

After recording return to
City of DeBary
Attn: City Clerk
16 Colomba Road
DeBary, Florida 32713

Attachment "A" to BPUD Ordinance

**AMENDED AND RESTATED DEVELOPER'S AGREEMENT
"THE CROSSINGS ON ENTERPRISE"
BUSINESS PLANNED UNIT DEVELOPMENT**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (herein this "Agreement" or "Development Agreement") entered into and made as of the _____, 2016, by and between the City of DeBary, a Florida municipal corporation (hereinafter referred to as the "City"), and DHANVANTARI, LLC, a Florida limited liability company (hereinafter referred to as the "Owner/Developer").

WHEREAS, Owner/Developer represents and warrants that it is the fee simple owner of that certain real property (the "Property") being approximately 4.6 +/- acres in size, having a Volusia County Tax Parcel Identification Number #23-18-30-00-00-0100, and legally described to wit:

**THE SOUTH ¼ OF THE EAST ½ OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼
OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY,
FLORIDA, LESS AND EXCEPT THE EAST 50 FEET THEREOF.**

WHEREAS, the City of DeBary City Council previously rezoned the Property to The Crossings on Enterprise BPUD pursuant to Ordinance No. 11-03 and further amended the BPUD by of Resolution No. 04-12, Ordinance No. 25-06 and the Developer's Agreement recorded at Official Records Book 5957, Page 1076, et. seq. of the Public Records of Volusia County, Florida (collectively the "The Crossings on Enterprise BPUD"); and

WHEREAS, the Owner/Developer is requesting a major amendment to The Crossings on Enterprise BPUD to modify the BPUD as set forth in this Amended and Restated Development Agreement and incorporated Master Development Plan attached hereto, including for the purposes of including provisions for an Assisted Living Facility as a permitted use; 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 the

Owner/Developer desires to ensure that its development is compatible with other properties in the area and planned traffic patterns; 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, this Development Agreement and its incorporated Master Development Plan supersedes and replaces all previous development agreements and master development plans for the Property, such instruments along with Ordinance No. 12-16 shall becoming the instruments governing and controlling the development of The Crossings on Enterprise BPUD; and

WHEREAS, based upon competent, substantial evidence presented in the record, Ordinance No. 12-16 and this Development Agreement have been determined by the City of DeBary City Council to meet the requirements for rezoning pursuant to Section 1-6, City of DeBary Land Development Code and Comprehensive Plan Policy 5.505 and is consistent with the City of DeBary Comprehensive Plan and Land Development Code; and

WHEREAS, the City of DeBary City Council finds that this Development Agreement promotes the public health, safety, and welfare and is consistent with and authorized by its authority under Chapter 166, Florida Statutes, Article VIII, Section 2 (b) of the State Constitution, and the City's home rule authority and police powers.

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. Ownership Title/Certification. The Owner/Developer represents and warrants that it is the present fee simple owner of the aforesaid described Property. 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 the State of Florida, or a certification by an abstractor or title company authorized to do business in the State of 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. Owner/Developer and

its successors and assigns shall maintain unified ownership of the Property within each phase of the Property until after issuance and recording of the final plat for each Phase being developed. In other words, the Owner/Developer cannot convey portions of the Property without first having obtained approval of and recorded a final plat(s) creating a legal subdivision of the portion of the Property it intends to convey separately from the remainder of the Property.

2. Master Development Plan. The Property shall be developed as a Business Planned Unit Development (BPUD) substantially in accordance with the Master Development Plan for each Phase of the development which shall be submitted in the manner provided by the City of DeBary Land Development Code. The Master Development Plan shall consist of the terms and conditions of this Development Agreement and the site dimension plan prepared by Interplan LLC and dated May 3, 2016 (collectively, the "Master Development Plan"). The Master Development Plan is hereby approved by the City Council and incorporated in this Development Agreement by reference as Exhibit "A". The Master Development Plan shall govern the development of the Property. The Master Development Plan, as part of this Development Agreement, shall be filed and retained for public inspection in the office of the City of DeBary and it shall constitute a supplement to the Official Zoning Map of the City of DeBary.

3. Obligations for infrastructure Operation and Maintenance. All utility facilities on the Property shall be privately operated and maintained. All utility lines on the Property, including electric transmission and distribution lines shall be installed underground to the extent reasonably applicable. The Owner/Developer hereby acknowledges that the City will not accept ownership, operation, or maintenance of any utilities (including but not limited to sanitary sewer, potable water, reclaimed water, or storm sewer) from a project which was approved as a single ownership development and which is subsequently split into multiple ownerships. The City will not accept for ownership, operation or maintenance any sanitary sewer system, potable or reclaimed water systems or drainage system which is inconsistent with the City's long range master plan(s). The Owner/Developer acknowledges all and any wastewater transmission system or other utility system improvements proposed along or across any public rights-of-way will require the Owner/Developer's submittal of a Right-of-Way Utilization Permit application and approval of same by the appropriate agency. Said utilities along or across any public rights-of-way will remain under the ownership and maintenance of the Owner/Developer.

4. Grant/Vacating of Cross Access Easements.

A. The Owner/Developer acknowledges and agrees that it will grant, convey, and assign to the City full, free, and nonexclusive rights to travel, enter, exit, pass and/or access, with or without vehicles, upon, over, and across, and all driveways, drive aisles and cross access easements determined necessary by the City. The number and location of such cross access easements shall be consistent with the Master Development Plan that is a part of this Agreement and shall be finally determined by the City as part of the Owner/Developer's future final site plan application review and executed and recorded prior to the issuance of the final site plan approval. The Owner/Developer shall create and submit at his own expense, for the City's review and approval a final site plan application. The granting, conveying and assigning of such easements shall be of form and substance acceptable to the City and shall be recorded in the Public Records of Volusia County, Florida.

B. Developer acknowledges and agrees that the existing cross access easement from Tera Plantation Lane, DeBary, Florida will be permanently vacated and **NO** access to the Crossings will be from any Residential areas including Terra Plantation Lane.

C. Developer acknowledges and agrees to convey to Volusia County Water Services an ingress/egress access easement from the Crossings into the Volusia County Water Services property to the west, via the driveway to be constructed off of Enterprise Road.

5. Landscaping, Buffer Yard and Tree Preservation The Owner/Developer agrees and shall at a minimum comply with all applicable City landscaping, buffer yard and tree preservation code requirements. The Owner/Developer shall submit appropriate site plans to the City for review and approval before starting development of the property. Both the City and the Owner/Developer agree that, unless otherwise specifically provided for by this Development Agreement, the Owner/Developer shall

design, develop and maintain the property in compliance with all applicable City code requirements.

A. The Owner/Developer shall, to the extent reasonably possible, preserve the trees located on the Property. Prior to the removal of any trees the Owner/Developer shall review its preservation efforts with the City and shall make such modifications to its development plan as may reasonably be required by the City. A minimum of 15% of the total site area will be set aside for the preservation of existing trees and native vegetation. Replanting with suitable native trees and vegetation may be allowed where necessary to supplement existing vegetation upon prior approval of the Development Review Committee.

B. The Owner/Developer, at its sole cost and expense, shall plant grass, ground cover, shrubs, and trees, and buffer yard improvements as are designated and described on the final landscape plan, as approved by the City.

C. The Owner/Developer, at its sole cost and expense, shall plant landscaping as approved by the City.

D. The Owner/Developer at its sole cost and expense shall install underground irrigation systems and take such other measures as may be necessary to ensure the long-term survival and maintenance of the required landscaping. Such irrigation and landscaping systems shall be incorporated into a landscaping plan which shall be submitted with the final site plans, and approved by the City prior to the issuance of a building permit. A permanent underground landscape irrigation system providing 100% coverage of all required landscape areas and plantings shall be provided and maintained. The landscaping and irrigation and maintenance systems shall be inspected and approved by the City as meeting the requirements of this Agreement prior to the issuance of a certificate of occupancy for each building in the development.

E. The Owner/Developer, and its heirs, successors and assigns, at its own cost and expense, shall at all times properly maintain and replace as necessary the

landscaping and buffer yard improvements required pursuant to this Agreement.

F. The Owner/Developer shall design, provide and maintain appropriate foundation and building planting areas and landscaping including grass, shrubs, groundcover and trees along all exterior sides (facing or visible from any street, and all abutting properties and easement areas) of all buildings to be constructed on the property in accordance with the standards of the City. Building, buffer yard, landscape irrigation and landscaping plans shall be provided by the Owner/Developer as part of the City's site plan review and approval. The Master Development Plan for the project is hereby amended to achieve compliance with these requirements.

The Owner/Developer shall submit for the City's review and approval a landscape plan and landscape irrigation plan prepared by a Florida licensed and registered Landscape Architect. Said plans shall be signed and sealed by the Landscape Architect upon submission and shall be designed in compliance with this Agreement and applicable City Code requirements. The landscape plan shall provide for a mixture of suitable evergreen and deciduous and flowering trees and evergreen landscape materials as stated and required by the landscaping and buffer standards of City of DeBary Land Development Code.

Developer agrees to construct an 8-foot decorative wall from the Northwest property corner of the Property along the entire western property line and continuing from the southwest corner of said parcel to the point where the property ceases to abut residential parcels.

G. Canopy trees as identified in the City's Land Development Code shall be installed every 50 feet along the perimeter of the Assisted Living Courtyard and Resident Park green spaces, as identified on the Master Development Plan. The canopy trees shall be depicted in the required landscape plans that are to be submitted to the City prior to final approval of the Final Site Plan. This requirement of canopy tree

plantings on the perimeter of the two interior greenspaces shall be in addition to the City's LDC landscaping requirements.

6. **Buffer yards.** Notwithstanding City code requirements referenced in item 5 above, the Owner/Develop shall provide and maintain at his sole expense, buffer yards, buffer yard improvements, and buffer yard fencing or walls in accordance with the standards of the City as referenced in City Ordinances and this Development Agreement as approved by the City. There shall be no encroachments by other improvements such as parking spaces into any required buffer yard, except dry bottom stormwater facilities. Required buffer yards shall be designed, constructed and maintained in compliance with City code requirements except as noted and agreed to be the City and the Developer. The conceptual site plan and Master Development Plan is to be amended to comply with these requirements.

A. Landscape buffers will not be required on the shared jurisdiction line as depicted on amended Exhibit "A".

B. There will not be a 5-foot building perimeter buffer required on the west side of buildings 1 and 2 as depicted on Exhibit "A".

7. **Plan Amendments** The Master Development Plan is intended to be a conceptual plan to guide development of the Property in compliance with the terms and conditions of this Development Agreement. The parties hereto acknowledge that reductions in density and/or intensity may and do occur; and that minor changes to roadway design, location and size of structures, and locations and design of stormwater storage, landscape buffers and upland buffers may occur during the plat and/or site plan review and approval processes. Proposed revisions to the Master Development Plan that also necessitate revisions to the substantive terms of this Development Agreement shall require approval by the City Council as either a major or minor amendment to this BPUD in accordance with the Land Development Code,

as may be amended. The DeBary City Manager shall make determinations as to whether requested revisions to the Master Development Plan rise to the level of a minor or major amendment of this BPUD pursuant to the Land Development Code, or is merely a minor deviation of the Master Development Plan. Minor and major amendments to this BPUD shall be processed in accordance with the Land Development Code, as may be amended. Changes determined by the City Manager to be minor deviations to the Master Development Plan may be approved by the City in the issuance of subsequent development orders. A minor deviation shall be a deviation from the Master Development Plan, which has no substantive effect on the overall goals, purpose and objectives of this Development Agreement and the Master Development Plan. Generally, a minor deviation would be a change that does (a) not conflict with the requirements of the Master Development Plan or any exhibit adopted as part of the Master Development Plan, (b) not conflict with any substantive provision of this Development Agreement, any City ordinance or regulation not superseded by the terms of the Ordinance approving this Development Agreement and this Development Agreement, and (c) not trigger the minor or major amendment PUD provisions of the City of DeBary Land Development Code.

8. Final Site Plan Approval. After the amended master development plan is recorded a Final Site Plan for the development, shall be prepared and submitted for review and approval in the manner required by the City's Land Development Code, as amended.

9. Phases of Development. The development shall be developed in its entirety subject to City of DeBary review and approval as part of a land development application.

10. Land Use Within the PUD. Pursuant to the Owner/Developer's request and the Owner/Developer's decision to voluntarily restrict the uses permitted on the Property, only the following land uses shall be allowed as permitted principal uses and structures along with their customary accessory uses and structures:

- i. Professional offices, general offices, financial institutions, personal service

businesses and daycare centers;

ii. Medical or Dental Clinics where patients are admitted for examination and treatment by one or more persons practicing a form of the healing arts, whether they are medical doctors, chiropractors, optometrists, dentists or a similar profession (excluding addiction treatment) licensed by the State of Florida;

iii. Assisted living facilities where housing, meals and supportive services to older persons and disabled adults who are unable to live independently and are licensed as such by the State of Florida.

The development of the Property shall be consistent with the uses prescribed for each area within the proposed BPUD. The location and size of said land use areas are shown on the Master Development Plan. All uses not expressly permitted by this Development Agreement are prohibited on the Property and within this BPUD.

11. Development Standards.

A. Maximum lot area: 4.6 acres; Overall, 5.07 acres

B. Minimum Perimeter setbacks:

1) Adjacent to Residential Zoned Lots: 35 feet.

2) Adjacent to Non-Residential Zoned Lots and non-residential uses: 10 feet.

C. Maximum building height: 35 feet.

D. Maximum lot coverage:

1) Principal buildings: 25%

2) Impervious surface area: 70%

E. Parking Requirements: The amount and configuration of off-street parking and loading areas within the PUD shall comply with Articles 3 and 4 of the DeBary Land Development Code.

F. Maximum Floor Ratio: 0.50 FAR

G. Landscaping: Landscaping shall meet all requirements of Landscaping and Buffers Standards of the City of DeBary Land Development Code.

H. Building Exterior Design and Appearance Requirements: The Owner/Developer shall comply with the City of DeBary Land Development Code.

12. Environmental Considerations. The Owner/Developer agrees to comply with all federal, state, county, and city laws, rules and regulations applicable to the Property. The minimum tree preservation area shall comply with the provisions of the City of DeBary Land Development Code.

13. Sewage Disposal and Potable Water. Provision for sewage disposal and potable water needs of the BPUD shall be provided in accordance with the City of DeBary, by connection to the Volusia County Water and Sewer system.

14. Stormwater Drainage. Provision for stormwater retention/detention shall be in accordance with the City Land Development Code, as amended, and the requirements of the St. Johns River Water Management District of Florida. No stormwater drainage facility shall encroach into any required buffer yard area. With the exception of the wet stormpond within the resident park, stormwater drainage facilities shall be designed, constructed and maintained to provide for stormwater retention/detention ponds that are normally dry except within 72 hours of a rainfall event, and/or placed underground. Any stormwater drainage positive outfall required to go through the City of Orange City shall meet all applicable requirements and permitting stipulated by the City of Orange City. The eastern stormwater ponds may encroach over the jurisdictional parcel line within the Property as depicted on the Master Development Plan, Exhibit "A".

15. Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of Orange City. The Property shall be developed in substantial accordance with the following access and transportation system improvements:

A. Access to the Property shall be provided from Enterprise Road.

Said driveway in Orange City shall be designed, constructed and maintained in compliance with the requirements of the City of Orange City's Land Development Code. The location, design and placement of the driveway on the Property including the driveways shown on the conceptual site

Preliminary plan are subject to change, review and approval by the City of DeBary and the City of Orange City as part of the final site plan review process.

B. The Owner/Developer shall be responsible for the full cost of designing and constructing all on and off site traffic circulation driveways, site access, including turn lanes and acceleration and deceleration lanes and tapers and intersection and traffic signalization improvements which are or may be required to accommodate project traffic impacts, which result directly from the development or use of the property as a commercial development.

C. The Owner Developer shall provide safe, efficient and convenient internal traffic and pedestrian circulation. The City may modify proposed traffic and pedestrian circulation improvements during final site plan approval to provide safe, efficient and convenient access

D. The Owner/Developer shall provide cross access to an existing driveway at 2765 Rebecca Lane, Orange City, subject to approval of the City of Orange City.

E. The Owner/ Developer shall vacate all cross access easements that exist off of Tera Plantation Lane and no access shall be via that street for any reason to any part of the development.

F. The access roadway/driveway shall be the responsibility of the property owner or a mandatory property owner's association. The City of DeBary assumes no responsibility for the roadway/driveway.

16. Solid Waste Disposal Facilities. The Owner/Developer shall provide solid waste disposal facilities and required waste area screening designed, constructed and maintained to provide for adequate, and safe on site refuse pick up and disposal operations. Solid waste and recycling facilities and containers shall be also screened from view from all streets and property lines. The solid waste disposal areas shall be located and provided to prevent backing into or improper or unsafe use of any street or alley for the disposal or transport of solid waste or solid waste containers. Furthermore, solid waste disposal facilities shall be situated behind the front face of any principal building.

17. Permit Requirements. The Owner/Developer shall be required to make application and

receive all other development approvals and permits necessary to start site development, as required by applicable Federal, State, County or City statutes, laws, regulations or development codes, including but not limited to the City concurrency management and site plan review and subdivision requirements.

18. Vested Rights. Approval of the rezoning ordinance shall not create any vested rights for the Owner/Developer to otherwise undertake any development, which is not in compliance with this Agreement and any applicable City of DeBary codes, Comprehensive Plans, State or Federal requirements, or development standards.

19. Site Lighting Requirements. A site lighting plan shall be submitted by the Owner/Developer and reviewed and approved by the City as part of the project's final site plan submittal. All site lighting shall be designed, constructed, and maintained by the Owner/Developer to not glare on any adjoining streets, or properties. All site lighting shall also not illuminate at the site property lines, any other adjoining properties or streets more than one lumen above the existing average night lighting level. Site lighting shall comply with the DeBary Land Development Code and nuisance lighting requirements.

20. Pickups of Refuse, Waste, and Recycled Materials. The Owner/Developer agrees to and shall limit the hours of refuse, waste, and recycled materials pickups from the Property between the hours of 7:00 am and 6:00 p.m. each day. The limitation on the hours of deliveries and pickups shall apply to all vendors, suppliers, agents, contractors or employees of the Owner/Developer and his successor or assigns.

21. Signage. The Owner/Developer shall prepare a master sign plan as part of his final site plan application for the entire Property and all proposed land uses. Said plan shall in all aspects comply with the sign regulations set forth in the City of DeBary Code of Ordinances and Land Development Code in effect as of the date of the final approved site plan and shall be binding upon the Owner/Developer upon

approval by the City as if same were contained herein. Signs prohibited by the City's sign regulation shall not be permitted and the Owner/Developer specifically acknowledges same and agrees to comply with said prohibition and shall not challenge it. The Owner/Developer and his heirs, successors and assigns acknowledges and agrees that no sign that does not conform with the City's sign regulations in effect at the time shall be permitted or constructed by the developer.

22. **Enforcement.** In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer shall be responsible for all costs and expenses, including attorney's fees whether or not litigation is necessary and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement. Should this Agreement require the payment of any monies to the City the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Property and the owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen-percent (18%) compounded annually or at the maximum rate allowed by law, whichever is lower.

23. **Indemnification.** The Owner/Developer shall indemnify and hold harmless the City and its officials, employees and agents from and against all claims, demands, disputes, damages, costs, expenses (to and on appeal), incurred by the City as a result, directly or indirectly, of the use or development of the Property described in the Whereas clauses above, in accordance with this Agreement, by the City or by third parties, except those claims or liabilities caused solely by or arising from the gross negligence 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 of development of the Property, including but not limited to, drainage or sewer plans, fire safety, or quality of construction, whether or not reviewed, inspected, approved, or permitted by the City.

24. **Recording and Effective Date.** This Development Agreement and all subsequent amendments shall be filed with the Clerk of the Court of Volusia County, Florida, and recorded

following execution of the document by the City Council, in the Official Records of Volusia County, Florida. The Owner/Developer shall pay all legal and filing costs for recording documents. The Owner/Developer will record the Agreement. Unless otherwise agreed by the Owner/Developer and the City Manager, the effective date of the ordinance shall be considered conditional and no Development Order or permits shall be issued until a copy of the recorded agreement is in the City records.

25. Compliance. The Owner/Developer agrees that it, and its successors and assigns, will abide by the provisions of this Agreement, the City of DeBary Comprehensive Plan, and the City of DeBary Land Development Code, including but not limited to, the site plan regulations of the City existing as of the date of this Agreement, which are incorporated herein by reference. Further, all required improvements, including landscaping shall be continuously maintained by the Owner/Developer, or its successors and assigns, in first class workmanlike fashion so as to present a pleasing appearance and to ensure compliance with the City of DeBary Land Development Code. The City may after thirty (30) days written notice and without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals, and may request termination of sewer and/or water services to the Property, should the Owner/Developer fail to comply with the terms of this Agreement.

26. Utility Easements. So long as the easements do not materially interfere with the Owner/Developer's use and enjoyment of the Property, the Owner/Developer shall provide to the City such easements and other legal documentation, in form acceptable to the City Attorney, as the City may deem necessary or appropriate for the installation and maintenance of street lighting or utility services, including but not limited to sewer, water, drainage and reclaimed water services. Within the PUD, all utilities, including telephone, television cable and electrical systems, shall be installed underground. Appurtenances to these systems which require aboveground installation must be effectively screened and, thereby, may be excepted from this requirement.

27. Concurrency and Vested Rights. The Owner/Developer acknowledges and agrees

that prior to the issuance of any building permit(s) for the Property, the Owner/Developer must have received and be in possession of a valid unexpired Certificate of Capacity. The Certificate of Capacity verifies that available infrastructure capacity is sufficient to permit levels of service adopted in the City's comprehensive plan. Neither this Developer's Agreement, approval of property rezoning, or the site plans approved create or result in a vested right or rights to develop the Property without a current and valid Certificate of Capacity.

28. Notices. Where notice is herein required to be given, it shall be by certified mail return receipt requested, addressee only, hand delivery or courier. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE

Dhanvantari, LLC
The Crossings on Enterprise
1188 Cathcart Circle
Sanford, FL
Phone: (407) 645-5008
EMAIL:
VistaOrlando@gmail.com

CITY'S REPRESENTATIVES:

Department of Growth Management
16 Colomba Rd
DeBary, FL 32713 Phone (386) 668-2040 x325, x317
Fax (386) 668-3523

and
City Manager
16 Colomba Rd.
DeBary, FL 32713
Phone (386-668-2040
Fax (386) 668-4122

Should any part 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 obligation to identify its lender(s) to all parties in fashion as is required for notices herein.

29. Other City Approvals and Permits. The approval and execution of this Agreement by the City does not exempt the Owner/Developer of the Property from obtaining any and all other

approvals and permits necessary to obtain a Development Order and Building Permits for the development of the Property.

30. Captions. The captions herein are for convenience only and shall not be relied upon in construing this Agreement and Grant of Easement.

31. Binding Effect. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest, and the City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida, and shall reimburse the City for the preparation of this Agreement in such amount to be determined by the City. 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.

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

33. Expiration of Agreement. All provisions of this Development Agreement and the Master Development Plan shall expire and terminate 720 days following the effective date of this Development Agreement if a subsequent development order for the Property or an extension of this BPUD has not been secured in writing by the Owner/Developer within said period of time. In event of expiration and termination of this Development Agreement and Master Development Plan occurs, the Property shall revert back to its previous zoning designation as City R-4 (Urban Single-Family Residential) zoning classification, and the BPUD entitlements become null and void.

34. Property Owners' Association. The Owner/Developer will form a Property Owners' Association pursuant to Chapter 720, Florida Statutes and other applicable statutes to ensure that all common area maintenance and all of the provisions of the Developer's Agreement remain in compliance. The charter and by-laws of said association and any other agreements, covenants, easements or restrictions shall be furnished to the City of DeBary at the time of creation. The Owner/Developer shall be responsible for recording said information in the Public Records of Volusia County, Florida. Also, the Owner/Developer shall bear and pay all costs for recording all of the aforementioned documents. The declaration shall set forth the property owners' association duty to maintain all common area, including open space and stormwater systems, and right to impose and collect assessments against the lots and lot owners. Further, the declaration shall be consistent with Chapter 720, Florida Statutes and include provisions required by the Land Development Code and other reasonable provisions that the City may require. The by-laws of said association and the declaration shall be furnished to the City of DeBary for review and approval prior to final plat or final site plan approval for the 1st phase of development. The Owner/Developer shall be responsible for recording the declaration in the Public Records of Volusia County, Florida. Also, the Owner/Developer shall bear and pay all costs for recording all of the aforementioned declaration. With respect to the enforcement of said declaration entered into between the Owner/Developer and the owners or occupiers of property within the BPUD, the City of DeBary shall only be given the right to enforce the provisions required by this Development Agreement, Land Development Code, as amended, and conditions of development orders, whichever is applicable, and not the private agreements entered into between the aforementioned parties.

35. Unity of Title/Pond Parcel. A Unity of Title Agreement shall be executed and recorded in the Public Records of Volusia County, Florida by the Owner\Development unifying the title of the Property and that certain real property with Volusia County Tax Parcel Identification number 23-18-30-00-00-0101 (the "Pond Parcel") located within the jurisdictional boundaries of the City of Orange City ensuring that these parcels will remain in common ownership control. The Pond Parcel is shown on the Master Development Plan as a portion (the east 50 feet) of the Stormwater Pond being

developed to support the development of the Property. Owner/Developer represents and warrants that it is the current fee simple owner of the Pond Parcel. Owner/Developer agrees that it shall develop the Pond Parcel as a stormwater retention area for the benefit of the Property and the Property's development consistent with the Master Development Plan, and shall not develop the Pond Parcel for any other purposes. Owner/Developer shall be responsible for seeking and obtaining any and all necessary permits and approvals from the City of Orange City and other applicable agencies for the development of the Pond Parcel consistent with this paragraph and the Master Development Plan. This provision shall constitute a restrictive covenant binding upon the land in favor of and enforceable by the City of DeBary.

36. Development Regulations. The DeBary Land Development Code, as may be amended from time to time, will control the development of the Property regarding any items not specifically covered by the Ordinance approving this Development Agreement and this Development Agreement. The local development approvals and permits required to be approved or issued by the City for the intended use contemplated by this Agreement include, but are not limited to, construction plan approvals, site plans, plats, stormwater drainage, SJRWMD permits, demolition permit, grading, arbor permits, engineering and utility plans, and construction permits for buildings and other structures. These development approvals and permits shall be processed and issued by the City in accordance with procedures with respect to same as otherwise set forth in the City's Land Development Code and subject to this Development Agreement. Failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner/Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions. This Development 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. Nothing contained in this Agreement nor in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the City of its sovereign immunity under the Constitution and laws of the State of Florida and federal law or other any other privilege, immunity or defense afforded under the law to the City or any of its elected or appointed officials, employees and agents.

37. Authority. Each party represents and warrants to the other that it has all necessary power and

authority to enter into and consummate the terms and conditions of this Development Agreement, that all acts, approvals, procedures and similar matters required in order to authorize this Development Agreement have been taken, obtained, or followed, as the case may be, that this Development Agreement and the proposed performance of this Development Agreement by such party is not an *ultra vires* act and that, upon the execution of this Development Agreement by all parties, this Development Agreement shall be valid and binding upon the parties and their successors in interest. Furthermore, Owner/Developer represents and warrants to City that Owner/Developer is the sole owner of the Property, in fee simple, free and clear of any monetary encumbrances, including but not limited to mortgages and liens, in the event such an encumbrance exists, Owner/Developer, Owner/Developer's sole cost, shall obtain the necessary joiners, consents and subordination to this Development Agreement or releases from the appropriate parties with an interest in the property.

38. Development Review Cost. The Owner/Developer (and its successors and assigns in interests) shall timely pay the City for any and all development review costs concerning the development and the Property in accordance with Section 1-16, City of DeBary Land Development Code. Owner/Developer acknowledges and agrees that Owner/Developer have read § 1-16, DeBary Land Development Code and understand Owner/Developer's responsibilities and obligations under such code provision and this Development Agreement and acknowledges and agrees that Owner/Developer is bound by such code provision for all development applications and approvals relating to the Property.

39. Recitals. The recitals herein contained are true and correct and are incorporated herein by reference as material terms of this Development Agreement.

IN WITNESS WHEREOF, The Owner/Developer and the City have executed this Agreement as of the day and year first above written so that the Official Zoning Map of the City of DeBary is hereby amended to show the rezoning of said parcel to BPUD.

AGREED to by the City Council of the City of DeBary, Florida, and the Owner/Development on this ____ the day of _____, 2016.

ATTEST:

CITY OF DEBARY, a Florida municipal
corporation

City Clerk

Lita Handy-Peters, Interim Mayor

WITNESSES:

Owner/Developer

DHANVANTARI, LLC, a Florida limited liability company

By: _____

Signature

Print Name: _____

Print

Title: _____

Signature

Print

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ in the year 2016 by _____ as Managing Member of DHANVANTARI, LLC, a Florida limited liability company, on behalf of said company, who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name_____

Commission No._____

My Commission Expires:_____