

**Village of Royal Palm Beach
Village Council
Agenda Item Summary**

Agenda Item:

PUBLIC HEARING PURSUANT TO SEC. 163.3225(1), *FLORIDA STATUTES*, TO CONSIDER APPLICATION NO. 19-0120 (DA) REQUESTING APPROVAL OF AN AMENDMENT TO THE PREVIOUSLY APPROVED DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AND THE DEVELOPER FOR A PROPOSED 401-UNIT MULTIFAMILY RESIDENTIAL DEVELOPMENT ON A 29.356± ACRE PARCEL OF LAND LOCATED ON THE SOUTH SIDE OF SOUTHERN BOULEVARD APPROXIMATELY 7/10 OF A MILE WEST OF STATE ROAD 7; BY AGENT: JEFF EVANS FROM EVANS LAND CONSULTING, LLC.

Issue:

The applicant is requesting approval of an amendment of a previously approved Development Agreement between the Village of Royal Palm Beach and the Developer of the "Southern Boulevard Properties POD 2", in accordance with Sections 163.3220 - 163.3243, *Florida Statutes*, the Florida Local Government Development Agreement Act (the "Act"). The original Development Agreement associated with the 401-unit multifamily residential development was approved by the Village Council on November 21, 2019. Execution of the development agreement was required as part of the development approval as the minimum unit floor areas proposed at that time were less than those required by the Village Code in the Multiple Family Residential (RM-14) Zoning District at Section 26-86 (4) (h).

Section 163.3225, *Florida Statutes* requires that before amending a development agreement, the Village shall conduct at least two (2) public hearings, with one, at the option of the governing body, allowed to be held by the Local Planning Agency.

The applicant has requested the proposed amendment because the applicant is proposing modifications to the unit sizes within the project. The proposed changes will increase the size of some units and the overall average size of units for the entire development in comparison with the sizes approved under the original agreement; however, the units continue to be below the minimum square footages required by the Village Code in the Multiple Family Residential (RM-14) Zoning District at Section 26-86 (4) (h).

Initiator:	Village Manager	Agenda Date	Village Council
Director of P & Z	Approval	3-17-2022	Action

The applicant is proposing to enter into an Amended and Restated Development Agreement which specifies the reduction in minimum floor area unit sizes as follows:

PROPOSED AMENDED AND RESTATED DEVELOPMENT AGREEMENT			
Unit Type	Proposed Minimum Unit Sizes	Code Required Minimum Unit Size	Difference
1 Bedroom	776 SF/850 SF/869 SF/773 SF	1,000 SF	-224 SF/-150 SF/-131 SF/-227 SF
2 Bedroom	1,118 SF/1,167 SF/1,186 SF	1,200 SF	-82 SF/-33 SF/-14 SF
3 Bedroom	1,374 SF/1,393 SF	1,350 SF	+24 SF/+43 SF
Townhomes (3 Bedroom)	1,660 SF/2,035 SF/1,685 SF	1,350 SF	+310 SF/+685 SF/+335 SF

For comparison, the previously approved unit sizes are provided below:

ORIGINAL DEVELOPMENT AGREEMENT			
Unit Type	Proposed Minimum Unit Sizes	Code Required Minimum Unit Size	Difference
1 Bedroom	719 SF/806 SF	1,000 SF	-281 SF /-194 SF
2 Bedroom	1,098 SF/1,141 SF	1,200 SF	-102 SF /-59 SF
3 Bedroom	1,215 SF/1,287 SF	1,350 SF	-135 SF /-63 SF

Additionally, Village Code also specifies a minimum average unit size of 1,200 square feet for each building within the development. The applicant is proposing a minimum average building size for the buildings listed below.

Average unit size / bldg. type	Code requirement 1,200 sf	Proposed
TYPE I		816 SF
TYPE II		1,127 SF
TYPE III		1,088 SF
TYPE IV		986 SF
TYPE V		978 SF
TYPE VI		961 SF
TYPE VII		1,820 SF

Initiator:	Village Manager	Agenda Date	Village Council
Director of P & Z	Approval	3-17-2022	Action

Z:\Project Files 12-11-02\Southern Blvd Properties (Tuttle Royale)_POD 2 (aka Phase 1 South A)\19-102 (DA)\Board Documents\AIS & Staff Report\Agenda Item Summary\19-120 (DA AMENDMENT) Southern Boulevard Properties Pod 2 Agenda Item VC.docx

The applicant states that a substantial recreation amenity package designed to meet the needs of the future residents has been provided. The list of proposed amenities is not proposed to be changed with this amendment and can be found in the attached Development Agreement at Exhibit "C".

