

This instrument Prepared by:

Brian Ray
202 Surprise Drive
Winter Garden FL 34787

and Return To:

City of Ocala
Growth Management Department
201 SE 3rd Street, 2nd Floor
Ocala, Florida 34471
Attn: Karen Cupp, Development Coordinator

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT is made and entered into on the dates set forth below by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **OFK Ocala LLC** (hereinafter the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of the real property described on attached Exhibit "A" (the "Property"), which is located within the jurisdictional boundaries of the City; and

WHEREAS, Developer has previously filed an application for the approval of "**One Fort King**", a **Residential** subdivision (the "Subdivision") of the Property, which is located approximately in the **100 Block of SW 2nd Street**; and

WHEREAS, the Property described on Exhibit "A" constitutes all of the real property in the Subdivision; and

WHEREAS, Developer has previously submitted to the City a conceptual plan and construction plans for the Subdivision, which depict the construction of the Improvements (as defined below) relating to the Subdivision. Copies of the construction plans shall be kept on record at the Growth Management Department of the City and are, by reference, made a part of this Agreement; and

WHEREAS, The City's Planning and Zoning Commission has recommended approval of the conceptual plans for the Subdivision subject to the parties entering into a Developer's Agreement in accordance with the applicable provisions of the City's Code of Ordinances.

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 this Developer’s Agreement, 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 “**Common Elements**” – shall refer to those portions of the Subdivision that will be either owned by or maintained by a Homeowner’s Association as set forth in Section 7.
 - 2.5 “**Developer**” – shall refer to **OFK Ocala LLC**.
 - 2.6 “**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.
 - 2.7 “**District**” – shall refer to the St. John’s River Water Management District, a public entity created under the laws of the State of Florida.
 - 2.8 “**Homeowners’ Association**” – shall refer to the Florida not-for-profit Corporation which will be incorporated for the benefit of the owners of Lots in the Subdivision, and which will become owner of the Private Improvements for the purposes of ownership and maintenance of the Private Improvements
 - 2.9 “**Improvements**” – shall refer to those roadways, stormwater conveyance system improvements, stormwater retention areas, sanitary sewer mains, sanitary sewer lines, water mains, water lines, water meters, fire hydrants, traffic control devices, sidewalks and grading and appurtenances which are depicted upon the Plans for the Subdivision which have been filed by the Developer with the City.
 - 2.10 “**Lot**” – shall refer to an individual lot shown on the Plat of the Subdivision.
 - 2.11 “**Plans**” – shall refer to the conceptual plan and construction plans for the Subdivision, which depict the construction of the Improvements. Copies of the Plans shall be kept on record at the offices of the Growth Management Department, and by reference are made a part of this Agreement.
 - 2.12 “**Plat**” – shall refer to the Plat of the Subdivision, after it has been recorded in the Public Records of Marion County, Florida

- 2.13 “**Property**” – shall refer to the real property located in Marion County, Florida described on attached Exhibit “A”.
- 2.14 “**Private Improvements**”- shall refer to the internal private rights of way, water system improvements, exclusive of the water meters which will be maintained by City, sanitary sewer system improvements and all common areas for landscaping and pedestrian access and appurtenances related thereto lying within the Subdivision.
- 2.15 “**Public Improvements**” –Water system improvements will be Public Improvements only with respect to the water meters. Sanitary sewer system improvements will be Public Improvements with respect to the sanitary sewer mains and manholes, and sanitary sewer lines and services within the public right of way.
- 2.16 “**Subdivision**” – shall refer to the proposed residential/commercial Subdivision located on the Property, which will be named “***One Fort King***”.
- 2.17 “**Tract**” – shall refer to any individual parcel of property designated as a “***Tract***” on the Plat of the Subdivision.
3. **APPROVAL**. The City hereby approves the Plans for the 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 Improvements for the Subdivision according to the Plans and according to the City’s Development Regulations, within a period of two (2) years from the 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 Improvements which are not constructed within two (2) years of the date of this Agreement, should those standards and specifications change prior to the construction of such 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 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 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; and (iv) to complete transfer of the stormwater system ownership and maintenance per the water management district requirements prior to city acceptance of the system.

