

Rec. \$ _____

This Instrument Prepared by:
Austin T. Dailey, Esq.
Klein & Klein, LLC
40 SE 11th Avenue
Ocala, FL 34471

Return to:
City of Ocala
Growth Management Department
Attn: Karen Cupp
201 SE 3rd Street, 2nd Floor
Ocala, FL 34471

ACKNOWLEDGMENT AND AGREEMENT REGARDING UTILITIES

THIS UTILITIES AGREEMENT ("Agreement"), is made and entered into effective as of _____ day of _____, 2024, by and between:

- **CITY OF OCALA**, a Florida municipal corporation ("City"); and
- **AURORA OCALA LLC**, a Delaware limited liability company ("Company").

WHEREAS:

- A. Company owns a multifamily residential development (the "Development") located on that certain real property having Marion County Parcel ID number 21385-001-01 and as is hereinafter defined as the "Property".
- B. City provides water and sewer utility service to the Property (the "Utilities").
- C. Company installed two ten-inch (10") water mains which were metered and were approved by the City in lieu of metering each of the 278 connections within the Development.
- D. City charges Company a Base Charge (as hereinafter defined) for water and sewer.
- E. The Base Charge is independent of use/consumption charges.
- F. The City's Base Charge for Utilities in the Development is based on two ten-inch (10") water mains and is \$15,720.94 per month per the currently approved rate schedule (the "Current Base Charge").
- G. If Company had individually metered the Development, the City would charge a Base Charge of \$14,824.00 per month per the currently approved rate schedule (the "Alternative Base Charge").

- H. The City and Company acknowledge that the Current Base Charge is higher than the Alternative Base Charge and desire to cause Company to be billed at the Alternative Base Charge, so as not to penalize Company for choosing to use master meters in the Development.
- I. Accordingly, the parties desire to enter this Agreement to set forth City's agreement to bill Company at the Alternative Base Charge.

NOW THEREFORE, in consideration of the foregoing matters (which are incorporated herein by reference) and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto 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.**

- 2.1. **Generally.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings.

- 2.1.1. *Agreement* – This Agreement, including any Exhibits attached hereto, as the same may be subsequently amended, modified or supplemented pursuant to its' terms and provisions.

- 2.1.2. *Alternative Base Charge* – The amount the City would have billed the Company for the Base Charge for Utilities had the Company chosen to individually meter the Development, as calculated based on City rates which is subject to change in accordance with any changes to the City's Rate Book, shown on Exhibit "B" attached hereto.

- 2.1.3. *Base Charge* – The monthly base charge for Utilities charged by the City for the Development.

- 2.1.4. *Current Base Charge* – The amount the City billed Company for the Base Charge for Utilities prior to this Agreement, as calculated based on City rates which is subject to change in accordance with any changes to the City's Rate Book, shown on Exhibit "C" attached hereto.

- 2.1.5. *Development* – The multi-family development located on the Property, and owned by Company, having 278 individual connections and two ten-inch (10") water mains each having its own master meter.

- 2.1.6. *Property* - That certain real property having Marion County Parcel ID number 21385-001-01 and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

2.1.7. *Utilities* – Water and sewer services provided by the City to Company for the Development.

2.2. Additional Definitions and Rules of Construction. The definitions in paragraph 2.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereof,” “hereunder,” and similar terms shall refer to this Agreement, unless the context otherwise requires.

3. **Agreement Regarding Utilities.** Relating to the Utilities, the parties agree that beginning on the Effective Date the City hereby agrees to apply the Alternative Base Charge to Company for the Utilities in lieu of the Current Base Charge. The Alternative Base Charge will be billed at the approved rate schedule in effect and subject to periodic adjustment as provided by City Code. Additionally, the Company agrees to pay all consumption charges in the amount listed in the City’s most current Rate Book.

4. **Representations & Warranties.** City represents to Company that it has the authority to enter into this Agreement and to adjust the Base Charge applied to the Development as set forth in this Agreement.

5. **General Provisions.**

5.1. **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.

5.2. **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.

5.3. **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 and their assigns. There are no representations or warranties other than those set forth herein.

5.4. **Severability.** In the event any provision or Paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability of the validity of the remaining provisions of this Agreement.

5.5. **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.

