

**TYPE III DEVELOPMENT AGREEMENT BETWEEN
FLEMING INDUSTRIAL PARK, LLC AND CLAY COUNTY, FLORIDA**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of this _____ day of September, 2024 by and between Fleming Industrial Park, LLC, a Florida Limited Liability Company (“FIP”) and Clay County, a political subdivision of the State of Florida (the “County”).

RECITALS

WHEREAS, the County enacted Ordinance 1995-44 which established procedures by which development agreements could be considered and approved by the County pursuant to Sections 163.3220 through 163.3243, Florida Statutes, (the “Development Agreement Act”) which Ordinance was designated as Article X of the Clay County Land Development Code (“Article X”); and,

WHEREAS, the County adopted Ordinance 2018-09 which amended Ordinance 1995-44, to create Type III Development Agreements for the purpose of, among other things, providing for the implementation and monitoring of land use controls by mutual agreement between the County and an applicant; and,

WHEREAS, pursuant to Section 125.01055, Florida Statutes (the “Live Local Act”), certain residential development rights are applicable to FIP’s property located at 1834 Storage Avenue, Middleburg (Parcel Identification Number 02-05-25-008874-000-00) (the “Property”), subject to land use controls enumerated in Sections 125.01055(7)(a) and (8), Florida Statutes, related to the provision of affordable housing as defined in Section 420.0004, Florida Statutes; and,

WHEREAS, this Agreement sets forth the applicable land use controls established in Section 125.01055, Florida Statutes and the requirements for monitoring for compliance; and,

WHEREAS, pursuant to the Florida Fire Code, residential development of the Property requires a second means of emergency access; and,

WHEREAS, FIP and the County desire to delineate their respective rights and obligations with regard to the development of multi-family units on the Property and the timing of the provision of a second means of emergency access for any residential development within the Property.

NOW THEREFORE, in consideration of the mutual covenants set forth herein the receipt and sufficiency of which are hereby acknowledged, FIP and the County hereby agree as follows:

- (1) **Legal Description.** FIP owns approximately 17.65 acres of real property in the County, which is described in **Exhibit A** (the “Property”) and which is intended to be developed as a multi-family residential project pursuant to the Live Local Act.
- (2) **Duration.** The duration of this Agreement shall be 30 years from approval of the certificate of occupancy for the last dwelling unit/building permitted within the Property as required by Section 125.01055(7)(a), Florida Statutes.
- (3) **Future Land Use Map Designation and Zoning District.** The land use designation and zoning applicable to the Property are Industrial Land Use and Planned Industrial Development Zoning District.
- (4) **Proposed Uses.** Consistent with the Live Local Act, the Property will be developed with multi-family residential dwellings.
- (5) **Dedication of Land for Public Purposes.** No land is proposed or required as a condition of development of the Property to be dedicated, donated or otherwise provided for public purposes.
- (6) **Plan of Development.** The proposed development consists of a maximum of three hundred and twelve (312) multi-family dwellings, ancillary uses, and supporting infrastructure (parking, buffers, etc.) and will be developed consistent with the RD Zoning District (and not the Planned Industrial Development) as set forth in the County Land Development Code and/or this Agreement, all in substantial compliance with the Preliminary Conceptual Site Plan (the “Plan of Development”) attached as **Exhibit B**. Maximum density permitted is 20 units per net acre and maximum height is 45 feet.

(7) **Land Use Controls.** This Agreement establishes the land use controls applicable to the Property:

a. A minimum of 40 percent of the residential units constructed shall be, for a period of a minimum of 30 years, provided at affordable monthly rents to moderate- income persons, as defined in Sections (3) and (12) of 420.0004, Florida Statutes:

(3) “Affordable” means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (9), subsection (11), subsection (12), or subsection (17).

(12) “Moderate-income persons” means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

The requirement for a minimum of 40 percent of the residential units within the Property to be provided at affordable monthly rents to moderate -income persons, as defined in Sections (3) and (12) of 420.0004, Florida Statutes, shall be calculated per the Program defined herein and apply to the number of residential units under lease on December 31 prior to each February 1 for which an annual report is due pursuant to Section 12 below. Rent ranges shall be consistent with the Florida Housing Finance Corporation Multifamily Rental Programs and CWHIP (Community Workforce Housing Innovation Pilot) Homeownership Program for Clay County as adjusted by the number of bedrooms in the applicable multi-family unit, number of people in a household/unit and as may be annually adjusted (the “Program”).

b. Rent ranges for moderate-income persons applicable for each report year shall be the ranges established by the Program. For reference, as of the Effective Date, the Program rental rates for Clay County are located at [https://www.floridahousing.org/docs/default-source/developers-and-property-managers/compliance/limits/florida-housing-rental-programs---2024-income-and-rent-limits-\(eff-4-1-24---4-22-24-update\).pdf?sfvrsn=42f17b_2](https://www.floridahousing.org/docs/default-source/developers-and-property-managers/compliance/limits/florida-housing-rental-programs---2024-income-and-rent-limits-(eff-4-1-24---4-22-24-update).pdf?sfvrsn=42f17b_2) .

c. Second Means of Access.

i. The second means of emergency access required for the residential use of the Property in accordance with the Florida Fire Prevention Code shall be provided through property

owned by the County that is adjacent to the Property (Parcel No. 02-05-25-008871-000-00) (“Armstrong Park”). The access will be provided by a non-exclusive easement granted by the County to FIP for emergency vehicular and pedestrian access to and from the Property and County Road 220. The easement set forth herein shall be in the form attached as **Exhibit C** (the “Access Easement”).

ii. FIP agrees to construct those improvements described and depicted in **Exhibit D** for the Access Easement (the “Easement Compensation”) prior to the issuance by the County of approval of the engineering site plan for horizontal construction for the Plan of Development (as contemplated in Section 9 of this Agreement). The issuance by the County of Final Construction Plan approval that permits horizontal improvements to support the Plan of Development within the Property shall be conditioned upon the completion and acceptance by the County of the Easement Compensation.

iii. The parties shall execute the Access Easement contemplated under this Agreement within 60 days of the issuance of the building permit for multi-family units.

iv. Approval of this Agreement shall serve to satisfy the requirement identified by the County Development Review Committee (“DRC”) for a second means of emergency access for the Plan of Development. FIP shall be entitled to approval of the Conceptual Site Plan for the Plan of Development upon the Effective Date of this Agreement provided all other DRC comments have been addressed.

(8) **Equivalency of Affordable Dwelling Units.**

a. Affordable rate units and market rate units constructed on the Property shall be proportionately distributed among the residential buildings in the development such that every residential building contains both affordable and market rate units, and in no event shall a residential building consist solely of market rate units;

b. The sizes and number of bedrooms in the affordable rate units shall be proportional to the sizes and number of bedrooms in the market rate units (e.g., for number of bedrooms, if 25% of the market rate units consist of two bedrooms, then 25% of the affordable rate units shall also have two bedrooms) , thereby maintaining a proportional distribution across unit types within the Plan of Development;

c. All common areas and amenities within the Plan of Development shall be accessible and available to all residents whether residing in affordable or market rate units; and

d. The main access entrance to the affordable and market rate units shall be the same.

e. Reference to "affordable" and "affordable rate units" shall be those units rented to moderate- income persons as set forth in Section 7 above.

(9) **Local Development Permits.** The Preliminary Conceptual Site Plan (**Exhibit B**) has been submitted to the County and comments received from the DRC. Any further approvals by the County are contingent on approved plans. Engineering Site Plan approval and building permits need to be approved prior to horizontal and vertical construction, respectively.

(10) **Statement of Voluntary Action.** This Development Agreement is voluntarily entered into in consideration of the benefits inuring to and the rights of the parties arising thereunder.

(11) **Statement of Compliance.** The Plan of Development is consistent with Section 125.01055, Florida Statutes. The Plan of Development will be consistent with land development regulations applicable to multifamily development, specifically the requirements of the RD Zoning District and as provided for in Section 125.01055, Florida Statutes, is a conforming use under the Comprehensive Plan. To the extent required by Section 125.01055, Florida Statutes, FIP shall comply with the applicable Land Development Code and laws in place at the time of the approval of this Agreement.

(12) **Annual Report.** An annual report shall be prepared annually by a certified public accounting firm approved by the County, the expense for such firm shall be paid by FIP. Upon approval of a firm by the County, FIP shall authorize preparation of said annual report. The annual report is due each February 1 beginning with the February following the issuance of a building permit and prior to the issuance of a certificate of occupancy for any residential unit. Once initially required, the annual report shall be continuously submitted each February for the prior calendar year period until expiration or termination of this Agreement. The annual report shall be submitted to the County's Planning Director for processing and review along with an annual monitoring fee set by the Clay County Board of County Commissioners by resolution. If upon review the annual report shows non-compliance with the terms of this Agreement, FIP shall within 60 days establish

compliance and resubmit a corrected annual report showing compliance along with a resubmittal fee set by the Clay County Board of County Commissioners by resolution.

(13) **Successors and Assigns:** This Agreement shall be binding upon and shall inure to all successors in interest of FIP. The obligations and development rights contemplated within this Agreement may be transferred to another party or parties. The County shall be notified of any such assignments. With notice to Clay County, FIP may transfer all or part of the obligations or responsibilities of this Agreement, and, upon said notice, FIP shall cease to be responsible for those obligations or responsibilities identified in the notice.

(14) **Security Interests:** FIP may grant a security interest in this Agreement, provided such security interest is (i) given in connection with obtaining financing for the development of the Property; (ii) is reflected in a document which contains the requirement that a notice of any default be provided to Clay County as a condition precedent to the initiation of any foreclosure or other possessory action; (iii) said document is recorded in the public records of Clay County, Florida; and (iv) a copy of the document creating the security interest is, at the time it is given, delivered to the County. A successful foreclosure of any security interest in this Agreement shall result in the transfer of all rights, responsibilities and obligations granted by this Agreement.

(15) **Other Permits:** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve FIP of the necessity of compliance with applicable land development regulations or law governing such permitting requirements, conditions, terms or restrictions in place at the time of the approval of this Agreement.

(16) **Amendment:** This Agreement may be amended by mutual agreement of the parties.

(17) **Enforcement:** If FIP fails to perform any obligation under this Agreement, the County shall provide a reasonable time to perform the obligation. Reasonable time shall be defined as sixty (60) days. If after the reasonable time FIP has failed to perform the obligation, the County shall deem the residential units as non-conforming and subject to Section 3-11 of the County Land Development Code. Furthermore, the County may initiate legal proceedings to enforce the Agreement and shall have all remedies available at law or in equity, including but not limited to the remedy of specific performance and all forms of injunctive relief. Furthermore, in the event FIP

fails to provide the required minimum of 40 percent of the residential units at affordable monthly rents to moderate- income persons as required in section 7 above, in addition to establishing compliance, FIP shall pay into a County fund for affordable housing initiatives three times the difference between the rent received and the monthly rent for moderate income persons, for all units in non-compliance for the time period of non-compliance, The County shall be entitled to recover all attorney's fees and costs it incurs in enforcing the Agreement plus interest at the then maximum statutory rate for judgments calculated on a calendar day basis until paid.

(18) **Representations and Warranties**: FIP represents that it has the authority to enter into and perform under this Agreement and that this Agreement constitutes the valid, binding and enforceable obligation of FIP .

(19) **Entire Agreement**: This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document.

(20) **Notices**: All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (i) by personal delivery; (ii) by deposit within the United States Postal Service, postage prepaid, to the addresses stated below; or (iii) by deposit with an overnight express delivery service. Notices deposited in the USPS in the manner described above shall be deemed effective five (5) business days after deposit with the USPS. Notice by overnight express delivery service shall be deemed effective 24 hours after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of notice, the address of the County shall be:

Clay County
Attn: County Manager
P.O. Box 1366
Green Cove Springs, FL 32043

With a copy to:

Clay County Planning and Zoning Division
Attn: Planning Director
Post Office Box 367
Green Cove Springs, FL 32043

The address of FIP shall be:

Brent White
Fleming Island Industrial Park, LLC
1635 Eagle Harbor Parkway
Fleming Island, FL 32003

Each party may change its notice address by providing written notice of the change of address as stated in this Agreement.

(21) **Jurisdiction and Governing Law:** Venue for any action brought to enforce or interpret the terms of this Agreement shall be brought in Clay County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.

(22) **Severability:** If any portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent, and such holding shall not affect the validity of the remaining portions.

(23) **Exhibits:** Exhibits to this Agreement consist of the following, all of which are incorporated in and form a part of this Agreement:

- Exhibit A Legal and Sketch Map – the Property
- Exhibit B Preliminary Conceptual Site Plan - Multi-family Residential Development
- Exhibit C Form of Easement
- Exhibit D Easement Compensation Improvements

(24) **Recording/Approval:**

(a) This Agreement shall be recorded in the public records of Clay, Florida, at FIP's expense following its execution by the Parties and shall run with the land.

(b) Notwithstanding that this Agreement is a Type III Development Agreement pursuant to Article X, the Agreement shall be approved by the Clay County Board of County Commissioners for purposes of the Access Easement. This Agreement is not a development agreement subject to the Development Agreement Act, including the public hearing and notice requirements set forth therein and in Article X.

(25) **Effective Date:** This Agreement is effective as of the date recorded in the public records of Clay County.

(26) **Termination:** This Agreement shall automatically terminate and be of no further force and effect if the Property ceases to be developed as or is not developed with the Plan of Development as contemplated in this Agreement. Upon such automatic termination, at the request of FIP or the County, the applicable party shall execute and deliver a written termination of this Agreement and the Access Easement, if executed, in recordable form, and such requesting party shall be entitled to record the same in the Official Records of Clay County, Florida.

[The remainder of this page intentionally left blank.]

Witnesses:

Signed, sealed, and delivered
in the presence of:

Print Name: _____
Postal Address: _____

Print Name: _____
Postal Address: _____

ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

**STATE OF FLORIDA
COUNTY OF CLAY**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of September, 2024, by Jim Renninger, as the Chairman of the Board of County Commissioners of **CLAY COUNTY**, a political subdivision of the State of Florida, on behalf of the political subdivision. Such person is personally known to me or has produced _____ as identification.

{Notary Seal must be affixed}

GRANTEE:

CLAY COUNTY, a political subdivision of
the State of Florida

By: Board of County Commissioners

By: _____

Name: Jim Renninger

Title: Chairman

Signature of Notary Public

Print Name: _____

Notary Public, State and County aforesaid

Commission No.: _____

My Commission Expires: _____

Witnesses:

Fleming Industrial Park, LLC

Signed, sealed, and delivered
in the presence of:

By: Brent White

Its: _____

Print Name: _____

Postal Address: _____

Print Name: _____

Postal Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this _____ day of _____, 2024, by Brent White, on behalf of Fleming Industrial Park, LLC, who is () personally known to me or () who has produced _____ as identification.

Notary Public Signature

My Commission Expires: _____
(SEAL)

Printed Name: _____

() Online Notary (Check if acknowledgment done by Online Notarization)

Exhibit A

Legal and Sketch Map

Exhibit B

Preliminary Conceptual Site Plan

Exhibit C

Form of Easement

Exhibit D

Easement Compensation Improvements