

DRAFT:

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As approved by Town Council
for the Town of Howey-in-the-Hills, Florida

AMENDMENT AND RESTATEMENT OF THE RESERVE AT HOWEY-IN-THE-HILLS DEVELOPER'S AGREEMENT

This AMENDMENT AND RESTATEMENT OF THE RESERVE AT HOWEY-IN-THE-HILLS DEVELOPER'S AGREEMENT ("Agreement") is made this 2021, between the **Town of Howey-in-the-Hills**, Florida, a Florida municipal corporation, whose address for purposes of this Agreement is P.O. Box 128, Howey-in-the-Hills, Florida 34737 (the "Town"), **Eagle's Landing at Ocoee, Inc.**, a Florida corporation, whose address for purposes of this Agreement is P.O. Box 770609, Winter Garden, Florida 34777, **Howey In the Hills, Ltd.**, a Florida limited partnership, whose address for purposes of this Agreement is 10165 NW 19th Street, Miami, Florida 33172 and **REO Funding Solutions, LLC.**, whose address for purposes of this Agreement is 100 N Tampa ST Suite 1850, Tampa, Florida 33602 (collectively, the "Owners").

RECITALS

- A. The Owners are the owners of an approximately 378-acre parcel of property more particularly described on **Exhibit "A"** ("the Property").
- B. The Property is within the corporate limits of the Town and the Town has assigned a land use and zoning designation to the Property of PUD-Planned Unit Development.
- C. The Property is subject to The Reserve at Howey-in-the-Hills Developer's Agreement, between the Town of Howey-in-the-Hills, Florida, Eagle's Landing at Ocoee, Inc., a Florida corporation and Howey-in-the-Hills, Ltd., a Florida limited partnership, recorded July 30, 2007 in Official Records Book 3480, Page 221 and the Owners and the Town desire to amend and restate same.
- D. The Owners intend to develop the Property as a mixed use planned development consisting of single-family residential, multi-family residential, commercial and institutional elements as more specifically set forth herein ("the Project").
- E. The Town and the Owners desire to enter into this Agreement in order to set forth the terms of their mutual understanding regarding the development of the Property.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, the mutual covenants and benefits herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Town and Owners agree as follows:

1. Recitals. The foregoing recitals are true, correct and are hereby incorporated as terms.

2. Authority. This Agreement is entered into by the Town under the home rule powers granted to it by the Florida Constitution (including Article VIII, Section 2(b) thereof), the general powers conferred upon municipalities by statute and otherwise (including Chapters 163 and 166, Florida Statutes), and the Town's Charter. This Agreement does not constitute a "development agreement" under the Florida Local Government Development Agreement Act.

3. Relationship to Land Development Regulations. The Owners shall abide by and comply in all respects with the requirements of the Town's Land Development Regulations, including without limitation, those pertaining to planned unit developments and this Agreement. However, in the event of conflict between this Agreement and the Town's Land Development Regulations, this Agreement shall control to the extent of such conflict.

4. Amendment and Restatement of Prior Developer's Agreement. The Owners, or their predecessors in interest, previously entered into The Reserve at Howey-in-the-Hills Developer's Agreement, between the Town of Howey-in-the-Hills, Florida, Eagle's Landing at Ocoee, Inc., a Florida corporation and Howey-in-the-Hills, Ltd., a Florida limited partnership, recorded July 30, 2007 in Official Records Book 3480, Page 221. The Owners and the Town desire to amend and restate that prior Developer's Agreement as set forth herein.

5. Preliminary Subdivision Plan. The Owners shall develop the Property substantially in conformance with **The Reserve At Howey in the Hills PUD** prepared by Connelly & Wicker Inc., Inc. for the Project and approved by the Town concurrently herewith and attached hereto as **Exhibit "B"** and incorporated herein by reference (the "Plan"). However, in the event of conflict between this Agreement and the Plan, this Agreement shall control to the extent of such conflict.

As depicted on the Plan, the Owners shall have the right to develop the Property with up to 740 single-family residential units, comprised of a mix of detached and attached (townhomes) units, and up to 105,716 square feet of Office/Storage use. The Owners may develop the Property with up to 300,000 square feet of Retail/Office Commercial use and up to 100,000 square feet of Institutional use in conformance with both the Plan and the building pads and square footages set forth on **Exhibit "C"** to this Agreement.

Any amendments to the Plan that occur after the effective date of this Agreement shall take effect only if and when approved by the Town Council or Town staff as applicable. Further, upon approval by the Town Council or Town staff as applicable, amendments to the Plan shall automatically be incorporated into this Agreement and shall modify or replace the Plan to the extent of such amendment to the Plan, without the necessity for an amendment to this Agreement.

The Town hereby acknowledges and agrees that the Project, as depicted on the Plan (and any amendments to the Plan, which amendments must first be approved by the Town Council), is consistent with its Comprehensive Plan and Land Development Regulations.

Unless the Town Council grants an extension of time, the Owners shall submit a PUD Preliminary Plan and/or PUD Final Construction Plans for Phase I or at least one other Phase as designated on the Plan to the Town within eighteen months following the later of (i) the date of execution of this Agreement, or (ii) the date the Town planner has determined in writing that the Preliminary Subdivision Plans have been approved.

6. Phasing Schedule. The phasing schedule shall be as shown on the Plan. It is recognized that this Phasing Schedule is general in nature and may be modified by notification to the Town.

7. Signage. Entrance signs and informational signage may be located in buffers, setbacks and/or signage easements as approved by the Planning and Zoning Commission.

8. Wetlands. Impacts to wetlands, if any, and wetland buffering shall be subject to the St. Johns River Water Management District regulations.

9. Setbacks.

9.1 SR 19 Setbacks. All buildings shall have a minimum setback distance of one hundred (100) feet from the centerline of State Road 19; provided, however, the minimum setback requirement shall be reduced to seventy-five (75) feet from such centerline if a landscape buffer is utilized which buffer contains, at a minimum, a similar planting schedule as that approved by the Town for the Venezia South project located adjacent to the Property to the east.

9.2 Perimeter Setbacks. Perimeter setbacks shall as identified in the approved Plan.

9.3 Wetlands Setbacks. Wetlands setbacks shall be as required by the St. Johns River Water Management District.

10. Water, Wastewater and Reclaimed Water Service. The Owners currently have a contract with the Central Lake Community Development District (“CDD”) under which the Project will receive wastewater treatment and disposal services from the CDD’s wastewater facilities. The Town shall provide potable water and reclaimed water in accordance with all applicable ordinances, resolutions, operating regulations, policies and procedures. Except as may be set forth otherwise in this Agreement, the Owners shall install on-site facilities, connect to the Town’s systems, and pay applicable capital and connection charges and other Town rates, fees, and charges.

10.1 Reclaimed Water. The Owners shall install reclaimed water lines, as required by the Town’s Code of Ordinances, and shall obtain reclaimed water service for the Project at such time the Town constructs its reclaimed water lines to the Project’s boundaries. Until such time as the Town supplies reclaimed water, the Owners may use the reclaimed water lines to irrigate properties within the Project boundaries with stormwater from on-site wet stormwater detention ponds or alternative and available sources acceptable to Owners.

10.2 Water.

(i) Water Service. If and to the extent allowed by, and subject to the limitations and requirements of, the permits issued to the Town from time to time by the St. John's River Water Management District in connection with water consumption, the Town shall provide potable water service to the Property in sufficient quantities as to allow for development of the Project as contemplated herein. Notwithstanding the foregoing, the Town acknowledges and agrees that it has the actual capacity to serve the Property with potable water service in sufficient quantities as to allow for development of the Project as contemplated herein and that such capacity shall be reserved upon the payment of impact fees to the Town.

The Owners shall construct, at their expense, the facilities (exclusive of water treatment plants), lines and appurtenances necessary to serve the Project. The route of any off-site lines shall be according to engineering plans produced by the Owners and approved by the Town Council, which approval shall not be unreasonably withheld, conditioned or delayed. If roads within the Project are private, the Owners shall provide the utility owner with utility easements for waterlines and sewer lines.

(ii) Town's Option to Oversize Water Lines. Within ninety (90) days of the date of this Agreement, the Town Council may elect to oversize such lines, improvements or appurtenances for the Town's use in the expansion of its potable water system and will inform the Owners in writing of the specifications for such oversizing. In the event the Town so elects to oversize such improvements, then the Town shall be responsible for the difference in the cost of design, materials and construction to oversize the improvements based on plans and cost estimates provided by the Owners to the Town, and approved by the Town Council, which approval shall not be unreasonably withheld, conditioned or delayed. The Town shall reimburse the Owners for the difference in such costs in the form of cash. The Town shall make such reimbursement to the Owners within sixty (60) days following a written request therefor from the Owners, accompanied by such supporting documentation as is reasonably necessary to demonstrate that the Owners have incurred and paid the costs which are attributable to such over-sizing in keeping with the plans and cost estimate previously approved by the Town Council.

(iii) Permit-Induced Costs, Restrictions, Requirements, and Risks. Under state and federal laws and regulations, the Town may provide its potable water service to the Property and the Owners only if the Town first has been issued certain permits, and the Owners acknowledge that the permits are inevitably conditioned with requirements and restrictions that typically impose costs and risks. The Owners further acknowledge that, for the Town to operate its potable water system in an orderly, dependable, and cost-effective manner, the Town must have the ability legally to spread the costs and risks among its customers and property owners who benefit from the service. The Owners acknowledge, therefore, (i) that from time to time the Town may impose fees and charges and may issue potable

water system regulations and policies that impose restrictions and requirements on its customers and benefiting property owners, such as the Owners, and (ii) so long as the Owners are required to pay only their fair share for such fees and charges, then the imposition of such fees and charges and the issuance of such system regulations are not prohibited by or otherwise a breach of this Agreement.

10.3 Wastewater. The parties acknowledge and agree that the Owners have entered into that certain Agreement and Commitment for Utility Services, dated June 21, 2005 (the “Utilities Commitment”), with the CDD, the terms of which provide, in relevant part, that the Project will receive wastewater treatment and disposal service from the wastewater facilities of the CDD.

The Owners acknowledge that (i) from time to time the Town may impose fees and charges and may issue wastewater-system regulations and policies that impose restrictions and requirements on its wastewater customers and benefiting property owners, such as the Owners, and (ii) the imposition of such fees and charges and the increase of such regulations are not necessarily prohibited by or otherwise a breach of this Agreement.

11. Owner’s Associations.

11.1 Association Responsibilities. The Owners, a homeowner’s association, and/or a property owner’s association created by the Owners, or, if approved by the Town Council, a community development district, but not the Town, shall be responsible for maintaining any and all community parks, open space areas, streetlights, stormwater management areas, entrance features, boundary walls and/or fences, access tracts and landscaped tracts within the Project. The Town shall maintain waterlines within the Project and the wastewater provider shall maintain the sewer lines which serve the property within the Project.

11.2 Traffic-Law Enforcement. The covenants, conditions and restrictions for the Property and the Project shall entitle the Town, as a third-party beneficiary, to enforce traffic laws on the private streets within the boundaries of the Property.

11.3 Requirement for Plat Recording. Before a plat may be recorded for the Property and the Project, the Owners shall furnish to the Town copies of the pertinent documents for the homeowners’ or property owners’ association and the covenants, conditions and restrictions for the Property, setting forth the requirements and restrictions enumerated in this section 10 and in subsections 11.1, 11.2, and 11.3.

12. Streets, Sidewalks and Parking.

12.1 Streets. All streets that are indicated as private on the Plan shall be owned and maintained by the Owners, a homeowner’s association, or a property owner’s association created by the Owners or, if approved by the Town Council, a community development district. All other streets shall be public and shall be owned and maintained by the Town. No streets in the Project, either public or private, may be gated or otherwise restricted or obstructed by the Owners, by a homeowners’ or property owners’ association, or by any other person or entity.

12.2 Sidewalks. Sidewalks located along private streets shall be owned and maintained by the Owners, a homeowner's association, or a property owner's association created by the Owners or, if approved by the Town Council, a community development district. All other sidewalks shall be owned and maintained by the Town.

12.3 Parking. On-street parking shall be prohibited on private streets with travel lanes that consist of less than twenty-four (24) feet of pavement width. This prohibition shall be enforced by the Owners, a homeowner's association, or property owner's association created by the Owners or, if approved by the Town Council, a community development district.

13. Utility Easement. Prior to the issuance of a building permit for any given phase of the Project, the Owners shall convey to the Town a five-foot (5') utility easement to be located adjacent to, and on both sides of, the right-of-way of any street (public or private) serving such phase of the Project. The planting of trees within any such easement shall be prohibited.

14. Irrigation. On-site wet ponds shall be used to irrigate the common landscaped areas, unless prohibited by the St. John's River Water Management District.

15. Necessity of a Letter of Credit. Construction and dedication to the Town of any new public facilities or improvements that are required to be constructed as part of this Agreement will be a condition precedent to final plat approval; provided, however, in lieu of such construction and dedication, the Owners may post a letter of credit with the Town for one hundred twenty-five percent (125%) of the cost of such improvements, in which event the condition precedent to final plat approval will be deemed satisfied.

16. Transportation. The Owners have submitted to the Town a traffic analysis prepared by Traffic & Mobility Consultants, LLC and dated _____ (the "Study"). If the results of the Study require any mitigation for traffic generation, the Town and the Owners work together and with any other applicable jurisdiction as required by applicable law to address such mitigation requirements.

17. School Concurrency. The Project shall be placed on the Town's "exempt" status list to be provided to Lake County and exempted from school concurrency requirements if the following requirements are completed on or before the date that the school concurrency element is adopted by the Town: (i) the Project has Preliminary Plan approval with no outstanding conditions, and (ii) this Developer's Agreement has been finalized and executed by all parties hereto. Inclusion on the "exempt" status list will not guarantee that the Project will remain on the list until after a formal determination has been rendered by the Town Council as to whether the Project is vested for school concurrency purposes in accordance with Florida law.

18. Binding Effect; Assignability. This Agreement, once effective, shall be binding upon and enforceable by and against the parties hereto and their assigns. This Agreement shall be assignable by the Owners without the need for consent by the Town. The rights and obligations set forth in this Agreement shall run with the land and be binding on all successors and/or assigns. The parties hereby covenant that they will enforce this Agreement and that it is a legal, valid, and binding agreement.

19. Notices. All notices or payments required to be made hereunder shall be made at the following addresses:

To Town: The Honorable Martha Macfarlane, Mayor,
Town of Howey-in-the-Hills
101 North Palm Avenue
Howey-in-the-Hills, Florida 34737

With a Copy to: Tom J. Wilkes GrayRobinson,
P.A. 301 East Pine Street
Suite 1400
Orlando, 32801

To Owner: Eagles Landing at Ocoee, Inc.
Attention: Randy June
P.O. Box 770609
Winter Garden, FL 34777

With a Copy to: Jim Pratt, Esq.
Graham Builder Jones Pratt & Marks LLP
PO Box 1690
Winter Park Florida 327901690

To Owner: Howey in the Hills, Ltd.
Attention: Eddie Easton
10165 NW 19th Street
Miami, Florida 33172

With a Copy to:

To Owner:

With a Copy to: REO Funding Solutions IV
100 N Tampa ST
Suite 1850,
Tampa, Florida 33602

20. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the parties relating to this Agreement. No amendment to the terms of this Agreement shall be effective unless it is in writing signed by all parties hereto. Amendments to this Agreement will take effect and will be binding against the Town only if approved by a vote of the Town Council.

21. Waiver. The failure of any party hereto to insist upon or enforce any right or privilege granted hereunder shall not constitute or operate as a waiver thereof and nothing shall constitute a waiver of any party's right to insist upon strict compliance with the terms hereof. Provided however, any party may, in writing, waive the benefit of any provision or condition for

its benefit which is contained herein. Waivers of material provisions of either this Agreement or the Town's Land Development Regulations will be valid and binding against the Town only if approved by a vote of the Town Council.

22. Governing Law. This Agreement shall be governed by the law of the State of Florida. Venue for any judicial proceeding pertaining to the Agreement shall be in the Fifth Judicial Circuit of Florida, in Lake County, Florida.

23. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall remain enforceable to the greatest extent permitted by law.

24. Recording. This Agreement shall be recorded in the Public Records of Lake County, Florida, by the Owners, at their expense.

25. Negotiated Agreement. The uses, densities, intensities and all of the conditions of approval of the Plan have been negotiated and agreed to by both the Owners and the Town. The Plan constitutes an agreement between the parties. The Owners and the Owners' successors in interest have the contract right to develop the PUD with the uses, densities and intensities approved by the Town, subject to the restrictions and requirements in the conditions of approval, and neither the applicant nor the Town shall have the right to rezone or downzone the property, or otherwise alter the uses, densities and intensities, or delete, waive or amend any conditions of approval except through an amendment to the Plan that is negotiated and approved by all parties.

26. Effective Date. This Agreement shall become effective after approval by the Town Council and execution of this Agreement by all parties.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]