- 5.6. **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.
- 5.7. **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 exclusive venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.
- 5.8. **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.
- 5.9. **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.
- 5.10. **City Code.** No provision of this Agreement shall supersede or take precedent over any existing ordinances, regulations or codes of the City.
- 5.11. **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.
- 5.12. **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, the parties have executed this Agreement on the day and year first written above.

[THIS SPACE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.]

AS TO COMPANY

ATTEST:

City of Ocala, a Florida municipal corporation

Angel B. Jacobs
City Clerk

Barry Mansfield.
President, Ocala City Council

Approved as to form and legality

William Sexton
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Barry Mansfield., as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.

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: _____

AS TO COMPANY

AURORA OCALA LLC, a Delaware limited liability company (“Company”)

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

By: _____

Print Name: _____

Title: _____

Date _____

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____, 2024, by _____, as _____ of **AURORA OCALA LLC**, a Delaware limited liability company (“Company”), on behalf of the company.

Notary Public, State of _____

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: _____

EXHIBIT A
Property Legal Description

A PARCEL OF LAND LYING IN SECTION 1, TOWNSHIP 15 SOUTH, RANGE 21 EAST, MARION COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 1; THENCE ALONG THE EAST BOUNDARY OF THE NORTHWEST 1/4 OF SAID SECTION 1, S.00°22'41"W., 356.57 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF CSX TRANSPORTATION RAILROAD (FORMERLY ATLANTIC COASTLINE RAILROAD AND BEING 120 FEET WIDE); THENCE DEPARTING SAID EAST BOUNDARY LINE, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, S.18°53'16"E., 349.97 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF BLOCK J, OF HOME ACRES AS RECORDED IN PLAT BOOK "D", PAGE 5, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA; THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE, ALONG SAID SOUTHERLY BOUNDARY LINE, N.89°54'10"W., 115.55 FEET TO A POINT ON THE EAST BOUNDARY LINE OF THE NORTHWEST 1/4 OF SAID SECTION 1; THENCE DEPARTING SAID SOUTH BOUNDARY LINE, ALONG SAID EAST BOUNDARY LINE THE FOLLOWING FIVE (5) COURSES, 1.) S.00°22'59"W., 475.50 FEET; 2.) THENCE S.00°01'50"W., 112.48 FEET; 3.) THENCE S.00°44'27"W., 188.69 FEET; 4.) THENCE S.00°22'51"W., 1395.32 FEET; 5.) THENCE S.00°25'08"W., 2613.00 FEET TO THE NORTH RIGHT OF WAY LINE OF N.W. 21ST STREET AVENUE (HAVING A 50' RIGHT OF WAY); THENCE DEPARTING SAID EAST BOUNDARY LINE, ALONG SAID NORTH RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES, (1.) N.89°28'23"W., 80.00 FEET TO THE POINT OF BEGINNING; (2.) THENCE N.89°28'23"W., 1247.69 FEET TO THE WEST BOUNDARY LINE OF EAST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 1; THENCE DEPARTING SAID NORTH RIGHT OF WAY LINE, ALONG SAID WEST BOUNDARY LINE, N.00°28'33"E., 783.50 FEET; THENCE DEPARTING SAID WEST BOUNDARY LINE, S.89°28'23"E., 1246.93 FEET TO THE WESTERLY RIGHT OF WAY LINE OF A PROPOSED 80' RIGHT OF WAY; THENCE ALONG SAID PROPOSED WESTERLY RIGHT OF WAY LINE, S.00°25'08"W., 783.50 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
ALTERNATIVE BASE CHARGE
Calculations based on rates in effect June 2024

	Size	Base Charge	Connections	
Water	5/8"	\$13.48	272	\$3,666.56
Sewer		\$32.70	272	\$8,894.40
Water	1"	\$42.03	4	\$168.12
Sewer		\$168.20	4	\$672.80
Water	2"	\$171.16	2	\$342.32
Sewer		\$539.90	2	\$1,079.80
				\$14,824.00

EXHIBIT C
CURRENT BASE CHARGE
Calculations based on rates in effect June 2024

	Size	Base Charge	Connections	
Water	10"	\$1,259.23	2	\$2,518.46
Sewer		\$6,601.24	2	\$13,202.48
				\$15,720.94