



THE COMMUNITY REDEVELOPMENT AGENCY  
FOR PORT ORANGE TOWN CENTER  
REGULAR MEETING AGENDA

COUNCIL CHAMBERS – 6:30 PM – CITY HALL  
MARCH 15, 2022

A. OPENING

1. Roll Call
2. Nomination of Chair
3. Nomination of Vice Chair

B. PROOF OF NOTICE OF MEETING OR WAIVER OF NOTICE

C. DISCUSSION/ACTION

4. Approval of Minutes
  - a. September 8, 2021 - Joint Special Meeting with City Council
  - b. September 21, 2021 - Joint Special Meeting with City Council
5. Port Orange Town Center CRA Annual Report - FY 2020/2021
6. Fourth Amendment to the Property Exchange Agreement (Former Cardwell Funeral Home Property)
7. Third Amendment to the Escrow Agreement (Former Cardwell Funeral Home Property)

D. PUBLIC COMMENTS

E. BOARD COMMENTS

F. ADJOURNMENT

**NOTICES** – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS'

RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO OFFICE.  
THE MEETING OR HEARING DATE.

**IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA)**, 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, 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](mailto: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 OR HEARING 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 & THE COMMUNITY REDEVELOPMENT AGENCY  
FOR PORT ORANGE TOWN CENTER  
JOINT SPECIAL MEETING MINUTES  
COUNCIL CHAMBERS – CITY HALL  
1000 CITY CENTER CIRCLE  
PORT ORANGE, FLORIDA  
SEPTEMBER 8, 2021

THE JOINT SPECIAL MEETING of the City of Port Orange City Council & The Community Redevelopment Agency for Port Orange Town Center was called to order by Mayor Donald O. Burnette at 5:30 p.m.

Roll Call Present: Council Member Jonathan (Reed) Foley  
Council Member Chase Tramont  
Council Member Scott Stiltner (virtually)  
Mayor Donald Burnette

CRA Members:  
Jonathan (Reed) Foley  
Chase Tramont  
Scott Stiltner (virtually)  
Don Burnette  
Stan Schmidt, Chairman

Absent: Drew Bastian  
Michael Benedict

Also Present: City Manager Wayne Clark  
City Attorney Matthew Jones  
City Clerk Robin Fenwick

B. PROOF OF NOTICE OF MEETING OR WAIVER OF NOTICE

There were no objections to the meeting notice and same was accepted.

Motion to allow Council/CRA Member  
Scott Stiltner to attend virtually was  
made by Council Member Tramont and  
Seconded by Council Member Foley.

C. DISCUSSION/ACTION

2. Second Reading - Ordinance No. 2021-21 - Third Amendment to the Riverwalk Amended and Restated Master Development Agreement (Case No. 21-40000001)

Mayor Burnette read Ordinance No. 2021-21.

ORDINANCE NO. 2021-21

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

Council: Motion to adopt Ordinance No. 2021-21 was made by Council Member Foley and Seconded by Council Member Tramont.

Tim Burman, Community Development Director, explained the details of the amendments being requested.

CRA Members: Motion to recommend approval of Ordinance No. 2021-21 as recommended by the Planning Commission was made by Member Foley and Seconded by Member Tramont. Motion carried unanimously by roll call vote.

Council Motion carried unanimously by roll call vote.

There was no further business of the Town Center Redevelopment Agency and City Council and the meeting was adjourned.

ADJOURNMENT - 5:36 p.m.

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Stan Schmidt, Chairman



Penelope Cruz, Planning Manager, presented the requested changes and answered questions from Council and the CRA Board.

Robert Reinhausen, citizen, suggested this item be denied as he believes the trail will become private property and that is inconsistent with the original vision. He doesn't believe a trail will happen.

CRA Motion to recommend approval to the City Council of Ordinance No. 2021-25, approving the Amendment to the Port Orange Town Center Community Redevelopment Plan, as recommended by the Planning Commission was made by Member Bastian and Seconded by Member Foley. Motion carried unanimously by roll call vote.

Council Motion to approve Ordinance No. 2021-25, approving the Amendment to the Port Orange Town Center Community Redevelopment Plan, as recommended by the Planning Commission and the Port Orange Town Center CRA was made by Council Member Tramont and Seconded by Council Member Foley. Motion carried unanimously by roll call vote.

3. First Reading Ordinance No. 2021-26 - LDC Amendment/ Chapters 2, 17, and 18 (Case No. 21-25000005)

Mayor Don Burnette read Ordinance No. 2021-26

ORDINANCE NO. 2021-26

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE BY AMENDING SECTION 2 OF CHAPTER 2 RELATING TO DEFINITIONS; AMENDING CHAPTERS 17 AND 18 RELATING TO RIVERWALK OVERLAY DISTRICT (ROD) AND THE PLANNED COMMERCIAL-RIVERWALK(PC-R) ZONING DISTRICT REGULATIONS FOR THE PURPOSE OF SUPPORTING REDEVELOPMENT EFFORTS IN THE RIVERWALK AREA; AMENDING THE BOUNDARY OF THE RIVERWALK OVERLAY DISTRICT (ROD); PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Mrs. Cruz provided details of the amendment being requested.

CRA Motion to recommend approval to the City Council of Ordinance No. 2021-26, approving the Amendment to Chapters 2, 17, and 18 of the Land Development Code (Case No. 21-25000005), as recommended by the Planning Commission was made by Member Bastian and Seconded by Member Foley. Motion carried unanimously by roll call vote.

Council Motion to approve Ordinance No. 2021-26, approving the Amendment to Chapters 2, 17, and 18 of the Land Development Code (Case No. 21-25000005), as recommended by the Planning Commission and the Port Orange Town Center CRA was made by Vice Mayor Bastian and Seconded by Council Member Stiltner. Motion carried unanimously by roll call vote.

4. Third Amendment to the Property Exchange Agreement (Cardwell Funeral Home Property)

Tim Burman, Community Development Director, provided details of the changes being made in the amendment.

CRA Motion to recommend approval of the Third Amendment to the Property Exchange Agreement (Cardwell Funeral Home Property) was made by Member Stiltner and Seconded by Member Bastian. Motion carried unanimously by roll call vote.

Council Motion to approve the Third Amendment to the Property Exchange Agreement (Cardwell Funeral Home Property) was made by Council Member Stiltner and Seconded by Vice Mayor Bastian. Motion carried unanimously by roll call vote.

Joint Special Meeting w/Council & Town Center CRA

September 21, 2021

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There was no further business to be brought before the members of the Town Center Redevelopment Agency and City Council.

ADJOURNMENT – 6:50 p.m.

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Stan Schmidt, Chairman



# COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER

AGENCY MEETING DATE: 3/15/2022

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**SUBJECT:** (C5) Port Orange Town Center CRA Annual Report - FY 2020/2021

**DEPARTMENT:** Community Development

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**RECOMMENDED MOTION:** Move to accept the FY 2020/2021 Annual Report for the Port Orange Town Center Community Redevelopment Agency.

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**SUMMARY:** Pursuant to Chapter 163.356(3)(c), Florida Statutes, all CRAs are required to annually file a report of activities and a financial statement for the preceding fiscal year with the local governing body. The attached report has been provided to the Port Orange City Council in fulfillment of this requirement. The County of Volusia and Halifax Hospital, both of whom contribute to the Tax Increment Fund, have also been provided a copy of the Annual Report. Notice of availability of this report has been published in the Daytona Beach News Journal to meet legal advertising requirements, and a copy of the report has been posted on the City's website for review by the public.

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**ATTACHMENTS:**

1.	FINAL DRAFT FY 20-21 POTC CRA Annual Reportdocx	FINAL DRAFT FY 20-21 POTC CRA Annual Reportdocx.pdf
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Penelope Cruz	Created/Initiated - 2/24/2022
Tim Burman	Approved - 2/24/2022
Linda Truitt	Approved - 2/25/2022
Shannon Balmer	Approved - 3/8/2022
Wayne Clark	Approved - 3/9/2022
Robin Fenwick	Final Approval - 3/9/2022

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# ANNUAL REPORT FY 20/21

Port Orange Town Center CRA

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# THIS IS TOWN CENTER

The Port Orange Town Center (POTC) Community Redevelopment District is comprised of three hundred (300) parcels constituting two hundred seventy-one (271) acres of land situated within the eastern section of Port Orange. This area historically served as the commercial core of the city. The creation of the Port Orange Town Center Community Redevelopment Agency (CRA) in 1998 was the first of many steps to be undertaken by the city to ensure that this historic area of the community remains a viable center of commercial and civic activity.

