

EXHIBIT E

This instrument was prepared by:

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Return to:

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**OVIEDO CHILD CARE NON- STATUTORY DEVELOPMENT AGREEMENT
PLANNED UNIT DEVELOPMENT AND CONCEPTUAL DEVELOPMENT PLAN**

THIS NON-STATUTORY DEVELOPMENT AGREEMENT (herein referred to as the "**Development Agreement**" or the "**Agreement**") is made and executed this ____ day of __ __ __, 2023, by and between the **CITY OF OVIEDO**, a Florida municipal corporation (herein referred to as the "**City**"), whose address is 400 Alexandria Boulevard, Oviedo, Florida 32765, and **ALLONDE DEVELOPMENT, LLC.** a Florida corporation (herein referred to as the "**Owner**"), whose mailing address is, 160 North Spring Lake Drive, Altamonte Springs FL 32714, and Developer **MH DESIGN BUILD SERVICES, LLC.** a Florida corporation (herein referred to as the "**Developer**"), whose mailing address is 1567 Travertine Terrace, Sanford FL 32771.

WITNESSETH:

WHEREAS, the Owner is the owner in fee simple title to certain real property consisting of approximately 0.83 acres located at the corner of Winter Springs Blvd. And Oak Bend CT. in the City of Oviedo, Seminole County, Florida, as more particularly described in ***Exhibit A*** attached hereto and incorporated by this reference (herein referred to as the "**Subject Property**"); and

WHEREAS, the Property has been assigned future land use designations of Low Density Residential (LDR) from the City's *Comprehensive Plan* and zoning district of Planned Unit Development (PUD) from the City's *Land Development Code ("LDC")*; and

WHEREAS, the Development Agreement and Conceptual Development Plan associated with the Planned Unit Development zoning district has expired; and

WHEREAS, Developer requests a change to the zoning district to Planned Unit Development "PUD" to incorporate a new Development Agreement and Conceptual Development Plan; and

WHEREAS, the Developer intends to develop the Subject Property as a Planned Unit Development ("**PUD**") zoning district with a child care facility to be known as the "Oviedo Child Care Center" (hereinafter referred to as the "**Project**"); and

WHEREAS, the Developer has filed with the City a Conceptual Development Plan (the "CDP") for the project prepared by German Engineering & Associates, LLC., a copy of which is attached as *Exhibit B* and is incorporated herein by this reference; and

WHEREAS, the City, Owner, and Developer desire to set forth certain terms, conditions, and agreements with respect to the development of the Project; and

WHEREAS, the City Attorney has reviewed the CDP and this Agreement and has found the CDP to be legally sufficient; and

WHEREAS, the City's Local Planning Agency considered the CDP and this Agreement at its _____ meeting, and thereat, recommended approval; and

WHEREAS, the City's City Council finds that the Project is consistent with the City's Comprehensive Plan and Land Development Code (herein referred to as the "LDC") and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the public health, safety, and welfare of the citizens of the City; and

WHEREAS, the City's City Council further finds that this CDP and Agreement are consistent with and an exercise of the City's powers under the Municipal Home Rule Powers Act, as provided in s.2b, Article VIII, of the Florida Constitution, and Section 166.021, Florida Statutes, and the City's police powers; and

WHEREAS, the City's City Council adopted Ordinance No. _____ at its _____, 2023 meeting approving the Development Agreement and CDP.

NOW, THEREFORE, it is hereby resolved and agreed by the City, Owner, and Developer that the Project is approved subject to the following terms and conditions:

Section (1) RECITALS.

The above recitals are true and correct and are incorporated herein by this reference.

Section (2) AUTHORITY

This Development Agreement is entered into pursuant to the City's constitutional powers, the Florida Municipal Home Rule Powers Act, the City's Comprehensive Plan, and LDC and other controlling law.

Section (3) REPRESENTATIONS OF DEVELOPER.

The Developer and the above-referenced property owners, represent and warrant to the

City that they have the power and authority to enter into and consummate the terms and conditions of this Development Agreement, that all acts, approvals, procedures and similar matters required in order to authorize this Development Agreement have been taken, obtained or followed, as the case may be, that this Development Agreement and the proposed performance of this Development Agreement by the Developer is not, and will not be, an ultra vires act and that, upon the execution of this Development Agreement by the City and Developer, this Development Agreement shall be valid and binding upon the City and the Developer hereto and the property owners and their successors in interest.

