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This Instrument Prepared by:
Bobby Lue, P.E.
Equity Lifestyle Properties, Inc.
4300 W. Cypress St., #400
Tampa, FL 33607

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

DEVELOPER'S AGREEMENT

(Subdivision Name)

THIS DEVELOPER'S AGREEMENT ("Agreement"), is effective this _____ day of _____, 2023, by and between:

- **City of Ocala**, a Florida municipal corporation ("City"); and
- **MHC Spanish Oaks, L.L.C.**, a Delaware limited liability company ("Owner" & "Developer")

WHEREAS:

- A. Owner is the owner of the real property on attached **Exhibit A** (the "Property") which is located within Marion County, Florida.
- B. The Property is not currently served by the City of Ocala wastewater services.
- C. Developer has requested City to provide it with wastewater services, and City has agreed to do so pursuant to the terms and conditions of this Agreement and the City Code.
- D. Developer has agreed to construct, at its sole cost and expense (except as otherwise set forth herein), the Improvements which are expressly set forth in the Plans (as defined below) for the Property pursuant to the terms and conditions of this Agreement.
- E. Pursuant to applicable law, City imposes conditions in return for providing wastewater service including, without limitation:
 - 1. City requires persons or property receiving wastewater service from City to adhere to appropriate criteria, standards and regulations (including land development regulations in accordance with state law) relating to design and construction of Improvements (defined herein).
 - 2. City requires customers or property requesting wastewater service from City, if such customers or property are not already located within the City, to request that

the property be voluntarily annexed into City either immediately or, if the property is not then contiguous to City limits, when it becomes contiguous.

- F. City has agreed to provide wastewater service to the Owner pursuant to the provisions hereof.

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” – This Developer’s Agreement, as the same may be subsequently amended, modified, or supplemented pursuant to its terms and provisions.
 - 2.2 “City Code” – The City’s Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
 - 2.3 “Development Regulations” – The Land Development Regulations of the City. This definition will include any promulgated construction or design specifications of the City including, without limitation, the City Utility Standards as set forth in the City’s Water and Sewer Standards Manual.
 - 2.4 “Plans” – The construction plans and specifications for the Improvements, which depicts the construction of the Improvements. A copy of the Plans shall be kept on record at the offices of the Water and Sewer Department of the City, and by reference are made a part of this Agreement.
 - 2.5 “Property” – The real property located in Marion County, Florida described on attached **Exhibit A**.
 - 2.6 Additional Definitions and Rules of Construction. The definitions in paragraph 2 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. **Covenants of Developer.**
 - 3.1. Developer shall construct at its own expense (except as otherwise set forth herein) all Improvements for the Property according to the Plans and according to the City’s Development Regulations. The Improvements shall consist of the following:

- 3.1.1. A 6-inch sewer force main from the existing Sanitary Manhole SS #7, north along NE 33rd CT, east along NE 26th ST, north along NE 36th AVE, west into the Spanish Oaks Mobile Home Park property along Palo Alto DR, west along San Marco WAY, and north to the new Spanish Oaks Lift Station.
 - 3.1.2. A lift station on the Property (or in adjacent right of way) with sufficient capacity to provide wastewater service to the Property.
 - 3.1.3. All similar Improvements or facilities necessary for City to provide wastewater services to the Property including meters.
- 3.2. Developer shall submit to City proposed Plans for the Improvements within sixty (60) days.
- 3.3. Developer has entered into a Cost-Share Agreement #36787 as may be amended (collectively the "District Grant") with the St. Johns River Water Management District (the "District") that provides up to \$1,586,355 of funding for which District will use to reimburse DEVELOPER for the design and construction of a new lift station and approximately 5,030 linear feet of a six-inch (6") Force Main to connect to the City of Ocala's central wastewater collection system and decommissioning of the existing wastewater package plant as depicted on the attached **Exhibit B**
- 3.4. Developer shall construct the Improvements within two (2) years from the effective date of this Agreement.
- 3.5. Developer shall provide to the City a current title opinion or deed acceptable to the City which attests to Developer's ownership of the Property within thirty (30) days of the date of execution of this Agreement.
- 3.6. Developer shall 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.
- 3.7. Developer shall 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.
- 3.8. Developer shall obtain and abide by all terms of any and all permits which may be required by the State of Florida, Marion County, the City with respect to the Property and the construction of the Improvements, all at no cost to the City.
- 3.9. Developer shall 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.

