

Rec. \$ _____

This Instrument Prepared by:

Fred N. Roberts, Jr.
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

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("*Agreement*"), is entered into effective as of _____, 2023, by and between:

- **City of Ocala**, a Florida municipal corporation ("*City*");
- **Watula South, LLC**, a Florida limited liability company ("*Developer*");

WHEREAS:

- A. Developer is the owner of the real property on attached **Exhibit A** (the "*Property*") which is located within the jurisdictional boundaries of the City.
- B. Developer has previously filed an application for the approval of "*WATULA SOUTH*", a residential subdivision (the "*Subdivision*") for the Property.
- C. The Property constitutes all of the real property in the Subdivision.
- D. Per the Development Regulations for R-3 in Sec. 122-357, development of the single-family (attached) dwelling unit is intended to promote homeownership on smaller infill lots with city services. All development will be required to submit a site plan with a developer's agreement. All development must be compatible in terms of design, scale and size with the surrounding residential neighborhood.
- E. Developer has previously submitted to the City a conceptual plan and improvement plans for the Subdivision, which depict the construction of stormwater conveyance system, , sidewalks, sanitary sewer services, water services, water meters, grading and appurtenances relating to the Subdivision. 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 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. *Access Improvements* – All streets, driveways and utilities to be constructed on the Property for use as a means of permitting access between parcels of real property and other parcels or public right of way, and to convey stormwater into offsite drainage improvements, pursuant to the Improvements Plan. Access Improvements shall expressly include those streets and driveways to be constructed within Tract A as shown on the Plat.
 - 2.1.2. *Acquisition Agreement* – That certain Acquisition and Development Agreement between City and Developer effectively dated April 17, 2018, as amended.
 - 2.1.3. *Agreement* – This Agreement, including any Exhibits attached hereto, as the same may be subsequently amended, modified or supplemented pursuant to its' terms and provisions.
 - 2.1.4. *City* – shall refer to the City of Ocala, a municipal corporation existing under the laws of the State of Florida.
 - 2.1.5. *City Code* – The Code of Ordinances of City of Ocala.
 - 2.1.6. *Conceptual Plan* – The Conceptual Plan for development of the Property as a residential subdivision approved by City Council on November 5, 2019.
 - 2.1.7. *Developer* — shall refer to **Watula South, LLC, a Florida limited liability company**, its successors or assigns.
 - 2.1.8. *Development Parcel* -- shall refer to the real property located in Marion County, Florida, described on attached **Exhibit B**.
 - 2.1.9. *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.
 - 2.1.10. *District* — shall refer to the St. John's River Water Management District, a public entity created under the laws of the State of Florida.
 - 2.1.11. *Improvements* — shall refer to those stormwater conveyance system, sidewalks, sanitary sewer services, water services, water meters, and grading and appurtenances relating to the Subdivision which are depicted upon the Plans for the Subdivision which have been filed by the Developer with the City.
 - 2.1.12. *Improvement Plans* – shall refer to those plans for the construction of the Improvements, the full approved version being on file with the City of Ocala Growth Management Department.

