AGENDA

CALL TO ORDER

Invocation
Flag Salute

ROLL CALL

PUBLIC PARTICIPATION: For any items NOT ON THE AGENDA, citizen comments are limited to three (3) minutes per speaker. For items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

APPROVAL OF MINUTES

1. Special City Council Meeting December 15, 2021
2. Regular City Council Meeting January 5, 2022

ADDITIONS, DELETIONS OR AMENDMENTS TO THE AGENDA

CONSENT AGENDA

3. Staff is requesting City Council authorization to dispose of surplus property and remove from capital inventory.
4. The Parks and Recreation Department is requesting City Council approval to renew the DeBary Babe Ruth Agreement for year three of the current three year term.
5. City Manager is requesting City Council to disband the Auditor Selection / Audit Committee.

GROWTH MANAGEMENT AND DEVELOPMENT

6. Staff is requesting City Council approval of the first reading of Ordinance No. 05-2022, on behalf of the applicant, Cobb Cole, Attorneys at Law (herein referred to as Cobb Cole), on behalf of Empire Cattle, Ltd., who is petitioning for the expansion of the Rivington Community Development District (CDD) to include 30.17 acres of land that was recently annexed into the Rivington MPUD (Rivington East).
7. The applicant, Brian Bussen, is seeking Final Plat approval for Springwalk at The Junction, Phase 1, which consists of lots 1-86 for a total of 86 lots.

NEW BUSINESS

8. The City Manager is requesting City Council approval of the Sixth Amendment to the Joint Marketing Agreement approving the Mosaic Development, LLC’s Letter of Intent to purchase 19.5 acres within the DeBary Main Street project.
9. The City Manager is requesting City Council discuss, select or provide guidance for the DeBary’s appointment to the Volusia County’s Opioid Abatement Funding Advisory Board.

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/Communications

A. Mayor and Council Members
B. City Manager
C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP

Special City Council Meeting February 16, 2022, 6:30 p.m.

ADJOURN

If any person decides to appeal any decision made by the City Council 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 (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.
CALL TO ORDER: Mayor Chasez called the meeting to order at 6:30 p.m.

ROLL CALL: Mayor Chasez, Vice-Mayor Butlien, Council Members Pappalardo, Sell and Stevenson are present.

Others present: Carmen Rosamonda, City Manager; Giffin Chumley City Attorney; Eric Frankton, Information Technology Director; Jason Schaitz, Parks & Recreation Director; Shari Simmans, Communications & Government Affairs Director; Alan Williamson, Public Works Director; and, Annette Hatch, City Clerk.

PUBLIC PARTICIPATION: For any items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

DELETIONS OR AMENDMENTS TO THE AGENDA (City Charter Sec. 4.11): City Manager requested Item No 5 under New Business be moved to immediately after the Sheriff’s Office presentation. There were no objections from Council.

PRESENTATIONS:

Charity Weigh In: City Council Member William Sell and City of Deltona Commissioner Dana McCool. Council Member Sell briefly explained the challenge and identified the United Methodist Church Hunger Ministry as his charity. He then weighed himself. Commissioner McCool could not be in attendance but sent a picture of her current weight.

Sid Vihlen, United Methodist Church Hunger Ministry: Elizabeth Vihlen speaking on behalf of Side Vihlen, addressed Council and gave a brief overview of the Hunger Ministry.

Christmas Light Contest Awards: Winners were presented with trophies. Please see attached for the list of winners.

Christmas Parade Contest Awards: Winners were presented with trophies. Please see attached for the list of winners.

Volusia Sheriff's Office, Carla Quann, Director, Juvenile Services: Director Quann gave a presentation on juvenile crime and drug use. She also discussed the availability of juvenile programs and family resources.

Linda Crough addressed Council.

School Board Superintendent, Dr. Scott Fritz, addressed Council and identified initiatives the schools would be implementing.

Ms. Roland, Volusia County Schools, addressed Council and identified social and emotional issues being addressed at the schools.
Mellissa Friedas, River Springs Middle School Assistant Principal, addressed Council and discussed discipline and drug use statistics at the middle school.

Sheriff Chitwood, Volusia Sheriff’s Office, addressed Council and discussed funding needs for a juvenile assessment center.

This item was originally listed on the agenda as Item 5 under New Business:

City Manager is requesting City Council approval of the First Amendment to the Volusia Sheriff’s Office (VSO) Interlocal Agreement for Law Enforcement Services, adding one Traffic Deputy.

City Manager reviewed prior law enforcement budgets, the reimbursement received and accelerating the City’s strategic initiative to add an additional deputy for traffic control.

Sheriff Chitwood, Volusia Sheriff’s Office, addressed Council.

Motion by Vice-Mayor Butlien to approve the first amendment to the Volusia Sheriff’s Office Interlocal Agreement to add one traffic deputy. Seconded by Council Member Pappalardo. Motion passed unanimously.

PUBLIC HEARINGS

City Staff is requesting City Council approve the first reading of Ordinance No. 2-2021, amending the nuisance abatement code.

City Attorney read the Ordinance into the record and noted the Ordinance Number should be 12-2021.

City Manager requested this item be continued until the regular City Council Meeting on January 5, 2022.

No one addressed Council.

It was the consensus of Council to continue this item.

City Staff is requesting City Council approve the first reading of Ordinance No. 02-2022, which proposes to limit automotive sales locations, clarifying the definition of automotive service stations, and creating provisions for nonconforming uses.

City Attorney read the Ordinance into the record.

City Manager requested this item be continued until the regular City Council Meeting on January 5, 2022.

No one addressed Council.

It was the consensus of Council to continue this item.

City Manager is requesting City Council approve the second reading of Ordinance No. 03-2022, amending the City Code to provide for regulations with respect to camping in public spaces.

City Attorney read the Ordinance into the record.

City Manager reviewed the homeless shelter availability. He stated wording had been added to the Ordinance to address Council’s concerns regarding sleeping in vehicles.

No one addressed Council.
Motion by Council Member Stevenson to approve the second reading of Ordinance No. 03-2022, providing regulations with respect to camping in public spaces. Seconded by Vice-Mayor Butlien. Motion passed unanimously.

City Manager is requesting City Council approve the second reading of Ordinance No. 04-2022, authorizing the operation of golf carts upon certain designated streets, roads and sidewalks with the City.

City Attorney read the Ordinance into the record.

City Manager recapped the information from the prior presentation and addressed Council’s concerns regarding insurance liability and trailers attached to golf carts. He added that carts would be prohibited from crossing US Highway 17-92 until the City could obtain a permit from the Florida Department of Transportation (FDOT).

Kyle Kleinschmidt, Donald Taylor and Sean Reece addressed Council.

Motion by Vice-Mayor Butlien to approve the second reading of Ordinance No. 04-2022 authorizing the operation of golf carts on certain designated streets, roads and sidewalks in the City. Seconded by Council Member Stevenson. Motion passed unanimously.

**NEW BUSINESS**

City Manager is requesting City Council approval of the First Amendment to the Volusia Sheriff’s Office (VSO) Interlocal Agreement for Law Enforcement Services, adding one Traffic Deputy.

This item was pulled from New Business and heard immediately after the Presentations section.

The Parks and Recreation Department is requesting Council approve the attached ECHO Grant Agreement to move forward with the Rob Sullivan Operations Center project.

Staff presented the item noting this was a matching grant and clarified that the City’s portion was being partially subsidized by a CDBG grant.

No one addressed Council.

Motion by Council Member Pappalardo to approve the ECHO Grant Agreement for the Rob Sullivan Operations Center project. Seconded by Vice-Mayor Butlien. Motion passed unanimously.

City Manager is requesting City Council approval of the Continuing Contract for Services between the City of DeBary and Whitehouse Contracting, LLC for Concrete Services.

City Manager presented the item and reviewed projects to be funded.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the continuing contract for concrete services with Whitehouse Contracting. Seconded by Council Member Stevenson. Motion passed unanimously.

City Manager is requesting City Council approval of the Whitehouse Contracting, LLC proposal to install a multi-use sidewalk on West Highbanks Road across from DeBary Elementary School.

City Manager reviewed the sidewalk project.

No one addressed Council.
Motion by Vice-Mayor Butlien to approve the Whitehouse Contracting, LLC proposal to install a multi-use sidewalk on West Highbanks Road across from DeBary Elementary School. Seconded by Council Member Stevenson. Motion passed unanimously.

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications

A. Mayor and Council Members
B. City Manager
C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP: January 5, 2022, 6:30 p.m.

ADJOURN: The meeting was adjourned at 8:54 p.m.

APPROVED:

CITY COUNCIL
CITY OF DEBARY, FLORIDA

___________________________________
Karen Chazez, Mayor

___________________________________
Annette Hatch, CMC, City Clerk
CITY OF DEBARY
ANNUAL LIGHT DISPLAY & HOA WINNERS
2021

NORTH SECTOR
1st Place-Robert Boggs (416 Quail Meadow Ct)
2nd Place-Chris Allen (502 Woodford Drive)
3rd Place-Robert Turek (70 Hollow Pine Drive)
4th Place-Susan Sokol (522 Tera Plantation Lane)
5th Place-Shawndra Wilson (277 Adelaide St)

SOUTH SECTOR
1st Place-Michael Brown (242 Buena Vista)
2nd Place-Nathan Balo (64 Keeble Ave)
3rd Place-Matthew Johnson (112 Catalina Drive)
4th Place-Kenneth Kiefer (2 Pleasant Hill)
5th Place-Cam Karnes (268 Valencia)

HOA Division
1st Place-DeBary Golf and Country Club
2nd Place-Hampton Hills Estates
3rd Place-Westridge DBGCC
4th Place-Saxon Woods
5th Place-Springview
CITY OF DEBARY
CHRISTMAS "WINTER WONDERLAND PARADE
FLOAT WINNERS 2021

ADULT CIVIC DIVISION
1ST PLACE-MOOSE LODGE #655
2ND PLACE-DEBARY GOLF CART IN
3RD PLACE-FRATERNAL ORDER OF EAGLES #4526

YOUTH/ADULT CIVIC DIVISION
1ST PLACE-CHAPMAN FAMILY
2ND PLACE-VCSO EXPLORER'S
3RD PLACE-SEA DOO FLORIDA COMMUNITY

YOUTH CIVIC DIVISION
1ST PLACE-SINGPHONY CHILDREN'S CHORUS
2ND PLACE-KJARI TIGERS ALL STAR CHEER & DANCE
3RD PLACE-CUB SCOUT PACK 241

COMMERCIAL DIVISION
1ST PLACE-DISCOM REALTY
2ND PLACE-DEBARY PAINT & BODY
3RD PLACE-RIVER CITY CHIRO & INJURY

GRAND CHAMPION
CHAPMAN FAMILY
CALL TO ORDER: Mayor Chazez called the meeting to order at 6:30 p.m.

ROLL CALL: Mayor Chazez, Vice-Mayor Butlien, Council Members Pappalardo, Sell and Stevenson are present.

Others present: Elizabeth Bauer, Finance Director/Acting City Manager; Kurt Ardaman, City Attorney; Matt Boerger, Growth Management Director; Eric Frankton, Information Technology Director; Shari Simmans, Communications & Government Affairs Director; Alan Williamson, Public Works Director; and, Annette Hatch, City Clerk.

PUBLIC PARTICIPATION: For any items NOT ON THE AGENDA, citizen comments are limited to three (3) minutes per speaker. For items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

Gary Crews addressed Council.

APPROVAL OF MINUTES: Special City Council Meeting November 17, 2021, and Regular City Council Meeting December 1, 2021.

Motion by Vice-Mayor Butlien to approve the minutes from November 17, 2021, and December 1, 2021. Seconded by Council Member Pappalardo. Motion passed unanimously.

ADDITIONS, DELETIONS OR AMENDMENTS TO THE AGENDA: None.

PRESENTATIONS:

Proclamation: Human Trafficking Awareness: Christie Gillis, Community Development Administrator, Florida Department of Children and Families, addressed Council. Mayor Chazez read the City’s Human Trafficking proclamation and presented same to Ms. Gillis.

Shari Simmans, Economic Development/Government Affairs Director, Trail Town Program Application Video: Video was presented and Gary Blair, Orange City Mayor, and Victor Ramos, City of Deltona Commissioner, video participants, addressed Council.

CONSENT AGENDA:

The Parks and Recreation Department is requesting Council approve the attached Trail and Park Maintenance Agreement.

The Parks and Recreation Department is requesting City Council approve the attached Ballfield Laser Grading Agreement with Laserturf.

The City Manager is requesting City Council approve the Engagement Letter with James Moore Certified Public Accountants and Consultants for annual audit services for five fiscal years (fiscal years ending September 30, 2021 through 2025).
Staff is requesting City Council approve the Piggyback Agreement for Banking Services, and Cash Services Master Agreement, with TD Bank, N.A. for a five-year term.

City Manager is requesting City Council approve the Interlocal Agreement governing the use of Volusia County Regional Opioid Settlement Funds.

Motion by Vice-Mayor Butlien to approve the Consent Agenda. Seconded by Council Member Pappalardo. Motion passed unanimously.

PUBLIC HEARINGS:

Staff is requesting City Council approve the first reading of Ordinance No. 12-2021, amending the nuisance abatement code.

City Attorney read the Ordinance into the record.

Prior to his presentation, Matt Boerger, the City’s Growth Management Director, thanked Council for their support over the years and introduced his predecessor, Amye King.

Staff presented the item and explained the Ordinance would allow the City to respond sooner to nuisance complaints. He added that this item was continued from the December 15, 2021, Council meeting, and clarified this was the first reading of the Ordinance.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the first reading of Ordinance No. 12-2021, amending the nuisance abatement code. Seconded by Council Member Stevenson. Motion passed unanimously.

Staff is requesting City Council approve the first reading of Ordinance No. 02-2022, which proposes to limit automotive sales locations, clarify the definition of automotive service stations, and create provisions for nonconforming uses.

City Attorney read the Ordinance into the record.

Staff presented the item and clarified the timeframe language was on use of the property and not ownership. He added that this item was continued from the December 15, 2021, Council meeting, and clarified this was the first reading of the Ordinance.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the first reading of Ordinance No. 02-2022, to limit automotive sales locations, clarifying automotive service stations definition and creating provisions for nonconforming uses. Seconded by Council Member Stevenson. Motion passed unanimously.

NEW BUSINESS:

Staff is requesting City Council approve Resolution No. 2022-04, updating the signatories on the City’s TD Bank accounts.

City Attorney read the Resolution into the record.

Staff explained that the signature update was needed due to staffing changes.

No one addressed Council.
Motion by Council Member Pappalardo to approve Resolution No. 2022-04, updating the signatories on the City’s TD Bank accounts. Seconded by Council Member Stevenson. Motion passed unanimously.

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications

A. Mayor and Council Members
B. City Manager
C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP: Special City Council Meeting January 19, 2022, 6:30 p.m.

ADJOURN: The meeting was adjourned at 7:11 p.m.

APPROVED:

CITY COUNCIL
CITY OF DEBARY, FLORIDA

___________________________________
Karen Chasez, Mayor

___________________________________
Annette Hatch, CMC, City Clerk
REQUEST

Staff is requesting authorization to dispose of surplus property and remove from capital inventory.

PURPOSE

Florida Statutes Chapter 274 requires the authority for disposal of property to be recorded in the minutes of the governmental unit.

CONSIDERATIONS

City staff has identified specific items as detailed in the attached listing that are obsolete, no longer serviceable and/or serve no useful function. The surplus property has no commercial value. The items will be removed from capital inventory.

Florida Statutes Chapter 274 authorizes the disposal of surplus property with an estimated value of less than $5,000 in the most efficient and cost effective means as determined by the governmental unit.

COST/FUNDING

N/A

RECOMMENDATION

It is recommended that the City Council approve the disposal of surplus property as detailed in the attached listing and removal from capital inventory.

ATTACHMENTS

Surplus property listing
<table>
<thead>
<tr>
<th>Asset #</th>
<th>Asset Description</th>
<th>Date Acquired</th>
<th>Acquisition Cost</th>
<th>Useful Life</th>
<th>Remaining Life</th>
<th>Depreciation Taken</th>
<th>Remaining Value</th>
<th>Removal Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>677</td>
<td>VEHICLE - 1985 FIRE TENDER</td>
<td>10/1/2011</td>
<td>25,728.75</td>
<td>5</td>
<td>0</td>
<td>25,728.75</td>
<td>-</td>
<td>Obsolete / Unserviceable</td>
</tr>
<tr>
<td>684</td>
<td>EQUIP - TRAILER CARGO 8X20X6 FT</td>
<td>10/28/2012</td>
<td>7,255.00</td>
<td>10</td>
<td>1.5</td>
<td>6,166.93</td>
<td>1,088.07</td>
<td>Obsolete / Unserviceable</td>
</tr>
<tr>
<td>16-0042</td>
<td>CAPITAL LEASE - MAIL MACHINE</td>
<td>12/31/2015</td>
<td>2,904.00</td>
<td>5</td>
<td>0</td>
<td>2,904.00</td>
<td>-</td>
<td>Lease has run to term</td>
</tr>
<tr>
<td>16-0043</td>
<td>CAPITAL LEASE - KONICA COPIER</td>
<td>12/1/2015</td>
<td>6,451.60</td>
<td>5</td>
<td>0</td>
<td>6,451.60</td>
<td>-</td>
<td>Lease has run to term</td>
</tr>
<tr>
<td>17-0017</td>
<td>CAPITAL LEASE - KONICA COPIER 1ST FLOOR</td>
<td>10/28/2016</td>
<td>6,824.40</td>
<td>5</td>
<td>0</td>
<td>6,824.40</td>
<td>-</td>
<td>Lease has run to term</td>
</tr>
<tr>
<td>524</td>
<td>EQUIP - CHAMBERS STAFF TABLE TAG 66</td>
<td>2/13/2009</td>
<td>750.09</td>
<td>10</td>
<td>0</td>
<td>750.09</td>
<td>-</td>
<td>Deterioration beyond repair</td>
</tr>
<tr>
<td>525</td>
<td>EQUIP - OLD CONFERENCE ROOM TABLE TAG 67</td>
<td>2/13/2009</td>
<td>989.93</td>
<td>10</td>
<td>0</td>
<td>989.93</td>
<td>-</td>
<td>Deterioration beyond repair</td>
</tr>
<tr>
<td>562</td>
<td>EQUIP - VEHICLE MOUNTED RADIO DOC PROGRAM</td>
<td>11/19/2008</td>
<td>4,414.00</td>
<td>5</td>
<td>0</td>
<td>4,414.00</td>
<td>-</td>
<td>Band No Longer Supported</td>
</tr>
</tbody>
</table>

**NON CAPITAL ITEMS:**
- Winco 6000 Watt Generator Serial #101986AO5
- Winco 6000 Watt Generator Serial #101106MO5
- Stihl - FS 90R- weedeater Serial #291955091
- Stihl - BR600 Backpack Blower Serial #291654091
- 800 MHz Radios Model PS100
- Band No Longer Supported

City of Debary
Surplus Capital Equipment
City Council Agenda 02/02/2022
REQUEST

The Parks and Recreation Department is requesting City Council approval to renew the DeBary Babe Ruth Agreement for year three of the current three year term.

PURPOSE

Approval is needed at this time to ensure we can start the Spring 2022 season on time. The City has had a long standing positive relationship with DeBary Babe Ruth and hope to continue our successes moving forward. DeBary Babe Ruth serves thousands of families annually through their baseball and softball programs. They have given back to the City through volunteerism and assisting with capital projects at Rob Sullivan Park and Bill Keller Park.

CONSIDERATIONS

DeBary Babe Ruth has two seasons annually and has been on agreement with the City in good standing for several years. There are no changes to the current agreement.

COST/FUNDING

Maintenance costs, including daily maintenance of the fields, are absorbed in the approved Parks and Recreation Department budget. There are no direct costs from the City to operate the baseball and softball leagues.

RECOMMENDATION

It is recommended City Council approve the DeBary Babe Ruth Agreement Renewal for year three of the current three year term.

IMPLEMENTATION

The 2022 agreement will be effective March 1, 2022 following the official start of the season at Opening Day Ceremonies on February 26, 2022.
ATTACHMENTS
ATTACHMENT A DeBary Babe Ruth Agreement
ATTACHMENT B DeBary Babe Ruth Budget
ATTACHMENT C DeBary Babe Ruth Balance Sheet
ATTACHMENT D DeBary Babe Ruth Insurance Certificate
Facility Use Agreement
DeBary Babe Ruth and the City of DeBary

WHEREAS, the City of DeBary ("City") is agreeable to allowing the West Volusia Athletic Club, Inc. d/b/a DeBary Babe Ruth ("League") use of said facilities on park property owned or leased by the City; and

WHEREAS, it is desirable that the respective duties and responsibilities of the parties be set forth in a written agreement (the "Agreement" or the "Contract"); and

WHEREAS, both parties hereto agree that the services and instruction rendered by the League and the land provided by the City are for the good and betterment of the community and in the best interest of the public;

NOW, THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

WITNESSETH:

1. For and in consideration of the covenants herein contained, the City does hereby agree to the use of certain City recreation facilities by the League as described herein, to wit: Rob Sullivan Community Park ball fields #1, 2, and 3 and Bill Keller Park ball fields #1, 2, and 3; and as future and post-season League use dictates (the "Premises" or "Fields" or "Parks"). The League must supply the City with any League use requests a minimum of two weeks in advance to confirm date, time, availability, and location of needs. Fields will be provided starting with the Skills Assessments each season and ending with Closing Day Ceremonies as well as provided for Summer All Stars as needed. If available, the League may use the Fields twice annually for kickball, baseball, or softball tournaments or clinics for fundraising purposes upon the agreement of the City.

2. This Agreement shall be a one-year contract with two (2) additional one-year renewals conditioned upon the mutual consent of the parties and the parties’ compliance with the renewal terms set forth herein. The term of this Agreement is for the one-year period beginning on March 1, 2020, and shall be subject to written requested renewal by exchange of written notice between the parties as set forth herein. Notwithstanding the preceding, either party may cancel this Agreement at will and in its sole discretion upon thirty (30) days written notice to the other party. Renewal of this Agreement shall be expressly conditioned upon the following terms:

A. That both parties shall be willing to renew the Agreement.

B. That a request for renewal shall be made in writing by the League in December of each year.

C. The League shall furnish the following information:

1
(1) A financial report covering the prior period of the Agreement, indicating the complete expenditures of the League.

(2) A statement relative to the goals set for the coming year and how they are proposed to be accomplished.

3. The League agrees to and will at all times indemnify, save and hold harmless the City, its elected and appointed officials, officers, agents, and employees from and against all liability, claims, demands, damages and costs of every kind and nature, including attorney’s fees at trial or appellate levels and all court costs arising out of injury to or death of the League’s employees, agents, invitees, guests, members, and youth players, and damage to any and all property, including loss of use thereof, resulting from or in connection with activities or use of the above facilities by the League, its agents, servants, employees, volunteers, members, guests, invitees or youth players, or resulting from the negligence, intentional torts, and criminal actions of the League, its agents, servants, employees, volunteers, members, guests, invitees and youth players. The League and the City acknowledge and agree that the League is solely responsible for the reasonable supervision, control, protection and safety of the League’s agents, servants, employees, volunteers, members, guests, invitees and youth players. The League shall upon request from the City, defend and satisfy any and all suits arising from the League’s use of the Premises. This paragraph and all indemnification and hold harmless provisions of this Agreement shall survive the termination and expiration of this Agreement. Further, nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of the City as set forth in the constitution and the laws of the state of Florida, including without limitation, section 768.28, Florida Statutes.

4. The City agrees to:

A. Maintain the playing fields in accordance with the standards deemed appropriate by the City to include, but not limited to, mowing. Any other requests or instructions must be submitted in writing by the League and approved by the City.

B. Also provide:

(1) Maintenance of water fountains.
(2) Preventative maintenance and management of turf grass within areas specified for use.
(3) Access to field tools and other tools as required providing field lining.
(4) One set of bases per field (League will provide extra sets).
(5) Maintenance of electrical scoreboards and field lighting.
(6) Preventative maintenance of bleachers and fencing.

C. Provide extra clay on-site at all times for minor field repairs.

D. Assume payment of all utilities, except for natural gas – which the League will provide at its expense. The City reserves the right to issue guidelines to the League and others concerning the usage of lighted areas.

E. Provide trash receptacles and payment for trash removal.
5. The League agrees that during its season it will:

A. Coordinate the League activities and provide all staff or volunteers essential for operating such a program.

B. Maintain the grounds outside and inside of the playing area free of paper, litter, and debris accruing from the operation of any concession stand and League activities. This includes the field and bleacher areas.

C. Assist in keeping restrooms/grounds clean during games and checking restrooms during use of the facilities. Will also make a final clean up prior to leaving at day’s end. Agrees to install supplies (provided by the City) for restroom facilities and keep facilities clean as a backup function only when City maintenance is unavailable.

D. Maintain concession facilities in accordance with specifications established by the State Sanitary Code.

E. Provide all equipment associated for said activity, i.e., balls, scorebooks, player equipment, etc.

F. The League representative shall assume responsibility for making the decision of field playability when City staff is not available. If damage to the field shall result from the use of the fields as determined by the Parks Superintendent or his/her designee, following the League representative’s decision, the League shall be financially responsible for the repair of the field.

G. Shall not add any materials to the playing field without the consent of the City. (Clay may be added for minor repairs. Drying agent “Turface” may be added at the rate of one bag per wet area).

H. Obtain the written prior approval of the City before physical improvements or additions are made to any facilities in the Parks. Unapproved contested work done to the facilities will require restoration back to original condition of the parks by the League at its expense.

I. Not make any irrigation control adjustments except in the case where irrigation is directly interfering with a League activity in progress. At such time, the controller will be turned off and the Parks Superintendent notified no later than the next business day. Furthermore the City, in cooperation with the St John’s River Water Management District has established very stringent and precise water usage regulations. Failure to comply will result in violations and fines to the guilty party.

J. Report damage, vandalism, problems, and safety hazards to the City immediately.

K. Provide one individual to act as the League representative and liaison between
the League and the City.

L. Maintain control of coaches, officials, participants and spectators, and ask rule violators to leave the parks or contact appropriate law enforcement agency as necessary. The League agrees to have a League official on park grounds during all games to enforce League and park rules.

M. Refrain from abusing the electrical or lighting system. (i.e., Provide adequate notice to the City so that actual play schedule coincides with automatic lighting schedule.)

N. Provide the City with a complete list (including names, addresses and phone numbers) of all League Board members, volunteers, and coaches. The League will provide a written statement listing the total number of participants that are City residents and non-residents.

O. Provide the City with a copy of the League rules, regulations, charter, guidelines and organizational chart.

P. Report all accidents or injuries to coaches, players, spectators, visitors and participants within 48 hours, by telephone and with a follow up written report.

Q. Provide the City with details of registration information (dates, times, locations, costs, etc.).

R. Provide training to League officials, coaches, volunteers, as to the proper techniques and use of maintenance equipment (tools, rakes, etc.) prior to use.

S. Return equipment to its original condition prior to storing.

T. The City will issue any necessary codes/combinations/ and or keys to be used by the League board members and team managers. These items are not to be duplicated or shared outside of the League needs.

U. Operate concession facilities during non-League related sports activities and/or special events. If the League cannot operate concessions during these pre-determined dates the City reserves the right to operate and/or assign this service to outside vendors.

V. Provide the City for approval, a copy of schedules for desired space needs (before each season begins) to include any Park area described in this Agreement. The preseason schedule and each subsequent schedule should be provided to the City a minimum of two weeks in advance.

W. Provide for natural gas to operate the facilities at the League’s expense.

X. The League will provide batters’ boxes and base lines prior to scheduled games with equipment and materials provided by the City.
Y. Provide monthly reports to the City Parks and Recreation Director detailing the number of games played, the number of injuries and type of injuries sustained by anyone participating in or attending a League event on or at the facilities, and the number of attendees of the League’s events occurring at the facilities, including League employees, players and volunteers.

Z. The League will prominently display “DeBary Babe Ruth” on all advertising, marketing, and league apparel starting the 2015 Fall Season and moving forward.

6. During the primary spring season starting in March of each year, the League shall have the use of the above referenced facilities. This usage to be determined by the League submitting to the City, for City approval, a schedule of practices, games, and special events on or before two weeks prior to the commencement of the League’s spring and fall seasons. If the League desires to make a change to the approved schedule submitted to the City, the League shall request in writing such change from the City Parks and Recreation Director at least twenty-four (24) hours in advance of the unscheduled day the League desires to utilize the facilities or the scheduled day the League desires to not utilize the facilities, or whichever day occurs first in the event of rescheduling from a scheduled day to an unscheduled day. The City Parks and Recreation Director, in his or her sole discretion, shall have the right to grant or deny the League’s request for a schedule change. If the League fails to use the facilities on a day listed on the approved schedule, the League will be charged a penalty of twenty-five dollars ($25.00) per occurrence, unless the League submitted a proper and timely request for a schedule change and City Parks and Recreation Director approved such change in the League’s schedule. The League shall release use of the facilities at times when they are not scheduled, or when they are required for use by the City for purposes of maintenance or use by others, including but not limited to weekday light hours when public school is in session. At all other times, scheduling of all facilities is at the sole discretion of the City. The League acknowledges and agrees that there may be times when the City will need to utilize the facilities, or otherwise deny the League’s use of the facilities on its scheduled day(s), due to an emergency or any other important event that may occur which the City determines in its sole discretion, requires the City to deny the League use of the facilities. In the event the City denies the League’s use of the facilities on an approved schedule day(s), the League shall release use of the facilities immediately upon notice to the League by the City. Throughout the year, no other entity shall use the League’s equipment or fixtures supplied by the League without its express permission. The League must contact the City at least two (2) weeks in advance for scheduling of post season or all-star competition.

7. During the secondary fall season starting in September of each year, the League and the City will negotiate and mutually agree upon field usage that will not interfere with existing or future City sponsored programs. Excluding the scheduling section of this document, all other agreements and covenants will remain in effect during the secondary season. The League is hereby authorized and instructed to make, keep and maintain reasonable rules and regulations regarding the use of the facilities by members of the League and the League agrees to keep said Premises and the buildings thereon in a sanitary and clean condition, and keep the Premises in as good condition as it is now,
ordinary wear, tear and damage by the elements excepted. The City shall inspect the facility regularly and the City’s determination as to the condition of the facility will be final. The League also agrees to enforce the City Park rules posted at each facility.

8. The League at its own cost and expense will be responsible for field prep and maintenance if scheduled games take place on a Sunday during the approved season dates. If this is not possible for the League they may elect not to have any maintenance coverage but will be subject to subsequent field conditions. The league agrees to designate approved personnel prior to the season to be responsible for City field maintenance and maintenance equipment. Approved league maintenance designee’s must complete a training provided by City staff and complete maintenance logs for the duration of the season. The League will be responsible for any damage to the maintenance equipment or the field that occurs while maintaining the fields for Sunday games. The League and any field maintenance designees must sign a separate waiver and hold harmless agreement to be provided by the City prior to each season upon completion of the field maintenance training by City staff. All signed weekly maintenance logs must be turned into the Parks Superintendent within one week of the final game of the season. No outside equipment may be used on the fields. Failure to comply with any of the above guidelines will result in loss of City maintenance equipment use as well as loss of Sunday field usage.

9. The League at its own cost and expense shall keep in force during the term of this Agreement; insurance from an insurance company licensed in the State of Florida and rated “A”, Class “X” or better by A.M. Best. The required insurance shall be evidenced by a certificate of insurance, which must be submitted to and approved by the City prior to the effective date of this Agreement.

The City of DeBary shall be named as an additional named insured under the policy, and the City shall be provided with a thirty-day (30) notice in the event of cancellation, non-renewal or adverse change to the policy.

The League shall provide, on forms no more restrictive than the latest edition of those filed by the Insurance Services Office, Comprehensive General Liability Insurance with a minimum limit of $1,000,000.00 per occurrence combined single limit to include:

A. Premises - Operations
B. Independent Contractors
C. Products - Completed Operations
D. Broad Form Contractual
E. Personal Injury

Failure to comply with this requirement shall render this Agreement void at the election of the City except all indemnification and hold harmless provisions and provisions pertaining to the City’s sovereign immunity protections shall survive.

10. In the event that the League operates a concession facility or in any way distributes or sells food, beverages, candy or foodstuffs of any description, the League agrees to fully indemnify the City (in accordance with paragraph 3 herein) from any claim or cost
arising from the provision of such foodstuffs.

11. This Agreement may not be assigned or transferred in any manner by the League or the City and any such assignment or transfer is expressly prohibited.

12. This Agreement shall be binding upon the parties hereto and their successors and assigns.

13. Any previously existing oral or written agreements shall be terminated as of the date of this Agreement and shall be deemed to be hereafter null and void and of no further force and effect whatsoever.

14. No modifications, amendments, or alterations in the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the parties.

15. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Florida. Any and all legal action arising out of this Agreement will have its exclusive venue in a court of appropriate and proper jurisdiction in Volusia County, Florida.

16. If any terms or provisions of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this __________ day of _________________, 2020.

Date: __2-7-2020__

BY: ____________________________

Tommy Grimm, President
West Volusia Athletic Club, Inc.
d/b/a DeBary Babe Ruth

Date: __2-7-2020__

BY: ____________________________

Witness
West Volusia Athletic Club, Inc.
d/b/a DeBary Babe Ruth

Print Name: ____________________________

Date: __2-7-2020__

BY: ____________________________

Mayor
City of DeBary
## DeBary Babe Ruth Budget

**Income**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Star Fees</td>
<td>$14,605.00</td>
</tr>
<tr>
<td>All Star Parent Shirts</td>
<td>$1,583.00</td>
</tr>
<tr>
<td>Concessions</td>
<td>$45,150.00</td>
</tr>
<tr>
<td>Umpires</td>
<td>$6,490.00</td>
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<tr>
<td>Opening Day</td>
<td>$246.00</td>
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<tr>
<td>Parent Shirts</td>
<td>$4,559.00</td>
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<td>Pictures</td>
<td>$1,410.00</td>
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<tr>
<td>Registration Fall</td>
<td>$65,656.00</td>
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<td>Registration Spring</td>
<td>$70,650.00</td>
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<td>Sponsors</td>
<td>$45,600.00</td>
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<tr>
<td>Xtreme Fee</td>
<td>$15,690.00</td>
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<tr>
<td><strong>Total Program Income</strong></td>
<td><strong>$271,639.00</strong></td>
</tr>
</tbody>
</table>

**Cost of Goods** $19,850.00

**Gross Profit** $251,789.00

**Expense**

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<tr>
<th>Item</th>
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<tbody>
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<td>Advertising</td>
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<td>Facilities/Equipment</td>
<td>$77,522.00</td>
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<td>Charter/Insurance</td>
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<tr>
<td>Christmas Parade</td>
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<td>Computers/Internet</td>
<td>$94.00</td>
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<td>Equipment</td>
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<td>License/Fees</td>
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<td>Capital Allocation General</td>
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<td>Capital Allocation Sign Sponsors</td>
<td>$15,000.00</td>
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<tr>
<td></td>
<td>$245,408.00</td>
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</tbody>
</table>

**Net Profit** $6,381.00
**ASSETS**

Current Assets
- Checking/Savings
  - Operating 2: 73,590.95
  - Umpire Account 2: 24,259.22

Total Checking/Savings: 97,850.17

Total Current Assets: 97,850.17

**TOTAL ASSETS**: 97,850.17

**LIABILITIES & EQUITY**

Equity
- Retained Earnings: 51,505.59
- Net Income: 46,344.58

Total Equity: 97,850.17

**TOTAL LIABILITIES & EQUITY**: 97,850.17
**CERTIFICATE OF LIABILITY INSURANCE**

**DATE (MM/DD/YYYY):** 2/1/2021

**PRODUCER:** K&K INSURANCE GROUP, INC.  
1712 MAGNAVOX WAY  
PO BOX 2338  
FORT WAYNE IN 46801

**INSURED:** WEST VOLUSIA ATHLETIC CLUB BABE RUTH LEAGUE  
DBA: West Volusia Athletic Club, LLC  
336 Hampton Hills Court  
DeBary, FL, 32713

**CONTACT NAME:** Cheryl Pettibone  
**PHONE:** 800-736-7358  
**FAX:** 847-953-2873  
**E-MAIL ADDRESS:** Cheryl.Pettibone@kandkinsurance.com

**INSURER(S) AFFORDING COVERAGE:**

- **INSURER A:** Nationwide Mutual Insurance Company  
  NAIC #: 23787
- **INSURER B:** Nationwide Life Insurance Company  
  NAIC #: 66869
- **INSURER C:**
- **INSURER D:**
- **INSURER E:**
- **INSURER F:**

**COVERAGES**

**CERTIFICATE NUMBER:**

- **POLICY NUMBER:**
  - **COMMERCIAL GENERAL LIABILITY:**
    - POLICY NUMBER: RPG0000031509700
    - LIMITS:
      - EACH OCCURRENCE: $1,000,000
      - DAMAGE TO RENTED PREMISES (Ea occurrence): $300,000
      - MED EXP (Any one person): $5,000
      - PERSONAL & ADV INJURY: $1,000,000
      - GENERAL AGGREGATE: $5,000,000
      - PRODUCTS-COMPROAGG: $1,000,000
      - PARTICIPANT LEGAL LIABILITY: $1,000,000
- **AUTOMOBILE LIABILITY:**
  - POLICY NUMBER: RPG0000031509700
  - LIMITS:
    - COMBINED SINGLE LIMIT (Ea Accident): $1,000,000
    - BODILY INJURY (Per person): $1,000,000
    - PROPERTY DAMAGE (Per accident): $1,000,000
- **UMBRELLA LIABILITY:**
  - POLICY NUMBER: # OCCUR
  - LIMITS:
    - EACH OCCURRENCE AGGREGATE
- **WORKERS COMPENSATION AND EMPLOYERS’ LIABILITY:**
  - Y/N: N/A
  - IF YES, DESCRIBE UNDER DESCRIPTION OF OPERATIONS below

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

**ADDITIONAL INSURED:** ANY PERSON, ORGANIZATION OR ENTITY WHO IS ENGAGED IN PROVIDING THE PREMISES, IS A SPONSOR OR CO-PROMOTER, BUT SOLELY WITH RESPECT TO THE OPERATIONS OF THE NAMED INSURED.

**SEXUAL ABUSE/MOLESTATION:** $1,000,000 PER OCCURRENCE/$2,000,000 AGGREGATE

**CERTIFICATE HOLDER CANCELLATION**

Evidence of Coverage

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**

Scott [Signature]
REQUEST

City Manager requests City Council to disband the Auditor Selection / Audit Committee.

PURPOSE

The Auditor Selection / Audit Committee completed the task of selecting new auditors for the annual audit so the committee can be disbanded and the City Council will act as the Audit Committee.

CONSIDERATIONS

The Auditor Selection / Audit Committee was set up with Resolution No. 2022-01 for the purpose of selecting new auditors for the city. An RFP process has been completed by the Auditor Selection Committee so their services are no longer needed.

For future reports to the City Council from the auditors, it would be most efficient to have the City Council serve as the Audit Committee. This will allow all Council members to hear reports from the auditors at the same time.

COST/FUNDING

N/A

RECOMMENDATION

It is recommended that the City Council disband the Auditor Selection / Audit Committee.

IMPLEMENTATION

N/A

ATTACHMENTS

N/A
REQUEST

Staff is requesting City Council approval of the 1st reading of Ordinance No. 05-2022, on behalf of the applicant, Cobb Cole, Attorneys at Law (herein referred to as Cobb Cole), on behalf of Empire Cattle, Ltd., who is petitioning for the expansion of the Rivington Community Development District (CDD) to include 30.17 acres of land that was recently annexed into the Rivington MPUD (Rivington East).

PURPOSE

The applicant wishes to expand the Rivington CDD to include Rivington East.

CONSIDERATIONS

Staff is requesting City Council approval of the first reading of Ordinance # 05-2022, on behalf of the applicant, Cobb Cole. The Florida Legislature created and amended Chapter 190. Florida Statutes, to allow for CDDs in order to provide an alternative method to finance and manage basic services for community development. The proposed CDD would be the financing and managing body for the proposed Rivington East development project, which is on approximately 30.17 acres of land located at the southeast corner of Fort Florida Road and Barwick Road.

Proposed facilities to be funded include roads and storm drainage (on- and off-site), ponds, utilities for water and sewer, reclaimed utilities, mitigation, site landscaping, entry features, amenity centers, parks and greens, and trails. The total estimated capital costs are $8,784,749.20. No bond, debt or other obligation of the CDD, nor any default, shall constitute a debt or obligation by the City.

FINDINGS OF FACT

- The applicant proposes to add approximately 30 acres into the Rivington Community Development District.
- The proposed Community Development District is consistent and compatible with the City of DeBary Comprehensive Plan.
- The Development Review Committee recommended approval to the DeBary City Council on December 21, 2021, contingent on addressing any remaining outstanding comments.
The City Council approved the first reading of Ordinance # 09-2021 (Item # 6), approving and revising the existing Rivington MPUD in order to annex 30.17 acres of land, on July 21st, 2021. The City Council approved the second reading of Ordinance # 09-2021 (Item # 9) on September 1st, 2021.

**COST/FUNDING**

N/A

**RECOMMENDATION**

It is recommended that the City Council approve the first reading of Ordinance 05-2022, expanding the Rivington Community Development District expansion.

**IMPLEMENTATION**

If the City Council approves the proposed Community Development District expansion, then the subject property will be added into the Rivington Community Development District.

**ATTACHMENTS**

Ordinance #05-2022
Petition to expand Rivington Community Development District
Ordinance #09-2021 (recorded)
Amended mobility fee agreement
Amended mobility fee agreement (exhibit D)
ORDINANCE NO. 05-2022

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, GRANTING THE PETITION FOR AND EXPANDING THE RIVINGTON COMMUNITY DEVELOPMENT DISTRICT PURSUANT TO CHAPTER 190, FLORIDA STATUTES, CONCERNING THAT CERTAIN APPROXIMATELY 30 +/- ACRES OF LAND; DESCRIBING THE EXPANDED BOUNDARIES OF THE RIVINGTON COMMUNITY DEVELOPMENT DISTRICT; PROVIDING FOR DISTRICT NAME, POWERS, AND DUTIES; PROVIDING DISTRICT DESCRIPTION AND BOUNDARIES; CONSENTING TO THE EXERCISE OF CERTAIN SPECIAL POWERS BY THE DISTRICT BOARD OF SUPERVISORS; PROVIDING FOR CONFLICTS, SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature created and amended Chapter 190, Florida Statutes, to provide an alternative method to finance and manage basic services for community development; and

WHEREAS, Reader & Partners, LLC, a Florida limited liability company, has petitioned the City Council of the City of DeBary, a Florida municipal corporation, to adopt an ordinance expanding the existing Rivington Community Development District (the “District”) pursuant to Chapter 190, Florida Statutes; and

WHEREAS, Empire Cattle, LTD, is the owner of approximately 30 +/- acres of land legally described in Exhibit “A,” attached hereto (“Subject Property”); and

WHEREAS, Empire Cattle, LTD, has consented to Petitioner’s request for the expansion of the District for the Subject Property and having the Subject Property represent the District’s expanded boundary; and

WHEREAS, the City Council of the City of DeBary, Florida (the “City”), has conducted a public hearing on the petition for the expansion of the District in accordance with the requirements and procedures of Section 190.046(1)(c), Florida Statutes, as amended; and
WHEREAS, the City Council has considered the record of the public hearing and the facts set forth in Section 190.046, Florida Statutes, as amended, in making its determination to grant the petition for the expansion of the District; and

WHEREAS, the City Council has determined that; the statements within the petition were true and correct; that the expansion of the District is not inconsistent with the Comprehensive Plan; that the land within the District, is of sufficient size, is sufficiently compact, and sufficiently developable as a functionally interrelated community; that the District is the best alternative available for delivering community development services and facilities to the area served by the District; that the community development services and facilities will be compatible with the capacity and use of existing local and regional community development services and facilities; and the area to be served by the District is amenable to separate special-district governance; and

WHEREAS, the City Council desires to consent to the District’s exercise of certain special powers as requested by the petition and for such to be governed by Chapter 190, Florida Statutes.

IT IS HEREBY ORDAINED BY THE CITY OF DeBARY AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and accurate and are incorporated herein as the legislative findings of the City Council.

SECTION 2. Authority. This Ordinance is adopted pursuant to Chapter 190, Florida Statutes, as amended.

SECTION 3. District Name/Petition Granted. There is hereby expanded a community development district situated entirely within the City of DeBary, which shall be known as the "Rivington Community Development District," and which is sometimes referred to in this Ordinance as the "District." The Petitioner's petition to expand the District over the Subject Property is hereby granted.
SECTION 4. District External Boundaries. The external boundaries of the District are described in Exhibit "A," attached hereto and incorporated herein, said expanded boundaries encompassing approximately 30 +/- acres.

SECTION 5. Initial Board Members. The initial members of the District's Board of Supervisors shall be as follows: Jeffrey M. Reader, Debra Dremann Ushkowitz, Marlene DeMarco, Steven Costa and Tisha Barberree.


SECTION 7. No Debt of City. No bond, debt or other obligation of the District, nor any default thereon, shall constitute a debt or obligation of the City of DeBary.

SECTION 8. Severability. If any portion of this Ordinance is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the balance of the Ordinance shall continue in full force and effect.

SECTION 9. Effective Date. This Ordinance shall take effect ten (10) days after adoption.
FIRST READING: ________________, 20____

SECOND READING: ________________, 20____

ADOPTED this ________ day of ______________, 20____, by the City Council of the City of DeBary, Florida.

CITY COUNCIL
CITY OF DEBARY

ATTEST: ____________________________

Karen Chasez, Mayor

______________________________
Annette Hatch, CMC, City Clerk

Date: ______________________

SEAL

Attachments – Exhibit “A” – Legal Description of Subject Property (also being the same as the expanded District Boundaries)
EXHIBIT A

PETITION
BEFORE THE CITY COUNCIL OF THE CITY OF DEBARY
DEBARY, FLORIDA

PETITION TO EXPAND RIVINGTON COMMUNITY DEVELOPMENT DISTRICT

Petitioner, Rivington Community Development District, a community development district established by Ordinance Number 12-18 by the City of DeBary, Florida on October 3, 2018 pursuant to the Uniform Community Development District Act of 1980, Chapter 190 of the Florida Statutes, (hereinafter “Petitioner”) hereby petitions the City Council of DeBary, Florida, to expand (hereinafter "Expansion") the established Rivington Community Development District (hereinafter “CDD” or “District”) with respect to land described herein. In support of this petition, Petitioner states:

1. **Location and Size.** The Expansion area is located entirely within the incorporated limits of DeBary, Florida. **Exhibit 1** describes the general location of the proposed expanded CDD. The proposed Expansion covers approximately 30.0 +/- acres of land. The metes and bounds description of the expanded District is attached as **Exhibit 2**.

2. **Excluded Parcels.** There are no parcels within the proposed external boundaries of the Expansion which are to be excluded.

3. **Landowner Consent.** Petitioner has obtained written consent to establish the Expansion from the owner of one hundred percent (100%) of the real property located within the Expansion. Documentation of this consent is set forth in **Exhibit 3**.

4. **Name.** The proposed name of the Expansion remains Rivington Community Development District.

5. **Initial Board Members.** The five persons designated to serve as initial members of the Board of Supervisors of the proposed Expansion are as follows:
Name: Jeffrey M. Reader  
Address: 5850 T.G. Lee Blvd., Suite 200, Orlando, FL 32822  

Name: Steven Costa  
Address: 444 Seabreeze Blvd., Suite 1000, Daytona Beach, FL 32118  

Name: Tisha Barberree  
Address: 2443 Upper Park Rd., Orlando, FL 32814  

Name: Marlene DeMarco  
Address: 5850 T.G. Lee Blvd., Suite 200, Orlando, FL 32822  

Name: Debra Dremann Ushkowitz  
Address: 5050 Sailwind Circle, Orlando, FL 32810  

All of the above-listed persons are residents of the State of Florida and citizens of the United States of America.

6. **Existing Zoning and Future Land Use.** The existing zoning and future land use for lands within the proposed Expansion are shown on Exhibits 4 and 5, respectively. The land within the proposed Expansion is currently undeveloped. The future development within the Expansion is consistent with Objective 1.7 (Transit Oriented Development) of the City of DeBary, Florida Future Land Use Plan. The development plan consistent with the objective is detailed on Exhibit 6.

7. **Future Land Uses.** The proposed development plan for the lands within the Expansion is described in Exhibit 6. Development is scheduled to occur over a five (5) year period. The proposed land uses for lands contained within the proposed Expansion are consistent with the approved City of DeBary, Florida Comprehensive Plan.

8. **Major Water and Wastewater Facilities.** Exhibit 7 shows the existing major trunk water mains and wastewater interceptors and the major outfall canals and drainage basins for the lands within the proposed Expansion.
9. **District Facilities and Services.** The District is presently expected to finance, construct, install and maintain improvements and facilities to benefit the lands within the Expansion. **Exhibit 8** describes the type of facilities Petitioner presently expects the District to finance, construct, install and maintain. The estimated costs of construction are also described in **Exhibit 8**. Actual construction timetables and expenditures may vary, due in part to the effects of future changes in the economic conditions upon costs such as labor, services, materials, interest rates and market conditions.

10. **Statement of Estimated Regulatory Costs.** **Exhibit 9** is the statement of estimated regulatory costs (hereinafter “SERC”) prepared in accordance with the requirements of Section 120.541, Florida Statutes. The SERC is based upon presently available data. The data and methodology used in preparing the SERC accompany it.

11. This petition to expand the District should be granted for the following reasons:

   a. Expansion of the District and all land uses and services planned within the proposed expansion are not inconsistent with applicable elements or portions of the effective State Comprehensive Plan or the City of DeBary, Florida Comprehensive Plan.

   b. The area of land within the proposed Expansion is of a sufficient size and is sufficiently compact and contiguous to be developed as one functional and interrelated development.

   c. The expansion of the District will prevent the general body of taxpayers in the City from bearing the burden for installation of the infrastructure and the maintenance of the above-described facilities within the development encompassed
by the District and Expansion. The District and Expansion are the best alternatives for delivering community development services and facilities to the proposed development without imposing an additional burden on the general population of the local general-purpose government. Expansion of the District in conjunction with a comprehensively planned development, as proposed, allows for a more efficient use of resources.

d. The community development services and facilities of the District and the expansion will not be incompatible with the capacity and use of existing local and regional community development services and facilities. In addition, the expansion of the District will provide a perpetual entity capable of making reasonable provisions for the operation and maintenance of the District and Expansion services and facilities.

e. The area to be served by the proposed Expansion is amenable to a separate special-district government.

WHEREFORE, Petitioner respectfully requests the City Council of DeBary, Florida to:

a. Schedule a public hearing in accordance with the requirements of Section 190.005(2)(b), Florida Statutes;

b. Grant the petition and adopt an ordinance expanding the Rivington Community Development District pursuant to Chapter 190, Florida Statutes;

c. Consent to the Expansion exercise of certain additional powers to finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate, and maintain, as appropriate, systems and facilities for transportation,
stormwater utilities, parks and facilities for indoor and outdoor recreational, cultural, and other uses all as authorized and described by Section 190.012(2)(a), Florida Statutes.

RESPECTFULLY SUBMITTED, this 5th day of November, 2021.

COBB COLE

By: Mark A. Watts
Florida Bar No. 0157521
231 N. Woodland Blvd.
DeLand, FL 32720
(386) 736-7700
Attorney for Petitioner
EXHIBIT 2

Legal Description:

The West half of the Northwest Quarter of Section 9, Township 19 South, Range 30 East lying South of Fort Florida Road. All lying and being situate in Volusia County, Florida.

Less and except the road right of way on the West. Also less and except any land contained in the Warranty Deed recorded in Official Records Book 7319, Page 2945, Public Records of Volusia County, Florida.
CONSENT AND JOINDER

TO PETITION TO EXPAND THE

RIVINGTON COMMUNITY DEVELOPMENT DISTRICT

THE UNDERSIGNED, Empire Cattle, Ltd., a Florida Limited Partnership, is the owner of certain lands located in Volusia County, Florida, and more fully described as follows:

SEE EXHIBIT “A” ATTACHED HERETO AND INCORPORATED HEREIN

The above-described land is hereinafter referred to as the “Property”.

The undersigned understands and acknowledges that Rivington Community Development District ("Petitioner"), intends to submit an application to City of DeBary to expand the RIVINGTON COMMUNITY DEVELOPMENT DISTRICT (the “District”) in accordance with the provisions of Chapter 190 of the Florida Statutes.

The undersigned is the owner of a portion of the lands located within the proposed District and described in Exhibit “A” attached hereto, and the undersigned understands and acknowledges that, pursuant to the provisions of Section 190.005(2)(a), Florida Statutes, the Petitioner is required to include the written consent to expand the District of one-hundred percent (100%) of the owners of the lands to be included within the District.

The undersigned hereby consents to the inclusion of its Property into the Rivington Community Development District, which will include the Property within the lands to be a part of the District, and agrees to further execute any other documentation necessary or convenient to evidence this consent and joinder.

The undersigned hereby acknowledges and agrees that the foregoing consent and obligation to execute additional documentation is and shall be a covenant running with the land which shall bind the undersigned’s heirs, personal representatives, administrators, successors-in-title and assigns and shall remain in full force and effect three (3) years from the date hereof.
SIGNATURE PAGE FOR CONSENT AND JOINDER
TO PETITION TO EXPAND THE RIVINGTON
COMMUNITY DEVELOPMENT DISTRICT

Executed this 3rd day of November, 2021

Empire Cattle, Ltd.
A Florida Limited Partnership

By: ____________________________
   Name: Steven Costa
   Position: Partner

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☑ physical
presence or ☐ online notarization, this 3rd day of November, 2021 by
Steven Costa, of Empire Cattle, Ltd., on behalf of said partnership. Said person is ☑ personally known to me or ☐ has produced a valid driver's license as identification.

Notary Public, State of Florida
Print Name: Heather Flores
My Commission Expires: August 22, 2024
My Commission No.: HH 029270
EXHIBIT A
LEGAL DESCRIPTION

The West half of the Northwest Quarter of Section 9, Township 19 South, Range 30 East lying South of Fort Florida Road. All lying and being situated in Volusia County, Florida.

Less and except the road right of way on the West. Also, less and except any land contained in the Warranty Deed recorded in Official Records Book 7319, Page 2945, Public Records of Volusia County, Florida.
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization</td>
<td>1</td>
<td>LS</td>
<td>$225,000.00</td>
<td>$225,000.00</td>
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<tr>
<td>2</td>
<td>Silt Fence</td>
<td>5,598</td>
<td>LF</td>
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<td>$16,524.00</td>
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<td>3</td>
<td>Site Clearing</td>
<td>25</td>
<td>AC</td>
<td>$5,000.00</td>
<td>$125,000.00</td>
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<td>4</td>
<td>Stripping</td>
<td>14,575</td>
<td>CY</td>
<td>$3.50</td>
<td>$51,012.50</td>
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<tr>
<td>5</td>
<td>Pond Excavation (Cut)</td>
<td>29,000</td>
<td>CY</td>
<td>$3.30</td>
<td>$95,700.00</td>
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<tr>
<td>6</td>
<td>Import Fill</td>
<td>73,025</td>
<td>CY</td>
<td>$15.50</td>
<td>$1,131,887.50</td>
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<tr>
<td>7</td>
<td>Sodding (pond berms, banks, behind curb, open space)</td>
<td>173,138</td>
<td>SF</td>
<td>$0.40</td>
<td>$69,255.20</td>
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<tr>
<td>8</td>
<td>Seed and Mulch (disturbed areas that are not sodded)</td>
<td>38,830</td>
<td>SY</td>
<td>$0.40</td>
<td>$15,532.00</td>
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<tr>
<td>9</td>
<td>Construction Layout, As-Built and Testing</td>
<td>1</td>
<td>LS</td>
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<td>$160,000.00</td>
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<td>10</td>
<td>Dewatering</td>
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<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$2,114,911.20</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.5&quot; Asphalt Structural Course</td>
<td>17,476</td>
<td>SY</td>
<td>$15.50</td>
<td>$270,878.00</td>
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<tr>
<td>2</td>
<td>8&quot; Compacted Crushed Concrete Base Course</td>
<td>20,749</td>
<td>SY</td>
<td>$16.50</td>
<td>$342,358.50</td>
</tr>
<tr>
<td>3</td>
<td>12&quot; Stabilized Subgrade</td>
<td>20,749</td>
<td>SY</td>
<td>$6.50</td>
<td>$134,868.50</td>
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<tr>
<td>4</td>
<td>Pavement Markings and Signage</td>
<td>1</td>
<td>LS</td>
<td>$17,500.00</td>
<td>$17,500.00</td>
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<tr>
<td>5</td>
<td>Curb and Gutter</td>
<td>8,244</td>
<td>LF</td>
<td>$17.00</td>
<td>$140,148.00</td>
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<tr>
<td>6</td>
<td>Sidewalk</td>
<td>41,220</td>
<td>SF</td>
<td>$4.75</td>
<td>$195,795.00</td>
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<tr>
<td>7</td>
<td>Multi-Use Trail</td>
<td>1,430</td>
<td>SY</td>
<td>$33.00</td>
<td>$47,190.00</td>
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<td></td>
<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$1,148,736.00</strong></td>
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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Storm Drain Collection Per LF of System</td>
<td>7,389</td>
<td>LF</td>
<td>$170.00</td>
<td>$1,256,130.00</td>
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<tr>
<td>2</td>
<td>Pond Outfall Structures</td>
<td>1</td>
<td>EA</td>
<td>$8,500.00</td>
<td>$8,500.00</td>
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<tr>
<td></td>
<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$1,264,630.00</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Potable Water per LF of System</td>
<td>6,844</td>
<td>LF</td>
<td>$85.00</td>
<td>$505,240.00</td>
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<tr>
<td></td>
<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$505,240.00</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reuse Water per LF of System</td>
<td>5,430</td>
<td>LF</td>
<td>$75.00</td>
<td>$407,250.00</td>
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<td></td>
<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$407,250.00</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sanitary Sewer per LF of System</td>
<td>6,324</td>
<td>LF</td>
<td>$95.00</td>
<td>$505,780.00</td>
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<tr>
<td>2</td>
<td>Force Main per LF of System</td>
<td>1,064</td>
<td>LF</td>
<td>$50.00</td>
<td>$53,200.00</td>
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<tr>
<td>3</td>
<td>Sanitary Lift Station</td>
<td>1</td>
<td>EA</td>
<td>$360,000.00</td>
<td>$360,000.00</td>
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<tr>
<td></td>
<td><strong>Sub-Total</strong></td>
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<td><strong>$918,880.00</strong></td>
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### Landscape and Hardscape Features in Common Areas

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Landscaping, Irrigation &amp; Hardscape in Common Areas</td>
<td>1</td>
<td>LS</td>
<td>$1,500,000.00</td>
<td>$1,600,000.00</td>
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<tr>
<td>2</td>
<td>Project Entry Features</td>
<td>1</td>
<td>LS</td>
<td>$500,000.00</td>
<td>$500,000.00</td>
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<tr>
<td></td>
<td><strong>Sub-Total</strong></td>
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<td></td>
<td></td>
<td><strong>$2,000,000.00</strong></td>
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</table>

### Wetland Mitigation

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wetland Mitigation</td>
<td>1</td>
<td>LS</td>
<td>$250,000.00</td>
<td>$250,000.00</td>
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<tr>
<td></td>
<td><strong>Sub-Total</strong></td>
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<td><strong>$250,000.00</strong></td>
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</table>

### Project Frontage Improvements

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Project Frontage Improvements on Fort Florida Road</td>
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<td>LS</td>
<td>$175,000.00</td>
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<tr>
<td></td>
<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$175,000.00</strong></td>
</tr>
</tbody>
</table>

**Grand Total** $6,764,749.20
Exhibit #9

STATEMENT OF ESTIMATED REGULATORY COSTS

EXPANSION OF RIVINGTON COMMUNITY DEVELOPMENT DISTRICT

1.0 Introduction

1.1 Purpose and Scope

This Statement of Regulatory Costs (SERC) supports the petition to expand the boundary of Rivington Community Development District ("District"). The expansion will add approximately 30 +/- acres of land, which will result in the expanded District being 326.2 +/- acres. The District will provide infrastructure and community services to this area in the District as described more fully below.

The limitations on the scope and use of this SERC are set out in Section 190.002(2)(d), Florida Statutes ("F.S."), as follows:

"That the process of expanding such a District pursuant to uniform general law shall be fair and based only on factors material to managing and financing the service delivery function of the District, so that any matter concerning permitting or planning of the development is not material or relevant." The same is true for this expansion. The remainder of this SERC will address the totality of the land within the District, presuming the expansion is approved.

1.2 Overview of the Expanded District

The expanded District would provide community infrastructure, services, and facilities, along with their operations and maintenance, to the expansion area, located in the City of Debary ("City"), Volusia County ("County"), Florida. The expanded District will encompass 326.2 +/- acres to be used exclusively for residential development. Table 1 below summarizes the residential land use plan for the expansion area.

<table>
<thead>
<tr>
<th>Category</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Townhome</td>
<td>224</td>
</tr>
</tbody>
</table>

1.3 Requirements for Statement of Estimated Regulatory Costs (SERC)

Section 120.541(2), F.S. (2017) defines the elements a SERC must contain (or in this case, City ordinance).
(a) An economic analysis showing whether the rule directly or indirectly:
1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after the implementation of the rule.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

(e) An analysis of the impact on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. The impact analysis for small businesses must include the basis for the agency’s decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

2.0 An economic analysis showing whether the rule/ordinance directly or indirectly will have an adverse impact on economic growth, job creation, employment, private-sector investment, business competitiveness, or regulatory costs.

Section 120.541(2)(a), F.S., requires an economic analysis showing whether the establishment of the District will directly or indirectly have an adverse impact on economic growth, job creation, employment, private-sector investment, business competitiveness, or regulatory costs exceeding $1 million in the aggregate within five years after the establishment takes place. The answer, based upon numerous other
residential community development districts, as well as the existing Rivington Community Development District, is that the expansion of the District will not have an adverse impact on economic growth, job creation, employment, private-sector investment, business competitiveness, or regulatory costs.

The expansion of the District is likely to increase economic growth, job creation, employment, private-sector investment, and business competitiveness. This is because the District will provide infrastructure improvements within the District’s boundaries, allowing for the development of the land within the District. The expansion areas are planned to include up to 224 new residences. The residents of the District will purchase goods and services. This new demand created by the District’s residents will increase economic growth, job creation, employment, private-sector investment, and business competitiveness in the areas surrounding the District.

The District will have the ability to assess the expansion area property owners to pay for the installation, operation, and maintenance of its infrastructure improvements. However, such costs will not be in addition to, or unique to, the expansion areas. The infrastructure improvements to be funded by the District would be required to support development of the planned 224 residences, regardless of the District’s existence. Community development districts, such as Rivington Community Development District, can fund their infrastructure improvements with long-term bond financing that typically carries more favorable terms than other sources of funding. Thus, the costs related to the installation of the public infrastructure serving the new planned development will not be increased due to the expansion of the District.

3.0 A good-faith estimate of the number of individuals and entities likely to be required to comply with the rule/ordinance, together with a general description of the types of individuals likely to be affected by the rule/ordinance.

The landowner of the expansion area plans to develop up to 224 dwelling units. Expansion of the District would put all these residents under the jurisdiction of the District. Before the sale of the property within the District, the developer will also be subject to the District’s jurisdiction.

4.0 Good-faith estimate of the cost to state and local government entities, of implementing and enforcing the proposed ordinance, and any anticipated effect on state and local revenues.

4.1 Impact on State and Local Costs

State Government Entities

There will be virtually no costs to various Florida ("State") governmental entities due to the fact that the District already exists, and the expansion will have no effect on various Florida governmental entities. The City of Debary was the establishing entity for this District; therefore, the City is also the reviewing agency for this petition for the
expansion pursuant to Section 190.046(1)(b), F.S. The State will incur no costs in reviewing the petition to expand the District, and the State will not be required to hold any public hearings on the matter.

The ongoing costs to various State entities to implement and enforce the expansion of the District relate strictly to the receipt and processing of various reports that the District is required to file annually with the State and its various entities. These annual reports are outlined in the attached Appendix. However, the costs to the State agencies that will receive and process the District’s reports will be the same since the District already exists. The District is only one of many governmental subdivisions required to submit various reports to the State. Additionally, pursuant to Section 189.018, F.S., the District will pay an annual fee to the State Department of Economic Opportunity to offset such processing costs.

City of Debary

City staff will process, analyze, and conduct public hearing(s) on the petition to expand the District. These activities will utilize the time of the staff and City Commissioners. However, these costs to the City are likely to be minimal for a number of reasons. First, review of the petition does not include analysis of the development to be served by the District. Second, the petition itself provides most of the information needed for City staff’s review. Third, the City currently employs the staff needed to conduct the review of the petition. Fourth, no capital expenditure is required to review the petition. Finally, local governments routinely process similar petitions for land use and zoning changes that are more complex than is the petition to expand the Community Development District.

The annual costs to the City, related to the ongoing operations of the District, are also minimal. The District will be an independent unit of local government. The only annual costs incurred by the City will be the minimal costs of receiving and, to the extent desired, reviewing the various reports that the District is required to provide to the City, which already exists because the District has already been established.

4.2 Impact on State and Local Revenues

Adoption of the proposed ordinance will have no negative impact on State or local revenues. The District is an independent unit of local government. It is designed to provide community facilities and services to serve the development. It has its own sources of revenue. No State or local subsidies are required or expected.

In this regard, it is important to note that any debt obligations incurred by the District to construct its infrastructure, or for any other reason, are not debts of the State, the County, the City, or any unit of local government. By State law, the debts of the District are strictly its own responsibility. In terms of the expansion areas and any future debt of the District for said areas, only the benefited properties within the expansion areas will repay
the debt, and existing property owners within the District will not be subject to said debt in any way.

5.0 A good-faith estimate of the transactional costs likely to be incurred by individuals and entities required to comply with the requirements of the rule/ordinance.

Table 2, below, provides an outline of the various facilities and services the expanded District may provide. The District plans to fund, own, operate, and maintain certain drainage and stormwater systems, landscaping, and ponds. The District will also plan, construct, and finance the community's roadways, along with offsite roadway improvements. The roadways and drainage systems within publicly dedicated rights-of-way will be conveyed to the appropriate general-purpose government for operation and maintenance. The landowner will construct the utilities and other community infrastructure and facilities. The District will be responsible for maintenance of some of these facilities.

<table>
<thead>
<tr>
<th>Improvement/Facility</th>
<th>Funded by</th>
<th>Ownership</th>
<th>Maintenance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roads and Storm Drainage (Onsite)</td>
<td>CDD</td>
<td>CDD/City</td>
<td>CDD/City</td>
</tr>
<tr>
<td>Roads and Storm Drainage (Offsite)</td>
<td>City/County/CDD</td>
<td>City/County</td>
<td>City/County</td>
</tr>
<tr>
<td>Ponds</td>
<td>CDD</td>
<td>CDD</td>
<td>CDD</td>
</tr>
<tr>
<td>Utilities Water</td>
<td>CDD</td>
<td>County</td>
<td>County</td>
</tr>
<tr>
<td>Utilities Sewer</td>
<td>CDD</td>
<td>County</td>
<td>County</td>
</tr>
<tr>
<td>Utilities Reclaimed</td>
<td>CDD</td>
<td>County</td>
<td>County</td>
</tr>
<tr>
<td>Mitigation</td>
<td>CDD</td>
<td>CDD</td>
<td>CDD</td>
</tr>
<tr>
<td>Site Landscaping</td>
<td>CDD</td>
<td>CDD</td>
<td>CDD</td>
</tr>
<tr>
<td>Entry Features</td>
<td>CDD</td>
<td>CDD</td>
<td>CDD</td>
</tr>
<tr>
<td>Amenity Centers</td>
<td>CDD</td>
<td>CDD</td>
<td>CDD</td>
</tr>
<tr>
<td>Parks and Greens</td>
<td>CDD</td>
<td>CDD</td>
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</tr>
<tr>
<td>Trails</td>
<td>CDD</td>
<td>CDD/City</td>
<td>CDD/City</td>
</tr>
</tbody>
</table>

The petitioner has estimated the costs for providing the capital improvements and facilities outlined in Table 2. The cost estimates for these improvements and facilities are shown in Table 3, below. Total costs are estimated at approximately $8,784,749. To fund these improvements, the District may issue special assessment or other revenue bonds. These bonds would be repaid through non-ad valorem assessments levied on all properties located within the expansion area only of the District that benefit from these improvements.

Prospective future landowners in the expansion areas of the District may be required to pay non-ad valorem assessments levied by the District to secure the debt incurred by the District through bond issuances. In addition to the levy of non-ad valorem assessments
for debt service, the District may also impose a non-ad valorem assessment to fund the operations and maintenance of the District and its facilities and services.

### Table 3. Summary of Estimated Capital Costs

<table>
<thead>
<tr>
<th>Improvements</th>
<th>Estimated Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDD Project Related Earthwork</td>
<td>$2,114,911</td>
</tr>
<tr>
<td>On-Site Roadway Paving and Improvements</td>
<td>$1,148,738</td>
</tr>
<tr>
<td>Utilities Drainage</td>
<td>$1,264,630</td>
</tr>
<tr>
<td>Utilities Water</td>
<td>$505,240</td>
</tr>
<tr>
<td>Utilities Reclaimed</td>
<td>$407,250</td>
</tr>
<tr>
<td>Sanitary</td>
<td>$918,980</td>
</tr>
<tr>
<td>Landscape and Hardscape Features in Common Areas</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Wetland Mitigation</td>
<td>$250,000</td>
</tr>
<tr>
<td>Project Frontage Improvements</td>
<td>$175,000</td>
</tr>
<tr>
<td><strong>Total Estimated Cost</strong></td>
<td><strong>$8,784,749</strong></td>
</tr>
</tbody>
</table>

It is important to note that the various costs outlined in Table 3 are typical for residential developments of the type contemplated here. In other words, there is nothing unusual about the District’s financing that requires additional infrastructure over and above what would normally be needed. Therefore, these costs are not in addition to normal development costs. Instead, the facilities and services provided by the District are substituting in part for developer-provided infrastructure and facilities. Along these same lines, District-imposed assessments for operations and maintenance costs are similar to what would be charged in any event by a property owner’s association common to most master-planned developments.

Real estate markets take into account the District’s cost because buyers and renters evaluate all of the costs and benefits associated with various alternative locations. Therefore, market forces preclude developers from marking up the prices of their products beyond what the competition allows. To remain competitive, the operations and maintenance charges must also be in line with the competition.

Furthermore, locating in the District by new residents is completely voluntary. So ultimately, all owners and users of the affected property choose to accept the District’s costs because of the benefits that the District provides.

The District is an alternative means to finance necessary community services. District financing is no more expensive, and often less expensive, than the alternatives of a municipal services taxing unit (MSTU), a neighborhood association, City provision (directly or via a dependent special district), or through developer-bank loans.
6.0 An analysis of the impact on small businesses, as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by Section 120.52, F.S.

There will be no adverse impact on small businesses because of expanding the District. If anything, the impact will be positive. This is because the District must competitively bid certain of its contracts. This affords small businesses the opportunity to bid on District work.

The City of Debary has a population greater than the number required to be classified as a "small city." As noted above, there will be no adverse impact on the City due to the expansion of the District. The District will provide infrastructure facilities and services to the property located within the District. These facilities and services will help make this property developable. Development of the property within the District will increase the value of this property, and consequently, will increase the property taxes that accrue to the City. These increased property taxes, along with other direct and indirect revenues accruing to the City as a result of the development of the land within the District, will offset any new staff, facilities, or equipment the City adds to provide services to the property owners within the District.

7.0 Any additional useful information.

The analysis provided above is based on a straightforward application of economic theory, especially as it relates to tracking the incidence of regulatory costs and benefits. Inputs were received from the developer's engineer and other professionals associated with the developer.

It is useful to reflect upon the question of whether or not the expansion of the District is the best alternative to provide community facilities and services to the added property. As an alternative to the District, the City could approve a dependent special district for the area, such as a municipal service benefit unit (MSBU) or a special taxing district pursuant to Chapter 189, F.S., or create a new CDD. Either of these alternatives could finance the improvements contemplated in Table 2 in a fashion similar to the existing District. However, since the District already exists, these alternatives would add additional administrative costs that are not necessarily beneficial.

Another alternative to the District would be for the developer to provide the infrastructure and to use a property owners association (POA) for operations and maintenance of community facilities and services. A District is superior to a POA for a variety of reasons. First, unlike a POA, a District can impose and collect its assessments along with other property taxes on the combined real estate tax bill through the County tax collector. Therefore, the District is far more assured of obtaining its needed funds than is a POA. Second, the District is a unit of local government. Therefore, unlike a POA, the District must abide by all governmental rules and regulations. Third, any debt of a District is strictly the District's responsibility. As stated earlier, any debt incurred by the District on behalf of the expansion area will only affect the properties located in the expansion area,
and none of the District’s property owners will be responsible in any way for the expansion area debt. While it may be technically true that the debt of a City-established dependent special district is not strictly the City’s responsibility, any financial problems that the dependent special district may have will inevitably entangle the City. This will not be the case if the District is expanded as proposed.

However, unlike the District, the alternatives would require the City to continue to administer the projects and its facilities and services. As a result, the costs for these services and facilities would not be sequestered to the land directly benefiting from them, as the case would be with the District. In addition, administering a project of the size and complexity of the development program for the District is a very significant and expensive undertaking, especially in light of the fact that the District already exists.

With a District, residents (owners and renters) within the District would have a focused unit of government under their direct control. The District can then be more responsive to resident needs without disrupting other City responsibilities.
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<th>REPORT</th>
<th>STATUE SECTION</th>
<th>DUE DATE</th>
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<td>Annual Financial Audit</td>
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<td>Proposed Budget</td>
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<td>Adopted Budget</td>
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<td>Notice of Public Finance</td>
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ORDINANCE NO. 09-2021

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, REZONING APPROXIMATELY 30.0 ACRES OF LAND LOCATED ON FORT FLORIDA ROAD, EAST OF BARWICK ROAD, HAVING VOLUSIA COUNTY SHORT TAX PARCEL IDENTIFICATION NUMBER 900900000020 OWNED BY EMPIRE CATTLE, LTD. FROM A-2 (AGRICULTURAL RURAL) TO RIVINGTON MIXED PLANNED UNIT DEVELOPMENT (MPUD) AND ANNEXATING SUCH PROPERTY INTO THE RIVINGTON MPUD; AMENDING ORDINANCE NO. 11-18, APPROVING A MAJOR AMENDMENT TO THE RIVINGTON MIXED PLANNED UNIT DEVELOPMENT GOVERNING THE DEVELOPMENT OF APPROXIMATELY 326.2 +/- ACRES OF LAND LOCATED ON FORT FLORIDA ROAD TO APPROVE A FIRST AMENDMENT TO AMENDED AND RESTATE DEVELOPMENT AGREEMENT, AN AMENDMENT TO THE MASTER DEVELOPMENT PLAN, INCREASING MAXIMUM DWELLING UNITS ALLOWED, AND ANNEXING ADDITIONAL PROPERTY INTO THE RIVINGTON MPUD; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND RECORDING.

WHEREAS, HR Rivington, LLC (herein "Applicant") is the fee simple owner of that certain real property zoned Rivington Mixed Planned Unit Development (MPUD) being approximately 296.2 acres in size, and legally described as the Property in Ordinance No. 11-18 adopted on October 3, 2018 and recorded at Official Records Book 7634, Page 2689 et. seq., Public Records of Volusia County, Florida, approving the Amended and Restated Development Agreement and its corresponding Master Development Plan (“Original Property”); and

WHEREAS, Empire Cattle, LTD (“Owner”) is the fee simple owner of that certain 30 acres of property currently having a Volusia County Short Tax Parcel Identification Number 900900000020 located on Fort Florida Road, west of Barwick Road and the Original Property, and legally described in Attachment “A” attached to this Ordinance (“Additional Property”); and

WHEREAS, the Applicant and Owner desire to rezone the Additional Property from A-2 (Agricultural Rural) to Rivington MPUD and annex the Additional Property into the Rivington MPUD and its corresponding development agreement and master development plan; and

WHEREAS, the Owner has consented to the Applicant’s request for a major amendment to the Rivington MPUD and annexation into and rezoning of the Additional Property to Rivington MPUD; and
WHEREAS, the Original Property and Additional Property shall collectively herein be referred to as the “Property;” and

WHEREAS, the Property has a Comprehensive Plan Future Land Use Map designation of SW Mixed Use Area (SWMUA) and Environmentally Sensitive Lands (ESL); and

WHEREAS, the Applicant requested a major amendment and update to the Rivington MPUD as more specifically set forth in the First Amendment to Amended and Restated Development Agreement attached hereto as Attachment “B” (“First Amendment”) and its corresponding updated Master Development Plan being approved by this Ordinance; and

WHEREAS, this Ordinance has been advertised and noticed in accordance with the requirements of state law and Section 1-10 of the City of DeBary Land Development Code; and

WHEREAS, the City Council finds that this Ordinance, the rezoning of the Additional Property to Rivington MPUD and the major amendment to Rivington MPUD approved herein is consistent with the City of DeBary Comprehensive Plan and Land Development Code and promotes the public health, safety and welfare; and

WHEREAS, the City of DeBary City Council acting as both the Land Planning Agency and the Governing Body has conducted the necessary public hearings on this Ordinance.

IT IS HEREBY ORDAINED BY THE CITY OF DeBARY AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and accurate and are incorporated herein as findings of the City Council.

SECTION 2. Rezoning. The Additional Property is hereby rezoned from A-2 (Agricultural Rural) to and annexed into the Rivington Mixed Planned Unit Development (MPUD) pursuant to the terms and conditions of the Amended and Restated Development Agreement and its corresponding Master Development Plan as amended by Section 3 of this Ordinance.

SECTION 3. Major Amendment Granted. The Owner’s and Applicant’s request for a major amendment of the Rivington MPUD as previously approved by Ordinance 11-18 adopted on October 3, 2018 is hereby granted. The MPUD is hereby amended with respect to the Property as described in the First Amendment to the Amended and Restated Development Agreement (Rivington MPUD) and its corresponding updated Master Development Plan attached hereto as Attachment “B”. The Mayor and City Clerk are authorized to execute the First Amendment to the Amended and Restated Development Agreement. The Amended and Restated Development Agreement (Rivington MPUD) as amended by the First Amendment and its corresponding updated
Master Development Plan approved by this Ordinance shall control and govern the development of the Property.

**SECTION 4.** Recording. The City Clerk is hereby directed to record this Ordinance and the First Amendment to Amended and Restated Development Agreement – The Rivington MPUD and its exhibits in the Public Records of Volusia County, Florida. The MPUD as amended by this Ordinance and attached First Amendment to Amended and Restated Development Agreement and its corresponding updated Master Development Plan affecting the Property shall run with the land and shall be applicable to and binding on the Owner, Applicant and any and all successors and assigns in interest.

**SECTION 5.** Severability. If any portion of this Ordinance is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the balance of the Ordinance shall continue in full force and effect.

**SECTION 6.** Effective Date. This Ordinance shall take effect immediately upon adoption.

FIRST READING HELD on **July 21**, 2021

ADOPTED AFTER SECOND READING on this **1st** day of **September**, 2021.

CITY COUNCIL

CITY OF DEBARY, FLORIDA

ATTEST:

Karen Chausez, Mayor

Annette Hatch, City Clerk

Attachments – **Attachment “A”** – Additional Property

**Attachment “B”** – First Amendment to Amended and Restated Development Agreement with its attached updated Master Development Plan
After Recording Return to:
City of DeBary
Attn: City Clerk
16 Columba Road
DeBary, Florida 32713

Attachment “B”

First Amendment to the Amended and Restated
MPUD DEVELOPMENT AGREEMENT
(RIVINGTON MPUD)

THIS First Amendment to the Amended and Restated MPUD DEVELOPMENT
AGREEMENT ("First Amendment to the Amended Development Agreement" or this "First
Amendment") is made and entered into by and between the CITY OF DEBARY, a Florida
municipal corporation (herein "City"), EMPIRE CATTLE, LTD. (herein "Owner"), and HR
RIVINGTON, LLC or assigns (herein "Applicant").

WHEREAS, the Applicant is the developer and owner of that certain real property
being approximately 296.2 acres in size, having a Volusia County Tax Parcel
Identification Number 08-19-30-00-00-0010, zoned Rivington MPUD, and being the same
property described in Attachment “A” to City of DeBary Ordinance No. 11-18 adopted on
October 3, 2018 and recorded at Official Records Book 7634, Page 2689, et. seq., Public
Records of Volusia County, Florida ("Original Property"); and

WHEREAS, Owner is the fee simple owner of that certain 30 acres of real property
currently having a Volusia County Short Tax Parcel Identification Number 900900000020
located on Fort Florida Road, west of Barwick Road ("Additional Property"), and being
rezoned from A-2 (Rural Agriculture) to and annexed into the Rivington MPUD as further
described herein; and
WHEREAS, Owner is executing this First Amendment in its capacity as the fee owner simple of the Additional Property; and

WHEREAS, the Rivington MPUD is regulated by the Amended and Restated Development Agreement and its corresponding Master Development Plan approved by Ordinance No. 11-18 on October 3, 2018 (the “Amended and Restated Development Agreement”) (recorded at Official Records Book 7634, Pages 2689 et. seq., Public Records of Volusia County, Florida); and

WHEREAS, the Original Property is under development and as of the date of this First Amendment to the Amended and Restated Development Agreement approximately 249 lots have been platted; and

WHEREAS, the Applicant proposes this First Amendment to the Amended and Restated Development Agreement to: (a) provide for rezoning and the annexation of the 30 acres of Additional Property, which Additional Property collectively with the Original Property currently included in the Rivington MPUD, shall be described in the Amended and Restated Development Agreement and as amended by this First Amendment as the “Property”; (b) amend the maximum number of residential dwelling units allowed on the Property, as more specifically set forth in this First Amendment to the Amended and Restated Development Agreement and its corresponding Master Development Plan; and (c) amend and replace the Master Development Plan.
NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Recitals. The recitals herein contained are true and correct and are incorporated herein by reference as material terms of this First Amendment.

B. Amendments. The Amended and Restated Development Agreement is hereby amended as follows:

Section A.8. of the Amended and Restated Development Agreement is amended to provide for the following (underlined language are additions; stricken-through language are deletions):

8. Number of Dwelling Units. Subject to the requirements of the DeBary Land Development Code, the Updated Master Development Plan and the rules and regulations of any other governmental agency having jurisdiction over the Property, the Property is entitled to be developed with a maximum of 924 700 residential dwelling units (the “Maximum Number of Residential Units”). A maximum of 700 residential dwelling units shall be permitted on the Original Property. A maximum of 224 residential dwelling units shall be allocated to the Additional Property. If the Additional Property and Original Property are held in common ownership, the Applicant shall have the right to reallocate the number of dwelling units from the Additional Property throughout the Property.

Section F of the Amended and Restated Development Agreement is amended to provide for the following (underlined language are additions; stricken-through language are deletions):

F. Tree Preservation Requirements: As required by LDC, the preservation areas shall be met within the boundary of the Development designation. Statistical tree surveys shall be permitted upon approval of a
methodology by the City Arborist. The Updated Master Plan has been designed to avoid impacts to specimen and historic trees to the fullest extent practical possible and there are no impacts proposed at this time. Specimen and historic trees, as defined by the Land Development Code, have been field located by a certified arborist and are shown on the Updated Master Development Plan. As long as ten out of the seventeen historic trees identified on the subject site are preserved forty percent (40%) of the historic trees located on the Additional Property are preserved, approval of this First Amendment constitutes approval of the removal of the remaining balance of historic trees.

Section J.2. of the Amended and Restated Development Agreement is amended to provide for the following (underlined language are additions; striken-through language are deletions):

2.1 Access and Transportation Improvements to Original Property. All access and transportation system improvements shall be provided in accordance with the Land Development Code, unless otherwise provided for within this Agreement, as part of the approved Updated Master Development Plan or as approved through a separate agreement between the City and the Owner or Applicant. Applicant shall be responsible for installing all appropriate internal roadway traffic control devices and signs in accordance with applicable standards. There shall be a minimum of one (1) ingress/egress point to both Ft. Florida Road and Barwick Road. (The Applicant shall also provide access improvements for the Project to and from Barwick Road.) The Applicant shall be required to construct one or more access points from Ft. Florida Road in conjunction with the first phase of development of the Property proposed west of the Florida Power and Light power line easement. The location of these vehicular access points shall meet City of DeBary Land Development Code standards. The Applicant shall construct a temporary entrance for construction traffic along Ft. Florida Road and no construction
access shall be permitted along Barwick Road. At least one permanent ingress/egress point shall be built in conjunction with the project’s first phase. The second ingress/egress point shall be completed prior to the 351st dwelling unit receiving a certificate of occupancy. However, prior to any certificates of occupancy being issued a stabilized entry to and from the Property and a public right-of-way shall be installed by the Applicant to serve as a secondary access point for emergency vehicles until such time as the second ingress/egress point is constructed. The Applicant and the City will coordinate with one another and any other applicable public agency with regard to opportunities for public-private partnerships that may be available for off-site roadway improvements.

2.1a Access and Transportation Improvements to Additional Property. The Applicant shall provide access improvements to the Additional Property as required by the Site Access Analysis study completed by LTG, Inc. on June 4, 2021 as finalized and updated to reflect city review, and coordinated with the City during subdivision review. In addition, prior to the issuance of a Development Order of the Additional Property, the Applicant and City shall enter into a separate jointly funded agreement or amendment to the existing Mobility Fee and Park and Recreation Fee Reimbursement Agreement, dated April 8, 2021 to provide for the improvement of Ft. Florida Road from Barwick to the Rail Road crossing and the improvement of Barwick Road from Ft. Florida Road south to the southern property boundary of the Additional Property.

2.1ba Road Maintenance Agreement.
Attachment “A” to the Amended and Restated Development Agreement is amended to include the following description that includes the Additional Property:

THE SOUTH 1/2 OF THE NORTHEAST 1/4; THE SOUTH 1/2 OF THE NORTHWEST 1/4; GOVERNMENT LOTS 1 AND 3; AND THE NORTH 1/2 OF GOVERNMENT LOT 6; ALL IN SECTION 8, TOWNSHIP 19 SOUTH, RANGE 30 EAST. LYING SOUTH OF FORT FLORIDA ROAD, VOLUSIA COUNTY, FLORIDA.

ALL EXCEPT THE RIGHTS OF WAY FOR ANY AND ALL PUBLIC ROADS ON AND OVER SAID REAL PROPERTY AND EXCEPT ALL ELECTRIC OR POWER LINE EASEMENT OR RIGHTS OF WAY AGREEMENTS THEREFORE, HERETOFORE GIVEN.


TOGETHER WITH THE ADDITIONAL PROPERTY (“Additional Property”):

THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST LYING SOUTH OF FORT FLORIDA ROAD. ALL LYING AND BEING SITUATE IN VOLUSIA COUNTY, FLORIDA. LESS AND EXCEPT THE ROAD RIGHT OF WAY ON THE WEST.

Exhibit “B” to the Amended and Restated Development Agreement is amended to fully replace the Updated Master Development Plan with the amended Updated Master Development Plan prepared by Kimley-Horn and Associates, Inc. dated 04/07/2021 that is attached to this First Amendment.

C. **Full Force & Effect; Binding.** The Amended Development Agreement shall remain in full force and effect except as expressly modified by this First Amendment. This First Amendment shall run with the land and be binding upon, and inure to the benefit of, the parties hereto, their respective heirs, successors, assigns and anyone claiming by, through or under any of them.

D. **Effective Date.** The effective date of this First Amendment shall be the date approved by the City Council.

AGREED to by the City Council of the City of DeBary, Florida, Owner, and the Applicant on this **1st** the day of **September**, 2021.

ATTEST:

[Signature]
Annette Hatch, City Clerk

CITY OF DEBARY, FLORIDA

[Signature]
Karen Chazez, Mayor

WITNESSES:

[Signature]
[Signature]

[Signature]
[Signature]
EMPIRE CATTLE, LTD.

By:

Print Name: Steven Castle

Title: Partner
NOTARIAL ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF Volusia

The foregoing instrument was acknowledged before me by physical presence this 3rd day of November in the year 2021 by Steven Costa as the Managing Member of EMPIRE CATTLE, LTD., on behalf of said company, who is personally known to me or who has produced as identification.

Heather Flores

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name Heather Flores

Commission No. HH 029270

My Commission Expires: August 22, 2024
WITNESSES:

HR RIVINGTON, LLC

By: HR Southeast, LLC, a Delaware limited liability company, Its Sole Member

By: RP Investors Southeast, LLC, a Florida limited liability company, Its Sole Managing Member

By: Reader & Partners, LLC, a Florida limited liability company, Its Sole Manager

By:

Print Name: **Dean Barber**

Title: **President**
NOTARIAL ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF Orange

The foregoing instrument was acknowledged before me by physical presence this 4th day of November in the year 2021 by Dean Barlow, as the President of HR RIVINGTON, LLC., on behalf of said company, who is personally known to me or who has produced ________________ as identification.

Marlene Demarco

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name Marlene Demarco

Commission No. G6213585

My Commission Expires: 6/18/2022
Updated Master Development Plan

Attached
AMENDED MASTER DEVELOPMENT PLANS
FOR
RIVINGTON
DEBARY, FLORIDA
JUNE 18, 2021
PARCEL ID:
08-19-30-00-00-0010 & 900900000020

PROJECT LOCATION

VICTIM MAP

SECTION 8, TOWNSHIP 19, RANGE 30

AERIAL MAP

PROJECT LOCATION

SPORTAGE MAP

PREPARED BY
Kimley-Horn

© 2021, Kimley-Horn and Engineering, Inc.
150 S. Orange Ave., Suite 1600, Orlando, FL 32801
Phone: 1-800-526-4767
www.kimley-horn.com
FIRST AMENDMENT TO THE MOBILITY FEE AND PARK AND RECREATION FEE REIMBURSEMENT AGREEMENT

This FIRST AMENDMENT TO THE MOBILITY FEE AND PARK AND RECREATION FEE REIMBURSEMENT AGREEMENT (this “First Amendment”) is made by and between HR Rivington, LLC, a Florida limited liability company (“Developer”) and the City of DeBary, a Florida municipal corporation (“City”).

WHEREAS, Developer is the property owner of that certain real property being approximately 296.2+/- acres in size, legally described in Exhibit “A” attached hereto (the “Property”) and being that same property described in that certain Development Agreement recorded at Official Records Book 7729, Page 1566 of the Public Records of Volusia County, Florida (the “Rivington MPUD”); and

WHEREAS, the Property is located within the City of DeBary along the south side of Ft. Florida Road, west of its intersection with U.S. Highway 17/92; and

WHEREAS, Developer and City entered into that Mobility Fee and Park and Recreation Fee Reimbursement Agreement with an effective date of the 8th day of April, 2021, incorporated herein by reference, regarding the completion of certain improvements to the road and trail network in the vicinity of the SunRail commuter rail station, as more particularly described herein (the “Original Agreement”); and

WHEREAS, the parties seek to amend the Original Agreement to account for the completion of additional improvements to the road and trail system, which shall eligible for City mobility fee and park and recreation fee credits; and

WHEREAS, this First Amendment is not a statutory development agreement pursuant to Chapter 163, Florida Statutes, and is being entered into by the City pursuant to the City’s home rule authority.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **Recitals.** The above premises are true and correct and are incorporated herein as material provisions of this First Amendment.

2. **Amendments.** The Original Agreement is hereby amended as follows:

   Section 2 of the Original Agreement is amended to provide for the following (underlined language are additions; stricken through language are deletions):

   2. **Developer Completion of Improvements.** The Developer agrees to:
(a) Complete the construction of the improvements to Ft. Florida Road, and Barwick Road, including the offsite turn lane improvements more particularly described in the Rivington MPUD (the “Initial Mobility Improvements”) as shown on Exhibit B and agrees to complete the construction of additional improvements as shown on Exhibit “B” attached hereto in accordance with the final engineering plans to be completed and approved by the City (the “Additional Mobility Improvements”) as shown on Exhibit D; (collectively, the “Mobility Improvements”); and

(b) Complete the construction and associated improvements, which may be completed in phases, of the multi-use trail system, as further detailed in the Rivington MPUD and shown on Exhibit “C” attached hereto in accordance with City approved plans (the “Park and Recreation Improvements”).

Section 3 of the Original Agreement is amended to provide for the following (underlined language are additions; stricken through language are deletions):

3. **Reimbursement Credits to Developer.**

   (a) As a result of the Developer funding the Mobility Improvements, as further detailed in Exhibit “B,” Developer shall be entitled to credits against the City’s mobility impact fees. The mobility impact fee credits shall be for an amount equal to the actual labor and material construction cost of the Mobility Improvements. The term “actual labor and material construction cost of the Mobility Improvements” includes construction staking, construction material testing, and third-party construction management, engineer’s certifications and as-built drawings as required by the City but for the Initial Mobility Improvements specifically does not and should not include design, engineering, design surveying and permitting costs since such were the responsibility of and funded by the City. The costs associated with the design, engineering, design surveying and permitting costs for the Additional Mobility Improvements shall be subject to reimbursement as provided herein if those costs are funded by the Developer. The credit against mobility impact fees provided herein is not intended to limit any additional mobility impact fee credits that may accrue under the terms of the Rivington MPUD. Regardless of the cost of the Mobility Improvements, in no event shall mobility impact fee credits received under this Agreement or under the Rivington MPUD exceed mobility impact fees that have become due or become due and owing for the Project (as defined in the Original Agreement).

Upon completion of the Mobility Improvements described under Section 2 herein, the Developer shall: (i) provide, from the project engineer, the certified construction costs of the completed Mobility Improvements that are funded by Developer that will comprise the total value for the mobility impact fee credits subject to City for review and approval; (ii) the City’s engineer of record will provide signed and sealed certification to the City that the Mobility Improvements were constructed in accordance with City approved plans; (iii) provide certification of the as-built construction drawings for the Mobility Improvements; (iv) assign any warranty for the Mobility Improvements provided by the contractor to the City; and (v) obtain the City’s inspection approval for the completed Mobility Improvements. The City shall have fifteen (15)
business days from the date of receipt of the certified costs to review the certified costs of the completed improvements. Upon the City’s approval of the certified costs for and inspection approval of the Mobility Improvements, Developer shall transfer the applicable Mobility Improvements to the City via a bill of sale in a form acceptable to the City along with an assignment of warranties from all contractors.

Subject to the Developer’s satisfaction of its obligations herein, the City shall issue mobility impact fee credits to the Developer as provided below (“Mobility Fee Credits”):

(i) Mobility Fee Credits shall be valued at the current rates for mobility impact fees and as established by the City as of the Effective Date of this Agreement;

(ii) Mobility Fee Credits shall be issued on a per unit basis based on dollar value. Mobility Credits shall be indexed to any increase in the City’s mobility impact fee in accordance with the requirements of Fla. Stat. §163.31801(5) and will be applied towards Project mobility impact fees at the then current rates in effective when such fees are due;

(iii) Mobility Fee Credits shall be transferable to by Developer to Developer’s successors and assigns for the purpose of utilizing such credits for the Project or any part thereof subject to prior written notice to the City documenting such transfer;

(iv) All homebuilders within the Rivington MPUD may redeem the Mobility Fee Credits assigned to them by the Developer in lieu of paying the applicable mobility impact fees as necessary to secure a certificate of occupancy for a residence;

(v) The City shall grant Developer Mobility Fee Credits at the time of completion of any Mobility Improvement on a per unit basis based on dollar value for all Mobility Improvements completed after the date of the First Amendment to this Agreement. In the event a homebuilder within the Rivington MPUD pays a mobility impact fee to the City, either prior to the Mobility Fee Credits contemplated herein are granted to Developer or while Developer has outstanding Mobility Fee Credits, the Developer may exchange Mobility Fee Credits with the City and the City shall pay Developer for such credit in the amount equal to the amount paid by the homebuilder to the City. However, in order to exercise such right, Developer must request such exchange of credits for a homebuilder payment from the City prior to no later than ninety (90) days from when the City awards Developer with Mobility Credits under the terms of this Agreement. The City shall hold any fees received from a homebuilder prior to completion of the Mobility Improvements for up to one hundred and eighty (180) days to provide a cash reimbursement to the Developer in exchange for a reduction in Mobility Fee Credits equal to the amount of such pre-paid mobility impact fees. After the date of this
First Amendment, the City agrees to only accept Mobility Fee Credits in the form of actual, City issued certificates from homebuilders in the Project rather than allowing cash payments of mobility impact fees by homebuilders that will later be reimbursed to the Developer by the City. Upon approval of this First Amendment, the Developer shall provide a list to the City of all lots sold by the Developer to third party homebuilders, which lots will be the final lots permitted to make cash payment of mobility impact fees to the City rather than satisfying their mobility impact fee liability with Mobility Fee Credits.

(vi) In regard to the Ft. Florida Road improvements portion of the Additional Mobility Improvements as outlined in Exhibit D and identified as “Mill Resurface or Repair” of Fort Florida Road (RED), the City will reimburse Developer’s direct cost for such improvements with mobility fee credits to be applied to the Project. In regard to the Barwick Road improvements portion of the Additional Mobility Improvements as outlined in Exhibit D and identified as “Mill Resurface or Repair” of Barwick Road (BLUE) and identified as “Mill Resurface or Repair” of Ft Florida Road (BLUE), the City will reimburse Developer for the expense of the remaining portions of the costs for the Ft. Florida Road improvements and Barwick Road improvements portions of the Additional Mobility Improvement as outlined in Exhibit D and identified as “Turn Lane Widening” of Fort Florida Road and Barwick Road (GREEN). As it pertains to the improvements identified as “Mill Resurface or Repair” of Barwick Road (BLUE) and identified as “Mill Resurface or Repair” of Ft Florida Road (BLUE), funds for cash reimbursement will be allocated by the City of DeBary City Council into a designated project fund and will be released monthly to Developer by the City based on City reviewed and approved draw requests once Developer provides the certified construction costs of any completed Additional Mobility Improvements, or portion thereof, from the project engineer. All other Mobility Fee credits or reimbursements by the City to Developer will be provided on a quarterly basis.

(b) As a result of the Developer funding the Park and Recreation Improvements, as further detailed in Exhibit “C,” Developer shall be entitled to credits against the City’s park and recreation impact fees. The park and recreation impact fee credits shall be for an amount equal to the actual labor and material construction cost of the Park and Recreation Improvements, including construction staking, construction material testing and preparation of as-built drawings. The term “actual labor and material construction cost of the Park and Recreation Improvements” does not and should not include design, engineering, design surveying and permitting costs since such are generally shared functions with the development of non-public Project site infrastructure. Mobility impact fee credits received under this Agreement are solely for the benefit of the Project and are not assignable or transferable to other properties or projects within the City. The credit against park and recreation impact fees provided herein is not intended to limit any additional park and recreation impact fee credits that may accrue under the terms of the Rivington MPUD. Regardless of the cost of the Park and Recreation Improvements, in no event shall park and recreation impact fee credits received under this Agreement or under the Rivington MPUD exceed park and recreation impact fees that become due and owing for the Project to be developed upon the Property.
Upon completion of the Park and Recreation Improvements described under Section 2 herein, the Developer shall: (i) provide, from the project engineer, the certified construction costs of the completed Park and Recreation Improvements that are funded by Developer that will comprise the total value for the park and recreation impact fee credits subject to City review and approval; (ii) provide the engineer of record’s signed and sealed certification to the City that the Park and Recreation Improvements were constructed in accordance with City approved plans; (iii) provide as-built construction drawings for the Park and Recreation Improvements; (iv) confirm the Park and Recreation Improvements are covered by the 1-year maintenance guarantee provided in connection with the applicable phase of the Rivington MPUD; and (v) obtain the City’s inspection approval for the completed Park and Recreation Improvements. The City shall have fifteen (15) business days from the date of receipt of the certified costs to review the certified costs of the completed improvements. Upon the City’s approval of the certified costs for and inspection approval of the Park and Recreation Improvements, Developer shall transfer the applicable Park and Recreation Improvements to the City via a bill of sale in a form acceptable to the City along with an assignment of warranties from all contractors.

Subject to the Developer’s satisfaction of its obligations herein, the City shall issue park and recreation impact fee credits to the Developer as provided below (“Park and Recreation Credits”):

(i) Park and Recreation Credits shall be valued at the current rates for park and recreation impact fees as established by the City as of the Effective Date of this Agreement;

(ii) Park and Recreation Credits shall be issued based on dollar value of the Park and Recreation Improvements and their value shall be indexed to any increase in the City’s park and recreation impact fee in accordance with the requirements of Fla. Stat. §163.31801(5). Park and Recreation Credits will be applied towards Project mobility impact fees at the then current rates in effect when such fees are due;

(iii) Park and Recreation Credits shall be transferable by Developer to Developer’s successors and assigns for the purpose of utilizing such credits for the Project or any part thereof subject to prior written notice to the City documenting such transfer;

(iv) All homebuilders within the Rivington MPUD may redeem the Park and Recreation Credits assigned to them by the Developer in lieu of paying the applicable park and recreation impact fees as necessary to secure a certificate of occupancy for a residence;

(v) In the event a homebuilder within the Rivington MPUD pays a park and recreation impact fee to the City, either prior to the Park and Recreation Credits contemplated herein are granted to Developer or while Developer has outstanding Park and Recreation Credits, the Developer may exchange Park and Recreation...
Credits with the City and the City shall pay Developer for such credit in the amount equal to the amount paid by the homebuilder to the City. However, in order to exercise such right, Developer must request such exchange of credits for a homebuilder payment from the City prior to no later than ninety (90) days from when the City awards Developer with Park and Recreation Credits under the terms of this Agreement. The City shall hold any fees received from a homebuilder prior to completion of the Park and Recreation Improvements for a period of one hundred eighty (180) days to provide a cash reimbursement to the Developer in exchange for a reduction in Park and Recreation Credits equal to the amount of such pre-paid mobility park and recreation impact fees.

(vi) The Developer shall design and construct the Additional Park and Recreation Improvements, known as the bicycle and pedestrian trail, described in Exhibit “D” attached hereto (“Additional Park and Recreation Improvements”). The City will reimburse Developer for Developer’s actual labor and material construction cost for the Additional Park and Recreation Improvements as outlined in Exhibit D and identified as “Bike Trail” of Fort Florida Road (RED DASH) with park and recreation impact fees credits to be applied to the Project and as outlined in Exhibit D and identified as “Bike Trail” of Fort Florida Road (BLUE DASH) of Developer’s actual labor and material construction cost for Additional Park and Recreational Improvements with a cash reimbursement. The park and recreation impact fee credits for the Additional Park and Recreation Improvements will be treated in the same manner as credits received for the Park and Recreation Improvements. Funds for cash reimbursement will be allocated by the City of DeBary City Council into a designated project fund and will be released monthly to Developer by the City based on City reviewed and approved draw requests once Developer provides the certified construction costs of any completed Additional Park and Recreation Improvements, or portion thereof, from the project engineer.

The Original Agreement is hereby amended to add an Exhibit “D” for the Additional Mobility Improvements and the Additional Park and Recreational Improvements, which is the same exhibit as Exhibit “D” attached to this First Amendment.

4. Validity. If any portion of this First Amendment is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the balance of the First Amendment shall continue in full force and effect.

5. Binding/Recording. This First Amendment shall run with the Property and the rights and the obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement. Except as to the assignment of credits contemplated herein to successors and assigns in the Project, this First Amendment may not be assigned by either party without a prior written amendment by both parties hereto. This First Amendment shall be recorded in the Public Records of Volusia County at the Developer’s expense.

6. Entire Agreement. This First Amendment embodies the entire understanding of the parties with respect to the matters specifically enumerated herein, and all negotiations,
representations, warranties and agreements made between the parties are merged herein. The making, execution and delivery of this First Amendment by all parties has been induced by no representations, statements, warranties or agreements that are not expressed herein. There are no further or other agreements or understandings, written or oral, in effect between or among the parties related to the subject matter hereof. Nothing in this First Amendment, express or implied, is intended to or will be construed to confer on any person, other than the parties of this First Amendment, any right, remedy, or claim with respect to this First Amendment.

7. **Attorneys’ Fees/Laws/Venue.** In any lawsuit between the parties to this First Amendment arising from this First Amendment, each party shall bear their own attorney’s fees and litigation costs. This First Amendment shall be governed by and construed and enforced in accordance with the laws of the State of Florida. Exclusive venue in any action to construe or enforce the provisions of this First Amendment shall be in the circuit court of and for Volusia County, Florida.

8. **Independent Parties.** City and Developer are not partners and this First Amendment is not a joint venture, and nothing in this First Amendment shall be construed to authorize the City or Developer to represent or bind the any other party to matters not expressly authorized or provided in this First Amendment.

9. **Interpretation.** None of the parties shall be considered the drafter of all or any portion of this Agreement for the purposes of interpreting all or any portion of this First Amendment, it being recognized that all parties have contributed substantially and materially to the preparation of this First Amendment.

10. **Non-Waiver of Sovereign Immunity and Indemnification.** Nothing contained in this First Amendment 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 home rule authority, police power, zoning authority and sovereign immunity under the Constitution and laws of the State of Florida or any other privilege, immunity or defense afforded to the City or the City’s officers, employees and agents under the law. The Developer shall indemnify and hold harmless the City and its respective officers, employees and agents from and against all claims, damages, injuries, liability, losses, expenses, including reasonable attorneys’ fees and costs (at trial and appellate levels), arising out of or resulting from the Developer’s construction of improvements, Developer’s assignment or transfer of any Mobility Fee Credits or Park and Recreation Credits (including relating to disputes between Developer and its successors and assigns regarding the same), or Developer’s performance under this First Amendment.

11. **Time is of the Essence.** Time is of the essence as to the performance of all duties and obligations set forth in this First Amendment.

12. **Effective Date.** The Effective Date of this First Amendment shall be the date on which the last party has executed this First Amendment.
[Remainder of Page Intentionally Left Blank]
IN WITNESS THEREOF, the parties hereto have caused this First Amendment to be executed under seal by their officers and agents, duly authorized, as to the City and Developer, on the day and year set forth hereinafter.

Developer:

HR RIVINGTON, LLC, a Florida limited liability company

By: HR Southeast, LLC, a Delaware limited liability company, Its Sole Member

By: RP Investors Southeast, LLC, a Florida limited liability company, Its Sole Managing Member

By: Reader & Partners, LLC, a Florida limited liability company, Its Sole Manager

By: __________________________
    Dean Barberree, President

STATE OF FLORIDA
COUNTY OF _______________

The foregoing instrument was acknowledged before me by physical presence this ______ day of ____________, 2021, by Dean Barberree as President of Reader & Partners, LLC, on behalf of said limited liability 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: __________________
City:

CITY OF DEBARY, FLORIDA

By: ______________________________
    Karen Chazez, Mayor

ATTEST:

________________________________
Annette Hatch, City Clerk
Exhibit “A”

Legal Description of the Rivington MPUD Property

The South 1/2 of the Northeast 1/4; the South 1/2 of the Northwest 1/4; Government Lots 1 and 3; and the North 1/2 of Government Lot 6; all in Section 8, Township 19 South, Range 30 East. lying South of Fort Florida Road, Volusia County, Florida.

ALL EXCEPT the rights of way for any and all public roads on and over said real property and except all electric or power line easement or rights of way agreements therefore, heretofore given.

EXCEPT the South 30 feet of said Lot 1 and except the South 30 feet of the North 1/2 of said Lot 6.

CONTAINS 296.2 Acres, more or less per the Volusia County Appraiser
Exhibit B to the Original Agreement is amendment to add the following additional scope of improvements: (underlined language are additions; stricken through language are deletions):
Exhibit “D”
Additional Mobility Improvements and Additional Park and Recreation Improvements
**ADDITIONAL Mobility Improvements**

RVT - Bids and coordinates construction of all work.
DeBary - Engineers & Permits Ft. Florida
RVT - Engineers Barwick (if needed - Built as part of Phase 2)

**FUNDING**

- **GREEN** - RVT Funds (Received NO Fee Credits)
- **RED** - RVT Funds (Received Fee Credits)
- **BLUE** - DeBary Funds for Cash Reimbursement (account monthly draw)

**ADDITIONAL Parks & Recreation Improvements**

RVT - Bids and coordinates construction of all work.
DeBary - Engineers & Permits Ft. Florida

**FUNDING**

- **RED DASH** - RVT Funds (Received Fee Credits)
- **BLUE DASH** - DeBary Funds for Cash Reimbursement (account monthly draw)
REQUEST

The applicant, Brian Bussen, is seeking Final Plat approval for Springwalk at The Junction, Phase 1, which consists of lots 1-86 for a total of 86 lots.

PURPOSE

The Applicant is requesting approval of a Final Plat for the purpose of recording the plat and permitting sellable lots.

CONSIDERATIONS

On October 3, 2018, the DeBary City Council adopted Ordinance No. 10-18, approving DeBary Town Center, LLC’s Mixed Planned Unit Development (MPUD), known as the DeBary Town Center Transit Oriented Development project. With this approval, City Council authorized the development of a mixed use development on approximately 51.29 acres of land. Other uses on the approved Preliminary Master Plan, of which any development shall be in substantial accordance with, include a grocery store, retail, coffee shop, a bank, multifamily, and carriage houses. On May 19, 2020, the City of DeBary’s Development Review Committee (DRC) approved The Junction Preliminary Plat and Construction Plans and a Development Order was issued on December 9, 2020, to begin site work construction.

The Applicant is now requesting Final Plat approval for Springwalk at The Junction, Phase 1, which includes lots 1-86 for a total of 86 lots. The Applicant wishes to develop the collective lots into single family homes, as previously permitted in the Preliminary Plat and Construction Plans.

FINDINGS OF FACT

The City of DeBary Development Review Committee and City Attorney reviewed the request and provide for the following findings of fact:

• All requirements per local and state codes have been addressed;
• The City’s Surveyor, in conformity with Chapter 177 of the Florida Statutes, has reviewed the final plat and the City Attorney has conducted a legal review of the final plat and the title opinion.
• On January 18th, 2022, the City’s Development Review Committee reviewed and recommended approval to the City Council of the proposed Final Plat contingent on addressing outstanding comments.

COST/FUNDING

N/A

RECOMMENDATION

It is recommended that the City Council approve the Final Plat for Springwalk at The Junction, Phase 1 subject to staff conditions of approval including the following:

• Payment of all required fees, deposits, and costs as may be applicable or required pursuant to the Land Development Code, and other applicable laws, ordinances, and regulations shall be paid to the City prior to final plat approval and recording. The applicant shall be responsible for all recording costs associated with the plat and related documents.
• The original signed plat Mylar and all original executed plat related documents are to be promptly recorded in the Public Records of Volusia County, Florida, after final plat approval and only after satisfaction of all conditions of plat approval. Upon recording of the plat and plat related documents, the applicant shall provide the City with a recorded copy of the plat and plat documents to evidence proper recording.
• It is the responsibility of the entity subdividing the land to ensure that all applicable requirements of the Land Development Code and Florida Statutes relative to the subdividing and development of property are met prior to the final plat approval and recording. The lots on the plat shall not be conveyed unless and until the conditions of approval have been satisfied and the plat as well as the plat related documents have been fully executed and recorded in the public records.

IMPLEMENTATION

The Plat will be recorded with the Volusia County Clerk of the Courts.

ATTACHMENTS

• Springwalk at The Junction, Phase 1 Final Plat
• Springwalk at The Junction, Phase 1 Boundary Survey
• Performance bond
• Bond numbers
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we THE JUNCTION COMMUNITY DEVELOPERS, LLC, whose address is 4885 North Wickham Road, Melbourne, FL 32940, hereinafter referred to as "PRINCIPAL" and, ARCH INSURANCE COMPANY, hereinafter referred to as "SURETY" are held and firmly bound unto the CITY OF DEBARY, a municipality of the State of Florida, whose address is 16 Columbia Road, Debary, FL 32713, hereinafter referred to as the CITY in the sum of $755,807.57 (115% of value of all remaining improvements) for the payment of which we bind ourselves, heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the above bound Principal has as a condition precedent to the approval by the City of Debary of a plat of a certain subdivision known as SPRING WALK AT THE JUNCTION has covenanted and agreed with the CITY OF DEBARY to construct roads, streets, alleys, landscaping, water, sewer, storm drainage and other improvements based upon development plans and plans and specification pertaining to said subdivision, said development plans and plans and specifications pertaining to said subdivision being dated the 3rd day of March, 2021, and being on file with the Growth Management Department of the City of Debary, Florida and

WHEREAS, it is a condition precedent to the recording of said subdivision that this bond be executed:

NOW THEREFORE, the conditions of these obligations are such that if the bound on Principal shall construct the aforesaid improvements in accordance with any date prescribed in the approved development plans and plans and specification dated the 3rd day of March, 2021, or within two (2) years of the date of approval, whichever occurs first, and shall in every respect fulfill its, his, their obligations under the development plans and plans and specifications, and shall indemnify and save harmless the City of Debary against contingent costs which the City of Debary may sustain on account of the failure of the Principal to perform in accordance with the developments plans and plans and specifications within the time therein specified, then this obligation to be void; otherwise to be and remain in full force and virtue.

The Surety unconditionally covenants and agrees that if the Principal fails to perform all or any part of the construction work required by the developments plans or plans and specification above referred to, within the time specified, the Surety upon forty-five (45) days written notice from the City of Debary, or its authorized agent or officer, of the default, will forthwith perform and complete the aforesaid construction work and pay the cost thereof, including, but not limited to engineering, legal and contingent costs. Should the Surety fail or refuse to perform and complete the said improvements, the City of Debary, in view of the public, interest, health, safety and welfare factors involved and the inducement in approving and filing the said plat, shall have the right to resort to any and all legal remedies against the Principal and the
Surety, or either, both at law and in equity, including specifically specific performance, to which the Principal and Surety unconditionally agree.

The Principal and the Surety further jointly and severally agree that the City of Debary, at its option, shall have the right to construct or, pursuant to public advertisement and receipt of bids, cause to be constructed the aforesaid improvements in case the Principal should fail or refuse to do so. In the event the City of Debary should exercise and give effect to such right, the Principal and the Surety shall be jointly and severally liable hereunder to reimburse the City of Debary the total cost thereof including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of the failure of the Principal to carry out and execute all the provisions of said agreement.

IN WITNESS WHEREOF, the Principal and the Surety have executed these presents this the ___20th___ day of ___January___, 2022__.

Address:

4885 N Wickham Road
Melbourne, FL 32940

THE JUNCTION COMMUNITY DEVELOPERS, LLC(SEAL)
Principal

By: ____________________________

Its: Jed Lowry, Regional VP
(if corporation)
CORPORATE SEAL

ARCH INSURANCE COMPANY
Surety

By: ____________________________

Stephen P. Farmer, Attorney-In-Fact

ATTEST: ____________________________

Vincent DeLuca

SURETY SEAL
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:
That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the “Company”) does hereby appoint:

M. Decker Youngman III, Pamela J. Thompson, Ryan P. Rothrock, Stephen P. Farmer and Tyler D. DeBord of Daytona Beach, FL (EACH)

its true and lawful Attorney(s) in Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:
Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars ($90,000,000.00).

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 10, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolutions adopted by unanimous consent of the Board of Directors of the Company on December 10, 2020:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 10, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 8th day of November, 2021.

Attested and Certified

Regan A. Shulman, Secretary

Arch Insurance Company

Stephen C. Ruschak, Executive Vice President

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

I, Michele Tripodi, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.

Michele Tripodi, Notary Public
My commission expires 07/31/2025

CERTIFICATION

I, Regan A. Shulman, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated November 8, 2021 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 20th day of January, 2022.

Regan A. Shulman, Secretary

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:
Arch Insurance – Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102

To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com

Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.
Spring Walk At The Junction Phase 1 in Debary, FL
Performance Bond

Bond Numbers per WD Site Development Payapp #9 Covering Work Done Through 12/31/21

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<th>Item</th>
<th>Scheduled Value</th>
<th>Total Completed</th>
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Bond Numbers Per Garcia Landscaping Bld:

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Bond Numbers Per Allen & Company Surveying Proposal

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<td>Set Permanent Control Points</td>
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<td>Set Lot Corner Monuments</td>
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Total $3,807,784.66 $3,150,560.69 $657,223.97

Bond Total (115%) $755,807.57

1/18/2022

Brian J Bussen, PE 19012
REQUEST

City Manager requests City Council approval of the Sixth Amendment to the Joint Marketing Agreement approving the Mosaic Development, LLC’s Letter of Intent to purchase 19.5 acres within DeBary Main Street project.

PURPOSE

The purpose of this Sixth Amendment to the Joint Marketing Agreement is to approve the Mosaic Development LLC’s Letter of Intent.

CONSIDERATIONS

- In September 2019, the City of DeBary approved the Joint Marketing Agreement with neighboring property owners agreeing to sell our property (19.5 acres) together for the purposes of building the City’s first downtown. There have been 5 previous amendments during this project to adjust right-of-way and add new partners and property.

- The City approved the Overall Development Plan for the 19.5 acres on October 27, 2020.

- Approving the Sixth Amendment authorizes the City and City Manager to negotiate a Purchase and Sales Agreement (PSA) with Mosaic Development, LLC based upon the details outlined in the Letter of Intent. The deadline for PSA approval is 90 days from the approval date of the Sixth Amendment to the Joint Marketing Agreement by the City Council.

- Mosaic’s Letter of Intent proposes to build a mixed-use development on the 19.5 acres in two phases, 60% in Phase 1 (approximately 11.7 acres) and 40% in Phase 2 (approximately 7.8 acres). Closing of Phase 1 property shall occur within one year of PSA approval.

- Upon closing of Phase 1, Mosaic will take possession of the southernmost 60% of the property. All private-entity JMA partners will be paid out in full, and the City will take ownership and possession of the remaining 40% of the property for Phase 2.
During this one-year period between the PSA approval and property closing of Phase 1, the City and Mosaic will work closely together during the development review process, which includes but not limited to design and engineering and establishing a developer’s agreement.

Mosaic is offering $6,250,000 for 19.5 acres, or approximately $320,500 (rounding) per acre. At Phase 1 closing (60% of the property), Mosaic will pay $3,750,000. Distribution of these proceeds are estimated as follows, 1) the private-entity JMA partners will be receive approximately $2,884,615 less expenses, and 2) City will receive $865,385, less expenses. The City will become sole owner of Phase 2 property, approximately 7.8 acres. The closing on Phase 1 will be within one year after the PSA approval, estimated April 2023.

At Phase 2 closing, estimated April 2026, the balance (40% of the property), Mosaic will take ownership of remaining property. The City will receive $2,500,000.

Brokerage Fees will be paid by the Sellers to Colliers International.

All private-entity Joint Marketing Partners have approved this Letter of Intent by signing the Sixth Amendment to Joint Marketing Agreement. Being a partner in the Joint Marketing Agreement, the City must also approve the Sixth Amendment to Joint Marketing Agreement.

Even though the Adams Property was not included in the original Joint Marketing Agreement, their property (32 acres) is part of the Main Street project and subject to the same TOD and Main Street regulations. Encore Capital has secured a contract to buy this property and is currently in development review. Upon approval of a PSA with Mosaic Development, LLC, all 52 acres of the original Main Street project will be under contract.

**COST/FUNDING**

There is no cost to approve the Sixth Amendment to the Joint Marketing Agreement.

**RECOMMENDATION**

It is recommended that the City Council approve the Sixth Amendment to Joint Marketing Agreement.

**IMPLEMENTATION**

Upon approval, the City and Mosaic will work diligently to develop and approve the Purchase and Sales Agreement within 90 days.

**ATTACHMENTS**

Sixth Amendment to Joint Marketing Agreement with the attached Exhibit A – Mosaic Development, LLC’s Letter of Intent
SIXTH AMENDMENT TO
JOINT MARKETING AGREEMENT

THIS SIXTH AMENDMENT TO JOINT MARKETING AGREEMENT (hereinafter “Sixth Amendment”) is made and entered into effective the ___ day of __________, 2022 (hereinafter the “Effective Date”) by and between the CITY OF DEBARY, a Florida municipal corporation, (hereinafter the “City”), DEBARY CENTRAL LLC, a Florida limited liability company (hereinafter “DCL”), STEPHANIE M. MILLER, TRUSTEE OF THE MILLER LAND TRUST AGREEMENT dated December 17, 2009 (hereinafter “Miller”), RAY SANDS and FRANK SLABODNIK (hereinafter collectively “S&S”) and EMPIRE CATTLE, LTD., a Florida limited partnership (hereinafter “EMPIRE”). The above referenced parties are hereinafter collectively referred to as the “Parties”.

WHEREAS, on or about September 7, 2019, all the Parties except EMPIRE entered into that certain Joint Marketing Agreement (hereinafter the “Agreement”) that is recorded in Official Records Book 7764, Page 573, Public Records of Volusia County, Florida.

WHEREAS, all the Parties except EMPIRE thereafter entered into that certain First Amendment to Joint Marketing Agreement, Second Amendment to Joint Marketing Agreement and Third Amendment to Joint Marketing Agreement.

WHEREAS, all the Parties thereafter entered into that certain Fourth Amendment to Joint Marketing Agreement that made certain changes to the Agreement including adding EMPIRE as a party to the Agreement and making the Empire Property subject to the terms and conditions of the Agreement.
WHEREAS, all the parties thereafter entered into that certain Fifth Amendment to Joint Marketing Agreement whereby the City’s newly acquired Muse Property was made subject to the terms and conditions of the Agreement.

WHEREAS, Mosaic Development, LLC (hereinafter “Mosaic”) has delivered a Letter of Intent (hereinafter the “Mosaic LOI”) to the City for the purchase and sale of all the Properties (as defined in the Agreement), a copy of which is attached hereto as Exhibit “A”.

WHEREAS, the Mosaic LOI provides for a Phase I purchase price of $3,750,000.00 and a Phase II purchase price of $2,500,000.00 for a combined total purchase price of $6,250,000.00.

WHEREAS, the Parties wish to amend the Agreement to authorize and direct the City to proceed with the Mosaic LOI in the manner outlined hereinafter.

NOW, THEREFORE, pursuant to the authority to amend the Agreement as set forth in Section 13, the Parties do hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by reference.

2. **The Mosaic LOI.** Section 9 of the Agreement is amended to add the following:

   a. The Parties accept and approve the Mosaic LOI and hereby authorize and direct the City to execute the same on behalf of all the Parties.

   b. The Parties further authorize and direct the City to negotiate a purchase and sale agreement (hereinafter “PSA”) of the Properties with Mosaic in accordance with the Mosaic LOI with such changes as the City deems appropriate.

   c. Each of the Parties appoints the City Manager as the Party’s attorney in fact to execute and deliver the PSA and any documents necessary to close the transaction.
Alternately, at the request of the City, each of the Parties shall execute and deliver the PSA and any other documents necessary to close the transaction.

3. **Distribution of Sales Proceeds.** Section 10e is amended to add the following language at the end:

“In the event a PSA is entered into with Mosaic and the transaction proceeds to closing, the City, at its option, may elect to have the entire proportionate shares of all the other Owners paid in full first from the closing of Phase I. In that event, the City shall be paid the remaining proceeds from Phase I and all the proceeds from Phase II and the other Owners shall convey marketable title by warranty deed to the City of all the Phase II property free and clear of liens and encumbrances. In addition, if the City makes such election, the other Owners shall have no further right, title, interest or claim arising by, through or under the Agreement, as amended. In the event that the transaction does not close and Mosaic forfeits the deposit to the City, the Deposit shall be paid and distributed in the order provided under Section 10 until the Deposit has been exhausted.”

4. **Counterparts.** The Sixth Amendment and any future amendments may be executed in counterparts, all of which executed counterparts shall constitute the same agreement, and the signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

5. **Facsimiles/Emails.** The Parties may deliver this Sixth Amendment and any further amendments and all documents executed in connection therewith, electronically via facsimile or email.

**IN WITNESS WHEREOF,** the Parties have signed and sealed these presents effective as of the day and year first above written.
CITY OF DEBARY, a
Florida municipal corporation

By: __________________________
    Karen Chasez
    Mayor

DEBARY CENTRAL LLC, a
Florida limited liability company

By: EQUITITEC GROUP, LLC,
a Florida limited liability company
    Its Manager

By: Index, LLC
    a Florida limited liability company
    Its Manager

By: __________________________
    Regan B. Bloss
    Manager
CITY OF DEBARY, a Florida municipal corporation

By: ______________________________
    Karen Chasez
    Mayor

DEBARY CENTRAL LLC, a Florida limited liability company

By: EQUITITEC GROUP, LLC,
a Florida limited liability company
Its Manager

By: Index, LLC
a Florida limited liability company
Its Manager

By: ______________________________
    Regan B. Bloss
    Manager
STEPHANIE M. MILLER, as Trustee of the
Miller Land Trust Agreement dated
December 17, 2009

RAY SANDS

FRANK SLABODNIK

EMPIRE CATTLE, LTD., a
Florida limited partnership

By: ________________________
    John Rhett III, Trustee of
    Elizabeth Rhett West Trust
    General Partner
STEPHANIE M. MILLER, as Trustee of the
Miller Land Trust Agreement dated
December 17, 2009

RAY SANDS

FRANK SLABODNIK

EMPIRE CATTLE, LTD., a
Florida limited partnership

By:

John Rhett III, Trustee of
Elizabeth Rhett West Trust
General Partner
STEPHANIE M. MILLER, as Trustee of the
Miller Land Trust Agreement dated
December 17, 2009

RAY SANDS

FRANK SLABODNIK

EMPIRE CATTLE, LTD., a
Florida limited partnership

By:  John Rhett Trustee

John Rhett III, Trustee of
Elizabeth Rhett West Trust
General Partner
January 20, 2022

VIA ELECTRONIC MAIL

Colliers International
4830 West Kennedy Boulevard, Suite 300
Tampa, FL 33609
Attention: Ken Krasnow

City of DeBary, Florida
16 Columba Road
DeBary, FL 32713
Attention: Carmen Rosamonda

RE: Letter of Intent to Purchase Real Estate located at South US Highway 17-92 in DeBary, Florida 19.5+/- Acres of Real Property

Ladies and Gentlemen:

Mosaic Development, LLC (the “Purchaser”) and/or its assigns is interested in purchasing the above described property (the “Property”) as outlined below. This agreement (this “Agreement”) shall serve as a letter of intent to purchase the Property on the terms and conditions set forth below and shall form the basis of a formal written Purchase and Sale Agreement (the “Contract”).

Mosaic Development’s sole business model is focused on developing market-rate rental opportunities in strategic growth areas within the State of Florida, and more specifically in the Tampa, Central and Southwest Florida markets. Recognized as experts in the arena of ground-up multifamily development, Mosaic Development is adept at delivering transformative development projects that uniquely coincide with a local community’s specific vision. The three partners of Mosaic Development have a tremendous depth of experience in spearheading development and redevelopment efforts in extremely challenging environments to ultimately produce industry-leading results validated by not only robust lease-up responses, but also intense market appeal leading up to asset stabilization.

In Florida, Mosaic Development currently has projects under design, construction and/or lease-up in Kissimmee (288 Units), North Fort Myers (360 units) and Lakeland (252 units) and we are seeking two additional development opportunities for 2022.
Property. The Property consists of approximately 19.5 +/- acres of real property and is currently zoned as a Transit Oriented Development ("TOD"). Our development plan for this mixed use project shall be in two (2) phases and contemplates 500 +/- multifamily apartments constructed above cold-shell ground floor retail largely in accordance with the Transit Oriented Development (TOD) plan along a newly created Main Street substantially consistent with the City of DeBary’s vision. With respect to the ground floor retail space, Mosaic Development intends to partner with an experienced retail developer to lease up such space and to work with the City of DeBary in the marketing of such space.

Phase I Development: The development of the first phase of the Property shall include the following:

- Construction and development of approximately 300 +/- multifamily apartment units constructed above cold-shell ground floor retail (the "Phase I Development").
- Full build out of Main Street consistent with the City’s conceptual plan which will run through Phase I and Phase II of the Property and will be dedicated to the City.
- Construction of a stormwater retention pond sufficient to support Main Street and the entire project and shall be used as community outdoor gathering green space including a lighted fountain, concrete walking path and seating areas and will be dedicated to the City.
- Mosaic Development shall request the City of DeBary to waive the City’s Parks and Recreation Impact Fee, the City’s Government Building Impact Fee and the City’s Mobility Impact Fee.
- Mosaic Development shall request the City of DeBary to reduce the City generated plan and permit review fee.
- Closing and construction commencement on the Phase I Development is expected to be within 12 months after execution of the Contract. Construction completion of Phase I (including the construction of Main Street) is anticipated to take approximately 24 months.

Phase II Development: The development of the second phase of the Property shall include the following:

- Construction and development of an additional 200 +/- multifamily apartment units constructed above cold-shell ground floor retail (the "Phase II Development").
- Mosaic Development will commence the Phase II Development within 36 months of the land closing of the Phase I Development. Mosaic Development may request an option to exercise a one-time six (6) month extension to commence the Phase II Development due to a change in market circumstances or other circumstances that Mosaic Development is unable to control. The acquisition and development of the Phase II Development is timed so that the Phase II Development lease up will not compete with the Phase I lease up and to also take into consideration changes, if any, to the City’s housing needs or any market changes.
- Construction completion of Phase II is anticipated to take approximately 24 months.
• In the event the closing on the land for the Phase I Development does not timely close pursuant to the terms of the Contract, Purchaser shall have no further rights to acquire any portion of the Property, including the Phase II Development.

**Purchase Price.** The Purchase Price for the Property shall be Six Million Two Hundred Fifty Thousand and 00/100 Dollars ($6,250,000.00) (the "**Purchase Price**"). The purchase price for the Phase I Development shall be an amount equal to Three Million Seven Hundred Fifty Thousand and 00/100 Dollars ($3,750,000.00) (the "**Phase I Purchase Price**"), and the purchase price for the Phase II Development shall be an amount equal to approximately Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) (the "**Phase II Purchase Price**").

**Inspection Period.** Purchaser shall have a period of ninety (90) days from execution of a Contract as described below (the "**Inspection Period**") within which to review, inspect, and evaluate all aspects of the Property, including, without limitation, conducting and/or obtaining appraisals, zoning investigations, surveys, title examinations, market studies, environmental audits, geotechnical reports and related investigations and reports (collectively, the **Due Diligence Information**"). Seller shall be responsible for providing Purchaser with the Due Diligence Information within five (5) days of the execution of the Contract and shall permit Purchaser access to the Property and the buildings constructed thereon. Purchaser may begin its inspection immediately upon execution of the Contract in form and content mutually acceptable to the parties.

Purchaser may, at any time on or before the end of the Inspection Period and in Purchaser’s sole discretion, terminate the Contract for any reason whatsoever by giving written notice to Seller. If Purchaser does terminate the Contract, then Purchaser and Seller shall have no further rights or obligations under the Contract and the Deposit and interest thereon shall immediately be refunded by Escrow Agent to Purchaser.

In the event the Property requires any environmental remediation, upon the City of DeBary’s request, Mosaic Development shall manage such remediation on behalf of the City for a management fee not to exceed five percent (5.00%) of the total cost of the work, including any re-testing that is required at the conclusion of the remediation.

**Closing Date.** The Closing on the Phase I Development shall occur on a date that is within twelve (12) months after the execution of the Contract.

**Earnest Money.** Within three (3) business days after execution of the Contract by Seller and Purchaser, Purchaser shall deposit One Hundred Thousand Dollars ($100,000) (the "**Initial Deposit**") with a mutually acceptable Escrow Agent. At the end of the Inspection Period, if Purchaser elects to proceed to Closing, the Initial Deposit shall become non-refundable to Purchaser. In addition, within five (5) business days after the expiration of the Inspection Period, Purchaser shall deliver an additional deposit in the amount of One Hundred Fifty Thousand Dollars ($150,000) (the "**Second Deposit**", and together with the Initial Deposit including all interest earned thereon shall be hereinafter collectively referred to as the "**Deposit**") with the Escrow Agent. The Deposit shall be non-refundable to Purchaser unless there is a condemnation of the Property or a Seller default under the Contract.
Other Conditions and Requirements to Closing:

1. **Title.** Seller shall convey to Purchaser by special warranty deed for good and marketable fee simple title to the Phase I Development, free and clear of all liens and encumbrances other than those acceptable to Purchaser (the "**Permitted Encumbrances**"). Marketable title shall mean fee simple title that is insurable without exception, other than the Permitted Encumbrances, by a national title insurance company acceptable to Purchaser at standard rates. If there is a title defect, the City of DeBary agrees to remedy such defect at its own expense.

2. **Possession.** Possession of the Phase I Development shall be delivered to Purchaser on the Closing Date subject only to the Permitted Encumbrances.

3. **Closing Costs and Cash Adjustments.** Real estate taxes for the year of Closing shall be prorated as of the Closing Date. All liens or assessments against the Phase I Development as of the Closing Date shall be paid in full by the Seller. All outstanding and current charges for utilities or other services furnished to the Phase I Development through the Closing Date shall be paid by Seller. Seller shall pay all transfer tax and documentary stamps, and Seller’s attorneys’ fees. Purchaser shall pay the cost of Purchaser’s title insurance, survey, Purchaser’s attorneys’ fees and all costs associated with Purchaser’s financing.

4. **Brokerage Fees.** Purchaser and Seller represent and warrant that they have not dealt with any real estate broker or agent in connection with this transaction other than Colliers International ("**Broker**"). Purchaser and Seller each indemnify one another against claims from other third-party brokers with whom they have had any dealings in connection with this transaction. All real estate commissions due to Broker shall be paid by the Seller at Closing pursuant to a separate agreement between Seller and Broker. Broker shall execute a release of all lien rights against the Property as a condition of Closing.

5. **Contract.** Purchaser will proceed with having a formal Contract drafted by its legal counsel incorporating the terms of this Agreement and such other terms as may be mutually acceptable to Seller and Purchaser.

6. **Assignability.** Purchaser may assign its interests in this Agreement and a subsequent Contract to an entity affiliated with Purchaser.

7. **Additional Provisions.** The Contract shall include additional provisions typical for real estate transactions, including, but not limited to, insurance provisions, liability for casualty and property condemnation prior to Closing, representations and warranties.

THIS AGREEMENT SHALL SERVE AS THE BASIS FOR A FORMAL CONTRACT BETWEEN PURCHASER AND SELLER AND IS INTENDED TO OUTLINE THE BASIC TERMS AND CONDITIONS OF A CONTRACT. BOTH PURCHASER AND SELLER UNDERSTAND THAT, EXCEPT FOR THE PROVISIONS OF THE LAST PARAGRAPH
HEREOF, THIS AGREEMENT IS NOT INTENDED TO BE A LEGAL AND/OR BINDING AGREEMENT UNTIL SUCH TIME AS A FORMAL CONTRACT IS FULLY EXECUTED BY BOTH PARTIES. THIS AGREEMENT SHALL EXPIRE AND HAVE NO FORCE OR EFFECT AFTER NINETY (90) DAYS AFTER THE EARLIER OF (i) THE DATE THE DEBARY CITY COUNCIL APPROVES THIS AGREEMENT, AND (ii) THE DATE THIS AGREEMENT IS EXECUTED BY PURCHASER.

