

**PALM HARBOR GOLF  
MASTER PLAN DEVELOPMENT AGREEMENT  
DRAFT 11-27-2019**

**THIS MASTER PLAN DEVELOPMENT AGREEMENT**, (herein referred to as the “Development Agreement”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF PALM COAST**, a Florida municipal corporation (herein referred to as the “City”), whose address is 160 Lake Avenue, Palm Coast, Florida, 32164, and the owner of the subject property, **JDI Palm Coast, LLC** a Georgia limited liability company (herein referred to from time-to-time as the “Owner” regardless of whether singular or plural ownership status) whose address is P.O. Box 64, Little Rock, AR 72203.

**WITNESSETH:**

**WHEREAS**, JDI Palm Coast, LLC, is the principal owner and developer of a 16.320 (+/-) acre site, as more particularly described on **Exhibit “A” (“JDI Property”)**; and

**WHEREAS**, the City is the fee simple title owner of certain real property that is the location of ~~portions of~~ the City owned Palm Harbor Golf Course and consists of \_\_\_\_\_ 148.68+/- acres located in Palm Coast adjacent to the JDI Property, more particularly described in the legal description attached hereto as **Exhibit “C” (“City Property”)**; and

**WHEREAS**, the JDI Property includes the driving range, ~~and~~ chipping green and parking areas for the City owned Palm Harbor Golf Course and ~~parking areas used by the patrons of the golf course’s~~ clubhouse; and

**WHEREAS**, the JDI Property and the City Property have a Future Land Use Map designation of Greenbelt; and

**WHEREAS**, the Owner desires to acquire certain portions of the City Property in order

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1 to create a consolidated and contiguous parcel for the purposes of residential  
2 development; and

3 **WHEREAS**, the City desires to acquire certain portions of the JDI Property for the  
4 driving range, chipping green and to allow future upgrades and expansion to the existing  
5 golf course operations and facilities; and

6 **WHEREAS**, Owner desires to convey to the City fee simple ownership of a \_\_\_\_\_  
7 9.07+/- acre portion of the JDI Property, more particularly described in the legal  
8 description attached hereto as Exhibit “D” (“JDI’s Exchange Property”); for the Palm  
9 Harbor Golf Course driving range, relocation of the chipping green, and other golf course  
10 improvements subject to the terms and conditions of a separate agreement between the  
11 parties; and

12 **WHEREAS**, the City desires to convey to the Owner fee simple ownership of certain  
13 parcels adjacent to the JDI Property totaling 2.71+/- acres, more particularly described in  
14 the legal description attached hereto as Exhibit “E” (“City’s Exchange Property”); to  
15 allow for a more efficient and consolidated residential development pattern; and

16 **WHEREAS**, the City Council deems the exchange of property between the Owner and  
17 the City to be a proper public purchase, and that said exchange will achieve important  
18 City objectives, such as providing a permanent facility-driving range for the Palm Harbor  
19 Golf Course's driving range, as well as stimulating economic development in the City,  
20 increasing property values, and declares that the portions of the City Property to be  
21 conveyed to Owner are surplus real property; and

22 **WHEREAS**, the JDI Property and the City Property are collectively referred to herein  
23 as the “Subject Property”; and

1       **WHEREAS**, the Subject Property ~~and portions of the City Property~~ is subject to  
2 Ordinance 2007-23 as recorded in Official Records Book 1624, Page 260 of the Public  
3 Records of Flagler County, Florida, which amended and restated the Planned Unit  
4 Development Agreement recorded in Official Records Book 1288, Page 529 of the Public  
5 Records of Flagler County, Florida (the "PUD"); and

6       **WHEREAS**, this Development Agreement shall supersede the PUD to the extent it  
7 affects the Subject Property ~~and the City Property~~ and to the extent that it is inconsistent  
8 with the terms of the PUD this Development Agreement shall control; and

9       **WHEREAS**, the Owner is in voluntary agreement with the conditions, terms, and  
10 restrictions hereinafter recited, and has agreed voluntarily to their imposition as an  
11 incident to development of the Subject Property; and

12       **WHEREAS**, the City of Palm Coast Planning and Land Development Regulation  
13 Board (PLDRB) and City of Palm Coast City Council finds that this Development  
14 Agreement is consistent with the City's Comprehensive Plan and Land Development  
15 Code ("LDC") and that the conditions, terms, restrictions, and requirements set forth  
16 herein are necessary for the protection of the public health, safety, and welfare of the  
17 citizens of the City; and

18       **WHEREAS**, the City of Palm Coast City Council further finds that this Development  
19 Agreement is consistent with and an exercise of the City's powers under the *Municipal*  
20 *Home Rule Powers Act*, Article VIII, Section 2(b) of the *Constitution of the State of Florida*;  
21 Chapter 166, *Florida Statutes*; the *City of Palm Coast City Charter*, other controlling law;  
22 and the City's police powers; and

23       **WHEREAS**, this is a non-statutory Development Agreement which is not subject to or

1 enacted pursuant to the provisions of Sections 163.3220 -163.3243, *Florida Statutes*.

