

CITY REDEVELOPMENT AGREEMENT FOR WATULA SOUTH

THIS CITY REDEVELOPMENT AGREEMENT FOR WATULA SOUTH is entered into as of April 17, 2018, between:

- City of Ocala, a Florida municipal corporation (“City”).
- Watula South, LLC, a Florida limited liability company (“Developer”).

WHEREAS:

- A. City is the owner of the Property.¹
- B. The Property is currently improved with the Existing Building.
- C. The Property is located within the Ocala Historic District (as defined in the Historic Preservation Code).
- D. Developer has requested City to convey the Property to Developer for the construction of the Project, and for City to provide the City Incentives, as set forth in this Agreement.
- E. The City Council of the City of Ocala has determined that conveyance of the Property and the City Incentives set forth herein are in the public interest because the construction of the Project will help promote a prosperous economy in the City of Ocala by, without limitation, spurring economic development in downtown Ocala.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable considerations, and with the intention that they be legally bound by this Agreement, 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. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:
 - 1.1. *Adequate Assurance* – The adequate assurance to be provided in connection with City’s conveyance of the Property and to consist of one, or a combination, of the following:
 - 1.1.1. Cash in an escrow account, maintained in Marion County, Florida by an escrow agent mutually acceptable to City and Developer. The parties agree that a licensed financial institution maintaining an office in Marion County, Florida shall qualify as an approved escrow agent.
 - 1.1.2. A letter of credit issued by a financial institution licensed to transact business in the State of Florida.
 - 1.1.3. Some other adequate financial assurance (other than personal guarantees) reasonably approved by City.

¹ Terms capitalized herein and not otherwise defined herein are defined in paragraph 1 below.

- 1.2. *Adjacent Parcel* – The real property in Marion County, Florida, with Marion County Tax Parcel ID No.: 2820-012-002, owned by Insurance Agency and described as follows: The East 1/2 of Lot 12, Caldwell's Addition to Ocala, except the South 55 feet thereof, as per plat thereof recorded in Plat Book E, Page 4, Public Records of Marion County, Florida
- 1.3. *Agreement* – This Agreement, as it may from time to time be amended or modified pursuant to its terms and provisions.
- 1.4. *Approval* – The final, unconditional approvals (i.e. issuance of Certificates of Appropriateness, site plan approval and issuance of a building permit) from all applicable governmental agencies (including City and/or OHPAB) reasonably necessary to allow for the immediate commencement of construction of the Project (including, without limitation, all necessary Development Orders), and, if person has objected to the approval, the expiration of time for the filing of an appeal or other challenge, without such an appeal or challenge having been filed.
- 1.5. *Approval Date* – The date on which Approval is obtained for the Project.
- 1.6. *Approved CDP* – A CDP for the Project as approved pursuant to paragraphs 5.2.3 and 8.3.
- 1.7. *Approved Plans* – The Plans for the Project as approved by the issuance of the Approval for the Project.
- 1.8. *CDP* – A conceptual development plan for the Project prepared by Developer pursuant to paragraph 8.3.
- 1.9. *Certificate of Appropriateness* – A document issued pursuant to the Historic Preservation Code evidencing approval for:
 - 1.9.1. The demolition or removal of the Existing Building as required by the Demolition Contingency; or
 - 1.9.2. The construction of the Project as required by the CDP Contingency.
- 1.10. *City Code* – The Code of Ordinances of the City of Ocala, Florida.
- 1.11. *City Demolition* – City's demolition or removal of the Existing Building pursuant to paragraph 9.5.
- 1.12. *City Improvements* – The improvements to be made by City pursuant to paragraph 9.3.
- 1.13. *City Incentives* – The City Property Donation, City Review Contributions, City Improvements, City Reimbursement and City Demolition.
- 1.14. *City Property Donation* – City's conveyance of the Property to Developer for nominal consideration.

- 1.15. *City Reimbursement* – The amount to be paid by City to Developer pursuant to paragraph 9.4.
- 1.16. *City Review Contributions* – The amounts to be paid or waived by City on behalf of Developer pursuant to paragraph 9.2.
- 1.17. *Closing* – The delivery of a deed and other documents pursuant to paragraph 7 to Developer for the Property to Developer concurrently with the delivery of the Purchase Price to City.
- 1.18. *Closing Date* – A date for a Closing as set forth in paragraph 7.1.
- 1.19. *Completion* (regardless of whether the term is capitalized) – When construction of the Project is substantially completed which shall be the date when City has issued certificate of occupancies for all Townhouses and certificates of completion (or similar approval) for any other applicable improvements to be constructed. (This definition does not require that all interior build-outs for each Townhouse be completed but sufficient improvements must be made such that a certificate of occupancy is issued for them.)
- 1.20. *Construction Costs* (regardless of whether the phrase is capitalized) – All actual costs of construction and site development work incurred by Developer in connection with the Project.
- 1.21. *Construction Loan* – A loan or loans from a third party to Developer to permit Developer to pay all or any portion of the Development Costs for the Project and secured by a mortgage on the Property.
- 1.22. *Contingency* – One or more of the following:
 - 1.22.1. *Land Use/Zoning Contingency* – As defined in paragraph 5.2.1.
 - 1.22.2. *Demolition Contingency* – As defined in paragraph 5.2.2.
 - 1.22.3. *CDP Contingency* – As defined in paragraph 5.2.3.
- 1.23. *Deadline* – A deadline for performance of an obligation, or an occurrence of a Contingency, under the Schedule as set forth in paragraph 10.
- 1.24. *Develop* (regardless of whether the term is capitalized) – To perform activity associated with the development of the Project including the construction of all the improvements on a Property pursuant to this Agreement. The term is synonymous with “redevelop” under this Agreement.
- 1.25. *Developer Principal* – Collectively, Clint Lewis and Angie Lewis, husband and wife.
- 1.26. *Development Costs* – All Construction Costs; furniture, fixture and equipment costs; and directly related “soft costs” (i.e. design, permitting, professional fees, consulting fees, etc.) incurred in connection with or directly attributable to the Project.

- 1.27. *Development Order* (regardless of whether the term is capitalized) – Issuance of Certificates of Appropriateness, site plan approvals, issuance of building permits or similar action by City and all other government entities with jurisdiction over the Project, or any portion thereof, necessary for Developer, as may be applicable, to develop such portions of the Project pursuant to the requirements of this Agreement.
- 1.28. *Effective Date* – The date or effective date of this Agreement is the date upon which City or Developer last signs this Agreement. [The last party executing this Agreement is authorized to fill in the Effective Date in the blank therefor in the first paragraph of this Agreement.]
- 1.29. *Equity Investment* – The required equity investment of Developer described in paragraph 7.3.
- 1.30. *Existing Building* – The existing building located on Parcel 2 and currently occupied by the Ocala/Marion County Transportation Planning Organization.
- 1.31. *Financial Information* – The information to be provided by Developer pursuant to paragraph 11.1.
- 1.32. *Financial Review Committee* – A person, or group of persons, which the parties anticipate shall provide services to City as set forth in this Agreement. The relationship between City and the Financial Review Committee is as set forth in paragraph 11.3.
- 1.33. *Historic Preservation Code* – Chapter 94 of the City Code.
- 1.34. *Inspection Period* – A period of time beginning on the Effective Date and ending three (3) months thereafter, subject to early termination by Developer pursuant to paragraph 3.5.
- 1.35. *Insurance Agency* – Angie Lewis Insurance Agency Inc., a Florida corporation, which is owned by one or more of the Developer Principals.
- 1.36. *Month* (regardless of whether the term is capitalized) – When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date or first event for example, two (2) months after July 15, 2018, is September 15, 2018.
- 1.37. *OHPAB* – The Ocala Historic Preservation Advisory Board established pursuant to the Historic Preservation Code.
- 1.38. *Person* (regardless of whether the term is capitalized) – An individual, corporation, limited liability company, partnership, or similar entity or group of individuals or persons.
- 1.39. *Plans* – The site plan and building plan for the Project, and other applications necessary to obtain a building permit and other Approvals for the Project.

