

1 After Recording Return to:
2 City of DeBary
3 Attn: City Clerk
4 16 Columba Road
5 DeBary, Florida 32713
6

7 **ORDINANCE No. 01-16**
8 **ATTACHMENT "A"**
9

10 **MPUD DEVELOPMENT AGREEMENT**
11 **(FORT FLORIDA COMMONS MPUD)**
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16 **THIS MPUD DEVELOPMENT AGREEMENT** ("Development Agreement" or this
17 "Agreement") is made and entered into by and between the **CITY OF DEBARY**, a
18 Florida municipal corporation (herein "City") and **EMPIRE CATTLE, LTD.** (herein
19 "Applicant").

20 **WHEREAS**, the Applicant is the fee simple owner of that certain real property
21 being approximately 296.2 acres in size and having a Volusia County Tax Parcel
22 Identification Number 08-19-30-00-00-0010, and legally described in **Exhibit "A"**
23 attached hereto and incorporated herein (herein the "Property") and being the same
24 property described in City of DeBary Ordinance No. 01-16:
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28 **WHEREAS**, the Applicant has requested that the Property be rezoned from
29 A-2 (Rural Agricultural) and RC (Resource Corridor) zoning classifications to a MPUD

1 (Mixed Planned Unit Development) and a RC (Resource Corridor) Zoning Classification,
2 with the portions of the Property currently zoned RC retaining its RC zoning; and

3 **WHEREAS**, the Property has a Comprehensive Plan Future Land Use Map
4 designation of SW Mixed Use Area (SWMUA) and Environmentally Sensitive Lands
5 (ESL); and

6 **WHEREAS**, Ordinance No. 01-16 approving this Development Agreement has
7 been advertised and noticed in accordance with the requirements of state law and
8 Section 1-10 of the City of DeBary Land Development Code; and

9 **WHEREAS**, the City Council acting in its capacity as the City of DeBary Local
10 Planning Agency and Governing Body has conducted the necessary public hearings on
11 Ordinance No. 01-16 approving this Development Agreement; and

12 **WHEREAS**, based upon competent, substantial evidence presented in the
13 record, Ordinance No. 01-16 and this Development Agreement have been determined
14 by the City of DeBary City Council to meet the requirements for rezoning pursuant to
15 Section 1-6, City of DeBary Land Development Code and Comprehensive Plan Policy
16 5.505 and is consistent with the City of DeBary Comprehensive Plan and Land
17 Development Code; and

18 **WHEREAS**, the City of DeBary City Council finds that this Development
19 Agreement promotes the public health, safety, and welfare and is consistent with and
20 authorized by its authority under Chapter 166, Florida Statutes, Article VIII, Section 2 (b)
21 of the State Constitution, and the City's home rule authority and police powers.

1 **NOW, THEREFORE**, in consideration of the mutual promises and covenants
2 contained herein, and for other good and valuable consideration, the receipt and
3 sufficiency of which are hereby acknowledged, the parties agree as follows:

4 A. Development Concept. The Property shall be developed as a Mixed Planned
5 Unit Development (MPUD) substantially in accordance with the Master
6 Development Plan (as hereinafter defined). The Master Development Plan shall
7 govern the development of the Property as a MPUD and shall regulate the future
8 land use of this parcel.

9 1. Master Development Plan. The Master Development Plan shall consist of
10 the Preliminary Plan series dated November 2015, and prepared by CPH
11 Engineers, Inc., and this Development Agreement (collectively, the
12 “Master Development Plan”). The Master Development Plan is hereby
13 approved and incorporated in this Development Agreement by reference
14 as Exhibit “B”. The Master Development Plan, as part of this
15 Development Agreement, shall be filed and retained for public inspection
16 in the office of the City Clerk and it shall constitute a supplement to the
17 Official Zoning Map of the City DeBary.

18 2. Amendments. The Master Development Plan is intended to be a
19 conceptual plan to guide development of the Property in compliance with
20 the terms and conditions of this Development Agreement. The parties
21 hereto acknowledge that reductions in density and/or intensity may and do
22 occur; and that minor changes to roadway design, location and size of
23 structures, and locations and design of stormwater storage, landscape
24 buffers and upland buffers may occur during the plat and/or site plan
25 review and approval processes. Proposed revisions to the Master
26 Development Plan that also necessitate revisions to the substantive terms
27 of this Development Agreement shall require approval by the City Council

1 as either a major or minor amendment to this MPUD in accordance with
2 the Land Development Code, as may be amended. The DeBary City
3 Manager shall make determinations as to whether requested revisions to
4 the Master Development Plan rise to the level of a minor or major
5 amendment of this MPUD pursuant to the Land Development Code, or is
6 merely a minor deviation of the Master Development Plan. Minor and
7 major amendments to this MPUD shall be processed in accordance with
8 the Land Development Code, as may be amended. Changes determined
9 by the City Manager to be minor deviations to the Master Development
10 Plan may be approved by the City in the issuance of subsequent
11 development orders. A minor deviation shall be a deviation from the
12 Master Development Plan, which has no substantive effect on the overall
13 goals, purpose and objectives of this Development Agreement and the
14 Master Development Plan. Generally, a minor deviation would be a
15 change that does (a) not conflict with the requirements of the Master
16 Development Plan or any exhibit adopted as part of the Master
17 Development Plan, (b) not conflict with any substantive provision of this
18 Development Agreement, any City ordinance or regulation not superseded
19 by the terms of Ordinance No. 01-16 and this Development Agreement,
20 and (c) not trigger the minor or major amendment PUD provisions of the
21 City of DeBary Land Development Code. Examples of a minor deviation
22 would include, but not be limited to, the following changes:

- 23 i. Relocating the ingress/egress points to the site and revisions to the
24 trail system to conform to topography, wetlands, final road design
25 and final design of the layout of the product types.

