

BLACK CREEK HIGHLANDS

FIRST AMENDED DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between Dr. Miley Miers (Dr. Miers) and any subsequent developer of the property described herein (DEVELOPER), and LEON COUNTY, FLORIDA, a political subdivision of the State of Florida (COUNTY).

WITNESSETH

WHEREAS, Dr. Miers owns approximately 232 acres (Property) of land located along Highway 90, the legal description of which is attached as Exhibit A; and

WHEREAS, the Property is identified on Blueprint 2000 as a Tier 2 project. The parties have agreed to terms for development and for conservation of designated portions of the Property.

WHEREAS, it is deemed to be in the interest of the public health, safety, and welfare for LEON COUNTY to memorialize the development plan and the conservation of land for Blueprint 2000 and to assure that overall planning principles and concerns of the COUNTY are addressed in order to provide for orderly development for LEON COUNTY.

WHEREAS, the City and County adopted Comprehensive Plan Amendment 2006-1-M-007 ("Plan Amendment") by Ordinance No. 06-11 on April 25, 2006 (DCA No. 06-1); and

WHEREAS, the Plan Amendment proposes to change the designation of 232 acres on the Future Land Use Map from Rural to Urban Fringe; and

WHEREAS, the Department of Community Affairs ("Department") signed its Statement of Intent regarding the Plan Amendment on June 30, 2006 and published its Notice of Intent on July 5, 2006; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Plan Amendment is not "in compliance" because it does not demonstrate that the level of service for facilities and services will be maintained, it exhibits indicators of urban sprawl, and it is internally inconsistent with portions of the comprehensive plan; and

WHEREAS, Leon County has entered into a Stipulated Settlement Agreement to resolve the Department's compliance objections to the Plan Amendment wherein Leon County agreed to amend Section E.(2) of this Development Agreement to be consistent with F.S. 163.3177 (3) and F.S. 163.3227(1)(d) requiring that development agreements contain a description of public facilities that will service the development, including who shall provide such facilities; the date

any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development.

NOW, THEREFORE in consideration of the mutual terms, covenants, and conditions contained herein, and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

(A) PURPOSE.

The purpose of this Agreement is to:

1. Provide a mechanism to allow the Property to proceed through the rezoning process.
2. Set forth requirements and commitments for the development of the Property.
3. This Agreement, except as specifically provided herein, is intended to address the developer's commitment to conserve a portion of the Property and to clarify the development process that will be applicable to the Property. It is not intended to, nor does it, approve or authorize any amount of development or type of use on the Property, except as otherwise provided herein.

(B) AUTHORITY FOR AGREEMENT.

This Agreement is being entered into pursuant to authority provided in Sections 163.3220 - .3203, Florida Statutes (F.S), otherwise known as the Florida Local Government Development Agreement Act, and the Leon County Code of Laws.

(C) TERM.

This Agreement, shall be effective for a period of ten years from the date upon which zoning has been approved on the Property. This Agreement may be extended by mutual written consent of the parties, or their successors, subject to public hearings in accordance with Section 163.3225, F.S. In the event the developer does not comply with the terms of the Agreement within ten years and the Agreement is not extended, the local government shall initiate a Future Land Use Map amendment and/or rezoning at the earliest possible time in order to return the property to the status it held prior to this Agreement.

(D) APPROVED LAND USES AND CONSISTENCY WITH COMPREHENSIVE PLAN.

The plan of development proposed under this development agreement is consistent with the Tallahassee-Leon Comprehensive Plan Urban Fringe Future Land Use Category and the applicable rules and regulations found within the Leon County Land Development Code.

(E) PUBLIC FACILITIES.

