

City of South Daytona

Community Redevelopment Department

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3016 • Fax 386/322-3018



MEMORANDUM

To: James L. Gillis Jr., City Manager
From: Patty Rippey, AICP, Redevelopment Director
Re: Foster Way Property Concept Plans
Date: July 29, 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 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, 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.

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/or 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.

Attached to this memorandum is a draft copy of the Master Development Agreement (MDA) for the project. The draft agreement still has to be vetted and approved by the City Council. The purpose of including the MDA with this submittal is to give both the applicant and the board members staff's expectations for the project.

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.

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.

Attached to this memorandum is a draft copy of the Master Development Agreement (MDA) for the project. The draft agreement still has to be vetted and approved by the City Council. The purpose of including the MDA with this submittal is to give both the applicant and the board members staff's expectations for the project.

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.

Staff Recommendation:

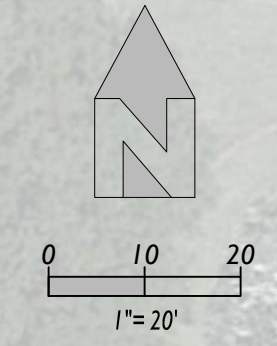
Staff's goal in deciding between the two projects involves identifying the best fit given the surrounding uses. The subject property has light industrial to the west and residential on the remaining sides. Staff believes that the storage suites would provide a smoother, softer transition from the light 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.

As a result, staff is recommending that the luxury storage suites project be the recommendation that the Planning and Appeals Board provides to the City Council. The recommendation of the Board will be presented to the City Council by staff. The City Council will then decide whether or not to sell the subject property to either of the project representatives. Once the City Council has approved 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. This is the Planning and Appeals Board's opportunity to recommend which use is better suited for the subject property before any zoning or land use changes, which involve public hearings, are required.

Villa Magnolia Townhome Project
Villa Richey LLC

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 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-1.1

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

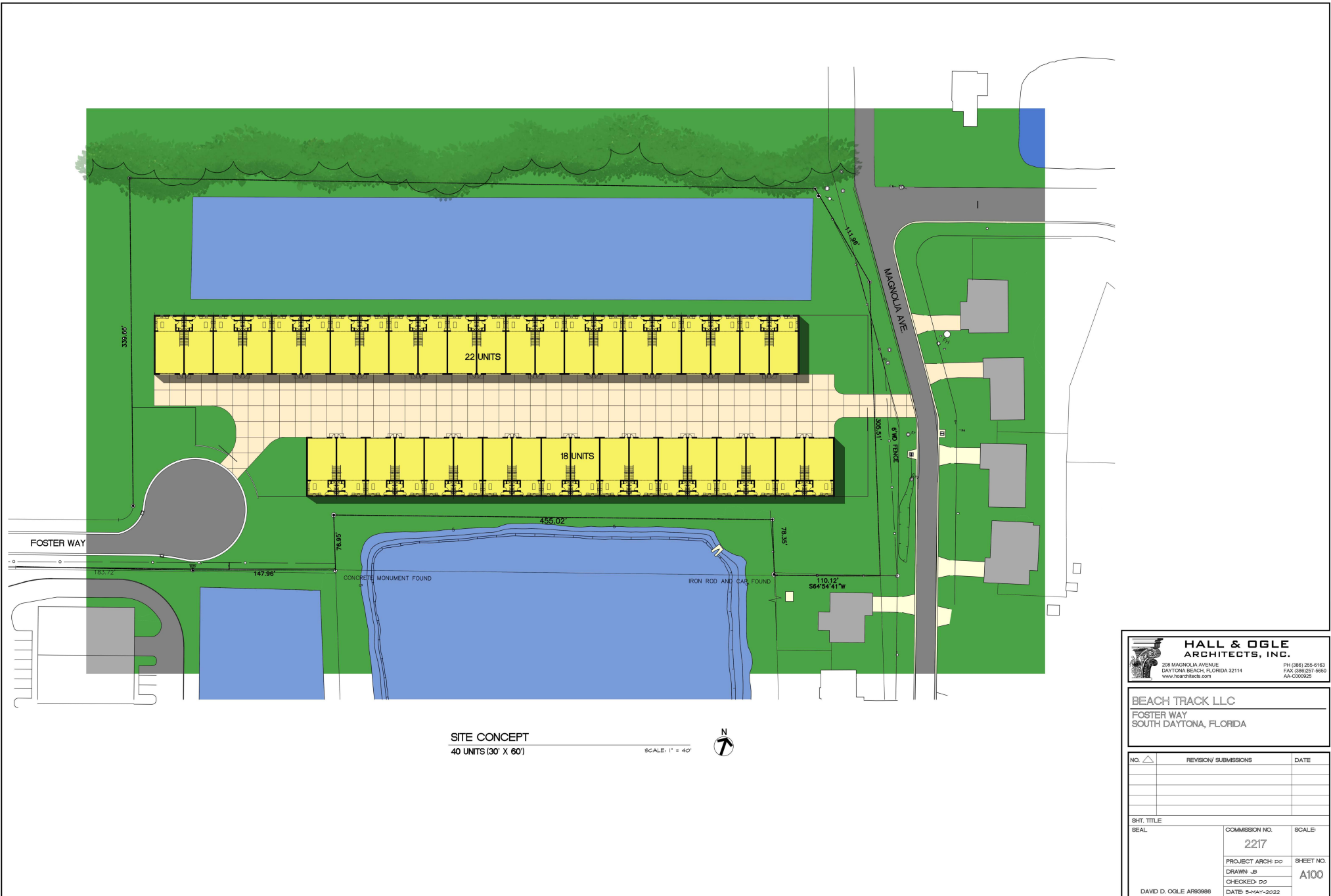
(NOTARY SEAL)

