CITY AFFORDABLE HOUSING AGREEMENT FOR *[DEVELOPER]*

THIS AFFORDABLE HOUSING AGREEMENT FOR *[DEVELOPER]* is entered into as of _____, 2023, between:

- City of Ocala, a Florida municipal corporation ("City").
- *[DEVLOPER],* a Florida limited liability company ("Developer").

WHEREAS:

A. City is the owner of the Property.[1]

B. The Property is currently vacant and unimproved.

C. The City issued an Invitation to Bid (ITB) - *GRM/[######]* for the development of affordable housing in the West Ocala community.

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 for 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 quality of place and a prosperous economy in the City of Ocala by, without limitation, spurring economic development and providing affordable housing solutions in *[West 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 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.

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1.2. *Affordable* - means that rent payments, mortgage payments, insurance, property taxes and homeowners' association fees, where applicable, do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross income for households qualifying under the definition of "low-income person," "moderate-income person" or "very-low-income person".

1.3. *Affordable Housing* – As defined in Section 106-102 of the City Code.

1.4. *Affordability Threshold* -The maximum amount (including mortgage principal, interest, taxes, insurance, rent, and utilities) that a dwelling unit can be sold or rented for to be considered affordable housing as established by the United States Department of Housing and Urban Development (HUD). A document including affordability thresholds for owner-occupied and renter-occupied units shall be maintained and updated each calendar year by the City.

1.5. *Affordable Housing Unit*- Housing unit that is available for a price equal to or below the Affordability Threshold.

1.6. *Agreement* – This Agreement, as it may from time to time be amended or modified pursuant to its terms and provisions.

1.7. *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 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.

1.8. *Approval Date* – The date on which Approval is obtained for the Project.

1.9. *Approved Plans* – The Plans for the Project as approved by the issuance of the Approval for the Project.

1.10. *City Code* – The Code of Ordinances of the City of Ocala, Florida.

1.11. *City Incentives* – The City Property Donation.

1.12. *City Property Donation* – City's conveyance of the Properties to Developer for nominal consideration.

1.13. *Closing* – The delivery of a deed and other documents pursuant to paragraph 6 to Developer for the Property to Developer concurrently with the delivery of the Purchase Price to City.

1.14. *Closing Date* – A date for a Closing as set forth in paragraph 6.1.

1.15. *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 certificates of occupancy for all housing units and certificates of

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completion (or similar approval) for any other applicable improvements to be constructed.

1.16. *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.

1.17. *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.

1.18. *Deadline* – A deadline for performance of an obligation, or an occurrence of a Contingency, under the Schedule as set forth in paragraph 9.

1.19. *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.

1.20. *Developer Principal* – Principals of *[DEVELOPER].*

1.21. *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.

1.22. *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.

1.23. *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.]

1.24. *Equity Investment* – The required equity investment of Developer described in paragraph 6.3.

1.25. *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 3.3.

1.26. *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, 2023, is September 15, 2023.

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1.27. *Person* (regardless of whether the term is capitalized) – An individual, corporation, limited liability company, partnership, or similar entity or group of individuals or persons.

1.28. *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.

1.29. *Project* – The construction of residential dwelling units, and related improvements, as set forth in paragraph 7.2.

1.30. *Property* – Individually and collectively the real property on the attached **Exhibit A.**

1.31. *Purchase Price* – The sum of *[Seven Thousand and no/100 Dollars ($7,000.00)],* together with Developer's performance of the Requirements under this Agreement.

1.32. *Requirements* – The obligations of Developer under paragraph 7 of this Agreement.

1.33. *Schedule* – The schedule for performance of certain requirements of this Agreement as set forth in paragraph 9.

1.34. *Title Insurance Company* – First American Title Insurance Company, Old Republic Title Insurance Company, or such other title underwriter mutually acceptable to City and Developer.

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.

2.1. The City of Ocala, Real Estate Division upon completion of the inspection period shall prepare a contract for sale and purchase of the properties.

