

Prepared by and returned to:
City of Deltona, City Clerk
2345 Providence Blvd.
Deltona, FL 32725

City of Deltona
Staff Drafted
DEVELOPMENT AGREEMENT
Deltona Village BPUD

For property located in the Areawide DRI at 2160 Normandy Boulevard

THIS DEVELOPMENT AGREEMENT ("Agreement") entered into and made as of the 15th day of February, 2010, by and between the CITY OF DELTONA, FLORIDA (hereinafter referred to as the "City"), and Deltona Retail Holdings, LLC, a Florida limited liability company and Eleanor J. DeMarsh, as Trustee of the Eleanor J. DeMarsh Revocable Trust dated May 20, 1992 as Restated on March 21, 1994 (hereinafter referred to as the "Owner/Developer").

WITNESSETH

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 has sought the City's approval for plans to develop the subject property, and the City Commission of the City of Deltona, Florida, has 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.

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;

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 which it is authorized to act is the present owner of the following described property (hereinafter referred to as the "**Subject Property**"):

Attached hereto as Exhibit "A"

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

A. The Owner/Developer shall develop the subject property in conformance with the requirements of the approved BPUD and approved ODP/MDP. In the event of the expiration or sooner termination, or amendment to the DRI, or any 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 expiration or sooner termination, or amendment to the DRI, or any 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, vest in the Owner/Developer and not be subject to the expiration, termination or amendment.

B. Site Plan(s). The Owner/Developer shall submit a Final Site Plan application for each proposed Lot and shall secure a Final Site Plan Development Order pursuant to the BPUD, ODP/MDP, and City Land Development Code. Each site proposed for development shall be platted

1 into one or more lots prior to commencement of development and as a condition for Final Site Plan
2 approval.

3 C. **Platting.** Subdivision of any Lot or Outparcel shown on the approved Plat that
4 creates a maximum of four (4) new conforming Lots or Parcels shall be considered a minor
5 amendment, and shall be approved by City staff as an administrative subdivision and does not
6 require an amendment to the BPUD, ODP/MDP, the Plat or approval of the City Commission.
7 Any further subdivisions of any Lot or Outparcel shall be a major amendment, and shall be
8 approved only after City Commission's approval as may be required by law in effect at the time
9 the amendment application is submitted to the City. Combination of any whole platted Lots
10 and/or Outparcels with one or more other whole platted Lots and/or Outparcels shall be
11 considered a minor amendment.

12 The submission of a sketch plan and ODP/MDP plan prior to the application for approval
13 of a Subdivision Preliminary Plat Development Order as required by the Code of Ordinances of
14 the City is satisfied by the approval of the ODP/MDP, and the City shall not require the
15 submission of any additional sketch plan nor overall development plan as a part of the Plat
16 approval process.

17 A final site plan application may be accepted and reviewed concurrently with the
18 preliminary plat application if such final site plan application shall provide all information and
19 analyses that is determined by the City staff to be necessary to show consistency and
20 coordination with the proposed preliminary plat, and any public and common improvements that
21 are planned, or approved, or funded, or under construction, or required in connection with the
22 preliminary plat, including the future phases of development.

23
24 5. **PHASING.** The Owner/Developer may choose to develop the Subject Property in
25 multiple phases or sub-phases in any order the Owner/Developer desires. Stormwater
26 calculations for the build out of each phase or sub-phase of the development shall be provided
27 with the Preliminary Plat application, along with the design and construction details of all
28 commonly or publicly owned or maintained stormwater facilities.

1
2 **6. PERMITTED USES.**

3 **A. Permitted Land Uses.**

4 The permitted land uses and their customary incidental and subordinate accessory uses on
5 the Subject Property shall be as described in the BPUD Ordinance No. 21-2009 or if not
6 specifically stated in said Ordinance, such similar uses as approved by the Development Services
7 Director.

8 **7. SITE DEVELOPMENT STANDARDS.**

9 **A. Site Development Standards shall be as set forth in the ODP/MDP and this**
10 **Agreement.** Any non-substantial or minor amendments or modifications to the
11 ODP/MDP, as such is determined by the Planning and Development Services Director, who
12 may request a review by the DRC, may be approved by the Planning and Development
13 Services Director.

14 **B. Building Architecture.**

15 Building architecture shall conform to design guidelines as approved by the Director of
16 Planning and Development Services.

17 **C. Impact Fees.**

18 The City acknowledges that the parties hereto reasonably expect any and all applications
19 for Final Site Plan review for any phase or sub-phases of this Project to be submitted within the
20 period in which the City has adopted a legal moratorium on the imposition of or obligation to
21 pay any impact fees or mobility fees or similar or like fees. It is anticipated by all parties to
22 this Agreement that no impact fees or mobility fees or any other similar or like fees or
23 obligations shall be required by the City for the development of the Subject Property. The
24 Owner/Developer shall be entitled to the benefit of the City moratorium so long as an
25 application for a building permit has been submitted by the expiration date of the moratorium
26 and the application is diligently pursued.

27
28 **D. Miscellaneous.**

- 29 a. The parties recognize that additional Police and Sheriff Department
30 services shall be required for the theatre and the Subject Property. The

1 City hereby acknowledges the availability of such services and agrees to
2 provide such services to the Subject Property that are consistent with or
3 similar to services provided throughout the City.

- 4 b. The City acknowledges that the proposed alignment of Graves Avenue
5 is no longer the preferred roadway network. The City acknowledges
6 that the ODP/MDP contains the preferred alignment for the roadway
7 network within and bordering the Subject Property.

8 **8. NATURAL RESOURCE PROTECTION**

9 **A. Wetlands** - There are no known wetlands on the Subject Property. The
10 City Commission acknowledges no payment shall be due of any funds, whether a fee, charge, or
11 otherwise, to the City and/or the City's Environmental Improvements Trust Fund, pursuant to
12 City Resolution No. 2006-13, or any other applicable ordinance, resolution or rule.

13 **B. Endangered Wildlife**: - The Owner/Developer has submitted a report
14 indicating that no scrub jays inhabit the site. The Owner/Developer shall submit a gopher tortoise
15 study for each Lot as part of the final site plan approval process and if applicable, secure the
16 appropriate permits from the applicable agencies.

17 **C. Archeological Assessment**. The Owner/Developer has complied with the
18 standard permitting condition of the Division of Historical Resources regarding fortuitous finds or
19 unexpected discoveries during ground disturbing activities on the property. The Division of Historical
20 Resources letter dated September 15, 2005, DHR No. 2005-8847, indicates no significant
21 archeological or historical sites or structures are within the Subject Property, and further examination
22 of the surrounding region suggests that a low potential for the identification of archaeological
23 resources in that area exists.

24 **D. Open Space Requirements**. The City acknowledges that due to
25 hurricanes and other damage, and in accordance with the proper permits, the Subject Property
26 was cleared of debris and dead trees and there were no trees on the site that could be preserved.
27 Accordingly, the City shall not require tree preservation, except for the impervious area,
28 landscaping and buffer specifically provided herein.