The vision for the “rebirth” of Town Center includes a strong emphasis on mixed-use development. The goal is to create a signature destination that reestablishes Port Orange’s image as a premier waterfront community.

Port Orange Town Center is comprised of five Special Character Districts. These Special Character Districts are Riverwalk, Causeway, Down Under, Dunlawton Village, and Ridgewood Avenue. Each of these districts have their own unique attributes and opportunities, but they all share the same vision of a revitalized “heart of Port Orange”; a unique place within the community that blends history, culture and public access to the water.

The 35-acre Riverwalk Project Area, located east of U.S. 1/Ridgewood Avenue and north of Dunlawton Avenue, has been the focal point for the redevelopment efforts and investment in Town Center.

The original base year taxable value within POTC as of the day the CRA was created was \$29,588,416. Based on the latest Volusia County Property Appraiser’s Final Tax Roll data, there was a **\$1,203,868** increase in taxable value between 2020 and 2021. The 2021 total taxable value within the POTC CRA stands at **\$51,403,724**.

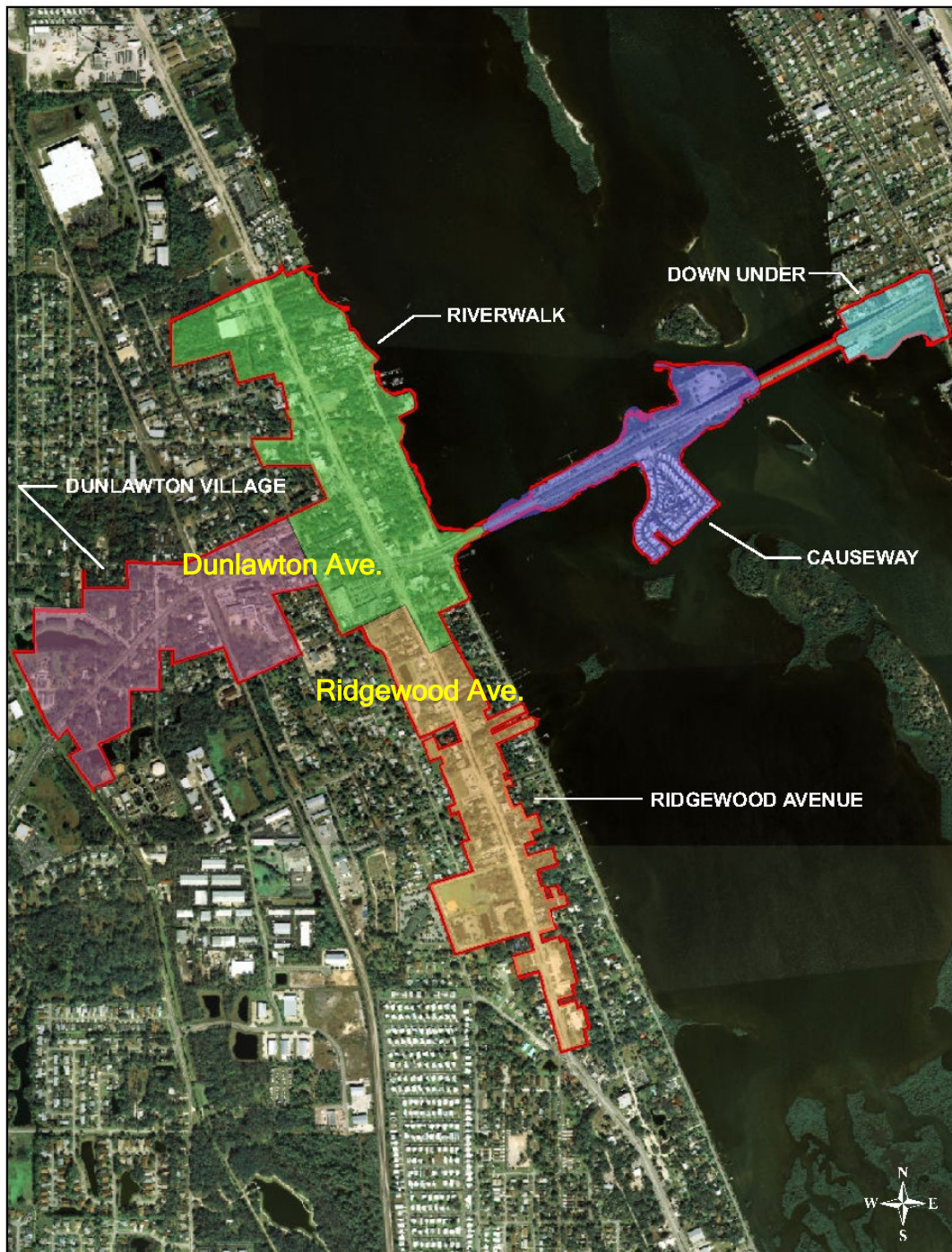
The County of Volusia and Halifax Hospital participate in the Tax Increment Trust Fund and are valued partners in the City’s redevelopment efforts.

*The Port Orange Town Center CRA, outlined in red on page 4, is approximately 271 acres in size and represents 1.33% of the City’s total tax base.*

## Points of Interest

- The Port Orange Town Center (POTC) CRA was created in 1998, with an original taxable value of \$29,588,416.
- POTC CRA is comprised of five Special Character Districts: Riverwalk, Causeway, Down Under, Dunlawton Village, and Ridgewood Avenue.
- The Riverwalk Project Area comprises 35 acres out of the total 271 acres in POTC CRA.
- The taxable values in POTC CRA have grown **74%** since 1998.

Port Orange Town Center CRA Boundary



# REDEVELOPMENT PLAN & GOALS

The Port Orange Town Center (POTC) Redevelopment Plan was originally adopted in 1998. Amendments to the Plan were adopted in 2007, 2014, 2016, and 2021 to facilitate redevelopment in the Riverwalk Project area. The Redevelopment Plan will continue to be used to guide redevelopment activities throughout the entire POTC Community Redevelopment Area (CRA) until the sunset of the CRA in 2036. The POTC Redevelopment Plan is available for review on the City's website. [POTC CRA Web page \(hyperlink\)](#)

The POTC Redevelopment Plan establishes a series of goals, objectives and policies designed to ensure that this historic area of the community remains a viable center of commercial and civic activity. The nine (9) primary goals of the plan are:

**GOAL 1.** Develop five Special Character Districts recognizing that these areas are distinct in terms of uses and built environment.

**GOAL 2.** Identify and promote land uses and zoning which are compatible with the special character districts and the overall POTC visions.

**GOAL 3.** Introduce mixed-use development comprised of commercial, office and residential uses and active programming to draw people to POTC.

**GOAL 4.** Develop a coordinated design concept for open space, streetscape, furniture and recreation facilities in a manner that emphasizes the nautical history and location of POTC.

**GOAL 5.** Identify suitable locations for housing and promote a variety of dwelling types to complement the mixed-use nature of POTC.

**GOAL 6.** Establish architectural guidelines to provide architectural consistency within the special character districts over time.

**GOAL 7.** Provide for an interconnected transportation network which aims at balancing the needs of pedestrians, cyclists and vehicles.

**GOAL 8.** Identify and secure all feasible sources of funding, including tax increment financing (TIF) revenues, that will aid in implementing the Redevelopment Plan throughout both short and long term; and

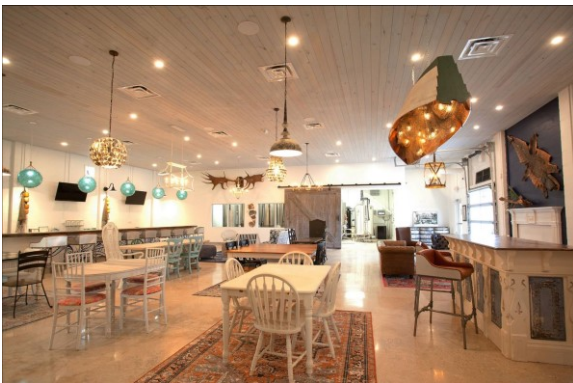
**GOAL 9.** Identify and offer an array of incentives to encourage redevelopment and revitalization of POTC through realization of specific plan objectives over time.

