



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Agenda

Planning and Zoning Board

Chair Tom Burbank
Vice Chair Adam Walosik
Member Noble Olasimbo
Member Stony Sixma
Member John Harper
Member Donald Philpitt
Member Michael Putkowski

Wednesday, July 20, 2016

7:00 PM

Deltona Commission Chambers

1. CALL TO ORDER:

2. ROLL CALL:

3. APPROVAL OF MINUTES & AGENDA:

A. [Minutes of June 15, 2016](#)

4. PRESENTATIONS/AWARDS/REPORTS:

5. PUBLIC FORUM:

6. OLD BUSINESS:

A. [Ordinance No. 26-2016: Project No. RZ16-001, Deltona Free Standing Emergency Room, Business Planned Unit Development](#)

7. NEW BUSINESS:

8. STAFF COMMENTS:

9. BOARD/COMMITTEE MEMBERS COMMENTS:

10. ADJOURNMENT:

NOTE: If any person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk, Joyce Raftery 48 hours in advance of the meeting date and time at (386) 878-8500.



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Minutes

Planning and Zoning Board

Wednesday, June 15, 2016

7:00 PM

Deltona Commission Chambers

1. CALL TO ORDER:

The meeting was called to order at 7:02 pm.

2. ROLL CALL:

Also present: Chris Bowley, Planning and Development Services and Kathrine Kyp, Planning and Development Services.

Present: 5 - Chair Tom Burbank
Vice Chair Adam Walosik
Member Noble Olasimbo
Member Donald Philpitt
Member Stony Sixma

Excused: 1 - Member Michael Putkowski

Absent: 1 - Member John Harper

B. Ordinance No. 26-2016: Project No. RZ16-001, Deltona Free Standing Emergency Room, Business Planned Unit Development

Chairman Burbank announced that Item 6.B, Ordinance No. 26-2016: Project No. RZ16-001, Deltona Free Standing Emergency Room, Business Planned Unit Development is continued date certain until the July 20, 2016, Planning and Zoning Board meeting and the City Commission meeting of August 15, 2016, date certain.

3. APPROVAL OF MINUTES & AGENDA:

A. Minutes for May 18, 2016

Motion by Member Olasimbo, seconded by Member Sixma, to approve the minutes for May 18, 2016. The motion carried by the following vote:

For: 5 - Chair Burbank, Vice Chair Walosik, Member Olasimbo, Member Philpitt and Member Sixma

7. NEW BUSINESS:

4. PRESENTATIONS/AWARDS/REPORTS:

5. PUBLIC FORUM:**6. OLD BUSINESS:****A. Ordinance No. 24-2016: Project No. RZ15-006, Vineland Reserve, Residential Planned Unit Development**

Mr. Bowley provided background regarding the rezoning request. He noted that the applicant has submitted suggested changes to the Development Agreement (DA). Mr. Bowley stated that the applicant's suggested changes reference that an amenity center would be tied to the town home construction, impervious service language was updated for the lot coverage of the town homes and the single family detached homes, the existing cell tower language was updated to address the location of the cell tower in relation to the development, and minimum parking standards language was updated to two car garage. He also noted that the stormwater language was updated to avoid future inconsistencies and the transportation language was updated to simplify the Volusia County Use Permit application review process. He stated that Collins Rd. is a prescriptive right of way with legal widths in the City and illegal or no widths in the County and that it will not become an access in to the subdivision. He stated that a secondary stabilized access for emergency access would only be suggested from Collins Rd.

Discussion between Member Philpitt and Mr. Bowley ensued regarding school concurrency. Mr. Bowley stated that there is concurrency is available for high school and middle school students. Discussion continued regarding Doyle Rd. improvements, cell tower distances and access management.

Member Walosik stated that the development is over designed with houses and with minimal improvements that do not include trails, parks or playgrounds. He also stated that the roadway widths are too narrow. Chairman Burbank concurred.

Michael Woods, Esq., Cobb Cole, 351 E. New York Ave, Suite 200, Deland, FL, spoke on behalf of the applicant, Lake Disstan Lands, LLC. He stated the quantity of homes meets density and that he supports the additional amenities. He also noted that Collins Rd. is only designed for emergency access. He stated that there will be sidewalks along both sides of the roads to include safe access to the school.

Discussion between the board and the applicant ensued regarding, safety, school traffic, pedestrian connectivity to the school and lot design. Member Walosik stated that this subdivision is not what the City of Deltona represents. Mr. Woods spoke regarding density compared to current code and is not opposed to adding additional language for the amenities to be accessible to both the town homes and the single family residential homes.

John Shultheis, PE., Dewberry Engineers, 110 W. Indiana Ave., Deland FL, addressed the board and made himself available for comments.

Chris Walsh, PE., Traffic Engineering Data Solutions, Inc., 80 Spring Vista Dr. Debarry, FL, spoke on behalf of the applicant and discussed with the board, traffic capacity, resurfacing of Doyle Rd., and internal circulation.

Brian Criste, 3030 Butler Ridge Rd. Deltona FL, spoke against the application and representing the homes along the western boundary. He noted that the design of the subdivision doesn't comport with the surrounding type of residential lots. Neighbors owns mud trucks, a shooting range, motocross course, atv's, side by sides, and he owns race cars. Numerous neighbors enjoy the outdoors and moved to the area to be distant from subdivisions. He stated that the subdivision will not attract the right type of people and suggested building bigger lots with expensive homes. He stated that traffic out of this development will be difficult and suggested building a wall surrounding the subdivision.

Richard Taylor, 268 Collins Rd., spoke against the applicant. He noted that he resides directly behind the subdivision and represents the neighbors on Collins Rd. He stated that they do not want vehicular access from Collins Rd. He noted that the surrounding lots are zoned for one home per acre whereas the proposed subdivision is proposing eight to ten homes per acre. He stated that this design is not compatible for this area and it would fit more around shopping centers.

Motion by Member Olasimbo, seconded by Vice Chair Walosik, to recommend to the City Commission denial of Ordinance No. 24-2016: Project No. RZ15-006, Vineland Reserve, Residential Planned Unit Development. The motion carried by the following vote:

For: 5 - Chair Burbank, Vice Chair Walosik, Member Olasimbo, Member Philpitt and Member Sixma

C. Ordinance No. 23-2016: Amending Section 110-828, Off-street Parking and Loading Land Development Code Regulations, Pertaining to Single Family Residential Lots

Meeting went into Recess.

Meeting Reconvened.

Mr. Bowley provided a background regarding Ordinance No. 23-2016: Amending Section 110-828, Off-street Parking and Loading Land Development Code Regulations, Pertaining to Single Family Residential Lots. He noted that the Ordinance Review Committee reviewed and the ordinance to accommodate residential parking while maintain fire safety.

Discussion regarding parking in the front yard, mulch, code enforcement ensued amongst the board and staff.

Motion by Member Olasimbo, seconded by Member Sixma, to recommend for approval, Ordinance No. 23-2016: Amending Section 110-828, Off-street Parking and Loading Land Development Code Regulations, Pertaining to Single Family Residential Lots. The motion carried by the following vote:

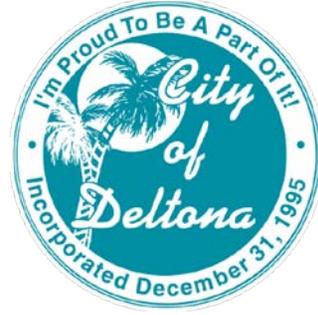
For: 5 - Chair Burbank, Vice Chair Walosik, Member Olasimbo, Member Philpitt and Member Sixma

8. STAFF COMMENTS:

9. BOARD/COMMITTEE MEMBERS COMMENTS:

10. ADJOURNMENT:

The meeting was adjourned at 8:39 am.



Staff Report

To: Planning and Zoning Board

From: Chris Bowley, AICP, Director Planning and Development Services

Date: May 26, 2016

Re: Ordinance No. 26-2016, Project No. RZ16-001, Deltona Free Standing Emergency Room, Business Planned Unit Development

A. Summary of Application:

Applicant: Matthew West, AICP. Littlejohn Engineering Assoc. Inc. representing Central Florida Regional Hospital

Request:

Tax Parcel No.: a portion of 8106-04-00-0542

Property Acreage: ± 3.24 Acres

Property Location: The property is located in the southwestern corner of the intersection of Howland Blvd. and Graves Av. situated within the Activity Center.

Legal Description: COMMENCE AT THE SOUTHEAST CORNER OF LOT 70, YOURLANDO FARMS AND GROVES PLAT (PLAT BOOK 10, PAGES 227 AND 228 OF THE OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE EAST LINE OF PLATED LOT 70, NORTH 00°18'37" WEST A DISTANCE OF 10.10 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF GRAVES AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE, NORTH 89°23'10" WEST A DISTANCE OF 292.39 FEET; THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE, NORTH 00°37'08" EAST A DISTANCE OF 381.01 FEET; THENCE NORTH 89°22'52" WEST A DISTANCE OF 50.00 FEET; THENCE NORTH 00°37'08" EAST A DISTANCE OF 150.00 FEET; THENCE NORTH 55°56'49" EAST A DISTANCE OF 114.36 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF HOWLAND BLVD (S.R. 472); THENCE ALONG SAID SOUTHWESTERLY RIGHT

OF WAY LINE ALONG A CURVE TO THE LEFT AND BEING CONCAVE NORTH EAST HAVING A RADIUS OF 1748.64 FEET, A CENTRAL ANGLE OF 12°32'22" AND AN ARC LENGTH OF 382.70 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 38°58'46" EAST A DISTANCE OF 381.93 FEET TO THE AFOREMENTIONED EASTERLY LINE OF LOT 70; THENCE SOUTH 00° 18'37" EAST A DISTANCE OF 301.79 FEET TO THE POINT OF BEGINNING..

B. Existing Zoning: Interchange Commercial Center Business Planned Unit Development (BPUD)

C. Background: The 3.24 acre property is a portion of a larger approximately 29 acre parent parcel. The 29 acre parent parcel was rezoned to Business Planned Unit Development (BPUD) in 2006 which was known as the Interchange Commercial Center. Even though the City adopted the rezoning Ordinance (Ordinance No. 22-2004), the BPUD Development Agreement was never executed. Recently, the City accepted an application to rezone 3.24 acres of the Interchange Commercial Center BPUD. Essentially, the present BPUD request will replace the Interchange Commercial Center BPUD for the 3.24 acres.

The use proposed is referred to as a freestanding emergency room. A freestanding emergency room is a relatively new medical land use and is a stand-alone facility where emergency medical care is provided. Other services include laboratories and imaging. The purpose of a freestanding emergency room is to provide fast and convenient emergency medical care. However, while freestanding emergency rooms may feature limited care beds, these facilities are not considered hospitals.

D. Support Information Public Facilities:

- a. Potable Water: to be supplied by Volusia County Utilities
- b. Sanitary Sewer: to be supplied by Volusia County Utilities
- c. Fire Protection: City of Deltona – Station 65
- d. Law Enforcement: Volusia County Sheriff's Office (VCSO)
- e. Electricity: Duke Energy

E. Matters for Consideration:

Section 110-1101, Code of City Ordinances, states that the City shall consider the following matters when reviewing applications for amendments to the Official Zoning Map:

1. Whether it is consistent with all adopted elements of the Comprehensive Plan.

The property is located within a local planning area of the City referred to as the Activity Center. The Activity Center is strategically located at the SR 472/I-4 interchange and has

the potential to provide needed economic development for the City of Deltona and southwest Volusia County. To realize the economic potential of the area, the Activity Center is associated with special planning and land use provisions.

OBJECTIVE FLU2-1

Achieve an integrated and well-planned mixture of urban land uses within The Deltona Activity Center that encourages the creation of an employment center.

The above objective illustrates the Activity Center is anticipated to be an employment center for the City. Medical uses typically are associated with higher wage skill sets oftentimes with benefits. Therefore, the rezoning would be consistent with this provision.

Policy FLU2-1.7

Future development within the Activity Center shall require rezoning to a Planned Unit Development (PUD) or amendment to an existing PUD. Provided, however, that any development of an existing parcel that is 0.5 acres or less in size and which is permissible by the existing zoning classification assigned the parcel shall not require rezoning to PUD if the existing zoning classification is consistent with the Activity Center Plan future land use designation.

The Business Planned Unit Development rezoning process for the property is required by this policy

Policy FLU2-1.13

Individual developments within the Activity Center shall be designed consistent with the City of Deltona's Urban Design Pattern Book and Urban Design Master Plan as it may be updated from time to time to provide visual compatibility and functional continuity with other adjacent developments within the Activity Center.

The project will be subject to the aesthetic requirements of this policy: Promote well designed and high quality development forms within the Activity Center.

The proposed development is also required to be consistent with the remaining Comprehensive Plan.

Policy FLU1-1.11

The following public facilities and services shall be available for new development in all areas: roadways, solid waste collection, stormwater management, fire and police protection, emergency medical services, potable water, sanitary sewer service, and public schools as defined in the Public School Facilities Element.

The project will be served by adequate infrastructure including transportation. To address transportation improvements programed under a previously approved BPUD (Deltona Village), the project will be subject to traffic mitigation requirements to improve Graves Av.

Policy FLU1-7.5

Subdivisions shall be designed so that all individual lots have access to the internal street system network with peripheral lots buffered from major roads and incompatible land uses.

The BPUD rezoning does involve a subdivision and includes the beginning of an internal road system.

Policy T1-1.4

The City of Deltona shall maintain land use regulations to facilitate safe and efficient transportation, which operates within the accepted levels of service as adopted by the City.

Access off of Graves Av. will be limited to right in and right out movements. In addition, there is a requirement for the applicant to construct a raised median between the Graves Av. travel lanes. The intent of the raised median is to discourage left turns. The suggested improvements will promote safe ingress and egress to the facility and ensure appropriate traffic flow.

2. Its impact upon the environment or natural resources.

The property is associated with well drained, sandy soils. There are no wetlands on the property and none of the area proposed to be rezoned is located within the 100 year flood plain.

The property has been cleared in the past. The property can be described as a ruderal landscape comprised of scrub palmetto, oak saplings, dogfennel, broom grass, and various early successional weeds. While the property may have been cleared, the site may be suitable habitat for gopher tortoises and scrub jays. It is not unusual for mechanically manipulated areas to support populations of scrub jays and/or gopher tortoises. To determine if the property supports scrub jays or gopher tortoises, the applicant will be required to survey the property. If gopher tortoises are noted, then the tortoises will need to be relocated or preserved on site as per State permitting requirements. Scrub jays are a listed species protected under the Endangered Species Act. Scrub jays and related habitat are regulated by the U.S. Fish and Wildlife Service and any impact to scrub jays or habitat will be subject to a Habitat Conservation Plan.

All listed species surveying and applicable permitting will be addressed during the site plan review process.

3. Its impact upon the economy of any affected area.

The proposed facility is a medical use and medical jobs typically feature relatively high wages, stable employment and oftentimes benefit packages. The facility will be staffed by approximately 30 personnel and will be open 24 hours a day. There is anticipation staff will operate in shifts. The project will bring in employment which has the potential to increase demand for retail service uses including restaurants.

4. Notwithstanding the provisions of Article XIV of the Land Development Code, Ordinance No. 92-25 [Chapter 86, Code of Ordinances] as it may be amended from time to time, its impact upon necessary governmental services, such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste or transportation systems.

- a. **Schools:** N/A. The project is not residential and would have no impact on school workstation space.
- b. **Sewage Disposal:** Volusia County utilities will serve the project with central sewer. Currently, the County has over 350,000 gallons per day of wastewater treatment capacity available. Therefore there is ample capacity to serve the project.
- c. **Potable Water:** Volusia County utilities will serve the project with potable water. The County is currently providing a high potable water level of service within the Deltona North service area. The County does have the capacity to serve the property with potable water.
- d. **Drainage:** Stormwater will be managed in accordance with the City Land Development Code and the St. Johns River Water Management District.
- e. **Transportation Systems:** A freestanding emergency room is a new medical land use. The use is intended to provide quick and convenient emergency medical service. Emergency room service has typically been ancillary to hospitals where a full range of medical services are provided within a large central facility. Traffic generation rates associated with hospitals have been well studied by the Institute of Traffic Engineers and others. The trip generation characteristics of hospitals tend to be somewhat unique based on shift changes, visitation hours, patient

admission/discharges, etc. These characteristics are driven, in part, because a hospital tends to be open seven days a week and 24 hours a day.

