

**DEVELOPER’S AGREEMENT BETWEEN
INDIAN RIVER COUNTY
AND
INDIGO VERO, LLC**

THIS DEVELOPER’S AGREEMENT (Agreement) is made and entered into this ____ day of _____, 2023, by and between **INDIAN RIVER COUNTY, FLORIDA**, a political subdivision of the State of Florida, 1801 27th Street, Vero Beach, FL 32960 (“County”) and **INDIGO VERO, LLC**, a Florida limited liability company, 2061 Indian River Boulevard, Vero Beach, FL 32960 (“Developer”).

W I T N E S S E T H:

WHEREAS, Developer proposes to develop subdivision comprised of residential condominium and single family residences located at the eastern terminus of 46th Place East and south of Tracking Station Park in Indian River County, Florida, to be known as “Indigo Vero Beach” (“the Development”) on real property legally described as follows:

SEE EXHIBIT “A” ATTACHED HERETO AND MADE A PART HEREOF.

WHEREAS, the County and the Developer share mutual goals and have determined that they can assist each other with respect to roadway and drainage improvements, intersection improvements, and other improvements described herein and required as a condition of the Indigo Vero approval; and

WHEREAS, the County and the Developer desire to enter into this Agreement to set forth the terms and conditions to which they have agreed with respect to the matters contained herein;

NOW, THEREFORE, for and in consideration of these premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Developer do hereby covenant, stipulate, and agree as follows:

Recitals: The foregoing recitals are incorporated as if fully restated herein.

- a. Improvements: The Developer and County agree that the improvements described in Exhibit “B” shall be completed by the Developer (“the Improvements”) with an estimated time for completion of XXX subject to extension(s) resulting from matters outside the control of Developer (e.g. natural disasters and weather events, supply shortages, labor availability, etc.).
- b. Developer shall construct the Improvements in accordance with the approved plans, Indian River County Right-of-Way permit number 2021100436 and FDOT permit number 2023-A-490-00041 (access) and FDOT permit number 2023-D-490-00025 (drainage).

- c. County will be the permittee for any FDOT permit required and that the Developer will be responsible for obtaining the permit.
- d. The costs of the Improvements shall be apportioned such that the Developer shall pay for eighty percent (80%) of the total cost of the Improvements and County shall pay for twenty percent (20%) of the total cost of the Improvements. The parties agree that the estimate of costs attached hereto as Exhibit "C" represent amounts consistent with the intent of the parties.
- e. Developer shall post a construction bond as required by the Indian River County Code of Ordinances Chapter 312.11 -Performance Security.
- f. County will reimburse Developer for its agreed upon, proportionate share of the total cost of the Improvements upon the completion of the Improvements and the provision of evidence of payment for all costs and expenses associated with the Improvements. More specifically, Developer shall advance and pay all costs and expenses associated with the completion of the Improvements and shall obtain all releases and lien waivers from each party providing services, labor and/or materials for the completion of the Improvements. Upon the completion of the Improvements, Developer shall present evidence of payment and the aforementioned lien clearances to County who shall reimburse Developer for its agreed upon and proportionate share of the costs for the completion of the Improvements. County shall pay all amounts due Developer under this agreement within forty-five (45) days of the delivery of the documents and payment evidence required hereby.
- g. The County shall not withhold any approval or permit, nor shall it deny concurrency, because of the condition or state of any intersection in the County as long as the Developer is in compliance with this Developer's Agreement.
- h. County and Developer will coordinate construction schedules so that Tracking Station Park will be open for normal vehicular traffic during the regular, posted hours for park access. Closures of the park, if any, shall be coordinated with the County and posted at least fourteen (14) days in advance of the park closing. Developer shall provide for maintenance of traffic continuity as required by its construction schedules. Developer shall coordinate construction of 46th Place with adjacent business operators (CVS and 7-11) to keep the closure of each businesses ingress/egress driveways to a minimum and that any closures of the driveways be noticed to said operators in advance.
- i. In the event the Developer has not received its Land Development Permit, Certificate of Completion for Indigo Vero Beach or other administrative authorization(s) or permit(s) required for the completion of the Development by the time the County is ready to issue a Notice to Proceed with construction of the Improvements to the extent necessary and applicable, the Developer shall permit the County or the County's contractor, to construct the necessary Improvements and the County shall permit the Developer to do so as well.
- j. Compliance: All road construction by the Developer pursuant to this Agreement shall be in compliance with all applicable, governing standards.

