

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

Marsha Segal-George
City Attorney
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

Exhibit "A" to Ordinance No. 04-2023

AMENDMENT TO THE DELTONA VILLAGE BPUD DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT ("Agreement") entered into and made as of the _____ day of _____, 2023, by and between the **CITY OF DELTONA, FLORIDA** (hereinafter referred to as the "**City**"), and Deltona Retail Holdings, LLC, a Florida limited liability (hereinafter referred to as the "**Owner/Developer**").

W I T N E S S E T H

WHEREAS, the Owner/Developer warrants that it or an entity on whose behalf it is authorized to act hereunder holds legal title to the property described in Paragraph 2 below 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 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 desires to ensure that its development is compatible with other properties in the area; 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 sought the City's approval for plans to develop the subject property, and the City Commission of the City of Deltona, Florida, approved a Business Planned Unit Development (“**BPUD**”) on February 15, 2010, with an Overall Development Plan/Master Development Plan (“**ODP/MDP**”) subject to the covenants, restrictions, and easements contained herein, and in the Business Planned Unit Development rezoning ordinance, Ordinance No. 21-2009, and further subject to all other applicable requirements of law (hereinafter referred to as “Development Agreement”).

WHEREAS, the City of Deltona adopted Ordinance No. 05-2003 on July 7, 2003, which approved the Development Order of the Interstate 4/State Road 472 Area wide Development of Regional Impact (“DRI”), and all development shall be consistent with this adopted ordinance;

WHEREAS, the Developer previously sought approval and the City approved on July 2, 2018, an amendment to this Ordinance as set forth in Ordinance No. 10-2018, and as approved by the City on December 13, 2021, an amendment to this Ordinance as set forth in Ordinance No. 06-2021;

WHEREAS, the Developer now seeks approval of an additional amendment to this Ordinance No. 21-2009 as previously modified, and the City desires to incorporate the current amendment to this Ordinance No. 21-2009 by adopting an amendment to the Development Agreement;

WHEREAS, the adoption of this amendment to the Development Agreement is being prepared for clarity purposes and to recognize all such vested rights of the Developer established therein shall not be affected or negatively impacted by this later amendment of this Development Agreement;

WHEREAS, the Developer and City desire to amend the Development Agreement as more specifically provided for hereinbelow.

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. INCORPORATION. The recitals herein contained are true and correct and are incorporated herein by reference.

2. OWNERSHIP. The Owner/Developer represents that it, or an entity on behalf of it which is authorized to act, is the present owner of the following described property (hereinafter referred to as the "**Subject Property**"):

Attached hereto as Exhibit "B"

3. TITLE OPINION/CERTIFICATION. The Owner/Developer has provided to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing marketable title to the Subject Property to be in the name of the Owner/Developer or an entity on behalf of which it is authorized to act and showing all liens, mortgages, and other encumbrances not satisfied or released of record.

4. DEVELOPMENT CONDITIONS. Paragraph 4.A of the Deltona Village Development Agreement, dated February 15, 2010, attached hereto as Exhibit "D" shall amended with the following language:

A. The Owner/Developer shall develop the Subject Property in conformance with the requirements of the approved BPUD and approved ODP/MDP, as amended herein. In the event of the expiration or sooner termination or amendment of any amendment of the provisions of the Code of Ordinances of the City or the Deltona Land Development Code, all rights and entitlements to which the Owner/Developer was entitled at the time of the DRI or Deltona Village Development Agreement, as amended, or any at the time of the expiration or sooner termination or amendment of the provisions of the Code of Ordinances of the City or the Deltona Land Development Code, shall at the option of the Owner/Developer, vesting the Owner/Developer, and not be subject to the expiration,

termination or amendment, by mutual agreement.

5. **PERMITTED USES.** Paragraph 6(A) of the Deltona Village Development Agreement, dated February 15, 2010, shall be amended with the following language:

6. A. **Permitted Land Uses.**

The permitted land uses and their customary incidental and subordinate accessory uses on the Subject Property shall be as described in the BPUD Ordinance No. 21-2009, as previously amended by Ordinance No. 10-2018, and as amended by Ordinance No. 06-2021, and as amended by BPUD Ordinance No. 04-2023 adopted simultaneously herewith on _____, 2023, and the Master Development Plan set forth in the Deltona Village ODP/MDP attached hereto as Exhibit “C”, or if not specifically stated in said Ordinance, such similar uses as approved by the Development Services Director. Such Permitted Principal Uses shall be updated to include 652 multifamily residential units from the original 414 units previously approved. The language as used in the original Deltona Village ODP/MDP which states “land uses not specifically permitted are prohibited” is hereby deleted in its entirety and such land uses expressly prohibited shall remain excluded as set forth in the attached Deltona Village ODP/MDP.

6. **DELTONA VILLAGE TRANSPORTATION IMPACT ANALYSIS (TIA) OBLIGATIONS.** The approved Deltona Village BPUD Traffic Impact Analysis, dated December 14, 2009, established proportionate fair share obligations for the development, which have been constructed as part of a traffic mitigation plan which detailed improvements required to be made to certain Volusia County roadways in order create the trips necessary for Owner/Developer’s development of Deltona Village. The original BPUD ODP/MDP, required improvements to Normandy Boulevard (City Thoroughfare) which the Owner/Developer completed in conjunction with development of Deltona Village Phase I. At this time the following is acknowledged by the City:

A. This agreement recognizes and otherwise reaffirms the vested entitlements outlined within the approved Development Agreement and accompanying Master Development Plan/Overall Development Plan (MDP/OPD) including but not limited to

DRH's satisfaction of all conditions within the time frames established in paragraph 11 entitled "Trip Reservations" of the Deltona Village Development Agreement, dated February 15, 2010, as to all TIA phases and sub-phases. Also, this agreement acknowledges the off-site transportation improvements required of the Deltona Village BPUD have been completed. In addition, the fair share payments discussed within paragraph 10 of the Deltona Village BPUD are also determined to be completed by the past actions of DRH and the transportation improvements associated with the Project Normandy IPUD, as determined by the City. Impact fees shall be assessed by the City as future projects develop.

B. No additional traffic impact analysis shall be required by the City for any future development by DRH so long as said development is consistent with the uses and trip reservations approved by the ODP/MDP and Development Agreement within Ordinance No. 21-2009, adopted and incorporated into the Deltona Village BPUD as amended. However, with regard to individual developments that may be processed within the Deltona Village BPUD, consistent with the Land Development Code, the City may require an access management/roadway geometry evaluation associated with an entitled access point for an individual development to ensure safe and effective traffic movements.

C. The vested rights referenced herein include access as illustrated as part of the MDP/OPD and all traffic trip reservations as set forth in paragraph 10 and 11 of the original Deltona Village BPUD Development Agreement dated February 15, 2010, for all TIA phases and sub-phases which shall not expire.

D. Any new development occurring within the Deltona Village BPUD will be responsible for paying City and County impact fees as per fee schedules in effect at the time of building permit issuance. No additional City public roadway improvements shall be required so as long as the development program remains consistent with the approved Trip Reservation detailed within the original Deltona Village BPUD Development Agreement dated February 15, 2010.

E. The full movement at Driveway I/Energy Avenue is vested under Ordinance No. 21-2009 for DRH's development, and the City shall not require any additional traffic impact analysis regarding future DRH development unless the traffic counts exceed the Trip Reservations established in the original Development Agreement dated February 15, 2010. However, the City may require an access management/roadway geometry evaluation associated with to ensure safe and effective traffic movements.

F. With regard to the proposed entrance to Deltona Retail Holdings property at Energy Av., the Deltona Village Development Agreement (Ordinance No. 21-2009) contemplates a full intersection movement at this location. It is understood that if adjustments to signal timing are required as a result of development occurring as part of the Deltona Village BPUD , said signal facility/timing improvements intended to promote safe and efficient travel will be the responsibility of the City of Deltona.

G. With regard to the proposed entrance to Deltona Retail Holdings property at Hollywood Boulevard the Deltona Village Development Agreement (Ordinance No. 21-2009) contemplates a full intersection movement at this location. It is understood that if a signal is warranted in the future or if adjustments to signal timing are required, said timing improvements intended to promote safe and efficient travel will be the responsibility of the City of Deltona.

J. Any signal facility/timing improvements required due to development within the Deltona Village BPUD project shall be the responsibility of the developer constructing any improvements deemed necessary to serve said project. These items will be addressed at time of site plan submitted should additional project specific improvements be required;

7. ADDITIONAL PROPERTY ANNEXED INTO BPUD: The real property described on Exhibit C (hereinafter referred to as "Annexed Property") totaling approximate 26.57 acres is hereby incorporated into and incorporated herein as the Deltona Village BPUD and such rights, entitlements, benefits and obligations in said BPUD shall extend to said Annexed Property.

