

Phases 2D and 2E

**CASH DEPOSIT AND ESCROW AGREEMENT
FOR
RESTORATION**

**RE: NORTH CYPRESS RESERVE SAND MINE
SP-MA-06-06-27 (2006030369-53634)**

THIS AGREEMENT is entered into this 24th day of July, 2018, by and between **North Cypress Reserve, Inc., a Florida corporation** (Developer), 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 security 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, on January 2, 2008, the Developer posted a SunTrust Bank Irrevocable Letter of Credit No. F851545 in the amount of \$169,590.00, representing \$155,400.00 as security for compliance of the entire site under the conditions of site plan approval and \$14,190.00 for Phase 1 restoration; and

WHEREAS, Phase 1 is now complete and the Developer is ready to move into Phases 2D and 2E, and wishes to transfer the \$14,190.00 earmarked in the letter of credit for Phase 1 restoration to Phases 2D and 2E restoration; and

WHEREAS, Phases 2D and 2E consist of a total of 20.72 acres, however under current Indian River County Code, only a maximum of 20 acres can be active, leaving the remaining 0.72 acres to be included in Phase 2C when that phase is ready to be excavated; and

WHEREAS, the total restoration amount for the 20 acres of Phases 2D and 2E is \$20,000.00 of which \$14,190.00 is allocated from the SunTrust Bank Irrevocable Letter of Credit No. F851545, leaving a shortfall of \$5,810.00; and

WHEREAS, Developer has been frustrated with the letter of credit amendment process through SunTrust Bank and does not wish to amend the existing letter of credit to both increase the shortfall and change the phasing, but would rather keep the existing SunTrust Bank Irrevocable Letter of Credit No.

F851545 in place AND post \$5,810.00 cash to make up the shortfall for the Phases 2D and 2E restoration; and

WHEREAS, Developer recognizes that despite the letter of credit not being amended to change the \$14,190.00 earmarked in the letter of credit for Phase 1 restoration to Phases 2D and 2E restoration, is agreeable and acknowledges that the \$14,190.00 is to now be used for Phases 2D and 2E restoration and if the County needs to call such funds, that the call language would coincide with the language recited in the SunTrust Bank Irrevocable Letter of Credit No. F851545,

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 acknowledges and agrees to the above recitals and they are true and correct.

2. The Developer has tendered to the County Office of Management and Budget (Escrow Agent) the sum of **Five Thousand Eight Hundred Ten and No/100 Dollars (\$5,810.00)**, the receipt whereof is hereby acknowledged, which sum shall be held in escrow by said Office, 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.

3. Upon completion of the restoration of each mine phase, the Developer 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.

4. 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 Developer, at the address specified in the request for disbursement.

5. Upon failure to comply with all the requirements of the site plan approval, including but not limited to unapproved off-site discharge of water, failure to confine hauling to approved hauling routes, operating in violation of the safety/security plan, excavating within required setbacks, mining of additional

phases prior to restoration of the previous phase, and activity not consistent with permits issued by other jurisdictional agencies; or if Developer fails 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 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 compliance or 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 site plan or restoration conditions of the mining approval, and that said funds are necessary to achieve compliance. All funds disbursed to County in excess of the final amount determined necessary by the County shall be returned to Developer, its legal representatives, successors or assigns, at the completion of site restoration, absent bankruptcy, court order, dissolution or an assignment.

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

7. 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 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.

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

9. 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:

**NORTH CYPRESS RESERVE, INC.,
a Florida corporation**

sign name: *Ann Perry*
print name: ANN PERRY

By: *Henry A Fischer*
printed name: Henry A Fischer
title: President & CEO
North Cypress Reserve, PNC
a Fla. Corporation

sign name: *Eric Fischer*
print name: Eric Fischer

Date: 7/19/2018



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

By: *Jason E. Brown*, ACA
for Jason E. Brown
County Administrator

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

Authority: Resolution No. 2018-060

By: *Ronald Warden*
Deputy Clerk

OFFICE OF MANAGEMENT
AND BUDGET

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: *Michael Smykowski*
Michael Smykowski
OMB Director

By: *William K. DeBraal*
William K. DeBraal
Deputy County Attorney

NORTH CYPRESS RESERVE, INC.

PAYROLL ACCOUNT
10729 US HWY 1
SEBASTIAN, FLORIDA 32958

SUNTRUST
ACH RT 061000104
63-215-631

7/19/2018

PAY TO THE ORDER OF INDIAN RIVER COUNTY

\$ **5,810.00

Five Thousand Eight Hundred Ten and 00/100 ***** DOLLARS

INDIAN RIVER COUNTY



AUTHORIZED SIGNATURE

MEMO Office of Management & Budget

Security features. Details on back.



NORTH CYPRESS RESERVE, INC.

INDIAN RIVER COUNTY

NORTH CYPRESS RESERVE

7/19/2018

5,810.00

N.CYPR"925361" PA

5,810.00