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**Sussex County**

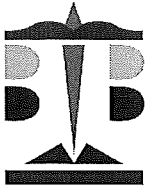
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## PLEASE NOTE

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COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE



BAIRD  
MANDALAS  
BROCKSTEDT LLC

John W. Paradee, Esq.  
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January 24, 2022

**VIA EMAIL ONLY**

Sussex County Council  
c/o Planning & Zoning Department  
2 The Circle  
Georgetown, DE 19947  
[jamie.whitehouse@sussexcountype.gov](mailto:jamie.whitehouse@sussexcountype.gov)

**RE: Change of Zone No. 1948/Grande at Canal Point Maintenance Corp.  
Proposed Amendment to Condition of Approval No. 15  
C/Z 1538 (Ordinance No. 1700) & C/Z 1926 (Ordinance No. 2786)**

Dear Members of Sussex County Council:

We represent several residents and property owners within the immediate vicinity of the proposed dock requested by the residential subdivision known as The Grande at Canal Pointe (the "Subdivision"), adjacent to the Lewes & Rehoboth Canal (the "Canal"). We write to express our opposition to the above-referenced application (the "Application") filed by The Grande at Canal Point Maintenance Corporation (the "Applicant"). The Commission should deny the amendment requested by the Application, and instead adopt the compromise amendment proposed herein.

Background. The Sussex County Council has made it a priority to protect the Canal and its surrounding environment in its dealings with the Subdivision, both in 2004 when the Council first approved the Subdivision and in 2021 when the Council addressed the prior version of the current Application.

When the Council was considering approving the Subdivision in 2004, the Council was presented with significant concerns from the public and regulators about the Subdivision's effect on the surrounding environment. The Council heard significant public opposition to the proposed Subdivision, particularly from neighboring property owners in the communities of Henlopen Keys, The Glade, and Sandalwood. Indeed, numerous letters submitted by the public opposing the Subdivision expressed serious and credible concerns about potential negative impacts of the Subdivision. This included adverse effects on natural buffers, wetlands, open space, wildlife habitat, indigenous endangered species, nutrient management, and Total Maximum Daily Loads in the Canal as well as potential negative impacts on quality of life for neighbors. In addition to opposition from neighbors, the Delaware Department of Natural Resources and Environmental

Control (DNREC) expressed serious reservations about the Subdivision's potential detrimental impact on the Canal and adjacent wetland areas.

Because of the well-founded public opposition and the concerns of DNREC, the Council imposed twenty conditions upon its approval of the Subdivision to "minimize any potential impacts on the surrounding area."<sup>1</sup> The conditions included Condition 15 which specifically addressed the environmental issues raised: "**No piers, docks, boat ramps, or other water related recreational facilities shall be permitted.**" The imposition of Condition 15 shows that, when approving the Subdivision in 2004, the Council was sufficiently concerned about the potential impacts of the Subdivision upon the neighbors and the Canal and the adjacent wetlands and natural vegetated buffers that the Council wisely exercised its judgment and legislative discretion to prohibit the Subdivision's residents from installing any "water related recreational facilities" along the Canal.

Turning to 2021, the Council again acted to protect the Canal and surrounding environment when it considered an application related to the Subdivision.<sup>2</sup> On May 13, 2021, the Planning and Zoning Commission recommended approval of that application with certain limiting conditions requested by our clients. On July 15, 2021, the Council approved the application with the limiting conditions by Ordinance No. 2786. The Ordinance amended Condition 15 to permit the construction of a much smaller dock for the use of the Subdivision's residents. The Council's approval limited the size and scope of the dock to minimize potential impacts on the surrounding areas and property owners. As suggested by neighbors, **the only effective way to minimize the potential uses of the dock is to minimize the size of the dock structure itself.**

After receiving the Council's approval of the prior application with limiting conditions, the Applicant has submitted yet another application seeking to further amend Condition 15 to permit electricity located along the dock or landward of it within the park property and a significantly larger dock.<sup>3</sup>

***Council Should Carefully Limit the Size of the Proposed Dock  
by Adopting the Compromise Design Proposed Herein***

It should be obvious to the Council that reconsideration and further amendment of Condition 15, as now proposed by the Applicant, would result in a complete reversal of important limitations imposed by the Council in 2004 and again in July 2021. The Council's initial prohibition of "water related recreational facilities" along the Canal, followed by its more recent limited permission for a dock with minimal impact, are very reasonable decisions that promote the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Sussex County.

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<sup>1</sup> The Council approved the Subdivision pursuant to Change of Zone No. 1538.

<sup>2</sup> The relevant Change of Zone number is 1926.

<sup>3</sup> The relevant Change of Zone number is 1948, the pending Application.

Respectfully, we submit that the Application now before the Council is, on its face, procedurally improper and barred as a matter of law by the doctrine of *res judicata*, for all the reasons set forth in our December 9, 2021 correspondence to the Sussex County Planning & Zoning Commission (see Exhibit “1” attached hereto).

