**[TEMPLATE]**

**THIS INSTRUMENT PREPARED BY**

**For Recording Purposes Only**

Signature of Notary

Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal):

My Commission Expires (if not legible on seal):

**Purposes Only**

**AND AFTER RECORDING RETURN TO:**

Gretchen R. H. Vose, Esq.

City Attorney

City of Deltona

2345 Providence Boulevard

Deltona, Florida 32725

**Exhibit “A” to Ordinance No. \_\_\_\_\_\_**

**DEVELOPMENT AGREEMENT**

for the project known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Planned Unit Development (PUD) located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the “Subject Property”).

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as the “Agreement”) is entered into and made as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_, by and between the CITY OF DELTONA, a Florida municipal corporation, with a mailing address of 2345 Providence Boulevard, Deltona, Florida 32725, (hereinafter referred to as the “City”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,(hereinafter referred to as the“Owner or Owner/Developer”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as the “Developer”, if the Developer is a separate entity from the “Owner/Developer” and the Developer has an executed Notarized Owner Authorization from the Owner/Developer).

**W I T N E S S E T H**

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

**WHEREAS,** the Owner/Developer has clear title of the Subject Property or the Developer is currently under contract to purchase the Subject Property and intends to develop such property as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and

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

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

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

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

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

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

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

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

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

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

1. Comprehensive Plan Policies specific to this Subject Property.
2. Permitted principal uses allowable on the Subject Property:
   1. <<LIST USES HERE>>
3. Prohibited principal uses, if any:
   1. <<LIST USES HERE>>
4. Proposed minimum density (in number of dwelling units per acre) or minimum intensity (measured in floor area ratio):
5. Proposed maximum density (in number of dwelling units per acre) or maximum intensity (measured in floor area ratio), if any:
6. Impervious surface ratio is not to exceed 70% of the gross square footage for the Subject Property.
7. Maximum lot coverage (in %) (dry retention systems can be used towards open space):
8. Minimum landscaping and bufferyard requirements are per the City’s Land Development Code. Stormwater management facilities shall not be placed within bufferyards.
9. Minimum lot size area (in acreage or square footage):
10. Minimum lot width (in feet):
11. Minimum yard setbacks:
    1. Front yard:
    2. Side yard:
    3. Street side yard:
    4. Rear yard:
12. Maximum building height (in feet):
13. Minimum parking standards are per Sections. 110-828 and 110-829 of the City’s Land Development Code.
14. Minimum lighting standards per the City’s Land Development Code shall be included on a separate Illumination Plan to be provided at the time of site plan submittal.
15. Architectural controls and development on the Subject Property shall follow a common architectural theme as listed in this Agreement by harmoniously coordinating the general appearance of all buildings and accessory structures. All controls and variations shall be defined by a Homeowners Association or Property Owners Association, as defined within this Agreement.
16. Utility provision and dedication: The Owner/Developer or Developer shall connect to the City of Deltona’s central utility systems, when available, or to Volusia County’s central utility systems, where applicable, at their sole cost and expense. Utility fees shall be paid to Deltona Water or Volusia County, respectively, before any building permit is issued. Central utility systems are to be designed, permitted, and constructed to the respective service provider specifications and dedicated to the respective service provider upon final inspection, clearance, and acceptance by the service provider.
17. Stormwater and environmental: Per parcel stormwater systems or master stormwater system shall be owned and maintained by an established Homeowners Association or Property Owners Association in private ownership and shall not be dedicated to or become the responsibility of the City of Deltona. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements, shall be the sole responsibility of the Homeowners Association or Property Owners Association, and shall be maintained in good condition/standing with the applicable permitting authorities. Best Management Practices and conformance to National Pollutant Discharge Elimination System (NPDES) criteria are required.
18. Transportation, site access, and traffic devices: The Owner/Developer or Developer is responsible for all transportation improvements within the Subject Property and any off-site transportation requirements, as a result of the proposed development, for site function, that maintains or improves the level of service for area roadways, and ensures the public health, safety, and welfare for the community. All permits shall be obtained from appropriate permitting agencies prior to development and the City shall determine the appropriate level of service per the City Comprehensive Plan and current traffic counts.

7. **Public Facilities/Land Dedication.** Facilities or tracts that either are or shall become public facilities/tracts that will serve the development and/or are on the Subject Property are, as follows:

8. **Development Permits/Fees.** The Owner/Developer or Developer is responsible for obtaining, permitting, and the payment of all fees for facilities and services to ensure for the Subject Property. Any site permits shall be kept current with the respective permitting agency and shall ensure the protection of the public health, safety, and welfare of the community and the development. All impact fees are applicable and no impact fee credits shall be awarded through this Agreement; unless a cessation exists through a City moratorium that is Citywide. Proportionate fair share site improvements shall not be used in lieu of impact fees.

9. **Obligations.** Should the Owner/Developer or Developer fail to undertake and complete its obligations as described in this Agreement to the City's specifications, then the City shall give the Owner/Developer or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner/Developer or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/Developer or Developer, or its successors in interest, may, without prejudice to any other rights or remedies it may have, place liens and take enforcement action on the Subject Property. A lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City’s said liens or assessments. Notice to the Owner/Developer or Developer and its successors in interest shall be deemed to have been given upon the mailing of notice to the address or addresses set forth in Paragraph (23) hereof.

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

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

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

13. **Obligations for Improvements.** Any surface improvement as described and required hereunder included, but not limited to such as signalization, walls, stormwater management facilities, medians, and utilities, or any other surface improvement shall be performed, prior to the issuance of the first Certificate of Occupancy on that portion of the Subject Property that the surface improvement(s) relates or is otherwise scheduled in this Agreement. Should the Owner/Developer or Developer fail to undertake and complete its obligations as described in this Agreement and to the City's specifications, then the City shall give the Owner/Developer or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner/Developer or Developer. If the Owner/Developer or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/Developer or Developer and their successors and assigns in interest, may but shall not be required to, perform such obligations at the expense of the Owner/Developer or Developer or their successors and assigns in interest, without prejudice to any other rights or remedies the City may have under this Agreement. Further, the City is hereby authorized to immediately recover the actual and verified cost of completing the obligations required under this Agreement and any legal fees from the Owner/Developer or Developer in an action at law for damages, as well as record a lien against the Subject Property in that amount. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City’s said liens or assessments. Notice to the Owner/Developer or Developer and their successors and assigns in interest shall be deemed to have been given upon the mailing of notice as provided in paragraph (24) of this Agreement.

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

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

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

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

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

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

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

**OWNER/DEVELOPER'S OR DEVELOPER’S REPRESENTATIVES:**

[INSERT NAMES AND ADDRESSES]

**CITY'S REPRESENTATIVES:**

City Manager

City of Deltona

2345 Providence Boulevard

Deltona, Florida 32725

With copy to:

Director

Planning & Development Services

City of Deltona

2345 Providence Boulevard

Deltona, Florida 32725

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

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

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

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

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

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

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

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

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

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

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

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

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

**OWNER/DEVELOPER**

**By:**

Signature of Witness # 1 Signature

Print or type name Print or type name

**As:**

Signature of Witness #2 Print or type

**ATTEST:**

Print or type name

Signature

Print or Type Name

**As:**

Mailing Address:

**STATE OF FLORIDA**

**COUNTY OF**

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_, by , and , of , who is/are personally known to me or who has/have produced as identification and who did not (did) take an oath.

Signature of Notary

(NOTARY SEAL)

Print or type name

**DEVELOPER**

**By:**

Signature of Witness # 1 Signature

Print or type name Print or type name

**As:**

Signature of Witness #2 Print or type

**ATTEST:**

Print or type name

Signature

Print or Type Name

**As:**

Mailing Address:

**STATE OF FLORIDA**

**COUNTY OF**

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_, by , and , of , who is/are personally known to me or who has/have produced as identification and who did not (did) take an oath.

Signature of Notary

(NOTARY SEAL)

Print or type name

**CITY OF DELTONA:**

**By:**

**Date:**

**ATTEST:**

**Date:**

Mailing Address:

City of Deltona

2345 Providence Boulevard

Deltona, Florida 32725

**STATE OF FLORIDA**

**COUNTY OF**

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who are personally known to me and acknowledge executing the same freely and voluntarily under authority vested in them by the City of Deltona.

Signature of Notary

(NOTARY SEAL)

Print or type name

Approved as to form and legality for use and

reliance by the City of Deltona, Florida

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Gretchen R. H. Vose

City Attorney