3. **Inspection Period.**

3.1. 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,

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and inquiries of any kind, so that no person or entity shall have the right to file any lien against the Property.

3.2. 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 3.2 shall survive the Closing or the earlier termination of this Agreement (for whatever reason).

3.3. Developer's Right to Terminate During the Inspection Period**.**

3.3.1. 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.

3.3.2. 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.

3.4. 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/NSPS Land Title Surveys (effective 2/23/21), 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** and shall contain a perimeter legal description of the Property.

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

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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.

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 provide timely notice to City of an election to accept title notwithstanding exceptions or title defects within the specified

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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. **Payment of Purchase Price.**

5.1. 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.

5.2. Developer and City acknowledge and agree that the Purchase Price consists of not only the nominal monetary amount set forth in paragraph 1.12, but also

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Developer's performance of its obligations under this Agreement including, without limitation, the Requirements under paragraph 7.

5.3. For purpose of documentary excise taxes, if any, and title insurance, the value of the Property shall be deemed to be *[$7,000.00].* (This paragraph shall not preclude Developer from obtaining a title insurance policy in a greater amount.)

6. **Conveyance of Property.**

6.1. Closing Date.

6.1.1. The Closing Date shall be a date selected by Developer upon at least ten (10) days written notice to City, and shall be within two (2) months after the Effective Date. 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.

6.2. Form of Conveyance and Closing Costs.

6.2.1. 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 6.5; and (d) the restriction on use set forth in paragraph 7.11.

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

6.2.3. 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.

6.2.4. City shall pay for the cost of recording curative instruments.

6.2.5. Each party shall pay its respective attorney's fees.

6.2.6. 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.

6.2.7. 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.

6.3. Equity Investment. Developer shall have available owner equity in the minimum amount of at least *[$223,878.00]* (the "*Equity Investment*") prior to Closing.

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6.3.1. The Equity Investment shall consist of: (a) Development Costs incurred by Developer prior to Closing, as established by documentation provided by Developer under paragraph 7.2.3.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.

6.3.2. 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 6.3.1 until it is either spent on the Project pursuant to paragraph 6.3.3 or until Completion (e.g., a higher percentage is funded or paid from other sources).

6.3.3. Developer shall be deemed to have complied with the Equity Investment requirement of this paragraph 6.3 if the Equity Investment is established as of the dates set forth in paragraph 6.3.2, but shall not be required to spend any portion of the Equity Investment maintained in a bank account under paragraph 6.3.1 on the Project if such expenditure is unnecessary as a result of funds available under a Construction Loan.

6.4. Adequate Assurance.

6.4.1. Developer shall, simultaneously with or prior to Closing of the Property, provide an Adequate Assurance to City in the amount of *[$34,174.00.]*

6.4.2. The form and substance of the Adequate Assurance shall be acceptable to City in its reasonable discretion.

6.4.3. 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 6.4.4 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 10.2.3.

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

6.4.5. City may request payment of the Adequate Assurance in the event any Requirement described in paragraph 7 fails to occur or be maintained during the period the Adequate Assurance is required to be maintained.

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6.4.6. 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 6.4.6.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 6.4.6.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.

c. Right-of Reverter in lieu of adequate assurance – City shall exercise right of reverter should Developer fail to construct or complete the project within the timeline defined in paragraph 9.1 of this Agreement.

6.5. Reserved Easements. City has advised Developer that there may be a 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.

6.5.1. 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 Plans.

6.5.2. 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.

6.6. 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

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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.

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

7.1. 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.

7.2. Project.

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7.2.1. Developer shall develop the Project on the Property in accordance with the *Design Guidelines – Minimum Project Specifications* provided in **ITB-GRM/[######].**

7.2.2. The Project shall provide for the construction of:

a. At least one (1) single-family residential home with a minimum of 900 gross square footage of livable area for each unit; and

7.2.3. Developer's total Development Costs shall be no less than ***[$100,000.00].***

a. For purposes of this paragraph 7.2.3, 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 6.3; 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 7.2.3. Developer shall not be required to provide any documentation concerning Development Costs in excess of such amount.

