

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of Resolution No. 2022-22, approving the sale and authorizing the City Manager to execute the necessary closing documents for the property owned by the City of South Daytona located on Foster Way, Parcel Number 5344-16-00-1133.

Date: August 19, 2022

The City acquired approximately 6 acres on Foster Way from John T. Self on May 14, 2004 for the purposes of constructing a new Public Works facility there. The property was rezoned in 2004 to Planned Commercial Development (PCD) and the Future Land Use was amended to Public. Ordinance 2004-03 noted that the sole purpose of the PCD was for accommodating the City's public works operation center. Since that time, this plan has been terminated.

The City Council on July 27, 2021, via Resolution No. 2021-18, determined the Subject Property was no longer necessary, useful, or suitable for municipal purposes and offered it for sale.

The City had an appraisal completed in April 2021. In July 2022, two offers were received at \$950,000. Since the offers were identical and yet the project ideas so different, staff has requested a recommendation from the Planning and Appeals Board to bring forth to the City Council. **The City Council will be deciding at the September 12, 2022 meeting on which developer will purchase the property. Future Council meetings will then be required to review and approve zoning changes and the Master Development Agreement.**

Included below are descriptions for the two projects, in no particular order. The first is a townhome project called Villa Magnolia proposed by Villa Richey, LLC and the second involves individual storage suites proposed by Beach Track, LLC.

Villa Magnolia Townhomes:

Villa Richey LLC has requested the Land Use of Residential High Density 4 for a Townhome Development Project. The project would include 10 townhouse buildings comprised of 80 units. The units will be three-story townhomes, each with a 1 or 2-car garages, covered entryways and balcony areas. A community pool is also included in the project scope. Residents will access the townhome development from Magnolia Avenue through a gated entryway. The developer will install a 6-foot high solid vinyl fence around the perimeter of the property. Robust landscaping within the buffer areas and at the entrance will be required.

If the City Council approves this project, the property will need to be rezoned to a Planned Unit Development (PUD) and a Master Development Agreement will have to be approved through an ordinance of the City Council. Attached is a draft of the proposed Master Development Agreement so that the developer knows what the City will be requiring prior to Council approval.

Luxury Storage Suites:

Beach Track, LLC has requested the Land Use of Commercial for 40 Luxury Storage Suites. The project would include 40 Luxury Storage Suites made of concrete block or tilt panel construction. Each unit will include kitchen area, restrooms including shower facilities, temperature control/HVAC, insulated walls and ceilings and insulated electric overhead door with separate covered entry doorway. The developer will install a 6-foot-high masonry wall with stucco finish around the perimeter of the property and a gated entrance will be placed at the end of Foster Way. Traffic will not enter or depart by Magnolia Avenue. Robust landscaping within the buffer areas and at the entrance will be required. Trees or large shrubs will be required along the wall every 25 feet.

If the City Council approves this project, the Planned Commercial Development (PCD) Zoning will remain on the property with a Master Development Agreement approved through an ordinance of the City Council. Attached is a draft of the proposed Master Development Agreement so that the developer knows what the City will be requiring prior to Council approval.

After the Planning and Appeals Board Meeting, Beach Trak, LLC has requested to lower their offer to \$938,500 since all of the closing costs that they would have to pay will push the purchase price to their original offer of \$950,000.

Staff Recommendation:

Staff's goal in deciding between the two projects involves identifying the best fit given the surrounding uses. The subject property has light industrial to the west and residential on the remaining sides. Staff believes that the storage suites would provide a smoother, softer transition from the light industrial to the residential. The residents in the townhome project might not want a view of the adjacent light industrial uses to the west and that project might struggle to obtain full occupancy. The storage suites would provide a more acceptable buffer separating the light industrial from the residential.

On August 17, 2022, the Planning and Appeals Board received presentations on the projects from both bidders and recommended the City Council sell the property Beach Track, LLC for their Luxury Storage Suites project.

If the City Council approves the sale, a contract will be signed, and the due diligence period will begin. The successful applicant will then provide greater detail such as a site plan and finalized Master Development Agreement to both the Planning and Appeals Board and City Council for further consideration and zoning or land use changes.

RESOLUTION NO. 2022-22

A RESOLUTION OF THE CITY OF SOUTH DAYTONA, FLORIDA, APPROVING THE SALE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY CLOSING DOCUMENTS TO SELL THE VACANT PROPERTY OWNED BY THE CITY OF SOUTH DAYTONA LOCATED ON FOSTER WAY, PARCEL ID 5344-16-00-1133; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in May 2004, John T. Self, individually, and as Trustee of the John T. Self Trust dated March 31, 2003, conveyed to the City of South Daytona, that certain real property as described in Exhibit “A” hereto, which real property is located on Foster Way, Parcel ID 5344-16-00-1133, South Daytona, (hereinafter, the “Subject Property”) and;

WHEREAS, the Subject Property is no longer necessary, useful, or suitable for municipal purposes; and

WHEREAS, an appraisal of the Subject Property was completed in April 2021 with an opinion of value at \$690,000, and;

WHEREAS, per Section 2-150 of the City of South Daytona Code of Ordinances, should the City Council find the Subject Property is surplus and authorize the sale, “all costs incurred by the city associated with the sale or lease of city property, including but not limited to attorney fees, appraisal costs, engineering fees, shall be paid by the purchaser or lessee, unless the city council waives this requirement,” and;

WHEREAS, on July 27, 2021, via Resolution No. 2021-18, the City Council determined the Subject Property to be unnecessary for its public purposes, determined that disposal of said land is in the best interest of the public, and authorized staff to facilitate its sale (with minimum sale price of \$693,500), and:

WHEREAS, two (2) identical offers of \$950,000 were received in July 2022; however, the developer Beach Track, LLC has since requested to lower their offer to \$938,500 since all required closing costs they have to pay will push the purchase price to the original \$950,000 offer, and;

WHEREAS, on August 17, 2022, the Planning and Appeals Board received presentations on the projects from both bidders and recommended the City Council sell the property to Beach Track, LLC for their Luxury Storage Suites project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

SECTION 1. The City Council of the City of South Daytona hereby:

- (1) Authorizes the sale of the land at Foster Way, Parcel Number 5344-16-00-1133 to Beach Track, LLC, in accordance with the Vacant Land Contract attached hereto as Exhibit "A", with said deed to specifically release any automatic reservation and right of entry in accordance with Florida Statute Section 270.11.
- (2) The City Council of the City of South Daytona hereby authorizes the City Manager to attend the closing on the sale of Foster Way, Parcel Number 5344-16-00-1133 and to execute the necessary closing documents on behalf of the City.

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 3. That all resolutions made in conflict with this Resolution are hereby repealed.

SECTION 4. Effective Date. This resolution shall take effect immediately upon its passage and adoption.

THIS RESOLUTION APPROVED ON FIRST AND ONLY READING this 12th day of September 2022 by the City Council of the City of South Daytona, Florida.

CITY OF SOUTH DAYTONA, FLORIDA

William C. Hall, Mayor

ATTEST: _____
James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:

Wade C. Vose, City Attorney

Vacant Land Contract



1. **Sale and Purchase ("Contract"):** _____ City of South Daytona _____ ("Seller")
 and _____ Beach Track LLC _____ ("Buyer")
 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")
 described as:
 Address: _____ Foster Way, South Daytona, FL 32119
 Legal Description: _____ E 710.7 FT OF LOT 113 EXC E 455.08 FT OF W 981.61 FT OF S 78.36 FT N OF LOT
 112 & EXC CULDESAC(MAP 5329)