This item was considered by the Local Planning Agency at its regular meeting on February 22, 2022, and was recommended for Approval by a vote of 4-0.

Recommended Action:

Staff is recommending Approval of the proposed amendments to Application 19-0120 (DA) and its associated Amended and Restated Development Agreement.

Initiator:	Village Manager	Agenda Date	Village Council
Director of P & Z	Approval	3-17-2022	Action

Z:\Project Files 12-11-02\Southern Blvd Properties (Tuttle Royale)_POD 2 (aka Phase 1 South A)\19-102 (DA)\Board Documents\AIS & Staff Report\Agenda Item Summary\19-120 (DA AMENDMENT) Southern Boulevard Properties Pod 2 Agenda Item VC.docx

Initiator:	Village Manager	Agenda Date	Village Council
Director of P & Z	Approval	3-17-2022	Action
Z:\Project Files 12-11-02\Southern Blvd Properties (Tuttle Royale)_POD 2 (aka Phase 1 South A)\19-102 (DA)\Board Documents\AIS & Staff Report\Agenda Item Summary\19-120 (DA AMENDMENT) Southern Boulevard Properties Pod 2 Agenda Item VC.docx			

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Steven E. Wallace, Esq.
Ward Damon P.L.
4420 Beacon Cir,
West Palm Beach, FL 33407
561-842-3000

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BETWEEN
VILLAGE OF ROYAL PALM BEACH, FLORIDA
AND
TUTTLE ROYALE**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2022, (the "Execution Date"), by and among TUTTLE ROYALE APARTMENTS LLC, a Florida limited liability company ("TRA") with an address of 1301 W Royal Palm Rd, Boca Raton, FL, 33486, ("Developer"), and the VILLAGE OF ROYAL PALM BEACH, FLORIDA, a municipal corporation duly organized by the laws of the State of Florida, with an address of 1050 Royal Palm Beach Boulevard, Royal Palm Beach, Florida 33411 ("Village").

WITNESSETH:

WHEREAS, the Villages wishes to encourage development of the land annexed into the Village generally located west of State Road 7 along Southern Boulevard (the "Property"); and

WHEREAS, Developer is the owner of the Property as more fully legally described within Exhibit "A" as attached hereto and incorporated herein; and

WHEREAS, the Developer desires to develop a multi-family residential project on the Property (the "Project"), as identified on the approved Site Plan set forth within Exhibit "E" which site plan has received final approval from the Village; and

WHEREAS, Section 26-86(4)(h) of the Village's Land Development Regulations ("LDR") for RM-14 Multifamily Residential District zoning provides that the minimum unit sizes for dwelling units begin at 1,000 square feet; and

WHEREAS, the Developer desires to develop dwelling units at minimum sizes less than provided for in LDR Section 26-86(4)(h); and

WHEREAS, LDR Section 26-86(4)(h) provides that a developer may develop multifamily residential dwelling units at a minimum size less than provided for in the LDR if a developer agreement pursuant to Chapter 163, Fla. Stat., is entered into between the developer and the Village under the terms set for therein; and

WHEREAS, the Village Council of the Village of Royal Palm Beach approved a developer agreement on November 21, 2019; and

WHEREAS, the Developer has requested a modification of the previously approved site plan (Application No. 20-62 (SPM, AAR)) which results in modifications to the unit sizes and requires an amendment to the previously approved development agreement; and

WHEREAS, the purpose of this Amended and Restated Development Agreement, consistent with the requirements of LDR Section 26-86(4)(h) is to establish conditions which will result in the Developer making certain additional improvements to the Project and to mitigate the additional impacts upon the adjacent residential community which said community believes may result from the reduction to the minimum square footage of the dwelling units in the Project; and

WHEREAS, the Developer and the Village intend for this Amended and Restated Development Agreement to be construed and implemented so as to effectuate its purpose and the purpose and intent of the Florida Local Government Development Agreement Act, Section 163.3220-163.2343, Fla. Stat. (2011); and

WHEREAS, the Property is designed MFH-Multifamily High Density Residential-in the Village of Royal Palm Beach Comprehensive Plan, and zoned as RM-14, Multifamily Residential (up to 14 dwelling units per acre) in the Existing Zoning (as that term is defined hereinafter; and

WHEREAS, the Developer and the Village mutually desire that the Property be developed as permitted in the Existing Zoning, the Comprehensive Plan and this Agreement; and

WHEREAS, Fla. Stat. Chapter 163 specifically provides for and authorizes local governments to enter into Development Agreements; and

WHEREAS, the Village has conducted two public hearings prior to entering into this Agreement, on February 22, 2022 and on March 17, 2022, both of which were properly noticed by publication in a newspaper of general circulation and by mailed notice to the affected property owners, in accordance with Section 163.3225, Fla. Stat.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the Village and Developer mutually agree and bind themselves as set forth herein:

The Parties hereby agree that the consideration and obligations recited and provided for under this Agreement constitute substantial benefits to both Parties and thus adequate consideration for this Agreement. This covenant shall be binding upon, and inure to the benefit of the Parties, their successors, assigns, heirs, legal representatives, and personal representatives.

1. Recitals; Exhibits. The recitals set forth herein are true and correct and are incorporated into and made a part of this Agreement. The attached exhibits shall be deemed adopted and incorporated into the Agreement; provided, however, that this Agreement shall be deemed to control in the event of a conflict between the attachments and this Agreement.

2. Definitions. All terms shall have the same definition as set forth in Section 163.3221, Fla. Stat. (2011) unless a different definition is specified herein.

“Agreement” means this Amended and Restated Development Agreement between the Village and the Developer.

“Approvals” means all local development permits anticipated by Developer to be requested for approval and issuance for the Project, as provided in Exhibit “B”.

“Village” means the Village of Royal Palm Beach, a municipal corporation duly organized by the laws of the State of Florida, and all departments, agencies and instrumentalities subject to the jurisdiction thereof.

“Comprehensive Plan” means a plan adopted by the Village pursuant to the Community Planning Act, which plan was in effect as of the Effective Date of this Agreement.

“Concurrency Requirements” means all those requirements imposed by Section 163.3180, Fla. Stat., in conjunction with the applicable Village Laws as of the Effective Date of this Agreement.

“County” means Palm Beach County, a political subdivision of the State of Florida.

“Development” means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels and such other activities described in Section 163.3221(4), Fla. Stat. (2009).

“Effective Date” is the date this instrument has been properly recorded in the public records of the County pursuant to Section 163.3239, Fla. Stat. (2011).

“Existing Zoning” is (a) the Village’s Future Land Use Map designation of “MFH-Multifamily High Density Residential” for the Property as of the Effective Date of this Agreement; (b) the Village’s zoning map designation for the Property of “RM-14, Multifamily Residential (up to 14 units per acre)” as of the Effective Date of this Agreement; (c) the associated Village Comprehensive Plan Goals, Policies and Objectives, Land Development Regulations, and other Village Ordinances in effect as of the Effective Date of this Agreement.

“Land” means the earth, water and air above, below or on the surface and includes any improvements or structures customarily regarded as land.

“Laws” means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a local government affecting the development of land.

“Property Interest” means any interest or rights in real property or appurtenances of the Property including, but not limited to, fee simple, leasehold, condominium, transferable development right or air rights and licenses, however acquired, including any interests or rights in real property acquired through foreclosure, deed in lieu of foreclosure or any other realization of a security interest in real property. Without limiting the foregoing, a Community Development District and/or a master property owners’ association with appropriate authority relating to the Property shall be deemed to hold a Property Interest.

“Public Facilities” means major capital improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, streets, parking and health systems and facilities.

“Site Plan” means the approved graphic and informative representation of the specific design solution for the Project or a development phase thereof.

“Project” means the development submitted for development approval by the Developer to the Village as set forth on the Site Plan.

3. Applicability; Legal Description. This Agreement applies only to the land located within the boundaries of the legal description as set forth and incorporated herein as Exhibit “A”.

