



## **SPECIAL HEARING EXAMINER HEARING**

Thursday, March 5, 2020

9:00 AM

Council Chambers

### **1. HEARINGS CALLED TO ORDER**

### **2. HEARINGS**

- A. Case# PDP20-0001\*; Address: 845, 851, 859, and 877 Cape Coral Parkway East; Applicant: Downtown Village Square, LLC., Downtown Village Square II, LLC., Red Rock Land Corporation

### **3. DATE AND TIME OF NEXT HEARINGS**

- A. Tuesday, March 10, 2020, at 9:00 a.m., in Council Chambers

### **4. ADJOURNMENT**

In accordance with the Americans with Disabilities Act and Florida Statutes 286.26, persons needing a special accommodation to participate in this proceeding should contact the City Clerk's Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0411 for assistance, if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8700 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he 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 based.

#### **PLEDGE OF CIVILITY**

We will be respectful of each other even when we disagree.  
We will direct all comments to the issues. We will avoid personal attacks.

The hearing shall, to the extent possible, be conducted as follows:

1. The Clerk shall read into the record the Ordinance or Resolution Title and Number, or the Applicant's name, file number, and the subject matter to be decided if there is no ordinance or resolution.
2. The Applicant, staff, and all Participants requesting to speak or present evidence or both the hearing shall be collectively sworn by an oath or affirmation by the Clerk.
3. Staff will testify regarding proper notice of the Hearing in accordance with City requirements.
4. The Applicant may waive the Applicant's right to an evidentiary hearing if Applicant agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The Hearing Examiner shall rule on the matter or make a recommendation, based upon the staff report and any other materials contained within the official file. Regardless of a waiver by the Applicant, a Public Hearing shall be held for all decisions requiring an ordinance or resolution.
5. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the Hearing Examiner, determines to proceed in a different order, taking proper consideration of fairness and due process:
  - The Applicant shall make the Applicant's presentation, including offering any documentary evidence, and introduce any witnesses as Applicant desires. The Applicant shall present the Applicant's entire case in thirty (30) minutes.
  - Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file that have not already been transmitted to the Hearing Examiner with the agenda materials, as staff desires; summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing. Staff shall present its entire case in thirty (30) minutes.
  - Participants in opposition to or support of the application shall make their presentation in any order as determined by the Hearing Examiner. Each Participant shall present their argument in 5 minutes.
  - The Applicant may cross-examine any witness and respond to any testimony presented.
  - Staff may cross-examine any witness and respond to any testimony presented.
  - The Hearing Examiner may choose to allow Participants to respond to any testimony if the Hearing Examiner deems the response to be necessary to ensure fairness and due process.
  - The Hearing Examiner, may ask questions of the staff, Applicant, and Participants.
  - Final argument may be made by the Applicant, related solely to the evidence in the record.
  - Final argument may be made by the staff, related solely to the evidence in the record.
  - For good cause shown, the Hearing Examiner may grant additional time to any of the hereinabove time limitations.
  - The Hearing Examiner's, decisions must be based upon Competent Substantial Evidence in the record.

**Item Number: 2.A.**  
**Meeting Date: 3/5/2020**  
**Item Type: HEARINGS**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Case# PDP20-0001\*; Address: 845, 851, 859, and 877 Cape Coral Parkway East; Applicant: Downtown Village Square, LLC., Downtown Village Square II, LLC., Red Rock Land Corporation

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan? No

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**

The applicant requests to amend the Downtown Village Square project, approved by Ordinance 42-10 and amended by Ordinance 33-19, to modify the phasing schedule and conditions of approval.

**LEGAL REVIEW:**

**EXHIBITS:**

See attached backup materials

**PREPARED BY:**

Shawn Baker      Division- Planning      Department- Community Development

**SOURCE OF ADDITIONAL INFORMATION:**

Mike Struve, AICP, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

**ATTACHMENTS:**

Description	Type
Backup materials	Backup Material



# PLANNED DEVELOPMENT PROJECT (PDP) APPLICATION

PROPERTY OWNER IS A CORPORATION, LIMITED LIABILITY COMPANY (LLC),  
LIMITED COMPANY (LC), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUST

Project Name: Downtown Village Square Amendment to Existing Ordinance 42-10

Project Number: Prior Planned Development Project PDP 08-0080006

Properties Owned by Downtown Village Square LLC: 877 Cape Coral Parkway E, & 826 SE 47th Terrace Cape Coral, FL 33904

To help prepare this application, the applicant should obtain copies of the following:

- Land Use and Development Regulations (this document is linked)
  1. Land Development Regulations (Article 4)
  2. Parking Requirements (Article 5.1)
  3. Landscape Ordinance (Article 5.2)
  4. Sign Ordinance (Article 7)
- NFPA 1 Fire Prevention Code
- Engineering Design Standards

The advisory review is conceptual only and any staff comments are subject to change based on detailed information with an application to the City of Cape Coral. Formal review may result in additional changes not noted at this time. The final design or project must comply with the Land Use and Development Regulations, Engineering Design Standards, City Code of Ordinances, Comprehensive Plan and other applicable laws and regulations.

## ACKNOWLEDGEMENT

I Robert A. Lee Jr., as the owner of this property or the duly Authorized Representative, agree to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State and County laws, and certify that all information supplied is correct to the best of my knowledge.

In addition, I understand that prior to the issuance of the Certificate of Occupancy for this development, the engineer of record must supply the Department of Community Development with record drawings and a letter of substantial compliance for the project.

In addition, I authorize the staff of the City of Cape Coral to enter upon the property for purposes of investigating and evaluating the request made through this application.

Please note: Advertising fees must be paid in full at least 10 days prior to public hearing or the item may be pulled from the agenda and continued to a future date once the fees have been paid.

(Name of Entity)

• Downtown Village Square LLC Robbie A. Lee Jr., MGRM

By: NAME AND TITLE (PLEASE TYPE OR PRINT)

SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF NY, COUNTY OF Suffolk

Sworn to (or affirmed) and subscribed before me this 15 day of January 2020, by  
Robert A. Lee Jr. who is personally known or produced  
as identification.

Exp. Date: 3/23/23 Commission Number: 4889768

Signature of Notary Public:  
Printed name of Notary Public:

RICHARD J. CHERTOCK  
NOTARY PUBLIC, State of New York  
No. 4889768  
Qualified in Nassau County  
Commission Expires 3/23/23

Please include additional pages for multiple property owners.



**Authorization to Represent Property Owner(s) –  
Property Owner is a Corporation, Limited Liability Company (LLC),  
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

Please be advised that Downtown Village Square LLC , and AMB Planning Consultants Inc.  
(Name of Authorized Representative(s) and business entity, if any)

is authorized to submit an application and represent me in the hearing(s) to the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals and /or City Council for a Planned Development Project.

Unit 6 & 8 Block 62A Lot Tract B plus See Legal Subdivision Cape Coral

Or Legal Description: ☐ (described as an exhibit A in Microsoft Word format and attached hereto)

Downtown Village Square LLC

\*\* Name of Entity (Corporation, Partnership, LLC, etc)

MGRM

Title of Signatory

Robert A. Lee Jr.

Name (Please print or type)

Signature

(SIGNATURE MUST BE NOTARIZED)

STATE OF NY, COUNTY OF Suffolk

Sworn to (or affirmed) and subscribed before me this 15 day of Jan, 2020, by  
Robert A. Lee Jr who is personally known or produced  
as identification.

Exp. Date: 3/23/23 Commission Number: 4889768

NOTARY STAMP HERE  
RICHARD J. CHERTOCK  
NOTARY PUBLIC, State of New York  
No. 4889768  
Qualified in Nassau County  
Commission Expires 3/23/23

Signature of Notary Public:  
Printed name of Notary Public:

[Signature]

Please include additional pages for multiple property owners.

**\*\*Notes:**

If the applicant is a corporation, then it is executed by the corp. pres. or v. pres, sec, tres, or a director, .

If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should be signed by the Company's "Managing Member."

If the applicant is a partnership, then a partner can sign on behalf of the partnership.

If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.

If the applicant is a trust, then they must include their title of "trustee."

In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.

[Signature]  
authorized representative  
or property owner's initials

## PDP Applicant Checklist

Project Name: Downtown Village Square

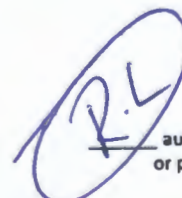
Applicant must submit the completed application and the associated documentation listed below, collated into 17 separate packets (one (1) original and 16 copies). These are minimum requirements for all PDP applications. Based on the nature of your project, additional items may be required by staff.

### Incomplete submittals will not be accepted

- ☐ All application pages must be initialed by the property owner or their authorized representative
- ☐ 24" x 36" engineered PDP Development Plans, including landscape buffer areas and building elevations – See pages 7 – 10 for further information
- ☐ Certified Boundary Surveys, in NGVD 1929, completed within the last six (6) months showing elevations – See page 7 for further information
- ☐ PDP application fees paid in full at time of application – See page 11 for further information
- ☒ Letter of Intent (LOI) – See page 6 for further instructions
- ☐ Environmental Survey/Report – See page 7 for further instructions
- ☐ Warranty or Quit Claim Deed – Applicant shall provide a copy of Warranty or Quit Claim Deed for one hundred (100) percent of the property comprising the Planned Development Project.
- ☐ Vacation of Plat requests must include letter of "No Objection" from the electric company, the telephone company, and the cable company – See page 9 for further instructions
- ☒ Page 1 must be signed and notarized by either all property owner(s) or the authorized agent
- ☒ The "Authorization to Represent Property Owners", page of the application, must be signed by all property owner(s) and notarized
- ☒ Properties owned by corporations, limited liability companies, limited partnerships, general partnerships, and trustees must provide legal documentation (For example, the Articles of Incorporation) listing persons authorized to sign for the entity and in these situations the property owner(s) must sign all applicable PDP forms in their corporate capacity.

### As an alternative to submitting everything in paper format, the applicant may opt to submit the following:

- ☐ 11 sets of plans, in paper format, as described above
- ☐ 11 signed and sealed Boundary Surveys, in paper format, as described above
- ☐ One (1) copy of the application & all other documents you are submitting for review
- ☐ 1 CD/DVD with PDFs of documents you are submitting:
  - o Each document you are submitting needs to be a separate PDF, appropriately identified by name. For example, the application will be one PDF, titled "Application", the Letter of Intent will be another PDF, titled "Letter of Intent", plans, boundary surveys, etc.



authorized representative  
or property owner's initials



## GENERAL INFORMATION

Project Name: Downtown Village Square  
Applicant: Red Rock Land Corporation, Downtown Village Square LLC and Downtown Village Square II LLC  
Address: 845, 851, 859, and 877 Cape Coral Parkway E., and 826 SE 47th Terrace, Cape Coral FL 33904  
Phone: 516 903-6400 Fax: \_\_\_\_\_ E-Mail: robertaleejr@aol.com

\*Property Owner: Downtown Village Square LLC  
Address 3505 Veterans Memorial Highway, Suite D, Ronkonkoma, N  
Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail specbuilder996@aol.com  
Authorized Representative Downtown Village Square LLC and AMB Planning Consultants Inc.  
Address 3505 Veterans Memorial Pkwy, Suite D, Ronkonoma, NY 11779 & P.O. Box 3495, N. Fort Myers FL 33918  
Phone Robbie Lee: 516 903-6400 Fax \_\_\_\_\_ E-Mail robertaleejr@aol.com  
Annette Barbaccia 239 850-8301 abarbaccia@ambpl.com

### Location

Unit 6 & 8 Block 62A Lot(S) Tract B and Portions See Legal  
Subdivision Cape Coral Strap Number(s) 18-45-24-C1-00012.0000 and 07-45-24-C4-00008.0000

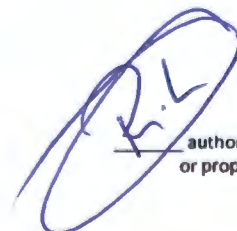
Legal Description ☒ (Described as Exhibit A in Microsoft Word Format and attached hereto)

Property Address: 877 Cape Coral Parkway E. & 826 SE 47th Terrace, Cape Coral, FL 33904

Plat Book 11 Page 46 Current Zoning SC Future Land Use DM

This application includes the following requests: (Please check all that apply)			
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Special Exception	<input type="checkbox"/> Rezoning	<input type="checkbox"/> Variance
<input type="checkbox"/> Deviation to Landscaping	<input type="checkbox"/> Deviation to Non-residential Design Standards	<input type="checkbox"/> Deviation to Engineering Design Standards (EDS)	All Other Deviation Requests <input checked="" type="checkbox"/> Amendment to Existing Development Order
<input type="checkbox"/> Borrow Pit	<input type="checkbox"/> Vacation of Plat		

\*Please include additional pages for multiple property owners.

  
authorized representative  
or property owner's initials

**PROPERTY and PROJECT DEVELOPMENT DATA**      **Note: No Changes to Existing PDP & Ordinance**

- a. Zoning District \_\_\_\_\_
- b. Future Land Use Class \_\_\_\_\_
- c. Area of Subject Property \_\_\_\_\_ acres
- d. Type of Development \_\_\_\_\_
- e. Estimated Number of Employees \_\_\_\_\_  
Number of Seats in Assembly \_\_\_\_\_
- f. Parking Spaces Required \_\_\_\_\_
- g. Parking Spaces Provided \_\_\_\_\_
- h. Parking and Street Area \_\_\_\_\_ sq. ft. \_\_\_\_\_ % of Site
- i. Ground Floor Building Area \_\_\_\_\_ sq. ft. \_\_\_\_\_ % of Site
- j. Total Floor Area \_\_\_\_\_ sq. ft. \_\_\_\_\_ % of Site
- k. Building Heights \_\_\_\_\_ feet \_\_\_\_\_ stories
- l. Total Proposed Impervious Surface Area sq. ft. \_\_\_\_\_ % of Site \_\_\_\_\_
- m. Permanent Open Space sq. ft. \_\_\_\_\_ % of Site \_\_\_\_\_  
Landscaped Area \_\_\_\_\_ sq. ft. \_\_\_\_\_ % of Site \_\_\_\_\_
- n. Recreation Area \_\_\_\_\_ sq. ft. \_\_\_\_\_ % of Site \_\_\_\_\_

**If the proposed project is a multifamily residential development, the following additional data shall be shown on the plans.**

- o. Number of Dwelling Units (du) \_\_\_\_\_
- p. Gross Density (du/acres) \_\_\_\_\_
- q. Number, Type, and Floor Area of each Dwelling Unit:
  - 1. Efficiency \_\_\_\_\_ Floor Area \_\_\_\_\_ sq. ft. \_\_\_\_\_
  - 2. 1 Bedroom \_\_\_\_\_ Floor Area \_\_\_\_\_ sq. ft. \_\_\_\_\_
  - 3. 2 Bedroom \_\_\_\_\_ Floor Area \_\_\_\_\_ sq. ft. \_\_\_\_\_
  - 4. 3 Bedroom \_\_\_\_\_ Floor Area \_\_\_\_\_ sq. ft. \_\_\_\_\_
  - 5. 4 Bedroom \_\_\_\_\_ Floor Area \_\_\_\_\_ sq. ft. \_\_\_\_\_

  
\_\_\_\_\_  
authorizing representative  
or property owner's initials



### LETTER OF INTENT

Please include a Letter of intent (LOI), stipulating your request, addressed to the Community Development Director. This letter must specify all applicable requests. Such requests may include any and/or all of the following:

- a. General purpose and intent of the PDP
- b. Subdivision requests – See Article 4.1 and 4.2.5
- c. Rezoning requests specifying the actual request and explanation of need for the rezoning
- d. Special exception requests and explanation of need for the special exception
- e. Variance requests specifying the actual request and explanation of need. All variance requests must address the five (5) criteria for the granting the a variance, per Land Use and Development Regulations, section 8.10. Note: Variances run with the land.
- f. Vacation of Plat as outlined in section 8.11 and explanation of vacation request
- g. Borrow pit requests as outlined in section 3.23, 4.2.5, and 8.3.2

### DEVIATION REQUEST LETTER(S)

Applicant must complete a separate deviation request letter for each deviation type requested. Please ensure that proper justification for the requested deviation accompanies each request. Staff will not analyze any requested deviation that does not include justification for the deviation sought and this may result in a rejection of your application. Refer to the appropriate section of the LUDRs for guidance on the criteria for which a particular deviation may be sought. Note: Deviations do not run with the land.

- Landscaping Deviations shall be in accordance with Section 5.2.19
- Non-residential Design Standards Deviations shall be in accordance with Section 5.6.10 Deviation,
- Engineering Design Standards (EDS) Deviations in accordance with sheet 1, "Foreword" paragraph 5,
- All Other Deviation Requests, shall be in accordance with Section 4.2.4.K

### TRAFFIC GENERATION ESTIMATE      **No Changes to Trip Generation**

The following will determine the need of a Traffic Impact Statement. Trip Generation Estimate, based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation manual:

ITE Code \_\_\_\_\_ Is estimate based on locally collected data? \_\_\_\_\_

Regression equation (if used) \_\_\_\_\_

Independent Variable \_\_\_\_\_

Daily Two Way Trip Estimate \_\_\_\_\_

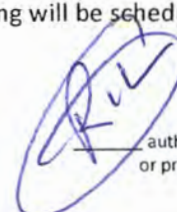
Peak Hour (of generator) Entering \_\_\_\_\_

Peak Hour (of generator) Exiting \_\_\_\_\_

Total Peak Hour (of generator) \_\_\_\_\_

Peak Hour Entering and Exiting trips greater than 300 trips \_\_\_\_\_

If the total peak hour traffic exceeds 300 trips, a Traffic Impact Statement (TIS) will be required. A methodology meeting with the City staff is required prior to submitting the TIS. The methodology meeting will be scheduled after the initial submittal of the PDP application.

  
\_\_\_\_\_  
authorized representative  
or property owner's initials

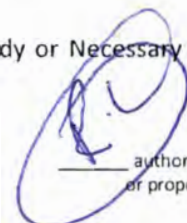
## SUBDIVISION, PER FLORIDA STATUTES, CHAPTER 177 – IF APPLICABLE

### Note: No Changes to existing subdivision plan

Sheet # of  
submitted  
plans

The Subdivision Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following with accurate dimensions to the nearest one-hundredth of a foot. If flexibility is requested for property lines prior to Plat recording, this request must be requested in the Letter of Intent (LOI).

- \_\_\_\_\_ 1. Contours at an interval of not greater than one foot.
- \_\_\_\_\_ 2. Access roads and their relationship to existing and proposed streets, alleys and other public ways.
- \_\_\_\_\_ 3. Setback lines, permanent open space, recreation areas, separation strips, existing and proposed landscape areas and general land use activity areas.
- \_\_\_\_\_ 4. Location of areas and their acreages, if any, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses, including bikeways or walks.
- \_\_\_\_\_ 5. Proposed lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use.
- \_\_\_\_\_ 6. Utility locations on and adjacent to the project showing proposed dimensions and connections to existing utility systems.
- \_\_\_\_\_ 7. All dimensions, angles, bearings and similar data on the plan shall be tied to primary control points approved by the City Engineer. The location and description of said control points shall be given.
- \_\_\_\_\_ 8. Approximate location of proposed and existing surface water management system components including treatment, storage, conveyance, and discharge locations.
- \_\_\_\_\_ 9. Project boundary lines, right-of-way lines of streets, waterways, easements and other rights-of-way. Bearings or deflection angles, radii, arcs and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown.
- \_\_\_\_\_ 10. Name of each street, waterway, easement or other right-of-way and the designation of all buildings, parking areas, access roads, permanent open spaces, recreation areas, separation strips, landscaped areas, dedication or reserved areas, and other land use activity areas by name, use, purpose or other appropriate method as well as by width, length, land area or floor area devoted to such use or purpose.
- \_\_\_\_\_ 11. Certification of title and dedication, on plat, showing that the applicant is the owner and a statement by such owner dedicating streets, rights-of-way and any other sites for public use, if any.
- \_\_\_\_\_ 12. Certification by the City Engineer, on plat, that a surety bond, certified check or other guarantee has been posted with the City in sufficient amount to assure completion of all such required site improvements.
- \_\_\_\_\_ 13. Certificate of approval for recording, on plat, suitable to be signed by the Mayor as applicable, to indicate that the plan has been approved for recording.
- \_\_\_\_\_ 14. Any other appropriate certification required by the Governing Body or Necessary to comply with Florida Statutes, Chapter 177.

  
\_\_\_\_\_ authorized representative  
or property owner's initials

## Planned Development Project (PDP) Application Fees \*

Administrative Review		Fees	Your Costs
<input type="checkbox"/>	PDP - without Subdivision	\$2,525.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of <b>\$3,625.00</b> for additional acres)	\$
<input type="checkbox"/>	PDP - with Subdivision	\$2,815.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of <b>\$3,915.00</b> for additional acres)	\$
<b>Fire Review</b>			
<input type="checkbox"/>	Fire review (mandatory)	\$104.00	\$
<b>Public Hearing</b>			
<input type="checkbox"/>	PDP - without Subdivision	\$665.00	\$
<input type="checkbox"/>	PDP - with Subdivision	\$1,415.00	\$
<input type="checkbox"/>	Zoning Amendment within PDP	\$1,165.00	\$
<input type="checkbox"/>	Vacation of Plat within PDP	\$880.00	\$
<input type="checkbox"/>	Variance/Deviation within PDP	\$1,250.00	\$
<input type="checkbox"/>	Special Exception within PDP	\$1,365.00	\$
<input type="checkbox"/>	Borrow Pit within PDP	\$1,725.00	\$
		Total	\$

\* Advertising fees will be due at time of advertising.

\*\* PDP – Acres x \$55.00 for each acre or portion thereof in excess of 10 acres (i.e. A 20.2 acre of land is calculated as follows.

20.2 – 10.00 = 10.2, then the 10.2 acres is rounded up to 11 acres)



authorized representative  
or property owner's initials





## PLANNED DEVELOPMENT PROJECT (PDP) APPLICATION

PROPERTY OWNER IS A CORPORATION, LIMITED LIABILITY COMPANY (LLC),  
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Project Name: Downtown Village Square Amendment to Existing Ordinance 42-10

Project Number: Prior Planned Development Project PDP 08-0080006

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(Name of Entity)

\*Downtown Village Square II LLC Robbie A. Lee Jr., MGRM

By: NAME AND TITLE (PLEASE TYPE OR PRINT)

SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF NY, COUNTY OF Suffolk

Sworn to (or affirmed) and subscribed before me this 15 day of January 2020, by  
Robert A. Lee Jr. who is personally known or produced  
as identification.

RICHARD J. CHERTOCK  
NOTARY PUBLIC, State of New York  
No. 4989768  
Qualified in Nassau County  
NOTARY STAMP HERE  
3/23/23

Exp. Date: 3/23/23 Commission Number: 4889768

Signature of Notary Public:

Printed name of Notary Public:

**\*Please include additional pages for multiple property owners.**

**Authorization to Represent Property Owner(s) –  
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Limited Company (LC), Partnership, Limited Partnership, or Trustee**

Please be advised that Downtown Village Square II LLC and AMB Planning Consultants Inc.  
(Name of Authorized Representative(s) and business entity, if any)

is authorized to submit an application and represent me in the hearing(s) to the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals and /or City Council for a Planned Development Project.

Unit 6 Block 62A Lot 6-15 + Por VAC ALLEY Subdivision Cape Coral

Or Legal Description: ☒ (described as an exhibit A in Microsoft Word format and attached hereto)

Downtown Village Square II LLC MGRM  
\*\* Name of Entity (Corporation, Partnership, LLC, etc) Title of Signatory

[Signature] Robert A. Lee Jr.  
Signature Name (Please print or type)

STATE OF N.Y. COUNTY OF Suffolk (SIGNATURE MUST BE NOTARIZED)

Sworn to (or affirmed) and subscribed before me this 15 day of Jan, 2020, by  
Robert A. Lee Jr. who is personally known or produced  
as identification.

Exp. Date: 3/23/23 Commission Number: \_\_\_\_\_

NOTARY STAMP HERE  
RICHARD J. CHERTOCK  
NOTARY PUBLIC, State of New York  
No. 4889768  
Qualified in Nassau County  
Commission Expires 3/23/23

Signature of Notary Public: [Signature]  
Printed name of Notary Public: \_\_\_\_\_

Please include additional pages for multiple property owners.

**\*\*Notes:**

If the applicant is a corporation, then it is executed by the corp. pres. or v. pres, sec, tres, or a director, .  
If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should be signed by the Company's "Managing Member."  
If the applicant is a partnership, then a partner can sign on behalf of the partnership.  
If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.  
If the applicant is a trust, then they must include their title of "trustee."  
In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.

[Signature]  
authorized representative  
or property owner's initials



## PDP Applicant Checklist

Project Name: Downtown Village Square

Applicant must submit the completed application and the associated documentation listed below, collated into 17 separate packets (one (1) original and 16 copies). These are minimum requirements for all PDP applications. Based on the nature of your project, additional items may be required by staff.

### Incomplete submittals will not be accepted

- ☐ All application pages must be initialed by the property owner or their authorized representative
- ☐ 24" x 36" engineered PDP Development Plans, including landscape buffer areas and building elevations – See pages 7 – 10 for further information
- ☐ Certified Boundary Surveys, in NGVD 1929, completed within the last six (6) months showing elevations – See page 7 for further information
- ☐ PDP application fees paid in full at time of application – See page 11 for further information
- ☒ Letter of Intent (LOI) – See page 6 for further instructions
- ☐ Environmental Survey/Report – See page 7 for further instructions
- ☐ Warranty or Quit Claim Deed – Applicant shall provide a copy of Warranty or Quit Claim Deed for one hundred (100) percent of the property comprising the Planned Development Project.
- ☐ Vacation of Plat requests must include letter of "No Objection" from the electric company, the telephone company, and the cable company – See page 9 for further instructions
- ☒ Page 1 must be signed and notarized by either all property owner(s) or the authorized agent
- ☒ The "Authorization to Represent Property Owners", page of the application, must be signed by all property owner(s) and notarized
- ☒ Properties owned by corporations, limited liability companies, limited partnerships, general partnerships, and trustees must provide legal documentation (For example, the Articles of Incorporation) listing persons authorized to sign for the entity and in these situations the property owner(s) must sign all applicable PDP forms in their corporate capacity.

### As an alternative to submitting everything in paper format, the applicant may opt to submit the following:

- ☐ 11 sets of plans, in paper format, as described above
- ☐ 11 signed and sealed Boundary Surveys, in paper format, as described above
- ☐ One (1) copy of the application & all other documents you are submitting for review
- ☐ 1 CD/DVD with PDFs of documents you are submitting:
  - o Each document you are submitting needs to be a separate PDF, appropriately identified by name. For example, the application will be one PDF, titled "Application", the Letter of Intent will be another PDF, titled "Letter of Intent", plans, boundary surveys, etc.

  
\_\_\_\_\_  
authorized representative  
or property owner's initials



## GENERAL INFORMATION

Project Name: Downtown Village Square  
Applicant: Red Rock Land Corporation, Downtown Village Square LLC and Downtown Village Square II LLC  
Address: 845, 851, 859, and 877 Cape Coral Parkway E., and 826 SE 47th Terrace, Cape Coral FL 33904  
Phone: 516 903-6400 Fax: \_\_\_\_\_ E-Mail: robertaleejr@aol.com

**\*Property Owner:** Downtown Village Square II LLC

Address 3505 Veterans Memorial Highway, Suite D, Ronkonkoma, New York, 11779  
Phone 516 903-6400 Fax \_\_\_\_\_ E-Mail robertaleejr@aol.com

**Authorized Representative** Downtown Village Square II LLC and AMB Planning Consultants Inc.

Address 3505 Veterans Memorial Pkwy, Suite D, Ronkonoma, NY 11779 & P.O. Box 3495, N. Fort Myers FL 33918  
Phone Robbie Lee: 516 903-6400 Fax \_\_\_\_\_ E-Mail robbertaleejr@aol.com  
Annette Barbaccia 239 850-8301 abarbaccia@ambpl.com

### Location

Unit 6 Block 62A Lot(S) 6 thru 15 + POR VAC ALLEY

Subdivision Cape Coral Strap Number(s) 18-45-24-C1-00011.0000

Legal Description ☒ (Described as Exhibit A in Microsoft Word Format and attached hereto)

Property Address: 859 Cape Coral Parkway E., Cape Coral, FL 33904

Plat Book 11 Page 46 Current Zoning SC Future Land Use DM

This application includes the following requests:  
(Please check all that apply)

<input type="checkbox"/> Subdivision	<input type="checkbox"/> Special Exception	<input type="checkbox"/> Rezoning	<input type="checkbox"/> Variance
<input type="checkbox"/> Deviation to Landscaping	<input type="checkbox"/> Deviation to Non-residential Design Standards	<input type="checkbox"/> Deviation to Engineering Design Standards (EDS)	All Other Deviation Requests <input checked="" type="checkbox"/> Amendment to Existing Development Order
<input type="checkbox"/> Borrow Pit	<input type="checkbox"/> Vacation of Plat		

**\*Please include additional pages for multiple property owners.**

  
authorized representative  
or property owner's initials

**PROPERTY and PROJECT DEVELOPMENT DATA**      **Note: No Changes to Existing PDP & Ordinance**

- |    |  |       |         |                 |
|----|--|-------|---------|-----------------|
| a. | Zoning District                        | _____ |         |                 |
| b. | Future Land Use Class                  | _____ |         |                 |
| c. | Area of Subject Property               | _____ | acres   |                 |
| d. | Type of Development                    | _____ |         |                 |
| e. | Estimated Number of Employees          | _____ |         |                 |
|    | Number of Seats in Assembly            | _____ |         |                 |
| f. | Parking Spaces Required                | _____ |         |                 |
| g. | Parking Spaces Provided                | _____ |         |                 |
| h. | Parking and Street Area                | _____ | sq. ft. | _____ % of Site |
| i. | Ground Floor Building Area             | _____ | sq. ft. | _____ % of Site |
| j. | Total Floor Area                       | _____ | sq. ft. | _____ % of Site |
| k. | Building Heights                       | _____ | feet    | _____ stories   |
| l. | Total Proposed Impervious Surface Area | _____ | sq. ft. | _____ % of Site |
| m. | Permanent Open Space                   | _____ | sq. ft. | _____ % of Site |
|    | Landscaped Area                        | _____ | sq. ft. | _____ % of Site |
| n. | Recreation Area                        | _____ | sq. ft. | _____ % of Site |

If the proposed project is a multifamily residential development, the following additional data shall be shown on the plans.

