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For Recording Purposes Only

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

James "Skip" Fowler
Acting City Attorney
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

Exhibit "A" to Ordinance No. 131-2019_____

DEVELOPMENT AGREEMENT

for the project known as Project Normandy Industrial Planned Unit Development (IPUD) located at N. Normandy Blvd, Deltona, FL (hereinafter referred to as the "Subject Property").

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as the "Agreement") is entered into and made as of the ____ day of _____, 2019, by and between the CITY OF DELTONA, a Florida municipal corporation, with a mailing address of 2345 Providence Boulevard, Deltona, Florida 32725, (hereinafter referred to as the "City"), and ~~DOT Properties, NV and JLS Holdings, LLC~~, Seefried Industrial Properties (hereinafter referred to as the "Owner or Owner/Developer"), and ~~Kimley Horn and Associates, Inc.~~, (hereinafter referred to as the "Developer", if the Developer is a separate entity from the "Owner/Developer" and the Developer has an executed Notarized Owner Authorization from the Owner/Developer).

W I T N E S S E T H

WHEREAS, the Owner warrants that it holds legal title to the lands located in Volusia County, Florida, and within the corporate limits of the City of Deltona, said lands being more particularly described in Exhibit “B”, Legal Description for the Subject Property, attached hereto and by this reference made a part hereof; and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer has clear title of the Subject Property or the Developer is currently under contract to purchase the Subject Property and intends to develop such property as a warehouse/distribution center; and

WHEREAS, the Owner/Developer or Developer desires to facilitate the orderly development of the Subject Property in compliance with the laws and regulations of the City and of other governmental authorities, and the Owner/Developer or Developer desires to ensure that its development is compatible with other properties in the area and planned traffic patterns; and

WHEREAS, the development permitted or proposed under this Development Agreement is consistent with the City’s Comprehensive Plan, concurrency management system, and all land development regulations and this Agreement does not replace, supersede, or grant variances to those regulations; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein; and

WHEREAS, the Owner/Developer and/or Developer have sought the City's approval to develop the Subject Property, and the City approved Ordinance No. 13-2019, through rezoning the Subject Property to a form of Planned Unit Development (PUD), as defined under the City’s Land Development Code on _____. The PUD shall consist of this Agreement as the Written Agreement of the PUD and an Exhibit “C”, Master Development Plan (MDP), attached hereto and by this reference made a part hereof as the Preliminary Plan, subject to the covenants, restrictions, and easements offered by the Owner/Developer or Developer and contained herein, (hereinafter the “Master Development Plan”). Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria applies.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals and Definitions.** The recitals herein contained are true and correct and are incorporated herein by reference. All capitalized terms not otherwise defined herein shall be as defined or described in the City’s Land Development Code as it may be amended from time to time, unless otherwise indicated.

2. **Ownership.** The legal and equitable owners of the Subject Property are: DOT Properties, NV and JLS Holdings, LLC. However, the subject property is under contract in a unified manner by Seefried Industrial Properties.

3. **Title Opinion/Certification.** The Developer will provide to the City, in advance of the City's execution and recordation of this Agreement, a title opinion from a licensed attorney in the state of Florida, or a certification by an abstractor or title company authorized to do business in the state of Florida, verifying marketable title to the Subject Property to be in the name of the Owner/Developer and any and all liens, mortgages, and other encumbrances that are either satisfied or not satisfied or released of record.

4. **Subordination/Joinder.** Unless otherwise agreed to by the City and if applicable, all liens, mortgages, and other encumbrances that is not satisfied or released of record, must be subordinated to the terms of this Agreement or the Lienholder join in this Agreement. It shall be the responsibility of the Owner/Developer and/or Developer to promptly obtain the said subordination or joinder, in form and substance that is acceptable to the City Attorney, prior to the execution and recordation of this Agreement.

5. **Duration.** The duration of this Agreement is binding and runs with the land in perpetuity, unless amended.

6. **Development of the Subject Property.** Development of the Subject Property shall be subject to performance standards listed in this Agreement. Where a land use listed below differs from a defined use in the City of Deltona's Code of Ordinances, the use listed in this Agreement shall prevail.