2 **NOW, THEREFORE**, it is hereby resolved and agreed by and between the City and  
3 the Owner that the Master Plan Development is approved subject to the following terms  
4 and conditions:

5 **SECTION 1. RECITALS.**

6 The above recitals are true and correct and are incorporated herein by this  
7 reference and form a material part of this Development Agreement upon which the City  
8 and the Owner have relied.

9 **SECTION 2. REPRESENTATIONS OF OWNER.**

10 (a) The Owner hereby represents and warrants to the City that it is the principal  
11 Owner of the Subject Property in accordance with the title opinion or title certification  
12 provided by the Owner to the City issued by an attorney or title insurance company  
13 licensed to provide services in the State of Florida with said title opinion or certification  
14 showing all liens, mortgages, and other encumbrances not satisfied or released of record  
15 relative to the Subject Property.

16 (b). The Owner represents and warrants to the City that it has the power and  
17 authority to enter into and consummate the terms and conditions of this Development  
18 Agreement; that all acts, approvals, procedures, and similar matters required in order to  
19 authorize this Development Agreement have been taken, obtained or followed, as the  
20 case may be; that this Development Agreement and the proposed performance of this  
21 Development Agreement by the Owner is not an *ultra vires* act; and that, upon the  
22 execution of this Development Agreement by the parties, this Development Agreement  
23 shall be valid and binding upon the parties hereto and their successors in interest.

1 (c) The ~~Owner~~Developers hereby represent to the City that all required joinders  
2 and consents have been obtained and set forth in a properly executed form on this  
3 Development Agreement. Unless otherwise agreed to by the City, all liens, mortgages,  
4 and encumbrances not satisfied or released of record must be subordinated to the terms  
5 of this Development Agreement and joinders must be executed by any mortgagees. It is  
6 the responsibility of the ~~Developers~~Owner to ensure that said subordinations and joinders  
7 occur in a form and substance acceptable to the City Attorney prior to the City's execution  
8 of this Development Agreement. If the ~~Developers~~Owner fails to attain the joinder and  
9 consent, then the ~~Owners and Developers~~ shall lose all rights and benefits deriving  
10 hereunder.

11 **SECTION 3. LAND CONVEYANCES.**

12 (a) No later than February 28, 2020, the Owner, in exchange for the  
13 conveyance of City's Exchange Property, agrees to deliver to the City a special warranty  
14 deed for JDI's Exchange Property. The special warranty deed shall be in a form approved  
15 by the City Attorney, conveying the JDI's Exchange Property, and shall include, in addition  
16 to all other common law covenants, the covenant of further assurances. The conveyance  
17 of the JDI's Exchange Parcel shall be at no cost to the City.

18 (b) In conjunction with Owner's conveyance of the JDI's Exchange Property  
19 and no later than February 28, 2020, the City, in exchange for the conveyance of the JDI's  
20 Exchange Property agrees to deliver to the Owner a special warranty deed for the City's  
21 Exchange Property.

22 (c) Each conveyance contemplated herein shall be free from all encumbrances  
23 except easements, reservations, and restrictions acceptable to the party accepting the  
24 conveyance from the other party, together with all appurtenances pertaining thereto.

1 Owner shall prepay taxes for the year of closing pursuant to Section 196.295, Florida  
2 Statutes, and all special assessments which have been levied or certified prior to closing  
3 must be paid in full by Owner.

4 (d) Title Insurance. No later than January 31, 2020, the Owner shall cause the  
5 title company of its choice to issue and deliver to City an ALTA title commitment to issue  
6 an owner's policy in the amount of \$ at least \$325,550 (assessed value), accompanied by  
7 one (1) copy of each document supporting any exceptions to the title commitment to the  
8 JDI's Exchange Property. Owner shall cause such title commitment to be updated 30  
9 days prior to conveyance of the JDI's Exchange Property. Owner will execute a standard  
10 form owner's affidavit and such other affidavits as may be reasonably required by the  
11 City, the Title Company, or the Closing Agent. Owner will also execute an Affidavit of  
12 Interest in Real Property pursuant to Section 286.23, Florida Statutes.

