Special Session

CITY OF OCOEE

Ocoee Commission Chambers
1 N. Bluford Avenue
Ocoee, Florida

CITY COMMISSION SPECIAL SESSION

May 18, 2023 5:30 PM

- **CALL TO ORDER AND ROLL CALL**
- **REGULAR AGENDA**
  1. Approval of Purchase and Sale Agreement - Chevron Property
  2. Approval of the Development Agreement with Montierre Development, PLLC, for the Ocoee Regional Sports Complex.
- **ADJOURNMENT**

Notice: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based. Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the office of the City Clerk, 1 N. Bluford Avenue, Ocoee, FL 34761, (407) 905 -3105 48 hours in advance of the meeting.

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STAFF REPORT

Meeting Date: May 18, 2023
Item #: 1

Contact Name: Michael Rumer
Contact Number: Ext. 1018

Department Director: Michael Rumer
City Manager: Robert Frank

Subject: Approval of Purchase and Sale Agreement - Chevron Property. (City Attorney Cookson)

Background Summary:

At the December 6, 2022 City Commission Meeting the City Commission approved and entered into a Memorandum of Understanding (the “Memorandum of Understanding”) with Montierre Development, LLC (“Montierre”) relating to the development of the Ocoee Regional Sports Complex (the “Project”). The Memorandum of Understanding outlined the basic terms whereby (i) the City would enter into a contract with Chevron Land and Development Company (“Chevron”) to purchase Chevron’s approximately 95 acre property located along Ocoee Apopka Road (the “Chevron Property”) for $4,200,000.00 (the “Chevron Contract”); (ii) the City would assign the City’s rights and obligations as the purchaser under the Chevron Contract to Montierre so that Montierre, and not the City, purchases the Chevron Property from Chevron; (iii) at the closing on Montierre’s purchase of the Chevron Property from Chevron pursuant to the Chevron Contract, the City would convey to Montierre the City’s approximately 37 acre property adjacent to the Chevron Property, commonly known as the “Rodgers Property”; and (iv) enter into a development agreement with Montierre that addresses the future development of the Project and the terms by which the City would be compensated for the assignment to Montierre of the Chevron Contract and for the conveyance of the Rodgers Property to Montierre.

The basic terms of the Chevron Contract are as follows:

Purchaser: City of Ocoee (with the right to assign the City’s rights and obligation to Montierre)
Seller: Chevron Land and Development Company
Effective Date: The date the Chevron Contract is executed by the City and Chevron
Purchase Price: $4,200,000.00
Initial Deposit: $100,000.00 (due within 5 business days from the Effective Date)
Additional Deposit: $25,000.00 (due within 5 business days following the expiration of the Due Diligence Period)
Due Diligence Period: 120 days following the Effective Date
Closing Date: 60 days following the expiration of the Due Diligence Period

The intent of the transaction is for the City to execute the Chevron Contract and then immediately assign the Chevron Contract to Montierre. Thus, Montierre would then become the purchaser and be responsible for posting the deposits and conducting the due diligence during the Due Diligence Period. In addition, Montierre, not the City, would eventually close under the Chevron Contract and purchase the Chevron Property.

The Chevron Property has some historical environmental contamination. The history of such contamination and the steps taken and being taken are detailed in reports provided by Chevron. In addition, Montierre will engage their own environmental consultants to examine the environmental condition of the Chevron Property. A condition to the sale of the Chevron Property by Chevron is that the purchaser (the City and Montierre) release and provide indemnification to Chevron relating to certain future claims that could arise relating to the environmental condition of the Chevron Property. The City has taken the following steps to address any liability of the City:

1. The City will assign the Chevron Contract to Montierre and not take title to the Chevron Property;
2. The City will process an application to designate the Chevron Property as a Brownfield Area which provides certain safe harbors with respect to environmental claims; and
3. As set forth in the Development Agreement between the City and Montierre, Montierre will obtain environmental liability insurance on the Chevron Property naming the City as an additional insured.

Issue:

Should the Honorable Mayor and the Board of City Commissioners approve the Chevron Contract?

Recommendations:

Staff respectfully recommends that the Honorable Mayor and Board of City Commissioners approve the Chevron Contract.

Attachments:

1. Purchase and Sale Agreement

Financial Impacts:

Detailed in the Development Agreement

Type of Item: Consent

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

BETWEEN

CHEVRON LAND AND DEVELOPMENT COMPANY

AND

CITY OF OCOEE, FLORIDA

ORANGE COUNTY, FLORIDA

Effective Date: _____________, 2023

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

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PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("**Agreement**") dated as of ______________ 2023 ("**Execution Date**") is between **CHEVRON LAND AND DEVELOPMENT COMPANY**, a Delaware corporation ("**Seller**") and **CITY OF OCOEE, FLORIDA**, a Florida municipal corporation ("**Purchaser**").

RECITALS

A. Seller desires to sell certain real property located in the City of Ocoee of Orange County, State of Florida, and Purchaser desires to purchase the real property, on the terms and conditions set out in this Agreement.

B. In consideration of the mutual promises set out in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree to be bound by this Agreement.

AGREEMENT

1. DEFINITIONS, INTERPRETATION, AND EXHIBITS

1.1 **Definitions.** In this Agreement, these capitalized words or expressions have the following meanings:

"**Access Agreement**" means an agreement in substantially the form of Exhibit C to this Agreement, providing Seller and its Affiliates access to the Property after Closing to abandon the Monitoring Wells.

"**Additional Deposit**" has the meaning given in Section 2.5(B).

Adjusted Purchase Price" means the balance of the Purchase Price required to be paid after application of the Deposit and all prorations, adjustments, and credits required to be made under the Agreement, including those set forth in Section 9.

"**Affiliate**" means any legal entity which, directly or indirectly, controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to control another if it owns directly or indirectly at least 50% of the shares or interests entitled to vote.

"**Agreement**" is defined in the introductory paragraph, including all exhibits and schedules (if applicable) which are part of this Agreement.

"**Applicable Law(s)**" means any law, regulation, rule, statute, order, policy, license, registration, and any other standard or requirements having the effect of law that applies to the Agreement or the Parties, or interpretations imposed by any Government Entity that apply to this Agreement.

"**Appurtenant Rights**" means all easements, hereditaments, appurtenances, development rights, and other benefits, if any, pertaining to or affecting the Property.

"**Brownfield Area**" shall have the meaning set forth in Section 376.79(5), Florida Statutes.

"**BSRA**" will have the meaning set forth in Section 4.2 of this Agreement.

"**Business Day**" means all days except for a Saturday, Sunday, or Legal Holiday.

"**City**" means the City of Ocoee, Orange County, Florida as set forth in the Recitals.

"**Claim**" means any claim, suits, proceeding, action, liability, loss, demand, damage, encumbrance, cause of action of any kind, order, subpoena, obligation, cost, royalty, fee, assessment, duty, requirement, charge, penalty, fine, judgment, interest, and award (including recoverable legal counsel fees and cost of litigation of the Person asserting the claim), whether arising by law, contract, tort, voluntary settlement, or in any other manner resulting from or in any way associated with:

(A) Acts or omissions of Purchaser or Purchaser Group with respect to, or occurring on, the Property;

(B) The ownership, control, use, possession, or operation of the Property;

(C) The performance or non-performance of any obligation under this Agreement; or

(D) Any condition existing or occurring in, on, under or within the Property after the Date of Closing, including but not limited to:

(1) The death or injury of any Person, including without limitation, any member of Purchaser Group;

(2) The damage or destruction of the Property;

(E) The violation or alleged violation of any federal, state, local, or municipal law, rule, regulation, order, judgment, decree, or other requirement, including without limitation, requirements under permits, licenses, consents, and approvals;

(F) The existence, assessment, or remediation of Contamination upon, under, in or emanating from, the Property;

(G) Emissions, discharges, releases or threatened releases, or the presence, generation, manufacturing, processing, distribution, use, treatment, storage, disposal, transport, labeling, advertising, sale, display, or handling, of Contamination;

(H) Any special, indirect, or consequential damages, including, but not limited to, claims for loss of use, rents, anticipated profit or business opportunity, or business interruption, diminution in value, or mental or emotional distress or fear of injury, disease or illness, or trespass, nuisance or otherwise;

(I) Any response costs any member of Seller Group or Purchaser Group may incur with respect to the Property under any Environmental Law; or

(J) Any cause of action or theory of any kind as a result of, in connection with, or in any way related to, the ownership and operation of the Property.

Claims do not include matters determined by final non-appealable judgment to have been caused by the gross negligence or willful misconduct of a member of Seller Group.

“**Closing**” means the consummation of the purchase and sale and purchase of the Property.

“**Closing Date**” or “**Date of Closing**” means the date on which Closing occurs, which is sixty (60) days after the expiration of the Due Diligence Period, or any other date as agreed to by the Parties.

“**Closing Documents**” means all the documents and instruments described in Section 10.2 and Section 10.3.

“**Closing Instructions**” means the respective letters of escrow closing instructions executed by Purchaser and Seller (or their respective counsel on behalf of Purchaser and Seller) containing such terms as described in this Agreement, which will supplement the instructions provided to the Escrow Agent in this Agreement.

“**Conditions Precedent**” has the meaning given in Section 8.1.

“**Contamination**” means any Hazardous Material or toxic material, substance, chemical or waste, contaminant, emission, discharge or pollutant or comparable material listed, identified or regulated pursuant to any federal, state or local law, ordinance or regulation which has as a purpose the protection of health, safety or the Environment, including petroleum or petroleum products or wastes, or PFAS resulting from any cause, release, or source during Seller’s ownership of the Property or from Seller’s use of the Property. As used in this Agreement, Contamination shall include the presence of arsenic in soils and/or groundwater on or underlying the Property at concentrations in excess of cleanup target levels set forth in Chapter 62-777, Florida Administrative Code.

“**County**” means the County of Orange, Florida as set forth in the Recitals.

“**Deed**” means a special warranty deed conveying title of the Property to Purchaser subject only to the Permitted Exceptions, in substantially the form of Exhibit B – Deed.

“**CTLs**” means Florida Department of Environmental Protection Cleanup Target Levels as defined in the Florida Administrative Code, Chapter 62-777.

“**Deposit**” means the Initial Deposit and any Additional Deposit as described in Section 2.5.

“**Development Agreement**’ means that certain Development Agreement (Eagle Creek of Ocoee) dated October 21, 2008, by and between Seller and Purchaser, recorded at Doc # 20080729283, Book 9798, Page 0257 of the Public Records of Ocoee County, Florida.

“**Dispute**” means any claim, disagreement or controversy arising out of this Agreement, including a Claim under this Agreement and any dispute or controversy regarding the existence, construction, validity, interpretation, enforceability, termination, or breach of this Agreement, whether based in contract, tort, or in any other manner.

“**Disputed Claim**” means any liability, loss, demand, damage, lien, cause of action of any kind, order, subpoena, obligation, cost, royalty, fee, assessment, duty, requirement, charge, penalty, fine, judgment, interest, and award (including recoverable legal counsel fees and cost of litigation of the Person asserting the claim), whether arising by law, contract, tort, voluntary settlement, or in any other manner.

"**Due Diligence Period**" means a period of time commencing on the Effective Date and expiring at 5:00 p.m. Local Time on the one hundred twentieth (120^{th}) day following the Effective Date.

"**Effective Date**" means the 1st day on which both Purchaser and Seller have signed this Agreement, and a fully executed counterpart of the Agreement, or a PDF copy of the fully executed Agreement, has been delivered to the Escrow Agent.

"**Environment**" means all forms of fauna, flora, soil, natural resources; surface, subsurface, or ground waters; land, ground, surface, or subsurface strata; ambient air; or any other environmental medium, including the indoor environment, contained within or affected by the Property or operations thereon.

"**Environmental Condition**" means Contamination at, on, under or emanating to or from the Property or a condition or circumstance relating to the Property or operation of the Property which is or is alleged to be not in compliance with Environmental Law.

"**Environmental Law**" means any Applicable Law relating to pollution; the protection of the Environment; the release, emission, discharge, or disposal of any material or chemical substance; human health or safety; Hazardous Materials; natural resource damage; product registration; hazard communication, each as from time to time has been or may be amended or adopted before or after the Effective Date, including any of the following:

(A) The Occupational Safety and Health Act, 29 U.S.C.A. §651, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901, et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. §9601, et seq.; the Clean Water Act, 33 U.S.C.A. §1251 et seq.; the Clean Air Act, 42 U.S.C.A. §7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §3001, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C.A. §2701 et seq.

(B) Chapters 376 and 403, Florida Statutes as amended, and in or under the regulations adopted or promulgated pursuant to such laws, including Chapter 62, Florida Administrative Code.

"**Environmental Obligation(s)**" means and includes all of the following, regardless of the sole, joint or concurrent negligence, breach of contract, breach of warranty, strict liability, regulatory liability, statutory liability, or other fault or responsibility of any Person and including expenses associated with claims investigation, testing and assessment, and monitoring: Claims and Losses incurred relating to any Environmental Condition; Claims and Losses incurred relating to Remediation; Claims and Losses incurred resulting from injury or death to natural Persons caused by the exposure or alleged exposure to Hazardous Materials; Claims and Losses incurred relating to the presence, release, emission or discharge of Hazardous Materials, pollution, contaminant or other regulated substances in or into the Environment, and Claims and Losses incurred resulting from compliance with Condition 56 set forth in Exhibit "B" to the Development Agreement, or any subsequent development agreement entered into between Purchaser and a third party with respect to development of the Property.

"**Escrow Agent**" means Baker & Hostetler, L.L.P., SunTrust Center, Suite 2300, 200 Orange Avenue, Orlando, Florida 32801-3432.

"**Exceptions**" means, collectively, conditions, easements, encumbrances, restrictions, exceptions, rights-of-way, title defects, deeds of trust, mortgages, liens, taxes, assessments, charges, leases, and other matters of record.

"**Execution Date**" means the date in the introductory paragraph.

"**FBRA**" means the Florida Brownfield Redevelopment Act (FS 376.77-376.83).

"**FDEP**" means the Florida Department of Environmental Protection.

"**Government Entity**" means any department, court, tribunal, exchange, authority, commission, board, instrumentality, or agency of any municipal, local, state, federal or other governmental authority (including regulatory authorities and administrative bodies) and any subdivision of the foregoing or any Person owned or controlled by the government.

"**Hazardous Materials**" means any chemical substance, product, waste, or other material which is, or becomes identified, listed, published, regulated, or defined as, or which shows the characteristics of, a hazardous substance, hazardous waste, hazardous material, toxic substance, or other regulatory term, including oil, oil waste, by-products and components, NORM, hydrocarbons, and hydrocarbons waste, produced water, by-products and components, polychlorinated biphenyls, and asbestos, or which is otherwise regulated or restricted under any Environmental Law or by any Government Entity, or which may otherwise cause, contribute to, or result in an Environmental Condition , or Environmental Obligation, including without limitation, hazardous materials as defined in Chapters 376 and 403, Florida Statutes as amended, and in or under the regulations adopted or promulgated pursuant to such laws, including Chapter 62, Florida Administrative Code. As used in this Agreement, Hazardous Materials shall include the presence of arsenic in soils and/or groundwater on or underlying the Property at concentrations in excess of cleanup target levels set forth in Chapter 62-777, Florida Administrative Code.

"**IDW**" has the meaning given in Section 3.2(B).

"**Improvements**" means any and all improvements located on the Land, including without limitation, buildings and other structures, any fixtures attached thereto, fencing and Monitoring Wells.

"**Independent Contract Consideration**" has the meaning given in Section 2.6.

"**Initial Deposit**" has the meaning given in Section 2.5(A).

"**Inspections**" means physical and environmental inspections of the Property.

"**Invasive Testing**" will have the meaning set forth in Section 3.2 (D) of this Agreement.

"**Land**" means that certain parcel of land containing approximately 95.1 acres located in the City of Ocoee, Orange County, Florida, bearing Orange County Property Appraiser Parcel ID No. 07-22-28-0000-00-001, as more specifically described on Exhibit "A" attached hereto.

"**Legal Holiday**" means any local or federal holiday on which post offices are closed in the City.

"**Liquidated Damages Amount**" means all of Purchaser's out of pocket costs paid to unrelated entities for performing due diligence of the Property, not to exceed the sum of US$100,000.00.

"**Local Time**" means the local time in Ocoee, Orange County, Florida.

"**Loss**" means all claims, suits, proceedings, actions, demands, liabilities, obligations, damages, penalties, fines, costs, and expenses, including fees and disbursements, incurred in connection with any Claim, by and for attorneys, experts, and consultants.

"**Monitoring Wells**" will have the meaning set forth in Section 6.1 (B) of this Agreement.

"**Montierre**" means Montierre Development, PLLC, a Florida professional liability company, having its offices at 5669 SE Crooked Oak Ave, Hobe Sound, Florida 33455.

"**New Exceptions**" will have the meaning set forth in Section 3.9 of this Agreement.

"**New Exceptions Cure Date**" will have the meaning set forth in Section 3.9 of this Agreement.

"**New Objection Letter**" will have the meaning set forth in in Section 3.9 of this Agreement.

"**Notice to Proceed**" will have the meaning set forth in Section 3.3 (A) of this Agreement.

"**Objection Letter**" means the Survey Objection Letter and the Title Objection Letter, or both.

"**Owner's Policy of Title Insurance**" means an ALTA owner's policy of title insurance in the amount of the Purchase Price, issued by Title insurer to Purchaser at the Closing pursuant to the Title Commitment. The Owner's Policy of Title Insurance will be dated no earlier than the date of recordation of the Deed from Seller to Purchaser, will name Purchaser as the insured, and will insure Purchaser's fee simple title to the Property, subject only to standard printed exceptions and the Permitted Exceptions. However, in no event will the Owner's Policy of Title Insurance include survey modification coverage unless Purchaser obtains the Survey and delivers a copy to Seller and Title insurer before the deadline by which Purchaser must deliver the Objection Letter. At its expense, Purchaser may obtain such endorsements to the Owner's Policy of Title Insurance as Purchaser deems appropriate, but in no event will the receipt of any such endorsements be deemed to be a

Condition of Closing for Purchaser's benefit and/or part of the Owner's Policy of Title Insurance for such purposes.

"**Party**" means each of Seller and Purchaser and "**Parties**" means both.

"**Permitted Exceptions**" means each of the enumerated exceptions to Purchaser's title to the Property set forth in Section 3.9 or any other exceptions explicitly stated as such elsewhere the Agreement.

"**Person**" means an individual, corporation, company, association, partnership, state, statutory corporation, Government Entity, or any other legal entity.

"**PFAS**" means any per- and polyfluoroalkyl substances, whether or not currently regulated by any Government Entity.

"**Prior Survey**" means the most recent survey of the Property in Seller's possession, if any.

"**Property**" means, collectively, the Land, all Improvements located on the Land and Appurtenant Rights to such Land.

"**Property Documents**" means the information materials relating to the Property that to Seller's Knowledge are in the possession of Seller.

"**Property Taxes**" means all real property, personal property, ad valorem taxes and any other similar taxes imposed on the Property.

"**Proposed Contract**" has the meaning given in Section 13.5 (B).

"**Purchase Price**" means the amount payable by Purchaser to Escrow Agent for disbursement to Seller under Section 2.4.

"**Purchaser Group**" means Purchaser and its parent, subsidiaries, and affiliated companies and corporations, and their respective directors, officers, managers, members, elected officials, employees, representatives, independent contractors, consultants, servants and agents, and their respective predecessors and successors in interest and assigns, excluding Seller Group.

"**Release and Indemnity Agreement**" means the agreement regarding the release and indemnity by Purchaser and future owners of the Property in substantially the form of Exhibit E attached hereto and made a part hereof for all purposes.

"**Released Matters**" has the meaning given in Section 7.1.

"**ROFR Acceptance Notice**" has the meaning given in Section 13.5 (B).

"**ROFR Notice**" has the meaning given in Section 13.5 (B).

"**ROFR Period**" has the meaning given in Section 13.5 (A).

"**ROFR Purchase Agreement**" has the meaning given in Section 13.5 (D).

"**Seller Group**" means Seller, its parent, and Affiliates, whether wholly owned, partially owned, directly or indirectly, together with their respective directors, officers, managers, members, employees, contractors, representatives and agents, and their respective predecessors and successors in interest and assigns, excluding Purchaser Group.

"**Seller's Broker**" means Jones Land LaSalle IP, Inc., doing business as JLL, whose principal office is located at 3344 Peachtree Road NE, Suite 1200, Atlanta, Georgia 30326.

"**Seller's Knowledge**" means to the current actual knowledge of Seller's Representative, without further investigation or inquiry. There will be no personal liability on the part of Seller's Representative.

"**Seller's Representative**" means Rainier Viera.

"**Seller's Retained Liabilities**" means (a) any Claims and other liabilities arising from or related to Environmental Conditions at the Property which were knowingly and intentionally concealed from Purchaser by Seller with the intention of inducing Purchaser to purchase the Property and of which Purchaser had no other knowledge prior to the Date of Closing; (b) fines or penalties or other relief imposed against Seller or levied against the Property by governmental agencies relating to Seller's non-compliance with Environmental Laws or regulations which occurred prior to the Date of Closing; (c) Claims or liabilities for personal injury, including death and disability, occurring prior to the Date of Closing caused to employees, contractors, invitees or guests or any other persons at or from the Property, but excluding liabilities for personal injury, including death and disability to the extent caused, in whole or in part, by acts or omissions of Purchaser; (d) Claims arising from or relating to any contractual liabilities or obligations of Seller to third parties other than those specifically assumed by Purchaser in this Agreement or at the Date of Closing; or (e) all of Seller's representations, warranties, covenants and obligations under this Agreement and any other document, instrument or agreement executed by Seller in connection with this Agreement limited to the Survival Period or such other period as set forth in this Agreement or such other document, instrument or agreement.

"**Settlement Statement**" means a closing statement prepared by the Escrow Agent.

"**Survey**" means (A) a Prior Survey, if any, which may be updated by Purchaser, or (B) a new ALTA survey obtained by Purchaser and made by a licensed surveyor, bearing a legal description, showing the area, dimensions and location of the Property to the nearest monuments, streets, alleys on all sides, the topography, the location of all available utilities in adjoining streets, alleys or property, the location of all improvements and encroachments, and the location of all recorded easements against or appurtenant to the Property, and certified to Purchaser and Title insurer.

"**Survey Cure Date**" means 5:00 p.m. Local Time on the date which is five (5) Business Days after Seller's receipt of Purchaser's Survey Objection Letter.

"**Survey Objection Letter**" has the meaning given in Section 3.7(A).

"**Survival Period**" means the period of time from Closing to and until 5:00 p.m. Local Time on the date which is six (6) months after the Date of Closing, during which the representations and warranties in Section 5 will survive.

"**Tax Authority**" means any revenue, customs or fiscal governmental, state, community, municipal or regional authority, body or Person authorized to assess, levy, impose, administer, or collect any Taxes.

"**Taxes**" means all income, capital, corporate, franchise, gross receipts, margins, turnover, transfer, occupation, and other excise taxes, severance taxes, Property Taxes, transaction taxes, customs and other import or export duties, stamp duties, fees, assessments, withholdings, or charges imposed by any Tax Authority and any penalties, interest and fines or additions attributable to or imposed on or with respect to any such assessments, all to the extent related to the Property.

"**Termination Agreement**" means the agreement regarding the termination of the Development Agreement in substantially the form of Exhibit F attached hereto and made a part hereof for all purposes.

"**Title Commitment**" means a commitment for title insurance describing the status of title to the Property and all exceptions which would appear in an Owner's Policy of Title Insurance.

"**Title Company**" means First American Title Insurance Company, with Baker & Hostetler, L.L.P. as its agent.

"**Title Cure Date**" means 5:00 p.m. Local Time on the date which is five (5) Business Days after receipt of the Title Objection Letter.

"**Title Objection Letter**" has the meaning given in Section 3.8(A).

"**US$**" means United States Dollars.

"**Vesting Deed**" means that certain Special Warranty Deed dated December 21, 2005, from Chevron U.S.A. Inc. to Seller conveying the Property, as recorded in Book 8386, Page 3045 of the Public Records of Orange County, Florida.

1.2 **Interpretation.** Unless the context expressly requires an interpretation to the contrary, all of the following apply to the interpretation of this Agreement:

(A) The plural and singular words each include the other.

(B) The masculine, feminine and neutral genders each include the others.