- 3.10. Developer shall pay all applicable fees (including impact fees) in accordance with the City Code and other applicable laws and ordinances. In that regard:
- 3.10.1. The actual impact fees to be paid by Developer shall be based upon the number of 455 dwelling units and two (2) recreation buildings constructed on the Property and the provisions of the City Code in effect at the time the impact fees are due.
- 3.11. Developer shall 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.
- 3.12. Developer shall execute and deliver to the City, at the request of the City, a dedication, assignment or deed conveying to the City ownership of the lift station and the sanitary sewer conveyance system to the wastewater treatment plant.
- 3.13. Developer shall maintain and repair all Improvements for a period of one (1) year after the completion of construction thereof and acceptance by the City. If during the maintenance period, the City provides notice to the Developer that the Improvement needs repair or replacement, as determined in the reasonable discretion of the City, 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, if required pursuant to this Section 3.12, 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).
- 3.14. Compliance with City's Land Development Regulations.
- 3.14.1. Developer acknowledges that pursuant to applicable law:
- a. Developer must hereafter adhere to City's criteria, standards and regulations (including the land development regulations of the Code of Ordinances of City of Ocala, Florida) relating to design and construction of Improvements for the Property; and
- 3.14.2. Developer shall notify City prior to requesting any comprehensive plan amendments, rezonings, subdivision or site plan approvals, building permits, or other development orders from Marion County concerning the Property.
- 3.14.3. As it is located within the City, the Property is already and shall be subject to all laws, ordinances, and regulations in force in the City and shall be entitled to the same privileges and benefits as other parts of the City.

4. **Covenants of City.**

- 4.1. City shall provide the Property with wastewater service pursuant to the City Code upon completion of the Improvements.
- 4.2. City shall accept and perpetually maintain only the meters, lift station and the sanitary conveyance system from the lift station to the City's wastewater treatment facility on the Property.

5. **Subject to City Ordinances and Annexation Statute.**

- 5.1. Nothing in this Agreement shall supersede or take precedence over any existing ordinances, regulations or codes of City.

6. **General Provisions.**

6.1. **Notice.**

- 6.1.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including e-mailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, e-mailed (with a read receipt requested) 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:

6.1.1.1. For City:

William E. Sexton, Esquire
City of Ocala - City Attorney
110 S.E. Watula Avenue, 3RD Floor
Ocala, FL 34471
Email: WSexton@ocalafl.org
PH: 352-401-3972

With Copy to:

Sean Lanier, PE, CFM
City of Ocala
Water Resources Department
1805 NE 30th Ave, Bldg. 600
Ocala, FL 34470
Email: SLanier@ocalafl.org
PH: 352-351-6772

6.1.1.2. For Developer:

Everrett Butler, Senior Vice President
MHC Spanish Oaks, L.L.C.
4300 W. Cypress St., #400
Tampa, FL 33607
E-mail: Everrett_butler@equitylifestyle.com

With a copy to:

Bobby Lue, P.E.
Equity Lifestyle Properties, Inc.
4300 W. Cypress St., #400
Tampa, FL 33607
E-mail: bobby_lue@equitylifestyle.com

And a copy to:

Permits and Licensing
Equity Lifestyle Properties, Inc.
Two N. Riverside Plaza, Suite 800
Chicago, IL 60606
E-mail: Permits_licenses@equitylifestyle.com

- 6.1.2. Each such Communication shall be deemed delivered:
 - 6.1.2.1. On the date delivered if by personal delivery;
 - 6.1.2.2. On the date of e-mail transmission if by e-mail (subject to Section 6.1.5); and
 - 6.1.2.3. 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.
 - 6.1.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by e-mail 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.
- 6.1.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.
- 6.1.4. 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.
- 6.1.5. Concerning communications sent by e-mail:
 - 6.1.5.1. 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 e-mail was not delivered or received;
 - 6.1.5.2. If the sender receives an automatic reply message indicating that the recipient is not present to receive the e-mail (commonly referred to as an "out of office message"), the e-mail shall not be deemed delivered until the recipient returns:

6.1.5.3. Any e-mail that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient;

6.1.5.4. Any e-mail that generates a “read receipt” sent by the recipient’s e-mail system shall be deemed delivered to the recipient.

6.1.5.5. The sender must print the e-mail to establish that it was sent (though it need not do so at the time the e-mail was sent); and

6.1.5.6. The sender shall maintain the digital copy of the e-mail in its e-mail system for a period of no less than one year after it was sent.

7. **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.

8. **Litigation.** With respect to any litigation or arbitration 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 or arbitration costs and expenses, which attorneys’ fees, suit costs and expenses shall include all such fees, costs and expenses incurred with respect to any arbitration, trial level activities, bankruptcy proceedings, appellate proceedings, or post-judgment proceeding related thereto.

9. **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.

10. **Severability.** In the event any provision or Section 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.

11. **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. Notwithstanding any provision contained herein to the contrary, Developer may assign its rights and obligations hereunder in its discretion.

12. **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.

13. **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.

14. **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. City Code.** No provision of this Agreement shall supersede or take precedent over any existing ordinances, regulations or codes of the City.
- 16. 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.
- 17. Exclusive Venue.** The parties agree that the exclusive venue for 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, shall be in Marion County, Florida.
- 18. Maintenance.** City hereby agrees to perpetually operate, maintain and repair all sewer facilities from the lift station to City's wastewater treatment facility at its own costs including necessary maintenance and repairs to prevent infiltration, inflow and exfiltration on the sewer facilities.
- 19. Impact Fees.** Developer agrees to pay the most current City Council approved impact fees based on approximately 276.9 equivalent single-family residential unit (ERU). For example: $\$3148 \times 276.9 \text{ ERU} = \$871,681.20$.
- 20. 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.
- 21. 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.

- 22. Signatures by Facsimile or Digital Execution.** Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- 23. Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
- 24. Language.** Whenever used in this Agreement, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders where the context permits.
- 25. Paragraph Headings.** The paragraph headings used in this Agreement are for convenience only and shall not be used in interpreting or construing any provision of this Agreement.
- 26. Exhibits.** Any exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
- 27. 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.
- 28. Entire Understanding.** This Agreement represents the entire understanding and Agreement between the parties with respect to the subject matter hereof and supersedes all other negotiations (if any) made by and between the parties.
- 29. Amendments.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, wavier or modification is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

City of Ocala, a Florida municipal corporation

Angel B. Jacobs
City Clerk

James P. Hilty, Sr.
President, Ocala City Council

Approved as to form and legality

William E. Sexton
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, 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 SELLER

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

MHC Spanish Oaks, L.L.C., a Delaware limited liability company

By: _____

Name: Everett Butler

Title: Senior Vice President

Date _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this this _____, 2023, by _____, as _____ of **MHC Spanish Oaks, L.L.C.**, a Delaware limited liability 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 LEGAL DESCRIPTION

PARCEL I:

Commence at the Northeast corner of Section 3, Township 15 South, Range 22 East; thence N. 89°50'21" W., 30.00 feet; thence S. 00°11'08" W., 30.00 feet to the Point of Beginning; thence continue S. 00°11'08" W., along the West right-of-way line for Citrus Drive (36th Avenue NE-60 feet wide), 1602.94 feet to the North boundary of Booster Stadium; thence N. 89°57'55" W., 1383.11 feet along the North boundary of the Booster Stadium; thence S. 01°02'56" E., along the West boundary of the Booster Stadium, 709.01 feet to a point on the Northeasterly right-of-way line of a Florida Power Corporation easement (200 feet wide); thence along said right-of-way line N. 68°50'33" W., 1892.90 feet to the Eastern right-of-way line of a Florida Power Corporation easement (150 feet wide); thence along said Florida Power Corporation easement N. 00°20'57" E., 183.24 feet to the South boundary of the Northeast 1/4 of the Northwest 1/4 of Section 3, Township 15 South, Range 22 East, Marion County, Florida and the South boundary of Carol Estates as recorded in Plat Book V, pages 26, 27 and 28 of the public records of Marion County, Florida; thence N. 88°45'12" E., along the South boundary of the Northeast 1/4 of the Northwest 1/4 of Section 3, Township 15 South, Range 22 East, Marion County, Florida and the South boundary of Carol Estates as recorded in Plat Book V, pages 26, 27 and 28 of the public records of Marion County, Florida, 551.17 feet to the Southwest corner of the Northwest 1/4 of the Northeast 1/4 of said Section 3; thence N. 88°45'25" E., along the South boundary of the Northwest 1/4 of the Northeast 1/4 of Section 3, Township 15 South, Range 22 East, Marion County, Florida and the South boundary of Carol Estates as recorded in Plat Book V, pages 26, 27 and 28 of the public records of Marion County, Florida, 1307.29 feet to the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of Section 3; thence N. 00°11'08" E., along the West boundary of the Northeast 1/4 of the Northeast 1/4 of Section 3, Township 15 South, Range 22 East and the Eastern boundary of Carol Estates, 1409.30 feet to the South right-of-way line of Joy Avenue (35th Street NE-60 feet wide); thence S. 89°50'21" E., along the South right-of-way line of Joy Avenue, 1276.90 feet to the Point of Beginning.

PARCEL II:

A nonexclusive easement for utilities and utility service over and across Lots 14, 15, 16, 17, 19, 20, 21, 22, 23, 25 and 26 of Carol Estates recorded in Plat Book V, Pages 26-28 of the Public Records of Marion County, Florida, as set forth in that certain Boundary Agreement and Easement Agreement dated February 1, 1990, recorded August 30, 1990 in Official Record Book 1681, Page 95 of the Public Records of Marion County, Florida.

EXHIBIT B
PROPERTY MAP

