

AGENDA REQUEST

C.A. #2010-011

Date: February 12, 2010

PUBLIC HEARING _____ RESOLUTION _____ ORDINANCE _____

BOARD APPOINTMENT _____ CONSENT _____ OTHER BUSINESS February 23, 2010

ITEM DESCRIPTION:

Amendment No. 3 to the Edgewater Harbor Planned Unit Development (PUD) Agreement to extend expiration date by 120-days.

BACKGROUND:

In September of 2003, the City advertised a Request for Proposal (RFP) seeking qualified development teams to develop approximately 59.94 acres located at 4115 US Highway 1, Edgewater, Florida. In November of 2003, the City Council chose Edgewater Harbor LLC and later approved the RPUD Classification and RPUD Agreement in June of 2004.

City Council approved Amendment #2 of the Agreement on March 5, 2007. As a provision of the Agreement the developer shall commence construction of Edgewater Harbor within three (3) years of March 5, 2007. There is a provision whereas at its "sole option" the City may extend the deadline for commencing construction. Previous amendments that have occurred have not only extended the duration of the Agreement but have also incorporated changes to the authorized agents and various other design and requirements outlined in the Agreement. This request for Amendment No. 3 is only for extending the expiration of the PUD Agreement for additional 120-days.

STAFF RECOMMENDATION:

Staff recommends that the City Council to approve Amendment No. 3 to the Edgewater Harbor Planned Unit Development (PUD) Agreement.

ACTION REQUESTED:


Motion to approve Amendment No. 3 to the Edgewater Harbor Planned Unit Development (PUD) Agreement.

FINANCIAL IMPACT: (Finance Director) _____

(SPECIFY IF BUDGET AMENDMENT IS REQUIRED) YES _____ NO _____

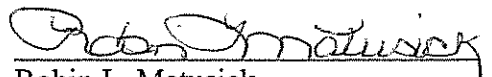
PREVIOUS AGENDA ITEM: YES _____ NO X
If so, DATE: N/A AGENDA ITEM # _____

Respectfully submitted,



Tracey T. Barlow
City Manager

Concurrence:



Robin L. Matusick
Paralegal

THIS INSTRUMENT PREPARED BY:

Carolyn S. Ansay, Esquire
Doran, Sims, Wolfe, Ansay, Kunding & Birch
Post Office Drawer 15110
Daytona Beach, Florida 32115

AFTER RECORDING RETURN TO:

Robin L. Matusick, Paralegal
City of Edgewater
Post Office Box 100
Edgewater, Florida 32132-0100

PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT

EDGEWATER HARBOR DEVELOPMENT

AMENDMENT NO. 3

THIS AMENDMENT is made and entered into this ____ day of _____, 2010 by and between, the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation, whose mailing address is Post Office Box 100, 104 N. Riverside Drive, Edgewater, Florida 32132, (hereinafter referred to as "City") and **EDGEWATER HARBOR, LLC.**, a limited liability company, with Robert E. W. "Hawk" McMillan III as its authorized agent, whose address is 2 Jungle Hut Road, Suite 2, Palm Coast, Florida 32137 (hereinafter referred to as "Developer"). The purpose of this Agreement is to extend the deadline for commencing construction.

Except as set forth below, the terms and conditions of that certain Planned Unit Development (PUD) Agreement, Amendment No. 2, dated March 5, 2007, and recorded at Book 6030, Page 3192 of the Public Records of Volusia County, Florida, shall remain in full force and effect.

NOW, THEREFORE, in consideration of the agreements, premises and covenants set forth herein and other good and valuable consideration, the parties agree as follows:

Section 2 of the Planned Unit Development (PUD) Agreement, Amendment No. 2, dated March 5, 2007, shall be deleted in its entirety and replaced with the following:

2. DURATION OF AGREEMENT

The duration of this Agreement shall be perpetual and run with the title to the Property. The Developer shall commence construction of Edgewater Harbor as defined by the revised Master Plan, dated March 2007 (Exhibit "B" included herein), on or before July 5, 2010. Developer's failure to initiate construction within the time frame identified herein may result in the City's termination of the Agreement. The City acknowledges that this project may be developed in phases, and location of building structures may be altered as necessary for permitting or other conditions. All building location alterations shall adhere to the site criteria and buffer restrictions set forth herein. The foregoing deadline for commencing construction shall apply only to the construction of the initial phase. For purposes of this Agreement, construction shall be deemed commenced on the Developer's beginning excavation and site work necessary for construction of the development. The City, at its sole option, may extend the deadline for commencing construction. All development must be consistent with the revised Master Plan and must be approved by City Council (in the form of a preliminary plat or site plan approval) prior to commencement of any authorized work. Final Construction Plan approval shall include, but not be limited to utilities, stormwater, traffic, fire rescue, pedestrian systems, street lighting, law enforcement, environmental, solid waste containment, and planning elements, including landscaping, signage and pavement markings.

IN WITNESS WHEREOF, the parties have caused this Amendment to the Planned Unit Development (PUD) Agreement to be made and entered into the date and year first written above.

ATTEST:

CITY COUNCIL OF THE CITY OF
EDGEWATER, FLORIDA

Bonnie Wenzel
City Clerk

Mike Thomas
Mayor

For the use and reliance only by the City of Edgewater, Florida. Approved as to form and legality by: Carolyn S. Ansay, City Attorney Doran, Sims, Wolfe, Ansay, Kundid & Birch

Approved by the City Council of the City of Edgewater at a meeting held on the ____ day of _____, 2010 under Agenda Item ____.

