

DEVELOPMENT AGREEMENT

(Economic Development Grant)

This DEVELOPMENT AGREEMENT (this "Agreement") made as of this ____ day of _____, 20__, between GREEN COVE SPRINGS, a Florida municipal corporation, (the "City,") and _____, (the "Developer")

ARTICLE 1: PRELIMINARY STATEMENTS

1.1. The Project. The Developer has submitted a proposal (the "Proposal") to construct and develop certain improvements, which are more particularly described on Composite Exhibit "A" attached hereto, and hereinafter referred to as the "Improvements" on that certain parcel of land located in Green Cove Springs, Florida, (the "Project Parcel"), and more particularly described on Composite Exhibit "B" attached hereto. The Project Parcel and the Improvements are collectively referred to herein as the "Project." The Proposal includes, among other things, Plans and Drawings describing the Project. The Project, as a whole, includes _____.

1.2. Public Interest. The City has received the proposal for the "Project" as set forth in this Agreement, has negotiated this Agreement, and based upon the contents of this Agreement, has determined this Agreement and the Use contemplated herein to be in the public interest and in accord with applicable Florida Statutes and the City's Home Rule powers. The City, taking into account and giving consideration to the long-term benefits to be achieved by this Agreement, has determined that the public actions and incentives contemplated in this Agreement, the construction by the Developer of the Project, and job creation and maintenance by the Developer, are in the best interests of Green Cove Springs, Florida, and that they collectively serve a public purpose.

1.3. Qualified Developer. The City finds the Developer to be qualified to complete the Project in accord with this Agreement.

1.4. City Determination. The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- a. increase jobs in Green Cove Springs;
- b. increase capital investment in Green Cove Springs; and
- c. increase major economic development projects in Green Cove Springs; and
- d. create ____ new Permanent Jobs in Green Cove Springs during the term of this Agreement; and
- e. generate in excess of an estimated \$_____ in new ad valorem real

estate taxes for the City over the term of this Agreement; and

- f. meet the overall community goal of business development and growth in Green Cove Springs; and
- g. promote the health, safety, morals and welfare of the residents of the City.

1.5. Small, Minority, and Women-Owned Businesses. It is important to the economic health of the community that whenever a developer receives incentives for construction, that such developer agrees to provide contracting opportunities to the maximum extent possible to small, minority, and women-owned businesses in Green Cove Springs.

ARTICLE 2: DEFINITIONS

As used in this Agreement, the following terms shall have the meaning set opposite each:

2.1. City – City of Green Cove Springs, Florida, a municipal corporation in the State of Florida, whose City Council is charged with the duty of governing the City.

2.2. Improvements - Any buildings, structures and other improvements shown on the Plans and the Drawings, or either of them, constructed or to be constructed on or contiguous to the Project Parcel substantially in accord with the Plans, this Agreement and the Drawings.

2.3. Person - Any individual, corporation, firm, partnership, trust, association, joint venture or other entity of any nature.

2.4. Secured Lender - The owner and holder of a mortgage upon the Project Parcel or the Improvements, or both, which mortgage secures indebtedness incurred solely for the acquisition, construction and development of the Project Parcel and the Improvements, or any permanent refinancing thereof.

2.5. Substantial Completion - The date when construction of any Phase of the Improvements is sufficiently complete, in the opinion of the architect or engineer, employed by the Developer, for such Improvements, so that the Improvements may be used for the purposes for which they are intended.

2.6. Use - The Improvements' primary use will be the development of a _____

_____.

2.7. Party or Parties - Either the Developer, or the City, or both of them as the context of the language of this Agreement may dictate.

2.8. Effective Date - The date on which this Agreement is signed by both Parties and a deed vesting title to the Project Parcel is recorded in the public records of Clay County, Florida, and a copy thereof delivered to the City or such other date as the parties may agree upon.

2.9 Term. Unless sooner terminated by either party as provided for in this Agreement, the term of this Agreement shall commence on the Effective Date, and continue throughout the construction of the Improvements, and terminate on the date the City makes the final annual Installment due, the timing of which is more particularly described in Section 4.2 of Article 4.

2.10. Capitalized terms not otherwise defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

2.11 County - Clay County, Florida, a political subdivision of the State of Florida, whose Board of County Commissioners is charged with the duty of governing the County.