8. 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 either party becomes necessary, the the losing party shall be responsible for the payment of all of the prevailing party's costs and expenses, including attorney fees, whether or not litigation is necessary and, if necessary, both at trial and on appeal. 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 five percent (5%) compounded annually or at the maximum rate allowed by law.

9. COMPLIANCE. The Owner/Developer agrees that it, will abide by the provisions of this BPUD Development Agreement, as amended, ODP/MDP, the City's Comprehensive Plan, and the City's Land Development Code, including the site plan regulations of the City which are incorporated herein by reference. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals, should the Owner/Developer fail to comply with the terms of this Agreement.

10. NOTICES. Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or overnight courier. Said notice shall be sent to the following, as applicable, and shall be deemed to be given and received if by hand delivery, and otherwise on the date of delivery or of first attempted delivery if delivery is impossible or refused.

OWNER/DEVELOPER'S REPRESENTATIVES:

**Deltona Retail Holdings, LLC
c/o Frank DeMarsh
939 Hollywood Boulevard
Deltona, FL 32725
Phone: 386-736-6830**

email: fd@epictheatres.com

With a Copy to:
Kim C. Booker, Attorney at Law
Booker & Associates, P.A.
1019 Town Center Drive, Suite 201
Orange City, Florida 32763
Telephone 386-774-6552
Email: kbooker@bookerandassoc.com

CITY'S REPRESENTATIVE:
City Clerk and Planning & Development Services Director
2345 Providence Boulevard
Deltona, Florida, 32725
Telephone 386-878-8600, Fax 386-878-8601

Should any party identified above change or should any party elect to add an additional person or entity to receive notices hereunder, it shall be said party's obligation to notify the remaining parties of the change or addition in a fashion as is required for notices herein.

11. CAPTIONS. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.

12. FORCE MAJURE. Notwithstanding anything contained in this Agreement, each party shall be excused from performing any obligation under this Agreement and any delay in the performance of any obligation under this Agreement shall be excused, if, but only for as long as, the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, actions or the elements, war, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, business closures required by laws or orders of governmental agencies caused by epidemic, pandemic, disease outbreak, or other public health crisis, government office closures, or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party (other than lack of or inability to procure monies to fulfill its commitments and obligations under the Agreement).

13. BINDING EFFECT. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest and the City and its assigns and successors in interest. 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.

14. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this 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 Agreement is declared severable.

OWNER/DEVELOPER'S OR DEVELOPER'S REPRESENTATIVES:

OWNER/DEVELOPER'S REPRESENTATIVES:

Deltona Retail Holdings, LLC
c/o Frank DeMarsh
939 Hollywood Boulevard
Deltona, FL 32725
Phone: 386-736-6830

email: fd@epictheatres.com

With a Copy to:
Kim C. Booker, Attorney at Law
Booker & Associates, P.A.
1019 Town Center Drive, Suite 201
Orange City, Florida 32763
Telephone 386-774-6552
Email: kbooker@bookerandassoc.com

CITY'S REPRESENTATIVES:

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

With a copy to:

Interim Director

Community Services

City of Deltona

2345 Providence Boulevard

Deltona, Florida 32725

Should any party identified above change or should any party elect to add an additional person or entity to receive notices hereunder, 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 or Developer's obligation to identify its lender(s) to all parties in a fashion as is required for notices herein.

15. 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.

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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. The venue of any litigation relating to this Agreement shall be in the courts of Volusia County, Florida.

22. 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 the City Commission's adoption of Ordinance No. Ordinance No. 04-2023; 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 the execution and recordation of this Agreement have occurred.

23. 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.

24. 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.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Owner/Developer has executed this agreement.

STATE OF FLORIDA

OWNER/DEVELOPER

By: Deltona Retail Holdings, LLC

a Florida Limited Liability Company

By: I-4 Howland Investments, LLC

Its: Manager

Signature of Witness #1

Print or type name

Signature of Witness #2

Print or type name

Signature

William F. DeMarsh, Its: Manager

Print or type name

AS: _____

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 _____, 2023, by William F. DeMarsh, the Manager of I-4 Howland Investments, LLC, which is the Manager of Deltona Retail Holdings, LLC, 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

IN WITNESS WHEREOF, the City has executed this agreement.

CITY OF DELTONA:

By: _____

Date: _____

ATTEST:

Date: _____

Mailing Address:

City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, 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

Marsha Segal-George
City Attorney