

FOURTH PHASE

**CASH DEPOSIT AND ESCROW AGREEMENT
FOR
RESTORATION**

**RE: WILD TURKEY SAND MINE
SP-MA-07-10-34 (2004120019-59695)**

THIS AGREEMENT is entered into this ____ day of _____, 2017, by and between **Wild Turkey Estates of Vero, L.L.C.**, a Florida limited liability company (Developer), **Duane C. Pankratz**, party posting security (Funder), and **INDIAN RIVER COUNTY**, a political subdivision of the State of Florida (County):

WITNESSETH:

WHEREAS, Developer is mining certain property within Indian River County and is required to post bonds insuring compliance with the requirements of the approved mining site plan; Indian River County Code Section 934.07; and restoration of the site; and

WHEREAS, in March, 2011, Funder posted \$83,867.74 cash to guarantee compliance with the restoration requirements of the approved mining site plan for Phase 1; and in May, 2011 the posted security was reduced to \$67,710.90 due to a portion of the restoration requirements being already posted with Sebastian River Improvement District for canal right-of-way restoration; and

WHEREAS, Phase 1 was restored to the satisfaction of the County based on site inspection and the posted funds were transferred to the second phase; and

WHEREAS, the second phase was restored to the satisfaction of the County based on site inspection, and the Developer transferred the entire \$67,710.90 cash from the second phase to the third phase; and

WHEREAS, the third phase has now been restored to the satisfaction of the County based on site inspection, and the Developer is now desirous to move into the fourth phase; and

WHEREAS, Developer and Funder wish to transfer the entire \$67,710.90 cash being held by County, from the third phase to the fourth phase,

NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth herein, and other good and valuable considerations, the parties hereto agree as follows:

1. The Developer and Funder agree to the transfer of the entire \$67,710.90 from the third phase to the fourth phase, as depicted on the attached map; said sum shall continue to be held in escrow by the County Office of Management and Budget (Escrow Agent), but earmarked/obligated for the fourth phase, subject to the terms, conditions and covenants of this escrow agreement as assurance that Developer shall perform in all respects the obligations of Indian River County Code Chapter 934 with respect to site restoration.

2. Upon completion of the restoration of each mine phase, the Developer or Funder may obtain a disbursement from the escrow account by making a written request to Indian River County's Community Development Director. The request shall specify the amount of disbursement, and shall be accompanied by a sealed certificate from Developer's engineer that the mine is in compliance and has been restored in accordance with the most recent set of plans approved and on file with the County.

3. Within seven (7) working days after receipt of a disbursement request, the Community Development Director shall cause an inspection of the work for which payment is sought. If the Community Development Director is satisfied in all respects with the condition of the site and certifications, the Community Development Director shall deliver written notice to disburse to the County Office of Management and Budget. Upon receipt of the notice to disburse, the Office of Management and Budget shall make the disbursement described therein directly to Funder (the party that posted the funds), or its legal representatives, heirs, successors or assigns, absent bankruptcy, court order, or an assignment.

4. Upon failure to perform all or any part of the obligations of restoration and reclamation, including, but not limited to mine abandonment prior to restoration, restoration not completed within the approved time frame, restoration not consistent with the restoration plan and Chapter 934 of the Indian River County Code, and restoration activity not consistent with permits issued by other jurisdictional agencies, the County may utilize escrowed funds to achieve restoration. All funds remaining in the escrow account at the time default is declared by the County shall be available for use by the County. Said funds shall be disbursed to the County upon receipt by the Office of Management and Budget of a certified copy of a resolution of the Board of County Commissioners stating that Developer has failed to comply with Indian River County Code Chapter 934 restoration conditions of the mining approval, and that said funds are necessary to achieve restoration. All funds disbursed to County in excess of the final amount determined necessary by the County shall be returned to Funder, its legal representatives, heirs, successors or assigns, absent bankruptcy, court order, or an assignment, at the completion of site restoration.

5. Any interest earned during the term of escrow, less administrative expenses, shall be disbursed at close of escrow unless necessary for County to utilize in cure of developer's default.

6. The funds deposited hereunder exist solely for the protection, use and benefit of the County and shall not be construed or intended in any way, expressly or impliedly, to benefit or secure payment to any contractor, subcontractor, laborer, materialman, architect, engineer, attorney or other party providing labor, material, supplies, or services to Developer and/or Funder while such funds remain subject to this escrow agreement. The County shall not be liable to any of the aforementioned parties for claims against the Developer relating to the approved mining site.

7. Alternate security, in the form of performance bonds or letters of credit, may be substituted with the approval of the County Attorney.

8. This Agreement is the full and complete understanding of the parties and shall not be construed or amplified by reference to any prior agreement, discussion, or understanding, except as specifically mentioned herein. This Agreement shall not be assigned without the express written approval of the County. Any amendment, deletion, modification, extension, or revision hereof or hereto shall be in writing, and executed by authorized representatives of each party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals. The effective date of this Agreement shall be the date of approval by the Board of County Commissioners.

Signed in the presence of:

sign name: Jennifer Solano
print name: Jennifer Solano

sign name: Jana Young
print name: Jana Young

Date: 8/31/17

**WILD TURKEY ESTATES OF VERO,
L.L.C., a Florida limited liability
company**

By: Duane C. Pankratz, Manager
Duane C. Pankratz, Manager

DEVELOPER

Signed in the presence of:

sign name: Jennifer Solano
print name: Jennifer Solano

sign name: Jana Young
print name: Jana Young

Date: 8/31/17

By: Duane C. Pankratz
Duane C. Pankratz

FUNDER

**BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

ATTEST: Jeffrey R. Smith, Clerk
of Court and Comptroller

BCC approved: _____

By: _____
Deputy Clerk

(SEAL)

OFFICE OF MANAGEMENT
AND BUDGET

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Michael Smykowski
OMB Director

By: _____
Dylan Reingold
County Attorney