SECTION (4) Findings of Facts.

The proposed development consists of the following: Total Acreage: 0.83 acres

- A. Land Use: The Subject Property has a future land use designation of Low Density Residential. The subject property will be developed as PUD with a childcare facility uses as described herein.
- B. The Subject Property will be developed as a PUD with a childcare facility and/or other C-2 permissible uses.
- C. Intensity Table:

Acreage	Maximum FAR	Proposed FAR	Proposed Square Feet
0.83	0.40	0.15	5,439

Impacts were based on the proposed use of 5,439 square foot day care use. Any changes that would increase the intensity of the development shall require an amendment to this Development Agreement and CDP and additional studies shall be required to determine if adequate capacity exists prior to the approval of the amendment to this Development Agreement.

- D. Project Phasing: The project will be developed in one phase.

SECTION (5) City of Oviedo Conditions of Approval.

The issuance of a development permit or a development order by the City of Oviedo does not create any rights on the part of the Developer to obtain a permit from a State or Federal agency and does not create liability on the part of the City for the issuance of any such permit or order if the Developer fails to obtain requisite approvals or fulfill the obligations imposed by a State or Federal agency or undertakes actions that result in a violation of State or Federal law. It is a general condition of all City development permits and development orders that all applicable State or Federal permits be obtained prior to commencement of the development and failure to do so may result in the City reporting such failure to the appropriate State and Federal agencies and such agency or agencies may take enforcement

action. To that end, please note that the density of any project is not guaranteed until all required permits and approvals are obtained from all applicable State or Federal permitting authorities and the density of the project may decrease due to compliance with such permits or as otherwise set forth herein. The City reserves the right to enforce all City codes and ordinances relative to the Subject Property. The Developer agrees to fully comply with the following terms, conditions, restrictions, and agreements with respect to the development of the Project. Unless specifically addressed herein, the LDC shall apply.

- A. **Principal Uses:** The property will be developed as childcare facility and/or C-2 uses. Accessory structures, associated with principal uses, are also permitted with the corresponding principal uses pursuant to the pertinent provisions of the LDC.
- a. **Parking:** Parking shall be consistent with the requirements of the City's LDC.
 - b. **Intensity:** Maximum allowable intensity: .40
Proposed intensity: 0.15 FAR
 - c. **Height:** No building or structure shall exceed 45 feet of height. Building height shall be the vertical distance measured from the finished grade adjacent to the building to the top of the ceiling plate (exclusive of rooftop mechanical or equipment enclosures).
 - d. **Setbacks:**
 - i. The following minimum building setback distance shall be required for commercial and office principal buildings:
 - ii. 20 feet from the West of the Property with 5 feet buffer for the remaining portions
 - iii. 20 foot landscaping buffer along Oak Bend Ct.
- B. **Landscaping and Buffering:** The Developer shall comply with the landscape and buffer requirements of the LDC, this Agreement, and the CDP which, in the event of conflict, this Agreement and the CDP shall apply.
- 1. For non-residential lots, landscaping shall comply with the City's LDC, unless expressly stated otherwise herein.
 - 2. Section 12.3(B)(3) of the LDC requires the planting of street trees at 1 canopy tree for every 50 linear feet of right-of-way and the applicable A1 buffer yard requires 3 trees per every 100 feet.

The above stated options will allow the Developer to meet the intent of the landscaping and buffer yard requirements without inhibiting the growth of shrubs, ground cover, and other such

landscaping and by allowing for the safe ingress and egress to and from the commercial uses.

3. **Landscape Buffer:**

- a. A 5-foot-wide landscape buffer area along the perimeter of the PUD with buffer yard type A1. With the exception of the western boundary shall be 20 feet in width.

C. **Police, Fire, Parks, and Recreation Services.** Applicants for building permits on the Subject Property shall comply with the City Impact Fee Ordinances, as may be amended from time to time.

D. **Transportation.**

I. **The Project shall have one (1) primary access point.** The final locations and types of the Project access point shall be determined with the issuance of a right-of-way permit issued by the City. The developer is responsible for all improvements required by the City at the access points pursuant to the approved plans for the project.

II. The Developer shall bear the costs of all street signs, traffic control signs and devices within the Project boundaries. Such signs and devices shall be in place in appropriate locations as approved by the City pursuant to the approved plans for the Project.

III. The Developer shall pay, or cause to be paid in accordance with the requirements of the LDC, transportation impact fees for the Projects consistent with the City's impact Fees codes and ordinances, as amended from time to time at the time of building permit issuance.

IV. Sight Distance shall be maintained in accordance with FDOT Design Standards.

E. **Water and Sewer:**

I. Potable Water: Potable water will be provided by the City's water distribution system.

II. Sewer: Central sewer will be provided by the City of Winter Springs.

III. Reclaimed Water: Potable water shall not be used to irrigate any portion of the Subject Property. Unless and until reclaimed water is available to the Subject Property, the Developer shall use a well or another alternative water source for irrigation. When reclaimed water is available at the Subject Property, the Developer shall use reclaimed water delivered by the City to irrigate all landscaping and open space areas within the Project. It shall be the Developer's responsibility to ensure that the use of the reclaimed water shall be in compliance and consistent with all current and future laws, codes, rules and regulations of the City, FDEP, the SJRWMD.

IV. The Developer shall pay water capital recovery charges/impact fees and sewer connection fees at the time of the Florida Department of Environmental Protection Permit applicable or at building permit issuance whichever occurs first, in accordance with applicable codes and ordinances.

F. Pollution and Environmental Concerns.

The Developer shall fully comply with all applicable local, State, and Federal environmental regulations and laws. Impacts on jurisdictional wetlands and threatened and endangered species shall be mitigated prior to or as part of the construction permit of the first construction activity. Impacts, mitigation, enhancement and/or management plan shall be reviewed and approved by the applicable governmental agencies.

G. Signs

- I. **Sign Regulations:** All Development within the PUD shall comply with the City's sign regulations in terms of allowable sign area and location except as provided herein.
- II. **Subdividing:** NONE
- III. **Project Entrance Signage:** One (1F) freestanding monument sign not to exceed 70 square feet in sign area, and 12 feet in height shall be allowed in the area of the Project's main entrance.

H. Lighting.

- I. The Developer shall provide lighting internal to the Project in accordance with the LDC's lighting requirements.
- II. Developer shall provide public right of way street lighting in accordance with the LDC.
- III. All initial and recurring monthly street lighting costs within the Project shall be incurred by the Developer.

SECTION 6. Approval of Planned Unit Development Agreement and Conceptual

Development Plan. The City Council at its meeting held on _____, 2023, approved a PUD to allow a child care facility, of approximately 5,439 sq ft building, to be known as "_____ PUD, subject to the terms and conditions of this Agreement. The Owner and Developer acknowledge that if this Agreement is ever terminated, the PUD shall be deemed null and void and the development permitted or proposed in this Development Agreement for the Subject Property shall no longer be permitted, unless otherwise approved by the City Council.

SECTION 7. Use Restrictions. The issuance of a development permit or a development order by the City does not create any rights on the part of the Developer to obtain a permit from a State or Federal agency and does not create liability on the part of the City for issuance of any such permit or order if the Applicant fails to obtain the requisite approvals or fulfill the obligations imposed by the a State or Federal agency or undertakes actions that result in a violation of State or Federal law. It is a general condition of all City development permits and development orders that all applicable State or Federal permits be obtained prior to commencement of the development and failure to do so may result in the City reporting such failure to the appropriate State and Federal agencies and such agency or agencies may take enforcement action. The City reserves the right to enforce all City codes and ordinances relative to the Subject Property.

SECTION 8. Breach. In the event of a breach hereof by either party hereto, the aggrieved party hereto or their transferees or assigns including, shall have all rights and remedies allowed by law, including the right to specific performance of the provisions hereof.

SECTION 9. Notice. All notices required or permitted to be given under the Agreement must be in writing and must be delivered to the City, Owner, or the Developer at its address set forth below (or such other address as may be hereafter designated in writing by such party). Any such notice must be personally delivered or sent by registered or certified mail, overnight courier, facsimile or telecopy. Any such notice will be deemed effective when received (if sent by hand delivery, overnight courier, telecopy or facsimile) or on the date which is 3 days after such notice is deposited in the United States mail (if sent by registered or certified mail). The parties' addresses for the delivery of all such notices are as follows:

As to City: Elianne Rivera,
City Clerk
Oviedo City Hall
400 Alexandria Boulevard
Oviedo, Florida 32765

As to Owner: Allonde Development, LLC
160 N. Spring Lake Dr.
Altamonte Springs, FL 32714

As to Developer: MH Design Build Services, LLC
1567 Travertine Terrace
Sanford, FL 32771

SECTION 10. Amendments.

- a. This Development Agreement shall not be modified or amended except by

written agreement executed by all parties hereto and approved by the City Council.

- b. If permit requirements and conditions are imposed by the County, SJRWMD, FFWCC, United States Army Corps of Engineers, FDEP, or any other applicable jurisdiction significantly change the design of the CDP or create conflicts or inconsistencies with the conditions of this Development Agreement and/or the CDP, this Development Agreement and the CDP shall be amended and approved by the City Council prior to the continuation of any development activities within the Project. With the submittal of a final site construction plan application, the Developer shall demonstrate that the Project is and will continue to be consistent with all conditions of the CDP and this Development Agreement.
- c. Non-substantial changes to the approved CDP that do not result in additional deviations shall be reviewed during final site construction plan review and architectural development order and may be approved by the Land Use Administrator. Non-substantial changes would include adjustments to, parking, building locations, etc.

SECTION 11. Severability. Except as otherwise provided herein, if any provisions of this Agreement are held to be illegal or invalid, the other provisions of this Agreement shall remain in full force and effect so long as each party substantially obtains the consideration contemplated hereunder.

SECTION 12. Successors and Assigns. This Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the City, the Owner, and the Developer and their respective successors in interest. The terms and conditions of this Agreement similarly shall be binding upon the Subject Property and shall run with title to the same. Except for the City, the burden of performance hereunder by a party shall be determined at the time performance is due based on record title evidence of ownership of the Parcel or Tract for which performance is due.

SECTION 12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the City.

SECTION 13. Effective Date. This Agreement shall be effective upon execution of this Agreement by all parties.

SECTION 14. Expiration. This Development Agreement including CDP attached as Exhibit 1 shall not expire.

SECTION 15. Land Use, Zoning, and Development Regulation Approvals. All development within the project shall comply with the conditions of this Agreement and the CDP. In the event of a conflict with the LDC, this Agreement and the CDP shall apply. In the event a development requirement, permit, condition, term or restriction is not addressed in the CDP, or this Agreement,

the development shall comply with the LDC in effect at the time of site plan or preliminary subdivision plan approval, as it may be applicable.

SECTION 16. Recordation. Upon execution of this Agreement by all parties, this Agreement, and any amendments hereto, shall be recorded by the City with the Seminole County Clerk of the Courts within 14 days after its execution by the Mayor of the City and shall run with the land. The Developer shall pay the costs to record this Agreement to the City Clerk.

SECTION 17. Permits. The failure of this Agreement to address any particular City, County, State, or Federal permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

SECTION 18. Third Party Rights. This Agreement is not a third party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third party.

SECTION 19. Specific Performance. Strict compliance shall be required with each and every provision of this Agreement. The parties agree that failure to perform the obligations established in this Development Agreement shall result in irreparable damage and that specific performance of these obligations may be obtained by suit in equity.

SECTION 20. Attorneys' Fees. In the event of any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the trial level, or upon appeal.

SECTION 21. Force Majeure. The parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specific time period ("**Time Period**") constitutes a default under the terms of this Development Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party, including, but not limited to, acts of God, acts of government authority (other than the City's own acts), terrorism acts of public enemy or war, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such party, or severe adverse weather conditions ("**Uncontrollable Event**"), then notwithstanding any provision of this Agreement to the contrary, that failure shall not constitute a default under this Agreement and any Time Period prescribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event.