1 **9. SITE ACCESS.**

2 A. **Rhode Island Extension Right of Way:** The Owner/Developer shall
3 dedicate 80' of right of way along a portion of the eastern boundary of the Property upon the City's
4 issuance of a Preliminary Plat Development Order and a Certificate of Capacity. This 80' right of
5 way shall be utilized for the future construction of a segment of Rhode Island Extension. In the
6 event the City/County does not construct the Rhode Island Extension within ten years from the date
7 hereof, that portion of the 80' right of way that has not been constructed shall revert back to the
8 Owner/Developer without further notice or hearing. At the option of the Owner/Developer, the
9 City/County may retain the 80' right of way upon either i) the conveyance or transfer to the
10 Owner/Developer or its assigns, of any and all development rights as to that portion of the property;
11 or ii) the City/County shall pay Owner/Developer a fair market value for the fee simple rights to the
12 subject property which may be paid by the granting of impact fee credits or mobility credits or such
13 similar or like credits which may be transferred to third parties for development within five miles of
14 the Subject Property and the City/County shall facilitate the sale, transfer or assignment of said
15 credits to third parties for such valuable consideration as determined by Owner/Developer. In the
16 event the Owner/Developer elects to make any improvements beyond those required for the
17 development of the Subject Property by Owner/Developer, the City/County shall grant to
18 Owner/Developer such impact fee credits or mobility credits or such similar or like credits as is
19 available pursuant to Florida Statutes and City Code of Ordinances for such additional
20 improvements.

21 B. **Cross Access:** The Owner/Developer shall provide cross access and easements
22 as may be necessary for real property surrounded by the Subject Property that is owned by third
23 parties that are not parties to this Agreement ("surrounded parcel"), and include cross access
24 implementation measures in the Preliminary Plat, Final Plat, and Final Site Plans submitted to the
25 City for its review and approval. If and when the Owner/Developer acquires from said third party a
26 surrounded parcel, then that easement to the surrounded parcel will no longer be required, and if the
27 easement was created it may be eliminated by the Owner/Developer. Said submittals shall not be
28 deemed to be complete until reasonable cross access provisions meeting sound engineering
29 standards have been included on the submitted plans. If such surrounded parcels are provided
30 access within the internal access system, the City shall require the third party owners of the

1 surrounded parcel(s) to pay their pro rata share of expenses related to the common area
2 improvements and maintenance expenses within the BPUD.

3 C. **Mass Transit:** Owner/Developer shall provide land for a bus shelter or
4 bus-stop adjacent to the Subject Property in a location reasonably acceptable to
5 Owner/Developer and which does not negatively impact the value of the Subject Property or
6 unreasonably interfere with the use of the Subject Property and Owner/Developer's plan for
7 development of the Subject Property. Any voluntary contributions of land by Owner/Developer
8 for mass transit facilities or parking area shall be in exchange for i) an equivalent development
9 entitlement; or ii) the reduction or elimination of an equivalent fee imposed by the City or
10 County.

11 D. **Traffic Mitigation:** The applicant has completed a Traffic Impact Analysis
12 ("TIA") which identified traffic impacts and necessary mitigation measures for the approval of this
13 BPUD. The traffic mitigation and fair share payments pursuant to Sections 163.3180(11) and
14 163.3180(16), *Florida Statutes* are set forth in paragraphs 10 and 11 hereinbelow. The
15 methodology utilized for the TIA is consistent with the methodology adopted by the Deltona
16 Activity Center DRI. The City acknowledges that due to the poor economic conditions which exist
17 in retail development industry, the TIA phase completion dates shall be extended to coincide with
18 the recovery of the national economy.

19 **10. FAIR SHARE OF COSTS OF ROADWAY IMPROVEMENTS.**

20 The overall project is a commercial project planned to consist of up to 900,000 square
21 feet of commercial retail uses on the Subject Property and on adjacent property controlled by the
22 Owner/Developer, subject to final site plan approvals by the City.

23 The Owner/Developer submitted a Traffic Impact Analysis (dated December 2009)
24 ("TIA") prepared for the City of Deltona for the first 96,000 square feet of development within
25 the Subject Project. The Owner/Developer submitted a TIA (dated December 2009) prepared for
26 the County of Volusia for an additional 804,000 square feet of development within the Subject
27 Project and on adjacent property controlled by the Owner/Developer. The TIA phases, which
28 refer to thresholds of developable square footage, do not equate to the lot arrangement phases
29 reflected in this Agreement and the ODP/MDP. The two (2) TIA reports submitted to the
30 County and City take into account all phases or sub-phases of development on the Subject

Property and adjacent property controlled by Owner/Developer. The TIA includes all phases of the Subject Property and an exhibit depicting such phases is attached hereto as **Exhibit B**, which is incorporated herein by this reference.

Based upon the TIA reports, the Owner/Developer shall pay to the County or to the City as the collecting agent for the County, a fair share assessment amount prior to the issuance of building permits by the City. Payment may be in the forms authorized pursuant to Sections 163.3180(11) and 163.3180(16), *Florida Statutes*. The total fair share assessment amount due by phase is stipulated below and shall not exceed the amounts below:

	<u>Square Feet</u>	<u>Mitigation</u>
City TIA Phase	96,000	0
County TIA Phase I	301,000	\$125,000
County TIA Phase II	269,000	\$803,605
County TIA Phase III (Build Out)	<u>234,000</u>	<u>\$984,122</u>
Cumulative Total	<u>900,000</u>	<u>\$1,912,727</u>

Prior to the construction of any improvements within the County TIA Phase III, the City shall put all fair-share contributions and impact fee payments into an escrow account. The phases outlined above are defined based upon the Trip Reservations enumerated in Paragraph 11 of this Agreement. In the event that the Owner/Developer chooses to further subdivide the phases outlined above into additional sub-phases, the fair share assessment due will be calculated based on the pro-rata share of net new p.m. peak hour external trips being allocated to that specific sub-phase versus the net new p.m. peak hour external trips allocated to the entire phase of development.

Prior to the issuance of a building permit for any development within County TIA Phase III and subject to the execution of an impact fee credit agreement with the County, the Owner/Developer shall design and construct the following improvements:

1 a. 2nd northwest-bound left-turn lane at the Howland Boulevard/Graves Avenue
2 intersection;

3 b. 2nd westbound travel lane on Graves Avenue from Howland Boulevard to the
4 westernmost driveway of the development on the north side of Graves Avenue located
5 approximately 400 feet east of the I-95 overpass;

6 c. extension of the eastbound right-turn lane on Graves Avenue such that the lane begins
7 immediately east of an existing driveway on the south side of Graves Avenue at a location
8 approximately 250 feet east of the I-95 overpass;

9 d. a 265-foot (including a 50-foot taper) westbound left-turn lane on Graves Avenue into
10 the site at a location approximately 600 feet east of Normandy Boulevard.
11

12 The Owner/Developer and County shall enter into an impact fee credit agreement which
13 shall provide that all eligible costs associated with improvements set forth in paragraphs a, b, and
14 c above shall be entitled to impact fee credit against Volusia County Road Impact Fees at the
15 time the contributions are made to the County. The costs of improvements set forth in
16 paragraphs a, b, and c above for which the Owner/Developer shall be responsible shall be limited
17 to \$1,912,727 or such lesser mitigation costs as are required by the County. The impact fee
18 credit agreement shall establish the process the Owner/Developer and County must follow
19 relative to the County/City transferring of monies from the escrow account back to the
20 Owner/Developer to allow the Owner/Developer to proceed with the design and construction of
21 such improvements set forth in a, b, and c above. The County and the Owner/Developer shall
22 also enter into an agreement to relocate the County owned retention pond and to convey or
23 transfer certain surplus properties.
24

