

Prepared by and Return to:

Christopher Roper, Esq.
Akerman LLP
P.O. Box 231
Orlando, FL 32802

_____[SPACE ABOVE THIS LINE FOR RECORDING DATA]_____

**CONCURRENCY DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

This Concurrency Development Agreement, executed by the Parties as of the ____ day of _____, 2022 and having the Effective Date specified below, is entered into by and between:

- **CITY OF OCALA**, a Florida municipal corporation (“City”); and
- **DONNA MACHELLE ALBRIGHT**, as Trustee of the **DONNA MACHELLE ALBRIGHT FAMILY TRUST**, dated July 2, 1999, as amended and restated on December 29, 2010 (“Trust”).

RECITALS:

- A. Trust owns a parcel of real property located in Marion County, Florida, also located within the jurisdictional boundaries of the City, being more particularly described in **Exhibit “A”** attached hereto and incorporated herein (the “Property”).
- B. Trust has made application to City for a Concurrency Development Agreement to facilitate making a proportionate share payment to City to mitigate the impact on a certain intersection which will have inadequate facility capacity at peak hour as a result of projected traffic to be generated by the development of the Property, as determined by the Traffic Study described in Recital C below.
- C. Trust retained Kimley-Horn and Associates, Inc., consulting engineers, to prepare a Traffic Impact Analysis (“Traffic Study”) of the effect on transportation facilities of the development of the Property based upon a methodology reviewed and approved by the City, County, and the Ocala/Marion County Transportation Planning Organization (“TPO”). The Traffic Study, dated September 2021 and approved by the City on October 13, 2021, has been reviewed and approved by City, County, and the TPO. The final approved Traffic Study, as revised, is by this reference incorporated into the terms of this Agreement.

- D.** The Traffic Study projects that based on the adopted level service standards of the City and County there is one intersection, identified below, that will have inadequate facility capacity at peak hour to provide adequate facility capacity for the projected new traffic generated by the build-out of the Property, taking into account existing background traffic and projected growth of existing traffic and background traffic. Trust and City have agreed to the required modification to the subject facility (described below) and to the proportionate share payment to be made by the Trust to the City to mitigate the impact on public transportation facilities generated by the proposed development of the Property.
- E.** Chapter 86 of City's Code of Ordinances provides that, in the case of inadequate traffic facility capacity, a property owner may enter into a Concurrency Development Agreement with the City to provide or fund traffic facilities system improvements. This Agreement shall constitute a Concurrency Development Agreement under the provisions of Chapter 86 of the City Code.
- F.** Trust has agreed to provide funds for the proportionate share payment owed as a result of the development plans for the Property, as set forth below, to mitigate the impact of development of the Property on public traffic facilities. Trust has also agreed to provide right-of-way to the City to facilitate additional traffic improvements that, although not required by City Code for this Project, will benefit the City and the traveling public by improving the overall roadway network that serves the Property and the surrounding area, if and when the City determines a need exists for such improvements in the future.
- G.** City has held public hearings to accept and encourage public input with respect to the proposals of Trust contained in this Agreement, and has considered public input. City has determined that the provisions of this Agreement and the contemplated vesting of development rights contemplated by this Agreement are consistent with, and not in contravention with, the provisions of City's Concurrency Management System, as codified in Chapter 86 of the City Code.
- H.** Trust has submitted an Application for Certificate of Capacity to the City for additional vehicular Trips (capacity) needed to accommodate the development of the Property.
- I.** City has provided its Notice of Intent to consider entering in this Concurrency Development Agreement by advertisements published in the Ocala Star-Banner, a newspaper of general circulation and readership in Marion County, Florida, on December 10, 2021, and December 17, 2021, by mailing a copy of the Notice of Intent to Trust, 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, and by announcing the date, time, and place of the second hearing during the first hearing.
- J.** The City Council of the City held Public Hearings on December 21, 2021, January 4, 2022, February 1, 2022, and February 15, 2022, to consider this Agreement. The City Council found and determined that execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land

Development Regulation Act and that the development contemplated and permitted by this Agreement is consistent with the City's Comprehensive Plan and the City Code.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, 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. **Incorporation of Recitals & Exhibits.** The parties confirm and agree that the above Recitals are true and correct, and incorporate their terms and provisions herein for all purposes. The content of all Exhibits referenced in this Agreement and attached hereto are incorporated into the terms of this Agreement.
2. **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:
 - 2.1 ***"Agreement"***— This Concurrency Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220 through 163.3243, inclusive, of the Florida Statutes.
 - 2.2 ***"City"***— City of Ocala, a Florida municipal corporation.
 - 2.3 ***"City's CMS"***— City's Concurrency Management System, as codified in Chapter 86 of the City Code.
 - 2.4 ***"City Code"*** —Code of Ordinances of the City of Ocala, Florida.
 - 2.5 ***"Effective Date"*** — The date the terms of this Agreement become effective, as set forth in Section 12.16.
 - 2.6 ***"Party" or "Parties"***— As applicable, either Trust or City or both Trust and City.
 - 2.7 ***"Property"*** — that certain parcel of real property owned by Trust and located in Marion County, Florida, also located within the jurisdictional boundaries of the City, being more particularly described in **Exhibit "A"** attached hereto and incorporated herein.
 - 2.8 ***"Project"*** – The development of the Property for up to 320 multi-family residential units or any other new use or uses authorized by this Agreement that does not exceed the PM peak hour trip equivalent of 180 single-family detached residential units.
 - 2.9 ***"Reservation of Capacity" or "Reserved Capacity" or "Capacity Reservation"*** — The reservation of exterior traffic capacity (Trips) for the benefit of the Property pursuant to Section 7.

2.10 “Traffic Study” — The Traffic Impact Analysis prepared by Kimley-Horn and Associates, Inc., consulting traffic engineers, regarding the Property dated September 2021 and approved by the City on October 13, 2021, assessing the impact on public transportation facilities of the development of the Property for up to 320 multi-family units. The Traffic Study was developed pursuant to a methodology approved by the City, Marion County, and the Ocala/Marion County Transportation Planning Organization (“TPO”), and the Traffic Study has been reviewed, approved and accepted by City, County, and TPO. The contents of the Traffic Study are, by this reference, incorporated into this Agreement.

3. 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:

3.1 Trust’s Representations and Warranties. Trust represents and warrants to City that:

3.1.1 Trust has taken all actions prerequisite necessary for the execution and delivery of this Agreement, and upon the full execution of this Agreement the obligations of Trust hereunder shall be valid and binding obligations of Trust. The individual executing this Agreement on behalf of Trust is a duly authorized representative of Trust, authorized to execute this Agreement in its capacity as trustee of the Trust as set forth below.

3.1.2 Trust is the record legal owner of the Property.

3.1.3 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 Trust.

3.2 City Representations and Warranties. City represents and warrants to Trust that:

3.2.1 The actions by City hereunder are consistent with the terms and provisions of the City’s Comprehensive Plan.

3.2.2 City 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.

3.2.3 Upon the full execution of this Agreement, the obligations of City shall be valid and binding obligations of City.

3.2.4 Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City’s Charter,

the City Code or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

4. **Legal and Equitable Owners.** Trust is the legal owner of the Property. The equitable owners of the Property are Donna Machelie Albright, Robert Clayton Albright, Reagan M. Albright, and Ryan M. Albright.
5. **Development Standards.** The future land use designation of the Property is Low Intensity. The zoning of the Property is R-3. Development of the Property shall be consistent with the City Comprehensive Plan and, except as modified and/or limited herein, the R-3 zoning district and other applicable sections of the City Code.
 - 5.1 **Permitted Uses.** Allowable uses on the Property include single-family residential and multi-family residential and related accessory uses, including, without limitation, recreation uses and facilities. As used herein, the term “single-family residential” includes single-family detached, two-family units and other single-family residential units allowed by City Code in the R-3 zoning district, but specifically does not include attached single-family units (other than two-family units). Attached single-family units (other than two-family units) may not be developed on the Property without an amendment to this Agreement and compliance with Section 122-357 of the City Code. As used herein, the term “multi-family residential” includes apartments and other multi-family residential uses allowed by City Code in the R-3 zoning district. Other uses allowed, either by right or by special exception, in the R-3 zoning district shall also be allowed on the Property, provided that (a) such use does not exceed the number of PM peak hour trips that would have been generated by 180 single-family residential dwelling units if such units were developed on the Property instead, and (b) no use that requires a special exception in the R-3 zoning district shall be developed on the Property without special exception approval from the City. Agriculture uses shall also be allowed to continue on the Property until such time as it is developed for a new use. Examples include routine maintenance of the pond (including dredging and vegetation removal), removal and burning of dead and dying trees and vegetation on the Property as authorized by the Florida Forest Service (including permit number #121440 SCT 22-TWP15- RNG22), commercial bee keeping and honey practices, rotation of planted crops, and harvesting and selling of merchantable timber.
 - 5.2 **Maximum Density.** The density of the Property shall not exceed a maximum of 180 single-family residential dwelling units, or a maximum of 320 multi-family residential dwelling units, or any combination of single-family and multi-family residential dwelling units such that the traffic impact of such combination of single-family and multi-family residential units does not exceed the number of PM peak hour trips that would be generated by 180 single-family detached residential dwelling units.
 - 5.3 **Maximum Intensity.** The maximum coverage of all non-residential buildings on the Property shall not exceed 35% of the total area of the Property. (Building

coverage shall be determined by the building footprint; not the aggregate of all floor space contained in multi-story buildings.)

- 5.4 Building Height.** Buildings may be 1, 2, or 3 stories, and shall not exceed a maximum 50 feet in height.
- 5.5 Architectural.** Multi-family development on the Property shall be subject to the City's architectural review requirements as set forth in Section 122-216(t) of the City Code and may be (but is not required to be) age-restricted and/or gated.
- 5.6 Setbacks.** Setbacks shall be in accordance with the applicable provisions of the City Code, except that setbacks from the access road or drive aisle constructed within Tract A (defined below), shall apply as though such access road or drive aisle is a public street, even if it is initially privately owned and maintained.
- 5.7 Building Service Areas; Mechanical Equipment.** Delivery and loading operations, HVAC equipment, dumpsters, backflow preventers and other utility and service functions shall be substantially screened from view of SE 24th Street, SE 27th Terrace, and SE 26th Street and not located nearer than 25-feet of the property line except as may be otherwise approved by the City during the site plan review process. Where possible, such screening shall be incorporated into the overall design of the buildings and landscaping.
- 5.8 Parking.** Parking shall be pursuant to Article VI of the City Code.
- 5.9 Lighting.** Lighting assemblies along driveways shall be consistent in type and color and should generally not exceed 35 feet in height. Any lighting directly abutting neighboring properties other than SE 27th Terrace shall use pedestrian level lighting. Pedestrian level lighting should generally not exceed 20 feet in height. Light fixtures may allow for additional elements such as banners or hanging planters.
- 5.10 Signage.** Signage shall be provided for the proposed uses and for pedestrian safety based on applicable portions of the City Code, Chapter 110, Article III, Division 2, provided that, where said Division indicates a "public right-of-way entrance," a private right-of-way entrance may be substituted in its place. External illumination shall be allowed. Except as may be otherwise approved by the City Growth Management Director or his/her designee, all signage shall be ground mounted signage with the base not to exceed 5-feet in height and an overall height not to exceed 20-feet.
- 5.11 Buffers.** Buffers shall comply with Section 122-260 of the City Code, except that (a) a minimum 50'-wide landscape buffer shall apply along the west boundary of the Property that may consist of existing trees and additional plantings to supplement where needed, (b) a minimum 20'-wide landscape buffer shall apply along the south and east sides of the Property, and (c) buffering along the access road or drive aisle constructed within Tract A shall be required as though such

access road or drive aisle is a public street (even if it is initially privately owned and maintained).

