



PORT ORANGE CITY COUNCIL AND
TOWN CENTER CRA JOINT SPECIAL MEETING

Council Chambers

Tuesday, August 20, 2019 @ 5:00 PM

SPECIAL MEETING AGENDA

Pursuant to Section 3.06 of the Charter of the City of Port Orange, the Mayor has called a **Joint Special Meeting** of the City Council and Town Center CRA Board to be held for the following purposes:

OPENING

1. Silent Invocation
2. Pledge of Allegiance
3. Roll Call
4. Riverwalk summary overview for POTC CRA and City Council meeting

ACTION ITEMS

5. First Reading: Ordinance No. 2019-30 – First Amendment to the Riverwalk Amended and Restated Master Development Agreement (Case No. 19-40000004)
6. License Agreement for Temporary Off-Site Parking Located at 3571 Ridgewood Avenue (Cardwell Funeral Home Property)
7. First Amendment to the Property Exchange and Escrow Agreement (Cardwell Funeral Home Property)
8. First Amendment to the Economic Development Incentive Agreement
9. Parking Easement Agreement Between Halifax River Partners, LLC and City of Port Orange

ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/20/2019

Consent item: No

SUBJECT: (4) Riverwalk summary overview for POTC CRA and City Council meeting

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION:

SUMMARY: Staff will present an overview of the agenda items associated with the Halifax River Partners LLC., proposed First Amendment to the Riverwalk Amended and Restated Master Development Agreement (MDA). The summary presentation will cover the CRA and Council agenda items and describe the interrelation between the proposed MDA Amendment and other development-related agreements and items. The overview discussion is intended to provide a general understanding of the developer's proposal for Council and the public. Detailed discussion, public comment and vote (only for the MDA Amendment) on each specific agenda item would occur after the items are opened for discussion by formal procedure within the CRA or Council meeting.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

Robin Fenwick	Created/Initiated - 8/8/2019
Tim Burman	Approved - 8/8/2019
Jake Johansson	Approved - 8/9/2019
Robin Fenwick	Final Approval - 8/9/2019



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/20/2019

Consent item: No

SUBJECT: (5) First Reading: Ordinance No. 2019-30 – First Amendment to the Riverwalk Amended and Restated Master Development Agreement (Case No. 19-40000004)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: CRA - Move to approve Ordinance No. 2019-30, approving the First Amendment to the Riverwalk Amended and Restated Master Development Agreement, as recommended by the Planning Commission.

City Council - Move to approve Ordinance No. 2019-30, approving the First Amendment to the Riverwalk Amended and Restated Master Development Agreement, as recommended by the Planning Commission and Port Orange Town Center CRA.

SUMMARY: Planning Commission Action (07/25/19): Recommended Approval, subject to limiting the City Manager's authority to extend the deadline dates in the MDA as amended up to 60-days.

The property owner, Halifax River Partners, LLC (HRP), is requesting approval of the proposed First Amendment to the Riverwalk Amended and Restated Master Development Agreement (MDA) to defer the recording of the subdivision plat for the project area and certain Phase 1 site improvements until September 21, 2020, and extend the completion date for the 23-foot-wide public trail and park and associated site improvements (landscape, benches, light poles, stormwater, etc.) to November 20, 2019, if needed. The current MDA approved in 2016 requires the subdivision plat to subdivide the project area into 9 lots to be recorded, all Phase 1 site improvements (except the restaurant on the point), and the 23-foot-wide public trail and park and associated site improvements (landscape, benches, light poles, stormwater, etc.), to be completed by September 20, 2019.

At their meeting, the Planning Commission recommended that language proposed in the MDA to allow the City Manager the authority to extend the deadline dates in the MDA as amended for delays as determined by the City Manager and Developer be limited to 60-days. Therefore, instead of including language to allow a 60-day extension, the First Amendment to the Riverwalk Amended and Restated Master Development Agreement has been revised to extend the completion date for the public trail and park to November 20, 2019, if needed. According to the developer, there may be the need to extend the completion date for the public trail and park due to an anticipated delivery delay in materials to complete the public trail. The proposed First Amendment (see Exhibit 1) provides the following:

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1. Defer the date the 9-lot subdivision plat for the project area is to be recorded to September 21, 2020;
 2. Defer the construction of the permanent parking lot and associated site improvements, left-turn lanes on Ridgewood Avenue, 12' sidewalk along Ridgewood Avenue in Phase 1 to September 21, 2020;
 3. Provide the ability to develop temporary parking on the Cardwell Funeral Home parcel or within the MDA project area to re-open the 38-slip marina, with temporary parking to be removed by September 21, 2020;
 4. Dedicate a parking easement in favor of the City over the project area property owned by HRP west of the Public Trail and Park; and
 5. Extend the completion date for the public trail and park to November 20, 2019, if needed.

There are no specific criteria to be used as a base for staff recommendations for the requested deviations from the timeline in the original Riverwalk Amended and Restated Master Development Agreement. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.) The proposed timing to complete the recording of the plat, Public Trail and Park and Phase 1 site improvements is different than originally planned in the Riverwalk Amended and Restated MDA and require Planning Commission, CRA and Council direction on whether the specific deviations to the completion dates will be acceptable.

In addition to the proposed amendment to the MDA, there are additional associated documents that require City Council approval. If one of the associated documents is not approved or modified, it could require modifications to the MDA amendment. Amendments to following documents will be considered prior to or in conjunction with the proposed MDA amendment.

1. First Amendment to the Economic Development Incentive Agreement;
2. First Amendment to the Exchange and Escrow Agreement for the Cardwell Funeral Home Property;
3. Parking Easement for parking on Halifax River Partners, LLC Property between City of Port Orange and HRP; and
4. License Agreement to allow temporary parking on the Cardwell Funeral Home property for the 39 slip marina, is reopened.

The staff report is attached for more detail.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Ord. No. 2019-30	Ord. No. 2019-30.pdf
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2.	Ord. No. 2019-30 Exhibit 1 - First Amendment to the Riverwalk Amended and Restated MDA	First Amendment to the Riverwalk Amended and Restated MDA.DOC
3.	Staff Report	Riverwalk PCD 1st Amendment - Staff rpt.pdf

Robin Fenwick	Created/Initiated - 8/6/2019
Tim Burman	Approved - 8/6/2019
Shannon Balmer	Approved - 8/8/2019
Jake Johansson	Approved - 8/9/2019
Robin Fenwick	Final Approval - 8/9/2019

ORDINANCE NO. 2019-30

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE RIVERWALK AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (MDA); PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to further amend the Riverwalk Amended and Restated Master Development Agreement (“MDA”) recorded in Official Records Book 7306, Page 1188, Public Records of Volusia County, Florida; and

WHEREAS, the City and Developer desire to enter into the First Amendment to the Riverwalk Amended and Restated Master Development Agreement (hereinafter referred to as the (“First Amendment”)); and

WHEREAS, the Developer submitted a request to the Planning Commission to approve the First Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by unanimous vote recommended approval of the proposed First Amendment; and

WHEREAS, the City Council has approved by a majority vote of the members present the approval of the First Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange does hereby approve the First Amendment to the Riverwalk Amended and Restated Master Development Agreement (attached hereto as **Exhibit “1”**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said First Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on second reading on the day of _____, 2019

Passed and adopted on second and final reading on the day of _____, 2019

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Prepared By:

Jeffrey P. Brock, Esq
Smith Bigman Brock, P.A.
444 Seabreeze Blvd. – Suite 900
Daytona Beach, FL 32118

Return Recorded Document to:

Records Clerk
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

**FIRST AMENDMENT TO THE RIVERWALK AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE RIVERWALK AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (the “First Amendment”), is entered into by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company, (“Owner/Developer”) Josif Atanasoski, Manager, having a mailing address of 1800 No. U.S. Highway 1, Ormond Beach, FL 32174 and the CITY OF PORT ORANGE, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, FL 32129 (the “City”), (collectively the “Parties”), who hereby agree and covenant as follows:

WHEREAS, the Parties previously entered into that certain Riverwalk Amended and Restated Master Development Agreement dated September 20, 2016 and recorded in Official Records Book 7306, Page 1188, Public Records of Volusia County, Florida (the “MDA”); and

WHEREAS, the former Riverboat Restaurant was destroyed by Hurricane Matthew in 2016 and is no longer in operation or part of the project area; and

WHEREAS, the Parties desire to amend the MDA as more particularly set forth below.