- |    |   |       |            |               |
|----|---|-------|------------|---------------|
| o. | Number of Dwelling Units (du)                       | _____ |            |               |
| p. | Gross Density (du/acres)                            | _____ |            |               |
| q. | Number, Type, and Floor Area of each Dwelling Unit: |       |            |               |
| 1. | Efficiency  | _____ | Floor Area | _____ sq. ft. |
| 2. | 1 Bedroom   | _____ | Floor Area | _____ sq. ft. |
| 3. | 2 Bedroom   | _____ | Floor Area | _____ sq. ft. |
| 4. | 3 Bedroom   | _____ | Floor Area | _____ sq. ft. |
| 5. | 4 Bedroom   | _____ | Floor Area | _____ sq. ft. |

 \_\_\_\_\_  
authorized representative  
or property owner's initials

### **LETTER OF INTENT**

Please include a Letter of intent (LOI), stipulating your request, addressed to the Community Development Director. This letter must specify all applicable requests. Such requests may include any and/or all of the following:

- a. General purpose and intent of the PDP
- b. Subdivision requests – See Article 4.1 and 4.2.5
- c. Rezoning requests specifying the actual request and explanation of need for the rezoning
- d. Special exception requests and explanation of need for the special exception
- e. Variance requests specifying the actual request and explanation of need. All variance requests must address the five (5) criteria for the granting the a variance, per Land Use and Development Regulations, section 8.10. Note: Variances run with the land.
- f. Vacation of Plat as outlined in section 8.11 and explanation of vacation request
- g. Borrow pit requests as outlined in section 3.23, 4.2.5, and 8.3.2

### **DEVIATION REQUEST LETTER(S)**

Applicant must complete a separate deviation request letter for each deviation type requested. Please ensure that proper justification for the requested deviation accompanies each request. Staff will not analyze any requested deviation that does not include justification for the deviation sought and this may result in a rejection of your application. Refer to the appropriate section of the LUDRs for guidance on the criteria for which a particular deviation may be sought. Note: Deviations do not run with the land.

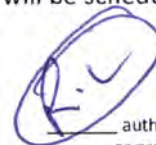
- Landscaping Deviations shall be in accordance with Section 5.2.19
- Non-residential Design Standards Deviations shall be in accordance with Section 5.6.10 Deviation,
- Engineering Design Standards (EDS) Deviations in accordance with sheet 1, "Foreword" paragraph 5,
- All Other Deviation Requests, shall be in accordance with Section 4.2.4.K

### **TRAFFIC GENERATION ESTIMATE**      **No Changes to Trip Generation**

The following will determine the need of a Traffic Impact Statement. Trip Generation Estimate, based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation manual:

ITE Code	_____	Is estimate based on locally collected data?	_____
Regression equation (if used)	_____		
Independent Variable	_____		
Daily Two Way Trip Estimate	_____		
Peak Hour (of generator) Entering	_____		
Peak Hour (of generator) Exiting	_____		
Total Peak Hour (of generator)	_____		
Peak Hour Entering and Exiting trips greater than 300 trips	_____		

If the total peak hour traffic exceeds 300 trips, a Traffic Impact Statement (TIS) will be required. A methodology meeting with the City staff is required prior to submitting the TIS. The methodology meeting will be scheduled after the initial submittal of the PDP application.





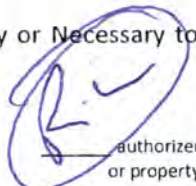
## SUBDIVISION, PER FLORIDA STATUTES, CHAPTER 177 – IF APPLICABLE

### Note: No Changes to existing subdivision plan

Sheet # of  
submitted  
plans

The Subdivision Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following with accurate dimensions to the nearest one-hundredth of a foot. If flexibility is requested for property lines prior to Plat recording, this request must be requested in the Letter of Intent (LOI).

- \_\_\_\_\_ 1. Contours at an interval of not greater than one foot.
- \_\_\_\_\_ 2. Access roads and their relationship to existing and proposed streets, alleys and other public ways.
- \_\_\_\_\_ 3. Setback lines, permanent open space, recreation areas, separation strips, existing and proposed landscape areas and general land use activity areas.
- \_\_\_\_\_ 4. Location of areas and their acreages, if any, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses, including bikeways or walks.
- \_\_\_\_\_ 5. Proposed lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use.
- \_\_\_\_\_ 6. Utility locations on and adjacent to the project showing proposed dimensions and connections to existing utility systems.
- \_\_\_\_\_ 7. All dimensions, angles, bearings and similar data on the plan shall be tied to primary control points approved by the City Engineer. The location and description of said control points shall be given.
- \_\_\_\_\_ 8. Approximate location of proposed and existing surface water management system components including treatment, storage, conveyance, and discharge locations.
- \_\_\_\_\_ 9. Project boundary lines, right-of-way lines of streets, waterways, easements and other rights-of-way. Bearings or deflection angles, radii, arcs and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown.
- \_\_\_\_\_ 10. Name of each street, waterway, easement or other right-of-way and the designation of all buildings, parking areas, access roads, permanent open spaces, recreation areas, separation strips, landscaped areas, dedication or reserved areas, and other land use activity areas by name, use, purpose or other appropriate method as well as by width, length, land area or floor area devoted to such use or purpose.
- \_\_\_\_\_ 11. Certification of title and dedication, on plat, showing that the applicant is the owner and a statement by such owner dedicating streets, rights-of-way and any other sites for public use, if any.
- \_\_\_\_\_ 12. Certification by the City Engineer, on plat, that a surety bond, certified check or other guarantee has been posted with the City in sufficient amount to assure completion of all such required site improvements.
- \_\_\_\_\_ 13. Certificate of approval for recording, on plat, suitable to be signed by the Mayor as applicable, to indicate that the plan has been approved for recording.
- \_\_\_\_\_ 14. Any other appropriate certification required by the Governing Body or Necessary to comply with Florida Statutes, Chapter 177.

  
\_\_\_\_\_  
authorized representative  
or property owner's initials


## Planned Development Project (PDP) Application Fees \*

Administrative Review		Fees	Your Costs
<input type="checkbox"/>	PDP - without Subdivision	\$2,525.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of <b>\$3,625.00</b> for additional acres)	\$
<input type="checkbox"/>	PDP - with Subdivision	\$2,815.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of <b>\$3,915.00</b> for additional acres)	\$
<b>Fire Review</b>			
<input type="checkbox"/>	Fire review (mandatory)	\$104.00	\$
<b>Public Hearing</b>			
<input type="checkbox"/>	PDP - without Subdivision	\$665.00	\$
<input type="checkbox"/>	PDP - with Subdivision	\$1,415.00	\$
<input type="checkbox"/>	Zoning Amendment within PDP	\$1,165.00	\$
<input type="checkbox"/>	Vacation of Plat within PDP	\$880.00	\$
<input type="checkbox"/>	Variance/Deviation within PDP	\$1,250.00	\$
<input type="checkbox"/>	Special Exception within PDP	\$1,365.00	\$
<input type="checkbox"/>	Borrow Pit within PDP	\$1,725.00	\$
		Total	\$

\* Advertising fees will be due at time of advertising.

\*\* PDP – Acres x \$55.00 for each acre or portion thereof in excess of 10 acres (i.e. A 20.2 acre of land is calculated as follows.

20.2 – 10.00 = 10.2, then the 10.2 acres is rounded up to 11 acres)

  
 \_\_\_\_\_  
 authorized representative  
 or property owner's initials



# PLANNED DEVELOPMENT PROJECT (PDP) APPLICATION

PROPERTY OWNER IS A CORPORATION, LIMITED LIABILITY COMPANY (LLC), LIMITED COMPANY (LC), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUST

Project Name: Downtown Village Square Amendment to Existing Ordinance 42-10

Project Number: \_\_\_\_\_

Properties Owned by Red Rock Land Corporation: 845 and 851 Cape Coral Parkway E, Cape Coral, FL 33904

To help prepare this application, the applicant should obtain copies of the following:

- Land Use and Development Regulations (this document is linked)
  1. Land Development Regulations (Article 4)
  2. Parking Requirements (Article 5.1)
  3. Landscape Ordinance (Article 5.2)
  4. Sign Ordinance (Article 7)
- NFPA 1 Fire Prevention Code
- Engineering Design Standards

The advisory review is conceptual only and any staff comments are subject to change based on detailed information with an application to the City of Cape Coral. Formal review may result in additional changes not noted at this time. The final design or project must comply with the Land Use and Development Regulations, Engineering Design Standards, City Code of Ordinances, Comprehensive Plan and other applicable laws and regulations.

## ACKNOWLEDGEMENT

I Daniel Kummer, as the owner of this property or the duly Authorized Representative, agree to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State and County laws, and certify that all information supplied is correct to the best of my knowledge.

In addition, I understand that prior to the issuance of the Certificate of Occupancy for this development, the engineer of record must supply the Department of Community Development with record drawings and a letter of substantial compliance for the project.

In addition, I authorize the staff of the City of Cape Coral to enter upon the property for purposes of investigating and evaluating the request made through this application.

Please note: Advertising fees must be paid in full at least 10 days prior to public hearing or the item may be pulled from the agenda and continued to a future date once the fees have been paid.

(Name of Entity)

\* Red Rock Land Corporation Daniel Kummer, President

By: NAME AND TITLE (PLEASE TYPE OR PRINT)

SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF New York COUNTY OF Suffolk

Sworn to (or affirmed) and subscribed before me this 10<sup>th</sup> day of January, 2020, by Daniel Kummer who is personally known or produced drivers license as identification.

**Donna Lee Sinram**  
Notary Public, State of New York

No. 10SI5012093

Qualified in Nassau County

My Commission Exp. June 15, 2023

Exp. Date: 6-15-23 Commission Number: 10SI5012093

Signature of Notary Public:

Printed name of Notary Public:

Donna Lee Sinram  
Donna Lee Sinram

\*Please include additional pages for multiple property owners.

DK authorized representative  
or property owner's initials



**Authorization to Represent Property Owner(s) –  
Property Owner is a Corporation, Limited Liability Company (LLC),  
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

Please be advised that Downtown Village Square LLC , and AMB Planning Consultants Inc.  
(Name of Authorized Representative(s) and business entity, if any)

is authorized to submit an application and represent me in the hearing(s) to the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals and /or City Council for a Planned Development Project.

Unit 6 Block 62A Lot 1-5, por vac alley Subdivision Cape Coral

Or Legal Description: ☐ (described as an exhibit A in Microsoft Word format and attached hereto)

Red Rock Land Corporation

President

\*\* Name of Entity (Corporation, Partnership, LLC, etc)

Title of Signatory

Signature

Daniel Kummer

Name (Please print or type)

(SIGNATURE MUST BE NOTARIZED)

STATE OF New York, COUNTY OF Suffolk

Sworn to (or affirmed) and subscribed before me this 10<sup>th</sup> day of Jan, 2020 by  
Daniel Kummer who is personally known or produced drivers license  
as identification.

Donna Lee Sinram  
Notary Public, State of New York  
NOTARY NO. 10615012093

Exp. Date: 6-15-23 Commission Number: 10SI5012093

Qualified in Nassau County  
My Commission Exp. June 15, 2023

Signature of Notary Public:

Donna Lee Sinram

Printed name of Notary Public:

Donna Lee Sinram

\*Please include additional pages for multiple property owners.

**\*\*Notes:**

If the applicant is a corporation, then it is executed by the corp. pres. or v. pres, sec, tres, or a director, .

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## PDP Applicant Checklist

Project Name: Downtown Village Square

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- ☐ 24" x 36" engineered PDP Development Plans, including landscape buffer areas and building elevations – See pages 7 – 10 for further information
- ☐ Certified Boundary Surveys, in NGVD 1929, completed within the last six (6) months showing elevations – See page 7 for further information
- ☐ PDP application fees paid in full at time of application – See page 11 for further information
- ☒ Letter of Intent (LOI) – See page 6 for further instructions
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- ☒ The "Authorization to Represent Property Owners", page of the application, must be signed by all property owner(s) and notarized
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- ☐ 11 signed and sealed Boundary Surveys, in paper format, as described above
- ☐ One (1) copy of the application & all other documents you are submitting for review
- ☐ 1 CD/DVD with PDFs of documents you are submitting:
  - o Each document you are submitting needs to be a separate PDF, appropriately identified by name. For example, the application will be one PDF, titled "Application", the Letter of Intent will be another PDF, titled "Letter of Intent", plans, boundary surveys, etc.



## GENERAL INFORMATION

Project Name: Downtown Village Square  
 Applicant: Red Rock Land Corporation, Downtown Village Square LLC and Downtown Village Square II LLC  
 Address: 845, 851, 859, and 877 Cape Coral Parkway E., and 826 SE 47th Terrace, Cape Coral FL 33904  
 Phone: 516 903-6400 Fax: \_\_\_\_\_ E-Mail: robertaleejr@aol.com

\*Property Owner: Daniel Kummer, President of Red Rock Land Corporation  
 Address: 1019 Fort Salonga Road, Suite 10-237, Northport, NY 11768  
 Phone: 516 375-7247 Fax: \_\_\_\_\_ E-Mail: specbuilder996@aol.com

Authorized Representative Downtown Village Square LLC and AMB Planning Consultants Inc.  
 Address: 3505 Veterans Memorial Pkwy, Suite D, Ronkonoma, NY 11779 & P.O. Box 3495, N. Fort Myers FL 33918  
 Phone: Robbie Lee: 516 903-6400 Fax: \_\_\_\_\_ E-Mail: robbertaleejr@aol.com  
Annette Barbaccia 239 850-8301 abarbaccia@ambpl.com

Location \_\_\_\_\_  
 Unit 6 Block 62A Lot(S) 1 thru 5 + POR OF VAC ALLEY  
 Subdivision Cape Coral Strap Number(s) 18-45-24-C1-00009.0000 and 18-45-24-C1-00010.0000

Legal Description ☒ (Described as Exhibit A in Microsoft Word Format and attached hereto)

Property Address: 845 and 851 Cape Coral Parkway E. , Cape Coral, FL 33904  
 Plat Book 11 Page 46 Current Zoning SC Future Land Use DM

This application includes the following requests: (Please check all that apply)			
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Special Exception	<input type="checkbox"/> Rezoning	<input type="checkbox"/> Variance
<input type="checkbox"/> Deviation to Landscaping	<input type="checkbox"/> Deviation to Non-residential Design Standards	<input type="checkbox"/> Deviation to Engineering Design Standards (EDS)	All Other Deviation Requests <input checked="" type="checkbox"/> Amendment to Existing Development Order
<input type="checkbox"/> Borrow Pit	<input type="checkbox"/> Vacation of Plat		

\*Please include additional pages for multiple property owners.

**Note: No Changes to Existing PDP & Ordinance**

- |    |  |               |                 |
|----|--|---------------|-----------------|
| a. | Zoning District                        | _____         |                 |
| b. | Future Land Use Class                  | _____         |                 |
| c. | Area of Subject Property               | _____         | acres           |
| d. | Type of Development                    | _____         |                 |
| e. | Estimated Number of Employees          | _____         |                 |
|    | Number of Seats in Assembly            | _____         |                 |
| f. | Parking Spaces Required                | _____         |                 |
| g. | Parking Spaces Provided                | _____         |                 |
| h. | Parking and Street Area                | _____ sq. ft. | _____ % of Site |
| i. | Ground Floor Building Area             | _____ sq. ft. | _____ % of Site |
| j. | Total Floor Area                       | _____ sq. ft. | _____ % of Site |
| k. | Building Heights                       | _____ feet    | _____ stories   |
| l. | Total Proposed Impervious Surface Area | sq. ft. _____ | % of Site _____ |
| m. | Permanent Open Space                   | sq. ft. _____ | % of Site _____ |
|    | Landscaped Area                        | _____ sq. ft. | % of Site _____ |
| n. | Recreation Area                        | _____ sq. ft. | % of Site _____ |

**If the proposed project is a multifamily residential development, the following additional data shall be shown on the plans.**

- o. Number of Dwelling Units (du) \_\_\_\_\_
- p. Gross Density (du/acres) \_\_\_\_\_
- q. Number, Type, and Floor Area of each Dwelling Unit:
- |    |            |       |            |       |         |       |
|----|------------|-------|------------|-------|---------|-------|
| 1. | Efficiency | _____ | Floor Area | _____ | sq. ft. | _____ |
| 2. | 1 Bedroom  | _____ | Floor Area | _____ | sq. ft. | _____ |
| 3. | 2 Bedroom  | _____ | Floor Area | _____ | sq. ft. | _____ |
| 4. | 3 Bedroom  | _____ | Floor Area | _____ | sq. ft. | _____ |
| 5. | 4 Bedroom  | _____ | Floor Area | _____ | sq. ft. | _____ |



### LETTER OF INTENT

Please include a Letter of intent (LOI), stipulating your request, addressed to the Community Development Director. This letter must specify all applicable requests. Such requests may include any and/or all of the following:

- a. General purpose and intent of the PDP
- b. Subdivision requests – See Article 4.1 and 4.2.5
- c. Rezoning requests specifying the actual request and explanation of need for the rezoning
- d. Special exception requests and explanation of need for the special exception
- e. Variance requests specifying the actual request and explanation of need. All variance requests must address the five (5) criteria for the granting the a variance, per Land Use and Development Regulations, section 8.10. Note: Variances run with the land.
- f. Vacation of Plat as outlined in section 8.11 and explanation of vacation request
- g. Borrow pit requests as outlined in section 3.23, 4.2.5, and 8.3.2

### DEVIATION REQUEST LETTER(S)

Applicant must complete a separate deviation request letter for each deviation type requested. Please ensure that proper justification for the requested deviation accompanies each request. Staff will not analyze any requested deviation that does not include justification for the deviation sought and this may result in a rejection of your application. Refer to the appropriate section of the LUDRs for guidance on the criteria for which a particular deviation may be sought. Note: Deviations do not run with the land.

- Landscaping Deviations shall be in accordance with Section 5.2.19
- Non-residential Design Standards Deviations shall be in accordance with Section 5.6.10 Deviation,
- Engineering Design Standards (EDS) Deviations in accordance with sheet 1, "Foreword" paragraph 5,
- All Other Deviation Requests, shall be in accordance with Section 4.2.4.K

### TRAFFIC GENERATION ESTIMATE      No Changes to Trip Generation

The following will determine the need of a Traffic Impact Statement. Trip Generation Estimate, based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation manual:

ITE Code	_____	Is estimate based on locally collected data?	_____
Regression equation (if used)	_____		
Independent Variable	_____		
Daily Two Way Trip Estimate	_____		
Peak Hour (of generator) Entering	_____		
Peak Hour (of generator) Exiting	_____		
Total Peak Hour (of generator)	_____		
Peak Hour Entering and Exiting trips greater than 300 trips	_____		

If the total peak hour traffic exceeds 300 trips, a Traffic Impact Statement (TIS) will be required. A methodology meeting with the City staff is required prior to submitting the TIS. The methodology meeting will be scheduled after the initial submittal of the PDP application.

## SUBDIVISION, PER FLORIDA STATUTES, CHAPTER 177 – IF APPLICABLE

### Note: No Changes to existing subdivision plan

- Sheet # of submitted plans \_\_\_\_\_
- The Subdivision Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following with accurate dimensions to the nearest one-hundredth of a foot. If flexibility is requested for property lines prior to Plat recording, this request must be requested in the Letter of Intent (LOI).
- \_\_\_\_\_ 1. Contours at an interval of not greater than one foot.
  - \_\_\_\_\_ 2. Access roads and their relationship to existing and proposed streets, alleys and other public ways.
  - \_\_\_\_\_ 3. Setback lines, permanent open space, recreation areas, separation strips, existing and proposed landscape areas and general land use activity areas.
  - \_\_\_\_\_ 4. Location of areas and their acreages, if any, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses, including bikeways or walks.
  - \_\_\_\_\_ 5. Proposed lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use.
  - \_\_\_\_\_ 6. Utility locations on and adjacent to the project showing proposed dimensions and connections to existing utility systems.
  - \_\_\_\_\_ 7. All dimensions, angles, bearings and similar data on the plan shall be tied to primary control points approved by the City Engineer. The location and description of said control points shall be given.
  - \_\_\_\_\_ 8. Approximate location of proposed and existing surface water management system components including treatment, storage, conveyance, and discharge locations.
  - \_\_\_\_\_ 9. Project boundary lines, right-of-way lines of streets, waterways, easements and other rights-of-way. Bearings or deflection angles, radii, arcs and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown.
  - \_\_\_\_\_ 10. Name of each street, waterway, easement or other right-of-way and the designation of all buildings, parking areas, access roads, permanent open spaces, recreation areas, separation strips, landscaped areas, dedication or reserved areas, and other land use activity areas by name, use, purpose or other appropriate method as well as by width, length, land area or floor area devoted to such use or purpose.
  - \_\_\_\_\_ 11. Certification of title and dedication, on plat, showing that the applicant is the owner and a statement by such owner dedicating streets, rights-of-way and any other sites for public use, if any.
  - \_\_\_\_\_ 12. Certification by the City Engineer, on plat, that a surety bond, certified check or other guarantee has been posted with the City in sufficient amount to assure completion of all such required site improvements.
  - \_\_\_\_\_ 13. Certificate of approval for recording, on plat, suitable to be signed by the Mayor as applicable, to indicate that the plan has been approved for recording.
  - \_\_\_\_\_ 14. Any other appropriate certification required by the Governing Body or Necessary to comply with Florida Statutes, Chapter 177.



### Planned Development Project (PDP) Application Fees \*

	Administrative Review	Fees	Your Costs
<input type="checkbox"/>	PDP - without Subdivision	\$2,525.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of \$3,625.00 for additional acres)	\$
<input type="checkbox"/>	PDP - with Subdivision	\$2,815.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of \$3,915.00 for additional acres)	\$
<b>Fire Review</b>			
<input type="checkbox"/>	Fire review (mandatory)	\$104.00	\$
<b>Public Hearing</b>			
<input type="checkbox"/>	PDP - without Subdivision	\$665.00	\$
<input type="checkbox"/>	PDP - with Subdivision	\$1,415.00	\$
<input type="checkbox"/>	Zoning Amendment within PDP	\$1,165.00	\$
<input type="checkbox"/>	Vacation of Plat within PDP	\$880.00	\$
<input type="checkbox"/>	Variance/Deviation within PDP	\$1,250.00	\$
<input type="checkbox"/>	Special Exception within PDP	\$1,365.00	\$
<input type="checkbox"/>	Borrow Pit within PDP	\$1,725.00	\$
	<b>Total</b>		\$

\* Advertising fees will be due at time of advertising.

\*\* PDP – Acres x \$55.00 for each acre or portion thereof in excess of 10 acres (i.e. A 20.2 acre of land is calculated as follows.

20.2 – 10.00 = 10.2, then the 10.2 acres is rounded up to 11 acres)



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

## Detail by Entity Name

Florida Limited Liability Company  
DOWNTOWN VILLAGE SQUARE, LLC

### Filing Information

**Document Number** L05000105297  
**FEI/EIN Number** 20-3886600  
**Date Filed** 10/27/2005  
**State** FL  
**Status** ACTIVE

### Principal Address

877 CAPE CORAL PARKWAY EAST  
CAPE CORAL, FL 33904

Changed: 04/28/2011

### Mailing Address

877 CAPE CORAL PARKWAY EAST  
CAPE CORAL, FL 33904

Changed: 04/27/2017

### Registered Agent Name & Address

SCHUMACHER, RICHARD  
877 CAPE CORAL PARKWAY EAST  
CAPE CORAL, FL 33904

Name Changed: 04/28/2011

Address Changed: 04/28/2011

### Authorized Person(s) Detail

#### **Name & Address**

Title MGRM

Lee,, Robert A., Jr.  
3505 Veterans Memorial Hwy.  
Suite D  
Ronkonkoma, NY 11779

Title MGRM



DiFede, Michael A.  
15 Carleton Ave.  
East Islip, NY 11730

Title MGRM

Schumacher, Richard  
173 Gothic Circle  
Manorville, NY 11949

#### Annual Reports

Report Year	Filed Date
2017	04/27/2017
2018	04/19/2018
2019	04/19/2019

#### Document Images

<a href="#">04/19/2019 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/19/2018 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/27/2017 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/11/2016 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/17/2015 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/09/2014 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">03/29/2013 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">03/10/2012 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/28/2011 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">03/08/2010 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">03/06/2009 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/14/2008 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/25/2007 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">12/06/2006 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/26/2006 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">10/27/2005 -- Florida Limited Liabilities</a>	<a href="#">View image in PDF format</a>



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## Detail by Entity Name

Florida Limited Liability Company  
DOWNTOWN VILLAGE SQUARE II LLC

### Filing Information

<b>Document Number</b>	L14000080796
<b>FEI/EIN Number</b>	46-5694873
<b>Date Filed</b>	05/19/2014
<b>Effective Date</b>	05/19/2014
<b>State</b>	FL
<b>Status</b>	ACTIVE

### Principal Address

877 CAPE CORAL PARKWAY EAST  
CAPE CORAL, FL 33904

### Mailing Address

877 CAPE CORAL PARKWAY EAST  
CAPE CORAL, FL 33904

### Registered Agent Name & Address

SCHUMACHER, RICHARD  
877 CAPE CORAL PARKWAY EAST  
CAPE CORAL, FL 33904

### Authorized Person(s) Detail

#### **Name & Address**

Title MGRM

LEE, ROBERT A, JR.  
3505 Veterans Memorial Hwy.  
Suite D  
Ronkonkoma, NY 11779

Title MGRM

DIFEDE, MICHAEL A  
15 CARLETON AVENUE  
EAST ISLIP, NY 11730

Title MGRM

SCHUMACHER, RICHARD

SCHEMLOCKER, RICHARD  
173 GOTHIC CIRCLE  
MANORVILLE, NY 11949

**Annual Reports**

Report Year	Filed Date
2017	04/27/2017
2018	04/19/2018
2019	04/19/2019

**Document Images**

<a href="#">04/19/2019 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/19/2018 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
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<a href="#">04/11/2016 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/17/2015 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">05/19/2014 -- Florida Limited Liability</a>	<a href="#">View image in PDF format</a>





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## Detail by Entity Name

Florida Profit Corporation

RED ROCK LAND CORPORATION

### Filing Information

**Document Number** P07000021379  
**FEI/EIN Number** 11-3459553  
**Date Filed** 02/15/2007  
**Effective Date** 10/27/1998  
**State** FL  
**Status** ACTIVE

### Principal Address

1019 Fort Salonga Rd  
Suite 10-237  
NORTHPORT, NY 11768

Changed: 04/14/2016

### Mailing Address

1019 Fort Salonga Rd  
Suite 10-237  
NORTHPORT, NY 11768

Changed: 04/14/2016

### Registered Agent Name & Address

SCHUTT, DARRIN RESQ.  
12601 New Brittany Blvd  
Building 19  
Ft Myers, FL 33907

Address Changed: 04/14/2016

### Officer/Director Detail

#### **Name & Address**

Title PD

KUMMER, DANIEL  
1019 Fort Salonga Rd  
Suite 10-237  
NORTHPORT, NY 11768

### Annual Reports

Report Year	Filed Date
2018	02/19/2018
2019	02/27/2019
2020	01/26/2020

### Document Images

<a href="#">01/26/2020 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/27/2019 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/19/2018 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">03/16/2017 -- ANNUAL REPORT</a>	View image in PDF format
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<a href="#">02/19/2015 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/20/2014 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">03/04/2013 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/27/2012 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/24/2011 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/26/2010 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">01/29/2009 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">03/06/2008 -- ANNUAL REPORT</a>	View image in PDF format
<a href="#">02/15/2007 -- Domestic Profit</a>	View image in PDF format

## **AMB Planning Consultants Inc.**

January 20, 2020

Vince Cautero, Director  
Department of Community Development  
1015 Cultural Park Boulevard  
City of Cape Coral  
Cape Coral, FL 33909

Re: Letter of Intent – Amendment to Downtown Village Square Planned Development Project (PDP) Ordinance 33-19, original Ordinance 42-10

Dear Mr. Cautero:

On behalf of the property owners (“Developer”) of the Downtown Village Square Project, Downtown Village Square LLC., Downtown Village Square II and Red Rock Land Corporation, I am submitting a proposed amendment to the Downtown Village Square Planned Development Project and Ordinance 42-10, approved April 26, 2010 and Ordinance 33-19, approved August 3, 2019. See attached PDP applications signed by all three property owners. The properties included in this PDP amendment are: 845, 851, 859 and 877 Cape Coral Parkway E. and 826 SE 47<sup>th</sup> Terrace, Cape Coral, FL 33904.

Pursuant to Ordinance 33-19, the Developer of Downtown Village Square demolished the former Fifth Third Bank building at 859 Cape Coral Parkway E., Cape Coral, FL 33904 and the former car wash building at 877 Cape Coral Parkway E., Cape Coral, FL 33904 by the December 31, 2019 deadline.

There is an existing Tenant at the small retail building at 851 Cape Coral Parkway, Cape Coral Parkway E., Cape Coral FL 33904, who’s lease does not terminate until November 17, 2020. The existing building at 851 Cape Coral Parkway E. Cape Coral, FL 33904 is located in Phase 1, where Building A is proposed. The Tenant does not want to extinguish his lease. As a result, the Developer is requesting an amendment to Ordinance 33-19 which would amend the phasing plan and demolition of the existing building:

- SECTION II.1 FINDING OF FACT/CONCLUSIONS OF LAW of Ordinance 33-19 would be amended as follow:

1.a. No changes

1.b. **The existing building at 851 Cape Coral Parkway East will be used as a Sales Center until Building D (parking garage) is constructed in the second phase. At the completion of Building “D” by July 31, 2022, the 851 Cape Coral Parkway East building will be demolished within thirty (30) days of Building “D” receiving a**



**Certificate of Occupancy.** ~~Demolishing the building at 851 Cape Coral Parkway East. This building shall be demolished by the developer no later than April 30, 2020. In the event this building is not demolished~~ **within thirty (30) days of Building “D” receiving a Certificate of Occupancy. At such time, the Sales Center office will be moved into Building “B”** ~~by April 30, 2020, the PDP shall be considered null and void.~~

1.c. Constructing the temporary parking at ground level within the footprint of the parking garage or constructing Building “D” (parking garage) concurrently with Building “A” **“B”**.

1.d. Constructing a temporary trash enclosure located at the northwest corner of the Phase 2 temporary parking area unless Building “D” (parking garage) is constructed concurrently with Building “A” **“B”**.

1.e. Constructing Building “A” **“B”**, installing landscaping associated with Building “A” **“B”**, and constructing utilities for Building “A” **“B”**.