ARTICLE 3: APPROVALS; PERFORMANCE SCHEDULES

3.1. Plans. The Preliminary Site Plan for the Improvements, prepared by the Developer, a copy of which is incorporated in Composite Exhibit "A" attached hereto, and referred to as the "Plans" has been submitted by the Developer to the City.

3.2. Zoning/Land Use. The Project Parcel is located at: _____. The future land use classification for the Project Parcel is: _____. The zoning for the Project Parcel is: _____. Developer has satisfied itself that the future land use and zoning is consistent with its planned development on the Parcel.

3.3. Governmental Approvals. The City agrees to use all reasonable efforts to assist Developer in obtaining all approvals, permits, subdivisions, variances or waivers necessary under applicable law.

3.4. Performance Schedule. The Developer and the City have jointly prepared a Performance Schedule setting forth anticipated target dates and deadline dates for the performance of each Party's respective obligations under this Agreement (herein called the "Performance Schedule"). The Performance Schedule has been approved by the City and the Developer and is attached hereto as Exhibit "C". The dates and obligations associated with the Performance Schedule are not intended to add or subtract from any of the obligations of the Parties contained in this Development Agreement or to add or subtract from any of the obligations of the Developer.

3.5. Approval of Agreement. By the execution hereof, the Parties certify as follows:

(a) Developer certifies that (i) the execution and delivery of this Agreement have been approved by all persons or entities whose approval is required under the terms of the governing documents creating the particular Developer entity; (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the same is binding upon the Developer entity and enforceable against it in accord with its terms; (iii) the Persons executing this Agreement on behalf of the Developer entity are

duly authorized and fully empowered to execute the same for and on behalf of the Developer entity; and (iv) the Developer is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida.

(b) The City certifies that the execution and delivery hereof has been approved at a duly convened meeting of the City Council and the same is binding upon the City and enforceable against it in accord with its terms.

ARTICLE 4: PROJECT GRANT

4.1. Payment. The City shall make an economic development grant to or for the benefit of the Developer (the "Project Grant"), payable in ____ annual installments. Each of the annual installments shall be referred to individually as an "Installment" and/or collectively, as the "Installments" and/or the "Project Grant". Commencing with the ad valorem tax liability for the tax roll year ____, the Project Grant shall be paid by the City to the Developer in cash or by warrant, in annual Installments determined in accord with Section 4.2, no earlier than 120 nor later than 150 days following payment of the immediately preceding year's City ad valorem tax liability to the City by the Developer. In order that the City may properly administer the amount of an Installment, Developer shall deliver to the City the Notice of Proposed Property Taxes (as described in Section 200.069, Florida Statutes; the "Notice") for the Project required to be sent by the Clay County Property Appraiser to Developer (pursuant to Section 200.069, Florida Statutes,) commencing with the Notice which is sent regarding the tax roll year _____. Developer, no later than September 1 of the applicable year under this Agreement, shall deliver the Notice from the County Property Appraiser's office to the City. Following receipt of the tax payment information referred to in this Section 4.1 by the City, the City shall determine the amount of the annual Installment and notify the Developer in writing of the amount (the "Grant Amount Calculation"). The Grant Amount Calculation will not reflect the application of any prepayment discount available to the Developer. If the Developer does not give written notice to the City of objection to the City's Grant Amount Calculation within thirty (30) days after its receipt thereof, the Developer shall be deemed to be in agreement with the City's Grant Amount Calculation. No Installment payment shall be made in any year during the term of this Agreement unless and until the City ad valorem tax liability, commencing with that for the year ____ and continuing throughout the term of this Agreement, is first paid to Clay County (on behalf of the City) in a timely manner. If the City ad valorem tax liability for the Project becomes delinquent for any given tax roll year then the annual Installment for the corresponding tax roll year shall be forfeited by Developer. In addition, the payment of every annual Installment is contingent upon and subject to the timely receipt by the County (on behalf of the City) of the Report described in Section 5.2 of this Agreement. Failure to deliver the above referenced Notice to the City in a timely manner MAY result in a delay of approximately one year in the payment of the Installment for the particular year. In order that the City may pay the annual installment in accord with the terms of this Agreement, the Parties hereby acknowledge that the amount of the installment must be budgeted and appropriated by the City no later than October 1 of the previous calendar year and the Parties hereby agree to use their best efforts to ensure that all contingencies to such appropriation within their respective controls shall be

fulfilled in order to meet such appropriation deadline.