Conversely, traffic generation rates for a freestanding emergency room have not been well documented. Since the freestanding emergency room has some commonalities with a hospital – 24/7 operation, medical services, etc., the hospital traffic generation rates were applied to determine traffic impacts associated with the proposed freestanding emergency room use.

Utilizing the above referenced methodology revealed the almost 11,000 square foot freestanding emergency room use would generate 143 trips with a pm peak of 10 movements to and from the facility. The trip generation rate of the use is well below the typical 1,000 trip threshold to perform a traffic impact analysis (TIA). However, the project is located in a congested area of the City. While none of the immediate roadway segments are failing, Graves Av., SR 472, and Howland Blvd. near the project are close to capacity. Furthermore, the local roadway geometry, signalization and traffic patterns create a condition where safety is of paramount importance. Notwithstanding the local roadway network has the capacity to support the 143 trips, the project needs to be carefully managed with regard to intensity, access and off-site transportation mitigation.

A road providing access to Graves Av. from the facility is planned. The access movement for the road will be limited to right in and right out. The intent of limiting the movement is because of the local curvature of Graves Av. which limits the view of on coming traffic. In addition, to ensure the right in and right out access is respected by drivers, the applicant will be required to install a raised concrete median down the center of Graves Av. near the project. The dimensions of the median will be determined by the County through the County Use Permit process (Graves Av. is a County Road).

In 2010, the City approved the Deltona Village Business Planned Unit Development. The Deltona Village BPUD mostly addressed 130 acres located south of the freestanding emergency room property. The Deltona Village BPUD transportation mitigation section addressed not only the 130 acres located south of Graves Av. but the 29 acre site of which the 3.24 acre property is a part. According to the Deltona Village BPUD, the 3.24 acre area is situated in “County Phase 1”. The subject phase is programed to provide mitigation. The mitigation associated with the Deltona Village BPUD mostly includes improvements to Graves Av. including a new Graves Av. west bound travel lane. The scope and size of the project will not trip the threshold for immediate improvements included within the Deltona Village BPUD. However, the owner and/or successor(s) in title is/are responsible, as identified in the Deltona Village Development Agreement, to finance and implement transportation improvements. The above mentioned access road featuring the right in and right out movement is one of three access points originally proposed by the applicant. The other two access points involve extending roads across land not proposed to be bought by

the applicant. One access point would intersect at a right angle with Normandy Blvd. at the Graves Av./Normandy Blvd. intersection. The other proposed access point was located further west towards the Graves Av. I-4 overpass. Both of these access points have merit and may be more functional than the right in right out access point planned to serve the property. However, the other access points involve unknown dynamics including ownership characteristics and other variables not suited to being adequately addressed under the subject BPUD document. Therefore, if access does change or is modified, the revised access network will need to be addressed through a PUD amendment or perhaps a new PUD involving abutting or nearby land.

5. Any changes in circumstances or conditions affecting the area.

None.

6. Any mistakes in the original classification.

No known mistakes.

7. Its effect upon the public health, welfare, safety, or morals.

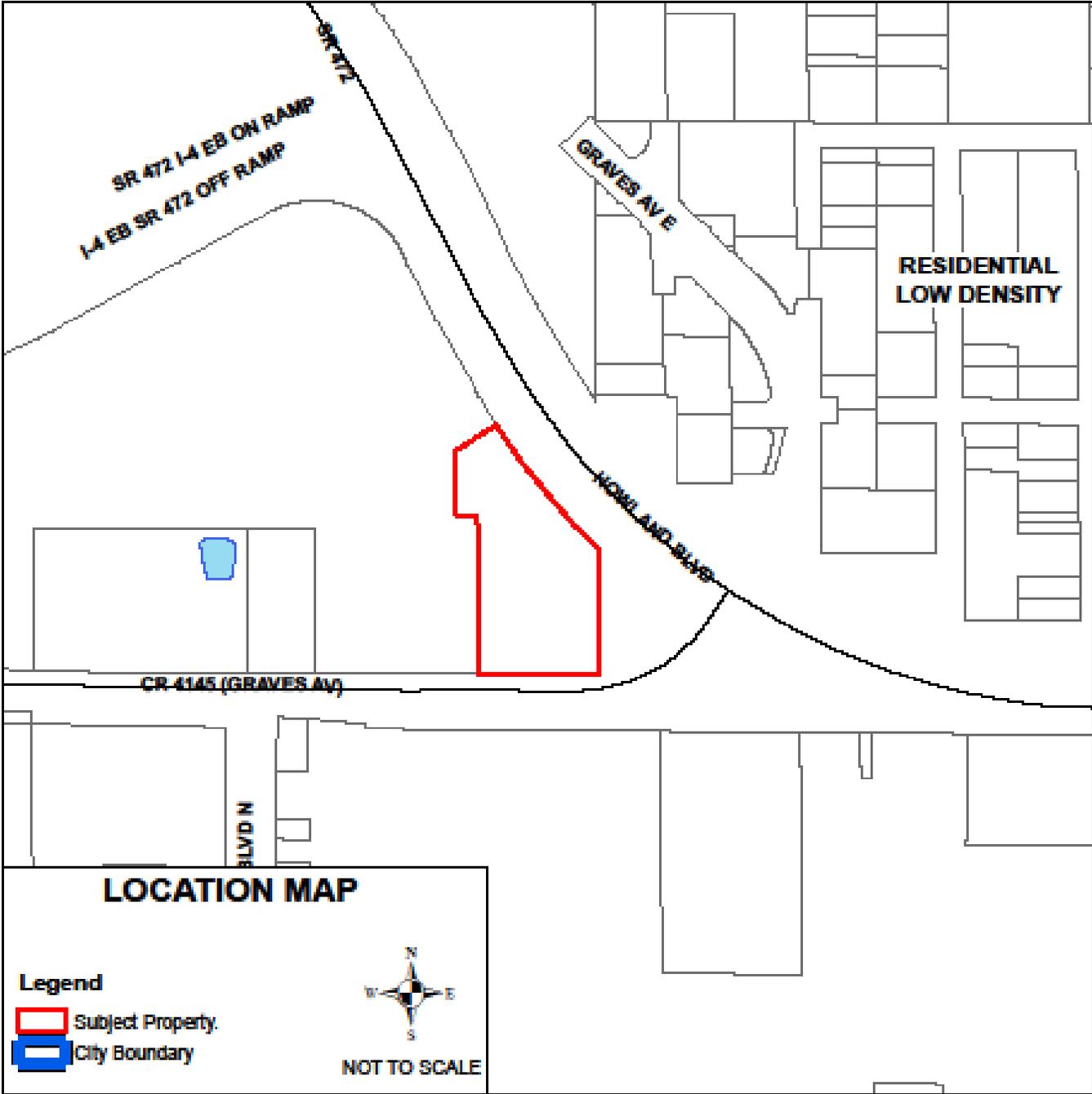
All Planned Unit Development zoning actions are associated with a written Development Agreement (DA). The DA establishes certain land uses, intensities and other development parameters intended to implement the mission of government – health, welfare, safety and morals. The DA is attached. The language of the DA suggested by City Staff is presented in an underline and strike through format.

Highlights of the recommended changes to the DA include the following:

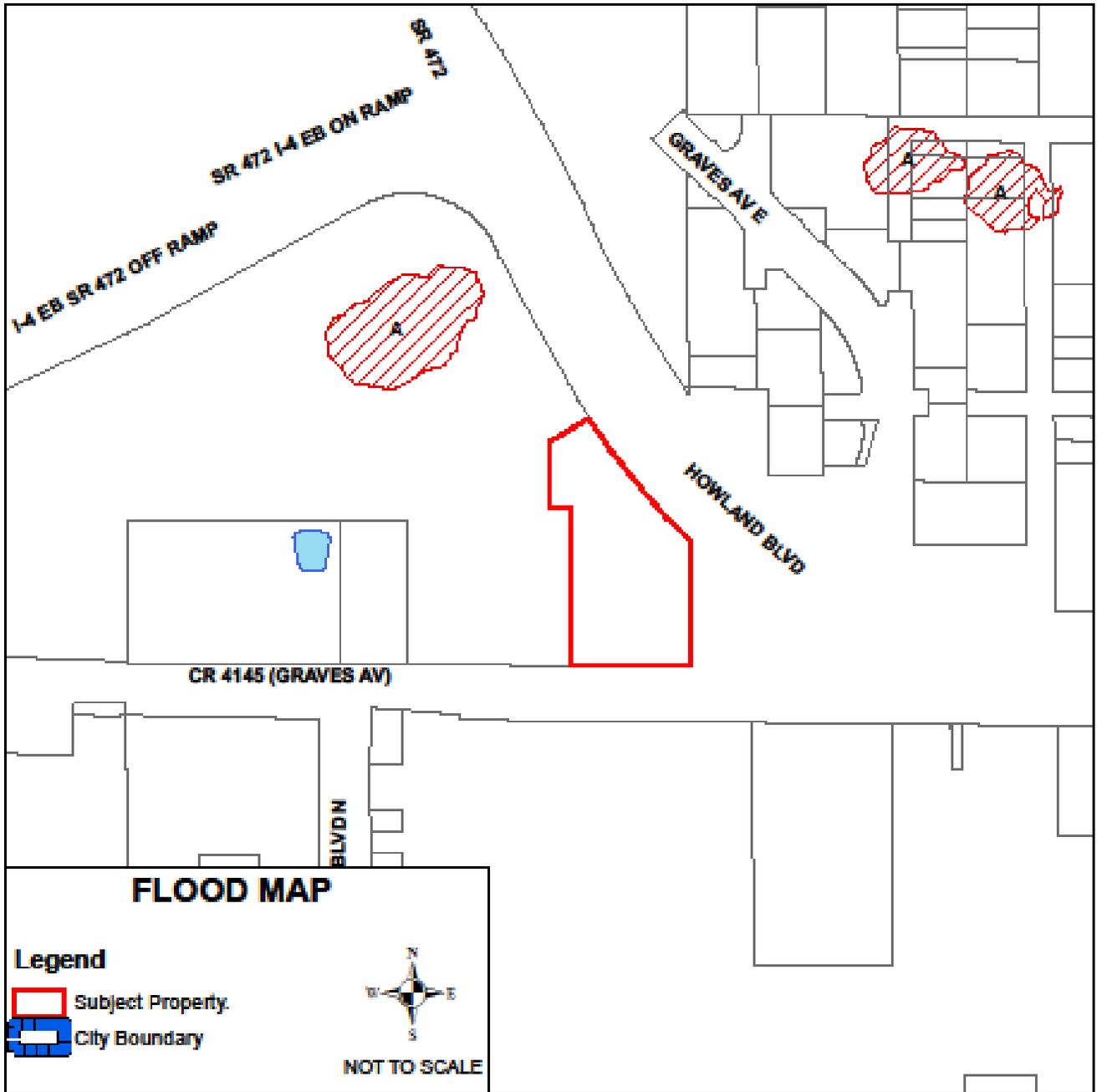
- a. Limitation on land use to a freestanding emergency room;
- b. Limitation on the intensity to reflect applicant proposal;
- c. Addition of aesthetic standards;
- d. Enumeration of various transportation conditions including access management;
- e. To recognize the 3.24 acre area as a legal lot, the underlying plat needs to be vacated and the 3.24 acre area platted; and
- f. The addition of language regarding scrub jay and gopher tortoise protection.

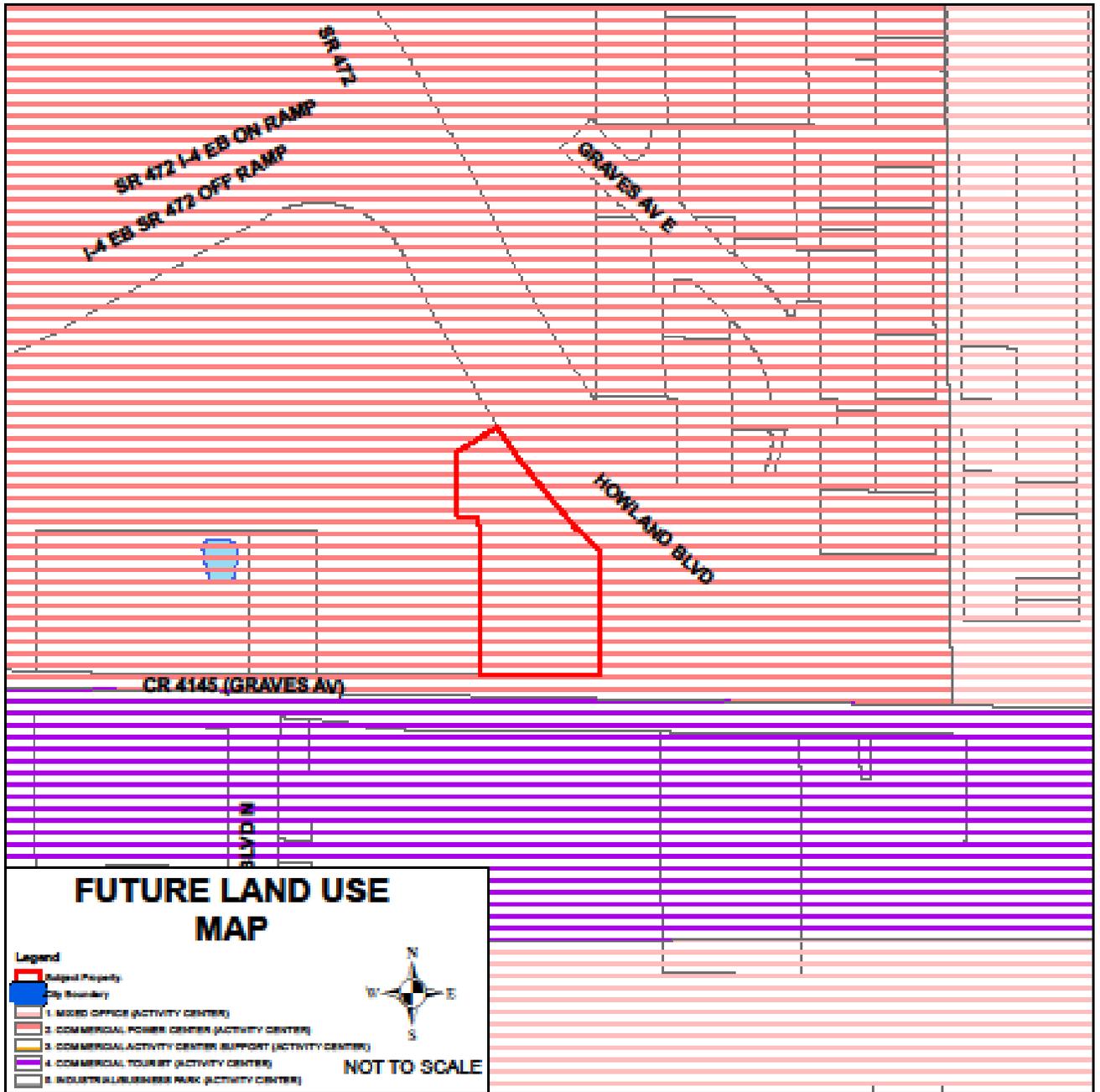
CONCLUSION/STAFF RECOMMENDATION:

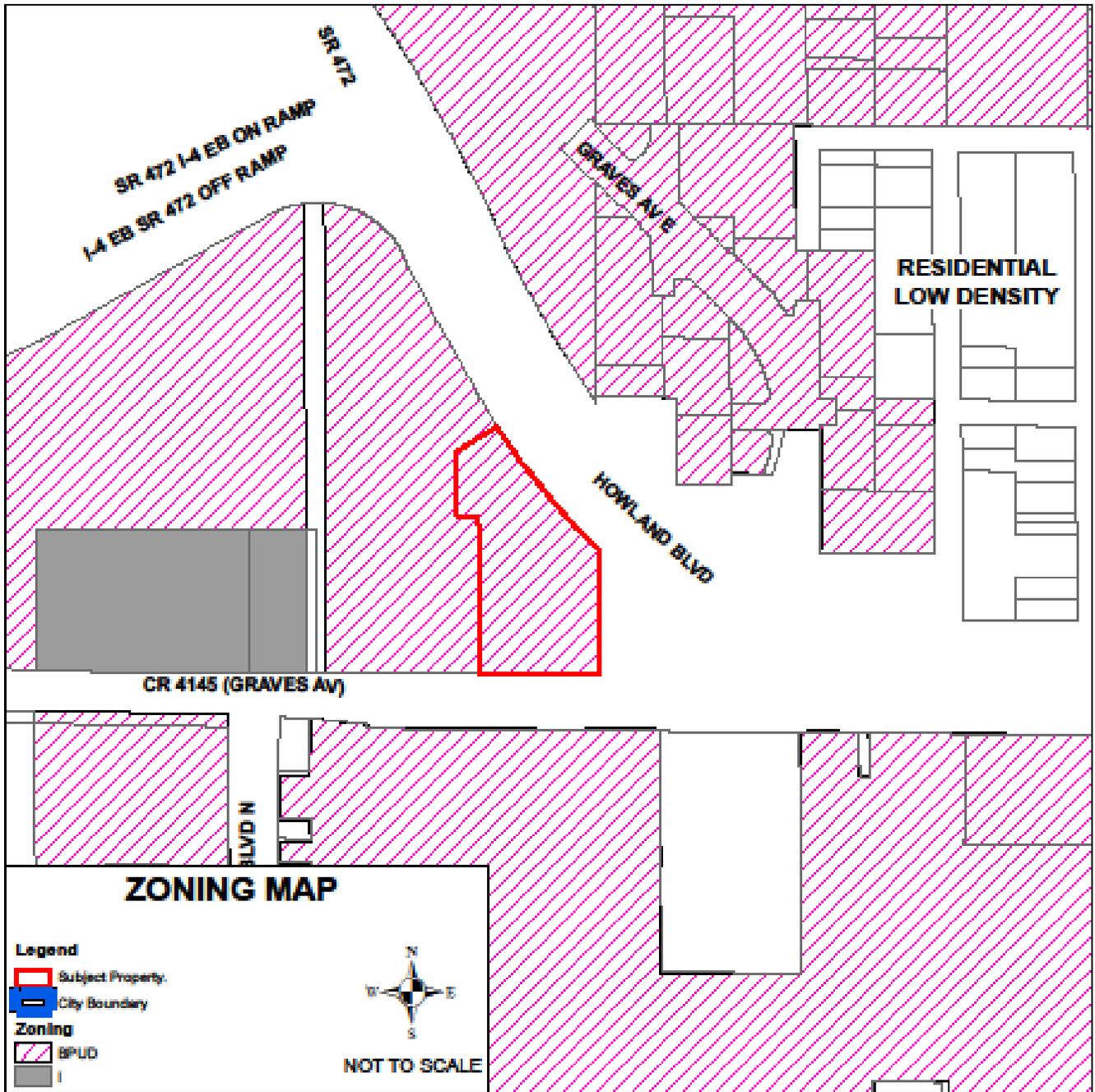
The proposed freestanding emergency room use is consistent with the City vision for the Activity Center. The freestanding emergency room will create jobs with good wages and benefits. In addition, the rezoning seems to further a medical oriented land use trend for the Activity Center that started with the Halifax Hospital development located in the vicinity of the proposed freestanding emergency room. There is anticipation the initial medical uses in the Activity Center will promote ancillary medical development including doctor offices, etc. In addition, increased employment in the area will spur the development of services like restaurants. Finally, the proposed rezoning is consistent with the Comprehensive Plan and can be served by existing public services. Therefore, staff recommends the adoption of Ordinance 26-2016, rezoning the 3.24 acres to Business Planned Unit Development.











**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Gretchen R. H. Vose, Esq.
City Attorney
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

<p>For Recording Purposes Only</p> <p>Signature of Notary</p>
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Exhibit "A" to Ordinance No. 26-2016

DEVELOPMENT AGREEMENT

for the project known as the Deltona Freestanding Emergency Room (FSER) Business Planned Unit Development (BPUD) located at the ~~northwest~~ southwest corner of Graves Avenue and Howland Boulevard (hereinafter referred to as the "Subject Property").

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as the "Agreement") is entered into and made as of the ___ day of _____, 2016, by and between the CITY OF DELTONA, a Florida municipal corporation, with a mailing address of 2345 Providence Boulevard, Deltona, Florida 32725, (hereinafter referred to as the "City"), and William F. DeMarsh, (hereinafter referred to as the "Owner or Owner/Developer"), and Central Florida Hospital, (hereinafter referred to as the "Developer", ~~if the Developer is a separate entity from the "Owner/Developer" and the Developer has an executed Notarized Owner Authorization from the Owner/Developer~~).

WITNESSETH

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

WHEREAS, the Owner/~~Developer~~ has clear title of the Subject Property or the Developer is currently under contract to purchase the Subject Property and intends to develop such property as a planned commercial development; and

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

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

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

WHEREAS, the Owner/~~Developer~~ and/or Developer have sought the City's approval to develop the Subject Property, and the City approved Ordinance No. 26-2106, through rezoning the Subject Property to a ~~form of~~ Business Planned Unit Development (BPUD), as defined under the City’s Land Development Code on _____. The BPUD shall consist of this Agreement as the Written Agreement of the BPUD and an Exhibit “C”, Master Development Plan (MDP), attached hereto and by this reference made a part hereof as the Preliminary Plan, subject to the covenants, restrictions, and easements offered by the Owner/~~Developer~~ or Developer and contained herein, (hereinafter the “Master Development Plan”). Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria applies.

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

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

2. **Ownership.** The legal and equitable owners of the Subject Property is ~~are~~: William F. DeMarsh.

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

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

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

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

A. Comprehensive Plan Policies specific to this Subject Property: None
~~None.~~

B. Permitted principal uses allowable on the Subject Property shall be: ~~Permitted and Conditional Uses for C-2, General Commercial (Sec 110-316, City of Deltona Land Development Code) except as noted under Section C. Freestanding Emergency Room. A free standing emergency room is a standalone medical facility featuring emergency care services, imaging, laboratory activities, and related administrative uses. Freestanding Emergency Room~~

~~B. Prohibited principal uses, if any: Any use besides a freestanding emergency room as described above.~~

~~Land uses not specifically listed as permitted are prohibited. In addition this ordinance shall not be interpreted to permit the following land uses as either temporary or permanent principal or accessory uses~~

~~1. Sale of sparklers or fireworks~~

~~2. Carnivals fairs and circuses~~

~~3. Automobile used car sales except as an accessory use to permitted sales of new~~

- ~~cars and arts and crafts shows except as permitted by Section 110-814.11 Code of Ordinances of the City of Deltona Florida as it may be amended from time to time~~
- ~~4. Outdoor storage except at the rear of the main building in areas designed for that purpose and screened from view from on or off the site~~
- ~~5. Fireworks displays and lightshows~~
- ~~6. Outdoor music concerts or musical promotions~~
- ~~7. Driving or Riding Schools or instructional classes~~
- ~~8. Display of boats motors, appliances, arts and crafts, vehicles, pets, livestock and similar items for sale or hire except as permitted by Section 110-814.11 of the Code of Ordinances of the City of Deltona and the Owner Developer~~
- ~~9. Communication towers and antennas~~
- ~~10. Adult entertainment establishments~~
- ~~11. Boarding houses~~
- ~~12. Tattoo Parlors~~

- C. Proposed ~~minimum density (in number of dwelling units per acre) or minimum intensity (measured in floor area ratio): 0.1 minimum no minimum FAR 0.077 FAR~~
- D. Proposed maximum density ~~(in number of dwelling units per acre) or maximum intensity (measured in floor area ratio), if any: 0.55 0.08 maximum FAR. The facility shall be limited to a maximum of 12 private care patient beds.~~
- E. Impervious surface ratio is not to exceed 70% of the gross square footage for the Subject Property.
- F. Maximum lot coverage ~~(in %) (dry retention systems can be used towards open space): 75% 8%~~
- G. Minimum landscaping and buffer yard requirements shall be consistent with Sec. 110-808 as it may be amended from time to time. are per the City's Land Development Code. ~~Stormwater management facilities shall not be placed within buffer yards.~~
- H. Minimum lot size area ~~(in acreage or square footage): 1.0 3.24 acres~~
- I. Minimum lot width ~~(in feet): 100 feet~~
- J. Minimum yard setbacks:
 - 1. Front yard: 35 Feet
 - 2. Side yard: 5 Feet
 - 3. Street side yard: ~~25~~ 35 Feet
 - 4. Rear yard: 15 Feet

- K.** Maximum building height (~~in feet~~): 75 35 Feet
- L.** Minimum parking standards are per Sections. 110-828 and 110-829 of the City's Land Development Code as may be amended from time to time.
- M.** Minimum lighting standards per the City's Land Development Code shall be included on a separate Illumination Plan to be provided at the time of site plan submittal.
- N.** Signs: Signs shall comply with Chapter 102 of the City Land Development Code as it may be amended from time to time.
- O.** Architectural controls and development on the Subject Property shall follow a common architectural theme and reflect a general appearance consistent with the City of Deltona Urban Design Pattern Book. The intent is to establish a high level of aesthetic within the Activity Center. For purposes herein, general appearance includes, but is not limited to, exterior wall finishes, construction materials, roof style, architectural details and ornamentation. The following requirements shall apply to development on the subject property:
1. The structure shall convey a sense of quality and permanence;
 2. Exterior walls facing public rights-of-way shall be constructed of finish materials such as stucco, natural brick or stone, finished concrete, or wood;
 3. All accessory structures, and signage shall be consistent with the overall theme of the principal use;
 4. Canopies shall be compatible with the architectural design of the principal structure and be designed consistent with other Fire Code and public safety oriented requirements;
 5. All service areas and mechanical equipment visible from public rights-of-way (ground or roof) including, but not limited to, air conditioning condensers, heating units, electric meters, satellite dishes, irrigation pumps, and other mechanicals/utilities shall be screened using architectural features consistent with the structure or landscaping of sufficient density and maturity at planting to provide opaque screening. ~~as listed in this Agreement by harmoniously coordinating the general appearance of all buildings and accessory structures. All controls and variations shall be defined by a Homeowners Association or Property Owners Association, as defined within this Agreement.~~
- P.** Utility provision and dedication: ~~The Owner/Developer or Developer shall connect to the City of Deltona's central utility systems, when available, or to Volusia County's central utility systems, where applicable,~~ at their sole cost and expense. Utility fees shall be paid to ~~Deltona Water or Volusia County, respectively,~~ before any building

permit is issued. Central utility systems are to be designed, permitted, and constructed to the respective service provider specifications and dedicated to the respective service provider upon final inspection, clearance, and acceptance by the service provider.

Q. ~~Stormwater and environmental: Per parcel stormwater systems or master~~ The stormwater system shall be owned and maintained by an established Homeowners Association or Property Owners Association the owner in private ownership and shall not be dedicated to or become the responsibility of the City of Deltona. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements; shall be the sole responsibility of the owner and/or developer; Homeowners Association or Property Owners Association, and shall be maintained in good condition/standing with the applicable permitting authorities. Best Management Practices and conformance to National Pollutant Discharge Elimination System (NPDES) criteria are required.

R. ~~Transportation, site access, and traffic devices: The Owner/Developer or Developer is responsible for all transportation improvements within the Subject Property and any off-site transportation requirements, as a result of the proposed development, for site function, that maintains or improves the level of service for area roadways, and ensures the public health, safety, and welfare for the community. All permits shall be obtained from appropriate permitting agencies prior to development and the City shall determine the appropriate level of service per the City Comprehensive Plan and current traffic counts. The Subject Property was included within the Traffic Impact Study (TIS) submitted to Volusia County (December 2009), which covered 804,000 square feet out of the 900,000 square feet in the Deltona Village BPUD and the Interstate Commerce Center (which was never recorded as a BPUD). A separate TIS was submitted to the City of Deltona (dated December 2009) which covered 96,000 square feet along the southern boundary of the Deltona Village BPUD. The subject property is geographically referenced in the TIS and therefore, it is the interpretation of the City of Deltona that the transportation provisions in the Development Agreement for the Deltona Village BPUD (Book 6482, Page 4234) apply to the Subject Property. The Subject Property is considered a sub-phase of the "County TIA Phase I" and will be responsible for proportionate share payments as outlined in sections 10 and 11 of the Development Agreement for the Deltona Village BPUD (Book 6482, Pages 4240-4245). The mitigation required includes payment towards making improvements to Graves Av. as outlined in the Deltona Village BPUD. Before a Certificate of Occupancy is issued for the project, the required mitigation must be accounted to the satisfaction of the County and City.~~

S.R.

Based on a determination that a freestanding emergency room facility traffic generation rates are analogous to a hospital, the free standing emergency room use planned will generate 143 daily trips and no more than 10 peak hour trips. Therefore, a traffic impact analysis (TIA) consistent with the River to Sea Transportation Planning Organization (TPO) was not required for the project. Any change of use, increase in size or any other increase of intensity shall require a major amendment to this BPUD document and a TIA will be required to be prepared consistent with TPO guidelines.

Access to the Deltona FSER BPUD shall be provided as follows: in accordance with the following provisions as illustrated on Exhibit "D" of this Development Agreement:

~~**Access 1:** The Deltona FSER BPUD site shall utilize Access 1 as its main point of access to be granted direct access Graves Avenue. Access 1~~ The access shall be limited to right-in/right-out turning movements. This access point and its northerly extension as shown on the Master Development Plan shall be constructed in conjunction with the development on the site and shall be completed prior to issuance of any Certificate of Occupancy for the site. Access 1 The access and the northern extension of the Access 1 driveway access shall be a dedicated road and designed to facilitate access to other property in the area. as a cross-access driveway between the owners of the FSER BPUD and the owners of the remaining parent parcel. Drainage for Access 1 the access will be incorporated into the stormwater design for the Deltona Freestanding Emergency Room BPUD site. The access connection with Graves Av. shall be constructed with a raised, tapered concrete median ('pork chop') to maintain appropriate traffic flow. In addition, the owner or developer will be required to construct a raised concrete median of sufficient height, width and length within the median of Graves Av. to effectively discourage left turning movements. The design of the raised median shall be determined through the County Use Permit process but shall not include the use of quick curb or similar type of apparatus. All traffic management improvements associated with this access shall be completed before a Certificate of Occupancy is issued for the property.

~~**Access 2:** The Deltona FSER BPUD site may utilize Access 2 as an alternate, additional access point. The extents of Access 2 shall be included within a dedicated access easement road and will be constructed at the expense of the developer(s) of the Deltona FSER BPUD site and the remaining parent parcel. Drainage for Access 2 will need to be accommodated in master stormwater pond(s) on the parent parcel within a drainage easement. Utilities to serve the parent parcel and the Deltona FSER BPUD site may be constructed along Access 2 within a utility easement which should be addressed in a cost sharing agreement between the parent parcel owners and the Deltona FSER BPUD site owners. If Access 2 is going to be designed as a full~~

~~intersection movement, a signal warrant study will be required to determine when the intersection will need to be signalized. An element of the signal warrant study will be a financing plan needed to facilitate installation of the signal. However, the signal will not be responsible for any contributions towards construction of the signal or improvements appurtenant to. In addition, the signal warrant study will be required if and when Access 2 is proposed for construction. The signal warrant study will be the responsibility of the owner or developer or other future interests in the property to produce. The owner, developer or other private interest in the property responsible for the signal warrant study shall also be responsible for City consultant fees associated with the review of the signal warrant study.~~

~~**Access 3:** The Deltona FSER BPUD site may utilize Access 3 as an alternative to Access 2. The extents of Access 3 shall be included within a dedicated access easement road and will be constructed at the expense of the developer(s) of the Deltona FSER BPUD site and the owner(s) of the remaining parent parcel. Drainage for Access 3 shall be accommodated in master stormwater pond(s) on the parent parcel within a drainage easement. Utilities to serve the parent parcel and the Deltona FSER BPUD site may be constructed along Access 2 within a utility easement which should be addressed in a cost sharing agreement between the parent parcel owners and the Deltona FSER BPUD site owners.~~

~~Access 3 is predicated on acquiring land from property owner(s) other than the parent parcel (the concrete plant) to accommodate a true, right angle alignment with Normandy Boulevard and Graves Avenue. This will also require signal modifications which shall be provided for at the expense of the developers of the Deltona FSER BPUD site and/or the parent parcel owner(s).~~

~~There shall be not access permitted to Howland Boulevard/SR 472. Other access points may be contemplated in the future. Any other access points serving the development will need to be addressed through a major amendment to this BPUD unless the new access points are associated with another BPUD rezoning request.~~

~~The access roadway and other related improvements shall be constructed to City and, if applicable, County specifications and standards.~~

~~As depicted on the MDP, there is an extensive internal driveway circulation planned for the project. The internal circulation system, including driveway entrances on to the access road may need to be relocated and/or redesigned to afford appropriate spacing and promote safe and functional traffic patterns. Therefore, while the MDP depicts certain driveway cuts and internal circulation, those traffic circulation features may need to be redesigned to comply with City Land Development Code requirements.~~

~~F.S.~~ There shall be no limit on the hours of operation of a Free Standing Emergency Room use.

7. **Public Facilities/Land Dedication.** Facilities or tracts that either are or shall become public facilities/tracts that will serve the development and/or are on the Subject Property are, as follows: Roadways and utility infrastructure as described elsewhere in this Development Agreement.

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

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

10. **Site Plan/Plat Approval.** Exhibit "C", the Master Development Plan, is the Preliminary Plan of the PUD and this Agreement. The Master Development Plan shall not replace, supersede, or absolve the Owner/~~Developer~~ or Developer from approvals for any site plan, preliminary plat, and/or final plat and their respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria applies. As per the City Land Development Code, the proposed lot will need to be platted and any development on the property will be required to be processed through the Final Site Plan review process. No site plan application will be approved unless and until the lot has received plat approval by the City Commission. At the request of the Owner or Developer, the City will process a Final Plat application at the same time as a Final Site Plan application. Before a Final Plat and/or Final Site Plan application(s) is/are submitted to the City, the Owner or Developer shall, at minimum, vacate lots 64 and 70 Yourlando Farms MB 10, PGS

227-228 consistent with Chapter 106 of the City Land Development Code.

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

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

13. **Obligations for Improvements.** Any surface improvement as described and required hereunder included, but not limited to such as signalization, walls, stormwater management facilities, medians, and utilities, or any other surface improvement shall be performed, prior to the issuance of the first Certificate of Occupancy on that portion of the Subject Property that the surface improvement(s) relates or is otherwise scheduled in this Agreement. Should the Owner/~~Developer~~ or Developer fail to undertake and complete its obligations as described in this Agreement and to the City's specifications, then the City shall give the Owner/~~Developer~~ or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner/~~Developer~~ or Developer. If the Owner/~~Developer~~ or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/~~Developer~~ or Developer and their successors and assigns in interest, may but shall not be required to, perform such obligations at the expense of the Owner/~~Developer~~ or Developer or their successors and assigns in interest, without prejudice to any other rights or remedies the City may have under this Agreement. Further, the City is hereby authorized to immediately recover the actual and verified cost of completing the obligations required under this Agreement and any legal fees from the

Owner/~~Developer~~ or Developer in an action at law for damages, as well as record a lien against the Subject Property in that amount. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments. Notice to the Owner/~~Developer~~ or Developer and their successors and assigns in interest shall be deemed to have been given upon the mailing of notice as provided in paragraph (24) of this Agreement.

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

15. **Environmental and Tree Preservation.** The property contains habitat that is suitable for scrub jays and gopher tortoises. As part of the Final Site Plan process, the property shall be surveyed to determine the presence and/or population density of scrub jays or gopher tortoises. If gopher tortoises are found to inhabit the development area then on-site preservation and/or removal shall be required in lieu of a 'take'. If scrub jays are noted on the property then any modification of scrub jay habitat shall be permitted consistent with the requirements of the U.S. Fish and Wildlife Service. Tree protection shall be in accordance with Chapter 98 of the City Land Development Code as it may be amended from time to time. Tree protection areas and habitat protection set aside land may coincide with buffer yards and other open space acreage. Irrigation shall comply with the requirements of the utility servicing the project and applicable permitting agencies. However, the use of potable water for irrigation shall be prohibited. The Owner or Developer shall install reuse infrastructure to support the irrigation and other non-potable water needs associated with the project. The Owner/~~Developer~~ or Developer is responsible to obtain all site related permits and approval prior to any development activity on or for the Subject Property. This may involve mitigation for habitat of threatened or endangered flora and fauna or for species identified for proportion (i.e. tree preservation). This Agreement does not vest or exempt the Owner/~~Developer~~ or Developer from any permitting and mitigation obligations needed to develop a Subject Property.

16. **Homeowners Association or Property Owners Association.** The charter and by-laws of any Homeowners Association ("HOA") or Property Owners Association ("POA") for the Subject Property and any deed restrictions related thereto shall be furnished to the City for

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

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

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

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

20. **Notices.** Where notice is herein required to be given, it shall be by certified mail

return receipt requested, hand delivery or nationally recognized courier, such as Federal Express or UPS. E-mail delivery of documents shall not replace or be in lieu of the aforementioned process. Said notice shall be sent to the following, as applicable:

OWNER/~~DEVELOPER'S~~ OR DEVELOPER'S REPRESENTATIVES:

[INSERT NAMES AND ADDRESSES]

CITY'S REPRESENTATIVES:

City Manager
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

With copy to:

Director
Planning & Development Services
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

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

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

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

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

legislative authority as the same may affect the Subject Property.

24. **Subsequently Enacted State or Federal Law.** If either state 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.

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

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

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

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

29. **Time of the Essence.** Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement. The Owner/~~Developer~~ or Developer shall execute this Agreement within ten (10) business days of City Commission adoption of Ordinance No. 26-2016; and agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida. Failure to execute this Agreement within ten (10) business days of this ordinance adoption may result in the City not issuing development orders or permits until execution and recordation of this Agreement has occurred.

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

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

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

OWNER/DEVELOPER

By:

Signature of Witness # 1

Signature

Print or type name

Print or type name

As:

Signature of Witness #2

Print or type

ATTEST:

Print or type name

Signature

Print or Type Name

As:

Mailing Address: _____

STATE OF FLORIDA
COUNTY OF _____

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

(NOTARY SEAL)

Signature of Notary

Print or type name

DEVELOPER

By:

Signature

Print or type name

As:

Print or type

ATTEST:

Signature

Print or Type Name

As:

Mailing Address: _____

Signature of Witness # 1

Print or type name

Signature of Witness #2

Print or type name

STATE OF FLORIDA
COUNTY OF _____

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

Signature of Notary

(NOTARY SEAL)

Print or type name

CITY OF DELTONA:

By:

Date:

ATTEST:

Date:

Mailing Address:

City of Deltona

2345 Providence Boulevard

Deltona, Florida 32725

STATE OF FLORIDA

COUNTY OF _____

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

Signature of Notary

(NOTARY SEAL)

Print or type name

Approved as to form and legality for use and

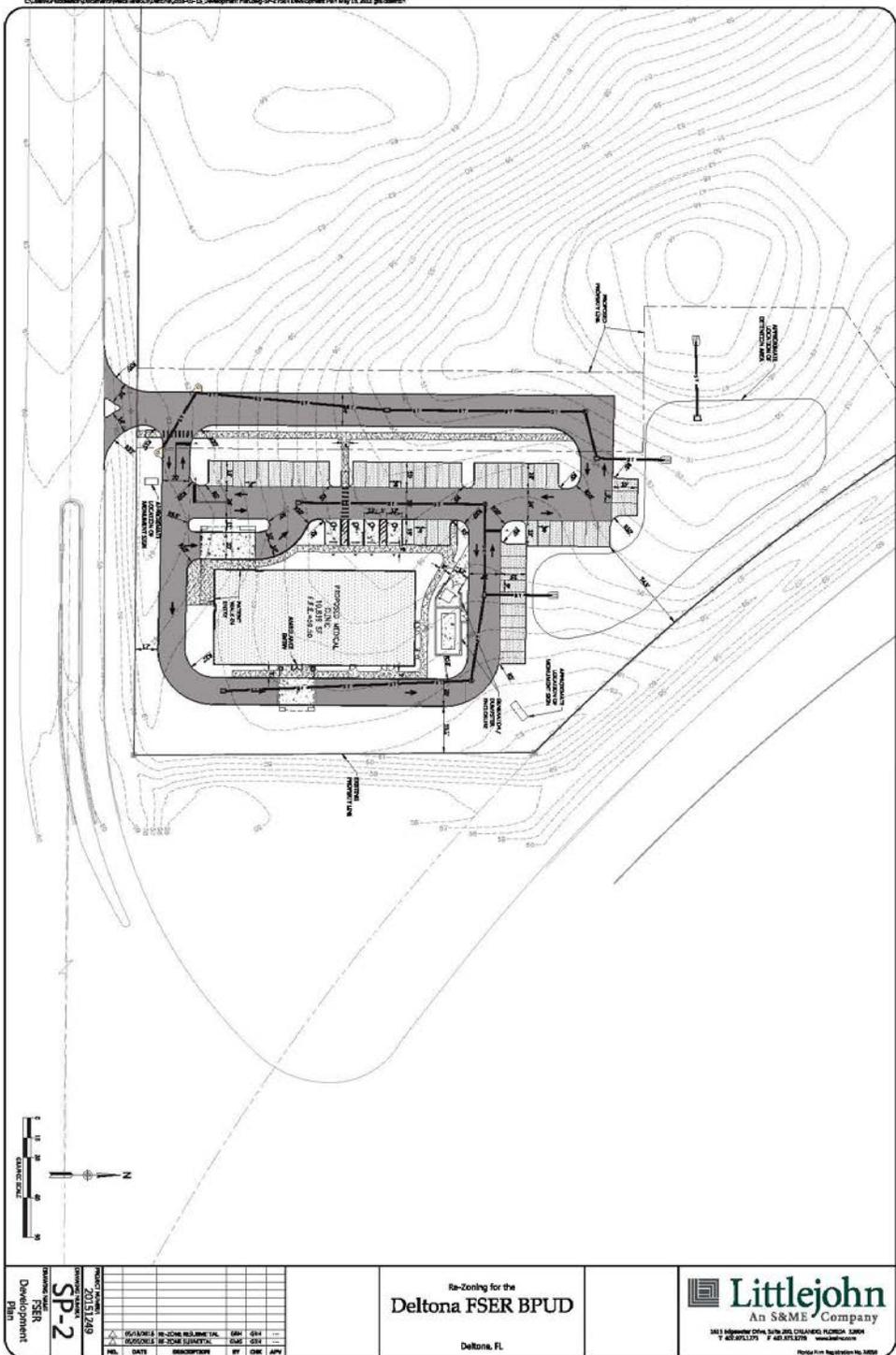
reliance by the City of Deltona, Florida

Gretchen R. H. Vose
City Attorney

EXHIBIT B
LEGAL DESCRIPTION

COMMENCE AT THE SOUTHEAST CORNER OF LOT 70, YOURLANDO FARMS AND GROVES PLAT (PLAT BOOK 10, PAGES 227 AND 228 OF THE OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA); THENCE ALONG THE EAST LINE OF PLATED LOT 70, NORTH 00°18'37" WEST A DISTANCE OF 10.10 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF GRAVES AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE, NORTH 89°23'10" WEST A DISTANCE OF 292.39 FEET; THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE, NORTH 00°37'08" EAST A DISTANCE OF 381.01 FEET; THENCE NORTH 89°22'52" WEST A DISTANCE OF 50.00 FEET; THENCE NORTH 00°37'08" EAST A DISTANCE OF 150.00 FEET; THENCE NORTH 55°56'49" EAST A DISTANCE OF 114.36 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF HOWLAND BLVD (S.R. 472); THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE ALONG A CURVE TO THE LEFT AND BEING CONCAVE NORTH EAST HAVING A RADIUS OF 1748.64 FEET, A CENTRAL ANGLE OF 12°32'22" AND AN ARC LENGTH OF 382.70 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 38°58'46" EAST A DISTANCE OF 381.93 FEET TO THE AFOREMENTIONED EASTERLY LINE OF LOT 70; THENCE SOUTH 00° 18'37" EAST A DISTANCE OF 301.79 FEET TO THE POINT OF BEGINNING.

EXHIBIT C MASTER DEVELOPMENT



PROJECT NUMBER				
SP-2				
DATE: 07/15/2019				
DRAWN BY: [blank]				
CHECKED BY: [blank]				
APPROVED BY: [blank]				
NO.	DATE	DESCRIPTION	BY	CHK

Re-Zoning for the
Deltona FSER BPUD

Deltona, FL

Littlejohn
An S&ME Company

3815 WINTER CREEK SUITE 100 DELTONA, FLORIDA 32117
TEL: 407.271.1177 FAX: 407.271.1278 www.littlejohn.com
Florida Firm Registration No. 38828

ORDINANCE NO. 26-2016

AN ORDINANCE OF THE CITY OF DELTONA AMENDING THE OFFICIAL ZONING MAP TO REZONE APPROXIMATELY 3.24 ACRES OF LAND LOCATED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF HOWLAND BLVD. AND GRAVES AVENUE FROM CITY OF DELTONA BUSINESS PLANNED UNIT DEVELOPMENT TO A NEW CITY OF DELTONA BUSINESS PLANNED UNIT DEVELOPMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Deltona, Florida has received an application to rezone approximately 3.24 acres from City Business Planned Unit Development (BPUD) to City Business Planned Unit Development (BPUD); and

WHEREAS, the City of Deltona, Florida and its Land Planning Agency have complied with the requirements of the Municipal Home Rule Powers Act, sections 166.011 et. seq., Florida Statutes, in considering the proposed BPUD rezoning; and

WHEREAS, after said public hearing, the City Commission of the City of Deltona, Florida, has determined that the BPUD zoning is consistent with the Comprehensive Plan of the City of Deltona, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA, as follows:

Section 1. Located in the City of Deltona, Florida the following property is hereby rezoned to BPUD:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 70, YOURLANDO FARMS AND GROVES PLAT (PLAT BOOK 10, PAGES 227 AND 228 OF THE OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE EAST LINE OF PLATED LOT 70, NORTH 00°18'37" WEST A DISTANCE OF 10.10 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF GRAVES AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE, NORTH 89°23'10" WEST A DISTANCE OF 292.39 FEET; THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE, NORTH 00°37'08" EAST A DISTANCE OF 381.01 FEET; THENCE NORTH 89°22'52" WEST A DISTANCE OF 50.00 FEET; THENCE NORTH 00°37'08" EAST A DISTANCE OF 150.00

FEET; THENCE NORTH 55°56'49" EAST A DISTANCE OF 114.36 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF HOWLAND BLVD (S.R. 472); THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE ALONG A CURVE TO THE LEFT AND BEING CONCAVE NORTH EAST HAVING A RADIUS OF 1748.64 FEET, A CENTRAL ANGLE OF 12°32'22" AND AN ARC LENGTH OF 382.70 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 38°58'46" EAST A DISTANCE OF 381.93 FEET TO THE AFOREMENTIONED EASTERLY LINE OF LOT 70; THENCE SOUTH 00° 18'37" EAST A DISTANCE OF 301.79 FEET TO THE POINT OF BEGINNING

Section 2. This Ordinance is adopted in conformity with and pursuant to the Comprehensive Plan of the City of Deltona, the Local Government Planning and Development Act, sections 163.161 et. seq., Florida Statutes, and the Municipal Home Rule Powers Act sections 166.011 et. seq., Florida Statutes.

Section 3. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this Ordinance which can be given effect without the invalid provision or application.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its final adoption by the City Commission.

PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA THIS _____ DAY OF _____, 2016.

First Reading: _____

Advertised: _____

Second Reading: _____

BY: _____
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:

JOYCE RAFTERY, CMC, MMC City Clerk

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

GRETCHEN R. H. VOSE, ESQ, City Attorney