A. Comprehensive Plan Policies specific to this Subject Property.

B. Permitted principal uses allowable on the Subject Property:

Premises is to be used for light manufacturing and warehouse uses. These light manufacturing/warehouses uses include, without limitation, the warehousing, storage, and distribution ~~and sale~~ of products, materials and merchandise, including liquor and grocery/food items of all types (including, without limitation, dairy, fresh vegetables, raw meats and seafood, canned or frozen foods or prepared meals). Other permitted accessory and ancillary uses of the premises will include, ~~without limitation~~, on-site food preparation (cafeteria not open to the general public), ~~retail sales~~, limited direct product pick-up and product returns by customers (General public pick-up or returns will be limited between the hours of 10:00 am and 4:00 pm), the parking, and storage ~~and use~~ of automobiles, trucks and trailers (including loading facilities), ~~the~~ processing customer returns, light assembly and repair (including, without limitation, the printing, assembly and making product on demand), general office and data center uses, ~~and other ancillary and related uses~~

C. Prohibited principal uses, if any: The storage, processing, handling, manufacturing, or transport of hazardous, explosive or radioactive materials and heavy industrial uses like

foundries, slaughter houses, etc.

- D.** Proposed minimum density (in number of dwelling units per acre) or minimum intensity (measured in floor area ratio): ~~FAR= 0.30, which includes 1,078,342 square feet of warehouse/distribution area.~~ N/A
- E.** Proposed maximum density (in number of dwelling units per acre) or maximum intensity (measured in floor area ratio), if any: 0.35 FAR, which includes a total of 1,414,894 square feet of floor area.
N/A
- F.** Impervious surface ratio is not to exceed 70% of the gross square footage for the Subject Property.
- G.** Maximum lot coverage (in %) (dry retention systems can be used towards open space):
~~65~~ 35%
- H.** Minimum landscaping and bufferyard requirements are per the City's Land Development Code. Stormwater management facilities shall not be placed within bufferyards.
- I.** Minimum lot size area (in acreage or square footage): 85.1 acres
- J.** Minimum lot width (in feet): 153-ft
- K.** Minimum yard setbacks:
1. Front yard: 50-ft (East along N. Normandy Blvd. and west generally along the I-4 corridor.)
 2. Side yard: 25-ft
 3. Street side yard: 25-ft
 4. Rear yard: 35-ft
- L.** Maximum building height (in feet): ~~50~~ 60-ft
- M.** Minimum parking standards are per Sections. 110-828 and 110-829 of the City's Land Development Code.

~~1,200 Auto parking spaces provided per alternative parking study.~~
- N.** Minimum lighting standards per the City's Land Development Code shall be included on a separate Illumination Plan to be provided at the time of site plan submittal. However, the following light pole exception shall be applied:
Light poles within truck court (west and south of building) have a maximum height of 45 ft. Balance of light poles on site have maximum height of 35 ft per City's Land Development Code.

- O. Architectural controls and development on the Subject Property shall follow a common architectural theme as listed in this Agreement by harmoniously coordinating the general appearance of all buildings and accessory structures. All controls and variations shall be defined by a Homeowners Association or Property Owners Association, as defined within this Agreement. In addition, the building shall comply with the design/aesthetic standards of Sec. 110-814(i) as applicable.
- P. Utility provision and dedication: The Owner/Developer or Developer shall connect to the ~~City of Deltona's central utility systems, when available, or to Volusia County's central utility systems, where applicable,~~ at their sole cost and expense. Utility fees shall be paid to ~~Deltona Water or Volusia County, respectively,~~ before any building permit is issued. Central utility systems are to be designed, permitted, and constructed to the respective service provider specifications and dedicated to the respective service provider upon final inspection, clearance, and acceptance by the service provider. Note: Fire suppression including fire flows and endurance shall meet specifications of the City and County. To enhance fire suppression, the facility shall have an onsite water storage tank of appropriate volume to assist in firefighting as applicable.
- Q. Stormwater and environmental: Per parcel stormwater systems or master stormwater system shall be owned and maintained into perpetuity by the owner/developer ~~an established Homeowners Association or Property Owners Association in private ownership~~ and shall not be dedicated to or become the responsibility of the City of Deltona. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements, shall be the sole responsibility of the owner/developer ~~Homeowners Association or Property Owners Association,~~ and shall be maintained in good condition/standing with the applicable permitting authorities. Best Management Practices and conformance to National Pollutant Discharge Elimination System (NPDES) criteria are required.
- R. Transportation, site access, and traffic devices: The Owner/Developer or Developer is responsible for all transportation improvements within the Subject Property and any off-site transportation requirements, as a result of the proposed development, for site function, that ~~protects~~ maintains or improves the level of service for area roadways, and ensures the public health, safety, and welfare for the community. All permits shall be obtained from appropriate permitting agencies prior to development and the City shall determine the appropriate level of service per the City Comprehensive Plan and current traffic counts. The project is going to generate 2,596 trips which will impact State, County and City roadway infrastructure. Of the 2,596 trips, 336 will consists of heavy trucks – 18 wheelers. These impacts will be addressed through various means including the management of employee shift changes, access management and mitigation measures through the State, County and City. To implement the traffic management the following conditions are applicable:

