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PLANNED DEVELOPMENT AGREEMENT
Holden Avenue PD

The application of Bavaria Holdings, LLC (hereinafter referred to as “Developer”) and Ordinance _____ for rezoning was heard by and before the City Council of the City of Edgewood, Florida (hereinafter referred to as “City”) on the ____ day of _____, 2020, for second and final reading. Based upon the application and other supporting documents, the Land Use Plan, maps, and other instruments, and based upon the advice, reports and recommendations of the City Engineer, and City Planner of the City of Edgewood and the first reading of the Ordinance by City Council on _____, the City Council does hereby find and determine as follows:

GENERAL FINDINGS

- a. That the application for rezoning was initially filed with the City on _____, as required by City Ordinance.
- b. That all fees and costs which are by law or regulation of the City required to be borne and paid by the applicant for rezoning of property have been paid.
- c. That application to rezone involves parcels of land containing 13.46 acres, more or less, situated in the City of Edgewood, Orange County, Florida. This parcel of land is described more particularly in the legal description which is attached hereto as **Exhibit “A”** (hereinafter referred to as the “Subject Property”) and incorporated herein.
- d. Developer is the owner in fee simple of the Subject Property.
- e. That the Development Review Committee held a public meeting wherein it considered the application and proposed Land Use Plan and moved the rezoning application and proposed land use plan forward to Planning and Zoning Committee.
- f. That on _____ at a public hearing the Planning and Zoning Committee reviewed and considered the application and proposed Land Use Plan, input from the public, and

reports and recommendations of the DRC and after considering the testimony of the applicant, the proposed conditions of approval by the applicant and other documents, the Planning and Zoning Committee made its recommendations to City Council.

g. That pursuant to the City's Code, the City Council held public hearings to review and consider the application for rezoning and proposed Land Use Plan and recommendations of the Planning and Zoning Committee relative to proposed conditions of approval. City Council heard testimony and received evidence from the applicant, and applicant's expert and members of the public.

h. Developer intends to construct a residential development consisting of those components described in the Land Use Plan attached hereto as **Exhibit "B"** and made a part hereof. The City Council agrees that the attached Land Use Plan conforms with all conditions contained herein.

i. Developer hereby affirms and acknowledges that everything contracted for, negotiated, acknowledged and affirmed herein by Developer is done freely and voluntarily.

j. That Ordinance _____ to which a copy of this Planned Development Agreement (the "Agreement") is attached, relating to the rezoning of Subject Property to Planned Development has been properly publicly noticed under the statutes of the State of Florida and the City's Code of Ordinances.

k. The City Council agrees that the Planned Development and the attached Land Use Plan is consistent with the goals, objectives and policies of the City's Comprehensive Plan and that the proposed development is consistent with the use and density requirements of the City's Comprehensive Plan.

l. The City enters this Agreement pursuant to its Home Rule Powers given to it under the Florida Constitution and the Florida Statutes.

NOW THEREFORE, in consideration of the covenants set forth below and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer, on behalf of itself, its agents, successors and assigns, hereby agree as follows:

1. **Incorporation of General Findings.** The general findings set forth above are true and correct and incorporated herein as if fully set out below.

2. **Compliance.**

a. The Developer shall conform to the Land Use Plan dated received X/X/2020 submitted by Developer and attached hereto as **Exhibit "B"** and with all conditions and requirements of Ordinance _____, which rezoned the Subject Property to Planned Development.

b. The Developer shall comply with all City laws, codes, ordinances, and regulations now in effect, which are incorporated herein by reference, except to the extent the applicable laws, codes, ordinances and regulations are expressly waived and modified by this Agreement or by action approved by City Council.

c. The Developer shall comply with all applicable Federal, State, and County laws, and all City laws, codes, ordinances and regulations hereinafter adopted which are not inconsistent with the specific terms and agreements set forth herein. In the event of a conflict between requirements of two or more governmental entities having jurisdiction over the subject property the more restrictive requirement shall apply.

d. The Developer shall comply with the terms of this Agreement as it may be amended from time to time.

e. The Developer shall comply with the City's Comprehensive Plan.

3. **Power to Bind.** The Developer hereby covenants and warrants that its officer executing this Agreement has the right, authority and capacity to enter into this Agreement, and Developer acknowledges that the City relied upon the Developer's covenants in connection with the decision to enter into this Agreement.

4. **Comprehensive Plan/Future Land Use.** The City attests that the future land use designation to the property allows single family residential.

