

## **AGREEMENT FOR RELEASE OF ERUs**

**THIS AGREEMENT FOR RELEASE OF RESERVE ERUs** (hereinafter “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 (hereinafter “Effective Date”) by and between Indian River County, Florida, a political subdivision of the State of Florida (“County”) and \_\_\_\_\_, (hereinafter “Owner”).

**WHEREAS;** Owner voluntarily paid for and reserved capacity in the utility system with water and or sewer impact fees; and

**WHEREAS;** the County used the impact fee monies to expand its treatment system and distribution/collection system (the “System”) in order to provide the capacity reserved; and

**WHEREAS;** the County, in expanding the System, has and continues to incur various utilities-related costs (“Utility Costs”) to maintain the capacity reserved; and

**WHEREAS;** Owner is delinquent in payments to County for various Utility Costs associated with the property located at \_\_\_\_\_ (the “Property”);

**WHEREAS,** Owner desires to resolve the issues relating to the delinquent payments associated with the Property;

**NOW, THEREFORE,** in consideration of the foregoing and the mutual benefits, undertakings and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **Section 1. Adoption of “Whereas” Clauses.**

The above recitals are true and correct and are incorporated herein.

### **Section 2. Owner Payment to County.**

#### **Option 1.**

In the event that the value of the reserved ERUs is less than the amount of the outstanding charges, penalties, and interest owed to County, Owner shall pay County the difference between the value of the reserved ERUs and the amount of the outstanding charges, penalties and interest owed to County.

## **Option 2.**

Owner shall pay the County ten percent of the outstanding charges, including penalties and interest, as compensation for a portion of the Utility Costs experienced during the period of ownership of the ERUs through and including the release of said ERUs.

### **Section 3. Release of ERUs**

In addition to making the payment as set forth in section 2 above, Owner agrees to release all reserved ERUs, as such term is defined in section 201.01 of the Indian River County Code of Ordinances, associated with the Property. The impact fee value of the ERUs being released will be applied by the County first against any remaining utility costs owed to County and then to any remaining penalties and interest owed to the County associated with the Property. Once Owner has made the payment per section 2, above and released the ERUs per this section, then the County will release the lien associated with the delinquent account for the Property. By releasing these ERUs, Owner acknowledges and agrees that the utility entitlements are hereby released and relinquished for the Property. Any development of the Property will require the payment of utility impact fees.

### **Section 4. No Refund**

In exchange for the reduction of the outstanding amount owed to the County, the Owner agrees and acknowledges that Owner is not entitled to and will not receive any refund from the County.

### **Section 5. Recording.**

This Agreement shall be recorded in the Public Records of Indian River County and will run with the land. Owner shall pay for the costs of recording of the Agreement and the recording of any releases of lien.

### **Section 6. Release.**

Owner release, acquits, and forever discharges County, its commissioners, officers, employees, agents, representatives, and insurers, from all claims, causes of action, demands, debts, liabilities, and obligations, of every name and nature, known or unknown, asserted or unasserted, accrued or unaccrued, both at law or in equity, including any claims relating to the use of the impact fees associated with the ERUs, from the beginning of time to the Effective Date.

### **Section 7. Binding Effect.**

This Agreement is final and binding on the Owner and County, including their heirs, successors, and future assigns.

**Section 8. Governing Law; Venue; Attorney Fees.** This Agreement shall be construed, governed and interpreted according to the laws of the State of Florida. Venue for resolution of any dispute shall be in Indian River County, Florida. Owner and County shall bear their own attorney fees in any dispute arising under this Agreement.

**Section 9. Entire Agreement; Amendments.** This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by written amendment or other appropriate written document. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**Section 10. Sovereign Immunity.** Nothing herein shall constitute a waiver of the County's sovereign immunity.

**Section 11. No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement is solely for the benefit of the named parties, and no enforceable right or cause of action shall accrue hereunder to or for the benefit of any entity or individual not a named party hereto.

**IN WITNESS THEREOF**, the parties have set their hands and seals the date entered below.

**BOARD OF COUNTY COMMISSIONERS,  
INDIAN RIVER COUNTY ("Indian River  
County")**

By: \_\_\_\_\_  
Vincent Burke, Utilities Director

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Dylan Reingold  
County Attorney

**Witness:**

\_\_\_\_\_

**Owner**

By: \_\_\_\_\_  
\_\_\_\_\_ ,

Date: \_\_\_\_\_, 2019.