Witnessed by:

EDGEWATER HARBOR, LLC

Robert E. W. "Hawk" McMillan III
Title: Manager

Dated: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me on this ____ day of _____, 2010, by **ROBERT E. W. "HAWK" McMILLAN III**, who has authority to execute this document on behalf of **EDGEWATER HARBOR, LLC** and who ___ is personally known to me or ___ has produced _____ as identification and who did (did not) take an oath.

Notary Public

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ce

03/26/2007 01:20 PM
Instrument# 2007-069323 # 1
Book : 6030
Page : 3192

THIS INSTRUMENT PREPARED BY:

Carolyn S. Ansay, Esquire
Doran, Wolfe, Ansay & Kundid
Post Office Drawer 15110
Daytona Beach, FL 32115

AFTER RECORDING RETURN TO:

Robin L. Matusick, Paralegal
Legal Department
City of Edgewater
Post Office Box 100
Edgewater, FL 32132-0100

For Recording Purposes Only

PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT

EDGEWATER HARBOR DEVELOPMENT

AMENDMENT NO. 2

THIS AMENDMENT TO THE PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT is made and entered into this 5th day of March, 2007 by and between, the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation, whose mailing address is P. O. Box 100, 104 N. Riverside Drive, Edgewater Florida 32132, (hereinafter referred to as "City") and **EDGEWATER HARBOR, LLC**, a Florida Limited Liability Company, with Hawk McMillan as the authorized agent, whose address is 2 Jungle Hut Road, Suite 2, Palm Coast, Florida 32137 (hereinafter referred to as "Developer") and who has authorized Atlas Design Group, Inc., with Curt M. Wimpee as the authorized agent, as Edgewater Harbor Engineer of Record. The purpose of this Agreement is to define the terms and conditions granting the development approval of the subject property. The terms and conditions incorporated by Amendment No. 2 are accommodations made by the City and the Developer in light of current market conditions.

In all other respects, the terms and conditions of that certain Planned Unit Development (PUD) Agreement dated June 21, 2004 and recorded on June 23, 2004 at Official Records Book

#5346, Pages 557 through 581, and Amendment No. 1 dated April 3, 2006 and recorded at Official Records Book 5819, Pages 4092 through 4125, shall remain in full force and effect.

NOW, THEREFORE, in consideration of the agreements, premises, and covenants set forth herein and other good and valuable consideration, the parties agree as follows:

1. LEGAL DESCRIPTION AND OWNER

The land subject to this Agreement is approximately 59.94 acres located East of U.S. Highway Number 1, Volusia County, Florida (hereinafter referred to as Property). The legal description of the Property is attached hereto as **Exhibit "A" – Legal Description**. The Record owner of the subject Property is Edgewater Harbor, LLC.

2. DURATION OF AGREEMENT

The duration of this Agreement shall be perpetual and run with the title to the Property. The Developer shall commence construction of Edgewater Harbor as defined by the revised Master Plan, dated March 2007 (**Exhibit "B"** included herein), within three (3) years of the effective date of this Agreement. Developer's failure to initiate construction within the time frame identified herein may result in the City's termination of the Agreement. The City acknowledges that this project may be developed in phases, and location of building structures may be altered as necessary for permitting or other conditions. All building location alterations shall adhere to the site criteria and buffer restrictions set forth herein. The foregoing deadline for commencing construction shall apply only to the construction of the initial phase. For purposes of this Agreement, construction shall be deemed commenced on the Developer's beginning excavation and site work necessary for construction of the development. The City, at its sole option, may extend the deadline for commencing construction. All development must be consistent with the revised Master Plan and

must be approved by City Council (in the form of a preliminary plat or site plan approval) prior to commencement of any authorized work. Final Construction Plan approval shall include, but not be limited to utilities, stormwater, traffic, fire rescue, pedestrian systems, street lighting, law enforcement, environmental, solid waste containment, and planning elements, including landscaping, signage and pavement markings.

3. DEVELOPMENT USES PERMITTED

The Developer hereby agrees to develop the Property subject to the terms of this Agreement and in accordance with the City of Edgewater's Land Development Code as it may be amended from time to time. The Developer further agrees that all development will be consistent with the Edgewater Harbor revised Master Plan dated March 2007 (**Exhibit "B"**), or such subsequent Master Plan as may be approved by the City. The Master Plan generally includes multi-story residential, mixed-use residential condominiums, public-access mixed-use waterfront commercial, professional, residential and retail, including one or more restaurants. A dry-stack boat storage building of up to 60,000 square feet and 300 slips and commercial waterfront access will be allowed if permissible through jurisdictional agencies. The City supports and will continue to support the Developer's efforts to secure the permits necessary for the boat storage building. If a boat storage building and commercial waterfront access are not feasible, for whatever reason, the area designated on the Master Plan as "Future Dry Stack Marina" will be utilized as additional commercial facilities along the water or along U. S. Highway 1. Edgewater Harbor shall be developed consistent with the City's development procedures. Final project approval may be subject to change based upon final environmental permitting. As described in Section 3.F. of this document, the developer will establish a Condominium Association for the residential portion of this project and a Property

Owner Association for the commercial portion of this project (hereinafter referred to as Associations).

