

**RESERVE AT HAW CREEK
PLANNED UNIT DEVELOPMENT AGREEMENT**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT, (herein referred to as the “PUD Agreement”) is made and executed this _____ day of _____, 2024, by and between the **CITY OF BUNNELL**, a Florida municipal corporation (herein referred to as the “City”), and the owner of the subject property, JM Properties X, LLC (herein referred to from time-to-time as the “Owner” regardless of whether singular or plural ownership status), where they do hereby agree and covenant, and bind their heirs, successors, and assigns as described within this PUD Agreement.

WITNESSETH:

WHEREAS, JM Properties X, LLC, is the principal owner of 2,787(+/-) acres of land, and is more particularly described in **Exhibit “B”** (herein referred to as “**Property**” or “**Subject Property**”); and

WHEREAS, the Owner desires to develop the Property for a residential, commercial, and mixed-use development (“**Project**”); and

WHEREAS, the City adopted a large-scale amendment to the 2035 Comprehensive Plan for the purpose of revising the Future Land Use Map (“**FLUM**”) pertinent to the Subject Property in order to ensure the accuracy and internal consistency of the plan, pursuant to Ordinance 2024-09; and

WHEREAS, the Subject Property has multiple Future Land Use Map designations that consist of Rural Estates, Single Family-Low Density, Single Family-Medium Density, Multifamily, Commercial-Medium, Industrial, and Public; and

WHEREAS, the City’s Community Development Department, Infrastructure Department, Engineering Department, and City Clerk’s Office, in order to ensure consistency of this PUD Agreement with the 2035 Comprehensive Plan and Land Development Code (“**LDC**”), have reviewed and considered the PUD Agreement; and

WHEREAS, professional City planning staff, the City of Bunnell Planning, Zoning and Appeals Board (PZA), and the City of Bunnell City Commission find that this PUD Agreement is consistent with the City’s Comprehensive Plan and LDC and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the protection of the public health, safety, and welfare of the citizens of the City; and

WHEREAS, the City finds that this PUD Agreement does not adversely affect the orderly development of the City as embodied in the City's Comprehensive Plan and LDC; will not adversely affect the health and safety of residents in the area; will not be detrimental to the natural environment or to the use of the adjacent properties in the general neighborhood; and the PUD Agreement will accomplish the objectives and meet the standards within Chapter 34, Article IV, Division 2, of the LDC; and

WHEREAS, the City of Bunnell City Commission further finds that this PUD Agreement is consistent with and an exercise of the City's powers under the *Municipal Home Rule Powers Act*; Article VIII, Section 2(b) of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*; the *City of Bunnell City Charter*; the *City of Bunnell Land Development Code*; other controlling law; and the City's police powers; and

WHEREAS, this is a non-statutory development agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220 – 163.3243, *Florida Statutes*; and

NOW, THEREFORE, it is hereby resolved and agreed by and between the City and the Owner that the Planned Unit Development ("PUD") is approved subject to the following terms and conditions:

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this PUD Agreement upon which the City and the Owner have relied.

Section 2. Ownership.

(a) The Owner hereby represents and warrants to the City that it is the principal Owner of the Subject Property in accordance with the Quit Claim Deed provided by the Owner, recorded in Book 2848, Page 1888 in the Public Records of Flagler County, Florida.

(b) The Owner represents and warrants to the City that is has the power and authority to enter into and consummate the terms and conditions of this PUD Agreement; that all acts, approvals, procedures, and similar matters required in order to authorize this PUD Agreement have been taken, obtained, or followed, as the case may be; that this PUD Agreement and the proposed performance of this PUD Agreement by the Owner is not an *ultra vires* act; and that, upon the execution of this PUD Agreement by the parties, this PUD Agreement shall be valid and binding upon the parties hereto and their successors in interest.

Section 3. Approval of Planned Unit Development.

(a) The City Commission of the City of Bunnell, at its _____, 2024 meeting, adopted Ordinance 2024-XX rezoning the Subject Property to PUD, Planned Unit Development, subject to the terms and conditions of this PUD Agreement.

(b) The Owner acknowledges that if this PUD Agreement is ever terminated, the approval shall be deemed null and void and the land uses approved for the Subject Property shall no longer be permitted, unless otherwise approved by the City Commission.

(c) The current provisions of the LDC, as may be amended from time-to-time, shall be applicable to the Subject Property unless otherwise specifically stated herein. Any City Code provision not specifically so identified will not be affected by the terms of this PUD Agreement and will be subject to enforcement and change under the same criteria as if no PUD Agreement were in effect.

Section 4. Planned Unit Development Criteria and Exhibits.

(a) This PUD Agreement allows for a mix of uses with specific development criteria as established within the following exhibits:

1. Exhibit "A" – Reserve at Haw Creek Planned Unit Development Criteria
2. Exhibit "B" – Survey with Legal Description
3. Exhibit "C" – Reserve at Haw Creek Master Conceptual Plan
4. Exhibit "D" – Greenspace and Park Space Distribution
5. Exhibit "E" – Reserve at Haw Creek Zone Map

(b) Exhibits "A" and "B" to this PUD Agreement are incorporated herein as if fully set forth herein verbatim.

(c) In the event of a conflict between the graphic illustrations of any Exhibit and the textual provisions of this PUD Agreement and/or Exhibit "A", the textual provisions shall control.

(d) Exhibit C, The Reserve at Haw Creek Master Conceptual Plan depicts a general layout for the entire development to provide a visualization for the type of development the terms and conditions of the PUD allow. The exact location of structures, lot lines, roadways, internal landscape buffers, wetlands, drainage facilities, and other improvements shown on the PUD Master Conceptual Plan may be modified during review of the Preliminary Plat/construction drawings and site development plans.

(e) Exhibit D, The Greenspace and Park Space Distribution depicts general layout and distribution of park and greenspace for the community. Actual acreage and distribution will be a result of net developable area for each neighborhood as measured in acres and the resultant application of percentages of park and greenspace as outlined within the PUD.

(f) Exhibit E, The Reserve at Haw Creek Zone Map provides a visual reference for zoning district locations. The zoning district language outlined within the Planned Unit Development Criteria corresponds directly with the locations as illustrated on this map.

Section 5. Governing Law; Compliance with Law.

(a) This PUD Agreement shall be governed by and construed in accordance with the laws of the State of Florida, the LDC, and the Code of Ordinances of the City of Bunnell.

(b) If state or federal laws are enacted after execution of this PUD Agreement, which are applicable to and preclude the parties' compliance with this PUD Agreement, this PUD Agreement shall be modified or revoked as necessary to comply with the relevant law.

Section 6. Third Party Rights.

This PUD Agreement is not a third-party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third party.

Section 7. Attorney's Fees.

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

Section 8. Force Majeure.

The parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specific time period ("Time Period") constitutes a default under terms of this PUD Agreement, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party including, but not limited to, acts of God, acts of government authority (other than the City's own acts), acts of public enemy or war, terrorism, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such party, or severe adverse weather conditions ("Uncontrollable Event"), then notwithstanding any provision of this PUD Agreement to the contrary, that failure shall not constitute a default under this PUD Agreement and any Time Period prescribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event.

Section 9. Interpretation.

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

(b) This PUD Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this PUD Agreement subject, however, to the provisions of Section 16.

Section 10. Disclaimer.

The provisions granted within this PUD Agreement and Exhibits shall not be construed as an exemption from any other applicable local, state, or federal laws, regulations, requirements, permits, or approvals.

Section 11. Further Assurances.

Each party agrees to sign any other and further instruments and documents consistent herewith, as may be necessary and proper to give complete effect to the terms of this PUD Agreement.

Section 12. Minor Amendments.

(a) The following may be administratively authorized by City staff as minor amendments to this PUD Agreement:

1. Amendments to this PUD Agreement and/or Exhibits that are necessary for compliance with the provisions of this PUD Agreement, the LDC, or extra-jurisdictional permitting requirements, and address technical considerations that could not reasonably be anticipated during the Planned Unit Development approval process.
2. Application of the criteria set forth herein where there is not an exact application to the proposed use / development criteria. Application of comparable criteria as established herein may be interpreted by City staff in the application of development criteria.
3. Application of parking space quantities that fall short of that which is required if within 5% of total required parking, and it is determined that the applicant provided research or other proof the parking is not required, staff may adjust the required parking for select uses.
4. Any request that does not significantly affect the basic size, form, style, and appearance of the community and does not exceed allowed densities, setbacks, and heights as outlined in **Exhibit "A"** shall be allowed administratively.

(b) Requests for minor amendments shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the general technical review process described in the City's LDC.

(c) Denial of a requested minor amendment shall be issued in writing to the applicant. Upon denial, or if more than 60 days elapses after the submittal of a completed application

without a decision by the City, the applicant may apply for an amendment to the agreement.

(d) Approved minor amendments shall be noted on the official submittal documents.

(e) All minor amendments shall be documented in City recorded PUD documents for future reference.

Section 13. Major Amendments.

(a) Any revisions to this PUD Agreement and/or Exhibits other than a minor amendment as described above shall require a major amendment approved by the City Commission after review and recommendation by the City's Planning, Zoning and Appeals Board.

(b) Requests for major modifications shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the City's general technical review process described in the LDC. Advertisement and notices shall be provided as if the application is one to rezone the property.

(c) In recognition of the City's general authority to rezone and legislate land uses and zoning requirements, all signatories to this Agreement and all individual lot owners, fee title holders, mortgages, or lien holders who now or hereafter own property subject to this PUD Agreement mutually agree as follows:

1. The property owners' association, community development district, or other development governing agency established for governance within the Reserve at Haw Creek shall be authorized to represent and execute amendments to this Agreement on behalf of all lot owners other than the owners of lots directly impacted by the amendment.
2. If any governing agency fails to retain its corporate status, then all directly impacted owners shall be authorized to represent and execute an amendment on behalf of all owners not directly impacted who have received notice of the proposed amendment as required by this PUD Agreement and applicable law.
3. For purposes of this section, a lot is "directly impacted" by an amendment to this PUD Agreement only where the amendment would revise the listed uses, dimensional requirements, architectural requirements, or sign requirements for that lot.

(d) No property owner other than one who actually executes an amendment shall be deemed to have waived his or her right to challenge a proposed or executed amendment in the same manner that an affected property owner may challenge zoning or related lot specific changes for property which is not subject to a planned unit development agreement. Such challenges include:

1. Objections to a proposed amendment before the City's Planning, Zoning and Appeals Board or City Commission.
2. Seeking certiorari review or injunctive action in relation to the adoption of such amendment as provided by law.
3. Consistency challenges as provided for in Section 163.3215, *Florida Statutes*, or any successor Florida Statute provision and/or City code.

Section 14. Variances.

Variances will be regulated in accordance with the standards for variances and the requirements for the granting of a variance as described in the LDC for only those conditions which allow for variances. The LDC variance application and notification process will be followed.

Section 15. Police Power and Sovereign Immunity Not Waived.

Nothing contained in this PUD Agreement and Exhibits shall be construed as a waiver of or contract with respect to the regulatory authority and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this PUD Agreement shall be construed as a waiver of or attempted waiver by the City of its Sovereign immunity under the constitution and laws of the State of Florida.

Section 16. Venue and Severability.

(a) In the event of any claim, action, litigation, or proceeding under this PUD Agreement, venue shall be in Flagler County, Florida.

(b) If any provision of this PUD Agreement is held by a court of competent jurisdiction to be invalid or otherwise enforceable, such holding shall not affect the validity or enforceability of any other provision of this PUD Agreement unless the holding so states.

Section 17. Effective Date; Implementation Date.

(a) This PUD Agreement shall be effective upon the effective date of the City of Bunnell Ordinance 2024-09 after execution by all parties. The restrictions on use and development imposed by this PUD Agreement shall be binding upon all successors in interest in the Subject Property.

(b) This PUD Agreement, and future amendments, shall run with the Subject Property in perpetuity as long as the physical development begins within 10 years. If no physical development has been initiated within 10 years of the effective date of this PUD Agreement, a 5-year extension may be requested in writing. If no extension requests are made in writing, this PUD Agreement shall become null and void.

Section 18. Complete Agreement; Agreement to be Recorded.

(a) This PUD Agreement represents the complete understanding by and between the parties with respect to the development and use of the Property. Any and all prior agreements between the parties with respect to any subject comprehended by this PUD Agreement is hereby voided and superseded by this PUD Agreement.

(b) Upon execution of this PUD Agreement by all parties, this PUD Agreement and any and all amendments hereto shall be recorded by the City with the Clerk of the Circuit Court of Flagler County, Florida, within thirty (30) days after its execution by the City.

IN WITNESS WHEREOF, the parties have caused this PUD Agreement to be duly executed by their duly authorized representatives as of the date first above written and hereto attached their hands and seals on the dates set forth below.

[SIGNATURES AND NOTARY BLOCKS ON NEXT PAGE]

WITNESSES:

**JM PROPERTIES X, LLC
[OWNER]**

Witness 1

Print Name of Witness 1

By:
Name:
Title:
Date:

Witness 2

Print Name of Witness 2

WITNESSES:

**[APPLICANT, IF DIFFERENT FROM
OWNER]**

Witness 1

Print Name of Witness 1

By:
Name:
Title:
Date:

Witness 2

Print Name of Witness 2

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CITY COMMISSION, City of Bunnell, Florida

Attest:

Kristen Bates, CMC, City Clerk

By: _____
Catherine D. Robinson, Mayor

Date signed by City: _____

Seal:

Approved for form and content by:

Vose Law Firm, City Attorney

DRAFT