13 (e) Environmental. Both parties warrant to the other that to the knowledge of  
14 the warranting party the property to be exchanged does not currently contain any  
15 Hazardous Substances in violation of any applicable environmental laws or regulations,  
16 including but not limited to Section 103 of the Comprehensive Environmental Response,  
17 Compensation and Liability Act, 42 U.S.C. '9601 et seq., any "superlien" laws, any  
18 superfund laws, or similar federal or state laws, or any successor statutes thereto  
19 ("Environmental Laws"), nor to the warranting party's knowledge has any clean-up of the  
20 property occurred pursuant to the Environmental Laws which could give rise to liability to  
21 reimburse any governmental authority for the costs of such clean-up nor a lien or  
22 encumbrance on the property.

**Commented [c1]:** We need to get the appraised value of these parcels to fill in here.

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**Commented [JL2]:** Because the property will be subject to a separate agreement addressing the donation of the driving range as well as the sale of the marina the applicant reserves the right to object to the title insurance premium or to incorporate these costs into the terms of the separate agreement.

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1           (f) As-is Conveyance. Except for warranties of title and other warranties  
2 specified herein, the City's Exchange Property and JDI's Exchange Property are being  
3 conveyed "as-is" without representations and warranties (express or implied), including,  
4 without limitation, concerning the condition of such properties and suitability for the  
5 respective intended uses. Given the nature of this transaction, in the event certain  
6 statutory disclosures or any other disclosures required by law were not made to Owner  
7 or the City, the Owner and City each for themselves, and for their successors and assigns,  
8 hereby waive any and all statutorily required disclosures, and release each other from  
9 any and all claims or right to terminate this Development Agreement on the basis that  
10 such disclosures have not or were not made.

11           (g) Covenants Pending Closing. Following the execution of this Development  
12 Agreement, and at all times prior to the closing, neither party shall transfer, sell, assign  
13 or otherwise dispose of or pledge, mortgage, hypothecate or otherwise encumber, or  
14 lease or sublease all or any portion of JDI's Exchange Property or City's Exchange  
15 Property or any interest therein during the pendency of this Development Agreement.

16           (h) Insurance. Each party shall maintain hazard and liability insurance in  
17 commercially reasonable amounts, but in no event less than the amount currently carried,  
18 with respect to their property, and all such policies shall be kept in full force and effect  
19 until the closing.

20           (i) Compliance with Laws. In the event that there shall be any notices of  
21 violations of law, ordinances, orders, protective covenants, development standards,  
22 requirements or regulations issued subsequent to the date hereof, but prior to the closing,  
23 by any federal, state, county, municipal or other governmental or quasi-governmental

1 department, agency, or authority relating to their property, each party will provide written  
2 notice thereof to the other party, and the owner of the property will cause the same to be  
3 complied with, at the owner's sole cost and expense, prior to the closing, or the owner  
4 shall escrow sufficient funds at closing or make such other arrangements to satisfy the  
5 other party.

6 **SECTION 4. APPROVAL OF MASTER PLAN DEVELOPMENT**

7 (a). The City Council at its business meeting of \_\_\_\_\_, 2019,  
8 approved the Master Plan Development plan for the Subject Property subject to the terms  
9 and conditions of this Development Agreement.

10 (b). The Owner may proceed to Technical Site Plan review for development of  
11 ~~the multi-family townhouse residential project~~ an individual lot.

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12 (c). The Owner acknowledges that if this Development Agreement is ever  
13 terminated, the approval shall be deemed null and void and the land uses approved for  
14 the Subject Property shall no longer be permitted, unless otherwise approved by the City  
15 Council.

16 (d). The current provisions of the LDC, as may be amended from time-to-time,  
17 shall be applicable to the Subject Property unless otherwise specifically stated herein.  
18 Any City Code provision not specifically so identified will not be affected by the terms of  
19 this Development ~~Agreement, and~~ Agreement and will be subject to enforcement and  
20 change under the same criteria as if no Development Agreement were in effect.

21 **SECTION 54. PROJECT DESCRIPTION**

22 (a) The ~~developer~~ Owner is developing the project area as a mixed-use  
23 development of public, recreational, commercial, and residential uses ("Project"). A



1 development plan is attached hereto ~~as~~ **Exhibit “B”** and shall be referred to herein as  
2 the **Master Plan**. **The Master Plan** depicts the general layout of the proposed Project.

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3 **SECTION 65. DEVELOPMENT PLAN**

4 (a) **The Master Plan** depicts the general layout of the entire development. The  
5 exact location of structures, lot lines, roadways, internal landscape buffers, drainage  
6 facilities and other improvements shown on the Master Plan may be modified during  
7 review of the technical site plans and construction plans.

