

ORDINANCE 2011- 7

AMENDING AND RESTATING ORDINANCE NUMBER 2009-21
COBBLESTONE VILLAGE PHASE II MASTER PLANNED DEVELOPMENT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AMENDING AND RESTATING ORDINANCE NUMBER 2009-21 (ORB 1749, PAGE 1143 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA) APPROVING THE MASTER PLANNED DEVELOPMENT AGREEMENT BETWEEN COBBLESTONE VILLAGE AT PALM COAST, LLC AND THE CITY OF PALM COAST FOR THE COBBLESTONE VILLAGE PHASE II MASTER PLANNED DEVELOPMENT (7.62 +/- ACRES AS DESCRIBED IN THIS ORDINANCE); PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE TAKING OF ADMINISTRATIVE ACTIONS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Land Development Regulation Board recommended approval of this Ordinance at their April 20, 2011 meeting; and

WHEREAS, the City Council of the City of Palm Coast hereby adopts the City staff report relating to the amendment to the Development Agreement (DA) of the Cobblestone Village MPD as findings; and

WHEREAS, the City of Palm Coast has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance is consistent with the Goals, Objectives, and Policies of the *City of Palm Coast Comprehensive Plan*; competent substantial evidence supports this amendment to the Development Agreement; this Ordinance serves a legitimate government purpose; and this Ordinance is in the best interests of the citizens of Palm Coast, Florida.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1; LEGISLATIVE FINDINGS AND INTENT. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. DEVELOPMENT AGREEMENT.

- (a) The Development Agreement as amended shall affect the following property zoned MPD:

LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A"

- (b) The First Amendment to the Master Planned Development Agreement and its exhibits, attached hereto as **EXHIBIT "B"**, with all appropriate signatures and joinders, is hereby adopted and approved by the City Council of the City of Palm Coast and shall constitute the regulations of the specific MPD District.
- (c) The First Amendment to the Master Planned Development Agreement shall be recorded in the Official Records of Flagler County, Florida (Land Records) by the City Clerk.

SECTION 3. SEVERABILITY.

If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 4. CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed with regard to the rezoning classification assigned to the subject property.

SECTION 5. NON-CODIFICATION.

This Ordinance shall not be codified in the *City Code of the City of Palm Coast* or the *Land Development Code of the City of Palm Coast*; provided, however, that the actions taken herein shall be depicted on the zoning map of the City of Palm Coast.

SECTION 6. EFFECTIVE DATE.

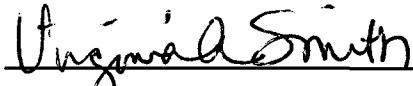
This Ordinance shall take effect immediately upon its passage and adoption.

APPROVED upon this first reading the seventeenth day of May 2011

ADOPTED upon second reading after due public notice and public hearing the seventh day of June 2011.

CITY OF PALM COAST, FLORIDA

ATTEST:




Virginia Smith, City Clerk



Jon Nettis, Mayor

APPROVED AS TO FORM AND LEGALITY:



William E. Reischmann Jr. Esq.
City Attorney

EXHIBIT "A"