Shift Changes

The facility will operate on a 24 hour cycle with two employee shift changes. The goal of the shift change times is to minimize impacts on local roadway AM and PM peak hours. The AM and PM peak hours are generally between the times of 7:00 am and 9:00 am and 4:00 pm and 6:00 pm respectively. Therefore the shift changes associated with project are illustrated in the table below:

Early Morning Shift – Outgoing/Incoming	Morning Shift - Incoming	Afternoon Shift - Outgoing	Afternoon Shift - Incoming
4:30 – 5:15 am	6:30 - 7:15am	5:30 – 6:15pm	5:30 – 6:15 pm

Access Management

Access management associated with the project involves the ingress and egress to and from City roads. Access management is needed to protect the capacity on City roadways and to promote transportation safety. Access management and related costs is the sole responsibility of the owner/developer to construct and finance. The access management will address four (4) driveways planned as part of the project, heavy truck access and a needed intersection turn lane. In addition, all work within City right of way areas will need to be appropriately permitted with the City. Access management improvements shall be completed before a certificate of occupancy is granted for the project. The improvements are as follows:

- a. Energy Av. (Driveway 1) will be reserved for heavy truck traffic ingress and egress to the IPUD. Already the road is used by Duke Energy for heavy equipment to access an electrical substation. The substation also is used by the power company to stage vehicles and material needed for local power outage response. As per the Kimley-Horn TIA, no truck traffic is forecast to traverse south on N. Normandy Blvd. and directing truck traffic to the SR 472/I-4 interchange is a preferable scenario. Neighborhoods located along the N. Normandy corridor from Firwood Dr. to Saxon Blvd. could be deleteriously impacted by extensive truck traffic. The Energy Av. driveway at N. Normandy will be a partial access point featuring right in, right out and left out only movements To discourage long wheel base traffic (i.e. heavy trucks) from making southbound movements, the access throat will need to be redesigned to feature a 20 foot radius on the southern margin of the driveway with a curb and berm. Also, the driveway will be posted to indicate trucks will be prohibited from making right hand turns. This traffic control will be

subject to enforcement by the Volusia County Sheriff's office and truck drivers can be cited for making illegal right hand turns. Finally, there is a license plate reader near the proposed driveway along N. Normandy Blvd. This electronic reader will be deployed to enforce the right turn prohibition for exiting heavy truck traffic. To support turning truck traffic from the southbound travel lane entering the project, a minimum of a 315-foot deceleration lane shall be constructed. The deceleration lane shall be curbed/guttered. This intersection will be fully signalized and the signal shall be synchronized with other signalization. Finally, with the goal of discouraging illegal left hand movements the driveway needs to be treated with a raised "pork chop" and ancillary "bat wing" design. The City shall determine the exact dimension and design elements during the land development review process. To facilitate appropriate access for Duke Energy to efficiently respond to power outages, etc. the applicant shall enter into a cross access easement or some other arrangement with Duke Energy (or successors) to access through the IPUD property to utilize other driveways.

