

EXHIBIT "B"

FLORIDA HOSPITAL FLAGLER

MASTER PLANNED DEVELOPMENT AGREEMENT

Prepared by and Return to:

First and Last Name

Address

City, State, zip code

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**MASTER PLAN DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PALM
COAST AND FLORIDA HOSPITAL FLAGLER**

THIS MASTER PLAN DEVELOPMENT AGREEMENT, (herein referred to as the "Development Agreement") is made and executed this ____ day of September, 2010, by and between the CITY OF PALM COAST, a Florida municipal corporation (herein referred to as the "City"), whose address is 160 Cypress Point Parkway, Suite B-106, Florida, 32164, and Memorial Hospital Flagler, Inc. d/b/a Florida Hospital Flagler, Inc., (herein referred to from time-to-time as the "Hospital" regardless of whether singular or plural ownership status) whose address is 875 Sterthaus Avenue, Ormond Beach, FL 32174

WITNESSETH:

WHEREAS, the Hospital is the fee simple title owner of certain real property consisting of approximately 100 acres located at 60 Memorial Medical Parkway in the City

of Palm Coast, Flagler County, Florida, more particularly described in **Exhibit "1"** (herein referred to as the "Subject Property"); and

WHEREAS, the City Council finds that the Hospital is a critical component of this community in that it positively affects the City in many ways including , but not limited to health, safety, welfare, emergency services and economic development; and

WHEREAS the City finds that to ensure the Hospital can properly grow and develop to meet the needs of the community the terms and conditions of this Development Agreement are necessary; and

WHEREAS, As a result, the Hospital requests approval for a Master Plan Development for the continued development of the Hospital's existing hospital facility along with additional office, commercial, open space and preservation of sensitive lands located on the Subject Property per the conditions set forth in this Development Agreement (the "Project"); and

WHEREAS, the Hospital voluntarily agrees with the conditions, terms, and restrictions hereinafter recited, and has agreed voluntarily to their imposition as an incident to development of the subject properties; and

WHEREAS, the City of Palm Coast City Council ("City Council") finds that this Development Agreement is consistent with the City's Comprehensive Plan (the "Comp Plan") and Unified Land Development Code (the "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 Council further finds that this Development 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 Palm Coast City Charter; 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.

NOW, THEREFORE, it is hereby resolved and agreed by and between the City and the Hospital that the Hospital's application for a Master Plan Development is approved subject to this Development Agreement's following terms and conditions:

SECTION 1. RECITALS.

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

SECTION 2. REPRESENTATIONS OF HOSPITAL.

(a). The Hospital hereby represents and warrants to the City that the Hospital is the owner of the Subject Property in accordance with the title opinion or title certification provided by the Hospital to the City issued by an attorney or title insurance company licensed to provide services in the State of Florida with said title opinion or certification showing all liens, mortgages, and other encumbrances not satisfied or released of record relative to the Subject Property.

(b). The Hospital represents and warrants to the City that it has the 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 the Hospital is not an ultra vires act; and that, upon the

execution of this Development Agreement by the parties, this Development Agreement shall be valid and binding upon the parties hereto and their successors in interest.

(c) The Hospital hereby represents to the City that all required joinders and consents have been obtained and set forth in a properly executed form on this Development Agreement. Unless otherwise agreed to by the City, all liens, mortgages, and encumbrances not satisfied or released of record must be subordinated to the terms of this Development Agreement and joinders must be executed by any mortgagees. It is the responsibility of the Hospital to ensure that said subordinations and joinders occur in a form and substance acceptable to the City Attorney prior to the City's execution of this Development Agreement. If the Hospital fails to attain the joinder and consent, then the Hospital shall lose all rights and benefits deriving hereunder.

SECTION 3. APPROVAL OF MASTER PLAN DEVELOPMENT; CONCEPTUAL SITE PLAN APPROVAL AND DEVELOPMENT REVIEW PROCESS

(a) The City Council, at its regular meeting on September __, 2010, approved the Hospital's application for a Master Plan Development affecting the Subject Property subject to the terms and conditions of this Development Agreement.

(b) The Hospital acknowledges that if this Development 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 Council.

(c) The current provisions of the LDC shall be applicable to the Subject Property unless otherwise specifically stated herein. Any City Code provision not specifically identified will not be affected by the terms of this Development Agreement, and will be subject to enforcement as if no Development Agreement were in effect.

(d). As part of the MPD approval the Conceptual Development Plan (**Composite Exhibit "2"**) shall be deemed the controlling master plan for the Project. The Conceptual Development Plan depicts the Project characteristics and delineates the approximate property boundaries, streets, easements, property lines, general location of buildings and intended uses. The Conceptual Development Plan also illustrates the general location of access points, driveways, signage, landscape buffers, primary sidewalk/pathway system and other pertinent information. Furthermore, the Subject Property may be developed into eight (8) Tracts as depicted by the Tract Map attached hereto as **Exhibit #3**.

The Conceptual Development Plan contains a level of detail satisfactory to permit the Project to proceed directly to preliminary plat. Site Plans may be submitted simultaneously with preliminary plat(s) subject to review approval as provided for in the LDC. In such instances, a site plan Development Order shall not be issued prior to the approval of the associated Final Plat. The City Manager, as the Land Use Administrator (LUA) or his designee is authorized to approve construction plans and preliminary plats for the project. Final Plat approval shall require approval by City Council.