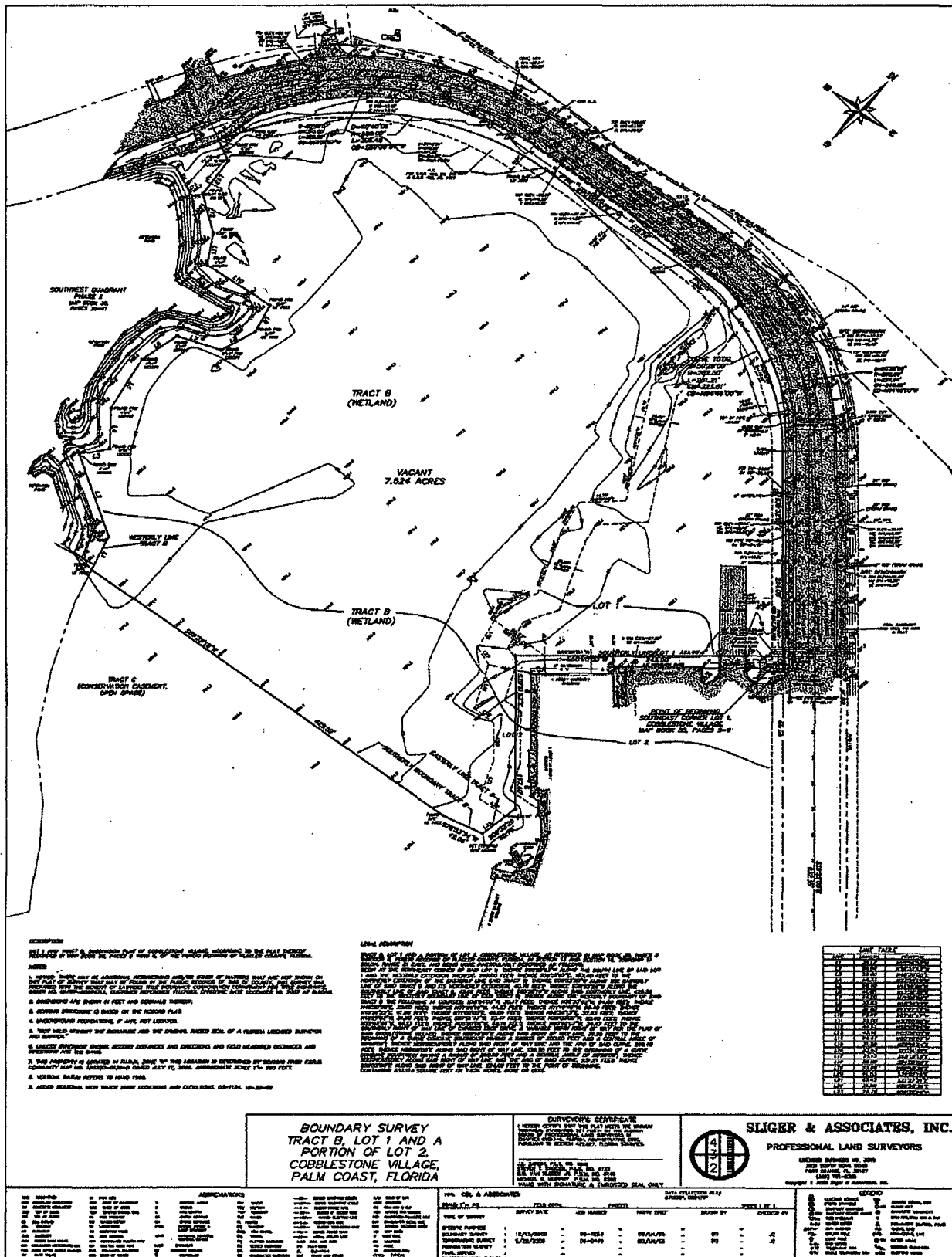


EXHIBIT "B"

Inst No: 2011017331 06/28/2011
12:53PM Book: 1822 Page: 1006 Total Pgs: 11

Return to:

GAIL WADSWORTH, FLAGLER Co.

FIRST AMENDMENT TO MASTER PLANNED DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF PALM COAST
AND
COBBLESTONE VILLAGE AT PALM COAST, LLC

This First Amendment to the Master Planned Development Agreement (the "Amendment") is made this 24th day of June, 2011 between the CITY OF PALM COAST, a Florida municipal corporation (herein referred to as the "City"), whose address is 160 Cypress Point Parkway, Suite B-106, Palm Coast, Florida, 32164, and the owner of the subject property, COBBLESTONE VILLAGE AT PALM COAST, LLC, (herein referred to from time-to-time as the "Owner" regardless of whether singular or plural ownership status) whose address is CBL Center, Suite 500, 2030 Hamilton Place Boulevard, Chattanooga, TN 37421-6000.

WHEREAS, the City and the Owner previously entered into that certain Master Planned Development Agreement ("Agreement") dated on or about October 6, 2009 and recorded in the Official Records of Flagler County on October 15, 2009 at Book 1740, Page 1143 and re-recorded with all exhibits thereto in the Official Records of Flagler County on December 22, 2009 at Book 1749, Page 1618 in connection with the rezoning of certain real property consisting of approximately 7.49 acres located in the City; and

WHEREAS, the City and the Owner wish to amend certain terms and conditions of the Agreement, which shall be memorialized in this Amendment.

