

PLANNED DEVELOPMENT AGREEMENT FOR HERITAGE OAKS PD-R PROJECT

THIS PLANNED DEVELOPMENT AGREEMENT ("PD Agreement") is made as of May 11, 2015, by and between the **CITY OF ALACHUA, FLORIDA** ("City"), a political subdivision of the State of Florida, and **DURATION BUILDERS, INC.**, a Florida corporation, its successors or assigns ("Developer"), and **HERITAGE OAKS PROPERTY OWNERS' ASSOCIATION**, a Florida corporation, its successors or assigns ("Association.") The City, the Developer, and the Association may jointly be referred to as the "Parties."

RECITALS

WHEREAS, the Association and the Developer desire to obtain approval for a **Planned Development ("PD")** in the City known as **Heritage Oaks Planned Development - Residential ("PD-R")**, which is proposed to consist of ±41.21 acres;

WHEREAS, the Developer wishes to improve that portion of the PD-R known as Heritage Oaks Phase II, the legal description for which is attached hereto as Exhibit "A," which is incorporated herein by reference ("Phase II");

WHEREAS, the legal description for the Heritage Oaks PD-R is attached hereto as Exhibit "B" ("Property"), which is incorporated herein by reference;

WHEREAS, as part of the approval process for Phase II, an application to rezone the Property from Planned Unit Development ("PUD") to Planned Development - Residential ("PD-R") has been filed with the City;

WHEREAS, the Planning & Zoning Board, serving as the Local Planning Agency ("LPA"), recommended approval of the proposed rezoning from Planned Unit Development ("PUD") to Planned Development - Residential ("PD-R") at a quasi-judicial public hearing held on April 14, 2015;

WHEREAS, the City Commission held the first of two required quasi-judicial public hearings on April 27, 2015, to consider the proposed rezoning of the Property pursuant to Ordinance Number 15-05;

WHEREAS, the City and the Developer desire to proceed to the second and final reading on the proposed rezoning of the Property pursuant to Ordinance Number 15-05;

WHEREAS, concurrent with the second and final reading of the proposed rezoning for the Property, a PD Agreement and a PD Master Plan are required to be approved; and

NOW, THEREFORE, in consideration of the foregoing premises, the Parties hereby agree as follows:

1. The above RECITALS are true and correct and incorporated into this PD Agreement by reference.
2. The Developer shall plan and construct, at the Developer's sole expense, Phase II according to the specifications set forth in the City's LDRs; Ordinance Number 15-05, which is attached hereto as Exhibit "C"; and the PD Master Plan documents, which are attached hereto as Exhibit "D."
3. A **Final PD Plan** for Phase II (known as a **Major Subdivision Preliminary Plat** for single-family detached residential development) must be submitted to the City within one (1) year from the City's approval of this PD Agreement, Ordinance Number 15-05, and the PD Master Plan, for any part or section of the plan for development shown in the PD Master Plan. If the **Final PD Plan** for Phase II is not submitted within the required one (1) year period, it shall result in the expiration of the PD zone district classification of Phase II. The City, in its sole discretion, shall have the right, but not the obligation, to conduct any hearings necessary to rezone the lands included within Phase II to a zoning district of Agriculture ("A").
4. The Developer shall construct Phase II in accordance with its approved PD Master Plan. Deviations from the PD Master Plan that constitute substantial changes as described in Section 2.4.3 of the City's LDRs must be approved in advance by the City.
5. The approval and execution of this PD Agreement does not guarantee the approval of any Final Plat (for single-family detached residential development) for Phase II, or for any part or section thereof, for the Developer or its successors or assigns.
6. Nothing contained in this PD Agreement shall relieve the Developer, or its successors, assigns, or anyone acting on the Developer's behalf, from obtaining all local, regional, state, or federal permits or complying with any applicable ordinance, law, rule, or regulation necessary for the development of Phase II. In the event that the Developer, and its contractors, subcontractors, or anyone for whose acts the Developer or its contractors or subcontractors may be liable or responsible, fails to comply with any applicable ordinance, law, rule, or regulation and such failure tends to or does pose an imminent threat or danger to life or of great bodily injury to any person, the City, through its City Manager or designee, shall have the right to stop work until appropriate corrective measures are taken, in addition to any other remedies available to the City.