5. **Plan of Development.**

a. **Maximum units:** The maximum number of units shall be forty-six (46) and all such units shall be single family detached residential.

b. **Minimum lot size:** The minimum lot size shall be 6,025 (50' x 120.5') square feet.

c. **Minimum net living area:** Residential structures of no less than 1,800 square feet under A/C. 12 of the residential structures shall be no less than 2,200 square under A/C feet shall be constructed on the Subject Property.

d. **Minimum lot width:** A maximum of X number of lots shall be allowed to have a, minimum lot width of fifty (50) feet; A maximum of X lots shall be allowed to have a minimum lot width of sixty (60) feet; at least X number of lots shall have a minimum lot width of seventy (70) feet).

e. **Maximum Building Height:** The maximum building height shall be thirty-five (35) feet or two stories; whichever is less.

f. **Setbacks:** The minimum setbacks shall be as follows:

Minimum Setbacks	
Front Yard (Roofed Porch)*	15'
Front Yard (Living Area)	20'
Front Yard (Garage)	20'
Rear Yard*** (Building)	20'
Rear Yard*** Screen Enclosure	5 feet
Rear Yard*** Pool	10 feet
Corner Lot (Side Yard) includes all structures, pool & screen Enclosures)	15'
Side Yard (Building, Pool & Screen Enclosures)	5'** (50' and 60' lots) 7.5' (70' lots)
Perimeter (Property Line)	20'

Comment [EaR1]: Define difference between Perimeter and Rear

* A front porch or similar appurtenance may encroach into the front yard setback, up to 5' resulting in a 15' front yard setback for porches and a 20' front yard setback for the remainder of the home, including the garage.

Comment [EaR2]: What would this include. Recommend deleting this wording.

** Use of 5' minimum side yard setback is conditioned on a minimum of 10' separation between what? Between structures and appurtenances as well as staggering the location of mechanical equipment, water filtration systems, gas tanks, propane tanks, and any other utility or service equipment located on the same side of the home.

Comment [EaR3]: When would this be otherwise? If it is a 5 feet side setback, it would always be at least 10 feet between structures. What is meant by staggering? Previously recommended: being alternated between lots in a manner to ensure that only one set of such mechanical equipment is located between any two buildings.

***Right-of-Way/Holden Avenue Setback includes all structures and pools and screen enclosures	60 feet from c/l (which is 30 feet from the property line
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Comment [EaR4]: Consideration of any variance to this requires a letter from the County.

- g. Density: Density shall not exceed four units per acre.
- h. Maximum Impervious Lot Coverage: The maximum lot coverage shall be % impervious.
- i. Driveway Width: Driveway width shall be a minimum of 18 feet.
- j. Parking: Parking for each lot shall be designed to allow two parking spaces in the garage and two spaces in the driveway for a total of four (4) parking spaces per residence. Additional parking will be provided through one-sided on-street parking. This parking will be regulated with signage and requirements within the Declaration of Covenants, Conditions and Restrictions.
- k. Drainage: All drainage resulting from the Development must be able to be accommodated within the Development's stormwater and drainage system.

Comment [EaR5]: Justification is necessary to allow more than allowed in any other single family district, which is 45%. The first time 70% maximum impervious surface is allowed is for a two family structure in R3.

Comment [EaR6]: 18 feet is the minimum supported by staff. Even at 18 feet, there is barely enough room for parking side by side and opening doors, let alone insufficient width for a pedestrian path.

l. Subdivision signage: Proposed signage shall be submitted with the application for Development Plan and must meet all sign requirements of the City's Code of Ordinances. A separate permit for signage shall be required.

Comment [EaR7]: Is a separate sign permit needed if submitted with the Development Plan?

m. Open Space: The minimum common open space shall be calculated based on overall gross acreage.

n. Tree removal: The Developer shall make every reasonable effort to save all live oak trees located upon the Subject Property.

Comment [EaR8]: Moved from 10.

The PD shall be subject to Code Chapter 130. An application for tree removal must be submitted, and a tree removal permit shall be required before the removal of any existing trees. The tree removal application shall include a replacement schedule as required by the City's Code of Ordinances and shall be reviewed concurrently with the Development/Subdivision plan. Upon request by the City Engineer, the Developer shall be required to submit a report by a professional arborist to justify removal of any existing trees, including and not limited to dead or diseased trees.

Comment [EaR9]: The language is recommended to eliminate any confusion that Chapter 130 pertains to PDs. Recommend increasing the replacement tree dbh. Currently the replacement is only 1.5 inches not even measured at dbh: A tree commonly sold in a 15-gallon container, of at least 1½ inches in diameter as measured three feet above soil level, and of a crown height of at least eight feet. DBH is typically 4.5 feet.

It shall be the responsibility of the developer and permittee (if the permittee is not the property owner) to ensure any tree designated to remain shall be protected. If posts are used as protective barriers, they shall be placed at points not closer than six feet of the trunk perimeter of any tree. A tree of four feet or more in diameter may require additional space as needed to protect the trees roots. Each section of the barrier shall be clearly visible (flagged with brightly colored plastic tapes or other markers).

The property owner and permittee shall guarantee survival of retained or replaced trees for one year from completion of permitted construction. Should any tree be deemed non-viable tree upon the inspection, that tree shall be replaced with a comparable tree within 60 days of the City's notification of need.

o. Landscaping :

1) Subdivision landscape plan shall be consistent with that approved with the Land Use Plan. No certificate of completion for the subdivision will be issued until the landscaping identified herein has been installed, inspected and approved by the City.