Second, we submit, the Council should not accept on blind faith the Applicant’s assertions that DNREC and the Army Corps of Engineers will not permit a dock of more limited size and scope than the rather substantial dock now requested by the Applicant. The plain and simple reality on this point is that no one knows for sure what DNREC and the Army Corps of Engineers will permit ***unless and until*** the Applicant submits an actual permit application to those agencies. Indeed, the compromise design which our clients do hereby ask the Council to approve instead (see Exhibit “2” attached hereto) was prepared by Robert Whitford of Precision Marine Construction, Inc. – the very same design consultant who prepared the Applicant’s more substantial dock design – and Mr. Whitford has advised our clients that this more limited dock design is both adequate for the Applicant’s stated purposes ***and*** would be permitted by both DNREC and the Army Corps of Engineers. Notably, this compromise design incorporates several of the design revisions requested by the Applicant (e.g., narrowing the widths of the ramp and gangway, and allowing electricity for the gated security system), while increasing the distance the dock would extend into the canal by 8 feet (from 18 feet to 26 feet, to allow more than adequate water depth for the launching of kayaks), while at the same time limiting the size of the floating dock structure itself to 6 feet by 12 feet (rather than 8 feet by 30 feet). Again, Mr. Whitford advises that this compromise design is both adequate for the Applicant’s stated purposes ***and*** would be permitted by both DNREC and the Army Corps of Engineers. Our clients therefore submit that the Applicant should be required to seek approval from DNREC and the Army Corps of Engineers for this more limited dock design, rather than the unnecessarily commodious dock design sought by the present Application. If DNREC or the Army Corps of Engineers will not permit the compromise design (and there is no credible reason to believe they will not), then the Applicant can come back to the Council with a more informed request, and at least then everyone will know precisely what DNREC and the Army Corps of Engineers may or may not permit (and why). To do otherwise, based solely upon the Applicant’s speculative contentions about what DNREC and the Army Corps of Engineers may or may not permit, would be to give the Applicant carte blanche to pursue and construct a much larger dock design than the minimal necessary to achieve the Applicant’s stated purposes – and that would do a great disservice to not only the prior judgments of the Council, but also to the precious environs, habitats, and natural resources of the Canal.

For all of the foregoing reasons, our clients humbly beseech the Council to approve the compromise design attached hereto as Exhibit “2”. For ease of administration, black-lined and clean copies of an amendment to Condition 15 which incorporates the compromise design are attached hereto as Exhibits “3” and “4”, respectively.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. Paradee". The signature is stylized with a large, looped initial "J" and a long, sweeping tail.

John W. Paradee

Enclosures

# EXHIBIT “1”



BAIRD  
MANDALAS  
BROCKSTEDT LLC

Stephen W. Spence, Esq.  
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December 9, 2021

**VIA EMAIL ONLY**

Planning & Zoning Department  
Attn: Planning & Zoning Commission  
2 The Circle  
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Georgetown, DE 19947  
[jamie.whitehouse@sussexcountyde.gov](mailto:jamie.whitehouse@sussexcountyde.gov)

**RE: Opposition to C/Z 1948 The Grande at Canal Maintenance Corporation**

Dear Commissioners:

We represent several residents and property owners within the immediate vicinity of the proposed dock as requested by the residential subdivision known as The Grande at Canal Pointe (the "Subdivision"), adjacent to the Lewes & Rehoboth Canal (the "Canal"). We write to express our opposition to the above-referenced application (the "Application") filed by The Grande at Canal Maintenance Corporation (the "Applicant"). The Commission should deny the Application because it both seeks to undo the Council's careful decisions protecting the Canal and its surrounding areas and is procedurally improper.

Background. The Sussex County Council has made it a priority to protect the Canal and its surrounding environment in its dealings with the Subdivision, both in 2004 when the Council first approved the Subdivision and in 2021 when the Council addressed the prior version of the current Application.

When the Council was considering approving the Subdivision in 2004, the Council was presented with significant concerns from the public and regulators about the Subdivision's effect on the surrounding environment. The Council heard significant public opposition to the proposed Subdivision, particularly from neighboring property owners in the communities of Henlopen Keys, The Glade, and Sandalwood. Indeed, numerous letters submitted by the public opposing the Subdivision expressed serious and credible concerns about potential negative impacts of the Subdivision. This included adverse effects on natural buffers, wetlands, open space, wildlife habitat, indigenous endangered species, nutrient management, and Total Maximum Daily Loads in the Canal as well as potential negative impacts on quality of life for neighbors. In addition to opposition from neighbors, the Delaware Department of Natural Resources and Environmental Control (DNREC) expressed serious reservations about the Subdivision's potential detrimental impact on the Canal and adjacent wetland areas.

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WILMINGTON | DOVER | GEORGETOWN | LEWES

Because of the well-founded public opposition and the concerns of DNREC, the Council imposed twenty conditions upon its approval of the Subdivision to “minimize any potential impacts on the surrounding area.”<sup>1</sup> The conditions included Condition 15 which specifically addressed the environmental issues raised: “**No piers, docks, boat ramps, or other water related recreational facilities shall be permitted.**” This shows that, when approving the Subdivision in 2004, the Council was sufficiently concerned about the potential impacts of the Subdivision upon the neighbors and the Canal and the adjacent wetlands and natural vegetated buffers that the Council wisely exercised its judgment and legislative discretion to prohibit the Subdivision’s residents from installing any “water related recreational facilities” along the Canal.

Turning to 2021, the Council again acted to protect the Canal and surrounding environment when it considered an application related to the Subdivision.<sup>2</sup> On May 13, 2021, the Planning and Zoning Commission recommended approval of that application with requested limiting conditions by our clients. On July 15, 2021, the Council approved the application with the limiting conditions by Ordinance No. 2786 attached as Exhibit A. The Ordinance amended Condition 15 to permit the construction of a much smaller dock for the use of the Subdivision’s residents. The Council’s approval limited the size and scope of the dock to minimize potential impacts on the surrounding areas and property owners. As suggested by neighbors, the only effective way to minimize use is to minimize the structure of the dock itself.

After receiving the Council’s approval of the prior application with limiting conditions, the Applicant has submitted yet another application seeking to further amend the approval conditions of Condition 15 to permit electricity located along the dock or landward of it within the park property and a significantly larger dock.<sup>3</sup>

The Commission should recommend denial of the Application. It should be obvious to this Commission and the Council that reconsideration and amendment of the approval conditions would result in a complete reversal of important limitations imposed by the Council in 2004 and again in July 2021. The Council’s initial prohibition of “water related recreational facilities” along the Canal, followed by its more recent limited permission for a dock with minimal impact, are very reasonable decisions that promote the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Sussex County.

The Commission should deny the Application not only because the Council’s prior decisions are sound legislative decisions that should be respected and followed, but also because the Application is improper and procedurally flawed.

First, the Application seeks the same relief the Council already rejected based on the same facts as before. This request for reconsideration or rehearing rehashes arguments already made to and considered by the Council, asking the Council to effectively reverse a reasonably conditioned approval issued just six months ago. This is contrary to the legal principal of *res judicata* which

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<sup>1</sup> The Council approved the Subdivision pursuant to Change of Zone No. 1538.

<sup>2</sup> The relevant Change of Zone number is 1926.

<sup>3</sup> The relevant Change of Zone number is 1948, the pending Application.



essentially means that, once a matter has been decided, an applicant cannot seek the same or similar relief based on the same facts, seeking a different result.<sup>4</sup> Here, the Application does exactly that, without providing any evidence that there has been a substantial change in the circumstances or in the proposed use or plan that would warrant a request for reconsideration or rehearing.

Second, the Applicant's submission of a request for reconsideration is procedurally defective under Section 115-216(d) of the Sussex County Code. The section precludes any reconsideration of the matter for one year, stating, with emphasis added, "such petition *or one substantially similar* shall not be reconsidered sooner than one year after the previous denial." The relief requested by the first application presented to Council was denied, in as much as the Applicant's full request was not approved. The Council determined that something much less intrusive than requested would be permitted by imposing several conditions on the kayak/canoe launch that limited its scope and critical dimensions. Because the Application seeks reconsideration of the Council's denial of aspects of its original application within the one-year period, the Application is barred by Section 115-216(d).

Third, the Applicant's reason for requesting reconsideration is also inconsistent with and not permitted by the Rules of Procedure of the Commission (the "Rules of Procedure"). Rule 15, Section 15.5 details very limited circumstances under which an applicant may request reconsideration and a new hearing. *See* Ex. B. Here, Applicant has not demonstrated and will be unable to demonstrate that it meets any of the reasons to request reconsideration.

Fourth, it appears the Applicant is actually requesting a rehearing subject to Rule 18 of the Rules of Procedure, which is improper and not supported. Rule 18 only permits a motion for rehearing for a subdivision application, not a rezoning application. Even if Rule 18 applies to the Application, Rule 18.2 requires the Applicant to state the grounds for its motion for rehearing which it has not done. The Applicant's attorney speculates that DNREC and the Army Corps of Engineers (ACOE) (collectively, the "Permitting Agencies") will not find the dock parameters the Council has imposed in July 2021 to be acceptable. All the Applicant provides to support this speculation is a letter from Ed Launay that provides technical reasons why the dimensions specified in conditions (i) – (ii) are "not workable from a *practical* standpoint." (emphasis added). The Applicant provides nothing from the Permitting Agencies themselves to support this position. Respectfully, this Commission and the Council should not accept as gospel the Applicant's word alone on this point. Instead, the Commission and Council should deny the Applicant's request for reconsideration or rehearing and insist that the Applicant submit the launch design approved by

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<sup>4</sup> *See Kollock v. Sussex County Bd. of Adjustment*, 526 A.2d 569 (Del. Super. 1987). In that case, the Superior Court held that the Board erred as a matter of law in failing to consider the substantiality of change in the proposed use, and the Board's decision was reversed and remanded for further consideration. Judge Chandler held that rules regarding the finality of decisions in zoning cases are no different from similar rules in other areas of the law. "While a board cannot change its decision once made, it can consider a new application for similar relief if there has been a substantial change in the circumstances of conditions affecting the property or in the proposed use or plans for use." *Id.* at 572. Under *Kollock* an applicant seeking a different result has the burden to prove a material change in the circumstances that merit reconsideration.

Council to DNREC and ACOE and seek to secure permits for the same. If DNREC or ACOE refuse to grant permits for any reason, then there will be evidence in the record from those agencies that the Commission and Council can consider. For the Commission and Council to reconsider this matter before those steps are taken is entirely premature and based solely on speculation.

Even though reconsideration or rehearing of this matter is procedurally defective and substantively based on speculative reasoning at best, our clients will not oppose a limited use dock that meets the critical dimensions of the dock designed by Rob Whitford of Precision Marine attached as Exhibit C and an amended Condition of Approval F attached for the Commission's review as Exhibit D.

In closing, on behalf of my clients, I ask that the Commission recommend denial of the Application, or in the alternative, accept our client's proposed amendment to Condition of Approval F as provided in Exhibit D, which would allow for a useable kayak/canoe launch that is limited in size and scope. Please include this letter as part of the record of your December 9, 2021 public hearing, and I thank you for your consideration.

Very truly yours,

*/s/ Stephen W. Spence*

Stephen W. Spence, Esq.

Enclosures



BAIRD  
MANDALAS  
BROCKSTEDT LLC

# EXHIBIT A

**ORDINANCE NO. 2786**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CZ 1538 (ORDINANCE 1700) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS**

**WHEREAS, on the 20th day of July 2020, a zoning application, denominated Change of Zone No. 1926 was filed on behalf of CP Townhomes, LLC; and**

**WHEREAS, on the 22nd day of April 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 13th day of May 2021, said Planning and Zoning Commission recommended that Change of Zone No. 1926 be approved contingent on an amended condition (Condition No. 15 of Change of Zone No. 1538, Ordinance No. 1700); and**

**WHEREAS, on the 15th day of June 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of MR-RPC Medium-Density Residential District, Residential Planned Community and adding in lieu thereof the designation MR-RPC District Medium-Density Residential District, Residential Planned Community as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C. R. 271), and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc, said parcel containing 180.60 acres, more or less.**