SECTION 4. MODIFICATIONS TO THE CONCEPTUAL DEVELOPMENT PLAN:

The exact location and number of structures, roadways, primary sidewalk/pathway system and other improvements as shown by the Conceptual Master Plan and the Pedestrian Connectivity Plan (**Exhibit "5"**) are subject to change as a result of the development review process and such modifications do not require amendment of the Development Agreement. Modifications to the exact location and number of structures, roadways, primary sidewalk/pathway system and other improvements may be requested by the Hospital and approved by the LUA during review of construction documents, site

plans or preliminary plats for the Project or portions thereof as long as the development standards contained in this Development Agreement are substantially maintained. Moreover, the LUA is authorized to approve modifications to the Conceptual Development Plan, construction documents, and final site plans for the Subject Property or portions thereof (collectively, "Plans" and individually, a "Plan"), provided that (i) the maximum external P.M. Peak Hour trip volume provided for in Section 10.3 are not exceeded, (ii) the maximum building height described herein are not exceeded, and (iii) the approved plan maintains the development standards in this Development Agreement.

SECTION 5. PERMITTED USES

The Hospital agrees to fully comply with the following Use Restrictions on the Subject Property. In addition to the existing facilities and land uses presently situated on the Subject Property, the Hospital may construct a mix of uses consistent with Tract Map and the Section 5.1 of the LDC (2010) (incorporated herein by reference) except as otherwise provided in Section 6 of this Development Agreement.

5.1 USE RESTRICTIONS.

The following Table summarizes the underlying zoning designation(s) permitted within the MPD respective land Tracts

| <u>TRACT</u> | <u>ZONING CLASSIFICATION*</u> |
|--------------|-------------------------------|
| 1 | COM-2, OFC-1, OFC-2 |
| 2 | COM-2, OFC-1, OFC-2 |
| 3 | PRS |
| 4 | COM-2, OFC-1, OFC-2 |

| | |
|---|-----------------------------|
| 5 | PRS |
| 6 | N/A (Stormwater facilities) |
| 7 | OFC-1, OFC-2 |
| 8 | COM-2, OFC-1, OFC-2 |

* Unless otherwise specifically called for herein, the uses identified in Table 3.4 of the LDC (2010) (incorporated herein by reference) shall govern the permitted uses allowed the zoning classifications.

5.2 VEHICULAR/NON-VEHICULAR, PEDESTRIAN, ACCESS AND PARKING

ACCESS AND INTERCONNECTIVITY: The Conceptual Development Plan integrates pedestrian, bicycle and vehicular traffic circulation systems within the Subject Property and with the adjacent properties or rights of ways. All uses shall have access to a roadway or driveway, but are not required to front on a dedicated road. The City shall be granted access to all roadways to ensure that public safety is maintained. SR100 vehicular access location shall be limited to the number indicated on the Conceptual Development Plan consistent with City of Palm Coast and Florida Department of Transportation approval.

SECTION 6. PROHIBITED USES

The Hospital agrees to comply and prohibit the following use restrictions on the Subject Property, as follows: (i) Standalone bars, taverns and nightclubs, unless associated with a hotel or restaurant (ii) Bed and Breakfast Inn; and (iii) Restaurants, with Drive-thru service.

SECTION 7. LAND DEVELOPMENT CODE NON-APPLICABILITY.

The development of the Project shall proceed in accordance with the terms of this Development Agreement. In the event of an inconsistency between the terms of this

Development Agreement and the LDC, the terms of this Development Agreement shall prevail. Where specific requirements are not contained in this Development Agreement, the LDC shall apply to the extent that it does not conflict with the provisions of this Development Agreement or the general intent of the Conceptual Development Plan. The requirements of this Development Agreement supersede any inconsistent provisions of LDC of the City unless provided elsewhere in this Development Agreement.

7.1 SIGNAGE:

(a) Tracts 1, 2, , 7 & 8: All signage shall comply with the LDC except as provided in the Buffer Plan described elsewhere in this Development Agreement.

(b) Tract 4: The Hospital may construct an electronic message center substantially similar to **Exhibit "6"** in the area designated on the Conceptual Master Plan. Prior to the installation of an electronic message center, the parties shall mutually agree to sign a management program regulating time, place and manner.

(c) The current wall sign (sign area sq. ft.) on the existing Hospital facility shall be permitted in the event such wall signage is ever changed.

(d) Monument Sign Tract 2, 6: The Hospital may construct signage consistent with **Exhibit "7"** and the Buffer Plan.

SECTION 8. FACILITY COMMITMENTS.

(a). Unless otherwise described elsewhere in this Development Agreement, the Hospital agrees that the City is not responsible for the construction or creation of public facilities or capacity to facilitate the development of the Subject Property. Except for issues of traffic concurrency which is provided for elsewhere in this Development Agreement, no building permits or development permits shall be issued for the Subject Property unless

adequate capacity of concurrency monitored facilities is available concurrent with the impact on said facilities by the development.

(b). The Hospital agrees to accomplish and complete, at a minimum, the following facility/infrastructure and to grant the following rights, at the Hospital's sole and exclusive expense, as a condition of this development approval and in addition to the payment of all impact fees relating to the development of the Subject Property:

(i) Construct all on-site improvements, including the parking areas, utilities, storm water management system, lighting, and perimeter buffer landscaping.

(c). The Hospital shall grant any and all utility easements to the City which are deemed necessary to serve the Subject Property with public utilities.

(d). The Hospital agrees that the City has shown an essential nexus between a legitimate City interest and the conditions, if any, imposed herein. The Hospital further agrees that all proposed conditions are roughly proportional to the impact the development upon the public based upon an individualized determination by the City that the required conditions are related in both nature and extent to the impacts of the proposed development.

(e) SIDEWALKS: The Hospital shall provide an internal integrated system of sidewalks and natural pathways, as depicted on the Conceptual Development Plan, to ensure that pedestrians maintain easy and safe access to all uses. The Hospital shall eight foot wide sidewalk along SR 100 or as otherwise specified per Flagler County's planned pedestrian/bicycle improvements along SR 100 and as required by the LDC. The external perimeter sidewalk which shall be connected to the Subject Property's primary internal sidewalk/pathway system as depicted on the conceptual master development plan.

(f) TRACT 2 ACCESS ROAD: As depicted on the Conceptual Development Plan, the Hospital shall provide a common roadway within Tract 2 connecting SR100 to Subject Property's existing main entry road located in Tract 4.

(g) I-95/SR 100 BUFFER PLAN: In an effort to promote a campus style development, the Hospital shall develop the boundaries of the Subject Property adjacent to I-95 and SR 100 consistent with buffer plan attached hereto as **Exhibit "4"** (the "Buffer Plan"). The Buffer Plan shall preserve the existing forty eight inch (48") Oak tree along SR 100 in a manner acceptable by the City. The Buffer Plan specifically provides for a landscape buffer (including building set back) of thirty five feet (35') along SR 100 and a twenty-five foot (25') landscape buffer along I-95. Construction of the Buffer Plan shall occur contemporaneously with development of Tract 2. The Buffer Plan is consistent with the City's existing CRA and planting materials shall be consistent with the LDC. The Hospital and the City shall work in a cooperative method to redevelop the existing ditches and the FDOT drainage pond adjacent to the Subject Property at the intersection of I-95/SR100 (the "Alternate Buffer Plan"). The City, with the assistance of the Hospital, shall coordinate all efforts with the FDOT to develop the Alternate Buffer Plan. If approved, the Hospital shall have the responsibility for construction and maintenance of the Alternate Buffer Plan unless otherwise agreed to in writing by LUA. Subsequent changes to the Buffer Plan shall be approved by the LUA.

SECTION 9. DEVELOPMENT STANDARDS

9.1 PARKING: Parking requirements shall be reviewed at the technical site plan review level. Project parking will consist of a combination of surface parking and a parking structure(s) consistent with the parking space requirements of the LDC. Tract 2, as represented on the Conceptual Development Plan (Exhibit "2"), shall be developed

utilizing Shared Parking and Joint Use of Facilities surface parking, as per the LDC (2010) (incorporated herein by reference) Table 5-4; Shared Parking Usage Percentages. Minimum and maximum number of parking spaces for all other Project tracts shall be in accord with the LDC.

9.2 OPEN SPACE: Minimum open space shall be forty percent (40%) of the Subject Property's gross area. Open space shall be defined by the LDC and include stormwater ponds. Flexibility to the minimum open space requirements shall be as provided by the LDC which may include but not limited to, green building principles, land donation, or other mechanisms that would justify a lower percentage and approved by the LUA. Open Space shall be maintained by either the actual owner of the property, a property owners association, covenants, or other method satisfactory to the Hospital.

Each Tract of the Project will include infrastructure to support the proposed uses, including water and wastewater service, drainage, private roads, vehicular and pedestrian access facilities.

9.3 WATER/WASTEWATER: The Project is located wholly within the City limits and is therefore within the City's water and wastewater service areas. All proposed permanent uses within the Project will be served by central water and sewer services. The City shall be the potable water and wastewater service provider for the Project upon payment of applicable fees. The City is under no obligation to accept the dedication of any facility.

9.4 TRANSPORTATION CONCURRENCY: Pursuant to review of various traffic analyses, and consistent with the LDC (2010) (incorporated herein by reference) , the parties agree that the Hospital is exempt from traffic concurrency requirements and shall be

vested for the term of this Development Agreement so long as the property upon which any permitted use is situated meets the following additional conditions:

- (a) The property shall be owned by the Hospital and the associated use shall be located on the hospital campus site; and
- (b) The property shall not be leased or conveyed to another person or entity whose actual use does not provide direct services to the hospital in any way including but not limited to having medical privileges at the Hospital or not part of the Hospital's medical staff.

In the event that the City determines that any of the above referenced conditions are not satisfied, the use shall be subject to the City's traffic concurrency requirements as required by the LDC and the State of Florida. For example, if a hotel or restaurant is constructed upon the Subject Property, such use shall be subject to the City's traffic concurrency review and requirements. As to Tract 8 in particular, in addition to satisfying applicable Concurrency requirements, , the vested uses on Tract 8 shall provide for any necessary improvements to roadways within the Town Center Community Development District.

9.5 DRAINAGE: The Project shall include a Master Stormwater System ("MSS"), which was permitted by the SJRWMD. The MSS design shall meet, and be governed by, applicable SJRWMD and City of Palm Coast rules and regulations. The MSS will include management of stormwater runoff lakes, structures, piping, and facilities. Best Management Practices (BMPs) to treat, control, attenuate, and convey stormwater and surface waters may include, but are not limited to, vegetated natural buffers, swales, dry retention and wet detention.

9.6 LANDSCAPING: Except for the Buffer Plan (**Exhibit "4"**) provided for in Section 8(g) all landscaping shall comply with the LDC. In addition, the Project shall use

stormwater for its primary source of irrigation. Reuse water, if available, will not be utilized due to medical concerns associated with immune suppressive patient exposure . No potable water shall be used for irrigation, except on a temporary basis until stormwater or reclaimed water source is available or if approved by the City.

9.7 LIGHTING: All exterior Lighting shall comply with the LDC and remain architecturally consistent with the Subject Property's existing lighting.

9.8 FIRE PROTECTION: Fire protection requirements for the Project will be met through a system of fire hydrants installed on the site by the Hospital in accordance with City standards. The locations of fire hydrants shall be shown on all construction documents, site plans or preliminary plats. The water requirements for the fire system will be served by the City's Utility Department. The Project shall comply with the City's fire protection requirements. The City will provide fire protection services to the Project and in accordance to established local response agreements.

9.9 UTILITIES: All internal utility lines for the Project shall be placed underground.

9.10 INTERCONNECTIVITY: All buildings within each Tract shall be interconnected by roadways, driveways, sidewalks and paths as called for by the City's Comprehensive Plan.

9.11 RESOURCE PROTECTION. (Intentionally omitted.)

9.12 WETLANDS: The SJRWMD granted the Hospital a permit for wetland impact(s) requiring mitigation. The City has reviewed the issued SJRWMD Permit 4-035-26008-4 and associated Uniform Mitigation Assessment Methodology (UMAM) impact-mitigation analysis. The City has determined that the SJRWMD approved

activities meet the requirements of Section 10.01 Wetland Resources, Unified Land Development Code.

9.13 Low Impact Development Practices

To further conservation practices identified in the LDC, the Project shall incorporate into the construction, operation and maintenance of all facilities conservation strategies to include but not limited to:

1. Water Conservation

- Native, drought tolerant plant materials
- SJRWD waterwise Florida landscapes or comparable
- Turf grass - Irrigated area(s) shall not exceed 50% of landscape area(s)
- Separate irrigation zones shall be required for turf, non-turf areas
- Landscape areas shall not be irrigated using high-volume irrigation system unless high pressure compensating spray heads are utilized
- All irrigation systems shall employ a rain shut-off device such as a soil moisture sensor

9.14 PROHIBITION OF DISCHARGES: The Hospital shall comply with the City of Palm Coast Code of Ordinances, Article VI, Prohibition of Discharges, and all applicable local, State, Federal and City water quality laws, rules, regulations and ordinances.

9.15 STORMWATER POLLUTION PREVENTION: A stormwater pollution prevention plan ("SWPPP") shall be attached to and incorporated into the construction and permit documents pursuant to the requirements of applicable federal, state, and City regulations.

9.16 WILDLIFE PROTECTION: In the event that listed species have been determined to be residing on, or otherwise be significantly dependant on the Subject Property, the Hospital shall obtain the necessary permits from the FWC or other applicable agencies. Activities associated with listed flora and fauna shall comply with the LDC.

SECTION 10 . DEVELOPMENT STANDARDS

10.1 DIMENSIONAL STANDARDS:

| | |
|---------------------|-------|
| Min. Lot size | n/a |
| Min. Lot width | n/a |
| Maximum FAR | 0.50* |
| Max Building Height | |
| Tracts 1, 2, 7 & 8 | 75'** |
| Tract 4 | 120' |
| Building Setbacks | |
| Lot lines | 0' |
| Roads | 20' |
| SR 100 | 35*** |
| I-95 | 35*** |

* Hospital facility within Tract 4 shall be permitted a Maximum FAR of .75

** Hotel use within Tract 2 shall have a maximum height limitation of 100'.

*** Setbacks measured from nearest property line of Subject Property

10.2 IMPERVIOUS: Maximum impervious area shall be limited to seventy percent (70%) of the individual tract(s) area. Moreover, the minimum pervious area shall be

thirty percent (30%) of the Subject Property's gross area. The terms "pervious" and "impervious" are defined by the LDC.

The FAR for the development of the Subject Property shall be calculated based on the ratio of all developed buildings to the total area of the individual Tracts. Moreover, FAR calculations shall exclude any structural parking facility.

