

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

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FOR RECORDING DEPARTMENT USE ONLY

CITY OF COCOA

CIRRUS MIXED-USE DEVELOPMENT AGREEMENT

THIS CIRRUS MIXED-USE DEVELOPMENT AGREEMENT ("Agreement") is made and executed this ____ day of _____, 2021, by and between the **CITY OF COCOA**, a Florida municipal corporation (the "City"), whose address is 65 Stone Street, Cocoa, Florida 32922 and **COCOA RETAIL, LLC**, a North Carolina limited liability company authorized to do business in the State of Florida (the "Developer"), whose address is 1111 Metropolitan Avenue, Suite 700, Charlotte, NC 28236. For purposes of this Agreement, the City and Developer may be referred to as "Parties," and individually each a "Party."

WITNESSETH:

WHEREAS, Developer is the owner of approximately 15.74 acres, more or less, of certain real property located north of SR 524 and west of Industry Road, in Cocoa, Brevard County, Florida, and legally depicted and described on **Exhibit A**, attached hereto and incorporated herein (the Property"); and

WHEREAS, an existing building of approximately ± 85,000 square feet and related parking lot are located on the Property and which building has remained vacant for approximately fifteen (15) years; and

WHEREAS, the Developer desires that the Property be redeveloped into a mixed-use Planned Unit Development (PUD) and has requested approval of PUD zoning and a final development plan for the Property (the "Mixed-Use PUD"), along with a preliminary plat to subdivide the Property into a parcel consisting of approximately 13.40 acres

intended for multi-family use (the "Multi-Family Parcel") and a parcel consisting of approximately 2.25 acres fronting SR 524 intended for future commercial use (the "Commercial Parcel"); and

WHEREAS, the City has determined the Property is an appropriate location for a quality infill development; and

WHEREAS, the Developer desires to redevelop and construct a first-class, luxury apartment complex containing approximately 280 multi-family units, swimming pool, dog park, parking and related facilities to be known as "The Cirrus Apartments" and a commercial development on the Commercial Parcel (collectively be referred to as the "Project"). The Parties have entered into this Agreement for the purpose of specifying the terms and conditions pursuant to which the Developer shall generally administer all aspects of the development of the Project; and

WHEREAS, the Developer desires to redevelop the Property in phases and that the final development plan indicates that the multi-family portion of the Mixed-Use PUD be designated 'Phase 1" and the commercial portion be designated as "Phase 2;" and

WHEREAS, the City Council and Developer desire to enter into this Agreement to allow for the future redevelopment of the Property pursuant to the terms and conditions stated herein including as required by the Mixed-Use PUD and the City Code; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1.0 Recitals. The foregoing Recitals are true and correct and are hereby incorporated herein by this reference.

2.0 Authority. This Agreement is entered into pursuant to the Florida Municipal Home Rule Powers Act and Section 15-21 of the City Code.

3.0 Project Description and Requirements. Developer shall, at its expense, design, permit and construct a mixed-use development on the Property as follows:

(a) Phase 1 of the Property of the Mixed Use PUD shall consist of a multi-family apartment complex on the "Multi-Family Parcel" with amenities, and Phase 2 on the "Commercial Parcel" shall consist of a commercial development as more fully set forth on the approved final development plan, prepared by B.S.E. Consultants, Inc., Project Number 11545, dated____, 2021, and approved by the City on _____,

2021, a complete copy of which is maintained on file by the City at City Hall (the "Final Development Plans"). However, Sheet #___ of ___ of the Final Development Plans, which depicts the Overall Site Plan, is attached hereto and incorporated herein as **Exhibit B** for purposes of conveniently illustrating the Project. The multi-family portion of the Mixed-Use PUD, including all supporting parking, infrastructure, and traffic facilities shall be constructed in Phase 1 of the Project. In addition, all shared infrastructure between Phases 1 and 2, including, but not limited to, potable water, sanitary sewer, and reclaimed water service, shared stormwater facilities and shared access entrances and drives, as more fully set for in the Final Development Plans, shall be completed in Phase 1 of the Project.

(b) The Developer shall redevelop the "Commercial Parcel" as Phase 2 of the Project consistent with the City Code and the terms and conditions as otherwise set forth in this Agreement.

(c) The Developer shall be responsible for securing, at Developer's expense, all utility services necessary and required to support the Project, and to the extent that any existing utilities on the Property must be relocated, the Developer shall likewise be responsible for such relocation. The Developer shall also provide any necessary utility easements required by the utility provider to provide service to the Property.

(d) The following City Code waivers are approved by the City:

1. For Phase 1 of the Project, trees to be newly planted as identified on the approved Landscape Plan that are not required as replacement trees pursuant to Article XIII, Section 22 of the City Code shall be a minimum 2.5" d.b.h at planting.