~~1.f. Constructing the fountain associated with Building “A”.~~

1.g. Constructing access from Cape Coral Parkway, SE 47<sup>th</sup> Terrace, and SE 8<sup>th</sup> Court as shown on the Phasing Plan, Sheet C-4A.

1.h. Installing the pavers located within the public square surrounding Building “A” **“B”**.

1.i. Constructing all right-of-way improvements including pavers ~~along SE 8<sup>th</sup> Court to the eastern edge of the Cape Coral Parkway entrance~~ **fronting Building “B” along Cape Coral Parkway E.**

1.j. No changes.

1.k. The Developer shall submit a complete set of building plans for Building “A” **“B”** to the City no later than March 31, 2020. In the event the Developer does not submit building plans to the City on or before March 31, 2020, the PDP shall be considered null and void.

1.l. Substantial construction to Building “A” **“B”** shall commence no later than July 1, 2020. Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of Building “A” **“B”**. In the event that substantial construction on Building “A” **“B”** does not occur on or before July 1, 2020, the PDP shall be considered null and void.

2. Phase 2 shall include:

- 2.a. No changes.
- 2.b. Constructing Building “B” **“D” (parking garage)** installing landscaping associated with Building “B” and “D”, and constructing utilities for Building “B” **“D”**.
- 2.c. ~~Constructing temporary parking on the site sufficient for Buildings “A” and “B”.~~
- 2.d. Demolishing the temporary parking area **that is within any portion of the Building D footprint** and constructing the entire parking garages of Building “D”, and installing all abutting landscaping. The two residential towers may be built in this Phase 2 or may be deferred until Phase 5.
- 2.e. Constructing all right-of-way improvements abutting Building ~~pad~~ “B” **“A”**.
- 2.f. The Developer shall submit a complete set of building plans for Building “B” ~~and Building “D” (parking garage)~~ no later than March 31, 2021. In the event the Developer does not submit building plans for **Building “D” (parking garage)** ~~both buildings~~ to the City on or before March 31, 2021, the PDP shall be considered null and void.
2. g. Substantial construction on ~~Building “B” and~~ Building “D” shall commence no later than August 1, 2021. Substantial construction for the purposes of this development order shall mean the Developer has been issued a building permit by the City for the construction of ~~Building “B” and~~ Building “D”. In the event that substantial construction on ~~Building “B” and~~ Building “D” does not occur on or before August 1, 2021, the PDP shall be considered null and void.
- 2.h. The Developer shall receive Certificates of Completion from the City for ~~Building “B” and~~ Building “D” no later than July 31, 2022. In the event the Developer does not receive Certificate of Completion for **Building “D” (parking garage)** ~~both building~~ from the City on or before July 31, 2022, the PDP shall be considered null and void.
- 2.i. The Department of Community Development Director, at his discretion, may extend the deadline dates described in Section II by up to thirty days. He shall provide a written extension to the Developer prior to the deadline date granting that extension and copying the City Manager, the City Attorney, and the City Council on the correspondence**
- 2. j. In the event the Developer believes that he has not been afforded a timely review by the City, causing him to miss any of the deadlines contained in Section II, the Developer will be afforded the right to petition the City Council within 30 days subsequent to the missed deadline. Based on the City Council’s review of the petition**

**and consideration of testimony and information, they will assess the petition and determine whether the PDP may continue to be active.**

3. Phase 3 shall include:

3.a. Constructing **Building “A” and** Building “C”, installing abutting landscaping associated with **Building “A” and** Building “C”, and constructing utilities for **Building “A” and** Building “C”.

3.b. No changes

3. c. No changes.

3. d. Constructing all right of way improvements abutting **Building “A” and** Building “C” including the access points along SE 9<sup>th</sup> Place.

SECTION III. ACTION ON REQUEST AND CONDITIONS OF APPROVAL is proposed to be amended as follows:

A. 1 to 7: No changes.

A. 8. The building located at 851 Cape Coral Parkway shall be demolished no later than ~~April 30, 2020~~ **July 31, 2022**.

A. 9. The Developer shall submit a complete set of building plans for Building “A” **“B”** to the City no later than March 31, 2020. In the event the Developer does not submit building plans to the City on or before March 31, 2020, the PDP shall be considered null and void.

A. 10. Substantial construction on Building “A” **“B”** shall commence no later than July 1, 2020, Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of Building **“A” “B”**. In the event that substantial construction on Building “A” **“B”** does not occur on or before July 1, 2020, the PDP shall be considered null and void.

A. 11. The Developer shall receive a Certificate of Completion from the City for Building **“A” “B”** no later than June 30, 2021. In the event the Developer does not receive a Certificate of Completion from the City on or before June 30, 2021, the PDP shall be considered null and void.

A. 12. The Developer shall submit a complete set of building plans for ~~Building “B” and~~ Building “D” (parking garage) no later than March 31, 2021. In the event the Developer does not submit building plans for **Building “D” (parking garage)** ~~both buildings~~ to the City on or before March 31, 2021, the PDP shall be considered null and void.



A. 13. Substantial construction on ~~Building “B” and~~ Building “D” shall commence no later than August 1, 2021. Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of ~~Building “B” and~~ Building “D”. In the event that substantial construction on ~~Building “B” and~~ Building “D” does not occur on or before August 1, 2021, the PDP shall be considered null and void.

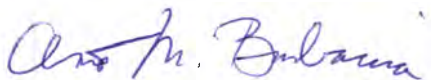
A. 14. The Developer shall receive Certificates of Completion for ~~Building “B” and~~ Building “D” no later than July 31, 2022. In the event the Developer does not receive Certificates of Completion for **Building “D” (parking garage)** ~~both buildings~~ from the City on or before July 31, 2022, the PDP shall be considered null and void.

**A.15. The Department of Community Development Director, at his discretion, may extend the deadline dates described in Section III by up to thirty days. He shall provide a written extension to the Developer prior to the deadline date granting that extension and copying the City Manager, the City Attorney, and the City Council on the correspondence**

**A.16 In the event the Developer believes that he has not been afforded a timely review by the City, causing him to miss any of the deadlines contained in Section III, the Developer will be afforded the right to petition the City Council within 30 days subsequent to the missed deadline. Based on the City Council’s review of the petition and consideration of testimony and information, they will assess the petition and determine whether the PDP may continue to be active.**

As indicated previously by the testimony of the Finance Department, the project is not feasible without the 95% of the eligible Tax Increment Financing. The Developer, in light of his compliance with Ordinance 33-19 to date, will be requesting staff and the City’s Community Redevelopment Agency to reinstate the full Tax Increment Financing as originally awarded to the project. This is needed for lender financing.

Sincerely,



Annette M. Barbaccia, President  
AMB Planning Consultants Inc.  
P.O. Box 3495  
N. Fort Myers, FL 33918  
Tel. (239) 850-8301 Email: [abarbaccia@ambpl.com](mailto:abarbaccia@ambpl.com)

Cc: Robert A. Lee Jr., Michael DiFede, Richard Schumacher, Daniel Kummer,  
Robert Pederson, Mike Struve, Amy Yearsley

RESOLUTION 10 - 10

A RESOLUTION OF THE CAPE CORAL CITY COUNCIL PURSUANT TO THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS; APPROVING AN APPLICATION FOR ENHANCED DENSITY, PURSUANT TO THE DOWNTOWN CRA REDEVELOPMENT INCENTIVE PROGRAM, FOR A PROPOSED PROJECT ENTITLED "DOWNTOWN VILLAGE SQUARE" LOCATED IN THE DOWNTOWN CORE (DC) ZONING DISTRICT ON PROPERTY DESCRIBED AS BLOCK 62A, UNIT 6 PART 1, AND BLOCK 62A, UNIT 8, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"; PROPERTY LOCATED BETWEEN SE 47<sup>TH</sup> TERRACE TO THE NORTH, SE 9<sup>TH</sup> PLACE TO THE EAST, CAPE CORAL PARKWAY TO THE SOUTH, AND SE 8<sup>TH</sup> COURT TO THE WEST; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral has established a Redevelopment Incentive Program (RIP) for development within the Downtown Community Redevelopment Area (CRA); and

WHEREAS, the RIP offers development incentive opportunities to property owners and developers as a means to meet specific development goals while increasing the quality of development and providing benefits to the community at large; and

WHEREAS, the regulations for the zoning districts located within the Downtown CRA set forth the criteria to be met in order to receive development incentives in the form of increased residential density and/or non-residential intensity (FAR); and

WHEREAS, development incentives must be provided from at least three of the nine categories of RIP development incentives in order to qualify for enhanced density and/or intensity; and

WHEREAS, an application has been received from Downtown Village Square, LLC, Red Rock Land Corporation, with authorization from Fifth Third Bank requesting enhanced density for including in a project certain development incentives that would provide public benefit(s); and

WHEREAS, the request has been reviewed by the Community Redevelopment Agency; and

WHEREAS, the request has been reviewed by the Cape Coral Planning and Zoning Commission/Local Planning Agency; and

WHEREAS, the City Council has considered the recommendations of the Community Redevelopment Agency and the Planning and Zoning Commission/Local Planning Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. In addition to considering the recommendations of the Community Redevelopment Agency and the Planning and Zoning Commission/Local Planning Agency, the City Council has considered the presentation made by the Applicant, the criteria set forth in Section 2.7.15 of the Land Use and Development Regulations as it pertains to the Downtown Core (DC) zoning district, and all other evidence presented to the City Council concerning Applicant's request to exceed the baseline density in the DC by nineteen dwelling units for that project known as "DOWNTOWN VILLAGE SQUARE", a proposed Planned Development Project (PDP). Because the baseline density of the DC zoning district allows 20 dwelling units per acre and the applicant is seeking an additional 19 dwelling units per acre through the RIP, this request, if approved, would result in this project having a density of 39 dwelling units per acre which would equate to a total of 152 dwelling units for the "DOWNTOWN VILLAGE SQUARE" project.

Section 2. The "DOWNTOWN VILLAGE SQUARE" project will be located in the Downtown Core (DC) zoning district at 845, 859, 869 and 877 Cape Coral Parkway East on property that is more particularly described as a parcel of land located in Section 18, Township 45 South, Range 24



East, Cape Coral, Lee County, Florida as more particularly described in Exhibit "A." The "DOWNTOWN VILLAGE SQUARE" project is proposed to consist of five (5) buildings that are described as follows: a six story building containing retail and professional office uses, two (2) six story compound use buildings, a seven story compound use building, and a 14 story compound use building containing six floors of structured parking. Because the DC zoning district restricts the height of buildings to 85 feet and six stories, the seven and 14 story buildings proposed for this project can only be approved by the awarding of a height deviation from the City Council through the Planned Development Project (PDP) process.

Section 3. The baseline density in the DC zoning district is 20 dwelling units per acre and the intensity (Floor Area Ratio) is 2.0 FAR. Additional residential density and commercial intensity, up to a maximum of 40 dwelling units per acre and a FAR of 4.0, respectively, may only be achieved through applicant participation in the RIP.

Section 4. The City Council finds that Applicant is proposing to provide development incentives from at least three (3) categories of RIP development incentives, as follows:

Category (1) Superior site design and quality development (as demonstrated in attached Exhibits "B", "C", and "D")

- (a) Connectivity. The five (5) buildings will be connected by covered cross-overs located on the third floor. The Developer will provide a series of walkways that will connect the eight foot wide sidewalk surrounding the site to a central square that provides a pedestrian link between SE 8<sup>th</sup> Court with SE 9<sup>th</sup> Place.
- (b) Exterior design and materials. The buildings associated with the Downtown Village Square Development contain a number of aesthetic enhancements that exceed the architectural requirements of the DC Zoning District. All buildings within the project have balconies, walls with ornamental details and display varied roof lines. Buildings A, B and C will contain stoops. The perimeter sidewalk and the majority of walkways located within the project along with the east-west central square that bisects Block 62A will be constructed of brick pavers. Collectively, the incorporation of these design features into the project will add greater visual appeal to the site than if the project simply was developed following the minimum standards contained within the DC Zoning District. Additionally, several of the architectural features mentioned above will assist in reducing building massing and thereby create a more inviting pedestrian-oriented scale associated with the project.
- (c) Orientation. Several buildings are oriented within the development to allow for small public gathering places. These areas include the patio located in front of Building A and the patio located between Building B and C, both of which contain fountains. Building E is designed to contain an atrium that also includes a central fountain. Three outdoor seating areas are located between Buildings C and E.
- (d) Underground utilities. Utilities, as well as the surface management system, will be located underground.

Within this category, the Village Square project meets four of five subsections. While this project does not meet the provisions of the clustering subsection, due to the quality and quantity of the enhancements provided in Sections a., b. and c. above, this project substantially meets the requirements of the Superior Site Design and Quality Development Category.

Category (3) Public Open Space and Recreational Areas (as demonstrated by Exhibit "E")

- (a) The project contains an east-west central square about 360 feet long and 26 feet wide that will provide for passive recreational opportunities.
- (b) The project will exceed the landscaping requirements by providing more than 1,000 plantings over the amount required by City code. The majority of

these plantings will be located around the periphery of Buildings A, B, C and E.

Category (4) Community Facilities (as demonstrated by Exhibit "F")

- (a) The project will have structured parking devoted to six floors of the 14-story building. Except for limited parking spaces on floors 2, 3 and 4 reserved for employees working at the project, the first four floors of the parking garage will be available for public use, including a minimum of 127 parking spaces located on the first floor.
- (b) Two thousand (2,000) sq. ft. of building space will be available on the ground floor of Building D for a City of Cape Coral police substation. The City shall have 18 months beginning with the issuance of a certificate of occupancy for this building to determine whether the City wishes to utilize this space. If the City, at its option, decides it does not wish to utilize this site, this action will not affect the awarding of enhanced density. Alternatively, in the event the space for the police substation is initially utilized by the City and subsequently the City decides not to utilize this space, the area must remain unoccupied by the City for a minimum of 12 consecutive months before this space would revert back to the Developer for his use. Should the City chose to vacate this area as described above, this action will not affect the awarding of enhanced density. For as long as the City wishes to utilize the aforementioned 2,000 ft<sup>2</sup> of area for a police substation, the City will receive this space free of rent, but will be responsible for maintenance-related expenses.

Category (5) Affordable Housing

Within 90 days of the approval of the development order, the Developer shall execute an affordable housing agreement with the City of Cape Coral. This agreement shall secure a minimum of five (5) affordable housing units for the project, or their monetary equivalent as provided herein. It shall be the Developer's option whether to provide housing in the project or their monetary equivalent.

- a. If Developer elects to provide housing within the project, the agreement shall contain provisions generally consistent with those outlined within LDR, Section 5.7.G. The affordable housing agreement shall contain the following provisions:
  - (1) No affordable housing unit in the development shall be rented or sold to a tenant whose household income has not been verified as moderate, low, or very low income family. Such verification shall be the responsibility of the owner and shall be submitted to the City Manager or the City Manager's designee for approval. Tenant income verification and certification shall be repeated annually to assure continued eligibility.
  - (2) No affordable housing unit that is to be sold, leased with option to purchase, or otherwise conveyed in the development shall be sold, leased with option to purchase, or otherwise conveyed to a buyer whose household income has not been verified and certified in accordance with this section as moderate, low, or very low income family. Such verification and certification shall be the responsibility of the developer and shall be submitted to the City Manager or the City Manager's designee for approval. It is the intent of this section to keep housing affordable; therefore, any person who buys an affordable housing unit must agree, in a lien instrument to be recorded with the Clerk of the Circuit Court of Lee County, Florida, that if he or she sells the property (including the land and/or the unit) within 15 years after his or her original purchase at a sales price in excess of 5% per year of his original purchase price that he or she will pay to the City of Cape Coral an amount equal to the sales price in excess of 5% increase per year. The lien instrument may be subordinated to a qualifying first mortgage.
  - (3) No more than two affordable housing units shall be located within a single building or single tower of Building "D".

- b. If the Developer chooses to pay to the City a monetary amount for each housing unit not provided in the development, the agreement shall contain, at a minimum, the following provisions:

In lieu of providing the five onsite housing units, the Developer shall pay \$25,000 per unit for each unit not located within the development. The Developer shall pay the funds no later than at the time of issuance of a certificate of occupancy for a maximum of 80 residential units located within the project.

Because the number of affordable housing units provided by the Developer is below 10% of the total number of housing units proposed for the development, the applicant partially meets the requirements of the Affordable Housing Category.

Category (8) Land Assemblage (as demonstrated in Exhibit "G")

Six parcels collectively yielding over three acres have been assembled by the applicant after December 1, 2005. The development site includes a 15 foot wide alley that is proposed to be vacated by the applicant thereby providing for a single, consolidated building site. The six assembled parcels will, if the alley is vacated as proposed, constitute an entire City block with over 250 feet in depth.

Category (9) Non-Residential Use Percentage (as demonstrated in Exhibit "H")

At buildout, about 51% of the net floor area of the project will be devoted to nonresidential uses.

Section 5. City Council hereby approves an increased density in the amount of nineteen (19) residential units per acre for the "DOWNTOWN VILLAGE SQUARE" planned development project which will award the development with an overall density of 39 residential units per acre.

Section 6. The enhanced density granted herein is contingent on the approval of a Planned Development Project (PDP) for the subject development by the City Council (or the Planning and Zoning Commission/Board of Adjustment and Appeals if the approval of the City Council is not required for the approval of the PDP). The PDP application includes a rezoning request from the Downtown Edge (DE) to the Downtown Core (DC) district. If a PDP Development Order is not approved by the City for the subject property in accordance with the enhanced density approved here, then the development of the subject property shall comply with the baseline density for the DC zoning district.

Section 7. All development incentives provided for the award of enhanced density through the RIP program must be maintained throughout the life of the development, except that the area set aside for a police substation shall only be required to be maintained for as long as the City of Cape Coral, in its sole discretion, maintains a police substation in that area. The relocation or removal of the police substation by the City of Cape Coral, at its sole option, shall not affect the award of enhanced density herein approved. The enhanced density granted herein is applicable only to the "DOWNTOWN VILLAGE SQUARE" development on property described as a parcel of land located in Block 62A, Unit 6 Part 1, and Block 62A, Unit 8, Cape Coral Subdivision, as more particularly described in Exhibit "A.". The increased density granted herein runs with the land and is transferable to any future owner of the land, but it cannot be transferred to a different site or a different project on the same site. If a PDP Development Plan approved for the "DOWNTOWN VILLAGE SQUARE" Development expires, the award of increased density shall also expire at the same time.

Section 8. This Resolution shall take effect immediately upon its adoption.



ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS 26th DAY OF April, 2010.

  
\_\_\_\_\_  
JOHN J. SULLIVAN, MAYOR

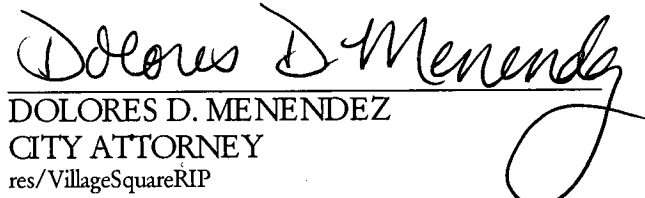
VOTE OF MAYOR AND COUNCILMEMBERS:

SULLIVAN	<u>aye</u>
McCLAIN	<u>aye</u>
BRANDT	<u>aye</u>
DEILE	<u>aye</u>
CHULAKES-LEETZ	<u>aye</u>
KUEHN	<u>aye</u>
McGRAIL	<u>aye</u>
DONNELL	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 6th DAY OF May, 2010.

  
\_\_\_\_\_  
REBECCA VAN DEUTEKOM,  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/VillageSquareRIP



## EXHIBIT "A"

### Downtown Village Square

City of Cape Coral, Lee County, Florida  
(Basis of Bearings - SE 47th Terrace - Due East)

#### Legal Description

(Description for Overall Property *After* Vacation)

All of Block 62A, Unit 6, Part I, Cape Coral, as recorded in Plat Book 11, Pages 45 through 47 of the Public Records of Lee County, Florida; and

All of Block 62A, Unit 8, Cape Coral, as recorded in Plat Book 13, Pages 1 through 6 of the Public Records of Lee County, Florida; and all alleys within and in-between said Blocks.

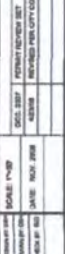
Further described as follows: Commencing at the Northwest corner of Section 18, Township 45 South, Range 24 East, City of Cape Coral, Lee County, Florida, thence S89°03'21"E for a distance of 676.08 feet along the Northerly line of said section to the Easterly line of the sixty foot wide right-of-way known as Southeast 8th Court (aka Chester Street) and the Point of Beginning of the parcel described herein:

Thence due North a distance of 111.14 feet along said Easterly line, to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of N45°00'00"E, a chord distance of 35.36 feet, a central angle of 90°00'00", for an arc distance of 39.27 feet to the Southerly line of the sixty foot wide right-of-way known as Southeast 47th Terrace (aka Marina Drive); thence due East a distance of 524.00 feet along said Southerly line to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of S45°00'00"E, a chord distance of 35.36 feet, a central angle of 90°00'00", for an arc distance of 39.27 feet to the Westerly line of the sixty foot wide right-of-way known as Southeast 9th Place (aka Candida Street); thence due South along said Westerly line a distance of 252.81 feet to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of S45°18'00"W, a chord distance of 35.54 feet, a central angle of 90°35'59", for an arc distance of 39.58 feet to the Northerly line of the 100 foot wide right-of-way known as Cape Coral Parkway East; thence N89°24'01"W for a distance of 524.03 feet to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of N44°42'01"W, a chord distance of 35.17 feet, a central angle of 89°%D24'01", for an arc distance of 39.01 feet to the Easterly line of the sixty foot wide right-of-way known as Southeast 8th Court (aka Chester Street); thence due North along said Easterly line for a distance of 136.19 feet returning to the Point of Beginning.

171,711.4394 sq.ft. or ±3.9420 Acres



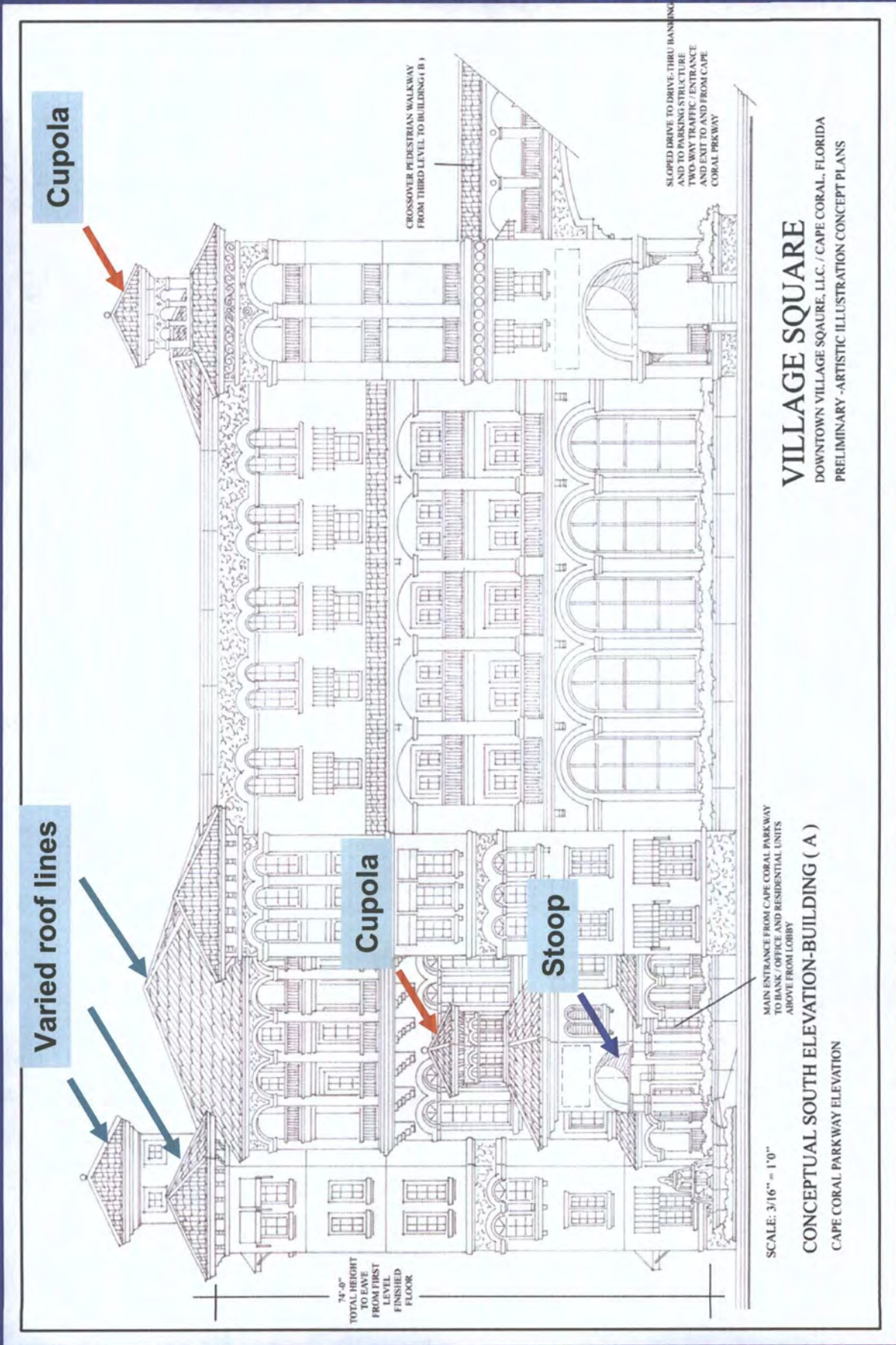
## RIP Category #1: Superior Design and Quality Development: Connectivity





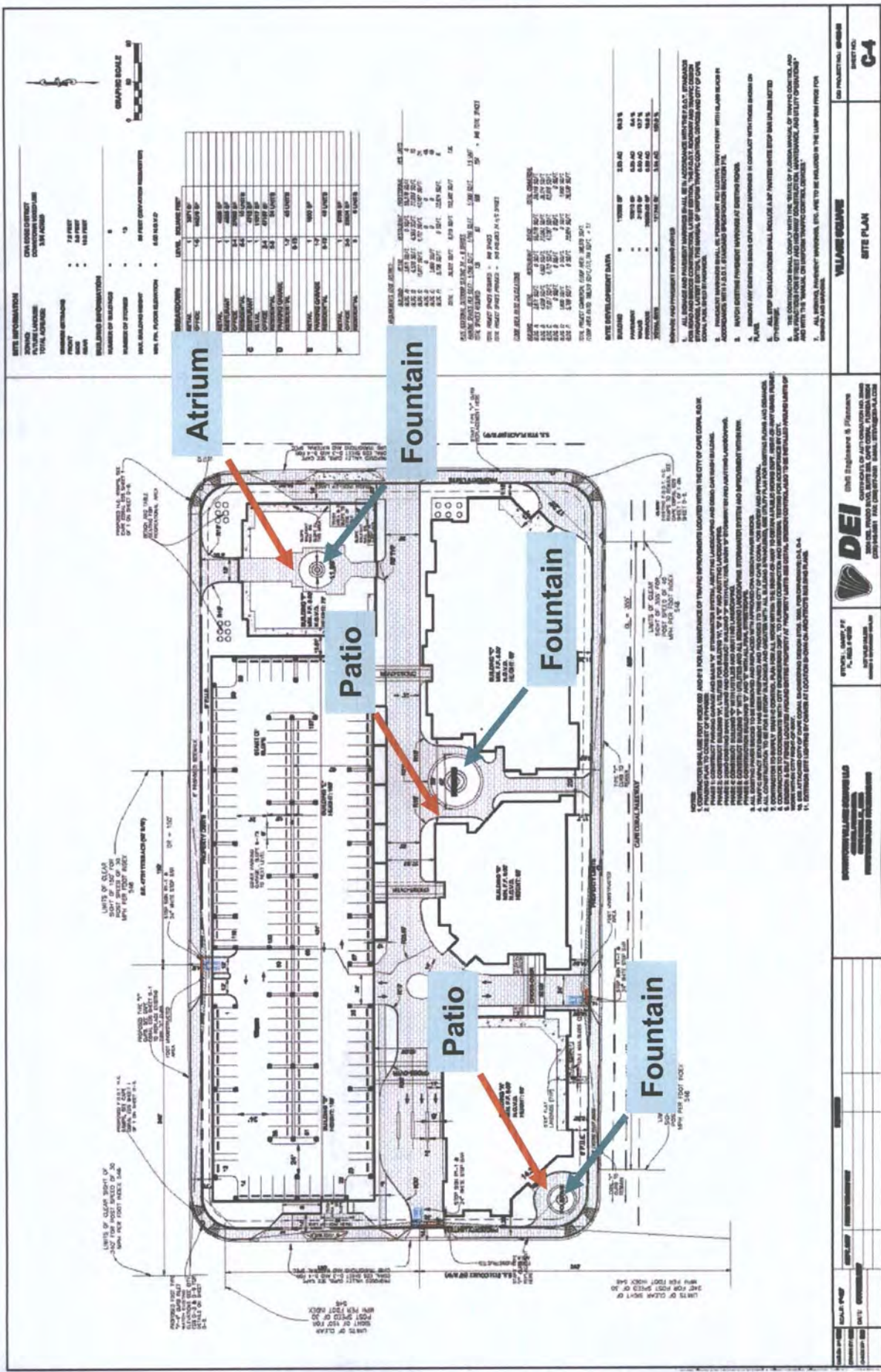
## Exhibit "C"