(C) The word "or" is not exclusive, and the words "includes" and "including" are illustrative, not limiting.

(D) References to the Parties include their respective successors and permitted assignees.

(E) References to matters "arising" (or which "arise" or "arises") "out of this Agreement" include matters which arise in connection with this Agreement or have a causal connection with or which flow from this Agreement or which would not have arisen or occurred but for the entering into this Agreement or the performance of or failure to perform obligations under this Agreement.

(F) The headings in this Agreement are included for convenience and do not affect the construction or interpretation of any provision of, or the rights or obligations of a Party under, this Agreement.

(G) A capitalized derivative or other variation of a defined term has a corresponding meaning and must be construed accordingly.

(H) If a conflict exists between any provisions of this Agreement as they apply to a Party, the provision that imposes the more stringent obligation on that Party prevails to the extent of the conflict.

(I) Where provision is made for agreement or the giving of notice, approval, or consent by any Party, unless otherwise specified, the agreement, notice, approval, or consent must be in writing.

1.3 **Exhibits.**

(A) All exhibits and schedules that are attached to the body of this Agreement are an integral part of, and are incorporated by reference into, this Agreement, and consist of:

(1) **Error! Reference source not found.**

(2) Exhibit B – Deed

(3) Exhibit C –

(4) Exhibit D-

(5) Exhibit E –

(6) Exhibit F – Termination Agreement

(B) If a conflict exists between the body of this Agreement and the Exhibits or schedules, the body prevails to the extent of the conflict.

2. SALE AND PURCHASE OF ASSETS, PURCHASE PRICE AND PAYMENTS

2.1 **Purchase and Sale.** Subject to the terms and conditions of this Agreement, and for the consideration required in this Agreement, Seller agrees to sell, assign, and convey, and Purchaser agrees to purchase and acquire, all of Seller's right, title, and interest, if any, in and to the Property.

2.2 **Agreement to Convey.** Seller agrees to sell and convey, and Purchaser agrees to purchase and accept, on the Closing Date, a fee simple title to the Propert**y** by way of a Deed, to be executed and delivered by Seller, and which will be subject to the Permitted Exceptions affecting or encumbering the Property.

2.3 Use Restrictions and Environmental Covenants. Purchaser is aware that there are existing use restrictions with respect to the Property created in the Vesting Deed and that as a result thereof, the Property may not be used for educational or hospital purposes nor will the groundwater within the Property be used for any potable purposes whatsoever. In addition, the Property to be sold from Seller to Purchaser will have the use restrictions and environmental covenants as set forth in the Deed. Such use restrictions and environmental covenants limit the use of the Property for mixed use development consisting of recreational fields (including ancillary uses such as dugouts, locker rooms, batting cages, restrooms, concession stands, bleachers, etc.), commercial (including restaurants and retail stores), parking, office and hotel (including hotel amenities and conference centers) uses. Such use restrictions will specifically prohibit use of the Property for residential purposes as well as prohibit the use of groundwater from the Property for any purpose.

2.4 **Purchase Price.** The Purchase Price for the Property (the "**Purchase Price**") is the sum of US$4,200,000.00 cash.

2.5 **Deposit.**

(A) **Initial Deposit.** Within five (5) Business Days of the Effective Date, upon the execution and delivery of this Agreement by both Seller and Purchaser, Purchaser shall, by federal wire transfer, deposit the sum One Hundred Thousand Dollars (US$100,000.00) (the "**Initial Deposit**") into the escrow account of Escrow Agent. If Purchaser fails to make the Initial Deposit in accordance with the foregoing, by 3:00 p.m. Local Time on or before the 3rd Business Day after the Effective Date, this Agreement will automatically terminate and after that point neither Party will have any further rights, obligations, or liability, except as otherwise expressly described in this Agreement.

(B) **Additional Deposit.** Within five (5) Business Day of the delivery of the Notice to Proceed to Seller, Purchaser shall, by federal wire transfer, deposit the sum of Twenty-Five Thousand Dollars (US$25,000.00) (the "**Additional Deposit**") into the escrow account of Escrow Agent. If Purchaser will fail to make the Additional Deposit in accordance with the foregoing, by 5:00 p.m. Local Time on or before the 1st Business Day after the delivery of the Notice to Proceed to Seller, this Agreement will automatically terminate and after that point neither Party will have any further rights, obligations, or liability under this Agreement, except as otherwise expressly set forth in this Agreement.]

(C) **Maintenance of Deposit.** The Initial Deposit will be held by the Escrow Agent in a non-interest-bearing account which is insured by the Federal Deposit Insurance Corporation. Provided that Purchaser has not terminated this Agreement pursuant to Sections 3.4, 3.7(B), or 3.8(B), the Deposit(s) will become non-refundable, subject only to the provisions of Sections 12, 13.1 and 13.2.

2.6 **Independent Contract Consideration.** Contemporaneously with the delivery of the Initial Deposit to the Escrow Agent, Purchaser will deliver to Seller the sum of US$100.00 (the "**Independent Contract Consideration**"), which Independent Contract Consideration will be retained by Seller in all instances, whether or not Closing occurs. If Closing does occur, the Independent Contract Consideration will be applied against the Purchase Price. The amount of the Independent Contract Consideration has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and for the rights and privileges granted to Purchaser in this Agreement, including all rights granted to Purchaser to terminate this Agreement during certain periods set out in this Agreement.

2.7 **Payment.** Purchaser will pay to the Escrow Agent the Adjusted Purchase Price, on or before 3:00 p.m., Local Time, at least 1 Business Day prior to the Date of Closing. Escrow Agent will then wire the Adjusted Purchase Price in immediately available funds to the bank account(s) as Seller may designate. The Deposit will be paid by the Escrow Agent to Seller at Closing and credited against the Purchase Price. The Purchase Price will also be subject to further adjustments for prorations and credits required to be made in accordance with this Agreement.

3. INSPECTIONS AND APPROVALS

3.1 **Inspections.** Purchaser may conduct the inspections and studies described in this Section 3 during the Due Diligence Period. The City, as Purchaser, intends that Montierre will take title directly from Seller at Closing and Montierre will subsequently develop the Property for the intended use pursuant to a separate agreement between the City and Montierre. The City, as Purchaser, intends to assign this Agreement to Montierre at or prior to the expiration of the Due Diligence Period. As a result thereof, the City, as Purchaser, does not intend to enter upon the Property prior to Closing to conduct any inspections of the Property; instead, the City and Montierre intend that Montierre will conduct the inspections on the Property. All inspections done by Montierre prior to the assignment to Montierre will be deemed to be performed by Montierre as the agent of the City, as Purchaser.

3.2 **Access to the Property and Indemnification by Purchaser.**

(A) During the Due Diligence Period, Seller will permit Purchaser and Purchaser's agents and representatives access to the Property for the purpose of conducting Inspections as Purchaser will deem necessary to determine the feasibility of the Property for Purchaser's intended use; provided however, that if Purchaser intends to conduct Invasive Testing, Purchaser will abide by all requirements set forth in Section 3.2(D). Before Purchaser enters the Property to perform Inspections, Purchaser will give Seller five (5) Business Days' notice and, at Seller's option, a representative of Seller may accompany Purchaser and/or Purchaser's representative. Purchaser will be solely responsible for the conduct of Purchaser's representatives on and adjacent to the Property and will assume and pay for all expenses incurred in connection with the Inspections.

(B) Purchaser will return the Property to substantially the same condition existing before entry by Purchaser's representatives, including proper abandonment of any wells installed by Purchaser or other similar subsurface investigations. Purchaser will be deemed the generator of and solely responsible for the proper management, removal and prompt disposal of waste generated during its Inspections ("**IDW**") all in accordance with Applicable Law. All IDW will be removed within sixty (60) days of the generation thereof and manifests for IDW will identify Purchaser as the generator, and Purchaser will indemnify Seller against any Claim associated with Purchaser having disposed of such IDW. Purchaser agrees to select a licensed disposal facility that meets federal, state, and local laws and requirements with respect to the disposal of IDW.

(C) Except as otherwise prohibited by laws governing disclosure of public documents, including, but not limited to, Chapter 119, Florida Statutes, to the extent applicable to any "public record," Purchaser will keep confidential the information resulting from the Inspections and will deliver to Seller copies of all reports, surveys, and studies generated by the Inspections promptly after receipt. Purchaser may disclose this confidential information to Purchaser's representatives to the extent each needs to know the confidential information for the sole purpose of evaluating the Property, provided Purchaser takes all reasonable measures to assure that Purchaser's representatives keep such information confidential. Purchaser will not contact any Government Entity regarding the results of any testing performed on the Property unless required by Applicable Law and only after Purchaser has given Seller not less than seven (7) Business Days written notice prior to any such contact. At Seller's sole option and to the extent allowed by Environmental Law, if Purchaser does not purchase the Property in accordance with the terms and conditions in this Agreement, Purchaser will either destroy all reports, surveys, and studies generated by the Inspections, or deliver the results to Seller.

(D) Neither Purchaser nor Purchaser's representatives will conduct any intrusive, destructive, or invasive sampling or chemical analysis of the Property or any portion of the Property as part of its Due Diligence investigation, including any (1) invasive or intrusive geotechnical, environmental or other inspections with respect to the Property or any portion thereof (including any drilling, boring, cutting, disassembling, or removing of the Property or any portion thereof) and (2) biological sampling or analysis, whether of air quality, soil, water samples, or otherwise (collectively "**Invasive Testing**") without first obtaining Seller's written consent, which may be granted or withheld in Seller's sole and absolute discretion. To seek Seller's written consent for any Invasive Testing, Purchaser must submit to Seller a scope of work including a description of the proposed physically invasive testing, the constituents included in any sampling and analysis, the analytical methodology to be used, the handling of any wastes potentially generated or derived from the Invasive Testing, and the location of such Invasive Testing. Purchaser's proposed scope of work will be provided to Seller at least ten (10) Business Days prior to the proposed date of commencement of the Invasive Testing. If applicable, Purchaser shall utilize sampling procedures, analytical methodologies, and data protocols in performing analyses that meet the standards of the State of Florida and use laboratories that are certified to complete the analyses. Purchaser must give Seller the opportunity to conduct split sampling for any Invasive Testing, which Seller may conduct at Seller's sole discretion. All tests and investigations will take place during Seller's business hours whenever feasible, unless otherwise requested by Seller. Any Invasive Testing consented to by Seller will be performed in accordance with all Applicable Laws (including all permit requirements of local, state and/or federal agencies) and all terms and conditions of Section 3.2. In the event Purchaser conducts any Invasive Testing, Purchaser must give Seller the opportunity to conduct split sampling for such Invasive Testing, which Seller may do at Seller's sole discretion. In the event Purchaser conducts any Invasive Testing, Purchaser will provide Seller with a true and correct copy of any Invasive Testing reports or data as well as any amendments or modifications, promptly upon receipt by Purchaser at no cost to the Seller and without representation, warranty, or liability on the part of Purchaser.

(E) Purchaser will indemnify, defend, and hold Seller harmless from any loss, injury, liability, damage, or expense, including reasonable attorneys' fees and costs which Seller may incur as a result of (1) any act or omission of Purchaser or its agents or representatives arising in connection with any tests or inspections conducted by Purchaser or its agents or representatives or (2) the failure of Purchaser to restore the Property in accordance with this Section.

(F) During the Due Diligence Period and before entering the Property for any purpose, Purchaser, or Purchaser's consultant performing any Invasive Testing or any other act authorized in this Section 3, will procure and maintain, at its own expense, during the performance of the Inspections, policies of insurance provided by insurance companies admitted to do business in the State of Florida with A.M. Best & Company ratings of at least A- / VIII and which are reasonably acceptable to Seller, which policies are primary as to any other existing, valid, and collectible insurance insuring Purchaser against loss or liability caused by or with the performance of this Agreement by Purchaser, or its agents, consultants, contractors, or subcontractors, in amounts not less than:

(1) Commercial General Liability Insurance with a minimum combined single limit of liability of at least US$1,000,000 and a general aggregate limit of at least US$2,000,000.

(2) Comprehensive Automobile Liability Insurance or Business Auto Policy covering all owned, hired or otherwise operated non-owned vehicles, with a minimum combined single limit of at least US$1,000,000 each occurrence for Bodily Injury and Property Damage.

(3) Workers' Compensation Insurance as required by Applicable Law, and Employers' Liability Insurance with a minimum limit of at least US$1,000,000 per employee and at least US$1,000,000 each occurrence.

(4) Where Purchaser or a Purchaser's agent or representative is acting as an environmental consultant or otherwise performing professional environmental services, a policy of environmental professional liability insurance, having minimum limits of US$2,000,000 per occurrence with a US$5,000,000 annual aggregate with no exclusion for pollution and/or environmental claims.

(G) The insurance coverage required may be provided by one or more policies of insurance issued to Purchaser or its agents, consultants, contractors, or subcontractors, provided, however, that in order for such insurance to be acceptable, **Purchaser will contractually require such agents, consultants, contractors, or subcontractors to indemnify, defend, and hold harmless Seller from and against Claims and Losses to the extent of Purchaser's obligations provided for in this Agreement**, with Seller Group named as an additional insured to such agreements, and such insurance policies will meet the requirements of this Section.

(H) The policies of insurance will name Seller Group as an additional insured and will not exclude or restrict coverage based upon alleged or actual negligence of an additional insured. Such insurance will provide coverage for Claims and Losses arising out of the actions of Purchaser or its agents, consultants, contractors, or subcontractors on or about the Property while the policy is in force, regardless of whether the Claim or Loss arises after the policy is expired. Prior to entry on the Property during the Due Diligence Period, Purchaser will deliver to Seller a certificate of insurance and additional insured endorsements evidencing the existence of the policies and further evidencing that coverage will not be canceled or materially changed prior to 30 days' advance written notice to Seller. Subrogation against Seller and Seller Group will be waived as respects all of the insurance policies required above (including policies of any subcontractor). The insurance required in no way limits or restricts any indemnity by Purchaser or its agents, consultants, contractors, or subcontractors under this Agreement nor by any limitation placed on the indemnity as a matter of Applicable Law.

(I) Seller, in its sole discretion, has the right to suspend or terminate Purchaser's or Purchaser Group member's access at any time for any violation of Section 3.2 or any action or omission by Purchaser personnel that may create a risk of harm of any type.

3.3 **Purchaser's Acceptance or Rejection prior to the Expiration of the Due Diligence Period**.

(A) If Purchaser gives Seller a notice to continue on or before the expiration of the Due Diligence Period (the "**Notice to Proceed**"), then Purchaser will be deemed to have elected to proceed under this Agreement. If the Due Diligence Period expires without Purchaser timely delivering the Notice to Proceed to Seller for any reason, then this Agreement will automatically terminate, subject to (1) the immediate return of all copies of all Property Documents to Seller, and (2) delivery of the Deposit to Purchaser (subject to the provisions of Section 13.3), at which point neither Party will have any further obligation or liability to the other Party under this Agreement, except as otherwise expressly provided in this Agreement.

(B) By delivery of the Notice to Proceed to Seller, Purchaser will be deemed to have approved and accepted the Property and to have agreed to complete the transaction contemplated by this Agreement, and the Deposit will be nonrefundable, subject only to the provisions of Sections 11 and 13.3.

3.4 **Seller's Termination Right**. Seller will be entitled to terminate this Agreement also based on the results of any findings from the Due Diligence undertaken by Purchaser if for any reason such findings cause Seller in its sole and absolute discretion to have any concerns about the environmental condition of the Property or this Agreement. If that occurs, Seller will be entitled to terminate this Agreement by providing notice of such termination to Purchaser by the later to occur of (A) the last day of the Due Diligence Period or (B) thirty (30) Business Days after Seller's receipt of the applicable Due Diligence findings. In the event Seller fails to terminate this Agreement timely in accordance with this Section after Seller's receipt of a Due Diligence finding, Seller will be irrevocably deemed to have waived its right to terminate this Agreement based on the Due Diligence finding, but no such waiver will apply to any subsequent Due Diligence findings received by Seller. Upon termination of this Agreement in accordance with the provisions of this Section 3.4, and notwithstanding any provision in this Agreement to the contrary, the Deposit will be promptly released or returned to Purchaser and Seller will pay to Purchaser an amount equal to Purchaser's out of pocket costs paid to unrelated entities for performing Due Diligence of the Property, not to exceed $50,000, upon presentation to Seller of receipts for such out of pocket costs, whereupon neither Party will have any further duty or obligation under this Agreement except for those obligations which are expressly stated to survive such termination.

3.5 **Survival.** The provisions of Sections 3.2, 3.3 and 3.4 will survive termination of this Agreement or the Closing, as applicable.

3.6 **Inspection of Property Documents.** The Parties acknowledge that Seller has provided Purchaser with access to the Data Room which contains the Property Documents. Within five (5) Business Days after the Effective Date, to the extent not already in the Data Room, Seller will include in the Data Room all of Property Documents in the possession of Seller to Seller's Knowledge for Purchaser's review and inspection. Purchaser acknowledges, understands, and agrees that the Property Documents may have been prepared by parties other than Seller and that Seller makes no representation or warranty whatsoever, express or implied, as to the completeness, content, or accuracy of the Property Documents. The provisions of this Section will survive Closing, or the early termination of this Agreement. All Property Documents will be kept confidential in accordance with Section 16.10.

3.7 **Survey.**

(A) In connection with Purchaser's access to the Data Room, Seller has made available to Purchaser for its inspection and review a copy of a Prior Survey. Purchaser will have the option of updating the Prior Survey, if any, or obtaining a new survey of the Property. On or before the date that is ten (10) Business Days after the date that Purchaser receives the Survey, but in no event later than fifteen (15) Business Days before the end of the Due Diligence Period, should Purchaser have objections to any matters shown on the Survey, Purchaser will deliver to Seller, in writing, a letter (the "**Survey Objection Letter**") explaining the objections to any matters shown on the Survey. Purchaser's failure to timely object to any such matters will be deemed to constitute Purchaser's approval.

(B) If Purchaser timely objects to any matters shown on the Survey, then Seller will have the right, but not the obligation, to agree in writing to cure before Closing such objections, or to decline to cure such objections. Seller will have until the Survey Cure Date to agree in writing to cure before Closing, or decline to cure, Purchaser's objections to the Survey in a manner acceptable to Purchaser. If Seller elects not to cure, or fails to timely respond to the Survey Objection Letter, Seller will be deemed to have elected not to cure, in which event, Purchaser will, on or before five (5) Business Days after the Survey Cure Date, either (1) terminate this Agreement by delivery of written notice to Seller and Escrow Agent, and Escrow Agent will release and return the Deposit to Purchaser or (2) waive in writing to Seller its objections to the Survey. Purchaser's failure to timely deliver to Seller and Escrow Agent a written notice of termination or waive its objection to the Survey will be deemed to constitute Purchaser's waiver of such objections.

3.8 **Title Commitment.**

(A) Seller has ordered a Title Commitment from Escrow Agent, specifying Purchaser as the named insured and showing the Purchase Price as the policy amount. If Purchaser has objections to any matter in the Title Commitment, Purchaser will, within ten (10) Business Days after receiving the Title Commitment, but in no event later than fifteen (15) Business Days before the end of the Due Diligence Period, deliver to Seller in writing a letter (the "**Title Objection Letter**") explaining the objections to matters shown in the Title Commitment. Purchaser's failure to object to any such matters timely will constitute Purchaser's approval of them, and such matters will then become Permitted Exceptions.

(B) If Purchaser timely objects to any item in the Title Commitment, then Seller will have the right, but not the obligation, to attempt to cure or cause to be cured before Closing an objected item. Seller will have until the Title Cure Date to agree in writing to cure before Closing an objected item. If Seller elects not to cure, or fails to respond timely to Purchaser's objections, Seller will be deemed to have elected not to cure, in which event Purchaser will, on or before five (5) Business Days after the Title Cure Date, either (1) terminate this Agreement by delivering to Seller and Escrow Agent a written notice of termination, and Escrow Agent will return the Deposit to Purchaser or (2) waive in writing to Seller its objections to the objected items, which will then become Permitted Exceptions. Purchaser's failure to deliver timely to Seller and Escrow Agent a written notice of termination or waiver of its objection to the objected items will constitute Purchaser's waiver of its objection to said items and such items will become Permitted Exceptions.

3.9 **Title/Survey Updates**. If any update to the Title Commitment issued subsequent to the date of the Title Commitment or any update to the Survey contains exceptions, which are not Permitted Exceptions, first appearing of record after the effective date of the Title Commitment or after the initial date of the applicable Survey (or after updates thereto), as applicable ("**New Exceptions**"), then Purchaser may object to one or more New Exceptions by delivering an objection letter ("**New Objection Letter**") to Seller within five (5) days following Purchaser's receipt of such update. If Purchaser fails to deliver to Seller such New Objection Letter on or before such date, Purchaser will be deemed to have waived any objection to the New Exceptions, and the New Exceptions will be included as Permitted Exceptions. Seller will have until 5:00 p.m. on the date which is five (5) days after receipt of such Purchaser's Objection Letter ("**New Exception Cure Date**") (and, if necessary, Seller may extend the Closing Date to provide for such five (5) day period and for an additional five (5) days following such period for Purchaser's response), to agree in writing to cure before Closing, or decline to cure, Purchaser's objections to such disapproved item. If Seller elects not to cure, or fails to timely respond to Purchaser's New Objection Letter, Seller will be deemed to have elected not to cure, in which event Purchaser shall, on or before five (5) days after the New Exception Cure Date, either (i) terminate this Agreement by delivering to Seller and Escrow Agent a written notice of termination, whereupon Escrow Agent will release and return the Deposit (subject to the provisions of Section 13.3 below) to Purchaser and thereupon neither Party will have any further obligation or liability to the other Party hereunder, except as otherwise expressly provided herein, or (ii) waive in writing its objection to the disapproved items, which will then become Permitted Exceptions. Purchaser's failure to timely deliver to Seller and Escrow Agent a written notice of termination or waiver of its objection to the disapproved items will be deemed to constitute Purchaser's waiver of its objection to said items and such items will become Permitted Exceptions.

3.10 **Permitted Exceptions.** Purchaser will accept title to the Property at Closing, subject to the following Permitted Exceptions:

(A) Those matters affecting or relating to the title to, or the survey of, the Property (1) which are of record on the date of the Title Commitment or as shown on the Survey, and which were not included in an Objection Letter timely delivered by Purchaser; (2) which were included in an Objection Letter, but for which (a) Seller has completed the cure, or (b) Purchaser has waived or been deemed to have waived the cure, or (c) Seller has elected to cure and will be cured by the payment of money at Closing; or (3) which Purchaser has otherwise approved in writing.

(B) The restrictions set forth in the Vesting Deed and the restrictions to be included in the Deed.

(C) All matters apparent from an inspection of the Property, or which a current, accurate survey of the Property would disclose.

(D) All dedicated roads, streets and highways;

(E) The lien of non-delinquent taxes, assessments, and other usual and customary charges assessed against the owners of real property in the state in which the Property is located.

(F) All matters disclosed by the Property Documents made available to Purchaser.

(G) All building and zoning laws, codes, and regulations affecting the Property, including all proffers, special exceptions, conditions, site plan approvals, and other similar matters, if any, relating to the zoning of the Property.

4. SELLER'S AND PURCHASER'S OBLIGATIONS PRIOR TO CLOSING

4.1 **Seller's Obligations**. Until Closing, Seller or Seller's agents or representatives will:

(A) Maintain the Property in its present condition, reasonable wear and tear, and damage from casualty or other events beyond the control of Seller or actions by the owner, occupant, or operator of the subsurface rights to the Property, excepted.

(B) Provide to Purchaser, promptly upon receipt, copies of any written notices relating to the Property received by Seller or its agents or representatives from any Government Entity or quasi-governmental instrumentality, insurance company, or vendor, which notices are of a type not normally received in the ordinary course of Seller's business, or which may have a material effect upon the Property or result in a material change in a representation or warranty made by Seller in this Agreement.

4.2 **Purchaser's Obligations**. During the Due Diligence Period, the City will designate the Property as a Brownfield Area pursuant to the FBRA. Prior to the Date of Closing, Seller and Purchaser will enter into a Brownfield Site Rehabilitation Agreement ("**BSRA**") with FDEP. Seller agrees to cooperate with Purchaser in its efforts to designate the Property as a Brownfield Area and to obtain FDEP's agreement on the terms and conditions of a BSRA.