NOW THEREFORE, the Parties hereby agree as follows;

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Paragraph 4 of the MDA, “Development Agreement and Conceptual Plan” is hereby amended to revise subparagraph “d.” to read as follows:
 - d. In the event Owner/Developer is unable to complete the PTP by November 20, 2019, then Owner/Developer shall record a deed dedicating an additional five (5) feet on either side of the right or way for Halifax Drive to provide a fifty (5) foot right of way between Ocean Avenue

and the property at 3738 Halifax Drive, unless otherwise approved by council. This provision shall survive and shall not terminate in the event that this Agreement expires.

3. Paragraph 6 of the MDA, "Phasing" is hereby amended to delete subparagraph "a." in its entirety.

4. Paragraph 6 of the MDA, "Phasing" is hereby amended to revise subparagraph "g." to read as follows:

g. Phase I will consist of the improvements set forth in this subsection "g.". The improvements listed herein in sub-subsections iii, iv, v, and viii shall be completed by September 21, 2019 and the remaining improvements listed herein shall be completed by November 20, 2020

- i. All the improvements on Lot 4 of the proposed subdivision plat referenced herein, also referred to as the "point", including a restaurant and the associated site improvements, extending into the intracoastal river within the mixed-use area except for the 2 multi-purpose marina buildings and the 58-slip marina.
- ii. The shared permanent parking facilities as shown on the CDP, located on Lot 9 of the proposed subdivision plat.
- iii. The PTP, including landscaping within the utility corridor, lights, stormwater, benches, trash receptacles, and other amenities.
- iv. Off-site work on the portion of Ocean Avenue to complete the PTP to the north side of the Ocean Avenue right-of-way where the PTP continues into the City's Riverwalk Park.
- v. Necessary utilities to service all proposed lots indicated on the Conceptual Replat, incorporated herein by reference on the CDP (Exhibit "E") and utilities to maintain service to off-site property currently served with laterals on the Project Area Property.
- vi. All stormwater improvements serving all phases except for structures and dry retention in the two condominium tower parking areas.
- vii. Landscaping, except around the condominium tower footprints and condominium parking areas.
- viii. Demolition of Cardwell structures, including the building and all subsurface structures and soils.
- ix. Temporary parking for the existing marina as described in this amendment
- x. An Eight (8) foot pedestrian pathway on Lot 4. the subject of the pedestrian easement referenced in subsection 3.e.x, of this Agreement and as generally shown on Exhibit 1. attached hereto and made apart hereof by reference.

5. Paragraph 7 of the MDA, "Subdivision" is hereby amended to revise subparagraph "f." to read as follows:

f. Owner/Developer shall record the plat as referenced herein and approved by the City of Port Orange on or before September 21, 2020.

6. Paragraph 12 of the MDA, "Bonding" is hereby amended to revise subparagraph "b." to read as follows:

b. Prior to the close of escrow, a separate bond, letter of credit or cash deposit shall be provided by the Owner/Developer to the City, to be held in escrow, guaranteeing the completion of the demolition and construction of the Public Trail and Park (PTP) and associated PTP utilities, stormwater and landscaping as set forth on plans stamped "Approved for Construction," in the amount of two (2) years of the net income for the Cardwell property along with a timing requirement that the PTP and the associated PTP improvements shall be complete within 14 months from the commencement of construction. The remaining Phase I improvements, as set forth in paragraph 6.g. of the Agreement, as amended herein, shall be complete on or before September 21, 2020. If construction of PTP and the associated improvements, as set forth in paragraph 6.g. of the Agreement, specifically sub-subparagraphs iii., iv., v., and viii, are not complete on or before November 20, 2019, then Owner/Developer shall forfeit the bond to the City, said bond being the amount of two times the annual income of the Cardwell property.

7. Paragraph 18 of the MDA, "Parking" is hereby amended to revise subparagraph "d." to read as follows:

d. Prior to the issuance of a certificate of occupancy for any use in Phase I or September 21, 2020, whichever date is earlier, Owner/Developer shall complete the permanent parking facilities as required in subparagraph 6.g as set forth in the Agreement and as otherwise required by the City's LDC.

8. Paragraph 18 of the MDA, "Parking: is hereby amended to revise subparagraph, "e.", to read as follows:

e. The Owner/Developer may use the Cardwell Parcel to comply with the parking requirement if the former 39 slip marina is re-opened. Prior to use of this parcel for parking, the demolition of Cardwell structures, including the building and all subsurface structures and soils shall be completed, in accordance with the City's LDC. If the City still owns the parcel at the time the marina is re-opened and parking is required, a license agreement, approved by the City Council, between the City, Owner/Developer, and marina tenant is required prior to use of Cardwell parcel for parking. The temporary parking on this parcel or in the Project Area for the Marina shall comply with the following.

- i. The temporary parking lot shall be constructed in conformance with the standards set forth herein and as approved by the City, requiring a paved, stabilized shell or gravel parking lot with stormwater facilities, and an ADA compliant walkway from the temporary parking to the marina facilities as shown on the approved subdivision construction plans.
- ii. Landscaping for the temporary parking facilities, as required by the LDC and this Agreement shall not be required during the period of time set forth in this section.

- iii. Temporary lighting for the temporary parking area and designated pedestrian crosswalk and pathway to the marina shall be required

The allowance of the temporary parking may require a site plan or building permit and shall expire upon completion of permanent parking as required in subparagraph 6.g. of this Agreement or September 21, 2020, whichever is earlier.

9. Paragraph 21 of the MDA, "Effective Date/Expiration" is hereby amended to revise subparagraph (a) to read as follows:

- a. The effective date of this Agreement shall be upon the recording of the Agreement, and the recording shall occur within 30 days of the City Council approval. If all PTP improvements and associated PTP utilities, stormwater drainage, and landscaping are not commenced by September 20, 2018 and completed by November 20, 2019, then this Agreement shall expire, except as amended by city council. The city council may consider the Developer/Owner's timely request for an ordinance amendment to extend the time for expiration of this Agreement. The remaining Phase I improvements, as set forth in paragraph 6.g. of the Agreement, including but not limited to the completion of the restaurant, shall be completed on or before Four (4) years from the date of approval of this Agreement, said date being September 20, 2020. The Owner/Developer, their successors or assigns, shall not be relieved of the prior obligations to develop infrastructure, landscaping, or any other common features required to serve the existing marina as provided in Paragraph 6.a. of this Agreement. This obligation shall survive and shall not terminate in the event that this Agreement expires. Once construction commences on the PTP and associated PTP improvements all construction activities associated with the PTP and the associated PTP improvements shall be completed within twelve (12) months.

