AGENDA
COMPREHENSIVE PLANNING AND ZONING BOARD REGULAR MONTHLY MEETING
TUESDAY, JANUARY 21, 2014, 7:00 P.M.
CITY HALL, 2200 STATE ROAD A1A SOUTH
ST. AUGUSTINE BEACH, FLORIDA 32080

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. APPROVAL OF MINUTES OF TUESDAY, DECEMBER 17, 2013 REGULAR MONTHLY MEETING

V. PUBLIC COMMENT

VI. NEW BUSINESS

1. **ELECTION OF CHAIRMAN AND VICE-CHAIRMAN OF THE COMPREHENSIVE PLANNING AND ZONING BOARD**
   Per Section 11.02.02.H of the City of St. Augustine Beach Land Development Regulations, the election of officers, consisting of a chairman and vice-chairman, will take place every year as the first order of business at the regularly scheduled meeting for the month of January.

2. **REQUEST TO EXTEND MARATEA PLANNED UNIT DEVELOPMENT NARRATIVE**
   Applicant seeks a two-year extension to the Maratea Planned Unit Development Narrative, pertaining to construction of 30 condominium units on 4.5 acres at 902 A1A Beach Boulevard.

   St. Augustine Development Associates
   LLC. Applicant
   753 East Glenn Avenue
   Auburn, Alabama 36831

VII. OLD BUSINESS

VIII. BOARD COMMENT AND DISCUSSION

IX. ADJOURNMENT

For more information on any of the above agenda items, please call the City of St. Augustine Beach Building and Zoning Department at 471-8758. Persons requiring special assistance should call this number at least 24 hours in advance of the meeting date and time.

MINUTES OF THE REGULAR MONTHLY MEETING OF THE COMPREHENSIVE PLANNING AND ZONING BOARD of the City of St. Augustine Beach, Florida, held Tuesday, December 17, 2013, at 7:00 p.m. in the City Commission Meeting Room, City Hall, 2200 State Road A1A South, St. Augustine Beach, Florida, 32080.

I. CALL TO ORDER

Chairman Alfred Guido called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Alfred Guido, Vice-Chairman Margaret England, Steve Mitherz, Roberta Odom, Elise Sloan, Karen Zander, Senior Alternate Lennet Daigle, Junior Alternate Jane West.

BOARD MEMBERS ABSENT: David Bradfield.

STAFF PRESENT: Gary Larson, Building Official; James Whitehouse, City Attorney; Max Royle, City Manager; Bonnie Miller, Recording Secretary.

Mr. Guido said they've been advised that the second item under "New Business," regarding the proposal by TowerCom III, LLC, to locate a 150-foot-high monopole cell tower on City Hall property between Old Beach Road and the City Hall parking lot, has been taken off the agenda, as the applicant wants to explore other options for a tower location.

IV. APPROVAL OF MINUTES OF TUESDAY, NOVEMBER 19, 2013 REGULAR MONTHLY MEETING

Mr. Daigle said he has a correction on page one, under "Roll Call." His first name is spelled "Lennet" with only one "t" at the end, not two.

> Ms. Odom **MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MONTHLY MEETING OF TUESDAY, NOVEMBER 19, 2013, SUBJECT TO THE CORRECTION ON PAGE ONE AS STATED.** The motion was seconded by Ms. England and passed 7-0 by unanimous voice-vote.

V. PUBLIC COMMENT AND DISCUSSION

Mr. Guido asked for public comment on any issue not on the agenda. There was none.

VI. NEW BUSINESS

1. CONDITIONAL USE FILE NO. CU 2013-01, filed by Christopher Way, 39 Avista Circle, St. Augustine, Florida, 32080, to amend a current conditional use permit granted for food and/or beverage service and consumption outside of an enclosed building on the premises of an existing restaurant, per Sections 3.02.02 and 10.03.00-10.03.03 of the City of St. Augustine Beach Land Development Regulations, to allow music to be played outside on a covered deck on the premises of Coquina Beach Surf Club, in a commercial land use district at 451 A1A Beach Boulevard, PERTAINING TO LOTS 65-67 AND 78-79, ATLANTIC BEACH SUBDIVISION, REAL ESTATE PARCEL NUMBER 167470-0000, AKA 451 A1A BEACH BOULEVARD, SECTION 34, TOWNSHIP 7, RANGE 30, AS RECORDED IN MAP BOOK 2, PAGE 50, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

Mr. Guido asked if anyone has ex parte communication to report regarding this item.

Ms. Zander said she'd have a conflict on this and needs to step down on this item.

Mr. Mitherz said he went to the property site and looked it over, and had a conversation with Ms. Miller about this application.

Ms. West said an attorney contacted her about this application, and she also made a site visit to the property and to the other restaurants Mr. Larson referred to in his staff memo.

Mr. Guido asked Ms. West, as the Board's junior alternate, to fill in for Ms. Zander on this item. He asked the applicant to come forward to the podium to state his request.

Chris Way, 39 Avista Circle, St. Augustine, Florida, 32080, said he wants to be able to do some music on his outside deck when he has special events and stuff. His restaurant is not a bar, the latest he stays open is 10:00 p.m. on weekends, so he doesn't see why this would be a problem as long as it doesn't violate whatever noise ordinances the City has.

Mr. Guido said Mr. Way is basically asking to amend the order approving his conditional use permit, which was granted in 2011, to strike condition number 4, which states, "No exterior sound system of any type and no live or recorded music whether amplified or not shall be allowed in the outside seating area approved by this conditional use permit," and replace it with something that would permit him to have music with conditions.

Mr. Way said yes, he's asking that this condition be struck to allow him to have music that will abide by whatever decibel or sound levels the City's noise ordinance allows.

Ms. England said recorded music can be controlled, as far as sound levels are concerned. She asked Mr. Way how he proposes to always control the sound levels of live music.

Mr. Way said there's not room to have more than two people playing music on the outside deck, as there's not a stage out there or anything like that. His business is a restaurant, so he doesn't want to have music that is so loud people can't talk to each other over dinner, as this would hurt, and not enhance, his business.

Mr. Mitherz asked if it's possible to have music inside the restaurant instead of outside.

Mr. Way said yes, this is possible, but when the weather is nice people like to sit outside.

Ms. Odom asked Mr. Way if he has a designated area in mind for the outside music.

Mr. Way said he would probably have music played from the northeast corner of the deck, so people sitting outside could see where the music is coming from.

Mr. Mitherz asked if the music Mr. Way wants to have outside will be acoustic, unamplified music, or something else.

Mr. Way said yes, this is the kind of music he'd like to have. Ted Nugent, however, won't be coming to his restaurant.

Mr. Guido said the plat map included in the application information shows all of the lots surrounding the restaurant are zoned commercial, and the lots adjacent to these lots are zoned medium density residential. He asked why the commercial zoning of the lots adjacent to the restaurant was noted, when almost all of them have a residence on them.

Mr. Larson said the lots adjacent to the restaurant, as notated on the plat map, are zoned commercial on the City's land use and future land use map, but they're residential in use. This was probably done by conditional use in the past, before he started with the City.

Mr. Guido said it's his understanding these residences preceded the commercial zoning.

Mr. Larson said he cannot answer that, as he doesn't know, but he does know that on the City's land use and future land use map, the lots immediately surrounding Coquina Beach Surf Club, as notated on the plat map, are actually still classified as commercial zoning.

Mr. Guido asked for public comment.

Pamela Nauss, 200 12th Street, St. Augustine Beach, Florida, 32080, said she and her husband live in a residence on the corner of 12th Street and A1A Beach Boulevard, within 200 feet of Coquina Beach Surf Club, and she is also representing their neighbors across the street, Mr. and Mrs. Jonathan Smith, who live at 201 12th Street, St. Augustine Beach, Florida, 32080, who asked her to speak on their behalf, as they're out-of-town. Section 9.02.11 of the City's Land Development Regulations addresses maximum permissible sound levels and states the maximum decibel limits for residential property is 60 decibels in the daytime and 50 decibels at night, and the maximum decibel limits for commercial property is 65 decibels in the daytime and 60 decibels at night. As she didn't know anything about decibels she looked this up and found a sound level of 60 decibels is about equivalent to the tone of her voice as she is speaking right now without amplification, so it's the sound of an ordinary conversation, and 50 decibels is the sound of a quiet office. Regarding loudspeakers, Section 9.02.12.A.7 of the Land Development Regulations specifically states, "No person shall operate, or permit the operation of, any

loudspeaker, public address system or similar device, for any commercial purpose, which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance or be plainly audible across a real property boundary." Based on this, she doesn't see how Coquina Beach Surf Club could be allowed to have any music in such close proximity to other properties that wouldn't be in violation of these regulations. She'd also like to point out if the requested amendment to Coquina Beach Surf Club's conditional use is granted, it may possibly run with the land, so even if Mr. Way found someone who sings like an angel and plays the softest guitar ever heard and the music was kept within the boundaries of the noise regulations, if he sold the restaurant in the future, a new owner might not mind exceeding the noise levels and having the police called out to the property on a regular basis. She believes allowing this would open a can of worms by setting a precedent, as there are so many restaurants up and down A1A Beach Boulevard.

Mr. Guido said the conditional use permit Mr. Way currently has for Coquina Beach Surf Club specifically states, "The use shall be non-transferable," so if Mr. Way sold the property, this conditional use permit would no longer be valid.

Jeremiah Mulligan, 24 Cathedral Place, Suite 504, St. Augustine, Florida, 32084, said he's an attorney representing Allan and Susan Richman, who live at 103 13th Street, St. Augustine Beach, Florida, 32080. The address he gave for himself is his business address, but he's also a resident of the City, and lives at 18 Bermuda Run Way, St. Augustine Beach, Florida, 32080. Mr. and Mrs. Richman's house is located directly to the south and slightly to the west of Coquina Beach Surf Club, so they are certainly among the residents located closest to this restaurant. The Richmans' property has been a residence for as long as they have lived there, which he believes is about 25 years, so he thinks their residence probably outdates the City's Comprehensive Plan and the current commercial zoning. On the Richmans' behalf, he's here to ask the Board to deny the request to amend the conditional use permit to allow outside music. He passed out copies of information relevant to the issues he'd like to address to the Board members and staff. First, he walked through how the original conditional use permit for outdoor seating was obtained, how it is not currently in compliance with the conditional use order that was granted, and why he and his clients think this property is not the best use for having music outside. The original conditional use permit for Coquina Beach Surf Club was granted in 2011 to allow dining on the covered deck Mr. Way wanted to build outside the restaurant. At the Board's February 15, 2011 meeting, Mr. Guido asked Mr. Way if he intended to put any kind of sound equipment, such as speakers, outside, and Mr. Way said no, and he would never have live music either, because this is not in keeping with what he's planning to do with the outside seating, as his restaurant "is a little more upscale than a Jimmy Buffet or Heineken umbrella-type of place." When the original conditional use permit was granted, a lot of homeowners came out with concerns, as they didn't want outside music or anything that would disturb the residential portion of the neighborhood. He's submitted a few photographs, the first of which was taken from his clients' property, showing the open trash bin area on the south side of the Coquina Beach Surf Club property, and the second showing the restaurant's porch and deck areas. In the third and fourth photos, speakers can be seen located along the upper walls of the porch and deck areas. What his clients frankly are afraid of is "the slippery slope," as they're

concerned with what will happen in a few years if piped-in or acoustic music is allowed at a certain decibel level, and what assurance they'll have that there will be compliance with that. He thinks the photos he's submitted demonstrate there probably will not be compliance, as the speakers in the photos show there is a violation of condition number four in the current conditional use permit, which states there shall not be speakers outside. The speakers are there, prior to any approval for an amendment to the current conditional use permit. The concern of his clients is that they don't want to have to listen to music coming from the restaurant, and they have that right, as they've owned their residence for over 20 years, and though they knew there was commercial property along A1A Beach Boulevard, the uses have to be compatible, and allowing music outside the restaurant is not compatible with the rest of the residential neighborhood. The subsequent photographs are from the County's GIS mapping service, and the first one demonstrates a distance of 84 feet from his clients' property line and Coquina Beach Surf Club's deck. Section 9.00.00 of the Land Development Regulations, which addresses the City's noise regulations and things like permissible decibel and volume levels, says noise can't be audible over a property line, so the idea that there would be music on Coquina Beach Surf Club's outside deck that would not be audible from his clients' property is not likely. The last couple of photos, which are also from the County's GIS mapping service, show two restaurants which were granted conditional use permits that allow music to be played outside: Zaharias on A1A South, which is 236 feet away from the nearest residence, and The Groove, which is now Hang Ten, in the SeaGrove Town Center, which is 191 feet away from the nearest residence, and which has a vegetative buffer that shields the Town Center's parking lot from the neighboring residences. So looking at what's already permissible within the City, these are completely different situations in different scenarios. In his staff memo to the Board, Mr. Larson referenced other restaurants along A1A Beach Boulevard that have piped or live music inside, but are not permitted to play live music outside. There may be a couple of restaurants allowed to have piped music outside, such as Salt Life, but Mr. Larson's memo says Sunset Grille, located directly next door to Coquina Beach Surf Club, asked to have piped music outside on its upper decks but this request was denied when its conditional use permit for outside seating on the decks was granted, due to the residences in close proximity to it. As the noise regulations are in place to protect the entire community, in conclusion, he'll focus on the regulations that apply in this case. Section 9.02.12 of the City's Land Development Regulations addresses specific prohibitions such as amplified music and Section 9.02.15 addresses permits that may be granted to exceed permissible sound levels. Paragraph E under this section specifically states, "No permit may be issued to permit the use of any loudspeaker or sound amplifier on the exterior of any building which at any time exceeds the sound level limits in Table 1 except those used for emergency warnings." As these regulations have already been ignored by Coquina Beach Surf Club, his clients are asking the Board to recommend the City Commission deny this application to amend the current conditional use permit to allow outside music.

Ms. West said the GIS diagrams showing the distances from facilities that were granted conditional use permits allowing outdoor music to the nearest residences are very instructive. However, a diagram for Oasis Restaurant, which Mr. Larson references in

his staff memo as being allowed to have outside music in the past, was not included, even though there is a residence immediately behind the restaurant.

Mr. Mulligan said yes, there is a residence immediately behind the Oasis Restaurant, but the reason he did not include a GIS diagram showing the distance between the restaurant and this residence was because he was unclear as to where music is actually played at the Oasis. There's a newer deck area on the south side of the building, so this is one possibility, but he thinks most of the music is played upstairs.

Mr. Larson said the conditional use permits for the Oasis and Zaharias allow speakers and televisions, but no live music outside. The Oasis, Jack's Bar-B-Que, and Panama Hattie's all have live music played inside.

Ms. West asked the basis for allowing the Oasis and Zaharias to have outdoor speakers.

Mr. Larson said there was one family residing in close proximity to the Oasis which had no problem with outside televisions and speakers, but they did not want live music played outside, to which the Oasis agreed. Zaharias is a suitable distance away from the nearest residence, and as there were no complaints from residents against outdoor speakers and televisions, Zaharias was allowed to have them.

Ms. West asked if Coquina Beach Surf Club would be the first case in the City currently seeking a conditional use permit that allows outside, live music.

Mr. Guido said yes.

Ms. Odom said she just wanted to clarify that she experienced live music played outside on the open deck at Jack's Bar-B-Que in the past, before the enclosed space was built.

Mr. Guido said he thinks they've been consistent in turning down nearly every applicant with a restaurant on A1A Beach Boulevard, such as Mango Mango's, Sunset Grille, and a number of others, who have come before the Board and asked for outside music or speakers, and the City Commission has also consistently supported the Board's position on the recommendations the Board has made to the Commission to deny them.

Ms. Odom said the Board members received a letter from Mr. Ernest Crews in the application information packet which says this past Veteran's Day, there was outside music played at Coquina Beach Surf Club. She asked Mr. Way for clarification on this.

Mr. Way said yes, there was music played outside this past Veteran's Day. He had scheduled the music to be played inside, but he wasn't there on Veteran's Day, and his staff put the musicians outside. However, he has not had outside music since then.

Mr. Guido asked if there are still speakers outside.

Mr. Way said yes.

Mr. Guido said he thinks this would then be a matter for code enforcement, as condition number four under Coquina Beach Surf Club's existing conditional use permit says no exterior sound system of any type and no live or recorded music whether amplified or not, shall be played in the outside seating area approved by the conditional use permit. As speakers are part of a sound system, he thinks Ms. Odom's question is whether or not this constitutes a violation of the existing conditional use permit.

Mr. Larson said this would actually be grounds to void the entire conditional use permit.

Mr. Whitehouse said obviously, code enforcement is complaint-based, as there's no way the City has enough employees to go around and look for every problem. So when the City receives a complaint, code enforcement looks into it and pursues the matter. In this particular instance, he doesn't know that Mr. Larson has received any complaints, aside from what has come to light now, and obviously, if the outside sound system at Coquina Beach Surf Club is being used, it could be something that could be pursued and brought to the Code Enforcement Board. This is not, however, what is before this Board tonight, as the Board's purview is to make a recommendation to the City Commission as to whether or not the applicant's current conditional use permit should be amended to allow music to be played on the outside deck. That's not to say the Board can't address the issue of the outdoor speakers at Coquina Beach Surf Club in its recommendation to the Commission, as clearly the Board members want all of their thoughts on the record to put forward to the Commission so the Commission can make a final decision on this matter.

Ms. Odom asked for the record how many years Mr. Way has been at this restaurant site, and how many years he has been at Barnacle Bill's in downtown St. Augustine.

Mr. Way said he's been out here at the beach for close to 20 years, and in downtown St. Augustine for 34 years.

Ms. England said she'll propose a motion for the purposes of discussion. As the applicant has asked for both live music and speakers and amplified music, her motion is that the Board recommend to the City Commission the application be denied, for the following reasons: 1) The close proximity of existing single-family residences to the restaurant and the source of the music; 2) The lack of ability to consistently control the decibel level of live music; 3) Similar requests from other commercial uses in proximity of this commercial area have been denied; 4) Granting such an exception would likely result in frequent nuisance complaints; 5) Concerns and objections of neighbors are on the record.

Mr. Guido seconded the motion and called for discussion on the motion.

Mr. Mitherz said he agrees with the five reasons for denial as stated in the motion.

Mr. Guido said he's concerned there are speakers outside, which to him is a violation of the current conditional use permit. When this conditional use application was originally brought before the Board he thought they had a full commitment from the applicant that there would be no sound system outside. In his mind, speakers are part of a sound

system, so basically, if the requested amendment to the existing conditional use permit is denied, the existing conditional use permit would stand as it is, and if there is a violation of this existing conditional use, his position is it's a matter for code enforcement.

Ms. West asked how this code enforcement issue would procedurally be handled. Would a notice of this violation have to be issued, and would this be resolved through the Code Enforcement Board, she asked?

Mr. Whitehouse said this Board is not addressing this issue at all. He spoke about this because it came up, but if he wasn't clear about this before, the objective of the Board is not to address this issue, but to address the request of the applicant to amend the current conditional use permit for Coquina Beach Surf Club to allow music to be played outside.

Mr. Guido asked for any other discussion on the motion. There was none, so he called for a roll-call vote on the motion.

Ms. England **MADE A MOTION TO RECOMMEND THE CITY COMMISSION DENY CONDITIONAL USE FILE NO. CU 2013-01, BASED ON THE FIVE REASONS AS STATED.** The motion was seconded by Mr. Guido and passed 6-1 by roll-call vote.

Mr. Mitherz	Yes
Ms. Odom	No
Mr. Guido	Yes
Ms. England	Yes
Mr. Daigle	Yes
Ms. Sloan	Yes
Ms. West	Yes

VII. OLD BUSINESS

VIII. BOARD COMMENT AND DISCUSSION

There was no further Board comment or discussion.

IX. ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

Chairman

Recording Secretary

MEMORANDUM

TO: Alfred Guido, Chairman
Berta Odom
Steve Mitherz
Karen Zander
Elisa Sloan
Margaret England
David Bradfield
Lennet Daigle (Alternate)
Jane West (Alternate)

FROM: Max Royle, City Manager

DATE: January 13, 2014

SUBJECT: Maratea Subdivision Adjacent to the Bermuda Run Subdivision: Request by Developers for Extension of Planned Unit Development Permit for 24 Months for 30 Condo Units on 4.5 Acres

INTRODUCTION

Attached as page 1 is a letter from Mr. Tony Yamnitz, representing the St. Augustine Development Associates. His letter is a formal request for an extension of the planned unit development permit that the City Commission approved for the construction of 30 residential condominium units on the remaining 4.5 acres of the Maratea subdivision. These acres are located northeast of the City's Ocean Hammock Park, and adjacent to the beach and the Bermuda Run subdivision.

The reason for the request to extend the permit is that the City Attorney and the City Manager believe that the original permit for development of the Maratea subdivision expired in July 2013.

We provide below the background of the subdivision's planned unit development and why it appears that the permit for it has expired.

BACKGROUND

Between the Bermuda Run and the Sea Colony subdivision there was an 18-acre parcel that for years was called the London Tract, as it was owned by Dr. Seymour London and his family of Miami. In 2003, the City applied to the Florida Communities Trust for a grant to purchase the property, but had to withdraw the application, because the Londons wouldn't agree to sell the Tract to the City. In

2004, the property was sold to the St. Augustine Development Associates, which asked the City to approve a development of 72 clustered residential units on this property and the dedication of the conservation area next to A1A Beach Boulevard. The Commission rejected this proposal.

In early 2005, the Commission reviewed two proposals for residential development of the Tract, and at its July 11, 2005 meeting passed Ordinance 05-09 on final reading. This ordinance approved the development of the Tract and the Maratea subdivision, a planned unit development of 72 residential units consisting of "multifamily attached units in approximately four buildings (condominiums) and three story attached units in buildings of up to six units per building (townhouses)." The ordinance also transferred ownership to the City of the land along the Boulevard that was designated as commercial, and a strip of land along the south side of the subdivision for a beach access. These transfers reduced the number of acres of the Maratea subdivision to 16.

Section 8 of the PUD narrative adopted by Ordinance 05-09 stated that "the development shall be constructed in a single phase with completion within five (5) years following the issuance of a Final Development Order by the City. Construction must commence within two (2) years of the effective date of the Initial PUD zoning ordinance [which was Ordinance 05-09]. Commencement of construction shall be deemed to have occurred upon approval of Final Construction Plans for horizontal improvements and payment of required fees to the City. Completion is defined as receipt from the City of a final certificate of occupancy for the last building to be constructed on the Property." Thus, construction had to be started by July 11, 2007 and be completed by July 11, 2010.

Because construction of the Maratea subdivision didn't begin within two years of July 11, 2007, Section 8 of the planned unit development narrative that was adopted by Ordinance 05-09 was amended by Ordinance 07-15, which the Commission approved on final reading on August 6, 2007. Ordinance 07-15 stated: "The development shall be constructed in a single phase with completion within five years following the issuance of a Final Development Order by the City. Construction must commence within three (3) years of the effective date of the initial PUD Ordinance [which was Ordinance 05-09]. Commencement of construction shall be deemed to have occurred upon approval of Final Construction Plans for horizontal improvements and payment of required fees to the City. Completion is defined as receipt from the City of a final certificate of occupancy for the last building to be constructed on the Property." Thus, according to Ordinance 07-15, construction had to be started by July 11, 2008.

As construction didn't occur by July 11, 2008, Section 8 of the PUD narrative adopted by Ordinance 05-08 was amended a second time by Ordinance 08-18, which the Commission adopted on final reading at its July 7, 2008 meeting. This amendment simply stated: "Section 8 of Exhibit 'A' [the PUD narrative] to

Ordinance No. 05-09 as amended by Ordinance 07-15 be and the same is hereby amended to read as follows: "The development shall be constructed in a single phase with completion within five years following the effective date hereof." Thus, the new completion date for Maratea's 72 condo units on 16 acres was July 7, 2013.

After July 2008, the following occurred:

a. A majority of those City residents who voted in the August 2008 primary election approved a referendum which allowed the City to levy up to half a mill each year for 20 years for bond indebtedness for the purchase of land to protect natural areas from development.

b. In March 2009, St. Augustine Development Associates sold to the City for $5.3 million 11.5 acres of the 16 acres of the Maratea subdivision, thereby reducing to 4.5 the number of acres under their ownership; and because of the reduction in the amount of developable acres, proposed to reduce the original 72-unit condo PUD to 30 condo units on the 4.5 acres. The Commission accepted this modification.

c. The City received a grant of $4,507,800 from the Florida Communities Trust to reimburse the City for the purchase of the 11.5 acres. This grant money was used to pay most of the $5.3 million that the City had obtained from the BB&T Bank for the purchase of the 11.5 acres. Each year the City levies below a tenth of a mill in property taxes for a yearly payment for what remains of the BB&T debt.

THE QUESTION

It concerns what is the deadline for the completion by the St. Augustine Development Associates of the PUD on the 4.5 acres.

There was a fourth ordinance, 09-01, which the Commission approved at its April 2009 meeting. This ordinance addressed the fact that the Maratea subdivision had been divided into two parts or phases: Phase I was the 11.5 acres purchased by the City; Phase II was the 4.5 acres retained for development by the St. Augustine Development Associates.

Ordinance 09-01 amended the planned unit development narrative that was adopted by Ordinance 05-09, to make that narrative applicable only to Phase II, the 4.5 acres. New working for Section 8 of the PUD narrative that Ordinance 09-01 adopted stated the following: "The Development shall be constructed in [a] single phase within a seven (7) year period following acquisition of Phase I [the 11.5] acres by the City or termination of the REPA [Real Estate Purchase Agreement for the sale of the 11.5 acres to the City]. Construction must

commence seven (7) years after approval of the construction plans for horizontal improvements and payment of required fees to the City."

There was additional language at the end of the planned unit development narrative adopted by Ordinance 09-01. It stated the following:

"This Ordinance shall take effect at such time as the City Commission of the City St. Augustine Beach and St. Augustine Development Associates, L.L.C. enter into a purchase and sales agreement [REPA] for the purchase by the City of the properties described within the Original Planned Unit Development as "Phase I" [the 11.5 acres], provided that such purchase and sale agreement shall be entered into no later than March 1, 2009. In the event that a purchase and sales agreement shall not be entered by such date, this Ordinance shall stand null and void and of no effect. In the event that a purchase and sales agreement is entered into, but the sale contemplated therein shall not be consummated within the time provided therein as from time to time extended, this Ordinance shall stand automatically repealed and the original planned unit development shall remain in effect as though unamended."

The real estate purchase and sale agreement was not entered into by March 1, 2009. It was signed by the St. Augustine Development Associates on March 3, 2009, and by the City's Mayor, Frank Charles, on March 19, 2009, after the City Commission approved the agreement at its March 16, 2009 meeting,

It appears that St. Augustine Development Associates doesn't have seven years from April 6, 2009 to complete the PUD, but has or had only the five years from July 7, 2008, which is the date of the adoption of the last amendment to the PUD approved by Ordinance 05-09.

However, in Section 18 of the real estate purchase agreement is the following wording: "The obligation of the Seller [St. Augustine Development Associates] under this Agreement is expressly contingent on (a) the Land Development Regulations of the City of St. Augustine Beach being amended to allow an entrance sign as shown on the sketch and attached as Schedule 7 and (b) the Final Development Permit and the PUD Approval for the Property and Phase II [the 4.5 acres] being amended to (i) provide for the construction of thirty (30) condominium units on Phase II and an extension of the Final Development Permit to seven (7) years from the Closing Date and (ii) allow the development of a Park on the Property [the 11.5 acres that the City purchased]. The City intends to cause the Comprehensive Plan to be amended to allow development of the Property as a park. The Parties acknowledge that the amendment of the Comprehensive Plan will not be completed prior to the Closing Date." On August 1, 2001, the City Commission adopted Ordinance 11-06, which changed the land use designation of the 11.5 acres from PUD to Parks and Recreation.

Thus, the basic question is: Which determines the date for the construction of the 30 condo units on the 4.5 acres: the language in Ordinance 09-01, or the language in Section 18 of the purchase agreement?

If the wording in Ordinance 09-01 governs, then because the purchase agreement wasn't finalized until after March 1, 2009, the date for completion stated in Ordinance 08-18 governs, and the deadline for completion of the 30 condo units was July 7, 2013.

If the language in Section 18 of the sales agreement governs, then the completion date would be March 19, 2016, which is seven years from March 19, 2009, when the Mayor signed the purchase agreement.

The City Attorney can provide legal advice as to which document governs the deadline for construction of the 30 condo units as a PUD on the 4.5 acres.

ATTACHMENTS

Attached for your review is the following information:

a. Pages 2-13, Ordinance 05-09, which designated 16 acres of the Maratea subdivision as a planned unit development and adopted the narrative for a PUD of a 72-unit condominium project.

b. Page 14, Ordinance 07-15, which amended the schedule of development adopted by Ordinance 05-09.

c. Page 15, Ordinance 08-18, which amended the schedule of development adopted by Ordinance 07-15.

d. Pages 16-24, Ordinance 09-01, which amended the PUD narrative that was adopted by Ordinance 05-09 to allow the construction of 30 condo units on the remaining 4.5 acres of the subdivision.

e. Pages 25-45, the agreement for the purchase by the City of the 11.5 acres of the Maratea subdivision, and the retaining of 4.5 acres by the St. Augustine Development Associates development. Section 18 (quoted above) is on page 40.

f. Page 46, a survey map which shows the dimensions of the 11.5 acres owned by the City and the 4.5 acres owned by St. Augustine Development Associates, and the easements and conservation areas on both parcels.

ACTION REQUESTED

It's that you decide, after the presentation by the St. Augustine Development Associates and the guidance provided to you by the City Attorney, what to recommend to the City Commission. The options appear to be these:

1. Not to recommend an extension of the deadline for completion of the PUD on the 4.5 acres. This option would allow St. Augustine Development Associates to apply for a new PUD on the 4.5 acres and would require a new PUD narrative and ordinance.

2. To recommend that an extension be allowed with the City and the St. Augustine Development Associates renegotiating certain easements on the City's 11.5 acres. This option also would require an ordinance to state the new deadline for completion and a modification to the narrative for changes in the easements.

3. To recommend that an extension be allowed without any renegotiation. This option also would require an ordinance to state the new deadline for completion.

If you favor Option 2 or 3 above, then we ask that you recommend how many months or years the extension should be.

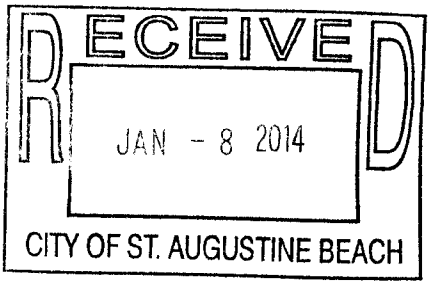
Maratea permit extension request

1/3/2014

City of St. Augustine Beach

2200 A1A South

St. Augustine, FL 32080



Max Royle,

As per our discussion on 12/23/2013 this is to serve as notice that we would like to be put on the agenda for the upcoming Planning and Zoning Board meeting this upcoming Jan 21st, 2014 and the subsequent City Commission meeting in February.

In light of the varying opinions of the permits expiration date and issues with a bank beyond our control we are requesting an extension of the PUD – Final development order for Maratea (on what was previously approved) for an additional 24 months.

This email notice will be followed by a letter to your office.

I thank you for your help with this matter and getting on the agenda for us.

Best regards,

Tony Yamnitz

St. Augustine Beach Development Associates

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, DESIGNATING AS A PLANNED UNIT DEVELOPMENT THE 18.18 ACRE PARCEL KNOWN AS THE "LONDON TRACT", 902 A1A BEACH BOULEVARD, ST. AUGUSTINE BEACH, FLORIDA

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, AS FOLLOWS:

1. That as requested by St. Augustine Development Associates, L.L.C. in its application dated September 21, 2004, (the "Application") the City hereby approves the development of the London Tract as a Planned Unit Development under the terms and conditions as set forth in Exhibit A (attached), titled "The Planned Unit Development Narrative for the London Tract, St. Augustine Beach, Florida."

2. That development of the lands within this Planned Unit Development shall proceed in accordance with the Planned Unit Development Application and supporting documents which are part of File Number CR2004-06 and which are incorporated by reference into and made part of this Ordinance and as supplemented by the provisions of this Ordinance. In the case of conflict between the Application and supporting documents and the provisions of this Ordinance described below, the provisions described below shall prevail.

3. That no commercial uses shall be allowed within the lands encompassed by the Planned Unit Development.

4. That all roadways and parking areas located within the project shall be constructed in accordance with the standards approved by the City of St. Augustine Beach.

5. That all stormwater and surface water management systems shall be constructed in accordance with standards approved by the City of St. Augustine Beach and by any agency exercising jurisdiction over the construction, maintenance and operation of said systems.

6. That all water and sewer service extension facilities provided by the developer of the project shall meet the standards for such facilities as established by the County of St. Johns.

7. That all easements required for maintenance and repair of any systems, facilities, roadways or parking areas dedicated to the City shall be granted to the City at no cost upon request of the City.

8. That the developer or its assigns shall submit a final development plan for the

Planned Unit Development in accordance with the Land Development Regulations of the City of St. Augustine Beach, Florida.

9. That the City of St. Augustine Beach is hereby authorized to issue building permits, certificates and other documents authorizing construction of said Planned Unit Development in accordance with the development plan after its approval pursuant to the Land Development Regulations of the City.