- 2.1.13. *Lot* — shall refer to an individual lot shown on the Plat of the Subdivision.
 - 2.1.14. *Plat* — shall refer to the Plat of the Subdivision, after it has been recorded in the Public Records of Marion County, Florida.
 - 2.1.15. *Property* — shall refer to the real property located in Marion County, Florida, described on attached **Exhibit A**.
 - 2.1.16. *Public Improvements* — shall refer to, subject to the limitations set forth below, sanitary sewer services, water services, water meters, sidewalks constructed in the public right of way in accordance with the Improvement Plans, and grading and appurtenances related thereto lying within the Subdivision as shown on the Improvement Plans. Water system improvements will be Public Improvements only to the property boundary as set forth in the Acquisition Agreement except water meters located within the property boundary which shall be deemed part of Public Improvements. Sanitary sewer system improvements will be Public Improvements with respect to the services within the dedicated right of way.
 - 2.1.17. *Subdivision* — shall refer to the proposed single-family residential Subdivision located on the Development Parcel, which will be named "Watula South".
- 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. **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 or the Acquisition Agreement, Developer covenants and agrees:
- 4.1. Accept as otherwise required to be constructed by the City pursuant to the Acquisition Agreement, to construct at its own expense all Improvements for the Subdivision according to the Improvement 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 or in the Acquisition Agreement, 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 Developer.
 - 4.2. To amend or modify the Improvement Plans as required to comply with future City standards and specifications 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 Development Parcel and its right to enter into this Agreement. 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.
 - 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 release or waiver reasonably satisfactory to the City of all liens arising out of this Agreement and the labor or services performed and the material and equipment furnished thereunder.
 - 4.8. To pay all applicable fees in accordance with the City Code, except as otherwise set forth in the Acquisition Agreement.
 - 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 Public Improvements, if any.
5. **Covenants of City.** In addition to the other covenants and agreements of City set forth specifically elsewhere in this Agreement or the Acquisition Agreement, City covenants and agrees:
- 5.1. The City will permit connections to City water and sewer services.
 - 5.2. To accept the dedicated Public Improvements, if any, constructed to City Standards one (1) year from the substantial completion date as determined by the Engineering Department and to perpetually maintain same.
 - 5.3. That it will issue building permits for the construction of the Development and will make all customary building inspections during the construction thereof, but will withhold Certificates of Occupancy until all supporting improvements for the Development have been completed and approved, and the final Plat has been approved and recorded.
 - 5.4. To otherwise comply with the terms of the Acquisition Agreement.

6. **Recording of Plat.** The City will allow the immediate recording of the Plat of the Subdivision and, subject to recording of the Deed Restrictions as required by Section 8.5 below, the subsequent conveyance of Lots in the Subdivision.
7. **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.
8. **Development Standards.**
 - 8.1. **Entrance Signage.** The entry signage will consist of no more than twelve (12) square feet of copy area and shall not include any internal illumination or animation.
 - 8.2. **Maintenance Agreement.** The Homeowners Association will become owner of the Private Improvements for the purposes of ownership and maintenance of the Private Improvements and Common Elements.
 - 8.3. **Development Standards.** The development standards as established by the Acquisition Agreement are incorporated herein by reference.
 - 8.4. **Deed Restrictions.** The parties acknowledge that the current form of the Declaration of Covenants and Restrictions for Watula South (the “Deed Restrictions”) has been provided to City and approved by the city attorney.
 - 8.5. **Statement of Unified Control.** The Developer is the sole owner of the Property as evidenced by Special Warranty Deed from City as recorded in Official Records Book 7621, Page 1086, Public Records of the City of Ocala. The Property shall remain under unified control until such time as the Deed Restrictions have been recorded in the Public Records of Marion County Florida.
 - 8.6. **Site Plan.** The approved site plan for the Subdivisions is attached hereto as **Exhibit B**.
9. **General Provisions.**
 - 9.1. **Notice.**
 - 9.1.1. All notices, requests, consents and other communications (each a “*Communication*”) required or permitted under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed 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:
 - 9.1.1.1. For City:

City of Ocala
City Manager
110 S.E. Watula Avenue
Ocala, FL 34471

With Copy to:
City of Ocala
Engineering and Water Resources Depart.
Attn: Sean Lanier, P.E.
1805 NE 30th Avenue, Bldg 600
Ocala, FL 34470

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

9.1.1.2. For Developer:

Watula South, LLC
Attn: Roy T. Boyd, III, Manager
1720 SE 16th Avenue, #200
Ocala, Florida 34471

With Copy to:
Fred N. Roberts, Jr., Esq.
Klein & Klein, LLC
40 SE 11th Avenue
Ocala, FL 34471

- 9.1.2. Each such Communication shall be deemed delivered:
- 9.1.2.1. On the date of delivered if by personal delivery;
 - 9.1.2.2. On the date of facsimile transmission if by facsimile; and
 - 9.1.2.3. 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.
 - 9.1.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile 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.
- 9.1.3. 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.
- 9.1.4. 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.

- 9.2. **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.
- 9.3. **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.
- 9.4. **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.
- 9.5. **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.
- 9.6. **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.
- 9.7. **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.
- 9.8. **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.
- 9.9. **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.
- 9.10. **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.
- 9.11. **Facsimile or Electronic Copy.** Any Party may rely upon receipt of a signed facsimile or electronic copy of this Agreement, signed by that party, as though the same were an original.
- 9.12. **City Code.** No provision of this Agreement shall supersede or take precedent over any existing ordinances, regulations or codes of the City.