- b. Driveway 2 will be a full access and shall feature a right turn lane of at least 265 feet. The deceleration lane shall be curbed and guttered. This entrance will be controlled with a full traffic signal and appropriately synchronized.
- c. Driveway 3 shall be designed as a right in and right out only facility. The right turn lane shall have a minimum length of 265 feet each and be treated with curb and gutters. In addition, to discourage illegal left hand movements a "pork chop" and a "bat wing" of sufficient dimension shall be constructed. The pork chop/bat wing shall consist of raised concrete.
- d. Driveway 4 shall be a full access and treated with a right turn lane of no less 265 feet in length. The right turn lane shall feature curb and gutters. A need for a traffic signal at this driveway has not been established. Therefore, no later than one year after a C.O. is issued for the project, a signal warrant study shall be completed by the developer and submitted to the City Development Review Committee for review and comment. If warranted, the signal shall be constructed by the developer within six months of the study being completed. Finally, when the driveway improvements are constructed, the driveway shall be designed and built to accommodate poles, control boxes, and other signal infrastructure. All City required easements for signal management shall be part of the driveway design.
- e. Center 12 foot turn lane constructed within the Normandy Blvd. envelope beginning beyond the southern property boundary, as applicable, with a two to

three lane transition. Transition should be clearly demarcated and should not be combined with the left turn movement into Driveway 4. Then the three lane expansion should extend to Energy Av/Driveway 1. North of signalized Driveway 1 (Energy Av.) the three lanes shall transition back to two lanes.

- f. To facilitate truck access an extra turn right lane shall be constructed along N. Normandy Blvd. at the intersection of N. Normandy Blvd. and Graves Av. The right turn lane shall be a minimum of 550 feet in length.

Mitigation

According to calculations performed by Volusia County as per the fair share formula the fair share amount was in excess of \$10 million. However, by State law, the developer cannot be made responsible for addressing such a range of transportation deficiencies some of which are not even a result of the project. What the fair share calculation represents is a base line of sorts to determine appropriate mitigation methods. Mitigation associated with this project involves various transportation improvements that need to be undertaken on City, County and State roads. The improvements include intersection upgrades and a lane mile expansion. The owner/developer shall be responsible for physically constructing these improvements. However, all improvements shall be subject to applicable governmental permitting and review. All improvements shall be constructed and open before a certificate of occupancy is granted for the project. The required improvements are as follows:

Lane Mile Additions

Graves Av. extending from Howland Blvd/SR 472.

Widen Graves Av. from SR 472/Howland Blvd. to N. Normandy Blvd. to four lanes. There shall be a transition back to two lanes extending west of the intersection of N. Normandy Blvd. and Graves Av. All improvements will need to be designed and constructed at urban cross section standards. Graves Av. is a County road and therefore, the exact design parameters will be determined by the County. In addition, the Graves Av. lane mile expansion shall be subject to a fair share agreement with the County and the applicant.

Intersection Improvements

Intersection of N. Normandy and Graves Av.:

Expand the westbound left lane of Graves Av. to N. Normandy to increase storage. The County shall determine the exact design.

Construct an eastbound right-turn lane from Graves Av. to N. Normandy Blvd.

County will provide the length and design elements of the right-turn lane.
The above intersection improvements shall be subject to a fair share agreement with the County and the applicant.

Intersection of SR 472/Howland Blvd. and Graves Av.:

Install a right-turn lane from SR 472 on to Graves Av. The right turn lane shall extend from the acceleration lane associated with the I-4/SR 472 eastbound I-4 off ramp and shall be coordinated with FDOT.

Construct dual left-turn lanes for the westbound movement from Howland Blvd. to Graves Av. The County and State will determine design criteria for the above improvements.

The above intersection improvements shall be subject to a fair share agreement with the County and the applicant.

Intersection of N. Normandy Blvd. and Graves Av./Stormwater:

Extend the northbound left turn lane a minimum of 310 feet.

Design and construct all stormwater management infrastructure associated with the aforementioned intersection improvements along the N. Normandy Blvd. corridor.

The above improvements shall be subject to a fair share agreement with the City and the applicant.

Transit

Before a certificate of occupancy is issued for the project, the owner/developer will have entered into and executed an agreement with VOTRAN (Volusia Transit Authority) for transit service to the project. The agreement will address shift changes, access, internal circulation and other matters deemed appropriate by VOTRAN.

7. **Public Facilities/Land Dedication.** Facilities or tracts that either are or shall become public facilities/tracts that will serve the development and/or are on the Subject Property are as follows: A 12 foot strip of land running along the entire N. Normandy Blvd. frontage of the property shall be dedicated to the City.