SECTION 22. City's Right to Terminate Development Agreement. Failure by Owner or Developer or successors in interest to the Owner or Developer, as applicable, to perform each and every one of its obligations hereunder shall constitute a default, entitling the City to pursue whatever remedies are available to it under Florida law or equity including, without limitation, an action for specific performance and/or injunctive relief or alternatively, the termination of this Agreement. Prior to the City filing any action or terminating this Agreement as a result of a default under this Agreement, the City shall first provide the Owner and Developer written notice of said default. Upon receipt of said

notice, the Owner and Developer shall be provided at least a 30 day opportunity in which to cure the default to the reasonable satisfaction of the City prior to the City filing said action or terminating this Agreement as a result of a default under this Agreement. If 30 days is not a reasonable period in which to cure the default, or such default reasonably requires more than 30 days in which to be cured and Owner or Developer has undertaken to cure same and is diligently pursuing such cure, then the cure period shall be extended to a reasonable cure period acceptable to the City, the Owner, and the Developer, but in no case shall that cure period exceed 90 days. Upon termination of this Agreement, the Owner and Developer or successors in interest, as applicable, shall immediately lose all rights and privileges granted hereunder, provided always that for any Parcel or Parcels for which a site plan has been submitted by the Developer or its successors in interest, as applicable, and finally approved by the City prior to such termination, the rights provided for under this Agreement shall have vested and shall continue unless Developer or its successors in interest, as applicable, shall voluntarily seek to withdraw such site plan and have the approval of same rescinded by the City. In the event a breach of the obligations under this Agreement is caused by a successor in interest to title of the Owner or Developer, then the limitations set forth in Section 12 above shall apply, and City shall not be entitled to terminate this Agreement as to the remaining Parcels or portions thereof owned by Owner or Developer at the time of such breach.

SECTION 23. Owner's and Developer's Right to Terminate Development Agreement.

Owner, Developer, and successors in interest to the Owner or Developer are hereby granted the right to terminate this Agreement by providing written notice of the Owner's or Developer's or such successors in interest to Owner or Developer election to terminate this Agreement to the City at least ninety 90 days prior to the effective date of such election to terminate. Upon termination of this Agreement by the Owner or Developer or such successors in interest to Owner or Developer, as applicable, the Owner and Developer or such successors in interest, as applicable, shall immediately lose all rights and privileges granted by this Agreement as to any Parcel or portions thereof owned by Owner or Developer or such successors in interest to Owner or Developer for which site plan approval has not been finally given by the City. For any Parcel or Parcels for which a site plan has been submitted by the Developer or by a successor interest to the Developer and finally approved by the City prior to such termination, the rights provided for under this Agreement shall have vested and shall continue unless Owner or Developer or such successor in interest to Owner or Developer, as applicable, shall voluntarily seek to withdraw such site plan and have the approval of same rescinded by the City.

{Signatures on Following Page}

IN WITNESS WHEREOF, the City, the Owner, and the Developer have caused this Development Agreement to be duly executed by their duly authorized representatives as of the date first above written.

ATTEST:

By: _____
Elianne Rivera
City Clerk

Approved as to form and
legal sufficiency:

By: _____
David W. Hall, Asst. City Attorney

CITY OF OVIEDO

By: _____
Megan Sladek
Mayor

ATTEST:

By: _____
Name: _____
Title: _____

**OWNER
ALLONDE Development, LLC**

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

**DEVELOPER
MH DESIGN BUILD SERVICES, LLC**

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ by _____ as _____ of Allonde Development, LLC, a Florida limited liability, on behalf of the company. He/she is personally known to me or has produced _____ as identification.

(SEAL)

Name: _____
Title: Notary Public

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ by _____ as _____ of MH Design Build Services, LLC, a Florida limited liability, on behalf of the company. He/she is personally known to me or has produced _____ as identification.

(SEAL)

Name: _____
Title: Notary Public

LEGAL DESCRIPTION

PARCEL 1, SENECA BEND, AS RECORDED IN PLAT BOOK 50, PAGE 1& 2 PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA