

IN RE: PETITION FOR RELIEF PURSUANT TO FLA.STAT. 70.51

200 CLUB OF OCALA, LLC, and
CATALYST DEVELOPMENT PARTNERS II, LLC

CASE NO.: ZON22-44645

Petitioners,
vs.

THE CITY OF OCALA, a political subdivision of the
State of Florida

Respondent.

REPORT OF SPECIAL MAGISTRATE

The undersigned Special Magistrate hereby reports that a mediation conference in the above-captioned matter was conducted as the first phase of the Petition for Relief pursuant to Fla. Stat. Chapter 70.51, Section 17 (a) on Tuesday, August 9, 2022, and that the parties have reached a resolution of the matter pursuant to a proposed Development Agreement under Chapter 163, Florida Statutes, a copy being attached hereto and incorporated herein, subject to approval by the City Council.

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been furnished via Electronic Mail to Robert W. Batsel, Jr, Esq., Rbatsel@lawyersocala.com and to Fred N. Roberts, Esq., Fred@kleinandkleinpa.com on the 23 day of August, 2022.

R. WILLIAM FUTCH, P.A.
2201 S. E. 30th Avenue
Suite 202
Ocala, FL 34471
(352) 732-8080
Email Address: bill@futchlaw.net
Florida Bar No: 0319856
Certification No.: 9530R

BY


R. WILLIAM FUTCH

Special Magistrate

This Instrument Prepared by and Return To:
Fred N. Roberts, Jr., Esq.
Klein & Klein, LLC
40 SE 11th Avenue
Ocala, FL 34471

**REVISED DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA
STATUTES, AND SETTLEMENT AGREEMENT CONCERNING FLUEDRA
PROCEEDINGS**

THIS DEVELOPMENT AGREEMENT ("Agreement"), executed by the Parties as of the ___ day of _____, 2022 and having the Effective Date specified below, is entered into by and between:

- **CITY OF OCALA**, a Florida municipal corporation ("City"); and
- **200 CLUB OF OCALA, LLC**, a Florida limited liability company ("Owner").

RECITALS:

- A. Owner owns a parcel of real property located in Marion County, Florida, also located within the jurisdictional boundaries of the City, being more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").
- B. Upon annexation into the City of Ocala, the Property was assigned a land use classification of Medium Intensity under the City's Comprehensive Plans but was not assigned a zoning classification.
- C. Owner intends to develop the Property for residential uses, which will include at least a portion of the Property being developed for multi-family residential units.
- D. Application has been made to City to have the southerly 15 acres of the Property being more particularly described on Exhibit B attached hereto (the "Multi-Family Parcel") assigned the zoning classification of R-3 (Multi-Family Residential District).
- E. As the entirety of the Property is not currently subject to rezoning or a master development plan, City and Owner desire to subject the Property to those restrictions and limitations set forth herein.
- F. City has provided its Notice of Intent to consider entering in this Development Agreement by advertisements published in the Ocala Star-Banner, a newspaper of general circulation and readership in Marion County, Florida, on February 18, 2022, and March 4, 2022, and by mailing a copy of the Notice of Intent to Owner, and to the persons and entities shown on the most recent Marion County Tax Roll to be the owners of property lying within three hundred feet (300') of the boundaries of the Property which is the subject-matter of this Agreement, and by announcing the date, time, and place of the second hearing during the first hearing.
- G. The City Council of the City has held public hearings on March 1, 2022, and April 19, 2022, to consider this Agreement, has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act.

