

**CITY REDEVELOPMENT AGREEMENT
FOR THE FORGE AT MADISON COMMONS, LLC**

THIS CITY REDEVELOPMENT AGREEMENT FOR THE FORGE AT MADISON COMMONS, LLC is entered into as September __, 2022 between:

- City of Ocala, a Florida municipal corporation (“*City*”).
- **THE FORGE AT MADISON COMMONS, LLC**, a Florida limited liability company (“*Developer*”).

WHEREAS:

- A. Developer owns the Property¹.
- B. Developer intends to develop the Project on the Property and desires for City to provide the City Incentives, as set forth in this Agreement.
- C. The City Council of the City of Ocala has determined that the City Incentives set forth herein are in the public interest because the rehabilitation of the Property and the construction of the Project will help promote a prosperous economy in the City of Ocala by, without limitation, spurring economic development in Midtown Ocala.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable considerations, and with the intention that they be legally bound by this Agreement, 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 the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:
 - 1.1. *Agreement* – This Agreement, as it may from time to time be amended or modified pursuant to its terms and provisions.
 - 1.2. *Approval* – The final, unconditional approvals (i.e. minor site plan approval and issuance of a building permit) from all applicable governmental agencies (including City) reasonably necessary to allow for the immediate commencement of construction of the Project (including, without limitation, all necessary Development Orders), and, if person has objected to the approval, the expiration of time for the filing of an appeal or other challenge, without such an appeal or challenge having been filed.
 - 1.3. *Approval Date* – The date on which Approval is obtained for the Project.
 - 1.4. *Approved Plans* – The Plans for the Project as approved by the issuance of the Approval for the Project.
 - 1.5. *CDP* – The conceptual development plan for the Project prepared by Developer pursuant to paragraph 3.3.

¹ Terms capitalized herein and not otherwise defined herein are defined in paragraph 1 below.

- 1.6. *City Code* – The Code of Ordinances of the City of Ocala, Florida.
- 1.7. *City Grant* – The amount to be paid by City to Developer pursuant to paragraph 4.3.
- 1.8. *City Improvements* – The improvements to be made by City pursuant to paragraph 4.2.
- 1.9. *City Incentives* – The City Review Contributions, City Improvements, and City Grant.
- 1.10. *City Review Contributions* – The amounts to be paid or waived by City on behalf of Developer pursuant to paragraph 4.1.
- 1.11. *Completion* (regardless of whether the term is capitalized) – When construction of the Project is substantially completed which shall be the date when City has issued a certificate of completion, letter of completion, or similar approval for improvements to be constructed. (This definition does not require that all interior build-outs for the Project be completed but sufficient improvements must be made such that all exterior improvements have been materially completed).
- 1.12. *Contingency* – The Plans Contingency as defined in paragraph 2.1.1.
- 1.13. *Contractor* – The licensed general contractor selected and engaged by Developer to cause for the construction of the Project.
- 1.14. *Construction Costs* (regardless of whether the phrase is capitalized) - All actual costs of the construction and site development work incurred by Developer in connection with the Project.
- 1.15. *Deadline* – A deadline for performance of an obligation, or an occurrence of a Contingency, under the Schedule as set forth in paragraph 5.
- 1.16. *Develop* (regardless of whether the term is capitalized) – To perform activity associated with the development of the Project including the construction of all the improvements on a Property pursuant to this Agreement. The term is synonymous with “redevelop” under this Agreement.
- 1.17. *Development Costs* – All Property acquisition costs, Construction Costs; furniture, fixture and equipment costs; and directly related “soft costs” (i.e. design, permitting, professional fees, consulting fees, etc.) incurred in connection with or directly attributable to the Project.
- 1.18. *Development Order* (regardless of whether the term is capitalized) – Issuance of site plan approvals, issuance of building permits or similar action by City and all other government entities with jurisdiction over the Project, or any portion thereof, necessary for Developer, as may be applicable, to develop such portions of the Project pursuant to the requirements of this Agreement.
- 1.19. *Effective Date* – The date or effective date of this Agreement is the date upon which City or Developer last signs this Agreement. [The last party executing this Agreement is authorized to fill in the Effective Date in the blank therefor in the first paragraph of this Agreement.]

- 1.20. *Encroachment Easement Agreement* – The Agreement between the City and Developer concerning Easements for the City’s Osceola Trak to encroach upon the Property pursuant to paragraph 3.10.
- 1.21. *Month* (regardless of whether the term is capitalized) – When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date or first event. For example, two (2) months after December 15, 2020, is February 15, 2021. If the starting date is a date that is not in the subsequent month, the monthly anniversary shall be deemed to be the last date of the subsequent month. For example, two (2) months after December 31, 2022, is February 28, 2023.
- 1.22. *Person* (regardless of whether the term is capitalized) – An individual, corporation, limited liability company, partnership, or similar entity or group of individuals or persons.
- 1.23. *Plans* – The site plan, if required, and building plan for the Project, and other applications necessary to obtain a building permit and other Approvals for the Project.
- 1.24. *Project* – The renovation of a currently existing building located on the Property for retail (including restaurant) and commercial purposes, and related improvements, as set forth in paragraph 3.2.
- 1.25. *Property* – The real property on the attached **Exhibit A** which property being identified by Marion County Tax Parcel ID No.: 28234-010-00.
- 1.26. *Requirements* – The obligations of Developer under paragraph 3 of this Agreement.
- 1.27. *Schedule* – The schedule of Deadlines and Contingency Deadlines set forth in paragraph 5.1.

