

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Marsha Segal-George
City Attorney
City of Deltona
2345 Providence Boulevard
Deltona, FL 32725

Exhibit “A” to Ordinance No. 13-2022

FIRST AMENDED DEVELOPMENT AGREEMENT

This First Amended Development Agreement updates and supersedes all prior agreements for the project known as Fernanda Place Residential Planned Unit Development (RPUD) located east of Howland Blvd. approximately 1.5 miles north of the CR 415/Howland Blvd. intersection and including the real property identified on attached Exhibits “A” and “A-1” (hereinafter referred to as the “Subject Property”).

THIS FIRST AMENDED DEVELOPMENT AGREEMNT (hereinafter referred to as the “Agreement”) is entered into and made as of the ____ of ____, 2022, by and between the CITY OF DELTONA, a Florida municipal corporation, with a mailing address of 2345 Providence Boulevard, Deltona, Florida 32725, (hereinafter referred to as the “City), Starlight Homes Florida L.L.C., a Delaware limited liability company, 1064 Greenwood Blvd, Suite 124, Lake Mary, FL 32746 (hereinafter referred to as the “Developer”) and Mark Rapp and Sherry L. Martin, as owners of Phase 3 of the Subject property, as described below, their successors or assigns (hereinafter referred to collectively as the “Owner”).

WITNESSETH

WHEREAS, The Owner warrants that it holds legal title to the lands located in Volusia County, Florida, and within the corporate limits of the City of Deltona, said lands being more particularly described in Exhibit “A-1”, being a portion of the legal description for the Subject Property, attached hereto and by this reference made a part hereof; and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreements; and

WHEREAS, the Owner now wants to annex the property described on Exhibit “A-1” into the Fernanda Place Planned Unit Development as an additional phase of the development (“Phase 3”) and subject it to the terms and conditions set forth in this Agreement; and

WHEREAS, the Owner has clear title of Phase 3 of the Subject Property and intends to develop such property as an RPUD; and

WHEREAS, the Owner and Developer desire to facilitate the orderly development of the Subject Property in compliance with the laws and regulations of the City and of other governmental authorities, and the Owner and Developer desires to ensure that its development is compatible with

the other properties in the area and planned traffic patterns; and

WHEREAS, the development permitted or proposed under this Agreement is consistent with and will continue to adhere to the City's Comprehensive Plan, Land Development Code, concurrency management system, and all other appropriate development regulations, all as may be amended, and except as specifically specified herein, this Agreement does not replace, supersede, or grant variances to those regulations; and

WHEREAS, the Developer has requested certain increases in the overall density of the RPUD, reduction in minimum lot sizes and has provided benefits to the City, as further described herein, in order to justify the approval of increased density and reduced lot sizes; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein; and

WHEREAS, the Owner and Developer have sought the City's approval to develop the Subject Property, and the City approved Ordinance No. 05-2015, through rezoning the Subject Property to a form of Residential Planned Unit Development (RPUD), as defined under the City's Land Development Code on August 17, 2015, as amended by Ordinance No. __-2022, as approved on _____, 2022. The RPUD shall consist of this Agreement as the Written Agreement of the RPUD and an updated Exhibit "B", Master Development Plan (MDP) depicting Phase 3, prepared by Poulos & Bennett and dated _____, 2022, attached hereto and by this reference made a part hereof as the Preliminary Plan, subject to the covenants, restrictions, and easements offered by the Owner or Developer and contained here, (hereinafter the "Master Development Plan"). Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria applies.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals and Definitions.** The recitals herein contained are true and correct and are incorporated herein by reference. All capitalized terms not otherwise defined herein shall be as defined or described in the City's Land Development Code as it may be amended from time to time, unless otherwise indicated.
2. **Ownership.** The legal and equitable owners of Phase 3 of the Subject Property are: Mark Rapp and Sherry L. Martin. A memorandum of understanding regarding the unified ownership of the property and signed by the Owner is included as Exhibit F.
3. **Title Opinion/Certification.** The Developer will provide to the City, in advance of the City's execution and recordation of this Agreement, a title opinion from a licensed attorney in the state of Florida, verifying marketable title to Phase 3 of the Subject Property to be in the name of the Owner and any and all liens, mortgages, and other encumbrances that are either satisfied or not satisfied or released of record.
4. **Subordination/Joinder.** Unless otherwise agreed to by the City and if applicable, all liens, mortgages, and other encumbrances that are not satisfied or released of record,

