

Prepared by: Dan Edwards

Address: 1750 W. Broadway St. Ste. 111, Oviedo, FL 32765

### **BINDING DEVELOPMENT PLAN**

**THIS AGREEMENT**, entered into this \_\_\_ day of \_\_\_\_\_, 2024 between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County") and **JEN Florida 48 LLC**, a Florida limited liability company (hereinafter referred to as "Developer/Owner").

### **RECITALS**

**WHEREAS**, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, and;

**WHEREAS**, Developer/Owner has requested, pursuant to the Brevard County Code, Section 62-1157, a rezoning of the Property to a Planned Unit Development zoning classification with a Binding Development Agreement, desiring to develop the Property as a mixed-use project as more particularly described herein, and;

**WHEREAS**, the County is authorized to regulate development of the Property.

**NOW, THEREFORE**, the Parties agree as follows:

1. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. The County shall not be required or obligated in any way to construct, maintain, or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest, or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
3. The Developer/Owner **VOLUNTARILY AGREES TO** provide the following conditions of

development for the Property:

1. The residential density of the development shall be capped at 3 units per acre.
2. The approval of Waiver #2 to be exempt from the storage of campers, travel trailers, recreational trailers and vehicles, boats and boat trailers, and other similar vehicles on the single-family lots as allowed by Brevard County Code Sec. 62-2117, provided each lot will have a 20' driveway capable of parking recreational vehicles.
3. The approval of Waiver #1 on the PDP plan set to allow for lots smaller than 5,000 square feet and less than 50 feet in width (40 feet X 120 feet) is conditioned upon the development containing a minimum of 474 acres of common recreation and open space as identified on the PDP plan set or as defined by the Brevard County Code. Said common recreation and open space shall consist of no less than 140 acres of active recreation and 334 acres of passive recreation.
4. The approval of Waiver #3 on the PDP plan set to allow for residential structures of two stories or less, to have a minimum building separation of 10' (rather than 15') is limited to structures that do not abut utility and/or stormwater easements or otherwise affect the intended purpose and use of the easement nor the ability to maintain utility/stormwater infrastructure.
5. Approval of the commercial uses as allowed in the BU-1 zoning classification per Brevard County Code Sec. 62-1482.
6. The approval of Waiver #4 on the PDP plan subject to the spine roadways: a) providing at a minimum of two (2) approved access points for each cluster of 350 dwelling units, and b) single family and/or multifamily lots shall not have individual direct access to a spine road, and c) the projects internal roadway network satisfying Florida Fire Prevention Code requirements including but not limited to 1:18.2, 1:18.4.5 and 1:18.5.
7. The approval of Waiver #6 reducing rear setback for residential principal structures from 20 feet to 15 feet is conditioned upon the development containing a minimum of 474 acres of common recreation and open space as identified on the PDP plan set or as defined by the Brevard County

Code. Said common recreation and open space shall consist of no less than 140 acres of active recreation and 334 acres of passive recreation.

8. Closure of the borrow pit permit shall be in accordance with SJRWMD requirements.
9. Reclamation of the existing lake shall include littoral plantings along the pond slope in accordance with Florida Fish and Wildlife Conservation Commission (FWC) comments provided.
10. Prior to County approval of a construction plan and/or Preliminary Plat/and or Site Plan, the Developer shall:
  - a) Execute an agreement, which may include, but is not limited to, a Proportionate Fair Share agreement, with the County and appropriate municipal entities addressing and/or mitigating any infrastructure deficiencies relating to the offsite transportation impacts as identified in a traffic study. The agreement may include, but is not limited to, provisions requiring the developer to design, permit, and construct the identified improvements at a cost to the developer proportionate to the project's impact. In addition, the agreement will identify timeframes for the necessary improvements, and updating and monitoring the traffic study as appropriate.
  - b) Execute an agreement for the donation/conveyance to the County in fee simple three (3) acres of land to be used for a fire station. The County will obligate the Emergency Medical Services Impact Fees and Fire Rescue Impact Fees collected from the development for a fire station on said property.
11. Prior to County approval of a construction plan and/or Preliminary Plat/and or Site Plan, the Developer shall demonstrate that adequate water and sewer services will be available to the development and are available prior to issuance of Certificate of Occupancy.
12. Address all staff comments regarding the PDP prior to, or concurrent with, site plan and subdivision submittals.
13. In accordance with Sec. 62-1301, if it is the opinion of the zoning official that an amendment to

the PDP warrants Board evaluation, such modifications shall be submitted for Board approval.

14. If the development is to have on-street parking, the Developer/Owner shall establish a financial mechanism for the maintenance of internal roadways prior to County approval of a construction plan and/or preliminary plat and/or site plan.
4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the property. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject Property and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on September 5, 2024. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
7. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before the Developer/Owner may implement the approved use(s) unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification, and is subject to enforcement action as described in Paragraph 7 above.
9. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be

invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

**IN WITNESS THEREOF**, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

\_\_\_\_\_  
Rachel M. Sadoff, Clerk of Court

\_\_\_\_\_  
Jason Steel, Chair (SEAL)

As approved by the Board on \_\_\_\_\_

*[Handwritten Signature]*

Witness 1 Signature

*Dan Edwards*

Witness 1 Printed Name

Address: 1750 W. Broadway St Ste 11  
Oviedo, FL 32765

Witness 2 Signature

*Jesse Anderson*

Witness 2 Printed Name

Address: 2602 Elivingsham  
Orlando, Florida 32803

*[Handwritten Signature]*

By: Richard Jerman, Vice President

STATE OF FLORIDA. COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 15<sup>th</sup> day of October 2024, by Richard Jerman, as Vice President of JEN Florida 48 LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