- 26 ii. Decrease in density.

- 27 iii. Relocation of internal improvements and community facilities as
28 depicted on the Master Development Plan, in order to preserve
29 existing trees and vegetation, minimize or avoid wetland impacts,
30 for stormwater design issues or for engineering issues.

1 3. Site Plan or Subdivision Approval. After the Master Development Plan is
2 recorded, and prior to issuance of any permits for construction, including
3 clearing and landfill, a Site Plan or Subdivision Plat shall be prepared and
4 submitted for review and approval to the City of DeBary in the manner
5 required by the City of DeBary Land Development Code (herein referred
6 to as the “Land Development Code” or “LDC”).

7 A.) The City is deferring development review fees for application #15-01-
8 PUD-Empire, A/K/A Ft. Florida Commons Planned Unit Development
9 (PUD) until such time that a preliminary plat and construction plan
10 application is submitted. At the time of submittal of the construction plans
11 for the land associated with the above PUD, an applicant shall reimburse
12 the City all of the PUD development review fees.

13 4. Unified Ownership. The Applicant or its successors shall maintain unified
14 ownership of the respective portions of the Property until after approval
15 and recording of final plat(s) of the Property. In order words, the Applicant
16 cannot convey portions of the Property without first having obtained a final
17 plat approval(s) creating a legal subdivision of the portion of the Property it
18 intends to convey separately from the remainder of the Property.

19 5. Phases of Development. The site may be developed in multiple phases.
20 Development phasing will be determined during the Site Plan and/or
21 Subdivision approval process.

22 6. Land Uses Within the MPUD. The development of the parcels shall be
23 consistent with the uses prescribed for each area within the proposed
24 MPUD. The location of said land use areas are shown on the Master
25 Development Plan (Exhibit “B” attached to this Agreement), which location
26 and size may vary with final design considerations. The following land

1 uses shall be allowed as permitted principal uses and structures along
2 with their customary accessory uses and structures, and essential utilities.

3 6.1 Town homes (no accessory sheds)

4 6.2 Single Family Detached Residential

5 6.3 Recreation and Open Space Uses.

6 6.4 Retail Commercial uses

7 7. Recreation. The following uses are permitted within the designated
8 recreation tracts for exclusive use by residents and guests within the
9 development:

10 7.1 Club houses

11 7.2 Swimming Pools

12 7.3 Tennis Courts

13 7.4 Basketball Courts

14 7.5 Tot Lots / Playgrounds

15 7.6 Pavilions / Picnic Areas

16 7.7 Trails

1 7.8 Community Farming

2 7.8 Other recreational uses as deemed appropriate by the DeBary City
3 Manager.

4 8. Number of Dwelling Units. Provided the requirements of the DeBary
5 Land Development Code, the rules and regulations of any other
6 governmental agency having jurisdiction over the Property, and the terms
7 of this Agreement are complied with, the Property is entitled to be
8 developed with a maximum of 700 residential dwelling units (the
9 “Maximum Number of Residential Units”).

10 The Applicant shall have the right to adjust or reallocate (a) the
11 approximate number and mix of residential dwelling units among the
12 product types (i.e. Town homes and Single Family Detached Residential)
13 (b) the size of each village area as shown on PUD Master Development
14 Plan Exhibit "B" up to 20% of the village area or up to 5 acres (whichever
15 is greater) provided (a) the total number of residential dwelling units
16 developed on the Property do not exceed the Maximum Number of
17 Residential Units, and (b) provided the number of Single-Family Detached
18 Residential units to be developed on the Property is not less than 200
19 units.

20 9. Prohibited Uses. All uses not expressly permitted by this Development
21 Agreement are prohibited on the Property and within this MPUD.

22 B. Development Standards.

23 1. **Town homes Lot and Building Guidelines**

24 All lots shall be adjacent to a public right-of-way.

- 1 **1.1 Maximum Lot Area:** NA.
- 2 **1.2 Minimum Lot Area:** 1800 sq. ft.
- 3 **1.3 Minimum lot Width and Frontage:** 20' for townhouse
- 4 **1.4 Minimum Lot Depth:** 95'
- 5 **1.5 Minimum Floor Area:** 1,500 sq. ft. for primary unit.
- 6 **1.6 Maximum Lot Coverage:** 75% (Area calculated as percentage of
7 the area covered by primary structure including the house, garage
8 and any accessory structure such as storage sheds.)
- 9 **1.7 Maximum Building Height:** *45 feet and not more than 3 stories*
- 10 **1.8 Minimum Building setbacks:**
- 11 **1.8.1 Front:** 10' to 20' build-to range to primary structure. If on
12 Street parking is not provided then minimum setback is 20'
- 13 **1.8.2 Side:** 10 feet.
- 14 **1.8.3 Rear:** 10 feet for primary structure, 5 feet for a garage or
15 other accessory structure except if there is a landscaped
16 common area behind the town home and there is a minimum
17 distance of 20 feet from the project boundary line and the
18 dwelling unit or accessory structures, in which case rear
19 setback may be 0 feet

1 Minimum distance between buildings shall be 20 feet.

2 **1.9** Maximum building width: 180 feet.

3 **1.10** Maximum number of units per building: 6 units.

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5 **2. SINGLE-FAMILY DETACHED DWELLINGS:**

6 **Detached Unit Lot and Building Guidelines**

7 **2.1 Minimum Lot Area:** 4,400 sq. ft., Lot area standards are subject to
8 the dimensional standards assigned to each specific Village Area
9 as listed on the Land Use Sheet of the PUD Master Development
10 Plan, Exhibit "B".

11 **2.2 Minimum lot width and frontage:** 40' for single family,

12 **2.3 Minimum lot depth:** 110'

13 **2.4 Minimum floor Area:** 1600 sq. ft. for primary dwelling unit,
14 maximum 450 sq. ft. for accessory structure

15 **2.5 Maximum Impervious Coverage:** 65%

16 **2.6 Maximum Building Height:** 45' or 3 stories'

17 **2.7 Maximum Number of Dwelling Units per lot:** 1

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2.8 Minimum Building setbacks:

- 2.8.1 Front:** 20'. Porches may be no closer than 14'.
- 2.8.2 Street Side:** 15'
- 2.8.3 Interior Side:** 5' on each side.
- 2.8.4 Rear:** 20' for primary structure, 5' accessory structure
- 2.8.5** Pool and/or Enclosure shall be 5' from side or rear yard

2.9 Density, Max. 5 dwellings per/ Gross Acre. Gross Acreage shall include common open space, wetlands, all buffers easements, right of way for roads and storm water ponds.

3. Commercial Retail Development Guidelines

3.1 Commercial - Commercial uses intended to serve the neighborhood may be developed in the commercial area depicted on the Master Development Plan. Development in these commercial areas shall be consistent with B-2 Neighborhood Commercial Classification development standards per the Land Development Code Sec. 3-100. Additionally, commercial use shall be limited to a total of 10,000 sq. feet, in entirety, within the MPUD.

Commercial use shall be limited to the following uses;
Retail Bakeries, Barbershops, beauty shops, shoe repair shops, Book and stationery stores, Confectioners and ice cream shops, Convenience stores without fuel dispensers, Convenience stores with fuel dispensers (No more than eight vehicular service positions per fuel dispenser island. Maximum of four fuel dispenser islands), Florist and gift shops, Hardware stores, Jewelry stores, Laundry and dry cleaning pickup stations, Outdoor display of retail merchandise (refer to section 3-133(10), Pharmacies, Photographic Studios, Physical fitness studios (gym), Publicly owned parks and

1 recreational areas, Restaurants, Type B, when accessory and subordinate to the
2 convenience store use excludes a single-use freestanding restaurant, Day care center (refer
3 to section 3-134(5)
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5 **3.2 Special Exception** - In addition to permitted uses, the following shall be permissible
6 by special exception approved and in accordance with the criteria set forth in the Land
7 Development Code;

8 Public uses not specifically allowed as a permitted use, Public utility uses and structures
9 (refer to section 3-134(1), Public uses not listed as a permitted principal use, Only one
10 single-family dwelling unit (for the owner or manager of an existing permitted principal use),
11 Houses of worship (refer to section 3-134(3), Financial institutions, Publicly owned or
12 regulated water supply wells, Public school, Libraries, General offices, Fire stations,
13 Communication towers not exceeding 70 feet in height.

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15 **C. General Development Standards:**

16 1. All plant materials in landscaped areas to be installed shall be Florida No.
17 1 grade, or better, according to the current “Grades and Standards for
18 Nursery Plants,” State of Florida, Department of Agriculture, Tallahassee.
19 The number of plantings within the created landscaped areas shall
20 conform to the City of DeBary landscaping regulations. Developer may
21 substitute fruit and nut producing trees and shrubs in place of traditional
22 landscaping materials permitted in DeBary’s Land Development Code
23 throughout the project area in common areas, parks, street ROWs,
24 wetland buffers and perimeter buffers. Developer will coordinate with
25 University of Florida IFAS local extension office to provide landscape
26 pallet that compliments existing native flora to create Food Forests in
27 appropriate areas.

28 2. Perimeter buffers shall be required from the property line and shall be the
29 following width:

30 2.1 North property line (adjacent to Fort Florida Road): 20’

- 1 **2.2** West property line adjacent to Resource Corridor Lands: None
- 2 **2.3** East property line (adjacent to Barwick Road): 20'
- 3 **2.4** South property line adjacent to Leisure World Drive: 20'
- 4 **2.5** Property lines adjacent to Meadowlea Subdivision: 20'
- 5 **2.6** Perimeter buffers shall remain in their natural condition and shall
6 not be required to have irrigation. Additional landscaping will be
7 added to the perimeter buffers where existing landscaping does not
8 meet City buffer standards per the Land Development Code. The
9 supplemental landscaping will be irrigated. Where existing
10 vegetation is inadequate or of undesirable appearance, excavation
11 or embankment will be permitted within the buffer to aid site
12 development. Following grading of the buffer in this manner, the
13 buffer shall be landscaped to meet City buffer standards per the
14 Land Development Code.
- 15 **2.7** Wetland buffers and landscape buffers can be located within a
16 residential lot. Wetland buffers will be placed in a conservation
17 easement during platting to allow for home owners to maintain
18 upland buffers per St. John Water Management Regulations. In no
19 case shall the buffer make up more than 25% of the rear minimum
20 setback area.
- 21 **3. Street and Median Landscaping will be provided as follows:**

1 **4.3** All other signage applicable to residential uses may be erected in
2 accordance with the Land Development Code.

3 **5. Garage Standards**

4 5.1 *Front-loaded garages setbacks.* Front-loaded garage doors shall be
5 recessed a minimum of five (5) feet behind the nearest adjacent plane of the primary
6 structure. However, when a porch in front of the forward-most plane of the structure,
7 which meets the minimum standards above, is provided, the garage door setback
8 behind the nearest adjacent plane of the primary structure may be decreased to three
9 (3) feet. Detached garages without access to a rear alley easement shall be located a
10 minimum of five (5) feet from side and rear property lines, and shall be no closer than
11 ten (10) feet to any other detached structure on the same lot.

12 **D. Model Homes and Sales Office Requirements:**

13 **1.** Model home construction prior to plat recording shall be allowed upon
14 compliance with the following requirements:

15 **1.1** Provision for fire protection, including testing and approval of the
16 water system by the Florida Department of Environmental
17 Protection (FDEP), if on-site hydrants are required to service the
18 area where the proposed models will be constructed.

19 **1.2** Construction of access roads to the model home sites prior to
20 building permit issuance, to the extent necessary to allow sufficient
21 access by City inspection vehicles.

22 **1.3** Permanent utility connections cannot be made until the sanitary
23 sewer system has been completed and certified to FDEP.

- 1 **2.** Two types of sales offices shall be permitted:
- 2 **2.1** Model Homes – A model home may be used as a sales office
3 within each Village until such time as the last lot is developed within
4 the specific Village development.
- 5 **2.2** Temporary Offices – Temporary structures, such as approved office
6 trailers, and the like, may be permitted as a temporary sales office
7 while a model home is under construction. Such temporary sales
8 office shall only be permitted for an interim period not to exceed
9 sixty (60) days from placement or until completion of the first model
10 home, whichever occurs first
- 11 **2.3** Building permits are required for both model homes and temporary
12 offices. A final building inspection to insure conformance with the
13 building and life safety codes shall be required for any model home
14 or temporary office prior to occupation.
- 15 **2.4** Parking at the model home/sales office shall be on the street and in
16 the residential driveway. These parking requirements shall be in
17 lieu of the parking requirements set forth in the City's Land
18 Development Regulations. Temporary parking lots located on lots
19 or areas adjacent to model homes are permitted and may be
20 surfaced with gravel, mulch, shell, or similar materials, in addition to
21 asphalt or concrete pavement.
- 22 **2.5** Signage shall be limited to one sign per model home, not to exceed
23 an area of ten (10) square feet and a height of four (4) feet. Signs
24 shall be at least ten (10) feet away from any dedicated or private
25 roadway.

1 **E. Open Space Requirements:** As required per the Land
2 Development Code, as amended; provided, however, in no event shall such
3 open space requirement be less than 20% of total site area. Areas counted
4 towards the minimum open space requirement shall include, but are not limited
5 to, recreation areas, man-made lakes, landscape buffers, tree preservation
6 areas, open grassed or vegetated areas, wetlands and required upland buffers.
7 The recreation uses shall be distributed evenly throughout the project as
8 generally depicted on the Master Development Plan - Exhibit "B" and consistent
9 with Policy 8.101 of the City Comprehensive Plan. Each park sites shall be
10 developed as a separate tract in conjunction with the required infrastructure
11 improvements for each proposed residential village. The park sites may include
12 accessory park furniture such as benches and bike racks. Recreational
13 structures will setback a minimum of 20 feet from any perimeter boundary.
14 Project will provide a private multi-use pedestrian, bicycle, and jogging trail
15 system generally connecting each village and other common open space areas
16 as generally shown on the submitted Exhibit "B" Master Development Plan
17 series. The specific path of each leg of the trail will be determined during the
18 planning of each preliminary plat. Development will include private/semi-public
19 community amenities, which may include a swimming pool(s), tennis courts,
20 pavilions, fitness center, bistro restaurant, outdoor entertainment and gathering
21 and wildlife observation areas.

22 **F. Tree Preservation Requirements:** As required by LDC, the preservation
23 areas shall be met within the boundary of the Development designation.

24 **G. Environmental Considerations:** The Property shall be developed in a
25 manner so as to preserve jurisdictional wetlands on site with a minimum 25-foot
26 buffer (a minimum 50-foot buffer for wetlands contiguous to St. Johns River). No
27 development will occur in such buffer except as in compliance with the DeBary
28 Land Development Code. Any permitted impacts to jurisdictional wetlands
29 located on the Property shall be mitigated according to the Land Development

1 Code and St. John's River Water Management District requirements. The
2 portions of the Property zoned RC (Resource Corridor) shall remain and be
3 maintained in perpetuity in their natural condition without right of development,
4 except as provided in the next sentence. If properly permitted and mitigated, if
5 and as required by state and local permitting agencies, impacts may occur along
6 the shoreline of the St. Johns River, naturally vegetated upland buffers and within
7 the RC (Resource Corridor) classification only for the following:

8 (1) pervious pedestrian crossings of wetlands

9 (2) gazebos and raised pedestrian boardwalks

10 (3) minor grading activities and swales

11 (4) Restoration and enhancement of wetland resources

12 **H. Sewage Disposal and Potable Water:** Each dwelling unit, amenity structure
13 and commercial structure developed on the Property shall be connected to
14 central potable water and sanitary sewer service, which is currently provided by
15 Volusia County. Water and sewer lines and appurtenances thereto shall be
16 extended and connected to the Property by Applicant, at the Applicant's
17 expense, in accordance with applicable sizes, pressures, metering, regulations
18 and standards. All project internal utility lines shall be provided at the expense of
19 the Applicant. If available, Applicant will install re-use water lines within the
20 development by connecting to re-use water lines provided at the property lines by
21 the City of DeBary or Volusia County Utilities. Applicant shall cause the granting
22 of all utility easements necessary for the required utility lines to the extent said
23 lines are not located within public rights-of-way. No certificates of completion for
24 site infrastructure and building permits and certificates of occupancy for

1 structures shall be issued until all potable water and sewer off-site and on-site
2 main lines are properly permitted, installed, inspected and fully functional.

3 **I. Stormwater Drainage.** Stormwater management shall be in accordance with
4 the requirements of the St. John's River Water Management District and the City
5 of DeBary. Moreover, the Applicant, at its expense, shall provide for proper
6 stormwater drainage, detention and retention of stormwater arising from and
7 concerning the Fort Florida Road and Barwick Road improvements described in
8 Section J of this Agreement. The Applicant shall grant the City of DeBary
9 perpetual drainage easements necessary to allow stormwater drainage from the
10 Fort Florida Road and Barwick Road improvements to be conveyed to and
11 retained on portions of the Property developed to accommodate such stormwater
12 drainage. The project's homeowner's association shall have the perpetual
13 obligation to maintain, replace and repair all of the Property's stormwater
14 management systems within the limits of the Property, including but not limited
15 to, drainage easements granted to the City of DeBary and improvements located
16 thereon.

17 **1. Design Standards:** The MPUD shall be served by a well-designed,
18 master stormwater management system as follows:

19 **1.1 Concept:** The design concept is to utilize and enhance natural
20 drainage systems, simulate natural systems in man-made
21 structures, and utilize the following guidelines:

22 **1.2 Integration:** Integrate the man made system into natural systems

23 **1.3 Water Detention:** Stormwater facilities shall be designed in an
24 aesthetically pleasing manner in which, it is integrated within the
25 parks and recreation greenspace and natural features of the

1 development. Stormwater ponds shall be wet detention where site
2 conditions allow.

3 **J. Access and Transportation System Improvements:** All access and
4 transportation system improvements shall be provided in accordance with the
5 Land Development Code.

6 The Property shall be developed in substantial accordance with the following
7 access and transportation system improvements:

8 **1. Access:**

9 There shall be two ingress/egress points to and from public rights-of-way. The
10 location of these vehicular access points shall meet City of DeBary standards.
11 Both entrances will be constructed with the first phase of development.

12 **2. Transportation System Improvements/Operations.**

13 **2.1** All access and transportation system improvements shall be
14 provided in accordance with the Land Development Code, unless
15 otherwise provided for within this Agreement and as part of the
16 approved Master Development Plan. Applicant shall be
17 responsible for installing all appropriate internal roadway traffic
18 control devices and signs in accordance with applicable standards.
19 During development and post development there shall be a
20 minimum of one (1) ingress/egress points to Ft. Florida Road and
21 Barwick Road. The location of these vehicular access points shall
22 meet City of DeBary Land Development Code standards. All
23 entrances will be constructed with the first phase. One (1) of the
24 ingress/egress points may be for construction and/or emergency

1 vehicle access purposes and may be located on Barwick Road, Ft.
2 Florida Road or Leisure World Drive. The first ingress/egress
3 points shall be built in conjunction with the project's first phase.
4 The second ingress/egress point shall be completed prior to the
5 351st dwelling unit receiving a certificate of occupancy. Until the
6 2nd entrance is required a stabilized entry may serve as access for
7 emergency vehicles.

8 **2.2** Prior to or concurrently with the recording of the final plat for the 1st
9 phase of development, the Applicant shall, at no charge to the City,
10 cause the fee simple conveyance of lands to the City necessary to
11 meet the required sixty-foot (60') right-of-way width to expand the
12 existing right-of-way along the Property's full boundary with Ft.
13 Florida Road and Barwick Road ("Right-of-Way Property") in
14 accordance with the procedures set forth in subsection 2.4 herein.
15 Applicant shall incur the costs of title work, surveying and preparing
16 legal descriptions and sketches for required Right-of-Way Property
17 conveyances. As of the effective date of this Development
18 Agreement, City does not currently have a transportation impact
19 fee. Applicant reserves the right to apply for and seek
20 transportation impact fee credits relating to the conveyance of the
21 Right-of-Way Property as described in this section and section 2.3
22 below, and any required offsite transportation improvements
23 excluding lands and improvements necessary for ingress and
24 egress to and from the Project (e.g. turn lanes and intersections of
25 internal roads with public rights-of-way); provided however, the
26 Applicant shall not be entitled to apply for, seek or receive
27 transportation impact fee credits if the City does not adopt a
28 transportation impact fee applicable to the development of the
29 Property prior to the Applicant's conveyance of the Right-of-Way
30 Property to the City. The conveyance of the Right-of-Way Property
31 to the City shall not relieve the Developer from its responsibilities to

1 engineer, design, permit and construct the any of the Ft. Florida
2 Road and Barwick Road improvements or any other improvements
3 specified in this Agreement or as a condition of Project approvals.

4 **2.3** The Applicant shall, at its expense, be responsible for engineering,
5 design, permitting and construction of certain improvements to Ft.
6 Florida Road along the full Property frontage on Ft. Florida Road to
7 accommodate access to and from the project entrances on Ft.
8 Florida Road, with asphalt at a width of twenty-four feet (24') and all
9 in accordance with the DeBary Comprehensive Plan, section
10 5.406(b) (3), the Land Development Code and the provisions of this
11 Development Agreement ("Public Road Improvements"). The
12 applicant shall also provide access to Barwick Road but is not
13 required to do additional improvements to Barwick Road. The City
14 will provide assistance in determining the existing prescriptive rights
15 and right-of-way limits of Ft. Florida Road. The Applicant (for itself
16 and its successors and assigns) hereby disclaims, releases and
17 quit claims to the City of DeBary any and all right, title and interests
18 Applicant may have or had in the current alignment of the Ft.
19 Florida Road right-of-way as maintained by the City of DeBary. To
20 the extent feasible, the current Fort Florida Road roadway
21 alignment will be preserved and the roadway and stormwater
22 design will accommodate the existing trees lining the roadway
23 corridor.

24 **2.4 Right-of-Way Property Conveyance.** The Right-of-Way Property
25 shall be conveyed to the City by warranty deed or special warranty
26 deed free and clear of all liens and encumbrances except for those
27 matters acceptable to the City. The form of the special warranty
28 deed shall be subject to the approval of the City. The Applicant
29 shall, at least ten (10) days prior to the conveyance of the Right-of-
30 Way Property to the City, provide to the City a boundary survey of

1 the Right-of-Way Property (including a depiction of the existing Ft.
2 Florida Road and Barwick Road rights-of-way in relation to such
3 property) certified to the City and a current attorney's opinion of title
4 or a current certificate of title, evidencing that fee simple title to the
5 Right-of-Way Property is free and clear of all liens and
6 encumbrances except for those matters acceptable to the City.
7 Real property taxes on the Right-of-Way Property shall be prorated
8 as of the day before the City's acceptance of the conveyance of the
9 same, and the prorated amount of such real property taxes
10 attributable to the Applicant shall be paid and escrowed by the
11 Applicant in accordance with the provisions of Section 196.295,
12 Florida Statutes; provided, however, that if the conveyance occurs
13 between November 1 and December 31, then Applicant shall be
14 responsible for real property taxes for the entire year. Applicant
15 shall comply with the disclosure requirements of Section 286.23,
16 Florida Statutes, with respect to the conveyance of the Right-of-
17 Way Property to the City, if applicable.

18 **A. Construction Schedule**

19 The Applicant shall proceed with engineering, design,
20 permitting, installation and construction of Ft. Florida Road and
21 Barwick Road improvements in accordance with the following road
22 improvement schedule:

23 Prior to Platting 351st Lot. Prior to the final plat
24 approval for the Project phase/village platting the 351st residential
25 dwelling unit lot, the Applicant, at its cost shall: (a) install and
26 construct or cause to be installed and constructed the Public Road
27 Improvements with asphalt at a width of twenty-four feet (24') and
28 improve the rights-of-way in accordance with the Local Road

1 Standards per the City of DeBary Land Development Code and
2 include traffic control devices, striping and signs. The Applicant
3 shall accommodate the stormwater drainage arising from and
4 concerning the Public Road Improvements in the existing right-of-
5 way and on retention pond(s) and areas on the Property. The
6 Applicant shall pay for all costs of engineering, design, and
7 construction of all roads and stormwater improvements described
8 herein. The City will, at Applicant's expense, provide the Applicant
9 with assistance in the St. Johns River Water Management District
10 (SJRWMD) permitting process and be named as the applicant
11 concerning stormwater improvements related to Ft. Florida Road
12 improvements.

13 2.4 Road Construction Agreement. Prior to Applicant's construction
14 commencement of the Public Road Improvements, Applicant shall
15 be required to enter into separate agreement with the City to set
16 forth the terms, conditions and specifications for the design,
17 permitting and construction of Ft. Florida and Barwick Road
18 improvements. Every effort will be made by the Applicant and City
19 to preserve the existing tree canopy along Ft. Florida during the
20 design and construction of improvements. Such agreement may
21 require performance and maintenance guarantees (in the form of
22 cash, letter of credit or surety bonds) to be provided by the
23 Applicant to secure the proper and timely completion of the road
24 improvements.

25 2.5 If any of the Public Road Improvements are not made when and
26 how required herein and by the aforementioned separate road
27 construction agreement, the City shall have the right, without
28 limitation on other remedies the City may have, to withhold further
29 building permits, plat approvals, certificates of occupancy and other

1 development orders concerning the Property, until such obligations
2 are satisfied. In addition to other remedies the City may have, in
3 the event the Applicant fails to timely make the Public Road
4 Improvements as required in this Agreement, the City may record a
5 Notice of Lien against the Property and Applicant in an amount
6 equal to the estimated design, permitting, installation and
7 construction cost of the uncompleted Public Road Improvements
8 required by this Agreement. The lien amount shall accrue interest
9 at the rate of twelve percent per annum. A copy of such Notice of
10 Lien(s) shall also be delivered to Applicant at Applicant's (or its
11 successors and assigns) last known address according to the
12 Volusia County Property Appraiser's website. The recorded Notice
13 of Lien(s) shall constitute a lien upon the Property and the lien may
14 be foreclosed upon for the benefit of the City any time ninety (90)
15 days after the Notice of Lien has been recorded in the public
16 records. The City may foreclose the lien in accordance with the
17 procedures established in Chapter 702, Florida Statutes, or
18 successor or other statute providing for lien foreclosure procedures.
19 The City shall be entitled to recover its collection costs and City's
20 litigation costs in obtaining a monetary judgment or foreclosing the
21 lien against Applicant and Property, including the City's attorneys'
22 fees and costs. The Applicant may obtain a release from the lien by
23 paying the amount stated in the lien, plus accrued interest, plus
24 attorneys' fees and costs incurred by the City in filing and collecting
25 upon the lien.

26

27 **3. Trail System**

1 **3.1** Sidewalks and Paths will be provided as depicted on the Master
2 Development Plan. Sidewalks shall meet the design criteria
3 requirements of DeBary Land Development Code.

4 **3.2** The City of DeBary will assist the Applicant in constructing the multi-
5 use trail system by annually submitting a project application to
6 compete for Federal and State transportation funding through the
7 Transportation Planning Organization until the Trail system is
8 completed, subject to annual budgetary discretion of the City Council.
9 Applicant (and its successors and assigns) shall grant, free of
10 charge, the easements for public use for any of the trails that are
11 funded as part of the City's match requirement.

12 **K. Internal Roadways.** Changes to the dimensions, design speeds, and other
13 features of internal streets may be allowed in accordance with the roadway typical
14 sections presented in Appendix B, subject to City review and approval during the site
15 development review process. This Developer's Agreement is intended to offer flexibility
16 to the Applicant in selecting private or public roadways or a mix thereof.

17 **L. Homeowners' or Property Owners' Association.** The Applicant shall create
18 a property owners' association(s) in accordance with Chapter 720, Florida Statutes, and
19 other applicable statutes prior to or concurrently with the recording of a plat of the
20 Property or any portion thereof. The property owners' association(s) shall be
21 responsible for the ongoing maintenance, repair and replacement of any common
22 areas, open space, retention, recreation areas, private streets, sidewalks and other
23 private subdivision infrastructure improvements and provide for the assessment of
24 property owners for such purposes. Common area tracts, including retention tracts and
25 private rights-of-way (if any), shall be conveyed in fee simple ownership to the property
26 owners association concurrently with the recording of the applicable plat creating such
27 tracts. If the Property is developed with private roads, the declaration of covenants,
28 conditions, easements or restrictions ("declaration") shall grant the City non-exclusive

1 ingress and egress rights over private roadways for the City, emergency service
2 providers and other public service providers. Further, the declaration shall be
3 consistent with Chapter 720, Florida Statutes and include provisions required by the
4 Land Development Code and other reasonable provisions that the City may require.
5 The by-laws of said association and the declaration shall be furnished to the City of
6 DeBary for review and approval prior to final plat approval for the 1st phase of
7 development. The Applicant shall be responsible for recording the declaration in the
8 Public Records of Volusia County, Florida. Also, the Applicant shall bear and pay all
9 costs for recording all of the aforementioned declaration. With respect to the
10 enforcement of said declaration entered into between the Applicant and the owners or
11 occupiers of property within the MPUD, the City of DeBary shall only be given the right
12 to enforce the provisions required by this Development Agreement, Land Development
13 Code, as amended, and conditions of development orders, whichever is applicable, and
14 not the private agreements entered into between the aforementioned parties.

15 **M. Development Regulations.** The DeBary Land Development Code
16 will control the development of the Property regarding any items not specifically covered
17 by Ordinance No. 01-16 and this Agreement. The local development approvals and
18 permits required to be approved or issued by the City for the intended use contemplated
19 by this Development Agreement include, but are not limited to, construction plan
20 approvals, site plans, plats, stormwater drainage, SJRWMD permits, demolition permit,
21 grading, arbor permits, engineering and utility plans, and construction permits for
22 buildings and other structures. These development approvals and permits shall be
23 processed and issued by the City in accordance with procedures with respect to same
24 as otherwise set forth in the City's Land Development Code and subject to this
25 Development Agreement. Failure of this Development Agreement to address a
26 particular permit, condition, term or restriction shall not relieve the Applicant of the
27 necessity of complying with the law governing said permitting requirements, conditions,
28 terms or restrictions. This Development Agreement does not, and is not intended to
29 prevent or impede the City from exercising its legislative authority as the same may
30 affect the Property. Nothing contained in this Agreement nor in any instruments
31 executed pursuant to the terms of this Agreement shall be construed as a waiver or

1 attempted waiver by the City of its sovereign immunity under the Constitution and laws
2 of the State of Florida and federal law or other any other privilege, immunity or defense
3 afforded under the law to the City or any of its elected or appointed officials, employees
4 and agents.

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7 **N. Utility Lines:** All utility lines on the Property, including electric transmission and
8 distribution lines shall be installed underground.

9 **O. Binding Effect of Plans; Recording; and Effective Date.** This Development
10 Agreement and the Master Development Plan, including any and all supplementary
11 orders and resolutions, shall bind and inure to the benefit of the Applicant and its
12 successor in title or interest. The MPUD zoning, provisions of this Development
13 Agreement, and all approved plans shall run with the land and shall be administered in
14 a manner consistent with the Land Development Code, as amended. This
15 Development Agreement shall be filed with the Clerk of the Court and recorded within
16 forty-five (45) days following execution of the document by the City Council, in the
17 Official Records of Volusia County, Florida. One copy of the document, bearing the
18 book and page number of the Official Record in which the document was recorded,
19 shall be submitted to the City Clerk. The date of City Council approval of Ordinance No.
20 01-16 shall constitute the effective date of the MPUD and this Development Agreement.
21 The applicant shall pay all filing costs for recording documents.

22 **P. Expiration:** All provisions of this Development Agreement and the Master
23 Development Plan shall expire and terminate 720 days following the effective date of
24 this Development Agreement if a subsequent development order for the Property has
25 not been secured in writing by the Applicant within said period of time. In event of
26 expiration and termination of this Development Agreement and Master Development
27 Plan occurs, the Property shall revert back to its previous zoning designations as City A-
28 2 (Rural Agriculture) and RC (Resource Corridor) zoning classifications, and the MPUD
29 entitlements become null and void.

1 **Q. Authority.** Each party represents and warrants to the other that it has all
2 necessary power and authority to enter into and consummate the terms and conditions
3 of this Development Agreement, that all acts, approvals, procedures and similar matters
4 required in order to authorize this Development Agreement have been taken, obtained,
5 or followed, as the case may be, that this Development Agreement and the proposed
6 performance of this Development Agreement by such party is not an *ultra vires* act and
7 that, upon the execution of this Development Agreement by all parties, this
8 Development Agreement shall be valid and binding upon the parties and their
9 successors in interest. Furthermore, Applicant represents and warrants to City that
10 Applicant is the sole owner of the Property, in fee simple, free and clear of any
11 monetary encumbrances, including but not limited to mortgages and liens, in the event
12 such an encumbrance exists, Applicant, Applicant's sole cost, shall obtain the
13 necessary joiners, consents and subordination to this Development Agreement or
14 releases from the appropriate parties with an interest in the property.

15 **R. Development Review Cost.** The Applicant (and its successors and assigns in
16 interests) shall timely pay the City for any and all development review costs concerning
17 the development and the Property in accordance with Section 1-16, City of DeBary
18 Land Development Code. Applicant acknowledges and agrees that Applicant have read
19 § 1-16, DeBary Land Development Code and understand Applicant's responsibilities
20 and obligations under such code provision and this Development Agreement and
21 acknowledges and agrees that Applicant is bound by such code provision for all
22 development applications and approvals relating to the Property.

23 **S. Recitals.** The recitals herein contained are true and correct and are
24 incorporated herein by reference as material terms of this Development Agreement.

25 AGREED to by the City Council of the City of DeBary, Florida, and the Applicant on this
26 3rd the day of February, 2016.

CITY OF DEBARY, FLORIDA

ATTEST:

Dan Parrott, City Clerk

Clint Johnson, Mayor

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WITNESSES:

EMPIRE CATTLE COMPANY, LTD.

Signature

By: _____

Print

Print Name: _____

Signature

Title: _____

Print

NOTARIAL ACKNOWLEDGEMENT

1 STATE OF FLORIDA

2 COUNTY OF _____

3 The foregoing instrument was acknowledged before me this _____ day of
4 _____ in the year 2016 by _____ as the
5 Managing Member of EMPIRE CATTLE COMPANY, LTD., on behalf of said company,
6 who is personally known to me or who has produced _____ as
7 identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name _____

Commission No. _____

My Commission Expires: _____

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EXHIBIT "A" – LEGAL DESCRIPTION

3 The South 1/2 of the Northeast 1/4; the South 1/2 of the Northwest 1/4; Government
4 Lots 1 and 3; and the North 1/2 of Government Lot 6; all in Section 8, Township 19
5 South, Range 30 East. lying South of Fort Florida Road, Volusia County, Florida.

6 ALL EXCEPT the rights of way for any and all public roads on and over said real
7 property and except all electric or power line easement or rights of way agreements
8 therefore, heretofore given.

9 EXCEPT the South 30 feet of said Lot1 and except the South 30 feet of the North 1/2 of
10 said Lot 6.

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2 **EXHIBIT "B" MASTER DEVELOPMENT PLAN SHEETS 1 – 4**