The Parties agree to use their best efforts to obtain FDEP's timely approval of the BSRA in substantial form as the Model BSRA provided in FDEP's public website for the Florida Brownfields Program at https://floridadep.gov/waste/waste-cleanup/content/brownfields-program prior to Closing and that the BSRA will not become effective until Purchaser acquires title to the Property.

5. REPRESENTATIONS AND WARRANTIES

5.1 **Survival Period for Representations and Warranties**. All representations and warranties of Seller and Purchaser set forth in this Section 5 are made as of the Effective Date through the Closing Date and will survive after the Closing Date for the Survival Period.

5.2 **Seller Representations and Warranties.** Seller represents and warrants to Purchaser that as of the Effective Date and continuing through Closing, the following statements are accurate:

(A) **Formation.** Seller is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization and is duly qualified to carry out its business in Delaware. Seller is qualified to do business in Florida.

(B) **Authorization.** Seller has (1) full corporate authority to enter into and perform this Agreement and to consummate the transaction contemplated by this Agreement and (2) taken all actions necessary to authorize execution, delivery, and performance of this Agreement and the transaction contemplated by this Agreement.

(C) **Valid and Binding Obligation.** This Agreement constitutes Seller's legal, valid, and binding obligation enforceable in accordance with its terms and conditions.

(D) **No Conflict with Articles of Incorporation and Other Governing Documents of Seller.** Neither this Agreement nor the performance of this Agreement constitutes a default, violation, or conflict with the articles of incorporation, by-laws, or governing documents of Seller.

(E) **No Litigation or Arbitration Proceedings.** Seller is not a party to any litigation, arbitration, or administrative proceedings in relation to the Property that might reasonably be expected to delay, prevent, or materially hinder the consummation of the transaction contemplated by this Agreement or materially adversely affect the title to or value of any of the Property.

(F) **FIRPTA.** Seller is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to (or as amended after) the date of this Agreement. Seller is in compliance with the terms of the USA Patriot Act of 2001, as amended, the regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, all sanctions programs administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, and all other laws, regulations, executive orders, or government programs designed to combat terrorism or money laundering, or the effect of any of the foregoing laws, regulations, orders, or programs, if applicable, on the transaction contemplated by this Agreement.

(G) **Non-Foreign Status.** Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

(H) **Knowledge.** For purposes of Section 5.2, Seller will be deemed to be aware of matters only within Seller's Knowledge.

5.3 **Purchaser Representations and Warranties.** Purchaser represents, warrants, and covenants to Seller that, as of the Effective Date and continuing through Closing, the following statements are accurate:

(A) **Formation.** Purchaser is a corporation, limited liability company or municipality duly organized, validly existing, and in good standing under the laws of the State of Florida.

(B) **Authorization.** Purchaser (1) has full power and authority to enter into and perform this Agreement and (2) has taken all actions necessary to authorize execution, delivery, and performance of this Agreement and the transaction contemplated by this Agreement.

(C) **Valid and Binding Obligation.** This Agreement constitutes Purchaser's legal, valid, and binding obligation enforceable in accordance with its terms and conditions.

(D) **No Conflict with Governing Documents of Purchaser.** Neither this Agreement nor the performance of this Agreement constitutes a default, violation, or conflict with the articles of incorporation, by-laws, governing documents or Applicable Law governing Purchaser, or any license, permit, or consent granted to or by Purchaser, or any material provision of any agreement or instrument to which Purchaser is a party and will not violate or be in conflict with any judgment, decree, order, statute, rule, or regulation.

(E) **No Litigation or Arbitration Proceedings.** Purchaser is not a party to any litigation, arbitration, or administrative proceedings that might reasonably be expected to delay, prevent, or materially hinder the consummation of the transaction contemplated by this Agreement.

(F) **Consents.** Purchaser has taken all requisite action and obtained all requisite consents, releases, and permissions required for entering into this Agreement, and the instruments and documents referenced in this Agreement or required under any covenant, agreement, encumbrance, law, or regulation with respect to the obligations required under this Agreement, and no consent of any other party is required for the performance by Purchaser of its obligations under this Agreement.

(G) **Breach.** Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement does now constitute or will result in a breach of, or a default under, any agreement, document, instrument, or other obligation to which Purchaser is a party or by which Purchaser may be bound, or any law, statute, ordinance, rule, governmental regulation, or any writ, injunction, order, or decree of any court or governmental body, applicable to Purchaser or to the Property.

(H) **Bankruptcy.** No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or state bankruptcy law, is pending against or, to the best of Purchaser's knowledge, contemplated by Purchaser.

(I) **FIRPTA.** Purchaser is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to (or as amended after) the date of this Agreement. Purchaser is in compliance with the terms of the USA Patriot Act of 2001, as amended, the regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, all sanctions programs administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, and all other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, or the effect of any of the foregoing laws, regulations, orders or programs, if applicable, on the transactions contemplated by this Agreement.

(J) **Non-Foreign Status.** Purchaser is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

(K) **Pre-Agreement Violations and Reporting.** Purchaser represents and warrants that no event has occurred prior to the Effective Date, which if it had occurred after the Effective Date, would be a violation of Section 18.1. Purchaser will immediately notify Seller of any violation of Sections 18.1 of the occurrence of any event prior to the Effective Date which, if it had occurred after the Effective Date, would constitute a violation of Section 18.1.

(L) **Evidence of Capacity.** Purchaser is not undergoing any insolvency or receivership proceedings.

5.4 **Broker.** Seller and Purchaser each represents to the other that there has been no dealings, negotiations, or consultations with any broker, representative, employee, agent, or other intermediary in connection with the sale of the Property, except that Seller has retained the services of Seller's Broker. Seller will be solely responsible for paying the fees and commissions owed to Seller's Broker pursuant to a separate written agreement. Seller and Purchaser mutually agree to indemnify, defend, and hold the other free and harmless from the claims of any other broker(s), representative(s), employee(s), agent(s), or other intermediary(ies) claiming to have represented Seller or Purchaser, respectively, or otherwise to be entitled to compensation in connection with this Agreement or in connection with the sale of the Property. This mutual indemnity will survive Closing and any termination of this Agreement.

6. PROPERTY CONDITION

6.1 EXISTING CONDITIONS.

(A) The Property has been used for agricultural farming operations. Agricultural research activities also previously occurred on portions of the Property, including field testing of agricultural chemicals through their application to test plots on the Property and to container-grown plants in onsite greenhouses on the Property. Purchaser expressly acknowledges the presence of arsenic and other chemicals consistent with such use are present, or have been present in the past, in soils and/or groundwater on the Property in concentrations exceeding CTLs. Purchaser further acknowledges that it has been provided access to a data room that includes information relating to the presence of soil and/or groundwater conditions including in concentrations exceeding CTLs and that Purchaser has reviewed said information. Purchaser acknowledges that at Closing, Seller will cause to be filed of record in the Public Records of Orange County, Florida the Disclosure Notice to put third parties on notice of the presence of arsenic and such other chemicals in the soils and/or groundwater on the Property in concentrations exceeding CTLs.

(B) Purchaser acknowledges that it has been informed by Seller that the Improvements may contain asbestos and, or, lead based paint.

(C) Purchaser acknowledges that located on the Property are wells historically used for sampling groundwater and a water production well (collectively the "**Monitoring Wells**"). Seller will be responsible at its cost for abandoning such Monitoring Wells. To the extent that all Monitoring Wells have not been properly abandoned prior to Closing, Seller and Purchaser will enter into the Access Agreement at Closing to provide Seller's affiliate, Chevron Environmental Management Company, with access to the Property after Closing for the purpose of abandoning such Monitoring Wells.

(D) Purchaser is aware that any development of the Property is presently subject to the terms and provisions of the Development Agreement by and between Seller and Purchaser. At Closing, Seller and Purchaser will enter into a Termination Agreement terminating the Development Agreement, which termination will provide that Seller has no further obligations with respect to the Development Agreement.

6.2 DISCLAIMER. PURCHASER ACKNOWLEDGES AND AGREES THAT, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT EXECUTED BY SELLER AT CLOSING, THE PROPERTY IS TO BE SOLD TO AND ACCEPTED BY PURCHASER "AS IS" AND "WHERE IS," WITH ALL FAULTS, IF ANY, INCLUDING THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT EXECUTED BY SELLER AT CLOSING, SELLER DISCLAIMS ANY AND ALL WARRANTIES, AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND TO PURCHASER INCLUDING WARRANTIES RELATING TO: (A) THE PHYSICAL CONDITION OF THE PROPERTY, AND IMPROVEMENTS, IF ANY, AND ANY PERSONAL PROPERTY; (B) THE HABITABILITY OF THE PROPERTY, OR IMPROVEMENTS; (C) THE SUITABILITY, MERCHANTABILITY, OR DESIGN OF THE PROPERTY FOR A PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF OR CONTAMINATION BY HAZARDOUS MATERIALS AT, ON, UNDER, OR

EMANATING TO OR FROM THE PROPERTY; (E) THE COMPLIANCE OF THE PROPERTY WITH LAWS AND REGULATIONS, INCLUDING ENVIRONMENTAL LAW AND (F) THE SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES OR OTHER CONDITIONS EXISTING IN, ON, OR UNDER THE PROPERTY. PURCHASER ACKNOWLEDGES THAT, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT EXECUTED BY SELLER AT CLOSING, SELLER MAKES NO, AND EXPRESSLY DISCLAIMS ANY, WARRANTIES OR REPRESENTATIONS CONCERNING THE ACCURACY OR COMPLETENESS OF ANY OF THE PROPERTY DOCUMENTS.

6.3 ACKNOWLEDGMENT OF INSPECTION. PURCHASER COVENANTS, REPRESENTS AND WARRANTS TO SELLER THAT: (A) PURCHASER HAS INSPECTED OR WILL INSPECT THE PROPERTY, INCLUDING THE IMPROVEMENTS ON THE PROPERTY AND THE PERSONAL PROPERTY, IF ANY, AND ALL MATTERS RELATING TO THE PROPERTY WHICH PURCHASER DESIRES; (B) NEITHER SELLER NOR ANYONE ON SELLER'S BEHALF HAS MADE, OR IS MAKING, ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROPERTY OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT EXECUTED BY SELLER AT CLOSING; (C) PURCHASER IS RELYING SOLELY ON PURCHASER'S OWN INVESTIGATION OF THE PROPERTY AND ALL MATTERS PERTAINING TO ITS INVESTIGATION, INCLUDING THE ENVIRONMENTAL CONDITION OF THE PROPERTY; AND (D) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER IS PURCHASING THE PROPERTY "AS IS."

6.4 THIRD PARTY CLAIMS. PURCHASER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL SELLER BE LIABLE FOR ANY CLAIMS BY PURCHASER OR ANY THIRD PARTY ATTRIBUTABLE TO OR ARISING FROM CONSTRUCTION ON THE PROPERTY FOLLOWING THE CLOSING DATE THAT INVOLVES SUBSURFACE EXCAVATION, SOIL MOVEMENT, OR HANDLING, TREATMENT, OR DISPOSAL OF SOIL OR GROUNDWATER.

6.5 INSPECTIONS. Purchaser covenants, represents, and warrants that: (A) Purchaser has inspected or will inspect the Property and all matters relating to the Property which Purchaser desires; (B) neither Seller nor anyone on Seller's behalf has made, or is making, any warranties or representations respecting the Property other than those expressly identified in this Agreement, if any; and (C) in evaluating the transaction contemplated by this Agreement, Purchaser is relying solely on Purchaser's own investigation of the Property and all matters pertaining to it, including the Environmental Condition of the Property.

6.6 OBLIGATION TO MAKE REPAIRS. Purchaser acknowledges and agrees that: (a) any reports, repairs or work required by Purchaser are the sole responsibility of Purchaser; (b) Seller has no obligation to make any changes, alterations, or repairs to the Property, or to cure any violations of Applicable Law or to comply with the requirements of any insurer; and (c) Purchaser is solely responsible for obtaining any certificate of occupancy or any other approval or permit necessary for transfer or

occupancy of the Property, and for any repairs or alterations necessary to obtain such certificate, approval, or permit, all at Purchaser's sole cost and expense.

6.7 RADON GAS. RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM THE COUNTY PUBLIC HEALTH DEPARTMENT.

6.8 RESPONSIBILITY. Purchaser acknowledges that it is purchasing the Property without any environmental indemnity of any kind from Seller for any Environmental Condition or Environmental Obligation at or relating to the Property except for Seller's Retained Liabilities. Purchaser further acknowledges and agrees that Purchaser will be solely responsible for the Environmental Condition of the Property, and for the Environmental Obligations, upon the Close of Escrow, as further detailed in this Agreement.

6.9 SURVIVAL. The acknowledgements and agreements of Purchaser in Section 6 will survive the Closing and will not be deemed merged into any instrument or conveyance delivered at the Closing.

7. PURCHASER'S RELEASE AND INDEMNIFICATION

7.1 INTENT OF INDEMNITY AND RELEASE PROVISIONS. The Parties have allocated between them certain risks and responsibility for Claims related to the Property and this Agreement as set out below. Upon Closing, the indemnities set out below are the exclusive remedy for any Claim based upon or relating to this Agreement, regardless of the manner in which any Claim is characterized or pleaded; provided, however, this does not affect a Party's rights to non-monetary equitable relief under Section 14 of this Agreement.

7.2 PURCHASER'S RELEASE. Subject to the Seller's Retained Liabilities for which Purchaser will have no liability and subject to Seller's representations and warranties under Section 5, Purchaser, for itself and Purchaser Group members release Seller Group members from any Claim or Loss (including reasonable outside attorneys' fees), whether known or unknown, liquidated or contingent, asserted against or incurred by any Purchaser Group member, and that arises from, is in connection with, or is related in any manner to the following (collectively, the "Released Matters"):

(A) Acts or omissions of Purchaser or Purchaser Group with respect to, or occurring on, the Property whether before or after the Closing Date.

(B) The ownership, control, use, possession, or operation of the Property.

(C) Any condition existing or occurring in, on, under, or within the Property, including the following:

(1) The death or injury of any Person, including, any Purchaser Group member.

(2) The damage or destruction of the Property or any personal property on the Property.

(3) The violation or alleged violation of any federal, state, local, or municipal law, rule, regulation, order, judgment, decree, or other requirement, including, requirements under permits, licenses, consents, and approvals.

(4) The existence, assessment, or remediation of Contamination upon, under, in, or emanating to or from the Property.

(5) Emissions, discharges, releases, or threatened releases, or the presence, generation, manufacturing, processing, distribution, use, treatment, storage, disposal, transport, labeling, advertising, sale, display, or handling, of Contamination.

(6) Any response costs any Seller Group or Purchaser Group members may incur with respect to the Property under any Environmental Law.

(7) Any cause of action or theory of any kind because of, in connection with, or related to, the ownership and operation of the Property.

(8) Environmental Conditions, whether the Environmental Conditions existed before or after the Closing.

(D) Seller Group's former operations on the Property or any adjacent property.

(E) Any special, indirect, or consequential damages by Purchaser, Purchaser Group, or any third party, including Claims or Losses for loss of use, rents, anticipated profit, or business opportunity, or business interruption, construction delays, diminution in value, loss of goodwill by Purchaser, or mental or emotional distress, or fear of injury, disease or illness, or trespass, nuisance, or otherwise.

(F) Purchaser's or its agent's, contractor's, or employee's activities and inspections regarding the Property.

(G) Purchaser's or Purchaser Group's construction or development activities on the Property.

(H) Purchaser's performance or failure to perform any due diligence reviews and surveys of the Property, including human health risk assessments or similar studies.

(I) Any environmental investigations, environmental claims, cleanup costs, or any Claims or action attributable or arising from subsurface excavation, soil

movement, or special handling, treatment, or disposal of soil or groundwater, vapor intrusion protections, or engineered controls.

(J) Any information contained in, or that should have been contained in, the Property Documents.

7.3 Released Matters do not extend to matters determined by final non-appealable judgment to have been caused by the gross negligence or willful misconduct of a Seller Group member, except that negligence of any type occurring prior to Closing with respect to matters described in Sections 7.2(D) 7.2(E) is <u>not</u> excluded from the definition of Released Matters.

7.4 Purchaser recognizes that there is a risk that, after Closing, Purchaser may suffer a Loss or Claim that is in some way caused by the Released Matters, and Purchaser agrees that other than Seller's Retained Liabilities, Purchaser Group members assume this risk and that this release will apply to all the unknown or unanticipated Losses or Claims. If this release is judicially determined to exceed that permitted by Applicable Law, then the release will be construed so as to preserve the maximum release permitted by Applicable Law.

7.5 NO ACTIONS OR PROCEEDINGS. In no event will Purchaser or any Person that is part of Purchaser Group file or pursue any legal action, proceeding, or arbitration against Seller or any other Seller Group member with respect to any of the Released Matters.

7.6 PURCHASER'S INDEMNITY. PURCHASER AND, WITH RESPECT TO ANY ASSIGNEE OF THE CITY OF OCOEE, PURCHASER GROUP WILL INDEMNIFY, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO SELLER), SAVE AND HOLD HARMLESS SELLER GROUP MEMBERS FROM ANY CLAIM OR ANY LOSS, INCLUDING, ALL RELEASED MATTERS EXCEPT SELLER'S RETAINED LIABILITIES. A CLAIM OR LOSS WILL INCLUDE ANY CLAIMS OR ANY LOSSES AS TO STRICT LIABILITY CLAIMS, INCLUDING THOSE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"); AND ANY REGULATORY OBLIGATIONS THAT WOULD REQUIRE REMEDIATION ACTIVITIES WITHOUT REGARD TO THE POINT IN TIME THAT THE CONTAMINATION OCCURRED. IF THIS INDEMNITY IS JUDICIALLY DETERMINED TO EXCEED THAT PERMITTED BY APPLICABLE LAW, THEN THE INDEMNITY WILL BE CONSTRUED AS TO PRESERVE THE MAXIMUM INDEMNITY PERMITTED BY APPLICABLE LAW. IF ANY REGULATORY OBLIGATIONS REQUIRE REMEDIATION ACTIVITIES IN CONNECTION WITH THE PROPERTY. NOTHING IN THIS AGREEMENT PRECLUDES PURCHASER FROM RECOVERING COSTS FROM PARTIES THAT ARE NOT SELLER GROUP MEMBERS.

7.7 COVENANTS RUNNING WITH THE LAND. The release and indemnity provisions set forth under Section 7 will, to the extent legally permissible, be covenants running with the land and will be binding on all future owners of the Property. Any conveyance, transfer, or assignment of all or part of the Property by Purchaser, its successors or assigns, in which the grantee, transferee, or assignee fails to expressly

assume the obligations of Purchaser under Section 7 will be deemed null and void, ab initio. Purchaser further agrees to cause the provisions of this Section to be included in all subsequent sales or transfers of any interest in the Property, and to cause all purchasers or transferees of the Property to expressly acknowledge and assume all of Purchaser's obligations.

7.8 NO LIMITATION ON PURCHASER'S INDEMNITY AND DEFENSE OBLIGATIONS. Nothing set forth in Section 7 will be construed to limit or narrow in any manner any indemnity and defense obligations or covenants of Purchaser which are set forth elsewhere in this Agreement.

7.9 SURVIVAL. The obligations of Purchaser under Section 7 will survive the Closing. At Closing, the Parties will enter into the Release and Indemnity Agreement to be recorded in the Public Records of Orange County, Florida.

8. CONDITIONS PRECEDENT TO CLOSING

8.1 **Conditions Precedent to Seller's Obligation to Sell.** The following are the Conditions Precedent to Seller's obligation to sell the Property to Purchaser pursuant to this Agreement, any of which may be waived (in whole or in part) by Seller (collectively, "**Conditions Precedent**"):

(A) Purchaser has performed and complied in all material respects with the terms and conditions of this Agreement required to be performed or complied with by Purchaser at or prior to Closing, including without limitation, designating the Property as a Brownfield Site pursuant to the FBRA and securing the BSRA.

(B) No action or proceeding by or before any Government Entity has been instituted or threatened (and not subsequently dismissed, settled, or otherwise terminated) which might restrain, prohibit, or invalidate the transaction contemplated by this Agreement, other than an action or proceeding instituted or threatened by Seller or any of its Affiliates.

(C) Purchaser representations and warranties in Section 5.3 are true and correct in all material respects on the Effective Date and Closing Date.

(D) The receipt of all material approvals or the execution of any necessary agreement or document (on terms reasonably satisfactory and agreed to by the Parties) which are required under Applicable Law or by a Government Entity prior to the transfer of the Property to Purchaser.

8.2 **Conditions Precedent to Purchaser's Obligation to Purchase.** The following are the Conditions Precedent to Purchaser's obligation to purchase the Property from Seller pursuant to this Agreement, unless waived by Purchaser:

(A) Seller has performed and complied in all material respects with the terms and conditions of this Agreement required to be performed or complied with by Seller at or prior to Closing, including without limitation, cooperating with Purchaser in designating the Property as a Brownfield Site pursuant to the FBRA and securing the BSRA.

(B) No action or proceeding by or before any Government Entity has been instituted or threatened (and not subsequently dismissed, settled, or otherwise terminated) which might restrain, prohibit, or invalidate the transaction contemplated by this Agreement, other than an action or proceeding instituted or threatened by Purchaser or any of its Affiliates.

(C) Seller's representations and warranties in Section 5.2 are true and correct in all material respects on the Closing Date.

8.3 **Fulfillment of Conditions Precedent.**

(A) Each Party (including each Parties' Affiliates) will use reasonable efforts to satisfy the Conditions Precedent to each Parties' obligation to consummate the Closing, including the execution of all documents, acts, and things as may be reasonably required to satisfy the Conditions Precedent.

(B) Each Party will promptly provide to the other Party all information and documentation concerning a Party as may be necessary to enable the other Party to prepare and submit all necessary filings required by any Government Entity in connection with the transaction contemplated by this Agreement and otherwise to satisfy the Conditions Precedent.

8.4 **Right to Terminate for Failure to Satisfy Conditions Precedent.**

(A) If the Conditions Precedent in Section 8.2 have not been satisfied by the Closing Date, and Seller has not waived any unsatisfied Conditions Precedent, then Seller may terminate this Agreement.

(B) If the Conditions Precedent in Section 8.1 have not been satisfied by the Closing Date, and Purchaser has not waived any unsatisfied Conditions Precedent, and Purchaser has not breached any representation, warranty, covenant, or agreement under this Agreement, then Purchaser may terminate this Agreement.

(C) A Party may terminate this Agreement under this Section 8.4 by giving notice to the other Party.

9. CLOSING COSTS AND PRORATIONS

9.1 **Purchaser's Costs.** Purchaser will pay the following Closing costs in connection with this Agreement:

(A) All premiums, fees, and costs associated with the issuance of any mortgagee title insurance policy, any costs of the Owner's Policy of Title Insurance above the base premium (including any premium or charge for deletion of the "areas and boundaries" exception or parties in possession exception on the Owner's Policy of Title Insurance, or other extended coverage or endorsements for the Owner's Policy of Title Insurance), and 50% of the settlement fees and other charges of the Escrow Agent (including escrow charges) due in connection with the closing of this transaction.

(B) The fees and disbursements of Purchaser's counsel and any other expense(s) incurred by Purchaser or its representative(s) in inspecting or evaluating the Property or closing this transaction.

(C) All costs and expenses in connection with obtaining financing for the purchase of the Property, including any recordation or transfer taxes required to be paid upon the recordation of any deed of trust, mortgage, or other security agreement executed and recorded in connection with Purchaser's financing.

(D) Any sales taxes payable with respect to any personal property included within the Property.

(E) All costs related to any financing of the purchase of the Property by Purchaser, including without limitation, the cost of any state documentary stamps related to any mortgage recorded in connection with such financing.

(F) Any costs related to a Survey.

9.2 **Seller's Costs.** Seller will pay the following Closing costs in connection with this Agreement:

(A) The cost of the Title Commitment and any related title search fees and the base premium only for an Owner's Policy of Title Insurance in the amount of the Purchase Price, and 50% of the settlement fees and charges of the Escrow Agent (including escrow charges) due in connection with the closing of this transaction.

(B) The cost of the transfer taxes (e.g., state documentary stamps) which are due upon recording of the Deed.

(C) The fees and disbursements of Seller's counsel.

(D) The fees of Seller's Broker.

(E) All release fees and other charges required to be paid to release from the Property the lien of any mortgage or other security interest which Seller is obligated to remove pursuant to the terms of this Agreement.

9.3 **Taxes.** Property Taxes and special assessments relating to the Property payable during the year in which Closing occurs will be prorated with respect to the Property as of the Date of Closing, with Seller being responsible for Property Taxes accruing prior to Closing and Purchaser being responsible for Property Taxes accrued on and after the Date of Closing. In no event will Seller be responsible for any Property Taxes relating to any period in which Seller did not own the Property. If Closing will occur before the actual Property Taxes and special assessments payable during the year are known, the apportionment of Property Taxes will be upon the basis of Property Taxes for the Property payable during the immediately preceding year. If, as the result of an appeal of the assessed valuation of the Property for any Property Tax year prior to (or including) the Closing, there is issued after Closing an administrative ruling, judicial decision, or settlement by which the assessed value of the Property for such Property Tax year is reduced, and a Property Tax refund or credit issued, Seller will be entitled to these Property Tax refunds relating to the period prior to Closing. No post-Closing re-prorations will occur. Notwithstanding any contrary provision of this Agreement, Purchaser will pay when due all assessments or Property Taxes for the change in the use of the Property, regardless of the period for which they were assessed, **and will further indemnify, defend, and hold harmless Seller from any Claim made or any Loss incurred relating to or arising out of any change in use of the Property**. The provisions of this Section will expressly survive the Closing.

9.4 **In General.** Any other costs or charges of Closing this transaction not specifically mentioned in this Agreement will be paid and adjusted in accordance with local custom or ordinance in the jurisdiction in which the Property is located.

10. CLOSING AND ESCROW

10.1 **Closing.** The purchase and sale of the Property will be consummated through an escrow with Escrow Agent. Closing will occur on the Date of Closing, on or before 10:00 a.m. Local Time or as soon after as possible on the Date of Closing, by mail or as otherwise agreed to by the Parties (as further described in Section 10.5) at the offices of the Escrow Agent, or at such other time and place as may be agreed to in writing by the Parties.

10.2 **Seller's Deliverables.** Seller will deliver at the Closing the following original documents, each executed and, if required, acknowledged:

(A) The Deed.

(B) The Disclosure Notice.

(C) The Release and Indemnity Agreement.

(D) The Termination Agreement.

(E) An affidavit pursuant to the Foreign Investment and Real Property Tax Act.

(F) Appropriate evidence of authority, capacity, and status of Seller as reasonably required by Escrow Agent.

(G) An "owner's affidavit", in a form reasonably acceptable to Seller and the Escrow Agent and sufficient for the Escrow Agent to delete any exceptions for (1) mechanics' or materialmen's liens arising from work at the Property which is the responsibility of Seller, (2) parties in possession, other than tenants as tenants only, and (3) matters not shown in the public records.

(H) The Settlement Statement.

(I) Any other documents, certificates, and other instruments as may be reasonably required to consummate the transaction contemplated by this Agreement.

10.3 **Purchaser's Deliverables.** At the Closing, Purchaser will (A) pay the Escrow Agent the Adjusted Purchase Price as required by, and in the manner described in, Section 2.7 and (B) execute and deliver the following original documents, each executed and, if required, acknowledged:

(A) The Deed.

(B) The Release and Indemnity Agreement.

(C) The Termination Agreement.

(D) Evidence of Purchaser's authority, and the authority of the Person executing any documents at Closing on behalf of Purchaser, acceptable to Seller and the Escrow Agent, to enter into the transactions contemplated by this Agreement.

(E) The Settlement Statement.

(F) Any other documents, certificates, and other instruments as may be reasonably required to consummate the transaction contemplated by this Agreement.

10.4 **Possession.** Purchaser will be entitled to possession of the Property at the conclusion of the Closing.

10.5 **Closing Procedure.**

(A) At least five (5) days before the scheduled Date of Closing, Escrow Agent will provide Purchaser and Seller with a preliminary Settlement Statement for approval by each of each of Seller and Purchaser. Seller and Purchaser in good faith will finalize with Escrow Agent the Settlement Statement in accordance with the terms and provisions of this Agreement.

(B) At least one (1) Business Day before the scheduled Date of Closing, counsel for each of Seller and Purchaser will deliver to Escrow Agent its Closing Instructions to complete Closing.

(C) At least one (1) Business Day prior to the scheduled Date of Closing: (a) Seller will deposit Seller's Deliverables with the Escrow Agent; (b) Purchaser will deposit Purchaser's Deliverables with the Escrow Agent and (c) Purchaser will deposit with the Escrow Agent the Adjusted Purchase Price which will be set forth on, and mutually agreeable pursuant to, the Settlement Statement agreed to by Seller and Purchaser.

11. POST-CLOSING DEVELOPMENT OF THE PROPERTY

11.1 Purchaser will be solely responsible, at Purchaser's expense, for performing any due diligence reviews and surveys of the Property that may be necessary, desirable or prudent before commencing any construction involving subsurface excavation soil disturbance or dewatering. Purchaser understands that such reviews and surveys may determine the presence, nature and character of any Hazardous Materials on or underlying the Property.

11.2 Purchaser acknowledges that the presence of arsenic or other Hazardous Materials disclosed by the reviews and surveys referenced in Section 11.1 above may pose an unacceptable risk to human health or the Environment during future construction or redevelopment activities, such as onsite or offsite excavations, dewatering events, etc. Purchaser further acknowledges that all responsible parties, landowners, and contractors performing subsurface activities at the Property should be prepared to encounter arsenic or such other Hazardous Materials, and that appropriate health and safety equipment and protocols as required by Applicable Law should be used and any encountered or such other Hazardous Materials should be managed properly to avoid threats to human health and the environment.

11.3 Before commencing any construction activities involving soil or groundwater disturbance or dewatering, Purchaser will be solely responsible, at Purchaser's expense, for performing any due diligence reviews and surveys of the Property that may be necessary, desirable or prudent, including a human health risk assessment, and for incorporating institutional controls which minimize risks associated with occupancy of a structure on the Property. Purchaser understands that such reviews and surveys may determine the presence, nature and character of any Hazardous Materials in soils and groundwater, if any. Purchaser must also implement such institutional controls, procedures and/or special industrial hygiene precautions as may be necessary, desirable or prudent based on Environmental Conditions encountered during construction and as required by Applicable Laws. Purchaser understands and acknowledges that any institutional controls, procedures and/or special industrial hygiene precautions will be Purchaser's sole responsibility and will be implemented at its sole cost and expense. Purchaser and its representatives will handle all permitting required for Purchaser's development of the Property, including all environmental permitting and documentation required by any regulatory agency. Purchaser will hold Seller harmless and indemnify Seller from and against any and all Claims which may arise as a result of Purchaser's failure to take such measures and precautions as are required by this Section 11.3.

11.4 Purchaser agrees that any and all soil and groundwater removal work performed by or on behalf of Purchaser at the Property will be performed by a licensed contractor or contractors under contract with Purchaser, at Purchaser's sole cost and expense. Any and all costs incurred by Purchaser to remove contaminated soil and/or groundwater from the Property will be borne by Purchaser, including costs associated with compaction and/or importing clean fill. All manifests for contaminated soil and/or contaminated groundwater removed from the Property will identify Purchaser as the generator, and Purchaser will indemnify Seller against any Claim associated with Purchaser's disposal of such contaminated material. Purchaser agrees to select a licensed disposal facility that meets federal, state and local laws and requirements.

11.5 Purchaser represents and warrants to Seller that, upon the effective date of the BSRA, Purchaser will comply with Purchaser's obligations under the BSRA and at no time will Purchaser withdraw as a party to the BSRA.

11.6 The provisions of this Section 11 will survive Closing and will be covenants running with the land binding on all future owners of the Property, or any portion thereof.

12. DAMAGE, DESTRUCTION AND CONDEMNATION

12.1 **Casualty.** Except as provided in this Agreement, Seller assumes all risk of loss or damage to the Property by fire or other casualty until Closing has occurred. If at any time on or prior to the conclusion of Closing any portion of the Property is destroyed or damaged as a result of fire or any other cause, Seller will promptly give written notice to Purchaser. If the estimated cost to repair the damage or destruction exceeds US$50,000.00 as reasonably estimated by Seller, Purchaser and Seller will each have the right to terminate this Agreement by written notice to the other within ten (10) days following the date upon which Purchaser receives Seller's written notice of the destruction or damage. If neither Purchaser nor Seller elects to terminate this Agreement within the ten (10) -day period, or if the cost of repair is equal to or less than US$50,000.00, this Agreement will remain in full force and effect and the Parties will proceed to Closing with a reduction or adjustment in the Purchase Price equal to the estimated cost to repair the damage as determined by Seller's insurance adjuster, and Seller will be entitled to retain all insurance proceeds which are compensable under its insurance policies in connection with the damage.

12.2 **Condemnation.** If, at any time on or prior to the Date of Closing, any action or proceeding is filed, under which the Property, or any portion of the Property, may be taken pursuant to any Applicable Law, ordinance or regulation, or by condemnation or the right of eminent domain, Seller will promptly give written notice to Purchaser (which notice will describe the type of action being taken against the Property and which portions of the Property will be affected). Purchaser will have the right to terminate this Agreement by written notice to Seller within ten (10) days following the date upon which Purchaser receives Seller's written notice of the action or proceeding. If Purchaser does not elect to terminate this Agreement within the 10-day period, this Agreement will remain in full force and effect and the Parties will proceed to Closing without any reduction or adjustment in the Purchase Price, except that all condemnation proceeds will be assigned to Purchaser.

13. DEFAULT AND REMEDIES

13.1 **Purchaser Default.**

(A) If Purchaser is in default of one or more of Purchaser's obligations under this Agreement other than a failure to timely close (for which there will be no notice and cure period), then Seller may give notice to Purchaser (with a copy to Escrow Agent) specifying the nature of the default. Purchaser will have five (5) days after receiving that notice, but in no event beyond the Closing Date, within which to cure that default. If Purchaser fails to cure that default within that period, then Seller's sole remedy for that default will be to terminate this Agreement by giving notice of that termination to Purchaser (with a copy to Escrow Agent) and receive the Deposit as liquidated damages. If Seller terminates this Agreement due to a Purchaser default, then Escrow Agent will immediately release and pay the Deposit to Seller.

(B) Purchaser and Seller agree that the release and payment of the Deposit to Seller represents a reasonable estimation as of the effective date of Seller's damages in the event of Purchaser default under this Agreement, that actual damages would be impracticable or extremely difficult to ascertain, and that the provision for liquidated damages under this Agreement does not constitute a forfeiture or penalty. The Parties acknowledge that these damages have been specifically negotiated between themselves and are intended, among other things, to compensate Seller for taking the Property off the market, for Seller's costs and expenses associated with this Agreement and for Seller's lost opportunity costs. Purchaser waives the rights and benefits of any law, rule, regulation, or order now (or in future) existing that would allow Purchaser to Claim a refund of the Deposit as unearned earnest

money, a penalty, or for any other reason. If a court determines that Seller is not entitled to receive the Deposit as a result of Purchaser's default, Seller will be entitled to seek all damages provided by Applicable Law.

(C) By placing their initials below, each Party specifically confirms the accuracy of the statements made above and their full understanding of those statements. Notwithstanding anything to the contrary in this Agreement, the Parties agree that, in no event, will this liquidated damages provision limit Seller's rights or recourse with respect to (1) any indemnity provisions of this Agreement; (2) any default by Purchaser following the Closing Date of escrow; and (3) any attorneys' fees incurred by Seller in enforcing this Agreement or any other agreements. The parties further agree that in the event Seller makes a Claim for any of the matters described in Section 13.1(C)(1) through (3), all of Seller's rights, options and remedies will be cumulative, and not one of them will be exclusive of the other. Seller will have, with respect to the matters described in Section 13.1(C)(1) through (3), the right to pursue any of these remedies or to seek damages in connection with the matters described in Section 13.1(C)(1) through (3) as in the event of any breach of the terms and conditions of this Agreement by Purchaser or to pursue any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

Seller Initials: ________________ **Purchaser Initials:** ________________

13.2 **Seller Default**.

(A) If Seller does any of the following: (1) fails to sell, transfer, and assign the Property to Purchaser in violation of the terms and conditions of this Agreement, (2) fails to perform any other material obligation of Seller under this Agreement after Seller has been given five (5) days' notice and opportunity to cure, (3) intentionally breaches any warranty made or granted by Seller under this Agreement, and this breach is not cured by the Closing Date, or (4) intentionally misrepresents any fact, or if any of the representations of Seller in this Agreement are not true, accurate, or complete in any material respect, Purchaser will as its sole and exclusive remedy, be entitled to (a) declare this Agreement to be null and void and demand and receive the return of the Deposit, at which point, neither Party will have any further rights, duties, or obligations under this Agreement except as otherwise provided in this Agreement and (b) to receive from Seller as liquidated damages the Liquidated Damages Amount.

(B) Purchaser agrees that the Liquidated Damages Amount represents a reasonable estimation as of the effective date of Purchaser's damages in the event of Seller's default under this Agreement, that actual damages would be impracticable or extremely difficult to ascertain, and that the provision for liquidated damages under this Agreement does not constitute a forfeiture or penalty. The Parties acknowledge that these damages have been specifically negotiated between themselves and are intended, among other things, to compensate Purchaser for its costs and expenses associated with this Agreement. Purchaser specifically waives all rights (1) to file or record any

lien or encumbrance against the Property, (2) to direct, incidental, consequential, or punitive damages, or (3) to seek specific performance of this Agreement and to record any *lis pendens*.

(C) **Waiver of Default.** If Purchaser does not notify Seller of Seller's default or does not give Seller a notice of termination under Section 12, then (1) the default will be treated as waived by Purchaser and (2) at Closing, Purchaser will accept the Property subject to the default without any reduction in the Purchase Price and without any Claims against Seller on account of the default.

13.3 **Termination.** Upon any termination of this Agreement pursuant to any right of a Party to terminate under this Agreement, (A) the Deposit will be paid to the Party entitled to it, (B) 50% of the settlement fees and charges of the Escrow Agent (including escrow charges) due in connection with the transaction will be paid by each Party, (C) all documents deposited by Purchaser and Seller into escrow will be returned by the escrow agent to the Party depositing them, and (D) copies of all Property Documents provided to Purchaser by Seller and all third party reports relating to the Inspections and studies obtained by Purchaser will be delivered to Seller, and the Parties will have no continuing liability to each other unless otherwise expressly stated in this Agreement.

13.4 **Attorneys' Fees.** If any legal action or proceeding, including arbitration, is brought for the enforcement or a declaration of any rights and duties under this Agreement, or because of an alleged dispute, breach, or default of any provisions of this Agreement, all arbitration fees and court costs will be paid equally, regardless of which Party prevails, and each Party will bear its own costs of legal representation and witness expenses.

13.5 **Right of First Refusal**.

(A) If this Agreement is terminated by Purchaser pursuant to Section 13.2 (A), then in in such event Seller grants to Purchaser a right of first offer to purchase the Property for a period of three (3) years from the date of such termination (the "**ROFR Period**").

(B) If within the ROFR Period Seller accepts a bona fide offer to purchase the Property or receives a bona fide purchase offer for the Property that Seller is willing to accept, to or from any third party purchaser other than an Affiliate of Seller, Seller shall notify Purchaser in writing of the same (the "**ROFR Notice** "), enclosing a copy of the proposed contract, letter of intent or other written offer for sale of the Property (any such contract, letter of intent, or other written offer is known as a "**Proposed Contract** "). Purchaser shall have until 5:00 pm Local Time on the date that is ten (10) Business Days following receipt of the ROFR Notice to Purchaser to notify Seller in writing that Purchaser elects to purchase the Property on the terms set forth in subsection (D) below (the "**ROFR Acceptance Notice** ").

(C) If Purchaser fails to give Seller a ROFR Acceptance Notice prior to the expiration of such 10-Business Day period, Seller shall be entitled to enter into the Proposed Contract with such third party and to sell the Property to such third party. Notwithstanding the foregoing, if Purchaser fails to timely deliver the ROFR Acceptance Notice, and following such failure, Seller offers the Property for purchase on economic terms and conditions that are more favorable than the economic terms and conditions set forth in the ROFR Notice provided to Purchaser, then Seller shall deliver another ROFR to Purchaser including the new Proposed Contract. Purchaser shall deliver the ROFR Acceptance Notice within 10 Business Days of delivery of such subsequent ROFR Notice, which procedure will be repeated until Seller enters into an agreement for the sale of the Property which does not require Seller to deliver another ROFR Notice to Purchaser pursuant to the terms of this Section or Purchaser delivers the ROFR Acceptance Notice, as applicable.

(D) If Purchaser gives Seller a ROFR Acceptance Notice prior to the expiration of the above described 10-Business Day period, then Seller and Purchaser shall enter into a purchase and sale agreement (the "**ROFR Purchase Agreement** ") for the sale and purchase of the Property on the same terms and conditions as set forth in this Agreement, except that the Due Diligence Period will be limited to thirty (30) days from the date of execution of such ROFR Purchase Agreement and the Closing Date will be five (5) Business Days after expiration of the Due Diligence Period. Failure of Purchaser to enter into such ROFR Purchase Agreement on the terms and conditions set forth above within fifteen (15) days of Purchaser's delivery of the ROFR Acceptance Notice will terminate the first refusal rights of Purchaser set forth in this Section 13.5.

(E) During the ROFR Period, Seller shall not offer for sale or solicit or accept any offers for sale of less than all of the Property.

(F) This Section 13.5 will survive the termination or expiration of this Agreement.

14. NOTICES

14.1 All notices must be in writing and delivered by mail (postage prepaid), email, or by a recognized courier service under this Agreement and may be served by a Party or its attorney to the appropriate Party's address set out in the signature page of this Agreement or in each case to such other address as either Party may from time to time designate by giving notice in writing pursuant to Section 14 to the other Party. Email notices must clearly state that it is a notice given under the Agreement. Notice given under Section 15 must be delivered by mail or by a recognized courier service, not by email. Notices are effective when received by the Parties during the recipient's regular business hours.

14.2 Each Party may change its representative or contact information by giving notice to the other Party. The new representative or contact information set out in the notice replaces the representative or contact information in the signature page of this Agreement.

14.3 Notices which do not comply with the requirements of this Agreement are ineffective and do not impart actual or any other kind of notice.

15. GOVERNING LAW AND RESOLUTION OF DISPUTES

15.1 GOVERNING LAW. THE AGREEMENT AND ITS SUBJECT MATTER, AND THE CONTRACTUAL AND NON-CONTRACTUAL RIGHTS AND OBLIGATIONS OF THE PARTIES ARISING OUT OF OR IN CONNECTION WITH THE FOREGOING, ARE GOVERNED BY AND INTERPRETED UNDER

THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO ITS CHOICE OF LAW RULES, EXCEPT THAT THE RULES OF THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1-16 GOVERN (THE "ACT") THIS SECTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, 1980 (KNOWN AS "THE VIENNA SALES CONVENTION") DOES NOT APPLY TO THE AGREEMENT.

15.2 RESOLUTION OF DISPUTES. THE PARTIES WILL EXCLUSIVELY AND FINALLY RESOLVE ANY DISPUTE BETWEEN THEM USING DIRECT NEGOTIATIONS, MEDIATION, AND THEN ARBITRATION AS SET OUT IN SECTION 15.4. IF ANY DISPUTE ARISES OUT OF OR IN CONNECTION WITH THE AGREEMENT, INCLUDING ANY QUESTION REGARDING ITS EXISTENCE, VALIDITY, OR TERMINATION, EITHER PARTY MAY INITIATE THE DISPUTE RESOLUTION PROCESS BY GIVING NOTICE TO THE OTHER PARTY SETTING OUT, IN WRITING AND IN DETAIL, THE ISSUES IN DISPUTE AND THE VALUE OF THE CLAIM.

15.3 MEDIATION. IF THE DISPUTE CANNOT BE RESOLVED BY DIRECT NEGOTIATIONS WITHIN 30 DAYS FROM THE DATE OF WRITTEN NOTICE INITIATING THE DISPUTE RESOLUTION PROCESS, EITHER PARTY MAY INITIATE MEDIATION BY GIVING NOTICE TO THE OTHER PARTY. MEDIATION MUST BE ATTENDED BY A REPRESENTATIVE FROM EACH PARTY WITH DECISION-MAKING AUTHORITY. THE PLACE OF MEDIATION WILL BE IN ORLANDO, FLORIDA.

15.4 ARBITRATION OF DISPUTES. IF THE PARTIES FAIL TO RESOLVE THE DISPUTE WITHIN 60 DAYS FROM THE DATE OF THE NOTICE OF MEDIATION, THEN THE DISPUTE MUST BE FINALLY RESOLVED BY BINDING ARBITRATION AND EITHER PARTY MAY INITIATE ARBITRATION BY GIVING NOTICE TO THE OTHER PARTY. ONE ARBITRATOR (OR THREE ARBITRATORS IF THE MONETARY VALUE OF THE DISPUTE IS MORE THAN US$5,000,000) WILL CONDUCT THE PROCEEDINGS IN ACCORDANCE WITH THE INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION AND RESOLUTION ("CPR") RULES FOR ADMINISTERED ARBITRATION WHICH ARE DEEMED TO BE INCORPORATED BY REFERENCE INTO THIS SECTION. TO THE EXTENT OF ANY CONFLICTS BETWEEN THE ACT OR CPR RULES AND THE PROVISIONS OF THIS CONTRACT, THE PROVISIONS OF THIS CONTRACT PREVAIL. THE CPR IS THE APPOINTING AUTHORITY FOR THE ARBITRATOR(S). THE SEAT OF ARBITRATION WILL BE IN ORLANDO, FLORIDA. ALL ARBITRATION FEES AND COSTS WILL BE PAID EQUALLY, REGARDLESS OF WHICH PARTY PREVAILS. THE ARBITRATION AWARD IS FINAL AND BINDING, AND THE ARBITRATORS SHOULD USE THEIR BEST EFFORTS TO ISSUE THE AWARD WITHIN 90 DAYS FROM COMPLETION OF THE ARBITRATION HEARING. ANY COMMUNICATIONS AND DOCUMENTS RELATED TO THE DISPUTE WILL BE CONFIDENTIAL AND MAY NOT BE DISCLOSED TO ANY THIRD PARTY OR USED FOR ANY OTHER PURPOSES, EXCEPT TO THE EXTENT THAT DISCLOSURE IS NECESSARY TO FULFILL A LEGAL OBLIGATION OR TO PROTECT A LEGAL RIGHT. REGARDLESS OF THE REQUIREMENT TO ARBITRATE,

THE FOLLOWING PROCEEDINGS MAY BE BROUGHT IN ANY COURT HAVING JURISDICTION OVER THE PERSON OR ASSETS OF THE NON-PREVAILING PARTY: PROCEEDINGS TO (A) PRESERVE PROPERTY PENDING DETERMINATION BY THE ARBITRATOR(S), (B) ENFORCE THE CONFIDENTIALITY OR DATA PROTECTION OBLIGATIONS UNDER THE CONTRACT, THE FAILURE OF WHICH TO ENFORCE THE PARTIES AGREE WOULD CAUSE IRREPARABLE HARM, OR (C) ENFORCE A JUDGMENT ENTERED ON AN ARBITRATION AWARD.

PURCHASER'S INITIALS: ____________ **SELLER'S INITIALS** ______________

16. MISCELLANEOUS

16.1 **Successors Bound.** This Agreement will be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and permitted assigns.

16.2 **Public Announcements.**

(A) Purchaser will not make any use of Seller Group's names, images, logos, or trademarks without obtaining Seller's prior written consent.

(B) Each Party will submit proposed notices, announcements, or press releases regarding the execution of this Agreement or the consummation of the Transaction to the other Party for prior review and approval, not to be unreasonably withheld, conditioned or delayed. Except as required by any mandatory notice or announcement, the release of reserve estimates in any announcement is expressly prohibited. The foregoing will not apply to any notices required as part of Purchaser obtaining permits and approvals.

(C) If a Party is required to make any mandatory notice or announcement required under Applicable Law, by the stock exchange upon which a Party's or Affiliate of such Party's shares are quoted or any similar regulatory body of any other jurisdiction, then prior approval by the other Party is not required, but the Party will use its reasonable efforts to allow the other Party reasonable time to comment on such notice or announcement in advance of its issuance.

16.3 **Captions.** The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Unless the context expressly indicates otherwise, all references to "Section" are to sections of this Agreement.

16.4 **No Partnership.** Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors in interest or permitted assigns.

16.5 **Time of Essence.** Time is of the essence with respect to each and every term, condition, obligation, and provision of this Agreement. Failure to timely perform any of the terms, conditions, obligations, or provisions by either Party will constitute a breach of and a default under this Agreement by the Party failing to perform. In calculating any period provided for in this Agreement, the number of days allowed will refer to calendar and not Business Days, unless otherwise specified.

16.6 **Business Days.** If any date for the performance of any obligations by Seller or Purchaser or for the delivery of any instrument or notice should fall on a Saturday, Sunday, or Legal Holiday, then compliance with such obligations or delivery will be deemed acceptable on the next Business Day following a Saturday, Sunday, or Legal Holiday.

16.7 **Recordation.** Purchaser and Seller agree not to record this Agreement or any memorandum of this Agreement.

16.8 **Proper Authority and Execution.** Each of the Parties and their officers represent and warrant that they are authorized to enter into this Agreement and execute the same without further authority. This Agreement will have no binding force and effect on either Party unless and until both Purchaser and Seller will have executed and delivered this Agreement.

16.9 **Waiver.** No waiver by either Party of this Agreement's terms, provisions, or conditions is effective unless specifically evidenced in writing and signed by or on behalf of the Party granting such waiver. A Party's failure to pursue remedies for breach of this Agreement does not constitute a waiver by a Party of any breach of this Agreement or raise any defense against Claims against a Party for breach of this Agreement. The waiver or failure to require the performance of any covenant or obligation contained in this Agreement or to pursue remedies for breach of this Agreement does not waive a later breach of that covenant or obligation.

16.10 **Confidentiality.** Except as otherwise prohibited by laws governing disclosure of public documents, including, but not limited to, Chapter 119, Florida Statutes, to the extent applicable to any "public record," until Closing, Purchaser and its partners, attorneys, agents, employees, and consultants will treat the information disclosed to it by Seller as confidential, giving it the same care as Purchaser's own confidential information, and make no use of any Seller-disclosed information not independently known to Purchaser except with the transactions contemplated by this Agreement. If this Agreement is terminated, Purchaser will promptly return copies of all Seller's confidential information to Seller]

17. ESCROW AGREEMENT

By its acknowledgment below, Escrow Agent agrees to deposit the Deposit in a non-interest-bearing account, subject to the receipt from Purchaser of a form W-9 for the purposes of investing Deposit funds and to hold and disburse Deposit funds, as described in this Section, and to otherwise be bound by and perform the terms of this Agreement as and to the extent the Agreement terms apply to Escrow Agent. Upon written notification from Seller or Purchaser in accordance with the terms of this Agreement, Escrow Agent will release the funds in accordance with the written instructions. In the event of a Dispute between any of the Parties sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent will be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Agreement, together with such legal pleading as it deems appropriate, and at that point be discharged. ***For purposes of complying with Internal Revenue Code Section 6045(e), as amended effective January 1, 1991, Escrow Agent is hereby designated as the "person responsible for closing the transaction" and also as the "reporting person," for purposes of filing***

any information returns with the Internal Revenue Service concerning this transaction, as required by Applicable Law.

18. ADDITIONAL OBLIGATIONS

18.1 **Conflict of Interest.** No Purchaser Group will in connection with the Agreement: (A) enter into any business arrangement with any director, employee, or agent of Seller, or any of its Affiliates (other than as a representative of Seller or any Affiliate of Seller) without Seller's prior written consent or (B) give to or receive from any director, employee, or agent of Seller or any of its Affiliates anything that is more than a nominal cost or value. Purchaser will ensure that Purchaser Group members comply with this Section.

18.2 **Termination.** Prior to Closing, Seller may, in its sole option, terminate this Agreement with immediate effect for any violation of Section 18.1 or Section **Error! Reference source not found.** or breach of the warranty set out in Section 5.3.

18.3 **Records and Inspection.** For 24 months from the end of the calendar year or the Closing Date in which the Agreement is completed or terminated, (A) Purchaser will ensure that Purchaser Group members retain all records related to the Agreement (or until expiry of the statute of limitations for taxes) and (B) Seller (or its representative) may inspect, at no cost to Seller and at any time, all records to confirm compliance with the Agreement.

19. GENERAL PROVISIONS

19.1 **Prior Agreements**. This Agreement supersedes all prior or contemporaneous representations, agreements, understandings, and commitments between the Parties concerning the subject matter and comprises the complete and exclusive agreement between the Parties. Seller and Purchaser each acknowledge that they have read this Agreement in its entirety and agree to be bound by the terms and provisions of this Agreement, and that each have had the opportunity to be represented by legal counsel of their choice in the negotiation of this Agreement.

19.2 **Amendment.** No amendment to this Agreement is effective unless made in writing and signed by authorized representatives of both of the relevant Parties, expressly identified as an amendment to this Agreement and delivered to both Parties.

19.3 **Assignments.** This Agreement is binding on and inures for the benefit of the rightful successors and permitted assigns of the Parties, but the rights, duties, and obligations of Purchaser under this Agreement may not be assigned, in whole or in part, without Seller's prior consent to the assignment, which consent, in the event of an assignment by Purchaser to an Affiliate, will not be unreasonably delayed or withheld provided that if an Affiliate ceases to be an Affiliate of Purchaser, it will promptly assign this Agreement back to Purchaser. The City may assign its rights and obligations to Montierre without the consent of Seller provided the City gives Seller not less than three (3) Business Days' notice of such assignment and Montierre assumes the rights, obligations, indemnities and liabilities of Purchaser under this Agreement. Notwithstanding any contrary provision of this Agreement, in the event of assignment by the City of its rights and obligations under this Agreement (including without limitation, an assignment to Montierre), the City will remain responsible to Seller for all obligations, indemnities, and liabilities due to Seller under this

Agreement, unless and until expressly released in writing by Seller, in Seller's sole discretion.

19.4 **Third Party Rights.** Except as otherwise stated in this Agreement, no third party has any rights under this Agreement or may enforce any provision in this Agreement.

19.5 **Severability.** Each provision of this Agreement is severable and if any provision is determined to be invalid, unenforceable, or illegal under any existing or future law by a court or arbitrator of competent jurisdiction or by operation of any Applicable Law, this invalidity, unenforceability, or illegality does not impair the operation of or affect those portions of this Agreement that are valid, enforceable, and legal so long as the economic or legal substance of the transaction contemplated by this Agreement is not affected in any manner adverse to any Party. Upon a determination that any term or other provision or part of this Agreement is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify this Agreement as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transaction contemplated by this Agreement is fulfilled to the extent possible.

19.6 **Survival of Certain Obligations.** Despite termination of this Agreement for any reason, all provisions in this Agreement containing waivers, disclaimers, releases, defense obligations, and indemnities, and all provisions relating to remedies, audit, records retention, confidentiality, taxes, conflicts of interest, improper payment, insurance, limitations of liability, ownership or use, or return of information subject to confidentiality obligations under this Agreement, Dispute resolution and governing law, and all causes of action, survive indefinitely until, by their respective terms, they are no longer operative, or are otherwise limited by an applicable statute of limitations. Each of the obligations and undertakings set out in this Agreement which are not fully performed at Closing continue in force after Closing.

19.7 **Drafting.** Each Party has participated in the preparation of this Agreement and has had the opportunity to consult with legal counsel and any other advisors of its choice to its satisfaction regarding the terms and conditions of this Agreement. As a result, the rule of construction that an agreement be construed against the drafter will not be asserted or applied to this Agreement.

19.8 **Costs and Expenses.** Each Party will pay its own costs and expenses in relation to the preparation, negotiation, and execution of this Agreement and the documents contemplated or executed pursuant to this Agreement.

19.9 **Counterparts; Methods of Exchange.** The exchange of counterpart signature pages between the Parties constitutes execution and delivery of this Agreement. No Party will be bound to this Agreement unless and until all Parties have executed and delivered a counterpart. Execution may be accomplished using an electronically verifiable method. Executed signature pages sent by email scan or otherwise by photocopy are valid means of delivery. For purposes of assembling all counterparts into one document, Seller is authorized to detach the signature page from one or more counterparts and, after signature by the respective Party, attach each signed signature page to a counterpart.

19.10 **PDF Signatures.** In order to expedite the transaction contemplated by this Agreement, PDF signatures may be used in place of original signatures on this Agreement. Seller and

Purchaser intend to be bound by the signatures on the PDF document, are aware that the other Party will rely on the PDF signatures, and each waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

The remainder of this page is intentionally left blank.

IMPORTANT NOTICE: THIS AGREEMENT CONTAINS PROVISIONS REGARDING INDEMNITIES AND WARRANTIES THAT EXPRESS THE AGREEMENT OF THE PARTIES CONCERNING CLAIMS ARISING OUT OF THIS AGREEMENT.

The Parties have executed this Agreement as evidenced by the following signatures of authorized representatives of the Parties:

SELLER:	**PURCHASER:**
CHEVRON LAND AND DEVELOPMENT COMPANY	**CITY OF OCOEE**
Signature:	**Signature:**
______________________________	______________________________
Name: [Insert Authorized Signatory Name]	**Name:** Rusty Johnson
Title: [Insert Authorized Signatory Title]	**Title:** Mayor
	Attest: ______________________________ Melanie Sibbitt City Clerk
	APPROVED BY THE OCOEE CITY COMMISSION AT A MEETING HELD ON ____________, 2023, UNDER AGENDA ITEM NO. _______.
	FOR USE AND RELIANCE ONLY BY THE CITY OF OCOEE, FLORIDA; APROVED AS TO FORM AND LEGALITY this __ day of _______, 2023.
	SHUFFIELD LOWMAN & WILSON, P.A.
	By: ________________________________ City Attorney
ADDRESS FOR NOTICES (SELLER)	**ADDRESS FOR NOTICES (PURCHASER)**

Seller Address:

Chevron Land and Development Company
1500 Louisiana St., 38th Floor
Houston, Texas 77002
Attn: Rainier Viera
Email:RViera@chevron.com

Purchaser's Address:

City of Ocoee, Florida
1 N. Bluford Ave.
Ocoee, Florida 34761
Attn: Robert D. Frank, City Manager
Email: rfrank@ocoee.org

With Copy To:
Shuffield, Lowman & Wilson, P.A.
1000 Legion Place, Suite 1700
Orlando, Florida 32801
Attn: Scott A. Cookson, City Attorney
email: scookson@shuffield.com
Phone: 407-581-9715

ACKNOWLEDGMENT OF ESCROW AGENT

The undersigned acknowledges receipt of the Deposit referred to in this Agreement and agrees to perform the obligations of the Escrow Agent with respect to the Deposit as provided.

Signature:

Date: ______________________

BAKER & HOSTETLER, L.L.P.

By: ______________________

Name: ______________________

Title: ______________________

EXHIBIT "A"

Real Property Description

The land referred to herein below is situated in the County of Orange, State of Florida, and described as follows:

That portion of the East One Half (1/2) of the Northwest One Quarter (1/4) and the West One Half (1/2) of the Northeast One Quarter (1/4) lying East of State Road 437 and South of Fuller's Cross Road of Section 7, Township 22 South, Range 28 East, Orange County, Florida. Being more particularly described as follows:

That portion of Section 7, Township 22 South, Range 28 East, Orange County, Florida described as follows: Commence at the North 1/4 corner of aforesaid Section 7, thence South 01°22'35" West along the West line of the Northeast 1/4 of Section 7 for 30.01 feet to the South line of the North 30.00 feet of Section 7 and the Southerly Right-of-Way line of Fullers Cross Road as shown on Orange County Bond Project Book Number 5, sheets 5 and 6; to the Point of Beginning; thence South 89°50'45" East along said South line of North 30.00 feet of the Northeast 1/4 of Section 7 and Southerly Right-of Way line for 1280.94 feet to the East line of the West 1/2 of the Northeast 1/4 of aforesaid Section 7; thence South 00°45'45" West along said East line for 2431.28 feet to the East-West center section line; thence South 87°15'02" West along said center section line for 1363.49 feet to the Easterly Right-of-Way line of former State Road No. 437,now known as Ocoee Apopka Road as shown in Road Plat Book 1, Pages 119 through 126 of the Public Records of Orange County, Florida; thence from a tangent bearing of North 12°53'57" West run Northerly along the aforementioned Easterly Right-of-Way line and the arc of a curve concave Westerly having a radius of 1941.86 feet through a central angle of 03°16'26" to a point; thence continue along said Easterly Right-of-Way line the following courses; North 16°17'16" West for 516.18 feet; thence North 16°00'04" West for 1,000.00 feet; thence North 15°24'56" West for 407.21 feet; thence North 07°30'17" West for 546.15 feet to the aforementioned Southerly Right-of-Way line of Fullers Cross Road; thence North 89°51'50" East along said Southerly Right-of-Way line for 741.16 feet to the Point of Beginning.

Less and Except that parcel conveyed to the City of Ocoee in that certain Right-Of-Way Deed to City of Ocoee recorded January 23, 2019 in Instrument No. 20190042931, being more particularly described as follows:

A parcel of land. Being a portion of that certain Special Warranty Deed, as recorded in Official Records Book 8386, Page 3045, Public Records of Orange County, Florida, lying in Section 7, Township 22 South, Range 28 East, being described as follows:

Commence at the North quarter corner of aforesaid Section 7 for a point of reference; thence run South 01° 03' 52" West, along the West line of the Northeast quarter of said Section 7, a distance of 30.01 feet to the point of beginning, said point lies on the South right-of-way line of Fullers Cross Road, as per Orange County Bond Project Book Number 5, Sheets 5 and 6; thence run North 89° 50' 37" East, along said South right-of-way line, 1280.94 feet to the East line of the West half of the Northeast quarter of aforesaid Section 7; thence departing said South right-of-way line, run South 00° 27' 01" West, along said East line, 20.00 feet; thence departing said East line, run South 89°50'37" West, 1281.16 feet; thence run South 89°43'45" West, 648.52 feet to the point of curvature of a curve concave Southeasterly; thence run Southwesterly, along said curve, having a radius of 50.00 feet, a central angle of 95°09'26", an arc length of 83.04 feet, a chord length of 73.82 feet and a chord bearing of South 42°09'02" West to the point of tangency; thence run South 05°25'41" East, 266.84 feet to the point of curvature of a curve concave Northeasterly; thence run Southeasterly, along said curve, having a radius of 1849.90 feet, a central angle of 10°47'31", an arc length of 348.43 feet, a chord length of 347.92 feet and a chord bearing of South 10°49'27" East to the point of tangency;

4825-0001-6019.10

END OF EXHIBIT A

EXHIBIT B – DEED

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Prepared by:

Baker & Hostetler, LLP
SunTrust Center, Suite 2300
200 South Orange Avenue
Orlando, FL 32801-3432
(407) 649-4000

RETURN TO:

____
____
____
____
____

SPECIAL WARRANTY DEED

THE STATE OF FLORIDA	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF _ORANGE	§	

THAT THE UNDERSIGNED, CHEVRON LAND AND DEVELOPMENT COMPANY, a Delaware corporation ("**Grantor**"), whose address is 6001 Bollinger Canyon Road, V1356B, San Ramon, California 94583-2324, for and in consideration of the sum of TEN DOLLARS ($10.00) cash, and other good and valuable consideration paid to Grantor by ______________________________, a___________ ____________________("**Grantee**"), the receipt and sufficiency of which are hereby fully acknowledged and confessed, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee, whose address is __________________ __________________________, all that certain real property in Orange County, Florida being more particularly described in **Exhibit "A"** attached hereto and made part hereof for all purposes (the "**Land**"), together with any and all improvements located on the Land, including without limitation, any and all buildings or other structures and the fixtures attached thereto, fencing and groundwater monitoring wells (the "**Improvements**") and all of Grantor's right, title and interest in and to (i) all easements, tenements, hereditaments, appurtenances, development rights, and other benefits, if any, pertaining to or affecting the Land; (ii) any land lying in the bed of any dedicated street, alley, road or avenue (before or after vacation thereof and whether previously abandoned or vacated or hereafter abandoned or vacated) in front of or adjoining the Land to the center line thereof; (iii) any strip, hiatus, gore, gap or boundary adjustment area adjoining or affecting the Land; (iv) all minerals, oil, gas and other hydrocarbon substances in, under, or that may be produced therefrom; and (v) all riparian and other water rights relating to the Land and all right, title or interest of Seller in any body of water situated on, under or adjacent to the Land (collectively, the "**Property**").

This conveyance is made and accepted subject to those certain matters set forth on **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successors and assigns, forever; and Grantor does hereby bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Land unto Grantee, and Grantee's successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject only to the Permitted Exceptions.

Grantor hereby adopts, establishes, and imposes upon the Property the following restrictions and covenants (the "Protective Covenants") and declares the Protective Covenants applicable to the Property, including any and all portions thereof:

1. No use shall be made of Property groundwater, either on or off the Property, except for the purposes of investigating or remediating Property groundwater.

2. The Property shall be used only for the following purposes: mixed use development consisting of recreational fields (including ancillary uses such as dugouts, locker rooms, batting cages, restrooms, concession stands, bleachers, etc.), commercial (including restaurants and retail stores), parking, office and hotel (including hotel amenities and conference centers) uses. Specifically, the Property shall not be used for residential uses, day care centers, children's homes, nursing homes, schools (including preschools, elementary schools, and secondary schools), hospitals and other similar uses.

The foregoing Protective Covenants shall run with the title to the Property and shall be binding upon all persons having or acquiring any right, title, or interest therein, or any part thereof, and shall inure to the benefit of and be enforceable by Grantor, its successors and assigns, excluding Grantee and any future record fee title owner of the Property and its/their successors and assigns as the owner or owners of all or any portion of the Property, whether acquired by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise (a "Property Owner"). The Protective Covenants may be terminated or amended by the written consent of Grantor.

Property Owner, by Property Owner's acceptance of a deed or conveyance of the Property or any portion thereof, covenants and agrees, as a covenant running with the title to the Property binding upon Property Owner, and Property Owner's heirs, successors and assigns as owners of any portion of the Property and inuring to the benefit of Grantor, that neither Property Owner nor any of Property Owner's heirs, successors, assigns, tenants, lessees, occupants, licensees, or invitees or any other person holding or using the Property or any portion thereof will use or be permitted to use any portion of the Property or conduct or be permitted to conduct any operation on any portion of the Property in a manner that violates the foregoing Protective Covenants.

Ad valorem taxes and special assessments, if any, against the Property for the year 20__ have been prorated between Grantor and Grantee as of the date of this Special Warranty Deed and Grantee expressly assumes liability for payment of taxes and assessments for the current year and subsequent years.

[Signature Pages Follow]

SIGNATURE PAGE OF GRANTOR

EXECUTED to be effective the ___ day of ___________, 20__ (the "**Effective Date**").

GRANTOR:

Signed, sealed and delivered
in the presence of:

____

__________________________________ By________________________________
Print Name:________________________ Name:______________________________
__________________________________ Title:___________________________________
Print Name:________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF __________)

On ______________________________, before me, _____________________________, Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

Notary Public Signature

Exhibit "A" – Legal Description (to be attached)
Exhibit "B" – Permitted Exceptions (to be attached)

END OF EXHIBIT B

EXHIBIT C – ACCESS AGREEMENT

SITE ACCESS AGREEMENT
(Outdoor)

This **SITE ACCESS AGREEMENT** (this "**Agreement**") is between **CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY**, a California corporation ("**EMC**"), and __________________, a ______________ ("**Grantor**"), hereinafter referred to individually as a "**Party**" and collectively as "**Parties.**"

RECITALS

A, Grantor holds record title to the property commonly known as Eagle Creek at Ocoee, as depicted on Exhibit A (the "**Property**").

B. EMC's Affiliate, Chevron Land and Development Company, operated an agricultural research facility on the Property.

C. EMC seeks Grantor's authorization to access the Property to conduct the Work and Grantor is willing to grant EMC access to the Property to conduct the Work, all pursuant to the terms of this Agreement.

TERMS AND CONDITIONS

20. DEFINITIONS, INTERPRETATION, AND EXHIBITS

20.1 **Definitions.** In this Agreement, these capitalized words or expressions have the following meanings:

"**Affiliate**" means any legal entity that controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to "control" another if it owns directly or indirectly at least 50% of the shares or interests entitled to vote.

"**Agency**" means the Florida Department of Environmental Protection or other governmental agencies having jurisdiction over environmental matters at the Property.

"**Agreement**" has the meaning set out in the introductory paragraph and includes all exhibits listed in Section 1.2 (Interpretation and Exhibits).

"**Applicable Law**" means any law, regulation, statute, code, rule, order, guidelines, memoranda, permit, policy, license, certification, decree, or standard having the effect of law or similar legally effective measure that applies to this Agreement.

"**EMC**" has the meaning set out in the introductory paragraph.

"**EMC Group**" means EMC, its Affiliates, its joint interest owners, contractors, and suppliers of any tier, and the shareholders, directors, officers, employees, and agents of all of them.

"**Effective Date**" means the latest date on the signature page when all Parties have signed this Agreement.

"**Grantor**" has the meaning set out in the introductory paragraph.

"**Party**" and "**Parties**" has the meaning set out in the introductory paragraph.

"**Property**" has the meaning set out in the Recitals.

"**Work**" means all the activities necessary to abandon existing monitoring wells located on the Property.

20.2 **Interpretation and Exhibits.** The words "includes" and "including" are illustrative, not limiting, and the word "or" is not exclusive. Any exhibit attached to this Agreement or made available via a hyperlink is part of this Agreement. If a conflict exists between the terms of an exhibit and this Agreement, the Agreement prevails. The following exhibit(s) are attached and made part of this Agreement:

(A) <u>Exhibit A</u> – Property Description.

21. SCOPE AND PURPOSE

21.1 **Rights Granted and Purpose.** Grantor grants to any EMC Group member a license over, under, and across the Property for the purpose of performing the Work. Grantor shall cooperate with EMC Group to effect the terms of this Agreement, including, if necessary, the execution of additional documents to obtain Agency permits or approvals to install, abandon, or remove EMC's equipment.

21.2 **Performance of the Work.**

(A) EMC shall conduct and perform the Work in a prompt, safe, efficient, and workmanlike manner, and in compliance with all Applicable Law.

(B) EMC shall give Grantor advance notice before the first entry to the Property to conduct the Work, specifying the date and approximate time when Work at the Property will commence.

(C) EMC shall perform all Work conducted under this Agreement at its sole cost and expense.

21.3 **Restoration.** If entry onto the Property by any member of EMC Group or exercise by EMC of any of its rights or obligations under this Agreement results in any physical damage to the Property (ordinary wear and tear and legal abandonment of subsurface equipment excepted), EMC shall promptly repair and restore the portions of the Property damaged to substantially the same condition as existed prior to the damage.

21.4 **Agency Communications.** EMC shall promptly provide Grantor with copies of all final reports and other communications submitted to the Agency regarding the Work. Further, Grantor shall provide EMC with copies of any communications to the Agency regarding the Work.

21.5 **Notice to EMC Prior to Construction.** During the term of this Agreement, Grantor shall give EMC at least 90 days advance written notice prior to any change in the intended use of the Property or construction which could impact or damage EMC's equipment on the Property.

22. TERM

22.1 **Term.** This Agreement is effective from the Effective Date and terminates when EMC has completed the Work and any restoration obligation under Section 21.3 (Restoration).

23. LIABILITY AND INDEMNITY

23.1 NO ADMISSION OF LIABILITY. The Parties acknowledge and agree that this Agreement, the act of entering into it, and any act or omission pursuant to this Agreement will not be construed as an admission of any nature.

23.2 INDEMNITY. Subject to Section 23.4 (Limitation on Classes of Damages), EMC shall indemnify, defend, and hold harmless Grantor and its employees, successors, and assigns from and against any claims brought against Grantor or any of its employees, successors, and assigns within 24 months after termination of this Agreement for personal injury or for physical damage to real or personal property arising out of the performance of the Work on the Property by EMC Group, to the extent caused by the negligence, breach of any obligation, fault, or liability of EMC Group, except to the extent that such damages or claims are due to the reckless, negligent, or intentional acts or omissions of Grantor or any of its employees, successors, and assigns.

23.3 LIENS. EMC shall discharge at once, or bond, or otherwise secure against all liens and attachments that are filed in connection with the Work, and within 24 months after termination of this Agreement shall indemnify, defend, and hold Grantor and the Property harmless from and against any and all loss, damage, injury, liability, and claims thereof resulting directly from such liens and attachments.

23.4 LIMITATION ON CLASSES OF DAMAGES. As to claims arising from this Agreement or the performance of the Work on the Property by EMC Group, no Party is liable to any other Party for any of the following: (A) indirect or consequential loss; (B) loss of profits, loss of prospective economic advantage or benefit, or loss of business opportunity, whether direct or indirect; or (C) punitive or exemplary damages.

24. INSURANCE

24.1 EMC will require contractors who perform the Work under this Agreement to maintain all insurance required by law and liability insurance coverage in accordance with the contractors' service agreements.

25. GOVERNING LAW AND RESOLUTION OF DISPUTES

25.1 **Governing Law.** This Agreement is governed by and interpreted in accordance with the law of the State of Florida, without regard to its choice of law rules, except that the substantive and procedural rules of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 govern Section 25.2 (Resolution of Disputes).

25.2 **Resolution of Disputes.** If a dispute arises between the Parties relating to this Agreement, the Parties agree to resolve the dispute first by negotiation in good faith. If the dispute cannot be resolved by direct negotiation, the Parties agree to mediate the dispute before initiating litigation or arbitration. All mediation and arbitration fees and costs must be paid equally and each Party shall bear its own attorneys' fees and costs in connection with such mediation and arbitration.

26. GENERAL PROVISIONS

26.1 **Records and Inspection.** Up until 24 months from the end of the calendar year in which this Agreement is terminated, (A) Grantor shall retain all records related to this Agreement and, (B) EMC may inspect at any time all records to confirm that the requirements of this Agreement are met.

26.2 **Prior Agreements.** This Agreement supersedes all prior and contemporaneous representations, agreements, understandings, and commitments between the Parties concerning the subject matter of this Agreement.

26.3 **Amendments.** No amendment to this Agreement is effective unless made in writing and signed by authorized representatives of all Parties.

26.4 **Notices.** All notices must be in writing and delivered by mail (postage prepaid), email, or by a recognized courier service to the appropriate Party's address set out in this Agreement. Email notices must clearly state that it is a notice given under this Agreement. Notices are effective when received by the recipient during the recipient's regular business hours.

26.5 **Counterparts.** The exchange of counterpart signature pages between the Parties constitutes execution and delivery of this Agreement. Executed signature pages sent by email scan or otherwise by photocopy are valid means of delivery.

26.6 **Severability and Savings.** Each provision of this Agreement is severable and any determination of invalidity does not affect any other provision.

26.7 **Binding Effect.** This Agreement will be binding on and inure for the benefit of the rightful successors and permitted assigns of the Parties.

26.8 **Assignment and Transfer.** Each Party may, at any time without the other Party's consent, assign or transfer this Agreement to any party who either owns the Property or will perform the Work. Further, Grantor shall provide EMC with 30 days prior written notice of any such assignment or transfer and shall provide a copy of this Agreement to any and all transferees.

The remainder of the page intentionally left blank.

1.

IMPORTANT NOTICE: THIS AGREEMENT CONTAINS PROVISIONS REGARDING INDEMNITIES THAT EXPRESS THE AGREEMENT OF THE PARTIES CONCERNING CLAIMS ARISING OUT OF THIS AGREEMENT.

The Parties have executed this Agreement as evidenced by the following signatures of authorized representatives of the Parties:

EMC:	**GRANTOR:**
CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY	____
Signature: ____	**Signature:** ____
Name: ______________________________	**Name:** ______________________________
Title: ______________________________	**Title:** ______________________________
Date: ______________________________	**Date:** ______________________________

AGREEMENT NOTICES		**AGREEMENT NOTICES**	
Attention:	[Insert Name], Claims & Agreements Specialist, Terminal No. ______	**Attention:**	[Insert Name]
Email:	[Insert Notices Email]	**Email:**	[Insert Notices Email]
Phone:	[Insert Phone]	**Phone:**	[Insert Phone]
Address:	Chevron Environmental Management Company 1500 Louisiana Street, Floor 38135 Houston, Texas 77002	**Address:**	[Insert Notices Address] [Insert City, State Zip]

EXHIBIT "A"

Real Property Description

The land referred to herein below is situated in the County of Orange, State of Florida, and described as follows:

That portion of the East One Half (1/2) of the Northwest One Quarter (1/4) and the West One Half (1/2) of the Northeast One Quarter (1/4) lying East of State Road 437 and South of Fuller's Cross Road of Section 7, Township 22 South, Range 28 East, Orange County, Florida. Being more particularly described as follows:

That portion of Section 7, Township 22 South, Range 28 East, Orange County, Florida described as follows: Commence at the North 1/4 corner of aforesaid Section 7, thence South 01°22'35" West along the West line of the Northeast 1/4 of Section 7 for 30.01 feet to the South line of the North 30.00 feet of Section 7 and the Southerly Right-of-Way line of Fullers Cross Road as shown on Orange County Bond Project Book Number 5, sheets 5 and 6; to the Point of Beginning; thence South 89°50'45" East along said South line of North 30.00 feet of the Northeast 1/4 of Section 7 and Southerly Right-of Way line for 1280.94 feet to the East line of the West 1/2 of the Northeast 1/4 of aforesaid Section 7; thence South 00°45'45" West along said East line for 2431.28 feet to the East-West center section line; thence South 87°15'02" West along said center section line for 1363.49 feet to the Easterly Right-of-Way line of former State Road No. 437,now known as Ocoee Apopka Road as shown in Road Plat Book 1, Pages 119 through 126 of the Public Records of Orange County, Florida; thence from a tangent bearing of North 12°53'57" West run Northerly along the aforementioned Easterly Right-of-Way line and the arc of a curve concave Westerly having a radius of 1941.86 feet through a central angle of 03°16'26" to a point; thence continue along said Easterly Right-of-Way line the following courses; North 16°17'16" West for 516.18 feet; thence North 16°00'04" West for 1,000.00 feet; thence North 15°24'56" West for 407.21 feet; thence North 07°30'17" West for 546.15 feet to the aforementioned Southerly Right-of-Way line of Fullers Cross Road; thence North 89°51'50" East along said Southerly Right-of-Way line for 741.16 feet to the Point of Beginning.

Less and Except that parcel conveyed to the City of Ocoee in that certain Right-Of-Way Deed to City of Ocoee recorded January 23, 2019 in Instrument No. 20190042931, being more particularly described as follows:

A parcel of land. Being a portion of that certain Special Warranty Deed, as recorded in Official Records Book 8386, Page 3045, Public Records of Orange County, Florida, lying in Section 7, Township 22 South, Range 28 East, being described as follows:

Commence at the North quarter corner of aforesaid Section 7 for a point of reference; thence run South 01° 03' 52" West, along the West line of the Northeast quarter of said Section 7, a distance of 30.01 feet to the point of beginning, said point lies on the South right-of-way line of Fullers Cross Road, as per Orange County Bond Project Book Number 5, Sheets 5 and 6; thence run North 89° 50' 37" East, along said South right-of-way line, 1280.94 feet to the East line of the West half of the Northeast quarter of aforesaid Section 7; thence departing said South right-of-way line, run South 00° 27' 01" West, along said East line, 20.00 feet; thence departing said East line, run South 89°50'37" West, 1281.16 feet; thence run South 89°43'45" West, 648.52 feet to the point of curvature of a curve concave Southeasterly; thence run Southwesterly, along said curve, having a radius of 50.00 feet, a central angle of 95°09'26", an arc length of 83.04 feet, a chord length of 73.82 feet and a chord bearing of South 42°09'02" West to the point of tangency; thence run South 05°25'41" East, 266.84 feet to the point of curvature of a curve concave Northeasterly; thence run Southeasterly, along said curve, having a radius of 1849.90 feet, a central angle of 10°47'31", an arc length of 348.43 feet, a chord length of 347.92 feet and a chord bearing of South 10°49'27" East to the point of tangency;

4825-0001-6019.10

END OF EXHIBIT C

EXHIBIT D-DISCLOSURE NOTICE

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Baker & Hostetler, LLP
200 South Orange Avenue
Suite 2300
Orlando, FL 32801-3432
(407) 649-4000
Attn: David L. Evans, Jr.

DISCLOSURE NOTICE

KNOW ALL MEN BY THESE PRESENTS:

CHEVRON LAND AND DEVELOPMENT COMPANY, a Delaware corporation ("Chevron"), whose address is 6001 Bollinger Canyon Road, V1356B, San Ramon, California 94583-2324, is the owner of that certain tract of land, together with all improvements thereon, located in Orange County, Florida and more fully described on Exhibit "A' attached hereto and made a part hereof for all purposes (the "Property").

Chevron hereby declares and puts third parties on notice, including any and all future owners of the Property, that consistent with the prior use of the Property for agricultural farming operations and agricultural research activities, the presence of arsenic and other chemicals consistent with such use are present, or have been present in the past, in soils and/or groundwater on the Property in concentrations exceeding the Florida Department of Environmental Protection Soil Cleanup Target Levels as defined in the Florida Administrative Code, Chapter 62-777 ("CTLs").

[Signature Page Follow]

SIGNATURE PAGE OF CHEVRON

EXECUTED to be effective the ___ day of _______, 20__ (the "**Effective Date**").

Signed, sealed and delivered in the presence of:	**CHEVRON LAND AND DEVELOPMENT COMPANY,** a Delaware corporation
______________________________ Print Name:____________________ ______________________________ Print Name:____________________	By________________________________ Name:______________________________ Title:______________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF __________)

On ____________________________, before me, ____________________________, Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

____

Notary Public Signature

Exhibit "A" – Legal Description (to be attached)

END OF EXHIBIT D

EXHIBIT E – RELEASE AND INDEMNITY AGREEMENT

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Baker & Hostetler, LLP
200 South Orange Avenue
Suite 2300
Orlando, FL 32801-3432
(407) 649-4000

RELEASE AND INDEMNITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

CHEVRON LAND AND DEVELOPMENT COMPANY, a Delaware corporation ("Chevron"), whose address is 6001 Bollinger Canyon Road, V1356B, San Ramon, California 94583-2324, has this day conveyed to__________________________________ , a _____________ ("Purchaser"), whose address is ____, that certain tract of land, together with all improvements thereon, located in Orange County, Florida and more fully described on Exhibit "A' attached hereto and made a part hereof for all purposes (the "Property") pursuant to that certain Purchase and Sale Agreement (the "PSA") dated ________, 2023, by and between Chevron, as seller and The City of Ocoee, as purchaser. As part of the consideration for the conveyance by Chevron to Purchaser of the Property, Purchaser, on behalf of itself and all future owners of the Property, has agreed as follows:

1. PURCHASER ACKNOWLEDGES AND AGREES THAT, OTHER THAN AS SPECIFICALLY SET FORTH IN THE PSA OR IN ANY DOCUMENT EXECUTED BY CHEVRON IN CONNECTION WITH ITS CONVEYANCE OF THE PROPERTY TO PURCHASER (SUCH DOCUMENTS BEING REFERRED TO HEREIN AS THE "SELLER CLOSING DOCUMENTS"), THE PROPERTY IS TO BE SOLD TO AND ACCEPTED BY PURCHASER "AS IS" AND "WHERE IS," WITH ALL FAULTS, IF ANY, INCLUDING THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND, OTHER THAN AS SPECIFICALLY SET FORTH IN THE PSA OR IN ANY OF THE SELLER CLOSING DOCUMENTS, CHEVRON DISCLAIMS ANY AND ALL WARRANTIES, AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND TO PURCHASER INCLUDING WARRANTIES RELATING TO: (A) THE PHYSICAL CONDITION OF THE PROPERTY, AND IMPROVEMENTS, IF ANY, AND ANY PERSONAL PROPERTY; (B) THE HABITABILITY OF THE PROPERTY, OR IMPROVEMENTS; (C) THE SUITABILITY, MERCHANTABILITY, OR DESIGN OF THE PROPERTY FOR A PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF OR CONTAMINATION BY HAZARDOUS MATERIALS AT, ON, UNDER, OR EMANATING TO OR FROM THE PROPERTY; (E) THE COMPLIANCE OF THE PROPERTY WITH LAWS AND REGULATIONS, INCLUDING ENVIRONMENTAL LAW AND (F) THE SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES OR OTHER CONDITIONS EXISTING IN, ON, OR

UNDER THE PROPERTY. PURCHASER ACKNOWLEDGES THAT, , OTHER THAN AS SPECIFICALLY SET FORTH IN THE PSA OR IN ANY OF THE SELLER CLOSING DOCUMENTS, CHEVRON MAKES NO, AND EXPRESSLY DISCLAIMS ANY, WARRANTIES OR REPRESENTATIONS CONCERNING THE ACCURACY OR COMPLETENESS OF ANY OF THE PROPERTY DOCUMENTS.

2. SUBJECT TO THE SELLER'S RETAINED LIABILITIES (AS DEFINED IN THE PSA) FOR WHICH PURCHASER WILL HAVE NO LIABILITY AND SUBJECT TO CHEVRON'S REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5 OF THE PSA, PURCHASER, FOR ITSELF AND PURCHASER GROUP MEMBERS RELEASE CHEVRON GROUP MEMBERS FROM ANY CLAIM OR LOSS (INCLUDING REASONABLE OUTSIDE ATTORNEYS' FEES), WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY ANY PURCHASER GROUP MEMBER, AND THAT ARISES FROM, IS IN CONNECTION WITH, OR IS RELATED IN ANY MANNER TO THE FOLLOWING (COLLECTIVELY, THE "<u>RELEASED MATTERS</u>"):

(A) ACTS OR OMISSIONS OF PURCHASER OR PURCHASER GROUP WITH RESPECT TO, OR OCCURRING ON, THE PROPERTY WHETHER BEFORE OR AFTER THE CLOSING DATE.

(B) THE OWNERSHIP, CONTROL, USE, POSSESSION, OR OPERATION OF THE PROPERTY.

(C) ANY CONDITION EXISTING OR OCCURRING IN, ON, UNDER, OR WITHIN THE PROPERTY, INCLUDING THE FOLLOWING:

(1) THE DEATH OR INJURY OF ANY PERSON, INCLUDING, ANY PURCHASER GROUP MEMBER.

(2) THE DAMAGE OR DESTRUCTION OF THE PROPERTY OR ANY PERSONAL PROPERTY ON THE PROPERTY.

(3) THE VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE, LOCAL, OR MUNICIPAL LAW, RULE, REGULATION, ORDER, JUDGMENT, DECREE, OR OTHER REQUIREMENT, INCLUDING, REQUIREMENTS UNDER PERMITS, LICENSES, CONSENTS, AND APPROVALS.

(4) THE EXISTENCE, ASSESSMENT, OR REMEDIATION OF CONTAMINATION UPON, UNDER, IN, OR EMANATING TO OR FROM THE PROPERTY.

(5) EMISSIONS, DISCHARGES, RELEASES, OR THREATENED RELEASES, OR THE PRESENCE, GENERATION,

MANUFACTURING, PROCESSING, DISTRIBUTION, USE, TREATMENT, STORAGE, DISPOSAL, TRANSPORT, LABELING, ADVERTISING, SALE, DISPLAY, OR HANDLING, OF CONTAMINATION.

(6) ANY RESPONSE COSTS ANY CHEVRON GROUP OR PURCHASER GROUP MEMBERS MAY INCUR WITH RESPECT TO THE PROPERTY UNDER ANY ENVIRONMENTAL LAW.

(7) ANY CAUSE OF ACTION OR THEORY OF ANY KIND BECAUSE OF, IN CONNECTION WITH, OR RELATED TO, THE OWNERSHIP AND OPERATION OF THE PROPERTY.

(8) ENVIRONMENTAL CONDITIONS, WHETHER THE ENVIRONMENTAL CONDITIONS EXISTED BEFORE OR AFTER THE CLOSING.

(D) CHEVRON GROUP'S FORMER OPERATIONS ON THE PROPERTY OR ANY ADJACENT PROPERTY.

(E) ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES BY PURCHASER, PURCHASER GROUP, OR ANY THIRD PARTY, INCLUDING CLAIMS OR LOSSES FOR LOSS OF USE, RENTS, ANTICIPATED PROFIT, OR BUSINESS OPPORTUNITY, OR BUSINESS INTERRUPTION, CONSTRUCTION DELAYS, DIMINUTION IN VALUE, LOSS OF GOODWILL BY PURCHASER, OR MENTAL OR EMOTIONAL DISTRESS, OR FEAR OF INJURY, DISEASE OR ILLNESS, OR TRESPASS, NUISANCE, OR OTHERWISE.

(F) PURCHASER'S OR ITS AGENT'S, CONTRACTOR'S, OR EMPLOYEE'S ACTIVITIES AND INSPECTIONS REGARDING THE PROPERTY.

(G) PURCHASER'S OR PURCHASER GROUP'S CONSTRUCTION OR DEVELOPMENT ACTIVITIES ON THE PROPERTY.

(H) PURCHASER'S PERFORMANCE OR FAILURE TO PERFORM ANY DUE DILIGENCE REVIEWS AND SURVEYS OF THE PROPERTY, INCLUDING HUMAN HEALTH RISK ASSESSMENTS OR SIMILAR STUDIES.

(I) ANY ENVIRONMENTAL INVESTIGATIONS, ENVIRONMENTAL CLAIMS, CLEANUP COSTS, OR ANY CLAIMS OR ACTION ATTRIBUTABLE OR ARISING FROM SUBSURFACE EXCAVATION, SOIL MOVEMENT, OR SPECIAL HANDLING,

TREATMENT, OR DISPOSAL OF SOIL OR GROUNDWATER, VAPOR INTRUSION PROTECTIONS, OR ENGINEERED CONTROLS.

(J) ANY INFORMATION CONTAINED IN, OR THAT SHOULD HAVE BEEN CONTAINED IN, THE PROPERTY DOCUMENTS.

RELEASED MATTERS DO NOT EXTEND TO MATTERS DETERMINED BY FINAL NON-APPEALABLE JUDGMENT TO HAVE BEEN CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A CHEVRON GROUP MEMBER, EXCEPT THAT NEGLIGENCE OF ANY TYPE OCCURRING PRIOR TO CLOSING WITH RESPECT TO MATTERS DESCRIBED IN SECTIONS 2(D) and 2(E) ABOVE IS NOT EXCLUDED FROM THE DEFINITION OF RELEASED MATTERS.

PURCHASER RECOGNIZES THAT THERE IS A RISK THAT PURCHASER MAY SUFFER A LOSS OR CLAIM THAT IS IN SOME WAY CAUSED BY THE RELEASED MATTERS, AND PURCHASER AGREES THAT PURCHASER GROUP MEMBERS ASSUME THIS RISK AND THAT THIS RELEASE WILL APPLY TO ALL THE UNKNOWN OR UNANTICIPATED LOSSES OR CLAIMS. IF THIS RELEASE IS JUDICIALLY DETERMINED TO EXCEED THAT PERMITTED BY APPLICABLE LAW, THEN THE RELEASE WILL BE CONSTRUED SO AS TO PRESERVE THE MAXIMUM RELEASE PERMITTED BY APPLICABLE LAW.

IN NO EVENT WILL PURCHASER OR ANY PERSON THAT IS PART OF PURCHASER GROUP FILE OR PURSUE ANY LEGAL ACTION, PROCEEDING, OR ARBITRATION AGAINST CHEVRON OR ANY OTHER CHEVRON GROUP MEMBER WITH RESPECT TO ANY OF THE RELEASED MATTERS.

2. PURCHASER, [AND WITH RESPECT TO ANY ASSIGNEE OF THE CITY OF OCOEE, THE PURCHASER GROUP], WILL INDEMNIFY, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO CHEVRON), SAVE AND HOLD HARMLESS CHEVRON GROUP MEMBERS FROM ANY CLAIM OR ANY LOSS, INCLUDING, ALL RELEASED MATTERS EXCEPT SELLER’S RETAINED LIABILITIES. A CLAIM OR LOSS WILL INCLUDE ANY CLAIMS OR ANY LOSSES AS TO STRICT LIABILITY CLAIMS, INCLUDING THOSE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (“CERCLA”) AND SIMILAR FLORIDA LAWS INCLUDING, BUT NOT LIMITED TO, CHAPTERS 376 AND 403, FLORIDA STATUTES; AS WELL AS ANY REGULATORY OBLIGATIONS THAT WOULD REQUIRE REMEDIATION ACTIVITIES WITHOUT REGARD TO THE POINT IN TIME THAT THE CONTAMINATION OCCURRED. IF THIS INDEMNITY IS JUDICIALLY DETERMINED TO EXCEED THAT PERMITTED BY APPLICABLE LAW, THEN THE INDEMNITY WILL BE CONSTRUED AS TO PRESERVE THE MAXIMUM INDEMNITY PERMITTED BY APPLICABLE LAW. IF ANY REGULATORY OBLIGATIONS REQUIRE REMEDIATION ACTIVITIES IN CONNECTION WITH

THE PROPERTY. NOTHING IN THIS AGREEMENT PRECLUDES PURCHASER FROM RECOVERING COSTS FROM PARTIES THAT ARE NOT CHEVRON GROUP MEMBERS.

3. THE RELEASE AND INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT WILL, TO THE EXTENT LEGALLY PERMISSIBLE, BE COVENANTS RUNNING WITH THE LAND AND WILL BE BINDING ON ALL FUTURE OWNERS OF THE PROPERTY. ANY CONVEYANCE, TRANSFER, OR ASSIGNMENT OF ALL OR PART OF THE PROPERTY BY PURCHASER, ITS SUCCESSORS OR ASSIGNS, IN WHICH THE GRANTEE, TRANSFEREE, OR ASSIGNEE FAILS TO EXPRESSLY ASSUME THE OBLIGATIONS OF PURCHASER UNDER THIS AGREEMENT WILL BE DEEMED NULL AND VOID, AB INITIO. PURCHASER FURTHER AGREES TO CAUSE THE PROVISIONS OF THIS AGREEMENT TO BE INCLUDED IN ALL SUBSEQUENT SALES OR TRANSFERS OF ANY INTEREST IN THE PROPERTY, AND TO CAUSE ALL PURCHASERS OR TRANSFEREES OF THE PROPERTY TO EXPRESSLY ACKNOWLEDGE AND ASSUME ALL OF PURCHASER'S OBLIGATIONS.

4. IN CONNECTION WITH ANY CLAIM BY A MEMBER OF THE CHEVRON GROUP FOR INDEMNITY BY PURCHASER PURSUANT TO THIS RELEASE AND INDEMNITY AGREEMENT, PURCHASER WAIVES AND RELEASES ANY AND ALL DEFENSES THAT PURCHASER MAY OTHERWISE HAVE TO SUCH CLAIM PURSUANT TO SECTION 376.82(2), FLORIDA STATUTES.

As used in this Agreement, the following words or expressions have the meanings specified below:

"Agreement" means this Release and Indemnity Agreement.

"Applicable Law(s)" means any law, regulation, rule, statute, order, policy, license, registration, and any other standard or requirements having the effect of law that applies to the Agreement or the parties hereto, or interpretations imposed by any Government Entity that apply to this Agreement.

"Chevron Group" means Chevron Land and Development Company, its parent and affiliates, whether wholly owned, partially owned, direct or indirect, together with their respective directors, officers, managers, members, employees, contractors, representatives and agents.

"Contamination" means any Hazardous Material or toxic material, substance, chemical or waste, contaminant, emission, discharge or pollutant or comparable material listed, identified or regulated pursuant to any federal, state or local law, ordinance or regulation which has as a purpose the protection of health, safety or the Environment, including petroleum or petroleum products or wastes, per- and polyfluoroalkyl substances (whether or not currently regulated by any Government Entity) or resulting from any cause, release, or source during Chevron's ownership of the Property or from Chevron's use of the Property. As used in this Agreement, Contamination shall include the presence of arsenic in soils and/or groundwater on or underlying the Property at concentrations in excess of cleanup target levels set forth in Chapter 62-777, Florida Administrative Code.

"Environment" means all forms of fauna, flora, soil, natural resources; surface, subsurface, or ground waters; land, ground, surface, or subsurface strata; ambient air; or any other environmental medium, including the indoor environment, contained within or affected by the Property or operations thereon.

"Environmental Condition" means Contamination at, on, under or emanating to or from the Property or a condition or circumstance relating to the Property or operation of the Property which is or is alleged to be not in compliance with Environmental Law.

"Environmental Law" means any Applicable Law relating to pollution; the protection of the Environment; the release, emission, discharge, or disposal of any material or chemical substance; human health or safety; Hazardous Materials; natural resource damage; product registration; hazard communication, each as from time to time has been or may be amended or adopted before or after the Effective Date, including: (A) the Occupational Safety and Health Act, 29 U.S.C.A. §651, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901, et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. §9601, et seq.; the Clean Water Act, 33 U.S.C.A. §1251 et seq.; the Clean Air Act, 42 U.S.C.A. §7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §3001, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C.A. §2701 et seq. and (B) Chapters 376 and 403, Florida Statutes as amended, and in or under the regulations adopted or promulgated pursuant to such laws, including Chapter 62, Florida Administrative Code.

"Government Entity" means any department, court, tribunal, exchange, authority, commission, board, instrumentality, or agency of any municipal, local, state, federal or other governmental authority (including regulatory authorities and administrative bodies) and any subdivision of the foregoing or any Person owned or controlled by the government.

"Hazardous Materials" means any chemical substance, product, waste, or other material which is, or becomes identified, listed, published, regulated, or defined as, or which shows the characteristics of, a hazardous substance, hazardous waste, hazardous material, toxic substance, or other regulatory term, including oil, oil waste, by-products and components, naturally occurring radioactive materials, hydrocarbons, and hydrocarbons waste, produced water, by-products and components, polychlorinated biphenyls, and asbestos, or which is otherwise regulated or restricted under any Environmental Law or by any Government Entity, or which may otherwise cause, contribute to, or result in an Environmental Condition , or Environmental Obligation, including without limitation, hazardous materials as defined in Chapters 376 and 403, Florida Statutes as amended, and in or under the regulations adopted or promulgated pursuant to such laws, including Chapter 62, Florida Administrative Code. As used in this Agreement, Hazardous Materials shall include the presence of arsenic in soils and/or groundwater on or underlying the Property at concentrations in excess of cleanup target levels set forth in Chapter 62-777, Florida Administrative Code.

"Person" means an individual, corporation, company, association, partnership, state, statutory corporation, Government Entity, or any other legal entity.

"Property Documents" means the information materials relating to the Property that Chevron has made available to Purchaser.

"Purchaser Group" means___________________, its parent, subsidiaries, and affiliated companies, and their respective employees, officers, directors, elected officials, managers, members, representatives, independent contractors, consultants, servants and agents, and their respective predecessors and successors in interest and assigns, excluding Chevron.

Under no circumstances shall any individual who is a member of the Purchaser Group (including but limited to officers, directors, elected officials, employees, managers, members, representatives, independent contractors, consultants, agents, and their respective predecessors and successors in interest and assigns) be subjected to any claims or losses incurred by the Purchaser Group arising out of this Agreement. In the event of any conflict between this provision and any other provision of this Agreement, this provision shall control.

[Signature Pages Follow]

SIGNATURE PAGE OF CHEVRON

EXECUTED to be effective the ___ day of _______, 20__ (the "Effective Date").

CHEVRON:

Signed, sealed and delivered
in the presence of:

CHEVRON LAND AND DEVELOPMENT COMPANY

____
Print Name:____________________
____
Print Name:____________________

By________________________________
Name:_____________________________
Title:______________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF __________)

On _____________________________, before me, ____________________________, Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

Notary Public Signature

SIGNATURE PAGE OF PURCHASER

EXECUTED to be effective as of the Effective Date.

Signed, sealed and delivered in the presence of:	PURCHASER: ___________________________________
____________________________________ Print Name:__________________________ ____________________________________ Print Name:__________________________	By_________________________________ Name:______________________________ Title:_______________________________________

STATE OF FLORIDA
COUNTY OF _____________

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this _____ day of _________, 20_____, by __________________, as ________________ of ________________________________, a _______________, on behalf of said__________________________. He/she [__] is personally known to me or [__] has produced a valid driver's license as identification.

AFFIX NOTARY STAMP	____ Signature of Notary Public (Print Notary Name)___ ___________________ My Commission Expires:_____________________ Commission No.:____________________________ ☐Personally known, or ☐Produced Identification Type of Identification Produced: _______________

Exhibit "A" – Legal Description (to be attached)

END OF EXHIBIT E

EXHIBIT F – TERMINATION AGREEMENT

TERMINATION OF DEVELOPMENT AGREEMENT

This Termination of Development Agreement (this "Termination") is made as of the _____ day of_______________, by and between **CHEVRON LAND AND DEVELOPMENT COMPANY**, a Delaware corporation ("Chevron") and **THE CITY OF OCOEE**, a Florida municipal corporation (the "City"). Chevron and the City are referred to herein as the "Parties" and individually as a "Party".

W I T N E S S E T H

WHEREAS, Chevron and the City entered into that certain Development Agreement dated October 21, 2008, between Chevron and the City of Ocoee, recorded at Doc. # 20080729283, Book 9798, Page 0257 of the Public Records of Orange County, Florida (as amended, modified or replaced being referred to herein as the "Development Agreement") related to the development of the Property described on Exhibit A attached hereto and made a part hereof for all purposes (the "Property"); and

WHEREAS, Chevron has this day conveyed the Property to the City or the City's assignee and in connection therewith the Parties have agreed to terminate the Development Agreement and evidence such termination;

NOW, THEREFORE, in consideration the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Chevron and the City agree to as follows:

1. Defined Terms. All capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Development Agreement.

2. Termination. Effective as of the date hereof (the "Termination Date"), the Development Agreement is hereby terminated and neither Party hereto shall have any further rights, duties, liabilities or obligations thereunder.

3. Mutual Release. As of the Termination Date, the obligations, duties and liabilities of Chevron and the City, respectively, under the Development Agreement shall terminate and be of no further force or effect. In connection therewith, the City hereby fully releases and forever discharges Chevron from all obligations, duties and liabilities arising out of, related to or in connection with the Development Agreement. Likewise, Chevron hereby fully releases and forever discharges the City from all obligations, duties and liabilities arising out of, related to or in connection with the Development Agreement.

4. Successors and Assigns. This Termination shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

5. Governing Law. This Termination shall be governed by and construed and interpreted in accordance with the laws of the State of Florida.

6. Captions. The captions of this Termination are solely for convenience of reference and shall not affect its interpretation.

7. Counterparts. This Termination may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature Pages Follow]

SIGNATURE PAGE OF CHEVRON TO

TERMINATION OF DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, Chevron has caused this Termination to be executed by its duly authorized representatives as of the day and year first above written.

CHEVRON LAND AND DEVELOPMENT COMPANY

By: ___________________________________

Name:_________________________________

Title:__________________________________

SIGNATURE PAGE OF THE CITY TO
TERMINATION OF DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, The City has caused this Termination to be executed as of the day and year first above written.

THE CITY OF OCOEE

By: ___________________________________
Rusty Johnson, Mayor

Title: Mayor

Attest: ______________________________
Melanie Sibbitt
City Clerk

APPROVED BY THE OCOEE CITY COMMISSION AT A MEETING HELD ON ____________, 2023, UNDER AGENDA ITEM NO. _______.

FOR USE AND RELIANCE ONLY BY THE CITY OF OCOEE, FLORIDA; APROVED AS TO FORM AND LEGALITY this __ day of _______, 2023.

SHUFFIELD LOWMAN & WILSON, P.A.

By: _________________________________
City Attorney

EXHIBIT "A"

Real Property Description

The land referred to herein below is situated in the County of Orange, State of Florida, and described as follows:

That portion of the East One Half (1/2) of the Northwest One Quarter (1/4) and the West One Half (1/2) of the Northeast One Quarter (1/4) lying East of State Road 437 and South of Fuller's Cross Road of Section 7, Township 22 South, Range 28 East, Orange County, Florida. Being more particularly described as follows:

That portion of Section 7, Township 22 South, Range 28 East, Orange County, Florida described as follows: Commence at the North 1/4 corner of aforesaid Section 7, thence South 01°22'35" West along the West line of the Northeast 1/4 of Section 7 for 30.01 feet to the South line of the North 30.00 feet of Section 7 and the Southerly Right-of-Way line of Fullers Cross Road as shown on Orange County Bond Project Book Number 5, sheets 5 and 6; to the Point of Beginning; thence South 89°50'45" East along said South line of North 30.00 feet of the Northeast 1/4 of Section 7 and Southerly Right-of Way line for 1280.94 feet to the East line of the West 1/2 of the Northeast 1/4 of aforesaid Section 7; thence South 00°45'45" West along said East line for 2431.28 feet to the East-West center section line; thence South 87°15'02" West along said center section line for 1363.49 feet to the Easterly Right-of-Way line of former State Road No. 437,now known as Ocoee Apopka Road as shown in Road Plat Book 1, Pages 119 through 126 of the Public Records of Orange County, Florida; thence from a tangent bearing of North 12°53'57" West run Northerly along the aforementioned Easterly Right-of-Way line and the arc of a curve concave Westerly having a radius of 1941.86 feet through a central angle of 03°16'26" to a point; thence continue along said Easterly Right-of-Way line the following courses; North 16°17'16" West for 516.18 feet; thence North 16°00'04" West for 1,000.00 feet; thence North 15°24'56" West for 407.21 feet; thence North 07°30'17" West for 546.15 feet to the aforementioned Southerly Right-of-Way line of Fullers Cross Road; thence North 89°51'50" East along said Southerly Right-of-Way line for 741.16 feet to the Point of Beginning.

Less and Except that parcel conveyed to the City of Ocoee in that certain Right-Of-Way Deed to City of Ocoee recorded January 23, 2019 in Instrument No. 20190042931, being more particularly described as follows:

A parcel of land. Being a portion of that certain Special Warranty Deed, as recorded in Official Records Book 8386, Page 3045, Public Records of Orange County, Florida, lying in Section 7, Township 22 South, Range 28 East, being described as follows:

Commence at the North quarter corner of aforesaid Section 7 for a point of reference; thence run South 01° 03' 52" West, along the West line of the Northeast quarter of said Section 7, a distance of 30.01 feet to the point of beginning, said point lies on the South right-of-way line of Fullers Cross Road, as per Orange County Bond Project Book Number 5, Sheets 5 and 6; thence run North 89° 50' 37" East, along said South right-of-way line, 1280.94 feet to the East line of the West half of the Northeast quarter of aforesaid Section 7; thence departing said South right-of-way line, run South 00° 27' 01" West, along said East line, 20.00 feet; thence departing said East line, run South 89°50'37" West, 1281.16 feet; thence run South 89°43'45" West, 648.52 feet to the point of curvature of a curve concave Southeasterly; thence run Southwesterly, along said curve, having a radius of 50.00 feet, a central angle of 95°09'26", an arc length of 83.04 feet, a chord length of 73.82 feet and a chord bearing of South 42°09'02" West to the point of tangency; thence run South 05°25'41" East, 266.84 feet to the point of curvature of a curve concave Northeasterly; thence run Southeasterly, along said curve, having a radius of 1849.90 feet, a central angle of 10°47'31", an arc length of 348.43 feet, a chord length of 347.92 feet and a chord bearing of South 10°49'27" East to the point of tangency;

4825-0001-6019.10

END OF EXHIBIT F

ocoee florida

STAFF REPORT

Meeting Date: May 18, 2023
Item #: 2

Contact Name: Michael Rumer
Contact Number: Ext. 1018

Department Director: Michael Rumer
City Manager: Robert Frank

Subject: Approval of the Development Agreement with Montierre Development, PLLC, for the Ocoee Regional Sports Complex. (Development Services Director Rumer)

Background Summary:

On December 6, 2022, the City entered into a Memorandum of Understanding with Montierre Development, PLLC, to help facilitate a Proposed Regional Sports and Entertainment Complex which will consist of 16 Baseball Fields, 9 Batting Cages, Multi-Purpose Fields, Recreation Park and Playground areas, a Splash Pad area and Welcome Center. The Sports and Entertainment Complex will be Anchored by a Mixed Use Center which will consist of 3 Hotels with up to 600 Rooms, Seven (7) Retail/Restaurant Buildings, 20k SF ± of Office Space and two (2) Parking Garages with 1,600 parking spaces. The Memorandum of Understanding (as attached) provided the City's Commitment to obligations in order to move the project forward.

Since the approval of the Memorandum of Understanding in December of 2022, City Staff, Montierre Development PLLC, City Attorney Scott Cookson have been finalizing a Development Agreement to facilitate all of the obligations contained within the Memorandum of Understanding. Simultaneously, City Staff, City Attorney Scott Cookson, Montierre Development PLLC, and representatives of Chevron have been working toward a Purchase and Sale Agreement for the Chevron Property. Both documents have been completed and approved by City Staff and City Attorney Scott Cookson to be approved and executed by the Honorable Mayor.

Key elements of the Development Agreement are:

Section 3(C). The City agrees to cooperate with Montierre, at no additional cost or expense to the City, in Montierre's pursuit of any tourist tax funds which may be utilized in connection with the development of the Project.
Section 4. Elements for the Closing of the Chevron Property.
Section 5. The City, at its sole cost and expense, shall be responsible for processing such applications and approvals as may be required in order to designate the Chevron Property and the City Property as a Brownfield Area (Currently in Process).
Section 6. Conditioned upon Montierre's acquisition of the Chevron Property, the City will convey to Montierre the City Property by special warranty deed on the date of Montierre's acquisition of the Chevron Property, subject only to taxes for the year of closing. In the event of a termination of the Chevron Contract for any reason, the City's obligation to convey and Montierre's obligation to purchase the City Property shall be null and void and of no further force or effect.
Section 7(A). In addition to the economic benefits to the City in having the Project within the City, the City will receive, as compensation for the assignment of the Chevron Contract to Montierre and the conveyance of the City Property to Montierre, the following: (a) $20.00 for each night a hotel room is rented out within the Project,

and (ii) twenty-five percent (25%) of all fees collected for each parking space per day within a parking garage rented out within the Project up to the amount of $5.00 per parking space per day. It is anticipated that the daily fee for parking within a parking garage will be equal to or exceed $20.00 per parking spot. Such payments shall be for a period of no less than thirty (30) years from the date of the build-out of the Project.
Section 7(B). Montierre shall guarantee that the City will receive at least Eight Hundred Thousand Dollars ($800,000.00) per year from the Payment Obligation Documents until the City has received Eight Million Dollars ($8,000,000.00).
Section 7 (C). The City shall provide to Montierre a tax abatement of City of Ocoee property taxes (but not other property taxes due and owing other than to the City of Ocoee) for the Project for a period of five (5) years.
Section 9. Montierre shall be responsible for improvements to Ocoee-Apopka Road from the intersection of West Road south to Franklin Street intersection, and potentially other area improvements, consisting of road widening and infrastructure improvements to accommodate the Project all in accordance with applicable roadway requirements and plans approved by the City based on the review of the Project and the traffic study conducted for the Project.
Section 9. The City agrees to use good faith efforts to seek federal, state and/or county participation or contributions toward the Ocoee-Apopka Road Improvements.
Section 9. Montierre shall be entitled to transportation impact fee credits for the Ocoee Apopka Road Improvements. However, Montierre shall not be entitled to an amount of transportation impact fee credits that exceed the amount of transportation impact fees calculated for the Project.
Section 10. Montierre shall build two (2) new baseball fields for the City's Parks and Recreation Department on City property for the City's use for City youth leagues at its sole cost and with limited use rights.

Issue:
Should the Honorable Mayor and City Commissioners approve a Development Agreement with Montierre Development, PLLC, for the Ocoee Regional Sports Complex?

Recommendations:
Staff recommends the Honorable Mayor and City Commissioners approve the Development Agreement between Montierre Development, PLLC, and the City of Ocoee.

Attachments:
1. Memorandum of Understanding_Montierre Development PLLC
2. Ocoee Regional Sports Complex Development Agreement

Financial Impacts:
Financial Obligation to Provide Road Impact Fee Credits Towards Improvements to Ocoee Apopka Road (Not to Exceed the Amount of Road Impact Fees Generated by the Project)
Guarantee payments to the City of at least Eight Hundred Thousand Dollars ($800,000.00) per year from the Payment Obligation Documents until the City has received Eight Million Dollars ($8,000,000.00).

Type of Item: Regular

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") is made and entered into as of December 6, 2022 (the "**Effective Date**"), by and between the City of Ocoee, Florida, a Florida municipal corporation ("**City**"), with an address of 1 North Bluford Avenue, Ocoee, Florida 34761, and **MONTIERRE DEVELOPMENT, PLLC**, a Florida professional limited liability company ("**Montierre**"), with an address of 5669 SE Crooked Oak Ave., Hobe Sound, FL 33455.

WHEREAS, Montierre is a commercial developer with experience in developing mixed-use projects and has a desire to develop a mixed use project within the City of Ocoee, Florida which would consist of a number of baseball fields and related facilities, hotels, retail buildings and parking garages constructed on the Chevron Property (as defined herein), the Rodgers Properties (as defined herein) and the Rodgers Adjacent Property (as defined herein) (the "**Project**"); and

WHEREAS, Montierre is seeking commitments from one or more established amateur baseball event and scouting organizations to, upon completion of the Project, utilize the facilities within the Project; and

WHEREAS, the City has an interest in facilitating the Project based on the benefits to the current and future residents of the City and the economic impact the Project would have within the City; and

WHEREAS, the City and Montierre have agreed to enter into this MOU to set forth certain terms and obligations between the parties.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Montierre hereby agree as to the following:

1. **Recitals**. The above recitals are true and correct and are incorporated in this MOU by reference as if set forth in full herein.

2. **Understandings**. The parties set forth their understandings under this MOU as follows:

a. Chevron Property.

i. The City will use good faith efforts to enter into a contract for the purchase (the "**Chevron Contract**") of that approximately 95.1 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-001, located in the City of Ocoee, Orange County, Florida east of Ocoee-Apopka Road and south of Fullers Cross Road and owned by, or by an affiliate of, Chevron Land and Development Company, Delaware corporation (the "**Chevron Property**");

ii. The parties anticipate that the Chevron Contract will be for a purchase price of approximately $4,200,000.00, will require that the buyer thereof to perform certain environmental remediation work and require the buyer to release and indemnify the seller, and seller-related entities, for all environmental claims relating to the Chevron Property;

iii. The parties further anticipate that the Chevron Contract will be assignable and that the City would assign the Chevron Contract to Montierre such that Montierre would purchase the Chevron Property directly from the owner thereof, reimburse the City for any deposits made by the City under the Chevron Contract, perform the required remediation work and provide the release and indemnity to the Seller and the seller-related entities. Other that entering into the Chevron Contract and assigning the Chevron Contract to Montierre, the City would have no obligations under the Chevron Contract; and

iv. The parties will work together in good faith to negotiate the terms of the Chevron Contract with the seller thereof.

b. Rodgers Property. Montierre would be responsible for, at Montierre's sole cost and expense, for the acquisition of one or more of the following parcels (i) that approximately 2.096 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-039; (ii) that approximately 2.228 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-041; (iii) that approximately 5.017 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-043; (iv) that approximately 1.178 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-105; (v) that approximately 1 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-074; (vi) that approximately 0.145 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-031; (vii) that approximately 0.348 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-067; (viii) that approximately 1.405 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-068; (ix) that approximately 2.092 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-042; and (x) that approximately 0.402 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-061, all located in the City of Ocoee, Orange County, Florida east of Ocoee-Apopka Road and south of the Chevron Property (the "**Rodgers Properties**").

c. Rodgers Adjacent Property.

i. Conditioned upon Montierre's acquisition of the Chevron Property and the Rodgers Properties, the City will convey to Montierre that approximately 37.1 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-023, located in the City of Ocoee, Orange County, Florida north, east and south of the Rodgers Properties (the "**Rodgers Adjacent Property**").

ii. The parties anticipate the appraised value of the Rodgers Adjacent Property will be less than $8,000,000.00.

iii. The parties agree to use good faith efforts to enter into an agreement for the conveyance of the Rodgers Adjacent Property from the City to Montierre.

d. Development of the Project. Montierre, at Montierre's sole cost and expense, shall develop the Project.

e. Payment to the City. In addition to the economic benefits to the City in having the Project within the City, the City will receive, as compensation for the assignment of the Chevron Property and the conveyance of the Rodgers Adjacent Property to Montierre, the following: $20.00 for each night a hotel room is rented out within the Project and $5.00 for each parking space within a parking garage rented out within the Project. Such payments shall be for a period of no less than thirty (30) years from the build-out of the Project. Montierre shall be entitled to all other revenues relating to the Project.

f. Additional Agreements.

i. Montierre will be responsible for improvements to Ocoee-Apopka Road and the City will provide transportation impact fee credits for such improvements.

ii. Montierre will make certain improvements to existing ballfields within the City.

iii. The City will have limited use rights to certain of the ballfields within the Project during no-peak use times and days without charge to the City.

iv. The City will cooperate with Montierre to obtain tourist tax funds for the development of the Project.

v. The City will provide a tax abatement for City of Ocoee property taxes for a period not to exceed five (5) years commencing from the conveyance of the Rodgers Adjacent Property.

3. **Development Agreement**. City and Montierre agree to use good faith efforts to memorialize the terms of this MOU in a Development Agreement for Project (the "**Development Agreement**"). Once the parties have entered into the Development Agreement, this MOU shall terminate and be of no further force or effect.

4. **Binding Effect**. The terms and provisions of this MOU shall be binding upon and inure to the benefit of the City and Montierre, and their representatives, successors, and assigns. The burdens hereof shall run with the land, with the effect that any person or entity which acquires an interest in the Property shall be bound by the burdens hereof. In the event of any conflict between the terms and conditions of this MOU and the terms of the Development Agreement, the terms of the Development Agreement shall control.

IN WITNESS WHEREOF, by their signatures below, the parties have caused this MOU to be executed and effective as of the Effective Date.

MONTIERRE DEVELOPMENT, PLLC, a Florida professional limited liability company

By: ______________________
Name: James A Douglas
Title President

CITY OF OCOEE, a Florida municipal corporation

By: ______________________
RUSTY JOHNSON
Mayor

Attest: ______________________
MELANIE SIBBITT
City Clerk

APPROVED BY THE OCOEE CITY COMMISSION AT A MEETING HELD ON December 6, 2022, UNDER AGENDA ITEM NO. 15.

FOR USE AND RELIANCE ONLY BY THE CITY OF OCOEE, FLORIDA; APPROVED AS TO FORM AND LEGALITY this 6th day of DEC., 2022.

SHUFFIELD LOWMAN & WILSON, P.A.

By: ______________________
City Attorney

<u>DEVELOPMENT AGREEMENT</u>
(Ocoee Regional Sports Complex)

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the __ day of _________, 2023 by and between **MONTIERRE DEVELOPMENT, PLLC**, a Florida limited liability company, whose mailing address is 5669 SE Crooked Oak Ave., Hobe Sound, FL 33455 ("**Montierre**"), and the **CITY OF OCOEE**, a Florida municipal corporation, whose mailing address is 1 North Bluford Ave., Ocoee, Florida 34761, Attention: City Manager (hereinafter referred to as the "**City**").

<u>W I T N E S S E T H</u>:

WHEREAS, the Montierre is a commercial developer with experience in developing mixed-use projects; and

WHEREAS, Montierre intends to develop a mixed use project within the corporate limits of the City of Ocoee, Florida which is anticipated to consist of (i) sixteen (16) baseball fields; (ii) batting cages; (iii) multi-purpose fields; (iv) an inclusive recreation park and playground; (v) splash pad area; (vi) welcome center; (vii) promenade; (viii) three (3) hotels each with approximately 600 rooms and parking garages; (ix) seven (7) restaurants/retail buildings; (x) six (6) office/retail buildings; and (xi) two parking garages to accommodate approximately 1,600 parking spaces, together with related facilities and generally consistent with the conceptual depictions attached hereto as **<u>Exhibit "A"</u>** (the "**Project**"); and

WHEREAS, the Project is anticipated to be constructed on the following parcels located in the City of Ocoee, Orange County, Florida east of Ocoee Apopka Road and south of Fullers Cross Road:

(i) that approximately 95.1 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-001 (the "**Chevron Property**"), and as of the date hereof owned by Chevron Land and Development Company, a Delaware corporation ("**Chevron**");

(ii) that approximately 37.1 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-023 (the "**City Parcel**"), and as of the date hereof owned by the City;

(iii) that approximately 2.096 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-039 ("**Parcel A**");

(iv) that approximately 2.228 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-041 ("**Parcel B**");

(v) that approximately 5.017 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-043 ("**Parcel C**");

(vi) that approximately 1.178 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-105 ("**Parcel D**");

(vii) that approximately 1.0 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-074 ("**Parcel E**")

(viii) that approximately 9.901 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-087 ("**Parcel F**"); and

(ix) that approximately 14.934 acre parcel under Orange County Property Appraiser Parcel ID: 07-22-28-0000-00-080 ("**Parcel G**");

Parcel A, Parcel B, Parcel C, Parcel D, Parcel E, Parcel F and Parcel G, are collectively referred to herein as the "**Remnant Parcels**"; the Remnant Parcels together with the Chevron Property and the City Property, are collectively referred to herein as the "**Property**"); and

WHEREAS, Montierre has secured or intends to secure the financing necessary to construct the Project and has or intends to secure a commitment from an established amateur baseball event and scouting organization (the "**Baseball Organization**"), who will utilize the baseball-related facilities within the Project pursuant to a separate agreement between Montierre and the Baseball Organization; and

WHEREAS, the City desires to facilitate the Project based on the benefits to the current and future residents of the City and the economic impact the Project will have within the City and surrounding areas; and

WHEREAS, the City and Montierre have entered into this Agreement setting forth certain terms and obligations with respect to the Project.

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Recitals**. The above recitals are true and correct and incorporated herein by this reference.

Section 2. **Development Approvals**. Nothing herein will be construed as a grant by the City or waiver by the City as to any development approvals that may be required in connection with the plans for the Project or Montierre's development of the Project; notwithstanding this Agreement, Montierre must comply with all applicable procedures and standards relating to the development of the Project. However, the City agrees to review and consider for approval Montierre's applications and plans for the Project pursuant to the City's established review and approval process in a timely manner so as not to unreasonably delay Montierre's established performance and milestone schedules for the Project. In addition, the City agrees to timely complete such applications that may reasonably be required of the City as the owner of the City Property.

Section 3. **Development of the Property**.

(A) Development Requirements. Montierre hereby agrees to develop the Project on the Property in accordance with the terms of this Agreement and the Ocoee Land

Development Code and consistent with the final plans, including any conditions of approval set forth therein, permits and approvals issued by the City and other governmental entities with respect to the Property. The parties recognize that the improvements within the Project are subject to change based on plans and approvals for the Project and development requirements for the Property and may be developed in multiple phases. Notwithstanding the forgoing, Montierre agrees not to materially modify the improvements within the Project without the prior consent of the City, not to be unreasonably withheld, conditioned or delayed.

(B) Condition to City Obligations. Notwithstanding anything contained herein to the contrary, the City's obligations with respect to completing applications and/or reviewing and processing applications and approvals contained herein are specifically conditioned on Montierre developing the Project consistent with the requirements set forth in this Section 3 and elsewhere in the Agreement.

(C) Tourist Tax Funds. Notwithstanding anything contained herein to the contrary, the City agrees to cooperate with Montierre, at no additional cost or expense to the City, in Montierre's pursuit of any tourist tax funds which may be utilized in connection with the development of the Project.

Section 4. Chevron Property.

(A) Chevron Contract; Inspections. Of even date herewith, the City has entered into a contract with Chevron for the purchase of the Chevron Property (the "**Chevron Contract**"). Montierre hereby acknowledges that Montierre had the opportunity to review, provide comments on, take part in the negotiations with respect thereto and has approved the Chevron Contract. The City's review, comments, negotiations and execution of the Chevron Contract was and is done as an accommodation to Montierre. Pursuant to the terms of the Chevron Contract, Montierre has the right to enter upon the Chevron Property and conduct such due diligence and testing as permitted under the terms of the Chevron Contract. The City shall have no responsibility to perform or review any due diligence materials relating to the Chevron Property; Montierre, at Montierre's sole cost and expense, agrees to perform all due diligence with respect to the purchase of the Chevron Property during the inspection period under the Chevron Contract. All due diligence and reports shall be contracted for and in the name of Montierre and not the City. In addition, Montierre agrees that all access and testing done on the Chevron Property shall be done consistent with the terms of the Chevron Contract, including providing evidence of insurance that may be required under the Chevron Contract. Montierre agrees to pay for all due diligence work and reports and agrees not to allow any lien to be placed on the Chevron Property relating to such work and reports.

(B) Pre-Closing Indemnification. Montierre hereby agrees to indemnify, defend, release and hold the City harmless with respect to Montierre's entry, due diligence and pre-closing obligations relating to the Chevron Property and/or under the Chevron Contract. To the extent, the purchaser under the Chevron Contract assumes any pre-closing liability with respect to the Chevron Property, as between Montierre and the City, Montierre agrees that such liability is solely assumed by Montierre and not the City. To the extent the purchaser under the Chevron Contract has a pre-closing indemnification, duty to defend, release and or hold harmless obligation as to Chevron, Montierre, and not the City, shall have such obligations and Montierre agrees to indemnify, defend, release and hold harmless the City for the same obligations and to the same extent as required under the Chevron Contract as to Chevron.

(C) Post-Closing Indemnification. Montierre hereby agrees to indemnify, defend, release and hold the City harmless with respect to all obligations of Montierre that survive the termination or closing under the Chevron Contract, including, but not limited to environmental remediation work that may be required. To the extent, the purchaser under the Chevron Contract assumes any post-closing liability with respect to the Chevron Property, as between Montierre and the City, Montierre agrees that such liability is solely assumed by Montierre and not the City. To the extent the purchaser under the Chevron Contract has a post-closing indemnification, duty to defend, release and or hold harmless obligation as to Chevron, Montierre, and not the City, shall have such obligations and Montierre agrees to indemnify, defend, release and hold harmless the City for the same obligations and to the same extent as required under the Chevron Contract as to Chevron.

(D) Insurance Requirements under Chevron Contract. Following the assignment of the Chevron Contract to Montierre and thereafter during the term of the Chevron Contract, Montierre shall maintain the insurance required by Section 3.3(F) – (H) of the Chevron Contract. For any insurance obtained by Montierre pursuant to the Chevron Contract that requires that the "Seller Group" be named as an additional insured, Montierre hereby agrees to also name the City as an additional insured.

(E) Environmental Indemnification Insurance. The parties acknowledge that the City would not have entered into the Chevron Contract without assurances that the City would incur no liability with respect to the investigations on, purchase of and/or development of the Chevron Property. Montierre's indemnification, defense, release and hold harmless obligations set forth in subsections (A) and (B) are a material part of the City entering into this Agreement and the Chevron Contract. In addition to such obligations, Montierre has agreed to obtain environmental indemnification insurance relating to the Chevron Property either directly for the City or directly for Montierre with the City being named as an additional insured (the "**Environmental Insurance**"). Montierre agrees to pay all premiums and costs and expenses relating to the Environmental Insurance. The City shall have the right to review and approve the Environmental Insurance obtained. While Montierre is principally responsible for all costs and expenses relating to the Environmental Insurance, the City may pay such amounts as necessary to keep such Environmental Insurance effective and Montierre shall be responsible for any costs expended by the City plus interest at twelve percent (12%) until paid.

(F) Assignment of Chevron Contract. The Chevron Contract provides for the City's assignment of the Chevron Contract to Montierre. On or before the expiration of the inspection period under the Chevron Contract, if Montierre so elects, the City agrees to assign all of the City's rights and obligations under the Chevron Contract to Montierre. Montierre shall notify the City at least five (5) days prior to the expiration of the inspection period under the Chevron Contract whether or not Montierre desires to take an assignment of the Chevron Contract. In the event Montierre advises the City that Montierre does not desire to take an assignment of the Chevron Contract or in the event Montierre fails to timely provide notice of its desire to take an assignment of the Chevron Contract, the City may terminate the Chevron Contract prior to the expiration of the inspection period thereunder and with such termination, Montierre and the City shall have not further obligations under the Chevron Contract except for those that survive termination of the Chevron Contract. As to any City obligations that survive termination of the Chevron Contract, the parties agree that Montierre shall solely assume the same. In the event Montierre does elect to take an assignment of the Chevron Contract, the parties shall execute an assignment document reasonably acceptable to both parties prior to the expiration of the inspection period under the Chevron Contract. Montierre agrees comply with all requirements relating to such assignment that may be set forth in the Chevron Contract.

(G) Deposits under the Chevron Contract. Montierre shall be responsible for all deposits required to be made under the Chevron Contract. For deposits required prior to the assignment of the Chevron Contract, Montierre will, at the City's election, pay such deposits for the City's behalf as and when required under the Chevron Contract, or reimburse the City for such deposits made within five (5) days of a request for reimbursement by the City. Montierre, and not the City, shall be responsible for all deposits required under the Chevron Contract subsequent to the assignment of the Chevron Contract to Montierre. In the event the Chevron Contract is terminated for any reason and with such termination the purchaser thereunder is entitled to a return of the deposit or any portion thereof, such deposit or portion thereof shall belong to Montierre, and not the City except in the event the City made such deposit and Montierre failed to reimburse the City for such deposit in which case the City shall be entitled to retain the returned deposit or portion thereof.

Section 5. **Brownfield Designation**. Notwithstanding anything to the contrary contained in this Agreement or the Chevron Contract, the City, at the City's sole cost and expense, shall be responsible for processing such applications and approvals as may be required in order to designate the Chevron Property and the City Property as a brownfield area. The City agrees to use commercially reasonable diligent efforts to cause the designation of the brownfield area, but the City makes no guaranty that such designation will occur. The City agrees to keep Montierre informed as to the status of the brownfield designation.

Section 6. **City Property**. Conditioned upon Montierre's acquisition of the Chevron Property, the City will convey to Montierre the City Property by special warranty deed on the date of Montierre's acquisition of the Chevron Property, subject only to taxes for the year of closing, entitlements in place and matters of record encumbering the Property (the "**Permitted Exceptions**"). In the event of a termination of the Chevron Contract for any reason, the City's obligation to convey and Montierre's obligation to purchase the City Property shall be null and void and of no further force or effect. Montierre shall be solely responsible for all closing costs and expenses relating to the City's conveyance of the City Property. Notwithstanding the foregoing, the City shall be responsible for the City's own attorney fees incurred with respect to the conveyance of the City Property to Montierre. The conveyance of the City Property to Montierre shall be for $1.00 and other good and valuable consideration, including the obligations contained in this Agreement. Within thirty (30) days following the expiration of the inspection period under the Chevron Contract, the City and Montierre shall enter into an agreement governing the conveyance of the City Property consistent with the terms hereof. In the event Montierre desires to enter upon the City Property or conduct testing of the City Property prior to the expiration of the execution of the contract for the purchase and sale of the City Property, the parties shall work together in good faith to agree upon a license agreement to permit the same prior to any such activities conducted by Montierre on the City Property.

Section 7. **Compensation**.

(A) Payment to the City. In addition to the economic benefits to the City in having the Project within the City, the City will receive, as compensation for the assignment of the Chevron Contract to Montierre and the conveyance of the City Property to Montierre, the following: (a) $20.00 for each night a hotel room is rented out within the Project, and (ii) twenty-five percent (25%) of all fees collected for each parking space per day within a parking garage rented out within the Project up to the amount of $5.00 per parking space per day. It is anticipated that the daily fee for parking within a parking garage will be equal to or exceed $20.00 per parking spot. Such payments shall be for a period of no less than thirty (30) years from the date of the build-out of the Project. Matters relating to the payments described herein, including, but not limited to, the security for receipt of the same, the payment procedures and the auditing procedures shall be incorporated into one or more payment obligation documents that will be recorded against the Property at the time of the conveyance of the City Property (the "**Payment Obligation Documents**"). Prior to the City's conveyance of the City Property to Montierre, the parties shall work together in good faith to agree on the form of the Payment Obligation Documents.

(B) Minimum Guaranteed Payments. Notwithstanding Section 7(A) above, commencing at the end of the twelve (12) month period following the issuance of a Certificate of Occupancy for a Hotel or Parking Garage, **but in no event later than three (3) years after closing of Chevron Property** and repeating for ten (10) successive years, Montierre shall guarantee that the City will receive at least **EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS ($800,000.00)** per year from the Payment Obligation Documents until the City has received **EIGHT MILLION AND NO/100 DOLLARS ($8,000,000.00)**. The foregoing minimum payment guarantee shall be incorporated and addressed in the Payment Obligation Documents. The Payment Obligation Documents shall also provide for Montierre's obligation to reconvey the City Property to the City in the event Montierre fails to make one or more minimum payment guarantees.

(C) Tax Abatement. Provided that Montierre is proceeding with the development of the Project and is otherwise not in default under this Agreement, from the date of the conveyance of the City Property to Montierre and continuing for the five (5) year period following the date Montierre opens any portion of the Project, the City shall provide to Montierre a tax abatement of City of Ocoee property taxes (but not other property taxes due and owing other than to the City of Ocoee) for the Project.

Section 8. **Remnant Parcels**. Montierre shall be solely responsible, at Montierre's sole cost and expense, for the acquisition of the Remnant Parcels. Montierre hereby agrees to indemnify, defend, release and hold the City harmless relating to any claims or disputes arising under any contracts or inspections relating to the Remnant Parcels.

Section 9. **Improvements to Ocoee-Apopka Road**. As part of Montierre's development of the Project, Montierre shall be responsible for improvements to Ocoee-Apopka Road from the intersection of West Road south to Franklin Street intersection, and potentially other area improvements, consisting of road widening and infrastructure improvements to accommodate the Project all in accordance with applicable roadway requirements and plans approved by the City based on the review of the Project and the traffic study conducted for the Project (collectively, the "**Ocoee-Apopka Road Improvements**"). The Ocoee-Apopka Road Improvements may also include the acquisition and dedication of additional right of way, the construction of an off-site retention pond and the transfer of maintenance responsibility from Orange County to the City. The City agrees to use good faith efforts to seek federal, state and/or county participation or contributions toward the Ocoee-Apopka Road Improvements. The Ocoee-Apopka Road Improvements may be completed in phases so that certain portions of the Project may receive a certificate of completion and/or certificate of occupancy prior to the full completion of the Ocoee-Apopka Road Improvements, pursuant to a phasing schedule agreed to by Montierre and the City's Development Services Department as part of the development approvals process for the Project. Montierre shall be solely responsible for the construction and costs relating to the Ocoee-Apopka Road Improvements; however, Montierre shall receive transportation impact fee credits as allowed under the Ocoee Land Development Code for Montierre's actual and documented third party expenses relating to the Ocoee-Apopka Road Improvements with the amount of and timing of such credits being memorialized in an impact fee agreement entered into by the parties and determined as part of the review of the Project and the traffic study conducted for the Project. In the event a party other than Montierre contributes land, improvements or funds relating to the Ocoee-Apopka Road Improvements, Montierre shall not be entitled to transportation impact fee credits for the same. In addition, Montierre shall not be entitled to an amount of transportation impact fee credits that exceed the amount of transportation impact fees calculated for the Project.

Section 10. Existing Ballfields. As part of Montierre's development of the Project, Montierre shall build two (2) new baseball fields for the City's Parks and Recreation Department on City property for the City's use for City youth leagues (collectively, the "**City Ballfield Improvements**"). Montierre shall be solely responsible for the costs relating to the City Ballfield Improvements. Provided that the construction of the City Ballfield Improvements are not delayed through no fault of Montierre, the City may withhold the issuance of final certificates of occupancy within the Project until such time as the City Ballfield Improvements are completed and accepted.

Section 11. Limited Use Rights. Montierre agrees that the City (and City affiliated or sponsored organizations at the election by the City) for no additional consideration shall have limited use rights to the ballfields within the Project. It is anticipated that such use rights will be during non-peak use times and days so as not to interfere with the use of the ballfields by the Baseball Organization. Prior to the conveyance of the City Property to Montierre the parties shall agree on the use rights and shall further document the same as a party deems appropriate.

Section 12. Notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) when (i) hand delivered to the other party, or (ii) when sent by overnight courier service for next business day delivery (i.e., Federal Express), addressed to the party at the address set forth opposite the party's name below, or such other person or address as the party shall have specified by written notice to the other party delivered in accordance herewith:

MONTIERRE: Montierre Development, PLLC
Attention: Jaime Douglas

5669 SE Crooked Oak Ave.
Hobe Sound, FL 33455
E-Mail: jaime@montierredevelopment.com

With a copy to: Shutts & Bowen, P.A.
Attention: Daniel T. O'Keefe, Esq.
300 South Orange Avenue, Suite 1600
Orlando, FL 32801
E-Mail: DOkeefe@shutts.com

CITY: City of Ocoee
Attention: City Manager
1 North Bluford Ave.
Ocoee, Florida 34761
E-Mail: rfrank@ocoee.org

With a copy to: Shuffield, Lowman & Wilson, P.A.
Attention: Scott A. Cookson, Esq.
1000 Legion Place, Suite 1700
Orlando, Florida 32801
Email: scookson@shuffield.com

Section 13. **Covenant Running with the Land**. This Agreement shall run with the Property for a period of thirty (30) years following the date of the build-out of the Project and shall inure to and be for the benefit of the parties hereto and their respective successors and assigns and any person, firm, corporation, or entity who may become the successor in interest to the Property or any portion thereof.

Section 14. **Assignment**. This Agreement may not be assigned by any party without the prior consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed.

Section 15. **Applicable Law**. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 16. **Time of the Essence**. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

Section 17. **Agreement; Amendment**. This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

Section 18. **Further Documentation**. The parties agree that at any time following a request by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party hereunder.

<u>Section 19.</u> **<u>Specific Performance</u>**. Both the City and the Montierre shall have the right to enforce the terms and conditions of this Agreement by an action for specific performance.

<u>Section 20.</u> **<u>Attorneys' Fees</u>**. In the event that either party finds it necessary to commence an action against the other party to enforce any provision of this Agreement or because of a breach by the other party of any terms hereof, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees, paralegal fees and costs incurred in connection therewith, at both trial and appellate levels, including bankruptcy proceedings, without regard to whether any legal proceedings are commenced or whether or not such action is prosecuted to judgment.

<u>Section 21.</u> **<u>Counterparts</u>**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

<u>Section 22.</u> **<u>Captions</u>**. Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

<u>Section 23.</u> **<u>Severability</u>**. If any word, sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Agreement can still be achieved.

<u>Section 24.</u> **<u>Effective Date</u>**. The Effective Date of this Agreement shall be the day this Agreement is last executed by a party hereto and such date shall be inserted on Page 1 of this Agreement.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Montierre and the City have caused this instrument to be executed by their duly authorized elected officials, partners, and/or officers as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

____

Print Name: ____________________

____

Print Name: ____________________

MONTIERRE:

MONTIERRE DEVELOPMENT, PLLC, a Florida professional limited liability company

By: ______________________________
Print Name:
Title:

STATE OF _________________________
COUNTY OF _______________________

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, by means of ☐ physical presence or ☐ online notarization personally appeared ____________________, as _________ of **MONTIERRE DEVELOPMENT, PLLC,** a Florida professional limited liability company, who ☐ is personally known to me or ☐ produced ______________________________ as identification, and that he/she acknowledged executing the same on behalf of said company in the presence of two subscribing witnesses, freely and voluntarily, for the uses and purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _________________, 2023.

____
Signature of Notary

____
Name of Notary (Typed, Printed or Stamped)
Commission Number (if not legible on seal):_________________
My Commission Expires (if not legible on seal): ______________

Signed, sealed and delivered
in the presence of:

____

Print Name:_____________________

____

Print Name______________________

<u>CITY</u>:

CITY OF OCOEE, FLORIDA

By:___________________________________
Rusty Johnson, Mayor

Attest: ________________________________
Melanie Sibbitt, City Clerk

(SEAL)

FOR USE AND RELIANCE ONLY BY THE CITY OF OCOEE, FLORIDA. Approved as to form and legality this ____ day of ___________, 2023.

SHUFFIELD, LOWMAN & WILSON, P.A.

By:_____________________________
City Attorney

APPROVED BY THE OCOEE CITY COMMISSION AT A MEETING HELD ON __________________________, 2023 UNDER AGENDA ITEM NO. _________________.

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, by means of physical presence personally appeared **RUSTY JOHNSON** and **MELANIE SIBBITT**, personally known to me to be the Mayor and City Clerk, respectively, of the **CITY OF OCOEE, FLORIDA** and that they severally acknowledged executing the same in the presence of two subscribing witnesses, freely and voluntarily under authority duly vested in them by said municipality.

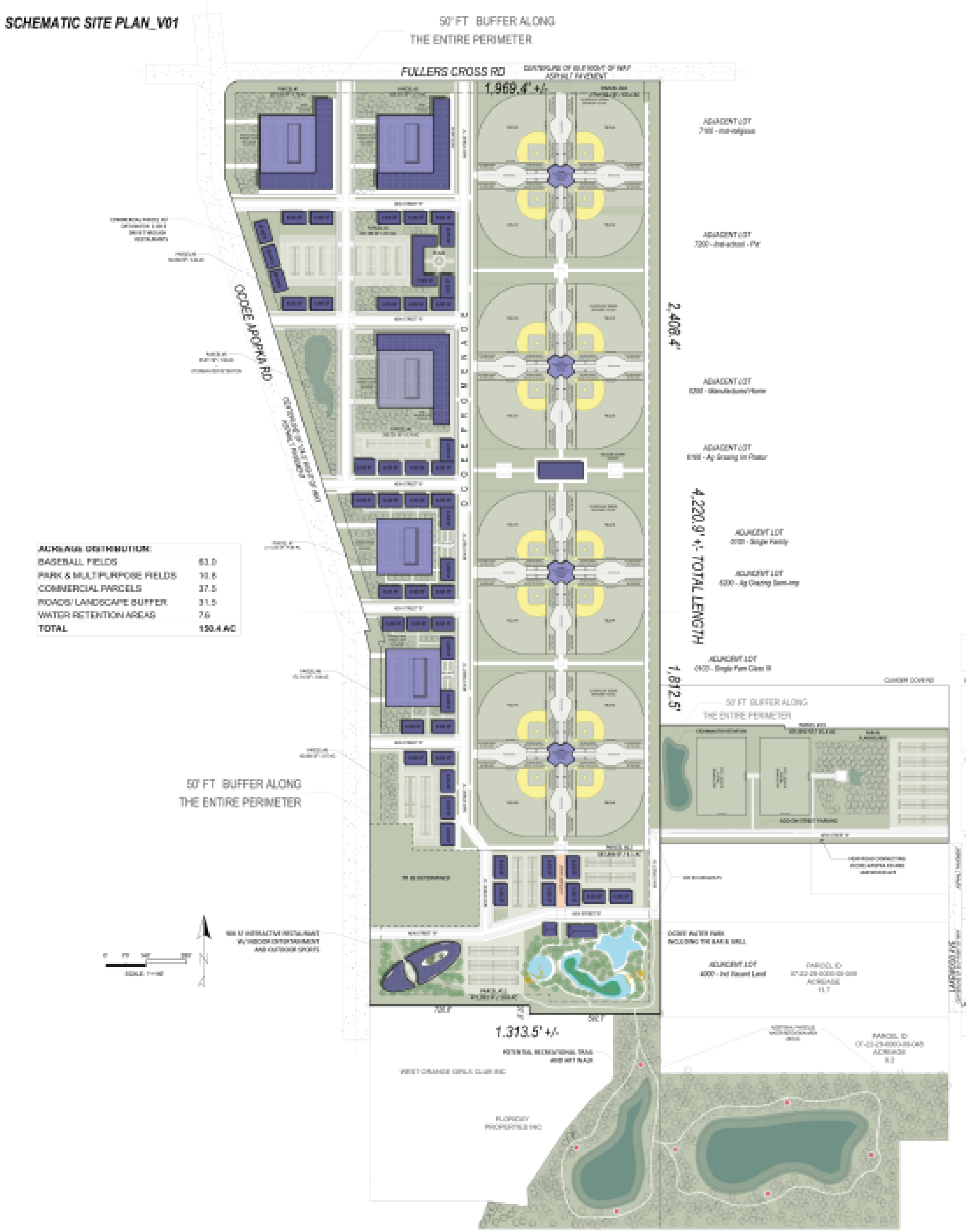
WITNESS my hand and official seal in the County and State last aforesaid this _____ day of ______________, 2023.

____
Signature of Notary

____
Name of Notary (Typed, Printed or Stamped)
Commission Number (if not legible on seal):_________________
My Commission Expires (if not legible on seal): _______________

EXHIBIT “A”
Depiction of Project

The below depictions are conceptual only and, as of the date hereof, have not been reviewed or approved by the City. It is anticipated that the Project will change from what is depicted as part of the City’s normal site plan review process.



DEVELOPMENT AGREEMENT
(Ocoee Regional Sports Complex)