4.1.a. Subject to the provisions of Section 4.4 of this Agreement, if the Notice is received by the City by September 1 of the applicable year, and the Agreement is not otherwise in default or terminated, then the City agrees to include the proper appropriation in the immediate next year's budget which will go into effect approximately thirty days' later on October 1. Developer acknowledges that if the September 1 deadline is missed, then the grant payment for that tax year may be delayed for a year until the next budget year.

4.2. Determination of Annual Installments. The amount of each annual Installment of the Project Grant shall be: _____

4.3 Property Value Adjustment. In the event there is a reduction in the Property Appraiser's determination of assessed value of the Project and/or Project Parcel by the Clay County Value Adjustment Board, special master, or a court of competent jurisdiction, for any of the tax roll years applicable to this Agreement and the reduction results in a rebate to the Developer or its assigns of real property taxes paid for the applicable tax roll year, then the annual Installment associated with that tax roll year shall be adjusted downward in accordance with such reduction in assessed value and Developer or its assigns shall promptly pay to the City the difference between the amount of the annual Installment actually paid by the City and the adjusted annual Installment following the reduction in value. Payment shall be made to the City within (30) thirty days of receipt of any rebate by the Developer or its assigns. In the event payment due under this section 4.3 is not made within sixty (60) days of receipt of any rebate, then the City shall have the option to deduct the amount due from the next ensuing grant payment and the amount due shall bear interest at the rate of (18) eighteen percent, per annum until paid.

4.4. **FURTHER DISCLAIMER.** NEITHER THE PROJECT GRANT NOR ANY INSTALLMENT SHALL BE DEEMED TO CONSTITUTE A DEBT, LIABILITY, OR OBLIGATION OF THE CITY OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION, OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE CITY OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF. THE CITY SHALL NOT BE OBLIGATED TO PAY THE PROJECT GRANT OR ANY INSTALLMENT THEREOF EXCEPT FROM FUNDS WHICH MAY BE APPROPRIATED FOR THAT PURPOSE IN ANY APPLICABLE BUDGET. THE DEVELOPER OR ANY PERSON, FIRM OR ENTITY CLAIMING BY, THROUGH OR UNDER THE DEVELOPER OR ANY OTHER PERSON WHOMSOEVER, SHALL NEVER HAVE ANY RIGHT, DIRECTLY OR INDIRECTLY, TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PROJECT GRANT OR ANY INSTALLMENT THEREOF. ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE MAXIMUM PAYMENT THAT THE

CITY IS OBLIGATED TO MAKE UNDER THIS AGREEMENT FROM THE BUDGET OF ANY FISCAL YEAR SHALL NOT EXCEED THE APPROPRIATION FOR SAID FISCAL YEAR.

4.5. Caveat regarding timing of substantial completion date. The Developer anticipates that its Project will be substantially complete by: _____. As a result, the first Project Grant is scheduled to be paid in ____ for the preceeding Tax Year. The timing of the payments reflected in Article 4 of this Agreement reflects that schedule. If the Developer does not achieve substantial completion by January 1, _____ which results in the Improvements to the Project Parcel not being added to the Tax Roll, then, notwithstanding anything to the contrary in sections 3.4, 4.1, 4.1a, 4.2, 5.1, 5.2, 5.4 and Exhibit "C" of this Agreement, the Developer shall not become eligible for the first Project Grant until ____ for the ____ Tax Year, assuming substantial completion occurs by January 1, _____, and the timing of all obligations of both parties in this Agreement shall be moved forward one year. Whether or not the Developer meets its employment obligations under Article 5 will have no effect on the condition precedent for payment of the first year's grant which is the addition of Improvements to the Tax Roll for either _____ or _____, as applicable. If the Project is not substantially complete by January 1, _____, then this Agreement will terminate.