NOW THEREFORE, the parties hereto acknowledge and agree to the additions shown as underlined and deletions shown as strikethrough in the following paragraphs:

First Whereas Clause:

WHEREAS, the Owner is the owner of fee simple title to certain real property consisting of approximately 7.62 acres located in the City of Palm Coast, Flagler County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (herein referred to as the "Subject Property"); and

Second Whereas Clause:

WHEREAS, the Owner requests approval for a Master Planned Development, the development entitlement of which permit a hotel, a medical office building, and three restaurants to include optional retail or office space to be developed and located on the Subject Property as depicted on the Conceptual Development Plan attached as Exhibit "B", (the "Development"), subject to the conditions set forth in this Development Agreement; and

SECTION 1. RECITALS.

- (a) The above recitals are true and correct and are incorporated herein by this reference and form a material part of this Development Agreement upon which the City and the Owner have relied.
- (b) "LDC" shall mean Ordinance 2009-26.

SECTION 4. PERMITTED USES.

The Owner agrees to fully comply with the following use restrictions on the Subject Property. The land use entitlements permitted within this development are limited to one (1) hotel (1) medical office building, two (2) freestanding restaurants, and one (1) freestanding building which may be a fast food drive-through type restaurant*, or which may be two or more smaller restaurants, or which may consist of up to 5,000 square feet of retail/office development or any combination thereof. Permitted retail use entitlements within this development shall be limited to the following:

Art Dealers

Clothing and Accessory store (e.g. shoes and luggage)

Copy and Print Center

Dry Cleaning (drop off and pick-up

Electronics/Cell Phone store

Florists

Home Furnishings Store

Pet (domestic) store

Photo Finishing

Specialty Food and Beverage Store

Sporting Goods, Hobby, Book and Music store

* The Owner and City acknowledge that, upon the development of a medical office building and hotel on the Subject Property, the fast food drive-through type restaurant use shall be eliminated as a Permitted Use under this Development Agreement. In the event the fast food drive-through restaurant is developed first, the potential hotel use shall be eliminated as a Permitted Use.

SECTION 6. MODIFICATIONS TO THE CONCEPTUAL DEVELOPMENT PLAN.

The exact location of structures, accessways and other improvements as provided for in Exhibit "B" are subject to change during the development review process and such modifications do not require amendment of this Agreement. Modifications to the exact location of structures, accessways and other improvements may be requested by the Developer and may be approved by the City Manager, acting as a Land Use Administrator, or his or her designee, during review of construction documents, site plans, preliminary plats and/or final plats for the Development or portions thereof; provided, however, that the development standards contained in this Agreement

shall be maintained. Moreover, the City Manager is authorized to approve modifications to the conceptual site plan, construction documents, and final site plans for the Property or portions thereof (collectively, "Plans" and individually, a "Plan), so long as (i) the maximum building height of any structure is not exceeded, and (ii) the applicable Plan complies with the development standards in this Agreement. This Development Agreement does not constitute a site plan, preliminary plat or final plat approval for the Development. This Development will be required to obtain all necessary land use approvals, including site plan/preliminary and final plat approval. A final plat for the Subject Property will be reviewed in accordance with the Unified Land Development Code and requirements of Florida Statutes. Once the final plat is approved, the internal lot lines established by the final plat may be reconfigured as set forth in accordance with the non-statutory requirements of the Unified Land Development Code.

SECTION 7. DEVELOPMENT STANDARDS

General Standards. The requirements of this Section supersede any inconsistent provisions of the City of Palm Coast LDC of the City to the extent of any inconsistency.

...

(4) Site Development Requirements: Development of the property shall generally be governed by the master site development plan and as such, shall precede the platting process.

...

(b) Impervious Surface Ratio (ISR)/Floor Area Ratio (FAR) - The maximum impervious surface ratio (ISR) is 0.70. The maximum floor area ratio (FAR) is 40. The FAR for the development of the Subject Property shall be calculated based on the ratio of all developed buildings to the total area of the Subject Property rather than the area of individual lots. A portion of the off-site detention area can be

credited to the Subject Property for purposes of calculating the ISR and FAR as outlined in section 03.05.03 of the LDC. Any one site may exceed the ISR, but the overall ISR for the development of the Subject Property upon completion shall be 0.70.