SITE DATA

<u>Overall Site</u>	<u>Mixed-Use Commercial (Non-Residential)¹</u>	<u>Residential</u>
<u>Total Land Area</u>	Approx. 12 acres	Approx. 48 acres
Approved Zoning	RPUD	RPUD
Approved Land Use Designation	Mixed Use w/conservation overlay	Mixed Use w/conservation overlay
Maximum Number of Units	100,000 s.f.	450 Units
Required Open Space	30%	30%
Maximum Building Height	60'	50'
Maximum Impervious Surface		
Area (Overall Site)	70%	70%
Number of Wet Marina Slips	30	
Number of Dry Slips	300	

¹Residential may be allowed in a mixed-use commercial area so long as there is at least 100,000 square feet of commercial.

Proposed Impervious Surface Area

Right-of-way (Roadways, Parking, Sidewalks)	6.8 acres	6.5 acres
Building Pad	2.3 acres	8.5 acres
Retention Ponds	+ 2 acres	+ 8 acres
Minimum Living Area	NA	1,200 s.f./unit
Maximum Building Coverage	40%	40%

Minimum Building Setbacks

North Property Line	20 ft. road, 75 ft. bldg.	20 ft. road, 75 ft. bldg.
East Property Line	20 ft.	NA
South Property Line	10 ft.	150 ft.
West Property Line	NA	40'

Minimum Building Separation Requirements

Building separations will comply with the current Florida Building Code and applicable Fire Code.

Parking

Required Spaces	1 sp./250 s.f.	1.5 sp.unit + 5% additional for visitors
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A. **Roads**

There shall be one access/entrance permitted from U.S. 1 to service Edgewater Harbor, with a minimum right-of-way width of sixty-five (65) feet. Right turn/deceleration and left turn lanes will be required on U.S.1. The existing left turn lane and a traffic signal at the entrance will be

modified/added at the cost of Edgewater Harbor, LLC, if a traffic study proves an upgrade to be necessary. The project will also be permitted one (1) emergency service access from U.S. 1. The main private residential roadway shall have a minimum right-of-way width of fifty (50) feet. All roadways shall be designed to the City's Land Development Code standards.

There shall be one (1) ungated public-access main road to serve the commercial facilities and one or two private-access(es), gated road for residents and authorized guests to access the residential buildings and facilities. All interior roads, gated and ungated, shall be maintained by the respective Associations. Turn lanes for access to commercial sites and residential sites may be required within the project with a needs determination at the time of site/construction plan approval for each phase. Adequate stacking distance and turnaround shall be provided at all resident access points.

B. Drainage Facilities

The Retention Pond(s) will meet the requirements of the St. Johns River Water Management District, the City, and all other jurisdictioning agencies. The retention pond(s) shall be sized, designed and permitted to treat the stormwater for the entire 59.94 acres, in accordance with the City's Land Development Code, and have a positive outfall to the Indian River. The Ponds will be owned and maintained by the respective Association.

Stormwater currently permitted to enter the site will continue to be accepted at the currently permitted "CFS" (cubic feet/second).

C. Signage

The development will be allowed either (i) two (2) monument/ground signs along U.S.1 -- one (1) for the commercial development and one (1) for the residential development; or (ii) a combination of permanent square footage for one (1) sign. Two (2) ground signs will be allowed

adjacent to the commercial facilities and the commercial parking area. Directional, "non-advertising" signage shall be allowed throughout the development. Wall signage for the commercial and waterfront facilities if included shall conform to the City's Land Development Code. All other signage shall conform to the City of Edgewater Land Development Code.

D. Trees/Landscaping

Landscaping for Edgewater Harbor shall meet or exceed the City's Land Development Code Tree Protection Requirements. Landscaping and irrigation plans must be submitted with final construction plans for each phase.

E. Irrigation

All common areas and the entrance medians will be irrigated by reclaimed water or from a surface water system upon proper permitting and approval.

F. Declaration of Covenants, Conditions and Restrictions

Edgewater Harbor will develop and submit condominium, and property owner association documents in accordance with all City, County, State and Federal laws, regulations, and guidelines. Further, Edgewater Harbor shall include in any and all such documents the following language, in similar font, size, and typeface:

NOTICE: PURSUANT TO THE TERMS OF THAT CERTAIN AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANT AS TO USE DATED MAY 5, 2004, AND RECORDED IN OFFICIAL RECORDS BOOK 5318 PAGE 3140, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA (THE "DECLARATION"), THE USE OF THE SUBJECT PROPERTY IS RESTRICTED TO PROHIBIT RESIDENTIAL USE ON THE SOUTHERLY 150 FEET, BY ACQUIRING ANY INTEREST IN THE SUBJECT PROPERTY, YOU WILL BE BOUND BY THE TERMS OF SAID DECLARATION INCLUDING THE WAIVER OF ANY AND ALL RIGHTS TO BRING A COURSE OF ACTION AGAINST THE OWNER(S) OF ADJACENT LAND FOR NUISANCE, ANNOYANCE, EXCESSIVE NOISE OR ODORS, OR ANY CLAIMS RELATED

THERETO, SO LONG AS THAT PROPERTY IS USED FOR INDUSTRIAL OR MANUFACTURING PURPOSES. IF YOU HAVE QUESTIONS REGARDING THE SAME, PLEASE CONSULT WITH A REAL ESTATE ATTORNEY.