must be subordinated to the terms of this Agreement or the Lienholder join in this Agreement. It shall be the responsibility of the Owner and Developer to promptly obtain the said subordination or joinder, in form and substance that is acceptable to the City Attorney, prior to the execution and recordation of this Agreement.

5. **Duration.** The duration of this Agreement is binding and runs with the land in perpetuity, unless amended.
6. **Development of the Subject Property.** Development of the Subject Property shall be subject to performance standards listed in this Agreement. Where a land use listed below differs from a defined use in the City of Deltona's Code of Ordinances, the use listed in this Agreement shall prevail.
7. Comprehensive Plan Policies.

- a. Permitted principal uses allowable on the Subject Property:
 - i. Single Family Residential and related recreational and accessory uses.
- b. Prohibited principal uses, if any: Any non-residential oriented use, unless otherwise specified in this Development Agreement.
- c. Proposed minimum density: No minimum density.
- d. Proposed maximum number of dwelling units: 403 units for the entire project.
- e. Impervious surface ratio is not to exceed 65% of the gross square footage for the Subject Property in total.
- f. Maximum lot coverage: 60 %. Lot coverage is defined as that area of a lot from the ground up which is occupied by principal and accessory buildings.
- g. Minimum landscaping and buffer yard requirements shall comply with the City's Land Development Code as it may be amended from time to time. For Phases 1 and 2 of the Subject Property, a 20 foot perimeter buffer shall be required to separate the RPUD from surrounding land uses. For Phase 3 of the Subject Property, there shall be no perimeter buffer along the northern boundary, a 10 foot buffer on the east & west boundary & 20 foot buffer on the southern boundary.

AS TO PHASE 1 AND PHASE 2 OF THE SUBJECT PROPERTY:

- h. Minimum lot size area (in acreage or square footage): 7,200 sq. ft.
- i. Minimum lot width (in feet): 60 ft. measured at the front yard setback line
- j. Minimum lot depth (in feet): 120 ft.

- k. Minimum yard setbacks (Primary Structures):
 - i. Front yard: 25 ft.
 - ii. Side yard: 5 ft.
 - iii. Street side yard: 15 ft. (5' side yard, plus minimum 10' common area tract adjacent to streets on all corner lots)
 - iv. Rear yard: 10 ft.
- l. Maximum building height (in feet): 35 ft./2 stories
- m. Minimum Floor Area (sq. ft.) 1,400
- n. Supplementary Regulations: All residential-oriented accessory uses shall comply with Article VIII of Chapter 110, City of Deltona Land Development Code, as it may be amended from time to time.
- o. Accessory Structures Minimum Setbacks: Note: accessory buildings and structures, other than lawn ornaments and fences built in accordance with Section 6(0) of this Development Agreement, shall not be located in the front yard forward of the edge of the principal dwelling, or beyond any side street yard setback.
 - i. Front yard: Not permitted
 - ii. Rear yard: 10 ft.
 - iii. Side yard: 5 ft.
 - iv. Side street yard back to back existing SFR structures: 15 ft.
 - v. Side street yard with existing house adjacent to a vacant lot: 25 ft.
Side street yard adjacent to the existing front yard of a developed lot: 25 ft.
- p. Additional On Street Parking: Additional on street parking shall be provided in Phases 1 and 2 as shown on the MDP

AS TO PHASE 3 OF THE SUBJECT PROPERTY:

- q. Minimum lot size area (in acreage or square footage): 5,250 sq. ft.
- r. Minimum lot width (in feet): 50 ft. measured at the front yard setback line
- s. Minimum lot depth (in feet): 105 ft.
- t. Minimum yard setbacks (Primary Structures):
 - i. Front yard: 25 ft.

