

COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. JAMES E. BALL
2. JOE DAVIS, III
3. BILLIE JO UNDERWOOD
4. CHARLES F. GRUBER

May 17, 2022

Mr. Nathan L. Cox
68V Reserve at Daphne 2021, LLC
29891 Woodrow Lane, Suite 300
Daphne, Alabama 36526

RE: Development Agreement with 68V Reserve at Daphne 2021, LLC, for Funding of Auxiliary Lane on County Road 64

Dear Mr. Cox:

The Baldwin County Commission, during its regularly scheduled meeting held on May 17, 2022, approved and authorized me, as Chairman, to execute the *Development Agreement* between the Baldwin County Commission and 68V Reserve at Daphne 2021, LLC, for funding of an auxiliary lane on County Road 64.

This *Agreement* shall be effective upon the date of full execution by both parties and shall be for twenty-four (24) months from its effective date unless terminated by the County upon the delivery of a thirty (30) day notice via certified mail.

Enclosed is a **fully executed copy** of the *Agreement* for your file.

If you have any questions or need further assistance, please do not hesitate to contact me or Joey Nunnally, County Engineer, at (251) 937-0264.

Sincerely,

JAMES E. BALL, Chairman
Baldwin County Commission

JB/clc Item BN7

cc: Joey Nunnally
Tyler Mitchell
Alfreda Jeffords
Halley Dixon

ENCLOSURE(S)

**DEVELOPMENT AGREEMENT
FOR FUNDING OF A TURNLANE ON COUNTY ROAD 64 BETWEEN 68V RESERVE
AT DAPHNE 2021, LLC, AND THE BALDWIN COUNTY COMMISSION**

This Development Agreement (hereinafter "Agreement") is made and entered into by and between 68V Reserve at Daphne 2021, LLC (hereinafter "Developer"), and the Baldwin County Commission (hereinafter "County"), as follows:

RECITALS

Whereas, County is the duly formed governing body in and for Baldwin County, Alabama, and Developer is a foreign limited liability company registered in Alabama; and

Whereas, Developer has acquired property and is constructing The Reserve at Daphne Subdivision, Phase II; and

Whereas, certain public infrastructure servicing the proposed subdivision will need to be improved to accommodate the traffic generated by the development; and

Whereas, the improvements related to the proposed development are described as a left turn lane eastbound on County Road 64 at County Road 54 West:

Whereas, it is in the public interest for the County and the Developer to cooperate toward the implementation of the necessary public infrastructure improvements; and

Whereas, currently planned County improvements to County Road 64 are described as follows:

COUNTY ROAD 64 WIDENING PROJECT – Add a dual left-turn auxiliary lane on County Road 64 from State Route 181 to Montelucia Way.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, County and Developer do hereby agree as follows:

1. **Recitals:** The recitals set out above are incorporated into this Agreement, as though the same were set out in full in this paragraph.
2. **Purpose:** The parties acknowledge and agree that the purpose of this Agreement is to establish the responsibilities of each party regarding the design, construction, management, and continuing maintenance of improvements to public infrastructure related to the project set forth above.
3. **COUNTY ROAD 64 WIDENING PROJECT Responsibilities:** The responsibilities of the parties related to the COUNTY ROAD 64 WIDENING PROJECT shall be as follows:
 - a. County will be responsible for all preliminary design and engineering, including all environmental studies and other similar documentation required by local, state,

or federal agencies, as part of the preconstruction phase for the COUNTY ROAD 64 WIDENING PROJECT.

- b. County will be responsible for acquiring any additional right-of-way, if needed, for the COUNTY ROAD 64 WIDENING PROJECT.
 - c. County will be responsible for the relocation and/or installation of any utilities related to or servicing the COUNTY ROAD 64 WIDENING PROJECT.
 - d. County will be responsible for the construction of the COUNTY ROAD 64 WIDENING PROJECT.
 - e. County will be responsible for furnishing all construction engineering for the COUNTY ROAD 64 WIDENING PROJECT.
 - f. County will be responsible for furnishing all necessary inspection and testing of materials when needed for the COUNTY ROAD 64 WIDENING PROJECT.
 - g. Developer shall provide financial assistance to the County in the amount of one-hundred thousand dollars (\$100,000) to be used at the County's discretion for the COUNTY ROAD 64 WIDENING PROJECT. Developer shall have no involvement in the COUNTY ROAD 64 WIDENING PROJECT beyond providing the financial assistance listed in this section. The Developer shall pay the sum of one-hundred thousand dollars (\$100,000) to the County on or before the date the Right-of-Way Access and Drainage Impact Permit is issued for The Reserve at Daphne Subdivision, Phase II.
 - h. The schedule for the COUNTY ROAD 64 WIDENING PROJECT shall be at the discretion of the County. If traffic generated by The Reserve at Daphne Subdivision, Phase II necessitates a left turn lane on eastbound County Road 64 at County Road 54 West before construction starts on the COUNTY ROAD 64 WIDENING PROJECT, Baldwin County reserves the right to utilize the one-hundred thousand dollars (\$100,000) of financial assistance from Developer to construct a left turn lane on eastbound County Road 64 at County Road 54 West and apply any leftover funds to the COUNTY ROAD 64 WIDENING PROJECT.
 - i. County shall be responsible for the continuing maintenance of the improvements within the County right-of-way created by the COUNTY ROAD 64 WIDENING PROJECT.
4. **No Joint Ownership of Property:** The parties acknowledge and agree that they will not jointly acquire, own, or otherwise come into joint or common possession of any property as a result of, or in relation to, this Agreement.
5. **Financing and Budgeting:** Each party shall be responsible for financing the obligations undertaken by that party hereunder and shall not be responsible for financing, or in any other manner contributing to, the costs or expenses of the obligations undertaken by the other party unless expressly identified herein.

6. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
7. **Term:** The term of this Agreement shall be for twenty-four (24) months from its Effective Date. This document may be amended only upon written approval by the Parties hereto, and any such amendment shall be approved by the same method by which this original contract has been approved by the Parties.
8. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement, with or without cause, upon written notice to the other party. The County's said notice shall be deemed effective, and the Agreement deemed terminated, thirty (30) days after the date such notice is mailed by certified mail to the other party. All notices provided for herein shall be sent as follows:

To Developer:
68V Reserve at Daphne 2021, LLC
29891 Woodrow Lane Suite 300
Daphne, AL 36526

To County:
Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

9. **Regulation of Rights-of-Way:** Nothing contained in this Agreement or otherwise shall limit the authority of the County to control, manage, supervise, regulate, repair, maintain or improve the public rights-of-way or improvements constructed pursuant to this Agreement in accordance with state law, and the County shall have the right to alter, change, modify, improve or remove any and all improvements constructed within their rights-of-way, in their discretion, in accordance with applicable state law, including, but not limited to, the improvements constructed pursuant to this Agreement.
10. **Other Work:** All other work required as part of the subdivision development that is not specifically addressed in this Agreement, whether on or off public rights-of-way, shall be the responsibility of the Developer.
11. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and Developer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.

This Agreement does not supersede any additional obligations between the parties under individual license agreements or permits related to the Project herein or as otherwise required by all applicable laws, rules and regulations.

12. **Both Parties Contributed Equally to the Agreement.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized

that both County and Developer have contributed substantially and materially to the preparation of this Agreement.

- 13. **Failure to Strictly Enforce Performance:** The failure of either party to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute a default or be construed as a waiver or relinquishment of the right of a party to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.
- 14. **Assignment:** Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered by the Developer without the prior written consent of the County approving such assignment, transfer, or other encumbrance.
- 15. **Choice of Law:** The parties acknowledge and agree that this Agreement shall in all respects be governed by the laws of the State of Alabama, including, without limitation, all issues relating to capacity, formation, interpretation, and available remedies, without regard to Alabama conflict of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below.

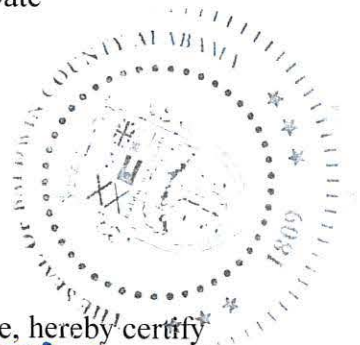
COUNTY:
BALDWIN COUNTY

ATTEST:

BY: [Signature] / 05/17/2022
James E. Ball /Date
Chairman

[Signature] / 05/17/2022
Ronald J. Cink / Date
Budget Director

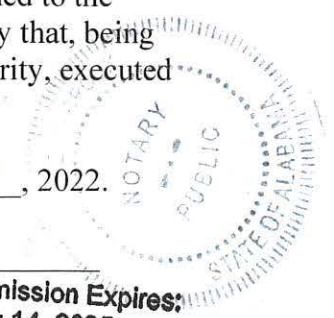
State of Alabama)
County of Baldwin)



I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James E. Ball, as Chairman of the Baldwin County Commission, and Ronald J Cink, as Budget Director of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal, this the 17th day of May, 2022.

[Signature]
Notary Public
My Commission Expires: July 14, 2025



DEVELOPER:

68V Reserve at Daphne 2021, LLC

ATTEST:

BY: [Signature] / 5/9/22
/ Date

N/A /
/ Date

State of Alabama)
County of Baldwin Mobile)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, Nathan L. Cox, whose name as Manager for 68V Reserve at Daphne 2021, LLC, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said 68V Reserve at Daphne 2021, LLC.

Given under my hand and official seal, this the 9th day of May, 2022.

SYDNEY MARIE HULETT
NOTARY PUBLIC, ALABAMA STATE AT LARGE
MY COMMISSION EXPIRES FEB. 18, 2026

Sydney Marie Hulett
Notary Public
My Commission Expires: 02/18/26