

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION

NATALIE ROSE STEPHENS MERCER,

Plaintiff,

vs.

CASE NO.: 01-2019-CA-2035

DIVISION: K

ALACHUA COUNTY, a political subdivision
of the State of Florida; DONALD N. JANES,
JR.; S. FAY BAIRD aka FAY BAIRD; LESLIE
C. SHEARER; DAVID L. MCCRACKEN;
and DONNA L. MCCRACKEN,

Defendants.

**DEFENDANT ALACHUA COUNTY'S ANSWER, DEFENSES AND COUNTERCLAIM
TO THE COMPLAINT**

COMES NOW the Defendant, ALACHUA COUNTY, a political subdivision of the State of Florida ("Alachua County"), by and through its undersigned counsel, and for its Answer and Affirmative Defenses to the Complaint, and its Counterclaim against the Plaintiff, Natalie Rose Stephens Mercer (hereinafter "Plaintiff"), states as follows:

PARTIES

1. Admitted that Plaintiff is the owner of the Mercer Property, but is without knowledge as to whether Plaintiff is a resident of Alachua County and therefore, same is denied.
2. Admitted.
3. Without knowledge, therefore denied.
4. Without knowledge, therefore denied.
5. Without knowledge, therefore denied.
6. Without knowledge, therefore denied.

7. Admitted that a copy of the plat recorded in Plat Book K at Page 46 of the public records of Alachua County is attached to the Complaint as “Exhibit A,” but is without knowledge as to the remaining allegations of this paragraph, therefore denied.

ACCESS TO MERCER PROPERTY

8. Without knowledge, therefore denied.

9. Admitted that the portion of SW 179th Avenue that commences at SE 175th Avenue, which is also known as SW 1st Street, and extends generally northwestward to the southern boundary of the private subdivision known as Micanopy Hammock, is a publically maintained road. Without knowledge as to the remaining allegations in this paragraph, therefore denied.

10. Admitted that a copy of a map depicting the alleged Historical Access Route is attached to the Complaint as Exhibit “B,” without admitting to the authenticity or any other information depicted in the map. Admitted that the segment of 179th Avenue that traverses the private subdivision called Micanopy Hammock and terminates at the boundary of the Alachua County Property is a private road. All other allegations in this paragraph are denied.

11. Admitted that the previous owners of the Alachua County Property entered into an *Agreement for Powerline Right of Way* with Clay Electric Cooperative, Inc., that said utility easement is for the erection and maintenance of an electrical line, and that a copy of said utility easement is attached to the Complaint as Exhibit “C”. Alachua County is without knowledge as to whether the electrical line solely provides electrical service to the Mercer Property, therefore denied.

12. As to Plaintiff’s use of the phrase “Historic Access Route”, Alachua County realleges its

response to Paragraph 10 as though fully set forth herein. Admitted that a copy of the Sketch of Ingress & Egress Easement dated June 7, 2006 and prepared by L.D. Bradley Land Surveyors (the "Sketch") is attached to the Complaint as Exhibit "D". Denied that the Sketch depicts an easement that traverses the Alachua County Property. Without knowledge as to whether the Sketch is an accurate survey of that portion of the alleged Historical Access Route, therefore denied.

13. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that a copy of the plat map of Micanopy Hammock is attached to the Complaint as Exhibit "A". Without knowledge as to all other allegations in this paragraph, therefore denied.

BACKGROUND FACTS AS TO DEFENDANT ALACHUA COUNTY

14. Admitted.

15. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that prior to Alachua County's purchase of the Alachua County Property on September 26, 2006, Alachua County had actual knowledge that a private service road, which commences at the southern boundary of the Alachua County Property (near the northern terminus of the private road named SW 179th Avenue) and traverses the Alachua County Property to the Mercer Property, had been used to access the Mercer Property. Admitted that prior to closing, Alachua County was provided with the Sketch attached to the Complaint as Exhibit "D". Denied that the Sketch depicts an easement that traverses the Alachua County Property. Without knowledge as to whether the Sketch is an accurate survey of that portion of the alleged Historical Access Route, therefore denied.

16. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein; otherwise, admitted.
17. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that at all times between September 26, 2006 and August 17, 2018, Alachua County had actual knowledge that the prior owner of the Mercer Property had a lock within the chain of locks located on the gate along the southern boundary of the Alachua County Property, which allowed the prior owner of the Mercer Property to access the gate and traverse the service road across the Alachua County Property. The remaining allegations of this paragraph are denied.
18. Admitted that on March 22, 2007, the Alachua County Land Conservation Board unanimously passed a motion to move the Mercer Property to the Eligibility Pool and that the minutes from that meeting states that the Mercer Property "is an inholding of the Barr Hammock property and they have a deeded access through the Barr Hammock." The minutes speak for themselves. Denied that the prior owner of the Mercer Property had "deeded access through Barr Hammock."
19. Admitted.
20. Admitted that the Barr Hammock – Hudson report is attached to the Complaint as Exhibit "F" and admitted that paragraph 20 contains a partial, incomplete quotation from the report. The report speaks for itself. Denied that SW 179th Avenue extends into Barr Hammock Preserve's southern boundary.
21. Admitted.
22. Admitted that on April 10, 2018, the Alachua County Board of County Commissioners approved the addition of the Mercer Property to the Alachua County Forever Acquisition

List. Admitted that Paragraph 22 contains partial, incomplete quotations from the supporting documentation for the agenda item, which is not attached to the Complaint, and also contains partial, incomplete quotations from the report attached to the Complaint as Exhibit "F". The supporting documentation and report speaks for itself. Denied that there is or was an access easement approximately half-mile-long through Barr Hammock from SW 179th Avenue.

23. Denied.

24. Admitted.

25. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that on August 17, 2018, Alachua County employee Andrea Christman informed Plaintiff that Alachua County discovered someone had been entering the Alachua County Property without authorization, and that Alachua County had removed the lock from the chain of locks on the entrance gate that Alachua County suspected was used to gain unauthorized access to the Alachua County Property. All other allegations in this paragraph are denied.

26. Admitted that during the period beginning on August 17, 2018 and continuing until November 12, 2018, Mercer was not permitted to use the entrance gate located on the southern boundary of the Alachua County Property nor traverse the private service road on the Alachua County Property that extends from said gate to the Mercer Property. Without knowledge as to whether Plaintiff was unable to access, maintain, secure or monitor the Mercer Property, therefore denied. All other allegations in this paragraph are denied.

27. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted generally that Plaintiff

and her counsel demanded a formal written easement. Denied that Plaintiff or her counsel ever provided to the County sufficient information to establish that Plaintiff was legally entitled to prescriptive easement or a statutory way of necessity easement over conversation lands purchased by Alachua County at a purchase price in excess of \$9,000,000.00, nor did Plaintiff offer to compensate the County for said easement over the private service road that traverses the Alachua County Property.

28. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that the Temporary License Agreement authorized Plaintiff to place her own lock on the chain of locks on the entrance gate and to use the private service road that traverses the Alachua County Property. Admitted that the Temporary License Agreement states that it would automatically terminate at 5:00p.m. on November 26, 2018, but prior to said termination, Plaintiff and Alachua County agreed that Plaintiff could continue to use the service road until the parties execute the Second Temporary License Agreement.

29. Admitted.

30. Admitted that the intent of the temporary license agreements was to provide Plaintiff access across the Alachua County Property while Alachua County and Plaintiff attempted to reach a settlement. All other allegations in this paragraph are denied.

31. Admitted that on January 8, 2019, the Alachua County Board of County Commissioners ("Board") approved agenda item #26, which authorized Alachua County staff and the Alachua County Attorney's Office to negotiate the details of a final settlement agreement, which would be presented to the Board for final approval at a future meeting, to include the following: (1) grant Plaintiff a non-exclusive, non-public statutory way of necessity

easement (“Temporary Easement”) over the existing service road until the alternate route is constructed by Alachua County and a replacement statutory way of necessity easement over the alternate route may be granted to Plaintiff; (2) authorize staff to construct a comparable access road along the alternate route and grant Plaintiff a statutory way of necessity easement over the new access road (“Replacement Easement”), at which time the Temporary Easement will terminate; (3) Plaintiff and Alachua County shall split the maintenance and repair cost for the Temporary Easement during the term of the Temporary Easement; (4) Alachua County shall pay for the cost of constructing the new access road; (5) Plaintiff shall be solely responsible for the cost of maintaining and repairing the new access road; (6) Plaintiff shall pay the County \$7,500 as consideration for the Replacement Easement; (7) Plaintiff and Alachua County shall equally split the cost of purchasing and installing fencing along the Replacement Easement, which shall consist of 3-strand galvanized barless wire fencing with galvanized hardware, attached to galvanized t-posts set on 12 foot spacing, with round wooden treated brace posts; and (8) Plaintiff shall fully and completely release of all claims against Alachua County.

32. Denied

33. Denied.

34. Alachua County is without knowledge as to the terms and conditions as to any agreement for legal representation as between Plaintiff and her counsel. Without knowledge as to whether Plaintiff has incurred significant legal fees, therefore denied. Alachua County denies that it is legally obligated under any circumstances to pay Plaintiff’s attorneys’ fees in connection with Counts One and Three of the Complaint. Alachua County denies further that it is legally obligated to pay Plaintiff’s attorneys fees in connection with Count Two

unless and until such time there has been a final determination that Alachua County unreasonably refused to comply with the provisions of §704.01(2), Florida Statutes. Alachua County denies further that it is legally obligated to pay Plaintiff's attorneys fees in connection with Count Two unless and until such time there has been a final determination that Alachua County has taken, in the constitutional sense, any property of Plaintiff. All other allegations in this paragraph are denied.

35. Without knowledge as to whether Alachua County's actions denied Plaintiff access to the Mercer Property. Denied that Alachua County refused to grant Plaintiff a permanent access easement for ingress and egress to the Mercer Property. Without knowledge to all other allegations in this paragraph, therefore denied.

36. Without knowledge as to whether Alachua County's actions completely denied Plaintiff access to the Mercer Property. Without knowledge to all other allegations in this paragraph, therefore denied.

37. Alachua County is without knowledge as to the terms and conditions as to any agreement for legal representation as between Plaintiff and her counsel. Alachua County denies that it is legally obligated under any circumstances to pay Plaintiff's attorneys' fees in connection with Counts One and Three of the Complaint. Alachua County denies further that it is legally obligated to pay Plaintiff's attorneys fees in connection with Count Two unless and until such time there has been a final determination that Alachua County unreasonably refused to comply with the provisions of §704.01(2), Florida Statutes. Alachua County denies further that it is legally obligated to pay Plaintiff's attorneys fees in connection with Count Two unless and until such time there has been a final determination that Alachua County has taken, in the constitutional sense, any property of

Plaintiff. All other allegations in this paragraph are denied.

BACKGROUND FACTS AS TO MICANOPY HAMMOCK OWNERS

38. Without knowledge, therefore denied.

39. Without knowledge, therefore denied.

40. Without knowledge, therefore denied.

41. Without knowledge, therefore denied.

42. Without knowledge, therefore denied.

**CLAIMS AGAINST DEFENDANT ALACHUA COUNTY
COUNT ONE – DECLARATION OF PRESCRIPTIVE
EASEMENT ACROSS ALACHUA COUNTY PROPERTY**

43. Alachua County realleges its responses to Paragraphs 1 through 37.

44. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted for the purpose of jurisdiction only; otherwise denied.

45. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge to all other allegations in this paragraph, therefore denied.

46. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge to all other allegations in this paragraph, therefore denied.

47. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Denied that, during the period of time commencing September 26, 2006 through May 2, 2018, that the prior owner of the Mercer Property's use of the private service road that traverses the Alachua County

Property was adverse to Alachua County. Admitted that any use of the private service road by Plaintiff between the period of May 2, 2018 through August 17, 2018 was without the permission of Alachua County. Without knowledge as to the remaining allegations in this paragraph, therefore denied.

48. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Denied.

49. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that during the period of September 26, 2006 through the present, the use of the private service road that traverses the Alachua County Property has been without express easement. Admitted that any use by Plaintiff of the private service road that traverses the Alachua County Property during the period of May 2, 2018 through November 12, 2018 was without permission from the lawful owner of the Alachua County Property. Denied that the prior owner of the Mercer Property used the private service road that traverses the Alachua County Property during the period of September 26, 2006 through May 2, 2018 without permission. Without knowledge as to all other allegations in this paragraph, therefore denied.

50. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Denied.

51. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

52. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Calls for a legal conclusion,

therefore denied.

53. Admitted for the purposes of jurisdiction; otherwise denied.

**COUNT TWO – STATUTORY WAY OF NECESSITY
EASEMENT ACROSS ALACHUA COUNTY PROPERTY**

54. Alachua County realleges its responses to Paragraphs 1 through 37.

55. Admitted for purposes of jurisdiction only, otherwise denied.

56. Admitted as to the Alachua County Property. Without knowledge as to the adjoining property to the South, therefore denied.

57. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge as to whether Plaintiff is entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes, across the Alachua County Property, therefore denied. Denied that Plaintiff "has" a statutory way of necessity across the Alachua County Property unless and until such time as there has been a final determination by this Court: (i) that Plaintiff is entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes; (ii) regarding the type, duration, extent, and location of the easement, the amount of compensation that Plaintiff is required to pay Alachua County for said easement, and the attorney's fees and costs to be awarded to Alachua County for Plaintiff's unreasonable refusal to comply with the provisions of Section 704.01(2), Florida Statutes; and (iii) Plaintiff has paid the award, if any, to Alachua County as required by Section 704.04, Florida Statutes.

58. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

59. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its

response to Paragraph 10 as though fully set forth herein. Without knowledge as to whether the Mercer Property is “shut off and hemmed in pursuant to Florida Statutes Section 704.01(2)”, therefore denied. All remaining allegations in this paragraph are denied.

60. As to Plaintiff’s use of the phrase “Historic Access Route”, Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Denied.

61. As to Plaintiff’s use of the phrase “Historic Access Route”, Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Denied.

62. The Temporary License Agreement speaks for itself. Admitted that the Temporary License Agreement authorizes Plaintiff to have her own lock on the chain of locks on the entrance gate along the southern boundary of the Alachua County Property, and authorizes Plaintiff to access that gate and use the private service road that traverses the Alachua County Property. Also admitted that the Temporary License Agreement may be terminated by Plaintiff or Alachua County upon thirty days written notice to the other party. Objection, calls for a legal conclusion with respect to whether the Temporary License Agreement is sufficient to assure marketable title to the Mercer Property; otherwise, without knowledge as to whether the Temporary License Agreement “is not sufficient to assure marketable title to the Mercer Property”, therefore denied.

63. As to Plaintiff’s use of the phrase “Historic Access Route”, Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted for purposes of jurisdiction only; otherwise without knowledge, therefore denied.

64. Admitted for purposes of jurisdiction only; otherwise denied.

65. Alachua County is without knowledge as to the terms and conditions as to any agreement for legal representation as between Plaintiff and her counsel. Alachua County denies that

it is legally obligated to pay Plaintiff's attorneys fees in connection with Count Two unless and until such time there has been a final determination that Alachua County unreasonably refused to comply with the provisions of §704.01(2), Florida Statutes.

**COUNT THREE – PERMANENT INJUNCTION
AGAINST ALACHUA COUNTY**

66. Alachua County realleges its responses to Paragraphs 1 through 37.
67. Admitted for purposes of jurisdiction only, otherwise denied.
68. Admitted for purposes of jurisdiction only, otherwise denied.
69. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Denied to the extent that Plaintiff's unspecified "legal right" arises from Plaintiff's claim for a statutory way of necessity under Section 704.01(2), Florida Statutes. Without knowledge as to all other allegations in this paragraph, therefore denied.
70. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge as to whether Plaintiff was unable to access the Mercer Property from August 17, 2018 until November 12, 2018, therefore denied. Admitted that commencing August 17, 2018 until November 12, 2018, Alachua County maintained a locked gate at the southern boundary of the Alachua County Property, would not allow Plaintiff to place a lock in the chain of locks, and would not allow Plaintiff to use the private service road that traverses the Alachua County Property because Plaintiff unreasonably refused to enter into any of the temporary license agreements that the County offered to Plaintiff, which would have authorized Plaintiff to access the gate and use the private service road.
71. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its

response to Paragraph 10 as though fully set forth herein. Admitted that upon Plaintiff finally executing a temporary license agreement with Alachua County on November 12, 2018, Alachua County has allowed Plaintiff to place a lock in the chain of locks at the gate along the southern boundary of the Alachua County Property and to use the private service road that traverses the Alachua County Property. All other allegations in this paragraph are denied.

72. Denied.

73. Denied.

74. Denied.

75. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Objection, this paragraph is improper because it does not consist of a short and plain statement of ultimate facts as required by the Florida Rules of Civil Procedure, but rather is a demand for judgment; therefore denied.

76. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge as to whether Plaintiff has incurred monetary damages, therefore denied. All other allegations in this paragraph are denied.

77. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge as to whether Plaintiff has incurred monetary damages, therefore denied. All other allegations in this paragraph are denied.

78. Denied. Plaintiff failed to present its claim in writing to the Alachua County as required by

Florida Statutes §768.28 and has, therefore, failed to satisfy a condition precedent to the commencement and maintenance of this action. Plaintiff has also failed to specifically allege compliance with the notice requirements of Florida Statute §768.28 and has, therefore, failed to satisfy a condition precedent to the commencement and maintenance of this action.

COUNT FOUR – INVERSE CONDEMNATION AGAINST ALACHUA COUNTY

79. Alachua County realleges its responses to Paragraphs 1 through 37.
80. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted for purposes of jurisdiction only, otherwise denied.
81. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted for purposes of jurisdiction only, otherwise denied.
82. Admitted for purposes of jurisdiction only, otherwise denied.
83. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.
84. Admitted that Plaintiff is the legal owner of the Mercer Property. Objection, calls for a legal conclusion as to Plaintiff's legal rights; otherwise admitted that Plaintiff's rights to use and enjoy her property are subject to applicable laws, rules and regulations. Denied that Plaintiff currently has a legal right to permanently and unconditionally access the Mercer Property by a statutory way of necessity across the Alachua County Property under Florida Statute Section 704.01(2), because such an easement is, by its very nature, limited

in duration to only “so long as such easement is reasonably necessary;” therefore the duration is not permanent. §704.04, Florida Statutes. Furthermore, “such easement shall be used only in an orderly and proper manner;” therefore Plaintiff’s use is not unconditional. §704.01(2), Florida Statutes. Finally, statutory ways of necessity do not arise unless and until such time as there has been a final determination by this Court: (i) that Plaintiff is entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes; (ii) regarding the type, duration, extent, and location of the easement, the amount of compensation that Plaintiff is required to pay Alachua County for said easement, and the attorney’s fees and costs to be awarded to Alachua County for Plaintiff’s unreasonable refusal to comply with the provisions of Section 704.01(2), Florida Statutes; and (iii) Plaintiff has paid the award, if any, to Alachua County as required by Section 704.04, Florida Statutes. §704.04, Florida Statute. Objection, calls for a legal conclusion; otherwise without knowledge as to whether Plaintiff has the legal right to permanently and unconditionally access the Mercer Property by a prescriptive easement across the Alachua County Property, therefore denied. Objection, calls for a legal conclusion; otherwise without knowledge as to whether Plaintiff has any other legal right to access the Mercer Property, therefore denied.

85. As to Plaintiff’s use of the phrase “Historic Access Route”, Alachua County realleges its response to Paragraph 10 as though fully set forth herein. As to Plaintiff’s use of the phrase “legal right”, Alachua County realleges its response to Paragraph 84 as though fully set forth herein. Without knowledge, therefore denied.

CLAIMS AGAINST MICANOPY HAMMOCK PROPERTY OWNERS
COUNT FIVE – DECLARATION OF PRESCRIPTIVE EASEMENT
ACROSS MICANOPY HAMMOCK PROPERTY

86. Alachua County realleges its responses to Paragraphs 1 through 13 and 38 through 42.
87. Admitted for purposes of jurisdiction only; otherwise without knowledge, therefore denied.
88. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.
89. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.
90. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.
91. As to Plaintiff's use of the phrase "Historic Access Route" and reference to Exhibit "B", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted that a copy of the Sketch of Ingress & Egress Easement dated June 7, 2006 and prepared by L.D. Bradley Land Surveyors (the "Sketch") is attached to the Complaint as "Exhibit D." Denied that the Sketch depicts an easement that traverses the Alachua County Property. Without knowledge as to whether the Sketch is an accurate survey of that portion of the alleged Historical Access Route, therefore denied. Without knowledge as to the remaining allegations of this paragraph, therefore denied.
92. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore

denied.

93. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

94. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

95. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

96. Admitted for purposes of jurisdiction only; otherwise without knowledge, therefore denied.

**COUNT SIX – STATUTORY WAY OF NECESSITY EASEMENT ACROSS
MICANOPY HAMMOCK PROPERTY**

97. Alachua County realleges its responses to Paragraphs 1 through 13 and 38 through 42.

98. Admitted for purposes of jurisdiction only; otherwise without knowledge, therefore denied.

99. Admitted as to the Alachua County Property. Without knowledge as to Micanopy Hammock, therefore denied.

100. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. As to that portion of the "Historic Access Route" that is alleged to traverse the Alachua County Property, denied that Mercer "has" a statutory way of necessity across unless and until such time as there has been a final determination by this Court: (i) that Plaintiff is entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes; (ii) regarding the type, duration, extent, and location of the easement, the amount of compensation that Plaintiff is required

to pay Alachua County for said easement, and the attorney's fees and costs to be awarded to Alachua County for Plaintiff's unreasonable refusal to comply with the provisions of Section 704.01(2), Florida Statutes; and (iii) Plaintiff has paid the award, if any, to Alachua County as required by Section 704.04, Florida Statutes. Without knowledge as to the remaining allegations of this paragraph, therefore denied.

101. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

102. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Without knowledge, therefore denied.

103. As to Plaintiff's use of the phrase "Historic Access Route", Alachua County realleges its response to Paragraph 10 as though fully set forth herein. Admitted for purposes of jurisdiction only; otherwise without knowledge, therefore denied.

AFFIRMATIVE DEFENSES

First Defense

104. As to Count One of the Complaint, to the extent that the alleged, but unspecified, 20 year prescriptive period includes any period of time during which the Alachua County Property was owned by Alachua County, Plaintiff's claim is barred by the doctrine of sovereign immunity.

Second Defense

105. As to Count One of the Complaint, to the extent that the alleged, but unspecified, 20 year prescriptive period includes any period of time between September 26, 2006 and

June 17, 2017, the prior owners of the Mercer Property use of the private service road that traverses the Alachua County Property was not adverse, but rather was with the permission of Alachua County.

Third Defense

106. As to Count One of the Complaint, to the extent that the alleged, but unspecified, 20 year prescriptive period includes any period of time during which the Mercer Property satisfied the elements for a statutory way of necessity, that period of time may not count towards the 20 year prescriptive period and, therefore, Plaintiff is not entitled to a prescriptive easement.

Fourth Defense

107. As to Count One of the Complaint, the owners of the Mercer Property's use of the private service road that traverses the Alachua County Property was not exclusive or inconsistent with the owner of the Alachua County Property's use of the Alachua County Property because both parties used the service road in common to access their respective properties; therefore, there is a strong presumption that the use of said private service road by the owners of the Mercer Property was permissive and not adverse.

Fifth Defense

108. As to Count One of the Complaint, Plaintiff fails to state a cause of action because Plaintiff failed to plead ultimate facts, as required by Florida Rule of Civil Procedure 1.110(b), that the owners of the Mercer Property's use the private service road that traverses the Alachua County Property, during the entire alleged but unspecified 20 year prescriptive period, was exclusive or, in the alternative, inconsistent with the owner of the Alachua County Property's use of the Alachua County Property.

Sixth Defense

109. As to Count Two of the Complaint, Plaintiff is not entitled to the relief sought because there was no consideration paid by Plaintiff to Alachua County for alleged statutory way of necessity as required by §704.04, Florida Statutes.

Seventh Defense

110. As to Count Two of the Complaint, Plaintiff is not entitled to the relief sought because there was no consideration paid by Plaintiff to Alachua County for remainder damages that would result by the alleged statutory way of necessity as required by §704.04, Florida Statutes. In the event that the Court makes a final determination of a statutory way of necessity at the location demanded by Mercer, approximately 45 acres of the Barr Hammock Preserve would be severed from future park uses.

Eighth Defense

111. As to Count Two of the Complaint, Plaintiff is not entitled to the relief sought because, in the absence of consideration, Article VII, Section 10 of the Florida Constitution prohibits Alachua County from conveying any right, title or interest in the Alachua County Property to Plaintiff. Plaintiff has not offered and has, in fact, refused to pay consideration to Alachua County for the alleged statutory way of necessity over the private service road.

Ninth Defense

112. As to Count Three of the Complaint, which alleges the tort of nuisance against Alachua County, Plaintiff has failed to present its claim in writing to the Alachua County as required by Florida Statutes §768.28 and has, therefore, failed to satisfy a condition precedent to the commencement and maintenance of this action.

Tenth Defense

113. As to Count Three of the Complaint, which alleges the tort of nuisance against Alachua County, Plaintiff has failed to specifically allege compliance with the notice requirements of Florida Statute §768.28 and has, therefore, failed to satisfy a condition precedent to the commencement and maintenance of this action.

Eleventh Defense

114. As to Count Three of the Complaint, which alleges the tort of nuisance against Alachua County, any recovery of damages by Plaintiff is limited by the provisions of Florida Statutes §768.28, the limited waiver of sovereign immunity in tort.

Twelfth Defense

115. As to Count Three of the Complaint, which alleges the tort of nuisance against Alachua County, Plaintiff seeks redress and relief for certain planning level or discretionary functions of Alachua County, for which Alachua County has absolute sovereign immunity from liability and to which immunity has not been waived by Florida Statutes §768.28.

Thirteenth Defense

116. As to Count Three of the Complaint, this count fails to state a cause of action because Plaintiff did not plead a short and plain statement of ultimate facts showing that Mercer has a “legal right” to use the “Historical Access Route across the Alachua County property for continued and uninterrupted access to the Mercer Property.” Instead, Plaintiff merely plead the legal conclusion that she has an unspecified “legal right” to use Alachua County’s private service road. Mere legal conclusions without pleading ultimate facts to support said legal conclusions does not satisfy the pleading obligations required by Florida Rule of Civil Procedure 1.110(b).

Fourteenth Defense

117. As to Count Three of the Complaint, injunctive relief is not available because Plaintiff has an adequate remedy at law.

Fifteenth Defense

118. As to Count Three of the Complaint, this count is not ripe because, as plead by Plaintiff, there is a valid temporary license agreement between the parties that allows Plaintiff to have a lock in the chain of locks on the entrance gate along the southern boundary of the Alachua County Property and to allow Plaintiff to use the private service road that traverse the Alachua County Property. In an action to enjoin a threatened nuisance, Plaintiff must plead ultimate facts showing an injury that is actually threatened and not merely anticipated, doubtful, or contingent.

Sixteenth Defense

119. As to Count Three of the Complaint, Plaintiff has failed to state a cause of action because Plaintiff failed to allege ultimate facts showing that Plaintiff will suffer irreparable harm if the requested injunctive relief is not granted. Vague allegations of opinion and legal conclusions are not sufficient to meet the pleading requirements of Florida Rule of Civil Procedure 1.110(b).

Seventeenth Defense

120. As to Count Three of the Complaint, this claim is barred because Plaintiff did not have a property interest and will not have a property interest in the private service road that traverses the Alachua County Property unless and until such time as there has been a final determination by this Court: (i) that Plaintiff is entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes; (ii) regarding the type, duration, extent, and location

of the easement, the amount of compensation that Plaintiff is required to pay Alachua County for said easement, and the attorney's fees and costs to be awarded to Alachua County for Plaintiff's unreasonable refusal to comply with the provisions of Section 704.01(2), Florida Statutes; and (iii) Plaintiff has paid the award, if any, to Alachua County as required by Section 704.04, Florida Statutes.

Eighteenth Defense

121. As to Count Three of the Complaint, injunctive relief is not available because it will not serve the public interest. The Alachua County Property is part of the public park known as the Barr Hammock Preserve, which is owned and operated by Alachua County. The Barr Hammock Preserve, including the Alachua County Property, is used for passive recreational activities such as trail walking and horseback riding. The Alachua County Property was purchased with public funding that was dedicated to the acquisition of conservation lands and the establishment of public parks. Plaintiff's proposed use of the Alachua County Property, namely for vehicular traffic, and her requested injunctive relief, is inconsistent with the Alachua County's public policy purpose of acquiring and operating the Alachua County Property as a pedestrian and equine trail system.

Nineteenth Defense

122. As to Count Three of the Complaint, an award of attorneys' fees are not available to Mercer under §86.011, Florida Statutes.

Twentieth Defense

123. As to Count Three of the Complaint, Plaintiff is not entitled to the relief sought because Plaintiff's alleged injuries were caused in substantial part by Plaintiff's own conduct by: (i) upon information and belief, purchasing the Mercer Property with actual

knowledge that the Mercer Property did not have established legal access; (ii) failing to even attempt to establish legal access prior to purchasing the Mercer Property; (iii) failing to attempt to establish legal access after purchasing the Mercer Property, but prior to the August 17, 2018; (iv) prior to August 17, 2018, failing to inform Alachua County that Plaintiff intended to assert a legal right to use the Alachua County Property to access the Mercer Property; (v) during the period of May 2, 2018 through August 17, 2018, entering the Alachua County Property without established legal access; and (vi) during the period of May 2, 2018 through August 17, 2018, entering the Alachua County Property without providing any notice to Alachua County that Plaintiff would be accessing the Alachua County Property.

Twenty-First Defense

124. As to Count Three of the Complaint, Plaintiff did not have a property interest in the use of the private service road that traverses the Alachua County Property during the period of August 17, 2018 through November 11, 2018.

Twenty-Second Defense

125. As to Count Four of the Complaint, Plaintiff did not have a property interest in the use of the private service road that traverses the Alachua County Property during the period of August 17, 2018 through November 11, 2018.

Twenty-Third Defense

126. As to Count Four of the Complaint, to the extent that Plaintiff's unspecified "legal right" to access the Mercer Property is predicated on a claim of prescriptive easement, that claim is barred by the doctrine of sovereign immunity to the extent that any of the 20 year prescriptive period occurred during Alachua County's ownership of the Alachua County

Property.

Twenty-Fourth Defense

127. As to Count Four of the Complaint, to the extent that Plaintiff's unspecified "legal right" to access the Mercer Property is predicated on a claim of prescriptive easement and the unspecified 20 year prescriptive period includes any period of time between September 26, 2006 and June 17, 2017, that claim is barred because the prior owners of the Mercer Property used the private service road that traverses the Alachua County Property with Alachua County's permission and, therefore, was not adverse.

Twenty-Fifth Defense

128. As to Count Four of the Complaint, fails to state a cause of action as to the relief requested in Paragraph 82 of the Complaint. As clearly set forth in §704.04, Florida Statutes, Plaintiff did not, does not, and will not have a property interest in the private service road that traverses the Alachua County Property unless and until such time as there has been a final determination by this Court: (i) that Plaintiff is entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes; (ii) regarding the type, duration, extent, and location of the easement, the amount of compensation that Plaintiff is required to pay Alachua County for said easement, and the attorney's fees and costs to be awarded to Alachua County for Plaintiff's unreasonable refusal to comply with the provisions of Section 704.01(2), Florida Statutes; and (iii) Plaintiff has paid the award, if any, to Alachua County as required by Section 704.04, Florida Statutes.

Twenty-Sixth Defense

129. As to Count Four of the Complaint, fails to state a cause of action for inverse condemnation because Plaintiff's loss of access to the private service road was caused, in

substantial part, by Mercer's own conduct by: (i) upon information and belief, purchasing the Mercer Property with actual knowledge that the Mercer Property did not have established legal access; (ii) failing to even attempt to establish legal access prior to purchasing the Mercer Property; (iii) prior to August 17, 2018, failing to establish legal access after purchasing the Mercer Property or to even inform Alachua County that Plaintiff intended to assert a right to use the Alachua County Property to access the Mercer Property; and (iv) entering the Alachua County Property without established legal access and without any notice to Alachua County.

Twenty-Seventh Defense

130. As to Count Four of the Complaint, fails to state a cause of action for inverse condemnation because Plaintiff's loss of access to the private service road was temporary and not permanent.

Twenty-Eighth Defense

131. As to Count Four of the Complaint, fails to state a cause of action for inverse condemnation arising from the alleged "limited, temporary conditions under which Alachua County has allowed access since November 12, 2018" because Mercer has not plead ultimate fact showing that such conditions constitute a substantial ouster and deprivation of all beneficial use of the Mercer Property. Mere impairment of use, as alleged by Plaintiff, does not constitute a taking.

COUNTERCLAIM

Defendant, Alachua County, a charter county and a political subdivision of the State of Florida, counterclaims against Plaintiff, Natalie Rose Stephens Mercer (hereinafter,

“Plaintiff”) and alleges:

132. This is a counterclaim brought pursuant to §§704.01(2) and 704.04, Florida Statutes, seeking the award of attorneys’ fees and cost to Alachua County for Plaintiff’s unreasonable refusal to comply with the provisions of §704.01(2), Florida Statutes and, in the event that this Court finds that Plaintiff is entitled to a statutory way of necessity under §704.01(2), Florida Statutes, Alachua County also seeks the award of compensation to Alachua County pursuant to §704.04, Florida Statutes for Plaintiff’s use of the statutory way of necessity easement and for remainder damages for the loss of use or diminished value of the remaining portion of the Alachua County Property.

133. Defendant and Counterclaimant, Alachua County, is a charter county and a political subdivision of the State of Florida (hereinafter “Alachua County”).

134. Alachua County is the owner of a parcel of real property located in Alachua County, Florida, identified by the Alachua County Property Appraiser as Tax Parcel No. 16825-000-000 and more specifically described as follows:

All of Section 29, Township 11 South, Range 20 East; LESS 166 acres on the East side thereof sold to Bauknight in Deed Book “I”, Page 125, Public Records of Alachua County, Florida. ALSO LESS the following described property: Begin at the Northwest corner of Section 29, Township 11 South, Range 20 East, and run North 89°18’00” East, along the North line of said Section 29, 2,657.00 feet to the Northeast corner of the Northwest ¼ of said Section 29; thence run South 34°12’54” East, along the Bauknight West property line, 1,716.96 feet; thence leave said Bauknight West property line, and run South 60°16’17” West, 1,350.86 feet; thence run North 73°32’43”

West, 1,742.65 feet; thence run North 28°21'23" West to the West line of said Section 29; thence run North 00°46'06" West, along the West line of said Section 29, to the Point of Beginning.

Said property is hereinafter referred to as the "Alachua County Property".

135. The Alachua County Property was purchased in a single transaction along with other contiguous parcels, which include all or portions of Tax Parcel Nos. 07420-000-000, 07421-000-000, 16471-000-000, 16822-000-000, and 16826-000-000, for the purpose of holding and preserving said property in conservation and with the purpose of establishing a passive recreational nature park for the use and enjoyment of the citizens of Alachua County. Collectively, all of these properties acquired by Alachua County are hereinafter referred to as Alachua County's "Barr Hammock Preserve".
136. The Barr Hammock Preserve, including the Alachua County Property, was purchased in a single transaction with funds from, and pursuant to, Alachua County's Alachua County Forever Land Conservation Program.
137. The purpose of the Alachua County Forever Land Conservation Program is to acquire and manage environmentally significant lands for the protection of water resources, wildlife habitat, and natural areas suitable for resource-based recreation.
138. The Alachua County Forever Land Conservation Program is funded by the Wild Spaces Public Place ½ cent surtax referendum that was approved by the voters of Alachua County.
139. Alachua County purchased the Barr Hammock Preserve, including the Alachua County Property, on September 26, 2006.
140. Plaintiff is the owner of a parcel of real property located in Alachua County,

Florida, identified by the Alachua County Property Appraiser as Tax Parcel No. 16830-000-000 and more specifically described as follows:

Lots 15, 16, 17, and 18, of Section 30, Township 11 South, Range 20 East, as shown by recorded map of said survey in Deed Book O, Page 491, of the Public Records of Alachua County, Florida.

Said property is hereinafter referred to as the “Mercer Property”.

141. Plaintiff purchased the Mercer Property on May 2, 2018; however, Alachua County did not discover the purchase until August 2018.
142. Upon information and belief, Plaintiff purchased the Mercer Property with actual knowledge that the Mercer Property did not have established legal access.
143. Upon information and belief, Plaintiff did not try to establish legal access to the Mercer Property prior to or contemporaneously with her purchase of the Mercer Property.
144. Prior to August 17, 2018, Plaintiff did not inform Alachua County that she wanted or needed access through or across the Alachua County Property.
145. Prior to August 17, 2018, Plaintiff did not inform Alachua County that she claimed or intended to claim any right of access through or across the Alachua County Property.
146. On August 17, 2018, Plaintiff admitted that she does not possess established legal access through or across the Alachua County Property.
147. In August 2018, Alachua County began to suspect that someone was gaining unauthorized access to the Alachua County Property through the entrance gate along the southern boundary of the Alachua County Property.
148. In mid-August 2018, Alachua County staff observed activity on the Mercer Property and, after investigation, discovered that the Mercer Property had been purchased

by Plaintiff on May 2, 2018.

149. On August 17, 2018, based on the belief that Plaintiff did not have established legal access through or across the Alachua County Property, Alachua County removed what it believed to be the lock used by Plaintiff to access the entrance gate along the southern boundary of the Alachua County Property and taped a business card with contact information to the chain of locks so that Plaintiff could contact Alachua County for the purposes of establishing legal access through and across the Alachua County Property.

150. On August 17, 2018, Alachua County staff noticed what appeared to be the same or similar truck that was observed at the Mercer Property at a residential property southwest of the Alachua County Property. Alachua County staff asked the person in the front yard if she was Plaintiff. Plaintiff replied in the affirmative.

151. The Alachua County staff person informed Plaintiff that the lock had been removed from the gate, Plaintiff admitted that she did not have established legal access, and the Alachua County staffer suggested that Plaintiff seek to establish legal access through and across the Alachua County Property.

152. Plaintiff subsequently requested a temporary license agreement for access over and across the Alachua County Property, and Alachua County offered Plaintiff two temporary license agreements that would have allowed Plaintiff to access the Alachua County Property during the period of time that Plaintiff claims she did not have access to the Mercer Property, but both were unreasonably rejected by Plaintiff.

153. Plaintiff subsequently claimed that she had a prescriptive easement or, in the alternative, a statutory way of necessity through and across the Alachua County Property.

154. On November 12, 2018, Alachua County and Plaintiff entered into the first of three

temporary license agreement that have provided Plaintiff with uninterrupted access through and across the Alachua County Property since November 12, 2018 through the present (hereinafter, the “Temporary License Agreements”).

155. The purpose of the Temporary License Agreements was to provide Plaintiff with access through and across the Alachua County Property while the parties attempted to resolve Plaintiff’s claims and reach a settlement.

156. Over the next few months, Alachua County and Plaintiff negotiated the potential settlement of Plaintiff’s claims.

157. On March 8, 2019, Alachua County sent Plaintiff a proposed statutory way of necessity, which is attached hereto as **Defendant’s Exhibit 1**.

158. On April 23, 2019, some 46 days after Alachua County sent Plaintiff the proposed statutory way of necessity, Plaintiff unreasonably rejected the proposed statutory way of necessity easement and provided Alachua County with revisions to said proposed statutory way of necessity.

159. On May 28, 2019, only 35 days after transmitting its revisions to the proposed statutory way of necessity to Alachua County, Plaintiff demanded that Alachua County reach complete and permanent resolution of this matter by no later than June 7, 2019, and indicated that it would proceed to litigation if this was not accomplished.

160. The period of May 28, 2019 to June 7, 2019 was insufficient to reach complete and permanent resolution of Plaintiff’s claims.

161. Plaintiff acted unreasonably by unilaterally imposing such a short and arbitrary deadline on Alachua County, especially in light of the fact that in order to reach complete and permanent resolution as demanded by Plaintiff, the parties would have to resolve

several issues and then schedule the matter for consideration by the Alachua County Board of County Commissioners at one of its regular public meetings.

162. Plaintiff acted unreasonably by terminating the negotiations with Alachua County and filing its Complaint against Alachua County.

163. As a result of its unreasonable actions, including but not limited to its unreasonable refusal to comply with §704.01(2), Florida Statutes, Alachua County has incurred legal fees and costs.

164. In the event that this Court determines that Plaintiff is entitled to a statutory way of necessity, Alachua County is entitled to compensation for the statutory way of necessity pursuant to §§704.01(2) and 704.04, Florida Statutes.

165. In the event that this Court determines that Plaintiff is entitled to a statutory way of necessity, Alachua County is also entitled to remainder or severance damages pursuant to §§704.01(2) and 704.04, Florida Statutes, regarding that loss of use or diminishment of value of the Alachua County Property.

WHEREFORE, based upon the foregoing, Alachua County respectfully requests that this Court award, pursuant to §704.04, Florida Statutes, Alachua County attorneys' fees and costs that Alachua County incurred due to Plaintiff's unreasonable refusal to comply with the provisions of §704.01(2), Florida Statutes, and, in the event that this Court determines that Plaintiff is entitled to a statutory way of necessity, Alachua County requests this Court to determine all questions including the type, duration, extent, location, and reasonable restrictions of use of said easement considering use for which Alachua County purchased the Alachua County Property, award Alachua County compensation for use of the easement, award Alachua County remainder or

severance damages regarding the loss of use or diminishment of value of the remaining portion of the Alachua County Property; and to grant such further relief as this Court deems appropriate.

Dated this 15th day of July, 2019.

Respectfully submitted,

OFFICE OF THE ALACHUA COUNTY ATTORNEY

By: /s/ David Forziano

David Forziano, Senior Assistant County Attorney

Florida Bar No. 0025755

12 S.E. 1st Street

Gainesville, Florida 32601

Telephone: (352) 374-5218/Fax; 374-5216

dforziano@alachuacounty.us

CAO@alachuacounty.us

Counsel for Defendant, Alachua County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been electronically filed with the Alachua County Clerk of Court by using the Florida Courts E-Filing Portal, which will also serve a copy to: Stephanie L. Emrick, Esquire, Counsel for Plaintiff (to: emrick@scwlegal.org and jrdla@scwlegal.org), on this 15th day of July, 2019.

By: /s/ David Forziano

David Forziano, Senior Assistant County Attorney

Florida Bar No. 0025755

This instrument prepared by:
David Forziano, Esq.
Senior Assistant County Attorney
Alachua County
12 SE 1st Street
Gainesville, FL 32601

Portion of Tax Parcel No: 16825-000-000
Barr Hammock Preserve
County Road: N/A
ALACHUA COUNTY, FLORIDA

***NON-PUBLIC, NON-EXCLUSIVE
STATUTORY WAY OF NECESSITY EASEMENT***

THIS NON-PUBLIC, NON-EXCLUSIVE STATUTORY WAY OF NECESSITY EASEMENT, made this _____ day of _____, A.D. 2018, between **ALACHUA COUNTY**, a political subdivision of the state of Florida, by and through its **BOARD OF COUNTY COMMISSIONERS**, whose mailing address is c/o Alachua County Public Works Department, 5620 NW120 Lane, Gainesville, Florida, 32653 (hereinafter referred to as "Grantor"), and **Natalie Rose Stephens Mercer**, whose mailing address is 1015 NW 179th Avenue, Micanopy, FL 32667 (hereinafter referred to as "Grantee").

WHEREAS, Grantor is the fee simple owner of certain real property located in Alachua County, Florida, commonly referred to as the Barr Hammock Preserve, which includes Tax Parcel No. 16825-000-000, and is more particularly described in **Exhibit "A"** ("Grantor's Property" or the "Servient Parcel"); and

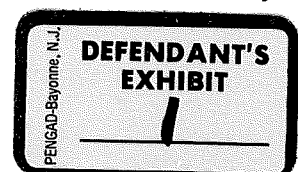
WHEREAS, Grantee is the fee simple owner of certain real property identified as Tax Parcel No. 16830-000-000, and is more particularly described in **Exhibit "B"** ("Grantee's Property" or the "Dominant Parcel"); and

WHEREAS, Grantee has represented to the Grantor that Grantee desires and intends to use the Dominant Parcel for a dwelling, agricultural, timber raising, timber cutting, and/or stockraising purposes; and

WHEREAS, Grantee alleges and has demonstrated to the satisfaction of the Grantor that the Dominant Parcel is shut off or hemmed in by lands, fencing, or other improvements by other persons so that no practical route of egress or ingress is available therefrom to the nearest practical public or private road in which the Grantee has a vested easement right; and

WHEREAS, Grantee alleges that access to the Dominant Parcel has historically traversed over, upon, and across an existing crushed limestone road, which traverses the Servient Parcel as depicted and more particularly described on the Sketch of Ingress & Egress Easement dated June 7, 2006 and prepared by L.D. Bradley Land Surveyors attached hereto as **Exhibit "C"** (the "Access Road"); and

WHEREAS, Grantee has requested that Grantor grant to Grantee a Statutory Way of Necessity over, upon and across the Access Road; and



WHEREAS, the Grantor and Grantee have negotiated in good faith and have agreed to settlement all claims regarding, related to or arising from this matter as more particularly described in that certain *Settlement Agreement* approved by the Alachua County Board of County Commissioners at the public meeting held on _____, 2019; and

WHEREAS, Grantor desires to grant to the Grantee this Non-Public, Non-Exclusive Statutory Way of Necessity Easement over, upon and across the Access Road as set forth herein and as more particularly described in **Exhibit "C"**.

NOW, THEREFORE, for and in consideration of the sum of one dollar (\$1.00), the mutual promises contained herein, and other good and valuable consideration to which the parties acknowledge receipt of, the parties agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Grant of Non-Public, Non-Exclusive Statutory Way of Necessity Easement.** Grantor, for and in consideration of the mutual promises contained in the Settlement Agreement and pursuant to §704.01(2), Florida Statutes, hereby grants to Grantee a non-public, non-exclusive statutory way of necessity easement over the Access Road as more particularly described and depicted in **Exhibit "C"** ("Easement"). Grantee, and anyone on their behalf, may use the easement only for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the Access Road. All other uses of this Easement are strictly prohibited. By accepting the benefits of this Easement, Grantee agrees to the terms and conditions set forth herein.
3. **Locked Easement Gate.** Grantor and Grantee acknowledge that Grantor maintains a locked gate at the southern boundary of the Servient Parcel and the southern terminus of the Access Road. Grantor and Grantee agree that the gate may remain in place, in Grantor's sole discretion, to restrict public access to the Servient Parcel, and that Grantor and Grantee shall each be permitted to place a private and independent lock in the chain of locks located on the chain securing the gate. Grantee shall close and lock the gate after opening the gate for access or for any other purpose authorized under this Easement.
4. **Duration of Easement.** This Easement will automatically terminate upon the occurrence of one of the following events, whichever occurs first: (a) the Grantor constructs an alternative access road along the route generally depicted on **Exhibit "D,"** and grants to Grantee and records a 20 foot wide easement over said alternate access road, in a form substantially similar to the easement attached hereto as **Exhibit "E"**; (b) the Grantee ceases using the Dominant Parcel for dwelling, agricultural, timber raising, timber cutting, and/or stockraising purposes, or (c) the Dominant Parcel gains access to

another public road or private road in which the owner of the Dominant Parcel has vested easement rights. In the event the Grantor elects to construct the alternate access road, the cost of designing, permitting and constructing the alternate access road shall be borne and paid solely by the Grantor. The alternative road shall consist of graded dirt, topped with crushed limestone, and shall include road-side swales or other drainage features.

- 5. Reservation by Grantor.** This Easement is non-exclusive, subject to all previously recorded easements, and the Grantor reserves to itself, its successors and assigns, the right to utilize the Easement and Access Road for any purpose which does not interfere with the use of this Easement and Access Road by Grantee for the purposes authorized herein, except as set forth herein. Each party shall use the rights granted and reserved by this Easement with due regard for the rights of the other party to use and enjoy the Easement and the Access Road.
- 6. Maintenance and Repair of the Easement and related Access Road.** Grantor shall maintain and repair the Easement and Access Road in accordance with Grantor's maintenance and repair practices. The Parties acknowledge that the historic annual cost to maintain and repair the Access Road is approximately \$500, which does not include the cost of repairing damage caused by large storm events that historically have not occurred on an annual basis, or damage caused by large/heavy trucks. With regards to typical annual maintenance and repair, Grantee shall reimburse Grantor 50% of the cost of maintaining and repairing the Easement and Access Road up to the total amount of \$250.00 per Fiscal Year (*i.e.*, October 1st through September 30th). Grantor shall submit quarterly invoices to Grantee for Grantee's 50% share of the actual cost incurred by the Grantor to maintain and repair the Easement and Access Road. Grantee shall remit payment to the Grantor within fifteen calendar days of receipt of an invoice from the Grantor. In addition to typical annual maintenance and repair, each party shall be solely responsible for the cost of repairing damage to the Easement caused by said party (*e.g.*, caused by use of large/heavy trucks). In the event the Easement or Access Road is damaged by a large storm and the cost of said repair causes the actual cost of maintenance and repair to exceed \$500 in any Fiscal Year, the Grantor shall solicit and obtain, in accordance with the Grantor's Procurement Code, one or more written quotes from qualified licensed contractors to repair the damage. Grantor shall provide the written quotes to the Grantee. Within ten days of receipt of the written quotes from the Grantor, the Grantee shall: (i) agree to pay for 50% of the cost of the repair, or (ii) provide Grantor with lower priced written quote from a qualified licensed contractor ("Grantee's Quote"). If the Grantee provides a lower priced written quote to the Grantor, the Grantor shall either: (i) accept the Grantee's Quote and authorize the repair upon receipt of 50% of the written quote amount from the Grantee; or (ii) accept one of the quotes solicited by the Grantor and authorize the repair upon receipt of 50% of the Grantee's Quote amount from the Grantee. In the event the Grantee does not comply or otherwise pay its 50% share of the repair cost in accordance with the process

described in this paragraph 6, the Grantor may terminate this Easement. Grantor reserves unto itself the right, but not the obligation, to upgrade or otherwise improve the Access Road, at Grantor's sole cost and expense. Grantee shall not be responsible for any cost associated with upgrading or otherwise improving the Access Road beyond its current condition.

- 7. Prescribed Burns on Grantor's Property.** Grantee acknowledges Grantor is used the Servient Parcel as conservation and recreation land that are subject to maintenance, including prescribed burns. Grantor shall provide Grantee with notice three calendar days prior to commencing any prescribed burn of the Servient Parcel. The notice shall include the schedule start date and anticipated date by which the prescribed burn will be completed. The Grantee acknowledges that the actual commencement date is subject to change depending on weather conditions and Grantor shall promptly notify Grantee of any changes to the start date or completion date. During the prescribed burn, Grantee shall not be permitted to use the Easement, including the Access Road. Grantor shall promptly notify Grantee that it may commence using the Easement once the prescribed burn has been completed.
- 8. Liability. GRANTEE ASSUMES ALL RISK AND ACCEPTS THIS EASEMENT, AND THE USE OF THE EASEMENT AND ACCESS ROAD, AS-IS, WHERE IS AND WITH ALL FAULTS AND FURTHER AFFIRMS THAT THE COUNTY HAS NOT, AND DOES NOT, MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE PHYSICAL CONDITION OF THE EASEMENT OR RELATED ACCESS ROAD.** The Grantee hereby acknowledges and agrees Grantor's maintenance and repair of the Easement, including the Access Road, is being provided simply as a convenience to Grantee and that Grantor has no duty, and owes no duty, to Grantee, and Grantor will not be responsible to the Grantee for injury, loss, or damage, whether to person, including death arising there from, or to the property, suffered by the Grantee from any cause whatsoever arising from or related the Grantor's maintenance or repair of the Easement and Access Road or from Grantee's use of the Easement and Access Road. For the purposes of this Paragraph 8, the term "Grantee" shall include the Grantee and all of Grantee's agents, servants, employees, representatives, invitees, guests, any person claiming through the Grantee, or anyone using the Easement with Grantee permission or on Grantee's behalf. Grantee shall be solely responsible for the negligent, reckless or intentional acts of Grantee as it pertains to injury, loss or damage suffered by Grantee. Nothing herein shall be construed as a waiver of the Grantor's sovereign immunity or the limits of liability set forth in §768.28, Florida Statutes. Any claims against the Grantor must comply with the procedures found in §768.28, Florida Statutes, and Article VII, section 10 of the Florida Constitution.
- 9.** The Grantor, or their successors or assigns, shall have the right, at any time, to convey the fee simple title to Grantor's Property, subject to this Easement or any other easements hereinafter granted.

10. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Florida. Sole and exclusive venue for any action arising from this Easement shall be the Alachua County, Florida.
11. Any notices to be given hereunder shall be delivered to the parties' addresses as stated herein or to such address as shall be designated by a party, or the party's successor-in-interest, to the other party.
12. The Easement granted herein shall be effective on the date this document is executed by Grantor and Grantee and recorded in the Public Records of Alachua County, Florida.

TO HAVE AND TO HOLD the same unto the Grantee, its successors and assigns forever.

[This space was intentionally left blank]

IN WITNESS WHEREOF, the said Grantee has caused these presents to be executed the day and year aforesaid.

GRANTOR:

Alachua County
a charter county and political subdivision
of the State of Florida

By: _____
Charles "Chuck" Chestnut, IV
Chair, Board of County Commissioner

ATTEST:

APPROVED AS TO FORM:

Jesse K. Irby, II, Clerk

(seal)

Alachua County Attorney's Office

IN WITNESS WHEREOF, the said Grantee has caused these presents to be executed the day and year aforesaid.

Signed, sealed and delivered
in the presence of:

GRANTEE

Witness No 1 Signature

By: _____
Natalie Mercer

Witness No 1 Print Name

Witness No 2 Signature

Witness No 2 Print Name

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "C"

EXHIBIT "D"

EXHIBIT "E"