**This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.**

**This Ordinance was adopted subject to amended Condition No. 15, as follows:**

- 15. Subject to the receipt of all applicable permits from the U.S. Army Corps of Engineers, DNREC and any other agencies having jurisdiction, the RPC's Grand at Canal Point Maintenance Corp. shall be permitted to have only one (1) dock for the use of its residents subject to the following requirements:**
  - a. This dock shall only be utilized for kayaks, canoes and paddleboards or similar non-motorized vessels.**
  - b. No motorized boats of any kind or other similar types of marine equipment shall be stored, launched, docked or otherwise permitted along the dock or landward of it within the park property.**
  - c. No storage of kayaks, paddleboards, boats or any other marine equipment shall be permitted along the dock or landward of it within the park property.**
  - d. No storage facilities or other structures or improvements shall be located along the dock or landward of it within the park property.**
  - e. No bathrooms, running water, electricity/lighting or parking shall be located along the dock or landward of it within the park property.**
  - f. The permitted dock shall be configured for kayak and canoe launch with one slip which shall extend no farther into the canal than 18 feet from the mean highwater mark and which shall be no larger than the following combined specifications:**
    - i. A ramp measuring 6 feet in width by 8 feet in length which runs to and connects with a fixed pier.**
    - ii. A fixed pier measuring 6 feet in width by 16 feet in length which is connected to the ramp and runs to a floating kayak slip dock to be located in the canal.**
    - iii. A floating kayak slip dock connected such that it is perpendicular to the fixed pier in the shape of a square bracket measuring 8 feet in length into the canal with two parallel sides perpendicular to the fixed pier, each measuring 12 feet in length.**
  - g. The permitted dock shall be secured via gated fencing (with a fob pass) to prevent members of the public from accessing it.**

h. No other piers, docks, boat ramps or other water-related facilities shall be permitted.

i. There shall be an amendment to the Canal Pointe Master Plan and a subsequent Final Site Plan showing the dock and its points of access from the RPC.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2786 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 29TH DAY OF JUNE 2021.



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ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of CP Townhomes, LLC (Canal Point RPC) to amend the Comprehensive Zoning Map of Sussex County from an MR-RPC Medium-Density Residential District, Residential Planned Community to a MR-RPC Medium-Density Residential District, Residential Planned Community to amend conditions of approval of CZ 1538 (Ordinance 1700) in relation to piers, docks, boat ramps and other water related recreational facilities for a certain parcel of land lying and being in Lewes And Rehoboth Hundred, Sussex County, containing 180.60 acres, more or less (property lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road [S.C.R. 271]) (Tax I.D. No. 334-13.00-334.00, 1448.00 through 1750.00) (911 Address: None Available).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Tim Willard, Attorney, was present on behalf of the Applicant (Grande at Canal Pointe Maintenance Corporation), together with Melissa Donnelly, President of Canal Pointe Homeowners Association (HOA); Kent Larson, Vice President of the HOA; and Ed Launay of Environmental Consultants; that CP Townhomes, LLC was the property manager and former developer of Canal Pointe and still owns the roads; that the maintenance of the development is now owned by the Canal Pointe Maintenance Corporation which is the HOA; that the HOA now owns the piece of land known as Canal Park, an open area that has frontage on the canal; that this application is for an amendment to one condition of approval of Change of Zone No. 1926 to permit docks; that there are a total of 284 homeowners; and that 180 homeowners voted on this proposal, of which 163 voted in favor.
- C. Council also found that the covenants of the HOA allow piers, docks, boat ramps and other water related recreational facilities; that they already received approval from the Army Corp of Engineers and from DNREC, however, those approvals expired and they need the Council's approval prior to reapplying; that the project is located on the Lewes – Rehoboth Canal and requires a high level of scrutiny by the Army Corp of Engineers; that DNREC performs an independent review; and that, although eagles are no longer considered a protected species, the proposal is outside of any protection zone for eagles.
- D. Council also found that there are no environmental factors that would prohibit the dock from being constructed; that the County has a 50 foot buffer ordinance requirement from State-regulated tidal wetlands and the buffer line is shown on the record plan; that water dependent recreational facilities are allowed in the buffer; that the requested dock would not be in conflict with the buffer ordinance; that the County only regulates the building of structures within the buffer, and not vegetation; and that there is a concrete path that leads through the park and terminates before entering the buffer.

- E. Council further found that they have no problem with limiting the condition to allow non-motorized vessels only and prohibiting storage in the park area; that the HOA is following all regulatory steps to have the proposed amenity; that there would be no parking permitted in the area; that the dimensions of the dock would be regulated by DNREC; and that the general public will not be permitted to use the dock facilities.**
- F. Based on the Planning & Zoning Commission's Findings (1 through 5) and Condition No. 6, as amended, Council found that:**
- 1. Condition No. 15 of Change of Zone No. 1926 and Ordinance No. 1700 currently states that "No piers, docks, boat ramps or other water-related facilities shall be permitted" within the Canal Pointe RPC.**
  - 2. The Canal Pointe RPC is adjacent to the Lewes-Rehoboth Canal, which is a source of water-related activities for many Sussex County residents and visitors.**
  - 3. It was shown during the public hearing that this area of the Lewes-Rehoboth Canal has developed with many personal docks attached to individual lots as well as a large marina associated with the Town of Henlopen Acres.**
  - 4. The revised Condition No. 15, which will be limited to non-motorized boats, will have less of an impact on the waterway and the environment than many of these existing docks and the motorized boats that they serve.**
  - 5. With one point of access to the Lewes-Rehoboth Canal, there will be a well-designed and permitted dock available to the residents of Canal Pointe instead of multiple undefined points of access that could cause more damage to the Canal and the environment.**
  - 6. Condition No. 15 of Change of Zone No. 1926 and Change of Zone No. 1538 (Ordinance No. 1700) is hereby amended by deleting it in its entirety and inserting the amended Condition No. 15.**



BAIRD  
MANDALAS  
BROCKSTEDT LLC

# EXHIBIT B



member of the Planning and Zoning Commission as is elected by a majority vote of the members of Planning and Zoning Commission present.