5.12 Accent Materials. Accent features shall be provided to ensure aesthetically pleasing development, such as pavers, landscape islands with vertical plantings, accent building materials, or other architectural features.

5.13 Access; Reservation or Dedication of Land for Public Purposes.

5.13.1 Prior to issuance of the first certificate of occupancy for any new use on the Property, SE 24th Street must be reconstructed as a two-lane paved roadway with sidewalks and drainage, substantially in accordance with that certain cross-section plan attached hereto and incorporated herein as **Exhibit “B,”** from Maricamp Road (SR 464) to the intersection of SE 27th Terrace (the “Off-Site Road Improvements”). The City has assumed, or within ninety (90) days after the Effective Date will assume, ownership of (but not maintenance responsibility for) the existing SE 24th Street right-of-way, from Maricamp Road (SR 464) to SE 27th Terrace, from Marion County. The City agrees to assume maintenance responsibility for the Off-Site Road Improvements no later than upon completion of the Off-Site Road Improvements in accordance with this Agreement. Trust will construct, at no cost to the City, any deceleration lanes at the intersection of Maricamp Road (SR 464) and SE 24th Street that may be required by the Florida Department of Transportation in connection with its issuance of permits for construction of the Off-Site Road Improvements.

5.13.2 In addition to above, prior to issuance of the first certificate of occupancy for any new use on the Property, a minimum two-lane access road must be constructed along the north boundary of the Property that connects to existing SE 24th Street (the “On-Site Road Improvements”). The On-Site Road Improvements shall extend a minimum 350 feet into the Property from existing SE 24th Street in accordance with the alignment generally depicted on **Exhibit “C”** attached hereto and incorporated herein. As depicted on Exhibit “C,” the On-Site Road Improvements may be wholly contained within the Property and the Access Easement (defined below); provided, however, nothing herein is intended to constitute a representation regarding the legal sufficiency of the Access Easement to accommodate such improvements, it being understood that such matter is outside of the scope of this Agreement and the City shall bear no responsibility for same. Notwithstanding the foregoing, if sufficient additional right-of-way (including, if applicable, any required easements or other property interests) is then available (at no cost to Trust) from the owner of the adjacent parcel to the north, then the parties agree that the On-Site Road

Improvements shall extend a minimum 350 feet into the Property from existing SE 24th Street in accordance with the alignment generally depicted on **Exhibit “D”** attached hereto and incorporated herein. For clarity, Exhibit “D” depicts the On-Site Road Improvements extending into portions of the Property and the adjacent parcel to the north by 350 feet. In either case, City shall not be responsible for obtaining any real property or interests therein vesting Trust with the right to construct On-Site Road Improvements.

5.13.3 The On-Site Road Improvements shall be constructed in accordance with City standards and specifications for access roads as may be approved by the City during the site plan or final engineering plan review process, provided the cross-section of the On-Site Road Improvements may (at Trust's option) be in substantial accordance with the cross-section plan attached as **Exhibit “B.”** The On-Site Road Improvements shall remain privately owned and maintained except to the extent they are conveyed to and accepted by the City as public right-of-way in the City’s sole discretion.

5.13.4 It is acknowledged that, after the Effective Date hereof, the City may, but shall not be required to, acquire additional right-of-way from (a) the owner of the adjacent property to the north, and (b) the owners who currently have a fee simple interest in SE 27th Terrace (subject to the Access Easement in favor of Trust and defined below), and combine such rights-of-way with the 33-foot-wide Tract A depicted on Exhibits “C” and “D” (“Tract A”) to create a minimum 50’-wide public right-of-way through which SE 24th Street may be extended as a public road. Accordingly, Trust agrees to convey to the City by special warranty deed all or any portion of Tract A as may be requested by the City for public right-of-way purposes, within ninety (90) days after Trust’s receipt of a written request therefor from the City. For clarity, Tract A shall remain privately owned and maintained except to the extent it is conveyed to and accepted by the City as public right-of-way in its sole discretion. In that such conveyance of Tract A and related costs are not required by City Code for development of the Project, the foregoing represents the maximum that Trust can contribute to the overall public interest without creating an unjust or inordinate burden on the Project.

5.13.5 In the event the City Code requires more than one means of ingress and egress for the proposed development of the Property, one of the required means of ingress and egress may be (but is not required to be) limited to use by emergency vehicles only (“Emergency Access”). Any such Emergency Access may be located at the

easternmost of the two driveways depicted in Tract A on Exhibits “C” and “D” or at another location approved by the City.

- 5.13.6** Existing access to the Property is from SE 24th Street, which is public right-of-way. Approximately 8 feet of the fee simple interest of the Property is contiguous with SE 24th Street and another approximately 25 feet of the Property is contiguous with SE 24th Street by virtue of the Access Easement, all as depicted on Exhibits “C” and “D.” The “Access Easement” means and refers to that certain easement for ingress and egress recorded at O.R. Book 173, Page 183, Public Records of Marion County, which easement benefits and runs with title to the Property and serves as a connection of the Property to SE 24th Street. Subject to Trust’s compliance with all other conditions set forth in this Section 5.13, the City agrees that Trust’s construction of the Off-Site Road Improvements and the On-Site Road Improvements as contemplated by this Agreement shall provide sufficient access for any new use to be developed on the Property in accordance with this Agreement.

6. Traffic Facilities; Traffic Concurrency; Proportionate Share Payment

- 6.1 Traffic Study.** The Traffic Study established that, upon the completion of development of the Property for up to 320 multi-family units (or an equivalent use based on PM peak hour trips), and as a result of the additional vehicular trips generated as a result of such development, the signalized intersection of Maricamp Road (SR 464) and SE 24th Street would not operate compliant with its specified level of service (the “Deficient Facility”). In order to satisfy transportation concurrency requirements, the following three (3) improvements to the Deficient Facility are required (collectively, the “Required Improvements”):

- 6.1.1** Signal timing adjustments to allow for additional green time for the eastbound left-turn movement;
- 6.1.2** Extension of the eastbound left-turn lane to allow for additional queue storage; and
- 6.1.3** Installation of a R10-30 “Right Turn on Red Must Yield to U-Turn” sign for the southbound right-turn movement from SE 24th Street to SR 464.

- 6.2 Proportionate Share Obligation.** Pursuant to Section 163.3180(5), Florida Statutes, the Project’s proportionate share percentage of the Required Improvements is 100%. It is further agreed by the Parties that the projected total cost of the Required Improvements is \$37,500.00 resulting in a total proportionate share payment obligation for the Project of \$37,500.00 (*i.e.*, 100% x \$37,500.00) (the “Proportionate Share Payment”). The Proportionate Share Payment shall be

paid to the City prior to the issuance of the first building permit for vertical construction of the Project.

- 6.3 Proportionate Share Payment Credits.** City acknowledges that, pursuant to Section 163.3180(5)(h)2.e., Florida Statutes, Trust shall receive credits on a dollar-for-dollar basis for impact fees, mobility fees, or other transportation concurrency requirements paid or payable in the future with respect to the Project. Because the County is not a party to this Agreement, Trust shall make appropriate notification and application to County with respect to Trust's rights to such dollar-for-dollar credit (this same procedure would be applicable in the event the County attempts to adopt or impose any mobility or other transportation concurrency mitigation requirements that are payable with respect to the Project).

7. Capacity Reservations.

- 7.1 Reservation of Capacity.** Trust has previously submitted to City a request for a certificate of capacity for the Project. Simultaneous with the execution of this Agreement, City will issue to Trust, for the benefit of the Property, a certificate of capacity in accordance with the normal procedures of City's CMS that reserves transportation capacity for the development of up to 320 multi-family dwelling units on the Property (or the equivalent thereof based on pm peak hour trips in the event the Property is developed for an allowed use other than multi-family residential). Such reservation of capacity shall have a term commencing on the Effective Date of this Agreement and ending on the date that is 30 years after the Effective Date of this Agreement. Any extensions of the reservation of capacity beyond such date shall require an amendment of this Agreement and subsequent review and approval of an updated Traffic Study.

- 7.2 Capacity Reservation Fees.** In consideration of Trust's agreement to improve and dedicate right-of-way for SE 24th Street as contemplated in Section 5.13 and Trust's agreement to make the Proportionate Share Payment, City agrees that, in lieu of the schedule provided in Section 86-7(c)(2) of the City Code, Trust's obligation to pay capacity reservation fees (in the form of prepaid transportation impact fees) may be satisfied as follows:

- 7.2.1** One hundred percent (100%) of the transportation impact fee obligation for the Project shall be prepaid prior to issuance of the first building permit for vertical construction of the Project.

8. Development Permits Required.

- 8.1 Local Development Permits.** The local development permits approved or needed to be approved for 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	STATUS
City Rezoning Approval to R-3	Approved

PERMITS/APPROVALS	STATUS
• For New Single-Family Residential Only: City Preliminary Plat (aka, Conceptual Plan), Final Plat, and Improvement Plans Approval • For All Other New Development: City Site Plan Approval	To Be Obtained
City Building Permits	To Be Obtained
Off-Site Improvements Plan Approvals (for off-site transportation improvements to SE 24 th Street)	To Be Obtained
Issuance of Certificate of Concurrency by City	Pending
Water Management District Environmental Resources (Stormwater) Permit	To Be Obtained
FDEP Permit — extension of City potable water system	To Be Obtained
FDEP Permit — extension of City sanitary sewer system	To Be Obtained
FDOT Permits, as may be applicable	To Be Obtained (if applicable)

Nothing in this Agreement shall be deemed to obviate the Trust's compliance with the terms and provisions of each such identified Permit, nor obligate the City to grant any of the permits, actions, or approvals enumerated above.

8.2 Additional Permits, Etc. The failure of this Agreement to address any particular permit, condition, term, or restriction on development shall not relieve the developer, City or County of the necessity of complying with the law governing said permitting requirement, conditions, terms or restrictions with respect to the contemplated development of the Property, as applicable.

9. Public Facilities. The Public Facilities that will service development of the Project on the Property, 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:

9.1 Transportation Facilities. Details of traffic facilities servicing the Project are included in the Traffic Study and identified in Sections 5.13 and 6.1. The Traffic Study establishes that the impact on public transportation facilities by development of the Project for up to 320 multi-family units (or an equivalent number of pm peak hour trips) will result in one intersection providing a sub-standard level of service. The Trust's obligations with respect to the impacted facility shall be satisfied by Trust's payment of the Proportionate Share Payment to the City.

9.2 Potable Water. Potable water services for the Property are available from the City. City presently has sufficient permitted and constructed capacity, unreserved, for development of the Project.

9.3 Sanitary Sewer. Sanitary sewer services for the Property are available from the City. City presently has sufficient permitted and constructed capacity, unreserved, for development of the Project.

- 9.4 Solid Waste Collection.** Solid waste collection for the Property will be provided pursuant to the City Code by the City. City currently has sufficient capacity, unreserved, to provide solid waste collection services for development of the Project.
- 9.5 Educational Facilities.** Public education services for the Property are currently provided by the following schools, operated by the Marion County Board of Public Education:
- 9.5.1** Elementary School — South Ocala Elementary School
- 9.5.2** Middle School — Osceola Middle School
- 9.5.3** High School — Forest High School
- 9.6 Recreational Facilities.** The Property is served by recreational facilities owned by the City, including Jervey Gantt Park, located within 1.2 miles of the Property.
- 9.7 Health Systems and Facilities.** Both Ocala Regional Medical Center and AdventHealth Ocala operate general community hospitals which serve the Property, both located approximately 3.5 miles from the Property.
- 10. Consistency.** Development of the Property as contemplated herein is consistent with the City Comprehensive Plan and Land Development Regulations.
- 11. Local Laws and Policies.** To the extent permitted by law and in accordance with Section 163.3233, Florida Statutes, the City's laws and policies (including, without limitation, the City Comprehensive Plan and City Code) governing the development of the Property as of the Effective Date shall continue to govern the development of the Property for the duration of this Agreement and no law or policy or change in law or policy adopted by the City after the Effective Date shall apply to the Property, except as authorized in accordance with Section 163.3233(2), Florida Statutes, or except as specifically authorized in writing by Trust.
- 12. General Provisions.**
- 12.1 Notices.** With respect to any Notices required to be given under the terms of this Agreement, such Notices shall be deemed given and effective:
- 12.1.1** Three (3) calendar days after the date they are deposited in the United States Mail, postage prepaid, return receipt requested, addressed to the parties at the following respective addresses or such other address as provided by a party pursuant to this Section; or
- 12.1.2** The date of actual delivery by hand or by a recognized national overnight delivery service such as Federal Express or UPS,

addressed to the parties at the following respective addresses or such other address as provided by a party pursuant to this Section:

AS TO THE CITY: City of Ocala, Florida
Attn: City Manager
110 SE Watula Avenue
Ocala, FL 34471
(352) 629-8401

With Copy To: City of Ocala Growth Management Department
Attn: Director of Growth Management
201 SE 3rd Street, 2nd Floor
Ocala, FL 34471
(352) 629-8490

With Copy To: City of Ocala Engineering Department
Attn: City Engineer
1805 NE 30th Avenue, Bldg. 600
Ocala, FL 34470
(352) 351-6772

AS TO TRUST: Donna Machelie Albright Family Trust
Attn: Clay Albright
P.O. Box 3718
Ocala, FL 34478

With Copy To: Chris Roper, Esq.
Akerman LLP
420 S. Orange Avenue, Suite 1200
Orlando, FL 32801
(407) 423-4000

Any party may modify the address for notices set forth above by providing notice of the change of address to all parties to this Agreement, which notice is to be provided in accordance with the requirements of this Section.

12.2 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership by or among the Parties, 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 and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

12.3 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. Except as herein specifically provided no right, privileges of 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.

12.4 Default Provisions.

- 12.4.1** Except as otherwise provided in paragraph 12.4.5, 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.
- 12.4.2** All 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.
- 12.4.3** No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy 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 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.
- 12.4.4** In the event of a material default by Trust with respect to obligations to City under this Agreement, and failure of Trust to cure the default within the grace period set forth above, in addition to any other remedies available to City under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations regarding the Property until the default has been cured. The Parties agree that failure of Trust to timely pay any funds owed under the provisions of this Agreement shall constitute a default with respect to the owner's obligations hereunder, and therefore would permit City to withhold permits for the Property.
- 12.4.5** If, after an annual review of the Property in accordance with Section 163.3235, Florida Statutes, the City Growth Management Director makes a preliminary finding that there has been an uncured default by Trust under this Agreement, the Agreement may be referred to the City Council who shall conduct two public hearings (and written notice shall be provided to Trust at least 7 days prior to each hearing) to determine whether, based on substantial competent evidence,

Trust has complied in good faith with the terms and conditions of this Agreement. If the City Council determines, based on substantial competent evidence, that Trust has not complied in good faith with the terms and conditions of this Agreement, then the City Council may consider revoking or modifying this Agreement.

12.5 Estoppel Statements. Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge 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 stating:

12.5.1 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.

12.5.2 Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).

12.5.3 That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.

12.5.4 That 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.

12.5.5 That, as to the Property or any 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 Certificates of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

Such written 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.

12.6 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.

- 12.7 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. There are no representations or warranties other than those set forth herein.
- 12.8 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.
- 12.9 Severability.** Except as otherwise set forth herein, in the event any provision or section of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.
- 12.10 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.
- 12.11 Successors and Assigns.**
- 12.11.1** Pursuant to the provisions of Section 163.3239, Florida Statutes, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, the Parties hereto and their respective successors and assigns. This Agreement shall run with title to the Property.
- 12.11.2** Upon written assignment of this Agreement to a successor owner of all of the Property (less any portions conveyed to the City or other governmental authority), Donna Machele Albright, as Trustee of the Donna Machele Albright Family Trust, dated July 2, 1999, as amended and restated on December 29, 2010, shall be relieved of all of its obligations under this Agreement.
- 12.12 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.
- 12.13 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.

12.14 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.

12.15 Gender. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

12.16 Effective Date. This Agreement shall become effective ~~upon~~on the ~~occurrence~~later of ~~execution of~~the following: (a) the date that Ordinance 2022-13, as adopted by the City Council of the City, becomes effective; (b) the date the last one of the Parties has executed this Agreement~~by all Parties;~~; and ~~the recordation of~~(c) the date this Agreement is recorded in the Public Records of Marion County, Florida. In accordance with Section 163.3239, Florida Statutes, this Agreement shall be recorded in the Public Records of Marion County, Florida, within fourteen (14) days after execution of the date the last one of the Parties has executed this Agreement~~by all parties.~~

12.17 Duration. The term of this Agreement shall be for a period of thirty (30) years commencing on the Effective Date, unless it is extended by mutual consent of the Parties in accordance with Section 163.3229, Florida Statutes.

~~[SIGNATURES CONTAINED ON FOLLOWING PAGES]~~

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates set forth below.

“Trust”

Signed, sealed and delivered in the presence of:

DONNA MACHELLE ALBRIGHT, as Trustee of the DONNA MACHELLE ALBRIGHT FAMILY TRUST, dated July 2, 1999, as amended and restated on December 29, 2010

Print Name: _____

Print Name: _____

By: _____
Donna Machelles Albright, as Trustee

Date: _____, 2022

STATE OF FLORIDA

COUNTY OF _____

This instrument was acknowledged before me by means of [] physical presence or [] online notarization this _____ day of _____, 2022, by DONNA MACHELLE ALBRIGHT, as Trustee of the DONNA MACHELLE ALBRIGHT FAMILY TRUST, dated July 2, 1999, as amended and restated on December 29, 2010, who [] is personally known to me OR [] has produced _____ as identification.

Signature of Notary Public – State of Florida

Print Name _____

Commission Number _____

My Commission Expires _____

“City”

CITY OF OCALA, FLORIDA, a Florida
municipal corporation

ATTEST

Angel B. Jacobs, City Clerk

By: _____

Name: _____

Title: _____

Date: _____, 2022

*APPROVED AS TO FORM
AND LEGALITY:*

Robert W. Batsel, Jr., City Attorney

Exhibit "A"

(Legal Description of the Property)

Legal Description:

Parcel No. 1:

That part of the North 16 chains of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) lying North of the A.C.L. Railroad in Section 27, Township 15 South, Range 22 East, Marion County, Florida.

EXCEPT Southerly 50 feet and EXCEPT Easterly 50 Feet.

AND ALSO:

Easement for ingress and egress over the North 50 feet of the East 50 feet of Northwest Quarter (NW 1/4) of Northwest Quarter (NW 1/4) of said Section 27, Marion County, Florida.

Parcel No. 2:

The South 8.00 feet of the SW 1/4 of the SW 1/4 of Section 22, Township 15 South, Range 22 East, Marion County, Florida.

Parcel Number:

29850-000-27

Exhibit “B”
(Cross Section Plan)
(see attached)



Exhibit “C”

(On-Site Road Improvements –Within Trust Property)

(see attached)

Exhibit “D”

(On-Site Road Improvements –Within Trust Property and Adjacent Parcel to the North)

(see attached)

Document comparison by Workshare Compare on Thursday, February 17, 2022
10:46:36 AM

Input:	
Document 1 ID	iManage://PDC-DMS/Active/58874811/10
Description	#58874811v10<Active> - Albright Concurrency Development Agreement
Document 2 ID	iManage://PDC-DMS/Active/58874811/11
Description	#58874811v11<Active> - Albright Concurrency Development Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	19
Deletions	21
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	40