# REDEVELOPMENT ACTIVITIES UPDATE

Implementation of the plans, projects and programs identified in the POTC Redevelopment Plan is largely dependent on available revenues. During FY 2020/2021, the POTC Community Redevelopment Agency (CRA) operated with an adopted budget of **\$472,758**. Of that amount, **95%** went towards debt service obligations, leaving very limited amount of funding for plan implementation.

Development projects completed, under construction, or under review between September 2020 and October 2021:

- **CRA Plan & LDC Amendment** - The Port Orange Town Center (POTC) Redevelopment Plan to modify the Riverwalk Planned Community Conceptual Development Plan (CDP) and the Land Development Code (LDC) were amended in October 2021 to further encourage development in the CRA.
- **Dunes Brewery** - Construction of Dunes Brewery, a microbrewery, located at 59 Dunlawton, on the north side of Dunlawton Avenue, under the Dunlawton Avenue Bridge, between Jimmy Hula's and Dairy Bar, in the Down Under area of the CRA was completed in September 2021. Dunes Brewery opened for business on October 1, 2021.



- **Fysh Bar & Grill Restaurant Site Plan** – In June 2021, construction began on the 456-seat Fysh Bar & Grill restaurant at Riverwalk. The restaurant is located along the Halifax River within the Riverwalk Special Character District of the CRA. The restaurant is anticipated to be completed in Spring 2022.



- Real Estate Contract for Riverwalk:** In July 2021, the City Council and the POTC CRA approved a Real Estate Brokerage Agreement with Colliers International Florida, LLC, to market and list for sale 3 parcels owned by the City of Port Orange and the Port Orange Town Center Community Redevelopment Agency (CRA) within the Riverwalk Special Character District of the CRA for a waterfront mixed-use destination along the Halifax River.



## Targeted Business Program

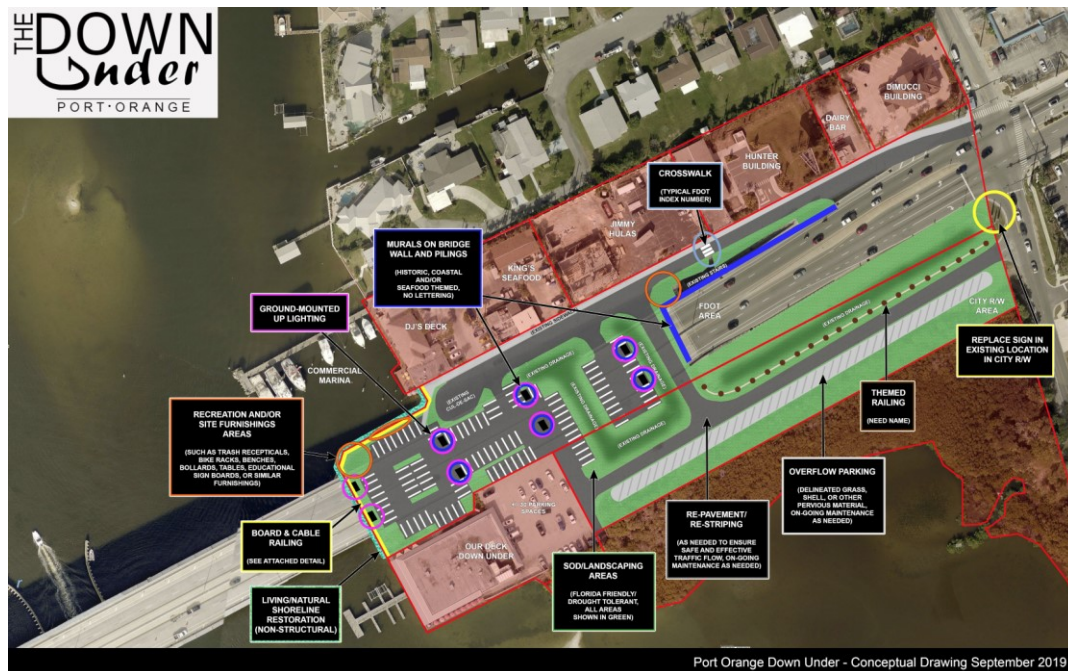
In December 2017, the City adopted regulations for a three-year pilot program for Ridgewood Corridor Targeted Businesses to encourage redevelopment of the corridor. In August 2020, the program was expanded to add additional uses as targeted businesses and expand the timeframe of the pilot program. The program applies to all properties along the Ridgewood Corridor, including those in the CRA. The program allows for site improvements to be waived if there is no increase in the size of the existing principal structure. The only upgrades required are those related to accessibility, Building and Fire Code requirements. This pilot program now runs until January 31, 2023. Fourteen of the twenty-six targeted businesses that have utilized the program are located within the Port Orange Town Center CRA.

## Down Under District Revitalization Plan

The Down Under is the commercial area located under the Dunlawton Avenue Bridge, west of South Peninsula Drive. The Down Under is one of 5 districts identified in the Port Orange Town Center CRA Plan. City Staff has worked with FDOT to amend the existing Lease Agreement between the City and FDOT for the Down Under to allow the city to implement the planned

improvements to make the area a unique destination in the CRA. These proposed improvements to the Down Under are to build upon the recent private redevelopment in this area (e.g. DiMucci building, Benedict Advertising, Dunes Brewery, Jimmy Hula's, Millie's Landing) and improve the aesthetics and vitality of the area. The proposed improvements include murals and ground-mounted lighting on the concrete bridge pilings and walls under the bridge, site furniture, native, drought-tolerant landscaping, master sign replacement, living shoreline improvements, and repaving and striping of the shared parking. Funding is anticipated to be a combination of City funding, funding from community partners and business owners in the Down Under area, and grants such as River2Sea TPO, FIND, and ECHO.

In September 2021, work began on a feasibility study to evaluate sidewalk improvements and wayfinding signage options in the Down Under area and along Peninsula Drive. Once the feasibility study has been completed, the City can apply to the River2Sea Transportation Planning Organization (TPO) for design and construction funds from FDOT to fund up to 90% of the project. Staff anticipates the feasibility study being completed in the Spring of 2022.



# TAX INCREMENT FINANCING

Tax Increment Financing, often referred to as “TIF”, is a financial method employed to target ad valorem tax revenues to an area that has been designated for redevelopment. Upon creation of a TIF district, a base year for property values within the district is established. Growth in the taxable value of property within the district over time is then applied to the current ad valorem millage rate, resulting in the tax increment revenue. This increment revenue is then deposited into a special Trust Fund account and may only be spent on redevelopment activities that are identified in the adopted redevelopment plan. The ad valorem millage from Volusia County (including General Fund, Echo, Forever, Mosquito Control and Ponce Inlet Port Authority), the City of Port Orange Operating and Halifax Hospital comprise the tax increment millage in Town Center. The FY 2020/2021 adopted budget for the Port Orange Town Center Fund (Fund #103), anticipated \$210,737 in TIF and \$4,500 in miscellaneous income, for total anticipated revenues of \$215,237 revenue. The City’s unaudited figures show actual receipt of \$224,405 from TIF and \$4,202 in miscellaneous income, for total revenues of \$228,607.



TIF Revenues may only be spent on redevelopment plans, projects and programs, as identified in the adopted CRA Plan.



# FINANCIAL STATEMENT AND DEBT SERVICE

The Annual Financial Statement of each CRA in the State of Florida is required to set forth the Agency's assets, liabilities, income and operating expenses as of the end of the fiscal year. This information is presented on the following page. The Community Redevelopment Agency for Port Orange Town Center operates on an October 1st - September 30th fiscal year.

In 2007, the Agency pledged its tax increment revenues to support a \$5.6 million bond issue to fund redevelopment activities in Town Center. The majority of the bond proceeds were used to fund property acquisitions in the Riverwalk Project Area. The total debt service payment for the 2007 Town Center TIF Bond for FY 2020/2021 was \$401,028.