**Rule 13 – Secretary**

- 13.1 The Chairman shall appoint a Secretary at the annual organizational meeting who shall serve at the pleasure of the Commission. The Secretary shall perform those duties as set forth in Chapter 115 of the Sussex County Code, and shall supervise the clerical work of the Commission.

**Rule 14 – Standards of Conduct**

- 14.1 Persons attending Planning and Zoning Commission meetings shall observe appropriate dress standards and standards of conduct. Attire that may distract from the proceedings shall not be permitted.
- 14.2 No applause or other disruptive behavior shall be permitted. No signs or placards shall be permitted at any meeting of the Planning and Zoning Commission.
- 14.3 Members of the news media shall conduct themselves in such a manner as to not be disruptive of the proceedings of the Planning and Zoning Commission.
- 14.4 Persons attending Planning and Zoning Commission meetings shall at all times conduct themselves in an orderly manner and follow the direction of the presiding officer. The Sussex County Sheriff or other person designated by the presiding officer shall be responsible for ensuring that reasonable and appropriate dress standards and standards of conduct are observed at meetings of the Planning and Zoning Commission.

**Rule 15 – Applications to the Planning and Zoning Commission**

- 15.1 Applications to the Commission, as permitted by State law and County ordinances, shall be on forms to be prepared by the Director of Planning and Zoning and approved by the Planning and Zoning Commission, and shall be accompanied by the proper fee. The fee may be waived by the Commission upon a majority vote. Applications shall be signed by any person authorized by law to make such an application, or an agent or attorney of such person.
- 15.2 Applications shall not be amended after public notice of the public hearing has been transmitted to a newspaper for publication.
- 15.3.1 All site plans, revisions to site plans, surveys, plots, documents, reports, supporting statements, or other material to be presented in support of an application shall be submitted to the Secretary not later than 10 calendar days prior to the meeting of the Planning and Zoning Commission at which the

application is to be presented or heard. This requirement may be waived by the Chairman only upon a showing of good cause therefor by the applicant.

- 15.3.2 During the presentation of an application to the Commission, persons addressing the Commission shall identify themselves by name and place of residence. No direct questioning or cross-examination of witnesses or applicants will be permitted. All questions should be directed to the Commission and the Commission may direct the question to the appropriate person. There will be no rebuttal testimony or presentation by the applicant or by any party in support of, or in opposition to an application, unless permitted or requested by the Commission.
- 15.4 Following a decision by the Commission on an application, a copy of the written decision shall be sent to the applicant, or the agent or attorney for the applicant.
- 15.5 If an applicant, his agent or attorney shall fail to appear prior to the conclusion of a meeting at which the application is scheduled for public hearing, the application shall be denied or recommended for denial for failure by the applicant to present a record in support of the application. Any reconsideration of an application denied under these circumstances shall be scheduled as though it is a newly filed matter; no scheduling preference shall be given unless permitted by the Commission.

Under very limited circumstances, if an applicant fails to appear at a scheduled zoning hearing, the applicant may request reconsideration and a new hearing accordance with Sussex County Code § 115-216D. If a petitioner, applicant or appellant fails to appear, or appear by agent, at the scheduled zoning hearing requesting an amendment, subdivision approval, supplement or change, and the failure to appear is for reasons beyond his control, within fifteen (15) days of the scheduled hearing before the Planning and Zoning Commission, the applicant may submit a Petition for Reconsideration to the Planning and Zoning Commission. Petitions submitted after the deadline shall not be considered.

The Petition for Reconsideration shall contain detailed facts sufficient to demonstrate that the applicant's failure to appear was beyond his control. Reasons may include, but are not limited to, the following:

- a. Emergency medical situations for applicant or applicant's immediate family;
- b. Death of a family member;
- c. Automobile accident;
- d. Failure to receive proper notice of the hearing; and
- e. Such other reason as may demonstrate extenuating circumstances or an event or condition that prohibited applicant's appearance at the public hearing.

Applicant shall include in his Petition any supporting documentation available such as a physician's note, hospital admission form, police report and the like.

Only those facts contained in the Petition and supporting documentation submitted with the Petition shall be considered by the Planning and Zoning Commission.

Upon receipt of the Petition, the Planning and Zoning Commission shall place the Petition on the agenda of its next available regular meeting for discussion and possible action.

If the Petition for Reconsideration is approved, a new public hearing date will be advertised in accordance with the Sussex County Zoning Ordinance. Pursuant to Sussex County Code, §115-216F, if the Petition for Reconsideration is denied, the applicant may not re-submit the application, or one substantially similar to it, sooner than one (1) year after the previous failure to appear.

- 15.6 Any application that is withdrawn in advance of the scheduled public hearing may be reconsidered (or a new application for the same property may be considered) as though it is a newly filed matter; no scheduling preference shall be given unless permitted by the Commission.

**Rule 16 – Delaware Freedom of Information Act**

- 16.1 All procedures of the Planning and Zoning Commission shall comply with the Delaware Freedom of Information Act, as contained in Title 29, Chapter 100 of the Delaware Code, as amended. To the extent that any provision herein shall conflict with the provisions of the Delaware Freedom of Information Act, the more restrictive provision shall apply.

**Rule 17 – Delaware State Employees', Officers' and Officials' Code of Conduct**

- 17.1 Members of the Planning and Zoning Commission shall be subject to the Delaware State Employees', Officers' and Officials' Code of Conduct, as set forth in Title 29, Chapter 58, Subchapter I of the Delaware Code.