2. For Phase 1 of the Project, a reduction of thirteen (13) parking spaces shall be permitted from the total required number of parking spaces to allow for the addition of a sidewalk connection along the southwest access aisle.

4.0 Development Schedule and Future Permitting. Phase 1 of the Project on the Multi-Family Parcel shall be developed in accordance with the approved Final Development Plans and the Development Schedule included in this Section. In addition, the Developer shall have the obligation to further submit and obtain the City's approval of an Amended Final Development Plan(s), for Phase 2 on the Commercial Parcel of the Mixed-Use PUD consistent with the requirements of this Agreement and in compliance

with the City Code, and in accordance with the Development Schedule included in this Section. The Phase 1 improvements of the Multi-Family Parcel shall be completed within forty-eight (48) months from the Effective Date of this Agreement. In the event Developer fails to complete construction of the Phase 1 Improvements as required by this Section, and Developer has not obtained building permits for the construction of Phase 2, the City shall have the right, but not obligation, to terminate this Agreement after providing Developer written notice of default and an opportunity to cure pursuant to Section 22 of this Agreement.

The Phase 2 Commercial Parcel shall be developed in one (1) or two (2) parcels, concurrently or independently. In either event, within forty-eight (48) months from the Effective Date of this Agreement, Developer and the City shall process for the City's consideration and approval an amendment to the Final Development Plans for the remaining Phase 2 stage of the Project, pursuant to Appendix A, Zoning Article XI, Section 17(j), and this Agreement, as required by Section 5 of this Agreement. If the Developer and City are not able to timely complete the Phase 2 amendment to this Agreement and Final Development Plans prior to the completion of the Phase 1 improvements, the City Manager, upon written request by the Developer, is authorized to grant for good cause a one (1) year extension to complete the Phase 2 amendment required by this Agreement. Any additional time extensions requested by the Developer, in writing, shall require the approval of the City Council. Upon approval and execution of the Phase 2 amendment to this Agreement by the Parties, and the City's approval of the amendment to the Development Plans for the Commercial Parcel, Developer shall promptly obtain building permits and complete construction of the Project on the Commercial Parcel.

The Developer shall be solely responsible for obtaining any and all necessary local and state permits including, but not limited to, building and environmental permit approvals which are required in order to permit the Project in compliance with local, state, and federal law. The Developer shall be responsible for all recording fees associated with this Agreement. Nothing contained herein shall be construed or interpreted as requiring the City Council to approve any future amendment to the Final Development Plan. The City Council will consider and act upon said application at appropriate public hearings pursuant to the requirements of law. If any amendment to the Final Development Plan(s) is denied by the City Council, Developer acknowledges that a modification to this Agreement may be required and a new Amendment to the Final Development Plan application may be presented to the City Council.

5.0 Phase 2 - Common Space Requirements and PUD Code. Developer shall be required to submit for City approval a future Amendment to the Final Development Plans for the Phase 2 commercial portion of the Mixed-Use PUD to provide detailed engineering and plans depicting the common space amenities, schematic drawings of the elevation and architectural construction of the commercial structures, proposed drive aisles and parking, landscape design, development schedule, and all other necessary elements required pursuant to Appendix A, Zoning, Article XI, Section 17 of the City Code for a Planned Unit Development. The open space approved by the City on the the Final Development Plans for Phase 1 shall be deemed sufficient by the City to satisfy the minimum common public space requirements in the commercial portion of the Mixed-Use PUD. No additional common public space will be required for the commercial portion of the Mixed-Use PUD.

6.0 Uses Permitted. The uses allowed on Phase I of the Property shall be limited to Multi-Family residential. The uses allowed on Phase II of the Property shall be commercial as expressly set forth as follows:

1. Retail stores, sales and display rooms (except automotive) and similar uses, including places such as bakeries in which goods are produced and sold at retail upon the premises;
2. Liquor stores (retail);
3. Personal service establishments such as beauty and barbershops, laundry and dry cleaning pickup stations, tailor shops and similar uses;
4. Professional offices;
5. Medical and dental clinics and laboratories;
6. Animal clinics and veterinary services;
7. Financial institutions;
8. Business service establishments such as secretarial services, drafting, reproduction services;
9. Restaurants, with or without drive-thru facilities, provided that a restaurant located within 100 feet of adjacent residentially zoned property shall be subject to the following:
Outdoor entertainment shall be prohibited;
The restaurant shall be required to close no later than 12:00 PM on Sunday through Thursday and no later than 2:00 AM on Friday and Saturday;
10. Hotels and motels;
11. Community or cultural centers, art galleries, museums and libraries; and
12. Any other commercial uses compatible with this list of commercial uses and the Phase 1 Multi-Family Project that are requested by the Developer, in writing,

and reviewed and approved by the City Council as an amendment to this Agreement.