 SEC 44 /TWP / 15 /RNG 33 of Volusia County, Florida. Real Property ID No.: 534416001133
 including all improvements existing on the Property and the following additional property: _____
2. **Purchase Price:** (U.S. currency) _____ \$ 938,500.00
 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:
 Escrow Agent's Name: _____ Cobb & Cole, P.A.
 Escrow Agent's Contact Person: _____ Ray Schumann
 Escrow Agent's Address: _____ 149 S Ridgewood Ave., Suite 700, Daytona Beach, FL 32114
 Escrow Agent's Phone: _____ 386-255-8171
 Escrow Agent's Email: _____
- (a) Initial deposit (\$0 if left blank) (**Check if applicable**)
☐ accompanies offer
☐ will be delivered to Escrow Agent within 5 days (3 days if left blank)
 after Effective Date _____ \$ 25,000.00
- (b) Additional deposit will be delivered to Escrow Agent (**Check if applicable**)
☐ within _____ days (10 days if left blank) after Effective Date
☒ within 5 days (3 days if left blank) after expiration of Due Diligence Period _____ \$ 25,000.00
- (c) Total Financing (see Paragraph 6) (express as a dollar amount or percentage) _____
- (d) Other: _____ \$ _____
- (e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)
 to be paid at closing by wire transfer or other Collected funds _____ \$ 888,500.00
- (f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The
 unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): _____
 prorating areas of less than a full unit. The purchase price will be \$ _____ per unit based on a
 calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in
 accordance with Paragraph 8(c). The following rights of way and other areas will be excluded from the
 calculation: _____
3. **Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy
 delivered to all parties on or before September 29, 2022, this offer will be withdrawn and Buyer's deposit, if
 any, will be returned. The time for acceptance of any counter-offer will be 3 days after the date the counter-offer is
 delivered. The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer
 has signed or initialed and delivered this offer or the final counter-offer.
4. **Closing Date:** This transaction will close on See Pg 7 Line 345 ("Closing Date"), unless specifically
 extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including,
 but not limited to, Financing and Due Diligence periods. However, if the Closing Date occurs on a Saturday,
 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business
 day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property
 insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If
 this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and
 other items.
5. **Extension of Closing Date:** If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not
 available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements

Buyer (TC) () and Seller () () acknowledge receipt of a copy of this page, which is 1 of 8 pages.

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("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

6. Financing: (Check as applicable)

(a) ☒ Buyer will pay cash for the Property with no financing contingency.

(b) ☐ This Contract is contingent on Buyer qualifying for and obtaining the commitment(s) or approval(s) specified below ("Financing") within _____ days after Effective Date (Closing Date or 30 days after Effective Date, whichever occurs first, if left blank) ("Financing Period"). Buyer will apply for Financing within _____ days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and other information required by the lender. If Buyer, after using diligence and good faith, cannot obtain the Financing within the Financing Period, either party may terminate this Contract and Buyer's deposit(s) will be returned.

(1) ☐ **New Financing:** Buyer will secure a commitment for new third party financing for \$ _____ or _____% of the purchase price at (Check one) ☐ a fixed rate not exceeding _____% ☐ an adjustable interest rate not exceeding _____% at origination (a fixed rate at the prevailing interest rate based on Buyer's creditworthiness if neither choice is selected). Buyer will keep Seller and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to Seller and Broker.

(2) ☐ **Seller Financing:** Buyer will execute a ☐ first ☐ second purchase money note and mortgage to Seller in the amount of \$ _____, bearing annual interest at _____% and payable as follows:

The mortgage, note, and any security agreement will be in a form acceptable to Seller and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if Buyer defaults; will give Buyer the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require Buyer to keep liability insurance on the Property, with Seller as additional named insured. Buyer authorizes Seller to obtain credit, employment, and other necessary information to determine creditworthiness for the financing. Seller will, within 10 days after Effective Date, give Buyer written notice of whether or not Seller will make the loan.

(3) ☐ **Mortgage Assumption:** Buyer will take title subject to and assume and pay existing first mortgage to

LN# _____ in the approximate amount of \$ _____ currently payable at \$ _____ per month, including principal, interest, ☐ taxes and insurance, and having a ☐ fixed ☐ other (describe) _____ interest rate of _____% which ☐ will ☐ will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. Buyer will purchase Seller's escrow account dollar for dollar. If the interest rate upon transfer exceeds _____% or the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing which this Contract will terminate; and Buyer's deposit(s) will be returned. If the lender disapproves Buyer, this Contract will terminate; and Buyer's deposit(s) will be returned.

7. Assignability: (Check one) Buyer ☐ may assign and thereby be released from any further liability under this Contract, ☒ may assign but not be released from liability under this Contract, or ☐ may not assign this Contract.

8. Title: Seller has the legal capacity to and will convey marketable title to the Property by ☒ statutory warranty deed ☐ special warranty deed ☐ other (specify) _____, free of liens, easements, and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____, provided there exists at closing no violation of the foregoing.

(a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay for the title search, including tax and lien search (including municipal lien search) if performed, and all other fees charged by closing agent. Seller will deliver to Buyer, at

(Check one) ☐ Seller's ☒ Buyer's expense and

(Check one) ☐ within _____ days after Effective Date ☒ at least 45 days before Closing Date,

(Check one)

(1) ☒ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by Seller at or before closing and, upon Buyer recording the deed, an owner's policy in the

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amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

- (2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within _____ days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within _____ days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 8(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

9. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections:** (Check (1) or (2))

- (1) ☒ **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 180 days (30 days if left blank) ("Due Diligence Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Due Diligence Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Due Diligence Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Due Diligence Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this Contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

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(2) ☐ **No Due Diligence Period:** Buyer is satisfied that the Property is suitable for Buyer's purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to Buyer. This Contract is not contingent on Buyer conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect Buyer's intended use of the Property will not be grounds for terminating this Contract if the Due Diligence Period has expired or if Paragraph 9(a)(2) is selected.

(c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☐ Buyer waives the right to receive a CCCL affidavit or survey.

10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 21. In addition to other expenses provided in this Contract, Seller and Buyer will pay the costs indicated below.

(a) **Seller Costs:**

~~Taxes on deed~~

Recording fees for documents needed to cure title

Title evidence (if applicable under Paragraph 8)

Estoppel Fee(s)

Other: _____

(b) **Buyer Costs:**

Taxes and recording fees on notes and mortgages

Recording fees on the deed and financing statements

Loan expenses

Title evidence (if applicable under Paragraph 8)

Lender's title policy at the simultaneous issue rate

Inspections

Survey

Insurance

Other: _____ Taxes on deed; owner's title policy

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and Buyer will pay all other amounts. If special assessments may be paid in installments, ☐ Seller ☐ Buyer (Buyer if left blank) will pay installments due after closing. If Seller is checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY

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IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If Seller is a "foreign person" as defined by FIRPTA, Seller and Buyer will comply with FIRPTA, which may require Seller to provide additional cash at closing.
- (g) **1031 Exchange:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

11. Computation of Time: Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this Contract.**

12. Risk of Loss; Eminent Domain: If any portion of the Property is materially damaged by casualty before closing or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may terminate this Contract by written notice to the other within 10 days after Buyer's receipt of Seller's notification, and Buyer's deposit(s) will be returned, failing which Buyer will close in accordance with this Contract and receive all payments made by the governmental authority or insurance company, if any.

13. Force Majeure: Seller or Buyer will not be required to perform any obligation under this Contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of Seller or Buyer and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this Contract by delivering written notice to the other; and Buyer's deposit(s) will be returned.

14. Notices: All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. Buyer's failure to timely deliver written notice to Seller, when such notice is required by this Contract, regarding any contingency will render that contingency null and void, and this Contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.

15. Complete Agreement; Persons Bound: This Contract is the entire agreement between Seller and Buyer. Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this Contract. Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This Contract, signatures, initials, documents referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. Seller and Buyer will use diligence and good faith in performing all obligations under this Contract. This Contract will not be recorded in any public record. The terms "Seller," "Buyer," and "Broker" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of Seller, Buyer, and Broker.

16. Default and Dispute Resolution: This Contract will be construed under Florida law. This Paragraph will survive closing or termination of this Contract.

- (a) **Seller Default:** If Seller fails, neglects, or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive a return of Buyer's deposit(s) without thereby waiving any action for damages resulting

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from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

- (b) **Buyer Default:** If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this Contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this Contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this Contract.

17. Attorney's Fees; Costs: In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

18. Escrow Agent; Closing Agent: **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

19. Professional Advice; Broker Liability: Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this Contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer** agrees to rely solely on **Seller**, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value. **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This Paragraph will survive closing.

20. Commercial Real Estate Sales Commission Lien Act: If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

21. Brokers: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or listing broker to cooperating brokers.

B David Wilson Jr SL3355674

Seller's Sales Associate/License No.

David Galt

SL3243843

Buyer's Sales Associate/License No.

Buyer (TC) () and Seller () () acknowledge receipt of a copy of this page, which is 6 of 8 pages.

