

**COMPOSITE
EXHIBIT "A"
TO
ORDINANCE 2023-33**

Comprehensive Plan Amendment

**OBJECTIVE FLUE B-5. MARION ESTATES
ORDINANCE NO. 07-25, (AMENDED BY
ORDINANCE NO. 2023-33, ADOPTED ON
_____, 2024)**

The amendment to the Comprehensive Plan Future Land Use Maps as requested by CGV of Fellsmere, LLC is subject to compliance with the following conditions and requirements, which shall run with the land.

1. The density of the residential development on the above-described land shall not exceed ~~4.58~~ 4.71 dwelling units per acre in order to achieve a maximum of Three Hundred ~~Twenty~~ Thirty-Two (332) residential units (~~152150~~ town homes and ~~168182~~ single-family homes) on Seventy ~~and Fifty-Six One-hundredth~~ (70.56) acres. The commercial activity shall be limited to the Northern Eight and ~~Seventy-seven~~ Twenty-One One Hundredths (8.7721) acres and no portion of this land shall be entitled to be used for calculating density within the residential development.
2. The owner/developer shall demonstrate prior to site plan approval that all concurrency provisions have been addressed or met including but not limited to: sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities, including mass transit, where applicable.
3. The owner/developer shall enter into a development agreement to provide for payment of fees for construction of public facilities and services demanded by the development.
4. Existing roadways shall be used as the basis for forming a "grid" pattern for new developments to the extent practical based upon the geography and typography.
5. Architectural and site designs standards shall provide for a uniform theme or character of the development, with a mix of styles and range of prices to assure access by various income groups.
6. The development will incorporate Green Building (LEED) buildings and the site standards to the extent feasible.

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POLICY FLUE A-3.2 – OVERLAY DISTRICT BOUNDARIES

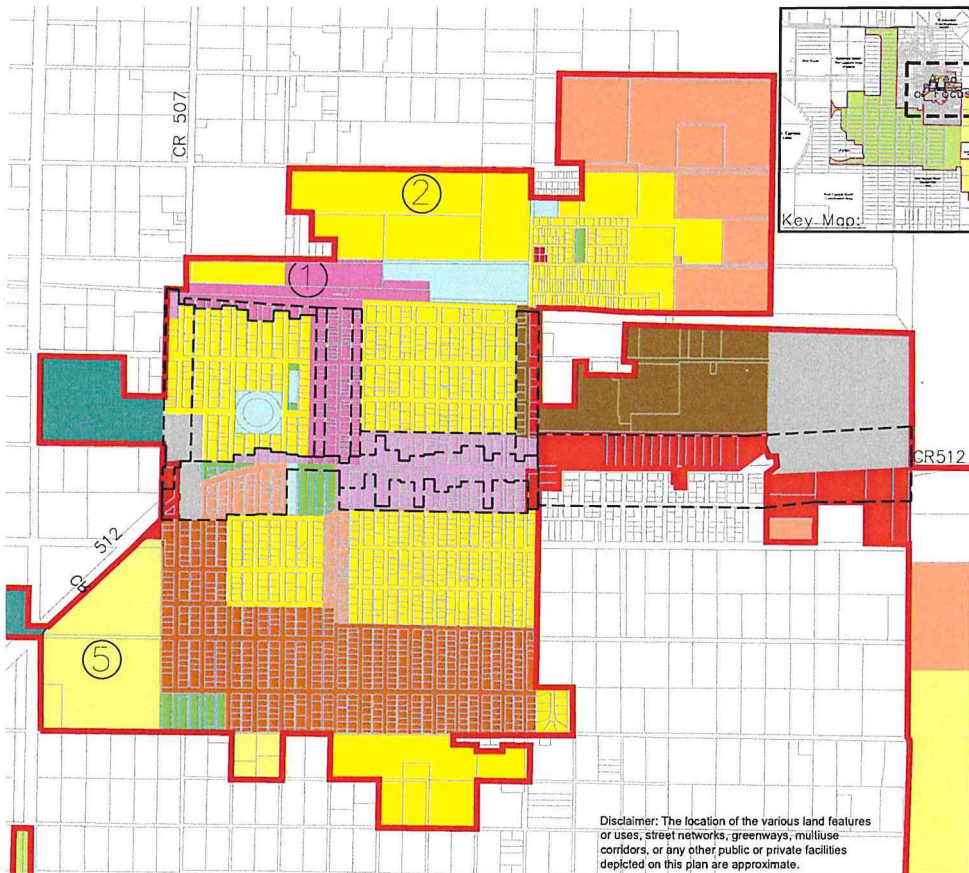
Policy FLUE A-3.2. - Overlay District Boundaries.

The following infill/redevelopment mixed-use districts are hereby created as future land use map overlays.

1. CR 512 Old Town. This district applies as follows:
 - a. All properties fronting CR 512 between Willow Street and ~~Myrtle Street~~141st Avenue and those properties that contain corner frontage with CR 512 and ~~Myrtle Street~~141st Avenue and CR 512 and Willow Street.
2. CR 512 Old Town - Off Road. This district applies as follows:
 - a. All properties not fronting CR 512 that lie as follows:
 - i. Between CR 512 and Oregon Avenue and between N. Willow Street and N. Pine Street but excluding those properties with frontage on N. Willow Street;
 - ii. Between CR 512 and Michigan Avenue and between S. Willow Street and S. Pine Street; and
 - iii. Between CR 512 and California Avenue and containing a Medium Density Residential future land use designation.
3. CR 512 Frontage Road. This district applies as follows:
 - a. To all portions of a site and buildings located to a depth of 450 feet from the edge of the CR 512 right-of-way between Willow Street and 120th Street, excluding those properties otherwise contained within the CR 512 Old Town district.
4. N. Broadway. This district applies as follows:
 - a. All properties fronting N. Broadway Street but excluding those properties that contain corner frontage with CR 512 and N. Broadway Street;
5. N. Broadway - Off Road. This district applies as follows:

- a. All properties fronting the east side of N. Orange Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
 - b. All properties fronting the west side of N. Pine Street but excluding those properties that fall within the boundaries of the CR 512 Old Town district and the S. Carolina Avenue district; and
6. N. Willow. This district applies as follows:
- a. All properties fronting N. Willow Street south of the former railroad right-of-way as recorded in Special Warranty Deed dated December 9, 2010 in Official Records Book 2463, Page 1625 but excluding those properties that contain corner frontage with CR 512 and N. Willow Street.
7. N. Myrtle. This district applies as follows:
- a. All properties fronting N. Myrtle Street but excluding those properties that contain corner frontage with CR 512 and Myrtle Street or contain corner frontage with S. Carolina Avenue and N. Myrtle Street.
8. S. Carolina. This district applies as follows:
- a. All properties with frontage on the south side of S. Carolina Avenue containing an Old Town future land use designation but excluding those properties that contain corner frontage with S. Carolina Avenue and N. Broadway Street.

The boundary between the CR 512 Old Town district and the CR 512 Old Town - Off Road district shall be determined at time of development application for property fronting CR 512 to allow for parcel aggregation.



- Land Use Legend:**
- Low Density Residential (LDR)
 - Low Density Mixed Use Neighborhood (LDMXN)
 - Low Density Mobile Home (LDMH)
 - Medium Density Residential (MDR)
 - High Density Residential (HDR)
 - Neighborhood Commercial (NC)
 - Old Town (OTD)
 - Regional Employment Activity Center (REAC)
 - General Commercial (GC)
 - Industrial (I)
 - Public / Institutional (PIN)
 - Recreation (REC)
 - Conservation (CON)
 - Villages of Fellsmere (VOF)
 - AG-1 (County)
 - L-1 (County)
 - Fellsmere City Limits
 - Infill/Redevelopment Overlay
- Note:**
 1. Educational uses, public buildings and grounds, and other public facilities are also allowed in all residential designations, LDMXN, and VOF land use categories.

Development Limitations for Site Specific Properties:

Map #	Max Allowable Development	Future Land Use	Comp. Plan Objective
1	Not Applicable	LDMXN	B-15 & B-19
2	3.5 units per acre	LDR	B-16
3	650 units	LDMXN	B-17
4	Residential -19,750	VOF	B-21
5	320 units	LDMXN	B-18
6	Non-Residential: 250,000sf - Industrial: up to 80% of total square feet - Commercial: up to 20% of total square feet - Office: up to 5% of total square feet Residential: - 5,600 units	LDMXN	B-10
7	Residential - 1.69 Units per acre Non-Residential - 12,000,000 sf	LDMXN REAC/Industrial	B-22

Disclaimer: The location of the various land features or uses, street networks, greenways, multiuse corridors, or any other public or private facilities depicted on this plan are approximate.

lucido & associates
 701 E Ocean Blvd., Stuart, Florida 34994
 (772) 220-2100 - Fax (772)223-0220

Future Land Use Map
Figure 1-1C

Adopted: 10/07/10, Ord 2010-07

Revised: 01/08/15, Ord 2014-17; _____ Ord 2023-33

CITY OF FELLSMERE, FLORIDA
 EST. 1911

22 S. Orange Street
 Fellsmere, Florida 32948
 (772) 646-6313
 www.cityoffellsmere.com



FIRST AMENDMENT
TO
ANNEXATION AGREEMENT

THIS FIRST ADMENDMENT TO ANNEXATION AGREEMENT, entered into this _____ day of _____, 2023 between the City of Fellsmere, Florida, a political subdivision of the State of Florida (hereinafter referred to as "City") and CGV of Fellsmere, LLC (hereinafter referred to as "Owner/Developer").

RECITALS

WHEREAS, CGV of Fellsmere, LLC has purchased from Albert H. Kahn, Individually and as Trustee the property previously annexed by Ordinance No. 06-26 (hereinafter referred to as the "Property") in Indian River County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference containing 78.77 acres; and

WHEREAS, Owner/Developer desires to develop the Property as a Planned Development District (PDD) for uses allowed under the Comprehensive Plan Land Use designations of Low Density Residential (LDR) and Neighborhood Commercial (NC) (hereinafter referred to as the "Development"); and

WHEREAS, as a part of its plan for comprehensive plan amendment and rezoning of the Property, Owner/Developer wishes to mitigate negative impacts on abutting land owners and assure the installation of proper public and private facilities and services; and

WHEREAS, the City is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The City shall not be required or obligated in any way to construct or maintain or participate in the construction, cost of construction or maintenance of any improvements (except for maintenance of improvements dedicated to and accepted by the City). The Owner/Developer,

its grantees, successors or assigns in interest or an association and/or assigns satisfactory to the City shall be responsible for the maintenance of all improvements not dedicated to the City.

2. The Owner/Developer agrees to apportion seventy ~~and fifty-six one-hundredths~~ (70.56) acres as Low Density Residential and eight and ~~seventy-seven~~ twenty-one one-hundredths (8.7721) acres with CR512 frontage as Neighborhood Center.

3. The Owner/Developer shall limit the density to a maximum of 4.5871 units per acre in order to achieve a maximum of three hundred and ~~twenty~~ thirty-two (32032) residential units (150 town homes and 182 single family homes) on ~~seventy and fifty-six one-hundredths~~ (70.56) acres which is consistent with the Low Density Residential future land use classification, provided that the density may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations. No portion of the eight and ~~seventy-seven~~ twenty-one one-hundredths (8.7621) acres requested to be zoned Neighborhood Commercial Center shall be entitled to be used for calculating residential density over the balance of the Property as provided in the Comprehensive Plan ~~2020~~ Objective FLUE B-2.15 ~~Garafolo~~. The Applicant shall process a Comprehensive Plan Amendment to incorporate the Neighborhood Commercial Center into the Infill Development and Redevelopment overlay district of Objective A-3, Comprehensive Plan. Upon adoption of such amendment, the Neighborhood Commercial Center shall then be allocated residential density as set forth by Comprehensive Plan.