8 ~~(b) The Future Land Use Designation of the Property set forth in the City of~~  
9 ~~Palm Coast Comprehensive Plan is predominantly Greenbelt as depicted on the~~  
10 ~~Comprehensive Plan’s Future Land Use Map. The Greenbelt future land use designation~~  
11 ~~permits a density of 1 residential unit per acre, calculated on the basis of gross~~  
12 ~~developable acreage, as defined by the Comprehensive Plan. The City and the Owner~~  
13 ~~agree that the density for the Project is determined based on a total of gross~~  
14 ~~developable acres. The Owner shall be entitled to develop and construct up to a~~  
15 ~~maximum of 50 residential townhouses with associated recreational facilities.~~

16 ~~(c)~~ Adjustments to the Master Plan are anticipated to occur during development  
17 of the Project and during technical site plan review processes. Revisions which meet the  
18 intent and purpose of the City’s Comprehensive Plan and LDC shall be approved by the  
19 Land Use Administrator (LUA), if the substantial integrity of the original Master Plan and  
20 the development standards contained herein are maintained. Any modification to the  
21 Master Plan that increases the intensity or types of development uses, increases building  
22 heights, reduces the total amount of open space, or decreases the size of any perimeter  
23 buffer within the Property shall require the approval of the City Council following the

1 review and recommendation of the Planning and Land Development Regulation Board  
2 (PLDRB).

3 (ed) MPD infrastructure shall be developed as necessary to support each phase  
4 of development.

5 **SECTION 76. LAND DEVELOPMENT CODE APPLICABILITY**

6 (a) The Land Development Code applies to the Property and development  
7 within it, unless expressly otherwise provided in this MPD.

8 (b) The requirements of this Section supersede any inconsistent provisions of  
9 the LDC or other ordinances of the City.

10 (1) Architecture. The architectural features of this project shall be a  
11 combination of Caribbean, Mediterranean, and Florida vernacular styles, reflective of  
12 coastal Florida's historic architectural styling.

13 (2) Stormwater; Roads/Rights-of-Way. The Property is being developed  
14 along Cooper Lane, a public right of way, with privately maintained drives internal to the  
15 project and a privately maintained drainage system. All roadways, turn lanes and  
16 signalization that are internal to the Project will be constructed in accordance with  
17 applicable City standards and the LDC. Emergency vehicle access shall be permitted  
18 through the Property at all times.

19 (4) Landscape. Efforts to enhance the design of the Project will be  
20 achieved through adjustments of building, parking, and roadway locations to provide  
21 landscaping that will accentuate the residential areas, commercial areas, entrances, and  
22 other common spaces. All ornamental landscape beds and lawn areas will have

1 supplemental irrigation. Florida Water Star landscaping standards are encouraged where  
2 feasible.

3 (5) Entry Features and Signage. All sign elements will have uniform  
4 design throughout the community. Due to the diverse nature of the development, a  
5 Directional Sign Program will be designed to provide direction for visitors and residents.  
6 Directional signage may include the identity of the facility or amenity and will not exceed  
7 6 square feet each in size and a height of three feet. Monument and wall signs will be  
8 constructed per the City of Palm Coast LDC.

9 ~~——(6) Tree Mitigation. (Additional text to be added later to address this  
10 issue. Perhaps Bob Dickinson can assist on this issue)~~

11  
12 The developer/Owner will prepare the final site plan with a tree survey indicating  
13 tree types and sizes. Additionally, the developer/Owner will have the trees  
14 reviewed by a certified arborist to obtain tree viability as well as protective measures for  
15 trees designated to be preserved. Tree coverage will be 1 tree per 2500 sf of lot area  
16 including existing tree credits.

17 (7) Lighting. Decorative pole mounted lighting fixtures will be installed  
18 within the Subject Property and along Cooper Lane, to the extent required so as not to  
19 conflict with existing lighting along the public right of way, andway and shall have uniform  
20 design and be provided throughout the MPD as needed. Additional landscape lighting  
21 may include low level lighting and occasional accent lighting.

22 **SECTION 7. SITE DEVELOPMENT PLAN**

**Commented [JL3]:** Unless the tree mitigation standards will be less strict than what is provided in the LDC it should control.

(a) The following table lists the site development general uses, maximum square footage and minimum parking requirement. Parking requirements may be modified during site plan submittals based on parking ratio criteria in the Site Development Data Table that are applicable within the Property.

**Site Development Data Table:**

Description of Use	Notes	Building Area or Unit Types		Minimum Parking	
		Gross Floor Area/Max. Height	# Units	Ratio	# Required
Common Area Roadway, Utilities, and Parking					0
Residential		{(3-Stories?)	50 Townhouse 2-BR multifamily units 20 ft min. width	2 per unit (1 garage, 1 drive)	100240
Driving Range (1)				N/A	N/A
			Total Required	100662	
			Total Parking Required		100240

**Commented [BH4]:** I am thinking we should remove the parking from this table and then include typical development restrictions similar to the MFR-2 District except for height. This would include standards for Item C Setbacks that you show below the table.