2. **Contingencies**

2.1. Generally.

2.1.1. The parties’ obligations under this Agreement are contingent upon the following (the “*Plans Contingency*”) occurring prior to the deadline (“*Contingency Deadline*”) therefor: Approval by City of the Plans for the Project.

- a. The CDP shall be submitted prior to the Plans and follow the City’s requirements for a Pre-Application meeting. Upon approval of the CDP, the Plans shall be submitted for staff review and follow the City’s standard procedures of 10-14 days for first review, and 7-10 days for subsequent reviews.

2.1.2. The Contingency Deadline for the Plans Contingency is six (6) months after the Effective Date.

2.2. Responsibilities.

2.2.1. Developer shall be responsible for all costs and expenses associated with the Plans Contingency, less any City Review Contributions set forth in paragraph 4.1.

- 2.2.2. Developer acknowledges and agrees that, insofar as action (e.g. Approval) by City is necessary to cause the Plans Contingency to occur, such action must only be considered pursuant to the City Code and other provisions of applicable law, and nothing in this Agreement shall obligate City to take such action.
 - 2.2.3. Nothing herein shall prevent the Developer from obtaining permitting for a portion of the work to be performed while awaiting final plans.
 - 2.3. Effect of Plans Contingency Failure.
 - 2.3.1. If the Plans Contingency fails to occur prior to the Contingency Deadline, either party may elect to terminate this Agreement, by providing written notice of termination (which notice must be delivered prior to the occurrence of the Plans Contingency), whereupon City and Developer shall be released from all further liability under this Agreement, except as to matters that are stated herein as expressly surviving the termination of this Agreement.
 - 2.3.2. Each party shall exercise reasonable diligence in causing the Plans Contingency to occur prior to the applicable Contingency Deadline.
- 3. **Requirements of Developer.** Developer agrees to comply with the following Requirements:
 - 3.1. Generally. Developer's development of the Project consistent with this Agreement is a material inducement for City to enter into this Agreement. The opportunity for Developer to develop the Project pursuant to this Agreement, and the other obligations of City pursuant to this Agreement, are material inducements for Developer to enter into this Agreement.
 - 3.2. Project.
 - 3.2.1. Developer shall develop the Project on the Property.
 - 3.2.2. The Project shall consist primarily of external improvements and the construction of various interior "shells" for use by the end-users with the exception of the Development of three separate restaurant themes by Midtown Eateries, LLC, the interior improvement of which is included in the Development Costs. City acknowledges that the availability of such shells for use by end-users in a previously distressed building coupled with the restaurant venues in a previously underutilized area provides a significant public benefit.
 - 3.2.3. The Project shall provide for the renovation of the Existing Building for retail and commercial purposes, and related improvements, and shall include shells for:
 - a. Multiple restaurants/bars comprising a total of approximately 13,300 square feet with utilities sufficient to use such shell for a restaurant;
 - b. Retail comprising a total of approximately 2,500 square feet;
 - c. Office Space comprised of approximately 2,500 square feet;
 - d. An indoor public common gathering area of about 4,000 square feet;

- e. Multiple outdoor public common gathering areas.

3.2.4. Developer's total Development Costs, including tenant improvements required under lease agreements, are estimated to be approximately \$4,000,000.00.

- a. For purposes of this paragraph 3.2.4, Developer's Development Cost shall consist solely of the Development Costs paid by Developer (or tenants) for the Project and should not consider the value or amount of any City Incentives.
- b. Developer shall provide to City documentation (consisting of copies of applicable invoices and corresponding copies of cancelled checks relating to development and construction of the Project) of its Development Costs establishing that Developer's actual Development Costs incurred in connection with the Project were equal to, or in excess of, the amount set forth in paragraph 3.2.4. Developer shall not be required to provide any documentation concerning Development Costs in excess of such amount. In the unlikely event Developer shall provide the Project contemplated in the approved plans at a price below the amount set forth in paragraph 3.2.4., the total amount of the City Grant identified in paragraph 4.3.1. shall be reduced proportionately. For example, if Developer spends only 95% of the estimated Development Cost in set forth in paragraph 3.2.4., Developer will be entitled to receive only 95% the total amount of the City Grant identified in paragraph 4.3.1. Any savings in the City Grant shall be deducted from the initial payment identified in paragraph 4.3.2.a.

3.3. CDP.

3.3.1. As and when required by the Schedule, Developer shall submit to City the proposed CDP for the Project for approval by City pursuant to the Plans Contingency.