8. **Development Permits/Fees.** The Owner/Developer or Developer is responsible for obtaining, permitting, and the payment of all fees for facilities and services to ensure for the Subject Property. Any site permits shall be kept current with the respective permitting agency and shall ensure the protection of the public health, safety, and welfare of the community and the

development. ~~All impact fees are applicable and no impact fee credits shall be awarded through this Agreement; unless a cessation exists through a City moratorium that is Citywide. Proportionate fair share site improvements shall not be used in lieu of impact fees.~~

9. **Obligations.** Should the Owner/Developer or Developer fail to undertake and complete its obligations as described in this Agreement to the City's specifications, then the City shall give the Owner/Developer or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner/Developer or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/Developer or Developer, or its successors in interest, may, without prejudice to any other rights or remedies it may have, place liens and take enforcement action on the Subject Property. A lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments. Notice to the Owner/Developer or Developer and its successors in interest shall be deemed to have been given upon the mailing of notice to the address or addresses set forth in Paragraph (20) hereof.

10. **Site Plan/Plat Approval.** Exhibit "C", the Master Development Plan, is the Preliminary Plan of the PUD and this Agreement. The Master Development Plan shall not replace, supersede, or absolve the Owner/Developer or Developer from approvals for any site plan, preliminary plat, and/or final plat and their respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria applies.

11. **Indemnification.** The Owner/Developer or Developer shall indemnify and hold the City harmless from any and against all claims, demands, disputes, damages, costs, expenses, (to include attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal), incurred by the City as a result, directly or indirectly, of the use or development of the Subject Property, except those claims or liabilities caused by or arising from the negligence or intentional acts of the City, or its employees or agents. It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the Subject Property, including but not limited to, drainage or water/sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.

12. **Compliance.** The Owner/Developer or Developer agrees that it, and their successors and assigns, will abide by the provisions of this Agreement, the City's Comprehensive Plan and the City's Code of Ordinances, including but not limited to, the site plan regulations of the City as amended from time to time, which are incorporated herein by reference and such subsequent amendments hereto as may be applicable. Further, all required improvements, including landscaping, shall be continuously maintained by the Owner/Developer or Developer, or their successors and assigns, in accordance with the City's Code of Ordinances. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, Certificates of Occupancy or plan/plat approvals to the Subject Property, should the Owner/Developer or Developer fail to comply with the terms of this Agreement. In the event of a conflict between this Development Agreement and the City's Land Development Code, the more

restrictive regulations shall govern the development of the Subject Property.

13. **Obligations for Improvements.** Any surface improvement as described and required hereunder included, but not limited to such as signalization, walls, stormwater management facilities, medians, and utilities, or any other surface improvement shall be performed, prior to the issuance of the first Certificate of Occupancy on that portion of the Subject Property that the surface improvement(s) relates or is otherwise scheduled in this Agreement. Should the Owner/Developer or Developer fail to undertake and complete its obligations as described in this Agreement and to the City's specifications, then the City shall give the Owner/Developer or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner/Developer or Developer. If the Owner/Developer or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/Developer or Developer and their successors and assigns in interest, may but shall not be required to, perform such obligations at the expense of the Owner/Developer or Developer or their successors and assigns in interest, without prejudice to any other rights or remedies the City may have under this Agreement. Further, the City is hereby authorized to immediately recover the actual and verified cost of completing the obligations required under this Agreement and any legal fees from the Owner/Developer or Developer in an action at law for damages, as well as record a lien against the Subject Property in that amount. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments. Notice to the Owner/Developer or Developer and their successors and assigns in interest shall be deemed to have been given upon the mailing of notice as provided in paragraph (20) of this Agreement.

14. **Concurrency and Vested Rights.** The Owner/Developer or Developer acknowledges and agrees that prior to the issuance of any development orders for the Property, the Owner/Developer or Developer must have received and be in the possession of a valid unexpired certificate of capacity/concurrency management system approval consistent with the City's Land Development Code. The capacity certificate/approval verifies the availability of infrastructure and service capacity sufficient to permit the proposed development of the Subject Property without causing a reduction in the levels of service adopted in the City's Comprehensive Plan. The certificate of capacity/approval shall be effective for a term, as defined in the City's Code of Ordinances. Neither this Agreement nor the approved Master Development Plan shall create or result in a vested right or rights to develop the Subject Property, as cited in Section 86-34 of the City's Land Development Code.

