

This Instrument Prepared by and Record and Return to:
 W. James Gooding III
 Gooding & Batsel, PLLC
 1531 SE 36th Avenue
 Ocala, FL 34471

**DEVELOPMENT AGREEMENT CONCERNING
 CONCURRENCY, IMPACT FEE CREDITS, AND OTHER MATTERS,
 FOR OCALA SW 100TH, LLC**

THIS DEVELOPMENT AGREEMENT CONCERNING CONCURRENCY, IMPACT FEE CREDITS, AND OTHER MATTERS, FOR OCALA SW 100TH, LLC, is executed as of _____, 2023 (the “Effective Date”) by and between:

- Marion County, Florida, a political subdivision of the State of Florida (“County”); and
- Ocala SW 100th, LLC, a Florida limited liability company (“Developer”).

WHEREAS:

- A. Developer owns the Property¹ located in Marion County, Florida.
- B. Developer has obtained the Approvals pursuant to which County approved a PUD zoning for the Property.
- C. Developer intends to develop the Property as single-family residential communities as set forth in the PUD Approvals.
- D. Vanasse Hangen Brustlin, Inc. (“VHB”) has prepared a Traffic Study on behalf of Developer concerning the effect, on Transportation Facilities, of the development of the Property pursuant to the PUD Approvals.
- E. Developer and County have agreed that additional new Transportation Facilities, upgrades to existing Transportation Facilities, or Proportionate Share Mitigation by Developer shall be constructed or paid, as applicable, to mitigate the impact on Transportation Facilities caused by future development of the Property, as well as to enhance County’s transportation network.
- F. Section 1.8.6.D(2)(a)3. of the County CMS provides that, if there is not adequate available capacity in one or more Transportation Facilities, a person may enter into a development agreement with the County which may include methods to provide the development’s “proportionate share of additional capacity via proportionate share payments and/or improvements which eliminate and/or mitigate the development’s proportionate share of deficiencies prior to the development project’s impact, consistent with Ch. 163 F.S.”
- G. Section 10-323 of the County Impact Fee Ordinance provides for a developer to be provided with a credit against Impact Fees pursuant to a written impact fee credit agreement approved by the

¹ Terms capitalized in these Whereas paragraphs have the meaning set forth in paragraph 1 below.

County Commission for conveyances of ROW and construction or expansion of Transportation Facilities.

- H. Developer is entitled to Impact Fee Credits pursuant to the County Impact Fee Ordinance and Section 163.3180, Florida Statutes.
- I. County has provided its Notice of Intent to consider entering in this Agreement by advertisements published in the Ocala Star-Banner, a newspaper of general circulation and readership in Marion County, Florida, on _____, and _____, and by mailing a copy of the Notice of Intent to owners, and to the persons and entities shown on the most recent Marion County tax Roll to be the owners of property lying within three hundred feet (300') of the boundaries of the Property which is the subject-matter of this Agreement, and by announcing the date, time, and place of the second hearing during the first hearing.
- J. The Marion County Planning and Zoning Commission held a public hearing on _____, and the County Commission held a public hearing on _____, to consider this Agreement, has found and determined that its execution of this Agreement will further the objectives of the Community Planning Act, and that the development contemplated and permitted by this Agreement is consistent with the Marion County Comprehensive Plan and County LDR.
- K. Developer and County are entering into this Agreement pursuant to the foregoing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein (which are incorporated herein by reference), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable:

- 1. **Definitions.** In addition to any other terms which may be specifically defined elsewhere in this Agreement, for the purposes of this Agreement the following terms shall have the following meanings:
 - 1.1. *100th Street Extension* – The extension of SW 100th Street between SW 62nd Avenue Road and SW 49th Avenue Road as set forth in greater detail in paragraph 5.2.1.
 - 1.2. *Agreement* – This Development Agreement Concerning Concurrency, Impact Fee Credits, and Other Matters, For Ocala SW 100th, LLC, as the same may be subsequently amended, modified or supplemented.
 - 1.3. *Community Planning Act* – Section 163.3161, *et seq.*, Florida Statutes (2022).
 - 1.4. *Concept Plan* – A Concept Plan of one or more of the Developer Improvements as set forth in the attached **Exhibit B**.
 - 1.5. *Construct* (regardless of whether the terms is capitalized) – When used in the context of the Developer Improvements: (a) the design, permitting and construction of the Developer Improvements; and (b) conveyance to County of all necessary ROW.
 - 1.6. *Conveyance Standards* – The standards and terms for the conveyance of ROW (including conveyances of fee simple title or grants of easements), as set forth on the attached **Exhibit E**.

- 1.7. *Conveyed ROW* – ROW owned or hereafter acquired by Developer and conveyed to County in connection with any Developer Improvements or pursuant to this Agreement.
- 1.8. *County* – Marion County, Florida, a political subdivision of the State of Florida.
- 1.9. *County CMS* – The County Concurrency Management System, as codified in Division 8 of Chapter 1 of the County LDR, as the same may be subsequently amended, modified or supplemented.
- 1.10. *County Code* – The “Marion County Code” as defined in Section 1-1 of the County Code, as the same may be subsequently amended, modified or supplemented.
- 1.11. *County Commission* – The Board of County Commissioners of Marion County, Florida.
- 1.12. *County Impact Fee Ordinance* – The “Marion County Impact Fee Ordinance for Transportation Facilities” as defined and codified in Division 2 of Article 10 of the County Code.
- 1.13. *County LDR* – The County’s “Land Development Code,” as adopted by County Ordinance No. 13-20, as defined in Section 1.1.1 of such Code, and as the same may be subsequently amended, modified or supplemented.
- 1.14. *County Representative* – The County Administrator, any Assistant or Deputy County Administrator, or the County Engineer.
- 1.15. *Credits* – Impact Fee Credits or credit against Proportionate Share Obligations.
- 1.16. *Deficient Facilities* – One or more Transportation Facilities for which capacity is inadequate (i.e., the Transportation Facilities will be operating at less than the adopted Level of Service (“LOS”) for such Transportation Facilities) as determined by the Traffic Study as of buildout of the Project, other than Transportation Facilities for which capacity is inadequate prior to development of the Property.
- 1.17. *Developer Improvements* – As set forth in paragraph 5.2.
- 1.18. *Developer Obligations* – The following obligations of Developer under this Agreement:
 - 1.18.1. Construct the Developer Improvements.
 - 1.18.2. Convey all Conveyed ROW.
- 1.19. *DRA* – One or more drainage retention areas constructed by Developer as part of the Stormwater Management Facilities. All DRAs will be Shared Facilities accommodating stormwater from the 100th Street Extension as well as development of the Property.
- 1.20. *Drainage Easement* – The easement to be granted by Developer to County as set forth in paragraph 6.2.2.
- 1.21. *Force Majeure* – As defined in paragraph 11.
- 1.22. *Governmental Authority* – Any governmental entity, agency, department, bureau, division, or other representative of any governmental entity which has jurisdiction, permitting

authority, or the authority to issue authorizations or approvals regarding development or usage of the Property or any Parcel thereof, all Developer Improvements which are the subject of this Agreement.