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329*	d.wilson@colliers.com	dgaltrealtor@gmail.com
330	Seller's Sales Associate Email Address	Buyer's Sales Associate Email Address
331		
332*	407 362 6125	386 882 3230
333	Seller's Sales Associate Phone Number	Buyer's Sales Associate Phone Number
334		
335*	Colliers International	Adams Cameron & Co
336	Listing Brokerage	Buyer's Brokerage
337		
338*	255 S. Orange Av #1300 Orlando, FL 32801	600 South Atlantic Av Daytona Beach, FL 32118
339	Listing Brokerage Address	Buyer's Brokerage Address

340 **22. Addenda:** The following additional terms are included in the attached addenda and incorporated into this Contract

341 **(Check if applicable)**

342* ☐ A. Back-up Contract

343* ☐ B. Kick Out Clause

344* ☐ C. Other _____

345* **23. Additional Terms:** Closing shall be on or before 30 days after the end of the Due Diligence Period.

346

347 Buyers Transaction Broker, Adams Cameron & Co., will be compensated 3% of the purchase price by Seller.

348 Sellers Transaction Broker, Colliers International, will be compensated 3% of the purchase price by Seller.

349

350 Buyer acknowledges that Seller is a municipal corporation which, in addition to owning the Property, is the general

351 purpose local government with land use and development approval authority over the Property. Buyer acknowledges

352 that Seller's approval of this Contract does not and shall not be construed to constitute approval of any rezoning, site

353 plan approval, building permit, or any other development order or development permit whatsoever, and Seller's

354 approval of this Contract shall not relieve Buyer of having to comply with all applicable regulations. In the event Buyer

355 does not receive the development approvals it desires during the course of its applications therefor, Buyer's sole

356 remedy shall be to terminate this Contract within the Due Diligence Period pursuant to Paragraph 9(a)(1).

357

358 In exchange for the preceding acknowledgement, Buyer is provided the right to two (2) Due Diligence Period

359 extensions of no more than thirty (30) days each, exercised by Buyer delivering written notice to Seller at least ten

360 (10) days before the expiration of the then-current Due Diligence Period.

361 **COUNTER-OFFER/REJECTION**

362* ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and

363 deliver a copy of the acceptance to Seller).

364* ☐ Seller rejects Buyer's offer

365 **This is intended to be a legally binding Contract. If not fully understood, seek the advice of an attorney before**

366 **signing.**

367* **Buyer:** Tom Clary Date: 9/8/2022

368* **Print name:** Tom Clary

369* **Buyer:** _____ Date: _____

370* **Print name:** _____

371 **Buyer's address for purpose of notice:**

372* **Address:** _____

373* **Phone:** _____ **Fax:** _____ **Email:** _____

374* **Seller:** _____ Date: _____

375* **Print name:** City of South Daytona

376* **Seller:** _____ Date: _____

377* **Print name:** _____

Buyer (TC) () and Seller () () acknowledge receipt of a copy of this page, which is 7 of 8 pages.

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378 **Seller's address for purpose of notice:**

379 * **Address:** _____

380 * **Phone:** _____ **Fax:** _____ **Email:** _____

381 * **Effective Date:** _____ **(The date on which the last party signed or initialed and delivered the**
382 **final offer or counter offer.)**

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RESOLUTION 2021-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, DECLARING THE VACANT PROPERTY OWNED BY THE CITY OF SOUTH DAYTONA LOCATED AT FOSTER WAY, PARCEL ID 5344-16-00-1133, AS SURPLUS AND AUTHORIZING STAFF TO FACILITATE ITS SALE; AND PROVIDING FOR CONFLICTING RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, in May 2004, John T. Self, individually, and as Trustee of the John T. Self Trust dated March 31, 2003, conveyed to the City of South Daytona, that certain real property as described in Exhibit "A" hereto, which real property is located on Foster Way, Parcel ID 5344-16-00-1133, South Daytona, (hereinafter, the "Subject Property") and;

WHEREAS, the Subject Property is no longer necessary, useful, or suitable for municipal purposes; and

WHEREAS, an appraisal of the Subject Property was completed in April 2021 with an opinion of value at \$690,000, and;

WHEREAS, per Section 2-150 of the City of South Daytona Code of Ordinances, should the City Council find the Subject Property is surplus and authorize the sale, "all costs incurred by the city associated with the sale or lease of city property, including but not limited to attorney fees, appraisal costs, engineering fees, shall be paid by the purchaser or lessee, unless the city council waives this requirement," and;

WHEREAS, the City Council authorizes staff to solicit formal bids from buyers to facilitate the sale of the Subject Property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

SECTION 1: The City Council of the City of South Daytona hereby

- (1) determines and finds the Subject Property to be unnecessary for its public purposes;
- (2) determines that disposal of the Subject Property is in the best interest of the public; and
- (3) authorizes staff to facilitate the sale of the Subject Property; and

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 3. That all resolutions made in conflict with this Resolution are hereby repealed.

SECTION 4. Effective Date. This resolution shall take effect immediately upon its passage and adoption.

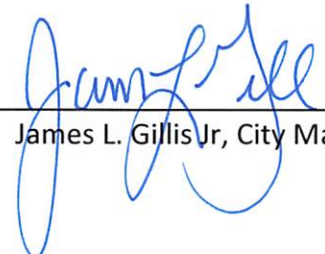
THIS RESOLUTION APPROVED ON FIRST AND ONLY READING this 27th day of July 2021 by the City Council of the City of South Daytona, Florida.

CITY OF SOUTH DAYTONA, FLORIDA



William C. Hall, Mayor

ATTEST:



James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:



Wade Vose, City Attorney

Exhibit "A"

Book : 5323
Page : 3639

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL #5344-16-00-1130 (SPLIT OUT)

LEGAL DESCRIPTION

POINT OF COMMENCEMENT NORTHWEST CORNER OF LOT 113, TOWN OF BLAKE TOWNSHIP 15 SOUTH, RANGE 33, SECTION 41; THENCE NORTH 65°05'17" EAST ALONG THE NORTH LINE OF AFORESAID LOT A DISTANCE OF 325.33 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE NORTH LINE NORTH 65°05'17" EAST A DISTANCE OF 710.70 FEET TO THE WEST RIGHT OF WAY LINE OF MAGNOLIA AVENUE; THENCE SOUTH 56°09'57" EAST ALONG THE WESTERLY RIGHT OF WAY LINE A DISTANCE OF 111.96 FEET; THENCE SOUTH 27°34'27" EAST A DISTANCE OF 305.51 FEET TO THE SOUTH LINE OF LOT 113, TOWN OF BLAKE TOWNSHIP 15 SOUTH, RANGE 33, SECTION 41; THENCE SOUTH 64°54'41" WEST ALONG THE SOUTH LINE OF LOT 113 A DISTANCE OF 110.12 FEET; THENCE DEPARTING THE SOUTH LINE OF LOT 113, NORTH 27°37'57" WEST A DISTANCE OF 78.35 FEET; THENCE SOUTH 64°44'04" WEST A DISTANCE OF 455.02 FEET; THENCE SOUTH 27°43'31" EAST A DISTANCE OF 78.95 FEET TO THE SOUTH LINE OF LOT 113; THENCE SOUTH 64°40'45" WEST ALONG THE SOUTH LINE OF LOT 113, A DISTANCE OF 147.98 FEET, TO A POINT OF A NON RADIAL CURVE ON A PROPOSED PUBLIC WORKS ROAD, THENCE 292.51 FEET ALONG THE ARC OF A CURVE TO THE LEFT, (CONCAVE SOUTHWEST), HAVING A CENTRAL ANGLE OF 268°09'05", A RADIUS OF 62.50 FEET, A CHORD BEARING OF NORTH 69°23'47" WEST AND A CHORD DISTANCE OF 89.80 FEET TO A POINT; THENCE NORTH 26°23'43" WEST A DISTANCE OF 339.66 FEET TO THE POINT OF BEGINNING.

CONTAINING 5.93 ACRES MORE OR LESS.

