

**DEVELOPER’S AGREEMENT
BETWEEN
VIRGINIA W. RUSSELL FAMILY, LTD AND RIVERFRONT GROVES, INC.
AND
INDIAN RIVER COUNTY, FLORIDA**

This Developer’s Agreement, (the “Agreement”)is made and entered into this ___ day of _____, 2019, by and between The Virginia W. Russell Family Limited Partnership., a Florida limited partnership (hereinafter “Russell”); Riverfront Groves, Inc., a Florida corporation (hereinafter “Riverfront”); and Indian River County, Florida, a political subdivision of the State of Florida (hereinafter “County”).

Recitals

WHEREAS, Russell owns certain property (the “Russell Property”) located in Indian River County and more particularly described as follows:

SEE EXHIBIT “A” ATTACHED AND INCORPORATED HERETO;

WHEREAS, Riverfront owns certain property (the “Riverfront Property”) located in Indian River County and more particularly described as follows:

SEE EXHIBIT “B” ATTACHED AND INCORPORATED HERETO;

WHEREAS, on December 3, 2018, the Board of County Commissioners of Indian River County adopted and updated the Capital Improvement Element to its Comprehensive Plan to include funding for a specific project tentatively called 11th Drive/McCrystal Drive (hereinafter “11th Drive”) as an extension between 37th Street and 41st Street as part of the alternative to widening 37th Street; and

WHEREAS, as a result of this decision by the County, 11th Drive qualifies for funding and impact fee credits from the County; and

WHEREAS, a portion of the proposed alignment of 11th Drive runs along the border between the Russell Property and the Riverfront Property; and

WHEREAS, Russell, Riverfront, and the County desire to cooperate with each other to dedicate right-of-way for and to accomplish the construction of 11th Drive, for the mutual benefit of each party;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, Russell, Riverfront, and the County hereby agree as follows:

1. The foregoing recitals are true and incorporated as if fully restated herein.

2. Prior to or in conjunction with full or partial development of the Russell Property, but not later than six (6) months from the date of this Agreement, Russell agrees to dedicate to the County 30 feet of right-of-way along Russell's eastern property line (adjacent to Riverfront's west line) to the County for the purpose of design, permitting, and construction of 11th Drive in accordance with plans and specifications which shall be approved by all parties through the County right-of-way permitting process in accordance with Chapter 312 of the Indian River County Code of Ordinances. In addition, Russell shall dedicate to the County 60 feet of right-of-way between the southern boundary of the Riverfront Property to the south line of the Russell site to align with the portion of 11th Drive to be extended by the County at a location determined by the County. Pursuant to Section 1000.12, Indian River County Code, Russell shall receive transportation impact fee credits in exchange for the dedication. Such credits shall be determined as provided in the County's application for impact fees credit agreement.
3. Prior to or in conjunction with full or partial development of the Riverfront Property, but not later than six (6) months from the date of this Agreement, Riverfront agrees to dedicate 30 feet of right-of-way along Riverfront's western property line for the purpose of design, permitting, and construction of 11th Drive in accordance with plans and specifications which shall be approved by all parties through the County right-of-way permitting process in accordance with Chapter 312 of the Indian River County Code of Ordinances. Pursuant to Section 1000.12, Indian River County Code, Riverfront shall receive transportation impact fee credits in exchange for the dedication. Such credits shall be determined as provided in the County's application for impact fees credit agreement.
4. The right-of-way to be dedicated and the proposed alignment of 11th Drive are depicted on Exhibit "C" attached and incorporated hereto.
5. For purposes of development, density, whether measured by residential units, non-residential square foot area, or other method, shall be calculated based upon the pre-dedication size (area) of the Russell Property and the Riverfront Property.
6.
 - A. Russell agrees to design, permit, and construct 11th Drive as a two-lane roadway as located on Exhibit "C", including turn lanes, (hereinafter "11th Drive Project"). All road construction shall be in compliance with design plans and standards which have been approved by Indian River County through the County right-of-way permitting process in accordance with Chapter 312 of the Indian River County Code of Ordinances.
 - B. Provided the County, through its Public Works Director or other designated official, has reviewed the bid documents prior to bidding and the bids prior to approval for the work described herein, the County shall reimburse Russell or its assignee for all design, permitting, and construction costs associated

with the 11th Drive Project. Notwithstanding the foregoing, the County shall not be responsible for those costs specifically required by development of the Russell Property (“Russell Project-Related Improvement”).

C. Russell or its assignee shall invoice the County for all costs except those specifically required by development of the Russell Property (“Russell Project-Related Improvements”) and shall be reimbursed by the County as draws throughout the design, permitting, and construction of the 11th Drive Project. Any invoice submitted by Russell or its assignee to the County for County’s payment shall be reimbursed by the County according to the Local Government Prompt Payment Act (Section 218.70-218.80, Florida Statutes, 2017), and not with impact fee credits. County hereby designates its Public Works Director to receive invoices from Russell or its assignee. Each invoice shall be accompanied by an itemized bid schedule or quantity sheet for the 11th Drive Project and a signed and sealed letter from the Engineer overseeing the 11th Drive Project that construction to date has been constructed in accordance with the approved plans. The letter must also stipulate that the Engineer has verified the quantities listed as part of the monthly invoice. The Public Works Director shall have twenty-one (21) days to review and approve reimbursable costs or to request revisions or additional information.