- 1.40. *Project* – The construction of Townhouses, and related improvements, as set forth in paragraph 8.2.
 - 1.41. *Property* – Individually and collectively the real property on the attached **Exhibit A** and, as set forth on such **Exhibit A**, consisting of the following parcels (each a “Parcel”):
 - 1.41.1. *Parcel 1* – The portion of the Property approximately .38 acres in size with Marion County Tax Parcel ID No.: 2820-012-001.
 - 1.41.2. *Parcel 2* – The portion of the Property approximately .16 acres in size with Marion County Tax Parcel ID No.: 2820-012-003.
 - 1.41.3. *Parcel 3* – The portion of the Property approximately .13 acres in size with Marion County Tax Parcel ID No.: 2820-012-004.
 - 1.42. *Purchase Price* – The sum of One and no/100 Dollar (\$1.00), together with Developer’s performance of the Requirements under this Agreement.
 - 1.43. *Requirements* – The obligations of Developer under paragraph 8 of this Agreement.
 - 1.44. *Schedule* – The schedule for performance of certain requirements of this Agreement as set forth in paragraph 10.
 - 1.45. *Title Insurance Company* – First American Title Insurance Company, Old Republic Title Insurance Company, or such other title underwriter mutually acceptable to City and Developer.
 - 1.46. *Townhouse* – A conjoined residential dwelling unit architecturally similar to a row house and having at least two stories.
2. **Purchase and Sale.** Subject to the terms of this Agreement, Developer agrees to purchase from City, and City agrees to sell to Developer, for the Purchase Price, the Property, on the terms and conditions hereinafter set forth.
3. **Inspection Period.**
- 3.1. City Provision of Materials. Developer acknowledges and agrees that City has provided Developer with the following prior to the Effective Date:
 - 3.1.1. Survey of the Property prepared by the City surveyor.
 - 3.1.2. (Unsigned) Draft Title Insurance Commitment issued by First American Title Insurance Company with an effective date of November 11, 2017.
 - 3.2. Developer’s Inspection of the Property. During the Inspection Period, Developer shall have the right to enter upon the Property to make all inspections of the condition of the Property which it may deem necessary, including, but not limited to, soil borings, percolation tests, engineering, environmental and topographical studies, inspections of zoning and the availability of utilities, all of which

inspections shall be undertaken at Developer's sole cost and expense. Before entering the Property, Developer or any of Developer's agents so entering shall provide City with proof of appropriate liability insurance covering any and all losses, costs, claims, damages, liabilities, and expenses which might arise from the exercise by Developer, or any of its agents, of the right of entry. Neither Developer nor Developer's agents shall conduct any inspection so as to damage the Property, except damage reasonably resulting from soil borings, but if any such damage occurs, Developer shall restore the Property to its pre-inspection condition no later than fifteen (15) days after the damage occurs. Developer shall, in a timely manner, pay in full the cost of all inspections, investigations, and inquiries of any kind, so that no person or entity shall have the right to file any lien against the Property.

- 3.3. Indemnification. Developer hereby agrees to indemnify City and any other occupants of the Property from, and hold such persons harmless against, all claims, demands and liability, including, but not limited to, attorneys' fees, for nonpayment for services rendered to Developer, for construction liens, or for damage to persons or property arising out of the presence of Developer's agents, employees, surveyors, engineers, contractors, or other third parties under the control of Developer, on the Property. Notwithstanding anything to the contrary set forth in this Agreement, the indemnification and agreement to hold harmless set forth in this paragraph 3.3 shall survive the Closing or the earlier termination of this Agreement (for whatever reason).

- 3.4. Developer's Right to Terminate During the Inspection Period.

3.4.1. In the event that Developer's inspection of the Property is unsatisfactory to Developer for any reason whatsoever, Developer may deliver to City, prior to 5:00 p.m. Eastern Time in effect on the final business day of the Inspection Period, written notice of its election to terminate this Agreement (the "*Termination Notice*"). Upon City's timely receipt of the Termination Notice, neither Developer nor City shall have any further rights or obligations hereunder except as otherwise expressly provided herein as surviving termination.

3.4.2. If City does not receive notice of termination from Developer by the end of the Inspection Period, Developer's right to terminate as aforesaid shall be deemed waived.

- 3.5. Early Termination of Inspection Period. Developer may, at any time during the Inspection Period, provide written notice (the "*Early Inspection Period Notice*") of its election to terminate the Inspection Period as of the date of such notice and proceed with this Agreement. Upon City's timely receipt of the Early Inspection Period Notice, the Inspection Period shall be deemed terminated for purposes of this Agreement including the calculation of any Deadlines hereunder.

4. **Survey; Title Insurance.**

- 4.1. Survey.

4.1.1. Developer shall, prior to the end of the Inspection Period, obtain a survey of the Property and provide such survey to City for its approval. The

survey shall comply with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (effective 2/23/16), including those set forth in paragraphs 1 through 4, 6(b), 7(a), 8, 11 and 20 of Table A to such requirements, and shall be certified to Developer and City. The Survey shall contain the descriptions of each Parcel as set forth in the attached **Exhibit A**, a note certifying that the Parcels are contiguous, shall exclude the portion of the Property described on the attached **Exhibit A** upon which sidewalks are located, and shall contain a perimeter legal description of the resulting Property.

4.1.2. The survey shall be subject to the parties' approval during the Inspection Period.

4.1.3. The final legal description for the Property shall be determined by the survey as approved by the parties.

4.2. **Title Insurance.**

4.2.1. Developer shall obtain, at Developer's expense, prior to the end of the Inspection Period, a commitment (the "*First Commitment*") for an owner's title insurance policy from Title Company, or from an agent of Title Company selected by Developer, agreeing to insure title to the Property and subject to: no exceptions other than those (the "*Permitted Exceptions*") set forth in the attached **Exhibit B**; those which will be discharged prior to or at Closing; and the standard printed exceptions and exclusions from coverage customarily contained in an owner's policy from the Title Company. (The First Commitment is not the same document referred to in paragraph 3.1.2, but rather shall be issued by or on behalf of Developer following the Effective Date.)

a. Developer shall provide City a copy of the First Commitment, together with copies of the exception documents, within five (5) business days of receipt of same.

b. Within twenty (20) days of its receipt of the First Commitment and Survey, Developer shall notify City of any objections relating to the First Commitment or to matters disclosed by the Survey. If Developer fails to do so, it shall be deemed to have accepted the First Commitment and title to the Property as evidenced thereby, and any additional exceptions to title not set forth on the attached **Exhibit B** shall be deemed to be Permitted Exceptions.

c. Developer shall take title subject to zoning, restrictions and prohibitions imposed by governmental authority which would not inhibit, restrict or prohibit redevelopment of the Property consistent with this Agreement.

d. If the First Commitment discloses unpermitted exceptions or matters that render the title non-marketable, City, at its option, shall have forty-five (45) days from the date of receiving written notice of defects from Developer within which to have the

exceptions removed from the First Commitment, or the defects cured to the reasonable satisfaction of Developer. If City fails to have the First Commitment exceptions removed or the defects cured within the specified time: (a) Developer may terminate this Agreement; or (b) Developer may elect, upon notice to City within ten (10) days after the expiration of the curative period, to take title as it then is notwithstanding such exceptions or title defects. If Developer fails to provide such notice, City may provide notice to Developer of its intent to terminate this Agreement unless Developer elects, by providing notice to City within ten (10) days of City's intent-to-terminate notice, to accept title as then exists, notwithstanding such exceptions or title defects. If Developer fails to timely provide notice to City of an election to accept title notwithstanding exceptions or title defects within the specified time period after the City intent-to-terminate notice Developer shall be deemed to have elected to terminate this Agreement.