See continuation of Legal Description

And
together with

DESCRIPTION OF PUBLIC ROAD RIGHT OF WAY:
POINT OF COMMENCEMENT BEING THE NORTHERLY LINE OF LOT 133, TOWN OF BLAKE SUBDIVISION, RECORDED IN MAP BOOK 1, PAGE 38, AND DEED BOOK "E", PAGE 150, AND THE EASTERLY LINE OF NOVA ROAD SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 78180, SHEET 12 OF 17, DATED 3-1-82. THENCE SOUTH 24°52'27" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF NOVA ROAD AS SHOWN ON AFORESAID MAP, A DISTANCE OF 4.98 FEET; THENCE SOUTH 85°07'33" WEST A DISTANCE OF 2.00 FEET; THENCE SOUTH 24°52'27" EAST A DISTANCE OF 260.29 FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING A POINT OF CURVATURE, THENCE LEAVING THE RIGHT-OF-WAY LINE OF NOVA ROAD, 23.56 FEET ALONG THE ARC OF A CURVE TO THE LEFT (CONCAVE NORTHERLY), HAVING A CENTRAL ANGLE OF 09°00'00", A RADIUS OF 15.00 FEET, A CHORD BEARING OF SOUTH 80°52'27" EAST AND A CHORD DISTANCE OF 21.21 FEET TO A POINT OF TANGENCY; THENCE NORTH 85°07'33" EAST A DISTANCE OF 11.84 FEET TO A POINT OF CURVATURE; THENCE 137.38 FEET ALONG THE ARC OF A CURVE TO THE RIGHT (CONCAVE SOUTHERLY), HAVING A CENTRAL ANGLE OF 03°58'40", A RADIUS OF 225.00 FEET, A CHORD BEARING OF NORTH 82°36'33" EAST AND A CHORD DISTANCE OF 135.23 FEET TO A POINT OF TANGENCY; THENCE SOUTH 79°53'47" EAST A DISTANCE OF 72.56 FEET TO A POINT OF CURVATURE; THENCE 108.20 FEET ALONG THE ARC OF A CURVE TO THE LEFT (CONCAVE NORTHERLY), HAVING A CENTRAL ANGLE OF 03°25'28", A RADIUS OF 175.00 FEET, A CHORD BEARING OF NORTH 82°23'09" EAST AND A CHORD DISTANCE OF 106.48 FEET TO A POINT OF TANGENCY; THENCE NORTH 84°40'45" EAST A DISTANCE OF 318.81 FEET TO A POINT OF CURVATURE; THENCE 78.93 FEET ALONG THE ARC OF A CURVE TO THE LEFT (CONCAVE NORTHWESTERLY), HAVING A CENTRAL ANGLE OF 01°39'10", A RADIUS OF 275.00 FEET, A CHORD BEARING OF NORTH 80°21'10" EAST AND A CHORD DISTANCE OF 78.85 FEET TO A POINT OF TANGENCY; THENCE NORTH 48°01'35" EAST A DISTANCE OF 63.84 FEET TO A POINT OF CURVATURE; THENCE 94.46 FEET ALONG THE ARC OF A CURVE TO THE RIGHT (CONCAVE SOUTHEASTERLY), HAVING A CENTRAL ANGLE OF 01°39'10", A RADIUS OF 325.00 FEET, A CHORD BEARING OF NORTH 80°21'10" EAST AND A CHORD DISTANCE OF 94.13 FEET TO A POINT OF TANGENCY; THENCE NORTH 84°40'45" EAST A DISTANCE OF 106.26 FEET TO A POINT OF CURVATURE; THENCE 23.08 FEET ALONG THE ARC OF A CURVE TO THE LEFT (CONCAVE NORTHWESTERLY), HAVING A CENTRAL ANGLE OF 08°08'08", A RADIUS OF 15.00 FEET, A CHORD BEARING OF NORTH 20°36'13" EAST AND A CHORD DISTANCE OF 20.87 FEET TO A POINT OF REVERSE CURVE; THENCE 282.51 FEET ALONG THE ARC OF A CURVE TO THE RIGHT (CONCAVE WESTERLY), HAVING A CENTRAL ANGLE OF 28°09'05", A RADIUS OF 82.50 FEET, A CHORD BEARING OF SOUTH 80°23'47" EAST AND A CHORD DISTANCE OF 89.80 FEET TO A POINT OF TANGENCY; THENCE SOUTH 84°40'45" WEST A DISTANCE OF 183.72 FEET; THENCE SOUTH 54°40'45" WEST A DISTANCE OF 685.02 FEET; THENCE NORTH 79°53'47" WEST A DISTANCE OF 60.39 FEET TO A POINT OF CURVATURE; THENCE 106.03 FEET ALONG THE ARC OF A CURVE TO THE LEFT (CONCAVE SOUTHERLY), HAVING A CENTRAL ANGLE OF 03°58'40", A RADIUS OF 175.00 FEET, A CHORD BEARING OF SOUTH 82°36'33" WEST AND A CHORD DISTANCE OF 105.18 FEET TO A POINT OF TANGENCY; THENCE SOUTH 85°07'33" WEST A DISTANCE OF 11.84 FEET TO A POINT OF CURVATURE; THENCE 23.56 FEET ALONG THE ARC OF A CURVE TO THE LEFT (CONCAVE SOUTHEASTERLY), HAVING A CENTRAL ANGLE OF 09°00'00", A RADIUS OF 15.00 FEET, A CHORD BEARING OF SOUTH 20°07'33" WEST AND A CHORD DISTANCE OF 21.21 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF NOVA ROAD; THENCE NORTH 24°52'27" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF NOVA ROAD A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.95 ACRES MORE OR LESS.

MASTER DEVELOPMENT AGREEMENT
between the City of South Daytona and Villa Richey LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into and made as of the ____ day of _____, 2022, by and between the CITY OF SOUTH DAYTONA, a Florida municipal corporation, with an address of 1672 South Ridgewood Avenue, South Daytona, Florida 32119, (hereinafter referred to as the "City"), and Villa Richey LLC, a Florida limited liability company, the record title property owner, with an address of 3817 S. Nova Road, Suite 104-613, Port Orange, Florida 32127 ("Owner/Developer")

WITNESETH

WHEREAS, the Owner/Developer warrants that it holds legal title to the lands located in Volusia County, Florida, and within the corporate limits of the City of South Daytona, said lands being more particularly described in **Exhibit A. Legal Description** for the subject property ("Property"), attached hereto and by this reference made a part hereof; and

WHEREAS, the Owner/Developer desires to facilitate the orderly development of the Property in compliance with the laws and regulations of the City and of other governmental authorities; and

WHEREAS, the City has determined that the Property is suitable in size, location and character for the uses and accessory uses listed in this Agreement as proposed by the Owner/Developer, and that the uses and accessory uses listed in this Agreement are consistent with the City's comprehensive plan; 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 seeks the City's approval to develop the Property and to use the Property for Owner/Developer's intended uses and accessory uses as listed in this Agreement; and

WHEREAS, the City previously rezoned the Property to a form of Planned Unit Development (PUD), as defined under the City's Land Development Code;

WHEREAS, going forward, the PUD shall consist of (a) this Agreement as the written agreement of the PUD and (b) **Exhibit B. Architectural Plans and Renderings** attached hereto and by this reference made a part hereof.

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 owner of the Property is Villa Richey, LLC.
3. **Non-Statutory Development Agreement.** This Agreement is a non-statutory agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220-163.3243, Florida Statutes.
4. **Duration.** This Agreement is binding and runs with the land in perpetuity, unless amended.
5. **Title Opinion/Certification.** The Owner/Developer will provide 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 Property to be in the name of the Owner/Developer and showing all liens, mortgages and other encumbrances not satisfied or released of record.
6. **Subordination/Joinder.** Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record (except for the statutory priority lien for ad valorem real estate taxes), must be subordinated to the terms of this Agreement or the Lienholder join in this Agreement. It shall be the responsibility of Owner/Developer to promptly obtain such subordination or joinder, in form and substance that is acceptable to the City Attorney, prior to the City's execution of this Agreement.
7. **Development of the Property.** Development of the Property shall be subject to the performance standards listed below:
 - A. Permitted principal uses allowable on the Property:
 1. 10 Townhouse Buildings comprised of 80 Units
 - a. Three-story townhomes with 1 or 2-car garage, covered entryways and balcony areas.

- b. Townhome units shall include luxury vinyl plank flooring in common spaces, carpet or vinyl plank flooring in bedrooms and walk-in closets, stainless steel kitchen appliances, granite or quartz countertops with tile backsplash, 9-foot-high ceilings, and in-unit laundry connections.
- B. Permitted Accessory uses on the Property include the following uses, or uses substantially similar thereto:
 - 1. Monumented sign entry way
 - 2. On-site Community Pool
 - 3. Internal Dog Park
- C. Required Amenities are to include:
 - 1. Gated private access off Magnolia Avenue with an emergency access off of Fosters Way.
 - 2. A sidewalk adjacent to the roadway that connects with a pedestrian signal crosswalk onto Magnolia Avenue.
 - 3. Lighted, well-maintained green space.
 - 4. Covered mail kiosk.
 - 5. Internal child play area.
 - 6. Dumpster enclosure.
- D. Maximum Residential Density: 20 units per acre
- E. Impervious surface ratio is not to exceed 70% of the gross square footage for the Property.
- F. Maximum Building Coverage: 40%
- G. Minimum Open space: 30%
- H. Minimum Common space: 20%
- I. Minimum landscaping and buffer yard requirements are per the City's Land Development Code. Stormwater management facilities shall not be placed within buffer yards. Buffering shall include:
 - 1. 6-foot-high solid vinyl fence around the perimeter of the property.
 - 2. Landscaping shall be installed along the exterior of the Vinyl Fence.

- J. Minimum Building Setbacks:
 - 1. Magnolia Avenue / East Property line: 30 feet
 - 2. Foster Way / West Property line: 30 feet
 - 3. North Property Line: 20 feet
 - 4. Aspen Pond / South Property Line: 20 feet
- K. Maximum building height: 35 feet
- L. Minimum required parking spaces: Two spaces per dwelling unit, plus ten percent of required resident parking as guest parking.
- M. Architectural Design Standards: All buildings and accessory structures shall generally be consistent with the **Exhibit B. Architectural Plans and Renderings** unless, prior to issuance of the initial building permit, Owner/Developer submits, and City staff approves a different conceptual elevation. The City shall have the right to reject any proposed elevation which does not meet the requirements herein, or which involves the use of fewer architectural details and ornamentation than are set forth in **Exhibit B**. Any modifications to the approved architectural elevations shall include:
 - 1. Florida Vernacular Architecture as provided in **Exhibit B**.
 - 2. Standing seam metal–or metal shingle roofs consistent with Florida Vernacular Architecture.
 - 3. Appropriate architectural delineation at all facades will be incorporated into the design to provide greater visual interest and appeal.
 - 4. Covered Home Entryways in order to provide greater visual interest and appeal.
 - 5. The construction materials will meet or exceed all the current Florida Building Code. The building construction shall consist of concrete block for the first floor with wood framed upper floors. The exterior finish will be stucco first floor and Hardie siding on the upper floors.
 - 6. Additional architectural interest to large blank walls on the front of the building or other decorative architectural elements that will be included in the Architectural Plans.

7. A Sign Site Plan will be provided to the City at time of Site Plan review or at such time deemed appropriate by the City. All signs require a permit.
- N.** Minimum Landscape buffers: Minimum 40 feet wide with 7 shade trees, 8 understory trees and 60 shrubs per 100 lineal feet on Magnolia (Front of Property only) and minimum of 10 feet for sides and rear of the property .
- O.** Homeowners Association Required. A Declaration of Covenants shall be recorded with the Volusia County Clerk of Court. An establishment of a Homeowners Association is required. The Homeowners Association will operate and maintain all streets, sidewalks, stormwater drainage, pond, exterior wall/fence and entry gate, potable water, sanitary sewer, landscaping, tree preservation, irrigation and improvements constructed within the boundaries site. In the event that Homeowners Association fails to satisfy these responsibilities and the City is asked to take over such responsibilities, the City shall not be obligated to do so, but that if the City voluntarily elects to do so, such costs shall be funded solely by Special Assessment assessed against each property within the Subdivision, payable annually by each property owner, to fully fund the costs of such maintenance responsibilities.
- P.** Stormwater and environmental: On-site stormwater retention will be improved and maintained in conjunction with the development. Stormwater retention facilities will be maintained at a level consistent with the standards of the St. Johns River Water Management District and The City of South Daytona. The onsite stormwater system shall not become the responsibility of the City. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements, shall be the sole responsibility of the Owner/Developer, 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.
- Q.** Transportation, site access, and traffic devices: The Owner/Developer is responsible for all transportation improvements within the Property and any off-site transportation requirements as may be identified in the traffic study required herein, as a result of the proposed development, for site function, that maintains or improves the adopted 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. A traffic report will be provided to the City. In the event that the report identifies a diminution in the adopted level of service for Foster Way and S. Nova Road, the Owner/Developer will mitigate the impacts that may be required by the City's concurrency management system either by making any needed capacity improvements to any impacted roadway segments or by paying a pro rata share of the total anticipated costs of improvements to any impacted segments based on the future vehicle trips from the project on the impacted segment.

8. **Development Permits/Fees.** The Owner/Developer is responsible for obtaining and paying for all building permits and other required permits and approvals, and for the payment of all fees for facilities and services to ensure compliance with all federal, state, and local requirements for the 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. Impact fees as required by the City shall be paid at the time of the issuance of the building permit.
9. **Site Plan Approval. Exhibit B. Architectural Plans and Renderings** are the Preliminary Plan of the PUD and this Agreement. A site plan approved by the city, complying with all codes shall be required prior to the issuance of a Building Permit. The Master Development Agreement shall not replace, supersede, or absolve the Owner/Developer from approvals for any site plan and its respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria apply.
10. **No Guarantee by City.** It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the 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.
11. **Indemnification.** The Owner/Developer shall indemnify and hold the City harmless from any and all claims, demands, disputes, costs, expenses, (to include attorney's 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 Property, except those claims or liabilities by or arising from gross negligence or intentional acts of the City, or its employees, contractors or agents.

12. Compliance; Minor Amendments; Defaults; Enforcement.

- A. The Owner/Developer agrees that it, and their successors and assigns, will abide by the provisions of this Agreement, the City's Comprehensive Plan, the City's Land Development Code, 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 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 Property, should the Owner/Developer fail to comply with the terms of this Agreement. In the event of a conflict between this Agreement and the City's Land Development Code, the more restrictive regulations shall govern the development of the Property, unless specific specifications are set forth herein, in which case the provisions of this Agreement shall prevail.
- B. **Minor Amendments.** Consistent with Section 5.5(O)(13) of the City's Land Development Code, the City Manager shall have the right to approve requests by the Owner/Developer for Minor Amendments to this Agreement. A Minor Amendment may include, without limitation: (1) a reduction in the maximum building height; (2) a reduction in the number of units; and (3) a modification to the number of unit types, provided that such modification does not result in a Total Unit Count in excess of Section 7(A)(1)(d) of this Agreement.
- C. **Default.** Failure by a party to perform any of its obligations hereunder after notice and a reasonable opportunity to cure as provided herein shall constitute a default hereunder, entitling the non-defaulting party to terminate this Agreement, or to pursue the remedies of specific performance, injunctive relief, and/or damages. Prior to termination of this Agreement or any party filing any action as a result of a default by the other party under this Agreement, the non-defaulting party exercising such right shall first provide the defaulting party with written notice specifying such default and the actions needed to cure same, in reasonable detail. Upon receipt of said notice, the defaulting party shall be provided a thirty (30) day opportunity within which to cure such default. If thirty (30) days is not a reasonably sufficient period in which to cure the default, the cure period shall be extended for a reasonable

time, provided cure is diligently pursued. Upon termination of the Agreement, the Owner/Developer shall immediately be divested of all rights and privileges granted hereunder.

D. Enforcement. In the event of a violation of this Agreement, the City's Land Development Code or Code of Ordinances by the Owner/Developer, the City Commission may after notice and a reasonable opportunity to cure as provided in Section 12.B above suspend construction activity and revoke any building permit or development order issued to Owner/Developer and take all actions necessary to halt construction until such time as the provisions herein are brought into compliance. In the event legal action is necessary due to a violation by Owner/Developer, and attorney's fees and costs are incurred by the City enforcing compliance with this Agreement, the Land Development Code or Code of Ordinances, these expenses shall be borne by the Owner/Developer. These methods of enforcement are in addition to any other methods of enforcement provided by law. In the event of a default by the City which is not cured after receipt of notice and expiration of the cure period, then Owner/Developer shall be entitled to recover all reasonable attorney's fees and costs incurred, whether at the trial or appellate level. The Owner/Developer agrees that it will abide by the provisions of this Agreement, the City's Comprehensive Plan, the City's Land Development Code, 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.