**Rule 18 – Request for a Rehearing**

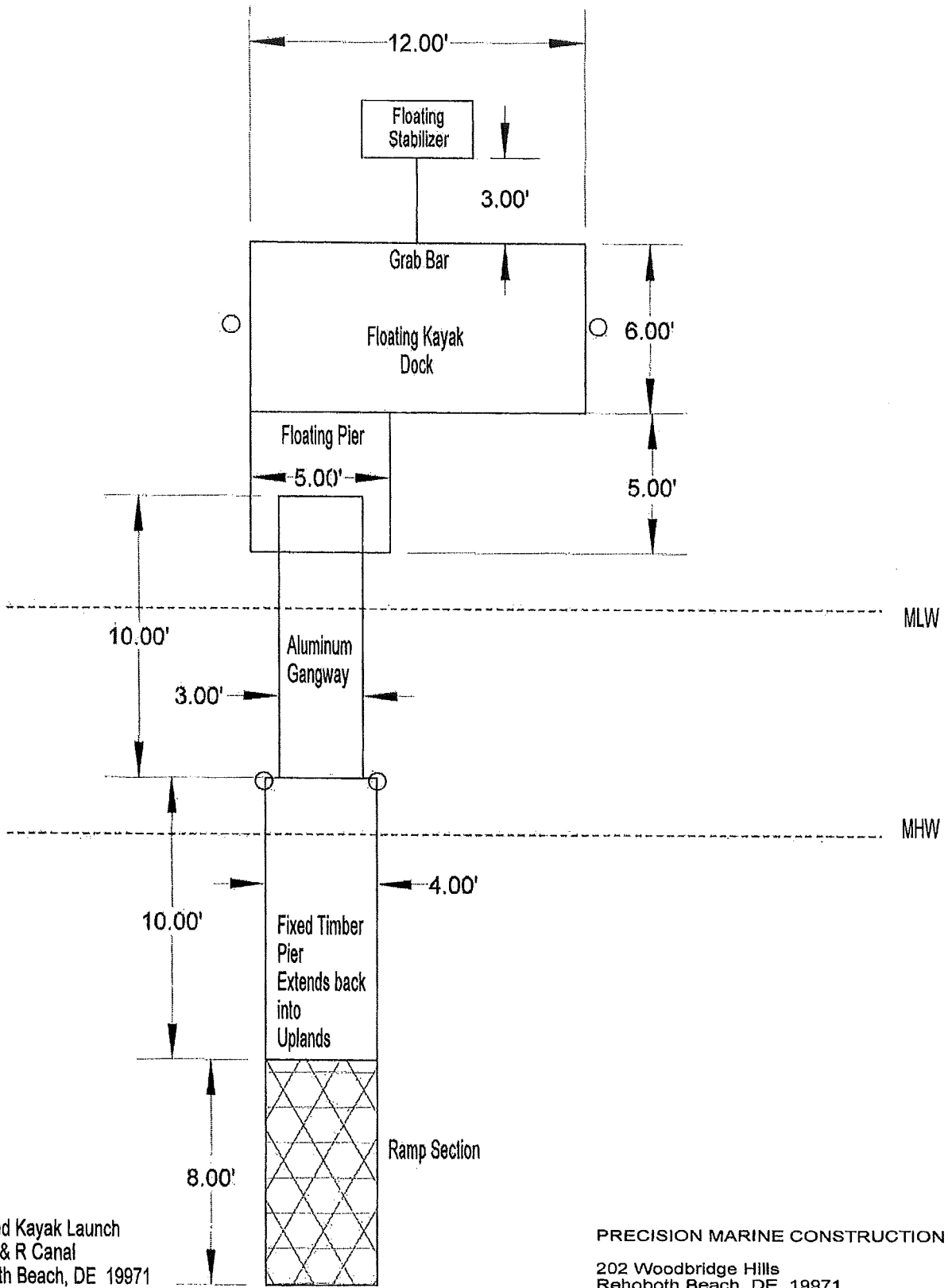
- 18.1 A motion for a rehearing of a subdivision application shall be made in accordance with the procedures set forth in Chapter 99 of the Sussex County Code.
- 18.2 A motion for a rehearing shall state the grounds therefore and may be accompanied by applicable affidavits. The motion and affidavits shall be provided by mail to the opposing party of record, if any. The opposing party shall have 10 days after receipt of the motion to file a response thereto and attach applicable affidavits. The Commission shall determine the motion upon the written application, any response thereto, and accompanying affidavits, if any.

**Rule 19- Commissioner Areas**



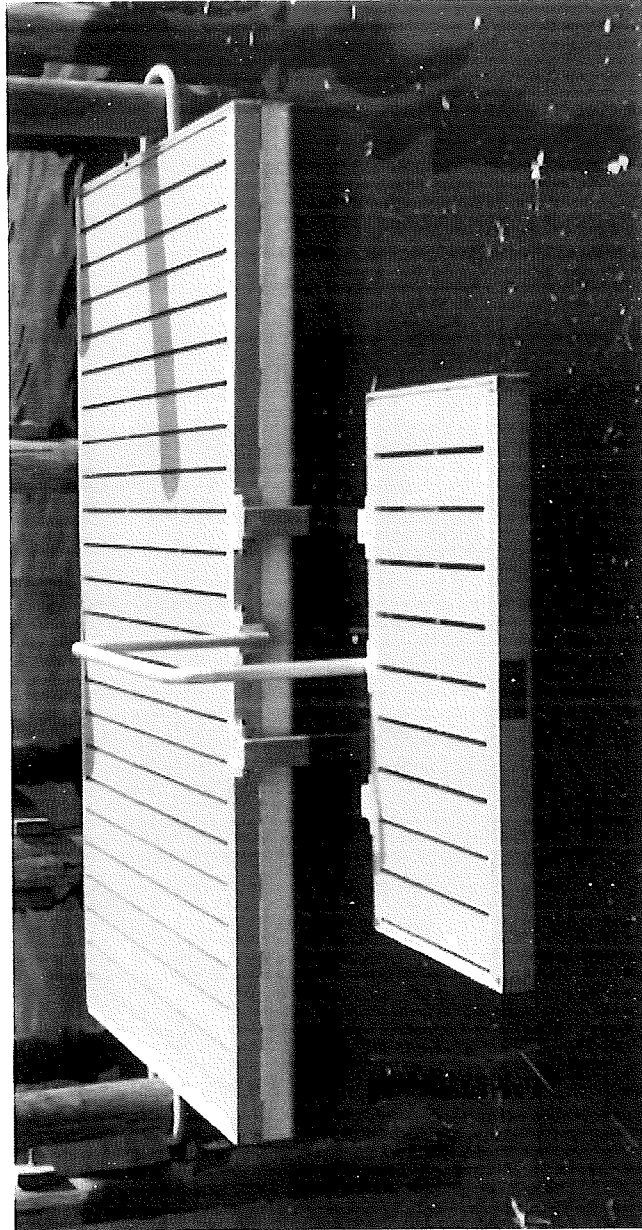
BAIRD  
MANDALAS  
BROCKSTEDT LLC

# EXHIBIT C



Proposed Kayak Launch  
 in the L & R Canal  
 Rehoboth Beach, DE 19971

PRECISION MARINE CONSTRUCTION INC.  
 202 Woodbridge Hills  
 Rehoboth Beach, DE 19971  
 Scale: 1" = 5' Date: 12-08-21





BAIRD  
MANDALAS  
BROCKSTEDT <sup>LLC</sup>

# EXHIBIT D

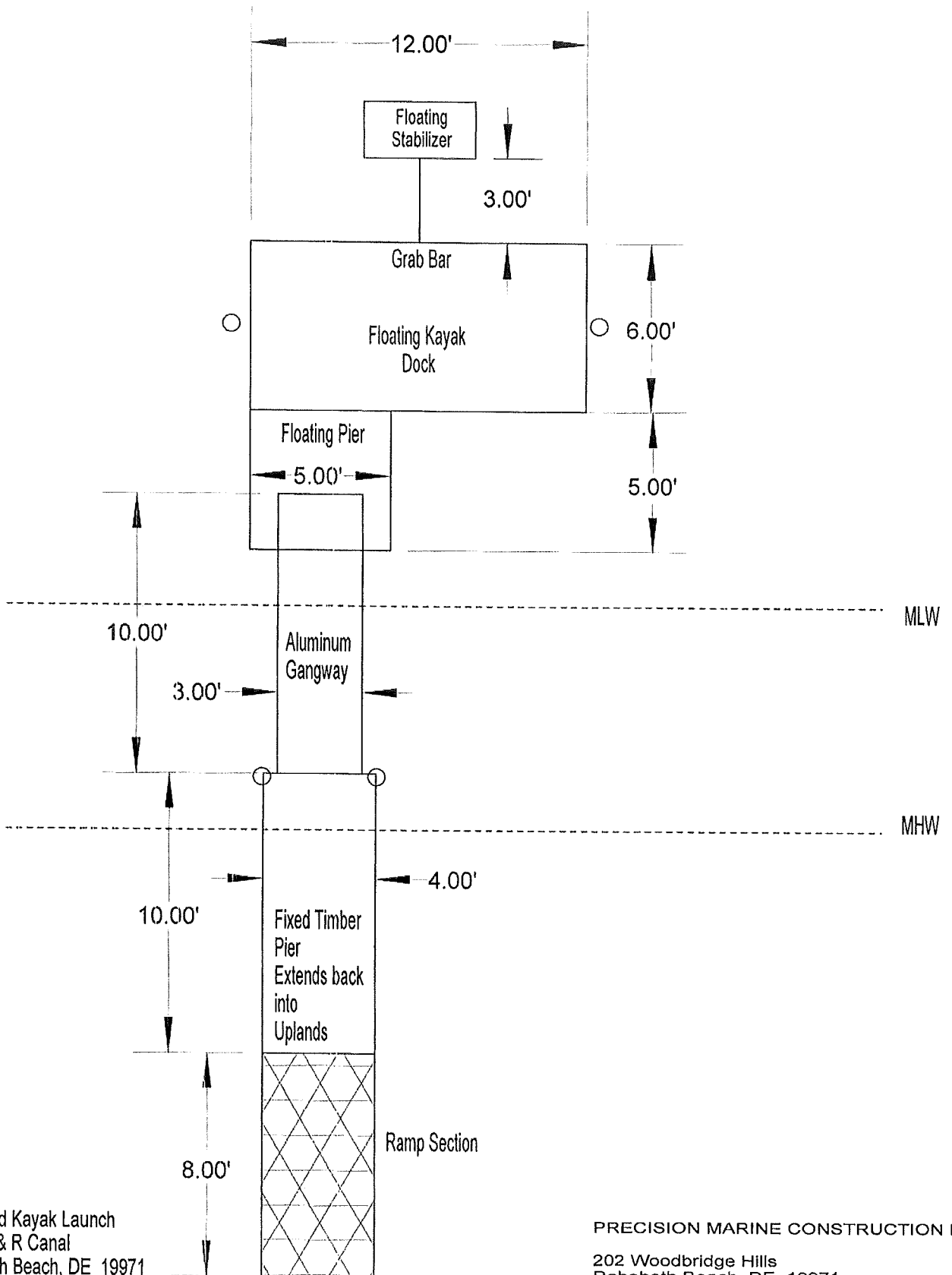
**Proposed Amendment to Condition of Approval F as part of Ordinance No. 2786**

f. The permitted dock shall be configured for kayak and canoe launch ~~with one slip which and~~ shall extend no farther into the canal than ~~18~~ 26 feet from the mean highwater mark and which shall be no larger than the following combined specifications:

- i. A ramp measuring ~~6~~ 4 feet in width by 8 feet in length which runs to and connects with a fixed pier.
- ii. A fixed pier measuring ~~6~~ 4 feet in width by ~~16~~ 10 feet in length which is connected to the canal side of the ramp. Said fixed pier runs to and connects with a gangway measuring 3 feet in width by 10 feet in length which and runs to and connects with a floating pier measuring 5 feet in width by 5 feet in length. ~~dock to be located the canal.~~
- iii. A floating kayak ~~slip dock~~ measuring 12 feet in width by 6 feet in length connected to said floating pier such that it is parallel to the canal and connected on the canal side of the floating kayak dock to a stabilization grab bar measuring no more than 3 feet in length which connects with a floating stabilizer measuring 2 feet in width and 3 feet in length. ~~such that it is perpendicular to the fixed pier in the shape of a square bracket measuring 8 feet in length into the canal with two parallel sides perpendicular to the fixed pier, each measuring 12 feet in length.~~



# EXHIBIT “2”



Proposed Kayak Launch  
in the L & R Canal  
Rehoboth Beach, DE 19971

PRECISION MARINE CONSTRUCTION INC.

202 Woodbridge Hills  
Rehoboth Beach, DE 19971

Scale: 1" = 5' Date: 12-08-21

# EXHIBIT “3”

**CP TOWN HOMES LLC**  
**Canal Pointe HOA**  
**C/Z 1538**  
**Reconsideration Conditions Tracked**  
**(COMPROMISE VERSION)**

15. Subject to the receipt of all applicable permits from the U.S. Army Corps of Engineers, DNREC, and any other agencies having jurisdiction, the RPC's Grand at Canal Pointe Maintenance Corp. shall be permitted to have only one (1) dock for the use of its residents, subject to the following requirements:

a. This dock shall only be utilized for kayaks, canoes, and paddleboards or similar non-motorized vessels.

b. No motorized boats of any kind or other types of marine equipment shall be stored, launched, docked, or otherwise permitted along the dock or landward of it within the park property.

c. No storage of kayaks, paddleboards, boats, or other marine equipment shall be permitted along the dock or landward of it within the park property.

d. No storage facilities or other structures or improvements shall be located along the dock or landward of it within the park property.

e. No bathrooms, running water, ~~electricity~~/lighting, or parking shall be located along the dock or landward of it within the park property. Electricity shall be permitted solely for the purpose of enabling gated security as described below.

f. The permitted dock shall be configured for kayak and canoe launch ~~with one slip which~~ and shall extend no further into the canal than ~~18~~ 26 feet from the mean highwater mark and which shall be no larger than the following combined specifications:

i. A ramp measuring ~~6~~ 4 feet in width by 8 feet in length which runs to and connects with a fixed pier.

ii. A fixed pier measuring ~~6~~ 4 feet in width by ~~16~~ 10 feet in length which is connected to the canal side of the ramp. Said fixed pier runs to and connects with a gangway measuring 3 feet in width by 10 feet in length which and runs to and connects with a floating pier measuring 5 feet in width by 5 feet in length ~~kayak slip dock to be located in the canal.~~

iii. A floating kayak slip dock measuring 12 feet in width by 6 feet in length connected to said floating pier such that it is parallel to the canal and connected on the canal side of the floating kayak dock to a stabilization grab bar measuring no more than 3 feet in length which connects with a floating stabilizer measuring 2 feet in width and 3 feet in length such that it is perpendicular to the fixed pier in the shape of a square bracket measuring 8 feet in length into the canal with two parallel sides perpendicular to the fixed pier each measuring 12 feet in length. See the graphic design attached hereto as Exhibit "A".

g. The permitted dock shall be secured via gated fencing (with a fob pass) to prevent members of the public from accessing it.

h. No other piers, docks, boat ramps, or other water-related facilities shall be permitted.

i. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC.

# EXHIBIT “4”

**CP TOWN HOMES LLC**  
**Canal Pointe HOA**  
**C/Z 1538**  
**Reconsideration Conditions Tracked**  
**(COMPROMISE VERSION)**

15. Subject to the receipt of all applicable permits from the U.S. Army Corps of Engineers, DNREC, and any other agencies having jurisdiction, the RPC's Grand at Canal Pointe Maintenance Corp. shall be permitted to have only one (1) dock for the use of its residents, subject to the following requirements:

a. This dock shall only be utilized for kayaks, canoes, and paddleboards or similar non-motorized vessels.

b. No motorized boats of any kind or other types of marine equipment shall be stored, launched, docked, or otherwise permitted along the dock or landward of it within the park property.

c. No storage of kayaks, paddleboards, boats, or other marine equipment shall be permitted along the dock or landward of it within the park property.

d. No storage facilities or other structures or improvements shall be located along the dock or landward of it within the park property.

e. No bathrooms, running water, lighting, or parking shall be located along the dock or landward of it within the park property. Electricity shall be permitted solely for the purpose of enabling gated security as described below.

f. The permitted dock shall be configured for kayak and canoe launch and shall extend no further into the canal than 26 feet from the mean highwater mark and which shall be no larger than the following combined specifications:

i. A ramp measuring 4 feet in width by 8 feet in length which runs to and connects with a fixed pier.

ii. A fixed pier measuring 4 feet in width by 10 feet in length which is connected to the canal side of the ramp. Said fixed pier runs to and connects with a gangway measuring 3 feet in width by 10 feet in length which runs to and connects with a floating pier measuring 5 feet in width by 5 feet in length.

iii. A floating kayak dock measuring 12 feet in width by 6 feet in length connected to said floating pier such that it is parallel to the canal and connected on the canal side of the floating kayak dock to a stabilization grab bar measuring no more than 3 feet in length which connects with a floating stabilizer measuring 2 feet in width and 3 feet in length. See the graphic design attached hereto as Exhibit "A".

g. The permitted dock shall be secured via gated fencing (with a fob pass) to prevent members of the public from accessing it.

h. No other piers, docks, boat ramps, or other water-related facilities shall be permitted.

i. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC.