

This Instrument Prepared By:  
W. James Gooding III, Esq.  
Gooding & Batsel, PLLC  
1531 SE 36th Avenue  
Ocala, FL 34471

Record and Return To:  
City of Ocala  
Growth Management Department  
201 SE 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
Ocala, Florida 34471  
Attn: Development Coordinator

Rec: \$ \_\_\_\_

**AMENDMENT TO  
DEVELOPER’S AGREEMENT (EMERSON POINTE PHASE 1 AND PHASE 1A)  
TO ADD PHASE 2**

**THIS AMENDMENT TO DEVELOPER’S AGREEMENT (EMERSON POINTE PHASE 1 AND PHASE 1A) TO ADD PHASE 2** (the “Amendment”) is made and entered into on the date (the “Effective Date”) it is executed by the last of the parties hereto, and is by and between the **CITY OF OCALA**, a Florida municipal corporation (“City”) and **EMERSON POINTE DEVELOPMENT, LLC**, a Florida limited liability company (hereinafter the “Developer”).

**WITNESSETH:**

**WHEREAS:**

- A. On or about December 17, 2024, City and Developer entered into the *Developer’s Agreement (Emerson Pointe Phase 1 and Phase 1A)* (the “Original Agreement”) as recorded in OR Book 8500, Page 1974.<sup>1</sup>
- B. The Original Agreement concerned certain subdivisions referred to therein and herein as the “Phase 1 Subdivision” and the “Phase 1A Subdivision.”
- C. The Phase 1 Subdivision was established pursuant to a plat recorded in Plat Book 16, Page 102.
- D. The Phase 1A Subdivision was established pursuant to a plat recorded in Plat Book 18, Page 124.
- E. Developer is now in the process of seeking approval of a subdivision known as “Phase 2” (the “Phase 2 Subdivision”) on the Phase 2 Property.<sup>2</sup> The Phase 2 Property is located outside of the jurisdictional boundaries of the City, i.e., in unincorporated Marion County. City is, however, providing electric, water, and sanitary sewer utilities (the “City Utilities”) to the Phase 2 Subdivision pursuant to the Utility Improvements.

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<sup>1</sup> All recording references refer to the Public Records of Marion County, Florida.

<sup>2</sup> Terms or phrases capitalized but not defined in these Whereas paragraphs, are defined in paragraph 2.

- F. Developer has previously submitted to City construction plans for the Utility Improvements. Copies of the construction plans shall be kept on record at the office of the City Engineer of the City and are, by reference, made a part of this Agreement.

**NOW, THEREFORE**, in consideration of 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. **INCORPORATION OF RECITALS.** The parties agree and confirm that the above recitals are true and correct and incorporate their terms and provisions herein for all purposes.
2. **DEFINITIONS.** The following definitions shall have the following meanings for the purpose of this Agreement:
  - 2.1 “**Agreement**” – shall refer to the Original Agreement, as amended hereby, as the same may be subsequently amended, modified, or supplemented pursuant to its terms and provisions.
  - 2.2 “**City**” – shall refer to the City of Ocala, a municipal corporation existing under the laws of the State of Florida.
  - 2.3 “**Code**” – shall refer to the City’s Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
  - 2.4 “**Developer**” – shall refer to Emerson Pointe Development, LLC, a Florida limited liability company.
  - 2.5 “**Development Regulations**” – shall refer to the Land Development Regulations of the City. This definition will include any promulgated construction or design specifications of the City.
  - 2.6 “**Lot**” – shall refer to an individual lot shown on a Plat of the Subdivisions.
  - 2.7 “**Plans**” – shall refer to the construction plans for the Subdivisions, which depict the construction of the Utility Improvements. Copies of the Plans shall be kept on record at the offices of the City Engineer, and by reference are made a part of this Agreement.
  - 2.8 “**Phase 2 Property**” – the real property in Marion County, Florida, upon which the Phase 2 Subdivision shall be established and described on the attached **Exhibit A.**
  - 2.9 “**Phase 2 Plat**” – shall refer to the Plat of the Phase 2 Subdivision after it has been approved by County and recorded in the Public Records of Marion County, Florida.
  - 2.10 “**Utility Improvements**” – shall refer to those electric facilities, sanitary sewer mains, sanitary sewer lines, sanitary sewer force main, water mains, water lines,

water meters, and fire hydrants, which are depicted upon the Plans for the Subdivisions which have been filed by the Developer with the City.