G. Once Developer has obtained approval for development of the Project from the City, the City may permit Developer to install a temporary construction/sales trailer on the subject property.

H. Berm

Developer hereby agrees that a landscaped buffer and berm will be constructed within the one hundred fifty foot (150') building setback on the southern most property line where residential use is adjacent to industrial zoned property. The landscaped buffer and berm shall comply with the applicable standards set forth in the City Land Development Code and shall:

1. Extend from the right of way or setback along U.S. Highway 1 to the dry boat storage building/mixed-use commercial facility located on the southeastern portion of the property;
2. Be an average width of fifty feet (50') along the total length of the berm;
3. Be a minimum width of forty feet (40') at any one point;
4. Be a minimum of four feet (4') in height with a 3:1 slope; and
5. Have landscaping with a minimum of fifteen feet (15') height and fifty percent (50%) opacity within one (1) year.

The berm and associated landscaping within the buffer shall be constructed in conformance to the Typical Landscape Buffer Plan, a copy of which is attached hereto and incorporated by reference in **Exhibit "C"**. During the submittal process, Developer will provide a complete set of

landscape design plans to the City.

Notwithstanding anything to the contrary contained in this Agreement or the City's Land Development Code, no brick or block wall or fencing of any type shall be required within the berm or between the Property and the neighboring property to the south.

4. **FUTURE LAND USE AND ZONING DESIGNATION**

The Future Land Use designation for Edgewater Harbor currently is Mixed Use with Conservation Overlay. The zoning designation for Edgewater Harbor is RPUD (Residential Planned Unit Development).

5. **PUBLIC FACILITIES**

A. Developer agrees to connect to and utilize, the City's water distribution system. Developer agrees to connect to the City's potable system at the nearest point of connection, with a minimum of eight inch (8") water main throughout the development. City agrees to reserve potable water capacity within its system up to an average daily flow of 170,000 gallons per day for this project as Developer complies with Paragraph 5.G. of this document. All water main distribution system improvements will be installed by the Developer and conveyed to the City by Bill of Sale in a form acceptable to the City and dedicated to the City prior to or at the time of platting or site plan approval, or in accordance with the requirements contained in Section 5.K.6. - Bonds as it relates to performance bonds.

B. Developer agrees to connect to and utilize, the County's wastewater transmission and collection system. City agrees to reserve capacity within it's wastewater system, up to an average daily flow of 150,000 gallon per day for this project, as Developer complies with Paragraph 5.G. of this document. All wastewater collection and transmission system improvements will be installed

by the Developer and conveyed to the City by Bill of Sale in a form acceptable to the City and dedicated to the City prior to or at the time of platting or in accordance with the requirements contained in Section 21-165 of the Land Development Code.

C. All electrical services will be underground.

D. Interior Roadway improvements and all associated rights-of-way shall be privately maintained by the respective Associations.

E. Off-site improvements (including but not limited to intersection improvements, turn lanes, acceleration lanes, deceleration lanes, signalization), if any, are the Developer's responsibility and shall meet all City, County and/or State requirements and approval.

F. Impact fees for each dwelling unit will be paid in accordance with the following schedule:

Water: Paid to City by applicant at the time of FDEP Capacity Reservation (Permit).

Sewer: Paid to City by applicant at the time of FDEP Capacity Reservation (Permit).

Guaranteed Revenue: A minimum water and sewer charge shall be applied to each E.R.U. reserved if not connected within one (1) year of reservation.

Police, Fire, Recreation: Paid to City by applicant at the time of Building Permit application.

City Road Impact Fee : Paid to City by applicant at the time of Building Permit Application.

Volusia County Impact fees for Roads and Schools: Paid at City Hall by applicant prior to a Building Certificate of Occupancy.

Developer shall pay Transportation Proportionate Fair Share amount as adopted by City Council.

The amount of all required impact fees shall be at the prevailing rate authorized at the time

of payment. If the Developer develops the project in phases, all impact fees for the first 142 residential units shall be paid initially upon site plan approval and prior to issuance of a building permit or any other development permit for the first phase. The impact fees for all remaining residential units and mixed-use residential units, with the exception of Volusia County impact fees for roads and schools, shall then be paid within two (2) years from the date construction of the first phase commences, regardless of whether or not Developer has or is prepared to commence construction on the remaining phases. All impact fees for the commercial space shall be paid prior to issuance of a building permit or any other development permit for the construction of commercial space. Developer shall ensure that all reservations of capacity shall correspond to the number of units for which impact fees have been paid (specifically, Developer shall reduce the initial reservation to 142 units as anticipated in the first phase).

G. All infrastructure facilities and improvements shall be constructed in compliance with applicable federal, state, and local standards.

H. A concurrency review shall be conducted to ensure that all required public facilities are available concurrent with the impacts of the development.

I. Developer agrees to reimburse the City of Edgewater for direct costs associated with the legal review, engineering review and construction inspection related to the Edgewater Harbor development approval and the construction of required infrastructure improvements and the review and approval of the final plat.

