

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:

25 **WHEREAS**, the Applicant has requested that the Property be rezoned from
26 A-2 (Rural Agricultural) and RC (Resource Corridor) zoning classifications to a MPUD
27 (Mixed Planned Unit Development) and a RC (Resource Corridor) Zoning Classification,
28 with the portions of the Property currently zoned RC retaining its RC zoning; and

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

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

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

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

16 **WHEREAS**, the City of DeBary City Council finds that this Development
17 Agreement promotes the public health, safety, and welfare and is consistent with and
18 authorized by its authority under Chapter 166, Florida Statutes, Article VIII, Section 2 (b)
19 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)
- 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.

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

5 **Detached Unit Lot and Building Guidelines**

6 **2.1 Minimum Lot Area:** 4,400 sq. ft., Lot area standards are subject to
7 the dimensional standards assigned to each specific Village Area
8 as listed on the Land Use Sheet of the PUD Master Development
9 Plan, Exhibit "B".

10 **2.2 Minimum lot width and frontage:** 40' for single family,

11 **2.3 Minimum lot depth:** 110'

12 **2.4 Minimum floor Area:** 1600 sq. ft. for primary dwelling unit,
13 maximum 450 sq. ft. for accessory structure

14 **2.5 Maximum Impervious Coverage:** 65%

15 **2.6 Maximum Building Height:** 45' or 3 stories'

16 **2.7 Maximum Number of Dwelling Units per lot:** 1

17 **2.8 Minimum Building setbacks:**

- 1 **2.8.1 Front:** 20'. Porches may be no closer than 14'.
- 2 **2.8.2 Street Side:** 15'
- 3 **2.8.3 Interior Side:** 5' on each side.
- 4 **2.8.4 Rear:** 20' for primary structure, 5' accessory structure
- 5 **2.8.5 Pool and/or Enclosure** shall be 5' from side or rear yard

6 **2.9 Density, Max.** 4 dwellings per/ Gross Acre. Gross Acreage
7 shall include common open space, wetlands, all buffers easements,
8 right of way for roads and storm water ponds.

9 **3. Commercial Retail Development Guidelines**

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

16 Commercial use shall be limited to the following uses:
17 Retail Bakeries, Barbershops, beauty shops, bed and breakfasts, inns or other small
18 scale lodging establishment not exceeding 10 units, shoe repair shops, Book and
19 stationery stores, Confectioners and ice cream shops, Convenience stores without
20 fuel dispensers, Florist and gift shops, Hardware stores, Jewelry stores, Laundry and
21 dry cleaning pickup stations, Outdoor display of retail merchandise (refer to section
22 3-133(10), Outdoor event facilities, Pharmacies, Photographic Studios, Physical

1 fitness studios (gym), Publicly owned parks and recreational areas, Restaurants,
2 Type B, when accessory and subordinate to the convenience store use excludes a
3 single-use freestanding restaurant, Day care center (refer to section 3-134(5))
4

5 **3.2 Special Exception** - In addition to permitted uses, the following shall be
6 permissible in the commercial area depicted on the Master Development Plan by
7 special exception approved and in accordance with the criteria set forth in the Land
8 Development Code: Public uses not specifically allowed as a permitted use, Public
9 utility uses and structures (refer to section 3-134(1)), Public uses not listed as a
10 permitted principal use, Only one single-family dwelling unit (for the owner or
11 manager of an existing permitted principal use), Houses of worship (refer to section
12 3-134(3)), Financial institutions, Publicly owned or regulated water supply wells,
13 Public school, Libraries, General offices, Fire stations, Communication towers not
14 exceeding 70 feet in height.

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.

1 **2.** Perimeter buffers shall be required from the property line and shall be the
2 following width:

3 **2.1** North property line (adjacent to Fort Florida Road): 20'

4 **2.2** West property line adjacent to Resource Corridor Lands: None

5 **2.3** East property line (adjacent to Barwick Road): 20'

6 **2.4** South property line adjacent to Leisure World Drive: 20'

7 **2.5** Property lines adjacent to Meadowlea on the River Subdivision: 20'

8 **2.5.1** Further buffering of property lines adjacent to Meadowlea
9 on the River Subdivision shall include provisions for a wall,
10 as approved by and consistent with Land Development
11 Code Chapter 5; Article III: Fences and Walls, where the
12 developed portions of the Property directly abuts the
13 existing Meadowlea on the River Subdivision. Walls shall
14 not be required where conservation, wetland or other
15 natural areas are located adjacent to Meadowlea on the
16 River have an average width of more than 40'.

17 **2.6** Perimeter buffers shall remain in their natural condition and shall
18 not be required to have irrigation. Additional landscaping will be
19 added to the perimeter buffers where existing landscaping does not
20 meet City buffer standards per the Land Development Code. The
21 supplemental landscaping will be irrigated. Where existing
22 vegetation is inadequate or of undesirable appearance, excavation
23 or embankment will be permitted within the buffer to aid site

1 development. Following grading of the buffer in this manner, the
2 buffer shall be landscaped to meet City buffer standards per the
3 Land Development Code.

4 **2.7** Wetland buffers and landscape buffers can be located within a
5 residential lot. Wetland buffers will be placed in a conservation
6 easement during platting to allow for home owners to maintain
7 upland buffers per St. John Water Management Regulations. In no
8 case shall the buffer make up more than 25% of the rear minimum
9 setback area.

10 **3. Street and Median Landscaping will be provided as follows:**

11 **3.1** Number/Type: Street trees will be provided according to Chapter 5
12 of the land development code, landscape code unless conflict
13 occurs with proposed edible landscape design.

14 **3.2** Minimum Size: Where and if street trees are used, they shall be six
15 (6) feet in height, three (3.0) inch caliper measured six (6) inches
16 above ground level at time of planting.

17 **3.3** Location: Where street trees are to be used, they shall be not less
18 than four (4) feet from back of curb.

19 **3.4** Maintenance: The City shall not be responsible for maintenance of
20 trees in dedicated rights of way.

21 **4. Signage requirements:**

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

2 1. Model home construction prior to plat recording shall be allowed upon
3 compliance with the following requirements:

4 1.1 Provision for fire protection, including testing and approval of the
5 water system by the Florida Department of Environmental
6 Protection (FDEP), if on-site hydrants are required to service the
7 area where the proposed models will be constructed.

8 1.2 Construction of access roads to the model home sites prior to
9 building permit issuance, to the extent necessary to allow sufficient
10 access by City inspection vehicles.

11 1.3 Permanent utility connections cannot be made until the sanitary
12 sewer system has been completed and certified to FDEP.

13 2. Two types of sales offices shall be permitted:

14 2.1 Model Homes – A model home may be used as a sales office
15 within each Village until such time as the last lot is developed within
16 the specific Village development.

17 2.2 Temporary Offices – Temporary structures, such as approved office
18 trailers, and the like, may be permitted as a temporary sales office
19 while a model home is under construction. Such temporary sales
20 office shall only be permitted for an interim period not to exceed
21 sixty (60) days from placement or until completion of the first model
22 home, whichever occurs first

1 **2.3** Building permits are required for both model homes and temporary
2 offices. A final building inspection to insure conformance with the
3 building and life safety codes shall be required for any model home
4 or temporary office prior to occupation.

5 **2.4** Parking at the model home/sales office shall be on the street and in
6 the residential driveway. These parking requirements shall be in
7 lieu of the parking requirements set forth in the City's Land
8 Development Regulations. Temporary parking lots located on lots
9 or areas adjacent to model homes are permitted and may be
10 surfaced with gravel, mulch, shell, or similar materials, in addition to
11 asphalt or concrete pavement.

12 **2.5** Signage shall be limited to one sign per model home, not to exceed
13 an area of ten (10) square feet and a height of four (4) feet. Signs
14 shall be at least ten (10) feet away from any dedicated or private
15 roadway.