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

Luxury Storage Suites Project
Beach Track LLC



SITE CONCEPT
 40 UNITS (30' X 60')

SCALE: 1" = 40'



 HALL & OGLE ARCHITECTS, INC. 208 MAGNOLIA AVENUE DAYTONA BEACH, FLORIDA 32114 www.hoarchitects.com PH (386) 255-6163 FAX (386) 257-6600 AA-C000925		
BEACH TRACK LLC FOSTER WAY SOUTH DAYTONA, FLORIDA		
NO. 	REVISION/ SUBMISSIONS	DATE
SHEET TITLE SEAL		
COMMISSION NO.	SCALE	
2217		
PROJECT ARCH: DO	SHEET NO.	
DRAWN: JS	A100	
CHECKED: DO		
DATE: 8-MAY-2022		
DAVID D. OGLE APR2022		



EXTERIOR RENDER 1



EXTERIOR RENDER 2


HALL & OGLE ARCHITECTS, INC.
 208 MAGNOLIA AVENUE DAYTONA BEACH, FLORIDA 32114
 www.hoarchitects.com PH (386) 255-6183 FAX (386) 257-6600 AA-C000925

BEACH TRACK LLC
 FOSTER WAY
 SOUTH DAYTONA, FLORIDA

NO.	REVISION/ SUBMISSIONS	DATE

SHEET TITLE SEAL	COMMISSION NO. 2217	SCALE
	PROJECT ARCH: DO DRAWN: JS CHECKED: DO DATE: 9-MAY-2022	SHEET NO. A101



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>		
BEACH TRACK LLC FOSTER WAY SOUTH DAYTONA, FLORIDA		
NO. ▲	REVISION/ SUBMISSIONS	DATE
SH-TITLE SEAL		COMMISSION NO. 2217
PROJECT ARCH: DO DRAWN: JS CHECKED: DO		SHEET NO. A102
DAVID D. OGLE APR2022		DATE: 8-MAY-2022

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

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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 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.

- 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; and (2) a reduction in the number of units.
- 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.

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:

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