4.2.2. Thereafter, Developer may obtain, during the time period between fifteen (15) and sixty (60) days before the Closing, an updated commitment (the "*Subsequent Commitment*") for an owner's title insurance policy for the Property in an amount acceptable to Developer and approved by Title Company. In the event a Subsequent Commitment contains any unpermitted exceptions or matters that render the title non-marketable, and such exceptions or matters were not set forth in the First Commitment, the following provisions shall apply:

- a. In the event that the new exceptions or matters arise by, through, under or against the City, and were not created pursuant to City's obligations under this Agreement or with Developer's written consent, City shall exercise reasonable diligence in the curing of any such exceptions or matters, including the payment and discharge of any liens or encumbrances affecting the title of the Property.
- b. Otherwise, the provisions of the last two sentences of paragraph 4.2.1.d shall apply.

4.2.3. Subsequent to or at closing, Developer, at Developer's expense, may obtain an owner's title policy showing good and marketable title in Developer as of the recording the special warranty deed and subject only to the permitted exceptions and any matters created at closing.

4.3. Closing Affidavits. At Closing, City shall provide all evidence, affidavits, and other documentation reasonably required such that the Policy when issued shall not contain the so-called "standard exceptions" for rights of parties in possession (other than tenants in possession under any leases accepted by Developer as "Permitted Exceptions"), matters of survey (provided that Developer obtains a Survey in accordance with this Agreement), unrecorded easements, and construction liens. The Commitment (and the Policy when issued) will contain an exception for the current year's taxes and taxes for subsequent years, unless the

Closing takes place in November or December, in which case the exception for taxes shall be for the year following the Closing and subsequent years.

- 4.4. Payment. Developer shall be responsible for the expense of the Title Insurance Commitment, and for the premium for the owner's title insurance policy, all mortgagee title coverage and for all endorsements.

5. **Contingencies.**

- 5.1. Generally. The parties acknowledge that:

5.1.1. The Property and Adjacent Parcel do not currently have the correct land use under the City Comprehensive Plan or zoning to permit the development of the Project.

5.1.2. The Property and Existing Building are located within the Ocala Historic District (as defined in the Historic Preservation Code) and therefore Certificates of Appropriateness must be issued:

- a. Pursuant to Sections 94-82 and 94-83 of the Historic Preservation Code, in order for City to demolish the Existing Building, or pursuant to Sections 94-82 and 94-102 of the Historic Preservation Cod, in order for City to remove the Existing Building; and
- b. Pursuant to Section 94-82 of the Historic Preservation Code, in order for Developer to construct the Project.

- 5.2. Contingencies. The parties' obligations under this Agreement are contingent upon each of the following (a "Contingency") occurring prior to the deadline ("Contingency Deadline") therefor as set forth below:

5.2.1. *Land Use/Zoning Contingency* – City: (a) changing the land use of the Property to Central Core under the City Comprehensive Plan; (b) rezoning of the Property to R-3 under the City Code; and (c) amending Section 122-133(b)(1) of the City Code to allow rezoning of parcels with an area no greater than the area of the Property.

- a. The Land Use/Zoning Contingency shall be deemed to have occurred when City Council has adopted ordinances accomplishing the foregoing, such ordinances become effective under applicable law, and all applicable appellate periods have expired.
- b. The Contingency Deadline for the Land Use/Zoning Contingency is three (3) months after the Effective Date.

5.2.2. *Demolition Contingency* – Issuance of a Certificate of Appropriateness for the demolition or removal of the Existing Building pursuant to the Historic Preservation Code.

- a. The Demolition Contingency shall be deemed to have occurred when OHPAB has issued such a Certificate of Appropriateness, or City Council directs such issuance pursuant to 94-54 of the Historic Preservation Code.
- b. The Contingency Deadline for the Demolition Contingency is five (5) months after the occurrence of the Land Use/Zoning Contingency.

5.2.3. *CDP Contingency* – Approval by City, and issuance of a Certificate of Appropriateness for, the CDP for the Project.

- a. The CDP Contingency shall be deemed to have occurred when OHPAB has issued such a Certificate of Appropriateness, or City Council directs such issuance pursuant to 94-82 of the Historic Preservation Code. The Certificate of Appropriateness approves construction of the Project pursuant to the CDP as approved by City.
- b. The Contingency Deadline for the CDP Contingency is five (5) months after the occurrence of the Land Use/Zoning Contingency.

5.3. Responsibilities.

- 5.3.1. City shall be responsible for all costs and expenses associated with the Land Use/Zoning Contingency and Demolition Contingency.
- 5.3.2. Developer shall be responsible for all costs and expenses associated with the CDP Contingency.
- 5.3.3. Developer shall cause Insurance Agency to join with: (a) City in the applications for the Land Use/Zoning Contingency and to cooperate with City in connection with the occurrence thereof; and (b) Developer in the application for the CDP Contingency if any portion of the Adjacent Parcel then owned by Insurance Agency is included in the Project pursuant to paragraph 8.2.2.
- 5.3.4. The parties shall cooperate in connection with the occurrence of each Contingency. Notwithstanding the foregoing, Developer acknowledges and agrees that, insofar as action by City or OHPAB is necessary to cause a Contingency to occur, such approval must only be considered pursuant to the City Code and other provisions of applicable law, and nothing in this Agreement shall obligate City or OHPAB to approve the matter.

5.4. Effect of Contingency Failure.

- 5.4.1. If a Contingency fails to occur prior to the Contingency Deadline, either party may elect to terminate this Agreement, by providing written notice of termination (which notice must be delivered prior to the occurrence of the Contingency), whereupon City and Developer shall be released from

all further liability under this Agreement, except as to matters that are stated herein as expressly surviving the termination of this Agreement.

5.4.2. Each party shall exercise reasonable diligence in causing the Contingencies to occur prior to the applicable Contingency Deadlines.

6. Payment of Purchase Price.

- 6.1. Developer shall pay to City the monetary portion of the Purchase Price in cash by cashier's check or by bank wire transfer on the Closing Date.
- 6.2. Developer and City acknowledge and agree that the Purchase Price consists, not only of the nominal monetary amount set forth in paragraph 1.42, but also Developer's performance of its obligations under this Agreement including, without limitation, the Requirements under paragraph 8.
- 6.3. For purpose of documentary excise taxes, if any, and title insurance, the value of the Property shall be deemed to be \$148,000.00. (This paragraph shall not preclude Developer from obtaining a title insurance policy in a greater amount.)

7. Conveyance of Property.

7.1. Closing Date.

7.1.1. The Closing Date shall be a date selected by Developer upon at least ten (10) days written notice to City, and shall be within the later of the following: (a) two (2) months after the determination by City Council pursuant to paragraph 11.2; or (b) one (1) month after the completion of the City Demolition. Such Closing Date may be extended for up to one (1) month at the option of Developer upon written notice to City, without the necessity of amending this Agreement.

7.1.2. The Closing of transfer of title to the Property shall occur simultaneously with the Closing of the Construction Loan for the Project.

7.2. Form of Conveyance and Closing Costs.

7.2.1. City shall convey the Property to Developer pursuant to a special warranty deed subject only to: (a) the current year's taxes and taxes for subsequent years, unless the Closing takes place in November or December, in which case the exception for taxes shall be for the year following the Closing and subsequent years; (b) the Permitted Exceptions; (c) the Reserved Easements as set forth in paragraph 7.5; and (d) the restriction on use set forth in paragraph 8.13.

7.2.2. Documentary stamps, if any, on the special warranty deed shall be the expense of Developer.

7.2.3. Developer shall pay for the cost of all title insurance commitments, and the owner's title policy if issued, recording of the deed and all expenses associated with any financing.