**Commented [BH5]:** I suggest we use minimum parking in Section 5.04 of LDC, which is 1.5 spaces per 1 BR unit and 2 spaces per 2 BR or 3 BR units. Golf course parking may need to be modified from Section 5.04 but we could likely get some parking numbers from the golf course on busy days. Once we have a number for the golf course we could provide a mixed use parking reduction of 10% to 15% since peak hours will be different and some residents will use the recreational facilities and restaurant.

**Commented [BH6]:** Let's not commit to the number of bedrooms at this point but use a minimum floor area of 650 S.F. (which is what we use for MFR-1 and MFR-2). Also, I would like to see any new three-story building at least 150 feet away from existing single-family homes, which Bob Dickinson's draft layout was meeting.

(1) Driving range will be deeded to the City and parking for driving range will be accommodated on City property.

(b). Permitted Uses. The Subject Property shall be permitted for up to 50 townhouse 50 townhouse 120 multi-family units, golf course uses, a restaurant, pro shop and driving range as generally depicted in the Master Plan. Other neighborhood recreational uses may be provided by the City on the edges of the golf course lands.

(c) Bus Stop/ Community Area : The Owner shall provide a school bus stop at a location within the Project, as required and determined by the Flagler County School District (the "District"), that meets the standards of the District and the City, to provide for student safety and community open space for the residents. The site plan will

1 ~~provide a Bus Stop Community Area to for school students and residents to have~~  
2 ~~community open space.~~

3 (de) Setbacks. [TBD]

4 (ed). Emergency Services. Fire protection requirements for the Project  
5 will be met through a system of fire hydrants installed on the site by the Owner in  
6 accordance with City standards. The locations of fire hydrants will be shown on the  
7 technical site plans. The water requirements for the fire system will be served by the City.

8 (fe). Maintenance. The Common Areas and other lands that are owned  
9 or controlled by a property owner's association, if any, shall be maintained by the property  
10 owner's association ~~or master association.~~

11 (f). Services. All services for the Property, including utilities, fire  
12 protection, solid waste, telephone, electricity, cable television, fiber optics, and  
13 stormwater management shall be provided by the responsible parties. All new utilities  
14 serving the project shall be installed underground. Water and wastewater services are to  
15 be provided by the City of Palm Coast.

16 **SECTION 8. TRAFFIC:**

17 A traffic impact analysis will consist of the review of projected peak flows on the  
18 study roadways and intersections. The review will include capacity analysis for roadways  
19 and intersections utilizing projected peak traffic flows in order to determine the adequacy  
20 of existing roadways/intersections and the need for improvement recommendations. The  
21 traffic impact analysis shall be submitted no later than at the time of submittal of the  
22 application for Technical Site Plan.

23 **SECTION 9. BREACH; ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION.**

**Commented [JL7]:** Please provide guidance on how the City wants to handle setbacks consistent with the revised conceptual development plan.

1 (a). In the event of a breach hereof by either party hereto, the other party hereto  
2 shall have all rights and remedies allowed by law, including the right to specific  
3 performance of the provisions hereof.

4 (b). In the event that a dispute arises under this Development Agreement, the  
5 parties shall attempt to resolve all disputes informally. In the event of a failure to informally  
6 resolve all disputes, the City and Owner agree to engage in mediation before a certified  
7 Circuit Court mediator selected by the parties. In the event that the parties fail to agree  
8 to a mediator, a certified mediator may be selected by mutual consent of the City and the  
9 Owner. The parties shall equally pay all costs of mediation. A party who unreasonably  
10 refuses to submit to mediation may not later object in Circuit Court that the other party  
11 failed to comply with this Section 8(b) by not participating in the mediation prior to filing  
12 suit.

13 (c). Prior to the City filing any action or terminating this Development Agreement  
14 as a result of a default under this Development Agreement, the City shall first provide the  
15 Owner written notice of the said default. Upon receipt of said notice, the Owner shall be  
16 provided a thirty (30) day period in which to cure the default to the reasonable satisfaction  
17 of the City prior to the City filing said action or terminating this Development Agreement.  
18 If thirty (30) days is not a reasonable period of time in which to cure the default, the length  
19 of the cure period shall be extended for a time period acceptable to the City, but in no  
20 case shall the cure period exceed ninety (90) days from the initial notification of default.  
21 Upon proper termination of the Development Agreement, the Owner shall immediately be  
22 divested of all rights and privileges granted hereunder.

23 **SECTION 10. NOTICES.**

1 (a). All notices required or permitted to be given under this Development  
2 Agreement must be in writing and must be delivered to the City or the Owner at its address  
3 set forth below (or such other address as may be hereafter be designated in writing by  
4 such party).