15. **Environmental and Tree Preservation.** The Owner/Developer or Developer is responsible to obtain all site related permits and approval prior to any development activity on or for the Subject Property. This may involve mitigation for habitat of threatened or endangered flora and fauna or for species identified for proportion (i.e. tree preservation). This Agreement does not vest or exempt the Owner/Developer or Developer from any permitting and mitigation obligations needed to develop a Subject Property.

The Owner/Developer or Developer will complete a formal consultation with the United States

Fish and Wildlife Service (USFWS) and/or the Florida Fish and Wildlife Conservation Commission (FWC) for federal and state listed threatened and endangered species, specifically the Florida scrub jay (*Aphelocoma coerulescens*), indigo snake (*Drymarchon couperi*), gopher tortoise (*Gopherus polyphemus*), and Southeastern American kestrel (*Falco sparverius paulus*). The results of these consultations will formalize approved offset and avoidance measures and/or the acquisition of permits, including required mitigation, for the potential incidental take of species and their habitat. Preservation for historic and specimen tree species and/or tree removal permitting will comply with the City's Land Development Code.

16. **Homeowners Association or Property Owners Association.** As applicable, the charter and by-laws of any ~~Homeowners Association ("HOA") or~~ Property Owners Association ("POA") for the Subject Property and any deed restrictions related thereto shall be furnished to the City for approval by the City Attorney prior to the recording thereof in the Public Records of Volusia County, Florida. Such recording, as applicable, shall take place before a Certificate of Occupancy is issued for the first development project on land covered by this Agreement. The ~~HOA or~~ POA or owner/developer shall at a minimum be responsible for maintaining the common open space, any common utility systems, such as for irrigation and site lighting, and project signage. If there is an intent to establish a property owners association, the Owner/Developer or Developer shall be responsible for establishing the ~~HOA or~~ POA and recording said information in the Public Records of Volusia County, Florida. The City is not responsible for the enforcement of any agreements or deed restrictions entered into between property owners or occupiers of the Subject Property. If maintenance for the Subject Property is not maintained following issuance of a Certificate of Occupancy, the City ~~has~~ will initiate a code compliance case through Code Enforcement Services.

17. **Enforcement.** Both parties may seek specific performance of this Agreement and/or bring an action for damages in a court within Volusia County, Florida, if this Agreement is breached by either party. In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer or Developer shall be responsible for the payment of all of the City's costs and expenses, including attorney fees, whether or not litigation is necessary and, if necessary, both at trial and on appeal. Such costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should this Agreement require the payment of any monies to the City, the recording of this Agreement shall constitute a lien upon the Subject Property for said monies, until said are paid, in addition to such other obligations as this Agreement may impose upon the Subject Property and the Owner/Developer or Developer. Interest on unpaid overdue sums shall accrue at the rate of the lesser of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.

18. **Utility Easements.** For any easement not established on a plat for the Subject Property, the Owner/Developer or Developer shall provide to the City such easements and other legal documentation, in form mutually acceptable to the City Attorney and the Owner/Developer or Developer, as the City may deem reasonably necessary or appropriate for the installation and maintenance of the utility and other services, including but not limited to, sanitary sewer, potable water, and reclaimed water services, electric, cable, gas, fire protection and telecommunications.

19. **Periodic Review.** The City reserves the right to review the Subject Property subject in relation to this Agreement periodically to determine if there has been demonstrated good faith compliance with the terms of this Agreement. If the City finds that on the basis of substantial competent evidence that there has been a failure to comply with the terms of this Agreement, the City may not issue development orders or permits until compliance with this Agreement has been established.

20. **Notices.** Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or nationally recognized courier, such as Federal Express or UPS. E-mail delivery of documents shall not replace or be in lieu of the aforementioned process. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S OR DEVELOPER'S REPRESENTATIVES:

~~DOT Properties N.V.
Ian D Fair
3620 Gardens Pkwy Unit 902
Palm Beach Gardens, Florida 33410~~

~~JLS Holdings, LLC
1441 Grand Avenue
Deland, Florida 32720~~

Paul Seefried
Seefried Industrial Properties
3333 Riverwood Parkway SE
Suite 200 Atlanta, GA 30339

~~Jason Lewis, P.E.
Kimley-Horn and Associates
116 South Kentucky Avenue
Lakeland, Florida 33801~~

CITY'S REPRESENTATIVES:

City Manager
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

With copy to:

Director
Planning & Development Services
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

Should any party identified above change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein. It shall be the Owner/Developer's or Developer obligation to identify its lender(s) to all parties in a fashion as is required for notices herein.