10. Prior to the commencement of construction of the Phase I paved parking lot the Developer/Owner shall allow the City to use the lands west of the PTP for overflow parking during special City events. The City and Developer shall enter into a Parking Easement Agreement memorializing the terms and conditions for this use.

11. This First Amendment shall be effective upon recording in the public records of Volusia County, Florida.

12. All the provisions of the MDA not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this First Amendment. The MDA shall survive the execution of this First Amendment.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Riverwalk Amended and Restated Master Development Agreement, by and through their duly authorized representatives, on the respective dates shown below.

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____,
Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, CMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ and ROBIN L. FENWICK, Mayor and City Clerk, respectively, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

HALIFAX RIVER PARTNERS, LLC

WITNESSES:

Signature

Printed Name

Signature

Printed Name

By: _____
Josif Atanasoski, Manager

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large

My Commission Expires:



STAFF REPORT

First Amendment to the Riverwalk Amended and Restated Master Development Agreement CASE NO. 19-40000004

Request:	Approve the First Amendment to the Riverwalk Amended and Restated Master Development Agreement (MDA)
Location:	East of Ridgewood Avenue, south of Ocean Avenue, north of Herbert Street (see Figure 1).
Owners:	Halifax River Partners, LLC; Port Orange Town Center Community Redevelopment Agency; City of Port Orange
Applicant:	Josif Atanasoski, Manager, Halifax River Partners, LLC
Planning Commission:	Recommended Approval (July 25, 2019), subject to limiting the City Manager's authority to extend the deadline dates in the MDA as amended for 60-days.
Staff Recommendation:	Approval
Staff Contact:	Tim Burman, Community Development Director (386) 506-5675
City Council:	August 20, 2019

DISCUSSION

The proposed First Amendment to the Riverwalk Amended and Restated Master Development Agreement (MDA) is to defer the recording of the subdivision plat for the project area and certain Phase 1 site improvements until September 21, 2020, and extend the completion date for the 23-foot-wide public trail and park and associated site improvements (landscape, benches, light poles, stormwater, etc.), burying of the FPL power lines, and underground utilities improvements in the former Halifax Drive right-of-way to November 20, 2019.

Figure 1. Location Map



In addition to the proposed amendment to the MDA, there are additional associated documents that may require City Council approval. If one of the associated documents is not approved or modified, it could require modifications to the MDA amendment. Amendments to following documents are anticipated to be considered prior to or in conjunction with the proposed MDA amendment. Some of the items require Planning Commission and the Port Orange Town Center CRA recommendation and some items only require Council approval.

- First Amendment to the Economic Development Incentive Agreement;
- First Amendment to the Exchange and Escrow Agreement for the Cardwell Funeral Home property;
- Temporary Parking Easement Agreement for Special Event Parking on Halifax River Partners, LLC Property; and
- License Agreement to allow temporary parking on the Cardwell Funeral Home property.

The Riverwalk Amended and Restated Master Development Agreement (MDA) was approved by the City Council in September 2016 and established a phasing plan along with specific timeframes for completion of the Public Trail and Park, recording of the subdivision plat for the MDA project area, and site and subdivision improvements for Phase 1 of the Riverwalk development, and completion of the restaurant on the point. The project is still expected to be completed in five phases (Figure 2), with each phase being required to have adequate access and infrastructure to support development. The majority of the site improvements (utilities, stormwater landscape buffers, and improved public trail), restaurant on the point property, and demolition of the Cardwell Funeral Home are to be completed with Phase 1. The residential condominium buildings will be constructed in Phases 2 and 3 and additional marina boat slips will be constructed in Phases 4 and 5.

In 2016, Phase 1 also included the Captain Daddy's Riverboat Restaurant, 38-slip marina and parking for these uses. However, due to damage caused by Hurricane Matthew in October 2016, the riverboat restaurant was removed, and the marina closed in 2018. At this time, neither of these uses have been reopened.

Figure 2. Original 2016 Approved Phasing Map



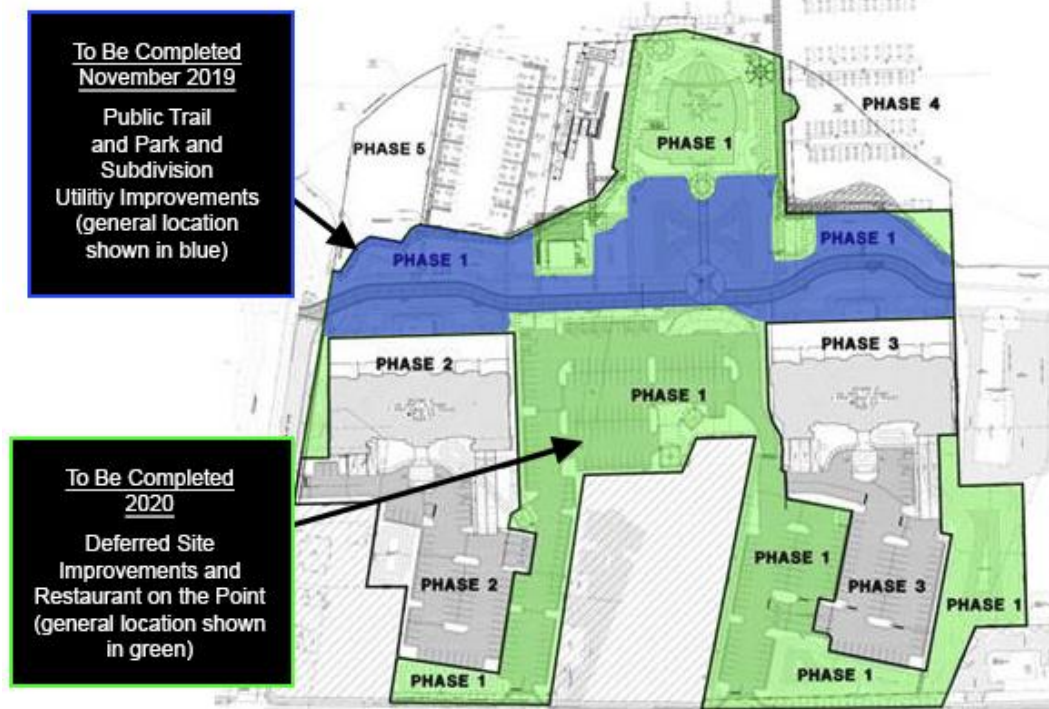
According to the applicant, the intent of the proposed First Amendment is to defer the recording of the subdivision plat for the project area and certain Phase 1 site improvements until September 21, 2020, and extend the completion date for the 23-foot-wide public trail and park and associated site improvements (landscape, benches, light poles, stormwater, etc.), burying of the FPL power lines, and underground utilities improvements in the former Halifax Drive right-of-way to November 20, 2019. The current MDA requires the subdivision plat to subdivide the project area into 9 lots to be recorded and all Phase 1 site improvements, except the restaurant on the point, and the 23-foot-wide public trail and park and associated site improvements (landscape, benches, light poles, stormwater, etc.) to be completed by September 20, 2019. The applicant indicated that the modifications to the MDA are to accommodate the development of the project, but due to unforeseen conditions, the developer of the project is requesting to defer some of the Phase 1 requirements until September 2020. The Phase 1 improvements being requested to be deferred to September 2020 are to support the private development proposed on the point property and the developer anticipates development of the restaurant on the point in 2020. Therefore, the applicant is requesting to defer certain Phase 1 site improvements (parking lots, turn lanes, stormwater, landscaping, and sidewalks) required in the original MDA to be completed by September 20, 2019 to now be completed by September 21, 2020.

There are no specific criteria to be used as a base for staff recommendations for the requested deviations from the timeline in the original Riverwalk Amended and Restated Master Development Agreement. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.) The proposed timing to complete the recording of the plat, Public Trail and Park and Phase 1 site improvements is different than originally planned in the Riverwalk Amended and Restated MDA and will require Planning Commission and Council direction on whether the specific deviations to the completion dates will be acceptable.

If approved, the proposed First Amendment will extend the completion date for the Public Trail and Park to November 20, 2019, if needed, and defer the completion date for recording of the subdivision plat and completion and acceptance of the certain Phase 1 site improvements that are required for operation of the proposed restaurant on the point to September 21, 2020 (Figure 3). The proposed First Amendment (see Exhibit 1) provides the following:

- Defer the date the 9-lot subdivision plat for the project area is to be recorded from September 20, 2019 to September 21, 2020;
- Defer the construction of the permanent parking lot and associated stormwater and installation of landscape buffers, landscape islands in the parking lot, sidewalks and irrigation on Lot 4 and Lot 9 in Phase 1 to September 21, 2020;
- Defer the completion of the two (2) left-turn lanes on Ridgewood Avenue in Phase 1 to September 21, 2020;
- Defer the construction of a 12' sidewalk along Ridgewood Avenue to September 21, 2020;
- Provide the developer the ability to develop temporary parking on the Cardwell Parcel or within the MDA project area to re-open the 38-slip marina, with temporary parking to be removed by September 21, 2020; and
- Extend the completion date for the public trail and park to November 20, 2019, if needed.

Figure 3. General location of items to be deferred to November 2019 and September 2020



As part of the proposed First Amendment to the Riverwalk Amended and Restated Master Development Agreement (MDA), the property owner has agreed to allow the City to use the lands west of the public trail for overflow parking during approved City special events. The City and Developer will need to enter into a Parking Easement Agreement memorializing the terms and conditions for this use.

The Staff Development Review Committee (SDRC) has reviewed the proposed amendment for compliance with the Land Development Code.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject property is designated Planned Community-Riverwalk on the City's Future Land Use (FLU) Map. The original MDA was found to be consistent with the City's Comprehensive Plan when it was approved in 2016. The proposed amendment does not change the FLU designation for the property and is consistent with the general intent of the Comprehensive Plan.

PUBLIC NOTICE

On June 28, 2019, yellow public notice signs were posted on the property to notify the public of the requested amendment. As of July 19, staff has not received and inquires.

RECOMMENDATION

Staff recommends **approval** of the First Amendment to the Riverwalk Amended and Restated Master Development Agreement.

ATTACHMENT

Exhibit 1 – See Ordinance Exhibit

Based on the Planning Commission's recommendation to limit the extension to 60 days, the First Amendment to the Riverwalk Amended and Restated Master Development Agreement (MDA) has been revised to extend the completion date for the Public Trail and Park to November 20, 2019, if needed. The staff report has been revised since the July 25, 2019, Planning Commission meeting to incorporate changes to the proposed First Amendment to the Riverwalk Amended and Restated MDA based on the Planning Commission's recommendation to limit the City Manager's authority to extend the deadline dates in the MDA as amended for 60-days. The First Amendment to the Riverwalk Amended and Restated MDA has been revised to extend the completion date for the Public Trail and Park to November 20, 2019, to incorporate the 60-day extension.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/20/2019

Consent item: No

SUBJECT: (6) License Agreement for Temporary Off-Site Parking Located at 3571 Ridgewood Avenue (Cardwell Funeral Home Property)

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Discuss the License Agreement for Temporary Off-Site Parking Located at 3571 Ridgewood Avenue (Cardwell Funeral Home Property)

SUMMARY:

Staff has received a License Agreement application for 3571 Ridgewood Avenue, CRA owned property located at the east side of Ridgewood Avenue, south of Ocean Avenue. Halifax River Partners, LLC has made this application in connection with a possible proposal for site modifications and renovation of the existing parking lot at 3571 Ridgewood Avenue to serve as a parking if the 39-slip marina is re-opened to the public. The applicant proposes that if off-site parking is needed to re-open the 39-slip marina, a development permit application to reestablish parking at 3571 Ridgewood Avenue would be submitted for staff review, if the license agreement is approved. The temporary parking would be required to be developed according to the Land Development Code and First Amendment to the Riverwalk Amended and Restated Master Development Agreement.

The applicant has been advised of applicable requirements and the License Agreement review process. The License Agreement has the effect of requiring the applicant to maintain, and if necessary, replace these improvements per the accepted standard construction requirements of the City. Further, should the applicant fail to abide by this requirement, it provides the City with the ability to take necessary corrective actions at the expense of the applicant. City liability concerns are addressed by an indemnity statement in the License Agreement document.

The License Agreement would only be good until September 21, 2020. According to the First Amendment to the Riverwalk Amended and Restated Master Development Agreement, the allowance to use temporary parking expires upon completion of permanent parking, or September 21, 2020, whichever is earlier.

Project No.: Funding Account No.:

Presenter: Tim Burman, Margaret Roberts, HRP

ATTACHMENTS:

1.	Cardwell License Agreement Draft	Cardwell License Agreement Draft.pdf
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Tim Burman	Created/Initiated - 8/7/2019
Shannon Balmer	Approved - 8/8/2019
Jake Johansson	Approved - 8/9/2019
Robin Fenwick	Final Approval - 8/9/2019

This Document Prepared by:

Shannon K. Balmer
Assistant City Attorney
1000 City Center Circle
Port Orange, FL 32129

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this ____ day of _____, 2019, by and between the COMMUNITY REDEVELOPEMENT AGENCY FOR PORT ORANGE TOWN CENTER, (CRA), a public body corporate and politic established pursuant to 163.356, Florida Statutes, of the County of Volusia in the State of Florida, post office address: 1000 City Center Circle, Port Orange, FL 32129, ("Licensor"); Halifax River Partners, LLC, a Florida limited liability company, whose mailing address is 1800 North U.S. Highway 1, Ormond Beach, Florida 32174, ("Licensee").

PREMISES

WHEREAS, the CRA is the owner of the property described in **Exhibit "A,"** attached hereto and made a part hereof by reference, hereinafter "Subject Property"; and

WHEREAS, the Licensee is the owner of property adjacent to the Subject Property which includes a 39 slip marina, graphically depicted in **Exhibit "B";** and

WHEREAS, the CRA recommended for approval the First Amendment to Riverwalk Amended and Restated Master Development Agreement (MDA Amendment) and the City Council did so approve said MDA Amendment which provides in part the temporary use of the Subject Property as graphically depicted in **Exhibit "A,"** for the purpose of temporary parking for the 39 slip marina, if reopened; and

WHEREAS, the Licensee hereby warrants to the CRA that the Licensee has full power and authority to enter into this Agreement, and that the Licensee agrees to be bound by the terms and conditions hereof is in compliance with and shall remain in compliance with any declaration of covenants and restrictions, as may exist and as may be amended from time to time.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. The CRA hereby grants to the Licensee a license to enter upon and to utilize a portion of the Subject Property known as, **3571 Ridgewood Avenue**, located and situated in Port Orange, Volusia County, Florida, for the purpose of temporary parking for the 39 slip marina, (hereinafter "Parking Area"), subject to the requirements set forth in the MDA Amendment and as approved by the City of Port Orange, Florida.

2. All improvements, uses, and activities shall comply with the terms and conditions of this License Agreement and exhibits hereto and any other applicable laws.