- 7.2.4. City shall pay for the cost of recording curative instruments.
- 7.2.5. Each party shall pay its respective attorney's fees.
- 7.2.6. City shall execute an owner's affidavit reasonably acceptable to City as may be required by Title Company to remove the so-called "standard exceptions" from any title insurance policy to be issued to Developer following Closing.
- 7.2.7. As the Property is currently owned by City, it is not subject to ad valorem taxes or assessments. Therefore, taxes and assessments will not be prorated as of the Closing. Developer shall be responsible for any ad valorem taxes and assessments that are due and payable on the Property after Closing.
- 7.3. Equity Investment. Developer shall have available owner equity in the minimum amount of at least \$525,000.00 (the "*Equity Investment*") prior to Closing.
 - 7.3.1. The Equity Investment shall consist of: (a) Development Costs incurred by Developer prior to Closing, as established by documentation provided by Developer under paragraph 8.2.4.b; and (b) amounts held by Developer in one or more bank accounts in the name of Developer, as documented by bank statements (the account numbers of which may be redacted by Developer) or other reasonable documentation provided by the applicable financial institution, and acceptable to City in its sole discretion.
 - 7.3.2. Developer must provide proof of the Equity Investment as of the date of the Financial Review, and shall retain the portion of the Equity Investment maintained in a bank account under paragraph 7.3.1 until it is either spent on the Project pursuant to paragraph 7.3.3 or until Completion (e.g., a higher percentage is funded or paid from other sources).
 - 7.3.3. Developer shall be deemed to have complied with the Equity Investment requirement of this paragraph 7.3 if the Equity Investment is established as of the dates set forth in paragraph 7.3.2, but shall not be required to spend any portion of the Equity Investment maintained in a bank account under paragraph 7.3.1 on the Project if such expenditure is unnecessary as a result of funds available under a Construction Loan.
- 7.4. Adequate Assurance.
 - 7.4.1. Developer shall, simultaneously with or prior to Closing of the Property, provide an Adequate Assurance to City in the amount of \$260,000.00.
 - 7.4.2. The form and substance of the Adequate Assurance shall be acceptable to City in its reasonable discretion.
 - 7.4.3. In the event the Adequate Assurance is in the form of a letter of credit, or other obligation with an expiration date, Developer shall renew the Adequate Assurance so it remains effective during the time period set forth in paragraph 7.4.4 that Developer is required to maintain the Adequate

Assurance. Developer shall provide City with proof of such renewal at least thirty (30) days before the expiration of the Adequate Assurance. In the event Developer fails to renew the Adequate Assurance as and when required hereunder, City shall provide Developer with written notice of such default and, in the event Developer thereafter fails to renew the Adequate Assurance within fifteen (15) days of City's provision of such notice, City shall be entitled to demand payment under the Adequate Assurance. The provisions of this paragraph shall govern over any conflicting provision in paragraph 12.2.3.

7.4.4. The Adequate Assurance shall be maintained from the date it is provided to City until Completion of the Project.

7.4.5. City may request payment of the Adequate Assurance in the event any Requirement described in paragraph 8 fails to occur or be maintained during the period the Adequate Assurance is required to be maintained.

7.4.6. The purpose of the Adequate Assurance is to reimburse or compensate City for its performance of obligations under this Agreement including, without limitation, its conveyance of the Property to Developer for monetary consideration of less than the Property's fair market value, and the City Incentives.

a. In the event the Adequate Assurance is paid to City, City shall, except as set forth in paragraph 7.4.6.b, be entitled to retain the full amount of such payment and shall not be obligated to credit Developer with any portion thereof or to otherwise account to Developer for the payment.

b. Notwithstanding paragraph 7.4.6.a, in the event that City is paid the proceeds of the Adequate Insurance prior to the date that City has performed (or entered into Contracts with third parties to perform) all of the City Improvements, or paid to Developer the City Reimbursement, City shall pay to Developer, the amount that City determines, in its sole discretion, is the amount of City Incentives that City has not paid under this Agreement by virtue of the non-performance of all City Improvements or non-payment of the City Reimbursement.

7.5. Reserved Easements. City has advised Developer that it will likely need to reserve certain easements (the "Reserved Easements") on the Property in connection with Developer's development of the Property and for other public purposes, including easements for electric poles, lines, transformers and other facilities, water and sewer facilities and perhaps other public utilities or improvements.

7.5.1. Prior to the Approval of the Plans, City shall, in its reasonable discretion, determine the location of the Reserved Easements. City shall use good faith efforts to locate the Reserved Easements in a manner that does not interfere with the development of the Project based upon the Approved CDP or other proposed Plans.

7.5.2. The form of such reservation shall be acceptable to City and Developer (and any lender of Developer, if applicable) in their reasonable discretion and shall be similar to other documents City has utilized to reserve easements on City property conveyed for development or redevelopment, including provisions that require Developer to grant City additional Reserved Easements during the process of constructing the Project.

7.6. AS IS. Except as otherwise expressly provided in this Agreement, City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to any Property or any portion thereof, including, but not limited to, warranties or representations as to matters of title (other than City's warranty of title set forth in the deed to be delivered at Closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, operating history or projections, valuation, governmental approvals, governmental regulations, or any other matter or thing relating to or affecting the Property including, without limitation, the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property. Developer agrees that with respect to the Property, Developer has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of City (except as expressly set forth in this Agreement) or any agent of City. Developer represents that it is a knowledgeable purchaser of real estate and that it is relying solely on its own expertise and that of Developer's consultants, and that Developer will conduct such inspections and investigations of the Property as Developer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters concerning such Property, including, but not limited to, adverse physical and environmental conditions, which may not have been revealed by Developer's inspections and investigations. Developer's closing hereunder shall be deemed to constitute an express waiver by Developer or its successors and assigns of any right to sue City, and of Developer's right to cause City to be joined in an action, concerning such Property brought under any federal, state, or local law, rule, act, or regulation which prohibits or regulates the use, handling, storage, transportation, or disposal of a hazardous or toxic substance or which requires removal or remedial action with respect to such hazardous or toxic substance, specifically including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. and Part IV of the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes. DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, CITY SHALL SELL AND CONVEY TO DEVELOPER, AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, ORAL REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN THE DEED TO BE DELIVERED AT CLOSING), COLLATERAL TO OR AFFECTING THE PROPERTY BY CITY, ANY AGENT OF CITY, OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF CITY. The terms and conditions of this paragraph shall expressly survive the closing and not merge into the deeds to be executed and delivered at Closing. This paragraph shall not relieve City from its obligation to construct the City Improvements following Closing.

8. **Requirements of Developer.** Developer agrees to comply with the following Requirements:

8.1. Generally. Developer's development of the Project consistent with this Agreement is a material inducement for City to enter into this Agreement. The opportunity for Developer to develop the Project pursuant to this Agreement, and the other obligations of City pursuant to this Agreement, are material inducements for Developer to enter into this Agreement.

8.2. Project.

8.2.1. Developer shall develop the Project on the Property.

8.2.2. At Developer's discretion, Developer may include the Adjacent Parcel as the location for driveway improvements for the Project.

8.2.3. The Project shall provide for the construction of:

- a. At least 8 Townhouses.
- b. At least 14,400.00 gross square feet of heated and cooled building area within the Townhouses; and
- c. At least one garage for each Townhouse, some of which may be detached garages as set forth in the Approved CDP.

8.2.4. Developer's total Development Costs shall be no less than \$ 2,100,000.00.

- a. For purposes of this paragraph 8.2.4, Developer's Development Cost shall consist solely of the Development Costs paid by Developer for the Project and should not consider the value or amount of any City Incentives.
- b. Developer shall provide to City documentation (consisting of copies of applicable invoices and corresponding copies of cancelled checks relating to development and construction of the Project) of its Development Costs:
 - 1). Establishing that Developer has the Equity Investment as of the date of the Financial Review, as and when required by paragraph 7.3; and
 - 2). Establishing that Developer's actual Development Costs incurred in connection with the Project were equal to, or in excess of, the amount set forth in paragraph 8.2.4. Developer shall not be required to provide any documentation concerning Development Costs in excess of such amount.

8.3. CDP.

8.3.1. As and when required by the Schedule, Developer shall submit to City a proposed CDP for the Project for approval by City and OHPAB pursuant to the CDP Contingency.