J. The developer shall provide all public facilities to support this project including the following:

1. Water Distribution System including fire hydrants.

2. Sewage Collection and Transmission System.
3. Stormwater collection/treatment system.
4. Provide all required pavement marking and signage (stop signs, road signs, etc.) within the Project. All signage shall comply with Florida Department Of Transportation (FDOT) standards.
5. Developer is responsible for recordation of plat upon approval by the City of Edgewater.
6. If developer desires to plat prior to installation and dedication of infrastructure, a Performance Bond shall be required for 110% of the costs of all requirement improvements. A Maintenance Bond equal to 10% of the cost of the infrastructure improvements shall be provided to the City prior to recording of the Final Plat. The Maintenance Bond shall be in effect for a two (2) year period.
7. The Developer shall provide a recreational jogging path along the perimeter of the property with a natural surface cover. Pedestrian circulation systems shall be maintained by the respective Associations.
8. Street Lighting shall be maintained by the respective Associations and be installed by the Developer at time of infrastructure or prior to the issuance of the Certificate of Occupancy for the first building of each phase.

K. Recreational Facilities

The Developer agrees to construct a recreational facility accessible to residents to include a pool, cabana, landscaping, irrigation, lighting and parking.

L. Boat Slips

Developer agrees to pay to the City an annual fee in perpetuity equal to \$1.50 per lineal foot per month for all wet and dry boat slips permitted by all relevant regulatory authorities. The initial payment shall be due when impact fees are paid for any dry stack facility or upon issuance of any building permit or development order for the wet slip facilities, whichever occurs sooner. Thereafter, the annual payment for all wet and dry slips permitted shall be due on or before August 1st of each year, with the understanding the first annual payment may be prorated to correctly account for the number of months since the initial payment. For purposes of measuring the footage of the slips referenced herein, the measurement shall be that of the actual wet slip or dry rack and shall not be related to the size of the vessel actually stored in the slip.

Developer acknowledges that the right to construct a 60,000 square foot dry stack facility containing up to 300 dry slips and 30 wet slips as set forth herein is contingent upon receipt of any and all regulatory and/or proprietary authorizations from all county, state and federal agencies. In the event the Developer has not secured such authorizations within three (3) years of the date of this Agreement, the right to construct said slips shall lapse and any development of slips shall be determined by the City.

Developer acknowledges that all wet and dry slips shall be open to the public and available on a first-come, first-served basis.

6. **CONSISTENCY OF DEVELOPMENT**

The City agrees to issue the required permits for the development in the manner defined in the Agreement after having determined it is not contrary to the City of Edgewater Comprehensive Plan and Land Development Code.

7. DEDICATION OF LAND FOR PUBLIC PURPOSES

The Developer shall convey to the City of Edgewater, by warranty deed and title insurance free and clear of all liens and encumbrances, all utility easements as required. All roadways accessing public areas will be deeded to the City. Roadways servicing the residential community only will remain privately owned and maintained by the Condominium Association. Law enforcement, Fire protection and other emergency services, trash and recycle collection will be provided by the City of Edgewater throughout the Edgewater Harbor Development.

8. PERMITS REQUIRED

The Developer will obtain the required development permits or letters of exemption. Permits may include but not be limited to the following:

1. Florida Department of Transportation, Department of Environmental Protection, Department of Health and Rehabilitative Services, St. Johns River Water Management District, Army Corps of Engineers, and Florida Fish and Wildlife Conservation Commission.

2. City of Edgewater – Rezoning, Subdivision Plat and/or Site Plan approval, Subdivision Construction Plan approval, all applicable clearing, removal, construction and building permits.

3. This site may require a Volusia County Environmental Permit.

4. 100 year flood elevation for the Indian River is 7.0 feet. Minimum finished floor elevation shall be 8.0 feet.

9. DEVELOPMENT REQUIREMENTS

Failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with those permitting requirements,

conditions, terms or restrictions, and any matter or thing required to be done under the existing ordinances of the City. Existing ordinances shall not be otherwise amended, modified, or waived unless such modification , amendment, or waiver is expressly provided for in this Agreement with specific reference to the ordinance provisions so waived, or as expressly provided or in this Agreement.

Development standards shall be those of the City except as designated in this Agreement and in the Master Plan.

Developer shall establish a mandatory Condominium Association for the purpose of maintaining the residential property and enforcing applicable covenants and restrictions. The mandatory Condominium Association will be responsible for the street lighting and pedestrian circulation system requirements that result from the project including payment to Florida Power and Light for installation, maintenance and power consumption, the maintenance of the stormwater areas within the residential portion of Edgewater Harbor, common area tracts as depicted on the plat, pedestrian systems, and private streets within the gated community. The Condominium Association documents, including applicable articles of incorporation; covenants and restrictions; and by-laws shall be reviewed and approved by the City prior to Final Plat and/or Site Plan approval.

Developer shall establish a mandatory Property Owner's Association for the commercial properties for the purpose of maintaining the public-access property and enforcing applicable covenants and restrictions. The mandatory Property Association will also be responsible for the street lighting requirements that result from the project including payment to Florida Power and Light for installation, maintenance and power consumption, the maintenance of the stormwater areas within the public-access portions of Edgewater Harbor, common area tracts as depicted on the plat,

pedestrian systems and public-access streets within Edgewater Harbor. The Property Owner's Association documents, including applicable articles of incorporation; covenants and restrictions; and by-laws shall be reviewed and approved by the City prior to Final Plat and/or Site Plan approval.

10. CAPITAL IMPROVEMENTS ASSOCIATED WITH BOSTON WHALER

Subject to annexation by Boston Whaler, the City and Developer agree to assist Boston Whaler with odor-causing emissions. All parties (Developer, City and Boston Whaler), will each contribute a one-third (1/3) portion of the improvements associated with these improvements in accordance with the Cost Sharing Agreement dated June 21, 2004 (the "Cost Sharing Agreement"). Notwithstanding the foregoing, Developer hereby assumes all of the City's obligations under the Cost Sharing Agreement and agrees to indemnify and hold the City harmless from any and all liabilities and obligations provided thereunder, it being the intention of Developer for the City to have no remaining obligations under the Cost Sharing Agreement.

11. HEALTH SAFETY AND WELFARE REQUIREMENTS

The Developer shall comply with such conditions, terms, restrictions, or other requirements determined to be necessary by the City for the public health, safety, or welfare of its citizens.

12. APPEAL

If the Developer is aggrieved by any City official interpreting the terms of this Agreement, the Developer shall file a written appeal to the City Manager. After receiving the written appeal, the appeal will be reviewed by the City Manager and City Attorney. If the City Manager cannot resolve the dispute, the issue shall be scheduled for the City Council agenda. The action of the City Council is the final authority concerning this Agreement, subject, however, to the parties' rights to invoke the remedies provided below.

13. PERFORMANCE GUARANTEES

During the term of this Agreement regardless of the ownership of the Property, the Property shall be developed in compliance with the terms of this Agreement and applicable regulations of the City not inconsistent with, or contrary to, this Agreement.

14. BINDING EFFECT

The provisions of this Agreement, including any and all supplementing amendments, and all final site plans, shall bind and inure to the benefit of the Developer or its successors in interest and assigns and any person, firm, corporation, or entity who may become the successor in interest to the land subject to this Agreement or any portion thereof and shall run with the land and shall be administered in a manner consistent with the laws of the State of Florida.

15. RECORDING

Upon execution by all parties, the City shall record this Amendment with the Clerk of the Court in Volusia County. The cost of recording shall be paid by the Developer.

16. PERIODIC REVIEW

The City shall review the development subject to this Agreement every 12-months, commencing 12-months after the date of this Agreement to determine if there has been good faith compliance with the terms of this Agreement. If the City finds on the basis on competent substantial evidence that there has been a failure to comply with the terms of this Agreement, subject to Developers' right to cure provided below, the Agreement may be revoked or modified by the City. Notwithstanding any other provision of this Agreement, if City at any time concludes Developer is in default of a covenant or obligation of this Agreement, City shall notify Developer in writing of the claimed default, and Developer shall have the right to cure the default within thirty (30) days

after receipt of City's notice. Developer shall not be deemed in default hereof, and City shall invoke no remedies, if Developer cures the claimed default within those thirty (30) days. Further, if the default is of such a nature that it cannot be cured through the exercise of reasonable diligence within thirty (30) days, then Developer shall not be deemed in default hereof, and City shall invoke no remedies, if Developer commences in good faith to cure the default within thirty (30) days after receipt of City's notice, and thereafter cures the default within ninety (90) days.

17. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

18. TIME OF THE ESSENCE

Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in the Agreement.

19. AGREEMENT/AMENDMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings, and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment. Substantial changes, as determined by the City Manager, shall require City Council approval.

20. FURTHER DOCUMENTATION

The parties agree that at any time following a request therefore by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party hereunder.

21. SPECIFIC PERFORMANCE

Both the City and the Developer shall have the right to enforce the terms and conditions of this Agreement by an action for specific performance. Further, Developer shall have the right to challenge City actions and decisions in accordance with Chapter 163, Florida Statutes and the Florida Rules of Appellate Procedure.

22. ATTORNEYS' FEES

In the event that either party finds it necessary to commence an action against the other party to enforce any provision of this Agreement or because of a breach by the other party of any terms hereof, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees, legal assistant's fees and costs incurred in connection therewith, at both trial and appellate levels, including bankruptcy proceedings, without regard to whether any legal proceedings are commenced or whether or not such action is prosecuted to judgment.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

24. CAPTIONS

Captions of the sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

25. SEVERABILITY


If any sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of the competent jurisdiction, such portion shall be

deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof.

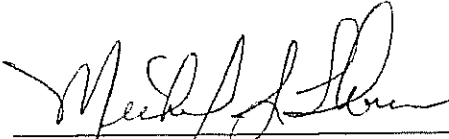
IN WITNESS WHEREOF, the parties have caused this Amendment to the Planned Unit Development (PUD) Agreement to be made and entered into the date and year first written above.

ATTEST:

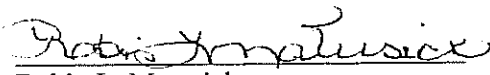
CITY COUNCIL OF THE CITY OF
EDGEWATER, FLORIDA



Susan J. Wadsworth
City Clerk



Mike Thomas
Mayor



Robin L. Matusick
Paralegal

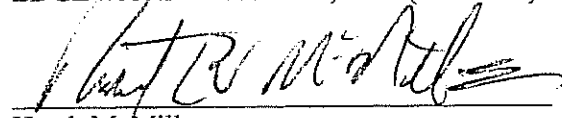
For the use and reliance only by the City of Edgewater, Florida. Approved as to form and legality by: Paul E. Rosenthal, Esquire
City Attorney
Carolyn S. Ansay
Doran, Wolfe, Ansay & Kundid

Approved by the City Council of the City of Edgewater at a meeting held on this 5 day of March, 2007 under Agenda Item No. 70.

