

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

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

Exhibit "A" to Ordinance No. 06-2020

DEVELOPMENT AGREEMENT

for the project known as HICKORY LAKES PRESERVE Planned Unit Development (PUD) located off of Enterprise Osteen Road, situated to the west of the intersection of Enterprise Osteen Rd. and SR 415, Deltona, FL 32764 (hereinafter referred to as the "Subject Property").

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as the "Agreement") is entered into and made as of the ____ day of _____, 20____, 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"), and OSTEEN ACQUISITIONS GROUP LLC, with a mailing address of 103 Commerce St., Suite 160, Lake Mary, FL 32746, (hereinafter referred to as the "Owner/Developer"),

W I T N E S S E T H

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 "B", 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 Agreement; and

WHEREAS, the Owner/Developer owns the Subject Property and intends to develop such property as a Residential PUD; and

WHEREAS, the Owner/Developer desires to facilitate the orderly development of the Subject Property in compliance with the laws and regulations of the City and other governmental authorities, and the Owner/Developer desires to ensure the development is compatible with other properties in the area and planned traffic patterns; and

WHEREAS, the development permitted or proposed under this Development Agreement is consistent with the City's Comprehensive Plan, concurrency management system, and all land development regulations and this Agreement does not replace, supersede, or grant variances to those regulations; 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/Developer has sought the City's approval to develop the Subject Property, through rezoning the Subject Property to a form of Planned Unit Development (PUD), Ordinance No. 06-2020 as defined under the City's Land Development Code on _____. The PUD shall consist of this Agreement as the Written Agreement of the PUD and an Exhibit "C", Master Development Plan (MDP), 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/Developer and contained herein, (hereinafter the "Master Development Plan"). Where more detailed criteria for City required submittals exceed the criteria required for an MDP, 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 owner of the Subject Property is: Osteon Acquisitions Group LLC.

3. **Title Opinion/Certification.** The Owner/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, or a certification by an abstractor or title company authorized to do business in the state of Florida, verifying marketable title to the Subject Property to be in the name of the Owner/Developer 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/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.

- A.** HICKORY LAKES PRESERVE RPUD is consistent with the Comprehensive Plan Policies specific to this Subject Property.
- B.** Permitted principal uses allowable on the Subject Property:
1. Residential – Single Family Residential not to exceed 189 units;
 2. Recreational Amenities serving HICKORY LAKES PRESERVE PUD residents, including pool cabana, dog park, and other common area amenities will be provided as shown on the MDP and as further described herein;
 3. Home Occupations, as restricted by Section 110-807 of the City's Land Development Code, as it may be amended from time to time;
 4. Signage - All signs shall be consistent with Chapter 102 of the City's Land Development Code, as it may be amended from time to time. The intent is to have two entrance signs at the Enterprise Osteen Road entrance. The entrance signs shall be a free-standing monument sign design of no more than six feet high, including an 18 inch tall base. The copy area of each sign shall feature no more than 30 square feet. The signs shall not contain any electronic messaging. Foundation landscaping will be a required element of the sign. The entrance signs shall be presented as part of a preliminary or final plat submission and approved by the Development Review Committee (DRC). An elevation of the signs, including color renditions, landscaping, and other design elements shall be part of the plat submittal to the DRC. The entrance signs and related landscaping shall be maintained in a like new condition by the Homeowners Association (HOA). The entrance signs would be allowed only on land owned, controlled, and maintained by the homeowner association (HOA); and
 5. Infrastructure and support uses for above listed uses.
- C.** Prohibited principal uses, if any:
1. Uses that are not customary residential;
Mobile/manufactured homes defined by the United States Department of Housing and Urban Development.
- D.** Proposed maximum density: 2.32 units/acre
- E.** Impervious surface ratio is not to exceed 65% of the gross square footage for the Subject Property.
- F.** Maximum lot coverage: 60%
- G.** Hickory Lakes Preserve shall be subject to the following buffer parameters:
1. A 25 foot landscape buffer, extending down the western margin of the property, shall be afforded to a larger lot development pattern located to the west. The landscape buffer will extend 1,300 feet to the south from the Enterprise Osteen Rd. corridor. The landscape buffer shall consist of existing native vegetation.