8.3.2. City has advised Developer that City will likely seek to obtain a Certificate of Appropriateness for the demolition or removal of the Existing Building prior to the date that OHPAB considers a Certificate of Appropriateness for the development of the Project pursuant to the CDP Contingency. Nonetheless, the parties acknowledge that OHPAB may be unwilling to approve a Certificate of Appropriateness for the demolition or the removal of the Existing Building until OHPAB also considers a Certificate of Appropriateness for the development of the Project. Therefore, the parties have established the same Contingency Deadlines for the Demolition Contingency and the CDP Contingency.

8.3.3. The CDP shall, at a minimum, include or be accompanied by the following items or information for the Project:

- a. A survey of the Property (if Developer has not previously provided to City the Survey pursuant to paragraph 4.1) and, if Developer intends to utilize any portion of the Adjacent Parcel pursuant to paragraph 8.2.2 of the western 10 feet of the Adjacent Parcel. The survey shall be certified to Developer and City and shall specify the square footage of the Property.
- b. Topography of the site and size, shape and location of building(s) on the Property and of the western 10 feet of the Adjacent Parcel.
- c. Architectural features and materials of the proposed building(s), including elevations of all sides thereof. The submittal shall include a color rendering of the proposed buildings.
- d. Internal circulation and parking plans and all access points/driveways connections.
- e. General landscape plan
- f. Preferred locations for electrical and other utility services.
- g. Location of trash or refuse service areas.

8.4. Plans. As and when required by the Schedule, Developer shall submit to City, for approval by City, proposed Plans for the Project which shall be generally consistent with the approved CDP.

8.5. Joinder and Applications. City, as owner of the Property during the entitlement process, shall join in any application for Development Orders associated with development of the Property consistent with this Agreement, including, but not

limited to, applications for final site plan approval, stormwater permits and Certificates of Appropriateness.

- 8.6. City Approval. City's approval of: (a) the CDP shall be evidenced by a writing signed by the City Manager; and (b) the Plans shall be evidenced by documents customarily issued by City staff for a project like the Project.
- 8.7. Report to City Council. During the term of this Agreement, Developer shall appear before City Council upon the request of City Council or the City Manager to provide a report on the progress of the proposed Project and the parties' performance of their obligations under this Agreement. Developer shall not be required, however, to appear more than two (2) times per calendar year.
- 8.8. City Cooperation. City shall exercise its best efforts and cooperate with Developer in submitting and obtaining any state and federal licenses, permits and governmental authorizations necessary, for the Completion of the Project; provided, however, all costs associated therewith shall be the sole responsibility of Developer. City's obligations shall not affect City's right and authority to act in regulatory matters in accordance with applicable laws or ordinances.
- 8.9. Utility Requirements. The Project shall be serviced solely by Ocala Electric Utility for electricity after the date on which a certificate of occupancy is issued for the Project.
- 8.10. Developer Payment of Fees. Developer is responsible for all charges for fees for the Project except to the extent that they are paid by City as the City Review Contributions.
- 8.11. Local Professionals. Developer shall endeavor to utilize local professionals, architects, engineers, or contractors in the development of the Project. Nothing set forth herein shall, however, require Developer to take any action or select any professionals, architects, engineers, or contractors that would interfere, in Developer's sole discretion, with Developer developing the Project in a competent, professional and cost-effective manner.
- 8.12. Compliance with Other Provisions of Applicable Law. Developer shall construct the Project in compliance with all applicable laws, regulations and ordinances including the Historic Preservation Code and provisions of the City Code involving platting or dividing real property pursuant to condominiums. The foregoing reference to provisions of the City Code involving platting or dividing of real property shall not be deemed to require Developer to comply therewith if such provisions do not apply on their face. By way of illustration, and not limitation, if Developer chooses to lease the Townhouses (as opposed to sell them), it may not be required to plat or establish the Townhouses as a condominium, but if Developer later decides to sell the Townhouses under provisions that would require platting or establishing a condominium, Developer may then be required to do so.
- 8.13. Restrictions on Use of Property. No portion of the Property may be used for any use other than Townhouses (and related uses (such as home offices) as permitted under the City Code to occur within Townhouses). This restriction shall be set forth in the deed to be executed by City at closing.

9. **City Incentives.**

9.1. City Property Donation. As set forth in paragraph 6.2, the monetary portion of the Purchase Price is nominal. Therefore, City shall be deemed, at Closing, to have provided Developer with a City Incentive in the amount of the fair market value of the Property as set forth in this Agreement (\$148,000.00).

9.2. City Review Contributions.

9.2.1. City shall pay on behalf of Developer (or waive, to the extent permitted by applicable law) all charges or fees (the "City Review Contributions") for plan review, permits and inspections for the Project including, without limitation: site plan review fees; building permits; plumbing, electrical, mechanical and site inspection fees; water, sewer and fire impact fees (subject to the availability of credits for water and sewer impact fees since the Property is located in the Ocala Historic District); stormwater capacity fees; and solid waste fees. The foregoing represents one-time payments for the foregoing items; nothing set forth in this Agreement shall relieve Developer from its obligation to pay periodic (including monthly) charges for utilities and other services provided by City.

9.2.2. During review of the plans for, and construction of the Project, City shall temporarily pay or defer payment of the fees or charges referred to in paragraph 9.2.1. If Developer causes Completion of the Project to occur as and when required by the Schedule, subject to applicable extensions set forth in this Agreement, City shall make final payment of the City Review Contributions to City's Building Department. If Developer does not cause Completion of the Project to occur as and when required by the Schedule, Developer shall pay to City the amounts deferred or temporarily paid by City within thirty (30) days of City's demand therefor.

9.3. City Improvements.

9.3.1. As and when required by the Schedule, City shall construct the following improvements (the "City Improvements") at its sole cost and expense:

- a. Water, sanitary sewer, stormwater, and electric utilities (all of which shall be located underground, except for portions thereof (such as meters or switches) which must, for engineering or operational reasons (as may be mutually agreeable to City and Developer), be located above-ground and shall be provided to the boundary of the Property at the appropriate location(s) therefor as shown on the Plans.
- b. Decorative street lamps on public right of way for Watula Avenue and SE 2nd Street immediately contiguous to the Property.

9.3.2. City and Developer shall cooperate with each other in connection with the City Improvements. Without limiting the foregoing, City shall use good faith reasonable efforts to construct the City Improvements in time and in a manner that does not interfere with Developer's construction of the

Project, and Developer shall use reasonable efforts in constructing the Project so as not to interfere with City's construction of the City Improvements.

9.4. City Reimbursement.

9.4.1. City shall pay to Developer (the "City Reimbursement") the amount of Construction Costs incurred by Developer in constructing rock salt/textured concrete sidewalks on that portion of the public right of way for Watula Avenue and SE 2nd Street (and, if a driveway for the Project intersects with SE Fort King Street, SE Fort King Street) immediately contiguous to the Property, pursuant to the Approved Plans.

9.4.2. City shall pay the City Reimbursement to Developer within thirty (30) days after Developer causes Completion of the Project to occur and provides to City documentation, acceptable to City, in its reasonable discretion, establishing the amount for which Developer has paid for the sidewalks. To permit Developer to do so, Developer shall require that the cost of the sidewalks be included as a separate line item in its construction contract for the Project.

9.4.3. Notwithstanding the proceeding provisions of this paragraph 9.4, City shall not be required to pay in excess of \$23,649.00 for the City Reimbursement.

9.5. City Demolition. As and when required by the Schedule, City shall demolish or remove the Existing Building (including the signage for the Existing Building) and remove all of the debris thereof.

9.5.1. City shall have sole discretion concerning whether to demolish or remove the Existing Building (subject, of course, to the occurrence of the Demolition Contingency).

9.5.2. City shall not be obligated, as part of the City Demolition, to remove the existing driveway or parking lot on the Property.

10. **Schedule; Deadlines.**

10.1. City and Developer shall perform the following obligations (or the following Contingencies must occur) pursuant to the following schedule ("*Schedule*"); the date by which an obligation is required to be performed, or by which a Contingency must occur, is referred to as the "Deadline" for such obligation or Contingency.