25 If the City or County modifies its Code of Ordinances with respect to the Concurrency
26 Management System (CMS) subsequent to the execution of this Agreement, or if a change in
27 circumstances such that the method or manner of payment of the total fair share assessment
28 outlined above, does not represent the method most beneficial to the Owner/Developer for
29 mitigation of transportation impacts, at the request of the Owner/Developer the City or County
30 may pursue such other method or methods so long as the rights and obligations granted herein to

1 the Owner/Developer are not adversely impacted and remain unchanged and the costs to the
2 Owner/Developer do not increase. Furthermore, should the City's CMS be eliminated or
3 otherwise negated subsequent to the execution of this Agreement, such as, but not limited to,
4 action of the Florida Legislature, the Owner/Developer (at Owner/Developer's option) may
5 waive or be released from the requirement to pay the total fair share assessments by phase,
6 subphase or otherwise, as outlined above. No such waiver or release shall eliminate the
7 Owner/Developer's Impact Fee Credits for fair share assessments already paid. Should the City
8 or County change to a mobility fee or similar form of transportation concurrency system, the
9 Owner/Developer, at Owner/Developer's option, may opt to apply its fair share assessment
10 contributions and related impact fee credits towards such fees. It is the intent of this paragraph to
11 allow the Owner/Developer to benefit from any legislative changes that reduce the financial
12 obligations for mitigation or fees of any nature or kind for transportation concurrency and to
13 limit the financial exposure of the Owner/Developer to that which is stated in this Agreement.
14

15 **11. TRIP RESERVATIONS.**

16 The Subject Property is planned as a part of the Phase I of the Interstate 4/SR 472
17 Areawide DRI, theretofore, the trip generation rate utilized for the project, as approved by the
18 City and County, was based on the approved total trip generation for Phase I of the DRI. The
19 Subject Property gross trip generation rate was based on the gross trip generation rate for the
20 retail component of Phase I of the DRI. The gross P.M. peak hour trip generation rate for Phase
21 I of the DRI was calculated as the approved gross P.M. peak hour trips for the Phase I retail uses
22 of the DRI (4,830 P.M. peak hour trips) divided by the retail square footage approved in Phase I
23 of the DRI (2,200 ksf) (4,830 P.M. peak hour trips divided by 2,200 ksf equals 2.1955 gross p.m.
24 peak hour trips per ksf). The gross daily trip generation rate for Phase I of the DRI was
25 calculated as the total daily trip generation for the retail uses for Phase I of the DRI (49,745 daily
26 trips) divided by the retail square footage approved in Phase I of the DRI (2,200 ksf) (49,745
27 daily trips divided by 2,200 ksf equals 22.6114 gross daily trips per ksf). Once the gross trip
28 generation rates for Phase I of the DRI were calculated, the gross trip generation for the project
29 was calculated by multiplying the gross trip generation rates for Phase I of the DRI by the
30 project's square footage by phase.

By its approval and execution of this Agreement, the City hereby agrees to issue and vest to the Owner/Developer the following net new external daily trip reservations by phase, and the net new p.m. peak hour external trip reservations by phase within the Interstate 4/SR 472 Areawide DRI:

CUMULATIVE PHASING

	<u>Square Feet</u>	<u>Net New External Trip Ends</u>	
		<u>P.M. Peak Hour</u>	<u>Daily</u>
City TIA Phase	96,000	122	1,900
County TIA Phase I	301,000	381	5,956
County TIA Phase II	570,000	723	11,278
County TIA Phase III (Build Out)	804,000	1,019	15,908
Combined City and County			
City TIA Phase	96,000	122	1,900
County TIA Phase I	397,000	503	7,856
County TIA Phase II	666,000	845	13,178
County TIA Phase III (Build Out)	900,000	1,141	17,808

BY PHASE

	<u>Square Feet</u>	<u>Net New External Trip Ends</u>	
		<u>P.M. Peak Hour</u>	<u>Daily</u>
City TIA Phase	96,000	122	1,900
County TIA Phase I	301,000	381	5,956
County TIA Phase II	269,000	342	5,322
County TIA Phase III (Build Out)	234,000	296	4,630
Total County	804,000	1,019	15,908

Combined City and County

City TIA Phase	96,000	122	1,900
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County TIA Phase I	301,000	381	5,956
County TIA Phase II	269,000	342	5,322
County TIA Phase III (Build Out)	<u>234,000</u>	<u>296</u>	<u>4,630</u>
Total Combined City and County	<u>900,000</u>	<u>1,141</u>	<u>17,808</u>

The Subject Property is planned as a part of the Interstate 4/SR 472 Areawide DRI, therefore the land uses are subject to the DRI Development Equivalency Matrix. The Interstate 4/State Road 472 Activity Center DRI Development Equivalency Matrix, as obtained from the City of DeLand DRI Development Order (Resolution 2003-28), which is included in **Exhibit C**, attached hereto and incorporated by this reference. The Development Equivalency Matrix is based on the trip generation rates for the DRI, therefore utilization of the Matrix by the Applicant will not require additional traffic studies by City or County. No trip reservations hereunder shall expire if Owner/Developer submits a final site plan application for any portion of the development within the City TIA Phase I (as described above) on or before January 30, 2015 and a final site plan application for any portion of the development of County TIA Phase I on or before December 30, 2020, and Owner/Developer has paid the fair share assessment or impact/mobility fees required by the City and County for the development of such phases or sub-phases. In such an event, the Owner/Developer shall be entitled to retain all trips reserved as stated herein for all other phases or sub-phases. Upon the submittal by the Owner/Developer of any final site plans for development within the Subject Property that causes the cumulative total floor area to exceed 600,000 square feet of floor area, the Owner/Developer shall be required to seek approval for any portion of development that exceeds 600,000 square feet of floor area prior to obtaining final approval of such final site plan from the City of up to a total of 900,000 square feet in accordance with the Owner/Developer's approved TIA, if otherwise required.

12. UTILITIES.

A. Sanitary Sewer. Owner/Developer shall install underground sanitary sewer utilities as are required to provide service to the Subject Property at Owner/Developer's cost and expense. Provided however, the City/County shall provide a sanitary sewer connection at or near the Subject Property at the City's/County's cost.

1 **B. Water.** Owner/Developer shall install underground water utilities as are
2 required to provide service to Subject Property at Owner/Developer's cost and expense.
3 Provided however, the City/County shall provide a connection for water at or near the
4 Subject Property at the City's/County's cost.

5 **C. Irrigation:** If available at the boundary of the Subject Property or any
6 Lot or phase within the Subject Property, the Subject Property shall use the following
7 sources for non-potable water, in order of priority, for surface irrigation of common and
8 private areas of the Subject Property.

- 9 a. Treated wastewater made available to the Subject Property by the City/County;
10 b. Surface water stored on-the Subject Property in surface water storage ponds;
11 and
12 c. If no other source is available, private irrigation wells, or potable water shall
13 be permitted.
14 d. In the event the Owner/Developer is required to construct and install any
15 water or sewer lines for the benefit of other third parties in connection with the
16 development of the Subject Property, Owner/Developer shall receive
17 reimbursement from the City/County for any other users of such facilities as such
18 users are required to connect into said system.

19 **13. STORMWATER MANAGEMENT**

20 Stormwater management and design for the Subject Property shall comply with City,
21 State and Federal requirements. The Subject Property shall have a master stormwater
22 management system in compliance with closed basin standards.

23 **14. OBLIGATIONS.** Should the Owner/Developer fail to undertake and complete its
24 obligations as described in this Agreement to the City's specifications, the City shall give the
25 Owner/Developer thirty (30) days' written notice to commence and ninety (90) days thereafter
26 to complete said required obligation (provided, however, that if any such obligation takes longer
27 than ninety (90) days to complete, in the exercise of reasonable due diligence, such time
28 permitted shall be extended by such additional time may be required if Owner/Developer
29 commences the obligation within the ninety (90) day period and thereafter prosecutes it to
30 completion with due diligence). If the Owner/Developer fails to complete the obligations within

1 such period, the City, without further notice to the Owner/Developer or its successors in interest,
2 may, without prejudice to any other rights or remedies it may have, perform such obligations.
3 Further, the City is hereby authorized to assess the actual and verified cost of completing such
4 obligations against the Subject Property. The lien of such assessments shall be superior to all
5 others, and all existing lienholders and mortgagees, by their execution of the subordination or
6 joinder documents, agree to subordinate their liens or mortgages to the City's said liens or
7 assessments.

8 **15. ENFORCEMENT.** In the event that enforcement of this Agreement by the City
9 becomes necessary, and the City is successful in such enforcement, the Owner/Developer shall
10 be responsible for all costs and expenses, including attorneys' fees whether or not litigation is
11 necessary and if necessary, both at trial and on appeal, incurred in enforcing or ensuring
12 compliance with the terms and conditions of this Agreement which costs, expenses and fees shall
13 also be a lien upon the Subject Property superior to all others. In the event that enforcement of
14 this Agreement by the Owner/Developer becomes necessary, and the Owner/Developer is
15 successful in such enforcement, the City shall be responsible for all costs and expenses,
16 including attorneys' fees whether or not litigation is necessary and if necessary, both at trial and
17 on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this
18 Agreement.

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

25 **17. UTILITY EASEMENTS.** The Owner/Developer shall provide to the City, prior to
26 the City's approval of the Final Plat and Final Site Plans, such easements and other legal
27 documentation, in form mutually acceptable to the City Attorney and the Owner/Developer, as
28 the City may deem reasonably necessary or appropriate for the installation and maintenance of
29 the utility and other services necessary to service the Subject Property, including but not limited
30 to, sewer, potable water, and reclaimed water services, electric, cable, fire protection and

telecommunications. The Owner/Developer shall also provide access and utility easements to all parcels of property owned by a third party and located within the boundaries of the Subject Property. Such easements shall not unreasonably impede or impair the use of the Subject Property by the Owner/Developer or interfere with the Owner/Developer's plan of development.

18. 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
EPIC Theatres, Inc.
P.O. Box 2076
DeLand, Florida 32721-2076
Phone: 386-736-6830
Fax: 386-738-2596
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**

**With a Copy to:
LENDERS:
Comerica Bank
Attn.: David Sass
101 North Main Street
Suite 200 MC 9403
Ann Arbor, Michigan 48104
Telephone 734-930-2442**

CITY'S REPRESENTATIVE:

**City Clerk and Planning & Development Services Director
2345 Providence Boulevard
Deltona, Florida, 32725
Telephone 386-878-8600, Fax 386-878-8601**

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

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

6 **20. FORCE MAJURE.** Notwithstanding anything contained in this Agreement, each
7 party shall be excused from performing any obligation under this Agreement and any delay in
8 the performance of any obligation under this Agreement shall be excused, if, but only for as long
9 as, the performance of the obligation is prevented, delayed or otherwise hindered by acts of God,
10 fire, earthquake, floods, explosion, actions or the elements, war, riots, mob violence, Inability to
11 procure or a general shortage of labor, equipment, facilities, materials or supplies in the open
12 market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court
13 orders, laws or orders of governmental or military authorities or any other cause, whether similar
14 or dissimilar to the foregoing, not within the control of such party (other than lack of or inability
15 to procure monies to fulfill its commitments and obligations under the Agreement).

16 Notwithstanding any specific references in certain provisions of this Agreement to this
17 Section 20, the absence of such specific reference in any other provision shall not be deemed to
18 diminish the general applicability of this Section 20.

19 **21. BINDING EFFECT.** This Agreement shall run with the land, shall be binding upon
20 and inure to the benefit of the Owner/Developer and its assigns and successors in interest and the
21 City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of
22 recording this document in the Public Records of Volusia County, Florida. This Agreement does
23 not, and is not intended to, prevent or impede the City from exercising its legislative authority as
24 the same may affect the Subject Property.

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

1 IN WITNESS WHEREOF, the Owner/Developer and the City have executed this
2 Agreement as of the day and year first above written.

3 SIGNED, SEALED AND DELIVERED
4 IN THE PRESENCE OF:

5
6
7
8
9
10 Signature of Witness #1
11 Eduardo M. Vega
12 Print or type name

13
14 Signature of Witness #2
15 Christine M. Morris
16 Print or type name

DELTONA RETAIL HOLDINGS, LLC
a Florida limited liability company

BY: William F. Demarsh
Print or type name: William F. Demarsh

17
18
19
20
21
22
23
24 Signature of Witness #1
25 Eduardo M. Vega
26 Print or type name

27
28
29 Signature of Witness #2
30 Christine M. Morris
31 Print or type name

ELEANOR J. DEMARSH, AS TRUSTEE OF
THE ELEANOR J. DEMARSH REVOCABLE
TRUST DATED MAY 20, 1992, AS RESTATED
MARCH 21, 1994

BY: Eleanor Demarsh
Print or type name: Eleanor Demarsh

32
33
34 ATTEST: Edith D. Lawrence
35 Signature
36 Edith D. Lawrence
37 Print or type name
38 AS: Member

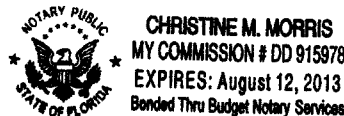
39
40 Mailing Address: P.O. Box 2076
41 Deland, FL 32721-2076
42
43
44

1 STATE OF FLORIDA

2 COUNTY OF Volusia

3 The foregoing instrument was acknowledged before me this 23rd day of March
4 2010, by William Frank DeMarsh and _____,
5 respectively, of Deltina Retail Holdings LLC, who is/are personally known to me or who
6 has/have produced _____ as identification and who did
7 not (did) take an oath.

8 Christine M Morris
9 Signature
10 (Notary Stamp) Christine M. Morris
11 Print or type name
12

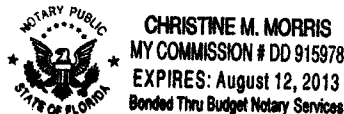


17 STATE OF FLORIDA

18 COUNTY OF Volusia

19 The foregoing instrument was acknowledged before me this 23rd day of March
20 2010, by Eleanor J. DeMarsh, as Trustee of the Eleanor J. DeMarsh Revocable Trust dated May
21 20, 1992, as Restated March 21, 1994, who is personally known to me or who has produced _____
22 _____ as identification and who did not (did) take an oath.

23 Christine M Morris
24 Signature
25 (Notary Stamp) Christine M. Morris
26 Print or type name



ACCEPTED FOR THE CITY OF DELTONA

By:

Dennis Mulder, Mayor

Date:

5-14-10

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 14th day of May 2010, by Dennis Mulder as Mayor of the City of Deltona, Florida, who is personally known to me and acknowledges executing the same freely and voluntarily under authority vested in him.



Signature of Notary

Jean W. Oertli

Print or type name

This instrument approved by:

James Fowler, Acting City Attorney

as to form and legality for use and reliance by the
City of Deltona.

This instrument prepared by:

City of Deltona

Department of Development Services

2345 Providence Boulevard

Deltona, Florida 32725

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT made this _____ day of _____
20__, by _____ whose address is _____,
referred to as "Mortgagee."