- 1.23. *Impact Fee Credits* – Credits against Impact Fees to be provided to Developer under this Agreement, including under paragraphs 8.2 and 7.
- 1.24. *Impact Fees* – Impact fees due under the County Impact Fee Ordinance. Because this Agreement concerns transportation concurrency and transportation impact fees only, this phrase does not apply to any other impact fees, or similar charges, assessed under the County Code.
- 1.25. *Month* (regardless of whether the term is capitalized) – When used with reference to calculation of dates, shall refer to the monthly anniversary of the starting date of the first event. For example, two (2) months after November 15, 2023, is January 15, 2024. If the first date is a day of the month which is not in the subsequent month, the subsequent date will be the last day of such subsequent month. For example, one month after May 31, 2023, is June 30, 2023.
- 1.26. *Parcel or Parcels* – A portion of the Property for which Developer or a Subsequent Owner seeks to undertake activities that constitute the Commencement of Development under this Agreement.
- 1.27. *Party or Parties* – As applicable, either Developer or County.
- 1.28. *Permits* – All permits necessary for the construction of the Developer Improvements.
- 1.29. *Plans* – The plans and specifications for the construction of the Developer Improvements, as approved by County and/or all other Governmental Authorities with jurisdiction thereover.
- 1.30. *Project* – Collectively, the development of the Property and all related infrastructure required to market and use the Property, or Parcels thereof, as single-family residential communities as contemplated under the terms of this Agreement and the PUD Approvals. The term “Project” shall include all design, permitting and construction of infrastructure including on-site Transportation Facilities; acquisition of all required ROW for roads and utilities infrastructure; and procurement of all necessary approvals or permits from all applicable Governmental Authorities. This term shall also apply to all actions to be undertaken by Developer and County pursuant to the terms of this Agreement or any amendment or supplement thereto.
- 1.31. *Project Engineer* – The engineering firm or firms retained by Developer to design, permit or perform other obligations of Developer hereunder concerning Developer Improvements to be performed by Developer hereunder. As of the Effective Date, Michael W. Radcliffe Engineering, Inc. (“Radcliffe Engineering”) is the Project Engineer.
- 1.32. *Property* – The real properties owned by Developer located in Marion County, Florida, and described on attached **Exhibit A**, and consisting of two parcels:

- 1.32.1. *West Parcel* – The real property owned by Developer and described under the heading of *West Parcel* on the attached Exhibit A with Marion County Tax Parcel ID #: 35695-011-01.
- 1.32.2. *East Parcel* – The real property owned by Developer and described under the heading of *East Parcel* on the attached Exhibit A with Marion County Tax Parcel ID #: 35695-033-00.
- 1.33. *Proportionate Share Mitigation* – The payments to be made, or other activities to be performed, by Developer pursuant to paragraph 5.
- 1.34. *PUD Approvals* – One or more of the following:
 - 1.34.1. *Western Approval* – The approval of the Planned Unit Development by Marion County under Application No.: 211008Z.
 - 1.34.2. *Eastern Approval* – The approval of the Planned Unit Development by Marion County under Application No.: 211009Z.
- 1.35. *PUD Plan* – The PUD Plans approved by County as part of the PUD Approvals.
- 1.36. *Reservation of Capacity or Reserved Capacity or Capacity Reservation* – The reservation of Trips to Developer as set forth in paragraph 9.
- 1.37. *Reserved Trips* – The number of Trips reserved by Developer as set forth in paragraph 9.1.
- 1.38. *ROW* – The right-of-way required for Developer Improvements which are the subject of this Agreement, including all land required for Stormwater Management Facilities for the Developer Improvements, also including any required easements, temporary easements, construction easements, temporary construction easements, crossing easements, or other contractual rights or licenses required to facilitate the construction, modification, repair and operation of the applicable Transportation Facilities.
- 1.39. *Stormwater* – Surface water or stormwater runoff (regardless of whether the term is capitalized), to be managed pursuant to the Stormwater Management Facilities.
- 1.40. *Stormwater Management Facilities* – The drainage retention facilities, ditches, swales, underground pipes, drainage structures, or other improvements which constitute the surface water and Stormwater Management Facilities which provide stormwater management for all Developer Improvements which will be constructed pursuant to the terms of this Agreement. The Stormwater Management Facilities shall comply with the design, construction and operational requirements of the Water Management District and (as applicable) County, and may be designated and constructed to operate as shared facilities.
- 1.41. *Subsequent Owners* – A successor in title to Developer or to the other current owners of the Property or any Parcel thereof.
- 1.42. *Substantial Completion* – Substantial completion of the Developer Improvements as evidenced by a certificate from the Project Engineer certifying that the Developer Improvements have been constructed pursuant to the approved Plans and any Permits therefor, and County’s acceptance of the Developer Improvements.

- 1.43. *Traffic Study* – The Traffic Study prepared by VHB regarding the Property (identified in the Traffic Study as *Ocala SW 100th PUD* dated September, 2022, assessing the impact on Transportation Facilities of the development of the Property. The Traffic Study was developed pursuant to a methodology approved by County and the Traffic Study has been reviewed, approved and accepted by County. The contents of the Traffic Study are, by this reference, incorporated into this Agreement.
 - 1.44. *Transportation Facilities* – All public roads, streets or highways (collectively the “Roadway Segments”), and intersections (“Intersections”) studied pursuant to the Traffic Study.
 - 1.45. *Trip or Project Trip* – A vehicle trip generated by the development of a Parcel measured in terms of net new external PM peak hour vehicle trip generation.
 - 1.46. *Water Management District or District* – The Southwest Florida Water Management District, an agency of the State of Florida, the Governmental Authority which has jurisdiction over the design, permitting and operation of surface water and Stormwater Management Facilities, and Stormwater Management Facilities, for the Property and for all Transportation Facilities to be constructed or improved under the terms of this Agreement.
2. **Representations and Warranties.** As a material inducement to the other Parties to enter into this Agreement, each Party makes the following representations and warranties to the other Parties to this Agreement:
- 2.1. Developer’s Representations and Warranties. Developer represents and warrants to County that:
 - 2.1.1. Developer is a validly organized and existing limited liability company, in good standing under the laws of the State of Florida, authorized to transact business in the State of Florida.
 - 2.1.2. Developer is the owner of the Property.
 - 2.1.3. Developer has the authority to enter into this Agreement.
 - 2.1.4. Developer has taken all actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Developer the obligations of Developer hereunder shall be valid and binding obligations of Developer.
 - 2.1.5. The individual executing this Agreement on behalf of Developer or its duly authorized representative for Developer, is authorized to execute this Agreement.
 - 2.1.6. Upon the execution and delivery of this Agreement by Developer, the obligations of Developer shall be valid and binding obligations of Developer.
 - 2.1.7. The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, court order, judgment, or the governing documents of Developer.

- 2.2. County Representations and Warranties. County represents and warrants to Developer that:
 - 2.2.1. Developer is entitled to reserve the Reserved Trips as set forth in paragraph 9.1.
 - 2.2.2. The actions by County hereunder are consistent with the terms and provisions of the County's Comprehensive Plan, County Code and County LDR.
 - 2.2.3. County has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and the conducting of public hearings related thereto.
 - 2.2.4. Upon the execution and delivery of this Agreement by County, the obligations of County shall be valid and binding obligations of County.
 - 2.2.5. Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the County LDR of any agreement, covenant, court order or judgment to which County is a party.
3. **Development Uses Permitted.**
 - 3.1. The Western Approval permits up to 222 single-family detached dwelling units and accompanying accessory amenities (e.g., clubhouses, pool, sport field, open space with trail).
 - 3.2. The Eastern Approval permits up to 180 single-family detached dwelling units and accompanying accessory amenities (e.g., clubhouse, pool, sport field, open space with trail).
4. **Traffic Study.** The Traffic Study has been: (a) prepared in accordance with a methodology agreed to by County, and (b) reviewed, approved and accepted by County. The Traffic Study evaluates long-term transportation needs within the agreed study area described therein. The Traffic Study projected impact on off-site public Transportation Facilities resulting from the development of the Project through full build-out of the Project, with a projected final build-out date of 2024.
5. **Developer's Construction of Developer Improvements.**
 - 5.1. Generally. Developer shall construct the Developer Improvements, at Developer's sole expense, but subject to Credits as set forth in this Agreement.
 - 5.2. Developer Improvements. The Developer Improvements consist of the following:
 - 5.2.1. 100th Extension – The extension of SW 100th Street between SW 62nd Avenue Road and SW 49th Avenue Road. The 100th Extension shall be constructed as a two-lane road, a 12 foot wide multi-modal path, and no median in approximately the location set forth on the Concept Plan. Attached hereto as **Exhibit C** is a drawing of a typical section of the 100th Street Extension.
 - 5.2.2. Stormwater Management Facilities – The construction of all Stormwater Management Facilities for the 100th Extension including all DRAs to accommodate stormwater from the 100th Extension and conveyance facilities to

convey stormwater from the 100th Extension to the DRAs. Attached hereto as **Exhibit D** is a drainage plan showing the approximate locations of the DRAs to be constructed on the Property, some of which shall be used to accommodate stormwater from the 100th Extension.