10. The Ordinance shall take effect upon passage.

PASSED by the City Commission of the City of St. Augustine Beach, Florida, upon second reading, this 11th day of July, 2005.

CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH

By: _____
Mayor/Commissioner

ATTEST: _____
City Manager

First reading: May 2, 2005, 2005
Second reading: July 11, 2005

EXHIBIT A

St. Augustine Development Associates, LLC

PUD Narrative

For

The London Tract
St. Augustine Beach, FL

Section 1. INTRODUCTION

This Planned Unit Development is for a parcel of property consisting of 18.18 acres (the "Property"). Approximately 1.6 acres of the Property is currently zoned commercial. The remaining approximately 16.58 acres of the Property is zoned low density residential. There are several wetland systems on the Property which will be identified by the St. Johns River Water Management District (the "District"). Portions of the wetlands may be filled pursuant to permits to be obtained from the District.

Section 2. INTENDED PLAN OF DEVELOPMENT

The Planned Unit Development permits the construction on the Property of 72 residential units consisting of multi-family attached units in approximately four (4) buildings (condominiums) and three (3) story attached units in buildings of up to six (6) units per building (townhouses). The townhouses may be submitted to condominium ownership at the Developer's discretion. The allocation and location of the units will be in the Developer's discretion.

That portion of the Property currently zoned commercial will be designated as a conservation area and deeded to the City or a designee of the City (the "Conservation Area"). The Developer will retain ownership of not more than a 110 feet wide area for a depth of 30 feet then reducing to a width of 75 feet at the easterly side of the Conservation Area, location subject to permits from St. Johns County to the Developer for ingress/egress to the PUD site and the land required for construction and operation of the gatehouse. The legal description retained by the Developer will be prepared by the Surveyor for the Developer and submitted to the Developer and the City for approval, which approval by both parties will not be reasonably withheld. The Developer agrees to clear underbrush and undesirable natural vegetation and clean up the existing wetland to the extent allowed by District permits.

A portion of the Property with a minimum width of 10 feet extending from A1A Beach Boulevard to the eastern boundary along the southern property line will be deeded to the City to provide a public beach access (the" Access"). The location of the Access will vary slightly according to existing foliage, trees and site conditions but will generally be located as depicted on Exhibits A, B and C. The location can be adjusted to avoid trees and site conditions. The Access can be placed parallel to but no closer than 20 feet to the Ingress/Egress property being retained by the Developer. The Access will be the south 15 feet of the property where the Access is south of the parking garages as proposed on the site plan to the Coastal Construction Line. Notwithstanding the previous sentence, the City agrees that the northern line of any improvements including railings to be constructed in the Access will be at least 7 feet south of the south wall of the parking garages and 8.5 feet south of the south wall for the southerly ocean front condominium building. The legal description for the Access will be prepared by the Surveyor for the Developer and submitted to the Developer and the City for approval which approval by both parties covenant will not be reasonably withheld.

The Developer and the City further agree that there will be a buffer of at least 2 feet on each side of the improvement pursuant to plans, Exhibits A, B and C, attached. The City will maintain the Access including trash removal. The City agrees that the improvements will be consistent material the length of the Access (no on-grade concrete or asphalt sidewalk segments) and will not be opened to the public until the entire improvements to be constructed in the Access have been completed. The deed conveying the Access to the City must include a reference diagram of the improvements showing materials and railing details and the height of the boardwalk improvements (i.e., minimum height required by the District to cross wetlands and 12 inches above the uplands). The railings must have a minimum height of 42 inches. The deed conveying the Access to the City must also specify that the improvements will follow the contours of the property to the extent that is practical to meet ADA requirements. The landscape buffers are subject to review and comment of the Developer and the Sea Colony Neighborhood Association.

The Developer and the City further acknowledge that the Developer will most likely have completed its development of the Property prior to the time the City commences with construction of the improvements within the Access. The Developer and the future Homeowners' Association agree to work together to allow the City access through the property to the Access to construct the improvements in the Access. The Developer/future Homeowners' Association for the Property will allow the City to use no more than a 5 foot wide area as needed for staging construction materials. The City acknowledges they will restore the property to its original condition following completion of the improvements within the Access and use its best efforts to limit the impact of construction on the residents.

The City can elect to widen the beach walkway and provide covered pavilions and seating along the Access where minimum dimensions from the development are maintained.

The Developer and Sea Colony Neighborhood Association will be consulted regarding the material to be used for the Access. The hours the public will be allowed to use the Access will be determined by the City. The Developer will be allowed to place a fence no more than six (6) feet in height along the northern boundary of the Access subject to approval by the City and any and all governmental agencies. The Developer will take into consideration the passage of wildlife when determining the material to be used for the fence.

The City will permit the balance of the Property as designated above. The Developer will stipulate as part of the PUD Ordinance that the maximum number of units to be built will be 72.

Section 3. RESTRICTIONS AND GUIDELINES

1. Unit Size

Each unit must be at least 1,800 square feet of heated and cooled space. Garages, porches and entries are not included in the computation of square footage. The front setbacks for each building shall be a minimum of 20 feet from the edge of the pavement. Rear setbacks shall meet the City zoning code in regards to distance from the boundary property line and shall be a minimum of 20 feet from an assumed property line or a combined distance of 40 feet between buildings. Side setbacks shall meet the City zoning code in regards to distance from the boundary property line and shall be a minimum of 15 feet from an assumed property line or a combined distance of 30 feet between buildings. A maximum height of thirty-five (35) feet will be allowed to the ridge of any roof structure on the structures east of the Conservation Area and west of the middle marsh. The buildings east of the middle marsh will be allowed an additional 5 feet above the roof ridge for screening purposes, placed as architectural styling dictates. Allowed impervious surface coverage is 50%.

All construction must meet or exceed the applicable Florida Building Code and the Florida Fire Prevention Code. Single story, one or two car garages, may be attached or detached for condominium units.

2. Accessory Structures

Accessory structures for use by only the residents include, but are not limited to, clubhouse, swimming pools, pool baths, cabanas, picnic pavilions, gazebos and garages. These structures shall be allowed a minimum 5 foot rear and side setback from other buildings and a 15 foot rear and side yard setback from all boundary property lines excepting the garages located on the south side of the development which will be allowed a 5 foot setback from the property deeded to the City. Construction materials and quality of all buildings will be uniform.

Fences shall not be allowed except along the Property lines. The fences shall be either decorative painted steel, powder coated aluminum, or masonry and will not exceed six (6) feet in height.

Docks, gazebos and boardwalks may be allowed in the Conservation Areas other than those dedicated to the City so long as the Developer obtains all required permits for intrusion into a Conservation Area.

Section 4. SIGNAGE

All signage for the development will comply with the City of St. Augustine Beach sign ordinance. Signage shall be allowed at the entry/exit to the Property.

Section 5. PARKING

Parking shall be two (2) spaces per unit and one (1) visitor space for each two (2) units. Garage parking capacity will count against the parking requirements.

Section 6. LANDSCAPING

The Property will at least meet the City requirements as set forth in the City's Land Development Regulations. All landscape plans will be submitted for approval by the City staff. All plants and grasses used shall be salt resistant. In addition to City requirements, a fifty (50) foot natural and/or created buffer along the frontage of A1A Beach Boulevard in the Conservation Area shall be maintained. Subject to applicable permits, grubbing of underbrush shall be allowed to enhance the appearance of the existing canopy growth within the Conservation Area. The Conservation Area will be enhanced and planted pursuant to the District permits. After fulfilling all District permit requirements, the Conservation Area dedicated to the City will be maintained by the City.

Section 7. GENERAL REQUIREMENTS

A five (5) foot wide sidewalk shall be constructed on one side of each street within the development; the location of each sidewalk will be at the discretion of the Developer. The sidewalks can be within the required front, side and rear setbacks. Materials for sidewalks shall be concrete based or brick pavers or pressure treated lumber over wet areas.

Lighting shall be placed along all streets and in the designated parking areas. All parking lot lighting shall be screened from all contiguous residential areas. All landscape lighting shall be placed to minimize glare on adjacent properties. All sign lighting shall be ground mounted type fixtures.

The Developer shall maintain a consistent architectural style throughout the development. Exterior colors shall meet the requirements of the City. At the time of Final Development Plan submission, the Developer will include in its submittal to the City proposed architectural guidelines for all types of construction within the development.

Temporary construction trailers shall be allowed on the Property and shall be allowed to be moved as construction dictates. The trailers shall be placed on the Property to minimize the impact on completed buildings and shall be a removed upon completion of the development. A temporary sales trailer shall be allowed subject to parking and landscaping requirements required by the City. The sales trailer shall be removed upon completion of sales activities.

St. Johns County Utilities will provide public water and sewer service to the development. The stormwater/drainage system shall conform to the City, District and other applicable governmental authority requirements.

All electrical, telephone and cable television lines will be installed underground within the development. Electricity will be provided by Florida Power and Light.

Section 8. SCHEDULE OF DEVELOPMENT

The development shall be constructed in a single phase with completion within five (5) years following the issuance of a Final Development Order by the City. Construction must commence within two (2) years of the effective date of the initial PUD Zoning Ordinance. Commencement of construction shall be deemed to have occurred upon approval of Final Construction Plans for horizontal improvements and payment of required fees to the City. Completion is defined as receipt of from the City of a final certificate of occupancy for the last building to be constructed on the Property.

Section 9. OWNERSHIP AND MAINTENANCE

All common areas and facilities located within the development for the common use and benefit of the owners of the units shall be owned by an owners' association to be formed as a separate not-for-profit corporation. At a time established by the owners' association document, the applicant will transfer ownership and maintenance responsibilities of the common areas to the Association.

Section 10. PRESERVATION OF RARE AND ENDANGERED WILDLIFE SPECIES

The Developer shall consult with all required governmental entities for the preservation of rare and endangered wildlife species.

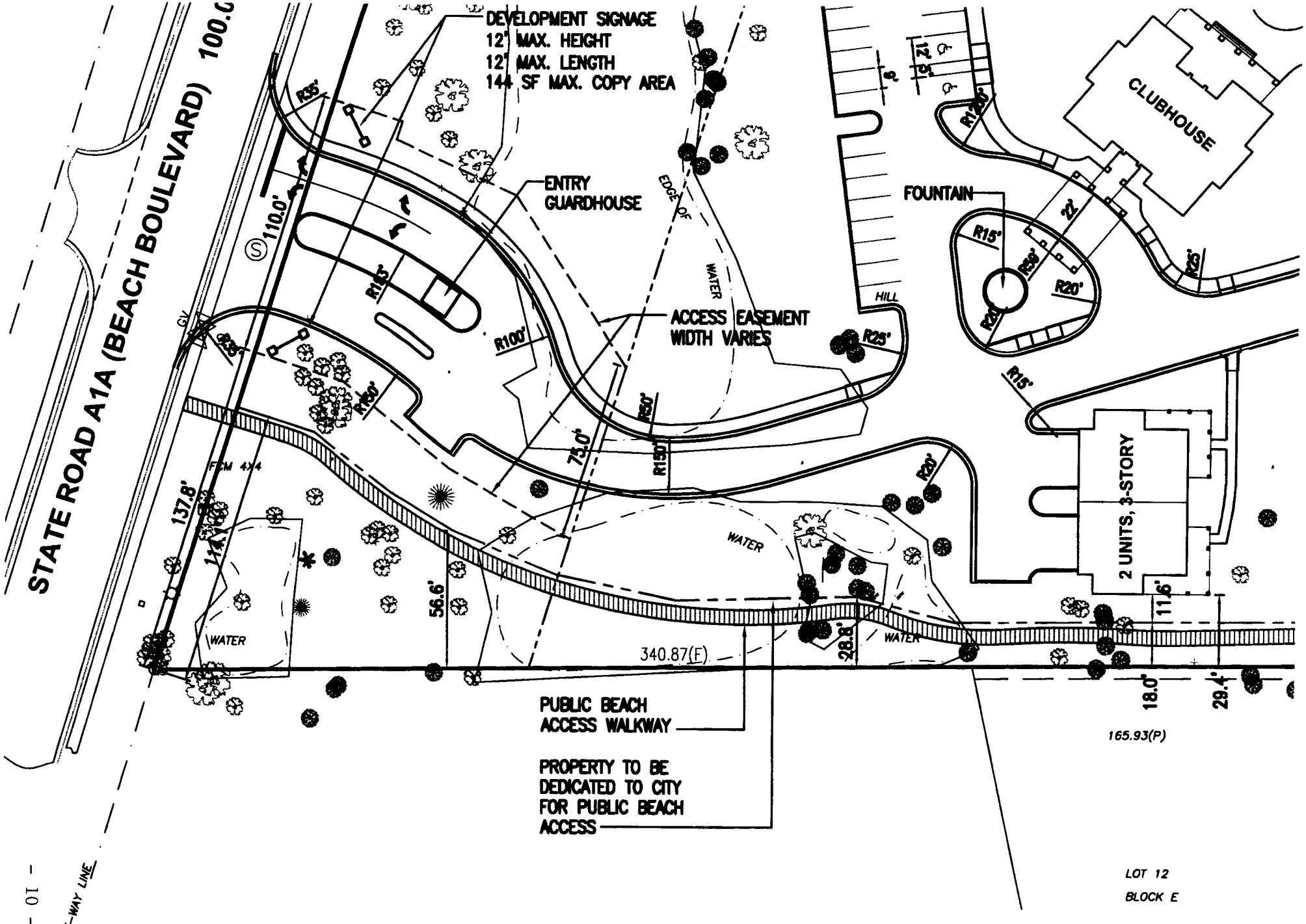
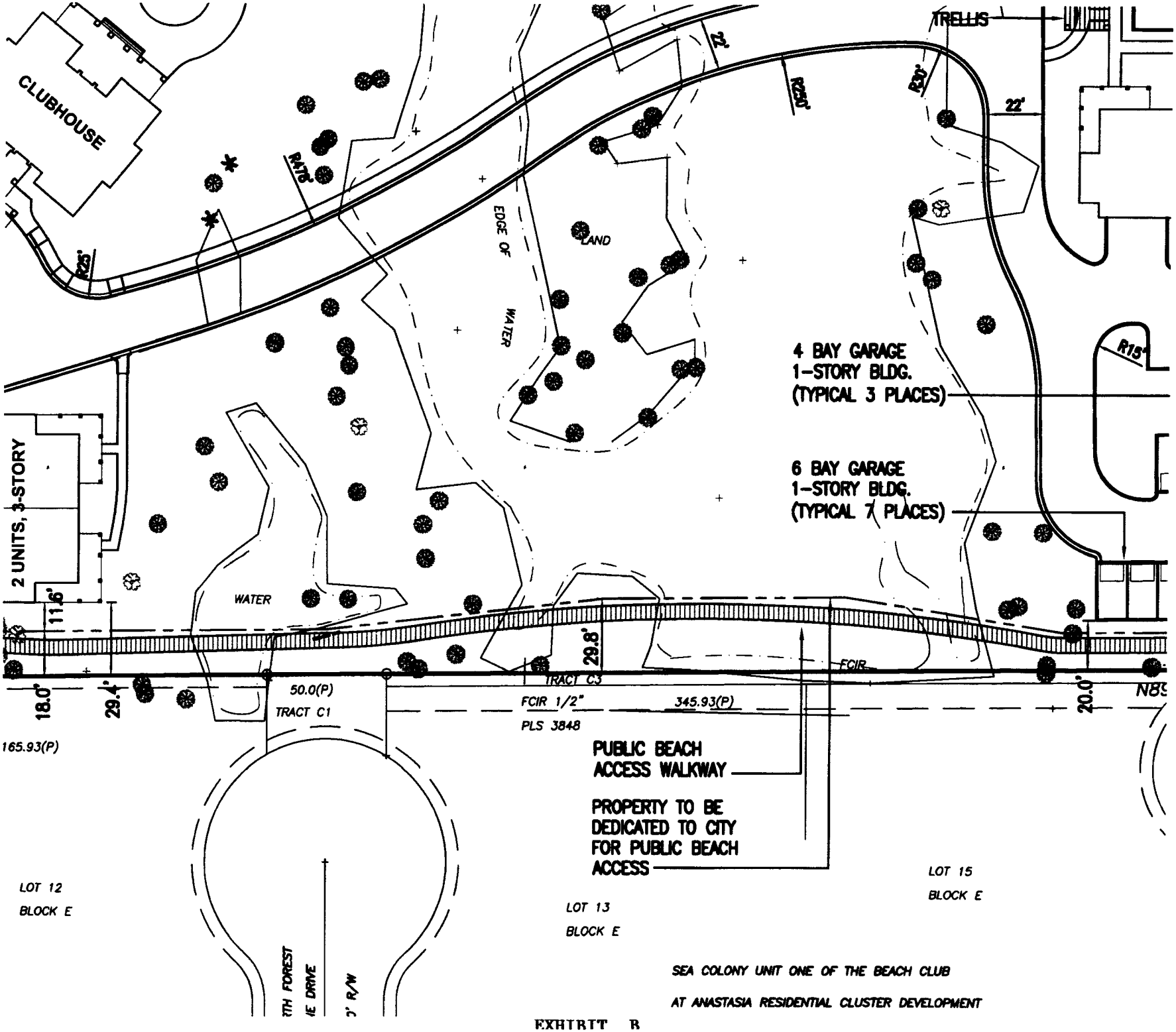

STATE ROAD A1A (BEACH BOULEVARD) 100.0
RIGHT-OF-WAY LINE
DEVELOPMENT SIGNAGE
12' MAX. HEIGHT
12' MAX. LENGTH
144 SF MAX. COPY AREA
ENTRY
GUARDHOUSE
110.0'
R35'
R15'
R100'
R50'
R25'
EDGE OF WATER
ACCESS EASEMENT
WIDTH VARIES
HILL
FOUNTAIN
CLUBHOUSE
R15'
R50'
R20'
22'
R25'
R15'
R20'
2 UNITS, 3-STORY
11.6'
18.0'
29.4'
73.0'
R150'
137.8'
141'
FCM 4X4
56.6'
WATER
340.87(F)
28.8'
165.93(P)
PUBLIC BEACH
ACCESS WALKWAY
PROPERTY TO BE
DEDICATED TO CITY
FOR PUBLIC BEACH
ACCESS
LOT 12
BLOCK E

EXHIBIT A



SEA COLONY UNIT ONE OF THE BEACH CLUB

AT ANASTASIA RESIDENTIAL CLUSTER DEVELOPMENT

EXHIBIT B

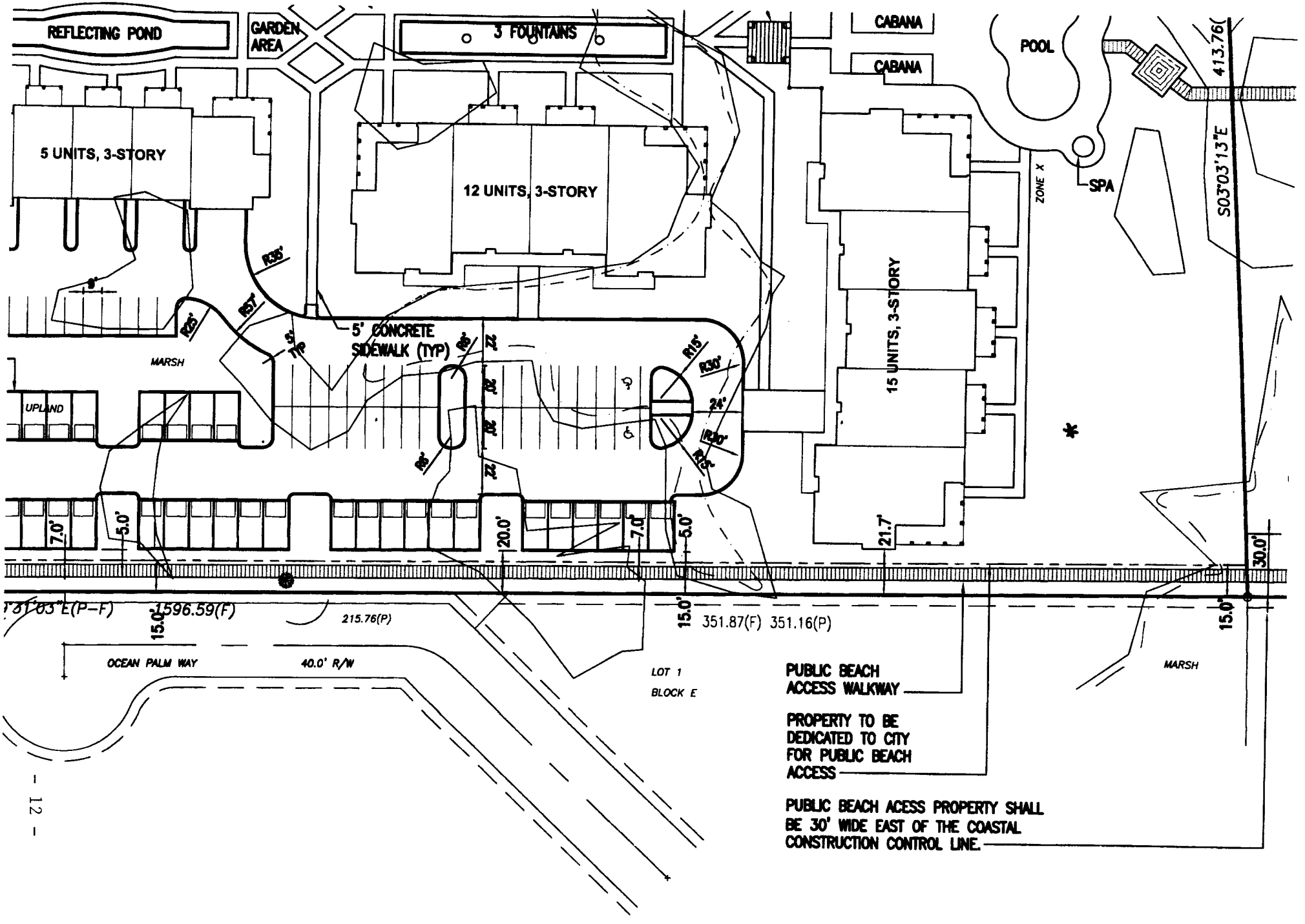
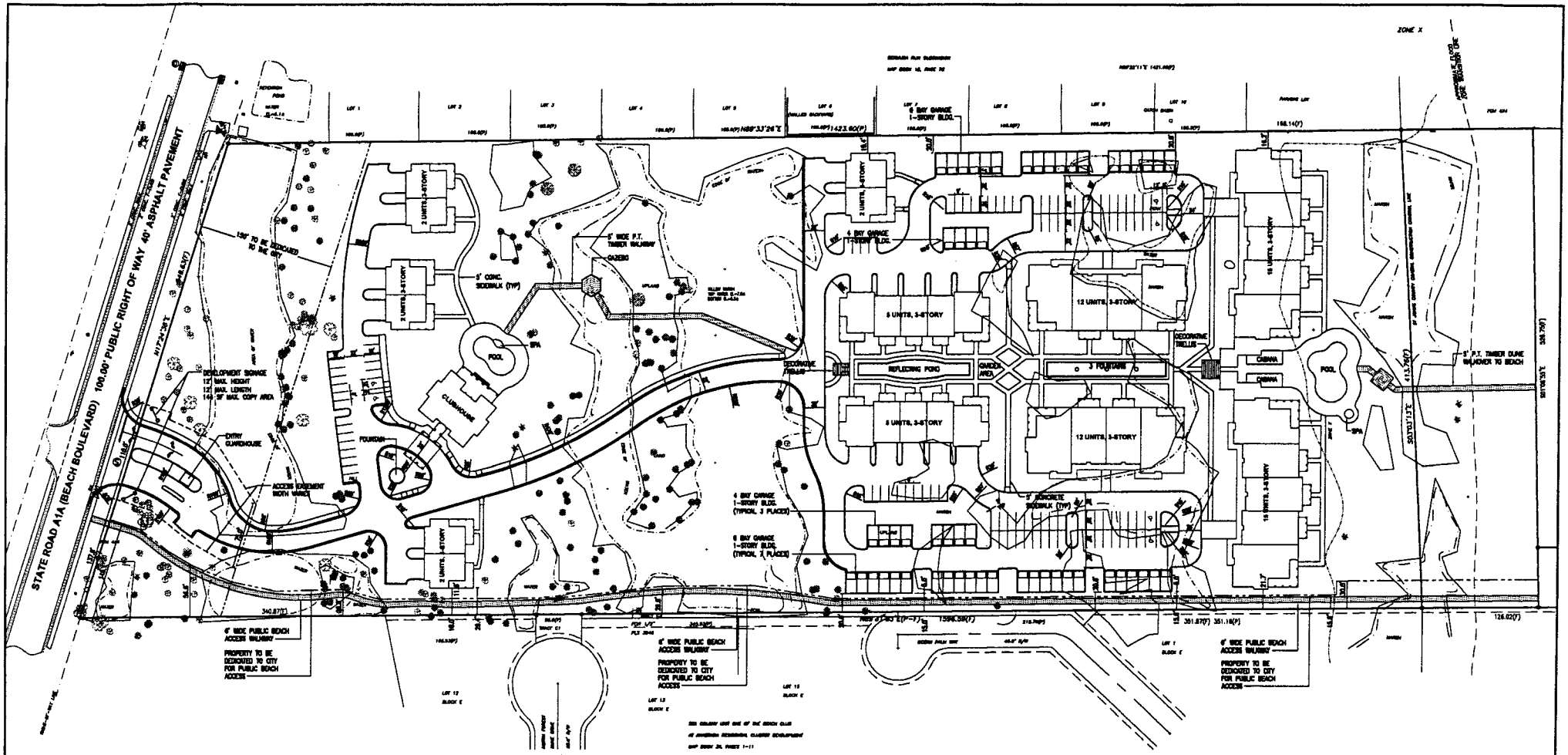

REFLECTING POND
GARDEN AREA
3 FOUNTAINS
CABANA
CABANA
POOL
413.76(
5 UNITS, 3-STORY
12 UNITS, 3-STORY
SPA
ZONE X
S03°03'13"E
15 UNITS, 3-STORY
R35'
R25'
R57'
5' TYP
5' CONCRETE SIDEWALK (TYP)
MARSH
UPLAND
R15'
R30'
24'
R30'
R15'
7.0'
5.0'
20.0'
7.0'
5.0'
21.7'
30.0'
15.0'
15.0'
351.87(F) 351.16(P)
1596.59(F)
215.76(P)
OCEAN PALM WAY
40.0' R/W
LOT 1
BLOCK E
MARSH
PUBLIC BEACH ACCESS WALKWAY
PROPERTY TO BE DEDICATED TO CITY FOR PUBLIC BEACH ACCESS
PUBLIC BEACH ACESS PROPERTY SHALL BE 30' WIDE EAST OF THE COASTAL CONSTRUCTION CONTROL LINE.

EXHIBIT C



NOT FOR CONSTRUCTION

GRAPHIC SCALE
1"=50'

NO.	DATE	DESCRIPTION	BY
		REVISIONS	

Upham, Inc.
Organization of Engineers, Surveyors & Landscape Architects
P.O. Box 1188 • 885 Ensilworth Avenue • Ormond Beach, Florida 32174
(386)672-8818 • FAX (386)673-6864 • LB# 0003618 • LC# 0000357
Visit us at: www.uphaminc.com

SITE LAYOUT PLAN

MARATEA

ST. AUGUSTINE, ST. JOHNS COUNTY

W.O. No.: DATE:

FILE NAME:

DRAWER No.: DESIGN: DRAFT: CHECK:

SCALE: SHEET: OF

ROGER H. BROOKS, PE #62764
NOT VALID UNLESS EMBOSSED
SEAL

Ordinance 07-15

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA AMENDING SECTION 8 OF THE PLANNED UNIT DEVELOPMENT NARRATIVE FOR THE LONDON TRACT AS ADOPTED BY ORDINANCE NO. 05-09 TO EXTEND THE TIME FOR THE COMMENCEMENT OF CONSTRUCTION AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH:

Section 1. Section 8 of Exhibit "A" to Ordinance No. 05-09, be, and the same is, hereby amended to read as follows:

"**Section 8. SCHEDULE OF DEVELOPMENT**

"The development shall be constructed in a single phase with completion within five years following the issuance of a Final Development Order by the City. Construction must commence within ~~two (2)~~ (three (3) years of the effective date of the initial PUD Zoning Ordinance. Commencement of construction shall be deemed to have occurred upon approval of Final Construction Plans for horizontal improvements and payment of required fees to the City. Completion is defined as receipt from the City of a final certificate of occupancy for the last building to be constructed on the Property."

Section 2. This ordinance shall take effect upon passage.

PASSED by the City Commission of the City of St. Augustine Beach, Florida, upon second reading this 6th day of August, 2007.

CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA

ATTEST: _____
City Manager

BY: _____
Mayor-Commissioner

First reading: July 2, 2007

Second reading: August 6, 2007

ORDINANCE 08-18

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, RELATING TO ZONING, AMENDING SECTION 8 OF THE PLANNED UNIT DEVELOPMENT NARRATIVE FOR THE LONDON TRACT AS ADOPTED BY ORDINANCE NO. 05-09 AS AMENDED BY ORDINANCE NO. 07-15 SO AS TO EXTEND THE TIME FOR THE COMMENCEMENT OF CONSTRUCTION FOR A PERIOD OF FIVE YEARS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH:

Section 1. Section 8 of Exhibit "A" to Ordinance no. 05-09 as amended by Ordinance No. 07-15 be, and the same is hereby amended to read as follows:

"Section 8. Schedule of Development

> "The development shall be constructed in a single phase with completion within five years following the effective date hereof."

Section 2. This Ordinance shall take effect upon passage.

PASSED by the City Commission of the City of St. Augustine Beach, Florida, upon second reading this 7 day of July, 2008.

CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA

ATTEST: _____ **BY:** _____
City Manager Mayor-Commissioner

First reading: June 2, 2008

Second reading: July 7, 2008

Ordinance No. 09-01

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, AMENDING THE NARRATIVE FOR THE LONDON TRACT PLANNED UNIT DEVELOPMENT AS ADOPTED BY ORDINANCE 05-09 TO TAKE INTO ACCOUNT A PROPOSED SALE OF A PORTION OF THE PARENT TRACT OF SUCH PLANNED UNIT DEVELOPMENT TO THE CITY OF ST. AUGUSTINE BEACH AND TO MAKE THE NARRATIVE APPLICABLE ONLY TO THE REMAINDER PORTION AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA:

WHEREAS, the Developer of the London Tract Planned Unit Development has proposed that a portion of the Planned Unit Development be sold to the City; and

WHEREAS, in the event that the City should agree to purchase such portion and consummate the purchase, it would be necessary to amend the Narrative for such Planned Unit Development to take into account the reduced size of the Planned Unit Development and to take into account recent changes to market conditions for condominium developments within Northeast Florida;

NOW THEREFORE, be it enacted by the City Commission of the City of St. Augustine Beach, Florida, as follows:

Section 1. The Narrative for the London Tract Planned Unit Development as adopted by Ordinance 05-09 be and the same is hereby amended to read as follows:

Section 1. INTRODUCTION

This Amendment to PUD Narrative amends that certain PUD Narrative which was part of the City of St. Augustine Beach, Florida, Ordinance 05-09 (the "Ordinance") which was approved by the City Commission of the City of St. Augustine Beach, Florida (the "City"), upon second reading on the 11th day of July, 2005. St. Augustine Development Associates, L.L.C. (the "Developer") has filed an application with the City to amend the Ordinance to divide the real property subject to the Ordinance into two (2) parcels, Phase I consisting of approximately 11.411 acres and Phase II consisting of approximately 4.551 acres.

Pursuant to that certain Real Estate Purchase Agreement (the "REPA") between the City and the Developer, the Developer intends to convey Phase I to the City but retain an easement through Phase I for ingress and egress as shown on Exhibit A and as described in Section 3.

Notwithstanding anything in this Amendment to PUD Narrative to the contrary, the City and the Developer acknowledge that the amendment to the Ordinance is conditioned and contingent on the City acquiring title to Phase I pursuant to the REPA. If the City does not acquire title to Phase I, this amendment to the Ordinance will be null and void and the Ordinance, as approved at a second reading on July 11, 2005, will remain in full force and effect except that the Developer will have seven (7) years from termination of the REPA to begin construction on Phase I and/or Phase II.

Section 2. INTENDED PLAN OF DEVELOPMENT

This Amended Planned Unit Development ("PUD") permits construction on Phase II of thirty (30) condominium units consisting of stacked, flat units in two (2) buildings.

Section 3. RESTRICTIONS AND GUIDELINES

1. Unit Size

Each unit must be at least 1,800 square feet of heated and cooled space. Garages, porches and entries are not included in the computation of square footage. The front setbacks for each building shall be 20 feet from the edge of pavement. Rear setbacks shall be in accordance with the City Zoning Code in regards to distance from the boundary property line and shall be a minimum of 20 feet from an

assumed property line or a combined distance of 40 feet between buildings. Side setbacks shall meet the City Zoning Code in regards to distance from boundary property line and shall be a minimum of 15 feet from an assumed property line or a combined distance of 30 feet between buildings. A maximum height to the roof ridge shall be 35 feet. An additional 5 feet (for a total height of 40 feet) will be allowed for screening purposes allowing placement of air conditioning units on roof tops.

All construction must meet or exceed the applicable Florida Building Code for attached or detached condominium and townhouse units.

2. Accessory Structures

Accessory structures for use by only residents as shown on Exhibit B.

Fences shall not be allowed except along property lines. The fences shall be either decorative painted steel, powder coated aluminum or masonry and will not exceed 6 feet in height.

3. Easements

The REPA describes the following easements to be granted/reserved at the closing of the sale/acquisition of Phase I.

(a) A non-exclusive ingress and egress easement from State Road A1A (Beach Boulevard) through Phase I to Phase II. The easement agreement will require the City to maintain a 20-foot landscape buffer on either side of the easement area.

(b) Phase II will be secured from Phase I by a physical barrier to be installed by the City. When the Developer commences development of Phase II, the Developer will replace the physical barrier with a more appropriate fence that meets the requirements of ordinances in place at the time.

(c) The easement agreement will grant easements for stormwater runoff, potable water, sanitary sewer, electricity, telephone, cable and other utilities/services reasonably required for development of Phase II. The original PUD contemplated that a stormwater detention system to accommodate stormwater runoff from Phase I and Phase II would be constructed on Phase I. The easement agreement will grant to the Developer easements across Phase I as reasonably necessary to provide Phase II with access to and use of the drainage facilities as currently designed pursuant to existing permits.

(d) The City acknowledges that the easement agreement will contain a provision allowing the Developer to redevelop the roadway located within the access easement area at the time it commences development of Phase II. The easement agreement will include an acknowledgment that there may be temporary blockage of the access easement to Phase I as a result of the reconstruction of the roadway and placement of utilities.

(e) The southern boundary of Phase II is contiguous with the northern boundary of a portion of Phase I. The City agrees that for building setback purposes, a 20-foot easement will be granted across Phase I to meet the setback requirements and the Developer will have the right to develop and maintain landscaping on such 20 feet.

(f) The City acknowledges that the easement agreement will approve the cul-de-sac located at the end of the access roadway for a fire truck turn-around area.

Section 4. SIGNAGE

All signage or the development will comply with the City's sign ordinance. Signage shall be allowed at the entry/exit to Phase I.

Section 5. PARKING

Parking spaces shall be 2 spaces per unit and 1 visitor space for each 2 units. Garage parking capacity shall count against the parking requirements.

Section 6. LANDSCAPING

Phase II will at least meet the City requirements as set forth in the City's Land Development Regulations. All landscape plans shall be submitted for approval by City staff. All plants and grasses shall be salt resistant. The landscaping for the entrance road will be in accordance with the attached Exhibit B.

Section 7. GENERAL REQUIREMENTS

A 5 foot wide sidewalk shall be constructed on one side of the entrance road; the location at the discretion of the Developer. Materials for the sidewalks shall be concrete based or brick pavers or pressure treated lumber over wet areas.

Lighting shall be placed along the entrance road. All landscape lighting shall be placed to minimize glare an adjacent properties. All sign lighting shall be ground mounted fixtures.

The Developer shall maintain a consistent architectural style throughout the Development. Exterior colors shall meet City requirements. At the time of Final Development Plan submission, the Developer will include in his submittal to the City, proposed Architectural guidelines for all types of construction with the Development.

Temporary construction trailers shall be allowed on Phase II and shall be allowed to be moved as construction mandates. The trailers shall be placed on Phase II to minimize impact on completed buildings and shall be removed upon completion of the Development. A temporary Sales Trailer shall be allowed subject to parking and landscaping requirements required by the City. The Sales Trailer shall be removed upon completion of sales.

St. Johns County Utility will provide public water and sewer service to the Development. The stormwater/drainage system shall conform to the City, District and other applicable governmental authority requirements.

All electrical, telephone and cable television lines will be installed underground within the Development. Electricity will be provided by Florida Power and Light.

Section 8. SCHEDULE OF DEVLOPMENT

The Development shall be constructed in single phase within a seven (7) year period following acquisition of Phase I by the City or termination of the REPA. Construction must commence seven (7) years after approval of the construction plans for horizontal improvements and payment of required fees to the City.

Section 9. OWNERHIP AND MAINTENANCE

All common areas and facilities located within the Development for common use and benefit of the owners of the units shall be owned by an owner's association to be formed as a separate not for profit corporation. At a time established by the association's documents, the applicant will transfer ownership and maintenance of the common areas to the Association.

Section 10. PRESERVATION OF RARE AND ENDANGERED WILDLIFE SPECIES

The Developer shall consult with all required governmental entities for the preservation of rare and endangered species, if any.

SECTION 2. Effective Date. This Ordinance shall take effect at such time as the City Commission of the City of St. Augustine and St. Augustine Development Associates, L.L.C. enter into a purchase and sale agreement for the purchase by the City of the properties described within the Original Planned Unit Development as "Phase I" provided that such purchase and sale agreement shall be entered into no later than March 1, 2009. In the event, that such a purchase and

sale agreement shall not be entered into by such date, this Ordinance shall stand null and void and of no effect. In the event, that a purchase and sale agreement is entered into, but the sale contemplated therein shall not be consummated within the time provided therein as from time to time extended, this Ordinance shall stand automatically repealed and the original planned unit development narrative shall remain in effect as though unamended.

PASSED by the City Commission of the City of St. Augustine Beach, Florida, upon Second Reading this 6th day of April, 2009.

CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH

ATTEST: _____ By: _____
City Manager Mayor-Commissioner

First reading: March 2, 2009
Second reading: April 6, 2009

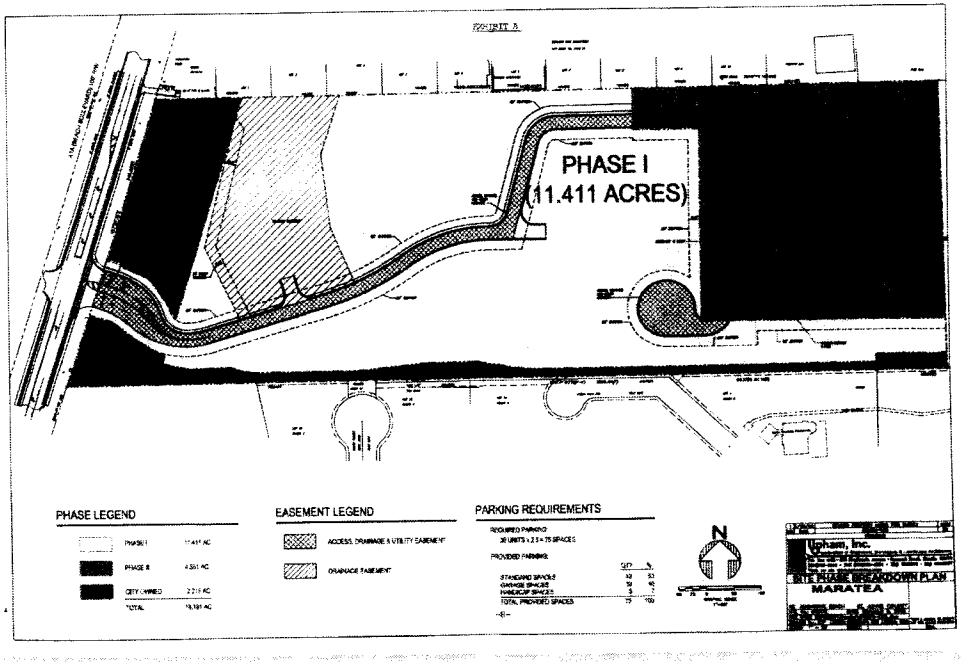
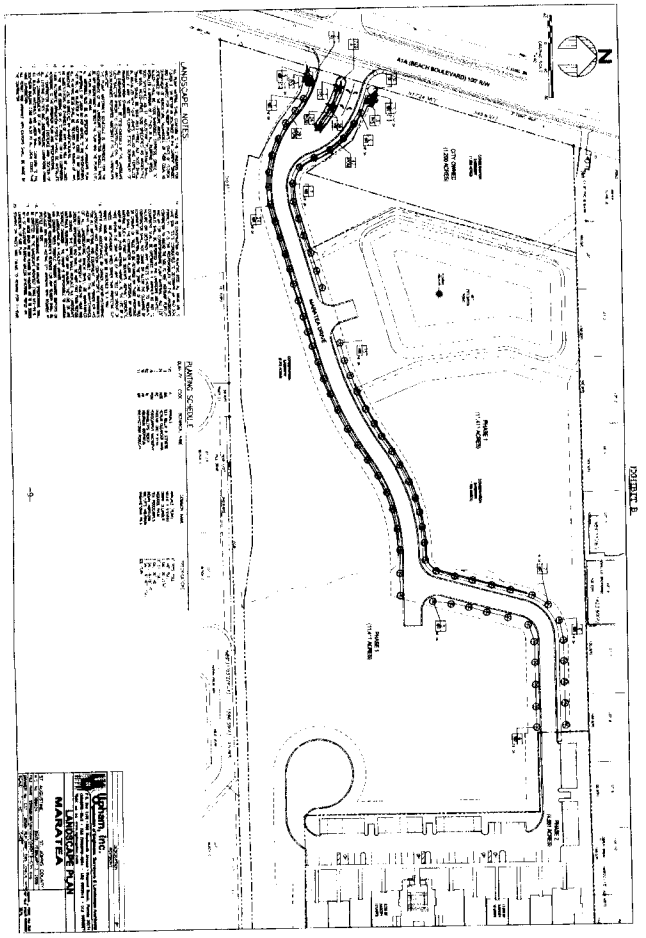


EXHIBIT A
PHASE I
(11.411 ACRES)
PHASE LEGEND
PHASE I
PHASE II
CITY OWNED
TOTAL
EASEMENT LEGEND
ACCESS, DRAINAGE & UTILITY EASEMENT
DRAINAGE EASEMENT
PARKING REQUIREMENTS
REQUIRED PARKING
30 UNITS x 2.5 = 75 SPACES
PROVIDED PARKING
STANDARD SPACES
GARAGE SPACES
HANDICAP SPACES
TOTAL PROVIDED SPACES
N
Upham, Inc.
SITE PHASE BREAKDOWN PLAN
MARATEA


N
MARATEA
LANDSCAPE PLAN

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "Agreement"), dated as of this 19th day of March, 2009, is between the **CITY OF ST. AUGUSTINE BEACH, FLORIDA**, a Florida municipal corporation (the "Purchaser"), and **ST. AUGUSTINE DEVELOPMENT ASSOCIATES, L.L.C.**, a Florida limited liability company (the "Seller").

1. **Defined Terms; Interpretation.**

Definitions of certain defined terms are provided throughout the text of this Agreement. Defined terms listed in this Section 1 have the meaning assigned to them below.

"Business Day" means any day, other than Saturday and Sunday, that the national banks in St. Johns County, Florida, are open for business.

"Closing" means the meeting at which and/or time when the Parties exchange the instruments, documents and money pursuant to Section 5.

"Closing Agent" means Burr & Forman LLP, 369 N. New York Avenue, Winter Park, Florida 32789.

"Closing Date" means on or before May 1, 2009. Notwithstanding, the Purchaser will have the option to extend the Closing Date not more than two (2) times by not more than thirty (30) days each by complying with Section 4.5.

"Deposit" means the sum of Fifty Thousand Dollars ($50,000.00).

"Due Diligence Documents" means all documents and materials furnished to the Purchaser or any of its affiliates or any of their respective representatives, consultants or contractors by the Seller or its affiliates or any officer, director, trustee, agent, employee or other person acting or purporting to act on behalf of the Seller or any of its affiliates (including all documents described on **Schedule** 3 and any other materials delivered in accordance with Section 6.1) and all documents concerning the Property obtained by the Purchaser or any of its affiliates or any of their respective representatives, consultants or contractors in connection with the Purchaser's evaluation of the Property, together with any excerpt from or copy of such documents that are prepared by the Purchaser or any of its affiliates or any of their respective representatives, consultants or contractors and all written or electronically stored documentation prepared by the Purchaser or any of its affiliates or any of their respective representatives, consultants or contractors based upon, reflecting or incorporating, in whole or in part, such information or the evaluation of the Property, except information that is or becomes generally available to the public through no action by the Purchaser or any of its affiliates or any of their respective representatives, consultants or contractors, or is or becomes available to the Purchaser on a non-confidential basis from a source, other than the Seller or its affiliates or any of the Seller's Related Entities or any of its affiliates, which source the Purchaser believes is not prohibited from disclosing such information by a contractual, legal or fiduciary obligation.

"Effective Date" means the date that a fully executed copy of this Agreement is delivered to the Purchaser. That date will be entered at the top of the first page.

"Environmental Law" means any law relating to the protection of the environment or, to the extent related to environmental conditions, human health or safety, including the Comprehensive

Environmental Response, Compensation and Liability Act, as amended; the Hazardous Materials Transportation Act, as amended; the Resource Conservation and Recovery Act, as amended; the Toxic Substances Control Act, as amended; the Federal Water Pollution Control Act, as amended; and similar Legal Requirements.

"Escrow Agent" means Burr & Forman LLP, 369 N. New York Avenue, 3rd Floor, Winter Park, Florida 32789, as an agent of the Title Company.

"Extension Deposit" means the sum of Fifty Thousand Dollars ($50,000.00) which will be applied against the Purchase Price.

"Feasibility Period" means the period of time commencing on the Effective Date and expiring at 5:00 p.m. (ET), sixty (60) calendar days after the Effective Date.

"Financing Contingency Period" means the period of time commencing on the Effective Date and expiring at 5:00 p.m. on the day before the Closing Date.

"Governmental Authorities" means any federal, state, county, municipal or other governmental department or entity, or any authority, commission, board, bureau, court or agency having jurisdiction over the Property, or any portion of the Property.

"Hazardous Materials" means (a) any substance that constitutes hazardous materials, hazardous waste or toxic waste within the meaning of any Environmental Law or that otherwise is subject to regulation under any Environmental Law and (b) regardless of whether it is so classified, any radioactive material, radon, mold, mildew, microorganisms, asbestos, any medical waste, polychlorinated biphenyls (PCB's), lead-based paint, urea formaldehyde foam insulation and petroleum or petroleum derivatives.

"New Survey" means an ALTA survey of the Property and Phase II prepared by a registered Florida Land Surveyor and will delineate and contain legal descriptions for: (a) the Property, (b) Phase II, (c) the easement area depicted on **Schedule 1**, (d) stormwater easements, (e) signage easements, (f) landscape buffers and setback easement, (g) utility easements and (h) other easements as required to allow development of Phase II. The New Survey will be an update and recertification of the 2004 Survey described in Section 7.1 The New Survey will be certified to the Seller, the Purchaser, the Title Company and the Closing Agent and will show the location of and include the legal description of the access easement depicted on **Schedule 1**.

"Normal Business Hours" means 9:30 a.m. to 5:00 p.m., of any Business Day.

"Permitted Exceptions" means (a) title matters identified on **Schedule 2**, (b) property taxes and assessments not due and payable as of the Closing Date, and (c) matters created by the Purchaser or any of its affiliates or any of their respective representatives, consultants or contractors.

"Phase II" means the real property depicted on **Schedule 1** as Phase II (4.553 acres) which is owned by the Seller and will not be included in the conveyance of the Property to the Purchaser.

"Property" means the real property generally depicted on **Schedule 1** to this Agreement as Phase I (11.410 acres) and all related rights and appurtenances. The New Survey to be obtained at the expense of the Seller will create the legal description of the Property to be conveyed to the Purchaser.

"Related Entities" or a **"Related Entity"** means and includes the members of the Seller, all entitles related to the members and all partners, shareholders, members, directors, officers and employees of the members.

"Title Company" means Fidelity National Title Insurance Company.

"Title Defect" means matters recorded or referred to in the Public Records of St. Johns County, Florida, which adversely affect the marketability and insurability of title to the Property (to be determined by the Purchaser applying standards customary in the industry for determining marketability), and liens and other exceptions to be discharged at or before the Closing, other than the Permitted Exceptions set forth on **Schedule 2**. For purposes of this Agreement, the term "Title Defect" will refer to one or more matters affecting title to the Property as the context requires. Any matter appearing in the Public Records because of actions of the Purchaser, either directly or indirectly, will not be deemed a Title Defect for purposes of this Agreement. For purposes of this Agreement, a "Title Defect" will not include any mortgages encumbering the Property or other liens or encumbrances of a monetary nature previously created, or created after the Effective Date, directly or indirectly, by the Seller, all of which the Seller will be required to have released at or before Closing and none of which will appear as exceptions to title in the Title Policy.

"Title Policy" means the ALTA Form "B" 1992 (10-17-92) owner's policy of title insurance to be issued by the Title Company upon recording of the Deed. The Title Policy will be in the amount of the Purchase Price and will insure the title of the Purchaser to the Property, subject only to the Permitted Exceptions.

When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the words "include" and "including" are intended as an introduction to illustrative matters and not as a limitation. When either Party is granted permission to exercise its discretion in this Agreement, there shall be no requirement, unless the Agreement expressly states to the contrary, to exercise such discretion reasonably or in accordance with commercial standards and instead such discretion may be exercised in the sole, absolute and unilateral discretion of such Party. References in this Agreement to "Sections" are to the numbered subdivisions of this Agreement, unless another document is specifically referenced. The word "Party" when used in this Agreement means either the Purchaser or the Seller unless another meaning is required by the context. The word "Person" includes individuals, entities and Governmental Authorities. When used in this Agreement, the word "Legal Requirements" is intended to be construed broadly and includes all codes, statutes, rules, regulations, ordinances, pronouncements, case law, requirements, orders, directives, decisions, decrees, judgments and formal or informal guidance or interpretations of any court or Governmental Authority. If any date set forth in this Agreement falls on any day not a Business Day, for purposes of the action to be taken on that day, such date will be changed, automatically, to the next Business Day.

2. Agreement to Purchase.

The Purchaser agrees to purchase the Property from the Seller, and the Seller agrees to sell the Property to the Purchaser, all on the terms provided in this Agreement.

3. Purchase Price.

The purchase price to be paid by the Purchaser for the Property (the "Purchase Price") is Five Million Two Hundred Fifty Thousand Dollars ($5,250,000.00). The Purchase Price will be paid by wire transfer of immediately available funds on the Closing Date.

4. **Deposit.**

4.1. In order for this Agreement to be binding on the Parties, each Party must provide the other Party with a signed signature page in accordance with Section 19.5. The Purchaser must deliver the Deposit by wire transfer of immediately available funds as earnest money payable to the Escrow Agent, no later than three (3) Business Days after the Effective Date or the Seller will have the continuing right and option to terminate this Agreement until the Escrow Agent has received the Deposit.

4.2. If the Purchaser gives written notice to the Seller and the Escrow Agent that it elects to terminate this Agreement on or before 5:00 p.m. on the last day of the Feasibility Period, the Escrow Agent will return the Deposit to the Purchaser. Thereafter, the Parties will be relieved of any liability to each other except for those obligations specifically intended to survive termination of this Agreement.

4.3. If the Purchaser does not terminate this Agreement pursuant to Section 4.2 by 5:00 p.m. on the last day of the Feasibility Period, the Deposit will be deemed nonrefundable to the Purchaser except on default of the Seller.

4.4. The Deposit will be applied against the Purchase Price at Closing.

4.5. If the Purchaser has not obtained financing for the acquisition of the Property prior to the termination of the Financing Contingency Period, the Purchaser may extend the Closing Date by not more than two (2) thirty (30) day periods by (a) giving written notice to the Seller and the Closing Agent at least ten (10) Business Days prior to each scheduled Closing Date and (b) delivering an Extension Deposit to the Escrow Agent no later than the termination of the Financing Contingency Period or the extended Closing Date, as appropriate.

5. **Closing.**

5.1. The purchase of the Property will be completed through an escrow to be opened with the Closing Agent. The escrow will be opened upon the deposit with the Closing Agent of a copy of this Agreement executed by the Purchaser and the Seller. The Closing shall take place on the Closing Date.

5.2. On the Closing Date, the Seller will deposit with the Closing Agent the following items (collectively, the "Seller Closing Documents"):

(a) a special warranty deed (the "Deed"), in the form attached to this Agreement as **Exhibit A**, executed and acknowledged by the Seller, conveying to the Purchaser the Property;

(b) a Closing Statement and Disbursement Sheet, generally in the form attached as **Exhibit B**;

(c) a No-Lien/GAP Affidavit in form required by the Title Company;

(d) an affidavit, dated the Closing Date and executed by an appropriate representative of the Seller under penalty of perjury, stating that the Seller is not a person with respect to whom withholding is required under Section 1445 of the Internal Revenue Code; and

(e) such documents as the Title Company may reasonably require to establish the authority of the Seller to complete the transfer of the Property contemplated by this Agreement.

5.3. On the Closing Date, the Purchaser will deposit with the Closing Agent the following documents (collectively, the "Purchaser Closing Documents"):

(a) Easement Agreement for Access and Utilities described in Section 12;

(b) such documents as the Title Company may require to complete the transfer of title to the Property contemplated by this Agreement to the Purchaser; and

(c) a Closing Statement and Disbursement Sheet (**Exhibit B**).

5.4. No later than 12:00 Noon (Eastern Time) on the Closing Date, the Purchaser shall deposit with the Closing Agent the Purchase Price, net of credit for the Deposit and adjustments for prorations and other items charged to the Purchaser pursuant to this Agreement.

5.5. All documents or other deliveries required to be made by the Purchaser or the Seller on or prior to the Closing Date and all deposits and transactions required to be consummated concurrently with Closing, shall be deemed to have been delivered and to have been consummated simultaneously with all other transactions and all other deliveries, and no delivery shall be deemed to have been made, and no transaction shall be deemed to have been consummated, until all deliveries required by the Purchaser and the Seller shall have been made, and all concurrent or other transactions shall have been consummated. Documents and funds deposited in escrow under this Section 5 will be returned to the person who deposited them if the Seller or the Purchaser terminates its obligation to complete the transfer of the Property contemplated by this Agreement under circumstances allowed by this Agreement.

5.6. The Closing Agent will disburse the "NET CASH DUE THE SELLER" in accordance with the Closing Statement and Disbursement Sheet executed by the Seller and the Purchaser and record the Deed and any other documents required by Schedule B--Section 1 of the Title Binder. The Closing Agent will also disburse the other documents delivered to the Closing Agent as appropriate and disburse the balance of the closing proceeds in accordance with the Closing Statement and Disbursement Sheet. The Closing Agent, as the agent for the Title Company, will deliver to the Purchaser the "marked up" copy of the Title Binder for the purpose of insuring the "gap" period between the last effective date of the Title Binder and the recording of the Deed and advance the effective date of the Title Binder. The "standard exceptions" for mechanics' liens and parties in possession will be deleted from the Title Binder (and the Title Policy) based on the affidavit provided by the Seller pursuant to Section 5.2(c). The "standard exceptions" for matters of survey will be deleted from the Title Binder (and the Title Policy) based on the New Survey.

6. Feasibility Period; Conditions for Closing.

6.1. The Seller has delivered, or will deliver, to the Purchaser within five (5) Business Days the Due Diligence Documents set forth on **Schedule 3**. The Purchaser acknowledges that all documents and materials made available by the Seller and its Related Entities or other person acting or purporting to act on behalf of the Seller or any of its Related Entities, including the materials described in this Section 6.1, are provided to the Purchaser without representation or warranty as to the accuracy or completeness thereof or sufficiency for the purposes for which the Purchaser uses such materials.

6.2. Immediately after the Effective Date, the Seller will order a Phase I Environmental Site Assessment, the expense of which will be borne by the Seller. The Parties acknowledge that the Purchaser will order an update of the appraisal, the expense of which will be borne by the Purchaser.

6.3. The Purchaser may terminate its obligation to complete the transfer of the Property contemplated by this Agreement at any time during the Feasibility Period if the Purchaser, in its sole discretion, is not satisfied with the Property or any matter relating to the Property. The Purchaser may exercise its right under this Section 6.3 by giving notice to the Seller at any time during the Feasibility Period. In the event the Purchaser terminates this Agreement, the Purchaser must return to the Seller all Due Diligence Documents provided to the Purchaser by the Seller or its agents or consultants. Thereafter, the Escrow Agent will be authorized and directed to return the Deposit to the Purchaser and the Parties will be relieved of any liability or obligation to each other, except for those obligations specifically intended to survive termination of this Agreement.

6.4. The Purchaser may terminate its obligation to complete the transfer of the Property contemplated by this Agreement at any time during the Financing Contingency Period if the Purchaser, in its sole discretion, is not able to obtain financing to acquire the Property. The Purchaser may exercise its right under this Section 6.4 by giving notice to the Seller at any time during the Financing Contingency Period. In the event the Purchaser terminates this Agreement, the Purchaser must return to the Seller all Due Diligence Documents provided to the Purchaser by the Seller or its agents or consultants. Thereafter, the Escrow Agent will be authorized and directed to return the Deposit to the Purchaser and the Parties will be relieved of any liability or obligation to each other, except for those obligations specifically intended to survive termination of this Agreement.

6.5. The Purchaser and its representatives, consultants and contractors may enter upon the Property during Normal Business Hours upon reasonable notice to the Seller to make such inspections and tests regarding the Property as the Purchaser deems necessary or desirable. Damages to the Property resulting from any inspection or testing conducted by or at the direction of the Purchaser will be repaired by the Purchaser so that the Property is restored to its condition as of the Effective Date. The Purchaser will, to the extent permitted by law, indemnify, defend and hold harmless the Seller against any claim arising out of activities conducted at the Property by the Purchaser and its representatives, consultants and contractors and related damage, liability, obligation, claim, suit, cause of action, judgment, settlement, penalty, fine or cost or expense (including fees and disbursements of attorneys and other professionals and court costs, both prior to and during any appellate proceedings).

6.6. The Purchaser agrees that, until it acquires the Property, all Due Diligence Documents, to the extent permitted by law, (a) will be kept and held strictly confidential by the Purchaser and its affiliates and their respective representatives, consultants or contractors, (b) will not be used by the Purchaser or any person affiliated with the Purchaser in any manner detrimental to the Seller or its Related Entities and (c) will not be used other than in connection with the Purchaser's evaluation of the Property; *provided that* the Purchaser and its affiliates may disclose Due Diligence Documents to their respective employees, representatives, consultants or contractors and others actually or prospectively involved with the Purchaser in connection with this transaction, and in connection with its evaluation of the Property, so long as the Purchaser informs the Person to whom the disclosure is made of the confidential nature of the Due Diligence Documents and of the Purchaser's obligations in that respect under this Agreement and directs the Person to whom the disclosure is made to treat the Due Diligence Documents confidentially and not to disclose the Due Diligence Documents to any Person other than as authorized by this Section 6.6. The Purchaser shall, to the extent permitted by law, be liable for any failure of any such Person to treat and hold all such Due Diligence Documents as strictly confidential. The Purchaser will notify the Seller in writing of any requests for examination or production of the Due Diligence Documents pursuant to any public records law of the State of Florida and the Seller may, at its own cost and expense, take such action as it deems appropriate to preserve the confidentiality of the Due Diligence Documents.

7. **Examination of Survey and Title Binder.**

7.1. Within ten (10) Business Days of the Effective Date, the Closing Agent shall deliver to the attorney for the Purchaser a title commitment issued by the Title Company (the "Title Binder") and copies of all documents listed as exceptions to title in Schedule B-II. A copy of a survey prepared by Survey Dynamics, Inc., Project #LK04-0038, dated 1/28/04 (the "2004 Survey") has been delivered to the Purchaser and the Purchaser acknowledges receipt of a copy of the 2004 Survey. If the Title Binder contains any matter which the Purchaser deems a Title Defect, the Purchaser must give the Seller written notice of its objection to the Title Defect within ten (10) Business Days after receipt of the Title Binder and related deliveries described in the previous sentence. Within ten (10) Business Days of receipt of notice of the Purchaser's Title Defects, the Seller shall notify the Purchaser in writing of which Title Defects it does not elect to cure. Within ten (10) Business Days after receipt of the Seller's notice of which Title Defects it will and will not cure, the Purchaser may give the Seller written notice of either (a) acceptance of the Seller's notice and proceed to Closing (the "**Purchaser's Second Notice**), or (b) termination of this Agreement and receive a full return of the Deposit, in which event neither Party shall have any further obligations pursuant to this Agreement except for those obligations which are specifically intended to survive termination of this Agreement. The Purchaser's failure to respond shall be deemed an election of (a) above. The Seller will have thirty (30) days (the "**Curative Period**") after receipt of the Purchaser's Second Notice within which to remove the Title Defects the Seller has agreed to cure and have the Title Company issue an endorsement to the Title Binder removing the Title Defect. The Seller agrees that it will use diligent effort to remove the Title Defects that it has agreed to cure within the Curative Period, but the Seller is not required to spend more than One Hundred Thousand Dollars ($100,000.00) in the aggregate (the "**Curative Amount**") to remove all Title Defects.

7.2. ~~In the event~~ the Seller elects to remove one (1) or more Title Defects and the Seller fails or is unable to remove such Title Defect within the Curative Period, or for the Curative Amount or less, the Seller must give the Purchaser written notice immediately and the Purchaser will have ten (10) Business Days to either (a) accept title to the Property in its present condition and close on the purchase of the Property as contemplated by this Agreement (but not earlier than the scheduled Closing Date); or (b) have a return of the Deposit, at which point this Agreement will be considered terminated. If the Purchaser fails to give the Seller written notice of its election within the ten (10) Business Day period, the Purchaser will be deemed to have elected option (a) above and the Closing will be held as contemplated by this Agreement (but no earlier than the Closing Date).

7.3. If at the end of the Curative Period the Seller fails or is unable to remove a Title Defect and the Purchaser elects to accept title to the Property in its present condition and close on the purchase of the Property, any Title Defect remaining will be deemed a "Permitted Exception."

7.4. Prior to the Closing Date, the Seller will provide the Purchaser with an endorsement to the Title Binder recertifying the date of the Title Binder to a more current date and showing no change in the status of the title to the Property, except as may have been specifically agreed to by the Purchaser. If the endorsement to the Title Binder includes a Title Defect which was not included on the Title Binder, the Purchaser must notify the Seller in writing within ten (10) Business Days after receipt of the endorsement to the Title Binder. During the Curative Period the Seller will attempt to remove the Title Defect and have the Title Company issue an endorsement removing the Title Defect from the Title Binder. The Seller agrees that it will use diligent effort to remove the Title Defect within the Curative Period, but the Seller is not required to spend more than the Curative Amount in the aggregate to remove all Defects. The scheduled Closing Date will be extended for up to fifteen (15) days if the Title Defect cannot be removed prior to the scheduled Closing Date. If the Seller is able to remove the Title Defect and have the Title Company issue an endorsement to the Title Binder to such effect, the Closing will be

held ten (10) Business Days after the endorsement to the Title Binder has been delivered to the Purchaser (but no earlier than the scheduled Closing Date).

7.5. In the event the Seller fails or is unable to remove, within the Curative Period, any Title Defect identified in the endorsement to the Title Binder delivered pursuant to Section 7.4 or for the Curative Amount or less, the Seller must give the Purchaser written notice immediately and the Purchaser will have ten (10) Business Days to either (a) accept title to the Property in its present condition and close on the purchase of the Property as contemplated by this Agreement (but not earlier than the scheduled Closing Date); or (b) have a return of the Deposit, at which point this Agreement will be considered terminated. If the Purchaser fails to give the Seller written notice of its election within the ten (10) Business Day period, the Purchaser will be deemed to have elected option (a) above and the Closing will be held in accordance with this Agreement (but not earlier than the scheduled Closing Date).

7.6. If at the end of the Curative Period the Seller is unable or fails to remove any Title Defect and the Purchaser elects to accept title to the Property in its present condition and close on the purchase of the Property, any Title Defect remaining will be deemed a "Permitted Exception." Notwithstanding any language contained in this Agreement to the contrary, any special assessment levied against the Property on or after the Effective Date shall be deemed an additional "Permitted Exception."

7.7. The Seller will obtain the New Survey and deliver a copy to the Purchaser no later than April 25, 2009. If the New Survey indicates Title Defects, the provisions of this Section 7 for Title Defects shall apply to survey matters shown on the New Survey not shown on the 2004 Survey identified to the Seller within ten (10) Business Days (but prior to the Closing Date) after the receipt of the New Survey by the Purchaser.

7.8. The Parties covenant and agree that neither will cause, either directly or indirectly, any change in the status of title to the Property between the Effective Date and the Closing Date. The Seller further acknowledges, covenants and agrees that the Seller, at its sole cost and expense, will remove all mortgages, liens or encumbrances created or permitted by the Seller, either directly or indirectly.

7.9. If the Purchaser has caused matters to be recorded in the Public Records, without the prior written approval of the Seller, either directly or indirectly, and the Purchaser does not close on the purchase of the Property, the Purchaser will be obligated to remove all such matters as expeditiously as possible and the Purchaser further hereby covenants and agrees to indemnify and hold harmless the Seller from any and all loss, liability, costs, claims, demands, damages, actions, causes of action and suits arising out of or in any manner related to such matters. If the Purchaser is entitled to the return of the Deposit, the Deposit will not be returned until such matters have been removed.

8. **Closing Costs and Prorations.**

8.1. The Seller will pay all costs associated with the Phase I environmental study, all recording fees, the cost of all endorsements to the Title Policy requested by the Purchaser, the cost of the Title Binder and the premium for the Title Policy, the documentary stamp tax on the Deed relating to the transfer of the Property and the New Survey. The Purchaser and the Seller each will pay its own attorneys' fees, subject to Section 19.1. Other costs will be paid by the Seller or the Purchaser, as applicable, as specified by other provisions of this Agreement or, if no provision is made in this Agreement, in accordance with local custom.

8.2. The Seller and the Purchaser will prorate the 2009 real property taxes as of the Closing

the apportionment of such taxes will be upon the basis of the actual real estate tax bills for the previous year (November discount) and reprorate subsequent to the Closing Date when the tax bill for the year of Closing is available, based on the November discount. The Parties will request from the Property Appraiser a "cutout" of the parent tract being purchased by the Purchaser, and the proration will be based on the Property actually acquired by the Purchaser.

9. **Representations and Warranties.**

9.1. In order to induce the Purchaser to enter into this Agreement and to complete the transfer of the Property contemplated by this Agreement, the Seller represents and warrants to the Purchaser that, as of the date of this Agreement:

(a) The Seller has been organized and is validly existing under the laws of the State of Florida. The Seller has the company power to enter into this Agreement, to perform its obligations under this Agreement and to complete the transfer of the Property contemplated by this Agreement. The Seller has taken all company action necessary to authorize the execution and delivery of this Agreement, the performance by the Seller of its obligations under this Agreement and the completion of the transfer of the Property contemplated by this Agreement.

(b) This Agreement has been duly executed and delivered by the Seller and constitutes a valid, binding and enforceable obligation of the Seller, subject to bankruptcy and other debtor relief laws.

(c) The execution and delivery of this Agreement by the Seller and the performance by the Seller of its obligations under this Agreement and the completion of the transfer of the Property contemplated by this Agreement will not result in (a) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which the Seller is party or, to the best knowledge of the Seller, by which the Seller or the Property is bound or (b) to the best knowledge of the Seller, a violation of any Legal Requirement or any judgment, order or decree of any court or Governmental Authority that is binding on the Seller.

(d) The Seller has no actual knowledge of any action, suit, proceeding, inquiry or investigation pending by or before any Governmental Authority (a) against or affecting the Property or arising out of the development, construction, financing, operation, maintenance or management of the Property or (b) that would prevent or materially hinder the performance by the Seller of its obligations under this Agreement or the completion of the transfer of the Property contemplated by this Agreement.

(e) Except for consents, approvals, authorizations and filings already completed, the Seller is not required to obtain any consent, approval or authorization from, or to make any filing with, any person (including any Governmental Authority) in connection with, or as a condition to, the execution and delivery of this Agreement, the performance by the Seller of its obligations under this Agreement or the completion of the transfer of the Property contemplated by this Agreement.

(f) The Seller has received no notice of any existing material violation of any Legal Requirement or under any permit or agreement obtained from any Governmental Authorities in regard to the Property.

(g) As of the Effective Date, no assessments for public improvements have been made against the Property that remain unpaid, and the Seller has no knowledge of any contemplated assessments for public improvements against the Property.

(h) The Seller has no employees.

(i) No notices of condemnation have been received by the Seller and the Seller has no actual knowledge of any existing facts or conditions which may result in the issuance of any such notice.

(j) To the Seller's knowledge: (i) there are no Hazardous Materials at the Property; (ii) there has been no release or threat of release of any Hazardous Materials in violation of applicable Legal Requirements; (iii) the Seller has not received notice that the Property is in violation of any Legal Requirements as a result of the presence of (A) stored, leaked or spilled petroleum products, (B) underground storage tanks, (C) an accumulation of rubbish, debris or other solid waste, or because of the presence, release, threat of release, discharge, storage, treatment, generation or disposal of any Hazardous Materials, including without limitation asbestos and items or equipment containing polychlorinated biphenyls (PCBs) in excess of 50 parts per million; (iv) no environmental condition exists on the Property that either (X) requires the owner of the Property to report such condition to any authority or agency of the State of Florida or (Y) requires the owner of the Property to make a notation of such condition in any public records or conveyancing instrument upon the conveyance of the Property; (v) no condition at the Property relating to its environmental compliance exists that is or may be characterized by any Governmental Authority as an actual or potential danger to the environment or public health and (vi) the Seller has received no notice of violation of any Legal Requirement pertaining to the Property.

(k) Douglas C. Bush is the representative of the Seller primarily responsible for overseeing the operation, maintenance and management of the Property.

When the phrase "to the "Seller's actual knowledge" or similar phrase is used with respect to the Seller, it shall (i) be limited to the actual knowledge of Douglas C. Bush only, (ii) be deemed to be the current actual, not implied, constructive or imputed, knowledge of such Person, as of the times expressly indicated only, and without any obligation to make any independent investigation of, or any implied duty to investigate, such matters, or to make any inquiry of any other Persons, or to search or to examine any files, records books, correspondence and the like, and (iii) not be construed to refer to the knowledge of any other Related Entity. There shall be no personal liability on the part of Douglas C. Bush arising out of this Agreement.

9.2. In order to induce the Seller to enter into this Agreement and to complete the transfer of the Property contemplated by this Agreement, the Purchaser represents and warrants to the Seller that, as of the Effective Date and the Closing Date:

(a) The Purchaser has the power to enter into this Agreement, to perform its obligations under this Agreement and to complete the transfer of the Property contemplated by this Agreement. The Purchaser has taken or will take all action necessary to authorize the execution and delivery of this Agreement, the performance by the Purchaser of its obligations under this Agreement and the completion of the transfer of the Property contemplated by this Agreement.

(b) This Agreement has been duly executed and delivered by the Purchaser and constitutes a valid, binding and enforceable obligation of the Purchaser, subject to bankruptcy and other debtor relief laws.

(c) The execution and delivery of this Agreement by the Purchaser, the performance by the Purchaser of its obligations under this Agreement and the completion of the transfer of the Property contemplated by this Agreement will not result in (a) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which the Purchaser is party or by

which the Purchaser is bound or (b) a violation of any Legal Requirement or any judgment, order or decree of any court or Governmental Authority that is binding on the Purchaser.

(d) There is no action, suit, proceeding, inquiry or investigation (including any bankruptcy or other debtor relief proceeding), pending against the Purchaser by or before any court or Governmental Authority that would prevent or hinder the performance by the Purchaser of its obligations under this Agreement or the completion of the transfer of the Property contemplated by this Agreement.

(e) Except for consents, approvals, authorizations and filings already completed prior to the execution of this Agreement by the Purchaser, the Purchaser is not required to obtain any consent, approval or authorization from, or to make any filing with, any Person (including any Governmental Authority) in connection with, or as a condition to, the execution and delivery of this Agreement, the performance by the Purchaser of its obligations under this Agreement or the completion of the transfer of the Property contemplated by this Agreement.

9.3. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IN SECTION 9.1 OR ELSEWHERE IN THIS AGREEMENT, THE SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS, IMPLIED, STATUTORY OR **OTHERWISE (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE OR ACCEPTABILITY FOR THE PURPOSE INTENDED BY THE PURCHASER)** WITH RESPECT TO THE PROPERTY OR ITS CONDITION OR THE SUITABILITY, PHYSICAL CONDITION, COMPLIANCE WITH LEGAL REQUIREMENTS, SOIL CONDITIONS, STORMWATER DETENTION, RETENTION OR DISCHARGE, DRAINAGE, GEOLOGICAL CONDITIONS, HAZARDOUS MATERIALS, ZONING OR PROSPECTS AND THE PURCHASER ACCEPTS SUCH DISCLAIMERS. THE DISCLAIMERS IN THIS SECTION 9.3 SPECIFICALLY EXTEND TO (1) MATTERS RELATING TO HAZARDOUS MATERIALS AND COMPLIANCE WITH ENVIRONMENTAL LAWS, (2) GEOLOGICAL CONDITIONS, INCLUDING SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND STREAMS AND RESERVOIRS AND OTHER UNDERGROUND WATER CONDITIONS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER, EARTHQUAKE FAULTS, AND MATTERS RELATING TO FLOOD PRONE AREAS, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARDS, (3) STORMWATER DETENTION, RETENTION, DISCHARGE OR DRAINAGE, (4) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF UNSTABLE SOILS, CONDITIONS OF SOIL FILL, SUSCEPTIBILITY TO LANDSLIDES, AND THE SUFFICIENCY OF ANY UNDERSHORING, (5) ZONING AND SUBDIVISION AND COMPLIANCE WITH ZONING AND SUBDIVISION LAWS, (6) THE VALUE AND PROFIT POTENTIAL OF THE PROPERTY, (7) PHYSICAL CONDITION OF THE PROPERTY AND (8) COMPLIANCE OF THE PROPERTY WITH ANY LEGAL REQUIREMENTS. THE PURCHASER REPRESENTS AND WARRANTS TO THE SELLER AND THE RELATED ENTITIES THAT THE PURCHASER IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED BUYER OF REAL ESTATE. THE PURCHASER ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER IN SECTION 9.1, THE PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY STATEMENT OF THE SELLER OR ANY OF ITS RELATED ENTITIES OR ANY OFFICER, DIRECTOR, TRUSTEE, AGENT, EMPLOYEE OR OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF THE SELLER OR ANY OF ITS RELATED ENTITIES. THE PURCHASER ACKNOWLEDGES THAT IT HAS CONDUCTED OR WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS AS TO THE CONDITION OF THE PROPERTY AND ALL MATTERS BEARING UPON THE PROPERTY OR THE SUITABILITY, PHYSICAL CONDITION, COMPLIANCE WITH LEGAL REQUIREMENTS, SOIL CONDITIONS, STORMWATER DETENTION, RETENTION OR DISCHARGE, DRAINAGE, GEOLOGICAL CONDITIONS, HAZARDOUS MATERIALS, ZONING AND PROSPECTS AS IT DEEMS NECESSARY TO PROTECT ITS INTERESTS AND DETERMINE THE SUITABILITY OF THE PROPERTY FOR THE PURCHASER'S INTENDED USE. **THE PURCHASER IS ACQUIRING THE PROPERTY "AS IS" AND "WHERE IS" AND SUBJECT TO ALL FAULTS, DEFECTS OR OTHER ADVERSE MATTERS, WHETHER PATENT OR LATENT.** AT THE CLOSING, THE PURCHASER WILL ACCEPT THE PROPERTY SUBJECT TO BOTH PATENT AND LATENT ADVERSE PHYSICAL, ECONOMIC OR ENVIRONMENTAL CONDITIONS OR DEFECTS THAT MAY THEN EXIST, WHETHER OR NOT REVEALED BY THE INSPECTIONS AND INVESTIGATIONS CONDUCTED BY THE PURCHASER. EXCEPT FOR

THE REPRESENTATIONS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE PURCHASER SPECIFICALLY WAIVES AND RELEASES (1) ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE **(INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE OR ACCEPTABILITY FOR THE PURPOSE INTENDED BY THE PURCHASER)** WITH RESPECT TO THE PROPERTY OR THE SUITABILITY, PHYSICAL CONDITION, COMPLIANCE WITH LEGAL REQUIREMENTS, SOIL CONDITIONS, STORMWATER DETENTION, RETENTION OR DISCHARGE, DRAINAGE, GEOLOGICAL CONDITIONS, HAZARDOUS MATERIALS, ZONING AND PROSPECTS AND (2) ALL RIGHTS, REMEDIES, RECOURSE OR OTHER BASIS FOR RECOVERY **(INCLUDING ANY RIGHTS, REMEDIES, RECOURSE OR BASIS FOR RECOVERY BASED ON NEGLIGENCE OR STRICT LIABILITY)** THAT THE PURCHASER WOULD OTHERWISE HAVE AGAINST THE SELLER OR ANY OF ITS RELATED ENTITIES, ANY PERSON WHO HOLDS A DIRECT OR INDIRECT OWNERSHIP INTEREST IN THE SELLER OR ANY RELATED ENTITY AND THE RESPECTIVE OFFICERS, DIRECTORS, TRUSTEES, AGENTS AND EMPLOYEES OF EACH SUCH PERSON IN RESPECT OF THE PROPERTY OR THE SUITABILITY, PHYSICAL CONDITION, COMPLIANCE WITH LEGAL REQUIREMENTS, SOIL CONDITIONS, STORMWATER DETENTION, RETENTION OR DISCHARGE, DRAINAGE, GEOLOGICAL CONDITIONS, HAZARDOUS MATERIALS, ZONING AND PROSPECTS AS IT DEEMS NECESSARY TO PROTECT ITS INTERESTS. THE PURCHASER ACKNOWLEDGES AND AGREES THAT: (i) THE DISCLAIMERS, WAIVERS, RELEASES AND OTHER PROVISIONS SET FORTH IN THIS SECTION 9.3 ARE AN INTEGRAL PART OF THIS AGREEMENT, (ii) THE SELLER WAS MATERIALLY INDUCED TO ENTER INTO THIS AGREEMENT AND SELL THE PROPERTY TO THE PURCHASER IN MATERIAL RELIANCE UPON SUCH DISCLAIMERS, WAIVERS, RELEASES AND OTHER PROVISIONS SET FORTH IN THIS SECTION 9.3, (iii) THE SELLER WOULD NOT HAVE AGREED TO COMPLETE THE SALE ON THE TERMS PROVIDED IN THIS AGREEMENT, WITHOUT THE DISCLAIMERS, WAIVERS, RELEASES AND OTHER PROVISIONS SET FORTH IN THIS SECTION 9.3. THE PROVISIONS OF THIS SECTION 9.3 AND THE DISCLAIMERS, WAIVERS AND RELEASES SET FORTH IN THIS SECTION 9.3 SHALL EXPRESSLY INCLUDE AND BE FOR THE BENEFIT OF ALL RELATED ENTITIES AND ALL RELATED ENTITIES ARE EXPRESSLY THIRD PARTY BENEFICIARIES OF THIS SECTION 9.3.

9.4. The representations and warranties in Sections 9.1 and 9.2 will survive the Closing, but only for a period of six (6) months, and no claim shall be allowed on any such representation or warranty unless notice of the claim and a detailed statement of the basis for the claim is delivered by the claimant to the other party within thirty (30) days following the end of such six (6) month period. Nothing in this Section 9.4 limits the disclaimers, waivers, releases and other provisions in Section 9.3, all of which will survive the Closing without limit as to time.

10. Remedies.

10.1. If the Purchaser fails to purchase the Property in violation of this Agreement or is otherwise in default of this Agreement, then, as its sole and exclusive remedy, the Seller may terminate its obligation to complete the transfer of the Property and, upon so doing, will be entitled to receive the Deposit as liquidated damages. The Seller waives all remedies for the Purchaser's failure to complete the transfer of the Property, except those specifically provided for in this Section 10.1. The Seller and the Purchaser acknowledge that the Seller's damages would be difficult or impossible to ascertain in the event of the Purchaser's default in its obligation to purchase the Property and that the liquidated damages provided for in this Section 10.1 are a reasonable estimate of the Seller's damages. The Seller and the Purchaser acknowledge that the amount of the liquidated damages has been set taking into account various factors, including the potential for change in value of the Property. Nothing in this Section 10.1 limits the Seller's remedies for any breach by the Purchaser of any of its obligations, prohibitions or covenants to be performed after Closing.

10.2. If the Seller fails to perform any of its obligations under this Agreement prior to the Closing Date, and if such failure is not cured within fifteen (15) days after written demand for performance delivered to the Seller by the Purchaser, then the Purchaser may either (a) terminate its

obligation to complete its purchase of the Property or (b) enforce specific performance of the Seller's obligation. Notwithstanding anything in this Section 10.2 to the contrary, the Seller's failure to deliver the Seller Closing Documents on the Closing Date will not entitle the Seller to a notice of default and cure period. In the case of any termination under this Section 10.2, the Purchaser shall be entitled to the return of the Deposit. The remedies provided in this Section 10.2 are exclusive, and the Purchaser expressly waives all other remedies, claims and causes of action (including any right to obtain any other damages from the Seller) for the Seller's failure in performance prior to the Closing Date or for any inaccuracy of the Seller's representations and warranties that is discovered by the Purchaser prior to the Closing Date.

10.3. Except as otherwise specifically provided in this Agreement, all remedies provided for in this Agreement or available as a matter of law (whether at law, in equity, by statute or otherwise) are cumulative and may be exercised concurrently or consecutively, in such order as a party may elect.

11. **Possession.**

The Seller will deliver possession of the Property to the Purchaser on the Closing Date, subject to the Permitted Exceptions.

12. **Phase II.**

The Parties acknowledge that the Property is part of a larger parcel titled in the name of the Seller. The Seller will retain title to approximately 4.553 acres ("Phase II") as shown on the sketch attached as **Schedule 1**. At Closing the Purchaser will deliver to the Seller the document entitled Easement Agreement for Access and Utilities (the "Easement Agreement") described in Section 5.3(a). The form of the Easement Agreement will be prepared by the attorney for the Seller and submitted to the attorney for the Purchaser for approval prior to the Closing Date. The approval of the form of the Easement Agreement will not be unreasonably withheld by either Party. The Easement Agreement will address the following issues and contain the following provisions

12.1. The Easement Agreement will provide a non-exclusive ingress and egress easement from State Road A1A (Beach Boulevard) to Phase II as generally depicted on the sketch attached as **Schedule 1**.

12.2. The Easement Agreement will require that the Purchaser maintain a 20-foot landscape buffer on either side of the easement area that will be left undisturbed except for driveways into the proposed park.

12.3. Phase II will be secured from the Property by a physical barrier to be installed by the Purchaser and to be shown on the amendment to the FDP (see Section 18). When the Seller commences development of Phase II, the Seller will replace the physical barrier with a more appropriate fence that meets the requirements of ordinances in existence at that time.

12.4. The Easement Agreement will grant easements for stormwater runoff, potable water, sanitary sewer, electricity, telephone, cable and any other utilities/services reasonably required for the development of Phase II.

12.5. The Purchaser acknowledges that the development plans for the Property and Phase II include sufficient space on the Property for construction and maintenance of a stormwater detention system to accommodate stormwater runoff from both parcels. The Easement Agreement will include such easements across the Property as are reasonably necessary to provide Phase II with access to and use

of the drainage facilities as currently designed pursuant to existing permits for development of the Property and Phase II.

12.6. The owner of Phase II will have the right to construct a road within the easement area and to landscape the easement area, provide lighting and walkways, including entry monuments on A1A to identify the location of Phase II. Because the Purchaser will be using portions of the easement area for access to the Property, the Purchaser acknowledges that when development of Phase II commences, there may be temporary blockage of access on the easement area during construction of the roadway and placement of utilities, but such temporary blockage will not exceed six (6) months.

12.7. The Parties acknowledge that, prior to any development of Phase II, the Purchaser may construct a temporary road within the easement area for access to the Property. The Purchaser may be solely responsible for the construction and maintenance of such road until completion of construction of improvements on Phase II at which time the owner of Phase II and the owner of the Property will share equally in the maintenance of the roadway improvements, including landscaping and utilities. When the owner of Phase II constructs the roadway in the easement area, such construction will be at the sole cost and expense of the owner of Phase II and will include curb cuts off the roadway providing access to the Property.

13. **Casualty and Condemnation.**

13.1. The Seller will notify the Purchaser within ten (10) days after receiving notice of, or otherwise becoming aware of the commencement of any proceedings for the taking by eminent domain of all or any part of the Property.

13.2. If, prior to the Closing Date, all or a material part of the Property, or access to the Property, is taken by eminent domain or any proceedings for the taking by eminent domain of all or a material part of the Property, or access to the Property, is commenced, then the Purchaser, at its option, may terminate its obligation to complete the transfer of the Property in which case the Deposit will be returned to the Purchaser. If the Purchaser elects to complete the transfer of the Property notwithstanding a taking by eminent domain or proceeding therefor, the Seller will deliver to the Purchaser on the Closing Date, through the closing escrow, all condemnation proceeds previously received by the Seller and an assignment of the Seller's rights with respect to all uncollected condemnation proceeds (in either case, net of costs incurred by the Seller in connection with such proceedings) and such documents as the Purchaser may reasonably request to substitute itself for the Seller in any pending eminent domain proceedings.

14. **Allocation of Liabilities.**

14.1. Subject to Section 14.3, the Seller agrees that, if the Closing occurs, it will indemnify, defend and hold harmless the Purchaser from and against any claim by a third-party and related loss, damage, liability, obligation, suit, cause of action, judgment, settlement, penalty, fine or cost or expense (including fees, costs and disbursements of attorneys and other professionals and court costs both prior to and on appeal) to the extent arising out of or related to any activity or event involving the Property and occurring on or before the Closing Date.

14.2. Subject to Section 14.3, the Purchaser agrees that, if the Closing occurs, it will, to the extent permitted by law, indemnify, defend and hold harmless the Seller from and against any claim by a third-party and related loss, damage, liability, obligation, suit, cause of action, judgment, settlement, penalty, fine or cost or expense (including fees, costs and disbursements of attorneys and other professionals and court costs both prior to and on appeal) to the extent arising out of or related to any activity or event involving the Property and occurring after the Closing Date. Notwithstanding this

Section 14.2, the Seller acknowledges that the Purchaser has no obligation to indemnify the Seller for any conditions that were existing at the time of Closing.

14.3. Neither the Seller nor any Related Entity will be liable under Section 14.1 or 14.2 in respect of Hazardous Materials existing on the Property (including in ground water, soil or soil vapor or in the ambient air over the Property) as of the Closing Date. Further, nothing in Section 14.1 or 14.2 shall modify, alter or affect in any manner the provisions of Sections 9.3 and 9.4 or any other disclaimers, waivers or releases set forth in this Agreement for the benefit of the Seller and the Related Entities, or the representations set forth in Section 9.1 for the benefit of the Purchaser.

15. Brokerage.

The Parties acknowledge and agree that there are no real estate commissions, brokers' fee or other finder fees owed to any Person who may make a claim as a procuring cause to any compensation in connection with this transaction. The Seller agrees to indemnify and defend the Purchaser and hold the Purchaser harmless against any claim for a commission, finder's fee or similar compensation asserted by any Person retained by or claiming through the Seller or its Related Entities in connection with the transfer of the Property or the execution of this Agreement and all related loss, damage, liability, obligation, claim, suit, cause of action, judgment, settlement, penalty, fine or cost or expense (including fees and disbursements of attorneys and other professionals and court costs). The Purchaser agrees, to the extent permitted by law, to indemnify and defend the Seller and hold the Seller harmless against any claim for a commission, finder's fee or similar compensation asserted by any Person retained by or claiming through the Purchaser or its affiliates in connection with the transfer of the Property or the execution of this Agreement and all related loss, damage, liability, obligation, claim, suit, cause of action, judgment, settlement, penalty, fine or cost or expense (including fees and disbursements of attorneys and other professionals and court costs).

16. Consequences of Termination.

If the Purchaser or the Seller terminates its obligation to complete the transfer of the Property under circumstances permitted by this Agreement, neither the Purchaser nor the Seller will have any further liability or obligation under this Agreement, except indemnity obligations under Sections 6.5 and obligations under Section 6.6. Nothing in this Section 16 is intended to limit the obligations of the Escrow Agent or the provisions of this Agreement dealing with the disposition of funds or documents held in escrow following termination of the obligations of the Purchaser or the Seller. If the Purchaser or the Seller terminates its obligation to complete the transfer of the Property, the Purchaser will deliver to the Seller all materials related to the Property provided to the Purchaser by the Seller. Return of materials as required by this Section 16 will not limit the Purchaser's obligations under Section 6.6 in respect of any Due Diligence Documents.

17. Duties of Escrow Agent.

In the event the Escrow Agent is in doubt as to its duties and liabilities under the provisions of this Agreement, the Escrow Agent, in its sole discretion, may continue to hold the Deposit until the Parties mutually agree in writing to disbursement of the Deposit, or until a judgment of a court of competent jurisdiction determines the rights of the Parties to the Deposit, or it may interplead the Deposit with the Clerk of the Circuit Court of St, Johns County, and upon notifying all Parties concerning such action, all liability on the part of the Escrow Agent will fully cease and terminate, except to the extent of accounting for the Deposit delivered out of escrow. In the event of any suit between the Purchaser and the Seller wherein the Escrow Agent is made a Party by virtue of acting as such Escrow Agent pursuant to this Agreement, or in the event of any suit wherein the Escrow Agent interpleads the Deposit, the Escrow

Agent will be entitled to recover reasonable attorneys' fees and costs incurred, such fees and costs to be charged and assessed as court costs and paid from the Deposit. Both Parties agree that the Escrow Agent will not be liable to any Party or person whomsoever for misdelivery to the Purchaser or the Seller of the Deposit, unless such misdelivery is due to willful breach of this Agreement or gross negligence on the part of the Escrow Agent, nor will the Escrow Agent be liable for the failure of any financial institution in which the Deposit is placed. The Seller and the Purchaser agree that the status of the Seller's counsel as the Escrow Agent under this Agreement does not disqualify such law firm from representing the Seller in connection with this transaction and in any dispute that may arise between the Purchaser and the Seller concerning this transaction, including any dispute or controversy with respect to the Deposit. It will not be necessary for the Escrow Agent to execute this Agreement or any amendments to this Agreement. By delivery to and acceptance by the Escrow Agent of a fully executed copy of this Agreement along with the Deposit, the Escrow Agent agrees to be bound by the terms and provisions of this Agreement specifically relating to the Deposit. However, no amendments to this Agreement will adversely affect or impair the rights or duties, or increase the liability of the Escrow Agent hereunder without the Escrow Agent's prior written approval.

18. **Development of the Property.**

It is the present intention of the Purchaser to create a public park on the Property and to do so after Closing, the Purchaser will use its reasonable best faith efforts to amend its Comprehensive Plan and Land Development Regulations so that the Property can be rezoned as Parks and Recreation. A conceptual plan of the Park is attached as **Schedule 5**. The Seller consents to such amendments to the Comprehensive Plan and Land Development Regulations and to the conceptual plan. The Purchaser shall propose to its City Commission such amendments to its outdoor advertising ordinances so as to permit an entrance sign in accordance with the sketch attached as **Schedule 7** to be placed in the access easement.

The obligation of the Seller under this Agreement is expressly contingent on (a) the Land Development Regulations for the City of St. Augustine Beach being amended to allow an entrance sign as shown on the sketch attached as **Schedule 7** and (b) the Final Development Permit and the PUD Approval for the Property and Phase II being amended to (i) provide for the construction of thirty (30) condominium units on Phase II and an extension of the Final Development Permit to seven (7) years from the Closing Date and (ii) allow the development of a park on the Property. The City intends to cause the Comprehensive Plan to be amended to allow development of the Property as a park. The Parties acknowledge that the amendment of the Comprehensive Plan will not be completed prior to the Closing Date.

If the amendments to the Land Development Regulations and/or the Final Development Permit and the PUD described in the previous paragraph are not finalized by the Closing Date, the Seller will have the option to (A) extend the Closing Date for a reasonable period of time to allow for completion of the amendment process or (B) terminate this Agreement and the Purchaser will be entitled to a return of the Deposit.

Notwithstanding any limitations set forth elsewhere in this Agreement, the provisions of this Section 18 will survive Closing.

19. **Miscellaneous.**

19.1. If litigation is commenced by the Purchaser or the Seller against the other Party in connection with this Agreement or the Property, the Party prevailing in the litigation will be entitled to collect from the other Party the expense (including fees, costs and disbursements of attorneys and other

professionals and court costs) incurred in connection with the litigation, both prior to and during any appellate proceedings.

19.2. All notices, demands, requests and other communications required or permitted hereunder (a "Notice") must be in writing and will be deemed to have been duly given (a) upon the date of the Notice if delivered personally, or by facsimile or electronic mail provided that a duplicate copy is promptly mailed by U.S. Mail, or by overnight courier which provides a receipt such as Federal Express; or (b) upon the date following the date of the Notice if delivered by overnight courier which provides a receipt, such as Federal Express. In each case the Notice must have adequate postage prepaid, addressed to the appropriate Party and marked to a particular individual's attention as provided in this Section 19.2. The Notice will be effective upon being so deposited, but the time period in which a response to any Notice must be given or any action taken with respect to the Notice will commence to run from the date of receipt of the Notice by the addressee of the Notice as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability of the United States Postal Service or air courier service to deliver because of a changed address of which no Notice was given will be deemed to be the receipt of the Notice sent as of the Business Day following deposit. If either Party changes their address, that Party must notify the other Party of such change by Notice delivered in accordance with this Section 19.2. The initial addresses of the Parties is as follows:

(a) Seller:

St. Augustine Development Associates, L.L.C.
753 E. Glenn Avenue
P.O. Box 1088
Auburn, AL 36831
Attn: Michael V. Shannon
Telephone: 334-821-0928
Facsimile: 334-821-0672
Email: jyoung@sswce.com

Copies to:

J. Lindsay Builder, Jr., Esq.
Burr & Forman LLP
369 N. New York Avenue, 3rd Floor
Winter Park, FL 32789
Telephone: 407-647-7670
Facsimile: 407-740-7063
E-mail: Lindsay.Builder@burr.com

(b) Purchaser:

City of St. Augustine Beach
2200 A1A South
St. Augustine, FL 32080
Attn: Max Royle, City Manager
Telephone: 904-471-2122
Facsimile: 904-471-4108
Email: sabadmin@cityofsab.org

(c) Copies to:

Geoffrey B. Dobson, Esq.
Geoffrey B. Dobson, P.A.
Post Office Box 3588
St. Augustine, FL 32085
Courier deliveries may be delivered to
the City Attorney at
City of St. Augustine Beach
2200 A1A South
St. Augustine Beach, FL 32080
Telephone: 904-824-9032
Facsimile: 904-824-9236
Email: dblaw@aug.com

(d) Escrow Agent and Closing Agent:

Burr & Forman LLP
369 N. New York Avenue, 3rd Floor
Winter Park, Florida 32789
Telephone: 407-647-4455
Facsimile: 407-740-7063

19.3. This Agreement will be binding upon and will inure to the benefit of the Purchaser and the Seller and their respective successors and permitted assigns. Any indemnity in favor of a Party or its Related Entities also will benefit each person who holds a direct or indirect ownership interest in such Party or affiliate and the respective officers, directors, trustees, agents, employees and affiliates of such Party or affiliate and such owners, and all such persons are third-party beneficiaries of this Agreement to the extent of their rights to indemnity under the related provision and may enforce that provision against the Purchaser or the Seller, as applicable. Neither the Escrow Agent nor the Closing Agent is a third-party beneficiary of this Agreement, nor may the Escrow Agent or the Closing Agent enforce this Agreement or any obligation under this Agreement, except to the extent the Escrow Agent enforces the provisions of Section 17.

19.4. The Section headings contained in this Agreement are for convenience of reference only and are not intended to delineate or limit the meaning of any provision of this Agreement or be considered in construing or interpreting the provisions of this Agreement.

19.5. This Agreement may be executed in any number of counterparts, including facsimile and electronic mail signatures, each of which will be deemed an original and all of which, taken together, will constitute one instrument. The Purchaser and the Seller may execute different counterparts of this Agreement and, if they do so, the signature pages from the different counterparts may be combined to provide one integrated document.

19.6. This Agreement embodies the entire agreement and understanding between the Purchaser and the Seller with respect to its subject matter and supersedes all prior agreements and understandings, written and oral, between the Purchaser and the Seller related to that subject matter, including any letter of intent. This Agreement and the obligations of the Parties may be amended, waived and discharged only by an instrument in writing executed by the Party against which enforcement of the amendment, waiver or discharge is sought. Joinder of the Escrow Agent and the Closing Agent will not be necessary to make any amendment, waiver or discharge effective between the Purchaser and the Seller.

19.7. The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other

circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

19.8. Neither the Purchaser nor the Seller may assign this Agreement or its rights under this Agreement without the approval of the other Party, which approval shall not be unreasonably withheld. In the event that the Seller consents to any assignment requested by the Purchaser, the Purchaser shall continue to remain fully liable pursuant to this Agreement as totally and completely as if such assignment had not occurred, such undertaking by the Purchaser to survive any such assignment and Closing of the transaction contemplated by this Agreement.

19.9. This Agreement will be governed by the laws of the State of Florida, without giving effect to principles of conflicts of law. Venue in the case of any dispute related to this Agreement shall be exclusively in St. Johns County, Florida.

19.10. No Related Entity, nor any person who holds a direct or indirect ownership interest in the Seller or any Related Entity, nor any of the respective officers, directors, trustees, agents and employees of any such person shall have any liability, directly or indirectly, under or in connection with this Agreement, any document or certificate executed in connection with this Agreement (including the Seller Closing Documents) or any amendment of any of the foregoing made at any time, whether prior to, contemporaneous with or after this Agreement. The Purchaser and its successors and assigns, as well as all other persons, may look solely to the Seller's assets for the payment of any claim or any performance, and the Purchaser, on behalf of itself and its successors and assigns, hereby waives any and all other claims, demands or causes of action.

19.11. THE PARTIES DO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE ANY RIGHT ANY PARTY MAY HAVE TO A JURY TRIAL IN EACH AND EVERY JURISDICTION IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

[signatures on separate pages]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Seller on the date set forth beneath its signature block and is intended to be effective as of the Effective Date.

SELLER:

ST. AUGUSTINE DEVELOPMENT ASSOCIATES, L.L.C.
a Florida limited liability company

By: _____
Michael V. Shannon, as a Manager
Bob Post - Vice President, manager

Date: March 3, 2009

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Purchaser on the date set forth beneath its signature block and is intended to be effective as of the Effective Date.

PURCHASER:

CITY OF ST. AUGUSTINE BEACH, FLORIDA
a Florida municipal corporation

By:_____
Print name: Frank Charles
Title: Mayor - Commissioner

Attest:

By:_____
Title: City Manager

Date: March 19, 2009