The Town Center CRA Debt Service Schedule is available from the City's Finance Department and Redevelopment Agency Office. The 2007 Town Center TIF Bond is projected to be paid off by 2036.



# FINANCIAL STATEMENT

Port Orange Town Center CRA	Unaudited FY20	Unaudited FY21
<b>Assets</b>		
	\$(96,520)	\$(290,035)
<b>Total</b>	<b>\$(96,520)</b>	<b>\$(290,035)</b>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	\$120	-
Customer deposits	\$1,540	\$1,540
Deferred Revenue	\$113	\$113
Due to other funds	\$4,023,324	\$4,121,617
<b>Total</b>	<b>\$4,025,097</b>	<b>\$4,123,270</b>
<b>Sources (Revenues)</b>		
City TIF	\$69,981	\$91,423
Intergovernmental (County/Halifax Hospital)	\$101,196	\$132,982
Charge for Services	\$4,237	\$4,200
Investment Income	\$785	-
Miscellaneous	\$7	\$2
<b>Total</b>	<b>\$176,206</b>	<b>\$228,607</b>
<b>Expenditures</b>		
Operating/Maint/Other	\$8,262	\$12,608
Interest Internal Loans	\$53,830	-
Grants and Aid (TIF Payments)	\$6,031	\$8,365
Transfer to Fund 218 (Debt Service)	\$404,738	\$ 401,028
<b>Total</b>	<b>\$472,861</b>	<b>\$ 422,001</b>
Net change in fund balance	\$(296,655)	\$(193,394)
Fund balance - beginning	\$(3,824,962)	\$(4,121,617)
<b>Fund Balance - Ending</b>	<b>\$(4,121,617)</b>	<b>\$(4,315,011)</b>

# TRUST FUND PARTNERS

Redevelopment plans, projects and programs are made possible through tax increment financing. The County of Volusia and Halifax Health, along with the City of Port Orange, contribute to the Port Orange Town Center Redevelopment Tax Increment Trust Fund. All revenue derived from tax increment financing is deposited into the Trust Fund. All expenditures of TIF revenues must be consistent with the plans, projects and programs outlined in the adopted Community Redevelopment Plan for Port Orange Town Center.



[Port Orange Town Center CRA  
Webpage \(hyperlink\)](#)

This Annual Report has been prepared in compliance with the requirements of Chapter 163.356(3)(c), Florida Statutes. The notice of the availability of this report has been published in the Daytona Beach News Journal. Additionally, the governing body of each special district is required under Chapter 163.387(8) to annually provide an independent financial audit of its trust fund to each taxing authority that pays into the trust fund. This audit of the Agency's assets, liabilities, income and expenses, as required under Chapter 163.356(3)(3) is included with the City's Comprehensive Annual Financial Report (CAFR) for each fiscal year.

# AGENCY BOARD

Mayor Donald O. Burnette

Vice-Mayor Scott Stiltner

Council Member Chase Tramont, Vice-Chair

Council Member Drew Bastian

Council Member Reed Foley

Board Member Stan Schmidt, Chair

Board Member Michael Benedict

Staff support provided by:

Wayne Clark, City Manager

Matt Jones, City Attorney

Linda Truitt, Assistant Finance Director

Robin Burris, Budget Analyst

Tim Burman, Community Development Director

Penelope Cruz, Planning Manager

Registered Agent's Name: Penelope Cruz

Registered Office Address:

City of Port Orange

1000 City Center Circle

Port Orange, FL 32129

Phone: 386-506-5671

Fax: 386-506-5699

e-mail: [pcruz@port-orange.org](mailto:pcruz@port-orange.org)



# COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER

AGENCY MEETING DATE: 3/15/2022

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**SUBJECT:** (C6) Fourth Amendment to the Property Exchange Agreement (Former Cardwell Funeral Home Property)

**DEPARTMENT:** Community Development

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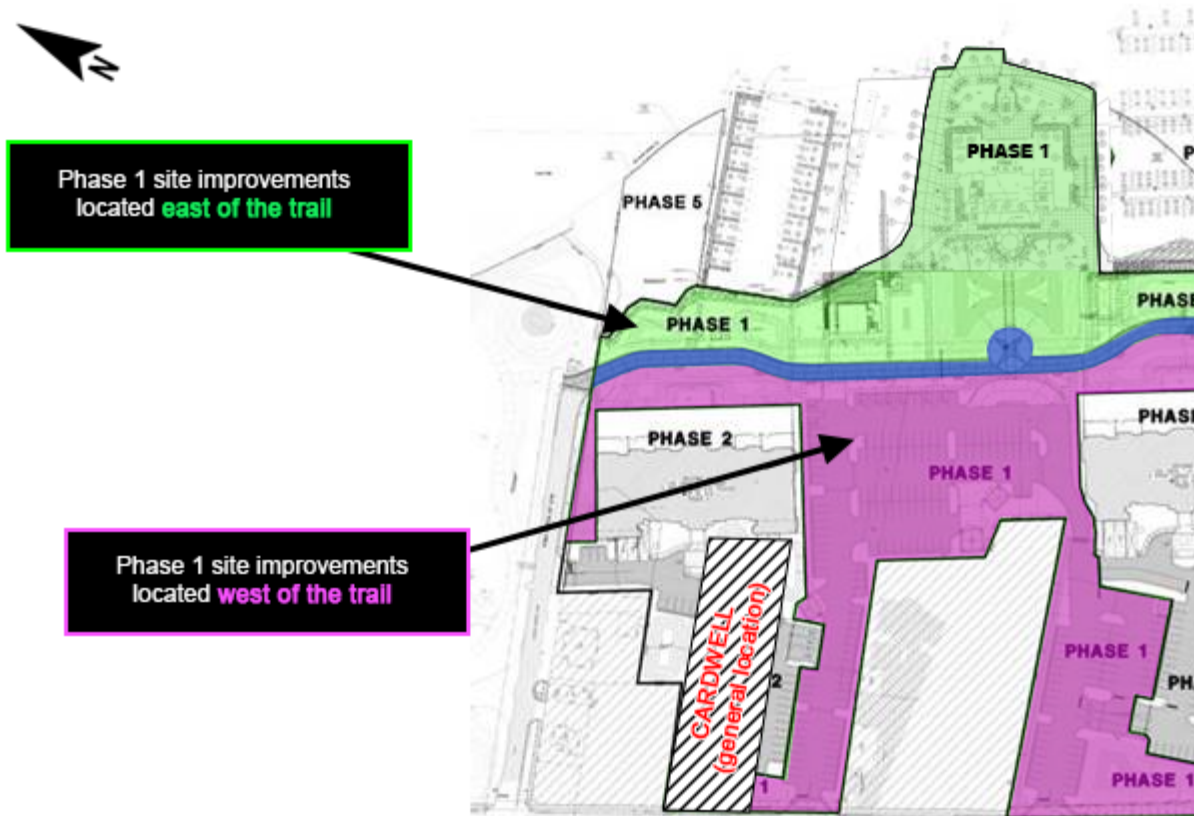
**RECOMMENDED MOTION:** Move to approve the Fourth Amendment to the Property Exchange Agreement (Cardwell Funeral Home Property) subject to City Council approval of the same; authorizing City Manager and City Attorney to finalize the Post-Closing Agreement, and authorizing Chairman and City Clerk to sign all necessary documents on behalf of the Town Center CRA in furtherance of the transfer of Cardwell Funeral Home Property.

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**SUMMARY:** The current Property Exchange Agreement between the City of Port Orange, Port Orange Town Center CRA, and Halifax River Partners (HRP) establishes the framework for HRP to receive the deed for the Cardwell Funeral Home Property, currently owned by the CRA, in exchange for HRP's completion of all Phase 1 site improvements as defined in the Riverwalk Amended and Restated Master Development Agreement. The Phase 1 site improvements include a 23' wide public trail, landscaping along the trail, stormwater infrastructure, parking lots, turn lanes, landscaping in the parking lot, sidewalks, site furnishings, irrigation, utility infrastructure (water, sewer, and reclaim), burying of power lines, and walklights. If the Phase 1 site improvements are not completed by March 21, 2022, the CRA would retain ownership of the Cardwell Funeral Home property.