7. The Developer shall indemnify and hold harmless the City, and its officers, agents, employees, or anyone acting directly or indirectly on behalf of the City, from and against all claims, damages, losses, and expenses, including reasonable attorney's fees, arising out of or resulting from a loss in the performance of work, down time of equipment, or any claim that may arise from bodily injury, sickness, disease or death, or the injury to or destruction of tangible property, including the loss of use resulting therefrom, caused in whole or in part by a negligent or wrongful act or omission on the part of the Developer, and its contractor, subcontractors, or anyone directly or indirectly employed or working on behalf of the Developer for whose acts the Developer, or its contractors or subcontractors, may be liable or responsible. The Developer further agrees that the Developer shall not insulate itself from liability or responsibility to the City for a default in or failure to perform any of the terms of this PD Agreement, or from responsibility under the indemnification clause contained herein by employment of independent contractors or subcontractors or other entities. The Developer shall remain liable to the City notwithstanding any attempt by the Developer to pass any responsibility stated herein to its contractor, subcontractor, or other agent or employee at all times during the existence of this PD Agreement.
8. The Developer shall pay all costs for the recording of this PD Agreement, the PD Master Plan, and Ordinance Number 15-05.
9. The City may, in its sole discretion, withhold any and all inspections, permits, certificates, or approvals for Phase II if such action is deemed necessary by the City to secure the Developer's compliance with the terms of this PD Agreement, including all documents attached hereto or referenced herein.
10. Except as otherwise provided in this PD Agreement, any notice, request, or approval from either party to the other party must be in writing and sent by certified mail, return receipt requested; overnight delivery with proof of delivery; or by personal delivery. Such notice shall be deemed to have been received when either deposited in the United States Postal Service mailbox, delivered by the United States Postal Service, delivered to the courier, or personally delivered with a signed proof of delivery. For purposes of notice, the Parties and their respective representatives and addresses are:

City: City of Alachua
ATTN: Department of Planning & Community Development
P.O. Box 9
Alachua, Florida 32616

Developer: Duration Builders, Inc.
527 Turkey Creek
Alachua, FL 32615

Association: Heritage Oaks Property Owners' Association, Inc.
HOPOA Registered Agent
P.O. Box 969
Alachua, FL 32616

11. The Parties each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this PD Agreement.
12. If any section, sentence, clause, phrase, or provision of this PD Agreement is for any reason held or declared to be unconstitutional, void, or inoperative by any court or agency of competent jurisdiction, such holding of invalidity or unconstitutionality shall not affect the remaining provisions of this PD Agreement, and the remainder of the PD Agreement after the exclusions of such part or parts shall be deemed to be valid.
13. The failure of any of the Parties to exercise any right in this PD Agreement shall not constitute a waiver of such right in the event of any future default or noncompliance with it.
14. This PD Agreement is governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this PD Agreement shall be in Alachua County, Florida.
15. In the event of any question or dispute arising out of or related to this PD Agreement or action to interpret this PD Agreement, the Developer and/or the Association shall exhaust any and all administrative remedies and thereafter shall be limited only to action for declaratory judgment. In no event shall Developer and/or the Association have any cause of action for monetary damages against the City for any question or dispute arising out of or related to this PD Agreement or any action to interpret this PD Agreement, and nothing herein, expressed or implied, waives or should be construed as a waiver or attempted waiver by the City of its sovereign immunity under the Florida Constitution and the laws of the State of Florida.
16. This PD Agreement is entered into by the City pursuant to the City's home rule powers, including police powers, as set forth in the Florida Constitution and the laws of the State of Florida to regulate the development of land. The City and the Developer expressly acknowledge and agree that this PD Agreement constitutes a regulatory document, and nothing herein, expressed or implied, is intended or shall be construed as establishing a contract upon which a cause of action for breach, monetary damages, or otherwise may be based. Further, no term or condition of this PD Agreement shall be construed as to proscribe, limit, or affect the ability of the City to enforce its Comprehensive Plan, its Land Development Regulations, or any other

authority granted by law with respect to Phase II, and nothing herein, expressed or implied, contracts away any of the City's police powers, regulatory authority, and/or immunities.