10.3 INTENSITY: Excluding the current traffic derived from the existing facilities on the Subject Property, the maximum development intensity of Uses for the Project shall not be limited to maximum square footage but rather to maximum external P.M. Peak Hour trips. In that light, the maximum development intensity for the Project shall not exceed 588 External P.M. Peak Hour trips plus the current traffic derived from the existing facilities (320 External P.M. Peak Hour Trips) ("Max External Trips"). Maximum P.M. Peak Hour Trips count is based on traffic derived by the present facilities and (1) 179,000 sq. ft. of office, (2) 16,000 sq. ft. of restaurant, and (3) an 80 unit hotel. Prior to the issuance of any site plan development order, the Hospital shall provide the City with an updated Traffic Study demonstrating that the Max External Trips derived by the Project and are not exceeded

10.4 ARCHITECTURE/PUBLIC SPACES: The architectural features of the Project shall be substantially similar with the existing facilities.

(a) Architectural character of all structures shall be compatible with existing facilities and comply with applicable standards of the LDC; Chapter 13, ARCHITECTURAL DESIGN GUIDELINES in effect at the time of development. Additionally, in furtherance of the campus theme, an architectural style, compatible with the existing hospital facility, shall be established and applicable to all future facilities.

(b) Public Spaces including but not limited to designated sitting areas, plazas, fountains, and other agreed to hardscape improvements shall be provided for each facility within the development in keeping with the scale of the respective project. In addition, the primary internal pedestrian/pathway system shall include, at minimum, benches strategically situated along the walkway corridors.

SECTION 11. LIST OF OUTSTANDING PERMITS/APPROVALS, AND PROPER SEQUENCING.

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

(b). All required City, County, State, or Federal permits shall be obtained prior to commencement of construction.

SECTION 12.: DEVELOPMENT FEES.

The Hospital acknowledges and agrees that the City has enacted and may in the future increase the amount of citywide impact fees or similar exactions. Except as provided for herein, the Hospital acknowledges that the Subject Property shall be subject to all fees in effect at the time of permitting.

SECTION 13. COMMON AREAS AND MAINTENANCE.

If the development on the Subject Property is to include any common areas, to ensure the long-term ownership, maintenance, and control of those areas, prior to the issuance of any building permits, the Hospital shall establish an association, in accordance with Florida law, comprised of the owners of lots or parcels with the development (the

“Association”). The Association documentation shall be subject to the prior reasonable review and approval of the City to ensure adequate provisions for the on-going care and maintenance of the common areas. The documentation, whether contained in a deed restriction or otherwise, shall provide for the permanent maintenance of the Common Areas by the Association, minimum insurance requirements for the Association, adequate mechanisms to force financial participation by members of the Association and restrictions on the ability to amend these requirements without the City’s approval.

SECTION 14. BREACH; ENFORCEMENT; ALTERNATIVE DISPUTE; CONFLICT RESOLUTION.

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

(b). In the event that a dispute arises under this Development Agreement, and if the City and Hospital are unable to resolve the issues, the parties shall attempt to resolve all disputes informally. In the event of a failure to informally resolve all disputes, the City and Hospital agree to engage in mediation before a certified Circuit Court mediator selected by the parties. In the event that the parties fail to agree to a mediator, a mediator with the Florida Conflict Resolution Consortium or, if unavailable, a certified mediator, may be selected solely by the City. The parties shall equally pay all costs of mediation.

(c). In the event of conflict between the terms of this Development Agreement and the Conceptual Development Plan, the provisions of this Development Agreement shall prevail.

SECTION 15. NOTICES.

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

(b). Any such notice must be personally delivered or sent by registered or certified mail, overnight courier, facsimile, or telecopy.

(c). Any such notice will be deemed effective when received (if sent by hand delivery, overnight courier, telecopy, or facsimile) or on that date which is three (3) days after such notice is deposited in the United States mail (if sent by registered or certified mail).

(d). The party's addresses for the delivery of all such notices are as follows:

As to the City: Jim Landon, City Manager
160 Cypress Point Pkwy, Suite B-106
Palm Coast, Florida, 32164

As to the Hospital: David Ottati
Florida Hospital Flagler, Inc.
60 Memorial Medical Parkway
Palm Coast, FL 32164

With copies to: Michael D. Chiumento III, Esq.
Chiumento & Guntharp, PA
145 City Place, Suite 301
Palm Coast, FL 32164

TL Trimble, Esq.
AHS Attorney
111 N. Orlando Avenue
Winter Park, FL 32789

SECTION 16. SEVERABILITY.

The terms and provisions of this Development Agreement are not severable and in the event any portion of this Development Agreement shall be found to be invalid or illegal, then the entire Development Agreement shall be null and void.

SECTION 17. SUCCESSORS AND ASSIGNS.

(a). This Development Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the City and Hospital and their respective successors-in-interest. The terms and conditions of this Development Agreement similarly shall be binding upon the Subject Property and shall run with the land and the title to the same.

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

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

SECTION 18. GOVERNING LAW/VENUE/COMPLIANCE WITH LAW.

(a). This Development Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the Code of Ordinances of the City Of Palm Coast.

(b). Venue for any dispute shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

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

(d). This Development Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development generally applicable to the entire area of the City, such as requiring compliance with the

City capital facilities plan; parks master plan, including parks and trail dedications; utility construction and connections; mandating utility capacities; requiring street development or other such similar land development regulations and requirements.