WITNESSETH:

The Mortgagee of the property described in the foregoing Developer's Agreement which
property is owned by _____, does hereby agree to subordinate all its interests
and rights contained in the property to the foregoing Developer's Agreement which property is
owned by _____ entered into by _____ as
Owner/Developer and the CITY OF DELTONA. This Subordination Agreement shall bind all
successors, assigns, and representatives of the Mortgagee.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

MORTGAGEE:

BY: _____

Signature _____
Print or type name

Signature of Witness # 1

Print or type name

Signature of Witness #2

Print or type name

ATTEST:

Signature

Print or type name

AS: _____

Mailing Address: _____

1 **STATE OF FLORIDA**

2 **COUNTY OF** _____

3 The foregoing instrument was acknowledged before me this ____ day of _____
4 20____, by _____ and _____,
5 and _____, respectively, of _____, who
6 are personally known to me or who have produced _____ as
7 identification and who did (did not) take an oath.

8 _____
9 Signature _____
10 Print or type name
11 _____

12 (Notary Stamp)

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT made this 12th day of March
2010, by Comerica Bank whose address is _____,
referred to as "Mortgagee."

WITNESSETH:

The Mortgagee of the property described in the foregoing Developer's Agreement
which property is owned by Deltona Retail Holdings, LLC, does hereby agree to
subordinate all its interests and rights contained in the property to the foregoing
Developer's Agreement which property is owned by Deltona Retail Holdings, LLC
entered into by Deltona Retail Holdings, LLC as Owner/Developer and the CITY OF
DELTONA. This Subordination Agreement shall bind all successors, assigns, and
representatives of the Mortgagee.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

MORTGAGEE:

BY: _____

Signature David J. SASS
Print or type name

Mary Ann Erick
Signature of Witness # 1
MARY ANN ERICK
Print or type name

Heide L. Lewiston
Signature of Witness #2
Heide L. Lewiston
Print or type name

ATTEST:

Signature

Print or type name

AS: _____

Mailing Address: _____

STATE OF MICHIGAN

COUNTY OF Washtenaw

The foregoing instrument was acknowledged before me this 12th day of March
2010, by David J. Sass, Sr Vice President respectively, of Comerica
Bank, who is personally known to me or who has produced

_____ as identification and who did (did not) take an oath.

Signature _____
Print or type name _____

Diana K Stamper

(Notary Stamp)

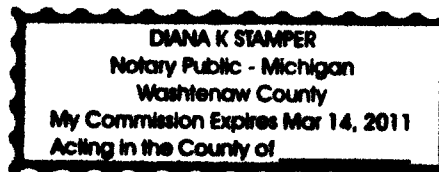


EXHIBIT "A"

LEGAL DESCRIPTION:

LEGAL DESCRIPTION: OVERALL (WRITTEN)

A parcel of land lying in and being a part of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, lying East of the Easterly Right of Way of Normandy Boulevard, as now established, and South of the Southerly Right of Way of Howland Boulevard, as now established, being more particularly described as follows: Commencing at the Southwest corner of said NE $\frac{1}{4}$, run thence S $89^{\circ}47'13''$ E along the South line of said NE $\frac{1}{4}$ a distance of 526.96 feet to a point lying on said Easterly Right of Way and the Point of Beginning. Run thence N $00^{\circ}10'55''$ W along said Right of Way a distance of 169.22 feet to a point of curve, concave to the Northwest, having a radius of 1959.86 feet and a delta of $11^{\circ}35'31''$ with a chord bearing and distance of N $05^{\circ}29'05''$ E, 395.84 feet, run thence Northeasterly along said curve and Right of Way an arc distance of 396.51 feet; run thence N $00^{\circ}18'41''$ W continuing along said Right of Way a distance of 765.22 feet to a point on the North line of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7; run thence N $00^{\circ}19'01''$ W continuing along said Right of Way and entering into the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7 a distance of 815.24 feet; run thence S $89^{\circ}32'05''$ E along said Right of Way a distance of 20.00 feet; run thence N $00^{\circ}19'01''$ W along said Right of Way a distance of 413.27 feet to aforesaid Southerly Right of Way of Howland Boulevard; run thence S $89^{\circ}28'24''$ E along said Southerly Right of Way a distance of 74.70 feet; run thence N $00^{\circ}20'22''$ W along said Right of Way a distance of 22.62 feet; run thence S $85^{\circ}04'51''$ E along said Southerly Right of Way a distance of 135.25 feet; run thence S $00^{\circ}21'46''$ E along said Right of Way a distance of 12.25 feet; run thence S $89^{\circ}28'24''$ E along said Right of Way a distance of 1841.57 feet to the East line of said NE $\frac{1}{4}$; run thence S $00^{\circ}37'22''$ E along said East line a distance of 2545.72 feet to the Southeast corner of said NE $\frac{1}{4}$; run thence N $89^{\circ}47'13''$ W along the South line of said NE $\frac{1}{4}$ a distance of 2124.49 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

AND

A parcel of land lying in and being a part of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, lying West of the Westerly Right of Way of Normandy Boulevard, as now established, and South of the Southerly Right of Way of Howland Boulevard, as now established, being more particularly described as follows: Beginning at the Southwest corner of said NE $\frac{1}{4}$, run thence N $00^{\circ}14'38''$ W along the West line of said NE $\frac{1}{4}$ a distance of 2560.14 feet to a point on said Southerly Right of Way of Howland Boulevard; run thence S $89^{\circ}28'24''$ E along said Right of Way a distance of 464.02 feet to a point on said Westerly Right of Way of Normandy Boulevard; run thence S $00^{\circ}19'01''$ E along said Westerly Right of Way a distance of 1228.82 feet to a point on the South line of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7; run thence S $00^{\circ}18'41''$ E continuing along said Right of Way and entering into the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7 a distance of 604.50 feet; run thence N $89^{\circ}40'16''$ W along said Right of Way a distance of 15.00 feet; run thence S $00^{\circ}18'41''$ E continuing along said Right of Way a distance of 387.24 feet; run thence S $89^{\circ}43'50''$ E along said Right of Way a distance of 1.32 feet to a point on a curve, concave to the Northwest, having a radius of 1859.86 feet and a delta of $08^{\circ}41'21''$, with a chord bearing and distance of S $10^{\circ}59'15''$ W, 281.79 feet; run thence Southwesterly along said curve and Right of Way an arc distance of 282.06 feet; run thence S $28^{\circ}57'24''$ W continuing along said Right of Way a distance of 68.76 feet to the South line of said NE

¼; run thence N 89°47'13" W a distance along said South line a distance of 364.80 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "A" (WRITTEN)

Lots 10 through 19, inclusive, Block 8, Davis Park, Second Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 175, Public Records of Volusia County, Florida and that part of the W ½ of Persimmon Street lying East of and contiguous thereto, all being more particularly described as follows: Commencing at the Northeast corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 00°37'22" E along the East line of said NE ¼ a distance of 1172.73 feet; run thence N 89°37'03" W a distance of 495.38 feet to the Point of Beginning. Continue thence N 89°37'03" W a distance of 165.12 feet; run thence N 00°31'40" W a distance of 251.05 feet; run thence S 89°35'12" E a distance of 165.02 feet; run thence S 00°33'05" E a distance of 250.96 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "B" (WRITTEN)