17. The Parties may amend this PD Agreement only by mutual written agreement of the Parties and with prior approval of the City Commission as may be necessary.
18. This PD Agreement shall not be construed more strictly against one party than against the other party (parties) merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that all Parties have contributed to the preparation of this PD Agreement and have had the opportunity to consult with legal counsel before signing it.
19. The Developer agrees that the terms and requirements of this PD Agreement, PD Master Plan, and Ordinance Number 15-05 do not inordinately burden the property described in Exhibit "A."
20. This PD Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral agreements, understandings, or representations.

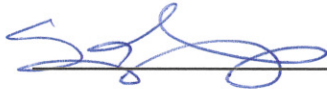
SIGNATURES CONTINUE ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first above written.

Witnesses:

DEVELOPER:


Duration Builders, Inc.



Nichole Lewis

(NAME)

By:


BRITTON JONES PRESIDENT

(NAME)

(TITLE)

of Duration Builders, Inc.

State of Florida

County of Alachua

The foregoing instrument was acknowledged before me this 9 day of April 2016, by Britton Jones, who is personally known to me or who has produced _____ as identification, and who took an oath.

(SEAL)





Notary Public, State of Florida at large

Commission No.:


Commission Expiration:


SIGNATURES CONTINUE ON NEXT PAGE

Witnesses:

ASSOCIATION:

Heritage Oaks Property Owners' Association, Inc.


Nichole Lewis
(NAME)


By: 
Charles E. Wallace Secretary
(NAME) (TITLE)
of Heritage Oaks Property Owners' Association, Inc.

State of Florida
County of Alachua

The foregoing instrument was acknowledged before me this 9 day of April
2015 by Charles E. Wallace who is personally known to me or who has produced
_____ as identification, and who took an oath.

(SEAL)




Notary Public, State of Florida at large
Commission No.:
Commission Expiration:

SIGNATURES CONTINUE ON NEXT PAGE

Attest:

CITY OF ALACHUA

Traci L. Cain
City Manager

By: _____
Gib Coerper, Mayor

Approved as to Form:

Marian B. Rush, City Attorney

State of Florida
County of Alachua

The foregoing instrument was acknowledged before me this ____ day of _____
20__, by _____, who is personally known to me or who has produced
_____ as identification, and who took an oath.

(SEAL)

Notary Public, State of Florida at large
Commission No.:
Commission Expiration:

EXHIBIT "A"

Phase 2:

DESCRIPTION: (PER O.R. BOOK 4231, PAGE 1068)

COMMENCE AT THE NORTHWEST CORNER OF SECTION 9, TOWNSHIP 8 SOUTH, RANGE 18 EAST, ALACHUA COUNTY FLORIDA, AND THENCE SOUTH 01 DEG. 49 MIN. 00 SEC. EAST ALONG THE WEST LINE OF SAID SECTION 9, A DISTANCE OF 1576.08 FEET; THENCE NORTH 88 DEG. 33 MIN. 13 SEC. EAST, 1300.20 FEET TO THE NORTHWEST CORNER OF OFFICIAL RECORDS BOOK 503, PAGE 107 OF THE OFFICIAL RECORDS OF ALACHUA COUNTY, FLORIDA, AS SURVEYED BY ENG. DENMAN AND ASSOCIATES, AND THE POINT OF BEGINNING; THENCE SOUTH 01 DEG. 49 MIN. 00 SEC. EAST ALONG THE WEST LINE OF SAID LANDS, A DISTANCE OF 1347.88 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2296, PAGE 2823 OF SAID OFFICIAL RECORDS; THENCE SOUTH 78 DEG. 52 MIN. 28 SEC. EAST ALONG THE NORTH LINE OF SAID LANDS, A DISTANCE OF 1258.05 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE NORTH 03 DEG. 06 MIN. 01 SEC. WEST ALONG THE EAST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 27, PAGE 296 OF SAID OFFICIAL RECORDS AS PER SURVEY BY ENG. DENMAN AND ASSOCIATES, A DISTANCE OF 1644.27 FEET TO A 5/8 INCH IRON ROD, LB 2389, MARKING THE NORTHEAST CORNER OF SAID LANDS AS SURVEYED BY ENG. DENMAN AND ASSOCIATES; THENCE SOUTH 84 DEG. 55 MIN. 02 SEC. WEST, 179.59 FEET TO A POINT ON THE EAST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1970, PAGE 718 OF SAID OFFICIAL RECORDS (ALACHUA COUNTY PROPERTY APPRAISERS PARCEL TAX IDENTIFICATION NUMBER 03049-001-011); THENCE SOUTH 01 DEG. 48 MIN. 33 SEC. EAST ALONG SAID LINE, 10.09 FEET TO A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF SAID LANDS; THENCE SOUTH 88 DEG. 17 MIN. 38 SEC. WEST, 327.34 FEET TO AN IRON PIPE MARKING THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2043, PAGE 2987 OF SAID OFFICIAL RECORDS (ALACHUA COUNTY PROPERTY APPRAISERS PARCEL TAX IDENTIFICATION NUMBER 03049-001-002); THENCE SOUTH 88 DEG. 41 MIN. 44 SEC. WEST, 322.15 FEET TO AN IRON PIPE MARKING THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 790, PAGE 371 OF SAID OFFICIAL RECORDS (ALACHUA COUNTY PROPERTY APPRAISERS PARCEL TAX IDENTIFICATION NUMBER 03049-001-001); THENCE SOUTH 88 DEG. 37 MIN. 50 SEC. WEST, 380.44 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PROPERTY DESCRIBED AS THE ENTIRE PLAT OF HERITAGE OAKS PHASE 1, AS RECORDED IN PLAT BOOK 24, PAGE 79 THROUGH 82, INCLUSIVE, PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA.