- H. Following the public hearings described above, City Council denied Owner's application for rezoning described in Recital D, above. Immediately following such denial, Owner filed a Petition for Releive under the Florida Land Use Environmental Dispute Resolution Act, Section 70.51, Florida Statutes ("FLUEDRA").
- I. After the parties' engagement of Special Magistrate R. William Futch, issuance of a Notice of Hearing, and City's timely notice to proper parties, a FLUEDRA hearing was held on August 9, 2022.
- J. This Agreement sets forth the terms agreed upon by the parties during the first phase of the FLUEDRA hearing pursuant to Section 70.5117(a), Florida Statutes.
- K. The City Council of the City has held public hearings on September 6, 2022, and September 20, 2022, to consider this Agreement, has found and determined that its execution of this Agreement will further the objectives of the City and the Local Government Comprehensive Planning and Land Development Regulation Act.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein by reference), the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

- 1. **Definitions.** In addition to any other terms which may be specifically defined elsewhere in this Agreement, for the purposes of this Agreement the following terms shall have the following meanings:
 - 1.1 ***"43rd Court Improvements"*** – The expansion to four lanes of SW 43rd Court from its southern terminus at its intersection with State Road 200, northerly to its intersection with Southwest 20th Street pursuant to the Road Improvement Plans.
 - 1.2 ***"Access Easement"*** – The easement created by that instrument recorded in Official Records Book 2302, Page 118, Public Records of Marion County Florida.
 - 1.3 ***"Agreement"***— This Concurrency Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220 through 163.3243, inclusive, of the Florida Statutes.
 - 1.4 ***"City"***— City of Ocala, a Florida municipal corporation.
 - 1.5 ***"City Code"*** — Code of Ordinances of the City of Ocala, Florida.
 - 1.6 ***"Commencement of Road Improvements"*** -- Initiation of any of the following actions by City with respect to the 43rd Court Improvements: (1) issuance of all necessary permits for the construction of the 43rd Court Improvements and entry into a definitive agreement with a vendor to construct the 43rd Court Improvements which agreement includes a required completion date; or (2) actual commencement of construction of the 43rd Court Improvements.
 - 1.7 ***"Commencement of Construction"*** – Commencement of construction of vertical improvements (e.g. buildings, etc.) relating to the Project but, specifically not including (i) submission for review or issuance of approvals relating to site plans, land disturbance

permits or building permits or (ii) construction of improvements related to drainage, water or sewer utilities improvements or road facilities.

- 1.8 ***“Completion of Road Improvements”*** – Substantial completion of the 43rd Court Improvements in substantial accordance with the Road Improvement Plans and either (i) issuance of a certificate of completion by the governmental agency with applicable jurisdiction relating thereto or (ii) the opening of the 43rd Court Improvements to the public.
 - 1.9 ***“Concurrency Management System”***— Concurrency Management System of the City, as codified in Chapter 86 of the City Code.
 - 1.10 ***“Developer”*** – Owner, or its successor-in-interest to the Multi-Family Parcel.
 - 1.11 ***“Effective Date”*** — The date the terms of this Agreement become effective, as set forth in Section 12.16.
 - 1.12 ***“Multi-Family Parcel”*** – That portion of the Property intended to be developed for multi-family residential dwelling units, being more particularly described on attached **Exhibit B**.
 - 1.13 ***“Party” or “Parties”*** — As applicable, either Owner or City or both Owner and City.
 - 1.14 ***“Road Improvement Plans”*** – Those certain plans and specifications for the 43rd Court Improvements prepared by _____ and dated _____, which are on file with the City of Ocala City Engineer as Project # _____
 - 1.15 ***“Property”*** — That certain parcel of real property owned by Owner and located in Marion County, Florida, also located within the jurisdictional boundaries of the City, being more particularly described on attached **Exhibit A**.
 - 1.16 ***“Project”*** – The development of the Property for up to 288 multi-family residential units or such number of single-family residential units which do not exceed the PM the PM peak hour trip equivalent of 288 multi-family residential units) on the Multi-Family Parcel.
2. **Representations and Warranties.** As a material inducement to the other Parties to enter into this Agreement, each Party makes the following representations and warranties to the other Parties to this Agreement:
- 2.1 **Owner’s Representations and Warranties.** Owner represents and warrants to City that:
 - 2.1.1 Owner is a validly organized and existing Florida limited liability company.
 - 2.1.2 Owner has taken all actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives for Owner, authorized to execute this Agreement in their respective capacities as set forth below.
 - 2.1.3 The Owner is the legal and equitable owner of the Property.

- 2.1.4 The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the governing documents of Owner.

2.2 City Representations and Warranties. City represents and warrants to Owner that:

- 2.2.1 The actions by City hereunder are consistent with, and not in contradiction of, the terms and provisions of the City's Comprehensive Plan.
- 2.2.2 City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and the conducting of public hearings related thereto.
- 2.2.3 Upon the execution and delivery of this Agreement by City, the obligations of City shall be valid and binding obligations of City.
- 2.2.4 Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, the City Code or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

3. Development Standards. The future land use designation of the Property is Medium Intensity. The zoning of the Multi-Family Parcel is R-3. Development of the Property shall be consistent with the Concept Plan attached hereto as Exhibit C.

- 3.1 **Permitted Uses.** Allowable uses on the Property include single-family residential and multi-family residential and related accessory uses, including, without limitation, recreation uses and facilities.
- 3.2 **Maximum Density.** The density of the Multi-Family Parcel shall not exceed a maximum of 288 multi-family residential dwelling units, or any combination of single-family and multi-family residential dwelling units such that the traffic impact of such combination of single-family and multi-family residential units does not exceed the number of PM peak hour trips that would be generated by 288 multi-family residential dwelling units.
- 3.3 **Architectural.** Multi-family development on the Property shall be subject to the City's architectural review requirements as set forth in Section 122-216(t) of the City Code and may be (but is not required to be) age-restricted and/or gated.
- 3.4 **Buffers.** Buffers shall comply with Section 122-260 of the City Code, except that a minimum 25'-wide landscape buffer shall apply along the north boundary of the Property that may consist of existing trees and additional plantings to supplement where needed.
- 3.5 **Setbacks.** Setbacks shall be in accordance with the applicable provisions of the City Code.
- 3.6 **Building Service Areas; Mechanical Equipment.** Delivery and loading operations, HVAC equipment, dumpsters, backflow preventers and other utility and service functions shall be substantially screened from view of SW 43rd Court and not located nearer than 25-feet of the current boundary lines of the Property, except as may be otherwise approved by the City during the site plan review process. Where possible, such screening shall be incorporated into the overall design of the buildings and landscaping.

- 3.7 Parking.** Parking shall comply with all requirements set forth in Article VI of the City Code.
- 3.8 Vehicular and Pedestrian Facilities.** Primary vehicular access to the development will be accomplished with a new driveway on SW 43rd Court that will be opposite of SW 36th Street. The new driveway will have two (2) lanes for ingress and two (2) lanes for egress with sidewalks on both sides for pedestrian access that will connect to the sidewalk on SW 43rd Court. Internal vehicular circulation will be provided by a loop. All buildings will be connected to an internal sidewalk loop. Secondary vehicular access for emergency vehicles will be provided at the north end of the site to SW 43rd Court with a stabilized road adjacent to the trash compactor.
- 3.9 Site Lighting.** Driveway and parking lot areas will be illuminated for safe maneuvering of vehicles. Lighting assemblies will be consistent in type and color with those used in common areas and will not exceed 35 feet in height. Pedestrian level lighting will not exceed 16 feet in height. Lighting fixtures may allow for additional elements such as non-commercial banners or hanging planters. Lighting will include cut-off fixtures, where appropriate, and light will not spill beyond parcel boundaries. Lighting adjacent to the exterior boundary or residential neighborhoods will not exceed 16 feet in height and will be shielded to limit impacts on surrounding properties.
- 3.10 Signage.** Signage shall be provided for the proposed uses and for pedestrian safety based on applicable portions of the Code of Ordinances, Chapter 110, Article III, Division 2. This shall include Sec. 110-158(1)(c). External illumination shall be allowed. Monument signs and wayfinding signage shall be identified on the site development plans and will be permitted separately as required in the Code of Ordinances.
- 3.11 Amenities.** Amenities will include a community clubhouse with pool and recreation/fitness areas. Outdoor grilling may be included. A dog park may be included along with facilities for washing and grooming.
- 3.12 Landscaping.** Landscaping will be provided to meet Section 122 of the City Code and will include buffers, screening of vehicle use areas and internal parking lot landscaping.
- 3.13 Utilities.**
- 3.13.1 Electric.** All electrical lines on the Property shall be located/buried underground.
- 3.13.2 Potable Water.** Potable water services for the Property available from the City. City presently has sufficient permitted and constructed capacity, unreserved, for development of the Project.
- 3.13.3 Sanitary Sewer.** Sanitary sewer services for the Property are available from the City. City presently has sufficient permitted and constructed capacity, unreserved, for development of the Project.
- 3.13.4 Solid Waste Collection.** Solid waste collection for the Property will be provided pursuant to the City Code by the City. City currently has sufficient capacity, unreserved, to provide solid waste collection services for development of the Project.

- 3.14 **Access Easement; Construction Access.** Until Completion of the Road Improvement or unless otherwise permitted by the City Manager and City Engineer in writing, Developer shall use the Access Easement, exclusively, for construction access for the Project. However, any improvements to the applicable easement area shall be at the discretion of Developer and this provision shall not require Developer to pave or otherwise improve the Access Easement in connection with such construction access. In addition, unless otherwise approved by the City, Developer shall not make use of the Access Easement for any purpose other than (i) accessing the Property for construction or service purposes or (ii) emergency secondary access as required by City Code.

4. **43rd Court Improvements; Traffic Facilities; Traffic Concurrency; Proportionate Share Payment.**

- 4.1 **43rd Court Improvements.** There shall not be Commencement of Construction on the Project unless and until Commencement of Road Improvements has occurred by City. Commencement of Road Improvements shall occur by City not later than July 1, 2023 ("Road Improvement Commencement Deadline"). The parties acknowledge that the City has received a legislative appropriation, and has otherwise budgeted funds necessary to construct the 43rd Court Improvements. Upon Commencement of Road Improvements, construction thereof shall be carried on diligently and without interruption or delay, until completed.
- 4.2 **Project Phasing; Limitations on Certificates of Occupancy.** The parties acknowledge and agree until the Completion of the Road Improvements (or the Outside Completion Date, whichever is earlier), Developer shall only be permitted to obtain certificates of occupancy for (i) up to 144 multi-family units (or for buildings containing the equivalent thereof) on the Multi-Family Parcel and (ii) other ancillary or common improvements to the Project (e.g. clubhouse, workout facilities, etc.). Upon Completion of the Road Improvements, Developer may be eligible to obtain certificates of occupancy for the remainder of the permitted multi-family units (or remaining buildings containing same). The foregoing notwithstanding, in the event that the Completion of Road Improvements has not occurred by November 1, 2024 (the "Outside Completion Date"), subject to extension thereof based upon an event of Force Majeure in accordance with paragraph 8 hereof, Developer shall thereafter be eligible to obtain certificates of occupancy for the remainder of the permitted multi-family units (or remaining buildings containing same).
- 4.3 **Traffic Study.** Prior to site plan approval or permits necessary for improvements within the Project, Developer shall cause for a traffic study (a "Traffic Study"), which has been: (a) conducted in accordance with the City's Traffic Study Guidelines and the Concurrency Management System, (b) prepared in accordance with a methodology approved by the City, and (c) reviewed, approved and accepted by City. The Traffic Study shall evaluate long-term transportation needs within the agreed study area described therein. The methodology for the Traffic Study shall assume that the 43rd Court Improvements have been completed in accordance with the Road Improvement Plans.
- 4.4 **Obligations Regarding Traffic Improvements.** The Multi-Family Developer shall be required to provide for such traffic improvements established by the Traffic Study as being necessary to satisfy concurrency requirements as permitted by the Concurrency Management System by either constructing such improvements or making required proportionate share contribution payments.