2) Holden Avenue Buffer

Holden Avenue Buffer Landscaping: The Holden Avenue buffer will include 16-18 foot tall shade trees with minimum caliper at planting of 5", which reach a mature height of 30'-40'. The trees shall be planted at 40' intervals or may be centered on the wall between the columns (with 30' feet off center). The buffer must include a continuous hedge along the wall, shall be at least 24 inches high at planting of a species capable of growing to at least 36 inches in

Comment [EaR10]: Shade trees are recommended

height within 18 months, which hedge shall be maintained at a height not less than 36 inches and a tiered planting of groundcover, small shrubs, medium shrubs and/or ornamental grasses up to the wall hedge. The height of the hedge shall be measured from site grade. A variety of foliage and/or flower color and accent plants shall be used. The selected plant material will be based on the plant's growth habit to fulfill the designed intent to avoid the need for excessive trimming.

Comment [EaR11]: Moved from v.

All requisite landscaping, whether preserved or newly planted, shall be irrigated and must demonstrate health and viability before issuance of the certificate of completion.

Comment [EaR12]: 1. It has been represented in the past that the overhead utilities along Holden will be buried; mention here implies otherwise.

The city may perform a courtesy inspection of the landscaping within 90 days after issuance of the certificate of occupancy/completion. If the landscaping appears to be under stress, staff shall notify the developer/HOA. A compliance inspection will be performed approximately one year after landscape installation. If the landscaping is not viable, notice shall be given to the developer/HOA, and the developer/HOA shall be responsible for restoring the landscaping within a time period acceptable to the city.

- Ribbon.

Comment [EaR13]: Palm trees are not supported. Not only do they not provide relief from the harsh Florida heat, they are inconsistent with the character of the City.

- 3) Residential Lot Landscaping: A certificate of occupancy for a house shall not be issued until the following landscaping has been installed, inspected and approved by the City. At least one canopy tree per lot, from the approved replacement tree stock list as approved by resolution of the City with at least two inch caliper diameter breast height shall be planted upon each residential lot. Developer shall be given credit for any live oak preserved on a residential lot and such tree shall be counted for that lot in lieu of a new planting.

Proposed residential lot landscaping to include:

- a. Front Yard Trees: One shade tree per lot shall be planted 7 feet from the sidewalk. Such tree shall be a minimum caliper of 3 inches and recommended to be Winged Elm, Simpson Stopper, Bottlebrush, and/or Drake Elm.
- b. A minimum of 3 gallons of landscaping material
- c. Irrigation of the entire yard, plus irrigation of the pervious area between the sidewalk and curb
- d. 12" mulch bed around the perimeter of the home
- e. Landscaping from street view in front of air handler
 - a. One shade tree, of the following species: Live Oak, Red Maple, Magnolia, Laurel Oak, Bald Cypress, Bottle Brush or Winged Elm

Comment [EaR14]: Could this be 1 3 gallon plant? A more comprehensive landscape package needs to be submitted. Revise to be 3 feet in width to include a hedge meeting the planting requirements of the Holden Ave buffer

Comment [EaR15]: What is the purpose of 12 inch width around the house? See Landscape Architects comment related to mulch

Comment [EaR16]: These aren't canopy trees

- f. Rear Lot Tree: At least one canopy tree with at least two inch caliper diameter breast height. Developer shall be given credit for any live oak preserved on a residential lot and such tree shall be counted for that lot in lieu of a new planting. Lot tree placement will be determined by Developer at the time of installation based on home orientation
 - g. Sodding the entire lot.
- p.. Non-uniformity of residential structures: Residential structures constructed shall be of varying elevations and color schemes in a manner that no adjacent houses have the same elevation and color scheme.

q.. Utilities and infrastructure: Water, sanitary sewer, storm drainage facilities placed within the private street tract shall be installed to city/utility provider standards. All utilities, including but not limited to electric and telephone, shall be underground, including the existing overhead utility lines along Holden Avenue, installation costs of which will be borne completely by the Developer.

Comment [EaR17]: This is included in q. above

Comment [EaR18]: Moved from f. below

Comment [EaR19]: Moved to CCR Declaration

s. Subdivision Regulation: Subdivision of lots shall comply with all regulations and ordinances in force at the time of subdivision plan approval except where specifically approved to deviate per the approved Land Use Plan.

t. Subdivision Streets and Sidewalks.

1) Private Ownership: All streets, sidewalks, street lighting, signage, landscaping, walls, drainage systems and all related appurtenances within the development including those located outside the gates, are to be private, owned in a separate tract where applicable and maintained by the HOA.

2) The streets and sidewalk shall conform to the City's construction standards for public streets and sidewalks.

3) Access Rights:

a) The plat shall indicate unrestricted access-easement rights over the platted roadway right-of-way tract are dedicated or otherwise granted to the owners of each lot within the subdivision and to all their successors in interest, as well as to the City and utility providers providing use of the property for any purpose related to the exercise of a governmental service or function, including but not limited to fire and police protection, inspection and code enforcement.

4) Sidewalk Along Holden Avenue

The sidewalk within the Holden Avenue right-of-way shall be a minimum of 6 feet in width and provide a smooth transition to the existing sidewalk not adjacent to the subject property.

- 5) **Subdivision Entrance.** Access to the site shall be provided on Holden Avenue directly opposite Red Fern Drive. The Developer shall provide a gated restricted access entrance to the subdivision that allows sufficient holding space for at least three vehicles as measured from the call box to the Holden Avenue south right-of-way line. The subdivision entrance must be equipped for visitor access with a call or code box located at least 60 feet from the boundary of the subdivision to provide for visitors calling in and vehicle queuing. The restricted access entrance shall provide a means of ensuring access to the subdivision by the City and other public/utility service providers with appropriate identification.

Comment [EaR20]: 60 feet is stated on the LUP and is the minimum acceptable.

Entryway gates must be equipped with an audio (siren) override device to allow emergency access to the subdivision by fire/rescue, police and other emergency-response personnel. The audio-override device must be submitted to the fire and rescue department for inspection and the entrance gates may not be closed unless and until the department determines that the device is acceptable and in good working order.

A code to the entryway gate must be provided to the City or the entryway gate must include a box, labeled "City of Edgewood," with a master-keyed padlock, and the box must contain a key, a card-key, a code, a remote-control device, or some other means by which public service and utility workers may gain access to the subdivision. The means of access must be approved by the City, public service/utility providers and (if chosen) the entryway gate box must be installed prior to the city's issuance of the certificate of completion for the subdivision infrastructure. Any other utilities serving the subdivision must have similar access, and the names of such utilities must be on the outside of the box containing the means of access.

Comment [EaR21]: What is the intent of "if chosen?"

A sign shall be erected in the area outside the gates to prohibit vehicle parking in such space.

u. **Wall Construction.**

An architectural precast concrete wall that replicates the look of masonry, natural rock or brick at least six feet in height with equally spaced columns shall be constructed around the entire perimeter of the subject property. The wall constructed on each perimeter shall be of a consistent material.

Comment [EaR22]: From c below

- v. **Recreation Area.** The Subject Property will contain a recreation area, a minimum of 0.736 acres and shall contain ?.

Comment [EaR23]: A cohesive perimeter boundary is recommended. The LUP reflects a wall not fence around the entire perimeter.

Comment [EaR24]: Unnecessary, "a" covers this.

w. Street Lighting. Type, color, spacing, etc.

Comment [EaR25]: Moved to O1.

Comment [EaR26]: Moved to n.

x. Any other condition agreed upon at DRC not included in this agreement (to be added here)

6.. Declarations of Covenants, Conditions, and Restrictions.

Simultaneously with the recording of the subdivision plat, the Developer shall record in the Public Records of Orange County, Florida, as a covenant running with the land of the Subject Property, a Declaration of Covenants, Conditions, and Restrictions (Declaration) that shall govern all platted lots within the subdivision, shall impose requirements and restrictions that run with the land, and shall address the responsibilities for the ongoing maintenance and repair of the subdivision infrastructure, landscaping and recreation areas. Prior to recordation in the public records of Orange County Florida, the declaration shall be reviewed and approved in writing by the City Attorney for consistency with all land use approval by the City. The Developer shall pay to the City the sum of the legal fees of the City Attorney relating to the review of the declaration. The terms of the Declaration shall be, to the city's satisfaction, legally sufficient and enforceable to accomplish or otherwise ensure, at a minimum, the following.

Comment [EaR27]: Consistent with xi.

- a. A mandatory homeowners association ("HOA") will be created which will
 - i. be an incorporated entity legally authorized,
 - ii. be required to, among other things, impose assessments and liens to enforce Conditions, Covenants, and Restrictions.
 - iii. include as members all owners of residential lots within the development.
 - iv. own and maintain in perpetuity all perimeter walls, landscaping in common open space, buffer areas, common irrigation, streets, sidewalks, street lighting, signage, and retention and drainage systems; and, such other provisions as are compatible with the Agreement and the Land Use Plan as approved by the City.
 - v. require that lot deeds must convey membership in the HOA and provide for the mandatory payment of dues and assessments required by the HOA.
- b. The HOA, through its Declaration of Covenants, Conditions, and Restrictions shall, among other matters, assess costs upon the properties of its members at least sufficient to pay:
 - i. The cost of maintaining and irrigating the entryway to the Development as well as any land dedicated to common use by the members of the homeowner's association; and,
 - ii. The cost associated with maintaining, repairing, or replacing any common area facilities mutually benefitting the association, including but not limited to all walls bounding the Subject Property, all appurtenances within common areas, storm drainage infrastructure serving the subdivision, all elements of the restricted access entry, all roads, streets and sidewalks within the subdivision, and all street lighting within the subdivision.

Comment [EaR28]: Moved to g. below

iii. Upon the completion of the construction of the recreation area, the Developer shall deed to the HOA the recreation area shown on the approved Land Use Plan. The HOA shall be responsible to maintain the recreation area, to limit its use to residents of the Development and their immediate families, guests, and invitees, and to maintain any and all fencing and buffer areas.

iv.. Every 15 years, the HOA must repave the private street. This requirement may be waived on a year-to-year basis if the HOA can provide a professional engineer's opinion to the city engineer stating the existing roads are in acceptable condition; however, the City shall have the right to inspect the private streets and related appurtenances at any time, and require the HOA to provide the repairs needed to ensure emergency access and quality of life for residents. The City Council shall be the final judge of whether such repairs are needed and shall have the right to assess each lot owner to provide for repair.

Comment [EaR29]: Moved from i. above

v.. If, in the city's opinion, the streets, sidewalks, streetlights or the stormwater system, subdivision entrance, and landscaping in common areas are not properly maintained, the city may do the required maintenance, replacement, and special assess each affected property owner in the subdivision 100 percent of the cost of said maintenance; and

c. The terms of the declaration shall be, to the City's satisfaction, legally sufficient and enforceable to accomplish or otherwise ensure, at a minimum, the following.

- (i) Require the establishment and maintenance of an HOA budget account for the annual routine maintenance and the repair, replacement and reconstruction of the street, street lights, landscaping, sidewalks, wall, recreation area, community parking, and drainage system, including stormwater management areas.
- (ii) Require at developer turnover of the HOA to the property owners, the establishment and maintenance of an HOA reserve account for major capital repair, replacement and reconstruction of the subdivision's street.
- (iii) Require at developer turnover of the HOA to the property owners, the establishment and maintenance of an HOA reserve account for major capital repair, replacement and reconstruction of the subdivision's stormwater management and drainage facilities.
- (iv) Require at developer turnover of the HOA to the property owners, the establishment and maintenance of an HOA reserve account for major capital

repair, replacement and reconstruction of other subdivision infrastructure such as sidewalks, entrance gates, curbing, recreation area, common parking areas, walls, etc.

- (v) Require at developer turnover of the HOA to the property owners, the establishment and maintenance of an HOA budget account for storm debris clean-up and removal, such as clearing downed trees, landscape, and other storm-created debris from the subdivision's street, common tracts, sidewalks and drainage facilities.
- (vi) Provide that:
 - (a) Until turnover of the HOA to the property owners and/or transfer of control of subdivision infrastructure to the HOA, all maintenance and repair of streets, street lighting, landscaping, walls, gates, sidewalks, community parking, recreation area, and the drainage system, including stormwater management areas and conveyance system, and the like is the responsibility of the developer;
 - (b) Prior to turnover of the HOA and/or transfer of control of subdivision infrastructure to the property owners, the developer shall expend monies in the routine-infrastructure-maintenance account for such maintenance and repair, Insufficiency of monies in the routine-infrastructure-maintenance account shall not act to relieve the developer of any responsibility to properly maintain and repair the street, gates, sidewalks, streetlights, community parking and recreation area, and drainage system, landscaping, and walls prior to turnover of the HOA and/or transfer of control of subdivision infrastructure.
- (vii) Require that:
 - (a) No earlier than one hundred eighty (180) days before turnover of the HOA and/or transfer of control of subdivision infrastructure to the property owners, the developer must retain the services of a Florida registered engineer experienced in subdivision construction (other than the engineer of record for the subdivision as of the date of the city's approval of the subdivision infrastructure construction plans, and engineers who are principals of, employed by, or contractors of the same firm as the engineer of record) to inspect the streets, gated entrance, recreation area, parking, sidewalks, street lighting, and drainage system, including stormwater detention/retention areas in accordance with the existing approved plans, and prepare a report recommending the amount of scheduled maintenance and unscheduled repair that likely will be needed each year for the noted infrastructure, in accordance with standards that may be established and revised from time to time by the City Engineer or his or her designee, which recommends the amounts of money that should be deposited each year in the routine-infrastructure-maintenance account, and determining what

Comment [EaR30]: this phrase doesn't make sense because the requirement is PRIOR to the turnover of the HOA.

repairs, if any, are needed prior to turnover of the HOA to the property owners;

- (b) The report shall be signed and sealed by the engineer;
- (c) The developer shall pay the cost of this initial engineer's report, which payment may be made from the routine-infrastructure-maintenance account;
- (d) A copy of the initial engineer's report shall be made available to all owners of lots, blocks, and tracts in the subdivision and to the City Engineer within fifteen (15) days after it is completed;
- (e) Any needed repairs or replacements identified by the report shall be completed by the developer, at the developer's sole expense, prior to either the developer's turnover of the HOA to the property owners of the subdivision or transfer of control of subdivision infrastructure to the HOA, whichever occurs first; and
- (f) If turnover of the HOA and/or transfer of control of subdivision infrastructure occurs and the foregoing requirements have not been fulfilled, the rights of the HOA, any of its members, and any and all owners of land in the subdivision to enforce these requirements against the developer shall survive the turnover of the HOA to the property owners, with the prevailing party to be entitled to attorneys' fees and costs.

(viii) Require that, after turnover of control of the HOA, or turnover of control of the subdivision infrastructure to the property owners:

- (a) The HOA shall obtain an inspection of the streets, sidewalks, walls, gates, community parking, landscaping, street lighting, recreation areas, and drainage systems, including stormwater detention/retention areas, by a Florida-registered engineer experienced in subdivision construction no less frequently than once every five (5) years after the initial engineer's inspection; and
- (b) Using good engineering practice, and in accordance with standards that may be established and revised from time to time by the City Engineer or his or her designee, or in accordance with such other standards as may be adopted from time to time by the HOA, or in accordance with such standards as the HOAs engineer may determine to be appropriate, if approved by the City's Engineer the inspection shall determine the level of maintenance and repair (both scheduled and unscheduled) needed, the amounts of funding needed each year for the next three (3) years in the routine-infrastructure-maintenance account to pay for such maintenance and repair, and any remedial repairs immediately needed; and

Comment [EaR31]: This is happening prior to the turnover.

Comment [EaR32]: Is the change recommended here needed for consistency with e?

- (c) That the inspection be written in a report format; and
 - (d) A copy of each engineering report be provided to each owner of property in the gated community within fifteen (15) days of completion of the report; as well as to the City and
 - (e) Within one hundred eighty (180) days of receipt of each tri-annual engineering report, the HOA shall complete all remedial work identified and recommended by the engineer.
- (ix) The developer (so long as the developer retains control of the board of directors of the HOA) and the HOA expressly indemnify and hold the City of Edgewood and its officers and employees harmless from any cost of maintenance, repair, and reconstruction of, or tort liability or award of damages related to or arising in connection with, the streets, sidewalks, street lights, walls, gates, community parking, landscaping, recreation areas, drainage system (including stormwater retention/detention area), and/or any other subdivision infrastructure.
 - (x) The Declaration shall expressly state that property owners receive no discount in property or other taxes because of private streets or drainage system.
 - (xi) The Declaration shall require that each purchaser of a residential lot in the gated subdivision, for the personal or family use of the purchaser, receive and certify receipt of a copy of the declaration at or prior to the time the sales contract is executed, together with the current budget for the HOA, including a schedule disclosing the then-existing amounts of the periodic assessments for each of the HOA accounts and a copy of the most recent year-end financial statement for the HOA, and if none are then existing, a good faith estimate of the HOA operating budget, along with a form to be signed by such initial purchaser acknowledging receipt of a copy of the declaration, budget, financial statement or good faith estimate, and that the original of the form acknowledging receipt of a copy of the declaration is to be attached to the sales contract as an exhibit or appendix.

Such schedule must also state that the periodic assessments for the HOA accounts do not necessarily include assessments for either the routine maintenance of or the capital repair and replacement of HOA facilities not related to subdivision infrastructure (such as streets, sidewalks, stormwater management system, common area landscaping, entrance and exit gates, walls, etc.).

- (xii) The Declaration shall declare that upon any default by the HOA or the developer in any requirements of the declaration, the City, at its option and after due notice of its declaration of a default and a reasonable time to cure, may prohibit closure of the gates and, upon dedication or conveyance of the rights-of-way to the City, perform all necessary maintenance, repair replacement and/or reconstruction

using all HOA monies on deposit in the routine-infrastructure-maintenance account and the several capital-repair accounts or, if no monies exist or if an insufficient amount exists, using such other revenues or financing methods as the City may elect, including (but not limited to) special assessments against the subdivision lots, and tracts. The lot owners shall be responsible for all costs, administration and attorney fees related to the City's action to maintain, repair, replace, and/or reconstruct development's infrastructure. Payment of costs and assessment will be enforced by lien or foreclosure.

- (xiii) The Declaration shall require that enforcement of traffic laws within the gated community, as requested by the HOA, shall be by the City Police Department and that all costs of enforcement incurred by the City shall be paid by the HOA.
- (xiv) The Declaration shall provide a procedure for nonbinding mediation in the event of a dispute between any homeowner and the developer, or between the HOA and the developer, with respect to the repair and maintenance of the streets, sidewalks, landscaping, walls, community parking, gates, recreation areas, street lighting, drainage system or other subdivision infrastructure or appurtenances and/or funding for such maintenance and repair.
- (xv) The Declaration shall provide that:
 - (a) The HOA, any member of the HOA, and any and all owners of land in the subdivision shall have the right jointly and severally to enforce against the developer or any other member of the HOA the requirements and provisions of the declaration required hereunder, with the prevailing party being entitled to attorney's fees and costs;
 - (b) Any member of the HOA and any and all owners of land in the subdivision shall have the right to enforce against the HOA or any other member of the HOA the requirements and provisions of the declaration required hereunder, with the prevailing party being entitled to attorneys' fees and costs; and
 - (c) Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County.
- (xvi) No portion of the HOA's documents pertaining to the maintenance of the private streets, gates, sidewalks, street lighting, landscaping, private walls, community parking, recreation areas, and drainage systems, and assessments thereto shall be amended without the written consent of the City Engineer or their designee, but in no event shall such consent require public hearing.
- (xvii)
 -) The Declaration must contain language whereby the developer (so long as the developer retains control of the board of directors of the HOA) and the HOA, as

Comment [EaR33]: Are these saying the same thing?

Comment [EaR34]: Discussion needed.

owner of the private streets, walls, gates, recreation area, community parking, sidewalks, storm water management system, other common areas, and appurtenances, agrees to release, indemnify, defend and hold harmless the City, its officers, agents, licensees, servants and employees, from and against any and all claims or suits for property damage or loss and/or personal injury, including death, to any and all persons, of whatsoever kind of character, whether real or asserted, arising out of or in connection with, directly or indirectly: a) the reasonable use of the private streets and sidewalks, emergency access, utility easements, community parking, entrance gate or structure by the City, its officers, agents, licensees, servants and employees; b) the condition of the private streets, sidewalks, private street lights, private entrance gates or structures, private walls, community parking, access to recreation areas, landscaping, private storm drainage systems and emergency access; or c) any use of the subdivision with private streets by the City or County, its officers, agents, licensees, servants and employees for any purpose related to the exercise of a governmental function or service, expressly excluding, however, any claim or cause of action arising in whole or in part by the negligence or willful misconduct of such officers, agents, servants, employees, contractors, subcontractors, licensees or invitees of City or County. The HOA shall be responsible for carrying liability insurance to meet the requirements in this paragraph. Those portions of the paragraph must not be amended without the written consent of the City Engineer or their designee, but in no event shall such consent require a public hearing.

Comment [EaR35]: same.

- (xix) The Declaration must include standards and regulations for
- a) lot and structure maintenance
 - b) prohibiting vehicle parking in the front or side yards, or blocking any sidewalk, including the portion crossing the driveway, or the pervious strip between the sidewalk and curb.
 - c) repair of common areas and infrastructure by owners and residents,
 - d) A house rental limitation to no less than 180 days,
 - e) Maintaining the tree, sod, and landscaping in the front yard
 - f) Maintaining the pervious area landscaping between the curb and sidewalk
 - g) procedures for notice and enforcement
 - h) Prohibiting any outdoor storage of boats, travel trailers, recreational vehicles, and similar equipment anywhere in the subdivision;
 - i) Permission given to the City/Orange County to enter the subdivision and remove any gate, device that is a barrier to access, and/or remove any vehicle or obstacle within the private street tract that impairs emergency access, with all associated costs borne by the HOA; and
 - j) The provisions for HOA governance and administration required by Florida law for mandatory HOAs.
- (xviii) The HOA must not be dissolved without the prior written consent of the City.

12. **Road Improvement.** All off-site road improvements shall be performed by the Developer in conjunction with onsite infrastructure construction. The City shall not be obligated to furnish any right-of-way funds or materials whatsoever to the construction of any new streets or roads or widening existing streets or roads upon the Subject Property or for any other improvement of any nature whatsoever.

13. **Model Homes.** The Subject Property may include up to five (5) model homes, which must adhere to any and all applicable standards herein, the Land Use Plan, and substantially similar to the elevations which accompany the PD development standards and the approved Land Use Plan.

Comment [EaR36]: subjective

14. **Recordation of Agreement.** Upon execution of this Agreement, the Developer shall reimburse the cost of recording this Agreement in Orange County, Florida.

15. **Housing Certification.** The Developer will not seek nor allow the Subject Property to be designated as a certified affordable project.

16. **Fees.** The Developer agrees to pay any and all impact fees (including, without limitation, transportation, school, electric, fire, police, water and sewer impact fees) and all City review, inspection, and permitting fees in accordance with the City Resolution 2018-09, as may be amended. The Developer shall pay all capacity reservation fees applicable to the Planned Development (including, without limitation, transportation, water, sewer, solid waste, and parks and recreation) regulated or enforced by the City.

Comment [EaR37]: Is this addition needed?

17. **Legislative Act.** This Agreement is deemed a legislative act of the City of Edgewood.

18. **Default.** The following events, if any occur prior to the time Developer turns over the property to the HOA, shall be a default by the Developer and shall be a breach of agreement and shall entitle the City to terminate this Agreement upon sixty (60) days written notice to the Developer.

- a. The Developer's adjudication as bankrupt, either voluntary or involuntary;
- b. The institution of any judicial proceeding for reorganization or rearrangement of the Developer's affairs that is not dismissed within sixty (60) days;
- c. Any assignment by the Developer for the benefit of creditors; and
- d. The appointment of a receiver for the Developer's assets or property, which appointment is not dismissed within sixty (60) days.

19. **Force Majeure.** The parties shall each use reasonable diligence to ultimately accomplish the purposes of this Agreement and the subsequent Subdivision Plan as approved but shall not be liable to each other, or their successors or assigns, for damages, costs, or attorneys'

fees, for breach of contract or otherwise, for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the parties. Such causes may include but shall not be limited to acts of God or of a public enemy, fires, floods, or failure or breakdown of transmission or other facilities.

20. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Developer and its assigns and successors in interest and the City and its assigns and successors in interest. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

21. **Third Party Beneficiary.** This Agreement is solely for the benefit of the City of Edgewood and the Developer, and their successors and assigns, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

22. **Captions.** The captions used in this Agreement are for convenience only and shall not be relied upon in construing the terms of this Agreement.

23. **Severability.** If any part of this Agreement is found invalid or unenforceable by any Court, such invalidity or enforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and the intentions of the parties can remain unaffected. To that end, this Agreement is declared severable.

24. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall lie in Orange County, Florida.

25. **Amendments to Development Agreement.** This Agreement may be amended in a manner consistent with the Code of Ordinance of the City of Edgewood. Additionally, notwithstanding the foregoing to the contrary, the entitlements granted pursuant to this Agreement shall not run with the land or be binding upon a single family residential end user or homeowner of a detached dwelling ("Homeowner"). The right to amend this Agreement gets "severed" to a Homeowner, and stays with the Developer unless the Developer assigns all of its right, title, and interest in and to this Agreement, and notify the City of such assignment.

26. **Indemnification and Hold Harmless.** The Developer and its assigns and successors in interest shall indemnify and hold harmless the City from and against all claims, demand, disputes, damages, costs, expenses (to include attorneys' fees or any fee for professional services whether or not litigation is necessary, and if necessary, both at trial and on appeal) incurred by the City as a result, directly of the use or development of the Subject Property and related to _____ except those claims or liabilities caused by or arising from the gross negligence or intentional acts of the City, its employees or agents. It is specifically understood by the parties that the City is not guaranteeing the quality of the use or development of the Subject Property, including but not limited to drainage or sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.

Notwithstanding the foregoing, the City acknowledges and agrees that upon the sale of the last home on the Subject Property, all of the Developer's rights, obligations, responsibilities and liabilities under this Agreement shall automatically terminate.

27. **Entire Agreement.** This instrument constitutes the entire Agreement between the parties as of the time of rezoning and supersedes any previous discussions, understandings and agreements. Modifications to and waivers of the provision herein may be made only by the parties hereto and in writing.

28. **Notice.** Any notice to be given in accordance with this Agreement shall be in writing and shall be sent by hand delivery, overnight mail, or certified mail, return receipt requested, to the party being noticed at the addresses set forth below:

As to Edgewood: City of Edgewood, Florida
Attn: Bea Meeks, City Clerk
405 Larue Avenue
Edgewood, Florida 32809-3406

As to Developer: Bavaria Holdings, LLC
Attn: Khaled Hussein
5200 Vineland Road
Orlando, Florida 32811

With a copy to: Toll Bros., Inc.
Attn: Brock Fanning, Division President
2966 Commerce Drive, Suite 100
Orlando, Florida 32819

And: Toll Bros., Inc.
Attn: Tom Smith
250 Gibraltar Road
Horsham, Pennsylvania 19044

Should any party identified above change, it shall be that party's obligation to notify the other party of the change in a fashion as is required for notices herein.

29. **Effective Date.** This Agreement shall become effective on the date when the Agreement is executed by both parties.

30. **Counterparts.** This Agreement may be executed in two counterparts, each of which if properly executed by both parties shall be considered an original.

[SIGNATURE BLOCKS APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Developer and the City of Edgewood have executed this Agreement as of the day and year last signed by those parties.

Signed, sealed and delivered
in the presence of:

BAVERIA HOLDINGS, LLC, a Florida
limited liability company

Witness:

Khaled Hussein, Manager

Witness:

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, personally appeared Khaled Hussein, as Manager of Bavaria Holdings, LLC, a Florida limited liability company, to me known to be the person described in or who provided _____ as proof of identification and who executed the foregoing and he acknowledged before me that he executed same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2020.

Notary Public

Attest:

CITY OF EDGEWOOD, FLORIDA

By: _____
Bea L. Meeks, City Clerk

By: _____
John Dowless
Mayor, City of Edgewood

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared John Dowless, Mayor, City of Edgewood, to me known to be the person described in or who provided _____ as proof of identification and who executed the foregoing and he acknowledged before me that he executed same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2020.

Notary Public

EXHIBIT "A"

THE WEST 165.00 FEET OF THE FOLLOWING TRACT: BEGINNING AT A POINT 440 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 14, TOWNSHIP 23 SOUTH, RANGE 29 EAST, RUN THENCE EAST 352 FEET; THENCE SOUTH 1320 FEET TO THE SOUTH LINE OF THE SAID NORTHWEST ¼ OF THE NORTHWEST ¼; THENCE WEST ALONG THE SOUTH LINE OF THE SAID NORTHWEST ¼ OF THE NORTHWEST ¼ 352 FEET; THENCE NORTH 1320 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

THE EAST 187.00 FEET OF THE FOLLOWING TRACT: BEGINNING AT A POINT 440 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 14, TOWNSHIP 23 SOUTH, RANGE 29 EAST, RUN THENCE EAST 352 FEET; THENCE SOUTH 1320 FEET TO THE SOUTH LINE OF THE SAID NORTHWEST ¼ OF THE NORTHWEST ¼; THENCE WEST ALONG THE SOUTH LINE OF THE SAID NORTHWEST ¼ OF THE NORTHWEST ¼ 352 FEET; THENCE NORTH 1320 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH

N 380 FT OF W 100 FT OF E 526.7 FT OF NW ¼ OF NW ¼ (LESS N 30 FT RD R/W) OF SEC 14-23-29

TOGETHER WITH

N 380 FT OF W 303 FT OF E 426.7 FT OF NW ¼ OF NW ¼ (LESS N 155 FT OF E 125 FT & LESS N 155 FT OF W 128 FT & LESS N 30 FT FOR RD) SEC 14-23-29

TOGETHER WITH

N 155 FT OF W 125 FT OF E 248.7 FT OF NW ¼ OF NW ¼ (LESS N 30 FT RD R/W) OF SEC 14-23-29

TOGETHER WITH

N 155 OF W 128 FT OF E 426.7 FT OF NW ¼ OF NW ¼ (LESS N 30 FT FOR RD R/W) OF SEC 14-23-29