Lots 12 through 15, inclusive, Block 11, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of Florida Avenue lying South of and contiguous thereto, and that part of the E ½ of Clara Street Lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°47'13" E along the South line of said NE ¼ a distance of 828.50 feet to the Point of Beginning. Run thence N 00°21'19" W a distance of 160.68 feet; run thence S 89°45'07" E a distance of 165.64 feet; run thence S 00°22'41" E a distance of 160.64 feet to said South line of the NE ¼; run thence N 89°47'13" W along said South line a distance of 165.70 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "C" (WRITTEN)

Lots 16 through 19, inclusive, Block 7, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of the E ½ of Araminta Street lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°14'38" W along the West line of said NE ¼ a distance of 437.94 feet; run thence S 89°43'25" E a distance of 165.53 feet to the Point of Beginning. Run thence N 00°16'01" W a distance of 100.80 feet; run thence S 89°42'47" E a distance of 165.49 feet; run thence S 00°17'23" E a distance of 100.77 feet; run thence N 89°43'25" W a distance of 165.53 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "D" (WRITTEN)

Lots 18 and 19, Block 1, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of the E ½ of Crystal Street lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Southeast corner of the SW ¼ of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°25'56" W along the East line of said SW ¼ of the NE ¼ a distance of 848.99 feet to the Point of Beginning. Run thence N 89°41'13" W a distance of 165.45 feet; run thence N 00°24'02" W a distance of 50.29 feet; run thence S 89°40'47" E a distance of 165.42 feet to the East line of said SW ¼ of the NW ¼; run thence S 00°25'56" E along said East line a distance of 50.27 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "E" (WRITTEN)

Lots 1 through 46, inclusive, Block 3, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida and that part of the N ½ of Alabama Avenue lying South of and contiguous thereto and that part of the W ½ of Clara Street lying East of and contiguous thereto and that part of an un-named alley lying South of Lots 1 through 9, and contiguous thereto, all lying East of the Easterly Right of Way of Normandy Boulevard, as now established, and all being more particularly described as follows: Commencing at the Southwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N 00°14'38" W along the West line of said NE ¼ a distance of 664.83 feet; run thence S 89°41'52" E a distance of 566.54 feet to the aforesaid Easterly Right of Way of Normandy Boulevard; run thence N 00°18'41" W along said Right of Way a distance of 30.00 feet to the Point of Beginning. Continue thence N 00°18'41" W a distance of 634.16 feet; run thence S 89°37'50" E a distance of 260.16 feet; run thence S 00°21'23" E a distance of 633.86 feet; run thence N 89°41'52" W a distance of 260.66 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "F" (WRITTEN)

Lot 24, Block 4, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida, lying West of the Westerly Right of Way of Normandy Boulevard, as now established, and being more particularly described as follows: Commencing at the Southwest corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N $00^{\circ}14'38''$ W along the West line of said NE $\frac{1}{4}$ a distance of 825.63 feet; run thence S $89^{\circ}41'27''$ E a distance of 330.91 feet to the Point of Beginning. Run thence N $00^{\circ}17'23''$ W a distance of 25.19 feet; run thence S $89^{\circ}41'11''$ E a distance of 135.44 feet to the aforesaid Westerly Right of Way of Normandy Boulevard; run thence S $00^{\circ}18'41''$ E along said Right of Way a distance of 25.18 feet; run thence N $89^{\circ}41'27''$ W a distance of 135.45 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "G" (WRITTEN)

Lots 11 through 20, inclusive, Block 4, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida, and that part of the S $\frac{1}{2}$ of an un-named alley lying North of and contiguous thereto, all lying West of the Westerly Right of Way of Normandy Boulevard, as now established, and all being more particularly described as follows: Commencing at the Southwest corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N $00^{\circ}14'38''$ W along the West line of said NE $\frac{1}{4}$ a distance of 926.48 feet; run thence S $89^{\circ}40'25''$ E a distance of 330.83 feet to the Point of Beginning. Run thence N $00^{\circ}17'23''$ W a distance of 259.40 feet; run thence S $89^{\circ}38'37''$ E a distance of 135.31 feet to the aforesaid Westerly Right of Way of Normandy Boulevard; run thence S $00^{\circ}18'41''$ E along said Right of Way a distance of 259.33 feet; run thence N $89^{\circ}40'25''$ W a distance of 135.41 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "H" (WRITTEN)

Lots 16 and 17, Block 6, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, lying West of the Westerly Right of Way of Normandy Boulevard as now established, and being more particularly described as follows: Commencing at the Northwest corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, run thence S $00^{\circ}14'38''$ E along the West line of said NE $\frac{1}{4}$ a distance of 1081.75 feet; run thence S $89^{\circ}36'17''$ E a distance of 330.19 feet to the Point of Beginning. Continue thence S $89^{\circ}36'17''$ E a distance of 135.08 feet to the aforesaid Westerly Right of Way of Normandy Boulevard; run thence S $00^{\circ}19'01''$ E along said Right of Way a distance of 50.84 feet; run thence N $89^{\circ}36'40''$ W a distance of 135.10 feet; run thence N $00^{\circ}17'39''$ W a distance of 50.86 feet to the Point of Beginning. Being subject to any Easement or Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "I" (WRITTEN)

Lots 20, 21 and 22, Block 4, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, and that part of Araminta Street lying West of and contiguous thereto, all being more particularly described as follows: Commencing at the Northwest corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S $00^{\circ}14'38''$ E along the West line of said NE $\frac{1}{4}$ a distance of 513.90 feet; run thence S $89^{\circ}32'05''$ E a distance of 164.83 feet to the Point of Beginning. Run thence N $00^{\circ}16'16''$ W a distance of 75.64 feet; run thence S $89^{\circ}31'26''$ E a distance of 164.83 feet; run thence S $00^{\circ}17'39''$ E a distance of 75.62 feet; run thence N $89^{\circ}32'05''$ W a distance of 164.86 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "J" (WRITTEN)

Lot 6, Block 3, Davis Park, Second Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 175, Public Records of Volusia County, Florida, and that part of the N $\frac{1}{2}$ of an unnamed driveway lying South of and contiguous thereto, all lying South of the Southerly Right of Way of Howland Boulevard, as now established, and being more particularly described as follows: Commencing at the Northeast corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S $00^{\circ}37'22''$ E along the East line of said NE $\frac{1}{4}$ a distance of 100.00 feet to a point on said Southerly Right of Way of Howland Boulevard; run thence N $89^{\circ}28'24''$ W along said Southerly Right of Way a distance of 658.75 feet to the Point of Beginning. Run thence S $00^{\circ}34'31''$ E a distance of 102.85 feet; run thence N $89^{\circ}28'43''$ W a distance of 24.95 feet; run thence N $00^{\circ}34'14''$ W a distance of 102.85 feet to the aforesaid Southerly Right of Way; run thence S $89^{\circ}28'24''$ E along said Right of Way a distance of 24.95 feet to the Point of Beginning. Being subject to any Easements of Record.

LEGAL DESCRIPTION: EXCEPTION "K" (WRITTEN)

Block 4, Davis Park, Second Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 175, Public Records of Volusia County, Florida, and that part of the E $\frac{1}{2}$ of Grape Street lying West of and contiguous thereto, and the W $\frac{1}{2}$ of Orange Street lying East of and contiguous thereof and the N $\frac{1}{2}$ of Tennessee Avenue lying South of and contiguous thereto and that certain unnamed alley lying South of Lots 1 through 10, and contiguous thereto, all lying South of the Southerly Right of Way of Howland Boulevard, as now established, and being more particularly described as follows: Commencing at the Northeast corner of the NE $\frac{1}{4}$ of section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S $00^{\circ}37'22''$ E along the East line of said NE $\frac{1}{4}$ a distance of 100.00 feet to a point on said Southerly Right of Way of Howland Boulevard; run thence N $89^{\circ}28'24''$ W along said Southerly Right of Way a distance of 823.43 feet to the Point of Beginning; run thence S $00^{\circ}30'15''$ E a distance of 567.57 feet; run thence N $89^{\circ}33'07''$ W a distance of 329.83 feet; run thence N $00^{\circ}27'24''$ W a distance of 568.02 feet to the aforesaid Southerly Right of Way; run thence S $89^{\circ}28'24''$ E along said Right of Way a distance of 329.37 feet to the Point of Beginning. Being subject to any Easement of Record.

LEGAL DESCRIPTION: EXCEPTION "L" (WRITTEN)

Lots 6 through 10, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, and that part of the N ½ of an un-named driveway lying South of and contiguous thereto, all lying South of the Southerly Right of Way of Howland Boulevard, as now established and East of the Easterly Right of Way of Normandy Boulevard, as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°28'24" E along the North line of said NE ¼ a distance of 583.89 feet; run thence S 00°19'01" E a distance of 100.00 feet to the Point of Beginning lying on said Southerly Right of Way of Howland Boulevard; run thence S 89°28'24" E along said Right of Way a distance of 74.70 feet; run thence S 00°20'22" E a distance of 103.49 feet; run thence N 89°29'34" W a distance of 74.74 feet to said Easterly Right of Way of Normandy Boulevard; run thence N 00°19'01" W along said Easterly Right of Way a distance of 103.51 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "M" (WRITTEN)

Lots 15, and 16, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, lying East of the Easterly Right of Way of Normandy Boulevard as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE ¼ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S 89°28'24" E along the North line of said NE ¼ a distance of 583.89 feet; run thence S 00°19'01" E a distance of 100.00 feet to a point lying on the Southerly Right of Way of Howland Boulevard, as now established, said point also lying on said Easterly Right of Way of Normandy Boulevard; run thence S 00°19'01" E along said Easterly Right of Way a distance of 211.75 feet to the Point of Beginning. Run thence S 89°30'10" E a distance of 74.78 feet; run thence S 00°20'24" E a distance of 50.37 feet; run thence N 89°30'38" W a distance of 74.80 feet to aforesaid Easterly Right of Way; run thence N 00°19'01" W along said Right of Way a distance of 50.38 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "N" (WRITTEN)

Lots 19, and 20, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, lying East of the Easterly Right of Way of Normandy Boulevard as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S $89^{\circ}28'24''$ E along the North line of said NE $\frac{1}{4}$ a distance of 583.89 feet; run thence S $00^{\circ}19'01''$ E a distance of 100.00 feet to a point lying on the Southerly Right of Way of Howland Boulevard, as now established, said point also lying on said Easterly Right of Way of Normandy Boulevard; run thence S $00^{\circ}19'01''$ E along said Easterly Right of Way a distance of 312.51 feet to the Point of Beginning. Run thence S $89^{\circ}31'06''$ E a distance of 74.82 feet; run thence S $00^{\circ}20'24''$ E a distance of 50.37 feet; run thence N $89^{\circ}31'35''$ W a distance of 74.84 feet to aforesaid Easterly Right of Way; run thence N $00^{\circ}19'01''$ W along said Right of Way a distance of 50.38 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "O" (WRITTEN)

Lots 23 through 34, inclusive, Block 3, Davis Park, First Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 167, Public Records of Volusia County, Florida, and that part of the W $\frac{1}{2}$ of Clara Street lying East of and contiguous thereto and the N $\frac{1}{2}$ of Tennessee Avenue lying South of and contiguous thereto, all lying East of the Easterly Right of Way of Normandy Boulevard as now established and being more particularly described as follows: Commencing at the Northwest corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S $89^{\circ}28'24''$ E along the North line of said NE $\frac{1}{4}$ a distance of 583.89 feet; run thence S $00^{\circ}19'01''$ E a distance of 100.00 feet to a point lying on the Southerly Right of Way of Howland Boulevard, as now established, said point also lying on said Easterly Right of Way of Normandy Boulevard; run thence S $00^{\circ}19'01''$ E along said Easterly Right of Way a distance of 413.27 feet to the Point of Beginning. Run thence S $89^{\circ}32'05''$ E a distance of 74.86 feet; run thence N $00^{\circ}20'24''$ E a distance of 50.37 feet; run thence S $89^{\circ}31'35''$ E a distance of 164.84 feet; run thence S $00^{\circ}21'46''$ E a distance of 202.15 feet; run thence S $89^{\circ}33'07''$ W a distance of 259.82 feet to the aforesaid Easterly Right of Way of Normandy Boulevard; run thence N $00^{\circ}19'01''$ W along said Right of Way a distance of 155.95 feet; run thence S $89^{\circ}32'05''$ E continuing along said Right of Way a distance of 20.00 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "P" (WRITTEN)

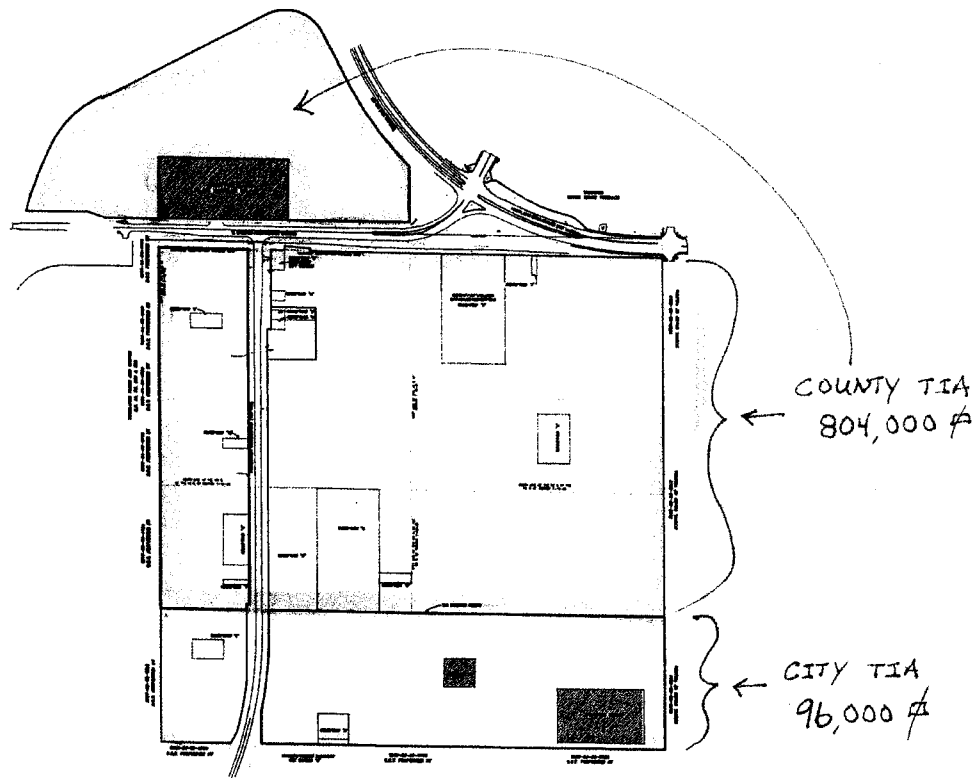
A parcel of land lying in and being a part of Blocks 8, 9 and 10 and Mangoe Street, Persimmon Street and Florida Avenue, Davis Park, Fourth Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 222, Public Records of Volusia County, Florida, being more particularly described as follows: Commencing at the Southeast corner of said Davis Park, Fourth Addition said point also being the Southeast corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N $89^{\circ}47'13''$ W along the Southerly boundary of said Fourth Addition also being the South line of said SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ a distance of 110.00 feet; run thence N $00^{\circ}36'47''$ W a distance of 30.00 feet to a point on the centerline of said Florida Avenue and the Point of Beginning. Run thence N $89^{\circ}47'13''$ W along said centerline a distance of 460.00 feet; run thence N $00^{\circ}36'47''$ W a distance of 280.00 feet; run thence S $89^{\circ}47'00''$ E a distance of 460.00 feet; run thence S $00^{\circ}36'47''$ E a distance of 280.00 feet to the Point of Beginning. Being subject to any Easement and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "Q" (WRITTEN)

Lots 35 through 40, inclusive, Block 7, Davis Park, Fourth Addition to Orange City, Florida, a subdivision according to map in Map Book 6, Page 222, Public Records of Volusia County, Florida, and the East $\frac{1}{2}$ of Grape Street lying West of and contiguous thereto and being more particularly described as follows: Commencing at the Southeast corner of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence N $89^{\circ}47'13''$ W along the South line of said NE $\frac{1}{4}$ a distance of 994.38 feet; run thence N $00^{\circ}28'48''$ W a distance of 311.16 feet to the Point of Beginning; run thence N $89^{\circ}45'11''$ W a distance of 165.60 feet; run thence N $00^{\circ}27'23''$ W a distance of 150.75 feet; run thence S $89^{\circ}44'09''$ E a distance of 165.54 feet; run thence S $00^{\circ}28'48''$ E a distance of 150.70 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.

LEGAL DESCRIPTION: EXCEPTION "R" (WRITTEN)

Lots 1 through 46, inclusive, Block 2, Davis Park, Sixteenth Addition to Orange City, Florida, a subdivision according to map in Map Book 7, Page 68, Public Records of Volusia County, Florida, and the East $\frac{1}{2}$ of Clara Street lying West of and contiguous thereto and the North $\frac{1}{2}$ of Alabama Avenue lying South of and contiguous thereto and the West $\frac{1}{2}$ of Crystal Street lying East of and contiguous thereto and that certain alley lying South of Lots 1 through 10, and contiguous thereto and being more particularly described as follows: Commencing at the Northeast corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7, Township 18 South, Range 31 East, Volusia County, Florida, run thence S $89^{\circ}37'50''$ W along the North line of said SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ a distance of 165.19 feet to the Point of Beginning; run thence S $00^{\circ}24'02''$ E a distance of 633.48 feet; run thence N $89^{\circ}41'52''$ W a distance of 330.86 feet; run thence N $00^{\circ}21'23''$ W a distance of 633.86 feet to said North line; run thence S $89^{\circ}37'50''$ E along said North line a distance of 330.38 feet to the Point of Beginning. Being subject to any Easements and Rights of Way of Record.



"B"

to mean land uses which generate five percent (5%) of the external daily trips allocated to the respective local government during this time frame. Infrastructure shall include, but not limited to, the construction of roads, water and sewer utilities, and stormwater management systems.

9. This development order shall comply with the requirements of the Volusia Growth Management Commission as articulated in their resolution No. 95-06 dated May 24, 1995, as such requirements may be amended and in effect from time to time.

Development Equivalency Matrix

10. The City may approve an increase or decrease of a particular land use within the approved development program identified on Exhibit B by using a conversion table, attached as Exhibit C, which is based on equivalent peak hour directional trip ends. Use of the matrix may increase or decrease the total amount of each land use by no more than the amount allowed for in the substantial deviation criteria identified in Chapter 380.06(19)(b) 1-14, Florida Statutes, unless the Development Order is amended to accommodate such a change. Greater changes than those discussed above, considered cumulatively, shall be subject to normal Development Order amendment processes. Any time the matrix is used, DCA, ECFRPC, and the FDOT must be provided notice of the proposal at least 30 days in advance of the change. Use of the matrix will be reported on an individual and cumulative basis and Project Impacts documented in the biennial report. The change notice shall show that there are not additional impacts to schools, affordable housing or other public facilities. Any future Notice of Proposed Change (NOPC) shall incorporate any changes due to the use of the matrix.

Archeological Resources

11. Prior to initiating project related land clearing or ground disturbing activities within the project area, a systematic professional archaeological and historical survey shall be conducted for that area is to locate and assess the significance of archaeological and historic properties present. The resultant survey report shall be consistent with Rule 9J2-043, F.A.C. and shall conform to the specifications set forth in Chapter 1A-46, FAC and shall be forwarded to the Florida Department of State, Division of Historical Resources (DHR). All correspondence with DHR regarding the survey and findings will be copied to the DCA, and the local government of jurisdiction, City of DeLand.
12. Project construction personnel shall be notified, through posted advisories or other methods, of the potential for artifact discoveries on the site and to report suspected findings to the project manager. In the event of discovery of artifacts of historic or archaeological significance during project construction, the developer shall stop construction at the site of discovery and notify the local government of jurisdiction and the Division of Historic Resources (DHR) of the Florida Department of State. From the date of notification, construction shall be suspended within a 100-foot radius of the site of discovery for a period of up to 120 days to allow evaluation of the site. The developer shall provide proper protection of the discovery, to the satisfaction of the DHR consistent with Rule 9J-2.043, F.A.C.

" C "

Interstate 4/State Road 472 Activity Center DRI
 Development Equivalency Matrix

Change To	Change From >	Light Industrial (KSF)	Office (KSF)	Retail (KSF)	Multi Family (Unit)	Single Family (Unit)	Hotel (Room)	PM Peak Hour External Outbound Trip Rate per Unit of Land Use *
Light Industrial (KSF)	N/A		1.170	1.394	8.341	3.264	4.010	1.005 per 1 KSF Light Industrial
Office (KSF)	0.856	N/A		1.191	5.420	2.790	3.428	0.889 per 1 KSF Office
Retail (KSF)	0.717	0.839	N/A		4.549	2.342	2.877	0.721 per 1 KSF Retail
Multi Family (Unit)	0.158	0.184	0.220	N/A		0.515	0.632	0.159 per 1 Unit Multi Family
Single Family (Unit)	0.308	0.358	0.427	1.943	N/A		1.229	0.308 per 1 Unit Single Family
Hotel (Room)	0.249	0.292	0.348	1.581	0.814	N/A		0.251 per 1 Room Hotel

* Land use exchanges based on net external PM peak hour outbound project traffic
 Trip rates derived from Table 21-6 per DRI Second Sufficiency Response - December 2002
 Industrial, Office & Retail trip rates are averaged from multiple phase external trip totals (refer to Tab 21-6)

Example Exchanges:

To Add 10 KSF Retail by Reducing Office Space:
 $10 \text{ KSF Retail} \times .839 \text{ KSF Office} = 8.39315$; Reduce Office by 8.39 KSF

To Add 25 KSF Office by Reducing Hotel Rooms:
 $25 \text{ KSF} \times 3.428 \text{ Rooms/KSF} = 85.6894 \text{ Rooms}$; Reduce Hotel Rooms by 86 Rooms

"C"