

AGREEMENT BETWEEN
INDIAN RIVER COUNTY, FLORIDA
AND
GRIFFON RESIDENCES, LLC
FOR
THE GRIFFON COMMUNITY

FOR THE CONSTRUCTION OF LIFT STATION IMPROVEMENTS

THIS AGREEMENT by and between **INDIAN RIVER COUNTY**, a political subdivision of the State of Florida, the address of which is 1801 27th Street, Vero Beach, Florida 32960 (hereinafter the "COUNTY") and **GRIFFON RESIDENCES, LLC**, a Delaware Limited Liability Company, the address of which is 500 Office Park Drive, Suite 215, Birmingham, Alabama 35223 (hereinafter the DEVELOPER) is effective upon execution by the two parties.

WHEREAS, the DEVELOPER, in conjunction with the construction of improvements at THE GRIFFON COMMUNITY, located at 7590 20TH Avenue (SR 60), whose legal description is attached as Exhibit "A" (the "Subject Property"), is assisting the COUNTY in constructing water and wastewater facilities to serve the proposed community; and

WHEREAS, the DEVELOPER was notified that capacity improvements to existing Lift Station No. 5 will be necessary to serve both the existing lift station service area and the proposed Griffon Community; and

WHEREAS, constructing improvements to existing Lift Station No. 5 will benefit both the DEVELOPER and the COUNTY by upgrading existing infrastructure and avoiding the operation and maintenance cost increases associated with adding another lift station; and

WHEREAS, pursuant to Section 918.05, the Code of Indian River County (the "Code"), the COUNTY requires the DEVELOPER to provide the utility improvements to connect to the regional sewer system; and

WHEREAS, the DEVELOPER, pursuant to Section 201.11, of the Code, agrees to reimburse the COUNTY, as provided herein, a share of the cost of constructing the improvements necessary to increase the capacity of the lift station to serve the Subject Property; and

WHEREAS, the COUNTY's cost associated with replacing the pumps is to not exceed \$42,000.00

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration, the COUNTY and DEVELOPER agree as follows:

1. Improvements to Existing Lift Station 5:

The DEVELOPER and COUNTY shall construct improvements to existing Lift Station 5 described herein as directed by the Indian River County Utilities Department. The DEVELOPER shall provide and/or reimburse the COUNTY the total sum of the material, equipment, and labor for the project as described in Section 1C:

A. Lift Station Improvements

The COUNTY and the DEVELOPER shall share in the construction of lift station improvements as follows:

- The COUNTY's obligations are as follows:
 - Temporary by-pass pumping during construction.
 - Remove the existing Flygt CP-3201 Duplex Pumps rated at 322 GPM with 29 HP motors in the existing wet well and install new Duplex NP 3202/460 45HP Flygt pumps.
 - Install a liner system (i.e.: Green Monster Liner or equal) in the existing concrete wet well.
 - Remove existing and install new pump control floats, pump bases, pump guide rails with mounting brackets and accessories.
 - Remove existing and install new wet well top slab with hatch covers.
 - Remove existing and install new electrical duplex pump control panel. New panel will provide soft start pump provisions for each 45 HP pump motor and time delay relay to prevent both pumps starting simultaneously.
 - Remove existing standby generator and automatic transfer switch and replace with new standby generator and automatic transfer switch properly sized for the duplex 45HP motors. COUNTY shall retain ownership of the existing generator.
 - Provide 8" connection valve adjacent to existing structure for new 8" force main
- The DEVELOPER's obligations are as follows:
 - Construct new 8" discharge force main approximately 1,400 LF in length and parallel to the existing 6" force main. The new 8" force main will wet tap into the existing force main per the approved construction plans.
 - Abandon the existing 6" force main after the new 8" force main is placed into operation.
 - Provide to the COUNTY and/or its assigned contractor the materials and equipment identified in Exhibit "A".

All improvements shall comply with Indian River County Department of Utility Services (IRCDUS) Water & Wastewater Utility Standards, May 2019 or latest edition.

B. Developer Cost Items

The DEVELOPER shall bear the entire cost of engineering design, permitting and inspection fees required for DEVELOPER's obligations listed in Section 1.A.

C. Reimbursement

The DEVELOPER shall reimburse the COUNTY for a portion of the funds necessary for the COUNTY to complete the lift station improvements as detailed in approved construction plans. DEVELOPER shall reimburse COUNTY the sum of \$160,163.39, which is the agreed upon cost share to install the DEVELOPER provided materials and equipment listed in Exhibit "B".

D. Notice to Proceed

The COUNTY shall issue the contractor a Notice to Proceed (NTP) to perform the work upon receipt of the reimbursement detailed in 1.C. above from the DEVELOPER.

2. Amendment:

This Agreement may be modified only by a written instrument executed by all parties to the Agreement.

3. Authority:

Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

4. Captions:

Captions, if included, in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions.

5. Definition

All pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the party or parties may require.

6. DEVELOPER'S Obligations:

The procurement and installation of the DEVELOPER's obligations listed in Section A shall be the DEVELOPER's responsibility and expense until such time the completion of necessary testing, acceptance and dedication of the DEVELOPER's obligations listed in Section A to Indian River County Department of Utility Services (IRCDUS) per (IRCDUS) Water & Wastewater Utility Standards, May 2019 or latest edition. Installation of the generator shall be subject to COUNTY review and approval.

7. Entire Agreement

This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

8. Governing Law & Jurisdiction:

This Agreement shall be governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in such state, and all actions arising out of this Agreement shall be brought in Indian River County, Florida, or, in the event of federal jurisdiction, the United States District Court for the Southern District of Florida. All of the parties to this Agreement have participated freely in the

negotiation and preparation hereof. Accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

9. Insurance and Indemnification:

The DEVELOPER shall ensure that, at least ten (10) days prior to the commencement of any work by Developer, the selected contractor and any subcontractor provides to the COUNTY a certificate of commercial general liability insurance with a reputable insurance company subject to approval by the COUNTY's risk manager in an amount not less than \$3,000,000 combined single limit for bodily injury and property damage in accordance with the COUNTY'S Administrative Policy Manual. The DEVELOPER shall ensure that, at least ten (10) days prior to the commencement of any work the selected contractor and any subcontractor provides to the COUNTY a certificate of business auto liability insurance with a reputable insurance company subject to the reasonable approval by the COUNTY'S risk manager in an amount not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage in accordance with the COUNTY'S Administrative Policy Manual. The commercial general liability and auto liability insurance policies shall name Indian River County, a political subdivision of the State of Florida, as an additional insured. In addition, the DEVELOPER shall ensure that, at least ten (10) days prior to the commencement of any work the selected contractor and any subcontractor provides to the COUNTY a certificate of statutory workers' compensation insurance and employers' liability with a limit of \$100,000 for each accident, \$500,000 disease (policy limit) and \$100,000 disease (each employee) in accordance with the COUNTY'S Administrative Policy Manual. The DEVELOPER shall provide to the COUNTY at least thirty (30) days' written notice by registered mail, return receipt requested, addressed to the COUNTY'S risk manager, prior to cancellation or modification of any required insurance.

The DEVELOPER hereby releases and holds harmless the COUNTY, and the COUNTY'S officers, employees and agents, from and against any and all claims for damages, costs, third party claims, judgments, and expense to persons or property that may arise out of, or be occasioned by, any work performed by DEVELOPER pursuant to this agreement, or from any negligent act or omission of any representative, agent, client, and/or employee of DEVELOPER, and DEVELOPER shall indemnify the COUNTY against any such claims and any judgments that may be entered in connection therewith, including reasonable attorney fees. DEVELOPER shall indemnify the COUNTY against any claim for damage that any utility, whether publicly or privately owned, may sustain or receive in connection with any work performed by DEVELOPER pursuant to this agreement. It is the intention of this indemnification agreement on the part of DEVELOPER, and a condition of this agreement, that it shall be full and total indemnity against any kind or character of claim whatsoever that may be asserted against the COUNTY and arising from or related to any work performed by DEVELOPER pursuant to this agreement. DEVELOPER hereby agrees to defend any and all suits, claims, and causes of action brought against the COUNTY arising out of or in connection with any work performed by the DEVELOPER, and DEVELOPER agrees to pay any judgment or judgments, including attorney fees, that may be rendered against the COUNTY or against the COUNTY'S officers, employees or agents in connection therewith.

10. Multiple Counterparts:

This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) Agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party to be charged.

11. Permits:

The DEVELOPER shall be responsible for obtaining all construction and operating permits required for the installation of the DEVELOPER's obligations listed in Section A. If, through no fault of the parties involved, any federal, state or local government or agency (excluding the COUNTY) fails to issue necessary permits, or fails to grant necessary approvals, or requires a material change in the system, then to the extent necessary and if possible, the parties agree to negotiate an amendment to the Agreement to reflect the change in condition. If the COUNTY determines that it is impossible or impracticable to perform under the terms of this Agreement because of the above, then this Agreement shall terminate and the parties shall have no further obligations to each other.

The DEVELOPER shall comply with reasonable request by the COUNTY concerning on-site operations and maintenance prior to County acceptance.

12. Severability / Invalid Provision:

If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

13. Term:

The term of this Agreement is one (1) year. Unless otherwise agreed to by the parties in writing, this Agreement shall not be renewed automatically for successive terms. The County may terminate this Agreement early in its sole discretion if it determines that the development project intended to be served by the improvements is suspended or discontinued.

14. Time of Essence:

Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the State of Florida, then, in such event, the time of such period shall be extended to the next business day which is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the COUNTY and the DEVELOPER have accepted, made, and executed this Agreement as follows:

DEVELOPER:
Griffon Residences, LLC

By: Griffon Partners, LLC, its Managing Member

By: Crest Griffon, LLC, its Manager

By: _____
Printed name: David A. O'Brien , Manager

Date: _____

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

STATE OF ALABAMA
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2023, by David A. O'Brien, as Manager of Crest Griffon, LLC., as Manager of Griffon Partners, LLC, the Managing Member of Griffon Residences, LLC, who is personally known to me or who has produced _____ as identification.

Notary Public

Name: _____
Commission # _____
Expiration Date _____

IN WITNESS WHEREOF, the COUNTY and the DEVELOPER have accepted, made, and executed this Agreement as follows:

Attest: _____
Jeffery R. Smith, Clerk of the Circuit Court

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Joseph H. Earman, Chairman

Approved as to Form and Legal Sufficiency

BCC Approved: _____

Approved by:

Dylan Reingold, County Attorney

Michael Zito, Interim County Administrator

DRAFT