- 9.13. **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.
- 9.14. **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.

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW]

THEREFORE, 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 by personal appearance this _____ day of _____, 20__, by James P. Hilty, Sr, 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: _____

DEVELOPER

WATULA SOUTH, LLC, a Florida limited liability company

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

By: _____
Roy T. Boyd, III, Manager

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by personal appearance this _____, 2023, by Roy T. Boyd, III, as Manager of Watula South, LLC, a Florida limited liability 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**

The land referred to herein below is situated in the County of MARION, State of Florida, and described as follows:

West 1/2 of Block 12, CALDWELL'S ADDITION TO OCALA, except the South 65 feet thereof, according to plat thereof recorded in Deed Book K, Page 741 and re-recorded in Plat Book E, Page 4, of the Public Records of MARION County, Florida and being also described as follows: 159 feet North and South by 105 feet East and West in the NW corner of

Lot 12 of CALDWELL'S ADDITION TO OCALA, according to the plat of said subdivision recorded in Plat Book E, Page 4, of the Public Records of Marion County, Florida; EXCEPTING from the foregoing that portion conveyed to the City of Ocala by Right-of-Way Deed recorded in Book 412, Page 92.

AND

South 55 feet of East 1/2 of Lot 12, of CALDWELL'S ADDITION TO OCALA, as per plat thereof recorded in Plat Book E, Page 4, of the Public Records of Marion County, Florida.

AND

Commencing at the S.W. corner of Lot or Block 12 of CALDWELL'S ADDITION TO OCALA, thence run North 65 feet, thence run East 105 feet, thence run South 65 feet, thence run West 105 feet to the Point of Beginning, as per plat of CALDWELL'S ADDITION, recorded in Plat Book E, Page 4, of the Public Records of Marion County, Florida.

LESS AND EXCEPT:

That portion of the above described property deeded to the City of Ocala in Official Records Book 8047, Page 1081, Public Records of Marion County, Florida, being further described as:

COMMENCING AT THE NORTHWEST CORNER OF SAID WEST 1/2 OF BLOCK 12, CALDWELL'S ADDITION TO OCALA, THENCE S.89°44'21"E., A DISTANCE OF 5.00 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF EAST FORT KING STREET (40' WIDE RIGHT-OF-WAY), TO THE EASTERNMOST CORNER OF THE LANDS DESCRIBED IN THE RIGHT OF WAY DEED RECORDED IN OFFICIAL RECORDS BOOK 412, PAGE 92, OF SAID PUBLIC RECORDS, AND TO THE POINT OF BEGINNING; THENCE CONTINUE, ALONG SAID SOUTH RIGHT-OF-WAY LINE, S.89°44'21"E., A DISTANCE OF 99.61 FEET, TO THE NORTHEAST CORNER OF SAID WEST 1/2 OF BLOCK 12, CALDWELL'S ADDITION TO OCALA; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, S.00°22'13"W., ALONG THE EAST BOUNDARY OF SAID WEST 1/2 OF BLOCK 12, CALDWELL'S ADDITION TO OCALA, A DISTANCE OF 3.98 FEET; THENCE DEPARTING SAID EAST BOUNDARY, N.89°50'34"W., A DISTANCE OF 99.72 FEET, TO A POINT THAT LIES S.01°47'08"W., 4.16 FEET, OF THE AFOREMENTIONED EASTERNMOST CORNER; THENCE S.44°56'14"W., A DISTANCE OF 7.02 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF S.E. WATULA AVENUE (40' WIDE RIGHT-OF-WAY); THENCE N.00°32'27"E., ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 4.15 FEET, TO THE SOUTHERNMOST CORNER OF THE AFOREMENTIONED LANDS DESCRIBED IN THE RIGHT OF WAY DEED RECORDED IN OFFICIAL RECORDS BOOK 412, PAGE 92; THENCE DEPARTING SAID EAST RIGHT-OF-WAY LINE, N.45°24'03"E., ALONG THE SOUTHEASTERLY BOUNDARY OF SAID LANDS, A DISTANCE OF 7.09 FEET TO THE POINT OF BEGINNING. CONTAINING 426 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

EXHIBIT B
SITE PLAN
(___ Pages Attached)