13. **Obligations for Improvements.** The groundbreaking for the construction of improvements to the Property shall take place by the October 2023, and construction shall be complete by the end of 2025. Should the Owner/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 forty (40) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner/Developer. If such work cannot be completed within such ninety (90) days, then Owner/Developer shall have an additional reasonable time period to complete same, provided it diligently pursues same. If the Owner/Developer fails to complete the obligations within the ninety (90) day period (as it may be extended), then the City, or its assignee, without further notice to the Owner/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 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 in an action at law for damages, as well as record a lien against the Property in that amount. Notice to the Owner/Developer and their successors and assigns in interest shall be deemed to have been given upon the mailing of notice as provided in paragraph (16) of this Agreement.

14. **Concurrency and Vested Rights.** The Owner/Developer acknowledges and agrees that prior to the issuance of any development orders for the Property, the Owner/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 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 Property beyond the rights that already exist as of the date of this Agreement.
15. **Periodic Review.** The City reserves the right to review the Property in relation to this Agreement periodically to determine if there has been 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 withhold development orders or permits until compliance with this Agreement has been established and Owner/Developer has taken all other actions as provided in this Agreement and under applicable law.
16. **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 be followed up with service by one of the other methods. Notices shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE:

Ursula Amon
Villa Richey, LLC
3817 S Nova Rd., Ste 104-163

Port Orange, FL 32127
Tel: 386-527-5089
Email: Ursula.amon@gmail.com
With a copy to nancy@nancygorenbusinesslaw.com

CITY'S REPRESENTATIVE:

Mr. James L. Gillis, Jr.
City of South Daytona
1672 South Ridgewood Avenue
South Daytona, Florida 32119
Tel. (386) 322-3014
E-mail: lgillis@southdaytona.org

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.

17. **Compliance with the Law.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner/Developer from the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.
18. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
19. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/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 Property.
20. **Subsequently Enacted State or Federal Law.** If either state or federal law is enacted after the effective date of this Agreement that is applicable to and precludes the parties' compliance with the terms of this Agreement, this Agreement and correlating zoning amendment shall be modified or revoked, as is necessary, to comply with the relevant state or federal law.
21. **Severability.** If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not

materially prejudiced and if the intentions of the parties can be affected. To that end, this Agreement is declared severable.

22. **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.
23. **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 for any litigation relating to this Agreement shall lie exclusively with the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Volusia County, Florida.
24. **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 shall execute this Agreement prior to this Agreement being placed on the agenda for final approval by the City Council of the City of South Daytona.
25. **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.
26. **Effective Date.** The Effective Date of this Agreement shall be the day this Agreement is recorded in the Public Records of Volusia County, Florida.

(The remainder of this page is intentionally blank)

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

VILLA RICHEY, LLC

Signature of Witness # 1

By: _____
Ursula Amon, Manager

Print or type name

Signature of Witness # 2

Print or type name

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2022, by Ursula Amon, as Authorized Person of Villa Richey, LLC, who [☐] is/are personally known to me or [☐] who has/have produced _____ as identification and who did not take an oath.

Signature of Notary

(NOTARY SEAL)

CITY OF SOUTH DAYTONA:

William C. Hall, Mayor

Date: _____

ATTEST:

James L. Gillis, Jr., City Manager

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 2022, by William C. Hall, as Mayor, and James L. Gillis, Jr., as City Manager who are personally known to me and acknowledge executing the same freely and voluntarily under authority vested in them by the City of South Daytona.

Signature of Notary

(NOTARY SEAL)

Print or type name

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

Wade C. Vose, City Attorney

VILLA MAGNOLIA





REVISIONS

REV	DATE	DESCRIPTION
1	---	---
2	---	---
3	---	---
4	---	---
5	---	---
6	---	---
7	---	---
8	---	---
9	---	---
10	---	---

BARDEZ

5048 POINTE EMERALD LANE, BOCA RATON, FL 33486
(O) 561-465-5949 | (e) nbarnett@bardezco.com

PROJECT DESCRIPTION

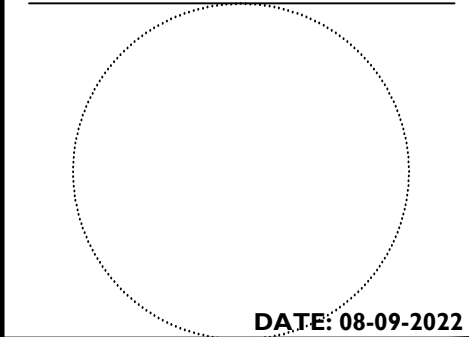
VILLA MAGNOLIA

ADDRESS: MAGNOLIA AVE; S. DAYTONA BEACH
PARCEL ID NUMBER: 534416001133
PREPARED FOR: ZEITGEIST

E-CERTIFICATION

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY
NOEL A. BARNETT, PE ON THE DATE ADJACENT TO THE SEAL
PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED
SIGNED AND SEALED AND THE SIGNATURE MUST BE
VERIFIED ON ANY ELECTRONIC COPIES

CERTIFICATION



DATE: 08-09-2022
NOEL BARNETT
PROFESSIONAL ENGINEER
FL LICENSE NO. 72006
FL BUSINESS C.A. NO.: 32223

SHEET TITLE

**CONCEPT
PLAN 'C'**

SHEET ID

C-I.1

MASTER DEVELOPMENT AGREEMENT
between the City of South Daytona and Beach Track LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into and made as of the ____ day of _____, 2022, by and between the CITY OF SOUTH DAYTONA, a Florida municipal corporation, with an address of 1672 South Ridgewood Avenue, South Daytona, Florida 32119, (hereinafter referred to as the "City"), and Beach Track LLC, a Florida limited liability company, the record title property owner, with an address of 3245 S. Atlantic Avenue, #504, Daytona Beach Shores, FL 32118 ("Owner/Developer")

W I T N E S E T H

WHEREAS, the Owner/Developer warrants that it holds legal title to the lands located in Volusia County, Florida, and within the corporate limits of the City of South Daytona, said lands being more particularly described in **Exhibit A. Legal Description** for the subject property ("Property"), attached hereto and by this reference made a part hereof; and

WHEREAS, the Owner/Developer desires to facilitate the orderly development of the Property in compliance with the laws and regulations of the City and of other governmental authorities; and

WHEREAS, the City has determined that the Property is suitable in size, location and character for the uses and accessory uses listed in this Agreement as proposed by the Owner/Developer, and that the uses and accessory uses listed in this Agreement are consistent with the City's comprehensive plan; 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 seeks the City's approval to develop the Property and to use the Property for Owner/Developer's intended uses and accessory uses as listed in this Agreement; and

WHEREAS, the City previously rezoned the Property to a Planned Commercial Development (PCD), as defined under the City's Land Development Code;

WHEREAS, going forward, the PCD shall consist of (a) this Agreement as the written agreement of the PCD and (b) **Exhibit B. Architectural Plans and Renderings** attached hereto and by this reference made a part hereof.

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 owner of the Property is Beach Track, LLC.
3. **Non-Statutory Development Agreement.** This Agreement is a non-statutory agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220-163.3243, Florida Statutes.
4. **Duration.** This Agreement is binding and runs with the land in perpetuity, unless amended.
5. **Title Opinion/Certification.** The Owner/Developer will provide 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 Property to be in the name of the Owner/Developer and showing all liens, mortgages and other encumbrances not satisfied or released of record.
6. **Subordination/Joinder.** Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record (except for the statutory priority lien for ad valorem real estate taxes), must be subordinated to the terms of this Agreement or the Lienholder join in this Agreement. It shall be the responsibility of Owner/Developer to promptly obtain such subordination or joinder, in form and substance that is acceptable to the City Attorney, prior to the City's execution of this Agreement.
7. **Development of the Property.** Development of the Property shall be subject to the performance standards listed below:
 - A. Permitted principal uses allowable on the Property:
 1. 40 Storage Suites
 - a. Concrete block construction or tilt panel.
 - b. Each individually owned unit to include kitchen area, restrooms including shower facilities, temperature

control/HVAC, insulated electric overhead door, separate covered door entryway.

- B.** Permitted Accessory uses on the Property include the following uses, or uses substantially similar thereto:

 - 1. Dumpster Enclosure.
- C.** Required Amenities are to include:

 - 1. Gated private access to Fosters Way.
 - 2. High Speed Wi-Fi throughout Property.
 - 3. Lighted, well-maintained green spaces.
 - 4. Lighted Fountain in stormwater pond.
 - 5. Stone flooring.
 - 6. Customizable units.
 - 7. Monitored security system in each unit.
 - 8. Virtual surveillance pre-wired in each unit.
 - 9. TV/Phone pre-wire in each unit.
 - 10. 50 amp RV Outlet.
 - 11. 16' clear interior ceiling height.
 - 12. Insulated walls and ceilings.
 - 13. Carbon monoxide sensors in each unit.
- D.** Prohibited Uses:

 - 1. Any use that may be considered to cause objectionable noise, fumes, vibrations, dust or odor.
 - 2. Outdoor Storage.
 - 3. Residential Units.
 - 4. Overnight Use.
 - 5. Rental Units.
 - 6. Access to Magnolia Avenue.
- E.** Impervious surface ratio is not to exceed 70% of the gross square footage for the Property.
- F.** Maximum Building Coverage: 40%

- G.** Minimum landscaping and buffer yard requirements are per the City's Land Development Code. Stormwater management facilities shall not be placed within buffer yards. Buffering shall include:
1. 6-foot-high masonry wall with stucco finish around the perimeter of the property.
 2. Landscaping shall be installed along the exterior of the Masonry Wall
 - a. One (1) tree or large shrub placed every 25 linear feet along the exterior of the wall.
 3. Landscape Plan will be required and must meet or exceed the City's Land Development Code Section 5.6 (C).
- H.** Minimum Building Setbacks:
1. Magnolia Avenue / East Property line: 25 feet
 2. Foster Way / West Property line: 25 feet
 3. North Property Line: 10 feet
 4. Aspen Pond / South Property Line: 10 feet
- I.** Maximum building height: 35 feet
- J.** Minimum required parking spaces: 1 space for every 4,000 square feet
- K.** Architectural Design Standards: All buildings and accessory structures shall generally be consistent with the **Exhibit B. Architectural Plans and Renderings** unless, prior to issuance of the initial building permit, Owner/Developer submits, and City staff approves a different conceptual elevation. The City shall have the right to reject any proposed elevation which does not meet the requirements herein, or which involves the use of fewer architectural details and ornamentation than are set forth in **Exhibit B**. Any modifications to the approved architectural elevations shall include:
1. Florida Vernacular Architecture as provided in **Exhibit B**. Building construction shall be concrete block construction or tilt panel.
 2. Standing seam metal-or metal shingle roofs consistent with Florida Vernacular Architecture.
 3. Appropriate architectural delineation at all facades will be incorporated into the design to provide greater visual interest and appeal.

4. Individual covered door entryways in order to provide greater visual interest and appeal.
 5. The construction materials will meet or exceed all the current Florida Building Code.
 6. Additional architectural interest to large blank walls on the front of the building or other decorative architectural elements that will be included in the Architectural Plans.
 7. A Sign Site Plan will be provided to the City at time of Site Plan review or at such time deemed appropriate by the City. All signs require a permit.
- L.** Minimum Landscape buffers: Minimum 30 feet wide with 5 shade trees, 6 understory trees and 50 shrubs per 100 lineal feet.
- M.** Stormwater and environmental: The existing on-site stormwater retention pond will be improved and maintained in conjunction with the development. The stormwater retention facility will be maintained at a level consistent with the standards of the St. Johns River Water Management District and The City of South Daytona. The onsite stormwater system shall not become the responsibility of the City. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements, shall be the sole responsibility of the Owner/Developer, 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.
- N.** Transportation, site access, and traffic devices: The Owner/Developer is responsible for all transportation improvements within the Property and any off-site transportation requirements as may be identified in the traffic report required herein, as a result of the proposed development, for site function, that maintains or improves the adopted 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. A traffic report will be provided to the City. In the event that

the report identifies a diminution in the adopted level of service for Foster Way and S. Nova Road, the Owner/Developer will mitigate the impacts that may be required by the City's concurrency management system either by making any needed capacity improvements to any impacted roadway segments or by paying a pro rata share of the total anticipated costs of improvements to any impacted segments based on the future vehicle trips from the project on the impacted segment.

8. **Development Permits/Fees.** The Owner/Developer is responsible for obtaining and paying for all building permits and other required permits and approvals, and for the payment of all fees for facilities and services to ensure compliance with all federal, state, and local requirements for the 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. Impact fees as required by the City shall be paid at the time of the issuance of the building permit.
9. **Site Plan Approval. Exhibit B. Architectural Plans and Renderings** are the Preliminary Plan of the PCD and this Agreement. A site plan approved by the city, complying with all codes shall be required prior to the issuance of a Building Permit. The Master Development Agreement shall not replace, supersede, or absolve the Owner/Developer from approvals for any site plan and its respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria apply.
10. **No Guarantee by City.** It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the 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.
11. **Indemnification.** The Owner/Developer shall indemnify and hold the City harmless from any and all claims, demands, disputes, costs, expenses, (to include attorney's 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 Property, except those claims or liabilities by or arising from gross negligence or intentional acts of the City, or its employees, contractors or agents.
12. **Compliance; Minor Amendments; Defaults; Enforcement.**
 - A. The Owner/Developer agrees that it, and their successors and assigns, will abide by the provisions of this Agreement, the City's Comprehensive Plan, the City's Land Development Code, 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 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 Property, should the Owner/Developer fail to comply with the terms of this Agreement. In the event of a conflict between this Agreement and the City's Land Development Code, the more restrictive regulations shall govern the development of the Property, unless specific specifications are set forth herein, in which case the provisions of this Agreement shall prevail.

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- C. **Default.** Failure by a party to perform any of its obligations hereunder after notice and a reasonable opportunity to cure as provided herein shall constitute a default hereunder, entitling the non-defaulting party to terminate this Agreement, or to pursue the remedies of specific performance, injunctive relief, and/or damages. Prior to termination of this Agreement or any party filing any action as a result of a default by the other party under this Agreement, the non-defaulting party exercising such right shall first provide the defaulting party with written notice specifying such default and the actions needed to cure same, in reasonable detail. Upon receipt of said notice, the defaulting party shall be provided a thirty (30) day opportunity within which to cure such default. If thirty (30) days is not a reasonably sufficient period in which to cure the default, the cure period shall be extended for a reasonable time, provided cure is diligently pursued. Upon termination of the Agreement, the Owner/Developer shall immediately be divested of all rights and privileges granted hereunder.
- D. **Enforcement.** In the event of a violation of this Agreement, the City's Land Development Code or Code of Ordinances by the Owner/Developer, the City Commission may after notice and a reasonable opportunity to cure as

provided in Section 12.B above suspend construction activity and revoke any building permit or development order issued to Owner/Developer and take all actions necessary to halt construction until such time as the provisions herein are brought into compliance. In the event legal action is necessary due to a violation by Owner/Developer, and attorney's fees and costs are incurred by the City enforcing compliance with this Agreement, the Land Development Code or Code of Ordinances, these expenses shall be borne by the Owner/Developer. These methods of enforcement are in addition to any other methods of enforcement provided by law. In the event of a default by the City which is not cured after receipt of notice and expiration of the cure period, then Owner/Developer shall be entitled to recover all reasonable attorney's fees and costs incurred, whether at the trial or appellate level. The Owner/Developer agrees that it will abide by the provisions of this Agreement, the City's Comprehensive Plan, the City's Land Development Code, 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.

13. **Obligations for Improvements.** The groundbreaking for the construction of improvements to the Property shall take place by the June 2023, and construction shall be complete by the end of 2024. Should the Owner/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 forty (40) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner/Developer. If such work cannot be completed within such ninety (90) days, then Owner/Developer shall have an additional reasonable time period to complete same, provided it diligently pursues same. If the Owner/Developer fails to complete the obligations within the ninety (90) day period (as it may be extended), then the City, or its assignee, without further notice to the Owner/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 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 in an action at law for damages, as well as record a lien against the Property in that amount. Notice to the Owner/Developer and their successors and assigns in interest shall be

deemed to have been given upon the mailing of notice as provided in paragraph (16) of this Agreement.

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15. **Periodic Review.** The City reserves the right to review the Property in relation to this Agreement periodically to determine if there has been 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 withhold development orders or permits until compliance with this Agreement has been established and Owner/Developer has taken all other actions as provided in this Agreement and under applicable law.
16. **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 be followed up with service by one of the other methods. Notices shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE:

Mr. Tom Clary
Beach Track, LLC
3245 S. Atlantic Avenue #504
Daytona Beach Shores, Florida 32118
Tel. _____
E-mail: _____

CITY'S REPRESENTATIVE:

Mr. James L. Gillis, Jr.
City of South Daytona

1672 South Ridgewood Avenue
South Daytona, Florida 32119
Tel. (386) 322-3014
E-mail: lgillis@southdaytona.org

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.

17. **Compliance with the Law.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner/Developer from the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.
18. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
19. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/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 Property.
20. **Subsequently Enacted State or Federal Law.** If either state or federal law is enacted after the effective date of this Agreement that is applicable to and precludes the parties' compliance with the terms of this Agreement, this Agreement and correlating zoning amendment shall be modified or revoked, as is necessary, to comply with the relevant state or federal law.
21. **Severability.** If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Agreement is declared severable.
22. **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.

23. **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 for any litigation relating to this Agreement shall lie exclusively with the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Volusia County, Florida.
24. **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 shall execute this Agreement prior to this Agreement being placed on the agenda for final approval by the City Council of the City of South Daytona.
25. **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.
26. **Effective Date.** The Effective Date of this Agreement shall be the day this Agreement is recorded in the Public Records of Volusia County, Florida.

(The remainder of this page is intentionally blank)

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

BEACH TRACK, LLC

Signature of Witness # 1

By: _____
Tom Clary, Authorized Person

Print or type name

Signature of Witness # 2

Print or type name

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2022, by Tom Clary, as Authorized Person of Beach Track, LLC, who [] is/are personally known to me or [] who has/have produced _____ as identification and who did not take an oath.

Signature of Notary

(NOTARY SEAL)

CITY OF SOUTH DAYTONA:

William C. Hall, Mayor

Date: _____

ATTEST:

James L. Gillis, Jr., City Manager

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 2022, by William C. Hall, as Mayor, and James L. Gillis, Jr., as City Manager who are personally known to me and acknowledge executing the same freely and voluntarily under authority vested in them by the City of South Daytona.

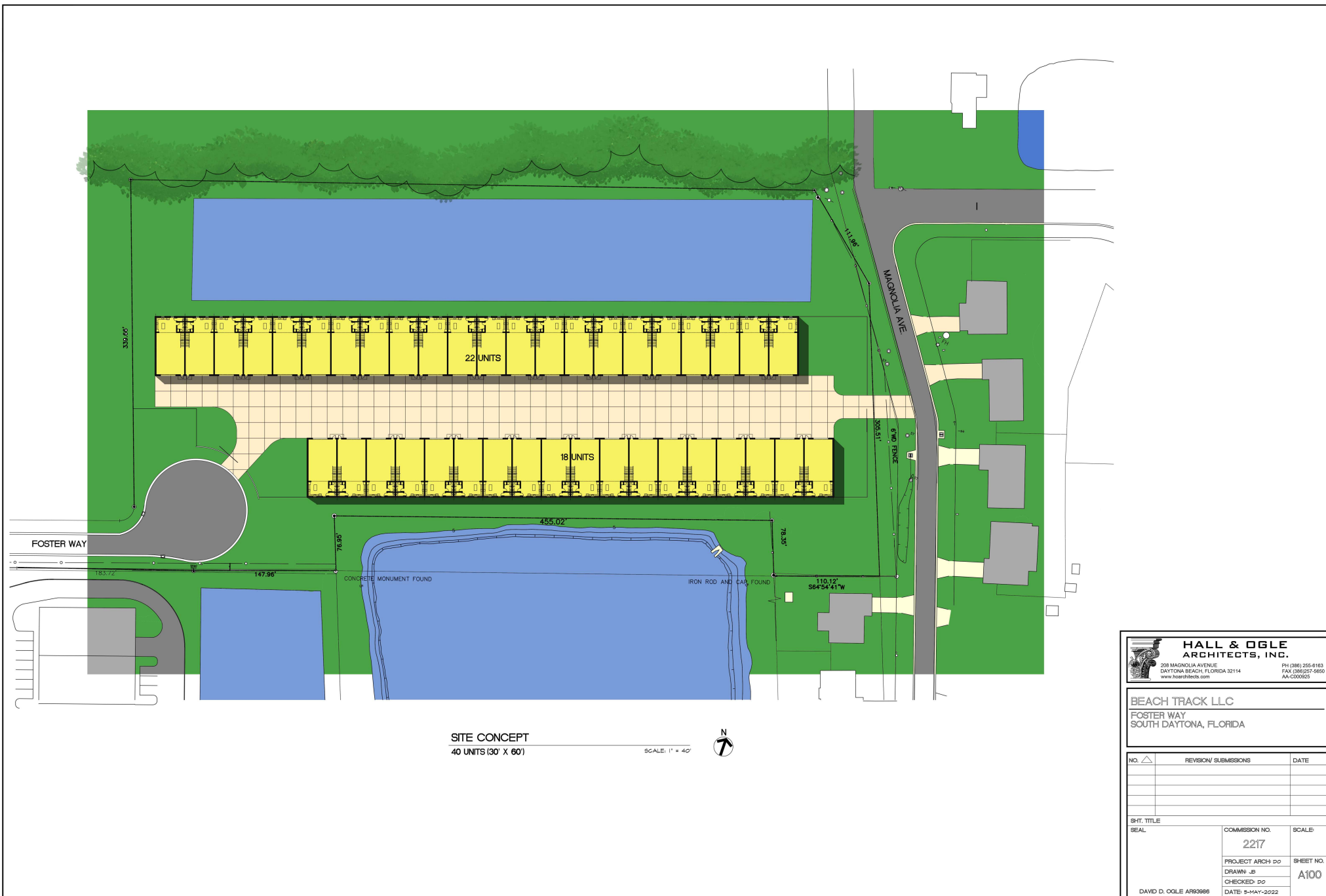
Signature of Notary

(NOTARY SEAL)

Print or type name

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

Wade C. Vose, City Attorney



 HALL & OGLE ARCHITECTS, INC. 208 MAGNOLIA AVENUE DAYTONA BEACH, FLORIDA 32114 www.hoarchitects.com PH (386) 255-6163 FAX (386) 257-6650 AA-C000025		
BEACH TRACK LLC FOSTER WAY SOUTH DAYTONA, FLORIDA		
NO. 	REVISION/ SUBMISSIONS	DATE
S-I-T: TITLE SEAL		
COMMISSION NO. 2217		SCALE
PROJECT ARCH: DO		SHEET NO. A100
DRAWN: JS		
CHECKED: DO		
DATE: 8-MAY-2022		
DAVID D. OGLE AP93986		



EXTERIOR RENDER 1



EXTERIOR RENDER 2

 HALL & OGLE ARCHITECTS, INC. <small>208 MAGNOLIA AVENUE DAYTONA BEACH, FLORIDA 32114 www.hoarchitects.com</small>			<small>PH (386) 255-6163 FAX (386) 257-6650 AA-C000025</small>
BEACH TRACK LLC FOSTER WAY SOUTH DAYTONA, FLORIDA			
NO. 	REVISION/ SUBMISSIONS	DATE	
SI-IT: TITLE SEAL		COMMISSION NO. 2217	SCALE
PROJECT ARCH: DO DRAWN: JB CHECKED: DO DATE: 8-MAY-2022		SHEET NO. A101	
DAVID D. OGLE AP93986		DATE: 8-MAY-2022	



INTERIOR RENDER 1



INTERIOR RENDER 2



INTERIOR RENDER 3

 HALL & OGLE ARCHITECTS, INC. <small>208 MAGNOLIA AVENUE DAYTONA BEACH, FLORIDA 32114 www.hoarchitects.com</small>			<small>PH (386) 255-6163 FAX (386) 257-6650 AA-C000025</small>
BEACH TRACK LLC FOSTER WAY SOUTH DAYTONA, FLORIDA			
NO. 	REVISION/ SUBMISSIONS	DATE	
SH-IT: TITLE SEAL			
COMMISSION NO. 2217		SCALE	
PROJECT ARCH: DO DRAWN: JB CHECKED: DO		SHEET NO. A102	
DAVID D. OGLE APR2022		DATE: 8-MAY-2022	