### RIP Category #1: Superior Design and Quality Development: Exterior Design and Materials





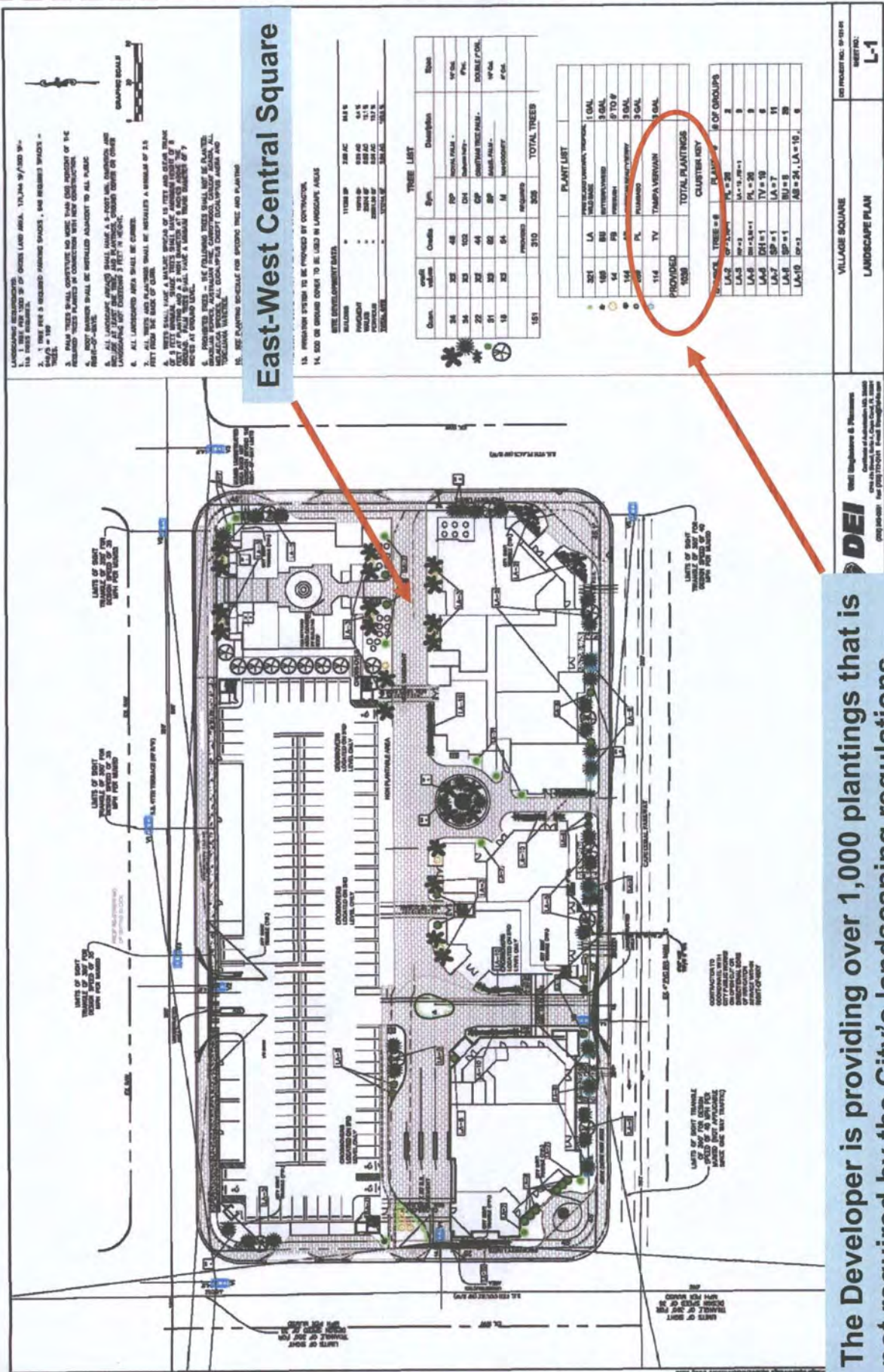
## RIP Category #1: Superior Design and Quality Development: Orientation





# Exhibit "E"

### RIP Category #3: Public Open Space and Recreation Areas

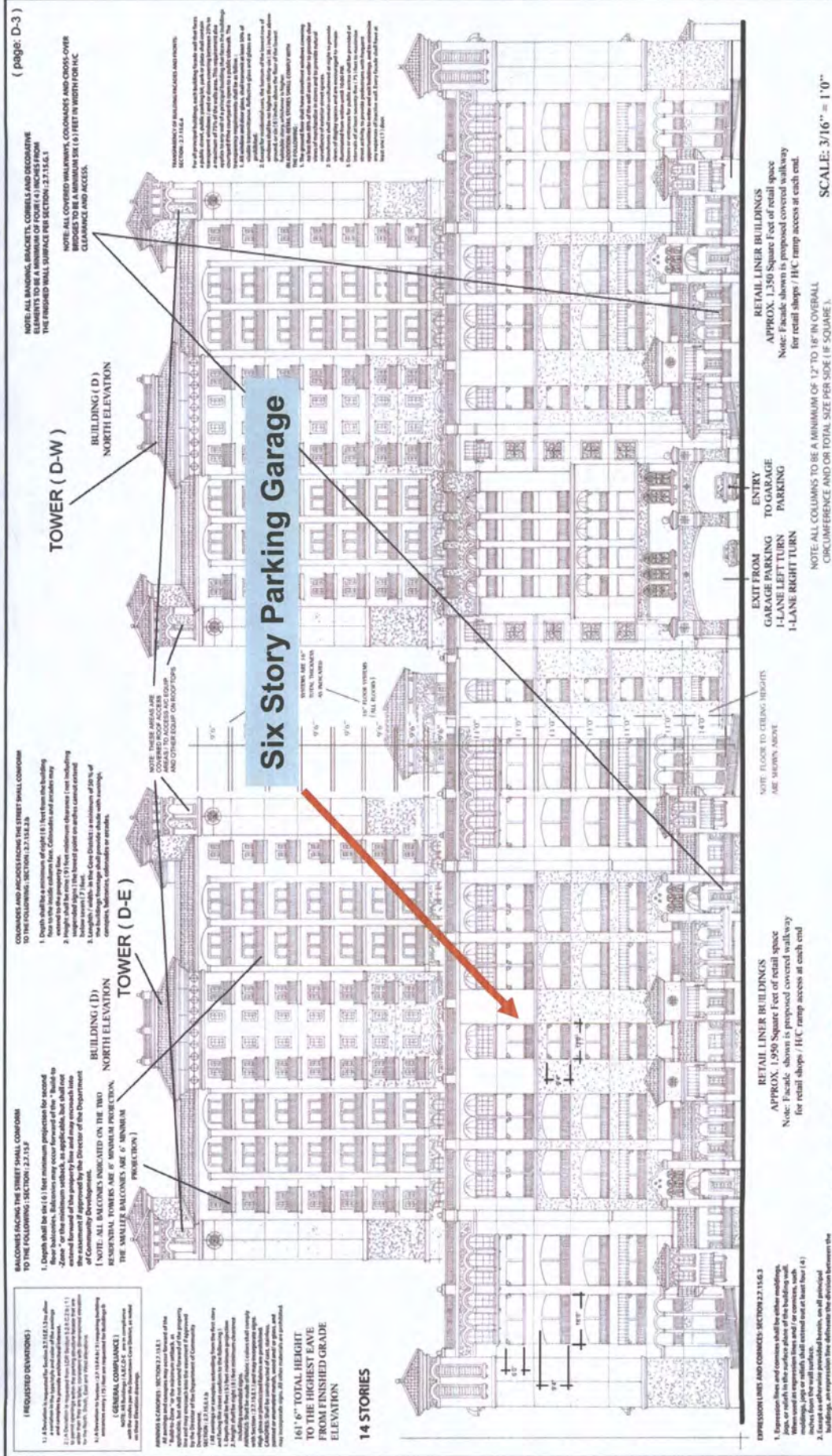


**The Developer is providing over 1,000 plantings that is not required by the City's landscaping regulations.**



# Exhibit "F"

## RIP Category #4: Community Facilities

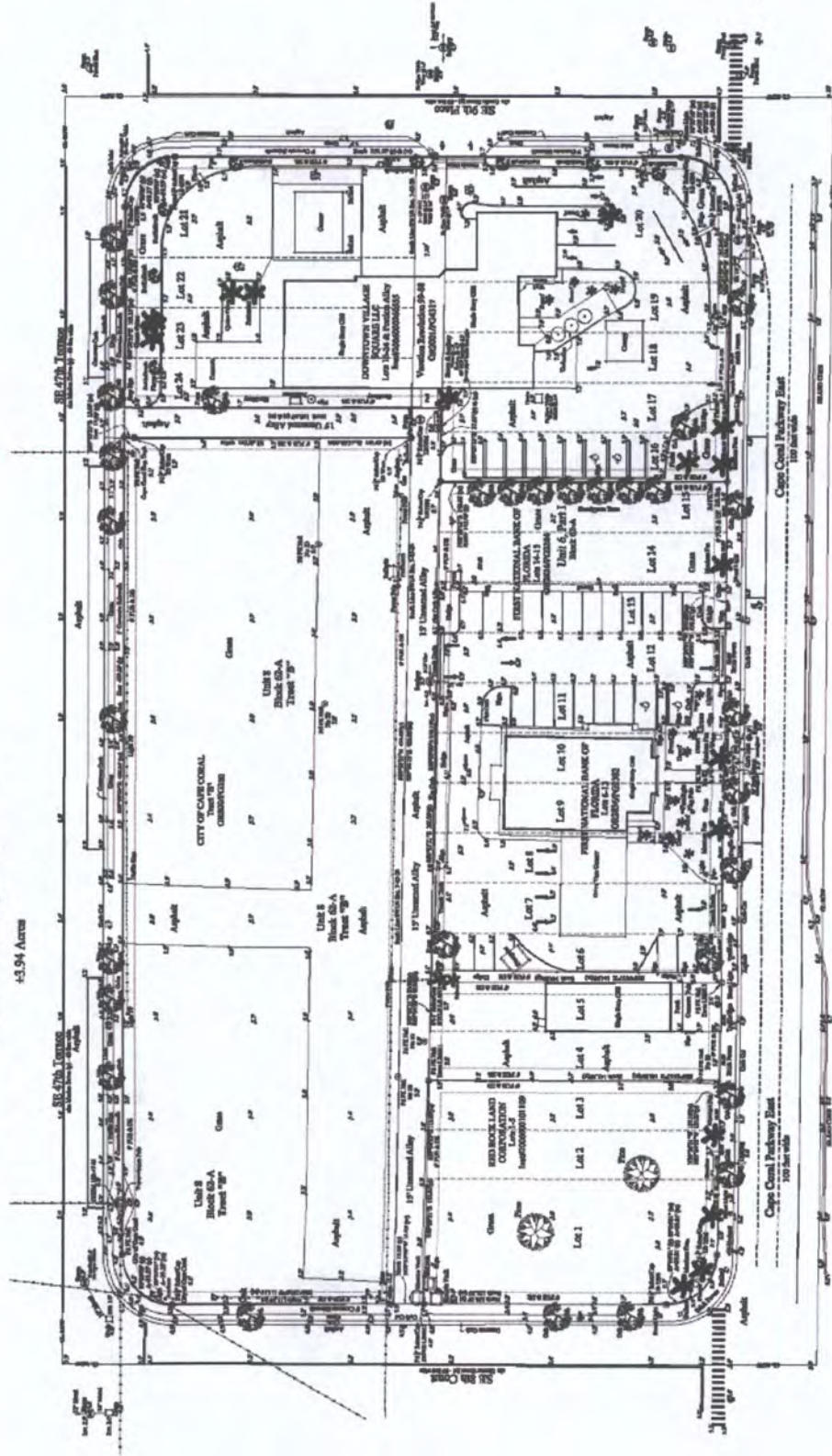


**Note:** Space totaling 2,000 ft<sup>2</sup> located within the project will be reserved for City of Cape Coral Police Department use.



**Project area comprised of six parcels plus a vacated alley totaling 3.94 acres.  
The subject block has about 300 feet of depth.**

+3.94 Acent

[illegible]



## Exhibit "H"

### RIP Category #9: Non-Residential Use Percentage

	Area (ft <sup>2</sup> )	Percentage (%)
Commercial	251,546	51
Residential	243,200	49
Total	494,746	100

RESOLUTION 10 - 10

A RESOLUTION OF THE CAPE CORAL CITY COUNCIL PURSUANT TO THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS; APPROVING AN APPLICATION FOR ENHANCED DENSITY, PURSUANT TO THE DOWNTOWN CRA REDEVELOPMENT INCENTIVE PROGRAM, FOR A PROPOSED PROJECT ENTITLED "DOWNTOWN VILLAGE SQUARE" LOCATED IN THE DOWNTOWN CORE (DC) ZONING DISTRICT ON PROPERTY DESCRIBED AS BLOCK 62A, UNIT 6 PART 1, AND BLOCK 62A, UNIT 8, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"; PROPERTY LOCATED BETWEEN SE 47<sup>TH</sup> TERRACE TO THE NORTH, SE 9<sup>TH</sup> PLACE TO THE EAST, CAPE CORAL PARKWAY TO THE SOUTH, AND SE 8<sup>TH</sup> COURT TO THE WEST; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral has established a Redevelopment Incentive Program (RIP) for development within the Downtown Community Redevelopment Area (CRA); and

WHEREAS, the RIP offers development incentive opportunities to property owners and developers as a means to meet specific development goals while increasing the quality of development and providing benefits to the community at large; and

WHEREAS, the regulations for the zoning districts located within the Downtown CRA set forth the criteria to be met in order to receive development incentives in the form of increased residential density and/or non-residential intensity (FAR); and

WHEREAS, development incentives must be provided from at least three of the nine categories of RIP development incentives in order to qualify for enhanced density and/or intensity; and

WHEREAS, an application has been received from Downtown Village Square, LLC, Red Rock Land Corporation, with authorization from Fifth Third Bank requesting enhanced density for including in a project certain development incentives that would provide public benefit(s); and

WHEREAS, the request has been reviewed by the Community Redevelopment Agency; and

WHEREAS, the request has been reviewed by the Cape Coral Planning and Zoning Commission/Local Planning Agency; and

WHEREAS, the City Council has considered the recommendations of the Community Redevelopment Agency and the Planning and Zoning Commission/Local Planning Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. In addition to considering the recommendations of the Community Redevelopment Agency and the Planning and Zoning Commission/Local Planning Agency, the City Council has considered the presentation made by the Applicant, the criteria set forth in Section 2.7.15 of the Land Use and Development Regulations as it pertains to the Downtown Core (DC) zoning district, and all other evidence presented to the City Council concerning Applicant's request to exceed the baseline density in the DC by nineteen dwelling units for that project known as "DOWNTOWN VILLAGE SQUARE", a proposed Planned Development Project (PDP). Because the baseline density of the DC zoning district allows 20 dwelling units per acre and the applicant is seeking an additional 19 dwelling units per acre through the RIP, this request, if approved, would result in this project having a density of 39 dwelling units per acre which would equate to a total of 152 dwelling units for the "DOWNTOWN VILLAGE SQUARE" project.

Section 2. The "DOWNTOWN VILLAGE SQUARE" project will be located in the Downtown Core (DC) zoning district at 845, 859, 869 and 877 Cape Coral Parkway East on property that is more particularly described as a parcel of land located in Section 18, Township 45 South, Range 24

East, Cape Coral, Lee County, Florida as more particularly described in Exhibit "A." The "DOWNTOWN VILLAGE SQUARE" project is proposed to consist of five (5) buildings that are described as follows: a six story building containing retail and professional office uses, two (2) six story compound use buildings, a seven story compound use building, and a 14 story compound use building containing six floors of structured parking. Because the DC zoning district restricts the height of buildings to 85 feet and six stories, the seven and 14 story buildings proposed for this project can only be approved by the awarding of a height deviation from the City Council through the Planned Development Project (PDP) process.

Section 3. The baseline density in the DC zoning district is 20 dwelling units per acre and the intensity (Floor Area Ratio) is 2.0 FAR. Additional residential density and commercial intensity, up to a maximum of 40 dwelling units per acre and a FAR of 4.0, respectively, may only be achieved through applicant participation in the RIP.

Section 4. The City Council finds that Applicant is proposing to provide development incentives from at least three (3) categories of RIP development incentives, as follows:

Category (1) Superior site design and quality development (as demonstrated in attached Exhibits "B", "C", and "D")

- (a) Connectivity. The five (5) buildings will be connected by covered cross-overs located on the third floor. The Developer will provide a series of walkways that will connect the eight foot wide sidewalk surrounding the site to a central square that provides a pedestrian link between SE 8<sup>th</sup> Court with SE 9<sup>th</sup> Place.
- (b) Exterior design and materials. The buildings associated with the Downtown Village Square Development contain a number of aesthetic enhancements that exceed the architectural requirements of the DC Zoning District. All buildings within the project have balconies, walls with ornamental details and display varied roof lines. Buildings A, B and C will contain stoops. The perimeter sidewalk and the majority of walkways located within the project along with the east-west central square that bisects Block 62A will be constructed of brick pavers. Collectively, the incorporation of these design features into the project will add greater visual appeal to the site than if the project simply was developed following the minimum standards contained within the DC Zoning District. Additionally, several of the architectural features mentioned above will assist in reducing building massing and thereby create a more inviting pedestrian-oriented scale associated with the project.
- (c) Orientation. Several buildings are oriented within the development to allow for small public gathering places. These areas include the patio located in front of Building A and the patio located between Building B and C, both of which contain fountains. Building E is designed to contain an atrium that also includes a central fountain. Three outdoor seating areas are located between Buildings C and E.
- (d) Underground utilities. Utilities, as well as the surface management system, will be located underground.

Within this category, the Village Square project meets four of five subsections. While this project does not meet the provisions of the clustering subsection, due to the quality and quantity of the enhancements provided in Sections a., b. and c. above, this project substantially meets the requirements of the Superior Site Design and Quality Development Category.

Category (3) Public Open Space and Recreational Areas (as demonstrated by Exhibit "E")

- (a) The project contains an east-west central square about 360 feet long and 26 feet wide that will provide for passive recreational opportunities.
- (b) The project will exceed the landscaping requirements by providing more than 1,000 plantings over the amount required by City code. The majority of

these plantings will be located around the periphery of Buildings A, B, C and E.

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- (a) The project will have structured parking devoted to six floors of the 14-story building. Except for limited parking spaces on floors 2, 3 and 4 reserved for employees working at the project, the first four floors of the parking garage will be available for public use, including a minimum of 127 parking spaces located on the first floor.
- (b) Two thousand (2,000) sq. ft. of building space will be available on the ground floor of Building D for a City of Cape Coral police substation. The City shall have 18 months beginning with the issuance of a certificate of occupancy for this building to determine whether the City wishes to utilize this space. If the City, at its option, decides it does not wish to utilize this site, this action will not affect the awarding of enhanced density. Alternatively, in the event the space for the police substation is initially utilized by the City and subsequently the City decides not to utilize this space, the area must remain unoccupied by the City for a minimum of 12 consecutive months before this space would revert back to the Developer for his use. Should the City chose to vacate this area as described above, this action will not affect the awarding of enhanced density. For as long as the City wishes to utilize the aforementioned 2,000 ft<sup>2</sup> of area for a police substation, the City will receive this space free of rent, but will be responsible for maintenance-related expenses.

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Within 90 days of the approval of the development order, the Developer shall execute an affordable housing agreement with the City of Cape Coral. This agreement shall secure a minimum of five (5) affordable housing units for the project, or their monetary equivalent as provided herein. It shall be the Developer's option whether to provide housing in the project or their monetary equivalent.

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  - (3) No more than two affordable housing units shall be located within a single building or single tower of Building "D".



- b. If the Developer chooses to pay to the City a monetary amount for each housing unit not provided in the development, the agreement shall contain, at a minimum, the following provisions:

In lieu of providing the five onsite housing units, the Developer shall pay \$25,000 per unit for each unit not located within the development. The Developer shall pay the funds no later than at the time of issuance of a certificate of occupancy for a maximum of 80 residential units located within the project.

Because the number of affordable housing units provided by the Developer is below 10% of the total number of housing units proposed for the development, the applicant partially meets the requirements of the Affordable Housing Category.

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Six parcels collectively yielding over three acres have been assembled by the applicant after December 1, 2005. The development site includes a 15 foot wide alley that is proposed to be vacated by the applicant thereby providing for a single, consolidated building site. The six assembled parcels will, if the alley is vacated as proposed, constitute an entire City block with over 250 feet in depth.

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At buildout, about 51% of the net floor area of the project will be devoted to nonresidential uses.

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Section 6. The enhanced density granted herein is contingent on the approval of a Planned Development Project (PDP) for the subject development by the City Council (or the Planning and Zoning Commission/Board of Adjustment and Appeals if the approval of the City Council is not required for the approval of the PDP). The PDP application includes a rezoning request from the Downtown Edge (DE) to the Downtown Core (DC) district. If a PDP Development Order is not approved by the City for the subject property in accordance with the enhanced density approved here, then the development of the subject property shall comply with the baseline density for the DC zoning district.

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Section 8. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS 26th DAY OF April, 2010.



JOHN J. SULLIVAN, MAYOR

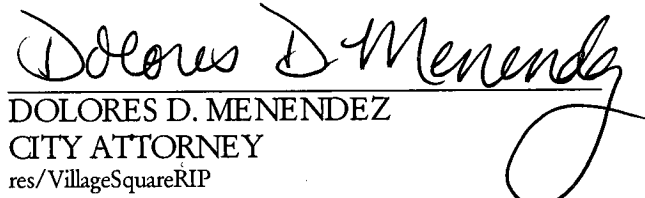
VOTE OF MAYOR AND COUNCILMEMBERS:

SULLIVAN	<u>aye</u>
McCLAIN	<u>aye</u>
BRANDT	<u>aye</u>
DEILE	<u>aye</u>
CHULAKES-LEETZ	<u>aye</u>
KUEHN	<u>aye</u>
McGRAIL	<u>aye</u>
DONNELL	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 6th DAY OF May, 2010.

  
REBECCA VAN DEUTEKOM,  
CITY CLERK

APPROVED AS TO FORM:

  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/VillageSquareRIP



## EXHIBIT "A"

### Downtown Village Square

City of Cape Coral, Lee County, Florida  
(Basis of Bearings - SE 47th Terrace - Due East)

#### Legal Description

(Description for Overall Property *After* Vacation)

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All of Block 62A, Unit 8, Cape Coral, as recorded in Plat Book 13, Pages 1 through 6 of the Public Records of Lee County, Florida; and all alleys within and in-between said Blocks.

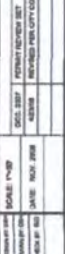
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171,711.4394 sq.ft. or ±3.9420 Acres



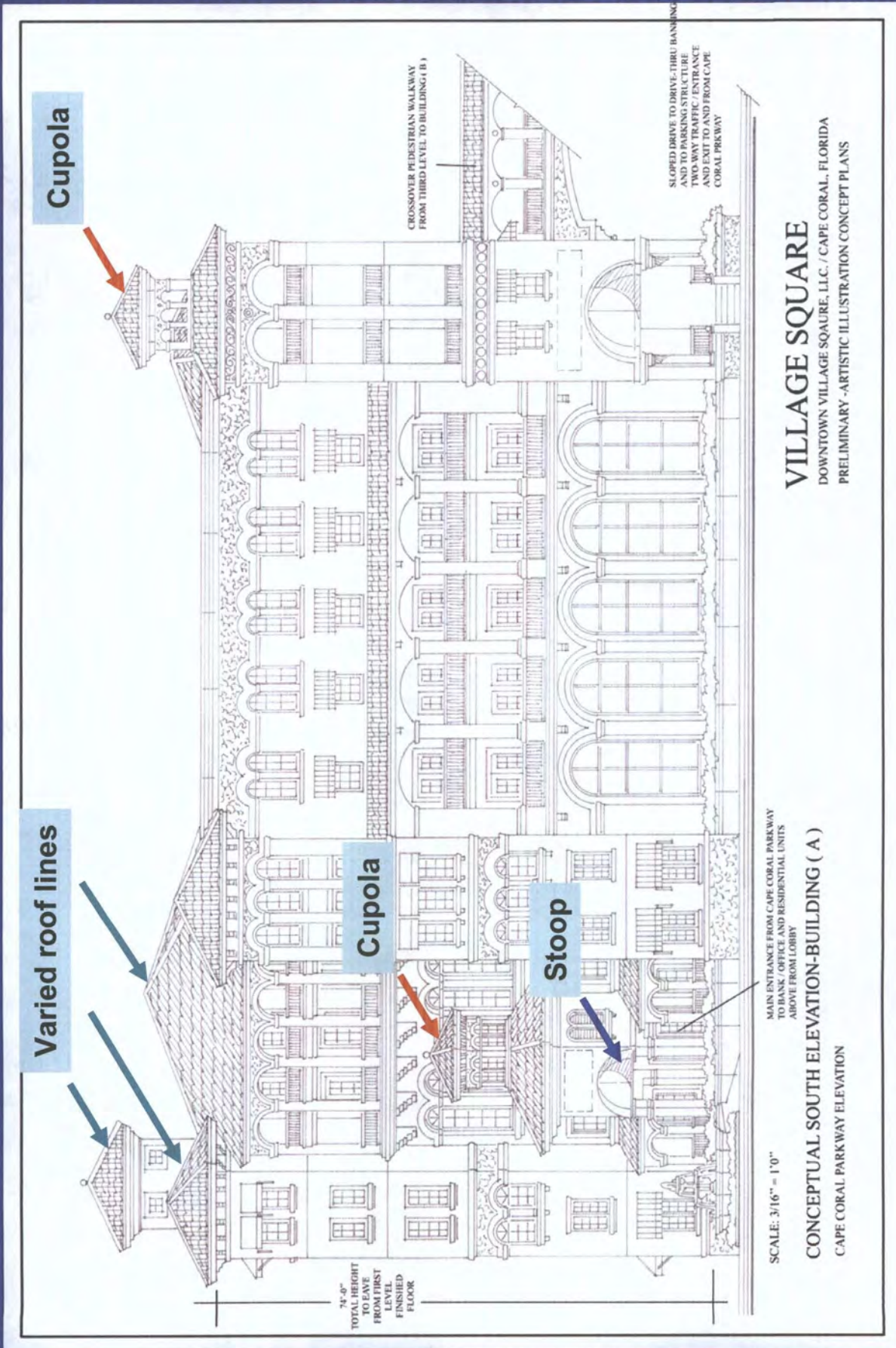
## RIP Category #1: Superior Design and Quality Development: Connectivity





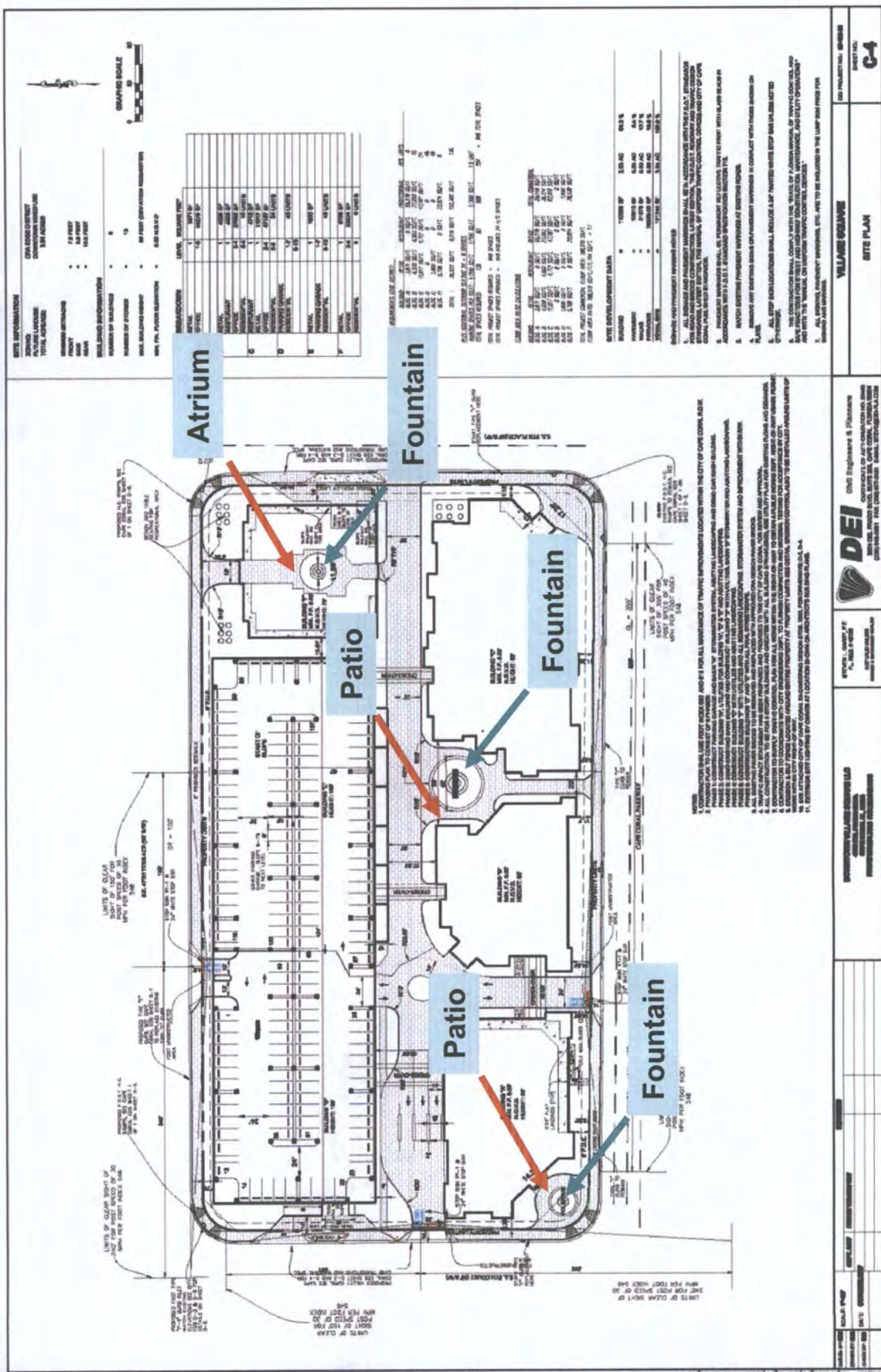
## Exhibit "C"

### RIP Category #1: Superior Design and Quality Development: Exterior Design and Materials





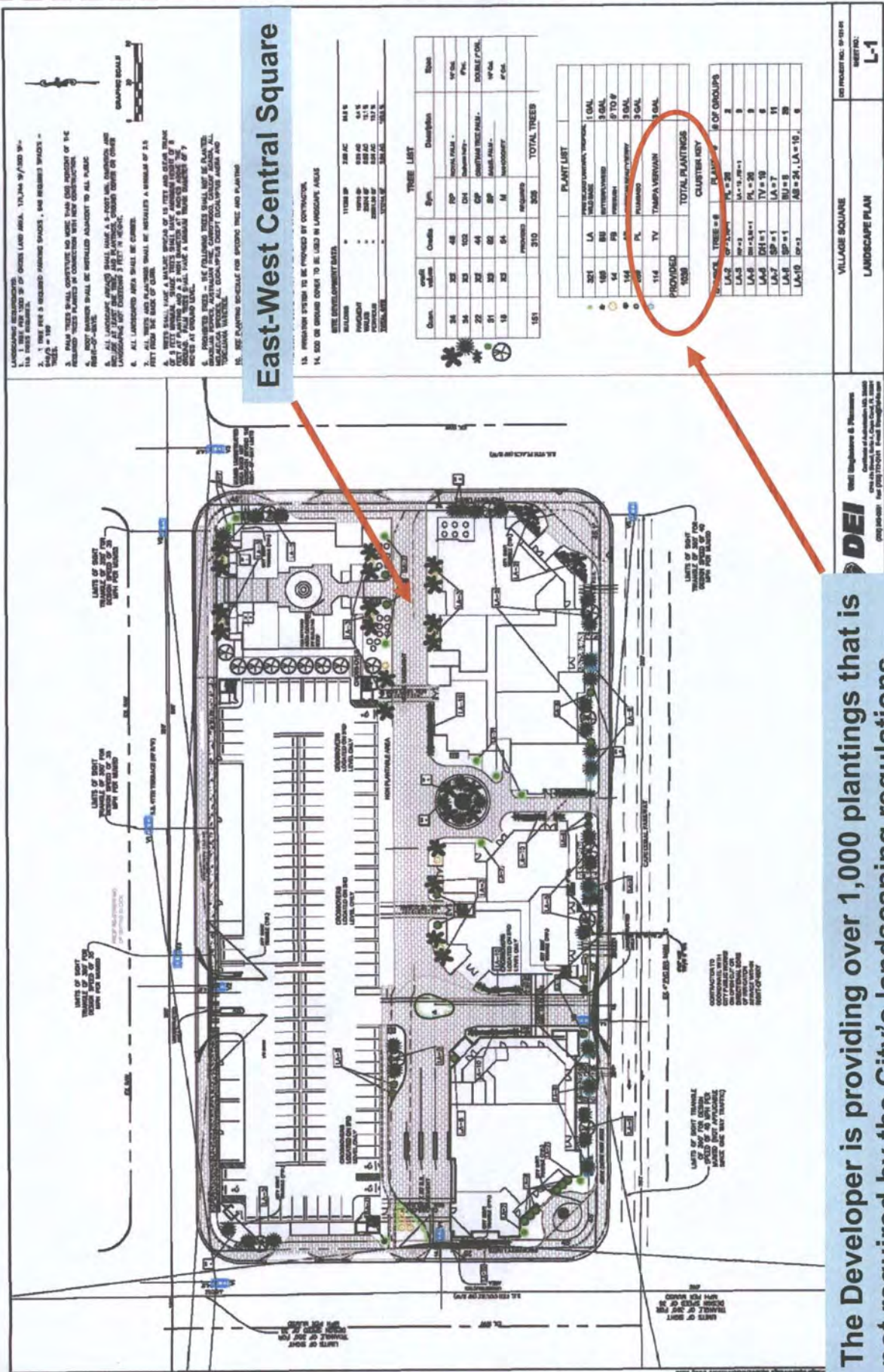
# Exhibit “D” or Design a Orientation





# Exhibit "E"

### RIP Category #3: Public Open Space and Recreation Areas

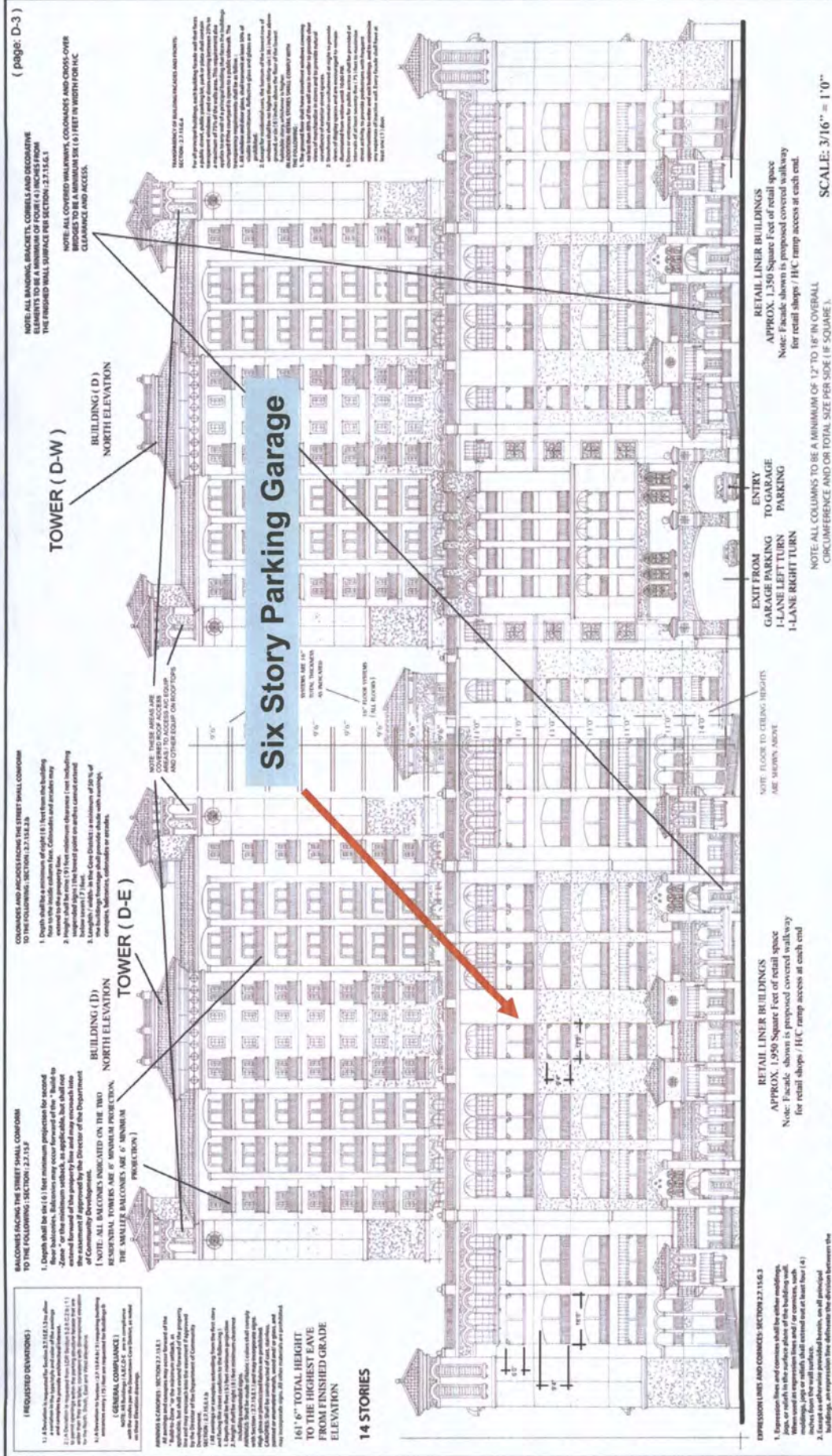


**The Developer is providing over 1,000 plantings that is not required by the City's landscaping regulations.**



# Exhibit “F”

## RIP Category #4: Community Facilities

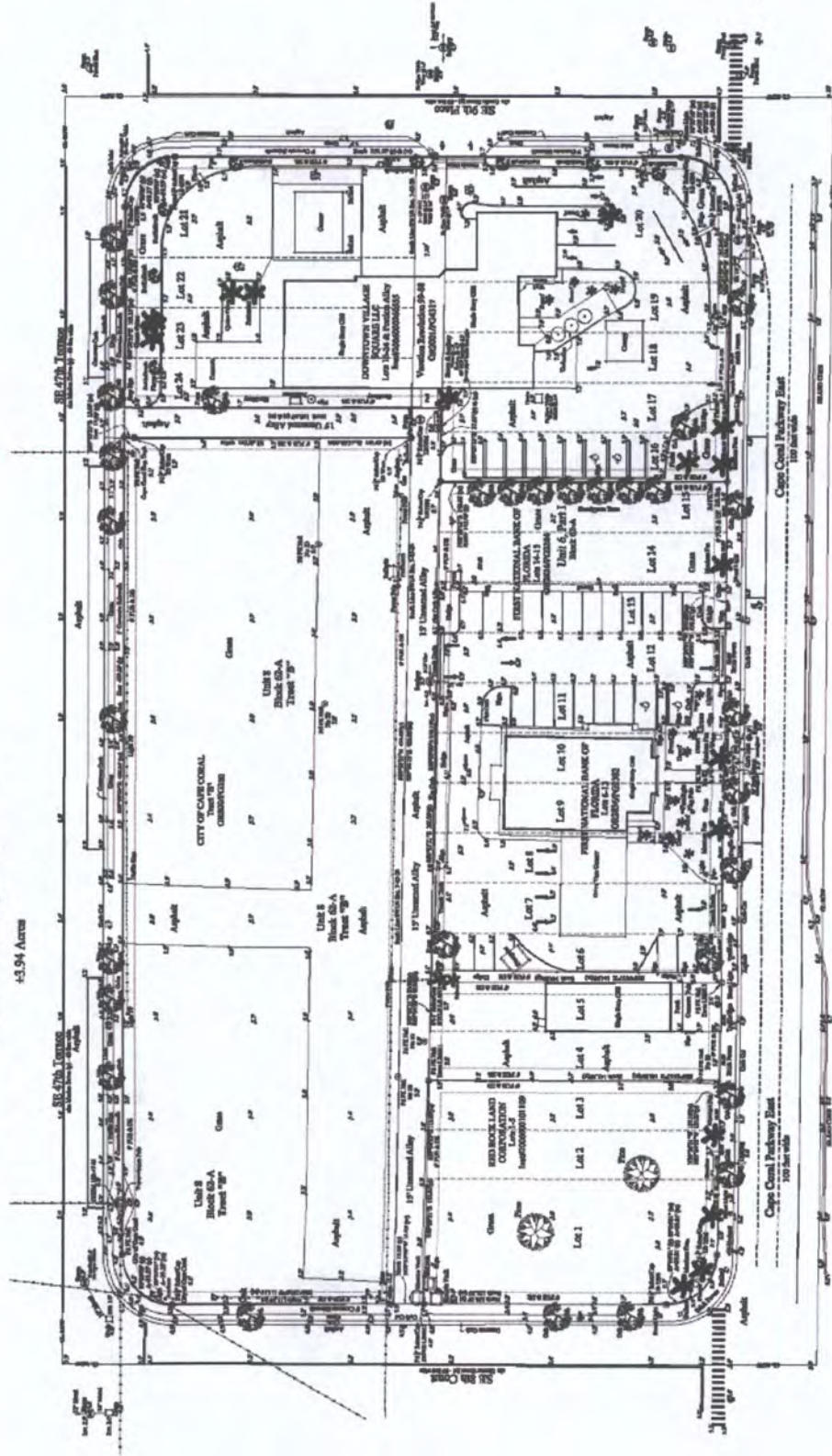


**Note:** Space totaling 2,000 ft<sup>2</sup> located within the project will be reserved for City of Cape Coral Police Department use.



**Project area comprised of six parcels plus a vacated alley totaling 3.94 acres.  
The subject block has about 300 feet of depth.**

+3.94 Acres

[illegible]



## Exhibit "H"

### RIP Category #9: Non-Residential Use Percentage

	Area (ft <sup>2</sup> )	Percentage (%)
Commercial	251,546	51
Residential	243,200	49
Total	494,746	100



COUNCILMEMBER McCLAIN      PDP 08-00800006  
03/26/10  
03/30/10  
04/05/10  
04/07/10  
04/20/10  
04/26/10

ORDINANCE 42 - 10

AN ORDINANCE APPROVING A PLANNED DEVELOPMENT PROJECT IN THE CITY OF CAPE CORAL, FLORIDA ENTITLED "DOWNTOWN VILLAGE SQUARE" FOR CERTAIN PROPERTY DESCRIBED AS BLOCK 62A, UNIT 6 PART 1, AND BLOCK 62A, UNIT 8, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"; PROPERTY LOCATED BETWEEN SE 47<sup>TH</sup> TERRACE TO THE NORTH, SE 9<sup>TH</sup> PLACE TO THE EAST, CAPE CORAL PARKWAY TO THE SOUTH, AND SE 8<sup>TH</sup> COURT TO THE WEST; REZONING THE SUBJECT PROPERTY FROM DOWNTOWN EDGE (DE) DISTRICT TO DOWNTOWN CORE (DC) DISTRICT; GRANTING A VACATION OF PLAT FOR INTERIOR LOT LINES, PUBLIC UTILITY AND DRAINAGE EASEMENTS, AND ALLEY RIGHT OF WAY AND UNDERLYING EASEMENTS LOCATED WITHIN THE SUBJECT PROPERTY WHILE MAINTAINING PERIMETER LOT LINES AND EASEMENTS; GRANTING A DEVIATION FROM THE REQUIREMENT THAT ALL OPENINGS IN THE FAÇADE OF A PARKING STRUCTURE BE TALLER THAN WIDE TO ALLOW OPENINGS IN THE FAÇADE OF THE PARKING STRUCTURE ASSOCIATED WITH BUILDING "D" TO BE WIDER THAN TALL; GRANTING A DEVIATION TO ALLOW THE PROPERTY TO DEVELOP WITHOUT THE MINIMAL LANDSCAPING BETWEEN AN OFF-STREET PARKING AREA AND ABUTTING RIGHT-OF-WAY ON THE NORTH AND WEST SIDES OF THE BUILDING CONTAINING THE PARKING GARAGE; GRANTING A DEVIATION FROM THE REQUIREMENT THAT OFF-STREET PARKING AREAS SHALL HAVE AT LEAST TEN SQUARE FEET OF INTERIOR ISLAND LANDSCAPING FOR EACH PARKING SPACE AND ONE TREE FOR EACH FIVE PARKING SPACES TO ALLOW THE PROJECT TO DEVELOP WITH NO INTERIOR ISLAND LANDSCAPING AND NO TREES LOCATED WITHIN THE OFF-STREET PARKING AREA; GRANTING A DEVIATION FROM THE REQUIREMENT OF A SEVEN TO SEVENTEEN FOOT BUILD-TO ZONE TO ALLOW BUILDINGS "A", "C", AND "E" TO BE BUILT UP TO FORTY-ONE FEET FROM THE PROPERTY LINE IN CERTAIN AREAS AS DESCRIBED HEREIN; GRANTING A DEVIATION FROM THE REQUIREMENT THAT THE FIRST STORY OF A BUILDING'S FRONTAGE CONSTITUTE AT LEAST 75% OF THE LOT'S WIDTH TO ALLOW BUILDINGS "C" AND "E" TO CONSTITUTE A LESSER PERCENTAGE ALONG SE 9<sup>TH</sup> PLACE AS DESCRIBED HEREIN; GRANTING A DEVIATION TO ALLOW BUILDING "D" AND "E" TO EXCEED THE SIX STORY MAXIMUM AND BUILDING "D" TO EXCEED THE MAXIMUM HEIGHT OF EIGHTY-FIVE FEET; GRANTING A DEVIATION FROM THE REQUIREMENT THAT PROHIBITS TREES IN FRONT YARDS TO ALLOW THE PROJECT TO DEVELOP WITH TREES LOCATED WITHIN FRONT YARDS; GRANTING A DEVIATION TO ALLOW AWNINGS AND CANOPIES APPLIED TOWARD MANDATORY ARCHITECTURAL ELEMENTS TO VARY IN TYPE AND COLOR; GRANTING A DEVIATION TO ALLOW BUILDING "C" TO HAVE DOORS WITH SPACING OF 90 AND 98 FEET ALONG THE EAST AND SOUTH ELEVATIONS OF THE BUILDING, RESPECTIVELY; GRANTING A DEVIATION FROM SHEET G-17 OF THE ENGINEERING AND DESIGN STANDARDS, TO ALLOW THE PROJECT TO DEVELOP WITHOUT THE REQUIRED THREE FOOT GRASS STRIP BETWEEN THE CURB AND SIDEWALK ON CERTAIN STREETS; GRANTING A DEVIATION FROM SHEETS G-21 AND G-22 OF THE ENGINEERING AND DESIGN STANDARDS, THAT REQUIRE A TEN (10) FOOT VISIBILITY TRIANGLE AT THE INTERSECTION OF THE PROJECT DRIVEWAY AND A LOCAL STREET, AND A FORTY-FIVE (45) FOOT VISIBILITY TRIANGLE AT THE INTERSECTION OF A COLLECTOR AND LOCAL ROAD, TO ALLOW THE USE OF THE FDOT MUMSDCMS SITE DISTANCE REQUIREMENTS FOR DRIVEWAYS AND INTERSECTIONS FOR CERTAIN STREETS; GRANTING SITE PLAN APPROVAL FOR PURPOSES OF DEVELOPMENT PLAN

APPROVAL PURSUANT TO SECTION 4.2 OF THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS; PROVIDING FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW; PROVIDING FOR ACTION ON REQUEST AND CONDITIONS OF APPROVAL; PROVIDING FOR LEGAL EFFECT AND LIMITATIONS OF THIS PDP DEVELOPMENT ORDER AND ADMINISTRATIVE REQUIREMENTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, an application from Downtown Village Square, LLC, and Red Rock Land Corporation, with authorization from Fifth Third Bank has been received requesting approval of a Planned Development Project (PDP) for "Downtown Village Square"; requesting rezoning, vacations of plat, deviations from the City of Cape Coral Land Use and Development Regulations, site plan approval and development plan approval; and

WHEREAS, the request has been reviewed by the Cape Coral Planning and Zoning Commission/Local Planning Agency; and

WHEREAS, the City Council has considered the recommendations of the Planning and Zoning Commission/Local Planning Agency.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

#### **SECTION I. PDP APPROVAL, REZONING, VACATIONS, DEVIATIONS, AND SITE PLAN.**

Having reviewed the application requesting approval of a Planned Development Project for "Downtown Village Square" PDP, requesting a rezoning of the subject property from Downtown Edge District (DE) to Downtown Core (DC) District; granting a vacation of plat for all interior lot lines and six foot wide public utility and drainage easements and all platted alley rights-of-way and underlying easements located within the subject property, while retaining a six foot wide public utility and drainage easement coincident with the resultant parcel perimeter as more particularly described in Exhibit "B"; granting a deviation from the requirement that all openings in the façade of a parking garage be taller than wide pursuant to Section 5.1.8.C.2.b.(1) of the City of Cape Coral Land Use and Development Regulations, to allow the project to develop with openings in the façade of the parking garage associated with Building "D" that are wider than tall; granting a deviation from the requirement for minimum landscaping between abutting right-of-way and an off-street parking area pursuant to Section 5.2.9.C.1 of the City of Cape Coral Land Use and Development Regulations, to allow the project to develop without the minimal landscaping along the north and west sides of the building containing the parking garage; granting a deviation from the requirement that off-street parking areas shall have at least ten square feet of interior island landscaping for each parking space and one tree for each five parking spaces pursuant to Section 5.2.9.D.1 of the City of Cape Coral Land Use and Development Regulations, to allow the project to develop with no interior island landscaping and no trees located with the off-street parking area; granting a deviation from the requirement that new buildings be constructed within a seven to seventeen foot build-to zone pursuant to Section 2.7.15.D.1.a of the City of Cape Coral Land Use and Development Regulations, to allow a portion of Building "A" near the SW corner, a portion of Building "C" near the SE corner, and a portion of Building "E" near the NE corner to be located twenty-four feet, seventeen feet, and four feet, respectively, outside the build-to zone; granting a deviation from the requirement that the first story of a building's frontage constitute at least 75% of the lot's width pursuant to Section 2.7.15.D.1.f.(1) of the City of Cape Coral Land Use and Development Regulations, to allow the project to be constructed with buildings "C" and "E" collectively comprising 68.5% of the lot's width along SE 9<sup>th</sup> Place; granting a deviation of eight stories and 76.5 feet from the requirement that limits buildings to six stories and a maximum height of 85 feet pursuant to Section 2.7.15.D.2.a of the City of Cape Coral Land Use and Development Regulations, to allow Building "E" to develop with 14 stories and a maximum height of 161.5 feet; granting a deviation from the requirement that limits buildings in the Downtown Core Zoning District to a maximum of six stories pursuant to Section 2.7.15.D.1.a of the City of Cape Coral Land Use and Development Regulations, to allow Building "E" to have seven stories; granting a deviation from the requirement that prohibits trees in front yards pursuant to Section 2.7.15.D.17.1.(4) of the City of Cape Coral Land Use and Development Regulations, to allow the project to develop with trees located within front yards; granting a deviation from the requirement that all architectural elements used to satisfy this requirement to be of the same color and style pursuant to Section 2.7.15.E.1.b.(3) of the City of Cape Coral Land Use and Development Regulations, to allow the awnings and canopies applied toward

mandatory architectural elements to vary in the type and color; granting a deviation from the requirement that entrances for public access shall be provided at intervals of at least 75 feet pursuant to Section 2.7.15.G.4.b.(3) of the City of Cape Coral Land Use and Development Regulations, to allow Building "C" to have doors with spacing of 90 and 98 feet along the east and south sides of the building, respectively; granting a deviation from the Engineering and Design Standards, Sheets G-17 that requires a three (3) foot strip of grass to be located between the curb and sidewalk within the right-of-way for streets with sixty (60) foot rights-of-way to allow the project to develop without a grass strip along SE 8<sup>th</sup> Court, SE 9<sup>th</sup> Place, and SE 47<sup>th</sup> Terrace; granting a deviation from the Engineering and Design Standards, Sheets G-21 and G-22, visibility triangles, that require a ten (10) foot visibility triangle at the intersection of the project driveway and a local street, and require a forty-five (45) foot visibility triangle at the intersection of a collector and local road, to allow the project to develop using the Florida Department of Transportation Standard Index 546 (Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways for the State of Florida) site distance requirements, allowing the project to develop without visibility triangles for all project driveways and intersections on SE 8<sup>th</sup> Court, SE 9<sup>th</sup> Place, and SE 47<sup>th</sup> Terrace; and having considered the recommendations of the Planning and Zoning Commission and the Local Planning Agency, the City Council of the City of Cape Coral, Florida, does hereby grant the aforesaid PDP approval, and approve development plan including site plan, in accordance with plan set, Sheets C-1 through C-7, D-1 through D-7, EC-1 through EC-3, L-1, PP-1, and SC dated April 23, 2008, and bearing a revision date of March, 2010, prepared by DEI and Sheets A-1 through A-4, B-1 through B-4, C-1 through C-4, D-1 through D-3, and E-1 through E-4 bearing a revision date of September 21, 2009 prepared by Bradford and Company Design Group, Inc. for purposes of development plan approval pursuant to Section 4.2 of the City of Cape Coral Land Use and Development Regulations from the date of adoption of this ordinance. Approval of the PDP shall be subject to the terms and conditions set forth below.

## SECTION II. FINDING OF FACT/CONCLUSION OF LAW

- A. The "Downtown Village Square" development is a Mixed Use Planned Development Project (PDP). This development consists of 3.94 acres of land located on property being rezoned to Downtown Core (DC) zoning district at 845, 859, 869 and 877 Cape Coral Parkway East on property that is more particularly described as a parcel of land located in Block 62A, Unit 6 Part 1, and Block 62A, Unit 8, Cape Coral Subdivision, as more particularly described in Exhibit "A." The proposed development will contain 251,546 square feet of nonresidential uses and a maximum of 152 residential units. The development will occur in five phases with a build out in ten years.

The Downtown Village Square development consists of five buildings as depicted on Sheet C-4 labeled "Site Plan" and is described as follows: a six story building containing retail and professional office uses, two (2) six story compound use buildings, a seven story compound use building, and a 14 story compound use building containing six floors of structured parking. Building "D," which includes a parking garage, will have covered cross-overs located on the third floor that connect to the other four buildings of the project. An additional covered cross-over will connect the third floors of Building "A" with Building "B." Except for limited parking spaces on floors 2, 3 and 4 reserved for employees working at the project, the first four floors of the parking garage will be available for public use, including a minimum of 127 parking spaces located on the first floor. Parking located on the first floor of the parking garage will be available free of charge unless the City Council approves a request from the Developer for charging a fee associated with this use.

An eight foot wide brick sidewalk will be constructed along the perimeter of the subject property. Several walkways will connect this sidewalk with an east-west central square that bisects Block 62A. Both the central square and the majority of the walkways will be composed of brick.

Several buildings are oriented within the development to allow for small public gathering places. These areas include patios with fountains located in front of Building "A" and between Buildings "B" and "C." Building "E" contains an atrium that also includes a central fountain. Three outdoor seating areas are situated between Buildings "C" and "E."

Project phasing is depicted on Sheets C-4A and C-4B labeled "Phasing Plan" and "Temporary Parking Layouts for Phase I and II", respectively, and is summarized below.

1. Phase 1 shall include:



- a. Demolishing the existing Fifth Third Bank canopy.
  - b. Constructing the temporary parking at ground level within the footprint of the parking garage.
  - c. Constructing a temporary trash enclosure located at the northwest corner of the Phase 2 temporary parking area.
  - d. Constructing Building "A", installing landscaping associated with Building "A", and constructing utilities for Building "A".
  - e. Constructing the fountain associated with Building "A".
  - f. Constructing access from Cape Coral Parkway, SE 47<sup>th</sup> Terrace and SE 8<sup>th</sup> Court as shown on the Phasing Plan, Sheet C-4A.
  - g. Installing the pavers located within the public square surrounding Building "A".
  - h. Constructing all right-of-way improvements, including installing pavers along SE 47<sup>th</sup> Terrace and SE 8<sup>th</sup> Court and to the eastern edge of the Cape Coral Parkway entrance except for the existing driveway access points for the existing Fifth Third Bank and the existing car wash.
  - i. Constructing the main portion of the stormwater system which does not conflict with future phases as delineated on the Phasing Plan, Sheet C-4A.
2. Phase 2 shall include:
- a. Demolishing the existing Fifth Third Bank and temporary trash enclosure.
  - b. Constructing Building "B", installing landscaping associated with Buildings "B" and "D", and constructing utilities for Building "B".
  - c. Demolishing the temporary parking area and constructing the entire parking garage of Building "D" and installing all abutting landscaping. The two residential towers may be built in this Phase 2, or may be deferred until Phase 5.
  - d. Constructing all right-of-way improvements abutting Building "B".
3. Phase 3 shall include:
- a. Demolishing the existing car wash.
  - b. Constructing Building "C", installing abutting landscaping associated with Building "C", and constructing utilities for Building "C".
  - c. Constructing the remaining stormwater systems.
  - d. Constructing the temporary trash enclosure for Building "E".
  - e. Constructing all right-of-way improvements abutting Building "C" including the two access points along SE 9<sup>th</sup> Place.
4. Phase 4 shall include:
- a. Removing the temporary trash enclosure associated with Building "E" that was installed in Phase 3.
  - b. Constructing Building "E" and remaining utilities.
  - c. Installing all remaining landscaping and site improvements.

5. Phase 5 shall include constructing the two residential towers associated with Building "D" that are located on the upper portion of the parking garage, unless built as part of Phase 2.
  6. The developer shall complete all elements of Phase 1 of this project in its entirety before work on Phases 2, 3, 4 or 5 can begin. With the exception of Phases 1 and 2, the enumeration of phases in this section is not intended to indicate an order of development. For example, the development of Phase 3 is not required to either begin or be completed prior to the development of Phase 4.
- B. The name(s) of the legal owner(s) are Downtown Village Square, LLC, Red Rock Land Corporation, and Fifth Third Bank. Downtown Village Square, LLC has entered into a Vacant Land Contract to purchase that parcel described as Tract B, Block 62A, Cape Coral Subdivision, Unit 8, according to Plat Book 13, Page 64, Public Records of Lee County, Florida, which is currently owned by the City of Cape Coral.
- C. The legal description of the property is as set forth in Exhibit "A" attached hereto and incorporated herein by reference.
- D. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described in Exhibit "A" and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

The amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

- E. The requests for vacation of plat and alley right-of-way meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such requests be granted. The following are hereby vacated by the City of Cape Coral, to wit:

All interior lot lines and all interior six foot public utility and drainage easements located within the subject property as more particularly described in Exhibit "A."

All of a 15 foot wide alley right-of-way including the underlying and adjoining easements located within the subject property as more particularly described in Exhibit "A."

Less and Excepting Therefrom: The City of Cape Coral will retain a six (6) foot wide public utility and drainage easement coincident with the resultant parcel perimeter.

These vacations shall take effect upon the recording of an easement by Developer, which shall occur no more than 60 days from the date of the adoption of this ordinance.

The Developer shall deed to the City a utility easement for a sanitary sewer and lift station located along the southerly boundary of Block 62A, Unit 8, Cape Coral, as recorded in Plat Book 13, Pages 1 through 6 of said public records as more particularly described in Exhibit "B". The Developer shall execute and record the deed within 180 days of the date of approval of this Planned Development Project.

- F. The "Downtown Village Square" PDP subject parcel has 3.94 acres zoned Downtown Core (DC), pursuant to the authority of Chapter 166, Florida Statutes, and the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. The subject property has approximately 3.94 acres with a Future Land Use designation of Downtown Mixed.
- G. All existing and future structures and uses, population density, building intensity, and building height shall conform to the respective provisions of the Downtown Core (DC) zoning district of the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. However, the project has qualified and been awarded by the Cape Coral City Council increased density of 19 additional residential units per acre per

Resolution 10-10 under the Downtown CRA Redevelopment Incentive Program (RIP). This increase in 19 residential units per acre will allow the project to develop with an overall density of 39 residential units per acre consistent with the RIP and the Downtown Core Zoning District. In addition, the development shall obtain all local development permits from the City of Cape Coral, Florida, and other governmental jurisdictions. Failure of this agreement to address a particular permit, condition, term, restriction, or zoning regulation shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, restrictions, or zoning regulations.

- H. The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- I. The "Downtown Village Square" PDP, as noted, is consistent with the adopted City of Cape Coral Comprehensive Plan, the City of Cape Coral Community Redevelopment Plan for the Downtown Redevelopment Areas, and the City of Cape Coral Land Use and Development Regulations.
- J. The term Developer for purposes of this development order shall mean and refer to Downtown Village Square, LLC, its successors in interest, lessees, and/or assigns.

### SECTION III. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it ordained by the City Council of Cape Coral, Florida, in public meeting duly advertised, constituted and assembled, that the Planned Development Project application for development approval submitted by Downtown Village Square, LLC, and Red Rock Land Corporation, with authorization from Fifth Third Bank, is hereby ordained approved, subject to the following conditions, restrictions, and limitations deemed necessary for the public health, safety, and welfare.

#### A. DRAINAGE/WATER QUALITY

- 1. Prior to the issuance of any site plan for the construction of the surface water management system, a South Florida Water Management District (SFWMD) construction permit for the proposed improvements shall be obtained and a copy provided to the City.
- 2. If the SFWMD construction permit plan differs from the plan submitted to the City for PDP approval, the Developer will not be required to amend the PDP unless a substantial deviation occurs as provided in Section IV.G.
- 3. At completion of construction of the required site improvements, the Developer shall provide certification by the Engineer of Record that all required surface water management infrastructure improvements have been constructed in accordance with the design approved by SFWMD and the City of Cape Coral. The certification shall include the wording "Construction Compliance Certification."