5 (b). Any such notice must be personally delivered or sent by certified mail, or  
6 overnight courier-

7 (c). Any such notice will be deemed effective when received (if sent by hand  
8 delivery or overnight courier) or on that date which is three (3) days after such notice is  
9 deposited in the United States mail (if sent ~~by certified~~by certified mail).

10 (d). The parties' addresses for the delivery of all such notices are as follows:

11 As to the City: City Manager  
12 160 Lake Avenue  
13 Palm Coast, Florida, 32164

14 As to the Owner: JDI Palm Coast, LLC  
15 P.O. Box 64  
16 Little Rock, AR 72203  
17  
18  
19

20 **SECTION 11. SEVERABILITY.**

21 It is hereby declared to be the intention of the City Council that the sections,  
22 paragraphs, sentences, clauses and phrases of this Development Agreement are  
23 severable, and if any phrase, clause, sentence, paragraph or section of this Development  
24 Agreement shall be declared unconstitutional by the valid judgment or decree of a court  
25 of competent jurisdiction, such unconstitutionality shall not affect any of the remaining  
26 phrases, clauses, sentences, paragraphs and sections of this Development Agreement.

27 **SECTION 12. SUCCESSORS AND ASSIGNS.**

28 (a). This Development Agreement and the terms and conditions hereof shall be

1 binding upon and inure to the benefit of the City and Owner and their respective  
2 successors-in-interest. The terms and conditions of this Development Agreement  
3 similarly shall be binding upon the Subject Property and shall run with the land and the  
4 title to the same.

5 (b). This Development Agreement touches and concerns the Subject Property.

6 (c). The Owner has expressly covenanted and agreed to this provision and all  
7 other terms and provisions of this Development Agreement.

8 **SECTION 13. GOVERNING LAW/VENUE/COMPLIANCE WITH LAW.**

9 (a). This Development Agreement shall be governed by and construed in  
10 accordance with the laws of the State of Florida and the Code of Ordinances of the City  
11 [Efof](#) Palm Coast.

12 (b). Venue for any dispute shall be in the Seventh Judicial Circuit Court in and  
13 for Flagler County, Florida, or the Middle District of Florida, for federal actions.

14 (c). The Owner shall fully comply with all applicable local, State, and Federal  
15 environmental regulations and all other laws of similar type or nature.

16 (d). Without waiving the Owner's potential rights, remedies and protections or  
17 the City's defenses pursuant to Chapter 70 of the Florida Statutes, as may be amended,  
18 this Development Agreement shall not limit the future exercise of the police powers of the  
19 City to enact ordinances, standards, or rules regulating development generally applicable  
20 to the entire area of the City, such as requiring compliance with the City capital facilities  
21 plan; parks master plan, including parks and trail dedications; utility construction and  
22 connections; mandating utility capacities; requiring street development or other such  
23 similar land development regulations and requirements.



1 (e). If state or federal laws are enacted after execution of this Development  
2 Agreement, which are applicable to and preclude the parties' compliance with this  
3 Development Agreement, this Development Agreement shall be modified or revoked as  
4 necessary to comply with the relevant law.

5 (f). This Development Agreement shall also not be construed to prohibit the  
6 City from adopting lawful impact fees applicable to the Owner and the Master Plan  
7 Development authorized hereunder.

8 **SECTION 14. TERM / EFFECTIVE DATE.**

9 This Development Agreement shall be effective upon adoption by the City Council  
10 of the City of Palm Coast, Florida and execution of this Development Agreement by all  
11 parties. The Development Agreement shall remain active provided project construction  
12 commences with 3-5 years of effective date and is completed within 150 years of effective  
13 date. The developer/Owner may request project extensions through a request to City  
14 Council after review and recommendation by the PLDRB.

15 **SECTION 15. RECORDATION.**

16 Upon adoption by the City Council of the City of Palm Coast, Florida and execution  
17 of this Development Agreement by all parties, this Development Agreement and any and  
18 all amendments hereto shall be recorded by the City with the Clerk of the Circuit Court of  
19 Flagler County within thirty (30) days after its execution by the City at the Owner's  
20 expense, and the Development Agreement shall run with the land.

21 **SECTION 16. PERMITS.**

22 (a). The failure of this Development Agreement to address any specific City,  
23 County, State, or Federal permit, condition, term, or restriction shall not relieve the Owner

**Commented [JL8]:** While I would prefer there not be any deadline on an MPD, especially when the underlying zoning pre-dates the City's zoning map, if a deadline must be included it should be, at minimum, the timeframes inserted.

1 or the City of the requirement of complying with the law governing said permitting  
2 requirements, conditions, terms, or restrictions.

3 (b). The terms and conditions of this Development Agreement determine  
4 concurrency for the project.

5 (c). All development and impact fees charged by the City for construction or  
6 development of subdivisions or site plans, [applicable to the development of the Subject](#)  
7 [Property](#), shall be paid by the Owner [or applied to any impact fee credits held by the](#)  
8 [Owner](#) at the time the City issues a building permit.

9 **SECTION 17. THIRD PARTY RIGHTS.**

10 This Development Agreement is not a third-party beneficiary ~~contract, and~~[contract](#)  
11 [and](#) shall not in any way whatsoever create any rights on behalf of any third party.

12 **SECTION 18. TIME IS OF THE ESSENCE.**

13 (a). Strict compliance shall be required with each and every provision of this  
14 Development Agreement.

15 (b). Time is of the essence to this Development Agreement and every right or  
16 responsibility required herein shall be performed within the times specified.

17 **SECTION 19. ATTORNEY'S FEES.**

18 In the event of any action to enforce the terms of this Development Agreement, the  
19 prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees,  
20 and all costs incurred, whether the same be incurred in a pre-litigation negotiation,  
21 litigation at the trial, or appellate level.

22 **SECTION 20. FORCE MAJEURE.**

23 The parties agree that in the event that the failure by either party to accomplish

1 any action required hereunder within a specific time period ("Time Period") constitutes a  
2 default under terms of this Development Agreement and, if any such failure is due to any  
3 unforeseeable or unpredictable event or condition beyond the control of such party  
4 including, but not limited to: acts of God, acts of government authority (other than the  
5 City's own acts), acts of public enemy or war, terrorism, riots, civil disturbances, power  
6 failure, shortages of labor or materials, injunction or other court proceedings beyond the  
7 control of such party, or severe adverse weather conditions ("Uncontrollable Event"), then  
8 notwithstanding any provision of this Development Agreement to the contrary, that failure  
9 shall not constitute a default under this Development Agreement and any Time Period  
10 prescribed hereunder shall be extended by the amount of time that such party was unable  
11 to perform solely due to the Uncontrollable Event.

12 **SECTION 21. CAPTIONS.**

13 Sections and other captions contained in this Development Agreement are for  
14 reference purposes only and are in no way intended to describe, interpret, define, or limit  
15 the scope, extent or intent of this Development Agreement, or any provision hereof.

16 **SECTION 22. INTERPRETATION.**

17 (a). The Owner and the City agree that all words, terms and conditions  
18 contained herein are to be read in concert, each with the other, and that a provision  
19 contained under one (1) heading may be considered to be equally applicable under  
20 another in the interpretation of this Development Agreement.

21 (b). This Development Agreement shall not be construed more strictly against  
22 either party on the basis of being the drafter thereof, and both parties have contributed to  
23 the drafting of this Development Agreement, ~~subject, however, to the provisions of~~

1 [Section](#)

2 **SECTION 23. FURTHER ASSURANCES.**

3 Each party agrees to sign any other and further instruments and documents  
4 consistent herewith, as may be necessary and proper to give complete effect to the terms  
5 of this Development Agreement.

6 **SECTION 24. COUNTERPARTS.**

7 This Development Agreement may be executed in any number of counterparts,  
8 each of which shall be deemed an original, but all of which, taken together, shall constitute  
9 one (1) and the same document.

10 **SECTION 25. MODIFICATIONS / AMENDMENTS/NON-WAIVER.**

- 11 (a) Amendments to and waivers of the provisions herein shall be made by the  
12 parties only in writing by formal amendment. This Development [Agreement](#)  
13 shall not be modified or amended except by written agreement executed by  
14 all parties hereto and upon approval of the City Council of the City of Palm  
15 Coast. Adjustments to the Master Plan are anticipated to occur during the  
16 technical site plan review and project development. Revisions which meet  
17 the intent and purpose of the City's Comprehensive Plan and LDC shall be  
18 approved by the Land Use Administrator (LUA), if the substantial integrity  
19 of the original Master Plan and the development standards contained herein  
20 are maintained. Any modification to the Master Plan that increases the  
21 intensity, [density](#) or types of development uses, increases building heights,  
22 reduces the total open space, or decreases the size of any perimeter buffer  
23 within the Property shall require approval of the City Council following the

1 recommendation of the Planning and Land Development Regulation Board  
2 (PLDRB).

- 3 (b) Failure of any party hereto to exercise any right hereunder shall not be  
4 deemed a waiver of any such right and shall not affect the right of such party  
5 to exercise at some future date any such right or any other right it may have.

6 **SECTION 26. ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENTS.**

7 This Development Agreement constitutes the entire agreement between the  
8 parties and supersedes all previous oral discussions, understandings, and agreements  
9 of any kind and nature as between the parties relating to the subject matter of this  
10 Development Agreement.

11 **IN WITNESS WHEREOF**, the City and JDI Palm Coast, LLC have caused this  
12 Development Agreement to be duly executed by his/her/its/their duly authorized  
13 representative(s) as of the date first above written.

14 **(SIGNATURES AND NOTARY BLOCKS ON NEXT PAGE)**  
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**OWNER'S/APPLICANT'S CONSENT AND COVENANT:**

**COMES NOW**, the Owner on behalf of itself and its successors, assigns and transferees of any nature whatsoever, and consents to and agrees with the covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Agreement.

WITNESSES: JDI Palm Coast, LLC  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_  
Print name: \_\_\_\_\_  
(print)  
\_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(print)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of JDI Palm Coast, LLC a Georgia limited liability company, (check one)  who is personally known to me or  who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida  
Print Name: \_\_\_\_\_  
My Commission expires:

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CITY OF PALM COAST, FLORIDA

\_\_\_\_\_  
Milissa Holland, Mayor

ATTEST:

\_\_\_\_\_  
Virginia A. Smith, City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
William E. Reischmann, Jr., City Attorney

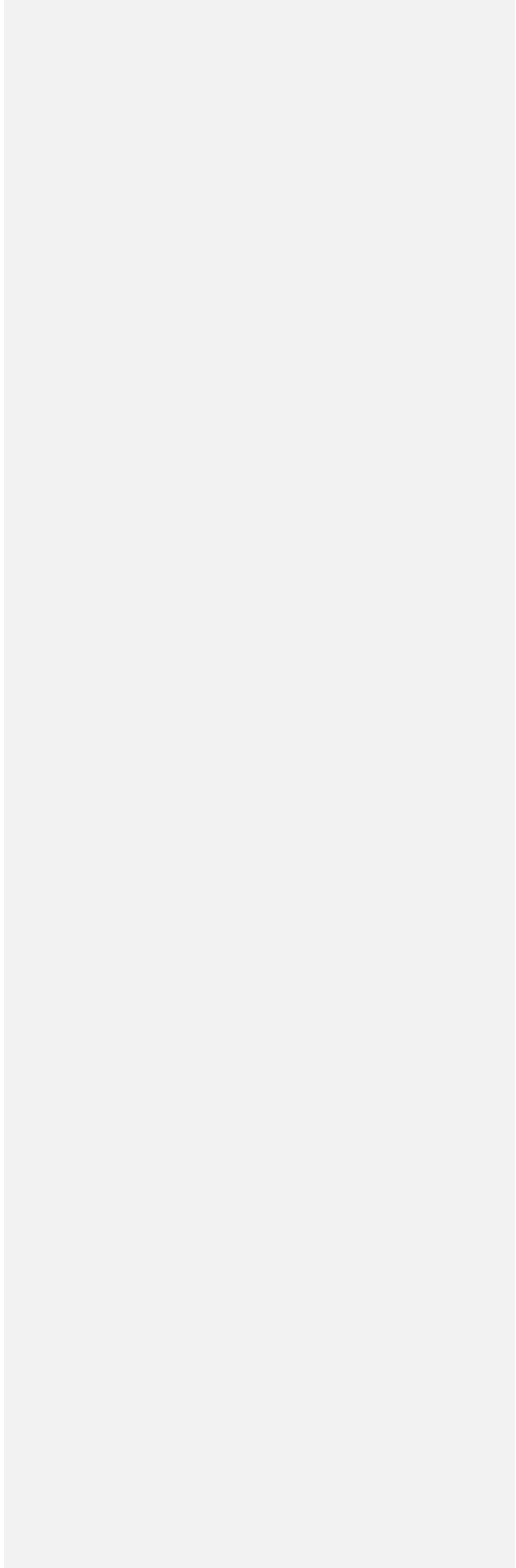
STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Milissa Holland, Mayor of the City of Palm Coast, Florida, who is personally known to me.

\_\_\_\_\_  
Notary Public – State of Florida  
Print Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

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**EXHIBIT "A"<sup>22</sup>**  
**LEGAL DESCRIPTION OF JDI PROPERTY**





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**EXHIBIT "B"**  
**MASTER PLAN**

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**EXHIBIT "C"**  
**LEGAL DESCRIPTION OF CITY PROPERTY**

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**EXHIBIT "D"**

**LEGAL DESCRIPTION OF JDI'S EXCHANGE PROPERTY**

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**EXHIBIT "E"**

**LEGAL DESCRIPTION OF CITY'S EXCHANGE PROPERTY**