7.0 Representations of the Parties. The City and Developer hereby each represent and warrant to the other that it has the power and authority to execute, deliver and perform the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement will, when duly executed and delivered by the City and Developer, constitute a legal, valid and binding obligation enforceable against the Parties hereto. Upon the recording of this Agreement in the Public Records of Brevard County, Florida, the Agreement shall be a binding obligation upon the Property in accordance with the terms and conditions of this Agreement. Developer represents that it has voluntarily and willfully executed this Agreement for purposes of binding himself and the Property to the terms and conditions set forth in this Agreement.

8.0 Successors and Assigns. This Agreement shall automatically be binding upon and shall inure to the benefit of the City and Developer and their respective successors and assigns. The terms and conditions of this Agreement similarly shall be binding upon the Property and shall run with title to the same upon being duly recorded against the Property by the City.

9.0 Applicable Law; Venue; Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue of any litigation arising out of this Agreement shall be in Brevard County, Florida or, for federal court actions, in Orlando, Florida. The Parties hereby agree and acknowledge that they have both participated equally in the drafting of this Agreement and no Party shall be favored or disfavored regarding the interpretation to this Agreement in the event of a dispute between the Parties.

10.0 Amendments. This Agreement shall not be modified or amended except by written agreement duly executed by both Parties hereto (or their successors or assigns) and approved by the City Council.

11.0 Entire Agreement; Exhibits. This Agreement and all attached exhibits hereto supersede any other agreement, oral or written, regarding the Property and contain the entire agreement between the City and Developer as to the subject matter hereof. The Exhibits attached hereto and referenced herein are hereby fully incorporated herein by this reference.

12.0 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect the validity or enforceability of the remainder of this Agreement.

13.0 Effective Date. This Agreement shall become effective upon approval by the City Council and execution of this Agreement by both Parties hereto.

14.0 Recordation. Upon full execution by the Parties, this Agreement shall be recorded in the Public Records of Brevard County, Florida by the City and shall be binding on the Property and all owners thereof.

15.0 Relationship of the Parties. The relationship of the Parties to this Agreement is contractual and Developer is an independent contractor and not an agent of the City. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither Party is authorized to, nor shall either party act toward third persons or the public in any manner, which would indicate any such relationship with the other.

16.0 Sovereign Immunity. Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars (\$300,000.00).

17.0 City's Police Power. Developer agrees and acknowledges that the City hereby reserves all police powers granted to the City by law. In no way shall this Agreement be construed as the City bargaining away or surrendering its police powers.

18.0 Interpretation. The parties hereby agree and acknowledge that they have both participated equally in the drafting of this Agreement and no party shall be favored or disfavored regarding the interpretation to this Agreement in the event of a dispute between the parties.

19.0 Third-Party Rights. This Agreement is not a third-party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third party.

20.0 Attorney's Fees. In connection with any arbitration or litigation arising out of this Agreement, each Party shall be responsible for their own attorney's fees and costs.

21.0 Development Permits. Nothing herein shall limit the City's authority to grant or deny any development permit applications or requests subsequent to the effective date of this Agreement. The failure of this Agreement to address any particular City, County, State and/or Federal permit, condition, term or restriction shall not relieve Developer or the City of the necessity of complying with the law governing said permitting requirement, condition, term or restriction. Without imposing any limitation on the City's police powers, the City reserves the right to withhold, suspend or terminate any and all certificates of occupancy for any building, trailer, structure or unit if Developer is in breach of any term and condition of this Agreement.

22.0 Default. Failure by either Party to perform each and every one of its obligations hereunder shall constitute a default, entitling the non-defaulting Party to pursue whatever remedies are available to it under Florida law or equity including, without limitation, termination of this Agreement or an action for specific performance and/or injunctive relief. Prior to any party filing any action as a result of a default under this Agreement, the non-defaulting Party shall first provide the defaulting Party with written notice of said default. Upon receipt of said notice, the defaulting Party shall have thirty (30) days, or other reasonable time period not to exceed one hundred twenty (120) consecutive days in the event the thirty (30) day time period is not a sufficient time to cure said default to the reasonable satisfaction of the non-defaulting Party prior to filing said action.

23.0 Termination. In addition to those circumstances allowing termination as already provided herein, the City shall have the right, but not obligation, to terminate the Agreement if Developer permanently abandons construction of the Project, provided, however, the City shall first deliver written notice and an opportunity to cure to the defaulting Party as set forth in Section 22.0 above. If the City terminates this Agreement, the City shall record a notice of termination against the Property in the public records of Brevard County, Florida. This Agreement may otherwise be terminated by mutual written agreement of the Parties.

24.0 Indemnification and Hold Harmless. Developer shall be solely responsible for designing, permitting, constructing, operating and maintaining this Project. As such, Developer hereby agrees to indemnify, release, and hold harmless the City and its elected officials, employees and attorneys from and against all claims, losses, damages, personal injuries (including, but not limited to, death), or liability (including reasonable attorney's fees and costs through all appellate proceedings), directly or indirectly arising from, out of, or caused by Developer and Developer's contractor's and subcontractor's performance of design, permit and construction activities in furtherance of constructing the Project under this Agreement and the operation and maintenance of the Project thereafter. This indemnification shall survive the termination of this Agreement for a period of five (5) years. In the event that the Property is subdivided and the Multi-Family Parcel and Commercial Parcel become under different ownership, this Section 24.0 shall be applied to each parcel separately whereby the owner of each parcel shall be responsible for the aforementioned indemnify, release and hold harmless of the City and its elected officials, employees and attorneys for any design, permitting, construction, operation and maintenance activities occurring on their respective parcel only and not the parcel of the other owner.

25.0 Force Majeure. The Parties agree that in the event that the failure by either Party to accomplish any action required hereunder within a specified time period ("Time Period") constitutes a default under the terms of this Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such Party, including, but not limited to, acts of God, acts of government authority (other than the City's own acts), acts of public enemy or war, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such Party, or severe adverse weather conditions ("Uncontrollable Event"), then, notwithstanding any provision of this Agreement to the contrary, that failure shall not constitute a default under this Agreement and any Time Period proscribed hereunder shall be extended by the amount of time that such Party was unable to perform solely due to the Uncontrollable Event. The extended time period shall be agreed to in writing by the Parties and said agreement shall not be unreasonably withheld by either Party.

26.0 Notice. Whenever either Party desires to give notice to the other, notice shall be sent by hand delivery or certified mail, return receipt requested, and regular U.S. mail and shall be sent to:

For the City:
City of Cocoa

with copies to:
City Attorney of Cocoa

City Manager
Stockton Whitten
65 Stone Street
Cocoa, FL 32922

Anthony Garganese, Esq.
Garganese, Weiss, D'Agresta & Salzman, P.A.
111 N. Orange Ave., Suite 2000
Orlando, Florida 32802

For Developer:
Cocoa Retail, LLC
Bob Sterns
1825 Riverview Driver
Melbourne, FL 32901

with copies to:
Christopher N. Challis
c/o Sooner Investment Group, Inc.
2301 W. 1-44 Service Road, Suite 100
Oklahoma City, OK 73112

Either Party may freely modify their respective contact person and address contained in this Paragraph by providing written notice of the modification to the other Party. Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; and if mailed, on the third business day after mailing.

27.0 Assignment. The Developer shall not assign this Agreement prior to the recordation required by Section 14 of this Agreement. Upon recordation, the commitments and obligations set forth hereunder shall run with the land and shall be fully binding on the Property and all owners thereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal on the date first above written.

[Signature Pages Follow]

Signed, sealed and delivered in the presence of the following witnesses:

City of Cocoa

Signature of Witness

Printed Name of Witness

Signature of Witness

Printed Name of Witness

By: _____

Michael C. Blake, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM

By: _____

Carie Shealy, City Clerk

By: _____

Anthony A. Garganese, City Attorney

CITY SEAL

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of (___) physical presence or (___) online notarization, this ____ day of _____, 2021, by Michael C. Blake, the Mayor of the City of Cocoa, on behalf of the City, who is personally known to me or produced _____ as identification.

(NOTARY SEAL)

(Notary Public Signature)

(Print Name)

Notary Public, State of _____

Commission No.: _____

My Commission Expires: _____

Signed, sealed and delivered in the presence of the following witnesses:

COCOA RETAIL, LLC

Signature of Witness

Date: _____

Printed Name of Witness

Signature of Witness

Printed Name of Witness

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this ____ day of _____, 2021, by _____, the _____ of Cocoa Retail, LLC, a North Carolina limited liability company. He is personally known to me or produced _____ as identification.

(NOTARY SEAL)

(Notary Public Signature)

(Print Name)

Notary Public, State of _____

Commission No.: _____

My Commission Expires: _____

DEVELOPER IS HEREBY ADVISED THAT SHOULD DEVELOPER FAIL TO FULLY EXECUTE, AND DELIVER TO THE CITY, THIS AGREEMENT WITHIN THIRTY (30) DAYS FROM THE DATE THAT THE CITY COUNCIL APPROVES THIS AGREEMENT,

**THIS AGREEMENT, AND THE DEVELOPMENT PERMIT APPROVALS REFERENCED
HEREUNDER, SHALL AUTOMATICALLY BE DEEMED NULL AND VOID.**

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
OVERALL SITE PLAN