

This instrument prepared by:

Atwell LLC
Attention: Charles Millar
11770 US Highway 1
Suite 308 East
Palm Beach Gardens, FL 33418

Proposed for the Town of Howey-in-the-Hills, Florida

THOMPSON GROVES PUD DEVELOPMENT AGREEMENT

This **THOMPSON GROVES PUD DEVELOPMENT AGREEMENT** (“Agreement”) is made as of the ___ day of _____, 2023 (“Effective Date”), between the **Town of Howey-in-the-Hills, Florida**, a Florida municipal corporation (the “Town”), and **KB KOME ORLANDO, LLC**, a Florida limited liability company (the “Owner”).

RECITALS

- A. The Owner owns approximately 87.95 acres of property more particularly described in **Attachment A** to this Agreement (“the Property”).
- B. The Property is within the corporate limits of the Town. The Town has assigned the Property a future-land-use designation of Medium Density Residential and has rezoned the Property from SFR to PUD - Planned Unit Development.
- C. The Owner intends to develop and use the Property for single-family residential purposes as more specifically set forth herein (“the Project”), to be known as the “Thompson Groves PUD”.
- D. The Town and Owner enter into this Agreement to set forth the terms and conditions of approval negotiated between them for the development and use of the Property as the Thompson Groves PUD.

NOW, THEREFORE, the Town and the Owner agree as follows:

Section 1: Land development and uses. Development and use of the Property is subject to the following conditions, requirements, restrictions, and terms:

(a) **General.** Development of the Project and use of the Property shall be governed by this Agreement, the Town’s Comprehensive Plan, the Town’s Land Development Code (“LDC”) and Code of Ordinances (“Town Code”), and all other applicable state laws and regulations and Town ordinances and rules. Where in conflict, the terms of this Agreement shall supersede and prevail over the LDC and Town Code, but only to the extent of the conflict.

In the Conceptual Master Plan for the Project the term “conceptual” means the general location of land uses on the site, including areas for residential development, open space, stormwater management, parks, and roads in relation to the site area and other uses on the site. Subsequent plan development may refine the plans based on detailed engineering design. “Conceptual” does not mean or contemplate the modification of proposed housing types or the relocation of land uses and roads other than minor adjustments dictated by engineering needs and best practices.

Unless otherwise noted, the definition of terms in this Agreement shall be the same as the definitions set forth in the LDC.

(b) Phasing. The Project is intended to be developed in one (1) phase as shown on the Conceptual Master Plan. Revisions to the phasing schedule shall be considered as minor amendments to this Agreement, which may be approved by Town staff with no formal amendment to this Agreement required.

(c) Purpose. The purpose of the Thompson Groves PUD is to:

1. Create an attractive and high-quality single-family housing development compatible with the scale and character of existing residential development and land uses in the Town.
2. Develop a residential area that is safe, comfortable and attractive for and to pedestrians.
3. Create a community with direct visual and physical access to open land, with a strong community identity, and with amenities in the form of community open space.
4. Provide a network of open space for use by the homeowners; and
5. Provide a variety of lot sizes and housing choices for diverse age and income groups and residential preferences.

(d) Land uses. The Conceptual Master Plan for the Project is contained in **Attachment B** and is an integral part of the approval of the Project. Elements in the Concept Plan include single-family detached homes of varying lot widths and sizes.

(e) Development standards.

Setbacks

The following setbacks shall be applied:

Front:	20 feet
Rear:	20 feet
Side 50':	5 feet
Side 60':	5 feet
Side 100':	10 feet
Side corner lots:	5 feet
Pool/ Accessory:	5 feet

Each initial purchaser of a home must be informed in writing by the developer or homebuilder before closing the purchase that Town Council may refuse to grant a variance for a pool on the lot, should the purchaser need a variance to install a pool. The substance of the disclosure statement used by the developer or builder must be approved by the Town Manager before being delivered to prospective homebuyers.

Lot Size

A range of lot sizes shall be provided in order to create variety and offer opportunity for different income households. Minimum lot size will be:

- 50' x 120'
- 60' x 120'
- 100' x 120'

The number of each lot size shall be at the sole discretion of the Owner.

Dwelling Size

The minimum dwelling size for all single-family residences shall be 1,500 square feet of heated/air-conditioned space under roof. Maximum dwelling size shall be 4,500 square feet.

Lot Width

The minimum lot width at building line shall be 50 feet with a minimum street frontage of 25 feet.

Lot Coverage

Lots shall have a maximum lot coverage of 70%, to include principal dwelling, all paved areas, and swimming pools, except that on a 100-foot lot the maximum lot coverage may be 80% if a swimming pool is built.

Height of Structures

No residential structure may exceed 35 feet in height

Building Design

Building design shall be in accordance with the Architectural Requirements of the Town's LDC and will comply specifically with the design requirements of LDC Sections 4.06.02 and 4.06.03.

The following principles seek to promote a high-quality development that will create a sense of place and community through the development of the site.

- Housing styles, shapes and materials shall meet the Town's Land Development Regulations.
- The different housing types shall be integrated architecturally in order to give the development a harmonious appearance.

- The creation of visual richness shall be considered when choosing materials and details. Local characteristics are encouraged.
- Side entrances for garages are encouraged.
- A variety of roof heights, pitches and materials will be encouraged.
- Landscaping shall be incorporated into the overall design as a means of linking the development areas with the open spaces.
- Each exterior wall for a single-family home must be a minimum of two materials and a minimum of two colors. Primary facades must have one base color and a complementary wall material may be used to meet the second color requirement.

(f) **Wetlands Buffer Requirement.** No residential units are permitted within jurisdictional wetlands on the property. Roadways and the like may be permitted up to the jurisdictional wetlands line. A minimum upland buffer of 25 feet along each wetland must be platted in a tract, to be maintained by the HOA. No development except passive recreation is permitted in wetland areas.

(g) **Potable water, wastewater, and reclaimed water.** Well and septic systems are not allowed. The Project must be connected to and served by a potable-water and wastewater system prior to a certificate of occupancy being issued for a structure in the Project (except temporary construction uses and sales centers).

Except as may be set forth otherwise in this Agreement, the Owner must install all on-site potable-water, wastewater, and reclaimed-water infrastructure and connect to a water and wastewater systems, and to a reclaimed-water system (when practical and when available) at the Property boundary, all at no cost to the Town. The Owner must pay potable-water, wastewater, and reclaimed-water capital and connection charges, impact fees, and other rates, fees, and charges, either applicable currently or in the future.

1. *Potable Water.* The Town shall provide potable water, and may in the future provide reclaimed water, to the Project in accordance with its applicable ordinances, resolutions, operating regulations, policies and procedures. The Town shall provide potable water to the Property in sufficient quantities for development of the Project as contemplated herein, subject to the limitations and requirements of permits issued to the Town from time to time by the St. John's River Water Management District in connection with water consumption.

The Owner shall construct all off-site potable-water-system facilities, lines, pumps, valves, control structures, and appurtenances (other than water-treatment plants) necessary to serve the Project. The construction and route of off-site lines and other structures shall be done according to engineering plans prepared by the Owner and approved by the Town Manager. When applicable, the Project may request reimbursement from the Town for off-site improvements.

2. *Wastewater.* The Town shall provide wastewater-collection and transmission service to the Project, transmitting Project wastewater to the Central Lake Community Development District ("CDD"). The Owner must obtain from the CDD a contract

right for the Project to receive treatment and disposal of its wastewater at the CDD's treatment and disposal facilities.

The Owner shall construct all off-site wastewater-system facilities, lines, lift stations, pumps, valves, control structures, and appurtenances (other than wastewater-treatment plants and disposal facilities) necessary to serve the Project. The construction and route of off-site lines, lift stations, pumps, and other structures shall be done according to engineering plans prepared by the Owner and approved by the Town Manager. When applicable, the Project may request reimbursement from the Town for off-site improvements.

3. *Town Option to Oversize Water and Wastewater Lines.* Within 180 days of the effective date of the Owner's contract right to receive wastewater-treatment and –disposal service from the CDD, as referenced above, the Town may elect to oversize the off-site lines, pumps, improvements, or other facilities or appurtenances for the Town's water or wastewater system, or for both. If the Town elects to oversize one or both systems, it must inform the Owners in writing of the specifications for the oversizing(s) within the 180-day period. The Town shall reimburse the Owner for the difference in the increase in cost of design, materials and construction to oversize the improvements based on plans and cost estimates provided by the Owner to the Town and approved by the Town Manager, which approval shall not be unreasonably withheld, conditioned or delayed. The Town shall reimburse the Owners for the difference in the costs within 60 days following (i) completion of the improvements and (ii) receipt by the Town of documentation reasonably demonstrating that the Owner has completed the work and has incurred the costs attributable to the over-sizing, all in keeping with the plans and cost estimate previously approved by the Town Manager.

4. *Permit-Induced Costs, Restrictions, Requirements, and Risks.* Under state and federal laws and regulations, the Town may provide its potable-water and wastewater services to the Property and the Owner and its successors only if the Town first has been issued certain required permits. The Owner acknowledges that the permits are inevitably conditioned with requirements and restrictions that typically impose costs and risks. The Owner further acknowledges that, for the Town to operate its potable-water and wastewater systems in an orderly, dependable, and cost-effective manner, the Town must have the ability legally to spread the costs and risks among customers and property owners benefiting from the services. The Owner acknowledges, therefore, that (i) from time to time the Town may impose rates, fees, and charges and may issue potable-water system and wastewater-system regulations and policies that impose restrictions and requirements on its customers and benefiting property owners, such as the Owner and its successors, and (ii) so long as the Owner or successors are required to pay only their fair share for such rates, fees, and charges, then the imposition of such rates, fees, and charges and the issuance of such system regulations are not prohibited by or otherwise a breach of this Agreement.

5. *Reclaimed Water.* The Owner must install reclaimed water lines as required by the Town's Code of Ordinances and shall obtain reclaimed-water service for the Project when the Town constructs reclaimed-water lines to the Project's boundaries. Until such time as the Town supplies reclaimed water, the Owner and its successors shall use the reclaimed water lines to irrigate properties within the Project boundaries, but only with stormwater from on-site stormwater-retention ponds or with sources other than potable water as may be approved by the Town. Except for installation of reclaimed lines at the time of development as noted above,

connection to reclaimed water after the development of the Project may not result in additional costs to the Owner or developer.

- (h) **Solid Waste.** Solid Waste collection shall be pursuant to Town regulations.
- (i) **Drainage.** The maintenance, repair, and replacement of the drainage system shall be the responsibility of the homeowner's association(s).
- (j) **Transportation**

Street and Sidewalks

There must be two ingress and egress points to the Project. All streets must have a minimum 50-foot right-of-way, curb and gutter, and a minimum 24-foot-wide pavement with minimum 12-foot travel lanes. Provision must be made in the rights-of-way for underground utilities.

The Project must have a connected street system that serves vehicles, pedestrians and bicycles and that connects to recreation facilities and adjacent residential/community areas. All streets must be public, dedicated to and maintained by the Town. No streets in the Project may be gated or otherwise restricted or obstructed by the Owner, by a homeowners' or property owners' association, or by any other person or entity.

All portions of the development must be accessible by a direct, convenient, attractive, safe, and comfortable system of pedestrian facilities. The development must provide appropriate pedestrian amenities. A bicycle/pedestrian path with minimum width of ten feet must be constructed as shown on the Conceptual Master plan. All sidewalks within rights-of-way must be dedicated to and maintained by the Town.

Transportation Concurrency and Proportionate Fair Share Mitigation

The Project must undergo concurrency review. The Owner must complete and submit for review prior to building permits a traffic-impact analysis. If required based on that traffic study, the Owner must fund its proportionate fair share of traffic improvements along SR-19 and other key roads as concluded by the traffic study's analysis of project traffic contributing to the needed improvements. Payment of the Owner's fair share must be made in pro-rata amounts upon the issuance of each building permit. If building permits are issued prior to completion of the traffic-study analysis and determination of the pro-rata amount due at each building permit, the Owner shall promptly make a lump-sum payment in arrears for all such dwelling units.

(k) **Schools.** The Project must apply for concurrency review at Lake County Public Schools. The school district has a specific application process. The Project must be shown to have appropriate school concurrency before building permits are issued.

(l) **Landscaping Requirements.** All landscaping and buffer requirements shall be in accordance with the LDC and as illustrated on the Conceptual Land Use Plan with the exception of the following:

1. All buffer, street, and canopy trees planted at the Project will be a minimum of a 2” caliper.
2. the Owner shall require homebuilders to plant at least one canopy tree for each single-family lot of at least 3” DBH; and

All trees planted at the Project shall adhere to the current guidelines established by the Florida Grades and Standards for nursery-grown trees and must be Florida grade #1 or better.

(m) Tree Protection. Under no circumstances may any tree, regardless of size or species, be removed from any designated wetland or conservation easement. Trees proposed to be maintained on site must comply with LDC requirements. No construction activity, equipment or material is permitted inside a tree protection barrier.

Citrus trees are excluded from Town tree-protection requirements.

(n) Lighting. Decorative street lighting (Sanibel fixture, a Duke Energy standard fixture) must be installed (i) at every intersection, (ii) at the end of each cul-de-sac, and (iii) at intervals of 300 feet or as approved otherwise by the Town Manager. Street lighting must be installed by the Owner. All lighting must be directional, shielded lighting designed to minimize light pollution. All lighting must be maintained by the HOA.

(o) Utilities. All utilities must be underground.

(p) Signage. Entrance signs and informational signage may be located in buffers, setbacks/and or signage easements as approved by the Planning and Zoning Board. The Owner shall present a sign plan for review and approval by the Planning and Zoning Board with the final site plan. The Town Council has approved use by the Owner and/or builder(s) of vertical marketing flags, also known as feather banners, with the following stipulations:

1. Feather banners must be placed no less than 200 feet apart.
2. A maximum of 10 feather banners, in total.
3. Feather banners cannot be placed within the right of way.
4. Feather banners cannot be located offsite of PUD property.
5. Feather banners cannot exceed 12 feet in height.
6. Feather banners must be replaced or removed if they become faded, torn, or tattered.
7. Feather banners must be removed when 90% of the homes in the development have received building permit approval.

Billboards and pole signs are prohibited. Unless defined differently in the LDC, a pole sign is a sign supported by at least one upright pole, pylon, or post secured to the ground, with the bottom of the sign face four feet or higher above the finished grade. All additional signage not previously approved must be in compliance with the requirements in the LDC.

(q) Maintenance of Common Areas. Maintenance of all common areas within the Project is the responsibility of the homeowners’ association(s) for the affected subdivision.

(r) **Prohibited Uses.** No manufactured or modular homes are allowed.

Section 2. Amendments. A substantial deviation from the Conceptual Land Use Plan in Attachment B or deviation from the other terms of this Agreement may occur only if approved by the Town Council in the manner required by law or otherwise as determined by Town Council, which may include public notice(s) and hearing(s).

Minor amendments needed once final engineering is completed may be reviewed and approved by the Town Manager without referral to the Planning and Zoning Board or Town Council. Whether a proposed amendment is major, or minor will be determined by the Town Manager.

Section 3: Notices. All notices or payments required to be made hereunder shall be made at the following addresses:

To Town: Sean O’Keefe, Town Manager
Town of Howey-in-the-Hills
101 North Palm Avenue
Howey-in-the-Hills, FL 34737
sokeefe@howey.org

With copies to: John Brock, CMC, Town Clerk
Town of Howey-in-the-Hills
101 North Palm Avenue
Howey-in-the-Hills, FL 34737
jbrock@howey.org

Thomas J. Wilkes, Town Attorney
Gray Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32801
twilkes@gray-robinson.com

To Owner: Steve McConn, PE
KB Home Orland, LLC
9120 Southpark Center Loop
Suite 100
Orlando, FL 32819

With copies to: Steve Feccia, PLA
KB Home Orland, LLC
9120 Southpark Center Loop
Suite 100
Orlando, FL 32819

Section 4: Severability. If any provision or portion of this Agreement is declared by a court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Agreement shall remain in full force and effect. To that end, this Agreement is declared to be severable.

Section 5: Binding Effect. This Agreement runs with the land and is binding on and enforceable by and against the parties hereto and all their successors in interest. However, no Lot Owner shall have the obligations imposed on the Owner as the developer of the Project under this Agreement. For that purpose, a “Lot Owner” means an end-user of a lot created within the Property with a completed residential unit constructed thereon, for which a certificate of occupancy has been issued. Each party covenants to each other party that this Agreement is a legal, valid, and binding agreement, enforceable against the party in accordance with its terms.

Section 6: Negotiated Agreement. The land uses, densities, intensities, and other conditions of approval of the Project have been negotiated and agreed to by the Owner and the Town. The Conceptual Land Use Plan and this Agreement together constitute an agreement between the parties with the knowledge that the Owner’s successors in title, the future homeowners, and other landowners within the Property, as well as the Town and its affected property owners and residents, all will rely justifiably on the agreed-to land uses, densities, and intensities authorized hereby for the Property. For that reason, the Owner and the Owner’s successors in interest have the contract right to develop the PUD with the uses, densities, and intensities approved by the Town, subject to the restrictions and requirements in the conditions of approval set forth in this Agreement. Neither the Owner (and its successors in interest) nor the Town shall have the right in the future to rezone or downzone the property, or otherwise alter the uses, densities and intensities, or delete, waive or amend any conditions of approval except through an amendment to the Plan negotiated and approved by the Town Council and the owner of the then-subject parcel. This section shall survive the termination and expiration of this Agreement.

Section 7. Homeowners’ Association(s).

(a) **Association Responsibilities.** A homeowner’s association and/or a property owner’s association (“HOA”) must be created by the Owner. Membership in the HOA shall be mandatory for all property owners within the Project. The HOA shall be responsible for maintaining all parks, open-space and buffer areas, streetlights, stormwater-management areas and drainage systems, entrance features, boundary walls and/or fences, access tracts, and landscaped tracts within the Project.

(b) **Requirement for Plat Recording.** Before a plat may be recorded for the Property and the Project, the Owner shall furnish to the Town copies of the pertinent documents for the homeowners’ or property owners’ association or associations, plus the covenants, conditions and restrictions for the Property, setting forth the requirements and restrictions enumerated in this section 7 and other applicable parts of this Agreement.

Section 8. Additional Requirements.

a. **Letter of credit.** Construction and dedication to the Town of the public facilities and improvements required under this Agreement will be a condition precedent to final plat

approval. In lieu of construction and dedication, however, the Owner may post a letter of credit or performance bond with the Town for 125% of the cost of such improvements not completed at the time of plat, in which event this condition precedent to final plat approval will be deemed satisfied.

b. **Conveyances to the Town.** Property dedicated or otherwise conveyed to the Town under this Agreement must be free and clear of encumbrances unless and to the extent an encumbrance is acceptable to the Town. Encumbrances discovered after the Effective Date of this Agreement must be removed or resolved by the Owner or its successor developer prior to dedication or conveyance of the affected property to the Town.

c. **Changes in status of land.** Until completion of the Project, the Owner or its successor developer of the Project has a continuing duty (i) to disclose promptly to the Town all changes in ownership, encumbrances, and other matters of record affecting the Property and (ii) to resolve all issues, title or otherwise, that may be identified by the Town as a result of such changes. Failure to disclose such changes or to resolve resulting issues may result in delay in issuance of development permits.

d. **Developer representations binding.** If at Town Council hearings on the approval of the Project the Owner makes a written or oral promise or representation, and if the promise or representation was relied upon by Town Council in approving the Project or otherwise acted to induce or materially influence Town Council in its vote to approve the Project, the promise or representation is a condition of approval of the Project. The promise or representation is binding on the Owner and its successors and enforceable by the Town against the Owner and its successors as if set forth fully in this Agreement.

Section 9. Governing Law. This Agreement shall be governed by the laws of the State of Florida. Venue for any judicial proceeding pertaining to the Agreement shall be in the Fifth Judicial Circuit of Florida, in Lake County, Florida.

Section 10. Effective Date; Termination.

(a) **Effective Date.** This Agreement shall take effect upon the Effective Date above, or on the date when it has been executed by both the Town Council and the Owner, whichever is later.

(b) **Termination.** This Agreement shall remain in effect unless and until terminated by both parties. Termination of this Agreement, in whole or in part, under this section shall be without prejudice to the Owner or its successor to apply for Town approvals to undertake or continue development of the Property in accordance with the circumstances and land-development regulations then existing in the Town.

Section 11. Recording. This Agreement shall be recorded by the Town, at the Owner's expense, in the Public Records of Lake County, Florida, and shall constitute a covenant running with the land.

Section 12. Authority. This Agreement is entered into by the Town under the home-rule powers granted to it by the Florida constitution (including specifically Article VIII, Section 2(b) thereof), the home-rule powers granted municipalities by statute (including specifically Chapter 166, Florida Statutes), and the Town’s Charter. This Agreement does not constitute a “development agreement” under the Florida Local Government Development Agreement Act.

Section 13. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the transactions contemplated herein. It supersedes all prior understandings or agreements between the parties relating to the Property and the Project. No amendment to the terms of this Agreement shall be effective unless in writing signed by all parties hereto. Amendments to this Agreement will take effect and will be binding against the Town only if approved by a vote of the Town Council.

Section 14. Waiver. The failure of a party hereto to insist upon or enforce any right or privilege granted hereunder shall not constitute or operate as a waiver thereof and nothing shall constitute a waiver of any party’s right to insist upon strict compliance with the terms hereof. However, any party may waive in writing the benefit of any provision or condition for its benefit which is contained herein. Waivers of material provisions of either this Agreement or the Town’s LDC will be valid and binding against the Town only if approved by a vote of the Town Council.

[Signature pages follow]

IN WITNESS WHEREOF, the parties are signing this Agreement as of the Effective Date or, if later, the date by which both parties have fully executed this Agreement.

**TOWN OF HOWEY-IN-THE HILLS,
FLORIDA**

By: its Town Council

By: _____
Mayor

Attest:

By: _____
John Brock, CMC, Town Clerk

Approved as to form and legality:
(for the use and reliance of the Town only)

Thomas J. Wilkes, Town Attorney

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was executed, sworn to and acknowledged before me this ____ day of _____, 2022, by Martha McFarlane, as Mayor of the Town of Howey-in-the-Hills.

(SEAL)

Signature of Notary Public

Name of Notary Public
(Typed, Printed or stamped)

Personally Known ____ OR Produced Identification ____
Type of Identification Produced: _____

Witnesses:

KB HOME ORLANDO, LLC

By: _____

Steve McConns

As its _____

Printed Name: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was executed, sworn to and acknowledged before me this ____ day of _____, 2023, by Steve McConn of KB HOME ORLANDO, LLC, a Florida limited liability company, on their behalf.

(SEAL)

Signature of Notary Public

Name of Notary Public
(Typed, Printed or stamped)

Personally Known ____ OR Produced Identification ____

Type of Identification Produced: _____

**Attachment A
To
WATERMARK PUD DEVELOPMENT AGREEMENT**

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

DRAFT

**Attachment B
To
WATERMARK PUD DEVELOPMENT AGREEMENT**

CONCEPTUAL MASTER PLAN

[to be added]

DRAFT