

**MEMORANDUM IN SUPPORT OF APPLICATION FOR PUBLIC
HEARING
TO TERMINATE AGREEMENT LIMITING DENSITY
AS TO KAS OCALA, LLC PARCEL**

Applicant: KAS Ocala, LLC
Property: PID: 23812-001-00
Instrument at Issue: Agreement Limiting Density recorded January 31, 2006 in Official Records Book 4324, Page 782, Public Records of Marion County, Florida (CFN#2006016425) (the "Agreement")

I. INTRODUCTION

KAS Ocala, LLC ("KAS" or "Applicant") submits this memorandum in support of its application for a public hearing and for approval of a release and termination of the Agreement Limiting Density solely as to the parcel presently owned by KAS Ocala, LLC and described in the application materials.

II. BACKGROUND

The Agreement was entered into on December 21, 2005 by Ransome Group Investors I, LLLP, a Delaware limited liability limited partnership ("Original Owner"), and the City of Ocala, Florida ("City"), in connection with then-pending applications for amendments to the Future Land Use Map of the City's Comprehensive Plan. The amendments changed the land use designations of the property from Low Density Residential, Medium Density Residential, Retail Services, and Professional Services to the classifications shown on the Land Use Map referenced in the Agreement as Exhibit "C," in connection with the City's Land Use Cases LUC05-0022 and LUC05-0030.

By its express terms, the Agreement was intended to limit aggregate development intensity on the covered property so that development would not trigger Development of Regional Impact ("DRI") review unless the owner later pursued one of several DRI-related approval paths, including a binding letter of interpretation from the DCA, a pre-development agreement with the DCA, or full DRI review and a development order. The Agreement expressly ties its purpose and operative restrictions to the former DRI framework under Chapter 380, Florida Statutes, and the related Florida Administrative Code thresholds contained in Section 28-24.013 and Section 28-24.014, FAC.

III. THE FORMER DRI REVIEW PATH FOR NEW PROPOSED DEVELOPMENT HAS BEEN DISPLACED

The original purpose of the Agreement no longer applies. Under prior Florida law, a DRI was defined as a development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county. In 2015, the Legislature displaced the former DRI review path for new proposed developments through Chapter 2015-30, Laws of Florida. Current Section 380.06(12)(a), Florida Statutes, provides that a proposed

development exceeding the statewide guidelines and standards must be approved by the local government pursuant to Section 163.3184(4), Florida Statutes, in lieu of proceeding under Section 380.06, subject to the transition provision for applications pending as of May 14, 2015. Section 380.06 remains in force, but it now principally preserves and governs existing DRI matters, including binding letters, amendments to existing development orders, vested rights, and abandonment. The Florida Senate's 2018 staff analysis confirms that the statutory changes shifted review authority away from the former DRI process.

IV. THE AGREEMENT'S PURPOSE IS OBSOLETE

Because the Agreement was adopted specifically to cap development by reference to the then-applicable DRI threshold framework in chapter 28-24, F.A.C. — with operative limits set forth in Section 4 of the Agreement at 1,000 residential units, 300,000 square feet of retail, and 100,000 square feet of office (an aggregate Threshold Percentage of 158.33% against the 160% band for the three land use classifications) — the legal premise underlying that cap has been materially altered by later statutory changes.

The Agreement was not intended to impose a free-standing perpetual development limitation unrelated to DRI law. It was a DRI-avoidance instrument. Section 4 of the Agreement, titled "Limitation on Development," explicitly conditions its operative restrictions on "the provisions of the presumptive thresholds for classification of the development as a DRI which are contained in Section 28-24.013 of the FAC." Section 5 identifies the alternative DRI approval processes by which the development limitations could be modified or exceeded — all of which presuppose the former DRI review path that has since been displaced for new proposed development. Continued application of the Agreement to the KAS parcel serves no present land use purpose and unnecessarily clouds administration of the parcel.

V. KAS IS THE PROPER APPLICANT

KAS is the current owner of the parcel for which relief is requested. The original owner party identified in the Agreement, Ransome Group Investors I, LLLP, is no longer the owner of the KAS parcel, and ownership of the former larger tract has since been divided among multiple parties. The Agreement itself contemplates successor ownership: Section 2.10 provides that "'Owner' shall also refer, at any time during the term of this Agreement, to any successor-in-title to Owner as to the Property or any portion thereof." KAS therefore stands as the present owner in the chain of title to its parcel and is the proper applicant to request parcel-specific termination and release.

VI. CURRENT REGULATORY FRAMEWORK REMAINS IN EFFECT

Termination as to the KAS parcel will not create a regulatory vacuum or exempt the parcel from otherwise applicable development regulation. To the contrary, the parcel will remain fully governed by the City's current Comprehensive Plan, future land use designation, zoning, land development regulations, permitting requirements, and any other applicable laws and approvals. The City's current Amended and Restated Chapter 163 Development Agreement with KAS confirms that development of the KAS property is governed by current comprehensive plan and land development regulations and identifies the permits and approvals applicable to the project.

VII. THE AMENDMENT PROVISION IS DISTINGUISHABLE

KAS recognizes that Section 6.5 of the Agreement contains language stating that "[t]his Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement." However, the present request is narrower and more practical than a general amendment: KAS seeks City approval, after public hearing, of a recorded release and termination solely as to the parcel now owned by KAS, based on changed law, changed ownership, and the obsolescence of the Agreement's original DRI-related purpose. The City is not being asked to revive or rework the former DRI regime. It is being asked to recognize that, as to the KAS parcel, the recorded DRI-limitation instrument no longer serves a valid present purpose and should be released of record so the parcel is governed exclusively by current law.

VIII. REQUEST

Accordingly, KAS Ocala, LLC respectfully requests that the City:

1. Set this matter for public hearing before the City Council;
2. After public hearing, approve and authorize the execution and recordation of an instrument providing that, as to the parcel described in Exhibit A to the proposed release instrument, the Agreement Limiting Density recorded in Official Records Book 4324, Page 782, Public Records of Marion County, Florida (CFN#2006016425), is terminated, released, and discharged, and shall be of no further force or effect with respect to that parcel.

Very truly yours,

KLEIN & KLEIN

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