16 **E. Open Space Requirements:** As required per the Land Development Code,
17 as amended; provided, however, in no event shall such open space requirement
18 be less than 20% of total site area. Areas counted towards the minimum open
19 space requirement shall include, but are not limited to, recreation areas, man-
20 made lakes, landscape buffers, tree preservation areas, open grassed or
21 vegetated areas, wetlands and required upland buffers. The recreation uses
22 shall be distributed evenly throughout the project as generally depicted on the
23 Master Development Plan - Exhibit "B" and consistent with Policy 8.101 of the
24 City Comprehensive Plan. Each park sites shall be developed as a separate
25 tract in conjunction with the required infrastructure improvements for each
26 proposed residential village. The park sites may include accessory park furniture
27 such as benches and bike racks. Recreational structures will setback a minimum
28 of 20 feet from any perimeter boundary. Project will provide a private multi-use

1 pedestrian, bicycle, and jogging trail system generally connecting each village
2 and other common open space areas as generally shown on the submitted
3 Exhibit “B” Master Development Plan series. The specific path of each leg of the
4 trail will be determined during the planning of each preliminary plat. Development
5 will include private/semi-public community amenities, which may include a
6 swimming pool(s), tennis courts, pavilions, fitness center, bistro restaurant,
7 outdoor entertainment and gathering and wildlife observation areas.

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

10 **G. Environmental Considerations:** The Property shall be developed in a
11 manner so as to preserve jurisdictional wetlands on site with a minimum 25-foot
12 buffer (a minimum 50-foot buffer for wetlands contiguous to St. Johns River). No
13 development will occur in such buffer except as in compliance with the DeBary
14 Land Development Code. Any permitted impacts to jurisdictional wetlands
15 located on the Property shall be mitigated according to the Land Development
16 Code and St. John’s River Water Management District requirements. The
17 portions of the Property zoned RC (Resource Corridor) shall remain and be
18 maintained in perpetuity in their natural condition without right of development,
19 except as provided in the next sentence. If properly permitted and mitigated, if
20 and as required by state and local permitting agencies, impacts may occur along
21 the shoreline of the St. Johns River, naturally vegetated upland buffers and within
22 the RC (Resource Corridor) classification only for the following:

23 (1) pervious pedestrian crossings of wetlands

24 (2) gazebos and raised pedestrian boardwalks

25 (3) minor grading activities and swales

1 (4) Restoration and enhancement of wetland resources

2 **H. Sewage Disposal and Potable Water:** Each dwelling unit, amenity structure
3 and commercial structure developed on the Property shall be connected to
4 central potable water and sanitary sewer service, which is currently provided by
5 Volusia County. Water and sewer lines and appurtenances thereto shall be
6 extended and connected to the Property by Applicant, at the Applicant's
7 expense, in accordance with applicable sizes, pressures, metering, regulations
8 and standards. All project internal utility lines shall be provided at the expense of
9 the Applicant. If available, Applicant will install re-use water lines within the
10 development by connecting to re-use water lines provided at the property lines by
11 the City of DeBary or Volusia County Utilities. Applicant shall cause the granting
12 of all utility easements necessary for the required utility lines to the extent said
13 lines are not located within public rights-of-way. No certificates of completion for
14 site infrastructure and building permits and certificates of occupancy for
15 structures shall be issued until all potable water and sewer off-site and on-site
16 main lines are properly permitted, installed, inspected and fully functional.

17 **I. Stormwater Drainage.** Stormwater management shall be in accordance with
18 the requirements of the St. John's River Water Management District and the City
19 of DeBary. Moreover, the Applicant, at its expense, shall provide for proper
20 stormwater drainage, detention and retention of stormwater arising from and
21 concerning the Fort Florida Road and Barwick Road improvements described in
22 Section J of this Agreement. The Applicant shall grant the City of DeBary
23 perpetual drainage easements necessary to allow stormwater drainage from the
24 Fort Florida Road and Barwick Road improvements to be conveyed to and
25 retained on portions of the Property developed to accommodate such stormwater
26 drainage. The project's homeowner's association shall have the perpetual
27 obligation to maintain, replace and repair all of the Property's stormwater
28 management systems within the limits of the Property, including but not limited

1 to, drainage easements granted to the City of DeBary and improvements located
2 thereon.

