

C O P Y

project: Millstone Landing Phases 4-6
PD-04-04-08

AGREEMENT CONCERNING OFFSITE 23RD STREET SW ROADWAY IMPROVEMENTS (RE: RIGHT-OF-WAY PERMIT NO. 2016010115)

THIS AGREEMENT, made and entered into this 4th day of October, 2016 by and between **SLV MILLSTONE, L.L.C., a Delaware limited liability company**, having a mailing address of 591 W. Putnam Avenue, Greenwich, CT 06830, hereinafter referred to as "Developer," and **INDIAN RIVER COUNTY, a political subdivision of the State of Florida**, by and through its **Board of County Commissioners**, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, Developer, as a condition of project approval, is required to construct certain off-site improvements within the County right-of-way; and

WHEREAS, pursuant to Indian River County Code Section 312.11, and as a condition of County right-of-way permit #2016010115, Developer is required to post acceptable security in either the form of cash or a letter of credit from an acceptable lending institution, in the amount of 115% of the estimated costs of the proposed improvements, submitted by an engineer registered in the State of Florida to practice professional engineering, and approved by County, to guaranty installation and completion of the required improvements to the satisfaction of County; and

WHEREAS, Developer is in the process of working out the language with County with regard to a Developer's Agreement which would include the timing and construction of the 23rd Street SW roadway improvements under right-of-way permit #2016010115; and

WHEREAS, Developer is desirous of moving forward with its project and receiving final plat approval in advance of the Developer's Agreement being finalized; and

WHEREAS, as an inducement for the project to receive final plat approval, Developer has heretofore posted acceptable security in the form of a letter of credit, expiring 15 months from the date of issuance, in the amount of **\$295,307.58**, which is 115% of the estimated cost of construction of the required 23rd Street SW roadway improvements, a copy of the approved cost estimate is attached hereto as Exhibit "A"; and

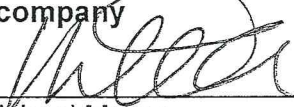
WHEREAS, once the Developer's Agreement has been finalized and executed, with the timing and construction of the required 23rd Street SW roadway improvements having been addressed in said Developer's Agreement, the Developer's Agreement will control, and the security posted under this Agreement will be released,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN CONTAINED, the parties agree as follows:


1. The above recitals form an integral part of this agreement.
2. The Developer and County agree that the timing and construction of the required 23rd Street SW roadway improvements as well as the posting of security to guaranty and warranty the roadway improvements will be controlled by the Developer's Agreement, which Developer's Agreement will be finalized in the future.
3. Once the Developer's Agreement is finalized and executed, the security posted under this Agreement will be released.
4. Should the Developer's Agreement not be finalized prior to the expiration of the letter of credit, Developer agrees to promptly have the letter of credit amended to extend the expiration date to a date agreeable by County, otherwise County shall take necessary action to call the letter of credit, with said funds being held in escrow until the Developer's Agreement is finalized. Alternatively, should Developer fail to enter into the Developer's Agreement, the Developer and the escrowed funds shall be jointly and severally liable to pay for the cost of construction and installment of the required 23rd Street SW roadway improvements to the final total cost, plus the warranty, including but not limited to engineering, construction, legal and contingent costs, including reasonable attorney's fees incurred by the County, together with any damages, either direct or consequential, which the County may sustain as a result of the failure of Developer.
5. Should Developer fail to enter into the Developer's Agreement, and the County calls the letter of credit, the parties agree that the County at its option shall have the right, but not the obligation, to construct and install or, pursuant to receipt of competitive bids, cause to be constructed and installed the required roadway improvements in the event Developer shall fail or refuse to do so. Developer shall remain wholly liable for any resulting deficiency, should the called funds be exhausted prior to completion of the required roadway improvements. In no event shall the County be obligated to expend public funds, or any funds other than those provided by the Developer to construct the required roadway improvements.
6. Security provided to the County by Developer with respect to this Agreement shall exist solely for the use and benefit of the County under the terms of this Agreement and shall not be construed or intended in any way, expressly or impliedly, to benefit or secure payment to any other party.
7. This agreement is the full and complete understanding of the parties and shall not be construed or amplified by reference to any other agreement, discussion, or understanding, whether written or oral, 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, executed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

SLV MILLSTONE, L.L.C., a Delaware limited liability company

By 
Michael Moser
Authorized Signatory
DEVELOPER

INDIAN RIVER COUNTY, FLORIDA

By: 
Bob Solari, Chairman
COUNTY

BCC approved: October 4, 2016



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

By:  Deputy Clerk

Approved as to Public Works matters:

By:  9/19/16
Rich Szpyrka, P.E.
Public Works Director

Approved as to form and legal sufficiency:

By: 
William K. DeBraal
Deputy County Attorney