- 4.5 To provide a full set of reproducible "*As-Built*" plans for the 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 the 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 Subdivision and the construction of the 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 the City, at the time of the recording of the Plat of the Subdivision, a solid waste system impact fee in the amount of **\$6,360**, representing a fee in the amount of Two Hundred Sixty-Five Dollars (\$265.00) per residential unit for the impact upon City's solid waste system calculated at \$265.00 per lot times (x) **24** Lots.
- 4.9 To pay all applicable fees in accordance with the City Code.
- 4.10 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.
- 4.11 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 Public Improvements, and to maintain and repair all Public Improvements for a period of one (1) year after the completion of construction thereof and acceptance by the City.
- 4.12 To provide to the City adequate assurance, in a form acceptable to the City, in an amount equal to twenty percent (20%) of the actual costs of the Public Improvements, that the Developer will comply with the maintenance obligations regarding the Public Improvements as required under the terms of this Agreement. Said 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 will be conducted, prior to the release of the adequate assurance, of the Public Improvements 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 Public Improvements.

5. **COVENANTS OF CITY.** The City covenants and agrees:

- 5.1 To accept and perpetually maintain the Public Improvements within the boundaries of the Subdivision upon the acceptance of the Improvements and after the completion of the one (1) year maintenance period.
- 5.2 That, if the provisions of Sections 6.1, 6.2 and 6.3 below are not applicable, upon completion of the Improvements, and upon approval of the Subdivision by the City Council, all of which must be in accordance with the provisions of this Agreement, it will permit connections to the City's water and sewer systems with respect to the Lots in the Subdivision.
- 5.3 That, if the provisions of Sections 6.1, 6.2 and 6.3 below are applicable, it will issue building permits for the construction of residences on Lots located in the Subdivision, and will make all customary building inspections during the construction thereof, but the City will be authorized to withhold the issuance of certificates of occupancy for building structures constructed on Lots until (i) all supporting improvements for the Lots have been constructed and approved by the City; and (ii) the final Plat has been recorded.

6. **RECORDING PLAT.** The City will allow the immediate recording of the Plat of the Subdivision, and the conveyance of Lots in the Subdivision (or portions thereof). If the Developer complies with the following provisions of this Section. If the Developer elects not to provide a Letter of Credit or other acceptable surety to the City to guarantee the construction of the Improvements for the Subdivision, the Plat will be recorded upon the completion of the construction of the Improvements in accordance with the Plans, and the acceptance thereof by the City. If the Developer elects to provide to the City a Letter of Credit, or some other acceptable surety, the following provisions will apply:

- 6.1 **Cost Estimate.** Developer will submit to the City, and the City will review and approve, a "*Cost Estimate*" prepared by the Developer's Engineer. The Cost Estimate must be certified to the City.
- 6.2 **Letter of Credit.** Upon the Developer providing to the City a Letter of Credit issued by a financial institution authorized to do business in the State of Florida in the amount of one hundred twenty percent (120%) of the approved Cost Estimate which guarantees to the City the performance of the Developer's obligations under this Agreement, (which Letter of Credit must be in form and content acceptable to the City and the City's attorney) the City will complete the execution of the Plat of the Subdivision and allow the Plat to be recorded in the Public Records of Marion County, Florida.
- 6.3 **Sale of Lots or Tracts.** Upon the recording of the Plat the Developer will be entitled to convey individual Lots or Tracts in the Subdivision to third party

purchasers. The purchasers of any Lots will be entitled to submit building plans and site plans, procure site plan approvals, procure building plan approvals, procure construction permits, and subject to paragraph 5.3 of this Agreement procure Certificates of Occupancy for improvements constructed on Lots in accordance with the normal approval procedures of the City as established under the City Code. No purchaser of a Lot or Tract in the Subdivision will be obligated to complete the obligations of Developer to the City under the terms of this Agreement in order to procure the issuance of a final Certificate of Occupancy by the City for the purchaser's improvements constructed on a Lot or Tract in the Subdivision but City shall not be required to issue such Certificate of Occupancy until the conditions in paragraph 5.3 of the Agreement have occurred.