4. Duration and Effective Date. This Agreement shall have a term of ten (10) years from the Effective Date and shall be recorded within fourteen (14) days after the execution by the parties in the Public Records of Palm Beach County, but in no event later than 180 days after site plan approval. This Agreement shall become effective on the Effective Date and shall constitute a covenant running with the land. The term of this Agreement may be further extended beyond the term set forth in this Agreement by mutual consent of the Village and the Developer, subject to public hearings in accordance with Section 163.3225, Fla. Stat. (2011). Notwithstanding anything contained herein to the contrary, should Developer not hold fee simple title to all parcels, both public and private, within the Property one hundred eighty (180) days after approval by the Village of the Site Plan, then this Development Agreement shall be null and void with no further obligations to either party hereto. Upon termination of this Agreement, Village shall record a termination of this Agreement in the public records of Palm Beach County, Florida.

5. Additional Conditions of Development. In order to better protect the community from any perceived impact resulting from any reduction of dwelling unit sizes as sought by the Developer as reflected in Exhibit “D” attached hereto and incorporated herein, the Developer has voluntarily agreed to comply with the additional conditions of development for the Project as set forth in Exhibit “C” attached hereto and incorporated herein.

6. Permitted Development Uses and Building Intensities.

(a) Zoning. The Property falls within the Village’s RM-14 zoning designation. The RM-14 zoning district regulations in effect as of the date of this Agreement are applicable except as specifically modified by Exhibit “D” concerning the permitted dwelling size reductions. In approving the Project, the Village has determined that the uses, intensities and densities of development permitted thereunder are consistent with the Existing Zoning.

(b) Density, Intensity, Use and Building Heights.

(1) As of the Effective Date and pursuant to the Existing Zoning, the density permitted on the Property is fourteen (14) units per acre.

(2) The height for any development on the Property shall be regulated by the Existing Zoning.

7. Concurrency; Public Facilities; Impact Fee Credits.

(a) Concurrency.

(1) As of the Effective Date, the following public facilities are able to service the Project: water and sewer; streets and traffic; drainage; parks and recreation; open space; solid waste; and schools.

(2) During the term of this Agreement, the Project shall be required to satisfy all concurrency obligations which, at the time of site plan approval, are required by the Village Code. Those obligations must be met prior to the issuance of the first building permit, at which time this obligation shall be deemed satisfied. As to recreation concurrency, see provisions of Exhibit "C".

(3) The Village shall within the parameters of its jurisdiction and services, reserve sufficient infrastructure capacities and shall cause them to remain available to serve this Project including, without limitation, with respect to water and sewer, traffic and streets, parks and open space, solid waste, drainage and schools.

(4) All subsequent development orders or permits sought to be issued which are in conformity with the Existing Zoning are hereby found to meet Concurrency Requirements so long as the Developer develops the Property in compliance with the approved site plan.

8. Local Development Permits. A description of the local development permits anticipated to be requested for approval and issuance for the future development of the Project (the "Approvals") is set forth and incorporated herein as Exhibit "B". The Approvals, Existing Zoning and this Agreement establish the criteria upon which the Property shall be developed during the term of this Agreement.

9. Existing Zoning Regulation Amendments.

(a) The Approvals, Existing Zoning and this Agreement shall govern development of the Property for the term of the Agreement. The Village's laws and policies adopted after the Effective Date may be applied to the Property only if the determinations required by Section 163.3233(2), Fla. Stat. (2011) have been made after thirty (30) days written notice to the Developer and at a public hearing.

(b) Pursuant to Section 163.3233(3), Fla. Stat. (2011), the ability to modify Existing Zoning Regulations after the Effective Date supplements, rather than supplants, any rights that may vest to the Developer under Florida or Federal law. Any such actions taken by the Village shall not abrogate any rights that may vest pursuant to common law.

10. Phasing of Development. Consistent with Section 163.3227(2), Fla. Stat. (2011), it is the intent of the Developer to retain the right to develop the Project in phases.

11. Consistency with Comprehensive Plan and Land Development Regulations. The Village hereby finds that development of the Project is consistent with the Village's Comprehensive Plan and land development regulations as of the Effective Date of this Agreement. The Village further hereby affirms that its Comprehensive Plan and any plan amendments implementing or related to this Agreement have been found to be in compliance by the state land planning agency as required by Section 163.3229, Fla. Stat. (2011).

12. Necessity of Complying with Local Regulations Relative to Development Permits. The Developer and the Village agree that the failure of this Agreement to address a particular permit,

condition, fee, term, license or restriction in effect on the Effective Date shall not relieve the Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms, licenses or restrictions as long as compliance with said regulation and requirements does not require any Developer to develop a Property in a manner that is inconsistent with Existing Zoning and/or the Agreement.

13. Reservation of Development Rights.

(a) For the term of this Agreement, the Village hereby agrees that it shall permit the development of the Property in accordance with the Existing Zoning and this Agreement.

(b) The expiration or termination of this Agreement shall not be considered a waiver of, or limitation upon, the rights including, but not limited to, any claims of vested rights or equitable estoppel obtained or held by any Developer or its successors or assigns to continue development of the Property in conformity with Existing Zoning and all prior and subsequent development permits or development orders granted by the Village.

14. Annual Review.

(a) The Village may, in its sole discretion, review the development that is subject to this Agreement every twelve (12) months, commencing twelve (12) months after the Effective Date for the term of the Agreement. The Village shall begin the review process by giving notice to the Developer, a minimum of thirty (30) days prior to the anniversary date of the Agreement of its intention to undertake an annual review of this Agreement.

(b) Any information required of the Developer during an annual review shall be limited to that necessary to determine the extent to which the Developer is proceeding in good faith to comply with the terms of this Agreement.

(c) If the Village finds on the basis of competent substantial evidence that there has been a failure to comply substantially with the terms of the Agreement, the Village shall provide the Developer with a reasonable time to cure any failure before the Village takes any action to terminate or amend this Agreement as provided herein.

15. Notices.

(a) All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties hereto at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the Village: Village Manager
Village of Royal Palm Beach
1050 Royal Palm Beach Boulevard
Royal Palm Beach, FL 33411

With a copy to: Village Attorney
Davis & Associates, P.A.
701 Northpoint Parkway, Suite 205
West Palm Beach, FL 33407

To the Developer: TUTTLE ROYALE APARTMENTS LLC
1301 W Royal Palm Rd
Boca Raton FL, 33486
Attn: Brian Tuttle

And

NEM, LLC
1301 W Royal Palm Rd
Boca Raton FL, 33486
Attn: Brian Tuttle

With a copy to: Steven E. Wallace, Esq.
Ward Damon P.L.
4420 Beacon Cir,
West Palm Beach, FL 33407
561-842-3000

(b) Any party to this Agreement may change its notification address(es) by providing written notification to the remaining party pursuant to the terms and conditions of this section.

16. Exclusive Venue, Choice of Law, Specific Performance. It is mutually understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of the State of Florida both as to interpretation and performance and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida, and venue for any such actions shall lie exclusively in a court of competent jurisdiction in the County. In addition to any other legal rights, the Village and the Developer shall each have the right to specific performance of this Agreement in court. The prevailing party shall be entitled to an award of reasonable attorneys' fees and costs incurred. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the parties hereto consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

17. No Oral Change or Termination. This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties hereto with respect to the subject matter hereof, and

no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

18. Compliance with Applicable Law. Subject to the terms and conditions of this Agreement, throughout the term of this Agreement, the Developer and Village shall comply with all applicable federal, state or local laws, rules regulations, codes, ordinances, resolutions, administrative orders, permits, policies and procedures and orders that govern or relate to the respective party's obligations and performance under this Agreement, all as they may be amended from time to time.

19. Representations. Each party hereto represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

20. Presumptions Inapplicable. This Agreement shall be deemed to have been drafted by both the Developer and the Village equally and any presumptions existing in interpretation hereof against the drafter shall be inapplicable.

21. No Exclusive Remedies. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default except where otherwise expressly provided.

22. Failure to Exercise Rights not a Waiver; Waiver Provisions. The failure by either party hereto to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

23. Events of Default.

(a) Developer shall be in default under this Agreement if Developer fails to perform or breaches any term, covenant or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the Village specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then Developer shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

(b) The Village shall be in default under this Agreement if the Village fails to perform or breaches any term, covenant or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from Developer specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the Village shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

24. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent hereafter be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances

other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

25. Assignment and Transfer. This Agreement shall be binding on the Developer and its heirs, successors and assigns, including the successor to or assignee of any Property Interest. Developer may not assign, in whole or in part, this Agreement or any of its rights and obligations hereunder to an unrelated or unaffiliated party except a joint venture partner, without the prior written consent of the Village after public hearing.

26. Lack of Agency Relationship. Nothing contained herein shall be construed as establishing an agency relationship between the Village and the Developer and neither Developer nor its employees, agents, contractors, subsidiaries, divisions or affiliates shall be deemed agents, instrumentalities, employees or contractors of the Village for any purpose hereunder, and the Village, its contractors, agents and employees shall not be deemed contractors, agents or employees of Developer or its subsidiaries, divisions or affiliates.

27. Cooperation; Expedited Permitting and Time is of the Essence.

(a) The parties hereto agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement.

(b) The parties hereto agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement.

(c) Notwithstanding the foregoing, the Village shall not be obligated to issue development permits to the extent Developer does not comply with the applicable requirements of the Existing Zoning, this Agreement and applicable building codes.

28. Enforcement.

(a) In the event that Developer, its successors and/or assigns fails to act in accordance with the terms of the Existing Zoning, the Village shall seek enforcement of said violation upon the subject Property.

(b) Enforcement of this Agreement shall be by action against any party or person violating, or attempting to violate, any covenants set forth in this Agreement. The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, such sums as the Court may adjudge to be reasonable for the services of his/her/its attorney.

(c) This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

29. Amendment or Termination by Mutual Consent. In addition to the amendment or termination provisions provided in Section 4 hereof, this Agreement may also be amended or terminated during its term by mutual agreement of the Developer and the Village pursuant to Section 163.3225, Fla.

Stat. (2011). Prior to amending or terminating this Agreement during its term, the Village shall hold at least two public hearings pursuant to Section 163.3225, Fla. Stat. (2011).

30. Third Party Defense. Village and Developer shall, at their own cost and expense, vigorously defend any claims, suits or demands brought against it by third party threatening the Agreement, challenging its enforceability or objecting to any aspect thereof including, without limitation, any claims for loss, damage, liability or expense (including reasonable attorneys' fees). Village and Developer shall promptly give the other written notice of any such action including those that are pending or threatened and all responses, filings and pleadings with respect thereto.

31. No Third Party Beneficiary. No persons or entities other than the Developer and the Village, their heirs, permitted successors and assigns, shall have any rights whatsoever under this Agreement.

32. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

[Remainder of Page Left Blank Intentionally.]

IN WITNESS WHEREOF, the Village and the Developer have caused this Agreement to be duly executed as of the day and year first above written.

WITNESSES:

VILLAGE OF ROYAL PALM BEACH

By: _____
Raymond C. Liggins, P.E., Village Manager

[SEAL]

ATTEST:

Dianne DiSanto, Village Clerk

WITNESSES:

WITNESSES:

TUTTLE ROYALE APARTMENTS LLC

By:

Print Name _____

Title _____

NEM, LLC

By:

Print Name _____

Title _____

LIST OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Description of all local Development Permits anticipated to be requested for approval and issuance for the Project ("Approvals")
Exhibit "C"	Additional Conditions of Development
Exhibit "D"	Amended Minimum Floor Area per Dwelling Unit
Exhibit "E"	Approved Site Plan

EXHIBIT "A"
LEGAL DESCRIPTION

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 36, TOWNSHIP 43 SOUTH, RANGE 41 EAST, TOGETHER WITH A PORTION OF SECTION 1, TOWNSHIP 44 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, TOGETHER BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 43 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA; THENCE ALONG THE WEST LINE OF SAID SECTION 36, N01°30'19"E, A DISTANCE OF 142.27 FEET; THENCE LEAVING SAID WESTERLY SECTION LINE, S88°59'05"E A DISTANCE OF 1252.51 FEET; THENCE S04°44'26"W A DISTANCE OF 195.87 FEET; THENCE N89°52'27"E A DISTANCE OF 22.93 FEET; THENCE S44°16'15"E A DISTANCE OF 50.38 FEET; THENCE N87°18'52"E A DISTANCE OF 49.35 FEET; THENCE N46°33'16"E A DISTANCE OF 24.60 FEET; THENCE S88°59'05"E A DISTANCE OF 104.89 FEET; THENCE S01°52'12"W A DISTANCE OF 35.00 FEET; THENCE S36°03'30"W A DISTANCE OF 83.87 FEET; THENCE S01°49'41" A DISTANCE OF 728.95 FEET TO THE NORTH LINE OF A 160 FOOT WIDE FLORIDA POWER AND LIGHT COMPANY EASEMENT AS RECORDED IN OFFICIAL RECORD BOOK 699, PAGE 534, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID NORTH LINE N88°57'45"W A DISTANCE OF 645.18 FEET; THENCE N59°20'02"W A DISTANCE OF 890.38 FEET TO A POINT ON THE WESTERLY SECTION LINE OF SECTION 1, TOWNSHIP 44 SOUTH, RANGE 41 EAST; THENCE ALONG SAID WESTERLY SECTION LINE, N01°50'01"E A DISTANCE OF 459.61 FEET TO THE POINT OF BEGINNING.

CONTAINING 29.356 ACRES MORE OR LESS.

EXHIBIT "B"

DESCRIPTION OF ALL LOCAL DEVELOPMENT PERMITS ANTICIPATED BY DEVELOPER TO BE
REQUESTED FOR APPROVAL AND ISSUANCE FOR THE PROJECT (THE "APPROVALS")

- Site Plan Review and Approval
- Architectural and Aesthetic Review (AAR)
- Concurrency
- Preliminary and Final Plat
- Building Permits
- Variance for Tandem Parking
- Land Development and Engineering:
 - Village of Royal Palm Beach On-Site Development Permit/Approval (paving, drainage, water and sewer)
 - Lake Worth Drainage District Permit/Approval
 - South Florida Water Management District Environmental Resource Permit
 - South Florida Water Management District Water Use Permit (if construction dewatering or irrigation wells are proposed)
 - Village of Wellington Water and Sewer Permit/Approval
 - Palm Beach County Fire Rescue Permit/Approval
 - Palm Beach County Public Health Unit Water and Sewer Permit/Approval

EXHIBIT "C"
ADDITIONAL CONDITIONS OF DEVELOPMENT

In order to mitigate any potential impact to the residents as a result of the reduced unit sizes, the Developer will provide additional amenities within the community and the units themselves.

Amenities planned to be provided in the units will include the following:

- Impact resistant windows with energy efficient tinting;
- Programmable thermostats;
- Daylight sensors, timers or motion detectors on outdoor lighting attached to buildings;
- Quartz or granite countertops;
- Kitchen islands;
- Stainless steel appliances;
- Separate dining areas in most homes;
- Designer cabinetry;
- Oversized bath tubs;
- Building access to attached car garages; and
- External storage rooms.

Community amenities planned for the project include the following:

- Private park with a summer kitchen;
- Large lake that includes a perimeter jogging path;
- Dog Park;
- Bocce court;
- Tot lot;
- Volleyball court;
- Fire pit;
- Community garden;
- Lake overlook which will be programmed with waterfront activities; and
- Community Clubhouse (inclusive of covered patios), with planned amenities such as:
 - Dining/Party Area;
 - Conference Room;
 - Cyber café;
 - Large Screen TV viewing area;
 - Fitness Club with a dedicated yoga/spinning class hall;
 - A resort-style pool;
 - A secondary pavilion at the pool area with TV, dining, kitchen and lounge;
 - Cabanas useable by residents;
 - Bocce ball court/horseshoe court; and
 - Putting green.

In the event a specifically-listed finish or amenity cannot be provided, a substitute of similar or enhanced quality will be substituted.

EXHIBIT "D"
AMENDED MINIMUM FLOOR AREA PER DWELLING UNIT

MINIMUM FLOOR AREA		Model 1/ Model 2/ Model 3/ Model 4 (Minimum Unit Sizes)
1-BEDROOM	1,000 SF	776 SF/ 850 SF/ 869 SF/ 773 SF
2-BEDROOMS	1,200 SF	1,118 SF/ 1,167 SF/ 1,186 SF
3-BEDROOMS	1,350 SF	1,374 SF/ 1,393 SF
TOWNHOMES (3 – BEDROOM)	1,350 SF	1,660 SF/ 2,035 SF/ 1,685 SF

EXHIBIT "E"
APPROVED SITE PLAN