EXHIBIT "B"

Phase 1:

DESCRIPTION:

COMMENCE AT THE NW CORNER OF SECTION 9, TOWNSHIP 8 SOUTH, RANGE 18 EAST, ALACHUA COUNTY, FLORIDA; THENCE S.01°49'00"E., ALONG THE WEST LINE OF SAID SECTION 9 A DISTANCE OF 1576.08 FEET; THENCE N.88°33'13"E., 1300.20 FEET TO THE NW CORNER OF OFFICIAL RECORDS BOOK (ORB) 503, PAGE 107 OF THE OFFICIAL RECORDS OF ALACHUA COUNTY, FLORIDA, AS SURVEYED BY ENG, DENMAN AND ASSOCIATES.; THENCE S.01°49'00"E., ALONG THE WEST LINE OF SAID LANDS, 600.76 FEET TO THE POINT OF BEGINNING. THENCE CONTINUE ALONG SAID WEST LINE, S.01°49'00"E., 747.12 FEET TO THE NW CORNER OF LANDS DESCRIBED IN ORB 2296, PAGE 2823 OF SAID OFFICIAL RECORDS; THENCE S.78°52'28"E., ALONG THE NORTH LINE OF SAID LANDS, 1258.05 FEET TO THE NE CORNER OF SAID LANDS; THENCE N.03°06'39"W., ALONG THE EAST LINE OF THE LANDS DESCRIBED IN ORB 27 PAGE 296 OF SAID OFFICIAL RECORDS AS PER SURVEY BY ENG, DENMAN AND ASSOCIATES, A DISTANCE OF 975.51 FEET; THENCE DEPARTING SAID EAST LINE, WEST, A DISTANCE OF 88.98 FEET TO A POINT ON 46.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD OF 41.18 FEET BEARING N.69°52'54"W., THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°10'43", A DISTANCE OF 42.69 FEET TO THE POINT OF TANGENCY; THENCE S.83°31'44"W., A DISTANCE OF 168.69 FEET TO THE POINT OF CURVATURE OF A 13.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, HAVING A CHORD OF 19.39 FEET BEARING N.48°14'08"W.; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 96°28'16", A DISTANCE OF 21.89 FEET; THENCE N.81°53'26"W., A DISTANCE OF 42.42 FEET TO A POINT ON A 13.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, HAVING A CHORD OF 18.38 FEET BEARING S.45°00'00"W.; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 20.42 FEET TO THE POINT OF TANGENCY; THENCE WEST A DISTANCE OF 162.95 FEET TO A POINT ON A 42.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD OF 20.61 FEET BEARING N.45°47'39"W.; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°24'43", A DISTANCE OF 20.83 FEET; THENCE WEST A DISTANCE OF 42.01 FEET TO A POINT ON A 42.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, HAVING A CHORD OF 20.61 FEET BEARING S.45°47'39"W., THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°24'43", A DISTANCE OF 20.83 FEET; THENCE WEST A DISTANCE OF 162.96 FEET TO THE POINT OF CURVATURE OF A 13.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, HAVING A CHORD OF 18.38 FEET BEARING N.45°00'00"W.; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 20.42 FEET; THENCE WEST A DISTANCE OF 42.00 FEET TO A POINT ON A 13.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, HAVING A CHORD OF 18.38 FEET BEARING S.45°00'00"W.; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 20.42 FEET TO THE POINT OF TANGENCY; THENCE WEST A DISTANCE OF 177.13 FEET TO A POINT ON A 42.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, HAVING A CHORD OF 20.62 FEET BEARING N.45°47'43"W., THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°24'51", A DISTANCE OF 20.83 FEET; THENCE WEST A DISTANCE OF 183.06 FEET TO THE POINT OF BEGINNING. SAID LANDS CONTAINING 23.92 ACRES, MORE OR LESS.

TOGETHER WITH:

Phase 2:

DESCRIPTION: (PER O.R. BOOK 4231, PAGE 1068)

COMMENCE AT THE NORTHWEST CORNER OF SECTION 9, TOWNSHIP 8 SOUTH, RANGE 18 EAST, ALACHUA COUNTY FLORIDA, AND THENCE SOUTH 01 DEG. 49 MIN. 00 SEC. EAST ALONG THE WEST LINE OF SAID SECTION 9, A DISTANCE OF 1576.08 FEET; THENCE NORTH 88 DEG. 33 MIN. 13 SEC. EAST, 1300.20 FEET TO THE NORTHWEST CORNER OF OFFICIAL RECORDS BOOK 503, PAGE 107 OF THE OFFICIAL RECORDS OF ALACHUA COUNTY, FLORIDA, AS SURVEYED BY ENG. DENMAN AND ASSOCIATES, AND THE POINT OF BEGINNING; THENCE SOUTH 01 DEG. 49 MIN. 00 SEC. EAST ALONG THE WEST LINE OF SAID LANDS, A DISTANCE OF 1347.88 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2296, PAGE 2823 OF SAID OFFICIAL RECORDS; THENCE SOUTH 78 DEG. 52 MIN. 28 SEC. EAST ALONG THE NORTH LINE OF SAID LANDS, A DISTANCE OF 1258.05 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE NORTH 03 DEG. 06 MIN. 01 SEC. WEST ALONG THE EAST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 27, PAGE 296 OF SAID OFFICIAL RECORDS AS PER SURVEY BY ENG. DENMAN AND ASSOCIATES, A DISTANCE OF 1844.27 FEET TO A 5/8 INCH IRON ROD, LB 2389, MARKING THE NORTHEAST CORNER OF SAID LANDS AS SURVEYED BY ENG. DENMAN AND ASSOCIATES; THENCE SOUTH 84 DEG. 55 MIN. 02 SEC. WEST, 179.59 FEET TO A POINT ON THE EAST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1970, PAGE 718 OF SAID OFFICIAL RECORDS (ALACHUA COUNTY PROPERTY APPRAISERS PARCEL TAX IDENTIFICATION NUMBER 03049-001-011); THENCE SOUTH 01 DEG. 48 MIN. 33 SEC. EAST ALONG SAID LINE, 10.09 FEET TO A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF SAID LANDS; THENCE SOUTH 88 DEG. 17 MIN. 38 SEC. WEST, 327.34 FEET TO AN IRON PIPE MARKING THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2043, PAGE 2987 OF SAID OFFICIAL RECORDS (ALACHUA COUNTY PROPERTY APPRAISERS PARCEL TAX IDENTIFICATION NUMBER 03049-001-002); THENCE SOUTH 88 DEG. 41 MIN. 44 SEC. WEST, 322.15 FEET TO AN IRON PIPE MARKING THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 790, PAGE 371 OF SAID OFFICIAL RECORDS (ALACHUA COUNTY PROPERTY APPRAISERS PARCEL TAX IDENTIFICATION NUMBER 03049-001-001); THENCE SOUTH 88 DEG. 37 MIN. 50 SEC. WEST, 360.44 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PROPERTY DESCRIBED AS THE ENTIRE PLAT OF HERITAGE OAKS PHASE 1, AS RECORDED IN PLAT BOOK 24, PAGE 79 THROUGH 82, INCLUSIVE, PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA.

EXHIBIT “C”

[EXECUTED/SIGNED ORDINANCE 15-05]

EXHIBIT “D”

[PD MASTER PLAN]