7.3. 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 proposed plans submitted in ***ITB-GRM/[######].***

7.4. City Approval. City's approval of the Plans shall be evidenced by documents customarily issued by City staff for a project like the Project.

7.5. 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.

7.6. 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.

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7.7. 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.

7.8. Developer Payment of Fees. Developer is responsible for all charges for fees for the Project.

7.9. 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.

7.10. 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.

7.11. No portion of the Property may be used for any use other than affordable housing (and related uses) as permitted under the City Code to occur within a residential zoning district). This restriction shall be set forth in the deed to be executed by City at Closing.

7.11.1. Developer shall cause the dwelling units to be developed as Affordable Housing ("Affordable Housing Units") in accordance with Code of Ordinances City of Ocala, Florida Sec. 106-105. Developer's affordable housing units shall consist solely of the Units provided by Developer within the affordability threshold for the Project.

7.11.2. Developer's affordable housing units may be sold or rented to ensure long term affordability.

8. **City Incentives.**

8.1. City Property Donation. As set forth in paragraph 5.2, 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 *[($34,174.00)]*.

9. **Schedule; Deadlines**.

9.1. 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.

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9.1.1. City and Developer shall close the transfer of title to the Property on the Closing Date as set forth in paragraph 6.1.

9.1.2. Within three (3) months after occurrence of the Closing date, Developer shall obtain Approval for the Project.

9.1.3. Developer shall commence construction of the Project within two (2) months after the Closing Date.

9.1.4. Developer shall cause Completion of the Project to occur within eighteen (18) months after commencing construction of the Project.

9.2. The schedule in paragraph 9.1 is subject to the following:

9.2.1. Two extensions, each with a duration of two (2) months, of the Deadline contained in paragraph 9.1.4 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.

9.2.2. Developer shall be entitled to an automatic extension to the Deadline for Completion provided in paragraph 9.1.4 caused due to any failure of the City to perform any of its obligations within the Deadline therefor as set forth in this paragraph 9. Such extension shall be equal to the actual number of days of any such delay.

9.2.3. Except as provided in paragraph 9.2.1, 9.2.2 or pursuant to other express provisions of this Agreement (e.g., in paragraph 12), there shall be no other extension of any performance obligation except through formal amendment of this Agreement.

9.3. Attached hereto as **Exhibit C** is a spreadsheet of a sample timeline (the "*Timeline*") demonstrating the Schedule set forth in paragraph 9.1.

9.3.1. 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.

9.3.2. In the event of a conflict between the Timeline and paragraph 9.1, the provisions of paragraph 9.1 shall prevail.

10. **Default.**

10.1. 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.

SAMPLE

10.2. 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.

10.2.1. 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.

10.2.2. 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.

10.2.3. 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.

10.3. 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:

10.3.1. Termination of this Agreement based upon a default prior to Closing;

10.3.2. Specific performance based upon a default by City before Closing, or default by City or Developer after Closing; or

10.3.3. Any other remedies specifically set forth in this Agreement (including City demanding payment of the Adequate Assurance or Right-of Reverter).

10.4. 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.

10.5. No Consequential Damages. Notwithstanding paragraph 10.3, under no circumstances will City or Developer be liable for consequential damages, including lost profits, the right to such damages being expressly waived.

10.6. 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.

10.7. Effect of Termination. In the event that a party terminates this Agreement under this paragraph 10 or any other provision of this Agreement:

SAMPLE

10.7.1. Prior to conveyance of the Property, this Agreement shall be deemed terminated in its entirety; or

10.7.2. After conveyance of the Property, such termination shall not affect the obligations of the parties as to the Project.

11. **Survival**. Notwithstanding the termination of this Agreement (except a termination of the entire Agreement under paragraph 10.3.1) or the prior performance by the parties hereunder, the following paragraphs of this Agreement shall survive and remain effective: 10.5, and 15 through 26.

12. **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.

13. **Assignment; Interest Transfer.**

13.1. 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.

13.2. No membership interest in Developer may be transferred (an "Interest Transfer") until Completion of the Project except as follows:

13.2.1. 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

13.2.2. Upon the written consent of City, which may be withheld or conditioned by City in its sole discretion.

13.3. Following Completion of the Project:

13.3.1. Developer may assign this Agreement in whole or in part; and

SAMPLE

13.3.2. Any Interest Transfer may be made.

13.4. 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.

13.5. In the event of permitted assignment hereunder, and to the extent of the assignment:

13.5.1. The assignee will have all rights and obligations of Developer.

13.5.2. The assignee shall be entitled to amend the provisions of this Agreement without the joinder or consent of Developer.

13.5.3. 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.

13.5.4. 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.

13.6. By executing this Agreement, Developer agrees, and by accepting any assignment, each assignee agrees, to the foregoing provisions of this paragraph 13 concerning the ability of an assignee to amend or terminate this Agreement.

14. **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.

15. **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.

16. **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.

SAMPLE

17. **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).

18. **Notice.**

18.1. 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:

18.1.1. For City: City Manager, 110 SE Watula Avenue, Ocala, FL 34471; email: plee@ocalafl.gov.

a. With copy to: Aubrey Hale, Planning Director, City of Ocala, Growth Management Dept., 201 SE 3rd Street, 2nd Floor, Ocala, FL 34471; email: ahale@ocalafl.gov.

18.1.2. For Developer: ***[Primary Contact], [Company Name], [Address];*** email: ***[Email Address], [Phone #]***

18.2. Each such Communication shall be deemed delivered:

18.2.1. On the date of delivery if by personal delivery;

18.2.2. On the date of email transmission if by email (subject to paragraph 18.5); and

18.2.3. 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.

18.2.4. 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.

18.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with paragraph 18.2.

SAMPLE

18.4. 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.

18.5. Concerning Communications sent by email:

18.5.1. 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;

18.5.2. 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;

18.5.3. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.

18.5.4. The sender must print the email to establish that is was sent (though it need not do so at the time the email was sent); and

18.5.5. 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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **Time**.

23.1. Time is of the essence of all of the provisions and terms of this Agreement.

SAMPLE

23.2. If a time period is five (5) days or less, intervening Saturdays, Sundays or legal holidays will be excluded from the calculation.

23.3. 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.

23.4. 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.

23.5. For purposes of this Agreement, a "business day" means any day other than Saturdays, Sundays or legal holidays.

24. **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.

25. **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.

26. **Exhibits**.

26.1. All exhibits attached to this Agreement are incorporated by reference.

26.2. The following exhibits are attached to this Agreement:

26.2.1. **Exhibit A** – Property.

26.2.2. **Exhibit B** – Permitted Exceptions.

26.2.3. **Exhibit C** – Timeline.

SAMPLE

27. **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

SAMPLE

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:

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

SAMPLE

DEVELOPER

[DEVELOPER], a Florida limited liability company

By: _____
[Full Name], [Title/Position]

Date: _____

SAMPLE

EXHIBIT A
PROPERTY

[Parcel ID]
[Legal Description]

SAMPLE

EXHIBIT B
PERMITTED EXCEPTIONS

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

SAMPLE

EXHIBIT C
TIMELINE

[DEVELOPER] **DEADLINES**

Effective Date ("ED") *[mm/dd/yyyy]*

	ITEM	PAR. #	MONTHS	AFTER	DEADLINE DATE	COMMENTS
1	Closing Date		3	Effective Date	*[mm/dd/yyyy]*	Assumes Developer request one month extension as set forth in paragraph [#]
3	Developer to commence construction		2	Closing Date	*[mm/dd/yyyy]*	Assumes Developer commences construction on last day of its Deadline
4	Developer to cause Completion of Project		18	Developer commences construction	*[mm/dd/yyyy]*	Assumes Developer completes the project on the last day of its Deadline

SAMPLE