7. **STORMWATER DRAINAGE FACILITIES.** Installation and maintenance of the stormwater drainage facilities (including, without limitation, the improvements previously referred to as the stormwater conveyance system improvements and stormwater retention areas) located in the Subdivision shall be in accordance with the following provisions.
 - 7.1 **Construction Standards.** All stormwater drainage facilities, whether or not such facilities are to be dedicated to the public, will be constructed to the construction standards and Development Regulations of the City, and the regulations of the District.
 - 7.2 **Disclaimer of Responsibility.** The City does not assume responsibility for the surface stormwater runoff from individual Lots to adjacent Lots or adjacent properties, the responsibility of which shall be solely that of the Developer.

8. **SIDEWALKS.** The plans for the Subdivision include an entrance roadway sidewalk providing pedestrian access from the Subdivision to **SW 1st Avenue**, and construction of an internal sidewalk system. In addition to those specifications shown on the Plans, the following provisions shall apply with respect to sidewalks to be installed in the Subdivision and along **SW 2nd Street**:
 - 8.1 Developer shall install the sidewalk adjacent to **SW 1st Avenue**, and the sidewalk connecting the **W Fort King Street & SW 2nd Street** sidewalk to the internal sidewalk system of the Subdivision, at the time of the construction of the Subdivision's improvements.
 - 8.2 All sidewalks within the Subdivision shall be constructed by the Developer simultaneous with the construction of road improvements.

9. **TRAFFIC CONTROL DEVICES.** All traffic control devices to be constructed by the Developer shall be constructed in accordance with the construction standards of the City.

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

11. **REPAIR OF DEFECTIVE IMPROVEMENTS:** With respect to any of the 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 improvement needs repair or replacement, the Developer will at its sole expense immediately initiate the repair and replacement of the defective 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 improvements for which repair or replacement is underway at the expiration of the one (1) year maintenance period).

12. **BUILDING PERMITS – MODEL UNITS.** Subject to the terms of this Section the City agrees to issue to the Developer, upon submission by the Developer to the City of the required applications and supporting documentation and any applicable fees, building permits necessary for the construction of the buildings for the attached single family residences, where each unit within the building will be an individual Lot when the final plat of the Subdivision is recorded. With respect to the issuance of these permits the Developer agrees as follows:
 - 12.1 The Developer acknowledges that the City will not issue Certificates of Occupancy with respect to any residence constructed until the conditions in paragraph 5.3 of this Agreement has occurred.
 - 12.2 The actions of the City under this Agreement allowing the issuance of building permits to the Developer for the construction of a model unit or model units does not in any fashion constitute the acceptance of the improvements in the Subdivision by the City as completed in accordance with the Plans, or the final Plat of the Subdivision. The Developer must comply with the applicable City regulations and normal procedures in procuring final City acceptance and approval of the final City approval of the Plat for recording.
 - 12.3 The Developer agrees that the Developer will not sell or convey any interest in that portion of the Property upon which any model unit is constructed pursuant to the terms of this Agreement prior to the final acceptance of the improvements by the City (or provisions of a surety to the City as set forth above) and the recording of the Plat of the Subdivision.
 - 12.4 When the Developer makes application to the City for a building permit for this Agreement the Developer must submit a sketch showing that lot upon which the residential unit will be constructed and the legal description of said lot. The parcel for which the building permit is issued must correspond to what will be a single lot when the Plat of the Subdivision is recorded.
 - 12.5 The Developer hereby agrees to indemnify and hold City harmless from any and all losses, claims, damages, expenses, judgments, litigation expenses, attorneys' fees or other liabilities of any nature incurred by the City as a result of this

Agreement by the City to issue building or development permits to the Developer as described in this Section. This grant of indemnity will expressly survive the termination of this Agreement and the acceptance and recording of the final Plat of the Subdivision.