1. Infrastructure Planning and Design. The design of the residential subdivision and necessary infrastructure shall be the responsibility of the developer. These improvements shall be designed in accordance with adopted standards for development as established in the Leon County Code.
2. Utilities. The developer shall be responsible for making the appropriate arrangements to provide central water and sewer to the Property. The City has agreed to supply water and sewer service consistent with attached correspondence (Exhibit B) and the terms of the Water and Sewer Agreement between the City and the County. The Developer shall be responsible for design and installation of a water distribution system and wastewater collection system to serve each home and for any infrastructure required consistent with City specifications. This system shall include the wastewater pumping station and force main. The developer will also be responsible for the design, permitting, and construction of any extension required to bring service from its off-site terminus at the time of hook-up to the Property. The developer and the City may negotiate a separate agreement to coordinate and facilitate the availability of the off-site water and wastewater infrastructure. Water and sewer services shall be in place prior to issuance of a final certificate of occupancy in accordance with applicable Land Development Code provisions and Section 163.3180(2)(a) Florida Statutes (2006). Developer agrees that the above infrastructure and systems shall be completed within ten (10) years from the date of this amended agreement.

As of the effective date of this agreement, the needed improvements are 8000 feet of 12 inch water pipe and 8000 feet of 6-inch sewer force main. The estimated cost to design, permit, and construct the project as of the effective date of this agreement is \$800,000 for the water pipe and \$400,000 for the force main. These costs and specifications are estimates and, regardless of these estimates, the Developer will be responsible for

those specifications and related costs applicable at the time of construction of the water and sewer infrastructure.

3. Transportation. The Property was issued a two year reservation of concurrency for 74 dwelling units on March 11, 2005.
4. Stormwater Management. The Property shall manage stormwater in accordance with the Leon County Code of Laws.
5. Conservation Easement. The developer shall dedicate a conservation easement to Leon County over the portion of the property that is within the 100-year floodplain of Black Creek and for other preservation and conservation features identified in the Natural Features Inventory. The extent of this conservation easement shall be determined by a surveyor licensed in the State of Florida and shall be determined by elevation. In at least three locations within the Property, public pedestrian access shall be provided to the easement area. At one of these pedestrian access points, vehicular access and area sufficient for a public parking area (not to exceed 1 acre of upland area) shall be provided for the purpose of public access and Leon County maintenance and public safety. At the other two public access points, easements shall be provided for trail access to adjacent parcels to the east and west.

The terms of the conservation easement shall comply with Section 704.06 Florida Statutes (2006) regarding prohibited activities, shall be in perpetuity, and shall be prepared by the Developer in a form acceptable to the County. The easement shall be dedicated and accepted concurrent with the County's action approving the site and development plan for the Property. If the Property is developed in phases, dedication and acceptance shall occur concurrent with review of the first phase.

6. Annexation: All deeds transferring lots within the Property shall require the owner to agree to annexation into the City if the City boundary ever abuts any portion of the Property.

(F) DEVELOPMENT APPROVAL PROCESS

1. Open Space and Natural Areas Requirements Satisfied in Residential Areas. The dedication of the conservation easement shall satisfy all Leon County code requirements for open space and natural areas.

(G) ADDITIONAL REQUIREMENTS.

1. Land Use. This agreement limits the residential density allowable on the Property to 74 single family detached residential lots and 7 additional inclusionary housing residential lots per Section (G)(3) of this Agreement regardless of the maximum density allowed within the Urban Fringe land use category found within the Comprehensive Plan. No lot shall be re-subdivided. Incidental and customary accessory uses to single family residential subdivisions are also permitted.
2. Silviculture: The upland portions of the Property have been historically, and are currently, used in active silviculture activities. Dr. Miers agrees that silviculture activities on the Property shall not be expanded and specifically shall not be conducted nor permitted in the 100-year floodplain, unless otherwise authorized by the COUNTY. At the time the COUNTY develops trail systems in the conservation easement, the developer shall receive fair market value compensation for any timber that is removed by Leon County or its designees.
3. Inclusionary Housing: The developer shall be responsible for providing a minimum of 7 single family residential inclusionary units (prices no greater than the maximum affordable sales price or MASP), as defined within City of Tallahassee Ordinance No. 04-0-90AA. These seven units may be in addition to the 74 single family units permitted in subsection (G)1. above. The developer shall be responsible for gaining approval of an Inclusionary Housing Plan by the Leon County Growth Management Department at the time of site plan submittal. Such Plan shall include the mechanisms that will be used to assure that the units remain affordable, per City of Tallahassee Ordinance No. 04-0-90AA, such as resale and rental restrictions, and rights of first refusal and other documents. Approval of this section by the COUNTY shall not be construed as adoption of the provisions of the above City of Tallahassee ordinance. COUNTY shall not apply any provisions of the above ordinance which are determined by the County Attorney's Office to contradict lawfully adopted County ordinances or policies in place at the time of development approval is sought.

(H) PERMITS.

Failure of this Agreement to address a particular need for a permit, a permit condition, term, or restriction, shall not relieve the developer from the necessity of complying with law governing permitting requirements, terms, or restrictions. This Agreement shall not be used to influence any permitting decision except as

specifically provided herein nor may it be used as the basis for a claim of vested rights to any amount of development on the Property.

(I) BINDING EFFECT.

The burden of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this document.

(J) EFFECTIVE DATE.

Within fourteen (14) days of execution of this Agreement, the COUNTY shall record the Agreement in the Public Records of Leon County. Within fourteen (14) days of recordation, the COUNTY shall submit a copy of the Florida Department of Community Affairs (DCA). This Agreement shall become effective thirty (30) days after submittal to DCA, but in no event shall the Agreement be effective or be implemented by a local government unless and until the local government's comprehensive plan and plan amendments implementing or related to the agreement are found in compliance by the state land planning agency, pursuant to Section 163.3229, F.S.

(K) FURTHER ASSURANCES.

Each of the parties to this agreement shall execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Agreement and give effect to it without in any manner limiting their specific rights and obligations as forth herein.

(L) NOTICES.

Any notices or reports required by this Agreement shall be sent to the following:

As to Leon County:

Leon County Department of
Growth and Environmental
Management
ATTN: Gary Johnson
3401 Tharpe Street
Tallahassee, Florida 32312

With a copy to:

Leon County Attorney's Office
Attention: Herbert Thiele

Leon County Courthouse
301 South Monroe Street
Tallahassee, Florida 32301

As to Owner:

Dr. Miley Miers
Century 21 First Realty
2365 Centerville Road
Tallahassee, Florida 32308

With a copy to:

Cynthia A. Henderson, Esquire
Cynthia A. Henderson, P.A.
2846-A Remington Green Circle
Tallahassee, Florida 32308

(M) SEVERABILITY.

If any word, phrase, clause, section, or portion of this Agreement shall be held invalid by a court of competent jurisdiction, such portion or word shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

(N) LAWS.

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

(O) ENFORCEMENT.

In the event of a breach of this Agreement by a party, the other may sue to enforce this Agreement and the prevailing party shall be entitled to payment of attorney's fees and costs by the non-prevailing party.

(P) APPROVAL.

This Development Agreement was approved by LEON COUNTY after two (2) public hearings before the County Commission on March 28, 2006 and April 25, 2006.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement as of the dates set forth below.

SIGNED, SEALED AND DELIVERED

In the presence of:

DR. MILEY MIERS

By: _____

Printed Name: _____

Title: _____

Witness

Printed Name:

Witness

Printed Name:

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC

Printed Name

My commission expires:

LEON COUNTY, FLORIDA

ATTESTED BY:
Bob Inzer, Clerk of the Court

By: _____
Bill Proctor, Chairman
Board of County Commissioners

By: _____
Bob Inzer, Clerk

Date: _____

APPROVED AS TO FORM:
County Attorney's Office

By: _____
Herbert W. A. Thiele, Esq.
County Attorney