If this Agreement is acceptable to the Seller, please indicate so by signing and dating below. Seller shall have until 5:00 p.m. Eastern Standard Time on February 7, 2022, to return this signed Agreement. If such signed Agreement is not received by Purchaser by such date and time this Agreement shall be deemed to be expired.

If this Agreement is accepted by Seller, then Seller agrees that the Property will be taken off the market for so long as this Agreement or the Contract is in effect, and, to that end, neither the Seller nor any agent, representative or employee of Seller will seek to sell or otherwise market the Property during such period. From and after Seller’s acceptance of this Agreement, Seller will provide Purchaser and its agents and representatives with full and free access to the Property and to all financial, marketing and operating records pertaining to the Property, and Purchaser and Seller further hereby agree to work together diligently and in good faith to finalize and execute a formal contract. Purchaser agrees to use such records and information solely in connection with the transaction contemplated by this Agreement. No other prospective purchasers shall be allowed to tour the Property.

Sincerely,

MOSAIC DEVELOPMENT, LLC

By:  

Roxanne Amoroso
Principal

ACCEPTED AND AGREED TO AS OF THIS _____ DAY OF FEBRUARY, 2022

CITY OF DEBARY, FLORIDA

By:  

Name:  

Title:  
City Council Meeting  
City of DeBary  
AGENDA ITEM

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<th>Subject:</th>
<th>Volusia County – Opioid Abatement Funding Advisory Board</th>
<th>Attachments:</th>
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<td>From:</td>
<td>Carmen Rosamonda, City Manager</td>
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<td>Meeting Hearing Date</td>
<td>February 2, 2022</td>
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**REQUEST**

City Manager requests City Council to discuss, select or provide guidance for the DeBary’s appointment to the Volusia County’s Opioid Abatement Funding Advisory Board.

**PURPOSE**

The purpose of this appointment is to serve a two-year term on Board and execute the duties and responsibilities as outlined in Section 5 of the Interlocal Agreement Governing Use of Volusia County Regional Opioid Settlement Funds.

**CONSIDERATIONS**

- There are 17 members of this Board, one from each City and one from Volusia County. The City of DeBary must appoint a member to this Board.

- The City approved the Interlocal Agreement Governing Use of Volusia County Regional Opioid Settlement Funds on January 5, 2022. Volusia County is now a Qualified County eligible to receive Regional Funds from the settlement.

- In Section 5 of the Interlocal Agreement, the appointed member should have experience with law enforcement, fire rescue, substance abuse treatment, or other relevant experience.

- The City will be receiving funds directly from this settlement. Staff is working on partnering with other Cities to combine funds and strategies to have a greater impact.

**COST/FUNDING**

There is no cost for this appointment.
RECOMMENDATION

It is recommended that the City Council discuss, select or provide guidance for the DeBary’s appointment to the Volusia County’s Opioid Abatement Funding Advisory Board.

IMPLEMENTATION

Immediately upon decision.

ATTACHMENTS

Interlocal Agreement Governing Use of Volusia County Regional Opioid Settlement Funds
INTERLOCAL AGREEMENT GOVERNING USE OF VOLUSIA COUNTY REGIONAL OPIOID SETTLEMENT FUNDS

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into as of this ___ day of ___________ 2021, by and between Volusia County, a political subdivision of the State of Florida, hereinafter referred to as the "County," and the City of Daytona Beach, the City of Daytona Beach Shores, the City of DeBary, the City of DeLand, the City of Deltona, the City of Edgewater, the City of Holly Hill, the City of Lake Helen, the City of New Smyrna Beach, the City of Oak Hill; the City of Orange City; the City of Ormond Beach; the Town of Pierson; the Town of Ponce-Inlet; the City of Port Orange; and the City of South Daytona; hereinafter referred to as the "Cities."

WHEREAS, a local, state and national crisis arose as a result of the manufacture, distribution and over-prescribing of opioid analgesics ("opioids") and resulted in opioid overdoses and addictions throughout municipalities, counties, states and the nation; and

WHEREAS, Volusia County and the municipalities therein are not immune from this nationwide crisis; an

WHEREAS, in April of 2021, a collaborative working group known as the Volusia County Opioid Task Force, hereinafter "Opioid Task Force", consisting of various knowledgeable staff of the local government entities assembled in response to the alarming increase in opioid related drug misuse and opioid-related deaths within the geographic boundaries of Volusia County; and

WHEREAS, the Opioid Task Force will continue to provide local governments with relevant information on the opioid national crises as well as information and analysis on the
nature, extent, and problems in Volusia County and on opioid-related programs consistent with the State MOU; and

WHEREAS, the crisis has caused and is causing an undue strain on local government finances to implement programing to combat the opioid epidemic, to mitigate the harmful effects of the opioid epidemic in the community, and to increase educational campaigns to counteract misinformation about the addictive nature and harmful effects of opioids; and

WHEREAS, the opioid crisis is as pronounced within Volusia County and within certain municipalities within Volusia County as it was throughout most of the harder hit areas in the state of Florida and in the United States and despite the resources expended on combatting the epidemic, the opioid epidemic continues to impact the local community; and

WHEREAS, as a result of the national opioid crisis, many governmental entities throughout the country filed lawsuits against opioid manufacturers, distributors, and retailers, hereinafter referred to as the "defendants", to hold them accountable for the damage caused by their misfeasance, nonfeasance and malfeasance, as well as to recover monetary damages for past harm and financial compensation for ongoing and future abatement efforts; and

WHEREAS, four governmental entities in Volusia County deemed the opioid crisis significant enough to secure litigation counsel and individually elect to file suit against the defendants to wit: Deltona, Daytona Beach, Ormond Beach, and Daytona Beach Shores, (hereinafter referred to as the "MDL Cities") and the County; and

WHEREAS, the lawsuits filed by the MDL Cities and the County were consolidated with other lawsuits filed by state, tribal and local governmental entities into what is known as
the National Prescription Opiate Litigation in the United States District Court of the Northern
District of Ohio, Eastern Division, case number I : 17-MD-2804; and

WHEREAS, as a result of this litigation, multiple defendants have begun to negotiate
settlements; and

WHEREAS, the Attorney General for the State of Florida (hereinafter "Attorney
General") anticipates that Settlement funds will be distributed to the State of Florida over
multiple years as part of a global settlement, and not directly to the MDL Cities and County,
despite their position as party plaintiffs; and

WHEREAS, the Attorney General has proposed entering into agreements with local
governments within the State of Florida to receive Settlement funds. This agreement
(hereinafter referred to as the "State MOU"), as currently drafted, divides settlement funds into
three portions designated as City County, Regional and State funds; and

WHEREAS, it is anticipated that the State MOU will set forth the amount and manner
of distribution of City/County and Regional Settlement funds within Florida, the requirements
to receive and manage Regional funds, and the purposes for which Regional funds may be used.
The approved uses in the State MOU for which Regional funds may be used are attached as
Exhibit A; and

WHEREAS, the parties recognize that local control over Regional Settlement funds is
in the best interest of all persons within the geographic boundaries of Volusia County and
ensures that Settlement funds are available and used to address opioid-related impacts within
Volusia County and are, therefore, committed to the County qualifying as a "Qualified County"
and thereby receiving Regional funds pursuant to the State MOU; and
WHEREAS, Volusia County is currently providing or contracting to provide substance
abuse, prevention, recovery, and/or treatment services to the citizens in Volusia County; and

WHEREAS, Volusia County currently has programs and policies for abatement of
opioid and other substance abuse, prevention, recovery, or treatment services that may be
enhanced or supplemented, including, but not limited to: carrying of Narcan by law
enforcement officers, first responders, and corrections officers; pro-active support systems such
as educational materials and services to reach at-risk individuals identified through historical
opioid events and historical locations of events; as well as intervention for individuals suffering
from opioid abuse in the criminal justice system; and

WHEREAS, the State MOU requires that in order for Volusia County to become a
Qualified County eligible to receive Regional Funding, there must be an interlocal agreement
among Volusia County and Municipalities, as defined in the MOU, with combined population
exceeding 50% of the total population of the Municipalities within Volusia County, with the
term "Municipalities" being defined for the purpose in this Agreement as those municipalities
with a population of 10,000 or more as required by the State MOU; or with population less than
10,000 who were party plaintiffs; population for purposes of the MOU is determined by specific
Census data; and

WHEREAS, historically, government-funded programming geared toward abating the
opioid crisis has been data driven based upon community impacts without regard to
governmental jurisdictional boundaries; and

WHEREAS, this interlocal provides for the appointment to the Opioid Abatement
Funding Advisory Board, which shall review and make recommendations on Volusia County’s
abatement plan and funding considerations consistent with the abatement plan and State MOU; and

WHEREAS, the parties recognize that it is in the best interest of the County and the Cities to enter into this interlocal agreement to ensure Volusia County is a "Qualified County" to receive Regional Funding pursuant to the State MOU.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the parties agree as follows:

Section 1. DEFINITIONS

A. Unless otherwise defined herein, all defined terms in the State MOU are incorporated herein and shall have the same meanings as in the State MOU.

B. "Volusia County Regional Funding" shall mean the amount of the Regional Funding paid to Volusia County in its role as a Qualified County.

Section 2. CONDITIONS PRECEDENT

This Agreement shall become effective on the Commencement Date set forth in Section 4, so long as the following conditions precedent have been satisfied:

A. Execution of this Agreement by the County and the governing bodies of the municipalities as required by the State MOU to enable Volusia County to become a Qualified County and directly receive Volusia County Regional Funding; and

B. Execution of all documents necessary to effectuate the State MOU in its final form; and

C. Volusia County being determined by the State of Florida to qualify as a "Qualified County" to receive Regional Funding under the State MOU; and
D. Filing of this Agreement with the Clerk of the Circuit Court for Volusia County as required by Florida Statutes, Section 163.01.

Section 3. EXECUTION

This Agreement may be signed in counterparts by the parties hereto.

Section 4. TERM

The term of this Agreement and the obligations hereunder commences upon the satisfaction of all conditions precedent, runs concurrently with the State MOU, and will continue until one (1) year after the expenditure of all Volusia County Regional Funding, unless otherwise terminated in accordance with the provisions of the State MOU. Obligations under this Agreement which by their nature should survive, including, but not limited to any and all obligations relating to record retention, audit, and indemnification will remain in effect after termination or expiration of this Agreement.

Section 5. BOARD

A. Volusia County Regional Funding will be used in accordance with the requirements of the State MOU, and guidelines set forth by a board established by this Interlocal Agreement (hereinafter referred to as the "Opioid Abatement Funding Advisory Board" or “Advisory Board”), which will include utilizing information, data, and projections provided by the Opioid Taskforce.

i. Opioid Abatement Funding Advisory Board membership shall be comprised of the following members, who should have experience with law enforcement, fire rescue, substance abuse treatment, or other relevant experience, appointed for two-year terms:
1. One member appointed by the City of Daytona Beach;
2. One member appointed by the City of Daytona Beach Shores;
3. One member appointed by the City of DeBary;
4. One member appointed by the City of DeLand;
5. One member appointed by the City of Deltona;
6. One member appointed by the City of Edgewater;
7. One member appointed by the City of Holly Hill;
8. One member appointed by the City of Lake Helen;
9. One member appointed by the City of New Smyrna Beach;
10. One member appointed by the City of Oak Hill;
11. One member appointed by the City of Orange City;
12. One member appointed by the City of Ormond Beach;
13. One member appointed by the Town of Pierson;
14. One member appointed by the Town of Ponce Inlet;
15. One member appointed by the City of Port Orange;
16. One member appointed by the City of South Daytona;
17. One member appointed by the Volusia County Council.

B. The Opioid Abatement Funding Advisory Board shall meet regularly and as often as needed to effectuate its responsibilities, but no less than semi-annually and on a schedule which allows the Opioid Task Force to provide the data compiled for and arising out of its semi-annual meeting to the Opioid Abatement Funding Advisory

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Board for review and consideration. A majority of the total membership of the Opioid Abatement Funding Advisory Board constitutes a quorum.

C. The Opioid Abatement Funding Advisory Board shall establish bylaws and an annual process which must include the following:

   a. A date certain each year by which the Opioid Abatement Funding Advisory Board must meet and review the data available from previous years, tending to evidence the local status of the opioid epidemic and the effect of abatement programming.

   b. A member of the Advisory Board shall abstain from voting on a proposal for funding a program or service provided by that member’s local government.

   c. The Opioid Abatement Funding Advisory Board must review the programs and services of the beneficiaries of Volusia County Regional Funds to determine the outcome of such programs and services in order to hold beneficiaries accountable.

   d. The Opioid Abatement Funding Advisory Board must annually make recommendations on funding, programs, services, and location priorities for the upcoming year(s) ("Opioid Abatement Funding Advisory Board Priority List," “Priority List,” or “Abatement Plan”). County Council shall have final approval of the Abatement Plan, or any amendments thereto.

D. The County shall perform competitive solicitations for programming and services based on the Opioid Abatement Funding Advisory Board Priority List in accordance
with the procurement process in Chapter 2 of the Code of Ordinances, County of Volusia.

E. Volusia County Regional Funding may be used to enhance current programs or develop new programs consistent with the State MOU. Regional funding is not intended to supplant current funding sources and general funds, and staff will continue to seek funding for opioid related abatement at the levels opioid abatement programs were funded as of the effective date of this agreement.

F. Final Review recommendations will be approved by the Opioid Abatement Funding Advisory Board, who shall present recommendations to the County Council for approval. The County Council shall approve Opioid Abatement Funding Advisory Board recommendations by a majority vote of the members present unless the County Council rejects such recommendations by a majority vote of the County Council members present. In the event of such rejection, the County Council shall determine and approve by a majority vote of the members present the expenditure of the Regional Funds in accordance with the State MOU.

G. The Opioid Abatement Funding Advisory Board shall recommend and the County Council shall use its best efforts to fund services and programs that are available to all residents of Volusia County and shall strive to allocate funding and services in a manner that equally benefits all residents of Volusia County.

Section 6. ADMINISTRATIVE COSTS

The County is responsible for administering the "Regional Funds" remitted pursuant to the State MOU and, therefore County staff will support the Opioid Abatement Funding
Advisory Board and shall provide all support services including but not limited to legal services, as well as contract management, program monitoring, and reporting required by the State MOU and is entitled to the maximum allowable administrative fee pursuant to the State MOU. The administrative fee will be deducted annually from the amount of available Volusia County Regional Funds, and the remaining Volusia County Regional Funds will be spent as provided in the State MOU and as provided herein.

Section 7. LOCAL GOVERNMENT REPORTING REQUIREMENTS

To the extent that local governmental entity receives Volusia County Regional Funds directly from the County, any local governmental entity so receiving funds must spend such funds for Approved Purposes and must timely satisfy all reporting requirements of the MOU. Failure to comply with this provision may disqualify the local governmental entity from further direct receipt of Volusia County Regional Funds.

Section 8. NON-APPROPRIATION

This Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County official, officer or employee creates any obligation to appropriate or make monies available for the purposes of the Agreement beyond the fiscal year in which this Agreement is executed. The obligations of the County as to funding required pursuant to the Agreement are limited to an obligation in any given fiscal year to budget and appropriate from Volusia County Regional Funds annually which are designated for regional use pursuant to the terms of the State MOU. No liability shall be incurred by the County beyond the monies budgeted and available for the purpose of the Agreement. If funds are not received by the County for any or all of this Agreement for a new fiscal period, the
County is not obligated to pay or spend any sums contemplated by this Agreement beyond the portions for which funds were received and appropriated. The County agrees to promptly notify the Cities in writing of any subsequent non-appropriation, and upon such notice, this Agreement will terminate on the last day of the current fiscal year without penalty to the County and all undistributed funds will be spent for programs previously proposed by the Opioid Abatement Funding Advisory Board and adopted by the County Council.

Section 9. INDEMNIFICATION

Each City and the County shall be responsible for their respective employees' acts of negligence when such employees are acting within the scope of their employment and shall only be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statues. Nothing herein shall be construed as a waiver of sovereign immunity, or the provisions of F S. § 768.28, by either Party. Nothing herein shall be construed as consent by either Party to be sued by third parties for any matter arising out of this Agreement.

Section 10. SEVERABILITY

If any provision of this Agreement is held invalid, the invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are severable.

Section 11 AMENDMENTS TO AGREEMENT

This Agreement may be amended, in writing, upon the express written approval of the governing bodies of all the parties.

Section 12. FILING OF AGREEMENT

This Agreement shall be filed with the Clerk of the Circuit court as provided in Section
Section 13. GOVERNING LAW

The laws of the State of Florida shall govern this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof, as of the day and year first above written.
COUNTY OF VOLUSIA, a political subdivision of the State of Florida

George Recktenwald
County Manager

DATE: ___________________________

BY: ______________________________
Jeffrey S. Brower
County Chair
ATTEST:  

CITY OF DAYTONA BEACH, a Florida municipal corporation

__________________________  
BY: Derrick Henry
Mayor

DATE: ______________________
ATTEST:  

CITY OF DAYTONA BEACH  
SHORES, a Florida municipal corporation  

______________________________  

BY:  
Nancy Miller  
Mayor  

DATE: ________________________
ATTEST: Annette Hatch, CMC, City Clerk

CITY OF DEBARY, a Florida municipal corporation

BY: Karen Chasez
Mayor

DATE: January 5, 2022
ATTEST:  

CITY OF DELTONA, a Florida municipal corporation  

__________________________  

BY: ________________________  

Heidi K. Herzberg  
Mayor  

DATE: ______________________

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ATTEST:                                    CITY OF EDGEWATER, a Florida municipal corporation

__________________________________________  ________________________________

BY:                                          Michael Thomas

Mayor

DATE:  ________________________________
ATTEST:  

CITY OF HOLLY HILL, a Florida municipal corporation

__________________________

BY:

Chris Via
Mayor

DATE: ______________________

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ATTEST: 

CITY OF LAKE HELEN, a Florida municipal corporation

______________________________

BY: ____________________________

Cameron Lane
Mayor

DATE: ____________________________
ATTEST:

CITY OF NEW SMYRNA BEACH, a Florida municipal corporation

______________________________
BY:

Russ Owen
Mayor

DATE: __________________________
ATTEST: 

CITY OF OAK HILL, a Florida municipal corporation

______________________________

BY: ____________________________

Douglas A. Gibson
Mayor

DATE: __________________________
ATTEST:

CITY OF ORANGE CITY, a Florida municipal corporation

________________________

BY:

Gary Blair
Mayor

DATE: ____________________
ATTEST:

CITY OF ORMOND BEACH, a Florida municipal corporation

__________________________________________
BY: _____________________________________

Bill Partington
Mayor

DATE: ____________________________
ATTEST: TOWN OF PIERSON, a Florida municipal corporation

__________________________    ________________________

BY: _________________________

Samuel G.S. Bennet
Mayor

DATE: ________________________
ATTEST: 

TOWN OF PONCE INLET, a Florida municipal corporation

______________________________

BY: __________________________

Gary Smith
Mayor

DATE: _________________________
ATTEST:

CITY OF PORT ORANGE, a Florida municipal corporation

BY: __________________________

Donald O. Burnette
Mayor

DATE: __________________________
ATTEST:

CITY OF SOUTH DAYTONA, a Florida municipal corporation

______________________________

BY: __________________________

William C. Hall
Mayor

DATE: _________________________