*[Handwritten Signature]*

My commission expires 9/9/28

Notary Public SEAL

Commission No.: HH 571774



## EXHIBIT "A"

BEING A PORTION OF SECTIONS 8, 9, 16 AND 17, TOWNSHIP 30 SOUTH, RANGE 37 EAST LYING IN BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE EAST ONE-QUARTER CORNER OF SECTION 16, TOWNSHIP 30 SOUTH, RANGE 37 EAST; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTH ONE-HALF OF SAID SECTION 16, SOUTH 89°35'24" WEST, 50.01 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE WESTERLY ALONG SAID SOUTH LINE OF THE NORTH ONE-HALF OF SECTION 16, SOUTH 89°35'24" WEST, 5372.81 FEET TO THE WEST ONE-QUARTER OF SAID SECTION 16; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 30 SOUTH, RANGE 37 EAST, SOUTH 89°35'24" WEST, 2711.24 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 17; THENCE NORTHERLY ALONG THE WEST LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 17, NORTH 00°11'21" EAST, 2642.10 FEET TO THE NORTH ONE-QUARTER CORNER OF SAID SECTION 17; THENCE WESTERLY ALONG THE SOUTH LINE OF SECTION 8, TOWNSHIP 30 SOUTH, RANGE 37 EAST, SOUTH 89°31'23" WEST, 2642.79 FEET TO THE WEST LINE OF SAID SECTION 8; THENCE NORTHERLY ALONG SAID WEST LINE OF SECTION 8, NORTH 00°40'15" EAST, 2511.48 FEET TO A POINT 100.00 FEET SOUTH OF THE NORTH LINE OF THE SOUTH ONE-HALF OF SAID SECTION 8; THENCE EASTERLY ALONG A LINE 100.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH ONE-HALF OF SAID SECTION 8, NORTH 89°29'13" EAST, 2650.82 FEET; THENCE CONTINUE EASTERLY ALONG SAID PARALLEL LINE, NORTH 89°23'59" EAST, 2658.46 FEET TO A POINT 100.00 FEET SOUTH OF THE WEST ONE-QUARTER CORNER OF SECTION 9, TOWNSHIP 30 SOUTH, RANGE 37 EAST; THENCE EASTERLY ALONG A LINE 100.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH ONE-HALF OF SAID SECTION 9, NORTH 89°23'59" EAST, 3415.39 FEET; THENCE SOUTH 89°04'27" EAST, 1941.19 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF BABCOCK STREET AS DESCRIBED IN OFFICIAL RECORDS BOOK 423, PAGE 262 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE SOUTHERLY ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 01°08'35" EAST, 2368.17 FEET; THENCE NORTH 90°00'00" WEST, 918.01 FEET; THENCE SOUTH 01°31'07" EAST, 1315.56 FEET; THENCE SOUTH 88°26'54" EAST, 873.58 FEET TO THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF BABCOCK STREET; THENCE SOUTHERLY ALONG SAID SAID WEST RIGHT OF WAY LINE, SOUTH 00°34'06" WEST, 1423.17 TO THE POINT OF BEGINNING.

SAID LANDS LYING IN BREVARD COUNTY, FLORIDA AND CONTAINING 1082.242 ACRES, MORE OR LESS.



## EXHIBIT "A"

DESCRIPTION: BEING A PORTION OF LAND LYING IN SECTIONS 9 AND 16, TOWNSHIP 30 SOUTH, RANGE 37 EAST, BREVARD COUNTY FLORIDA. SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 9; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 9, SOUTH 89°32'36" WEST, 50.01 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE WEST RIGHT OF WAY LINE OF BABCOCK STREET AS DESCRIBED IN O.R.B. 423, PAGE 262 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE SOUTHERLY ALONG SAID WEST RIGHT OF WAY LINE OF BABCOCK STREET, SOUTH 00°34'06" WEST, 1225.02 FEET; THENCE NORTH 88°26'54" WEST, 873.58 FEET; THENCE NORTH 01°31'07" WEST, 1315.56 FEET; THENCE NORTH 90°00'00" EAST, 918.01 FEET TO THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF BABCOCK STREET; THENCE SOUTHERLY ALONG SAID WEST RIGHT OF WAY LINE OF BABCOCK STREET, SOUTH 01°08'35" EAST, 113.83 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN BREVARD COUNTY, FLORIDA AND CONTAINING 27.33 ACRES (MORE OR LESS).

**JOINDER IN BINDING DEVELOPMENT PLAN BY MORTGAGEE CORPORATION**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated February 29, 2024, given by JEN Florida 48 LLC, as mortgagor, in favor of the undersigned, Boruch - David LLC, as mortgagee, recorded in Official Records Book 10004, Page 1063, of the Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

**MORTGAGEE CORPORATION NAME AND ADDRESS**

Allen Boruch of Boruch David LLC  
Mortgagee Corporation Name

3300 PGA Boulevard, Suite 600 Palm Beach Gardens FL 33410  
Street City State Zip Code

[Signature] William E. Boyer, Manager  
\*Authorized Agent Signature Authorized Agent Printed Name and Title

\*Note: All others besides CEO or President require attachment of original corporate resolution of authorization to sign documents of this type.

**AFFIX CORPORATE SEAL**

**WITNESSES**

Judy Daily  
Signature

Judy Daily  
Print Name

[Signature]  
Signature

Cara Stropp  
Print Name

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2024,  
by William E. Bayes, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

Christine A. Zill  
Notary Public Signature

Christine A. Zill  
Name Printed



SEAL