ARTICLE 5: EMPLOYMENT CREATION AND RETENTION ACTIVITIES

5.1. Jobs. Developer estimates that the Project will result in the creation of approximately _____ new Permanent Jobs in the City by _____, _____. For the purposes of this Agreement, "Permanent Job" means any filled full-time job position offered by the Developer, new to the City and located at the Project Site, that is reasonably expected to exist for a period of more than one (1) year from the date such position is created and first becomes available to a prospective employee (as distinguished from a job position of a known, short-term duration, such as a construction job, expected to exist only for one (1) year or less) and which position is continuously filled by the Developer except for customary periods to advertise, interview and hire new employees. For the purposes of this Agreement, the average pay for the _____ Permanent Jobs shall be no less than one hundred _____ percent (____%) above the average wage for Clay County, using the State of Florida's QTI and QDC Tax Refund Programs Annual Average Wage Data, as that data may be adjusted from year to year. "Employee" means any person employed by the Developer to fill a Permanent Job made available by the Developer at the Project.

5.2. Periodic Reports. Developer shall deliver an annual report (the "Report") to the City no later than January 31, _____, and continuing with an additional Report on January 31st of each year thereafter through January 31, _____. The Report shall certify to the City as of December 31 of the immediately preceding year, a brief description and the number of Permanent Jobs in existence and the status of any job creation or retention activities undertaken in accord with this Agreement. The report shall be verified by the Developer who shall affirm that the information contained in the report is true and accurate. Payment of the Installment shall be contingent until such time as the City receives the Report corresponding to the relevant Installment, containing a description of the data set forth in the immediately preceding sentence and conforming to the substantive job creation requirements set forth in Section 5.1 and 5.4 of

this Agreement.

5.3. Satisfaction of Job Criteria. When all the Permanent Jobs have been created and filled, Developer will give notice to the City and will make available reasonable documentation evidencing job creation and employment for the review and inspection by the City at the Project at reasonable times and on reasonable notice.

5.4. Failure to Create and Maintain Jobs. If the Developer creates and maintains at least ____ new Permanent Jobs at the Project by December 31, ____, and continuously maintains at least ____ Permanent Jobs throughout the term of this Agreement, then the formula used in Article 4 to compute the amount of the Annual Project Grant shall not be altered. In the event the number of new Permanent Jobs is not at least ____ at the Project Site by December 31, ____, or if the number of new Permanent Jobs, as of December 31 in any given year during the term of this Agreement, drops below ____, then the City, in its sole discretion, may declare a default, which default, if left uncured pursuant to Section 7.1(c), will subject this Agreement to immediate termination by the City following expiration of the cure period pursuant to Section 7.1(c).

5.5. Caveat Regarding Timing of Establishment of New Jobs. The Developer anticipates that its Project will be substantially complete by January 1, ____ and that it will have established the required ____ new Permanent Jobs at the Project by December 31, _____. As a result, the first Project Grant is scheduled to be paid in ____ for the ____ Tax Year. The timing of the payments reflected in Article 4 of this Agreement reflects that schedule. If the Developer does not establish the required ____ new Permanent Jobs until December 31, ____, then, notwithstanding anything to the contrary in sections 3.4, 4.1, 4.1a, 4.2, 5.1, 5.2, 5.4 and Exhibit "C" of this Agreement, the Developer shall become eligible for the first Project Grant for the ____ Tax Year, and the timing of all obligations of both parties in this Agreement shall be moved forward one year. The Developer must then maintain its employment requirements under this Agreement to remain eligible for the next ____ Project Grants authorized under this Agreement. If the Developer does not establish the required ____ Permanent Jobs by December 31, ____, then this Agreement shall terminate. Other than the specific extension of time until December 31, ____ to initially establish the ____ new Permanent Jobs provided under this subarticle, the provisions of subarticle 5.4 relating to the Developer's failure to maintain said Permanent Jobs during any given year during the term of this Agreement shall be applicable.

ARTICLE 6: THE DEVELOPMENT

6.1. Scope of Development.

(a) The Developer shall construct and develop all Improvements which the Developer is obligated to construct and develop under this Agreement and in accord with any requirements therefore in this Agreement and the Performance Schedule.

(b) All Improvements shall be constructed by the Developer pursuant to a building permit or permits, if applicable, issued by the City covering each such

Improvement.

