

This instrument was prepared by:

South Milhausen, P.A./jpm  
Gateway Center  
1000 Legion Place Suite 1200  
Orlando, Florida 32801  
Tel. 407.539.1638

(Space reserved for Clerk of Court)

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between **LALLY DEVELOPMENT INCORPORATED**, a Florida corporation (including any successors or assigns hereinafter collectively the "Developer"), and the **CITY OF FT. PIERCE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as the "City").

### W I T N E S S E T H

WHEREAS, Developer is the successor developer and owner of a certain platted tract of real property and improvements, located within the boundaries of the City, and more specifically identified as Magnolia Square of Ft. Pierce, the legal description of which is attached hereto as "Exhibit A" and made a part hereof (the "Property");

WHEREAS, the Property currently requires improvements and remediation to the asphalt due to deterioration and disrepair; and

WHEREAS, the City is the holder of certain funds in the amount of One Hundred Forty Eight Thousand Seventy Seven and 50/100 Dollars US (\$148,077.50), said funds representing Property improvement funds required pursuant to the prior approved City development requirements for the Property ("Funds"); and

WHEREAS, Developer and the City shall establish the terms and conditions whereby Developer shall perform certain repaving and asphalt improvements to the Property, and thereafter be entitled to timely reimbursement from the City for the costs of the repaving and asphalt improvements to the Property from the Funds.

NOW, THEREFORE, in consideration of the conditions, covenants, and mutual promises hereinafter set forth, the Developer and the City agree as follows:

1. Recitals. The foregoing recitals are true and correct and are fully incorporated herein by reference. All Exhibits to this Agreement are hereby attached and deemed a fully incorporated part hereof.
2. Definitions.

- a. "Developer" means the person undertaking the development of the Property, as defined in the preamble to this Agreement, or any successors or assigns thereof that (a) acquire an interest in any portion of the Property from the Developer pursuant to sale or ground lease for the purpose of the development and resale or sublease and (b) is specifically assigned rights as Developer hereunder by the Developer pursuant to an express written assignment. Upon execution and recording of such assignment, the assignee will be deemed the Developer hereunder to the extent set forth in such assignment.
- b. "Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, and/or the dividing of land into three or more parcels.
- c. "Development Permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.
- d. "Effective Date" is the date of recording of this Agreement by the City in the Public Records of St. Lucie County, Florida.
- e. "Entire Term" is the total term of this Agreement.
- f. "Governing Body" means the board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government.
- g. "Land" means the earth, water, and air, above, below, or on the surface and includes and improvements or structures customarily regarded as land.
- h. "Land Development Regulations" means ordinances, rules, and policies in effect on the Effective Date, which have been enacted and implemented by the City for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulation or any other regulations controlling the development of, or construction upon, Land.
- i. "Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a local government affecting the development of Land.
- j. "Project" means the development approved pursuant to the Property Approvals.
- k. "Property" is that certain +/-72 acre parcel of real property owned by the Developer, as more particularly described in Exhibit "A" attached hereto.
- l. "Public Facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health system facilities.
- m. "Utility" includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, oil, water sewer service, telephone service, telegraph service, radio service, or telecommunication service.

3. Intent. It is the intent of the Developer and the City that this Agreement should be construed and implemented so as to effectuate the purposes and intent of the parties and the purposes and intent of the City Land Development Regulations.

4. Effective Date and Duration. This Agreement shall become effective on the Effective Date. The Agreement shall be recorded in the public records of St. Lucie County, Florida and shall run with the land and shall be binding on all parties and all persons claiming under it for an initial term of five (5) years from the Effective Date, after which time it may be extended for a period of five (5) years after approval by the City Council at a public hearing, unless an instrument has been recorded agreeing to release, amend or modify this Agreement in whole, or in part, as provided below.

5. Asphalt Repair and Improvements. Within approximately thirty (30) days from the Effective Date, Developer shall mobilize and begin the necessary construction improvements and repairs to the asphalt and roadway located within Phase I of the Property, in accordance with the Land Development Regulations and as depicted in the approved paving and drainage construction plans and specifications for the Property and as generally depicted in the attached Phase I and Phase II site map. Developer shall diligently pursue the completion of the construction improvements and repairs to the asphalt and roadway located within Phase I of the Property. Upon completion, Developer shall apply to the City for final inspection and a Certificate of Completion if required. City shall promptly inspect the requested construction improvements and repairs to the asphalt and roadway located within Phase I of the Property, and issue all required final approvals and certifications within 30 days thereafter.

Developer shall be entitled to determine market conditions and timing required to begin construction of the Phase II necessary construction improvements and repairs to the asphalt and roadway located within Phase II of the Property. Upon determination to move into Phase II, Developer shall mobilize and begin the necessary construction improvements and repairs to the asphalt and roadway located within Phase II of the Property, in accordance with the Land Development Regulations and as depicted in the approved paving and drainage construction plans and specifications for the Property and as generally depicted in the attached Phase I and Phase II site map. Developer shall diligently pursue the completion of the construction improvements and repairs to the asphalt and roadway located within Phase II of the Property. Upon completion, Developer shall apply to the City for final inspection and a Certificate of Completion if required. City shall promptly inspect the requested construction improvements and repairs to the asphalt and roadway located within Phase II of the Property, and issue all required final approvals and certifications within 30 days thereafter.

6. Construction Costs City Reimbursement from Funds. Upon issuance by City of all required final approvals and certifications to the Property asphalt and roadway construction improvements and repairs to either Phase I or Phase II of the Property, the City shall reimburse Developer from the Funds and within thirty (30) days from final approvals and certifications to the construction improvements and repairs for all construction costs, in substantial compliance with the attached construction improvements and repairs costs schedules attached to this Agreement as the composite Exhibit "B." The obligation of the City to reimburse the Developer under this provision shall never exceed, in the aggregate, One Hundred Forty Eight Thousand Seventy Seven Dollars and 50/100 (\$148,077.50).

7. Sidewalk and Landscaping Requirements. Developer understands and agrees that all residential homes constructed upon any Lot located within the Property, will require installation of sidewalks from property line to property line and landscaping, in compliance with all governmental specifications and requirements, as a condition precedent to the issuance of a certificate of occupancy or certificate of completion from the necessary governmental authorities. Upon the Developer's first permit request to the City for the construction of a home on the Property, Developer shall provide City with a surety bond, in effect for the period of five (5) years, naming City as the named surety insured under the

surety bond for the required sidewalk improvements. The amount of any reduction to the surety bond shall be reviewed and approved annually in writing by the City.

8. Reservation of Development Rights. For the Entire Term, the City hereby agrees that it shall permit the development of the Project in accordance with the Property Approvals, the Land Development Regulations, the Comprehensive Plan, and the existing laws and policies as of the Effective Date of this Agreement that are or may be applicable to the Property, subject to the conditions of this Agreement, and in effect at the time of any Property approvals and modifications thereto.

9. Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees, and assigns, and a copy of this Agreement shall be recorded in the Public Records of St. Lucie County, Florida, at the sole cost and expense of the Developer, upon execution of this Agreement.

10. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Developer and the City agree that St. Lucie County, Florida is the appropriate venue in connection with any litigation between the parties with respect to this Agreement.

11. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand or confirmed delivered by a recognized overnight courier, and addressed to each party as follows:

If to City:                   City of Ft. Pierce  
                                  Attn: City Manager  
                                  City Hall  
                                  100 North U.S. 1  
                                  Ft. Pierce, Florida 34950

With a copy to:           City of Ft. Pierce  
                                  Attn: City Attorney  
                                  City Hall  
                                  100 North U.S. 1  
                                  Ft. Pierce, Florida 34950

If to Developer:         Lally Development Incorporated  
                                  Attn: Nicholas Burden  
                                  1507 S. Hiawasse Rd Suite 211  
                                  Orlando, Florida 32835

With a copy to:         South Milhausen, P.A.  
                                  Jeffrey P. Milhausen, Esq.  
                                  Gateway Center  
                                  1000 Legion Place Suite 1200  
                                  Orlando, Florida 32801

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery. Any party may change its notice address by providing written notice to the other parties of the new address as provided in this paragraph. The terms of this section shall survive the termination of this Agreement.

12. Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

13. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations, or warranties other than as set forth herein.

14. Modification, Amendment, and Release. This Agreement may not be modified, amended, or released, except by written instrument signed by the City and the Developer, provided that such modification, amendment, release has been approved by the City after public hearing.

15. Cancellation and Enforcement. Enforcement of this Agreement shall be by action against any parties or person violating, or attempting to violate, any covenants set forth in this Agreement. The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his/her/its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both. The terms of this section shall survive the termination of this Agreement.

16. Cumulative Remedies. Nothing contained herein shall prevent the Developer from exercising its rights and remedies it may have under law.

16. Nondiscrimination. Developer shall not discriminate in the performance of this Agreement in regard to race, color, creed, age, national origin, sex, religion, ancestry, physical handicap or marital status.

17. Time is of the Essence. Time is of the essence in the performance of all of the terms and conditions of this Agreement and in the performance of all conditions, covenants and obligations to be performed or satisfied by the parties hereto. Waiver of performance or of any condition, covenant, or obligation by a party shall not be implied or deemed given, and shall not be deemed to be a waiver of the performance of any other condition, covenant, or obligation, unless specifically stated in writing.

18. Rights of Assignment to Lender. All rights of the Developer hereunder may be collaterally assigned to any lender for the Property as security for any loan or construction loan, and in the event of a foreclosure or deed-in-lieu of foreclosure, the lender and/or grantee of any deed-in-lieu of foreclosure, and their respective successors and assigns, shall be bound by this Developer's Agreement and entitled to enforce the rights of the Developer hereunder.

19. Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be and be taken to be an original, and all collectively but one instrument. Facsimile signatures and electronically transmitted signatures shall be considered binding executions of each party upon proof of delivery in accordance with this Agreement.

{Signatures on following pages.}

IN WITNESS WHEREOF, DEVELOPER has caused these present to be signed and delivered in accordance with this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

2 WITNESSES:

**Lally Development Incorporated**  
a Florida corporation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA )

) SS:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_ of **Lally Development Incorporated**, a Florida corporation, on behalf of said corporation, who is \_\_\_\_ personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public – State of Florida

\_\_\_\_\_  
Printed Name

The City of Ft. Pierce, Florida has caused these present to be signed and delivered in accordance with this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST**

**City of Ft. Pierce, Florida**  
a Florida municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_  
As City Clerk

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF ST. LUCIE        )

The foregoing instrument was acknowledged before me by \_\_\_\_\_, as \_\_\_\_\_ of the City of Ft. Pierce, Florida, who is personally known to me or has produced \_\_\_\_\_, as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public – State of Florida

\_\_\_\_\_  
Printed Name

Attested to and Approved as to form and legality by the office of the City Attorney for the City of Ft. Pierce, Florida.

By: \_\_\_\_\_

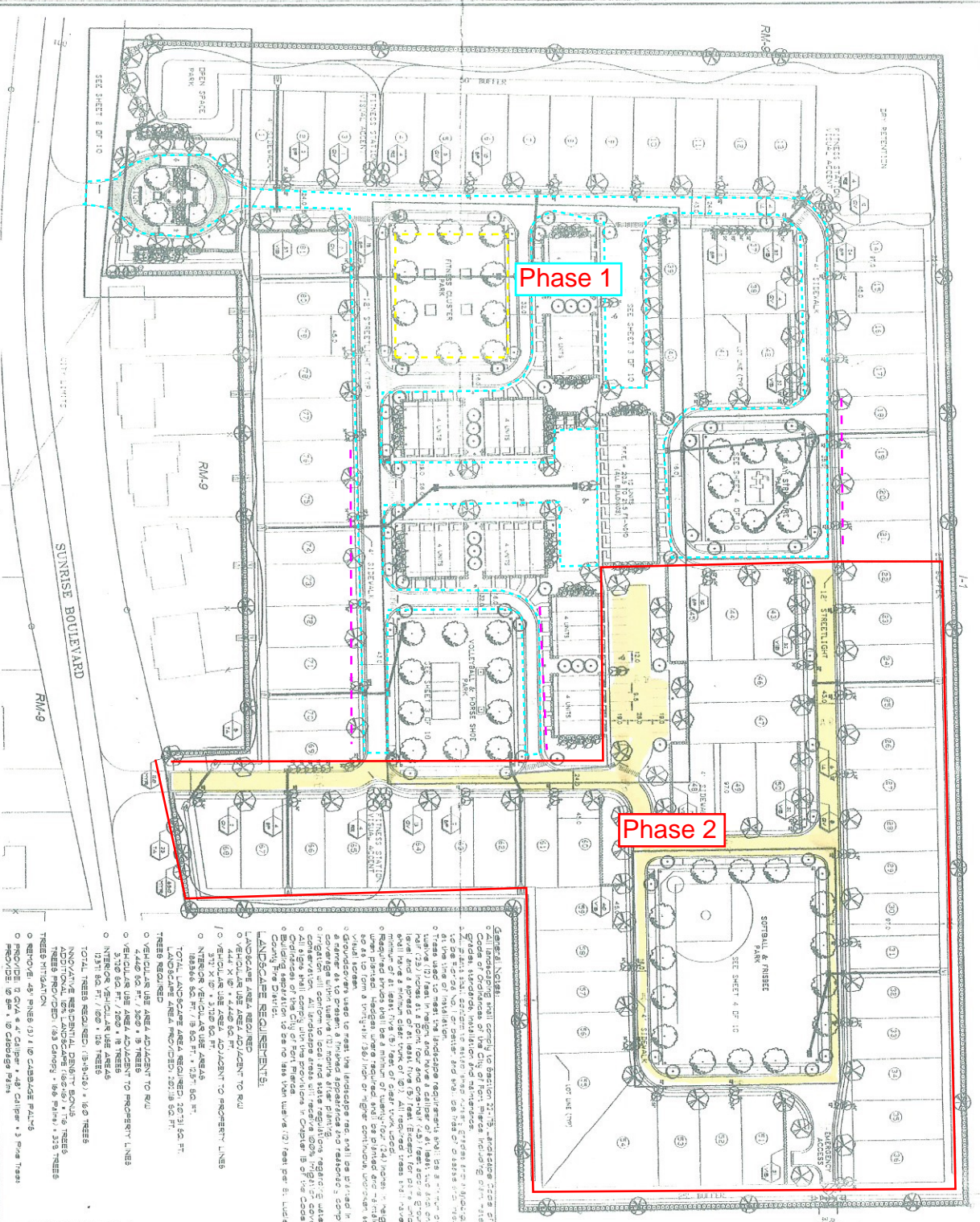
Print: \_\_\_\_\_, City Attorney

Date: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of the Property**

**SITE PLAN**  
**PHASE I & PHASE II**



Phase 1

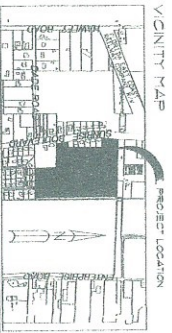
Phase 2

**General Notes:** 1. All quantities for plants are based on 10% mortality. 2. All plants shall be installed within 14 days of the start of construction. 3. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 4. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 5. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 6. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 7. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 8. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 9. All plants shall be installed in accordance with the specifications of the City of Fort Pierce. 10. All plants shall be installed in accordance with the specifications of the City of Fort Pierce.

**PLANT MATERIALS LIST**

KEY	COMMON NAME
ALP	Variegated Shrub Ginger
BOL	Dwarf Bougainvillea
CO	Cassia
EA	East Palmetto Holly
EH	Dwarf Holly
LI	Lavender Grass Wreath
LR	Vandusland Giant Utricle
LD	Lily Palm
MO	Little Oem Magnolia
MOA	Southern Magnolia
WR	Wax Wreath
NER	Orange
POD	Dwarf Podocarpus
CV	Live Oak
OVA	Florida Royal Palm
SP	Cabbage Palm
TA	Pandanus
TI	Florida Orange Grass
VB	Street Verbena
WR	Washington Palm

See Sheet 5 of 10 for Quantities



**Magnolia Square**  
City of Fort Pierce

**Street Tree Landscape Plan**

Thomas Lindo & Associates, P.A.  
Land Planning/Landscape Architecture  
1000 Highway 1, Suite 100, Ft. Pierce, FL 34949  
787-467-1500, Fax 787-467-1550



7.188 THREE RINGS AND THE...  
LAND PLANNING AND LANDSCAPE ARCHITECTURE...  
REPRODUCTION OF THIS DOCUMENT IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE FIRM.



Scale	1" = 50'-0"
Drawn by	JK
Checked by	GB
Design No.	2024-01-01
Date	11/11/23
No.	10
Date	11/11/23
Description	Design of Streets

**EXHIBIT "B"**

**Construction Improvements and Repairs Costs Schedules**

# Burton Construction Management

9300 Conroy Windermere Road, Suite 3194  
Windermere, Florida 34786  
CGC1523873  
321-265-7000

## PROPOSAL

Date: September 29, 2017

### Property Address:

Magnolia Square  
Ft. Pierce, Florida



Description	AMOUNT
Phase One: Move car stops and pins, machine clean pavement, apply tack coat, pave 9.5 average 1" compacted asphalt, install car stops, machine clean area to be sealed, apply two coats of Polytar sealer with 3-5 pounds of aggregate per gallon, extra sealer to be applied to entrances and turning points, AOS latex additive included into mix design, latex paint on all pavement markings.	\$ 72,500.00
Overhead, general conditions and profit	\$ 6,925.00
Phase One Total Cost:	\$ 79,425.00
Phase Two: Move car stops and pins, machine clean pavement, apply tack coat, pave 9.5 average 1" compacted asphalt, install car stops, machine clean area to be sealed, apply two coats of Polytar sealer with 3-5 pounds of aggregate per gallon, extra sealer to be applied to entrances and turning points, AOS latex additive included into mix design, latex paint on all pavement markings.	\$ 54,550.00
Overhead, general conditions and profit	\$ 5,350.00
Phase Two Total Cost:	\$ 59,900.00
Total Phase One and Two:	\$ 139,325.00