5.3. Design and Permitting.

- 5.3.1. Developer shall, at its sole cost and expense, design and permit the Developer Improvements.
- 5.3.2. Developer shall prepare and submit to County, and any Governmental Authority, including the Water Management District, the Plans for approval by County or such Governmental Authority, prior to commencing construction of the Developer Improvements.
- 5.3.3. Developer shall obtain all Permits necessary for the construction of the Developer Improvements. County consents to such Permits being in the name of County and/or Developer, and County shall cooperate with Developer in connection with the permitting process.

5.4. Schedule of Developer Improvements.

- 5.4.1. Developer shall complete the design and permitting of the Developer Improvements within nine (9) months after the Effective Date of this Agreement.
- 5.4.2. Developer shall commence construction of the Developer Improvements within two (2) months after issuance of all Permits for the Developer Improvements.
- 5.4.3. Developer shall cause Substantial Completion of the Developer Improvements within sixteen (16) months after the commencement of construction.

5.5. Conditions to Obligation to Construct Certain Developer Improvements.

- 5.5.1. Developer's obligation to construct the 100th Extension is conditioned upon the following:
 - 5.5.1.1. County approval of the construction of the 100th Extension and/or any other Governmental Authorities with jurisdiction over such Developer Improvements. Developer shall use good faith efforts to obtain such approval; and
 - 5.5.1.2. The determination by the Project Engineer that either of the following (the "ROW Condition") exists: (a) County owns sufficient ROW for the 100th Extension (except for additional ROW located on the Property which will be conveyed by Developer to County pursuant to paragraph 6); or (b) if the County does not own all such ROW, ROW may be obtained by County acquiring the necessary ROW (by purchase, donation or condemnation). County shall use good faith efforts to acquire any necessary ROW from third parties in order for the ROW Condition to occur and shall, if necessary, condemn such ROW. In connection with the foregoing, County acknowledges and

agrees that the acquisition of such ROW is for a valid public purpose. In the event that County is required to condemn such ROW, County and Developer shall amend this Agreement to extend the time for Developer to construct the 100th Extension.

5.5.2. If any condition set forth in paragraph 5.5.1 does not occur:

5.5.2.1. Developer may extend the time period for it to complete the 100th Extension for which the condition does not occur by a reasonable time in order to accomplish such condition.

5.5.2.2. If Developer determines, in its reasonable discretion, that any such condition is unlikely to occur during such extension period, Developer's obligation to construct portion of the 100th Extension for which the condition has not occurred shall be deemed terminated. Such termination shall concern only portions of the 100th Extension as to which a condition has not occurred, and Developer shall remain obligated to construct all such other portions of the 100th Extension unless Developer and County determine, in the exercise of their reasonable discretion, that the construction of such other portions would not accomplish the public purpose for which they are planned, in light of the portions not being constructed. Developer shall nonetheless be entitled to Impact Fee Credits for any costs incurred by Developer in designing and permitting the portions of the 100th Extension for which the condition has not occurred.

6. **Conveyance of ROW.**

6.1. Within forty-five (45) days after Substantial Completion of the Developer Improvements, Developer shall provide to County "as-built" Surveys for the completed Developer Improvements. Within forty-five (45) days thereafter, Developer shall convey to County any ROW on real property owned by Developer and not currently owned by County.

6.2. As of the Effective Date of this Agreement, the parties anticipate that the following ROW (the "Conveyed ROW") may or will be conveyed to County:

6.2.1. Fee simple title to real property owned by Developer and contiguous to the proposed ROW for the 100th Extension.

6.2.2. A drainage easement ("Drainage Easement") encumbering real property owned by Developer for the Stormwater Management Facilities constructed by Developer on the Property to accommodate stormwater from the 100th Extension. There will be two (2) types of Drainage Easements:

6.2.2.1. A Drainage Easement (the "Conveyance Easement") for the conveyance of stormwater from the 100th Extension to the DRAs.

6.2.2.2. A Drainage Easement (the "Storage Easement") permitting the storage of stormwater from the 100th Extension in the DRAs.

- 6.3. The Conveyed ROW will be conveyed to County under threat of and in lieu of condemnation. Therefore, County and Developer believe no documentary excise taxes are due. If they are due, they shall be paid by County, together with any interest and penalties.
- 6.4. Such conveyance shall be pursuant to the Conveyance Standards.
7. **Impact Fee Credits.**
- 7.1. Generally.
- 7.1.1. Developer is entitled to credits (“Impact Fee Credits”) against the Impact Fee imposed by Section 10-322 of the County Impact Fee Ordinance pursuant to this Agreement and the following provisions of this paragraph 7.
- 7.1.2. This Agreement constitutes a “written impact fee credit agreement” pursuant to Section 10-323 of the County Impact Fee Ordinance.
- 7.2. Amount of Impact Fee Credits.
- 7.2.1. Developer shall be entitled to Impact Fee Credits for all Proportionate Share Mitigation upon receipt of payment by County or performance by Developer of its other Proportionate Share Mitigation requirements.
- 7.2.2. Developer shall be entitled to Impact Fee Credits for the Conveyed ROW and Developer Improvements calculated as follows:
- 7.2.2.1. *Developer Improvement.* For the cost of the 100th Street Extension, Developer shall be entitled to Impact Fee Credits pursuant to Section 10-323(d)(2) of the County Impact Fee Ordinance.
- 7.2.2.2. *Conveyed ROW.*
- a. For any ROW conveyed in fee simple for the 100th Street Extension, Impact Fee Credits calculated pursuant to Section 10-323(d)(1) of the County Impact Fee Ordinance.
- b. For any Conveyed ROW representing Drainage Easements:
- 1) For Conveyance Easements, Impact Fee Credits in the amount of one-half of the amount determined pursuant to Section 10-323(d)(1) of the County Impact Fee Ordinance.
- 2) For Storage Easements, Impact Fee Credits calculated as follows: (a) the square footage value of the portion of the Property upon which each DRA is located as determined by the County-accepted appraisal prepared pursuant to Section 10-323(d)(1) of the County Impact Fee Ordinance; multiplied by (b) the percentage that the quantity of stormwater permitted to be conveyed into such DRA by County from the 100th Extension bears to the total permitted capacity of such DRA.

- 7.3. Duration of Impact Fee Credits. Developer shall be entitled to the Impact Fee Credits arising under this Agreement, or that Developer has prior to the Effective Date of this Agreement, all of which Credits shall expire twenty (20) years from the effective date of this Agreement. For purposes of this paragraph, the Impact Fee Credits shall be considered used on a first in, first out, basis.
- 7.4. Additional Requirements. In compliance with Section 10-323(f) of the County Impact Fee Ordinance, the following provisions shall apply:
- 7.4.1. All Developer Improvements or Conveyed ROW under this Agreement shall be construed and characterized as work done and property rights acquired by the County for the improvement of a road within the boundaries of a ROW, and County has the exclusive control of such construction or contributions (except to the extent they are to be performed by Developer hereunder) including whether or not they are subsequently transferred to another governmental entity.
- 7.4.2. Developer shall keep or provide for the retention of adequate records and supporting documentation which concern or reflect total cost of the Developer Improvements. Such information shall be available to County, or its duly authorized agent or representative for audit, inspection or copying for a minimum of 5 years from the termination or expiration of this Agreement.
- 7.4.3. Each Impact Fee Credit shall run with the land for which the Impact Fee is being assessed and shall be reduced by the entire amount of the Impact Fee due for each building permit or site plan approval issued thereon until the Project is either completed or all Impact Fee Credits are exhausted or no longer available.
- 7.4.4. The burdens of this Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors in interest to Parties, including, without limitation, Subsequent Owners.
- 7.4.5. County shall conduct an annual review under this Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Agreement, and shall, upon request of Developer, provide to Developer the amount of Impact Fee Credits applied toward payment of Impact Fees, and the balance of available and unused Impact Fee Credits.
- 7.4.6. County and Developer shall negotiate in good faith to modify or revoke this Agreement as is necessary to comply with relevant state or federal laws, if state or federal laws are enacted after execution of the Agreement which are applicable to and preclude the Parties' compliance with the terms of this Agreement.
- 7.4.7. This Agreement may be amended or cancelled by mutual consent of the parties or by their successors in interest. For purposes of the foregoing, any owner of a Parcel which has been developed as contemplated by this Agreement and for which all Impact Fees have been paid (either monetarily or by Impact Fee Credit) shall not be required to join in any subsequent amendment.
- 7.4.8. Developer shall cause this Agreement to be recorded in the Public Records of Marion County, Florida, within 14 days of the Effective Date thereof.

- 7.4.9. This Agreement establishes the time frame when the Impact Fee Credits become available.
- 7.4.10. Except where this Agreement contains a different deadline, all Conveyed ROW shall be dedicated or conveyed to County no later than the time at which the Impact Fees are required to be paid under the County Impact Fee Ordinance. The portion of the Impact Fee represented by an Impact Fee Credit for construction of an Intersection Improvement shall be deemed paid when the Improvement is completed and accepted by the County for maintenance.
- 7.4.11. The Impact Fee Credits granted under this Agreement are for construction or contributions made to the major road network system to accommodate growth within the respected road construction district under the County Impact Fee Ordinance where the impact generating land development activity is located.
- 7.4.12. The Impact Fee Credits shall run with Developer and may be assigned to other developments, regardless of ownership, within the same road construction district under the County Impact Fee Ordinance.
- 7.4.13. As the Developer Improvements were not an integral part of the major road network system which was scheduled for construction in the five (5) year County TIP or any municipal CIP, this Agreement has been approved by a super-majority vote of the County Commission.

8. **Proportionate Share Mitigation.**

8.1. Proportionate Share Mitigation.

- 8.1.1. The Traffic Study identified Roadway Segments and Intersections which are projected to constitute Deficient Facilities on the build-out of the Project in calendar year 2024 or other improvements necessary to benefit the County Transportation System (i.e., the “100th Extension”).
- 8.1.2. Specifically, the Traffic Study identified the following Transportation Facilities that constitute Deficient Facilities that would ordinarily be mitigated through payment of money (except for paragraph 8.1.6.3):
 - 8.1.2.1. Adding a 200 foot exclusive right-turn lane for eastbound traffic approaching the intersection of SW 62nd Avenue and SW 103rd Street Road, with the existing lane shared between left and thru movements.
 - 8.1.2.2. Overlap phase to be added to the eastbound right movement, to coincide with the protected northbound left movement, at the signalized intersection of SW 49th Avenue and SW 95th Street.
 - 8.1.2.3. Construction of a traffic signal at the intersection of 100th Street and SW 49th Avenue.
 - 8.1.2.4. Extension of left-turn lane for northbound traffic at intersection of SW 49th Avenue and SW 103rd Street Road.

- 8.1.3. Under the provisions of Sections 163.3180, Florida Statutes and Section 1.8.7.B.(2) of the County CMS, an acceptable method for Developer to mitigate transportation impacts is to pay or perform Proportionate Share Mitigation pursuant this Agreement.
 - 8.1.4. Attached hereto as **Exhibit D** is a spreadsheet that County and Developer agree accurately calculates Developer's Proportionate Share Mitigation payment due to mitigate the Deficient Facilities referred to in paragraph 8.1.2, such amount being \$.
 - 8.1.5. The Developer Improvements satisfy the requirements of Section 163.3180, Florida Statutes and Section 1.8.7.B.(2) of the County CMS for proportionate share mitigation and are the subject of Developer's obligation to pay or perform Proportionate Share Mitigation.
 - 8.1.6. Developer shall pay, or perform other obligations set forth below, to provide such Proportionate Share Mitigation to County:
 - 8.1.6.1. Developer shall construct the Developer Improvements, for which Developer shall receive a credit against the Proportionate Share Mitigation, which credit shall be calculated using the same formula for Impact Fee Credits as set forth in paragraph 7.2.2.1.
 - 8.1.6.2. Developer shall convey ROW pursuant to paragraph 6, for which Developer shall receive a credit against the Proportionate Share Mitigation, which credit shall be calculated using the same formula for Impact Fee Credits as set forth in paragraph 7.2.2.2.
 - 8.1.6.3. Developer and County have estimated that the anticipated cost of the Developer Improvements shall exceed the Proportionate Share Mitigation payment due from Developer set forth in paragraph 8.1.4. Therefore, provided that Developer performs the Developer Improvements, Developer shall have satisfied its Proportionate Share Mitigation Obligations, and County and Developer shall execute a separate instrument (which may be in the form of an amendment to this Agreement or a separate instrument executed by the County Representative and Developer) acknowledging that Developer has no remaining Proportionate Share Mitigation Obligations.
 - 8.2. Impact Fee Credits for Proportionate Share Mitigation. County acknowledges that, pursuant to the provisions of Section 163.3180(5)(2)(e), Florida Statutes, Developer is entitled to a credit for Proportionate Share Mitigation (regardless of whether paid in cash, by the performance of Developer Improvements, or by the conveyance of ROW) on a dollar-for-dollar basis against impact fees, mobility fees or other transportation concurrency mitigation requirements paid or payable following the Effective Date with respect to the Project. Therefore, Developer is entitled to Impact Fee Credits pursuant to paragraph 7.
9. **Capacity Reservations.**

- 9.1. Reservation of Capacity. In consideration for Developer's obligations under this Agreement, there is reserved in favor of Developer and for the benefit of the Property, Reserved Trips for the development program specified in paragraph 3 in the amount of 351 Trips.
 - 9.2. Concurrency Determination. Simultaneous with the execution of this Agreement, County will issue to Developer, for the benefit of Developer, a concurrency determination in accordance with the procedures of County's CMS. The issuance of such concurrency determination shall not preclude County from pursuing remedies under other provisions of this Agreement (including paragraph 16.4.4) upon a default by Developer hereunder.
 - 9.3. Capacity Reservation Fees.
 - 9.3.1. Pursuant to Section 1.8.6.E of the County CMS, capacity reservation fees ("Capacity Reservation Fees") are calculated pursuant to the County Impact Fee Ordinance and the payment for which is divided into two stages as follows:
 - 9.3.1.1. 50% at Concurrency Approval.
 - 9.3.1.2. 50% at the issuance of a Certificate of Occupancy for any building, or its equivalent.
 - 9.3.2. Developer and County have estimated that the cost of the Developer Improvements, and the value of Conveyed ROW to be contributed by the Developer in connection therewith, is in excess of the estimated Capacity Reservation fee set forth in paragraph 9.3.1.1 above. Therefore, County agrees that Developer shall not be required to pay the Concurrency Reservation Fees set forth in paragraph 9.3.1.1. Nothing set forth herein shall relieve Developer from paying the amount owed under paragraph 9.3.1.2 (subject to available Impact Fee Credits under this Agreement).
 - 9.4. Term of Reservation. The reservation of capacity granted to Developer by County as set forth above for the benefit of the Property or any portion thereof shall have a term commencing on the Effective Date of this Agreement and ending on the expiration of the term of this Agreement under paragraph 16.15.
10. **Maintenance.**
- 10.1. Following construction of the Developer Improvements and County's acceptance thereof:
 - 10.1.1. County shall maintain all of the Developer Improvements other than the Stormwater Management Facilities into which stormwater from the 100th Extension is conveyed.
 - 10.1.2. Developer shall maintain the Stormwater Management Facilities from which stormwater from the 100th Extension is conveyed.
 - 10.2. POA.
 - 10.2.1. In connection with its development of the Property, Developer may form a validly organized Florida not-for-profit corporation as a property owners' association, or

if Developer develops the Property pursuant to a community development district under Chapter 190, Florida Statutes, Developer may form a community development district (such property owners' property association or community development district is referred to as the "POA"), provided that all the following conditions are satisfied:

- 10.2.1.1. The POA is formed for the specific purpose of owning and maintaining common elements for the development of the Property, including the Stormwater Management Facilities which are the subject matter of this Agreement.
 - 10.2.1.2. The POA is granted the authority to own, maintain and operate the Stormwater Management Facilities by a Declaration recorded in the Public Records of Marion County, Florida.
 - 10.2.1.3. The POA is empowered under the terms of any recorded Declaration to collect assessments from all or some of the owners of units located on the Property for the purpose of providing funds necessary for the maintenance and operation of the Stormwater Management Facilities which are the subject of this Agreement.
- 10.2.2. Developer shall have the right to convey to the POA fee simple title to the Stormwater Management Facilities. The POA shall have the right to assume the operation, repair, and maintenance obligations of Developer with respect to the Stormwater Management Facilities, and Developer shall be released from any and further liabilities or responsibilities with respect to the ownership, operation, maintenance and repair of the Stormwater Management Facilities. The conveyance of the Stormwater Management Facilities, assumption of the maintenance obligations of Developer by the POA, and the release of Developer shall be completed in accordance with the following provisions:
- 10.2.2.1. Simultaneous with the conveyance of the Stormwater Management Facilities to the POA, Developer and the POA shall enter into an agreement (the "Assumption Agreement"), to be recorded in the Public Records of Marion County, Florida, under which the POA expressly acknowledges assumption of all of Developer's obligations under this Agreement with respect to the Stormwater Management Facilities. A copy of the recorded Assumption Agreement shall be provided to County and to the District promptly after its recordation.
 - 10.2.2.2. Upon completion of the procedures set forth above, Developer and the POA will, at their sole cost and expense, undertake actions to have the designated permittee of the Stormwater Permit modified to be the POA, subject to any required review and approval by the District or County.
 - 10.2.2.3. Upon completion of the execution of the Assumption Agreement and the recording of the same in the Public Records of Marion County, Florida, the POA shall have assumed and shall be responsible for all maintenance obligations of Developer with respect to the Stormwater

Management Facilities, notwithstanding whether the designated permittee of the Stormwater Permit has been modified to the POA.

11. **Force Majeure.**

- 11.1. “Force Majeure” means causes that: (a) are beyond the reasonable control of a party (the “Delayed Party”); (b) the Delayed Party, despite its diligent, good faith efforts, is unable to overcome; and (c) consist solely of delays caused by any of the following: fire, flood, windstorm, sinkhole, unavailability of materials or equipment (provided that the Delayed Party demonstrates that such materials or equipment were ordered with sufficient lead time given known market conditions, and there are no commercially available alternative sources from which the materials or equipment can be procured at prices substantially equivalent to the prices of the original materials or equipment), equipment or fuel, declaration of hostilities, terrorist act, civil strife, strike, lock-out, labor dispute, epidemic, pandemic, archaeological excavation, act of God, act of public enemy, act of armed forces, war, riot, sabotage, blockage, embargo, earthquake, flood, fire, explosions, tornado or hurricane, litigation, unusual and unforeseen delays in actions, restrictions, requirements or mandates of governmental authorities, governmental restraints, or any other cause whether or not of the same kind as enumerated above, that is either: (a) not within the sole control of the Delayed Party and which by exercise of Due Diligence the Delayed Party is unable to overcome; or (b) that constitutes an excuse under Florida law based upon the doctrine of “impossibility of performance.”
- 11.2. If Developer is unable to timely perform its obligations under this Agreement, due to a Force Majeure, such delay shall be excused in the manner herein provided.
- 11.3. If Developer is so delayed, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. Developer shall give written notice of the delay to County, which notice shall indicate the anticipated duration of the Force Majeure. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

12. **Acknowledgement Upon Completion.** Upon Developer’s completion of the Developer Improvements, County shall execute and deliver to Developer a recordable instrument acknowledging such completion. Such instrument may be executed by County Representative on behalf of County.

13. **Development Permits Required.**

- 13.1. Local Development Permits. The local development permits approved or needed to be approved for the development of the Project in accordance with the provisions of this Agreement, and the status of each such permit or approval, are as follows:

PERMITS/APPROVALS ²	STATUS
PUD Approvals	Issued

² Some of the Permits or Approvals identified herein may be issued multiple times as portions of the Property are developed.

Issuance of Certificate of Concurrency regarding traffic concurrency, by County	Pending ³
Water Management District Environmental Resource Permit (Stormwater) (“Project”)	TBAF ⁴
FDEP Permit – extension of County potable water system	TBAF
FDEP Permit – extension of County wastewater system	TBAF
County – Approval of Master PUD Plan (one for Western Parcel and the other for Eastern Parcel)	Under County Review
County – Preliminary Plat approval	TBAF
County – Subdivision Improvements Plan approval (one for East Parcel and the other for the West Parcel)	TBAF
County – Plat approval – Plat(s) of Property or Parcels thereof ⁵ (one for East Parcel and the other for the West Parcel)	TBAF
County – Approval of plans for 100th Extension	TBAF

- 13.2. Additional Permits. The failure of this Agreement to address any particular permit, condition, term, or restriction on development shall not relieve the Developer or County of the necessity of complying with any law governing said permitting requirement, conditions, terms and restrictions with respect to the contemplated development of the Project, as applicable.
- 13.3. Additional Conditions. County reserves the right to impose additional conditions, terms, restrictions or other requirements determined to be necessary for the public health, safety, and welfare of their citizens with respect to the development contemplated by the Developer and described in this Agreement, provided that such conditions, terms or restrictions shall not be in contravention with the terms of this Agreement.
14. **Public Facilities**. The public facilities (“Public Facilities”) that will service the Project, the person or entity who shall provide such Public Facilities, and the date of any new Public Facilities which must be constructed, are as follows:
- 14.1. Transportation Facilities. The Transportation Facilities that will serve the Project are as set forth in the Traffic Study. Developer shall construct Developer Improvements pursuant to paragraph 5, convey ROW pursuant to paragraph 6 and otherwise provide Proportionate Share Mitigation pursuant to this Agreement.
- 14.2. Potable Water. Potable water services for the portions of the Project for which central water services are required are available from the County. County presently has sufficient permitted and constructed capacity, unreserved, for the development of part of the Project and will construct additional facilities for the remainder of the Project.
- 14.3. Wastewater. Wastewater services are available from the County. County presently has sufficient permitted and constructed capacity, unreserved, for the development of part of the Project and will construct additional facilities for the remainder of the Project.

³ To be issued upon approval of this Agreement.

⁴ “TBAF” stands for “To be applied for.”

⁵ There may be multiple plans and or plats of the Property.

- 14.4. Solid Waste Collection. Solid waste collection for the Property will be provided pursuant to the County Code by the County or a private contractor with a franchise from County. County or its franchise contractors currently have sufficient capacity, unreserved, to provide solid waste collection services for the Project.
- 14.5. Educational Facilities. Public education services for the Property are currently provided by the following schools, operated by the Marion County Board of Public Education:
 - 14.5.1. Elementary School – Hammett Bowen Jr. Elementary School
 - 14.5.2. Middle School – Liberty Middle School
 - 14.5.3. High School – West Port High School.
- 14.6. Recreational Facilities. The Property is served by the following public recreational facilities:
 - 14.6.1. Liberty County Park is approximately 1 mile away.
 - 14.6.2. The Greenway is approximately two miles away.
 - 14.6.3. Independence Park is approximately 2.2 miles away.
 - 14.6.4. Cherrywood Country Club is approximately 1.8 miles away.
 - 14.6.5. Royal Oak Golf Club is approximately 2.7 miles away.
- 14.7. Health Systems and Facilities.
 - 14.7.1. HCA Florida West Marion Hospital is located approximately 7 miles from the Property.
 - 14.7.2. AdventHealth Ocala and HCA Florida Ocala Hospital are located approximately 12.3 miles from the Property.
15. **Additional Provisions.**
 - 15.1. Adopted Pursuant to Florida Local Government Development Agreement Act. This Agreement has been adopted pursuant to the “Florida Local Government Development Agreement Act” (codified at Sections 163.3220 through 163.3243, Florida Statutes (2022)).
 - 15.2. Performance On Behalf Of Developer. County agrees that any obligation of Developer to construct any Developer Improvements hereunder may be performed by or on behalf of Developer by third parties under contract with Developer, and such improvement shall be deemed performed by Developer hereunder.
16. **General Provisions.**
 - 16.1. Notices.

- 16.1.1. All notices, requests, consents and other communications (each a “Communication”) required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:
- 16.1.1.1. If to County: County Engineer H. Elton Holland, P.E., 412 SE 25th Avenue, Ocala, FL 34471; email: elton.holland@marionfl.org.
- a. With a copy to: Assistant County Administrator Tracy Straub, P.E., 601 SE 25th Avenue, Ocala, FL 34471; email: tracy.straub@marionfl.org.
- b. With a copy to: County Attorney Matthew Guy Minter, 601 SE 25th Avenue, Ocala, FL 34471; email: matthew.minter@marionfl.org.
- 16.1.1.2. If to Developer: Attn: Ocala SW 100th, LLC, 4912 Turnbury Wood Drive, Tampa, FL 33647; email: dawsonransome@newstrategyholdings.com;
- a. With a copy to: W. James Gooding III, Gooding & Batsel, PLLC, 1531 SE 36th Avenue, Ocala, FL 34471; email: jgooding@lawyersocala.com.
- 16.1.2. Each such Communication shall be deemed delivered:
- 16.1.2.1. On the date of delivery if by personal delivery with signed receipt thereof;
- 16.1.2.2. On the date of email transmission if by email (subject to paragraph 16.1.5); and
- 16.1.2.3. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
- 16.1.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 16.1.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.
- 16.1.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

16.1.5. Concerning Communications sent by email:

- 16.1.5.1. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;
- 16.1.5.2. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns;
- 16.1.5.3. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
- 16.1.5.4. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
- 16.1.5.5. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

16.2. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership by or among Developer, County in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

16.3. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Any portion of the Property which may under the terms of this Agreement later may be designated for public use or purposes shall be conveyed by Developer to County, as applicable. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

16.4. Default Provisions.

16.4.1. The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

16.4.2. All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedy provided by law or equity.

16.4.3. No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy (including, without limitation, an action under Section 163.3243, Florida Statutes) arising out of a default under this Agreement

until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice (with, if applicable, a copy to any other Party to this Agreement) specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default.

16.4.4. In the event of a material default (as defined under Florida law) by Developer with respect to their obligations to County under this Agreement, and failure of Developer to cure the default within the grace period set forth above, in addition to any other remedies available to County under the terms of this Agreement, County shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured.

16.4.4.1. If Developer has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third-Party Parcel"), the default of Developer is not with respect to, or does not impact Developer's obligations regarding, a Third-Party Parcel, and, prior to the conveyance, Developer obtained an Estoppel Statement from County under paragraph 16.5 acknowledging that there are no defaults by Developer under this Agreement, the right of County to withhold permits upon a default by Developer shall not extend to County permits pending or to be issued with respect to a successor owner of the Third-Party Parcel.

16.4.4.2. The Parties agree that failure of Developer to timely pay any Proportionate Share Mitigation owed under the provisions of this Agreement does not constitute a default with respect to, or impacting Developer's obligations regarding, a Third-Party Parcel, if, prior to the date that Developer conveyed the Third-Party Parcel, Developer obtained an Estoppel Statement pursuant to paragraph 16.5 acknowledging that Developer is not in default under its obligation to pay any Proportionate Share Mitigation. Therefore, County may not withhold permits for such Third-Party Parcel based on such non-payment.

16.5. Estoppel Statements.

16.5.1. Each Party agrees that upon written request from time to time of any other Party it will timely issue to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an estoppel statement ("Estoppel Statement") stating:

16.5.1.1. Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

- 16.5.1.2. Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).
 - 16.5.1.3. That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.
 - 16.5.1.4. That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.
 - 16.5.1.5. That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.
- 16.5.2. Such Estoppel Statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.
- 16.5.3. The Estoppel Statement shall be provided at no charge to the requesting party except that County may charge a reasonable fee (currently established at \$300.00) if Developer or a Subsequent Owner requests an Estoppel Statement.
- 16.6. Litigation. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.
- 16.7. Binding Effect. The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.
- 16.8. Headings. The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.
- 16.9. Severability. Except as otherwise set forth herein, in the event any provision or section of this Agreement is determined to be invalid or unenforceable by a court of competent

jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

- 16.10. Survival of Representations and Warranties. All representations and warranties contained herein are made in writing by the Parties in connection herewith shall survive the execution and delivery of this Agreement.
- 16.11. Successors and Assigns.
- 16.11.1. All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.
- 16.11.2. Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.
- 16.12. Applicable Law. This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Marion County, Florida.
- 16.13. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 16.14. Amendment of Agreement. This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.
- 16.15. Term. The term of this Agreement shall be for a period of thirty (30) years, commencing on the Effective Date.
- 16.16. Rules of Construction. For the purposes of the interpretation, construction, administration, and implementation of this Agreement, unless otherwise stated in this Agreement or the context clearly indicates to the contrary, the following rules of construction shall apply:
- 16.16.1. Any pronoun used herein shall include the corresponding masculine, feminine and neuter forms.
- 16.16.2. All definitions in this Agreement shall apply equally to both the singular and plural forms of the nouns defined, to the present, future and past tenses of verbs defined, and to all derivatives of defined terms.
- 16.16.3. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.”
- 16.16.4. The words “herein,” “hereof,” “hereunder,” and similar terms shall refer to this Agreement.

16.16.5. A reference to an Article, paragraph, subparagraph, or other subpart of this Agreement, shall include all paragraphs, subparagraphs, and subparts under the referenced part.

16.16.6. Where a provision involves two or more items, conditions, provisions, or events connected by the conjunction “and,” “or” or “either or,” the conjunction shall be interpreted as follows: “and” indicates that all the connected terms shall apply; “or” indicates that the connected terms may apply singly or in any combination; and “either or,” indicates that only one of the connected terms may apply.

16.17. Time.

16.17.1. Time is of the essence of all of the provisions and terms of this Agreement.

16.17.2. If a time period is five (5) days or less, intervening Saturdays, Sundays or legal holidays will be excluded from the calculation.

16.17.3. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall automatically extend to 5:00 p.m. on the next ensuing business day.

16.17.4. For purposes of this Agreement, “legal holiday” means: (a) the day set aside by paragraph 110.117, Florida Statutes, for observing New Year’s Day, Martin Luther King, Jr.’s Birthday, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day or Christmas Day; (b) the Friday after Thanksgiving; (c) Christmas Eve; (d) if Christmas is on weekend, the Monday after Christmas Day; and (e) any other day upon which the Clerk of the Court of Marion County, Florida, is closed for ordinary business.

16.18. Exhibits.

16.18.1. The Exhibits attached to this Agreement are as follows:

16.18.1.1. **Exhibit A** – Property

16.18.1.2. **Exhibit B** – Concept Plan

16.18.1.3. **Exhibit C** – Conveyance Standards

16.18.1.4. **Exhibit D** – Proportionate Share Analysis

16.19. Effective Date. This Agreement shall become effective upon the recording of the fully executed Agreement in the Public Records of Marion County, Florida, as set forth in Section 163.3239, Florida Statutes.

16.20. Entire Understanding. This Agreement represents the entire understanding and Agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties. The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

THEREFORE the Parties have executed this Agreement as of the Effective Date.

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SIGNATURES START ON NEXT PAGE**

COUNTY

MARION COUNTY, FLORIDA, a political subdivision of the State of Florida, by its Board of County Commissioners

By: _____
Craig Curry as Chair

ATTEST:

Gregory C. Harrell, Clerk of Court and Comptroller

For use and reliance of Marion County only,
approved as to form and legal sufficiency:

Matthew Guy Minter, County Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2023, by Craig Curry, as Chairman of the Board of County Commissioners of Marion County, Florida, a political subdivision of the State of Florida, on behalf of County.

Notary Public, State of Florida
Name: _____
(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:

- _____ Personally known OR
- _____ Produced Identification (if this box is checked, fill in blank below).
- _____ Type of Identification Produced: _____

DEVELOPER

Ocala SW 100th, LLC, a Florida limited liability company

By: _____
Joseph Tabshe as Manager

Witness

Print Witness Name

Witness

Print Witness Name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2023, by Joseph Tabshe as Manager of Ocala SW 100th, LLC, a Florida limited liability company, on behalf of such company.

Notary Public, State of _____
Name: _____
(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:

- _____ Personally known OR
- _____ Produced Identification (if this box is checked, fill in blank below).
- _____ Type of Identification Produced: _____

**EXHIBIT A
PROPERTY**

Eastern Parcel #: 35695-033-00

Commencing at the Northeast corner of Section 28, Township 16 South, Range 21 East, Marion County, Florida, thence go along the East line of said Section 28, S.00°36'37"W., a distance of 40.00 feet; thence go along the South right of way line of Belmont Blvd, N.89°47'13"W., a distance of 828.31 feet to the POINT OF BEGINNING; thence continue along said South right of way line N.89°47'13"W., a distance of 1274.02 feet to a point of curve concave Northwesterly having a radius of 2440.00 feet, a central angle of 3°24'13" and an arc distance of 144.95 feet; thence leaving said South right of way line S.12°19'53"W., a distance of 725.71 feet; thence S.00°36'37"W., a distance of 575.17 feet; thence S.89°23'23"E., a distance of 1564.30 feet; thence N.00°36'37"E., a distance of 1291.33 feet to the POINT OF BEGINNING.

Western Parcel #: 35695-011-01

Commencing at the N.E. corner of Section 28, Township 16 South, Range 21 East, Marion County, Florida, go thence along the centerline of Belmont Boulevard N.89 degrees 47'13"W. a distance of 2102.61 feet to a point; thence by a curve concave to the North having a radius of 2400 feet and a central angle of 21 degrees 35'51" thru an arc distance of 904.67 feet to a point; thence go S.21 degrees 48'38"W. a distance of 40.00 feet to a point on the South right of way line of Belmont Blvd., also the Point of Beginning; said point also being the N.W. corner of the property described in Official Records Book 955, at Page 613; thence leaving said South right of way line go S.02 degrees 13'58"W. a distance of 1722.72 feet to a point; thence N.83 degrees 50'00"E. a distance of 62.14 feet to a point at the N.W. corner of the property described in Official Records Book 908, Page 557, thence S.00 degrees 36'37"W. a distance of 442.31 feet to a point on the Northerly boundary of Alejandria Estates, as recorded in Plat Book 1, Pages 13-14; thence N.89 degrees 23'23"W. along said Northerly boundary of Alejandria Estates 365.67 feet to a point; thence N.00 degrees 44'15"W. along said Northerly boundary of Alejandria Estates 190.76 feet to a point; thence S.81 degrees 46'49"W. along said Northerly boundary of Alejandria Estates 565.89 feet to a point; thence N.62 degrees 07'27"W. along said Northerly boundary of Alejandria Estates 240.00 feet to a point; thence continue along said Northerly boundary of Alejandria Estates by a curve concave to the East, having a radius of 186.99 feet, a central angle of 51 degrees 30'00" and thru an arc distance of 168.07 feet to a point; said point being the point of tangency of said curve; thence S.01 degrees 30'00"E. along the West boundary of aforesaid Alejandria Estates 198.05 feet; thence S.88 degrees 30'00"W. along said Northerly boundary of Alejandria Estates 60.00 feet to a point; thence N.01 degrees 30'00"W. a distance of 198.05 feet to a point; thence by a curve concave to the East having a radius of 246.99 feet, a central angle of 72 degrees 27'4" and thru an arc distance of 312.39 feet to a point; thence N.19 degrees 02'19"W. a distance of 1387.37 feet to a point; said point being on the South right of way line of Belmont Blvd.; thence go along said South right of way line of Belmont Blvd. by a curve concave to the North having a radius of 2040 feet, a central angle of 14 degrees 54'01" and thru an arc distance of 530.52 feet to a point; thence N.56 degrees 03'40"E. a distance of 377.76 feet to a point; thence by a curve concave to the South having a radius of 835.00 feet, a central angle of 55 degrees 44'58" and thru an arc distance of 812.46 feet to the Point of Beginning.
Except any portion of the above described land lying in Section 21, Township 16 South, Range 21 East.

EXHIBIT B CONCEPT PLAN

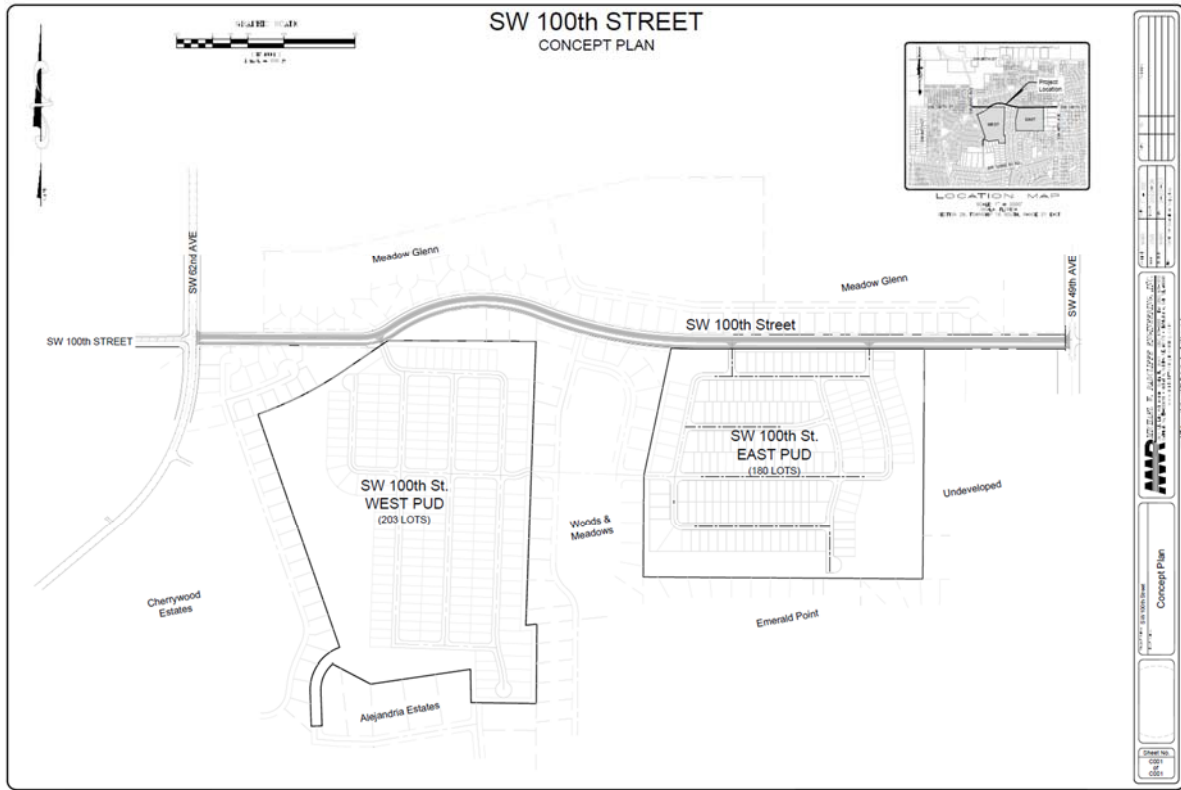


EXHIBIT C TYPICAL SECTION

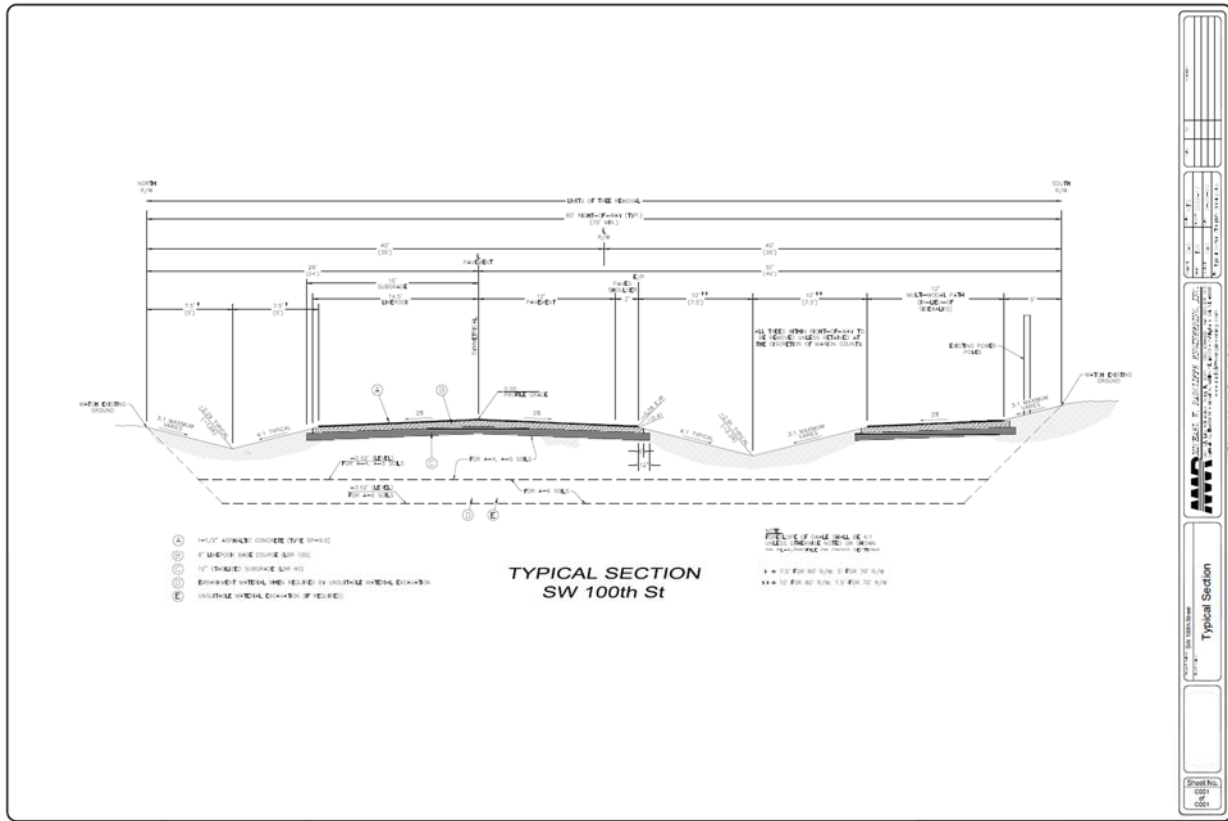


EXHIBIT D DRAINAGE PLAN

SW 100th STREET DRAINAGE BASIN MAP

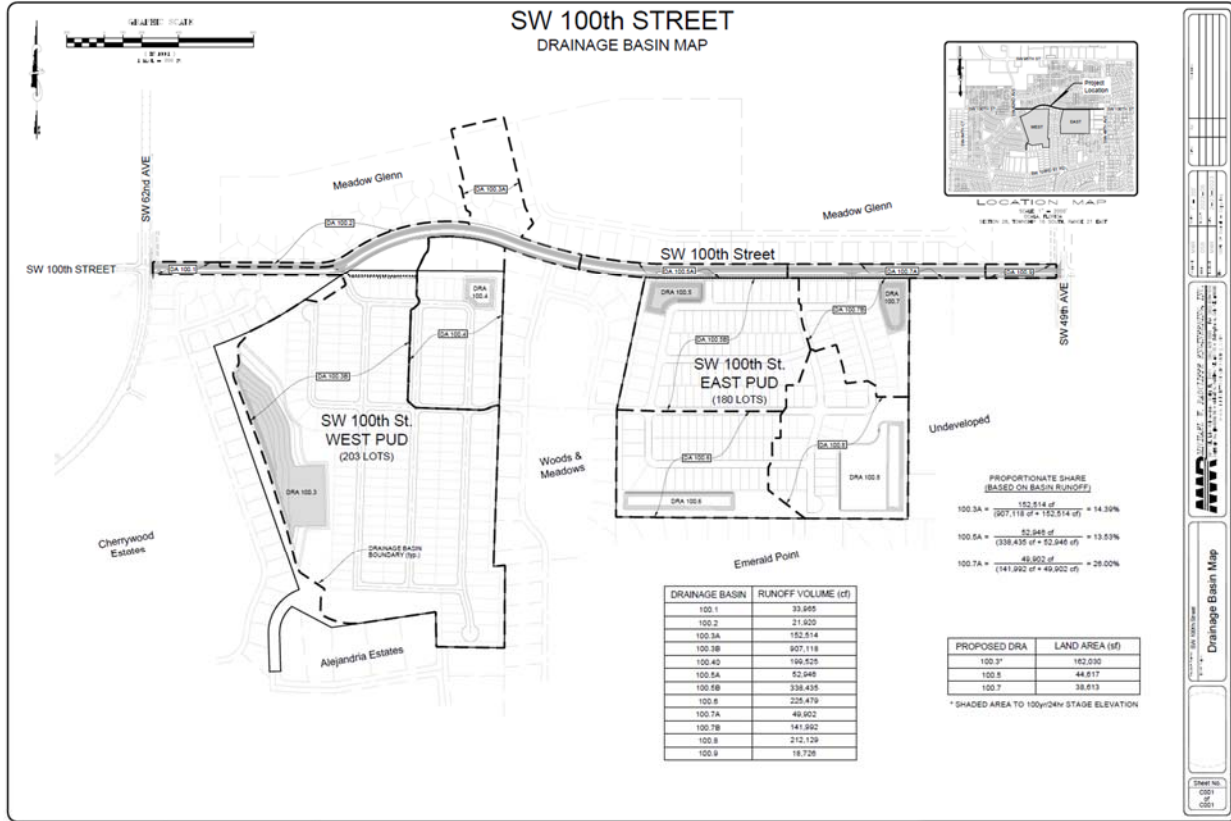


EXHIBIT E
CONVEYANCE STANDARDS

All conveyances of title to ROW (whether in fee simple or by grants of easements) which are required under the terms of this Agreement shall be made in accordance with the following Conveyance Standards:

1. The conveying party (“Conveying Party”) shall convey fee simple title ROW by Special Warranty Deed.
2. Unless otherwise specifically provided in this Agreement, fee simple title to parcels of real property shall be conveyed free and clear of all liens or encumbrances other than utility easements in favor of governmental entities or licensed public utilities, which shall be Permitted Exceptions with respect to the conveyances.
3. The Conveying Party shall have prepared, at its expense, a survey or a sketch and legal description of each parcel to be conveyed or each parcel for which an easement is to be granted, sealed and signed by a licensed Florida surveyor and certified to the grantor and the grantee in the conveyance or grant.
4. As to all conveyances of fee simple title or grants of easements, the Conveying Party shall, at its expense, provide a commercial title insurance commitment and policy with respect to the conveyance, in accordance with the following provisions:
 - 4.1. The title insurance underwriter shall be First American Title Insurance Company.
 - 4.2. The amount of the title insurance policies shall be determined by utilizing the per square foot value of the real property, according to the most recent assessment by the Marion County Property Appraiser, multiplied by the square feet of the parcel.
 - 4.3. The Conveying Party shall provide, at its expense, all necessary closing documents and satisfy other requirements necessary for deletion of the Standard Exceptions in the final title insurance policy, and comply with all other title commitment requirements for the conveyance to be insured.
5. Except as to conveyances that this Agreement expressly provides are in lieu of condemnation (and therefore exempt from the payment of documentary excise taxes), the Conveying Party shall be responsible for payment of any applicable documentary excise taxes. The Conveying Party shall be responsible for payment of the cost of recording the instrument of conveyance and the cost of recording any documents required to satisfy title insurance requirements.
6. With respect to any grant of easement provided under the terms of this Agreement, the same cost allocations and title insurance requirements applicable to conveyances of fee title to real property shall apply.
7. If not specifically provided as an Exhibit to this Agreement, the form and content of any conveyance documents, and other documents prepared by or on behalf of Conveying Party, shall be subject to approval by County in its reasonable discretion. By approving this Agreement, the County Commission authorizes the County Representative to provide such approval on behalf County.

EXHIBIT F
PROPORTIONATE SHARE ANALYSIS

P:\JG\New Strategy\100th St Rezoning\Traffic\Concurrency K\Concurrency Agreement 2-23-23.docx