

ORDINANCE NO. 12-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEBARY, FLORIDA, AMENDING THE EXISTING SWALLOWS PUD (A/K/A GLEN ABBEY PLANNED UNIT DEVELOPMENT) AS AMENDED BY THE YMCA BUSINESS PLANNED UNIT DEVELOPMENT (BPUD) PURSUANT TO ORDINANCE 14-07, TO APPROVE A MAJOR AMENDMENT TO THE PUD AND ITS CORRESPONDING DEVELOPMENT AGREEMENT AND MASTER DEVELOPMENT PLAN CONCERNING APPROXIMATELY 17.77 ACRES OF LAND LOCATED ON THE EAST SIDE OF U.S. HIGHWAY 17-92 AT ITS INTERSECTION WITH N. PINE MEADOW DRIVE; PROVIDING FOR A NEW DEVELOPMENT AGREEMENT AND MASTER DEVELOPMENT PLAN GOVERNING THE 17.77 ACRE SUBJECT PROPERTY AND DESCRIBING THE DEVELOPMENT AS THE SHOPPES AT PINE MEADOWS; PROVIDING FOR RECORDING, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of DeBary, Florida adopted a Land Development Code as required by Chapter 163, Florida Statutes through Ordinance No. 01-99, as amended; and

WHEREAS, Volusia/Flagler Family Young Men's Christian Association, Inc., formerly West Volusia Family Young Men's Christian Association, Inc. ("Owner") is the owner of the subject property that is described in Exhibit "C" attached hereto ("subject property") and has joined in the application for rezoning from the existing BPUD (Business Planned Unit Development) adopted by Ordinance No. 14-07 and recorded in official records Book 6078, page 2146, Public Records of Volusia County, Florida, ("YMCA BPUD"); and

WHEREAS, DeBary Retail Investments, LLC, a South Carolina limited liability company ("Applicant") is the contract purchaser of the subject property and has received a limited power of attorney from the Owner to seek the approval set forth herein; and

WHEREAS, the Applicant complied with all application and Due Public Notice requirements of the City of DeBary Land Development Code; and

WHEREAS, the Applicant notified all property owners within 200 feet of the subject property by certified mail of the proposed change, posted the site, and paid for the required newspaper advertising as required by the City Land Development Code; and

WHEREAS, the Applicant and Owner agrees with the provisions of the Development Agreement attached to this ordinance as Exhibit "A"; and

WHEREAS, in accordance with the City's Land Development Code, Sections 1-6

and 1-10 City Council held a public hearing on this application after due public notice and read this ordinance at a public meeting on two occasions for this amendment to the existing BPUD zoning; and

WHEREAS, the subject property is a 17.7 +/- acres parcel of land, which is a portion of the larger (primarily residential) Swallows PUD which was approved by the County of Volusia in Volusia County Resolution No. 78-96 on or about September 18, 1972 recorded in ORB 2114 page 1203, Public Records of Volusia County, Florida), under which it was designated for general commercial purposes as "Commercial Area # 2;" and

WHEREAS, Chapter 2, Section 2-3 of the City of DeBary Land Development Code provides that the completion of such planned developments as were previously approved under the regulations of Volusia County shall continue to be administered under the approved standards unless changes are requested, and any subsequent major revisions to them will be made under the provisions of the said Land Development Code; and

WHEREAS, subsequent to the incorporation of the City of DeBary and inclusion of the subject property within the jurisdictional limits of the City, the subject property was designated with the Residential/Low Density (RLD) Comprehensive Plan future land use; and

WHEREAS, pursuant to Comprehensive Plan Policy 5.402a.4. the Residential/Low Density (RLD) future land use does allow certain larger retail areas that are part of a primarily residential planned unit development where specific criteria for the development can be established; and

WHEREAS, in 2007 the Owner desired to develop the subject property with 65,000 square feet of certain commercial uses, including a private club, physical fitness studio (gyms), exercise and health spas and athletic field, but was required to obtain the YMCA BPUD zoning for the subject property to develop such uses due to the existing Swallows PUD lacking specific development/performance standards for the Commercial Area #2 as required by the Comprehensive Plan; and

WHEREAS, in June 2007 the Owner sought and received a rezoning of the subject property to the YMCA BPUD designation pursuant to Ordinance No. 14-07 and its associated Development Agreement and Master Development Plan, and in the City Council approving such rezoning (i.e. major amendment to an existing PUD) recognized the subject property as being part of a larger residential development (Swallows PUD) and permitted certain commercial uses subject to specific criteria in accordance with Comprehensive Plan Policy 5.402a.4.; and

WHEREAS, the development of the subject property did not progress in accordance with the timeframes set forth in the YMCA BPUD Development Agreement and therefore, in accordance with the terms of such Development Agreement any subsequent proposed development of the subject property must be processed as a major amendment of the BPUD; and

WHEREAS, under Ordinance 14-07 (and as was contemplated by the YMCA BPUD Development Agreement), any development of the subject property must be processed as a Major BPUD Amendment in order to provide for community input and ensure that specific development/performance standards are incorporated into the project; and

WHEREAS, the amendment to the current BPUD (Business Planned Unit Development) zoning as set forth herein provides for specific criteria for the development of the subject property and is consistent with both the City of DeBary Comprehensive Plan, Ordinance No. 15-97, as amended, and the intent and purpose of the City of DeBary Land Development Code, as amended, and does promote the public health, safety, morals, general welfare, and orderly growth of the area affected by the rezoning request; and

WHEREAS, the City Council finds that based on competent, substantial evidence in the record, the major amendment to the Swallows PUD (a/k/a Glen Abbey Planned Unit Development) as amended by the YMCA BPUD and its corresponding Development Agreement and Master Development Plan approved by this Ordinance is consistent with the Comprehensive Plan and the Land Development Code and meets all applicable criteria for approval of such application.

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

SECTION 1: Recitals. The City Council finds that the above recitals are true and correct and that such constitute findings of the City Council.

SECTION 2: Major Amendment. The Applicant's application for a major amendment to the existing the Swallows PUD (a/k/a Glen Abbey Planned Unit Development) as amended by the YMCA BPUD zoning of the 17.7 acre subject property is granted and its corresponding Development Amendment and Master Development Plan is hereby approved and is found to be consistent with the City of DeBary Land Development Code, as amended. The amendment to the Development Agreement (attached hereto as Exhibit "A"), to read (in its entirety) and the amendment to the Master Development Plan (attached hereto as Exhibit "B") to both read as hereinafter set forth in this ordinance are approved and are found to be consistent with the City of DeBary Land Development Code, as amended. The development of the subject property shall be governed by the amended Development Agreement and the amended Master Development Plan, attached as Exhibits "A" and "B", respectively. With respect to any conflicts between the City of DeBary Land Development Code and the Development Agreement, the provisions of the Development Agreement shall control. The development of the subject property shall comply with the City of DeBary Land Development Code and all other applicable City regulations concerning matters not specifically addressed by this BPUD and its corresponding Development Agreement (as amended) and the Master Development Plan (as amended). The City of DeBary Zoning Enforcement Official will ensure overall compliance with the Development Agreement and the City's Land Development Code. The development project on the subject property will hence forth be referred to as "The Shoppes at Pine Meadows BPUD."

SECTION 3: Recording. The City Clerk is hereby directed to record this Ordinance and its exhibits in the Public Records of Volusia County, Florida. This Ordinance and the attached Development Agreement and the Master Development Plan shall run with the land of the subject property and shall be applicable to and binding on any and all successors and assigns in interest.

SECTION 4: Severability. If any portion of this ordinance is 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 5: Effective Date. This ordinance shall become effective immediately upon its adoption.

First reading and public hearing held on the 14th of January, 2015.

ADOPTED on second and final reading following a public hearing on the 4th of February, 2015.

**CITY COUNCIL
CITY OF DEBARY, FLORIDA**

ATTEST:

Clint Johnson, Mayor

Stacy Tebo, City Clerk

ATTACHMENTS:

Exhibit "A" The Shoppes at Pine Meadows Development Agreement
Exhibit "B" Master Plan
Exhibit "C" Legal Description

EXHIBIT "A"
THE SHOPPES AT PINE MEADOWS DEVELOPMENT AGREEMENT

THIS BPUD DEVELOPMENT AGREEMENT ("Development Agreement") is made and entered into by and between the **CITY OF DEBARY**, a Florida municipal corporation (herein "City") and DeBary Retail Investments, LLC, a South Carolina Limited Liability Company (herein "Applicant").

A. DEVELOPMENT CONCEPT. The 17.7± acre subject property legally described in Exhibit "C" to Ordinance No. 12-14 (the "subject property") shall be developed as a Business Planned Unit Development ("BPUD") substantially in accordance with the Master Development Plan attached as Exhibit "B" to and approved by Ordinance No. 12-14, and incorporated herein by this reference (the "Master Development Plan"). The Master Development Plan shall govern the development of the subject property as a BPUD and shall regulate the future use of this property.

1. Master Development Plan. The Master Development Plan, which replaces the Master Development Plan as set forth in the YMCA BPUD, shall consist of the Preliminary Plan prepared by CPH, Inc., dated 11/20/14, and the terms and conditions of this Development Agreement. The Master Development Plan shall be filed and retained for public inspection by the City Clerk and it shall constitute a supplement to the Official Zoning Map of the City of DeBary.

2. Amendments All amendments of the Master Development Plan shall require the review, recommendation, and approval of the City of DeBary, in accordance with the applicable process set forth in the City of DeBary Land Development Code.

3. Subdivision Approval. The subject property consists of an existing legal standing parcel. Future subdivision consistent with the City of DeBary Land Development Code is permissible, and is anticipated.

4. Final Site Plan Approval. After the Master Development Plan is recorded, and prior to issuance of any permits for construction, including clearing and landfill, a Final Site Plan shall be prepared and submitted for review and approval in the manner required by the City of DeBary Land Development Code, as amended. Site work for the subdivision infrastructure can only begin after preliminary plat/construction plan approval. Upon Applicant's request site plan and subdivision approvals may be processed concurrently with each other.

B. UNIFIED OWNERSHIP. The Owner, Applicant or their respective successors and assigns shall maintain unified ownership of the subject property unless and until the subject property is legally subdivided with approval of the City, as aforesaid.

C. LAND USES WITHIN THE BPUD. The development of the subject property shall be consistent with the uses prescribed for each area within the proposed BPUD. The location and size of said land use areas are shown on the Master Development Plan. The land uses allowed as permitted uses on the subject property are all Permitted Uses in the B-4 zoning district as set forth in §3-102(b), City of DeBary Land Development Code, as it is in effect at the time of adoption of the ordinance approving this Development Agreement, along with their customary principal and accessory structures, but excluding as Prohibited Uses, the following: billiard parlors; auction parlors; automobile, boat, recreational vehicle, and motorcycle sales, rental, storage, service, and/or repair; funeral homes; crematorium; mini-storage/warehouse facilities; theaters; bowling alleys; billboards and off-site signs (other than the Glen Abbey subdivision sign which currently encroaches on the subject property); pawnshops; adult or pornographic book, magazine, video and novelty stores; adult entertainment; tattoo parlors; body piercing (except ear piercing); veterinary clinics/hospitals; and night clubs and bars; and fast food restaurants on lot 3. Provided, however, with respect to lot 3, bakery café style bagel shops, high-end coffee shops and donut/pastry shops with drive-through service and high turnover casual restaurants (i.e. Panera, Chipotle) with drive through operations are permitted. Provided, however, for purposes of this Development Agreement, an establishment which would not otherwise be considered a bar shall not be prohibited merely because a sign (that does not include the word “bar”) is exhibited or displayed indicating that alcoholic beverages are obtainable for consumption on the premises.

D. DEVELOPMENT/PERFORMANCE STANDARDS. Notwithstanding the requirements otherwise set forth in the City’s Land Development Code, the development/performance standards for this BPUD shall be as follows:

Total Project Area: 17.7 acres, plus or minus

Minimum building setbacks (from perimeter boundaries of the subject property)

Front Setback (Pine Meadow Dr. and U.S. 17/92): 35’, except that Lots 1 and 3 shall have a minimum building setback of 45’ along Pine Meadow Drive if Applicant is permitted to reduce the size of the master stormwater retention/detention pond by holding the difference between the pre-development volume versus the post-development volume (as contemplated in the Master Development Plan), instead of holding the complete volume.

Side yard Setback (North property line): 10 ft.

Rear yard (East property line) Setback: 35 ft.

Note: There are no minimum building setbacks required from internal lot lines. For clarification, internal lot lines are those lot lines (or portions thereof) which abut other property within the BPUD rather than adjoining lands which are not within the BPUD.

Minimum Landscape Buffers (from perimeter boundaries of the subject property)

Front (Pine Meadow Drive and US 17/92): 35', except that Lots 1 and 3 shall have a landscape buffer of not less than 45' along Pine Meadows Drive if Applicant is permitted to reduce the size of the master stormwater retention/detention pond by holding the difference between the pre-development volume versus the post-development volume (as contemplated in the Master Development Plan), instead of holding the complete volume.

Side (North property line): 10 ft.

Rear (East property line): 30 ft. (as shown on Exhibit B, with a masonry screening wall to be located where shown on the said exhibit, to be 6' tall where not directly adjoining a single family residence, and 8' tall or 6' tall on top of a 2' berm where directly adjoining a single family residence, or a combination thereof, and landscaping and canopy trees on both sides of the said masonry screening wall as required by the City's Land Development Code.)

Note: Except as otherwise provided herein, no screening walls or internal landscape buffers are required. Building perimeter landscaping is only required for the building perimeters which face Pine Meadow Drive or U.S. 17/92 and, as to Lots 3 and 4, the building perimeters which face the adjoining drive aisles. No landscape buffer shall be required across the Conservation Area, as depicted on Exhibit B. Where applicable, natural trees and vegetation left in place may serve as the screening wall or landscape buffer. A landscape buffer for the proposed fuel station shall be required in the approximate location as shown on Exhibit B, and shall be generally developed in accordance with the sketch attached as Exhibit E.

Maximum Building Height: 40'

Parking: The minimum parking requirement is one (1) space per every 275 square feet of air conditioned floor area, but can be increased to meet the needs of the Applicant. Minimum parking stall depth is 19 feet for all parking types, except as might otherwise be provided by State law for handicap parking stalls. Lots 1 and 2 may, but are not required to, have shared parking.

Note: see Tree Mitigation/Tree Protection Area regarding an allowance for shifting parking lot islands for tree preservation.

Sidewalks: If there is sufficient existing right of way or, if there is insufficient existing right of way but the owner of the necessary additional right of way donates such right of way, the Applicant shall design and construct a sidewalk on the south side of N. Pine Meadow Drive from

Spring Glen to US Hwy 17-92. Otherwise, the existing sidewalks on U.S. 17/92 and Pine Meadows Drive serve to satisfy all public sidewalk requirements. New internal sidewalks shall connect to the existing public sidewalks.

Maximum Lot Coverage: 0.35 FAR

Minimum Lot Size: 0.9 acres. The general locations of the lots are depicted on attached Exhibit B.

Tree Mitigation/Tree Protection area: That portion of the subject property located with the existing wetland and the wetland buffer is counted as a part of the tree preservation area. The Applicant shall be entitled to remove all specimen and historic trees outside of the Conservation Area but shall make diligent effort to retain specimen and historic trees, which are located within the perimeter landscape buffers. Also, the Applicant shall be permitted to shift parking lot islands along the 17/92 frontage, exceeding ten (10) parking spaces in a row by as much as 50%, to save historic or specimen trees. Tree mitigation requirements shall be provided at a rate of one (1) tree per 2,500square feet of developed site area rather than as otherwise provided. The Conservation/Tree Preservation Area, as shown on Exhibit B, meets the fifteen (15%) minimum tree preservation area for all of the Lots on the entirety of the subject property.

Maximum Impervious Surface Coverage: The maximum impervious surface coverage shall be 70% on the property as a whole and, after the subject property is subdivided, 90% on any individual lot.

Signage: All signage shall comply with the City of DeBary's sign ordinance provided that, notwithstanding any other provision of the sign ordinance, the subject property shall be allowed at least three (3) monument signs along U.S. 17/92, to be allocated to the various Lots as determined by the Applicant, and there shall be no signs allowed along Pine Meadow Drive except directional signs and a 2' x 3' entrance sign at the driveway. One or more of the signs on US Hwy 17-92 may be, at the Applicant's option, treated as multi-tenant shopping center signs. The planned general locations of the said monument signs are as depicted on Exhibit B, but it is recognized that the Applicant retains flexibility as to the final locations of the signs, which will be addressed during the development process. The permitted signs within the BPUD shall be of a similar architectural design to create continuity throughout the entire project site. The Applicant shall create a master sign program to establish a uniform pattern of sign style, location, size and material of signs. Applicant shall leave the present entrance sign identifying the Glen Abbey subdivision, which partially encroaches on the subject property, in its current location. Such Glen Abbey entrance sign shall not count towards Applicant's allowance of signage, and shall be treated as though it is not on the subject property. Upon further request,

the City may require the Applicant to cause the conveyance of a sign easement to an appropriate third party for the purpose of operating, maintaining and repairing said sign in a form to be reviewed and approved by the City.

Common Open Space/Pedestrian Enhancements: Prior to issuance of the certificate of occupancy on Lots 1 or 2, the Applicant shall create common open space areas and construct Pedestrian Enhancement features adjacent to and along the projects entrance drive off of N. Pine Meadow and adjacent to the proposed retail building to include but not limited to outdoor seating, decorative landscaping and hardscape, street trees (canopy) and a pergola, which shall be generally consistent with the feature as shown on attached Exhibit D. Common open space and pedestrian features shall also be incorporated into the design of the development on Lot 4 if consistent with the land use of the end user and at a reasonable cost, not to exceed \$20,000.

Bus stop: Prior to issuance of the certificate of occupancy on Lots 1 or 2, the Applicant shall either construct a bus stop shelter at a location on U.S. 17/92 to be coordinated with VOTRAN, or shall pay sufficient funds to City, not to exceed \$12,000.00, for construction of a bus stop shelter.

Beautification: Prior to issuance of the certificate of occupancy on Lots 1 or 2, the Applicant shall either beautify Pine Meadow Drive and/or the entrance to the Glen Abbey subdivision under such standards as reasonably agreed upon between the City's staff and applicant, or shall pay \$15,000.00 to the City for the City's beautification of Pine Meadow Drive and/or the entrance to the Glen Abbey subdivision. Such beautification may include, without limitation, landscaping, architectural treatments, painting, stuccoing, and paying such funds over to a responsible homeowners' association to be utilized for such purposes.

Lighting: Outside lighting shall comply with the City's Gateway Corridor regulations.

E. ENVIRONMENTAL CONSIDERATIONS. The minimum requirements of the Land Development Code Ordinance, as amended, shall be met including, but not limited to, the 15% existing tree preservation area.

F. SEWAGE DISPOSAL AND POTABLE WATER. Provision for sewage disposal and potable water needs of the Project shall be provided in accordance with the Comprehensive Plan, the Land Development Code, and the Florida Administrative Code. Each commercial structure shall be connected to central potable water and sanitary sewer, which will initially be served by Volusia County via connection to systems along US 17/92. Reclaimed water lines (dry) shall be installed by Applicant for future use.

G. STORMWATER DRAINAGE. Provision for stormwater retention shall be in accordance with the City of DeBary Land Development Code, as amended and St. Johns River Water Management District regulations. Stormwater management shall be provided by on-site

retention to accommodate a 100 Year 24 Hour Storm Event, provided that the required retention may be the difference between post-development versus pre-development volume with the approval of the City Engineer. In the event the subject property is subdivided, restrictive covenants shall be put in place providing for assessment of all lot owners to ensure proper perpetual operations, use, maintenance and repair of all stormwater management systems and retention areas.

H. ACCESS AND TRANSPORTATION SYSTEM IMPROVEMENTS. All access and transportation system improvements shall be provided in accordance with the City of DeBary Land Development Code, as amended. The subject property shall be developed in substantial accordance with the access driveways depicted on the Preliminary Plan. Access to the site will be from US 17/92 and North Pine Meadow Drive. The southern US 17/92 connection will allow right in/right out access and the northern access will allow right in/right out and left in access. The connection to the North Pine Meadow Drive will be a full access drive, provided, however, that all construction traffic for site development and for construction of the buildings on the subject property shall utilize the driveways on US 17/92 for ingress and egress to the site.

I. INTERNAL CROSS ACCESS EASEMENTS. Internal cross access easements, if any, will be addressed during the subdivision process.

J. OTHER REQUIREMENTS.

1. *Architectural Style*: Provisions of the DeBary Gateway Corridor Standards, as amended, will be met as minimum standards. In addition to, and not in limitation of, the standards set forth in the DeBary Gateway Corridor Standards, the architectural style of the store to be constructed on Lot 2 shall include a prominent entry feature with varying roof lines, the appearance of a second story with clerestory windows, awnings, contrasting colors along the exterior front façade and otherwise shall be generally consistent with the drawing attached hereto as Exhibit D. The architecture of the fuel station shall also be generally consistent with the drawing attached hereto as Exhibit D. The adjacent shops to be constructed on Lot 1 shall generally mimic the architectural style of the store to be constructed on Lot 2. The architecture of any fast food restaurant with a “drive through” shall be compatible with the architecture of the balance of the development.

2. *Trash Receptacles*: All four sides of the container shall be fully screened at a height of six feet. The gate side must not be viewable from a public right-of way or be oriented toward a residential use. The trash receptacle colors and architectural features shall be consistent with those of the proposed buildings.

3. *Walls*: Screening walls shall be architecturally designed with offsets (projections and recesses) and landscape pockets to avoid a monotonous appearance. The location of all walls shall be shown in the Site Plan. The wall material, height, and colors will be submitted for approval with the Site Plan.

4. *Underground Utilities*: All utility distribution shall be installed and maintained underground, and any other lines that will require additional electrical poles on U.S.17-92 to service this project shall be installed underground. Service lines crossing any perimeter road shall also be underground.

5. *Lighting*: Street and parking area light poles shall be of the same or similar style architecturally to insure aesthetic harmony and be compatible in appearance to the street lights along North Pine Meadow and US 17-92, but may have multiple light fixtures (which shall also be compatible). Parking area lighting fixtures shall be recessed in compliance with Land Development Code Article V - Gateway Corridor Standards, in order to conceal the actual source of light so as to reduce glare and direct the light to specific areas while shielding other areas. Lighting may utilize LED fixtures. The maximum height of lights shall be 20 feet.

K. BUILDING OR PROPERTY OWNERS ASSOCIATION. Not applicable to this project at this time. If necessary, may be addressed during the subdivision process, if applicable, or may be dealt with through recording of a declaration of easements, covenants and conditions.

L. BINDING EFFECT OF PLANS; RECORDING AND EFFECTIVE DATE. The Master Development Plan, including any and all supplementary orders and resolutions, and the Preliminary Plan, shall bind and inure to the benefit of the Owner and Applicant and their successors in title or interest. The BPUD zoning provisions of the "Development Agreement," and all approved plans shall run with the land and shall be administered in a manner consistent with the City of DeBary Land Development Code, as amended.

This Development Agreement and its authorizing Ordinance and all subsequent Ordinances and Resolutions shall be filed with the City Clerk and recorded within twenty (20) days following execution of the document by the Mayor of the City of DeBary, in the Official Records of Volusia County, Florida. One copy of the document, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the City Clerk. The date of recordation of this document shall constitute the effective date of the BPUD or its subsequent amendments. The applicant shall record and pay all filing costs for recording documents.

M. EXPIRATION OF AGREEMENT. The effectiveness of this Development Agreement and the Master Development Plan shall be from the effective date and shall expire

720 days following execution of the development agreement by the City, if a subsequent development order has not been secured in writing by the applicant within such time period. Upon expiration of this Agreement and the Master Development Plan the zoning designation of the subject property will revert to its previous designation and the PUD entitlements become null and void.

N. CONCEPTUAL APPROVAL. The parties hereto acknowledge that reductions in density and/or intensity may and do occur; and that minor changes to roadway design, location and size of structures, actual location of parking spaces, specific locations for land uses, and locations and design of stormwater storage, landscape buffers, and upland buffers may result to comply with the City of DeBary Land Development Code, as amended. Upon determination of the City Manager, these revisions may be processed as minor amendments as set forth in the City of DeBary Land Development Code, as amended. A copy of the Revised Preliminary Plan, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the City Clerk.

O. AUTHORITY. Each party represents and warrants to the other that it has all necessary power and authority to enter into and consummate the terms and conditions of this Development Agreement, that all acts, approvals, procedures and similar matters required in order to authorize this Development Agreement have been taken, obtained, or followed, as the case may be, that this Development Agreement and the proposed performance of this Development Agreement by such party is not an ultra vires act and that, upon the execution of this Development Agreement by all parties, this Development Agreement shall be valid and binding upon the parties and their successors in interest. Furthermore, Owner and Applicant represent and warrant to City that Applicant is the contract purchaser and Owner is the sole owner of the subject property, in fee simple, free and clear of any encumbrances, including but not limited to mortgages, liens or easements (except those listed on the attached Schedule of Permitted Encumbrances) or, in the event an encumbrance (other than a Permitted Encumbrance) exists, then Applicant, at Applicant's sole cost, shall obtain the necessary joinders and consents to this Development Agreement or releases from the appropriate parties with an interest in the subject property. Owner hereby joins in and consents to this Development Agreement.

P. DEVELOPMENT PERMITS AND APPROVALS. This Development Agreement does not require the City to issue any permit or approval for development, construction, subdivision plan, site plan, final plat, building permit or other matter by the City relating to the subject property or otherwise. The local development approvals and permits required to be approved or issued by the City for the intended use contemplated by this Development

Agreement include, but are not limited to, construction plan approvals, site plans, stormwater drainage, SJRWMD permits, demolition permit, grading, arbor permits, engineering and utility plans, and construction permits for buildings and other structures: These development approvals and permits shall be processed and issued by the City in accordance with procedures with respect to same as otherwise set forth in the City's Land Development Code and subject to this Development Agreement. Failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Applicant of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions. This Development Agreement does not, and is not intended to prevent or impede the City from exercising its legislative authority as the same may affect the subject property.

Q. DEVELOPMENT REVIEW COSTS. Applicant and Owner shall timely pay the City for any and all development review costs concerning the development and the property in accordance with Section 1-16, City of DeBary Land Development Code. Applicant and Owner acknowledge and agree that Applicant and Owner have read §§1-16, DeBary Land Development Code and understand Applicant's and Owner's responsibilities and obligations under such code provisions and this Agreement and acknowledges and agrees that Applicant and Owner are bound by such code provision for all development applications and approvals relating to the Property and Project.

R. RECITALS. The recitals contained within the Ordinance authorizing this Development Agreement are true and correct and are incorporated herein by reference.

DONE and ORDERED by the City Council of the City of DeBary, Florida, this ____ day of _____, 2015.

CITY OF DEBARY

ATTEST:

Clint Johnson, Mayor

Stacy Tebo, City Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Clint Johnson as Mayor, on behalf of the City of DeBary, who is personally known to me or has produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA
Commission No.: _____
My Commission Expires: _____

AS TO OWNER
WITNESSES:

**VOLUSIA/FLAGLER FAMILY YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC. formerly WEST
VOLUSIA FAMILY YOUNG MEN'S CHRISTIAN
ASSOCIATION, INC.**

Printed name: _____

Printed name: _____

BY: _____
Teresa Rogers, Chief Executive Officer

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Teresa Rogers, as Chief Executive Officer on behalf of Volusia/Flagler Family Young Men's Association, Inc., formerly West Volusia Family Young Men's Christian Association, Inc., who is personally known to me or has produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA
Commission No.: _____
My Commission Expires: _____

AS TO APPLICANT
WITNESSES:

**DeBARY RETAIL INVESTMENTS, LLC,
a South Carolina limited liability company**

Printed name: _____

BY: _____

Printed name: _____

Title: _____

Printed name: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2015, by, _____, as _____ on behalf of DeBary Retail Investments, LLC., He/she is personally known to me or has produced _____ as identification.

NOTARY PUBLIC, STATE OF SOUTH CAROLINA
Commission No.: _____
My Commission Expires: _____

EXHIBIT "C"LEGAL DESCRIPTION

A PORTION OF THE EAST 1/2 OF SECTION 27, TOWNSHIP 18 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, LYING EAST OF U.S. HIGHWAY 17-92, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE NORTH RIGHT OF WAY OF PINE MEADOWS DRIVE, (100' R/W) WITH EAST RIGHT OF WAY OF STATE ROAD 15 / 600 (ALSO KNOWN AS US HIGHWAY 17), (RIGHT OF WAY WIDTH VARIES), AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, (SAID INTERSECTION BEING MARKED BY A F.D.O.T. IRON ROD & CAP) SAID POINT BEING ON THE ARC OF A CURVE, CONCAVE WESTERLY HAVING A RADIUS OF 5783.58 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE PASSING THROUGH A CENTRAL ANGLE OF 02°09'02" AND HAVING AN ARC LENGTH OF 217.07 FEET, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N 02°50'35" E, 217.06 FEET TO A F.D.O.T. IRON ROD & CAP; THENCE N 88°13'56" W, 4.00 FEET; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY BEING ON THE ARC OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 5779.58 FEET, PASSING THROUGH A CENTRAL ANGLE OF 01°45'00", AND HAVING AN ARC LENGTH OF 176.53 FEET, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N 00°53'34" E, 176.52 FEET; THENCE S 89°58'56" E, 3.00 FEET TO A F.D.O.T. IRON ROD & CAP; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY BEING ON THE ARC OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 5782.58 FEET, PASSING THROUGH A CENTRAL ANGLE OF 00°29'39", AND HAVING AN ARC LENGTH OF 49.88 FEET, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N 00°13'45" W, 49.88 FEET TO A POINT OF TANGENCY; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY N 00°28'35" W, 275.58 FEET TO A F.D.O.T. IRON ROD & CAP; THENCE S 89°31'25" W, 3.00 FEET TO AN F.D.O.T. IRON ROD & CAP; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY N 00°28'35" W, 325.00 FEET TO A F.D.O.T. IRON ROD & CAP; THENCE N 89°31'25" E, 3.00 FEET TO AN F.D.O.T. IRON ROD & CAP; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY N 00°28'35" W, 270.02 FEET TO A F.D.O.T. IRON ROD & CAP, SAID POINT BEING THE POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY ALONG THE ARC OF A CURVE HAVING A RADIUS OF 5676.58 FEET PASSING THROUGH A CENTRAL ANGLE OF 02°25'22" AND HAVING AN ARC LENGTH OF 240.05 FEET, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N 00°44'06" E, 240.03 FEET TO A F.D.O.T. IRON ROD & CAP; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY RUN N 89°53'25" E, A DISTANCE OF 497.35 FEET TO A 1" IRON PIPE, SAID POINT BEING ON THE ARC OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 5179.58 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, PASSING THROUGH A CENTRAL ANGLE OF 02°37'13", AND HAVING AN ARC LENGTH OF 236.88 FEET, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S 00°50'02" W, 236.85 FEET TO A POINT OF TANGENCY; THENCE S 00°28'35" E, 870.60 FEET TO A 1/2" IRON ROD & CAP LS #5205, SAID POINT BEING THE POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 6279.58 FEET; THENCE CONTINUE SOUTHERLY ALONG THE ARC OF SAID CURVE PASSING THROUGH A CENTRAL ANGLE OF 04°05'02" AND HAVING AN ARC LENGTH OF 447.60 FEET, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S 01°33'56" W, 447.50 FEET TO A 5/8" IRON ROD & CAP LS #5205, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF SAID PINE MEADOWS DRIVE; THENCE S 89°59'25" W, ALONG THE NORTH LINE OF SAID PINE MEADOWS DRIVE A DISTANCE OF 497.08 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 17.77 ACRES MORE OR LESS.

SCHEDULE OF PERMITTED EXCEPTIONS

1. Taxes for the year 2014 and subsequent years, which are not yet due and payable.
2. Any lien arising under Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service by any water system, sewer system or gas system servicing the lands described herein.
3. Utilities Easement granted to County of Volusia by instrument in Official Records Book 3596, Page 22, of the Public Records of Volusia County, Florida.