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

5 **1.1 Concept:** The design concept is to utilize and enhance natural
6 drainage systems, simulate natural systems in man-made
7 structures, and utilize the following guidelines:

8 **1.2 Integration:** Integrate the man made system into natural systems

9 **1.3 Water Detention:** Stormwater facilities shall be designed in an
10 aesthetically pleasing manner in which, it is integrated within the
11 parks and recreation greenspace and natural features of the
12 development. Stormwater ponds shall be wet detention where site
13 conditions allow.

14 **1.4 Surrounding Infrastructure Impacts:** If the design of the
15 Property's stormwater management system would cause or result
16 in discharge of additional storm water run off through the culvert
17 underneath Leisure World Drive, the Applicant shall, at its expense,
18 cause a licensed professional engineer to inspect and evaluate the
19 existing culvert underneath Leisure World Drive and provide the
20 City with a signed and sealed engineer's report concerning the
21 condition and structural integrity of and ability to handle the
22 additional drainage impacts of the Property's development on such
23 culvert. If the existing culvert is found to be insufficient to
24 accommodate the additional drainage impacts, the Applicant shall,

1 at its expense, repair or replace the culvert to applicable City
2 standards.

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 a minimum of two ingress/egress points to and from public rights-
10 of-way. The ingress/egress points will be provided by the Applicant in
11 accordance with schedule outlined below in section 2.1 Transportation System
12 Improvements. The location of these vehicular access points shall meet City of
13 DeBary Land Development Code standards. Additionally, a secondary
14 emergency access shall be constructed on the Property to provide emergency
15 access to and from the existing Meadowlea on the River development through
16 the Property. Proper easement conveyance shall be granted by the Applicant to
17 the City for emergency access purposes over and through such emergency
18 ingress/egress improvements. Construction of the secondary emergency access
19 The emergency access shall be constructed in a manner and location acceptable
20 to the City at the same time the Applicant develops the phase of the Property
21 containing the proposed secondary emergency access location.

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

23 **2.1** All access and transportation system improvements shall be
24 provided in accordance with the Land Development Code, unless

1 otherwise provided for within this Agreement and as part of the
2 approved Master Development Plan. Applicant shall be
3 responsible for installing all appropriate internal roadway traffic
4 control devices and signs in accordance with applicable standards.
5 There shall be a minimum of one (1) ingress/egress point to both
6 Ft. Florida Road and Barwick Road. The Applicant shall also
7 provide access improvements for the Project to and from Barwick
8 Road. The Applicant shall be required to construct one or more
9 access points from Ft. Florida Road in conjunction with the first
10 phase of development of the Property proposed west of the Florida
11 Power and Light power line easement. The location of these
12 vehicular access points shall meet City of DeBary Land
13 Development Code standards. The Applicant shall construct a
14 temporary entrance for construction traffic along Ft. Florida Road
15 and no construction access shall be permitted along Barwick Road.
16 At least one permanent ingress/egress point shall be built in
17 conjunction with the project's first phase. The second
18 ingress/egress point shall be completed prior to the 351st dwelling
19 unit receiving a certificate of occupancy. However, prior to any
20 certificates of occupancy being issued a stabilized entry to and from
21 the Property and a public right-of-way shall be installed by the
22 Applicant to serve as a secondary access point for emergency
23 vehicles until such time as the second ingress/egress point is
24 constructed.