2. A six (6) foot high white vinyl fence shall be constructed along the eastern margin of the above mentioned 25 foot buffer extending along the western boundary of the property. The fence shall be maintained by the HOA.
3. A 75 foot landscape buffer will be provided along the Enterprise Osteen Rd. corridor. A portion of the 75 foot landscape buffer will include a 20 foot right of way dedication along Enterprise Osteen Rd. There are no immediate plans to widen the segment of Enterprise Osteen Rd. associated with the Hickory Lakes Preserve RPUD. If and when Enterprise Osteen Rd. is improved in a manner that requires the use of the 20 foot dedication, there is recognition the remaining buffer will be 55 feet wide. The landscape buffer shall consist of existing native vegetation.
4. A minimum fifty (50) foot landscape buffer along the southern boundary consisting of existing native vegetation shall be maintained.
5. A minimum of a 14 foot buffer will be maintained between lots 25-32, approximately described as the south 400 feet of the north 1,700 feet of the Hickory Lakes Preserve RPUD, and the western terminus of the project. This buffer shall consist of existing native vegetation. In addition, the six foot high vinyl fence associated with the 25 foot buffer extending down the western side of the north 1,300 feet of the Hickory Lakes Preserve RPUD property shall be continued along the eastern margin of the subject 14 foot buffer. The fence shall be maintained by the HOA.
6. All existing native vegetation within landscape buffers shall be maintained in a natural condition throughout the entire land development process while still allowing access and signage activities consistent with the City Land Development Code and for non-mechanized/very limited clearing to accommodate surveying and like purposes. However, based on local topographic conditions and other grading factors, within the 75 foot, 50 foot, and 25 foot landscape buffers, limited clearing/grading may occur. The 75 foot, 50 foot, and 25 foot landscape buffers may be encroached upon no more than five (5) feet in a limited and infrequent manner from within the project boundary to accommodate equipment maneuvering or other grading activity. It is not the intent for the entire or majority of the five (5) foot area of the 75 foot, 50 foot or 25 foot landscape buffers to be cleared. These encroachments shall be restored before the first building permit for a dwelling is issued for the project. Finally, this provision does not apply to wetlands, wetland buffers, or the 14 foot buffer along the western terminus of the Hickory Lakes Preserve RPUD property.

H. Minimum lot size area: 6,000 sq. ft.

I. Minimum lot width (in feet): 50 ft.

J. Minimum yard setbacks:

1. Front yard: 20 ft.
 2. Front yard for garage: 25 ft.
 3. Side yard (for buildings, pools & patios): 5 ft.
 4. Street side yard (defined as the area extending from the front yard to the rear yard between the lot line abutting a public street and the required setback): 15 ft.
 5. Rear yard: 10 ft.
 - (a) Accessory structure setback: 5 ft. from rear yard only
 - (b) Pool Screen setback: 5 ft. from rear yard only
 6. Principal structure (not accessory structures) Projections of sills, belt courses, cornices, buttresses, ornamental features, chimneys, eaves, and other similar features may project no more than 25 inches into required yards.
- K.** Maximum building height (in feet): 35 ft.
- L.** Minimum floor area (in square feet): 1,200 square feet.
- M.** Accessory Structures shall meet the requirements provided in Section 110-827 (Accessory uses and Structures) of the City's Land Development Code as it may be amended from time to time.
- N.** Model Homes. The number of model homes shall be limited to five (5). Model home development shall be consistent with Sec. 110-819(a) of the City of Deltona Land Development Code, as it may be amended from time to time. The developer may apply for building permits for model homes contingent on the following:
- 1) A preliminary plat or final plat is approved for the project where the model homes are planned;
 - 2) Roadways are created and stabilized as to allow safe passage by applicable personnel including workers, inspectors, emergency responders, etc.;
 - 3) All stormwater infrastructure needed to support the model homes is installed/constructed to manage drainage;
 - 4) Fire protection water supply and minimum required fire flows shall be made available in accordance with Section 96-45 of the City of Deltona Land Development Code and Chapter 18 of NFPA1-2015 Edition;
 - 5) A certificate of occupancy (CO) shall not be granted for a model home until the infrastructure has been completed and accepted by the City of Deltona and the plat is recorded;
 - 6) Additional conditions may be required by City staff to address specific site concerns.

- O. Mobile Offices.** Mobile offices shall comply with applicable provisions of Sec. 110-819(b) of the City Land Development Code as it may be amended from time to time.
- P. Minimum parking standards:** All lots shall provide a minimum of 25 feet from the lot line to the face of the garage door to ensure that sufficient depth is provided to allow parking in the driveway without obstructing public sidewalks. Each dwelling shall be constructed with a minimum of a two-car garage and each driveway accessing a garage shall have a minimum width of 18 feet. Only operable vehicles having less than or equal to a 10,000 pound GVWR shall be parked in a driveway. No boat, trailer, recreational vehicle, or other equipment except as otherwise specified, shall be parked/stored in a driveway. In addition, designated visitor or overflow parking areas shall be separately created and depicted on the MDP. The number of overflow parking places provided shall be factored at a ratio of one (1) space per ten (10) dwelling units; fractional spaces will be rounded to the nearest whole number. The overflow parking space areas shall be strategically located throughout the development, as shown on the MDP. However, overflow parking ratio requirements are in addition to parking required/needed to accommodate amenities or mailboxes. In addition, maintenance of the parking areas, including striping, shall be the responsibility of the Homeowners Association (HOA). Landscaping, design, and other elements of the overflow parking shall be addressed during the subdivision review process. Finally, no unpaved area shall be used to park, store or otherwise accommodate any vehicle, car, truck, trailer, boat, recreational vehicle, or other equipment. Parking shall be consistent with all other City regulations (Sec. 110-828 and Sec. 110-829), which do not conflict with the parking requirements associated with this Development Agreement.
- Q. Minimum lighting standards** per the City's Land Development Code shall be included on a separate Illumination Plan to be provided at the time of site plan submittal. In addition, streetlights are required and there will be a streetlight assessment district established. In no cases shall the HOA, residents, or any other entity cause streetlights to be removed, rendered inoperable, or otherwise not illuminate. Streetlighting shall be maintained by the HOA or a special assessment district established by the City to fund and maintain the streetlighting. Furthermore, the streetlight design shall be consistent with International Dark Sky standards.
- R. Architectural controls and development** on the Subject Property shall follow a common architectural theme as listed in this Agreement by harmoniously coordinating the general appearance of all buildings and accessory structures. All controls and variations shall be defined by the Homeowner's Association, as defined within this Agreement.
- a. All structures shall complement one another and shall convey a sense of quality and permanence. Nothing contained herein shall require, nor preclude, a uniform architectural style or design

aesthetic within the single-family residential neighborhood. This shall permit, but not require, a diversification of architectural styles or designs available to homebuilders within the single-family residential neighborhood, so long as such styles are complementary and form a cohesive and aesthetically pleasing development.

- b. Exterior walls facing public rights-of-way shall be constructed of finished materials such as stucco, natural brick or stone, finished concrete, wood, or concrete fiberboard or other similar materials on all sides.
 - c. Utility boxes, air conditioning condensers, pool pumps, and similar mechanicals/apparatuses shall be screened from the public rights-of-way by architectural screening consistent with the structure or landscaping of sufficient density and maturity at planting to provide opaque screening. The homeowner's association established for the project shall be empowered to enforce this requirement and impose fines for failure to provide the required screening. All controls and variations shall be defined by a HOA. The City shall not be responsible for implementing or ensuring the implementation of controls by the applicable HOA.
- S. Utility provision and dedication: The Owner/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 including water, wastewater, and reclaimed water are to be designed, permitted, and constructed to City standards and specifications and dedicated to the City upon final inspection, clearance, and acceptance by the City. In addition, the provision of utilities shall be consistent with any applicable pioneer agreement or other arrangements with the City.
- T. Stormwater and environmental: A master stormwater system shall be owned and maintained by an established HOA in private ownership and shall not be dedicated to or become the responsibility of the City of Deltona. The City shall be granted a maintenance easement over the stormwater system to address emergency maintenance, if needed, but shall have no obligation to maintain. All environmental permitting, mitigation, and/or soil and erosion control for the property shall conform to all federal, state, and local permits/requirements, shall be the sole responsibility of the HOA, 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. A portion of the property is located within the 100-year floodplain. The Hickory Lakes Preserve RPUD lot layout and design shall create a condition where each lot is either platted or otherwise located out of the 100-year floodplain or if a lot does contain 100-year floodplain area, there shall be ample room designed to support a

principal structure, accessory structure(s) and related appurtenant improvements (driveways, etc.) outside of the 100-year floodplain. Lot design shall also factor in all setbacks so each lot can be comfortably used/developed. In addition, no principal or accessory structure not defined as a fence shall be located within the 100-year floodplain. The floodplain extents as depicted on the MDP and otherwise relied upon to direct the design of the project to minimize floodplain impacts represent best available data based on sound research and appropriate engineering science. The final establishment of a base floodplain elevation of the property will still need to be determined and approved by the Federal Emergency Management Agency (FEMA) through a Letter of Map Revision (LOMR) process. FEMA approval of the LOMR may result in changes to the floodplain. Depending on the final floodplain extent, the requirements of this section meant to direct development and investment away from the floodplain shall continue to be imposed. Therefore, there may be a need to further redesign the project with the possibly there could be a reduction of net density. This provision will be implemented through the City plat process. Finally, the LOMR process cannot be used to increase density beyond the maximum number of units approved by the City Commission as part of this RPUD rezoning request.

- U. Transportation, site access, and traffic devices: The Owner/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 and the City shall determine the appropriate level of service per the City's Comprehensive Plan and current traffic counts. Left and right turn lanes along Enterprise Osteen Road to service the entrance to the Hickory Lakes Preserve RPUD shall be constructed. The design of the turn lanes shall be determined by Volusia County. According to FDOT, a signal is warranted at the intersection of Enterprise Osteen Rd. and SR 415. Signalization of the intersection is needed for safety purposes. The intersection is off-set with the intersection of Railroad Ave. and SR 415, and the curvature of SR 415 associated with the intersection reduces sight line distances. Finally, SR 415 is a high speed roadway with a 45 mph posted speed limit. Therefore, the project will add over 1,000 trips to the Enterprise Osteen Rd./SR 415 intersection, and the Owner/Developer shall be required to install signalization at the intersection of Enterprise Osteen Road and SR 415. The signalization must be installed and activated before the first building permit is submitted for an owner-occupied single family residence excluding the five model homes. The signalization is not a transportation capacity project and therefore not eligible for impact fee credits. Financing of the signal is the responsibility of the owner/developer and subject to partnerships and arrangements made with other development interests, FDOT, the County, etc. To facilitate interconnectivity between the Hickory Lakes Preserve RPUD and

other lands that may one day be developed, there shall be a roadway and pedestrian stub out platted and constructed to land to the west. The northern extent of the stub out right of way shall terminate at the approximate southern extent of the NE ¼ of Section 14 Township 19S Range 31E. To ensure the interconnection is available for future use and the purpose and intent of the stub out is clearly known by all into the future the following is applicable:

1. The MDP approved as part of this RPUD shall depict the interconnection/stub-out to the property to the west as described above;
 2. The plat shall depict the interconnection/stub-out and label such as “future pedestrian and vehicular transportation connection”;
 3. The interconnection shall be physically constructed to the property boundary in a manner that will allow seamless connection to future project roadway/pedestrian infrastructure;
 4. The project covenants and restrictions and homeowner association documents shall make mention of the interconnection in a manner that communicates to the residents/property owners of the Hickory Lakes Preserve neighborhood the purpose and intent of the interconnection.
- V. Development Phases: The Subject Property may be developed at one time or in no more than two phases. If developed in phases, each phase must comply with and satisfy the terms and conditions provided for herein.
- W. Common Open Space: No less than 25% of the RPUD will be considered common open space. It shall be dedicated to and maintained by a HOA. Maintenance guarantees shall be included in the Development Agreement. The common open space area shall be open for all residents for recreation or other leisure uses. The amenity center shall be subject to the City site plan review process as per Chapter 75 of the City’s Land Development Code and will include, but not be limited to, a review of parking, stormwater, landscaping, etc. The City is under no obligation to build, construct, or maintain these amenities. Finally, the construction of these amenities will be subject to all applicable permitting requirements. Visitor or overflow parking shall be provided on common area tracts as per Section P. All Common Open Space shall be owned and maintained by the HOA in private ownership and shall not be dedicated to or become the responsibility of the City of Deltona.
- X. Amenity Center: The developer shall construct an amenity center to be owned and maintained by the HOA. The amenity center will be open to only HOA members and their guests. Active recreation within Hickory Lakes Preserve will be provided on Tract C and will contain a pool and cabana to accommodate the residents of Hickory Lakes Preserve. Tract C and other common area tracts shown on the MDP may include other amenities such as pavilions, gazebos, shade trees, benches, tot lots, playfields, dog park, paved or mulched walkways. In the event a dock is placed within the recreation tract located on Little Lake, the use of motorized boats and jet skis shall be prohibited. Amenity Center design and building shall be processed through

the City site plan review consistent with the Land Development Code. Off street parking to support amenities shall be required and will be subject to the "Park" standards within Table 110-9 of the City Land Development Code. Alternatively, and since an amenity for a specific project is not part of Table 110-9, parking requirements may be modified as per the requirements of Section 110-828(f).

- Y. Centralized Mail Delivery:** A centralized mail kiosks will be provided as shown on Tracts B and C of the MDP or as otherwise located during subdivision review and approval by the City. These facilities, including parking, will be maintained by the HOA in accordance with USPS requirements as applicable.

7. Public Facilities/Land Dedication. Facilities or tracts that either are or shall become public facilities/tracts that will serve the development and/or are on the Subject Property are, as follows:

- A. All rights of way shall be dedicated to the public pending review and acceptance by the City.
- B. All lift stations shall be dedicated to the public pending review and acceptance by the City.
- C. No additional facilities or lands are to be dedicated to the public.

8. Development Permits/Fees. The Owner/Developer is responsible for obtaining, permitting, and the payment of all fees for facilities and services to ensure capacity is reserved 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 unless a cessation exists through a City moratorium that is Citywide. Proportionate fair share site improvements shall not be used in lieu of City impact fees except in accordance with Chapter 94 of the City's Code of Ordinances and Florida Statutes.

9. Obligations. Should the Owner/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/Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner/Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/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/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 (20) hereof.

10. Site Plan/Plat Approval. Exhibit "C", the Master Development Plan, is the Preliminary Plan of the PUD and this Agreement. The Master Development Plan shall

not replace, supersede, or absolve the Owner/Developer from approvals for any site plan, preliminary plat, and/or final plat and their respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for an MDP, the more detailed criteria applies.

11. **Indemnification.** The Owner/Developer shall indemnify and hold the City harmless from any and against all claims, demands, disputes, 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 a 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 or 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.

12. **Compliance.** The Owner/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 but not limited to, the site plan regulations of the City as amended from time to time, which are incorporated herein by reference and such subsequent amendments hereto as may be applicable. Further, all required improvements, including landscaping, shall be continuously maintained by the Owner/Developer, 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 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 terms of this Development Agreement shall govern the development of the Subject Property.

13. **Obligations for Improvements.** Any surface improvement as described and required hereunder including, but not limited to such as signalization, walls, stormwater management facilities, medians, and utilities, or any other surface improvement shall be installed, guaranteed or otherwise performed, prior to the issuance of the first Certificate of Occupancy for that phase portion of the development on the Subject Property that the surface improvement(s) relates to, or as otherwise provided in this Agreement or a separate agreement between the City and Owner/Developer regarding the installation of such improvements. Should the Owner/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/Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation at the sole expense of the Owner/Developer. If the Owner/Developer fails to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner/Developer and their successors and assigns in interest, may but shall not be required to, perform such obligations at the expense of the Owner/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 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. Notice to the Owner/Developer and their successors and assigns in interest shall be deemed to have been given upon the mailing of notice as provided in paragraph (20) of this Agreement.

14. Concurrency and Vested Rights. The Owner/Developer acknowledges and agrees that prior to the issuance of any development orders for the Property, the Owner/Developer must have received and be in the possession of a valid unexpired 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.

15. Environmental and Tree Preservation. The Owner/Developer is responsible to obtain all site related permits and approval prior to any development activity on or for the Subject Property. This may involve mitigation for the habitat of threatened or endangered flora and fauna or for species identified by a biological survey submitted as part of the subdivision review process. This Agreement does not vest or exempt the Owner/Developer from any permitting and mitigation obligations needed to develop a Subject Property. In addition, tree replacement and/or wetland mitigation fees, as applicable, shall be paid in full upon issuance of a preliminary plat or, if the project is not phased, a final plat development order. The property contains gopher tortoise habitats. Therefore, the site will need to be surveyed and, if deemed necessary, tortoises relocated. Any relocation of tortoises needs to be consistent with applicable permitting agencies. A minimum of a 25 foot upland buffer shall be maintained adjacent to all wetland areas. Some of the lots are associated with wetlands, or wetland buffers. The City goal of this Section is to ensure these resources will remain viable into the future. Therefore, the following requirements are applicable:

A. Activities occurring on private individual lots shall be limited to the following:

1. No lot shall have riparian rights along or to Little Lake. Therefore, individual private docks or access to water are prohibited.
2. No part of a wetland or wetland buffer may be altered.
3. The establishment of beaches or similar cleared areas is prohibited.
4. Wetlands and wetland buffers shall not be fenced by lot owners. Fences shall be designed to avoid wetland and wetland buffers.

5. Building permit site plans/surveys shall include the location of wetlands to ensure consistency with the environmental regulations outlined within this Section.
 6. Off highway vehicle use within wetlands or wetland buffers or open space tracts shall be prohibited.
- B. Community access to water shall be limited to the following:
1. A dock shall consist of no more than 1,000 square feet of decking extending waterward of OHW of Little Lake.
 2. Boardwalk widths shall be minimized while still providing appropriate accessibility.
 3. At grade walkways of a minimum width to ensure accessibility are allowed for pedestrian use only.
 4. No beaches or similar cleared areas shall be established.
 5. Wetland alteration permits, as applicable, to support improvements shall be the responsibility of the Owner/Developer or HOA.

16. **Homeowners Association.** The charter and by-laws of the HOA for the Subject Property and any deed restrictions related thereto 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. Such recording shall take place before a Certificate of Occupancy is issued for the first development project on land covered by this Agreement. The HOA shall, at a minimum, be responsible for maintaining the common open space, any common utility systems, such as for irrigation and site lighting, and project signage. The Owner/Developer shall be responsible for establishing the HOA and recording said information in the Public Records of Volusia County, Florida. 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. The HOA shall adhere to all regulations, including this Development Agreement, environmental requirements, etc.

17. **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/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/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.

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

19. **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.

20. **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/DEVELOPER'S REPRESENTATIVES:

Osteen Acquisitions Group, LLC
c/o Sadique Jaffer, Managing Member
103 Commerce Street, Ste. 160
Lake Mary, FL 32746

Mark A. Watts, Esq.
Cobb Cole, P.A.
231 N. Woodland Blvd.
DeLand, FL 32720

CITY'S REPRESENTATIVES:

John Peters III, Acting City Manager
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

With copy to:

Ron A. Paradise, Director
Planning & Development 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/Developer obligation to identify its lender(s) to all parties in a fashion, as is required for notices herein.

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

22. **Captions.** The captions used herein are for convenience only and shall

not be relied upon in construing this Agreement.

23. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/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.

24. **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.

25. **Severability.** If any part of this Development Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Development 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 Development Agreement is declared severable.

26. **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.

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

28. **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. The Venue of any litigation relating to this Agreement shall be in the courts of Volusia County, Florida.

29. **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/Developer shall execute this Agreement within ten (10) business days of City Commission adoption of Ordinance No. 06-2020; 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 may result in the City not issuing development orders or permits until the execution and recordation of this Agreement has occurred.

30. **Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with 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 waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

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

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

[Remainder of page intentionally left blank]

OWNER/DEVELOPER:
OSTEEN ACQUISITIONS GROUP LLC

By: Sadique Jaffer

Signature of Witness # 1

Print or type name

Signature of Witness # 2

Print or type name

Signature

Print or type name

AS:

Signature

Print or type name

ATTEST:

Signature

Print or type Name

As:

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 _____, 2021, by _____, of OSTEEN ACQUISITION GROUP LLC, who is/are personally known to me or who has/have produced _____ as identification and who did not (did) take an oath.

Signature of Notary

Print or type name

(NOTARY SEAL)

CITY OF DELTONA:

By: _____

Date: _____

ATTEST:

Date: _____

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 _____, 2021, 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