

RETURN TO:
Archer & Lovell
PO Box 1024
Cartersville, GA 30120

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “*Agreement*”) is made as of _____, 2021, by and between THE CITY OF CARTERSVILLE, GEORGIA, a municipal corporation of the State of Georgia (“*City*”) and _____, a Georgia limited liability company (“*Developer*”). The City, and Developer are sometimes referred to collectively as the “*Parties*” or individually as a “*Party*”.

WITNESSETH:

WHEREAS, Developer is the owner of that certain real property located within the City limits of the City of Cartersville, Bartow County, Georgia and more specifically described on Exhibit “A” attached hereto and incorporated by reference (the “*Property*”); and

WHEREAS, Developer desires to develop a residential subdivision, as indicated on Exhibit “A;” and

WHEREAS, in order for Developer to develop its proposed project in the manner it desires, a variance is required to the existing City of Cartersville Development Regulations; and

WHEREAS, on November 22, 2021, the Board of Zoning Appeals approved the requested variance as indicated on Exhibit “B” attached hereto and incorporated herein by reference; and

WHEREAS, the approved variance conditions require Developer to enter into a Development Agreement with City to agree to provide for the payment and performance bonds required therein; and

WHEREAS, on a previous project, The Reserve at Pettit Creek, Developer was supposed to provide easement to the City of Cartersville, but failed to do so; and

WHEREAS, Developer shall use its best efforts to convey said easements to the City.

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer, intending to be legally bound by the terms hereby, hereby agree to the following:

ARTICLE I GENERAL

Section 1.01. Jackson Farm. In order to construct the Jackson Farm development indicated on Exhibit “A” and to allow the Developer to construct it in the phasing it desires, requires variances to the existing Development Regulations of the City of Cartersville which were approved on November 22, 2021 by the City of Cartersville Board of Zoning Appeals. Developer has agreed to develop said Property as described on Exhibit “C” pursuant to the requirements of the City of Cartersville Development Regulations and the variances approved herein as indicated on Exhibit “B.”

Section 1.02. Recording of Documents. Both parties understand that this document shall be recorded in the Office of the Clerk of the Superior Court, Bartow County, Georgia, and if Developer conveys the property or any interest therein prior to the recording of this Agreement, then this agreement is null and void, at the City’s sole discretion.

Section 1.03. Covenant on Land. This Agreement is intended to be a covenant on the land described herein and shall run with said land.

ARTICLE II DEVELOPER’S OBLIGATIONS

Section 2.01. Dedication. Developer shall dedicate and convey to the City all of the infrastructure as indicated on Exhibits “A,” “B,” and “C.”

Section 2.02. Easements. Developer shall dedicate and convey to the City the easements indicated on Exhibits “A” and “C,” and all utility access easements that are to be provided to the

City. Said easements are to be provided prior to any building permits are issued, unless specified herein.

Section 2.02.1 In addition to said easements indicated on Exhibits “A” and “C”, Developer shall dedicate and convey to the City the easements required to obtain a natural gas main feed from the Reserve at Pettit Creek Subdivision. The actual location of said natural gas main feed will be determined once the necessary easements have been acquired from those property owners within the Reserve at Pettit Creek Subdivision.

Section 2.03. Development Conditions.

2.03.1 Prior to the final plat being approved the following must be completed.

- a. Topping, curb and gutter is required to be installed for the entrance and left turn lane and all utilities therein are to be installed as shown on the attached drawing prior to final plat.
- b. All gas utilities are required to be installed prior to the roads being topped. All areas where gas facilities are to be installed are required to be graded by developer to City standards, prior to installation.
- c. The existing natural gas main relocation along Mission Road shall be completed prior to placing the pavement for the turn lanes. The existing natural gas main relocation cannot be completed until the proposed shoulder grading and the curb and gutter is complete from the end of the roadway taper to the east of the entrance roadway and the end of the roadway taper to the west of the entrance roadway.
- d. Subject to, and before the final plat is reviewed and recorded, Developer shall ensure that the current drainage issues outlined at the Board of Zoning Appeals Meeting on November 22, 2021 that effects the property owners at The Reserve at Pettit Creek have been fixed and cured, and that all supporting documents indicating the fix and cure have been submitted to and reviewed and approved by the City Engineer, before the City can approve said final plat. This includes all studies, plans, reports, and hydrological reports that may exist or may be required by the City Engineer to ensure said compliance.

