

------(Space above this line for recording use)-----

STATE OF ALABAMA) **DEVELOPMENT AGREEMENT**
)
CITY OF FOLEY) _____

This **DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into as of the _____ day of _____, 2025 (“Agreement Date”), by and between Kolter Group Acquisitions LLC, a Florida limited liability company (“Developer”), and the **CITY OF FOLEY** (the “City”), an Alabama municipal corporation.

R E C I T A L S

WHEREAS, Developer has obtained the contractual right to acquire certain real property consisting of approximately 720.25 acres, more or less, located in the City of Foley and to be known as the Cresswind Sandy Creek and more fully described in Section 1.04 of this Agreement (“Property”) and thus has an equitable interest therein;

WHEREAS, the City has zoned the Property as a Planned Unit Development (PUD) on December 2, 2024 by Ordinance Number 25-2001-ORD recorded as Instrument Number 2166853 and by Ordinance Number 25-2002-ORD recorded as Instrument Number 2166865, Baldwin County Probate Court records (collectively, the “PUD Approval”);

WHEREAS, Developer and City have determined that it is in the best interests of the City and Developer to enter into this Agreement to set forth the additional terms and conditions of the development of the Property, in addition to those contained in the PUD Approval, in order to achieve a well-coordinated, planned development, reasonably mitigate any project impacts to the community and achieve predictability to the City and the Developer on the scope and terms of the development;

WHEREAS, in connection with the proposed development, Developer and City recognize that the scope and term of the planned development under this Agreement accomplish the statutory aims of comprehensive and orderly planning and development within the City.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth in this Agreement, the receipt and sufficiency of such consideration being acknowledged by the parties, and pursuant to the Alabama law.

G E N E R A L

Section 1.01. Incorporation. The above recitals are incorporated in this Agreement as if the recitals were set out in this Agreement in its entirety.

Section 1.02. Definitions. (A) As used in this Agreement:

- (1) “Agreement” means this Development Agreement.
- (2) “Agreement Date” means the date the last party signs below.
- (3) “City” means the City of Foley, a body politic and corporate, a political subdivision of the State of Alabama.
- (4) “City Council” means the governing body of the City of Foley.
- (5) “Developer” means Kolter Group Acquisitions LLC, a Florida limited liability company, and its successors and assigns in title to the Property who undertake Development of the Property or who are transferred or assigned Development Rights.
- (6) “Development Program” means stipulations and design criteria approved in the Cresswind Foley PUD as approved by the City in Ordinances 25-2001 and 25-2002 and in accordance with this Agreement.
- (7) “Laws and Land Development Regulations” means the City’s applicable rules and regulations governing development of real property in force as of the approval of the PUD by City Council on December 2, 2024.
- (8) “Ordinance No. 25-2001-ORD” means Ordinance adopted by the City on 01/06/2025 and recorded on 01/17/2025 with the Baldwin County Probate Court as Instrument Number 2166853.
- (9) “Ordinance No. 25-2002-ORD” means Ordinance adopted by the City on 01/06/2025 and recorded on 01/17/2025 with the Baldwin County Probate Court as Instrument Number 2166865.
- (10) “Ordinance No. 25-2005-ORD” means Ordinance adopted by City on 02/03/2025 and recorded 02/2025 with the of the Baldwin County Probate Court as Instrument Number 2171444.
- (11) “Parties” means City and Developer.
- (12) “Property” means the land, and any improvements thereon, described in Section 1.04 and approved for the development of the active-adult residential community.

Section 1.03. Parties. The Parties to this Agreement are City and Developer.

Section 1.04. Property. This Agreement applies to a portion of five (5) parcels of land identified as Baldwin County Tax Map Nos. Tax Parcel Nos. 05-54-06-14-0-000-004.000, 05-54-06-23-0-000-001.000, 05-54-06-23-0-000-001-001, 05-54-06-24-0-000-002.000 and 05-54-06-13-0-000-006.000. These parcels are shown in Exhibit A (legal description) and Exhibit B (plat), attached hereto and incorporated herein by reference as if these exhibits were set out in this Agreement in their entirety.

Section 1.05. Zoning. The five (5) parcels specified in Section 1.04 have been rezoned and annexed by the City of Foley as a Planned Unit Development (PUD) to develop a single-family, age-restricted community for persons aged 55 and over as allowed by Federal Law.

Section 1.06. Development Program.

(A) **Development Size** – community will allow for the development of a maximum of 1,318 homes with a maximum density of 3 units per acre.

(B) **Restricted Homes** – Homes in the community will be restricted for persons 55 and older in accordance with federal fair housing laws. Such restrictions shall be specified in recorded homeowners' association (HOA) documents and shall be enforced by the Developer.

(C) **Land Uses** – Land uses within the development will be restricted to single-family homes and proposed community amenities including clubhouse (with HOA offices), event lawn, pickle ball courts, bocce ball courts, swimming pool, food truck parking, walking trails, community garden, open space and centralized mail kiosk. The Developer may propose additional recreational type uses with City approval. In addition, the Developer may use proposed model homes for market and sales offices with such homes converted to single-family residential use once they are no longer needed. Prohibited land uses include office (except for sales, marketing, operation offices and similar activities related to constructing and selling the proposed single-family homes), retail (with the exception sales during temporary events, festivals, etc.), home-based businesses, industrial development, landfills, water and/or sewer treatment facilities, and mineral, oil or gas exploration, extraction and/or development. No other land uses will be permitted unless agreed to by both Parties.

(D) **Master Plan** – The development will be designed in accordance with the approval master plan that was approved as part of the PUD Approval. The master plan may be amended as agreed to by both Parties in accordance with current City regulations. The approved master plan is set forth in Exhibit C.

(E) **Home Construction** – Homes will be constructed with a combination of materials including cementitious siding, brick, natural stone, synthetic or polymer stone. Homes will have a minimum roof pitch of 5:12 as viewed on front elevations.

(F) **Model Home Park/Inventory Homes** – The City agrees to issue up to 50 model/inventory home permits at a time in a subdivision phase prior to final plat recording. As a condition of this approval, Developer will provide an adequate water source for fire protection and suitable fire access prior to the City issuing any building permits. Further, Developer and City will enter into a *Model Home Infrastructure Construction and Hold Harmless Agreement* as a condition of the City issuing building permits to Developer prior to the installation of certain infrastructure (i.e., prior to the installation of water distribution systems, curbs, and asphalt) at the proposed community. Developer acknowledges and agrees that the City will not issue any Certificates of Occupancy (CO's) for any structures until that phase of the subdivision has received final plat approval and the final plat has been recorded.

(G) **Minimum Lot Size, Minimum Lot Width and Maximum Build Area** – The minimum lot size will be 5,590 square feet with no more than 15 percent (198 lots) of the lots in the community being the minimum lot size. The remaining lots will exceed 6,000 square feet with

a weighted average lot size of 7,371 square feet. The minimum lot width at the building line will be 43 feet. The maximum building area will be 66 percent of the lot.

(H) **Setbacks** – Front setbacks will be 20 feet. Side setbacks will be 5 feet with rear setbacks 10 feet.

(I) **Clearing/Exposed Ground** – The Developer will be allowed to disturb up to 50 acres of bare ground at one time. In order to disturb the 50 acres, the Developer will follow all standard erosion and sediment control procedures along with additional erosion and sediment control practices recommended by EcoSolutions in a draft CBMPP found in Exhibit D.

(J) **Streets, Street Trees and Sidewalks** – All streets will be private and maintained by the community HOA. Streets will consist of concrete valley curb 24 inches wide. Streets will have easements for utilities and drainage. Minimum sidewalk width will be 4 feet. Required street trees will be planted in front yard areas and not in the street right-of-way. Developer and City agree that Developer will not dedicate the streets to the City, and even if dedicated, the City will not accept the streets.

(K) **Access Parkway**– The Developer will provide an access parkway road from the Foley Beach Express to the main entrance of the community as shown on Exhibit “C” hereto (the “Access Parkway”). The Right-Of-Way for the Access Parkway will be a minimum width of 100 feet. The Access Parkway will be engineered, constructed and developed to City specifications and shall be dedicated to the City after its construction at no cost to the City. If the Access Parkway has been built to the City’s specifications and is in a reasonably suitable condition for acceptance, then the City will accept the dedication subject to the Developer’s requirement to post a maintenance bond for one year for any latent defects that materialize during that one year. The Developer, additional landowners that will use the Access Parkway, and/or the HOA for the community will be responsible for maintaining landscaping within the Access Parkway under a separate agreement with the City. The development will have two ingress/egress points located along the Access Parkway as shown on Exhibit “C”. The main entrance will consist of a gate along with a guardhouse to be located on private property outside of the Access Parkway right of way. The secondary entrance will be located along the Access Parkway east of the main gated entrance.

(L) **Utilities and Easements** – All utilities will be public utilities, and all drainage will be private facilities owned and maintained by the HOA. All homes and related facilities will be provided with water and sewer service from Riviera Utilities under a separate agreement.

(M) **Golf Cart Use** – Golf cart use will be permitted along all private roads in the development and on public roads where such use may be approved by the City.

(N) **Buffers** - Outside of road crossings, jurisdictional wetlands shall remain in an undisturbed natural state with 30 feet wetland buffers. Natural watercourses shall remain in an undisturbed natural state with 50 feet buffers from top of bank. Any crossings for the natural earth trails shall be constructed boardwalks resulting in no fill to the wetland areas. The Developer will provide a minimum 40’ common area strip along its exterior boundary with the majority of the community providing more than 100’. These exterior common area strips will include existing natural vegetation, planted landscape areas, and natural earth trails.

(O) **Open Space** – Developer will provide a minimum of 25 percent open space with the goal to provide approximately 331 acres of open space. Uses of open space will include approx. 106 acres of preservation of wetland and floodway along Sandy Creek, 19-acre amenity area with clubhouse and other active use amenities, several pocket parks and green space areas throughout the development, and natural earth walking trails through portions of common area connecting back to the sidewalks along internal streets. Due to the layout of the project, the open space area provided may not be proportional to each phase. Some of the earlier phases may provide more open space than is required for that phase. The phasing of the development will ensure that all open space requirements will either be met with the proposed phase or sufficient open space areas will have previously been provided in completed phases.

(P) **Signage** – Developer will prepare a signage plan that will include monument signs, hardscape and landscaping at the main entrance at Foley Beach Express, at the primary gated entrance along the access parkway and the secondary entrance proposed east of the main gate. The signage plan will also include marketing and directional signage along the Access Parkway and interior roads with the development. The signage plan will be submitted for review and approval by the City (for the Access Parkway ROW area) and for review and approval by the Alabama Department of Transportation (for the Foley Beach Express ROW area). Monument signs will not exceed 8 feet in height and will comply with all state and local ordinances concerning right of way signage.

(Q) **Construction Trailer** – The Developer will be allowed to install two temporary construction trailers on site in a location agreed to by both Parties.

(R) **Existing Right-of-Ways** – City will work with Baldwin County and Developer to either vacate the rights-of-way as reflected on Exhibit E, or to convey the same to the Developer.

(S) **Impact Fees** - The Developer will pay the applicable impact fee at the time of issuance of a building permit. The City and the Developer may agree to additional infrastructure/land improvements that benefit the City but are not required for the proposed development. If the City and Developer agree to additional infrastructure/land improvements that warrant a credit against the impact fees, then the City may agree to reduce the impact fees in the dollar amount of the additional infrastructure/land improvements under a separate agreement or in compliance with the City's impact fee ordinance.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the City.

(A) The City has found that the development permitted by this Agreement is consistent with the City's Comprehensive Plan, as amended by the City Council.

(B) The City represents that the City Council approved the PUD by adopting Ordinances 25-2001-ORD and 25-2002-ORD.

(C) The City represents that the City Council approved the annexation of some of the Property by adopting Ordinance 25-2005-ORD.

Section 2.02. Representations and Warranties of Developer.

(A) Developer represents that the number of acres of highland contained in the Property is approximately 720.25 acres.

(B) Developer represents that, as of the Agreement Date, it has contractual rights to acquire the Property and thus has an equitable interest therein.

(C) Developer represents and warrants that the execution, delivery and performance by the respective individual or entity signing this Agreement on behalf of the party has been duly authorized and approved by all requisite action on the part of Developer.

ARTICLE III

DEVELOPMENT REGULATIONS

Section 3.01. Applicability of Subsequently Adopted Laws and Land Development Regulations.

(A) It is recognized that laws and regulations will periodically change. However, the laws applicable to the development of the Property during the Term of this Agreement shall be the Laws and Land Development Regulations in effect on 12/02/2024, the date the PUD was approved by City Council.

(B) Notwithstanding the provisions of subsection (A) of this section, the City agrees that if City Council imposes a moratorium or other similar restriction that would curtail or hinder the rate at which development can occur, then the moratorium or other similar restriction shall not apply to the Development of the Property.

(C) Developer agrees to comply with any city-wide building, housing, electrical, plumbing, fire, and gas codes adopted by City Council after the Agreement Date and in force at the time plans for buildings are submitted to the City for review. Nothing in this Agreement is intended to supersede or contravene the requirements of any building, housing, electrical, plumbing, fire or gas code adopted by City Council.

ARTICLE IV

INFRASTRUCTURE AND SERVICES

Section 4.01. Infrastructure and Services.

The Parties recognize that the majority of the direct costs associated with the Development of the Property will be borne by Developer, and many necessary infrastructure improvements and services will be

provided by Developer or other governmental or quasi-governmental entities, and not by the City. For clarification, the Parties make specific note of and acknowledge the following:

(A) **Roads.** (1)1. Developer is responsible for the construction and costs of all roads, whether for public or private use, within or to the Property including but not limited to any necessary entrance and intersection improvements as required by the Alabama Department of Transportation related to the development of the Property. All roads must be constructed in accordance with the City's, or Alabama DOT where applicable, standards. Developer is also responsible for maintenance of all roads that are not public roads. Developer acknowledges that City will only accept as public roads those roads constructed in full compliance with the City's current regulations and providing connectivity to the City and/or State road system. City will not accept the roads within the boundaries of the proposed age-restricted development into the City road system for any other purpose, including, but not limited to, maintenance. Developer may transfer the ownership of the roads and its obligations for the roads to a homeowners' or property owners' association or similar organization.

(a) **Traffic Improvements.** Developer has caused to be prepared a traffic impact analysis conducted by Gresham Smith. Any road improvements, which are determined to be necessary, based on the results of the traffic impact analysis and agreement between the City, Alabama DOT and the Developer, shall be incorporated into the approved preliminary plat and final site plan prior to City approval, and the Developer is responsible for all costs of the road improvements.

(B) **Potable Water, Sewage Treatment and Disposal.** Potable water, sewage treatment and disposal will all be supplied to the Property by Riveria Utilities. Developer will construct, or cause to be constructed, all necessary water and sewer service infrastructure within the Property and the water and sewer service infrastructure will be maintained by the provider. The City is not responsible for any construction, treatment, maintenance, or costs associated with water or sewer service or water and sewer service infrastructure to or within the Property. Developer acknowledges that City has no authority or responsibility for providing potable water services or sewer services, and that Riveria Utilities is a separate and distinct entity from the City.

(C) **Storm Water Management.** Developer will construct or cause to be constructed all storm water runoff and drainage improvements within the Property required by the development of the Property and such infrastructure will be maintained by Developer or a homeowners' association. City is not responsible for any construction, maintenance or costs associated with the storm water runoff and drainage for the Property.

(D) **Solid Waste Collection.** The City shall provide solid waste collection to the Property on the same basis as is provided to other residents and businesses within the City.

(E) **Fire Services.** The Property is in the City of Foley Fire Department service area, and fire services will be provided by the City of Foley Fire Department, or its successor entities.

Mobile, Alabama 36602
danderson@burr.com

Section 5.02. Amendments.

(A) This Agreement may be amended or cancelled by mutual consent of the Parties to the Agreement or by their successors in interest. An amendment to this Agreement must be in writing.

(B) Anything to the contrary contained herein notwithstanding, in the event Developer or its successors or assigns elects not to or otherwise does not acquire the Property at any time, Developer may so notify the City in writing and upon such notification and written request by Developer to terminate this Agreement, this Agreement shall terminate and Developer shall not be considered in breach of this Agreement and the parties shall have no further obligations to one another.

Section 5.03. Enforcement. The Parties shall each have the right to enforce the terms, provisions and conditions of this Agreement, if not cured within the applicable cure period, by any remedy available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with enforcement.

Section 5.04. No Third-Party Beneficiary. The provisions of this Agreement may be enforced only by the Parties, except that if Developer assigns this Agreement in accordance with the terms of this Agreement, then such assignee may enforce this Agreement. No other persons shall have any rights hereunder.

Section 5.05. Recording of Agreement. The Parties agree that Developer may record this Agreement with the Baldwin County Probate Court within fourteen (14) days of the date of execution of this Agreement.

Section 5.06. Estoppel Certificate. Any of the Parties may, at any time, and from time to time, deliver written notice to the other party requesting the party to certify in writing (i) that this Agreement is in full force and effect, (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) whether, to the knowledge of the party, the requesting party is in default or claimed default in the performance of its obligation under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and (iv) whether, to the knowledge of the party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

Section 5.07. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions, and understandings among the Parties relative to the Property and its Development, and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement.

Section 5.08. Covenant to Sign other Documents. City and Developer acknowledge that consummation of the transactions contemplated by this Agreement may require the execution contemporaneously with the execution of this Agreement and thereafter of certain documents in addition to this Agreement, and City and Developer agree to cooperate with the execution thereof.

Section 5.09. Assignment. This Agreement may only be assigned by Developer with the City's express written consent prior to such assignment, which consent may be withheld in City's sole and absolute discretion; provided, however, that any such assignment will not discharge or release Developer of its obligations hereunder. Notwithstanding the foregoing or anything to the contrary in this Agreement, Developer shall have the right, in its sole and absolute discretion, to assign this Agreement and all of its rights and obligations hereunder, without the City's prior consent, to an entity affiliated with, owned (in-whole or in part), controlled, operated, or managed by The Kolter Group LLC, or its affiliates or the owners or principals of an affiliated entity of such entities. This Agreement shall not be assigned by the City without Developer's consent; provided, however, that any such assignment will not discharge or release the City of its obligations hereunder. Subject to the terms of this section, this Agreement will be binding on and will inure to the benefit of the Parties and their respective successors and assigns. Furthermore, and notwithstanding the foregoing or anything to the contrary in this Agreement, this Agreement shall also be binding on the City and City Councils for the duration of this Agreement, even if the City Council members change.

Section 5.10. Governing Law; Jurisdiction; and Venue.

(A) This Agreement is governed by the laws of the State of Alabama.

(B) The Parties agree that the exclusive jurisdiction and venue for disputes relating to this Agreement is a court of competent subject matter jurisdiction located in Baldwin County, Alabama.

Section 5.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

Section 5.12. Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the City's right and power of eminent domain under the laws of the State of Alabama.

Section 5.13. Severability. If any provision in this Agreement or the application of any provision of this Agreement is held invalid, the invalidity shall apply only to the invalid provision, and the remaining provisions of this Agreement, and the application of this Agreement or any other provision of this Agreement, shall remain in full force and effect. However, if the invalid provision would prevent or materially impair Developer's right or ability to complete performance of this Agreement, the Parties agree to use their best efforts to renegotiate that provision in order for Developer to complete performance of this Agreement.

Section 5.14. General Terms and Conditions.

(A) Agreements to Run with the Land. This Agreement shall be recorded against the Property as described in Exhibit A and shown on Exhibit B. The agreements contained herein shall be deemed to run with the land.

(B) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.

(C) Merger. This Agreement, coupled with its Exhibits which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions with respect to

the matters set forth herein. All prior negotiations and representations are superseded and merged herein.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date below found.

WITNESSES:

DEVELOPER:

KOLTER GROUP ACQUISITIONS LLC, a
Florida Limited Liability Company

By: _____

Name: _____

Title: _____

STATE OF _____)

) ACKNOWLEDGMENT

COUNTY OF _____)

I, _____, a Notary Public for the State of _____, do hereby certify
that _____, by _____, its _____, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this ____ day of _____, 20__.

Notary Public for State of _____

My commission expires: _____

Print Name: _____

WITNESSES:

CITY:

CITY OF FOLEY
ALABAMA

By: _____
Ralph Hellmich, Mayor

Date: _____

By: _____
_____, City Clerk

Date: _____

STATE OF ALABAMA)
CITY OF FOLEY)

ACKNOWLEDGMENT

I, _____, a Notary Public for the State of Alabama, do hereby certify that City of Foley, by Ralph Hellmich, Mayor, and _____, its City Clerk, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this ____ day of _____, 20__.

Notary Public for State of _____
My commission expires: _____
Print Name: _____

(SEAL)

Exhibit A

Property Description

Exhibit B

Plat

Exhibit C

Master Plan

Exhibit D

Stormwater Requirements

Exhibit E

Rights-of-Way