(14) Parking:

...

(b) Parking Requirements - Due to the timing of the infrastructure construction in the Development, the overall number of parking spaces for the Development shall be calculated on the basis of anticipated maximum number of hotel rooms, gross floor area for medical office space, anticipated seating area for the restaurant uses and gross floor area for retail space. Phases of the Development may exceed 110% of the minimum parking permitted to support an individual use, however, the final total number of parking spaces for the overall Development shall not exceed 110% of the total number of required spaces for the combined land uses and calculated as specified below.

The overall parking plan shall be deemed approved and consistent with each site buildout should the actual development plans specific to the number of hotel rooms, restaurant(s) seating area(s) and medical office or retail gross floor area require less parking spaces than the respective maximum number of parking space requirements initially calculated for each land use.

i. Hotel - 1.1 spaces per sleeping room

ii. Medical Office Building - one (1) space per 300 square feet of gross floor area

iii. Restaurants - one (1) space per three (3) seats including drive-thru type. Drive-thru restaurant stacking lane shall accommodate a minimum of eight (8) vehicles.

iv. Retail - one (1) space per 250 feet of gross floor area.

v. Professional office - one (1) space per 300 square feet of gross floor area

vi. Maximum Number of Spaces -

(a) Impervious parking spaces - Shall not exceed 90% of the required number of spaces for each individual use and calculated based upon the applicable parking requirements.

(b) Pervious parking spaces: All parking spaces that exceed 90% of the required number of parking spaces shall be pervious.

vii. Shared Parking - All parking within the Subject Property will be shared.

(15) Architecture: Architectural guidelines shall be as provided by the Unified Land Development Code.

SECTION 9. FACILITY COMMITMENTS.

(a) The Owner agrees that the City is not responsible for the construction or creation of public facilities or capacity in order to facilitate the development of the Subject Property.

(b) The Owner agrees to accomplish and complete, at a minimum, the following facility/infrastructure and to grant the following rights, at the Owner's sole and exclusive expense, as a condition of this development approval and in addition to the payment of all impact fees, when due for each building phase, relating to the development of the Subject Property:

(1) Construction of on-site improvements will occur in phases with development and building construction on each individual lot. The balance of the Subject Property will be cleared, rough graded, stabilized and maintained by the Owner pending development.

(c) The Owner agrees to the granting of any and all utility easements to the City which the City deems necessary to serve the Subject Property with public utilities.

(d) The Owner hereby agrees that the City has shown an essential nexus between a legitimate City interest and the conditions imposed herein. The Owner further agrees that all proposed conditions are roughly proportional to the impact the development upon the public based upon an individualized determination by the City that the required conditions are related in both nature and extent to the impacts of the proposed development.

IN WITNESS WHEREOF, the City and Cobblestone Village at Palm Coast, LLC have caused this First Amendment to Master Planned Development Agreement to be duly executed by their authorized representative(s) as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

OWNER'S/APPLICANT'S CONSENT AND COVENANT:

COMES NOW, the Owner on behalf of itself and its successors, assigns and transferees of any nature whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Agreement.

WITNESSES:

Carmen Lindsey
Sign Name

Carmen Lindsey
Print Name

Candace Church
Sign Name
Candace Church
Print Name

**COBBLESTONE VILLAGE
AT PALM COAST, LLC**

By: CBL & Associates Limited
Partnership, its chief manager

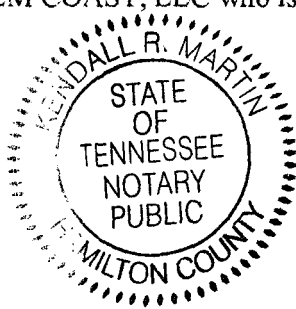
By: CBL Holdings I, Inc., its sole general
Partner

By: Victoria S. Berghel
Victoria S. Berghel
Senior Vice President and General Counsel

MW
6/21/11

STATE OF Tennessee
COUNTY OF Hamilton

The foregoing instrument was acknowledged before me this 21st day of June, 2011, by Vitoria S. Berghel, as Senior Vice President and General Counsel CBL Holdings, I, Inc, the sole general partner of CBL & Associates Limited Partnership, the chief manager of COBBLESTONE VILLAGE AT PALM COAST, LLC who is personally known to me.