Miscellaneous:

- A. In the event of any litigation arising out of this Agreement, the prevailing party shall recover attorneys' fees and costs from the non-prevailing party.
- B. No amendment, modification, change, or alteration of this Agreement shall be valid or binding unless accomplished in writing and executed by all of the parties hereto.
- C. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, and assigns.
- D. This Agreement contains the entire agreement and understanding between the parties. No representation, statement, recital, undertaking, or promise not specifically set forth herein shall be binding on any parties hereto. This Agreement shall not be effective unless signed by the Developer and the County.
- E. The obligations of the Developer to this Agreement are expressly conditioned upon the Developer's decision, at the Developer's sole discretion, to proceed with the development of Indigo Vero Beach.
- F. No Building Permit, Certificate of Completion, or Certificate of Occupancy shall be withheld or delayed by the County for Indigo Vero Beach or any portion thereof, nor shall the County delay or withhold any other required permits, provided that the Developer is in compliance with this Agreement, all applicable laws and regulations.
- G. Except as described herein, and in the plans submitted by the Developer and approved by the County, the County shall not require the Developer to construct, contribute to, or share in the costs of any off-site improvements other than the payment of impact fees.
- H. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Florida. Venue hereunder shall lie in Indian River County, Florida. Time shall be of the essence.
- I. This Agreement shall be deemed prepared jointly by each of the parties hereto and shall be construed on parity as between the parties. There shall be no canon of construction for or against any party by reason of the physical preparation of this Agreement.

- J. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural; and the masculine, feminine, and neuter genders shall each include the others.
- K. The County and the Developer shall grant such further assurances and provide such additional documents as may be reasonably required by one another from time to time, and cooperate fully with one another in order to carry out the terms and conditions hereof and comply with the express intention of this Agreement.
- L. Failure to insist upon strict compliance with any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.
- M. All words, terms, and conditions contained herein are to be read in concert each with the other, and a provision contained under one paragraph may be considered to be equally applicable under another in the interpretation of this Agreement.
- N. The words herein and hereof and words of similar import, without referenced to any particular section or subdivision of this Agreement, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.
- O. In the event any term, conditions, or clause of this Agreement is declared to be illegal or unenforceable by a court of competent jurisdiction, such declaration of illegality or unenforceability shall not affect or alter the legality or enforceability of any remaining term, condition, or clause hereof, provided of the parties, as set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Signed, sealed and delivered
in the presence of :

Print Name: _____ BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA.

Print Name: _____ By: _____
Joseph H. Earman, Chairman

Approved by:

BCC Approved: _____

John A. Titkanich, Jr., County Administrator

Approved as to Form and Legal Sufficiency

Attest: Ryan Butler, Clerk of Court
and Comptroller

William K. DeBaal, County Attorney

By: _____
Deputy Clerk

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization this _____ day of _____, 2023, by Joseph H. Earman, as Chairman of the Board of County Commissioners, who is personally known to me or who produced _____ as identification.

(Notary Seal)

Printed Name: _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

Print Name: _____ INDIGO VERO, LLC, a Florida limited liability company

Print Name: _____ By: _____
Yane F. Zana, Manager

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization this _____ day of _____, 2023, by Yane F. Zana as Manager of INDIGO VERO, LLC, a Florida limited liability company, who is personally known to me or who has produced _____ as identification.

(Notary Seal)

Print Name: _____
Notary Public
My Commission Expires:

Exhibit "A"
Legal Description

BEING A PARCEL OF LAND LYING IN THE EAST 10 ACRES OF GOVERNMENT LOT 1 (THE SAME BEING KNOWN AS THE GOVERNMENT TRACKING STATION), SECTION 20, TOWNSHIP 32, RANGE 40 EAST, INDIAN RIVER COUNTY, FLORIDA. THE BOUNDARY OF SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE SOUTHWEST CORNER OF SAID SECTION 20, RUN N89°42'15"E ALONG THE SECTION LINE 346.80 FEET, MORE OR LESS TO A CONCRETE MONUMENT MARKING THE SOUTHWEST CORNER OF AFORESAID GOVERNMENT TRACKING STATION FOR THE POINT OF BEGINNING OF THE PARCEL TO BE HEREIN DESCRIBED; THENCE RUN N00°13'15"E ALONG THE WEST LINE OF SAID TRACKING STATION, 197.00 FEET; THENCE RUN S89°15'45"E, 131.47 FEET; THENCE RUN N00°12'06"E 294.90 FEET; THENCE RUN N45°28'41 "E, 21.11 FEET; THENCE RUN S89°15'45"E 154.28 FEET; THENCE CONTINUE S89°15'45"E, 110.75 FEET, MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE MEANDER SOUTHEASTERLY ALONG THE MEAN HIGHWATER LINE, TO THE SOUTH LINE OF SAID SECTION 20; THENCE RUN S89°42'15"W ALONG THE SECTION LINE, 542.43 FEET TO THE POINT OF BEGINNING.

Exhibit "B"
Description of Improvements

Exhibit "C"
Opinion of Probable Costs of Improvements

COST ESTIMATE
46TH PLACE E IMPROVEMENTS
INDIGO

Item	Description	Quantity	Unit	Unit Price	Total Price
1000	Demo and Earthwork				
01	Mobilization	1.00	LS	10000.00	10,000.00
02	Maintenance Of Traffic	1.00	LS	15000.00	15,000.00
03	Maintenance Of Traffic	1.00	LS	12500.00	12,500.00
04	Silt Fence - Furnish And Install	700.00	LF	3.50	2,450.00
05	Construction Entrance	1.00	EA	4500.00	4,500.00
06	Other SWPP Requirements	1.00	EA	10000.00	10,000.00
07	Remove Asphalt	1,330.00	SQYD	4.50	5,985.00
08	Excavate Retention Pond	2.00	EA	11500.00	23,000.00
09	Grade ROW And Behind Curb	1.00	LS	8000.00	8,000.00
10	Grade Swale	300.00	LF	11.00	3,300.00
11	Remove Existing 2" WM	1.00	LS	3000.00	3,000.00
12	Remove Existing FM	1.00	LS	5000.00	5,000.00
13	Remove Base Rock	1,330.00	SQYD	8.00	10,640.00
14	Sod	3,540.00	SQFT	2.30	8,142.00
15	Irrigation Repair	1.00	LS	2000.00	2,000.00
				Total:	123,517.00
2000	Roadway				
01	1" FC-9.5 (TL-C Asphalt)	1,400.00	SQYD	35.00	49,000.00
02	2" Asphalt Pavement	1,450.00	SQYD	38.00	55,100.00
03	10" Coquina Base	1,600.00	SQYD	26.00	41,600.00
04	ERP-1 Prime	1,600.00	SQYD	1.00	1,600.00
05	12" Stabilized Subgrade	2,000.00	SQYD	7.50	15,000.00
06	Type F Curb	320.00	LF	36.50	11,680.00
07	Type D Curb	270.00	LF	28.00	7,560.00
08	6" Concrete Sidewalk In R/O/W	2,182.00	SQFT	10.50	22,911.00
09	6" Concrete Paving	300.00	SQFT	11.25	3,375.00
10	Handicap Ramps (with A.D.A.)	7.00	EA	1050.00	7,350.00
11	Concrete Flumes	3.00	EA	2125.00	6,375.00
12	Striping & Signage (Thermo)	1.00	LS	11250.00	11,250.00
13	Temp Asphalt Driveway	2.00	EA	6500.00	13,000.00
				Total:	245,801.00
3000	Drainage Items				
01	Type C Inlet	2.00	EA	8,700.00	17,400.00
02	Storm Sewer - 12 X 18" ERCP	161.00	LF	130.00	20,930.00
03	Mitered End Section	3.00	EA	1,950.00	5,850.00
				Total:	44,180.00
	Other				
01	Fence and Gate at Park	1.00	LS	35,000.00	35,000.00
02	Survey - Stake-out/ As-Builts	1.00	LS	25,000.00	25,000.00
03	Testing (Geotech)	1.00	LS	10000.00	10,000.00

04	Engineering Design and Inspections	1.00 LS	80000.00	80,000.00
			Total:	<u>150,000.00</u>

Summary

Total For Demo and Earthwork	123,517.00
Total For Roadway	245,801.00
Total For Drainage	44,180.00
Total For Other	150,000.00
Total:	<u>563,498.00</u>
Surety Amout (115%)	<u>648,022.70</u>

CERTIFICATE OF COST ESTIMATE

I, Joseph W. Schulke, A Florida registered engineer, License No. 47048, do hereby certify to Indian River County that a cost estimate has been prepared under my responsible direction for those improvements itemized in this exhibit. This estimate has been prepared, in part, to induce approval by the county of a cost estimate for the above referenced project, and for the purpose of establishing proper surety amounts associated therewith.

(Signature) _____ (Date)

Joseph W. Schulke, P.E., Florida Registered Engineer License No. 47048