- 4.5 **Proportionate Share Payment Credits.** City acknowledges that, pursuant to Section 163.3180(5)(h)2.e., Florida Statutes, Developer would be entitled to a dollar-for-dollar basis for impact fees, mobility fees, or other transportation concurrency requirements paid or payable in the future with respect to the Project. Because the County is not a party to this Agreement, Developer shall make appropriate notification and application to County with respect to Developer's rights to such dollar-for-dollar credit (this same procedure would be applicable in the event the County attempts to adopt or impose any mobility or other transportation concurrency mitigation requirements that are payable with respect to the Project).

5. **Development Permits Required.**

- 5.1 **Local Development Permits.** The local development permits approved or needed to be approved for development of the Project in accordance with the provisions of this Agreement, and the status of each such permit or approval, are as follows:

PERMITS/APPROVALS	STATUS
City Rezoning Approval to R-3	Approved
<ul style="list-style-type: none">• For New Single-Family Residential Only: City Preliminary Plat (aka, Conceptual Plan), Final Plat, and Improvement Plans Approval• For All Other New Development: City Site Plan Approval	To Be Obtained
City Building Permits	To Be Obtained
Off-Site Improvements Plan Approvals (for off-site transportation improvements to SW 43 rd Court and SW 40 th Street)	To Be Obtained
Water Management District Environmental Resources (Stormwater) Permit	To Be Obtained
FDOT Permits, as may be applicable	To Be Obtained (if applicable)

Nothing in this Agreement shall be deemed to obviate the Owner's compliance with the terms and provisions of each such identified Permit, nor obligate the City to grant any of the permits, actions, or approvals enumerated above.

- 5.2 **Additional Permits, Etc.** The failure of this Agreement to address any particular permit, condition, term, or restriction on development shall not relieve the developer, City or County of the necessity of complying with the law governing said permitting requirement, conditions, terms or restrictions with respect to the contemplated development of the Property, as applicable.
6. **Consistency.** Development of the Property as contemplated herein is consistent with the City Comprehensive Plan and Land Development Regulations.
7. **Local Laws and Policies.** To the extent permitted by law and in accordance with Section 163.3233, Florida Statutes, the City's laws and policies (including, without limitation, the City Comprehensive Plan and City Code) governing the development of the Property as of the Effective Date shall continue to govern the development of the Property for the duration of this Agreement and no law or policy or change in law or policy adopted by the City after the Effective Date shall apply to the Property, except as authorized in accordance with Section 163.3233(2), Florida Statutes, or except as specifically authorized in writing by Owner.

8. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; pandemic; act of God or nature; or any other matter beyond the control of the party obligated to perform that constitutes an excuse under Florida law based upon the doctrine of "impossibility of performance," shall be deemed events of Force Majeure and such delays shall be excused in the manner herein provided. If a party is delayed in any performance required by this Agreement because of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay within twenty (20) days of the commencement of such event stating the nature thereof and indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses to overcome any loss of time that has resulted. Force Majeure shall only apply to those deadlines expressly set forth herein.

9. **Release.** Owner and its successors, affiliates, subsidiaries, parent companies and assigns of limited liability companies, corporations, partnerships or other entities or associations wherever the context so admits or requires, hereby remises, releases, acquits, satisfies, and forever discharges the City, of and from, and waives, as against City, all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, known or unknown, now existing or hereafter acquired, which the Owner ever had, now has, or may have, or which any personal representative, successor, heir or assign of the Owner, hereafter can, shall or may have, against the City, from the beginning of the world to the day these presents including, without limitation, those concerning, for, upon or by reason of the Property, including claims arising from the applications referenced herein governing the zoning designation or concurrency determination concerning Owner's Property. Owner hereby acknowledges full and final settlement and satisfaction of all claims, demands, actions and causes of action of whatsoever kind or character which it may have against City and its current and former agents, employees, officers, elected officials, subsidiaries, servants, successors, heirs, executors, administrators, and assigns thereof, by reason of the above mentioned matters and any resulting damages, losses or injuries. In making this Release, Owner understands and agrees that it relied wholly upon its own judgment, belief and knowledge of any claims. No representatives or statements regarding any matters made by the persons, firms, or corporations who are hereby released, or by any other person or persons representing them, have influenced Owner to any extent whatsoever in making this Release. Owner understands and agrees that this settlement is in compromise of a doubtful and disputed claim, liability being expressly denied. The release, waiver and indemnification set forth herein is effective regardless of the cause including, without limitation, acts of God or of third parties.

10. **General Provisions.**

10.1 **Notices.** With respect to any Notices required to be given under the terms of this Agreement, such Notices shall be deemed given and effective:

10.1.1 Three (3) calendar days after the date they are deposited in the United States Mail, postage prepaid, return receipt requested, addressed to the parties at the following respective addresses or such other address as provided by a party pursuant to this paragraph; or

10.1.2 The date of actual delivery by hand or by a recognized national overnight delivery service such as Federal Express, UPS, or Express Mail, addressed to the

parties at the following respective addresses or such other address as provided by a party pursuant to this paragraph:

(a) **Owner:** 200 Club of Ocala, LLC., Attn: _____;
_____, _____; Email: _____; Facsimile:
_____.

(b) **City:** City of Ocala, Florida, Attn: Planning Director; 201 SE 3rd Street,
2nd Floor; Ocala, FL 34471

10.1.3 Any party may modify the address for notices set forth above by providing notice of the change of address to all parties to this Agreement, which notice is to be provided in accordance with the requirements of this paragraph.

10.2 **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership by or among the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

10.3 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges of immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

10.4 **Default Provisions.**

10.4.1 Except as otherwise provided in paragraph 10.4.5, the terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

10.4.2 All rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedy provided by law or equity.

10.4.3 No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default.

10.4.4 In the event of a material default by Owner or Developer with respect to obligations to City under this Agreement, and failure of Owner or Developer to cure the default within the grace period set forth above, in addition to any other remedies available to City under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations regarding the Property until the default has been cured. The Parties agree that failure of Owner or Developer to timely pay any funds owed under the provisions of this Agreement shall constitute a default with respect to the owner's obligations hereunder, and therefore would permit City to withhold permits for the Property.

10.4.5 If, after an annual review of the Property in accordance with Section 163.3235, Florida Statutes, the City Growth Management Director makes a preliminary finding that there has been an uncured default by Owner or Developer under this Agreement, the Agreement may be referred to the City Council who shall conduct two public hearings (and written notice shall be provided to Owner or Developer at least 7 days prior to each hearing) to determine whether, based on substantial competent evidence, Owner or Developer has complied in good faith with the terms and conditions of this Agreement. If the City Council determines, based on substantial competent evidence, that Owner or Developer has not complied in good faith with the terms and conditions of this Agreement, then the City Council may consider revoking or modifying this Agreement.

10.5 Estoppel Statements. Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

10.5.1 Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

10.5.2 Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).

10.5.3 That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.

10.5.4 That to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

10.5.5 That, as to the Property or any specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificates of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever,

notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

- 10.6 **Litigation.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.
- 10.7 **Binding Effect.** The Parties to this Agreement represent to each other that each Party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. There are no representations or warranties other than those set forth herein.
- 10.8 **Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.
- 10.9 **Severability.** Except as otherwise set forth herein, in the event any provision or section of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.
- 10.10 **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the Parties in connection herewith shall survive the execution and delivery of this Agreement.
- 10.11 **Successors and Assigns.**
 - 10.11.1 Pursuant to the provisions of Section 163.3239, Florida Statutes, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, the Parties hereto and their respective successors and assigns. This Agreement shall run with title to the Property.
 - 10.11.2 Upon written assignment of this Agreement to a successor owner of all of the Property (less any portions conveyed to the City or other governmental authority), Owner shall be relieved of all of its obligations under this Agreement.
- 10.12 **Applicable Law.** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.
- 10.13 **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 10.14 **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.
- 10.15 **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

- 10.16 Effective Date.** This Agreement shall become effective upon the occurrence of execution of this Agreement by all Parties, and the recordation of the Agreement in the Public Records of Marion County, Florida within fourteen (14) days after execution of this Agreement by all parties.
- 10.17 Duration.** The term of this Agreement shall be for a period of thirty (30) years commencing on the Effective Date, unless it is extended by mutual consent of the Parties in accordance with Section 163.3229, Florida Statutes.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

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

“Owner”

Signed, sealed and delivered in
the presence of:

200 CLUB OF OCALA, LLC, a Florida limited
liability company

Print Name: _____

By: _____

Print: _____

Print Name: _____

Date: _____, 2022

STATE OF FLORIDA

COUNTY OF _____

This instrument was acknowledged before me by means of ☐ physical presence or ☐ online
notarization this _____ day of _____, 2022, by _____, as _____ 200
CLUB OF OCALA, LLC, a Florida limited liability company, who ☐ is personally known to me OR ☐ has
produced _____ as identification.

Signature of Notary Public – State of Florida

Print Name _____

Commission Number _____

My Commission Expires _____

“City”

CITY OF OCALA, FLORIDA, a Florida
municipal corporation

ATTEST

Angel B. Jacobs, City Clerk

By: _____

Name: _____

Title: _____

Date: _____, 2022

*APPROVED AS TO FORM
AND LEGALITY:*

Robert W. Batsel, Jr., City Attorney

Exhibit A

The Property

Parcel 1

Commence at the Southeast corner of the West 1/2 of the Southeast 1/4 of SECTION 27, TOWNSHIP 15 SOUTH, RANGE 21 EAST, Marion County, Florida, proceed thence South 89° 41' 33" West along the South boundary of said Section 649.57 feet to the Point of Beginning; thence continue South 89° 41' 33" West 549.16 feet; thence departing said South boundary North 00° 00' 37" East 661.62 feet; thence North 89° 17' 56" East 5.03 feet; thence North 00° 00' 03" East 993.99 feet; thence North 89° 44' 14" East 1193.96 feet; thence South 00° 05' 18" West 171.77 feet; thence South 89° 42' 55" West 649.62 feet; thence South 00° 00' 12" West 1483.20 feet to the Point of Beginning.

Parcel 2

Together with that certain non-exclusive agreement for ingress and egress and sign easement as created in the Construction, Operation and Easement Agreement recorded October 30, 1996 in Official Records Book 2302, Page 118, Public Records of Marion County, Florida.

Exhibit B

Multi-Family Parcel

A portion of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, lying in Marion County, Florida and being more particularly described as follows:

Commence at the Southwest Corner of the Southeast Quarter of Section 27, Township 15 South, Range 21 East, Marion County, Florida; thence South 89°55'19" East, a distance of 50.67 feet along the South line of said Southeast Quarter to the East Right of Way line of SW 44th Avenue as described in Official Records Book 5118, Page 1991 of the Public Records of Marion County (also known as SW 43rd Court), for a POINT OF BEGINNING; thence North 00°24'23" East, a distance of 1047.10 feet along said East Right of Way line; thence departing said East Right of Way line, South 89°55'19" East, a distance of 623.83 feet; thence South 00°23'19" West, a distance of 1047.10 feet to the aforesaid South line of the Southeast Quarter; thence North 89°55'19" West, a distance of 624.16 feet along said South line to the POINT OF BEGINNING.

Containing 15.00 acres, more or less.

Exhibit C

Concept Plan

(7 Pages Attached)