3. **APPROVAL.** The City hereby approves the Utility Plans for the Phase 2 Subdivision.
4. **COVENANTS OF DEVELOPER.** In addition to the other covenants and agreements of Developer set forth specifically elsewhere in this Agreement, Developer covenants and agrees:
  - 4.1 To construct at its own expense all Utility Improvements for the Phase 2 Subdivision according to the Plans and according to the City's Development Regulations, within a period of two (2) years from the Effective Date of this Agreement, unless otherwise provided for herein, provided that additional time may be mutually agreed upon in the event of delays caused or due to Acts of God, strikes, or other circumstances not controlled by the Developer.
  - 4.2 To amend or modify the Plans as required to comply with future City standards and specification for those Utility Improvements which are not constructed within two (2) years of the Effective Date of this Agreement, should those standards and specifications change prior to the construction of such Utility Improvements.
  - 4.3 To provide to the City a current title opinion acceptable to the City which attests to the Developer's ownership of the Phase 2 Property and its right to enter into this Agreement. The Developer further agrees not to enter into any Agreement which would affect the validity of such title opinion until such time as this Agreement has been executed and recorded in the Public Records of Marion County, Florida.
  - 4.4 To retain a professional engineer registered in the State of Florida to (i) supervise the construction of the Utility Improvements; (ii) provide the required certification of completion in "*As-Built*" drawings; and (iii) act on behalf of and represent the Developer in technical matters in all dealings with the City.
  - 4.5 To provide a full set of reproducible "*As-Built*" plans for the Utility Improvements certified to the City by the Developer's engineer in detail to the extent required by the City Engineer, together with actual itemized construction and engineering cost summaries for such Utility Improvements, such itemization to be certified by the Developer's engineer and submitted on a form approved by the City Engineer.
  - 4.6 To obtain and abide by all terms of any and all permits which may be required by the State of Florida, Marion County, the District or the City with respect to the Phase 2 Subdivision and the construction of the Utility Improvements, all at no cost to the City.
  - 4.7 To provide the City with complete and legally effective releases or waivers satisfactory to the City of all liens arising out of this Agreement and the labor and services performed and the materials and equipment furnished thereunder.
  - 4.8 To pay all applicable fees in accordance with the City Code.

- 4.9 To furnish or cause to be furnished to the City by the Developer's contractor a proof of insurance, submitted to the City Engineer, confirming the existence of a liability insurance company insurance coverage to protect the City within any dedicated rights-of-way or easements during the construction and maintenance period of this Agreement, which insurance shall satisfy all applicable City insurance standards.
- 4.10 To execute and deliver to the City, at the request of the City, a dedication, assignment, or deed conveying to the City ownership of all Utility Improvements, and to maintain and repair all Utility Improvements for a period of one (1) year after the completion of construction thereof and acceptance of construction by the City. City: (a) has inspected and approved the Utility Improvements and acknowledges they have been substantially completed; and (b) by execution of this Agreement, shall be deemed to have accepted the construction of them on the Effective Date hereof.
- 4.11 To provide to the City adequate assurance, in a form acceptable to the City, in the amount of \$219,259.40, being an amount equal to twenty percent (20%) of the actual costs of the Utility Improvements, that the Developer will comply with the maintenance obligations regarding the Utility Improvements as required under the terms of this Agreement. Said adequate assurance shall remain in effect for the duration of the one (1) year maintenance period described elsewhere in this Agreement. An eleven (11) month inspection of the Utility Improvements will be conducted, prior to the release of the adequate assurance and should all required corrections not be made prior to the expiration of the one (1) year maintenance period the City shall have the right to utilize the adequate assurance to make the necessary corrections to the Utility Improvements.
- 4.12 The adequate assurance set forth in paragraph 4.11 is different from the adequate assurance posted by Developer pursuant to the Original Agreement. This Amendment shall not revise the maintenance period concerning, or date for release of, the adequate assurance pursuant to the Original Agreement.
5. **COVENANTS OF CITY.** The City covenants and agrees:
- 5.1 To accept and perpetually maintain the Utility Improvements within the boundaries of the Phase 2 Subdivision upon the acceptance of the Utility Improvements and after the completion of the one (1) year maintenance period.
- 5.2 When the Plat for the Phase 2 Subdivision has been recorded, and all Utility Improvements thereon accepted by City and County, City will permit connection to the City's water and sewer systems with respect to Lots of the Phase 2 Subdivision.
6. **REPAIR OF DEFECTIVE IMPROVEMENTS.** With respect to any of the Utility Improvements which are subject to a one (1) year period of maintenance by the Developer, as set forth elsewhere in this Agreement, if during the maintenance period the City provides notice to the Developer that the Utility Improvement needs repair or replacement, the Developer will at its sole expense immediately initiate the repair and replacement of the

defective Utility Improvements, and pursue the completion of the repair and replacement with due diligence. Such repair or replacement must be completed prior to the City assuming responsibility for permanent maintenance (as to any portion of the Utility Improvements for which repair or replacement is underway at the expiration of the one (1) year maintenance period).

7. **GRANT OF UTILITY EASEMENT.**

7.1 Developer has granted, bargained and sold to City, its successors or assigns forever, a perpetual non-exclusive easement for the operation and maintenance of the Utility Improvements by City, over, under, across and on the following described land (the "Easement Area"), situate, lying and being in Marion County, Florida to wit: any roads and utility easements depicted on the Phase 2 Plat as it will be recorded in the public records of Marion County, Florida.

7.2 The easement rights specifically include: (a) the right of perpetual ingress and egress to patrol, inspect, alter, improve, construct, repair, maintain, rebuild, relocate, remove and provide access and service to the Utility Improvements; (b) the right to decrease or increase, or to change the quantity and type of the Utility Improvements; the right to clear the Easement Area of trees, limbs, undergrowth, and other physical objects (regardless of the location of such trees, limbs, undergrowth and other objects) which, in the opinion of City, endanger or interfere with the safe and efficient installation, operation, or maintenance of the Utility Improvements; and all other rights and privileges reasonably necessary or convenient for the safe and efficient installation, operation and maintenance of the Utility Improvements and for the enjoyment and use of such easement for the purposes described above. No buildings, structures, or obstacles (except fences) shall be located, constructed, excavated, or created within the Easement Area which would unreasonably interfere with the City's easement rights granted hereunder. Any proposed fence installation with appropriate gates must be approved by the City and must allow reasonable access to the Utility Improvements.

8. **RECORDING PLAT.** [Standard provisions intentionally deleted because Phase 2 Subdivision is in unincorporated Marion County.]

9. **STORMWATER DRAINAGE FACILITIES.** [Standard provisions intentionally deleted because Phase 2 Subdivision is in unincorporated Marion County.]

10. **SIDEWALKS.** [Standard provisions intentionally deleted because Phase 2 Subdivision is in unincorporated Marion County.]

11. **TRAFFIC CONTROL DEVICES.** [Standard provisions intentionally deleted because Phase 2 Subdivision is in unincorporated Marion County.]

12. **ELECTRICAL INFRASTRUCTURE AND SERVICES.** Electric utility infrastructure and service provisions shall follow the policies and procedures in accordance with the City's Code of Ordinances, Sec. 70-541 thru Sec. 70-720.

13. **DRAINAGE RETENTION AREA FENCES.** [Standard provisions intentionally deleted because Phase 2 Subdivision is in unincorporated Marion County.]
14. **BUILDING PERMITS – MODEL UNITS.** [Standard provisions intentionally deleted because Phase 2 Subdivision is in unincorporated Marion County.]
15. **GENERAL PROVISIONS.** The following General Provisions shall apply to this Agreement:

15.1 **Notices.** Any notices required or permitted hereunder, and all demands and requests given or required to be given by any party hereto to another party, shall be in writing unless otherwise provided herein and shall be deemed given when received, if personally delivered or sent by telex, telegram, or if sent by Federal Express (which term shall be deemed to include within it any other nationally recognized reputable firm or overnight couriers) or if mailed, if such notice has been delivered to the United States Postal Service with postage prepaid and properly marked for certified or registered mail with a request for return receipt.

15.2 **Developer’s Address.** If given to Developer any notice hereunder shall be addressed and given as follows:

Emerson Pointe Development, LLC  
Attn: Matt P. Fabian  
4349 SE 20th Street  
Ocala, FL 34471  
Email: mattpfabian@gmail.com

**With Copy to:**  
W. James Gooding III, Esq.  
Gooding & Batsel, PLLC  
1531 SE 36th Avenue  
Ocala, FL 34471  
Email: jgooding@lawyersocala.com

15.3 **City’s Address.** If given to City:

City of Ocala  
Attn: City Manager  
110 SE Watula Avenue  
Ocala, Florida 34471  
Email: plee@ocalafl.gov

**With copy to:**  
City of Ocala  
City Engineer’s Office  
1805 NE 30th Avenue, Building 600  
Ocala, FL 34470

Email: Slanier@ocalafl.gov

**With copy to:**

City of Ocala  
City Attorney's Office  
110 SE Watula Avenue  
Ocala, Florida 34471  
Email: wsexton@ocalafl.gov

Any party hereto may change the address or addresses to which notice is to be sent by giving written notice of such change to all other parties executing this Agreement, in the manner provided herein.

- 15.4 **Headings.** The heading contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.
- 15.5 **Litigation.** With respect to any litigation arising out of this Agreement, or to resolve any claims or controversies arising out of or in connection with this agreement, then the non-prevailing party pay all reasonable costs incurred by the prevailing party, including reasonable attorneys' fees, suit costs and expenses, which attorneys' fees, suit costs and expenses shall include all such fees, costs and expenses incurred with respect to any trial level activities, bankruptcy proceedings, appellate proceedings, or post-judgment proceeding related thereto.
- 15.6 **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. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.
- 15.7 **Severability.** In the event any provision or paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not effect the enforceability or the validity of the remaining provisions of this Agreement.
- 15.8 **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.
- 15.9 **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, whether so expressed or not.
- 15.10 **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.

- 15.11 **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.
- 15.12 **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.
- 15.13 **Facsimile Copy.** Any party may rely upon receipt of a signed facsimile or copy of this Amendment, signed by that party as though the same were an original.
- 15.14 **City Code.** No provision of this Agreement shall supersede or take precedent over any existing ordinances, regulations or codes of the City.
- 15.15 **Exercise of Rights.** All rights, power and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law.
- 15.16 **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties hereto as to the subject matter hereof; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force or effect. This Amendment 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.
- 15.17 **Effect on Original Agreement.** Except as expressly set forth herein, the Original Agreement is not amended or modified. All references herein or in the Original Agreement to “this Agreement,” “the Agreement,” or similar terms shall be deemed to refer to the Original Agreement as amended hereby.
16. **DEFAULT.** In the event that Developer defaults under this Agreement by, without limitation, failing to construct improvements or pay amounts as and when required hereunder:
- 16.1 City may pursue all remedies available at law and equity;
- 16.2 City may withhold issuance of building permits, certificates of occupancy or other City permits, approvals or development orders; and
- 16.3 If the default consists the failure to pay money:
- 16.3.1 City may declare any remaining payments due under this Agreement immediately due and payable by providing written notice of such acceleration to Developer, and Developer will then immediately pay the full amount owed; and

14.3.2 Any unpaid amount shall accrue interest at the maximum rate allowed by law.

THEREFORE the parties hereto have executed this instrument on the dates below.

**AS TO CITY:**

**CITY OF OCALA, A FLORIDA MUNICIPAL CORPORATION**

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
WILLIAM E. SEXTON  
City Attorney

By: \_\_\_\_\_  
Ire J. Bethea, Sr., President  
Ocala City Council

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Angel B. Jacobs, City Clerk

**STATE OF FLORIDA  
COUNTY OF MARION**

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2026, Ire J. Bethea, Sr., as President of Ocala City Council, on behalf of the City of Ocala, a Florida municipal corporation.

\_\_\_\_\_  
Notary Public, State of Florida

Name: \_\_\_\_\_  
(Please print or type)

Commission Number:  
Commission Expires:

Notary: Check one of the following:

Personally known      OR       Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: \_\_\_\_\_

Signed and delivered in our presence as witnesses:

**AS TO DEVELOPER:**

Emerson Pointe Development, LLC, a Florida limited liability company

By: \_\_\_\_\_  
Matt P. Fabian as Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

Print Witness Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

Print Witness Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The foregoing DEVELOPER’S AGREEMENT was acknowledged before me by means of \_\_ physical presence or \_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by Matt P. Fabian, as Manager of Emerson Pointe Development, LLC, a Florida limited liability company, on behalf of such company, who is:

Notary: Check one of the following:

- Personally known      OR       Produced Identification (if this box is checked, fill in blank below).

\_\_\_\_\_  
Notary Public, State of Florida

Name: \_\_\_\_\_  
(Please print or type)

Commission Number:  
Commission Expires:

Type of Identification Produced: \_\_\_\_\_

**EXHIBIT A**  
**PHASE 2 PROPERTY**

A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 15 SOUTH, RANGE 22 EAST, MARION COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF EMERSON POINTE PHASE 1 AS PLAT THEREOF RECORDED IN PLAT BOOK 16, PAGES 102 THROUGH 106 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA; THENCE ALONG THE EAST RIGHT OF WAY OF N.E. 19TH AVENUE (VARIES RIGHT OF WAY), N.00°15'29"E., 914.42 FEET; THENCE DEPARTING SAID EAST RIGHT OF WAY, S.89°42'35"E., 244.76 FEET; THENCE N.00°15'20"E., 300.14 FEET TO THE SOUTH BOUNDARY OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4; THENCE ALONG THE SOUTH BOUNDARY AND EAST BOUNDARY OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4 THE FOLLOWING TWO (2) COURSES: (1) S.89°41'04"E., 384.32 FEET; (2) THENCE N.00°13'07"E., 357.00 FEET TO THE SOUTH RIGHT OF WAY OF N.E. 35TH STREET (VARIES RIGHT OF WAY PER MAP BOOK 1, PAGES 5 THROUGH 6 OF MARION COUNTY, FLORIDA); THENCE DEPARTING SAID SOUTH AND EAST BOUNDARY, ALONG SAID SOUTH RIGHT OF WAY, S.89°44'27"E., 488.83 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY, ALONG THE WEST AND SOUTH BOUNDARY OF THE NORTH 150 FEET OF THE EAST 170 FEET OF THE WEST 1/2 OF THE N.E. 1/4 OF SAID SECTION 4, THE FOLLOWING TWO (2) COURSES: (1) S.00°03'33"W., 125.00 FEET; (2) THENCE S.89°40'47"E., 169.95 FEET TO A POINT ON THE EAST BOUNDARY OF THE WEST 1/2 OF THE N.E. 1/4 OF SAID SECTION 4; THENCE DEPARTING SAID WEST AND SOUTH BOUNDARY, ALONG SAID EAST BOUNDARY THE FOLLOWING TWO (2) COURSES: (1) S.00°04'06"W., 1,378.07 FEET TO THE SOUTHEAST CORNER OF THE NW 1/4 OF THE N.E. 1/4 OF SAID SECTION 4; (2) THENCE S.00°05'34"W., 67.79 FEET TO THE NORTHEAST CORNER OF EMERSON POINTE PHASE 1, AS PLAT THEREOF RECORDED IN PLAT BOOK 16, PAGES 102 THROUGH 106 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA; THENCE DEPARTING SAID EAST BOUNDARY, ALONG THE NORTH BOUNDARY OF SAID EMERSON POINTE PHASE 1, N.89°44'29"W., 1,292.80 FEET TO THE POINT OF BEGINNING SAID LANDS CONTAINING 39.21 ACRES, MORE OR LESS.