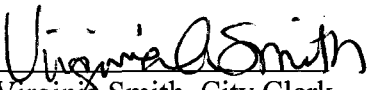
Kendall R. Martin
NOTARY PUBLIC, STATE OF TN

Type or Print Name: Kendall R. Martin
Commission No.: MA
My Commission Expires: 01/22/2014

APPROPRIATE CORPORATE OR INDIVIDUAL SIGNATURES HERE


ATTEST:

CITY OF PALM COAST, FLORIDA


Virginia Smith, City Clerk



Jon Netts, Mayor

For use and reliance of the
Palm Coast City Council only.
Approved as to form and legality.


William B. Reischmann, City Attorney

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 8th day of June, 2011,
by Jon Netts, Mayor, on behalf of the City of Palm Coast, and who is personally known to me ~~or who~~
~~has produced~~ _____ ~~as identification.~~

NOTARY PUBLIC-STATE OF FLORIDA
 Judi D. McCullar
Commission #DD845994
Expires: DEC. 16, 2012
BONDED THRU ATLANTIC BONDING CO., INC.


NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name: Judi D. McCullar
Commission No.: DD845994
My Commission Expires: 12-16-2012

EXHIBIT "A"

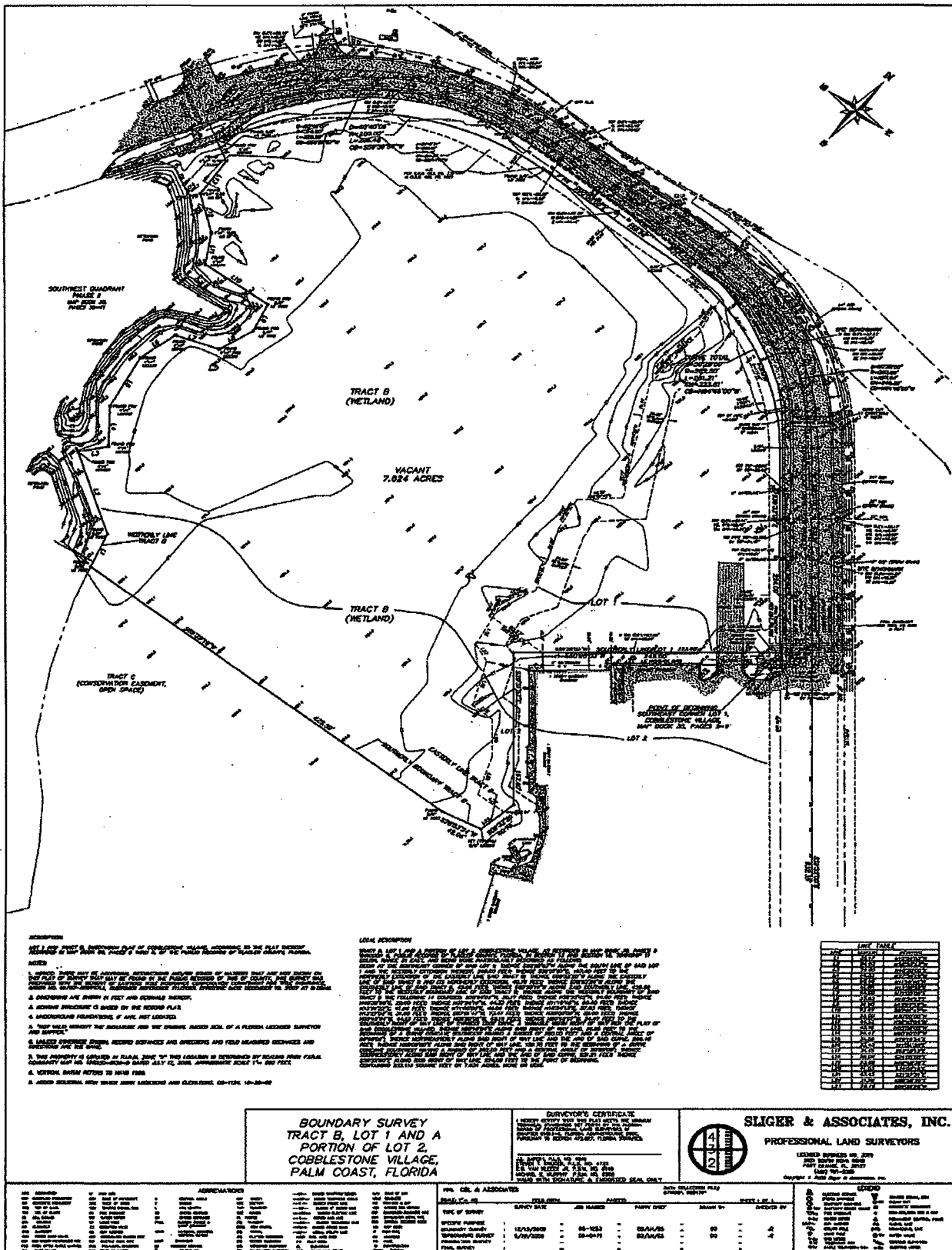
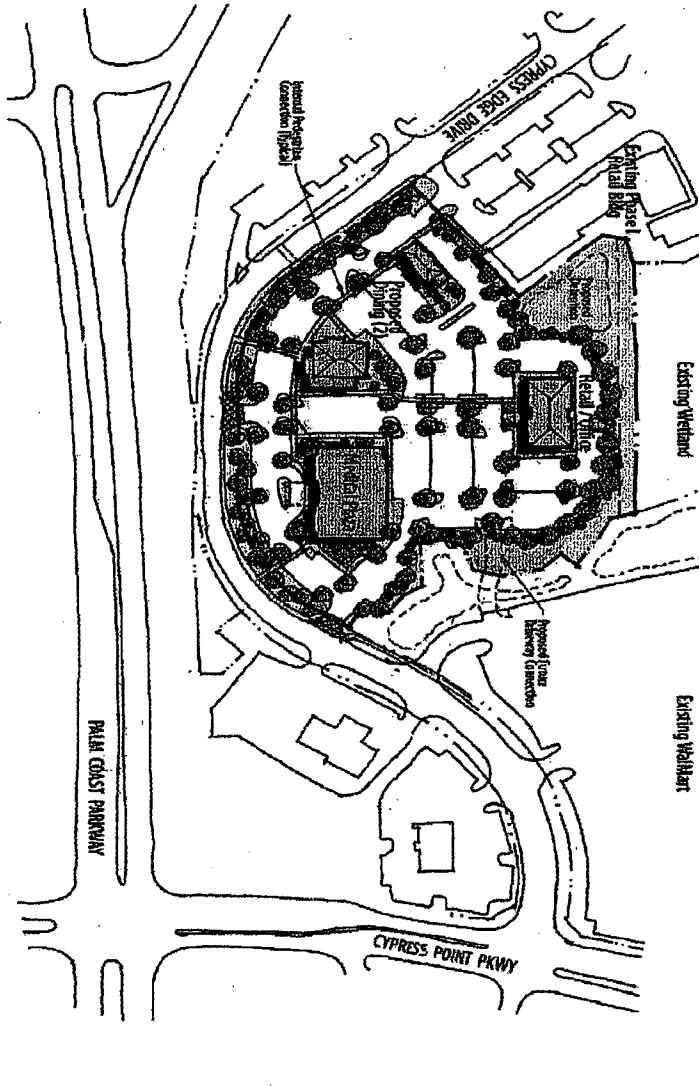


EXHIBIT "B"

COBBLESTONE VILLAGE II
Palm Coast, Florida
Conceptual Site Plan - April 13, 2011

CBL
CBL & ASSOCIATES ARCHITECTS, INC.
CBL & ASSOCIATES ARCHITECTS, INC.
20000 US Highway 1, Suite 200
Palm Beach, FL 33480
TEL: 561-840-1100 FAX: 561-840-1101



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