21. **Compliance with the Law.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner/Developer or Developer of the Subject Property from the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

22. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.

23. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer or Developer and their successors and assigns in interest, and the City and their successor and assigns in interest. This Agreement shall become effective upon its execution and recordation with the Public Records of Volusia County, Florida. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

24. **Subsequently Enacted State or Federal Law.** If either state or federal law is enacted after the effective date of this Agreement that is applicable to and precludes the parties' compliance with the terms of this Agreement, this Agreement and correlating zoning amendment shall be modified or revoked, as is necessary, to comply with the relevant state or federal law.

25. **Severability.** If any part of this Development Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Development Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Development Agreement is declared severable.

26. **Covenant Running with the Land.** This Agreement shall run with the Subject Property and inure to and be for the benefit of the parties hereto and their respective successors and assigns and any person, firm, corporation, or entity who may become the successor in interest to the Subject Property or any portion thereof.

27. **Recordation of Agreement.** The parties hereto agree that an executed original of this Agreement shall be recorded by the City, at the Developer's expense, in the Public Records of Volusia County, Florida.

28. **Applicable Law/Venue.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue of any litigation relating to this Agreement shall be in the courts of Volusia County, Florida.

29. **Time of the Essence.** Time is hereby declared of the essence to the lawful

performance of the duties and obligations contained in this Agreement. The Owner/Developer or Developer shall execute this Agreement within ten (10) business days of City Commission adoption of Ordinance No. 13-2019; and agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida. Failure to execute this Agreement within ten (10) business days of this ordinance adoption may result in the City not issuing development orders or permits until execution and recordation of this Agreement has occurred.

30. **Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof; provided, however, that it is agreed that this Agreement is supplemental to the City's Comprehensive Plan and does not in any way rescind or modify any provisions of the City's Comprehensive Plan. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

31. **Effective Date.** The Effective Date of this Agreement shall be the day this Agreement is recorded in the Public Records of Volusia County, Florida.

IN WITNESS WHEREOF, the Owner, the Developer and the City have executed this Agreement.

OWNER/DEVELOPER

By:

Signature of Witness # 1

Signature

Print or type name

Print or type name

AS:

Signature of Witness # 1

Signature

Print or type name

Print or type name

ATTEST:

Signature

Print or type Name

As:

Mailing Address:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____, and _____, of
_____, who is/are personally known to me or who has/have produced
_____ as identification and who did not (did) take an oath.

Signature of Notary

(NOTARY SEAL)

Print or type name

OWNER/DEVELOPER

By:

Signature of Witness # 1

Signature

Print or type name

Print or type name

AS:

Signature of Witness # 1

Signature

Print or type name

Print or type name

ATTEST:

Signature

Print or type Name

As:

Mailing Address:

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____, and _____, of
_____, who is/are personally known to me or who has/have produced
_____ as identification and who did not (did) take an oath.

Signature of Notary

(NOTARY SEAL)

Print or type name

DEVELOPER

By:

Signature of Witness # 1

Signature

Print or type name

Print or type name

AS:

Signature of Witness # 1

Signature

Print or type name

Print or type name

ATTEST:

Signature

Print or type Name

As:

Mailing Address:

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, and _____, of _____, who is/are personally known to me or who has/have produced _____ as identification and who did not (did) take an oath.

Signature of Notary

(NOTARY SEAL)

Print or type name

CITY OF DELTONA:

By: _____

Date: _____

ATTEST:

Date: _____

Mailing Address:
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, and _____, who are personally known to me and
acknowledge executing the same freely and voluntarily under authority vested in them by the City
of Deltona.

Signature of Notary

(NOTARY SEAL)

Print or type name

Approved as to form and legality for use and
reliance by the City of Deltona, Florida

James "Skip" Fowler
~~Acting~~ City Attorney