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

(f). This Development Agreement shall also not be construed to prohibit the City from adopting lawfully imposed impact fees applicable to the Hospital and the Master Plan Development authorized hereunder.

SECTION 19. TERM / EFFECTIVE DATE.

(a). This Development Agreement shall be effective upon approval by the City Council of the City of Palm Coast, Florida and execution of this Development Agreement by all parties.

(b) This agreement provides an initial timeframe of ten (10) years to commence development. The baseline date shall be the recording date of the approved and executed Development Agreement by all parties.

(c) Should development not commence within the initial established timeframe, the Term of this Development Agreement shall be modified by action of the City Council. Failure to obtain an extension shall cause the zoning of all lands encumbered to revert to the previous equivalent zoning designation.

SECTION 20. RECORDATION.

Upon approval by the City Council of the City of Palm Coast, Florida and execution of this Development Agreement by all parties, this Development Agreement and any and all amendments hereto shall be recorded by the City with the Clerk of the Circuit Court of Flagler County within fourteen (14) days after its execution by the City and the Development Agreement shall run with the land. The Hospital shall pay the costs to record this Development Agreement.

SECTION 21. PERMITS.

The failure of this Development Agreement to address any specific City, County, State, or Federal permit, condition, term, or restriction shall not relieve the Hospital or the City of the requirement of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

SECTION 22. THIRD PARTY RIGHTS.

This Development 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 23. SPECIFIC PERFORMANCE/TIME IS OF THE ESSENCE.

(a). Strict compliance shall be required with each and every provision of this Development Agreement.

(b). The parties agree that failure to perform the obligations established in this Development Agreement shall result in irreparable damage, and that specific performance of these obligations may be obtained by suit in equity.

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

SECTION 24. ATTORNEY'S FEES.

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

SECTION 25. 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 Development Agreement and, 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 Development Agreement to the contrary, that failure shall not constitute a default under this Development 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 26. INDEMNIFICATION.

The Hospital shall indemnify for and save the City harmless from and against any and all liability, claims for damages and suit for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of in any way connected with the Owner's development of the Subject Property as provided in this Development Agreement.

SECTION 27. ENFORCEMENT; CITY'S RIGHT TO TERMINATE DEVELOPMENT AGREEMENT.

(a). This Development Agreement shall continue to be enforceable, unless lawfully terminated, notwithstanding any subsequent changes in any applicable law that may amend any laws or ordinances frozen by this Development Agreement.

(b). The failure by the Hospital to perform each and every one of its obligations hereunder shall constitute a default, entitling the City to pursue whatever remedies are available to it under Florida law or equity, including, without limitation, an action for specific performance and/or injunctive relief, or alternatively, the termination of this Development Agreement. Prior to the City filing any action or terminating this Development Agreement as a result of a default under this Development Agreement, the City shall first provide the Hospital written notice of said default. Upon receipt of said notice, the Hospital shall be provided a thirty (30) day period in which to cure the default to the reasonable satisfaction of the City prior to the City filing an action or terminating this Development Agreement. If thirty (30) days is not considered by the parties to be a reasonable period in which to cure the default, the cure period shall be extended to such cure period acceptable to the City, but in no case shall that cure period exceed ninety (90) days from initial notification of default. Upon termination of the Development Agreement, the Hospital shall immediately be divested of all rights and privileges granted hereunder.

SECTION 28. CAPTIONS.

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

SECTION 29. EXHIBITS.

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

SECTION 30. INTERPRETATION.

(a). The Hospital 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 Development Agreement.

(b). This Development 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 Development Agreement subject, however, to the provisions of Section 23.

SECTION 31. 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 Development Agreement.

SECTION 32. COUNTERPARTS.

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

SECTION 33. MODIFICATIONS / AMENDMENTS/NON-WAIVER.

(a). Unless provided for elsewhere in this Development Agreement, (1) amendments to and waivers of the provisions herein shall be made by the parties only in writing by formal amendment, and (2) Development Agreement shall not be modified or amended except by written agreement executed by all parties hereto and upon approval of the City Council of the City of Palm Coast.

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

SECTION 34. ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENTS.

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

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

CITY OF PALM COAST, FLORIDA

Jon Netts, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

William Reischmann, Esq.
City Attorney

MEMORIAL HOSPITAL FLAGLER,
INC. d/b/a
FLORIDA HOSPITAL - FLAGLER
By: _____

Print Name: David Ottati
Title: _____
Date: _____

EXHIBITS TO MPD AGREEMENT
FOR
MEMORIAL HOSPITAL FLAGLER, INC.
d/b/a FLORIDA HOSPITAL - FLAGLER

- | | |
|-----------|--|
| Exhibit 1 | The Subject Property (legal description) |
| Exhibit 2 | Conceptual Development Plan |
| Exhibit 3 | Tract Map |
| Exhibit 4 | Buffer Plan |
| Exhibit 5 | Pedestrian Connectivity Plan |
| Exhibit 6 | Electronic Message Center |
| Exhibit 7 | Monument Signage |

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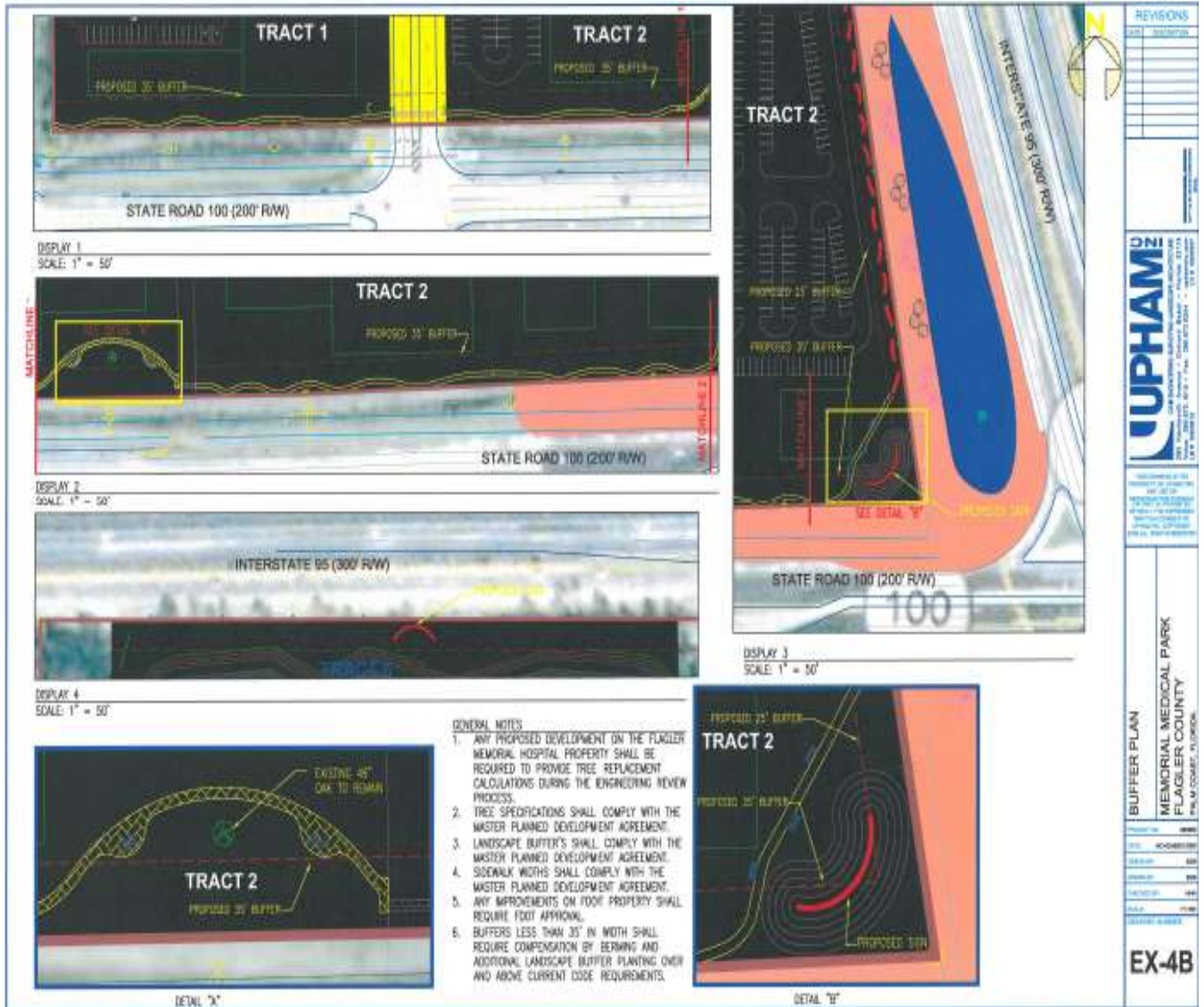
Exhibit 2 Conceptual Development Plan