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HRP is requesting approval of the proposed Fourth Amendment to the Property Exchange Agreement for the deed to the Cardwell Funeral Home property to be held in an Escrow until the Riverwalk Phase 1 site improvements are completed or bonded on or before March 21, 2022. According to HRP, it is anticipated that most of the site improvements located west of the Riverwalk Trail will be completed on or before March 21, 2022, except for certain site improvements that require outside agency approval or have been delayed for reason outside of HRP's control. In addition, the site improvements located east of the Riverwalk Trail are not anticipated to be completed by March 21, 2022, due to the logistics associated with completion of the Fysh Bar and Grill Restaurant and likely damage that would occur to those site improvements as construction of the restaurant is completed. According to HRP, the site improvements east of the trail anticipated not to be completed by March 21, 2022, include sidewalks, stormwater, site furnishings, landscape, railing/fencing, irrigation, wood bridges, and light poles, and the delay in completing these site improvements is due to the ongoing construction of the restaurant.



HRP indicates that all site improvements east and west of the Public Trail and Park could be completed by March 21, 2022. However, completing the site improvements east of the trail while the restaurant is still under construction could lead to said improvements being damaged or broken and having to be repaired or replaced, causing further delay in completion of the restaurant. The completion of certain site improvements west of the trail require outside agency action or approval beyond HRP's control (For example, FPL removal of infrastructure to complete sidewalk panel along Ridgewood Avenue). Therefore, HRP is requesting to use a payment and performance bond for the remaining site improvements that will not be completed by March 21, 2022, for the deed to the Cardwell Funeral Home property to be transferred from the CRA to HRP. The bond would be in the amount of 150% of the estimated cost, as certified by a Florida licensed civil engineer, for completing the outstanding site improvements. If the site improvements are not completed within six (6) months from execution of the Fourth Amendment to the Property Exchange Agreement, the City would be able to call the bond and complete the remaining Phase 1 site improvements. The terms and conditions of HRP's bonding for the remaining Phase I site improvements would be set forth in a post-closing agreement, substantially in the form attached to the Fourth Amendment to the Property Exchange Agreement as Exhibit F. In addition, the staff is recommending council authorize the City Manager and City Attorney to finalize the language in the post-closing agreement.

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**ATTACHMENTS:**

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1.	Fourth Amendment to Property Ex w SB rev 2-25-22 w TB rev 3-3-22 (003) w SB 3-6	Fourth Amendment to Property Ex w SB rev 2-25-22 w TB rev 3-3-22 (003) w SB 3-6.pdf
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Robin Fenwick

Created/Initiated - 2/28/2022

Tim Burman

Approved - 2/28/2022

Shannon Balmer

Approved - 3/10/2022

Wayne Clark

Approved - 3/10/2022

Robin Fenwick

Final Approval - 3/10/2022

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## FOURTH AMENDMENT TO THE PROPERTY EXCHANGE AGREEMENT

**THIS FOURTH AMENDMENT TO THE PROPERTY EXCHANGE AGREEMENT** (the “Fourth 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 as amended by the First Amendment to the Property Exchange Agreement dated September 17, 2019 (“First Amendment”) and as further amended by the Second Amendment to the Property Exchange Agreement dated September 16, 2020 (“Second Amendment”) and as further amended by the Third Amendment to the Property Exchange Agreement dated September 21, 2021 (“Third Amendment”); and  
and

**WHEREAS**, the Parties wish to further amend the Property Exchange 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, said time for completion being on or before March 21, 2022.

Notwithstanding the foregoing, in lieu of completing the construction of certain Phase 1 site improvements easterly of the Public Trail and Park, as more specifically described in **Exhibit “E”**, attached hereto and made a part hereof by reference, HRP shall deliver to the City on or before March 21, 2022, by close of business (5:00 PM EST), a payment and performance bond in the amount of 150% of the estimated cost (as certified by a Florida licensed civil engineer) for completing those certain Phase 1 site improvements easterly of the Public Trail and

Park as set forth in Exhibit “E” in substantially the same form marked **Exhibit “F”**, attached hereto and made a part hereof by reference.

If HRP opts to timely provide a payment and performance bond for the completion of the site improvements as set forth in Exhibit “E”, then Parties agree that the terms and conditions to exercise the provision of a payment and performance shall be set forth in a Post-Closing Agreement in substantially the form marked **Exhibit “G”**, attached hereto and made a part hereof by reference. Furthermore, the Parties agree from and after closing on the property described in Exhibit “A” that the Post-Closing Agreement shall govern those outstanding obligations of HRP and the remedies available to the City and CRA as they relate to the completion of those Improvements, referenced and described herein.”

3. Paragraph 1 d. of the Agreement is hereby deleted in its entirety and replaced with the following:

“d. The Escrow Agreement shall be closed within 30 days of HRP’s timely completion and delivery of the Public Trail and Park and the Phase 1 site improvements, or, in the alternative, HRP’s timely provision of a payment and performance bond for those certain Phase 1 site improvements set forth in Exhibit “E” pursuant to paragraph 1 (c), hereinabove. 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 completion and acceptance of the Public Trail and Park and Phase 1 site improvements or, in the alternative, HRP’s timely provision of a payment and performance bond for those certain Phase 1 site improvements set forth in Exhibit “E” pursuant to paragraph 1 (c), hereinabove. In the event the Public Trail and Park and Phase 1 site improvements are not timely completed or bonded pursuant to paragraph 1 (c), hereinabove, this 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.”

5. This Fourth 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 Fourth Amendment. The Agreement shall survive the execution of this Fourth Amendment.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the Parties have executed this Fourth 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: Stan Schmidt, Chairman

Robin L. Fenwick, Agency Clerk

(SEAL)

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [ ] online notarization this \_\_\_\_ day of \_\_\_\_\_, 2022, by Stan Schmidt, 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] Notary Public, State of Florida at Large  
Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [ ] online notarization this \_\_\_\_ day of \_\_\_\_\_, 2022, 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] Notary Public, State of Florida at Large  
My Commission Expires: \_\_\_\_\_

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

**WITNESSES (as to both):**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Donald O. Burnette, Mayor

Attest: \_\_\_\_\_  
Robin L. Fenwick, MMC, City Clerk

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by DONALD O. BURNETTER 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 by means of [XX] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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 "E"**

**PARKER MYNCHENBERG & ASSOCIATES, INC.**

1729 Ridgewood Avenue  
 Holly Hill, Florida 32117  
 (386) 677-6891  
 FAX (386) 677-2114  
 E-Mail: info@parkermynchenberg.com

Mr. Tim Burman  
 Community Development Director  
 City of Port Orange  
 1000 City Center Circle  
 Port Orange, FL 32129

March 3, 2022

**Re: RIVERWALK – EAST OF TRAIL  
 Engineer’s Certification of Cost**

Dear Mr. Burman:

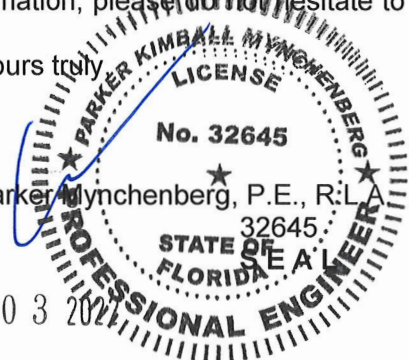
By copy of this letter and based on the attached proposals, I hereby certify the construction cost for site improvements on the above referenced project is \$256,775.50.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Concrete Sidewalk Point	750	LF	\$ 35.00	\$ 26,250.00
2	Construct Dry Retention Swales	1	LS	\$ 5,000.00	\$ 5,000.00
3	Sod	1	LS	\$ 5,000.00	\$ 5,000.00
4	Landscaping	1	LS	\$ 129,089.50	\$ 129,089.50
5	Irrigation	1	LS	\$ 9,275.00	\$ 9,275.00
6	Sea Wall Railing	1	LS	\$ 38,400.00	\$ 38,400.00
7	Service Area	1	LS	\$ 4,880.00	\$ 4,880.00
8	Dumpster Gates	1	LS	\$ 5,890.00	\$ 5,890.00
9	"C" Inlets	3	EA	\$ 3,800.00	\$ 11,400.00
10	4" PVC (SDR-26)	53	LF	\$ 20.00	\$ 1,060.00
11	6" PVC (SDR-26)	116	LF	\$ 22.00	\$ 2,552.00
12	10" PVC (DR-26)	30	LF	\$ 24.00	\$ 720.00
13	10" PVC (DR-18)	147	LF	\$ 27.00	\$ 3,969.00
14	12" PVC (DR-26)	40	LF	\$ 32.00	\$ 1,280.00
15	15" RCP	51	LF	\$ 30.00	\$ 1,530.00
16	18" RCP	35	LF	\$ 35.00	\$ 1,225.00
17	24" RCP	33	LF	\$ 40.00	\$ 1,320.00
18	2' x 3' Concrete Splash Pad	7	EA	\$ 200.00	\$ 1,400.00
19	Mitered End	2	EA	\$ 2,500.00	\$ 5,000.00
20	Junction Manhole	1	EA	\$ 35.00	\$ 35.00
21	Cleanouts	3	EA	\$ 500.00	\$ 1,500.00
<b>Subtotal:</b>					<b>\$ 256,775.50</b>

Should you have any questions or need additional information, please do not hesitate to contact me at 386-677-6891.

Yours truly

Parker Mynchenberg, P.E., R.L.A.



PM/kh  
 Enclosures  
 cc: Mr. Josif Atanasoski

# AAA Fence

A Division of Fence Service, Inc.

801 Orange Ave.  
www.aaafence.com  
Daytona Beach, FL 32114

Phone: (386) 253-4212  
Fax: (386) 253-2878

February 25, 2022

**Proposal To:**

**SAT Development  
Attn: Scott Tobin  
(386) 566-7258**

**Job Location:**

**Riverwalk Restaurant  
3633 Ridgewood Ave.  
Port Orange, FL 32127**

AAA Fence Company does hereby propose to provide materials, labor, equipment, tools and all items necessary to install fencing for this project as per the plans and specifications provided. All work shall be performed in a professional and workmanlike manner, in accordance with standard practices.

Scope of Work:

**Sea Wall Railing**

**370' of 42" high White Standard Mushroom Cap Railing .....\$27,750.00**

- Actual field dimensions required to build the Railing
- 3/4" pickets with standard picket spacing & plated posts to mount to concrete wall & sidewalk
- Sidewalk to be poured with elevation & pitch TBD
- SS Anchors are required

**142' of 42" high White Standard Mushroom Cap Railing along Sidewalk .....10,650.00**

**Service Area**

**2 – Approx 4' Walk Gates Ornamental to match Railing Look x 8' tall .....4,880.00**

- Aluminum posts to be mounted to wall to hang the gates from
- 2" x 2" outside frames with 3 horizontal 1" x 2" rails & 3/4" pickets
- Gates include 1/2" Flattened expanded aluminum attached to gates to allow air flow
- Latch to be slide type (padlockable)
- Shop drawing can be submitted for approval

**Dumpster Gates**

**1 – Approx 21' Double Gate White PVC attached to galv frames .....5,890.00**

- White PVC with Deco Rails attached to 2" Sq galv welded frames
- Gate frames are braced & trussed
- 2 SS drop rod assemblies included w/ pipe sleeves for open & closed positions
- 2 – 6 5/8" Galvanized Schedule 40 posts set in concrete

Dolphin Irrigation Plus Landscape Division  
 PO Box 1448  
 Bunnell, FL 32110  
 (386) 445-0284  
 dolphinirrigationplus@gmail.com  
 dolphinirrigationplus.com



# Estimate

**ADDRESS**

S.A.T. DEVELOPMENT  
 1368 NORTH US HIGHWAY 1  
 ORMOND BEACH, FL 32174

ESTIMATE # 1426  
 DATE 12/04/2020

DESCRIPTION	QTY	RATE	AMOUNT
PH1 East of walkway Irrigation System Built to desgin	1	9,275.00	9,275.00

TOTAL **\$9,275.00**

Accepted By

Accepted Date

Dolphin Irrigation Plus Landscape Division  
 PO Box 1448  
 Bunnell, FL 32110  
 (386) 445-0284  
 dolphinirrigationplus@gmail.com  
 dolphinirrigationplus.com



# Estimate

**ADDRESS**

S.A.T. DEVELOPMENT  
 1368 NORTH US HIGHWAY 1  
 ORMOND BEACH, FL 32174

ESTIMATE # 1408  
 DATE 11/25/2020

DESCRIPTION	QTY	RATE	AMOUNT
P1 East.			
3g Jasmine	83	12.50	1,037.50
3g Garlic	0	12.50	0.00
3g Arboricola	44	12.50	550.00
3g Yaupon	61	12.50	762.50
3g Orange Bird of Paradise	10	28.50	285.00
3g Red sister	46	12.50	575.00
7g Green Pitt	0	36.00	0.00
7g Virburn suspen	84	34.50	2,898.00
7g Croton Mammy	25	37.50	937.50
7g Hawthorn	102	35.50	3,621.00
7g Podo	4	36.50	146.00
7g Var. Ginger	55	36.50	2,007.50
7g Philodendron	3	36.50	109.50
30g Tree form Ligustrum	10	175.00	1,750.00
30g Crape multi	14	175.00	2,450.00
65g Hollies tree form	0	425.00	0.00
30g Robelleni	4	150.00	600.00
Regen Sable 12-14 ct	41	325.00	13,325.00
Sylvester Palm 12-14 ct	13	2,750.00	35,750.00
Washington Palm 12-14	3	475.00	1,425.00
Medjool 12-14	11	4,950.00	54,450.00
30g Bald Crypress	0	175.00	0.00
65g Maginola	0	425.00	0.00
45g Live Oak	0	275.00	0.00
Pine bark mulch yard (est)	25	50.00	1,250.00
St. Augustine sod (Qty based upon how much is disturbed. est only)	12,000	0.43	5,160.00

All Quotes valid for 10 days

---

TOTAL

**\$129,089.50**

Accepted By

Accepted Date

**EXHIBIT "F"**

**PAYMENT AND PERFORMANCE BOND**

**BOND NO.** \_\_\_\_\_

**PRINCIPAL:**

Developer or Contractor: Halifax River Partners, LLC  
Principal Business Address: 1800 North U.S. Highway 1  
Ormond Beach, Florida 32174  
Contact Person: Josif Atanasoski, Member

**SURETY:**

Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

**OBLIGEE:**

City of Port Orange, Florida, a chartered municipal corporation  
1000 City Center Circle  
Port Orange, Florida 32129-4144  
Contact Person: City Manager  
Phone Number: (386) 506-5501

**Amount: \$** \_\_\_\_\_ **City Case/Project No.** \_\_\_\_\_

**Description of Work:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Project Location:** Ridgewood Avenue  
Port Orange, Volusia County, Florida

**Legal Description:** See attached Exhibit "A"

Front Page

All other pages are subsequent to this page regardless of any numbers that may be printed thereon.

**Riverwalk Exchange Agreement for Bond Legal Description  
\_\_\_\_\_ Ridgewood Avenue, Port Orange, FL 32129**

**Parcel ID:**

\_\_\_\_\_

**Legal Description:**

DRAFT

**EXHIBIT "A"**

**EXHIBIT "A"**

DRAFT

**Phase I Site Improvements for Riverwalk Fysh Restaurant**

Project No. \_\_\_\_\_

Bond No. \_\_\_\_\_

**COMBINATION PAYMENT AND PERFORMANCE BOND**

Guaranty for Construction of Improvements

BY THIS BOND, We, **HALIFAX RIVER PARTNERS, LLC**, a Florida limited liability company, as Principal, and \_\_\_\_\_ insurance company, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, as Obligee, herein called "City," in the sum of \_\_\_\_\_ **& NO/100 DOLLARS** (\$ \_\_\_\_\_), being 150% of the cost estimate for the construction of the required improvements, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

1. THE CONDITION OF THIS BOND is that if Principal performs the obligations set forth in the Post-Closing Agreement, having an effective date of \_\_\_\_\_, recorded in OR Book \_\_\_\_\_, Page \_\_\_\_\_, Public Records of Volusia County, Florida, hereinafter sometimes referred to as the Contract, entered into between Principal and City for construction of those certain improvements referenced therein and reflected on the plans approved by the City Council, as prepared by Parker Mychenberg, P.E., Florida Registration No. \_\_\_\_\_, of the engineering firm Parker Mynchenberg & Associates, Inc., being made a part of this bond by reference, at the times and in the manner prescribed in the Contract, then this Bond shall be released; otherwise it shall remain in full force and effect.; and

2. **DEFAULT:** Principal and Surety jointly and severally understand, in the event the Principal fails or refuses to complete the obligations required by the Post-Closing Agreement and this Bond, the CITY has the right to:

- (1) demand that the Surety promptly remedy the default; or
- (2) demand payment by the Surety of the amount due to City up to the face amount of the Bond by letter signed by the City Manager, or a designee, stating that the Principal has defaulted on his or her obligations as set forth in the Post-Closing Agreement and this Bond, which obligations were a condition of approval of Post-Closing Agreement; or
- (3) institute an immediate suit against Surety to recover the full amount of this Bond for the purposes of completing the obligations set forth herein. Notice to City that this Bond will expire prior to performance of Principal's obligations shall be deemed a default.

3. Principal and Surety jointly and severally understand that failure to complete the obligations required by the Post-Closing Agreement and this Bond in accordance with any time periods set forth therein, or at the latest, to commence or recommence completion of the obligations within thirty (30) days after written notice by the City Manager, or a designee, to do so, shall be deemed to be a failure or refusal to complete such obligations.

4. Principal and Surety also understand that in the event the City elects to institute suit against Surety and the funds recovered thereby prove insufficient to complete the obligations required by the Post-Closing Agreement and this Bond, the Principal shall be liable hereunder to pay the City, any sums required to complete the obligations hereunder, including, but not limited to, legal and contingent costs, together with any damages, direct or

consequential, which the City may sustain because of Principal's failure to comply with all of the requirements hereof.

5. BOND TO REMAIN IN FULL FORCE AND EFFECT: This Bond shall be kept in full force and effect by the Principal at all times, including any warranty/maintenance period, as provided herein. In the event of any material change, cancellation, expiration or non-payment of premiums, Surety shall notify City by certified mail or registered mail, return receipt requested, at least thirty (30) days prior to the effective date of the change, cancellation, or expiration of said Bond. Notice to City that this Bond will expire prior to performance of Principal's obligations shall be deemed a default pursuant to section B above.

6. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by registered or certified mail, return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving notice shall remain such until it shall have been changed by written notices in compliance with the provisions of this paragraph. For the present, the parties designate the place as specified on the Bond Cover Sheet, hereinabove, for giving notice.

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company

\_\_\_\_\_  
(As to Corporate Principal) Secretary

By: \_\_\_\_\_  
Josif Atanasoski, Manager

\_\_\_\_\_  
(Witness to Principal)

(Corporate Seal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Witness to Surety)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
(Attorney-in-Fact)

(Corporate Seal)

NOTE: **Date of BOND must not be prior to date of Contract.** If Developer/Principal is Partnership, all partners should execute BOND. All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.  
IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

**EXHIBIT "G"**  
**Post-Closing Agreement**

THIS POST-CLOSING AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2022, by and between HALIFAX RIVER PARTNERS, LLC, a Florida limited liability company, Josif Atanasoski, Manager, having a mailing address of 1800 No. U.S. Highway 1, Ormond Beach, FL 32174 ("HRP") 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"),

**RECITALS:**

**WHEREAS**, the Parties previously entered into that certain Property Exchange Agreement dated September 20, 2016 (the "Agreement") for the exchange of real property, as amended by the First Amendment to the Property Exchange Agreement dated September 17, 2019 ("First Amendment") and as further amended by the Second Amendment to the Property Exchange Agreement dated September 16, 2020 ("Second Amendment") and as further amended by the Third Amendment to the Property Exchange Agreement dated September 21, 2021 ("Third Amendment") and as further amended by the Fourth Amendment to the Property Exchange Agreement dated March \_\_\_\_\_, 2022 ("Fourth Amendment") (collectively, "Exchange Agreement"); and

**WHEREAS**, the Exchange Agreement between the Parties imposes certain obligations upon HRP, which are specifically outlined below, as part of the consideration for transfer of the property subject to the Exchange Agreement, being described as Parcel ID. 6303-10-02-0030, located at 3571 Ridgewood Avenue, Port Orange, Florida 32129 ("Cardwell Funeral Home Property"); and

**WHEREAS**, HRP owns the property where those certain Phase 1 site improvements are required to be completed in order to complete the transfer of the Cardwell Funeral Home Property, said property being more fully described hereinbelow; and

**WHEREAS**, the Exchange Agreement, in lieu of completing, contemplates the provision of bonding certain Phase I site improvements, more particularly described hereinbelow, in lieu of timely completion of certain obligations as set forth in the Exchange Agreement; and

**WHEREAS**, HRP desires to exercise the provision of bonding those certain site improvements in furtherance of the transfer of the property subject to the Exchange Agreement; and

**WHEREAS**, Parties desire to set forth the terms and conditions of completing those certain site improvements and setting forth the obligations and remedies afforded to the Parties.

**NOW, THEREFORE** the Parties hereby agree to the following:

1. **Recitals:** The above recitals are incorporated hereinbelow as if set forth.
2. **Subject Property for Phase I Site Improvements:** HRP is the owner of the property where the Phase I site improvements are required to be timely completed or bonded. Said property being more fully described in **Exhibit "A"**, attached hereto and made a part hereof by reference, ("Subject Property").
3. **Phase I Site Improvements Work:** HRP warrants that it will complete those certain Phase I site

improvements as set forth in **Exhibit “B”**, attached hereto, and made a part hereof by reference (“Improvements”). The Improvements shall be completed in accordance with the Site Plan stamped “Approved for Construction,” referenced as **Project No. \_\_\_\_\_**, and the Port Orange Land Development Code, and any other applicable regulations, ordinances or laws of the City or State.

4. **Completion.** All Improvements shall be completed and accepted by the City within six (6) months of the effective date of this Agreement, said date being \_\_\_\_\_, 2022.
5. **Default.** Execution of this Agreement shall allow HRP the right to provide a financial guarantee prepared and recorded in the public records of Volusia County and as acceptable to the City, in an amount equal to one hundred fifty percent (150%) of the engineer's signed and sealed estimated construction costs for the completion of the required Improvements. If the required Improvements are not completed as agreed under this Agreement, the City shall be authorized to draw upon the financial guarantee funds to pay for completion of said Improvements, including reasonable administrative costs in the completion of the construction.
6. **Post-Closing Remedies.** If after the transfer of the Cardwell Funeral Home Property (“Closing”), HRP fails to perform its obligations which expressly survive the Closing pursuant to this Agreement, then the City may exercise any remedies available to it at law or in equity, in any order it deems appropriate in its sole and absolute discretion. In such event, the provision of the financial guarantee contained in Section 4, hereinabove, will not limit nor be an offset against City's recoverable damages.
7. **Release of the Funds.** The financial guarantee shall continue until receipt of notice from the City and CRA directing the Surety to release the bond held on behalf of HRP's obligations, Surety shall release said bond as directed in such notice. Upon such release, the Surety shall have no further liability under this Agreement.
8. **Certificate of Occupancy.** Notwithstanding the foregoing, no certificate of occupancy shall be issued for the **Riverwalk Fysh Restaurant** located on the Subject Property until all Improvements reflected on the plans approved by the City referenced in Paragraph 2, above, have been completed and accepted by the City.
9. **Counterparts:** This Agreement may be executed in counterparts. When each party has executed a copy of this Agreement, the executed copies taken together shall have the same force and effect as if executed in one document. Facsimile signatures on this Agreement shall be deemed original signatures.
10. **Notices:** Any notice required under this Agreement shall be given in writing at the addresses set forth at the end of this Agreement and by: (a) certified or registered mail, postage prepaid, (b) overnight courier guaranteeing next day delivery, (c) personal delivery, or (d) facsimile. All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery or facsimile (with proof of transmission).
11. **Binding:** This Agreement shall be recorded in the Public Records of Volusia County, Florida. The provisions of this Agreement shall constitute covenants running with the land applicable to all of the subject property described herein or any portion thereof. This Agreement shall inure to the benefit of the parties hereto and the Subject Property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.