D. Prior to beginning the design and permitting of the 11th Drive Project, Russell shall submit an engineer’s cost estimate for the design and permitting of that portion of the 11th Drive Project from 41st Street to the southern boundary of the Russell Property. Such cost estimate shall be approved by both parties prior to beginning the design and permitting of the 11th Drive Project. The agreed upon cost shall be presented to the Indian River County Board of County Commissioners for approval.

7. At the time Russell elects to develop the Russell Property hereto, Russell agrees to incorporate sufficient capacity in the development of the Russell Property to provide stormwater treatment for the impervious area within the 11th Drive Project right-of-way for the portion of 11th Drive on the Russell and Riverfront Properties and shall dedicate a non-exclusive easement to access, construct, maintain and use an appropriate stormwater tract for such purpose. The treatment capacity shall be sufficient to accommodate all impervious improvements within the County right-of-way associated with 11th Drive Project. The County shall be responsible for all costs associated with the design, permitting, and construction of these permanent capacity drainage improvements for 11th Drive Project only, excluding developer required impervious area. If prior to development of the Russell Property, drainage for the 11th Drive Project is necessary for design, permitting and construction of 11th Drive Project by the County, , Russell agrees to provide a suitable location compatible with the Russell development plan for the County to construct a temporary stormwater facility and shall provide temporary non-exclusive easement for access, construction, maintenance and use

of the temporary stormwater facility. The County shall be responsible for costs associated with design, permitting, and construction of the temporary facility.

8. Russell's obligation to design, permit, and construct the 11th Drive Project in accordance with Chapter 312 of the Indian River County Code of Ordinances is expressly contingent upon Russell's election to proceed with developing the Russell Property. In the event Russell or its assignee elect not to proceed with the development within six (6) months from the date of this Agreement, then the County may proceed to design, permit, and construct the 11th Drive Project at its own cost and expense except Russell Project-Related Improvements. If the County proceeds with design, permitting, and construction of the 11th Drive Project, the County will offer in writing to Russell the opportunity to participate in the design, permitting, and construction of Russell Project-Related Improvements. Notwithstanding the foregoing, Russell shall still timely dedicate the right-of-way as described herein in exchange for impact fee credits and density credits as described above.
9. The Parties acknowledge the County is negotiating to purchase the right-of-way necessary to extend 11th Drive from Russell's south property boundary south to 37th Street. If the County has not entered into a contract for the purchase of said right-of-way within 90 days of the date of this Agreement, then Russell or its successors or assigns shall, include as part of the site plan and right-of-way permitting process, a temporary connection to 12th Drive, to provide a southern access to the Russell Property development from 37th Street. When 11th Drive is completed in an alignment from 37th Street to 41st Street, this temporary access connection to 12th Drive will be closed by Russell or its successors.
10. Miscellaneous:
 - A. In the event of any litigation arising out of this Agreement, the prevailing party shall recover attorney's fees and costs from the non-prevailing party.
 - B. No amendment, modification, change, or alteration of this Agreement shall be valid or binding unless accomplished in writing and executed by all of the parties hereto.
 - C. This Agreement may be assigned and shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
 - D. This Agreement contains the entire agreement and understanding between the parties. No representation, statement, recital, undertaking, or promise not specifically set forth herein shall be binding on any parties hereto. This Agreement shall not be effective unless signed by Russell, Riverfront, and the County.

E. Except for the dedication of right-of-way, the obligations of Russell to this Agreement are expressly conditioned upon Russell's decision, at Russell's sole discretion, to proceed with development of the Russell Property.

F. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Florida. Venue hereunder shall lie in Indian River County, Florida. Time shall be of the essence.

G. This Agreement shall be deemed prepared jointly by each of the parties hereto and shall be construed on parity as between the parties. There shall be no canon of construction for or against any party by reason of the physical preparation of this Agreement.

H. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural; and the masculine, feminine, and neuter genders shall each include the others.

I. The County, Russell, and Riverfront shall grant such further assurances and provide such additional documents as may be reasonably required by one another from time to time, and cooperate fully with one another in order to carry out the terms and conditions hereof and comply with express intention of this Agreement.

J. This Agreement may be executed in any number of duplicate originals and any such duplicate original shall be deemed to constitute one and the same instrument.

(Signature pages to follow)

IN WITNESS WHEREOF, the parties have executed this Developer's Agreement as of the day and year first above written.

The Virginia W. Russell Family Limited Partnership, a Florida limited partnership

By: _____

Name/Title: _____

Riverfront Groves, Inc.,
A Florida corporation

By: _____

Name/Title: _____

INDIAN RIVER COUNTY, FLORIDA

ATTEST:

BOARD OF COUNTY COMMISSIONERS

Deputy Clerk

By: _____

Name: _____, Chairman

(SEAL)

Approved as to form and legal sufficiency:

Approved as conforming to County
policy:

Name: _____
County Attorney

Name: _____
County Administrator