3. The Licensee jointly and severally assumes all responsibility for the maintenance and oversight of the Parking Area.

4. The Licensee agrees, upon thirty (30) days written notice from the CRA, to correct any deficiencies of the Parking Area which require maintenance and repair to be in compliance with all applicable laws. If no remedy is made within the specified time, the CRA reserves the right to terminate this License Agreement without further notice to the Licensee and at the sole cost and expense of the Licensee.

6. The CRA reserves the right to terminate this License Agreement in the event that the CRA needs to utilize the property for CRA or City purposes, such as road, bike path, public utility installation or maintenance, drainage improvement or other public uses or if Subject Property is transferred or conveyed from CRA ownership. The CRA shall endeavor to give at least ninety (90) days prior notice to the Licensee cease use of the Subject Property.

7. The Licensee agrees that no improvements shall be made or altered on the Subject Property except as agreed herein and as may be depicted on a City approved site plan or subsequently approved amendments thereto.

8. The License granted by this License Agreement shall be effective for a period of One year expiring September ___, 2020 or unless terminated in accordance with the provisions specified herein.

9. Any party may terminate this License Agreement upon giving ninety (90) days prior written notice to the other party, after which time this License Agreement shall be of no force and effect. If the Licensee terminates this Agreement or otherwise fails to remain in good standing and in compliance with this Agreement, the CRA may maintain and repair the Parking Area and the CRA shall not be obligated to either maintain or repair the Parking Area and the CRA shall not be liable for either undertaking or failing to maintain or repair the Parking Area. All costs and expenses of the CRA resulting from maintenance or repair of the Parking Area, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing and operating a special district, shall be chargeable to and assessed by the CRA jointly and severally against the Licensee. The CRA shall have the right to enforce collection of assessments for such costs and expenses by a lien jointly and severally against the Licensee, which lien shall include interest at the then highest lawful rate of interest and attorneys' fees and costs for collection thereof. The CRA shall have the right to establish a special district and to utilize any methods or procedures provided by law or ordinance for imposition and collection of the assessments described herein against the real property described in **Exhibit "B"**.

10. This License is given to the Licensee as an accommodation to the Licensee without any consideration. The Licensee acknowledges the legal title of the CRA to the Subject Property described herein and agrees never to deny such title or to claim title in the Licensee's name.

11. The License is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part. If the Licensee cease to be an active owner or developer of the project governed by the Amended and Restated Riverwalk Master Development Agreement recorded in Official Records Book 7306, Page 1188, as amended by the First Amendment to the Riverwalk Amended and Restated Master Development Agreement

recorded in Official Records Book _____, Page _____ recorded in the Public Records, Volusia County, Florida (MDA), the CRA shall have the immediate right to prohibit entry to the Parking Area for which this license is granted; subject, however, to application made by the successor property owner for and due diligence in obtaining approval by the CRA of a new license agreement for the existing Improvements to remain on the Subject Property.

12. The Licensee shall exercise the rights, privileges and permission granted herein at the Licensee's own risk. Licensee shall make monthly inspections of the Improvements; and shall immediately repair any deviation from the site plan as approved by the City of Port Orange, Florida. The Licensee shall not claim any damages from the CRA for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the CRA's property, or the use of the property. Licensee agrees to maintain general liability insurance including contractual liability and having a minimum coverage of **One Million Dollars (\$1,000,000.00)**. Licensee shall provide to the CRA a certificate of insurance identifying the CRA as an additional insured within ten (10) business days after City Council's approval of the MDA, referenced herein. The certificate of insurance shall be provided to the City of Port Orange Community Development Department, Engineering Division and shall thereafter be submitted annually by the Licensee each year the license remains in effect. Failure to maintain the required insurance or provide proof thereof may result in the immediate termination of this License Agreement. In the event that the Licensee allows the required general liability insurance to elapse or expire, the CRA may remove all Improvements after thirty (30) days prior written notice to Licensee that the insurance had elapsed or expired. Further, the Licensee shall indemnify and hold harmless the CRA, the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the CRA's property, the use of the property by Licensee, his invitees and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein or otherwise permitted by this License Agreement. The CRA shall not be liable to the Licensee if for any reason the Licensee's use of the Subject Property is hindered or disturbed.

13. Licensee's failure to comply with the terms of the MDA as amended by the MDA Amendment, referenced herein, shall cause this License to terminate immediately and the CRA may prohibit access and use after thirty (30) days prior written notice to Licensee of their failure to comply with the terms of the MDA and this License Agreement shall be terminated immediately.

14. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail, telegram or in person to: the COMMUNITY REDEVELOPEMENT AGENCY FOR PORT ORANGE TOWN CENTER, 1000 City Center Circle, Port Orange, Florida 32129, for the City; and Halifax River Partners, LLC, a Florida limited liability company, 1800 North U.S. Highway 1, Ormond Beach, Florida 32174 for the Licensee, or as otherwise designated in writing to all respective parties.

15. This Agreement shall be recorded in the Public Records of Volusia County, Florida. Upon execution of this Agreement, the Licensee agrees to pay the City an amount equal to the applicable cost of recording this Agreement in the Public Records of Volusia County, Florida.

16. This License Agreement constitutes the entire agreement between the parties.

There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

Printed Name:_____

Printed Name:_____

Printed Name:_____

Printed Name:_____

LICENSOR:

**COMMUNITY REDEVELOPEMENT AGENCY
FOR PORT ORANGE TOWN CENTER**

By:_____
Donald O. Burnette, Chairman

Attest:_____
Robin L. Fenwick, MMC, City Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Donald O. Burnette, as Mayor of the City of Port Orange, Florida, who acknowledged that he is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **Community Redevelopment Agency for Port Orange Town Center**, a public body corporate and politic established pursuant to 163.356, Florida Statutes, and who is personally known to me.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Robin L. Fenwick, as the City Clerk of the City of Port Orange, Florida, who acknowledged that she is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who is personally known to me.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

LICENSEE:

HALIFAX RIVER PARTNERS, LLC

WITNESS:

Signature

By: _____
Josif Atanasoski, Manager

Printed Name

Date: _____

Signature

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/20/2019

Consent item: No

SUBJECT: (7) First Amendment to the Property Exchange and Escrow Agreement
(Cardwell Funeral Home Property)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Discuss Exchange Agreement for the Cardwell Funeral Home Property

SUMMARY: The First Amendment to the Exchange and Escrow Agreement provides for the Deed to the Cardwell Funeral Home property to continue to be held in an Escrow until the Public Trail and Park and Riverwalk Phase 1 site and building improvements are completed in accordance with the timeline set forth in the First Amendment to the Riverwalk Amended and Restated Master Development Agreement. According to the proposed First Amendment to the Riverwalk Amended and Restated Master Development Agreement, the Phase 1 (site and restaurant) improvements are to be completed by September 21, 2020.

There are no other changes to the original Property Exchange and Escrow Agreement approved in 2016.

Project No.: Funding Account No.:

Presenter: Tim Burman, Margaret Roberts, HRP

ATTACHMENTS:

1.	Amendment to Property Exchange Agreement 8-8-19	Amendment to Property Exchange Agreement 8-8-19.pdf
2.	First Amendment to Escrow	First Amendment to Escrow.pdf

Melanie Schmotzer
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 8/1/2019
Approved - 8/1/2019
Approved - 8/8/2019
Approved - 8/9/2019
Final Approval - 8/9/2019

FIRST AMENDMENT TO THE PROPERTY EXCHANGE AGREEMENT

THIS FIRST AMENDMENT TO THE PROPERTY EXCHANGE AGREEMENT (the "First Amendment"), is entered into by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company, ("HRP") Josif Atanasoski, Manager, having a mailing address of 1800 No. U.S. Highway 1, Ormond Beach, FL 32174 and the CITY OF PORT ORANGE, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, FL 32129 (the "City") and the COMMUNITY REDEVELOPMENT AGENCY OF PORT ORANGE TOWN CENTER, a special purpose unit of local government organized and existing under Chapter 163, Part III, the laws of the State of Florida (the "CRA"), (collectively the "Parties"), who hereby agree and covenant as follows:

WHEREAS, the Parties previously entered into that certain Property Exchange Agreement dated September 20, 2016 (the "Agreement") for the exchange of real property; and

WHEREAS, the Parties previously entered into that certain Riverwalk Amended and Restated Master Development Agreement dated September 20, 2016 and recorded in Official Records Book 7306, Page 1188, Public Records of Volusia County, Florida as amended by that certain First Amendment To The Riverwalk Amended and Restated Master Development Agreement of even date herewith (the "MDA"); and

WHEREAS, the Parties desire to amend the Incentive Agreement as more particularly set forth below.

NOW THEREFORE, the Parties hereby agree as follows;

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Paragraph 1 c. of the Agreement is hereby deleted in its entirety and replaced with the following:

"c. The Parties agree that the exchange shall be contingent on the escrow agreement and escrow closing on the real property interests. The Escrow Agreement shall be in the form attached hereto as Exhibit B. The delivery for recording of the deed to HRP shall be contingent upon HRP's completion of the construction of the Public Trail and Park together with all other Phase 1 site improvements in accordance with the scope and timeline set forth in the MDA."

3. Paragraph 1 d. of the Agreement is hereby deleted in its entirety and replaced with the following revised to replace 2019 with 2020:

"d. The Escrow Agreement shall be closed on or before September 21~~0~~, 2019 2020 unless otherwise terminated pursuant to the terms of this Agreement or the Escrow Agreement. The City Manager shall be authorized to act on behalf of Port Orange to Authorize the filial language of the Escrow Agreement , in accordance with the requirements of Chapter 286, Florida Statutes. scope and timeline set forth in the MDA and acceptance by the City. The City Manager

shall be authorized to act on behalf of Port Orange to authorize the final language of the Escrow Agreement, in accordance with the requirements of Chapter 286, Florida Statutes.”

4. Paragraph 10 of the Agreement is hereby deleted in its entirety and replaced with the following:

“10. Closing. Closing shall occur within 30 days after ~~the~~ timely after completion and acceptance of the Phase 1 Improvements. In the event the Phase 1 Improvements are not completed by September 21st, 2020 ~~Public Trail and Park as set forth in the MDA. In the event the Public Trail and Park is not timely completed within the timeframes set forth in the MDA,~~ then this Property Exchange Agreement shall terminate. G. Larry Sims, Esquire, a Florida licensed attorney who does not represent a Party, shall serve as Escrow Agent. ~~On or before closing, the Escrow Agent shall provide the City’s Closing Agent, Columbia Title Corporation, with the closing deposits and documents required to transfer all the Property Interest as set forth in this Agreement and pursuant to the terms and conditions of the Escrow Agreement.”~~—In the event HRP is unable to obtain approval of the First Amendment to the Amended and Restated Master Development Agreement by September 20, 2019 this Property Exchange Agreement shall be of no further force or effect. The closing shall not be extended except by written mutual agreement of the Parties. On or before closing, the Escrow Agent shall provide the City’s Closing Agent, Columbia Title Corporation, with the closing deposits and documents required to transfer all Property Interests as set forth in this Agreement and pursuant to the terms and conditions of the Escrow Agreement executed simultaneous herewith.

5. This First Amendment shall be effective on the date set forth below.

6. All the provisions of the Agreement not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this First Amendment. The Agreement shall survive the execution of this First Amendment.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Property Exchange Agreement, by and through their duly authorized representatives, on the respective dates shown below.

**PORT ORANGE TOWN CENTER COMMUNITY
REDEVELOPMENT AGENCY**

Attest:

Chairman

_____, Agency Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as the Chairman of the Port Orange Town Center Community Redevelopment Agency, on behalf of the Agency. Said person [] is personally known to me or [] has produced _____ as identification.

[Notary Stamp]

Signature of Notary Public
Printed Name: _____
Serial No. (if any): _____
Commission Expires: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as Agency Clerk of the Port Orange Town Center Community Redevelopment Agency, on behalf of the Agency, on behalf of Agency. Said person [] is personally known to me or [] has produced _____ as identification.

[Notary Stamp]

Signature of Notary Public
Printed Name: _____
Serial No. (if any): _____
Commission Expires: _____

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____
Donald O. Burnette, Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Donald O., Burnette, Mayor of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by ROBIN L. FENWICK, City Clerk, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

HALIFAX RIVER PARTNERS, LLC

WITNESSES:

Signature

Printed Name

Signature

Printed Name

By: _____
Josif Atanasoski, Manager

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large

My Commission Expires:

FIRST AMENDMENT TO THE ESCROW AGREEMENT

THIS FIRST AMENDMENT TO THE ESCROW AGREEMENT is made and entered into as of this ____ day of _____, 2019, by and among **CRA/CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation with a mailing address of 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as “**Port Orange**” and the **HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company** with a mailing address of 1800 North U.S. Highway 1, Ormond Beach, Florida 32174 hereinafter referred to as “**Developer**” and **G. LARRY SIMS, ESQUIRE** of Doran Sims, Wolfe and Ciocchetti, with a mailing address of P.O. Box 15110, Daytona Beach, FL 32115-5110 hereinafter referred to as “**Escrow Agent**”, collectively the “Parties”.

WHEREAS, the Parties previously entered into that certain Escrow Agreement dated September 20, 2016 (“Agreement”) to effectuate that certain Property Exchange Agreement dated September 20, 2016 (“Exchange Agreement”) for the property identified as Tax Parcel Number 1, Tax ID 630311020030, located at 3571 Ridgewood Avenue, Port Orange, Florida 32129; and

WHEREAS, the Port Orange and Developer previously entered into that certain Riverwalk Amended and Restated Master Development Agreement dated September 20, 2016 and recorded in Official Records Book 7306, Page 1188, Public Records, Volusia County, Florida (“MDA”); and

WHEREAS, Port Orange and Developer desire to amend the MDA, which requires revision to the Agreement in order to effectuate the Property Exchange Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Section 1.2, “Receipt of Deposits for Escrow”, subsection (b) is hereby amended to read as follows:

(b) The Developer shall deposit the guarantee, that may be in the form of a bond, letter of credit, or cash deposit guaranteeing the completion of the Cardwell property demolition and subsequent site improvements within Phase I and for lease payment loss of revenue for two years payable to the City in the amount of \$48,000.00 in the event that the construction of the Public Trail and Park and Phase I site improvements are not commenced by September 20, 2018 and completed on or before September 20, 2020. The Developer may substitute the form of the guarantee upon mutual agreement of the Parties.

3. Section 3.1, “Completion of the Public Trail and Park and Phase I horizontal site improvement of the Riverwalk Project” is hereby amended to read as follows:

Section 3.1 Completion of the Public Trail and Park and Phase I site improvements of the Riverwalk Project. If on or before September 20, 2018, Developer has commenced the Public Trail and Park and the site improvements for Phase I of the Riverwalk Project to the satisfaction of the City and if on or before September 20, 2020, the Developer has completed all Phase I improvements as set forth in paragraph 6.g. of the MDA and the City and other governing entities have accepted the Phase I improvements, including but not limited to the completion of the Public Trail and Park improvements within Tract “A”, the City shall provide the Escrow Agent (copying Developer) with written notice of the same.

4. This First Amendment to the Escrow Agreement shall be effective on the date set forth below.
5. All provisions of the Agreement not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this First Amendment. The Agreement shall survive execution of this First Amendment.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by the parties as of the respective dates shown below.

WITNESSES:

HALIFAX RIVER PARTNERS, LLC

Signature

By: _____
Josif Atanasoski, Manager

Printed Name

Date: _____

Signature

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large
My Commission Expires:

**COMMUNITY REDEVELOPMENT
AGENCY FOR PORT ORANGE TOWN
CENTER**

AND

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

WITNESS:

Signature

Printed Name

Signature

Printed Name

By: _____
Donald O. Burnette,
Chairman and Mayor

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by DONALD O. BURNETTE, Chairman and Mayor of the COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER AND CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the Agency and City, respectively. He is personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by ROBIN L. FENWICK, CMC, City Clerk of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. She is personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

WITNESSES:

Signature

Printed Name

Signature

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by G. LARRY SIMS, ESQUIRE, of DORAN SIMS WOLFE AND CIOCCHETTI. He is personally known to me or has produced _____ as identification.

ESCROW AGENT

By: _____
G. Larry Sims, Esquire

Date: _____

Notary Public, State of Florida at Large
My Commission Expires:



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/20/2019

Consent item: No

SUBJECT: (8) First Amendment to the Economic Development Incentive Agreement

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Discuss First Amendment to the Economic Development Incentive Agreement

SUMMARY: The First Amendment to the Economic Development Incentive Agreement would revise the completion date to September 21, 2020, for all Riverwalk Phase 1 site improvements (includes parking lot, landscape, stormwater, irrigation, sidewalks along Ridgewood and the point, and left-turn lanes into site) and the restaurant on the point to obtain a Certificate of Occupancy. The original Agreement approved in 2016 requires the Phase 1 site improvements to be completed by September 20, 2019, and the restaurant on the point to be completed and obtain a Certificate of Occupancy by September 21, 2020.

There are no other changes proposed to the original Economic Development Incentive Agreement approved in 2016.

Project No.: Funding Account No.:

Presenter: Tim Burman, HRP

ATTACHMENTS:

1.	First Amendment to Economic Incentive Agreement TB revisions	First Amendment to Economic Incentive Agreement TB revisions.pdf
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Tim Burman
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 8/1/2019
Approved - 8/1/2019
Approved - 8/8/2019
Approved - 8/9/2019
Final Approval - 8/9/2019

**FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT
INCENTIVE AGREEMENT**

THIS FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT INCENTIVE DEVELOPMENT AGREEMENT (the “First Amendment”), is entered into by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company, (“Owner”) Josif Atanasoski, Manager, having a mailing address of 1800 No. U.S. Highway 1, Ormond Beach, FL 32174 and the CITY OF PORT ORANGE, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, FL 32129 (the “City”) and the COMMUNITY REDEVELOPMENT AGENCY OF PORT ORANGE TOWN CENTER, a special purpose unit of local government organized and existing under Chapter 163, Part III, the laws of the State of Florida (the “Agency”), (collectively the “Parties”), who hereby agree and covenant as follows:

WHEREAS, the Parties previously entered into that certain Economic Development Incentive Agreement dated September 20, 2016 (the “Incentive Agreement”) for the development of the property more particularly described therein (the “Property”); and

WHEREAS, the Parties previously entered into that certain Riverwalk Amended and Restated Master Development Agreement dated September 20, 2016 and recorded in Official Records Book 7306, Page 1188, Public Records of Volusia County, Florida as amended by that certain First Amendment to The Riverwalk Amended and Restated Master Development Agreement of even date herewith (the “MDA”); and

WHEREAS, the Parties desire to amend the Incentive Agreement as more particularly set forth below.

NOW THEREFORE, the Parties hereby agree as follows;

1. The recitals stated above are true and correct and are incorporated herein by reference.
2. Section 7A of the Incentive Agreement is hereby deleted in its entirety and replaced with the following:

“**Section 7A. Agreement to Develop Property.** The Owner agrees to develop the following facilities.”

- A. The improvements constituting the initial phase of development of the Property (the “Phase I Improvements”) having an assessed value of not less than \$4,000,000.00. Permitting shall be completed and construction of the Phase I improvements, including the restaurant on the point, shall be completed and certificate of occupancy obtained no later than September 21 (Monday), 2020.
3. This First Amendment shall be effective on the date set forth below.

4. All the provisions of the Incentive Agreement not in conflict herewith shall remain in full force and effect and shall be supplemented for the matters specifically amended herein by this First Amendment. The Incentive Agreement shall survive the execution of this First Amendment.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Economic Development Incentive Agreement, by and through their duly authorized representatives, on the respective dates shown below.

**PORT ORANGE TOWN CENTER COMMUNITY
REDEVELOPMENT AGENCY**

Attest:

Chairman

_____, Agency Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as the Chairman of the Port Orange Town Center Community Redevelopment Agency, on behalf of the Agency. Said person [] is personally known to me or [] has produced _____ as identification.

[Notary Stamp]

Signature of Notary Public

Printed Name: _____

Serial No. (if any): _____

Commission Expires: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as Agency Clerk of the Port Orange Town Center Community Redevelopment Agency, on behalf of the Agency, on behalf of Agency. Said person [] is personally known to me or [] has produced _____ as identification.

[Notary Stamp]

Signature of Notary Public

Printed Name: _____

Serial No. (if any): _____

Commission Expires: _____

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____
_____, Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, CMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ and ROBIN L. FENWICK, Mayor and City Clerk, respectively, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large

My Commission Expires:

HALIFAX RIVER PARTNERS, LLC

WITNESSES:

Signature

Printed Name

Signature

Printed Name

By: _____
Josif Atanasoski, Manager

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large

My Commission Expires:



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/20/2019

Consent item: No

SUBJECT: (9) Parking Easement Agreement Between Halifax River Partners, LLC and City of Port Orange

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Discuss Parking Easement Agreement Between Halifax River Partners, LLC and City of Port Orange

SUMMARY: The parking easement permits the City the ability to authorize the public to park vehicles upon the land located west of the public trail and park that is owned by Halifax River Partners, LLC. This will provide the city additional access to public parking for our Riverwalk parks during construction.

Project No.: Funding Account No.:

Presenter: Tim Burman, HRP

ATTACHMENTS:

1.	Parking and Access Easement	Parking and Access Easement.pdf
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Tim Burman	Created/Initiated - 8/7/2019
Tim Burman	Approved - 8/7/2019
Shannon Balmer	Approved - 8/8/2019
Jake Johansson	Approved - 8/9/2019
Robin Fenwick	Final Approval - 8/9/2019

Affected Parcel Nos. _____

NON-EXCLUSIVE ACCESS AND PARKING EASEMENT AND JOINT USE AGREEMENT

This PARKING AND ACCESS EASEMENT AGREEMENT ("Agreement") is entered into as of _____, 2019 by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company ("HRP"), and CITY OF PORT ORANGE, a chartered municipal corporation ("City"); hereinafter collectively the "Parties".

RECITALS

A. HRP is the owner of that certain real property situated in Port Orange, Volusia County, Florida and described in **Exhibit "A"** attached hereto and made a part hereof by reference (the "HRP Property").

B. The City is the owner of that certain real property located adjacent to the HRP Property as described in **Exhibit "B"** attached hereto (the "City Property").