**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 by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of March, 2022, 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**

**WITNESS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Stan Schmidt, Chairman

Attest: \_\_\_\_\_  
Robin L. Fenwick, MMC, City Clerk

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of March, 2022, by Stan Schmidt, Chairman of the COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER, on behalf of the Agency. 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 by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by ROBIN L. FENWICK, MMC, 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:

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

**WITNESSES (as to both):**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Donald O. Burnette, Mayor

Attest: \_\_\_\_\_  
Robin L. Fenwick, MMC, City Clerk

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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 by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by ROBIN L. FENWICK, 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

**Exhibit A**  
**To Be Inserted**

DRAFT

**Exhibit “B”**  
**ENGINEER’S COST ESTIMATE**  
*(to be attached)*

DRAFT



## COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER

AGENCY MEETING DATE: 3/15/2022

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**SUBJECT:** (C7) Third Amendment to the Escrow Agreement (Former Cardwell Funeral Home Property)

**DEPARTMENT:** Community Development

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**RECOMMENDED MOTION:** Move to approve the Third Amendment to the Escrow Agreement subject to removing the language releasing the \$48,000 cash bond, and authorizing the Chairman and City Clerk to sign all necessary documents related to the Escrow Agreement in furtherance of the transfer of Cardwell Funeral Home Property.

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**SUMMARY:** The current Escrow Agreement requires an amendment in order to accommodate Halifax River Partners' (HRP) request to bond certain Phase 1 site improvements located east and west of the Public Trail and Park and for consistency with the similarly requested amendment to the Property Exchange Agreement. The amended language allows for the provision of bonding said improvements in lieu of completion of all Phase 1 site improvements. According to HRP, the site improvements located east of the trail anticipated not to be completed by March 21, 2022, include sidewalks, stormwater, site furnishings, landscape, railing/fencing, irrigation, wood bridges, and light poles, and the delay in completing these site improvements is due to the ongoing construction of the Fysh Bar and Grill Restaurant. HRP indicates that all site improvements could be completed by March 21, 2022, but completing some of the site improvements while the restaurant is still under construction could lead to these site improvements being damaged or broken and having to be repaired or replaced and causing further delay in the completion of the restaurant. As for the site improvements located west of the Riverwalk Trail, HRP has indicated there are certain site improvements that require outside agency (FPL, FDOT, STJWMD) action or approval which could delay completion of certain site improvements west of the Riverwalk Trail. Therefore, HRP is requesting this amendment, in part, to bond the remaining Phase 1 site improvements that will not be completed by March 21, 2022, in order for the deed to the Cardwell Funeral Home property to be transferred from the CRA to HRP.

In addition to the requested amended language hereinabove, HRP is requesting an amendment to the current Escrow Agreement to add language to allow a \$48,000 cash bond to be released by the City to HRP upon the completion of the Phase 1 site improvements or, alternatively, provide a bond for said improvements as indicated in the proposed Fourth Amendment to the Property Exchange Agreement (See highlighted language in the attachment). Staff cannot recommend approval of the proposed Third Amendment to the Escrow Agreement with this additional language as said language proposed conflicts with the current Amended and Restated Master Development

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Agreement (MDA). The current MDA requires the cash bond to be released upon completion of the Phase 1 site improvements, including the Fysh Bar and Grill Restaurant.

HRP was required by the Riverwalk Amended and Restated Master Development Agreement to provide a bond to the City in the amount of two (2) years of the net income for the Cardwell Funeral Home or \$48,000 to guarantee completion of the 23' Public Trail and Phase 1 site improvements before September 2019. As part of the 1st Amendment to the Riverwalk Amended and Restated Master Development Agreement, the requirement to release the cash bond was changed to require the 23' Public Trail and Park be completed by November 2019, and all remaining Phase 1 improvements, including completion of the restaurant, to be completed before September 2020. The 23' Public Trail was completed in October 2019, ahead of the amended deadline for completion. However, the remaining Phase 1 improvements, including the restaurant, were not completed in September 2020, and the date to complete the remaining Phase 1 improvements, including the restaurant, has been extended two more times through amendments to the MDA. The current MDA requires all Phase 1 improvements, including the restaurant, to be completed by March 21, 2022, and if not completed by March 21, 2022, HRP forfeits the \$48,000 cash bond.

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**ATTACHMENTS:**

1.	Third Amendment to Escrow Agreement w highlight of language for CC consideration 3-6-22-ca-asstatty01-vdi	Third Amendment to Escrow Agreement w highlight of language for CC consideration 3-6-22-ca-asstatty01-vdi.pdf
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Robin Fenwick	Created/Initiated - 3/1/2022
Tim Burman	Approved - 3/1/2022
Shannon Balmer	Approved - 3/8/2022
Wayne Clark	Approved - 3/10/2022
Robin Fenwick	New - 1/1/1900

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### **THIRD AMENDMENT TO THE ESCROW AGREEMENT**

**THIS THIRD AMENDMENT TO THE ESCROW AGREEMENT** is made and entered into as of this \_\_\_\_ day of March, 2022, 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 Ciochetti, 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 to effectuate that certain Property Exchange Agreement dated September 20, 2016 (“Exchange Agreement”) for the property identified as Tax Parcel ID 630310020030, located at 3571 Ridgewood Avenue, Port Orange, Florida 32129 as amended by the First Amendment to Escrow Agreement dated September 17, 2019 and as further amended by the Second Amendment to the Escrow Agreement dated September 15, 2020 (the “Agreement”); and

**WHEREAS**, Port Orange and Developer desire to further amend the 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 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 horizontal site improvements of the Riverwalk Project. If on or before March 21, 2022, Developer has completed the Public Trail and Park and the horizontal site improvements for Phase I of the Riverwalk Project as set forth in paragraph 6.g. of the MDA, as amended, or, alternatively, bonded off certain Phase I site improvements pursuant to paragraph 1 (c) of the Exchange Agreement, and the City and other governing entities have accepted the Public Trail and Park improvements and Phase I horizontal site improvements or said bond pursuant to paragraph 1 (c) of the Exchange Agreement, then the City shall provide the Escrow Agent (copying Developer) with written notice of the same. Upon receipt of said notice, the Escrow Agent shall deliver to Columbia Title Corporation, as closing agent, the following: (1) the Escrow Deposits for the transfer tax, recording, and closing costs; (2) the plans and permits for the park improvements; and (3) the Special Warranty Deed and cause the deed for the Exchange Property (Cardwell) to be recorded in the

Public Records of Volusia County Florida. Upon notice from the closing agent of the recording of the deed, the Escrow Agent shall release the \$48,000 cash bond to Developer.

- 3. This Third Amendment to the Escrow Agreement shall be effective on the date set forth below.
4. 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 Third Amendment. The Agreement shall survive execution of this Third Amendment.

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 by means of [ ]physical presence or [ ] online notarization this \_\_\_ day of March, 2022, 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**

**WITNESS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Stan Schmidt, Chairman

Attest: \_\_\_\_\_  
Robin L. Fenwick, MMC, City Clerk

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of March, 2022, by Stan Schmidt, Chairman of the COMMUNITY REDEVELOPMENT AGENCY FOR PORT ORANGE TOWN CENTER, on behalf of the Agency. 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 by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by ROBIN L. FENWICK, MMC, 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 (as to both):**

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

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Donald O. Burnette, Mayor

\_\_\_\_\_  
Printed Name

Attest: \_\_\_\_\_  
Robin L. Fenwick, MMC, City Clerk

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

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\_\_\_\_\_  
Notary Public, State of Florida at Large

My Commission Expires:

**WITNESSES:**

**ESCROW AGENT**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
G. Larry Sims, Esquire

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by G. LARRY SIMS, ESQUIRE, of DORAN SIMS WOLFE AND CIOCCHETTI. He is personally known to me or has produced \_\_\_\_\_ as identification.

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