental Protection or other governmental units for conservation purposes shall be subject to a conservation easement. Within such conservation easements, no activities shall occur that violate Article VI of the Flagler County Development Code. The conservation easement area shall be determined and shown for the entire PUD parcel prior to the recording of the Master Plat.

(b) Developer agrees to relocate, on site, as many gopher tortoises as the State will permit to be relocated on site. The remaining gopher tortoises currently on site will be relocated, by the developer, at its own expense to a County approved preserved site which is subsequently determined to be suitable for gopher tortoise habitation as approved by the State. The developer agrees to pay to Flagler County an amount of money equivalent to what it would have paid to the State for the incidental take permit (entombment) of the tortoises. Said funds are intended to be used by the County to purchase additional environmental preservation land or in compensation for the use of the County land to support the tortoises. The developer agrees to take responsibility for any testing, relocation, and monitoring required for the successful relocation of the tortoises.

(c) Construction of Docks on the proposed Marina parcel, and on the internal canal system, is subject to permitting by the St. Johns River Water Management District and/or the State of Florida Department of Environmental Protection, the US Army Corps of Engineers, and Flagler County. All docks shall be constructed in accordance with governmental rules and regulations, including but not limited to the following standards:

1. Single family docks will be permitted for every single family residential lot abutting a canal.
2. Adjacent property line (riparian rights line) setbacks of 20 feet will be

adhered to, except where docks are parallel wharf docks that are appended to the canal seawalls, in which case the wharf docks may occupy the entire length of the canal frontage with a maximum width of 8 feet.

(d). All environmental restrictions provided in this PUD development agreement shall also be included in the Covenants, Conditions and Restrictions of the Homeowners Association recorded within the public records of Flagler County, Florida.

(e). The marina to be developed shall participate in the Florida Department of Environmental Protection's "Clean Marina Program" within 18 months of a Certificate of Occupancy and shall maintain this designation as long as the facility is in operation, provided that the designation is maintained by the FDEP.

(f). Prior to the Final PUD Site Development Plan, the developer will provide to the County a Phase II environmental assessment testing for CKD constituent materials in soil and groundwater. The number and location of boring and well locations will be approved in advance by Flagler County. If the assessment requires remediation, such remediation shall be approved by the Board of County Commissioners, FDEP and all other agencies having jurisdiction. Remediation shall be deemed a subdivision improvement, the cost of which shall be included in the subdivision performance bond.

(g). Prior to the Final PUD Site Development Plan, the proposed canals shown on the Concept Plan shall receive all necessary approvals from FDEP, SJRWMD and ACOE, as applicable.

(h). The mechanical flushing system for the canals to be constructed shall be maintained in perpetuity, in a manner required by all applicable permits, by the homeowners' association or other entity as may be required by a permitting agency. All pumping and control equipment shall be located in a completely enclosed, sound retardant building.

8. Sewage and Potable Water: A central potable water system and sewage collection system shall serve the PUD, with service by the City of Palm Coast.

9. Stormwater Drainage: Stormwater will be initially retained on site and shall meet or exceed the requirements of the Flagler County Land Development Code and St. Johns River Water Management District, prior to discharging offsite.

10. Traffic Patterns: Access: Road system improvements throughout the project shall be as depicted in Exhibit B attached hereto. All roads within the project are private and shall be constructed to County standards, and shall be maintained solely by the Developer and/or the Homeowners Association. The Plat shall contain a legend in bold as follows:

IT IS EXPRESSLY PROVIDED THAT FLAGLER COUNTY SHALL HAVE NO RESPONSIBILITY FOR THE MAINTENANCE OR IMPROVEMENTS OF THE PRIVATE ROADWAYS OR INFRASTRUCTURE IMPROVEMENTS HARBOR VIEW PUD.

The roadway system within the PUD may be gated and restricted by use of the general public with the exception of providing emergency route access for the residents and for emergency personnel and other service providers. All construction activities shall access the project from Colbert Lane.

11. Covenants and Restrictions: The property shall be governed by A Declaration of Covenants, Conditions and Restrictions. There shall be a Master Homeowners Association, and there may be sub-Associations for the various neighborhoods, multi family sites, and commercial sites identified on Exhibit "B". The Developer shall be responsible for recording said document in the Public Records of

Flagler County, Florida. Also, the Developer shall bear and pay all costs for recording all of the aforementioned documents. With respect to the enforcement of said agreements, covenants, easements or restrictions entered into between the Developer and the owners or occupiers of property within the PUD, the County of Flagler may only enforce the provisions of this PUD Development Agreement, the Plat, and the Flagler County Zoning Ordinance, whichever is applicable, and is specifically exempt from any requirement to enforce private agreements, covenants, restrictions and easements entered into between subsequent owners of lots. The County may enforce any rights, such as conservation easements, dedicated directly to the County.

12. Binding Effect of Plans: Recording: The provisions of the foregoing PUD Development Agreement, including any and all supplementary orders and resolutions, and the Preliminary Conceptual Plan shall bind and inure to the benefit of the Developer or its successor in title or interest. The PUD zoning, provisions of the PUD Development Agreement and all approved plans shall run with the land and shall be administered in a manner consistent with the Flagler County Land Development Code. All subsequent orders and resolutions shall be filed for record in the Official Records of Flagler County, Florida.

13. Developer's Contributions to Public Facilities.

a) Conveyance of Lot 167: Upon final, non-appealable approval of this PUD, and in compliance with the Flagler County Land Development Code, Developer shall dedicate on preliminary plat and convey on final plat approval the lot shown as lot 167 on Exhibit B attached hereto to Flagler County, to be used by the County for Public Safety purposes. Should the County decide it does not wish this conveyance, Lot 167 shall be entitled to the same uses and development rights and subject to the same development constraints as Lot 166.

b) Offsite Transportation Improvements: Developer obligate the property

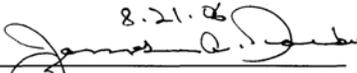
to contribute to a "Fair Share" program to finance and construct Offsite transportation improvements to Colbert Lane from S.R. 100 to Roberts Road, including transitions. A final report defining the projects and including costs estimates and beneficiaries is being finalized with the Developer, other property owners, Flagler County and the City of Palm Coast. Proportionate share payments shall be based upon net external trip generation. The final agreement shall provide for the amount and timing of Developer's contributions as well as for concurrency vesting and/or impact fee credits, as may be applicable.

14. Amendment. Adjustments to the PUD Plan attached as Exhibit B, and to the provisions of this Development Agreement are anticipated to occur during the site plan and plat review processes. Revisions which meet the intent and purpose of Flagler County's Comprehensive Plan and this PUD Agreement shall be approved by the Director of Development Services, if the substantial integrity of the original PUD Plan and the development standards contained herein are substantially maintained. Any modification to the PUD Conceptual Plan that: 1) increases the total number of dwelling units; or 2) reduces the total amount of open space; or 3) decreases the size of any perimeter buffer within the PUD shall require only the approval of the Board of County Commissioners upon recommendation of the Director of Development Services.

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IN WITNESS WHEREOF, the parties hereto have set their hands this 21<sup>ST</sup> day of AUGUST, 2006.

**BOARD OF COUNTY COMMISSIONERS  
OF FLAGLER COUNTY, FLORIDA**

8.21.06  
  
James A. Darby, Chairman

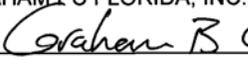
**ATTEST:**

  
Gail Wadsworth, Clerk and Ex Officio  
to the Board

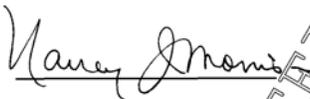
**APPROVED AS TO FORM:**

  
Carl E. Kern, County Attorney 8/21/06

GRAHAM PC FLORIDA, INC.

BY:   
As its PRESIDENT

Witnesses as to Developer:

UNOFFICIAL DOCUMENT

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

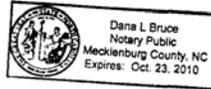
The foregoing instrument was acknowledged before me this 9<sup>th</sup> day  
of August by Graham B. Allen, who is personally known to me or who  
has produced \_\_\_\_\_ as identification and who did (did not) take an oath,  
and who executed the foregoing instrument as President of GRAHAM PC  
FLORIDA, INC. and acknowledged to and before me that he executed such  
instrument as such manager of said company, and that said instrument is the  
free act and deed of said company.

Dana L Bruce

Notary Public – State of North Carolina at Large

Commission # \_\_\_\_\_

My Commission Expires: 10-23-2010



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A PART OF SECTIONS 34 AND 35, TOWNSHIP 11 SOUTH, RANGE 31 EAST, AND SECTION 2, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; FOR A POINT OF BEGINNING COMMENCE AT THE SOUTHWEST CORNER OF PALM COAST PLANTATION PUD UNIT 2, AS RECORDED IN PLAT BOOK 33, PAGES 54 THROUGH 61 OF THE PUBLIC RECORDS OF SAID COUNTY, SAID CORNER ALSO LYING ON THE EAST RIGHT OF WAY LINE OF COLBERT LANE (A 200 FOOT WIDE RIGHT OF WAY, AS NOW ESTABLISHED) THENCE NORTH 71°35'39" EAST ALONG THE SOUTHERLY LINE OF SAID PALM COAST PLANTATION PUD UNIT 2, A DISTANCE OF 219.53 FEET TO THE NORTHWEST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORD BOOK 569, PAGE 759 OF SAID PUBLIC RECORDS; THENCE SOUTH 18°24'03" EAST ALONG THE WESTERLY LINE OF SAID LANDS, A DISTANCE OF 1418.28 FEET TO THE SOUTHWEST CORNER OF SAID LANDS; THENCE NORTH 80°54'30" EAST ALONG THE SOUTHERLY LINE OF SAID LANDS, A DISTANCE OF 1097.79 FEET TO THE SOUTHEAST CORNER OF SAID LANDS; THENCE NORTH 18°24'16" WEST ALONG THE EASTERLY LINE OF SAID 34 LANDS, A DISTANCE OF 60.80 FEET TO THE SOUTHWEST CORNER OF TRACT I, PALM COAST PLANTATION PUD UNIT 4 AS RECORDED IN PLAT BOOK 34, PAGES 5 THROUGH 11, INCLUSIVELY, THENCE EASTERLY AND SOUTHERLY ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID PALM COAST PLANTATION PUD UNIT 4 THE FOLLOWING FOUR COURSES; NORTH 80°54'30" EAST, A DISTANCE OF 726.45 FEET; THENCE SOUTH 61°44'16" EAST, A DISTANCE OF 425.31 FEET; THENCE NORTH 80°54'30" EAST, A DISTANCE OF 1101.40 FEET; THENCE SOUTH 19°11'49" EAST, A DISTANCE OF 1358.39 FEET; THENCE WESTERLY ALONG THE NORTHERLY LINES OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 554, PAGE 832 AND RECORDED IN SAID PUBLIC RECORDS THE FOLLOWING NINE COURSE, SOUTH 79°29'51" WEST, A DISTANCE OF 304.73 FEET; THENCE SOUTH 70°14'27" WEST, A DISTANCE OF 92.41 FEET; THENCE NORTH 83°02'12" WEST, A DISTANCE OF 51.54 FEET; THENCE SOUTH 77°10'19" WEST, A DISTANCE OF 619.14 FEET; THENCE NORTH 89°14'51" WEST, A DISTANCE OF 475.82 FEET; THENCE NORTH 73°01'14" WEST, A DISTANCE OF 142.83 FEET; THENCE NORTH 75°05'25" WEST, A DISTANCE OF 97.11 FEET; THENCE SOUTH 71°00'23" WEST, A DISTANCE OF 69.80 FEET; THENCE NORTH 55°45'02" WEST, A DISTANCE OF 70.36 FEET; THENCE SOUTH 00°16'47" EAST, ALONG THE WESTERLY LINE OF SAID LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 554, PAGE 832, A DISTANCE OF 52.58 FEET; THENCE NORTH 25°14'03" WEST, A DISTANCE OF 156.53 FEET; THENCE WESTERLY ALONG THE SOUTHERLY LINE AND ITS EASTERLY PROLONGATION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 678, PAGE 1352, SOUTH 89°10'59" WEST, A DISTANCE OF 1717.09 FEET TO THE INTERSECTION OF AFOREMENTIONED EASTERLY RIGHT OF WAY LINE OF COLBERT LANE, SAID RIGHT OF WAY LINE ALSO BEING A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 7734.00 FEET; THENCE NORTHERLY ALONG SAID CURVE AND SAID RIGHT OF WAY LINE AN ARC DISTANCE OF 1.62 FEET AND SUBTENDED BY A CHORD BEARING OF NORTH 07°55'11" WEST AND A CHORD DISTANCE OF 1.62 FEET TO A POINT ON SAID CURVE; THENCE NORTH 82°08'24" EAST, A DISTANCE OF 50.24 FEET; THENCE NORTH 07°51'35" WEST, A DISTANCE OF 60.00 FEET; THENCE SOUTH 82°08'24" WEST, A DISTANCE OF 50.54 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF AFOREMENTIONED COLBERT LANE, SAID RIGHT OF WAY LINE BEING A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 7734.00 FEET; THENCE NORTHERLY ALONG SAID CURVE AND SAID RIGHT OF WAY LINE AN ARC DISTANCE OF 1354.22 FEET AND SUBTENDED BY A CHORD BEARING OF NORTH 13°23'11" WEST AND A CHORD DISTANCE OF 1352.49 FEET TO THE POINT OF TANGENCY OF SAID CURVE AND SAID RIGHT OF WAY LINE; THENCE NORTH 18°24'09" WEST, CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1040.94 FEET TO THE POINT OF BEGINNING.

