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10 **VERANDA BAY**
11 **AMENDED AND RESTATED**
12 **MASTER PLANNED DEVELOPMENT AGREEMENT**
13

14 **THIS AMENDED AND RESTATED MASTER PLANNED DEVELOPMENT**
15 **AGREEMENT**, (this "Development Agreement") is made and executed this ____ day of
16 _____, 2024 by and between the CITY OF FLAGLER BEACH, a Florida
17 municipal corporation (the "City"), with an address at 105 S. Second St., Flagler Beach,
18 Florida, 32136, and the master developer of the Subject Property, PALM COAST
19 INTRACOASTAL, LLC, a Florida limited liability company with an address at 3129
20 Springbank Lane, Suite 201, Charlotte, NC 28226 (The "Declarant").
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23 **RECITALS.**
24

25 A. In 2005, Flagler County adopted Ordinance 2005 -22 recorded at O.R. Book 1429,
26 Page 19, Public Records of Flagler County, Florida which rezoned and approved the
27 negotiated PUD Development Agreement (the "2005 Development Agreement") for a
28 mixed-use development affecting approximately 1,999 acres of land.

29 B. As negotiated in the 2005 Development Agreement, the owner conveyed
30 approximately 1,100 acres of land designated as environmental lands to Flagler County
31 for the purpose of public services, preservation, conservation, and public recreation for

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1 the benefit of citizens of Flagler County. In addition, the owner conveyed to the County
2 two parcels of land for a public boat ramp and for public safety. These lands conveyed
3 to the County are collectively called the “Public Land”.

4 C. As negotiated in the 2005 Development Agreement, the remaining +/- 899 acres of
5 land (the “PUD Property”) is permitted to be developed as a mixed-use development
6 and was annexed into the City of Flagler Beach, Flagler County, Florida, on the
7 Effective Date of this Agreement (**Exhibit “A”**).

8 D. The Declarant also owns two parcels of a land, totaling +/- 54.8 acres, which are
9 located directly adjacent to the PUD Property (**Exhibit “A”**) within the City (the
10 “Declarant Parcel”) and which have a land use designation of residential uses.

11 E. The Declarant desires to amend the presently approved development plan for the
12 PUD Property and the Declarant Property (collectively, the “Subject Property; **Exhibit**
13 **“A”**) by creating a single integrated mixed-use community providing for a marina and
14 other amenities.

15 F. Subsequent to the effective date of the 2005 Development Agreement, the
16 Declarant properly developed and conveyed a portion of the PUD Property (the
17 “Approved Properties”; **Exhibit “B”**) to third parties for uses including but not limited
18 to single-family residential lots.

19 G. The Declarant has the sole authority to amend the terms and conditions of the 2005
20 Development Agreement as permitted by law.

21 H. The City’s Comprehensive Plan shows the Subject Property, *infra*, designated as
22 Residential and Commercial on its Future Land Use Map.

1 I. Based upon the finding of facts and conclusions of law, the City Commission
2 determines that this Development Agreement is consistent with the City's
3 Comprehensive Plan, the City's Land Development Regulations (2024) (the "LDR"),
4 and that the conditions, terms, restrictions, and requirements set forth herein are
5 necessary for the protection of the public health, safety, and welfare of the citizens of
6 the City.

7 J. The City Commission further finds that this Development Agreement is consistent
8 with an exercise of the City's powers under the *Municipal Home Rule Powers Act*,
9 Article VIII, Section 2(b) of the *Constitution of the State of Florida*, Chapter 166,
10 *Florida Statutes*, the *City Charter*, other controlling laws, and the City's police powers.

11 K. This is a non-statutory Development Agreement which is not subject to or enacted
12 pursuant to the provisions of Sections 163.3220 -163.3243, *Florida Statutes*.

13 L. The Parties, therefore, desire to amend and restate the 2005 Development
14 Agreement affecting the Subject Property.

15 **NOW, THEREFORE**, it is hereby resolved and agreed by and between the City and the
16 Declarant that the Declarant's rezoning application for a Master Planned Development is
17 approved subject to the Development Agreement's following terms and conditions:

18 **SECTION 1. RECITALS.**

19 The above recitals are taken as true, incorporated herein by this reference and form a
20 material part of this Development Agreement upon which the City and the Declarant have
21 relied.

1 **SECTION 2. REPRESENTATIONS OF DECLARANT.**

2
3 The Declarant hereby represents and warrants to the City that the Declarant is an owner
4 or authorized agent of the Subject Property in accordance with the title opinion or title
5 certification provided by the Declarant to the City issued by an attorney or title insurance
6 company licensed to provide services in the State of Florida, with said title opinion or
7 certification showing all liens, mortgages, and other encumbrances not satisfied or released of
8 record relative to the Subject Property.

9 **SECTION 3. THE PROJECT & MPD MASTER PLAN.**

10
11 (a) The Declarant shall continue to develop the Subject Property as a mixed-use
12 development generally consistent with the MPD Master Plan (**Exhibit "C"**) hereinafter
13 referred to as the "Project".

14 (b) This Project is a mixed-use, low-density development focused on providing
15 significant Open Space, including preserved lands. The Project provides for low density
16 residential development, commercial development along State Road 100 ("SR100") and a
17 marina village. The residential uses shall include multiple types of housing opportunities such
18 as low density residential development, medium density multi-family uses, and high density
19 multi-family uses; none exceeding thirty five feet (35') in height. Property designated as
20 Commercial, generally located adjacent to SR100, is intended to provide shopping, office and
21 other commerce and economic development opportunities for the Project's residents and the
22 general public. However, this area may also be developed into a mixed-use center where
23 residential uses are integrated with the general commercial uses to further the concept of
24 "work, shop and play". The commercial area identified adjacent to the Intracoastal Waterway
25 ("ICW") is intended to be developed into a commercial or private marina which may include

1 a ship store, restaurants, retail uses or other commercial uses integrated with medium density
2 to high density residential uses. The Project will preserve a minimum of forty percent (40%)
3 of the Project (+/- 300 acres) as Open Space, which includes, but is not limited to, preserved
4 lands subject to passive recreation, buffers and wetlands. Recognizing that approximately
5 1,100 acres of land were previously dedicated to the County for (i) preservation, (ii) access to
6 the ICW, and (iii) public safety, the Parties agree that the Project benefits the entire Flagler
7 County community, including the residents of the City of Flagler Beach. The Project's density
8 and intensity are provided below.

Project	899 ac.
Residential units (max.)	2735 units (3.2 units/ac)
Commercial density	480,000 sq ft
Open Space (40%)	>300 ac.

10
11 (c) The MPD Master Plan is conceptual in nature and subject to change as
12 permitted by this Development Agreement. The locations of improvements are graphical in
13 nature and will be located as the Project is designed, permitted and approved by the City. For
14 example, the location of sidewalks, stormwater ponds, and other improvements noted on the
15 MPD Master Plan are not required to be constructed in the exact locations as shown. The
16 Parties agree that all such improvements will be engineered and located on each tract, or
17 portion thereof, as developed and subsequently approved by the City.

1 **SECTION 4. APPROVAL OF MPD DEVELOPMENT AGREEMENT, MPD MASTER PLAN**
2 **APPROVAL, AND DEVELOPMENT REVIEW PROCESS.**

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4 (a) The City Commission, at its regular meeting on _____, 2024 and
5 pursuant to Ordinance 2024-___, adopted this Development Agreement affecting the Subject
6 Property.

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7 (b) The MPD Master Plan generally depicts the layout of the Project and delineates
8 the approximate property boundaries, Spine Road (as defined below), Project entrances,
9 general location of Tracts and intended uses, all of which may be further refined in the future
10 at the discretion of the Declarant. Moreover, the MPD Master Plan satisfies the requirements
11 of the City's Comprehensive Plan, the LDR and other City regulations, including but not
12 limited to City Ordinance 2024-06.

13 (c) The MPD Master Plan contains a level of detail satisfactory to permit the
14 Project or portions of it to proceed directly to Preliminary Plat and/or Site Plan approval of any
15 portion of the Subject Property [which shall be approved by the City](#).

16 (d) This Development Agreement (i) does not affect the entitlements, rights or
17 responsibilities of any owner of the Approved Properties and (ii) affirms any and all vested
18 rights of the Approved Properties as provided in the 2005 Development Agreement and the
19 Approvals as defined by City of Flagler Beach Ordinance 2024-__ (the "Pre-Annexation
20 Agreement").

21 (e) The development of the Project has commenced, satisfies all timing or phasing
22 requirements by the City's Comprehensive Plan and LDR, and is therefore deemed to be
23 ongoing. Absent written notice from the Declarant to the City abandoning the Project or

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1 terminating this Agreement, this Agreement shall not expire or lapse.

2
3 (f) The Parties agree and acknowledge that, in the event, the Declarant obtains title
4 to any portion of the Public Lands previously dedicated to the County, the Parties shall in good
5 faith annex such into the City, amend its land use designation and rezone the property in a
6 manner that is consistent with adjacent lands owned by the Declarant or its assigns.

7 **SECTION 5. MODIFICATIONS TO THE DEVELOPMENT AGREEMENT & MPD**

8 **MASTER PLAN.**

9 Modifications to the exact location of Tracts, roadways, primary sidewalk/pathway
10 systems, and other improvements generally depicted on the MPD Master Plan are anticipated
11 to change (“Minor Modifications”) and shall be approved by the City Manager or its designee
12 (the “Land Use Administrator” or “LUA”) during review of construction documents, site plans,
13 or Preliminary Plat for the Project or portions thereof, as long as the development standards
14 contained in this Development Agreement are maintained. Moreover, the Land Use
15 Administrator shall approve a Minor Modification in writing, without City Commission
16 approval, for modifications to the Development Agreement, MPD Master Plan and any
17 construction documents and Preliminary Plat for the Subject Property, provided that: (1) the
18 maximum building height and maximum number of residential units permitted are not
19 exceeded; (2) the Project setbacks from adjacent properties, [Bulow Creek](#) or buffers along John
20 Anderson Highway are not modified; or (3) the approved plans maintain the general
21 development standards in this Development Agreement. The Declarant may challenge the
22 LUA’s denial of a Minor Modification and, in writing, request a hearing before the City
23 Commission which will, in good faith, decide whether the change is deemed a Minor
24 Modification. Only proposed changes that affect criteria (1) thru (3) above shall require City

1 Commission approval or be deemed to require a rezoning, as provided by *Florida Statutes*,
 2 Chapter 163, or the City’s regulations. Otherwise, a Minor Modification or other change shall
 3 be deemed to be de minimis and shall be approved by the LUA as provided above.

4 **SECTION 6. PERMITTED USES.**

5 The Declarant agrees to fully comply with the following uses and restrictions on the
 6 Subject Property. The Declarant must develop the Project generally consistent with the MPD
 7 Master Plan with the following approved uses on each Tract (**Exhibit “D”**), as provided by the
 8 table below. The design standards for the permitted use on each Tract shall comply with design
 9 standards provided in Section 12.1, Lot Dimensional Standards, below:

<u>TRACT</u>	<u>ZONING DISTRICT</u>	<u>APPROVED USES</u>
A	Residential	SFR, Town House and Conservation
B	Residential	SFR, Town House, Multi-family
C	Residential	SFR, Town House, Multi-family
D	Residential	SFR, Town House, Multi-family
E	Commercial	Mixed-Use, Commercial, Town House, Multi-family, Marina
F	Residential	SFR, Town House, Multi-family
G	Residential	SFR, Town House, Multi-family
H	Residential	SFR, Town House, Multi-family
I	Commercial	Mixed-Use, Commercial, Town House, Multi-family
J1 & J2	Commercial	Mixed-Use, Commercial, Town House, Multi-family
K	Residential	SFR, Town House, Multi-family
L	Residential	SFR
M	Residential	SFR

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 12 (a) **SFR:** The purpose of the Single-Family Residential (SFR) uses is to provide
 13 areas for detached single-family dwellings and accessory use, including ancillary dwelling
 14 units permitted by State statutes and the Declarant. SFR uses adjacent to the ICW or Bulow
 15 Creek shall be permitted to construct docks in any configuration designated by the Declarant,

1 subject only to State and Federal permitting requirements.

2 (b) Town House: This use permits two or more attached or shared wall single-
3 family units. Town House may include fee simple or condominium ownership models. Town
4 House units may be constructed with one car garages, so long as minimum parking standards
5 are met. In addition, duplex homes under single ownership are permitted.

6 (c) Multi-family: The purpose of the multi-family use is to provide areas for
7 attached housing, and medium-density to high-density apartments or condominiums. These
8 uses also allow for assisted living or nursing homes.

9 (d) Commercial: This use is to provide areas for general commercial and office
10 uses to meet the community-wide demand for retail, services, business, and employment
11 opportunities. Specific uses are provided by the City Ordinance 2024-06 with additional
12 permitted uses being amphitheaters, farmers markets, mooring docks and marina facilities.
13 Commercial uses may also include residential uses to establish mixed-use neighborhood nodes
14 consistent with Section 16, below.

15 (e) Mixed-Use: This use supports economic development by providing a specific,
16 defined location where multiple opportunities for working, shopping, entertainment, lodging,
17 and living are provided. Recognizing that Tracts may include both commercial and residential
18 uses, the mixed-use allows for designs to integrate commercial and residential (attached or
19 detached) uses to achieve this goal. For example, mixed-use allows for buildings to provide
20 commercial uses on the first floor with residential above.

21 (f) Conservation: This use allows areas within the Project to generally remain in
22 their natural vegetative state upon which development may proceed with restrictions. The
23 use permitted to be developed in Conservation areas are restricted to: 1) open space parks,

1 2) recreation areas, 3) public facilities/utilities, and 4) uninhabitable structures. The
2 Conservation use designation shall be permitted on any Tract despite not being designated
3 in the table above.

4 **SECTION 7. VEHICULAR/NON-VEHICULAR AND PEDESTRIAN ACCESS, AND**
5
6 **INTERCONNECTIVITY.**

7
8 (a) The MPD Master Plan integrates pedestrian, bicycle, and vehicular traffic
9 circulation systems within the Project and within adjacent right-of-way(s). All uses shall have
10 access to a roadway or shared driveway(s) and may, but are not required to, front on a dedicated
11 road. The City, but not the general public, shall be granted access at all times to all private
12 roadways to ensure that public safety is maintained.

13 (b) During the subsequent design and development stage of the Project, the
14 Declarant shall coordinate with the Flagler County School District for a school bus stop
15 location.

16 (c) As depicted on the MPD Master Plan, the Spine Road (*defined below*) shall be
17 a public right-of-way. The MPD Master Plan depicts various Tracts intended for development
18 accessing the Spine Road, the final location of such is at the sole discretion of the Declarant.
19 The Spine Road shall be designed and constructed to also accommodate pedestrian traffic for
20 the benefit of the general public, and as generally depicted on **Exhibit “E”**.

21 (d) Vehicular and pedestrian access from the Project to Palm Drive shall be
22 expressly prohibited.

23 (e)

24 **SECTION 8. LAND DEVELOPMENT CODE PARTIAL NON-APPLICABILITY.**
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1 The development of the Project shall proceed in accordance with the terms of this
2 Development Agreement. In the event of a conflict between the terms of this Development
3 Agreement and the MPD Master Plan, the provisions of this Development Agreement shall
4 prevail. In the event of an inconsistency or conflict between the terms of this Development
5 Agreement and the LDR, the terms and provisions of this Development Agreement shall prevail.
6 Where specific requirements are not contained in this Development Agreement, the LDR shall
7 apply to the extent that it does not conflict with the provisions of this Development Agreement
8 or the general intent of the MPD Master Plan. Moreover, the Parties agree that the City's LDR
9 (2024) shall be applied and any subsequent changes to such shall have no effect unless the
10 Declarant elects, at its sole discretion, to comply with such change to the LDR.

11 **SECTION 9. FACILITY COMMITMENTS.**

12 (a) Unless provided elsewhere in this Development Agreement or other agreement,
13 the Declarant agrees that the City is not responsible for the construction or creation of public
14 facilities or capacity to facilitate the development of the Subject Property. As a material
15 inducement for entering into this Agreement, the City represents and warrants that it presently
16 has and shall maintain potable water and wastewater capacity for the Project, each of which is
17 estimated to be 850,000 gallons per day, and the failure to provide such shall be deemed a
18 breach of this Agreement subject to damages. Therefore, the City shall reserve sufficient
19 potable, wastewater, and reuse water capacity for the Project, and if such reservation cannot
20 be immediately satisfied by the City when requested by the Declarant, the Parties agree that
21 the Declarant may, at its sole discretion and without objection from the City, construct private
22 services or obtain such services from other providers including adjacent municipalities.

23 (b) **Private & Public Improvements:** The Declarant agrees to construct the
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1 following on-site improvements at the Declarant’s sole and exclusive expense as a condition
2 of this Development Agreement, and in addition to the payment of all impact fees relating to
3 the development of the Subject Property, unless otherwise provided for herein:
4

5 i. Private Improvements: The parking areas; utilities; master stormwater
6 system; sidewalks; lighting; recreational facilities, and perimeter buffer landscaping.

7 ii. The Declarant agrees that the City has shown an essential nexus between
8 a legitimate City interest and the conditions, if any, imposed herein. The Declarant further agrees
9 that all proposed conditions are roughly proportional to the impact the development will have
10 upon the public, based upon an individualized determination by the City that the required
11 conditions are related in both nature and extent to the impacts of the proposed Project.

12 iii. Nothing herein shall be deemed a prohibited exaction under *Florida*
13 *Statutes*, Section 70.45, and Declarant agrees it has not suffered any damages under that statute.

14 (c) Sidewalks and Pedestrian Paths: The Declarant shall provide an internal
15 integrated system of sidewalks to ensure that pedestrians maintain access to all uses. The
16 Declarant shall require homeowners to construct community sidewalks a minimum of five (5)
17 feet wide on at least one side of the internal roadway system, as may be determined by the
18 Declarant. In addition, the Declarant may provide stabilized pedestrian trails in other areas of
19 the Project, as permitted by governmental permits for the purpose of providing recreational
20 opportunities, connectivity and open space. Moreover, the Declarant shall construct an eight
21 foot (8’) multi-use trail along the Spine Road connecting SR100 to John Anderson Highway
22 as generally depicted on the MPD Master Plan and **Exhibit “E”**.

23 (d) Access: Ingress and egress to the Project shall be provided, constructed, and
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1 dedicated to the City as a public roadway between SR100 and John Anderson Highway, as
2 generally depicted on the MPD Master Plan (the “Spine Road”). Prior to dedication, at the
3 Declarant’s sole discretion, Declarant (or its assigns) may reserve an easement over the Spine
4 Road for purposes of signage, enhanced landscape maintenance, Tract access and construction.
5 Moreover, the development of Tracts may be gated from the Spine Road and other public rights
6 of way. The cost of design and construction of the Spine Road shall be eligible for transportation
7 impact fee credits on a dollar-for-dollar basis.

8 (i) Spine Road Construction. If after the 600th home is
9 completed within the residential areas of Veranda Bay, the construction of the Spine Road
10 connection from State Road 100 to John Anderson Highway has not commenced, no further
11 building permits will be issued for new home construction until the Spine Road construction is
12 complete. –

13 permitting, constructing, and maintaining the means of conveyance of stormwater runoff within
14 the Project including, but not limited to, all stormwater lines, ditches, culverts, and other stormwater
15 facilities that are necessary to convey and treat stormwater runoff (the “Stormwater System”), as
16 generally depicted on **Exhibit “F”**. This is graphical in nature, subject to change and intended to
17 only provide a conceptual model subject to final permitting including but not limited to the City’s
18 preliminary plat approvals.

19 (f) Parks And Recreation: Given (i) the prior conveyance of the Public Lands,
20 including the public boating facility land to Flagler County, and (ii) the active and passive recreational
21 obligations found herein, the Project satisfies the City’s Comprehensive Plan and the City’s
22 recreational level of service. Notwithstanding, the Declarant shall provide one or more active
23 recreational facilities west of John Anderson Highway for the benefit of the Project’s residents.

1 Declarant will cooperate with Flagler County to provide public park access to Bulow Creek in the
2 southwest portion of the Project through the parcel currently owned by the County or an equivalent
3 property.

4 (g) Community Development Districts: The City agrees and acknowledges that
5 the Annexed Property is subject to the Gardens at Hammock Beach Community Development
6 District, Flagler County, Florida (“District”), Chapter 190, *Florida Statutes*, which was
7 initially established by Flagler County. The City agrees that it shall accept and acknowledge
8 the powers granted to the District pursuant to State law. The City agrees to execute all
9 documents that may be necessary or take any action necessary to transfer the local government
10 jurisdiction to the City, to the extent such may be necessary. In addition, the City agrees and
11 acknowledges that it will, in good faith, assist the Declarant, at Declarant’s sole discretion, to
12 amend the District’s existing boundaries. The City shall, at the request of the Declarant, assist
13 the Declarant to establish an additional community development district governing that portion
14 of the Annexed Property west of John Anderson Highway, which shall be permitted to finance,
15 fund, plan, establish, acquire, construct, enlarge or extend, equip, operate and maintain
16 projects, systems and facilities for the purposes described in Section 190.012, *Florida Statutes*,
17 including but not limited to, any transportation improvements that may be required by this
18 Development Agreement or other permit.

19 (h) Agriculture/Silviculture: The Subject Property has been and will continue to
20 be used for silviculture purposes. Silviculture activities may continue to occur on the Subject
21 Property until that portion of the Subject Property approved for development obtains all
22 necessary permits and construction commences. All silviculture activities shall continue to
23 comply with all Federal and State requirements. All silviculture activities shall comply with
24

1 the State of Florida Division of Forestry Best Management Practices. The Subject Property
2 shall therefore remain eligible for all agricultural exemptions as provided by law.

3 **SECTION 10. DEVELOPMENT STANDARDS.**

4 (a) Parking: Parking requirements for each Tract shall be consistent with the LDR, unless
5 provided for elsewhere in this MPD Agreement. The calculation of minimum parking space
6 requirements for the development of any Tract or subsequently platted lot may include excess parking
7 spaces from another Tract or lot, so long as the aggregate number of parking spaces required for both
8 is satisfied. Additionally, the Declarant may have shared parking facilities serving more than one use
9 or Tract, only if the Declarant provides analysis from a traffic engineer that the different uses or mixed-
10 uses will have different peak hour parking demands and sufficient parking will be provided as required
11 by the LDR. The calculation of minimum parking space requirements for the development of any
12 Tract may be determined by the Declarant, subject to the recommendation of a duly licensed traffic
13 engineer. Multi-family developments shall require 1.75 parking spaces/unit or more, as determined by
14 the Declarant.

15 (b) Open Space: Minimum open space shall be forty percent (40%) of the Project in its
16 entirety. Tracts may be developed with less open space, so long as the aforementioned requirement
17 for the Project is maintained. Open space is defined by Ordinance 2024-06 and the flexibility defined
18 therein shall be approved by the Land Use Administrator. Open space shall be maintained by either
19 the Community Development District, a property owners association, a mutually agreeable
20 conservation easement, or other method satisfactory to the Declarant. Based on the obligations of this
21 Development Agreement and the prior conveyance of the Public Lands, the City's open space
22 requirements provided in its Comprehensive Plan, LDR and other regulations is satisfied.

23 (c) Water/Wastewater/Reuse: The Declarant shall convey all on site water, waste
24 water and reuse improvements being served by the City to the City, pursuant to the City's
25 Ordinance No. 2024

1 standard utility agreement. The City shall not charge fees to a community development district
2 or a property owners association for the use of City reuse water for common areas.

3 (d) Transportation: The Parties accept the traffic study performed by Chindalur
4 Traffic Solutions, Inc. (the “Transportation Study”), including its conclusions which are
5 incorporated herein by reference. Notwithstanding, the Declarant shall be obligated to comply
6 with Florida Department of Transportation requirements for its impacts to SR100. As for
7 impacts to John Anderson Highway, the Declarant shall construct improvements as provided
8 in the Transportation Study and as depicted on the MPD Master Plan (“Traffic Improvements”)
9 at such time as deemed necessary in the Transportation Study. The Declarant shall be obligated
10 for all the cost of design, permitting and construction of all required Traffic Improvements
11 identified in the Transportation Study. The Project shall be deemed vested and no additional
12 off site transportation improvements shall be required to be constructed by the Declarant.

13 (e) Drainage: The Declarant shall construct and maintain a stormwater
14 management system that provides treatment and attenuation as required by St. Johns River
15 Water Management District (SJRWMD) and the LDR. Stormwater piping, swales and ditches
16 shall be designed to convey a five (5) year, twenty-four (24) hour storm event. Stormwater
17 detention facilities shall be designed to meet the water quality and attenuation requirements of
18 SJRWMD. Any impact to a flood zone shall be solely regulated by SRJRMD, FEMA or other
19 applicable State and Federal agencies. Permits issued by these agencies shall be determinative
20 that the proposed impact satisfies any and all City regulations, codes and ordinances, including
21 but not limited to the City’s Comprehensive Plan. As provided in the Pre-Annexation
22 Agreement and upon request, the City shall timely cooperate with Declarant to obtain a
23 CLOMR(s) or LOMAR(s) as issued by FEMA.
24

1 (f) Landscaping, Tree and Vegetation Protection: Landscaping

2 requirements adjacent to SR100 and John Anderson Highway shall be subject to this
3 Development Agreement and the LDR. All other landscaping design and requirements shall
4 comply with those standards provided in Exhibit "I" which may be amended from time to time.
5 ~~be at the sole discretion of the Declarant.~~ No potable water shall be used for irrigation after
6 sufficient stormwater or reclaimed water source becomes available in adequate quantities.
7

8 Efforts to preserve and enhance the Project's design will be achieved, by the Declarant,
9 through adjustments of building, parking, roadway and stormwater locations and through
10 supplemental landscaping that will blend with the natural look yet carefully accentuate the
11 residential areas, entrances, and other common spaces. General landscaping around parking
12 lots, roadways, entrances, residential and commercial buildings, and other common areas will
13 be landscaped with ornamental and native plant materials when possible. Within residential
14 common areas, fifty percent (50%) of the total planted vegetation, by aerial extent, shall consist
15 of native, drought-tolerant or waterwise vegetation. Native or drought-tolerant plants include
16 those in the SJRWMD's Waterwise Florida Landscapes, the Florida Native Plant Society's list
17 of native landscape plants for Flagler County, A Gardener's Guide to Florida's Native Plants
18 (Osorio 2001), or comparable guidelines prepared by the Florida Department of Agriculture
19 and Consumer Services, SJRWMD, Florida Fish and Wildlife Conservation Commission or
20 Florida Department of Environmental Protection. All ornamental landscape beds and lawn
21 areas will have supplemental irrigation. Flexibility of the MPD Master Plan shall allow for
22 further refinement of site development, and landscaping.

23 The Declarant shall require (i) three (3) ~~two (2)~~ shade trees for each single-family
24 detached lot and (ii) a shade tree every eighty (80) feet along each side of the Spine Road. Tree

1 and vegetation protection, removal, conservation, and mitigation requirements shall be
2 governed by this Development Agreement. In consideration of (i) the approximately 1,100
3 acres previously conveyed to the County, (ii) the forty percent (40%) minimum open space
4 required for the Project as provided in Section 10(b) above, (iii) the Declarant's significant
5 commitment herein to extensive landscaping along the Spine Road, (iv) the Declarant's
6 commitment herein to require ~~three (3)-2~~ shade trees for each single-family detached lot, (v)
7 the Declarant's commitment herein to incorporate drought-tolerant vegetation and (vi) the
8 Declarant's commitment to a significant investment in a reuse water distribution system, the
9 removal of trees and vegetation shall be allowed to the extent the removal of such is necessary
10 as solely determined by the Declarant, to provide infrastructure, stormwater, utilities,
11 recreational opportunities, or
12 finished lots. Mitigation for tree and vegetation removal shall not be required.

13
14 The Declarant, at its option, may erect fences or walls up to eight (8) feet high along
15 all parts of the perimeter of the Subject Property ~~except~~except for areas in a conservation
16 easement. In addition, a Community Development District or Property Owners Association or
17 Home Owners Association shall be permitted to use temporary wells for the Project's irrigation
18 until sufficient reuse is available subject only to permits issued by the state or federal agencies.
19 Notwithstanding the foregoing, private wells shall be prohibited on individual single-family
20 lots.

21 ~~(i) John Anderson Buffer. The Developer will voluntarily~~shall provide a 25-
22 foot minimum and 50-foot average buffer along the limits of the Project boundary that
23 coincides with the John Anderson Highway right of way.

24 (g) Lighting: All lighting, including but not limited to all pole mounted lighting,

1 shall be designed to minimize light pollution to off-site properties and to comply with the LDR,
2
3 unless otherwise agreed to by the LUA. In addition, development within one hundred feet
4 (100') from Bulow Creek shall be encouraged to use low level lighting shielded from view to
5 minimize its impact to the natural environment.

6 (h) Fire Protection: The Declarant previously donated to Flagler County a three (3) acre
7 parcel of land for a fire station to serve the Project and the residents along John Anderson Highway.
8 Fire protection requirements for the Project will be met through a system of fire hydrants installed on
9 the Project by the Declarant in accordance with City standards. The locations of fire hydrants shall be
10 shown on all construction documents, technical site plans, or preliminary plats. The Project shall
11 comply with the City's fire protection requirements. The City will provide fire protection services to
12 the Project in accordance with established local response agreements.

13 (i) Utilities: The Declarant shall not be responsible for any costs associated with the
14 extension of City utilities to the Subject Property that may be required to serve this Project.
15 Notwithstanding, all City utilities, including water and sewer, constructed in or adjacent to the Spine
16 Road shall be eligible to receive connection fee credits on a dollar-for-dollar basis.

17 (j) Interconnectivity and Access: All units within the Project shall be
18 interconnected by roadways and sidewalks, as called for by the City's Comprehensive Plan. The
19 Project shall provide and maintain the minimum number of access drives onto John Anderson
20 Highway, as generally depicted on the MPD Master Plan.

21 (k) Wetlands: Wetland permitting, including their impacts and/or mitigation, for the
22 Project may occur and shall only be subject to Federal and States permits which the City shall accept.
23 The City agrees that any approval, impact or effect to wetlands, wetland buffers, and wetland setbacks
24 provided by said permits shall be accepted by the City and deemed consistent with the City's

1 Comprehensive Plan. The Project shall therefore be exempt from Section 4 of the LDR.

2 (i) Bulow Creek Buffer. The Developer will voluntarily provide a 25-foot
3 minimum and 75-foot average buffer along the limits of the Project boundary that coincides with
4 Bulow Creek. Notwithstanding the foregoing, the minimum setback shall be 75-feet in those areas as
5 generally depicted in Exhibit “G”.

6 (4)(1) Signage: Signs shall comply with the LDR, unless otherwise provided herein. The
7 design and intent of signage is to ensure adequate means of communication through signage while
8 maintaining the attractive visual appearance within the Project. Signage shall meet the following
9 requirements:

10 (i) Gateway Signage and Entrance Features. Signage located at the
11 primary entrances to the Project (SR100 and John Anderson Highway) shall have a maximum
12 height of twenty (20) feet with a maximum signage area of one hundred sixty (160)
13 square feet. A maximum of two (2) gateway signs shall be permitted for any primary
14 entrance. An entrance feature may be designed in conjunction with the entrance signage
15 or it may occur separately. Any entrance feature shall have a maximum height of twenty
16 (20) feet.

17 (ii) Thoroughfare Neighborhood Entrance Signs. Signage located along any
18 internal road or at any neighborhood entrance shall have a maximum height of twelve (12) feet and a
19 maximum signage area of one hundred (100) square feet. Any entrance features shall have a maximum
20 height of twenty (20) feet.

21 (iii) Commercial Signage. Ground signs shall be permitted for the
22 commercial area of the Project with a maximum signage area per sign of three hundred twenty (320)
23 square feet and a maximum height of thirty (30) feet. Additional commercial signage and wall signage
24

1 shall be permitted, including signage at the Marina and Intracoastal Waterway.

2 (iv) Signage Area. Signage area shall be calculated using the actual text and, if
3 applicable, logo graphics area only. Walls or architectural effects shall not count toward the signage
4 area square feet restriction, but shall meet the height restrictions set forth above.

5 (v) Entrance Features. Walls, architectural icons, water features, landforms,
6 landscaping, or other effects which announce and signify arrival are permitted for the signage on the
7 Subject Property. Where a sign is incorporated in an entrance feature, the sign height shall be measured
8 from the bottom to the top of the sign copy area.

9 (vi) Ground signage provided for in this section shall be permitted be constructed
10 in the public right of way.

11 ~~(m)~~ Temporary Facilities/Model Homes: Temporary support facilities shall be
12 permitted for a period of ten (10) years, at which time sales offices, model homes, development
13 trailers and real estate offices shall be transitioned into a permanent use within the Project. This
14 time period may be extended for successive periods of three (3) years by the LUA. Temporary
15 support facility approval and extension shall be processed by the LUA. The initial application
16 for temporary support facilities will be reviewed and approved by City Staff. Following City
17 Staff approval, a building permit application will be submitted to the City Building Department
18 for review and approval. Residential units may be used as model homes and sales centers
19 (collectively, "Model Homes"). Up to five Model Homes can be constructed, occupied, and
20 operated as sales centers for each Tract of the Project. Sales and leasing activities shall be limited
21 to properties located within the Project. Construction and Certificates of Occupancies shall be
22 issued consistent with the City and State rules, regulations, and codes for residential structures.
23 Model homes shall not be deemed commercial activities. The City shall permit the construction

1 of Model Homes during the development of a Tract so long as a stabilized subbase of an
2 adjacent roadway is available.

3 ~~(m)~~(n) Rental Program: Developer reserves the right to place all or any portion of the
4 Project's ~~residential units~~units located in zoned Commercial on the MPD Master Plan, in long
5 term, short term, resort residential, or resort condominium rental programs operated by
6 Declarant, its affiliates or any third-party rental program operators approved by the Declarant.
7

8 Otherwise, short term vacation rentals shall be prohibited.

9 ~~(m)~~(o) Marina: The Marina located on Tract E, shall only be governed by permits issued
10 by State and Federal agencies. The City agrees that said permits shall be deemed to be consistent with
11 the City's Comprehensive Plan, the LDR and other City ordinances. The development of the Marina
12 shall: (i) participate in the FDEP Clean Marina program, and (ii) remain exempt from Chapter 22, Art
13 IV of the City Code of Ordinances. The Marina may, at Declarant's sole discretion, include wet and
14 dry slips, transient or permanent slips, fueling facilities, a boat ramp and any uses permitted as a
15 commercial use. Subject to the above, the design, permitting and construction of the Marina shall be
16 exempt from any City code or regulation, except its fire and building codes. For purposes of this
17 Agreement dry slips shall be spaces not in or above the water used to park or store marine vessels.

18 ~~(m)~~(p) Age Restrictions: Nothing in the Development Agreement shall prohibit any age
19 restriction requirements or use permitted by Federal or State law.

20
21 ~~(p)~~(q) Accessory Uses: Typical residential accessory uses will be allowed, including but not
22 limited to: decks, swimming pools, patios, air conditioning units, walkways and sidewalks. Accessory
23 uses and structures will be allowed in accordance with this Development Agreement, provided such
24 uses and structures are of a nature customarily incidental and clearly subordinate to the permitted or

1 principal use of a structure. Accessory uses or structures contained within or attached to the building
2 containing the principal use shall be considered a part of the principal building and not an accessory
3 building and shall meet the same requirements for setbacks as the main use structure. However, pools,
4 covered pools, patios, outdoor fireplaces, decks, and gazebos, either attached or detached from the
5 principal use structure, may be constructed up to a minimum of ~~three (3)~~ five (5) feet from the rear or
6 side property boundary. In no case shall the water's edge of a swimming pool be located closer than
7 five (5) feet from the side and rear property line. Air conditioning and heating units, pool mechanical
8 equipment, utility meters and other mechanical or utility service features may be located in any required
9 side or rear yard up to a minimum two (2) foot setback to the property line. No accessory structure,
10 excluding yard ornaments, shall be located within the required front yard.

11

12 **SECTION 11. PHASING OF DEVELOPMENT.**

13 (a) The Project may be developed in multiple phases. Prior to the issuance of any
14 permit for any phase of the Project (and prior to any construction of any improvement,
15 building, or structure on the Subject Property), the Declarant shall submit a Preliminary Plat
16 or Site Plan for the relevant phase. Each Tract of the Project will include infrastructure to
17 support the proposed uses, including water and wastewater service, drainage, private roads,
18 vehicular, and pedestrian access facilities. All infrastructure necessary to support each phase
19 that is constructed on the Subject Property shall be constructed concurrently with, or prior to
20 construction of that phase of the Project, as approved by the City, and prior to the issuance of
21 building permits for that phase. Adequate emergency vehicle access and turnarounds shall be
22 provided at all times.

23 (b) Roadways shall be constructed concurrently with development of adjacent lots

1 to ensure that contiguous roadways are available at all times prior to the issuance of any
 2 building permits for that phase. To avoid unnecessary construction and repair costs, internal
 3 sidewalks shall be constructed adjacent to each residential lot at the time the home is
 4 constructed and prior to the Certificate of Occupancy, and each home’s building permit shall
 5 be conditioned on this requirement. Model Homes shall be exempt from this standard until no
 6 longer being used as such at which time the owner shall construct the required sidewalk.

7 (c) The City may issue permits for clearing, grading and earthwork for portions of
 8 the Subject Property before approving final construction plans, however, all Federal and State
 9 permits relating to land clearing, grading and earthwork must be obtained.

10 (a) Lot Dimensional Standards: Dimensional standards for each use shall comply with
 11 the LDR except as follows:
 12

<u>Type</u>	<u>SF</u>	<u>Multi-family</u>	<u>Town House</u>	<u>Multi-family Marina</u>
Min. Distance Between Buildings***	10'	10'	10'	10'
Min. Bldg. Setback to Water	20'	20'	20'	10'
Max. Bldg. Height****	35'	35'	35'	35'
Min. Front Bldg. Setback to Property Line	15'	15'	10'	10'
Min. Bldg. Rear Yard Setback	10'	10'	10'	10'
<u>Type</u>	<u>SF</u>	<u>Multi-family</u>	<u>Town House</u>	<u>Multi-family Marina</u>
Minimum Front Setback from Right of Way	20'	N/A	20'	N/A
Minimum Bldg. Side Street or Rear Yard Setback	10'	10'	10'	10'

Min. Lot Size (SF)	4,000 sf	N/A	1,600 sf	N/A
Minimum Lot Width	40'	N/A	16'	N/A
Max. Impervious Surface Ratio**	80%	80%	80%**	80%**

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*Except as provided in Section 10, above.

**Maximum Floor Area and Impervious Surface Ratios shall be applicable to each Tract.

*** Shall be measured as the distance between walls of adjacent structures.

**** In the event the City increases its max building height limitations, the Declarant may elect to increase its maximum building height to such new limit. Notwithstanding, residential structures presently under construction or constructed may exceed this height limitation.

Commercial or Mixed-Use with Residential Above Commercial
Site Development Requirements

Min. Lot Width	80'***
Min. Lot Size	12,000 sf
Min. Bldg. Side Setback	0'
Min. Bldg. Street-Side Setback	10'
Min. Bldg. Front Setback	10'
Max. Bldg. Height****	35'
Min. Bldg. Rear Setback	10'
Minimum Bldg. Setback to MPD Property Line	20'
Maximum Floor Area Ratio*	100%
Max. Impervious Surface Ratio*	80%**

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* Maximum Floor Area and Impervious Surface Ratios shall be applicable to each Tract.

**Minimum open space shall be forty percent (40%) of the entire MPD gross area.

*** If Town Houses are developed within a Commercial District, the dimensional standards for Town Houses shall control.

**** In the event the City increases its max building height limitations, the Declarant may elect to increase its maximum building height to such new limit.

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3 (b) Mixed-Use Dimensional Standards: If a mixed-use is being developed for both
4 residential and commercial uses on the same Lot then the dimensional standards for the
5 dominant use shall be utilized (residential or commercial uses having the most building gross
6 floor area), unless commercial uses are on the first floor and the residential uses are on above
7 floor(s), then the standards in the above table shall be used. Any conflict in dimensional or
8 design standards for a mixed-use development may be resolved by the Land Use Administrator.

9
10 (c) Architecture: All architectural standards and requirements shall be determined,
11 approved and enforced by the Declarant. Notwithstanding, commercial architectural requirements
12 shall be governed by the City's LDR.
13

14
15 **SECTION 13. LIST OF OUTSTANDING PERMITS/APPROVALS AND PROPER**
16 **SEQUENCING.**

17
18 (a) The failure of the Development Agreement to address any specific State or
19 Federal permit, condition, term, or restriction shall not relieve the Declarant of the requirement
20 of complying with the law governing said permitting requirements, conditions, terms, or
21 restrictions.

22 ~~(b)~~—All required City, County, State, or Federal permits shall be obtained prior to
23 commencement of construction. This Development Agreement is not a Preliminary Plat approval, and
24 the Declarant remains responsible for complying with all provisions of the LDR, unless provided
25 elsewhere in this Development Agreement. The subdivision of the Subject Property to provide for any
26 Tract shall not require platting as required by Chapter 177, *Florida Statutes*, and therefore the
27 Declarant may convey a Tract by metes and bounds and without platting.

28 ~~(c)~~—Burning: ~~City of Tallahassee, Florida, Ordinance No. 2019-01, which is hereby incorporated by reference into this Ordinance.~~

29 **SECTION 14. DEVELOPMENT FEES.**

1 The Declarant acknowledges and agrees that the City has enacted citywide impact fees,
2 and may in the future increase the amount of those fees. The Declarant acknowledges that the
3 Project shall be subject to all fees in effect at the time of permitting. Notwithstanding the above,
4 the Declarant shall not be charged impact fees for the marina wet slips or dry slips.

5 **SECTION 15. COMMON AREAS AND MAINTENANCE.**

6 To ensure the long-term maintenance and control of common areas, the Declarant shall
7 dedicate such areas to (i) the existing community development district, (ii) a property owners
8 association or (iii) other entity accepted by the LUA (collectively the “Association”).

10 **SECTION 16. CONVERSION OF USES.**

11 The Declarant may increase or decrease the amount of a particular land use without modifying
12 or amending this Development Agreement or the MPD Master Plan, but only within the minimum and
13 maximum standards provided for on the Land Use Conversion Matrix attached as **Exhibit “H”**,
14 provided that (i) the changes are consistent with the Land Use Conversion Matrix and (ii) at the time
15 of election of a land use conversion under the Land Use Conversion Matrix, the Declarant shall notify
16 the City of the conversion in writing at least thirty (30) days in advance of the conversion. Any
17 modification to this Development Agreement shall incorporate all changes previously made pursuant
18 to the Land Use Conversion Matrix prior to the filing of such modification. Provided that the
19 conversion is (i) consistent with the criteria contained in the Land Use Conversion Matrix attached as
20 **Exhibit “H”**, and (ii) such converted uses are consistent with the uses allowed under by this
21 Development Agreement. Notwithstanding the foregoing, any change or deviation from the approved
22 land uses provided for herein shall be consistent with the City’s Comprehensive Plan, which may
23 require a small scale comprehensive plan amendment as more particularly described in Section
24 163.3187, Florida Statutes.
25

1 **SECTION 17. BREACH, ENFORCEMENT, ALTERNATIVE DISPUTE AND**
2
3 **CONFLICT RESOLUTION.**

4 (a) In the event of a breach of this Agreement by either Party, the other party hereto
5 shall have all rights and remedies allowed by law, including the right to specific performance
6 of the provisions hereof.

7 (b) In the event that a dispute arises between the Parties, the City and Declarant
8 shall attempt to resolve all disputes informally and if they cannot, the Parties agree to engage
9 in pre-suit mediation before a certified Circuit Court mediator selected by the Parties within
10 thirty (30) days of either party making a written request to the other. If the Parties fail to agree
11 to a mediator, a certified mediator will be selected solely by the City. The Parties shall equally
12 pay all costs of mediation.

13 **SECTION 18. NOTICES.**

14 (a) All notices required or permitted to be given under this Development
15 Agreement must be in writing and must be delivered to the City or the Declarant at its address
16 set forth below (or such other address as may be hereafter be designated in writing by such
17 party).

18 (b) Any such notice must be personally delivered, sent by certified mail, or
19 overnight courier

20 (c) Any such notice will be deemed effective when received (if sent by hand
21 delivery receipt required,) or on that date which is ten (10) days after such notice is deposited
22 in the United States mail (if sent by certified mail).

23 (d) The Parties' addresses for the delivery of all such notices are as follows:

24 As to the City: City Manager
25 Ordinance No. 2024

1 City of Flagler Beach
2 City Hall
3 105 S. 2nd Street
4 Flagler Beach, FL 32136
5

6
7 As to the Declarant: PALM COAST INTRACOASTAL, LLC,
8 Attn: Kenneth Belshe
9 3129 SPRINGBANK LN 201
10 CHARLOTTE, NC 28226
11

12 With copies to: Michael D. Chiumento III, Esq.
13 Chiumento Law, PLLC
14 145 City Place, Suite 301
15 Palm Coast, FL 32164
16

17 **SECTION 19. SEVERABILITY.**

18
19 The terms and provisions of this Development Agreement are not severable. However,
20 in the event any portion of this Development Agreement shall be found to be invalid or illegal,
21 then the remaining portions of the Development Agreement shall remain valid and binding on
22 the Parties.

23 **SECTION 20. SUCCESSORS AND ASSIGNS.**

24
25 This Development Agreement and the terms and conditions hereof shall be binding upon and
26 inure to the benefit of the City and Declarant and their respective successors-in-interest. The terms
27 and conditions of this Development Agreement similarly shall be binding upon the Subject Property
28 and shall run with the land and the title to the same.

29 (b) This Development Agreement touches and concerns the Subject Property.

30 (c) The Declarant has expressly covenanted and agreed to this provision and all other terms
31 and provisions of this Development Agreement.

32
33 **SECTION 21. GOVERNING LAW, VENUE AND COMPLIANCE WITH LAW.**

34 Ordinance No. 2024

1 (a) This Development Agreement shall be governed by and construed in
2 accordance with the laws of the State of Florida.

3 (b) Venue for any dispute shall be in the Seventh Judicial Circuit Court in and for
4 Flagler County, Florida, or the Middle District if in Federal court.

5 (c) The Declarant shall fully comply with all applicable State, and Federal
6 environmental regulations and all other laws of similar type or nature.

7 (d) If State or Federal laws are enacted after execution of this Development
8 Agreement which are applicable to and preclude the Parties' compliance with this
9 Development Agreement, this Development Agreement shall be modified as necessary to
10 comply with the relevant law.

11
12 **SECTION 22. TERM/EFFECTIVE DATE.**

13 (a) This Development Agreement shall be effective upon approval by the City
14 Commission and execution of this Development Agreement by all Parties (the "Effective
15 Date").
16

17 (b) This Development Agreement will expire 30 years from the Effective Date
18 unless renewed in writing by the Parties.

19 **SECTION 23. RECORDATION.**

20 Upon approval by the City Commission and execution of this Development Agreement
21 by all Parties, this Development Agreement and any and all amendments hereto shall be
22 recorded by the City with the Clerk of the Circuit Court of Flagler County within fourteen (14)
23 days after its execution by the City, and the Development Agreement shall run with the land.
24

1 The Declarant shall pay the costs to record this Development Agreement.

2 **SECTION 24. THIRD PARTY RIGHTS.**

3
4 This Development Agreement is not a third-party beneficiary contract, and shall not in
5 any way whatsoever create any rights on behalf of any third party.

6 **SECTION 25. SPECIFIC PERFORMANCE / TIME IS OF THE ESSENCE.**

7
8 (a) Strict compliance shall be required with each and every provision of this
9 Development Agreement. The Parties agree that each has the remedy of specific performance
10 of these obligations.

11 (b) Time is of the essence to this Development Agreement and every right or
12 responsibility required herein shall be performed within the times specified.

13
14 **SECTION 26. ATTORNEYS' FEES.**

15 In the event of any action to enforce the terms of this Development Agreement, the
16 prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and all
17 costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the
18 trial, or appellate level.

19
20 **SECTION 27. FORCE MAJEURE.**

21 The Parties agree that in the event that the failure by either party to accomplish any
22 action required hereunder within a specific time period ("Time Period") constitutes a default
23 under terms of this Development Agreement, and if any such failure is due to any unforeseeable
24 or unpredictable event or condition beyond the control of such party, including, but not limited
25 to: acts of God, acts of government authority (other than the City's own acts), acts of public
26

1 enemy or war, terrorism, riots, civil disturbances, power failure, shortages of labor or materials,
2 injunction or other court proceedings beyond the control of such party, or severe adverse
3 weather conditions (“Uncontrollable Event”); then notwithstanding any provision of this
4 Development Agreement to the contrary, that failure shall not constitute a default under this
5 Development Agreement and any Time Period prescribed hereunder shall be extended by the
6 amount of time that such party was unable to perform solely due to the Uncontrollable Event.

7 **SECTION 28. INDEMNIFICATION.**

8 The Declarant shall indemnify and save the City harmless from and against any and all
9 damages caused solely by the Declarant’s development of the Subject Property as provided in
10 this Development Agreement. This provision shall exclude any damages arising out of a third
11 party challenging this Development Agreement or any subsequent development order issued
12 by the City affecting the Subject Property as defined by State statute.

13 **SECTION 29. ENFORCEMENT: CITY’S RIGHT TO TERMINATE DEVELOPMENT**
14 **AGREEMENT.**

15
16 (a) This Development Agreement shall continue to be enforceable, unless lawfully
17 terminated, notwithstanding any subsequent changes in any applicable law.

18
19 (b) The failure by the Declarant to perform its material obligations hereunder shall
20 constitute a default, entitling the City to pursue whatever remedies are available to it under
21 Florida law or equity, including, without limitation, an action for specific performance and/or
22 injunctive relief, or alternatively, the termination of this Development Agreement. Prior to the
23 City filing any action or terminating this Development Agreement as a result of a default under
24 this Development Agreement, the City shall first provide the Declarant written notice of said

1 default. Upon receipt of said notice, the Declarant shall be provided a ninety (90) day period
2 in which to cure the default to the reasonable satisfaction of the City prior to the City filing an
3 action or terminating this Development Agreement. If ninety (90) days is not considered by
4 the Parties to be a reasonable period in which to cure the default, the cure period shall be
5 extended to such cure period acceptable to the City, but in no case shall that cure period exceed
6 one hundred and eighty (180) days from initial notification of default. Upon the judicial
7 termination of the Development Agreement, the Declarant shall immediately be divested of all
8 rights and privileges granted hereunder.

9 **SECTION 30. CAPTIONS.**

10 Sections and other captions contained in this Development Agreement are for reference
11 purposes only and are in no way intended to describe, interpret, define, or limit the scope,
12 extent or intent of this Development Agreement, or any provision hereof.
13

14 **SECTION 31. EXHIBITS.**

15 Each exhibit referred to and attached to this Development Agreement is an essential part of
16 this Development Agreement. The exhibits and any amendments or revisions thereto, even if not
17 physically attached hereto, shall be treated as if they are part of this Development Agreement

18 **SECTION 32. INTERPRETATION.**

19 (a) The Declarant and the City agree that all words, terms and conditions contained
20 herein are to be read in concert, each with the other, and that a provision contained under one
21 (1) heading may be considered to be equally applicable under another in the interpretation of
22 this Development Agreement.
23

24 (b) This Development Agreement shall not be construed more strictly against either
25 party on the basis of being the drafter thereof, and both Parties have contributed to the drafting

1 of this Development Agreement.

2 **SECTION 33. FURTHER ASSURANCES.**

3
4 Each party agrees to sign any other and further instruments and documents consistent
5 herewith as may be necessary and proper to give complete effect to the terms of this
6 Development Agreement.

7 **SECTION 34. COUNTERPARTS.**

8
9 This Development Agreement may be executed in any number of counterparts, each of
10 which shall be deemed an original, but all of which, taken together, shall constitute one (1) and
11 the same document.

12 **SECTION 35. MODIFICATIONS, AMENDMENTS AND NON-WAIVER.**

13
14 (a) Unless provided for in Section 5, above: (1) Amendments to and waivers of the
15 provisions herein shall be made by the Parties only in writing by formal amendment, and (2)
16 This Development Agreement shall not be modified or amended except by written agreement
17 executed by all Parties hereto and upon approval of the City.

18 (b) Failure of any party hereto to exercise any right hereunder shall not be deemed
19 a waiver of any such right and shall not affect the right of such party to exercise at some future
20 date any such right or any other right it may have.

21 **SECTION 36. ENTIRE AGREEMENT AND EFFECT ON PRIOR AGREEMENTS.**

22
23 This Development Agreement constitutes the entire agreement between the Parties and
24 supersedes all previous oral discussions, understandings, and agreements of any kind and
25 nature, as between the Parties relating to the subject matter of this Development Agreement.

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(SIGNATURES INTENTIONALITY TO NEXT PAGE)

Ordinance No. 2024

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|

IN WITNESS WHEREOF, the Parties have executed this Development Agreement on the dates set forth below.

CITY OF FLAGLER BEACH, FLORIDA

_____, Mayor

ATTEST:

_____, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____, Esq.

City Attorney

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2024, by _____, Mayor of the CITY OF FLAGLER BEACH, who is personally known to me.

Notary Public – State of Florida
Print Name: _____
My Commission expires:

WITNESSES:

“DECLARANT”
PALM COAST INTRACOASTAL, LLC

By: _____
William G. Allen, Jr., Manager

(print)

(print)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2024, by William G. Allen, Jr., Manager, of Palm Coast Intracoastal, LLC, a Florida limited liability company, (check one) who is personally known to me or who produced _____ as identification.

Notary Public – State of Florida
Print Name: _____
My Commission expires: