

**§8-3 DEVELOPMENT AGREEMENT**

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***[See Commentary]***

§8-3-1 TITLE

This Resolution [Ordinance] shall be known and may be cited as the “Development Agreement Resolution [Ordinance] of \_\_\_\_\_ County [City of \_\_\_\_\_].

§8-3-2 FINDINGS

The need for a development agreement arises in instances where a landowner generally wishes to guarantee that a local government’s land use regulations will remain fixed during the life of a prospective land development on a subject parcel. The local government, on the other hand, seeks as many concessions and land development conditions as possible beyond what it could reasonably require through subdivision regulations under the normal exercise of its authority or police power.

Developers have an incentive to voluntarily enter into a development agreement with the County [City] that will limit the property use(s), even though the County [City] does not have regulations governing land uses by district at the effective date of this Resolution [Ordinance], because the prospects exist that the local government will adopt and apply land use restrictions to said property in the future. Hence, a development agreement would benefit a developer by locking in the development regulations that apply to a particular development, even if the local government subsequently adopts land use regulations.

Developers also have an incentive to voluntarily enter into a development agreement with the County [City] for two other important reasons, even if no land use regulations currently apply to a proposed development. First, the developer may need the cooperation of the County [City] in extending infrastructure (e.g., water and sewer lines, drainage facilities, roads, utilities, etc.), and such cooperation may not be forthcoming in the absence of concessions voluntarily submitted to by the developer in the form of a development agreement. Second, knowledge of a pending development may stir citizen controversy, and even if the County [City] has no land use regulations, the development agreement becomes a flexible negotiating instrument whereby the developer can submit to certain concessions (i.e., limits on land uses) that will satisfy neighborhood concerns.

The County [City] similarly has interests in voluntarily entering into a development agreement in certain instances. As just noted, the County [City] may have an interest in limiting land uses in a given area because of citizen opposition. Without the mechanism of a voluntary development agreement and in the absence of land use regulations, the County [City] has virtually no control

over the quality, extent, and location of a proposed development. The County [City] will also support entering into development agreements in cases where infrastructure is needed to serve the development but no existing regulation exists to require such improvements.

The Board of Commissioners of \_\_\_\_\_ County [Mayor and City Council of the City of \_\_\_\_\_], Georgia, therefore finds that a negotiated development agreement, voluntarily submitted by a development applicant and involving infrastructure improvements and limits on land use regulations, can be in the best interests of the County [City] and the development community and within the proper scope of the county's [city's] police powers.

#### §8-3-3 PURPOSE

The purpose of a development agreement is to vest certain development rights in the landowner/developer in exchange for construction and dedication of public improvements, certain restrictions on land uses, and other concessions on the part of developer. A development agreement allows a developer who needs additional discretionary approval now or in the future to acquire long-term project approval, regardless of any local regulations that may be subsequently adopted. Development agreements will provide assurances to the applicant for a particular development project, that upon approval of the project, the applicant may proceed with the project in accordance with all applicable local statues, ordinances, resolutions, rules, and policies in existence at the time the development agreement is executed and that the project will not be restricted or prohibited by the county's [city's] subsequent enactment or adoption of laws, ordinances, resolutions, rules, or policies. Public benefits derived from development agreements may include, but are not limited to, restrictions on land uses, limits on development intensity and location, affordable housing, design standards, and on- and off-site infrastructure and other improvements. The local government needs a mechanism for negotiating such benefits in return for the vesting of development rights for a specific period. It is therefore the specific purpose of this Resolution [Ordinance] to authorize the local governing body to exercise its police powers to enter into individual development agreements and to specify the content and procedures for such development agreements.

#### §8-3-4 AUTHORITY TO ENTER INTO DEVELOPMENT AGREEMENTS

The Board of Commissioners of \_\_\_\_\_ County [Mayor and City Council of the City of \_\_\_\_\_], Georgia, hereby exercises its police powers to negotiate and enter into a voluntary development agreement upon application of a developer. The procedure for entering into a development agreement, and the contents of any development agreement, shall be consistent with the requirements of this Resolution [Ordinance].

#### §8-3-5 APPLICATION

Any person having a legal or equitable interest in real property may make application to enter into a development agreement with the County [City]. Applications shall be made to the Land Use Officer on forms furnished by said Land Use Officer and according to specifications of the Land Use Officer. The County [City] may establish an application fee to recover from applicants the direct costs associated with holding a public hearing on the application and providing notice thereof. Such application fee, if adopted by the County [City], shall be submitted along with said application.

§8-3-6 REQUIRED CONTENTS OF A DEVELOPMENT AGREEMENT

Any application for a development agreement, and any development agreement itself, shall at minimum contain the following provisions:

§8-3-6.1 Definitions. All technical terms to be used in the development agreement shall be precisely defined. Terms that have been defined in any applicable statute or ordinance should be defined the same way in the agreement.

§8-3-6.2 Parties. All parties to the agreement shall be named and their capacities to enter into the agreement clearly stated. In the case of developer/owners, their equitable or legal interests in the property must be stated.

§8-3-6.3 Relationship of the Parties. The relationship between the parties to the agreement shall be stated clearly. Typically, the statement will specify that the relationship is contractual and that the owner/developer is an independent contractor, and not an agent of the local government.

§8-3-6.4 Property. The property to be subject to the agreement shall be clearly and thoroughly identified. An attachment, preferably with a map, specifically describing the property shall be provided and incorporated into the agreement by reference. Specifically, the agreement shall provide that the property is located in the City [County] of \_\_\_\_\_, more particularly described in Exhibit "A" (attached hereto and incorporated herein), which real property is the subject matter of this Agreement, and that said property consists of \_\_\_\_ acres of property.

§8-3-6.5 Intent of the Parties. The intent of the parties to be bound by the terms of the agreement should be clearly stated. The agreement shall specifically include a statement that the property owner represents that it has an equitable or a legal interest in the real property and that all other persons holding legal or equitable interests in the real property are to be bound by the agreement. The development agreement may provide for the rights and obligations of the property owner under the agreement to be transferred or assigned.

§8-3-6.6 Recitation of Benefits and Burdens. The agreement shall recite the benefits each party expects to gain from entering into the agreement, as well as the burdens each party agrees to bear. Because the agreement will be treated as a contract, the consideration each party is to receive from the other should be stated clearly in order to ensure enforceability. The benefits to the local government and community must be expressed in terms that exhibit the agreement as consistent with (or as an exercise of) the police power.

***[See Commentary]***

§8-3-6.7 Notice and Hearings. The date upon which the public hearing was held shall be noted, as well as all relevant findings resulting from such hearing. All other pertinent notice and hearing requirements should be recited.

§8-3-6.8 Applicable Land Use Regulations. The agreement shall contain a precise statement of all land use regulations to which the development project will be subject. The agreement should specify precisely which regulations will apply to the project regardless of future changes, or otherwise be affected by the agreement. The statement shall clearly state that regulations not specifically so identified will not be affected by the terms of the agreement, and will be subject to enforcement and change under the same criteria that would apply if no agreement were in effect. The development agreement shall specify that, unless otherwise provided by the development agreement rules, regulations, official policies governing permitted uses of the land, governing density, governing design, improvement and construction standards

and specifications applicable to the development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. The agreement should also specify that the County [City] hereby agrees that it will accept from the property owner for processing and review all development applications for development permits or other entitlements for the use of the real property in accordance with this agreement, provided that said applications are submitted in accordance with County [City] rules and regulations and fees, if any, have been paid.

***[See Commentary]***

§8-3-6.9 Approval and Permit Requirements. The agreement shall specify all discretionary approvals and permits that will have to be obtained before the development can proceed beyond its various stages. All conditions precedent to the obtaining of the permits and approvals should be listed.

§8-3-6.10 Uses Permitted Under the Agreement. The agreement must specify: (1) the permitted uses of the property; (2) the density or intensity of use; and, (3) the maximum height and size of proposed buildings.

§8-3-6.11 Uses Prohibited by the Agreement. The development agreement may establish limits to permissible uses or prohibit certain uses on the subject property.

§8-3-6.12 Dedications and Reservations. The agreement should provide, where appropriate, a statement of any land or improvements to be dedicated to the County [City] or land reservations made by the developer for public purposes, and the specific time period for such dedications and reservations as they relate to the date of entering into the agreement.

§8-3-6.13 Utility Connections. All water and sewer service, either to be provided by the developer or by the local government, shall be described in detail, together with schedules of construction completion, cost allocation (between or among developers and government and later developers), hookup or connection schedules, and parameters for permitting, including fees for utility provision and service.

§8-3-6.14 Duration of the Agreement. The agreement shall state a termination date. It should also specify project commencement and completion dates, either for the project on the whole, or for its various phases. The agreement should specify that the termination date can be extended by mutual agreement, and that commencement and completion dates may also be extended.

§8-3-6.15 Amendments and Termination. The development agreement shall provide that it may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successor in interest. The agreement shall include the conditions under which the agreement can be amended, canceled, or otherwise terminated. The agreement shall specifically include that in the event that State or Federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. The development agreement shall also specifically state that if the local government finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with the terms or conditions of the agreement, the local government may terminate or modify the agreement.

§8-3-6.16 Periodic Review. The agreement should provide for periodic reviews of the project in order to determine compliance with the terms of the agreement. Unless otherwise negotiated, the Land Use Officer of the County [City] shall be responsible for performing such reviews.

§8-3-6.17 Remedies and Enforcement. Remedies for breach on the part of either party shall be provided, and the agreement shall provide for enforcement of its provisions.

§8-3-6.18 Approval and Signature Block. The agreement shall specifically provide signature blocks for execution upon approval by ordinance, preceded by the following statement:

AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ THE COUNTY [CITY] OF \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ corporation [partnership, etc.] (hereinafter referred to as "Property Owner"). On \_\_\_\_\_, \_\_\_\_\_, the Board of County Commissioners [Mayor and City Council] adopted Resolution [Ordinance] No. \_\_\_\_\_ approving the development agreement with the Property Owner. The Resolution [Ordinance] thereafter took effect on \_\_\_\_\_, \_\_\_\_\_.

§8-3-7 ADOPTION BY ORDINANCE AFTER PUBLIC HEARING

The Board of Commissioners of \_\_\_\_\_ County [Mayor and City Council of the City of \_\_\_\_\_] shall only enter into a development agreement pursuant to the Resolution [Ordinance] if a developer has made application for a development agreement, the Board [Mayor and City Council] has held a public hearing after which adequate notice was given in compliance with the Zoning Procedures Law (O.C.G.A. 36-66), and if a particular development agreement is adopted by Resolution [Ordinance] of said Board [Mayor and City Council]. Furthermore, a development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the comprehensive plan of the County [City].

**[See Commentary]**

§8-3-8 ADMINISTRATION

The Land Use Officer shall administer the provisions of this Resolution [Ordinance].

**[See References]**