3.3.2. The CDP shall, at a minimum, include or be accompanied by the following items or information for the Project:

- a. A survey of the Property. The survey shall be certified to Developer and City and shall specify the square footage of the Property;
- b. Architectural features and materials of the proposed remodeled building, including elevations of all sides thereof. The submittal shall include a color rendering of the proposed buildings;
- c. Internal circulation and parking plans and all access points/ driveways connections;
- d. General landscape plan;
- e. Preferred locations for electrical and other utility services;

- f. Location of trash or refuse service areas; and
 - g. Sufficient detail for City to determine whether the City Improvements can comply with the provisions therefor as set forth in paragraph 4.2.1.
- 3.4. Plans. As and when required by the Schedule, Developer shall submit to City, for approval by City, proposed Plans for the Project which shall be substantially similar to the approved CDP.
 - 3.4.1. It is anticipated that the Project involves “non-substantial expansions, alterations or changes that are generally those modifications to a developed site that present a minor impact on the drainage requirements, the impervious area of the site, on-site parking, on-site circulation, access to the site and the existing trees and landscaping.” Pursuant to Code of Ordinances, City of Ocala, Florida, Section 122-213(b), the building official shall make the determination to allow the Project to be processed as a minor site plan after the CDP is completed.
- 3.5. City Approval. City’s approval of the Plans shall be evidenced by documents customarily issued by City staff for a project like the Project.
- 3.6. City Cooperation. City shall exercise its best efforts and cooperate with Developer in submitting and obtaining any state and federal licenses, permits and governmental authorizations necessary, for the Completion of the Project; provided, however, all costs associated therewith shall be the sole responsibility of Developer. City’s obligations shall not affect City’s right and authority to act in regulatory matters in accordance with applicable laws or ordinances.
- 3.7. Utility Requirements. The Project shall be serviced solely by Ocala Electric Utility for electricity for at least the first fifteen years after the date on which a certificate of occupancy is issued for the Project.
- 3.8. Adequate Assurance.
 - 3.8.1. Developer shall, prior to the plan submittal Deadline set forth in paragraph 5.1.4., provide an Adequate Assurance to City in the amount of \$146,000.00 (representing the value of the City Review Contributions and City Incentives, except for impact fees, the City Reimbursement, and certain City Improvements that City would have constructed for the benefit of the public whether or not such work was performed in conjunction with the Project).
 - 3.8.2. The form and substance of the Adequate Assurance shall be acceptable to City in its reasonable discretion.
 - 3.8.3. In the event the Adequate Assurance is in the form of a letter of credit, or other obligation with an expiration date, Developer shall renew the Adequate Assurance so it remains effective during the time period set forth in paragraph 3.8.4 that Developer is required to maintain the Adequate Assurance. Developer shall provide City with proof of such renewal at least thirty (30) days before the expiration of the Adequate Assurance. In the event Developer fails to renew the Adequate Assurance as and when required hereunder, City shall provide Developer with written notice of such default and, in the event Developer thereafter fails to

renew the Adequate Assurance within ten (10) days of City's provision of such notice, City shall be entitled to demand payment under the Adequate Assurance. The provisions of this paragraph shall govern over any conflicting provision in paragraph 7.2.2.

- 3.8.4. The Adequate Assurance shall be maintained from the date it is provided until Completion of the Project.
- 3.8.5. City may request payment of the Adequate Assurance in the event any Requirement described in paragraph 3 fails to occur or be maintained during the period the Adequate Assurance is required to be maintained.
- 3.8.6. The purpose of the Adequate Assurance is to reimburse or compensate City for its performance of obligations under this Agreement including, without limitation, the City Review Contributions and City Incentives. In the event the Adequate Assurance is paid to City, City shall be entitled to retain the full amount of such payment and shall not be obligated to credit Developer with any portion thereof or to otherwise account to Developer for the payment.
- 3.9. Developer Payment of Fees. Developer is responsible for all charges for fees for the Project except to the extent that they are paid by City as the City Review Contributions.
- 3.10. Local Professionals. Developer shall endeavor to utilize local professionals, architects, engineers, or contractors in the development of the Project. Nothing set forth herein shall, however, require Developer to take any action or select any professionals, architects, engineers, or contractors that would interfere, in Developer's sole discretion, with Developer developing the Project in a competent, professional and cost-effective manner.
- 3.11. Compliance with Other Provisions of Applicable Law. Developer shall construct the Project in compliance with all applicable laws, regulations and ordinances.
- 3.12. Encroachment Easement. City has advised Developer that it will likely need to reserve certain easements (the "Encroachment Easements") on the Property in connection with Developer's development of the Property and for other public purposes, including easements for electric poles, lines, transformers and other facilities, water and sewer facilities and perhaps other public utilities or improvements.
 - 3.12.1. Prior to the Approval of the Plans, City shall, in its reasonable discretion, determine the location of the Encroachment Easements. City shall use good faith efforts to locate the Encroachment Easements in a manner that does not interfere with the development of the Project based upon the Approved CDP or other proposed Plans.
 - 3.12.2. City shall construct those improvements of Osceola Trak on the eastern boundary of the Property including connectivity to Osceola Trak from the Property's existing elevation as and when set forth in the City's current Capital Improvement Plan.

4. City Incentives.

4.1. City Review Contributions.

- 4.1.1. City shall pay on behalf of Developer (or waive, to the extent permitted by applicable law) all charges or fees (the “*City Review Contributions*”) for plan review, permits and inspections for the Project including, without limitation: site plan review fees; building permits; plumbing, electrical, mechanical and site inspection fees; water, sewer and fire impact fees; stormwater capacity fees. Attached hereto as **Exhibit B** is a schedule of the City Review Contributions as well as the estimated amount therefor as of the Effective Date. City shall not be obligated to pay or waive any amounts owed in excess of Forty-six thousand and no/100 Dollars (\$46,000.00) as the City Review Contributions. The foregoing represents one-time payments for the foregoing items; nothing set forth in this Agreement shall relieve Developer from its obligation to pay periodic (including monthly) charges for utilities and other services provided by City. The developer agrees to pay remaining fees of which the City Review Contribution does not cover.
- 4.1.2. During review of the Plans for, and construction of the Project, City shall temporarily pay or defer payment of the fees or charges referred to in paragraph 4.1.1. If Developer causes Completion of the Project to occur as and when required by the Schedule, subject to applicable extensions set forth in this Agreement, City shall make final payment of the City Review Contributions to City’s Building Department. Any deferred fees or charges in excess of the City Review Contribution shall be paid by the developer within thirty (30) days of City’s demand therefor.
- 4.1.3. If Developer does not cause Completion of the Project to occur as and when required by the Schedule, Developer shall pay to City the amounts deferred or temporarily paid by City within thirty (30) days of City’s demand therefor.
- 4.1.4. The City has been awarded an Environmental Protection Agency (EPA) Brownfields Assessment Grant and shall utilize the grant as applicable and as approved by the EPA to perform updated Phase I and II site assessments. This shall not obligate the City to perform additional studies or remedy any contamination issues discovered.

4.2. City Improvements.

- 4.2.1. As and when required by the Schedule, City shall construct the following improvements (the “*City Improvements*”) at its sole cost and expense:
 - a. Water, sanitary sewer and electric utility laterals shall be provided to the boundary of the Property at the appropriate location(s) therefor as shown on the Plans. If the existing water, fire and sanitary sewer laterals and infrastructure are insufficient to provide adequate service for the Project, upgrade such lines and infrastructure. The City shall not be obligated to perform any infrastructure upgrades within the boundary of the property. Any upgrades to existing infrastructure within the property shall be the developer’s responsibility. Developer shall provide sketches of the

proposed location of electric, water and sanitary sewer utilities during the time period for the occurrence of the Plans Contingency.

- b. Install sidewalk within the public right of way for N.E. 1st Avenue immediately contiguous to the Property to a width of no less than six (6 feet, measured from the western boundary of the Property. The sidewalk shall bump out into current parking along N.E. 1st Avenue at the existing awning on the northern concrete block wall to permit sufficient space for a handicap accessible entry to the enclosed Patio Area.
- c. Install decorative streetlamps on public right of way for N.E. 1st Avenue immediately contiguous to the Property and across N.E. 1st Avenue from the Property. The streetlights should be equipped with electrical outlets for use for public events and decorative lights during holiday season and should also contain one banner device for the purpose of hanging decorative banners provided from time to time by marketing organizations of the City.
- d. Install bicycle racks along the N.E. 1st Avenue right of way.

- 4.2.2. City and Developer shall cooperate with each other in connection with the City Improvements. Without limiting the foregoing, City shall use good faith reasonable efforts to construct the City Improvements in time and in a manner that does not interfere with Developer's construction of the Project, and Developer shall use reasonable efforts in constructing the Project so as not to interfere with City's construction of the City Improvements.

The City shall notify the Developer if any City Improvements will be delayed. The Developer shall have the option of completing the improvements and obtaining a reimbursement from the City in-lieu of the City completing the work. The Developer shall submit a cost estimate of the improvement to the City Engineer. The City Engineer must approve the cost estimate prior to commencement of the improvement.

4.3. City Grant.

- 4.3.1. City and Developer hereby acknowledge that the Property has heretofore been underdeveloped. Moreover, the City has previously identified the Property as a Catalytic Site – a location where development would have significant impacts, well beyond the Property, on creation of economic investment within the Community Redevelopment Area. Accordingly, the City hereby acknowledges significant benefit by virtue of development of the Project. As an incentive to construct the desired improvements associated with the Project, and in anticipation of the benefits to be received by City and the public if the Project is constructed, City shall pay, to Developer, a City Grant totaling \$250,000.00.
- 4.3.2. The City Grant shall be paid as follows:
 - a. The first payment of the City Grant, in the amount of \$125,000.00 shall be made upon satisfaction of the following conditions: (the “*City Grant Payment Conditions*”):

- 1). City shall be provided with a certification from the Contractor that the Project has been Completed in substantial accordance with the Approved Plans.
- 2). Developer shall provide to City documentation (consisting of copies of applicable invoices and corresponding copies of cancelled checks relating to development and construction of the Project) of its Development Costs, and such other reasonable information as City may request to provide proof of payment of such sums.

City shall cause for the first City Grant payment to be made within thirty (30) days of satisfaction of the City Grant Payment Conditions.

- b. The remainder of the City Grant, comprising a total of \$125,000.00, shall be payable within twelve (12) months of satisfaction of the City Grant Payment Conditions.

5. **Schedule; Deadlines.**

- 5.1. City and Developer shall perform the following obligations (or the following Contingencies must occur) pursuant to the following schedule (“*Schedule*”); the date by which an obligation is required to be performed, or by which a Contingency must occur, is referred to as the “*Deadline*” for such obligation or Contingency.
 - 5.1.1. Within one (1) month after the Effective Date, Developer shall provide to City a proposed CDP for the Project for approval by City.
 - 5.1.2. The Parties shall cause the occurrence of the Plans Contingency as and when set forth in paragraph 2.1.2.
 - 5.1.3. Within one (1) month after Effective Date, Developer shall complete Financial Review pursuant to paragraph 6.
 - 5.1.4. Within two (2) months after Effective Date, City Council shall make the determination of financial ability and experience pursuant to paragraph 6.2.
 - 5.1.5. Within one (1) month after the last to occur of: (i) City Council determination of financial ability and experience pursuant to paragraph 6.2, or (ii) satisfaction of the Plans Contingency, Developer shall commence construction of the Project.
 - 5.1.6. City shall construct the City Improvements set forth in paragraph 4.2.1.a within five (5) months of City Council determination of financial ability and experience pursuant to paragraph 6.2.
 - 5.1.7. Developer shall cause Completion of the Project to occur within twelve (12) months after commencing construction of the Project, subject to reasonable extensions for supply chain availability and labor shortages.

- 5.1.8. City shall complete the City Improvements set forth in paragraphs 4.2.1.b-d within three (3) months after Developer causes Completion of the Project.
- 5.2. The Schedule in paragraph 5.1 is subject to the following:
 - 5.2.1. Two extensions, each with a duration of two (2) months, of the Deadline contained in paragraph 5.1.7 may be provided by the City Manager. Developer shall request such extension in writing not less than five (5) days prior to the expiration of the Deadline, which request shall state the good cause for the extension. The City Manager shall not unreasonably withhold or condition approval of a request for an extension.
 - 5.2.2. Developer shall be entitled to an automatic extension to the Deadline for Completion provided in paragraph 5.1.7 caused due to any failure of the City to perform any of its obligations within the Deadline therefor as set forth in this paragraph 5 or properly documents delays due to supply chain availability and labor shortages. Such extension shall be equal to the actual number of days of any such delay. Request for extensions hereunder may be provided by the City Manager and shall not be unreasonably withheld or conditioned.
 - 5.2.3. Except as provided in paragraph 5.2.1, 5.2.2 or pursuant to other express provisions of this Agreement (e.g., in paragraph 9), there shall be no other extension of any performance obligation except through formal amendment of this Agreement.
- 5.3. Timeline. Attached hereto as **Exhibit C** is a spreadsheet depicting a timeline (the “Timeline”) of the Deadlines calculated based on the assumption that (a) each step in paragraph 5.1 will take the entire time required therefor, and (b) if an event is calculated as occurring within a particular time period after the later of more than one prior event, the event with the latest Deadline shall be the last to occur; nothing set forth in such Timeline shall preclude the parties from causing such steps to occur before the Deadline. In the event of a conflict between the Timeline and paragraph 5.1, paragraph 5.1 shall govern.

6. **Financial Review.**

- 6.1. Financial Reviews and Information.
 - 6.1.1. As and when required by the Schedule, Developer shall request the Financial Review Committee to conduct its financial review (the “Financial Review”) of the Project and shall submit to the Financial Review Committee information (the “Financial Information”) confirming the financial ability of Developer and the Developer Principals to develop the Project.
 - 6.1.2. Unless modified pursuant to 6.1.3.a, the Financial Information shall include the following:
 - a. Information concerning the Developer Principals’ prior development experience, current or ongoing Projects similar to the Project in which the Developer Principals have been involved.

- b. The last two (2) years' federal corporate income tax returns of the Developer Principals and of Developer (if Developer was required to file such tax returns).
- c. Financial statements of Developer and each Developer Principal (owning more than a 20% interest) accurately representing their financial condition as of a date that is no less than six months prior to the date of delivery of the financial statements and credit bureau reports for each Developer Principal.
- d. Estimates of Development Costs for the Project provided by a licensed general contractor to be used for the Project and copies of the construction contract with such contractor.
- e. A loan commitment or other documentation establishing that Developer or the Developer Principals have sufficient financing or resources in place to develop the Project.

6.1.3. In connection with the Financial Review:

- a. Developer or the Financial Review Committee may request City to permit the types of Financial Information described in paragraph 6.1.2 be modified based upon the following factors: whether the Financial Information is subject to the Florida Public Records Act (notwithstanding paragraph 6.3.4); and such other matters as otherwise render the provision of the Financial Information described in paragraph 6.1.2 inappropriate and unnecessary. In considering the information to be provided, City shall consider, not only the matters asserted by the requesting party, but also City's reasonable necessity to assure that Developer and the Developer Principals have the financial ability to develop the Project.
- b. City and Developer shall request that no person serve on the Financial Review Committee who is employed by, or represents, a financial institution: (a) if a Developer Principal owns stock in such financial institution; (b) if a Developer Principal serves on the Board of Directors of such financial institution; or (c) if the financial institution has a business relationship with a Developer Principal that would create an appearance of impropriety if such person were to serve on the Financial Review Committee.
- c. The Financial Review Committee shall review the Financial Information submitted and make a report to City Council concerning its findings as to whether Developer and the Developer Principals have the financial ability to develop the Project.

6.1.4. As of the Effective Date, City anticipates that the Financial Review Committee shall consist of at least three persons selected in writing by the Ocala/Marion County Chamber of Commerce, Inc., a Florida not for profit corporation ("CEP"), or selected by one or more persons selected by the CEP: whose primary offices are in Marion County; who are employed by banks or similar financial institutions

with offices in Marion County; who are experienced in commercial lending; and who are willing to serve on the Financial Review Committee for no compensation. In the event that the CEP is unable or unwilling to select such persons, City shall select persons meeting the foregoing qualifications in its sole discretion. Although the CEP has a role in selecting the members of the Financial Review Committee, the Financial Review Committee is not a committee of, nor under the control of, the CEP and shall perform its duties hereunder without any direction from CEP and shall not disclose financial information obtained to the CEP.

- 6.2. Council Determination. City's obligation to provide the City Incentives shall be subject to City Council's determination that Developer and the Developer Principals have the financial ability to develop the Project, and that the Developer Principals has the experience to develop and market the Project, based upon any report of the Financial Review Committee and other information available to City Council. If City Council does not make such determination by the Deadline therefor, either party may terminate this Agreement by providing written notice of such termination (which must occur before City Council makes an affirmative determination under this paragraph 6.2).
- 6.3. Relationship Between City and Financial Review Committee. The relationship between City and the Financial Review Committee is as follows:
- 6.3.1. The Financial Review Committee is not, and will not be, a department, division, bureau, commission or other separate unit of government created or established by City.
- 6.3.2. The Financial Review Committee was not created by law or ordinance of City or any other public agency.
- 6.3.3. Although City anticipates that the Financial Review Committee will provide a report to City as set forth in paragraph 6.1.3.c, City has not entered into a contract with the Financial Review Committee concerning such report or other activities of the Financial Review Committee hereunder.
- 6.3.4. Therefore, in light of the foregoing, City and Developer believe and intend that all documents or other information provided by or on behalf of Developer to the Financial Review Committee shall be kept confidential by the Financial Review Committee and are not subject to the Florida Public Records Act. Nothing set forth herein shall preclude the disclosure of such documents or other information: (a) in any litigation involving City or Developer in which the such documents or other information is relevant, but the parties shall endeavor to protect such documents or other information from disclosure pursuant to available procedures under Florida law (including requesting that such documents or other information be sealed, if appropriate); or (b) pursuant to a subpoena or court order. Except in connection with any such use, City shall not request the Financial Review Committee to provide the information or documents to City. Further, City and Developer acknowledge that the Financial Review Committee may destroy information and documents provided to it by or on behalf of Developer hereunder upon Developer's request and that therefore it may be unable to obtain such information in connection with any permitted use thereof.

7. **Default.**

- 7.1. Force Majeure. Neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as defined in paragraph 9.
- 7.2. Notice and Opportunity to Cure. Prior to declaring a default hereunder, the non-defaulting party must provide the defaulting party with written notice and at least thirty (30) days to cure such default. Provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and pursues such cure.
- 7.2.1. Provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and pursues such cure.
- 7.2.2. In addition to the foregoing provisions concerning notice and an opportunity to cure, in the event that City desires to demand payment under the Adequate Assurance, City must (except as expressly set forth in other provisions of this Agreement, e.g., paragraph 3.8.3), after expiration of the foregoing time periods for notice and opportunity to cure, provide Developer with an additional written notice and at least thirty (30) days to cure such default.
- 7.3. Remedies. The Non-Defaulting Party may pursue, following the occurrence of default and expiration of any necessary notice or opportunity to cure, all remedies at law or equity against the defaulting party, including, without limitation:
- 7.3.1. Termination of this Agreement based upon a default;
- 7.3.2. Specific performance based upon a default by City after the occurrence of the Plans Contingency; or
- 7.3.3. Any other remedies specifically set forth in this Agreement.
- 7.4. Remedies Not Exclusive. The specific rights and remedies to which City and Developer are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which City or Developer may have under this Agreement.
- 7.5. No Consequential Damages. Notwithstanding paragraph 7.3, under no circumstances will City or Developer be liable for consequential damages, including lost profits, the right to such damages being expressly waived.
- 7.6. No Waiver. The failure by City or Developer to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that City or Developer may have and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.
8. **Survival**. Notwithstanding the termination of this Agreement (except a termination of the entire Agreement under paragraph 7.3.1) or the prior performance by the parties hereunder, the following paragraphs of this Agreement shall survive and remain effective: 7.5, and 10 through 24.

9. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; pandemic; archaeological excavation; 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 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. Specific references in this Agreement to deadlines as to which Force Majeure shall apply shall not be interpreted as intending to exclude the application of Force Majeure from other performance.
10. **Assignment; Interest Transfer.**
- 10.1. Developer may not, without the written consent of City which may be withheld or conditioned by City in its sole discretion, assign its rights or obligations under this Agreement, in whole or in part, until Completion of the Project.
- 10.2. No membership interest in Developer may be transferred (an “Interest Transfer”) until Completion of the Project except as follows:
- 10.2.1. An interest held by a Developer Principal may be transferred to: (a) another Developer Principal, (b) an entity in which the Developer Principals, individually or collectively, own at least 51% ownership and voting interests, or (c) any trusts, all of the beneficial interests of which are owned by Developer Principals, individually or collectively, or their immediately family members; or
- 10.2.2. Upon the written consent of City, which may be withheld or conditioned by City in its reasonable discretion.
- 10.3. Following Completion of the Project:
- 10.3.1. Developer may assign this Agreement in whole or in part; and
- 10.3.2. Any Interest Transfer may be made.
- 10.4. Promptly after any Interest Transfer before Completion of the Project, Developer shall provide notice thereof to City which shall include sufficient information for City to determine whether the Interest Transfer was permissible under this Agreement; such information could include an affidavit from a Developer Principal with personal knowledge of the matters set forth therein and need not be copies of operating agreements, partnership agreements or other documents that Developer deems confidential.
- 10.5. In the event of permitted assignment hereunder, and to the extent of the assignment:
- 10.5.1. The assignee will have all rights and obligations of Developer.

- 10.5.2. The assignee shall be entitled to amend the provisions of this Agreement without the joinder or consent of Developer.
- 10.5.3. The assignee shall be permitted to terminate this Agreement as otherwise provided in this Agreement without the joinder or consent of Developer or any prior assignee.
- 10.5.4. In the event of an assignment in connection with a sale of all of Developer's rights in a Project, the assignor shall be released from all liability under this Agreement for actions or inactions after, but not before, such assignment.
- 10.6. By executing this Agreement, Developer agrees, and by accepting any assignment, each assignee agrees, to the foregoing provisions of this paragraph 10 concerning the ability of an assignee to amend or terminate this Agreement.
11. **City's Police Powers.** Nothing in this Agreement shall serve to affect or limit City's police powers in the exercise of rezoning decisions or other governmental action associated with the proposed redevelopment of the Property or any Development Order associated therewith.
12. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on City's potential liability under state or federal law. As such, City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, that exceeds the applicable limit of liability under applicable law (currently Section 768.28(5), Florida Statutes). This paragraph shall survive termination of this Agreement.
13. **Resolving any Invalidity.** City and Developer hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for Developer undertaking the Project.
14. **Notice.**
- 14.1. All notices, requests, consents and other communications (each a "*Communication*") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:
- 14.1.1. For City: City Manager, 151 SE Osceola Avenue, Ocala, FL 34471; email: plee@ocalafl.org.
- a. With copy to: Aubrey Hale, Deputy Director, Planning, City of Ocala
201 SE 3rd Street, 2nd Floor, Ocala, FL 34471; email:
ahale@ocalafl.org.

- b. With a copy to: Robert W. Batsel, Jr., Gooding & Batsel, P.A., 1531 SE 36th Avenue, Ocala, FL 34471; email: rbatsel@lawyersocala.com.
- 14.1.2. For Developer: The Forge at Madison Commons, LLC, Attn: Ted Schatt; P.O. Box 4259, Ocala, Florida 34478; email: ted@schattlaw.com.
- 14.2. Each such Communication shall be deemed delivered:
 - 14.2.1. On the date of delivery if by personal delivery;
 - 14.2.2. On the date of email transmission if by email (subject to paragraph 14.5); and
 - 14.2.3. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
 - 14.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 14.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with paragraph 14.2.
- 14.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.
- 14.5. Concerning Communications sent by email:
 - 14.5.1. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;
 - 14.5.2. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;
 - 14.5.3. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient;
 - 14.5.4. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
 - 14.5.5. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

15. **Agreement Not Recordable.** Neither this Agreement nor any notice of it shall be recorded in the Public Records of Marion County, Florida, except as expressly permitted in this Agreement or as otherwise agreed by the parties.
16. **Successors and Assigns.** All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.
17. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
18. **Severability.** In the event any of the terms and provisions of this Agreement are determined to be unenforceable, for any reason whatsoever, such unenforceability shall in no way affect or eliminate the enforceability of all of the remaining terms and provision of this Agreement.
19. **Mutuality of Negotiation.** Developer and City acknowledge that this Agreement is a result of negotiations between Developer and City and the Agreement shall not be construed in favor of, or against, either party as a result of that party having been more involved in the drafting of the Agreement.
20. **Time.**
 - 20.1. Time is of the essence of all of the provisions and terms of this Agreement.
 - 20.2. If a time period is five (5) days or less, intervening Saturdays, Sundays or legal holidays will be excluded from the calculation.
 - 20.3. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall automatically extend to 5:00 p.m. on the next ensuing business day.
 - 20.4. For purposes of this Agreement, "legal holiday" means: (a) the day set aside by Section 110.117, Florida Statutes, for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day or Christmas Day; (b) the Friday after Thanksgiving; (c) Christmas Eve; (d) if Christmas is on weekend, the Monday after Christmas Day; and (e) any other day upon which the Clerk of the Court of Marion County, Florida, is closed.
 - 20.5. For purposes of this Agreement, a "business day" means any day other than Saturdays, Sundays or legal holidays.
21. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.

22. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
23. **Exhibits.**
- 23.1. All exhibits attached to this Agreement are incorporated by reference.
- 23.2. The following exhibits are attached to this Agreement:
- 23.2.1. **Exhibit A** – Property.
- 23.2.2. **Exhibit B** – City Review Contribution.
- 23.2.3. **Exhibit C** – Timeline
24. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force or effect. 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.

THEREFORE, each of the parties hereto set their hand and seal on this Agreement effective the Effective Date set forth above.

ATTEST:

CITY

City of Ocala, a Florida municipal corporation

Angel B. Jacobs
City Clerk

Ire Bethea Sr
President, Ocala City Council

Approved as to form and legality

Robert W. Batsel, Jr.
City Attorney

DEVELOPER

**The Forge at Madison Commons, LLC,
a Florida Limited Liability Company**

By: _____
J. Theodore Schatt, Manager

**EXHIBIT A
PROPERTY**

SEC 17 TWP 15 RGE 22
PLAT BOOK A PAGE 114
WESTON CENTRAL CITY
LOTS 10 THRU 19 & UNNUMBERED LOT LYING E OF & ADJ TO LOT 10
ALL OF THE ABOVE ALSO BEING DESC AS FOLLOWS:
LOTS 10.11.12.13.14.15.16.17.18.19 &
THAT CERTAIN PLOT OF LAND 39 FT IN WIDTH N & S BEING
BOUNDED ON THE N BY LOTS 12.13.14 ON THE E BY OSCEOLA ST ON THE
S BY LOTS 15.17.18 ON THE W BY MAIN ST &
COM AT A PT 429 FT E & 339 FT N OF THE SW COR OF GOV LOT 2
OF SEC 27 TH N 52 YRDS (156 FT) TH W 70 YRDS (210 FT) TO
THE NE COR OF LOT 10 TH S 52 YRDS (156 FT) TH E 70 YRDS
(210 FT) MOL TO THE POB

EXHIBIT B
CITY REVIEW CONTRIBUTION

List of Potential City Review Contributions		
Item	Category	Amount
Review Fee	Site	\$4,200.00
Fire Impact Fee	Impact	\$24,734.20
Building Permit Fees	Building	\$16,321.42
Total		\$45,255.62

EXHIBIT C **TIMELINE**

Effective Date

09/06/2022

All Deadlines based upon occurrence of prior event assume that such prior event occurs on the last day of its Deadline

	ITEM	PAR. #	MONTHS	AFTER	DEADLINE DATE
1	Developer to provide City with proposed CDP	5.1.1	1	Effective Date	10/06/2022
2	Plans Contingency Deadline	5.1.2	6	Effective Date	03/06/2023
3	Developer to complete Financial Review	5.1.3	1	Effective Date	10/06/2022
4	City Council determination of financial ability and experience	5.1.4	2	Effective Date	11/06/2022
5	Developer to commence construction of Project	5.1.5	1	Latter of City Council determination of financial ability and experience or Plans Contingency	12/06/2022
6	City to construct some City Improvements	5.1.6	5	City Council determination of financial ability and experience	05/06/2023
7	Developer to cause Completion of Project	5.1.7	12	Developer commences construction of Project	05/06/2024
8	City to complete remaining City Improvements	5.1.8	3	Developer causes Completion of Project	08/06/2024

Deadlines have not been Adjusted for weekends or Holidays