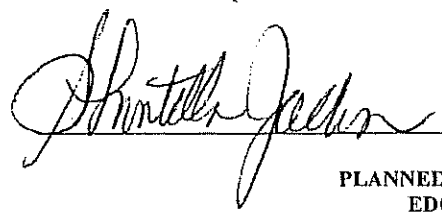
Witnessed by:



EDGEWATER HARBOR, LLC (OWNER)



Hawk McMillan
Title: managing member



Dated: 3-15-07

EXHIBIT "A"

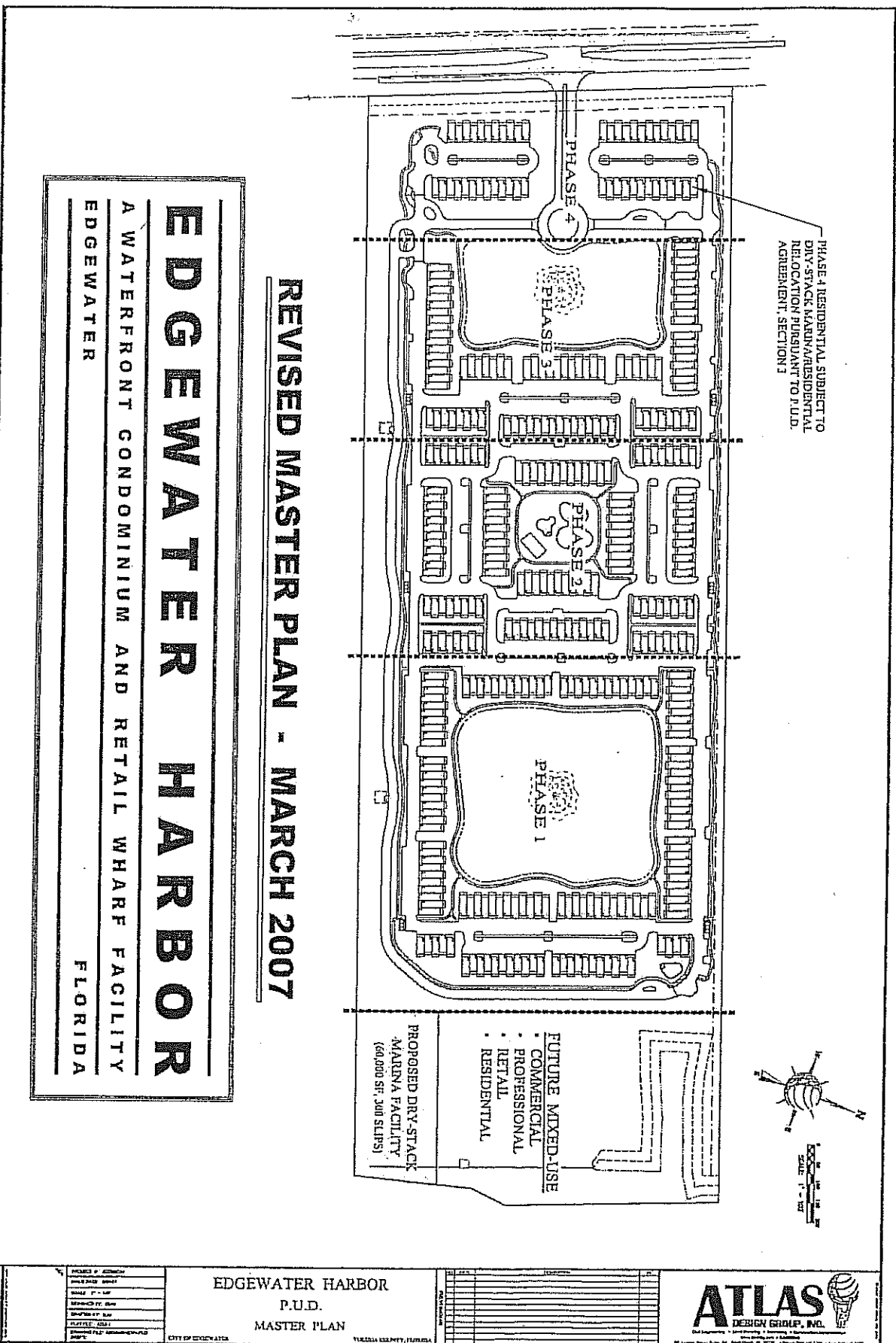
LEGAL DESCRIPTION

(Official Record 2766, Page 307, Per Volusia County, Florida.)

That part of the South 924.00 feet as measured on the East Right-of-Way line of U.S. Number 1 Highway of lots One (1), Four (4) and Twenty-Two (22), Assessor's Subdivision of the C.E. McHardy Grant as recorded in Map Book 3, Page 152 of the Public Records of Volusia County, Florida, lying North of Riverfront Estates Subdivision as recorded in Map Book 19, Page 18, of the Public Records of Volusia County, Florida, and that part of Sections 13 and 24, Township 18 South, Range 34 East, lying East of U.S. Number 1 Highway and between the described property. Containing 59.94 acres more or less and being in Volusia County, Florida.

General Notes:

1. Legal description from June 19, 1969 survey by W.E. Swoope Jr., R.L.S. #417
2. Bearing structure shown based on bearing of South property line per above 1969 survey.
3. Warranted deed as shown per Official Record 2766, Page 307 per Volusia County, Florida.
4. There may be additional information found in the public records of Volusia County, Florida. No Title information provided.
5. Land containing 59.94 acres more or less.
6. Mean high water line as shown Elev. = 1.14 N.G.V.D. 1929 per sler (0960) an interpolation from topographic survey Upham File #D-188 for waiver of survey requirements for public easement 06/21/1999. This line has not been revised in the current survey.



EDGEWATER HARBOR
 A WATERFRONT CONDOMINIUM AND RETAIL WHARF FACILITY
 EDGEWATER
 FLORIDA

REVISED MASTER PLAN - MARCH 2007

PROJECT #	2007-089323
DATE	03/01/07
SCALE	1" = 100'
DESIGNED BY	ATLAS DESIGN GROUP, INC.
DRAWN BY	ATLAS DESIGN GROUP, INC.
CHECKED BY	ATLAS DESIGN GROUP, INC.
DATE	03/01/07

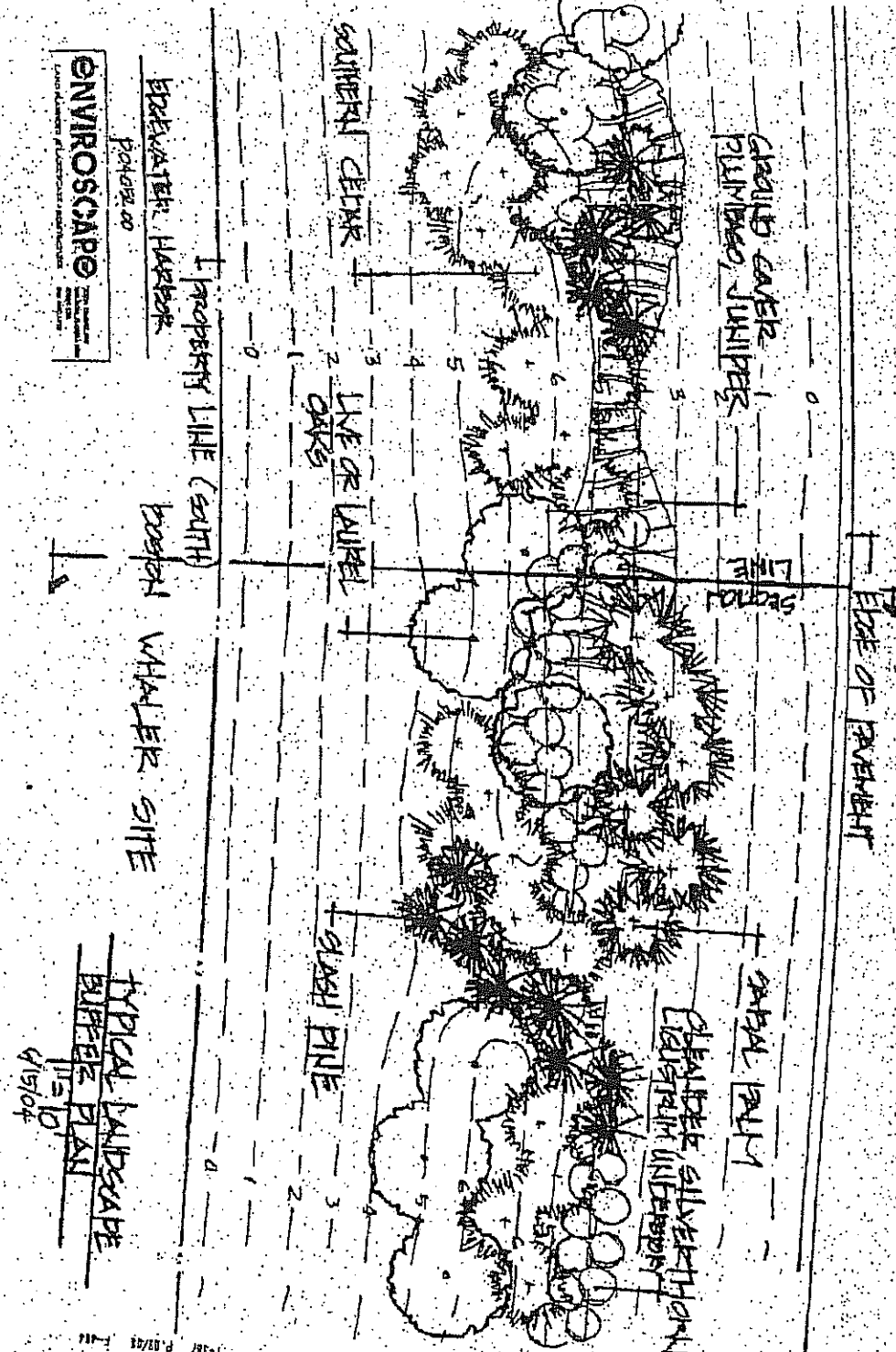
EDGEWATER HARBOR
 P.U.D.
 MASTER PLAN



EXHIBIT B

Exhibit 'C'
Page 1 of 2

Book : 3015
Page : 4122



ENVIROSCAPE
Landscape Architecture & Construction
1115 10th St. S.
Calgary, Alberta T2G 1P9
403.243.8888

TYPICAL LANDSCAPE
BUFFER PLAN
1115 10
403.243.8888