10.1.1. The Land Use/Zoning Contingency must occur prior to the Land Use/Zoning Contingency Deadline as set forth in paragraph 5.1.1.

10.1.2. Within two (2) months after the occurrence of the Land Use/Zoning Contingency, Developer shall provide to City a proposed CDP for the Project for approval by City, and for consideration by OHPAB, in connection with the CDP Contingency.

- 10.1.3. The Demolition Contingency and CDP Contingency must occur prior to the Demolition Contingency Deadline and CDP Deadline as set forth in paragraphs 5.2.2 and 5.2.3.
- 10.1.4. Within four (4) months after occurrence of the later of: (a) the Demolition Contingency; or (b) the CDP Contingency:
- a. Developer shall obtain Approval for the Project; and
 - b. City shall deliver to Developer a notice identifying the member(s) of the Financial Review Committee, and the address for Developer to provide the Financial Information for review by the Financial Review Committee.
- 10.1.5. Within one month after obtaining Approval under paragraph 10.1.4, Developer shall complete the Financial Review pursuant to paragraph 11.1.
- 10.1.6. Within one (1) month after the later of: (a) Developer completes Financial Review pursuant to paragraph 11.1; or (b) Developer obtains Approval under paragraph 10.1.4, City Council shall make the determination of financial ability and experience pursuant to paragraph 11.2.
- 10.1.7. Within one (1) month after City Council determination of the financial ability pursuant to paragraph 11.2, City shall complete the City Demolition.
- 10.1.8. City and Developer shall close the transfer of title to the Property on the Closing Date as set forth in paragraph 7.1.
- 10.1.9. Developer shall commence construction of the Project within two (2) months after the Closing Date.
- 10.1.10. City shall construct the City Improvements set forth in paragraph 9.3.1.a during construction of the Project, as necessary to permit Developer to timely complete the Project.
- 10.1.11. Developer shall cause Completion of the Project to occur within twelve (12) months after commencing construction of the Project.
- 10.1.12. City shall complete the City Improvements set forth in paragraph 9.3.1.b within two (2) months after Developer causes Completion of the Project.
- 10.2. The schedule in paragraph 10.1 is subject to the following:
- 10.2.1. Two extensions, each with a duration of two (2) months, of the Deadline contained in paragraph 10.1.11 may be provided by the City Manager. Developer shall request such extension in writing not less than fifteen (15) days prior to the expiration of the Deadline, which request shall state the good cause for the extension. The City Manager shall not unreasonably withhold or condition approval of a request for an extension.

- 10.2.2. Developer shall be entitled to an automatic extension to the Deadline for Completion provided in paragraph 10.1.11 caused due to any failure of the City to perform any of its obligations within the Deadline therefor as set forth in this paragraph 10. Such extension shall be equal to the actual number of days of any such delay.
- 10.2.3. Except as provided in paragraph 10.2.1, 10.2.2 or pursuant to other express provisions of this Agreement (e.g., in paragraph 14), there shall be no other extension of any performance obligation except through formal amendment of this Agreement.
- 10.3. Attached hereto as **Exhibit C** is a spreadsheet of a sample timeline (the “*Timeline*”) demonstrating the Schedule set forth in paragraph 10.1.
 - 10.3.1. The Timeline is merely an example of the calculation of dates pursuant to such schedule; because the performance of certain obligations will likely occur prior to the exact date of the Deadline therefor as set forth in the Timeline, it is very unlikely that the Timeline will reflect the actual schedule.
 - 10.3.2. In the event of a conflict between the Timeline and paragraph 10.1, the provisions of paragraph 10.1 shall prevail.

11. Financial Review

11.1. Financial Reviews and Information.

- 11.1.1. As and when required by the Schedule, Developer shall request the Financial Review Committee to conduct its financial review (the “*Financial Review*”) of the Project and shall submit to the Financial Review Committee information (the “*Financial Information*”) confirming the financial ability of Developer and the Developer Principals to develop the Project.
- 11.1.2. Unless modified pursuant to paragraph 11.1.3.a, the Financial Information shall include the following:
 - a. Information concerning the Developer Principals and/or the real estate firm Developer advises the Financial Review Committee will be assisting Developer in constructing and marketing the Project (the “*Real Estate Firm*”), including prior development experience, current or ongoing development of Projects similar to the Project in which the Developer Principals or the Real Estate Firm are or have been involved, and credit bureau reports for each Developer Principal.
 - b. The last two (2) years’ federal corporate income tax returns of the Developer Principals and of Developer (if Developer was required to file such tax returns).

- c. Financial statements of Developer and each Developer Principal accurately representing their financial condition as of a date that is no less than six months prior to the date of delivery of the financial statements.
- d. A complete pro forma and cash flow projection on the Project, including all assumptions.
- e. Feasibility study of the Project.
- f. Estimates of Construction Costs for the Project provided by a licensed general contractor to be used for the Project and copies of the construction contract with such contractor.
- g. A loan commitment or other documentation establishing that Developer or the Developer Principals have sufficient financing or resources in place to develop the Project.
- h. Proof that Developer has the Equity Investment required by paragraph 7.3.

11.1.3. In connection with the Financial Review:

- a. Developer or the Financial Review Committee may request City to permit the types of Financial Information described in paragraph 11.1.2 be modified based upon the following factors: whether the Financial Information is subject to the Florida Public Records Act (notwithstanding paragraph 11.3.3); and such other matters as otherwise render the provision of the Financial Information described in paragraph 11.1.2 inappropriate and unnecessary. In considering the information to be provided, City shall consider, not only the matters asserted by the requesting party, but also City's reasonable necessity to assure that Developer and the Developer Principals have the financial ability to develop the Project.
- b. City and Developer shall request that no person serve on the Financial Review Committee who is employed by, or represents, a financial institution: (a) if a Developer Principal owns stock in such financial institution; (b) if a Developer Principal serves on the Board of Directors of such financial institution; or (c) if the financial institution has a business relationship with a Developer Principal that would create an appearance of impropriety if such person were to serve on the Financial Review Committee.
- c. The Financial Review Committee shall review the Financial Information submitted and make a report to City Council concerning its findings as to whether Developer and the Developer Principals have the financial ability to develop the Project.

- 11.1.4. As of the Effective Date, City anticipates that the Financial Review Committee shall consist of at least three persons selected in writing by the Ocala/Marion County Chamber of Commerce, Inc., a Florida not for profit corporation ("CEP"), or selected by one or more persons selected by the CEP: whose primary offices are in Marion County; who are employed by banks or similar financial institutions with offices in Marion County; who are experienced in commercial lending; and who are willing to serve on the Financial Review Committee for no compensation. In the event that the CEP is unable or unwilling to select such persons, City shall select persons meeting the foregoing qualifications in its sole discretion. Although the CEP has a role in selecting the members of the Financial Review Committee, the Financial Review Committee is not a committee of, nor under the control of, the CEP and shall perform its duties hereunder without any direction from CEP.
- 11.2. Council Determination. Conveyance of the Property shall be subject to City Council's determination that Developer and the Developer Principals have the financial ability to develop the Project, and that the Developer Principals or the Real Estate Firm has the experience to develop and market the Project, based upon any report of the Financial Review Committee and other information available to City Council.
- 11.3. Relationship Between City and Financial Review Committee. The relationship between City and the Financial Review Committee is as follows:
- 11.3.1. The Financial Review Committee is not, and will not be, a department, division, bureau, commission or other separate unit of government created or established by, City.
- 11.3.2. The Financial Review Committee was not created by law or ordinance of City or any other public agency.
- 11.3.3. Although City anticipates that the Financial Review Committee will provide a report to City as set forth in paragraph 11.1.3.c, City has not entered into a contract with the Financial Review Committee concerning such report or other activities of the Financial Review Committee hereunder.
- 11.3.4. Therefore, in light of the foregoing, City and Developer believe and intend that all documents or other information provided by or on behalf of Developer to the Financial Review Committee shall be kept confidential by the Financial Review Committee and are not subject to the Florida Public Records Act. Nothing set forth herein shall preclude the disclosure of such documents or other information: (a) in any litigation involving City or Developer in which the such documents or other information is relevant, but the parties shall endeavor to protect such documents or other information from disclosure pursuant to available procedures under Florida law (including requesting that such documents or other information be sealed, if appropriate); or (b) pursuant to a subpoena or court order. Except in connection with any such use, City shall not request the Financial Review Committee to provide the information or documents

to City. Further, City and Developer acknowledge that the Financial Review Committee may destroy information and documents provided to it by or on behalf of Developer hereunder upon Developer's request and that therefore it may be unable to obtain such information in connection with any permitted use thereof.