- ii. Side yard: 5 ft.
- iii. Street side yard: 10 ft.
- iv. Rear yard: 10 ft.
- u. Maximum building height (in feet): 35 ft./2 stories
- v. Minimum Floor Area (sq. ft.) 1,200
- w. Minimum Garage Parking - 2 spaces
- x. Minimum Driveway Standards – All driveways shall be located a minimum of 25' from driveways located on adjacent lots, as measured from the closest sides of the respective driveways. Driveway dimensions shall be at least twenty-five feet by eighteen feet (25' x 18') in order to permit a minimum of two vehicles to park side by side in each driveway.
- y. Supplementary Regulations: All residential-oriented accessory uses shall comply with Article VIII of Chapter 110, City of Deltona Land Development Code, as it may be amended from time to time.
- z. Accessory Structures Minimum Setbacks: Note: accessory buildings and structures, other than lawn ornaments and fences built in accordance with Section 6(o) and (w) of this Development Agreement, shall not be located in the front yard forward of the edge of the principal dwelling, or beyond any side street yard setback.
 - a. Front yard: Not permitted
 - b. Rear yard: 10 ft.
 - c. Side yard: 5 ft.
 - d. Side street yard back to back existing SFR structures: 15 ft.
 - e. Side street yard with existing house adjacent to a vacant lot: 25 ft.
 - f. Side street yard adjacent to the existing front yard of a developed lot: 25 ft.

The project shall comply with all applicable parking standards, as per the City's Land Development Code effective as of the date hereof, including required parking for recreational or amenity uses. All fencing within the RPUD shall comply with the minimum standards set forth in Section 110.806 of the City's Land Development Code, as may be amended from time to time.

- aa. Lighting associated with this RPUD shall be consistent with all applicable City of Deltona Land Development Code requirements.

- bb. Development within the Subject Property shall follow common architectural themes as defined by the homeowner or property owners association.
- cc. Utility provision and dedication: The Developer shall connect to the City of Deltona's central utility systems, at their sole cost and expense. Utility fees shall be paid to Deltona Water before any building permit is issued. Central utility systems are to be designed, permitted, and constructed to City specifications and dedicated to the City upon final inspection, clearance, and acceptance by the City. In addition, all powerlines that serve development within the RPUD shall be buried in accordance with the specification of the utility provider, the City or any other entity as applicable.
- dd. Stormwater: The on-site stormwater system shall be designed and constructed compliant with all City, St. Johns River Water Management District and other applicable agency regulations and requirements. Stormwater retention shall be directed away from protected wetlands, required wetland buffers, the 100 year floodplain and the Conservation area except as illustrated in Section 15 of this agreement. Stormwater areas, including ponds and related drainage infrastructure shall be dedicated to the City. However, the maintenance of grass and other landscaping material associated with stormwater ponds shall be the responsibility of an established Homeowners Association in private ownership and shall not be the responsibility of the City of Deltona. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements and shall be maintained in good condition/standing with the applicable permitting authorities. Best Management Practices and conformance to National Pollutant Discharge Elimination System (NPDES) criteria are required. The Developer intends to continue using certain permitted stormwater ponds in Phase 1 as a source of fill material for the development of Phase 3 if fill material excavated from the planned stormwater pond located in Phase 3 is insufficient to meet the fill needs required to develop Phase 3. Final grading, sodding and completion of the stormwater ponds in Phase 1 in accordance with all applicable permits, including the approved plans associated with the development order for Fernanda, Phases 1 and 2, dated September 8, 2018 and St. Johns River Water Management District Permit # 145293-2, shall be required as part of the completion of Phase 3. In the event fill is needed from Phase 2 in order to complete development of Phase 3, trucks hauling fill material from Phase 2 to Phase 3 shall be limited in operation to the hours of 9:00am to 2 pm, Monday through Friday and shall be required to follow the approved haul route set forth on Exhibit C. Prior to commencement of any hauling activities, the Developer will be required to post a bond in an amount determined by the City Engineer during subdivision review to be sufficient to repair any damage caused by excessive wear and tear on the roads within Phases 1 and 2 as a result of the fill hauling activity authorized herein.

ee. Transportation, site access, and traffic devices: The Developer is responsible for all transportation improvements within the Subject Property and any off- site transportation requirements, as a result of the proposed development, for site function, that maintains or improves the level of service for area roadways, and ensures the public health, safety, and welfare for the community. All permits shall be obtained from appropriate permitting agencies prior to development.

There is recognition that the access to this RPUD will be extended off of Howland Blvd. through land that is located within unincorporated Volusia County. The access shall comply with all design and construction standards of the City of Deltona. The access to Howland Blvd. along with all other public roads within the RPUD shall be dedicated to the City as per the Land Development Code. However, the developer shall be responsible for obtaining a Use Permit with the County of Volusia to connect to Howland Blvd. In addition, the main project entrance road shall be designed to align with the Golden Hills St/Howland Blvd. intersection at right angles. The RPUD project abuts an elementary school. As part of the development of Phase 3, the Developer shall be responsible for installing a traffic signal at the intersection of Howland Boulevard and Fernanda Drive, subject to review and approval of a Use Permit by the County of Volusia. Applications for all required permits related to the traffic signal shall be submitted and approved on the same schedule as required for the preliminary plat. Installation of the traffic signal must be completed prior to recording the final plat. No building permits for single family residences in Phase 3, other than for the model homes permitted in Paragraph ii, below, shall be issued until the traffic signal installation is completed and accepted by the County of Volusia.

To facilitate an interconnected road network, the Developer shall also be responsible for the design and construction of a roadway that will connect Learning Lane and Pride Elementary School to Fernanda Drive and the newly signalized intersection at Fernanda Drive and Howland Boulevard. Developer shall acquire a minimum of sixty (60') feet of right of way west of Tract C in Phase 1 of the RPUD for construction of the new roadway. The right of way for the new roadway will be annexed into the City and dedicated to the City concurrent with the approval of the final plat for Phase 3. The Developer shall coordinate with the Volusia County School District to design vehicular and pedestrian connections between the new roadway and Learning Lane. The design shall be finalized as part of the Developer's final engineering plans approved through the preliminary plat process and shall be coordinated with the Volusia County School District. The new roadway shall be completed and accepted by the City prior to recording the final plat. Upon completion of the new roadway, all right of way and related improvements will be dedicated to the City.

Finally, a portion of a prescriptive right of, way known locally as Osteen Cemetery Road extends through the southeastern corner of Phase 2 of the Subject

Property and the eastern boundary of Phase 3 of the Subject Property. This road cannot be used for general, non-emergency subdivision access. Nor shall construction activity be routed down Osteen Cemetery Road. No lots can be created that access Osteen Cemetery Road, however right of way for Osteen Cemetery Road shall be established as a public right of way during the platting process for any portion of the roadway adjacent to or within Phase 3. To facilitate the proposed subdivision pattern in Phase 2 as depicted on the MDP, Osteen Cemetery Road will need to be realigned. Realignment of the road was addressed during the Phase 2 platting process and realignment shall comply with all applicable City design and land development standards.

Public sidewalks will abut both sides of all rights of way within Phase 3 (excluding within any right of way dedication area for Osteen Cemetery Road) and will be constructed with a minimum width of five (5') feet.

- ff. Signage: All signs shall comply with the Chapter 102 of the City Land Development Code. Entrance signage shall be a free standing monument type sign, be no more than six feet high with an 18 inch base and feature no more than 48 square feet of copy area. The sign shall not contain any electronic messaging. The entrance sign shall be permitted separately and must be approved by the Director of Planning and Development Services. An elevation of the sign, including color renditions and other design elements shall be part of the submittal to the Director.
- gg. Increased/Active Open Space: The City's Land Development Code requires a minimum of 25 percent of the open space within an RPUD be set aside as common open space. Phase 3 includes an increase in the overall common open space provided to approximately 30 percent. The additional common open space is provided in exchange for the reduction in minimum lot size provided herein versus the lot sizes that were included in Phases 1 and 2 of the RPUD. The additional common open space will be activated with park facilities, as shown on the Master Development Plan for Phase 3, and the community amenity located in Phase 1 will also be expanded with additional pool facilities and parking area. Completion of the expanded community amenity in Phase 1 shall occur prior to recording the final plat for Phase 3.
- hh. Contribution to City's Affordable Housing Initiatives: The Developer has requested an increase in the overall density from approximately 1.75 upa (including conservation areas) for Phases 1 and 2 to 3.49 upa for Phase 3. The increase in density, together with the reduction in minimum lot sizes provided herein, is intended to provide housing for certain segments of the market that prefer smaller lots that require less outside maintenance. While the proposed homes in Phase 3 are intended to be sold at market rate, the Developer recognizes that the City has a

need for increased inventory of affordable housing units. In a voluntary effort to assist the City in advancing its efforts to establish additional affordable housing opportunities and as part of the City's consideration for approving the increased density in Phase 3, as provided herein, the Developer shall make a voluntary contribution of \$100,000.00 (the "Affordable Housing Contribution") to the City, or its designee, to be allocated as best deemed fit by the City Commission to advance the City's efforts to increase the available supply of affordable housing. The Affordable Housing Contribution shall be due upon the Developer's recording of a final plat for Phase 3 and before a certificate of occupancy may be issued for the first single family residence constructed in Phase 3 for transfer to a third party purchaser.

- ii. Model Homes. The Developer shall be permitted to construct up to 11 model homes, including a sales center, prior to recording the final plat for Phase 3. Certificates of occupancy shall not be issued until the final plat is recorded, but permits for the model homes may be issued and temporary certificates of occupancy for the limited purpose of using the homes as model homes may be issued once stabilized road base is provided for all roadways within Phase 3 serving the model homes and adequate utilities to provide sanitary sewer service and potable water sufficient for fire protection flows is provided.

8. Public Facilities/Land Dedication. Roads and utilities shall be dedicated to the City through the plat process illustrated in the City Land Development Code. Stormwater, open space, landscape buffers, entrance signage, natural resource areas, etc. shall be the responsibility of the Developer and/or the Homeowners Association to own, maintain or otherwise manage in accordance with applicable laws/regulations and best practices.

9. Development Permits/Fees. The Developer is responsible for obtaining, permitting, and the payment of all fees for facilities and services to ensure for the Subject Property. Any site permits shall be kept current with the respective permitting agency and shall ensure the protection of the public health, safety, and welfare of the community and the development. All impact fees are applicable and no impact fee credits shall be awarded through this Agreement; unless a cessation exists through a City moratorium that is Citywide. Proportionate fair share site improvements shall not be used in lieu of impact fees.

10. Obligations. Should the Owner or Developer fail to undertake and complete its obligations as described in this Agreement to the City's specifications, then the City shall give the Owner or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner or Developer, or its successors in interest, may, without prejudice to any other rights or remedies it may have, place liens and take enforcement action on the Subject Property. A lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said

liens or assessments. Notice to the Owner or Developer and its successors in interest shall be deemed to have been given upon the mailing of notice to the address or addresses set forth in Paragraph (23) hereof.

11. **Site Plan/Plat Approval.** the Master Development Plan as shown on Exhibit B herein shall not replace, supersede, or absolve the Owner or Developer from approvals for any preliminary plat, and/or final plat and their respective construction plans and other regulations. Where more detailed criteria for City required submittals that provide final design and engineering for the Subject Property exceed the criteria required for a Master Development Plan, the more detailed criteria apply. Any minor adjustments required to the general layout shown on the Master Development Plan required in connection with preliminary plat or site plans for the Subject Property shall be permissible.