#### B. ENERGY

- 1. The Developer shall incorporate at a minimum the following energy conservation measures into this development, through deed restrictions and/or covenants with successors in title. All applications for site plan approvals and building permits shall be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to insure compliance, such documents shall be approved by the Cape Coral City Attorney's Office prior to recording. If no deed restrictions are approved and recorded, the first alternative shall be utilized and the following features must be included:
  - a. Cooperation in the location of bus stops, shelters, and other passenger and system accommodations for a transit system to service the project area.
  - b. Use of energy efficient features in window design (e.g., tinting and exterior shading).
  - c. Use of operable windows and ceiling fans, where appropriate.



- d. Installation of energy-efficient appliances and equipment.
- e. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g., building orientation, and solar water heating systems).
- f. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat, as determined by the Cape Coral Department of Community Development.
- g. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
- h. Orientation of structures, as possible, to reduce solar heat gain by walls and to utilize the natural cooling effects of the wind.
- i. Provision for structural shading (e.g., trellises, awnings, and roof overhangs), wherever practical when natural shading cannot be used effectively.
- j. Consideration by the project architectural review committee(s) if any exists, of energy conservation measures (both those noted here and others) to assist builders and tenants in their efforts to achieve greater energy efficiency in the development and compliance with the above conditions.
- k. Provision of bicycle/pedestrian system connecting all land uses to be placed along arterial and collector roads within the project. The system is to be consistent with local government requirements.
- l. Provision of bicycle racks or storage facilities in recreational, commercial, and multi-family residential areas.

#### C. HURRICANE EVACUATION/SHELTERING

- 1. Prior to issuance of the building permits, the Developer shall meet with Lee County Emergency Management, and Cape Coral emergency management officials to discuss and identify (if appropriate) any areas in the common portion of the project that may be utilized as public shelter. A letter documenting this meeting shall be submitted to the City.
- 2. The Developer shall encourage actual site users and developers to incorporate within their building design the sheltering demands of the employees and their families.

#### D. WETLANDS, VEGETATION, AND WILDLIFE

- 1. Ongoing control and removal of nuisance exotic plants onsite is required, including but not limited to, *Casuarina* sp. (Australian Pine), *Melaleuca quinquenervia* (melaleuca), *and* *schinus terebinthifolius* (Brazilian Pepper), all Category I invasive exotic plants listed by the Florida Exotic Pest Plant Council.
- 2. All landscaping and screening required in the subject development by either this Development Order or the City Code of Ordinances or the City Land Use and Development Regulations shall be maintained in good condition throughout the life of this development.
- 3. The Developer shall comply with the State of Florida regulations pertaining to the protection of gopher tortoise burrows located on the site and a protective barrier composed of stakes, silt fence, and rope or other suitable materials shall be placed around all gopher tortoise burrows, including any that are discovered during the life of the project. This requirement shall be waived if the Developer provides the City with evidence of a funded permit prior to the issuance of any City of Cape Coral permit. The Developer shall seek a gopher tortoise relocation permit for some or all of the gopher tortoises that must be removed from the site, if such permit is

available at the time of development. Only as a last resort shall the Developer seek a gopher tortoise take permit. Entombment of tortoise is strictly prohibited at all times, regardless of the type of permit procured by the applicant.

4. In the event all or a portion of the subject property is located within an Eagle Nest Management Zone, the developer shall comply with all City laws, regulations, and guidelines that are currently in effect or that may be hereafter adopted by the City concerning the protection and management of bald eagle nests including, but not limited to Chapter 23 of the City Code of Ordinances. No development shall occur on any portion of the subject property that is within an Eagle Nest Management Zone except in accordance with a Bald Eagle Management Plan that has been approved by the City. Once an Eagle Management Plan has been approved by the City for all or a portion of the property, the Developer's ability to develop in accordance with such Plan shall not be affected by any amendment to the City's regulations concerning eagle nests, so long as no additional or "new" eagle nest need to be accommodated. In the event, however, that one or more eagle nests are hereafter established or determined to be active in locations that result in all or a portion of the subject property being located in a new or expanded Eagle Nest Management Zone, then no development shall occur in such new zone except in accordance with an Eagle Management Plan that has been approved by the City for such zone.

#### E. FIRE PROTECTION

1. Fire impact fees shall be paid as provided in Section III.N.16. herein.
2. The Developer shall review site development plans with the Cape Coral Fire Department to incorporate fire protection design recommendations into the project.

#### F. WATER CONSERVATION

1. The Developer shall incorporate the use of water conserving devices as required by state law (Section 553.14, Florida Statutes).
2. For the purpose of non-potable water conservation, the development should require, through the use of deed restriction, the utilization of Florida Yards and Neighborhoods (FYN) and other xeriscape principals, where feasible, in the design and installation of the project's landscaping. FYN materials and assistance are available through the Planning Division and Environmental Resources Division.
3. Irrigation will be accomplished in accordance with City Ordinance(s) or South Florida Water Management District mandate as applicable.

#### G. SOLID WASTE

1. The Developer and tenants of the project should investigate methods of reducing solid waste volume at the project.
2. The Developer and tenants of the project shall identify to the City, the presence of and the proper on-site handling and temporary storage procedures for hazardous waste that may be generated on-site, in accordance with local, regional, and state hazardous waste programs.
3. The Developer will require that an EPA/DEP approved holding storage tank be provided on-site along with the proper monitoring devices if a prospective user has the potential for producing toxic or industrial waste. These wastes shall be disposed of off-site by a company licensed to dispose of such wastes.
4. The Developer shall inform the waste hauler and disposer of the nature of any hazardous waste on the site, to determine if, and the extent of, any special precautions that may be necessary.
5. No solid waste disposal facilities shall be located on site.

6. The Developer will participate in recycling programs.
7. Solid waste disposal shall be provided through Lee County, Florida pursuant to Special Act, Chapter 85-447. Current and planned facilities have sufficient capacity to meet the demands of this development.

#### H. WASTEWATER MANAGEMENT

1. Wastewater (sewer) service is available to the site.
2. The Developer shall design, construct and install all improvements required by the City to connect to the City's wastewater system. Said design, construction, and installation shall be accomplished in accordance with prevailing City design criteria and shall be subject to City inspection and approval prior to acceptance.
3. Wastewater containing hazardous materials shall be segregated and handled in accordance with Florida Department of Environmental Protection (DEP) criteria. Wastewater entering the City system shall meet quality limitations as specified by City Ordinance(s).
4. Wastewater impact fees shall be paid as provided in Section III.N.16. herein.
5. The Developer shall connect to City wastewater facilities as specified by City Ordinance.
6. The Developer shall grant appropriate easements to City for utility service prior to issuance of a building permit. Prior to connection of this development to City utility facilities, the Developer shall convey to the City the component parts of the Wastewater system that were constructed by Developer by bill of sale in a form satisfactory to the City Attorney, together with such other evidence as may be required by the City that the utility system proposed to be transferred to the City is free of all liens and encumbrances.

#### I. WATER SERVICE

1. Water service is available to the site.
2. The Developer shall design, construct and install all improvements required by the City to connect to the City's water system. Said design, construction, and installation shall be accomplished in accordance with prevailing City design criteria and shall be subject to City inspection and approval prior to acceptance.
3. Water impact fees shall be paid as provided in Section III.N.16. herein.
4. The Developer shall connect to City water facilities as specified by City Ordinance.

#### J. IRRIGATION SERVICE

1. Irrigation service is available to the site.
2. Developer shall connect to the City's irrigation system as prescribed by City Ordinance. The Developer shall design, construct, and install all improvements required by the City to connect to the City's irrigation system in accordance with prevailing City design criteria and shall be subject to City inspection and approval prior to acceptance.
3. Irrigation impact fees shall be paid as provided in Section III.N.16. herein.

#### K. AIR QUALITY

1. If any of the individual tract owners/developers create a complex source of pollution as defined by DEP rules, they shall apply directly to DEP for permitting.
2. Each individual tract development will be required to comply with all federal, state and local laws and codes governing air quality and emissions.



## L. HISTORICAL/ARCHAEOLOGICAL

During the life of the project, if any historical or archaeological sites are uncovered, work in the vicinity shall cease until the proper authorities can be contacted and an evaluation of the site carried out.

## M. TRANSPORTATION

1. The "Downtown Village Square" project is located within a Transportation Concurrency Exception Area (TCEA). To provide consistency with Policy 14.5 of the Future Land Use Element contained within the City's Comprehensive Plan, the Developer will implement five transportation improvement projects, identified below, that will support mobility enhancement within the Downtown TCEA.
  - a. Preferential parking for carpools, vanpools, or multiple occupancy vehicles. The Developer will provide and designate five spaces on the third level of the parking deck for these vehicles. These parking spaces will be identified with signs and will be located near one or more crossovers. These spaces will be reserved for employees working at businesses located within the Downtown Village Square development. Employees will be provided a form by their respective employers that validates the employee arrived at work with two or more occupants that day. The form will be displayed on the front dashboard of the vehicle.
  - b. Parking price structures to favor carpools, vanpools, and multiple occupancy vehicles to increase vehicle occupancy. The Developer will provide free parking for these vehicles on the third level of the parking deck.
  - c. Safe and convenient internal pedestrian and bicycle circulation in the development.
  - d. Structured parking for residents, patrons and employees. The Developer will provide a six story parking garage as part of the project.
  - e. Cluster buildings within the development or design the development to achieve maximum density that preserves open space, enhances multi-modal opportunities, and provides transit oriented densities.
2. Road impact fees shall be paid as provided in Section III.N.15. herein.
3. Developer shall convey to the City the component parts of the transportation infrastructure constructed by the Developer and being transferred to the City on a form acceptable to the City Attorney, together with such other evidence as may be required by the City that the transportation infrastructure is free of all liens and encumbrances.

## N. GENERAL CONSIDERATIONS

1. Within 90 days of the approval of this development order, the Developer shall execute an affordable housing agreement with the City of Cape Coral. This agreement shall secure a minimum of five (5) affordable housing units for the project, or their monetary equivalent as provided herein. It shall be the Developer's option whether to provide housing in the project or their monetary equivalent.
  - a. If Developer elects to provide housing within the project, the agreement shall contain provisions generally consistent with those outlined within LDR, Section 5.7.G. The affordable housing agreement shall contain the following provisions:
    - (1) No affordable housing unit in the development shall be rented or sold to a tenant whose household income has not been verified as moderate, low, or very low income family. Such verification shall be the responsibility of the owner and shall be submitted to the City Manager or the City Manager's designee for approval. Tenant

income verification and certification shall be repeated annually to assure continued eligibility.

- (2) No affordable housing unit that is to be sold, leased with option to purchase, or otherwise conveyed in the development shall be sold, leased with option to purchase, or otherwise conveyed to a buyer whose household income has not been verified and certified in accordance with this section as moderate, low, or very low income family. Such verification and certification shall be the responsibility of the developer and shall be submitted to the City Manager or the City Manager's designee for approval. It is the intent of this section to keep housing affordable; therefore, any person who buys an affordable housing unit must agree, in a lien instrument to be recorded with the Clerk of the Circuit Court of Lee County, Florida, that if he or she sells the property (including the land and/or the unit) within 15 years after his or her original purchase at a sales price in excess of 5% per year of his original purchase price that he or she will pay to the City of Cape Coral an amount equal to the sales price in excess of 5% increase per year. The lien instrument may be subordinated to a qualifying first mortgage.
  - (3) No more than two affordable housing units shall be located within a single building or single tower of Building "D".
- b. If the Developer chooses to pay to the City a monetary amount for each housing unit not provided in the development, the agreement shall contain, at a minimum, the following provisions:
  - (1) In lieu of providing the five onsite housing units, the Developer shall pay \$25,000 per unit for each unit not located within the development. The Developer shall pay the funds no later than at the time of issuance of a certificate of occupancy for a maximum of 80 residential units located within the project.
  - (2) Any unit for which the Developer pays a monetary amount shall be located within the boundaries of the CRA.
2. The Developer shall dedicate to the City a minimum of two thousand (2,000) sq. ft. of building space located on the ground floor of Building "D" for a police substation, and an additional 2,000 sq. ft. for governmental use. The City shall have 18 months beginning with the issuance of a certificate of occupancy for this building to determine whether the City wishes to utilize this space. If the City, at its option, decides it does not wish to utilize this site, this area shall be available to the Developer for use. Alternatively, in the event the area is initially utilized by the City and subsequently left vacant by the City for a minimum of nine months, the Developer may at his option provide written notification to the City Manager regarding the City's intentions for using this space. If within 90 days of receipt of this letter the City does not respond or acknowledges to the Developer that it does not intend to use this space, this area may be utilized by the Developer. If the City intends to use this space, it shall notify Developer within 90 days of receipt of the letter. For as long as the City chooses to utilize the aforementioned 4,000 sq. ft., the City will receive this space free of rent, but will be responsible for typical maintenance-related expenses and monthly utility payments.
3. Within a building, awnings and canopies having similar dimensions and located within the same floor of said building shall be of the same color and style. This provision shall apply only to floors exclusively containing residential dwelling units and to all six floors of the parking garage. This requirement does not apply to any floor of the development that contains nonresidential uses, nor shall it apply to the liner buildings located directly adjacent to the parking garage.
4. The Developer shall provide a minimum of 127 parking spaces located on the ground floor of Building "D" as depicted on Sheet C-4 that shall be reserved for public use in perpetuity. Parking located on the ground floor of the parking garage

will be available free of charge unless the City Council approves a request from the Developer for charging a fee associated with this use.

5. In no event shall the total parking demand for the project as determined by the City exceed the minimum number of parking spaces provided by the Developer for the mix of uses supported by the Downtown Village Square project.
6. The Downtown Village Square project at build out shall contain a minimum of 251,546 square feet of nonresidential uses.
7. All creditable features of the Downtown CRA Redevelopment Incentive Program (RIP) used for the basis of approval for increased density above the baseline density shall remain in place throughout the life of the development, unless such basis of approval for increased density is rescinded or amended by the City. Except as otherwise provided herein, the owner, of the real property on which the density above the baseline density is approved shall be responsible for maintaining any such creditable feature in good condition and in accordance with any conditions of approval throughout the life of the development. Such maintenance responsibility of said owner shall not apply to creditable features which are donated or dedicated to the City or for which the City has approved alternative responsibility provisions. Failure to comply with this requirement shall constitute a violation of the City of Cape Coral's Code of Ordinances, and would subject the aforementioned party to any penalty imposed by law.
8. Approval of the increase in density under the RIP runs with the land and is transferable to any future owner of the land, but it cannot be transferred to a different site or a different project on the same site. If a site plan or PDP Development Plan expires, any award of increased density also expires at the same time.
9. All buildings of the Downtown Village Square development shall be constructed consistent with the building elevations prepared by Bradford & Company Design Group, Inc., as depicted in Sheets A-1 through A-4, B-1 through B-4, C-1 through C-4, D-1 through D-3, and E-1 through E-4 bearing a revision date of September 21, 2009 prepared by Bradford and Company Design Group, Inc.
10. Prior to issuance of a permit, the Developer shall enter into an agreement, in a form acceptable to the City Attorney, regarding obligations resulting from landscaping located in utility easements.
11. Prior to receiving a building permit for Building "A", the Developer shall provide LCEC with a private easement for relocating LCEC facilities from the vacated six foot wide public utility easement located immediately north of the 15 foot wide alley that is centrally located within Block 62A and is proposed to be vacated by the Developer.
12. The City will pay up to \$265,000 for the costs and fees associated with relocating the transmission pole at the northwest corner of the property. Any additional costs and fees associated with the relocation of the pole shall be paid by the Developer.
13. Nothing in this development order shall prevent the Developer from granting any utility provider with one or more private utility easements for servicing the Downtown Village Square development. This development order contemplates that minor alterations to the site and building plans may be necessary, and therefore shall be allowed, to accommodate these easements for the purpose of locating utility facilities for providing service to the project.
14. The City agrees to waive the building permit fees for the construction of Buildings A, B, C, D, and E, including the parking structure and two towers associated with Building D, if not constructed simultaneously.
15. The Developer is not required to pay the City's impact fees for this development. This includes only impact fees charged by the City; impact fees or any other fees



charged by other entities but collected by the City are not included. The City will pay all City impact fees that Developer is not required to pay.

16. Certificates of Occupancy for the residential units shall be limited to 122 units until such time as certificates of occupancy for Buildings A, B, and D, in their entirety, are issued and the existing carwash is demolished. After the Developer has received the certificates of occupancy for Buildings A, B, and D, and the carwash is demolished, another 24 residential units may be developed within Building C and another 6 residential units may be developed within Building E.
17. The Developer shall incorporate into all structures within the project a firefighter breathing air replenishment system (FBARS) for high-rise buildings. The system shall contain, at a minimum, an air filling control panel, an emergency air monitoring system, an RA-4 air filling station, an exterior mobile air connection, an emergency air storage system and a series of air standpipes.

#### O. CONCURRENCY

1. The "Downtown Village Square" PDP is concurrent for sewer, water, drainage, solid waste, and parks based on the analysis of the proposed development and specific mitigation programs specified herein.
2. The "Downtown Village Square" project is located within a Transportation Concurrency Exception Area (TCEA) and therefore is subject to the provisions contained within Section III.M. of this ordinance.

#### SECTION IV. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

- A. This Development Order shall constitute an ordinance of the City of Cape Coral, adopted by this Council in response to the Planned Development Project Application filed for the "Downtown Village Square" PDP.
- B. This Development Order shall be binding on the Developer. Those portions of this Development Order which clearly apply only to the project Developer, shall not be construed to be binding upon future owners of the project lots. It shall be binding upon any builder/developer who acquires any tract of land within the "Downtown Village Square" PDP.
- C. The terms and conditions set out in this document constitute a basis upon which the Developer and City may rely in future actions necessary to implement fully the final development contemplated by this Development Order.
- D. All conditions, restrictions, stipulations, and safeguards contained in this Development Order may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable attorney's fees, shall be paid by the defaulting party.
- E. Any references herein to any governmental agency shall be construed to mean to include any future instrumentality which may be created and designated as successor in interest to or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.
- F. The approval granted by this Development Order is limited. Such approval shall not be construed to obviate the duty of the Developer to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided. Such approval shall also not obviate the duty of the Developer to comply with any City Ordinance or other regulations adopted after the effective date of this Development Order.
- G. Subsequent requests for local development permits shall not require further review, unless it is found by the City Council, after due notice and hearing, that one or more substantial deviation(s), or other changes to the approved development plans which create a reasonable likelihood of adverse impacts which were not evaluated in the review by the City have occurred. Substantial deviations include but are not limited to:

1. Any change which requires a variance to code and above those specifically incorporated herein.
2. An increase of more than five (5) percent in density, parking requirements, trip generation rates, water or sewer usage, or building square footage.
3. An expiration of the period of effectiveness of this Development Order as herein provided.
4. If development order conditions and applicant commitments incorporated within the Development Order to mitigate impacts are not carried out as indicated to the extent or in accordance with the Development Order, then this shall be presumed to be a substantial deviation from the Development Order.

Upon a finding that any of the above is present, the City Council may order a termination of all development activity until such time as a new PDP Application for Development Approval has been submitted, reviewed and approved, and all local approvals have been obtained.

- H. The physical development authorized under this Development Order shall terminate in ten years from the date of adoption of this Development Order, unless an extension is approved by this Council. The Council may grant an extension if the project has been developing substantially in conformance with the original plans and approved conditions, and if no substantial adverse impacts not known to Cape Coral at the time of their review and approval, or arising due to the extension, have been identified. For purposes of determining when the buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits. All conditions imposed on the subject development shall remain in full force and effect throughout the life of the development unless rescinded or amended by the City and shall not be affected by any termination of the authorization for physical development.
- I. The Director of the Cape Coral Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order. Upon reasonable notice by the City and at all reasonable times, the Developer shall allow the City of Cape Coral, its agents, employees, and/or representatives, access to the project site for the purpose of assuring compliance with this Development Order.
- J. The Developer, or its successors in title to the undeveloped portion of the subject property, shall submit a report annually to the Cape Coral City Council, the Director, and all affected permit agencies. This report shall describe the state of development and compliance as of the date of submission.

The first monitoring report shall be submitted to the Director not later than one (1) year from the effective date of this order, and further reports shall be submitted not later than annually thereafter. The Developer shall so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This shall not be construed to require reporting from tenants or owners of individual lots or units. Annual Monitoring Reports including Traffic Monitoring Reports shall be required until such time as the project is complete, at which time, a final development report shall be submitted to the City.

- K. Within thirty (30) days of adoption of this Ordinance, this Development Order shall be recorded in the Office of the Clerk of the Circuit Court by the Developer or Authorized Representative, who shall thereafter return the original recorded Development Order to the City.

**SECTION V. SEVERABILITY.**

In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

**SECTION VI. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon its adoption by the Cape Coral City Council. Permits issued prior to or after the effective date of this Ordinance are obtained solely at the risk of the Developer.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 20th DAY OF April, 2010.

  
JOHN J. SULLIVAN, MAYOR

**VOTE OF MAYOR AND COUNCILMEMBERS:**

SULLIVAN	<u>may</u>
McCLAIN	<u>aye</u>
BRANDT	<u>aye</u>
DEILE	<u>aye</u>
CHULAKES-LEETZ	<u>aye</u>
KUEHN	<u>aye</u>
McGRAIL	<u>aye</u>
DONNELL	<u>aye</u>

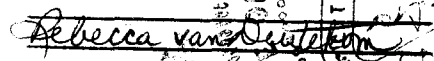
ATTESTED TO AND FILED IN MY OFFICE THIS 17th DAY OF May, 2010.

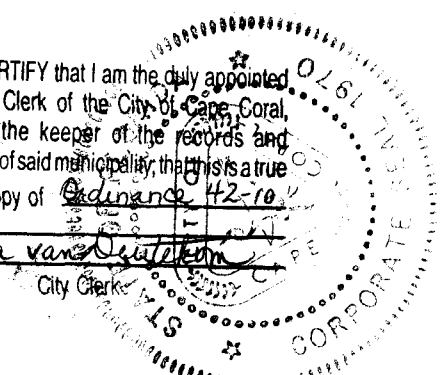
  
REBECCA VAN DEUTEKOM,  
CITY CLERK

**APPROVED AS TO FORM:**

  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
ord/pdp088-6

I HEREBY CERTIFY that I am the duly appointed and qualified Clerk of the City of Cape Coral, Florida, and the keeper of the records and corporate seal of said municipality, that this is a true and correct copy of Ordinance 42-10.

  
City Clerk





## EXHIBIT " A"

**Downtown Village Square**  
City of Cape Coral, Lee County, Florida  
(Basis of Bearings - SE 47th Terrace - Due East)

### Legal Description (Description for Overall Property *After* Vacation)

All of Block 62A, Unit 6, Part I, Cape Coral, as recorded in Plat Book 11, Pages 45 through 47 of the Public Records of Lee County, Florida; and

All of Block 62A, Unit 8, Cape Coral, as recorded in Plat Book 13, Pages 1 through 6 of the Public Records of Lee County, Florida; and all alleys within and in-between said Blocks.

Further described as follows: Commencing at the Northwest corner of Section 18, Township 45 South, Range 24 East, City of Cape Coral, Lee County, Florida, thence S89°03'21"E for a distance of 676.08 feet along the Northerly line of said section to the Easterly line of the sixty foot wide right-of-way known as Southeast 8th Court (aka Chester Street) and the Point of Beginning of the parcel described herein:

Thence due North a distance of 111.14 feet along said Easterly line, to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of N45°00'00"E, a chord distance of 35.36 feet, a central angle of 90°00'00", for an arc distance of 39.27 feet to the Southerly line of the sixty foot wide right-of-way known as Southeast 47th Terrace (aka Marina Drive); thence due East a distance of 524.00 feet along said Southerly line to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of S45°00'00"E, a chord distance of 35.36 feet, a central angle of 90°00'00", for an arc distance of 39.27 feet to the Westerly line of the sixty foot wide right-of-way known as Southeast 9th Place (aka Candida Street); thence due South along said Westerly line a distance of 252.81 feet to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of S45°18'00"W, a chord distance of 35.54 feet, a central angle of 90°35'59", for an arc distance of 39.58 feet to the Northerly line of the 100 foot wide right-of-way known as Cape Coral Parkway East; thence N89°24'01"W for a distance of 524.03 feet to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of N44°42'01"W, a chord distance of 35.17 feet, a central angle of 89°24'01", for an arc distance of 39.01 feet to the Easterly line of the sixty foot wide right-of-way known as Southeast 8th Court (aka Chester Street); thence due North along said Easterly line for a distance of 136.19 feet returning to the Point of Beginning.

171,711.4394 sq.ft. or ±3.9420 Acres

## EXHIBIT "B"

**Downtown Village Square**  
City of Cape Coral, Lee County, Florida  
(Basis of Bearings - SE 47th Terrace - Due East)

**Legal Description**  
(New Sanitary Sewer and Lift Station Easement)

A sanitary sewer and lift station easement along the Southerly boundary of Block 62A, Unit 8, Cape Coral, as recorded in Plat Book 13, Pages 1 through 6 of said Public Records.

Further described as follows: Commencing at the Northwest corner of Section 18, Township 45 South, Range 24 East, City of Cape Coral, Lee County, Florida, thence S89°03'21"E for a distance of 676.08 feet along the Northerly line of said section to the Easterly line of the sixty foot (60') wide right-of-way known as Southeast 8th Court (aka Chester Street); thence continue S89°03'21"E for a distance of 6.00 feet to the Easterly line of a 6' wide public utility and drainage easement and the Point of Beginning of the easement described herein:

Thence continue S89°03'21"E for a distance of 562.06 feet along said section line to the Westerly line of a 6.00 foot public and utility easement; thence due South a distance of 15.00 feet along the Westerly line of said easement; thence N89°03'21"W a distance of 538.06 feet, a distance of 15.00 feet from and parallel to said section line; thence due South a distance of 15.00 feet, a distance of 30.00 feet from and parallel with the Easterly line of the sixty foot (60') wide right-of-way known as Southeast 8th Court (aka Chester Street); thence N89°03'21"W a distance of 24.00 feet, a distance of 30.00 feet from and parallel with said section line, to the Easterly line of a 6.00 foot public and utility easement; thence N00°00'00"E a distance of 30.00 feet along the Easterly line of said easement returning to the Point of Beginning.

8,790.9244 sq.ft. or ±0.2018 Acres

ORDINANCE 33 - 19

AN ORDINANCE AMENDING ORDINANCE 42-10 WHICH APPROVED A PLANNED DEVELOPMENT PROJECT IN THE CITY OF CAPE CORAL, FLORIDA ENTITLED "DOWNTOWN VILLAGE SQUARE" FOR CERTAIN PROPERTY DESCRIBED AS BLOCK 62A, UNIT 6, PART 1, AND BLOCK 62A, UNIT 8, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED BETWEEN SE 47<sup>TH</sup> TERRACE TO THE NORTH, SE 9<sup>TH</sup> PLACE TO THE EAST, CAPE CORAL PARKWAY TO THE SOUTH, AND SE 8<sup>TH</sup> COURT TO THE WEST; EXTENDING THE PROJECT BUILDOUT DATE; AMENDING THE PHASING SCHEDULE AND CONDITIONS OF APPROVAL; PROVIDING FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW; PROVIDING FOR ACTION ON REQUEST AND CONDITIONS OF APPROVAL; PROVIDING FOR LEGAL EFFECT AND LIMITATIONS OF THIS PDP DEVELOPMENT ORDER AND ADMINISTRATIVE REQUIREMENTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the "Downtown Village Square" Planned Development Project was approved by the City of Cape Coral, by Ordinance 42-10; and

WHEREAS, an application from Red Rock Land Corporation, Downtown Village Square, LLC, and Downtown Village Square II, LLC, has been received requesting an amendment of a Planned Development Project (PDP) for "Downtown Village Square"; requesting extending the deadline to commence substantial construction and the project buildout date, and amending the phasing plan and conditions of approval; and

WHEREAS, the request has been reviewed by the Cape Coral Hearing Examiner; and

WHEREAS, the City Council has considered the recommendations of the Hearing Examiner.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

**SECTION I. PDP APPROVAL**

Having reviewed the application requesting approval of an amendment to a Planned Development Project for "Downtown Village Square" PDP, requesting extending the deadline to commence substantial construction and the project buildout date, and amending the phasing schedule and conditions of approval; and having considered the recommendations of the Hearing Examiner, the City Council of the City of Cape Coral, Florida, does hereby grant the aforesaid PDP approval, pursuant to Section 4.2 of the City of Cape Coral Land Use and Development Regulations from the date of adoption of this ordinance. Approval of the PDP shall be subject to the terms and conditions set forth below.

**SECTION II. FINDING OF FACT/CONCLUSION OF LAW**

- A. The "Downtown Village Square" development is a mixed use Planned Development Project (PDP). This development consists of 3.94 acres at 845-877 Cape Coral Parkway East and 826 SE 47<sup>th</sup> Terrace. The site consists of Block 62A in its entirety and is bound by SE 47<sup>th</sup> Terrace to the north, SE 9<sup>th</sup> Place to the east, Cape Coral Parkway to the south, and SE 8<sup>th</sup> Court to the west. At buildout, the proposed development will contain a maximum of 251,546 sq. ft. of nonresidential uses and 152 residential units.

Since the adoption of Ordinance 42-10, the Downtown Village Square project has been extended several times by a combination of actions taken by the Cape Coral City Council and extensions granted by the state of Florida resulting from state of emergency declarations issued by the governor.



On April 1, 2019, the City Council adopted Resolution 71-19. This resolution granted an extension of the Downtown Village Square project to July 22, 2019. Furthermore, this resolution stated that the Developer's request to extend the deadline to commence substantial construction was to be treated as an application to amend the "Downtown Village Square" PDP. This resolution identified July 22, 2019, as the date the PDP amendment was to be scheduled for City Council consideration. This resolution stated that the PDP amendment may further extend the deadline to commence substantial construction beyond the July 22, 2019 date, revise the phasing schedule approved by Ordinance 42-10, and set forth additional requirements that shall be met by the Developer.

- B. The name(s) of the legal and equitable owners are Red Rock Land Corporation, Downtown Village Square, LLC, and Downtown Village Square II, LLC.

- C. The legal description of the property is as follows:

All of Block 62A, Unit 6, Part I, Cape Coral, as recorded in Plat Book 11, Pages 45 through 47 of the Public Records of Lee County, Florida; and

All of Block 62A, Unit 8, Cape Coral, as recorded in Plat Book 13, Pages 1 through 6 of the Public Records of Lee County, Florida; and all alleys within and in-between said Blocks.

Further described as follows: Commencing at the Northwest corner of Section 18, Township 45 South, Range 24 East, City of Cape Coral, Lee County, Florida, thence S89°03'21"E for a distance of 676.08 feet along the Northerly line of said section to the Easterly line of the sixty foot wide right-of-way known as Southeast 8th Court (aka Chester Street) and the Point of Beginning of the parcel described herein:

Thence due North a distance of 111.14 feet along said Easterly line, to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of N45°00'00"E, a chord distance of 35.36 feet, a central angle of 90°00'00", for an arc distance of 39.27 feet to the Southerly line of the sixty foot wide right-of-way known as Southeast 47th Terrace (aka Marina Drive); thence due East a distance of 524.00 feet along said Southerly line to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of S45°00'00"E, a chord distance of 35.36 feet, a central angle of 90°00'00", for an arc distance of 39.27 feet to the Westerly line of the sixty foot wide right-of-way known as Southeast 9th Place (aka Candida Street); thence due South along said Westerly line a distance of 252.81 feet to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of S45°18'00"W, a chord distance of 35.54 feet, a central angle of 90°35'59", for an arc distance of 39.58 feet to the Northerly line of the 100 foot wide right-of-way known as Cape Coral Parkway East; thence N89°24'01"W for a distance of 524.03 feet to the point of curvature of a curve to the right; thence along said curve with a radius of 25.00 feet, a chord bearing of N44°42'01"W, a chord distance of 35.17 feet, a central angle of 89°24'01", for an arc distance of 39.01 feet to the Easterly line of the sixty foot wide right-of-way known as Southeast 8th Court (aka Chester Street); thence due North along said Easterly line for a distance of 136.19 feet returning to the Point of Beginning.

171,711.4394 sq.ft. or ±3.9420 Acres

- D. The "Downtown Village Square" PDP Amendment subject parcel has 3.94 acres zoned South Cape Downtown (SC), pursuant to the authority of Chapter 166, Florida Statutes, and the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. The subject property was rezoned in 2012 to the SC District after the Downtown Village Square project was approved. The subject property has approximately 3.94 acres with a Future Land Use designation of Downtown Mixed (DM).
- E. Under Ordinance 42-10 that approved "Downtown Village Square," all future structures and uses, population density, building intensity, and building height shall conform to the respective provisions of the Downtown Core (DC) zoning district of the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. In addition, the development shall obtain all local development permits from the City of Cape Coral, Florida, and other governmental jurisdictions. Failure of this agreement to address a particular permit, condition, term, restriction, or zoning regulation shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, restrictions, or zoning regulations.

- F. The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- G. The "Downtown Village Square" PDP Amendment, as noted, is consistent with the adopted City of Cape Coral Comprehensive Plan, and the City of Cape Coral Land Use and Development Regulations.
- H. The term Developer for purposes of this development order shall mean and refer to Red Rock Land Corporation, Downtown Village Square, LLC, and Downtown Village Square II, LLC, or its successors in interest, lessees, and/or assigns.
- I. The new phasing schedule for the project appear below and replaces in its entirety the original phasing schedule approved by Ordinance 42-10.
  - 1. Phase I shall include:
    - a. Demolishing two buildings at 859 and 877 Cape Coral Parkway East. These two buildings shall be demolished by the developer no later than December 31, 2019. Until these two buildings have been demolished and this work has been inspected by the City, no other work on Phase 1 shall commence. In the event these two buildings are not demolished by December 31, 2019, the PDP shall be considered null and void.
    - b. Demolishing the building at 851 Cape Coral Parkway East. This building shall be demolished by the developer no later than April 30, 2020. In the event this building is not demolished by April 30, 2020, the PDP shall be considered null and void.
    - c. Constructing the temporary parking at ground level within the footprint of the parking garage or constructing Building "D" (parking garage) concurrently with Building "A".
    - d. Constructing a temporary trash enclosure located at the northwest corner of the Phase 2 temporary parking area, unless Building "D" (parking garage) is constructed concurrently with Building "A".
    - e. Constructing Building "A", installing landscaping associated with Building "A", and constructing utilities for Building "A".
    - f. Constructing the fountain associated with Building "A".
    - g. Constructing access from Cape Coral Parkway, SE 47<sup>th</sup> Terrace, and SE 8<sup>th</sup> Court as shown on the Phasing Plan, Sheet C-4A.
    - h. Installing the pavers located within the public square surrounding Building "A".
    - i. Constructing all right-of-way improvements including pavers along SE 8<sup>th</sup> Court to the eastern edge of the Cape Coral Parkway entrance.
    - j. Constructing the main portion of the stormwater system which does not conflict with future phases as delineated on the Phasing Plan, Sheet C-4A, that was prepared by DEI Civil Engineers and Planners, dated April, 2010.
    - k. The Developer shall submit a complete set of building plans for Building "A" to the City no later than March 31, 2020. In the event the Developer does not submit building plans to the City on or before March 31, 2020, the PDP shall be considered null and void.
    - l. Substantial construction on Building "A" shall commence no later than July 1, 2020. Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of Building "A." In the event that substantial

construction on Building "A" does not occur on or before July 1, 2020, the PDP shall be considered null and void.

- m. The Developer shall receive a Certificate of Completion from the City for Building "A" no later than June 30, 2021. In the event the Developer does not receive a Certificate of Completion from the City on or before June 30, 2021, the PDP shall be considered null and void.

2. Phase 2 shall include

- a. Demolishing the temporary trash enclosure at the northwest corner of the Phase 2 temporary parking area.
- b. Constructing Building "B", installing landscaping associated with Buildings "B" and "D", and constructing utilities for Building "B".
- c. Constructing temporary parking on the site sufficient for Buildings "A" and "B".
- d. Demolishing the temporary parking area and constructing the entire parking garage of Building "D" and installing all abutting landscaping. The two residential towers may be built in this Phase 2 or may be deferred until Phase 5.
- e. Constructing all right-of-way improvements abutting Building "B".
- f. The Developer shall submit a complete set of building plans for Building "B" and Building "D" (parking garage) no later than March 31, 2021. In the event the Developer does not submit building plans for both buildings to the City on or before March 31, 2021, the PDP shall be considered null and void.
- g. Substantial construction on Building "B" and Building "D" shall commence no later than August 1, 2021. Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of Building "B" and Building "D." In the event that substantial construction on Building "B" and Building "D" does not occur on or before August 1, 2021, the PDP shall be considered null and void.
- h. The Developer shall receive Certificates of Completion from the City for Building "B" and Building "D" no later than July 31, 2022. In the event the Developer does not receive Certificates of Completion for both buildings from the City on or before July 31, 2022, the PDP shall be considered null and void.

3. Phase 3 shall include:

- a. Constructing Building "C", installing abutting landscaping associated with Building "C", and constructing utilities for Building "C".
- b. Constructing the remaining stormwater systems.
- c. Constructing the temporary trash enclosure for Building "E".
- d. Constructing all right-of-way improvements abutting Building "C" including the access point along SE 9<sup>th</sup> Place.

4. Phase 4 shall include:

- a. Removing the temporary trash enclosure associated with Building "E" that was installed in Phase 3.
- b. Constructing Building "E" and remaining utilities.
- c. Installing all remaining landscaping, right-of-way, and site improvements.



5. Phase 5 shall include constructing the two residential towers associated with Building "D" that are located on the upper portion of the parking garage, unless built as part of Phase 2.
6. The developer may construct the elements of Phase 1 and Phase 2 of this project concurrently. The developer shall complete all elements of Phases 1 and 2 of this project before work on Phase 3 can begin. With the exception of Phases 1 and 2, the enumeration of phases in this section is not intended to indicate an order of development. For example, the development of Phase 3 is not required to either begin or be completed prior to the development of Phase 4.
7. A Certificate of Use shall not be issued for any building or any unit of a building on the site until the developer demonstrates that parking sufficient to meet the minimum parking requirements for supporting uses in the building or a use in a unit of a multi-tenant building exist.

### SECTION III. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it ordained by the City Council of Cape Coral, Florida, in public meeting duly advertised, constituted and assembled, that the Planned Development Project application for development approval submitted by Red Rock Land Corporation, Downtown Village Square, LLC, and Downtown Village Square II, LLC, is hereby ordained approved, subject to the following conditions, restrictions, and limitations deemed necessary for the public health, safety, and welfare.

#### A. GENERAL CONSIDERATIONS

1. All provisions and conditions contained in the "Downtown Village Square" PDP as approved by Ordinance 42-10 shall remain in full force and effect, except as otherwise stated in this Development Order. Although some provisions and conditions set forth in Ordinance 42-10 have been restated herein, failure to restate a provision or condition shall not be interpreted as an intention to delete or alter such provision or condition.
2. In 2018 the City made streetscape improvements in the SE 47<sup>th</sup> Terrace right-of-way along the north side of the site originally required of the Developer that included the installation of new pavers. Since the cost of this work exceeded \$265,000, the City shall no longer be responsible for paying up to \$265,000 for costs and fees associated with relocating the LCEC transmission pole at the northwest corner of the property. Any costs and fees associated with relocating this pole shall be paid by the Developer.
3. The Developer shall install pavers along SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place within the City right-of-way as shown on Sheet C-4, entitled "Site Plan," prepared by DEI Civil Engineers and Planner, dated December 2007 and bearing a revision date of January 12, 2009. These pavers shall be of the same color, shape, and pattern as those used by the City for the streetscape improvements in the SE 47<sup>th</sup> Terrace right-of-way.
4. The developer shall replace the pavers in the right-of-way along Cape Coral Parkway between SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place to match the existing pavers in the SE 47<sup>th</sup> Terrace right-of-way and those pavers that will be installed by the developer along SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place. The purpose of this condition is to provide a uniform streetscape within the right-of-way around Block 62A. This requirement, however, may be modified at the sole discretion of the Public Works Director if the Director determines that an alternative design provides a suitable transition between the pavers along SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place with those along Cape Coral Parkway.
5. Details of pavers to be installed on the Downtown Village Square site that includes color, shape, and pattern shall be reviewed by the Public Works Department and found to be acceptable prior to the installation of these hardscape materials by the Developer.
6. Any damage incurred to the existing pavers in the right-of-way along SE 47<sup>th</sup> Terrace during construction of the project shall be replaced to its original condition by the Developer at Developer's expense.

7. The buildings located at 859 and 877 Cape Coral Parkway East shall be demolished no later than December 31, 2019. In the event these two buildings are not demolished by December 31, 2019, the PDP shall be considered null and void.
8. The building located at 851 Cape Coral Parkway East shall be demolished no later than April 30, 2020. In the event this building is not demolished by April 30, 2020, the PDP shall be considered null and void.
9. The Developer shall submit a complete set of building plans for Building "A" to the City no later than March 31, 2020. In the event the Developer does not submit building plans to the City on or before March 31, 2020, the PDP shall be considered null and void.
10. Substantial construction on Building "A" shall commence no later than July 1, 2020. Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of Building "A." In the event that substantial construction on Building "A" does not occur on or before July 1, 2020, the PDP shall be considered null and void.
11. The Developer shall receive a Certificate of Completion from the City for Building "A" no later than June 30, 2021. In the event the Developer does not receive a Certificate of Completion from the City on or before June 30, 2021, the PDP shall be considered null and void.
12. The Developer shall submit a complete set of building plans for Building "B" and Building "D" (parking garage) no later than March 31, 2021. In the event the Developer does not submit building plans for both buildings to the City on or before March 31, 2021, the PDP shall be considered null and void.
13. Substantial construction on Building "B" and Building "D" shall commence no later than August 1, 2021. Substantial construction for the purposes of this development order shall mean that the Developer has been issued a building permit by the City for the construction of Building "B" and Building "D." In the event that substantial construction on Building "B" and Building "D" does not occur on or before August 1, 2021, the PDP shall be considered null and void.
14. The Developer shall receive Certificates of Completion from the City for Building "B" and Building "D" no later than July 31, 2022. In the event the Developer does not receive Certificates of Completion for both buildings from the City on or before July 31, 2022, the PDP shall be considered null and void.

#### **SECTION IV. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS**

- A. This Development Order shall constitute an ordinance of the City of Cape Coral, adopted by this Council in response to the Planned Development Project Application filed for the "Downtown Village Square PDP Amendment" PDP.
- B. This Development Order shall be binding on the Developer. Those portions of this Development Order which clearly apply only to the project Developer, shall not be construed to be binding upon future owners of the project lots. It shall be binding upon any builder/developer who acquires any tract of land within the PDP.
- C. The physical development authorized under this Development Order shall ~~terminate~~ terminate in five years from the date of adoption of this amendment, unless an extension is approved by this Council. The Council may grant an extension if the project has been developing substantially in conformance with the original plans and approved conditions, and if no substantial adverse impacts not known to Cape Coral at the time of their review and approval, or arising due to the extension, have been identified. For purposes of determining when the buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits. All conditions imposed on the subject development shall remain in full force and effect throughout the life of the development unless

rescinded or amended by the City and shall not be affected by any termination of the authorization for physical development.

- D. This Development Order shall be recorded with the Office of the Lee County Clerk of the Circuit Court by the City of Cape Coral. The Developer shall be responsible for reimbursing the City for all recording fees within 30 days of being notified by the City that the Development Order has been recorded.

**SECTION V. SEVERABILITY.**

In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

**SECTION VI. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon its adoption by the Cape Coral City Council. Permits issued prior to or after the effective date of this Ordinance are obtained solely at the risk of the Developer.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 22nd DAY OF July, 2019.

  
JOE COVIELLO, MAYOR

**VOTE OF MAYOR AND COUNCILMEMBERS:**

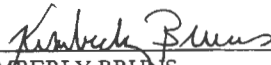
COVIELLO  
GUNTER  
CARIOSCIA  
STOUT

Aye  
Aye  
Aye  
Aye


NELSON  
STOKES  
WILLIAMS  
COSDEN

Aye  
Aye  
Excused  
Excused

ATTESTED TO AND FILED IN MY OFFICE THIS 23rd DAY OF August, 2019.

  
KIMBERLY BRUNS  
CITY CLERK

**APPROVED AS TO FORM:**

  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
ord/pdp 19-0001 Village Square Amendment  
7/22/19



# Planning Division Case Report

PDP20-0001

Staff Report prepared by Mike Struve, AICP, Planning Team Coordinator

<b>SITE ADDRESSES</b> 845, 851, 859, and 877 Cape Coral Parkway East 826 SE 47 <sup>th</sup> Terrace	<b>APPLICANT/PROPERTY OWNERS<sup>1</sup></b> Downtown Village Square, LLC Downtown Village Square II, LLC Red Rock Land Corporation
<b>AUTHORIZED REPRESENTATIVE</b> Annette Barbaccia, AMB Planning Consultants, Inc.	
<b>LEGAL DESCRIPTION</b> Block 62A, Unit 6, Part 1, and Block 62A, Unit 8, Cape Coral Subdivision, plus a vacated alley (see Exhibit "A" for full legal description of the site)	

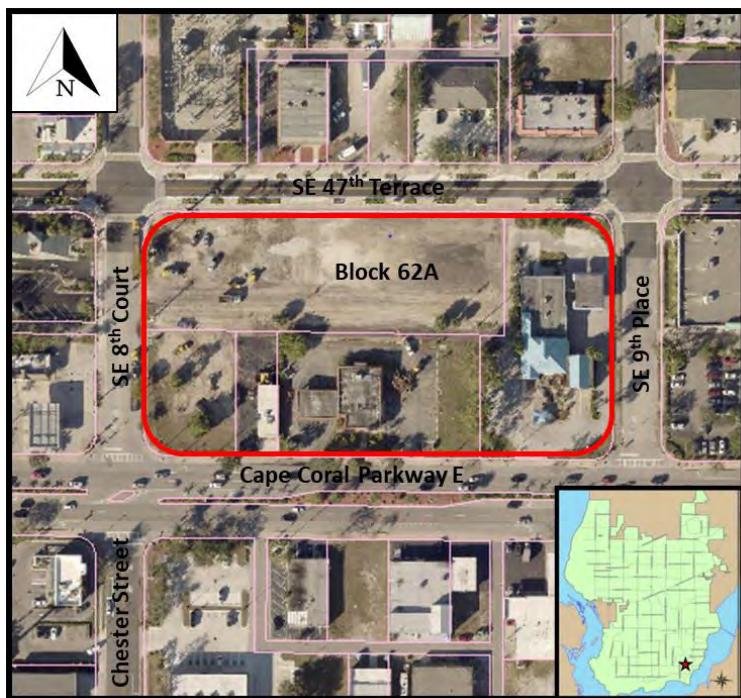


Figure 1. Aerial and Location Maps showing Block 62A - the Downtown Village Square Project Area

## SUMMARY OF REQUEST

The applicant requests to amend the Downtown Village Square project, approved by Ordinance 42-10 and amended by Ordinance 33-19, to modify the phasing schedule and conditions of approval.

## RECOMMENDATION

**Denial of the requested PDP amendment**

<sup>1</sup> Within this report the terms applicant, developer, and owner are considered interchangeable. While three property owners have filed this PDP amendment, references are made to these three terms in the singular in this report.

## DESCRIPTION OF THE SITE

The 3.94-acre site is located in the Community Redevelopment Area (CRA) in southeast Cape Coral. The site has frontage on four streets: SE 47<sup>th</sup> Terrace (to the north); SE 9<sup>th</sup> Place (east); Cape Coral Parkway (south); and SE 8<sup>th</sup> Court (west) (Figure 1). Cape Coral Parkway is classified as a major arterial and SE 47<sup>th</sup> Terrace is classified as a collector. SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place are classified as local streets. The site is located in the Urban Services Infill Area.

## PROCESS FOR EXTENDING THE PROJECT

LDC, Article 1.13, "Transitional Rules" provides provisions for projects that were approved by PDP prior to the adoption of the LDC. This subsection states that all PDPs approved prior to the adoption of LDC, and any approved site plan and conditions attached thereto, shall remain in full force. All such approved PDPs may be developed in accordance with the previous approval, unless one of the following occurs:

- a. The existing PDP approval expires or substantial construction pursuant to the PDP approval has not commenced before the approval expires or if the approval is abandoned, the provisions of these regulations shall govern;*
- b. The owner chooses to develop the site under the FLUC and zoning district in effect for the site at the time of application and the scope of the development does not require an amendment to the existing PDP or require a new PUD approval;*
- c. A PUD is approved by City Council to replace an existing PDP approval; or*
- d. The owner applies for and the City Council has approved a PUD for a substantial change or modification to the prior PDP approval. For purposes of this section, a substantial change or modification is one that exceeds the scope of administrative amendments to a PUD approval in Section 3.4.7.K. of this code.*

The four provisions above do not address a situation where the owner seeks to amend a term or condition in a development order that was approved prior to the adoption of the LDC. In discussing this matter with the City Attorney's Office, staff was advised that owners in these situations should be provided an opportunity to submit their request to the City. Staff is drafting language to amend the LDC to formally establish procedures and standards for amending conditions within previous approved PDP development orders. In the interim, such requests will be processed as PDP amendments consistent with those standards that appeared in the LUDRs.

## PREVIOUSLY APPROVED ENTITLEMENTS FOR THE SITE

In 2010 a PDP for the site was approved for a project entitled "Downtown Village Square." Ordinance 42-10 approved:

- Rezoning the site from the Downtown Edge to the Downtown Core (DC) District;
- Vacating interior lot lines, public utility and drainage easements, and alley right-of-way (ROW); and
- Granting multiple deviations to the Land Use and Development Regulations (LUDR) and the Engineering and Design Standards.

Prior to PDP approval, the developers received approval from the City Council for a bonus density of 19 additional dwelling units (DU) per acre above the baseline density in the DC District of 20 DU/acre. This increase in density was achieved through the former Redevelopment Incentive Program and was approved by Resolution 10-10.

In 2012 the site was rezoned from the DC to the SC District by Ordinance 18-12. Since the project was originally entitled under the DC zoning requirements when approved in 2010, this development continues to be governed by the DC regulations.

In 2019 the PDP was amended by Ordinance 33-19. This ordinance approved:

- Extending the project buildout date;
- Amending the phasing schedule; and
- Amending the conditions of approval.

#### **PROJECT EXTENSIONS AND WORK ON THE SITE**

The Downtown Village Square Project was approved in 2010 by Ordinance 42-10. Construction has not yet begun. Subsequent to the adoption of Ordinance 42-10, the project has been extended twice by the State of Florida through state of emergency declarations issued by the Governor, and four times (Resolutions 102-15, 81-17, 91-18, and 71-19) by the City of Cape Coral. Most recently, the project was extended by Ordinance 33-19.

In 2019 demolition permits were issued for a bank building at 845 Cape Coral Parkway East (WEB 19-28390) and a carwash establishment at 877 Cape Coral Parkway East (WEB 19-28433).

A single building at 851 Cape Coral Parkway East remains on the project site. This building has an area of 1,524 sq. ft. and has two existing businesses, an insurance company and a retail business.

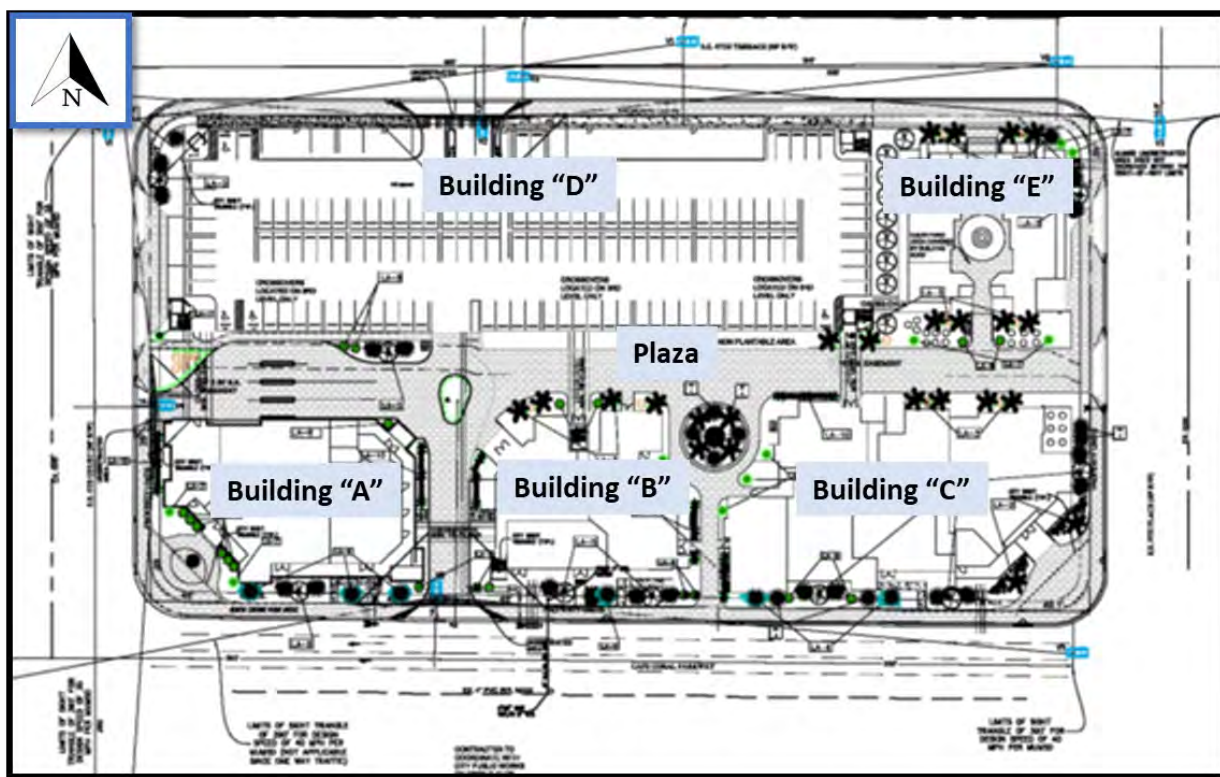
#### **REQUEST TO AMEND THE PDP**

The letter of intent states that a tenant with an existing business occupies the building at 851 Cape Coral Parkway East. The lease terminates on November 30, 2020 and the tenant wishes to stay in the building throughout the term of this lease. This building occupies part of the area where Building “A” was approved to be constructed (Figure 2). Several deadlines appear in Ordinance 33-19 that pertain to Building “A,” including the submittal of building plans to the City (no later than March 31, 2020), commencement of substantial construction on the building (no later than July 1, 2020), and issuance of a certificate of completion by the City to the developer (no later than June 30, 2021). In addition to



preparing the site for the construction Building "A," the existing building at 851 Cape Coral Parkway East was required to be demolished no later than April 30, 2020. The applicant requests changes to the phasing schedule and conditions of approval to move up the construction of Building "B" to an earlier date and to allow construction of Building "A" to be delayed until Phase 3. The applicant also requests that the demolition of the building at 851 Cape Coral Parkway be delayed until the tenant's lease expires on November 30, 2020. Following the expiration of the lease, the applicant proposes to utilize the building as a temporary sales center for the project with the building scheduled to be demolished no later than August 30, 2022.

**Figure 2. Site design of the Downtown Village Square Project as approved by Ordinance 42-10 and amended by Ordinance 33-19 showing the location of buildings.**



#### CHANGES TO THE PROJECT ASSOCIATED WITH THE PDP AMENDMENT

This PDP amendment includes several changes to project phasing and conditions of approval that have been requested by the developer and are discussed in greater detail below.

1. Moving the construction of Building "B" and associated improvements from Phase II to Phase I

The applicant proposes moving the construction of Building “B” from Phase II and Phase I of the project. Deadlines for submitting building plans, beginning substantial construction, and receiving a certificate of completion for Building “B” will be those dates originally identified for Building “A.”

***Analysis***

Altering the phasing schedule to begin construction with Building “B” will result in construction commencing near the middle of the block at the onset of the project compared to the western end as originally contemplated. Generally, it is more advantageous to begin at one end of a project and work sequentially across the site. This allows construction to occur in a more orderly fashion. While the changes in the construction schedule can likely be managed by the developer, the project may appear to develop in a less predictable or even haphazard fashion. This change will affect construction activities on- and off-site (in the City right-of-way).

***2. Delaying the demolition of the existing building at 851 Cape Coral Parkway East***

Ordinance 33-19 requires the existing building at 851 Cape Coral Parkway East to be demolished no later than April 30, 2020. The developer has requested that this building remain until July 31, 2022.

The reasons given for allowing the building to remain are two-fold. The developer wishes to honor a lease with the tenant in the building that is set to expire on November 30, 2020. Once the lease expires, the developer proposes to utilize this Building “A” as a temporary sales center until Building “D” (the parking garage) is constructed. The sales center will be used to lease space in Building “B” and the liner building of the parking garage (Building “D”) until the demolition of this building has been finished no later than August 30, 2022.

***Analysis***

Since Building “B” was not initially targeted to have office space, the use of the building at 851 Cape Coral Parkway may perform an important for leasing and pre-leasing units associated with the project. However, both the scale and architecture of the new development will be a sharp contrast between the new buildings on the site and the existing, older building until the latter building is demolished.

***3. Delaying construction on Building “A”***

Ordinance 33-19 established dates not to be exceeded for the submittal of building plans (March 31, 2020), substantial construction (July 1, 2020), and receipt of a certificate of completion (June 30, 2021) for Building “A.” Since Building “A” will be constructed on land that includes 851 Cape Coral Parkway, the developer has requested that the construction of this building be deferred.

***Analysis***

The developer proposes moving the construction of Building “A” from Phase I to Phase III. Phase III of this project does not have permitting or construction deadlines associated with this phase. One of the key differences between the schedule approved in Ordinance 33-19 and that proposed by the developer in this PDP amendment is that the proposed change allows for more uncertainty as to when Building “A” will be constructed and completed (Table 1).

**Table 1. Key project deadlines appearing in Ordinance 33-19 compared to changes proposed by the developer with this PDP amendment.**

Building No.	Current (ORD 33-19)			Changes proposed by developer		
	<i>Submit building plans</i>	<i>Commence substantial construction</i>	<i>Receive certificate of completion</i>	<i>Submit building plans</i>	<i>Commence substantial construction</i>	<i>Receive certificate of completion</i>
A	March 31, 2020	July 1, 2020	June 30, 2021	--	--	--
B	March 31, 2021	August 1, 2021	July 31, 2022	March 31, 2020	July 1, 2020	June 30, 2021
C	--	--	--			
D	March 31, 2021	August 1, 2021	July 31, 2022	March 31, 2021	August 1, 2021	July 31, 2022
E	--	--	--	--	--	--

The buildings and associated areas approved for the Village Square project appear in Table 2. The net result of moving up the construction of Building “B” and delaying construction on Building “A” will result in a building with less commercial area constructed at the onset of the project compared to the phasing schedule approved in Ordinance 33-19. It is unclear how the construction of this smaller building will influence the Tax Increment Financing (TIF) revenues generated near the onset of the project that the developer has stated are vital for leveraging future financing for completing the project.

**Table 2. Commercial areas (in sq. ft.) and number of residential units of various buildings associated with the Downtown Village Square Project.**

Building (BLDG)	Retail (sq. ft.)	Restaurant (sq. ft.)	Office (sq. ft.)	Theatre (sq. ft.)	Total Commercial (sq. ft.)	Residential Units
BLDG A	7,492	0	72,375	0	79,867	0
BLDG B	21,571	10,345	0	13,352	45,268	10
BLDG C	31,278	13,169	36,592	0	81,039	24
BLDG DE	0	0	0	0	0	56
BLDG DW	5,317	0	0	0	5,317	56
BLDG E	29,870	10,185	0	0	40,055	6
<b>Total</b>	<b>95,528</b>	<b>33,699</b>	<b>108,967</b>	<b>13,352</b>	<b>251,546</b>	<b>152</b>

4. Eliminating the fountain at the southwest corner of the site near Building “A”

The developer proposes to eliminate this feature from the phasing schedule. No reason in the letter of intent for this change by the developer was provided.

***Analysis and Recommendation***

The foundation was used in part to meet a Superior Site Design and Quality Development Category associated with the Redevelopment Incentive Program (RIP). Project enhancements identified within this category included providing public gathering places, two of which included outdoor fountains. The fountain the developer wishes to eliminate is near the corner of Cape Coral Parkway East and SE 8<sup>th</sup> Court. The project will retain a strong site design without the fountain, but the project will be



diminished to some degree without this feature because of the prominence of this corner in providing a focal point for the project.

Under the RIP, development incentives in the form of increased density and commercial intensity above baseline levels could be awarded by the City Council in exchange for the developer increasing the quality of development and providing benefits to the community at large.

