

**CITY OF SOUTH DAYTONA  
PLANNED COMMERCIAL DEVELOPMENT (PCD)  
MASTER DEVELOPMENT AGREEMENT**

**THIS PLANNED COMMERCIAL DEVELOPMENT DISTRICT MASTER DEVELOPMENT AGREEMENT** (this "Agreement") is effective as of the 14<sup>th</sup> day of February 2006, by and between the **CITY OF SOUTH DAYTONA, FLORIDA** (hereinafter referred as the "City"), and **INDUSTRIAL OPPORTUNITY, LLC, C/O SELBY REALTY, INC.**, 200 East Granada Blvd., Suite 200, Ormond Beach, FL 32176 (hereinafter referred to as the "Owner/Developer").

**WITNESSETH**

**WHEREAS**, the Owner/Developer warrants that it holds legal title to the property described in Paragraph 1 below and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement;

**WHEREAS**, the Owner/Developer desires to facilitate the orderly use and development of the Subject Property for commercial uses in compliance with the laws and regulations of the City and other pertinent governmental authorities, and the Owner/Developer also desires to ensure that its development is compatible with other properties in the area;

**WHEREAS**, it is the purpose of this Agreement to clearly set forth the understanding and agreement between the parties concerning the matters contained herein; and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Ownership. The Owner/Developer represents that it is the present owner of the property described in Exhibit A attached hereto (hereinafter referred to as the "Subject Property").
2. Title Opinion/Certification. The Owner/Developer shall provide to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing marketable title to the Subject Property to be in the name of the Owner/Developer and showing all liens, mortgages, and other encumbrances not satisfied or released of record.
3. Subordination/Joinder. Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record, must be subordinated to the terms of this Agreement, or else the lienholder must join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain any such subordination or joinder, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.
4. Permitted Uses. The Subject Property may be used for the purposes set forth on Exhibit B attached hereto and incorporated by reference. Uses generally excluded for planned

commercial districts under §5.5.P.3. of the City's Land Development Regulations shall not be permitted on the Subject Property.

5. Development Standards. The Subject Property is currently developed as more particularly shown on the Planned Unit Development Plan, attached hereto and incorporated by reference as Exhibit C. Further development or redevelopment of the Property shall be in accordance with the City's Land Development Regulations and this Agreement for the Light Industrial (LI) Zoning District.

6. Enforcement. In the event that enforcement of this Agreement by either party becomes necessary, the non-prevailing party shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary, and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement.

7. Recording and Effective Date. This Development Agreement and all subsequent amendments shall be filed with the Clerk of Court of Volusia County, Florida, and recorded following execution of the document by the City Council, 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 of South Daytona. The date of receipt of this document by the City shall constitute the effective date of the Planned Unit Development zoning, or any amendments thereto. The applicant shall be responsible for and pay all legal and filing costs for recording documents.

8. Compliance. The Owner/Developer agrees that it, and its successors and assigns, will abide by the provisions of this Agreement and the City's Land Development Code, including but not limited to, the site plan regulations of the City existing as of the date of this Agreement, which are incorporated herein by reference. The City may, after forty-five (45) days written notice and commercially reasonable period of time to cure deficiencies without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals to the Subject Property should the Owner/Developer fail to comply with the terms of this Agreement. Unless otherwise specifically stated in this Agreement, all current and future ordinances and regulations of the City and other applicable regulatory bodies shall apply to this Agreement.

9. Amendments to this Agreement. Pursuant to Ordinance 05-24, adopted by the City Council on July 26, 2005, the City Manager or his designee is authorized to approve minor amendments to this Agreement. Major deviations from this Agreement, as determined by the City Manager, shall require City Council approval as provided in Ordinance 05-24.

10. Notices. Where notice is herein required to be given, it shall be by certified mail, return receipt requested, addressee only, by hand delivery or courier. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE

Dwight C. Selby  
Industrial Opportunity, LLC  
c/o Selby Realty, Inc.  
200 E. Granada Blvd., Suite 200  
Ormond Beach, FL 32176

with copy to:

Robert A. Merrell III, Esquire  
Cobb & Cole, P.A.  
150 Magnolia Ave.  
Daytona Beach, FL 32114

CITY'S REPRESENTATIVE:

Joseph W. Yarbrough, City Manager  
City of South Daytona  
1672 S. Ridgewood Avenue  
South Daytona, FL 32119

Should any party identified above change, it shall be said party's obligation to notify the other parties of the change in the manner required for notices herein. It shall be the Owner/Developer's obligation to identify its lender(s) to all parties in the manner required for notices herein.

11. Other City Approvals and Permits. The approval and execution of this Agreement by the City does not exempt the Owner/Developer of the Subject Property from obtaining any and all other approvals and permits necessary to obtain Development Orders and Building Permits for the development of the Subject Property.

12. Captions. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement and Grant-of-Easement.

13. Binding Effect. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest, and the City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida. This 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.

14. Severability. If any part of this Developer's Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Developer's Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be effected. To that end, this Developer's Agreement is declared severable.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

WITNESSES:

[Signature]  
Name  
[Signature]  
Name

OWNER/DEVELOPER  
Industrial Opportunity, LLC

By: [Signature]  
Dwight C. Selby, Manager

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of October, 2007, by Dwight C. Selby as Manager of Industrial Opportunity, LLC, a Florida limited liability company who is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:

Sign: Patricia H. Hazard  
Print: Patricia H. Hazard

State of Florida At Large  
(Seal)

My Commission Expires:

Title/Rank: \_\_\_\_\_

Commission Number: \_\_\_\_\_



CITY OF SOUTH DAYTONA:

By: [Signature]  
Blaine O'Neal, Mayor

ATTEST:

[Signature]  
Joseph W. Yarbrough  
City Manager

CERTIFIED AS TO FORM:

[Signature]  
Scott Simpson  
City Attorney

**Joinder and Consent**

*Signed, sealed, and delivered  
in the presence of:*

WITNESSES:

**FOOD SUPPLY, INC.**, a Florida corporation

Sherry Clough  
Printed Name: Sherry Clough  
Ranee Lantzy  
Printed Name: Ranee Lantzy

By: David Sacks  
Its: President  
Print: David Sacks

STATE OF FLORIDA  
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November 2007, by David Sacks as CEO of Food Supply, Inc., a Florida corporation who is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:  
Sign: Katrina Dill  
Print: Katrina Dill

State of Florida At Large  
(Seal)

My Commission Expires:

Title/Rank: \_\_\_\_\_

Commission Number: \_\_\_\_\_  
**Katrina M. Dill**  
Commission # **DD286164**  
Expires **March 16, 2008**  
Bonded Troy Pain - Insurance, Inc. 800-385-7019

**Owner of the Following Property:**

Unit 1, Industrial Opportunity Condominium, a condominium according to the Declaration of Condominium thereof recorded in Official Records Book 5135, Page 3098, Public Records of Volusia County, Florida, together with an undivided share or interest in the common elements appurtenant thereto.

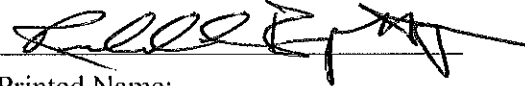
Together with a perpetual, non-exclusive easement for the rights of utility and other purposes including ingress and egress from public right-of-ways, granted, established and declared in those certain Easements recorded in Official Records Book 5135, Page 3086 and in Official Records Book 5135, Page 3092, of the Public Records of Volusia County, Florida.

**Joinder and Consent**

Signed, sealed, and delivered  
in the presence of:

WITNESSES:

**BOONE DISTRIBUTORS, INC.**, a Florida  
corporation



Printed Name: \_\_\_\_\_

Charles E. Windham  
Printed Name: Charles E. Windham

By: 

Its: VP Finance

Print: Robert J. Boone

STATE OF FLORIDA  
COUNTY OF Polk

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November  
2007, by Robert Boone VP of Boone Distributors, Inc., a Florida corporation who is  
personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:

Sign: Megan E. Odom

Print: Megan E. Odom

State of Florida At Large

(Seal)



Megan E. Odom  
MY COMMISSION # DD340769 EXPIRES  
December 21, 2008  
BONDED THRU TROY FARM INSURANCE, INC.

My Commission Expires:

Title/Rank: \_\_\_\_\_

Commission Number: \_\_\_\_\_

**Owner of the Following Property:**

Unit 2, 3, 4, 5, 6, 7, 8, 22, 23, 24, 25, 26, 27 and 28, INDUSTRIAL OPPORTUNITY  
CONDOMINIUM, a Condominium according to the Declaration of Condominium thereof recorded  
in Official Records Book 5135, Page 3098, Public Records of Volusia County, Florida, and all  
amendments thereto, together with an undivided interest in the common elements appurtenant  
thereto.

**EXHIBIT A**  
**LEGAL DESCRIPTION**

PARCEL 1:

LOT 1 AND LOT 8, SOUTH DAYTONA BUSINESS PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 43, PAGE 170, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

PARCEL 2:

A PORTION OF SECTION 33, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE COMMENCE AT THE CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF SAID SECTION 33; THENCE NORTH 88° 46' 31" WEST ALONG THE SOUTH LINE OF SAID SECTION 33, 666.00 FEET; THENCE NORTH 00° 02' 42" EAST 251.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 88° 46' 31" WEST 239.93 FEET TO THE EAST LINE OF THE FLORIDA EAST COAST RAILROAD, A 100 FOOT RIGHT-OF-WAY; THENCE NORTH 21° 25' 00" WEST ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE 820.15 FEET; THENCE NORTH 68° 35' 00" EAST 708.00 FEET; THENCE SOUTH 21° 25' 00" EAST 464.85 FEET; THENCE SOUTH 65° 05' 05" WEST 50.09 FEET; THENCE SOUTH 21° 25' 00" EAST 351.53 FEET; THENCE SOUTH 68° 35' 00" WEST 399.97 FEET; THENCE SOUTH 00° 02' 42" WEST, A DISTANCE OF 100 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A TRIANGULAR PARCEL DESCRIBED AS:

A PORTION OF SECTION 33, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE, BEGIN AT THE SOUTHEAST CORNER OF SECTION 33, TOWNSHIP 15 SOUTH, RANGE 33 EAST, THENCE RUN NORTH 88° 46' 31" WEST A DISTANCE OF 666.00 FEET; THENCE PARALLEL WITH THE EAST LINE OF SAID SECTION 33, NORTH 00° 02' 42" EAST 351 FEET; THENCE NORTH 68° 35' 00" EAST A DISTANCE OF 399.97 FEET TO THE POINT OF BEGINNING; THENCE RUN NORTH 21° 25' 00" WEST 351.53 FEET TO A POINT; THENCE RUN NORTH 65° 05' 05" EAST 50.09 FEET TO A POINT; THENCE RUN SOUTH 13° 23' 27" EAST 358.09 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**  
PERMITTED USES

**Advertising:**

Advertising Agency  
Directory Service  
Promotions/Out-of-town Firm  
Public Relations Agency  
Shopping Mall Promotion  
Sign Manufacturer  
Sign Painter  
Sign Shop  
Trade Show or Exposition

**Business Agencies:**

Abstract or Title Company  
Accounting Service  
Appraiser  
Auditing Service Agent  
Bookkeeping Service  
Collection Agency  
Court Reporter  
Credit Bureau  
Delivery Service  
Employment Agency  
Insurance Adjuster (Firm)  
Insurance Agency  
Investment Dealer  
Land Development Agency  
Magazine or Book Agent  
Real Estate Agency  
Sample Salesman

Trading Stamp Company  
Travel Agency  
Sales Rep/Office  
Mortgage Broker/Banking  
Management Agency  
Model Agency  
Income Tax Consultant  
Radio/TV Stations

**Health and Education Agencies:**

Ambulance Service (Private Company)  
Funeral Services  
Laboratory (Performing Services for a Medical Agency)  
Nursery School (Includes All Levels)  
Nursing Home (Includes All Care Levels)  
Sanitarium (Includes Private Hospitals)  
Vocational Skills Training  
School, Studio and Instruction  
School, Private Educational  
Animal Hospital

**Amusement Centers:**

Amusement Arcade  
Billiard/Pool Parlor  
Bowling Alley  
Carnival  
Entertainment  
Golf Driving Range or Miniature Course  
Hall for Hire  
Museum  
Night Club, Bar, Tavern, Pub (Includes Cabarets, Lounges, Dancing, Entertainment)  
Skating Rink - Skateboard Center  
Standard Golf Course  
Swimming Pool (Where Fee is Charged)

Theater (Including Drive-Ins)

Vending Machine Distributor

**Auctions:**

Auction Sales

**Automotive, Trailer, Mobile Homes and RV Sales and Service:**

Automobile Leasing or Rental Agency or Transporting Agency

Automotive Paint and Body Shop

Automotive Repair or Service Shop

Car Wash

Dealer or Agency - Mobile Homes, Recreational Vehicles and Boats

Dealer or Agent - New and Used Cars, Trucks, Trailers, Motorcycles

Service or Filling Stations

Taxicabs

“U-Haul” Type Trailer Rental Agency

Automotive Parts Sales and Service

**Contracting Service:**

Building Contractor

Engineering Contractor

General Contractor

Residential Contractor

Aluminum Material Installers

Electrical

Elevator Installation

Equipment Installer

Fencing

Fire Sprinkling Equipment

Floor and Floor Coverings

Glass and Glazing

Heating and Air Conditioning

Home Maintenance

House Moving and Wrecking

Lathing, Plastering, Drywall  
Masonry and Concrete  
Painting, Waterproofing, Wallpapering  
Pest Control  
Plumbing  
Roofing, Siding, and Sheet Metal  
Septic Tank Installation and Maintenance  
Service Station Equipment Installation  
Solar Heating Equipment and Window Film  
Swimming Pool Contractors  
Hauling - Fill Dirt  
Landscaping Contractor  
Framing and Trimming Contractor  
Cabinet Makers - Woodwork  
Tree Surgeon (Trim and Removal)  
Welding

**Distribution and Delivery:**

Distributor - Beverages  
Distributor - Dairy Products  
Distributor - Food Products/Dry Goods  
Distributor - Natural or Manufactured Gas  
Distributor - Petroleum Products  
Distributor - Heat Recovery Units

**Financial Agencies:**

Bail Bondsman  
Banks  
Savings and Loan Association  
Credit Union  
Loan Company  
Investment Counselors

**Lodging and Related Facilities:**

Hotels and Motels

**Manufacturing:**

Factory or Other Unit

**Merchants, Wholesale and Retail:**

First \$10,000 Inventory Value

\$10,001 to \$25,000 Inventory

\$25,001 to \$50,000 Inventory

Over \$50,000 Inventory

**Restaurants:**

1 to 50 Seats

51 to 150 Seats

Over 150 Seats

Drive-Ins

Sandwich Bars, Refreshment Stands

**Business Services:**

Service Agency

Alterations/Tailoring

Barber Shop (Requires State License)

Beauty Salon (Requires State License)

Catering Service

Coin Laundromat

Janitorial Service

Laundry/Dry Cleaners, pick-up only

Photostat/Blueprinting/Graphics

Rental Store

Warehousing, Bonded or Storage

Mini-Storage Facilities or RV Storage

Interior Decorators/Designers

Photographer

Physical Therapy

Health Spa/Fitness Center/Massage Parlor  
Re-Upholstery/Repair/Refinishing  
Animal Grooming and Care Center  
Professional Trade Association  
Dance/Art Studio  
Optician  
Taxidermist  
Answering Service (Telephone)  
Moving and Transfer Company  
Newspaper or Periodical

**Professional Services:**

Accountant/CPA  
Architect  
Attorney  
Chiropractor  
Dentist  
Engineer  
Laboratories - Scientific and Industrial  
Medical Doctor  
Optometrist  
Pharmacy  
Surveyor  
Veterinarian  
Polygraphist  
Psychologist  
Counseling  
Psychiatrist

**Utilities:**

Cable TV Company  
Major Utility Installation  
Utilities - Administrative/Support Offices  
Refuse Collection Facilities

**EXHIBIT C**  
**PLANNED UNIT DEVELOPMENT PLAN**