25 **2.2** Prior to or concurrently with the recording of the final plat for the 1st
26 phase of development, the Applicant shall, at no charge to the City,
27 cause the fee simple conveyance of lands to the City necessary to
28 meet the required sixty-foot (60') right-of-way width to expand the
29 existing right-of-way along the Property's full boundary with Ft.
30 Florida Road and Barwick Road ("Right-of-Way Property") in
31 accordance with the procedures set forth in subsection 2.4 herein.

1 Applicant shall incur the costs of title work, surveying and preparing
2 legal descriptions and sketches for required Right-of-Way Property
3 conveyances. As of the effective date of this Development
4 Agreement, City does not currently have a transportation impact
5 fee. Applicant reserves the right to apply for and seek
6 transportation impact or mobility fee credits relating to the
7 conveyance of the Right-of-Way Property as described in this
8 section and section 2.3 below, and any required offsite
9 transportation improvements excluding lands and improvements
10 necessary for ingress and egress to and from the Project (e.g. turn
11 lanes and intersections of internal roads with public rights-of-way);
12 provided however, the Applicant shall not be entitled to apply for,
13 seek or receive transportation impact or mobility fee credits if the
14 City does not adopt a transportation impact or mobility fee
15 applicable to the development of the Property prior to the buildout
16 of the Property. The conveyance of the Right-of-Way Property to
17 the City shall not relieve the Developer from its responsibilities to
18 engineer, design, permit and construct the any of the Ft. Florida
19 Road and Barwick Road improvements or any other improvements
20 specified in this Agreement or as a condition of Project approvals.
21 Notwithstanding the foregoing, nothing contained herein shall limit
22 the Applicant's ability to apply for or receive impact or mobility fee
23 credits from Volusia County, if such credits are available.

24 **2.3** The Applicant shall, at its expense, be responsible for
25 engineering, design, permitting and construction of improvements
26 to Ft. Florida Road along the full Property frontage on Ft. Florida
27 Road and to accommodate access to and from the project
28 entrances on Ft. Florida Road, with asphalt at a width of twenty-four
29 feet (24') and all in accordance with the DeBary Comprehensive
30 Plan, section 5.406(b) (3), the Land Development Code and the
31 provisions of this Development Agreement ("Public Road

1 Improvements”). The Applicant shall accommodate the stormwater
2 drainage arising from and concerning the Public Road
3 Improvements and Project access improvements in the existing
4 right-of-way and on retention pond(s) and areas on the Property.
5 The Applicant shall pay for all costs of engineering, design, and
6 construction of all roads and stormwater improvements described
7 herein. The City will, at Applicant’s expense, provide the Applicant
8 with assistance in the St. Johns River Water Management District
9 (SJRWMD) permitting process and be named as the applicant
10 concerning stormwater improvements related to Public Road
11 Improvements. The City will provide assistance in determining the
12 existing prescriptive rights and right-of-way limits of Ft. Florida
13 Road. The Applicant (for itself and its successors and assigns)
14 hereby disclaims, releases and quit claims to the City of DeBary
15 any and all right, title and interests Applicant may have or had in
16 the current alignment of the Ft. Florida Road right-of-way as
17 maintained by the City of DeBary. To the extent feasible, the
18 current Fort Florida Road roadway alignment will be preserved and
19 the roadway and stormwater design will accommodate the existing
20 trees lining the roadway corridor.

21 **2.4 Right-of-Way Property Conveyance.** The Right-of-Way Property
22 shall be conveyed to the City by warranty deed or special warranty
23 deed free and clear of all liens and encumbrances except for those
24 matters acceptable to the City. The form of the special warranty
25 deed shall be subject to the approval of the City. The Applicant
26 shall, at least ten (10) days prior to the conveyance of the Right-of-
27 Way Property to the City, provide to the City a boundary survey of
28 the Right-of-Way Property (including a depiction of the existing Ft.
29 Florida Road and Barwick Road rights-of-way in relation to such
30 property) certified to the City and a current attorney’s opinion of title
31 or a current certificate of title, evidencing that fee simple title to the

1 Right-of-Way Property is free and clear of all liens and
2 encumbrances except for those matters acceptable to the City.
3 Real property taxes on the Right-of-Way Property shall be prorated
4 as of the day before the City's acceptance of the conveyance of the
5 same, and the prorated amount of such real property taxes
6 attributable to the Applicant shall be paid and escrowed by the
7 Applicant in accordance with the provisions of Section 196.295,
8 Florida Statutes; provided, however, that if the conveyance occurs
9 between November 1 and December 31, then Applicant shall be
10 responsible for real property taxes for the entire year. Applicant
11 shall comply with the disclosure requirements of Section 286.23,
12 Florida Statutes, with respect to the conveyance of the Right-of-
13 Way Property to the City, if applicable.

14 **2.5 Public Road Improvements Construction Schedule**

15 Prior to the final plat approval for the Project phase/village platting
16 the 351st residential dwelling unit lot, the Applicant, at its cost, shall
17 engineer, design, permit, install and construct or cause to be
18 engineered, designed, permitted, installed and constructed the
19 Public Road Improvements with asphalt at a width of twenty-four
20 feet (24') and improve the right-of-way in accordance with the Local
21 Road Standards per the City of DeBary Land Development Code
22 and include traffic control devices, striping and signs. The Public
23 Road Improvements may be designed to mitigate impacts to the
24 natural tree canopy along Ft. Florida Road. The City Manager may
25 approve such design modifications based on recommendations
26 provided by the City's Development Review Committee ("DRC").
27 Such modifications may include lane width reduction and other
28 applicable mitigation strategies in accordance with DeBary
29 Comprehensive Plan section 6.203. Prior to Applicant's

1 construction commencement of the Public Road Improvements,
2 Applicant shall be required to enter into separate agreement with
3 the City to set forth the terms, conditions and specifications for the
4 design, permitting and construction of Ft. Florida Road
5 improvements. Such agreement may require performance and
6 maintenance guarantees (in the form of cash, letter of credit or
7 surety bonds) to be provided by the Applicant to secure the proper
8 and timely completion of the road improvements.

9 **2.6** If any of the Public Road Improvements are not made when and
10 how required herein and by the aforementioned separate road
11 construction agreement, the City shall have the right, without limitation
12 on other remedies the City may have, to withhold further building
13 permits, plat approvals, certificates of occupancy and other
14 development orders concerning the Property, until such obligations are
15 satisfied. In addition to other remedies the City may have, in the event
16 the Applicant fails to timely make the Public Road Improvements as
17 required in this Agreement, the City may record a Notice of Lien
18 against the Property and Applicant in an amount equal to the estimated
19 design, permitting, installation and construction cost of the
20 uncompleted Public Road Improvements required by this Agreement.
21 The lien amount shall accrue interest at the rate of twelve percent per
22 annum. A copy of such Notice of Lien(s) shall also be delivered to
23 Applicant at Applicant's (or its successors and assigns) last known
24 address according to the Volusia County Property Appraiser's website.
25 The recorded Notice of Lien(s) shall constitute a lien upon the Property
26 and the lien may be foreclosed upon for the benefit of the City any time
27 ninety (90) days after the Notice of Lien has been recorded in the
28 public records. The City may foreclose the lien in accordance with the
29 procedures established in Chapter 702, Florida Statutes, or successor
30 or other statute providing for lien foreclosure procedures. The City
31 shall be entitled to recover its collection costs and City's litigation costs

1 in obtaining a monetary judgment or foreclosing the lien against
2 Applicant and Property, including the City's attorneys' fees and costs.
3 The Applicant may obtain a release from the lien by paying the amount
4 stated in the lien, plus accrued interest, plus attorneys' fees and costs
5 incurred by the City in filing and collecting upon the lien.

6 **3. Trail System**

7 **3.1** Sidewalks and trails shall be designed, permitted and constructed
8 at the Applicant's expense as depicted on the Master Development
9 Plan and as stated herein. Sidewalks shall meet the design criteria
10 requirements of DeBary Land Development Code. The multi-use
11 trails shown on the Master Development Plan shall be constructed
12 by Applicant with asphalt or similar material approved by DRC and
13 shall be ten (10) feet in width. The multi-use trail system shall
14 provide for a connection from Ft. Florida Road through the Project
15 to the southern boundary of the Property adjacent to Leisure World
16 Drive. The multi-use trail shall also run parallel to Ft. Florida Road
17 from Barwick Road to the western boundary of the Property.
18 Construction of these multi-use trails shall be in lieu of providing
19 additional sidewalks along Ft. Florida Road and Barwick Road.
20 The City shall be responsible for any connection of the trail system
21 to River City Nature Park. Additional nature trails shown on the
22 Master Development Plan may be unpaved and will be constructed
23 in a manner approved by the DRC.

24 **3.2** The City of DeBary will assist the Applicant in attempting to secure
25 funding for constructing the multi-use trail system by submitting a
26 project application to compete for Federal and State transportation
27 funding through the Transportation Planning Organization until the
28 Trail system is completed. Failure to obtain funding as potentially

1 contemplated by the previous sentence shall not absolve the
2 Applicant from its obligation to design, permit and construct the multi-
3 use trail system as provided herein. The Applicant shall dedicate
4 easements to the City, in a form acceptable to the City, for public use
5 and operation, regulation, maintenance and repair for all of segments
6 of the multi-use trails the City desires to be available for public use.
7 Once constructed by the Applicant, the City shall maintain all
8 sections of the multi-use trail system for which the City accepts an
9 easement for public use.

10 **3.3** Applicant shall complete construction of not less than 50% of the
11 length of multi-use trail system before a certificate of occupancy is
12 issued for the 351st platted residential lot. Construction of 100% of
13 the multi-use trail system shall be completed prior to the issuance of
14 certificates of occupancy for 75% of the planned residential lots. The
15 City shall have the right to withhold building permits and certificates
16 of occupancy when it deems necessary to ensure the aforesaid trail
17 construction deadlines are met.

18 **K. Internal Roadways.** Changes to the dimensions, design speeds, and other
19 features of internal streets may be allowed in accordance with the roadway typical
20 sections presented in Appendix B, subject to City review and approval during the site
21 development review process. This Development Agreement is intended to offer
22 flexibility to the Applicant in selecting private or public roadways or a mix thereof.

23 **L. Homeowners' or Property Owners' Association.** The Applicant shall create
24 a property owners' association(s) in accordance with Chapter 720, Florida Statutes, and
25 other applicable statutes prior to or concurrently with the recording of a plat of the
26 Property or any portion thereof. The property owners' association(s) shall be
27 responsible for the ongoing maintenance, repair and replacement of any common
28 areas, open space, retention, recreation areas, private streets, sidewalks and other

1 private subdivision infrastructure improvements and provide for the assessment of
2 property owners for such purposes. Common area tracts, including retention tracts and
3 private rights-of-way (if any), shall be conveyed in fee simple ownership to the property
4 owners' association concurrently with the recording of the applicable plat creating such
5 tracts. If the Property is developed with private roads, the declaration of covenants,
6 conditions, easements or restrictions ("declaration") shall grant the City non-exclusive
7 ingress and egress rights over private roadways for the City, emergency service
8 providers and other public service providers. Further, the declaration shall be
9 consistent with Chapter 720, Florida Statutes and include provisions required by the
10 Land Development Code and other reasonable provisions that the City may require.
11 The by-laws of said association and the declaration shall be furnished to the City of
12 DeBary for review and approval prior to final plat approval for the 1st phase of
13 development. The Applicant shall be responsible for recording the declaration in the
14 Public Records of Volusia County, Florida. Also, the Applicant shall bear and pay all
15 costs for recording all of the aforementioned declaration. With respect to the
16 enforcement of said declaration entered into between the Applicant and the owners or
17 occupiers of property within the MPUD, the City of DeBary shall only be given the right
18 to enforce the provisions required by this Development Agreement, Land Development
19 Code, as amended, and conditions of development orders, whichever is applicable, and
20 not the private agreements entered into between the aforementioned parties.

21 **M. Development Regulations.** The DeBary Land Development Code
22 will control the development of the Property regarding any items not specifically covered
23 by Ordinance No. 01-16 and this Agreement. The local development approvals and
24 permits required to be approved or issued by the City for the intended use contemplated
25 by this Development Agreement include, but are not limited to, construction plan
26 approvals, site plans, plats, stormwater drainage, SJRWMD permits, demolition permit,
27 grading, arbor permits, engineering and utility plans, and construction permits for
28 buildings and other structures. These development approvals and permits shall be
29 processed and issued by the City in accordance with procedures with respect to same
30 as otherwise set forth in the City's Land Development Code and subject to this
31 Development Agreement. Failure of this Development Agreement to address a

1 particular permit, condition, term or restriction shall not relieve the Applicant of the
2 necessity of complying with the law governing said permitting requirements, conditions,
3 terms or restrictions. This Development Agreement does not, and is not intended to
4 prevent or impede the City from exercising its legislative authority as the same may
5 affect the Property. Nothing contained in this Agreement nor in any instruments
6 executed pursuant to the terms of this Agreement shall be construed as a waiver or
7 attempted waiver by the City of its sovereign immunity under the Constitution and laws
8 of the State of Florida and federal law or other any other privilege, immunity or defense
9 afforded under the law to the City or any of its elected or appointed officials, employees
10 and agents.

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12

13 **N. Utility Lines:** All new utility lines associated with new development on the
14 Property, including electric transmission and distribution lines shall be installed
15 underground.

16 **O. Binding Effect of Plans; Recording; and Effective Date.** This Development
17 Agreement and the Master Development Plan, including any and all supplementary
18 orders and resolutions, shall bind and inure to the benefit of the Applicant and its
19 successor in title or interest. The MPUD zoning, provisions of this Development
20 Agreement, and all approved plans shall run with the land and shall be administered in
21 a manner consistent with the Land Development Code, as amended. This
22 Development Agreement shall be filed with the Clerk of the Court and recorded within
23 forty-five (45) days following execution of the document by the City Council, in the
24 Official Records of Volusia County, Florida. One copy of the document, bearing the
25 book and page number of the Official Record in which the document was recorded,
26 shall be submitted to the City Clerk. The date of City Council approval of Ordinance No.
27 01-16 shall constitute the effective date of the MPUD and this Development Agreement.
28 The applicant shall pay all filing costs for recording documents.

1 **P. Expiration:** All provisions of this Development Agreement and the Master
2 Development Plan shall expire and terminate 720 days following the effective date of
3 this Development Agreement if a subsequent development order for the Property has
4 not been secured in writing by the Applicant within said period of time. In event of
5 expiration and termination of this Development Agreement and Master Development
6 Plan occurs, the Property shall revert back to its previous zoning designations as City A-
7 2 (Rural Agriculture) and RC (Resource Corridor) zoning classifications, and the MPUD
8 entitlements become null and void.

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

23 **R. Development Review Cost.** The Applicant (and its successors and assigns in
24 interests) shall timely pay the City for any and all development review costs concerning
25 the development and the Property in accordance with Section 1-16, City of DeBary
26 Land Development Code. Applicant acknowledges and agrees that Applicant have read
27 § 1-16, DeBary Land Development Code and understand Applicant's responsibilities
28 and obligations under such code provision and this Development Agreement and
29 acknowledges and agrees that Applicant is bound by such code provision for all
30 development applications and approvals relating to the Property.

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

3 AGREED to by the City Council of the City of DeBary, Florida, and the Applicant on this
4 ____the day of _____, 2016.

CITY OF DEBARY, FLORIDA

ATTEST:

Dan Parrott, City Clerk

Clint Johnson, Mayor

5

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: _____

1

EXHIBIT "A" – LEGAL DESCRIPTION

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

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

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

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