

Developer Agreement

This Agreement is made and entered into as of the ___ of _____, 2021, by and between **WALTON COUNTY, FLORIDA**, a political subdivision of the State of Florida, 76 North Sixth Street, DeFuniak Springs, Florida, 32435, (hereinafter referred to as “County”), and **THE GOLF GARDEN OF DESTIN, INC.**, a Florida corporation, (f/k/a The Garden of Destin, Inc., a Florida corporation) whose address is 949 Bambi Drive, Destin, Florida 32541 (hereinafter referred to as “Owner”) and **DAVIS DEVELOPMENT, INC.**, a Georgia corporation or an affiliate under common control of Davis Development, whose address is 403 Corporate Center Drive, Suite 201, Stockbridge, Georgia 30281 (hereinafter referred to as “Developer”).

WITNESSETH

Whereas, the local government by and through adopted laws and policies govern the development of the land at the time of the execution of this agreement, which shall govern the development of the land for the duration of the development agreement; and

Whereas, the proposal for residential apartments and commercial uses constitutes “development” in Florida Statute 163.3221(4)(a)(2), which development requires a subsequently issued development permit to proceed with said development; and

Whereas, the proposal was heard before two public hearings, the first on _____ day of _____, 2021, and the second being held on ___ day of _____, 2021; and

Whereas, pursuant to F.S. 163.3227(1)(a), the Property for this agreement is described in Exhibit A (“Property”). It consists of approximately 25.35+/- acres and bears the following parcel identification number 30-2S-21-42000-002-0000; and

Whereas, the County recognizes that the Property has a Future Land Use designation of Commercial; and

Whereas, the County recognizes that the Property has a Zoning District of General Commercial; and

Whereas, the Zoning of General Commercial does allow for mixed-use developments to develop at a density of 17 units per acre as a primary use subject to conditions within the Walton County Land Development Code Section 2.02.15.D; and

Whereas, Section 2.02.15.D.1. states that multi-family residential may be authorized as a conditional use, at a density of 17 units per acre, and with a minimum 20% of the dwelling units for workforce housing; and

Whereas, the Walton County Comprehensive Plan Policy H-1.2.11 (1) states:

Workforce housing means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if the County's median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home at the time of application. For the purposes of this Policy, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

Whereas, Florida adopted 2020-27 (HB1339) containing changes to statutory language. That under subsection 420.5095 changes were made to the "Community Workforce Housing Loan Innovation Pilot Program" in which the "workforce housing" was redefined in subsection (3) to be:

"workforce housing" means housing affordable to natural persons or families whose total annual household income does not exceed 80 ~~140~~ percent of the area median income, adjusted for household size, or 120 ~~150~~ percent of area median income, adjusted for household size, in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years before ~~prior to~~ removal of the designation."

Whereas, the modified the term for "workforce housing" that is for projects that are participating in the Community Workforce Housing Loan Program and this Property and subsequent development is most decidedly NOT part of the Community Workforce Housing Loan Program, it is agreed that the definition as amended in 2020-27 does not apply to this agreement.

Whereas, the above revised definition in 2020-276 contradicts the Walton County Comprehensive Plan Policy H-1.2.11 (1) and the Property is not part of the Community

Workforce Housing Loan Program, it is therefore understood that the Florida Statutes Section 420.0004 Definitions gives guidance to the Housing terminology applicable to this development. More specifically that “workforce housing” was removed from these terms and replaced with subsection (12) which defines “moderate-income persons” as

“one or more natural persons or a family, the total annual adjusted gross income of which is less than 120 percent of the median annual adjusted gross income for households within the state or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, with the county in which the person or family resides, whichever is greater.” [emphasis added.]

Whereas, this definition is more suited to the intent in the aforementioned language in the Walton County Comprehensive Plan and, therefore, for the purposes of this developer agreement the statutory definitions are accepted and adopted into this agreement so that “workforce housing” shall be understood to mean the same thing as “moderate-income persons” by definition as attached in Exhibit B.

Whereas, the County and the Developer agree that, pursuant to the Florida Statutes 163.3227(1)(d), the developer must ensure that that the development will have access to all public facilities available within the service area, including but not limited to public water and sanitary service provided by South Walton Utility Company, Inc., telephone services, cable / television services, and electricity, for which the Owner will provide the necessary easements for utilities ingress/egress for installation and maintenance during the development permit review process. Such easements will be shown in the public records of Walton County, Florida.

Whereas, pursuant to F.S. 163.3227(1)(e) the Owner dedicates to the County a north/south right of way easement for the purpose of public ingress, egress, and utilities to reach from US Highway 98 to the 10 acres owned by Walton County, Florida. See attached Exhibit C consisting of copies of county commission exhibits related to the easement and improvements.

Whereas the County and the Owner know that the Property was a golf course with man-made ponds as amenities for golf hazards, to provide for contouring for sand traps, and rolling hills. For the purposes of the development of the Property, the County and the Owner agree:

1. Said ponds are not considered wetlands and may be filled at any time as indicated in the attached letter from the Northwest Florida Water Management District.
2. Said ponds were erroneously added to the FEMA Firm maps with an unnamed A zone designation simply because they appeared to be “wetlands” when, in fact, these ponds are isolated basins and collect little to no additional runoff from the area surrounding the ponds (as reflected on the topographic survey attached).
3. Said ponds do not meet the definition of a flood zone under the Walton County Land Development Code with respect to “filling of named or unnamed flood

zones” per LDC 4.09.12(E) and 5.00.07 (B)(5) and the Property is therefore exempt under these provisions.

Whereas the County believes that safe, aesthetic improvements on the property consistent with the density and intensity of uses of neighboring properties is in the best interest of the health, safety, and welfare of its citizens.

Now, therefore, in consideration of the above premises and the mutual benefits from the covenants herein set forth, the parties do hereby agree to the following:

1. **Density, Intensity.** Walton County agrees that the Property has base density and intensity permitted by right, as follows:

- a. Pursuant to Policy L-1.5.1 (A) General Commercial, the maximum density for the Property is 17 dwelling units per acre to be provided in multi-family apartments by Conditional Use approval.
- b. The minimum required workforce housing units is 20% of the total number of units for the development.
- c. Workforce housing means housing that is affordable to a person who earns less than 120 percent of the area median income.
- d. The Property will be permitted to calculate the 17 units per acre.
- e. The Property will be developed in two phases with Phase I being multifamily and Phase II being commercial.

Description	Square Feet	Acres
Site	1,104,073.05 SF	25.35 acres
Easement	108,112.37 SF	2.48 acres
Open Space	357,235.48 SF	8.20 acres
Recreational Area	83,910 SF	1.926 acres
Density		
Total Area Less Ponds and less Commercial	25.35 acres - 1.45 acres (ponds) - 4.55 acres (commercial) <hr/> 19.35 acres	19.35 acres x 17 dus/ac Allowed 328 dus Proposed 321 dus
Commercial		
Site is 4.55 acres	Allowed FAR 100% or 198,198 SF	Proposed FAR 53%

- f. The base density is evaluated and calculated based on 25.35 +/- acres of the Property minus the 1.45 +/- acres located within a flood zone that requires fill and excluding the 4.55 acres of commercial front US Highway 98.

- i. The acreage for the density calculation is 19.35 +/- acres at 17 dwelling units per acre for a total of 328 units.
 - ii. The development conceptual plan attached hereto as Exhibit C reflects a total of 321 dwelling units.
 - iii. The 20% of the total development for workforce housing is 64 dwelling units.
- a. The maximum allowed intensity for the Property at 100% FAR is 4.558+/- acres is 198,548.23 square feet (Phase II). See attached Exhibit D, Site Plan.
 - b. The ponds on the Property will be permitted to be filled with an issued development order but exempt from the requirements to determine the unnumbered A zone or compensatory storage because the ponds were historically a man-made ancillary and amenity use for the golf course not a wetland or retention pond.

2. **Improvements.** Walton County is responsible for those certain improvements as delineated in the contract between _____ and Walton County:

- a. Walton County shall pay for design and construction of a traffic signal at the intersection of Highway 98 and the southeastern corner of the Golf Garden property no later than 18 months from the recording of this agreement.
- b. Walton County will be responsible for the design and construction of that part of the road from Highway 98 to Walton Way that crosses the County's 10-acre parcel no later than 18 months from the recording of this agreement.
- c. Owner / Developer shall be responsible for the construction of the right of way from Highway 98 to Walton County's 10-acre parcel. The cost of which will be credited to the required mitigation as necessary for traffic concurrency.

3. **Duration of the Agreement.** The duration of this agreement is Twenty (20) Years. Commencing upon the date of approval of this document.

4. **Development Permits, Description.** The subject property will be required to obtain the necessary permits from the local agencies. These permits include:

- a. Major Development Order
- b. Building Permits
- c. Northwest Florida Water Management District permits
- d. FDEP permits

5. **Compliance with Plan and Code.** Development proposed is consistent with the local government's comprehensive plan and land development regulations.

6. **Entire Agreement and Amendments.** This Agreement constitutes the entire understanding between the parties and supersedes all previous agreements or negotiations on the subject matter herein, whether written or oral, and shall not be modified or amended except by written agreement duly executed by the Parties.

7. **Failure.** The failure of the Agreement to address a permit, condition, term, or restriction shall not relieve the Developer of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

8. **Modification of Agreement.** Modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing and duly signed by the parties.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

10. **Venue.** Venue for all matters arising from this contract shall lie in
Walton County, Florida.

11. **Waiver.** Failure or delay on the part of either party to exercise any right, power, privilege, or remedy under this Agreement shall not constitute a waiver thereof. No modifications or waiver by either party of any provision shall be deemed to have been made unless in writing.

12. **Severability.** The provisions of this Agreement shall be severable and the invalidity of any provision, or portion thereof, shall not affect the enforceability of the remaining provisions.

13. **Assignment.** Parties shall not assign or transfer any interest in this Agreement, except as stated herein, without the approval of the County, whose approval shall not be unreasonable withheld.

In Witness Whereof, the parties hereto have, through their proper and duly authorized officials, executed this Agreement, the day and year first above set forth.

**WALTON COUNTY BOARD OF
COUNTY COMMISSIONERS**

ATTEST:

Alex Alford, Clerk of Court and County
Comptroller

By: _____

Trey Nick, Chairman

OWNER

Witnesses:
Florida corporation

THE GOLF GARDEN OF DESTIN, INC., a

_____ By: _____

Printed Name_ Printed Name: _____

Printed Name _____

DEVELOPER

Witnesses:
corporation

DAVIS DEVELOPMENT, INC., a Georgia

_____ By: _____

Printed Name_ Printed Name: _____

Printed Name _____

EXHIBIT A

LEGAL:

Less and Except the North 10 acres sold to Walton County, a Florida corporation, as described in Warranty Deed recorded with the Clerk of Court in the Official Records Book 3134, Page 583 on February 13, 2020, Walton County, Florida.

For a total of 25.35 acres, more or less.

EXHIBIT B

EXHIBIT C

EXHIBIT D