12. Default.

- 12.1. Force Majeure. Neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as set forth below.
- 12.2. Notice and Opportunity to Cure. Prior to declaring a default hereunder, the non-defaulting party must provide the defaulting party with written notice and at least thirty (30) days to cure such default.
 - 12.2.1. Provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and pursues such cure.
 - 12.2.2. Further provided, however, that no prior notice or opportunity to cure need to be provided concerning a party's failure to close as and when required by this Agreement.
 - 12.2.3. In addition to the foregoing provisions concerning notice and an opportunity to cure, in the event that City desires to demand payment under any Adequate Assurance, City must (except as expressly set forth in other provisions of this Agreement), after expiration of the foregoing time periods for notice and opportunity to cure, provide Developer with an additional written notice and at least thirty (30) days to cure such default.
- 12.3. Remedies. The Non-Defaulting Party may pursue, following the occurrence of default and expiration of any necessary notice or opportunity to cure, all remedies at law or equity against the defaulting party, including, without limitation:
 - 12.3.1. Termination of this Agreement based upon a default prior to Closing;
 - 12.3.2. Specific performance based upon a default by City before Closing, or default by City or Developer after Closing; or
 - 12.3.3. Any other remedies specifically set forth in this Agreement (including City demanding payment of the Adequate Assurance).
- 12.4. Remedies Not Exclusive. The specific rights and remedies to which City and Developer are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which City or Developer may have under this Agreement.

- 12.5. No Consequential Damages. Notwithstanding paragraph 12.3, under no circumstances will City or Developer be liable for consequential damages, including lost profits, the right to such damages being expressly waived.
- 12.6. No Waiver. The failure by City or Developer to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that City or Developer may have and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.
- 12.7. Effect of Termination. In the event that a party terminates this Agreement under this paragraph 12 or any other provision of this Agreement:
- 12.7.1. Prior to conveyance of the Property, this Agreement shall be deemed terminated in its entirety; or
- 12.7.2. After conveyance of the Property, such termination shall not affect the obligations of the parties as to the Project.
13. **Survival.** Notwithstanding the termination of this Agreement (except a termination of the entire Agreement under paragraph 12.3.1) or the prior performance by the parties hereunder, the following paragraphs of this Agreement shall survive and remain effective: 12.5, and 16 through 30.
14. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; act of God or nature; or any other matter beyond the control of the party obligated to perform that constitutes an excuse under Florida law based upon the doctrine of "impossibility of performance," shall be deemed events of Force Majeure and such delays shall be excused in the manner herein provided. If a party is delayed in any performance required by this Agreement because of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses to overcome any loss of time that has resulted. Specific references in this Agreement to deadlines as to which Force Majeure shall apply shall not be interpreted as intending to exclude the application of Force Majeure from other performance.
15. **Assignment; Interest Transfer.**
- 15.1. Developer may not, without the written consent of City which may be withheld or conditioned by City in its sole discretion, assign its rights or obligations under this Agreement, in whole or in part, until the Completion of the Project.
- 15.2. No membership interest in Developer may be transferred (an "Interest Transfer") until Completion of the Project except as follows:

- 15.2.1. An interest held by a Developer Principal may be transferred to (a) another Developer Principal, (b) an entity in which the Developer Principals, individually or collectively, own at least 51% ownership and voting interests, or (c) any trusts, all of the beneficial interests of which are owned by Developer Principals, individually or collectively, or their immediately family members; or
 - 15.2.2. Upon the written consent of City, which may be withheld or conditioned by City in its sole discretion.
- 15.3. Following Completion of the Project:
 - 15.3.1. Developer may assign this Agreement in whole or in part; and
 - 15.3.2. Any Interest Transfer may be made.
- 15.4. Promptly after any Interest Transfer before Closing, Developer shall provide notice thereof to City which shall include sufficient information for City to determine whether the Interest Transfer was permissible under this Agreement; such information could include an affidavit from a Developer Principal with personal knowledge of the matters set forth therein and need not be copies of operating agreements, partnership agreements or other documents that Developer deems confidential.
- 15.5. In the event of permitted assignment hereunder, and to the extent of the assignment:
 - 15.5.1. The assignee will have all rights and obligations of Developer.
 - 15.5.2. The assignee shall be entitled to amend the provisions of this Agreement without the joinder or consent of Developer.
 - 15.5.3. The assignee shall be permitted to terminate this Agreement as otherwise provided in this Agreement without the joinder or consent of Developer or any prior assignee.
 - 15.5.4. In the event of an assignment in connection with a sale of all of Developer's rights in a Project, the assignor shall be released from all liability under this Agreement for actions or inactions after, but not before, such assignment.
- 15.6. By executing this Agreement, Developer agrees, and by accepting any assignment, each assignee agrees, to the foregoing provisions of this paragraph 15 concerning the ability of an assignee to amend or terminate this Agreement.
- 16. **City's Police Powers.** Nothing in this Agreement shall serve to affect or limit City's police powers in the exercise of rezoning decisions or other governmental action associated with the proposed redevelopment of the Property or any Development Order associated therewith.

17. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on City's potential liability under state or federal law. As such, City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, that exceeds the applicable limit of liability under applicable law (currently Section 768.28(5), Florida Statutes). This paragraph shall survive termination of this Agreement.
18. **Resolving any Invalidity.** City and Developer hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for Developer undertaking the Project.
19. **Real Estate Commission.** Developer represents and warrants to City, and City likewise represents and warrants to Developer, that they have neither dealt nor negotiated with any broker or finder in connection with the sale of the Property to the Developer, each party hereto agrees to indemnify and hold the other harmless from any and all claims, demands, causes of action or other liability, and all costs and expenses, including reasonable attorney's fees and disbursements incurred in defending against any such claims, arising from or pertaining to any brokerage commission, fees, cost or other expense which may be claimed by any broker or person by reason of any claims arising out of the actions of the Developer (as to the indemnity obligations of Developer) or arising out of any actions of the City (as to the indemnity obligations of City).
20. **Notice.**
- 20.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed 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:
- 20.1.1. For City: City Manager, 110 SE Watula Avenue, Ocala, FL 34471; email: jzobler@ocalafl.org.
- a. With copy to: Melanie Gaboardi, City of Ocala, Revitalization Strategies Dept., 201 SE 3rd Street, 2nd Floor, Ocala, FL 34471; email: mgaboardi@ocalafl.org.
- 20.1.2. For Developer: Watula South, LLC, 416 E. Fort King Street, Ocala, Florida 34471; email: clintlewis21@gmail.com.
- a. With copy to: Fred Roberts, 40 SE 11th Avenue, Ocala, FL 34471; email: fred@kleinandkleinpa.com.

- b. With copy to: Thad Boyd, 1720 SE 16th Avenue, Bldg. 200,
Ocala, FL 34471; email: tboyd@boydrealestategroup.com.

- 20.2. Each such Communication shall be deemed delivered:
 - 20.2.1. On the date of delivery if by personal delivery;
 - 20.2.2. On the date of email transmission if by email (subject to paragraph 20.5);
and
 - 20.2.3. 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.
 - 20.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or
by email 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.
- 20.3. If a Communication is delivered by multiple means, the Communication shall be
deemed delivered upon the earliest date determined in accordance with paragraph
20.2.
- 20.4. 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.
- 20.5. Concerning Communications sent by email:
 - 20.5.1. 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 email was not delivered or received;
 - 20.5.2. If the sender receives an automatic reply message indicating that the
recipient is not present to receive the email (commonly referred to as an
"out of the office message"), the email shall not be deemed delivered until
the recipient returns;
 - 20.5.3. Any email that the recipient replies to, or forwards to any person, shall be
deemed delivered to the recipient.
 - 20.5.4. The sender must print the email to establish that it was sent (though it need
not do so at the time the email was sent); and
 - 20.5.5. The sender shall maintain the digital copy of the email in its email system
for a period of no less than one year after it was sent.
- 21. **Agreement Not Recordable.** Neither this Agreement nor any notice of it shall be recorded
in the Public Records of Marion County, Florida, except as expressly permitted in this
Agreement (e.g., by paragraph 8.13).

22. **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.
23. **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.
24. **Severability.** In the event any of the terms and provisions of this Agreement are determined to be unenforceable, for any reason whatsoever, such unenforceability shall in no way affect or eliminate the enforceability of all of the remaining terms and provision of this Agreement.
25. **Mutuality of Negotiation.** Developer and City acknowledge that this Agreement is a result of negotiations between Developer and City and the Agreement shall not be construed in favor of, or against, either party as a result of that party having been more involved in the drafting of the Agreement.
26. **Time.**
- 26.1. Time is of the essence of all of the provisions and terms of this Agreement.
- 26.2. If a time period is five (5) days or less, intervening Saturdays, Sundays or legal holidays will be excluded from the calculation.
- 26.3. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall automatically extend to 5:00 p.m. on the next ensuing business day.
- 26.4. For purposes of this Agreement, a "legal holiday" means: (a) the days set aside by Section 110.117, Florida Statutes, for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day; (b) Christmas Eve (if City recognizes that as a paid holiday for City staff); and (c) any day upon which the Clerk of the Court of Marion County, Florida, is closed for ordinary business.
- 26.5. For purposes of this Agreement, a "business day" means any day other than Saturdays, Sundays or legal holidays.
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. **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.
29. **Exhibits.**
- 29.1. All exhibits attached to this Agreement are incorporated by reference.
- 29.2. The following exhibits are attached to this Agreement:
- 29.2.1. **Exhibit A** – Property.
- 29.2.2. **Exhibit B** – Permitted Exceptions.
- 29.2.3. **Exhibit C** – Timeline.
30. **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.

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SIGNATURES START ON NEXT PAGE**

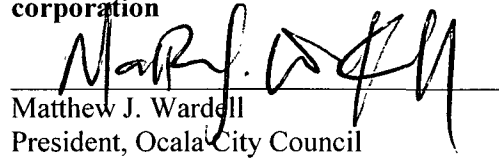
IN WITNESS WHEREOF, each of the parties hereto set their hand and seal on this Agreement as of the day and year set forth immediately beneath their respective signatures.

CITY

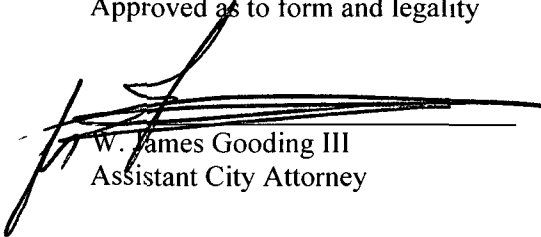
ATTEST:


Angel B. Jacobs
City Clerk


City of Ocala, a Florida municipal
corporation


Matthew J. Wardell
President, Ocala City Council

Approved as to form and legality


W. James Gooding III
Assistant City Attorney



ACCEPTED BY CITY COUNCIL

DATE 17, 2018
OFFICE OF THE CITY CLERK

DEVELOPER

**Watula South, LLC, a Florida limited
liability company**

By: 
Clinton Lewis as Manager

**EXHIBIT A
PROPERTY**

THE WEST 1/2 OF BLOCK 12, CALDWELL'S ADDITION TO OCALA, EXCEPT THE SOUTH 65.00 FEET THEREOF, ACCORDING TO THE PLAT THEREOF, RECORDED IN DEED BOOK K, PAGE 741 AND RE-RECORDED PLAT BOOK E, PAGE 4, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA, AND BEING FURTHER DESCRIBED AS FOLLOWS:

Parcel 1

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 plat of said subdivision of record in Deed Book "K", page 741, Public Records of Marion County, Florida.

EXCEPTING from the foregoing that portion thereof conveyed to the City of Ocala, a political subdivision, by Right-of-Way Deed dated January 7, 1970, and recorded January 8, 1970, in Official Records Book 412, page 92.

Parcel 2

Commencing at the S. W. corner of Lot or Block 12 of CALDWELL'S ADDITION to the City of 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 Deed Book "K", page 741, of the Public Records of Marion County, Florida.

Parcel 3

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

Less and except any portion of the foregoing upon which sidewalks are currently located.

EXHIBIT B
PERMITTED EXCEPTIONS

None (except for matters to be included in deed executed at Closing, and Reserved Easements).

EXHIBIT C TIMELINE

WATULA SOUTH DEADLINES Effective Date ("ED")

ITEM	PAR. #	MONTHS	AFTER	DEADLINE DATE	COMMENTS
1 Inspection Period Ends	1.35	3	ED	7/17/2018	
2 Land Use/Zoning Contingency Deadline	5.2.1.b	3	ED	7/17/2018	
3 Developer submits proposed CDP	10.1.2	2	Occurrence of Land Use/Zoning Contingency	9/17/2018	Assumes that Land Use/Zoning Contingency occurs on last day of its Deadline
4 Demolition Contingency	5.2.2	5	Occurrence of Land Use/Zoning Contingency	12/17/2018	Assumes that Land Use/Zoning Contingency occurs on last day of its Deadline
5 CDP Contingency	5.2.3	5	Occurrence of Land Use/Zoning Contingency	12/17/2018	Assumes that Land Use/Zoning Contingency occurs on last day of its Deadline
6 Developer to obtain Approval for the Project	10.1.4.a	4	Occurrence of later of Demolition Contingency or CDP Contingency	4/17/2019	Assumes that both Contingencies occur on last day of their Deadlines
7 City to deliver Developer notice concerning members of FRC	10.1.4.b	4	Occurrence of later of Demolition Contingency or CDP Contingency	4/17/2019	Assumes that both Contingencies occur on last day of their Deadlines
8 Developer completes Financial Review	10.1.5	1	Obtaining Approval	5/17/2019	Assumes Approval occurs on its Deadline
9 City Council determination of financial ability	10.1.6	1	Later of Developer completes Financial Review or Developer obtains Approval	6/17/2019	Assumes that the Financial Review is the later to occur, and that it occurs on its Deadline
10 City completes City demolition	10.1.7	1	Council determination of financial ability	7/17/2019	Assumes determination of financial ability occurs on last day of its Deadline
11 Closing date (based on Council determination of financial ability)	7.1.1	2	Council determination of financial ability	8/17/2019	Assumes determination of financial ability occurs on last day of its Deadline
12 Closing Date (based on City completion of City Demolition)	7.1.1	1	Completion of City Demolition	8/17/2019	Assumes City Demolition occurs on the last day of its Deadline
13 Developer to commence construction	10.1.9	2	Closing Date	10/17/2019	Assumes Closing Date is based on completion of City Demolition and that latter occurs on last day of its Deadline
14 Developer to cause Completion of Project	10.1.11	12	Developer commences construction	10/17/2020	Assumes Developer commences construction on last day of its Deadline
15 City to complete City Improvements in paragraph 9.3.1.b	10.1.12	2	Developer causes Completion of Project	12/17/2020	Assumes Developer causes Completion on last day of its Deadline

Deadlines have NOT been revised to reflect weekends or holidays.

E:\CITY\Reutilization Strategies\Watula South\Agreement\Contract Deadlines 4-9-18.xlsx