C. A portion of the City Property has been developed as a public park known and referred to as Riverwalk Park, the City Property being adjacent to HRP Property; and

D. The remainder of City Property is currently being developed as a linear public park, know and referred to as "Public Trail and Park" which meanders through a portion of the HRP Property; and

E. HRP Property is planned for mixed use development which includes access ways, sidewalks, drive aisles and parking areas; and

D. HRP desires to grant to the City, and City desires to accept from HRP, an easement and rights in HRP's Property situated in Volusia County, Florida, providing for access, parking, and joint use.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Grant of Easement. HRP does hereby grant and convey to the City a perpetual, non-exclusive, public easement (the "Easement") upon, over, and across a portion of HRP's Property, more particularly described in **Exhibit "C"**, attached hereto and made apart hereof by reference (collectively, the "Easement Lands"), subject to the terms and conditions set forth herein, for the following purposes:

(a) Pedestrian Easement. Easement for the purpose of public pedestrian traffic between HRP's Property, City's Property, public streets located adjacent to the HRP's Property and parking areas now and hereafter located on the Easement Lands.

(b) Vehicular Easement. Easement for the purpose of vehicular traffic over, upon, and across HRP's Property, City's Property, and public streets located adjacent to HRP's Property and parking areas now and hereafter located on the Easement Lands.

(c) Parking Easement. Easement for the purpose of public parking areas located on HRP's Property inclusive of access to and use for vehicular parking purposes.

(d) Government and Emergency Access. Easement for access, ingress and egress for emergency vehicles and government services.

2. Character of Easement. The Easement shall be appurtenant to the City's Property and HRP's Property and shall therefore be binding upon and run with the HRP's Property and the City's Property. The easement rights granted to the City hereunder shall be non-exclusive, and HRP reserves full right to use the Easement Lands for legally authorized purposes in accordance with the City of Port Orange, Florida Land Development Code ("LDC") and not in conflict with the City's Easement granted hereunder. HRP hereby represents and warrants to City that HRP has good and indefeasible fee simple title to the Easement Lands, free and clear of all encumbrances that may adversely affect City's rights hereunder.

3. Reservation for Construction and Relocation. HRP hereby reserves the right to adjust and relocate the Easement upon HRP's Property either before or after any design, redesign, or redevelopment of the HRP's Property upon Sixty (60) days prior written notice to City, provided, the proposed design of access ways, drive aisles, and parking areas contemplated within the Easement Lands shall not be designed or relocated in a manner which decreases the City's use of the Easement Lands for the purposes as set forth herein. In the event of any adjustment or relocation of the Easement, HRP shall grant to the City comparable easement rights, as provided herein, simultaneously with the termination or amendment by the City of the easement rights contained herein. The Parties agree to then execute, deliver and record an amendment or termination and replacement to this Agreement, whichever is appropriate, to evidence relocation of said Easement.

4. Easement Obstructions. No fence or other barrier shall be erected or permitted within or across the Easement which would prevent or obstruct the passage of pedestrian or vehicular travel; provided, however, that the foregoing shall not prohibit (i) the temporary erection of barricades which are reasonably necessary for security and/or safety purposes in connection with the construction, reconstruction, repair and maintenance of improvements, including the Easement, on HRP's Property, it being agreed by the parties however, that all such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Easement by Grantor, and such work shall be diligently prosecuted to completion, or (ii) the construction of limited curbing or other forms of traffic controls along the outer perimeter of the Easement.

5. Reservation and Limitations on the Use of the Easement Lands.

(a) The right to primary use of the Easement Lands shall be allocated between the Parties as follows:

(i) HRP reserves the right to primary of use of the Easement Lands, subject to terms and conditions set forth herein.

(ii) The grant of Easement to the City shall not interfere with HRP's development of the Easement Lands in accordance with the City of Port Orange, Florida Code of Ordinances.

(iii) Upon written notice, not later than One Hundred and Eighty Days (180) in advance, City shall have the primary right for the use of the Easement Lands for the purposes as set forth herein for special events. If less than 180 days, Parties agree to make best efforts to work out any conflicts with the City's use of HRP's Property for a said special event.

(iv) Notwithstanding other provisions in this Agreement, if any clean-up and trash is required on the Easement Lands by reason of the act or failure to act in connection with a special event sponsored or held by the City, then City shall be responsible for said clean-up of trash and debris.

(v) This Agreement does not constitute a land use approval. For any land use by HRP of the Easement Lands, HRP shall be required to submit engineering plans and any other required documents in accordance with the LDC process for site plan approval. As necessary for a Certificate of Occupancy or Certificate of Completion, City agrees to work with HRP for the relocation of the Easement, pursuant to Section 3 herein. City's cooperation will not unreasonably be withheld.

6. Easement Lands Maintenance. Except as may be provided herein, HRP's Property maintenance and repair obligations shall be the sole responsibility and obligation of the HRP.

7. Governmental Immunity. Nothing herein shall be deemed to waive, limit or otherwise modify the protections and limitations of liability found in Florida Statute § 768.28 or any other protections available to the Parties by law.

8. Taxes. HRP shall continue to be responsible for real property taxes and any other taxes that may be associated with HRP's Property or the use thereof.

9. Insurance. HRP affirms that they carry general liability insurance policy sufficient in amount and coverage which will apply to any personal injury or loss or property damage that may occur on HRP's Property.

10. Notices. Any notice or invoice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as certified mail, return receipt requested, postage prepaid or deposit with a

nationally recognized overnight delivery service, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other party):

HRP: Halifax River Partners
1800 No. U.S. Highway 1
Ormond Beach, FL 32174
Attn: Josif Atanasoski

City: City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
ATTN: City Manager

11. Entire Agreement. This Agreement constitutes the entire agreement between HRP and City relating to the Easement. Any prior agreements, promises, negotiations, or representations pertaining to the matters set forth herein but not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and executed by the Parties to be bound thereby.

12. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors, administrators, executors, and assigns and all terms and provisions of this Agreement shall be binding upon and are covenants running with the land.

13. No Partnership, Joint Venture or Principal-Agent Relationship. Neither anything in this Agreement nor any acts of HRP or City shall be deemed by HRP, City or by any third party to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties hereto.

14. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law, and that portion which is found to be unenforceable shall be deemed to be a statement of intention by the parties.

15. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida.

16. Venue. All litigation regarding this Agreement shall be in the Seventh District Court in and for Volusia County, Florida. This Agreement shall be interpreted in accordance with the fair meaning of the provisions hereof, and not strictly for or against either party.

17. Counterparts. This Agreement may be executed in one or more originally executed counterparts, all of which, when taken together, shall constitute one and the same instrument.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

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IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Riverwalk Amended and Restated Master Development Agreement, by and through their duly authorized representatives, on the respective dates shown below.

WITNESSES (as to both):

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

Signature

By: _____
Donald O. Burnette, Mayor

Printed Name

Signature

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Printed Name

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by DONALD O. BURNETTE, Mayor, respectively, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by ROBIN L. FENWICK, City Clerk, respectively, of the CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida at Large
My Commission Expires:

**HALIFAX RIVER PARTNERS, LLC
WITNESSES:**

Signature

Printed Name

Signature

Printed Name

By: _____
Josif Atanasoski, Manager

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by JOSIF ATANASOSKI, Manager of HALIFAX RIVER PARTNERS, LLC. He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida at Large
My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF HRP PROPERTY

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EXHIBIT “B”

LEGAL DESCRIPTION OF CITY PROPERTY
(RIVERWALK PARK & PUBLIC TRAIL & PARK)

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EXHIBIT "C"