For the Downtown Village Square project, the RIP was requested by the developer and approved by the City Council by Resolution 10-10. This resolution approved residential density (39 DU/acre) associated with the project that exceeded the baseline residential density (20 DU/acre) at the time for the Downtown Core (DC) District. Since the developer voluntarily offered this fountain as an enhancement as a means of qualifying for a density bonus in when the project was proceeding through permitting, staff does not support this change.

5. Requesting the DCD Director be authorized to extend deadlines in the PDP up to 30 days

The developer requests the following language be included in the PDP amendment: *The Department of Community Development Director, at his discretion, may extend the deadline dates described in Section II by up to thirty days. He shall provide a written extension to the Developer prior to the deadline date granting that extension and copying the City Manager, the City Attorney, and the City Council on the correspondence.*

**Analysis and Recommendation**

Planning staff does not support this provision as extensions to timelines in a development order approved by the City Council should only be altered by action taken by the City Council.

6. Requesting the right to petition City Council if the developer has not been granted a timely review

The developer requests the following language be included in the PDP amendment: *In the event the Developer believes that he has not been afforded a timely review by the City, causing him to miss any of the deadlines contained in Section II, the Developer will be afforded the right to petition the City Council within 30 days subsequent to the missed deadline. Based on the City Council's review of the petition and consideration of testimony and information, they will assess the petition and determine whether the PDP may continue to be active.*

**Analysis and Recommendation**

Section IV, I of Ordinance 42-10 states the “the Director of the Cape Coral Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order...” LDC, Section 3.1.14 clearly identifies appeal paths for decisions made on administrative permits and approvals, and decisions made by the DCD Director. Since codified appeal processes have already been established in the LDC, Planning staff does not support this request.

## **CITY OBLIGATIONS REGARDING THE DOWNTOWN VILLAGE SQUARE PROJECT**

The Downtown Village Square Project represents a private/public partnership in developing a mixed-use development in Block 62A. The developer has agreed to provide several amenities that will provide benefits to the public that includes: 127 parking spaces for public use in a parking garage; a minimum of 2,000 sq. ft. on the ground floor of the parking garage for a police substation, with an additional 2,000 sq. ft. for a governmental use; and a central plaza that includes pavers and a fountain that will provide a public gathering place.

The City also agreed to assist the developer in several specific ways with the project. One such obligation was eliminated in Ordinance 33-19 that originally required the City to pay a maximum of \$265,000 to relocating a LCEC transmission pole at the northwest corner of the site. However, since the City made streetscape improvements along NE 47<sup>th</sup> Terrace that was required of the developer, and the cost of these improvements to the City exceeded \$264,000, the City is no longer obligated to financially assist with relocating this pole.

Two existing obligations involving City assistance with building permit fees and impact fees are described in greater detail below. The financial obligations to the City in covering these costs was estimated to range between \$2.235 and \$2.875 million based on a 2010 estimate provided by the City Building Official that is discussed in a 2014 memo to the City Council.

### **1. Building Permit Fees**

The City agreed to pay the building permit fees for the construction of Buildings “A,” “B,” “C,” “D,” and “E,” including the parking garage and the two residential towers associated with Building “D,” if not constructed simultaneously. This requirement appears in Ordinance 42-10.

### **2. City Impact Fees**

The City also agreed to pay impact fees charged by the City for the development. The developer is still responsible for paying impact fees or other fees charged by entities (like the Lee County School District). This requirement also appears in Ordinance 42-10.

## **ANALYSIS OF GENERAL STANDARDS AND REQUIREMENTS FOR PDPS**

This project was evaluated for compliance with general standards and requirements found in LUDR, Section 4.2, provided below.

- A. *Environmental control standards:* This PDP amendment involves changes to the phasing schedule and conditions of approval. However, the amendment does not approve any additional commercial intensity or residential density beyond that which was previously approved by Ordinance 42-10. Prior to construction, the developer will be required to submit a burrowing owl and gopher tortoise affidavit to the City identifying the number of each protected species on the site. If owls or tortoises inhabit the site and cannot be protected, the developer will need permits also from the Florida Fish and Wildlife Conservation Commission.

- B. *Maintenance of improvements:* A condition appearing in the Wetlands, Vegetation, and Wildlife Section of Ordinance 42-10 requires all landscaping and screening required in the Downtown Village Square project to be maintained in good condition throughout the life of the development.
- C. *Consistency with Comprehensive Plan:* This project is consistent with several policies in the Comprehensive Plan discussed in greater detail later in this report.
- D. *Financial Responsibility:* This standard is not applicable as the owners are not required to post a security bond or a certified check to assure the installation of any required improvements.
- E. *Dimensional requirements:* The project received several deviations to the former DC District when the project was approved by Ordinance 42-10. Except for those granted deviations, the project complies with all dimensional requirements of the DC District.
- F. *Maximum density:* This project includes 152 residential units on the 3.94 acre site or 39 DU/acre. The former DC District allowed a maximum of 20 DU/acre. The developer received an additional 19 DU/acre in density by qualitying and being approved for the former Redevelopment Incentive Program.
- G. *Minimum parcel size:* The former DC District did not have a minimum parcel area. The project is not in the Urban Services Reserve Area.
- H. *Time limitation:* Since project approval in 2010, several extensions have been granted by either the City or the state of Florida for extending the period for substantial construction.
- I. *Ownership requirements:* Three owners are involved in this PDP amendment: Red Rock Land Corporation; Downtown Village Square, LLC; and Downtown Village Square II, LLC. All three owners are parties to this PDP amendment.
- J. *Special exceptions:* This project does not involve a special exception use.
- K. *Deviations:* Multiple deviations were granted from LUDR and the Engineering and Design Standards by the City Council in approving Ordinance 42-10.
- L. *Underground Utilities:* New utilities serving the site will be placed underground.

## **CURRENCY REVIEW**

The project was found to meet concurrency requirements when the Downtown Village Square Project was reviewed during 2008-2010. The site is in a Transportation Concurrency Exception Area (TCEA). As a result, the Developer is required to implement a minimum of five transportation improvement projects that are identified in Ordinance 42-10 to support mobility enhancement in the Downtown TCEA.



## CONSISTENCY WITH THE SOUTH CAPE DOWNTOWN COMMUNITY REDEVELOPMENT PLAN

The project is consistent with several policies identified below that appear in the SC CRA Plan that was last amended in 2019.

### 3.1 Open Space and Street Layout

#### **Policy 3.1.5**

*“Utilize incentive regulations and the developer negotiation process to create plaza areas aesthetically and functionally related to adjacent uses and the pedestrian and open space network.”* **Staff comments:** The project includes a central plaza providing for pedestrian connectivity among the buildings on the site.

#### **Policy 3.1.7**

*“Encourage and provide incentives for new projects to use structured parking to optimize green and open space.”* **Staff comments:** The project includes a six-story parking garage. A minimum of 127 spaces will be reserved for public use. The parking garage was used in part as a basis for justifying the approval of residential density above the baseline levels otherwise allowed in the former DC District.

### 3.2 Limitations on Size, Height, Number and Use of Buildings

#### **Policy 3.2.1**

*“Assemble property as necessary where conditions of title, diverse ownership, lot layouts or other conditions prevent proper development in strategic areas where the City’s redevelopment efforts can be successfully and effectively leveraged.”* **Staff comments:** Six parcels (over three acres) were assembled by the developers. The site includes a vacated alley and constitutes an entire block.

#### **Policy 3.2.6**

*“Encourage the revitalization of all properties as high quality mixed-use or commercial projects.”* **Staff comments:** The project will involve the redevelopment of several single-use sites into a larger, cohesive mixed-use development.

#### **Policy 3.2.7**

*“Encourage and provide incentives for the development of mixed-use buildings that include restaurants, outdoor cafes, specialty retail, and entertainment complexes to create attractive pedestrian oriented streets.”* **Staff comments:** The project includes over 33,000 sq. ft. of restaurant uses and over 95,000 sq. ft. of retail. A movie theater is proposed for Building “B.”

### 3.3 Property Intended for Use as Public Parks and Recreation Areas

#### **Policy 3.4.1**

*“Encourage the development of pocket parks and/or plazas for redevelopment projects.”* **Staff comments:** The project includes an east-west central plaza that provides a pedestrian link between SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place.

## CONSISTENCY WITH THE COMPREHENSIVE PLAN

The project is consistent with the following goals and policies.

### Housing Element

#### GOAL

*“To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.”* **Staff comments: The project was approved for 152 multi-family residential units. The developer has signed an affordable housing agreement with the City to provide a minimum of five affordable housing units onsite.**

### Future Land Use Element

#### Policy 1.9

*“The City will issue no development orders or construction permits, which result in a reduction in the level of service for any affected public facility below the level of service standard adopted in this comprehensive plan.”* **Staff comments: The project was deemed concurrent with City services when approved in 2010.**

#### Policy 1.13

*“In establishing commercial siting guidelines, it is the intent of the City of Cape Coral to discourage new ‘strip commercial’ development. Strip commercial development, for the purpose of this policy, is often, but not always, linear in orientation, typically generates high volumes of traffic (often associated with separate vehicular entrances and exits for each property on the primary street), may have poor or undefined pedestrian path systems that create conflicts between pedestrian and vehicular movements, and generally lacks sufficient onsite space to accommodate normal parking and loading activities. In discouraging new strip commercial development, the City shall also seek to limit or reduce traffic conflict points along arterial and collector roadways, to promote pedestrian-friendly development, and to create synergistic, compact patterns of commercial development...”* **Staff comments: The Downtown Village Square site consists of Block 62A. The site has a depth of about 300 feet.**

#### Policy 1.15.1

*“Downtown Mixed: Intended primarily for the Downtown Community Redevelopment Area, to provide, a vibrant, walkable, mixed-use district in the historical heart of Cape Coral, mixed-use projects containing commercial and professional uses in conjunction with multi-family housing opportunities where practical and feasible are encouraged. To this end, commercial/professional uses may develop at a maximum Floor Area ratio of four (4) with an average area-wide FAR of two and twenty-three one hundredths (2.23) with commercial/professional uses developed at a ratio of sixty-five (65) percent commercial and thirty-five (35) percent professional, on an areawide basis. Residential development may develop at a density of forty (40) dwelling units per acre, not to exceed an aggregate of eleven thousand one hundred forty-six (11,146) dwelling units nor two hundred (200) dwelling units within the coastal high hazard*

*area. In order to maintain these development limits, the City shall track residential and non-residential development within this future land use map classification. No further residential development will be permitted in this future land use classification should dwelling unit limits be reached. If the average area-wide FAR of two and twenty-three hundredths (2.23) is reached, the City will permit only that nonresidential development with a FAR of 2.23 or below. Development at these intensities and densities are contingent on the availability of centralized city utility services and transportation network at sufficient capacities to accommodate the development at the appropriate level of service, the availability of sufficient and convenient parking to service the project, the availability of multimodal transportation opportunities, and compatibility with adjacent existing and future land use. Special zoning designations may be established to implement this future land use classification, designed to result in a compact urban form."* **Staff comments:** At the time of project approval in 2010, the site was zoned DC that was consistent with the Downtown Mixed FLUC. This site, along with most other sites in the CRA, was rezoned to the SC District in 2012. The SC District is consistent with the Downtown Mixed FLUC.

**Policy 4.1**

*"Future development requiring access or connection to public water and sewer facilities will be located within either the Urban Services Infill or Transition areas."* **Staff comments:** The site is in the City Urban Services Infill Area.

**Policy 5.3**

*"New commercial development shall meet all of the requirements for adequate facilities based on the level of service standards adopted for roads, potable water and sanitary sewer, solid waste, storm water facilities and other services in this plan."* **Staff comments:** The project was found to be concurrent with City services when approved in 2010.

**Policy 5.5**

*"The City may consider the vacation of rights-of-way to facilitate land assembly and the development of a unified, contiguous commercial project."* **Staff comments:** The site includes a vacated alley that provides a single, unified site with about 300 feet of depth along a major arterial street (Cape Coral Parkway).

**Policy 5.6**

*"In addition to the facilities for which level of service standards are adopted as part of the concurrency management system of this plan; other services that should be considered to serve new commercial and mixed-use development include fire, police and emergency medical protection."* **Staff comments:** As a condition of approval appearing in Ordinance 42-10, the developer will provide the City with a minimum of 2,000 sq. ft. on the ground floor of Building "D" for a police substation, and an additional 2,000 sq. ft. for a governmental use.

**Policy 7.3**

*"The City will provide incentives to individual property owners, builders, and developers to assemble parcels of land for future private uses and will encourage the use of zero lot line (ZLL) and cluster type of development to improve lot layout, drainage, and stormwater retention."* **Staff comments:** The



assembly of the site, originally comprised of six parcels, was used in part for justifying the approval of residential density above the baseline levels allowed in the former DC District.

### **Policy 8.3**

*“Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial development (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive uses of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.”* **Staff comments: All parking on the site will be in a parking garage. The base of the parking garage along SE 47<sup>th</sup> Terrace will be fronted by a liner building. Open space will be incorporated into the project by providing a centrally located plaza that includes a fountain and walkways to buildings in the development.**

### **Policy 13.3**

*“In order to encourage and facilitate development and redevelopment and the provision of housing, employment, service and shopping opportunities in a compact area currently served by public facilities, mixed use development shall be allowed in the Downtown Community Redevelopment Area. Such mixed use development shall conform to the Community Redevelopment Area Plan, as same may be amended, and shall be reviewed in accordance with the City's Land Use and Development Regulations.”* **Staff comments: The Downtown Village Square project is a mixed-use development that includes over 250,000 sq. ft. of nonresidential uses and a maximum of 152 dwelling units.**

### **Policy 14.3**

*“New development, redevelopment and infill development projects located within the City of Cape Coral Downtown Transportation Concurrency Exception Area (Downtown TCEA) may elect to be exempt from transportation concurrency requirements through implementation of the mitigation strategies described in Policy 14.5 of this Element. New development, redevelopment and infill development projects that do not choose to mitigate transportation concurrency impacts in such manner shall be subject to all applicable transportation concurrency requirements. Whether or not a project elects to mitigate its transportation impacts through the strategies identified in Future Land Use Policy 14.5, or elects to be subject to standard transportation concurrency requirements, all projects shall be subject to concurrency review for the purpose of assessing the transportation impacts of the proposed development.”* **Staff comments: The developer has elected to implement five transportation improvement projects, specified in Ordinance 42-10, that will support mobility enhancement within the Downtown TCEA.**

#### **Policy 14.5**

*"In order to be exempt from link specific concurrency and to support mobility enhancement within the Downtown TCEA, all new development, redevelopment, or infill development projects may opt to incorporate any five of the following provisions:*

- *Preferential parking for carpools, vanpools, and/or multiple occupancy vehicles with the object of increasing the average vehicle occupancy for trips generated by the development.*
- *Parking price structures favoring carpools, vanpools, and/or multiple occupancy vehicles, with the object of increasing either the average vehicle occupancy for trips generated by the development, or increasing transit ridership.*
- *Flexible work schedules for employees of the development, with the object of decreasing peak hour automobile trips generated by the development.*
- *Payment of a subsidy to LeeTran to support an increased level of transit service within the TCEA.*
- *Payment into one or more funds, to be established by the City or the CRA. Monies collected by such fund(s) shall be used to support programs and/or capital projects designed to provide additional parking and/or to enhance bicycle, pedestrian, and transit mobility within the TCEA.*
- *The provision of transit shelters, built to City of Cape Coral specifications, within the development.*
- *The provision of a safe and convenient internal pedestrian and bicycle circulation system within the development, including the placement of bicycle racks or bike lockers.*
- *The provision of transit turn out lanes on heavily traveled roadways.*
- *The provision of structured parking for ... residents, patrons and employees of the development.*
- *Clustering buildings within the development, or otherwise designing the development to achieve maximum residential density or non-residential intensity at the development site in a manner, which preserves open space, enhances multi-modal opportunities and provides transit oriented densities or intensities.*
- *Where feasible, the construction of new roadway or alleyway facilities to reduce congestion on major roadways and to provide alternate access to the development.*
- *Any other innovative transportation related modifications or standards submitted by the developer and acceptable to and approved by the City of Cape Coral."* **Staff comments: The developer has incorporated five of the provisions provided above (Bullets 1,2,7,9, and 10) into the project to satisfy requirements of the TCEA.**

#### **Policy 16.7**

*"Land use intensities and densities within the Downtown TCEA shall be consistent with the goals objectives and policies of the City's Comprehensive Plan. In particular, Policy 1.15 (I) of this Element, describing the Downtown Mixed Future Land Use Classification, defines the allowable intensities and densities within the Downtown TCEA." At the time of project approval, commercial/professional uses in this FLUC could develop at a FAR of 4. Residential development could develop at a maximum density of 40 DU/acre.*

## Transportation Element

### **Policy 1.1.7**

*"New development, redevelopment and infill development projects located within the City of Cape Coral Downtown CRA Transportation Concurrency Exception Area (TCEA) may be exempt from transportation concurrency requirements, so long as said new development, redevelopment or infill development opts to mitigate impacts to transportation levels of service through the strategies described Policy 14.5 of the Future Land Use Element of this comprehensive plan. New development, redevelopment and infill development projects that do not choose to mitigate transportation concurrency impacts in such manner shall be subject to all applicable transportation concurrency requirements. Whether or not a project agrees to mitigate its transportation impacts through the strategies identified in Future Land Use Policy 14.5 or opts to be subject to standard transportation concurrency requirements, all projects shall be subject to concurrency review for the purpose of assessing the transportation impacts of the proposed development."*

**Staff comments:** Staff comments: The developer has elected to implement five transportation improvement projects that will support mobility enhancement within the Downtown TCEA.

### **Policy 2.1.5**

*"The City shall continue to require new development to incorporate design elements to accommodate and protect bicyclists and pedestrians."* **Staff comments:** The developer will install pavers within the project ROW along SE 8<sup>th</sup> Court and SE 9<sup>th</sup> Place to match those pavers installed earlier by the City along SE 47<sup>th</sup> Terrace. Pavers will be installed by the developer in the project area on a plaza and on walkways between buildings to promote pedestrian activity.

### **Policy 2.2.6**

*"In order to promote bicycling, walking, and other alternative modes of transportation, the City shall provide incentives for the development of mixed use projects, commercial activity centers and alternative subdivision design and lot layouts."* **Staff comments:** The developer received a density bonus through the Redevelopment Incentive Program by incorporating elements into the project that included superior site design, public open space and recreational areas, affordable housing, and non-residential use percentage.

### **Policy 2.3.1**

*"New development, redevelopment and infill development projects located within the City of Cape Coral Downtown Transportation Concurrency Exception Area (Downtown TCEA) may elect to be exempt from transportation concurrency requirements through implementation of the mitigation strategies described in Policy 14.5 of the Future Land Use Element. New development, redevelopment and infill development projects that do not choose to mitigate transportation concurrency impacts in such manner shall be subject to all applicable transportation concurrency requirements. Whether or not a project elects to mitigate its transportation impacts through the strategies identified in Future Land Use Policy 14.5 or elects to be subject to standard transportation concurrency requirements, all projects shall be subject to concurrency review for the purpose of assessing the transportation impacts of the proposed development."* **Staff comments:** The developer elected to meet transportation concurrency



**requirements by implementing five strategies established for the TCEA as described Policy 14.5 of the Future Land Use Element.**

**Project Recommendation:**

Mixed-use projects, including Cape Harbour and Tarpon Point, have been developed in Cape Coral. Village Square differs from these other projects in that it is located in the heart of the CRA thus providing shopping, dining, and entertainment options within a walkable distance for many residents living in the South Cape. This development also places a greater emphasis on nonresidential uses compared to other mixed-used projects in the City that have a stronger residential emphasis. The area devoted to retail, office, and restaurant space in the Village Square project is important in a City like Cape Coral that because of its platted nature, remains deficient in commercial area compared to municipalities of comparable size. During the initial permitting of this mixed-use development Village Square was often referred to as a “transformational” project based on the potential of this development to attract visitors to the CRA thereby serving as a catalyst in revitalizing the downtown area.

Since the last project extension that was approved by the City Council on July 22, 2019, two buildings on the site have been demolished by the developer. While the preparation of the site for this development represents a positive step, there are questions about the feasibility of the project as currently designed. Some questions center around the length of time that has passed since the project was approved in 2010. For example, the project has a large retail component (38% of the total nonresidential area). It is unclear what impact on-line retailing that has becoming increasing more common over the past five years might have on the development. In addition, a major tenant that was at one time expected to occupy Building “A” has changed plans. A bank was originally slated to occupy space in Building “A” as evidenced by the drive-thru lanes located to the north of the building that appear on the site plan.

There also appears to be uncertainty about the financial viability of the project. For example, the developer has indicated the TIF will need to be restored to 95%, from its current 50%, to allow the project to be financially feasible. Any adjustments to the TIF will require approval by the CRA Board of Commissioners and cannot be addressed as part of this amendment. It is also unclear how the delaying the construction of Building “A” and instead constructing Building “B” at the onset of the project might affect future financing of the development.

Usually the City would not be particularly interested in the financing viability of the project. However, this project is different in a few respects. The City is currently committed to pay building permit fees and impact fees on behalf of the developer. The City has a financial stake in the project and an interest that the project be completed one begun. In addition, this project is in a highly visible area in the heart of the CRA. If the project were to begin and stall at some point, a partially completed project could stymie future reinvestment in this area for some time that could have serious implication for the City.

Staff supports the Downtown Village Square project, but because of the additional uncertainty and potential risk associated with the current amendment discussed above, does not support the applicant’s request to alter the phasing schedule as proposed. Due to the time that has passed since the project

was originally approved in 2010, the applicant may want to considered resubmitting the project as a Planned Unit Development (PUD). This action would eliminate the existing PDP, thereby freeing the developer to redesign the site and alter the phasing schedule consistent with current market demands and financing in mind.

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**Staff Contact Information**

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Planning Division

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CITY OF CAPE CORAL  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
MEMORANDUM

TO: Mayor Sawicki and Council Members

THRU: John Szerlag, City Manager

FROM: Vincent A. Cautero, Community Development Director  
Dana Brunett, Economic Development Director

DATE: March 7, 2014

SUBJECT: Village Square Planned Development Project

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This memorandum provides background information and a history of the project entitled "Village Square Planned Development Project" which was approved by City Council April 26, 2010. On October 19, 2011, under House Bill 7207, an extension to the Village Square PDP development order was requested and the new expiration date to meet "substantial construction"<sup>1</sup> became April 26, 2014.

Within the PDP development order (DO), a total of five (5) buildings were approved that provide a total of 251,546 square feet nonresidential uses and 152 dwelling units. The development would occur in five phases:

Phase 1 -- includes Building "A"

Phase 2 -- includes Building "B" and Building "D" and an optional two residential towers (or deferred until Phase 5)

Phase 3 -- Building "C" and trash enclosure for Building "E"

Phase 4 -- Building "E"

Phase 5 -- The two residential towers associated with Building "D" if not built during Phase 2.

Specifically, the breakdown of units and square footage is as follows:

Building A:	<i>Retail 7,492 sq. ft., and office 72,375 sq. ft.</i>
Building B:	<i>Retail 21,571 sq. ft, restaurant 10,345 sq. ft, office 13,352 sq. ft., and 10 units of residential</i>
Building C:	<i>Retail 31,278 sq. ft., restaurant 13,169 sq. ft., office 36,592 sq. ft., and 24 units of residential</i>
Buildings D&E:	<i>One six (6) story parking garage, and 56 units of residential</i>
Buildings D&W:	<i>Retail 5,317 sq. ft., and 56 units of residential</i>

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<sup>1</sup> Substantial construction means that a valid building permit has been issued for construction of the main building or buildings.

Building E:           *Retail 29,870 sq. Ft., restaurant 10,185 sq. ft., and  
six (6) units of residential*

The DO contains several conditions of approval that require completion prior to issuance of a valid Building Permit. Those required items are as follows:

- ❖ Agreement acceptable to the City Attorney regarding obligation of landscaping located in utility easements;
- ❖ Provide LCEC with private easement for relocating LCEC facilities from the vacated six foot wide public utility easement located immediately north of the 15 foot wide alley that is centrally located within Block 62A was vacated. Note: correspondence dated February 28, 2014 from LCEC states this has not been completed.

The DO for the Village Square PDP has several additional conditions that are required, specifically:

- ❖ The Developer execution of an affordable housing agreement with the City of Cape Coral that shall secure a minimum of five (5) affordable housing units<sup>2</sup> for the project or their monetary equivalent;
- ❖ The Developer shall provide a minimum of 127 parking spaces located on the ground floor of Building "D" and shall be reserved for public use in perpetuity; and
- ❖ The City will pay up to \$265,000 for the costs and fees associated with the relocating the transmission pole at the northwest, which is required for Phase I construction.

In a separate memorandum dated February 16, 2010 from Paul Dickson, Building Official, to the former Interim City Manager, the minimum cost of permit and impact fees to be paid by the City was estimated to be \$2,235,169.08 and could be as high as \$2,875,190.62.

From the feasibility standpoint city staff has some concerns over the financial viability of the project as proposed. Staff has met with project representatives to go over our concerns and is awaiting updated financial information for our review.

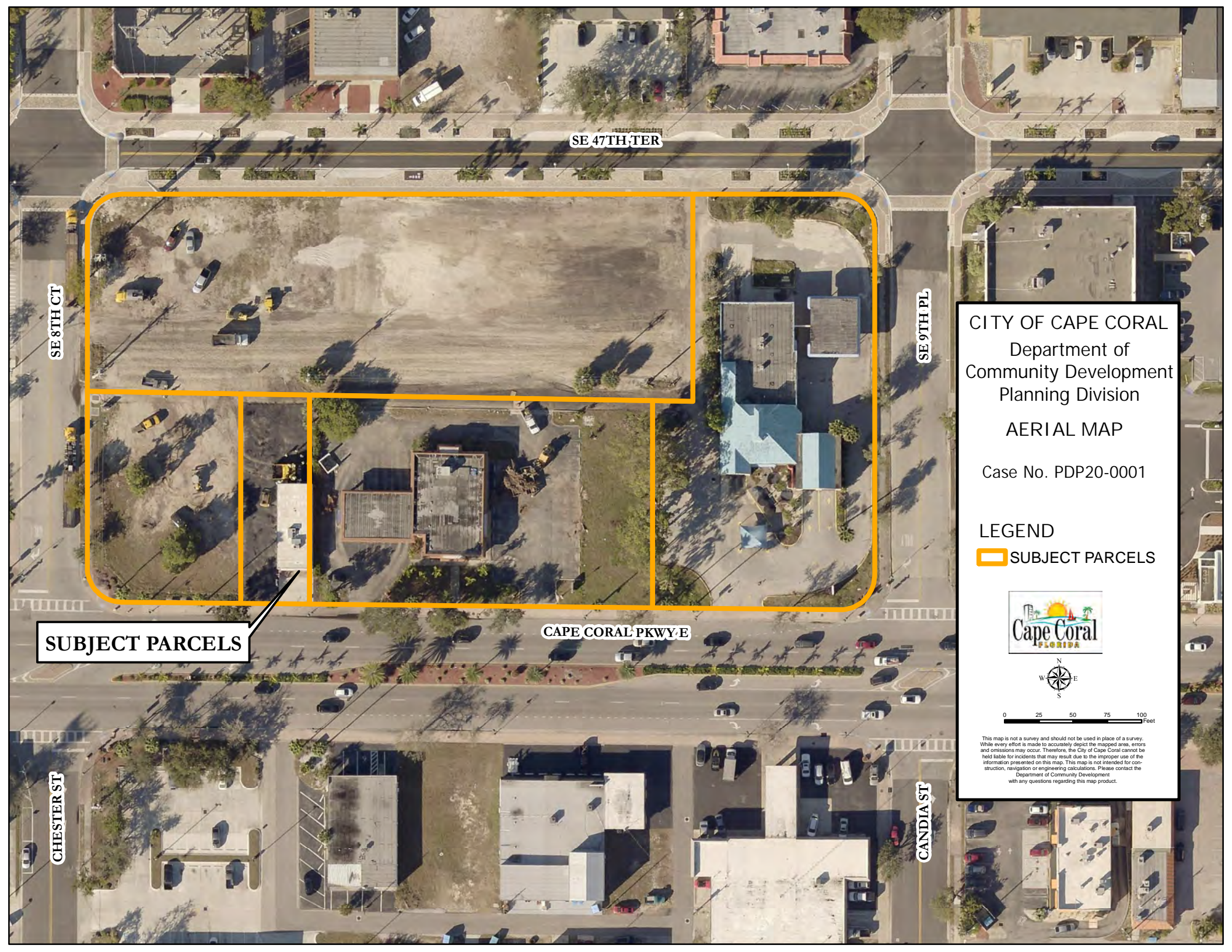
We will update you once we receive and review the promised updated financials for the proposed project.

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<sup>2</sup> No affordable housing unit in the development shall be rented or sold to a tenant whose household income has not been verified as moderate, low, or very low income. Such verification shall be the responsibility of the owner and shall be submitted to the City Manager, or designee. Tenant income verification and certification shall be repeated annually to assure continued eligibility. To insure continued affordability of the units a resale provision was included limiting the future sales prices of these units for a period of 15 years.

<sup>3</sup> Village Square Tax Increment Financing Study – October 2, 2007.





SE 47TH TER

SE 8TH CT

SE 9TH PL

SUBJECT PARCELS

CAPE CORAL PKWY E

CHESTER ST

CANDIA ST

CITY OF CAPE CORAL  
Department of  
Community Development  
Planning Division

AERIAL MAP

Case No. PDP20-0001

LEGEND

 SUBJECT PARCELS



0 25 50 75 100 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.



SE 46TH LN

CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division


CURRENT ZONING MAP

Case No. PDP20-0001

LEGEND

 500' BOUNDARY

 SUBJECT PARCELS

 RML - Residential Multi-Family Low

 SC - South Cape Downtown District



0 60 120 180 240  
Feet

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SE 47TH ST

SE 9TH PL

SE 10TH PL

SE 8TH CT

SE 47TH TER

SUBJECT PARCELS

CAPE CORAL PKWY E

CHESTER ST

LAFAYETTE ST

CANDIA ST

LEONARD ST

MILTON ST

YORK  
ST

MIRAMAR ST

500' BOUNDARY

Item Number:	3.A.
Meeting Date:	3/5/2020
Item Type:	DATE AND TIME OF NEXT MEETING

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Tuesday, March 10, 2020, at 9:00 a.m., in Council Chambers

**REQUESTED ACTION:**

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**

WHAT THE ORDINANCE ACCOMPLISHES:

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**