12. **Indemnification.** The Developer shall indemnify and hold the City harmless from any and against all claims, demands, disputed, damages, costs, expenses, (to include attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal), incurred by the City as result, directly or indirectly, of the use or development of the Subject Property, except those claims or liabilities caused by or arising from the negligence or intentional acts of the City, or its employees or agents. It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use of development of the Subject Property, including but not limited to, drainage or water/sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.

13. **Compliance.** The Owner or Developer agrees that it, and their successors and assigns, will abide by the provisions of this Agreement, the City's Comprehensive Plan and the City's Code of Ordinances, including the Fire Code and other appropriate regulatory provisions. Further, all required improvements, including landscaping, shall be continuously maintained by the Owner or Developer until the project is turned over to the Homeowners Association and then by the Homeowners Association, or their successors and assigns, in accordance with the City's Code of Ordinances. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, Certificates of Occupancy or plan/plat approvals to the Subject Property, should the Owner or Developer fail to comply with the terms of this Agreement. In the event of a conflict between this Development Agreement and the City's Land Development Code, the more restrictive regulations shall govern the development of the Subject Property.

14. **Obligations for Improvements.** Any surface improvement as described and required hereunder included, but not limited to such as signalization, walls, stormwater management facilities, medians, and utilities, or any other surface improvement shall be performed, prior to the issuance of the first Certificate of Occupancy on that portion of the Subject Property that the surface improvement(s) relates or is otherwise scheduled in this Agreement. Should the Owner or Developer fail to undertake and complete its obligations as described in this Agreement and to the City's specifications, then the City shall give the Owner or Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner or Developer. If the Owner or Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner or Developer and their successors and assigns in interest, may but shall not be required to, perform

such obligations at the expense of the Owner or Developer or their successors and assigns in interest, without prejudice to any other rights or remedies the City may have under this Agreement. Further, the City is hereby authorized to immediately recover the actual and verified cost of completing the obligations required under this Agreement and any legal fees from the Owner or Developer in an action at law for damages, as well as record a lien against the Subject Property in that amount. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments.

15. Concurrency and Vested Rights. The Owner or Developer acknowledges and agrees that prior to the issuance of any development orders for the Subject Property, the Owner or Developer must have received and be in the possession of a valid certificate of capacity/concurrency management system approval consistent with the City's Land Development Code. The capacity certificate/approval verifies the availability of infrastructure and service capacity sufficient to permit the proposed development of the Subject Property without causing a reduction in the levels of service adopted in the City's Comprehensive Plan. The certificate of capacity/approval shall be effective for a term, as defined in the City's Code of Ordinances. Neither this Agreement nor the approved Master Development Plan shall create or result in a vested right or rights to develop the Subject Property, as cited in Section 86-34 of the City's Land Development Code.

16. Environmental and Tree Preservation. There are portions of the Phase 1 and Phase 2 property that are environmentally sensitive/associated with development constraints. The ecological and poor development suitability indices include wetland acreage, poorly drained soils and extensive 100 year floodplain acreage. Therefore, in 2009, the City designated this environmental/constrained area as Conservation on the City Future Land Use Map. The Conservation area accounts for 60 acres and is located in the northeastern section of the project. The Conservation area will be used for open space area with only passive uses allowed. Passive uses include natural resource protection, including tree preservation, nature trails, and wildlife habitat. However, consistent with the Comprehensive Plan up to 5% of the upland acreage of the Conservation area can be used for stormwater management purposes but wetlands or wetland buffers within the Conservation area cannot be altered for stormwater management purposes. Stormwater infrastructure within the Conservation area shall be designed to mimic natural systems and be integrated into the natural landscape. Other infrastructure including roads will be directed away from the Conservation area. Lots will not be platted into the Conservation area nor will lots be platted into the 100 year floodplain area. Internal roadways shall be designed to avoid Conservation designated land or aligned in a manner that minimizes impacts to the Conservation area. The tree preservation and open space areas for Phase 3 are depicted on the Master Development Plan for Phase 3. All wetland areas shown on the Phase 3 Master Development Plan will be preserved and will be afforded a minimum of a 25 foot buffer.

The upland area of the property provides habitat for gopher tortoises. Any gopher tortoises found on site will be relocated or mitigated pursuant to the rules and regulations of Florida Fish and Wildlife Conservation Commission.

Tree protection shall be in accordance with the City Land Development Code. Overall tree protection requirements under the City's Land Development Code will be reviewed cumulatively between Phases 1, 2 and 3. Individual phases may have less than the required amount of tree protection area as long as the cumulative total remains in compliance with the Land Development Code.

- The Owner or Developer is responsible to obtain all site related permits approval prior to any development activity on or for the Subject Property. This may involve mitigation for habitat of threatened or endangered flora and fauna or for species identified for protection (i.e. tree preservation). This Agreement does not vest or exempt the Owner or Developer from any permitting and mitigation obligations needed to develop the Subject Property.

17. Homeowners Association or Property Owners Association. An existing Homeowners Association ("HOA") for Phases 1 and 2 already exists. Prior to recording the final plat for Phase 3, the property included in Phase 3 will be annexed into the deed restrictions related to the existing Development and copies of the annexation amendment shall be furnished to the City for approval by the City Attorney prior to the recording thereof in the Public Records of Volusia County, Florida. The amended deed restrictions shall unify access to all common areas between owners within Phases 1, 2 and 3. Such recording shall take place before any other development approval application is accepted by the City including but not limited to a plat application on land included in Phase 3. The HOA shall at a minimum be responsible for maintaining the common open space, stormwater areas, landscaping, entry features, any common utility systems, such as for irrigation, site lighting, implementing architectural controls, and project signage. The City is not responsible for the enforcement of any agreements or deed restrictions entered into between property owners or occupiers of the Subject Property. If maintenance for the Subject Property is not maintained following issuance of a Certificate of Occupancy, the City has Code Enforcement services.

18. Enforcement. Both parties may seek specific performance of this Agreement and/or bring an action for damages in a court within Volusia County, Florida, if this Agreement is breached by either party. In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner or Developer shall be responsible for the payment of all of the City's costs and expenses, including attorney fees, whether or not litigation is necessary and, if necessary, both at trial and on appeal. Such costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should this Agreement require the payment of any monies to the City, the recording of this Agreement shall constitute a lien upon the Subject Property for said monies, until said are paid, in addition to such other obligations as this Agreement may impose upon the Subject Property and the Owner or Developer. Interest on unpaid overdue sums shall accrue at the rate of the lesser of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.

19. Utility Easements. For any easement not established on a plat for the Subject Property, the Owner or Developer shall provide to the City such easements and other legal documentation, in form mutually acceptable to the City Attorney and the Owner or Developer, as

the City may deem reasonably necessary or appropriate for the installation and maintenance of the utility and other services, including but not limited to, sanitary sewer, potable water, and reclaimed water services, electric, cable, gas, fire protection and telecommunications.

20. **Periodic Review.** The City reserves the right to review the Subject Property subject in relation to this Agreement periodically to determine if there has been demonstrated good faith compliance with the terms of this Agreement. If the City finds that on the basis of substantial competent evidence that there has been a failure to comply with the terms of this Agreement, the City may not issue development orders or permits until compliance with this Agreement has been established.

21. **Notices.** Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or nationally recognized courier, such as Federal Express or UPS. E-mail delivery of documents shall not replace or be in lieu of the aforementioned process. Said notice shall be sent to the following, as applicable:

OWNER'S AND DEVELOPER'S REPRESENTATIVES:

AS TO Martin:

Sherry L Martin
4012 Messina Drive
Lake Mary, FL 32746

AS TO Rapp:

Mark Rapp
880 Osteen Cemetery Rd.
Deltona, FL 32738

AS TO STARLIGHT:

Starlight Homes Florida L.L.C.
1064 Greenwood Blvd, Suite 124
Lake Mary, FL 32746
Attn: Division President and VP of Land Acquisition

With a copy to:

Ashton Woods Homes
3820 Mansell Road, Suite 400
Alpharetta, Georgia 30022
Attention: Christina Malone, Associate General Counsel

And

Cobb Cole
231 North Woodland Boulevard
DeLand, FL 32720
Attention: Mark Watts

CITY'S REPRESENTATIVES:

City Manager, City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

With copy to:

Director
Community Services, City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

Should any party identified above change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein. It shall be the Owner's or Developer obligation to identify its lender(s) to all parties in a fashion as is required for notices herein.

22. Compliance with the Law. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner or Developer of the Subject Property from the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

23. Captions. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.

24. Binding Effect. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner or Developer and their successors and assigns in interest, and the City and their successor and assigns in interest. This Agreement shall become effective upon its execution and recordation with the Public Records of Volusia County, Florida. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

25. Subsequently Enacted State or Federal Law. If either state or federal law is enacted after the effective date of this Agreement that is applicable to and precludes the parties' compliance with the terms of this Agreement, this Agreement and correlating zoning amendment

shall be modified or revoked, as is necessary, to comply with the relevant state or federal law.

26. **Severability.** If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Agreement is declared severable.

27. **Covenant Running with the Land.** This Agreement shall run with the Subject Property and inure to and be for the benefit of the parties hereto and their respective successors and assigns and any person, firm, corporation, or entity who may become the successor in interest to the Subject Property or any portion thereof.

28. **Recordation of Agreement.** The parties hereto agree that an executed original of this Agreement shall be recorded by the City, at the Developer's expense, in the Public Records of Volusia County, Florida.

29. **Applicable Law/Venue.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue of any litigation relating to this Agreement shall be in the courts of Volusia County, Florida.

30. **Time of the Essence.** Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement. The Owner or Developer shall execute this Agreement within ten (10) business days of City Commission adoption of Ordinance No. __-2022; and agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida. Failure to execute this Agreement within ten (10) business days of this ordinance adoption shall result in the City not issuing development orders or permits until execution and recordation of this Agreement has occurred.

31. **Agreements; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with the respect to the subject matter hereof; provided, however, that it is agreed that this Agreement is supplemental to the City's Comprehensive Plan and does not in any way rescind or modify any provisions of the City's Comprehensive Plan. Amendments to and waives of the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

32. **Effective Date.** The Effective Date of this Agreement shall be the day this Agreement is recorded in the Public Records of Volusia County, Florida.

[This space intentionally left blank}

IN WITNESS WHEREOF, the Owner, the Developer and the City have executed this Agreement.

Witnesses:

OWNER:
MARK RAPP

Signature of Witness # 1

Signature

Print or type name

Print or type name

Signature of Witness # 2

Print or type name

Mailing Address:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____, who is personally known to me or who has/have produced _____ as identification.

(NOTARY SEAL)

Signature of Notary

Print or type name

IN WITNESS WHEREOF, the Owner, the Developer and the City have executed this Agreement.

Witnesses:

OWNER:
SHERRY L. MARTIN

Signature of Witness # 1

Signature

Print or type name

Print or type name

Signature of Witness # 2

Print or type name

Mailing Address:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____, who is personally known to me or who has/have produced _____ as identification.

(NOTARY SEAL)

Signature of Notary

Print or type name

Witnesses:

DEVELOPER:
STARLIGHT HOMES FLORIDA L.L.C.

Signature of Witness # 1

Signature

Print or type name

Print or type name
AS:

Signature of Witness # 2

Print or type name

Mailing Address:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____, as _____ of _____, who is personally known to me or who has/have produced _____ as identification.

(NOTARY SEAL)

Signature of Notary

Print or type name

CITY OF DELTONA:

Signature

ATTEST:

Print or type name

AS:

Print or type name

Mailing Address:
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____, and _____, who are personally known to me and acknowledge executing the same freely and voluntarily under authority vested in them by the City of Deltona.

(NOTARY SEAL)

Signature of Notary

Print or type name

Approved as to form and legality for use and
Reliance by the City of Deltona, Florida

Marsha Segal-George
City Attorney