THE LANDS THUS DESCRIBED CONTAINS 112.7 ACRES MORE OR LESS.

Exhibit A - Harborview PUD  
Legal Description

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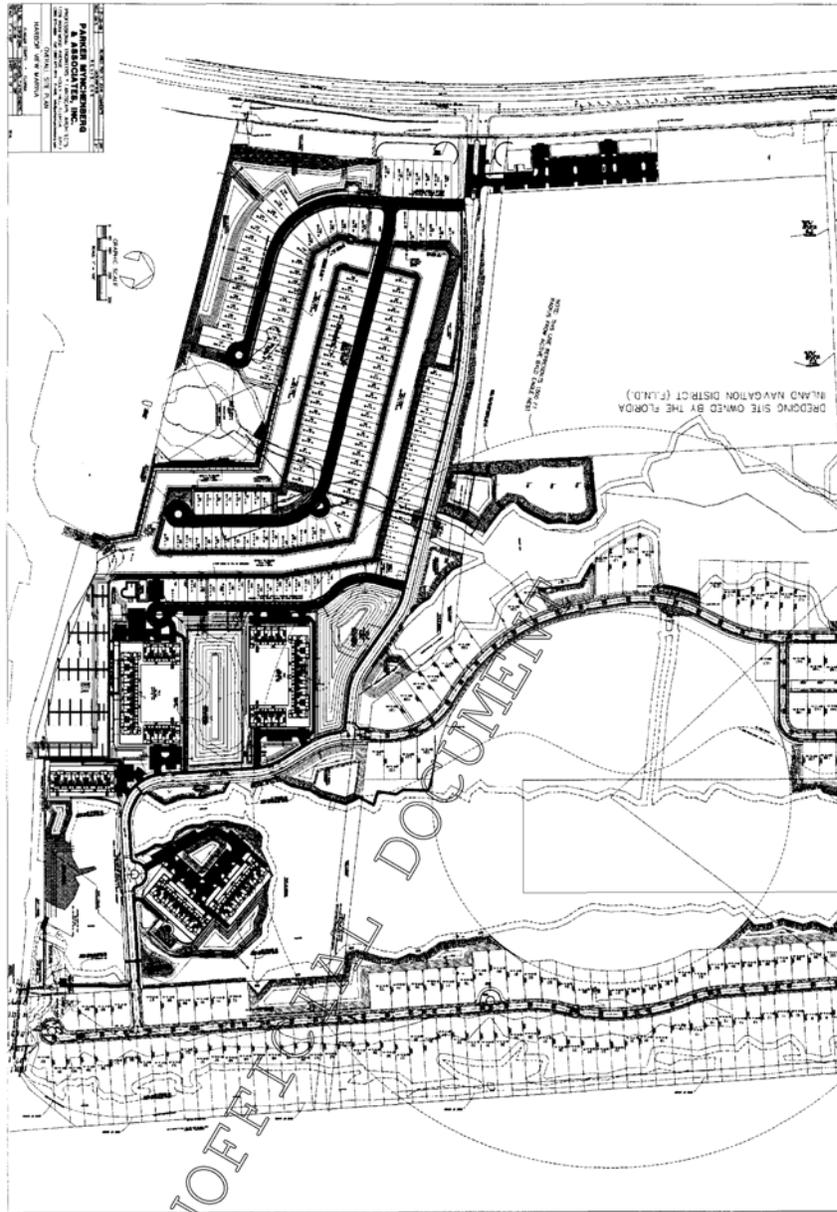


Exhibit "B"  
Harbor View PUD



FLORIDA DEPARTMENT OF STATE  
**Sue M. Cobb**  
Secretary of State  
DIVISION OF LIBRARY AND INFORMATION SERVICES

August 28, 2006

Honorable Gail Wadsworth  
Clerk of Circuit Court  
Flagler County  
Post Office Box 787  
Bunnell, Florida 32110-0787

Attention: Lisa Bates, Deputy Clerk

Dear Ms. Wadsworth:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated August 24, 2006 and certified copy of Flagler County Ordinance No. 2006-20, which was filed in this office on August 25, 2006.

Sincerely,

*Liz Cloud*  
Liz Cloud  
Program Administrator

LC/jru

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