13. **GENERAL PROVISIONS.** The following General Provisions shall apply to this Agreement:

13.1 **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.

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

OFK Ocala LLC
Attn: Brian Ray
202 Surprise Drive
Winter Garden FL 34787
407.421.5605

With Copy to:

Richard Janssen
11700 E. Asbury Avenue
Aurora CO 80014
303.369.2268

13.3 **City's Address.** If given to City:

City of Ocala
Attn: City Manager
110 SE Watula Avenue
Ocala, Florida 34471

With copy to

City of Ocala
City Engineer's Office
1805 NE 30th Avenue, Building 600
Ocala, FL 34470

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.

- 13.4 **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.
- 13.5 **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.
- 13.6 **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.
- 13.7 **Severability.** In the event any provision or Section 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.
- 13.8 **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.
- 13.9 **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.
- 13.10 **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.
- 13.11 **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.

- 13.12 **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.
- 13.13 **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.
- 13.14 **City Code**. No provision of this Agreement shall supercede or take precedent over any existing ordinances, regulations or codes of the City.
- 13.15 **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.
- 13.16 **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.
14. **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:
- 14.1 City may pursue all remedies available at law and equity;
- 14.2 City may withhold issuance of building permits, certificates of occupancy or other City permits, approvals or development orders; and
- 14.3 If the default consists the failure to pay money:
- 14.3.1 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.

IN WITNESS WHEREOF the parties hereto have executed this DEVELOPER'S AGREEMENT on the dates below.

AS TO CITY:

APPROVED AS TO FORM AND LEGALITY:

CITY OF OCALA, A FLORIDA MUNICIPAL CORPORATION

William E. Sexton,
City Attorney

By: _____
James P. Hilty, 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 _____, 20__, by James P. Hilty, 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:

OFK Ocala LLC

Print Name:_____

BY: _____
Brian Ray

TITLE: Manager

Print Name:_____

**STATE OF FLORIDA
COUNTY OF MARION**

The foregoing DEVELOPER’S AGREEMENT was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 20___, by _____, as _____, 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"
LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN SECTION 18, TOWNSHIP 15 SOUTH, RANGE 22 EAST, MARION COUNTY, FLORIDA, BEING A PORTION OF BLOCK 34 OF OLD SURVEY OF THE CITY OF OCALA, AS RECORDED IN PLAT BOOK E, PAGE 1 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 34, SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF SW 2ND STREET AND THE WEST RIGHT OF WAY LINE OF SW 1ST AVENUE (BOTH HAVING A RIGHT OF WAY WIDTH OF 40 FEET), THENCE NORTH 89°17'13" WEST, ALONG THE SOUTH LINE OF SAID BLOCK 34, AND ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 100.47 FEET; THENCE DEPARTING SAID NORTH RIGHT OF WAY LINE, NORTH 0°38'10" EAST, A DISTANCE OF 100.55 FEET; THENCE NORTH 0°23'11" EAST, A DISTANCE OF 124.91 FEET TO THE NORTH LINE OF SAID BLOCK 34, SAID POINT ALSO LYING ON THE SOUTH RIGHT OF WAY LINE OF SW FORT KING STREET (HAVING A RIGHT OF WAY WIDTH OF 40 FEET); THENCE SOUTH 89°33'38" EAST, ALONG THE NORTH LINE OF SAID BLOCK 34, AND ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 100.47 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 34, SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF SAID SW FORT KING STREET WITH THE WEST RIGHT OF WAY LINE OF SAID SW 1ST AVENUE; THENCE SOUTH 0°29'54" WEST, ALONG THE EAST LINE OF SAID BLOCK 34, AND ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 225.90 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED LANDS CONTAIN 0.520 ACRES, MORE OR LESS.