2.03.2 One (1) year from the approval of the Development Agreement with the City of Cartersville, the following must be completed:

- a. All utility easements and all utility relocations must be provided to the City and/or completed and transferred to the City, as required, and as shown on the final plat.

- b. No building permits may be issued until all utilities are installed within the subdivision, as indicated on the approved final plat.
- c. All requirements shown on the final plat or necessary for providing service must be completed and shown on the final plat or provided for in the development agreement, referenced herein.
- d. For the purpose of this variance, the final plat shall be prepared in accordance with the approved construction plans, upon which shall be indicated “Final Plat approved subject to variance V21-26.”
- e. All items for which variances are granted are required, upon completion, to submit a maintenance bond as of the date of the compliance and acceptance by the City of Cartersville.
- f. If the work referenced herein is not commenced within three (3) months, and not completed within twelve (12) months from the date of the final plat, all payment and performance bonds shall be called by the City of Cartersville on either respective date.
- g. Roads shall not be accepted by the City of Cartersville until satisfactory installation of all infrastructure, including utilities, sidewalks, curb and gutter, topping and roads have been completed. At that time, a new maintenance bond will be required for eighteen (18) months.
- h. All other requirements of the City of Cartersville Development Regulations must be complied with.

2.03.3 Prior to approval of the final plat, the following is required:

- a. The maintenance bond, excluding topping, shall be provided for the roads, prior to issuance of a final plat.
- b. A performance and payment bond equal to one hundred twenty-five (125%) percent of the cost for developer to prepare the site for gas utilities to be installed, must be provided prior to the final plat approval.
- c. All water, sewer, and storm sewer installations, must be completed prior to the approval of the final plat.

2.03.4 After approval of the final plat, the following is required:

- a. Road topping for interior roads beginning from STA 0+40 on Silo Drive, based on the attached plat, may be delayed one (1) year from the date of the final plat. A performance and payment bond in the amount in one hundred twenty-five (125%) percent of the cost must be submitted prior to final plat approval.

2.03.5 Prior to issuance of a residential building permit, the following is required:

- a. Sidewalks along the west side of Silo Drive and along the frontage of Mission Road, must be installed within one (1) year from the issue date of the first single-family residential building permit. A performance and payment bond in the amount of one hundred twenty-five (125%) percent of the anticipated cost must be provided.

2.03.6 These variances are approved subject to a development agreement between the City and Developer/Owner, being executed which includes at a minimum said variances, payment and performance bonds, and other related matters being approved by the Mayor and City Council, within forty-five (45) days of the approval of this variance. If said agreement is not approved this variance expires after said time period.

2.03.7 If said final plat is not approved with three (3) months of the approval of this variance, said variance shall terminate and the pre-existing ordinance requirements shall be reinstated.

Section 2.04. Right of Entry and Encroachment Agreement. Developer shall provide to the City any right of entry if necessary, and encroachment agreements, if necessary, for the City to access utilities.

Section 2.05. Construction Payment and Performance Bond. Developer shall provide construction and performance bonds as outlined in Section 2.03 as well as other bonds required by the City of Cartersville Code of Ordinances.

Section 2.06. Indemnify and Hold Harmless. Developer shall indemnify and hold harmless the City from any and all lawsuits, claims, damages and/or actions resulting from or related to this Agreement and any and all activities and construction as a result, including paying any and all attorney's fees of the City and any judgments or settlements thereof.

Section 2.07. Right of Entry, Indemnify and Hold Harmless. Developer agrees, to the extent it may lawfully do so, to indemnify and save harmless and defend the City from the payment of any sum or sums of money to persons whomsoever (including third persons, subcontractors, the Developer, the City and agents and employees of them) on account of claims or lawsuits growing out of injuries to persons (including death) or damage to property including property of the City) in any way attributable to or arising out of this Agreement, by the Developer as herein provided,

including (but not limiting the generality of the foregoing) all liens, garnishments, attachments, claims, suits, judgments, costs, attorney's fees, cost of investigation and of defense, and excepting only those situations where the personal injury or property damage claimed have been caused by reason of the sole negligence on the part of the City, its agents, or employees.

Section 2.08. Indemnify and Hold Harmless by Other Parties to Contract. Developer hereby agrees to incorporate in any and all of its contracts and/or agreements, for any work or construction done on or to said described right(s)-of-way or easements, with any and all third persons, contractors, or subcontractors, a provision requiring said third parties, contractors or subcontractors to indemnify and defend the City, its agents and employees as provided for above from payment of any sum or sums of attributable to or resulting from the construction, use or maintenance of the City's facilities, projects or programs conducted on the City's right(s)-of-way herein described, and excepting only those situations where the personal injury or property damage claimed have been caused by reason of the sole negligence on the part of the City, its agents or employees.

Section 2.09. Liability Insurance. Developer further agrees to carry, if performing work or construction, and to require that any such third party, contractor or subcontractor doing or providing any such work or construction on said right(s)-of-way carry liability insurance which shall specifically cover such contractually assumed liability. A certificate of such insurance issued by the appropriate insurance company shall be furnished to the City upon request, said amount of insurance to be not less than \$2,000,000.00 per occurrence for bodily injury and property damage which arise out of or result from the Developer's operations under this Agreement. The City shall be named as an additional insured on this liability insurance coverage.

Section 2.10. Construction Plans. Prior to any revisions or modifications to the Construction Plans approved by the City and attached hereto as Exhibit "D" which affect Jackson Farm as indicated on Exhibit "A," prior approval by the City must be granted.

Section 2.11. Right of Way to City. Developer shall convey the right of way to the City for Jackson Farm as indicated on Exhibit "A" and Exhibit "C" upon completion and acceptance by the City and shall provide a right of entry and/or easements prior to said date for the installation of utilities, as necessary. Bonds shall be provided as required in Section 2.03.

Section 2.12. Titles. Developer shall provide title policies to the City for all property and easements to be conveyed to the City referenced herein.

Section 2.13. On-Site Easements. Developer shall grant to the City all easements indicated on Exhibit "A" and Exhibit "C" necessary for access and installation and maintenance of utilities for the City. All easements shall be for the exclusive use of the City, except as otherwise specified in the documents. The form of the easements is attached as Exhibit "E," and all easements shall be executed prior to the execution of this Agreement.

Section 2.14. Off-Site Easements. Developer shall provide or have provided to the City,” exclusive easements to the City from all off-site easements indicated on Exhibit “A” and Exhibit “C,” except as otherwise indicated therein. All off-site easements shall be provided prior to the issuance of certificates of occupancies for any parcels of the development.

Section 2.15. Bonds. Developer shall provide performance and maintenance bonds in the format and amount as required by the City development regulations prior to the execution of this Agreement, or as may be required in addition to those required, by Section 2.03 above.

Section 2.16. Warranty Deed. Developer shall dedicate to the City the right of way indicated on Exhibit “A” as Jackson Farm Drive and other public streets, acceleration and deceleration lanes, and other areas necessary for the public use of the proposed roads. Standard dedication form to be provided by City.

Section 2.17. Quitclaim Deeds. Developer shall provide quitclaim deeds to the City from all lien holders on the real property to be conveyed and easements to the City.

Section 2.18. Previous Easements. Developer shall make a good faith effort to provide executed drainage easements for Lots 39-46 and 147-165 from The Reserve at Pettit Creek.

ARTICLE III CITY’S OBLIGATIONS

Section 3.01. Bonds. Upon receipt of the applicable bonds, plats, and construction plans being filed and accepted by the City for the Property, and payment and performance bonds as required by Section 2.03, the City shall issue all appropriate permits.

ARTICLE IV MISCELLANEOUS

Section 4.01. Binding Agreement. This Agreement shall be fully binding on all Parties to the Agreement, their heirs, successors and assigns, in accordance with its terms.

Section 4.02. Assignment. No Party to this Agreement may assign its rights and obligations under this Agreement without the prior written consent of the other Party except as expressly provided for herein. Notwithstanding the foregoing, the Developer may assign this Agreement to any affiliate of the Developer, an entity which acquires all or substantially all of the assets of the Developer and a successor in a merger or acquisition, and Eckstein Properties, LLC.

Section 4.03. Governing Law. The laws of the State of Georgia shall govern the interpretation of this Agreement. If any provision hereof is held to be invalid or unenforceable,

such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.

Section 4.04. Amendment. This Agreement may be amended at any time by a writing which refers to this Agreement and is executed by all Parties hereto.

Section 4.05. Other Documents. The parties agree to execute and record such other documents as may be necessary for the implementation and consummation of this Agreement. Any approvals or consents required hereunder shall not be unreasonably withheld by the party from whom such approval or consent is sought.

Section 4.06. Third Parties. The parties hereto acknowledge that nothing herein expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than Developer or the City any rights or remedies under or by reason of this Agreement.

Section 4.07. Cooperation. Developer and the City agree to cooperate and assist each other to comply with and fulfill the terms and provisions of this Agreement.

Section 4.08. Written Notices. Whenever under the terms of this Agreement notice is required, or whenever a notice or communication is sent by one party to the other, the same shall be accomplished by certified mail, return receipt requested, postage prepaid, or by recognized overnight courier service addressed as follows:

City: City of Cartersville, Georgia
 P. O. Box 1390
 Cartersville, GA 30120
 Attn: City Manager

Developer:

and/or to such other addresses as any of the parties above mentioned shall designate by written notice. Any such notice shall be deemed to have been sent on the date it is deposited in the U.S. Mail as aforesaid, and shall be deemed received three (3) business days thereafter, provided, however, in the event any such notice is sent by overnight courier service, such notice shall be deemed received upon delivery by such service.

Section 4.09. Binding on Successors and Assigns. Except as otherwise provided in this Agreement, all covenants, agreements, provisions and conditions of this Agreement shall be

binding on and inure to the benefit of the Parties hereto, their respective personal representatives, successors and assigns.

Section 4.10. Relationship of Parties. Nothing in this Agreement shall create between Developer and the City the relationship of principal and agent, joint venturers, partners or any other similar or representative relationship, and Developer shall not hold itself out as an agent (except as expressly provided herein), representative, partner or joint venturer of the City.

Section 4.11. Immigration Reform Compliance Requirement. During the entire term of this Agreement, Developer must remain in compliance with Georgia Security and Immigration Compliance Act of 2007 and Official Code of Georgia Annotated §13-10-91 and §50-36-1.

Section 4.12 Drawings and Plats. Developer shall provide to the City complete as built drawings and final plats for any facilities and/or infrastructure to be developed, to the City. Developer also acknowledges that said records are subject to the Georgia Open Records Act.

IN WITNESS WHEREOF, the parties have signed and sealed this agreement the day and year first above written.

Signed, sealed and delivered
in the presence of:

City of Cartersville, Georgia

By: _____(SEAL)
Matthew Santini, Mayor

Witness

Attest: _____(SEAL)
Julia Drake, City Clerk

Notary Public

My commission expires:

[NOTARIAL SEAL]

Signed, sealed and delivered
in the presence of:

By: _____(SEAL)

Witness

Is: _____

Notary Public

My commission expires:

[NOTARIAL SEAL]

w