6.2. Cost of Development/Documentation. Except as may be otherwise set forth in this Agreement, the Developer shall pay the cost of constructing and developing the Improvements at no cost to the City. For the purposes of this Agreement, the term “Capital Investment” shall mean funds used by the Developer or paid to third parties by the Developer in connection with the acquisition, planning, permitting, investigation, demolition, repair, renovation, construction or remediation of the Project Parcel and/or the Improvements or any portion(s) thereof. The term “Capital Investment” shall also include the fair market value of services provided by subcontractors, suppliers, and the Developer’s internal resources, including, without limitation, contractor’s profit and overhead normally associated with and charged to a property owner in connection with construction activities of a similar kind and quality as the Project when such construction activities are performed for owners not engaged in the commercial construction industry. Developer shall within sixty (60) days after Substantial Completion of the Project, furnish to the County written documentation to evidence the actual Capital Investment both as to the value of the acreage and the physical improvements thereon.

6.3. Approval by Other Governmental Agencies. The Project shall also be approved by such other governmental agencies whether state, local or federal, as have jurisdiction and require approval of them.

6.4. Effect of Secured Lender. The Developer may collaterally assign its rights hereunder to a Secured Lender, upon giving written notice thereof to the City. In the event of the foreclosure of any mortgage or security agreement secured by the Project or any part of it or in the event of a deed in lieu of foreclosure, then the City shall have the right in its sole discretion, to terminate this Agreement immediately upon notice of same. Developer shall immediately notify the City in the event of the initiation of a foreclosure action (which shall include any written notice of an event of default by the Developer) against the Project or in the event of a deed in lieu of foreclosure.

6.5. Casualty Loss. In the event the Project and Improvements are damaged or destroyed completely or partially by fire, flood, natural disaster or intentional or negligent act of any person and as a result, the Project and Improvements are rendered unusable by the Developer, in whole or in part, then Developer agrees that it shall take all necessary steps to rebuild or repair the Project and Improvements. In the event the Developer has not initiated repair and/or rebuilding activities within (30) thirty days of the act or event causing the damage, then the City may in its sole discretion, terminate this Agreement.

ARTICLE 7: **DEFAULTS, REMEDIES, TERMINATION AND FURTHER RIGHTS**

7.1. Developer Default.

(a) In the event the Developer materially defaults in the performance of any material obligation imposed upon it under this Agreement or if the Developer fails to achieve Substantial Completion of any material Improvement, or otherwise fails to fulfill any other material obligation under this Agreement within the time established therefor by the Performance Schedule or otherwise in this Agreement, the City shall, as soon as reasonably practicable, deliver written notice of such failure or default to the Developer. The Developer shall commence to cure such default within forty-five (45) days after delivery of such notice of default from the City and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice as to any default which by its nature is capable of being cured within seventy-five (75) days (or within a reasonable period of time in no event to exceed one hundred twenty (120) days as to any default which by its nature is not capable of being cured within seventy-five (75) days). If the Developer does not so commence to cure and cure such default within the above time period, the City may terminate this Agreement.

(b) If a delay in performance by the Developer results from an event described in Section 9.3, the Performance Schedule shall be extended for the reasonable period of time lost by such delay.

(c) In the event the Developer fails to create and maintain ____ Permanent Jobs as is more particularly described in Article 5 of this Agreement or ceases its employment operation at the Project, then such event shall constitute a default under the terms of this Agreement. The Developer shall commence to cure such default within forty-five (45) days after delivery of such notice of default from the City and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice as to any default which by its nature is capable of being cured within seventy-five (75) days (or within a reasonable period of time in no event to exceed one hundred twenty (120) days as to any default which by its nature is not capable of being cured within seventy-five (75) days). If the Developer does not so commence to cure and cure such job related default within the above time period, the City may terminate this Agreement. In the event the Developer is evicted, or quits the premises for any reason, then Developer shall immediately notify the City of same.

(d) In the event of a termination by the City caused by an uncured material default by the Developer of its obligation to create and maintain Permanent Jobs as provided for in Sections 5.1 and 5.4 of this Agreement, the City shall not be obligated to make any annual Installment payment that may thereafter otherwise become due to the Developer; provided, however, it is expressly understood and acknowledged by all parties that in the event of any termination under this section, the City shall, after such termination, remain obligated to make any payments arising under this agreement to the Developer that are not contingent obligations of the City to the Developer at the time of termination (i.e., the City shall be obligated to pay any Installment-the amount of which has been finally determined pursuant to the terms of this Agreement and for which the City has not yet paid to the Developer).