4. The Owner/Developer shall provide ten (10) town-home units and six (6) single family homes (hereinafter collectively referred to as "homes") for sale as affordable housing. Affordable housing shall be defined as follows:

Affordable Housing is a dwelling unit for which the rental payment or mortgage payment for owner occupied, including principal, interest, taxes and insurance (P.I.T.I.) does not exceed forty percent (40%) of the gross income of households that classify as moderate lower income households, where moderate income households is, defined as follows:

A moderate income household has a gross combined income between eighty-one percent (81%) and one hundred twenty percent (120%) of the Indian River County Adjusted Median Income as defined by the Florida Housing Finance Authority.

Deed restrictions will be required that prohibit the home from being sold at a price which exceeds the threshold for housing that is affordable under Affordable Housing as defined above. For a period of Sixty (60) months after the initial sale, if the home is resold, the sales price shall not be greater than the initial sales price plus 3% of the assessed value for the prior year or the percentage change in the Consumer Price Index from the prior year to the current year, whichever is lower, as calculated on an annual basis by the Indian River County Property Appraiser. The deed restrictions will also prohibit the sale or resale of a home to a buyer who does not qualify under the above definition of moderate income. The terms of the resale restrictions must be included in the public land records so that they are readily identifiable in a routine title search. Applicants must be approved by a qualifying organization as determined by the City Council.

5. Prior to the issuance of the ~~first~~ nonresidential building permit or as required to meet concurrency, whichever is earlier, the Owner/Developer shall install a City and Indian River County approved traffic signal at the intersection of Broadway and CR512. In lieu of installation of the traffic signal prior to issuance of the first building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to do business in Florida for one hundred twenty-five percent (125%) of the cost of installing the traffic signals so the traffic signals shall be installed within fourteen (14) months. The Cash Bond or Letter of Credit shall be good for eighteen (18) months and shall be in a form approved by the City Attorney.

6. Prior to the approval of any final plat, the Owner/Developer shall construct left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development in accordance with a phasing plan. In the event any traffic from this Development uses Myrtle Street, left turn and right turn lanes and other improvements related to the Myrtle Street/CR512 Intersection set forth in the letter dated July 25, 2012 attached hereto as Exhibit "B" shall be constructed at the Owner/Developer's sole expense at the intersection of Myrtle Street and CR512. In lieu of installation of the left turn and right turn lanes and other required improvements, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank authorized to do business in Florida for one hundred twenty-five percent (125%) of the cost of installing the ~~left turn and right turn lanes~~ required improvements. The ~~turn lanes~~ improvements shall be constructed within fourteen (14) months. The Cash Bond or Letter of Credit shall be good for eighteen (18) months and shall be in a form approved by the City Attorney. The Owner/Developer shall construct and pave all roads (City streets) providing access to the Development to standards determined by the City. All roads internal to the Development shall be private and constructed and paved to such standards as required by the City.

7. Owner/Developer shall comply with all regulations and ordinances of the City. In consideration for being annexed into the City and allowed to develop eight and ~~seventy-seven~~ twenty-one one-hundredths (8.~~7621~~) acres acres for commercial and mixed uses and ~~seventy and fifty-six one-hundredths~~ (70.56) acres for residential use at a density that substantially exceeds the fourteen (14) residential units (on 70.56 acres) that this Property would have been allowed to develop within the unincorporated area of Indian River County, this Agreement constitutes Owner's/Developer's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no "vested rights" against changes to the zoning, the Comprehensive Plan or Land Development Regulations as they may apply to this Property nor may it be relied upon for any "investment backed expectation" as these phrases are used in general and in Chapter 70, Florida Statute (2023), as amended, upon failure of the Owner/Developer to receive final plat approval and record such plat for: (1) at least fifty (50%) percent of Property within three (3) years after ~~the date Ordinance No. 06-26 was passed on second and final reading by City Council,~~ and (2) ~~at least seventy five (75%) percent of the Property within four (4) years after Ordinance No. 06-26 was passed on second and final reading by the City Council~~ this First Amendment to Annexation Agreement is entered into as first above written.

8. Owner/Developer, upon execution of this Agreement, shall pay to the City the cost of recording this Agreement in the Public Records of Indian River County, Florida.

9. Owner/Developer shall be required to install or have installed by private providers, where applicable, all private utilities (electric, cable), surface water or storm water management systems, water and wastewater facilities that relate to the overall Development. All utilities shall be underground.

10. Owner/Developer shall secure solid waste pick-up services to serve the Development.

11. In the event of a violation of any of the provisions contained in this Agreement, the City shall have the right to refuse to issue any further Building Permits or Certificates of Occupancy as the case may be for the entire Development until such violation(s) are corrected and this Agreement may also be enforced by all appropriate Sections of the Code of Ordinances and the Land Development Regulations of the City, as they may be amended, as well as through Code Enforcement action.

12. The Owner/Developer shall implement deed restrictions to include:

- a. Each structure (home, clubhouse or otherwise) shall consist of "on-site" construction, no pre-manufactured structures shall be allowed. Metal buildings are specifically prohibited.
- b. All homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
- c. All homes shall have as a minimum an attached one (1) car garage.
- d. Each structure shall be responsible for and include construction of the adjacent sidewalk built to specifications identified on the recorded plat and approved engineering plans, prior to issuance of a Certificate of Occupancy for such structure.
- e. A requirement for each property owner to participate in a solid waste pick up service.
- f. All roads within the Development shall be private.
- g. The enforcement provisions contained in Paragraph 10 above.
- h. Affordable homes pursuant to Section 4 above.

13. In lieu of providing seven (7) acres of land required to meet the ten percent (10%) recreation area within the Development, the Owner/Developer shall pay into the City's Recreation Trust Fund an amount equivalent to the value of seven (7) acres of land ready for construction of homes, to be used by the City toward public recreational improvements. The value of the seven (7) acres shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any ~~building permits~~ development order.

14. The Owner/Developer shall construct a City-approved Pedestrian linkage System within the Development and a sidewalk eight (8) feet in width along the South side of County Road 512 connecting with the existing sidewalk. The sidewalk along CR512 shall be constructed to City/County standards prior to the issuance of the first Certificate of Occupancy for the Development.

15. The Owner/Developer owns land fronting on County Road 512 for this Development, and shall dedicate immediately upon request and without compensation, land for the ultimate right-of-way for County Road 512 as determined by the City and Indian River County.

16. The Owner/Developer shall provide an Emergency Response Plan acceptable to the City prior to the issuance of the first Certificate of Occupancy for the Development.

17. Immediately following the recording of a final plat and prior to issuance of the first building permit within the Neighborhood Commercial area, the Owner/Developer shall convey without charge by Warranty Deed, to the County in fee simple ownership ~~two (2) twelve thousand square foot (12,000sq.ft.) commercial lots ("building pads site only")~~, for its own use in order to accommodate growth and

~~development in the City. The Owner/Developer shall also provide at its cost a clean Owner's Policy of Title Insurance to the City for the two lots land sufficient to accommodate a Fire Station as designed by Indian River County in order to accommodate this Development and growth and development in the City. The Owner/Developer shall also provide at its cost a clean Owners' Policy of Title Insurance to the County for the land.~~

18. The Owner/Developer shall construct both on-site and off-site portable water Supply System Facilities per City specifications and determination. The Owner/Developer shall dedicate the portion of such utility improvements desired by the City to the City. The Owner/Developer shall construct both on-site and off-site Wastewater Collection and Force Main System Facilities per City specifications and determination. The Owner/Developer shall dedicate the portion of such utility improvements desired by the City to the City. Additionally, a permanent standby emergency generator shall be provided with each sewer pump station.

19. All public or private improvements required under the terms of this Agreement or by the City's regulations/codes, with the exception of the internal Pedestrian Linkage System, shall be constructed by the Owner/Developer and approved by the City prior to approval by the City Council of any Final Plat, unless a specific allowance has been provided herein for a Cash Bond or Letter of Credit to guarantee construction of such improvement.

20. The deed restrictions and all documents creating a Property Owners'/Homeowners' Association shall be reviewed and approved by the City Attorney and shall be recorded in the Public Records along with the Final Plat at the Owner's/Developer's expense.

21. The Owner/Developer will work with the City to evaluate opportunities to provide for a "master regional storm water" area to serve both the Development and the City's needs in the area.

22. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the Property and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property and be subject to the above referenced conditions as approved by the City Council on August 9, 2006, and as amended by this First Amendment to Annexation Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the date and year first written above.

ATTEST:

Witnesses:

Witnesses:

Witnesses:

Witnesses:

CITY OF FELLOSMERE, FLORIDA
21 S. Cypress Street
Fellsmere, Florida 32948

By: _____
Joel Tyson, Mayor

By: _____
Maria F. Suarez-Sanchez, City Clerk

OWNER/DEVELOPER
CGV of Fellsmere, LLC

By: _____

Donald T. Cohen, Manger

By: _____
Joanna Verderame, Manager

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2024, by Joel Tyson, Mayor, who is personally known to me or has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2024, by Donald T. Cohen, Manager of CGV of Fellsmere, LLC, who is personally known to me or has produced an _____ as identification.

“SEAL”

Notary Public, State of _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was sworn to, subscribed, and acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2024, by Joanna Verderame,

Manager of CGV of Fellsmere, LLC, who is personally known to me or has produced an
_____ as identification.

“SEAL”

Notary Public, State of _____

EXHIBIT "A"
TO
FIRST AMENDMENT
TO
ANNEXATION AGREEMENT

The following described land being situated in Indian River County, City of Fellsmere, State of Florida:

LEGAL DESCRIPTION

PARCEL 1:

Tract 1730 lying South of County Road No. 512, less the North 35 feet; Tract 1731 less the North 35 feet; Tract 1762; Tracts 1763 and 1764 lying South of County Road No. 512, all as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 29.05 acres, ±.

PARCEL 2:

Tracts 1829, 1830, 1831, 1862, 1863 and 1864, as shown on the plat of FELLSMERE FARMS COMPANY, as recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said lands now lying and being in Indian River County, Florida. 49.72 acres, ±

**DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF FELLSMERE, FLORIDA
AND
OWNER NAME HERE**

This Development Agreement is made this ____ day of _____, 2023, to be effective upon the Effective Date of Ordinance No. 2023-____ between the City of Fellsmere, Florida (the "City") and **OWNER NAME HERE** a Florida limited liability company and its successors or assigns in title or interest (the "Owner").

GENERAL FINDINGS

A: That the application for a Development Agreement for **OWNER NAME HERE** was duly and properly filed with the City of Fellsmere as required by the City's Land Development Code.

B: That all fees and costs which are by ordinance and resolution required to be borne and paid by the applicant will be billed by the City to the applicant and paid within forty-five (45) days from the date of billing receipt.

C: That the applicant is the Owner of 78.77 acres more or less, (the "Land" or "Property"), situated in the City. The Land is being developed as Marian Estates. This Land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

D: That the Owner has certified to the City compliance with the "Public Notice" requirements of the City's Land Development Code.

DEVELOPMENT AGREEMENT

Section 1.0 Development Concept. The above General Findings are incorporated herein. The Property shall be developed as a planned development that generally conforms to the Preliminary Development Plan as adopted by Resolution No. 2023-____. This Development Agreement and the Preliminary Development Plan shall govern the development of the Property as a planned development and shall regulate the future use of the Property during their respective existence.

Section 1.1 Preliminary Development Plan. The Preliminary Development Plan shall consist of the Preliminary Development Plan prepared by Mills Short & Associates dated _____.

Section 1.2 Site Plan and Subdivision Approval. After the Preliminary Development Plan is approved, and prior to issuance of any permits for construction, including clearing and grading, a Final Development Plan and/or Subdivision Plat with Site Construction Plan for a phase of the project shall be prepared and submitted for review and approval to the City of Fellsmere in the manner required by the City's Land Development Code. The overall project may be developed in phases as specified in Section 3.0.

Section 1.3 Performance Guarantees. Performance guarantees for the installation of public improvements will be provided at the time of subdivision or site plan approval in accordance with the City's Land Development Code.

Section 1.4 Enforcement. In the event of any violation of the provisions contained in this Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and this Development Agreement may be further enforced by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action. However, in the event of a violation of paragraph B of the General Findings, regarding payment to the City, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall also have the right to rescind this Development Agreement for nonpayment.

Section 2.0 Unified Ownership. The Applicants or their successors in title shall maintain unified ownership of the Land until approval of a final plat or other legally permissible division of the property dividing or subdividing all or portions of the property. Subsequent owners of the Land or portions of the Land shall be bound by this Development Agreement and the Preliminary Development Plan and may request, subject to City Council approval, amendment of this Development Agreement and Preliminary Development Plan for that portion of the Land under their ownership without requiring consent of other owners within the project to submit the amendment.

Section 3.0 Phases of Development. The Land shall be developed in phases consistent with the Preliminary Development Plan. The proposed phasing is as follows:

- Phase 1: Residential Single-Family Homes
Stormwater Management Areas
Two Road Connections to S. Myrtle Street
Intersection Improvements at CR512 and Myrtle Street
Sidewalk connection to Senior League Park
Payment of Recreational Fee
- Phase 2: Residential Multi-Family Homes
Stormwater Management Areas
Two Road Connections to CR512
Sidewalk along CR512
Sidewalk along S. Myrtle from Massachusetts Avenue to CR512
Intersection Improvements at CR512 and Broadway
- Phase 3: Non-Residential Uses
Stormwater Management Areas
Improvements along Myrtle Street

Subsequent development phases will be determined by market conditions and detailed through the subdivision and/or site plan approval process.

Section 4.0 Land Uses Within the PDD. The location and size of each land use area is shown on the Preliminary Development Plan.

Single-Family

Within the areas designated as Single-Family on the Preliminary Development Plan, the uses shall be limited to the following:

- Single Family Homes with minimum two-car garage;
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Home Based Business as set forth in the City of Fellsmere Land Development Code as may be amended;
- Recreation, outdoor; and
- Stormwater and Utility Infrastructure to support allowed uses.

Multi-Family

- Multi Family Homes with minimum one-car garage;
- Clubs and lodges;
- Cultural or Civic Facility/Building or Use; Community Center Building;
- Recreation, outdoor; and
- Stormwater and Utility Infrastructure to support allowed uses.

Neighborhood Commercial

- All uses listed as permitted or conditional in Exhibit 3, of Section 9.3, Land Development Code (upon the effective date of a Comprehensive Plan Amendment designating the Neighborhood Commercial area under the CR512 Old Town Infill/overlay District of the Comprehensive Plan).

All uses fronting on CR512 in the Neighborhood Commercial area as shown on the Preliminary Development Plan must be conducted indoors, except outdoor seating for restaurants related to a principal structure. Outdoor retail sales accessory to a principal use may be permitted by the City. If drive-through bays are part of a proposed use, such bays shall not be oriented toward CR512.

Any amendment to the uses in subsections a., b. or c. above shall be considered a major amendment to the project.

Section 5.0 Development Standards.

Section 5.1 Project Density and Number of Units: The Preliminary Development Plan provides for a maximum of 332 residential units within the areas designated as residential comprised of ~~182227~~ single-family units and ~~15005~~ multifamily units. Furthermore, subject to approval of a Comprehensive Plan Amendment to incorporate the Neighborhood Commercial area into the CR512 Old Town Infill/Overlay District of the Comprehensive Plan, the intensity of nonresidential development shall be as set forth in Section 9.6, Land Development Code, The allocation of units by type may be amended by the Owner based on market conditions and project phasing so long as the total of 332 residential units in the

residential area is not exceeded. Any amendment of the allocation of units by type in excess of five percent (5%) shall be considered a major amendment to the project.

Section 5.2 Project Buffers: The project shall provide a twenty-five (25) foot natural buffer or landscaped buffer along all project boundaries except CR512 frontage. Buffers and landscaping along CR 512 shall conform to the Fellsmere CR 512 Old Town Overlay District requirements as included in Article IX of the Fellsmere Land Development Code. Unless otherwise noted, project buffers shall meet Type B minimum standards per Section 11.4.D.2 of the City's Land Development Code. Where buffers contain preserved vegetation equal to Type B minimum standards, additional planting is not required. The twenty-five (25) foot buffer shall be included within the required building setback.

Internal buffering shall be required as set forth by Section 3.21.H.1.j, Land Development Code. As part of the application for the final development plan within Phase 1 and Phase 2, the applicant shall provide a proposed landscape plan demonstrating the level of buffering proposed between single and multifamily and between the multifamily and nonresidential, respectively. The landscape plan must demonstrate at time of ~~final development site construction~~ plan approval that all service areas are totally screened from any residential. Screening may take the form of additional landscaping, walls, berms, or intervening buildings or combination thereof.

Section 5.3 Single-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: 540'x100'

Front Setback = 20'

Side Setback = 5'

Side Corner Setback = 10'

Rear Setback = 30'

Accessory Structure Setback = 5'

Maximum Project Density: As set forth in the Preliminary Development Plan

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Height: 35 feet

For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.4 Multi-Family Dwellings

Building and Parcel Requirements

Minimum Parcel Size: 16'x50'

Maximum Project Density: As set forth in the Preliminary Development Plan

Front Setback = 20'

Side Setback = 5'

Side Corner Setback = 10'

Rear Setback = 30'

Accessory Structure Setback = 5'

Minimum Building Spacing:

10 feet plus five (5) feet for each additional ten (10) of building height above twenty (20) feet or fraction thereof

Maximum Building Length: 300 feet

Maximum Building Height: 35 feet

For front garages, the garage shall be set back at least 5' from the front façade unless a porch is provided along the front of the façade, in which case the garage shall be set back at least the depth of the porch.

Section 5.5 Non-Residential and Mixed Use Buildings:

Building and Parcel Requirements

Minimum Parcel Size: As required by Section 9.6, Land Development Code

Floor Area Ratio: As set forth in Section 9.6, Land Development Code

Maximum required building setbacks: As required by Section 9.6, Land Development Code

Maximum Lot Coverage: As required by Section 9.6, Land Development Code

Maximum Building Height: As required by Section 9.6, Land Development Code

Maximum Building Length: As required by Section 9.6, Land Development Code

Building Appearance and Design:

All residential buildings within the entire Property shall substantially comply with the building elevations attached hereto as Exhibit [REDACTED]. All nonresidential or mixed use buildings shall comply with the requirements of Article IX (CR 512 Old Town Overlay District Design Standards) of the Fellsmere Land Development Code. Nonresidential building elevations with materials and colors (4-sided) shall be submitted for City Council approval with the final development plan application for the pertinent phase. Compliance with these conditions shall be determined solely by the City Council as part of the approval of the final development plan. The City Council may impose more requirements upon finding that it will improve the general safety, welfare, health, appearance, or aesthetics and is in conformance with the Comprehensive Plan and this Code. The City shall have the right to evaluate the physical layout, architectural characteristics and amenities of the planned development to require changes or modifications in design to create compatibility and conformity in the variety of uses within the project to insure, protect and promote the health, safety and general welfare of the property owners of the planned development and the residents of the City.

Off-Street Parking and Loading Requirements:

All residential off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2 of the Fellsmere Land Development Code with the addition of 0.25 spaces per unit for guest parking for all lots less than 60' wide in width. All nonresidential and mixed-use off-street parking shall comply with the off-street parking regulations as set forth in Section 7.2, Fellsmere Land Development Code. Off-street loading shall comply with Section 7.3, Fellsmere Land Development Code.

Section 5.8 Amendment

All amendments to the Preliminary Development Plan, other than those deemed by the Fellsmere City Manager or designee to be minor amendments as set out herein, shall be considered major and require the review and recommendation of the Fellsmere Planning and Zoning Commission and action by the Fellsmere City Council in the same manner as this Development Agreement was adopted. Minor amendments are changes to the Preliminary Development Plan that result from the application of more specific site data or design criteria but do not result in material revisions to the Preliminary Development Plan by affecting the conceptual layout and content. Minor amendments include but are not limited to (the following list is intended to provide examples of minor amendments):

- a. Relocation of internal primary and secondary access points to meet standard engineering design criteria, avoid unsuitable soils or properly align access points and to accommodate future tenant requirements.
- b. Relocation of the internal roads and driveways to comply with standard design criteria, conform to final lot and building layouts and avoid tree or wetland areas.
- c. Reduction of five (5) percent or less to the size or boundaries of the areas allocated to recreational use.
- d. Modification of the boundaries of storm water retention areas, tree protection areas and wetland areas and buffers, which do not fall below minimum standards, based on specific field information or conditions resulting from non-local permits.
- e. Decrease in overall project density.
- f. Change of single-family to multifamily unit mix by less than 5%.

Any requested amendment to the permitted land uses in Section 4.0 or dimensional standards for the development is a major amendment to the project.

Any requested amendment to Development Standards in Sections 5.1 through 5.7 is a major amendment to the project.

Section 5.9 Project Signage

Signs shall comply with the provisions of Sections 9.3 and 9.6, Land Development Code.

Section 5.10 Common Open Space: Open space shall be as set forth by Section 3.21.G, Land Development Code. In lieu of providing all of the open space required by Section 3.21.G.6.a of the Land Development Code, as set forth in Section 7.22, LDC, the Owner/Developer shall pay into the City's Recreation Trust Fund an amount equivalent to the value of the acreage of open space not provide onsite to be used by the City toward public recreational improvements. Based on the Preliminary Development Plan, with approximately seventy (70) acres of residential subdivision, the Project shall set aside at least seven (7) acres of common open space. The value shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development orders. If this option is utilized by the Owner/Developer, payment shall be made to the City at time of Site Construction

Plan approval. In lieu of providing amenities at the southern lake to allow such lake to be credited toward Common Open Space, the Owner/Developer shall contribute \$40,000 to the City within 90 days of approval of this Development Agreement to allow the City to construct an amenity at the Senior League Park adjacent to the southern lake.

Section 5.11 Waivers. The Owner has requested a waiver of certain design features for the project. The following design provisions contained in the Land Development Code as set forth below are waived to the extent as amended:

<u>Existing provision to be waived</u>	<u>Provision as amended to be complied with</u>
1. Section 3.21 H 1 Front building setback of 50 feet from County right of way	7.5' to 15' foot front building setback from County right of way (CR512)
2. Section 3.21 H 1 g parking plan Required with preliminary development plan	Provide parking plan for nonresidential at final development plan
3. Section 3.21 H 1 i Buffer Yard requirement of 30 feet	25 foot Buffer Yard Requirement except along CR512 where no buffer is required
4. Section 17.15 3.f 12 and 13 General landscape plans and conceptual building elevations	Provide complete landscape plans and building elevation at <u>final developmentsite construction</u> plan
<u>5. Section 3.21.G.6 Common Open Space</u>	<u>Fee in lieu of providing gazebo, overlook, boardwalk, dock or pier w/ lake</u>

Section 6.0 Environmental Considerations. As allowed by Section 13.1, Land Development Code, and as contemplated in the Annexation Agreement, the Owner shall meet the Conservation Requirements of the City of Fellsmere through the payment in lieu of providing the required 15% habitat set-aside. Based on the Environmental Statement provided in support of the Preliminary Development Plan, with approximately 78.77 acres of native habitat, the project is required to provide payment in lieu for 11.82 acres of required conservation area, which is equivalent to 15% of the existing native habitat.

In lieu of providing 11.82 acres required to meet the fifteen percent (15%) conservation area within the Development, the Owner/Developer shall pay into the City's Conservation/Recreation Trust Fund an amount equivalent to the value of 11.82 acres to be used by the City toward public conservation or recreational improvements. The value of the 11.82 acres shall be determined by an MAI Appraiser based on the proposed use/density of the final end product. The City shall hire the appraiser and be reimbursed for this cost by the Owner/Developer. Payment shall be made prior to issuance of any development orders.

Section 7.0 Utility Services. Public utilities consisting of water and wastewater for the Property shall be obtained from the City of Fellsmere and shall be applied for, built, and conveyed in accordance with the City's rules, regulations, requirements, tariffs, policies, and agreements prevailing at the time of Owner's application for service.

The Owner shall provide permanent standby emergency generators and radio telemetry units with each sewer pump station constructed by the Owner to serve the project.

The Owner shall construct all wastewater and water lines required to serve the project. For all private streets, the Owner will provide the City with utility easements granting the City access to maintain utility lines dedicated to the City. Water meters used within the project shall provide for electronic reading.

The City may require oversize lines for additional anticipated development. If oversize lines are required, the Owner shall be entitled to cost recovery for the additional cost beyond the cost required to service the Owner's project. The cost recovery shall be based upon the actual cost of installation and shall be paid to the City by future development based on its proportionate share of the recoverable cost. Upon receipt of funds from a third-party user, the City shall promptly reimburse the recovered cost to the Owner.

Other utilities not provided by the City shall be built in accordance with and consistent with the City's requirements. Electric, natural gas, telephone, internet fiber, cable televisions and like utilities shall be installed underground. The project shall provide internet fiber and natural gas to each lot.

Section 8.0 Stormwater Drainage. Provision for storm water retention shall be in accordance with the requirements of the City of Fellsmere Land Development Code, Fellsmere Water Control District, and St. John's River Water Management District requirements. The project shall incorporate off-site drainage improvements by joining the on-site lake with the adjacent off-site city-owned lake. The City will provide all required easements to accommodate such improvements.

Section 9.0 Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of Fellsmere Comprehensive Plan and Land Development Code. In addition to any on-site improvements, the Owner shall provide the following off-site improvements as conditions:

Section 9.1 CR 512/Project Entrance Intersection Improvements: Prior to the approval of any final plat, the Owner/Developer shall construct left turn and right turn lanes into the Development from County Road 512 at each entrance of the Development. In lieu of installation of the left turn and right turn lanes, prior to approval of any final plat, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be installed no later than fourteen (14) months from the issuance of the first building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney. All roads internal to the Development shall be constructed and paved to such standards as required by the City.

Section 9.2 CR 512/Myrtle Intersection Improvements: Prior to the approval of any final plat, the Owner/Developer shall construct ~~left turn and right turn lanes and other improvements related to the Myrtle Street/CR512 Intersection set forth in the letter dated July 25, 2012 attached hereto as Exhibit "B".~~ ~~left turn lanes at CR512 and Myrtle.~~ In lieu of installation of the ~~left turn lanes required improvements,~~ prior to approval of any final plat, the Owner/Developer may provide a Cash Bond

escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the required improvements. The improvements shall be installed no later than fourteen (14) months from the issuance of the first building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

Section 9.3 North Myrtle Street Improvements: Prior to the issuance of the first nonresidential building permit, the Owner/Developer shall install City and Indian River County approved improvements ~~to align~~ North Myrtle Street ~~with Babcock Street~~ as set forth in the letter from Indian River County dated July 25, 2012 ~~attached hereto as Exhibit "B"~~. In lieu of installation of the improvements prior to issuance of the first nonresidential building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the improvements. The Improvements shall be installed no later than fourteen (14) months from the issuance of the first nonresidential building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

~~The City of Fellsmere shall enter into a cost share agreement with the Owner/Developer to provide cost reimbursement from other development that assigns traffic to North Myrtle Street. Developments that will be subject to such cost share shall be a minimum of 20 residential units or their equivalent traffic generation.~~

Section 9.4 CR 512/Broadway Intersection Improvements: Prior to the issuance of the ~~1280th~~ residential ~~building permit~~ certificate of occupancy or as required to meet concurrency, whichever occurs earlier, the Owner/Developer shall install a City and Indian River County approved traffic signal at the intersection of Broadway and CR512. In lieu of installation of the traffic signal prior to issuance of the first building permit, the Owner/Developer may provide a Cash Bond escrowed with the City or Letter of Credit from a nationally insured bank for one hundred twenty-five percent (125%) of the cost of installing the traffic signal. The traffic signal shall be installed no later than fourteen (14) months from the issuance of the first nonresidential building permit. The Cash Bond or Letter of Credit shall be in a form approved by the City Attorney.

Section 9.5 CR 512 Road Improvements: ~~Prior to the issuance of the first multifamily building permit or as required to meet concurrency, whichever occurs earlier, the~~ The Owner/Developer shall install City and Indian River County approved improvements along CR512 from Willow Street to Myrtle Street. The Owner will design, install and pay for right-of-way improvements in the form of a 3-lane roadway, drainage and street lighting including four (4) thru lanes at Willow and Myrtle (transition to three (3) lanes as soon as possible) in accordance with the schedule as set forth below.

- Design/Permitting at 50th Building Permit
- Start of Construction at 200th Building Permit
- Road Completed Prior to Completion of 320th Building Permit

Section 9.6 Bicycle and Pedestrian Facilities: In addition to facilities set forth above, the Owner will provide the following bicycle and pedestrian facilities:

9.3.1: The Owner shall construct an five-eight (85) foot wide sidewalk along the west south side of South Myrtle Street from CR512 from Project's eastern driveway to the existing sidewalk on CR512 east of the Project to Massachusetts Avenue prior to the issuance of the first Certificate of Occupancy for the Development no later than fourteen (14) months from the issuance of the final first residential building permit.

9.3.2: The Owner shall construct five (5) foot wide sidewalks along one side of all roads within the Property. For nonresidential development, the sidewalk shall be installed as part of the site infrastructure. For multifamily development, the sidewalk shall be constructed prior to the certificate of occupancy for each structure. For single family development, the sidewalk shall be provided as set forth in Section 10 of this Agreement.

Section 9.7 Internal Roads: All roads leading into and throughout the development shall be paved and designed as minimum 50-foot wide rights-of-way with curb and gutter to meet the City standards as set forth in Section 7.19 of the Fellsmere Land Development Code. All roads within the development shall be private and open to the public. The project shall not be gated.

Section 10.0 Other Development Conditions: The Owner shall implement deed restrictions subject to approval of the City Attorney to include:

- a. Each structure shall consist of "on-site" construction; no pre-manufactured structures shall be allowed, unless allowed by the City pursuant to standards set out in the Pattern Book. Metal buildings are specifically prohibited except as accessory uses for residential units.
- a. All single-family homes shall be no less than 1,200 square feet, exclusive of any added areas, such as, but not limited to, porches, patios, terraces, attached garages, carports and unroofed areas.
- b. All single-family homes shall have as a minimum an attached two car garage.
- c. Each single-family home shall be responsible for and include construction of the adjacent sidewalk and street trees built to City specifications prior to the issuance of a Certificate of Occupancy for such single family home.
- d. Each property owner shall participate in a solid waste pick-up service.
- e. All roads within the development shall be private and maintained by an incorporated property owner's association(s).
- f. The property owner's association described in Section 11.0 shall maintain the streetscape enhancements along the CR 512 frontage of the Property.
- g. In the event of any violation of the provisions contained in the Development Agreement, as determined at a hearing before the City Council, with notice to the Owner and an opportunity for the Owner to be heard by the City Council, the City shall have the right to refuse to issue any further building permits or Certificates of Occupancy as the case may be for the Owner's Property until such violation(s) is/are corrected and the Development Agreement may be further enforced

by all appropriate sections of the Code of Ordinances and Land Development Code of the City, , including, but not limited to, code enforcement action.

Section 11.0 Building or Property Owners Association. The Owner shall create an incorporated property owner's association (POA) or associations for the purpose of maintaining, repairing and replacing improvements conveyed to the property owners association or associations; enforce covenants and restrictions; and assure continued compliance with covenants and restrictions imposed by the various permitting agencies, including but not limited to, the City of Fellsmere, Indian River County, St. Johns River Water Management District, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the Florida Department of Environmental Protection. The deed restrictions and documents creating a property owner's/home owner's association for the entire project shall be reviewed and approved by the City Attorney for items required by this Development Agreement, Annexation Agreement and City regulations, and shall be recorded along with the first Site Plan or Final Plat at the Owner's/ expense.

Section 12.0 Development Regulations. The Fellsmere Comprehensive Plan and Land Development Code will control regarding any items not specifically covered by this Development Agreement.

Section 13.0 Local Development Permits Obtained by Owner. All local Development Permits shall be obtained at the sole cost of the Owner and, that in the event that any such local Development Permits are not received, no further development of the Property shall be allowed until such time as the City Council of the City of Fellsmere has reviewed the matter and determined whether or not to terminate this Development Agreement, or to modify it in a manner consistent with the public interest and the City of Fellsmere Comprehensive Plan.

Section 14.0 Compliance with laws not identified in Development Agreement. The failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing ordinances of the City of Fellsmere shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in this Development Agreement with specific reference to the code provisions so waived, modified or amended.

Section 15.0 Expiration: This Development Agreement shall be valid for ten (10) years from the date of execution. This Development Agreement may be extended by mutual consent of the City Council and the Owner, subject to two (2) public hearings. The term of any one (1) extension shall not exceed five (5) years. This Development Agreement shall run with the land and shall bind all parties hereto and inure to the benefit and burden of all parties hereto as successors in title or interest. The above notwithstanding, when a phase of the development as set forth in Section 3.0 above is completed and totally built out this Development Agreement and the Pattern Book shall control all future activities within the completed phase.

Section 16.0 Applicability. This Development Agreement shall be subject to all provisions contained in Section 17.22 Development Agreements of the City's Land Development Code.

APPROVED by Resolution No. 2022-_____ of the City Council of the City of Fellsmere, Florida, on the _____ day of _____, 2022.

WITNESSES:

CITY OF FELLOSMERE, FLORIDA

Print Name: _____

By: _____
Joel Tyson, Mayor

Print Name: _____

ATTEST:

Maria Suarez-Sanchez
City Clerk

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Jol Tyson and Maria Suarez-Sanchez, as Mayor, City of Fellsmere, and City Clerk, respectively, on behalf of the City of Fellsmere, who are personally known to me or who have produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____
Commission No.: _____
My Commission Expires: _____

NAME OF OWNER HERE, a Florida limited liability company

WITNESSES:

Print Name: _____

By: _____, Managing Member

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, Managing Member on behalf of **NAME OF OWNER HERE**, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____
Commission No.: _____
My Commission Expires: _____

MORTGAGEE’S CONSENT

THE UNDERSIGNED, being the holder of a Mortgage and Security Agreement recorded on _____ in Official Record Book ____, Page ____, Public Records of Indian River County, Florida, upon the following described real property to wit:

See Exhibit “A” attached hereto

(herein referred to as “the Real Property”)

does hereby join in and consent to the Real Property being subject to this Development Agreement for Marian Estates and agrees that its Mortgage and Security Agreement shall be subordinated to this Development Agreement.

IN WITNESS WHEREOF, the undersigned has caused this consent to be signed by _____ and its seal to be affixed by and with the authority of its Board of Directors this _____ day of _____, 2022.

WITNESSES:

MORTGAGEE
NAME OF MORTGAGEE HERE, a Florida limited liability company

Print Name: _____

By: _____
Print Name: _____
Its: Managing Member

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, Managing Member on behalf of **NAME OF MORTGAGEE HERE**, who is personally known to me or who has produced a _____ Driver's License as identification.

SEAL

NOTARY PUBLIC, STATE OF FLORIDA
Type or Print Name: _____

Commission No.: _____
My Commission Expires: _____