Exhibit 3 Tract Map



Exhibit 4 Buffer Plan



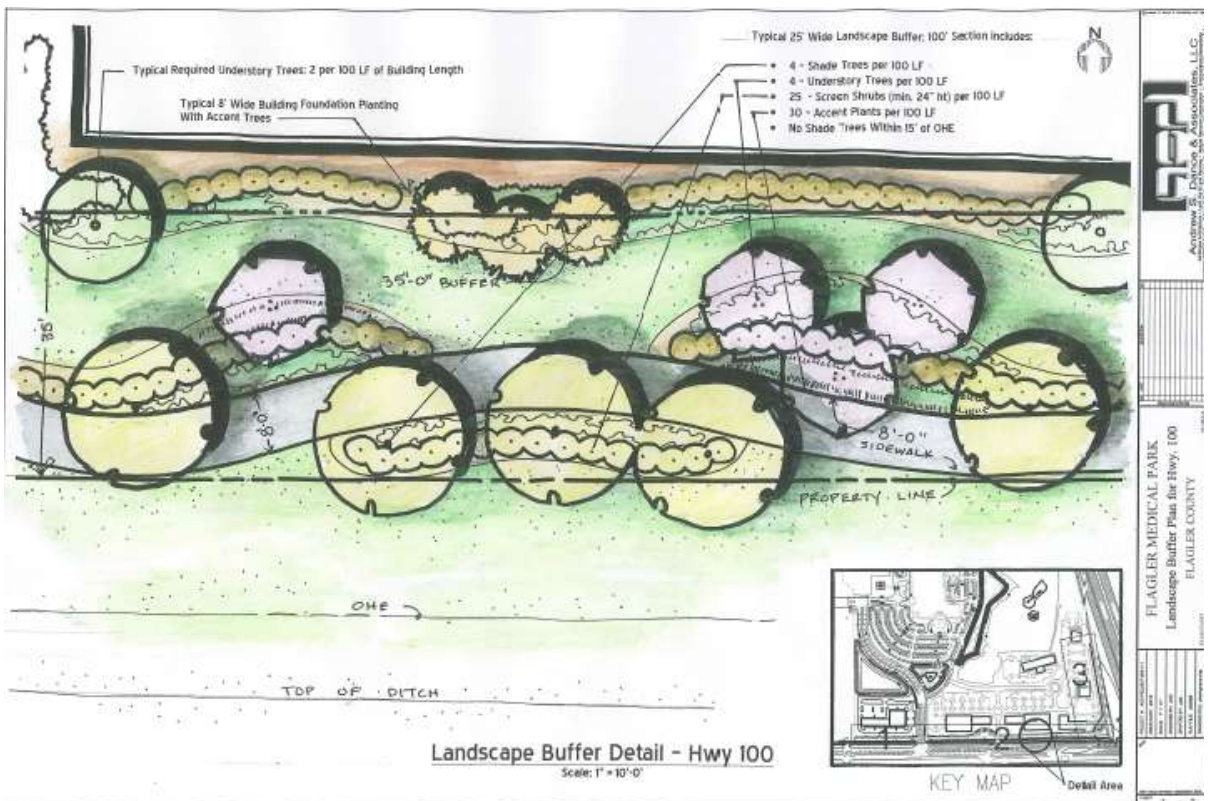
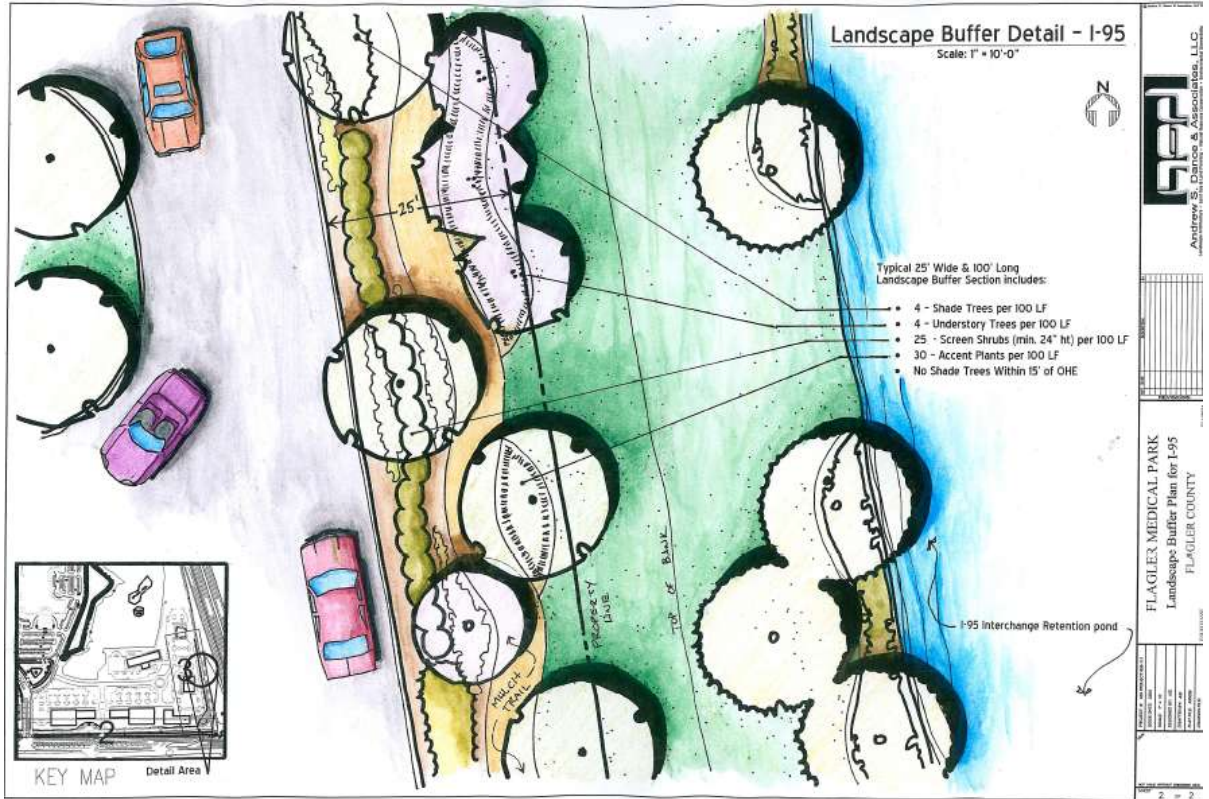


Exhibit 7 Monument Signage