7.2. Developer's Bankruptcy. Notwithstanding any contrary provision contained in this Agreement, in the event (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition under the United States Bankruptcy Code seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets; or (b) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, assignment for the benefit of creditors, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for more than sixty (60) days after any stay thereof expires, then the City may terminate this Agreement.

7.3 Change in law. Any change in law as a result of any amendment to the Constitutions of the United States or the State of Florida, or the promulgation of or amendment to any federal, state, county, or city statute, regulation, or ordinance, or any judicial decision controlling in the Fourth Judicial Circuit of the State of Florida or the Middle District of Florida, which occurs after the date of this Agreement and has the effect of prohibiting the City through regulation, ordinance or the use of this Agreement from performing under this Agreement or rendering it unlawful to do so shall have the effect of immediately terminating all obligations of the City under this Agreement, without the opportunity to cure.

7.4 Termination. Should the City ever exercise any of its rights under this Agreement to terminate the same or if the Agreement is otherwise terminated, then upon such termination the City or Developer shall be deemed to have been excused from any further performance and obligations under this Agreement, including but not limited to the obligation to make any payments arising under this Agreement, except with respect to any payments by the City that are not contingent payment obligations of the City to the Developer at the time of termination (i.e., the City shall be obligated to pay any Installment-the amount of which has been finally determined pursuant to the terms of this Agreement and for which the City has not yet paid to the Developer).

ARTICLE 8: ASSIGNMENT PROVISIONS

8.1. Purpose. The Developer anticipates taking title to the Project Parcel no later than _____, _____. Its undertakings pursuant to this Agreement are for the purpose of developing the Project Parcel for the Use set forth in this Agreement. The Developer further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City, that the qualifications, financial strength and identity of the Developer and the Developer are of particular concern to the City.

8.2 Assignment; Limitation on Conveyance. The Developer agrees that it shall not without the prior written consent of the City, assign, transfer or convey this Agreement except as authorized in Section 6.4; provided, however, the Developer shall be permitted to transfer title to the Project Parcel to a third party so long as the Developer becomes a tenant of the third party transferee and the Use of the Project Parcel and the Improvements by the Developer does not

materially change during the term of this Agreement. If any such prohibited assignment, transfer or conveyance is made, then the City may declare a default and terminate this Agreement immediately upon written notice thereof without the opportunity to cure.

8.3. If the Developer transfers a controlling interest in itself and, as a result of such transfer, the use of the Improvements changes from the Use intended and more specifically described in Section 2.6 of this Agreement, the obligation of the City to pay any further amounts due under the Project Grant shall terminate.

8.4. Permitted Mortgages. The proceeds of any mortgage encumbering the Project Parcel and given to a Secured Lender shall be used only to finance or refinance the Developer's costs of acquiring, constructing and developing the Project Parcel, or any Phase of it, or any Improvements thereon, pursuant to this Agreement and for no other purpose.

ARTICLE 9: GENERAL PROVISIONS

9.1. Non-liability of City Officials. No member, official or employee of the City shall be personally liable to the Developer or to any Person with whom the Developer shall have entered into any contract, or to any other Person in the event of any default or breach by the City, or for any amount which may become due to the Developer or the Developer or any other Person under the terms of this Agreement.

9.2. Approval. Whenever this Agreement requires the City or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld, delayed or conditioned. The Developer and the City shall perform all obligations imposed upon them under this Agreement in a reasonable and timely fashion.

9.3. Force Majeure. No Party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, terrorist act, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, government restrictions of priority, litigation, severe weather and other acts or failures beyond the control or without the control of either Party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a Party.

9.4. Notices. All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the Parties, and others as set forth in this section, at the following addresses (or to such other or further addresses as the Parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) The City:

City Manager, City of Green Cove Springs
321 Walnut Street
Green Cove Springs, FL 32043

With copy to:

L.J. Arnold III, Esquire
Office of the City Attorney
P. O. Box 1570
Green Cove Springs, FL 32043

(b) The Developer:

With copy to:

9.5. Time. Time is of the essence in the performance by any Party of its obligations hereunder.

9.6. Entire Agreement. This Agreement, including all exhibits and schedules to this Agreement, constitutes the entire understanding and agreement between the Parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

9.7. Amendment. This Agreement may be amended or modified by the Parties hereto only upon the execution of a written amendment or modification signed by the Parties.

9.8. Waivers. All waivers of or applicable to this Agreement must be in writing and signed by all Parties. Any failures or delays by any Party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties hereto are cumulative, and the exercise by

any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

9.9. Indemnification. The Developer shall have a duty to indemnify the City, its officers, agents, servants, employees and subcontractors for any damage, loss or liability arising out of any error, omission or negligent act of the indemnifying party or its agents, servants or employees in the performance of their respective obligations under this Agreement; provided, however, the Developer shall have no duty to indemnify, save harmless or defend the City to the extent that any such damage, loss or liability is caused by the negligence of, or breach of this Agreement by, the City or its employees, authorized agents or contractors. The indemnification obligation described in this Section 9.9 shall survive the termination of this Agreement for a period of two years.

9.10. Captions. The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

9.11. Construction. In the construction of this Agreement, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular and the masculine, feminine and neuter genders include all other genders. Since all parties have engaged in the drafting of this Agreement, no presumption of construction against any party shall apply.

9.12. Section, Schedule and Exhibit References. All references contained in this Agreement to Sections, Schedules and Exhibits shall be deemed to be references to Sections of, and Schedules and Exhibits attached to, this Agreement, except to the extent that any such reference specifically refers to another document. All references to Sections shall be deemed to also refer to all subsections of such Sections, if any. The definitions of terms defined in this Agreement shall apply to the Schedules and Exhibits.

9.13. Waiver. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

9.14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, heirs, successors and permitted assigns.

9.15. Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.16. No Relationship other than Contractual Relationship. Other than as set forth herein contractually, this Agreement establishes no special legal relationship among the parties and the parties hereby acknowledge and agree that nothing in this Agreement shall cause the Developer to be acting as an agent, employee, partner, joint venturer or associate of the City.

The Developer and its employees or agents, shall be solely responsible for the means, method, technique, sequences and procedures utilized by either in the performance of this Agreement.

9.17. City Liability. Nothing contained herein shall be deemed to impose directly or indirectly any obligation or liability on the City to carry out or perform any of the obligations or liabilities of the Developer.

9.18. Non-merger. None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

9.19. Lack of Third Party Beneficiary. This is an agreement solely between the City and the Developer. The execution, delivery and performance of the rights and duties under this Agreement shall not be deemed to confer any rights or privileges on any Person not a Party hereto other than the authorized successors or assigns of the City and the Developer.

9.20. Business Day. As used in this Agreement, the term "business day" means any day other than a Saturday, Sunday or legal holiday. If any time period set forth in this Agreement expires on other than a business day, such period shall be extended to and through the next succeeding business day. At present, City Administrative Offices are closed on each Friday and so long as that remains, Friday shall not be a business day.

9.21. Venue; Applicable Law. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Clay County, Florida, or in the appropriate Federal District Court in Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement, without regard to conflicts of law principles. Each party hereby waives any rights it may have to a jury trial of any legal suits arising hereunder.

9.22. Recording. This Agreement will be recorded in the public records of Clay County, Florida, at City expense following its execution by the Parties.

9.23. Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

Witnesses as to "City":

"City"

(1)_____

CITY COUNCIL OF
GREEN COVE SPRINGS, FLORIDA

(2)_____

By: _____
Pamela J. Lewis, Its Mayor

ATTEST:

F. Lee Bentley, City Clerk

Approved as to form:

L.J. Arnold III, City Attorney

Witnesses as to "Developer":

"Developer"

(1) _____

(2) _____

By: _____
_____, its _____

STATE OF _____
COUNTY OF _____

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, _____, by _____, _____
He/She is personally known to me or has produced _____ as identification.

[SEAL]

Print name: _____
Notary Public, County and State aforesaid
Commission Serial No.: _____
My commission expires: _____

LIST OF EXHIBITS

EXHIBIT A: THE PRELIMINARY SITE PLAN

EXHIBIT B: LEGAL DESCRIPTION OF THE PROJECT PARCEL

EXHIBIT C: PERFORMANCE SCHEDULE

Exhibit “C”

Performance Schedule

DATE

**These dates and the obligations associated therewith are provided for in the Development Agreement. This Performance Schedule is not intended to add or subtract from any of the obligations of the Parties contained in the Development Agreement or to add or subtract from any of the obligations of the Developer